DIGEST

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ADMINISTRATIVE LAW

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

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

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

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

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

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

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

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

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

There are varying degrees of familial relationships and Micronesian legislative bodies have consistently instructed the courts that not every family relationship requires disqualification. An affidavit, stating that an administrative decision-maker is a relative of a party, but not saying whether he is a near relative and failing to set out the degree of relationship, is insufficient to constitute a claim of statutory violation. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 92, 100 (Kos. S. Ct. Tr. 1987).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Cases involving effective denials by administrative bodies generally arise where the administrative body fails to take steps to provide an administrative remedy. Doone v. Chuuk State Election Comm'n, 16 FSM R. 459, 462 (Chk. S. Ct. App. 2009).

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

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

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

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

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

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

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

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

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

When the FSM civil rights statute is not as expansive as 42 U.S.C. § 1988 because it allows an attorney's fee award only in an action brought under 11 F.S.M.C. 701(3) and when an "action" is a court case while a "proceeding" includes both administrative and judicial proceedings, 11 F.S.M.C. 701(3) does not authorize the award of attorney's fees for administrative proceedings, even for administrative proceedings that were a prerequisite to a later court action (the exhaustion of administrative remedies requirement). It authorizes an attorney's fee award only for actions (court cases) brought under 11 F.S.M.C. 701(3). Poll v. Victor, 18 FSM R. 402, 405 (Pon. 2012).

Due process would seem to require a prompt post-seizure hearing before the administrative agency that has administratively levied execution of unpaid taxes. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 155 (Chk. 2013).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

– Administrative Procedure Act

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

Where there is a conflict between a statute of general application to numerous agencies or situations, such as the APA, and a statute specifically aimed at a particular agency or procedure, such as the National

Election Code, the more particularized provision will prevail. This rule is based upon recognition that the legislative body, in enacting the law of specific application, is better focused and speaks more directly to the affected agency and procedure. Olter v. National Election Comm'r, 3 FSM R. 123, 129 (App. 1987).

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

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

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

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

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

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

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

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

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

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

Although a hearing officer has the discretion to decide which recording method to use, stenographic or

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

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

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

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

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

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

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

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

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

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

– Exhaustion of Remedies

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

1996).

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

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

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

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

The doctrine of exhaustion of administrative remedies requires that no one is entitled to bring a land dispute to court until the Land Commission has been given a chance to decide the case because the Land Commission is the proper forum for the determination of land ownership. Choisa v. Osia, 8 FSM R. 567, 569 (Chk. S. Ct. Tr. 1998).

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

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

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

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

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

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

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

Exhaustion of remedies means that one must follow whatever procedures are in place to seek

reconsideration of an agency's allegedly erroneous decision (within the agency itself) or to seek the decision's reversal at the administrative level (often by the executive body overseeing the agency) before bringing the dispute to the judiciary's attention. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 89 (Pon. 2003).

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

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

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

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

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

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

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

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

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

The doctrine of exhaustion of remedies requires that a potential plaintiff follow whatever procedures are in place to seek reconsideration of an agency's allegedly erroneous decision before bringing the dispute to the attention of the judiciary. It is incumbent on parties to exhaust administrative procedures concerning their disputes as designated by applicable state law before coming to court, unless and until the state law is

judged invalid. Smith v. Nimea, 16 FSM R. 186, 190 (Pon. 2008).

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

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

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

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

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

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

If the Director had jurisdiction, the plaintiff's claims are statutorily barred for his failure to appeal the Director's decision to the Pohnpei Supreme Court trial division within 15 days, but if the Director had no jurisdiction, then the plaintiff has clearly failed to exhaust his administrative remedies, meaning that the plaintiff may not yet come to court on the claims for unpaid wages, overtime and wrongful termination. Smith v. Nimea, 17 FSM R. 284, 288 (Pon. 2010).

Failure to exhaust administrative remedies is an affirmative defense which a defendant must plead and prove. But when a complaint has been filed and it appears that the plaintiff may not have exhausted his administrative remedies, the court may, in its discretion, stay the matter to allow the plaintiff to first pursue his administrative remedies and if he remains aggrieved, the court can then lift the stay and allow the

litigation to proceed. Aunu v. Chuuk, 18 FSM R. 48, 50 (Chk. 2011).

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

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

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

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

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

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

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

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

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

When a complaint has been filed and it appears that the plaintiff may not have exhausted his administrative remedies, the court may, in its discretion, stay the matter to allow the plaintiff to first pursue his administrative remedies and if he remains aggrieved, the court can then lift the stay and allow the litigation to proceed. Preferably, the court may dismiss the petition without prejudice allowing the plaintiff to refile so that the litigation's pleading might accurately reflect the administrative deficiency with new and

accurate pleadings. Ramirez v. College of Micronesia, 20 FSM R. 254, 261 (Pon. 2015).

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

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

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

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

The difference between the exhaustion of remedies doctrine and the primary jurisdiction doctrine is that exhaustion applies where the claim is cognizable by the administrative agency alone because Congress has expressly removed the subject matter from the court and replaced it with an exclusive administrative remedy. Primary jurisdiction, on the other hand, applies where a claim is originally cognizable in the court, and the administrative remedy is considered a cumulative remedy. Technically, under primary jurisdiction, either remedy may be pursued at the plaintiff's election, but public policy nevertheless requires that the matter be first placed within the administrative body's competency. Ramirez v. College of Micronesia, 20 FSM R. 254, 262 (Pon. 2015).

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

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

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

Exhaustion of remedies means that one must follow whatever procedures are in place to seek reconsideration of an agency's allegedly erroneous decision (within the agency itself) or to seek reversal of the decision at the administrative level (often by the executive body overseeing the agency) before bringing

the dispute to the judiciary's attention. Eperiam v. FSM, 20 FSM R. 351, 355 (Pon. 2016).

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

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

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

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

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

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

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

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

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

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

The failure to exhaust administrative remedies is an affirmative defense that ordinarily must be pled in

the answer or it is deemed waived. Basu v. Amor, 22 FSM R. 557, 563 (Pon. 2020).

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

A government official's decision or a government agency's decision, that an aggrieved party considers to be "wrong" or "incorrect," on the law or the facts does not automatically entitle that party to skip or avoid administrative proceedings and head straight to court alleging a civil rights violation so that the court will apparently have jurisdiction and the administrative agency will not. Thus, an additional pleading of a civil rights cause of action will not automatically preclude a remand (and a stay) to exhaust administrative proceedings. Basu v. Amor, 22 FSM R. 557, 567-68 (Pon. 2020).

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

– Judicial Review

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

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

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

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

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

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

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

The fact that some provisions of the APA are overridden by the National Election Code does not

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

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

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

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

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

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

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

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

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

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

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

(App. 1989).

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

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

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

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

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

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

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

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

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

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

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

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

When an appeal from an administrative agency decision involves an issue of extreme time sensitivity and of national importance that ultimately would have to be decided by the appellate division the court may

allow a direct appeal to the appellate division. Robert v. Mori, 6 FSM R. 394, 397 (App. 1994).

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

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

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

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

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

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

An appeal from the land commission will be on the record unless the court finds good cause for a trial of the matter. At a trial de novo the parties may offer any competent evidence, including the record of proceedings before the land commission, but the question of whether the commission considered the evidence submitted to it is not normally a part of judicial scrutiny. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 35 (Kos. S. Ct. Tr. 1997).

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

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

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

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

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

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

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

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

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

The standard required for the review of a Land Commission decision by the Chuuk State Supreme Court trial division is whether the decision of the Land Commission is supported by substantial evidence. Nakamura v. Moen Municipality, 8 FSM R. 552, 554 (Chk. S. Ct. App. 1998).

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

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

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

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

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

Under Title 18, there is no limitation on the court's jurisdiction to hear claims based upon a grievance

filed by a former employee of the Executive Branch. Abraham v. Kosrae, 9 FSM R. 57, 61 (Kos. S. Ct. Tr. 1999).

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

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

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

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

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

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

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

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

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

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

In an appeal from an administrative agency under 10 Y.S.C. 164, judicial review is be confined to the

record, and upon any party's request, the court will receive briefs and hear oral argument, and the court also may, in it discretion, receive any evidence necessary to supplement the record. International Bridge Corp. v. Yap, 9 FSM R. 390, 394-95 (Yap 2000).

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

The standard for judicial review of an agency decision under 10 Y.S.C. 165 is the court may reverse or modify the agency's decision, or remand the case for further proceedings if the petitioner's substantial rights have been prejudiced because the agency's decision is a) in violation of applicable constitutional or statutory provisions; b) in excess of the agency's statutory authority; c) made upon unlawful procedure; d) affected by other error of law; e) clearly erroneous in view of the reliable, probative and substantial evidence in the whole record; or f) arbitrary, capricious, or characterized by abuse of discretion. International Bridge Corp. v. Yap, 9 FSM R. 390, 396 (Yap 2000).

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

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

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

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

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

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

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

Although the land commission may appoint a land registration team to conduct hearings and

adjudicate the parties' competing claims, the land registration team's determination, including the record upon which it is based, is not the final determination of ownership. Rather, it is the subsequent action of the land commission that establishes a determination of ownership and which is, in turn, subject to judicial review. In re Lot No. 014-A-21, 9 FSM R. 484, 493 (Chk. S. Ct. Tr. 1999).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Under Chuuk election law, once the votes are tabulated and certified, the Election Commission does not have the power to grant a recount request unless ordered to do so by "a court of competent jurisdiction." It can only deny a recount request and a contestant's only recourse then is an appeal to a court of competent jurisdiction. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 154 (Chk. S. Ct. App. 2001).

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

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

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

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

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

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

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

When the Land Commission reasonably assessed the evidence with respect to who owned the land, its findings are not clearly erroneous, and when those findings are that Ittu never took back ownership of the land, the Land Commission did not reach the issue of applying Kosrae tradition and thus properly resolved that legal issue and did not exceed its constitutional authority. That Land Commission decision will be affirmed. Anton v. Heirs of Shrew, 10 FSM R. 162, 165 (Kos. S. Ct. Tr. 2001).

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

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

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

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

On appeal, the Kosrae State Court may not substitute its judgment for those Land Commission findings

which are based upon a reasonable assessment of the evidence. Taulung v. Jack, 11 FSM R. 345, 348 (Kos. S. Ct. Tr. 2003).

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

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

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

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

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

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

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

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

A motion to amend a complaint to add the FSM as a party will be granted when the original complaint was an appeal of a Pohnpei state administrative decision and when a related FSM administrative decision involving the plaintiff's related tax matters was recently issued since, as the plaintiff asserts that Pohnpei and the FSM are inconsistently interpreting tax laws, it seeks to add the FSM as a defendant so that both Pohnpei and the FSM will be required to tax it uniformly, without potentially subjecting it to double tax

liability. Judicial economy weighs in favor of permitting plaintiff to file its amended complaint and consolidate the appeals of inconsistent Pohnpei and FSM administrative decisions. Truk Trading Co. (Pohnpei) v. Department of Treasury, 12 FSM R. 1, 2-3 (Pon. 2003).

Where the provisions of former Kosrae State Code, Title 11, Chapter 6, were applicable to the Land Commission proceedings now on appeal, the court will apply the provisions of former Kosrae State Code, Title 11, Chapter (repealed) to its review of the Land Commission's procedure and decision in the matter. Tulenkun v. Abraham, 12 FSM R. 13, 15-16 (Kos. S. Ct. Tr. 2003).

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

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

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

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

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

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

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

Given the absence in the statute of any express language limiting the court's jurisdiction, the 60 day period for filing a petition in the FSM Supreme Court trial division to appeal a final order of the Social Security Administration is a statute of limitations. As such, it is one of the specifically enumerated defenses under FSM Civil Rule 8(c) that may be raised in the answer. The time limit does not affect the court's subject matter jurisdiction. Andrew v. FSM Social Sec. Admin., 12 FSM R. 78, 81 (Kos. 2003).

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

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

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

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

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

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

When a plaintiff files a lawsuit against a Pohnpei state employee or public officer arising out of an act or omission within the scope of his or her public duties or employment either in his or her official capacity or as an individual, and that lawsuit alleges any tort, tax or contract claims, claims for injuries or damages, or actions which seek injunctive relief or writ of mandamus, the state itself must also be named as a defendant, but in an appeal from an administrative agency decision, the plaintiff is permitted, but not required, to name the state as a party to the action. Cuipan v. Pohnpei Foreign Inv. Bd., 12 FSM R. 184, 185 (Pon. 2003).

When the Pohnpei Foreign Investment Board's letter states that the plaintiff is ordered to cease and desist from engaging in business and must surrender her Foreign Investment Permit, the clear implication of the Board's letter is that its revocation decision is effective immediately with no indication that those "orders" would take effect only at the expiration of a 20-day period. Thus, having failed to inform plaintiff of the 20-day waiting period, and having improperly indicated that its revocation decision was immediately effective, the Board cannot rely on the 20-day statutory period to appeal as a basis for dismissing this

appeal. To the extent that it functions as a statute of limitation, it begins to run when a permit holder is notified of a Board decision and informed that the decision will become effective in 20 days if not appealed. Cuipan v. Pohnpei Foreign Inv. Bd., 12 FSM R. 184, 186 (Pon. 2003).

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

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

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

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

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

The Kosrae State Court must hear an appeal from the Land Commission on the record unless it finds good cause exists for a trial of the matter. The Land Commission's failure to follow the Kosrae Rules of Evidence does not constitute good cause for a trial *de novo* because those rules do not apply in the Land Commission. Anton v. Cornelius, 12 FSM R. 280, 286 (App. 2003).

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

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

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

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

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

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

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

An appeal from a Social Security Board decision will be determined on the record below and not on a trial de novo because, under 53 F.S.M.C. 708, the Board must certify and file in court a copy of the record. The Board's findings as to the facts, if supported by competent, material, and substantial evidence, will be conclusive. If either party applies for leave to adduce additional material evidence, and shows to the court's satisfaction that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives and that such evidence is competent, material, and substantial, the court may order the Board to take the additional evidence to be adduced upon the hearing in such manner and upon such conditions as the court considers proper. Clarence v. FSM Social Sec. Admin., 12 FSM R. 635, 636 (Kos. 2004).

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

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

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

trial court's disposition of the appeal on the record is final, subject to review by the Supreme Court appellate division. Clarence v. FSM Social Sec. Admin., 13 FSM R. 150, 152 (Kos. 2005).

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

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

The primary forum in which election contests must run their course is the election administrative machinery created by Congress. Constitutions and statutes provide, as a part of the machinery of elections, a procedure by which election results may be contested. Such contests are regulated wholly by the constitutional or statutory provisions. A strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are powerless to entertain such proceedings. Wiliander v. National Election Dir., 13 FSM R. 199, 203 (App. 2005).

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

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

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

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

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

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

The proper standard for judicial review of agency (including Land Commission) decisions is that the reviewing court shall declare unlawful and set aside agency action, findings and conclusions found to be

unsupported by substantial evidence. Nakamura v. Moen Municipality, 15 FSM R. 213, 217 (Chk. S. Ct. App. 2007).

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

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

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

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

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

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

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

When the appellants took no action beyond filing their October 17, 2001 notice of appeal; when a November 19, 2003 order placed on the appellants the responsibility for ordering and obtaining a transcript of the Land Commission proceedings; when the November 19, 2003 order required the appellants to comply with the Appellate Procedure Rules 10 and 11 no later than December 19, 2003; when the appellants had every opportunity to comply with the November 19, 2003 order since the Land Commission transcript had been transmitted to the court on October 24, 2001, and was available for them to order and obtain after that date; when a March 28, 2007 order restated the appellants' obligation to comply with the

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

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

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

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

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

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

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

When an agency failed to substantially comply with the procedures required by law through the hearing officer's failure to prepare a full written statement of his findings of fact and his decision and the agency's failure to make a record of the hearing proceedings, either stenographically or by recording machine, the court will set aside the agency order. Ruben v. FSM, 15 FSM R. 508, 517 (Pon. 2008).

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

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

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

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

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

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

A claims denial made before the due date to submit supporting documents is arbitrary and capricious and will be vacated by the court and remanded for further proceedings. Alokoa v. FSM Social Sec. Admin., 16 FSM R. 271, 277 (Kos. 2009).

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

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

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

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

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

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

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

Before the appellate division proceeds to the merits of any action filed as an election contest, the court should determine if it has subject matter jurisdiction because the appellate division has jurisdiction over election contests only to the extent that a constitutional or statutory provision expressly or impliedly gives it that authority. Rayphand v. Chuuk State Election Comm'n, 16 FSM R. 540, 542 (Chk. S. Ct. App. 2009).

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

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

When there were no valid certificates of title for the land at the time of the Land Commission decision,

the decision was a determination from which any party aggrieved thereby had 120 days to appeal, and, as such, the Chuuk State Supreme Court's trial division could exercise review jurisdiction over a timely appeal from that Land Commission decision, and the appellate division could exercise review jurisdiction over a timely appeal from the trial division review decision. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 553 (Chk. S. Ct. App. 2009).

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

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

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

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

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

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

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

The court will not attach any deference to a state agency's findings of fact when the defendant was never a party to any proceeding in that agency and was not even aware of the proceeding and no state agency ever initiated any action against the defendant or imposed any fines or penalties on it and when this court case is not a judicial review of an adversarial agency action so the agency report is not entitled to the

judicial deference given such agency action. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 175 (Yap 2012).

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

Under Title 52, when the FSM Supreme Court's review is for the sole purpose of preventing statutory, regulatory, and constitutional violations, review of the factual findings is limited to determining whether substantial evidence in the record supports the administrative official's conclusion that a violation justifying termination has occurred. The court is thus required to uphold the President's findings of fact if there is substantial evidence in the record to support them. Poll v. Victor, 18 FSM R. 235, 239 (Pon. 2012).

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

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

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

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

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

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

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

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

(Pon. 2013).

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

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

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

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

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

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

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

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

The Chuuk State Supreme Court trial division certainly has jurisdiction to consider an attack on a Land Commission determination of ownership as void due to the lack of notice of the formal hearings and lack of

notice of the issuance of the determination of ownership because the Chuuk State Supreme Court has jurisdiction to review administrative agency decisions as provided by law, its trial division can exercise appellate review of Land Commission decisions. Aritos v. Muller, 19 FSM R. 533, 537 (Chk. S. Ct. App. 2014).

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

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

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

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

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

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

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

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

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

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

GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 551, 556 (Pon. 2014).

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

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

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

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

Under 53 F.S.M.C. 708, an appeal to the FSM Supreme Court trial division from a Social Security Board final order is on the record except when a person aggrieved by the order makes a showing that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives. In that event, the party may apply to the court for leave to adduce additional material evidence. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 199 (Pon. 2015).

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

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

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

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

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

concurrent jurisdiction. Ramirez v. College of Micronesia, 20 FSM R. 254, 262 (Pon. 2015).

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

The difference between the exhaustion of remedies doctrine and the primary jurisdiction doctrine is that exhaustion applies where the claim is cognizable by the administrative agency alone because Congress has expressly removed the subject matter from the court and replaced it with an exclusive administrative remedy. Primary jurisdiction, on the other hand, applies where a claim is originally cognizable in the court, and the administrative remedy is considered a cumulative remedy. Technically, under primary jurisdiction, either remedy may be pursued at the plaintiff's election, but public policy nevertheless requires that the matter be first placed within the administrative body's competency. Ramirez v. College of Micronesia, 20 FSM R. 254, 262 (Pon. 2015).

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

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

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

Since the College of Micronesia is an agency and instrumentality of the government, the Administrative Procedures Act should apply to all COM board decisions including employment disputes. Accordingly, a COM employee is required to bring his grievances to the agency tribunal, as the court of first instance under the primary jurisdiction doctrine, and complete the administrative procedures before the FSM Supreme

Court will adjudicate the complaint. Ramirez v. College of Micronesia, 20 FSM R. 254, 263 (Pon. 2015).

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

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

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

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

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

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

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

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

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

Sec. Admin., 20 FSM R. 268, 275 (Pon. 2015).

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

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

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

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

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

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

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

The Social Security Board's findings as to the facts, if supported by competent, material, and substantial evidence, is conclusive. If either party applies to the court for leave to adduce additional material evidence and shows to the court's satisfaction that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives, and that such evidence is competent, material, and substantial, the court may order the Board to take additional evidence to be adduced in the hearing in such manner and upon such conditions as the court considers proper. The Board may modify its findings and order after receipt of further evidence together with any modified or new

findings or order. The court's judgment on the record shall be final, subject to review by the Supreme Court appellate division on any aggrieved party's petition, including the Board's, within 60 days from judgment. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 366, 372 (Pon. 2016).

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

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

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

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

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

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

When the causes of action alleged and the factual averments in support are vague and lack the particularity which would place defendants on notice about what to respond to and thereby interpose an answer; when simply claiming the plaintiff's termination was based on "petty and insufficient reasons," without citing to the purported failings within the relevant Administrative Review Decision that approved the employee's dismissal, is inadequate; when the causes of action based on an alleged statutory or regulatory violation additionally lack this underpinning; and when absent articulating how the defendants' conduct constituted an "unlawful termination," the causes of action sounding in a violation of substantive due process and civil rights also fail to survive, the court will grant a motion to dismiss for failure to state a claim upon which relief can be granted. Solomon v. FSM, 20 FSM R. 396, 403 (Pon. 2016).

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

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

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

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

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

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

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

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

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

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

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

Judicial review of an agency decision is confined to the record. Although the court may receive briefs,

hear oral argument, and receive supplemental evidence, the court cannot substitute its judgment for that of the agency on factual questions and must give appropriate weight to the agency's experience, technical competence, and specialized knowledge. Celestine v. FSM Social Sec. Admin., 21 FSM R. 263, 268 (Pon. 2017).

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

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

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

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

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

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

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

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

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

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

In reviewing the evidence in the record below, the court must recognize that it is primarily Social Security's task to assess the witnesses' credibility, the admissibility of evidence, and to resolve factual disputes since substantial evidence is a deferential standard, which is more than a scintilla or some evidence, but less than a preponderance of evidence. The court does not assume the fact-finder's role, since the issue is purely one of law. Hadley v. FSM Social Sec. Admin., 21 FSM R. 420, 428 (App. 2018).

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

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

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

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

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

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

595 (Pon. 2018).

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

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

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

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

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

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

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

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

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

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

The standard of judicial review of a Board of Trustees of the Pohnpei State Public Lands Trust decision is a very deferential one, and affirmance of the Board's decision is mandated except when that decision is arbitrary, capricious, an abuse of discretion, unlawful, unsupported by substantial evidence, or the Board

has committed prejudicial error (that is, an error that was not harmless error). If a Board decision has a rational basis and was not made through an unlawful procedure or contrary to law, it must be affirmed. That is a high hurdle to clear. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 203, 206-07 (Pon. 2019).

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

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

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

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

– Rules and Regulations

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

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

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

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

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

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

Lack of structure in a statute can be remedied by agency regulations that support, rather than distort,

the statutory language of the legislature. Klavasru v. Kosrae, 7 FSM R. 86, 91 (Kos. 1995).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A public service system employee's claim or disagreement over the employee's pay, working conditions, or status is a grievance for which the Truk Public Service System Act requires that regulations prescribe a system for hearing. The Truk Public Service Regulations provide for a Truk Public Service Grievance System that covers any employment matter of concern or dissatisfaction to an eligible employee. The regulations contain two grievance procedures, an informal grievance procedure, and a formal grievance procedure. An employee must show evidence of having pursued the employee's grievance

informally before the employee can utilize the formal grievance procedure. Weriey v. Chuuk, 16 FSM R. 329, 331 (Chk. 2009).

While the Pohnpei PL&MD Division must establish procedures to ensure compliance with the Pohnpei Residents Employment Act of 1991 and the rules and regulations promulgated thereunder, the statute does not mention a "Chief of the Division," and where the Division of PL&MD is mentioned specifically, it is specifically envisioned that the Division must establish procedures to ensure compliance. By providing the Division with the responsibility for making the rules, the Act nevertheless does not empower only the Division to ensure compliance. Rather, it establishes that responsibility as part of the overall effort to ensure compliance and the statute vests the power of the final decision for effecting compliance with the Director, not the Division or its Chief. Smith v. Nimea, 17 FSM R. 125, 130 (Pon. 2010).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Regulatory language is interpreted in the same way that statutory language is. Ramirez v. College of

Micronesia, 20 FSM R. 254, 264 (Pon. 2015).

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

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

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

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

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

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

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

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

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

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

Regulations may provide convenient remedies for the protection of the right secured and regulating the claim of citizenship so that its exact limits may be better known and understood, but any such legislation or

regulation must be subordinate to the constitutional provision and in furtherance of its purpose, and must not, in any particular, attempt to narrow or embarrass it. Hartmann v. Department of Justice, 21 FSM R. 468, 476 (Chk. 2018).

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

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

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

– Statutory Construction

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

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

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

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

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

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

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

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

(App. 1987).

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

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

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

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

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

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

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

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

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

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

Kosrae Island Resource Management Authority is statutorily required to adopt regulations necessary for the protection and sustainable commercial harvesting, commercial processing, and commercial exportation of sea cucumbers, and to effect this regulatory scheme, the statute vests KIRMA with the authority to issue commercial sea cucumber permits and requires that those making commercial use of sea

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

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

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

ADMIRALTY

The concept of admiralty is related uniquely to the law of nations. It consists of rules in large part intended to govern the conduct of various nations in their shipping and commercial activities. Lonno v. Trust Territory (I), 1 FSM R. 53, 71 (Kos. 1982).

Where a vessel has been arrested pursuant to a warrant, a post-seizure hearing is required by the constitutional guarantee of due process. FSM v. M.T. HL Achiever (II), 7 FSM R. 256, 257 (Chk. 1995).

Proceedings concerning the arrest or release of a vessel should take place in the civil action in which it is a defendant, not in a related criminal case. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 474 n.4, 475 n.5 (App. 1996).

Whenever an asserted maritime counterclaim arises out of the same transaction or occurrence as the original maritime action, and the defendant or claimant in the original action has given security to respond in damages, any plaintiff for whose benefit such security has been given shall give security in the usual amount and form to respond in damages set forth in such counterclaim, unless the court, for cause shown, directs otherwise. Proceedings on the original claim shall be stayed until such security is given, unless the court otherwise directs. FSM v. Kana Maru No. 1, 14 FSM R. 365, 366-67 (Chk. 2006).

When the defendants have not yet given any security for the plaintiff's benefit no countersecurity bond will be required for a fishing boat's counterclaims because the defendants have not complied with Rule E(6)(d)'s prerequisite for countersecurity. Countersecurity will only be required of a plaintiff when there are counterclaims against any plaintiff for whose benefit security has been given. FSM v. Kana Maru No. 1, 14 FSM R. 365, 367 (Chk. 2006).

If there is a conflict between the Supplemental Admiralty and Maritime Rules and Title 24, then Title 24 must prevail because the Constitution permits the Chief Justice to promulgate procedural rules, which Congress may amend by statute and since Congress has the authority to amend or create procedural rules by statute (and when Congress has enacted a procedural rule, it is valid) and the Chief Justice does not have the authority to amend Congressionally-enacted statutes, if the statute applies and the statute and the rule conflict, the statute must prevail. FSM v. Kana Maru No. 1, 14 FSM R. 365, 367 n.1 (Chk. 2006).

The court will not direct that the government provide countersecurity under the admiralty rules for a defendant's counterclaims in an fishing boat seizure case. FSM v. Kana Maru No. 1, 14 FSM R. 365, 367 (Chk. 2006).

In generally accepted admiralty practice, a letter of undertaking becomes the substitute *res* for a vessel in lieu of the vessel's seizure, providing the court with *in rem* subject matter jurisdiction. People of Rull ex

rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 414 (Yap 2006).

Although Section 1306 of Title 19 of the FSM Code authorizes the Secretary of the Department of Transportation, Communication and Infrastructure to investigate violations, there is no provision in Title 19 that prescribes what action shall be taken if an investigation is not undertaken. As such, the requirement that an investigation be undertaken prior to the filing of an information is not mandatory. FSM v. Zhang Xiaohui, 14 FSM R. 602, 611 (Pon. 2007).

A master of a vessel that is within FSM waters must render assistance to any person who is found at sea and in distress or in danger of being lost at sea if this assistance can be rendered without endangering the vessel, crew or passengers. FSM v. Zhang Xiaohui, 14 FSM R. 602, 614 (Pon. 2007).

When the unit of prosecution for 19 F.S.M.C. 425, as reflected in the legislative intent, is that there be a punishment for each violation of the law, as it relates to each person who is found at sea and who is in distress or capable of being lost at sea, but is denied assistance, the double jeopardy clause of the FSM Constitution, which parallels the double jeopardy clause of the United States Constitution, is not violated when a defendant, who commits the single act of failing to render assistance to a boat carrying four people – all of whom are purportedly in distress – is charged with four counts of violating the 19 F.S.M.C. 425. FSM v. Zhang Xiaohui, 14 FSM R. 602, 617 (Pon. 2007).

A proctor in admiralty is a lawyer engaged in admiralty practice. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 70 n.6 (Yap 2007).

Interlocutory appeals in civil admiralty and maritime cases may be made under Appellate Rule 4(a)(1)(D) but that rule does not apply in a criminal case. Zhang Xiaohui v. FSM, 15 FSM R. 162, 166 n.1 (App. 2007).

Although the court must first look to FSM sources of law rather than begin with a review of cases decided by other courts when the FSM Supreme Court has not previously construed an FSM Supplemental Admiralty and Maritime Rule which is identical or similar to a U.S. counterpart, the court may consult U.S. sources construing the U.S. rule. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 633, 635 n.1 (Yap 2009).

The Civil Rule 55(a) twenty-day time limit does not apply in an admiralty case where the court is able to exercise personal jurisdiction over the *in personam* defendants under the long-arm statute. People of Tomil ex rel. Mar v. M/V Mell Sentosa, 17 FSM R. 478, 479 (Yap 2011).

The applicable time frame before a default can be entered in an admiralty case is the thirty-day time period to answer or otherwise defend found in 4 F.S.M.C. 204(3) and in Supplemental Admiralty and Maritime Rule B(2)(b). People of Tomil ex rel. Mar v. M/V Mell Sentosa, 17 FSM R. 478, 479 (Yap 2011).

When, because the thirty-day time period applies, the defendants still have time within which to respond to the plaintiffs' complaint, the plaintiffs' requests for entries of default will be denied, and since no default will be entered, the plaintiffs' motion for a default judgment must also be denied. People of Tomil ex rel. Mar v. M/V Mell Sentosa, 17 FSM R. 478, 479-80 (Yap 2011).

It is the long-established rule in admiralty cases that omissions and deficiencies in pleadings may be supplied and errors and mistakes in practice in matters of substance, as well as of form may be corrected at any stage of the proceedings for the furtherance of justice. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288 (Yap 2012).

Since the failure to verify a complaint is a technical defect that can be cured by amendment, it would not entitle the defendants to an immediate dismissal or to a summary judgment because the Civil Procedure Rules reject the approach that pleading is a game of skill in which one misstep by counsel may

be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. This same principle should hold for an in rem admiralty proceeding and the plaintiffs be given a reasonable time to amend their complaint by verifying it by affidavit. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288-89 (Yap 2012).

When an FSM court has not previously construed an FSM supplemental and maritime rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 313 n.5 (Yap 2012).

The FSM Rules of Civil Procedure apply in *in rem* admiralty cases except to the extent they are inconsistent with the FSM Supplemental Rules for Certain Admiralty and Maritime Claims, in which case the supplemental rules govern. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 464 n.2 (Yap 2012).

The international nature of admiralty and maritime law would necessitate that FSM statutory maritime law be applied uniformly throughout the FSM and not vary from island to island because the concept of admiralty law is related uniquely to the law of nations and it consists of rules in large part intended to govern the conduct of various nations in their shipping and commercial activities. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 538 (Yap 2013).

If there is any conflict between Admiralty Rule F(1) and the limitation statute, then the statute must prevail since the Constitution permits the Chief Justice to promulgate procedural rules, which Congress may amend by statute. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 539 (Yap 2013).

Congress has the authority to amend or create procedural rules by statute (and when Congress enacts a procedural rule, it is valid) but the Chief Justice does not have the power to amend Congressionally-enacted statutes. Thus, if a statute applies and the statute and the admiralty rule conflict, the statute must prevail. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 539 (Yap 2013).

Complaints in Admiralty Rule B, C, and D actions must be verified upon oath or solemn affirmation by a party or by an authorized officer of a corporate party but complaints in other in personam admiralty actions against natural and juridical persons do not have to be verified. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 56 (Yap 2013).

While the court must first look to FSM sources of law and not begin with a review of other courts' cases when the court has not previously construed an FSM supplemental admiralty and maritime rule that is similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 57 n.2 (Yap 2013).

Since a plaintiff class is analogous to a corporate body and a class representative is analogous to a corporation's officer or attorney and with due deference to the Constitution's Judicial Guidance Clause and the FSM's geographical configuration, a class representative's verification of the complaint was sufficient compliance with Supplemental Rule C's requirement that the in rem complaint be verified even though he was not present when the incident occurred. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 57 (Yap 2013).

Lightering or lighterage is the loading and unloading of goods between a ship and a smaller vessel, called a lighter. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 57 n.3 (Yap 2013).

The statutory fines in 19 F.S.M.C. 908(2); 19 F.S.M.C. 912, do not state a claim for which private parties can be granted relief because those fines are payable only to the FSM national government and then only if imposed as part of a sentence after a conviction in a criminal case. People of Eauripik ex rel.

Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 96 (Yap 2013).

Even though admiralty and maritime cases arrests are often made without an arrest warrant, the defendant is nonetheless entitled to a judicial determination as to whether there is probable cause to detain the accused. In this hearing, the government bears the burden of proving it had probable cause to seize the vessel. FSM v. Kimura, 19 FSM R. 630, 636 (Pon. 2015).

If the pleading shows that both admiralty and another basis of subject matter jurisdiction exist, the suit will be treated as an admiralty claim for purposes of the special admiralty procedures and remedies only if the pleading or count setting forth the matter contains a statement identifying the claim as an admiralty claim. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 227 (App. 2017).

The FSM Supreme Court must first look to FSM sources of law rather than other courts' cases, but when the court has not already construed an aspect of an FSM Supplemental Admiralty and Maritime Rule that is identical or similar to the U.S. rule, it may consult U.S. sources for guidance. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 312 n.1 (Pon. 2019).

Maritime law is uniquely related to the law of nations and consists of rules that in large part govern the conduct of nations in their shipping and commercial activities. Its origins lie in the codes of the world's seafaring nations and is still a part of the law of nations. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 313 n.3 (Pon. 2019).

– Jurisdiction and Extent

At the time when the FSM Constitution was adopted there was uncertainty as to whether, to establish United States federal court admiralty jurisdiction over a tort case, it was necessary to establish not only that the wrong occurred in navigable waters, but also that there was a relationship between the wrong and a traditional maritime activity. Weilbacher v. Kosrae, 3 FSM R. 320, 323 (Kos. S. Ct. Tr. 1988).

When passengers purchase passage in an ocean-going vessel for transportation, there is an implied maritime contract for passage even in the absence of written document. Weilbacher v. Kosrae, 3 FSM R. 320, 323 (Kos. S. Ct. Tr. 1988).

Exact scope of admiralty jurisdiction is not defined in the FSM Constitution or legislative history, but United States Constitution has a similar provision, so it is reasonable to expect that words in both Constitutions have similar meaning and effect. Weilbacher v. Kosrae, 3 FSM R. 320, 323 (Kos. S. Ct. Tr. 1988).

A dispute arising out of injury sustained by a passenger on a vessel transporting passengers from Kosrae to Pohnpei, at a time when the vessel is 30 miles from Kosrae, falls within the exclusive admiralty jurisdiction of the FSM Supreme Court. Weilbacher v. Kosrae, 3 FSM R. 320, 323 (Kos. S. Ct. Tr. 1988).

The FSM Supreme Court's grant of original and exclusive jurisdiction in admiralty and maritime cases implies the adoption of admiralty or maritime cases as of the drafting and adoption of the FSM Constitution. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 57, 59 (Truk 1989).

The maritime jurisdiction conferred on the FSM Supreme Court by the Constitution is not to be decided with reference to the details of United States cases and statutes concerning admiralty jurisdiction but instead with reference to the general maritime law of seafaring nations of the world, and to the law of nations. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 374 (App. 1990).

The FSM Supreme Court has jurisdiction over all cases which are maritime in nature including all maritime contracts, torts and injuries. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 374 (App. 1990).

A maritime contract cannot be converted into a non-maritime one by stipulation of the parties so as to divest the court of its admiralty jurisdiction. Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31, 6 FSM R. 1, 4 (Pon. 1993).

A civil seizure and forfeiture action involving a commercial fishing vessel within FSM waters falls under the admiralty and maritime jurisdiction of the national courts. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM R. 594, 599 (Pon. 1994).

The grant of admiralty and maritime jurisdiction to the national courts was intended to assist in the development of a uniform body of maritime law. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM R. 594, 600 (Pon. 1994).

Where *in rem* jurisdiction over a vessel has not been established and its owner has not been made a party to the action an *in rem* action that includes a claim against the vessel's owner may be dismissed without prejudice. In re Kuang Hsing No. 127, 7 FSM R. 81, 82 (Chk. 1995).

In an admiralty and maritime case for the *in rem* forfeiture of a vessel, jurisdiction and venue are so interrelated that the government, or its agents, may not move a defendant vessel from the state in which it was arrested where the FSM admiralty venue statute does not anticipate transfer even though the civil rules allow improper venue to be raised as a defense or to be waived. It is unclear what the result of such a move would be. FSM v. M.T. HL Achiever (I), 7 FSM R. 221, 222-23 (Chk. 1995).

The FSM Supreme Court has original and exclusive jurisdiction over admiralty and maritime cases. This grant of exclusive jurisdiction is not made dependent upon constitutional grants of powers to other branches of the national government. When the Supreme Court's jurisdiction is exclusive it cannot abstain from deciding a case in favor of another court in the FSM because no other court in the country has jurisdiction. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 459 (App. 1996).

Only the FSM Supreme Court has original and exclusive jurisdiction over admiralty and maritime and certain other cases under the Constitution. The other national courts authorized by the Constitution, but which Congress has never created, are only authorized to entertain cases of concurrent jurisdiction, and thus could never exercise jurisdiction over admiralty and maritime cases. Maritime jurisdiction can reside only in one national court – the Supreme Court. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 460 n.2 (App. 1996).

The hallmark of an *in rem* proceeding in admiralty is that it is an adjudication of all rights in the vessel, good against the world, not just of the rights of the parties to the action. An *in rem* proceeding against a vessel can only be had in the context of an admiralty or maritime case. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 461-62 (App. 1996).

The FSM Constitution, by its plain language, grants exclusive and original jurisdiction to the FSM Supreme Court trial division for admiralty and maritime cases. It makes no exceptions. Therefore all *in rem* actions against marine vessels, even those by a state seeking forfeiture for violation of its fishing laws, must proceed in the trial division of the FSM Supreme Court. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 463 (App. 1996).

Actions to enforce *in personam* civil penalties for violations of state fishing laws are within the exclusive admiralty and maritime jurisdiction of the FSM Supreme Court. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 464-65 (App. 1996).

Generally, to complete a court's jurisdiction in an in rem action, the res must be seized and be under the court's control. In other words, jurisdiction of the res is obtained by a seizure under process of the court, whereby it is held to abide such order as the court may make concerning it. Kosrae v. M/V Voea

Lomipeau, 9 FSM R. 366, 370 (Kos. 2000).

When a vessel has not been seized and is not in the FSM, the court has not obtained jurisdiction over it and the complaint as to the vessel must be dismissed. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 370 (Kos. 2000).

When the complaint states that it is an admiralty and maritime action and that the plaintiffs are invoking the court's *in rem* and *in personam* jurisdiction, plaintiffs' failure to style their action against a vessel as *in rem* in the caption is merely a formal error and not a fatal defect, and the caption can always be amended to correct technical defects. Moses v. M.V. Sea Chase, 10 FSM R. 45, 51 (Chk. 2001).

The only way a vessel can be a defendant in a civil action is if the proceeding against it is *in rem*. The FSM Supreme Court may exercise *in rem* jurisdiction over a vessel for damage done by that vessel. Moses v. M.V. Sea Chase, 10 FSM R. 45, 51 (Chk. 2001).

In order for a court to exercise *in rem* jurisdiction, the thing (such as a vessel) over which jurisdiction is to be exercised (or its substitute, *e.g.*, a posted bond) must be physically present in the jurisdiction and seized by court process and under the court's control, whereby it is held to abide such order as the court may make concerning it. Moses v. M.V. Sea Chase, 10 FSM R. 45, 51 (Chk. 2001).

When a vessel was never seized and brought under the court's jurisdiction and is no longer present in the jurisdiction, a court cannot exercise *in rem* jurisdiction over it and all such claims against the vessel will be dismissed without prejudice. Moses v. M.V. Sea Chase, 10 FSM R. 45, 52 (Chk. 2001).

Dismissal of an *in rem* suit against a vessel does not act to dismiss the suit against its captain and crew as that is an action *in personam*, not *in rem*. Moses v. M.V. Sea Chase, 10 FSM R. 45, 52 (Chk. 2001).

Jurisdiction over admiralty and maritime cases resides exclusively with the FSM Supreme Court trial division. The language of the FSM Constitution is clear and unambiguous in this regard. Robert v. Sonis, 11 FSM R. 31, 33 (Chk. S. Ct. Tr. 2002).

The exclusive nature of the national court jurisdiction is such that the FSM Supreme Court appellate division has held that it does not have the power to abstain from admiralty and maritime cases. Robert v. Sonis, 11 FSM R. 31, 33 (Chk. S. Ct. Tr. 2002).

A motion to dismiss for lack of diversity jurisdiction will be denied when the plaintiff's complaint does not plead diversity jurisdiction (found in section 6(b) of article XI of the Constitution), but clearly pleads that the court's jurisdiction under section 6(a), and when a fair reading of the plaintiff's claim is that it is based on the defendant's alleged breach of a maritime contract – the plaintiff's employment contract as a ship's captain. This, coupled with the complaint's allegation that the court has jurisdiction based on section 6(a), which provides for FSM Supreme Court exclusive jurisdiction over certain cases including admiralty and maritime cases, indicates that the plaintiff did not base his jurisdictional plea on the parties' citizenship, but upon the case's alleged maritime nature. Kelly v. Lee, 11 FSM R. 116, 117 (Chk. 2002).

The FSM Supreme Court has exclusive and original subject matter jurisdiction over a case in admiralty. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 414 (Yap 2006).

The FSM Supreme Court trial division has original and exclusive jurisdiction in admiralty or maritime cases but the exact scope of admiralty and maritime jurisdiction is not defined in the Constitution or elsewhere. Ehsa v. Pohnpei Port Auth., 14 FSM R. 505, 507-08 (Pon. 2006).

The article XI, section 6(a) maritime jurisdiction extends to all cases which are maritime in nature. Since a maritime cause of action is one arising on the sea, ocean, great lakes, or navigable rivers, or from some act or contract concerning the commerce and navigation thereof, and when, although the plaintiffs

attempt to characterize the issue as one of state law, they are essentially complaining about loss of business as a result of the penalties imposed by the port authority on the vessels resulting from the port authority's maritime-related activities, it is a maritime case and will not be remanded to state court. Ehsa v. Pohnpei Port Auth., 14 FSM R. 505, 508 (Pon. 2006).

The Civil Rule 55(a) twenty-day time limit does not apply in an admiralty case where the court is able to exercise personal jurisdiction over the *in personam* defendants under the long-arm statute. People of Tomil ex rel. Mar v. M/V Mell Sentosa, 17 FSM R. 478, 479 (Yap 2011).

With admiralty jurisdiction comes the application of substantive admiralty law. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 8 (Pon. 2013).

The FSM Supreme Court has personal jurisdiction, under 4 F.S.M.C. 204(1)(c), over a cause of action that arises from the operation of a vessel or craft within the FSM territorial waters. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 54 (Yap 2013).

The exclusive nature of the national court jurisdiction is such that the FSM Supreme Court does not have the power to abstain from admiralty and maritime cases. Gilmete v. Peckalibe, 20 FSM R. 444, 448 (Pon. 2016).

The FSM Supreme Court trial division has original and exclusive jurisdiction over admiralty and maritime cases. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 131 (Pon. 2017).

Two helicopter charter agreements can only be maritime contracts when the performance of those agreements (fish spotting and search and rescue) was to take place at sea, while operating from a vessel at sea, and directly related to that vessel's use to catch fish. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 200 (Pon. 2019).

A maritime contract is a contract relating to a ship in its use as such, or to commerce or navigation on navigable waters, or to transportation by sea or to marine employment. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 200 n.8 (Pon. 2019).

A defendant's alleged breach of a maritime contract falls within the FSM Supreme Court's original and exclusive jurisdiction over admiralty and maritime cases. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 200 (Pon. 2019).

Conversion can be a maritime tort, and, when it is, it gives rise to a maritime lien. Admiralty jurisdiction over a conversion claim depends on whether the chattel was on navigable waters when the alleged wrongful exercise of dominion occurred. Maritime conversion is an intentional tort that gives rise to a preferred maritime lien. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 314 (Pon. 2019).

– Maritime Torts

In maritime law an allision is the sudden impact of a vessel with a stationary object such as an anchored vessel or a pier or a submerged reef. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 196 n.1 (Yap 2003).

An allision is the sudden impact of a vessel with a stationary object such as an anchored vessel, a pier, or a submerged reef. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 613, 616 n.1 (Yap 2004).

General maritime law has long recognized causes of action in maritime tort for damages resulting from groundings and oil spills. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 415 (Yap 2006).

A cause of action exists in admiralty and maritime law for recovery of damages for oil contamination of wildlife and other natural resources in the marine environment. The type of injury includes both physical loss or injury, such as due to the grounding on the reef, as well as loss of use, either because of a government ban or because there has been a diminution of the resources because of oil contamination. Maritime nations generally recognize that parties injured by an oil spill should recover their damages, as the polluter must pay. Such a cause of action is available under the general admiralty and maritime law of the Federated States of Micronesia. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 416 (Yap 2006).

The elements of a maritime negligence cause of action are four: 1) existence of a duty requiring a person to conform to a certain standard of conduct in order to protect others against unreasonable risks; 2) breach of that duty by engaging in conduct that falls below the standard of conduct, which is usually called "negligence"; 3) a reasonably close causal connection between the unreasonable conduct and any resulting injury, often referred to as "proximate cause"; and 4) actual loss, injury or damage to another party. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 416 (Yap 2006).

Causes of action for public and private nuisance are recognized in admiralty law, borrowing from traditional common law principles. Admiralty courts look to general sources of the common law for guidance, such as the Restatement (Second) of Torts. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 416 (Yap 2006).

Causation in maritime tort law is similar to the common law causation principle. A defendant's act or omission must be the proximate cause of the plaintiff's injury. An injury is proximately caused by an act, or failure to act, whenever it appears from the evidence that the act or omission played a substantial part in bringing about or actually causing the injury or damage, and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 417 (Yap 2006).

Injured parties in maritime tort cases are typically awarded prejudgment interest. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 420 (Yap 2006).

FSM admiralty law recognizes a cause of action for damages to coral reefs and marine resources caused by marine vessels. The elements of maritime negligence are: 1) the existence of a duty requiring conformance to a certain standard of conduct in order to protect others against unreasonable risks; 2) a breach of that duty by engaging in conduct that falls below the standard of conduct (usually called "negligence"); 3) a reasonably close causal connection between the unreasonable conduct and any resulting injury (often called "proximate cause"); and 4) an actual loss or injury to another party. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 174 (Yap 2012).

FSM admiralty law recognizes a cause of action for nuisance. The Yapese interest in exclusive use and exploitation of their submerged lands on and within the fringing reef is analogous to interests in dry land. A nuisance is a substantial interference with the use and enjoyment of another's land (either dry or submerged in Yap) resulting from intentional and unreasonable conduct or caused unintentionally by negligent or reckless conduct. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 176 (Yap 2012).

The owners were liable under a nuisance cause of action when its vessels substantially interfered with the plaintiffs' use and enjoyment of the affected reef both when the vessels were present and afterward because of the resulting damage. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 176 (Yap 2012).

When the nuisance damages are the same (or lesser portion of) those awarded for maritime negligence, no further damages will be awarded for the nuisance cause of action. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 176 (Yap 2012).

Since injured parties in admiralty and maritime tort cases are typically awarded prejudgment interest, when the plaintiff pled a claim for prejudgment interest, the 9% statutory interest will start on the damages award on the day the vessel ran aground. The 9% statutory interest will start on the costs award on the day the amended judgment is entered. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 80 (Pon. 2015).

A maritime negligence cause of action's elements are: 1) existence of a duty requiring persons to conform to a certain standard of conduct in order to protect others against unreasonable risks; 2) conduct that falls below that standard thus breaching that duty (usually called "negligence"); 3) a reasonably close causal connection between the unreasonable conduct and the resulting injury, (often called "proximate cause"); and 4) an actual loss, injury, or damage to another party. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 19 (Yap 2018).

A vessel, and the mariner commanding it, have a duty to navigate safely. They also have a duty not to cause any damage to the reef and marine resources in Yap waters. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 19 (Yap 2018).

General maritime law has long recognized causes of action in maritime tort for damages resulting from groundings. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 19 (Yap 2018).

Liability for collisions, allisions – a collision between a moving vessel and a stationary object, and other types of marine casualties is based upon a finding of fault that caused or contributed to the damage incurred. The standard of care against which fault is determined is derived from 1) general concepts of prudent seamanship and reasonable care; 2) statutory and regulatory rules governing the movement and management of vessels and other maritime structures; and 3) recognized customs and usages. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 19-20 & n.1 (Yap 2018).

A fundamental rule of collision law, long applied, is that to impose liability for a collision, the fault committed by the vessel must be a contributory cause of the collision. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 20 (Yap 2018).

There are a number of presumptions in collision law that are directed to the issue of fault. When a vessel under its own power collides with an anchored vessel or a navigational structure, the burden of proving absence of fault or inevitable accident rests with the moving vessel. The presumption also applies when an unmoored, drifting vessel hits an anchored vessel or structure. The presumption does not apply, however, in the case of an allision with a submerged hidden object. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 20 (Yap 2018).

Since the presumption of fault does not apply to allisions with sunken or hidden objects, the party who is invoking the presumption has the burden of proving either that the object was visible or that the vessel otherwise possessed knowledge of the object's location. While this presumption generally does not apply to allisions with sunken or hidden objects, knowledge of an otherwise nonvisible object warrants imposition of presumed negligence against those operating the vessel who possessed this knowledge because, if the submerged object's presence is known, then the accident was neither fortuitous nor unavoidable. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 20 (Yap 2018).

The *res ipsa loquitur* doctrine creates a rebuttable presumption of negligence on the part of a party who is in exclusive control of an instrumentality with regard to a mishap that ordinarily does not occur in the absence of negligence. It is primarily applicable in allision cases. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 20 (Yap 2018).

When the vessel, while moving under its own power, struck a stationary object – the outer edge of a reef – and ran hard aground on it, causing damage; when the vessel's captain knew that the reef's outer edge was located off the vessel's port side, although he was unsure of its exact location; when the vessel

deliberately ran parallel to the reef while the captain looked for its outer edge with his own eyes; when the reef was submerged, but it was not hidden; and when the reef was visible when not staring directly into the sunlight's glare, the allision presumption applies and none of the exceptions to that principle applies. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 20 (Yap 2018).

When the vessel was running at 5 knots in an easterly direction toward the early morning sun; when the atoll and its reef were off the vessel's port side; when if the vessel had wanted to avoid the reef, a turn to starboard, where there was plenty of sea room, no shipping, and no reef, would have sufficed; when even the use of the vessel's sonar depth finders or the posting of lookouts should have prevented the allision, the court must discount the presence of inaccurate navigational charts on the vessel because, even if the vessel had been using the inaccurate charts to navigate when it grounded on the reef, that grounding would still have to be considered the result of maritime negligence because of the captain's other failures. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 20-21 (Yap 2018).

When the defendants are unable to overcome the allision presumption or show that an exception to it applies, the court will hold the vessel, its captain, and its owner liable for maritime negligence. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 21 (Yap 2018).

Since the Yap Constitution recognizes traditional rights and ownership of marine resources, a vessel's unconsented grounding on Sorol reef constitutes a trespass, and since proof of damages is not necessary to prove trespass, both the grounding and the running of lines from the vessel to the reef are trespasses. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 21 (Yap 2018).

While negligent conduct can give rise to a nuisance claim when the conduct has caused substantial interference with the use and enjoyment of another's property that causes substantial harm, when the amount of damage and whether there was substantial harm are genuine issues of material fact, summary judgment will be denied. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 21 (Yap 2018).

While it may be uncontested that the value of a reef on the main island of Yap is $600 per square meter, the court cannot presume, without evidence, that $600 a square meter is an accurate value for any particular Yap outer island reef, especially where on the outer island there may be more reef and fewer people who have the right to rely on or depend on the reef's resources. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 22 (Yap 2018).

An appropriate measure of damages for a damaged coral reef may be the cost of restoration without grossly disproportionate expense. Or if the cost of restoration would not be an appropriate measure because it would entail a grossly disproportionate expense, damages could be measured by the economic value of the marine resources lost or diminished by the reef damage. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 22 (Yap 2018).

The FSM Supreme Court customarily awards injured parties prejudgment interest in maritime tort cases. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 313 (Pon. 2019).

For a conversion claim, a prejudgment interest award under maritime law does not differ from a common law award for conversion, because, under the common law, one whose property is converted is entitled to interest at the legal rate from the time of conversion. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 314 n.4 (Pon. 2019).

Conversion can be a maritime tort, and, when it is, it gives rise to a maritime lien. Admiralty jurisdiction over a conversion claim depends on whether the chattel was on navigable waters when the alleged wrongful exercise of dominion occurred. Maritime conversion is an intentional tort that gives rise to a preferred maritime lien. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 314 (Pon. 2019).

Maritime torts, like all torts, occur when a defendant breaches a legal duty and proximately causes a

plaintiff damage. Such a duty is imposed by law whether or not the parties have ever had any prior consensual contact. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 314 (Pon. 2019).

In the admiralty context, as elsewhere, conversion is simply an intentional and wrongful exercise of dominion or control over a chattel, which seriously interferes with the owner's right in the chattel. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 314 (Pon. 2019).

The failure to return property, possession of which was acquired lawfully, when the owner is entitled to its return and makes demand therefor, is a tortious conversion. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 314 (Pon. 2019).

When the alleged conversion of each helicopter took place while that helicopter was aboard the defendant vessel and thus on navigable waters, the plaintiff's conversion claims allege maritime torts for which maritime liens on the offending vessel will arise. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 314 (Pon. 2019).

The measure of damages for conversion is the property's market value at the time and place of conversion plus the legal rate of interest from the date of the conversion. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

A conversion is complete when the defendant takes, detains, or disposes of the chattel. At that point, the plaintiff acquires the right to enforce a sale, and recover the property's full value. The defendant cannot undo his wrong by forcing the goods back upon their owner, either as a bar to the action, or in mitigation of damages. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

Regardless of how accurate a May 9, 2019 appraisal was, it cannot be used to establish conversion damages where no evidence relates that appraised value to the chattels' value eight to ten months earlier when the chattels were allegedly converted. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

Even if the conversion occurs in good faith, the plaintiff may nonetheless recover damages beyond the converted property's fair market value. Thus, damages for lost profits are allowed when, either from the article's nature or the case's peculiar circumstances, they might be reasonably supposed to follow from the conversion, even though this recovery of lost profits is above and beyond the chattels' market value. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

The general rule is that compensation for lost profits may be recovered in an action for conversion, when the loss is the proximate result of the defendant's act and the loss can be shown with reasonable certainty. Thus, although the usual measure for conversion damages is the property's value at the time and place of conversion, plus interest, and lost profits may also be recovered if they may reasonably be expected to follow from the conversion. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

Lost profit damages can be awarded for conversion when the plaintiff shows that, but for the conversion, a profit would have been realized from the items converted and shows the extent thereof with reasonable certainty. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

Awards for lost business profits are appropriate damages in a conversion case when proved with reasonable certainty. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315-16 (Pon. 2019).

It would be improper to allow lost business profit damages in every case involving conversion. The damages would only be proper when the person whose property has been converted shows that the conversion has resulted in lost business profits and shows with reasonable certainty the amount of these lost profits. Lost profits is the proper measure of damages, as opposed to lost gross receipts, and this damages amount need only be shown with as much certainty as the tort's nature and the case's

circumstances permit. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 316 (Pon. 2019).

Recovery for lost rental income may be limited in time until when the plaintiff could have obtained a replacement for his rental business since, if a plaintiff could have avoided the loss by purchasing a substitute item, profits from that point on are not the measure of the plaintiff's recovery even if profits were in fact lost. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 316 (Pon. 2019).

Conversion, when committed on navigable waters, is a maritime tort that creates a maritime lien. The measure of damages in a maritime conversion is the property's market value at the time and place of its conversion plus the legal rate of interest from that date, and to these damages, the plaintiff's lost profits can be added when that loss can reasonably be expected to follow from the conversion, or is the proximate result of the defendant's conversion, and when the amount of that loss can be shown with reasonable certainty. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 316 (Pon. 2019).

– Salvage

Congress specifically exempted salvage claims from the statutory limitation of liability. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 627 (Yap 2013).

The statute exempts from the limitation of liability all claims in respect of the raising, removal, destruction or the rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such vessel. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 627 (Yap 2013).

Salvage claims or claims for raising, removing, destroying, or rendering a vessel harmless are exempt from the statutory limitation of liability defense. Since it is an exempt claim, it is a claim that is not included in the limitation of liability fund and the claim is not payable out of the limitation of liability fund, and since any salvage reward or award for removing or rendering the vessel harmless is exempt from the limitation of liability and will be determined separately, the court cannot include an estimate of the salvage claims in the fund amount. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 627 (Yap 2013).

Salvage damages cannot be awarded when there has been no salvage or rendering harmless operation and when no salvage costs have been incurred. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 627 (Yap 2013).

The right to payment for salvage operations presumes that salvage operations have been conducted to a beneficial result. Salvage operations undertaken within the FSM which have had a useful result create the right to reward, and the criteria for fixing a salvage reward amount includes the measure of success obtained by the salvor. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 628 (Yap 2013).

When a wrecked vessel is an obstruction or danger to commerce or shipping, the Receiver of Wreck may require any owner to raise, remove or destroy the vessel, and if the owner does not comply forthwith, the Receiver may raise, remove, destroy, sell, or otherwise deal with the wrecked vessel and any recovered property in such manner as he or she thinks fit. The Receiver deducts any and all expenses incurred from the sale of the wreck and pays the proceeds to the persons entitled to them. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 628 (Yap 2013).

In the event of a forced sale of a stranded or sunken vessel following its removal by the Receiver in the interest of safe navigation or the protection of the marine environment, the costs of such removal will be paid out of the sale proceeds, before all other claims secured by a maritime lien on the vessel. If the forced sale proceeds are inadequate, then the Receiver may recover from any owner of a wrecked vessel any and all expenses incurred in guarding, lighting, buoying, raising, removing, or destroying the vessel,

which are not recovered from the sale proceeds. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 628 (Yap 2013).

In order for the Receiver of Wreck, and thus the FSM, to recover salvage or rendering harmless damages, the FSM must have actually incurred those expenses. The damages that the FSM is entitled to because its Secretary of Transportation is the Receiver of Wreck are for results obtained after the Receiver has taken charge of a wreck. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 628 (Yap 2013).

The salvage statute's purpose is to reward those whose efforts preserve property or protect the marine environment or both. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 628 (Yap 2013).

The Receiver or the FSM has not attained the status of salvor when it has not yet salvaged anything or tried to salvage anything. A salvor is a person who saves a vessel and its cargo from danger or loss; a person entitled to salvage. Salvage, in this sense, is the compensation allowed to a person who, having no duty to do so, helps save a ship or its cargo. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 629 (Yap 2013).

The FSM Supreme Court has exclusive jurisdiction over admiralty and maritime matters, which include claims relating to salvage, claims for towage, and ancillary matters of admiralty and maritime jurisdiction. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 8 (Pon. 2013).

A contract to assist in salvage of a vessel is a salvage contract. More than one party can simultaneously engage in the salvage of the same vessel. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 8 (Pon. 2013).

In contract salvage, the salvor acts to save maritime property after entering into an agreement to use "best efforts" to do so. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 8 (Pon. 2013).

In a salvage contract case, the FSM statute concerning salvage contracts is applicable regardless of whether any party pled the statute because statutory FSM salvage contract law applies to all salvage contracts performed in the FSM. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 8 (Pon. 2013).

While foreign law is a fact which must be pled and proven, national (or state law) does not need to be expressly pled since the court may take judicial notice of any national (or state) law. Thus, the FSM salvage contract statute's application cannot be avoided by trying to characterize a salvage contract as some other kind of contract. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 8 (Pon. 2013).

A contract was formed by a salvor's June 16, 2007 e-mail offer and the insurer's June 19, 2007 letter acceptance with offer of additional term of an invoice, with the salvor's acceptance of the additional term by performance. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 9 (Pon. 2013).

There is no statute of frauds in the FSM Code. The relevant statutes do not require salvage contracts, or maritime contracts of any kind, to be in writing in order to be enforceable. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 9 (Pon. 2013).

It is generally true that salvage contracts may be oral. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 9 (Pon. 2013).

When the salvage contract between the salvor and the vessel owner did not require that an invoice be presented in order that the salvor be paid, but the contract between the salvor and the insurer, the party that everyone expected would make the actual payment, did require that an invoice be presented, payment was due after an invoice was presented. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 10 (Pon. 2013).

The salvor's failure to obtain an oil/water separator and to use it to process the slops was a material breach of the salvage contract when the acquisition of an oil/water separator and its use to separate the oil from the slops and return it to the vessel was a matter of vital importance the went to the salvage contract's essence; when an essential element of any modern salvage contract is the protection of the marine environment; and when the largest component of the contract price was for processing the slops. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 10 (Pon. 2013).

An essential element of any modern salvage contract is not only the rescue of maritime property in peril but also the protection of the marine environment. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 10 (Pon. 2013).

A salvage contract is, by its terms, divisible when the parties have apportioned the entire $325,000 contract price into various components and activities within the scope of work, each assigned a specific part of the overall contract price. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 11 (Pon. 2013).

When the only component of a salvage contract that the salvor did not satisfactorily complete was the slops processing, the salvor's material breach of failing to obtain and use an oil/water separator does not excuse performance – payment – for the rest of the salvage contract components. Nor does it excuse performance (payment) for the work that the salvor was asked to do, and which it agreed to do, that was outside the salvage contract's scope of work, but it does excuse payment for the storage of the slops since that storage would have been unnecessary if the salvor had obtained and used an oil/water separator. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 11 (Pon. 2013).

The applicable statute of limitations for a salvage contract bars any recovery after the two-year period statutory period. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 11 (Pon. 2013).

A cause of action on a salvage contract accrues and the statute of limitations period starts to run on the day on which the salvage operations are terminated or the vessel and any part of the cargo is delivered to a safe port. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 11 (Pon. 2013).

The two-year statute of limitations in 19 F.S.M.C. 928 applies only to salvage contracts and does not apply to a contract between a salvor and the insurer that is not a salvage contract but is instead a contract of guaranty or a surety or to answer for the liability of another and which may be subject to the six-year statute of limitations for contracts in general. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 11 (Pon. 2013).

When there are two express written contracts in which the parties' obligations are clearly set out: 1) the salvage contract between the vessel owner and the salvor and 2) the contract between insurer and the salvor that the insurer would pay the salvor the amounts due under the salvage contract on the presentation of an invoice and when there are additional, probably oral contracts for the $26,607.50 preparation work the salvor agreed to do that was outside the salvage contract's scope of work, the defendants are, with the exception of the $26,607.50 preparation work, entitled to summary judgment on the salvor's quantum meruit claims. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 12 (Pon. 2013).

The FSM Secretary of Transportation and Communications is designated by statute as the Receiver of wreck and when any vessel is wrecked, stranded or in distress, the Receiver may take command of all persons present, assign duties, issue directions, requisition assistance, and demand the use of any nearby vehicle or equipment, if necessary to preserve the vessel, the cargo, and lives. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 57 (Yap 2013).

When the Receiver takes possession of wreck, he must cause a description of the wreck to be: 1) broadcast on at least one radio station in each state; 2) published in the local newspaper, if any; 3) posted by notice describing the wreck at the Department and in appropriate public places in each state capital. This is notice to the public or the world. Notice to the owner, captain, and crew is another matter. People

of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 58 (Yap 2013).

The defendant's receipt of documents about the arrest of its vessel and its participation in the arrest proceedings before the court did not, regardless of the effect of those proceedings on the class plaintiffs' claims against certain defendants, constitute notice to anyone that the FSM Receiver had taken possession of the stranded vessel. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 58 (Yap 2013).

Even if the 19 F.S.M.C. 907 notice was never given to the public, actual notice to the owner is sufficient for a claim against the owner. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 58 (Yap 2013).

When a party has had actual notice of the receivership it cannot complain that the notice is defective because it did not also get notice by publication or constructive notice that, if given, might still never come to the party's attention. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 58 (Yap 2013).

The $100,000 penalty in 19 F.S.M.C. 908(2) is a criminal penalty – punishment – that can be imposed only upon a criminal conviction and cannot be imposed in a civil case. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 58 (Yap 2013).

Civil liability may be imposed under 19 F.S.M.C. 905 and the duty to deliver items removed from a wreck is imposed under 19 F.S.M.C. 903(3). It cannot be imposed under 19 F.S.M.C. 908(2) or 19 F.S.M.C. 912. Those are provisions for criminal liability and must be sought through a criminal prosecution. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 58 (Yap 2013).

When the defendants have had actual notice that the FSM is the Receiver of their stranded vessel notwithstanding the lack of statutory notice to the public that would be necessary to enforce the receivership against the general public; when the extent to which defendants may avoid civil liability because they did not have actual notice of the receivership until after the refloating attempts is question on the merits left for another day as is whether liability is avoided or lessened because material was removed, as part of the government permitted and supervised attempt to refloat and to make it easier to refloat the stranded vessel and to lessen the chance of pollution of the marine environment, the defendants' motion to dismiss will be denied. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 59 (Yap 2013).

Salvage damages cannot be awarded when there has been no salvage or rendering harmless operation and when no salvage costs have been incurred because the right to payment for salvage operations presumes that salvage operations have been conducted to a beneficial result. Salvage operations undertaken within the FSM which have had a useful result shall create the right to reward, and the criteria for fixing a salvage reward amount includes the measure of success obtained by the salvor. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 96 (Yap 2013).

When the plaintiff does not allege to have conducted any salvage operations or obtained any useful result, it would be futile for the plaintiff to amend its complaint to include a salvage claim because it would not state a claim for which the court could grant it relief. Futile amendments are not allowed. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 96 (Yap 2013).

The statutorily created Receiver of Wreck has certain powers and duties and the Receiver of Wreck may delegate all or any authority and responsibility as Receiver to the relevant state authority but class plaintiffs are not a relevant state authority. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 232 (Yap 2013).

No statute authorizes the Secretary of Transportation and Communications to delegate his statutory duties as Receiver of Wreck to private persons, let alone named and unnamed persons in a plaintiff class.

People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 232 (Yap 2013).

Since a statutory receiver or public officer cannot, even with a court's approval, delegate his powers or duties, or surrender assets which the law compels him to administer and since the Receiver of Wreck is both a statutory receiver and a public officer (the Secretary of Transportation and Communications), the delegation of the Receiver's duties to private persons (the class plaintiffs) would be unlawful because the statute only permits delegation to "relevant state authority" and cannot be approved as a class action settlement agreement. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 232-33 (Yap 2013).

Salvage damages cannot be awarded when there has been no salvage or rendering harmless operation and when no salvage costs have been incurred because the right to payment for salvage operations presumes that salvage operations have been conducted to a beneficial result. Pohnpei v. M/V Ping Da 7, 20 FSM R. 1, 3 (Pon. 2015).

Salvage operations undertaken within the FSM which have had a useful result create the right to reward. The criteria for fixing a salvage reward amount includes the measure of success obtained by the salvor. Pohnpei v. M/V Ping Da 7, 20 FSM R. 1, 3 (Pon. 2015).

When a plaintiff has not furnished any evidence that it has suffered any damages conducting salvage operations to a useful and beneficial result, no salvage damages can be awarded even though the defendants are in default. Pohnpei v. M/V Ping Da 7, 20 FSM R. 1, 3 (Pon. 2015).

FSM salvage contract law applies to all salvage contracts performed in the FSM regardless of whether any party pled the statute. This is because it is well established that with admiralty jurisdiction comes the application of substantive admiralty law. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 78 (Pon. 2015).

Substantive admiralty law, whether FSM statute or general maritime law, rewards a successful salvage, not a salvage that has not yet occurred. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 78 (Pon. 2015).

The court cannot award, disguised as costs, what are damages for an unsuccessful salvage contract cause of action that was neither pled nor tried. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 80 (Pon. 2015).

"Special compensation" may be paid to a salvor who has carried out salvage operations on a vessel which threatened damage to the environment in FSM waters. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 318, 325 (Yap 2017).

A salvor is entitled to an award for the salvor's "out-of-pocket expenses reasonably incurred in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, and when the salvor by his salvage operations has prevented or minimized damage to the environment, the special compensation payable by the owner to the salvor may be increased up to a maximum of 30% of the salvor's actual, audited expenses incurred. A claim for depreciation in value of a vessel that was engaged in the salvage operation will be disregard since salvage awards are based on actual expenses, and depreciation is not an actual expense. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 318, 325 (Yap 2017).

– Seamen

A seaman's contract claim against the owner of the vessel upon which he served would be regarded as falling within the FSM Supreme Court's exclusive admiralty and maritime jurisdiction. FSM Const. art. XI, § 6(a). Lonno v. Trust Territory (I), 1 FSM R. 53, 68-71 (Kos. 1982).

The Seaman's Protection Act, originally enacted for the entire Trust Territory by the Congress of

Micronesia, relates to matters that now fall within the legislative powers of the national government under article IX, section 2 of the Constitution, and has therefore become a national law of the Federated States of Micronesia under article XV. That being so, a claim asserting rights under the Act falls within the FSM Supreme Court's jurisdiction under article XI, section 6(b) of the Constitution as a case arising under national law. 19 F.S.M.C. 401-437. Lonno v. Trust Territory (I), 1 FSM R. 53, 72 (Kos. 1982).

Cases involving claims for wages by seamen are maritime cases. Robert v. Sonis, 11 FSM R. 31, 33 (Chk. S. Ct. Tr. 2002).

A case involving the hazardous duty pay claims of fifty-eight port operators and seamen employed by the defendants on Federated States of Micronesia Class III vessels comes before the FSM Supreme Court on the court's exclusive jurisdiction in admiralty and maritime cases. Zion v. Nakayama, 13 FSM R. 310, 312 (Chk. 2005).

The owner or master of a vessel must enter into a written employment agreement (called shipping articles) with each and every seaman employed on board. Gilmete v. Peckalibe, 20 FSM R. 444, 447 n.1 (Pon. 2016).

A seaman's contract claim against the owner of the vessel on which he served falls within the FSM Supreme Court's exclusive admiralty and maritime jurisdiction. Gilmete v. Peckalibe, 20 FSM R. 444, 448 & n.3 (Pon. 2016).

Cases involving claims for wages by seamen are maritime cases. Gilmete v. Peckalibe, 20 FSM R. 444, 448 (Pon. 2016).

A seaman is a person (including the master and officers) engaged or employed in any capacity on board a vessel other than a pilot, supercargo, or a person temporarily employed on board the vessel while it is in port, and shipping articles are the written employment contract between a vessel's owner or master and a seaman to be employed on board, setting forth the terms and conditions of employment. Gilmete v. Peckalibe, 20 FSM R. 444, 448-49 n.5 (Pon. 2016).

Under 19 F.S.M.C. 606(4), shipping articles are limited to a period of no longer than one year. Gilmete v. Peckalibe, 20 FSM R. 444, 449 (Pon. 2016).

Since the FSM Supreme Court has jurisdiction over all cases which are maritime in nature including all maritime contracts, torts, and injuries, it has jurisdiction over a seaman's claims for breach of contract and negligence. Gilmete v. Peckalibe, 20 FSM R. 444, 449 (Pon. 2016).

When a person's employment is established pursuant to shipping articles, which is a contract between the FSM national government and seamen, it is unlike employment positions protected under the Public Service System, since there is no continued expectation of employment because the shipping articles have a one-year duration, and may be renewed upon expiration. Gilmete v. Peckalibe, 20 FSM R. 444, 450 (Pon. 2016).

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

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

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

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

– Ships

The statutory scheme sets up a system for the registration of FSM vessels, the recordation of ownership interests in those vessels, the priority of liens and claims against those vessels, and the methods of enforcing those claims. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 332 (Pon. 2001).

The Secretary of the Department of Transportation and Communications, appoints a Registrar, who keeps a Register of FSM vessels and the instruments that must be deposited with the Registrar. A transfer of any interest, including a mortgage, in a registered vessel is not valid with respect to that vessel against any person other than the grantor or mortgagor until the instrument evidencing such transaction is recorded in the Register. The Registrar is required to record the particulars in such instruments as soon as they are received, including the amount and date of maturity of any mortgage. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 332 (Pon. 2001).

Once an FSM ship is registered, the Registrar must issue a Certificate of Registry for it, and once a mortgage has been properly recorded with the Registrar, the Registrar must endorse on the Certificate of Registry the mortgagor's and mortgagee's names, the mortgage's amount and date of maturity, and the time and date the mortgage was recorded. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 332 (Pon. 2001).

In an admiraltry case, the court must review the verified complaint and supporting papers to determine whether the conditions for an in rem action appear to exist. If the court finds a sufficient basis, it may then issue an order authorizing the clerk to issue an order authorizing the vessel's arrest. Meninzor v. M/V Caroline Voyager, 15 FSM R. 97, 99 (Pon. 2007).

Title 19 does not permit any lien or authorize proceedings in rem against any government vessel engaged in noncommercial services. Meninzor v. M/V Caroline Voyager, 15 FSM R. 97, 100 (Pon. 2007).

The Pohnpei Port Authority has the express statutory authority to set as a condition of a vessel's use of port facilities that a vessel's account for port charges is kept current. Pohnpei Port Auth. v. Ehsa, 16 FSM R. 11, 13 (Pon. 2008).

Whenever process in rem is issued, the execution of such process shall be stayed, or the property released, on the giving of security. "On the giving of security" refers to the situation where the defendant has "given security to respond in damages," and refers to the bond or other security posted to obtain the release of the property in the first instance, not the property itself. The fact that the FSM is holding the seized vessel does not mean that security has been given within the meaning of Admiralty Rule E(6)(d). FSM v. Koshin 31, 16 FSM R. 15, 20 (Pon. 2008).

The FSM National Police must arrange for adequate safekeeping, which may include placing keepers on or near the arrested vessel, and the FSM Police may procure insurance to protect itself from liability assumed in arresting and holding the vessel. Providing for the vessel's adequate safekeeping is mandatory, while arranging to place keepers on board and for insurance is discretionary. FSM v. Koshin 31, 16 FSM R. 15, 21 (Pon. 2008).

Interlocutory sales of arrested vessels are allowed 1) if the property that has been attached is

perishable or liable to injury by being detained in custody pending the action, or 2) if the expense of keeping the property is excessive or disproportionate, or 3) if there is unreasonable delay in securing the release of the property. The plaintiffs need only demonstrate that one of these three conditions is present to justify the vessels' interlocutory sale. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 633, 634-35 (Yap 2009).

Where there is no evidence that the vessels are currently deteriorating or liable to injury and where the defendants have unsuccessfully sought the vessels' release through a letter of undertaking and made a good faith attempt to modify the proposed letter to satisfy the plaintiffs' and the court's concerns but were unable to, resulting in a court denial, the four months' delay in the vessels' release cannot yet be considered unreasonable, especially when the defendants, not the plaintiffs, are currently bearing the expenses of keeping the vessels. The request for an interlocutory sale of the arrested vessels will thus be denied without prejudice, but, if the vessels' release is not obtained, there will come a time when the delay will be considered unreasonable and the vessels' interlocutory sale could be ordered. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 633, 635-36 (Yap 2009).

The thirty-day time period to answer or otherwise defend before a default can be entered found in 4 F.S.M.C. 204(3) and in Supplemental Admiralty and Maritime Rule B(2)(b) is the applicable time frame in an admialty case. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 83 & n.2 (Yap 2010).

The only way a vessel can be a defendant in a civil action is if the proceeding against it is *in rem*. A court cannot exercise *in personam* jurisdiction over a vessel, but can entertain an *in personam* suit against a vessel's owner if the court has obtained personal jurisdiction over the owner. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

When a vessel was never seized and brought under the court's control and is not in, or is no longer in, the FSM, the court cannot exercise *in rem* jurisdiction over it and all claims against the vessel will be dismissed without prejudice unless a letter of undertaking or a bond has been made a substitute *res* for the vessel in lieu of the vessel's seizure, thus permitting the court to exercise *in rem* jurisdiction. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

When two vessels were never arrested or seized in the FSM and no substitute *res*, a bond or letter of undertaking, has been provided to the court so that the court can exercise *in rem* jurisdiction through the substitute, the court lacks jurisdiction over the vessels regardless of the service on the vessels' agent, and no default can be entered against either vessel. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

Vessels are not subject to service of process under Rule 4(d)(3) (service on corporations), but must be proceeded against *in rem* because they are things, not corporations. This is unlike the vessels' owner, which is a corporation. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

The only way a vessel can be a defendant in a civil action is if the proceeding against it is in rem, and in order for a court to exercise in rem jurisdiction, the vessel over which jurisdiction is to be exercised (or its substitute, *e.g.*, a posted bond) must be physically present in the jurisdiction and seized by court process and under the court's control, whereby it is held to abide such order as the court may make concerning it. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288 (Yap 2012).

If a vessel was never seized and brought under the court's control and is not in, or is no longer in, the FSM, the court has not acquired in rem jurisdiction over it and all claims against it will be dismissed without prejudice unless a letter of undertaking or a bond has been made a substitute *res* for the vessel in lieu of its seizure. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288 (Yap 2012).

When a tug is not present in the FSM and was not arrested when it was present and when no bond or letter of undertaking has been posted to provide a substitute res over which the court could exercise jurisdiction, the complaint against it must be dismissed without prejudice. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288 (Yap 2012).

Service of process on a defendant vessel is usually effected by the vessel's arrest unless a substitute security, such as a letter of undertaking, has been arranged. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 (Yap 2012).

When a vessel has been abandoned and is situated such that the taking of actual possession is impracticable, the FSM national police must execute the process by affixing a copy thereof to the property in a conspicuous place and by leaving a copy of the complaint and process with the person having possession or the person's agent. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 n.3 (Yap 2012).

The FSM Supreme Court cannot exercise jurisdiction over any vessel unless that *in rem* defendant has been validly arrested in the FSM and brought under the court's actual control or under its constructive control through the provision of a substitute security. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 (Yap 2012).

The court can exercise jurisdiction only over vessels that are present in the FSM and that have been brought into the court's jurisdiction by arrest or over vessels for which an adequate substitute has been provided. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 94 (Yap 2013).

When a vessel has been arrested in rem in a parallel civil proceeding but is not restrained in the criminal matter, the government's request that the vessel be seized as evidence in the criminal case, and not for forfeiture, is an unnecessary restriction to establish that the vessel was as an instrumentality used in a crime. FSM v. Kimura, 19 FSM R. 617, 620 (Pon. 2014).

Under the Supplemental Rules for Certain Admiralty and Maritime Claims, a prompt post seizure hearing may be requested by "any person" claiming an interest in the vessel. At this hearing the plaintiff shall be required to show why the arrest or attachment should not be vacated or other relief granted consistent with the rules, and the property must be released upon giving of a security and, if the parties are unable to stipulate to the amount and nature of the security, the court shall fix the principal sum. FSM v. Kimura, 19 FSM R. 617, 620 n.8 (Pon. 2014).

A Port Authority and a pilot are immune from any negligence claim for the pilot's acts or omissions in berthing a vessel, but not from a gross negligence claim. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 16 (Pon. 2015).

There are a variety of circumstances in which a pilot's navigating too fast combined with other circumstances have equaled gross negligence on the pilot's part. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 16-17 (Pon. 2015).

A person holding a current and valid foreign investment permit is qualified to register a vessel in the FSM, and qualified persons may register in the FSM any vessel they wholly own. An FSM-registered vessel must fly the FSM national flag. FSM v. Kimura, 20 FSM R. 297, 304-05 (Pon. 2016).

In an admiralty case, when the suit is against a vessel or other property, the proper venue is the state within which the ship, goods, or other thing involved can be seized. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 131 (Pon. 2017).

The only way a vessel can be a defendant in a civil action is if the proceeding against it is *in rem*. In order for a court to exercise *in rem* jurisdiction, the vessel over which jurisdiction is to be exercised (or its

substitute, *e.g.*, a posted bond) must be physically present in the jurisdiction and seized by court process and under the court's control, whereby it is held to abide such order as the court may make concerning it. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 132 (Pon. 2017).

A bond for a barge cannot exceed the barge's actual value. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 318, 325-26 & n.7 (Yap 2017).

– Ships – Charter

The term "charter party" is used in maritime law to designate the specialized form of contract for the hire of an entire ship, specified by name. "Charter party" is used synonymously with "charter." Three principal types are recognized: 1) under a time charter, the charterer engages for a fixed period of time a vessel, which remains manned and navigated by the vessel owner, to carry cargo wherever the charter instructs; 2) under a voyage charter, the charterer engages the vessel to carry goods only for a single voyage; and 3) under a demise, or bareboat charter, the charterer takes complete control of the vessel, mans it with his own crew, and is treated by law as its legal owner. Yap v. M/V Cecilia I, 13 FSM R. 403, 408 (Yap 2005).

A requirement for a true bareboat charter is that the charterer selects his own master and crew. If the owner provides the master and crew, tendering them as the agents of the charterer, the charter is a demise, although not technically a "bareboat" charter. Of these three varieties of charter parties, the demise charter has unique characteristics. A demise is the transfer of full possession and control of the vessel for the period covered by the contract. The charterer obtains the right to run the vessel and carry whatever cargo he chooses. The ship is manned and supplied by the charterer as well. Yap v. M/V Cecilia I, 13 FSM R. 403, 408 (Yap 2005).

The legal test of a demise charter is whether the owner of the vessel completely and exclusively relinquished possession, command and navigation to the demisee. A demise is present where the provisions of the charter show that those in charge of the vessel are intended to be the agents and servants of the demisee, not the shipowner. For most purposes, the charterer in a demise is treated as an owner, termed *pro hac vice*. Yap v. M/V Cecilia I, 13 FSM R. 403, 408-09 (Yap 2005).

The owner's fundamental obligation under the demise charter party is to provide a seaworthy vessel of the specified class and type at the beginning of the charter term. A warranty of seaworthiness of the vessel will be implied; it may, however, be qualified or even waived. The seaworthiness warranty extends only to the charter's beginning; subsequent to delivery the vessel's seaworthiness is the charterer's responsibility unless otherwise stated. Yap v. M/V Cecilia I, 13 FSM R. 403, 409 (Yap 2005).

The demise charterer's basic obligation is to pay the charter hire stipulated in the charter party. At the end of the charter term, the vessel must be returned in the same condition as received excepting ordinary wear and tear. Yap v. M/V Cecilia I, 13 FSM R. 403, 409 (Yap 2005).

The charterer under a demise is responsible for the proper performance of all agreements made with third parties in connection with the ship's operation. The charterer, as owner *pro hac vice* is also potentially liable for collision, personal injuries to the master, crew, and third parties, pollution damages, and for loss or damage to the chartered vessel. The vessel owner normally has no personal liability, but the vessel may be liable *in rem*. The charterer, however, has an obligation to indemnify the vessel owner if the damage was incurred through the charterer's negligence or fault. Yap v. M/V Cecilia I, 13 FSM R. 403, 409 (Yap 2005).

A claim for personal injuries against a charterer can be secured by a maritime lien on the vessel. Meninzor v. M/V Caroline Voyager, 15 FSM R. 540a, 540b (Pon. 2008).

– Ships – Liability

A vessel owner's right to seek a limitation of its liability is created by an FSM statute, and as the vessel's owner at the time of its grounding and thus the potentially liable party, a company has standing to raise this statute as a defense to limit its liability for the vessel's grounding, regardless of any arguments that the FSM Secretary of Transportation and Communications, as the receiver of wrecked and abandoned vessels, may have current ownership rights over the vessel. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 312 (Yap 2012).

One purpose of the limitation procedure is to avoid a multiplicity of law suits and have all claims against the vessel determined in a single action. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 312 n.3 (Yap 2012).

Although Supplemental Admiralty and Maritime Rule F(1) sets the limitation fund amount at "a sum equal to the amount or value of the owner's interest in the vessel and pending freight," the FSM statute sets the amount as "the sum of such amounts set out in regulations as are applicable to claims for which that person may be liable, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund." The regulations referred to are those promulgated by the Secretary of the Department of Transportation and Communications implementing Title 19, chapter 11 and taking into account the provisions of the 1976 London Limitation of Liability Convention and the 1969 Tonnage Convention. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 312 (Yap 2012).

If there is any conflict between Admiralty Rule F(1) and the limitation statute, then the statute must prevail since the Constitution permits the Chief Justice to promulgate procedural rules, which Congress may amend by statute. Since Congress has the authority to amend or create procedural rules by statute and the Chief Justice does not have the authority to amend Congressionally-enacted statutes, if the statute applies and the statute and the rule conflict, the statute must prevail. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 312-13 n.4 (Yap 2012).

A vessel owner's right to limitation may be asserted in either one of two ways – the owner can file a complaint for limitation as a new and independent action or the owner may raise and assert it as an affirmative defense in a suit against the owner or the vessel. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 313 (Yap 2012).

When a shipowner chooses to assert its limitation rights by a filing in a pending case, the court should consider it as the owner's motion for leave to amend its answer so as to assert the affirmative defense of statutory limitation of liability because a thing is what it is regardless of what someone chooses to label its filing. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 313 (Yap 2012).

Since any application to the court for an order is a motion, when a shipowner filed an application for the limitation of its liability in a pending case, it is a motion, which, unless lengthened or shortened by court order or rule, a party has ten days to respond to. Thus, when the other parties were not allowed the ten days to respond to shipowner's limitation motion because the court granted the motion and issued the orders after only five or six days, they were not given the procedural due process afforded them by the civil procedure rules and for that reason alone, the orders should be considered voidable and vacated. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 313 (Yap 2012).

A limitation of liability defense can only be pled if a Limitation of Liability Fund is "constituted" by either by depositing the sum with the Supreme Court, or by lodging with the court an irrevocable letter of credit or other form of security acceptable to the court and it must be freely transferrable. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 313 (Yap 2012).

The limitation of liability defense was enacted as a part of the National Maritime Act and under Congress's powers to regulate shipping and navigation and foreign and interstate commerce. People of

Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 538 (Yap 2013).

Custom does not divest Congress of its power to regulate shipping and commerce or render the limitation of liability statute, 19 F.S.M.C. 1101-1108, unconstitutional. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 538 (Yap 2013).

Even in the absence of regulations, Congress's intent in providing for a limitation of liability defense is clear – the Limitation of Liability Fund is to be calculated by the London Convention method and not based on the "value of the owner's interest in the vessel and pending freight." People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 539 (Yap 2013).

"Pending freight" or "freight pending" is a term of art. "Freight" refers to the compensation paid to a carrier for transporting goods. The term "freight pending," for purposes of constituting a limitation of liability fund, means the total earnings of the vessel for the voyage, whether for carriage of passengers or goods. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 539 n.2 (Yap 2013).

When the rules provide that the limitation of liability fund must include in additional sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the statutes' provisions as amended, or together with such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the statutes' provisions as amended, the court does not have to decide whether the statute conflicts with the rule and will calculate the limitation of liability fund amount according to the London Convention method. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 539 (Yap 2013).

A limitation of liability fund must be constituted before the limitation defense can be effective. The London Convention calculation should be used along with the interest mandated by statute, which will be computed at the legal 9% rate. Once this amount is deposited with the court in cash or an irrevocable letter of credit, the limitation of liability defense may then be asserted. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 539-40 (Yap 2013).

A plaintiff's's claims as "fairly stated" are not a basis to calculate the amount at which a limitation of liability fund should be set. This should be obvious from the principle that the fund involves a limitation of liability while a plaintiff's claim as "fairly stated" does not involve any limitation. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 540 (Yap 2013).

In the trial of a limitation proceeding, the burden of proof is divided between the parties, and there is a two-step analysis. The claimants must prove that the destruction or loss was caused by negligence or the vessel's unseaworthiness. The burden then shifts to the shipowner to demonstrate that he comes within the statutory limitation conditions: that there was no design, neglect, privity or knowledge on his part. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 540 (Yap 2013).

The privity and knowledge issue is the favored method to deny the limitations defense. The determination of whether the shipowner has established a lack of privity and knowledge of the fault involves a delicately balanced inquiry. Privity and knowledge exist where the owner has actual knowledge, or could have or should have obtained the necessary information by reasonable inquiry or inspection. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 540 (Yap 2013).

Plaintiffs must first prove that their loss was caused by negligence or the vessel's unseaworthiness. Next, they have the opportunity to prove that their claims are not the sort of claim to which the limitation of liability defense can be applied. But even if their claims are subject to the limitation of liability defense, that still does not mean that the defense will succeed because the burden then shifts to the shipowner to demonstrate that there was no design, neglect, privity or knowledge on the shipowner's part. If the shipowner cannot demonstrate that, then the limitation of liability defense will not be allowed. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 540 (Yap 2013).

Regulations, even if promulgated by the Secretary, must not exceed or limit the statute's reach. Thus, any promulgated regulation would have taken into account the provisions of the 1976 London Limitation of Liability Convention and the 1969 Tonnage Convention. The court will do likewise. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 626 (Yap 2013).

No statutory language can be interpreted to require or encourage the inclusion of cultural damages in the limitation of liability fund calculation. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 627 (Yap 2013).

Congress specifically exempted salvage claims from the statutory limitation of liability. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 627 (Yap 2013).

The statute exempts from the limitation of liability all claims in respect of the raising, removal, destruction or the rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such vessel. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 627 (Yap 2013).

Salvage claims or claims for raising, removing, destroying, or rendering a vessel harmless are exempt from the statutory limitation of liability defense. Since it is an exempt claim, it is a claim that is not included in the limitation of liability fund and the claim is not payable out of the limitation of liability fund, and since any salvage reward or award for removing or rendering the vessel harmless is exempt from the limitation of liability and will be determined separately, the court cannot include an estimate of the salvage claims in the fund amount. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 627 (Yap 2013).

When the FSM statute specifically defines the "Limitation of Liability Convention" as "the Convention on Limitation of Liability for Maritime Claims done at London on November 19, 1976 as modified by its protocols and as amended from time to time, " 19 F.S.M.C. 106(11), the statute specifically provides that later changes to the Liability Convention will be part of FSM law without further action by Congress. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 629 (Yap 2013).

For vessels under 2,000 gross tons the limitation of liability fund amount is 1,000,000 units of account. A unit of account is the Special Drawing Right as defined by the International Monetary Fund. This amount is expected to be raised to 1,510,000 units of account in June 2015. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 630 (Yap 2013).

When a limitation of liability fund has been constituted, any judgment covered by that fund would not include any further prejudgment interest because as a general rule, once the funds are paid into court, the only interest that the prevailing party is entitled to is the interest earned by the money in the court's depository institution. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 94 (Yap 2013).

– Ships – Maritime Liens

Supplies and service that are necessaries when provided to a vessel give rise to maritime liens. Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31, 6 FSM R. 1, 3 (Pon. 1993).

A general agent is not barred from obtaining a maritime lien. Obtaining the lien depends on whether the supplies and services furnished the vessel are necessaries, not on the contractual relation. Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31, 6 FSM R. 1, 3 (Pon. 1993).

Necessaries are defined as those things reasonably needed in the business of the vessel. Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31, 6 FSM R. 1, 3 (Pon. 1993).

To be entitled to a maritime lien a provider of necessaries must rely on the credit of the vessel. General maritime law presumes that a provider of necessaries relies on the credit of the vessel. Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31, 6 FSM R. 1, 3 (Pon. 1993).

A contract provision for a line of credit that was never filled in as to the amount and never funded cannot overcome the presumption that a supplier of necessaries relied on the credit of the vessel. Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31, 6 FSM R. 1, 4 (Pon. 1993).

The statutory scheme sets up a system for the registration of FSM vessels, the recordation of ownership interests in those vessels, the priority of liens and claims against those vessels, and the methods of enforcing those claims. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 332 (Pon. 2001).

A claim against the owner, demise charterer, manager or operator of a registered vessel in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel may be secured by a maritime lien on the vessel. Meninzor v. M/V Caroline Voyager, 15 FSM R. 97, 99 (Pon. 2007).

A registered vessel may be arrested in respect of default in payment on claims secured by maritime liens or mortgages against the vessel recorded in the register and when sufficient evidence is provided to the Supreme Court to warrant a registered vessel's arrest, the court may issue an order for the vessel's arrest. Thus a vessel may be arrested when sufficient evidence is provided to the court that there has been a default in payments secured by a maritime lien, but when there is no present obligation for payment, there can be no default. Meninzor v. M/V Caroline Voyager, 15 FSM R. 97, 99 (Pon. 2007).

When the statute provides that a vessel may be arrested for default in payment on claims secured by maritime liens or mortgages against the vessel recorded in the register and that the Registrar shall upon the request of any person record in the register notice of such person's claim to a lien on a registered vessel, supported by credible documentary evidence and when the statute further provides that where a vessel has caused personal injury giving rise to a claim which creates a maritime lien against the vessel, the lien holder may require the Registrar to record the lien against the vessel in the Register. But when the plaintiffs have not shown that their maritime lien has been recorded, this is a ground for denying the request for an arrest warrant for the vessel. Meninzor v. M/V Caroline Voyager, 15 FSM R. 97, 99-100 (Pon. 2007).

Title 19 does not permit any lien or authorize proceedings in rem against any government vessel engaged in noncommercial services. Meninzor v. M/V Caroline Voyager, 15 FSM R. 97, 100 (Pon. 2007).

A claim for personal injuries against a charterer can be secured by a maritime lien on the vessel. Meninzor v. M/V Caroline Voyager, 15 FSM R. 540a, 540b (Pon. 2008).

A registered vessel may be arrested for a default in payment of claims secured by the vessel's maritime liens as recorded in the register. Meninzor v. M/V Caroline Voyager, 15 FSM R. 540a, 540b (Pon. 2008).

Title 19 does not permit any lien or authorize proceedings in rem against any government vessel engaged in non-commercial services. Meninzor v. M/V Caroline Voyager, 15 FSM R. 540a, 540c (Pon. 2008).

When a trip's purpose was to provide support and humanitarian services to the FSM outer islands; when there were 28 government officials aboard the vessel; when this included doctors, who were on the trip to perform public health, and dental services, a weather station representative, two police officers who were seeking to arrest a suspect, and an official who was on the trip to inspect school and airport projects, and seven Pohnpei legislators; when private passengers were charged a nominal fare; when the vessel transported building materials to Sapwuafik for use in school construction and airport runway repairs; and

when, although Pohnpei was the vessel's charterer, it was not charged a fee for the charter, the trip was not one carried on for profit, but rather to benefit the outer islands' inhabitants by delivering public services to them consistent with Micronesia's geographical configuration. The government vessel thus falls within the 19 F.S.M.C. 102(2) exception, and is not subject either to a maritime lien or to arrest as part of an in rem proceeding. Meninzor v. M/V Caroline Voyager, 15 FSM R. 540a, 540c & n.1 (Pon. 2008).

The courts broadly construe the term "necessaries" to mean any goods or services that are useful to the vessel to keep her out of danger, and enable her to perform her particular function. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 199 (Pon. 2019).

The term "necessaries" does not mean absolutely indispensable; rather the term refers to what is reasonably needed in the ship's business. The test to apply in deciding whether the subject matter of a contract is necessary to the operation, navigation, or management of a ship is a test of reasonableness, not of absolute necessity. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 199 (Pon. 2019).

Necessaries are the things a prudent owner would provide to enable a ship to perform well the functions for which she has been engaged. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 199 (Pon. 2019).

While a fish-spotting helicopter is not an absolute necessity for a purse seiner, it does enable the vessel to perform well her particular function and the function for which she had been engaged – catching fish. A prudent owner would conclude it was reasonably needed in the vessel's business. It is thus a necessary provided the vessel, and anyone who furnishes necessaries to any foreign or domestic vessel will have a maritime lien on the vessel. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 199 (Pon. 2019).

Maritime lien enforcement is an in rem proceeding against a vessel and a court can only exercise in rem jurisdiction when the res (the vessel), or its substitute, is physically within the court's territorial jurisdiction and under the court's control. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 199 n.7 (Pon. 2019).

Although a lien priority for creditors who provide necessaries (goods, materials, or services) to a vessel is absent from 19 F.S.M.C. 326(2), it is provided for elsewhere that a maritime lien for necessaries ranks after the maritime liens set out in section 326 and also after registered mortgages or charges recorded in accordance with the statute. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 199-200 (Pon. 2019).

The FSM Supreme Court has jurisdiction in rem over all vessels irrespective of their flag and all maritime claims wherever arising with respect to claims for goods, materials or services supplied to a vessel. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 200 (Pon. 2019).

Helicopter fish-spotting services provided to a fishing vessel are necessaries that can give rise to a maritime lien. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 310 (Pon. 2019).

Conversion can be a maritime tort, and, when it is, it gives rise to a maritime lien. Admiralty jurisdiction over a conversion claim depends on whether the chattel was on navigable waters when the alleged wrongful exercise of dominion occurred. Maritime conversion is an intentional tort that gives rise to a preferred maritime lien. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 314 (Pon. 2019).

– Ships – Maritime Liens – Security for

The release of vessels from arrest is governed by Supplemental Admiralty and Maritime Rule E(6), and if the parties are unable to stipulate to the amount and nature of the security, the court must fix the principal sum of the bond at an amount sufficient to cover the plaintiff's claim fairly stated with accrued interest. If the plaintiffs' claim "fairly stated" exceeds the vessels' value, the amount of the bond needed to

release the vessels would be limited to the vessels' value, and, if the vessels' value exceeds that of the plaintiffs' claim, the bond amount would be the amount of the plaintiffs' claim "fairly stated" with accrued interest. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 543, 545 (Yap 2009).

For a court to determine the amount of a plaintiff's claim "fairly stated," the court can consider affidavits and look behind the complaint to ascertain the amount actually in controversy. For a plaintiff's claim to be "fairly stated," it must only be arguable. This is because "any ultimate recovery against the *res* itself [the vessel] is limited to the amount of the bond; therefore it is prudent to err on the high side. Thus, in making a preliminary assessment of plaintiff's damages claim, the court should be satisfied that the plaintiff's claims are not frivolous, but it should not require the plaintiff to prove its damages with exactitude. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 543, 545-46 (Yap 2009).

Factual disputes that a trial would resolve need not be resolved to set a bond for an arrested vessel; the court need only conclude that the plaintiffs' claims are not frivolous and are arguable. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 543, 546 (Yap 2009).

The FSM Rules of Evidence would appear to be inapplicable to proceedings with respect to release of an arrested vessel on bond. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 543, 546 (Yap 2009).

When, without prejudging who will ultimately prevail and to what extent, the plaintiffs' claim appears arguable; the amount is "fairly stated" for the purpose of setting a bond for an arrested vessel. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 543, 546, 546 (Yap 2009).

Whenever security is taken for the release of an arrested vessel, the court may, on motion and hearing, for good cause shown, increase or reduce the amount of security given. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 543, 547 (Yap 2009).

Whenever security is taken for the release of an arrested vessel the court may, on motion and hearing and for good cause shown, increase or reduce the amount of security given. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 311 (Pon. 2019).

The court may reduce a stipulated bond amount, but the burden on a party seeking the reduction of a bond so established is considerably greater than when the bond amount is set by statute or is provided by rule. While the court may reduce the amount of stipulated security, this is justified only upon a showing that the bond amount is clearly excessive. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 311 (Pon. 2019).

In order to obtain a reduction of a stipulated bond amount, the movants must show that the current bond amount is clearly excessive. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 312 (Pon. 2019).

Whenever an asserted counterclaim arises out of the same transaction or occurrence as the original action, and the defendant has given security to respond in damages, any plaintiff for whose benefit such security has been given shall give security to respond in damages set forth in the counterclaim unless the court, for cause shown, directs otherwise. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 312 (Pon. 2019).

A defendant, that gave security to respond in damages to a maritime lien, cannot ask that the plaintiff be required to give security for a counterclaim it did not make or ask for a reduction in the security it provided to be based on another party's counterclaims. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 312 (Pon. 2019).

Rule E(6)(d) does not authorize the court to, and it cannot, reduce the amount a defendant posted for security because the defendant has a counterclaim, but, under that rule, the court can require the plaintiff to

post security to answer the defendant's counterclaim. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 312 (Pon. 2019).

Rule E(6)(a) clearly allows the maritime lien bond amount to include prejudgment interest. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 313 (Pon. 2019).

Under maritime law, a prejudgment interest award is the rule rather than the exception, and, in practice, is well-nigh automatic. This maritime law practice has been followed in the FSM. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 313 (Pon. 2019).

When the alleged conversion of each helicopter took place while that helicopter was aboard the defendant vessel and thus on navigable waters, the plaintiff's conversion claims allege maritime torts for which maritime liens on the offending vessel will arise. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 314 (Pon. 2019).

Regardless of how accurate a May 9, 2019 appraisal was, it cannot be used to establish conversion damages where no evidence relates that appraised value to the chattels' value eight to ten months earlier when the chattels were allegedly converted. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

Even if the conversion occurs in good faith, the plaintiff may nonetheless recover damages beyond the converted property's fair market value. Thus, damages for lost profits are allowed when, either from the article's nature or the case's peculiar circumstances, they might be reasonably supposed to follow from the conversion, even though this recovery of lost profits is above and beyond the chattels' market value. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

The general rule is that compensation for lost profits may be recovered in an action for conversion, when the loss is the proximate result of the defendant's act and the loss can be shown with reasonable certainty. Thus, although the usual measure for conversion damages is the property's value at the time and place of conversion, plus interest, and lost profits may also be recovered if they may reasonably be expected to follow from the conversion. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

Lost profit damages can be awarded for conversion when the plaintiff shows that, but for the conversion, a profit would have been realized from the items converted and shows the extent thereof with reasonable certainty. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

Awards for lost business profits are appropriate damages in a conversion case when proved with reasonable certainty. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315-16 (Pon. 2019).

It would be improper to allow lost business profit damages in every case involving conversion. The damages would only be proper when the person whose property has been converted shows that the conversion has resulted in lost business profits and shows with reasonable certainty the amount of these lost profits. Lost profits is the proper measure of damages, as opposed to lost gross receipts, and this damages amount need only be shown with as much certainty as the tort's nature and the case's circumstances permit. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 316 (Pon. 2019).

Recovery for lost rental income may be limited in time until when the plaintiff could have obtained a replacement for his rental business since, if a plaintiff could have avoided the loss by purchasing a substitute item, profits from that point on are not the measure of the plaintiff's recovery even if profits were in fact lost. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 316 (Pon. 2019).

Conversion, when committed on navigable waters, is a maritime tort that creates a maritime lien. The measure of damages in a maritime conversion is the property's market value at the time and place of its

conversion plus the legal rate of interest from that date, and to these damages, the plaintiff's lost profits can be added when that loss can reasonably be expected to follow from the conversion, or is the proximate result of the defendant's conversion, and when the amount of that loss can be shown with reasonable certainty. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 316 (Pon. 2019).

The amount of the bond securing a vessel's release can be based on the plaintiff's conversion causes of action and on the lost profits and prejudgment interest claims related to those causes of action. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 316 (Pon. 2019).

The court cannot reduce a stipulated bond amount when, considering the nature and the breadth of the alleged maritime liens, it cannot say that the stipulated security bond amount was shown to be clearly excessive. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 316 (Pon. 2019).

– Ships – Mortgages

United States statutes regarding ships' mortgages will not be adopted as the common law of the Federated States of Micronesia, because their purposes are not applicable to the FSM and because their changing nature and complexity are not conducive to forming the basis of the common law of this nation. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 57, 59-60 (Truk 1989).

The enforcement of ships' mortgages does not come within the admiralty jurisdiction of the FSM Supreme Court. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 57, 60 (Truk 1989).

The question of the enforceability of ship mortgages is a matter that falls within the maritime jurisdiction of the FSM Supreme Court under article XI, section 6(a) of the Constitution. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 376 (App. 1990).

The Secretary of the Department of Transportation and Communications, appoints a Registrar, who keeps a Register of FSM vessels and the instruments that must be deposited with the Registrar. A transfer of any interest, including a mortgage, in a registered vessel is not valid with respect to that vessel against any person other than the grantor or mortgagor until the instrument evidencing such transaction is recorded in the Register. The Registrar is required to record the particulars in such instruments as soon as they are received, including the amount and date of maturity of any mortgage. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 332 (Pon. 2001).

Once an FSM ship is registered, the Registrar must issue a Certificate of Registry for it, and once a mortgage has been properly recorded with the Registrar, the Registrar must endorse on the Certificate of Registry the mortgagor's and mortgagee's names, the mortgage's amount and date of maturity, and the time and date the mortgage was recorded. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 332 (Pon. 2001).

An earlier recorded mortgage has priority over one recorded later according to the time and date on which each mortgage was recorded in the Register and not according to the date of each mortgage itself. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 332 (Pon. 2001).

The question of mortgage priority is important because if a ship has to be sold either as forfeiture or to satisfy its or its owner's debts, the mortgagees will be paid from the proceeds according to their priority. A mortgagee with a higher priority will thus be paid in full before a subsequent mortgagee with a lower priority is paid one cent. The priority of the mortgages should be immediately apparent because they will all be recorded on the same Certificate of Registry. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 332 (Pon. 2001).

No principle of law prohibits a lender from securing with a mortgage a sum less than the full amount of what it has lent. It merely does so at its own risk. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM

R. 327, 332 (Pon. 2001).

To permit a registered ship mortgage to hold priority for an additional $100,000 over its registered amount would destroy the statutory scheme created by Congress and one of the goals of the ship registry system – that all ownership interests be recorded on the ship's Certificate of Registry, and would also hinder another purpose and goal – enhancing the ability of ship owners to obtain needed financing. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 333-34 (Pon. 2001).

A mortgagee cannot assert that its registered mortgage has priority over a subsequent mortgagee for a principal amount greater than the principal amount registered. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 334 (Pon. 2001).

When there is more than one registered mortgagee of the same vessel, a subsequent mortgagee cannot apply to sell the vessel without the concurrence of every prior mortgagee, except under an order of the Supreme Court. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 334 (Pon. 2001).

If a judgment creditor were attempting to levy execution on an FSM-registered vessel, the competing priorities are regulated by statute based on whether, and when, the security interest had been properly recorded. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 365 (Chk. 2003).

AGENCY

Under the common law there are only two reasons for distinguishing between agents of a principal who are "servants" or "employees" of the principal and agents who are independent contractors. The most common is to determine the possible liability of the principal for torts of the agent within the scope of employment. The second purpose is to determine the obligations, rights and immunities between the principal and the agent. Earlier common law rules making distinctions for this purpose have for the most part been supplanted by social legislation such as workers' compensation, fair labor standards, social security, minimum wage and income tax laws. Rauzi v. FSM, 2 FSM R. 8, 15 (Pon. 1985).

The emphasis in governmental tort liability cases has been on the special status of government, its functions and its officials rather than on the degree of control tests commonly employed in nongovernmental cases. Even those commentators who specifically note that the *respondeat superior* doctrine applies to the government analyze governmental liability issues in terms of public policy considerations rather than through a degree of control analysis which distinguishes between closely supervised and high-ranking officials. Rauzi v. FSM, 2 FSM R. 8, 16 (Pon. 1985).

The excavation of large holes on the land of private citizens, in areas where children play, and near a public road, is inherently dangerous and calls for special precautions. One who causes such work to be undertaken may not escape liability simply by employing an independent contractor to do the work. Ray v. Electrical Contracting Corp., 2 FSM R. 21, 25 (App. 1985).

When a state government is acting on behalf of the national government by virtue of the joint administration of law enforcement act, the state's officers and employees are agents of the national government and are acting "under color of authority" within the meaning of 6 F.S.M.C. 702(5). Plais v. Panuelo, 5 FSM R. 179, 209-10 (Pon. 1991).

A party to a foreign fishing agreement voluntarily assumes primary liability and responsibility for its own failure to comply with the law, and for similar failures on the part of its fishing vessels and vessel operators within the FSM. Such a party also assumes a legal duty to ensure that the operators of its licensed vessels comply with all applicable provisions of FSM law. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 212 (Pon. 1995).

A person can be criminally liable for the conduct of another if having a legal duty to prevent the

commission of an offense, he fails to make proper effort to do so. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 212 (Pon. 1995).

The acts of agents, illegal or otherwise, are the acts of the principal itself provided that those acts are in the ordinary course of the agent's business relationship with its principal because under accepted principles of agency law a principal is responsible for the criminal acts of its agents provided that those acts where committed in furtherance of the agents' business relationship with the principal. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 212-13 (Pon. 1995).

The principal is bound by, and liable for, the acts which his agent does with or within the actual or apparent authority from the principal, and within the scope of the agent's employment. Black Micro Corp. v. Santos, 7 FSM R. 311, 315-16 (Pon. 1995).

Under the law of agency, a principal is liable not just for the expressly authorized acts and contracts of his agent, but also, with respect to third parties who deal with his agent in good faith, for actions his agent takes with apparent authority to act on behalf of the principal. Apparent authority may be implied where the principal passively permits the agent to appear to a third person to have authority to act on his behalf. Kosrae Island Credit Union v. Obet, 7 FSM R. 416, 419 n.2 (App. 1996).

A principal is bound by, and liable for the acts of its agent if done with or within the actual or apparent authority from the principal and within the scope of the agent's employment. Bank of the FSM v. O'Sonis, 8 FSM R. 67, 69 (Chk. 1997).

An agency relationship is based upon consent by one person that another shall act in his behalf and be subject to his control. Bank of the FSM v. O'Sonis, 8 FSM R. 67, 69 (Chk. 1997).

The existence of an agency relationship is not negated merely because the agent is named by someone other than the principal. Bank of the FSM v. O'Sonis, 8 FSM R. 67, 69 (Chk. 1997).

A party may require another to appoint an agent as a condition to an agreement. Bank of the FSM v. O'Sonis, 8 FSM R. 67, 69 (Chk. 1997).

When a bank requires, as a condition of the loan, that a borrower have his employer make the loan repayments out of the borrower's paycheck the borrower's employer is acting as the agent of the borrower. Bank of the FSM v. O'Sonis, 8 FSM R. 67, 69 (Chk. 1997).

When a fishing boat captain knows that he has caught fish and retained possession of fish while he had not maintained the required daily catch log in English that knowledge is attributable, under agency law principles, to the foreign fishing agreement party through which the boat was authorized. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 91 (Pon. 1997).

A principal is bound by, and liable for, the acts of its agent done with or within the actual or apparent authority from the principal and within the scope of the agent's employment. Agency relationships are based upon consent by one person that another shall act in his behalf and be subject to his control. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 91-92 (Pon. 1997).

The duties of an agent for the service of process are not the same as those of an attorney. Practically anyone may serve in the capacity as an agent. It may entail little more than receiving legal papers and promptly forwarding them on to the principal. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 93, 94 (Chk. 1997).

When a law firm has been designated as an agent for service of process by a foreign corporation required to appoint one in the FSM, the law firm may remain the corporation's agent for service even if the corporation has left the FSM and the firm is no longer its attorney. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 93, 94-95 (Chk. 1997).

A principal is bound by, and liable for, the acts of its agent, if those acts are done with actual or apparent authority from the principal and are within the scope of the agent's employment. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 176 (Pon. 1997).

Because a corporate principal may be held criminally liable for its agent's conduct when the agent acts within the scope of its authority for the principal's benefit, a foreign fishing agreement party may be held criminally liable for the conduct of its authorized vessel. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 176 (Pon. 1997).

An authorized vessel's master's knowledge is attributable to its foreign fishing agreement party because knowledge held by an agent or employee of a corporation may be attributed to its principal. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 180 (Pon. 1997).

An agent and principal may be sued in the same action for the same cause of action even when the principal's liability is predicated solely on the agency. Kaminanga v. FSM College of Micronesia, 8 FSM R. 438, 442 (Chk. 1998).

An agency relationship is based upon consent by one person that another shall act in his behalf and be subject to his control. A principal is bound by, and liable for the acts of its agent if done with or within the actual or apparent authority from the principal and within the scope of the agent's employment. Sigrah v. Timothy, 9 FSM R. 48, 52 (Kos. S. Ct. Tr. 1999).

When a general manager's actions in hiring, supervising and paying the employees of a sawmill were within the scope of authority granted to him by the principals, the sawmill's joint owners, the principals are bound by their agent's actions in hiring or authorizing the hiring of a sawmill employee. Sigrah v. Timothy, 9 FSM R. 48, 52 (Kos. S. Ct. Tr. 1999).

Under the common law, there are only two reasons for distinguishing between agents of a principal who are "servants" or "employees" of the principal and agents who are independent contractors. The most common is to determine the principal's possible liability for torts of the agent within the scope of employment. The second purpose is to determine the obligations, rights and immunities between the principal and the agent. Sigrah v. Timothy, 9 FSM R. 48, 53 (Kos. S. Ct. Tr. 1999).

A fishing association is not liable under a general theory of agency when the complaint does not make a general agency allegation, and instead asserts liability based on an agreement's language, and nothing in the agreement renders the other defendants the agents of the fishing association such that the association is liable under the respondeat superior doctrine for the damages flowing from a vessel's alleged negligent operation. Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM R. 112, 115 (Kos. 2001).

Generally, a principal is bound by, and liable for, the acts of its agent done with or within the actual or apparent authority from the principal and within the scope of the agent's employment. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 174 (Chk. 2001).

Agency relationships are based upon one person's consent that another shall act on his behalf and be subject to his control. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 174 (Chk. 2001).

Acting for another is the act of an agent. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 174 (Chk. 2001).

Someone acting on another's behalf is someone who is acting as an agent for that other. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 174 (Chk. 2001).

There is no authority by which an agent may be held liable to a third party for its principal's actions when they are not also the agent's own actions or when the agent has not expressly agreed to be liable for those actions. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 174 (Chk. 2001).

Corporations of necessity must always act by their agents. Kosrae v. Worswick, 10 FSM R. 288, 292 (Kos. 2001).

When the defendants provide documents signed by both Naiten and Linda Phillip showing them to be co-owners of the business; Kolonia Town municipal records showing that they were recorded as the business's co-owners for business license purposes; an affidavit concerning times that both had come in together to make the original insurance application and that later dealings with the business were always with Linda Phillip; and the rental agreement for the damaged pickup, which was signed by Linda Phillip as "company agent" and when the plaintiff offers no evidence, argument, or affidavit that Linda Phillip did not have authority to act as the business's agent in this regard, the court must conclude that there is no genuine issue of fact that Linda Phillip had the actual or apparent authority to act as agent concerning payment of the insurance premium. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 469 (Pon. 2004).

A principal is bound by, and liable for, the acts which his agent does with or within the actual or apparent authority from the principal, and within the scope of the agent's employment. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 469 (Pon. 2004).

Under the law of agency, a principal is liable not just for the expressly authorized acts and contracts of his agent, but also, with respect to third parties who deal with his agent in good faith, for actions his agent takes with apparent authority to act on the principal's behalf. Apparent authority may be implied where the principal passively permits the agent to appear to a third person to have authority to act on his behalf. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 469 (Pon. 2004).

A principal is liable not just for his agent's expressly authorized acts and contracts, but also, with respect to third parties who deal with his agent in good faith, for actions his agent takes with apparent authority to act on the principal's behalf. Apparent authority may be implied where the principal passively permits the agent to appear to a third person to have authority to act on his behalf. Hartman v. Krum, 14 FSM R. 526, 530 (Chk. 2007).

When an agent had neither the actual nor the apparent authority to bind the principal to make rental payments since the principal did not give the agent actual authority to agree to rental payments for a cement mixer's use, and since the agent informed the plaintiffs that he would have to discuss their proposed rental amount with the principal, the agent did not have the apparent authority to agree to rental payments and bind the principal. Hartman v. Krum, 14 FSM R. 526, 530 (Chk. 2007).

A principal is bound by, and liable for his agent's acts if done with or within the actual or apparent authority from the principal and within the scope of the agent's employment, but when agreeing to pay rent for a cement mixer was not within the scope of the agent's "employment" as the principal's agent, no contract was formed between the principal and the plaintiffs through agency. Hartman v. Krum, 14 FSM R. 526, 530-31 (Chk. 2007).

A principal is bound by the acts of the agent that the agent performs with the principal's actual or apparent authority. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 335 (Pon. 2007).

When the defendants' local agent – prior to defendants' fishing activities on August 18th, 19th, and 20th – had actual knowledge that NORMA would not be issuing the fishing permit, the knowledge of the defendants' agent is imputed to the defendants under the law of agency. FSM v. Katzutoku Maru, 15 FSM R. 400, 404 (Pon. 2007).

The FSM Development Bank, in administering an IDF loan, is statutorily an agent of the Federated

Development Authority and of the Investment Development Fund, not of the State of Pohnpei, even though the loan funds came from Pohnpei's earmarked subaccount. The mere fact that Pohnpei's approval was also needed if the loan funds came from the subaccount earmarked for Pohnpei, is not enough to make the Bank Pohnpei's agent because, by statute, the IDF, not the State of Pohnpei, profits from the repayment of an IDF loan since all repayments of principal and interest and penalties on loans made from the Fund, all cash assets recovered on loans made from the Fund, and all fees, charges, and penalties collected in relation to administration of the Fund must be deposited into the Fund and the money deposited into the Fund is then available for lending to other entrepreneurs or developers, who are the ultimate beneficiaries of any loan repayment. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 634-35 (Pon. 2008).

When confronted with a situation where a principal may be held vicariously liable for its agent's acts, a plaintiff, at the plaintiff's option, may sue either the principal, the agent, or both. Thus, an agent is not an indispensable or necessary party to a vicarious liability claim against the principal. Nakamura v. Mori, 16 FSM R. 262, 268 (Chk. 2009).

Since an agent is not an indispensable party to a vicarious liability claim against the principal, the principal would not be prejudiced if leave were granted to amend the complaint against it to include a vicarious liability claim against it for an agent's acts even if the plaintiffs do not also sue the agent. Nakamura v. Mori, 16 FSM R. 262, 268 (Chk. 2009).

When a contract expressly provides that a party is responsible to the other party for its employees' acts, the party is contractually liable to the other for its employee's actions. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 437 (Pon. 2009).

A principal is liable for the acts of his or her agent when acting under the principal's authority within the scope of the agent's employment. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 437 (Pon. 2009).

Employers are responsible for the actions of their employee under the law of agency, which binds the principal for the acts of the agent. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 438 (Pon. 2009).

An employee is herself jointly and severally liable with her employers for the checks she converted by cashing them while she was their employee because, under the doctrine of respondeat superior, an agent's act within the scope of his or her agency is the act of the principal, and the result is that both the principal and the agent are jointly and severally liable to the person injured by the wrongful act. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 438 (Pon. 2009).

An agent is not relieved from responsibility for tortious conduct merely because he acted at the request, or even at the command or direction, of the principal. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 438 (Pon. 2009).

An employee or agent is liable to a third person for injuries resulting from the breach of any duty which the employee or agent owes directly to such third person, and is not liable to a third person for injuries resulting from a breach of duty which the employee or agent owes only or solely to his employer. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 438-39 (Pon. 2009).

Even as an insurance agency's employee, the employee had a duty not to cash premium checks without first confirming with the insurer that she had the authority to cash the checks. By failing to do so, the employee intentionally deprived the insurer of its property, and is thus liable for the conversion of the checks that she cashed while she was an the agency's employee. The employers and the employee are jointly and severally liable for the checks that the employee cashed during the time that the employers were acting as the insurer's general agents. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 439 (Pon. 2009).

By definition, the relationship between an agent and principal is a fiduciary one. Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on

his behalf and subject to his control, and consent by the other so to act. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 441 (Pon. 2009).

An agent is a fiduciary with respect to the matters within the scope of his agency. The very relationship implies that the principal has reposed some trust or confidence in the agent, and the agent or employee is bound to the exercise of the utmost good faith, loyalty, and honesty toward his principal. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 441 (Pon. 2009).

Both principal and agent are jointly and severally liable for the torts that the agent commits in the course and scope of the work performed for the principal. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 446 (Pon. 2009).

A subcontractor is one who is awarded a portion of an existing contract by a contractor. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 (Pon. 2011).

An independent contractor is one who is entrusted to undertake a specific project but who is left free to do the assigned work and to choose the method for accomplishing it. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 (Pon. 2011).

The two terms – subcontractor and independent contractor – are not mutually exclusive. A subcontractor may or may not have an agency relationship with the contractor and that relationship does not control whether or not a subcontract has been struck. A party might be both an independent contractor and a subcontractor. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 (Pon. 2011).

A subcontractor's status, when compared to that of an employee, is ordinarily that of an independent contractor. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 (Pon. 2011).

Subcontracting is merely "farming out" to others all or part of work contracted to be performed by the original contractor. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 572 (Pon. 2011).

When an Hawaii-based architect undertook to perform part of the contractor's existing contract but his initial designs were never used and his later conceptual design work was not actually used since the final designs were prepared by an employee of the contractor and not by an independent contractor or other subcontractor, this transaction might better be described as an unsuccessful attempt to subcontract part of the contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 573 (Pon. 2011).

The FSM Development Bank was not Pohnpei's agent in making the loan, in receiving the loan repayments, or in suing the guarantors when the borrower defaulted because until FSM Public Law No. 12-75 was enacted over the President's veto, Pohnpei could not even consider that any IDF funds might be its own money. If it had been Pohnpei's money, then Congress would not have had to enact a law to give it to Pohnpei. That Congress later decided to wind up IDF subaccount activity and allow the transfer of those funds to the states does not magically and retroactively relieve the guarantors of their judicially-determined liability to the bank and it does not create a new cause of action or cause a new claim to accrue upon which the plaintiffs can now sue for the first time. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 10 (Pon. 2011).

When nothing in the record contradicts the trial court finding that Actouka was acting as an insurance broker and that the national government acted as an agent for Chuuk (and the other states) in dealing with the insurance broker Actouka until it came time for the ship operators to pay their respective shares of the agreed premiums due, the trial court's finding that Actouka and Chuuk entered into two separate agreements for Actouka to seek and obtain insurance and that various writings to that effect were signed on the behalf of Chuuk, the party to be charged, was thus not clearly erroneous. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 118 (App. 2011).

A principal is certainly liable to a third party for the acts of its subagent and a subagent is liable to the

principal for the subagent's own acts. But it would be odd indeed if an agent could instruct or authorize a subagent to do something and then escape all liability to the principal because the subagent, not the agent, did the act. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 (App. 2012).

Unless otherwise agreed, an agent is responsible to the principal for the conduct of a subagent with reference to the principal's affairs entrusted to the subagent, as the agent is for his own conduct; and as to other matters as a principal is for the conduct of an agent. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 (App. 2012).

An agent who employs a subagent is the latter's principal and is responsible both to third persons and to his principal for the subagent's derelictions. Thus the agent is subject to liability to the principal for harm to the principal's property or business caused by the subagent's negligence or other wrong to the principal's interests. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 (App. 2012).

The agents were responsible to their principal for the subagent's derelictions or defalcations concerning the principal's premium checks. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 (App. 2012).

Agency is the fiduciary relation which results from one person's manifestation of consent to another that the other shall act on his behalf and subject to his control, and consent by the other to so act, and fiduciary is defined as relating to or founded upon a trust or confidence. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 (App. 2012).

An agent is a fiduciary with respect to the matters within the scope of his agency and the agent is bound to the exercise of the utmost good faith, loyalty, and honesty toward his principal. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 (App. 2012).

Since handling the principal's premium checks was within the scope of their agency and since the agents did not exercise the utmost good faith, loyalty, and honesty toward the principal when they were its agents because they did not immediately remit all premium checks to the principal, the agents breached the fiduciary duty they owed to the principal and were properly found liable under a breach of fiduciary duty theory. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 (App. 2012).

It is not logical that any individual would have apparent authority to cash a check with a corporate payee, especially a foreign corporation. The corporation's agents may have had apparent authority to perform a number of acts on the corporation's behalf, but cashing checks with the corporation as the payee was not one of them. One who pays out on such a check does so at his own peril. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 359 (App. 2012).

The promises made by the insurer's agents bind the insurer and must be enforced in order to avoid manifest injustice because if the plaintiff had enrolled her daughter under a separate cancer policy, she would have been covered under her own policy, but instead, the agent's misrepresentation caused her to keep her daughter under her cancer policy, making the daughter ineligible at the time she was diagnosed with cancer because she did not qualify as a covered family member under that policy's provisions. Johnny v. Occidental Life Ins., 19 FSM R. 350, 359 (Pon. 2014).

A principal is bound by, and liable for, the acts which his agent does with or within the actual or apparent authority from the principal, and within the scope of the agent's employment, and an insurance company's general agent is one who has authority to transact all the business of an insurance company of a particular kind, or in a particular place, and whose powers are coextensive with the business entrusted in the agent's care. Agents have been regarded as general agents when they fully represent the insurance company in a particular district and are authorized to solicit insurance, receive money and premiums, issue and renew polices, appoint subagents, and adjust loses. Johnny v. Occidental Life Ins., 19 FSM R. 350, 362-63 (Pon. 2014).

When an agent has been employed by the insurer for approximately 25 years and, although he may not have had the power to unilaterally amend policies, he informed the plaintiff that cancer coverage was up to 25 years of age; and when, because he was the manager of the insurer's office in Pohnpei and aside from a subordinate he was the only insurer's representative whom the plaintiff was in contact with, the plaintiff had ample reason to rely and accept his statements as the truth. Johnny v. Occidental Life Ins., 19 FSM R. 350, 363 (Pon. 2014).

A principal is bound by and liable for the acts of its agent if done within the scope of this agent's employment. Setik v. Mendiola, 20 FSM R. 236, 243 (Pon. 2015).

When, assuming the allegations in the complaint about the defendants named individually, along with the inferences drawn therefrom, are true; when the plaintiffs are precluded from bringing the present cause of action against the individuals' employer on several grounds; and when, given the individual defendants were all acting on their employer's behalf and within the scope of their employment, vicarious liability is not available and the claims leveled against the individual defendants must also fall. Setik v. Mendiola, 20 FSM R. 236, 243-44 (Pon. 2015).

While it may be true that an agent and a principal may be sued in the same case for the same cause of action even when the principal's liability is predicated solely on the agency, when the principal's liability is not based on the agency but is based on a statute, the Chuuk Health Care Act of 1994, that imposes the liability only on the principal – the employer – and absolves the employee from any liability, the employee agent is not a proper party to the litigation. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 284 (Chk. 2016).

AGRICULTURE

All aircraft entering FSM ports of entry are subject to immigration inspection, customs inspections, agricultural inspections and quarantines, and other administrative inspections authorized by law. In Chuuk, the Chuuk International Airport is the only port of entry for aircraft. FSM v. Joseph, 9 FSM R. 66, 70 (Chk. 1999).

An agriculture quarantine inspector's duty is to enforce the provisions of plant and animal quarantine controls, quarantines, and regulations, the purpose of which is to protect the agricultural and general well-being of the people of the FSM from injurious insects, pests, and diseases. Goods entering or transported within the FSM can be inspected. Those goods known to be, or suspected of being, infected or infested with disease or pests may be refused entry into or movement within the FSM, and anything attempted to be brought into or transported within the FSM in contravention of the agricultural inspection scheme shall be seized and may be destroyed. FSM v. Joseph, 9 FSM R. 66, 70 (Chk. 1999).

The Pohnpei stray livestock statute does not create any property rights in impounded stray pigs. It does not grant the person impounding the stray animal the right to hold on to that animal until he is compensated. To the contrary, the statute creates a right for the person impounding the stray animal to "just compensation for its keep from the owner." Palasko v. Pohnpei, 20 FSM R. 90, 95 (Pon. 2015).

The Pohnpei stray livestock statute does not authorize a person to hold onto stray pigs until he receives just compensation for the pigs' upkeep and it certainly does not create a lien for the value of any damaged crops. It does not authorize anyone to hold onto the pigs once the livestock's owner has been identified. Nor does it authorize compensation from the stray pigs' owner for any damage the pigs may have caused or any crops that may have been destroyed. The right to compensation for destroyed crops exists outside the statute. Palasko v. Pohnpei, 20 FSM R. 90, 95 (Pon. 2015).

The Pohnpei stray livestock statute requires that the impoundment of stray pigs be reported within three days. Palasko v. Pohnpei, 20 FSM R. 90, 96 (Pon. 2015).

AMICUS CURIAE

If the FSM wishes to present the court with its views on an appeal it may file an amicus curiae brief as permitted by Rule 29 of the FSM Rules of Appellate Procedure. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 520, 522 (App. 1996).

The FSM government does not need leave of court to file an amicus brief. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 668 (App. 1996).

Absent compelling reasons to the contrary, form must ever subserve substance. A thing is what it is regardless of what someone chooses to call it. Viewed in this light, a letter that stated an unequivocal legal opinion based on certain facts and cited points and authorities to support that opinion is the functional equivalent of an amicus curiae brief. McIlrath v. Amaraich, 11 FSM R. 502, 505-06 (App. 2003).

Because the petition for a writ of mandamus is moot and the underlying case has been dismissed, the court will leave to another time the general question of whether the trial court has jurisdiction to order a non-party to file an amicus brief. McIlrath v. Amaraich, 11 FSM R. 502, 508 (App. 2003).

If not requested to by the court, a non-party may participate in an appeal as an amicus curiae by either written consent of all parties or leave of court unless the non-party seeking to be an amicus curiae is a state or is the FSM or an officer or agency thereof. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 627 (App. 2003).

A state does not need either the parties' written consent or leave of court to file an amicus curiae brief. It can file one as a matter of right. It could even participate in oral argument as an amicus curiae when its motion to participate in oral argument is granted, but such a motion will be granted only for extraordinary reasons. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 627 (App. 2003).

It is not unusual for amicus curiae to appear at the appellate level. The FSM Rules of Appellate Procedure specifically provide for amicus curiae participation. FSM v. Sipos, 12 FSM R. 385, 386 (Chk. 2004).

Unlike the appellate rules, neither the civil nor criminal procedure rules provide for an amicus curiae's appearance, although the court has in the past invited amicus curiae briefs in civil cases. FSM v. Sipos, 12 FSM R. 385, 387 (Chk. 2004).

Amicus curiae literally means friend of the court. An amicus is someone who is not a party to the lawsuit but who petitions the court or who is asked by the court to file a brief in the matter because that person has a strong interest in the subject matter. FSM v. Sipos, 12 FSM R. 385, 387 (Chk. 2004).

An amicus curiae gives the court information on some matter of law in respect to which the court is doubtful or calls the court's attention to a legal matter which has escaped or might escape the court's consideration. An amicus curiae's principal or usual function is to aid the court on questions of law. FSM v. Sipos, 12 FSM R. 385, 387 (Chk. 2004).

When an amicus curiae undertakes to inform the court, he or she should act in good faith, make full disclosure on the point, and suppress nothing with the intent to deceive the court. This is true whether the amicus curiae is a neutral provider of information or legal insight or has a partisan interest. FSM v. Sipos, 12 FSM R. 385, 387 (Chk. 2004).

When a criminal contempt prosecution of an attorney regarding his relationship with his client is a matter of first impression in the Federated States of Micronesia and the court concludes that an amicus curiae's insight may benefit it in understanding the legal issues, a petition to appear as an amicus curiae will be granted. This appearance is limited to briefing legal issues. FSM v. Sipos, 12 FSM R. 385, 387 (Chk.

2004).

"Amicus curiae" literally means friend of the court. An amicus curiae is someone who is not a party to the lawsuit. An amicus curiae either petitions the court, or is asked by the court, to file a brief in the matter because the amicus has a strong interest in the subject matter that is pending before the court. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 364 (App. 2007).

An amicus curiae is expected to give the court information on some matter of law which the court may be doubtful upon, or calls the court's attention to a legal matter which has escaped, or might escape, the court's consideration. An amicus curiae's principal or usual function is to aid the court on questions of law. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 364 (App. 2007).

When an amicus curiae undertakes to inform the court, he or she should act in good faith, make full disclosure on the point, and suppress nothing with the intent to deceive the court. This is true whether the amicus curiae acts as a neutral provider of information or legal insight, or has a partisan interest in the outcome of the litigation. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 364 (App. 2007).

The Appellate Procedure Rules specifically provide for amicus curiae participation. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 364 (App. 2007).

The amicus curiae's role in appeals is limited to addressing only those issues that the parties have raised. It would be inappropriate for an appellate court to consider any arguments or evidence that were not previously presented to and ruled upon by the trial court. Accordingly, a particular document that was not previously considered by the trial court and the references to it in an amicus curiae brief will be stricken from the record. The other arguments presented by the amicus curiae in its brief will be considered. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 365 (App. 2007).

An amicus curiae's motion to participate in oral argument will be granted only for extraordinary reasons, and in the absence of the presentation of any reason why an amicus curiae should be heard at oral argument, its request to participate in the oral argument will be denied. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 366 (App. 2007).

APPELLATE REVIEW

An appeal at the early stage of development of FSM judicial systems is a significant event calling for relatively large expenditure of judiciary resources. In order to preserve and uphold the legitimate right of parties to appropriate appeals, the FSM Supreme Court must be vigilant and exercise its inherent powers to avoid unnecessary expenditure of resources for premature or unauthorized appeals. FSM v. Yal'Mad, 1 FSM R. 196, 197-98 (App. 1982).

The Trust Territory High Court has the legitimate authority to issue writs of certiorari for cases from the FSM Supreme Court; the Supreme Court cannot disregard an opinion resulting from such review. Jonas v. Trial Division, 1 FSM R. 322, 326-29 (App. 1983).

A writ of certiorari is improvidently granted by the Trust Territory High Court unless the FSM Supreme Court decision affects the Secretary of the Interior's ability to fulfill his responsibilities under Executive Order 11021. Jonas v. Trial Division, 1 FSM R. 322, 329 n.1 (App. 1983).

A trial court may in its discretion permit a case involving separate charges based upon the same act to proceed to trial. The court, however, should render a decision and enter a conviction only on the more major of the crimes proven beyond a reasonable doubt. After appeal, if any, has been completed, and the greater charge is reversed on appeal, the trial court may then find it necessary to enter a judgment on the lesser charge. Laion v. FSM, 1 FSM R. 503, 529 (App. 1984).

Rule 26(b) provides for enlargement of time for doing most acts but explicitly excludes enlargement of time to file notice of appeal. A court can grant no relief under Rule 26 for late filing of a notice of appeal. Jonas v. Mobil Oil Micronesia, Inc., 2 FSM R. 164, 166 (App. 1986).

The interest protected by having exact time limits is in preserving finality of judgments. Jonas v. Mobil Oil Micronesia, Inc., 2 FSM R. 164, 166 (App. 1986).

In a new nation in which the courts have not yet established a comprehensive jurisprudence, where an issue is one of first impression and of fundamental importance to the new nation, the court should not lightly impose sanctions upon an official who pushes such an issue to a final court decision, and should make some allowance for wishful optimism in an appeal. Innocenti v. Wainit, 2 FSM R. 173, 188 (App. 1986).

Only attorneys admitted to practice before the FSM Supreme Court or trial counselors supervised by an attorney admitted to practice may appear before the FSM Supreme Court on appeals from state court cases. Kephas v. Kosrae, 3 FSM R. 248, 252 (App. 1987).

FSM Appellate Rule 26(b) gives the appellate court broad discretion to enlarge time upon a showing of good cause. Kimoul v. FSM, 4 FSM R. 344, 346 (App. 1990).

Where an appellate court has held that a trial judge is under a clear and non-discretionary duty to step aside from presiding over a case and the petitioner has a constitutional right to obtain compliance with that duty, all documents issued after the date of the appellate decision are null and void and shall be expunged from the record and the judge shall be enjoined from taking any further action as a judge in the case. Etscheit v. Santos, 5 FSM R. 111, 113 (App. 1991).

When the language of an FSM appellate rule is nearly identical to a United States' counterpart, FSM courts will look to the United States federal courts for guidance in interpreting the rule. Jano v. King, 5 FSM R. 326, 329 (App. 1992).

Conducting trials de novo and making findings of fact is normally the province of the trial court and not of the appellate division, which is generally unsuited for such inquiries. Moroni v. Secretary of Resources & Dev., 6 FSM R. 137, 138 (App. 1993).

Where the appellant at oral argument contended that a grant of an interest in land was for an indefinite term and the court inquired of the appellant whether the grant was perpetual or forever the issue of whether a perpetual grant was for an indefinite term was fairly before the appellate court and could be decided by it even though the issue had not been briefed nor had the appellee urged it. Nena v. Kosrae (II), 6 FSM R. 437, 439 (App. 1994).

An appellate court cannot hold a party in contempt for violating a trial court's orders because his actions were not a violation of the appellate court's orders or done in the appellate court's presence. Onopwi v. Aizawa, 6 FSM R. 537, 539 (Chk. S. Ct. App. 1994).

For good cause shown, an appellate court may grant an enlargement of time for any act, except notice of appeal or times set by statute in administrative appeals, including a petition for rehearing. Nena v. Kosrae (III), 6 FSM R. 564, 567 (App. 1994).

Failure to locate counsel to prosecute appeal or to attempt to proceed pro se may, after notice, be deemed a voluntary dismissal of an appeal. Palsis v. Talley, 7 FSM R. 380, 381 (App. 1996).

After a judgment has been appealed a trial court, without appellate court permission, has the power to both consider, and deny Rule 60(b) relief from judgment motions. A trial court, however, cannot grant a Rule 60(b) motion while an appeal is pending. If the trial court is inclined to grant the motion, it should

issue a brief memorandum so indicating. Armed with this, movant may then request the appellate court to remand the action so that the trial court can vacate judgment and proceed with the action accordingly. Walter v. Meippen, 7 FSM R. 515, 517-18 (Chk. 1996).

The time for making a motion for relief from judgment continues to run even while the case is on appeal. Walter v. Meippen, 7 FSM R. 515, 518 (Chk. 1996).

When an appeal is taken from the trial court it is divested of authority to take any action except actions in aid of the appeal. This is a judge-made rule to avoid the confusion and inefficiency of putting the same issue before two courts at the same time. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 520, 522 (App. 1996).

When the attorney of record at the time of appeal obtains a later trial court order substituting another attorney who cannot address all the issues on appeal, the appellate court will direct the first attorney to proceed with the appeal. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 520, 522 (App. 1996).

An appellate court may affirm the decision of the trial court on different grounds. Nahnken of Nett v. United States, 7 FSM R. 581, 589 (App. 1996).

Where counsel have waived the issue of reliance damages and only argued specific performance at trial and on appeal the appellate court will leave the matter where counsel have placed it. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 623 (App. 1996).

As a general rule, a properly filed notice of appeal transfers jurisdiction from the trial court to the appellate court, but a trial court may retain jurisdiction over the issue of attorneys' fees even though an appeal is pending on the merits of the case. Damarlane v. United States, 8 FSM R. 14, 16 (App. 1997).

A trial court has jurisdiction to issue an order assessing costs, even though it was issued after the notice of appeal was filed. Damarlane v. United States, 8 FSM R. 14, 17 (App. 1997).

A policy of judicial economy dictates against allowing further piecemeal appeals when the appeal in question arises from the same civil action and involves the same or similar questions of law. Damarlane v. United States, 8 FSM R. 14, 17 (App. 1997).

An appeal is still pending on the day before the appellate opinion is filed even though the justices' signatures are dated earlier. Damarlane v. Pohnpei Legislature, 8 FSM R. 23, 26 (App. 1997).

A civil case decided by the Chuuk State Supreme Court Appellate Division may be appealed to the FSM Supreme Court Appellate Division by writ of certiorari. Wainit v. Weno, 8 FSM R. 28, 29 (App. 1997).

Chuuk State Supreme Court appellate rules may be amended by statute. Wainit v. Weno, 8 FSM R. 28, 30 (App. 1997).

When a judgment is on appeal, a trial court, without appellate court permission, has the power to both consider and deny Rule 60(b) relief from judgment motions, but cannot grant such a motion while an appeal is pending. If inclined to grant the motion, the trial court issues a brief memorandum so indicating. Armed with this, the movant can then request the appellate court to remand the action so that judgment could be vacated. If the Rule 60(b) motion is denied, the movant may appeal from the order of denial. A trial court's jurisdiction to consider and deny a Rule 59(e) motion (motion to alter or amend judgment) after an appeal has been filed is similar to its power with respect to a Rule 60(b) motion. Stinnett v. Weno, 8 FSM R. 142, 145 & n.1 (Chk. 1997).

Although in the absence of an order directing final judgment any order or decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights of all the parties, a trial court does not have the authority to vacate or amend the order from which an appeal is taken. Stinnett v.

Weno, 8 FSM R. 142, 145 (Chk. 1997).

When there is an Appellate Rule 4(a)(1)(B) appeal from the grant of an injunction the trial court loses its power to vacate the order when the notices of appeal are filed. However, as with Rule 59(e) and 60(b) motions, the trial court may consider and deny the motion, or, if it were inclined to grant the motion, so indicate on the record so as to allow the movant an opportunity to request a remand from the appellate division so that it could proceed to grant the motion. Stinnett v. Weno, 8 FSM R. 142, 145 & n.2 (Chk. 1997).

When an appellate rule has not been construed by the FSM Supreme Court and it is nearly identical to a similar United States counterpart, we may look to U.S. practice for guidance. Iriarte v. Etscheit, 8 FSM R. 231, 235 (App. 1998).

Appeals to the FSM Supreme Court appellate division from Chuuk State Supreme Court appellate division final decisions in civil cases, may be made by certiorari. The appellants' petition for certiorari may constitute their notice of appeal. Chuuk v. Ham, 8 FSM R. 467, 468-69 (App. 1998).

A Rule 60(b) motion is for relief from the judgment of a trial court, not the reconsideration of an appellate order. A motion to reconsider before the Pohnpei Supreme Court appellate division is not analogous to a relief from judgment motion. It is instead analogous to the types of motions to reconsider specifically mentioned in FSM Appellate Rule 4(a)(4). Damarlane v. Pohnpei, 9 FSM R. 114, 118-19 (App. 1999).

At least three justices hear all appeals in the Chuuk State Supreme Court appellate division with the decision by a concurrence of a majority of the justices sitting on the appellate panel, but a single justice may make necessary orders concerning failure to take or prosecute the appeal in accordance with applicable law and procedure. Wainit v. Weno, 9 FSM R. 160, 162 (App. 1999).

In the Chuuk Constitution there is a distinction between a "decision," which must be by a majority of the appellate justices assigned to hear the case, and "orders," which a single appellate justice may make. A "decision" means the final determination of the appeal. Wainit v. Weno, 9 FSM R. 160, 162 (App. 1999).

Sections 37 and 38(1) of the 1990 Chuuk State Judiciary Act preserve, just as the Chuuk Constitution does, the distinction between an "order" and a "decision." Specifically, a "decision" will be made by the entire appellate panel assigned to the case. Wainit v. Weno, 9 FSM R. 160, 162 (App. 1999).

Although 4 F.S.M.C. 121 mandates the publication of FSM Supreme Court appellate opinions, confidentiality in the spirit of the rules can been maintained in a continuing attorney disciplinary matter by the omission of names and identifying characteristics. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 175 (App. 1999).

Appellate review, in all but narrowly defined, exceptional circumstances, should be postponed until final judgment has been rendered by the trial court. Hence the party requesting a writ of prohibition or mandamus has the burden of showing a clear and indisputable right thereto, and must show exceptional circumstances necessitating review before final judgment below. Federated Shipping Co. v. Trial Division, 9 FSM R. 270, 273 (App. 1999).

When an FSM appellate rule has not be construed by the FSM Supreme Court and is similar or nearly identical to a U.S. counterpart, the court may look to U.S. practice for guidance. Santos v. Bank of Hawaii, 9 FSM R. 306, 308 n.1 (App. 2000).

The FSM Supreme Court trial division has no appellate or supervisory jurisdiction over either division of the Pohnpei Supreme Court, and no appeal lies from the Pohnpei Supreme Court to the FSM Supreme Court trial division. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 120 (Pon.

2001).

When the issue in both appeals is identical, the cases may be consolidated for purposes of rendering an opinion. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 136 (App. 2001).

Only one Chuuk State Supreme Court justice may hear or decide an appeal in the appellate division. The other members of the appellate panel must be temporary justices appointed for the limited purpose of hearing the appeal. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 150 (Chk. S. Ct. App. 2001).

When a Chuuk Appellate Rule is similar to a U.S. Federal Rule of Appellate Procedure and the Chuuk State Supreme Court has not previously construed its rule, it may look to other FSM sources and then to U.S. sources for guidance. Wainit v. Weno, 10 FSM R. 601, 606 n.1 (Chk. S. Ct. App. 2002).

The presence or lack of subject matter jurisdiction can be raised at any time by any party or by the court. Once raised, it must be considered. This is because a decision by a court without subject matter jurisdiction is void, and such occurrences should be avoided. Bualuay v. Rano, 11 FSM R. 139, 145 (App. 2002).

When an appellate rule has not been construed by the FSM Supreme Court and it is nearly identical to a United States counterpart, the FSM Supreme Court may look to U.S. practice for guidance. Bualuay v. Rano, 11 FSM R. 139, 146 n.1 (App. 2002).

The court's review of a single justice's action is discretionary, and when the appeal is fully briefed and is ready to be heard on its merits and when the full court finds that its order directing distribution of a portion of the cash supersedeas bond is sufficient to protect the appellees, the court will not revisit every single justice order. Panuelo v. Amayo, 11 FSM R. 205, 209 (App. 2002).

When the trial court concluded that its ruling would not change what had been established long ago and continued until today and what had been habitually practiced on an island but did not make a finding of what had been established long ago and what had been the habitual and normal practice on the island, the case will be remanded to the trial court for it to determine if the appellants had customary and traditional use rights to the island and what the extent of those rights is. Rosokow v. Bob, 11 FSM R. 210, 216-17 (Chk. S. Ct. App. 2002).

When an appellate court remands a case to the trial court on the ground that the lower court's findings are inadequate the reviewing court may require or recommend that the trial court take additional evidence. Rosokow v. Bob, 11 FSM R. 210, 217 (Chk. S. Ct. App. 2002).

Although the court must first look to FSM sources of law rather than begin with a review of cases decided by other courts, when the court has not previously construed an FSM appellate rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 626 n.2 (App. 2003).

No appellee is forced to do anything in any appeal. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 627 (App. 2003).

An appellant must timely file a request for a transcript, or a statement of the issues, a designation of the appendix, and an opening brief, with an appendix. An appellant's failure to comply with these rules may subject its appeal to dismissal. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 627 (App. 2003).

If not requested to by the court, a non-party may participate in an appeal as an amicus curiae by either written consent of all parties or leave of court unless the non-party seeking to be an amicus curiae is a state or is the FSM or an officer or agency thereof. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 627 (App. 2003).

An appellate court will first consider an appellant's due process contentions, when, if the appellant were to prevail on these, the decision below would be vacated (without the appellate court considering its merits), and the matter remanded for new proceedings. Anton v. Cornelius, 12 FSM R. 280, 284 (App. 2003).

It is not unusual for amicus curiae to appear at the appellate level. The FSM Rules of Appellate Procedure specifically provide for amicus curiae participation. FSM v. Sipos, 12 FSM R. 385, 386 (Chk. 2004).

When the language of an FSM appellate rule is nearly identical to its counterpart United States rule, the court may choose to look to United States court decisions for guidance in interpreting the rule, but is not required to do so. FSM Dev. Bank v. Yinug, 12 FSM R. 437, 439 (App. 2004).

When the language of an FSM appellate rule is nearly identical to its counterpart United States rule, the court may choose to look to United States court decisions for guidance in interpreting the rule, but it is not required to do so. FSM Dev. Bank v. Yinug, 12 FSM R. 450, 452 (App. 2004).

Under the doctrine of *stare decisis,* once a point of law has been established by a court, that point of law will be followed by all courts of lower rank in subsequent cases where the same legal issue is raised. Kosrae v. Sikain, 13 FSM R. 174, 177 (Kos. S. Ct. Tr. 2005).

The court should not have to instruct attorneys that the court rules mean what they say. An attorney practicing before the court is expected to know the rules and abide by them. Chuuk v. Davis, 13 FSM R. 178, 183 (App. 2005).

While it is true in construction of rules that the word "may" as opposed to "shall" is indicative of discretion or a choice between two or more alternatives, the context in which the word appears must be the controlling factor. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 11 (App. 2006).

The court must first look to FSM sources of law, but when the court has not previously construed an FSM appellate rule which is identical or similar to a U.S. rule, it may look to U.S. sources for guidance in interpreting and applying the rule. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 12 n.1 (App. 2006).

Although the court must first look to FSM sources of law and circumstances to establish legal requirements in criminal cases rather than begin with a review of other courts' cases, when an FSM court has not previously construed an FSM appellate rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. FSM v. Wainit, 14 FSM R. 164, 168 n.1 (Chk. 2006).

Aggrieved parties have the right to appeal single-justice appellate orders to a full panel. This applies strictly to parties, not to justices. Ruben v. Petewon, 14 FSM R. 177, 185 (Chk. S. Ct. App. 2006).

A specific provision in the rules will control rather than a general rule to the extent that they conflict. FSM v. Petewon, 14 FSM R. 463, 467 (Chk. 2006).

If two rules conflict, the more recent expression of the sovereign's will (that is, the most recently enacted statute or rule) prevails over the earlier to the extent of the conflict. FSM v. Petewon, 14 FSM R. 463, 468 n.1 (Chk. 2006).

The civil procedure rules generally do not apply in the appellate division. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 575, 577 (Chk. S. Ct. App. 2007).

The appellate rules provide that in the interest of expediting decisions, or for other good cause shown, the court may, except as otherwise provided in Rule 26(b), suspend the requirements or provisions of any of

the appellate rules in a particular case on a party's application or on its own motion and may order proceedings in accordance with its discretion. Enengeitaw Clan v. Shirai, 14 FSM R. 621, 624 (Chk. S. Ct. App. 2007).

Civil Rule 65 and the Civil Procedure Rules in general apply to civil proceedings in the trial division, not to appellate division proceedings. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

Generally, only attorneys admitted to the FSM Supreme Court can file papers in the appellate division. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

In a case that has been reversed and remanded a new trial may not be necessary when a complete trial transcript was prepared for the appeal, but if the trial court deems it necessary, it may take further evidence. Kileto v. Chuuk, 15 FSM R. 16, 18 (Chk. S. Ct. App. 2007).

In instances where there is no FSM precedent, the appellate court may consider cases from other jurisdictions in the common law tradition. Walter v. FSM, 15 FSM R. 130, 131 (App. 2007).

Although the court must first look to FSM sources of law and circumstances to establish legal requirements in criminal cases rather than begin with a review of other courts' cases, when an FSM court has not previously construed an FSM rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. Zhang Xiaohui v. FSM, 15 FSM R. 162, 167 n.3 (App. 2007).

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

Once a notice of appeal is filed the appellants' options in pursuing their appeal, are: 1) they can order from the court clerk a transcript of such parts of the proceedings not in the file, as they deemed necessary; 2) if they intend to urge on appeal that a Land Commission finding or conclusion was unsupported by the evidence or was contrary to the evidence, they can include in the record a transcript of all evidence; and 3) if the appellants decide not to include the whole transcript on appeal, they should, within 10 days of the filing of the notice of appeal, file a statement of the issues they intend to present on appeal. Liwis v. Rudolph, 15 FSM R. 245, 249 (Chk. S. Ct. Tr. 2007).

The Appellate Procedure Rules specifically provide for amicus curiae participation. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 364 (App. 2007).

Although it is appropriate for the FSM Supreme Court to consider United States courts' decisions as guidance in interpreting a similar appellate rule, when that U.S. rule was extensively rewritten in 1998, it is appropriate to consider only those U.S. court decisions that interpret the rule before its 1998 rewriting. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 364-65 (App. 2007).

An argument raised for the first time at appellate oral argument is improperly raised. Akinaga v. Heirs of Mike, 15 FSM R. 391, 398 (App. 2007).

An appeal from bail orders brought pursuant to FSM Appellate Rule 9(a) may be heard by a single justice of the appellate division. Nedlic v. Kosrae, 15 FSM R. 435, 437 (App. 2007).

When the court has not had occasion to consider the standard of review for an appeal of an order denying bail pending trial under FSM Appellate Rule 9(a), the court may consider authorities from other jurisdictions in the common law tradition since FSM Appellate Rule 9(a) is similar to U.S. Appellate Rule 9(a). Nedlic v. Kosrae, 15 FSM R. 435, 437 (App. 2007).

When it is demonstrably the case that bail was set for each of the appellants in the amount of $1,000, the issue on appeal is not whether they are entitled to bail, but rather the issue is whether the bail amount is excessive. Nedlic v. Kosrae, 15 FSM R. 435, 438 (App. 2007).

When the date for a party to do an act is within a prescribed period after service of a paper upon that party, Appellate Rule 26(c) permits six days to be added, but the Rule 26(c) enlargement only applies when the prescribed time period is triggered by and calculated from the service of a paper upon the party who may then act. The fact that notice is to be served by mail is not dispositive. The correct inquiry is whether the required actions must be performed within a prescribed period of filing or of service. If the act is to be taken after filing, the time for action begins to run from that date. If the act is to be taken after service, the Appellate Rule 26(c) extension applies. Berman v. College of Micronesia-FSM, 15 FSM R. 622, 624 (App. 2008).

When an FSM court has not previously construed an FSM appellate procedure rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. Berman v. College of Micronesia-FSM, 15 FSM R. 622, 624 n.1 (App. 2008).

The time within which a party may file a notice of appeal is calculated from when the trial court judgment is entered, and even when the notice is served by mail, the extra days allowed by Rule 26(c) cannot be added. The same is true for filing a cross-appeal even if the notice of appeal is served by mail, or for any court-ordered deadline even if the court order is served by mail. Berman v. College of Micronesia-FSM, 15 FSM R. 622, 624 (App. 2008).

In the absence of an order issued by the court upon a showing of special cause, the clerk of court may not accept papers for filing by facsimile, but the court may authorize the clerk of court to accept for filing a facsimile response when the appellant desires to submit a timely response for filing. Haruo v. Mori, 16 FSM R. 31, 32 (App. 2008).

Filing by facsimile might be accepted if the provisions of General Court Order 1990-1, § 2 are observed. Wainit v. FSM, 16 FSM R. 47, 48 (App. 2008).

When an FSM Appellate Procedure Rule is identical or similar to a U.S. counterpart and the court has not previously construed some aspect of the rule, it may look to U.S. sources for guidance. Kosrae v. Langu, 16 FSM R. 83, 87 n.1 (App. 2008).

Imposition of Rule 46(c) disciplinary sanctions is subject to due-process scrutiny. Adequate notice and an opportunity to be heard are the essence of due process. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 107 (App. 2008).

When an FSM court has not previously construed an FSM appellate procedure rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 107 n.4 (App. 2008).

It is the FSM Supreme Court appellate division that, under Rule 46(c), imposes "any appropriate disciplinary action" against one certified to practice before the court. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 109 (App. 2008).

A norm of the interpretation of rules is that the specific provision prevails over the general provision. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 110 (App. 2008).

Only an appellate panel has the power to impose attorney disciplinary sanctions through the application of Appellate Rule 46(c) (for transgressions committed in the appellate division). A single appellate justice cannot impose Rule 46(c) disciplinary sanctions. The proper procedure is for the

appellate division to give notice of possible sanction after disposing of the appeal, or, in a criminal appeal, after the offending attorney has been discharged. The same panel would then rule on, and impose, if necessary, the appropriate sanction. If the appeal is disposed of by a single justice dismissal order, that single justice may give notice of a possible Rule 46(c) sanction, but only an appellate panel may decide whether to impose it. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 110 (App. 2008).

Besides Appellate Rule 46(c), disciplinary sanctions may also be imposed on an attorney through a complaint referred to the Chief Justice and docketed by the Chief Clerk, which then proceeds through the usual disciplinary process in the Disciplinary Rules. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 110 & n.8 (App. 2008).

A single justice reprimand must be reversed since a single justice lacks the power to impose Appellate Rule 46(c) discipline. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 110 (App. 2008).

Imposition of Appellate Rule 46(c) disciplinary sanctions is subject to due-process scrutiny. Adequate notice and an opportunity to be heard is therefore required. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 123 (App. 2008).

When an FSM court has not previously construed an FSM Appellate Procedure Rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 123 n.4 (App. 2008).

In the interpretation of rules, the specific provision prevails over the general provision. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 125 (App. 2008).

Only an appellate panel has the power to impose attorney disciplinary sanctions through the application of Appellate Rule 46(c). A single justice cannot impose Rule 46(c) disciplinary sanctions. The proper procedure is for the appellate division to give notice of possible sanction after disposing of the appeal, or in a criminal appeal, after the offending attorney has been discharged. The same panel would then rule on, and impose, if necessary, the appropriate sanction. If the appeal is disposed of by a single justice dismissal order, that justice may give notice of possible Rule 46(c) discipline, but only a full appellate panel may decide whether to impose it. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 126 (App. 2008).

Besides Appellate Rule 46(c), disciplinary sanctions may also be imposed on an attorney through a complaint referred to the Chief Justice and docketed by the Chief Clerk, which then proceeds through the usual process in the Disciplinary Rules. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 126 & n.9 (App. 2008).

A single justice reprimand must be reversed since a single justice lacks the power to impose Rule 46(c) discipline. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 126 (App. 2008).

An appellate court should not have to instruct counsel on the rules' requirements. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 552 (Chk. S. Ct. App. 2009).

It is proper for temporary justices, otherwise meeting the requirements of Chuuk Constitution Article VII, section 5(b), to constitute the full appellate panel and to preside over Chuuk State Supreme Court appeals if Chuuk State Supreme Court justices are disqualified or not readily available. Mori v. Haruo, 16 FSM R. 556, 557 (Chk. S. Ct. App. 2009).

When the appellate court has not previously considered whether Appellate Rule 4(a) or 4(b) applies to a criminal contempt finding in a civil case and those FSM appellate procedure rules are identical or similar to U.S. counterparts, the court may consult U.S. sources for guidance in interpreting those rules. Berman v. Pohnpei Legislature, 17 FSM R. 339, 353 n.6 (App. 2011).

Rules are construed in a manner similar to the manner in which statutes are construed. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 628 (App. 2011).

If the appellees wish the appellants to provide a bond necessary to ensure payment of costs on appeal, they must first apply to the court appealed from. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 210 (App. 2012).

The Kosrae Rules of Appellate Procedure govern procedure in the Kosrae State Court trial division when considering an appeal from the Kosrae Land Court. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 545 n.1 (App. 2013).

FSM Appellate Rules 3 and 4 govern how and when appeals are taken by the FSM Supreme Court appellate division. Ruben v. Chuuk, 18 FSM R. 604, 606 (App. 2013).

The court must first look to FSM sources of law, but when the court has not previously construed an aspect of an FSM appellate rule which is identical or similar to a U.S. rule, it may look to U.S. sources for guidance in interpreting and applying the rule. Ruben v. Chuuk, 18 FSM R. 637, 639 n.3 (Chk. 2013).

When, at the close of the petitioner's case-in-chief, the respondents move to dismiss the petitioner's case because he had not shown a right to relief, the Chuuk State Supreme Court appellate division will consider the motion to be analogous to a trial division Civil Procedure Rule 41(b) motion to dismiss although the civil procedure rules apply to the trial division and not the appellate division. Such a motion to dismiss may be made on the ground that on the facts and the law the petitioner has shown no right to relief, and the Chuuk State Supreme Court appellate division, as the trier of fact, may then determine the facts and render judgment against the petitioner or may decline to render any judgment until the close of all the evidence. Hallers v. Yer, 18 FSM R. 644, 647 (Chk. S. Ct. App. 2013).

While the appellate court must first look to FSM sources of law rather than start with a review of other courts' cases, when it has not already construed an FSM appellate rule which is similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. Berman v. FSM Nat'l Police, 19 FSM R. 118, 123-24 n.1 (App. 2013).

When the issue of the trial court's jurisdiction is being appealed on various constitutional grounds but there has been no determination that the trial court lacks jurisdiction, the trial court retains jurisdiction to enforce the judgment and is not acting without authority or jurisdiction. The extraordinary writ of prohibition will not serve as a substitute for that appeal. Ehsa v. Johnny, 19 FSM R. 175, 177-78 (App. 2013).

FSM Appellate Rule 21 is a nearly verbatim adoption of U.S. Federal Appellate Rule 21, and so special consideration should be given to United States decisions regarding application of Appellate Rule 21. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 257 (Pon. 2014).

Since the Kosrae Constitution provides that appeals from the State Court trial division may be made to the State Court appellate division, as shall be prescribed by law, enabling legislation is required to implement appeals from the trial division to the State Court appellate division, and when no such legislation has become law, no constitutional or statutory authority exists to authorize appeals from the Kosrae State Court trial division to the non-existent Kosrae State Court appellate division. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 301 (App. 2014).

By statute, the Kosrae State Court can, if appropriate, order a rehearing in the Land Court for only a part of a case. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 303 (App. 2014).

The court must first look to FSM sources of law and circumstances, but when it has not previously construed an aspect of an FSM appellate procedure rule that is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. Nena v. Saimon, 19 FSM R. 393, 395 n.1

(App. 2014).

The appellate panel's presiding justice may consider a bill of costs. A single justice's action may be reviewed by the court. Nena v. Saimon, 19 FSM R. 393, 395 (App. 2014).

Although it must first look to FSM sources of law and circumstances, when the court has not previously construed an aspect of an FSM appellate procedure rule that is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. In re Sanction of Sigrah, 19 FSM R. 396, 398 n.1 (App. 2014).

The appellate panel's presiding justice may consider an opposed bill of costs, but the single justice's action may be reviewed by the court. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

Although the court must first look to FSM sources of law and circumstances, when it has not previously construed an aspect of an FSM appellate procedure rule that is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. Andrew v. Heirs of Seymour, 19 FSM R. 451, 452 n.1 (App. 2014).

An appellate panel's presiding justice may consider an opposed bill of costs, but the single justice's action may be reviewed by the court. Andrew v. Heirs of Seymour, 19 FSM R. 451, 452-53 (App. 2014).

There is no due process violation from the different composition of the two appellate panels when the first appellate panel had before it an interlocutory appeal and the later appeal was from a final judgment on the merits. There is no due process reason why a different panel could not be constituted for the second appeal case when the first panel had completed its work on the appeal case before it and then, after a new and final trial division decision, a different group of three judges was empaneled to hear the new appeal case. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 603, 607 (App. 2014).

The absence of express authority in FSM appellate case law to consolidate similar, but not identical, appeals does not mean the court lacks the ability to do so when appropriate circumstances present themselves so long as it does not conflict with any rule or law. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 389-90 (App. 2016).

Since appeals may be consolidated by order of the Supreme Court appellate division on its own motion or on a party's motion, or by stipulation of the parties to the several appeals, it is clear that the court exercises broad discretion in determining whether or not to consolidate cases. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 390 (App. 2016).

When common questions of fact pervade the trial case from which the three appeals all arose and when each appellate case shares at least one common issue, if not more, with at least one of the other cases, consolidation of the appeals is appropriate because addressing the several legal issues arising from the same facts and procedural history with commonality of parties in a single consolidated proceeding conserves judicial resources, reduces cost and delay, and expedites the disposition of the issues without sacrifice of justice and because consolidating the matters would further the interest of justice and ultimately promote judicial economy since the issues of law to be decided are closely interrelated in all three cases and since hearing the matter as three separate appeals would result in unnecessary duplicative efforts by the parties and the court. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 390 (App. 2016).

An appellate court does not sit to render decisions on abstract legal propositions or issue advisory opinions. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 513 (App. 2016).

When it is an issue of first impression in interpreting an FSM Appellate Rule and the Rule's language is nearly identical to its United States' counterpart, it is appropriate for the court to look to the United States federal courts for guidance in interpreting the rule. People of Eauripik ex rel. Sarongelfeg v. Osprey

Underwriting Agency, Ltd., 21 FSM R. 214, 224, 229 n.5 (App. 2017).

Arguments that a later appellate panel must either consist of the exact three justices who sat on the prior appeal or, alternatively, of three justices who were not involved in the previous appeal, are devoid of merit. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 310, 314 (App. 2017).

The computation of time in the Pohnpei Supreme Court appellate division is governed by Pohnpei Civil Procedure Rule 6, and under that rule, when a period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and holidays are excluded in the computation. Silbanuz v. Leon, 21 FSM R. 336, 341 (App. 2017).

A notice of appeal divests trial court of jurisdiction, except to take action in aid of the appeal. Examples of orders in aid of an appeal include, but are not limited to, applications for release from jail pending appeal, applications for stays pending appeal, taxation of costs on a judgment after notice of appeal filed, considering and denying a Rule 60(b) relief from judgment motions (but not granting one unless the case is remanded), and, since the mere filing of a notice of appeal does not affect a judgment's validity, the trial court also retains jurisdiction to enforce the judgment, unless a stay has been granted. Setik v. FSM Dev. Bank, 21 FSM R. 505, 518 (App. 2018).

It is not proper to make the lower court a defendant when seeking judicial review of its actions in a higher court. Judicial review of a lower court's acts or omissions is usually accomplished by an appeal to a higher court or, on rare occasion, by a petition for a prerogative writ, such as prohibition or mandamus. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 579 (App. 2018).

– Briefs, Record, and Oral Argument

The appellant's tardiness in filing his brief, with no explanation offered in response to a motion for dismissal or when the brief is submitted, constitutes a ground for dismissal of an appeal. FSM App. R. 31(a) & (c). Alaphonso v. FSM, 1 FSM R. 209, 229-30 (App. 1982).

In absence of express appellate division permission to appear without supervision of an attorney, the court will require all appellate level briefs and other documents to be signed by an attorney authorized to practice before the FSM Supreme Court. Any appellate submissions not so signed will be rejected. Alaphonso v. FSM, 1 FSM R. 209, 230 n.13 (App. 1982).

A delay of only two days in filing the appellate brief does not warrant dismissal of the appeal when there is no showing of prejudice. Kephas v. Kosrae, 3 FSM R. 248, 253 (App. 1987).

Unexcused and extended delay in service of appellant's brief after certification of the record warrants dismissal of the appeal. Kephas v. Kosrae, 3 FSM R. 248, 254 (App. 1987).

Failure of the appellant to include a transcript in the record on an appeal based upon a claim of insufficiency of evidence warrants dismissal of the appeal. Kephas v. Kosrae, 3 FSM R. 248, 254 (App. 1987).

Where the delay was only ten days, no prejudice to the appellant has been suggested, the appellant has not opposed the motion for extension of time and the court finds a substantial public interest in having the position of the government considered in the criminal appeal, the court may appropriately enlarge the time and permit late filing of the government's brief. Kimoul v. FSM, 4 FSM R. 344, 346 (App. 1990).

The date of notice from the clerk that the record is ready, not the filing of the Certification of Record, triggers the running of the due date of an appellant's brief. Federated Shipping Co. v. Ponape Transfer & Storage, 5 FSM R. 89, 91 (App. 1991).

It is within the court's discretion to dismiss an appeal where the appellant has failed to file a brief within the time prescribed when the appellee has moved for dismissal. In deciding a motion to dismiss an appeal under FSM Appellate Rule 31(c), the court may consider, among other things, the length of delay in filing briefs; nature of the reason for any filing delay; evidence of prejudice to the opposing party; and extent of the delaying party's efforts to correct procedural defects. Nakamura v. Bank of Guam (I), 6 FSM R. 224, 227 (App. 1993).

Prejudice to an appellee may be shown by failure of an appellant to file a notice of issues presented and contents of the appendix as required under FSM Appellate Rule 30(b). Nakamura v. Bank of Guam (I), 6 FSM R. 224, 227 (App. 1993).

The service on opposing counsel of a signed and dated copy of a brief filed with the appellate division, although not explicitly stated in FSM Appellate Rule 31(d), is a procedural requirement of the FSM Supreme Court. Nakamura v. Bank of Guam (I), 6 FSM R. 224, 228 (App. 1993).

The requirement under FSM Appellate Rule 30(a) of an appendix is only waived at the court's discretion and by court order. Nakamura v. Bank of Guam (I), 6 FSM R. 224, 228 (App. 1993).

Parties to an appeal must reference properly and clearly in their briefs the parts of the record containing material in support of their arguments, and unless the court has waived an appendix under Appellate Rule 30(f), references should be to the appropriate pages of the appendix. Nakamura v. Bank of Guam (I), 6 FSM R. 224, 228 (App. 1993).

Facts asserted to excuse the filing of an appellate brief within the time prescribed must be proved. Nakamura v. Bank of Guam (I), 6 FSM R. 224, 228 (App. 1993).

FSM Appellate Rule 28(a) requires, among other things, that arguments in an appellant's brief be supported by citations to authority; failure to provide such support will be deemed a waiver by appellant of the claims being argued. McCaffrey v. FSM Supreme Court, 6 FSM R. 279, 283 (App. 1993).

A motion to correct the record on appeal must first be made in the trial court before application to the appellate court. Berman v. Santos, 7 FSM R. 492, 493 (App. 1996).

If an appellant intends to urge on appeal that a finding or conclusion is unsupported by, or contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to that finding or conclusion. If the appellee then deems a transcript of other parts of the proceedings necessary, he must counter designate the additional parts the appellant should include in the record. If the appellant does not request such parts, the appellee may request the additional parts himself or move for a court order requiring the appellant to do so. Damarlane v. United States, 7 FSM R. 510, 512 (App. 1996).

An appellant must include in the appendix to its opening brief all relevant and essential portions of the record, including any supporting opinion, findings of fact or conclusions of law filed or delivered orally by the court(s) below, but oral rulings are not required in the appendix if already contained in transcripts filed as a part of the record. The record must be sufficient to permit the court to insure that the issues on appeal were properly raised before the trial court. Damarlane v. United States, 7 FSM R. 510, 512-13 (App. 1996).

Appellants are responsible for presenting to the court a record sufficient to permit it to decide the issues raised on appeal, and one which provides the court with a fair and accurate account of what transpired in the trial court proceedings. Damarlane v. United States, 7 FSM R. 510, 513 (App. 1996).

An appellant has the primary responsibility for including in the record all necessary parts of the transcript, and the appellant cannot shift his responsibility to the appellee by the simple device of failing to discharge it himself. It is the appellant who must insure an adequate record, and if the record fails to

demonstrate error, the appellant cannot prevail. Damarlane v. United States, 7 FSM R. 510, 513 (App. 1996).

An appellant's failure to include in the record relevant transcripts may be fatal to his appeal because when the appellants do not include evidence in the record, the presumption is that the evidence was sufficient to sustain the trial court's judgment. Damarlane v. United States, 7 FSM R. 510, 513 (App. 1996).

If the FSM wishes to present the court with its views on an appeal it may file an amicus curiae brief as permitted by Rule 29 of the FSM Rules of Appellate Procedure. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 520, 522 (App. 1996).

Any appellant would be hard pressed to prove a finding of fact at trial was clearly erroneous without a transcript of the trial proceedings. Berman v. Santos, 7 FSM R. 624, 627 (App. 1996).

The FSM government does not need leave of court to file an amicus brief. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 668 (App. 1996).

A transcript of at least part of the trial court proceedings is generally necessary if the appeal involves issues of fact or evidence. Damarlane v. United States, 8 FSM R. 45, 53 n.6 (App. 1997).

When an appellant has failed to comply with the appellate rules' timing requirements for filing its opening brief, a single article XI, section 3 justice may, on his own motion, dismiss the appeal after the appellant has been afforded its constitutional due process right to notice and an opportunity to be heard. Ting Hong Oceanic Enterprises v. FSM, 8 FSM R. 264, 265 (App. 1998).

If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including his recollection. After settlement and approval by the trial justice, this statement of the evidence shall be included by the clerk of the court appealed from in the record on appeal. When appellants have failed to avail themselves of this procedure to secure a record of the evidence for review on appeal such failure on their part gives no grounds for complaint for the absence of a record of the evidence for review by the appellate court. Lewis v. Haruo, 8 FSM R. 300L, 300m (Chk. S. Ct. App. 1998).

When a transcript of the evidence in the Chuukese language has been on file for three years and the appellant has had access to the transcript for the purpose of prosecuting his appeal during the entire time and when nothing in the record indicates that the appellant requested an English language transcript a motion to enlarge time to file brief and to postpone oral argument on the ground that an English language transcript has not been received will be denied. Reselap v. Chuuk, 8 FSM R. 584, 586 (Chk. S. Ct. App. 1998).

Because the Chuuk Constitution provides that Chuukese is the state language, but both Chuukese and English are official languages, a criminal appellant in the Chuuk State Supreme Court has no constitutional right to a transcript in both Chuukese and English. Reselap v. Chuuk, 8 FSM R. 584, 586 (Chk. S. Ct. App. 1998).

An appeal may be dismissed when the appellant has not ordered a transcript and no certificate has been filed that no transcript would be ordered and the appellee has filed a written motion to dismiss the appeal for appellant's failure to comply with the appellate rules. Nechiesom v. Irons, 8 FSM R. 589, 590 (Chk. S. Ct. App. 1998).

An appeal may be dismissed when the appellants have been served with a notice of oral argument and briefing schedule which required appellant's brief to be filed no later than a certain date and appellants have filed no brief and no extension of time to do so was ever requested of or granted by the court and when the appellee has filed a written motion for dismissal on those grounds and when, at oral argument.

appellants' counsel offered no reasonable justification for not filing a brief. Walter v. Welle, 8 FSM R. 595, 596 (Chk. S. Ct. App. 1998).

Appellees' counsel's motion to continue oral argument because the appellees are unable to pay for a copy of the transcript may be denied when he made the same motion on the same ground during the previous appellate session one year earlier and the other parties oppose any further continuance. Sellem v. Maras, 9 FSM R. 36, 37-38 (Chk. S. Ct. App. 1999).

An appellant must include a transcript of all evidence relevant to the trial court's decision if the appellant argues on appeal that a finding or conclusion is not supported by the evidence or is contrary to the evidence. The burden is on the appellant to ensure that he brings an adequate record to support his argument. Cheida v. FSM, 9 FSM R. 183, 189 (App. 1999).

In meeting the standard of review, the appellant must ensure an adequate record. If the record does not demonstrate error, the appellant cannot prevail. Cheida v. FSM, 9 FSM R. 183, 189 (App. 1999).

Rule 28(l) permits appellants to join in a single brief. Implicit in this rule is an appellant's right to file individually. The right to file an individual brief is not forfeited or waived by the filing of a joint notice of appeal. Chuuk v. Secretary of Finance, 9 FSM R. 255, 257 (App. 1999).

An appellant has a right to file its brief individually, and does not waive this right by joining the other appellants in earlier appeal procedures. Prejudice to an appellee from the resulting two briefs can be eliminated by seeking any necessary enlargement of time to file its responding briefs. Chuuk v. Secretary of Finance, 9 FSM R. 255, 257 (App. 1999).

It is the appellant's duty to prepare and file the appendix. But when the appellant has failed to prepare and file the appendix and the appellee instead does so, and the appellee prevails, the cost of producing copies of the appendix may be taxed in the appellee's favor. Santos v. Bank of Hawaii, 9 FSM R. 306, 308 n.2 (App. 2000).

The appellate division has broad discretion to grant an extension of time to file a brief and appendix upon a showing of good cause. O'Sonis v. Bank of Guam, 9 FSM R. 356, 361 (App. 2000).

If an appellant fails to file a brief within the time provided by the rules, or within the time as extended, an appellee may move for dismissal of the appeal. Factors that a court may consider on a motion to dismiss an appeal under Rule 31(c) are the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reason for appellant's failure to file on time; and extent of appellant's efforts in mitigation. O'Sonis v. Bank of Guam, 9 FSM R. 356, 361 (App. 2000).

While it is true that in an attorney sanction appeal many items usually placed in an appendix are not relevant to the appeal, many are, such as the docket sheet or trial court's certified list, the notice of appeal, and the final order appealed from; and those items, and any other documents in the record to which the appellant wishes to draw particular attention, should be included in the appendix, but irrelevant items may be omitted. In re Sanction of Woodruff, 9 FSM R. 374, 375 (App. 2000).

An appellee who fails to file a brief will not be heard at oral argument except by the court's permission. In re Sanction of Woodruff, 9 FSM R. 414, 415 (App. 2000).

Although certain consequences flow from the failure to file a brief, appellees' attorneys are not otherwise under an obligation to the court to file briefs, but may be under a professional ethical obligation to their clients to do so, or may be subject to malpractice liability if an appellee is in the end prejudiced by his attorney's failure to file. In re Sanction of Woodruff, 9 FSM R. 414, 415 (App. 2000).

A trial court memorandum entered after entry of both a final order and a notice of appeal is not an

action in aid of the appeal, especially when such a memorandum might necessitate an appellant having to seek leave to amend its issues on appeal or take some other action it would not have otherwise had to, and may be stricken from the appellate record. Department of the Treasury v. FSM Telecomm. Corp., 9 FSM R. 465, 467 (App. 2000).

An appellant must serve and file a brief within 40 days after the date of the appellate clerk's notice that the record is ready, and if an appellant fails to file a brief within the time frame provided by the rule, or within the time as extended, an appellee may move for the appeal's dismissal. Cuipan v. FSM, 10 FSM R. 323, 325 (App. 2001).

It is within the court's discretion to dismiss an appeal for late filing of an appellant's brief. Among the factors which the court considers on a Rule 31(c) motion to dismiss are the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reasons for appellant's failure to file on time; and extent of appellant's efforts in mitigation. Cuipan v. FSM, 10 FSM R. 323, 325 (App. 2001).

An appellant shall, not later than 10 days after the date of the appellate clerk's notice that the record is ready, serve on the appellee a designation of the parts of the record which the appellant intends to include in the appendix and a statement of the issues which the appellant intends to present for review. Cuipan v. FSM, 10 FSM R. 323, 326 (App. 2001).

An appeal may be dismissed when the appellant has failed for approximately 6 months after entry of the record ready notice, to serve on the appellee a designation of the parts of the record which appellant intends to include in the appendix and a statement of the issues which the appellant intends to present for review, both of which the appellant must file within 10 days after the date of the clerk's record ready notice. Cuipan v. FSM, 10 FSM R. 323, 326 (App. 2001).

An in forma pauperis appellant may be allowed to proceed on the original record without the necessity to reproduce any part of it. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 519 (Pon. 2002).

When an appellant's 1996 brief was not filed with the court, but only lodged with the clerk and the appellant filed one in 1999, the appellant has filed only one brief in the appeal because papers merely "lodged" with the clerk, but not filed, are not part of the record, although the existence of the 1996 "lodged" brief is part of the record. Wainit v. Weno, 10 FSM R. 601, 606 (Chk. S. Ct. App. 2002).

If an appellee deems a transcript is needed when the appellant has declined to order one, the appellee may designate what transcript is needed and if the appellant does not order it, then the appellee may order it or seek an order requiring it. Wainit v. Weno, 10 FSM R. 601, 607 n.2 (Chk. S. Ct. App. 2002).

No transcript is needed when no facts are in dispute and the chronology of events is clear. Wainit v. Weno, 10 FSM R. 601, 607 (Chk. S. Ct. App. 2002).

When a justice's reason for denying an appellant's motions was clearly stated in his order, speculation about other possible reasons is pointless. Parties are entitled to rely on the justice's written order. Wainit v. Weno, 10 FSM R. 601, 607 (Chk. S. Ct. App. 2002).

While the court will not look favorably on anyone who attempts to manipulate type face in an attempt to circumvent the rules' intent, which is to place a reasonable limitation on submissions to the appellate division and prevent the court from wasting time and resources, the court may decide not to strike a brief when there was no evidence the appellees' intentionally disregarded Appellate Rule 32(a) or that the appellant was prejudiced, but which, because of technological changes from typewriters to computers, technically exceeded the Rule's page limit. Panuelo v. Amayo, 11 FSM R. 205, 208-09 (App. 2002).

Good cause to enlarge time to file a reply brief may be found when the appellant's motion to strike the appellees' brief has not been resolved. Panuelo v. Amayo, 11 FSM R. 205, 209 (App. 2002).

A state does not need either the parties' written consent or leave of court to file an amicus curiae brief. It can file one as a matter of right. It could even participate in oral argument as an amicus curiae when its motion to participate in oral argument is granted, but such a motion will be granted only for extraordinary reasons. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 627 (App. 2003).

An appellee may supplement the designation of the appendix, but if it does not, the appendix stands as designated by the appellant; and an appellee is also directed to file its brief within thirty days of service of the appellant's brief, but the sole consequence of not doing so is that the appellee will not be heard at oral argument except by permission of the court. The court, however, prefers full participation by appellees as the court, FSM jurisprudence, and the FSM bar usually benefit from a full presentation of all the relevant issues by all the interested parties. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 627 & n.3 (App. 2003).

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

The court reviewing a Land Court decision must have before it the full and complete record upon which the Land Court's final decision was based. Heirs of Palik v. Heirs of Henry, 12 FSM R. 625, 627 (Kos. S. Ct. Tr. 2004).

Since the amount of the attorney's fees owing to plaintiffs remained before the trial division at the time the appellate record ready certificate was issued, this does not mean that the record ready certificate's issuance was improper since an order awarding a specific amount of attorney's fees is a separate order that is not yet part of the appeal. Felix v. Adams, 13 FSM R. 28, 29 (App. 2004).

Regardless of whether a party who filed a notice of appeal is designated an appellant or cross-appellant, each appellant must discharge the duties imposed by Appellate Rule 10(b) and take any other action necessary to enable the clerk to assemble and transmit the record. AHPW, Inc. v. FSM, 13 FSM R. 36, 44 n.1 (Pon. 2004).

Alleged deficiencies such as inadequate citations to the record and an inadequate appendix are not grounds upon which a single justice may dismiss an appeal, but such deficiencies, if true, would adversely affect the appellant's power to persuade the full appellate panel that the trial court erred in the manner in which it claims. Nor will a single justice strike the portions of the brief concerning an issue allegedly not raised below since it is the appellant's burden to persuade the full appellate panel that the issue was raised below or is properly before the appellate division. Pohnpei v. AHPW, Inc., 13 FSM R. 159, 161 (App. 2005).

Rule 30 requires an appellant to file an appendix with its brief which must contain relevant and essential portions of the record and specifies the exact documents that should be part of an appellant's appendix, including the trial court docket sheet, the notice of appeal, relevant portions of pleadings filed below, the judgment sought to be reviewed, and any portions of the transcript of proceedings below to be relied upon. Chuuk v. Davis, 13 FSM R. 178, 182 (App. 2005).

Although Rule 30(f) provides for the possibility of hearing appeals without an appendix, that is by special order of the court only since an appendix is an essential element of an appellant's brief and the requirement that it be included is not waiveable by appellant and only in limited circumstances at the court's discretion and by court order may it be waived. Chuuk v. Davis, 13 FSM R. 178, 182 (App. 2005).

An appellant's failure to satisfy Rule 30's requirements can result in the of the appeal's dismissal. Chuuk v. Davis, 13 FSM R. 178, 182 (App. 2005).

The parties are required to cite in their briefs to the record as included in the appendix or the record as

a whole. The court take such citations to the record seriously. Clear identification of parts of the record containing matter that forms the basis for appellant's argument is the brief writer's responsibility, as the court is not required to search the record for error. Chuuk v. Davis, 13 FSM R. 178, 183 (App. 2005).

When an appellant neither filed an appendix nor made a single citation to the record in its brief and submitted nothing to the appellate court which even documented the trial court decision under review, such egregious omissions are evidence of negligence. These violations of procedural rules present problems with both the form and substance of appellate review when the appellant's assertions in its brief are utterly unsupported by proof of what the trial court did or did not do below. The appellate court should not be put in the position of having to take an appellant at its word. Chuuk v. Davis, 13 FSM R. 178, 183 (App. 2005).

When an appellant fails to provide a necessary appendix and that appendix is provided by an appellee and the appellee prevails, the cost of producing the appendix may be taxed in the appellee's favor. Chuuk v. Davis, 13 FSM R. 178, 183 (App. 2005).

When an appellant has provided certain portions of the trial transcript in its brief and as part of its appendix, but does not direct the court to the relevant portions of the transcript that show that the trial court's findings were clearly erroneous, it is not the court's responsibility to search the record for error. The parties' briefs must clearly identify those portions of the record which support their arguments. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 514 (App. 2005).

When an appellant asserts that there was no evidence to support certain findings, but has not provided a full transcript, the court cannot make the determination that there was no evidence before the court to support these findings. A transcript setting forth all of the evidence relevant to the trial court's decision must be provided by the appellant if he is arguing on appeal that the trial court's findings lack evidentiary support. Otherwise the appellate court will be unable to identify any of the trial court's findings of fact as clearly erroneous. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 514 (App. 2005).

When a full trial transcript is included in appellant's appendix, there is no reason why the cross-appellant should be required to also file an identical trial transcript. One complete trial transcript in the appellate file is sufficient. Two would be a waste of resources. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 13 (App. 2006).

The court may hear argument from the appellee if the appellant fails to appear at the time set for hearing. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 494, 495 (Kos. S. Ct. Tr. 2006).

Although Kosrae Appellate Rule 14(c) provides that if an appellant fails to file his brief within the time provided by the rule, or within time as extended by court order, an appellee may move for dismissal of the appeal and also that the court, on its own motion, may issue an order to show cause why the appeal should not be dismissed for appellant's failure to file a brief, under Kos. S.C. § 11.614(5), governing Land Court appeals, the State Court may refuse to allow oral argument by a party who fails to file a timely brief. Since the statute differs from the appellate rules and the statute specifically applies to appeals from Land Court, it governs over the general appellate rules and the court may exercise its discretion to allow oral argument by appellants from a Land Court decision who have not filed a brief. Heirs of Tara v. Heirs of Kurr, 14 FSM R. 521, 523 (Kos. S. Ct. Tr. 2007).

Any appellee may move to strike any document in the appellant's appendix on the ground that that document was not certified as part of the record on appeal. Enengeitaw Clan v. Shirai, 14 FSM R. 621, 625 (Chk. S. Ct. App. 2007).

If a cross appeal is filed, the brief of the appellee must contain the issues and argument involved in the appellee's appeal as well as the answer to the appellant's brief and the appellant must prepare and file an appendix that contains the essential and relevant portions of the record. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 7, 9 (App. 2007).

The court may shorten or enlarge the periods prescribed for the serving and filing of briefs and may also enlarge the time period for doing any act that is required or allowed under the rules. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 7, 9 (App. 2007).

Within 30 days after service of the principal brief by the appellants/cross-appellees, the appellees/cross appellants must file their principal and response brief. That brief must comply with Appellate Rules 28(a) and (b), except that the brief need not include a statement of the case or a statement of the facts unless they are dissatisfied with the statement in the appellants' principal brief. In addition, their brief may not exceed a total of 100 pages in length, nor may the respective portions of the brief comprising the principal brief and response brief each exceed 50 pages in length. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 7, 10-11 (App. 2007).

The appellants/cross-appellees must, within 30 days after service of the appellees/cross-appellants' principal and response brief, file their brief that responds to the principal brief in the cross appeal. Their brief must comply with Appellate Rule 28(b), except that it need not include a statement of the case or a statement of the facts unless it is dissatisfied with the appellees/cross-appellants' statement. In filing the brief, the appellants/cross-appellees may, in the same brief, reply to the appellees/cross-appellants' response brief. If a reply is made, the combined brief must also comply with Appellate Rule 28(c), and if a combined brief is filed, the brief may not exceed a total of 75 pages in length, with a further restriction being that the portion of the brief comprising the response brief must not exceed 50 pages in length while that portion of the brief comprising the reply cannot exceed 25 pages in length. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 7, 11 (App. 2007).

The appellees/cross-appellants may, within 14 days after service of the appellants/cross-appellees' response brief, file a reply. This reply brief must comply with Appellate Rule 28(c) and must be limited to the issues presented by the cross appeal. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 7, 11 (App. 2007).

Parties who have been designated as the appellants in an appeal and cross-appeal for the purpose of complying with Appellate Rules 28, 30 and 31, must undertake the duty of preparing the appendix to the appellant's brief. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 7, 11 (App. 2007).

When, because the appellees were allowed to file an untimely brief, the court exercised its statutory discretion and ordered that they would not be allowed to present oral argument, and when the appellants' counsel requested a continuance and claimed that the appellees' counsel agreed to the continuance, but appellees' counsel opposed the continuance and appeared at the time set for argument stating he had not agreed and that the appellants had not shown sufficient grounds for a continuance and then requested that appellants' counsel not be allowed to present oral argument, the court ordered that the case would be decided on the briefs and record and that neither party would be allowed to present oral argument. Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 143-44 (Kos. S. Ct. Tr. 2007).

The court may permit the respondents to present oral argument even though they had not answered the petition in the time previously set by the court and had thus waived their right to respond at oral argument without the court's permission. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 223 (Chk. S. Ct. App. 2007).

Costs for printing and copying the brief, appendix, and reply brief are expenses that traditionally have been included within costs that are awarded to prevailing parties. Ruben v. Hartman, 15 FSM R. 240, 242 (Chk. S. Ct. App. 2007).

Although briefs must be bound in volumes having pages not exceeding 8½ by 11 inches and type matter not exceeding 6½ by 9½ inches, with double spacing between each line of text and the cover of the appellant's brief must be blue; that of the appellee, red; that of an intervenor or amicus curie, green; and

that of any reply brief gray, and except by court permission, the parties' principal briefs must not exceed 50 pages, and the reply briefs not exceed 25 pages, when the appellant's briefs were not all bound in blue because blue paper was unavailable on-island; when, even though that brief used spacing of one and one half, instead of double spacing, it was possible that if the brief had contained the proper double spacing of typed matter it might have resulted in the same amount of text being presented within the 50 page limit; and when the appellee did not raise the issue concerning the color of the coversheet to the appellant's brief before it submitted its own brief, the appellee's request to strike the appellant's brief will be denied. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 308 (App. 2007).

The court will not look favorably upon anyone who attempts to manipulate type face in an effort to circumvent the intent of the Appellate Procedure Rules, which is to place a reasonable limitation on submissions to the court which, in turn, prevent the court from wasting time and resources. In such cases, the court may decide not to strike a brief when there is no evidence of any intentional disregard for the rules, and when the other party has not been prejudiced. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 308 (App. 2007).

The amicus curiae's role in appeals is limited to addressing only those issues that the parties have raised. It would be inappropriate for an appellate court to consider any arguments or evidence that were not previously presented to and ruled upon by the trial court. Accordingly, a particular document that was not previously considered by the trial court and the references to it in an amicus curiae brief will be stricken from the record. The other arguments presented by the amicus curiae in its brief will be considered. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 365 (App. 2007).

A party whose position is being opposed by an amicus curiae brief may file a responsive brief. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 365 (App. 2007).

An amicus curiae's motion to participate in oral argument will be granted only for extraordinary reasons, and in the absence of the presentation of any reason why an amicus curiae should be heard at oral argument, its request to participate in the oral argument will be denied. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 366 (App. 2007).

There are four factors to consider when the government files an untimely motion for enlargement of time to respond to appellant's brief in a criminal appeal: 1) the length of the delay in seeking an enlargement; 2) whether the appellant will be prejudiced; 3) whether the appellant objects to the motion; and 4) whether there is substantial public interest in allowing the government to submit its argument. Engichy v. FSM, 15 FSM R. 432, 434 (App. 2007).

When the FSM's request for an enlargement of time to file its response brief was over seven months late and the appellants opposed the enlargement; when allowing the FSM to file a brief would necessitate the postponement of the scheduled oral argument, severely prejudicing the appellants due to restrictions placed on their civil liberties as a result of the underlying convictions; when allowing the FSM to participate in oral argument (with or without filing a brief) would severely prejudice the appellants since it would deny them both adequate notice of the FSM's arguments and adequate time to prepare for responding to those arguments; when there is the public interest in allowing the government to participate in the appeal of a criminal matter and at least an equal public interest in requiring the government to diligently, competently and promptly prosecute its cases; when the FSM Department of Justice's unpersuasive excuses point to internal strife within their own ranks; when the public most certainly has an interest in holding the government to a standard that demands resolution of such strife and efficient administration of its duties, good cause does not exist to enlarge time for the FSM to file a brief and to be heard at oral argument. Engichy v. FSM, 15 FSM R. 432, 434 (App. 2007).

The court may grant co-appellants' motions to consider their two briefs as supplemental to each other. Engichy v. FSM, 15 FSM R. 546, 551 (App. 2008).

When an appellant has filed his brief properly he need not ask to incorporate his brief as his oral argument due to his absence from oral argument because all properly filed appellate briefs are considered regardless of participation in oral argument. Engichy v. FSM, 15 FSM R. 546, 551 (App. 2008).

Although it was stamped as "received" by the clerk, the court will deem filed a brief signed by unadmitted trial counselor and signed by an admitted supervising attorney since the brief was signed by an admitted attorney. Heirs of George v. Heirs of Tosie, 15 FSM R. 560, 562 n.1 (App. 2008).

Two appeals may both set for oral argument at the same time when the issues were identical, the facts were virtually identical, the trial court decisions appealed from were virtually identical, and the trial court transcript was completely identical since the trial court (and counsel) dealt with both cases simultaneously. For these same reasons, both appeals may be considered and addressed in one opinion. Albert v. George, 15 FSM R. 574, 577 (App. 2008).

Under Appellate Rule 31(c) an appellee who fails to file a brief will not be heard at oral argument except by the court's permission. The court may permit an appellee to be heard when it cannot find any prejudice to the appellants and the appellee's participation at oral argument will be helpful. The appellee's participation may be restricted. Albert v. George, 15 FSM R. 574, 577 (App. 2008).

The Complaint and Answer are pleadings that should normally be included in the appellant's appendix. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 596 n.6 (App. 2008).

An appellant's opening brief is due 40 days after the date of the appellate clerk's notice that the record is ready and Rule 26(c) does not enlarge the 40 days even if the notice is served by mail. But the date when an appellees' brief is due is calculated by "30 days after service" of the appellant's brief, and the time for an appellant to serve and file a reply brief is "14 days after service" of the appellee's brief. Under Rule 26(c) six extra days are added when the brief whose service triggers the time period running is served by mail. Berman v. College of Micronesia-FSM, 15 FSM R. 622, 625 (App. 2008).

An opening brief is deemed filed when mailed, not when received by the clerk. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 106 n.3 (App. 2008).

An attorney can be disciplined for ignoring or tardily responding to repeated court orders to file documents and briefs, and failure to prosecute an appeal with due diligence is sanctionable under Appellate Rule 46(c). It is not required that the appellate court find intentional conduct in order for an attorney to be disciplined under Rule 46(c). Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 108-09 (App. 2008).

An attorney's inability to comply with the court's rules and orders governing the filing of briefs and appendixes within the time deadlines does not excuse the attorney's failure to comply with such rules and orders. The attorney's admitted inability to produce an appellate brief in a timely manner would not prevent him from being disciplined under Rule 46(c). Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 109 (App. 2008).

Rule 34(a) exhibits a marked preference for oral argument on the merits, although the parties may waive oral argument unless the court directs otherwise, but Rule 2 provides a ready means for dispensing with oral argument, especially when argument would not be on the merits. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 111 & n.10 (App. 2008).

The FSM Supreme Court appellate division may, in the interest of expediting decisions or for other good cause shown, suspend the requirements or provisions of any of the appellate rules in a particular case on a party's application or on its own motion except as otherwise provided in Rule 26(b), which prohibits the court from enlarging time to file an appeal or to seek permission to appeal and does not mention oral argument. Thus, even if Rule 34(a) were read to require oral argument, Rule 2 would permit

the court to dispense with oral argument. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 111 (App. 2008).

The Constitution's due process protections do not require appellate oral argument. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 111 (App. 2008).

Motions may be decided without oral argument. Where argument would not be helpful to the decisional process, it will not be required on a dismissal issue when the appellants have had, and have taken, their opportunity to be heard by filing written submissions. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 111 (App. 2008).

Dismissal for an attorney's inexcusable neglect in failing to file an opening brief is handled differently in civil and criminal appeals. Appellate courts are much more reluctant to dismiss a criminal appeal for an attorney's inexcusable neglect because a criminal defendant has no other remedy. In a civil appeal, when the appeal is dismissed for inexcusable neglect in prosecuting the appeal, if the party whose appeal is thus dismissed is thereby aggrieved, his remedy will be against his attorney. A criminal appellant has no such remedy. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 114 (App. 2008).

The burden is on the appellant to apply, before his time allowance has run, for additional time upon a showing of real need which will not unduly prejudice the appellee. Until such application for extended time is made so that it may be considered before the allotted time has expired, it is evidence of a lack of good faith and, and failing extraordinary circumstances, it constitutes neglect which will not be excused. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 114 (App. 2008).

When there is a pattern of not seeking enlargements of time until after filing dates, either set by the court or rule, or even the ones suggested by the appellants as when their brief would be done, had passed; when this practice is considered evidence of a lack of good faith; and when the appellants do not present any extraordinary circumstances that would warrant excusing their neglect in filing their brief seven months late, the dismissal of their appeal is proper. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 114-15 (App. 2008).

The appellate court is not required to just patiently wait until a self-described inexperienced (in appellate matters) counsel has finished a brief and then moved for an enlargement of time so that the court can then be called upon to decide the appeal on its merits. The policy preference for adjudications on the merits (and the case has already been adjudicated on the merits once, by the trial court) does not automatically negate all other considerations or make the procedural rules a nullity. The rules' timing requirements apply to these appellants as they would with any other civil appellant. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 115 (App. 2008).

Counsel can certainly be disciplined for ignoring or tardily responding to repeated court orders to file appellate documents and briefs, and failure to prosecute an appeal with due diligence is sanctionable under Appellate Rule 46(c). It is not required that the court find intentional conduct in order for an attorney to be disciplined under Rule 46(c). Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 124 (App. 2008).

The inability of a law firm or of an attorney to comply with the court's rules and orders governing the filing of briefs and appendixes within the time deadlines does not excuse the attorney's or the firm's failure to comply with such rules and orders. Thus, an attorney's admitted inability to produce an appellate brief in a timely manner would not prevent him, or his law firm, if it had had notice, from being disciplined under Appellate Rule 46(c). Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 124 (App. 2008).

There is a marked preference for oral argument on an appeal's merits, although he parties may, of course, waive oral argument unless the court directs otherwise. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 126-27 & n.11 (App. 2008).

Appellate Rule 2 provides a ready means for dispensing with oral argument, especially when the argument would not be on the merits. In the interest of expediting decisions, or for other good cause shown, the rule allows the appellate division, on a party's application or on its own motion, to suspend any of the rules' requirements or provisions in a particular case except as otherwise provided in Rule 26(b), which prohibits the court from enlarging time to file an appeal or to seek permission to appeal and does not mention oral argument. Thus, even if Rule 34(a) were read to require oral argument in all final dispositions, Rule 2 would permit dispensing with oral argument. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 127 (App. 2008).

The Constitution's due process protections do not require appellate oral argument. Oral argument on appeal is not an essential ingredient of due process. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 127 (App. 2008).

Motions may be decided without oral argument. When it does not appear that argument would help the decisional process, oral argument is not required on a dismissal issue, when the appellant has had, and has taken, his opportunity to be heard by filing written submissions. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 127 (App. 2008).

If an appellant fails to file a brief within the time set by rule, or within the time as extended, an appellee may move for dismissal of the appeal. But Rule 31(c) does not require an appellee to do so. Rule 31(c) also does not prevent an appellate court, in an effort to control its own docket, from also moving to dismiss an appeal for an appellant's failure to timely file a brief. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 128 (App. 2008).

Dismissal for an attorney's inexcusable neglect in failing to file an opening brief must be handled differently in civil and criminal appeals. Appellate courts are much more reluctant to dismiss a criminal appeal for an attorney's inexcusable neglect because a criminal defendant has no other remedy. When a civil appeal is dismissed for inexcusable neglect in prosecuting the appeal, if the party whose appeal is thus dismissed is thereby aggrieved, his remedy will be against his attorney. A criminal appellant has no such remedy. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 129-30 (App. 2008).

The burden is on the appellant to apply, before his time allowance has run, for additional time upon a showing of real need which will not unduly prejudice the appellee. Until such application for extended time is made so that it may be considered before the allotted time has expired, it is evidence of a lack of good faith and, failing extraordinary circumstances, it constitutes neglect which will not be excused. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 130 (App. 2008).

When there is a pattern of not seeking enlargements of time until after filing dates have passed, whether the date was set by the court or by rule, or was even suggested by the appellant as when the brief would be done; when this practice is considered evidence of a lack of good faith; and when the appellant does not present any extraordinary circumstances that would warrant excusing his neglect in filing his brief six months late, the dismissal of his appeal is proper. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 130 (App. 2008).

The appellate court does not have to just patiently wait until a legal services corporation attorney has finished a brief and then moved for an enlargement of time so that the appeal can then be decided on the merits. The policy preference for adjudications on the merits (and when a case is on appeal it has already been adjudicated on the merits once – by the trial court) does not automatically override or negate all other considerations or make the procedural rules a nullity. The Appellate Rules' timing requirements apply to legal services clients with equal vigor as with any other civil appellant. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 131 (App. 2008).

In meeting the clearly erroneous standard of review, the appellant must ensure an adequate record. If the record does not demonstrate error, the appellant cannot prevail. Setik v. Ruben, 16 FSM R. 158, 163

(Chk. S. Ct. App. 2008).

An appellee will not be allowed to participate in oral argument when it failed to file a brief. Kasmiro v. FSM, 16 FSM R. 243, 244 (App. 2009).

Even if the appellate clerk omits the due dates for briefs in his notice that he has received the record, counsel should, because the record is certified by the trial division clerk before transmittal to the appellate clerk, consider that the record has been certified and that the time for briefs to be filed has started. Lewis v. Rudolph, 16 FSM R. 278, 280 (Chk. S. Ct. App. 2009).

When the parties receive the appellate clerk's notice that he has received the record, the parties have been notified that the record has been certified and that the appellant's brief is due 40 days hence and should conform their behavior accordingly. Lewis v. Rudolph, 16 FSM R. 278, 280 (Chk. S. Ct. App. 2009).

By rule, an appellant must serve and file a brief within 40 days after the date of the appellate clerk's notice that the record is ready. The date of the clerk's notice that the record is ready triggers the running of the due date of an appellant's brief. Baelo v. Sipu, 16 FSM R. 288, 291 (Chk. S. Ct. App. 2009).

If an appellant fails to file a brief within the rules' time frames, or within the time as extended, an appeal is subject to dismissal for lack of prosecution. The appellate division, however, has broad discretion upon a showing of good cause, to grant an extension of time to file a brief and appendix. Baelo v. Sipu, 16 FSM R. 288, 291 (Chk. S. Ct. App. 2009).

Generally, oral argument is not set until after the necessary steps have been taken to allow for the preparation of brief, namely the certification and notice that the record is available, which notice provides the date from which the forty-day deadline for filing an opening brief is counted. Baelo v. Sipu, 16 FSM R. 288, 292 (Chk. S. Ct. App. 2009).

When, on October 10, 2002, the appellants designated the entire trial court record and ordered a transcript of all trial court testimony for the appeal; when, almost five years later, on September 23, 2007, appellants' counsel filed a motion to certify the record although during the numerous proceedings during the almost five-year interim between the designation of the record and the motion to certify, counsel did not raise the issue of certification and availability of record, but instead requested continuances based on the existence of ongoing settlement negotiations and the need for additional time to prepare a brief; when, if counsel had, at any time after August 10, 2004, inquired with the clerk regarding the record he would have discovered that the record was certified and available; when the case was first called for oral argument on May 2, 2007, and the appellants then represented to the court that continuance was needed for reasons other than any delay in assembling and transmitting the record, the court is not inclined to consider the clerk's apparent oversight in promptly notifying the appellants that the record was available as a reason for the appellants' continuing failure to meet court deadlines for filing their brief. Baelo v. Sipu, 16 FSM R. 288, 292 (Chk. S. Ct. App. 2009).

While it is the clerk's obligation to notify counsel when the record is ready, counsel also has an obligation to ensure that the record is assembled and transmitted. Baelo v. Sipu, 16 FSM R. 288, 292 (Chk. S. Ct. App. 2009).

When a single justice order was a sua sponte motion for counsel to file an opening brief by October 12, 2007, or to show cause why the appeal should not be dismissed and when the court has weighed the appellants' subsequent failure to file a brief without good cause against the clerk's apparent delay in notifying counsel of the record's certification and availability, and against the court's preference to hear an appeal on the merits instead of resolving it on procedural grounds, the court finds that even after the clerk notified the appellants, on March 28, 2008, that the record was available, the appellants had ample time to comply with the filing deadlines and file a brief before the January 20, 2009 hearing, and when counsel did not file a brief within three days of the January 20, 2009 hearing, as he promised, the court concludes that

the numerous, unjustified delays in filing a brief without good cause warrant dismissal. Baelo v. Sipu, 16 FSM R. 288, 292-93 (Chk. S. Ct. App. 2009).

As required by Appellate Rule 28(a)(1), all appellate briefs are required to include certain helpful features – a statement of issues, a table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with page references. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 418 & n.2 (App. 2009).

The burden is on the appellant to apply, before his time allowance has run, for additional time to file a brief upon a showing of real need which will not unduly prejudice the appellee, and until such application for extended time to file a brief is made so that it may be considered before the allotted time has expired, it is evidence of a lack of good faith and, failing extraordinary circumstances, it constitutes neglect which will not be excused. Lewis v. Rudolph, 16 FSM R. 499, 501 (Chk. S. Ct. App. 2009).

If an appellant fails to appear for oral argument, the court may hear argument on behalf of the appellee if his counsel is present, but an appellee that has not filed a brief will not be heard at oral argument. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 551 (Chk. S. Ct. App. 2009).

Although, ordinarily, the appellate court would consider the clerk's failure to provide a requested English-language transcript as good cause to grant an enlargement of time for an appellant to file its opening brief, when the appellant did not request the transcript until seventeen months after it filed its notice of appeal and when the appellant gives no explanation why its transcript request was made then although the rules require an appellant to make its transcript request within ten days after filing the notice of appeal, it is evidence of a lack of good faith because it is the appellant's burden to apply, before its time allowance has run, for additional time upon a showing of real need which will not unduly prejudice the appellee and, failing extraordinary circumstances, it constitutes neglect which will not be excused. If no extraordinary circumstances are present, the appellant's motion to enlarge time for it to file its opening brief will be denied. Kosrae v. Smith, 16 FSM R. 578, 579-80 (App. 2009).

Appellate Rule 10(b) is instructive in designating the specific portions of the trial transcript that comprise the record on appeal and it requires that, within 10 days after filing the notice of appeal from a final judgment of a trial court, the appellant request a transcript only of such parts of the proceedings not already on file as the appellant deems necessary. Iriarte v. Individual Assurance Co., 17 FSM R. 78, 79 (App. 2010).

The record on appeal includes the transcript of proceedings designated and ordered by the parties, as specified in Appellate Rule 10(a), and the clerk must transmit the record when requested, but, when there is more than one set of appellants in a case, there may not be a single record on appeal. Iriarte v. Individual Assurance Co., 17 FSM R. 78, 80 (App. 2010).

When each set of appellants' actions are separate, one set of appellants may not access the portions of the trial transcript created specifically for use in the separate appeal initiated by another appellant. Allowing one set of appellants to do so would permit them to make an end run around the transcript request and payment mechanism provided for in Appellate Rule 10(b), and would permit them to unfairly benefit from the proper transcript request and payment made by another appellant. Iriarte v. Individual Assurance Co., 17 FSM R. 78, 80 (App. 2010).

If one set of appellants wants to access portions of the transcript they had not properly requested and paid for but which was ordered by a different appellant, they are free to either request portions of the trial transcript from the other appellant if they work out an equitable payment scheme with that appellant or they may submit a supplemental transcript order to obtain the requested portions of the transcript from the court reporter at the fee set by General Court Order No. 1991-3. Neither the Rules of Appellate Procedure nor the general principles of equity permit appellants to obtain from the Clerk's Office portions of the trial transcript they did not request in their original transcript order and for which they have not compensated the

court reporter. Iriarte v. Individual Assurance Co., 17 FSM R. 78, 80 (App. 2010).

Motions, even motions to dismiss an appeal, may be decided without oral argument. Kosrae v. Jim, 17 FSM R. 97, 98 (App. 2010).

Arguments in an appeal brief must be supported by citation to the record or other types of supporting authority, and it is particularly important to identify where an argument was raised and preserved for appeal since, except in instances of plain error, an issue raised for the first time on appeal is waived. Palsis v. Kosrae, 17 FSM R. 236, 241 n.2 (App. 2010).

An appellant's failure to include a transcript in the record on an appeal based upon a claim of insufficiency of evidence may warrant a dismissal since the presumption is that the evidence was sufficient to sustain the lower court's judgment. An appellant must include in the record all necessary parts of the transcript. Palsis v. Kosrae, 17 FSM R. 236, 243 (App. 2010).

If an appellant asserts that there was no evidence to support certain findings but has not provided a full transcript, the appellate court cannot determine that there was no evidence before the lower court to support its findings, and it will be unable to identify any of the trial court's factual findings as clearly erroneous. This is true even when the appellant has provided portions of the trial transcript in its brief and as part of its appendix, but has not directed the appellate court to the relevant portions of the transcript that show that the trial court's findings were clearly erroneous. Palsis v. Kosrae, 17 FSM R. 236, 243 (App. 2010).

"Service" is the key word in the Rule 26(c) provision that whenever a party is required or permitted to do an act within a prescribed period after service of a paper on that party and the paper is served by mail, six days is added to the prescribed period, but the prescribed period for filing the appellant's opening brief is not triggered by service. Berman v. Pohnpei, 17 FSM R. 251, 252 (App. 2010).

Rule 31(a)'s language is clear that an appellant must serve and file a brief within 40 days after the date of the Supreme Court appellate division clerk's notice that the record is ready. The appellate clerk must, on receipt of the "record ready certificate" from the clerk of the court appealed from, file it and must immediately give notice to all parties of the date on which it was filed and the date, 40 days after the appellate clerk's notice, when the appellant's brief will be due. Berman v. Pohnpei, 17 FSM R. 251, 253 & n.1 (App. 2010).

Rule 26(c) does not apply to an appellant's opening brief since the prescribed period for the brief's filing is triggered by the date of notice that the record is ready, and not by service of that notice. Thus, no future argument that Rule 26(c) is applicable to an appellant's opening brief will satisfy as "good cause shown" within the meaning of a Rule 26(b) motion for the enlargement of time. Berman v. Pohnpei, 17 FSM R. 251, 253 (App. 2010).

Since the appellate record must be sufficient to permit the court to insure that the issues on appeal were properly raised before the trial court, the appellants are responsible for presenting a record sufficient to permit the court to decide the issues raised on appeal, and the record must be one which provides the court with a fair and accurate account of what transpired in the trial court. They therefore have the burden of providing an appendix that is reviewable by the court – a certified translation of the Chuukese transcript. Setik v. Ruben, 17 FSM R. 301, 303 (App. 2010).

Among the documents which an appendix may include are any exhibits relied upon by either party, or at issue, in the appeal. Setik v. Ruben, 17 FSM R. 301, 303 (App. 2010).

When an appellant argues that some of the trial court's legal and factual findings are incorrect, specifically its factual findings about the ownership of a particular piece of land, the issue is certainly relevant to the appeal, but without a translation of the deposition transcript, the appellate court cannot

conclude that the deposition transcript is relevant. Thus, if the deposition transcript's assertions are part of the reported case, there is no need to include it in the appendix but if the assertions are not part of the reported case, the appellants have the burden of providing a certified translation of the deposition transcript. Setik v. Ruben, 17 FSM R. 301, 303 (App. 2010).

When the trial transcript and a deposition transcript relied upon by the appellants are in Chuukese and have not been translated, the court may order the appellants: 1) to provide a certified translation of the trial transcript and either a certified translation of the deposition transcript or a statement that the appellants will not rely on the deposition transcript; or 2) to stipulate to a continuation of oral argument and move for enlargement of time to file a certified translation; or 3) to proceed with oral argument as scheduled without the benefit of the appendix. Setik v. Ruben, 17 FSM R. 301, 303 (App. 2010).

Citations to specific documents from the record included in the appellants' appendix must cite to the specific page numbers in those documents. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 500 n.‡ (App. 2011).

Usually, when the record is not in a form that fairly and accurately provides the appellate court with an account of what happened in the lower court because it has not been translated into English, the appellate court will stop the analysis of the issue there and proceed to the next since the appellants have not met their responsibility to present the court with a record sufficient to permit it to decide the issues raised on appeal and which provides the court with a fair and accurate account of what transpired in the trial court proceedings. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 504 n.2 (App. 2011).

Since a trial court's findings are presumptively correct, the FSM Supreme Court appellate division would need a complete translated transcript from the Kosrae Land Court before it could identify any of that court's findings of fact as clearly erroneous or as unsupported by substantial evidence. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 505 n.2 (App. 2011).

Appellate litigants should translate court decisions and other necessary parts of the record into English in order to facilitate and ensure a proper appellate review. Otherwise, the appellate court may be unable, except in an uncommon case, to ensure a proper review of the record and the litigants' arguments. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 657 n.2 (App. 2011).

Documentary evidence that is offered and excluded should be listed as part of the certification of record and so should be a part of the record on appeal to the State Court, which would consider and decide, on a party's assignment of error, if it had been improperly excluded. If evidence that was offered and excluded is not listed in the certified Land Court records as an excluded exhibit, the evidence's proponent, and the State Court if it considers the evidence, ought to be able to point to where in the record it was offered. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 659 n.3 (App. 2011).

If an appellee has not actually received a copy of the appellant's opening brief, he may ask the appellate clerk to make a copy for him with the copying cost to be, after the appeal has been decided, taxed by the court on the non-prevailing party. Phillip v. Moses, 18 FSM R. 85, 87 (Chk. S. Ct. App. 2011).

The cover of the appellant's brief should be blue; that of the appellee, red; that of an intervenor or amicus curiae, green; that of any reply brief gray, and if separately bound, the appendix's cover should be white. These cover colors are for the judges' convenience, and, as should be apparent from the rule's text, the correct brief color is not mandatory but advisory. Since it is not mandatory, the clerks do not have the authority to refuse to file a timely brief otherwise in compliance with the rules but with a cover not the correct color. Kosrae v. Edwin, 18 FSM R. 507, 512 (App. 2013).

The court clerks certainly should bring any deficiencies to the brief filer's attention and seek compliance. If compliance is not obtained, the clerk should inform the presiding justice so that the justice can make an appropriate order. Kosrae v. Edwin, 18 FSM R. 507, 512 (App. 2013).

Even when litigants have violated mandatory sections of Appellate Rule 32(a) governing the form of briefs, the remedy has not always been for the court (not the clerk) to refuse to file the brief. Courts will instead impose sanctions on counsel personally. Kosrae v. Edwin, 18 FSM R. 507, 512 (App. 2013).

Once the Kosrae State Court has explicitly made its ruling on the appellants' petition for rehearing in that court, the appellants may, if they are still aggrieved, file a new notice of appeal within the 42-day appeal period after that denial and ask that their briefs and appendixes already filed in this appeal be used in the new appeal. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 546 (App. 2013).

The cost of printing or otherwise producing necessary copies of briefs, appendixes or copies of records is taxable in the Supreme Court appellate division by stating them in an itemized and verified bill of costs which the party must file with the appellate clerk, with proof of service, within 14 days after the entry of the appellate judgment. George v. Sigrah, 19 FSM R. 210, 220 (App. 2013).

Costs incurred in the preparation and transmission of the record and the costs of the reporter's transcript must be taxed in the court appealed from as costs of the appeal in favor of the party entitled to costs. George v. Sigrah, 19 FSM R. 210, 219 (App. 2013).

A brief was timely filed on November 12, 2013, when the appellate clerk's office was closed on the due date, Friday, November 8, 2013; when Monday, November 11, 2013, was a national holiday; and when November 12, 2013, was the next day that the clerk's office was open for business. Andrew v. Heirs of Seymour, 19 FSM R. 331, 337 (App. 2014).

An appellant must include a transcript of all evidence relevant to the trial court's decision if the appellant argues on appeal that a finding or conclusion is not supported by the evidence or is contrary to the evidence. The burden is on the appellant to ensure that he brings an adequate record to support his argument. Iron v. Chuuk State Election Comm'n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

In meeting the standard of review, the appellant must ensure an adequate record because, if the record does not demonstrate error, the appellant cannot prevail. Iron v. Chuuk State Election Comm'n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

An appellant's failure to include a transcript in the record on an appeal based upon a claim of insufficiency of evidence warrants dismissal of the appeal. Iron v. Chuuk State Election Comm'n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

Without the Chuuk State Election Commission case record, including but not limited to the complaint and the Commission's decision, the court cannot determine whether certain requirements before retaining jurisdiction were met: 1) whether the Chuuk State Election Commission case was filed within the prescribed time and 2) whether the Chuuk State Election Commission case was filed as a verified complaint. Iron v. Chuuk State Election Comm'n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

By statute, the Kosrae State Court decides appeals from the Land Court on the parties' briefs and no evidence or testimony will be considered, except the official record, transcripts, and exhibits received at the Land Court hearing. Ittu v. Ittu, 20 FSM R. 178, 186 (App. 2015).

It is not the court's responsibility to search the record for errors; the parties' briefs must clearly denote those portions of the record that support their arguments. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 196 (App. 2015).

By statute, the Kosrae State Court decides appeals from the Land Court on the parties' briefs and no evidence or testimony will be considered, except the official record, transcripts, and exhibits received at the Land Court hearing. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 196 (App. 2015).

It is incumbent on the appellants to ensure that any alleged "essential facts" are made part of the record for the appellate court. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 196 (App. 2015).

The burden is on the appellant to apply, before the time allowance has run, for additional time upon a showing of real need which will not unduly prejudice the appellee. Until such application for extended time is made so that it may be considered before the allotted time has expired, it is evidence of a lack of good faith and failing extraordinary circumstances, it constitutes neglect which will not be excused. Pacific Skylite Hotel v. Penta Ocean Constr. Co., 20 FSM R. 251, 253 (App. 2015).

It is within a single justice's power to dismiss an appeal upon stipulation of the parties or upon a party's failure to comply with the Rules' timing requirements. The phrase "timing requirements of these rules" has been interpreted to include an appellant's failure to file an opening brief. Pacific Skylite Hotel v. Penta Ocean Constr. Co., 20 FSM R. 251, 253 (App. 2015).

Appellate Rule 30(b) encourages the parties to agree about the appendix's contents and that failing, an appellant is required, no later than ten days following issuance of the record ready notice from the clerk's office, to serve on the opposing party a designation of the portions of the record that the appellant intends to include within the appendix, along with a statement of issues to be presented for review. Central Micronesia Commc'ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 311, 313 (App. 2016).

Appellate Rule 30(b)'s mandatory language contemplates that the appellants will serve its intended designation of the record and statement of issues on the appellee, giving the opposing party the opportunity to supplement that designation by imposing a duty on the appellants to include within the appendix the portions sought by appellee. Central Micronesia Commc'ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 311, 314 (App. 2016).

Appellate Rule 28(e) requires the parties, in their briefs, to cite to the record as included in the appendix or the record as a whole. Equally important as the provision of an appendix to both the appellate panel and appellee's counsel, is the proper referencing to the record in appellant's brief. Clear identification of parts of the record containing matter that forms the basis for appellant's argument is the brief writer's responsibility, as the court is not required to search the record for error. Central Micronesia Commc'ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 311, 314 (App. 2016).

Since the appellants have neglected to comply with Rule 30(b) when they did not contact the appellee to solicit its input about the appendix's contents and when there were other deficiencies in the appendix's composition, the appellants will be entitled to cure those procedural defects, as their noncompliance did not rise to the level of willful conduct and remedying the cited deficiencies within a finite period of time will not unduly prejudice the appellee. Central Micronesia Commc'ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 311, 314-15 (App. 2016).

A motion to dismiss the appeal because of deficiencies in the appellants' appendix will be denied and the appellants instructed to confer with the appellee about the contents of the appendix and record as a whole, and include the appropriate citations to the latter within the appellants' "amended" brief. Central Micronesia Commc'ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 311, 315 (App. 2016).

When the appellants have failed to adhere to the timeline set forth in Appellate Rule 31(a), the appeal is subject to dismissal pursuant to Appellate Rule 31(c) because it is within the court's discretion to dismiss an appeal for late filing of an appellant's brief. Among the factors which the court considers on a Rule 31(c) motion to dismiss are the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reasons for appellant's failure to file on time; and extent of appellant's efforts in mitigation. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 387 (App. 2016).

Notwithstanding that the court for good cause shown may upon motion enlarge the time prescribed for doing any act, or may permit an act to be done after the expiration of such time, the court does not condone

what it may perceive as a practitioner causing undue delay in fling a brief. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 387 (App. 2016).

Continued unfettered use of Appellate Rule 26(b) to enlarge time because of counsel's inability to find time to prepare a brief could quickly rise to a level of abuse causing undue delay, thus subjecting the appeal to dismissal. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 389 (App. 2016).

Upon the appellee's motion, certain documents in the appellants' appendix were stricken when a search did not reveal those documents in the certified record. Sam v. FSM Dev. Bank, 20 FSM R. 409, 414-15 (App. 2016).

Appellate Rule 30(a) requires an appellant to file with the appellant's brief, an appendix that must contain the relevant and essential portions of the record, including those parts to which the parties wish to direct the particular attention of the court, and a document that should be included is any portion, relied upon by counsel, of the transcript of the proceeding in the court appealed from, unless it was reproduced in a transcript filed. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 468, 470 (App. 2016).

Clear identification of parts of the record containing matter that forms the basis for appellant's argument is the brief writer's responsibility, as the court is not required to search the record for errors. It is not the court's responsibility to cobble those relevant sections of the transcript which constitute the gravamen of the appellants' claim. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 468, 470 (App. 2016).

Under Appellate Rule 10(b)(3), when an appellant neglects to communicate with the opposing party about which portions of the record it intends to request, the appellee is deprived of an opportunity to designate additional parts, if not the entire transcript. Central Micronesia Commc'ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 649, 650 (App. 2016).

The burden is on the appellant to apply, before his or her time allowance has run, for additional time upon a showing of real need which will not unduly prejudice the appellee. Until such application for extended time is made so that it may be considered before the allotted time has expired, it is evidence of a lack of good faith and, failing extraordinary circumstances, it constitutes neglect which will not be excused. Central Micronesia Commc'ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 649, 651 (App. 2016).

Among the factors which the court considers on a Rule 31(c) motion to dismiss an appeal are the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reason for appellant's failure to file on time; and extent of appellant's efforts in mitigation. Central Micronesia Commc'ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 649, 651 (App. 2016).

Although dismissing an appeal on purely procedural grounds is a sanction normally reserved for severe disregard of the rules resulting in prejudice to the opposing party, this policy preference for adjudication on the merits does not negate all other considerations or make the procedural rules a nullity. Central Micronesia Commc'ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 649, 651 (App. 2016).

The appellants' motions for enlargement are no longer material or relevant when the appellants did not file an opening brief within the time periods for which enlargements were sought and have neither filed a brief nor sought a further enlargement since then. Walter v. FSM Dev. Bank, 21 FSM R. 1, 3 (App. 2016).

An appellant must file and serve a brief within 40 days after the date of the court clerk's notice that the record is ready, and if the appellant fails to file a brief within that time frame, or within the time as extended, an appellee may move for the appeal's dismissal. Walter v. FSM Dev. Bank, 21 FSM R. 1, 3 (App. 2016).

An appellate court may dismiss an appeal when the appellant has failed to file an opening brief within the time prescribed and the appellee has moved for dismissal, and, when an appellee has so moved. The

factors that the court may consider are: the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reason(s) for the appellant's failure to file on time; and the extent of appellant's efforts in mitigation. Walter v. FSM Dev. Bank, 21 FSM R. 1, 3-4 (App. 2016).

If an appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to such finding or conclusion because it is not the appellate court's responsibility to search the record for errors. The parties' briefs must clearly denote those portions of the record that support their arguments. Lonno v. Heirs of Palik, 21 FSM R. 103, 107 (App. 2016).

In the appellate court, unlike the trial court, a party does not have an automatic right to appear pro se and must seek permission. In the absence of express appellate division permission to appear without the supervision of an attorney, the court will require all appellate level briefs and other documents to be signed by an attorney authorized to practice before the FSM Supreme Court. Any appellate submissions not so signed shall be rejected by the Clerk of Courts. Jano v. Santos, 21 FSM R. 241, 243 n.1 (App. 2017).

Filing the notice of appeal in the court appealed from ensures the clerk of that court is put on notice of the duty to prepare, certify, and transmit the record to the FSM Supreme Court appellate division chief clerk, but when no service of the notice of appeal is made on the court appealed from, the clerk of the court appealed from has no way to know of this duty and the court appealed from has no notice its judgment or order has been appealed and therefore might unknowingly take further actions that are inconsistent with the matter's status as one subject to further appeal. Serment v. Antonio, 21 FSM R. 251, 253 (App. 2017).

Appellants are responsible for presenting to the court, a record sufficient to permit the court to decide the issues raised on appeal and one which provides it with a fair and accurate account of what transpired in the trial court. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 310, 313 (App. 2017).

An appellant must timely file a request for a transcript or a statement of the issues, a designation of the appendix, and an opening brief with an appendix. An appellant's failure to comply with these rules may subject its appeal to dismissal. Carl v. FSM Dev. Bank, 21 FSM R. 342, 343 (App. 2017).

Clear identification of parts of the record containing the matter that forms the basis for the appellant's argument is the brief writer's responsibility, and when the record provided by the appellant does not provide the court with the basis for the trial court findings, the appellate court must presume the findings are correct because, by not providing an adequate record, the appellant cannot successfully challenge those findings. Hadley v. FSM Social Sec. Admin., 21 FSM R. 420, 425 (App. 2018).

When an appellant filed an appendix, but failed to include the relevant filings concerning the issue of whether the trial court abused its discretion in denying the motion for enlargement of time, the record does not demonstrate error and the appellate court must presume the trial court acted within its discretion. Hadley v. FSM Social Sec. Admin., 21 FSM R. 420, 425 (App. 2018).

When an appellant has not included in the appendix parts of the record that the appellee has designated as needed, the appellee may supplement the appendix. The parts of the supplemental appendix that were part of the trial court record are, as a matter of course, allowed. Setik v. FSM Dev. Bank, 21 FSM R. 505, 513 (App. 2018).

If a party wants an appellate court to take judicial notice of matter outside the record, it must provide the court with the necessary information. A supplemental appendix, with the items therein for which judicial notice is sought clearly labeled as such, is a perfectly acceptable method to do this. Setik v. FSM Dev. Bank, 21 FSM R. 505, 514 (App. 2018).

Vague generalizations of an appellant's statement of issues – that the lower court decision was erroneous and contrary to law – are unhelpful, not only to the court, but also to the parties, and to effective

advocacy of appellants' position. Alik v. Heirs of Alik, 21 FSM R. 606, 615 (App. 2018).

The drafting of the statement of issues involved is the phase of appellate advocacy which calls for the greatest degree of skill, and is the part of the job most frequently botched by counsel. In such instances, one often needs to read the whole of both briefs and then match one against the other in order to ascertain what the disputed question really is. Alik v. Heirs of Alik, 21 FSM R. 606, 615 (App. 2018).

Six tests are suggested for an effective statement of issues: 1) the issue must be stated in terms of the facts of the case; 2) the statement must eliminate all unnecessary detail; 3) it must be readily comprehensible on first reading; 4) it must eschew self-evident propositions; 5) it must be so stated that the opponent has no choice but to accept it as an accurate statement of the question; and 6) it should be subtly persuasive. Alik v. Heirs of Alik, 21 FSM R. 606, 615 (App. 2018).

A generalized statement of issues that just says that the order appealed from was erroneous and contrary to law says nothing in terms of the case's facts; has eliminated not only all unnecessary detail but also all necessary detail; is not readily comprehensible; and is stated in the form of a self-evident proposition, and so is unhelpful. Alik v. Heirs of Alik, 21 FSM R. 606, 615 (App. 2018).

When the appellants' statement of issues on appeal are unhelpful, the appellate court may recast the issues on appeal. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

An appellant's duty after filing a notice of appeal is to comply with the provisions of Rule 10(b) and to take any other action necessary to enable the clerk to assemble, certify and transmit the record. Within ten days of filing the notice of appeal, the appellant must order from the reporter a transcript of such parts of the proceedings not already on file as he deems necessary or, if no such parts of the proceedings are to be ordered, file a certificate to that effect. Chuuk Public Utility Corp. v. Chuuk Health Care Plan, 22 FSM R. 38, 41 (Chk. S. Ct. App. 2018).

If the entire transcript is not ordered, the appellant must within 10 days of filing the notice of appeal, file a statement of the issues the appellant intends to present on the appeal and serve on the appellee a copy of the statement and of the transcript order or certificate of no transcript. Chuuk Public Utility Corp. v. Chuuk Health Care Plan, 22 FSM R. 38, 41 (Chk. S. Ct. App. 2018).

When an appellant has ordered the entire transcript and has thus discharged its duty as an appellant, the alternative methods of creating a trial court record are unneeded or unusable, and there is no basis to dismiss the appeal for the appellant's alleged failure to perform its duty. Chuuk Public Utility Corp. v. Chuuk Health Care Plan, 22 FSM R. 38, 41-42 (Chk. S. Ct. App. 2018).

The court reporter's duty is to prepare and file the transcript within 30 days or such longer time as the court reporter has requested and the appellate clerk has approved. When the transcript is complete, the reporter must file it with the trial court clerk, and, when the trial court record, including the transcript, is complete, the trial court clerk will transmit the record to the appellate clerk. Chuuk Public Utility Corp. v. Chuuk Health Care Plan, 22 FSM R. 38, 42 (Chk. S. Ct. App. 2018).

Once the appellate clerk has received the record from the trial clerk, the appellate clerk must file it and immediately give notice to all parties of the date on which it was filed. The appellant's opening brief is due within 40 days after the date on which the record is filed. Chuuk Public Utility Corp. v. Chuuk Health Care Plan, 22 FSM R. 38, 42 (Chk. S. Ct. App. 2018).

Appellate Rule 31(a), and not the court, sets the times to file and serve appellate briefs. Chuuk Public Utility Corp. v. Chuuk Health Care Plan, 22 FSM R. 38, 42 (Chk. S. Ct. App. 2018).

When the court reporter has not completed the transcript, the trial court clerk cannot transmit the certified record to the appellate clerk, and, when there is no certified record with the appellate clerk, the

briefing schedule will not start. Chuuk Public Utility Corp. v. Chuuk Health Care Plan, 22 FSM R. 38, 42 (Chk. S. Ct. App. 2018).

A statement of issues that the trial court order "was erroneous, contrary to law, and was not based on substantial evidence," and that the trial court violated the appellants' "constitutional and state law rights and other common law rights," is a generalized and scattershot framing of issues that is unhelpful to an appellate court and to all the parties, especially the appellants, since it is a missed opportunity for effective appellate advocacy. Setik v. Perman, 22 FSM R. 105, 113 (App. 2018).

When it comes to the statement of issues, too many brief writers fall into one of two errors: 1) they reproduce the headings from the body of the brief; or 2) they state the issue in terms so general as to be useless. Both errors are annoying and both represent missed opportunities for effective advocacy. Setik v. Perman, 22 FSM R. 105, 113 (App. 2018).

One should assume that Rule 28(a)(2), which requires a statement of issues in the brief, does not ask an advocate to do an idle act. The statement of issues is there for a purpose. Setik v. Perman, 22 FSM R. 105, 113 (App. 2018).

Generalized statements of issue give the reader no guide as to what follows. Setik v. Perman, 22 FSM R. 105, 113 (App. 2018).

When the appellants' statement of issues is so generalized as to be no statement at all, it requires the appellate court to sift through the brief to ascertain what issues they might actually be arguing. Setik v. Perman, 22 FSM R. 105, 113 (App. 2018).

When the issues presented on appeal are framed as the lower court orders "are erroneous and contrary to law," this statement of the issues is too general to be meaningful. The statement of issues should tell the court the question or questions raised. Jackson v. Siba, 22 FSM R. 224, 229 (App. 2019).

The statement of issues must be specific. They must not be so general as to be meaningless. Jackson v. Siba, 22 FSM R. 224, 229 (App. 2019).

In every appellate case, the ultimate question is whether the judgment of the court below should be affirmed or reversed, whether it was supported by the evidence or whether the lower court committed prejudicial error. Stating the issues in such general terms, therefore, tells the court essentially nothing about the particular questions in the case. Jackson v. Siba, 22 FSM R. 224, 229 (App. 2019).

Appellate Rule 28(a)(2), requires a statement of issues in the brief. It does not ask an advocate to do an idle act. The statement of issues is there for a purpose. Jackson v. Siba, 22 FSM R. 224, 229 (App. 2019).

– Decisions Reviewable

FSM Appellate Rule 9's purpose is to permit a defendant held in custody, or subjected to conditions of release, to receive expedited review of that restriction of his freedom. There is no suggestion in the rule nor in any other authority indicating that the government is entitled to appeal from the pretrial release of a defendant. FSM v. Yal'Mad, 1 FSM R. 196, 198 (App. 1982).

The court will not issue a writ of certiorari to review the trial court's suppression of defendant's confession in a case in which no assignments of error are furnished to the court, although such decision effectively terminates the case because the government cannot continue its prosecution without the confession, and although no appeal is available to the government. In re Edward, 3 FSM R. 285, 286-87 (App. 1987).

A petition for certiorari will not be granted unless it delineates the act or acts alleged to be in error with sufficient particularity to demonstrate material, harmful error. In re Edward, 3 FSM R. 285, 288 (App. 1987).

There are no FSM statutory or constitutional provisions that expand or establish the grounds for a writ of certiorari beyond its customary scope. In re Edward, 3 FSM R. 285, 289 (App. 1987).

Generally, an appeal from a ruling of a trial judge is to be taken only after completion of all trial proceedings, upon issuance of a final judgment. In re Main, 4 FSM R. 255, 257 (App. 1990).

Where it is unclear as to what rights a state trial court found the appellants had and the FSM court is unequipped to define those rights, and when the FSM appellate panel remains unsatisfied that the due process issue was raised below, although not determinative these are additional factors militating against FSM Supreme Court, appellate division review of a state trial court decision. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 322, 325 (App. 1992).

Although the FSM Supreme Court has the constitutional power to use its discretion to review a case from a state trial court, generally, proper respect for the state court requires that state appeal rights be exhausted before the FSM Supreme Court would grant appellate review especially when important state interests are involved. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 322, 324 (App. 1992).

Judicial review of a certification of extraditability, although not appealable, is available to an accused in custody by seeking a writ of habeas corpus. In re Extradition of Jano, 6 FSM R. 23, 25 (App. 1993).

Where the FSM statute governing extradition proceeding is silent on the appealability of extradition proceedings and where the statute has been borrowed from another jurisdiction where extradition proceedings are not appealable it is presumed that the meaning and application of the statute is as it was interpreted by the courts of the source. In re Extradition of Jano, 6 FSM R. 23, 25 (App. 1993).

An appeals court has no jurisdiction over a motion for an injunction filed after final dismissal of the appeal case. Damarlane v. Pohnpei Transp. Auth. (II), 6 FSM R. 167, 168 (App. 1993).

Under the FSM Constitution the FSM Supreme Court may hear cases on appeal from the highest state court in which a decision may be had if that state's constitution permits it. The Chuuk State Constitution permits such appeals, which, in civil cases, Chuuk statute provides be made by certiorari. Gustaf v. Mori, 6 FSM R. 284, 285 (App. 1993).

When no motion for relief from judgment was filed in the trial court and the appellant appealed from an order in aid of judgment, the appellate court cannot address the validity of the underlying judgment as the issue was never properly raised before the trial court. Kosrae Island Credit Union v. Obet, 7 FSM R. 416, 419-20 (App. 1996).

On appeal, a party will be limited ordinarily, to the specific objections to evidence made at trial and the appellate court will consider only such grounds of objection as are specified. Rosokow v. Chuuk, 7 FSM R. 507, 509 (Chk. S. Ct. App. 1996).

A party cannot raise an issue upon appeal that he did not raise at the trial level, simply because the result of not raising the issue dissatisfies him. Rosokow v. Chuuk, 7 FSM R. 507, 509 (Chk. S. Ct. App. 1996).

A broadly stated affirmative defense not argued at trial and on which no evidence has been submitted and which was therefore summarily rejected by the trial court has not been preserved for appeal. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 618 (App. 1996).

A sanction against an attorney who is not a party to the underlying case is immediately appealable if the sanctioned attorney proceeds under her own name and as the real party in interest. In re Sanction of Berman, 7 FSM R. 654, 656 (App. 1996).

An objection to the amount of a monetary sanction cannot be raised for the first time on appeal. In re Sanction of Berman, 7 FSM R. 654, 658 (App. 1996).

A tentative agreement to a stipulated order cannot preclude a party from appealing the order actually entered by the trial court when it differs from the stipulation. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 669 (App. 1996).

The FSM Supreme Court's jurisdiction is derived from the FSM Constitution which grants the appellate division the jurisdiction to review cases heard in state or local courts if they require interpretation of the FSM Constitution, and a state constitution cannot deprive the FSM Supreme Court of this jurisdiction. Damarlane v. Pohnpei Legislature, 8 FSM R. 23, 26-27 (App. 1997).

It is unlikely that in paying the judgment an appellant would waive its appeal, so long as payment was made under protest. In holding that the right to appeal was not precluded by payment, the courts have sometimes noted that payment had been made under protest; conversely, in holding that the right to appeal was barred by payment, the courts have sometimes noted that payment had not been made under protest. Louis v. Kutta, 8 FSM R. 460, 461 (Chk. 1998).

There is no persuasive authority that should a garnishee pay a judgment pursuant to a garnishment order, that the garnishee would waive its rights to appeal. Louis v. Kutta, 8 FSM R. 460, 462 (Chk. 1998).

The FSM Supreme Court appellate division has jurisdiction over appeals from final decisions of the Chuuk State Supreme Court appellate division because the state constitution so permits. Chuuk v. Ham, 8 FSM R. 467, 468 (App. 1998).

Appeals may be taken to the appellate division of the FSM Supreme Court from all final decisions of the trial division of the Kosrae State Court and from any other civil case if permitted as a matter of state law. Youngstrom v. Phillip, 9 FSM R. 103, 105 (Kos. S. Ct. Tr. 1999).

An order directing the Kosrae Land Commission, a non-party, to complete the division of disputed land is not injunctive in nature, and is not a controlling question of law. Therefore the order is not appealable, and it should not be stayed pending any putative appeal. Youngstrom v. Phillip, 9 FSM R. 103, 105 (Kos. S. Ct. Tr. 1999).

With some exceptions, the FSM Supreme Court does not exercise jurisdiction over appeals that are not from final decisions. Damarlane v. Pohnpei, 9 FSM R. 114, 117 (App. 1999).

The FSM Supreme Court can hear appeals from final decisions of the highest state courts in Yap and Pohnpei if the cases require interpretation of the national Constitution, national law, or a treaty. Damarlane v. Pohnpei, 9 FSM R. 114, 117 (App. 1999).

A motion to reconsider dismissal of an appeal by the Pohnpei Supreme Court appellate division is relief under comparable rules of any state court from which an appeal may lie equivalent to motions under the rules specifically cited in FSM Appellate Rule 4(a)(4) because the motion seeks reversal or modification of an earlier dispositive order. Damarlane v. Pohnpei, 9 FSM R. 114, 118 (App. 1999).

A properly filed notice of appeal will not create subject matter jurisdiction in FSM Supreme Court when there is none, but it always has jurisdiction over an appeal to determine if it has subject matter jurisdiction. Damarlane v. Pohnpei, 9 FSM R. 114, 119 n.4 (App. 1999).

A notice of appeal filed in the FSM Supreme Court while a motion to reconsider is pending before the

Pohnpei Supreme Court appellate division has no effect because it was prematurely filed. Jurisdiction was thus never transferred to the FSM Supreme Court appellate division. Damarlane v. Pohnpei, 9 FSM R. 114, 119 (App. 1999).

A party to an appeal in which the Chuuk State Supreme Court appellate division has rendered an appellate decision may appeal such decision to the FSM Supreme Court appellate division by certiorari, except in a criminal case in which the defendant may appeal as of right. Wainit v. Weno, 9 FSM R. 160, 162 (App. 1999).

A petition for writ of certiorari that seeks to appeal an order by a single Chuuk State Supreme Court appellate justice is not an appellate decision. The FSM Supreme Court therefore lacks jurisdiction to consider it. Wainit v. Weno, 9 FSM R. 160, 162 (App. 1999).

An action of a Chuuk State Supreme Court single appellate justice may be reviewed by the court. This provides a means whereby a single justice "order" may become the appellate panel's dispositive "decision." Wainit v. Weno, 9 FSM R. 160, 162-63 (App. 1999).

Once an appellant has sought and obtained review of a single justice's order by the appellate panel of the Chuuk State Supreme Court appellate division, the FSM Supreme Court appellate division may then review that decision. At that point the FSM Supreme Court has jurisdiction to hear the appeal, but not before. Wainit v. Weno, 9 FSM R. 160, 163 (App. 1999).

The FSM Supreme Court's appellate jurisdiction over matters decided by the Chuuk State Supreme Court originates in article XI, section 7 of the FSM Constitution. Chipen v. Election Comm'r of Losap, 9 FSM R. 163, 164 (App. 1999).

In the Chuuk State Supreme Court appellate division the action of a single justice may be reviewed by the court. Chipen v. Election Comm'r of Losap, 9 FSM R. 163, 164 (App. 1999).

Decisions of the Kosrae State Court may be appealed to the FSM Supreme Court appellate division. Kosrae v. Langu, 9 FSM R. 243, 246 (App. 1999).

An appeal dismissed because it is not from a final order is dismissed without prejudice to any future appeal made from the order once it has become final. Santos v. Bank of Hawaii, 9 FSM R. 285, 288 (App. 1999).

An attorney may appeal a sanction, but only if proceeding under his or her own name and as real party in interest. In re Sanction of Woodruff, 9 FSM R. 374, 375 (App. 2000).

When even if the court reversed the garnishment order, any relief it could grant the FSM on the sovereign immunity issue would be ineffectual since 6 F.S.M.C. 707 makes the FSM no longer subject to garnishment of funds it owes to a state, and when, although the general rule is that the payment of a judgment does not make an appeal moot, the FSM has stated that it will not seek repayment of the funds that it paid the plaintiff, the FSM would have no interest in the case's outcome and the issues it raised on appeal are moot. FSM v. Louis, 9 FSM R. 474, 482-83 (App. 2000).

When other trial division cases recognize the principle of sovereign immunity and the trial court decision appealed from only observed that in the absence of a specific expression by the legislature, sovereign immunity would not prevent the court from garnishing property held by the FSM for a state, when the constitutionality of the FSM's sovereign immunity statute was not before the court, and when the FSM served only as a mere garnishee in a situation which Congress has prevented from recurring by the enactment of 6 F.S.M.C. 707, the trial court decision will not effect future litigation involving the FSM and the FSM's appeal is thus moot. FSM v. Louis, 9 FSM R. 474, 483-84 (App. 2000).

When it appears that a case comes before the FSM Supreme Court appellate division as a final decision entered by the Chuuk State Supreme Court appellate division, the review of such a decision may be had before the FSM Supreme Court appellate division. Bualuay v. Rano, 9 FSM R. 548, 549 (App. 2000).

The time limit set by Rule 4(a)(1) is jurisdictional, and if that time is not extended by a timely motion to extend that time period under Rule 4(a)(5), the appellate division is deprived of jurisdiction to hear the case. Hartman v. Bank of Guam, 10 FSM R. 89, 95 (App. 2001).

An issue raised for the first time on appeal is waived. An exception to this rule is in the case of plain error, or error that is obvious and substantial and that seriously affects the fairness, integrity, or public reputation of judicial proceedings. Hartman v. Bank of Guam, 10 FSM R. 89, 95 (App. 2001).

Any adjudication of contempt is subject to appeal to the FSM Supreme Court appellate division. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 470 (Pon. 2001).

A discovery order is not appealable. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 470 (Pon. 2001).

No justiciable controversy is presented if events subsequent to an appeal's filing make the issues presented in a case moot. A claim becomes moot when the parties lack a legally cognizable interest in the outcome, and if an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot. Enactment of a statute after judgment is entered and before the appeal is heard can make an appeal moot. Wainit v. Weno, 10 FSM R. 601, 610 (Chk. S. Ct. App. 2002).

A single justice's decisions are reviewable by the court and may be so reviewed when a full appellate panel of judges has been assembled. Panuelo v. Amayo, 11 FSM R. 83, 85 (App. 2002).

An appellate court has jurisdiction over an appeal only if it is timely filed. The time limit set by Rule 4(a)(1) is jurisdictional, and if that time is not extended by a timely motion to extend that time period under Rule 4(a)(5), the appellate division is deprived of jurisdiction to hear the case. Bualuay v. Rano, 11 FSM R. 139, 145 (App. 2002).

Since a finding of contempt is final and appealable, the legality of the specific sanction of imprisonment should be reviewed at the same time in the interest of judicial economy. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 380 (App. 2003).

Appellate review, in all but narrowly defined, exceptional circumstances, should be postponed until the trial court has rendered final judgment. Hence the party requesting a writ of mandamus has the burden of showing a clear and indisputable right thereto, and must show exceptional circumstances necessitating review before a final judgment is entered below. FSM Dev. Bank v. Yinug, 11 FSM R. 405, 409 n.3 (App. 2003).

Appellate review, in all but narrowly defined, exceptional circumstances, should be postponed until final judgment has been rendered by the trial court. Hence the party petitioning for a writ of mandamus has the burden of showing a clear and indisputable right thereto, and must show exceptional circumstances necessitating review before a final judgment is entered below. FSM Dev. Bank v. Yinug, 11 FSM R. 437, 441 (App. 2003).

If an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot. Fritz v. National Election Dir., 11 FSM R. 442, 444 (App. 2003).

An appellate court does not sit to render decisions on abstract legal propositions or to render advisory opinions. Fritz v. National Election Dir., 11 FSM R. 442, 444 (App. 2003).

Because the petition for a writ of mandamus is moot and the underlying case has been dismissed, the court will leave to another time the general question of whether the trial court has jurisdiction to order a non-party to file an amicus brief. McIlrath v. Amaraich, 11 FSM R. 502, 508 (App. 2003).

No justiciable controversy is presented if events subsequent to the filing of an appeal make the issues presented moot, and an appellate court may receive proof or take notice of facts outside the record for determining whether a question presented to it is moot. Reddy v. Kosrae, 11 FSM R. 595, 596-97 (App. 2003).

The court is without jurisdiction to consider and will dismiss a moot appeal. Reddy v. Kosrae, 11 FSM R. 595, 597 (App. 2003).

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

The appealability of the denial of dismissal of a criminal case is an issue for the appellate division since it goes to their jurisdiction. FSM v. Wainit, 12 FSM R. 201, 204 (Chk. 2003).

When the court is of the opinion that its order involves a controlling question of law, and that an immediate appeal from its order will materially advance the ultimate termination of the litigation, as well as other cases, the court may permit a party to seek permission to appeal pursuant to Chuuk Appellate Rule 5(a). Kupenes v. Ungeni, 12 FSM R. 252, 257 (Chk. S. Ct. Tr. 2003).

An appeal will be dismissed for the lack of indispensable parties because an appellant's failure to join all the co-owners as parties is fatal to his appeal. Anton v. Heirs of Shrew, 12 FSM R. 274, 279 (App. 2003).

The Chuuk Constitution provides that final decisions of municipal courts may be appealed to the Chuuk State Supreme Court appellate division, and, in addition, the Chuuk Legislature, by statute, has conferred jurisdiction upon the trial division to hear appeals from municipal court criminal decisions. Ceasar v. Uman Municipality, 12 FSM R. 354, 356 (Chk. S. Ct. Tr. 2004).

While the Chuuk Constitution expressly authorizes appeals of municipal court decisions to the Chuuk State Supreme Court appellate division, and does not specifically confer authority in the Legislature to permit appeals to the trial division but is silent on the issue and does not prohibit it, and since the Legislature is empowered to enact any and all laws not inconsistent with the state and national constitutions, the trial division thus has jurisdiction, by statute, over an appeal from a municipal court. Ceasar v. Uman Municipality, 12 FSM R. 354, 356-57 (Chk. S. Ct. Tr. 2004).

When a litigant raises an issue for the first time on appeal, he or she is deemed to have waived the right to challenge the issue unless it involves a plain error that is obvious and substantial and that seriously affects the fairness, integrity, or public reputation of judicial proceedings. Panuelo v. Amayo, 12 FSM R. 365, 372 (App. 2004).

The Kosrae State Court has jurisdiction to review all decisions of inferior courts. Neither the Kosrae Constitution nor state law requires that Land Court decisions be appealed to the State Court appellate division. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 421 (Kos. S. Ct. Tr. 2004).

The Kosrae State Court trial division has jurisdiction to review all decisions of inferior courts, including decisions entered by the Kosrae Land Court. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 421 (Kos. S. Ct. Tr. 2004).

A Rule 11 attorney sanction order is immediately appealable, but only if the sanctioned attorney proceeds under his or her own name, as the real party in interest. FSM Dev. Bank v. Yinug, 12 FSM R. 450, 453 (App. 2004).

Under an exception to the mootness doctrine, when the court's rulings will have a continuing effect on future events and future litigation and will offer guidance to future litigants, which should have the positive effect of eliminating or lessening unwarranted attempts at interlocutory appeals, thus conserving judicial resources, the court will review the matter. FSM Dev. Bank v. Adams, 12 FSM R. 456, 460 (App. 2004).

Appeals are not permitted when the appeal is over issues involving steps moving towards a final judgment and in which they will merge. The purpose of an appeal of a final judgment is to combine in one appellate review all stages of the proceeding if and when a final judgment or order results. This procedure advances the policy of judicial economy which dictates against piecemeal appeals from the same civil action. FSM Dev. Bank v. Adams, 12 FSM R. 456, 461 (App. 2004).

The FSM Supreme Court has exclusive jurisdiction when all parties are agents of the national government and no issue involving land is presented. When the court of first instance is the appellate division, and not the trial division, the appellate division's jurisdiction is necessarily derivative of the trial division's since the Supreme Court appellate division may review cases heard in the national courts. Whether the case is in a proper procedural posture is different from the question of the appellate division's subject matter jurisdiction, so the threshold question is whether the appellate division may exercise that jurisdiction as the court of first instance. Urusemal v. Capelle, 12 FSM R. 577, 582 (App. 2004).

Since the Kosrae statute requires that within 90 (ninety) days of receipt of the certified copy of the notice of appeal, the Land Court must provide to the Kosrae State Court a complete written copy of the transcript of proceedings, when the transcript that is part of the record is only a summary of the Land Court hearing and not a verbatim transcript and when the tape of the hearing has either been erased or is inaudible and it is thus not possible to produce a complete transcription of the hearing now, the court, in light of the statute's requirement, can see no alternative but to remand the matter to the Land Court for rehearing. The sole purpose of this rehearing is to insure that a complete record of the hearing is made and preserved so that a verbatim transcript may be prepared. Heirs of Mackwelung v. Heirs of Mongkeya, 13 FSM R. 20, 21 (Kos. S. Ct. Tr. 2004).

No other extension of time to file a notice of appeal is permitted other than that in Appellate Rule 4(a)(5), and the appellate division has no power to enlarge the time within which to file a notice of appeal. This is because the Rule 4(a)(1) time limit is jurisdictional and if that time is not extended by the grant of a timely Rule 4(a)(5) motion to extend that time period, the appellate division lacks jurisdiction to hear the case. Goya v. Ramp, 13 FSM R. 100, 104-05 (App. 2005).

The sole issue before the state appellate court on a petition for writ of mandamus is whether the petitioner has established that the trial judge must be prohibited from acting in a certain case, not whether some other judge may also be disqualified. The national government's removal of that case to the FSM Supreme Court does not affect the court's jurisdiction because the court has no way of knowing whether the required procedural steps to effect removal to that court were completed, or, even if they were, whether it might be remanded; because the state appellate proceeding is not an appeal from the civil action since the issue is whether the trial judge properly sit on the case and because since the purported removal action started, the trial judge has issued another preliminary injunction that does not name the national government as a party being restrained. Therefore the later "removal" did not deprive the appellate court of jurisdiction over the original action for a writ of prohibition. Nikichiw v. O'Sonis, 13 FSM R. 132, 137 (Chk. S. Ct. App. 2005).

When no notice of appeal from a post-judgment order awarding attorneys' fees is filed, the appellate court lacks jurisdiction to review the order. Pohnpei v. AHPW, Inc., 13 FSM R. 159, 161 (App. 2005).

An appeal from an adjudicated matter in the Kosrae Land Court may be made within sixty days of service of the Land Court Justice's written decision upon the party appealing the decision. Sigrah v. Heirs of Nena, 13 FSM R. 192, 195 (Kos. S. Ct. Tr. 2005).

An appeal from an administrative agency must be perfected as well as started within the established statutory time period and part of perfecting the appeal is the joinder of indispensable parties. Failure to join indispensable parties prior to the expiration of the statutory time for appeal is a fatal defect which deprives the court of jurisdiction to entertain the action. Sigrah v. Heirs of Nena, 13 FSM R. 192, 196 (Kos. S. Ct. Tr. 2005).

When an individual, who was not a party to the Land Court proceedings, likely does not have standing to appeal the Land Court decision, and when the Heirs of Joseph Nelson, as the claimant and party who claimed ownership of the subject parcels at the Land Court proceedings, may be indispensable parties to this litigation and should have appeared as appellants but did not, the court may be without jurisdiction to consider the appeal filed by the individual in his individual capacity. Sigrah v. Heirs of Nena, 13 FSM R. 192, 196 (Kos. S. Ct. Tr. 2005).

An election contest appellant has not strictly observed the steps necessary to give the court jurisdiction when he has not filed his appeal within the time frame permitted by statute. Wiliander v. National Election Dir., 13 FSM R. 199, 203 (App. 2005).

The court lacks jurisdiction to hear an election appeal filed too soon because the statute does not grant the court jurisdiction over election cases until the administrative steps and time frames in 9 F.S.M.C. 902 have been adhered to. Such an appeal is therefore dismissed as premature (unripe). Wiliander v. National Election Dir., 13 FSM R. 199, 204 (App. 2005).

The applicable time frame within which an election contest appeal can be made starts with a petition to the National Election Director filed within one week of certification of the results of the election. The winning candidate then has one week to respond to the petition. The Director then has ten days to decide whether to approve the petition. If the petition is denied, then the aggrieved candidate would have five days to appeal to the FSM Supreme Court appellate division. It is at that point that the court would have jurisdiction to consider this election contest. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

By statute, an aggrieved candidate in an election contest can appeal to the FSM Supreme Court only after the election agency has denied his petition. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

An appeal from an administrative agency must be started within the established statutory time period. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

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

An election contest appeal must await the National Election Director's certification of the election results and the Director's denial of a timely post-certification petition by the candidate. If the Director's decision on the petition does not adequately address his concerns, only then would the aggrieved candidate have five days from the receipt of the Director's decision to appeal to the FSM Supreme Court appellate division if the Director's decision on the petition does not adequately address his concerns. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

If the National Election Director does not issue his decision on a candidate's post-certification petition within the statutory time frame, the candidate may appeal without waiting further for the decision. Asugar v.

Edward, 13 FSM R. 215, 219 n.3 (App. 2005).

Congress, when it drafted the election statute, limited the court's involvement in election contests to until after the issues were narrowed to the certified result and whether a candidate's petition contesting the certified result should have been granted by the Director and, if so, what relief was then appropriate. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

If an aggrieved candidate's appeal seeks a revote, he may, once the election is certified, petition the National Election Director for a revote, and if he feels that the Director's decision does not adequately address his concerns, then appeal that decision to the FSM Supreme Court appellate division within the statutory time limit. An earlier appeal is too soon. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

The court would be without jurisdiction to hear an election contest appeal on the acceptability of a vote or votes when the aggrieved candidate withdrew his only timely petition on the subject. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

If election contest issues come before the FSM Supreme Court appellate division by an appeal properly filed during the statutory time limit after the election contest machinery has run its course, the court will then consider at that time the merits of what is raised and before it. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

When no separate notice of appeal from a post-judgment order awarding attorneys' fees is filed, the appellate court lacks jurisdiction to review the order. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 13 (App. 2006).

When the appellant introduced no evidence of customary law at anytime before the appeal, it is deemed to have waived the issue. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 18 (App. 2006).

An objection to the admission of evidence not made at trial is not preserved for appeal because in the absence of an objection in the trial court an issue cannot properly come before the appellate division for review and the appellate division will refuse to consider the issue. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 19 (App. 2006).

When the issue of custom was not raised before the trial court, it can be disregarded on appeal on that ground alone. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 22 n.6 (App. 2006).

No justiciable controversy is presented if events subsequent to the filing of an appeal make the issues presented moot. The FSM Supreme Court lacks jurisdiction to consider cases or issues that are moot, and therefore must dismiss or deny the same. Wainit v. FSM, 14 FSM R. 476, 478 (App. 2006).

When the appellants appeal from a decision fully in their favor; when the appellants challenge the ownership of a portion of Parcel 069M05, which shares a boundary with Parcel 069M03 but their appeal is from a Land Court determination of the ownership for Parcel 069M03 in their favor; when all parties agree the appellants own Parcel 069M03; when the appellants admit that they are disputing the ownership of a portion of Parcel 069M05, which is not part of the Land Court determination in the matter below; and when the appellants previously appealed the determination about that parcel and the court's order in that previous case is final, there is no justiciable dispute being presented to the court in the appeal. Heirs of Tulenkun v. George, 14 FSM R. 560, 561-62 (Kos. S. Ct. Tr. 2007).

A prematurely-filed election contest appeal must be dismissed because, by statute, an aggrieved candidate in an election contest can only appeal to the FSM Supreme Court after his petition has been denied. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 4 (App. 2007).

If a losing candidate wanted to appeal the National Election Director's April 3, 2007 decision rejecting his petition, he would have had to file a notice of appeal from that decision after it was issued on April 3,

2007. When he did not, and when if he had, then that appeal would have been docketed and filed separately as a different case, the court lacks jurisdiction to consider the appeal from the Director's alleged non-decision, filed before the Director's April 3, 2007 decision, and must dismiss the appeal. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 5 (App. 2007).

The timely filing of a notice of appeal is jurisdictional. The appellate court must dismiss an appeal that was untimely filed no matter how meritorious the appellant's claims are. Mori v. Dobich, 15 FSM R. 12, 13-14 (Chk. S. Ct. App. 2007).

The general rule is that appellate review of a trial court is limited to the trial court's final orders and judgments. Final orders and judgments are final decisions. Valentin v. Inek, 15 FSM R. 14, 15 (Chk. S. Ct. App. 2007).

The general rule is that appellate review of a trial court case is limited to the trial court's final orders and judgments. Final orders and judgments are final decisions. Bossy v. Wainit, 15 FSM R. 30, 32-33 (Chk. S. Ct. App. 2007).

When there is no indication from the record that the trial court decision had been announced before the February 20, 2006 notice of appeal was filed and the decision was not "announced" until the written final judgment was entered on April 10, 2006, the time to appeal that decision (and any interlocutory orders entered in the case before that decision) started running on April 10, 2006. Since no notice of appeal was filed after that date, the appellate court must dismiss the appeal as untimely filed no matter how meritorious the appellant's claims are since the court lacks jurisdiction. Bossy v. Wainit, 15 FSM R. 30, 33 (Chk. S. Ct. App. 2007).

A criminal appeal involving a fugitive appellant, who has left the FSM in violation of three court orders, will be dismissed because the fugitive's ongoing disobedience to those orders precludes him from availing himself of the appellate process. He is thus disentitled to call upon the court for a review of his conviction. Walter v. FSM, 15 FSM R. 130, 132 (App. 2007).

Neither the Criminal Procedure nor the Appellate Procedure Rules provide for an appeal in a criminal case before a final decision, although interlocutory appeals may be made by permission in civil cases. Neither FSM Code, Title 12 (criminal procedure) nor Title 4 (Judiciary Act) authorize interlocutory criminal appeals. Zhang Xiaohui v. FSM, 15 FSM R. 162, 166 (App. 2007).

When an appellant asks to be advised on whether, if he goes to trial, and if he is convicted on more than one count, and then if he is sentenced on more than one count, would his sentence then violate his right not to be subjected to double jeopardy, any ruling the appellate court could make would be in the nature of an advisory opinion and the court does not have the jurisdiction to issue advisory opinions. Zhang Xiaohui v. FSM, 15 FSM R. 162, 167-68 (App. 2007).

No justiciable controversy is presented if events subsequent to an appeal's filing make the issues presented in a case moot. A claim becomes moot when the parties lack a legally cognizable interest in the outcome, and if an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot, and if the appeal has become moot, the court no longer has jurisdiction to hear and decide it. Nikichiw v. Marsolo, 15 FSM R. 177, 179 (Chk. S. Ct. App. 2007).

The Kosrae State Court normally reviews a Land Court order or decision in an appeal. But when the court is reviewing the Land Court's issuance of title where there was no hearing and appeal and no statutory procedure is set for this type of review and when the Kosrae Constitution provides that the State Court has jurisdiction to review all inferior court decisions and when the State Court has the power to make rules and orders, and do all acts, not inconsistent with law or rule, required for the due administration of justice, based on the constitutional grant of jurisdiction and on the power to administer justice, the Kosrae State Court will review the issuance of certificate of title. Siba v. Noah, 15 FSM R. 189, 194 (Kos. S. Ct. Tr.

2007).

When the plaintiff was an interested party and never received notice or an opportunity to be heard, he could have pursued his claim by filing an appeal of the issuance of title because without notice, his time to file an appeal is extended beyond the statutory sixty-day time limit. The Kosrae State Court favors this approach when Land Commission or Land Court actions are at issue because an appeal ensures that the records needed to make a fair determination are before the court and because this approach promotes finality in decisions on land ownership by encouraging full participation of all interested parties at Land Court proceedings instead of allowing later, collateral attacks on their decisions. Siba v. Noah, 15 FSM R. 189, 195 (Kos. S. Ct. Tr. 2007).

When the case clearly raises issues concerning the FSM Constitution since the appellant claimed a violation of the FSM Constitution, which he not only asserted early on in the case, but which the Pohnpei Supreme Court appellate division also considered in rendering its opinion, the FSM Supreme Court thus not only has jurisdiction over the case, but its consideration of the state court's determination that the appellant's letter is not protected speech under the FSM Constitution is also ripe for review since FSM Constitution Article XI, Section 7 provides that the FSM Supreme Court appellate division has jurisdiction to hear appeals from cases heard in state and local courts if they require interpretation of the FSM Constitution. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 307 (App. 2007).

Although a state court's determination of a litigant's rights under that state's constitution may be final and not subject to review by the FSM Supreme Court, a state court's determination of a litigant's rights guaranteed under the FSM Constitution is subject to de novo review by the FSM Supreme Court since a state constitution cannot deprive the FSM Supreme Court of its jurisdiction granted under the FSM Constitution because the FSM Constitution is the supreme law of the land. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 307 (App. 2007).

Any conflict between the Pohnpei Constitution provision that no appeal of any matter relating to the Pohnpei Constitution, Pohnpei law, customs or traditions may be made to any court except the Pohnpei Supreme Court and the FSM Supreme Court's jurisdiction to hear cases under the FSM Constitution is resolved under the FSM Constitution's supremacy clause, which provides that any act of a government that conflicts with the FSM Constitution is invalid, to the extent of the conflict. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 307 (App. 2007).

The FSM appellate rules, and the cases interpreting them, clearly enunciate that untimely filing of a notice of appeal deprives the appellate division of jurisdiction. Akinaga v. Heirs of Mike, 15 FSM R. 391, 395 (App. 2007).

When the appellant's error was not one of timeliness but rather one of not filing in all the appropriate courts because the appellant timely filed her notice of appeal in the Kosrae State Court, and later did perfect her appeal within the extended 72-day period by properly filing her notice of appeal with the FSM Supreme Court appellate division 57 days after the Kosrae State Court's entry of judgment, the appeal is permissible, despite being directed to the wrong court, since the appeal: 1) was otherwise valid and timely; 2) steps were taken to correct the error; 3) the steps to correct the error were undertaken within the period of extension allowed by our rules; and 4) there was no prejudice to the opposing party. Akinaga v. Heirs of Mike, 15 FSM R. 391, 395 (App. 2007).

When no substantial activity took place on the appeal before counsel filed his motion for pro hac vice admission or before his full admission to the FSM Supreme Court bar after he passed the FSM bar examination and when that counsel did not submit the appellant's brief until he was fully licensed to appear before the appellate division as contemplated by Appellate Rule 46(a) thus complying with Appellate Rule 31(d)'s explicit mandate, which requires all briefs to be signed by licensed attorneys admitted to the FSM Supreme Court, the appeal was not precluded either by the appellant's flawed notice of appeal or the fact that her counsel was not admitted to practice before the FSM Supreme Court at the time the notice of

appeal was filed in the FSM Supreme Court. Akinaga v. Heirs of Mike, 15 FSM R. 391, 395-96 (App. 2007).

Appeals are not permitted when the appeal is over issues involving steps moving towards a final order into which the interlocutory orders will merge. The purpose of limiting appeals to those from final decisions is to combine in one appellate review all stages of the proceeding if and when a final judgment or order results. This advances the policy of judicial economy which dictates against piecemeal appeals from the same civil action. Heirs of George v. Heirs of Tosie, 15 FSM R. 560, 562 (App. 2008).

Even when neither party has raised the issue, an appellate court, as a court of limited jurisdiction, is obligated to examine the basis for its jurisdiction. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 588 (App. 2008).

A timely notice of appeal from a final decision is a prerequisite to an appellate court's jurisdiction over an appeal. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 (App. 2008).

Post-judgment orders are generally final decisions from which an appeal may lie and from which a separate notice of appeal must be filed if the judgment itself has been appealed. When no separate notice of appeal from a post-judgment order awarding attorneys' fees has been filed, the appellate court lacks jurisdiction to review the order even though the judgment had been appealed. This general principle is also true of any other post-judgment order for which an appellant seeks review. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 (App. 2008).

If a judgment has been appealed and a Rule 60(b) motion for relief from that judgment is afterwards denied, a separate notice of appeal from that denial must be filed for an appellate court to have jurisdiction to review the Rule 60(b) denial. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 (App. 2008).

When, while the judgment was on appeal, the appellant's recusal motion was filed at the same time as her Rule 60(b) motion for relief from judgment and the recusal motion had to be decided before any action could be taken on the Rule 60(b) motion, and when the appellant did not file a separate notice of appeal from the post-judgment order denying recusal, the appellate court accordingly lacks jurisdiction to review the recusal issue. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 (App. 2008).

An appellate court is obligated to examine the basis of its jurisdiction, *sua sponte*, if necessary. Alanso v. Pridgen, 15 FSM R. 597, 598 n.1 (App. 2008).

A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of a timely motion filed in the FSM Supreme Court trial division by any party, 1) for judgment under Rule 50(b); 2) to amend or make additional findings of fact under Rule 52(b); 3) to alter or amend the judgment under Rule 59; 4) for a new trial under Rule 59; or from the entry of the order disposing of a timely motion for any equivalent relief under comparable rules of any state court from which an appeal may lie, and the time for appeal for all parties runs from the entry of the order denying a new trial or granting or denying any other such motion because a notice of appeal filed before the disposition of any of the above motions has no effect. This applies to appeals from the Kosrae State Court for any motion that sought relief equivalent to any of the four enumerated motions. Alanso v. Pridgen, 15 FSM R. 597, 599 (App. 2008).

A notice of appeal filed before the disposition of a Kosrae Rule 59 motion has no effect, and a new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion. Thus, a December 4, 2006 notice of appeal was of no effect and a nullity because a pending Rule 59(e) motion to alter or amend judgment negated that notice of appeal and when no new notice of appeal was filed in the 42-day period following the December 7, 2006 denial of the Rule 59 motion, the FSM Supreme Court appellate division never acquired jurisdiction over the case. Alanso v. Pridgen, 15 FSM R. 597, 600 (App. 2008).

Appeals may be taken from all final decisions of the Kosrae State Court within forty-two (42) days after the date of the entry of the judgment or order appealed from. In re Parcel 79T11, 16 FSM R. 24, 25 (App. 2008).

An order from the Kosrae State Court may be a final decision for the purposes of appeal. In re Parcel 79T11, 16 FSM R. 24, 25 (App. 2008).

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. Haruo v. Mori, 16 FSM R. 31, 32 (App. 2008).

An appeal may be dismissed if it fails entirely to cite any error in the trial court's findings or judgment. Wainit v. FSM, 16 FSM R. 47, 48 (App. 2008).

The Kosrae State Code provides that in a criminal proceeding the prosecution may appeal from the Kosrae State Court only when the court has held a law or regulation invalid, and it further provides that a notice of appeal must be filed within thirty days of receipt of notice of imposition of sentence or entry of the judgment, order or decree to be appealed from, or within a longer time to be prescribed by rule. In the absence of any other filing deadline, the FSM Supreme Court will use the thirty-day deadline of Kosrae Code section 6.401 for prosecution appeals from the Kosrae State Court. Kosrae v. Langu, 16 FSM R. 83, 87 (App. 2008).

Where the Kosrae Code provides that government appeals in a criminal proceeding are limited to when the Kosrae State Court has held a law or regulation invalid, and further provides that on a government appeal from a criminal proceeding the appellate court may not reverse a finding of not guilty, but may reverse determination of invalidity of a law or regulation; and where the prosecution's basic claim on appeal is that the trial court ought to have found that the defendant had the requisite intent required for the charge of aggravated assault, and that the trial court's interpretation that the evidence was insufficient to prove the required intent was wrong, it is not the type of prosecution appeal authorized by the Kosrae statute, and the FSM Supreme Court therefore lacks jurisdiction over it. The motion to dismiss will be granted on this ground. Kosrae v. Langu, 16 FSM R. 83, 87-88 (App. 2008).

When the notice of appeal was filed not within 42 days of the December 27, 2006 decision but within 42 days of the March 22, 2007 denial of the reconsideration motion, the denial of the reconsideration motion, if it was a Rule 60(b) motion for relief from judgment, would be the only issue before the court on an appeal on the merits. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 131 (App. 2008).

Although appellants could have addressed the issue of deficient notice of trial with an appropriate filing in the trial court, they were not required to before filing an appeal since a trial court may not shirk its responsibility to provide notice in compliance with due process merely because a party has a measure of recourse when notice is deficient. Farek v. Ruben, 16 FSM R. 154, 157 (Chk. S. Ct. App. 2008).

Where a plain error is involved that is obvious and substantial and that seriously affects the fairness, integrity, or public reputation of judicial proceedings, a party will not be deemed to have waived the right to challenge the issue on appeal. In such cases, where the court's integrity is brought into question because the court did not follow its own procedures for providing notice of trial, the only remedy is to permit a new trial where adequate notice is given. Farek v. Ruben, 16 FSM R. 154, 157-58 (Chk. S. Ct. App. 2008).

An appeal to the FSM Supreme Court appellate division may be made from all "final decisions" of the FSM Supreme Court trial division. Barrett v. Chuuk, 16 FSM R. 229, 233 (App. 2009).

Appeals are not permitted when the appeal is over issues involving steps moving towards a final order into which the interlocutory orders or partial adjudications will eventually merge. The purpose of limiting appeals to those from final decisions is to combine in one appellate review all stages of the proceeding

once a final judgment or order results. This advances the policy of judicial economy which dictates against piecemeal appeals from the same civil action. Smith v. Nimea, 16 FSM R. 346, 349 (App. 2009).

A timely notice of appeal from a final decision is a prerequisite to an appellate court's jurisdiction over an appeal. Smith v. Nimea, 16 FSM R. 346, 349 (App. 2009).

An appeal that is not from a final decision will be dismissed for lack of jurisdiction without prejudice to any future appeal from a final decision. Smith v. Nimea, 16 FSM R. 346, 349 (App. 2009).

Under Chuuk election law, an appeal may be taken to the FSM Supreme Court appellate division from a Chuuk State Supreme Court appellate division decision in an election contest. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 397 (Chk. 2009).

A court's subject-matter jurisdiction may be raised at any time by a party or by the court. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 419 (App. 2009).

Constitutions and statutes provide, as a part of the election machinery, the procedure by which election results may be contested, and such contests are regulated wholly by these constitutional or statutory provisions. A strict observance of the steps necessary to give us jurisdiction over an election contest is required, and if these steps are not followed, the court is powerless to entertain such proceedings. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 419 (App. 2009).

An aggrieved candidate may, within five days after receipt of the National Election Director's decision granting or denying a petition for a recount or a revote, appeal that decision to the FSM Supreme Court appellate division. A post-certification petition, and a decision thereon, is a prerequisite to an appeal to the court. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 419 (App. 2009).

When an election contestant's shifting allegations of irregularities (the allegations shifted from misreporting or tampering with the reported results to double-voting) and his later exhibits could have been an appropriate basis for a post-certification petition to the National Election Director, but instead of filing the required post-certification petition, the contestant filed a court appeal, the court cannot conduct a meaningful appellate review in such a manner and therefore cannot consider them because these issues and exhibits would, if allowed, come before the court without the benefit of the National Election Director's reasoned review and decision. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 420-21 (App. 2009).

A decision to provide a recount is not appealable. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 421 (App. 2009).

A candidate's only appeal from the certification of an election or the declaration of the winning candidate is to file a petition with the National Election Director within seven days of the certification, and, if the candidate is still aggrieved after the National Election Director's decision on the post-certification petition, then he or she may appeal to the FSM Supreme Court appellate division. The Election Code does not authorize an appeal of a certification of election directly to the FSM Supreme Court. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 421-22 (App. 2009).

An election appeal filed too soon will be dismissed as premature (unripe) because the statute does not grant the court jurisdiction over election cases until the administrative steps and time frames have been adhered to. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 422 (App. 2009).

Chuuk Election Code, section 138 clearly contemplates that the FSM Supreme Court appellate division may exercise jurisdiction over a Chuuk state election contest even after the candidates that have been declared the winners have been sworn in. Chuuk State Election Comm'n v. Chuuk State Supreme Court App. Div., 16 FSM R. 614, 615 (App. 2009).

An appellate court is obligated to examine the basis of its jurisdiction. Kosrae v. Benjamin, 17 FSM R. 1, 3 (App. 2010).

The Kosrae Code provides that government appeals in a criminal proceeding are limited to only when the court has held a law or regulation invalid. It further provides that on a government appeal from a criminal proceeding the appellate court cannot reverse a finding of not guilty, but may reverse determination of invalidity of a law or regulation. Kosrae v. Benjamin, 17 FSM R. 1, 3 (App. 2010).

Generally, absent specific statutory authorization, the prosecution lacks the right to appeal an adverse ruling in a criminal case. Kosrae v. Benjamin, 17 FSM R. 1, 3 (App. 2010).

Even if the prosecution succeeded in convincing an appellate court that a trial court's rulings were erroneous, the prosecution would be constitutionally barred from retrying an accused found not guilty and that would make the prosecution appeal a moot appeal seeking an advisory opinion on statutory interpretation and the appellate court does not have jurisdiction to consider or decide moot appeals. Kosrae v. Benjamin, 17 FSM R. 1, 4 (App. 2010).

An appellate court is obligated to examine the basis of its appellate jurisdiction, *sua sponte*, if necessary. Kosrae v. George, 17 FSM R. 5, 7 (App. 2010).

Under the Kosrae Code, government appeals from the Kosrae State Court in a criminal proceeding are limited to only when the Kosrae State Court has held a law or regulation invalid, and the appellate court may then reverse determination of invalidity of a law or regulation. No other Kosrae statute specifically authorizes a prosecution appeal. Kosrae v. George, 17 FSM R. 5, 7 (App. 2010).

Generally, absent specific statutory authorization, the prosecution lacks the right to appeal an adverse ruling in a criminal case. Kosrae v. George, 17 FSM R. 5, 7 (App. 2010).

Since the Kosrae Code only provides for an appeal in a criminal proceeding by the government only when the Kosrae State Court has held a law or regulation invalid, it does not authorize prosecution appeals from an adverse legal ruling construing a statute, such as when the Kosrae State Court did not hold the applicable statute of limitations invalid (it remains in effect) but interpreted it in a manner that the prosecution disagreed with and which terminated the prosecution. Kosrae v. George, 17 FSM R. 5, 7 (App. 2010).

In a prosecution appeal from an acquittal in a Kosrae State Court criminal case, the appellate court has no jurisdiction to reverse a not guilty finding and to either order a guilty finding entered or to order a new trial and it has no jurisdiction to render an advisory opinion on statutory construction or to decide a moot appeal. It will accordingly dismiss the appeal. Kosrae v. Jim, 17 FSM R. 97, 99 (App. 2010).

The Chuuk State Supreme Court appellate division does not have jurisdiction over a challenge to a municipal election commission's order for a revote because it is not an election contest since the appellant does not contest an election's result or a candidate's qualifications and since it is not an appeal from a municipal court decision or otherwise an appeal from a trial court decision. Siis Mun. Election Comm'n v. Chuuk State Election Comm'n, 17 FSM R. 146, 147 (Chk. S. Ct. App. 2010).

When an intervener did not appeal the trial court decision, the appellate court need not address his trial court claim. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

An appellate court is obligated to examine the basis of its appellate jurisdiction, *sua sponte*, if necessary. Berman v. Pohnpei Legislature, 17 FSM R. 339, 352 (App. 2011).

Even if no party has raised the issue, an appellate court is obligated to examine the basis for its jurisdiction. Iriarte v. Individual Assurance Co., 17 FSM R. 356, 358 n.1 (App. 2011).

The well-established general rule is that only final judgment decisions may be appealed. The appellate court can also review certain interlocutory orders involving injunctions, receivers and receiverships, and interlocutory decrees determining rights and liabilities in admiralty cases, and it may also grant appellate review when the trial court has issued an order pursuant to Appellate Rule 5(a), and it can review those rare collateral orders that conclusively determine a disputed question resolving an important issue completely separate from the action's merits but that are effectively unreviewable on appeal from a final judgment. Iriarte v. Individual Assurance Co., 17 FSM R. 356, 359 (App. 2011).

Since a timely notice of appeal from a final decision is a prerequisite to the FSM Supreme Court's jurisdiction over an appeal, when there was no final decision in the civil action below, the court is without jurisdiction to consider the appeal and the appeal will be dismissed without prejudice to the merits of any future appeal from a final judgment decision. Iriarte v. Individual Assurance Co., 17 FSM R. 356, 359 (App. 2011).

An appellee that has not filed a cross-appeal cannot urge or be granted any affirmative relief in the manner of a modification, vacation, or reversal of a trial court ruling in the appellant's favor. Berman v. Pohnpei, 17 FSM R. 360, 373 (App. 2011).

The question of the civil rights nature of the underlying cases was not properly before the appellate court when the trial court does not appear to have made a final determination on the question whether the violation should be considered as tort or civil rights in nature. Stephen v. Chuuk, 17 FSM R. 496, 499 (App. 2011).

The requirement that a notice of appeal be timely filed is mandatory and jurisdictional, and, since the Rule 4(a)(1) time limit is jurisdictional, if that time is not extended by the grant of a timely Rule 4(a)(5) motion to extend that time period, the appellate court will lack jurisdiction to hear the case. An untimely filed appeal must be dismissed. Jonah v. FSM Dev. Bank, 17 FSM R. 506, 508 (App. 2011).

A sanction against an attorney who is not a party to the underlying case is immediately appealable if the sanctioned attorney proceeds under his or her own name and as the real party in interest. In re Sanction of George, 17 FSM R. 613, 616 (App. 2011).

The FSM Supreme Court appellate division is obligated to examine the basis of its jurisdiction, *sua sponte*, if necessary. Simon v. Heirs of Tulenkun, 17 FSM R. 646, 648 (App. 2011).

The Kosrae state constitution permits the FSM Supreme Court appellate division to review cases on appeal from the highest Kosrae state court in which a decision may be had, which, since no Kosrae State Court appellate division has yet been prescribed by law, is the Kosrae State Court trial division. Simon v. Heirs of Tulenkun, 17 FSM R. 646, 648 (App. 2011).

A Kosrae small claims judgment does not qualify as a decision of "the highest state court in which a decision may be had" since there are further State Court proceedings available in which a decision may be had. A decision after a trial de novo on the State Court's regular civil docket, instead of on its small claims docket, would be a judgment from the "highest" state court in which a decision could be had. Simon v. Heirs of Tulenkun, 17 FSM R. 646, 649 (App. 2011).

When a party's sole recourse from a Kosrae small claims judgment is to file for a trial de novo in the Kosrae State Court, the party cannot appeal directly to the FSM Supreme Court. The FSM Supreme Court's only authority over a direct appeal from a Kosrae small claims judgment is to enter an order dismissing the appeal since the court lacks jurisdiction over it because it is not an appeal from the highest state court in which a decision may be had. Simon v. Heirs of Tulenkun, 17 FSM R. 646, 649-50 (App. 2011).

While an impeachment conviction may not be appealable, a contempt conviction certainly is. Helgenberger v. U Mun. Court, 18 FSM R. 274, 282 n.6 (Pon. 2012).

When no party has paid any of the judgment, an appellate court cannot rule on whether parties would be liable for contribution to a co-defendant since there can be no actual case or dispute until the co-defendant has paid more than its pro rata share because anything the appellate court says now would be an advisory opinion and it does not have any jurisdiction to give advisory opinions. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 364 (App. 2012).

Since a prerequisite to an equitable indemnity claim is that the party seeking it (indemnitee) have discharged the liability for the party against whom it is sought (indemnitor), when neither party seeking indemnity has discharged any of their liability to the judgment-creditor, no equitable indemnity claim has yet accrued even if the cause of action were recognized. Since it has not, any appellate opinion about whether equitable indemnity ought to be recognized would only be an advisory opinion. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 365 (App. 2012).

Although, ordinarily, an issue must be raised at the trial level for it to be preserved for appeal, whether a court has subject-matter jurisdiction is an issue that may be raised at any time. Helgenberger v. FSM Dev. Bank, 18 FSM R. 498, 500 (App. 2013).

Since an appellate court is without jurisdiction to consider an appeal if there is no timely notice of appeal or if there was no final decision in the court below, the appellate court should rule on jurisdictional matters first because, without jurisdiction, any ruling the appellate court makes on the merits would merely be an advisory opinion which it does not have the jurisdiction to issue. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 545 (App. 2013).

If an otherwise timely notice of appeal was indeed premature and of no effect because of a timely petition for rehearing in the Kosrae State Court, the FSM Supreme Court appellate division would then be without jurisdiction. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 545 (App. 2013).

Since Kosrae Appellate Rule 19(a) is a state court rule that seeks relief equivalent to relief afforded by FSM Civil Procedure Rules 52(b) or 59 because it seeks to obtain a decision or judgment different from the one entered, when the notice of appeal is filed before the disposition of a Rule 19 rehearing petition, there is no final decision or judgment for the FSM Supreme Court appellate division to review and it must dismiss the appeal for lack of jurisdiction. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 546 (App. 2013).

When a petition for rehearing was not explicitly denied, there was no denial. An explicit notice that a Kosrae Appellate Rule 19 petition had been denied would have put the appellants on notice that they had 42 days to file a new (and effective) notice of appeal. Therefore the FSM Supreme Court's dismissal of the premature appeal is without prejudice to any future appeal since the rehearing petition is still pending in the Kosrae State Court. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 546 (App. 2013).

When no extension was requested, the late filing of the notice of appeal did not conform to the requirement under 4(a)(1), making the filing of the notice of appeal at the appellate level invalid and because the filing of the notice was improper, jurisdiction was never transferred from the trial to the appellate level. Ruben v. Chuuk, 18 FSM R. 604, 607 (App. 2013).

Since the issue of a court's subject-matter jurisdiction can be raised at any time, no cross-appeal is needed for the appellee to raise it, and since the appellate court has an obligation to examine the basis of its jurisdiction even if it must do so sua sponte, the appellate court must promptly address any claim that it lacks jurisdiction and examine the basis for its jurisdiction before it considers the appeal's merits. Berman v. FSM Nat'l Police, 19 FSM R. 118, 123 (App. 2013).

A party to an order refusing an injunction has the option of either pursuing an interlocutory appeal or, if

still aggrieved after the final judgment, appealing the entire matter then. The opportunity to take an interlocutory appeal under Appellate Rule 4(a)(1)(B) is not an obligation to do so; if the parties are content to preserve the status quo while the trial court decides the case, they retain their right to comprehensive review at the end. Berman v. FSM Nat'l Police, 19 FSM R. 118, 123 (App. 2013).

Appellants can raise the matter of the orders denying their injunction requests when they timely appealed from the final judgment into which the interlocutory orders denying their injunction requests had merged. Berman v. FSM Nat'l Police, 19 FSM R. 118, 124 (App. 2013).

The plaintiffs, having acquiesced to a dismissal so they could appeal, cannot revive on appeal, by asserting that the dismissal was a trial court error, a claim for which they agreed to a dismissal even though if they had proceeded to trial and proved their allegations, they could have been awarded money damages. Berman v. FSM Nat'l Police, 19 FSM R. 118, 127 (App. 2013).

When parties seek relief from a final order and interlocutory relief in the nature of relief usually sought by a petition for a writ of prohibition, the two are deemed to be two separate appellate cases with the appeal from the final order proceeding on the usual course of an appeal on the merits and with the petition for a writ of prohibition proceeding separately under a different docket number on the Rule 21 expedited procedure pertinent to that form of relief. In re Sanction of George, 19 FSM R. 131, 133 (App. 2013).

A sanction against an attorney who is not a party to the underlying case is immediately appealable if the sanctioned attorney proceeds under his or her own name and as the real party in interest. In re Sanction of George, 19 FSM R. 131, 133 (App. 2013).

Generally, only final orders of the Kosrae State Court may be appealed to the FSM Supreme Court appellate division, but the FSM Supreme Court may also hear appeals from the Kosrae State Court in any other civil case in which an appeal to the FSM Supreme Court appellate division is permitted as a matter of law. Nena v. Saimon, 19 FSM R. 136, 138 (App. 2013).

An appellate court may receive proof or take notice of facts outside the record to determine whether a question presented to it is moot, and, if events after an appeal is filed make the issue presented moot, no justiciable dispute is presented and the court is without jurisdiction to consider the appeal – it must dismiss a moot appeal. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 143-44 (App. 2013).

A court is precluded from making pronouncements on the basis of a hypothetical, abstract, or academic issue or when the matter is moot. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 144 (App. 2013).

When an appellant asserts that the six-year statute of limitations means he is not legally liable for any payments that were due over six years before the lawsuit was filed and all the extra interest that accrued because those payments were missed and the appellee has conceded that the judgment against the appellant should be reduced by those amounts, the parties no longer have a legally cognizable dispute about this issue's outcome and the issue is moot. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 144 (App. 2013).

An appellate court is obligated to examine the basis of its appellate jurisdiction, *sua sponte*, if necessary. Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 180 (App. 2013).

The FSM Supreme Court appellate division has jurisdiction over an appeal only if the notice of appeal is timely filed because the time limit set by Rule 4(a)(1) is jurisdictional, and if that time is not extended by a timely motion to extend that time period under Rule 4(a)(5), the appellate division is deprived of jurisdiction to hear the case. Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 180 (App. 2013).

No matter how excusable their neglect or how good the appellants' cause, a motion to extend time to appeal will be denied when it was not filed in the court appealed from and it was not filed within 72 days of

the decision appealed because the failure to file an extension motion in the court appealed from within the 30-day extension period is fatal to the appellants' attempt to appeal. The FSM Supreme Court appellate division lacks jurisdiction and has no power or authority to do anything in the appeal case other than to dismiss it. Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 181 (App. 2013).

The Kosrae State Court trial division has jurisdiction to review all decisions of inferior courts and neither the Kosrae Constitution nor state law requires that Land Court decisions be appealed to a State Court appellate division. There is thus no requirement that an appeal from Land Court be heard by a three-judge panel in the Kosrae State Court. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 301 (App. 2014).

The FSM Supreme Court appellate division has the power of appellate review of cases on appeal from the highest state court in which a decision may be had. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 401, 402 (App. 2014).

The Pohnpei Supreme Court trial division does not have appellate jurisdiction over Pohnpei municipal or local courts, and therefore the Pohnpei Supreme Court appellate division lacks jurisdiction over a petition for a writ of mandamus directed to a municipal court. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 401, 402 (App. 2014).

The FSM Supreme Court appellate division may exercise jurisdiction over an appeal from the Nett District Court to the extent that it is an appeal from the Nett District Court appellate division and it may consider a petition for a writ of prohibition if a writ of prohibition has already been sought and denied in the Nett District Court appellate division or to the extent that it is a petition for a writ of prohibition directed to the Nett District Court appellate division. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 401, 403 (App. 2014).

The general rule is that appellate review of a trial court is limited to final orders and judgments. The exceptions to this rule include: review of injunctions, appointment of receivers, admiralty decisions, or other statutory rights. Mori v. Hasiguchi, 19 FSM R. 414, 417 (App. 2014).

When no formal sanction was issued, when no fines were assigned, when no disciplinary action was ordered, when there was not an explicit finding of wrongdoing by the court, when there is only a footnote instructing the opposing party they have the right to investigate the matter and file a request for disciplinary action if they find reason, this is a non-decision, and as such, it is not appealable. Mori v. Hasiguchi, 19 FSM R. 414, 417 (App. 2014).

An FSM judge is required to memorialize proceedings, and in many cases, the appropriate action is an instructional footnote, rather than calling for full disciplinary hearing. Mori v. Hasiguchi, 19 FSM R. 414, 417 n.1 (App. 2014).

An appellant may not complain of an error in his favor in the rendition of a judgment. Mori v. Hasiguchi, 19 FSM R. 414, 417 (App. 2014).

The most distinctive feature of the doctrine of appellate standing to emerge from the adverse impact requirement is that a prevailing party cannot appeal from a favorable judgment to secure a review of unfavorable findings. Mori v. Hasiguchi, 19 FSM R. 414, 417 (App. 2014).

Under the doctrine of appellate standing, an attorney cannot raise an appeal to revise the reasoning, or verbiage, of a decision if that decision is favorable to his client. Mori v. Hasiguchi, 19 FSM R. 414, 417 (App. 2014).

The basic rule that a nonparty cannot appeal the judgment in an action between others is well established. Mori v. Hasiguchi, 19 FSM R. 414, 417 (App. 2014).

When no formal judicial action was taken and no disciplinary action was ordered against the appellant

or his counsel and when there was no formal finding of wrongdoing, the attorney lacks standing to bring an appeal under the attorney exception to the nonparty rule. Mori v. Hasiguchi, 19 FSM R. 414, 418 (App. 2014).

An appellate court is obligated to examine the basis of its appellate jurisdiction, *sua sponte*, if necessary. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 603, 606 (App. 2014).

One requisite of appellate jurisdiction is that there must be a timely filed notice of appeal. This requirement is mandatory and jurisdictional. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 603, 607 (App. 2014).

When, in order for the FSM Supreme Court appellate division to have jurisdiction over the second Nett District Court appellate division's decision about whether the Nett Chief Justice should have heard the trial division case, the appellant would have had to have filed a notice of appeal from that decision. Since he did not, the FSM Supreme Court does not have jurisdiction to review the part of the second decision which the court would have had jurisdiction to review if there had been a timely notice of appeal, and since there was no timely notice of appeal from the decision that would require interpretation of the FSM Constitution's due process clause, the appeal must be dismissed. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 603, 607-08 (App. 2014).

An appellate court may receive proof or take notice of facts outside the record for determining whether a question presented to it is moot. Narruhn v. Chuuk State Election Comm'n, 20 FSM R. 36, 38 (Chk. S. Ct. App. 2015).

An appeal of an order denying a run-off election is moot when the real party in interest has taken the oath of office and has served the term as Governor until April 2013 since a run-off election following the August 24, 2011 special election is not now possible. Narruhn v. Chuuk State Election Comm'n, 20 FSM R. 36, 38 (Chk. S. Ct. App. 2015).

If an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot. Narruhn v. Chuuk State Election Comm'n, 20 FSM R. 36, 38 (Chk. S. Ct. App. 2015).

Sanctions against an attorney may only be appealed when the attorney makes the appeal in the attorney's own name and as a real party in interest. When the attorney was named in the notice of appeal's caption and in its body as the real party in interest, that requirement has been satisfied. Abrams v. FSM Dev. Bank, 20 FSM R. 309, 310 (App. 2016).

The well-established general rule is that only final judgment decisions may be appealed. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 344 (App. 2016).

The Appellate Rule 4(a)(1) time limit is jurisdictional and if that time is not extended by a timely motion to extend that time period under Rule 4(a)(5), the appellate division is deprived of jurisdiction to hear the case. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 345 (App. 2016).

The relevant period of time, within which to file a notice of appeal is rigid, and the appellate court does not have the authority to allow an appeal that does not adhere to this time frame because an appellate court has jurisdiction over an appeal only if it is timely filed. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 345 (App. 2016).

An appellate court has jurisdiction over an appeal only if it is timely filed. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 345 (App. 2016).

The general rule is that appellate review of a trial court is limited to final orders and judgments. A policy of judicial economy dictates against piecemeal appeals. Salomon v. Mendiola, 20 FSM R. 357, 360

(App. 2016).

The general rule is that appellate review of a trial court is limited to final orders and judgments. A policy of judicial economy dictates against piecemeal appeals. Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

Generally, an appeal from a trial judge's ruling is to be taken only after completion of all trial proceedings. Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

The appeal of a trial court order partially dismissing claims was brought prematurely and was not ripe for review and also is not reviewable under the collateral order doctrine when it did not conclusively determine the rights and liabilities in the underlying multi-claim action, involving multiple parties; when the relevant order speaks directly to the action's merits and found the dismissed claims to be unsupported by the facts pled in the complaint; and when a dismissal at this juncture would not preclude appellants from lodging an appeal once a final decision is entered. Salomon v. Mendiola, 20 FSM R. 357, 361 (App. 2016).

An appellate court will first consider an assignment of error that is a potentially dispositive threshold issue going to the court's subject-matter jurisdiction because if the appellants prevail on the issue any opinion given on other issues would merely be advisory and the court does not sit to render advisory opinions since it lacks the authority to do so. Sam v. FSM Dev. Bank, 20 FSM R. 409, 416 (App. 2016).

An appellate court may receive proof of or take notice of facts outside the record to determine whether a question presented to it is moot, and, if events after an appeal is filed make the issue presented moot, no justiciable dispute is presented and the court is without jurisdiction to consider the appeal – it must dismiss a moot appeal. Andrew v. Heirs of Seymour, 20 FSM R. 629, 631 (App. 2016).

Since no justiciable case or dispute is presented when events after the filing of an appeal make the issues presented moot, the appellate court lacks jurisdiction to consider or decide moot appeals. Andrew v. Heirs of Seymour, 20 FSM R. 629, 631 (App. 2016).

The well-established general rule is that only final decisions may be appealed. Esau v. Penrose, 21 FSM R. 75, 78 (App. 2016).

The Kosrae State Court has the authority to hear appeals from Land Court, but it cannot act until the Land Court has adjudicated the matter and an appeal has been filed. Esau v. Penrose, 21 FSM R. 75, 79 (App. 2016).

The Kosrae State Court trial division has jurisdiction to review all decisions of inferior courts, including decisions by the Kosrae Land Court. Esau v. Penrose, 21 FSM R. 75, 79 (App. 2016).

When service of the Land Court decision was made on someone who did not reside with the appellant, that service was insufficient, and the fact that the appellant became aware of the Land Court's decision later is not equivalent to being properly served to safeguard her due process rights. If a party was not served notice and was then denied the right to appeal, his or her due process rights are violated. Esau v. Penrose, 21 FSM R. 75, 80-81 (App. 2016).

The statutory sixty-day period to appeal a Kosrae Land Court decision is tolled until proper service is made. Serving notice of a Land Court adjudication or decision, is required in order to give the party a chance to appeal, and if a party is not properly served the Land Court's written determination of ownership, the statutory sixty-day appeals period does not run against that party. Esau v. Penrose, 21 FSM R. 75, 81 (App. 2016).

When a Kosrae Land Court decision was never properly served on the appellant, the Land Court will

be instructed to properly serve its decision on the appellant, and the Kosrae State Court will then allow the appellant sixty days to file an appeal after the Land Court's decision has been properly served. Esau v. Penrose, 21 FSM R. 75, 81 (App. 2016).

The FSM Supreme Court appellate division has jurisdiction to hear appeals from all final decisions of the Kosrae State Court trial division, if a notice of appeal is filed as provided in FSM Appellate Rule 3 within 42 days after the entry of the judgment or order appealed from. Tilfas v. Kosrae, 21 FSM R. 81, 86 (App. 2016).

If the Kosrae State Court finds the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, it must remand the case to the Land Court, with instructions and guidance for rehearing the matter in its entirety or such portions of the case as may be appropriate, but if the State Court affirms the Land Court decision, no further appeals to the State Court will be allowed. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 99 (App. 2016).

When there has been no disposition of an appeal before the Kosrae State Court, and when a separate later civil action is inextricably intertwined with that appeal, the Kosrae State Court is precluded from entertaining the civil action while the appeal is still pending. A civil action in the Kosrae State Court cannot be a substitute for an appeal from the Land Court. Nor can it be a second appeal of a Land Court decision. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 100 (App. 2016).

When the appellants participated in the appeal on ownership of a specific parcel, they are barred from relitigating the ownership of any part of that parcel under the doctrine of res judicata. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 100 (App. 2016).

When the proper forum for the claim would have been a timely appeal from the Land Court, not a complaint filed outside the applicable time to appeal, the Kosrae State Court's dismissal of the action will be affirmed. Lonno v. Heirs of Palik, 21 FSM R. 103, 109 (App. 2016).

The well-established general rule is that only final decisions may be appealed. Setik v. Mendiola, 21 FSM R. 110, 112 (App. 2017).

An appellate court lacks jurisdiction over a matter that was not timely appealed because a October 22, 2015 notice of appeal is untimely for an appeal from a September 4, 2015 decision. Edwin v. Kohler, 21 FSM R. 133, 135 & n.1 (App. 2017).

When the appellant did not allege any facts, law, or error by the Pohnpei Supreme Court appellate division that implicate either interpretation of the FSM Constitution, national law, or treaty or a violation thereof, the appeal would not be properly before the FSM Supreme Court appellate division for review, even if the appellant were permitted to brief the matter and an FSM constitutional issue was raised for the first time. Edwin v. Kohler, 21 FSM R. 133, 136-37 (App. 2017).

An appellant offers the FSM Supreme Court appellate division no basis on which it could properly exercise jurisdiction, when he is content to recite the same self-serving statement that his due process rights were violated by the orders of the Pohnpei Supreme Court trial and appellate divisions without further explaining how or why those orders violated due process under the FSM Constitution. Edwin v. Kohler, 21 FSM R. 133, 137 (App. 2017).

Litigants cannot argue that, in their view, they were deprived of due process because the Pohnpei Supreme Court appellate division wrongly decided a matter of state law. A Pohnpei Supreme Court appellate division decision on Pohnpei state law is always correct. It is not correct because the Pohnpei Supreme Court appellate division is infallible. It is correct because, until the Pohnpei Supreme Court appellate division reverses or overrules its prior decision, it is final. Edwin v. Kohler, 21 FSM R. 133, 137 (App. 2017).

The FSM Supreme Court is not in a position to review Pohnpei Supreme Court appellate division decisions that do not involve interpretation of the FSM Constitution, national law or treaty, or that do not involve some other violation of the FSM Constitution, even when a litigant contends that court's decision might have been wrongly decided. Edwin v. Kohler, 21 FSM R. 133, 137 (App. 2017).

When an order in question disposes of all the claims against one of several parties, it clearly has the requisite finality to be appealable under Civil Procedure Rule 54(b) if the trial court has made a proper certification under that rule. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 224 (App. 2017).

While an appellate court may exercise broad discretion in granting permission for interlocutory appeal, it has no discretion to refuse to hear an appeal as a matter of right. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 224 n.3 (App. 2017).

When an appeal was certified under Appellate Procedure Rule 5(a) rather than Civil Procedure Rule 54(b), no appeal as of right is available. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 226 (App. 2017).

The general rule is that an issue not raised below will not be considered for the first time on appeal. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 232 (App. 2017).

When the Pohnpei Supreme Court appellate division did not, in its order denying that a motion to reconsider (or at any other time), address the appellant's contention that a member of the appellate panel that issued the order of dismissal was disqualified from sitting on the appeal, it is apparent that the appellant properly raised, in the court below, an issue requiring interpretation of the FSM Constitution. Jano v. Santos, 21 FSM R. 241, 244-45 (App. 2017).

The FSM Supreme Court appellate division could properly exercise jurisdiction of an appeal from the Pohnpei Supreme Court appellate division when the appellant properly alleged an issue in the court below that implicated interpretation of the FSM Constitution but which the court below did not address. Jano v. Santos, 21 FSM R. 241, 245 (App. 2017).

An appellate court is obliged to examine the basis for its jurisdiction even if neither party has raised a particular issue affecting jurisdiction. Jano v. Santos, 21 FSM R. 241, 245 (App. 2017).

The interest protected by having exact time limits to appeal cases is the finality of judgments. While the paramount goal is to provide a full and fair opportunity for the parties to be heard and to reach an enlightened result understandable to all of the parties, an important subsidiary goal is to end the litigation itself and to reach a final decision. Jano v. Santos, 21 FSM R. 241, 245-46 (App. 2017).

The timely filing of a notice of appeal is jurisdictional and mandatory. Jano v. Santos, 21 FSM R. 241, 246 (App. 2017).

An untimely filing of a notice of appeal absolutely deprives the appellate division of jurisdiction, and it must dismiss an appeal that was untimely filed no matter how meritorious it believes the appellant's claims to be. Jano v. Santos, 21 FSM R. 241, 246 (App. 2017).

The law of the case doctrine posits ordinarily an issue of fact or law decided on appeal may not be reexamined either by the trial court on remand or by the appellate court on a subsequent appeal. The three exceptions are: 1) the evidence at a subsequent trial is substantially different; 2) there has been an intervening change of law by a controlling authority; and 3) the earlier decision is clearly erroneous and would work a manifest injustice, but only in extraordinary circumstances may a court sustain a departure

from the law of the case doctrine on the ground that a prior decision was clearly erroneous. When none of these exceptions apply, the law of the case doctrine requires the later appellate court to rely on the prior appellate decision. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 310, 313 (App. 2017).

When the appellant has raised the issue that her due process rights were violated by the manner of the Pohnpei appellate division's dismissal of her appeal and when, if the case ever came properly before the FSM Supreme Court appellate division, it would have appellate jurisdiction over at least part of the underlying case's merits, because the appellant, in her trial court complaint, raised her due process and equal protection claims under both the FSM and Pohnpei Constitutions and pled her civil rights claim under the national civil rights statute, the FSM Supreme Court appellate division has jurisdiction to consider the one FSM Constitution due process issue she raises in this appeal. Silbanuz v. Leon, 21 FSM R. 336, 340 (App. 2017).

Chuuk courts are restricted in hearing only "live" cases, meaning the case must be one appropriate for judicial determination. A matter is appropriate for judicial determination when there is a justiciable controversy, as distinguished from a difference or dispute of a hypothetical or abstract character, or one that is academic or moot. Selifis v. Robert, 21 FSM R. 352, 353 (Chk. S. Ct. App. 2017).

A justiciable controversy may become moot subsequent to filing an appeal if certain events cause the parties to lack a legally cognizable interest in the outcome, and if an appellate court finds that any relief it could grant would be ineffectual, and, if an appellate court dismisses a case as moot, the established rule is for the appellate court to reverse or vacate the judgment below and dismiss the case. Selifis v. Robert, 21 FSM R. 352, 353-54 (Chk. S. Ct. App. 2017).

The general rule is that appellate review of a trial court is limited to final orders and judgments. Final orders and judgments are final decisions. Fuji Enterprises v. Jacob, 21 FSM R. 355, 380 (App. 2017).

An appellate court will not consider an appellant's arguments against certain defendants when no final adjudication has been made on the appellant's claims against these particular defendants. Fuji Enterprises v. Jacob, 21 FSM R. 355, 360 (App. 2017).

An appellate court will normally dismiss an appeal for lack of jurisdiction when it is not from a final order because, although sanctions liability had been determined, the amount of those sanctions had not, but when a later appeal was from a final order (since it fixed the sanction amount) into which the earlier liability order merged, it did not matter whether the first appeal case was dismissed or consolidated with the later appeal case. Setik v. Mendiola, 21 FSM R. 537, 560 n.4 (App. 2018).

The FSM Supreme Court appellate division may exercise appellate jurisdiction over the merits of a Chuuk State Supreme Court appellate division case if the appeal is from a final order or judgment. Chuuk v. Chuuk State Supreme Court App. Div., 21 FSM R. 583, 585 (App. 2018).

When the date of the entry of judgment appealed from was June 14, 2017, and counsel neglected to file a notice of appeal within the forty-two day period within which a party may file a notice of appeal, and no extension of time was sought or granted, the appellate court lacks jurisdiction to consider the appeal's merits. Ardos v. FSM Social Sec. Admin., 22 FSM R. 1, 3 (App. 2018).

The well-established general rule is that only final judgment decisions may be appealed. A final decision is generally one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 43, 46 (Chk. S. Ct. App. 2018).

When an August 12, 2014 judgment disposed of all the questions within the post-judgment motion and left nothing as to a review or compliance with its order to be disposed of in the future, the order on that motion was a final order, and the appellant had 30 days to appeal the order but when it failed to appeal within that time limit, the appellate division lacks subject matter jurisdiction to review that motion. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 43, 48 (Chk. S. Ct. App. 2018).

When, on February 19, 2015, the appellant appealed from a February 11, 2015 post-judgment order, it fell within the allowable time-frame for appeal and the appellate division has subject matter jurisdiction to review only that February 11, 2015 trial division order. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 43, 48 (Chk. S. Ct. App. 2018).

The law of the case doctrine posits ordinarily an issue of fact or law decided on appeal may not be reexamined either by the trial court on remand or by the appellate court on subsequent appeal. The law of the case proscription applies regardless of whether the issue was decided explicitly or by necessary implication. This reflects the sound policy that, once the court has finally decided an issue, a litigant cannot demand that it be decided again. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 203, 207 (Pon. 2019).

Three exceptions to the law of the case doctrine permit a court to depart from a prior appellate ruling in the same case: 1) if the evidence at a subsequent trial is substantially different; 2) if there has been an intervening change of law by a controlling authority; and 3) if the earlier decision is clearly erroneous and would work a manifest injustice. Only in extraordinary circumstances may a court sustain a departure from the law of the case doctrine on the ground that a prior decision was clearly erroneous. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 203, 207 (Pon. 2019).

The well-established general rule is that only final decisions may be appealed. Salomon v. FSM Dev. Bank, 22 FSM R. 280, 281 (App. 2019).

When the trial court's order appealed from was not a final order or judgment, the appeal from that order will be dismissed for lack of jurisdiction as judicial economy dictates against piecemeal appeals and that the case below should be permitted to proceed to final judgment. Salomon v. FSM Dev. Bank, 22 FSM R. 280, 282 (App. 2019).

The well-established general rule is that only final decisions may be appealed. A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute judgment. Final orders and judgments are final decisions. Salomon v. Mendiola, 22 FSM R. 283, 284 (App. 2019).

When the trial court's order appealed from was not a final order or judgment, the appeal from that order will be dismissed for lack of jurisdiction to hear the appeal as judicial economy dictates against piecemeal appeals and that the case below should be permitted to proceed to final judgment. Salomon v. Mendiola, 22 FSM R. 283, 285 (App. 2019).

The well-established general rule is that only final decisions may be appealed. Salomon v. FSM Dev. Bank, 22 FSM R. 286, 287 (App. 2019).

Appeals are not permitted when the appeal is over issues involving steps moving towards a final order into which the interlocutory orders will merge. The purpose of limiting appeals to those from final decisions is to combine in one appellate review all stages of the proceeding if and when a final judgment or order results. Salomon v. FSM Dev. Bank, 22 FSM R. 286, 287-88 (App. 2019).

When the trial court's order appealed from was not a final order or judgment, the appeal from that order will be dismissed for lack of jurisdiction as judicial economy dictates against piecemeal appeals and that the case below should be permitted to proceed to final judgment. Salomon v. FSM Dev. Bank, 22 FSM R. 286, 288 (App. 2019).

The well-established general rule is that only final decisions may be appealed. A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute judgment. Final orders and judgments are final decisions. Salomon v. Mendiola, 22 FSM R. 289, 290 (App. 2019).

Generally, an appeal from a trial judge's ruling is to be taken only after completion of all trial proceedings, upon issuance of a final judgment. Timsina v. FSM, 22 FSM R. 383, 386 (Pon. 2019).

The appellate court is the appropriate court to determine whether an appeal is proper. Timsina v. FSM, 22 FSM R. 383, 386 (Pon. 2019).

An issue not presented to and ruled upon by the trial court cannot properly come before the appellate division for review. The general rule is that on appeal a party is bound by the theory advanced in the trial court and cannot urge a ground for relief which was not presented there. An issue raised for the first time on appeal is waived. FSM v. Kuo Rong 113, 22 FSM R. 515, 528 (App. 2020).

When the appellant never timely appealed the trial division's denial of its motion for relief from judgment that asked the trial division to admit new evidence, res judicata bars that new evidence from being admitted within a different appeal. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 578 (Chk. S. Ct. App. 2020).

When the summary judgment hearing and the trial were run one after the other like it was one proceeding, all blurred together and the defendant had raised during the summary judgment hearing the unfairness of the court considering the evidence the plaintiff was supposed to provide in response to the defendant's discovery requests, but had not, the issue of whether the plaintiff could use that evidence at trial was preserved for appellate review. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 623 (Chk. S. Ct. App. 2020).

When a litigant raises an issue for the first time on appeal, he or she is deemed to have waived the right to challenge the issue unless it involves a plain error that is obvious and substantial and that seriously affects the fairness, integrity, or public reputation of judicial proceedings. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 623 (Chk. S. Ct. App. 2020).

– Decisions Reviewable – Collateral Orders

Immediate appeals from collateral orders will sometimes be necessary when they have a final and irreparable effect on the rights of the parties or non-parties. An immediate appeal may be taken, in that small class which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated. FSM Dev. Bank v. Adams, 12 FSM R. 456, 461 (App. 2004).

The three requirements for an appeal under the collateral order doctrine are that the order appealed from: 1) conclusively determine the disputed question; 2) resolve an important issue completely separate from the merits of the action; and 3) be effectively unreviewable on appeal from a final judgment. FSM Dev. Bank v. Adams, 12 FSM R. 456, 461 (App. 2004).

A Rule 11 sanction establishing a party's liability to the plaintiffs based on a third-party beneficiary claim and an agreement would be reviewable in an appeal from a final judgment setting forth, among other things, the amount of damages. The same can be said of the sanction awards of attorney fees and costs. When the sanctions all run to a party and can be reviewed on appeal after a final judgment is rendered, an adjudication on liability without determining damages (the amount of that liability) is not a final judgment, and is thus not appealable. FSM Dev. Bank v. Adams, 12 FSM R. 456, 462 (App. 2004).

A Civil Rule 11 attorney sanction order is immediately appealable, but only if the sanctioned attorney proceeds under his or her own name, as the real party in interest. FSM Dev. Bank v. Adams, 12 FSM R. 456, 463 (App. 2004).

In criminal cases, appeals are permitted from all final decisions of the FSM Supreme Court trial division. It is thus a final decision, not a final judgment, that is reviewable under Appellate Rule 4(b). Only the sentence constitutes a final judgment in a criminal case, so a final judgment finding an accused guilty and imposing a sentence is always a final decision. However, a final decision may also be one of those small class of orders referred to as collateral orders. Zhang Xiaohui v. FSM, 15 FSM R. 162, 166 (App. 2007).

Immediate appeals from orders that are not final judgments will sometimes be necessary when they have a final and irreparable effect on the rights of the parties or non-parties. An immediate appeal may be taken, from that small class of orders that finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated. Zhang Xiaohui v. FSM, 15 FSM R. 162, 166-67 (App. 2007).

An accused's claim that he was previously put in jeopardy and is about to be tried again for the same offense is a collateral order that is immediately appealable because it is a final decision, as is the denial of an accused's motion for reduction of bail on the ground that it is unconstitutionally excessive. Zhang Xiaohui v. FSM, 15 FSM R. 162, 167 & n.2 (App. 2007).

Because reversal on appeal from a conviction following a second trial comes too late to afford an accused protection against being twice put to trial for the same offense, an order denying a motion to dismiss on the ground that the accused had previously been tried for that offense is a final decision and thus appealable. Zhang Xiaohui v. FSM, 15 FSM R. 162, 167 (App. 2007).

When the double jeopardy claim involves protection against multiple punishment, not the protection against being put on trial a second time, the rationale for granting pretrial appeals does not apply. There is no right to an immediate appeal from a double jeopardy claim of multiple punishments because that right can be fully vindicated on an appeal following a final judgment and therefore is not an immediately appealable final decision. Zhang Xiaohui v. FSM, 15 FSM R. 162, 167 (App. 2007).

A pretrial double jeopardy appeal will be dismissed as not from a final decision when the double jeopardy claim is not based on a claim that the defendants had been previously put in jeopardy. The "collateral order" exception for double jeopardy claims is limited to former jeopardy claims and an appellate court lacks jurisdiction to entertain an immediate pretrial appeal of a trial court denial of a motion to dismiss based on multiple punishment grounds. Zhang Xiaohui v. FSM, 15 FSM R. 162, 167 (App. 2007).

Denials of motions to dismiss on grounds such as a challenge to the sufficiency of the indictment are not immediately appealable by an accused, even if contained in a motion to dismiss on double jeopardy grounds. An order denying a motion to dismiss a charging document because it is defective is not "collateral" in any sense of that term because it goes to the heart of the issues to be resolved at trial. Zhang Xiaohui v. FSM, 15 FSM R. 162, 168 (App. 2007).

The three requirements for an appeal under the collateral order doctrine are that the order appealed from must: 1) conclusively determine the disputed question; 2) resolve an important issue completely separate from the merits of the action; and 3) be effectively unreviewable on appeal from a final judgment. If an order meets all three of these requirements, it is a final decision and is immediately appealable. Zhang Xiaohui v. FSM, 15 FSM R. 162, 168 (App. 2007).

The collateral order doctrine permits appeals before a final decision. The requirements for a collateral order doctrine appeal are that the order appealed from must: 1) conclusively determine the disputed question; 2) resolve an important issue completely separate from the merits of the action; and 3) be effectively unreviewable on appeal from a final judgment. Heirs of George v. Heirs of Tosie, 15 FSM R. 560, 562 (App. 2008).

The collateral order doctrine does not apply to an interlocutory appeal that involves an issue which

would be reviewable on appeal from a final decision and which is not completely separate from the merits of the action but is at the heart of the action's merits. The appeal will therefore be dismissed since it is not from a final decision and thus not ripe for review. The dismissal will be without prejudice to any future appeal from a final decision. Heirs of George v. Heirs of Tosie, 15 FSM R. 560, 562-63 (App. 2008).

If a person's contempt conviction was unsafe, that is, if he should have been acquitted because there was no earlier order requiring his appearance or if he was not allowed to present a defense, or if he had some valid defense that should have resulted in an acquittal on the contempt charge, his remedy would have been an immediate appeal of the contempt conviction as a final collateral order. Helgenberger v. U Mun. Court, 18 FSM R. 274, 282 (Pon. 2012).

A nonparty attorney who is held in contempt or otherwise sanctioned by the court in the course of litigation may appeal from the order imposing sanctions, either immediately or as part of the final judgment in the underlying case. Mori v. Hasiguchi, 19 FSM R. 414, 417-18 (App. 2014).

The requirements for a collateral order doctrine appeal are that the order appealed from must: 1) conclusively determine the disputed question; 2) resolve an important issue completely separate from the merits of the action; and 3) be effectively unreviewable on appeal from a final judgment. Salomon v. Mendiola, 20 FSM R. 357, 361 (App. 2016).

If an interlocutory order were a collateral order, a trial court certification would not be needed in order to appeal it. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 572 (Pon. 2016).

– Decisions Reviewable – Direct Appeals

The appellate division of the Supreme Court of the FSM may accept direct filing of a case and an expedited briefing schedule may be established where there is limited time available and prompt resolution of the issues in the case is decidedly in the national interest. Constitutional Convention 1990 v. President, 4 FSM R. 320, 324 (App. 1990).

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

"Direct" appeals to the appellate division have been limited to entire cases appealed from administrative agencies decisions. Etscheit v. Adams, 6 FSM R. 608, 610 (App. 1994).

The FSM Supreme Court has in the past permitted direct appeals from administrative decisions to the FSM Supreme Court appellate division. Urusemal v. Capelle, 12 FSM R. 577, 582 (App. 2004).

When no development of a trial record is required since there is no factual dispute and the issue for determination is one of law, when the case is time sensitive because of the effect on pending cases, and when the issue is one of significant national importance since it bears on the fundamental relationship between all three branches of government, the appellate division has subject matter jurisdiction over the matter and may hear the case. Urusemal v. Capelle, 12 FSM R. 577, 583 (App. 2004).

The appellate division may consider "direct appeals" in cases of national importance and extreme time sensitivity involving the national government. Christian v. Urusemal, 14 FSM R. 291, 293 (App. 2006).

When a party's sole recourse from a Kosrae small claims judgment is to file for a trial de novo in the Kosrae State Court, the party cannot appeal directly to the FSM Supreme Court. The FSM Supreme Court's only authority over a direct appeal from a Kosrae small claims judgment is to enter an order dismissing the appeal since the court lacks jurisdiction over it because it is not an appeal from the highest state court in which a decision may be had. Simon v. Heirs of Tulenkun, 17 FSM R. 646, 649-50 (App. 2011).

– Decisions Reviewable – Final Decision Defined

The well established general rule is that only final judgment decisions may be appealed. A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. In re Extradition of Jano, 6 FSM R. 23, 24 (App. 1993).

Certifications of extraditability are not final decisions of the trial court since the final decision-making authority rests with the Secretary of External Affairs. Therefore they are not appealable. In re Extradition of Jano, 6 FSM R. 23, 25 App. 1993).

In civil cases appeals may be taken from all final decisions of the Kosrae State Court. Finality should be given practical rather than technical construction, however, a summary judgment on the issue of liability, is not final or appealable until after the damage issue is resolved. Giving the word "final" its ordinary meaning, a decision that does not entirely dispose of one claim of a complaint containing four cannot be said to be final. Kosrae v. Melander, 6 FSM R. 257, 259 (App. 1993).

Because a decision of a single justice in the appellate division of the Chuuk State Supreme Court may be reviewed by an appellate panel of the same court it is not a final decision of the highest state court in which a decision may be had, which it must be in order for the FSM Supreme Court to hear it on appeal. Gustaf v. Mori, 6 FSM R. 284, 285 (App. 1993).

Where summary judgment has been granted on the issue of liability, but the issue of damages is still pending, the right to appeal has not been lost even though 10 months have elapsed because no final judgment has been entered and the deadline for filing an appeal does not begin to run until a final judgment has been entered. Kihara Real Estate, Inc. v. Estate of Nanpei (II), 6 FSM R. 354, 356 (Pon. 1994).

Civil case appeals to the FSM Supreme Court may be taken from final decisions of the highest state courts in Yap and Pohnpei if the cases require interpretation of the national constitution, national law, or a treaty; and in other cases where appeals from final decisions of the highest state courts are permitted under the Constitution of that state. A final decision is one which leaves nothing open to further dispute and which ends the litigation on the merits leaving the trial court with no alternative but to execute judgment. Damarlane v. United States, 7 FSM R. 202, 203-04 (App. 1995).

A state appellate court opinion in response to questions of state law certified to it by the FSM Supreme Court trial division is not a final decision and therefore not reviewable by the FSM Supreme Court appellate division. Damarlane v. United States, 7 FSM R. 202, 204 (App. 1995).

When a judgment has been entered, executed, and paid into court, the order disbursing the executed funds is a final decision and appealable. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 668 (App. 1996).

An order by a single justice of the Chuuk State Supreme Court dismissing an appeal is a final order that may be appealed to the FSM Supreme Court appellate division. Wainit v. Weno, 8 FSM R. 28, 30 (App. 1997).

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

Ordinarily a judgment of reversal rendered by an intermediate appellate court which remands the cause for further proceeding in conformity with the opinions of the appellate court is not final and therefore,

not appealable to the higher appellate court, so long as judicial action in the lower court is required. Youngstrom v. Phillip, 8 FSM R. 198, 201 (Kos. S. Ct. Tr. 1997).

The general rule is that only final judgments can be appealed. There is no appealable final judgment when only liability and not damages decided. Iriarte v. Etscheit, 8 FSM R. 231, 235 (App. 1998).

A single justice order in the Pohnpei Supreme Court appellate division is not a final decision of the Pohnpei Supreme Court because it is subject to review by a full appellate panel of the Pohnpei Supreme Court. Damarlane v. Pohnpei, 9 FSM R. 114, 118 (App. 1999).

A single appellate justice might not be considered the highest state court when his orders are subject to review by a full appellate panel. Damarlane v. Pohnpei, 9 FSM R. 114, 118 n.3 (App. 1999).

The FSM Supreme Court does not have jurisdiction to consider an appeal from an order by a Chuuk State Supreme Court single justice denying a motion for a stay or injunction pending appeal because it is not from a final decision. Chipen v. Election Comm'r of Losap, 9 FSM R. 163, 164 (App. 1999).

The general rule is that appellate review of a trial court is limited to final orders and judgments. A policy of judicial economy dictates against allowing piecemeal appeals. A final decision is one that leaves nothing open to further dispute and which ends the litigation on the merits, leaving the trial court with no alternative but to execute judgment. Santos v. Bank of Hawaii, 9 FSM R. 285, 287 (App. 1999).

When a trial court has determined a party's liability for an attorney's fees sanction but has not determined the amount of that liability, it is not a final order because the trial court could not execute on the order when the amount of attorney fees had not been fixed. Only once the fees have been fixed will the order become final and appealable. Santos v. Bank of Hawaii, 9 FSM R. 285, 287 (App. 1999).

The general rule is that appellate review of a trial court is limited to final orders and judgments. Final orders and judgments are final decisions. Chuuk v. Davis, 9 FSM R. 471, 473 (App. 2000).

When an appeal is from a trial court post-judgment order that does not make any specific order concerning how the judgment is to be satisfied, or what specific funds are to be used to satisfy the judgment, or specify the method that should be used to provide payment to the plaintiff, and that does not make a specific finding about the fastest way for the judgment to be paid, and which, by its terms, extends only for two months when the trial court would then take further action, if necessary, it is not appeal from a final decision and will be dismissed. Chuuk v. Davis, 9 FSM R. 471, 473-74 (App. 2000).

When, on August 12, 1998, the trial court entered a judgment on four claims pursuant to FSM Civil Rule 54(b) that stated that "there is no just reason for delay," and expressly directed entry of judgment as to the four claims, then that judgment is final and appealable, and the time to appeal began to run as of the date of the entry of the judgment, August 12, 1998. Hartman v. Bank of Guam, 10 FSM R. 89, 94 (App. 2001).

Generally discovery orders are interlocutory in character and review may be obtained only through means of the contempt process or through appeal of the final judgment in the underlying action. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 469 (Pon. 2001).

An order granting or refusing a transfer of venue is not a final judgment and is not appealable. FSM v. Wainit, 11 FSM R. 411, 412 (Pon. 2003).

Because of the automatic ten-day stay on the issuance of a writ of execution, a money judgment, upon entry of judgment, is final for the purposes of appeal, even though it is not yet final for the purposes of execution. In re Engichy, 11 FSM R. 520, 528 (Chk. 2003).

When a municipality's complaint alleged that the defendants damaged its reef, submerged lands, and

resources but the trial court concluded that since the state owned the submerged lands and resources, the municipality was precluded from recovering damages for injury to the submerged lands and living marine resources, but if it was able to prove damage to other municipal resources, it would be provided that opportunity at trial; when no other claimed municipal resources were identified by either the court or a party, before or after that decision; and when the municipality stipulated to a final judgment being entered against it, it abandoned any claim that it might have had for damage to resources other than living marine resources; nothing remained for the trial court to adjudicate and the judgment was final and appealable. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 507 (App. 2005).

In criminal cases, appeals are permitted from all final decisions of the FSM Supreme Court trial division. It is thus a final decision, not a final judgment, that is reviewable under Appellate Rule 4(b). Only the sentence constitutes a final judgment in a criminal case, so a final judgment finding an accused guilty and imposing a sentence is always a final decision. However, a final decision may also be one of those small class of orders referred to as collateral orders. Zhang Xiaohui v. FSM, 15 FSM R. 162, 166 (App. 2007).

A pretrial double jeopardy appeal will be dismissed as not from a final decision when the double jeopardy claim is not based on a claim that the defendants had been previously put in jeopardy. The "collateral order" exception for double jeopardy claims is limited to former jeopardy claims and an appellate court lacks jurisdiction to entertain an immediate pretrial appeal of a trial court denial of a motion to dismiss based on multiple punishment grounds. Zhang Xiaohui v. FSM, 15 FSM R. 162, 167 (App. 2007).

Denials of motions to dismiss on grounds such as a challenge to the sufficiency of the indictment are not immediately appealable by an accused, even if contained in a motion to dismiss on double jeopardy grounds. An order denying a motion to dismiss a charging document because it is defective is not "collateral" in any sense of that term because it goes to the heart of the issues to be resolved at trial. Zhang Xiaohui v. FSM, 15 FSM R. 162, 168 (App. 2007).

Denial of a defense motion to dismiss ordinarily is not final. Thus, appeals from a denial of a defense motion to dismiss based on challenges to the charging document's sufficiency or failure to charge an offense or and many other grounds will be dismissed. Zhang Xiaohui v. FSM, 15 FSM R. 162, 168 (App. 2007).

The well-established general rule is that only final decisions may be appealed. A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. Final orders and judgments are final decisions. Heirs of George v. Heirs of Tosie, 15 FSM R. 560, 562 (App. 2008).

Post-judgment orders are generally final decisions from which an appeal may lie and from which a separate notice of appeal must be filed if the judgment itself has been appealed. When no separate notice of appeal from a post-judgment order awarding attorneys' fees has been filed, the appellate court lacks jurisdiction to review the order even though the judgment had been appealed. This general principle is also true of any other post-judgment order for which an appellant seeks review. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 (App. 2008).

When the July 25, 2007 State Court order denying the appellants' motion for reconsideration ended all litigation on the underlying dispute in the Kosrae State Court, it is a final decision that triggered the beginning of the 42-day period for filing a notice of appeal, and when the notice of appeal was not filed within that time, the appeal will be dismissed and the clerk of court will be instructed to strike it from the docket. In re Parcel 79T11, 16 FSM R. 24, 25 (App. 2008).

When the trial court planned to take further post-judgment action, its decision could not be considered final for appeal purposes. But when the trial court states that it will not take any further action unless the appellate division chooses to expand a previous ruling, the trial court's order is a final decision since it does

not contemplate further action by the court, and the appeal will proceed on the merits. Barrett v. Chuuk, 16 FSM R. 229, 233 (App. 2009).

When a trial court dismisses less than all of the claims but does not expressly make the required findings under Rule 54(b), that dismissal is not a final decision. When the trial court did not expressly determine that there was no just cause for delay and did not expressly direct the entry of judgment, the appeal is not from a final decision since the trial court must do both for a partial adjudication to be deemed a final decision capable of being appealed. Smith v. Nimea, 16 FSM R. 346, 349 (App. 2009).

The general rule is that appellate review of a trial court is limited to final orders and judgments because a policy of judicial economy dictates against allowing piecemeal appeals. A final decision is one that leaves nothing open to further dispute and which ends the litigation on the merits, leaving the trial court with no alternative but to execute the judgment. Jano v. Fujita, 17 FSM R. 281, 283 (App. 2010).

When the trial court's order granting an award of attorney's fees was simply the beginning of a process since the order itself required the movant to submit evidence of the reasonable fees incurred, and when the key fact was that the trial court had not yet fixed on an amount for the attorney's fees and without fixing the amount, there was nothing for the trial court to execute, the movant's contention that the appeal was not from a final order is dispositive and the appeal will be dismissed because only once the fees have been fixed will the order become final and appealable. Jano v. Fujita, 17 FSM R. 281, 283 (App. 2010).

When, even though the trial court may have expressly directed entry of a judgment, it never made an express determination that there was no just cause for delay, the judgment is not an appealable final judgment since in the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties will not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and all the parties' rights and liabilities. Thus, although a filing designated as a "Judgment" was entered, it was, under Rule 54(b), not a final decision and therefore not appealable. Iriarte v. Individual Assurance Co., 17 FSM R. 356, 358-59 (App. 2011).

Generally, an order is not final when the substantial rights of the parties involved in the action remain undetermined and when the cause is retained for further action. Accordingly, a decision reserving certain questions for future determination or direction ordinarily cannot be final for the purposes of appeal. Stephen v. Chuuk, 17 FSM R. 453, 459 (App. 2011).

When a trial court disposes of a postjudgment motion for writ of garnishment and fully adjudicates the questions of ability to pay and fastest method of payment and when the trial court has not retained for itself the power to review compliance with the order at a specific later date, the trial court's order is final for the purposes of appeal. Stephen v. Chuuk, 17 FSM R. 453, 460 (App. 2011).

Generally, the appellate division may review only final decisions. A final decision is one that leaves nothing open to further dispute and which ends the litigation on the merits, leaving the trial court with no alternative but to execute the judgment, and an appeal that is not from a final decision will be dismissed for lack of jurisdiction without prejudice to any future appeal from a final decision. In re Sanction of George, 17 FSM R. 613, 616 (App. 2011).

Dicta is not a final decision that may be subject to appellate review since dicta cannot be used as a basis to require or compel any later action. In re Sanction of George, 17 FSM R. 613, 616 (App. 2011).

The FSM Supreme Court appellate division may, in civil actions, hear appeals from the trial division only from final decisions, interlocutory orders disposing of injunctions, interlocutory orders with respect to receivers, interlocutory decrees determining rights and liabilities of parties in admiralty cases. Generally, an order is not final when the substantial rights of the parties involved in the action remain undetermined

and when the cause is retained for further action. Accordingly, a decision reserving certain questions for future determination or direction cannot ordinarily be final for the purposes of appeal. Mori v. Hasiguchi, 18 FSM R. 83, 84 (App. 2011).

When the appealed order did not affect the substantial rights of the parties, and the cause was retained for further action, as evidenced by the subsequent orders, the appealed order was not final as to the issue it resolved, and the appellate court has no jurisdiction to hear the appeal. Mori v. Hasiguchi, 18 FSM R. 83, 84 (App. 2011).

When the Kosrae State Court's April 23, 2013 order made the denial of a rehearing petition before it final, it made the Kosrae State Court's July 7, 2011 decision final and appealable as of April 23, 2013. Therefore the FSM Supreme Court appellate division had subject-matter jurisdiction over the July 7, 2011 Kosrae State Court decision when a timely appeal was filed after the April 23, 2013 rehearing denial. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 366 (App. 2014).

The well established general rule is that only final judgment decisions may be appealed. A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. An order is not final when the substantial rights of the parties involved in the action remain undetermined and when the cause is retained for further action. A decision reserving certain questions for future determination or direction cannot ordinarily be final for the purposes of appeal. Mori v. Hasiguchi, 19 FSM R. 416, 418-19 (App. 2014).

In civil actions, the appellate division may take appeals from the trial division only from final decisions, but an order is not final when substantial rights of the parties involved in the action remain undetermined and when the cause is retained for further action. Accordingly, a decision reserving certain questions for future determination or direction cannot ordinarily be final for the purposes of the appeal. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 343-44 (App. 2016).

When there was further trial court activity involving a determination of the specifics of the relevant sanctions requiring further analysis by the lower court, the order appealed from was not a "final decision" and consequently, the appellate court is without jurisdiction to consider the appeal. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 344 (App. 2016).

An adjudication on liability, without determining damages (the amount of that liability) is not a final judgment and thus not appealable. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 344 (App. 2016).

When the trial court issued an order awarding attorney's fees to counsel and a notice of appeal was filed, challenging the fee award, a final appealable order did not exist, thereby precluding appellate review, because the order appealed from established only the pecuniary responsibility for opposing counsel's reasonable fees but did not establish the amount of those fees. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 344 (App. 2016).

When a notice of appeal from the trial court's order denying reconsideration of the Rule 11 sanctions was lodged on June 20, 2014, the order was not a "final decision" since the specific amount of reasonable costs and attorney's fees was not determined until the issuance of the August 11, 2014 order. Hence, a subsequent notice of appeal was required in order to perfect an appeal challenging the propriety of levying sanctions. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 344-45 (App. 2016).

The well-established general rule is that only final decisions may be appealed. A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. Final orders and judgments are final decisions. Esau v. Penrose, 21

FSM R. 75, 78 (App. 2016).

Dismissal of an action for lack of subject-matter jurisdiction is a final judgment for purposes of appeal. Esau v. Penrose, 21 FSM R. 75, 79 (App. 2016).

A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. A decision reserving certain questions for future determination or direction cannot ordinarily be final for the purposes of the appeal. Setik v. Mendiola, 21 FSM R. 110, 112 (App. 2017).

Generally, an order is not final when the substantial rights of the parties involved in the action remain undetermined and when the cause is retained for further action. Accordingly, a decision reserving certain questions for future determination or direction cannot ordinarily be final for the purposes of appeal. Setik v. Mendiola, 21 FSM R. 110, 112 (App. 2017).

The appellate court lacks jurisdiction to review an appeal from a trial court order that was not even a final decision on whether the trial court would accept the plaintiffs' opposition to the defendants' pending dismissal motion because that order was not a final decision on anything since it left for the trial court's future decision not only whether it would accept a future opposition to the pending motion but also whether the pending motion would be granted or denied. Setik v. Mendiola, 21 FSM R. 110, 113 (App. 2017).

The well-established general rule is that only final decisions may be appealed. A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute judgment. Final orders and judgments are final decisions. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 228 (App. 2017).

A final decision generally is one that ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. Explained differently, an order is not final when the substantial rights of the parties to the action remain undetermined and when the cause is retained for further action. A decision reserving certain questions for future determination or direction cannot ordinarily be final for the purposes of appeal. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 43, 46 (Chk. S. Ct. App. 2018).

A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute judgment. Final orders and judgments are final decisions. Salomon v. FSM Dev. Bank, 22 FSM R. 280, 281 (App. 2019).

The well-established general rule is that only final decisions may be appealed. A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute judgment. Final orders and judgments are final decisions. Salomon v. Mendiola, 22 FSM R. 283, 284 (App. 2019).

A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute judgment. Final orders and judgments are final decisions. Salomon v. FSM Dev. Bank, 22 FSM R. 286, 287 (App. 2019).

The well-established general rule is that only final decisions may be appealed. A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute judgment. Final orders and judgments are final decisions. Salomon v. Mendiola, 22 FSM R. 289, 290 (App. 2019).

A final order is a final decision. A final decision is one which ends the litigation on the merits and leaves nothing for the court to do but enforce the final order or execute the judgment. Berman v. Pohnpei, 22 FSM R. 300, 302 (Pon. 2019).

An order that Pohnpei seek an earthmoving permit to remove a dredging berm was a final decision because it ended the litigation and did not contemplate further court action other than the enforcement of that order. Berman v. Pohnpei, 22 FSM R. 300, 302 (Pon. 2019).

– Decisions Reviewable – Interlocutory

For an interlocutory appeal, FSM Appellate Rule 5 must be read as requiring a prescribed statement from the trial court. Lonno v. Trust Territory (II), 1 FSM R. 75, 77 (Kos. 1982).

The trial court will not issue a Rule 5(a) prescribed statement for an interlocutory appeal when there is no substantial ground for difference of opinion and that an immediate appeal from the order would retard, rather than materially advance, the ultimate determination of the litigation. Lonno v. Trust Territory (II), 1 FSM R. 75, 78 (Kos. 1982).

Generally only final judgments or orders can be appealed, but the appellate division may, at its discretion, permit an appeal of an interlocutory order. The court, in exercising its discretion should weigh the advantages and disadvantages of an immediate appeal and consider the appellant's likelihood of success before granting permission. Jano v. King, 5 FSM R. 326, 329 (App. 1992).

Where a court order takes no action concerning an existing injunction and states that it may modify the injunction depending on the happening of certain events, that order does not come within the provision of the rule allowing interlocutory appeals of orders granting, continuing, modifying, or dissolving, or refusing to dissolve or modify an injunction. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 332, 334 (App. 1992).

The right to appeal an interlocutory order which affects an injunction is an exception to the general rule that permits appeals only from final decisions. The exception reflects the importance of prompt action when injunctions are involved since the threat of irreparable harm is a prerequisite to injunctive relief. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 332, 334 (App. 1992).

The general rule is that appellate review of a trial court is limited to final orders and judgments. However, certain interlocutory orders involving injunctions, receivers and receiverships, and interlocutory decrees determining rights and liabilities in admiralty cases, are reviewable in the appellate division. In exceptional cases, the extraordinary writs of mandamus or of prohibition may be issued to correct a trial court's decisions before final judgment. Appellate review may also be granted when the trial court has issued an order pursuant to Appellate Rule 5(a). Etscheit v. Adams, 6 FSM R. 608, 610 (App. 1994).

The appellate division does not have the power to enlarge time to petition for permission for an interlocutory appeal, but the trial division may re-enter its order with a prescribed statement thereby causing a new ten-day period to run because a trial court retains jurisdiction over its interlocutory orders and may reconsider any such order until a final judgment is entered. In re Estate of Hartman, 7 FSM R. 409, 410 (Chk. 1996).

Pursuant to FSM Appellate Rule 4(a)(1)(B) the FSM Supreme Court appellate division has jurisdiction to hear an appeal from an interlocutory order granting a permanent injunction. Stinnett v. Weno, 8 FSM R. 142, 145 n.2 (Chk. 1997).

In order for the appellate division to hear an appeal in the absence of a final judgment there must be some other source of jurisdiction, such as FSM Appellate Rule 4(a)(1)(B) which allows appeals from FSM Supreme Court trial division interlocutory orders granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions. Iriarte v. Etscheit, 8 FSM R. 231, 235 (App. 1998).

As a general rule in an interlocutory appeal of an injunction an appellate court concerns itself only with the order from which the appeal is taken, and reviews other issues only if they are inextricably bound up with the injunction. Thus an appellate court has jurisdiction to review a summary judgment on the merits

when the appellants are subject to a permanent injunction which is inextricably bound up with the underlying summary judgment. Iriarte v. Etscheit, 8 FSM R. 231, 235 (App. 1998).

When no final judgment or decree has been entered an appeal may be taken from the Kosrae State Court from an interlocutory order granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions; or, in a civil proceeding, when a justice has certified that an order not otherwise appealable involves a controlling question of law concerning which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance completion of the action. Youngstrom v. Phillip, 9 FSM R. 103, 105 (Kos. S. Ct. Tr. 1999).

The FSM Supreme Court appellate division may hear appeals in civil cases from all final decisions of the FSM Supreme Court trial division and from interlocutory orders involving injunctions, receivers and receiverships, decrees determining parties' rights and liabilities in admiralty cases, and any other civil case in which an appeal is permitted as a matter of law. Permission may also be sought for an interlocutory appeal pursuant to Appellate Rule 5(a). Chuuk v. Davis, 9 FSM R. 471, 473 (App. 2000).

Generally discovery orders are interlocutory in character and review may be obtained only through means of the contempt process or through appeal of the final judgment in the underlying action. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 469 (Pon. 2001).

Neither the Criminal Procedure nor the Appellate Procedure Rules provide for an appeal in a criminal case before a final decision, and although interlocutory appeals may be made by permission in civil cases, such appeals do not stay trial division proceedings. FSM v. Wainit, 12 FSM R. 201, 203 (Chk. 2003).

An interlocutory appeal may be considered moot when the trial court has issued a final judgment in the case below and the appellant has since filed a notice of appeal on the same issues. FSM Dev. Bank v. Adams, 12 FSM R. 456, 460 (App. 2004).

When there are no monetary Rule 11 sanctions against party's counsel and he is not appealing in his own name as the real party in interest and the Rule 11 sanctions run to the party and are identical to the Rule 37 sanctions (which can only be appealed after entry of a final judgment) imposed on the party, the Rule 11 sanctions are not properly before the court in an interlocutory appeal. FSM Dev. Bank v. Adams, 12 FSM R. 456, 461 (App. 2004).

Generally, the only interlocutory appeals allowed are those for which permission has been sought and granted, or those from certain orders concerning injunctions, or concerning receivers or receiverships, or from decrees determining parties' rights and liabilities in admiralty cases. FSM Dev. Bank v. Adams, 12 FSM R. 456, 461 (App. 2004).

A defendant may appeal from an interlocutory order denying him bail. Robert v. Kosrae, 12 FSM R. 523, 524 (App. 2004).

Irrespective of any stipulation of the parties, the court must still determine whether the orders in question are suitable for certification for appeal pursuant to Appellate Rule 5(a). The court may not certify orders by virtue of the fact that the parties have stipulated to a stay. Amayo v. MJ Co., 13 FSM R. 259, 262 (Pon. 2005).

When an FSM Supreme Court justice in the trial division, in making in a civil action an order not otherwise appealable under Appellate Rule 4(a), is of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, the justice shall so state in writing in such order. The remaining article IX, section 3 FSM Supreme Court justices(s), acting as the appellate division, may permit an appeal to be taken from such order. Amayo v. MJ Co., 13 FSM R. 259, 262 (Pon. 2005).

Certification under Appellate Rule 5(a) requires a prescribed statement from the trial court why an interlocutory appeal should be permitted. The determination to certify an order under Rule 5(a) lies within the trial court's sound discretion. Even then, a second exercise of discretion by the appellate division is required before the appeal may proceed. Amayo v. MJ Co., 13 FSM R. 259, 263 (Pon. 2005).

Permitting the appeal to proceed is at the appellate court's discretion after the trial court's discretionary Appellate Rule 5(a) certification. It is only in exceptional circumstances that the trial court should certify an interlocutory order for immediate appeal. In sum, for the appellate division to have jurisdiction over an appeal under Rule 5(a), the trial court must certify the question and the appellate court must thereafter grant permission for the appeal to go forward. Amayo v. MJ Co., 13 FSM R. 259, 263 (Pon. 2005).

An order denying or granting discovery ordinarily does not present a controlling question of law so as to allow immediate appeal under Appellate Rule 5(a) and is thus a nonappealable interlocutory order which is reviewable only upon final judgment or order. Nor is an order granting or denying a motion in limine to exclude testimony appropriate for certification, since it is an interlocutory ruling on evidence. Amayo v. MJ Co., 13 FSM R. 259, 263 (Pon. 2005).

Under Appellate Rule 5(a), orders cannot be certified for immediate appeal unless they meet the standard set out therein: they must involve a controlling question of law as to which there is substantial ground for difference of opinion such that an immediate appeal from the order may materially advance the ultimate termination of the litigation, and when the orders in question do not meet this standard, the request for certification must be denied. Amayo v. MJ Co., 13 FSM R. 259, 263 (Pon. 2005).

Since a denial of a summary judgment motion is not a final order or judgment and since an order of consolidation is not a final order or judgment and when there is no indication that an interlocutory appeal of those orders is one of the few limited exceptions to the final order or judgment rule that are permitted by the Appellate Rules, the appeal will be dismissed. Valentin v. Inek, 15 FSM R. 14, 15 (Chk. S. Ct. App. 2007).

Neither the Criminal Procedure nor the Appellate Procedure Rules provide for an appeal in a criminal case before a final decision, although interlocutory appeals may be made by permission in civil cases. Neither FSM Code, Title 12 (criminal procedure) nor Title 4 (Judiciary Act) authorize interlocutory criminal appeals. Zhang Xiaohui v. FSM, 15 FSM R. 162, 166 (App. 2007).

Interlocutory appeals in civil admiralty and maritime cases may be made under Appellate Rule 4(a)(1)(D) but that rule does not apply in a criminal case. Zhang Xiaohui v. FSM, 15 FSM R. 162, 166 n.1 (App. 2007).

An accused cannot file interlocutory appeals from orders denying motions to suppress evidence, orders granting or denying discovery, orders denying or granting a transfer or change of venue and denial of motions challenging indictments on various grounds. Zhang Xiaohui v. FSM, 15 FSM R. 162, 168 (App. 2007).

The appellate procedure rules permit certain interlocutory appeals from the FSM Supreme Court trial division, but those rules may not apply to appeals from the Kosrae State Court. In civil cases, appeals may be taken from all final decisions of the Kosrae State Court. Heirs of George v. Heirs of Tosie, 15 FSM R. 560, 562 (App. 2008).

Although many jurisdictions authorize prosecution appeals when a trial court's interlocutory pretrial order effectively terminates the prosecution, either because vital evidence is suppressed or because the court dismisses the case based solely on a pretrial legal ruling, the Kosrae Code does not authorize such appeals. Kosrae v. George, 17 FSM R. 5, 7 (App. 2010).

Interlocutory orders involving injunctions, receivers and receiverships, and interlocutory decrees

determining rights and liabilities in admiralty cases, are reviewable in the appellate division and interlocutory appellate review may also be granted when the trial court has issued an order pursuant to Appellate Rule 5(a). Mori v. Hasiguchi, 17 FSM R. 602, 604 (Chk. 2011).

A trial court order that stated that if certain conditions occurred it might modify an injunction was not an appealable order under FSM Appellate Rule 4(a)(1)(B) because further proceedings were needed before it became an order modifying an injunction and thus an appealable order. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 375 (App. 2012).

The appellate rules authorize interlocutory appeals from interlocutory orders of the FSM Supreme Court trial division granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions. Berman v. FSM Nat'l Police, 19 FSM R. 118, 123 (App. 2013).

A party to an order refusing an injunction has the option of either pursuing an interlocutory appeal or, if still aggrieved after the final judgment, appealing the entire matter then. The opportunity to take an interlocutory appeal under Appellate Rule 4(a)(1)(B) is not an obligation to do so; if the parties are content to preserve the status quo while the trial court decides the case, they retain their right to comprehensive review at the end. Berman v. FSM Nat'l Police, 19 FSM R. 118, 123 (App. 2013).

Since under Kosrae state law a party may appeal from the Kosrae State Court to the appellate court from an interlocutory order granting, continuing, modifying, refusing or dissolving an injunction, or refusing to dissolve or modify an injunction, an appeal from a Kosrae State Court order granting a preliminary injunction is thus an appeal to the FSM Supreme Court appellate division that is permitted by Kosrae state law. Nena v. Saimon, 19 FSM R. 136, 138 (App. 2013).

Since a party in the Kosrae State Court may appeal to the appellate court from an interlocutory order granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify an injunction, the FSM Supreme Court appellate division has jurisdiction over an appeal of a Kosrae State Court preliminary injunction. Nena v. Saimon, 19 FSM R. 317, 324 (App. 2014).

Normally, a partial summary judgment is not appealable because only final judgments and orders can be appealed. A decision finding liability but not determining the amount of damages is not a final order or judgment and thus usually not appealable. Andrew v. Heirs of Seymour, 19 FSM R. 331, 337 (App. 2014).

Since a party in the Kosrae State Court may appeal to the FSM Supreme Court appellate division from an interlocutory order granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify an injunction, the court can exercise jurisdiction on this basis over a partial summary judgment granting an injunction even if there was no final judgment. Andrew v. Heirs of Seymour, 19 FSM R. 331, 337 (App. 2014).

Absent one of the limited exceptions to the final order or judgment rule found in Appellate Rule 4(a)(1)(B) through (E) applying, the appellate division does not have subject-matter jurisdiction over an interlocutory appeal. Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

The FSM appellate division may hear appeals in civil cases from all final decisions of the FSM Supreme Court trial division and from interlocutory orders involving injunctions, receivers and receiverships, decrees determining parties' rights and liabilities in admiralty cases and any other civil case in which an appeal is permitted by law. Permission may also be sought for an interlocutory appeal pursuant to Rule 5(a). Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

FSM Appellate Rule 5(a), which provides another vehicle for overcoming the jurisdictional impediment regarding an interlocutory appeal, is unavailable when the required certification from the trial court, setting forth why an interlocutory appeal should be allowed, is not present. Certification under Appellate Rule 5(a) requires the trial court's prescribed statement why an interlocutory appeal should be permitted. The

determination to certify an order under Rule 5(a) lies within the trial court's discretion. Even then, a second exercise of discretion by the appellate division is required before the appeal may proceed. It is only in exceptional circumstances that the trial court should certify an interlocutory appeal. Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

For the appellate division to have jurisdiction over an appeal under Rule 5(a), the trial court must certify the question and the appellate court must thereafter grant permission to go forward. Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

Appeals are not permitted when the appeal is over issues involving steps moving toward a final order into which the interlocutory orders will merge. The purpose of limiting appeals to those from final decisions, is to combine in one appellate review all stages of the proceeding if and when a final judgment or order results. This advances the policy of judicial economy, which dictates against piecemeal appeals from the same civil action. Salomon v. Mendiola, 20 FSM R. 357, 361 (App. 2016).

An appeal from a trial court order partially dismissing claims is premature when the interlocutory ruling leaves the remaining claims undisturbed. Only when a final decision is entered in the matter, does it ripen, in terms of an action which can properly be appealed. Salomon v. Mendiola, 20 FSM R. 357, 361 (App. 2016).

While the court would expect that if the grounds for certification of an interlocutory appeal existed, an aggrieved litigant seeking appellate review would move fairly promptly for certification, no rule requires that or sets a time limit for a motion to certify. While prejudice to the non-movants does not, by itself, make the motion untimely, it will be a factor to consider when determining whether a certification would materially advance the litigation's ultimate termination, and thus whether an order should be certified under Rule 5(a). FSM Dev. Bank v. Salomon, 20 FSM R. 565, 570-71 (Pon. 2016).

If a trial court order is certified, there is then a jurisdictional time limit of ten days within which the party seeking appellate review must file an application with the appellate division requesting permission to appeal. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 570 n.1 (Pon. 2016).

In order to certify an interlocutory trial court order as one from which a litigant may apply for permission to appeal, the trial court must be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 571 (Pon. 2016).

Certification must be denied when an immediate appeal from the interlocutory order would retard, rather than materially advance, the litigation's ultimate determination. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 571 (Pon. 2016).

When an interlocutory order does not contain controlling questions of law over which substantial grounds for exist for a difference of opinion and when an immediate appeal would not materially advance the litigation's ultimate termination, a motion to certify the order for a possible interlocutory appeal must be denied. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 572 (Pon. 2016).

If an interlocutory order were a collateral order, a trial court certification would not be needed in order to appeal it. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 572 (Pon. 2016).

Whether FSM Development Bank officials can be considered public officers for the purpose of Rule 25(d)(1) is neither a controlling issue of law nor a matter of first impression. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 572 (Pon. 2016).

An order will not be certified when, even if it involved a controlling question of law, there is no

substantial ground for a difference of opinion and when an immediate appeal of the issue would only retard, not materially advance this litigation's ultimate termination. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 574 (Pon. 2016).

Factual disputes are not appropriate for Appellate Rule 5(a) certification. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 574 (Pon. 2016).

Since an order denying or granting discovery ordinarily does not present a controlling question of law so as to allow immediate appeal, it is thus a nonappealable interlocutory order reviewable only upon final judgment or order. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 574 (Pon. 2016).

If the supposed controlling issue involves facts over which there is a substantial ground for difference, then Appellate Rule 5(a) cannot be used. Rule 5(a) appeals can be maintained only when it is the controlling question of law that is in dispute, not when the dispute is over factual matters. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 575 (Pon. 2016).

The appropriate time to seek appellate review of a Rule 37 expense award would be after final judgment. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 575 (Pon. 2016).

A party may appeal from FSM Supreme Court trial division interlocutory orders granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions or the party to an order concerning injunctive relief, or the party may await final judgment (and the entry or denial of a permanent injunction) and appeal the entire matter then. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 585, 587 (App. 2016).

In an interlocutory appeal of an injunction, an appellate court will concern itself only with the order from which the appeal is taken, but will review other issues only if they are inextricably bound up with the injunction. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 585, 588 (App. 2016).

When an appeal is moot, the appellate court must dismiss it without considering whether the court would also lack jurisdiction because it is an interlocutory appeal. That is an issue to be left for another day. Andrew v. Heirs of Seymour, 20 FSM R. 629, 631 (App. 2016).

Appeals are not permitted when the appeal is over issues involving steps moving towards a final order into which the interlocutory orders or partial adjudications will eventually merge. Setik v. Mendiola, 21 FSM R. 110, 113 (App. 2017).

Once an interlocutory order has merged into a final decision or judgment, it may, if that final decision or judgment is appealed, come before the appellate court for review in that appeal and at that time. The appellate court has no jurisdiction to review it in an earlier appeal and will dismiss such an appeal. Setik v. Mendiola, 21 FSM R. 110, 113 (App. 2017).

The general rule is that only final judgments can be appealed. Thus, in the absence of a final judgment there must be some other source of jurisdiction in order for an appellate court to be able to hear an appeal. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 224 (App. 2017).

Appellate Rule 5(a) is a discretionary rule. Under it, the Article XI, § 3 justices "may permit an appeal" from an interlocutory order if application for permission is made within 10 days of the entry of the interlocutory order. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 224 (App. 2017).

Once a trial judge has certified an interlocutory order for appeal, the appellate court may, in its discretion, permit an appeal to be taken from the certified order. The final decision to accept or reject an

interlocutory appeal rests within the appellate court's total discretion. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 224 (App. 2017).

While an appellate court may exercise broad discretion in granting permission for interlocutory appeal, it has no discretion to refuse to hear an appeal as a matter of right. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 224 n.3 (App. 2017).

The appellate division may hear an appeal of an order that the trial court certified for an Appellate Rule 5(a) interlocutory appeal that it could have certified as a Civil Procedure Rule 54(b) final judgment but did not, and it need not convert the appeal to an appeal as of right under Rule 54(b) or remand it to the trial court for certification under Rule 54(b). People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 224 (App. 2017).

A permissive appeal taken under Appellate Rule 5(a) affords appellate jurisdiction over the matter and, in that light, the appellate court should advance its disposition being mindful that practical, not technical, considerations are applicable rather than exalting formalism over substance in order to convert or dismiss the appeal. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 226 (App. 2017).

When an appeal was certified under Appellate Procedure Rule 5(a) rather than Civil Procedure Rule 54(b), no appeal as of right is available. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 226 (App. 2017).

No good purpose would be served by sending a case back to the trial judge to make a Rule 54(b) certification when the trial judge has already certified the appeal pursuant to Appellate Rule 5(a), especially when the trial judge already had the chance to consider certification under Rule 54(b) and did not do so. This is consistent with the FSM Supreme Court's policy to preserve judicial economy and its limited resources. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 226 (App. 2017).

For the appellate court to *sua sponte* convert a permissive appeal into an appeal by right would effectively usurp the trial court's discretionary power of certification when it is in the best position to determine whether an appeal is appropriate under the case's particular set of circumstances. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 226 (App. 2017).

The Appellate Rule 5(a) requirement that the order be interlocutory, may be met by reason of the very absence of a Civil Rule 54(b) certification. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 226 (App. 2017).

Rule 4(a)(1)(D) permitting interlocutory appeals from a trial division order determining the rights and liabilities of the parties in admiralty cases is inapplicable when, even assuming that the plaintiffs effectively pled the matter as an admiralty claim under Civil Rule 9(h), the order appealed from does not determine the rights and liabilities of the parties because it only determined that the court had no jurisdiction over one of multiple defendants. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 227 (App. 2017).

The appellate division, in exercising its discretion about whether to permit an Appellate Rule 5(a) appeal in a case that more appropriately would before it under Civil Procedure Rule 54(b), but which the trial court certified under the more restrictive Appellate Rule 5(a), will appropriately (and more importantly it is jurisdictionally sound to) allow the appeal if the requisite factors for a permissive appeal are met. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 227 (App. 2017).

Appeals are not permitted when the appeal is over issues involving steps moving towards a final order into which the interlocutory orders will merge. The purpose of limiting appeals to those from final decisions

is to combine in one appellate review all stages of the proceeding if and when a final judgment or order results. This advances the policy of judicial economy which dictates against piecemeal appeals from the same civil action. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 228 (App. 2017).

Generally, the only interlocutory appeals allowed are those for which permission has been sought and granted, or those from certain orders concerning injunctions, or concerning receivers or receiverships, or from decrees determining parties' rights and liabilities in admiralty cases. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 228 (App. 2017).

A trial court's failure to specify the controlling question(s) of law it had in mind when certifying the case for interlocutory appeal, is one of several factors the appellate division may consider in deciding whether to exercise its discretionary power to review the matter. The power to review, however, is wholly separate from prudence in the exercise of it. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 228 n.4 (App. 2017).

In deciding whether to entertain an Appellate Rule 5(a) appeal, the appellate court is not bound by the trial court's belief that the question merits immediate review. Instead, the appellate court is vested with its own broad discretion whether or not to permit the appeal to proceed, and its discretion is so broad that it is difficult to imagine any controlling limit. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 228-29 (App. 2017).

The appellate court, despite its unconstrained freedom of discretion in deciding whether to accept an Appellate Rule 5(a) appeal, should give deference to the opinion of the experienced trial judge who has dealt in depth with the litigation for several years. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 229 (App. 2017).

In exercising its discretion to determine whether to grant or deny leave to appeal, the appellate court must consider the policy against piecemeal appeals. Thus, permission to appeal should be granted sparingly and with discrimination, and the appellate court should determine whether an appeal would delay rather than advance the case's ultimate disposition. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 229-30 (App. 2017).

Before the FSM Supreme Court appellate division decides whether or not to exercise its discretion to grant permission for an interlocutory appeal, the court should weigh the advantages and disadvantages of an immediate appeal. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 230 (App. 2017).

An immediate appeal's advantages increase with the probabilities of prompt reversal, the length of the court proceedings saved by reversal of an erroneous ruling, and the substantiality of the burdens imposed on the parties by a wrong ruling. An immediate appeal's disadvantages increase with the probabilities that lengthy appellate consideration will be required, that the order will be affirmed, that continued court proceedings without appeal might moot the issue, that reversal would not substantially alter the course of court proceedings, and that the parties will not be relieved of any significant burden by reversal. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 230 (App. 2017).

A petition for permission to appeal an interlocutory order must contain a statement of the facts necessary to an understanding of the controlling question of law determined by the trial court order; a statement of the question itself; and a statement of the reasons why a substantial basis exists for a difference of opinion on the question and why an immediate appeal may materially advance the litigation's termination. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 230 (App. 2017).

A non-final order may be properly certified for interlocutory appeal when three factors are present –

the non-final order 1) involves a controlling question of law, 2) about which there is a substantial ground for difference of opinion, and 3) when an immediate appeal from the order may materially advance the litigation's ultimate termination. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 230 (App. 2017).

The petitioner for certification for an interlocutory appeal bears the burden of showing that exceptional circumstances justify a departure from the basic judicial policy of postponing appellate review until after a final judgment is entered. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 230 (App. 2017).

An appellate court, before deciding whether it should exercise its discretion to grant permission to appeal, must first determine whether the trial court properly found that the requisite Appellate Rule 5(a) factors have been properly met. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 232 (App. 2017).

To establish that the interlocutory trial court decision contains a controlling question of law, the petitioner must show that reversal of the court's order would terminate the action or that the determination of the issue on appeal would otherwise materially affect the litigation's outcome. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 232 (App. 2017).

Generally, an order granting or denying discovery is a non-appealable interlocutory order reviewable only through an appeal of the final judgment since an order denying or granting discovery ordinarily does not present a controlling question of law so as to allow immediate appeal under Appellate Rule 5(a). People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 232 (App. 2017).

When neither the plaintiffs nor the court sought discovery about the court's personal jurisdiction over a defendant, that the trial court erred in not allowing the plaintiffs to conduct discovery before considering and granting a motion to dismiss for lack of personal jurisdiction, is not a controlling question of law properly certified for interlocutory review. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 233 (App. 2017).

No substantial basis for difference of opinion exists about a defendant's right to move before trial for dismissal based on lack of personal jurisdiction. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 233 (App. 2017).

Whether a defendant's conduct amounts to the requisite minimum contacts necessary for the court to exercise personal jurisdiction over it, requires the court to undertake a particularized inquiry about the extent to which the defendant purposefully availed itself of the benefits of FSM laws. This "particularized inquiry" is a necessarily fact-intensive investigation into the alleged facts that constitute the conduct by which the defendant established minimum contacts. Since it would be impossible for the appellate court to determine the trial court's jurisdiction over a defendant without reference to the trial court record, personal jurisdiction cannot be seen as a "pure" question of law, and because the issue is not a pure question of law, it cannot be properly certified for interlocutory appeal. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 234-35 (App. 2017).

When, if the appellate court were to reverse the trial court, it would only serve to prolong, rather than advance, the matter's termination, the more appropriate procedure is to await the matter's termination below and, after final judgment, hear an appeal on all issues presented below. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 235 (App. 2017).

Despite the fact that some, or even all, of the requisite factors for properly permitting interlocutory review under Appellate Rule 5(a) are met, the appellate division may otherwise decline to grant a petition for permission to appeal an interlocutory order for other reasons, or no reason at all. People of Eauripik ex

rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 235 n.7 (App. 2017).

An order may be amended, at any time, to include the prescribed statement and permission to appeal may be sought within 10 day after entry of the order as amended by filing a petition for permission to appeal with the appellate division clerk within 10 days after the entry of such order with proof of service on all other parties to the action in the court from which appeal is being taken. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 43, 46 (Chk. S. Ct. App. 2018).

The parties have ten days from the entry of an appropriate order with the prescribed statement to petition the appellate division for permission to appeal an interlocutory order. Chuuk v. FSM, 22 FSM R. 85, 95 (Chk. 2018).

The appellate division is prohibited from extending the time to petition for permission to pursue an interlocutory appeal, and the trial court cannot extend the time either. Chuuk v. FSM, 22 FSM R. 85, 95 (Chk. 2018).

A trial court can reconsider an interlocutory matter and then re-enter its order with the prescribed statement to start a new ten-day period running in which to petition for permission to appeal. Chuuk v. FSM, 22 FSM R. 85, 95 (Chk. 2018).

Appeals are not permitted when the appeal is over issues involving steps moving towards a final order into which the interlocutory orders will merge. The purpose of limiting appeals to those from final decisions is to combine in one appellate review all stages of the proceeding if and when a final judgment or order results. Salomon v. FSM Dev. Bank, 22 FSM R. 280, 281-82 (App. 2019).

When the trial court's order appealed from was not a final order or judgment, the appeal from that order will be dismissed for lack of jurisdiction as judicial economy dictates against piecemeal appeals and that the case below should be permitted to proceed to final judgment. Salomon v. FSM Dev. Bank, 22 FSM R. 280, 282 (App. 2019).

Appeals are not permitted when the appeal is over issues involving steps moving towards a final order into which the interlocutory orders will merge. The purpose of limiting appeals to those from final decisions is to combine in one appellate review all stages of the proceeding if and when a final judgment or order results. Salomon v. Mendiola, 22 FSM R. 283, 285 (App. 2019).

When the trial court's order appealed from was not a final order or judgment, the appeal from that order will be dismissed for lack of jurisdiction to hear the appeal as judicial economy dictates against piecemeal appeals and that the case below should be permitted to proceed to final judgment. Salomon v. Mendiola, 22 FSM R. 283, 285 (App. 2019).

Appeals are not permitted when the appeal is over issues involving steps moving towards a final order into which the interlocutory orders will merge. The purpose of limiting appeals to those from final decisions is to combine in one appellate review all stages of the proceeding if and when a final judgment or order results. Salomon v. FSM Dev. Bank, 22 FSM R. 286, 287-88 (App. 2019).

When the trial court's order appealed from was not a final order or judgment, the appeal from that order will be dismissed for lack of jurisdiction as judicial economy dictates against piecemeal appeals and that the case below should be permitted to proceed to final judgment. Salomon v. FSM Dev. Bank, 22 FSM R. 286, 288 (App. 2019).

Appeals are not permitted when the appeal is over issues involving steps moving towards a final order into which the interlocutory orders will merge. The purpose of limiting appeals to those from final decisions is to combine in one appellate review all stages of the proceeding if and when there is a final judgment or order. Salomon v. Mendiola, 22 FSM R. 289, 291 (App. 2019).

When the trial court's order appealed from was not a final order or judgment, the appeal from that order will be dismissed for lack of jurisdiction to hear the appeal as judicial economy dictates against piecemeal appeals and that the case below should be permitted to proceed to final judgment. Salomon v. Mendiola, 22 FSM R. 289, 291 (App. 2019).

– Dismissal

The appellant's tardiness in filing his brief, with no explanation offered in response to a motion for dismissal or when the brief is submitted, constitutes a ground for dismissal of an appeal. FSM App. R. 31(a) & (c). Alaphonso v. FSM, 1 FSM R. 209, 229-30 (App. 1982).

A delay of only two days in filing the appellate brief does not warrant dismissal of the appeal when there is no showing of prejudice. Kephas v. Kosrae, 3 FSM R. 248, 253 (App. 1987).

Unexcused and extended delay in service of appellant's brief after certification of the record warrants dismissal of the appeal. Kephas v. Kosrae, 3 FSM R. 248, 254 (App. 1987).

Failure of the appellant to include a transcript in the record on an appeal based upon a claim of insufficiency of evidence warrants dismissal of the appeal. Kephas v. Kosrae, 3 FSM R. 248, 254 (App. 1987).

It is within the court's discretion to dismiss an appeal where the appellant has failed to file a brief within the time prescribed when the appellee has moved for dismissal. In deciding a motion to dismiss an appeal under FSM Appellate Rule 31(c), the court may consider, among other things, the length of delay in filing briefs; nature of the reason for any filing delay; evidence of prejudice to the opposing party; and extent of the delaying party's efforts to correct procedural defects. Nakamura v. Bank of Guam (I), 6 FSM R. 224, 227 (App. 1993).

A party appealing a decision of the Kosrae State Court must file a notice of appeal with the state court and with the FSM Supreme Court, either with its trial division on Kosrae or with its appellate division. Where appellant's failure to timely and properly file his notice of appeal in the FSM Supreme Court trial division on Kosrae was because of faulty instructions of a court employee, dismissal of the appeal is unwarranted. Kosrae Island Credit Union v. Obet, 7 FSM R. 193, 194 (App. 1995).

When an appellant has failed to comply with the appellate rules' timing requirements for filing its opening brief, a single article XI, section 3 justice may, on his own motion, dismiss the appeal after the appellant has been afforded its constitutional due process right to notice and an opportunity to be heard. Ting Hong Oceanic Enterprises v. FSM, 8 FSM R. 264, 265 (App. 1998).

When appellants to the Chuuk State Supreme Court appellate division have made little or no effort to comply with any of the requirements of Appellate Rule 10, their appeals are due to be dismissed. Iwenong v. Chuuk, 8 FSM R. 550, 551 (Chk. S. Ct. App. 1998).

When, in a three-year old criminal appeal, notice was served requiring appellant's opening brief to be filed and served by a certain date and the notice further stated that failure to do so would be grounds for dismissal of the appeal, no brief was ever filed and a motion bordering on frivolous was filed for more time, the motion may be denied and the case is remanded to the trial division for additional proceedings, including sentencing, as is provided for by law. Reselap v. Chuuk, 8 FSM R. 584, 586-87 (Chk. S. Ct. App. 1998).

An appeal may be dismissed when no action is taken beyond filing a notice of appeal, when no transcript is ordered and no certificate filed to the effect that no transcript would be ordered, and when notice was served, setting a date for oral argument and for filing appellant's opening brief, that stated that

failure to do so would be grounds for dismissal. Os v. Enlet, 8 FSM R. 587, 588 (Chk. S. Ct. App. 1998).

An appeal may be dismissed when the appellant has not ordered a transcript and no certificate has been filed that no transcript would be ordered and the appellee has filed a written motion to dismiss the appeal for appellant's failure to comply with the appellate rules. Nechiesom v. Irons, 8 FSM R. 589, 590 (Chk. S. Ct. App. 1998).

An appellee's oral motion at oral argument to dismiss for appellant's failure to prosecute the appeal in accordance with the appellate rules may be denied because he has waived any objections by his delay in raising procedural matters until the time set for oral argument and by not complying with the appellate rule concerning motions. In re Malon, 8 FSM R. 591, 592 (Chk. S. Ct. App. 1998).

An appeal may be dismissed when the appellants have been served with a notice of oral argument and briefing schedule which required appellant's brief to be filed no later than a certain date and appellants have filed no brief and no extension of time to do so was ever requested of or granted by the court and when the appellee has filed a written motion for dismissal on those grounds and when, at oral argument. appellants' counsel offered no reasonable justification for not filing a brief. Walter v. Welle, 8 FSM R. 595, 596 (Chk. S. Ct. App. 1998).

A single justice may dismiss an appeal upon a party's failure to comply with the appellate rules' time requirements, including the time requirement to file the notice of appeal within 42 days after the entry of the judgment. O'Sonis v. Bank of Guam, 9 FSM R. 356, 360 (App. 2000).

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. It is then properly dismissed. O'Sonis v. Bank of Guam, 9 FSM R. 356, 360 (App. 2000).

If an appellant fails to file a brief within the time provided by the rules, or within the time as extended, an appellee may move for dismissal of the appeal. Factors that a court may consider on a motion to dismiss an appeal under Rule 31(c) are the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reason for appellant's failure to file on time; and extent of appellant's efforts in mitigation. O'Sonis v. Bank of Guam, 9 FSM R. 356, 361 (App. 2000).

A practicing attorney is expected to know the rules and abide by them. Nevertheless, a preference exists for resolution of matters on the merits. Within the bounds of reason, and except where a specific rule, law, or conduct of a party or his counsel directs a different result, this preference should be given effect. O'Sonis v. Bank of Guam, 9 FSM R. 356, 361-62 (App. 2000).

The Chuuk State Supreme Court's authority to dismiss a case on appeal on procedural grounds under the Chuuk State Rules of Appellate Procedure is purely discretionary. In re Lot No. 014-A-21, 9 FSM R. 484, 491 (Chk. S. Ct. Tr. 1999).

An appellant may dismiss his own appeal upon such terms as may be agreed by the parties or fixed by the court. An appellee may not take over and prosecute an opposing party's appeal because he would be contesting an issue that he had never before challenged. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 158 (Chk. S. Ct. App. 2001).

An appellant must serve and file a brief within 40 days after the date of the appellate clerk's notice that the record is ready, and if an appellant fails to file a brief within the time frame provided by the rule, or within the time as extended, an appellee may move for the appeal's dismissal. Cuipan v. FSM, 10 FSM R. 323, 325 (App. 2001).

It is within the court's discretion to dismiss an appeal for late filing of an appellant's brief. Among the factors which the court considers on a Rule 31(c) motion to dismiss are the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reasons for appellant's failure to file on time; and extent

of appellant's efforts in mitigation. Cuipan v. FSM, 10 FSM R. 323, 325 (App. 2001).

An appeal may be dismissed when the appellant has failed for approximately 6 months after entry of the record ready notice, to serve on the appellee a designation of the parts of the record which appellant intends to include in the appendix and a statement of the issues which the appellant intends to present for review, both of which the appellant must file within 10 days after the date of the clerk's record ready notice. Cuipan v. FSM, 10 FSM R. 323, 326 (App. 2001).

Good cause exists to grant an appellee's motion to dismiss when the appellant's failure to comply with the Rules has postponed the final resolution of the case, forestalled the possibility that the defendant would be confined to serve her sentence, and undermined the policy of finality. Cuipan v. FSM, 10 FSM R. 323, 327 (App. 2001).

When an action was filed as an appeal under Kosrae State Code § 11.614, which provides that a Land Commission determination of ownership is subject to appeal, but there was no determination of ownership issued, the Kosrae State Court does not have subject matter jurisdiction to hear it as an appeal. When it appears that the court lacks subject matter jurisdiction, the case will be dismissed. Jack v. Paulino, 10 FSM R. 335, 336 (Kos. S. Ct. Tr. 2001).

When an appellant had no notice of the court's sua sponte motion to dismiss the appeal before the dismissal order was entered, the dismissal was a violation of the appellant's right to due process because of the lack of notice and an opportunity to be heard. Wainit v. Weno, 10 FSM R. 601, 606 (Chk. S. Ct. App. 2002).

Rule 3(a) does not require the dismissal for failure to comply with the procedural rules, but merely permits it in the proper case. Not every appeal which fails to comply with the time requirements in Rules 10, 11, and 12 must be dismissed because the rules are stated in permissive, rather than mandatory language. Wainit v. Weno, 10 FSM R. 601, 608 (Chk. S. Ct. App. 2002).

Because an appellate court is not required to dismiss every appeal which does not meet each of the time limitations in the rules, some lesser appropriate action or sanction should be tried first instead of opting for the most extreme sanction of dismissal. Wainit v. Weno, 10 FSM R. 601, 608 (Chk. S. Ct. App. 2002).

Generally, dismissal of an appeal for failure to comply with procedural rules is not favored, although Rule 3(a) does authorize it in the exercise of sound discretion. That discretion should be sparingly used unless the party who suffers it has had an opportunity to cure the default and failed to do so. Wainit v. Weno, 10 FSM R. 601, 608 (Chk. S. Ct. App. 2002).

Before dismissing an appeal, a court should consider and weigh such factors as whether the defaulting party's action is willful or merely inadvertent, whether a lesser sanction can bring about compliance, and the degree of prejudice the opposing party has suffered because of the default. Wainit v. Weno, 10 FSM R. 601, 608 (Chk. S. Ct. App. 2002).

When there is no allegation that the law firm's omissions in the appeal were anything but inadvertent and no evidence that they were made in bad faith, when the defect was cured promptly once the law firm had notice of it, when every indication is that a lesser sanction than dismissal would have assured compliance with Rule 10(b), and when the appellee could not have been misled or prejudiced because the statement of issues had not been timely filed and did not suffer any prejudice because of the default, none of the factors that should have been considered weigh in favor of dismissal. All weigh in favor of a lesser sanction or none at all. Wainit v. Weno, 10 FSM R. 601, 609 (Chk. S. Ct. App. 2002).

That appellant's counsel and the members of his law firm are experienced attorneys and have practiced law long enough in the court is insufficient to dismiss an appeal when the appellant has promptly cured any defects in the appeal, when the default was not willful, when there was no prejudice to the

appellee, and when the appellant's only failure was his untimely filing of the statement of issues and the certificate that a transcript would not be needed. Wainit v. Weno, 10 FSM R. 601, 609 (Chk. S. Ct. App. 2002).

While practicing counsel are expected to know the rules and abide by them, a preference exists for resolution of matters on the merits. Within the bounds of reason, and except where a specific rule, law, or conduct of a party or his counsel directs a different result, this preference should be given effect and dismissal denied. Wainit v. Weno, 10 FSM R. 601, 609 (Chk. S. Ct. App. 2002).

When neither Rule 3(a) nor counsel's conduct in the appeal directs a dismissal, the preference for resolution of matters on the merits should be given effect and dismissal denied. Wainit v. Weno, 10 FSM R. 601, 609 (Chk. S. Ct. App. 2002).

If an appeal is one where the issues on appeal involve factual findings and no meaningful review is possible without a transcript, the appellate court is left with no choice but dismissal when the appellant has not provided one. But even then dismissal would likely come only after an appellee's motion or when the time had come for a court's decision on the merits. Wainit v. Weno, 10 FSM R. 601, 609 (Chk. S. Ct. App. 2002).

Where a single justice abused his discretion when he denied motions to vacate the dismissal and to enlarge time to file Rule 10(b) statements, the appeal will be reinstated and the Rule 10(b) statements considered properly filed. Wainit v. Weno, 10 FSM R. 601, 609 (Chk. S. Ct. App. 2002).

When an appeal is dismissed as moot, the established rule is for the appellate court to reverse or vacate the judgment below and dismiss the case. Wainit v. Weno, 10 FSM R. 601, 611 (Chk. S. Ct. App. 2002).

An appellee's trial court motion to dismiss an appeal on the ground that it is moot must be denied for want of jurisdiction of the trial court to rule upon it. It is a matter for the appellate division to consider, if raised there. FSM Dev. Bank v. Louis Family, Inc., 10 FSM R. 636, 638 (Chk. 2002).

Because the requirement that an appeal be timely filed is mandatory and jurisdictional, an untimely filed appeal must be dismissed. Bualuay v. Rano, 11 FSM R. 139, 145 (App. 2002).

When the issues presented in a petition for a writ of mandamus concerning the discovery of non-party borrower records have become moot because, by virtue of a trial court order, no further discovery will take place, the issuance of a writ of mandamus to the trial court to disallow or restrict the discovery would be ineffectual since there will be no further discovery. The petition will therefore be dismissed. FSM Dev. Bank v. Yinug, 11 FSM R. 405, 410 (App. 2003).

The court is without jurisdiction to consider and will dismiss a moot appeal. Reddy v. Kosrae, 11 FSM R. 595, 597 (App. 2003).

Violation of filing a timely notice of appeal requires dismissal of the appeal due to lack of jurisdiction. However, other violations of appellate requirements may be subject to dismissal or other sanctions. Authority to dismiss a case on appeal on procedural grounds is discretionary. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 419 (Kos. S. Ct. Tr. 2004).

The appellants' failure to state the issues on appeal in their notice of appeal is a procedural violation that may be subject to sanctions. Dismissing an appeal on purely procedural grounds is a sanction normally reserved for severe disregarding of the rules resulting in prejudice to the opposing party. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 419 (Kos. S. Ct. Tr. 2004).

If it appears that the court lacks subject matter jurisdiction the case will be dismissed. Failure to file

the notice of appeal within the statutory time will result in dismissal of the appeal. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 422 (Kos. S. Ct. Tr. 2004).

There are two filing requirements for a notice of appeal from the Kosrae Land Court: first at the Kosrae State Court and second at the Kosrae Land Court. The first filing requirement actually dockets the appeal, as Kosrae State Court serves as the appellate court for Kosrae Land Court decisions. The second filing requirement does not docket the appeal. It serves the purpose of commencing the preparation of the transcript and record by the Land Court. Thus, an appeal from Kosrae Land Court is timely filed (and the Kosrae State Court has subject matter jurisdiction to hear the appeal) when the notice of appeal is filed with the Kosrae State Court within sixty days of service of the written decision upon the appellants even though there was a two-day delay in filing the notice of appeal with the Land Court. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 422 (Kos. S. Ct. Tr. 2004).

Dismissing an appeal on purely procedural grounds is a sanction normally reserved for severe disregard of the rules resulting in prejudice to the opposing party. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 422 (Kos. S. Ct. Tr. 2004).

The appellants' late filing of the copy of the notice of appeal with the Land Court is a procedural violation that may be subject to sanctions. The proper procedure is to file the notice of appeal with Kosrae State Court, and file a copy of the notice of appeal with Kosrae Land Court, both within the sixty day period. When the appellees have not demonstrated any prejudice by the two-day delay, the appellants' failure to file the copy of the notice of appeal with the Land Court within sixty days does not constitute grounds for the appeal's dismissal, only sanctions. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 422-23 (Kos. S. Ct. Tr. 2004).

When a notice of appeal was not filed within the statutory time period for appeal, the court has no jurisdiction over the appeal and also has no authority to allow filing of the notice of appeal beyond the statutory time period. When a notice of appeal is filed one day after the statutory sixty day period for appeal from Land Court expired, the statutory deadline for filing a notice of appeal cannot be extended, the court does not have jurisdiction over the appeal, and the appeal will be dismissed with prejudice. Melander v. Heirs of Tilfas, 13 FSM R. 25, 27-28 (Kos. S. Ct. Tr. 2004).

An appellate panel cannot dismiss an appeal not assigned to it even though the parties to that appeal have consented to its dismissal. Nikichiw v. O'Sonis, 13 FSM R. 132, 136 (Chk. S. Ct. App. 2005).

A single justice does not have the power to dismiss a cross-appeal when the cross-appellant's brief allegedly fails to make proper citations to the record as required by the appellate rules; includes extraneous matters; and has an inadequate appendix and which is alleged to be without merit on its face. A single justice may not dismiss or otherwise determine an appeal, except upon stipulation of all parties, or upon failure of a party to comply with the timing requirements of the appellate rules, including the time requirement to file the notice of appeal within 42 days after the entry of the judgment. Pohnpei v. AHPW, Inc., 13 FSM R. 159, 161 (App. 2005).

Since no notice of appeal was filed for the post-judgment attorney's fee award, the FSM Supreme Court appellate division lacks jurisdiction to review it because in the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. It is then properly dismissed. Pohnpei v. AHPW, Inc., 13 FSM R. 159, 161 (App. 2005).

A single justice may dismiss an appeal for failure to comply with the appellate rules' timing requirements, including the timing requirement to file a notice of appeal. Pohnpei v. AHPW, Inc., 13 FSM R. 159, 161 (App. 2005).

Alleged deficiencies such as inadequate citations to the record and an inadequate appendix are not grounds upon which a single justice may dismiss an appeal, but such deficiencies, if true, would adversely

affect the appellant's power to persuade the full appellate panel that the trial court erred in the manner in which it claims. Nor will a single justice strike the portions of the brief concerning an issue allegedly not raised below since it is the appellant's burden to persuade the full appellate panel that the issue was raised below or is properly before the appellate division. Pohnpei v. AHPW, Inc., 13 FSM R. 159, 161 (App. 2005).

Among the factors which the court considers on a motion to dismiss under Rule 31(c) is the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reason for appellant's failure to file on time; and extent of appellant's efforts in mitigation. Chuuk v. Davis, 13 FSM R. 178, 183 (App. 2005).

When the appellee has suffered no prejudice due to the appellant's neglect to file an appendix and cite to the record since the appeal relates primarily to legal issues that may be addressed using only the appendix filed by the appellee, the appeal will not be dismissed for the appellant's negligence. Chuuk v. Davis, 13 FSM R. 178, 183 (App. 2005).

A prematurely filed election appeal must be dismissed. By statute, an aggrieved candidate in an election contest can appeal to the FSM Supreme Court only after the Election Director has denied his petition or after his petition has been effectively denied because the time has run out for the Director to issue a decision on the petition. Wiliander v. National Election Dir., 13 FSM R. 199, 202 (App. 2005).

An election contest appellant's failure to specify which statutory standard of review he thinks applies to his appeal should not, by itself, be fatal to his appeal. Wiliander v. National Election Dir., 13 FSM R. 199, 204 (App. 2005).

When the ground for the appellee's motion to dismiss is that the appeal was filed prematurely and this is the same ground, based on essentially the same facts, as the same appellee's motion to dismiss a different appeal case and that motion was granted and that other appeal dismissed, the appellee's motion to dismiss this appeal will be granted and this appeal will be dismissed and this appeal will also be dismissed on the ground that it has been abandoned since the appellant indicated orally he intended to dismiss his appeal and then filed no response to the appellee's motion to dismiss. Asor v. National Election Dir., 13 FSM R. 205, 206 (App. 2005).

Even if an opposition to a motion to dismiss is not filed, the court still needs good grounds before it can grant the motion. Asugar v. Edward, 13 FSM R. 215, 218 (App. 2005).

An election contest appeal must be dismissed for lack of jurisdiction when it is filed too soon, at a time before the election statute confers jurisdiction on the court. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

A single appellate judge's order denying a motion to dismiss an appeal is a procedural order requiring the appeal to be briefed and put on the calendar; it is not a determination having preclusive effect on the appeal's validity. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 12 (App. 2006).

No justiciable controversy is presented if events subsequent to the filing of an appeal make the issues presented moot. The FSM Supreme Court lacks jurisdiction to consider cases or issues that are moot, and therefore must dismiss or deny the same. Wainit v. FSM, 14 FSM R. 476, 478 (App. 2006).

The court is reluctant to dismiss an action based on counsel's behavior. An adjudication on the merits allows the parties to have a reasonable opportunity to present their claims and defenses and is generally preferred over dismissal for procedural reasons. For this reason, dismissal based on counsel's misconduct is generally avoided. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 494, 495 (Kos. S. Ct. Tr. 2006).

When the appellee filed a motion to dismiss the matter on January 19, 2007 and the appellants were

served on January 19, 2007 and chose not to file a response to the motion, the appellants' failure to respond also offers grounds for dismissal. Heirs of Tulenkun v. George, 14 FSM R. 560, 562 (Kos. S. Ct. Tr. 2007).

An election contestant, when, if he obtained as relief the nullification of all the votes in a VAAPP box, his vote total would then be higher than another's with the result that he would be declared a winning candidate, has stated a claim for which the court can grant relief so his election appeal cannot be dismissed on that ground. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 575, 577 (Chk. S. Ct. App. 2007).

When an appellant filed its opening brief four years ago; and when the appellees would not stipulate to the record on appeal so the appellant, through its motion on the state of the record, sought relief to move things forward so that the appellees could prepare their briefs, the appellant has tried to prosecute the appeal and its appeal will not be dismissed on that ground. Enengeitaw Clan v. Shirai, 14 FSM R. 621, 625 (Chk. S. Ct. App. 2007).

When an appellee does not contend that the appeal from the trial division to the appellate division was untimely, or is not from a final judgment or order, or that it is a case under the exclusive jurisdiction of the national courts, but only contends that the trial division did not have the jurisdiction to grant the relief the appellant sought, the appellee's motions to dismiss will be denied because the appellate court sits in review of the trial court decision, and a claim that the trial court does, or does not, have jurisdiction to grant the relief sought is an argument on the appeal's merits and not a ground to dismiss because the appellate court lacks jurisdiction to review the trial court. The appellees may raise, if appropriate, any of the grounds they cited for dismissal, in their brief(s) on the merits. Enengeitaw Clan v. Shirai, 14 FSM R. 621, 625 (Chk. S. Ct. App. 2007).

Since a denial of a summary judgment motion is not a final order or judgment and since an order of consolidation is not a final order or judgment and when there is no indication that an interlocutory appeal of those orders is one of the few limited exceptions to the final order or judgment rule that are permitted by the Appellate Rules, the appeal will be dismissed. Valentin v. Inek, 15 FSM R. 14, 15 (Chk. S. Ct. App. 2007).

When there is no indication from the record that the trial court decision had been announced before the February 20, 2006 notice of appeal was filed and the decision was not "announced" until the written final judgment was entered on April 10, 2006, the time to appeal that decision (and any interlocutory orders entered in the case before that decision) started running on April 10, 2006. Since no notice of appeal was filed after that date, the appellate court must dismiss the appeal as untimely filed no matter how meritorious the appellant's claims are since the court lacks jurisdiction. Bossy v. Wainit, 15 FSM R. 30, 33 (Chk. S. Ct. App. 2007).

A criminal appeal involving a fugitive appellant, who has left the FSM in violation of three court orders, will be dismissed because the fugitive's ongoing disobedience to those orders precludes him from availing himself of the appellate process. He is thus disentitled to call upon the court for a review of his conviction. Walter v. FSM, 15 FSM R. 130, 132 (App. 2007).

When the opinion and the writ of prohibition issued in a different appeal has already granted the appellants all of the relief that they first sought in this case, this appeal has become moot because any relief the court could now grant would be ineffectual, and a motion to dismiss will therefore be granted. Nikichiw v. Marsolo, 15 FSM R. 177, 179 (Chk. S. Ct. App. 2007).

When an appeal is dismissed as moot, the established rule is for the appellate court to reverse or vacate the judgment below and dismiss the case. Nikichiw v. Marsolo, 15 FSM R. 177, 179 (Chk. S. Ct. App. 2007).

Although briefs must be bound in volumes having pages not exceeding 8½ by 11 inches and type matter not exceeding 6½ by 9½ inches, with double spacing between each line of text and the cover of the appellant's brief must be blue; that of the appellee, red; that of an intervenor or amicus curie, green; and

that of any reply brief gray, and except by court permission, the parties' principal briefs must not exceed 50 pages, and the reply briefs not exceed 25 pages, when the appellant's briefs were not all bound in blue because blue paper was unavailable on-island; when, even though that brief used spacing of one and one half, instead of double spacing, it was possible that if the brief had contained the proper double spacing of typed matter it might have resulted in the same amount of text being presented within the 50 page limit; and when the appellee did not raise the issue concerning the color of the coversheet to the appellant's brief before it submitted its own brief, the appellee's request to strike the appellant's brief will be denied. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 308 (App. 2007).

Although an appeal's dismissal for failure to comply with procedural rules is not favored, Appellate Procedure Rule 3(a) does authorize dismissal in the exercise of sound discretion. That discretion, however, should be sparingly used unless the party who suffers it has had an opportunity to cure the defect and failed to do so. Moreover, before dismissing an appeal, the court should consider and weigh such factors as whether the defaulting party's action is willful or merely inadvertent, whether a lesser sanction can bring about compliance and the degree of prejudice the opposing party has suffered because of the defect. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 308 (App. 2007).

Dismissing an appeal on purely procedural grounds is a sanction normally reserved for severe disregard of the rules resulting in prejudice to the opposing party. Akinaga v. Heirs of Mike, 15 FSM R. 391, 394 (App. 2007).

When the July 25, 2007 State Court order denying the appellants' motion for reconsideration ended all litigation on the underlying dispute in the Kosrae State Court, it is a final decision that triggered the beginning of the 42-day period for filing a notice of appeal, and when the notice of appeal was not filed within that time, the appeal will be dismissed and the clerk of court will be instructed to strike it from the docket. In re Parcel 79T11, 16 FSM R. 24, 25 (App. 2008).

An appellate court lacks jurisdiction over, and must dismiss, an appeal when the notice of appeal, including a petition for writ of certiorari, was not filed within 42 days from the date that the final order or judgment being appealed has been entered. Haruo v. Mori, 16 FSM R. 31, 33 (App. 2008).

An appeal may be dismissed if it fails entirely to cite any error in the trial court's findings or judgment. Wainit v. FSM, 16 FSM R. 47, 48 (App. 2008).

An appeal shall not be dismissed for informality of form or title of the notice of appeal. Kosrae v. Langu, 16 FSM R. 83, 86 (App. 2008).

When the notice of appeal only lacks the name, address, and phone number of the appellee's attorney and a certificate of service and the appellee cannot claim prejudice or that he was misled because the notice did not include his own counsel's name, address, and phone number and when the lack of a certificate of service would not prejudice him (although the lack of actual service could), the notice of appeal's defects are not of a jurisdictional nature that would require dismissal. Kosrae v. Langu, 16 FSM R. 83, 86-87 (App. 2008).

While it is the filing of a notice of appeal that confers jurisdiction on the appellate court, strict adherence to Appellate Rule 3's requirements is not a prerequisite to a valid appeal. When the defect in the notice of appeal did not mislead or prejudice the appellee, and when the appellant's intention to appeal the order was manifest, the ineptness of the notice of appeal should not defeat the appellant's right to appeal. Kosrae v. Langu, 16 FSM R. 83, 87 (App. 2008).

When the State Court's return of service shows that the Kosrae Attorney General's Office was served the judgment of conviction on June 4, 2008 and when, using the Kosrae statute's thirty-day deadline, which runs from date of receipt of the order instead of date of entry, the June 30, 2008 notice of appeal is timely when measured from the June 4th service date, the motion to dismiss cannot be granted on the ground the

appeal was filed too late. Kosrae v. Langu, 16 FSM R. 83, 87 (App. 2008).

Motions may be decided without oral argument. Where argument would not be helpful to the decisional process, it will not be required on a dismissal issue when the appellants have had, and have taken, their opportunity to be heard by filing written submissions. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 111 (App. 2008).

A single FSM Supreme Court appellate division justice may entertain and may grant or deny any request for relief which under the appellate rules may properly be sought by motion, but a single justice may not dismiss or otherwise determine an appeal, except upon stipulation of all parties, or upon a party's failure to comply with the rules' timing requirements. The phrase "timing requirements of these rules" has been interpreted to include an appellant's failure to file an opening brief or a statement of issues on appeal and a designation of the record and the failure to file a notice of appeal within the time prescribed by Rule 4. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 112 (App. 2008).

If an appellant fails to file a brief within the time provided by Rule 31, or within the time as extended, an appellee may move for dismissal of the appeal. Rule 31(c) permits an appellee to move to dismiss, but it does not require appellees to do so because they are not required to do anything. Since a court, even an appellate court, has the right to control its own docket, Rule 31(c) does not prevent the appellate court, in an effort to control its own docket, from also moving to dismiss an appeal for an appellant's failure to timely file a brief. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 112-13 (App. 2008).

When the court, through a single justice, has made its own motion to dismiss as a matter of docket management, it cannot decide its own motion without first giving the parties notice and an opportunity to be heard because that would violate a litigant's due process rights guaranteed by the FSM Constitution since notice and an opportunity to be heard is the essence of due process. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 113 (App. 2008).

When an order constituted the *sua sponte* motion to dismiss and the notice to the appellants of the motion to dismiss and when, although it did not cite Rule 27(c), the order did give notice that the appeal was subject to dismissal and the factual basis (failure to file a brief and thus failure to comply with Rule 31) for the possible dismissal, the appellants had notice of the facts they had to respond to and the probable result if they were unable to show cause. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 113 (App. 2008).

It is within a single justice's power to, upon the justice's own motion and with adequate notice, dismiss an appeal for an appellant's failure to timely file an opening brief. Like any other single justice order, an aggrieved party may seek review of the dismissal order by a full appellate panel, which must then consider it. Review of a single justice order is *de novo*. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 113 (App. 2008).

Dismissal for an attorney's inexcusable neglect in failing to file an opening brief is handled differently in civil and criminal appeals. Appellate courts are much more reluctant to dismiss a criminal appeal for an attorney's inexcusable neglect because a criminal defendant has no other remedy. In a civil appeal, when the appeal is dismissed for inexcusable neglect in prosecuting the appeal, if the party whose appeal is thus dismissed is thereby aggrieved, his remedy will be against his attorney. A criminal appellant has no such remedy. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 114 (App. 2008).

The burden is on the appellant to apply, before his time allowance has run, for additional time upon a showing of real need which will not unduly prejudice the appellee. Until such application for extended time is made so that it may be considered before the allotted time has expired, it is evidence of a lack of good faith and, and failing extraordinary circumstances, it constitutes neglect which will not be excused. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 114 (App. 2008).

When there is a pattern of not seeking enlargements of time until after filing dates, either set by the

court or rule, or even the ones suggested by the appellants as when their brief would be done, had passed; when this practice is considered evidence of a lack of good faith; and when the appellants do not present any extraordinary circumstances that would warrant excusing their neglect in filing their brief seven months late, the dismissal of their appeal is proper. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 114-15 (App. 2008).

The appellate court is not required to just patiently wait until a self-described inexperienced (in appellate matters) counsel has finished a brief and then moved for an enlargement of time so that the court can then be called upon to decide the appeal on its merits. The policy preference for adjudications on the merits (and the case has already been adjudicated on the merits once, by the trial court) does not automatically negate all other considerations or make the procedural rules a nullity. The rules' timing requirements apply to these appellants as they would with any other civil appellant. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 115 (App. 2008).

Motions may be decided without oral argument. When it does not appear that argument would help the decisional process, oral argument is not required on a dismissal issue, when the appellant has had, and has taken, his opportunity to be heard by filing written submissions. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 127 (App. 2008).

A single FSM Supreme Court appellate division justice may entertain and may grant or deny any request for relief which under the appellate rules may properly be sought by motion, but a single justice may not dismiss or otherwise determine an appeal, except upon stipulation of all parties, or upon failure of a party to comply with the rules' timing requirements. The phrase "timing requirements of these rules" has been interpreted to include an appellant's failure to file an opening brief or a statement of issues on appeal and a designation of the record, and the failure to file a notice of appeal within the time prescribed by Appellate Rule 4. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 128 (App. 2008).

If an appellant fails to file a brief within the time set by rule, or within the time as extended, an appellee may move for dismissal of the appeal. But Rule 31(c) does not require an appellee to do so. Rule 31(c) also does not prevent an appellate court, in an effort to control its own docket, from also moving to dismiss an appeal for an appellant's failure to timely file a brief. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 128 (App. 2008).

The court may, through a single justice, make its own motion to dismiss as a matter of appellate docket management. A court cannot decide its own motion without first giving the parties notice and an opportunity to be heard because that would violate a litigant's due process rights guaranteed by the FSM Constitution since notice and an opportunity to be heard is the essence of due process. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 128-29 (App. 2008).

It is within the single justice's power to move *sua sponte*, with notice, for, and to dismiss appeals for the appellants' failure to timely file opening briefs. Like any single justice order, an aggrieved party may apply for review of the dismissal order by a full appellate panel, which then must consider it. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 129 (App. 2008).

Dismissal for an attorney's inexcusable neglect in failing to file an opening brief must be handled differently in civil and criminal appeals. Appellate courts are much more reluctant to dismiss a criminal appeal for an attorney's inexcusable neglect because a criminal defendant has no other remedy. When a civil appeal is dismissed for inexcusable neglect in prosecuting the appeal, if the party whose appeal is thus dismissed is thereby aggrieved, his remedy will be against his attorney. A criminal appellant has no such remedy. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 129-30 (App. 2008).

The burden is on the appellant to apply, before his time allowance has run, for additional time upon a showing of real need which will not unduly prejudice the appellee. Until such application for extended time is made so that it may be considered before the allotted time has expired, it is evidence of a lack of good

faith and, failing extraordinary circumstances, it constitutes neglect which will not be excused. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 130 (App. 2008).

When there is a pattern of not seeking enlargements of time until after filing dates have passed, whether the date was set by the court or by rule, or was even suggested by the appellant as when the brief would be done; when this practice is considered evidence of a lack of good faith; and when the appellant does not present any extraordinary circumstances that would warrant excusing his neglect in filing his brief six months late, the dismissal of his appeal is proper. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 130 (App. 2008).

The appellate court does not have to just patiently wait until a legal services corporation attorney has finished a brief and then moved for an enlargement of time so that the appeal can then be decided on the merits. The policy preference for adjudications on the merits (and when a case is on appeal it has already been adjudicated on the merits once – by the trial court) does not automatically override or negate all other considerations or make the procedural rules a nullity. The Appellate Rules' timing requirements apply to legal services clients with equal vigor as with any other civil appellant. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 131 (App. 2008).

When the appellants have sought review of a single justice order of dismissal and when, after review of the record and careful consideration of the appellants' arguments, a full appellate panel finds the single justice's reasoning to be factually accurate and legally sound, it will affirm the single justice order of dismissal. In re Parcel 79T11, 16 FSM R. 174, 174 (App. 2008).

The parties to an appeal may, without any court action, voluntarily dismiss the appeal at any time. If the parties sign and file with the appellate division clerk an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, and pay whatever fees are due, the clerk must enter the case dismissed, but no mandate or other process will issue without a court order. To be effective, a signed and filed voluntary dismissal must included specific terms about payment of costs. Lewis v. Rudolph, 16 FSM R. 278, 279-80 (Chk. S. Ct. App. 2009).

A dismissal, although signed by counsel for all parties and containing an agreement about settlement terms, which it was not necessary to include to effect the voluntary dismissal, but which did not specify the terms as to payment of costs, would have if it had contained terms as to the payment of costs, been effective to dismiss the appeal without any court action except the clerk's entry of dismissal. Any settlement terms other than costs included in a stipulated dismissal would not form an order of the court, but would be a private agreement between the parties, which would not have to be included in the notice of voluntary dismissal. Lewis v. Rudolph, 16 FSM R. 278, 280 (Chk. S. Ct. App. 2009).

If an appellant fails to file a brief within the rules' time frames, or within the time as extended, an appeal is subject to dismissal for lack of prosecution. The appellate division, however, has broad discretion upon a showing of good cause, to grant an extension of time to file a brief and appendix. Baelo v. Sipu, 16 FSM R. 288, 291 (Chk. S. Ct. App. 2009).

The court may raise sua sponte whether an appeal may be dismissed for lack of prosecution, and there is no due process violation when a court orders dismissal upon its own motion so long as the appellant has had notice and an opportunity to be heard on the motion. Baelo v. Sipu, 16 FSM R. 288, 291 (Chk. S. Ct. App. 2009).

Generally, an appeal's dismissal for failure to comply with procedural rules is not favored, and the court's discretion to dismiss an appeal should be sparingly used unless the appellant has had an opportunity to cure the default and failed to do so. Before dismissing an appeal, a court should therefore consider and weigh such factors as whether the defaulting party's action is willful or merely inadvertent, whether a lesser sanction can bring about compliance, and the degree of prejudice the opposing party has suffered because of the default. Baelo v. Sipu, 16 FSM R. 288, 292 (Chk. S. Ct. App. 2009).

When a single justice order was a sua sponte motion for counsel to file an opening brief by October 12, 2007, or to show cause why the appeal should not be dismissed and when the court has weighed the appellants' subsequent failure to file a brief without good cause against the clerk's apparent delay in notifying counsel of the record's certification and availability, and against the court's preference to hear an appeal on the merits instead of resolving it on procedural grounds, the court finds that even after the clerk notified the appellants, on March 28, 2008, that the record was available, the appellants had ample time to comply with the filing deadlines and file a brief before the January 20, 2009 hearing, and when counsel did not file a brief within three days of the January 20, 2009 hearing, as he promised, the court concludes that the numerous, unjustified delays in filing a brief without good cause warrant dismissal. Baelo v. Sipu, 16 FSM R. 288, 292-93 (Chk. S. Ct. App. 2009).

An appeal that is not from a final decision will be dismissed for lack of jurisdiction without prejudice to any future appeal from a final decision. Smith v. Nimea, 16 FSM R. 346, 349 (App. 2009).

An appeal will not be dismissed because the appellant filed his statement of issues on Wednesday, April 8, 2009, when, under Appellate Rule 10(b)(3), the deadline for filing the statement of issues would have been April 9, 2009; when a court order shortened it to noon "Wednesday April 7, 2009," but this was a typographical error since April 7, 2009 was a Tuesday and Wednesday was April 8, 2009; and when the movant has not asserted that he was prejudiced by the April 8, as opposed to April 7, filing and because the court cannot see how he would have been prejudiced by receiving the statement of issues one day later. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 412, 413 (App. 2009).

Dismissing an appeal on purely procedural grounds is a sanction normally reserved for severe disregard of the rules resulting in prejudice to the opposing party. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 412, 413 (App. 2009).

When there is a pattern of not seeking enlargements of time until after filing dates have passed, whether the date was set by the court or by rule; when this practice is considered evidence of a lack of good faith; and when the appellant does not present any extraordinary circumstances that would warrant excusing his neglect in filing his brief late, the dismissal of his appeal is proper. Lewis v. Rudolph, 16 FSM R. 499, 501-02 (Chk. S. Ct. App. 2009).

When the appellants never moved for an enlargement of time to file their brief, either before or after any of several brief-filing deadlines; when the reason given orally for the delay – a problem with the trial division docket entries record – hardly constitutes extraordinary circumstances or even good cause since that document was in the appellate file as an attachment to the clerk's November 27, 2008 notice and since the court's January 27, 2009 order was predicated on the certification of the trial division docket and record; and when, considering that land is so important in Chuuk and underlying the appeal there is a land case, it was inexplicable that the appellants were not more diligent in prosecuting this appeal, the appellees' motion to dismiss will be granted. Lewis v. Rudolph, 16 FSM R. 499, 502 (Chk. S. Ct. App. 2009).

When deciding a Rule 31(c) motion to dismiss, the appellate court considers factors including the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reasons for appellant's failure to file on time; and extent of appellant's efforts in mitigation. But when an appellant has not served on the appellee a designation of the parts of the record which the appellant intends to include in the appendix and a statement of the issues which the appellant intends to present for review; when there was no excuse for the appellant not knowing that its brief was due August 12, 2009; and when there was no excuse for its seventeen-month delay in requesting an English-language transcript, the appellant's neglect is inexcusable, and since the appellant's misleading statement that it had requested an English-language transcript but the Kosrae clerk had not provided it was completely unacceptable, the appeal will be dismissed. Kosrae v. Smith, 16 FSM R. 578, 580 (App. 2009).

Motions, even motions to dismiss an appeal, may be decided without oral argument. Kosrae v. Jim,

17 FSM R. 97, 98 (App. 2010).

An appellant's failure to include a transcript in the record on an appeal based upon a claim of insufficiency of evidence may warrant a dismissal since the presumption is that the evidence was sufficient to sustain the lower court's judgment. An appellant must include in the record all necessary parts of the transcript. Palsis v. Kosrae, 17 FSM R. 236, 243 (App. 2010).

A full panel is not needed to grant a motion to dismiss since a single article XI, section 3 justice may dismiss an appeal upon a party's failure to comply with the appellate rules' timing requirements, including the time requirement to file the notice of appeal within 42 days after the entry of the order appealed from. Jonah v. FSM Dev. Bank, 17 FSM R. 506, 508 (App. 2011).

When the Kosrae State Court abused its discretion by not granting an enlargement of the date to file the appellants' opening briefs and that denial is reversed, then it follows that the dismissal must also be vacated. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 629 (App. 2011).

While a vacated sua sponte dismissal without notice may mean that a later dismissal after notice is more likely to be a further abuse of discretion than a dismissal made on the court's own motion but only after notice, it does not automatically follow that every dismissal after a vacated sua sponte dismissal must also be an abuse of discretion. Nevertheless, courts should tread carefully here because, to an impartial observer, the process may by then seem tainted. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 629 (App. 2011).

Since the Chuuk Appellate Rules require the clerk of the court appealed from to serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant, if the appellee was not served a copy of the notice of appeal, it is not the appellant's fault, but an omission by the trial court clerk. In such a case, the appellate court cannot dismiss an appeal and deprive an aggrieved appellant of his day in court merely because a court employee may have neglected to perform. Phillip v. Moses, 18 FSM R. 85, 87 (Chk. S. Ct. App. 2011).

A security bond is not a requirement to perfect an appeal although Appellate Rule 7 permits the trial court appealed from to require a bond for appellate costs if the trial court finds it necessary. Phillip v. Moses, 18 FSM R. 85, 87 (Chk. S. Ct. App. 2011).

The absence of a bond to stay the execution of a money judgment while the appeal is pending would not be a ground for dismissal of an appeal. Phillip v. Moses, 18 FSM R. 85, 87 (Chk. S. Ct. App. 2011).

A single FSM Supreme Court appellate division justice may entertain and may grant or deny any request for relief which under the appellate rules may properly be sought by motion except that a single justice may not dismiss or otherwise determine an appeal other than on all the parties' stipulation or on a party's failure to comply with the appellate rules' timing requirements. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 209 (App. 2012).

A single justice may deny a motion to dismiss an appeal. A single justice's order denying a motion to dismiss an appeal is a procedural order requiring the appeal to be briefed and put on the calendar; it is not a determination having preclusive effect on the appeal's validity, and it remains subject to correction by the full appellate panel. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 209 (App. 2012).

When the appellees seek to have the appeal's merits decided without the benefit of briefing and argument because the appellees' ground for dismissal is the basis on which the lower court decided the case and which is therefore either the issue or one of the issues that the appellants will raise, brief, and argue on appeal, the court will not permit the appellees to short circuit the appellate process. Once the appellants brief the issue, the appellees must, in due course, be prepared to brief and argue it. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 209 (App. 2012).

If a reconsideration motion in Kosrae State Court were considered analogous to a Rule 50(b) motion or to a Rule 52(b) motion or to a Rule 59 motion and were timely, a notice of appeal filed before the motion was decided would be premature because for any equivalent relief under comparable rules of any state court from which an appeal may lie, the time for appeal for all parties runs from the entry of the order denying a new trial or granting or denying any other such motion and a notice of appeal filed before the disposition of any of the motion would have no effect, and a new notice of appeal would have to be filed within the 42 days following the denial. If the notice of appeal was indeed premature because of a reconsideration motion, then the court would be without jurisdiction. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 209-10 (App. 2012).

An appellant's failure to obtain a stay does not affect an appeal's validity or the appellate court's jurisdiction over it. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 210 (App. 2012).

Allegations that the appellants' counsel have or had a conflict or conflicts are not a ground on which an appeal can be dismissed. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 210 (App. 2012).

If the appellees seek damages under Appellate Rule 38, its inclusion in a preliminary motion to dismiss is improper because the determination of whether to award Rule 38 damages is a two step process – first, it must be determined that the appeal was frivolous and second, it must be determined that sanctions are appropriate. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 210 (App. 2012).

A five-year old appeal will be dismissed when the appellant has failed to diligently pursue the matter and has not filed an opening brief and no counsel filed an appearance even though he intends to pursue the appeal through other counsel. The appellees' renewed motions to dismiss are granted unless counsel has entered an appearance on the appellant's behalf by August 24, 2012 and unless that counsel has filed an opening brief by September 13, 2012, and if these events do not occur, the appeal is automatically dismissed without further order of the court. Kuch v. Mori, 18 FSM R. 337, 339 (Chk. S. Ct. App. 2012).

An appellate opinion that merely dismissed the appeal for the lack of jurisdiction could not, and did not, convert any interlocutory order into an enforceable final order. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 374 (App. 2012).

When the property was lawfully transferred and this transfer is not a part of what is being appealed because the appellants are appealing the minimum sale price and when the mortgagee does not have title to the land but only a lien, the court will reject the appellants' claim of lack of subject-matter jurisdiction based on the exception for where an interest in land is at issue. Helgenberger v. FSM Dev. Bank, 18 FSM R. 498, 500 (App. 2013).

Since Kosrae Appellate Rule 19(a) is a state court rule that seeks relief equivalent to relief afforded by FSM Civil Procedure Rules 52(b) or 59 because it seeks to obtain a decision or judgment different from the one entered, when the notice of appeal is filed before the disposition of a Rule 19 rehearing petition, there is no final decision or judgment for the FSM Supreme Court appellate division to review and it must dismiss the appeal for lack of jurisdiction. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 546 (App. 2013).

When a petition for rehearing still remains undecided in the Kosrae State Court, the FSM Supreme Court appellate division will dismiss the appeal for lack of jurisdiction with notice that once the Kosrae State Court has disposed of the rehearing petition, any party may file a new notice of appeal, and the FSM Supreme Court appellate division proceedings will start again. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 546 (App. 2013).

When a petition for rehearing was not explicitly denied, there was no denial. An explicit notice that a Kosrae Appellate Rule 19 petition had been denied would have put the appellants on notice that they had 42 days to file a new (and effective) notice of appeal. Therefore the FSM Supreme Court's dismissal of

the premature appeal is without prejudice to any future appeal since the rehearing petition is still pending in the Kosrae State Court. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 546 (App. 2013).

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. It is then properly dismissed. Ruben v. Chuuk, 18 FSM R. 604, 607 (App. 2013).

An appellate court has jurisdiction over an appeal only if it is timely filed because the Rule 4(a)(1) time limit is jurisdictional, and if that time is not extended by a timely Rule 4(a)(5) motion to extend that time period, the appellate division is deprived of jurisdiction to hear the case. Ruben v. Chuuk, 18 FSM R. 604, 607-08 (App. 2013).

Because the requirement that an appeal be timely filed is mandatory and jurisdictional, an untimely filed appeal must be dismissed. Ruben v. Chuuk, 18 FSM R. 604, 608 (App. 2013).

A single justice may dismiss an appeal for failure to comply with the appellate rules' timing requirements, including the timing requirement to file a notice of appeal. Ruben v. Chuuk, 18 FSM R. 604, 608 (App. 2013).

The FSM Supreme Court appellate division has no authority to waive or extend FSM Appellate Rule 4(a)'s time requirements or to grant a motion to extend time to appeal, and in the absence of a timely notice of appeal, the appellate court has no jurisdiction over an appeal and must then dismiss it. Ruben v. Chuuk, 19 FSM R. 78, 79 (App. 2013).

A single FSM Supreme Court appellate division justice may not dismiss or otherwise determine an appeal other than on all the parties' stipulation or on a party's failure to comply with the appellate rules' timing requirements, but a single justice may deny a motion to dismiss an appeal. Nena v. Saimon, 19 FSM R. 136, 138 (App. 2013).

Grounds for dismissal that go to either the merits of the preliminary injunction or the merits of the underlying case are not grounds for dismissal before the parties brief and argue the appeal. Nena v. Saimon, 19 FSM R. 136, 138 (App. 2013).

Because the requirement that an appeal be timely filed is mandatory and jurisdictional, an untimely filed appeal must be dismissed. Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 180 (App. 2013).

A contention that the appeal should be dismissed because the appellants filed their brief on November 12, 2013, instead of on the court-ordered November 8, 2013 deadline is frivolous. An appeal's dismissal on purely procedural grounds is a sanction normally reserved for severe disregard of the rules resulting in prejudice to the opposing party. Andrew v. Heirs of Seymour, 19 FSM R. 331, 336-37 (App. 2014).

The burden is on the appellant to apply, before the time allowance has run, for additional time upon a showing of real need which will not unduly prejudice the appellee. Until such application for extended time is made so that it may be considered before the allotted time has expired, it is evidence of a lack of good faith and failing extraordinary circumstances, it constitutes neglect which will not be excused. Pacific Skylite Hotel v. Penta Ocean Constr. Co., 20 FSM R. 251, 253 (App. 2015).

Among the factors which the court considers on a motion to dismiss under Rule 31(c) are the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reason for appellant's failure to file on time; and the extent of appellants' efforts in mitigation. Pacific Skylite Hotel v. Penta Ocean Constr. Co., 20 FSM R. 251, 253 (App. 2015).

Although dismissing an appeal on purely procedural grounds is a sanction normally reserved for severe disregard of the Rules resulting in prejudice to the opposing party, this policy preference for adjudications on the merits does not negate all other considerations or make the procedural Rules a nullity.

Pacific Skylite Hotel v. Penta Ocean Constr. Co., 20 FSM R. 251, 253 (App. 2015).

It is within a single justice's power to dismiss an appeal upon stipulation of the parties or upon a party's failure to comply with the Rules' timing requirements. The phrase "timing requirements of these rules" has been interpreted to include an appellant's failure to file an opening brief. Pacific Skylite Hotel v. Penta Ocean Constr. Co., 20 FSM R. 251, 253 (App. 2015).

The court will, on the appellees' motion, dismiss an appeal when no opening brief has been filed or an enlargement sought and the court has found the appellants have exhibited severe disregard for the Appellate Procedure Rules' timing requirements and as a result of this, the appellees have been prejudiced. Pacific Skylite Hotel v. Penta Ocean Constr. Co., 20 FSM R. 251, 253 (App. 2015).

Although Appellate Rule 3(a) authorizes dismissal, courts, in the exercise of sound discretion, should, especially when a failure to comply with procedural rules is in issue, be particularly prudent in issuing such a ruling until the recalcitrant party has had an opportunity to remedy the defects. A lesser sanction is appropriate when the noncompliant party's conduct is merely inadvertent and undue prejudice does not redound to the opposing party. Central Micronesia Commc'ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 311, 314 (App. 2016).

A motion to dismiss the appeal because of deficiencies in the appellants' appendix will be denied and the appellants instructed to confer with the appellee about the contents of the appendix and record as a whole, and include the appropriate citations to the latter within the appellants' "amended" brief. Central Micronesia Commc'ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 311, 315 (App. 2016).

A single justice may dismiss an appeal for an appellant's failure to comply with the timing requirements for filing a notice of appeal that are set forth within the Appellate Rules. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 345 (App. 2016).

When, given the absence of a timely filed appeal from a final decision, the appellate court has no jurisdiction, the appellee's motion to dismiss the appeal will be granted, thereby rendering moot all other motions. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 346 (App. 2016).

The threshold determination of subject-matter jurisdiction may be raised at any time by a party or by the court. Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

When the appellants have failed to adhere to the timeline set forth in Appellate Rule 31(a), the appeal is subject to dismissal pursuant to Appellate Rule 31(c) because it is within the court's discretion to dismiss an appeal for late filing of an appellant's brief. Among the factors which the court considers on a Rule 31(c) motion to dismiss are the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reasons for appellant's failure to file on time; and extent of appellant's efforts in mitigation. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 387 (App. 2016).

Dismissal at the appellate level is undoubtedly a harsh sanction and the court should exercise its discretion to dismiss under Appellate Rule 3(a) sparingly. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 388 (App. 2016).

Continued unfettered use of Appellate Rule 26(b) to enlarge time because of counsel's inability to find time to prepare a brief could quickly rise to a level of abuse causing undue delay, thus subjecting the appeal to dismissal. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 389 (App. 2016).

When an appeal is moot, the appellate court must dismiss it without considering whether the court would also lack jurisdiction because it is an interlocutory appeal. That is an issue to be left for another day. Andrew v. Heirs of Seymour, 20 FSM R. 629, 631 (App. 2016).

Among the factors which the court considers on a Rule 31(c) motion to dismiss an appeal are the

length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reason for appellant's failure to file on time; and extent of appellant's efforts in mitigation. Central Micronesia Commc'ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 649, 651 (App. 2016).

Although dismissing an appeal on purely procedural grounds is a sanction normally reserved for severe disregard of the rules resulting in prejudice to the opposing party, this policy preference for adjudication on the merits does not negate all other considerations or make the procedural rules a nullity. Central Micronesia Commc'ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 649, 651 (App. 2016).

When the appellants have had ample time within which to file their brief after the court's February 18th order, much less engage in a dialogue with opposing counsel about what parts of the trial transcript need to be reproduced and made a part of the record and when the September 27th due date for filing a response to the appellee's motion to dismiss has expired and no enlargement was sought by the appellants, the appellee has been prejudiced by the resultant inordinate delay and the appeal may be dismissed by a single justice for failure to comply with the Appellate Rules' timing requirements. Central Micronesia Commc'ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 649, 651 (App. 2016).

An appellant must file and serve a brief within 40 days after the date of the court clerk's notice that the record is ready, and if the appellant fails to file a brief within that time frame, or within the time as extended, an appellee may move for the appeal's dismissal. Walter v. FSM Dev. Bank, 21 FSM R. 1, 3 (App. 2016).

An appellate court may dismiss an appeal when the appellant has failed to file an opening brief within the time prescribed and the appellee has moved for dismissal, and, when an appellee has so moved. The factors that the court may consider are: the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reason(s) for the appellant's failure to file on time; and the extent of appellant's efforts in mitigation. Walter v. FSM Dev. Bank, 21 FSM R. 1, 3-4 (App. 2016).

An appellate court will, on an appellee's motion, dismiss an appeal when no opening brief has been filed and the appellants have severely disregarded the Appellate Procedure Rules' timing requirements and the appellee has been prejudiced as a result. Walter v. FSM Dev. Bank, 21 FSM R. 1, 4 (App. 2016).

The appellants' tardiness in filing their brief, with no explanation offered in response to a motion for dismissal, constitutes a ground for dismissal of an appeal. Walter v. FSM Dev. Bank, 21 FSM R. 1, 4 (App. 2016).

An appeal will be dismissed when the filing of the appellants' brief has been delayed over two years with no likely expectation of an imminent filing or indication that an opening brief will ever be filed; when the prejudice to the appellee is the further difficulty, expense, and delay in having its money judgment satisfied; when, earlier, the appellants' grounds for seeking an enlargement of time to file their brief were a pending Rule 60(b) motion and a pending or expected payment to reduce the judgment amount, neither of which are relevant now because the Rule 60(b) motion was denied well over a year ago and the loan principal credit occurred before then; when the appellants have thus had, even though no enlargement of time or stay was granted, more than ample time to complete an opening brief, but have not done so and no reasons have been given for this excessive delay; and when the appellants have made no attempt to mitigate. Walter v. FSM Dev. Bank, 21 FSM R. 1, 4 (App. 2016).

It is within a single justice's power to dismiss, on motion, an appeal because of the appellants' failure to comply with the Appellate Rules' timing requirements to file an opening brief, but when a long time has elapsed since the motion was filed, it may be better that a full appellate panel consider a motion to dismiss. Walter v. FSM Dev. Bank, 21 FSM R. 1, 4 (App. 2016).

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over the appeal and the proper remedy is dismissal. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 56 (App. 2016).

Once an interlocutory order has merged into a final decision or judgment, it may, if that final decision or judgment is appealed, come before the appellate court for review in that appeal and at that time. The appellate court has no jurisdiction to review it in an earlier appeal and will dismiss such an appeal. Setik v. Mendiola, 21 FSM R. 110, 113 (App. 2017).

Generally, a timely and properly filed notice of appeal transfers jurisdiction from the lower court to the appellate court, but, in the absence of a timely notice of appeal, the appellate court has no jurisdiction over an appeal and it is then properly dismissed. Serment v. Antonio, 21 FSM R. 251, 253 (App. 2017).

If the appellants failed to file a timely notice of appeal with the court appealed from pursuant to FSM Appellate Rules 3 and 4(a)(1), then the FSM Supreme Court appellate division lacks jurisdiction to hear the matter and must dismiss it. Serment v. Antonio, 21 FSM R. 251, 253 (App. 2017).

When the appellants have been given reasonable notice of the appeal's possible dismissal, and have failed to take further action, they are deemed to have abandoned their appeal, and their appeal will be dismissed. Serment v. Antonio, 21 FSM R. 251, 254 (App. 2017).

Generally, a timely and properly filed notice of appeal transfers jurisdiction from the lower court to the appellate court, but, in the absence of a timely notice of appeal, an appellate court lacks jurisdiction over the appeal and it is then properly dismissed. Darra v. Pohnpei, 21 FSM R. 254, 257 (App. 2017).

If the appellant fails to timely file a notice of appeal with the court appealed from, then the appellate court will lack jurisdiction to hear the matter, in which case it must be dismissed. Darra v. Pohnpei, 21 FSM R. 254, 257 (App. 2017).

When the appellant has been given reasonable notice of his appeal's possible dismissal and has failed to take further action or comply with the court's order, he is deemed to have abandoned his appeal. It will therefore be dismissed. Darra v. Pohnpei, 21 FSM R. 254, 257 (App. 2017).

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal and it is then properly dismissed. Gallen v. Santiago, 21 FSM R. 258, 261 (App. 2017).

Generally, an appeal should not be dismissed because the person filing the notice of appeal was misled or misinformed by the court staff. Chuuk Public Utility Corp. v. Chuuk Health Care Plan, 21 FSM R. 334, 335 (Chk. S. Ct. App. 2017).

Since an appeal's dismissal for failure to comply with procedural rules is generally not favored, the court's discretion to dismiss an appeal must be sparingly used unless the appellant has had an opportunity to cure the default and has failed to do so. Chuuk Public Utility Corp. v. Chuuk Health Care Plan, 21 FSM R. 334, 335 (Chk. S. Ct. App. 2017).

When an appellant's timely-filed notice of appeal was accepted and filed by a clerk who failed to tell the filer that a $25 fee had to accompany the notice and when the appellant promptly paid the fee and filed a new notice of appeal once it was informed that a $25 filing fee was due and that was unpaid, the appeal's dismissal will be denied even though the fee was paid after the time to appeal had expired. Chuuk Public Utility Corp. v. Chuuk Health Care Plan, 21 FSM R. 334, 335-36 (Chk. S. Ct. App. 2017).

An appellant must timely file a request for a transcript or a statement of the issues, a designation of the appendix, and an opening brief with an appendix. An appellant's failure to comply with these rules may subject its appeal to dismissal. Carl v. FSM Dev. Bank, 21 FSM R. 342, 343 (App. 2017).

Although Appellate Rule 3(a) does authorize dismissal in the court's exercise of sound discretion, an appeal's dismissal for failure to comply with procedural rules is generally not favored. Carl v. FSM Dev. Bank, 21 FSM R. 342, 343 (App. 2017).

The court's discretion to dismiss an appeal should be sparingly used unless the party who suffers it has had an opportunity to cure the defect and failed to do so. Before dismissing an appeal, a court should consider and weigh such factors as whether the defaulting party's action is willful or merely inadvertent, whether a lesser sanction can bring about compliance, and the degree of prejudice the opposing party has suffered because of the defect. Carl v. FSM Dev. Bank, 21 FSM R. 342, 343-44 (App. 2017).

When, at an appeal's early stage, any prejudice to the appellees from the failure to either file a statement of issues or to order a full transcript is minor; when the appellants have not yet been given an opportunity to cure their defective performance; and since the court is generally quite reluctant to dismiss an appeal for failure to comply with the procedural rules when that failure may be the result of mere inadvertence, the appeal will not be dismissed until the appellants have been be given an opportunity to cure their defective performance by either filing and serving their statement of issues on appeal or by ordering a full transcript of the hearing(s) out of which the order appealed from arose. Carl v. FSM Dev. Bank, 21 FSM R. 342, 344 (App. 2017).

A justiciable controversy may become moot subsequent to filing an appeal if certain events cause the parties to lack a legally cognizable interest in the outcome, and if an appellate court finds that any relief it could grant would be ineffectual, and, if an appellate court dismisses a case as moot, the established rule is for the appellate court to reverse or vacate the judgment below and dismiss the case. Selifis v. Robert, 21 FSM R. 352, 353-54 (Chk. S. Ct. App. 2017).

An appeal concerning a municipal election will not be dismissed as a moot or non-justiciable controversy when that municipality currently has two mayors that have been elected pursuant to two separate elections, which may be due to errors made in the trial division. Selifis v. Robert, 21 FSM R. 352, 354 (Chk. S. Ct. App. 2017).

An appellate court will normally dismiss an appeal for lack of jurisdiction when it is not from a final order because, although sanctions liability had been determined, the amount of those sanctions had not, but when a later appeal was from a final order (since it fixed the sanction amount) into which the earlier liability order merged, it did not matter whether the first appeal case was dismissed or consolidated with the later appeal case. Setik v. Mendiola, 21 FSM R. 537, 560 n.4 (App. 2018).

When the court lacks jurisdiction to hear an appeal, it will be dismissed. Ardos v. FSM Social Sec. Admin., 22 FSM R. 1, 3 (App. 2018).

Although a single Chuuk State Supreme Court appellate division justice cannot dismiss or otherwise determine an appeal or other appellate proceeding, a single justice can deny a motion to dismiss, subject to review by the full panel. Chuuk Public Utility Corp. v. Chuuk Health Care Plan, 22 FSM R. 38, 41 (Chk. S. Ct. App. 2018).

When an appellant has ordered the entire transcript and has thus discharged its duty as an appellant, the alternative methods of creating a trial court record are unneeded or unusable, and there is no basis to dismiss the appeal for the appellant's alleged failure to perform its duty. Chuuk Public Utility Corp. v. Chuuk Health Care Plan, 22 FSM R. 38, 41-42 (Chk. S. Ct. App. 2018).

The timely filing of a notice of appeal is jurisdictional. The appellate court must dismiss an appeal that was untimely filed no matter how meritorious the appellant's claims are. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 43, 46 (Chk. S. Ct. App. 2018).

An appeal will be dismissed when a review of the record shows that none of the issues the appellants raised were ever considered in the trial division, when the order of sale appealed from was never executed, and when the appellants concur that if the appellee no longer pursues the order of sale the matter should proceed in the trial division. Edmond v. FSM Dev. Bank, 22 FSM R. 77, 81 (App. 2018).

An appeal will be dismissed if events after its filing make the issues presented moot because the court lacks jurisdiction to consider moot cases. Setik v. Perman, 22 FSM R. 105, 118 (App. 2018).

An appellate court may receive proof of, or take notice of, facts outside the record to determine if an appeal has become moot. In most cases, it would be difficult to determine mootness any other way. Setik v. Perman, 22 FSM R. 105, 118 (App. 2018).

All the appellants' substantive claims are moot and will be dismissed when those claims no longer present a justiciable dispute because previous appellate decisions have resolved them in their entirety. Setik v. Perman, 22 FSM R. 105, 120 (App. 2018).

Although the usual result when an appeal becomes moot is for the appellate court to vacate the judgment below and order that the case be dismissed, when the case below has already been dismissed, no purpose would be served by vacating that dismissal and then dismissing it again. Setik v. Perman, 22 FSM R. 105, 120 (App. 2018).

When the trial court's order appealed from was not a final order or judgment, the appeal from that order will be dismissed for lack of jurisdiction as judicial economy dictates against piecemeal appeals and that the case below should be permitted to proceed to final judgment. Salomon v. FSM Dev. Bank, 22 FSM R. 280, 282 (App. 2019).

When the trial court's order appealed from was not a final order or judgment, the appeal from that order will be dismissed for lack of jurisdiction to hear the appeal as judicial economy dictates against piecemeal appeals and that the case below should be permitted to proceed to final judgment. Salomon v. Mendiola, 22 FSM R. 283, 285 (App. 2019).

When the trial court's order appealed from was not a final order or judgment, the appeal from that order will be dismissed for lack of jurisdiction as judicial economy dictates against piecemeal appeals and that the case below should be permitted to proceed to final judgment. Salomon v. FSM Dev. Bank, 22 FSM R. 286, 288 (App. 2019).

When the trial court's order appealed from was not a final order or judgment, the appeal from that order will be dismissed for lack of jurisdiction to hear the appeal as judicial economy dictates against piecemeal appeals and that the case below should be permitted to proceed to final judgment. Salomon v. Mendiola, 22 FSM R. 289, 291 (App. 2019).

The appellate court will grant the appellees' motion to dismiss the appeal when the deadline for the appellants to file an opening brief and appendix expired over a year ago. Estate of Gallen v. Governor, 22 FSM R. 539, 541 (App. 2020).

When deciding whether to dismiss an appeal because the appellant has failed to file an opening brief within the time prescribed and the appellee has moved for dismissal, an appellate court may consider: the length of delay in filing the brief; evidence of prejudice to the appellee; the nature of the reason(s) for the appellant's failure to file on time; and the extent of appellant's efforts in mitigation. Estate of Gallen v. Governor, 22 FSM R. 539, 541 (App. 2020).

The appellants' tardiness in filing their brief, with no explanation offered in response to a motion for dismissal, constitutes a ground for dismissal of an appeal. Estate of Gallen v. Governor, 22 FSM R. 539, 541 (App. 2020).

A single justice may dismiss an appeal for failure to comply with the appellate rules' timing requirements. Estate of Gallen v. Governor, 22 FSM R. 539, 541 (App. 2020).

When the only reason the appellants advance for their failure to obtain counsel is that it will take time

to find one; when the court has granted a number of continuances to accommodate the appellants, but the appellants have not obtained counsel or set a definite timeline for obtaining counsel, an appeal will be dismissed because the appellants have abandoned their appeal since they have failed to file a notice of appearance by counsel on their behalf and failed to file an opening brief and appendix. Estate of Gallen v. Governor, 22 FSM R. 539, 541 (App. 2020).

– Frivolous Appeals

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

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

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

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

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

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

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

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

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

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

The determination of whether to award Rule 38 damages is a two step process. First, it must be

determined that the appeal was frivolous and second, it must be determined that sanctions are appropriate. FSM Dev. Bank v. Yinug, 12 FSM R. 450, 452 (App. 2004).

An appeal is frivolous when the result is obvious to the court or when the appellant's arguments are wholly without merit or groundless or when the court has previously ruled on the question on appeal. FSM Dev. Bank v. Yinug, 12 FSM R. 450, 452 (App. 2004).

Rule 38 damages may be awarded when a mandamus petition is frivolous. FSM Dev. Bank v. Yinug, 12 FSM R. 450, 452 (App. 2004).

When a petition was not wholly without merit or groundless, or when the petition was not frivolous since the issues raised had not previously been ruled upon when they were raised in the petition and when there was also some question raised as to how appellate review of the issues could be sought, whether by writ of mandamus or by an interlocutory appeal, the petition is not frivolous and Rule 38 damages will not be awarded. FSM Dev. Bank v. Yinug, 12 FSM R. 450, 453 (App. 2004).

Rule 38 damages are determined in the appellate court and not remanded to the trial court for determination. Rule 38 gives the appellate court discretion in the damage amount awarded, which can be up to double the amount of actual expenses, and unlike other awards that may include attorney's fees, Rule 38 awards are uniquely the province of the appellate court based on its determination of the frivolous nature of the appeal. A trial court does not have jurisdiction to impose Appellate Rule 38 sanctions. FSM Dev. Bank v. Yinug, 12 FSM R. 450, 453 (App. 2004).

If the Supreme Court appellate division determines that an appeal is frivolous, it may award just damages and single or double costs, including attorney's fees, to the appellee. FSM Dev. Bank v. Adams, 12 FSM R. 456, 462 (App. 2004).

Determining whether to award Rule 38 damages is a two step process. First, it must be determined that the appeal was frivolous and second, it must be determined that sanctions are appropriate. FSM Dev. Bank v. Adams, 12 FSM R. 456, 462-63 (App. 2004).

An appeal is frivolous when the result is obvious, or when the appellant's arguments are wholly without merit or groundless, or when the court has previously ruled on the question on appeal. FSM Dev. Bank v. Adams, 12 FSM R. 456, 463 (App. 2004).

When an action was filed based upon the application or good faith argument for the extension of the Berman rule and upon the contention that the collateral order doctrine allowed an interlocutory appeal; when no previous decisions had specifically dealt with the application or limits of the collateral order doctrine and related issues; and when there was also some question raised as to how a party should seek appellate review of the issues (by writ of mandamus or by an interlocutory appeal), the appeal was not wholly without merit or groundless, or frivolous and no Rule 38 attorney's fees will be granted. FSM Dev. Bank v. Adams, 12 FSM R. 456, 463 (App. 2004).

If the appellees seek damages under Appellate Rule 38, its inclusion in a preliminary motion to dismiss is improper because the determination of whether to award Rule 38 damages is a two step process – first, it must be determined that the appeal was frivolous and second, it must be determined that sanctions are appropriate. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 210 (App. 2012).

In all cases in which an appellee seeks Rule 38 damages, an appellee must file a separate written motion at least seven days before the date scheduled for oral argument in order to give the appellant time to respond to the motion. The appellee's motion gives the appellant the notice it is due, and its opportunity to be heard may be through filing a written response. If a written response is filed, the court, in its discretion, may allow inclusion of the issue in the oral argument on the merits; otherwise it will be decided on the papers. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 210 (App. 2012).

– In Forma Pauperis

An appellant who desired to proceed on an appeal in forma pauperis but failed to file an affidavit showing his inability to pay and who failed to bring his in forma pauperis motion to the attention of the trial division, is deemed to have abandoned his request or at least waived any right he may have had to proceed in forma pauperis. Reselap v. Chuuk, 8 FSM R. 584, 585-86 (Chk. S. Ct. App. 1998).

Generally, only natural persons may proceed in forma pauperis. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 517 (Pon. 2002).

In order to proceed in forma pauperis on appeal, an appellant must file a motion in the court appealed from together with an affidavit showing his inability to pay fees and costs or give security, his belief that he is entitled to redress, and a statement of the issues he intends to present on appeal. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 517 (Pon. 2002).

Appellate Form 2's absence from the FSM Appellate Rules will not be a ground for denying an in forma pauperis motion when the affidavit shows the appellant's inability to pay fees and costs or to give security therefor in the detail required by Rule 24(a) and shows that he is indigent and without any income or property. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 517-18 (Pon. 2002).

For an indigent litigant to proceed on appeal in forma pauperis, the appeal must be made in good faith and not be frivolous. The two requirements are related. "Good faith" is demonstrated when a party seeks appellate review of any issue "not frivolous." For an issue not to be frivolous, it does not have to be meritorious. The issue only has to be colorable. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 518 (Pon. 2002).

To proceed on appeal in forma pauperis, a litigant must be economically eligible, and his appeal must not be frivolous. Probable success on the merits need not be shown. The court only examines whether the appeal involves legal points arguable on their merits (and therefore not frivolous). The existence of any nonfrivolous or colorable issue on appeal requires the court to grant the motion to proceed in forma pauperis. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 518 (Pon. 2002).

Raising nonfrivolous issues on appeal entitles an indigent to proceed in forma pauperis. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 518 (Pon. 2002).

Courts cannot deny a motion to proceed in forma pauperis because the movant's attorney is employed on a contingent fee basis. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 518 (Pon. 2002).

If the court appealed from grants the motion to proceed in forma pauperis, the party may proceed without further application to the FSM Supreme Court appellate division and without prepayment of fees and costs in either court or giving security therefor, except when the Public Defender Office or Micronesian Legal Services Corporation represents an indigent party the transcript fee is reduced to $1.25 per page, to be paid by the public agency, and not by the party personally. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 519 (Pon. 2002).

Being allowed to proceed in forma pauperis only relieves an appellant from prepayment of fees and costs, not from ultimate liability for those costs. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 519 (Pon. 2002).

It is a matter to be resolved between the court reporters and the judicial branch whether the judiciary pays the costs for in forma pauperis litigants' transcripts. An in forma pauperis litigant is not required to prepay transcript costs, although if the in forma pauperis litigant is represented by the Public Defender or Micronesian Legal Services Corporation then that agency must prepay $1.25 per page. Lebehn v. Mobil

Oil Micronesia, Inc., 10 FSM R. 515, 519 (Pon. 2002).

An in forma pauperis appellant is not required to tender payment in order to receive the transcript he has ordered. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 519 (Pon. 2002).

An in forma pauperis appellant may be allowed to proceed on the original record without the necessity to reproduce any part of it. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 519 (Pon. 2002).

A general court order that provides that when an indigent party is represented by the Office of the Public Defender in *in forma pauperis* proceedings, the transcript fee will be reduced to $1.25 per page (payable by the public agency and not by the defendant personally) has no effect on Appellate Procedure Rule 24(a). It merely establishes a reduced transcript fee to be paid by the Office of the Public Defender when it represents an indigent party. It does not automatically classify every client of that office as an indigent party. FSM v. Moses, 12 FSM R. 619, 621 (Chk. 2004).

In order to proceed in forma pauperis on appeal, an appellant must file an affidavit showing his inability to pay fees and costs or give security, his belief that he is entitled to redress, and a statement of the issues he intends to present on appeal. FSM v. Moses, 12 FSM R. 619, 621 (Chk. 2004).

To show that a party is indigent the affidavit of a person seeking *in forma pauperis* status must contain more detail than a mere recitation that the affiant is poor and cannot pay. The affidavit should, at minimum, outline the affiant's income, necessary expenditures and liabilities, savings, the value of any real or personal property the affiant owns individually, and the value of the affiant's ownership interest in any real or personal property in which the affiant shares ownership with others. FSM v. Moses, 12 FSM R. 619, 621 (Chk. 2004).

When seeking *in forma pauperis* status, a party's affidavit, besides containing a financial statement, must also contain the party's belief that the party is entitled to redress, and a statement of the issues which the party intends to present on appeal. This is because for a litigant to proceed on appeal in forma pauperis, not only must the litigant be economically eligible, the appeal must be made in good faith and not be frivolous. For an issue not to be frivolous, it does not have to be meritorious. The issue only has to be colorable. FSM v. Moses, 12 FSM R. 619, 621 (Chk. 2004).

Although it might be advisable for the trial court to conduct a hearing on motions to stay and for in forma pauperis status, especially if the motions look like they may be denied, it is not part of the constitutional public trial right. Ned v. Kosrae, 20 FSM R. 147, 156 (App. 2015).

The court would be leery of awarding in forma pauperis status to someone who is paying private counsel. Ned v. Kosrae, 20 FSM R. 147, 157 (App. 2015).

– Mandate

A motion to reconsider judgment filed after the mandate has issued is considered a petition for rehearing, as well as a motion to enlarge time to file such a petition and a motion to recall the mandate. Such a petition may be denied in its entirety as untimely filed. Jano v. FSM, 12 FSM R. 633, 634 (App. 2004).

The trial court's power to order a stay of execution, and by implication to deny a stay, continues throughout the appeal's pendency, until the appellate division's mandate issues. The trial court's power to grant a stay is invested in the trial court by virtue of its original jurisdiction over the case and continues to reside in the trial court until such time as the court of appeals issues its mandate. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

If a money judgment in a civil case is affirmed, whatever interest is allowed by law will be payable from the date the judgment was entered in the court appealed from, but if a judgment is modified or reversed

with a direction that a judgment for money be entered in the court appealed from, the mandate must contain instructions with respect to allowance of interest. AHPW, Inc. v. Pohnpei, 15 FSM R. 520, 523 (Pon. 2008).

A petition for rehearing which is filed after the mandate has been issued is not only considered a petition for rehearing, but also a motion to enlarge time, within which to file such petition and recall the mandate. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 468, 469 (App. 2016).

– Motions

That fee arrangements had not been made is not good cause in support of a motion to enlarge time for filing appellee's brief when the motion is filed well after the brief was due and after oral argument was held. Paul v. Celestine, 3 FSM R. 572, 574 (App. 1988).

The appellate court, for good cause shown, may upon motion enlarge the time prescribed by the appellate rules or by its order for doing any act, or may permit an act to be done after the expiration of such time. Kimoul v. FSM, 4 FSM R. 344, 345 (App. 1990).

A motion to strike a single appellate justice's dismissal of an appeal may be set for oral argument and determination by an appellate panel. David v. Uman Election Comm'r, 8 FSM R. 300d, 300f (Chk. S. Ct. App. 1998).

A motion to reconsider a single justice appellate order in the Pohnpei Supreme Court is an application for review by a full appellate panel. Damarlane v. Pohnpei, 9 FSM R. 114, 118 (App. 1999).

A motion filed pro se in the appellate division can be denied on the basis that it was filed pro se without leave of court. In the appellate court, unlike the trial court, a party does not have an automatic right to appear pro se and must seek permission. Wiliander v. National Election Dir., 13 FSM R. 199, 204 n.4 (App. 2005).

A motion may be denied as moot when the court has already dismissed the appeal. Asugar v. Edward, 13 FSM R. 221, 222 (App. 2005).

A single Supreme Court appellate division article XI, section 3 justice may entertain and may grant or deny any request for relief which under the appellate rules may properly be sought by motion, although a single justice may not dismiss or otherwise determine an appeal, except upon stipulation of all parties, or upon a party's failure to comply with the appellate rules' timing requirements. A single justice's action may be reviewed by the court. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 11 (App. 2006).

Appellate Rule 27(c)'s use of the word "may" indicates that the review by the full appellate panel of all single justice orders is not mandatory. The word "may" instead of "shall" indicates some discretion. It does not, however, indicate that the discretion lies with the court. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 11 (App. 2006).

Rule 27(c) generally restricts a single justice to issuing procedural orders and (with two exceptions) from dismissing appeals. Any action that a single justice takes can be reviewed by the court, on motion by the aggrieved party. Even when the Appellate Rules authorize single appellate judges to entertain requests for relief, the single appellate judge's decisions remain subject to correction by the appellate court. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 12 (App. 2006).

A single appellate judge's order denying a motion to dismiss an appeal is a procedural order requiring the appeal to be briefed and put on the calendar; it is not a determination having preclusive effect on the appeal's validity. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 12 (App. 2006).

The discretion indicated by the word "may" in Rule 27(c) lies primarily with the parties and makes it mandatory for the full appellate panel to review a single justice order when an aggrieved party asks it to. It is not mandatory that the full appellate panel review every order made by the single justice. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 12 (App. 2006).

The full panel's review of a single appellate judge's order can be on the papers and the decision announced beforehand either in writing or orally at the start of oral argument on the merits; or the panel can chose to permit the parties a short time to argue and then take a short recess and then announce its decision and then proceed to the main argument on the merits. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 12 (App. 2006).

Motions may be decided without oral argument. Even an appeal's merits may be submitted on the briefs and decided without oral argument if the parties agree. Christian v. Urusemal, 14 FSM R. 291, 293 (App. 2006).

The time period for opposing a motion is seven days. But if service of the motion is made by mail, six additional days are added to the response period. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 361 n.2 (App. 2007).

The appellate court, for good cause shown, may, upon motion, enlarge the time prescribed for doing any act, or may permit an act to be done after the expiration of such time. This differs significantly from the provisions found in the Civil and Criminal Procedure Rules, both of which require a party wishing to enlarge the time period for undertaking an act once the original time period for undertaking the act has expired to demonstrate that the failure to act within initially prescribed time period was the result of excusable neglect. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 362 (App. 2007).

A party may file a response in opposition to a motion within 7 days after service of the motion, so if the motion is served on that party by mail, the party has six added days to file and serve a response. Berman v. College of Micronesia-FSM, 15 FSM R. 622, 625 (App. 2008).

The action of a single justice may be reviewed by a full panel of the appellate division. In re Parcel 79T11, 16 FSM R. 24, 26 (App. 2008).

Motions may be decided without oral argument. Kosrae v. Langu, 16 FSM R. 83, 86 (App. 2008).

The good cause standard is a broader and more liberal standard than excusable neglect standard. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 108 n.5 (App. 2008).

A single Supreme Court appellate division justice may entertain and may grant or deny any request for relief which under the appellate procedure rules may properly be sought by motion. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 109 (App. 2008).

A single justice may entertain and grant or deny any request for relief which under the appellate rules may properly be sought by motion. But "appropriate disciplinary action" is not "relief" that can be properly sought by motion and is thus not within a single justice's power. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 109 (App. 2008).

Motions may be decided without oral argument. Where argument would not be helpful to the decisional process, it will not be required on a dismissal issue when the appellants have had, and have taken, their opportunity to be heard by filing written submissions. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 111 (App. 2008).

A single FSM Supreme Court appellate division justice may entertain and may grant or deny any request for relief which under the appellate rules may properly be sought by motion, but a single justice

may not dismiss or otherwise determine an appeal, except upon stipulation of all parties, or upon a party's failure to comply with the rules' timing requirements. The phrase "timing requirements of these rules" has been interpreted to include an appellant's failure to file an opening brief or a statement of issues on appeal and a designation of the record and the failure to file a notice of appeal within the time prescribed by Rule 4. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 112 (App. 2008).

If an appellant fails to file a brief within the time provided by Rule 31, or within the time as extended, an appellee may move for dismissal of the appeal. Rule 31(c) permits an appellee to move to dismiss, but it does not require appellees to do so because they are not required to do anything. Since a court, even an appellate court, has the right to control its own docket, Rule 31(c) does not prevent the appellate court, in an effort to control its own docket, from also moving to dismiss an appeal for an appellant's failure to timely file a brief. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 112-13 (App. 2008).

When the court, through a single justice, has made its own motion to dismiss as a matter of docket management, it cannot decide its own motion without first giving the parties notice and an opportunity to be heard because that would violate a litigant's due process rights guaranteed by the FSM Constitution since notice and an opportunity to be heard is the essence of due process. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 113 (App. 2008).

It is within a single justice's power to, upon the justice's own motion and with adequate notice, dismiss an appeal for an appellant's failure to timely file an opening brief. Like any other single justice order, an aggrieved party may seek review of the dismissal order by a full appellate panel, which must then consider it. Review of a single justice order is *de novo*. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 113 (App. 2008).

The good cause standard is a broader and more liberal standard than the excusable neglect standard. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 124 n.5 (App. 2008).

A single justice of the Supreme Court appellate division may entertain and may grant or deny any request for relief which under these rules may properly be sought by motion. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 125 (App. 2008).

It is the appellate division, not a single justice, that imposes disciplinary sanctions under Rule 46(c), which may include suspension or disbarment. While a single justice may entertain and grant or deny any request for relief which under the appellate rules may properly be sought by motion, "appropriate disciplinary action" is not "relief" that can be properly sought by motion and is thus not within a single justice's power. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 125 (App. 2008).

Motions may be decided without oral argument. When it does not appear that argument would help the decisional process, oral argument is not required on a dismissal issue, when the appellant has had, and has taken, his opportunity to be heard by filing written submissions. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 127 (App. 2008).

A single FSM Supreme Court appellate division justice may entertain and may grant or deny any request for relief which under the appellate rules may properly be sought by motion, but a single justice may not dismiss or otherwise determine an appeal, except upon stipulation of all parties, or upon failure of a party to comply with the rules' timing requirements. The phrase "timing requirements of these rules" has been interpreted to include an appellant's failure to file an opening brief or a statement of issues on appeal and a designation of the record, and the failure to file a notice of appeal within the time prescribed by Appellate Rule 4. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 128 (App. 2008).

If an appellant fails to file a brief within the time set by rule, or within the time as extended, an appellee may move for dismissal of the appeal. But Rule 31(c) does not require an appellee to do so. Rule 31(c) also does not prevent an appellate court, in an effort to control its own docket, from also moving to dismiss

an appeal for an appellant's failure to timely file a brief. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 128 (App. 2008).

The court may, through a single justice, make its own motion to dismiss as a matter of appellate docket management. A court cannot decide its own motion without first giving the parties notice and an opportunity to be heard because that would violate a litigant's due process rights guaranteed by the FSM Constitution since notice and an opportunity to be heard is the essence of due process. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 128-29 (App. 2008).

It is within the single justice's power to move *sua sponte*, with notice, for, and to dismiss appeals for the appellants' failure to timely file opening briefs. Like any single justice order, an aggrieved party may apply for review of the dismissal order by a full appellate panel, which then must consider it. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 129 (App. 2008).

A full panel's review of a single justice order is *de novo*. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 129 (App. 2008).

When the appellants have sought review of a single justice order of dismissal and when, after review of the record and careful consideration of the appellants' arguments, a full appellate panel finds the single justice's reasoning to be factually accurate and legally sound, it will affirm the single justice order of dismissal. In re Parcel 79T11, 16 FSM R. 174, 174 (App. 2008).

The court may raise sua sponte whether an appeal may be dismissed for lack of prosecution, and there is no due process violation when a court orders dismissal upon its own motion so long as the appellant has had notice and an opportunity to be heard on the motion. Baelo v. Sipu, 16 FSM R. 288, 291 (Chk. S. Ct. App. 2009).

Motions may be decided without oral argument. Smith v. Nimea, 16 FSM R. 346, 348 (App. 2009).

A "Report" that asks for relief, is a motion because any request or application made to the court for relief can only be considered a motion. Since all papers, including motions, must be served on the other parties, when there was no indication that this "Report" had been served on the other parties, the court can disregard it as not properly before the court. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 551 (Chk. S. Ct. App. 2009).

No one should ever presume that any court will reflexively or automatically grant a continuance whenever a motion is filed seeking one. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 552 (Chk. S. Ct. App. 2009).

Motions, even motions to dismiss an appeal, may be decided without oral argument. Kosrae v. Jim, 17 FSM R. 97, 98 (App. 2010).

With certain limitations, a single justice may entertain and may grant or deny any request for relief which under the rules may properly be sought by motion, and a motion for enlargement of time properly falls within such request for relief. Berman v. Pohnpei, 17 FSM R. 251, 252 (App. 2010).

Rule 26(c) does not apply to an appellant's opening brief since the prescribed period for the brief's filing is triggered by the date of notice that the record is ready, and not by service of that notice. Thus, no future argument that Rule 26(c) is applicable to an appellant's opening brief will satisfy as "good cause shown" within the meaning of a Rule 26(b) motion for the enlargement of time. Berman v. Pohnpei, 17 FSM R. 251, 253 (App. 2010).

Since a single justice may entertain and may grant or deny any request for relief which under the appellate rules may properly be sought by motion, a motion to strike the appellant's appendix or require the

submission of translation properly falls within such request for relief. Setik v. Ruben, 17 FSM R. 301, 302 (App. 2010).

The appellants' motion to exclude evidence not submitted in the trial court is moot when the appellate court did not rely on that evidence in reaching its decision. Stephen v. Chuuk, 17 FSM R. 453, 457 (App. 2011).

Motions, even motions to dismiss an appeal, may be decided without oral argument. Jonah v. FSM Dev. Bank, 17 FSM R. 506, 507 (App. 2011).

A full panel is not needed to grant a motion to dismiss since a single article XI, section 3 justice may dismiss an appeal upon a party's failure to comply with the appellate rules' timing requirements, including the time requirement to file the notice of appeal within 42 days after the entry of the order appealed from. Jonah v. FSM Dev. Bank, 17 FSM R. 506, 508 (App. 2011).

Motions for enlargement of time to file briefs are timely because they are filed before the briefs are due when they are filed on the same day the briefs were due. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 626 (App. 2011).

An early enlargement motion can be useful in showing good faith, and a motion two or three days beforehand may be most helpful if it can provide an accurate estimate of the time needed. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 626 (App. 2011).

"Good cause" is a legally sufficient reason. It is the burden placed on the litigant, usually by court rule or order, to show why a request should be granted. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 627 (App. 2011).

While merely being a busy lawyer does not constitute excusable neglect justifying an enlargement of time (although when other factors are also present, the neglect may be excusable), the "good cause" standard is a broader and more liberal standard than "excusable neglect." Since the "good cause" standard frees courts from some of the restraints imposed by the excusable neglect requirement, there thus would be times when being a busy lawyer would satisfy the good cause standard where it obviously could not satisfy the higher excusable neglect standard. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 627 (App. 2011).

The court's discretion lies in determining whether the busy lawyer (since all lawyers claim to be busy) was busy enough to be considered good cause. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 627 (App. 2011).

Even if counsel were unaware of an unpublished decision announcing that in the future enlargements would not be granted without good cause, Kosrae Appellate Rule 9(b) is clear on its face that enlargement is not automatic and will be granted only for good cause shown. Thus, he cannot claim ignorance of the appellate rule and of its requirement to show good cause. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 627 (App. 2011).

When the Kosrae State Court was arbitrary in denying the enlargement, and it based its ruling, in part, on an erroneous conclusion of law that the excusable neglect standard was the same as the good cause standard or that it could apply the excusable neglect standard to the appellants' enlargement motion because Kosrae Appellate Rule 9(b) mandates that the good cause standard be used, not the higher excusable neglect standard and when record so large that it cost over $1,500 and four appellate briefs and appendixes, in two separate cases, had to be prepared from it between December 21, 2009 and February 1, 2010, and during that time, counsel also conducted a trial plus the usual press of business, a twelve-day enlargement to complete two of the four appellate briefs would be reasonable, especially when the State Court did not cite any prejudice to the opposing party, the State Court should thus have granted their

enlargement motion. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 628 (App. 2011).

The Kosrae State Court's discretion lies in determining whether the reasons given, taking all the surrounding circumstances into account, constitute good cause. Once it has determined that there is good cause for an enlargement, then the State Court should grant the motion unless some countervailing reason, such as demonstrable prejudice to the opposing party if the enlargement is granted, would militate against it. In such instances, the State Court may have some discretion to deny it. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 628 (App. 2011).

An opposition to a motion to enlarge that is not entitled as a motion to dismiss but which specifically asks the court to dismiss the appeal is a motion to dismiss because a thing is what it is regardless of what someone calls it. Mori v. Hasiguchi, 18 FSM R. 83, 84 (App. 2011).

A single FSM Supreme Court appellate division justice may entertain and may grant or deny any request for relief which under the appellate rules may properly be sought by motion except that a single justice may not dismiss or otherwise determine an appeal other than on all the parties' stipulation or on a party's failure to comply with the appellate rules' timing requirements. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 209 (App. 2012).

A single justice may deny a motion to dismiss an appeal. A single justice's order denying a motion to dismiss an appeal is a procedural order requiring the appeal to be briefed and put on the calendar; it is not a determination having preclusive effect on the appeal's validity, and it remains subject to correction by the full appellate panel. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 209 (App. 2012).

A single appellate justice does not have the authority to sanction attorneys. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 210 (App. 2012).

The appellate division may decide motions without oral argument. Berman v. Pohnpei, 18 FSM R. 418, 420 n.1 (App. 2012).

Motions may be decided without oral argument. Kuch v. Mori, 18 FSM R. 442, 443 (Chk. S. Ct. App. 2012).

A single FSM Supreme Court appellate division justice may not dismiss or otherwise determine an appeal other than on all the parties' stipulation or on a party's failure to comply with the appellate rules' timing requirements, but a single justice may deny a motion to dismiss an appeal. Nena v. Saimon, 19 FSM R. 136, 138 (App. 2013).

A motion to alter, or amend, under FSM Civil Rule 59(e), or reconsideration of a mistake through inadvertence under FSM Civil Rule 60(b) are post-judgment motions that are appropriately filed in the trial division, not the appellate division, and, under the final judgment rule, these post-judgment motions prohibit filing an appeal until they have been either granted or denied. Mori v. Hasiguchi, 19 FSM R. 416, 418 (App. 2014).

Appellate Rule 26(b) grants the appellate division broad discretion to grant an extension of time upon a showing of good cause, but enlargement is not automatic and will be granted only for good cause shown. "Good cause" is a legally sufficient reason or the burden placed on a litigant, usually by court rule or order, to show why a request should be granted or an action excused. In making its inquiry into a movant's good cause, the court's primary consideration should be the diligence of the party seeking the enlargement. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 387 (App. 2016).

There are times when being a busy lawyer would satisfy the good cause standard. The court's discretion lies in determining whether the busy lawyer (since all lawyers claim to be busy) was busy enough to be considered good cause. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 388 (App. 2016).

When a motion is served on opposing counsel by mail, the seven days allowed for responses to motions is enlarged by six more days. Andrew v. Heirs of Seymour, 20 FSM R. 629, 631 (App. 2016).

When a motion for costs and attorney's fees contains no supporting grounds for this request in the motion's text, the motion will be denied without prejudice to any claim for costs taxable under Appellate Rule 39(a). Andrew v. Heirs of Seymour, 20 FSM R. 629, 631 (App. 2016).

The burden is on the appellant to apply, before his or her time allowance has run, for additional time upon a showing of real need which will not unduly prejudice the appellee. Until such application for extended time is made so that it may be considered before the allotted time has expired, it is evidence of a lack of good faith and, failing extraordinary circumstances, it constitutes neglect which will not be excused. Central Micronesia Commc'ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 649, 651 (App. 2016).

The appellants' motions for enlargement are no longer material or relevant when the appellants did not file an opening brief within the time periods for which enlargements were sought and have neither filed a brief nor sought a further enlargement since then. Walter v. FSM Dev. Bank, 21 FSM R. 1, 3 (App. 2016).

It is within a single justice's power to dismiss, on motion, an appeal because of the appellants' failure to comply with the Appellate Rules' timing requirements to file an opening brief, but when a long time has elapsed since the motion was filed, it may be better that a full appellate panel consider a motion to dismiss. Walter v. FSM Dev. Bank, 21 FSM R. 1, 4 (App. 2016).

Generally, an appellate court has broad discretion to grant an enlargement of time upon a showing of good cause, but enlargement is not automatic. Silbanuz v. Leon, 21 FSM R. 336, 340 (App. 2017).

The Pohnpei appellate division's failure to rule on a motion to enlarge time by four days is a failure to exercise discretion (to grant or deny a motion), and is itself an abuse of discretion. Silbanuz v. Leon, 21 FSM R. 336, 341 (App. 2017).

Although a single Chuuk State Supreme Court appellate division justice cannot dismiss or otherwise determine an appeal or other appellate proceeding, a single justice can deny a motion to dismiss, subject to review by the full panel. Chuuk Public Utility Corp. v. Chuuk Health Care Plan, 22 FSM R. 38, 41 (Chk. S. Ct. App. 2018).

In the Pohnpei Supreme Court appellate division, oral argument will not be heard on any motion unless the court specifically assigns it thereof. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 67 (Pon. 2018).

Under Appellate Rule 27(a), any party may file an opposition to a motion within 7 days after the motion's service, and, if the motion is served by mail, six days must be added to this prescribed period. Setik v. Perman, 22 FSM R. 105, 111 n.1 (App. 2018).

An appellate court may, despite the non-movants' neglectful tardiness, grant an oral request for a chance to respond since the court may extend the time for responding to any motion. Setik v. Perman, 22 FSM R. 105, 111 n.1 (App. 2018).

– Notice of Appeal

Under the FSM Appellate Rule 4(a)(1), a notice of appeal must be filed within 42 days after entry of the judgment. Kimoul v. FSM, 4 FSM R. 344, 346 (App. 1990).

The proper procedure, in accordance with Kosrae State law and the FSM appellate rules, in filing a notice of appeal from a decision of the Kosrae State Court is to file notice in both Kosrae State Court and the FSM Supreme Court, either with the trial division in Kosrae or directly with the appellate division.

Tafunsak v. Kosrae, 6 FSM R. 467, 468 (App. 1994).

A properly filed notice of appeal transfers jurisdiction from the trial court to the appellate court. Election Comm'r v. Petewon, 6 FSM R. 491, 498 (Chk. S. Ct. App. 1994).

A party appealing a decision of the Kosrae State Court must file a notice of appeal with the state court and with the FSM Supreme Court, either with its trial division on Kosrae or with its appellate division. Where appellant's failure to timely and properly file his notice of appeal in the FSM Supreme Court trial division on Kosrae was because of faulty instructions of a court employee, dismissal of the appeal is unwarranted. Kosrae Island Credit Union v. Obet, 7 FSM R. 193, 194 (App. 1995).

A properly filed notice of appeal transfers jurisdiction from the trial court to the appellate court. The trial court is then divested of jurisdiction, except to take action in aid of the appeal, until the case is remanded to it. Walter v. Meippen, 7 FSM R. 515, 517 (Chk. 1996).

As a general rule, a properly filed notice of appeal transfers jurisdiction from the trial court to the appellate court, but a trial court may retain jurisdiction over the issue of attorneys' fees even though an appeal is pending on the merits of the case. Damarlane v. United States, 8 FSM R. 14, 16 (App. 1997).

A trial court has jurisdiction to issue an order assessing costs, even though it was issued after the notice of appeal was filed. Damarlane v. United States, 8 FSM R. 14, 17 (App. 1997).

Appeals to the FSM Supreme Court appellate division from Chuuk State Supreme Court appellate division final decisions in civil cases, may be made by certiorari. The appellants' petition for certiorari may constitute their notice of appeal. Chuuk v. Ham, 8 FSM R. 467, 468-69 (App. 1998).

Appellate Rule 4(a)(2), which allows a notice of appeal filed after the announcement of a decision or order but before the entry of the judgment or order to be treated as filed after such entry and on the day thereof, is designed for cases of premature appeals where it is known that the final order or judgment to be entered will merely reflect the earlier decision. It specifically does not apply when Rule 4(a)(4) does. Damarlane v. Pohnpei, 9 FSM R. 114, 118 (App. 1999).

Generally, a properly filed notice of appeal transfers jurisdiction from the lower court to the appellate court. Damarlane v. Pohnpei, 9 FSM R. 114, 119 (App. 1999).

A properly filed notice of appeal will not create subject matter jurisdiction in FSM Supreme Court when there is none, but it always has jurisdiction over an appeal to determine if it has subject matter jurisdiction. Damarlane v. Pohnpei, 9 FSM R. 114, 119 n.4 (App. 1999).

A notice of appeal filed in the FSM Supreme Court while a motion to reconsider is pending before the Pohnpei Supreme Court appellate division has no effect because it was prematurely filed. Jurisdiction was thus never transferred to the FSM Supreme Court appellate division. Damarlane v. Pohnpei, 9 FSM R. 114, 119 (App. 1999).

Generally, a notice of appeal acts to transfer jurisdiction from the trial court to the reviewing court, except for the trial court to take action in aid of the appeal, such as an application for release from jail pending appeal, a motion for stay, taxing costs, considering and denying (but not granting unless remanded) a Rule 60(b) relief from judgment motion. Bank of Guam v. O'Sonis, 9 FSM R. 197, 198-99 (Chk. 1999).

A trial court is without jurisdiction or authority to strike a notice of appeal from the record no matter how inadequate the notice because it raises a question addressed to the appellate court's jurisdiction. Bank of Guam v. O'Sonis, 9 FSM R. 197, 199 (Chk. 1999).

Rule 3(b) is permissive as to filing a joint notice of appeal. No provision in the rule makes this decision irrevocable. Chuuk v. Secretary of Finance, 9 FSM R. 255, 257 (App. 1999).

Rule 28(l) permits appellants to join in a single brief. Implicit in this rule is an appellant's right to file individually. The right to file an individual brief is not forfeited or waived by the filing of a joint notice of appeal. Chuuk v. Secretary of Finance, 9 FSM R. 255, 257 (App. 1999).

A single justice may dismiss an appeal upon a party's failure to comply with the appellate rules' time requirements, including the time requirement to file the notice of appeal within 42 days after the entry of the judgment. O'Sonis v. Bank of Guam, 9 FSM R. 356, 360 (App. 2000).

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. It is then properly dismissed. O'Sonis v. Bank of Guam, 9 FSM R. 356, 360 (App. 2000).

Generally, a timely and properly filed notice of appeal transfers jurisdiction from the lower court to the appellate court. Department of the Treasury v. FSM Telecomm. Corp., 9 FSM R. 465, 466-67 (App. 2000).

The notice of appeal divests trial court of jurisdiction, except to take action in aid of the appeal. Examples of orders in aid of an appeal include, but are not limited to, applications for release from jail pending appeal, applications for stays pending appeal, taxation of costs on a judgment after notice of appeal filed, and considering and denying a Rule 60(b) relief from judgment motions (but not granting a Rule 60(b) motion unless case remanded). Department of the Treasury v. FSM Telecomm. Corp., 9 FSM R. 465, 467 (App. 2000).

A trial court memorandum entered after entry of both a final order and a notice of appeal is not an action in aid of the appeal, especially when such a memorandum might necessitate an appellant having to seek leave to amend its issues on appeal or take some other action it would not have otherwise had to, and may be stricken from the appellate record. Department of the Treasury v. FSM Telecomm. Corp., 9 FSM R. 465, 467 (App. 2000).

Generally, a notice of appeal acts to transfer jurisdiction from the trial court to the reviewing court, with some exceptions all characterized as acts in aid of the appeal, such as motions for release from jail pending appeal, for a stay pending appeal, to proceed *in forma pauperis* on appeal, to tax costs, and the trial court may both consider and deny Rule 60(b) relief from judgment motions, but cannot grant one unless the case is remanded. FSM Dev. Bank v. Louis Family, Inc., 10 FSM R. 636, 638 (Chk. 2002).

A trial court is without jurisdiction or authority to strike a notice of appeal from the record, no matter how inadequate the notice is, because it raises a question addressed to the appellate court's jurisdiction and the notice of appeal's filing transfers jurisdiction to the appellate court. FSM Dev. Bank v. Louis Family, Inc., 10 FSM R. 636, 638 (Chk. 2002).

A notice of appeal divests the trial court of jurisdiction except to act in aid of the appeal. FSM Dev. Bank v. Louis Family, Inc., 10 FSM R. 636, 638 (Chk. 2002).

The 42-day appeal period applies to all appellate review of final decisions of the Chuuk State Supreme Court appellate division. A certiorari petition is treated as a notice of appeal since it seeks appellate review of a Chuuk State Supreme Court appellate division final decision. Bualuay v. Rano, 11 FSM R. 139, 145 (App. 2002).

A notice of appeal is typically a single page document that names the appellant and the other parties to the proceeding; indicates the order, judgment, or part thereof appealed from; shows the appellate division of the FSM Supreme Court as the court in which the appeal is brought; identifies counsel; and contains a certificate of service. Ramp v. Ramp, 12 FSM R. 228, 230 (Pon. 2003).

The Kosrae State Court ruling that co-tenants were not parties to the case before it because they had not been served the notice of appeal was not plain error. That court correctly ruled. It had no jurisdiction over the co-tenants because no timely notice of appeal was filed as to them. Anton v. Heirs of Shrew, 12 FSM R. 274, 278 (App. 2003).

The Chuuk appellate procedure rules require that a notice of appeal be filed with the clerk of the court of the Chuuk State Supreme Court trial division not later than 30 days after entry of judgment. Hartman v. Chuuk, 12 FSM R. 388, 393 n.8 (Chk. S. Ct. Tr. 2004).

By Kosrae statute and State Court Rules of Appellate Procedure, the notice of appeal from Land Court must state specific legal grounds upon which such appeal is based. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 418-19 (Kos. S. Ct. Tr. 2004).

Following review of the transcript and record, appellants may also request to amend the issues stated in the notice of appeal from Land Court. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 419 (Kos. S. Ct. Tr. 2004).

The appellants' failure to state the issues on appeal in their notice of appeal is a procedural violation that may be subject to sanctions. Dismissing an appeal on purely procedural grounds is a sanction normally reserved for severe disregarding of the rules resulting in prejudice to the opposing party. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 419 (Kos. S. Ct. Tr. 2004).

Generally, a properly filed notice of appeal transfers jurisdiction from the lower court to the appellate court. In the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 422 (Kos. S. Ct. Tr. 2004).

There are two filing requirements for a notice of appeal from the Kosrae Land Court: first at the Kosrae State Court and second at the Kosrae Land Court. The first filing requirement actually dockets the appeal, as Kosrae State Court serves as the appellate court for Kosrae Land Court decisions. The second filing requirement does not docket the appeal. It serves the purpose of commencing the preparation of the transcript and record by the Land Court. Thus, an appeal from Kosrae Land Court is timely filed (and the Kosrae State Court has subject matter jurisdiction to hear the appeal) when the notice of appeal is filed with the Kosrae State Court within sixty days of service of the written decision upon the appellants even though there was a two-day delay in filing the notice of appeal with the Land Court. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 422 (Kos. S. Ct. Tr. 2004).

The appellants' late filing of the copy of the notice of appeal with the Land Court is a procedural violation that may be subject to sanctions. The proper procedure is to file the notice of appeal with Kosrae State Court, and file a copy of the notice of appeal with Kosrae Land Court, both within the sixty day period. When the appellees have not demonstrated any prejudice by the two-day delay, the appellants' failure to file the copy of the notice of appeal with the Land Court within sixty days does not constitute grounds for the appeal's dismissal, only sanctions. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 422-23 (Kos. S. Ct. Tr. 2004).

A notice of appeal from a Land Court decision to the Kosrae State Court must be filed within sixty days of service of the Land Court decision upon the party appealing the decision. State law does not provide any mechanism or authority for extension of the time for filing the notice of appeal beyond the sixty-day period. Melander v. Heirs of Tilfas, 13 FSM R. 25, 27 (Kos. S. Ct. Tr. 2004).

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. The appeal is then properly dismissed. Melander v. Heirs of Tilfas, 13 FSM R. 25, 27 (Kos. S. Ct. Tr. 2004).

When a notice of appeal was not filed within the statutory time period for appeal, the court has no jurisdiction over the appeal and also has no authority to allow filing of the notice of appeal beyond the

statutory time period. When a notice of appeal is filed one day after the statutory sixty day period for appeal from Land Court expired, the statutory deadline for filing a notice of appeal cannot be extended, the court does not have jurisdiction over the appeal, and the appeal will be dismissed with prejudice. Melander v. Heirs of Tilfas, 13 FSM R. 25, 27-28 (Kos. S. Ct. Tr. 2004).

Appellants must file a subsequent notice of appeal to perfect their right to appeal any of the issues raised by a later attorney fee award order. Appellants must take the necessary steps to perfect an appeal from the trial division's order awarding attorney's fees and to consolidate that appeal with the pending appeal on the merits. Felix v. Adams, 13 FSM R. 28, 29-30 (App. 2004).

A second notice of appeal adds nothing to an initial notice of appeal, when it purports to appeal the an earlier non-final – and hence nonappealable – order as well as the already appealed final judgment and is therefore nugatory. AHPW, Inc. v. FSM, 13 FSM R. 36, 44 (Pon. 2004).

If a timely motion for a new trial on any ground other than newly discovered evidence has been made, an appeal from a judgment of conviction may be taken within 10 days after the entry of an order denying the motion. FSM v. Fritz, 13 FSM R. 85, 87-88 (Chk. 2004).

It might have been to a litigant's advantage to file a notice of appeal along with her motion to extend time to appeal since the grant of a motion to extend time to appeal retroactively validates a previously-filed notice of appeal. Goya v. Ramp, 13 FSM R. 100, 104 n.1 (App. 2005).

A notice of appeal may be filed in either the trial division or the appellate division. A party has the right to represent herself pro se in the trial division (although that may not always be a good idea) and may file a notice of appeal pro se, but appellate division filings usually require an admitted attorney's signature. Goya v. Ramp, 13 FSM R. 100, 107 & n.7 (App. 2005).

To preserve her client's appeal rights, a counsel off-island on vacation could either 1) draft a notice of appeal that her client could sign and file pro se in the trial division and mail it to her for filing; or 2) draft a motion to extend time to file a notice of appeal that her client could file pro se and mail it to her for filing; or 3) draft a motion to extend time to file a notice of appeal and mail it to the court for filing; or 4) draft a motion to file by facsimile and mail it to the court for filing, and then fax (and mail) a notice of appeal once she and her client have agreed to payment terms for an appeal. Goya v. Ramp, 13 FSM R. 100, 107 (App. 2005).

A motion to extend time to file a notice of appeal filed before the expiration of the 42-day appeal period can be made ex parte unless the court orders otherwise. Goya v. Ramp, 13 FSM R. 100, 107 (App. 2005).

To preserve her client's appeal rights, a counsel off-island on an extended vacation, who learns that her client needs her to file an appeal three days before the end of the 42-day appeal period, could either draft and fax a notice of appeal along with a request to file by fax; or draft and fax to her client a notice of appeal that her client could sign and then file pro se in the trial division; or draft and fax a motion to extend time to appeal and mail it along with a notice of appeal; or draft and mail a motion to extend time to appeal along with a notice of appeal, any of which should obtain results before counsel's scheduled return. Goya v. Ramp, 13 FSM R. 100, 107 (App. 2005).

When no notice of appeal from a post-judgment order awarding attorneys' fees is filed, the appellate court lacks jurisdiction to review the order. Pohnpei v. AHPW, Inc., 13 FSM R. 159, 161 (App. 2005).

Since no notice of appeal was filed for the post-judgment attorney's fee award, the FSM Supreme Court appellate division lacks jurisdiction to review it because in the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. It is then properly dismissed. Pohnpei v. AHPW, Inc., 13 FSM R. 159, 161 (App. 2005).

The five-day time limit to appeal an election to the FSM Supreme Court does not start when the

Director certifies the election, but rather when the aggrieved candidate receives the Director's decision on the candidate's petition or until the time has run out for the Director to issue a decision on the candidate's petition. Wiliander v. National Election Dir., 13 FSM R. 199, 204 (App. 2005).

When no separate notice of appeal from a post-judgment order awarding attorneys' fees is filed, the appellate court lacks jurisdiction to review the order. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 13 (App. 2006).

A properly filed notice of appeal transfers jurisdiction from the trial court to the reviewing court. The transfer of jurisdiction divests the trial court of any authority, except to act in aid of the appeal. Examples of actions which have been construed to aid an appeal include, but are not necessarily limited to: applications for release from jail pending appeal, applications for stay pending appeal, taxation of costs, and considering and denying, but not granting, except upon remand, Rule 60(b) motions for relief from judgment. Ruben v. Petewon, 14 FSM R. 177, 185 (Chk. S. Ct. App. 2006).

In criminal cases, a defendant's notice of appeal must be filed within 10 days after the entry of the judgment appealed from. Neth v. Kosrae, 14 FSM R. 228, 231 (App. 2006).

Criminal Rule 46(c) is not a nullity since it applies to the release of a defendant who has been found guilty – "convicted" – but not yet sentenced. Such a defendant, although no judgment of conviction has been entered, may file a notice of appeal which will become effective once the defendant has been sentenced because a notice of appeal filed after the announcement of a decision, sentence or order but before entry of the judgment is treated as filed after such entry and on the day thereof. FSM v. Petewon, 14 FSM R. 463, 467-68 (Chk. 2006).

Since a judgment of conviction must set forth the plea, the findings, and the adjudication and sentence, a judgment of conviction cannot be entered until after the defendant has been sentenced. Thus, a notice of appeal may be filed after a finding of guilty but before a judgment of conviction has been entered. Criminal Rule 46(c) applies to this time span. FSM v. Petewon, 14 FSM R. 463, 468 (Chk. 2006).

If a criminal defendant files a notice of appeal after the court publicly announced its finding of guilty but before the sentence of imprisonment is imposed and the judgment of conviction entered, the notice of appeal would become valid on the date the judgment is entered and Criminal Rule 46(c) would have applied to whether he should have been on release from when the notice of appeal was actually filed until the entry of judgment. Once a judgment of conviction imposing a sentence of imprisonment is entered, Criminal Rule 38(a)(2) and Appellate Rule 9(b) and 9(c) apply to any application for release pending appeal. FSM v. Petewon, 14 FSM R. 463, 468 (Chk. 2006).

Actual notice as required by statute must be given for preliminary and formal hearings at the Land Commission. Notice is required because it gives a chance to be heard. However, the consequences for failing to give notice of decisions are different. The party has had a chance to be heard and to present evidence. Serving notice of an adjudication, or decision, is required in order to give the party a chance to appeal. If a party is not properly served notice of a determination of ownership, the statutory appeals period that an appeal shall be made within sixty days of the written decision's service upon the party, does not run. Heirs of Tara v. Heirs of Kurr, 14 FSM R. 521, 525 (Kos. S. Ct. Tr. 2007).

The appellate court acquires jurisdiction over a case and the parties thereto, when a notice of appeal has been timely filed and the parties to the case before the inferior tribunal appealed from have been properly served the notice of appeal. No separate summons is required. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 575, 577 (Chk. S. Ct. App. 2007).

Since the Civil Procedure Rules generally apply to civil proceedings in the trial division, not the appellate division, it is not necessary to serve a summons when an election contest is appealed to the appellate division and the respondent was properly served the notice of appeal. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 575, 577 (Chk. S. Ct. App. 2007).

The timely filing of a notice of appeal is jurisdictional. The appellate court must dismiss an appeal that was untimely filed no matter how meritorious the appellant's claims are. Mori v. Dobich, 15 FSM R. 12, 13-14 (Chk. S. Ct. App. 2007).

Counsel's failure to serve the notice of appeal on the appellee's counsel is not fatal since the Chuuk Appellate Rules require that the clerk of the court appealed from must serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant, so if the appellee was not served a copy of the notice of appeal, it is not the appellant's fault, but an omission by the trial court clerk. Bossy v. Wainit, 15 FSM R. 30, 32 (Chk. S. Ct. App. 2007).

An appellant's filing of a notice of appeal in the appellate division is not fatal to his appeal since if a notice of appeal is mistakenly filed in the Chuuk State Supreme Court appellate division, the appellate division clerk must note thereon the date on which it was received and transmit it to the trial division clerk and it will be deemed filed in the trial division on the date so noted, and thus, if the notice of appeal was not transmitted to the trial division (to be served by the trial court clerk on the other party), it was an error of omission on the appellate clerk's part, not the appellant's. Bossy v. Wainit, 15 FSM R. 30, 32 (Chk. S. Ct. App. 2007).

The timely filing of a notice of appeal from a final order or judgment is jurisdictional, and a notice of appeal filed before a final order or judgment has been entered is premature and untimely. The common exception is that a notice of appeal filed after the announcement of a decision or order but before the entry of the judgment or order will be treated as filed after such entry and on the day thereof. Bossy v. Wainit, 15 FSM R. 30, 33 (Chk. S. Ct. App. 2007).

Although the better practice is to file the motion to appear pro hac vice simultaneously with the first filing in the FSM Supreme Court appellate division, it is not uncommon for unlicensed counsel to move for pro hac vice admission at a reasonable time after the filing of a notice of appeal, as meeting the rules' time constraints and thus protecting the client's interest is of paramount concern. Akinaga v. Heirs of Mike, 15 FSM R. 391, 395 (App. 2007).

A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of a timely motion filed in the FSM Supreme Court trial division by any party, 1) for judgment under Rule 50(b); 2) to amend or make additional findings of fact under Rule 52(b); 3) to alter or amend the judgment under Rule 59; 4) for a new trial under Rule 59; or from the entry of the order disposing of a timely motion for any equivalent relief under comparable rules of any state court from which an appeal may lie, and the time for appeal for all parties runs from the entry of the order denying a new trial or granting or denying any other such motion because a notice of appeal filed before the disposition of any of the above motions has no effect. This applies to appeals from the Kosrae State Court for any motion that sought relief equivalent to any of the four enumerated motions. Alanso v. Pridgen, 15 FSM R. 597, 599 (App. 2008).

The timely filing of a motion to alter or amend judgment destroys a previously filed notice of appeal and even a subsequent notice of appeal if that notice is filed while the motion to alter or amend is still pending. Alanso v. Pridgen, 15 FSM R. 597, 600 (App. 2008).

A notice of appeal filed before the disposition of a Kosrae Rule 59 motion has no effect, and a new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion. Thus, a December 4, 2006 notice of appeal was of no effect and a nullity because a pending Rule 59(e) motion to alter or amend judgment negated that notice of appeal and when no new notice of appeal was filed in the 42-day period following the December 7, 2006 denial of the Rule 59 motion, the FSM Supreme Court appellate division never acquired jurisdiction over the case. Alanso v. Pridgen, 15 FSM R. 597, 600 (App. 2008).

An order of dismissal is not a final decision if a timely motion under Rule 59 has been made and not disposed of, since the case lacks finality. For that reason, the subsequent filing of a notice of appeal is a nullity and does not deprive the trial court of power to rule on the motion. Alanso v. Pridgen, 15 FSM R. 597, 600 (App. 2008).

The statute of limitations for filing an action is different and distinct from the time limits for filing an appeal from a Land Court or Land Commission decision. An appeal from a Land Court or Land Commission decision is a statutorily-created right. Allen v. Allen, 15 FSM R. 613, 620 (Kos. S. Ct. Tr. 2008).

A party may appeal a Land Court decision within 60 days of being served with a written decision. Before the Land Court Act of 2000, a party could appeal a Land Commission decision within 120 days of receiving notice of the determination. So, for the purpose of filing such an appeal, service of the written determination is a statutory requirement that begins the running of the appeals period. In other words, the service of the determination is a condition precedent to the running of the appeals period. Allen v. Allen, 15 FSM R. 613, 620 (Kos. S. Ct. Tr. 2008).

The time within which a party may file a notice of appeal is calculated from when the trial court judgment is entered, and even when the notice is served by mail, the extra days allowed by Rule 26(c) cannot be added. The same is true for filing a cross-appeal even if the notice of appeal is served by mail, or for any court-ordered deadline even if the court order is served by mail. Berman v. College of Micronesia-FSM, 15 FSM R. 622, 624 (App. 2008).

A notice of appeal must be taken within 42 days after the date of entry of the judgment appealed from. The 42-day period applies to all appellate review of final decisions of the Chuuk State Supreme Court appellate division and a certiorari petition is treated as a notice of appeal since it seeks appellate review of a Chuuk State Supreme Court appellate division final decision. Haruo v. Mori, 16 FSM R. 31, 32 (App. 2008).

The time within which a party may file a notice of appeal is calculated from the date when the final order or judgment being appealed is entered. The deadline is not calculated from the date it was purportedly served on appellant's counsel. Haruo v. Mori, 16 FSM R. 31, 33 (App. 2008).

An appellate court lacks jurisdiction over, and must dismiss, an appeal when the notice of appeal, including a petition for writ of certiorari, was not filed within 42 days from the date that the final order or judgment being appealed has been entered. Haruo v. Mori, 16 FSM R. 31, 33 (App. 2008).

When the notice of appeal contains the names of both parties in its caption and designates one as the appellee, it is not necessary to repeat them in the text of the notice where one is referred to only as "appellee." Kosrae v. Langu, 16 FSM R. 83, 86 (App. 2008).

The timely filing of a notice of appeal is jurisdictional, but timely certification of service is not. Kosrae v. Langu, 16 FSM R. 83, 86 (App. 2008).

An appeal shall not be dismissed for informality of form or title of the notice of appeal. Kosrae v. Langu, 16 FSM R. 83, 86 (App. 2008).

When the notice of appeal only lacks the name, address, and phone number of the appellee's attorney and a certificate of service and the appellee cannot claim prejudice or that he was misled because the notice did not include his own counsel's name, address, and phone number and when the lack of a certificate of service would not prejudice him (although the lack of actual service could), the notice of appeal's defects are not of a jurisdictional nature that would require dismissal. Kosrae v. Langu, 16 FSM R. 83, 86-87 (App. 2008).

While it is the filing of a notice of appeal that confers jurisdiction on the appellate court, strict adherence to Appellate Rule 3's requirements is not a prerequisite to a valid appeal. When the defect in the notice of appeal did not mislead or prejudice the appellee, and when the appellant's intention to appeal the order was manifest, the ineptness of the notice of appeal should not defeat the appellant's right to appeal. Kosrae v. Langu, 16 FSM R. 83, 87 (App. 2008).

The FSM Appellate Rules require a criminal defendant to file his notice of appeal within ten days of entry of the judgment of conviction, but the FSM Appellate Rules have no provision for prosecution appeals. Kosrae v. Langu, 16 FSM R. 83, 87 (App. 2008).

The Kosrae State Code provides that in a criminal proceeding the prosecution may appeal from the Kosrae State Court only when the court has held a law or regulation invalid, and it further provides that a notice of appeal must be filed within thirty days of receipt of notice of imposition of sentence or entry of the judgment, order or decree to be appealed from, or within a longer time to be prescribed by rule. In the absence of any other filing deadline, the FSM Supreme Court will use the thirty-day deadline of Kosrae Code section 6.401 for prosecution appeals from the Kosrae State Court. Kosrae v. Langu, 16 FSM R. 83, 87 (App. 2008).

When the State Court's return of service shows that the Kosrae Attorney General's Office was served the judgment of conviction on June 4, 2008 and when, using the Kosrae statute's thirty-day deadline, which runs from date of receipt of the order instead of date of entry, the June 30, 2008 notice of appeal is timely when measured from the June 4th service date, the motion to dismiss cannot be granted on the ground the appeal was filed too late. Kosrae v. Langu, 16 FSM R. 83, 87 (App. 2008).

When the notice of appeal was filed not within 42 days of the December 27, 2006 decision but within 42 days of the March 22, 2007 denial of the reconsideration motion, the denial of the reconsideration motion, if it was a Rule 60(b) motion for relief from judgment, would be the only issue before the court on an appeal on the merits. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 131 (App. 2008).

As a general rule, a properly filed notice of appeal transfers jurisdiction from the trial court to the appellate court, but a specific provision in the rules will control rather than a general rule to the extent that they conflict. Thus an application for release after a judgment of conviction must be made in the first instance in the court appealed from and thereafter, if an appeal is pending, a motion for release, or for modification of the conditions of release, pending review may be made to the Chuuk State Supreme Court appellate division or to a justice thereof. So that when the defendant brought an earlier motion for stay pending appeal which was granted, he should have argued the release of his passport at that time when the issue was properly before the trial court, since the considerations a court is required to undertake when granting a release pending appeal involve contemplation and possible imposition of conditions for release. Chuuk v. Billimon, 17 FSM R. 313, 317 (Chk. S. Ct. Tr. 2010).

A timely filing of a notice of appeal is jurisdictional and mandatory. Berman v. Pohnpei Legislature, 17 FSM R. 339, 352 (App. 2011).

The time to appeal a final order in a civil case is 42 days, but the time to appeal a criminal judgment is only ten days. Berman v. Pohnpei Legislature, 17 FSM R. 339, 352 (App. 2011).

Since a notice of appeal filed after the announcement of a decision, sentence or order but before entry of the judgment must be treated as filed after such entry and on the day thereof, when a party in a civil case was held in criminal contempt of court, but the contempt finding was entered on the civil docket and not on the criminal docket, the ten-day period for criminal appeals has not begun to run since no entry has yet been made on the criminal docket, making a notice of appeal filed 37 days after the contempt finding timely under Appellate Rule 4(b). Berman v. Pohnpei Legislature, 17 FSM R. 339, 353 (App. 2011).

When an appeal has been filed in the case, the trial court, in the absence of any authority indicating

otherwise, no longer retains jurisdiction over the matter. Chuuk v. William, 17 FSM R. 495, 496 (Chk. S. Ct. Tr. 2011).

Since, when appealing an FSM Supreme Court trial division decision, a party may, at its option, file the notice of appeal either with the clerk of the FSM Supreme Court trial division in the state in which the decision appealed from was made or directly with the clerk of the FSM Supreme Court appellate division, where that party, appealing an FSM Supreme Court trial division decision, files a notice of appeal with the FSM Supreme Court trial division clerk in the Kosrae venue on February 22, 2011, and on February 25, 2011, files a notice of appeal with the appellate division clerk, the earlier, February 22, 2011 notice of appeal that was filed with the trial division clerk in Kosrae is the operative one. Jonah v. FSM Dev. Bank, 17 FSM R. 506, 507 (App. 2011).

Since a notice of appeal is a paper that the clerk of the court appealed from – the Chuuk Sate Supreme Court trial division clerk – is required to serve on the parties, Appellate Rule 25(b), by its terms, does not apply, and the appellant need only timely file the notice with the court clerk. Phillip v. Moses, 18 FSM R. 85, 87 (Chk. S. Ct. App. 2011).

Since the Chuuk Appellate Rules require the clerk of the court appealed from to serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant, if the appellee was not served a copy of the notice of appeal, it is not the appellant's fault, but an omission by the trial court clerk. In such a case, the appellate court cannot dismiss an appeal and deprive an aggrieved appellant of his day in court merely because a court employee may have neglected to perform. Phillip v. Moses, 18 FSM R. 85, 87 (Chk. S. Ct. App. 2011).

If a reconsideration motion in Kosrae State Court were considered analogous to a Rule 50(b) motion or to a Rule 52(b) motion or to a Rule 59 motion and were timely, a notice of appeal filed before the motion was decided would be premature because for any equivalent relief under comparable rules of any state court from which an appeal may lie, the time for appeal for all parties runs from the entry of the order denying a new trial or granting or denying any other such motion and a notice of appeal filed before the disposition of any of the motion would have no effect, and a new notice of appeal would have to be filed within the 42 days following the denial. If the notice of appeal was indeed premature because of a reconsideration motion, then the court would be without jurisdiction. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 209-10 (App. 2012).

Since an appeal may be taken by filing a notice of appeal with the clerk of the FSM Supreme Court trial division in the state in which the decision appealed from was made or, at the appellant's option, directly with the clerk of the FSM Supreme Court appellate division, a notice of appeal from the Kosrae State Court may be filed with the FSM Supreme Court trial division clerk on Kosrae instead of the appellate division clerk on Pohnpei. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 210 (App. 2012).

Since an appellate court is without jurisdiction to consider an appeal if there is no timely notice of appeal or if there was no final decision in the court below, the appellate court should rule on jurisdictional matters first because, without jurisdiction, any ruling the appellate court makes on the merits would merely be an advisory opinion which it does not have the jurisdiction to issue. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 545 (App. 2013).

If an otherwise timely notice of appeal was indeed premature and of no effect because of a timely petition for rehearing in the Kosrae State Court, the FSM Supreme Court appellate division would then be without jurisdiction. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 545 (App. 2013).

When the FSM Supreme Court has not previously considered whether, under FSM Appellate Rule 4(a)(4), a procedural rule which is identical or similar to, or which is drawn from, a U.S. counterpart, Kosrae Appellate Rule 19(a) is a comparable state court rule, it may look to U.S. sources for guidance in interpreting the rule. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 545 n.2 (App. 2013).

Since Kosrae Appellate Rule 19(a) is a state court rule that seeks relief equivalent to relief afforded by FSM Civil Procedure Rules 52(b) or 59 because it seeks to obtain a decision or judgment different from the one entered, when the notice of appeal is filed before the disposition of a Rule 19 rehearing petition, there is no final decision or judgment for the FSM Supreme Court appellate division to review and it must dismiss the appeal for lack of jurisdiction. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 546 (App. 2013).

When a petition for rehearing still remains undecided in the Kosrae State Court, the FSM Supreme Court appellate division will dismiss the appeal for lack of jurisdiction with notice that once the Kosrae State Court has disposed of the rehearing petition, any party may file a new notice of appeal, and the FSM Supreme Court appellate division proceedings will start again. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 546 (App. 2013).

The requirement that a notice of appeal be timely filed is mandatory and jurisdictional, and, since the Rule 4(a)(1) time limit is jurisdictional, if that time is not extended by the grant of a timely Rule 4(a)(5) motion to extend that time period, the appellate court will lack jurisdiction to hear the case. An untimely filed appeal must be dismissed. Jonah v. FSM Dev. Bank, 17 FSM R. 506, 508 (App. 2011).

Once the Kosrae State Court has explicitly made its ruling on the appellants' petition for rehearing in that court, the appellants may, if they are still aggrieved, file a new notice of appeal within the 42-day appeal period after that denial and ask that their briefs and appendixes already filed in this appeal be used in the new appeal. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 546 (App. 2013).

When the record shows that the appellant never filed for an extension with the FSM Supreme Court trial level on or before December 28, 2012, which is 30 days after the expiration of the 42-day appeal period, the November 29, 2012 notice of appeal is untimely. Ruben v. Chuuk, 18 FSM R. 604, 607 (App. 2013).

A properly filed notice of appeal transfers jurisdiction from the lower court to the appellate court, but the FSM Supreme Court appellate division has no authority to waive or extend Rule 4(a)'s time requirements or to grant a motion to extend time to appeal. Only the trial division has the authority to waive or extend the period to file the notice of appeal. Ruben v. Chuuk, 18 FSM R. 604, 607 (App. 2013).

When no extension was requested, the late filing of the notice of appeal did not conform to the requirement under 4(a)(1), making the filing of the notice of appeal at the appellate level invalid and because the filing of the notice was improper, jurisdiction was never transferred from the trial to the appellate level. Ruben v. Chuuk, 18 FSM R. 604, 607 (App. 2013).

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. It is then properly dismissed. Ruben v. Chuuk, 18 FSM R. 604, 607 (App. 2013).

An appellate court has jurisdiction over an appeal only if it is timely filed because the Rule 4(a)(1) time limit is jurisdictional, and if that time is not extended by a timely Rule 4(a)(5) motion to extend that time period, the appellate division is deprived of jurisdiction to hear the case. Ruben v. Chuuk, 18 FSM R. 604, 607-08 (App. 2013).

Because the requirement that an appeal be timely filed is mandatory and jurisdictional, an untimely filed appeal must be dismissed. Ruben v. Chuuk, 18 FSM R. 604, 608 (App. 2013).

A single justice may dismiss an appeal for failure to comply with the appellate rules' timing requirements, including the timing requirement to file a notice of appeal. Ruben v. Chuuk, 18 FSM R. 604, 608 (App. 2013).

A properly filed notice of appeal transfers jurisdiction from the lower court to the appellate court. Ruben v. Chuuk, 19 FSM R. 78, 79 (App. 2013).

Generally, the filing of a notice of a appeal divests the trial court of jurisdiction over the appealed case. Notwithstanding the general effect of the filing of a notice of appeal, the trial court retains jurisdiction to determine matters collateral or incidental to the judgment, and may act in aid of the appeal. For example, because the mere filing of a notice of appeal does not affect the validity of a judgment, the trial court retains jurisdiction to enforce the judgment. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

Unlike a notice of appeal, there are no jurisdictional time frames for filing a petition for a writ of prohibition or for other extraordinary writs. The Appellate Rule 4 time limits for filing notices of appeal do not apply to petitions for extraordinary writs under Appellate Rule 21. In re Sanction of George, 19 FSM R. 131, 132 (App. 2013).

The FSM Supreme Court appellate division has jurisdiction over an appeal only if the notice of appeal is timely filed because the time limit set by Rule 4(a)(1) is jurisdictional, and if that time is not extended by a timely motion to extend that time period under Rule 4(a)(5), the appellate division is deprived of jurisdiction to hear the case. Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 180 (App. 2013).

Because the requirement that an appeal be timely filed is mandatory and jurisdictional, an untimely filed appeal must be dismissed. Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 180 (App. 2013).

In civil cases, appeals may be taken from all final decisions of the Kosrae State Court by the filing of a notice of appeal within forty-two days after the date of the entry of the judgment or order appealed. Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 180 (App. 2013).

One requisite of appellate jurisdiction is that there must be a timely filed notice of appeal. This requirement is mandatory and jurisdictional. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 603, 607 (App. 2014).

While a notice of appeal filed after the announcement of a decision or order but before the entry of the judgment or order must be treated as filed after such entry and on the day thereof, other prematurely filed notices of appeal have no effect and never transfer jurisdiction to the FSM Supreme Court appellate division. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 603, 607 (App. 2014).

Sanctions against an attorney may only be appealed when the attorney makes the appeal in the attorney's own name and as a real party in interest. When the attorney was named in the notice of appeal's caption and in its body as the real party in interest, that requirement has been satisfied. Abrams v. FSM Dev. Bank, 20 FSM R. 309, 310 (App. 2016).

Notwithstanding a notice of appeal's general effect, the trial court retains jurisdiction to determine matters collateral or incidental to the judgment and may act in aid of the appeal. Because the mere filing of a notice of appeal does not affect the judgment's validity, the trial court retains jurisdiction to enforce the judgment. FSM Dev. Bank v. Setik, 20 FSM R. 315, 318 (Pon. 2016).

When the trial court issued an order awarding attorney's fees to counsel and a notice of appeal was filed, challenging the fee award, a final appealable order did not exist, thereby precluding appellate review, because the order appealed from established only the pecuniary responsibility for opposing counsel's reasonable fees but did not establish the amount of those fees. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 344 (App. 2016).

When a notice of appeal from the trial court's order denying reconsideration of the Rule 11 sanctions was lodged on June 20, 2014, the order was not a "final decision" since the specific amount of reasonable costs and attorney's fees was not determined until the issuance of the August 11, 2014 order. Hence, a subsequent notice of appeal was required in order to perfect an appeal challenging the propriety of levying sanctions. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 344-45 (App. 2016).

A timely notice of appeal from a final decision is a prerequisite to jurisdiction over an appeal. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 345 (App. 2016).

The Appellate Rule 4(a)(1) time limit is jurisdictional and if that time is not extended by a timely motion to extend that time period under Rule 4(a)(5), the appellate division is deprived of jurisdiction to hear the case. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 345 (App. 2016).

The relevant period of time, within which to file a notice of appeal is rigid, and the appellate court does not have the authority to allow an appeal that does not adhere to this time frame because an appellate court has jurisdiction over an appeal only if it is timely filed. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 345 (App. 2016).

An "Amended Notice of Appeal" that appears in the appellant's appendix, but that was not served upon the appellees or filed with the court, clearly fails to comply with the timing requirements for filing notices of appeal and is not properly before the court. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 345 (App. 2016).

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over the appeal and the proper remedy is dismissal. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 56 (App. 2016).

There are two filing requirements for a notice of appeal from the Kosrae Land Court: first at the Kosrae State Court and second at the Kosrae Land Court. The first filing requirement actually dockets the appeal, as Kosrae State Court is the appellate court for Kosrae Land Court decisions. The second filing requirement does not docket the appeal, but it serves the purpose of commencing the Land Court's preparation of the transcript and record. Thus, an appeal from Kosrae Land Court is timely filed (and the Kosrae State Court has subject matter jurisdiction to hear the appeal) when the notice of appeal is filed with the Kosrae State Court within sixty days of the written decision service upon the appellants even though there was a two-day delay in filing the notice of appeal with the Land Court. Esau v. Penrose, 21 FSM R. 75, 79 (App. 2016).

An October 22, 2015 notice of appeal was not timely filed since notices of appeal must be filed within forty-two days of entry of the order appealed from, and since October 16, 2015, was the forty-second day after the Pohnpei Supreme Court appellate division denied the petition for rehearing before it. Edwin v. Kohler, 21 FSM R. 239, 240 (App. 2017).

A notice of appeal was untimely when the order appealed from was filed and entered on the docket on December 23, 2013 and the appellant filed his notice of appeal on February 10, 2014, because a notice of appeal in a civil case must be filed within 42 days after the date of the entry of the judgment or order appealed from and the 42nd day was February 3, 2014 and because the appellant did not file a motion for extension of time within which to file his notice of appeal and the time for filing for a 30-day extension expired on March 5, 2014. Jano v. Santos, 21 FSM R. 241, 245 (App. 2017).

The timely filing of a notice of appeal is jurisdictional and mandatory. Jano v. Santos, 21 FSM R. 241, 246 (App. 2017).

In an appeal from any court other than the FSM Supreme Court trial division, the appellant must also serve a copy of the notice of appeal upon the court appealed from. Serment v. Antonio, 21 FSM R. 251, 252 (App. 2017).

The untimely filing of a notice of appeal deprives the appellate court of jurisdiction. Serment v. Antonio, 21 FSM R. 251, 253 (App. 2017).

In an appeal from any court other than the FSM Supreme Court trial division, an appellant must file his notice of appeal: 1) with the clerk of the FSM Supreme Court trial division in the state in which the decision appealed from was made or, at the appellant's option, directly with the FSM Supreme Court appellate

division clerk and 2) in the court appealed from. Serment v. Antonio, 21 FSM R. 251, 253 (App. 2017).

Filing the notice of appeal in the court appealed from ensures the clerk of that court is put on notice of the duty to prepare, certify, and transmit the record to the FSM Supreme Court appellate division chief clerk, but when no service of the notice of appeal is made on the court appealed from, the clerk of the court appealed from has no way to know of this duty and the court appealed from has no notice its judgment or order has been appealed and therefore might unknowingly take further actions that are inconsistent with the matter's status as one subject to further appeal. Serment v. Antonio, 21 FSM R. 251, 253 (App. 2017).

Generally, a timely and properly filed notice of appeal transfers jurisdiction from the lower court to the appellate court, but, in the absence of a timely notice of appeal, the appellate court has no jurisdiction over an appeal and it is then properly dismissed. Serment v. Antonio, 21 FSM R. 251, 253 (App. 2017).

If the appellants failed to file a timely notice of appeal with the court appealed from pursuant to FSM Appellate Rules 3 and 4(a)(1), then the FSM Supreme Court appellate division lacks jurisdiction to hear the matter and must dismiss it. Serment v. Antonio, 21 FSM R. 251, 253 (App. 2017).

In an appeal from any court other than the FSM Supreme Court trial division, the appellant must also serve a copy of the notice of appeal on the court appealed from. Darra v. Pohnpei, 21 FSM R. 254, 256 (App. 2017).

An untimely filing of a notice of appeal deprives the appellate court of jurisdiction. Darra v. Pohnpei, 21 FSM R. 254, 256 (App. 2017).

In an appeal from any court other than the FSM Supreme Court trial division, the appellant must file his notice of appeal: 1) with the clerk of the FSM Supreme Court trial division in the state in which the decision appealed from was made or, at the appellant's option, directly with the clerk of the FSM Supreme Court appellate division and 2) in the court appealed from. Darra v. Pohnpei, 21 FSM R. 254, 256 (App. 2017).

Filing the notice of appeal in the court appealed from ensures the clerk of that court is put on notice of the duty to prepare, certify, and transmit the record to the chief clerk of the FSM Supreme Court appellate division and when no service of the notice of appeal is made on the court appealed from, the clerk of the court appealed from has no way to know of this duty. Furthermore, proper respect due the court appealed from, requires that that court be informed of the appeal so that it may, in its discretion, decide whether to stay its judgment and mandate, thus avoiding the unseemly possibility of two courts unknowingly taking inconsistent actions in the same matter. Darra v. Pohnpei, 21 FSM R. 254, 256 (App. 2017).

The timely filing a notice of appeal is jurisdictional. Darra v. Pohnpei, 21 FSM R. 254, 256 (App. 2017).

Generally, a timely and properly filed notice of appeal transfers jurisdiction from the lower court to the appellate court, but, in the absence of a timely notice of appeal, an appellate court lacks jurisdiction over the appeal and it is then properly dismissed. Darra v. Pohnpei, 21 FSM R. 254, 257 (App. 2017).

If the appellant fails to timely file a notice of appeal with the court appealed from, then the appellate court will lack jurisdiction to hear the matter, in which case it must be dismissed. Darra v. Pohnpei, 21 FSM R. 254, 257 (App. 2017).

An untimely filing of a notice of appeal deprives the appellate division of jurisdiction. Gallen v. Santiago, 21 FSM R. 258, 260 (App. 2017).

In an appeal from any court other than the FSM Supreme Court trial division, the appellant is required to file his notice of appeal 1) with the clerk of the FSM Supreme Court trial division in the state in which the decision appealed from was made or, at the appellant's option, directly with the clerk of the FSM Supreme

Court appellate division and 2) in the court appealed from. Gallen v. Santiago, 21 FSM R. 258, 260 (App. 2017).

Filing the notice of appeal in the court appealed from ensures the clerk of that court is put on notice of the duty to prepare, certify, and transmit the record to the chief clerk of the FSM Supreme Court appellate division, and when no service of the notice of appeal is made on the court appealed from, the clerk of the court appealed from has no way to know of this duty. Gallen v. Santiago, 21 FSM R. 258, 260 (App. 2017).

The timely filing of a notice of appeal is jurisdictional. Gallen v. Santiago, 21 FSM R. 258, 261 (App. 2017).

Generally, a timely and properly filed notice of appeal transfers jurisdiction from the lower court to the appellate court. Gallen v. Santiago, 21 FSM R. 258, 261 (App. 2017).

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal and it is then properly dismissed. Gallen v. Santiago, 21 FSM R. 258, 261 (App. 2017).

An appeal to the FSM Supreme Court from another court is permissible, despite the notice of appeal not being directed to all of the appropriate courts as the rules require, when the appeal: 1) was otherwise valid and timely filed in the FSM Supreme Court appellate division; 2) steps were taken to correct the error; 3) the steps to correct the error were undertaken within the period of extension as allowed by the rules; 4) there was no prejudice to the opposing party; and 5) at the time, the appellant was acting as a self-represented litigant. Gallen v. Santiago, 21 FSM R. 258, 261-62 (App. 2017).

An appellant should take steps to cure the defect of not having filed a timely notice in the court appealed from by seeking an extension of the time to appeal in the court appealed from. This is only proper because it is more important that the court appealed from be informed that its decision has been appealed than that the appellate division knows an appeal is on the way. Gallen v. Santiago, 21 FSM R. 258, 262 (App. 2017).

A notice of appeal divests trial court of jurisdiction, except to take action in aid of the appeal. Examples of orders in aid of an appeal include, but are not limited to, applications for release from jail pending appeal, applications for stays pending appeal, taxation of costs on a judgment after notice of appeal filed, considering and denying a Rule 60(b) relief from judgment motions (but not granting one unless the case is remanded), and, since the mere filing of a notice of appeal does not affect a judgment's validity, the trial court also retains jurisdiction to enforce the judgment, unless a stay has been granted. Setik v. FSM Dev. Bank, 21 FSM R. 505, 518 (App. 2018).

The filing of a notice of appeal does not operate as a stay. Setik v. FSM Dev. Bank, 21 FSM R. 505, 518 (App. 2018).

When a notice of appeal is filed before the disposition of any Rule 59 motion, it has no effect, and a new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the Rule 59 motion. Setik v. FSM Dev. Bank, 21 FSM R. 505, 520 (App. 2018).

Appellate Rule 4(a)(4) makes a notice of appeal filed while a Rule 59 motion is pending a nullity and requires the filing of a new notice of appeal once the Rule 59 is decided, but it does not require a new notice of appeal if a pending Rule 60(b) motion is decided. Setik v. FSM Dev. Bank, 21 FSM R. 505, 520 (App. 2018).

The date of service of the judgment does not affect the time to appeal. The time to appeal starts to run on the date the judgment was entered. Ardos v. FSM Social Sec. Admin., 22 FSM R. 1, 3 (App. 2018).

In civil cases, an appeal can only be taken by the filing of a notice of appeal within forty-two days after

the date of the entry of the judgment or order appealed from. This time period is jurisdictional and mandatory and cannot be extended without a timely motion to extend filed in the court appealed from, within seventy-two days of the entry of judgment. Ardos v. FSM Social Sec. Admin., 22 FSM R. 1, 3 (App. 2018).

Lack of notice of the clerk's entry of judgment does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as Appellate Rule 4(a) allows. Ardos v. FSM Social Sec. Admin., 22 FSM R. 1, 3 (App. 2018).

When the date of the entry of judgment appealed from was June 14, 2017, and counsel neglected to file a notice of appeal within the forty-two day period within which a party may file a notice of appeal, and no extension of time was sought or granted, the appellate court lacks jurisdiction to consider the appeal's merits. Ardos v. FSM Social Sec. Admin., 22 FSM R. 1, 3 (App. 2018).

Chuuk Appellate Procedure Rule 4(a)(1) provides that in a civil case, in which an appeal is permitted by law as of right, the notice of appeal must be filed with the clerk of the trial division within 30 days after the date of the entry of the judgment or order appealed from. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 43, 46 (Chk. S. Ct. App. 2018).

The timely filing of a notice of appeal is jurisdictional. The appellate court must dismiss an appeal that was untimely filed no matter how meritorious the appellant's claims are. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 43, 46 (Chk. S. Ct. App. 2018).

When an August 12, 2014 judgment disposed of all the questions within the post-judgment motion and left nothing as to a review or compliance with its order to be disposed of in the future, the order on that motion was a final order, and the appellant had 30 days to appeal the order but when it failed to appeal within that time limit, the appellate division lacks subject matter jurisdiction to review that motion. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 43, 48 (Chk. S. Ct. App. 2018).

When, on February 19, 2015, the appellant appealed from a February 11, 2015 post-judgment order, it fell within the allowable time-frame for appeal and the appellate division has subject matter jurisdiction to review only that February 11, 2015 trial division order. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 43, 48 (Chk. S. Ct. App. 2018).

– Notice of Appeal – Extension of Time

Upon showing of excusable neglect or good cause, Rule 4(a)(5) permits extension of time for filing notice of appeal, upon motion made within 30 days after expiration of the 42 days prescribed in Rule 4(a)(1). Jonas v. Mobil Oil Micronesia, Inc., 2 FSM R. 164, 166 (App. 1986).

Rule 26(b) provides for enlargement of time for doing most acts but explicitly excludes enlargement of time to file notice of appeal. A court can grant no relief under Rule 26 for late filing of a notice of appeal. Jonas v. Mobil Oil Micronesia, Inc., 2 FSM R. 164, 166 (App. 1986).

A court has no authority to grant enlargement of time to file notice of appeal pursuant to motion filed after the maximum period of 72 days. Jonas v. Mobil Oil Micronesia, Inc., 2 FSM R. 164, 166 (App. 1986).

For good cause shown, an appellate court may grant an enlargement of time for any act, except notice of appeal or times set by statute in administrative appeals, including a petition for rehearing. Nena v. Kosrae (III), 6 FSM R. 564, 567 (App. 1994).

Even if the post-judgment motion for attorney's fees had been made within ten days of the judgment, it would not have been efficacious to extend the time for filing the notice of appeal. An attorney's fees motion is not one of the motions enumerated in Rule 4(a)(4) which changes the benchmark time extending the time for filing the notice of appeal. O'Sonis v. Bank of Guam, 9 FSM R. 356, 359 (App. 2000).

A post-judgment motion for supplemental attorney's fees is not a motion to alter or amend judgment under FSM Civil Procedure Rule 59(e), and does not extend the time for the filing of the notice of appeal under Appellate Procedure Rule 4(a)(4). O'Sonis v. Bank of Guam, 9 FSM R. 356, 359 (App. 2000).

The Federated States of Micronesia Supreme Court appellate division may not enlarge the time for filing of a notice of appeal. Any power to enlarge the time for filing the notice of appeal lies with the trial division, not the appellate division. FSM Appellate Procedure Rule 4(a)(5) provides that the court appealed from, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time to file. O'Sonis v. Bank of Guam, 9 FSM R. 356, 360 & n.2 (App. 2000).

Upon a showing of excusable neglect or good cause, the court appealed from may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by Rule 4(a). Hartman v. Bank of Guam, 10 FSM R. 89, 94 (App. 2001).

In the absence of a notice of appeal filed within 42 days after entry of judgment, a putative appellant has a maximum of 72 days after entry of judgment in which to file, for good cause, a motion to extend the time for the filing of the notice of appeal. Hartman v. Bank of Guam, 10 FSM R. 89, 94 (App. 2001).

Upon a motion filed not later than 30 days after the expiration of the time prescribed by Appellate Rule 4(a) and with notice to the other parties, Rule 4(a)(5) allows the court appealed from to extend the time for filing a notice of appeal for excusable neglect or good cause. Bualuay v. Rano, 11 FSM R. 139, 145 (App. 2002).

Although Rule 4(a)(5) has no absolute deadline within which the court appealed from must rule on a motion to extend time to file a notice of appeal, it does expect a fairly prompt ruling and encourages one within the thirty-day period. Therefore when there has been no ruling on a motion to extend for almost three years, it is best to treat the lack of a ruling as a denial. Bualuay v. Rano, 11 FSM R. 139, 146 (App. 2002).

The FSM Supreme Court appellate division has no authority to waive or extend Rule 4(a)'s time requirements or to grant a motion to extend time to appeal. Bualuay v. Rano, 11 FSM R. 139, 146 (App. 2002).

A lower court's grant or denial of an extension of time to file a notice of appeal is an appealable order reviewed under the abuse of discretion standard. Bualuay v. Rano, 11 FSM R. 139, 146 (App. 2002).

The court appealed from may extend the time to seek appellate review of a final decision upon a showing of excusable neglect or good cause. Failure to learn of the entry of judgment is a major, but not the only, reason for finding excusable neglect. Bualuay v. Rano, 11 FSM R. 139, 146 (App. 2002).

Merely being a busy lawyer does not constitute excusable neglect justifying an enlargement of time to file a notice of appeal, but when other factors are also present, the neglect may be excusable. Bualuay v. Rano, 11 FSM R. 139, 147 (App. 2002).

The alternative ground for a motion to extend time to appeal, "good cause" is a broader and more liberal standard than "excusable neglect," and under a plain reading of the rule, the good cause standard applies both to motions to extend filed after the initial appeal period has passed as well as those filed before. Bualuay v. Rano, 11 FSM R. 139, 147 (App. 2002).

Under the unique combination of the state court's lack of a working copy machine, which delayed the entry of that court's opinion becoming known to the parties; the appellant's protracted unavailability for consultation with his counsel coupled with the short time left to appeal once he became available; the contemporaneous press of urgent cases; the appellant's counsel's diligent and good faith efforts; and the lack of prejudice to the opposing parties; both excusable neglect and good cause existed to extend time to

appeal, and that it would have been an abuse of discretion to deny the motion requesting it. Bualuay v. Rano, 11 FSM R. 139, 147 (App. 2002).

The grant of a motion to extend time to appeal retroactively validates a previously-filed notice of appeal. Similarly, an appellate reversal of a lower court's denial of a motion to extend, retroactively validates a notice of appeal filed within the thirty-day extension period. Bualuay v. Rano, 11 FSM R. 139, 148 (App. 2002).

A notice of appeal from the Chuuk State Supreme Court trial division must be filed with the clerk of the trial division, not with the clerk of the appellate division, no later than 30 days after the entry of the judgment appealed from, as extended by Rule 26(a). Konman v. Esa, 11 FSM R. 291, 295 & n.5 (Chk. S. Ct. Tr. 2002).

A notice of appeal in civil cases must be filed within 42 days of entry of the order or judgment appealed from, and any motion for an enlargement of time to file a notice of appeal must be filed no later than 30 days after the original 42-day period. Ramp v. Ramp, 12 FSM R. 228, 229 (Pon. 2003).

The good cause standard applies to a motion for the enlargement of time to file a notice of appeal when that notice is filed after the original 42 day period. The good cause standard is more lenient than the excusable neglect standard, to which the rule also makes reference. Ramp v. Ramp, 12 FSM R. 228, 229-30 (Pon. 2003).

When preparation of the notice of appeal would not have presented an insurmountable obstacle even given the distance involved and when there was no calendaring error and the notice for enlargement of time to file a notice of appeal was filed on the 72nd day after the entry of the order appealed from, which was the last day for doing so, while this presents a close question under a good cause standard, after careful consideration the court concludes that good cause for granting the enlargement of time to file the notice of appeal has not been stated. Ramp v. Ramp, 12 FSM R. 228, 230 (Pon. 2003).

A notice of appeal from a Land Court decision to the Kosrae State Court must be filed within sixty days of service of the Land Court decision upon the party appealing the decision. State law does not provide any mechanism or authority for extension of the time for filing the notice of appeal beyond the sixty-day period. Melander v. Heirs of Tilfas, 13 FSM R. 25, 27 (Kos. S. Ct. Tr. 2004).

When a notice of appeal was not filed within the statutory time period for appeal, the court has no jurisdiction over the appeal and also has no authority to allow filing of the notice of appeal beyond the statutory time period. When a notice of appeal is filed one day after the statutory sixty day period for appeal from Land Court expired, the statutory deadline for filing a notice of appeal cannot be extended, the court does not have jurisdiction over the appeal, and the appeal will be dismissed with prejudice. Melander v. Heirs of Tilfas, 13 FSM R. 25, 27-28 (Kos. S. Ct. Tr. 2004).

No other extension of time to file a notice of appeal is permitted other than that in Appellate Rule 4(a)(5), and the appellate division has no power to enlarge the time within which to file a notice of appeal. This is because the Rule 4(a)(1) time limit is jurisdictional and if that time is not extended by the grant of a timely Rule 4(a)(5) motion to extend that time period, the appellate division lacks jurisdiction to hear the case. Goya v. Ramp, 13 FSM R. 100, 104-05 (App. 2005).

One factor to consider in ruling on a motion to extend time to file a notice of appeal is the length of the delay. When the length of delay was as long as it could possibly be – to the last day of the 30-day extended period and was under the defendant's counsel's reasonable control because it was caused by counsel's unwillingness (and maybe misperceived inability) to try to file anything while she was on vacation in the U.S. and when, given the number of possible steps counsel could have taken and the minimal amount of effort any of them would have required, counsel did not take any, it seems that the delay was purposeful. Goya v. Ramp, 13 FSM R. 100, 108-09 (App. 2005).

What may, in a close case, constitute good cause or excusable neglect for failure to file a notice of appeal until only one or two days after the 42-day period to appeal has expired, may no longer be good cause or excusable neglect 30 days later. Goya v. Ramp, 13 FSM R. 100, 109 (App. 2005).

When the potential impact on judicial proceedings of granting a motion to extend time to file a notice of appeal that was filed 30 days after the end of the 42-day appeal period, would be to change the 42-day time period to appeal to a 72-day time period where any reason given for not filing a notice of appeal before the 72nd day would suffice, the court will decline to grant the motion. Goya v. Ramp, 13 FSM R. 100, 109 (App. 2005).

When the factors of length of delay and its potential impact on judicial proceedings, reason for the delay and whether it was within the reasonable control of the movant, and possibly whether the movant acted in good faith, all weigh against a conclusion that excusable neglect was present and only the danger of prejudice factor does not clearly weigh against a movant who filed a motion to extend time to file a notice of appeal thirty days after the end of the 42-day appeal period, the trial court did not abuse its discretion when it concluded that the movant had not shown excusable neglect, and, given the number of available options, both before and after the end of the 42-day period, the trial court did not abuse its discretion when it concluded that the movant had not shown good cause. Goya v. Ramp, 13 FSM R. 100, 109 (App. 2005).

When there were many possible methods by which the situation may have been avoided, the trial court's denial of a motion to extend time to appeal was neither clearly unreasonable, arbitrary, nor fanciful nor was it based on an erroneous conclusion of law and the trial court therefore did not abuse its discretion when it found neither excusable neglect nor good cause to extend time to file a notice of appeal. Goya v. Ramp, 13 FSM R. 100, 109 (App. 2005).

A litigant in the Chuuk State Supreme Court trial division has thirty days after a judgment is entered in which to file a notice of appeal. Failing that, they have another thirty days in which to seek an enlargement of time in which to file a notice of appeal if they can show good cause or excusable neglect for the failure to file earlier. Esa v. Elimo, 14 FSM R. 216, 219 (Chk. 2006).

Appellants have thirty days from the date of the order appealed from to file their notice of appeal. Chuuk Appellate Procedure Rule 4(a)(5) permits the trial division to extend the time to file a notice of appeal by another 30 days, or to ten days after the entry of the order granting the extension, if the motion to extend is filed before the second thirty days has expired. The appellate court cannot enlarge the time to file a notice of appeal. Mori v. Dobich, 15 FSM R. 12, 13 (Chk. S. Ct. App. 2007).

The FSM appellate rules allow an appellant to request an extension for filing a notice of appeal up to 30 days in addition to the 42-day period following judgment, creating a 72-day maximum period for perfecting an appeal. Akinaga v. Heirs of Mike, 15 FSM R. 391, 395 (App. 2007).

The deadline for filing an appeal from the Chuuk State Supreme Court appellate division to the FSM Supreme Court appellate division is 42 days from entry of judgment, which time may be extended an additional 30 days upon a showing of excusable neglect or good cause. Setik v. Ruben, 16 FSM R. 380, 381 (Chk. S. Ct. App. 2009).

Although typically, an appellate judgment is entered at the same time the court enters its opinion, when the date judgment was entered was after the opinion, and when the appellants filed their notice within 42 days from entry of judgment, the notice of appeal was timely, and there was no need to seek an enlargement. Setik v. Ruben, 16 FSM R. 380, 381 (Chk. S. Ct. App. 2009).

Although there are rare occasions when an equitable remedy may be proper in an election case, overlooking or extending a deadline to file an appeal is not one of them. Statutory deadlines to file appeals are jurisdictional, and if the deadline has not been strictly complied with the adjudicator is without jurisdiction

over the matter once the deadline has passed. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 422 (App. 2009).

An appeal in a civil case may be taken by the filing of a notice of appeal as provided in Rule 3 within 42 days after the date of the entry of the order appealed from, and the court appealed from may extend this 42-day period upon a motion, filed not later than 30 days after the expiration of the 42-day time period, showing excusable neglect or good cause. Jonah v. FSM Dev. Bank, 17 FSM R. 506, 507-08 (App. 2011).

Although Appellate Rule 4(a)(5) allows for the extension of 30 days to file the notice of appeal, based on excusable neglect, after the 42 days to appeal has expired, the FSM Supreme Court appellate division may not extend the time for filing of a notice of appeal because any power to enlarge the time for filing the notice of appeal lies with the trial division, not the appellate division. Ruben v. Chuuk, 18 FSM R. 604, 607 (App. 2013).

The court appealed from, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time to file a notice of appeal. Ruben v. Chuuk, 18 FSM R. 604, 607 (App. 2013).

Either good cause or excusable neglect would suffice as a ground to extend time to file a notice of appeal. Ruben v. Chuuk, 18 FSM R. 637, 639 & n.2 (Chk. 2013).

The trial court can extend the time to file a notice of appeal only upon motion filed not later than 30 days after the expiration of the time to appeal prescribed by Rule 4(a). Ruben v. Chuuk, 18 FSM R. 637, 639 (Chk. 2013).

Rule 4(a)(5)'s central purpose is to make clear that a motion for extension of time must be made not later than 30 days after the expiration of the initial appeal time prescribed by Rule 4(a). Ruben v. Chuuk, 18 FSM R. 637, 639 (Chk. 2013).

In order for a motion to extend the time to appeal to be timely when the time prescribed by Rule 4(a) to file a notice of appeal had expired on November 28, 2012, the appellant would have had to file the motion no later than December 28, 2012. Ruben v. Chuuk, 18 FSM R. 637, 639 (Chk. 2013).

The requirement that motions for extension be filed within thirty days of the original deadline is mandatory and jurisdictional, and the failure to make a timely motion to file a notice of appeal out of time prohibits either the trial court or the appellate court from reviving the right to appeal. Ruben v. Chuuk, 18 FSM R. 637, 639-40 (Chk. 2013).

Because it is simply too late, a court is powerless to grant or even consider a party's March 25, 2013 motion to extend the time to appeal, even nunc pro tunc and the appeal cannot be revived when the court would have had jurisdiction to grant the motion only if the party had filed his motion by December 28, 2012, since Rule 4(a)(5) plainly permits the court to grant an extension only if the motion is filed within 30 days after the expiration of the original appeal period. Ruben v. Chuuk, 18 FSM R. 637, 640 (Chk. 2013).

The FSM Supreme Court appellate division has no authority to waive or extend FSM Appellate Rule 4(a)'s time requirements or to grant a motion to extend time to appeal, and in the absence of a timely notice of appeal, the appellate court has no jurisdiction over an appeal and must then dismiss it. Ruben v. Chuuk, 19 FSM R. 78, 79 (App. 2013).

There are two requirements for a valid timely motion to extend the time to appeal. The motion must be filed in the court appealed from and it must be filed within 30 days of the expiration of the 42-day appeal period. Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 180 (App. 2013).

The FSM Supreme Court appellate division has no authority to waive or extend Rule 4(a)'s time

requirements or to grant a motion to extend time to file a notice of appeal. Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 180 (App. 2013).

Rule 4(a)(5)'s central purpose is to make clear that a motion for extension of time to file a notice of appeal must be made not later than 30 days after the expiration of the initial appeal time prescribed by Rule 4(a). Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 180 (App. 2013).

No matter how excusable their neglect or how good the appellants' cause, a motion to extend time to appeal will be denied when it was not filed in the court appealed from and it was not filed within 72 days of the decision appealed because the failure to file an extension motion in the court appealed from within the 30-day extension period is fatal to the appellants' attempt to appeal. The FSM Supreme Court appellate division lacks jurisdiction and has no power or authority to do anything in the appeal case other than to dismiss it. Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 181 (App. 2013).

While the FSM Supreme Court appellate division has no authority to waive or extend Rule 4's time requirements or to grant a motion to extend time to appeal, a lower court's grant or denial of an extension of time to file a notice of appeal is an appealable order reviewed under the abuse of discretion standard. Gleason v. Pohnpei, 19 FSM R. 283, 284 (App. 2014).

Although Rule 4(b) has no absolute deadline within which the court appealed from must rule on a motion to extend the time to appeal, it does expect a fairly prompt ruling and encourages one within the thirty-day period. The lack of a ruling on the motion to extend is considered a denial. Gleason v. Pohnpei, 19 FSM R. 283, 285 (App. 2014).

The court appealed from may extend the time to seek appellate review of a final decision upon a showing of excusable neglect or good cause. Failure to learn of the entry of judgment is a major, but not the only, reason for finding excusable neglect. Gleason v. Pohnpei, 19 FSM R. 283, 285 (App. 2014).

When the July 23, 2010 Pohnpei Supreme Court appellate decision was not served on the appellant's counsel until eleven days after the decision was entered; when the time to appeal in a criminal case is ten days; when the failure to learn of the entry of judgment is a major reason for finding excusable neglect; when the Pohnpei Supreme Court appellate division has not ruled on the appellant's motion to extend time to appeal; and since the lack of a ruling on the motion to extend is considered a denial, the Pohnpei Supreme Court's denial of the motion to extend is reversed and the time for the movant to file his notice of appeal is extended 30 days to September 1, 2010. Gleason v. Pohnpei, 19 FSM R. 283, 285 (App. 2014).

The grant of a motion to extend the time to appeal retroactively validates a previously-filed notice of appeal. Similarly, an appellate reversal of a lower court's denial of a motion to extend, retroactively validates a notice of appeal filed within the thirty-day extension period. Gleason v. Pohnpei, 19 FSM R. 283, 285 (App. 2014).

The time limit under the applicable rules is jurisdictional and the appellate court has no discretion to extend the time within which to file a notice of appeal. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 345 (App. 2016).

The time limit for filing a notice of appeal cannot be circumvented via an attempt to obtain an order nunc pro tunc, which runs counter to the underlying purpose of such a motion because the appellant does not seek the order to supply a record of an action previously done but omitted from the record through inadvertence or mistake, to have effect as of the former date, but instead asks the court to antedate an "Amended Notice of Appeal" that was never served, let alone filed and thus, was not listed in the underlying matter's certificate of record. That would be improper since the existence of the "Amended Notice" only came to light when it was included in the appendix of the appellant's opening brief. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 345-46 (App. 2016).

The court appealed from may grant an extension of time for the filing of a notice of appeal not

exceeding 30 days upon motion filed within 30 days of the expiration of the 42 days prescribed in Rule 4(a)(1) upon a showing of excusable neglect or good cause. Jano v. Santos, 21 FSM R. 241, 245 n.4 (App. 2017).

The trial division, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal, upon motion filed not later than 30 days after the expiration of the time set by Rule 4(a), but no such extension can exceed 30 days past that time or 10 days from the date of entry of the order granting the motion, whichever occurs later. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 43, 46 (Chk. S. Ct. App. 2018).

The submission of post-judgment motions is irrelevant for the purposes of extending the time of appeal. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 43, 47 (Chk. S. Ct. App. 2018).

– Parties

Where a party on appeal challenges the intervention in the appeal of another party, and the issue on the merits is decided in favor of the challenging party, no harm is visited on the challenging party by allowing the intervention, and the court is not required to rule on the propriety of that intervention. Innocenti v. Wainit, 2 FSM R. 173, 180 (App. 1986).

An appellant should include in the caption only those persons or entities party to the appeal. In re Sanction of Woodruff, 9 FSM R. 374, 375 (App. 2000).

An attorney may appeal a sanction, but only if proceeding under his or her own name and as real party in interest. In re Sanction of Woodruff, 9 FSM R. 374, 375 (App. 2000).

Appellate Rule 43 generally allows substitution of parties by their successors in interest, either as a result of a party's death, a public officer's replacement, or for other causes. Substitution for other causes is for such things as a party's incompetency, or the transfer of an interest, or the dissolution, acquisition, merger or similar change of a corporate party. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 625-26 (App. 2003).

The common-sense interpretation of the term "necessary" in Appellate Rule 43(b), which reads: "If substitution of a party in the Supreme Court appellate division is necessary for any reason other than death . . . ." is that it means that a party to the suit is unable to continue to litigate, not that an original party has voluntarily chosen to stop litigating, and the most natural reading of the Rule is that it only permits substitutions where a party is incapable of continuing the suit, such as where a party becomes incompetent or a transfer of interest in the company or property in the suit has occurred. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 626 (App. 2003).

When Pohnpei is not a successor in interest to the parties it seeks to substitute for on appeal or a transferee of any of their interests, but was at all times, a party adverse to their interests, and when the parties sought to be substituted for are not incapable of continuing suit, the motion to substitute parties must be denied. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 626 (App. 2003).

A party to a partial adjudication in a consolidated case is an appellee when an adverse party appeals that decision. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 628 (App. 2003).

When the provisions of the trial court's consolidation order and later order assigning one docket number indicated that the cases were consolidated for all purposes including trial, and when the trial court dismissed the claims between certain parties but did not make the required findings under Rule 54(b), that dismissal was not a final judgment and thus the plaintiff in one of the consolidated actions remained a party to the consolidated action for purposes of later appeal. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 629 (App. 2003).

In a consolidated case, when claims between a plaintiff and the defendants in one of the original cases were dismissed, but the decision on the claims between the plaintiff and the plaintiff in the case consolidated with it remained a part of the consolidated case, the first plaintiff remained a party to the case and would thus be a party to an appeal. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 629 (App. 2003).

Certification by the court to the attorney general that the constitutionality of a statute has been drawn into question and subsequent intervention may occur at any stage of a proceeding. Thus, the FSM could intervene as a matter of right in any appeal of the matter. Estate of Mori v. Chuuk, 12 FSM R. 3, 8-9 (Chk. 2003).

The Kosrae State Court ruling that co-tenants were not parties to the case before it because they had not been served the notice of appeal was not plain error. That court correctly ruled. It had no jurisdiction over the co-tenants because no timely notice of appeal was filed as to them. Anton v. Heirs of Shrew, 12 FSM R. 274, 278 (App. 2003).

It might have been to a litigant's advantage to file a notice of appeal along with her motion to extend time to appeal since the grant of a motion to extend time to appeal retroactively validates a previously-filed notice of appeal. Goya v. Ramp, 13 FSM R. 100, 104 n.1 (App. 2005).

When notice of appeal was filed by the then Chuuk Attorney General was ostensibly on behalf of all the defendants below, all of whom were jointly and severally liable for all or parts of the judgment, but the order in aid of judgment and writ of garnishment being appealed were directed solely against the state and state funds, the other defendants were not real appellants in interest since their only possible interest in the appeal was directly adverse to the state's. This is because if state funds satisfy the judgment then the other defendants' liability is extinguished without any payment by them. It was thus to their advantage that the writ of garnishment against the State was issued and honored. Consequently, the appeal was briefed and argued as if the state was the sole appellant. Chuuk v. Davis, 13 FSM R. 178, 181 n.1 (App. 2005).

When an heir appeared as an individual on his own behalf only, the remaining heirs did not appear in the case and therefore cannot be designated as appellees. Thus, the individual appears representing only his personal and individual claims to the land. Sigrah v. Heirs of Nena, 13 FSM R. 192, 196 (Kos. S. Ct. Tr. 2005).

Appellate Procedure Rule 43, governing the substitution of parties in appeals, relies on Civil Procedure Rule 25. Civil Rule 25 contemplates that a court of competent jurisdiction would confirm or appoint an administrator or personal representative of the deceased's estate. Since the appellate division does not sit as a probate court of the first instance, the appellate court will not designate a representative of the estate or of the heirs. If a representative is later duly appointed, that representative will be listed as a party. Enengeitaw Clan v. Shirai, 14 FSM R. 621, 625 (Chk. S. Ct. App. 2007).

A candidate's supporters are not properly part of an election contest. Only the election contestant(s), the National Election Director, and the "winning candidate" are proper parties to an election contest appeal. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

Under Appellate Rule 28(h), if a cross appeal is filed, the plaintiff in the court below will be deemed the appellant for the purpose of Rule 28 and 31, unless the parties otherwise agree or the court otherwise orders. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 7, 9 (App. 2007).

In an appeal involving a cross-appeal, when the defendants below, who had filed the initial appeal, have filed an unopposed motion to be deemed the appellants, the court may designate the defendants at trial as the appellants in the appeal case for the purpose of complying with Appellate Rules 28, 30 and 31. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 7, 10 (App. 2007).

A deceased party's personal representative may be substituted as a party, on motion filed by the representative or by any party with the appellate division clerk in accordance Civil Rule 25, or, if the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the appellate division may direct. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 366 (App. 2007).

An attorney is the real party in interest for sanctions imposed on him personally. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 122 (App. 2008).

If certain parties were named as defendants because they were the senior land commissioners in 1991 and 1999, the current senior land commissioner should have been substituted for them. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 551 n.2 (Chk. S. Ct. App. 2009).

While the Micronesian Legal Services Corporation Kosrae office was the party whose complaint led to the now reversed attorney sanction, the sanction was imposed by the Kosrae State Court, but, unlike sanction where the sanction is monetary and paid to an opposing party, there was no opposing party on the appeal because, although the Micronesian Legal Services Corporation Kosrae office did file a brief on the appeal, the court viewed the brief as more of an amicus curiae brief appearing because it was the complainant whose complaint led to the now reversed attorney disciplinary sanctions in the case below. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

When there is no appellee against whom the prevailing appellants may tax costs, the appellants' bill of costs must be denied in its entirety. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

When no formal judicial action was taken and no disciplinary action was ordered against the appellant or his counsel and when there was no formal finding of wrongdoing, the attorney lacks standing to bring an appeal under the attorney exception to the nonparty rule. Mori v. Hasiguchi, 19 FSM R. 414, 418 (App. 2014).

The basic rule that a nonparty cannot appeal the judgment in an action between others is well established. Mori v. Hasiguchi, 19 FSM R. 414, 417 (App. 2014).

An appellant should include in the caption only those persons or entities that are a party to the appeal. Abrams v. FSM Dev. Bank, 20 FSM R. 309, 310 (App. 2016).

In an appeal from an attorney sanction order only the sanctioned attorney and the a party to whom the sanction is payable are parties to the appeal. Abrams v. FSM Dev. Bank, 20 FSM R. 309, 310 (App. 2016).

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

It is not proper to make the lower court a defendant when seeking judicial review of its actions in a higher court. Judicial review of a lower court's acts or omissions is usually accomplished by an appeal to a higher court or, on rare occasion, by a petition for a prerogative writ, such as prohibition or mandamus. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 579 (App. 2018).

When the Land Court does not own, or claim to own, any interest in a land parcel, it is not a proper party to any dispute over title to that parcel. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 579 (App. 2018).

A lower court should not be made a defendant when seeking judicial review of its actions in a higher court. Judicial review of a lower court's acts or omissions is properly accomplished by an appeal to a higher court or, on rare occasion, by a petition for a prerogative writ, such as prohibition or mandamus. Alik v. Heirs of Alik, 21 FSM R. 606, 620 (App. 2018).

The Land Court is not a proper party – a real party in interest – to any dispute over title because no judgment against the Land Court could ever give the plaintiffs the relief they seek – ownership of a parcel, which can only be done by an action against the current registered owner or his heirs, if he is deceased. Alik v. Heirs of Alik, 21 FSM R. 606, 620 (App. 2018).

– Rehearing

Rehearing denied after review of appellant's petition. Loch v. FSM, 1 FSM R. 595, 595 (App. 1985).

Where the points of law and fact referred to in a petition for rehearing were not overlooked or misapprehended in the previous consideration of the appeal the petition will be denied. Carlos v. FSM, 4 FSM R. 32, 33 (App. 1989).

Where appellants request a rehearing on the grounds that it is no longer equitable that the judgment have prospective application, and neither the appellate order of dismissal nor the judgment in the state court had by their terms any prospective application the motion will be denied. Damarlane v. Pohnpei Transp. Auth. (I), 6 FSM R. 166, 167 (App. 1993).

After an appellate court has issued its opinion it may grant a petition for a rehearing if it has overlooked or misapprehended points of law or fact. Ordinarily, such petitions are summarily denied. Nena v. Kosrae (II), 6 FSM R. 437, 438 (App. 1994).

A motion for reconsideration of denial of rehearing will be considered as a second petition for rehearing, and as such it cannot be granted it unless the court has overlooked or misapprehended points of law or fact. Nena v. Kosrae (III), 6 FSM R. 564, 567 (App. 1994).

A court has the power to enlarge the time to petition for rehearing and to modify an erroneous decision although the time for rehearing has expired, and sometimes may consider petitions for rehearing filed even after rehearing has been denied. Nena v. Kosrae (III), 6 FSM R. 564, 567-68 (App. 1994).

Ordinarily, petitions for rehearing are summarily denied, but when clarification may be helpful reasons may be given. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 481, 482 (App. 1996).

Because dicta does not create a precedent and is not binding, no rehearing can be granted on dicta in an opinion. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 481, 484 (App. 1996).

When an appellate court has ruled on those issues necessary to decide the appeal before it and it has neither overlooked nor misapprehended any points of law or fact, it may summarily deny a petition for rehearing. Nahnken of Nett v. Pohnpei, 7 FSM R. 554, 554-55 (App. 1996).

Summary denial of a petition for rehearing is proper when the court has neither overlooked nor misapprehended any points of law or fact. Nahnken of Nett v. United States, 7 FSM R. 612, 613 (App. 1996).

A summary denial of a petition for rehearing is proper when the court has ruled on those issues necessary to decide this appeal and has neither overlooked nor misapprehended any points of law or fact. Berman v. Santos, 7 FSM R. 658, 659 (App. 1996).

There is no basis on which to grant a motion for rehearing when the court has not overlooked or misapprehended points of law or fact and has not relied on cases not on point and has not deprived appellants of their right to appeal specific costs. Damarlane v. United States, 8 FSM R. 14, 18 (App. 1997).

A summary denial of a petition for rehearing is proper when the court has neither overlooked nor misapprehended any points of law or fact. In re Sanction of Berman, 8 FSM R. 22, 23 (App. 1997).

There is no basis to grant a petition for rehearing when it does not make any argument or raise any issue not previously considered, and the petitioners had ample time to address those arguments during the pendency of the action. Damarlane v. United States, 8 FSM R. 70, 71 (App. 1997).

The court may summarily deny a petition for rehearing and order the mandate issue immediately when it has carefully considered all of the appellants' arguments and has neither overlooked nor misapprehended any points of law or fact. Iriarte v. Etscheit, 8 FSM R. 263, 264 (App. 1998).

A petition for rehearing may be granted if the court has overlooked or misapprehended points of law or fact that may affect the outcome. Ordinarily, petitions for rehearing are summarily denied, but when clarification may be helpful reasons may be given. Rosokow v. Bob, 11 FSM R. 454, 456 (Chk. S. Ct. App. 2003).

When counsel, who now claims he was surprised and unprepared by the scheduling of oral argument, did not ask for a couple of days' (or even a few hours') continuance when the case was called, although such a continuance would have been possible and when counsel argued ably, it is not a ground to grant a rehearing. Rosokow v. Bob, 11 FSM R. 454, 456 (Chk. S. Ct. App. 2003).

Where the Chuuk Constitution specifically authorizes the appointment of qualified attorneys in Chuuk as temporary appellate justices on a per case basis and the Constitution's framers therefore must have contemplated that counsel in one appeal may well be a temporary justice on a different appeal, the presence of qualified attorneys on an appellate panel is not a ground to grant a rehearing. Rosokow v. Bob, 11 FSM R. 454, 457 (Chk. S. Ct. App. 2003).

After carefully considering a petition for rehearing and the arguments therein, the court may deny the petition and order the mandate to issue. Panuelo v. Amayo, 12 FSM R. 475, 476 (App. 2004).

A court has the power to enlarge the time to petition for rehearing and to modify a decision although the time for rehearing has expired, and sometimes may consider later petitions for rehearing filed even after rehearing has been earlier denied. FSM v. Udot Municipality, 12 FSM R. 622, 624 (App. 2004).

A petition for rehearing can be granted only if the court had overlooked or misapprehended a point of law or fact. FSM v. Udot Municipality, 12 FSM R. 622, 624 (App. 2004).

Ordinarily, the court would require an answer to the petition for rehearing, but when the matter on which rehearing is sought was also previously raised in motions and no response or opposition to the motions was received, the court may chose not to request an answer to this petition. FSM v. Udot Municipality, 12 FSM R. 622, 624 (App. 2004).

A petition for rehearing will be granted when it has been shown that the court has overlooked or misapprehended a point of law or fact, and when the court concludes that it has overlooked something it will grant the petition for rehearing solely to address that issue. FSM v. Udot Municipality, 12 FSM R. 622, 624 (App. 2004).

Regardless of what a post-appellate-judgment motion is called, it can only be considered a petition for rehearing, the only method of post-judgment relief allowed. Jano v. FSM, 12 FSM R. 633, 634 (App.

2004).

A motion to reconsider judgment filed after the mandate has issued is considered a petition for rehearing, as well as a motion to enlarge time to file such a petition and a motion to recall the mandate. Such a petition may be denied in its entirety as untimely filed. Jano v. FSM, 12 FSM R. 633, 634 (App. 2004).

Ordinarily, petitions for rehearing are summarily denied, but when the court considers that clarification may be helpful, reasons may be given. Jano v. FSM, 12 FSM R. 633, 634 (App. 2004).

After an appellate court has issued its opinion, it may grant a motion for reconsideration if it has overlooked or misapprehended points of law or fact. Ordinarily such motions are summarily denied. A motion for reconsideration's summary denial is proper when the court has neither overlooked nor misapprehended any points of law or fact. Sigrah v. Heirs of Nena, 13 FSM R. 280, 281 (Kos. S. Ct. Tr. 2005).

When the points of law and fact referred to in a motion for reconsideration were not overlooked or misapprehended in the appeal's previous consideration, the motion for rehearing will be denied. Sigrah v. Heirs of Nena, 13 FSM R. 280, 281 (Kos. S. Ct. Tr. 2005).

After carefully considering a petition for rehearing and the arguments therein, the court may deny the petition and order the mandate to issue. Ordinarily, petitions for rehearing are summarily denied, but when clarification may be helpful reasons may be given. Goya v. Ramp, 14 FSM R. 305, 307 (App. 2006).

Since a party has fourteen days to petition for a rehearing, when an appellate opinion and judgment was entered on January 13, 2005, a rehearing petition should therefore be filed no later than January 27, 2005 or an enlargement of time requested. When the petition was filed February 2, 2005 and no enlargement of time was sought, the petition was untimely filed and could be denied on that ground alone. Goya v. Ramp, 14 FSM R. 305, 307 (App. 2006).

Appellate courts do have the power to enlarge the time to petition for rehearing and to modify an erroneous decision even though the time for rehearing has expired. Goya v. Ramp, 14 FSM R. 305, 307 (App. 2006).

Rehearing will be denied when even if the court misapprehended a certain fact, the result in the case would not change. Goya v. Ramp, 14 FSM R. 305, 307 (App. 2006).

When the appellant raises no argument that the court has not already considered and rejected, the court will conclude that it has not overlooked or misapprehended a point of law and rehearing will be denied. Goya v. Ramp, 14 FSM R. 305, 308 (App. 2006).

When the appellants timely filed a petition for rehearing asserting that the panel overlooked or misapprehended points of law or fact, but by the next appellate session, one appellate panel member had become employed by the corporation representing the appellants and another had become the Chuuk Attorney General and was representing the state in a related appeal, in which some of the same issues were raised and whose office also represented the appellee in this appeal and then the original presiding justice passed away, it necessitated the appointment of a completely new appellate panel to consider the rehearing petition. Nakamura v. Moen Municipality, 15 FSM R. 213, 216 (Chk. S. Ct. App. 2007).

Once the appellate court has granted a petition for rehearing, it may make a final disposition of the cause without reargument, or it may restore it to the calendar for reargument or resubmission. Nakamura v. Moen Municipality, 15 FSM R. 213, 216 (Chk. S. Ct. App. 2007).

When a petition for a rehearing is based on the court's ruling in a trial *de novo*, the petition is

analogous to a motion for a new trial under the Chuuk Civil Rules of Procedure. The only legal grounds for a new trial are when there is a manifest error of law or fact, or for newly discovered evidence. A motion for a new trial will be denied when the movant has not identified any manifest error of law or fact or any newly discovered evidence. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 426, 428 (Chk. S. Ct. App. 2007).

A summary denial of a petition for rehearing is proper when the appellate court has carefully considered all of the appellant's arguments and has neither overlooked nor misapprehended any points of law or fact. Damarlane v. Pohnpei Legislature, 15 FSM R. 529, 529 (App. 2008).

When an appellate opinion and judgment were entered on April 14, 2008 and the appellant filed her petition for rehearing on May 5, 2008, the petition was filed seven days late because Appellate Procedure Rule 40(a) permits a petition for rehearing to be filed within 14 days after entry of judgment unless the time is shortened or enlarged by order and because no court order was issued changing the time within which to file a rehearing petition. Berman v. College of Micronesia-FSM, 15 FSM R. 612, 613 (App. 2008).

A motion to reconsider filed after the time to file a petition for rehearing has expired is considered a petition for rehearing, as well as a motion to enlarge time to file such a petition. Such a petition may be denied in its entirety as untimely filed. Berman v. College of Micronesia-FSM, 15 FSM R. 612, 613 (App. 2008).

When an appellate opinion and judgment were entered on April 14, 2008 and the appellant filed her petition for rehearing on May 5, 2008 without a motion to enlarge time to file the petition, the petition was filed seven days late because Appellate Procedure Rule 40(a) permits a petition for rehearing to be filed within 14 days after entry of judgment unless the time is shortened or enlarged by order and because no court order was issued changing the time within which to file a rehearing petition. Berman v. College of Micronesia-FSM, 15 FSM R. 622, 623-24 (App. 2008).

By its express terms, Appellate Rule 40(a) only allows the time for a petition for rehearing to be enlarged by court order and Rule 26(c) is not a court order. Berman v. College of Micronesia-FSM, 15 FSM R. 622, 624 (App. 2008).

The running of time within which a party may petition the court for a rehearing is not triggered by service of the opinion or judgment. It begins with the "entry of judgment." Thus, it, like the filing of a notice of appeal, a cross-appeal, or the appellant's opening brief, is not triggered by service, but by entry or filing. Appellate Rule 26(c) does not apply to petitions for rehearing and cannot extend the Rule 40(a) time limit for a petition for rehearing. Berman v. College of Micronesia-FSM, 15 FSM R. 622, 625 (App. 2008).

A motion to reconsider filed after a panel has disposed of the appeal is considered to be a petition for rehearing. Kosrae v. Langu, 16 FSM R. 172, 173 (App. 2008).

A petition for rehearing can be granted only if the court has overlooked or misapprehended a point of law or fact. Kosrae v. Langu, 16 FSM R. 172, 173 (App. 2008).

When the petitioner has raised no argument that the court has not already considered and rejected, the court will conclude that it has not overlooked or misapprehended a point of law and rehearing will be denied. Kosrae v. Langu, 16 FSM R. 172, 173 (App. 2008).

A petition for rehearing may be denied as untimely when untimely filed and not accompanied by a request for enlargement of time. Mori v. Haruo, 16 FSM R. 556, 557 (Chk. S. Ct. App. 2009).

When, after a careful consideration of a petition for rehearing, the appellate court has determined that it has neither overlooked nor misapprehended any points of law or fact, it may deny the petition. Berman v. Pohnpei Legislature, 17 FSM R. 452, 452 (App. 2011).

The appellate court will not, on a petition for rehearing, "correct" a factual finding when it made no findings of fact; when the fact objected to is a statement that was the facts as found by the trial court; and when that remained the facts on appeal as the events that occurred that led to the appellant's arrest even though the Pohnpei police station's booking sheet differs from those facts in some respects as to the charges for which she was booked. Berman v. Pohnpei, 17 FSM R. 464, 465 (App. 2011).

Rehearing will be denied when, even if the court had misapprehended a certain fact, the result in the case would not change. Berman v. Pohnpei, 17 FSM R. 464, 465 (App. 2011).

When the appellate court has neither overlooked nor misapprehended any material points of law or fact, it may summarily deny a petition for rehearing. Berman v. Pohnpei, 17 FSM R. 464, 465 (App. 2011).

When, by definition a default judgment is not a judgment obtained on the merits and makes no claim as to the merits of the case at all, the trial court could not have resolved the question of the civil rights nature of the underlying judgment that was a default judgment. Stephen v. Chuuk, 17 FSM R. 496, 499 (App. 2011).

When the appellate court has neither overlooked nor misapprehended any material points of law or fact, it will summarily deny petitions for rehearing. Stephen v. Chuuk, 17 FSM R. 496, 499 (App. 2011).

When the appellate court has neither overlooked nor misapprehended any material points of law or fact, it will deny a petition for rehearing. Congress v. Pacific Food & Servs., Inc., 18 FSM R. 76, 78 (App. 2011).

Ordinarily, petitions for rehearing are summarily denied, but, when clarification may be helpful, some reasons may be given. Iriarte v. Individual Assurance Co., 18 FSM R. 406, 408 (App. 2012).

When the petitioners' breach-of-contract liability is based solely on the breach of their contractual obligation to immediately remit to the appellee all money received or collected on its behalf and when it is undisputed that they did not immediately remit to the appellee all money received on its behalf, the petitioners would still be liable to the appellee on its breach-of-contract cause of action and the judgment would remain unaltered. Iriarte v. Individual Assurance Co., 18 FSM R. 406, 408 (App. 2012).

When even if a petitioner had not signed any of the converted checks, that would not alter the trial court's finding that she had authorized another to sign her name and thus the result would not change and the petitioners would still be liable to the appellee. Iriarte v. Individual Assurance Co., 18 FSM R. 406, 408 (App. 2012).

An appellate court must deny a petition for rehearing when, even if it had misapprehended or overlooked a certain point of fact or law, the result in the case would not change. Iriarte v. Individual Assurance Co., 18 FSM R. 406, 408 (App. 2012).

Kosrae Appellate Rule 19 provides that a petition for rehearing may be filed within 14 days after entry of the Kosrae State Court's judgment or decision on an appeal from the Kosrae Land Court. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 545 (App. 2013).

Once the Kosrae State Court has explicitly made its ruling on the appellants' petition for rehearing in that court, the appellants may, if they are still aggrieved, file a new notice of appeal within the 42-day appeal period after that denial and ask that their briefs and appendixes already filed in this appeal be used in the new appeal. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 546 (App. 2013).

Regardless of what the party filing a paper seeking post-appellate-judgment relief calls the filing, it can only be considered a petition for rehearing, the only method of post-judgment relief allowed. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 365 (App. 2014).

The appellate court can grant a petition for rehearing only if it has overlooked or misapprehended points of law or fact, and then only if the misapprehended or overlooked point might alter the outcome. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 365 (App. 2014).

Petitions for rehearing are usually summarily denied, but, when clarification may be helpful, some reasons may be given. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 365 (App. 2014).

Subject-matter jurisdiction can be raised at any time. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 366 (App. 2014).

When the Kosrae State Court's April 23, 2013 order made the denial of a rehearing petition before it final, it made the Kosrae State Court's July 7, 2011 decision final and appealable as of April 23, 2013. Therefore the FSM Supreme Court appellate division had subject-matter jurisdiction over the July 7, 2011 Kosrae State Court decision when a timely appeal was filed after the April 23, 2013 rehearing denial. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 366 (App. 2014).

Since the appellate court must deny a rehearing when, even if it had misapprehended or overlooked a certain point of fact or law, the result in the case would not change, the correction of a person's ancestry is not a ground to grant a petition for rehearing. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 366 (App. 2014).

While the court may grant a petition for rehearing if it has overlooked or misapprehended points of law or fact that may affect the outcome, petitions for rehearing are usually summarily denied but when clarification may be helpful, reasons may be given. Aritos v. Muller, 19 FSM R. 574, 575 (Chk. S. Ct. App. 2014).

A motion for reconsideration of a denial of a petition for rehearing must be considered a second petition for rehearing, and as such it cannot be granted it unless the court has overlooked or misapprehended points of law or fact. Aritos v. Muller, 19 FSM R. 612, 613 (Chk. S. Ct. App. 2014).

Even if the court has overlooked or misapprehended points of law or fact, a petition for rehearing will not be granted when it will not change the result. Aritos v. Muller, 19 FSM R. 612, 614 (Chk. S. Ct. App. 2014).

A petition for rehearing must be filed within fourteen days of entry of the judgment, but the court may, by order, enlarge (or shorten) that time. Lee v. Kosrae, 20 FSM R. 229, 230 (App. 2015).

A rehearing petition filed after the time to file a petition for rehearing has expired is considered a petition for rehearing, as well as a motion to enlarge time to file such a petition, and may be denied in its entirety as untimely filed. Lee v. Kosrae, 20 FSM R. 229, 230 (App. 2015).

An appellate court will grant a petition for rehearing only if it has overlooked or misapprehended points of law or fact, and then only if the misapprehended or overlooked point might alter the outcome. Lee v. Kosrae, 20 FSM R. 229, 231 (App. 2015).

Ordinarily, an appellate court will summarily deny a petition for rehearing, but, when clarification may be helpful, it may give some reasons. Lee v. Kosrae, 20 FSM R. 229, 231 (App. 2015).

A petition for rehearing which is filed after the mandate has been issued is not only considered a petition for rehearing, but also a motion to enlarge time, within which to file such petition and recall the mandate. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 468, 469 (App. 2016).

A summary denial of a petition for rehearing is proper when the court has ruled on those issues necessary to decide an appeal and has neither overlooked nor misapprehended any points of law or fact.

Notwithstanding, when the court considers that clarification may be helpful, reasons may be given. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 468, 469 (App. 2016).

The deadline to file a petition for rehearing is fourteen days afterward. Edwin v. Kohler, 21 FSM R. 239, 240 (App. 2017).

Any motion made for reconsideration after the disposal of an appeal is a petition for rehearing. An untimely motion to reconsider is considered a motion to enlarge time to file such a petition as well as a petition for rehearing. Such a petition may be denied in its entirety as untimely filed. Edwin v. Kohler, 21 FSM R. 239, 240 (App. 2017).

When the appellate court would still lack jurisdiction because the notice of appeal was untimely filed, it must deny a petition for rehearing even if it has overlooked or misapprehended other points of law or fact because a rehearing would not change the result – the court still lacks jurisdiction. Edwin v. Kohler, 21 FSM R. 239, 240 (App. 2017).

A petition for rehearing will be denied when the court has neither overlooked, nor misapprehended any points of law or fact because its opinion, which affirmed the Kosrae State Court's decision, was consistent in rejecting a claim to a parcel's uppermost portion that protruded onto the property owned by others and because implicit therein was a recognition that the claimant was entitled to the remainder of the parcel and thus, in accordance with the reconfigured boundaries, the respective landowners were, as the Land Court decided, to be issued certificates of title. Tilfas v. Heirs of Lonno, 21 FSM R. 281, 282-83 (App. 2017).

A summary denial of a petition for rehearing is proper when the appellate court has carefully considered all of the appellant's arguments and has neither overlooked nor misapprehended any points of law or fact, but when the court considers that clarification may be helpful, reasons may be given. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 310, 312 (App. 2017).

When nothing new is offered, much less reflective of how the appellate court either overlooked or misunderstood any points of fact or law, and when the appellants simply take issue with the court's determination to affirm the lower court's decision, they fail to consider the standard of review to be employed. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 310, 314 (App. 2017).

Merely rephrasing arguments that were previously addressed and found to be deficient, in support of the proposition that a rehearing is warranted, cannot prevail and will not convince the court that a rehearing is warranted. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 310, 315 (App. 2017).

A petition for rehearing may be denied as untimely when untimely filed and not accompanied by a request for enlargement of time. Setik v. FSM Dev. Bank, 21 FSM R. 604, 605 (App. 2018).

An appellate court may grant a petition for a rehearing if it overlooked or misapprehended points of law or fact. Setik v. Mendiola, 21 FSM R. 624, 625 (App. 2018).

Ordinarily, an appellate court summarily denies petitions for rehearing, but, when clarification may be helpful, some reasons may be given. Setik v. Mendiola, 21 FSM R. 624, 625 (App. 2018).

– Standard – Civil Cases

The general rule is that on appeal a party is bound by the theory advanced in the trial court, and cannot urge a ground for relief which was not presented there, particularly where the party had ample opportunity to raise the issues in the trial court instead of presenting them for the first time on appeal. Paul v. Celestine, 4 FSM R. 205, 210 (App. 1990).

Where no motion has been made to amend the complaint at the trial level and the issue was not tried

with the express or implied consent of the parties the general rule is that one cannot raise on appeal an issue not presented in the trial court. Nena v. Kosrae (I), 6 FSM R. 251, 253-54 (App. 1993).

A claim that a trial court's decision did not address all the issues raised is not a basis for remand as long as the trial judge made a finding of such essential facts as provide a basis for the decision. The test as to the adequacy of the findings is whether they are sufficiently comprehensive and pertinent to the issue to form a basis for the decision. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 349 (App. 1994).

Where a party at trial claims surprise, and the judge offers that party a chance to cure any prejudice this might have caused and they make the tactical choice to decline the opportunity, it is a tactical choice the party must live with and is not a basis for reversal. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 351-52 (App. 1994).

Where a trial court's decision does not state that it reached any conclusion about a certain disputed fact, the appellate court may presume that it was not a basis for the trial court's decision. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 352 (App. 1994).

A court commits reversible error by basing its decision on a theory of recovery that was not raised by the pleadings nor tried by consent or understanding of the parties. Apweteko v. Paneria, 6 FSM R. 554, 558 (Chk. S. Ct. App. 1994).

The standard of review for an appeal from the trial division's determination of an administrative agency appeal is whether the finding of the trial division was justified by substantial evidence of record. FSM v. Moroni, 6 FSM R. 575, 577 (App. 1994).

An issue not presented to and ruled upon by the trial court cannot properly come before the appellate division for review. FSM v. Moroni, 6 FSM R. 575, 579 (App. 1994).

A court must deny a motion for summary judgment unless the court, viewing the facts presented and the inferences made in the light most favorable to the non-moving party, finds there is no genuine issue as to any material fact. Thus if the appellants can show there was a genuine issue of material fact then the trial court's summary judgment must be reversed. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 48 (App. 1995).

When reviewing the grant of a motion to dismiss the appellate court must take as true the facts alleged and view them and their reasonable inferences in the light most favorable to the party opposing the dismissal. Nahnken of Nett v. United States, 7 FSM R. 581, 586 (App. 1996).

If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including his recollection. After settlement and approval by the trial justice, this statement of the evidence shall be included by the clerk of the court appealed from in the record on appeal. When appellants have failed to avail themselves of this procedure to secure a record of the evidence for review on appeal such failure on their part gives no grounds for complaint for the absence of a record of the evidence for review by the appellate court. Lewis v. Haruo, 8 FSM R. 300L, 300m (Chk. S. Ct. App. 1998).

When Land Commission has received considerable credible and compelling evidence, the trial division's decision refusing to disturb the Land Commission's findings that there was substantial evidence to support the Land Commission's conclusion will not be overturned. Nakamura v. Moen Municipality, 8 FSM R. 552, 554 (Chk. S. Ct. App. 1998).

An appellant may not complain of an error in his favor in the rendition of a judgment. Nakamura v. Moen Municipality, 8 FSM R. 552, 554 (Chk. S. Ct. App. 1998).

A probate appeal may be remanded when a number of essential issues and facts have yet to be established and the ends of justice require that additional matters must be considered, including whether the appellants are proper parties to the proceedings and who are the beneficiaries or the exact persons entitled to share in the assets of the estate and what the proposed division of the assets is. In re Malon, 8 FSM R. 591, 592 (Chk. S. Ct. App. 1998).

When appellants' claim to tidelands has no customary basis and they never had any rights to it, and the only issues raised on appeal, whether the tidelands in question could be transferred without the consent of all the lineage's adult members and whether the trial court's decision allowed American citizens to become owners of Chuukese tidelands, are not material and are hypothetical as to the appellants, the trial court will be affirmed. William v. Muritok, 9 FSM R. 34, 35 (Chk. S. Ct. App. 1999).

When a plaintiff has not been awarded damages, the question is not whether he made his case for damages with the requisite specificity, but whether he has shown entitlement to damages in the first instance. Wolphagen v. Ramp, 9 FSM R. 191, 193 (App. 1999).

In reviewing the Land Commission's decision, the Kosrae State Court should merely consider whether the Land Commission exceeded its constitutional or statutory authority, has conducted a fair proceeding, has properly resolved any legal issues and has reasonably assessed the evidence presented. Isaac v. Benjamin, 9 FSM R. 258, 259 (Kos. S. Ct. Tr. 1999).

The Kosrae State Court, in reviewing the Land Commission's procedure and decision, should consider whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Nena v. Heirs of Melander, 10 FSM R. 362, 364 (Kos. S. Ct. Tr. 2001).

When a judgment can be shaped to cure any prejudice to a party absent below, dismissal at the appellate stage is not required. An appellate court may also properly require suitable modification as a condition of affirmance. Phillip v. Moses, 10 FSM R. 540, 546 (Chk. S. Ct. App. 2002).

When a genuine issue of material fact exists about where the boundary between the two halves of a piece of land lies, summary judgment on this issue is not possible, and the trial court's summary judgment concerning the boundary will be vacated, and that issue remanded to the trial court. Bualuay v. Rano, 11 FSM R. 139, 151 (App. 2002).

The Chuuk election law requires a trial in the appellate division and not a normal appeal where generally only issues of law are decided and the facts as determined below are left undisturbed. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 477 (Chk. S. Ct. App. 2003).

The Legislature has granted the appellate division "all powers necessary to make the determination" of the contested election. The Legislature's intent when it said "all powers" was that the court could consider all relevant and admissible evidence properly offered. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 477 (Chk. S. Ct. App. 2003).

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

On an appeal from the Kosrae State Court, before considering the appeal's other merits, the appellate

court must consider whether the Kosrae State Court should have granted the appellant's motion for a trial *de novo* (instead of conducting a judicial review), since, if he prevails on this point, the appellate court would not consider his other assignments of error. He would be starting afresh with a trial *de novo* before the Kosrae State Court as if nothing had previously happened there. Anton v. Cornelius, 12 FSM R. 280, 286 (App. 2003).

An issue raised for the first time on appeal is waived. An exception to this rule is in the case of plain error – error that is obvious and substantial and that seriously affects the fairness, integrity, or public reputation of judicial proceedings. George v. Nena, 12 FSM R. 310, 319 (App. 2004).

The Kosrae State Court must review the Land Court decision on the record, transcripts, and exhibits received at the Land Court hearing. The court's review must determine whether the Land Court's decision was based upon substantial evidence or whether the decision was contrary to law, and if the court finds that the Land Court's decision was based upon substantial evidence and was not contrary to law, the Land Court's decision must be affirmed. Heirs of Palik v. Heirs of Henry, 12 FSM R. 625, 627 (Kos. S. Ct. Tr. 2004).

When a careful review of the record, analysis, and consideration of the parties' arguments shows that the Land Court decision was based upon substantial evidence and was not contrary to law, the Kosrae Land Court decision will be affirmed. Heirs of Palik v. Heirs of Henry, 12 FSM R. 625, 628 (Kos. S. Ct. Tr. 2004).

If, on appeal, the Kosrae State Court finds that a Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, the court must remand the case to the Land Court with instructions and guidance for re-hearing the matter. Heirs of Noda v. Heirs of Joseph, 13 FSM R. 21, 23 (Kos. S. Ct. Tr. 2004).

When the boundary claimed by appellants was supported by testimony of a neutral observer and the appellees' was based only on their testimony, the Land Court decision, which accepted the appellees' boundary claim was not based upon substantial evidence. Heirs of Noda v. Heirs of Joseph, 13 FSM R. 21, 23 (Kos. S. Ct. Tr. 2004).

When there was no evidence presented to the Land Court regarding the parties' acceptance of the river as the boundary between their parcels, but the Land Court relied upon an alleged settlement between the parties which was never presented or accepted as evidence at the hearing, the Land Court decision which determined the river as the boundary was not based upon substantial evidence. Heirs of Noda v. Heirs of Joseph, 13 FSM R. 21, 23 (Kos. S. Ct. Tr. 2004).

When the parties' settlement to divide the islands in the swampy area such that each party is owner of two islands was accepted into evidence at the Land Court hearing, but was not reflected in the Land Court decision, that decision regarding the swampy area, was not based upon substantial evidence. Heirs of Noda v. Heirs of Joseph, 13 FSM R. 21, 23-24 (Kos. S. Ct. Tr. 2004).

When the Land Court's boundary decision was not based upon substantial evidence, the matter must be remanded to the Land Court with instructions and guidance for re-hearing the matter. Heirs of Noda v. Heirs of Joseph, 13 FSM R. 21, 24 (Kos. S. Ct. Tr. 2004).

The principle of stare decisis is one of the guiding lights of our jurisprudence, and without a principled and compelling reason for overruling a long line of FSM cases, the court is disinclined to do so. Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 149 (App. 2005).

The general rule is that an issue not raised below will not be considered for the first time on appeal. Pohnpei v. AHPW, Inc., 13 FSM R. 159, 161 (App. 2005).

When an appellant failed to raise a state constitutional provision as an argument in its brief but mentioned it at oral argument, the court will not consider it. Chuuk v. Davis, 13 FSM R. 178, 184 n.4 (App. 2005).

When the appellant neither briefed nor argued that part of the trial court's order holding a statute unconstitutional as it applies to a judgment for violations of civil rights, the appellee correctly took the position that this issue was waived and did not address it, and, for these reasons, the court will not consider the issue. Chuuk v. Davis, 13 FSM R. 178, 185 (App. 2005).

The Kosrae State Court must review a Kosrae Land Court decision only on the record, transcripts, and exhibits received at the Land Court hearing. This review must determine whether the Land Court decision was based upon substantial evidence or whether the decision was contrary to law. If the court finds that the Land Court decision was based upon substantial evidence and was not contrary to law, the decision must be affirmed. Sigrah v. Heirs of Nena, 13 FSM R. 192, 195 (Kos. S. Ct. Tr. 2005).

The Kosrae State Court is required to apply the "substantial evidence rule" to Kosrae Land Court decisions. If the Kosrae State Court finds that the Land Court decision was not based upon substantial evidence or that it was contrary to law, the case must be remanded to the Land Court with instructions and guidance for re-hearing the matter. Heirs of Obed v. Heirs of Wakap, 13 FSM R. 337, 339 (Kos. S. Ct. Tr. 2005).

Since the Kosrae Land Court procedures recognize the difficulty of receiving testimony and other evidence from claimants, parties, or witnesses who are not represented by counsel and pro se claimants are not well versed in the law and procedural rules and have difficulty understanding the specific procedural requirements and time limitations for the submission of evidence, and when the parties would have had the opportunity to submit the newly discovered evidence within a motion to amend, set aside or vacate the decision, the Kosrae State Court must conclude that the appellants' rights were violated when the Land Court summarily rejected the purported hand written statement without offering the pro se appellants an opportunity to offer foundation and authentication of the hand written statement and the appellees the opportunity to cross examine the same. Accordingly, the Kosrae Land Court's ownership decision was made contrary to law, and the matter must be remanded to the Land Court with instructions and guidance for re-hearing the matter. Heirs of Obed v. Heirs of Wakap, 13 FSM R. 337, 339-40 (Kos. S. Ct. Tr. 2005).

The Kosrae State Court is required to apply the "substantial evidence rule" to Kosrae Land Court decisions. If the Kosrae State Court finds that the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, it must remand the case to the Land Court with instructions and guidance for re-hearing the matter. Heirs of Taulung v. Heirs of Wakuk, 13 FSM R. 341, 342 (Kos. S. Ct. Tr. 2005).

When based upon consideration of the record for both the Land Commission and the Land Court, and based upon the consideration of the position and knowledge inferred to the eldest son of a landowner who resided at and cultivates the land, the Land Court's ownership decision for the parcel was not based upon substantial evidence since it failed to consider the appellee eldest son's admission at the Land Commission proceedings, that the appellants' predecessor-in-interest owned some land at the place. Therefore, the matter must be remanded to the Kosrae Land Court with instructions and guidance for re-hearing the matter. Heirs of Taulung v. Heirs of Wakuk, 13 FSM R. 341, 342-43 (Kos. S. Ct. Tr. 2005).

If the Kosrae State Court finds that a Land Court decision was contrary to law, or not based upon substantial evidence, it must remand the matter to the Land Court for further proceedings. Edmond v. Alik, 13 FSM R. 413, 415 (Kos. S. Ct. Tr. 2005).

When the Kosrae Land Court failed to provide statutory notice of the proceeding to an interested party, the determination of ownership must be vacated. Heirs of Lonno v. Heirs of Lonno, 13 FSM R. 421, 423 (Kos. S. Ct. Tr. 2005).

The Kosrae State Court must review a Kosrae Land Court decision on the record, transcripts and exhibits received at the Land Court hearing and the court's review must determine whether the Land Court's decision was based upon substantial evidence and whether the decision was contrary to law. If the court finds that the Land Court decision was based upon substantial evidence and was not contrary to law, the Land Court decision must be affirmed. Wesley v. Carl, 13 FSM R. 429, 430 (Kos. S. Ct. Tr. 2005).

If the Kosrae State Court finds that a Land Court decision was contrary to law, or not based upon substantial evidence, it must remand the matter to the Land Court for further proceedings. Heirs of Nena v. Heirs of Nena, 13 FSM R. 480, 481 (Kos. S. Ct. Tr. 2005).

The general rule is that on appeal a party is bound by the theory advanced in the trial court, and cannot urge a ground for relief which was not presented there, particularly when the party had ample opportunity to raise the issues in the trial court instead of presenting the issue for the first time on appeal. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 507 (App. 2005).

When unclean hands was not pled as a defense to the plaintiff's claim, and it was not argued in the defendant's closing statement and the issue was not raised below, it was thus waived. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 518 (App. 2005).

The Kosrae State Court must review a Kosrae Land Court decision on the record, transcripts and exhibits received at the Land Court hearing. The court's review must determine whether the Land Court decision was based upon substantial evidence or whether the decision was contrary to law, and if the court finds that the Land Court decision was based upon substantial evidence and was not contrary to law, the Land Court decision must be affirmed. Kun v. Heirs of Abraham, 13 FSM R. 558, 559 (Kos. S. Ct. Tr. 2005).

Under the statutory provisions applicable to appeals made from a Kosrae Land Court decision, Kosrae State Court is required to apply the "substantial evidence rule" – if the Kosrae State Court finds that the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, then the court must remand the case to the Land Court with instructions and guidance for re-hearing the matter. Isaac v. Saimon, 14 FSM R. 33, 35 (Kos. S. Ct. Tr. 2006).

When the presiding Land Court justice was required to disqualify himself, his failure to recuse himself was a violation of due process making the Land Court's decision contrary to law because the Land Court proceeding's presiding justice failed to recuse himself, and the matter must be remanded to the Kosrae Land Court with instructions and guidance for re-hearing the matter. Isaac v. Saimon, 14 FSM R. 33, 36 (Kos. S. Ct. Tr. 2006).

On appeals from a decision entered by the Kosrae Land Court, the Kosrae State Court is required to apply the "substantial evidence rule," and if the court finds that the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, the court must remand the case to the Land Court with instructions and guidance for re-hearing the matter. Heirs of Weilbacher v. Heirs of Luke, 14 FSM R. 99, 100 (Kos. S. Ct. Tr. 2006).

An appellate court may affirm the trial court's decision on a different theory or on different grounds when the record contains adequate and independent support for that basis. FSM Dev. Bank v. Adams, 14 FSM R. 234, 249 (App. 2006).

The Kosrae State Court is required to apply the "substantial evidence rule" to all Land Court decisions so that if the court finds that the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, it must remand the case to the Land Court with instructions and guidance for re-hearing the matter. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 287, 288 (Kos. S. Ct. Tr. 2006).

When the Land Court findings and decision relied upon purported written wills which were not part of the record, the Land Court findings were not supported by substantial evidence and therefore the decision must be vacated and the matter remanded for re-hearing. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 287, 289 (Kos. S. Ct. Tr. 2006).

When some undisputed testimonies appearing in the transcript raise questions that the Land Court did not assess the evidence properly and when a careful review of the record and transcript finds that the appellants' argument have merit, the Land Court decision was not based upon substantial evidence. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 287, 289-90 (Kos. S. Ct. Tr. 2006).

Appellate courts do not make factual findings. Goya v. Ramp, 14 FSM R. 305, 307 n.1 (App. 2006).

When a trial court decision was based on an erroneous conclusion of law, the appellate court will reverse and remand the case to the trial court for further proceedings. Kileto v. Chuuk, 15 FSM R. 16, 17 (Chk. S. Ct. App. 2007).

A court need not, and indeed should not, engage in rendering advisory opinions. Allen v. Kosrae, 15 FSM R. 18, 23 (App. 2007).

When the appellate court is unable to make any meaningful review of the trial court judgment because of the virtually complete absence of any findings of fact or conclusions of law and when a trial court has failed to make the findings of fact required by Rule 52(a), or if the findings are insufficient for a clear understanding and effective appellate review of the basis of the trial court's decision, the appellate court will vacate the judgment and remand the case to the trial court to make the required findings. Mathias v. Engichy, 15 FSM R. 90, 96 (Chk. S. Ct. App. 2007).

When, because of the lack of findings of fact and conclusions of law by the trial court, the appellate court cannot determine whether the judgment was founded on an erroneous or a correct view of the law or whether the record could support a factual basis for the decision, the judgment must be vacated and the case remanded with orders that the trial court enter findings of fact and conclusions of law accordingly. Mathias v. Engichy, 15 FSM R. 90, 96 (Chk. S. Ct. App. 2007).

When, in a March 2004 Order, the court held that the 120-day time limit applied and that the appeal had been filed within 120 days of service of the Land Commission's decision and therefore the Kosrae State Court had jurisdiction to hear the appeal, and when the appellants presented no new facts or legal argument that would merit reconsidering or changing that decision, it is the law of the case; which the appellants could have appealed after the September 2005 decision, but chose not to do so. Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 144 (Kos. S. Ct. Tr. 2007).

The standard of review for appeals from the Land Court is set by statute. Land Court findings and decisions will be overturned if they are not supported by substantial evidence or if they are contrary to the law. In considering whether the decision is based upon substantial evidence, the court recognizes that it is primarily the Land Court's task to assess the credibility of the witnesses, the admissibility of evidence and to resolve factual disputes. If findings are adequately supported and the evidence has been reasonably assessed, the findings will not be disturbed on appeal. Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 144 (Kos. S. Ct. Tr. 2007).

When the evidence presented at the Land Court hearing on remand is undisputed because the appellants chose not to appear; when the Land Court carefully considered the appellants' testimony from the records in the case to reach its decision; and when the Land Court's findings are adequately supported by the evidence, the court will not disturb those findings on appeal. Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 145 (Kos. S. Ct. Tr. 2007).

Stare decisis is the doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same points of law arise again in litigation. Stare decisis requires that the same rule of law previously announced be applied to any succeeding cases with similar facts. Nakamura v. Chuuk, 15 FSM R. 146, 149-50 (Chk. S. Ct. App. 2007).

When the appellate court has remanded a case to the trial court for the lower court to make findings, the trial judge must make his findings of fact and separately state his conclusions of law, and, in doing so, the trial judge may consult the transcripts and, if necessary, he may also take further evidence. Nakamura v. Chuuk, 15 FSM R. 146, 150-51 (Chk. S. Ct. App. 2007).

Since an appellate court may receive proof or take notice of facts outside the record for determining whether a question presented to it is moot, the court therefore may take notice of the opinion in a related appeal case. Nikichiw v. Marsolo, 15 FSM R. 177, 178 (Chk. S. Ct. App. 2007).

When reviewing the Land Commission's actions after the plaintiff filed his request in 1987 and the issuance of title in 2002, the question is whether the Land Commission or Land Court deprived the plaintiff or any other party of property in an unfair fashion and whether the procedures used ensured a fair and rational decision-making process. This is consistent with the due process requirements of the Kosrae Constitution, Article II. Siba v. Noah, 15 FSM R. 189, 194 (Kos. S. Ct. Tr. 2007).

When the order on remand required the Land Court to specifically consider a portion of testimony and the Land Court took additional testimony on remand and specifically analyzed the prior testimony and when the order on remand did not require the Land Court to change its findings or decision, only to specifically address this point of testimony, the appellant's argument that the Land Court decision must be overturned on this point must fail because the Land Court addressed the specific issue as required on remand. Heirs of Taulung v. Heirs of Wakuk, 15 FSM R. 294, 298 (Kos. S. Ct. Tr. 2007).

An issue raised for the first time on appeal is waived. The reason for this rule is that the lower court was not given an opportunity to consider the issue. Heirs of Tulenkun v. Heirs of Seymour, 15 FSM R. 342, 346 (Kos. S. Ct. Tr. 2007).

When the record provided by the appellant on appeal does not provide the court with the basis for the trial court findings, the appellate court must therefore presume the findings are correct because by not providing an adequate record, the appellant cannot successfully challenge these findings. Akinaga v. Heirs of Mike, 15 FSM R. 391, 397 (App. 2007).

The appellate court may affirm lower court judgments on grounds other than those employed by the lower court. Akinaga v. Heirs of Mike, 15 FSM R. 391, 399 (App. 2007).

When the appellees' general right to enter the land to tend to existing burial sites is established by the undisputed facts but the same cannot be said of the ten-foot buffer zone that was ordered to be maintained around the exiting burial sites since the trial court did not elaborate as to the exact operation of this "perimeter"; when the undisputed facts which establish the right of way do not support such a precisely defined area being designated; when the case relied upon by the trial court is factually distinguishable and does not alone justify the trial court's mandate of such a large buffer zone; and when the invocation of custom remains as the only basis for the trial court's order but the trial court was not provided supporting evidence of a custom or tradition involving such a specifically demarcated perimeter around burial sites, this single issue will be remanded to the trial court with instructions to strike the portion of its order that provides a 10-foot perimeter around the existing burial sites. The trial court may then receive supporting evidence of custom or tradition about the size of perimeters around graves and thereafter may enter an amended order based upon its findings. Akinaga v. Heirs of Mike, 15 FSM R. 391, 399 (App. 2007).

The standard of review for appeals from the Kosrae Land Court is set by statute. Land Court findings and decisions will be overturned if they are not supported by substantial evidence or if they are contrary to the law. In considering whether the decision is based upon substantial evidence, the Kosrae State Court

recognizes that it is primarily the Land Court's task to assess the credibility of the witnesses, the admissibility of evidence and to resolve factual disputes. If findings are adequately supported and the evidence has been reasonably assessed, the findings will not be disturbed on appeal. Heirs of Wakap v. Heirs of Obet, 15 FSM R. 450, 453 (Kos. S. Ct. Tr. 2007).

When an issue is decided at trial and later reversed on appeal due to legal error, the findings of fact still bind the trial court on remand as law of the case. Heirs of Wakap v. Heirs of Obet, 15 FSM R. 450, 453-54 (Kos. S. Ct. Tr. 2007).

When the original decision had been reviewed by the Kosrae State Court on appeal and remanded for the purpose of considering new evidence and when the only new evidence was rejected, the findings of fact made in the original decision should bind the Land Court on remand. When, in its second decision, it reconsidered the evidence previously offered and made different, conflicting findings than in the original decision, applying the principle of law of the case, the findings in favor of the appellants' ownership of the subject parcel in the original decision are upheld. Heirs of Wakap v. Heirs of Obet, 15 FSM R. 450, 454 (Kos. S. Ct. Tr. 2007).

When the Land Court's first decision, assessed the evidence and made findings of fact supporting the appellants' ownership of the parcel and its second decision, issued two years later, rejected new evidence and assessed the identical evidence to make findings of fact supporting the appellees' ownership of the parcel, the matter presents the kind of confusion that results when a court reopens what it has already decided. Evidence often conflicts and may reasonably support inconsistent findings. But the Land Court cannot redetermine factual issues decided earlier in the case without new evidence to support a different decision. When the Kosrae State Court was presented with the question of whether the original decision was based on substantial evidence at the time of the first appeal and remanded the case back to Land Court for the purpose of looking at new evidence but did not remand based on a lack of substantial evidence to support the original decision, the doctrine of law of the case applies to uphold the original findings of fact as based on substantial evidence and the original determination of title in favor of the appellants. Heirs of Wakap v. Heirs of Obet, 15 FSM R. 450, 454 (Kos. S. Ct. Tr. 2007).

When none of the trial court's rulings on legal issues, such as the existence of contracts and no liability for interest or attorney's fees, were appealed, they remain the law of each case on remand. Albert v. George, 15 FSM R. 574, 581 n.2 (App. 2008).

The Kosrae State Court is required to apply the "substantial evidence rule" to all appeals from Land Court decisions. If the Kosrae State Court finds that a Land Court decision was not based upon substantial evidence, or that the Land Court decision was contrary to law, it must remand the case to the Land Court with instructions and guidance for re-hearing the matter. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 661 (Kos. S. Ct. Tr. 2008).

When the Land Court relied on equity jurisdiction instead of substantial evidence as required by statutory authority and precedent, its decision was contrary to law and the matter will therefore be remanded to it with instructions and guidance for re-hearing the matter. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 663 (Kos. S. Ct. Tr. 2008).

A trial court case that when affirmed on appeal held that the decision – that the State of Pohnpei and not its municipalities owned the marine areas in Pohnpei – concerned only Pohnpei and not the other three FSM states, is clearly not controlling precedent for the resolving issues unique to the State of Yap, including the interpretation of its Constitution and Code when, unlike Pohnpei, Yap not only repealed the relevant Trust Territory Code provision, but Yap's Constitution expressly recognizes the traditional rights and ownership over the natural resources and the marine space within the state of Yap. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 58 (App. 2008).

The FSM Supreme Court may affirm judgments of lower courts for reasons other than those employed

by the lower court. Narruhn v. Aisek, 16 FSM R. 236, 242 (App. 2009).

Since, by statute, the Kosrae State Court decides appeals from the Land Court on the parties' briefs, a request for a *de novo* proceeding will be denied and no evidence or testimony will be considered except the official record, transcripts, and exhibits received at the Land Court hearing. The court applies the "substantial evidence rule" when reviewing Land Court decisions. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 374 (Kos. S. Ct. Tr. 2009).

If the State Court finds that the Land Court decision was not based upon substantial evidence or that the decision was contrary to law, it must remand the case with instructions and guidance for the Land Court to rehear the matter in its entirety or in such portions as may be appropriate. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 374 (Kos. S. Ct. Tr. 2009).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion. It consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 374 (Kos. S. Ct. Tr. 2009).

In reviewing the Land Court's procedure and decision, the State Court considers whether the Land Court: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. The question is whether the Land Court deprived any party of property in an unfair fashion and whether the procedures used ensured a fair and rational decision-making process. The State Court cannot substitute its judgment for the lower court's well-founded findings. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 374 (Kos. S. Ct. Tr. 2009).

Since a determination of ownership for the unsurveyed portion of Yekula was not before the court when it rendered its 1997 decision on the other parcels involved in the dispute between the claimants, the State Court's 1997 instructions to Land Commission about Yekula can only be considered further guidance (beyond and in addition to that given in 1988) to the Land Commission on how it ought to proceed in resolving the remainder of the dispute. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 376-77 (Kos. S. Ct. Tr. 2009).

The appellate court need not address again a duplicative argument that it addressed earlier in its opinion. Simina v. Kimeuo, 16 FSM R. 616, 622-23 (App. 2009).

The FSM Supreme Court's jurisdiction and ability to consider facts and arguments are dictated by Constitution, statute and rule, and the court will not ignore its constitutional duty by permitting the appellants to raise at the appeal's late date a different theory of the case and factual assertions not raised at the trial level. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 658 (App. 2009).

Harmless error is not a ground for granting a new trial or for vacating, modifying, or otherwise disturbing a judgment or order. George v. Albert, 17 FSM R. 25, 32 (App. 2010).

When the trial court granted summary judgment on statute of limitations grounds, the appellate court will, when considering the question of issues of material fact, consider only to those facts needed to determine whether the statute of limitations has run, and not whether the Land Commission process was improper or whether the 1986 determination should be vacated or whether the Land Commission should have ruled in the appellant's, instead of the appellee's, favor. Allen v. Allen, 17 FSM R. 35, 39 (App. 2010).

The appellate court will not substitute its judgment for that of the trial court when the trial court made findings of such essential facts as provide a basis for the decision. Peter v. Jessy, 17 FSM R. 163, 172 (Chk. S. Ct. App. 2010).

Arguments in an appeal brief must be supported by citation to the record or other types of supporting

authority, and it is particularly important to identify where an argument was raised and preserved for appeal since, except in instances of plain error, an issue raised for the first time on appeal is waived. Palsis v. Kosrae, 17 FSM R. 236, 241 n.2 (App. 2010).

When only three of the seven issues raised by the appellant are ripe for appeal because the trial court made no determination on the other four issues and explicitly did not consider any argument on those issues and made no ruling on those issues below, the appellate court will not address those four. Narruhn v. Chuuk, 17 FSM R. 289, 293 (App. 2010).

An appellate court may first address the ground that the trial judge ought to have recused himself because if the appellant were to prevail on it, the case would be remanded for a new trial and no other issue would need to be addressed. Berman v. Pohnpei, 17 FSM R. 360, 367 (App. 2011).

Generally, an appellate court will not consider an issue raised for the first time on appeal because when a litigant raises an issue for the first time on appeal, he or she is deemed to have waived the right to challenge the issue unless it involves a plain error that is obvious and substantial and that seriously affects the fairness, integrity, or public reputation of judicial proceedings. Berman v. Pohnpei, 17 FSM R. 360, 367 (App. 2011).

The appellate court will not consider a recusal issue when, by her own account, the appellant knew of the factual basis for a recusal motion long before trial but she delayed raising the issue in the case until she filed her appellate brief. Berman v. Pohnpei, 17 FSM R. 360, 367-68 (App. 2011).

While the trial court incorrectly used the Pohnpei criminal statutes to decide tort elements, this was a harmless error since, if the trial court had correctly applied Pohnpei tort law, the plaintiff still would not have prevailed on her assault and battery claims. A harmless error is not a ground to grant a new trial or to vacate, modify, or otherwise disturb a judgment or order. Berman v. Pohnpei, 17 FSM R. 360, 372 (App. 2011).

When the plaintiff did not ask the trial court to allow it to use the parcel for an equivalent time period and when this issue was not raised at the trial level, it is not properly before the appellate court, but, given that the case will be remanded for further hearings on damages, this is an issue of damages, to be resolved on remand to the trial court. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 438 (App. 2011).

Even when an appellee has not moved to dismiss the appeal for lack of jurisdiction over a non-final judgment, the appellate court will consider the question because, generally, only final judgments or orders can be appealed. Stephen v. Chuuk, 17 FSM R. 453, 459 (App. 2011).

When the parties never briefed the issue of takings in the trial court, that issue is not properly before the appellate court. Stephen v. Chuuk, 17 FSM R. 453, 463 (App. 2011).

When the possible fourth type of civil rights violations – whether a court judgment (state or national) constitutes a property right under the FSM Constitution – was never addressed on the merits by the trial court and was not considered by the court on appeal; when the Barrett appellate decision does not stand for the proposition that a judgment is a property right which affords judgment-creditors due process rights under the national Constitution; and when the trial court appealed from did not state that the plaintiff had a property right in the state court judgment, the question is not properly before the appellate court. Stephen v. Chuuk, 17 FSM R. 453, 463 (App. 2011).

When the trial court observed that the question of ejectment was still open and when there is no evidence in the record that the parties have made further motions or filed further briefs on that question, that question is not properly before the appellate court. Stephen v. Chuuk, 17 FSM R. 453, 463 (App. 2011).

The question of the civil rights nature of the underlying cases was not properly before the appellate court when the trial court does not appear to have made a final determination on the question whether the violation should be considered as tort or civil rights in nature. Stephen v. Chuuk, 17 FSM R. 496, 499 (App. 2011).

Usually, when the record is not in a form that fairly and accurately provides the appellate court with an account of what happened in the lower court because it has not been translated into English, the appellate court will stop the analysis of the issue there and proceed to the next since the appellants have not met their responsibility to present the court with a record sufficient to permit it to decide the issues raised on appeal and which provides the court with a fair and accurate account of what transpired in the trial court proceedings. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 504 n.2 (App. 2011).

A factual finding and a legal conclusion should be vacated on due process grounds when they were arrived at without the benefit of due process of law. In re Sanction of George, 17 FSM R. 613, 616 (App. 2011).

By statute, the standard under which the Kosrae State Court must review Land Court decisions is by applying the "substantial evidence rule." And, if the State Court finds the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, it must remand the case to the Land Court with instructions and guidance for re-hearing the matter in its entirety or such portions of the case as may be appropriate. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 655 (App. 2011).

The Kosrae Legislature has mandated that the State Court must use the substantial-evidence rule when it reviews all Land Court decisions. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 657 (App. 2011).

When the State Court either applied the wrong (preponderance of the evidence) standard or incorrectly applied the substantial-evidence rule and when the State Court made a clear error of law in its adverse possession ruling and it is difficult to determine to what extent that error tainted the State Court's review of the Land Court decision, the State Court's decision must be vacated and the matter remanded for further proceedings in the State Court. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

By statute, no evidence or testimony can be considered at the appeal hearing except those matters which constituted the official record, transcripts, and exhibits received at the Land Court hearing. Thus, when a transcript of 2004 Land Court hearing testimony and 1991 testimony before the Land Registration team were part of the title registration process, they should have been part of the official Land Court record and thus reviewable by the State Court. And when a Trust Territory High Court case that was mentioned in the Land Court decision both that court and the State Court could properly take judicial notice of its files if the files had been given to the Land Court and to the other parties. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 659 (App. 2011).

The Land Court should not exclude any relevant evidence and the Kosrae Rules of Evidence do not apply in the Land Court, but the State Court cannot consider evidence that was not "received" in the Land Court. "Received" in the statute is read to include evidence offered or introduced but improperly excluded. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 659 (App. 2011).

The statute does not give the State Court the power to reverse the Land Court and order it to enter a decree the opposite of the Land Court's original decision, but it does allow the State Court to vacate the Land Court decision and to give the Land Court such instructions and guidance that may result in a reversal after the Land Court re-hearing. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 660 (App. 2011).

When the appellate court ruled that an appellee has the better argument, it did not create a burden of proof for either side, or shift any burden. Congress v. Pacific Food & Servs., Inc., 18 FSM R. 76, 77 (App.

2011).

An appellate court may affirm the trial court's decision on a different theory or on different grounds when the record contains adequate and independent support for that basis. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 121 (App. 2011).

Although, ordinarily, an issue must be raised at the trial level for it to be preserved for appeal, whether a court has subject-matter jurisdiction is an issue that may be raised at any time. Helgenberger v. FSM Dev. Bank, 18 FSM R. 498, 500 (App. 2013).

When the decision appealed from was the result of a trial de novo on the merits, the usual standards of review of a trial court judgment apply. Kosrae v. Edwin, 18 FSM R. 507, 511 (App. 2013).

Issues of whether an act was a material breach of a contract can be a mixed question of law and fact. An appellate court will review questions of law de novo and will review a trial court's factual determinations under a clearly erroneous standard. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 143 (App. 2013).

When an appellant listed an issue in his brief but did not include any argument about it in his brief and did not mention it during oral argument, the issue must be considered waived. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 146 (App. 2013).

The standard for appellate review of decisions involving comity can be either the abuse of discretion standard or de novo review depending on the nature of the comity involved. Dison v. Bank of Hawaii, 19 FSM R. 157, 160 (App. 2013).

The standard of review for appeals from the Land Court is set by statute. Land Court findings and decisions will be overturned if they are not supported by substantial evidence or if they are contrary to the law. In considering whether the decision is based upon substantial evidence, the court recognizes that it is primarily the Land Court's task to assess the credibility of the witnesses, the admissibility of evidence, and to resolve factual disputes. If the findings are adequately supported and the evidence has been reasonably assessed, the findings will not be disturbed on appeal. Ittu v. Ittu, 19 FSM R. 258, 261 (Kos. S. Ct. Tr. 2014).

When the appellant presented four issues in his brief, but addressed and labeled only two, the court will address only the two issues actually expanded on by the appellant. Ittu v. Ittu, 19 FSM R. 258, 261 (Kos. S. Ct. Tr. 2014).

Due process issues are generally questions of law that are reviewed de novo. In re Sanction of Sigrah, 19 FSM R. 305, 309 (App. 2014).

Conclusions of law are reviewed de novo, and, since a trial court's findings are presumptively correct, any challenged findings of fact are reviewed using the clearly erroneous standard. Nena v. Saimon, 19 FSM R. 317, 324 (App. 2014).

The appellate court reviews questions of law de novo, but will overturn a lower court's factual findings only if they are not supported by substantial evidence in the record, or if they were the result of an erroneous conception of the applicable law, or if, after considering the entire record, the court is left with a definite and firm conviction that a mistake has been made. Aritos v. Muller, 19 FSM R. 533, 536 (Chk. S. Ct. App. 2014).

Generally, the rule is that an issue not raised below will not be considered for the first time on appeal. Esiel v. FSM Dep't of Fin., 19 FSM R. 590, 594 (App. 2014).

In meeting the standard of review, the appellant must ensure an adequate record because, if the

record does not demonstrate error, the appellant cannot prevail. Iron v. Chuuk State Election Comm'n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

Appeals from Kosrae Land Court decisions are decided by applying the "substantial evidence rule" and if the Kosrae State Court finds that the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, it must remand the case to the Land Court with instructions and guidance for rehearing the matter in its entirety or such portions of the case as may be appropriate. Ittu v. Ittu, 20 FSM R. 178, 184 (App. 2015).

Caselaw mirrors the statutory directive that the Kosrae State Court, when reviewing Land Court decisions, must focus on whether the lower court decision was predicated on substantial evidence and not contrary to law. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 193 (App. 2015).

The standard of review for Kosrae Land Court decisions, by not only the Kosrae State Court but also the FSM Supreme Court, is whether the record contains evidence supporting the Land Court decision that was more than a mere scintilla or even more than some evidence, and if there was, the Land Court decision must be affirmed even if the evidence would not amount to a preponderance of the evidence but would be somewhat less and even if the State Court would have decided it differently. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 193 (App. 2015).

The standard of review to be utilized by the FSM Supreme Court, when scrutinizing a Kosrae State Court decision that reviewed a Land Court decision, is whether the Kosrae State Court abused its discretion by failing to properly apply its standard of review. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 194 (App. 2015).

An appellate court may affirm a trial court decision on a different theory or on different grounds when the record contains adequate and independent support for that basis. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418 n.2 (App. 2016).

An appellate court cannot ignore applicable, controlling law, even if the parties have. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418-19 (App. 2016).

When the trial court correctly decided that the statute of limitations was tolled by the debtor's partial payments, but did not separately determine whether those partial payments also tolled the statute of limitations with respect to the guarantor mortgagors, the appellate court will vacate the trial court judgment against the mortgagors and remand the matter for the trial court to conduct further proceedings to make that determination since that determination may need factual findings about whether the mortgagors were aware that the debtor was making partial payments and whether they acquiesced to the acknowledgment of the debt, and the trial court is the place to address those factual issues. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

An appellate court may affirm a trial court decision on a different theory or on different grounds when the record contains adequate and independent support for that basis. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 430 (App. 2016).

When neither the doctrine of *res judicata* nor equitable estoppel was addressed by trial court, an appellate court should be reluctant to substitute its judgment for that of the trial judge. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 511 (App. 2016).

An appellate court may affirm the trial court's decision on a different theory or on different grounds when the record contains adequate and independent support for that basis. Kama v. Chuuk, 20 FSM R. 522, 528 (Chk. S. Ct. App. 2016).

On appellate review, the Kosrae State Court must focus on whether the Land Court decision was

predicated on substantial evidence and not contrary to law. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 55 (App. 2016).

When reviewing a Land Court decision, the Kosrae State Court must determine if the record contained evidence supporting the Land Court decision that was more than a scintilla or even more than some evidence. If there was, the State Court must affirm the Land Court decision, even if the evidence would not in the State Court's view, amount to a preponderance of the evidence, but would be somewhat less and even if the State Court would have decided it differently. The statute mandates that the standard of review that the State Court must apply to a Land Court decision is whether there was substantial evidence in the record to support it, not whether the Land Court "reasonably assessed" the evidence. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 55 (App. 2016).

An appellate court may affirm the trial court's decision on a different theory or on different grounds when the record contains adequate and independent support for that basis. Tilfas v. Kosrae, 21 FSM R. 81, 92 (App. 2016).

An appellate court need not address an appellant's duplicative arguments. Tilfas v. Kosrae, 21 FSM R. 81, 94 (App. 2016).

The FSM Supreme Court need not dwell on apparent conflicts between two lines of cases in the U.S., but should search for reconciling principles which will serve as a guide to FSM courts. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 226 (App. 2017).

The law of the case doctrine posits ordinarily an issue of fact or law decided on appeal may not be reexamined either by the trial court on remand or by the appellate court on a subsequent appeal. The three exceptions are: 1) the evidence at a subsequent trial is substantially different; 2) there has been an intervening change of law by a controlling authority; and 3) the earlier decision is clearly erroneous and would work a manifest injustice, but only in extraordinary circumstances may a court sustain a departure from the law of the case doctrine on the ground that a prior decision was clearly erroneous. When none of these exceptions apply, the law of the case doctrine requires the later appellate court to rely on the prior appellate decision. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 310, 313 (App. 2017).

When an appellate court finds nothing that contradicts a Trust Territory High Court judgment previously rendered on the issue of ownership of the land in question and the state court decision is based solely on the prior Trust Territory judgment, the trial court will be affirmed. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 310, 315 (App. 2017).

Generally, the rule is that an issue not raised below will not be considered for the first time on appeal. Setik v. FSM Dev. Bank, 21 FSM R. 505, 517 (App. 2018).

An appellate court may affirm a trial court decision on a different theory or on different grounds when the record contains adequate and independent support for that basis. Setik v. Mendiola, 21 FSM R. 537, 554 n.3 (App. 2018).

When a judge has sat in violation of an express statutory standard for disqualification, the usual remedy is that the disqualified judge's rulings are, on appeal, to be vacated. Setik v. Mendiola, 21 FSM R. 537, 560 (App. 2018).

An appellate court may affirm a trial court decision on a different theory or on different grounds when the record contains adequate and independent support for that basis. Alik v. Heirs of Alik, 21 FSM R. 606, 620 n.7 (App. 2018).

An issue not presented to and ruled upon by the trial court cannot properly come before the appellate division for review because the general rule is that on appeal a party is bound by the theory advanced in the

trial court, and cannot urge a ground for relief which was not presented there. Edmond v. FSM Dev. Bank, 22 FSM R. 77, 80 (App. 2018).

The appellate court will disregard a contention that the appellants believe that the same FSM Supreme Court law clerk, who worked on their other trial court cases, worked on this case in the trial court when they do not explain how this would entitle them to any relief and when they do not point to any reason that disqualified this particular law clerk from assisting the FSM Supreme Court trial judge in this case. Setik v. Perman, 22 FSM R. 105, 118 (App. 2018).

When an appellant has failed to present arguments in support of two issues that he presented on appeal, it would be improper for the appellate court to address those unsubstantiated issues. The appellate court will conclude that the appellant has waived those two issues. George v. Palsis, 22 FSM R. 165, 172 (App. 2019).

Generally, a court should weigh four factors before granting a stay pending appeal: 1) whether the appellant has made a strong showing that it is likely to prevail on the appeal's merits; 2) whether the appellant has shown that it will be irreparably harmed without the stay; 3) whether the stay's issuance would substantially harm other parties interested in the proceedings; and 4) whether the public interest would be served by granting a stay, and ordinarily, the most important factor is the first, but a stay may be granted upon a lesser showing of a substantial case on the merits if the balance of the equities in factors 2, 3, and 4 weighs heavily in a stay's favor. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 203, 206 (Pon. 2019).

One who seeks an injunction pending appeal must show irreparable injury. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 203, 206 (Pon. 2019).

The law of the case doctrine posits ordinarily an issue of fact or law decided on appeal may not be reexamined either by the trial court on remand or by the appellate court on subsequent appeal. The law of the case proscription applies regardless of whether the issue was decided explicitly or by necessary implication. This reflects the sound policy that, once the court has finally decided an issue, a litigant cannot demand that it be decided again. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 203, 207 (Pon. 2019).

Three exceptions to the law of the case doctrine permit a court to depart from a prior appellate ruling in the same case: 1) if the evidence at a subsequent trial is substantially different; 2) if there has been an intervening change of law by a controlling authority; and 3) if the earlier decision is clearly erroneous and would work a manifest injustice. Only in extraordinary circumstances may a court sustain a departure from the law of the case doctrine on the ground that a prior decision was clearly erroneous. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 203, 207 (Pon. 2019).

An issue not presented to and ruled upon by the trial court cannot properly come before the appellate division for review. The general rule is that on appeal a party is bound by the theory advanced in the trial court and cannot urge a ground for relief which was not presented there. An issue raised for the first time on appeal is waived. FSM v. Kuo Rong 113, 22 FSM R. 515, 528 (App. 2020).

When a litigant raises an issue for the first time on appeal, he or she is deemed to have waived the right to challenge the issue unless it involves a plain error that is obvious and substantial and that seriously affects the fairness, integrity, or public reputation of judicial proceedings. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 623 (Chk. S. Ct. App. 2020).

– Standard – Civil Cases – Abuse of Discretion

An abuse of discretion by the trial court occurs when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. Jano v. King, 5 FSM R. 326, 330 (App. 1992).

In order to overturn the trial judge's denial of a motion to recuse, the appellant must show an abuse of discretion by the trial judge. The appellate court will not merely substitute its judgment for that of the trial judge. Jano v. King, 5 FSM R. 326, 330 (App. 1992).

The fashioning of remedies and sanctions for a party's failure to comply with discovery requirements is a matter within the trial court's discretion and should not be disturbed by an appellate court absent a showing that the trial court's action has unfairly resulted in substantial hardship and prejudice to a party. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 349 (App. 1994).

It is not an abuse of the trial court's discretion for a trial court to admit testimony that is inconsistent with that witness's answer to an interrogatory. Admissions made in interrogatories are not binding and the answering party may introduce other evidence on the subject of the admissions at trial. Contradictions between a party's answers to interrogatories and court testimony go to the weight and credibility of the testimony, not to its admissibility. Conflicting testimony may be admitted, and it is the responsibility of the finder of fact to weigh all the answers and resolve the conflict. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 350 (App. 1994).

Appeals of Rule 11 sanctions are reviewed under an abuse of discretion standard. Berman v. Kolonia Town, 6 FSM R. 433, 436 (App. 1994).

The standard of review of a trial court's ruling on a motion for relief from judgment is whether the trial court has abused its discretion. Senda v. Mid-Pacific Constr. Co., 6 FSM R. 440, 445 (App. 1994).

Whether the lower court erred by issuing a preliminary injunction that did not require the return of funds obtained in violation of a TRO involves a trial court's exercise of discretion and is reviewed using an abuse of discretion standard. Onopwi v. Aizawa, 6 FSM R. 537, 539 (Chk. S. Ct. App. 1994).

Whether the lower court erred by not holding the appellee in contempt of court involves a trial court's exercise of discretion and is reviewed using an abuse of discretion standard. Onopwi v. Aizawa, 6 FSM R. 537, 539 (Chk. S. Ct. App. 1994).

If no understanding by the parties appears in the record that evidence admitted at trial was aimed at an unpled issue, it is an abuse of discretion for a court to base its decision on issues not pled. An adverse party must have sufficient notice to properly prepare to oppose the claim. Apweteko v. Paneria, 6 FSM R. 554, 557 (Chk. S. Ct. App. 1994).

The decision to certify a question to a state court lies wholly within the sound discretion of the trial court. Thus the standard of review of the decision not to certify a question is whether the trial court abused its discretion. Nanpei v. Kihara, 7 FSM R. 319, 322 (App. 1995).

The choice to abstain from a decision, like the decision to certify a question, lies wholly within the sound discretion of the trial court. Thus the standard of review of the decision not to abstain is whether the trial court abused its discretion. Nanpei v. Kihara, 7 FSM R. 319, 322 (App. 1995).

An abuse of discretion standard is used to review whether the elements of laches have been established, but the question of law – whether it would be inequitable or unjust to the defendant to enforce the complainant's right is reviewed *de novo*. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 489 (App. 1996).

Rule 11 sanction orders are reviewed under an objective abuse of discretion standard. In re Sanction of Berman, 7 FSM R. 654, 656 (App. 1996).

A denial of a motion to recuse may be reviewed by means of a petition for a writ of prohibition or mandamus. The standard of review is whether the trial judge abused his discretion in denying the motion to recuse. The petitioner must show that the trial judge clearly and indisputably abused his discretion when

he denied the motion to disqualify. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 4 (App. 1997).

Rule 11 sanction orders are reviewed under an abuse of discretion standard, using an objective standard, rather than assessing an attorney's subjective intent. Damarlane v. United States, 8 FSM R. 45, 58 (App. 1997).

When there is no right of appeal from the Chief Clerk's deferral of an applicant's certification as an attorney entitled to practice law before the FSM Supreme Court, and no other remedy exists, and when the deferral was without giving the applicant a hearing, and the deferral was continued during an unexplained, lengthy delay in the subsequent disciplinary proceeding, constituting an abuse of the discretion allowed by the admission rules, a writ of mandamus will lie to compel the certification of the applicant. In re Certification of Belgrove, 8 FSM R. 74, 78 (App. 1997).

Rule 11 sanction orders are reviewed under an abuse of discretion standard. In re Sanction of Michelsen, 8 FSM R. 108, 110 (App. 1997).

The standard for review of the exercise of discretion by the trial justice is the abuse of discretion standard because the trial judge has the opportunity to observe the demeanor and candor of the witnesses and is in the best position to make the determination on issues of fact. In re Ori, 8 FSM R. 593, 594 (Chk. S. Ct. App. 1998).

The standard of review of whether the balancing factors for weighing enforceability of part of an illegal employment contract were weighed properly is whether the trial court abused its discretion. FSM v. Falcam, 9 FSM R. 1, 4 (App. 1999).

The trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful. Weno v. Stinnett, 9 FSM R. 200, 209 (App. 1999).

The standard of review for a decision not to abstain is that of abuse of discretion. Weno v. Stinnett, 9 FSM R. 200, 210 (App. 1999).

Whether a trial court erred in denying leave to amend a complaint, is usually reviewed on an abuse of discretion standard, but when the denial is based on a legal conclusion, the review is de novo. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 411 (App. 2000).

The standard of review of a court's imposition of sanctions under its inherent powers is for abuse of discretion. This accords with the abuse of discretion standards for review of Rule 11 attorney sanctions and for review of discovery sanctions. In re Sanction of Woodruff, 10 FSM R. 79, 86 (App. 2001).

Unless the court otherwise specifies, an involuntary dismissal pursuant to Rule 41(b) acts as an adjudication upon the merits, and is generally reviewed for abuse of discretion. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 137 (App. 2001).

An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 138 (App. 2001).

The abuse of discretion standard is usually applied in reviewing a Rule 41(b) dismissal when there is no substantial dispute over the facts underlying the trial court's determination that the plaintiff had failed to prosecute the action. In such instances the analysis turns instead on whether the circumstances surrounding the delay justify dismissal. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 138 (App. 2001).

When an appellant takes issue with both the trial court's findings of fact and its subsequent dismissal order, it requires a two tier analysis. The appellate court first reviews the trial court's findings of fact for clear error. Thereafter, it applies the facts found that are not clearly erroneous, together with those shown by the record as undisputed, and reviews the Rule 41(b) dismissal order under an abuse of discretion standard. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 138 (App. 2001).

Appellate review of a grant or denial of a motion for relief from judgment is limited to determining whether the trial court abused its discretion. Kama v. Chuuk, 10 FSM R. 593, 598 (Chk. S. Ct. App. 2002).

An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Kama v. Chuuk, 10 FSM R. 593, 598 (Chk. S. Ct. App. 2002).

A judge abuses his discretion when his action violates a litigant's right to due process because such action is clearly unreasonable. Kama v. Chuuk, 10 FSM R. 593, 598 (Chk. S. Ct. App. 2002).

A trial court abuses its discretion when it sua sponte sets aside a judgment because the court, and not a party or his legal representative made the motion; when the judgment holder was denied due process because he was not given notice and an opportunity to be heard before the decision against him was announced; and when the decision was based upon an erroneous conclusion of law that a trial court Rule 68(b) hearing was an absolute necessity before this judgment could be entered. Kama v. Chuuk, 10 FSM R. 593, 599 (Chk. S. Ct. App. 2002).

A lower court's grant or denial of an extension of time to file a notice of appeal is an appealable order reviewed under the abuse of discretion standard. Bualuay v. Rano, 11 FSM R. 139, 146 (App. 2002).

A court may abuse its discretion by an unexplained, lengthy delay or by failure to exercise its discretion within a reasonable time. Bualuay v. Rano, 11 FSM R. 139, 147 (App. 2002).

There is a two part standard of review for a laches defense since laches is a mixed question of law and fact. Whether the elements of laches have been established is a factual determination which depends upon the case's circumstances, and calls for an appellate court to apply an abuse of discretion standard of review. But whether, in view of the established facts, it would be equitable or unjust to the defendant to enforce the complainant's right is a question of law that is reviewed *de novo*. Kosrae v. Skilling, 11 FSM R. 311, 318 (App. 2003).

The issue of whether a trial court erred in issuing an injunction is reviewed using an abuse of discretion standard. FSM v. Udot Municipality, 12 FSM R. 29, 52 (App. 2003).

The FSM Supreme Court's standard of review of a Kosrae State Court's judicial review of a Land Commission decision is whether the Kosrae State Court abused its discretion – whether it failed to properly apply its standard of review to the case. Issues of law are reviewed *de novo*. Anton v. Cornelius, 12 FSM R. 280, 287 (App. 2003).

An appellate court reviews a trial court denial of a Rule 60(b) motion under an abuse of discretion standard. Panuelo v. Amayo, 12 FSM R. 365, 372 (App. 2004).

An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Such abuses must be unusual and exceptional; an appeals court will not merely substitute its judgment for that of the trial judge. Panuelo v. Amayo, 12 FSM R. 365, 372 (App. 2004).

A trial court commits an abuse of discretion when it commits legal error by denying a motion for relief from judgment when a defendant was surprised by the date and time of trial since he was never served with a notice of trial because the trial court erred when, through its clerks' office, it failed to serve notice of the trial date and time on the *pro se* litigant. This error seriously affected the judicial proceedings' fairness, integrity, and public reputation, regardless of opposing counsel's service of a trial subpoena on the litigant. Panuelo v. Amayo, 12 FSM R. 365, 372 (App. 2004).

An abuse of discretion by the trial court occurs when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. Goya v. Ramp, 13 FSM R. 100, 109 (App. 2005).

When there were many possible methods by which the situation may have been avoided, the trial court's denial of a motion to extend time to appeal was neither clearly unreasonable, arbitrary, nor fanciful nor was it based on an erroneous conclusion of law and the trial court therefore did not abuse its discretion when it found neither excusable neglect nor good cause to extend time to file a notice of appeal. Goya v. Ramp, 13 FSM R. 100, 109 (App. 2005).

A trial court's Appellate Rule 5(a) certification is subject to an abuse of discretion standard. Amayo v. MJ Co., 13 FSM R. 259, 263 (Pon. 2005).

A trial court's imposition of discovery sanctions is reviewed on an abuse of discretion standard. Since fashioning remedies and sanctions for a party's failure to comply with discovery requirements is a matter within the trial court's discretion, the appellate court will not disturb them absent a showing that the trial court's action unfairly resulted in substantial hardship and prejudice to a party. FSM Dev. Bank v. Adams, 14 FSM R. 234, 245-46 (App. 2006).

Rule 11 sanctions are reviewed under an abuse of discretion standard, using an objective standard rather than assessing an attorney's subjective intent. FSM Dev. Bank v. Adams, 14 FSM R. 234, 246 (App. 2006).

A trial court's abuse of discretion occurs when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. FSM Dev. Bank v. Adams, 14 FSM R. 234, 246 (App. 2006).

The question before an appellate court is not whether the appellate court would have imposed the sanction the trial court did, but whether the trial court abused it discretion in doing so. FSM Dev. Bank v. Adams, 14 FSM R. 234, 252 (App. 2006).

The question on appeal is not whether it was an abuse of the trial court's discretion to quash a deposition subpoena for a party, but whether the trial court abused its discretion in awarding expenses and attorney's fees as sanctions for quashing the subpoena. FSM Dev. Bank v. Adams, 14 FSM R. 234, 254 (App. 2006).

Whether a trial court erred in granting leave to amend a complaint is usually reviewed on an abuse of discretion standard, but when the decision is based on a legal conclusion, the review is de novo. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 394 (App. 2006).

When the trial court decided to grant leave to amend based on its determination that the interests of justice outweighed any prejudice that might accrue to the appellants if the amendment were allowed, this was not a legal conclusion by the trial court, but rather an exercise of its discretion and therefore the trial court's decision will be reviewed on an abuse of discretion standard. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 394 (App. 2006).

When no hearing was held before the court issued its December 14, 2001 order in aid of judgment and no finding was made on the debtor's ability to pay in December 2001, the December 14, 2001 order was issued in violation of the State's right to due process and the order constitutes an abuse of the trial court's discretion. Chuuk v. Andrew, 15 FSM R. 39, 42 (Chk. S. Ct. App. 2007).

A court abuses its discretion by an unexplained failure to exercise its discretion within a reasonable time. Thus, failures to rule on motions were an abuse of the trial justice's discretion and led to further reversible error in the trial justice's rulings. Ruben v. Hartman, 15 FSM R. 100, 109 (Chk. S. Ct. App. 2007).

When the trial judge made no rulings on motions to dismiss and for relief from judgment or order and so failed to exercise whatever discretion he may have had to rule on them, he abused his discretion since a court abuses its discretion by an unexplained failure to exercise its discretion within a reasonable time. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 224 (Chk. S. Ct. App. 2007).

An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Such abuses must be unusual and exceptional; an appeals court will not merely substitute its judgment for that of the trial judge. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 64 (App. 2008).

An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Such abuses must be unusual and exceptional; an appeals court will not merely substitute its judgment for that of the trial judge. Barrett v. Chuuk, 16 FSM R. 229, 232 (App. 2009).

Although an argument that it is not logical that one outsider of the clan would know about the history of a *nechop* land transfer when no testifying clan member had knowledge of the *nechop* and that for this reason the testimony is not credible, may affect credibility, the court cannot say that the trial court abused its discretion in accepting and relying upon the testimony when the witness could have attained this knowledge from his wife's uncle. Narruhn v. Aisek, 16 FSM R. 236, 241 (App. 2009).

For an appellate court to find that a trial court's factual findings were in error is an abuse of discretion standard of review. An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Such abuses must be unusual and exceptional; an appeals court will not merely substitute its judgment for that of the trial judge. In making this determination the appellate court must view the evidence in the light most favorable to the appellee. Simina v. Kimeuo, 16 FSM R. 616, 619-20 (App. 2009).

Relief from a judgment under Rule 60 is addressed to the court's discretion, which is not an arbitrary one to be capriciously exercised but a sound legal discretion guided by accepted legal principles. An appellate court therefore reviews a trial court's denial of a Rule 60(b) motion under an abuse of discretion standard. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 657 (App. 2009).

An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Such abuses must be unusual and exceptional; an appeals court will not merely substitute its judgment for that of the trial judge. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 657-58 (App. 2009).

When, in essence this is an appeal of an earlier final appellate court determination of the appellants' liability based on a defense they could have raised but waived in the trial court, it is yet another attempt to have a second bite of the appellate apple. When the appellants assert that the trial court erred in failing to vacate the judgment and raise claims either already argued and decided in their first appeal or not raised at the trial level, this is not an opportunity or an appropriate occasion for them to have a second bite of the appellate apple or to address issues that were not raised at the trial level. The trial court thus did not abuse its discretion by not vacating the judgment. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 661 (App. 2009).

When the trial court denies admission of documentary evidence on the basis that it was not properly authenticated, the appellate court's review is limited to determining whether the trial court abused its discretion in deciding whether the movant made a prima facie showing as to the document's authenticity. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

When the affidavit was not acknowledged in the manner provided for by law since the affiant was not present at the time that the affidavit was acknowledged, the trial court's determination that the presumption of self-authentication had been rebutted and that the affidavit was not otherwise authenticated was proper. There was therefore no abuse of discretion in the trial court's denial of the affidavit's admission into evidence for the reason that it was not authenticated. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

The choice to abstain from hearing a case, like the decision to certify a question, lies wholly within the trial court's sound discretion, and this is reviewed on an abuse of discretion standard. Narruhn v. Chuuk, 17 FSM R. 289, 293 (App. 2010).

A trial court's abuse of discretion occurs when its decision is clearly unreasonable, arbitrary, or fanciful; when it is based on an erroneous conclusion of law; or when the record contains no evidence upon which the court could rationally have based its decision. Such abuses must be unusual and exceptional; an appeals court will not substitute its judgment for that of the trial judge. Narruhn v. Chuuk, 17 FSM R. 289, 293 (App. 2010).

An appellant must show that there was an abuse of discretion for an appellate panel to reverse a trial court's order of abstention. Narruhn v. Chuuk, 17 FSM R. 289, 294 (App. 2010).

When a trial court's abstention order is well-reasoned and reaches no arbitrary or fanciful conclusions because the trial court provided a careful analysis of the questions before it and citation to the legal precedents on which it relied and no erroneous conclusions of law are apparent and the record contains sufficient evidence on which it could have rationally based its decision, there is no basis under the abuse of discretion standard by which to reverse the trial court. The trial court's decision to abstain was not an abuse of discretion. Narruhn v. Chuuk, 17 FSM R. 289, 296 (App. 2010).

The abuse of discretion standard sets a high bar for reversal. Narruhn v. Chuuk, 17 FSM R. 289, 297 (App. 2010).

The standard of review appropriate in allegations of abuse of discretion is that an abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence upon which the court could rationally have based its decision. This standard implies that the reviewing court must also review the decision below for erroneous conclusions of law and clearly erroneous findings of fact. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 434 (App. 2011).

The standard of review appropriate for denials of writs of garnishment is the abuse of discretion standard. An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly

erroneous; or 4) the record contains no evidence upon which the court could have rationally based its decision. Stephen v. Chuuk, 17 FSM R. 453, 458 (App. 2011).

When a trial court has the power to fashion an alternative remedy, but a party neither files a request for such alternative nor urges it at a hearing for the remedy the party actually requested and when the trial court has not foreclosed the possibility of the alternative remedy, the trial court has not abused its discretion by not fashioning its own relief. Stephen v. Chuuk, 17 FSM R. 453, 462 (App. 2011).

A lower court's denial of an extension of time is reviewed under the abuse of discretion standard. A court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision, and such abuses must be unusual and exceptional. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 626 (App. 2011).

In determining if a lower court abused its discretion, the appellate court cannot substitute its own judgment for that of the lower court. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 627-28 (App. 2011).

When the Kosrae State Court was arbitrary in denying the enlargement, and it based its ruling, in part, on an erroneous conclusion of law that the excusable neglect standard was the same as the good cause standard or that it could apply the excusable neglect standard to the appellants' enlargement motion because Kosrae Appellate Rule 9(b) mandates that the good cause standard be used, not the higher excusable neglect standard and when record so large that it cost over $1,500 and four appellate briefs and appendixes, in two separate cases, had to be prepared from it between December 21, 2009 and February 1, 2010, and during that time, counsel also conducted a trial plus the usual press of business, a twelve-day enlargement to complete two of the four appellate briefs would be reasonable, especially when the State Court did not cite any prejudice to the opposing party, the State Court should thus have granted their enlargement motion. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 628 (App. 2011).

The Kosrae State Court, under Kosrae Appellate Rule 9(b), does not have such unbridled discretion as to deny an enlargement motion when if good cause is shown because if it did, its actions would only be arbitrary or capricious and thus an abuse of discretion. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 628 (App. 2011).

The Kosrae State Court's discretion lies in determining whether the reasons given, taking all the surrounding circumstances into account, constitute good cause. Once it has determined that there is good cause for an enlargement, then the State Court should grant the motion unless some countervailing reason, such as demonstrable prejudice to the opposing party if the enlargement is granted, would militate against it. In such instances, the State Court may have some discretion to deny it. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 628 (App. 2011).

When the Kosrae State Court abused its discretion by not granting an enlargement of the date to file the appellants' opening briefs and that denial is reversed, then it follows that the dismissal must also be vacated. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 629 (App. 2011).

Appeals of Rule 11 sanctions are reviewed under an abuse of discretion standard, using an objective standard rather than assessing an attorney's subjective intent. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 372 (App. 2012).

Since the standard of review of a trial court's ruling on a motion for relief from judgment is whether the trial court has abused its discretion, the standard of review for a relief from an entry of default logically should also be abuse of discretion. Damarlane v. Damarlane, 19 FSM R. 97, 104 (App. 2013).

The appellate court reviews the issue of whether a trial court erred in issuing, modifying, or denying an

injunction by using the abuse of discretion standard. Damarlane v. Damarlane, 19 FSM R. 97, 105 (App. 2013).

A court may abuse its discretion by an unexplained, lengthy delay or by the failure to exercise its discretion within a reasonable time because the failure to exercise discretion is an abuse of the discretion. Damarlane v. Damarlane, 19 FSM R. 97, 105 (App. 2013).

Since the grant of a motion to consolidate rests with the trial court's broad judicial discretion, an appellate court will review the trial court's denial of consolidation on an abuse of discretion standard. Damarlane v. Damarlane, 19 FSM R. 97, 106 (App. 2013).

A trial court's abuse of discretion occurs when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence on which the court could rationally have based its decision. Dison v. Bank of Hawaii, 19 FSM R. 157, 160 (App. 2013).

A trial court did not abuse its discretion in applying only FSM, and not U.S., statutory law in determining whether property is exempt from legal process in the FSM. Dison v. Bank of Hawaii, 19 FSM R. 157, 162 (App. 2013).

If, whether attorney's fees should have been awarded presents a question of law, that question is reviewed de novo, but when it is within the trial court's discretion to award attorney's fees, the grant or denial of an attorney's fees request is reviewed under the abuse of discretion standard. George v. Sigrah, 19 FSM R. 210, 216 (App. 2013).

A trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. George v. Sigrah, 19 FSM R. 210, 216 (App. 2013).

Rule 11 sanction orders are reviewed using the abuse of discretion standard. A trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. In re Sanction of Sigrah, 19 FSM R. 305, 310 (App. 2014).

A trial court abuses its discretion by misunderstanding the balance-of-injuries factor and by considering only the speculative injury to the plaintiffs and completely failing to consider the actual injuries to the defendant. Nena v. Saimon, 19 FSM R. 317, 329 (App. 2014).

When the trial court never considered requiring a bond and especially since its preliminary injunction was not aimed at preserving the status quo, the failure to require a bond is a further ground to hold the preliminary injunction invalid and its issuance an abuse of the trial court's discretion. Nena v. Saimon, 19 FSM R. 317, 330 (App. 2014).

A trial court abuses its discretion by issuing a preliminary injunction without proper notice and an opportunity to be heard; by issuing a preliminary injunction when there was no irreparable injury to the movants and the balance of harms strongly favored the non-movant; and by issuing a preliminary injunction without requiring or considering a bond. That preliminary injunction will be reversed. Nena v. Saimon, 19 FSM R. 317, 330 (App. 2014).

When no motion to certify was ever made, the trial court could not abuse its discretion by not certifying a question to the state court. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

The decision to grant or deny a motion for relief from a final judgment is committed to the trial court's sound discretion. Accordingly, the lower court's decision about relief from judgment should be reviewed only upon a showing that the trial judge's ruling manifested an abuse of discretion. Such abuses must be

unusual and exceptional; an appellate court will not merely substitute its judgment for that of the trial court. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 506 (App. 2016).

An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 506 (App. 2016).

An appellate court will find an abuse of discretion only when there is a definite and firm conviction, upon weighing all the relevant factors, that the court below committed a clear error of judgment in the conclusion it reached. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 506 (App. 2016).

Whether to impose Rule 11 sanctions is subject to the trial court's discretion. As such, an abuse of discretion standard is utilized to review lower court decisions that address the propriety of these sanctions. Such abuses must be unusual and exceptional; an appellate court will not merely substitute its judgment for that of the trial court. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 26 (App. 2016).

An abuse of discretion occurs when: 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 26 (App. 2016).

In addition to appeals of Rule 11 sanction orders being reviewed under an abuse of discretion standard, an objective standard is employed, as opposed to assessing an attorney's subjective intent. Since the underlying reason for imposing Rule 11 sanctions is to deter baseless and frivolous filings, an appellate court will objectively scrutinize the lower court's analysis about the merits of imposing Rule 11 sanctions. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 26-27 (App. 2016).

The FSM Supreme Court's standard of review when scrutinizing a Kosrae State Court decision, which in turn, reviewed a Land Court decision, is whether the former abused its discretion. Such abuses must be unusual and exceptional; an appellate court will not merely substitute its judgment for that of the trial court. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 55 (App. 2016).

A Rule 41(b) dismissal is generally reviewed for abuse of discretion. A trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. Waguk v. Waguk, 21 FSM R. 60, 65-66 (App. 2016).

The complaining party has the burden of showing that the trial court abused its discretion. Such abuse will not be presumed. It will be presumed that the discretion was proper. Waguk v. Waguk, 21 FSM R. 60, 66 (App. 2016).

Although res judicata and collateral estoppel can be raised *sua sponte*, it is an abuse of discretion to apply those doctrines when the judgment on which it rests was neither valid, final, nor on the merits. Waguk v. Waguk, 21 FSM R. 60, 74 (App. 2016).

The decision to grant or deny a motion for relief from a final judgment is committed to the trial court's sound discretion. Accordingly, the lower court's decision should be scrutinized, with an eye toward determining whether the trial judge's ruling manifested an abuse of discretion. Such abuses must be unusual and exceptional; an appellate court will not merely substitute its judgment for that of the trial court. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 98 (App. 2016).

An abuse of discretion occurs when: 1) the court's decision is clearly unreasonable, arbitrary or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous or; 4) the record contains no evidence on which the court rationally could have based its

decision. As such, there is an abuse of discretion only when there is a definite and firm conviction, upon weighing all the relevant factors, that the court below committed a clear error of judgment in the conclusion it reached. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 98 (App. 2016).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion, and it consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 98 (App. 2016).

A lower court's decision to dismiss a case should be scrutinized, with an eye toward determining whether it is an abuse of discretion on the presiding judge's part. Such abuses must be unusual and exceptional; an appellate court will not merely substitute its judgment for that of the trial court. Lonno v. Heirs of Palik, 21 FSM R. 103, 106 (App. 2016).

An abuse of discretion occurs when: 1) the court's decision is clearly unreasonable, arbitrary or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence, on which the court rationally could have based its decision. Lonno v. Heirs of Palik, 21 FSM R. 103, 106 (App. 2016).

A court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence on which the court could rationally have based its decision. Silbanuz v. Leon, 21 FSM R. 336, 340 (App. 2017).

The Pohnpei appellate division's failure to rule on a motion to enlarge time by four days is a failure to exercise discretion (to grant or deny a motion), and is itself an abuse of discretion. Silbanuz v. Leon, 21 FSM R. 336, 341 (App. 2017).

When the Pohnpei Supreme Court appellate division granted the appellant's requests for 124 days of enlargement to file her brief and when, a month after the brief had actually been filed, that court effectively denied her timely request for the four days of enlargement by concluding that she "chose to remain silent in the end" and then dismissed her appeal, under these circumstances, this denial of the appellant's timely request to file her brief three or four days late was so arbitrary and capricious as to be an abuse of discretion that violated the appellant's right to due process under the FSM Constitution, and which would require reversal. Silbanuz v. Leon, 21 FSM R. 336, 341 (App. 2017).

An appellate court's review of a trial court's grant or denial of a Rule 60(b)(1) motion focuses on whether there was an abuse of discretion. An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision, and such an abuse must be unusual and exceptional. Gallen v. Moylan's Ins. Underwriters (FSM) Inc., 21 FSM R. 380, 383-84 (App. 2017).

An abuse of discretion occurs when: 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Such abuses must be unusual and exceptional; an appeals court will not merely substitute its judgment for that of the trial judge. Hadley v. FSM Social Sec. Admin., 21 FSM R. 420, 423 (App. 2018).

When an appellant filed an appendix, but failed to include the relevant filings concerning the issue of whether the trial court abused its discretion in denying the motion for enlargement of time, the record does not demonstrate error and the appellate court must presume the trial court acted within its discretion. Hadley v. FSM Social Sec. Admin., 21 FSM R. 420, 425 (App. 2018).

Since Rule 60(b) relief from judgment is addressed to the court's sound discretion, an appellate court reviews the trial court's denial of relief from judgment using the abuse of discretion standard. Setik v. FSM

Dev. Bank, 21 FSM R. 505, 514 (App. 2018).

The denial of a Rule 60(b) motion does not bring up the underlying judgment for review. The appellate court's review is limited to whether the trial court abused its discretion in denying the Rule 60(b) motion because Rule 60(b) is not a substitute for a direct appeal from an erroneous judgment. That a judgment is erroneous does not constitute a ground for relief under the Rule. Setik v. FSM Dev. Bank, 21 FSM R. 505, 514 (App. 2018).

The trial court's issuance of an order transferring title six days after the bank filed its motion and notice of payment was not reversible error when an earlier order in aid of judgment required that a court order transferring title to the parcel had to be issued no later than ten days after notice is given of delivery of a cashier's check in the full amount and when the appellants do not contend that there were any procedural defects in the sale on which they could base a challenge to its outcome. Setik v. FSM Dev. Bank, 21 FSM R. 505, 520 (App. 2018).

An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Such abuses must be unusual and exceptional; an appellate court will not merely substitute its judgment for that of the trial judge. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 530-31 (App. 2018).

A reviewing court, reviewing the record as a whole and considering evidence detracting from, as well as supporting, the respective decision, will find an abuse of discretion only if it has a definite and firm conviction, upon weighing all the relevant factors, that the court below committed a clear error of judgment in the conclusion it reached. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 531 (App. 2018).

An appellate court reviews, under an abuse of discretion standard, a trial court's grant or denial of relief in an independent action to set aside a judgment. Setik v. Mendiola, 21 FSM R. 537, 552 (App. 2018).

An appellate court uses a two-part standard to review a laches defense since it is a mixed question of law and fact. Whether the elements of laches have been established in any particular case is a factual determination which depends upon the circumstances, and calls for us to apply an abuse of discretion standard of review. But whether, in view of the established facts, it would be equitable or unjust to the defendant to enforce the complainant's right is a question of law that is reviewed de novo. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

Appellate review of the equitable defenses of estoppel and waiver is similar to appellate review of a laches equitable defense since they are mixed questions of law and fact. An appellate court reviews an equitable estoppel defense for clear error for any factual findings and uses an abuse of discretion standard to review its application. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

An appellate court reviews a trial court's denial of a motion for a continuance under an abuse of discretion standard. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

An appellate court reviews a trial court's denial of a motion for a continuance under an abuse of discretion standard. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence on which the court could have rationally based its decision. Edmond v. FSM Dev. Bank, 22 FSM R. 77, 80 (App. 2018).

Once the facts are found, that are not determined to be clearly erroneous, the question becomes whether those facts were sufficient evidence to meet the burden of proof, which is a question of law

measured by the abuse of discretion standard. George v. Palsis, 22 FSM R. 165, 171 (App. 2019).

An appellate court reviews a trial court's denial of a Rule 60(b) motion under an abuse of discretion standard. Heirs of Sigrah v. George, 22 FSM R. 211, 216 (App. 2019).

The standard of review for a denial of a motion to recuse is whether the trial judge abused his discretion in denying the motion to recuse. Heirs of Sigrah v. George, 22 FSM R. 211, 216 (App. 2019).

The standard test for a trial court's abuse of discretion is whether its decision is clearly unreasonable, arbitrary, or fanciful, or if the decision was based on an erroneous conclusion of law or if there is no evidence in the record upon which the court could have rationally based its decision, and an appellate court will find an abuse of discretion only when there is a definite and firm conviction, upon weighing all the relevant factors, that the lower court committed a clear error of judgment in its conclusion. Heirs of Sigrah v. George, 22 FSM R. 211, 216 (App. 2019).

Involuntary dismissals under Kosrae Civil Rule 41(b) are reviewed for abuse of discretion, with adjudication dependent on whether the circumstances surrounding the delay justify dismissal. An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous or 4) the record contains no evidence on which the court rationally could have based its decision. Such abuses must be unusual and exceptional; an appellate court will not merely substitute its judgment for that of the trial court. Jackson v. Siba, 22 FSM R. 224, 229-30 (App. 2019).

When an appellant takes issue with both the trial court's findings of fact and its subsequent dismissal order, it requires a two-tier analysis. The appellate court first reviews the trial court's findings of fact for clear error. Thereafter, it applies the facts found that are not clearly erroneous, together with those shown by the record as undisputed, and reviews the Rule 41(b) dismissal order under an abuse of discretion standard. Jackson v. Siba, 22 FSM R. 224, 230 (App. 2019).

When it was an error of law for the trial court to apply the fourteen-day rule; when it was a clearly erroneous finding of fact that the previous delays were all, or were mostly attributable to the plaintiffs, it was therefore an abuse of the trial court's discretion not to grant the enlargement under the "cause shown" standard. Jackson v. Siba, 22 FSM R. 224, 233 (App. 2019).

An abuse of discretion occurs when: 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or, 4) the record contains no evidence on which the court could rationally have based its decision. FSM v. Kuo Rong 113, 22 FSM R. 515, 519 (App. 2020).

An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision, and a judge abuses his discretion when his action violates a litigant's right to due process because such action is clearly unreasonable. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 618-19 (Chk. S. Ct. App. 2020).

– Standard – Civil Cases – Admission of Evidence

If a judge does not specifically rely on the objected to evidence, the appellate court must presume that he did not rely on that evidence and therefore that any error in admitting the evidence did not result in substantial hardship or prejudice to a party. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 349 (App. 1994).

It is not an abuse of the trial court's discretion for a trial court to admit testimony that is inconsistent with

that witness's answer to an interrogatory. Admissions made in interrogatories are not binding and the answering party may introduce other evidence on the subject of the admissions at trial. Contradictions between a party's answers to interrogatories and court testimony go to the weight and credibility of the testimony, not to its admissibility. Conflicting testimony may be admitted, and it is the responsibility of the finder of fact to weigh all the answers and resolve the conflict. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 350 (App. 1994).

Where there is no indication that the trial court relied on certain evidence, the presumption is there was no such reliance, and any error in its admission is not prejudicial. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 351 (App. 1994).

A trial court's errors in admitting or excluding evidence are not grounds for reversal when the appellants have not explained what the evidence would have shown had it been admitted and how this evidence would or could have changed the court's decision because error in admitting or excluding evidence is not ground for vacating judgment unless refusal to do so is inconsistent with substantial justice. Rosokow v. Bob, 11 FSM R. 210, 216 (Chk. S. Ct. App. 2002).

When the admissibility of certain evidence is questioned on appeal, the relevant inquiry is whether there is other credible evidence in the record to support the trial court's finding of fact, which an appellate court should not set aside where there is credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. George v. Nena, 12 FSM R. 310, 317 (App. 2004).

When the full and complete record of prior Land Commission proceedings was admitted into evidence at a Land Court hearing and that record contained documentary and testimonial evidence of an oral will, it was proper for the Land Court to consider and rely upon the Land Commission record, including the evidence pertaining to the oral will. Accordingly, the Land Court's consideration of the Land Commission record, including evidence of the oral will, was not contrary to law. Heirs of Palik v. Heirs of Henry, 12 FSM R. 625, 627-28 (Kos. S. Ct. Tr. 2004).

If an objection to the admission of evidence is not raised at the trial level, it is not preserved for appeal and the appellate court will not consider the issue. In rulings excluding evidence, however, the issue is preserved for appeal so long as the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked. The offering of the evidence must otherwise be on the record and it must reveal the grounds for admission. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

Grounds for admission of a document that were not raised in the trial court, may be considered waived. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

When the proponents failed to raise any other basis for admission of an affidavit other than as a self-authenticating document, the appellate court is left to review whether the trial court's exclusion was proper on the basis that the document was not authenticated. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

When the trial court denies admission of documentary evidence on the basis that it was not properly authenticated, the appellate court's review is limited to determining whether the trial court abused its discretion in deciding whether the movant made a prima facie showing as to the document's authenticity. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

When the proponents did not present any evidence or argument to support their contention that achemwir doesn't require lineage member consent or to otherwise impeach the testimony of their own expert to that effect and when they had ample opportunity, at the trial level, to raise any issues regarding achemwir's requirements and their own expert witness presented evidence that the trial court found

credible, and which clearly articulated its requirements including the lineage member consent requirement, they failed to meet their burden of proof to show otherwise at trial. The appellate court will not, therefore, entertain a new theory regarding achemwir's requirements. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

If an objection to the admission of evidence is not raised at the trial level, it is not preserved for appeal, and the appellate court will not consider the issue. But, in rulings excluding evidence, the issue is preserved so long as the substance of the evidence was made known to the court by an offer of proof or was apparent from the context within which questions were asked and the offering of the evidence must otherwise be on the record, and it must reveal the grounds for admission. Palsis v. Kosrae, 17 FSM R. 236, 244 (App. 2010).

When the trial court granted a motion in limine excluding a letter, the proponent did not need to take any further steps to preserve the issue for appeal since, as an interlocutory order excluding evidence, the denial order merged with the final judgment because the letter's substance had been made known to the trial court before its ruling. Palsis v. Kosrae, 17 FSM R. 236, 244 (App. 2010).

Reversible error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected and no error in the admission or the exclusion of evidence is ground for granting a new trial or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. Palsis v. Kosrae, 17 FSM R. 236, 244 (App. 2010).

A trial court decision issuing, modifying, or denying an injunction is reviewed using an abuse of discretion standard. A trial court's abuse of discretion occurs when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. Berman v. Pohnpei, 19 FSM R. 111, 114-15 (App. 2013).

The appellate court reviews whether a trial court erred in issuing, modifying, or denying an injunction under an abuse of discretion standard. Berman v. FSM Nat'l Police, 19 FSM R. 118, 124 (App. 2013).

When the plaintiffs did not produce any evidence that the FSM national police intended to or might choose to have another party there, the trial court did not abuse its discretion by refusing to issue an injunction barring the police from holding parties on the berm because the FSM police's actions were non-continuing – there was no future action to enjoin. Berman v. FSM Nat'l Police, 19 FSM R. 118, 124 (App. 2013).

When no injunction could compel the issuance of a earthmoving permit since there was no application for one; when no injunction was needed to bar the FSM police from holding a party on the berm since the police did not have any plans to do so again; and when no injunction could issue ordering non-parties to cease certain activities or to perform certain acts since they were not parties and not the agents of any party, the trial court did not abuse its discretion by denying injunctive relief. Berman v. FSM Nat'l Police, 19 FSM R. 118, 125 (App. 2013).

Since the granting of a motion to consolidate rests with the trial court's broad judicial discretion, an appellate court reviews the trial court's denial of consolidation on an abuse of discretion standard. Berman v. FSM Nat'l Police, 19 FSM R. 118, 126 (App. 2013).

Whether a trial court erred in issuing an injunction is reviewed using the abuse of discretion standard. A trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence on which the court could rationally have based its decision. Nena v. Saimon, 19 FSM R. 317, 324 (App. 2014).

– Standard – Civil Cases – De Novo

Issues of law are reviewed *de novo* on appeal. Nanpei v. Kihara, 7 FSM R. 319, 323-24 (App. 1995).

An appellate court applies the same standard in reviewing a trial court's grant of a summary judgment motion as that initially employed by the trial court under Rule 56(c) – summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Thus, review is *de novo.* The facts must be viewed in the light most favorable to the party against whom judgment was entered. Tafunsak v. Kosrae, 7 FSM R. 344, 347 (App. 1995).

The appellate court applies de novo the same standard in reviewing a trial court's grant of summary judgment as that used by a trial court under Rule 56. Nahnken of Nett v. United States, 7 FSM R. 581, 585-86 (App. 1996).

An abuse of discretion standard is used to review whether the elements of laches have been established, but the question of law – whether it would be inequitable or unjust to the defendant to enforce the complainant's right is reviewed *de novo*. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 489 (App. 1996).

Interpretations of contract terms are matters of law to be determined by the court, and are reviewed on appeal *de novo*. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 621 (App. 1996).

A court grants judgment on the pleadings if, based on contents of the pleadings alone, it is apparent that either an affirmative defense completely bars plaintiff's claim, or that the sole defense relied upon by defendant is insufficient as a matter of law. An appellate court reviews motions for judgments on the pleadings de novo, as it does all rulings of law. Damarlane v. United States, 8 FSM R. 45, 52 (App. 1997).

An appellate court applies the same standard in reviewing a trial court's grant of a summary judgment motion as that initially employed by the trial court under Rule 56(c). Thus, the review is *de novo*. Iriarte v. Etscheit, 8 FSM R. 231, 236 (App. 1998).

An appellate court applies the same standard in reviewing a trial court's grant of a summary judgment motion as that initially employed by the trial court under Rule 56(c). Thus, the review is *de novo*. Taulung v. Kosrae, 8 FSM R. 270, 272 (App. 1998).

Whether a trial court correctly used the balancing of factors in weighing enforceability of part of an illegal employment contract, or whether the hiring, being in violation of public policy is unenforceable, is a matter of law, which is reviewed de novo. FSM v. Falcam, 9 FSM R. 1, 4 (App. 1999).

Contractual interpretation is a question of law to be reviewed de novo on appeal. Wolphagen v. Ramp, 9 FSM R. 191, 194 (App. 1999).

Motions the trial court decided as a matter of law are issues of law and are reviewed de novo. Weno v. Stinnett, 9 FSM R. 200, 206 (App. 1999).

Issues of law, such as whether cooks were permanent state employees in the legal sense such that they were entitled to all the protections afforded to them under the statute and regulations, are reviewed de novo on appeal. Kosrae v. Langu, 9 FSM R. 243, 248 (App. 1999).

Whether a trial court erred in denying leave to amend a complaint, is usually reviewed on an abuse of discretion standard, but when the denial is based on a legal conclusion, the review is de novo. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 411 (App. 2000).

The question whether the facts as found (or whether the facts as found which are not clearly erroneous) are sufficient evidence to meet the plaintiff's burden of proof is a question of law distinct from

issues relating to the weight of the evidence, and as such a proper issue on appeal. Questions of law are reviewed de novo. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 462 (App. 2000).

The standard of review of a summary judgment on appeal is a de novo determination that there was no genuine issue of material fact and that the prevailing party was entitled to judgment as a matter of law. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 353, 355 (App. 2000).

Motions that the trial court decided as a matter of law are issues of law, which an appellate court reviews de novo. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 410-11 (App. 2000).

Whether a trial court erred in dismissing a complaint for failure to state a claim is an issue of law, which an appellate court reviews de novo. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 411 (App. 2000).

An appellate court applies the same standard in reviewing a trial court's grant of a summary judgment motion that the trial court initially employed under Rule 56(c). An appellate court, viewing the facts in the light most favorable to the party against whom judgment was entered, determines *de novo* whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Chuuk v. Secretary of Finance, 9 FSM R. 424, 430 (App. 2000).

When the question presented is one of law, it is reviewed on a de novo basis. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 579 (App. 2000).

Issues of law are reviewed de novo on appeal. Tulensru v. Wakuk, 10 FSM R. 128, 132 (App. 2001).

Issues of law are reviewed *de novo*. Phillip v. Moses, 10 FSM R. 540, 543 (Chk. S. Ct. App. 2002).

An appellate court uses the same standard in reviewing the grant or denial of a summary judgment that the trial court initially did. Therefore, if the appellate court concludes that a genuine issue of material fact was present, then it must rule that the summary judgment should have been denied; and if it concludes that a genuine issue is not present, then, viewing the facts in the light most favorable to the nonmovant, it rules *de novo* on whether the movant was entitled to judgment as a matter of law. This is true even when the appeal comes from another appellate court. Bualuay v. Rano, 11 FSM R. 139, 149 (App. 2002).

An appellate court may affirm the trial court's summary judgment on a different theory when the record contains adequate and independent support for that basis. Bualuay v. Rano, 11 FSM R. 139, 150 n.3 (App. 2002).

Questions of law are reviewed *de novo*. Rosokow v. Bob, 11 FSM R. 210, 214 (Chk. S. Ct. App. 2002).

The same standard that a trial court uses in its determination of a motion for summary judgment is applied *de novo* by the appellate court. Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Kosrae v. Skilling, 11 FSM R. 311, 315 (App. 2003).

The review of legal errors is *de novo*. The questions of when a statute of limitations begins to run, and whether a claim is barred by the statute of limitations, are questions of law and to be reviewed *de novo*. Kosrae v. Skilling, 11 FSM R. 311, 315 (App. 2003).

There is a two part standard of review for a laches defense since laches is a mixed question of law and fact. Whether the elements of laches have been established is a factual determination which depends upon the case's circumstances, and calls for an appellate court to apply an abuse of discretion standard of review. But whether, in view of the established facts, it would be equitable or unjust to the defendant to enforce the complainant's right is a question of law that is reviewed *de novo*. Kosrae v. Skilling, 11 FSM R.

311, 318 (App. 2003).

In reviewing the trial court's grant of summary judgment, the appellate court applies the same standard employed by the trial court under Civil Procedure Rule 56. Under that rule, unless a court finds that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law, the court must deny the motion. In considering a motion for summary judgment, the court views the facts and inferences in the light most favorable to the nonmoving party. Rosario v. College of Micronesia-FSM, 11 FSM R. 355, 358 (App. 2003).

An issue on the application of a statutory provision is an issue of law that is reviewed *de novo* on appeal. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 377 (App. 2003).

Whether a party has standing is a question of law reviewed *de novo* on appeal. FSM v. Udot Municipality, 12 FSM R. 29, 40 (App. 2003).

The FSM Supreme Court's standard of review of a Kosrae State Court's judicial review of a Land Commission decision is whether the Kosrae State Court abused its discretion – whether it failed to properly apply its standard of review to the case. Issues of law are reviewed *de novo*. Anton v. Cornelius, 12 FSM R. 280, 287 (App. 2003).

Issues of law are reviewed de novo on appeal. George v. Nena, 12 FSM R. 310, 313 (App. 2004).

When the facts are not in dispute and questions of law alone are present, the appellate court reviews these questions de novo. Sigrah v. Kosrae, 12 FSM R. 320, 324 (App. 2004).

A contention that the trial court erred as a matter of law when it afforded relief on an unjust enrichment claim is reviewed de novo. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 513 (App. 2005).

Those issues which are questions of law are reviewed *de novo*. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 14 (App. 2006).

Whether a financial privilege with respect to non-party borrower records should be recognized; whether a loan agreement's terms created intended third-party beneficiaries; and whether the trial court could award attorney's fees as part of the third-party beneficiary claim are questions of law, which an appellate court reviews de novo. FSM Dev. Bank v. Adams, 14 FSM R. 234, 246 (App. 2006).

On appeal from a summary judgment based dismissal, the standard of review is a *de novo* determination that there was no genuine issue of material fact and that the party who prevailed below was entitled to judgment as a matter of law. In other words, the reviewing court applies the same standard that the trial court employed when it determined whether the moving party was entitled to summary judgment. Allen v. Kosrae, 15 FSM R. 18, 21 (App. 2007).

The appellate court reviews questions of law *de novo*, but will overturn a trial court's factual findings only when they are not supported by substantial evidence in the record, or if they were the result of an erroneous conception of the applicable law, or if, after a consideration of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. Ruben v. Hartman, 15 FSM R. 100, 108 (Chk. S. Ct. App. 2007).

The question of prejudice to the other party is usually treated as a question of law and reviewed de novo on appeal. The longer the delay, the less need there is to show specific prejudice and the greater the shift to the other party to demonstrate the lack of prejudice. When a party developed the property and treated it as their own for over 50 years, the passing of witnesses and the loss of their testimony is prejudicial to them. The prejudice is economic as well, from the loss of their efforts in maintaining and

developing the property during this time. With a delay of 50 years, the burden shifts to the other party to demonstrate lack of prejudice. The criteria of prejudice is met. Heirs of Taulung v. Heirs of Wakuk, 15 FSM R. 294, 299-300 (Kos. S. Ct. Tr. 2007).

When the facts are not in dispute and questions of law alone are present, the appellate court reviews these questions de novo. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 312 (App. 2007).

Issues of law are reviewed de novo on appeal. Heirs of Tulenkun v. Heirs of Seymour, 15 FSM R. 342, 346 (Kos. S. Ct. Tr. 2007).

All issues of law are reviewed de novo on appeal. Akinaga v. Heirs of Mike, 15 FSM R. 391, 396 (App. 2007).

Whether a party was a bona fide purchaser without notice and whether the consent of all adult lineage members is needed for the sale of lineage land are issues of law, which the appellate court reviews *de novo*. Mori v. Haruo, 15 FSM R. 468, 471 (Chk. S. Ct. App. 2008).

Due process issues are questions of law, and questions of law are reviewed *de novo*. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

Trial court judgments issued without a trial are summary judgments to which the trial court should have applied the summary judgment standard to its rulings. The appellate court's standard of review of those rulings thus must be the one used to review summary judgments. It must apply *de novo* the same standard that a trial court uses in its determination of a summary judgment motion, which is that summary judgment is proper only when, viewing the facts in the light most favorable to the party against whom judgment is sought, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Albert v. George, 15 FSM R. 574, 579 (App. 2008).

Due process issues are generally questions of law. Questions of law are reviewed *de novo* by the appellate court. Albert v. George, 15 FSM R. 574, 579 (App. 2008).

An appellate court applies the same standard in reviewing a trial court's grant of a summary judgment motion that the trial court initially employed under Rule 56(c). It views the facts in the light most favorable to the party against whom judgment was entered and it determines *de novo* whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 590 (App. 2008).

On appeal, issues which are questions of law are reviewed de novo. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 58, 59, 61, 62 (App. 2008).

In reviewing an issue de novo, an appellate court applies the same standard in reviewing the trial court's grant of summary judgment as that initially employed by the trial court itself, *i.e.*, whether there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 58 (App. 2008).

Whether a party has standing to sue is a question of law reviewed de novo on appeal. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 59 (App. 2008).

It is within a single justice's power to, upon the justice's own motion and with adequate notice, dismiss an appeal for an appellant's failure to timely file an opening brief. Like any other single justice order, an aggrieved party may seek review of the dismissal order by a full appellate panel, which must then consider it. Review of a single justice order is *de novo*. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 113 (App. 2008).

A full panel's review of a single justice order is *de novo*. Palsis v. Tafunsak Mun. Gov't, 16 FSM R.

116, 129 (App. 2008).

Whether judgment was improperly entered in the appellees' favor when the appellants contend that they did not appear and present their case at trial because they had not received notice of trial is an issue of law which is reviewed de novo. Farek v. Ruben, 16 FSM R. 154, 156 (Chk. S. Ct. App. 2008).

When the facts are not in dispute and questions of law alone are present, the appellate court reviews these questions *de novo*, and motions that the trial court decided as a matter of law are issues of law, which an appellate court reviews *de novo*. Barrett v. Chuuk, 16 FSM R. 229, 232 (App. 2009).

An issue on the application of a statutory provision is an issue of law that is reviewed *de novo* on appeal. Statutes are presumed constitutional until challenged, and the burden is on the challenger to clearly demonstrate that a statute is unconstitutional. Barrett v. Chuuk, 16 FSM R. 229, 232 (App. 2009).

Issues of law are reviewed de novo on appeal. Narruhn v. Aisek, 16 FSM R. 236, 239 (App. 2009).

An appellate court reviews de novo questions of law, but will overturn a lower court's factual findings only when they are not supported by substantial evidence in the record, or if they were the result of an erroneous conception of the applicable law, or if, after a consideration of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 553 (Chk. S. Ct. App. 2009).

Issues of law are reviewed de novo on appeal. Simina v. Kimeuo, 16 FSM R. 616, 619 (App. 2009).

Issues of law are reviewed *de novo* on appeal. George v. Albert, 17 FSM R. 25, 30 (App. 2010).

An appellate court applies the same standard in reviewing a trial court's grant of summary judgment that the trial court initially employed under Rule 56(c), that is, it views the facts in the light most favorable to the party against whom judgment was entered and it determines *de novo* whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Allen v. Allen, 17 FSM R. 35, 39 (App. 2010).

Due process issues are questions of law and are reviewed *de novo*, and findings of fact which support a trial court's legal findings are reviewed for clear error. Palsis v. Kosrae, 17 FSM R. 236, 240 (App. 2010).

On appeal, issues of law are reviewed *de novo*. Narruhn v. Chuuk, 17 FSM R. 289, 293 (App. 2010).

Contentions involving due process issues are generally questions of law, and questions of law are reviewed *de novo*. Berman v. Pohnpei, 17 FSM R. 360, 369 (App. 2011).

Whether a party has standing to sue is a question of law reviewed de novo on appeal. Berman v. Pohnpei, 17 FSM R. 360, 370 n.3 (App. 2011).

Although, when denying the plaintiff's due process claims, the trial court may have been imprecise when it failed to specify that the one claim Pohnpei was liable for was also a due process claim and it was on all of the other due process claims that the trial court ruled in Pohnpei's favor, any imprecision in, or confusion caused by, the trial court language would not entitle the appellant to any relief. Berman v. Pohnpei, 17 FSM R. 360, 371-72 (App. 2011).

Whether a litigant is entitled to an attorney's fee award is a question of law, which an appellate court reviews de novo. Berman v. Pohnpei, 17 FSM R. 360, 375 (App. 2011).

Conclusions of law will be reviewed de novo. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 434 (App. 2011).

A trial court may grant summary judgment, viewing facts and inferences drawn from them in the light most favorable to the nonmoving party, only if the moving party shows that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. An appeals court applies the same standard in reviewing a trial court's grant of summary judgment as that applied by the trial court. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 434-35 (App. 2011).

Statutory interpretation is a matter of law and issues of law are reviewed de novo on appeal. Berman v. Lambert, 17 FSM R. 442, 446 (App. 2011).

Conclusions of law will be reviewed de novo. Stephen v. Chuuk, 17 FSM R. 453, 458 (App. 2011).

Conclusions of law will be reviewed de novo. Setik v. Ruben, 17 FSM R. 465, 471 (App. 2011).

Since due process issues are questions of law that are reviewed de novo, and since, if the appellants were to prevail on the due process claims, the appellate court would vacate the decisions below without further considering the merits and remand the matter for new proceedings, the appellate court will analyze the due process issues first. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 503 (App. 2011).

Trial court decisions concerning questions of law are reviewed de novo. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 545 (App. 2011).

A trial court may grant summary judgment, viewing facts and inferences drawn from them in the light most favorable to the nonmoving party, only if the moving party shows that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. An appeals court will apply the same standard in reviewing a trial court's grant of summary judgment as that applied by the trial court. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 545 (App. 2011).

Issues of law are reviewed de novo. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 351 (App. 2012).

A trial court's contract interpretation will reviewed de novo because the interpretation of contract provisions is a matter of law determined by the court. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 351 (App. 2012).

A statutory provision's interpretation and application is an issue of law reviewed de novo. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 351 (App. 2012).

Questions of law are reviewed *de novo*. Kosrae v. Edwin, 18 FSM R. 507, 511 (App. 2013).

Whether the damages sought in a default judgment constitute a sum certain is a matter of law which is reviewed de novo. Damarlane v. Damarlane, 19 FSM R. 97, 104 (App. 2013).

An appellate court reviews an abstention order on an abuse of discretion standard. A trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence on which the court could rationally have based its decision. Damarlane v. Damarlane, 19 FSM R. 97, 106 (App. 2013).

The appellate court applies the same standard in reviewing a trial court's grant of summary judgment that the trial court initially employed under Civil Procedure Rule 56(c), that is, it views the facts in the light most favorable to the party against whom judgment was entered and it determines de novo whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 143 (App. 2013).

Since interpretation of contract provisions is a matter of law to be determined by the court, an appellate court will review de novo the interpretation of contract provisions. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 143 (App. 2013).

Any issues of law are reviewed de novo. Dison v. Bank of Hawaii, 19 FSM R. 157, 160 (App. 2013).

In reviewing a grant or denial of summary judgment, an appellate court uses the same standard that the trial court initially used under Rule 56(c) in its determination of the summary judgment motion, which the court applies de novo to determine whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Smith v. Nimea, 19 FSM R. 163, 168-69 (App. 2013).

Interpretation of contract provisions is a matter of law to be determined by the court, and an appellate court reviews issues of law de novo. Smith v. Nimea, 19 FSM R. 163, 169 (App. 2013).

Appellate courts interpret contract language de novo. Smith v. Nimea, 19 FSM R. 163, 171 (App. 2013).

When the contract language is clear and the record is clear, the appellate court may, on an alternate ground, affirm the trial court's decision denying an employee's claims for wages and overtime claims when the state administrative decision found as fact that he worked only on the projects for which he was paid a commission and when that decision was necessarily before the trial court when it was asked to grant partial summary judgment. Smith v. Nimea, 19 FSM R. 163, 171 (App. 2013).

Since Kosrae State Court orders in aid of judgment and the accrual of post-judgment interest are governed by Kosrae statutes and since an issue on a statute's application is an issue of law, the review will be de novo. George v. Sigrah, 19 FSM R. 210, 216 (App. 2013).

If, whether attorney's fees should have been awarded presents a question of law, that question is reviewed de novo, but when it is within the trial court's discretion to award attorney's fees, the grant or denial of an attorney's fees request is reviewed under the abuse of discretion standard. George v. Sigrah, 19 FSM R. 210, 216 (App. 2013).

Questions of law are reviewed de novo. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 300 (App. 2014).

Review of conclusions of law is de novo. In re Sanction of Sigrah, 19 FSM R. 305, 310 (App. 2014).

The appellate court applies the same standard in reviewing a trial court's grant of summary judgment that the trial court initially employed under Rule 56(c), that is, it views the facts in the light most favorable to the party against whom judgment was entered and it determines de novo whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Andrew v. Heirs of Seymour, 19 FSM R. 331, 337 (App. 2014).

Jurisdictional issues are mainly questions of law. Questions of law are reviewed de novo. Andrew v. Heirs of Seymour, 19 FSM R. 331, 337 (App. 2014).

When the question presented is one of law, it is reviewed on a de novo basis. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 429 (App. 2014).

A grant or denial of summary judgment is reviewed using the same standard that the trial court initially used under Rule 56(c) in its determination of the summary judgment motion. Thus, the appellate court determines de novo whether genuine issues of material fact are absent and whether the prevailing party is

entitled to judgment as a matter of law. Esiel v. FSM Dep't of Fin., 19 FSM R. 590, 593 (App. 2014).

Matters of law are reviewed de novo. Esiel v. FSM Dep't of Fin., 19 FSM R. 590, 593 (App. 2014).

Since the interpretation of contract provisions is a matter of law to be determined by the court, the appellate review is de novo. Ihara v. Vitt, 19 FSM R. 595, 600 (App. 2014).

Issues of law are reviewed de novo on appeal. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 21 (App. 2015).

An appellate court applies the same standard in reviewing a trial court's grant of summary judgment as that initially employed by the trial court under Rule 56(c). Thus, the standard of appellate review of a summary judgment is a de novo determination that there was no genuine issue of material fact and that the prevailing party was entitled to judgment as a matter of law. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 22 (App. 2015).

In reviewing a trial court's grant of summary judgment, the appellate court applies the same standard employed by the trial court under FSM Civil Rule 56. Under Rule 56, unless a court, viewing the facts and inferences in the light most favorable to the nonmoving party, finds that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law, the court must deny the motion. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 22 (App. 2015).

Matters of law are reviewed de novo. Alexander v. Hainrick, 20 FSM R. 377, 381 (App. 2016).

In reviewing a summary judgment, an appellate court uses the same standard that the trial court initially used under Rule 56(c) when it determined the summary judgment motion – the appellate court determines de novo whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Sam v. FSM Dev. Bank, 20 FSM R. 409, 415 (App. 2016).

An appellate court reviews issues of law de novo. Sam v. FSM Dev. Bank, 20 FSM R. 409, 415 (App. 2016).

Questions of contract interpretation are matters of law to be determined by the court. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418 (App. 2016).

An appellate court reviews de novo any matters of law. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 426 (App. 2016).

Issues of law are reviewed de novo. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 506 (App. 2016).

Whether a party has standing is a question of law reviewed *de novo* on appeal. Since standing cannot be waived, an appellate court is obliged to conduct an independent inquiry, with respect to the parties' standing to challenge national laws, even though the parties have not raised, and the trial court not ruled on, the standing issue. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 511 (App. 2016).

When the case on appeal is subject to *de novo* review, the reviewing court is empowered to affirm a lower court's decision on grounds other than those utilized by the latter. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 516 (App. 2016).

An appellate court uses the same standard in reviewing the grant or denial of a summary judgment that the trial court initially did. Therefore, if it concludes that a genuine issue of material fact was present, then it must rule that the summary judgment should have been denied; and if it concludes that a genuine issue is not present, then, viewing the facts in the light most favorable to the nonmovant, it rules *de novo* on whether the movant was entitled to judgment as a matter of law. Kama v. Chuuk, 20 FSM R. 522, 528

(Chk. S. Ct. App. 2016).

Issues of law are reviewed de novo on appeal. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 55 (App. 2016).

Whether a party has standing is a question of law, to be reviewed de novo on appeal. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 57 (App. 2016).

Issues of law are reviewed de novo on appeal. Waguk v. Waguk, 21 FSM R. 60, 66 (App. 2016).

Issues of law are reviewed de novo on appeal. Esau v. Penrose, 21 FSM R. 75, 77 (App. 2016).

The questions of when a statute of limitations begins to run, whether and when the statute is tolled, and whether a claim is barred by the statute of limitations are questions of law to be reviewed de novo. Tilfas v. Kosrae, 21 FSM R. 81, 86 (App. 2016).

Issues of law are reviewed de novo on appeal. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 98 (App. 2016).

Issues of law are reviewed de novo on appeal. Lonno v. Heirs of Palik, 21 FSM R. 103, 106 (App. 2016).

Issues of law are reviewed de novo on appeal. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 119 (App. 2017).

When the facts are not in dispute and questions of law alone are present, the appellate court reviews these questions *de novo*. Fuji Enterprises v. Jacob, 21 FSM R. 355, 359 (App. 2017).

The appellate court reviews issues of law de novo. Gallen v. Moylan's Ins. Underwriters (FSM) Inc., 21 FSM R. 380, 384 (App. 2017).

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

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

The question of whether the facts as found (or whether the facts as found which are not clearly erroneous) are sufficient evidence to meet the plaintiff's burden of proof is a question of law, and issues of law are reviewed de novo on appeal. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 531 (App. 2018).

Issues of law, including the Kosrae Land Court's jurisdiction and the applicable statute of limitations (to the extent it does not require factual findings) are reviewed de novo. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 578 (App. 2018).

When reviewing a summary judgment, an appellate court uses the same standard that the trial court initially used when it determined the summary judgment motion – the appellate court determines de novo whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 578 (App. 2018).

Whether a trial court erred by dismissing a complaint for failure to state a claim is an issue of law,

which is reviewed de novo. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

To review a summary judgment, the appellate court uses the same standard that the trial court initially used when it determined the summary judgment motion – it determines de novo whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

The question of whether the statute of limitations bars a claim is a question of law, which the appellate court reviews de novo. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

An appellate court uses a two-part standard to review a laches defense since it is a mixed question of law and fact. Whether the elements of laches have been established in any particular case is a factual determination which depends upon the circumstances, and calls for us to apply an abuse of discretion standard of review. But whether, in view of the established facts, it would be equitable or unjust to the defendant to enforce the complainant's right is a question of law that is reviewed de novo. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

Appellate review of the equitable defenses of estoppel and waiver is similar to appellate review of a laches equitable defense since they are mixed questions of law and fact. An appellate court reviews an equitable estoppel defense for clear error for any factual findings and uses an abuse of discretion standard to review its application. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

The issue of waiver is a mixed question of law and fact for which an appellate court uses a de novo review for the law and the clearly erroneous standard for the facts. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

Which court is the proper forum for a case is generally a jurisdictional issue. Jurisdictional issues are mainly questions of law, which the appellate court reviews de novo. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

Which court is the proper forum for a case is generally a jurisdictional issue. Jurisdictional issues are mainly questions of law, which the appellate court reviews de novo. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

Issues of law are reviewed de novo on appeal. Edmond v. FSM Dev. Bank, 22 FSM R. 77, 80 (App. 2018).

Issues and matters of law are reviewed *de novo*. Heirs of Sigrah v. George, 22 FSM R. 211, 216 (App. 2019).

Issues that are questions of law are reviewed de novo. FSM v. Kuo Rong 113, 22 FSM R. 515, 519 (App. 2020).

Whether a particular dispute falls within the scope of a court's subject matter jurisdiction is an issue of law. Issues of law are reviewed de novo. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 576 (Chk. S. Ct. App. 2020).

The appellate court uses the same standard to review a grant or denial of a summary judgment motion that the trial court initially used. Thus, if the appellate court concludes that a genuine issue of material fact was present, then it must rule that the summary judgment should have been denied; and if it concludes that a genuine issue is not present, then, viewing the facts in the light most favorable to the nonmovant, it will rule de novo on whether the movant was entitled to judgment as a matter of law. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 618 (Chk. S. Ct. App. 2020).

Since an appellate court does not set aside findings of fact unless they are clearly erroneous, it starts its review of a trial court's factual findings by presuming the findings are correct, and, if it determines that substantial evidence supports the trial court findings, it will not disturb those factual findings on appeal. But even then, if the appellate court does not disturb the facts, as found, it must ask whether those factual findings are sufficient to meet the plaintiff's burden of proof. Since the trial court's answer to that question is a legal conclusion and thus a ruling on a point of law, the appellate court reviews that conclusion de novo. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 619 (Chk. S. Ct. App. 2020).

– Standard – Civil Cases – Factual Findings

The trial court finding of recklessness is a finding of fact which may not be set aside on appeal unless it is clearly erroneous. FSM Civ. R. 52(a). Ray v. Electrical Contracting Corp., 2 FSM R. 21, 25 (App. 1985).

The standard of review on appeal on the issue of the sufficiency of the evidence is very limited – only findings that are clearly erroneous can be set aside. Opet v. Mobil Oil Micronesia, Inc., 3 FSM R. 159, 165 (App. 1987).

The standard of review on a question of the sufficiency of the evidence is whether it is clearly erroneous. Senda v. Mid-Pac Constr. Co., 5 FSM R. 277, 280 (App. 1992).

The standard of review of a trial court's factual findings is whether those findings are clearly erroneous. The appeals court cannot substitute its judgment for that of the trial judge but in reviewing the findings it may examine all of the evidence in the record in determining whether the trial court's factual findings are clearly erroneous, and if it is left with the definite and firm conviction that a mistake has been committed with respect to the findings, it must reject the findings as clearly erroneous. Kapas v. Church of Latter Day Saints, 6 FSM R. 56, 59 (App. 1993).

Clear error in key factual findings merits setting aside conclusions of law and is one factor indicating incorrect use of discretion. Kapas v. Church of Latter Day Saints, 6 FSM R. 56, 60 (App. 1993).

Where the trial court found no negligence and the appeal court upon review of the record does not find the trial court's factual findings to be clearly erroneous the trial court's dismissal of the negligence claim will be affirmed. Nena v. Kosrae (I), 6 FSM R. 251, 254 (App. 1993).

Where the trial court's finding that damages were not proven at trial is not clearly erroneous the appellate court will not remand to the trial court for further presentation of evidence on that issue. Wito Clan v. United Church of Christ, 6 FSM R. 291, 292 (App. 1993).

In determining whether a trial court's findings are clearly erroneous, an appellate court must construe the evidence in the light most favorable to the appellee. A finding is clearly erroneous when the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. Kinere v. Kosrae, 6 FSM R. 307, 309 (App. 1993).

An appellate court should not set aside a trial court's finding of fact where there is credible evidence in the record to support that finding. The trial court, unlike the appellate court, had the opportunity to view the witnesses and the manner of their testimony. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 349 (App. 1994).

Because findings of fact shall not be set aside unless clearly erroneous an appellate court starts its review of a trial court's factual findings by presuming the findings are correct. The appellant's burden to clearly demonstrate error in the trial court's findings is especially strong when the findings are based upon oral testimony because, before reaching its conclusions as to the witnesses' credibility, the trial court had the opportunity to view the witnesses' demeanor as they testified, while the reviewing court has not. Cheni

v. Ngusun, 6 FSM R. 544, 546 (Chk. S. Ct. App. 1994).

An appellate court may set aside a trial court's factual findings as clearly erroneous when the factual finding was not supported by substantial evidence in the record, or when the factual finding was the result of an erroneous conception of the applicable law, or when after a consideration of the entire record the appellate court is left with a definite and firm conviction that a mistake has been made. Cheni v. Ngusun, 6 FSM R. 544, 547 (Chk. S. Ct. App. 1994).

A trial court's findings of fact shall not be set aside unless clearly erroneous, and the appellate court shall give due regard to the opportunity of the trial court to judge the credibility of the witnesses. Emilios v. Setile, 6 FSM R. 558, 560 (Chk. S. Ct. App. 1994).

A trial court's factual findings are presumed correct. An appellate court must be especially circumspect in reviewing a trial court for clear error when there was conflicting evidence presented on issues of fact because the trial court had the opportunity to observe the witnesses' demeanor while it has not. Emilios v. Setile, 6 FSM R. 558, 560 (Chk. S. Ct. App. 1994).

If an appellant alleging clear error fails to show that the trial court's factual finding was not supported by substantial evidence in the record, or that the factual finding was the result of an erroneous conception of the applicable law, or that, if after a consideration of the entire record, the appellate court is not left with a definite and firm conviction that a mistake has been made, the appellate court can only affirm. Emilios v. Setile, 6 FSM R. 558, 561 (Chk. S. Ct. App. 1994).

Factual determinations of a trial court, such as the appropriate size and period for an award of child support, will be overturned on appeal only if the findings of the trial court are clearly erroneous. Youngstrom v. Youngstrom, 7 FSM R. 34, 36 (App. 1995).

Whether a debtor has the ability to comply with an order in aid of judgment is a finding of fact, which will be set aside on appeal only if it is clearly erroneous. Hadley v. Bank of Hawaii, 7 FSM R. 449, 452 (App. 1996).

In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee, but it should not set aside a finding of fact where there is credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. If, upon reviewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Hadley v. Bank of Hawaii, 7 FSM R. 449, 452 (App. 1996).

The Chuuk State Supreme Court appellate division will affirm a trial court's findings of fact unless the findings are clearly erroneous. Rosokow v. Chuuk, 7 FSM R. 507, 509 (Chk. S. Ct. App. 1996).

Where the existence of a contract is at issue, the trier of fact determines whether the contract did in fact exist. The standard of review for findings of fact is whether the trial court's findings are clearly erroneous. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 620 (App. 1996).

A trial court's qualification of a witness as an expert and the admission of his opinion testimony will not be reversed unless clearly erroneous. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 622 (App. 1996).

The appropriate standard of review when reviewing a trial court's finding on sufficiency of the evidence is whether the trial court's finding is clearly erroneous. A finding is clearly erroneous when the appellate court, after reviewing the entire body of the evidence and construing the evidence in the light most favorable to the appellee, is left with the definite and firm conviction that a mistake has been committed. Damarlane v. United States, 8 FSM R. 45, 53 (App. 1997).

The appellate division will not set aside findings of fact unless clearly erroneous, and due regard will be given to the trial court's opportunity to judge the credibility of the witnesses. Marcus v. Suka, 8 FSM R. 300a, 300b (Chk. S. Ct. App. 1998).

Due regard must be given to the opportunity of the trial judge to weigh the witnesses' credibility. During the testimony, a trial judge may take into account the witness's appearance, manner, and demeanor while testifying, his apparent frankness and intelligence, his capacity of consecutive narration of acts and events, the probability or improbability of the story related by him, the advantages he appears to have had for gaining accurate or retentiveness of his memory as well as the lapse of time affecting it, and even the intonation of his voice and his positiveness or uncertainty in testifying. It may affect the credibility of a witness that he is expressing his belief as to a particular matter, rather than his knowledge, or that he testifies positively rather than negatively; or that he has made prior statements which are inconsistent with his trial testimony. Marcus v. Suka, 8 FSM R. 300a, 300b-0c (Chk. S. Ct. App. 1998).

To reverse the trial division's findings of fact, the appellate division must find that 1) the trial division's findings are not supported by substantial evidence; 2) there was an erroneous conception by the trial division of the applicable law; and 3) the appellate division has a definite and firm conviction that a mistake has been made. Marcus v. Suka, 8 FSM R. 300a, 300c (Chk. S. Ct. App. 1998).

Findings of fact will not be set aside unless clearly erroneous, and due regard shall be given to the trial court's opportunity to judge the witnesses' credibility. The appellate court starts its review of a trial court's factual findings by presuming the findings are correct which means that the appellant has the burden to clearly demonstrate error in the trial court's findings. Lewis v. Haruo, 8 FSM R. 300L, 300m-0n (Chk. S. Ct. App. 1998).

The trial court will be affirmed when the appellant, challenging the weight given a witness's uncorroborated testimony, has failed to furnish the appellate court with a means to review all the evidence presented to the trial justice and nothing is found in a review of the record and briefs to indicate that the trial justice's factual findings were clearly erroneous. Lewis v. Haruo, 8 FSM R. 300L, 300m-0n (Chk. S. Ct. App. 1998).

The standard of review of a trial court's adoption of a special master's report is whether the adoption of the special master's findings was clearly erroneous. This same standard of review applies to a special master's report. Thus, if a special master's report is clearly erroneous, then it, like a trial court opinion, may be set aside. Thomson v. George, 8 FSM R. 517, 521 (App. 1998).

In determining whether a factual finding is clearly erroneous, an appellate court cannot substitute its judgment for that of the fact finder. The trial court's factual findings are presumed correct. A factual finding is clearly erroneous when the appellate court, after reviewing the entire body of the evidence and construing the evidence in the light most favorable to the appellee, is left with the definite and firm conviction that a mistake has been committed. Thomson v. George, 8 FSM R. 517, 522 (App. 1998).

A review of the trial court's factual findings is done under the clearly erroneous standard. The appellant has the burden to clearly demonstrate error in the trial court's findings. The appellant has a very strong burden to overcome because the trial court had the opportunity to view the witnesses as they testified and to observe their demeanor before reaching its conclusions as to the witnesses' credibility. Hartman v. Chuuk, 9 FSM R. 28, 30 (Chk. S. Ct. App. 1999).

When the trial court has carefully observed the demeanor of all the witnesses, the trial court will not be put in error unless its findings of fact are clearly erroneous. William v. Muritok, 9 FSM R. 34, 36 (Chk. S. Ct. App. 1999).

A review of the trial court's factual findings is done under the clearly erroneous standard. The

appellant has the burden to clearly demonstrate error in the trial court's findings. The appellant has a very strong burden to overcome because the trial court had the opportunity to view the witnesses as they testified and to observe their demeanor before reaching its conclusions as to the witnesses' credibility. The appellate court does not have the same opportunity to view the witnesses and as a result, it must be especially circumspect in reviewing a trial court for clear error. Sellem v. Maras, 9 FSM R. 36, 38 (Chk. S. Ct. App. 1999).

The appellate court begins its review of trial court rulings by presuming that the trial court's factual findings are correct. The trial court's grant or refusal to adopt an expert's opinion is a question of fact and factual questions are reviewed by this court under the clearly erroneous standard. Sellem v. Maras, 9 FSM R. 36, 38 (Chk. S. Ct. App. 1999).

When the appellate court finds nothing in the record on appeal that contradicts the master's findings or the High Court judgment previously rendered on the issues of ownership of the land in question and the state trial court judgment appealed from is based solely on the previous High Court decision, the trial court will be affirmed. Bualuay v. Rano, 9 FSM R. 39, 40 (Chk. S. Ct. App. 1999).

The standard of review on a question of the sufficiency of the evidence is whether the trial court's finding is clearly erroneous. When the trial court's finding that damages were not proved at trial is not clearly erroneous the appellate court will not remand to the trial court for further presentation of evidence on that issue. Wolphagen v. Ramp, 9 FSM R. 191, 194 (App. 1999).

The standard of review on a question of the sufficiency of the evidence is whether the trial court's findings are clearly erroneous. Only findings that are clearly erroneous can be set aside on appeal. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 462 (App. 2000).

A trial court's factual findings adequately supported by substantial evidence in the record cannot be set aside on appeal. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 462 (App. 2000).

The question whether the facts as found (or whether the facts as found which are not clearly erroneous) are sufficient evidence to meet the plaintiff's burden of proof is a question of law distinct from issues relating to the weight of the evidence, and as such a proper issue on appeal. Questions of law are reviewed de novo. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 462 (App. 2000).

A finding is clearly erroneous when the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 462 (App. 2000).

If an appellant alleging clear error fails to show that the trial court's factual finding was not supported by substantial evidence in the record, or if the factual finding was the result of an erroneous conception of the applicable law, or that, if after a consideration of the entire record, the appellate court is not left with a definite and firm conviction that a mistake has been made, the appellate court can only affirm. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 463 (App. 2000).

When the trial judge believed one witness's testimony and not another's, and gave an extensive analysis of the testimony before him that led him to that conclusion, there is no reason for the appellate court to disturb his conclusion, since it was supported by credible evidence and he had the opportunity to observe the witnesses and the manner of their testimony, and the appellate court did not have that opportunity. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 463 (App. 2000).

There are not reasons to find clearly erroneous the trial court's finding that the defendant continued to utilize her IDD service after she requested termination when the trial court had before it evidence that the calls reflected the same pattern as existed throughout the billing period. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 464 (App. 2000).

An appellate court cannot say that the trial court's finding was clearly erroneous when it was the result of weighing conflicting evidence. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 464 (App. 2000).

The standard of review of a trial court's factual findings is whether those findings are clearly erroneous. In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee. Tulensru v. Wakuk, 10 FSM R. 128, 132 (App. 2001).

An appellate court should not set aside a finding of fact when there is credible evidence in the record to support that finding, in part because the trial court, unlike the appellate court, had the opportunity to view the witnesses' demeanor and the manner of their testimony. Tulensru v. Wakuk, 10 FSM R. 128, 132 (App. 2001).

If, upon reviewing all the evidence in the record, an appellate court is left with a definite and firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Tulensru v. Wakuk, 10 FSM R. 128, 132 (App. 2001).

An appellate court cannot substitute its judgment for that of the trial court where the court made findings of such essential facts as provide a basis for the decision. The test as to the adequacy of the findings is whether they are sufficiently comprehensive and pertinent to the issue to form the basis of the decision. Tulensru v. Wakuk, 10 FSM R. 128, 133 (App. 2001).

When a trial court has found that all parties fulfilled their obligations under the contract, and the plaintiff did not offer competent evidence of breach sufficient to establish that the trial court's findings were improper, there was no clear error in the trial court's factual findings on the liability issue. Tulensru v. Wakuk, 10 FSM R. 128, 133 (App. 2001).

When reviewing a trial court's Rule 41(b) dismissal order on sufficiency of the evidence, the appropriate standard of review is whether the findings of fact are clearly erroneous. A finding is clearly erroneous when the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 138 (App. 2001).

When an appellant takes issue with both the trial court's findings of fact and its subsequent dismissal order, it requires a two tier analysis. The appellate court first reviews the trial court's findings of fact for clear error. Thereafter, it applies the facts found that are not clearly erroneous, together with those shown by the record as undisputed, and reviews the Rule 41(b) dismissal order under an abuse of discretion standard. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 138 (App. 2001).

The appellate court starts its review of a trial court's factual findings by presuming the findings are correct. This means that an appellant has the burden to clearly demonstrate error in the trial court's findings. The reason for this heavy burden is that the trial court had the opportunity to view the witnesses as they testify and to observe their demeanor before reaching its conclusions as to the witnesses' credibility. The reviewing court does not have the same opportunity. Phillip v. Moses, 10 FSM R. 540, 543 (Chk. S. Ct. App. 2002).

When a sketch proffered to the appellate court, even if it had been admitted at trial, would not have been enough to demonstrate that a trial court's factual finding was clearly erroneous, the factual finding must stand. Phillip v. Moses, 10 FSM R. 540, 544 (Chk. S. Ct. App. 2002).

A trial court's factual findings can be overturned only if they are not supported by substantial evidence in the record, or if they were the result of an erroneous conception of the applicable law, or if, after a consideration of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. Phillip v. Moses, 10 FSM R. 540, 546 (Chk. S. Ct. App. 2002).

An appellate court starts its review of a trial court's factual findings by presuming the findings are correct. The appellant's burden is to clearly demonstrate error in the trial court's findings. The reason for this heavy burden is that the trial court had the opportunity to view the witnesses as they testify and to observe their demeanor before reaching its conclusions as to the witnesses' credibility. The reviewing court does not have the same opportunity. Rosokow v. Bob, 11 FSM R. 210, 214 (Chk. S. Ct. App. 2002).

A trial court's factual findings can be overturned only when they are not supported by substantial evidence in the record, or if they were the result of an erroneous conception of the applicable law, or if, after a consideration of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. Rosokow v. Bob, 11 FSM R. 210, 214 (Chk. S. Ct. App. 2002).

The trial court will be affirmed when the appellants have not overcome the presumption that a trial court's findings are correct, and have not met their heavy burden of showing that the trial court's findings were clearly erroneous and when there was substantial evidence in the record to support the trial court's decision that the island belonged to the appellees and a review of the entire record does not leave the appellate court with the definite and firm feeling that a mistake has been made. Rosokow v. Bob, 11 FSM R. 210, 216 (Chk. S. Ct. App. 2002).

A finding that a judgment debtor is in civil contempt will be set aside on appeal only if it is clearly erroneous. In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 374 (App. 2003).

In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee. The reviewing court will set aside a finding of fact only where there is no credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. If, upon viewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 374 (App. 2003).

When the trial court did not make any finding as to what the prior custom and practice had been, the purpose of a remand to the trial division is for it to determine what the prior customary and traditional practice was. The appellate court can make no finding as to what the customary and traditional practice has been concerning Fayu because that finding must first be made by the trial court. Rosokow v. Bob, 11 FSM R. 454, 457 (Chk. S. Ct. App. 2003).

It is not the appellate court's place or function to make factual findings in the first instance. An appellate court may review a trial court's findings for clear error, but it cannot use the trial court record to supplant the trial court and act as fact finder. Rosokow v. Bob, 11 FSM R. 454, 457 (Chk. S. Ct. App. 2003).

The standard of review of a trial court's factual findings is whether those findings are clearly erroneous. In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee. George v. Nena, 12 FSM R. 310, 313 (App. 2004).

If, upon viewing all evidence in the record, the appellate court is left with a definite and firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. George v. Nena, 12 FSM R. 310, 313 (App. 2004).

The fact that the trial court based its findings of fact in part on a witness's testimony, when he was not subject to cross examination, is not clear error if other credible evidence supports the same findings of fact.

George v. Nena, 12 FSM R. 310, 317 (App. 2004).

When, viewing the evidence in the light most favorable to the appellee, the appellate court does not have a definite or firm conviction that any mistake was made by the trial court, it cannot find that the trial court's decision was clearly erroneous. George v. Nena, 12 FSM R. 310, 317 (App. 2004).

When there is no clear evidence in the record that anyone else had significant involvement with the parcel, and given the trial court's judgment as to the witness's credibility, there is no significant evidence to overcome even "some evidence" of Timothy's ownership as presented by the 1932 Japanese Map. George v. Nena, 12 FSM R. 310, 318 (App. 2004).

It is primarily the task of the Land Court, and not the reviewing court, to assess the credibility of the witnesses, consider the admissibility of evidence and to resolve factual disputes. This is because it is the Land Court who is present during the testimony and offer of evidence. On appeal, the reviewing court should not substitute its judgment for well-founded findings of the lower court. Heirs of Palik v. Heirs of Henry, 12 FSM R. 625, 628 (Kos. S. Ct. Tr. 2004).

A review of the trial court's factual findings is done under the "clearly erroneous" standard and the appellant has the burden to clearly demonstrate error in the trial court's findings. The appellant has a very strong burden to overcome for the reason that the trial court had the opportunity to view the witnesses as they testified and to observe their demeanor before reaching its conclusions as to the witnesses' credibility. Narruhn v. Aisek, 13 FSM R. 97, 99 (Chk. S. Ct. App. 2004).

Any of three conditions are required for the court to find reversible error when the trial court findings are alleged to be clearly erroneous: first, if the trial court findings were not supported by substantial evidence in the record; second, the trial court's factual finding was the result of an erroneous conception of the applicable law; and third, if the appellate court is of firm conviction that a mistake has been made. Narruhn v. Aisek, 13 FSM R. 97, 99 (Chk. S. Ct. App. 2004).

For an appellate court to find that a trial court's finding is in error it must determine that the finding was clearly erroneous. In making this determination the appellate court must view the evidence in the light most favorable to the appellee. The trial court's finding will only be set aside if there is no credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. If, upon viewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Livaie v. Weilbacher, 13 FSM R. 139, 143 (App. 2005).

The Kosrae Land Court's factual findings and decision can be overturned only if they are not supported by substantial evidence. In considering whether the Land Court's findings and decision were based upon substantial evidence, the Kosrae State Court recognizes that it is primarily the Land Court's task to assess the witnesses' credibility, the admissibility of evidence, and to resolve factual disputes. On appeal, the Kosrae State Court should not substitute its judgment for the lower court's well-founded findings. Sigrah v. Heirs of Nena, 13 FSM R. 192, 198 (Kos. S. Ct. Tr. 2005).

The Kosrae Land Court's factual findings and decision can be overturned only if they are not supported by substantial evidence. In considering whether the Land Court's findings and decision were based upon substantial evidence, the Kosrae State Court recognizes that it is primarily the Land Court's task to assess the witnesses' credibility, the admissibility of evidence and to resolve factual disputes. On appeal, the Kosrae State Court should not substitute its judgment for the well-founded findings of the lower court. Wesley v. Carl, 13 FSM R. 429, 431 (Kos. S. Ct. Tr. 2005).

When, after careful review of the record, the Kosrae State Court concludes that the factual disputes before the Land Court were properly resolved and the Land Court's finding that the conditions pertaining to

continued ownership of land had been fulfilled was supported by substantial evidence, it will not substitute its judgment for the Land Court's well-founded findings, and when the Land Court's findings and conclusions in awarding the appellee ownership were supported by substantial evidence and are not contrary to law, the Land Court decision must be affirmed. Wesley v. Carl, 13 FSM R. 429, 432 (Kos. S. Ct. Tr. 2005).

The Kosrae Land Court's factual findings and decision can be overturned only if they are not supported by substantial evidence. In considering whether the Land Court's findings and decision were based upon substantial evidence, the court recognizes that it is primarily the task of the Land Court to assess the credibility of the witnesses, the admissibility of evidence and to resolve factual disputes. Heirs of Nena v. Heirs of Nena, 13 FSM R. 480, 481 (Kos. S. Ct. Tr. 2005).

When a decedent's will did not identify or list the parcel as one of the parcels belonging to the decedent; when a brother and a sister of the decedent both testified that the parcel was not owned by the decedent; and when it is the Land Court's duty to assess the witnesses' credibility, the admissibility of evidence, to resolve factual disputes, and to accord weight to evidence presented at hearing, including appropriate weight to hearsay evidence which was made by a person, now deceased, and therefore not subject to cross-examination, the Land Court properly resolved the factual disputes, whose findings were supported by substantial evidence. The reviewing court will not substitute its judgment for the Land Court's well-founded findings. Heirs of Nena v. Heirs of Nena, 13 FSM R. 480, 482 (Kos. S. Ct. Tr. 2005).

On a challenge to the sufficiency of the evidence in support of the trial court's findings of fact – the standard of review applicable to the trial court's findings of fact is whether they are clearly erroneous. A finding is clearly erroneous when the reviewing court, after considering the evidence in the light most favorable to the appellee, is left with the firm and definite conviction that a mistake has been committed. The trial court's findings are presumptively correct. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 513 (App. 2005).

For those issues challenging a trial court's factual findings the standard of review is whether those findings are clearly erroneous, and in determining whether a factual finding is clearly erroneous, the appellate court must view the evidence in the light most favorable to the appellee. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 14 (App. 2006).

The standard of review for findings of fact is whether the trial court's findings are clearly erroneous. A finding is clearly erroneous when the appellate court, after reviewing the entire body of the evidence and construing the evidence in the light most favorable to the appellee, is left with the definite and firm conviction that a mistake has been committed. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 24 (App. 2006).

When the trial court's finding that the trochus business was generally not profitable was not clearly erroneous, that finding must stand. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 25 (App. 2006).

Land Court findings and decisions will be overturned if they are not supported by substantial evidence or if they are contrary to the law. In considering whether the decisions were based upon substantial evidence, the Kosrae State Court recognizes that it is primarily the Land Court's task to assess the credibility of the witnesses, the admissibility of evidence and to resolve factual disputes. On appeal, the Kosrae State Court should not substitute its judgment for the lower court's well-founded findings. Heirs of Tara v. Heirs of Kurr, 14 FSM R. 521, 524 (Kos. S. Ct. Tr. 2007).

The standard of review for appeals from the Land Court is set by statute. Findings and decisions of the Land Court will be overturned if they are not supported by substantial evidence or if they are contrary to the law. In considering whether the decisions were based upon substantial evidence, the Kosrae State Court recognizes that it is primarily the Land Court's task to assess the credibility of the witnesses, the admissibility of evidence and to resolve factual disputes. On appeal, the Kosrae State Court should not substitute its judgment for the well-founded findings of the lower court. Heirs of George v. Heirs of Dizon, 14 FSM R. 556, 558 (Kos. S. Ct. Tr. 2007).

The Kosrae State Court must uphold Land Commission findings as issued by the Land Court if they are supported by substantial evidence. This does not mean that the evidence must be uncontroverted or undisputed. Heirs of George v. Heirs of Dizon, 14 FSM R. 556, 559 (Kos. S. Ct. Tr. 2007).

The appellate court reviews factual findings on a clearly erroneous standard, and questions of law *de novo*. Mathias v. Engichy, 15 FSM R. 90, 96 (Chk. S. Ct. App. 2007).

When the trial court's findings are inadequate, the appellate court should not try to resolve the factual issues itself, but should vacate the judgment and remand because it is not the appellate court's place or function to make factual findings in the first instance or to supplant the trial court and act as fact finder. Remand is appropriate because the trial court had the opportunity to view the witnesses as they testified and to observe their demeanor before reaching its conclusions as to the witnesses' credibility, and the appellate court did not. Mathias v. Engichy, 15 FSM R. 90, 96-97 (Chk. S. Ct. App. 2007).

When the appellate court has remanded a case to the trial court because the lower court's findings were inadequate, the trial judge must make his findings of fact and separately state his conclusions of law used to arrive at his decision, and, to assist, the trial judge may consult the transcripts, the filed proposed findings of fact and conclusions of law, and, if necessary, he may also take further evidence. Mathias v. Engichy, 15 FSM R. 90, 97 (Chk. S. Ct. App. 2007).

The appellate court reviews questions of law *de novo*, but will overturn a trial court's factual findings only when they are not supported by substantial evidence in the record, or if they were the result of an erroneous conception of the applicable law, or if, after a consideration of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. Ruben v. Hartman, 15 FSM R. 100, 108 (Chk. S. Ct. App. 2007).

When the trial court's findings are inadequate, the appellate court should not try to resolve the factual issues itself, but should vacate the judgment and remand since it is not the appellate court's place or function to make factual findings in the first instance or to supplant the trial court and act as fact finder. Remand is appropriate since the trial court had the opportunity to view the witnesses as they testified and to observe their demeanor before reaching its conclusions as to the witnesses' credibility, and the appellate court has not. Nakamura v. Chuuk, 15 FSM R. 146, 150 (Chk. S. Ct. App. 2007).

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

The Land Court's factual findings and decision are overturned on appeal if they are not supported by substantial evidence. In considering whether the Land Court's findings and decision was based upon substantial evidence, the appellate court should not substitute its judgment for the lower court's well-founded findings since it is primarily the Land Court's task to assess the witnesses' credibility, the admissibility of evidence and to resolve factual disputes. The appellate court views evidence in the light most favorable to the appellee, looking for a definite or firm conviction that a mistake was made and therefore that the lower court's decision was clearly erroneous. Heirs of Taulung v. Heirs of Wakuk, 15 FSM R. 294, 297 (Kos. S. Ct. Tr. 2007).

In determining whether a trial court's findings are clearly erroneous, an appellate court must construe the evidence in the light most favorable to an appellee. A finding is clearly erroneous when the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. Heirs of Tulenkun v. Heirs of Seymour, 15 FSM R. 342, 346 (Kos. S. Ct. Tr. 2007).

When the evidence cited by the appellants to support their new argument is that the hand drawn map from the earlier case does not look enough like the maps in the current case, their conjecture that they may not be the same does not leave the court with a definite and firm conviction that a mistake has been made. When construing the evidence in a light favorable to the appellees; this conjecture is not enough to demonstrate a clear error. Heirs of Tulenkun v. Heirs of Seymour, 15 FSM R. 342, 346 (Kos. S. Ct. Tr. 2007).

The Land Court is responsible for assessing the credibility of the witnesses, the admissibility of evidence and resolving factual disputes. If its findings are adequately supported and the evidence has been reasonably assessed, the findings will not be disturbed on appeal. Heirs of Wakap v. Heirs of Obet, 15 FSM R. 450, 454 (Kos. S. Ct. Tr. 2007).

A trial court finding of fact is clearly erroneous when, after reviewing the entire body of the evidence and construing the evidence in the light most favorable to the appellee, the appellate court is left with the definite and firm conviction that a mistake has been committed. Albert v. George, 15 FSM R. 574, 579 (App. 2008).

When the ledger sheets, from which the trial court derived each judgment amount, were never authenticated by affidavit or by testimony and neither were their accuracy vouched for by affidavit, or testimony, or other evidence; when, even though the defendants may have agreed at the hearing to the ledger sheets' admissibility (i.e., authenticity), it is seriously doubtful that they could have agreed to the ledger sheets' accuracy since one defendant had not seen the business ledger and the other specifically questioned the accuracy of certain charges; and when, if they had been stipulating to the ledgers' accuracy, that would have been a waiver of any rights they had left since no other issues of fact or right to trial would have remained, the appellate court can only conclude that the defendants, when they left it up to the court "without waiving any rights" did not intend to, and did not, waive their rights to trial on disputed material facts, that is, on the amounts owed. The trial court's findings that the cases had been submitted to it for its decision, that is, that the facts including the ledger sheets' accuracy had been stipulated to, is thus clearly erroneous. Albert v. George, 15 FSM R. 574, 580 (App. 2008).

On appeal, the appellate court will review the evidence in the light most favorable to the appellee, and findings will be upheld when there is credible evidence to support them, in part because the trial court viewed the witnesses and their manner during testimony. If, upon viewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 661 (Kos. S. Ct. Tr. 2008).

It was clear error by the Land Court to dismiss, based on a finding of lack of corroboration, a witness's testimony about the existence of an agreement to divide the land when a review of the record shows testimony from a number of witnesses referring to the existence of an agreement. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 661 (Kos. S. Ct. Tr. 2008).

A remand is proper when the court, reviewing the record as a whole, is convinced that the Land Court's decision is not based on substantial evidence because the Land Court found no corroborating evidence for a witness's testimony about an agreement to divide land but the record shows multiple witnesses testified regarding an agreement to divide land; because the Land Court made inconsistent findings regarding the effect of failing to exclude other heirs from using the land; and because the Land Court made no findings regarding the use of different portions of the land despite testimony from multiple witnesses that different heirs used different portions. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 661-62 (Kos. S. Ct. Tr. 2008).

The standard of review for findings of fact is whether the trial court's findings are clearly erroneous. A finding is clearly erroneous when the appellate court, after reviewing the entire body of the evidence and construing the evidence in the light most favorable to the appellee, is left with the definite and firm

conviction that a mistake has been committed. For an appellate court to find that a trial court's finding is in error it must determine that the finding was clearly erroneous. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 60 (App. 2008).

The trial court was free to accept or reject the testimony that the reef in question is owned by Tomil and that the people of neighboring Rull had some fishing rights in the waters surrounding the reef, and the reviewing court will only set aside those findings of fact when there is no credible evidence in the record to support the finding as the trial court had the opportunity to view the witnesses and the manner of their testimony. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 60 (App. 2008).

Whether the evidence was sufficient to support the trial court's verdict for the appellees involves a review of the trial court's findings of fact and is reviewed under a "clearly erroneous" standard. An appellate court will overturn a trial court's factual findings only when they are not supported by substantial evidence in the record, or if they were the result of an erroneous conception of the applicable law, or if, after a consideration of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. Farek v. Ruben, 16 FSM R. 154, 156 (Chk. S. Ct. App. 2008).

Issues of whether the evidence was sufficient to support the trial court's verdict for the appellees and whether the trial court properly found that the evidence was insufficient to support appellants' claim of adverse possession are both issues that involve a review of the trial court's findings of fact under a "clearly erroneous" standard. An appellate court will overturn a trial court's factual findings only when they are not supported by substantial evidence in the record, or if they were the result of an erroneous conception of the applicable law, or if, after a consideration of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. Setik v. Ruben, 16 FSM R. 158, 162-63 (Chk. S. Ct. App. 2008).

In meeting the clearly erroneous standard of review, the appellant must ensure an adequate record. If the record does not demonstrate error, the appellant cannot prevail. Setik v. Ruben, 16 FSM R. 158, 163 (Chk. S. Ct. App. 2008).

When the appellate court does not find anything in the trial court record to suggest that the trial court should have found, by a preponderance of the evidence, that appellants were granted any an alleged enduring, customary right, the trial court's finding was not clearly erroneous. Setik v. Ruben, 16 FSM R. 158, 163 (Chk. S. Ct. App. 2008).

A trial court finding that the appellants occupied the land during the prior ownership under a right of use will not be overruled unless it is clearly erroneous, and when there is nothing in the record to indicate that the appellants ever challenged the ownership of the land, the court will not overturn the trial court's ruling against the claim for adverse possession without anything to indicate error in the trial court's finding that the appellants' use was permissive. Setik v. Ruben, 16 FSM R. 158, 166 (Chk. S. Ct. App. 2008).

For an appellate court to find that a trial court's factual finding is in error, it must determine that the finding was clearly erroneous. A trial court's finding will only be set aside if there is no credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. If, upon viewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Narruhn v. Aisek, 16 FSM R. 236, 239 (App. 2009).

The test as to the adequacy of trial court findings is whether they are sufficiently comprehensive and pertinent to the issue to form the basis of the decision. Narruhn v. Aisek, 16 FSM R. 236, 239 (App. 2009).

An appellate court cannot say that the trial court's finding was clearly erroneous when it was the result of weighing conflicting evidence. When the trial judge believed one witness's testimony and not another's, and gave an extensive analysis of the testimony before him that led him to that conclusion, there is no

reason for the appellate court to disturb his conclusion since it was supported by credible evidence and he had the opportunity to observe the witnesses and the manner of their testimony and the appellate court did not have that opportunity. Narruhn v. Aisek, 16 FSM R. 236, 239 (App. 2009).

Although the appellants may consider the timing of a witness's rebuttal testimony to be problematic, when the witness's testimony is not contradictory to his testimony before rebuttal and when the trial court's findings are supported by other testimony, the finding will not be set aside based on an alleged inconsistency between the witness's direct and later rebuttal testimony. Narruhn v. Aisek, 16 FSM R. 236, 241 (App. 2009).

When, given the trial court's wide discretion in weighing the credibility of evidence, there is credible evidence to support the trial court's findings, the appellate court will reject argument that the trial court's legal conclusions were erroneous because the trial court's factual findings are not supported by credible evidence. Narruhn v. Aisek, 16 FSM R. 236, 242 (App. 2009).

In considering whether a Land Court decision is based upon substantial evidence, the court recognizes that it is primarily the Land Court's task to assess the witnesses' credibility, the admissibility of evidence, and to resolve factual disputes. A finding that substantial evidence supports the findings does not mean that the evidence must be uncontroverted or undisputed, but if findings are adequately supported and the evidence has been reasonably assessed, the findings will not be disturbed on appeal. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 374 (Kos. S. Ct. Tr. 2009).

When land claimants have apparently abandoned their earlier position that the land was given to their predecessor in 1917 and now assert that the land was acquired at a later time from some person not previously mentioned in the lengthy litigation over the land, and when the Land Court rejected the testimony supporting this new theory, and thus the theory itself, as not credible, the State Court, on appeal, can detect no error in that rejection since it is primarily the Land Court's task, and not the reviewing court's, to assess the witnesses' credibility and resolve factual disputes and the Land Court was present during the testimony. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 374 (Kos. S. Ct. Tr. 2009).

Although the presence of a person's name on the 1932 Japanese Survey Map as the owner of a parcel of land is not conclusive or dispositive of that person's ownership but may be overcome or rebutted by other evidence, when there was substantial evidence in the record before the Land Court that Mackwelung used, controlled, and occupied Yekula continuously after 1932, including evidence and testimony presented at the original 1979 Land Commission proceeding, the Land Court reasonably assessed this evidence as supporting the Mackwelungs' position that a *kewosr* to Sra Nuarar had taken place, and since the testimony that a previously unmentioned person had owned the land and had later transferred it to Kun Mongkeya was reasonably assessed as not credible, the evidence did not overcome the 1932 Japanese survey map. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 377 (Kos. S. Ct. Tr. 2009).

When the boundaries described in two May 9, 1957 land use agreements, one in which Kun Mongkeya granted about ¾ hectare for use by the Kusaie Intermediate School, and in the other in which Allen Mackwelung (and Daniel Aliksa) granted four hectares for the same purpose, and which were both signed not only by the grantors but also by a Tafunsak village chief, the Chief Magistrate of Kusaie, and five members of the Land Advisory Committee of Seven, including the District Administrator and the clerk of courts, abut each other; when the Land Commission-ordered "subdivision" reflects the boundary descriptions in both agreements; and when the boundary location was corroborated by witnesses who had been present in 1957 when the boundary was marked on the ground as personally directed by Allen Mackwelung, this all constitutes substantial evidence in support of the Land Court finding that the 1957 land use agreements reflect the true ownership of the land. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 377-78 (Kos. S. Ct. Tr. 2009).

An appellate court reviews de novo questions of law, but will overturn a lower court's factual findings

only when they are not supported by substantial evidence in the record, or if they were the result of an erroneous conception of the applicable law, or if, after a consideration of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 553 (Chk. S. Ct. App. 2009).

A trial court's finding will only be set aside if there is no credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. If, upon viewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Simina v. Kimeuo, 16 FSM R. 616, 620, 624 (App. 2009).

A claim that a trial court's decision did not address all the issues raised is not a basis for remand as long as the trial judge made a finding of such essential facts as provide a basis for the decision. The test as to the adequacy of the findings is whether they are sufficiently comprehensive and pertinent to the issue to form a basis for the decision. Simina v. Kimeuo, 16 FSM R. 616, 620 (App. 2009).

When a trial court's decision does not state that it reached any conclusion about a certain disputed fact, the appellate court may presume that it was not a basis for the trial court's decision. Simina v. Kimeuo, 16 FSM R. 616, 620 (App. 2009).

The trial court need not state why it did not consider an issue or facts, it need only make a finding of such essential facts as provide a basis for the decision. The findings must be sufficiently comprehensive and pertinent to the issue to form a basis for the decision and be pertinent to its conclusions of law. Simina v. Kimeuo, 16 FSM R. 616, 622 (App. 2009).

A finding is clearly erroneous when the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 658 (App. 2009).

The standard of review for findings of fact is whether the trial court's findings are clearly erroneous. When trial court findings are alleged to be clearly erroneous, an appellate court will find reversible error only: 1) if the trial court findings were not supported by substantial evidence in the record; or 2) if the trial court's factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing the evidence in the light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made. The trial court's findings are presumptively correct. George v. George, 17 FSM R. 8, 9-10 (App. 2010).

When the trial court did not rely on unadmitted evidence to reach its decision and when there was substantial trial testimony from which the trial court could reasonably find that the defendant owed the plaintiff $6,220.52, the trial court decision did not violate the defendant's due process rights and its factual finding that $6,220.52 was the amount owed was not clearly erroneous. George v. George, 17 FSM R. 8, 10 (App. 2010).

A trial court's findings are presumptively correct and findings of fact are reviewed using the clearly erroneous standard. George v. Albert, 17 FSM R. 25, 30 (App. 2010).

When trial court findings are alleged to be clearly erroneous, an appellate court can find reversible error only: 1) if the trial court findings were not supported by substantial evidence in the record; or 2) if the trial court's factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing the evidence in the light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made. George v. Albert, 17 FSM R. 25, 30 (App. 2010).

On appeal of a trial court's Rule 41(b) dismissal order on sufficiency of the evidence, the appropriate standard of review for findings of fact is whether they are clearly erroneous. A finding is clearly erroneous when the trial court's factual finding was not supported by substantial evidence in the record, or if the factual finding was the result of an erroneous conception of the applicable law, or, if after a consideration of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. Peter v. Jessy, 17 FSM R. 163, 170-71 (Chk. S. Ct. App. 2010).

If an appellant alleging clear error fails to show that the trial court's factual finding was not supported by substantial evidence in the record, or that the factual finding was the result of an erroneous conception of the applicable law, or that, if after a consideration of the entire record, the appellate court is not left with a definite and firm conviction that a mistake has been made, the appellate court can only affirm. Peter v. Jessy, 17 FSM R. 163, 171 (Chk. S. Ct. App. 2010).

Because findings of fact must not be set aside unless clearly erroneous, the appellate court starts its review of a trial court's factual findings by presuming the findings are correct. If it determines that substantial evidence supports the trial court's findings, it does not mean that the evidence was uncontroverted or undisputed. Rather, if the findings were adequately supported and the evidence was reasonably assessed, the findings will not be disturbed on appeal. Peter v. Jessy, 17 FSM R. 163, 171 (Chk. S. Ct. App. 2010).

The appellant's burden to clearly demonstrate error in the trial court's findings is especially strong when the findings are based upon oral testimony because, before reaching its conclusions as to the witnesses' credibility, the trial court had the opportunity to view the witnesses' demeanor as they testified, while the reviewing court has not. Peter v. Jessy, 17 FSM R. 163, 171 (Chk. S. Ct. App. 2010).

In reviewing a dismissal for insufficiency of evidence, once the appellate court determines the trial court's findings are not clearly erroneous, the appellate court asks whether those factual findings are sufficient or insufficient to meet the plaintiff's burden of proof. The trial court's answer to that question forms a legal conclusion, and as such is a ruling on a point of law that is reviewed de novo. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

When, given the trial court's wide discretion in weighing the credibility of evidence, there is credible evidence to support the trial court's findings, the appellate court will reject an argument that the trial court's legal conclusions were erroneous because the trial court's factual findings are not supported by credible evidence. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

A trial court's grant or refusal to adopt an expert's opinion is a question of fact and will not be reversed unless clearly erroneous. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

Due process issues are questions of law and are reviewed *de novo*, and findings of fact which support a trial court's legal findings are reviewed for clear error. Palsis v. Kosrae, 17 FSM R. 236, 240 (App. 2010).

Since a Kosrae public service system management official may, for disciplinary reasons, dismiss an employee when he determines that the good of the public service will be served thereby but since no dismissal of a permanent employee is effective for any purpose until the management official transmits to the employee, by the most practical means, a written notice setting forth the specific reasons for the dismissal and the employee's rights of appeal, the employee must be provided with notice that specifically identifies the reasons for dismissal and the employee's rights of appeal, which is the opportunity to be heard. When the trial court's findings of fact indicate that these specific mandates were satisfied, the appellate court is unable to find that the State Court's reasoning was clearly erroneous. Palsis v. Kosrae, 17 FSM R. 236, 242 (App. 2010).

The standard of review on a question of the sufficiency of the evidence is whether the trial court's findings are clearly erroneous. A finding is clearly erroneous and reversible error if: 1) the findings are not supported by substantial evidence in the record; 2) the finding was the result of an erroneous

conception of the applicable law; or 3) after reviewing the entire body of the evidence in the light most favorable to the appellee, the reviewing court is left with a definite and firm conviction that a mistake has been made. Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion, and it consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Palsis v. Kosrae, 17 FSM R. 236, 243 (App. 2010).

If an appellant asserts that there was no evidence to support certain findings but has not provided a full transcript, the appellate court cannot determine that there was no evidence before the lower court to support its findings, and it will be unable to identify any of the trial court's factual findings as clearly erroneous. This is true even when the appellant has provided portions of the trial transcript in its brief and as part of its appendix, but has not directed the appellate court to the relevant portions of the transcript that show that the trial court's findings were clearly erroneous. Palsis v. Kosrae, 17 FSM R. 236, 243 (App. 2010).

The appropriate standard of review cannot be applied to an appellant's assertions of fact when she does not identify which of the trial court's findings were not supported by substantial evidence and when she does not explain or analyze how those findings were not supported by the testimony elicited and introduced at the trial. Absent these arguments and assertions, the appellate court need not further analyze this issue. Palsis v. Kosrae, 17 FSM R. 236, 244 (App. 2010).

Although issues of law are reviewed *de novo* on appeal, the standard of review for trial court findings of fact is whether those findings are clearly erroneous. Berman v. Pohnpei Legislature, 17 FSM R. 339, 346 (App. 2011).

A trial court's factual findings are presumptively correct. When an appellant asserts that trial court findings are clearly erroneous, the appellate court will find reversible error only: 1) if the trial court findings were not supported by substantial evidence in the record; or 2) if the trial court's factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing it in the light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made. Berman v. Pohnpei Legislature, 17 FSM R. 339, 346 (App. 2011).

When an appellant asserts that a trial court finding was erroneous but has not provided a full trial transcript, the appellate court cannot determine whether that finding is clearly erroneous or that the trial court should have made a different finding and the trial court's findings of fact will thus remain the only facts on which the appellate court can decide the appeal. Berman v. Pohnpei Legislature, 17 FSM R. 339, 347 (App. 2011).

When an appellant challenges a trial court factual finding that is presumptively correct, in the absence of a trial transcript, that finding must stand as fact, especially when, even with a trial transcript, it would have been difficult to show that this finding was clearly erroneous. Berman v. Pohnpei Legislature, 17 FSM R. 339, 347 (App. 2011).

Absent a trial transcript, a presumptively-correct trial court finding must stand as fact. Berman v. Pohnpei Legislature, 17 FSM R. 339, 347 (App. 2011).

If an issue was actually tried and evidence on the matter admitted with the parties' implied or express consent, it must be treated as if it was raised by the pleadings and the trial court should have ruled on it and granted whatever relief, if any, the plaintiff had proven herself entitled to. But when, without a transcript, it is impossible for the appellate court to determine if the retaliation issue was actually tried with the parties' consent, express or implied, the appellate court will not consider this assignment of error because there is nothing to show that it was ever properly before the trial court since the plaintiff never sought to amend the pleadings to include it although she had ample opportunity to do so, and there is no evidence that it was ever tried by the parties' express or implied consent. Berman v. Pohnpei Legislature, 17 FSM R. 339,

350-51 (App. 2011).

The standard of review for findings of fact is whether the trial court's findings are clearly erroneous. A trial court's findings are presumptively correct. Berman v. Pohnpei, 17 FSM R. 360, 368 (App. 2011).

When an appellant claims that trial court findings are clearly erroneous, the appellate court will find reversible error only: 1) if the trial court findings were not supported by substantial evidence in the record; or 2) if the trial court's factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing the evidence in the light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made. Berman v. Pohnpei, 17 FSM R. 360, 368 (App. 2011).

If an appellant asserts that there was no evidence to support certain findings or that the evidence compels a different finding but has not provided a full transcript, the appellate court cannot determine that the trial court's findings were clearly erroneous or that the trial court should have made other findings. Thus, without a trial transcript, the appellate court will be unable to identify any trial court finding of fact as clearly erroneous, and the trial court's findings of fact will remain the only facts on which the appeal can be decided. Berman v. Pohnpei, 17 FSM R. 360, 368 (App. 2011).

Whether the Pohnpei police injured an arrestee through the use of excessive force and thus battered her is a question of fact. Thus, when the trial court found as fact that the arrestee had caused her own injuries by struggling with the handcuffs during the travel from the arrest site to the police station, which resulted in the handcuffs tightening further around her wrists and that the handcuffs' tightening was not the result of an officer's conduct, but rather was the result of her own movements, the police did not cause her injury and no use-of-excessive-force battery could have occurred. Berman v. Pohnpei, 17 FSM R. 360, 372 (App. 2011).

Findings of fact will be reviewed on the clearly erroneous standard. In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee. If, upon reviewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 434 (App. 2011).

A finding of actual damages is a finding of fact, and findings of fact are reviewed on the clearly erroneous standard. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 437 (App. 2011).

When the appellant never brought up the issue of actual damages in the civil rights claim at the trial level, that issue is not properly before the appellate court. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 437-38 (App. 2011).

Those parts of a trial court decision that are findings of fact are reviewed on the clearly erroneous standard. In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee, and if, upon reviewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Stephen v. Chuuk, 17 FSM R. 453, 458 (App. 2011).

Inherent within the trial court's description that the size of the judgments is "unwieldy" is a statement of fact and the recognition that Chuuk had a limited ability to pay and although the appellate court may sympathize with the plaintiffs' frustration, it must not substitute its judgment for that of the trial court without feeling a definite and firm conviction that a mistake has been made and that these statements of fact were "clearly erroneous." Stephen v. Chuuk, 17 FSM R. 453, 460-61 (App. 2011).

The standard of review of a trial court's factual findings is whether those findings are clearly erroneous. In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee. If, upon reviewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Setik v. Ruben, 17 FSM R. 465, 471 (App. 2011).

When the appellants have submitted the trial transcript, as well as a translation, that includes numerous references by multiple witnesses to the alleged customary gift to the appellants, the appellate court, upon reviewing all the evidence in the record, including the translated transcript, is left with the definite and firm conviction that a mistake has been made, and therefore concludes that the trial court was clearly erroneous in finding that there was "no material evidence" of the customary gift. Setik v. Ruben, 17 FSM R. 465, 471-72 (App. 2011).

Since a trial court's findings are presumptively correct, the FSM Supreme Court appellate division would need a complete translated transcript from the Kosrae Land Court before it could identify any of that court's findings of fact as clearly erroneous or as unsupported by substantial evidence. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 505 n.2 (App. 2011).

Generally, an appellate court does not make factual findings. In re Sanction of George, 17 FSM R. 613, 616 (App. 2011).

The substantial-evidence rule is the principle that a reviewing court should uphold an administrative body's ruling if it is supported by evidence on which the administrative body could reasonably base its decision. Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion, and it consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 655 (App. 2011).

When reviewing a Land Court decision, the State Court, applying the substantial-evidence rule, does not determine where, in its view, the preponderance of the evidence lies. Under the substantial-evidence rule, the court's sole obligation is to review the entire record and determine whether the evidence as a whole is such that reasonable minds could have reached the same conclusion. The State Court thus must determine if the record contained evidence supporting the Land Court decision that was more than a mere scintilla or even more than some evidence. If there was, the State Court must affirm the Land Court decision even if the evidence would not, in the State Court's view, amount to a preponderance of the evidence but would be somewhat less and even if the State Court would have decided it differently. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 655-56 (App. 2011).

The record may contain evidence which preponderates one way and yet include substantial evidence to support an order reaching an opposite result. Substantial evidence need not be much evidence, and though "substantial" means more than a mere scintilla, or some evidence, it is less than is required to sustain a verdict being attacked as against the great weight and preponderance of the evidence. The substantial-evidence rule is a very deferential standard of review. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 656 (App. 2011).

The Kosrae State Court cannot assume the role of fact-finder. The statute mandates that the standard of review that the State Court must apply to a Land Court decision is whether there was substantial evidence in the record to support it, not whether the Land Court "reasonably assessed" the evidence. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 656 (App. 2011).

"Some evidence" may be a higher standard than the scintilla of evidence standard, but "some evidence" still does not equate with "substantial evidence." "Substantial evidence" is a higher standard than "some evidence" but it is not as high as the "preponderance of the evidence" standard. It can be less. Substantial evidence is more than a mere scintilla or some evidence, but less than is required to sustain a

verdict being attacked as against the great weight and preponderance of the evidence. The trial court does not assume the role of fact finder, the issue is purely one of law. In fact, the evidence may be substantial and yet greatly preponderate the other way. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 656 (App. 2011).

Generally, a finding of fact, though presumptively correct, may nevertheless be reversed or vacated if a challenger proves clear error. Heirs of Mackwelung v. Heirs of Mongkeya, 18 FSM R. 12, 14 (Kos. S. Ct. Tr. 2011).

When nothing in the record contradicts the trial court finding that Actouka was acting as an insurance broker and that the national government acted as an agent for Chuuk (and the other states) in dealing with the insurance broker Actouka until it came time for the ship operators to pay their respective shares of the agreed premiums due, the trial court's finding that Actouka and Chuuk entered into two separate agreements for Actouka to seek and obtain insurance and that various writings to that effect were signed on the behalf of Chuuk, the party to be charged, was thus not clearly erroneous. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 118 (App. 2011).

When it is apparent from the pleadings that genuine issues of material fact are present and when it is apparent that the trial court's judgment included rulings on disputed factual issues, the case was not one that was appropriate for resolution by summary judgment and thus the trial court judgment must be vacated and the matter remanded for trial. Phillip v. Moses, 18 FSM R. 247, 250 (Chk. S. Ct. App. 2012).

The standard of review for trial court findings of fact is whether those findings are clearly erroneous. A trial court's findings are presumptively correct, but when trial court findings are alleged to be clearly erroneous, the appellate court can find reversible error only: 1) if the trial court findings were not supported by substantial evidence in the record; or 2) if the trial court's factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing it in the light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 351 (App. 2012).

That the trial court found other testimony more credible than one witness's is not a ground for reversal because the trial court was in the best position to judge the witnesses' demeanor and credibility since the trial judge had the opportunity to observe the witnesses and the manner in which they testified. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 352 (App. 2012).

Although the trial judge did not have the opportunity the manner in which a witness testified when she testified by deposition, the appellate court cannot presume that even if she had testified in person that the trial judge would have found her more credible than the other witnesses and then decided the case in her favor since there was substantial evidence in the record to support the trial court's findings. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 352 (App. 2012).

When the appellants do not contend that the checks are not authentic but contend that the signature endorsements are all forgeries, and when the trial court found as fact that, except for one or two or a few that she had signed herself, Lilly Iriarte had authorized Santos to sign her name on the premium checks, the appellate court cannot conclude that the finding was clearly erroneous since substantial evidence in the record supports that finding. Since a forgery is a signature of a person that is made without the person's consent and without the person otherwise authorizing it, Lilly Iriarte's signatures are not forgeries even if made by Santos and having the original checks could not have altered the finding that Lilly Iriarte were authorized. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 352 (App. 2012).

An appellate court does not decide factual issues de novo. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 362 (App. 2012).

An appellate court does not make factual findings. Iriarte v. Individual Assurance Co., 18 FSM R. 406,

408 (App. 2012).

The appellate standard of review for trial court findings of fact is whether those findings are clearly erroneous. A trial court's findings are presumptively correct. When trial court findings are alleged to be clearly erroneous, the appellate court can find reversible error only: 1) if the trial court findings were not supported by substantial evidence in the trial court record; or 2) if the trial court's factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing it in the light most favorable to the appellee, the court is left with a definite and firm conviction that a mistake has been made. It cannot substitute its judgment for that of the trial court. Kosrae v. Edwin, 18 FSM R. 507, 511-12 (App. 2013).

When the appellant does not point to any evidence in the record that would lead the appellate court to feel that a trial court finding was clearly erroneous, that trial court finding must stand. Kosrae v. Edwin, 18 FSM R. 507, 515 (App. 2013).

A trial court's findings are presumptively correct. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 143 (App. 2013).

The standard of review of trial court findings of fact is whether those findings are clearly erroneous. A trial court's findings are presumptively correct. When trial court findings are alleged to be clearly erroneous, an appellate court can find reversible error only: 1) if the trial court findings were not supported by substantial evidence in the record; or 2) if the trial court's factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing it in the light most favorable to the appellee, it is left with a definite and firm conviction that a mistake has been made. Smith v. Nimea, 19 FSM R. 163, 169 (App. 2013).

An appellate court cannot substitute its judgment for that of the trial court. Smith v. Nimea, 19 FSM R. 163, 169 (App. 2013).

A trial court's "findings" are the facts as found. To be clearly erroneous, a decision must strike the appellate court as more than just maybe or probably wrong; it must strike the appellate court as wrong with the force of a five-week-old unrefrigerated dead fish. Smith v. Nimea, 19 FSM R. 163, 173 (App. 2013).

When a party claimed a boundary to subject land, but now claims the entire parcel, that caused the court to find and conclude that the party was uncertain as to what he was claiming and because of the inconsistencies the land court questioned his credibility. Ittu v. Ittu, 19 FSM R. 258, 262 (Kos. S. Ct. Tr. 2014).

Due regard must be given to the trial judge's opportunity to weigh the witnesses' credibility. In considering whether the decision is based upon substantial evidence, the reviewing court recognizes that it is primarily the Land Court's task to assess the witnesses' credibility, the admissibility of evidence, and to resolve factual disputes. Ittu v. Ittu, 19 FSM R. 258, 262 (Kos. S. Ct. Tr. 2014).

Land Court findings of fact will not be set aside unless clearly erroneous. To reverse its findings of fact, the appellate court must find that 1) its findings are not supported by substantial evidence; 2) there was an erroneous conception by the Land Court of the applicable law; and 3) the appellate court has a definite and firm conviction that a mistake has been made. Ittu v. Ittu, 19 FSM R. 258, 262 (Kos. S. Ct. Tr. 2014).

It is primarily the Land Court's task to assess the admissibility of evidence and when it was reasonably assessed, the reviewing court will accept its finding. Ittu v. Ittu, 19 FSM R. 258, 263 (Kos. S. Ct. Tr. 2014).

A finding is clearly erroneous when the reviewing court is left with the definite conviction that a mistake had been committed. Ittu v. Ittu, 19 FSM R. 258, 263 (Kos. S. Ct. Tr. 2014).

The Land Court's finding is based on substantial evidence in the record and not clearly erroneous when the appellant spends most of his argument repeating the same point that this matter is a boundary dispute within a parcel and not a title dispute but he not only claimed the entire parcel before the lower court, but he also surreptitiously asks for the Certificate of Title for the parcel in the same brief in which he calls for it boundary dispute. The appellant's repeated arguments are disingenuous. Ittu v. Ittu, 19 FSM R. 258, 264 (Kos. S. Ct. Tr. 2014).

Since a trial court's findings are presumptively correct, any challenged findings of fact will be reviewed on a clearly erroneous standard. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 300-01 (App. 2014).

When the appellant does not challenge the trial court's factual findings about the lack of notice or the improper makeup of the land registration team, those trial court findings of fact must stand. Aritos v. Muller, 19 FSM R. 533, 537 (Chk. S. Ct. App. 2014).

The standard of review for trial court findings of fact is whether those findings are clearly erroneous. A trial court's findings are presumed correct. Ihara v. Vitt, 19 FSM R. 595, 600 (App. 2014).

When trial court findings are alleged to be clearly erroneous, the appellate court will find reversible error only: 1) if the trial court findings were not supported by substantial evidence in the record; or 2) if the trial court's factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing it in the light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made, but the appellate court cannot substitute its judgment for that of the trial court. Ihara v. Vitt, 19 FSM R. 595, 600 (App. 2014).

A trial court's finding will only be set aside if there is no credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. Ihara v. Vitt, 19 FSM R. 595, 600 (App. 2014).

To be clearly erroneous, a decision must strike the court as more than just maybe or probably wrong; it must strike the court as wrong with the force of a five-week-old unrefrigerated dead fish. Ihara v. Vitt, 19 FSM R. 595, 600 (App. 2014).

The trial court's conclusion upholding an employee's termination is sound when the factual findings on which the conclusion is based are not clearly erroneous and the facts meet the three-factor test to permit immediate termination despite an employee handbook provision requiring progressive discipline. Ihara v. Vitt, 19 FSM R. 595, 602 (App. 2014).

An appellant's failure to include a transcript in the record on an appeal based upon a claim of insufficiency of evidence warrants dismissal of the appeal. Iron v. Chuuk State Election Comm'n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

Case law mirrors Kosrae State Code § 11.614(5)(d)'s statutory directive, in that the State Court's review must focus on whether the Land Court decision was predicated on substantial evidence and not contrary to law. The standard of appellate review regarding sufficiency of the evidence, is very limited; only findings that are clearly erroneous can be set aside. Ittu v. Ittu, 20 FSM R. 178, 184 (App. 2015).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion and consists of more than a scintilla of evidence but may be less than a preponderance. The Kosrae State Court, when reviewing a Land Court decision, applies the substantial evidence rule and does not determine where, in its view, the preponderance of the evidence lies but must determine if the record contains evidence supporting the Land Court decision that was more than a mere scintilla or even more than some evidence, and if there was, the State Court must affirm the Land Court decision even if the evidence would not, in its view, amount to a preponderance of the evidence and even if it would have decided it differently. Ittu v. Ittu, 20 FSM R. 178, 184 (App. 2015).

The standard of review, concerning a trial court's findings of fact, is whether such determination is clearly erroneous. Since a trial court's findings are presumptively correct, when trial court findings are alleged to be clearly erroneous, an appellate court can find reversible error only if: 1) the trial court findings were not supported by substantial evidence in the record; or 2) the trial court's factual finding was the result of an erroneous conception of the applicable law or 3) after reviewing the entire body of evidence and construing it in a light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made. Ittu v. Ittu, 20 FSM R. 178, 184-85 (App. 2015).

In order to be clearly erroneous, a decision must strike the appellate court as more than just maybe or probably wrong; it must strike the appellate court as wrong with the force of a five-week-old unrefrigerated dead fish. Ittu v. Ittu, 20 FSM R. 178, 185 (App. 2015).

An appellate court cannot substitute its judgment for that of the trial court. Ittu v. Ittu, 20 FSM R. 178, 185 (App. 2015).

The standard of review to be utilized by the FSM Supreme Court appellate division, when scrutinizing a Kosrae State Court decision, which in turn reviewed a Land Court decision, is whether the former abused its discretion, to wit: did the State Court fail to properly apply its standard of review in this particular case. Ittu v. Ittu, 20 FSM R. 178, 185 (App. 2015).

A determination that substantial evidence supports the finding does not mean the evidence must be uncontroverted or undisputed. If findings are adequately supported and the evidence reasonably assessed, the findings will not be disturbed on appeal since the reviewing court should not substitute its judgment for the lower court's well-founded findings. Ittu v. Ittu, 20 FSM R. 178, 185 (App. 2015).

In determining whether a factual finding is clearly erroneous, an appellate court must review the evidence in a light most favorable to the appellee and will set aside a finding of fact only when there is no credible evidence in the record to support that finding, in part, because the trial court had the opportunity to observe the demeanor of the witnesses, alongside their respective testimony. Ittu v. Ittu, 20 FSM R. 178, 185 (App. 2015).

A party's insistence that the case solely involved a boundary dispute within a parcel is belied by his claim to the parcel *in toto*. Ittu v. Ittu, 20 FSM R. 178, 185 (App. 2015).

An appellate court cannot say that the trial court's finding was clearly erroneous when it was the result of weighing conflicting evidence. When the trial judge believed one witness's testimony and not the other's and gave an extensive analysis of the testimony before him that led to the conclusion, there is no reason for the appellate court to disturb the trial court's conclusion since it was supported by credible evidence and the trial judge had the opportunity to observe the witnesses and the manner of testimony and the appellate court did not have that opportunity. Ittu v. Ittu, 20 FSM R. 178, 186 (App. 2015).

If the appellate court, after having pored over all the evidence in the record, is left with a firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Ittu v. Ittu, 20 FSM R. 178, 186 (App. 2015).

When one can safely deduce from the Kosrae State Court's memorandum of decision that it found that substantial evidence was propounded in the Land Court to support that court's decision and as a result, affirmed same, and when the FSM Supreme Court appellate division was afforded the opportunity to review each side's appellate briefs as well as entertain oral argument, it similarly ruled that the Kosrae State Court decision affirming the Land Court's ruling was accurate, given a meticulous review of the entire evidence and resultant absence of a definite/firm conviction that any mistake has been committed. Ittu v. Ittu, 20 FSM R. 178, 186-87 (App. 2015).

Appeals from Kosrae Land Court decisions are decided by applying the "substantial evidence rule" and, except for the official record, no evidence or testimony is considered at the appeal hearing. If the Kosrae State Court finds that the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, it must remand the case to the Land Court with instructions and guidance for rehearing the matter in its entirety or such portions of the case as may be appropriate. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 192-93 (App. 2015).

The standard of review, concerning a trial court's findings of fact, is whether such determination is clearly erroneous. A trial court's findings are presumptively correct. When trial court findings are alleged to be clearly erroneous, an appellate court can find reversible error only if: 1) the trial court findings were not supported by substantial evidence in the record; or 2) the trial court's factual finding was the result of an erroneous conception of the applicable law or 3) after reviewing the entire body of evidence and construing it in a light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 193-94 (App. 2015).

In order to be clearly erroneous, a decision must strike the appellate court as more than just maybe or probably wrong; it must strike the appellate court as wrong with the force of a five-week-old unrefrigerated dead fish. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 194 (App. 2015).

An appellate court cannot substitute its judgment for that of the trial court. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 194 (App. 2015).

An appellate court, in determining whether a factual finding is clearly erroneous, must review the evidence in a light most favorable to the appellee. The reviewing court will set aside a finding of fact only when there is no credible evidence in the record to support that finding, in part, because the trial court had the opportunity to observe the witnesses' demeanor, alongside their respective testimony. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 194 (App. 2015).

When, after having pored over all the evidence in the record, the appellate court is left with the firm conviction that a mistake has been made, it may then conclude that the trial court finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 194 (App. 2015).

When the FSM Supreme Court determines the Kosrae State Court decision contained a sufficiently comprehensive analysis, referencing the factors taken into consideration in formulating its ruling and when one can safely deduce from the Kosrae State Court's memorandum of decision that it found substantial evidence propounded in the Land Court to support its decision and therefore affirmed same, the FSM Supreme Court appellate division will find that the Kosrae State Court decision, affirming the Land Court ruling, was accurate, given a fastidious review of the entire evidence and resultant absence of a definite/firm conviction that any mistake had been committed. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 194 (App. 2015).

A determination that substantial evidence supports the finding, does not mean the evidence must be uncontroverted or undisputed, but if findings are adequately supported and the evidence reasonably assessed, the findings will not be disturbed on appeal. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 195 (App. 2015).

A reviewing court will take every precaution not to second guess a trial court's finding of fact because, when the admissibility of certain evidence is questioned on appeal, the relevant inquiry is whether there is other credible evidence in the record to support the trial court's finding of fact, which an appellate court should not set aside. When there is credible evidence in the record to support that finding, in part because the trial court has the opportunity to view the witnesses and the manner of their testimony, the reviewing court should not substitute its judgment for the lower court's well-founded findings. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 195 (App. 2015).

An appellate court cannot say that the trial court's finding was clearly erroneous when it was the result of weighing conflicting evidence. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 195 (App. 2015).

When the trial judge believed one witness's testimony and not the other's and gave an extensive analysis of the testimony before it that led to that conclusion, there is no reason for the appellate court to disturb this conclusion, as it was supported by credible evidence and the trial court had the opportunity to observe the witnesses and the manner of their testimony and the appellate court did not have that opportunity. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 195 (App. 2015).

When the Kosrae State Court's memorandum of decision contained a detailed analysis which cogently recapped the aggregate testimony from the Land Court and thoroughly reviewed the record, including the Land Registration Team's finding of fact and was privy to the appellants' appellate brief and when that court undertook a painstaking review to substantiate its respective ruling, its memorandum of decision was sufficiently comprehensive to refute the appellants' position. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 195-96 (App. 2015).

An appellants' claim that a lower court decision did not address all the issues raised, is not a basis for remand, as long as the decision denotes the essential facts that provide a basis for such ruling. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 196 (App. 2015).

The test, with respect to the adequacy of the findings, is whether they are sufficiently comprehensive and pertinent to the issue, in terms of formulating a basis for the decision. A court need not state why it did not consider an issue or fact; it need only make a finding of such essential facts as provide a basis for the decision. Simply because the Kosrae State Court's memorandum of decision did not specifically articulate why sundry "essential facts" cited by the appellants' brief were insufficient to sway that court, does not necessarily imply they were ignored. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 196 (App. 2015).

The standard of review for trial court findings of fact is whether those findings are clearly erroneous. A trial court's findings are presumed correct, and the appellate court cannot substitute its judgment for that of the trial court. When a trial court finding is alleged to be clearly erroneous, the appellate court will find reversible error only: 1) if the trial court finding was not supported by substantial evidence in the record; or 2) if the trial court's factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing it in the light most favorable to the appellee, it is left with a definite and firm conviction that a mistake has been made. Alexander v. Hainrick, 20 FSM R. 377, 381 (App. 2016).

That the trial court found one witness's testimony more credible than another's, is not a ground for reversal since the trial judge was in the best position to judge the witnesses' demeanor and credibility by observing them and the manner in which they testified. Alexander v. Hainrick, 20 FSM R. 377, 382 (App. 2016).

The standard of review for trial court factual findings is whether those findings are clearly erroneous since trial court findings are presumed correct and the appellate court will not substitute its judgment for the trial court's. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 426 (App. 2016).

When an appellant claims that a trial court finding is clearly erroneous, an appellate court will find reversible error only: 1) if the trial court finding was not supported by substantial evidence in the record; or 2) if the trial court's factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing it in the light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 426 (App. 2016).

That the trial court found one witness's testimony more credible than another's is not a ground for

reversal because the trial court was in the best position to judge the witnesses' demeanor and credibility since the trial judge was able to observe the witnesses and the manner in which they testified. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 426, 427 (App. 2016).

The appellate court may disregard an assignment of error that a factual finding was clearly erroneous when, even if the finding was clearly erroneous, it would not affect the case's outcome. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 427 (App. 2016).

When the trial judge was able to observe the witnesses while they testified and the trial judge found one witness's testimony more credible than another's and analyzes why, the appellate court will not disturb that finding if it is supported by credible evidence in the record since the trial judge had the opportunity to observe the witnesses and the manner of their testimony and the appellate court did not have that opportunity. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 427 (App. 2016).

The appellate court will usually not hold a trial court finding clearly erroneous when it was the result of weighing conflicting evidence. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 427 (App. 2016).

A court determines that a finding is clearly erroneous when, although there is some evidence to support it, the reviewing court examines all the evidence and is left with the definite and firm conviction, that a mistake has been committed. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 26 (App. 2016).

Simply because, when the trial court denied the imposition of Rule 11 sanctions on the bank's attorney, it did not specifically articulate its reasoning for not imposing Rule 11 sanctions on the bank, does not necessarily imply that due consideration was lacking, in terms of such a prospect. A trial court need not state why it did not consider an issue or fact, it need only make a finding of such essential facts, as provide for a basis for the decision. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 28 (App. 2016).

When there was more than ample evidence that the bank, as well as its attorney, conducted due diligence and thereby, reasonable inquiry into the documents' signatories, an appellate court should be reluctant to substitute its judgment for that of the trial judge. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 28 (App. 2016).

With respect to an allegation that a decision is clearly erroneous, an appellate court can find reversible error only if: 1) the trial court findings were not supported by substantial evidence in the record, or 2) the trial court's factual finding was the result of an erroneous conception of the applicable law, or 3) after reviewing the entire body of evidence and construing it in a light most favorable to the appellee, the appellate court is left with a firm conviction that a mistake has been made. In order to be clearly erroneous, a decision must strike the appellate court as more than just maybe or probably wrong; it must strike the appellate court as wrong with the force of a five-week old unrefrigerated dead fish. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 55 (App. 2016).

The test to be utilized in determining the adequacy of findings and thus the sufficiency of evidence, is whether they are comprehensive and pertinent to the issue at hand, in terms of formulating a sound basis for the decision. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 58 (App. 2016).

Determining when documents were submitted is purely a factual determination more suited for a trial court. Tilfas v. Kosrae, 21 FSM R. 81, 90 (App. 2016).

If, after poring over all the evidence in the record, the appellate court is left with a firm conviction that a mistake has been made, it may then conclude that the finding was erroneous, but it cannot substitute its judgment for that of the trial court. Lonno v. Heirs of Palik, 21 FSM R. 103, 108 (App. 2016).

A trial court's findings are presumptively correct. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 118 (App. 2017).

When the trial court findings are alleged to be clearly erroneous, an appellate court can find reversible error only if: 1) the trial court findings were not supported by substantial evidence in the record or 2) the trial court's factual finding was the result of an erroneous conception of the applicable law or 3) after reviewing the entire body of evidence and construing it in a light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 118 (App. 2017).

In order to be clearly erroneous, a decision must strike the appellate court as more than maybe or probably wrong; it must strike the court as wrong with the force of a five-week-old unrefrigerated dead fish. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 118 (App. 2017).

Substantial evidence is evidence which a reasonable mind would accept as sufficient to support a conclusion and it consists of more than a scintilla of evidence, but less than a preponderance. A court, reviewing a claim that substantial evidence is lacking, cannot substitute its judgment for that of the trial court. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 118-19 (App. 2017).

When an appellate court finds nothing that contradicts a Trust Territory High Court judgment previously rendered on the issue of ownership of the land in question and the state court decision is based solely on the prior High Court decision, the trial court will be affirmed. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 119 (App. 2017).

The trial court need not say why it did not consider an issue or fact; it need only make a finding of such essential facts as provide a basis for its decision. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 120 (App. 2017).

A determination that substantial evidence supports the finding does not mean the evidence must be uncontroverted or undisputed, but if findings are adequately supported and the evidence reasonably assessed, the findings will not be disturbed on appeal. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 121 (App. 2017).

A trial court's findings are presumptively correct, and are reviewed using the clearly erroneous standard. When trial court findings are alleged to be clearly erroneous, the appellate court can find reversible error only: 1) if the trial court findings were not supported by substantial evidence in the record; or 2) if the trial court's factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing the evidence in the light most favorable to the appellee, we are left with a definite and firm conviction that a mistake has been made. Gallen v. Moylan's Ins. Underwriters (FSM) Inc., 21 FSM R. 380, 384 (App. 2017).

A trial court's findings are presumptively correct. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 531 (App. 2018).

When trial court findings are alleged to be clearly erroneous, an appellate court can find reversible error only: 1) if the trial court findings were not supported by substantial evidence in the record; or 2) if the trial court's factual finding was the result of an erroneous conception of the applicable law; or 3) if after reviewing the entire body of evidence and construing the evidence in the light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 531 (App. 2018).

To be clearly erroneous, a decision must strike the appellate court as more than just maybe or probably wrong; it must strike the appellate court as wrong with the force of a five-week-old unrefrigerated dead fish. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 531 (App. 2018).

The question of whether the facts as found (or whether the facts as found which are not clearly erroneous) are sufficient evidence to meet the plaintiff's burden of proof is a question of law, and issues of law are reviewed de novo on appeal. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 531 (App.

2018).

Any purportedly erroneous trial court finding about specific boundary lines' accuracy of the lot are safely ameliorated as harmless error, when the plaintiff's proffer of evidence was inadequate to show that it would have developed this lot during the divested five-month period of its respective lease. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 532 (App. 2018).

The test to be utilized in determining the adequacy of findings (and the sufficiency of evidence) is whether they are comprehensive and pertinent to the issue at hand, in formulating a sound basis for the decision. The trial court need not state why it did not consider an issue or facts; it need only make a finding of such essential facts as provide a basis for the decision. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 533 (App. 2018).

The issue of waiver is a mixed question of law and fact for which an appellate court uses a de novo review for the law and the clearly erroneous standard for the facts. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

The standard of review of a trial court's factual findings is whether those findings are clearly erroneous. In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee. Edmond v. FSM Dev. Bank, 22 FSM R. 77, 79-80 (App. 2018).

Generally, appellate courts do not make factual findings. Edmond v. FSM Dev. Bank, 22 FSM R. 77, 80 (App. 2018).

To the extent an appellant contests the trial court's findings of fact as clearly erroneous, an appellate court can only find reversible error when 1) the trial court findings were not supported by substantial evidence in the record; 2) the factual findings were the result of erroneous conception of the applicable law; or 3) after reviewing the entire body of evidence and construing the evidence in the light most favorable to the appellee, we are left with a definite and firm conviction that a mistake has been made. George v. Palsis, 22 FSM R. 165, 171 (App. 2019).

An appellate court cannot hold the trial court's findings as clearly erroneous when the decision was the result of weighing conflicting evidence. George v. Palsis, 22 FSM R. 165, 171 (App. 2019).

A trial court's findings are presumptively correct. Thus, in order for a factual finding to be clearly erroneous, the decision must strike the appellate court as more than just maybe or probably wrong; it must strike the appellate court as wrong with the force of a five-week-old unrefrigerated dead fish. George v. Palsis, 22 FSM R. 165, 171 (App. 2019).

Once the facts are found, that are not determined to be clearly erroneous, the question becomes whether those facts were sufficient evidence to meet the burden of proof, which is a question of law measured by the abuse of discretion standard. George v. Palsis, 22 FSM R. 165, 171 (App. 2019).

When reviewing an appeal from a Land Court decision, the Kosrae State Court uses the "substantial-evidence rule" to review the Land Court's factual findings, and otherwise determines whether that decision was contrary to law, and, if the Land Court decision is ultimately appealed to the FSM Supreme Court appellate division, the FSM Supreme Court will use the same standard of review. Heirs of Sigrah v. George, 22 FSM R. 211, 216 (App. 2019).

The Chief Justice's use of another case as evidence is improper because he was sitting as an appellate court with its terms of review set by statute, and that statute provided that no evidence or testimony can be considered at the appeal hearing except the official record, transcripts, and exhibits received at the Land Court hearing, since the Chief Justice considered evidence that the statute prohibited him from considering, unless that evidence was part of the Land Court record or is only being cited for a

principle of law. Heirs of Sigrah v. George, 22 FSM R. 211, 219 (App. 2019).

When reviewing a trial court's Rule 41(b) dismissal on sufficiency of the evidence, the appropriate standard of review is whether the findings of fact are clearly erroneous. Jackson v. Siba, 22 FSM R. 224, 230 (App. 2019).

A finding is clearly erroneous and reversible error if: 1) the findings are not supported by substantial evidence in the record; 2) the finding was the result of an erroneous conception of the applicable law; or 3) after reviewing the entire body of the evidence in the light most favorable to the appellee, the reviewing court is left with a definite and firm conviction that a mistake has been made. Jackson v. Siba, 22 FSM R. 224, 230 (App. 2019).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion, and it consists of more than a mere scintilla of evidence, but may be somewhat less than a preponderance. Jackson v. Siba, 22 FSM R. 224, 230 (App. 2019).

When an appellant takes issue with both the trial court's findings of fact and its subsequent dismissal order, it requires a two-tier analysis. The appellate court first reviews the trial court's findings of fact for clear error. Thereafter, it applies the facts found that are not clearly erroneous, together with those shown by the record as undisputed, and reviews the Rule 41(b) dismissal order under an abuse of discretion standard. Jackson v. Siba, 22 FSM R. 224, 230 (App. 2019).

Issues of fact are reviewed under the clearly erroneous standard. FSM v. Kuo Rong 113, 22 FSM R. 515, 519 (App. 2020).

Since an appellate court does not set aside findings of fact unless they are clearly erroneous, it starts its review of a trial court's factual findings by presuming the findings are correct, and, if it determines that substantial evidence supports the trial court findings, it will not disturb those factual findings on appeal. But even then, if the appellate court does not disturb the facts, as found, it must ask whether those factual findings are sufficient to meet the plaintiff's burden of proof. Since the trial court's answer to that question is a legal conclusion and thus a ruling on a point of law, the appellate court reviews that conclusion de novo. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 619 (Chk. S. Ct. App. 2020).

– Standard – Criminal Cases

The standard of review is not whether the appellate court is convinced beyond a reasonable doubt but whether the court can conclude that the trier of fact could, acting reasonably, be convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. Engichy v. FSM, 1 FSM R. 532, 546 (App. 1984).

An appellate court should not overrule or set aside a trial court's finding of fact where there is credible evidence in the record to support that finding. Engichy v. FSM, 1 FSM R. 532, 556 (App. 1984).

The trial court's findings will be upheld so long as they rationally reflect evidence which is reasonable and combines with other evidence to present a coherent, believable, overall picture. Engichy v. FSM, 1 FSM R. 532, 557 (App. 1984).

The appellate process contemplates that any issue brought before an appellate court will first have been ruled upon by a trial judge. Loch v. FSM, 2 FSM R. 234, 236 (App. 1986).

An issue not presented to and ruled upon by the trial court cannot properly come before the appellate division for review. In the absence of an objection in the trial court the appellate division will refuse to consider the issue. Loney v. FSM, 3 FSM R. 151, 154 (App. 1987).

For false evidence to lead to reversal of a conviction, there must be some reason to believe that the trier of fact may have been misled and that this may have contributed to the conviction. Bernardo v. FSM, 4 FSM R. 310, 314 (App. 1990).

In a criminal case, the task of an appeals court is to determine whether the trier of fact could reasonably have been convinced of the charge beyond a reasonable doubt by the evidence. Tosie v. FSM, 5 FSM R. 175, 178 (App. 1991).

The test on appeal is not whether the appellate court is convinced beyond a reasonable doubt, but whether the trial court acting reasonably is convinced. Otto v. Kosrae, 5 FSM R. 218, 222 (App. 1991).

Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded. FSM Crim. R. 52(a). Otto v. Kosrae, 5 FSM R. 218, 222 (App. 1991).

An issue raised in closing argument at trial can be properly brought before the appellate court. Otto v. Kosrae, 5 FSM R. 218, 222 (App. 1991).

In reviewing a criminal conviction on appeal the appellate court need not go beyond the standard of review in Engichy v. FSM, 1 FSM R. 532, to require that the test be whether the trier of fact could reasonably conclude that the evidence is inconsistent with every hypothesis of innocence. Jonah v. FSM, 5 FSM R. 308, 310-11 (App. 1992).

The appellate court will not decide a constitutional issue if not raised below and because unnecessary constitutional adjudication is to be avoided. Jonah v. FSM, 5 FSM R. 308, 313 (App. 1992).

An issue not raised at trial cannot be introduced for the first time on appeal. Alfons v. FSM, 5 FSM R. 402, 404 (App. 1992).

Although, ordinarily, an issue must be raised at the trial level for it to be preserved for appeal, whether a court has subject matter jurisdiction is an issue that may be raised at any time. Hartman v. FSM, 6 FSM R. 293, 296 (App. 1993).

In an appeal of a criminal conviction, before the appellate court can conclude that a trial court error was harmless, the court must conclude that it was harmless beyond a reasonable doubt. Yinmed v. Yap, 8 FSM R. 95, 99 (Yap S. Ct. App. 1997).

The standard of review for a criminal contempt conviction, like the standard for any criminal conviction, is whether the appellate court can conclude that the trier of fact reasonably could have been convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. Johnny v. FSM, 8 FSM R. 203, 206 (App. 1997).

An appellate court will not reweigh the evidence presented at trial. Credibility determinations are uniquely the province of the factfinder, not the appellate court. Johnny v. FSM, 8 FSM R. 203, 207 (App. 1997).

When facts not controverted are admitted, or have been assumed by both parties, the failure to make findings thereof does not necessitate a remand. Nelson v. Kosrae, 8 FSM R. 397, 403-04 (App. 1998).

In meeting the standard of review, the appellant must ensure an adequate record. If the record does not demonstrate error, the appellant cannot prevail. Cheida v. FSM, 9 FSM R. 183, 189 (App. 1999).

An issue of whether there was any testimony presented to show that the defendant was threatened by imminent unlawful bodily harm would not really be an issue since even if there was such testimony, the issue is whether the trial court could have reasonably found that other contrary testimony was more credible

or carried more weight. Neth v. Kosrae, 14 FSM R. 228, 232 n.1 (App. 2006).

In a criminal case, the appellate court's responsibility is to determine whether the trier of fact could reasonably have been convinced beyond a reasonable doubt by the evidence presented. The standard of review is not whether the appellate court is convinced beyond a reasonable doubt, but whether the court can conclude that the trier of fact could, acting reasonably, be convinced beyond a reasonable doubt by the evidence which it had the right to believe and accept as true. Moses v. FSM, 14 FSM R. 341, 344 (App. 2006).

The appellate court's obligation is to review the evidence in the light most favorable to the trial court's factual determinations. The standard of review extends to inferences drawn from the evidence as well. The trial court's findings will be upheld so long as they rationally reflect evidence which is reasonable and combines with other evidence to present a coherent, believable, overall picture. Moses v. FSM, 14 FSM R. 341, 344 (App. 2006).

When the defendant raised as a ground for his motion to recuse the trial judge that the trial judge participated in the plea negotiations, in violation of Kosrae Criminal Procedure Rule 11(e)(1), although the defendant did not argue that the trial court's involvement in plea discussions violation warranted vacation of his conviction, (only that it warranted recusal), the issue was not forfeited. Kinere v. Kosrae, 14 FSM R. 375, 387 (App. 2006).

When the trial court issued findings of guilt for the defendant's violation of both 11 F.S.M.C. 532 and 11 F.S.M.C. 701, but only entered a conviction for his violation of 11 F.S.M.C. 701 and thereafter, the defendant was sentenced to a term of one year in jail, again, only for his conviction of 11 F.S.M.C. 701, the trial court's finding of guilt for the defendant's violation of 11 F.S.M.C. 532 is not at issue in the appeal. Wainit v. FSM, 15 FSM R. 43, 46 n.2 (App. 2007).

Since statutory vagueness is a due process concept and since the wording of the Due Process Clauses of the Kosrae Constitution and of the FSM Constitution is identical, these two constitutional provisions may be treated as identical in meaning and in scope. The appellate court will proceed as if the statute is challenged under both. Phillip v. Kosrae, 15 FSM R. 116, 119 (App. 2007).

An appeal from an order denying bail is to be determined upon such papers, affidavits, and portions of the record as the parties present, including any statement of the reasons of the court appealed from explaining the denial of release, or conditions. Nedlic v. Kosrae, 15 FSM R. 435, 437, 438 (App. 2007).

The standard of review for an appeal from an order denying bail is that the reviewing court will undertake an independent review of the detention decision, giving deference to the trial court's determination, and, if, after its independent review of the facts and the trial court's reasons, the appellate court concludes that the trial court should have reached a different result, then the reviewing court may amend or reverse the detention order, but if the appellate court does not reach such a conclusion – even if it sees the decisional scales as evenly balanced – then the trial judge's determination should stand. Nedlic v. Kosrae, 15 FSM R. 435, 437-38 (App. 2007).

When, after the appellate court's independent review of all of the matter which it is entitled to consider under FSM Appellate Rule 9(a), along with the trial court's statement of its reasons for setting bail in the amount it did, the appellate court cannot conclude that the trial court should have reached a different result, the appellants' motions to overturn the trial court bail orders will therefore be denied. Nedlic v. Kosrae, 15 FSM R. 435, 438-39 (App. 2007).

When a party at trial claims surprise, and the judge offers that party a chance to cure any prejudice and the party makes the tactical choice to decline the opportunity, it is a tactical choice the party must live with and is not a basis for reversal. Engichy v. FSM, 15 FSM R. 546, 555 (App. 2008).

While appellate panels must always show deference to the inferences and conclusions drawn by a trial judge from evidence, this deference seems even greater in the context of a conspiracy trial, in which the trial judge is likely looking for the proverbial "wink and nod" that often ties a conspiracy together. It is with such considerable deference that an appellate court reviews the evidence explicitly relied upon by the trial court in reaching its guilty verdict. Engichy v. FSM, 15 FSM R. 546, 558-59 (App. 2008).

The Kosrae Code provides that government appeals in a criminal proceeding are limited to only when the court has held a law or regulation invalid. It further provides that on a government appeal from a criminal proceeding the appellate court cannot reverse a finding of not guilty, but may reverse determination of invalidity of a law or regulation. Kosrae v. Benjamin, 17 FSM R. 1, 3 (App. 2010).

Constitutional constraints would bar the appellate reversal of a not guilty finding since both the FSM Constitution and the Kosrae Constitution protect an accused from being twice put in jeopardy for the same offense. Kosrae v. Benjamin, 17 FSM R. 1, 3 (App. 2010).

Under the Kosrae Code, government appeals from the Kosrae State Court in a criminal proceeding are limited to only when the Kosrae State Court has held a law or regulation invalid, and the appellate court may then reverse determination of invalidity of a law or regulation. No other Kosrae statute specifically authorizes a prosecution appeal. Kosrae v. George, 17 FSM R. 5, 7 (App. 2010).

Since the Kosrae Code only provides for an appeal in a criminal proceeding by the government only when the Kosrae State Court has held a law or regulation invalid, it does not authorize prosecution appeals from an adverse legal ruling construing a statute, such as when the Kosrae State Court did not hold the applicable statute of limitations invalid (it remains in effect) but interpreted it in a manner that the prosecution disagreed with and which terminated the prosecution. Kosrae v. George, 17 FSM R. 5, 7 (App. 2010).

Although many jurisdictions authorize prosecution appeals when a trial court's interlocutory pretrial order effectively terminates the prosecution, either because vital evidence is suppressed or because the court dismisses the case based solely on a pretrial legal ruling, the Kosrae Code does not authorize such appeals. Kosrae v. George, 17 FSM R. 5, 7 (App. 2010).

The trial court is in the best position to judge the demeanor and credibility of the witnesses. Cholymay v. FSM, 17 FSM R. 11, 17 (App. 2010).

The standard of review for a criminal contempt conviction, as for any criminal conviction, is whether the appellate court can conclude that the trier of fact reasonably could have been convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 (App. 2011).

The standard of review for a criminal contempt conviction under 4 F.S.M.C. 119(1)(b), like the standard for any criminal conviction, is whether the appellate court can conclude that the trier of fact reasonably could have been convinced beyond a reasonable doubt. In re Contempt of Jack, 20 FSM R. 452, 464 n.11 (Pon. 2016).

– Standard – Criminal Cases – Abuse of Discretion

Normally the trial court fashions the remedies and sanctions for a party's failure to comply with discovery requirements. The exercise of the trial court's discretion should not be disturbed by an appellate court absent a showing that the trial court's action has unfairly resulted in substantial hardship and prejudice to a party. Engichy v. FSM, 1 FSM R. 532, 558 (App. 1984).

Normally the trial court fashions the remedies and sanctions for failure of a party to comply with discovery requirements and the exercise of the trial court's discretion should not be disturbed by an appellate court absent a showing that the trial court's action has unfairly resulted in substantial hardship

and prejudice to a party. Bernardo v. FSM, 4 FSM R. 310, 313 (App. 1990).

An appeal from the decision of the trial judge may be only on the grounds of abuse of discretion resulting from the justice exceeding constraints imposed by the parole statute, Pub. L. No. 5-24 (5th Cong., 1st Spec. Sess. 1987). Yalmad v. FSM, 5 FSM R. 32, 34 (App. 1991).

The trial court's denial of the Rule 32(d) motion to withdraw his guilty plea is reviewed for an abuse of discretion and the trial court's underlying factual findings are reviewed for clear error. Kinere v. Kosrae, 14 FSM R. 375, 381 (App. 2006).

A trial court abuses its discretion when it renders a decision that is clearly unreasonable, arbitrary, or fanciful, based on an erroneous conclusion of law, or unsupported by the evidence. Kinere v. Kosrae, 14 FSM R. 375, 382 (App. 2006).

When the trial court asked the government to redact the other defendants' names from one co-defendant's affidavit but no redacted version offered into evidence, and when a physical redaction under these circumstances would have been superfluous, merely replicating the mental exercise of compartmentalizing already successfully undertaken by the trial court, if the trial court proceeded with the trial despite the government's failure to provide a redacted copy of the statement, that choice was within the trial court's discretion and did not unfairly result in substantial hardship or prejudice to any party and thus was not reversible error. Engichy v. FSM, 15 FSM R. 546, 557-58 (App. 2008).

An issue of whether the trial court erred by failing to recognize someone as an expert witness is reviewed for an abuse of discretion. Fritz v. FSM, 16 FSM R. 192, 197 (App. 2008).

An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. The burden is on the appellant to show an abuse. Fritz v. FSM, 16 FSM R. 192, 197 (App. 2008).

When the defendant never presented a witness as an expert witness at trial, the appellate court cannot find that the trial court abused its discretion in declining or otherwise refusing to qualify that witness as an expert witness. Fritz v. FSM, 16 FSM R. 192, 197 (App. 2008).

Although Evidence Rule 706 provides that the court may, on its own motion, enter an order to show cause why an expert witness should not be appointed, a trial court in not acting *sua sponte* to have a defense witness qualified as an expert witness did not abuse its discretion. Fritz v. FSM, 16 FSM R. 192, 197-98 (App. 2008).

For purposes of review, the trial court has substantial discretion in deciding questions concerning the admissibility of evidence. Cholymay v. FSM, 17 FSM R. 11, 19 (App. 2010).

Authentication is satisfied by evidence sufficient to support a finding that the matter in question is what it its proponent claims. The appellate court's review is limited to determining whether the trial court abused its discretion in deciding that the government made a prima facie showing as to the documents' authenticity. Cholymay v. FSM, 17 FSM R. 11, 21 (App. 2010).

The standard of review of a trial court's decision to impose consecutive sentences is de novo review when the issues raised are the questions of law – whether an offense is a lesser included offense of another offense; whether a sentence violates the FSM and Kosrae Constitutions' protections against double jeopardy; and whether the rule of lenity should apply in construing a statute. Otherwise, the review of a judge's decision to impose concurrent or consecutive sentences is generally limited to review for abuse of discretion. Benjamin v. Kosrae, 19 FSM R. 201, 205 (App. 2013).

While the FSM Supreme Court appellate division has no authority to waive or extend Rule 4's time requirements or to grant a motion to extend time to appeal, a lower court's grant or denial of an extension of time to file a notice of appeal is an appealable order reviewed under the abuse of discretion standard. Gleason v. Pohnpei, 19 FSM R. 283, 284 (App. 2014).

– Standard – Criminal Cases – Clearly Erroneous

A conviction for robbery is a finding which can only be reversed if the court's finding is clearly erroneous. Loney v. FSM, 3 FSM R. 151, 155 (App. 1987).

The proper standard of appellate review for a criminal conviction challenged for insufficiency of evidence is not whether the appellate court believes the defendant is guilty but whether there is evidence sufficient to convince a reasonable trier of fact of the defendant's guilt beyond a reasonable doubt. The appellate court must review the evidence in the light most favorable to the trial court's factual determination. A trial court's factual findings challenged for insufficiency are reviewed on a clearly erroneous standard. Palik v. Kosrae, 8 FSM R. 509, 512 (App. 1998).

An appellate court will not set aside a factual finding where there is credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. Palik v. Kosrae, 8 FSM R. 509, 516 (App. 1998).

A conviction of a crime can only be reversed if the court's finding is clearly erroneous. The appellate standard of review on the issue of the sufficiency of the evidence is very limited – only findings that are clearly erroneous can be set aside. Moses v. FSM, 14 FSM R. 341, 344 (App. 2006).

The standard to be applied in reviewing a criminal conviction against an insufficiency of the evidence challenge is whether the appellate court can conclude that the trier of fact could reasonably have been convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. The appellate court must review the evidence in the light most favorable to the trial court's factual determination. A trial court's factual findings challenged for insufficiency are reviewed on a clearly erroneous standard, while the appellate court may disagree with and overrule the trial court's conclusions of law. Sander v. FSM, 9 FSM R. 442, 449 (App. 2000).

When sufficient evidence was before the trial court such that it could reasonably have been persuaded beyond a reasonable doubt that the defendant did not attempt to turn in the shotgun to an appropriate official because the trial court could reasonably have concluded that the defendant's actions at the security screening area were consistent with the way any passenger might have dealt with any piece of carry on luggage, and that it did not constitute turning in the shotgun to an "appropriate official" under 11 F.S.M.C. 1223(6), its findings were not clearly erroneous and will not be disturbed. Sander v. FSM, 9 FSM R. 442, 449 (App. 2000).

The trial court's denial of the Rule 32(d) motion to withdraw his guilty plea is reviewed for an abuse of discretion and the trial court's underlying factual findings are reviewed for clear error. Kinere v. Kosrae, 14 FSM R. 375, 381 (App. 2006).

When the appellate court is asked to review the trial court's legal conclusion that the Kosrae DUI statute was constitutional, the appellate court will restate the issue as, whether the trial court correctly concluded that, as a matter of law, Kosrae State Code Section 13.710 is not void for vagueness since "clearly erroneous" is applied on appeal to findings of fact made by the trial court in civil cases. Phillip v. Kosrae, 15 FSM R. 116, 119 (App. 2007).

The standard of review of a trial court's factual findings is whether those findings are clearly erroneous. The appeals court cannot substitute its judgment for that of the trial judge, and because findings of fact must not be set aside unless clearly erroneous, an appellate court starts its review of a trial court's factual findings by presuming the findings are correct. The appellant's burden to clearly demonstrate error in the

trial court's findings is especially strong when the findings are based upon oral testimony because, before reaching its conclusions as to the witnesses' credibility, the trial court had the opportunity to view the witnesses' demeanor as they testified, while the reviewing court has not. Engichy v. FSM, 15 FSM R. 546, 552 (App. 2008).

An appellate court cannot say that a trial court's finding was clearly erroneous when it was the result of weighing conflicting evidence because an appellate court will not reweigh the evidence presented at trial, and since credibility determinations are uniquely the province of the factfinder, not the appellate court. Engichy v. FSM, 15 FSM R. 546, 552 (App. 2008).

An appellate court should not overrule or set aside a trial court's finding of fact when there is credible evidence in the record to support that finding. The trial court's findings will be upheld so long as they rationally reflect evidence which is reasonable and combines with other evidence to present a coherent, believable, overall picture. The exercise of the trial court's discretion should not be disturbed by an appellate court absent a showing that the trial court's action has unfairly resulted in substantial hardship and prejudice to a party. Engichy v. FSM, 15 FSM R. 546, 552 (App. 2008).

The standard of review of a trial court's findings is whether those findings are clearly erroneous. In making this determination, the appellate court must view the evidence in the light most favorable to the appellee, and if, upon viewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Fritz v. FSM, 16 FSM R. 192, 199 (App. 2008).

Appellate review of the sufficiency of the evidence is very limited – only findings that are clearly erroneous can be set aside. Cholymay v. FSM, 17 FSM R. 11, 23 (App. 2010).

An appellate court will not set aside a factual finding where there is credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. The trial court's findings will be upheld so long as they rationally reflect evidence which is reasonable and combines with other evidence to present a coherent, believable, overall picture. Cholymay v. FSM, 17 FSM R. 11, 23 (App. 2010).

– Standard – Criminal Cases – De Novo

The question of whether a municipality has the legal authority to impose license fees or taxes solely as a revenue measure is a pure question of law, and on appeal, questions of law are reviewed *de novo*. Ceasar v. Uman Municipality, 12 FSM R. 354, 357 (Chk. S. Ct. Tr. 2004).

If, as a matter of law, a state statute preempts any local regulation of the possession and sale of alcoholic beverages, and if the municipality is also precluded from imposing license fees or taxes for revenue purposes only, a municipal conviction for possession and sale without a municipal license must be overturned and the defendant found not guilty of the infraction as a matter of law. Ceasar v. Uman Municipality, 12 FSM R. 354, 357 (Chk. S. Ct. Tr. 2004).

In order for the defendant to prevail on appeal, it is necessary to determine whether a municipality has the constitutional or statutory authority to raise revenue by imposing licensing fees and taxes on businesses that engage in alcoholic beverage sales even though the municipality did not raise the issue of its power to impose business license fees or taxes for revenue, rather than regulatory purposes because, as a general rule, a lower court decision will not be reversed if based upon any proper ground. Ceasar v. Uman Municipality, 12 FSM R. 354, 358 (Chk. S. Ct. Tr. 2004).

On appeal, issues of law are reviewed de novo. Wainit v. FSM, 15 FSM R. 43, 48 (App. 2007).

On appeal, the appellate court reviews issues of law de novo. Phillip v. Kosrae, 15 FSM R. 116, 119 (App. 2007).

Issues of law are reviewed de novo. The standard of review applied to sufficiency of the evidence challenges in a criminal case is whether, in reviewing the evidence in the light most favorable to the trial court's determinations of fact, there is sufficient evidence to convince a reasonable trier of fact, relying on evidence which it had the right to believe and accept as true, that the defendant is guilty beyond a reasonable doubt. Tulensru v. Kosrae, 15 FSM R. 122, 125 (App. 2007).

All issues of law are reviewed *de novo* on appeal. Engichy v. FSM, 15 FSM R. 546, 552 (App. 2008).

Whether, as a matter of law, a variance between the FSM's allegations and the evidence adduced at trial and relied upon by the trial court in its findings unfairly prejudiced the accused, is an issue reviewed *de novo*. Kasmiro v. FSM, 16 FSM R. 243, 245 (App. 2009).

Issues of law are reviewed de novo. Lee v. Kosrae, 20 FSM R. 160, 164 (App. 2015).

– Standard – Criminal Cases – Plain Error

The appellate court may notice error, even though not properly raised or preserved in the trial court, where the error affects the substantial rights of a minor under the particular circumstances of a case. In re Juvenile, 4 FSM R. 161, 164 (App. 1989).

A defendant that has failed to raise and preserve the issue has waived his right to object to the admission of evidence, but when a plain error that affects the constitutional rights of the defendant has occurred the court may notice the error. Moses v. FSM, 5 FSM R. 156, 161 (App. 1991).

Appellate courts may notice plain error where the error affects the substantial rights of the defendant. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 477 (App. 1996).

Generally, when a criminal defendant has failed to raise and preserve an issue, he has waived his right to object, but when a plain error that affects the defendant's constitutional rights has occurred, the court may notice that error on its own. An appellate court may notice plain error when the error affects a criminal defendant's substantial rights. Nena v. Kosrae, 14 FSM R. 73, 77 (App. 2006).

Under the constitutional guarantee of a public trial, an accused and the public both have a constitutional right that the court's finding be announced publicly in open court with the accused present. This is true whether the finding is guilty or not guilty. Violation of this constitutional protection is not subject to a harmless error analysis and the defendant need not show any prejudice. Nena v. Kosrae, 14 FSM R. 73, 78 (App. 2006).

When a criminal defendant has failed to raise and preserve an issue, he has waived his right to object, but when a plain error that affects the defendant's constitutional rights has occurred, the court may notice the error on its own. Neth v. Kosrae, 14 FSM R. 228, 232 (App. 2006).

An appellate court may notice plain error when the error affects a criminal defendant's substantial rights. The plain error exception also applies when the error is obvious and substantial and seriously affects the fairness, integrity, or public reputation of judicial proceedings. Neth v. Kosrae, 14 FSM R. 228, 232 (App. 2006).

Violation of the constitutional public trial right is not subject to a harmless error analysis and the defendant need not show any prejudice. Neth v. Kosrae, 14 FSM R. 228, 232 (App. 2006).

When, after the trial court had taken the case under advisement, it made its finding of guilt in writing and the written finding was then served on counsel and there was never an oral in-court pronouncement of

guilt beforehand, and when, following the sentencing hearing, there was no public imposition of sentence in open court, only a later written sentencing order served on counsel, an appellate court must vacate the finding because it was improperly entered since there was no public finding of guilt. Neth v. Kosrae, 14 FSM R. 228, 232 (App. 2006).

When an issue has been forfeited through failure to raise and preserve the issue, an appellate court may address it only when there has been a plain error affecting the defendant's constitutional rights; or when the error affects a criminal defendant's substantial rights; or when the error is obvious and substantial and seriously affects the fairness, integrity, or public reputation of judicial proceedings. Kinere v. Kosrae, 14 FSM R. 375, 387 (App. 2006).

When an issue is not raised in the appellate briefs or oral argument, the appellate court should (but not must) exercise its discretion to notice a forfeited error if that error seriously affects the judicial proceeding's fairness, integrity, or public reputation. Kinere v. Kosrae, 14 FSM R. 375, 387 (App. 2006).

The standard of review of a trial court's decision to impose consecutive sentences is de novo review when the issues raised are the questions of law – whether an offense is a lesser included offense of another offense; whether a sentence violates the FSM and Kosrae Constitutions' protections against double jeopardy; and whether the rule of lenity should apply in construing a statute. Otherwise, the review of a judge's decision to impose concurrent or consecutive sentences is generally limited to review for abuse of discretion. Benjamin v. Kosrae, 19 FSM R. 201, 205 (App. 2013).

The appellate court may notice plain error when the error affects a criminal defendant's substantial rights, such as his right of allocution. Benjamin v. Kosrae, 19 FSM R. 201, 206-07 & n.2 (App. 2013).

Under the plain error doctrine, when a criminal defendant has failed to raise an issue in the trial court and preserve it for appeal, he has generally waived his right to object; but if a plain error that affects the defendant's constitutional rights has occurred, the appellate court may notice that error on its own. Wolphagen v. FSM, 22 FSM R. 96, 101 (App. 2018).

If an appellant's assignment of error is indeed a plain error, the appellate court should not be precluded from considering it merely because the appellant directed it to the appellate court's attention before the appellate court itself noticed it. Wolphagen v. FSM, 22 FSM R. 96, 101 (App. 2018).

– Standard – Criminal Cases – Sentence

A criminal sentence may be affirmed on appeal when a review of the record reveals that the sentence is appropriate. Malakai v. FSM, 1 FSM R. 338, 338 (App. 1983).

In reviewing a sentencing decision of a trial court, an appellate court should follow the standards generally applied in criminal appeals, upholding findings of fact supported by credible evidence but overruling those legal rulings with which the appellate court disagrees. Tammed v. FSM, 4 FSM R. 266, 274 (App. 1990).

If the trial court based the sentence upon the defendant's background and potential, and the nature of the offense, such individualized sentencing decision would be entitled to the deference accorded to findings of fact. Cheida v. FSM, 9 FSM R. 183, 187 (App. 1999).

In a criminal case, the appellate court may commute, reduce, or suspend the execution of sentence, but when the appellate court has held that the trial court did not abuse its discretion in considering and imposing its sentence on the defendant for the offense committed, it will find no way to commute, reduce, or suspend the sentence. Cheida v. FSM, 9 FSM R. 183, 190 (App. 1999).

A criminal sentence may be affirmed when a review of the record reveals that the sentence is

appropriate, and, if the trial court based the sentence upon the defendant's background and potential, and the nature of the offense, such an individualized sentencing decision would be entitled to the deference accorded to findings of fact. Benjamin v. Kosrae, 19 FSM R. 201, 205 (App. 2013).

The standard of review of a trial court's decision to impose consecutive sentences is de novo review when the issues raised are the questions of law – whether an offense is a lesser included offense of another offense; whether a sentence violates the FSM and Kosrae Constitutions' protections against double jeopardy; and whether the rule of lenity should apply in construing a statute. Otherwise, the review of a judge's decision to impose concurrent or consecutive sentences is generally limited to review for abuse of discretion. Benjamin v. Kosrae, 19 FSM R. 201, 205 (App. 2013).

In reviewing a trial court's sentencing decision, the standards generally applied in criminal appeals are followed – findings of fact that are supported by credible evidence are upheld but those legal rulings with which the appellate court disagrees are overruled since issues of law are reviewed de novo. Ned v. Kosrae, 20 FSM R. 147, 152 (App. 2015).

The better practice is for the trial court to impose sentence on each count individually and to indicate on the record whether the sentences are to run concurrently or consecutively. Such a sentence facilitates appellate review, and obviates the need for the appellate court to review the entire sentence's propriety in the event any count underlying a general sentence is vacated. Thus, if any part of a conviction is reversed on appeal, the sentence imposed under the valid count would not have to be disturbed. Ned v. Kosrae, 20 FSM R. 147, 155 (App. 2015).

– Standard – Criminal Cases – Sufficiency of Evidence

In considering challenges that there was insufficient evidence to justify the trial court's findings that the defendant aided and abetted, and is therefore criminally liable for the assaults with dangerous weapons, the FSM Supreme Court recognizes its appellate tribunal's obligation to review the evidence in the light most favorable to the trial court's factual determinations. The standard of review extends to inferences drawn from the evidence as well. Engichy v. FSM, 1 FSM R. 532, 545 (App. 1984).

The standard to be applied in reviewing a trial court's finding of intention to kill is not whether the appellate court is convinced that there was intention to kill but whether the appellate court believes that the evidence was sufficient to persuade a reasonable trier of fact beyond a reasonable doubt of the intention to kill. Loch v. FSM, 1 FSM R. 566, 575-76 (App. 1984).

Standard to be applied in reviewing a claim of insufficiency of evidence in a criminal proceeding is whether the appellate court can conclude that the trier of fact could reasonably have been convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. Runmar v. FSM, 3 FSM R. 308, 315 (App. 1988).

In reviewing the sufficiency of evidence to warrant conviction, the issue is whether the evidence, viewed in a light most favorable to the finding, would justify a finder of fact, acting reasonably, to conclude that guilt was established beyond a reasonable doubt. Welson v. FSM, 5 FSM R. 281, 285 (App. 1992).

The proper standard of appellate review for a criminal conviction challenged for insufficiency of evidence is whether the appellate panel, in considering the evidence in the light most favorable to the trial court's findings of fact, determines that a reasonable trier of fact could be convinced of the defendant's guilt beyond a reasonable doubt. Alfons v. FSM, 5 FSM R. 402, 405 (App. 1992).

In reviewing a criminal conviction against an insufficiency of the evidence challenge, the appellate court must ask whether the trier of fact could reasonably have been convinced beyond a reasonable doubt by the evidence it had a right to believe and accept as true. Nelson v. Kosrae, 8 FSM R. 397, 401 (App. 1998).

The proper standard of appellate review for a criminal conviction challenged for insufficiency of evidence is not whether the appellate court believes the defendant is guilty but whether there is evidence sufficient to convince a reasonable trier of fact of the defendant's guilt beyond a reasonable doubt. The appellate court must review the evidence in the light most favorable to the trial court's factual determination. A trial court's factual findings challenged for insufficiency are reviewed on a clearly erroneous standard. Palik v. Kosrae, 8 FSM R. 509, 512 (App. 1998).

Insufficiency of the evidence argument is not available to criminal appellants when a transcript of all evidence relevant to such finding or conclusion is not included in the record on appeal. Iwenong v. Chuuk, 8 FSM R. 550, 551 (Chk. S. Ct. App. 1998).

When an appellant has failed to provide a transcript of the relevant evidence and failed to identify the portions of the record that support his argument, he has failed to demonstrate that the trial court has erred as a matter of law in imposing sentence, and the presumption is that the evidence was sufficient to sustain the trial court's judgment. Cheida v. FSM, 9 FSM R. 183, 189 (App. 1999).

The standard to be applied in reviewing a criminal conviction against an insufficiency of the evidence challenge is whether the appellate court can conclude that the trier of fact could reasonably have been convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. The appellate court must review the evidence in the light most favorable to the trial court's factual determination. A trial court's factual findings challenged for insufficiency are reviewed on a clearly erroneous standard, while the appellate court may disagree with and overrule the trial court's conclusions of law. Sander v. FSM, 9 FSM R. 442, 449 (App. 2000).

When sufficient evidence was before the trial court such that it could reasonably have been persuaded beyond a reasonable doubt that the defendant did not attempt to turn in the shotgun to an appropriate official because the trial court could reasonably have concluded that the defendant's actions at the security screening area were consistent with the way any passenger might have dealt with any piece of carry on luggage, and that it did not constitute turning in the shotgun to an "appropriate official" under 11 F.S.M.C. 1223(6), its findings were not clearly erroneous and will not be disturbed. Sander v. FSM, 9 FSM R. 442, 449 (App. 2000).

In a criminal appeal, the appropriate standard of review for sufficiency of the evidence questions is whether, reviewing the evidence in the light most favorable to the trial court's determinations of fact, there is sufficient evidence to convince a reasonable trier of fact of the defendant's guilt beyond a reasonable doubt. Yow v. Yap, 11 FSM R. 63, 65 (Yap S. Ct. App. 2002).

In reviewing the sufficiency of evidence to warrant conviction, the issue before an appellate court is whether the evidence, viewed in a light most favorable to the trial court's finding, would justify a finder of fact, acting reasonably, to conclude that guilt was established beyond a reasonable doubt. The appellate court must be able to conclude that no trier of fact could reasonably have been convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. A trial court's factual findings challenged for insufficiency are reviewed on a clearly erroneous standard. FSM v. Wainit, 14 FSM R. 164, 169 (Chk. 2006).

A conviction of a crime can only be reversed if the court's finding is clearly erroneous. The appellate standard of review on the issue of the sufficiency of the evidence is very limited – only findings that are clearly erroneous can be set aside. Moses v. FSM, 14 FSM R. 341, 344 (App. 2006).

When there is ample evidence in the record to support the trial court's finding, the appellate court will conclude that there is sufficient evidence in the record for a reasonable trier of fact to find beyond a reasonable doubt that appellant used none of the national government funds allotted to him for the construction of a new community hall. Moses v. FSM, 14 FSM R. 341, 345 (App. 2006).

Issues of law are reviewed de novo. The standard of review applied to sufficiency of the evidence

challenges in a criminal case is whether, in reviewing the evidence in the light most favorable to the trial court's determinations of fact, there is sufficient evidence to convince a reasonable trier of fact, relying on evidence which it had the right to believe and accept as true, that the defendant is guilty beyond a reasonable doubt. Tulensru v. Kosrae, 15 FSM R. 122, 125 (App. 2007).

In the appeal of a criminal matter, when considering challenges of insufficient evidence to justify the trial court's findings, an appellate tribunal is obligated to review the evidence in the light most favorable to the trial court's factual determinations and this standard of review extends to inferences drawn from the evidence as well. The standard of review is not whether the appellate court is convinced beyond a reasonable doubt but whether the court can conclude that the trier of fact could, acting reasonably, be convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. The appellate court need not conclude that the evidence is inconsistent with every hypothesis of innocence in order to affirm the conviction. Engichy v. FSM, 15 FSM R. 546, 552 (App. 2008).

When the record was uniform in signifying that the trial court did not consider one co-defendant's affidavit against the other defendants and when the trial court, in its special findings made at the trial's conclusion identified the other pieces of admitted evidence that it relied upon and that exist independent of the one co-defendant's affidavit; when a review of this specifically relied upon evidence, in addition to the complete record on appeal, presents a sufficient evidentiary basis to support the other defendants' participation in the conspiracy wholly independent of and detached from the one co-defendant's affidavit, the appellate court will conclude that the trial court was successful in excluding the one co-defendant's affidavit as evidence against the other defendants. Engichy v. FSM, 15 FSM R. 546, 557 (App. 2008).

When credible evidence in the record supports the trial court's findings and presents a coherent, believable, overall picture and when, after reviewing the entire record on appeal in the light most favorable to the trial court's factual determinations and inferences, the appellate court finds there is sufficient evidence to support the trial court's findings of guilt beyond a reasonable doubt, the appellants' convictions will be affirmed. Engichy v. FSM, 15 FSM R. 546, 559 (App. 2008).

The standard of review applied to sufficiency of the evidence challenges in a criminal case is whether, in reviewing the evidence in the light most favorable to the trial court's determinations of fact, there is sufficient evidence to convince a reasonable trier of fact, relying on evidence which it had the right to believe and accept as true, that the defendant is guilty beyond a reasonable doubt. This standard of review extends to inferences drawn from the evidence as well. Cholymay v. FSM, 17 FSM R. 11, 23 (App. 2010).

Appellate review of the sufficiency of the evidence is very limited – only findings that are clearly erroneous can be set aside. Cholymay v. FSM, 17 FSM R. 11, 23 (App. 2010).

While appellate panels must always show deference to the inferences and conclusions drawn by a trial judge from evidence, this deference seems even greater in the context of a conspiracy trial, in which the trial judge is likely looking for the proverbial "wink and nod" that often ties a conspiracy together. It is with such considerable deference that an appellate court reviews the evidence explicitly relied upon by the trial court in finding the defendants guilty. Cholymay v. FSM, 17 FSM R. 11, 24 (App. 2010).

Appellate review of the sufficiency of the evidence is very limited – only findings that are clearly erroneous can be set aside. Ned v. Kosrae, 20 FSM R. 147, 152 (App. 2015).

The standard of review applied to a sufficiency-of-the-evidence challenge in a criminal case is whether, in reviewing the evidence in the light most favorable to the trial court's determinations of fact, there is sufficient evidence to convince a reasonable trier of fact, relying on evidence which it had the right to believe and accept as true, that the defendant is guilty beyond a reasonable doubt. Ned v. Kosrae, 20 FSM R. 147, 152 (App. 2015).

A factual finding will not be set aside when there is credible evidence in the record to support that

finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. Ned v. Kosrae, 20 FSM R. 147, 152 (App. 2015).

To be clearly erroneous, a decision must be more than just maybe or probably wrong; it must be wrong with the force of a five-week-old unrefrigerated dead fish. Ned v. Kosrae, 20 FSM R. 147, 152 (App. 2015).

An appellant cannot pass the sufficiency-of-the-evidence test when it is evident that the victim's testimony provided substantial evidence that the trial court found credible and reliable; when the trial judge recited credible, substantial evidence to support the guilty finding; when the trial judge had the opportunity to view the witnesses and the manner of their testimony and chose to believe as credible the victim's testimony, which the judge had the right to believe and accept as true, and to reject the defendant's own testimony. Ned v. Kosrae, 20 FSM R. 147, 152 (App. 2015).

The prosecution, by proving sexual assault, also proved that the accused annoyed or disturbed the victim and that he caused her bodily harm so that, just as there was sufficient evidence to find him guilty of sexual assault, there was also sufficient evidence to find him guilty of the other lesser offenses. Ned v. Kosrae, 20 FSM R. 147, 153 (App. 2015).

– Stay – Civil Cases

A motion to the state appellate division to stay state trial court proceedings pending appellate court issuance of a promised detailed written opinion explaining appellate denial of an earlier petition for writ of mandamus against the trial judge is denied where: 1) there was no presently scheduled proceeding to take place at the trial level although the trial judge had instructed the parties to be prepared to proceed if the writ was denied; 2) an appellate opinion is to be written informing the parties of the reasons for dismissal of the petition for writ of mandamus; 3) the constitutional issues of first impression were resolved in the denial of the writ; 4) a matter that has been ruled upon and completed such that no other action is required except for the issuance of an opinion will not support a motion to stay on the appellate level; and 5) no motion to stay had been requested of the trial court. Etscheit v. Adams, 4 FSM R. 242, 244 (Pon. S. Ct. App. 1990).

When an appellant has applied to the appellate division for a stay it normally will be considered by all justices of the appellate division, but in exceptional cases application may be made to and considered by a single justice. The power of the appellate division or a single justice thereof to stay proceedings during the pendency of an appeal is not limited by the Rules of Civil Procedure. Pohnpei v. Ponape Constr. Co., 6 FSM R. 221, 222 (App. 1993).

A court may modify an injunction to preserve the status quo during the pendency of an appeal. Ponape Enterprises Co. v. Luzama, 6 FSM R. 274, 276-77 (Pon. 1993).

While a supersedeas bond is a prerequisite to granting a stay from a money judgment, no such bond is required in order to obtain a modification of an injunction pending appeal. It may be granted upon such terms as to bond or otherwise as the court considers for the security of the adverse party's rights. Ponape Enterprises Co. v. Luzama, 6 FSM R. 274, 277 (Pon. 1993).

The criteria for granting a stay pending appeal under Rule 62 are: 1) whether the appellant has shown that without the stay he will be irreparably harmed; 2) whether issuance of the stay would substantially harm other parties interested in the proceedings; 3) whether the public interest would be served by granting a stay; and 4) whether the appellant has made a strong showing that he is likely to prevail on the merits of the appeal. Ponape Enterprises Co. v. Luzama, 6 FSM R. 274, 277-78 (Pon. 1993).

When summary judgment is granted enjoining trespassing farmers, removing the farmers from the land while their appeal is pending might more substantially alter the status quo than a stay allowing them to

remain on the land. Ponape Enterprises Co. v. Luzama, 6 FSM R. 276, 278 (Pon. 1993).

A stay on appeal may be granted even when the moving party has less than a 50% chance of success if the question is a difficult one, or an issue of first impression about which respectable minds might differ. Ponape Enterprises Co. v. Luzama, 6 FSM R. 274, 279 (Pon. 1993).

An appellant may apply to the trial division for a stay of judgment. If the stay is denied by the trial division he may apply to the appellate division. If the stay is granted and its terms seem onerous, the petitioner may apply to the appellate division for a modification of the stay, and may also request an expedited briefing schedule. Senda v. Trial Division, 6 FSM R. 336, 338 (App. 1994).

The FSM Code provision authorizing the general powers of the Supreme Court gives the court the authority to grant a stay of proceedings in one case pending the outcome of another case which addresses the same or similar issues. Ponape Enterprises Co. v. Bergen, 6 FSM R. 411, 414 (Pon. 1994).

Factors for a court to consider in determining it whether should exercise its discretion to grant a stay of proceedings in one case pending the outcome of another case which addresses the same or similar issues include whether judicial economy will be furthered by a stay because the cases on appeal may have claim or issue preclusive effect on the case to be stayed; the balance of the competing interests; the orderly administration of justice and whether the case is one of great public importance. Ponape Enterprises Co. v. Bergen, 6 FSM R. 411, 414 (Pon. 1994).

A stay should be granted in one case pending the outcome of another case on appeal which addresses the same or similar issues, when it is in the interests of avoiding the waste of judicial resources, managing the court's calendar, sparing the parties unnecessary litigation efforts, and avoiding inconsistent or confusing outcomes, especially if granting the stay will not adversely affect the parties opposing the stay to any substantial extent because they are also parties to the other case on appeal. Ponape Enterprises Co. v. Bergen, 6 FSM R. 411, 415-16 (Pon. 1994).

Because speedy and final resolution of questions regarding the constitutional roles of the state and national governments will avoid unnecessary conflict and possible jurisdictional tension between the state and national courts, it is proper to stay an order of abstention pending appeal in such cases. Pohnpei v. MV Hai Hsiang #36 (II), 6 FSM R. 604, 605 (Pon. 1994).

A stay of judgment by a trial court is an action in aid of the appeal. Walter v. Meippen, 7 FSM R. 515, 519 (Chk. 1996).

A stay of judgment may be granted while a motion for relief from judgment is pending. Walter v. Meippen, 7 FSM R. 515, 519 (Chk. 1996).

In exceptional cases when consideration by the appellate panel would be impracticable due to time requirements, an application for a stay may be made to and considered by a single Chuuk State Supreme Court justice. In re Contempt of Umwech, 8 FSM R. 20, 21 (Chk. S. Ct. App. 1997).

Punishment of imprisonment for contempt is automatically stayed on appeal, unless the court finds that a stay of imprisonment will cause an immediate obstruction of justice. "Obstruction of justice" means to impede those who seek justice in court or to impede those who have duties or powers to administer justice. In re Contempt of Umwech, 8 FSM R. 20, 22 (Chk. S. Ct. App. 1997).

When all parties are seeking to vindicate their positions in a court of law an immediate obstruction of justice is not present that would prevent the automatic stay of punishment of imprisonment for contempt. In re Contempt of Umwech, 8 FSM R. 20, 22 (Chk. S. Ct. App. 1997).

A single justice may consider a motion for a stay when time requirements and geographical dispersion

make it impractical for it to be considered by the full appellate panel. In re Recall Election, 8 FSM R. 71, 73-74 (App. 1997).

A motion for a stay will be denied when it does not show that application to the court appealed from is impractical or that the court appealed from has denied the relief requested accompanied by that court's reasons for the denial. In re Recall Election, 8 FSM R. 71, 74 (App. 1997).

Motions to stay proceedings during an appeal are governed by Rule 62, CSSC Rules of Civil Procedure, which is near identical to the corresponding rule of the FSM Supreme Court and the Federal rules of the United States. The criteria for granting a motion to stay pending appeal are the same as for equity jurisdiction for the granting of an injunction. Pius v. Chuuk State Election Comm'n, 8 FSM R. 570, 571 (Chk. S. Ct. App. 1998).

No stay in an election appeal will be granted when nothing in the record of the case indicates that appellant will suffer irreparable harm and, also, that he will likely prevail on the merits of the appeal and when granting a stay would have a substantial effect on the municipal employees and other public officials who have held office for almost a year and would not be in the public interest of having an efficient and effective municipal government. Pius v. Chuuk State Election Comm'n, 8 FSM R. 570, 571 (Chk. S. Ct. App. 1998).

When it appears that there is no provision in the Chuuk Constitution or statutes which guarantees the right to or even permits voting by absentee ballot, the appellants have not shown a likelihood of success on appeal and their request for a stay of a trial court judgment not to deliver Losap municipal absentee ballots to voters outside of Chuuk will be denied. Chipen v. Election Comm'r of Losap, 9 FSM R. 80, 81 (Chk. S. Ct. App. 1999).

An order directing the Kosrae Land Commission, a non-party, to complete the division of disputed land is not injunctive in nature, and is not a controlling question of law. Therefore the order is not appealable, and it should not be stayed pending any putative appeal. Youngstrom v. Phillip, 9 FSM R. 103, 105 (Kos. S. Ct. Tr. 1999).

A final judgment that precisely defines a disputed boundary cannot be entered until the Land Commission completes the survey partitioning the land. Once the boundary is determined, the defendant may then meaningfully assess his situation for purposes of considering any appeal. Therefore a motion to stay the survey's completion pending appeal will be denied. Youngstrom v. Phillip, 9 FSM R. 103, 106 (Kos. S. Ct. Tr. 1999).

When a stay application to the court appealed from is not practicable because the trial justice is unavailable and ill and out of the country for an extended time an appellant may apply for a stay in the appellate division. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 353, 354-55 (App. 2000).

One reason to grant a stay on appeal is if the court is persuaded that the appellant will prevail on the merits of the appeal. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 353, 355 (App. 2000).

Generally, there are four factors to weigh before granting a stay pending appeal: 1) whether the appellant has made a strong showing that he is likely to prevail on the merits of the appeal; 2) whether the appellant has shown that without the stay he will be irreparably harmed; 3) whether issuance of the stay would substantially harm other parties interested in the proceedings; and 4) whether the public interest would be served by granting a stay. Ordinarily, the first factor is the most important, but a stay may be granted upon a lesser showing of a substantial case on the merits when the balance of the equities identified in factors 2, 3, and 4 weighs heavily in favor of granting the stay. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 353, 355 (App. 2000).

A stay will be denied when the appellant has not made a strong showing that it is likely to prevail on the

merits of its claim that a use tax is permitted under the FSM Constitution and has not shown that its injury is irreparable, even though there might be no harm to the only other party to the appeal, and the public interest favors neither granting nor denying a stay. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 353, 355-56 (App. 2000).

The court may order that, before a stay pending appeal will be granted in the appellant's favor, the appellant must post an appropriate cash bond which would fairly compensate the appellee should the appeal be unsuccessful. College of Micronesia-FSM v. Rosario, 10 FSM R. 296, 298 (Pon. 2001).

If an appellee prevails on appeal it will be entitled to recover its trial court and appellate costs, and the court may add the trial court costs to the amount of the appeal bond required for a stay. College of Micronesia-FSM v. Rosario, 10 FSM R. 296, 298 (Pon. 2001).

The trial court may require an appellant to file a bond to cover costs on appeal. College of Micronesia-FSM v. Rosario, 10 FSM R. 296, 298 (Pon. 2001).

A modification of a permanent injunction pending appeal may be conditioned upon the posting of an appeal bond. College of Micronesia-FSM v. Rosario, 10 FSM R. 296, 298 (Pon. 2001).

Interest earned on an appellate bond placed in an interest-bearing account will be given to the party entitled to the principal. College of Micronesia-FSM v. Rosario, 10 FSM R. 296, 298 (Pon. 2001).

A case will not be stayed pending the appeal of another when two different accidents, involving different victims, provide the bases for the two cases. Each case must ultimately rest on its facts. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 463, 465 (Pon. 2001).

An application for a stay of the judgment appealed from pending appeal must ordinarily in the first instance be made in the court appealed from, but a motion for such relief may be made to the appellate division or a justice thereof when the motion shows that: 1) application to the court appealed from for the relief sought is not practicable; 2) that the court appealed from has denied an application; or 3) that the court appealed from has failed to afford the relief which the applicant requested, with any reasons given by that court for its actions. Panuelo v. Amayo, 10 FSM R. 558, 560 (App. 2002).

A motion in the appellate division to stay will normally be considered by all justices of the court eligible to act with the appellate division in the case, but in exceptional circumstances when such procedure would be impracticable due to the requirements of time, the application may be made to and considered by a single FSM Supreme Court justice. Panuelo v. Amayo, 10 FSM R. 558, 560 (App. 2002).

Civil Rule 62 does not limit the power of the appellate division, or a single justice thereof, to stay proceedings during the pendency of an appeal. The appellate division, or a justice thereof, may make any order appropriate to preserve the status quo. Panuelo v. Amayo, 10 FSM R. 558, 563 (App. 2002).

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The contention – that once a stay is issued the matter falls within the appellate division's jurisdiction, and the trial court is deprived of all jurisdiction to modify or vacate its stay – cannot be sustained. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

The trial court retains jurisdiction over the stay, even during the pendency of an appeal. The only time the trial division loses jurisdiction over the issue is when a stay is denied, which denial permits the appellant to seek a stay from the appellate division. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

Jurisdiction over a stay remains in the trial court until such time as the trial court approves a supersedeas bond. This is so even after the notice of appeal is filed, and until approval of the bond, whenever that may occur. By failing to give a bond sufficient to obtain the trial court's approval, the

appellant never obtains his right to a stay. Only the trial division has jurisdiction, in the first instance, to approve the bond. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

The trial court's power to order a stay of execution, and by implication to deny a stay, continues throughout the appeal's pendency, until the appellate division's mandate issues. The trial court's power to grant a stay is invested in the trial court by virtue of its original jurisdiction over the case and continues to reside in the trial court until such time as the court of appeals issues its mandate. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

Although the trial court, absent a remand, lacks jurisdiction to vacate or alter its judgment pending appeal, the trial court retains the power throughout the pendency of the appeal to simply preserve the status quo by granting a stay of the judgment. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

An appellant cannot argue that the issuance of a stay would not preserve the *status quo* when it would permit the appellant to reside in appellee's property, rent free, and without any obligation to pay rent, until an appellate session can be convened, and the appeal decided; or that a stay of execution that has not yet to come into effect as a result of the appellant's failure to offer a bond sufficient to protect the plaintiff's interests pending appeal could permit a continuing trespass. Konman v. Esa, 11 FSM R. 291, 296-97 (Chk. S. Ct. Tr. 2002).

When it is clear that regardless of the probability of appellant's success on appeal, he cannot demonstrate any right to possession of the property at the current time greater than that of the appellee, and when regardless of any stay of execution and of the offering of any supersedeas bond adequate to obtain the court's approval, the appellee is currently entitled to possession of her property pending the appeal's outcome and the appellant is not and must vacate the premises at the earliest possible moment. Konman v. Esa, 11 FSM R. 291, 297 (Chk. S. Ct. Tr. 2002).

In order for the court to stay execution of a judgment, it is necessary for the defendant to offer a supersedeas bond to the court. That bond must be in a form, and in a sum sufficient to protect the plaintiff's interests, in the event that the defendant's appeal is unsuccessful. The only supersedeas bond which the court would find sufficient in form and amount, under the circumstances, would be a cash bond in a sum that would cover the premises's rental value during the defendant's wrongful occupation thereof, and would also cover any additional damages which plaintiff might prove upon remand from the appellate division. Konman v. Esa, 11 FSM R. 291, 297 (Chk. S. Ct. Tr. 2002).

If no supersedeas bond is deposited with the court as required by its order, no stay shall be considered as having issued, and the plaintiff shall be free to seek enforcement of her judgment against the defendant, according to any lawful means at her disposal. Konman v. Esa, 11 FSM R. 291, 298 (Chk. S. Ct. Tr. 2002).

The trial court has jurisdiction to entertain the motions to stay enforcement of the writs of garnishment. Ordinarily the applicant must first seek a stay from the court appealed from; if the court denies the motion, the applicant may then seek a stay from the appellate division. Estate of Mori v. Chuuk, 12 FSM R. 3, 7 (Pon. 2003).

The four factors that a court will consider in granting or denying a stay on appeal are: whether the applicant has shown that without the stay he will suffer irreparable harm; whether the stay would substantially harm other parties interested in the proceeding; whether the public interest would be served by a stay; and whether the applicant has shown that he is likely to prevail on the merits of the appeal. As to the last factor, a stay may be granted even if there is less than a 50% chance of prevailing on appeal when the issue is difficult, or when it is one of first impression over which reasonable minds may reach different conclusions. Estate of Mori v. Chuuk, 12 FSM R. 3, 7 (Chk. 2003).

No stay pending appeal is warranted when the defendant will not suffer irreparable harm if no stay is

granted because it undeniably owes the judgments, as liability is not an issue on appeal since the only issue for appeal purposes is how the judgments will be paid; when the stay would harm the plaintiffs by further delaying exoneration of the constitutional rights that the judgments are intended to vindicate; when all citizens have an interest in preserving the constitutional rights guaranteed to all and would be disserved by the further delay in the judgments' satisfaction; and when the issue presented, although one of first impression, does not alone compel the conclusion that a stay should issue in light of the other considerations – a material one being that liability is not at issue. Estate of Mori v. Chuuk, 12 FSM R. 3, 7-8 (Chk. 2003).

A trial court may stay the execution of any proceedings to enforce a judgment pending the disposition of a motion for relief from a judgment or order made pursuant to rule 60. Estate of Mori v. Chuuk, 12 FSM R. 3, 12 (Chk. 2003).

Even assuming without deciding for the sake of a motion to stay that the FSM Development Bank is an agency of the national government, FSM Civil Rule 62(e) contains two conditions precedent that must occur in order for the requirement of an appeal bond or other security to be dispensed with: the appeal must be taken by the national government or an agency thereof, and the enforcement of the judgment must have been stayed. Only then does the waiver of the bond requirement apply. Adams v. Island Homes Constr., Inc., 12 FSM R. 348, 351 (Pon. 2004).

Under the plain reading of Rule 62(e), the court must first determine whether the judgment against the FSM Development Bank should be stayed pending appeal. If the judgment is stayed then, and only then, may the bank avail itself of the waiver of a bond or other security provided for by Rule 62(e). Adams v. Island Homes Constr., Inc., 12 FSM R. 348, 352 (Pon. 2004).

Ours is a developing nation, and preserving the balance among our government's three branches established by our Constitution is of utmost importance. The FSM Supreme Court must remain sensitive to this concern. To read Rule 62 subparagraphs (d) and (e) to give the FSM national government or an agency thereof a blanket right to stay any judgment of this court, regardless of the terms of the stay and regardless of the appeal's merit or lack thereof, would be to create a constitutional puzzle. Adams v. Island Homes Constr., Inc., 12 FSM R. 348, 352-53 (Pon. 2004).

The court is disinclined to exercise its discretion to grant a stay in the appellant's favor pending the appeal when that party unsuccessfully attempted to evade the discovery process by refusing, willfully and in bad faith, to disclose a document that the court has found established its liability to the plaintiffs as a matter of law, when its conduct generated a mountainous court file that resulted in the waste of the time of all involved, as well as increased costs to the other litigants, and when it could engage in such conduct with impunity without concern for whether its conduct made economic sense in terms of legal expenses incurred since it employs house 188
counsel. Adams v. Island Homes Constr., Inc., 12 FSM R. 348, 353 (Pon. 2004).

An application for a stay of the judgment or order of the court appealed from pending appeal must ordinarily be made in the first instance in the court appealed from. Thus the trial court retains jurisdiction over the case for deciding a motion to stay. AHPW, Inc. v. FSM, 13 FSM R. 36, 43 (Pon. 2004).

When the case is one of public importance involving a novel issue of law, the court will consider four factors in determining whether to grant a stay pending appeal: 1) whether a strong showing has been made of the likelihood that the appellant will be successful on appeal; 2) whether irreparable injury to the appellant will result in the absence of a stay; 3) whether other interested parties would be harmed by the stay; and 4) whether staying the judgment on appeal would serve the public interest. In the usual case the first factor is the most important, but a stay is also appropriate in a substantial case when the equities reflected in the remaining factors weigh heavily in favor of granting the stay. AHPW, Inc. v. FSM, 13 FSM R. 36, 43 (Pon. 2004).

An application for a stay of an order of the court pending appeal must ordinarily be made in the first instance in the court appealed from. Amayo v. MJ Co., 13 FSM R. 259, 261 (Pon. 2005).

No Chuuk state justice may hear or decide an appeal of a matter heard by the justice in the trial division, but the issuance of a stay is a procedural matter that does not require the justice issuing it to hear or decide the appeal. Ruben v. Petewon, 13 FSM R. 383, 389 (Chk. 2005).

An application for stay must first be made in the trial division. If the trial justice issues a stay, that justice retains jurisdiction of the stay issue while the appeal is pending. Ruben v. Petewon, 14 FSM R. 177, 186 (Chk. S. Ct. App. 2006).

An attack upon the Acting Chief Justice's authority to rule on a motion to stay as a single appellate justice must come from one of the parties, and in the proper forum – the appellate division, not by a trial judge. Ruben v. Petewon, 14 FSM R. 177, 187 (Chk. S. Ct. App. 2006).

A motion to stay proceedings pending consideration of a petition for a writ of mandamus concerning a lawyer's representation is denied when there: 1) is no substantial possibility that an appellate panel would grant the writ, 2) is no showing of irreparable harm if the stay is denied, and 3) are no equities presented that favor a stay. McVey v. Etscheit, 14 FSM R. 268, 271 (Pon. 2006).

When the court's alleged errors only raise further grounds to disqualify opposing counsel and that counsel already is disqualified, even if the appellate court were to find the arguments on those alleged errors persuasive, it could not possibly grant the relief sought – moving counsel's appearance as counsel for his clients. McVey v. Etscheit, 14 FSM R. 268, 271 (Pon. 2006).

When not only was there never an explicit consent by a client to an adverse representation, but the law firm also never explicitly requested such a consent and the only explicit communication regarding consent came after it became apparent that the representation was becoming very adverse to the client and that client explicitly refused to consent to the representation, the law firm cannot show prejudice from an "original consent" that they cannot show existed. McVey v. Etscheit, 14 FSM R. 268, 271 (Pon. 2006).

When attorneys now contend that the consent to the adverse representation was part of a quid pro quo – the adverse client would not object to the representation and in return the attorneys' other clients would not sue the adverse client – but cannot show any explicit request for the adverse client to consent to such a quid pro quo, they thus have not shown a substantial possibility of success on this ground entitling them to a stay. McVey v. Etscheit, 14 FSM R. 268, 272 (Pon. 2006).

When a law firm was disqualified from representing all of the defendants on other grounds, a claim that the conflict between the corporate defendant and the other defendants was waived does not have a substantial possibility of success entitling a petitioner for a writ of prohibition to a stay because the trial court never ruled on the issue. McVey v. Etscheit, 14 FSM R. 268, 273 (Pon. 2006).

When there does not appear to be a substantial possibility that the appellate division will grant the writ of prohibition, the circumstances and the equities do not require a stay. McVey v. Etscheit, 14 FSM R. 268, 273 (Pon. 2006).

When a motion to stay the effect of the trial court judgment below was not filed in the court appealed from, as required by Appellate Procedure Rule 8(a), and when, only if the court appealed from denies the stay, or application to that court is not practicable, will the appellate division, on motion, consider a motion to stay, the appellate court will deny the motion to stay. Enengeitaw Clan v. Shirai, 14 FSM R. 621, 624 (Chk. S. Ct. App. 2007).

When an appellant moved to stay the effect of the trial court judgment below and what the appellant sought to stay was the appellee State of Chuuk's payment to another of installments of the purchase price

for the land in question, the only potential harm would be to the appellee state if it paid money to buy land and ended up receiving nothing because it had not paid the true owner. Accordingly, the motion to stay will be denied. Enengeitaw Clan v. Shirai, 14 FSM R. 621, 624 (Chk. S. Ct. App. 2007).

When a trial justice makes no rulings on the motion to stay before him, he fails to exercise whatever discretion he may have had to rule on it because a court abuses its discretion by an unexplained failure to exercise its discretion within a reasonable time and since the trial judge neglected his duties by ignoring the motion to stay and further abused his discretion by failing to rule on it before issuing an order in aid of judgment, the appellate court issuing a writ of prohibition barring the order in aid of judgment will stay any enforcement of the judgment until the appeal of the judgment has been decided. Albert v. O'Sonis, 15 FSM R. 226, 233 (Chk. S. Ct. App. 2007).

Generally, a court should weigh four factors before granting a stay pending appeal: 1) whether the appellant has made a strong showing that he is likely to prevail on the appeal's merits; 2) whether the appellant has shown that he will be irreparably harmed without the stay; 3) whether the stay's issuance would substantially harm other parties interested in the proceedings; and 4) whether the public interest would be served by granting a stay. Ordinarily, the first factor is the most important, but a stay may be granted upon a lesser showing of a substantial case on the merits when the balance of the equities identified in factors 2, 3, and 4 weighs heavily in favor of granting the stay. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 176, 178-79 (Pon. 2010).

When the appellant wants the court to stay, pending appeal, a court order that a lot be made available for immediate commercial lease, an appeal issue that involves only the amount of money damages awarded to the appellant is not pertinent to the stay request. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 176, 179 & n.1 (Pon. 2010).

The court can see irreparable harm if the lot is awarded to another party who develops the lot and then the appellant prevails on appeal, but it cannot see irreparable harm from the bidding process going forward since the appellant may well be the successful bidder. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 176, 179 (Pon. 2010).

There is no significant harm to others interested in the litigation when throughout the litigation, both claimants have been more interested in preventing the other from using Lot No. 014-A-08 than in actually using it themselves and neither made any effort whatsoever to further prosecute their claims (or to settle the matter) for three years until the court prodded them into action. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 176, 179 (Pon. 2010).

When the Pohnpei Legislature has directed that Lot. No. 014-A-08 be leased in an expeditious manner, with the intent that all public land within its plat should be fully leased, the court cannot say that the public interest favors a stay of the bidding process to lease that lot. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 176, 180 (Pon. 2010).

When the court, weighing the four factors, concludes that they do not favor a stay in the form sought by the appellant, the court will deny the motion for a stay without prejudice since the court would be willing to consider a motion that sought to stay an award of the lot to another if the appellant had submitted a bona fide bid for the lot and that would also allow the court to set a more accurate figure for an appeal bond – the amount of lease payments that the Board of Trustees could have received but would not receive while the appeal was pending. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 176, 180 (Pon. 2010).

Generally, a court weighs four factors when considering whether to grant a stay pending appeal: 1) whether the appellant has made a strong showing that he is likely to prevail on the appeal's merits; 2) whether the appellant has shown that he will be irreparably harmed without the stay; 3) whether the stay's issuance would substantially harm other parties interested in the proceedings; and 4) whether the public interest would be served by granting a stay, and ordinarily, the first factor is the most important, but a stay

may be granted upon a lesser showing of a substantial case on the merits if the balance of the equities in factors 2, 3, and 4 weighs heavily in the stay's favor. Mori v. Hasiguchi, 17 FSM R. 602, 604 (Chk. 2011).

Although it is not a trial court's place to rule on an appellate court's jurisdiction, an analysis of the first factor to weigh when considering a stay request – likelihood of success – may require that the trial court to express a view on the appellate court's jurisdiction over what has been appealed. Mori v. Hasiguchi, 17 FSM R. 602, 604 (Chk. 2011).

When the trial court is unaware of any basis on which an appellate court can entertain an interlocutory appeal of a motion, it may conclude the plaintiff has virtually zero chance of success on the appeal's merits because the appellate court will not, for lack of jurisdiction, be able to even consider the appeal's merits, and when, even if the interlocutory appeal were from a severance order and not a motion, it is not apparent that, under these circumstances, an appellate court could exercise jurisdiction, the first and most important factor weighs most heavily against granting the plaintiff a stay. Mori v. Hasiguchi, 17 FSM R. 602, 604 (Chk. 2011).

When the first and most important factor weighs most heavily against granting the plaintiff a stay and the second factor – irreparable harm to the appellant – also does not weigh in the plaintiff's favor because he cannot show any harm when the court has yet to rule one way or the other on its own pending motion, the other two factors are irrelevant since even if they favored a stay, they could not overcome the weight of the first two factors. Mori v. Hasiguchi, 17 FSM R. 602, 604 (Chk. 2011).

An appellant's failure to obtain a stay does not affect an appeal's validity or the appellate court's jurisdiction over it. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 210 (App. 2012).

Under Appellate Rule 8(a), the appellate court may grant an injunction during the pendency of an appeal. An injunction during the pendency of an appeal is a preliminary injunction. Berman v. Pohnpei, 18 FSM R. 418, 420 (App. 2012).

When affidavits are not attached to a motion for injunction during pendency of appeal but reference is made to affidavits filed earlier in the trial division that might be found in various places in the trial court record and when the other parts of the record that the movants deem relevant to their motion are also not attached to the motion, the movants have failed to comply with Appellate Rule 8(a)'s technical requirements. Berman v. Pohnpei, 18 FSM R. 418, 421 (App. 2012).

When the appellate court has not previously construed Appellate Rule 8(a)'s provisions about the issuance of injunctions, it may consult U.S. authority for guidance because FSM Rule 8(a) is drawn from a similar U.S. rule. Berman v. Pohnpei, 18 FSM R. 418, 421 n.2 (App. 2012).

Litigants should not lightly seek injunctions pending appeal. Berman v. Pohnpei, 18 FSM R. 418, 421 (App. 2012).

An appellate court, in ruling on a request for an injunction pending appeal, must engage in the same inquiry as when it reviews the grant or denial of a preliminary injunction, and in considering whether to grant a preliminary injunction, courts consider four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience to the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. Generally, the purpose of an injunction pending appeal is to maintain the status quo while the appeal is heard and decided. Berman v. Pohnpei, 18 FSM R. 418, 421 (App. 2012).

When the movants do not seek to maintain the status quo pending appeal but seek to substantially alter or even reverse the status quo by obtaining a mandatory injunction against Pohnpei requiring it to take certain actions to prevent the activities of persons not parties to the case, on that ground alone the movants' likelihood of success is poor. Berman v. Pohnpei, 18 FSM R. 418, 421 (App. 2012).

One who seeks an injunction pending appeal must show irreparable injury. Berman v. Pohnpei, 18 FSM R. 418, 421 (App. 2012).

When what the movants seek to enjoin is not trespass and nuisance on their land but on a causeway or berm which is not their land and when the trial court denied their initial motion for injunction on January 7, 2009, they did not appeal that denial as they could have under Appellate Rule 4(a)(1)(B), the movants have not shown irreparable harm or injury. Berman v. Pohnpei, 18 FSM R. 418, 421-22 (App. 2012).

The balance-of-injuries factor will not weigh in the movants' favor when the movants ask that Pohnpei be ordered to take certain actions against non-parties at an unknown cost and with an unknown exposure by Pohnpei to potential liability to those non-parties while leaving the movants free of any expense or liability. Berman v. Pohnpei, 18 FSM R. 418, 422 (App. 2012).

A preliminary injunction will not be issued when, regardless of where the public interest lies, that factor cannot overcome the other three and cause the issuance of the preliminary injunction sought. Berman v. Pohnpei, 18 FSM R. 418, 422 (App. 2012).

A very substantial cash bond may be required in order to grant a preliminary injunction that is mandatory in nature. Berman v. Pohnpei, 18 FSM R. 418, 422 (App. 2012).

A motion to stay pending appeal is moot when the appeal has been withdrawn. Perman v. Ehsa, 18 FSM R. 452, 454 n.1 (Pon. 2012).

When there is no basis for the court to depart from the procedures established for a stay to be put in place pending an appeal since the petitioner has other adequate remedies to obtain what he seeks and since the petitioner, who is also seeking an extraordinary writ of prohibition, has not met his burden to show that his right to the writ is clear and indisputable, the petition for a writ of prohibition will be denied. Ehsa v. Johnny, 19 FSM R. 175, 178 (App. 2013).

The mere filing of an independent action for relief, is not in itself a ground for relief of any kind. Such a filing does not affect the judgment's finality or suspend its operation. Nor is the filing of an independent action a ground for stay. FSM Dev. Bank v. Setik, 20 FSM R. 315, 319 (Pon. 2016).

The rules do not stay trial division proceedings while a writ of mandamus or prohibition is sought. The trial division is therefore free to act unless a stay has been specifically ordered. A writ applicant may seek a stay, first from the trial division, and if unsuccessful there, from the appellate division. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 577, 578 (App. 2016).

When no stay was ever issued (and none apparently ever sought), the trial division justice may, while a petition for a writ of prohibition to disqualify that justice is pending in the appellate division, continue to make such orders, and do all acts, not inconsistent with law or with the rules of procedure and evidence as may be necessary for the due administration of justice. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 577, 578 (App. 2016).

An application to the appellate division for a stay must show that an application to the court appealed from for the relief sought is not practicable, or that the court appealed from has denied the application with any reasons given by the court appealed from for its action. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 585, 587 (App. 2016).

A motion for a stay must also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion must be supported by affidavits or other sworn statements or copies thereof, and such parts of the record as are relevant must be filed with the motion. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 585, 587 (App. 2016).

When a party's application to the appellate division for a stay does not state what reasons were given by trial justice for her action in denying a stay and when if there were relevant parts of the record, none were provided, there is not enough before the appellate division for it to consider a stay. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 585, 587 (App. 2016).

Where a motion for a stay only sought a stay while the Rule 60(b) motion was pending, when the trial court had just denied the Rule 60(b) motion, it correctly denied the stay motion. Setik v. FSM Dev. Bank, 21 FSM R. 505, 518 n.5 (App. 2018).

The filing of a notice of appeal does not operate as a stay. Setik v. FSM Dev. Bank, 21 FSM R. 505, 518 (App. 2018).

When an appellant has made a lesser showing of a substantial case on the merits, the court can still grant the requested stay if the balance of equities of the other three factors weighs heavily in the appellant's favor. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 203, 208 (Pon. 2019).

When claims lurking in the background have not been fully developed, the court, in considering a stay, will not place any weight on them. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 203, 209 (Pon. 2019).

When an appellant seeks a stay, the factor to consider is whether other interested parties would be substantially harmed, not the "balance-of-harm" factor. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 203, 209 (Pon. 2019).

A clear legislative directive, that all public lands in a certain cadastral plat should be fully leased in an expeditious manner, is a clear statement of the public interest about that particular public land. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 203, 210 (Pon. 2019).

When the court is faced with weighing competing public interests, it can conclude that the public interest factor does not weigh heavily in the favor of a stay for the appellant's benefit. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 203, 210 (Pon. 2019).

When an appellant has not made a strong showing that it is likely to prevail on the merits of its appeal; when it has also not shown that the balance of the equities of the other three factors weigh heavily in favor of a stay; and when it has not shown irreparable harm, the court cannot grant the requested stay. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 203, 210 (Pon. 2019).

Under Appellate Rule 8(a), the appellate court may grant an injunction during the pendency of an appeal. An injunction during the pendency of an appeal is a preliminary injunction. In re Decision of Nat'l Election Dir., 22 FSM R. 221, 223 (App. 2019).

When ruling on a request for an injunction pending appeal, an appellate court engages in the same inquiry as when it reviews the grant or denial of a preliminary injunction. In making this inquiry, the court considers four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience to the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. In re Decision of Nat'l Election Dir., 22 FSM R. 221, 223 (App. 2019).

One who seeks an injunction pending appeal must show irreparable injury. The party seeking a preliminary injunction must be faced with irreparable harm before the litigation's end and there must be a clear showing that immediate and irreparable injury would otherwise occur, and there must be no adequate alternative remedy. In re Decision of Nat'l Election Dir., 22 FSM R. 221, 223 (App. 2019).

A "winning" candidate cannot show that a revote constitutes irreparable harm because, after the revote is held, that candidate may still be declared and certified as the winning candidate – the revote might not

alter the ultimate outcome. In re Decision of Nat'l Election Dir., 22 FSM R. 221, 223 (App. 2019).

Since irreparable harm before the litigation's end is a prerequisite to preliminary injunctive relief, when irreparable harm does not exist, a preliminary injunction should be denied. In re Decision of Nat'l Election Dir., 22 FSM R. 221, 223 (App. 2019).

When an appellant seeking a stay cannot show irreparable harm, the court need not consider his likelihood of success on the merits. In re Decision of Nat'l Election Dir., 22 FSM R. 221, 224 (App. 2019).

To seek a stay within the appellate division, the movant 1) must first have filed a motion to stay in the court of first instance and if it was denied or gave impractical relief, or if such filing was impractical; 2) the motion must state reasons and facts relied upon and have support in affidavits or by the record; and 3) reasonable notice must be provided to all parties. A single appellate justice may consider the motion if it is deemed impractical, due to requirements of time, for all eligible justices to, and relief may be conditioned on the posting of a bond. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 276, 278 (Chk. S. Ct. App. 2019).

The Chuuk State Supreme Court appellate division's standard to review motions for stays of judgment is to weigh the following factors: 1) whether the appellant has shown that without the stay he will be irreparably harmed; 2) whether issuance of the stay would substantially harm other parties interested in the proceedings; 3) whether the public interest would be served by granting a stay; and 4) whether the appellant has made a strong showing that he is likely to prevail on the merits of the appeal. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 276, 278 (Chk. S. Ct. App. 2019).

Public interest requires accountability of quasi-governmental entities towards the public when instances of wrongdoing occur, and public interest also demands that a plaintiff who may ultimately lose on appeal, not walk away with a windfall he is unable to repay to the quasi-governmental entity – at the public's expense. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 276, 279 (Chk. S. Ct. App. 2019).

A court usually weighs four factors when considering whether to grant a stay pending appeal: 1) whether the appellant has made a strong showing that it is likely to prevail on the appeal's merits; 2) whether the appellant has shown that it will be irreparably harmed without the stay; 3) whether the stay's issuance would substantially harm other parties interested in the proceedings; and 4) whether the public interest would be served by granting a stay, and ordinarily, the first factor is the most important, but a stay may be granted upon a lesser showing of a substantial case on the merits if the balance of the equities in factors 2, 3, and 4 weighs heavily in the stay's favor. In re Wrecked/Damaged Helicopter, 22 FSM R. 580, 583-84 (Pon. 2020).

The court, whether considering the matter before it to be a request to continue or reinstate an earlier injunction pending appeal or a request for a stay pending appeal, the court must consider the same basic four factors. In re Wrecked/Damaged Helicopter, 22 FSM R. 580, 584 (Pon. 2020).

When the appellant contends that there are important legal issues that must be resolved before its helicopter can be sent abroad, but those legal issues are all matters of United States federal law that can only be resolved in a United States federal court, not in an FSM court, the appellant's claim that the issues must be heard and resolved by an FSM appellate court before the helicopter can be sent to Guam, a U.S. jurisdiction where those claims can actually be definitively resolved, is frivolous. An FSM court is not the final arbiter of U.S. federal law, and the appellant should not try to make it so. In re Wrecked/Damaged Helicopter, 22 FSM R. 580, 584-85 (Pon. 2020).

Although the appellant contends that if its helicopter is sent to Guam, its appeal is in danger of becoming moot, mootness is not even a consideration for all of the issues turning on U.S. federal law because those issues, if raised, will then be properly before the court where they should be determined, and, if there are any remaining issues restricted solely to FSM law, the appellant, if it chooses, can rely on the capable-of-repetition-yet-evading-review doctrine to avoid a dismissal based on mootness. In re

Wrecked/Damaged Helicopter, 22 FSM R. 580, 585 (Pon. 2020).

The balance of harms weigh substantially, if not overwhelmingly, in the U.S.'s (as represented through the FSM) favor and not in true real party in interest's (as represented through the appellant's) favor when, without the helicopter, the U.S. loses the ability to use its "key" evidence against the true real party in interest in his upcoming criminal prosecution, but, once the appellant's helicopter reaches Guam, the true real party in interest will still have every opportunity to raise his legal claims and seek suppression of that "key" evidence before trial in the only court where those issues are legally cognizable and can actually be raised and resolved – the U.S. district court on Guam. In re Wrecked/Damaged Helicopter, 22 FSM R. 580, 585 (Pon. 2020).

An appellant's purported concerns about its helicopter's fate on Guam and whether it will ever get its helicopter back are misplaced, and cannot show any irreparable harm when the U.S., through the Assistant U.S. Attorney's written undertaking, has agreed to comply with the terms of an FSM Supreme Court order about the helicopter's return to the FSM. There is thus no irreparable harm to the appellant since it will get its helicopter back, and the appellant will not suffer irreparable harm if its injunction is not reinstated. In re Wrecked/Damaged Helicopter, 22 FSM R. 580, 585-86 (Pon. 2020).

The public interest does not favor a stay when the public interest lies with assisting judicial inquiries into the truth and that those inquiries, and the legal issues around them, be resolved in a court that has the jurisdiction to resolve those legal issues and to make those truth-seeking inquiries – a U.S. federal court – and not needlessly consume FSM judicial resources to consider legal questions that can only be resolved elsewhere. In re Wrecked/Damaged Helicopter, 22 FSM R. 580, 586 (Pon. 2020).

A stay or an injunction pending appeal will not be granted when the irreparable harm, the balance of injuries, and the public interest factors all do not favor granting a stay or injunction pending appeal. In re Wrecked/Damaged Helicopter, 22 FSM R. 580, 586 (Pon. 2020).

When delay is the major reason, if not the sole reason, for an appellant to seek a stay or injunction pending appeal, the delay is for an improper purpose. In re Wrecked/Damaged Helicopter, 22 FSM R. 580, 586 (Pon. 2020).

– Stay – Civil Cases – Money Judgments

The purpose of requiring a supersedeas bond for a stay is to protect the interests of the appellees. A bond protects the appellees by providing a fund out of which it may be paid if the money judgment is affirmed, and it meets the concerns of the appellee that the appellant might flee the jurisdiction or conceal or dissipate assets so as to render itself judgment-proof. The latter concerns are not present when the appellant is a state. Pohnpei v. Ponape Constr. Co., 6 FSM R. 221, 223 (App. 1993).

While a supersedeas bond is a prerequisite to granting a stay from a money judgment, no such bond is required in order to obtain a modification of an injunction pending appeal. It may be granted upon such terms as to bond or otherwise as the court considers for the security of the adverse party's rights. Ponape Enterprises Co. v. Luzama, 6 FSM R. 274, 277 (Pon. 1993).

The rule requiring a supersedeas bond to be posted before a stay may granted pending appeal is applicable only to appeals from money judgments. Pohnpei v. MV Hai Hsiang #36 (II), 6 FSM R. 604, 605 (Pon. 1994).

A stay of a money judgment pending appeal is effective when the appellant's supersedeas bond is approved by the court. Walter v. Meippen, 7 FSM R. 515, 519 (Chk. 1996).

The term "bond" in an appeal context includes more than the supersedeas bond in Civil Rule 62. One example is the bond for costs in Appellate Rule 7; another is the bond that may be required under Appellate

Rule 8(b) (which does not use the word "supersedeas") when a motion for stay is brought in the appropriate circumstances in the appellate division. Regardless of the specific type of bond, the general principles applicable to appeal bonds and undertakings also apply in most cases to supersedeas bonds. Amayo v. MJ Co., 10 FSM R. 427, 428 (Pon. 2001).

In jurisdictions having statutory requirements for a supersedeas bond, a competent surety is ordinarily required. A surety is one who undertakes to pay money in the event that his principal fails therein, and who is primarily liable for the payment of debt or performance of the obligation of another. The appellant himself is generally not competent to stand as a surety on an appeal bond. Amayo v. MJ Co., 10 FSM R. 427, 428 (Pon. 2001).

A supersedeas bond's purpose is to protect the appellees' interest by providing a fund out of which a judgment can be paid if it is affirmed on appeal. It provides absolute security to the party who is affected by the appeal. The bond also protects the judgment debtor from levy while the appeal takes its course. Amayo v. MJ Co., 10 FSM R. 427, 428-29 (Pon. 2001).

In the usual case, a full supersedeas bond is required in order to stay execution of a judgment. The bond's amount is calculated to include the judgment's whole amount, costs on appeal, interest, and damages for delay. Courts in the exercise of their discretion have permitted a form of security other than a bond so long as that security is adequate and the judgment creditor's recovery is not at risk. Amayo v. MJ Co., 10 FSM R. 427, 429 (Pon. 2001).

Due to the lack of an established Pohnpei real estate market, a mortgage offered in lieu of a supersedeas bond does not provide absolute security to an appellee. Realistically, the lack of a ready market for property also precludes a professional surety either inside or outside the FSM from accepting the property as bond collateral. Amayo v. MJ Co., 10 FSM R. 427, 429 (Pon. 2001).

When a supersedeas bond from a qualified surety is presented to the court, the appropriate vetting and assessment of financial information by a competent surety will have taken place, thus obviating the need for a court to engage in that process. Amayo v. MJ Co., 10 FSM R. 433, 434 (Pon. 2001).

In the absence of a supersedeas bond, a judgment creditor generally has, within specified statutory limits, a right to a writ of execution upon entry of judgment. Amayo v. MJ Co., 10 FSM R. 433, 434 (Pon. 2001).

When no stay has been ordered in a pending appeal, alien judgment-creditors may suggest, although no rule or other authority requires this, that any sums resulting from a levy on the judgment be deposited with the court in an interest bearing account, and the court, aware of the creditors' great financial distress resulting from the injury sued upon may order a portion of the money deposited to be paid over to plaintiffs' counsel. Amayo v. MJ Co., 10 FSM R. 433, 435 (Pon. 2001).

An appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in Civil Rule 62(a). The stay is effective when the supersedeas bond is approved by the court. Panuelo v. Amayo, 10 FSM R. 558, 560, 563 (App. 2002).

The purpose of a supersedeas bond is to protect the prevailing party below pending the appeal. Panuelo v. Amayo, 10 FSM R. 558, 563 (App. 2002).

Because there is very little FSM law governing supersedeas bonds, the FSM Supreme Court may consult the laws of the United States for guidance, as the civil procedure rules in the United States district courts related to supersedeas bonds are similar to those in the FSM, but the court must also take into account the circumstances in the FSM, and independently consider suitability of the U.S. courts' reasoning for application in the FSM. Panuelo v. Amayo, 10 FSM R. 558, 563 (App. 2002).

The amount of a supersedeas bond typically takes into account the amount needed to satisfy the

judgment appealed from, as well as costs, interest, and any damages which may be caused by the stay pending appeal. Panuelo v. Amayo, 10 FSM R. 558, 563 (App. 2002).

While reference to U.S. law is helpful in enunciating general principals regarding posting of supersedeas bonds, the reality of the financial markets in the FSM requires that the established U.S. requirement of posting of a full supersedeas bond, in cash or by a cash-backed surety, receive additional scrutiny. Panuelo v. Amayo, 10 FSM R. 558, 563 (App. 2002).

When, given the general unavailability of cash-backed sureties in the FSM, an appellant would essentially be required to liquidate his several businesses in order to post a full cash bond, and in the absence of a stay, writs of execution would be enforced against appellant's property before his appeal is resolved, and when the public interest would also be served by allowing appellant the opportunity to provide alternative security, the appellate division may order an alternative bond of $50,000 cash plus a substantial mortgage. Panuelo v. Amayo, 10 FSM R. 558, 564-65 (App. 2002).

In some cases, an abuse of discretion may be found when the trial court rejects, as an alternative to a full cash bond, a supersedeas bond of which a portion of the bond is in cash and a portion is in the form of a property mortgage. Panuelo v. Amayo, 11 FSM R. 83, 85 (App. 2002).

When the appellees' submission for partial distribution of the appellant's supersedeas bond complies with a single justice's previous orders concerning client contact, lost wages, and expenses incurred, the court will release the previously-ordered $20,000 distribution plus the pro rata interest on that amount. Panuelo v. Amayo, 11 FSM R. 205, 207-08 & n.1 (App. 2002).

When an appeal is taken, the appellant by giving a supersedeas bond may obtain a stay. The stay is effective when the court approves the supersedeas bond. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

When the appellant has yet to offer a supersedeas bond, and the court has yet to approve the bond, the stay has yet to become effective. Until such time as the appellant offers a supersedeas bond acceptable to the court, there is no stay in effect, and the plaintiff is free to execute on the judgment. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

When defendants have not posted a supersedeas bond and have not stated any basis upon which the court could exercise its discretion to stay the money judgment against them in absence of a bond, they are not entitled to a stay under FSM Civil Rule 62(d). Adams v. Island Homes Constr., Inc., 12 FSM R. 348, 350 (Pon. 2004).

That defendants claim that they owe a different amount than that for which they were found liable and thus still contest liability is not a basis for a stay pending the appeal when the plaintiffs proved by a preponderance of evidence the amount that the defendants owe to them. Adams v. Island Homes Constr., Inc., 12 FSM R. 348, 350 (Pon. 2004).

Judgment creditors have a statutory right to obtain the immediate issuance of a writ of execution unless a motion for an order in aid of judgment is pending. This statutory right is automatically stayed for ten days by court rule, and may be stayed by the court pending an appeal. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 501, 503 (Yap 2006).

A judgment-debtor who posts a satisfactory supersedeas bond is entitled to a stay pending appeal as a matter of right. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 501, 503 (Yap 2006).

The purpose of requiring a supersedeas bond for a stay pending an appeal is to protect the appellee's interests. A bond protects an appellee by providing a fund out of which it may be paid if the money judgment is affirmed, and the bond also meets the appellee's concern that the appellant might flee the

jurisdiction or conceal or dissipate assets so as to render itself judgment-proof. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 501, 503 (Yap 2006).

A supersedeas bond provides absolute security to the party who is affected by the appeal. It also protects the judgment debtor from levy while the appeal takes its course. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 501, 503-04 (Yap 2006).

A judgment creditor's primary concern when a judgment in his favor is stayed pending appeal is that he be secure from loss resulting from the stay of execution. Therefore, to be entitled to a stay of execution pending appeal, the defendants must either post an adequate supersedeas bond or pay the money into the court's registry (or a combination of both). A letter of undertaking is insufficient. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 501, 504 (Yap 2006).

If appellants post a supersedeas bond, they are automatically entitled to stay once the court has approved the bond. Statutory post-judgment interest, however, will continue to accrue until the judgment is paid. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 501, 505 (Yap 2006).

When the defendants attempted to obtain an $8.1 million standby letter of credit through the Bank of the FSM, Colonia, Yap, but were unable to because that bank was institutionally unable to handle such a letter of credit for a sum larger than $2.5 million; when the possibility that the other bank in the FSM, the Bank of Guam, might be able to issue such a letter of credit was not explored; and the defendants submitted a surety bond from the Travelers Casualty and Surety Company of Hartford, Connecticut; and when the court issued its order, it was under the impression that a standby letter of credit could be issued through the Bank of the FSM, Yap, and if it had had any hint that such was not possible, the order would have specified a letter of credit through any bank in the FSM and only if that was unavailable would an alternative bond have been considered; the court will approve the Travelers surety bond that the defendants have already obtained and stay execution on the judgment pending appeal and further court order. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 533, 534-35 (Yap 2007).

The purpose of a supersedeas bond is to protect the prevailing party's interest in a trial court judgment pending the appeal. As such, a supersedeas bond provides a fund out of which a judgment can be paid if it is affirmed on appeal. It provides absolute security to the party who is affected by the appeal. The bond also protects the judgment debtor from levy while the appeal takes its course. In the usual case, a full supersedeas bond is required in order to stay execution of a judgment. The bond's amount is calculated to include the judgment's whole amount, costs on appeal, interest, and damages for delay. Sisra v. Billimon, 15 FSM R. 266, 268 (Chk. S. Ct. Tr. 2007).

Unlike U.S. courts, which require the posting of a full supersedeas bond, the Chuuk State Supreme Court may use its discretion as to whether a cash bond must be posted in the full amount of the trial court judgment. Sisra v. Billimon, 15 FSM R. 266, 268 (Chk. S. Ct. Tr. 2007).

A $7,000 supersedeas bond, which approximates the amount of economic damages the plaintiffs alleged in their complaint plus, at least in part, security against the plaintiffs' costs, interests and delay damages on the appeal but which is far less than the amount of the judgment they obtained, is sufficient when the plaintiffs have consented to the amount. While there is no direct authority that the parties may consent to a lower bond amount than that reflected in the trial court judgment, the principles applied in the settlement context are instructive. Typically parties are free to waive objections to the amount of a claim and settle at whatever amount they may agree upon. Sisra v. Billimon, 15 FSM R. 266, 268-69 (Chk. S. Ct. Tr. 2007).

A motion to freeze funds will be denied when it would violate the stay against judgment pending the defendant's appeal and would merely duplicate the security given to the plaintiffs by the defendant's posting of a cash bond. Sisra v. Billimon, 15 FSM R. 266, 269 (Chk. S. Ct. Tr. 2007).

The criteria for granting a stay under Rule 62(c) are: 1) whether the appellant has shown that without the stay he will be irreparably harmed; 2) whether issuance of the stay would substantially harm other parties interested in the proceedings; 3) whether the public interest would be served by granting a stay; and 4) whether the appellant has made a strong showing that he is likely to prevail on the merits of the appeal. These criteria do not apply to appeals from a money judgment or to the denial of a motion to vacate a money judgment. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 136 (Pon. 2008).

While a supersedeas bond may be required for a stay of a money judgment under Rule 62(d), it is clear that no such bond is required in order to obtain a modification of an injunction pending appeal. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 136 (Pon. 2008).

The irreparable injury contemplated by Rule 62(c) is that which will make the appeal moot. Thus, prospective monetary damage is not irreparable injury. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 137 (Pon. 2008).

Rule 62(d), not 62(c), applies to stays of money judgments and awards. That rule provides that when an appeal is taken the appellant by giving a supersedeas bond may obtain a stay and the bond may be given when the notice of appeal is filed or after. The stay is effective when the court approves supersedeas bond. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 140 (Pon. 2008).

The purpose of requiring a supersedeas bond for a stay pending an appeal is to protect the appellee's interests. A bond protects an appellee by providing a fund out of which it may be paid if the money judgment is affirmed, and the bond also meets the appellee's concern that the appellant might flee the jurisdiction or conceal or dissipate assets so as to render itself judgment-proof. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 140 (Pon. 2008).

A supersedeas bond provides absolute security to the party who is affected by the appeal, but it also protects the judgment-debtor from levy while the appeal takes its course. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 140 (Pon. 2008).

A supersedeas bond serves three main purposes: 1) it permits the appellant to appeal without risking satisfying the judgment prior to appeal and then being unable to obtain a refund from the appellee after judgment is reversed on appeal; 2) it protects the appellee against risk that the appellant could satisfy the judgment prior to the appeal but is unable to satisfy the judgment after appeal; and 3) it provides a guarantee that the appellee can recover from the appellant the damages caused by the delay incident to the appeal, that is, the bond guarantees that the appellee can recover the interest that accrues on the judgment during appeal, and guarantees that the appellant will satisfy the judgment plus interest and costs if it is affirmed on appeal. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 140 (Pon. 2008).

A judgment creditor's primary concern when a judgment in his favor is stayed pending appeal is that he be secure from loss resulting from the stay of execution. Therefore, to be entitled to a stay of execution pending appeal, the defendants may either post an adequate supersedeas bond or pay the money into the court's registry (or a combination of both). If the appellants post a supersedeas bond, they are entitled to stay as of right once the court has approved the bond, but statutory post-judgment interest will continue to accrue until the judgment is paid. If the money is paid into court, interest will cease to accrue on the judgment, and if only a part of the principal is paid, then the statutory interest stops only on that part. Payments into court accrue interest for the ultimate recipient's benefit only as earned in the court's depository institution. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 140-41 (Pon. 2008).

Usually, a full supersedeas bond is required in order to stay execution of a judgment, and the amount of the bond is calculated to include the whole amount of the judgment, costs on appeal, interest, and damages for delay, but courts in the exercise of their discretion have permitted a form of security other than a bond so long as that security is adequate and the judgment creditor's recovery is not at risk. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 141 (Pon. 2008).

If the appellants have a history of paying judgments of large size, the court might be able to issue a stay without a bond or equivalent security. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 141 (Pon. 2008).

When the appellants' ability to pay is not so plain that a bond would be a waste of money and when the appellants have not shown that a bond would put their other creditors in jeopardy, the judgment-debtor defendants must provide adequate security for the judgment-creditor appellee in order for the court to issue a stay pending appeal. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 141 (Pon. 2008).

A stay may be denied when the appellant is unable to post a supersedeas bond and has failed to propose alternate security. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 141 (Pon. 2008).

It is the appellant's burden to demonstrate objectively that posting a full bond is impossible or impracticable; likewise, it is the appellant's duty to propose a plan that will provide adequate (or as adequate as possible) security for the appellee. A supersedeas bond is essentially a judgment insurance policy, and the alternate security must serve the same basic purpose. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 142 (Pon. 2008).

In the absence of a stay obtained in accordance with Rule 62(d), the pendency of an appeal does not prevent the judgment creditor from acting to enforce the judgment. But a person who cannot furnish a supersedeas bond does not lose the right to appeal, although he does assume the risk of getting his money back again if the judgment is reversed. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 142 (Pon. 2008).

When the defendants are not entitled to a stay on the terms sought; when they have not posted a supersedeas bond; and when they have not proposed alternative security for all, or any part of, the judgment they seek to appeal for the second time, the court must deny the defendants' motion for a stay pending appeal. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 143 (Pon. 2008).

An offer of a supersedeas bond in the amount of the consummated sale price plus projected interest and costs, might entitle the appellants to a stay of the sale since a supersedeas bond's purpose is to protect the prevailing party below pending the appeal. FSM Dev. Bank v. Helgenberger, 17 FSM R. 266, 269 (Pon. 2010).

Generally, there are four factors to weigh before granting a stay pending an appeal in a civil case: 1) whether the appellant has made a strong showing that it is likely to prevail on the merits of the appeal; 2) whether the appellant has shown that without the stay it will be irreparably harmed; 3) whether the stay's issuance would substantially harm other parties interested in the proceedings; and 4) whether the public interest would be served by granting a stay, and ordinarily, the first factor is the most important, but a stay may be granted upon a lesser showing of a substantial case on the merits when the balance of the equities identified in factors 2, 3, and 4 weighs heavily in favor of granting the stay. FSM Dev. Bank v. Helgenberger, 17 FSM R. 266, 269 (Pon. 2010).

Even though there might be no harm to the only other party to the appeal and the public interest may favor neither granting nor denying a stay, a stay will be denied when the appellant has not made a strong showing that it is likely to prevail on the merits and it has not shown that its injury is irreparable. FSM Dev. Bank v. Helgenberger, 17 FSM R. 266, 269 (Pon. 2010).

A claim that if a property is worth $832,000 but being sold for $151,000, it is a serious irreparable harm that cannot be compensated or remedied, does not constitute an irreparable injury since, if it is an injury, it is an injury that can easily be compensated monetarily, and may, in this case, be accomplished more easily than is usual – by a reduction in the defendants' indebtedness to the bank, a quick and efficient remedy. FSM Dev. Bank v. Helgenberger, 17 FSM R. 266, 269 (Pon. 2010).

The appellants' chances of success on appeal are slim when they have not put forth any basis to show

that the court's reasoning for denying raising the minimum bid price from $120,000 to $832,990 was unsound or unconstitutional and when no FSM order in aid of judgment law relating to real property requires a certain minimum bid or requires that a minimum bid be set in a particular way, which is all that the court ruled on in the order appealed from. FSM Dev. Bank v. Helgenberger, 17 FSM R. 266, 269-70 (Pon. 2010).

The appellants' likelihood of success on their claim that the court should have abstained or certified their "novel issues" to the state court is virtually zero when they never moved for certification or abstention and when, even if they had, the court is not required to certify or abstain from every "unsettled" state law issue. FSM Dev. Bank v. Helgenberger, 17 FSM R. 266, 270 (Pon. 2010).

A collection case based on a defaulted loan is not a case or dispute in which an interest in land was at issue and so the FSM Constitution article XI, section 6(a) jurisdictional language is not applicable since an apartment building's sale is merely a post-judgment remedy sought by the judgment-creditor because other remedies had been ineffective. FSM Dev. Bank v. Helgenberger, 17 FSM R. 266, 270 (Pon. 2010).

Even if the other two factors favor a stay, it would not be enough to overcome the appellants' lack of irreparable injury and of a substantial chance of a success on the merits. FSM Dev. Bank v. Helgenberger, 17 FSM R. 266, 270 (Pon. 2010).

The rule requiring a supersedeas bond to be posted before a stay may be granted pending appeal is applicable only to appeals from money judgments. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 210 (App. 2012).

By rule, a judgment is automatically stayed for only ten days. Once that ten days has passed, the judgment holder is free to execute on or to enforce the judgment unless a supersedeas bond has been posted and approved by the court or a stay sought and granted. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

In the absence of a stay obtained in accordance with Rule 62(d), the pendency of an appeal does not prevent the judgment creditor from acting to enforce the judgment. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

An appeal from a final judgment does not affect the judgment holder's right to execute upon the judgment. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

An appeal from a final judgment does not affect the judgment holder's right to enforce the judgment unless a supersedeas bond is posted or a stay of enforcement is ordered by the court. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

Since the trial court retains jurisdiction to enforce a judgment even though it has been appealed, a judgment holder may, in the absence of a stay, seek to enforce its judgment, and a hearing to enforce or modify existing orders in aid of the existing judgment will proceed as scheduled because Congress has, by statute, has authorized judgment holders to use these methods to enforce valid money judgments. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

Whether an appeal's pendency hampers a money judgment's enforcement or collection usually depends on whether a stay has been granted. Chuuk Public Utility Corp. v. Chuuk Health Care Plan, 22 FSM R. 38, 42 (Chk. S. Ct. App. 2018).

An appellant may be irreparably harmed if it prevails on appeal and the appellee, or his estate, is unable to repay, and substantive harm to the appellee is not as likely when the appellate decision should not delay it more than several months. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 276, 278 (Chk. S. Ct. App. 2019).

The court may require a bond in the judgment amount as a precondition to grant a motion to stay. If the appellee should prevail, the release of the judgment money will occur unhindered if it is already posted as a bond – thus alleviating the appellee's main concern that he will not see his judgment during his lifetime. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 276, 279 (Chk. S. Ct. App. 2019).

Collection proceedings against a judgment debtor will not be stayed because the debtor has filed a notice of appeal and has also filed an independent action for relief from the judgment. The usual method to stay the collection of a money judgment is for the defendant to give a supersedeas bond, and when the judgment debtor did not obtain, and did not offer to obtain, a supersedeas bond, and has not stated any basis upon which the court could exercise its discretion to stay the money judgment against him in absence of a bond, he is not entitled to a stay under FSM Civil Rule 62(d). FSM Dev. Bank v. Talley, 22 FSM R. 608, 610 (Kos. 2020).

In the absence of a stay, the court has the ability, and the inclination, to protect a judgment-debtor during an appeal by requiring that all sums the judgment-debtor is ordered to pay, be paid into the court's registry where the money would be held awaiting the outcome of the judgment debtor's appeal, with the money delivered to whichever party the appellate court deems proper. FSM Dev. Bank v. Talley, 22 FSM R. 608, 610-11 (Kos. 2020).

– Stay – Criminal Cases

A stay is normally granted only where the court is persuaded as to the probability of ultimate success of the movant. In re Raitoun, 1 FSM R. 561, 563 (App. 1984).

In determining whether to grant a stay, a single appellate judge, acting alone, must consider whether it is more likely than not that the petitioner would be able to persuade a full appellate panel as to the soundness of his legal position and that there are such special circumstances that the trial court should be mandated to modify its conduct of the trial. In re Raitoun, 1 FSM R. 561, 563 (App. 1984).

In weighing the possibility of success of an application for a writ of mandamus on grounds that one public defender's conflict should be imputed to all lawyers in the Public Defender's office, when the original disqualification is based upon a conflict of the attorney's loyalties because of his familial relationship with the victim, but no issue of confidentiality is raised, and only the issue of loyalty is present, but no showing is made that the other lawyers could not give full loyalty to the client; there exists no substantial possibility of an appellate court granting the writ and a stay of proceedings pending consideration of the application should not be granted. Office of the Public Defender v. Trial Division, 4 FSM R. 252, 254 (App. 1990).

Under FSM Appellate Rule 27(c) a motion for a stay of proceedings pending consideration of a motion for a writ of mandamus to require a trial court to appoint a lawyer other than the Public Defender is denied where there: 1) is no substantial possibility that a full panel would grant the writ, 2) is no showing of irreparable harm if the stay is denied, and 3) are no equities presented in favor a stay. Office of the Public Defender v. Trial Division, 4 FSM R. 252, 255 (App. 1990).

The FSM Supreme Court appellate division has no authority to review an application for release from jail pending appeal until the court appealed from has refused release or imposed conditions. Nimwes v. FSM, 8 FSM R. 297, 298-99 (App. 1998).

When a person convicted of a crime appeals only his jail sentence and seeks a stay of that sentence pending appeal, the trial court will grant a stay only if it is reasonably assured that the appellant will not flee or pose a danger to any other person or to the community, and that the appeal is not for purpose of delay, and raises a substantial question of law or fact likely to result in a sentence that does not include a term of imprisonment. The burden of establishing these criteria rests with the defendant. FSM v. Nimwes, 8 FSM R. 299, 300 (Chk. 1998).

The request of a defendant, who is appealing only his jail sentence, for a stay pending appeal will be denied because his allegation that his four-month jail sentence for misappropriating to his own use $17,125 of government money is cruel and unusual punishment and an abuse of the judge's discretion when he has diabetes does not raise a substantial question likely to result in a sentence without a jail term and raises the inference that the appeal was brought for the purpose of delay. FSM v. Nimwes, 8 FSM R. 299, 300 (Chk. 1998).

A sentence of imprisonment will be stayed if an appeal is taken to the Chuuk State Supreme Court appellate division and the defendant is released pending disposition of appeal if application for release is made in the first instance in the court appealed from. Iwenong v. Chuuk, 8 FSM R. 550, 551-52 (Chk. S. Ct. App. 1998).

FSM Appellate Procedure Rule 9(c) sets forth the criteria for release pending an appeal from a criminal conviction. The burden of establishing the requisite criteria rests with the defendant. FSM v. Akapito, 10 FSM R. 255, 256 (Chk. 2001).

Among the criteria the defendant must show to be released pending appeal when the appeal is only of his sentence of imprisonment is that the appeal is not for the purpose of delay and that it raises a substantial question of law or fact likely to result in a sentence that does not include a term of imprisonment. FSM v. Akapito, 10 FSM R. 255, 256 (Chk. 2001).

A defendant appealing his sentence has utterly failed to meet the criteria for release pending appeal when neither his moving papers nor argument raised a substantial question of law or fact likely to result in a sentence not including a term of imprisonment. FSM v. Akapito, 10 FSM R. 255, 256 (Chk. 2001).

That the defendant would then be free, in mind and body, to assist his counsel in the preparation of his appeal is not a substantial question of law or fact justifying release pending an appeal. FSM v. Akapito, 10 FSM R. 255, 257 (Chk. 2001).

When an appeal of a criminal sentence does not raise any substantial question likely to obtain the result the appellant seeks, the court may draw the inference that it was brought for the purpose of delay. FSM v. Akapito, 10 FSM R. 255, 257 (Chk. 2001).

Since an order granting a change of venue is not appealable, no stay is warranted while the defendant seeks its review in the appellate division. FSM v. Wainit, 11 FSM R. 411, 412 (Pon. 2003).

When, given the appellate cases' unusual posture, the appellate division determines that it is appropriate to apply Appellate Procedure Rule 2, which allows it, for good cause shown, to suspend in a particular case the Appellate Rules' usual requirements and order proceedings in accordance with its direction and when it is within the court's inherent power to ensure the efficient administration of justice, which may be hindered if trial were to start before it ruled on the question presented, it may stay trial in the case below pending further notice. Wainit v. FSM, 11 FSM R. 568, 569 (App. 2003).

The rules do not stay trial division proceedings when a writ of mandamus is sought. FSM v. Wainit, 12 FSM R. 201, 203 (Chk. 2003).

There is no good reason to stay the completion of discovery in a criminal case while appellate review is sought when the defendant has already made his discovery request and because the amount of discovery that can be requested in a criminal case is so limited and the government cannot even request discovery unless the defendant has already done so, it is difficult to conceive of any circumstances under which staying discovery in a criminal case would be proper. FSM v. Wainit, 12 FSM R. 201, 204 (Chk. 2003).

As jeopardy does not attach in a criminal case until the first witness is sworn in to testify at trial, the trial court will therefore not stay pretrial proceedings while the defendant seeks appellate review because

rulings on pretrial motions not yet filed may dispose of the case entirely in the defendant's favor. FSM v. Wainit, 12 FSM R. 201, 204 (Chk. 2003).

The only stay of a pending criminal case while appellate review is sought that the trial court could consider granting would be a stay of trial. For a stay to be granted, the appeal must be meritorious – a substantial likelihood that the applicant will prevail. A stay is normally granted only where the court is persuaded as to the probability of the movant's ultimate success. FSM v. Wainit, 12 FSM R. 201, 204 (Chk. 2003).

It has been a principle of long standing that a stay will not be granted in a criminal matter while the defendant is seeking a writ of mandamus unless there is a substantial likelihood he will prevail. The court cannot see any reason why the standard should be lower when the defendant has also filed an interlocutory notice of appeal as well as a petition for a writ of mandamus. FSM v. Wainit, 12 FSM R. 201, 204 (Chk. 2003).

An issue appealed is not meritorious and the method of seeking appellate review is not meritorious solely because it is a matter of first impression for the appellate division. FSM v. Wainit, 12 FSM R. 201, 204 (Chk. 2003).

In order for a defendant to be granted a stay of a criminal proceeding while he seeks interlocutory appellate review, he must show that his appeal or his petition is meritorious and has a substantial likelihood of success on the merits. FSM v. Wainit, 12 FSM R. 201, 205 (Chk. 2003).

Appellate Rule 9(c) sets the criteria for release pending appeal in a criminal case, and the burden of establishing the requisite criteria rests with the defendant. FSM v. Moses, 12 FSM R. 509, 511 (Chk. 2004).

To grant a release pending appeal, the court first must conclude that one or more release conditions will reasonably assure that the appellant will not flee or pose a danger to another person or the community, and then the movant must establish that the appeal is not for purpose of delay and that it raises a substantial question of law or fact likely to result in either 1) a reversal; 2) an order for a new trial; 3) a sentence that does not include a term of imprisonment; or 4) a reduced sentence to a term of imprisonment less than the total of the time already served. FSM v. Moses, 12 FSM R. 509, 511 (Chk. 2004).

The release of a prisoner is not automatic once a notice of appeal and a motion for release have been filed. The prisoner must establish the requisite criteria exist under Appellate Rule 9(c). FSM v. Moses, 12 FSM R. 509, 511 (Chk. 2004).

When a criminal defendant wants to be released pending appeal but his appeal does not raise any substantial question likely to obtain the result sought by the appeal, the court may draw the inference that the appeal was brought for the purpose of delay. FSM v. Moses, 12 FSM R. 509, 511 (Chk. 2004).

A stay of sentence pending appeal is not automatic upon the filing of a notice of appeal and a motion to stay, but rests on the court's discretion. FSM v. Moses, 12 FSM R. 509, 511 (Chk. 2004).

The court may, in its discretion, stay pending appeal upon such terms as the court deems proper, an order for restitution, but the court may require the defendant pending appeal to deposit the whole or any part of the fine, restitution or costs in the registry of the trial court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make any appropriate order to restrain the defendant from dissipating his assets. The court may invite the movant and the government to submit their views on the advisability, if restitution is stayed, of an order that while the appeal is pending the restitution be paid into the court's registry to remain there in an interest-bearing account until the appeal is decided. FSM v. Moses, 12 FSM R. 509, 512 (Chk. 2004).

An order placing a defendant on probation may be stayed if an appeal is taken. If not stayed, the court shall specify when the term of probation will commence. If the order is stayed, the court must fix the terms of the stay. FSM v. Moses, 12 FSM R. 509, 512 (Chk. 2004).

When the trial court's decision to deny a defendant bail under Kosrae Rule of Criminal Procedure 46(a)(1) even though Section 6.401 appears to have entitled him to bail may be error, given the likelihood that the defendant will prevail on the merits of his appeal, he may be released from incarceration pending the outcome of his appeal. Robert v. Kosrae, 12 FSM R. 523, 524 (App. 2004).

Under Rule 38(a)(4), when a sentence is probation and an appeal is taken, an automatic stay pending appeal remains in effect until a starting date is set for probation to begin. If a motion to stay is filed, the court would not set a starting date until the defendant's motion for a stay was either granted (in which case the terms of that stay order would take effect) or denied (in which case a starting date would be set for probation to begin). Conceivably, the court could set a starting date that came before the court was able to rule on the motion to stay. In such a circumstance, the probation would start and then a stay would be either granted or denied. FSM v. Fritz, 13 FSM R. 88, 91-92 (Chk. 2004).

FSM Appellate Procedure Rule 9(c) sets forth the criteria for release pending an appeal from a criminal conviction. The defendant has the burden of establishing the requisite criteria. It permits the court to release a person who has been convicted of an offense and has filed an appeal only if the court believes that one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. FSM v. Wainit, 14 FSM R. 164, 167 (Chk. 2006).

Once the court has determined that adequate and proper release conditions can be set, it must then make a two-part determination: 1) whether the appeal raises a substantial question of law or fact and does not appear to be for purpose of delay and 2) if a substantial question is found, whether that question is likely to result in a reversal, new trial, a sentence not including imprisonment, or imprisonment for less than time served. A "substantial question of law or fact" is defined as one that is a "close" question or one that could be decided the other way. FSM v. Wainit, 14 FSM R. 164, 168 (Chk. 2006).

A defendant's potential health problems and needs are not relevant to a motion for stay of execution of sentence. They are appropriately raised in a Rule 35(b) motion for reduction of sentence. FSM v. Wainit, 14 FSM R. 164, 168 (Chk. 2006).

That the trial transcript might reveal issues is a ground far too speculative for the court to conclude that a defendant has met Rule 9(c)'s requirement that there be a substantial issue of law or fact for a stay pending appeal. The court cannot presume that an issue of which counsel is currently unaware will be revealed by a review of a completed transcript and that, if revealed, it will be a substantial issue. FSM v. Wainit, 14 FSM R. 164, 168 (Chk. 2006).

When the offenses being charged, the charges tried, and the resulting conviction involved only the national election and candidates, and not the state election, whether the national government can prosecute a violation of rights in a state election is not a possible, let alone a substantial, issue on an appeal of the conviction. FSM v. Wainit, 14 FSM R. 164, 169 (Chk. 2006).

If by raising an issue about the state election the appellant means that evidence relevant to the national election charges could not be introduced if it also referred to the candidates and campaigns for the simultaneous state election, this, without more, is not a substantial or close question. FSM v. Wainit, 14 FSM R. 164, 169 (Chk. 2006).

That the evidence presented in a prosecution for interfering in a national election, might also have sustained a state court conviction on state law charges (if one had been brought) arising from the simultaneous state election, is irrelevant and thus not a substantial or close question. FSM v. Wainit, 14 FSM R. 164, 169 (Chk. 2006).

When a February 19, 1999 letter clearly refers to state legislative seats, but also asks for support for the Government of Udot's candidates, the question of who are the Government of Udot's candidates allowed the court to consider all evidence relevant to the issue, and when further evidence established that the incumbent candidate for the Chuuk Fourth Congressional District was one of those candidates, it was upon this basis that defendant was convicted of interfering in the national election. Thus this evidentiary issue is not substantial. FSM v. Wainit, 14 FSM R. 164, 169 (Chk. 2006).

Considering the high hurdle that a criminal appellant must overcome to prevail on an insufficiency of the evidence challenge, it would take much more than the mere assertion that this is possible issue on appeal for a court to consider this a substantial or close issue. FSM v. Wainit, 14 FSM R. 164, 169 (Chk. 2006).

Merely being an issue of first impression before the appellate division does not automatically make it a nonfrivolous issue, and just because an issue being brought before the appellate division is one of first impression for that division, does not make it a substantial issue entitling a defendant to a stay. FSM v. Wainit, 14 FSM R. 164, 169 (Chk. 2006).

An assertion that a constitutional issue is presented as to whether the FSM can, in its laws, "define who is a public officer, when it is a function expressly reserved to the state government," mischaracterizes the court's holding that national laws are often applied to persons based on their status, even when that status is defined solely by another government (not that the FSM can, in its laws, define who is a public officer under state law), is frivolous. To assert that the national government cannot apply its laws based upon a person's status as defined by some other body is also frivolous. FSM v. Wainit, 14 FSM R. 164, 170 (Chk. 2006).

A contention that the meaning of the term "public officer," which was not defined in the FSM Code, cannot be its common and approved English usage (the required construction under the FSM Code) but a meaning that comports with different, defined terms, is not a substantial issue. Also meritless is a passing reference that new legislation, which does not include the term "public officer," somehow redefines or clarifies the term "public officer" to create an issue as to the meaning of "public officer." FSM v. Wainit, 14 FSM R. 164, 170 (Chk. 2006).

Raising a series of non-substantial issues on appeal does not combine or convert them into a substantial issue entitling the movant to a stay. It is quality, not quantity, that creates a substantial or close issue. FSM v. Wainit, 14 FSM R. 164, 170 (Chk. 2006).

When, pursuant to Appellate Procedure Rule 9(b), an appellant first filed a motion with the trial court for release while an appeal is pending and the trial court denied the motion and set out in detail the reasons for the denial in its order, a motion for release may thereafter be made to the Supreme Court appellate division or to a justice thereof. Wainit v. FSM, 14 FSM R. 193, 194 (App. 2006).

Rule 9(c) lists the criteria that the court should use to determine whether to grant a motion for release pending appeal The appellant must establish 1) that he will not flee or pose a danger to any other person or to the community and 2) that his appeal is not for the purpose of delay, and raises a substantial question of law or fact likely to result in reversal, an order for a new trial, a sentence that does not include a term of imprisonment, or a reduced sentence to a term of imprisonment less than the total of the time already served. Wainit v. FSM, 14 FSM R. 193, 194 (App. 2006).

Rule 9 provides no explicit standard of review for a motion made to the appellate court for release pending appeal. Rule 9(b) contemplates the appellate court making an independent determination on whether post-conviction release should be granted and clearly contemplates the appellate court giving some weight to the trial court's findings as the appellate court is required to consider its statement of reasons for the denial. The court's determination should give great deference to the trial court's statement of reasons for denial, as that court is in the best position to evaluate the appellant's legal arguments at least

until the appeal has been briefed. Wainit v. FSM, 14 FSM R. 193, 194-95 (App. 2006).

When an appellate rule has not been construed by the FSM Supreme Court and the rule's language is the same or substantially similar to its United States counterpart, the court may look to U.S. courts for guidance. Wainit v. FSM, 14 FSM R. 193, 195 n.1 (App. 2006).

When the appellant has not raised any arguments in his motion for release that counter the trial court's findings or undermines its reasoning relied on in denying the motion for release, the appellate court will find that the appellant has not established that his appeal raises a substantial question of law or fact and will deny it and adopt as its own the trial court's well-reasoned decision. Wainit v. FSM, 14 FSM R. 193, 195 (App. 2006).

Appellate Procedure Rule 9(c) sets forth the criteria for release pending an appeal from a criminal conviction. The defendant has the burden of establishing the requisite criteria. FSM v. Petewon, 14 FSM R. 320, 324 (Chk. 2006).

Release from imprisonment pending appeal is not automatic once a notice of appeal and a motion to stay have been filed, but rests on the court's discretion. FSM v. Petewon, 14 FSM R. 320, 324 (Chk. 2006).

Rule 9(c) permits the court to release persons who have been convicted of an offense and have filed appeals only if the court believes that one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community, and if the court concludes that no such a risk of flight or danger exists and it appears that the appeal is not for purpose of delay, and raises a substantial question of law or fact likely to result in: 1) reversal; 2) an order for a new trial; 3) a sentence that does not include a term of imprisonment; or 4) a reduced sentence to a term of imprisonment less than the total of the time already served, plus the expected duration of the appeal process, the person shall be released. The burden of establishing the requisite criteria rests with the defendant. FSM v. Petewon, 14 FSM R. 320, 324 (Chk. 2006).

If the court determines that adequate and proper release conditions can be set, it must then make a two-part determination: 1) whether the appeal raises a substantial question of law or fact and does not appear to be for purpose of delay and 2) if a substantial question is found, whether that question is likely to result in a reversal, new trial, a sentence not including imprisonment, or imprisonment for less than time served. FSM v. Petewon, 14 FSM R. 320, 324 (Chk. 2006).

For purposes of a stay, a "substantial question of law or fact" is defined as one that is a "close" question or one that could be decided the other way. FSM v. Petewon, 14 FSM R. 320, 324 (Chk. 2006).

That a pretrial motion to dismiss succeeded in eliminating one count and a motion to acquit on the other count was unsuccessful – is too vague an issue to show a substantial or close question. Exactly what issue(s) an appellant intends to raise under this ground is unclear. FSM v. Petewon, 14 FSM R. 320, 325 (Chk. 2006).

As summarized in a well-known adage – ignorance of the law is no excuse. Nor is it a substantial or close question on appeal. FSM v. Petewon, 14 FSM R. 320, 325 (Chk. 2006).

The standard of review that an appellate court must apply in reviewing a claim of insufficiency of evidence in a criminal proceeding is whether the appellate court can conclude that the trier of fact could reasonably have been convinced beyond a reasonable doubt by the evidence. In reaching this conclusion, the appellate court's obligation is to review the evidence in the light most favorable to the trial court's factual determinations and most favorable to the inferences the trial court drew from the evidence. FSM v. Petewon, 14 FSM R. 320, 325 (Chk. 2006).

A mere assertion that an appellate panel might view the evidence from different angles does not show

a close or substantial question. It ignores the standard that the appellate court must use in its review and the difficulty an appellant has in prevailing on an insufficiency of the evidence claim. FSM v. Petewon, 14 FSM R. 320, 325-26 (Chk. 2006).

Defenses and objections based on defects in the information (other than that it fails to show jurisdiction in the court or to charge an offense) must be raised prior to trial. Any deficiency in the information not raised before trial has been waived and therefore cannot be a substantial or close question on appeal. FSM v. Petewon, 14 FSM R. 320, 326 (Chk. 2006).

Deficiencies in the presentation of evidence is a claim of insufficiency of the evidence. In light of the standard of appellate review for such claims and the high hurdle an appellant must overcome, the court, without more, cannot consider this to be a close or substantial question. FSM v. Petewon, 14 FSM R. 320, 326 (Chk. 2006).

A blanket claim that all evidence should have been excluded will not be considered a close or substantial question on appeal. Nor is a claim that prejudicial evidence was admitted a substantial issue because relevant evidence is inherently prejudicial; but it is only unfair prejudice, substantially outweighing probative value, which permits exclusion of relevant matter. FSM v. Petewon, 14 FSM R. 320, 326 (Chk. 2006).

A question whether the verdict is based on sufficient evidence and is consistent with the evidence as presented and the charges as filed is too vague for the court to consider it a substantial or close question, and it raises an insufficiency of the evidence claim. The mere assertion that the evidence was insufficient, in light of the appellate court's standard of review, does not present a close or substantial question. FSM v. Petewon, 14 FSM R. 320, 326 (Chk. 2006).

When there was evidence that an appellant was part of a conspiracy, an assertion that his mere knowledge of a conspiracy is not enough to implicate him in the conspiracy, does not present a substantial or close question. FSM v. Petewon, 14 FSM R. 320, 327 (Chk. 2006).

There are cases where the voluntariness of a defendant's statement and whether he knowingly and intelligently waived his right to silence present a close or substantial question, but when the appellant merely lists the denial of his suppression motion as a ground for appeal and does not state why it is an appealable issue or why that denial was in error, the ground will not support a stay. FSM v. Petewon, 14 FSM R. 320, 327 (Chk. 2006).

When no evidence was ever presented that a defendant made any effort, let alone a reasonable effort to prevent the conduct or result which is the object of the conspiracy, he cannot claim that the withdrawal or renunciation defense presents a substantial question since he did not present any evidence that might show that he could meet the defense's statutory requirements. FSM v. Petewon, 14 FSM R. 320, 327 (Chk. 2006).

That the time an appellant expects the appeal to take deprives him of his right to appeal is a meritless ground for a stay. FSM v. Petewon, 14 FSM R. 320, 327 (Chk. 2006).

Stays in criminal cases shall be had in accordance with the provisions of Criminal Procedure Rule 38(a). Rule 38(a)(2) provides that a defendant who has been sentenced to imprisonment and who has appealed shall be released pursuant to Appellate Procedure Rule 9(b) and Appellate Rule 9(c) sets out the criteria for release under Appellate Rule 9(b). FSM v. Petewon, 14 FSM R. 463, 467 (Chk. 2006).

Criminal Rule 46(c) does not apply to a person who has been sentenced to imprisonment and has filed a notice of appeal. Criminal Rule 38(a)(2) and Appellate Rule 9 specifically apply to such situations. Criminal Rule 46 applies generally to release on bail while Criminal Rule 38(a)(2) (and by reference Appellate Rule 9) applies specifically to release pending appeal after a sentence of imprisonment has been

imposed. FSM v. Petewon, 14 FSM R. 463, 467 (Chk. 2006).

Criminal Rule 46(c) is not a nullity since it applies to the release of a defendant who has been found guilty – "convicted" – but not yet sentenced. Such a defendant, although no judgment of conviction has been entered, may file a notice of appeal which will become effective once the defendant has been sentenced because a notice of appeal filed after the announcement of a decision, sentence or order but before entry of the judgment is treated as filed after such entry and on the day thereof. FSM v. Petewon, 14 FSM R. 463, 467-68 (Chk. 2006).

If a criminal defendant files a notice of appeal after the court publicly announced its finding of guilty but before the sentence of imprisonment is imposed and the judgment of conviction entered, the notice of appeal would become valid on the date the judgment is entered and Criminal Rule 46(c) would have applied to whether he should have been on release from when the notice of appeal was actually filed until the entry of judgment. Once a judgment of conviction imposing a sentence of imprisonment is entered, Criminal Rule 38(a)(2) and Appellate Rule 9(b) and 9(c) apply to any application for release pending appeal. FSM v. Petewon, 14 FSM R. 463, 468 (Chk. 2006).

A criminal defendant's motion for a stay of imprisonment pending appeal is governed by Criminal Rule 38(a)(2) and Appellate Rule 9(b) and the criteria to be used are as set out in Appellate Rule 9(c), which provides that if the court concludes that no such a risk of flight or danger exists and it appears that the appeal is not for purpose of delay, and raises a substantial question of law or fact likely to result in: 1) reversal; 2) an order for a new trial; 3) a sentence that does not include a term of imprisonment; or 4) a reduced sentence to a term of imprisonment less than the total of the time already served, plus the expected duration of the appeal process, the person will be released. The burden of establishing the requisite criteria rests with the defendant. FSM v. Petewon, 14 FSM R. 463, 468 (Chk. 2006).

Release from imprisonment pending appeal is not automatic once a notice of appeal and a motion to stay have been filed, but rests on the court's sound discretion. The appeal must raise a substantial question of law or fact likely to result in a reversal; or an order for a new trial; or a sentence that does not include a term of imprisonment; or a sentence reduced to a jail term less than the total of the time already served. FSM v. Petewon, 14 FSM R. 463, 468 (Chk. 2006).

A "substantial question of law or fact" is defined as one that is a "close" question or one that could be decided the other way. FSM v. Petewon, 14 FSM R. 463, 469 (Chk. 2006).

Since an appellate court's standard in reviewing a claim of insufficiency of evidence in a criminal proceeding is whether the appellate court can conclude that the trier of fact could reasonably have been convinced beyond a reasonable doubt by the evidence and since the appellate court's obligation is to review the evidence in the light most favorable to the trial court's factual determinations and most favorable to the inferences the trial court drew from the evidence, in light of the standard of appellate review for such claims and the high hurdle an appellant must overcome, the court, after having carefully reviewed the arguments and the extensive evidence, cannot consider insufficiency of the evidence claims to be a close or substantial questions. FSM v. Petewon, 14 FSM R. 463, 469 (Chk. 2006).

A claim that the statute of limitations has run that is raised as an insufficiency of the evidence claim – based on a contention that there is no evidence that any overt acts to further the conspiracy were committed within the statute of limitations applicable to the appellant because the appellant explains away all acts within the three years before the information was filed as totally innocent acts or acts to commit some other underlying offense – is not a close or substantial question because an overt act in the furtherance of a conspiracy may be in itself a totally innocent act, and not a crime at all. FSM v. Petewon, 14 FSM R. 463, 469 (Chk. 2006).

A criminal defendant's claim that if he is not granted a stay of his sentence of imprisonment pending appeal his appeal will become moot can only be deemed frivolous or for the purpose of delay since even if

a criminal appellant has finished his sentence before his appeal is decided, that will not render his appeal moot because of a criminal conviction's collateral consequences, such as the legal disabilities that ensue. FSM v. Petewon, 14 FSM R. 463, 469 (Chk. 2006).

When the appellant has been released from jail on parole, any relief that the appellate court could grant the appellant on his request for release pending the outcome of his appeal, would be entirely ineffectual. As such, the appellant's request for release pending appeal is moot and will be denied as moot. Wainit v. FSM, 14 FSM R. 476, 478 (App. 2006).

Since, under Rule 38(a)(2), a defendant who has been sentenced to imprisonment and who has appealed will be released pursuant to Appellate Procedure Rule 9(b) and since, by contrast, Criminal Rule 46(c) applies to requests for release when a defendant has been found guilty but has not yet been sentenced, when a motion for stay of execution was ruled on after sentencing, the court will treat it as a request pursuant to Criminal Rule 38(a)(2), and not one under Rule 46(c). Chuuk v. Inek, 17 FSM R. 137, 142 (Chk. S. Ct. Tr. 2010).

Under Rule 38(a)(2), a defendant who has been sentenced to imprisonment and who has appealed may seek release under Appellate Procedure Rule 9(b). After the filing of a notice of appeal and a motion to stay, the defendant's release is not automatic but within the court's discretion, and the burden is on the defendant to establish the criteria for release. Chuuk v. Inek, 17 FSM R. 137, 142 (Chk. S. Ct. Tr. 2010).

The burden to meet the criteria for release is on the defendant. Such criteria include the burden to establish that the defendant will not flee or pose a danger to others in the community. These and other criteria were intended to be set forth by statute but since there is no such statute, the Chuuk State Supreme Court will adopt the criteria provided for under FSM Appellate Rule 9(c) to the extent consistent with the apparent intent of Chuuk Appellate Rule 9(c). Chuuk v. Inek, 17 FSM R. 137, 142-43 (Chk. S. Ct. Tr. 2010).

The trial court will grant a stay only if the appellant meets his burden to reasonably assure the court through his written and oral presentations that he will not flee or pose a danger to any other person or to the community and that his appeal is not for purpose of delay, and if he raises a substantial question of law or fact. Chuuk v. Inek, 17 FSM R. 137, 143 (Chk. S. Ct. Tr. 2010).

For purposes of a stay, a "substantial question of law or fact" is defined as one that is a "close" question or one that could be decided the other way. If a substantial question of law or fact is raised, the defendant must also show that the issue raised is likely to result in either 1) a reversal; 2) an order for a new trial; 3) a sentence that does not include a term of imprisonment; or 4) a reduced sentence to a term of imprisonment less than the total of the time already served. Chuuk v. Inek, 17 FSM R. 137, 143 (Chk. S. Ct. Tr. 2010).

When a criminal defendant wants to be released pending appeal but his appeal does not raise any substantial question likely to obtain the result sought by the appeal, the court may draw the inference that the appeal was brought for the purpose of delay. Chuuk v. Inek, 17 FSM R. 137, 143 (Chk. S. Ct. Tr. 2010).

Raising a series of non-substantial issues on appeal does not combine or convert them into a substantial issue entitling the movant to a stay since it is quality, not quantity, that creates a substantial or close issue. Chuuk v. Inek, 17 FSM R. 137, 143 (Chk. S. Ct. Tr. 2010).

If an issue raised for appeal is too vague to clearly show a substantial or close question for appeal, the motion to stay will be denied. Chuuk v. Inek, 17 FSM R. 137, 143 (Chk. S. Ct. Tr. 2010).

When the defendant has met his burden to show that he will not flee or pose a danger to any other person or to the community, the defendant must, in order for the court to grant a stay, also raise a

substantial question of law or fact that will result in either a reversal, an order for a new trial, a sentence without imprisonment, or a sentence reduced to a term of imprisonment less than time already served. Chuuk v. Inek, 17 FSM R. 137, 143 (Chk. S. Ct. Tr. 2010).

When the defendant seeks a stay and raises for appeal that the time of the alleged offense was not specific enough to inform him of the charge and the defendant raised that argument regarding the sufficiency of the information in his pre-trial motions, so preserving the issue for appeal, and when the court already denied the pre-trial motion on this issue and the defendant has not provided any additional authority to show a close issue, the defendant has failed to meet his burden to show a substantial issue of fact or law upon which he will prevail on appeal. Chuuk v. Inek, 17 FSM R. 137, 143 (Chk. S. Ct. Tr. 2010).

When the defendant seeks to challenge the court's finding of when the offense occurred, based on the inconsistent dates in the police report and the information, he is challenging the sufficiency of the evidence to prove the charge. A defendant faces a high hurdle when challenging the sufficiency of the evidence. For the challenge to be considered a close or substantial issue for appeal entitling the defendant to a stay, he must, in light of the trial judge's role of weighing the evidence, come forth with more than mere assertions of inconsistencies in the evidence especially when he faces the additional hurdle that he is now using as a basis for his contention of inconsistencies in the record, evidence that was not and which the defendant did not seek to introduce into the record. Chuuk v. Inek, 17 FSM R. 137, 143-44 (Chk. S. Ct. Tr. 2010).

Although a criminal defendant may seek introduction of a police report as an offering against the government of a factual finding resulting from an investigation made pursuant to authority granted by law and the declarant's availability would have been immaterial for the purposes of ruling on the report's admission, when the defendant did not seek to admit the report and the report was not part of the record, the court will not consider it as a basis to challenge the sufficiency of its findings. Chuuk v. Inek, 17 FSM R. 137, 144 (Chk. S. Ct. Tr. 2010).

A defendant's contention that as a result of the police report containing an inconsistent date of the offense, he was misled as to when the alleged offense took place, borders on the spurious because the information is the charging document that informs the defendant of the charge he is called upon to defend against and a police report that was not mentioned in the affidavit of probable cause and which no one sought to admit into evidence has no bearing on whether the defendant was sufficiently informed of the allegations. Chuuk v. Inek, 17 FSM R. 137, 144 (Chk. S. Ct. Tr. 2010).

A mere inconsistency between the allegations contained in the information and a document that the defendant did not seek to admit into evidence does not provide the court with a substantial question of law or fact. Chuuk v. Inek, 17 FSM R. 137, 144 (Chk. S. Ct. Tr. 2010).

Although physical evidence or the lack thereof may be compelling in some cases, it is not a requirement of proof when the victim herself testified credibly to the alleged act and when her testimony was neither impeached nor rebutted. The lack of physical evidence may even be expected in a case charging sexual abuse because, unlike sexual assault, proof of sexual abuse does not require proof of sexual penetration, but only of sexual contact. Sexual contact is defined as any touching of the sexual or other intimate parts of a person not married to the defendant, done with the intent of gratifying the sexual desire of either party. It would be highly unlikely for a doctor examining a person days after her genitalia or intimate parts had been touched to be able to determine whether she had in fact been touched. Thus, the lack of physical evidence in a sexual abuse case is rather to be anticipated, and does not provide the defendant with a defense. Chuuk v. Inek, 17 FSM R. 137, 145 (Chk. S. Ct. Tr. 2010).

Where the court addressed the defendant's motions before trial and ruled that the issues raised were subject to proof at trial and where, at the conclusion of trial, the court denied the motion and made its findings on the record, the defendant does not raise a substantial issue of fact or law when he cannot state how the court's deferred ruling adversely affected his right to appeal or how the ruling otherwise violated

Criminal Rule 12(e). Chuuk v. Inek, 17 FSM R. 137, 145 (Chk. S. Ct. Tr. 2010).

No substantial issue of law or fact is raised when the defendant argues that the government failed to file a written response to his second motion to dismiss and therefore it should have been granted since the court has the discretion to allow argument without the filing of a brief and since the court will not grant an unopposed motion unless there are otherwise good grounds to grant it. Chuuk v. Inek, 17 FSM R. 137, 145 (Chk. S. Ct. Tr. 2010).

The relevant subsections of Chuuk State Law No. 190-08, § 27 provide that upon appeal, punishments of imprisonment for contempt will automatically be stayed unless the court finds cause to the contrary and renders its findings in writing. Chuuk v. Billimon, 17 FSM R. 313, 315 (Chk. S. Ct. Tr. 2010).

Since the defendant is entitled to those procedural rights normally accorded other criminal defendants, defendants in the vast majority of criminal contempt cases are given substantially those procedural rights normally accorded to defendants in other criminal cases. Criminal contempt convictions are not a special category of crime deserving of or requiring alternative considerations other than those specified under Chk. S.L. No. 190-08, § 27, Chk. Crim. R. 42, and case law. Chuuk v. Billimon, 17 FSM R. 313, 315-16 (Chk. S. Ct. Tr. 2010).

Subsection 46(c) provides for release pending sentence and for release pending appeal. It states that a person who has been convicted of an offense and is either awaiting sentence or has filed an appeal will be treated in accordance with the provisions of Rule 46(a)(1) through (6), which provide for conditions of pre-trial release and address the nature of information supporting orders issued under the rule. Criminal Rule 46(c) does not apply to a person who has been sentenced to imprisonment and has filed a notice of appeal; it applies to the release of a defendant who has been found guilty – "convicted" – but not yet sentenced. Rule 46 applies generally to release on bail. Chuuk v. Billimon, 17 FSM R. 313, 316 (Chk. S. Ct. Tr. 2010).

In criminal matters where a judgment of conviction imposes a sentence of imprisonment, the controlling rules for a stay are Chuuk Criminal Procedure Rule 38(a)(2) and Chuuk Appellate Rule 9 (b)-(c). An order issued pursuant to these rules would constitute one in aid of appeal. Chuuk v. Billimon, 17 FSM R. 313, 316 (Chk. S. Ct. Tr. 2010).

As a general rule, a properly filed notice of appeal transfers jurisdiction from the trial court to the appellate court, but a specific provision in the rules will control rather than a general rule to the extent that they conflict. Thus an application for release after a judgment of conviction must be made in the first instance in the court appealed from and thereafter, if an appeal is pending, a motion for release, or for modification of the conditions of release, pending review may be made to the Chuuk State Supreme Court appellate division or to a justice thereof. So that when the defendant brought an earlier motion for stay pending appeal which was granted, he should have argued the release of his passport at that time when the issue was properly before the trial court, since the considerations a court is required to undertake when granting a release pending appeal involve contemplation and possible imposition of conditions for release. Chuuk v. Billimon, 17 FSM R. 313, 317 (Chk. S. Ct. Tr. 2010).

To grant a release pending appeal, the court first must conclude that one or more release conditions will reasonably assure that the appellant will not flee or pose a danger to another person or the community. Chuuk v. Billimon, 17 FSM R. 313, 317 (Chk. S. Ct. Tr. 2010).

Chuuk Appellate Rule 9(b) makes no provision for reconsideration of a decision on a motion to stay made by the court appealed from in the first instance and specifically provides for the appellate division's review of such a determination. Were the trial court to consider a defendant's second motion as one made pursuant to Chuuk Criminal Rule 38(a)(2), it would do so in contravention of the Appellate Rules of Procedure. Chuuk v. Billimon, 17 FSM R. 313, 317 (Chk. S. Ct. Tr. 2010).

When a defendant has been convicted of a crime and that conviction still stands; when his sentence for the conviction, though stayed pending appeal, also remains intact; and when his release pending appeal is subject to conditions, to view him as a "free man with all his rights intact," as he now weathers the consequences of being a convicted criminal, is to take flight into fantasy. The stay of his sentence does not also serve to exonerate him. Chuuk v. Billimon, 17 FSM R. 313, 317 (Chk. S. Ct. Tr. 2010).

If the court were authorized to rule on a defendant's motion to release his passport while his conviction is on appeal, it would be hard pressed to see how he is less likely to flee the jurisdiction now than when the conditions of his release were first imposed since the weight of the evidence adduced at trial has demonstrated his guilt beyond reasonable doubt and since now he faces re-instatement of a six-month term of imprisonment. Chuuk v. Billimon, 17 FSM R. 313, 318 (Chk. S. Ct. Tr. 2010).

Although it might be advisable for the trial court to conduct a hearing on motions to stay and for in forma pauperis status, especially if the motions look like they may be denied, it is not part of the constitutional public trial right. Ned v. Kosrae, 20 FSM R. 147, 156 (App. 2015).

A stay is mandatory only if the defendant is released pending appeal because a sentence of imprisonment must be stayed if an appeal is taken and the defendant is released pending disposition of appeal. Ned v. Kosrae, 20 FSM R. 147, 156 (App. 2015).

Rule 38(a)(2) does not make a release pending appeal mandatory because the word "and" requires that both conditions – a pending appeal and a release – exist before a stay must be granted. If an appellant is not released pending appeal, the rule does not entitle him to a stay. Ned v. Kosrae, 20 FSM R. 147, 156 (App. 2015).

If the appellant is not released and there is no stay the appellant then gets credit for time served while the appeal is pending. If the sentence were stayed but the defendant remained in jail, he would not get credit for time served, which would be inherently unfair. Ned v. Kosrae, 20 FSM R. 147, 156 (App. 2015).

If the court appealed from refuses to release a criminal defendant pending appeal, or imposes conditions of release, that court must state orally on the record or in writing the reasons for the action taken, and must do so in all future cases. Ned v. Kosrae, 20 FSM R. 147, 156 (App. 2015).

Pohnpei Criminal Procedure Rule 38(a)(2) does not grant a defendant the right to an automatic stay pending appeal. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 66 (Pon. 2018).

Under Pohnpei Criminal Rule 38(a)(2), a stay of sentence is automatic only if the defendant is released pending disposition of appeal. If the defendant is not released pending appeal, there is no automatic stay. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 66 (Pon. 2018).

If a convicted defendant is not released pending appeal, there is no automatic stay, but the trial court may make recommendations about the conditions and place of a defendant's imprisonment while the appeal is being prepared. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 66 (Pon. 2018).

A defendant's release, and the stay of his imprisonment pending appeal, is a matter of judicial discretion. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 67 (Pon. 2018).

A court may abuse its discretion by not ruling on a defendant's motion for a stay pending appeal at any time before the date of his release from jail. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 67 (Pon. 2018).

Under the Pohnpei appellate rules, for a stay of sentence pending appeal, a showing that the appeal raises a substantial question of law is sufficient cause for granting a stay upon reasonable terms. Even then a stay is not automatic. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 67 (Pon. 2018).

Stays in criminal cases are granted in accordance with the provisions of Criminal Procedure Rule 38(a), which provides that a defendant who has been sentenced to imprisonment and who has appealed will be released pursuant to Appellate Rule 9(b), and Appellate Rule 9(c) sets out the criteria for release under Appellate Rule 9(b). FSM v. Shiro, 22 FSM R. 120, 122 (Chk. 2018).

A person who has been convicted of a crime and has filed an appeal will be released only if the court believes that one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. Defendants have the burden of establishing the requisite criteria under Appellate Rule 9(c) to qualify for a stay of imposition of sentence pending appeal. A stay of sentence pending appeal is not automatic upon the filing of a notice of appeal and a motion to stay, but rests on the court's discretion. FSM v. Shiro, 22 FSM R. 120, 123 (Chk. 2018).

Defendants must provide the court with facts upon which to assess whether they pose a flight risk, since this determination is a prerequisite to a consideration of the merits of their stay on appeal. FSM v. Shiro, 22 FSM R. 120, 123 (Chk. 2018).

The length of the sentence imposed may provide a defendant with substantial motivation to avoid the court's jurisdiction and make him a flight risk. FSM v. Shiro, 22 FSM R. 120, 123 (Chk. 2018).

Defendants must provide the court with facts upon which to assess whether they pose a danger to the community. The nature of the crime itself may indicate that the defendant is a danger to the community. FSM v. Shiro, 22 FSM R. 120, 123 (Chk. 2018).

When the court is unable to analyze the merits of the motion to stay and release from custody without further information and evidence being submitted by the defendants, the defendants have failed to establish eligibility for relief as set forth in Appellate Rule 9(b) and (c), and their motion to stay and for release from custody will be denied. FSM v. Shiro, 22 FSM R. 120, 123 (Chk. 2018).

6 F.S.M.C. 906 gives the court authority to stay the execution of a sentence pending appellate review, but nothing in 6 F.S.M.C. 906 specifically authorizes the court to grant a stay pending the review of a writ of habeas corpus petition, and there is no authority in Titles 4 and 6 of the 2014 FSM Code or the FSM Rules to stay execution of sentence pending a habeas corpus proceeding. FSM v. Wolphagen, 22 FSM R. 237, 238 (Pon. 2019).

ARBITRATION

When the defendant never accepted the plaintiff's offer to waive arbitration, no binding agreement to waive arbitration was ever entered into by the parties. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 407 (Pon. 2001).

The filing of a lawsuit constitutes a party's waiver of arbitration only if that party substantially invokes the litigation machinery and the other party is prejudiced as a result. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 407 (Pon. 2001).

Compelling arbitration will not subject either party to duplicative litigation of the issues in dispute when the plaintiff did not substantially invoke the litigation machinery and there was no prejudice to the defendant from the filing of the court case because the plaintiff's initial complaint was dismissed for failure to comply with the statute of limitations for contract actions, because the defendant never answered the complaint, but merely filed a motion to dismiss; and because the court never addressed any of the substantive issues. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 407-08 (Pon. 2001).

The prevailing modern view of arbitration is that, even in the absence of a statute, courts generally favor arbitration, and every reasonable presumption will be indulged to uphold arbitration proceedings.

E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 408 (Pon. 2001).

Agreements to arbitrate need not even be in any particular form, as long as the parties have agreed to do so by clear language, and it appears that the intent of the parties was to submit their dispute to arbitrators and be bound by the arbitrators' decision. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 408 (Pon. 2001).

An agreement to arbitrate future contractual disputes is specifically enforceable, even if one party attempts to revoke the agreement. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 408 (Pon. 2001).

Requiring parties to resolve their disputes outside of court does not replace the judiciary's role in resolving disputes; it complements judicial proceedings by allowing the parties to freely contract to resolve their disputes in other forums, with the confidence that the court will enforce such agreements. When a contract's clear language evidences the parties' intent to submit disputes to arbitration, the court will hold them to their agreement and specifically enforce the contract's arbitration provisions. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 408 (Pon. 2001).

Non-judicial settlement of disputes is entirely consistent with Micronesian customs and traditions, whether it be by arbitration or some other form of alternative dispute resolution. Beyond customary considerations, international commercial disputes may best be resolved by private individuals, selected by the parties, who are knowledgeable in the trade and industry in which the commercial enterprises operate. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 408-09 (Pon. 2001).

The FSM Supreme Court adopts the modern view of common law of arbitration and specifically enforces the parties' contract to arbitrate. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 409 (Pon. 2001).

The touchstone for determining whether the right to arbitrate has been waived by litigation conduct is prejudice to the non-moving party. A non-exclusive list of factors relevant to the prejudice inquiry is: 1) timeliness of a motion to arbitrate; 2) the degree to which the party seeking to compel arbitration has contested the merits of its opponent's claim; 3) the extent of the moving party's non-merits motion practice; 4) its assent to the trial court's pretrial orders; and 5) the extent to which both parties have engaged in discovery. Harden v. Inek, 18 FSM R. 551, 552 (Pon. 2013).

While delay alone is not sufficient to establish prejudice, a delay of more than two years far exceeds the delay involved when courts have found no waiver of the right to compel arbitration, and also of great significance is that the parties had previously expected the matter to be resolved at trial but the judge previously assigned to the case recused herself only one day before trial was to start, all of which, combined with the parties' compliance with pretrial orders, demonstrates conclusively that the parties had consented to a judicial determination of the dispute. Harden v. Inek, 18 FSM R. 551, 552-53 (Pon. 2013).

A plaintiff would suffer prejudice if compelled to engage in duplicative litigation efforts in an arbitral forum because when a party fails to demand arbitration during pretrial proceedings, and, in the meantime, engages in pretrial activity inconsistent with an intent to arbitrate, the party later opposing arbitration may more easily show that its position has been prejudiced, since it can readily be inferred that the party claiming waiver has already invested considerable time and expense in litigating the case in court and would be required to duplicate its efforts, at least to some degree, if the case were to proceed in the arbitral forum. Prejudice of this sort is not mitigated by the absence of substantive prejudice to the party's legal position. Harden v. Inek, 18 FSM R. 551, 553 (Pon. 2013).

The FSM Supreme Court generally encourages parties to voluntarily agree to resolve their disputes through alternative means such as arbitration and will specifically enforce the parties' contract to arbitrate. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 657 (Pon. 2013).

There are no FSM statutes governing arbitration, therefore only common law arbitration exists here. Nevertheless, when a contract clearly shows the parties' intent to submit disputes to arbitration, the court will allow and encourage the parties to freely contract to resolve their disputes in other forums, with the confidence that the court will enforce such agreements. The court will hold the parties to their agreement and specifically enforce the arbitration provisions in the contract. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 657-58 (Pon. 2013).

In the absence of a statute requiring it, the specific enforcement of the arbitration clause does not mandate that litigation be dismissed before the arbitration can proceed. Generally, judicial proceedings will instead be stayed pending the arbitration. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 658 (Pon. 2013).

In the absence of a statute requiring dismissal and in the interests of judicial economy and of lessening the parties' financial burden, the best way to specifically enforce the arbitration clause's intent is not to dismiss the case in the hope that a foreign arbitration will proceed smoothly and not require further judicial enforcement. The best way to specifically enforce the arbitration clause is to stay the judicial proceedings and maintain the status quo while the parties go through arbitration. A preliminary injunction will therefore remain in effect and the case will remain open while the arbitration proceeds. Once an arbitration decision is rendered, the court can then enforce that decision as a judgment or final order of this court and take such further steps as may be necessary and appropriate to conclude this litigation. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 658 (Pon. 2013).

A stay of judicial proceedings while the parties arbitrate is meant solely as an aid to the mandatory and binding arbitration, leaving the parties confident that the result will be quickly and easily enforceable here if needed, with the rest of the case proceeding or being dismissed as need be. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 658 (Pon. 2013).

An agreement to arbitrate future contractual disputes is specifically enforceable, even if one party attempts to revoke the agreement. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 658 (Pon. 2013).

Even in the absence of a statute, courts generally favor arbitration and every reasonable presumption will be held to uphold arbitration proceedings. Pacific Int'l, Inc. v. FSM, 20 FSM R. 220, 224 (Pon. 2015).

When the applicable regulations require that any public contracts awarded under those regulations are subject to mandatory alternative dispute methods; when the movants have filed a complaint and thereby "invoked the litigation machinery"; when the parties availed themselves of an alternative dispute method by virtue of a mediation session but the settlement agreement thus reached was unenforceable because it did not receive the required Presidential approval; and when the government is not disposed to resume alternative dispute resolution, the plaintiff's motion to compel arbitration will be denied. Pacific Int'l, Inc. v. FSM, 20 FSM R. 220, 224-25 (Pon. 2015).

Arbitration clauses imbedded in contracts are separately enforceable, regardless of whether there are other potentially void or voidable portions in the agreement. Thus, a mandatory arbitration clause in an unenforceable mediated agreement is separately enforceable from the remainder of the agreement, and further arbitration is legally required. Pacific Int'l, Inc. v. FSM, 21 FSM R. 662, 663 (Pon. 2018).

Mandatory arbitration clauses in contracts are specifically enforceable. Pacific Int'l, Inc. v. FSM, 21 FSM R. 662, 664 n.1 (Pon. 2018).

Since settlement through a more informal alternative dispute resolution than arbitration would be most consistent with Micronesian custom and practice and likely to lead to a lasting solution, the court will order that the parties attempt that before resorting to the mandatory arbitration. Pacific Int'l, Inc. v. FSM, 21 FSM

R. 662, 664 (Pon. 2018).

When neither side has expressed any interest in proceeding to arbitration and both sides reject the idea, any right to arbitration, that either party had, has been waived. Basu v. Amor, 22 FSM R. 557, 562-63 (Pon. 2020).

ATTACHMENT AND EXECUTION

The statutes concerning writs of execution protect certain property of the debtor from execution, but contain no suggestion that other creditors can obtain rights superior to that of the judgment creditor in property covered by a writ of execution. Bank of Guam v. Island Hardware, Inc., 2 FSM R. 281, 285 (Pon. 1986).

While the statute authorizing execution against "the personal property of the person against whom the judgment has been rendered" contains no exceptions for third party creditors, neither does it purport to sweep away pre-existing property rights, including security interests, of such creditors, nor does the statute authorize the sale of property owned by others which happens to be in possession of the debtor at the time of execution. 6 F.S.M.C. 1407. Bank of Guam v. Island Hardware, Inc., 2 FSM R. 281, 285 (Pon. 1986).

Attachment and seizure create statutory and possessory lien rights which will be unaffected by subsequent writs of execution, but will be subject to national government's wage and salary tax lien claims under 54 F.S.M.C. 135(2), to wage claims of low level employees and laborers, and to pre-existing national government lien rights under 54 F.S.M.C. 153. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 303 (Pon. 1988).

An execution creditor holds a more powerful position than a mere judgment creditor. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 306 (Pon. 1988).

Writs of execution will not be granted on an automatic basis, but only when it has been shown that judgment creditors have seriously explored the possibility of satisfying the judgment through other means, in order to avoid bankruptcies or economic hardships. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 306 (Pon. 1988).

Where it becomes apparent that claims or creditors will outstrip the value of debtor's assets, the approach is to give all creditors an opportunity to submit claims, and distribute any available proceeds on an equitable basis. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 306 (Pon. 1988).

Where purchasers at a judicial sale are not served by summons and complaint pursuant to FSM Civil Rule 3 but receive notice of a motion seeking confirmation of the sale and made by a creditor of the party whose property was sold, and where the purchasers do not object to the motion, confirmation of the sale is effective and binding on the purchasers and is not violative of their rights of due process. Sets v. Island Hardware, 3 FSM R. 365, 368 (Pon. 1988).

Creditors with judgments more than 10 days old are entitled to writs of execution upon request. In re Pacific Islands Distrib. Co., 3 FSM R. 575, 582 (Pon. 1988).

Absent specific legislative authority the Chuuk State Judiciary Act properly bars the state court from attaching, executing, or garnishment of public property. Billimon v. Chuuk, 5 FSM R. 130, 136 (Chk. S. Ct. Tr. 1991).

The statutory right of a judgment creditor to obtain immediate issuance of a writ of execution implies as well a legislative intent that holders of writs be paid on the basis of a first-in-right rule according to the dates of the individual parties' writs. In re Island Hardware, Inc., 5 FSM R. 170, 173 (App. 1991).

Among execution creditors the claims of those whose writs are dated earliest have priority to an insolvent's assets over those whose writs are dated later. Individual writ-holders are to be paid on the basis of first-in-time, first-in-right rule according to the dates of their writs. Western Sales Trading Co. v. Ponape Federation of Coop. Ass'ns, 6 FSM R. 592, 593 (Pon. 1994).

A writ of attachment is a process by which property is seized and held to satisfy an established debt or prospective judgment and may only issue against the property of a defendant debtor. The property of a third party, to which the debtor has no possessory rights, may not be seized, held, and eventually sold to satisfy the obligations of the debtor. Pan Oceania Maritime Servs. (Guam) Ltd. v. Micronesia Shipping, 7 FSM R. 37, 38 (Pon. 1995).

That a defendant debtor is a shareholder of a corporation that might receive a favorable settlement in the future and might pay a dividend to its shareholders does not entitle creditors to attach that corporation's assets. Pan Oceania Maritime Servs. (Guam) Ltd. v. Micronesia Shipping, 7 FSM R. 37, 39 (Pon. 1995).

A writ of execution may issue without seriously exploring other possible means of satisfying the judgment. House of Travel v. Neth, 7 FSM R. 228, 229 (Pon. 1995).

Execution may be had against a judgment debtor's non-exempt personal property, not against his interests in land. House of Travel v. Neth, 7 FSM R. 228, 229 (Pon. 1995).

Property may not be taken by the government, even in aid of a judgment, without due process of law. In executing the writ, due process of law may be assured by directing the executing officer to comply strictly with the statutory provisions for levying a writ of execution. House of Travel v. Neth, 7 FSM R. 228, 229-30 (Pon. 1995).

The right to prejudgment seizure must exist by the law of the state in which the action is pending. In the absence of state law, no remedy is available under Rule 64. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 659, 662 (Pon. 1996).

Under Pohnpei law a court may issue writs of attachment, for special cause shown, supported by a statement under oath. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 659, 662 (Pon. 1996).

Attachment is an extraordinary, prejudgment remedy, which is purely ancillary to the main suit, has nothing to do with the merits, and is a summary, anticipatory method of impounding defendant's assets to facilitate collection of the judgment against him, if and when one is obtained. Attachment did not exist at common law, and is created by statute. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 659, 662 (Pon. 1996).

Statutes authorizing attachment must be construed strictly. In general, attachment is available only in certain kinds of actions and then only upon a showing of special grounds. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 659, 662 (Pon. 1996).

Under Pohnpei law attachment appears to be available in any suit for collection of money, but not available in judgments affecting land, and the statute requires only that "special cause" be shown for the issuance of a writ of attachment. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 659, 662 (Pon. 1996).

The existence of a sale of some of a debtor's assets is not special cause sufficient to grant a request for attachment. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 659, 663 (Pon. 1996).

Under the Chuuk Constitution, statutory authorization is required as a predicate to expenditure of state funds, and the Chuuk state court does not have the power to issue an execution order against state property. Louis v. Kutta, 8 FSM R. 208, 210 (Chk. 1997).

Process to enforce payment of a money judgment is by writ of execution, in accordance with the practice and procedure of the state in which the court is held, except that an FSM statute governs to the extent it is applicable. Louis v. Kutta, 8 FSM R. 208, 210-11 (Chk. 1997).

A state may not use its own constitution to defeat enforcement of a judgment entered on a civil rights claim brought pursuant to the mandate of the national constitution and statutes. Thus, a state constitutional provision will not prevent a civil rights plaintiff from using national execution procedures to obtain satisfaction of his judgment. Louis v. Kutta, 8 FSM R. 208, 213 (Chk. 1997).

A non-party is deprived of due process of law when a case is started against it without notice or it having been made a party, when an order in aid of judgment has been issued against the non-party without a judgment and a hearing held following notice, and when a writ of execution has been issued against a non-party and without notice or hearing to determine the amount to be executed upon. Bank of Guam v. O'Sonis, 8 FSM R. 301, 304 (Chk. 1998).

A writ of execution issued in violation of statute, against the property of a non-party in a case for which no judgment has been issued and in which the judge should have recused himself is a wrongfully-issued writ. Bank of Guam v. O'Sonis, 8 FSM R. 301, 305 (Chk. 1998).

FSM Civil Rule 70 provides for five different remedies, one of which is a writ of attachment. Garnishment exists in the FSM through judicial interpretation of the FSM attachment statute, 6 F.S.M.C. 1405(2), and because attachment is an available remedy under Rule 70, it follows that garnishment is also. Louis v. Kutta, 8 FSM R. 312, 314 n.1 (Chk. 1998).

Chuuk state courts have the power to issue all writs for equitable and legal relief, except the power of attachment, execution and garnishment of public property. Kama v. Chuuk, 9 FSM R. 496, 497 (Chk. S. Ct. Tr. 1999).

The only purpose of statutes authorizing orders in aid of judgment is to force the payment of a judgment and to provide means to collect a money judgment, which is the same as proceedings for attachment, garnishment or execution. Kama v. Chuuk, 9 FSM R. 496, 498 (Chk. S. Ct. Tr. 1999).

The Trust Territory Code provisions for orders in aid of judgment are not available as against Chuuk because, when it barred the courts' power of attachment, execution and garnishment of public property, the clear legislative intent was to supersede or repeal all provisions of the Trust Territory Code, Title 8 insofar as they allowed seizure of Chuuk state property. Kama v. Chuuk, 9 FSM R. 496, 498 (Chk. S. Ct. Tr. 1999).

Historically, orders in aid of judgment and orders in aid of execution serve the same purpose and the terms are used interchangeably. Their purpose is to provide a means of discovery to inquire into the assets and ability of a judgment debtor to pay a judgment. Kama v. Chuuk, 9 FSM R. 496, 498 (Chk. S. Ct. Tr. 1999).

Proceedings in aid of a judgment are supplementary proceedings to enforce a judgment, the same as attachment, execution and garnishment, and as against Chuuk State public property, are prohibited by § 4 of the Chuuk Judiciary Act. Kama v. Chuuk, 9 FSM R. 496, 498 (Chk. S. Ct. Tr. 1999).

There is no provision in FSM law that makes a judgment dormant or that extinguishes a judgment-creditor's right to execution before the twenty-year statute of limitations has run. A dormant judgment is one upon which the statute of limitations has not yet run but which, because of lapse of time during which no enforcement action has been taken, may not be enforced unless certain steps are taken by the judgment holder to revive the judgment. Walter v. Chuuk, 10 FSM R. 312, 316 (Chk. 2001).

Although under FSM law once an application for an order in aid of judgment has been filed no writ of execution may issue except under an order in aid of judgment or by special order of the court, it is uncertain what effect, if any, this (or the Chuuk state law prohibiting attachment, execution, or garnishment of Chuuk public property) would have on courts in jurisdictions outside the Federated States of Micronesia. Walter v. Chuuk, 10 FSM R. 312, 317 (Chk. 2001).

The attempt to execute a judgment on the judgment debtor's bank accounts constitutes a garnishment, since it is a debt owed by a third party to the judgment debtor. This remedy is recognized in the FSM, and should go forward as a separate proceeding. The writ of execution will issue upon the court's receipt of a simplified form of writ that conforms with 6 F.S.M.C. 1407. Amayo v. MJ Co., 10 FSM R. 371, 386 (Pon. 2001).

In the usual case, a full supersedeas bond is required in order to stay execution of a judgment. The bond's amount is calculated to include the judgment's whole amount, costs on appeal, interest, and damages for delay. Courts in the exercise of their discretion have permitted a form of security other than a bond so long as that security is adequate and the judgment creditor's recovery is not at risk. Amayo v. MJ Co., 10 FSM R. 427, 429 (Pon. 2001).

In the absence of a supersedeas bond, a judgment creditor generally has, within specified statutory limits, a right to a writ of execution upon entry of judgment. Amayo v. MJ Co., 10 FSM R. 433, 434 (Pon. 2001).

Section 4 of the Chuuk Judiciary Act of 1990 denies courts the power of attachment, execution and garnishment of public property. Thus, a court may issue an order in aid of judgment addressed to the state, but is barred from issuing any order in aid of judgment that acts as an attachment, execution and garnishment of public property. Kama v. Chuuk, 10 FSM R. 593, 600 (Chk. S. Ct. App. 2002).

When the appellant has yet to offer a supersedeas bond, and the court has yet to approve the bond, the stay has yet to become effective. Until such time as the appellant offers a supersedeas bond acceptable to the court, there is no stay in effect, and the plaintiff is free to execute on the judgment. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

When a bank's chattel mortgage purchase money liens are not enforceable against third parties who have had no notice of them and are therefore not enforceable against and do not have priority over an execution lien, even if the bank were permitted to intervene, it could not prevail. Since that is so, the bank does not have an interest in the litigation that would be impaired if it were not allowed to intervene and therefore does not satisfy the elements required to intervene of right. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 365-66 (Chk. 2003).

A judgment holder is entitled to a writ of execution. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 366 (Chk. 2003).

Social Security benefits are not subject to execution, attachment, or garnishment and are not assignable except as provided in the FSM Social Security Act. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 377 (App. 2003).

Both execution and attachment are legal processes carried out by writ. Likewise, garnishment is carried out by writ. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 378 (App. 2003).

The current practice that where a judgment creditor who holds a national court judgment wants national police officers to execute on the judgment, he must bear the transportation and per diem costs of bringing national police personnel to Yap to execute on the writ since Yap has no resident national law enforcement officer. While this involves substantial up-front costs to the judgment creditor, those costs are recoverable from the judgment debtor under 6 F.S.M.C. 1408. Parkinson v. Island Dev. Co., 11 FSM R.

451, 453 (Yap 2003).

The court is reluctant to opine on 6 F.S.M.C. 1408's constitutionality when the judgment creditor has an enforcement remedy, if not an ideal one, notwithstanding any constitutional adjudication which this court might render on the division of powers issue that Yap raised regarding a writ of execution directed to the Yap chief of police. Parkinson v. Island Dev. Co., 11 FSM R. 451, 453 (Yap 2003).

When the judgment creditor has an execution remedy apart from a writ of execution directed to the state police, the court is reluctant to unnecessarily consider the constitutional issue raised when doing so could be viewed in any light as hampering voluntary cooperation between state and national law enforcement as a matter of comity, an important concern given the geographical configuration of our country and the limited law enforcement resources of both the state and national governments. Parkinson v. Island Dev. Co., 11 FSM R. 451, 453 (Yap 2003).

When the judgment creditor has made the necessary arrangements through the FSM Department of Justice to bring national police officers to Yap, he should so advise the court which will then issue the writ of execution designating the appropriate individuals. Parkinson v. Island Dev. Co., 11 FSM R. 451, 453-54 (Yap 2003).

Among judgment creditors, those with a writ of execution have priority over those who do not. In re Engichy, 11 FSM R. 520, 527 (Chk. 2003).

One reason writ-holders are granted a higher priority is that the judgment creditor who has taken the effort and exhibited the diligence to move to the status of execution creditor deserves to be treated differently on that basis. In re Engichy, 11 FSM R. 520, 527 (Chk. 2003).

A judgment-creditor's right to the issuance of a writ of execution is provided for by statute, as is the right to obtain an order in aid of judgment. In re Engichy, 11 FSM R. 520, 527 (Chk. 2003).

By statute, a party recovering a civil judgment for money is entitled to a prompt, immediate issuance of a writ of execution. In re Engichy, 11 FSM R. 520, 527 (Chk. 2003).

The court's procedural rules stay a writ of execution's issuance until ten days after entry of judgment. The purpose behind this automatic ten-day stay is to permit a judgment-debtor to determine what course of action to follow. In re Engichy, 11 FSM R. 520, 527 (Chk. 2003).

Because of the automatic ten-day stay on the issuance of a writ of execution, a money judgment, upon entry of judgment, is final for the purposes of appeal, even though it is not yet final for the purposes of execution. In re Engichy, 11 FSM R. 520, 528 (Chk. 2003).

An FSM judgment-debtor can, if he so chooses, prevent the issuance of a writ of execution because any party, either the judgment-creditor or the judgment-debtor may apply for an order in aid of judgment and once a party has applied for an order in aid of judgment, the judgment-creditor is statutorily barred from obtaining a writ of execution except as part of an order in aid of judgment or by special order of the court for cause shown. In re Engichy, 11 FSM R. 520, 528 (Chk. 2003).

A judgment-creditor who has obtained an order in aid of judgment should be accorded the same status as a judgment creditor who has obtained a writ of execution because both methods of enforcing a money judgment are provided for by statute and both methods show that the judgment creditor has taken the effort and exhibited diligence greater than that of a mere judgment-creditor. In re Engichy, 11 FSM R. 520, 528 (Chk. 2003).

A judgment-creditor's statutory right to obtain immediate issuance of a writ of execution implies as well a legislative intent that holders of writs be paid on the basis of a first-in-time, first-in-right rule according to

the dates of each party's writ. In re Engichy, 11 FSM R. 520, 528 (Chk. 2003).

Judgment-creditors with execution creditor status are to be paid on the basis of a first-in-time, first-in-right rule according to the dates of the individual parties' writs. The pro rata payment basis is the rule for unsecured judgment-creditors who do not hold execution creditor status or a statutory lien priority. Because holders of orders in aid of judgment are accorded the status of execution creditors, those judgment-creditors will be paid in order according to the date of either their first writ of execution or their first order in aid of judgment. In re Engichy, 11 FSM R. 520, 528-29 (Chk. 2003).

If a judgment-creditor were to attempt to execute against a piece of land for which there was a certificate of title and that certificate showed an outstanding mortgage on the land, or if there was no certificate of title for the land but a mortgage had been duly and properly recorded at the Land Commission so that anyone searching the records there should necessarily find it, then that would be a security interest that was not a secret lien and therefore valid against third parties. In re Engichy, 11 FSM R. 520, 530 (Chk. 2003).

Any judgment-creditor with a writ of execution may elect not to use it, and try some other method to satisfy its judgment. In re Engichy, 11 FSM R. 520, 532 (Chk. 2003).

An execution sale does not require judicial confirmation or allow claims of other creditors. In re Engichy, 11 FSM R. 520, 532 (Chk. 2003).

An execution creditor who has levied on its writ may, with the debtors' consent, postpone the execution sale. In re Engichy, 11 FSM R. 520, 532 (Chk. 2003).

Courts have the power to issue all writs for equitable and legal relief, except the power of attachment, execution and garnishment of public property. This statutory prohibition has been held to prohibit the issuance of an order in aid of judgment against Chuuk. Ben v. Chuuk, 11 FSM R. 649, 651 (Chk. S. Ct. Tr. 2003).

The statutory prohibition on issuing writs against public property is jurisdictional. Since the statute deprives a court of jurisdiction to issue any such writ, the parties may not by agreement confer jurisdiction upon a court when a statute affirmatively deprives the court of jurisdiction. Ben v. Chuuk, 11 FSM R. 649, 651 (Chk. S. Ct. Tr. 2003).

Any party recovering a civil judgment for money is entitled to a prompt, immediate issuance of a writ of execution anytime after ten days after the entry of judgment, and a writ of execution, if levied upon, requires immediate payment of the judgment in full. In re Engichy, 12 FSM R. 58, 66 (Chk. 2003).

An order in aid of judgment, unlike a writ of execution, may only be obtained after application and notice to the other party and a hearing instead of the prompt issuance possible for a writ of execution. In re Engichy, 12 FSM R. 58, 66 (Chk. 2003).

A judgment-creditor (or its attorney) must evaluate which method (writ of execution or order in aid of judgment) is most likely to best satisfy its judgment unless the judgment-debtor has already foreclosed that choice by applying for an order in aid of judgment. In re Engichy, 12 FSM R. 58, 66-67 (Chk. 2003).

Process to enforce a judgment for the payment of money will be a writ of execution, unless the court directs otherwise. The procedure on execution will be in accordance with the practice and procedure of the state in which the court is held, existing at the time the remedy is sought, except that any FSM statute governs to the extent that it is applicable. Barrett v. Chuuk, 12 FSM R. 558, 560 (Chk. 2004).

Rule 69, which governs procedure on execution, is meant to benefit a judgment creditor, not a judgment debtor. It was intended to establish an effective and efficient means of securing the execution of

judgments. As part of the process, it provides for the securing of information relating to the judgment-debtor's assets. Adams v. Island Homes Constr., Inc., 12 FSM R. 644, 646 (Pon. 2004).

Judgment creditors have a statutory right to obtain the immediate issuance of a writ of execution unless a motion for an order in aid of judgment is pending. This statutory right is automatically stayed for ten days by court rule, and may be stayed by the court pending an appeal. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 501, 503 (Yap 2006).

A supersedeas bond provides absolute security to the party who is affected by the appeal. It also protects the judgment debtor from levy while the appeal takes its course. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 501, 503-04 (Yap 2006).

Generally, state property cannot be attached, executed upon, or garnished. Barrett v. Chuuk, 14 FSM R. 509, 511 (Chk. 2006).

The trial court will not extend the right to a writ of garnishment against the state beyond that affirmed by the appellate division in Chuuk v. Davis and will therefore deny a judgment-creditor's request to seize local revenues by the only means logical, a writ of garnishment directed to the FSM national government, when his damages are strictly economic in nature. The suggested alternative, a more drastic step of an order seizing and auctioning the state legislative officers' new vehicles will also be denied. Barrett v. Chuuk, 14 FSM R. 509, 511 (Chk. 2006).

Section 4 of the Chuuk Judiciary Act of 1990 denies courts the power of attachment, execution and garnishment of public property. Thus, a court may issue an order in aid of judgment addressed to a governmental body, but is barred from issuing any order in aid of judgment that acts as an attachment, execution and garnishment of public property. Albert v. O'Sonis, 15 FSM R. 226, 232 (Chk. S. Ct. App. 2007).

The process to enforce a judgment for the payment of money may be a writ of execution or an order in aid of judgment. Salik v. U Corp., 15 FSM R. 534, 537 (Pon. 2008).

Judgments can be enforced in any manner known to American common law or common in American courts. Salik v. U Corp., 15 FSM R. 534, 538 (Pon. 2008).

A trial court's decision to enter or not enter a writ of execution or garnishment is discretionary. Barrett v. Chuuk, 16 FSM R. 229, 232 (App. 2009).

Although a compelling state interest exists in protecting the state from garnishment and execution of its funds as governments cannot effectively administrate essential public services with litigants constantly raiding their coffers, but since Congress has created a statutorily-based action for civil rights violations as these violations are particularly egregious in that they infringe upon what we commonly recognize as unalienable human rights, what must be struck is an adequate balance between protecting a government's ability to maintain sufficient funds to operate and the ability to hold the government accountable for violating its citizens' most basic rights. Barrett v. Chuuk, 16 FSM R. 229, 234 (App. 2009).

Process to enforce a judgment for the payment of money may be a writ of execution or an order in aid of judgment. Barrett v. Chuuk, 16 FSM R. 229, 234 (App. 2009).

None of the FSM Code statutory exemptions to garnishment and execution provide an exception to execution or garnishment when the debtor is a state government. Barrett v. Chuuk, 16 FSM R. 229, 234 (App. 2009).

Requests for writs of execution or garnishment demand consideration of many factors, including the nature of the judgment, whether or not the debtor has acted in good or bad faith in its attempts to satisfy the

judgment, the length of time the judgment has gone unsatisfied, etc. These factors are best weighed by the trial court. Barrett v. Chuuk, 16 FSM R. 229, 235 (App. 2009).

Under the FSM national law regarding enforcement of judgments, the exemption for necessities for trade or occupation is defined as tools, implements, utensils, two work animals, and equipment necessary to enable the person to carry on his usual occupation. By a plain reading of the statute's language, a rental house, and by extension, the land on which it stands, is not such a necessity. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 323 (Kos. 2011).

A writ of execution levied on an account in the Bank of Guam, Pohnpei branch, was directed toward funds held in a local bank, authorized to conduct banking transactions under FSM law, and did not assign, garnish, attach, execute, or levy on U.S. Social Security or military retirement benefits, but executed on funds on deposit in the FSM. Bank of Hawaii v. Dison, 18 FSM R. 161, 164 (Pon. 2012).

Under a writ of execution's terms and the applicable law, a return is required. The funds executed upon must be accounted for and credited toward the judgment. Saimon v. Wainit, 18 FSM R. 211, 213 (Chk. 2012).

When a judgment-creditor has requested a writ and no motion for an order in aid of judgment is pending, he is entitled to a writ of execution against the judgment-debtor's non-exempt personal property. Personal property is property other than land or interests in land. Saimon v. Wainit, 18 FSM R. 211, 214 (Chk. 2012).

Interests in land are not subject to a writ of execution, but any interest in land owned solely by a judgment debtor, in his own right, may be ordered sold or transferred under an order in aid of judgment if the court making the order deems that justice so requires and finds as a fact that after the sale or transfer, the debtor will have sufficient land remaining to support himself and those persons directly dependent on him according to recognized local custom and FSM law. Saimon v. Wainit, 18 FSM R. 211, 214 (Chk. 2012).

Since homes and lands are not personal property, a writ of execution cannot be used to force their sale or rental to satisfy a judgment. A judgment-creditor must proceed through an order in aid of judgment to reach such assets. An evidentiary hearing under 6 F.S.M.C. 1410(1) is a necessary step of that process. Saimon v. Wainit, 18 FSM R. 211, 214 (Chk. 2012).

Execution may be had against a judgment debtor's non-exempt personal property, but not against his interests in land. Saimon v. Wainit, 18 FSM R. 211, 215 (Chk. 2012).

Since property may not be taken by the government, even in aid of a judgment, without due process of law, due process of law in executing the writ may be assured by directing the executing officer to strictly comply with the statutory provisions for levying a writ of execution. Saimon v. Wainit, 18 FSM R. 211, 215 (Chk. 2012).

The court cannot issue a writ of execution to seize a non-party's assets. Saimon v. Wainit, 18 FSM R. 211, 215 (Chk. 2012).

If a judgment creditor seeks to attach and sell any land personally owned by a judgment debtor in his own right, the judgment creditor must seek an order in aid of judgment and at the 6 F.S.M.C. 1410(1) order in aid of judgment hearing must produce sufficient evidence that the court can deem that justice so requires and can find as a fact that after the sale, the judgment debtor will have sufficient land remaining to support himself and any those persons directly dependent on him. Saimon v. Wainit, 18 FSM R. 211, 215 (Chk. 2012).

The Chuuk State Judiciary Act gives each Chuuk court the power to issue all writs for equitable an

legal relief; except the power of attachment, execution and garnishment of public property. Kama v. Chuuk, 18 FSM R. 326, 334 (Chk. S. Ct. Tr. 2012).

By rule, a judgment is automatically stayed for only ten days. Once that ten days has passed, the judgment holder is free to execute on or to enforce the judgment unless a supersedeas bond has been posted and approved by the court or a stay sought and granted. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

In the absence of a stay obtained in accordance with Rule 62(d), the pendency of an appeal does not prevent the judgment creditor from acting to enforce the judgment. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

An appeal from a final judgment does not affect the judgment holder's right to execute upon the judgment. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

An appeal from a final judgment does not affect the judgment holder's right to enforce the judgment unless a supersedeas bond is posted or a stay of enforcement is ordered by the court. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

Generally, the filing of a notice of a appeal divests the trial court of jurisdiction over the appealed case. Notwithstanding the general effect of the filing of a notice of appeal, the trial court retains jurisdiction to determine matters collateral or incidental to the judgment, and may act in aid of the appeal. For example, because the mere filing of a notice of appeal does not affect the validity of a judgment, the trial court retains jurisdiction to enforce the judgment. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

Since the trial court retains jurisdiction to enforce a judgment even though it has been appealed, a judgment holder may, in the absence of a stay, seek to enforce its judgment, and a hearing to enforce or modify existing orders in aid of the existing judgment will proceed as scheduled because Congress has, by statute, has authorized judgment holders to use these methods to enforce valid money judgments. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

The purpose of an order-in-aid-of-judgment hearing is for the trial court to examine the question of the judgment debtor's ability to pay and determine the fastest way in which the judgment debtor can reasonably satisfy the judgment. A writ of execution (or garnishment or attachment) can issue as part of an order in aid of judgment. George v. Sigrah, 19 FSM R. 210, 220 (App. 2013).

The execution statute, 6 F.S.M.C. 1407, requires issuance of a writ of execution upon request, subject to the Rule 62(a) limitation that no execution shall issue upon a judgment until the expiration of 10 days after the entry of that judgment. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 276, 277 (Pon. 2015).

When the issuance of a writ of execution was not only based on statutory law, but the court had also afforded the judgment debtor and her counsel ample time to confer and respond to the motion for a writ of execution, the issuance of the writ was appropriate. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 276, 278 (Pon. 2015).

A writ of execution applies to all the judgment debtor's business assets and personal property under 53 F.S.M.C. 607. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 276, 278 (Pon. 2015).

In the absence of a stay obtained in accordance with Rule 62(d), the pendency of an appeal does not prevent the judgment-creditor from acting to enforce the judgment. FSM Dev. Bank v. Setik, 20 FSM R. 315, 318 (Pon. 2016).

Notwithstanding a notice of appeal's general effect, the trial court retains jurisdiction to determine matters collateral or incidental to the judgment and may act in aid of the appeal. Because the mere filing

of a notice of appeal does not affect the judgment's validity, the trial court retains jurisdiction to enforce the judgment. FSM Dev. Bank v. Setik, 20 FSM R. 315, 318 (Pon. 2016).

Chuuk State Law No. 190-08, § 4 does not bar the issuance of an order in aid of judgment addressed to the state, but does bar the issuance of any order in aid of judgment that acts as an attachment, execution, or garnishment of public property. The general rule is that statutes (and case law) barring the issuance of such writs against public property are a constitutionally valid expression of the separation of powers doctrine recognizing the legislative branch's power to appropriate funds and the judicial branch's lack of power to appropriate funds. Kama v. Chuuk, 20 FSM R. 522, 531 (Chk. S. Ct. App. 2016).

When Chuuk not only has not expressly waived its sovereign immunity to writs of attachment, execution, and garnishment, but has also gone further and affirmatively enacted legislation emphatically notifying the public and potential litigants that it has not waived its immunity to those writs, that statute is a valid expression of the separation of powers doctrine enshrined in the Chuuk Constitution. Kama v. Chuuk, 20 FSM R. 522, 532 (Chk. S. Ct. App. 2016).

Under Rule 69, the judgment creditor, in aid of the judgment or execution, may obtain discovery from any person, including the judgment debtor. Rule 69 was intended to establish an effective and efficient means of securing the execution of judgments. As part of the process, it provides for securing information relating to the judgment-debtor's assets. FSM Dev. Bank v. Carl, 20 FSM R. 592, 594-95 (Pon. 2016).

When the issue of a bank releasing funds under 54 F.S.M.C. 153 is a matter of first impression, the court may look to case law of other jurisdictions, particularly the United States, for comparison and guidance. Fuji Enterprises v. Jacob, 21 FSM R. 355, 361 (App. 2017).

Under 54 F.S.M.C. 153, a delinquent taxpayer will have a lien placed on his property, and the lien will be collected in the similar manner as an execution, meaning it may be seized and sold to satisfy the taxes owed. Fuji Enterprises v. Jacob, 21 FSM R. 355, 361 (App. 2017).

Execution is the judicial enforcement of a money judgment, usually by seizing and selling the judgment debtor's property. Fuji Enterprises v. Jacob, 21 FSM R. 355, 361 n.6 (App. 2017).

The statutory scheme of 54 F.S.M.C. 153, in using the language "in the same manner as a levy of an execution," does not mean that a court-issued writ of execution is required before a levy. Fuji Enterprises v. Jacob, 21 FSM R. 355, 361 (App. 2017).

Attachment and execution are products of litigation. Estate of Gallen v. Governor, 21 FSM R. 457, 461 (Pon. 2018).

An action on a judgment is a new and independent action, and not merely a means of enforcing a judgment, as is a writ of execution. FSM Dev. Bank v. Carl, 22 FSM R. 365, 372 (Pon. 2019).

A judgment for the plaintiff awarding him a sum of money creates a debt in that amount in his favor. The plaintiff may maintain proceedings by way of execution for enforcement of the judgment, the plaintiff may also be able to maintain an action upon the judgment. Ordinarily no useful purpose is served by bringing an action in the same state upon the judgment instead of executing upon it, but if the statute of limitations period has almost run, the plaintiff can bring an action upon the judgment and obtain a new judgment upon which the limitations period will run again. FSM Dev. Bank v. Carl, 22 FSM R. 365, 375 (Pon. 2019).

– Garnishment

Although there is no provision for garnishment in Pohnpei state law nor any national statute explicitly providing for garnishment, garnishment of wages is an acceptable means for enforcing an unpaid judgment, pursuant to the FSM Supreme Court's statutory "general powers," its power to enforce

judgments in any manner common in courts in the United States, and its power to issue writs of attachment. Bank of Guam v. Elwise, 4 FSM R. 150, 152 (Pon. 1989).

Although technically attachment and garnishment are distinct processes, attachment applying to assets in the defendant's possession and garnishment involving assets in the possession of a third party, the statutory language regarding attachment would seem to apply to both cases. Bank of Guam v. Elwise, 4 FSM R. 150, 152 (Pon. 1989).

The requirements and procedures for issuing a writ of garnishment should be the same as those applied to attachment proceedings. Bank of Guam v. Elwise, 4 FSM R. 150, 152 (Pon. 1989).

The FSM Supreme Court's power to issue writs of garnishment is clearly discretionary. Bank of Guam v. Elwise, 4 FSM R. 150, 152 (Pon. 1989).

Where garnishment is warranted, then anything beyond what is reasonably necessary for the defendant to support himself and his dependents can be garnished. Bank of Guam v. Elwise, 4 FSM R. 150, 153 (Pon. 1989).

Absent specific legislative authority the Chuuk State Judiciary Act properly bars the state court from attaching, executing, or garnishment of public property. Billimon v. Chuuk, 5 FSM R. 130, 136 (Chk. S. Ct. Tr. 1991).

FSM Civil Rule 70 provides for five different remedies, one of which is a writ of attachment. Garnishment exists in the FSM through judicial interpretation of the FSM attachment statute, 6 F.S.M.C. 1405(2), and because attachment is an available remedy under Rule 70, it follows that garnishment is also. Louis v. Kutta, 8 FSM R. 312, 314 n.1 (Chk. 1998).

Garnishment exists as a remedy available in the FSM to a judgment creditor. Louis v. Kutta, 8 FSM R. 312, 319 (Chk. 1998).

Creation of a doctrine of sovereign immunity of the FSM from garnishment should be left to the specific, unambiguous, and explicit action of Congress. The court will not create such a doctrine by judicial action. Louis v. Kutta, 8 FSM R. 312, 321 (Chk. 1998).

Hypothetical administrative difficulties do not justify holding that garnishment does not apply to the national government. Louis v. Kutta, 8 FSM R. 312, 321 (Chk. 1998).

FSM Civil Rule 69 expressly authorizes the court to issue process other than a writ of execution in the course of enforcing a judgment. Louis v. Kutta, 8 FSM R. 312, 322 (Chk. 1998).

The provision that money judgments against the FSM shall be paid from funds appropriated by Congress is not implicated when the FSM is a mere garnishee because garnishment is directed toward the property of the judgment debtor held by the FSM, not toward property of the FSM itself. Louis v. Kutta, 8 FSM R. 312, 322 (Chk. 1998).

It is unlikely that in paying the judgment an appellant would waive its appeal, so long as payment was made under protest. In holding that the right to appeal was not precluded by payment, the courts have sometimes noted that payment had been made under protest; conversely, in holding that the right to appeal was barred by payment, the courts have sometimes noted that payment had not been made under protest. Louis v. Kutta, 8 FSM R. 460, 461 (Chk. 1998).

There is no persuasive authority that should a garnishee pay a judgment pursuant to a garnishment order, that the garnishee would waive its rights to appeal. Louis v. Kutta, 8 FSM R. 460, 462 (Chk. 1998).

Chuuk state courts have the power to issue all writs for equitable and legal relief, except the power of attachment, execution and garnishment of public property. Kama v. Chuuk, 9 FSM R. 496, 497 (Chk. S. Ct. Tr. 1999).

The attempt to execute a judgment on the judgment debtor's bank accounts constitutes a garnishment, since it is a debt owed by a third party to the judgment debtor. This remedy is recognized in the FSM, and should go forward as a separate proceeding. The writ of execution will issue upon the court's receipt of a simplified form of writ that conforms with 6 F.S.M.C. 1407. Amayo v. MJ Co., 10 FSM R. 371, 386 (Pon. 2001).

A writ of garnishment is the equivalent of a writ of execution in terms of the end sought, which is satisfaction of the judgment. Amayo v. MJ Co., 10 FSM R. 433, 435 (Pon. 2001).

In the event that judgment creditors wish to execute on any bank accounts or other debts owed to the judgment debtor, they should present the court with a form of writ of garnishment directed to the garnishee debt-holder, which will specify that 1) upon receipt of the writ, the garnishee will freeze payment of all accounts, debts, or other money owed to the judgment debtor pending further order of court; and 2) that within three days of the writ's service, the garnishee will file with the court a response showing what debts it owes to the judgment debtor. Upon review of the response, the court will then issue a turnover order if appropriate, after determining any competing claims that the garnishee may have to those accounts. Amayo v. MJ Co., 10 FSM R. 433, 435-36 (Pon. 2001).

Section 4 of the Chuuk Judiciary Act of 1990 denies courts the power of attachment, execution and garnishment of public property. Thus, a court may issue an order in aid of judgment addressed to the state, but is barred from issuing any order in aid of judgment that acts as an attachment, execution and garnishment of public property. Kama v. Chuuk, 10 FSM R. 593, 600 (Chk. S. Ct. App. 2002).

Social Security benefits are not subject to execution, attachment, or garnishment and are not assignable except as provided in the FSM Social Security Act. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 377 (App. 2003).

Both execution and attachment are legal processes carried out by writ. Likewise, garnishment is carried out by writ. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 378 (App. 2003).

By statute, the national government is not subject to writ of garnishment or other judicial process to apply funds or other assets owed by it to a state to satisfy a state's obligation to a third person. Estate of Mori v. Chuuk, 11 FSM R. 535, 540-41 (Chk. 2003).

When the only reasonably effective means by which to obtain payment of a civil rights judgment against the state is through an order of garnishment directed to the national government, the anti-garnishment statute is unconstitutional to the extent that it precludes a garnishment order to pay a judgment that is based in material part on civil rights claims under 11 F.S.M.C. 701. Estate of Mori v. Chuuk, 11 FSM R. 535, 541 (Chk. 2003).

A court finding that 6 F.S.M.C. 707 is unconstitutional to the extent that it prevents satisfaction of a judgment based on a violation of constitutional rights is limited to the facts before the court and applies only to a judgment against the state that is based on civil rights claims under the national civil rights statute, which confers a cause of action for violation of rights guaranteed by the FSM Constitution. Estate of Mori v. Chuuk, 11 FSM R. 535, 541 (Chk. 2003).

A garnishment order against the national government will issue to pay a civil rights judgment against Chuuk when the sum is less by at least an order of magnitude than the sums that Chuuk receives on a drawdown basis from the FSM when Chuuk accordingly has the ability to pay the judgment and when, based on the case's history, a garnishment order is the only means by which payment can reasonably be

made. Estate of Mori v. Chuuk, 11 FSM R. 535, 542 (Chk. 2003).

When the drawdown amounts that Chuuk receives from the FSM national government are greater by more than an order of magnitude than the judgment amount remaining and when, looking to the case's more than six and a half year post-judgment history, the anti-garnishment statute deprives the judgment creditor of the only reasonably expeditious means of obtaining satisfaction of her judgment. Thus the fastest manner in which the debtor can reasonably pay the judgment under 6 F.S.M.C. 1409 is by an order of garnishment directed to the national government. Davis v. Kutta, 11 FSM R. 545, 549 (Chk. 2003).

The trial court has jurisdiction to entertain the motions to stay enforcement of the writs of garnishment. Ordinarily the applicant must first seek a stay from the court appealed from; if the court denies the motion, the applicant may then seek a stay from the appellate division. Estate of Mori v. Chuuk, 12 FSM R. 3, 7 (Pon. 2003).

When writs of garnishment that formally designated the FSM as a "garnishee/defendant" were entered before the notices of appeal, the FSM was already a party and its motion to intervene is therefore moot. Estate of Mori v. Chuuk, 12 FSM R. 3, 8 (Chk. 2003).

The finding of unconstitutionality of 6 F.S.M.C. 707 (the anti-garnishment statute) applies only to the facts of cases which involve judgments based on violation of constitutional rights guaranteed under the FSM Constitution's Declaration of Rights, and for which a cause of action is expressly conferred by national civil rights statute. Estate of Mori v. Chuuk, 12 FSM R. 3, 9 (Chk. 2003).

A garnishment order directs the garnishee, which is the person or entity holding money for the benefit of the judgment creditor, to pay sufficient money to the judgment creditor to discharge the judgment. Before this can occur, the garnishee must determine if and how much money it holds for the judgment debtor, and then pay the judgment amount. This will involve administrative steps by the garnishee. Estate of Mori v. Chuuk, 12 FSM R. 3, 10 (Chk. 2003).

In a garnishment matter, a significant administrative burden would be offset by the substantially greater weight of the fundamental human rights guaranteed by the FSM's Constitution's Declaration of Rights. In such a case, a mere administrative burden may not be interposed as an obstacle to the vindication of those rights. Estate of Mori v. Chuuk, 12 FSM R. 3, 10 (Chk. 2003).

A garnishment order will not circumvent any state plan to pay judgments when there has been no plan although legislation had required that one be developed. Estate of Mori v. Chuuk, 12 FSM R. 3, 10 (Chk. 2003).

When writs of garnishment are left in place which require the FSM to pay the judgments and attorney's fees awards, the FSM may pay the judgments under protest and still preserve its grounds for appeal. Estate of Mori v. Chuuk, 12 FSM R. 3, 12 (Chk. 2003).

The court has granted writs of garnishment against funds held by the national government for the benefit of the State of Chuuk only in one instance, and that is where a judgment was entered against the state for violations of 11 F.S.M.C. 701 *et seq.*, the national civil rights statute. Barrett v. Chuuk, 12 FSM R. 558, 560 (Chk. 2004).

The FSM Congress has specifically acted to confer a cause of action for violation of civil rights, 11 F.S.M.C. 701 *et seq.*, and it is for judgments based on such claims that the court has issued writs of garnishment against the state. Barrett v. Chuuk, 12 FSM R. 558, 561 (Chk. 2004).

The remedy of garnishment exists in the FSM, and does so on the basis that 6 F.S.M.C. 1404 provides that judgments may be enforced "in any . . . manner known to American common law or common in courts in the United States." FSM Social Sec. Admin. v. Lelu Town, 13 FSM R. 60, 61 (Kos. 2004).

At common law, garnishment did not exist as a remedy where the judgment debtor was a municipality because it is generally held that the funds or credits of a municipality or other public body exercising governmental functions, acquired by it in its governmental capacity, may not be reached by its creditors by garnishment served upon the debtor or depository of the municipality. FSM Social Sec. Admin. v. Lelu Town, 13 FSM R. 60, 62 (Kos. 2004).

The FSM Supreme Court has issued writs of garnishment directed toward the assets of a state government where the underlying cause of action is based on a violation of the national civil rights statute. The rationale for those writs was the Supremacy Article of the FSM Constitution, which must control regardless of a state constitutional provision, or national law, to the contrary. It has declined to issue a writ of garnishment where the judgment debtor was a state government and the judgment was based on ordinary breach of contract. FSM Social Sec. Admin. v. Lelu Town, 13 FSM R. 60, 62 (Kos. 2004).

Although preserving the integrity of the FSM social security system is a matter of concern to all FSM citizens, when Social Security has offered no argument why the court should depart from the general rule that municipal entities are immune from garnishment, a motion for issuance of a writ of garnishment directed toward the assets of a municipality will be denied. FSM Social Sec. Admin. v. Lelu Town, 13 FSM R. 60, 62 (Kos. 2004).

When issuing a writ of garnishment becomes necessary to satisfy a civil rights judgment, the judiciary is clearly empowered to do so. The fact that the garnished is a state within this federation (and the garnishee is the national government) does not change the analysis because the FSM Constitution guarantees this nation's citizens certain protections, and Congress has passed laws allowing its citizens to sue for damages where those rights have been violated. It is not for one state to roll back those rights and privileges afforded by the national government, and the court would be derelict in our duty to allow it to do so. The trial court's action case was thus appropriate and within the bounds of its authority. Chuuk v. Davis, 13 FSM R. 178, 186 (App. 2005).

When, only after repeated attempts to satisfy those judgments by less drastic measures, writs of garnishment were issued in a civil rights case after over six and a half years had elapsed since judgment and in another civil rights case, in which a writ of garnishment was issued at the same time, after over two years since judgment, but when in the present case, it has only been about four months since the first payment on the consent judgment was due, and since legislative appropriation can be a time-consuming process, the state must be given a reasonable time and opportunity to complete the process and given further opportunity to meet its obligation in some other manner before the plaintiffs can resort to a writ of garnishment. Tipingeni v. Chuuk, 14 FSM R. 539, 543 (Chk. 2007).

A statute is unconstitutional to the extent that it prohibits garnishment of state funds to satisfy a civil rights judgment, including civil rights judgments involving purely economic damages as well as those involving physical injury damages. Barrett v. Chuuk, 16 FSM R. 229, 234 (App. 2009).

The FSM Supreme Court's power to issue writs of garnishment is clearly discretionary. Stephen v. Chuuk, 17 FSM R. 453, 458 (App. 2011).

Since the trial court can, on application, endeavor to find a workable way in which to eventually pay the judgment as quickly as reasonably possible and issue writs for less than the full judgment amount, the court will issue a writ of garnishment for compensation for the taking of the plaintiff's retained property during two years, and if no further payments are made on the judgment within the next six months, the plaintiff may then apply for another writ of garnishment. Stephen v. Chuuk, 18 FSM R. 22, 26 (Chk. 2011).

The FSM Supreme Court's power to issue writs of garnishments is based in 6 F.S.M.C. 1404 and supported by case authority. FSM Social Sec. Admin. v. Yamada, 18 FSM R. 88, 89 (Pon. 2011).

A garnishment order directs the garnishee, which is the person or entity holding money for the

judgment debtor's benefit, to pay sufficient money to the judgment creditor to discharge the judgment. The garnishee must determine if and how much money it holds for the judgment debtor and then pay the judgment amount. FSM Social Sec. Admin. v. Yamada, 18 FSM R. 88, 89 (Pon. 2011).

The writ of garnishment is to be used completely at the court's discretion and should only garnish funds beyond what the defendant reasonably needs to support herself. Although it is in the best interest of all parties to have the judgment paid as soon as possible, the court must be cautious in issuing writs of garnishment, and it must be precise in directing the garnishee and mindful of how the garnishment will affect the defendant. FSM Social Sec. Admin. v. Yamada, 18 FSM R. 88, 89 (Pon. 2011).

Before garnishing tenants' rental payments to pay the lessor's tax liens, the court should be provided with information concerning the building, including current interests in the building, current leases, and any other facts that the court might require to rule on the garnishment request and any information on the defendant's dependence on the monthly rental income and other income at her disposal so that the court may order with particularity a writ of garnishment. FSM Social Sec. Admin. v. Yamada, 18 FSM R. 88, 89-90 (Pon. 2011).

The FSM Supreme Court has issued writs of garnishment directed toward the assets of a state government when the underlying cause of action is based on a violation of the national civil rights statute, but it has declined to issue a writ of garnishment where the judgment debtor was a state government and the judgment was based on ordinary breach of contract. The rationale for the issued writs was the FSM Constitution's Supremacy Clause, which must control regardless of a state constitutional provision, or national law, to the contrary. Kama v. Chuuk, 18 FSM R. 326, 334 (Chk. S. Ct. Tr. 2012).

In civil rights cases, the FSM Supreme Court has ordered garnishment of civil rights judgments from state funds held by the national government when civil rights judgments have gone unpaid for a long period of time. Alexander v. Pohnpei, 19 FSM R. 133, 135 (Pon. 2013).

The usual first step for an order in aid of judgment against a state when there are no appropriated funds available for that purpose is to order the state executive to submit an appropriation bill, and since legislative appropriation can be a time-consuming process, the state must be given a reasonable time and opportunity to complete the process and be given further opportunity to meet its obligation in some other manner before a plaintiff can resort to a writ of garnishment. Alexander v. Pohnpei, 19 FSM R. 133, 136 (Pon. 2013).

When the $50 monthly payments barely cover the monthly interest plus some of the accrued interest, if some of the rental payments to the judgment debtor can be garnished while complying with Kosrae Code § 6.2409(1) that allows debtors to retain property and income to provide reasonable living requirements, the trial court must do so unless there is an even faster way to satisfy the judgment. This is for the trial court to determine at a hearing where the parties present the necessary evidence for a determination. George v. Sigrah, 19 FSM R. 210, 220 (App. 2013).

A writ of garnishment directing rent payments to the judgment creditor from the debtor corporation's commercial tenant, constitutes a proper exercise of the court's authority under the order-in-aid-judgment statute. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 104 (Chk. 2015).

The remedy of garnishment exists in the FSM, and does so on the basis that 6 F.S.M.C. 1404 provides that judgments may be enforced in any manner known to American common law or common in courts in the United States. FSM Dev. Bank v. Carl, 20 FSM R. 592, 594 (Pon. 2016).

Upon application of either party and notice to the other, the court may modify an order in aid of judgment at any time, but the debtor's attorney cannot simply direct her other client, the garnishee, to stop payments in violation of a lawful court order and writ of garnishment, without going through the proper legal process of having the order and writ modified. In re Contempt of Fujita, 21 FSM R. 634, 638 (Pon. 2018).

A garnishee's payment of the monthly rent to the debtor or to his attorney does not excuse his non-compliance with the writ of garnishment, because clients are held accountable for their attorney's acts or omissions. In re Contempt of Fujita, 21 FSM R. 634, 638-39 (Pon. 2018).

A garnishee's attorney, as an officer of the court, is obligated to advise her garnishee client to comply with the writ of garnishment, and to transmit the garnishee's monthly payments to the creditor and not to her other clients, who were not entitled to receive those funds. In re Contempt of Fujita, 21 FSM R. 634, 639 (Pon. 2018).

Any intentional disobedience or resistance to the court's lawful order is contempt of court, and a non-party may be in contempt of a court order. Thus, a garnishee who deliberately disobeys a court order may be held in contempt of court. In re Contempt of Fujita, 21 FSM R. 634, 639 (Pon. 2018).

A garnishee is in contempt of court for intentional disobedience of the writ of garnishment when he had assistance of counsel, had notice and knowledge of the writ of garnishment requiring payments to the creditor, and had the ability to comply with the writ because he gave the full amount of the monthly rent payments to other persons. In re Contempt of Fujita, 21 FSM R. 634, 639 (Pon. 2018).

ATTORNEY AND CLIENT

The FSM Supreme Court's trial division is not precluded from allowing reasonable travel expenses of an attorney for a prevailing party as costs under 6 F.S.M.C. 1018 where there is a showing that no attorney is available on the island where the litigation is taking place. Ray v. Electrical Contracting Corp., 2 FSM R. 21, 26 (App. 1985).

The purpose of Rule 4.2 of the Model Rules of Professional Conduct as it applies to organizations is not to pull a veil of partial confidentiality around facts, or even people who have knowledge of the matter in litigation by virtue of their close relationship with a party, but to protect against intrusions by other attorneys upon an existing attorney-client relationship. Panuelo v. Pohnpei (II), 2 FSM R. 225, 232 (Pon. 1986).

The prohibition in Rule 4.2 of the Model Rules of Professional Conduct against communications with a client organization represented by another attorney applies only to communications with an individual whose interests at the time of the proposed communication are so linked and aligned with the organization that one may be considered the alter ego of the other concerning the matter in representation. Panuelo v. Pohnpei (II), 2 FSM R. 225, 232 (Pon. 1986).

The comment to Rule 4.2 of the Model Rules of Professional Conduct was written with the understanding or assumption that it could only affect people who, at the time of the proposed communication, have a working relationship with the organization. Panuelo v. Pohnpei (II), 2 FSM R. 225, 233 (Pon. 1986).

An attorney's professional activities are individually subject to regulation by the judiciary, not by the administrators of the Foreign Investment Act. Michelsen v. FSM, 3 FSM R. 416, 427 (Pon. 1988).

Truk State Bar Rule 13(a), which adopts the Code of Professional Responsibility, prevents conflicts of interest and appearances of impropriety by requiring that members of the state bar conduct themselves in a manner consistent with the American Bar Association's Code of Professional Responsibility. Nakayama v. Truk, 3 FSM R. 565, 570 (Truk S. Ct. Tr. 1987).

An attorney holding public office should avoid all conduct which might lead the layman to conclude that the attorney is utilizing his former public position to further his subsequent professional success in private practice. Nakayama v. Truk, 3 FSM R. 565, 572 (Truk S. Ct. Tr. 1987).

Since Congress did not give any consideration to, or make any mention of, the services enumerated in article XIII, section 1 of the FSM Constitution in enacting the Foreign Investment Act, 32 F.S.M.C. 201-232, the avoidance of potential conflict with the Constitution calls for the conclusion that Congress did not intend the Foreign Investment Act to apply to noncitizen attorneys or to any other persons who provide services of the kind described in article XIII, section 1 of the Constitution. Carlos v. FSM, 4 FSM R. 17, 30 (App. 1989).

Counsel for a party in a civil action may not be appointed to prosecute the opposing party for criminal contempt for violating an order in that action because the primary focus of the private attorney is likely to be not on the public interest, but instead upon obtaining for his or her client the benefits of the court's order. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 62, 67 (Pon. 1991).

By statute the practice of law is specifically included in businesses engaged in by noncitizens requiring a foreign investment permit. 32 F.S.M.C. 203. Michelsen v. FSM, 5 FSM R. 249, 254 (App. 1991).

The parties, not their attorneys, have ultimate responsibility to determine the purposes to be served by legal representation. Thus, clients always have the right, if acting in good faith, to agree to settle their own case, with or without the consultation or approval of counsel, even when their attorneys have failed to settle. Iriarte v. Micronesian Developers, Inc., 6 FSM R. 332, 334 & n.1 (Pon. 1994).

Counsel's own dissatisfaction with the settlement agreement reached by his clients without counsel's consultation or approval does not take precedence over the clients' rights to settle their claims themselves. Iriarte v. Micronesian Developers, Inc., 6 FSM R. 332, 334-35 (Pon. 1994).

While it may be unethical for an attorney to testify at a trial in which he is an advocate, no actual conflict exists when the attorney has not yet been called to testify and case may be resolved without a trial. Triple J Enterprises v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 385, 386 (Pon. 1996).

When the attorney of record at the time of appeal obtains a later trial court order substituting another attorney who cannot address all the issues on appeal, the appellate court will direct the first attorney to proceed with the appeal. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 520, 522 (App. 1996).

Rule 1.16(d) requires that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 170 n.3 (App. 1999).

A court cannot unilaterally relieve an attorney of his obligations to his clients. It is initially the attorney's responsibility, in consultation with his clients, to determine where his obligations and duties lie and if they will be satisfied by not participating in an appeal, and proceed accordingly. In re Sanction of Woodruff, 9 FSM R. 414, 415 (App. 2000).

Counsel must act with reasonable diligence and promptness in representing a client. Reasonable diligence requires follow up by legal counsel to determine whether any documents have been served upon him at his office. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 193 (Kos. S. Ct. Tr. 2001).

A lawyer must keep a client reasonably informed about the status of a matter. The failure of the counsel of record to inform his clients of an order striking their punitive damages count if new counsel did not file an appearance by March 30, 2001, would appear not to discharge that duty. Elymore v. Walter, 10 FSM R. 267, 268 (Pon. 2001).

A lawyer generally cannot appear as an advocate when he also appears as a witness, although there is an exception when the testimony relates to an uncontested issue. FSM Dev. Bank v. Ifraim, 10 FSM R. 342, 344 (Chk. 2001).

Attorney negligence, even gross negligence, if demonstrated, is not a separate basis for Rule 60(b)(6)

relief from judgment. Under established FSM law, attorney neglect as a basis for Rule 60(b) relief falls within subsection Rule 60(b)(1), "mistake, inadvertence, surprise, or excusable neglect." Amayo v. MJ Co., 10 FSM R. 371, 381 (Pon. 2001).

Generally, attorney negligence is not a basis for Rule 60(b)(1) relief from judgment. Parties who freely choose their attorneys should not be allowed to avoid the ramification of the acts or omissions of their chosen counsel. A party in a civil case whose attorney's conduct has fallen below a reasonable standard has other remedies. To grant Rule 60(b)(1) relief in such circumstances would penalize the nonmoving party for the negligent conduct of the moving party's counsel. Amayo v. MJ Co., 10 FSM R. 371, 381 (Pon. 2001).

The exception to the rule that attorney neglect does not state a basis for relief under Rule 60(b)(1) is where the neglect itself is excusable. Clients must be held accountable for their attorneys' acts or omissions. Amayo v. MJ Co., 10 FSM R. 371, 381-82 (Pon. 2001).

Allegations of an attorney's gross negligence do not entitle his client to relief from judgment under the excusable neglect provision of Rule 60(b)(1). Amayo v. MJ Co., 10 FSM R. 371, 382 (Pon. 2001).

An analysis of excusable neglect under Rule 60(b)(1) by its terms brings into play the conduct of the client, as well counsel because the proper focus is upon whether the neglect of the clients and their counsel was excusable. Amayo v. MJ Co., 10 FSM R. 371, 382 (Pon. 2001).

The phrase "the endless stream of discovery drivel emanating from plaintiffs' quarter" in a written response has no place in the civil colloquy (especially in the course of written discourse which permits the authoring party time to reflect) within the bounds of which professional, zealous advocacy takes place. Such comments are no substitute for convincing arguments that follow from the careful marshaling of facts, and the application to those facts of carefully researched principles of law. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 473-74 (Pon. 2001).

Normally, a quasi-governmental agency would be represented by private counsel not associated with the agency. Hauk v. Board of Dirs., 11 FSM R. 236, 239 n.2 (Chk. S. Ct. Tr. 2002).

While counsel may be engaged for only limited purposes, it is expected that the court and the other parties would be so informed on the record at the representation's start. If the court has not been so informed, the court and the other parties, must presume that counsel is the counsel of record for all purposes whatsoever. Atesom v. Kukkun, 11 FSM R. 400, 402 (Chk. 2003).

When the court has not been notified on the record at the representation's start that counsel's representation was limited, counsel then must seek the court's permission to withdraw when he believes his representation has come to an end. He then remains counsel of record until, and if, the court grants him permission to withdraw. Atesom v. Kukkun, 11 FSM R. 400, 402 (Chk. 2003).

An experienced, certified trial counselor admitted to practice law in Kosrae is held to a higher standard regarding knowledge of contract requirements. He should have known that a valid, enforceable contract requires the material term of the cost. Youngstrom v. Mongkeya, 11 FSM R. 550, 554 (Kos. S. Ct. Tr. 2003).

Trial counsel may have a duty to take steps to protect a client's appeal rights even though trial counsel may not be obligated or intended to be appellate counsel. Goya v. Ramp, 13 FSM R. 100, 106 (App. 2005).

Trial counselors and attorneys are expected to handle different types of cases, both civil and criminal. A counsel need not necessarily have special training or prior experience to handle legal problems of a type with which the counsel is unfamiliar. Consequently, even if a trial counselor did not have prior experience

with the specific types of offenses charged against the defendant, that lack of experience does not automatically result in lack of competency. Kosrae v. Kinere, 13 FSM R. 230, 236 (Kos. S. Ct. Tr. 2005).

Since as an advocate, a lawyer zealously asserts the client's position under the rules of the adversary system, clients have every expectation that counsel should vigorously pursue their interests along the line of uncovering incriminating evidence against the opposing parties even if it happens to involve another of counsel's clients. McVey v. Etscheit, 14 FSM R. 207, 213 (Pon. 2006).

Dismissal for an attorney's inexcusable neglect in failing to file an opening brief is handled differently in civil and criminal appeals. Appellate courts are much more reluctant to dismiss a criminal appeal for an attorney's inexcusable neglect because a criminal defendant has no other remedy. In a civil appeal, when the appeal is dismissed for inexcusable neglect in prosecuting the appeal, if the party whose appeal is thus dismissed is thereby aggrieved, his remedy will be against his attorney. A criminal appellant has no such remedy. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 114 (App. 2008).

Dismissal for an attorney's inexcusable neglect in failing to file an opening brief must be handled differently in civil and criminal appeals. Appellate courts are much more reluctant to dismiss a criminal appeal for an attorney's inexcusable neglect because a criminal defendant has no other remedy. When a civil appeal is dismissed for inexcusable neglect in prosecuting the appeal, if the party whose appeal is thus dismissed is thereby aggrieved, his remedy will be against his attorney. A criminal appellant has no such remedy. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 129-30 (App. 2008).

It is not the province of the court to prepare a party's case but that of counsel. Clients must be held accountable for their attorneys' acts or omissions. Parties who freely choose their attorneys should not be allowed to avoid the ramification of the acts or omissions of their chosen counsel because to grant relief in such circumstances would penalize the nonmoving party for the conduct of the moving party's counsel. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 426, 429 (Chk. S. Ct. App. 2007).

When the contract is for an attorney to provide legal assistance for the plaintiffs' appeal case and when the terms are that the attorney will represent the plaintiffs and the plaintiffs will pay the attorney a $100 per hour, there is a promise between the two parties with an offer of performing legal services and the acceptance on the plaintiffs' behalf and there was mutual assent when the parties reached a meeting of the minds with the attorney making the offer and the plaintiffs accepting the offer. The consideration present for the promise was that the attorney offered his legal services to the plaintiffs in exchange for the plaintiffs' money. There was a bargained-for exchange between the parties and what was bargained for was considered of legal value. The contract terms were definite and therefore there was a valid written contract between the parties for the performance of legal services for a fee. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 645 (Kos. S. Ct. Tr. 2009).

When an attorney had promised to handle an appeal case for the plaintiffs and when the attorney failed to file a brief in the case resulting in the appeal's dismissal, the attorney, by his failure to file a brief, breached his contract with the plaintiffs. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646 (Kos. S. Ct. Tr. 2009).

When the plaintiffs had a contract with the defendant attorney and their appeal case was dismissed without the plaintiffs getting their day on court due to the attorney's failure to file required materials with the appellate court, the plaintiffs are entitled to a refund of the $500 retainer that they paid the attorney in the case and to the $10 filing fee because $510 is the amount to put the non-breaching party, the plaintiffs, in a position they would have been in but for the attorney's breach. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646-47 (Kos. S. Ct. Tr. 2009).

Notice served on a represented party's attorney of record is notice to the party because clients must be held accountable for their attorneys' acts or omissions. Saimon v. Wainit, 18 FSM R. 211, 214 (Chk. 2012).

Although the court must first look to FSM sources of law, it may look to U.S. sources for guidance in interpreting the Model Rules of Professional Conduct when FSM case law does not provide a complete answer. FSM Dev. Bank v. Ehsa, 18 FSM R. 388, 391 n.3 (Pon. 2012).

Although the court must first look to FSM sources of law and circumstances, when an FSM court has not previously construed an FSM ethical rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 569, 571-72 n.1 (Kos. 2013).

In representing a client, a lawyer must not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter unless the lawyer has the other lawyer's consent or is authorized by law to do so. Mori v. Hasiguchi, 19 FSM R. 16, 20 (Chk. 2013).

An attorney may rely on someone else to do the research and, based on past experience with that researcher or by double-checking the researcher's research, be able to certify that the filing was well-grounded in fact and warranted by law or by a good faith argument that this is what the law should be. In re Sanction of Sigrah, 19 FSM R. 305, 310 (App. 2014).

If a disbarred or suspended attorney drafts a paper and an admitted attorney signs and files it, the attorney signature on the filing constitutes assisting a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law. That would subject the signing attorney to discipline under Model Rule 5.5(b), which prohibits an attorney from assisting a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law. In re Sanction of Sigrah, 19 FSM R. 305, 313 (App. 2014).

An attorney's reputation is an important and valuable professional asset. Mori v. Hasiguchi, 19 FSM R. 414, 418 (App. 2014).

A motion sounding in an attorney's purported negligence does not constitute a basis for Rule 60(b) relief from judgment, as clients are held accountable for their attorney's acts or omissions. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 103 (Chk. 2015).

Under the foreign investment laws requiring noncitizens "engaging in business" to hold a valid foreign investment permit, "engaging in business" includes providing professional services as an attorney for a fee. Pacific Int'l, Inc. v. FSM, 20 FSM R. 346, 349 (Pon. 2016).

Someone providing professional services for a fee, such as an attorney, is not considered to be "engaging in business" unless he or she, while present in the FSM, performs his or her respective professional services for more than 14 days in any calendar year. Pacific Int'l, Inc. v. FSM, 20 FSM R. 346, 349 (Pon. 2016).

A noncitizen attorney, licensed to practice in the FSM since 1985 and a member of the Bar in good standing but currently resident and practicing on Guam, is excepted from the foreign investment permit requirement when he works in tandem with an FSM citizen licensed to practice in the FSM and when his involvement in the case has been from a remote location and, as a result, he has not been present in the FSM rendering professional services for more than 14 days in any calendar year. Pacific Int'l, Inc. v. FSM, 20 FSM R. 346, 349 (Pon. 2016).

Under 55 F.S.M.C. 419(1) and (2), no foreign investment permit is required of a noncitizen attorney when his representation directly involves "contract management activities" that relate to a public contract awarded for a civil works project to implement part of the Infrastructure Development Plan and that is supported by funds through the Amended Compact of Free Association Section 211. Pacific Int'l, Inc. v. FSM, 20 FSM R. 346, 349-50 (Pon. 2016).

An attorney cannot be said to come within the ambit of the 32 F.S.M.C. 204, which otherwise would require a foreign investment permit, when his legal representation, to date, has been conducted *in absentia*, and thus cannot be said to have rendered his professional services "while present in the FSM for more than 14 days in any calendar year" and when the present action involves an Infrastructure Development Plan project and the construction by his client was undertaken pursuant to a contract underwritten with Compact monies. Pacific Int'l, Inc. v. FSM, 20 FSM R. 346, 350 (Pon. 2016).

A non-attorney parent must be represented by counsel in bringing an action on behalf of his or her child. Pillias v. Saki Stores, 20 FSM R. 391, 395 (Chk. 2016).

A minor child cannot bring suit through a parent acting as a next friend if the parent is not represented by an attorney. Pillias v. Saki Stores, 20 FSM R. 391, 395 (Chk. 2016).

The requirement that a minor be represented by counsel is based on two cogent policy considerations. First, there is a strong governmental interest in regulating the practice of law. The second consideration is the importance of the rights at issue during litigation and the final nature of any adjudication on the merits. Pillias v. Saki Stores, 20 FSM R. 391, 395 (Chk. 2016).

A non-attorney parent must be represented by counsel in bringing an action on behalf of a child. Pillias v. Saki Stores, 20 FSM R. 391, 395 (Chk. 2016).

A garnishee's payment of the monthly rent to the debtor or to his attorney does not excuse his non-compliance with the writ of garnishment, because clients are held accountable for their attorney's acts or omissions. In re Contempt of Fujita, 21 FSM R. 634, 638-39 (Pon. 2018).

A garnishee's attorney, as an officer of the court, is obligated to advise her garnishee client to comply with the writ of garnishment, and to transmit the garnishee's monthly payments to the creditor and not to her other clients, who were not entitled to receive those funds. In re Contempt of Fujita, 21 FSM R. 634, 639 (Pon. 2018).

A lawyer's incorrect legal argument does not, by itself, constitute a fraud upon the court since an attorney is to be expected to responsibly present his client's case in the light most favorable to his client. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 12 (Pon. 2018).

The Chuuk State Supreme Court adopted the 1983 ABA Model Rules of Professional Conduct as the code of ethics and model for professional conduct. These Model Rules lack a provision concerning "prospective clients." Thus, a person who approaches a firm and has a consultation with its attorneys is classified as either a former client, current client, or perhaps as a non-client. Peter v. Gouland, 22 FSM R. 404, 406 (Chk. S. Ct. Tr. 2019).

A client is responsible for his attorney's actions, inactions, or omissions. Rule 60(b) is not meant to relieve a party from its own carelessness and neglect, or from his counsel's carelessness and neglect. FSM Dev. Bank v. Talley, 22 FSM R. 587, 593 (Kos. 2020).

– Admission to Practice

The normal Trust Territory High Court authorization to practice before it is unlimited as to time and covers the entire Trust Territory. Limited or provisional Trust Territory High Court authorization to practice law is not sufficient High Court "certification" to qualify an applicant for admission to practice under Rule I(A) of the FSM Supreme Court's Rules for Admission. In re Robert, 1 FSM R. 4, 4-5 (Pon. 1981).

The grandfather clause of Rule I of the FSM Supreme Court's Rules for Admission permits licensed or existing practitioners before the Trust Territory courts to continue in their same capacity by shielding them from the necessity of complying with the new licensing standards. In re Robert, 1 FSM R. 4, 7 (Pon. 1981).

In seeking authorization to practice before the FSM Supreme Court, if the High Court's authorization of the applicant to practice before it is not an unreserved certification the applicant does not fulfill the requirements under the FSM Supreme Court's Rule for Admission I(A), and must fulfill the conditions required of new applicants. In re Robert, 1 FSM R. 4, 11-13 (Pon. 1981).

In absence of express appellate division permission to appear without supervision of an attorney, the court will require all appellate level briefs and other documents to be signed by an attorney authorized to practice before the FSM Supreme Court. Any appellate submission not so signed will be rejected. Alaphonso v. FSM, 1 FSM R. 209, 230 n.13 (App. 1982).

Only attorneys admitted to practice before the FSM Supreme Court or trial counselors supervised by an attorney admitted to practice may appear before the FSM Supreme Court on appeals from state court cases. Kephas v. Kosrae, 3 FSM R. 248, 252 (App. 1987).

Admission to appear for a particular case, pursuant to Rule 4(A) of the Rules for Admission to Practice, is liberally granted. Truk Transp. Co. v. Trans Pacific Import Ltd., 3 FSM 440, 443 (Truk 1988).

Where an attorney seeks to have another attorney disqualified on the grounds that such other attorney was not admitted to the state bar, and the attorney seeking the disqualification should have known that the other attorney was within an exception to that rule, the motion to disqualify is without merit and shall be denied. Nakayama v. Truk, 3 FSM R. 565, 568-69 (Truk S. Ct. Tr. 1987).

In a nation constitutionally committed to attempt to provide legal services for its citizens, the mere fact that an attorney had previously sued the state, without any suggestion that actions taken were frivolous, vexatious, or for purposes of harassment, cannot be viewed as reasonable grounds for denying the attorney the opportunity to practice law in that state. Carlos v. FSM, 4 FSM R. 17, 24 (App. 1989).

The Constitution places control over admission of attorneys to practice before the national courts, and regulation of the professional conduct of the attorneys, in the Chief Justice, as the chief administrator of the national judiciary. Carlos v. FSM, 4 FSM R. 17, 27 (App. 1989).

The decision whether to permit an attorney, not licensed within the FSM, to practice before the FSM Supreme Court, in a particular case falls within the sound discretion of the trial judge. In re Chikamoto, 4 FSM R. 245, 248 (Pon. 1990).

FSM Admission Rule IV(A) does not provide a means for a nonresident attorney, who has not been licensed to practice before the court and who has no reasonable prospect of being licensed in the near future, nonetheless to be permitted to practice before the court on a continuing basis. In re Chikamoto, 4 FSM R. 245, 249 (Pon. 1990).

Congress and the President respectively have the power to regulate immigration and conduct foreign affairs while the Chief Justice may make rules governing the admission of attorneys. Therefore a rule of admission that treats aliens unequally, promulgated by the Chief Justice, implicates powers expressly delegated to other branches. Berman v. FSM Supreme Court (I), 5 FSM R. 364, 366 (Pon. 1992).

FSM Admission Rule III presumes that an arrangement of reciprocity must already exist between the FSM Court and another jurisdiction, in order for the rule to apply. When no such arrangement exists, it must first be created before Rule III can be applied. In re McCaffrey, 6 FSM R. 20, 21 (Pon. 1993).

The fact that the Pohnpei Supreme Court admits attorneys of the FSM Bar does not alone create a formal arrangement of reciprocity. The arrangement must be formal, neither implied nor constructive. In re McCaffrey, 6 FSM R. 20, 22 (Pon. 1993).

The language of FSM Admission Rule III contemplates that formal arrangements between the FSM Supreme Court and other jurisdictions must exist before an attorney from another jurisdiction may apply for admission to the FSM Supreme Court on the basis of reciprocity. McCaffrey v. FSM Supreme Court, 6 FSM R. 279, 281-82 (App. 1993).

FSM Admission Rule III is directed at attorneys residing outside of the FSM in other Pacific jurisdictions. McCaffrey v. FSM Supreme Court, 6 FSM R. 279, 282 (App. 1993).

Motions to appear are not granted as a matter of course and each application must be carefully reviewed for compliance with the Rules of Admission. Pohnpei v. M/V Zhong Yuan Yu #606, 6 FSM R. 464, 466 (Pon. 1994).

The FSM Supreme Court's Chief Justice's constitutional powers to make rules governing the attorney discipline and admission to practice is limited to the national courts. He is not authorized to govern admission to practice in state courts. Berman v. Santos, 7 FSM R. 231, 236 (Pon. 1995).

The FSM Supreme Court and the state courts may each admit and discipline attorneys to appear before their respective courts. Berman v. Santos, 7 FSM R. 231, 237-38 (Pon. 1995).

A chief justice's actions in reviewing an attorney's application for admission is a judicial function that is entitled to absolute immunity from suit for damages. Berman v. Santos, 7 FSM R. 231, 240 (Pon. 1995).

The power to make rules governing the admission of attorneys to practice in state courts is a state power, not a power of the FSM Supreme Court Chief Justice. Berman v. Santos, 7 FSM R. 624, 626 (App. 1996).

Once an attorney has started private practice she must submit a $25 fee to the Pohnpei Supreme Court in order to be admitted there even if she was exempt from that requirement before as a government attorney. Berman v. Santos, 7 FSM R. 624, 627 (App. 1996).

A motion to appear pro hac vice requires a Rule II(B) certification as to the morals and character of the applying attorney. In re Certification of Belgrove, 8 FSM R. 74, 77 (App. 1997).

The FSM Supreme Court has the discretion to properly raise the issue of the fitness and character of an applicant for admission to the FSM bar even when the rule's requirements have been met by the applicant's actions because the court may require, in addition to the applicant's certificate, other proof of good character. In re Certification of Belgrove, 8 FSM R. 74, 77 (App. 1997).

When there are pending criminal or professional responsibilities charges against an applicant to the FSM bar the FSM Supreme Court normally has the necessary discretion to investigate and reach a conclusion concerning the applicant's character and fitness. That discretion may be abused by an unexplained, lengthy delay. Failure to exercise the discretion within a reasonable time is an abuse of the discretion. In re Certification of Belgrove, 8 FSM R. 74, 77-78 (App. 1997).

When there is no right of appeal from the Chief Clerk's deferral of an applicant's certification as an attorney entitled to practice law before the FSM Supreme Court, and no other remedy exists, and when the deferral was without giving the applicant a hearing, and the deferral was continued during an unexplained, lengthy delay in the subsequent disciplinary proceeding, constituting an abuse of the discretion allowed by the admission rules, a writ of mandamus will lie to compel the certification of the applicant. In re Certification of Belgrove, 8 FSM R. 74, 78 (App. 1997).

Admission to appear pro hac vice may be granted conditioned upon counsel's later providing to the court certificates of good standing in the jurisdictions where she is permitted to practice. Kosrae v. Worswick, 9 FSM R. 536, 538 (Kos. 2000).

The FSM Supreme Court Admission Rules apply to all cases properly before the national courts, regardless of where the case originated. There is no exception to these rules, express or implied, for legal representatives whose cases are removed to the national court from a state court. Nett Dist. Gov't v. Micronesian Longline Fishing Corp., 10 FSM R. 520, 521-22 (Pon. 2002).

When trial counselors seek to appear in the FSM Supreme Court without supervision, the court will, in addition to any relevant criteria specified in Rule IV.A., consider the availability to the trial counselor of an attorney for consultation; the client's wishes and whether the trial counselor had prior professional association with the client; the litigation's complexity and the importance of the issues to the FSM; the trial counselor's previously demonstrated competence and other factors indicating whether granting the motion would be in the interests of justice. Nett Dist. Gov't v. Micronesian Longline Fishing Corp., 10 FSM R. 520, 522 (Pon. 2002).

When the issues involved in the litigation are complex, and are important to the people of Micronesia and of Pohnpei and when the trial counselor has had a prior professional association with the client, but had been required to appear with supervision in previous FSM Supreme Court cases in which he represented the client, and when there are several private attorneys in Pohnpei who are admitted to practice before the court, the trial counselor will be admitted to appear in the case only after he has submitted a written motion and a written agreement, signed by an attorney admitted to practice before the FSM Supreme Court, stating that the attorney will supervise him. Nett Dist. Gov't v. Micronesian Longline Fishing Corp., 10 FSM R. 520, 522 (Pon. 2002).

A person seeking to appear *pro hac vice* in a case, but who is not licensed to practice law, nor admitted as a trial counselor in Chuuk or in any other jurisdiction is therefore moving to permit "third-party lay representation" in the case. Chuuk v. Ernist Family, 12 FSM R. 154, 156 (Chk. S. Ct. Tr. 2003).

The Chuuk State Supreme Court follows the general rule that in order to obtain permission to appear for a particular case (*pro hac vice*), in a jurisdiction where the applicant is not admitted to practice, the applicant must be properly admitted to practice law in another jurisdiction. The only exceptions to this rule are when a party represents him or he self, *pro se*, or where a husband or wife appears on behalf of either or both when one or the other are parties to a lawsuit, pursuant to the custom that a spouse may represent the other spouse in matters involving either or both of them. Chuuk v. Ernist Family, 12 FSM R. 154, 156-57 (Chk. S. Ct. Tr. 2003).

While it might perhaps be better if the rule that admission *pro hac vice* requires admission in another jurisdiction could be relaxed or waived in some cases, the potential injury to the client, should the applicant fail to discharge his duties as an attorney properly, clearly outweighs the benefits of permitting him to act as an attorney without having the requisite credentials. For these reasons a motion for admission *pro hac vice* will be denied. Chuuk v. Ernist Family, 12 FSM R. 154, 157 (Chk. S. Ct. Tr. 2003).

Any attorney who assists parties in a case must be one admitted to practice before the national court. Without the court's prior authorization, attorneys or individuals who are not admitted to the national court are expressly prohibited from taking any part in any matter filed in the national court. Damerlane v. Sato Repair Shop, 12 FSM R. 231, 233 (Pon. 2003).

All persons admitted to practice law in Kosrae must comply with the Model Rules of Professional Conduct as adopted by the American Bar Association in August 1983 as amended through 1995. The word "lawyer" as it appears in the Model Rules is deemed to refer to attorneys and trial counselors practicing law in the state. George v. Nena, 12 FSM R. 310, 318 n.5 (App. 2004).

When a complaint and a later memorandum are signed by the plaintiffs and a practitioner not admitted to practice in the national courts and the practitioner has not moved to appear pro hac vice, the court must therefore disregard the practitioner's signature and consider the plaintiffs as appearing pro se only. Puchonong v. Chuuk, 14 FSM R. 67, 68 n.1 (Chk. 2006).

The filing of a motion to appear pro hac vice does not automatically entitle the applicant to appear. Goya v. Ramp, 14 FSM R. 303, 305 n.2 (App. 2006).

The filing of a motion to appear pro hac vice does not automatically entitle the applicant to appear. Goya v. Ramp, 14 FSM R. 305, 308 n.4 (App. 2006).

All attorneys and trial counselors admitted to practice law before the FSM Supreme Court pursuant to the court's rules for admission to practice are eligible to appear before the FSM Supreme Court's appellate division. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 7, 11 (App. 2007).

When attorneys were granted permission to appear pro hac vice before the court's trial division in the underlying matter at issue in an appeal, but have not been admitted to practice law before the court, they must, if they intend to appear in the appeal, undertake the appropriate action to appear before the appellate division. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 7, 11 (App. 2007).

When counsel was admitted pro hac vice conditioned upon his submission of certificates of good standing from all jurisdictions in which he is admitted along with a sworn statement that complied with the morals and character requirement imposed under FSM Admission Rule II(B), but counsel failed to submit certificates of good standing for two of the three jurisdictions he was admitted in, his request to appear pro hac vice will be denied. Upon the submission of another request to appear pro hac vice which contains all the relevant documentation needed for the court to issue a determination on the request to appear, the court will reconsider its ruling. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 361 (App. 2007).

Although the better practice is to file the motion to appear pro hac vice simultaneously with the first filing in the FSM Supreme Court appellate division, it is not uncommon for unlicensed counsel to move for pro hac vice admission at a reasonable time after the filing of a notice of appeal, as meeting the rules' time constraints and thus protecting the client's interest is of paramount concern. Akinaga v. Heirs of Mike, 15 FSM R. 391, 395 (App. 2007).

When no substantial activity took place on the appeal before counsel filed his motion for pro hac vice admission or before his full admission to the FSM Supreme Court bar after he passed the FSM bar examination and when that counsel did not submit the appellant's brief until he was fully licensed to appear before the appellate division as contemplated by Appellate Rule 46(a) thus complying with Appellate Rule 31(d)'s explicit mandate, which requires all briefs to be signed by licensed attorneys admitted to the FSM Supreme Court, the appeal was not precluded either by the appellant's flawed notice of appeal or the fact that her counsel was not admitted to practice before the FSM Supreme Court at the time the notice of appeal was filed in the FSM Supreme Court. Akinaga v. Heirs of Mike, 15 FSM R. 391, 395-96 (App. 2007).

An argument that the residency requirement for foreign citizens to take the FSM bar exam violates the U.S. Constitution's privileges and immunities clauses is without merit. In re Neron, 16 FSM R. 472, 474 (Pon. 2009).

Admitted attorneys are required to annually provide certain contact information and those attorneys who fail to comply are removed from the list of active members and are no longer authorized to practice before the FSM Supreme Court. In re Attorney Disciplinary Proceeding, 19 FSM R. 576, 578 (Pon. 2014).

An attorney who has not complied with FSM GCO 2012-01, § X, and who is thus "removed from the list of active members" remains a member of the FSM bar otherwise in good standing and licensed to practice law before the FSM Supreme Court and who, upon submission of the required contact information, will be included in or restored to the list of active members authorized to appear before the court. Until then the attorney is an inactive member of the bar in good standing. In re Attorney Disciplinary Proceeding, 19 FSM

R. 576, 578 (Pon. 2014).

– Appearance

An attorney, who stated that he was appearing temporarily for a party and only for the purposes of that one brief, in chambers, off-the-record status conference and who did not file a notice of appearance either then or subsequently, did not appear of record. And when that attorney did nothing officially of record in the case until he came to court with the party for the trial's afternoon session, he was not the party's counsel of record as of the date the notice of trial was served, and it is immaterial whether he received the notice of trial. Amayo v. MJ Co., 10 FSM R. 371, 378-79 (Pon. 2001).

When a court allows an attorney's limited appearance, it is not clear whether litigants represented in a limited manner understand that their attorney is not taking full responsibility for prosecuting or defending them. Thus trial judges should consider carefully, on a case-by-case basis, whether to allow "limited appearances." As a general rule, attorneys should either enter formal appearances and accept full responsibility for a case, or not be permitted to appear before the court. Panuelo v. Amayo, 12 FSM R. 365, 373 (App. 2004).

If the court learns that an attorney is providing legal advice and/or drafting documents for a *pro se* litigant but concealing that fact from the court, the court should consider ordering the attorney to file a formal notice of appearance or be subjected to sanctions. Panuelo v. Amayo, 12 FSM R. 365, 373-74 (App. 2004).

A special appearance is for the purpose of testing or objecting to the sufficiency of service or the court's jurisdiction over the defendant without submitting to such jurisdiction. Civil Procedure Rule 12 obviates the need for special appearances, since that rule abolished the distinction between general and special appearances. Ehsa v. Pohnpei Port Auth., 14 FSM R. 567, 572 (Pon. 2007).

When one defendant's trial level counsel and his appellate counsel are both employed by the Kosrae Public Defender's Office and appellate counsel is admitted to practice before the FSM Supreme Court, but trial counsel is not, since both counsel are employed by the Kosrae Public Defender's Office, the appellate counsel properly appeared in the appeal, and it would have been improper for trial counsel to file the appeal, since he is not admitted to practice before the FSM Supreme Court. Nedlic v. Kosrae, 15 FSM R. 435, 437 (App. 2007).

In the trial court, a party has the right to appear pro se. To appear "pro se" means to appear on one's own behalf; without a lawyer. A person appearing pro se thus appears only for himself and does not represent any other person or anyone else. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

A pro se party can, of course, represent his own business when that business is merely a d/b/a because a "d/b/a" is not a separate person or party since a d/b/a is just another name under which a person operates the business or by which the person or business is known. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

A party appearing pro se cannot represent anyone else. That would be the unauthorized practice of law. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

A corporation is not a human being but a creature created by the government and subject to its regulation and control, including the rule that in court proceedings a corporation must be represented by a licensed attorney. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

In instances where there is no FSM precedent, such as whether to require an attorney to appear for a corporation (although it has been a rather long-standing practice in the FSM Supreme Court), the court may

consider cases from other jurisdictions in the common law tradition. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 n.2 (Pon. 2011).

Just as natural persons, appearing pro se, are not permitted to act as "attorneys" and represent other natural persons, by the same token, non-attorney agents are not allowed to represent corporations in litigation, for a wholly unintended exception to the rules against unauthorized practice of law would otherwise result. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

A corporation obviously cannot appear pro se and represent itself since it is not a natural person and it cannot physically appear in court or draft pleadings or the like. Someone must appear for the corporation. Corporations of necessity must always act through their agents. In a court case, that someone would ordinarily be an attorney admitted to appear before the court. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

The widely-recognized general rule is that a corporation can only appear through an attorney and that a corporation may not represent itself through nonlawyer employees, officers, or shareholders. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

When a business accepts the advantages of incorporation, it must also bear the burdens, including the need to hire counsel to sue or defend in court. Corporations are required to appear through attorneys because a corporation is a hydra-headed entity and its shareholders are insulated from personal responsibility. There must therefore be a designated spokesman accountable to the court. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

Unlike lay agents of corporations, attorneys are subject to professional rules of conduct and are amenable to disciplinary action by the courts for violations of ethical standards. Therefore, attorneys, being fully accountable to the courts, are properly designated to act as the representatives of corporations. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

A corporation cannot appear in the FSM Supreme Court and represent itself either "pro se" or by its nonlawyer officers or employees. It can only appear through an attorney licensed to practice law. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

Often when a shareholder files a derivative action against a corporation, the corporation's regular attorney may defend it as he would an other suit. But when a corporation does not have a regular corporate counsel and neither the plaintiff nor a defendant corporation control the majority of the corporation's shares (each owning 50%) and because they are adverse to each other, neither the plaintiff nor the defendant should choose and hire an attorney to represent that corporation since its corporate interests would likely differ from those of both of its two shareholders. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 412 (Pon. 2011).

An attorney that represents a corporation represents the organization itself, and does not represent the organization's constituents such as its shareholders or its officers. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 412 (Pon. 2011).

It is extremely rare that the court will assign counsel in a civil case. It may be worth a try when the plaintiff and an adverse defendant each own 50% of a corporation that needs representation. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 412 (Pon. 2011).

Since a corporation can only be represented by counsel, any possibility that a corporation could proceed pro se is precluded. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 569, 572 (Kos. 2013).

Being off-island does not prohibit an attorney from appearing telephonically. In re Contempt of Jack, 20 FSM R. 452, 466 (Pon. 2016).

Although a corporation may appear only through licensed counsel, there is no requirement that such licensed attorney must not be an employee of the corporation that he or she represents. The licensed attorney may be an employee of the corporation. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 451 (Pon. 2018).

The court expects prior notice when circumstances cause an attorney to appear telephonically in a matter. Salomon v. FSM, 21 FSM R. 522, 524 (Pon. 2018).

– Attorney Discipline and Sanctions

A counsel's decision to take steps which may cause him to be late for a scheduled court hearing, coupled with his failure to advise the court and opposing counsel of the possibility that he might be late to the hearing, may, when followed by failure to appear at the scheduled time, constitute an intentional obstruction of the administration of justice within the meaning of section 119(a) of the Judiciary Act, and may be contempt of court. 4 F.S.M.C. 119(a). In re Robert, 1 FSM R. 18, 20 (Pon. 1981).

The summary contempt power may be invoked even after some delay if it was necessary for a transcript to be prepared to substantiate the contempt charge, or when the contemner is an attorney and immediate contempt proceedings may result in a mistrial. In re Iriarte (II), 1 FSM R. 255, 261 (Pon. 1983).

In a new nation in which the courts have not yet established a comprehensive jurisprudence, where an issue is one of first impression and of fundamental importance to the new nation, the court should not lightly impose sanctions upon an official who pushes such an issue to a final court decision, and should make some allowance for wishful optimism in an appeal. Innocenti v. Wainit, 2 FSM R. 173, 188 (App. 1986).

The Constitution places control over admission of attorneys to practice before the national courts, and regulation of the professional conduct of the attorneys, in the Chief Justice, as the chief administrator of the national judiciary. Carlos v. FSM, 4 FSM R. 17, 27 (App. 1989).

Courts have inherent power, and an obligation, to monitor the conduct of counsel and to enforce compliance with procedural rules. Leeruw v. Yap, 4 FSM R. 145, 150 (Yap 1989).

Under Rule 3.7 of the Model Rules of Professional Conduct, when a party's counsel believes the opposing party's attorney should be required to testify as to information which may be prejudicial to the opposing party, it is appropriate for counsel for the first party to move to disqualify opposing counsel from further representation of the opposing party, but this is not the only procedure which may be followed and counsel who fails to file such a motion may not be sanctioned for his failure in absence of harm to the opposing party or a showing of bad faith. Bank of Guam v. Sets, 5 FSM R. 29, 30 (Pon. 1991).

Where the record lacked any identifiable order directing a particular counsel to appear before the court, insofar as the court's expectation was that "somebody" from the Office of the Public Defender appear, no affirmative duty to appear existed, nor did any intentional obstruction of the administration of justice occur to support the lower court's finding of contempt against counsel. In re Powell, 5 FSM R. 114, 117 (App. 1991).

Where the information desired from another party's lawyer as a witness was material and necessary and unobtainable elsewhere and the party desiring it had not acted in bad faith in the late service of a subpoena, a motion for sanctions may be denied at the court's discretion. In re Island Hardware, Inc., 5 FSM R. 170, 174-75 (App. 1991).

Certification of extraditability is an adversarial proceeding. An advocate in an adversarial proceeding is expected to be zealous. In re Extradition of Jano, 6 FSM R. 26, 27 (App. 1993).

Dismissal of actions for attorney misconduct is generally disfavored in light of the judicial preference for

adjudication on the merits whenever possible so as to allow parties a reasonable opportunity to present their claims and defenses. Paul v. Hedson, 6 FSM R. 146, 147 (Pon. 1993).

The court may sanction an attorney by its inherent authority to enforce compliance with procedural rules whenever it is apparent that the attorney has failed to abide by such rules without good cause. Paul v. Hedson, 6 FSM R. 146, 148 (Pon. 1993).

An attorney who fails to make timely requests for enlargement of time to complete discovery beyond the deadline set by court order; who has someone other than the client sign answers to interrogatories; and who fails to serve the answers properly on opposing counsel while filing a proof of service with the court is sanctionable on the court's own motion. Paul v. Hedson, 6 FSM R. 146, 148 (Pon. 1993).

In light of the court's policy for adjudicating matters on the merits the court may sanction counsel for initial noncompliance with the procedural rules rather than dismissing his client's case. Nakamura v. Bank of Guam (I), 6 FSM R. 224, 229 (App. 1993).

A member of the FSM Bar may be suspended or disbarred if that individual has been suspended or disbarred by any other court. When an attorney has been suspended or disbarred in another jurisdiction and has not shown cause why he is not unfit to practice law in the FSM, he will be disbarred in the FSM. In re Webster, 7 FSM R. 201, 201 (App. 1995).

An attorney disciplinary proceeding in state court for violations of state disciplinary rules may not be removed to the FSM Supreme Court. Berman v. Santos, 7 FSM R. 231, 241 (Pon. 1995).

An attorney who takes a fee for representation and fails to provide any services to his client and whose client has to sue him for the return of the fee has violated the bar's ethical rules and his oath, and no longer has the good moral character required of a member of the Chuuk State Bar and will be suspended from the practice of law. In re Suspension of Chipen, 7 FSM R. 268, 268-69 (Chk. S. Ct. Tr. 1995).

An attorney may be sanctioned when that attorney's use of two different addresses and his failure to monitor both addresses for service of papers causes delay. FSM Telecomm. Corp. v. Worswick, 7 FSM R. 420, 422 (Yap 1996).

A lawyer has an ethical obligation to disclose legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to her client's position. Iriarte v. Etscheit, 8 FSM R. 231, 237 (App. 1998).

When counsel has not been specifically advised that the court is considering the issuance of personal sanctions against him and he was not specifically given notice of a hearing on the court's motion to sanction him, the sanction will be vacated and a hearing scheduled to provide the counsel an opportunity to be heard on every matter relevant to the court's resolution of the issue. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 150, 153 (Pon. 1999).

A disbarment proceeding is adversarial and quasi-criminal in nature and the moving party bears the burden of proving all elements of a violation. The same is true when an attorney disciplinary proceeding results in a lesser sanction. Any disciplinary proceeding has the potential to end in disbarment or suspension. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 171 (App. 1999).

The disciplinary counsel's burden is to prove attorney misconduct by clear and convincing evidence. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 171 (App. 1999).

The FSM Disciplinary Rules do not encourage settlement or compromise between disciplinary counsel and the respondent attorney. Settlements between a complainant and the respondent attorney do not, in themselves, justify abatement of the disciplinary proceeding. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 171 (App. 1999).

The reviewing justice has every right to reject a sanction proposed by the disciplinary counsel and respondent attorney. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 172 (App. 1999).

Any reliance on a "proposed disposition" to prove the respondent attorney's misconduct is improper when the respondent attorney's statements show that any admissions of misconduct were only for the purpose of the reviewing justice's approval of the proposed disposition and if it was not accepted, the respondent attorney would have to call defense witnesses. Such equivocation is not an admission of professional misconduct. It is thus inadmissible under FSM Evidence Rules 410 and 408, which bar the admission of pleas, plea discussions, and related statements and compromises and offers to settle, respectively. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 172 (App. 1999).

The standard of proof for establishing allegations of attorney misconduct is clear and convincing evidence. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 173 (App. 1999).

A hearing cannot qualify as the full evidentiary hearing contemplated by Disciplinary Rule 5(b) when neither side had an opportunity to present evidence. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 174 (App. 1999).

A hearing cannot qualify as the full evidentiary hearing contemplated by Disciplinary Rule 5(b) when the decision finding the allegations of misconduct proven had been made and announced before the hearing was held. Such a hearing must take place before the decision is made. Otherwise it is a denial of due process. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 174 (App. 1999).

Although 4 F.S.M.C. 121 mandates the publication of FSM Supreme Court appellate opinions, confidentiality in the spirit of the rules can been maintained in a continuing attorney disciplinary matter by the omission of names and identifying characteristics. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 175 (App. 1999).

Appellate counsel will not be sanctioned when they were not the party's counsel before the trial division or in previous appellate procedures and once they became counsel acted expeditiously to comply with the rules. Chuuk v. Secretary of Finance, 9 FSM R. 255, 257 (App. 1999).

When the pleadings, the documents submitted as evidence during the hearing, the responding attorney's signed affidavit which clearly and unequivocally states that he admits to a violation of Rule 1.16(d) and to a violation of Rule 1.7(a), and his statements during the hearing, constitute clear and convincing evidence establishing that violations of the Model Rules occurred, the court may find that the attorney violated Rules 1.7 and 1.16 of the Model Rules. In re Robert, 9 FSM R. 278a, 278g (Pon. 1999).

Suspensions may run concurrently, beginning 30 days from the date that the Clerk of Court enters the order. In re Robert, 9 FSM R. 278a, 278g (Pon. 1999).

In the event that a suspended attorney is reinstated under Rule 13 of the Disciplinary Rules, his future practice of law may be supervised for some time. In re Robert, 9 FSM R. 278a, 278g (Pon. 1999).

A suspended attorney may be assessed the costs, excluding salaries, but including airfare, per diem, and car rentals, that were incurred in connection with the prosecution of his disciplinary matter. In re Robert, 9 FSM R. 278a, 278h (Pon. 1999).

A suspended attorney is required to abide by the provisions of the Disciplinary Rules during his suspension, including Rule 12, which governs disbarred or suspended attorneys. In re Robert, 9 FSM R. 278a, 278h (Pon. 1999).

An attorney can be sanctioned in his individual capacity for willfully violating a valid court order, for causing the needless consumption of substantial amounts of the court's time and resources and for

otherwise engaging in conduct abusive of the judicial process. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 316, 327 (Pon. 2000).

When Rule 37 sanctions have proven futile in resolving a discovery dispute and because they do not provide a remedy for the waste of a court's time and resources, a court may invoke its inherent power to control the orderly and expeditious disposition of cases and proper compliance with its lawful mandates. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 316, 329 (Pon. 2000).

When a court has issued no sanction in response to a discovery motion and sanctions of attorney's fees and costs in response to a second motion and when a third motion reveals that the attorney's behavior was then at the root of the problem to be corrected, an attorney's knowing and deliberate violation of a valid court order may result in personal monetary sanctions against him because while the court is cautious of exercising its inherent powers to issue personal monetary sanctions against an attorney, it cannot and will not tolerate continued discovery abuse. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 316, 331-32 (Pon. 2000).

An attorney may appeal a sanction, but only if proceeding under his or her own name and as real party in interest. In re Sanction of Woodruff, 9 FSM R. 374, 375 (App. 2000).

An attorney is entitled to appropriate notice and an opportunity to be heard before any sanction is imposed on him, whether that sanction is imposed on him under the civil procedure rules, the criminal contempt statute, or some other court power. In re Sanction of Woodruff, 10 FSM R. 79, 84 (App. 2001).

In addition to its statutory contempt power, the FSM Supreme Court does retain inherent powers to sanction attorneys. In re Sanction of Woodruff, 10 FSM R. 79, 85 (App. 2001).

Sanctions imposed personally on an attorney must be based on that attorney's personal actions or omissions, not on the court's frustration, no matter how justified, with previous counsel's actions or omissions, or with a recalcitrant client's actions or omissions that are beyond an attorney's control or influence. In re Sanction of Woodruff, 10 FSM R. 79, 87 (App. 2001).

No proper personal sanction against an attorney should include any consideration of the amount of time and work the court spent on earlier motions when the attorney was not responsible for or personally involved with the case at the time the court's work was done. In re Sanction of Woodruff, 10 FSM R. 79, 87 (App. 2001).

The clear and convincing evidence standard of an inherent powers sanction is also consistent with the standard of proof needed to discipline an attorney. It would be inequitable if a court could avoid the heightened standard of a disciplinary proceeding by instead resorting to its inherent powers to sanction an attorney. In re Sanction of Woodruff, 10 FSM R. 79, 88 (App. 2001).

The Professional Conduct Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies, and are not designed to be a basis for civil liability. The Rules' purpose can be subverted when they are invoked by opposing parties as procedural weapons. Nix v. Etscheit, 10 FSM R. 391, 395 (Pon. 2001).

The fact that a Professional Conduct Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek the Rule's enforcement. Nix v. Etscheit, 10 FSM R. 391, 395 (Pon. 2001).

Kosrae Civil Procedure Rule 11 provides that for a wilful violation of that rule an attorney or trial counselor may be subjected to appropriate disciplinary action. In re Bickett, 11 FSM R. 124, 125 (Kos. S. Ct. Tr. 2002).

Kosrae practitioners may be disciplined by the Kosrae Chief Justice after notice and hearing. In re Bickett, 11 FSM R. 124, 125 (Kos. S. Ct. Tr. 2002).

The Model Rules of Professional Conduct are applicable to attorneys and trial counselors practicing before the Kosrae State Court. In re Bickett, 11 FSM R. 124, 126 (Kos. S. Ct. Tr. 2002).

A complaint that alleges violations of Model Rules 3.1, 5.1, and 8.4, taken together, are sufficient to allege a Civil Rule 11 violation. In re Bickett, 11 FSM R. 124, 126 (Kos. S. Ct. Tr. 2002).

A finding of subjective bad faith on the part of the attorney filing the pleading is required in order to impose sanctions under Kosrae's Civil Rule 11. In re Bickett, 11 FSM R. 124, 127 (Kos. S. Ct. Tr. 2002).

A complaint for declaratory judgment was not filed in subjective bad faith and thus did not violate Kosrae Civil Rule 11 when, although the claim did not survive a motion to dismiss, it was colorable, and the fact that the court later found that the dispute in question was not justiciable as a matter of law did not change that. Not every colorable claim will succeed, and the benefit of hindsight may not serve to bootstrap a Rule 11 violation. In re Bickett, 11 FSM R. 124, 128 (Kos. S. Ct. Tr. 2002).

When the court cannot conclude that the complaint for declaratory judgment constituted a claim not simply lacking in merit, but bordering on frivolity and when the court is not persuaded that there is clear evidence that the declaratory judgment claim was entirely without color and made for reasons of harassment or delay or for other improper purposes, the case was a colorable claim, supported by some authority. Thus Kosrae Civil Rule 11 was not violated when the complaint for declaratory judgment was filed. In re Bickett, 11 FSM R. 124, 129 (Kos. S. Ct. Tr. 2002).

No authority leads to the conclusion that various procedural defects in the pleadings in themselves constitute sanctionable conduct, and the court finds such contentions to be without merit. In re Bickett, 11 FSM R. 124, 129 (Kos. S. Ct. Tr. 2002).

The Model Rules of Professional Conduct are applicable to practitioners before the FSM Supreme Court. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 230 (Pon. 2002).

A lawyer must not knowingly make a false statement of material fact or law to a tribunal. Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 230 (Pon. 2002).

Model Rule 1.2 prohibits a lawyer from perpetrating a fraud upon the court. If a party's attorney pursues a spurious lack of relevancy claim on the party's behalf with the specific intent to prevent the disclosure of evidence damaging to the party, then Rule 1.2 is implicated. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 230 (Pon. 2002).

While the court cannot find, beyond a reasonable doubt, that an attorney intended either to obstruct the administration of justice or to disobey the court's order since he thought the order did not apply to him because he believed he was no longer counsel and he thought (at that time) that he had informed the court of that, it can conclude that the attorney's conduct falls below that expected of someone admitted to the FSM bar. Atesom v. Kukkun, 11 FSM R. 400, 402 (Chk. 2003).

A proper sanction is to admonish an attorney in the strongest terms for his failure, as counsel of record, to appear at a scheduled hearing. Further such inattentiveness and lack of diligence may require the attorney's referral to the attorney disciplinary process. Atesom v. Kukkun, 11 FSM R. 400, 402 (Chk. 2003).

The practice of attorneys or trial counselors "ghost drafting" legal documents should, wherever possible, be strongly discouraged. In re Suda, 11 FSM R. 564, 566 n.1 (Chk. S. Ct. Tr. 2003).

The Model Rules of Professional Conduct apply to all attorneys and trial counselors. Ittu v. Palsis, 11 FSM R. 597, 598 (Kos. S. Ct. Tr. 2003).

The Model Rules of Professional Conduct are adopted pursuant to Kosrae State Code, Section 6.101(f), and applied to all counsel admitted to practice law in Kosrae through GCO 2001-5. Wakuk v. Melander, 12 FSM R. 73, 74 (Kos. S. Ct. Tr. 2003).

A legal services' agency's request to withdraw based solely upon the agency's policy, even though in the past the agency has routinely violated its own policy, will be denied. The Model Rules of Professional Conduct, which regulate the conduct of all legal counsel admitted to practice law in the State of Kosrae, as adopted by General Court Order pursuant to sate law, take precedence over the agency's policy. Wakuk v. Melander, 12 FSM R. 73, 75 (Kos. S. Ct. Tr. 2003).

If the court learns that an attorney is providing legal advice and/or drafting documents for a *pro se* litigant but concealing that fact from the court, the court should consider ordering the attorney to file a formal notice of appearance or be subjected to sanctions. Panuelo v. Amayo, 12 FSM R. 365, 373-74 (App. 2004).

When the plaintiff's letter specified that the defendant was given until March 31, 2004 to complete its remaining obligation to fill, spread and compact fill on the plaintiff's land, or face legal action and when despite the letter's deadline, the plaintiff did not wait to take legal action, but on February 25, 2004, only seven days after the letter's date, the plaintiff, through his counsel, filed a small claim, the plaintiff's failure to wait until the end of March 2004 to take legal action, contrary to his February 18 letter, raises the issue of the plaintiff's and his counsel's good faith. Counsel, in compliance with the Model Rules of Professional Conduct, is expected to abide by his own offers made on his client's behalf. Esau v. Malem Mun. Gov't, 12 FSM R. 433, 436 (Kos. S. Ct. Tr. 2004).

Good faith conduct is expected in matters filed in the Kosrae State Court. Esau v. Malem Mun. Gov't, 12 FSM R. 433, 436 (Kos. S. Ct. Tr. 2004).

Any person admitted to practice law in the State of Kosrae may, after notice and hearing, be disciplined for violation of the Model Rules and an order may be entered pursuant to the Kosrae State Court's authority to discipline or disbar admitted trial counselors for cause. In re Mongkeya, 12 FSM R. 536, 538 (Kos. S. Ct. Tr. 2004).

When a respondent legal counsel fails to timely respond to an order and notice of disciplinary proceeding and the factual allegations made therein and also fails to request, within the prescribed time, an extension of time to respond either verbally or in writing, the factual allegations made in the order and notice shall be deemed admitted by the respondent for the purpose of the disciplinary proceeding. In re Mongkeya, 12 FSM R. 536, 538, 539 (Kos. S. Ct. Tr. 2004).

The disciplinary system for attorneys and trial counselors is structured not only to protect the public and maintain integrity of the judicial system, but also to inspire confidence in the public that the legal profession is being regulated. Consequently, it is imperative that that disciplinary proceedings be considered and initiated, as appropriate, where there has been allegations of misconduct by legal counsel. In re Mongkeya, 12 FSM R. 536, 539 (Kos. S. Ct. Tr. 2004).

It is implicit in the legal counsel's role as an officer of the court that he owes a duty of candor and honesty to the court. Thus a legal counsel's first duty is to the court and to the proper administration of justice. A legal counsel's duty of candor and honesty to the court applies even when the counsel is acting as a party and not as legal counsel. In re Mongkeya, 12 FSM R. 536, 539 (Kos. S. Ct. Tr. 2004).

No breach of professional ethics or of the law, is more harmful to the administration of justice or more

hurtful to the public appraisal of the legal profession than the knowledgeable use by a legal counsel of false testimony and evidence in the judicial process. For this violation of ethics, disbarment is the presumptive penalty. It is appropriate to disbar legal counsel who have submitted documents known to be false with the intent to mislead the court. In re Mongkeya, 12 FSM R. 536, 539 (Kos. S. Ct. Tr. 2004).

Model Rule 3.3 requires legal counsel to take remedial measures when he discovers that false evidence was offered. The false evidence must be disclosed to the court and remedial action must be taken immediately. In re Mongkeya, 12 FSM R. 536, 539 (Kos. S. Ct. Tr. 2004).

Fair competition in the adversary system is secured by prohibition against alteration, destruction and concealment of evidence. Rule 3.4 ensures that litigation is conducted fairly. It prohibits a lawyer from altering a document that has potential evidentiary value. Suspension from the practice of law is appropriate discipline for misrepresentation by counsel. In re Mongkeya, 12 FSM R. 536, 540 (Kos. S. Ct. Tr. 2004).

A legal counsel's falsification of documents is prohibited under Model Rule 8.4(c). In re Mongkeya, 12 FSM R. 536, 540 (Kos. S. Ct. Tr. 2004).

Model Rule 8.4(d) prohibits legal counsel from engaging in conduct that is prejudicial to the administration of justice. The Rule applies to both personal and professional conduct of legal counsel, encompasses conduct prohibited by other ethics rules, as well as conduct not specifically addressed by other rules. It includes conduct that has an adverse effect upon the administration of justice. In re Mongkeya, 12 FSM R. 536, 540 (Kos. S. Ct. Tr. 2004).

In Kosrae, many persons are not sophisticated in knowledge of the judicial system. Consequently they place complete trust and faith in their legal counsel to properly present their claim and appear before the court. Improper conduct by one legal counsel reflects not only upon himself, but also upon the entire legal profession as a whole. The falsification of evidence and submission of false evidence prejudices the fairness of our legal system and leads to increased mistrust and skepticism by the public in the legal profession and the legal process. In re Mongkeya, 12 FSM R. 536, 540 (Kos. S. Ct. Tr. 2004).

A trial counselor admitted to practice in the State of Kosrae is subject to the Model Rules of Professional Conduct, and violates those rules when he alters and presents those altered checks as evidence in a case in which he is a party. He will be suspended from the practice of law and must notify in writing all clients he represents in any pending matters and any opposing counsel in any pending matters that he has been disqualified by court order to act as legal counsel and the Chief Clerk shall unseal his file and remove his name from the listing of persons admitted to practice law in the State of Kosrae. In re Mongkeya, 12 FSM R. 536, 540-41 (Kos. S. Ct. Tr. 2004).

The FSM Supreme Court's Disciplinary Rules apply to every attorney and trial counselor who practice before it, including those appearing pro hac vice. Mailo v. Chuuk, 12 FSM R. 597, 601 (Chk. 2004).

Any person may initiate a disciplinary complaint by advising the court of the nature of the charge and indicating the factual basis for the charges. This is done by referring the complaint to the Chief Justice in Pohnpei where the Chief Clerk of the Supreme Court will assign the complaint a disciplinary proceeding docket number and open a file. Mailo v. Chuuk, 12 FSM R. 597, 601 (Chk. 2004).

A civil action is not the proper forum in which to pursue or resolve a disciplinary complaint. A proper forum may be reached through the Chief Justice and the Chief Clerk in Pohnpei. A complaining party should, if it is so advised, file its disciplinary complaint with the Chief Justice and the Chief Clerk in Pohnpei. Mailo v. Chuuk, 12 FSM R. 597, 601 (Chk. 2004).

An attorney's actions in preparing a notice of appeal for filing by the appellant as a pro se litigant, is called "ghostwriting." An attorney's behind-the-scenes document preparation for persons who wish to

appear pro se is not viewed favorably by courts. This surreptitious representation results in the litigant representing to the court that he is acting without the assistance of counsel, when this is not true. Importantly, ghostwriting permits an attorney to evade the responsibilities imposed by Civil Rule 11. Melander v. Heirs of Tilfas, 13 FSM R. 25, 27 (Kos. S. Ct. Tr. 2004).

Attorney involvement in drafting pro se court documents constitutes unprofessional conduct and is inconsistent with procedural, ethical and substantive rules of court. Melander v. Heirs of Tilfas, 13 FSM R. 25, 27 (Kos. S. Ct. Tr. 2004).

The Kosrae State Court disapproves of ghostwriting of court documents for pro se litigants by legal counsel admitted to practice law in the State of Kosrae. Counsel may, of course, always refer a pro se litigant to the court for the litigant to review a sample notice of appeal from a decision entered by Kosrae Land Court. Melander v. Heirs of Tilfas, 13 FSM R. 25, 27 (Kos. S. Ct. Tr. 2004).

A counsel's actions in preparing the answer on behalf of a defendant as a pro se litigant, is called "ghostwriting." An attorney's behind-the-scenes document preparation for persons who appear pro se is not viewed favorably by courts. This surreptitious representation results in the litigant representing to the court that he is acting without the assistance of counsel, when this is not true. Importantly, ghostwriting permits an attorney to evade the responsibilities imposed by Rule 11, which requires attorneys to sign documents that they have prepared for filing. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 81 (Kos. S. Ct. Tr. 2004).

The Kosrae State Court considers ghostwriting to constitute unprofessional conduct and disapproves ghostwriting of court documents for pro se litigants by legal counsel admitted to practice law in the State of Kosrae. The practice of ghostwriting prejudices the pro se litigant, who may believe that the counsel will continue to assist him throughout the litigation. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 81-82 (Kos. S. Ct. Tr. 2004).

Counsel are put on notice that ghostwriting will be considered a violation of ethical and procedural rules of the Kosrae State Court. Counsel may assist pro se litigants in drafting and filing an answer to a summons and complaint, to avoid the entry of default. In cases where counsel assist pro se litigants with drafting and filing an answer, the answer shall reflect the counsel's limited assistance in preparing the answer, and shall sign the answer in that capacity, along with the signature of the pro se litigant. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 82 (Kos. S. Ct. Tr. 2004).

Any person may initiate an attorney disciplinary complaint by advising the court of the nature of the charge and indicating the factual basis for the charges. This is done by referring the complaint to the Chief Justice in Palikir, Pohnpei where the Chief Clerk of the Supreme Court will assign the complaint a disciplinary proceeding docket number and open a file. Asugar v. Edward, 13 FSM R. 221, 222 (App. 2005).

A closed appeal case is not the proper forum in which to pursue or resolve a disciplinary complaint. A proper forum may be reached through application to the Chief Justice and the Chief Clerk in Pohnpei. Only in that forum may a movant seek an order requiring the attorney to show cause why he should not be immediately restrained from engaging in the practice of law. No action on a disciplinary proceeding will be taken within a closed appeal. Asugar v. Edward, 13 FSM R. 221, 222 (App. 2005).

The court's disciplinary procedures remain the means of redress for anyone who believes an FSM attorney has acted unethically. Sipos v. Crabtree, 13 FSM R. 355, 367 (Pon. 2005).

Under Rule 11, the court's discretion includes the power to impose sanctions on the client alone, solely on counsel, or on both. This is desirable because there are circumstances in which one of these actions is more appropriate than the other two. For example, when the offending conduct relates to work that lies within the counsel's supposed competence, especially when it is beyond the client's understanding, it is the

former who should be sanctioned, not the latter. Amayo v. MJ Co., 14 FSM R. 355, 362 (Pon. 2006).

When an attorney has been convicted of a felony, Disciplinary Rule 10 places the burden on the respondent to prove that he or she should not be suspended pending the outcome of the disciplinary proceeding. An interim suspension may be terminated or modified upon showing of extraordinary circumstances. A weaker standard would subvert the purpose of the Rule 10 suspension, which is to protect the public and the integrity of profession from an attorney who has been convicted of serious crime. In re Fritz, 14 R. 563, 564-65 & n.1 (Pon. 2007).

The court is bound by Article XI, Section 11, but when the respondent attorney has not pointed to any custom or tradition that either excuses his actions or provides the extraordinary circumstances necessary to prevent the court from suspending him and when he has been convicted of four felony violations of the Financial Management Act and an element of each of those crimes is that a government official act knowingly and willingly, there is conclusive evidence before the court (Disciplinary Rule 10(b) states that a final conviction is conclusive evidence of the crime) that the respondent attorney acted dishonestly and fraudulently since the legislature has decided that the actions taken by respondent attorney are bad, immoral, and unethical since they are crimes punishable by up to twenty years imprisonment. In re Fritz, 14 R. 563, 565 (Pon. 2007).

Even if the court were to accept as true the respondent attorney's assertion that his conviction has not adversely affected the public's views on his integrity, honesty, and untrustworthiness, that conclusion would not end the matter since the court has a duty to protect and advance the public's trust in the judicial system and therefore in officers of the court and if that trust is in such a state that the public's perception is not adversely affected when convicted felons are permitted to act as officers of the court, then it may be the court's duty to help improve the public's perception. In re Fritz, 14 R. 563, 565 (Pon. 2007).

That there are no other local private attorneys who are available to provide legal services to the public in Chuuk does not alone constitute extraordinary circumstances that would allow the court to refrain from suspending the respondent attorney. In re Fritz, 14 R. 563, 565-66 (Pon. 2007).

When a respondent attorney is suspended from the practice of law, he is advised to take all actions required of him by the Disciplinary Rules and in particular must perform the actions required by Disciplinary Rule 12. In re Fritz, 14 R. 563, 566 (Pon. 2007).

A term of suspension under Disciplinary Rule 10 runs until the court enters a final order of discipline in or dismisses the disciplinary action. In re Fritz, 14 R. 563, 566 (Pon. 2007).

The Model Rules of Professional Conduct provide rules of reason, which should be interpreted with reference to the purposes of legal representation and of the law itself. The rules are thus partly obligatory and disciplinary and partly constitutive and descriptive. The MRPC does not provide binding rules of law, but the numerous FSM cases addressing the issue of disqualification of government lawyers are binding the court according to the rule of *stare decisis*. Chuuk v. Robert, 15 FSM R. 419, 422 n.1 (Chk. S. Ct. Tr. 2007).

A single justice's reprimand of a legal services corporation law firm must be reversed where it was based on a factual error that the attorney appearing for the appellants was appearing as a member of the law firm when he was appearing only on his own behalf and his close relatives. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 106-07 (App. 2008).

When, although the notice did not cite any of the Rules of Professional Conduct that the reprimand found that the attorney violated, it was adequate notice because it did state what act or omission of counsel may lead to discipline and cited the relevant appellate rule. The attorney ought to have been aware that he was facing some sort of sanction for not timely filing a brief and that the sanction would be imposed under Rule 46(c). Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 108 (App. 2008).

An attorney can be disciplined for ignoring or tardily responding to repeated court orders to file documents and briefs, and failure to prosecute an appeal with due diligence is sanctionable under Appellate Rule 46(c). It is not required that the appellate court find intentional conduct in order for an attorney to be disciplined under Rule 46(c). Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 108-09 (App. 2008).

An attorney's inability to comply with the court's rules and orders governing the filing of briefs and appendixes within the time deadlines does not excuse the attorney's failure to comply with such rules and orders. The attorney's admitted inability to produce an appellate brief in a timely manner would not prevent him from being disciplined under Rule 46(c). Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 109 (App. 2008).

An attorney is the real party in interest for any sanction imposed on him personally. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 107 (App. 2008).

Imposition of Rule 46(c) disciplinary sanctions is subject to due-process scrutiny. Adequate notice and an opportunity to be heard are the essence of due process. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 107 (App. 2008).

It is the FSM Supreme Court appellate division that, under Rule 46(c), imposes "any appropriate disciplinary action" against one certified to practice before the court. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 109 (App. 2008).

A single justice may entertain and grant or deny any request for relief which under the appellate rules may properly be sought by motion. But "appropriate disciplinary action" is not "relief" that can be properly sought by motion and is thus not within a single justice's power. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 109 (App. 2008).

Only an appellate panel has the power to impose attorney disciplinary sanctions through the application of Appellate Rule 46(c) (for transgressions committed in the appellate division). A single appellate justice cannot impose Rule 46(c) disciplinary sanctions. The proper procedure is for the appellate division to give notice of possible sanction after disposing of the appeal, or, in a criminal appeal, after the offending attorney has been discharged. The same panel would then rule on, and impose, if necessary, the appropriate sanction. If the appeal is disposed of by a single justice dismissal order, that single justice may give notice of a possible Rule 46(c) sanction, but only an appellate panel may decide whether to impose it. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 110 (App. 2008).

Besides Appellate Rule 46(c), disciplinary sanctions may also be imposed on an attorney through a complaint referred to the Chief Justice and docketed by the Chief Clerk, which then proceeds through the usual disciplinary process in the Disciplinary Rules. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 110 & n.8 (App. 2008).

A single justice reprimand must be reversed since a single justice lacks the power to impose Appellate Rule 46(c) discipline. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 110 (App. 2008).

An attorney is the real party in interest for sanctions imposed on him personally. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 122 (App. 2008).

Imposition of Appellate Rule 46(c) disciplinary sanctions is subject to due-process scrutiny. Adequate notice and an opportunity to be heard is therefore required. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 123 (App. 2008).

Counsel can certainly be disciplined for ignoring or tardily responding to repeated court orders to file

appellate documents and briefs, and failure to prosecute an appeal with due diligence is sanctionable under Appellate Rule 46(c). It is not required that the court find intentional conduct in order for an attorney to be disciplined under Rule 46(c). Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 124 (App. 2008).

The inability of a law firm or of an attorney to comply with the court's rules and orders governing the filing of briefs and appendixes within the time deadlines does not excuse the attorney's or the firm's failure to comply with such rules and orders. Thus, an attorney's admitted inability to produce an appellate brief in a timely manner would not prevent him, or his law firm, if it had had notice, from being disciplined under Appellate Rule 46(c). Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 124 (App. 2008).

It is the appellate division, not a single justice, that imposes disciplinary sanctions under Rule 46(c), which may include suspension or disbarment. While a single justice may entertain and grant or deny any request for relief which under the appellate rules may properly be sought by motion, "appropriate disciplinary action" is not "relief" that can be properly sought by motion and is thus not within a single justice's power. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 125 (App. 2008).

Only an appellate panel has the power to impose attorney disciplinary sanctions through the application of Appellate Rule 46(c). A single justice cannot impose Rule 46(c) disciplinary sanctions. The proper procedure is for the appellate division to give notice of possible sanction after disposing of the appeal, or in a criminal appeal, after the offending attorney has been discharged. The same panel would then rule on, and impose, if necessary, the appropriate sanction. If the appeal is disposed of by a single justice dismissal order, that justice may give notice of possible Rule 46(c) discipline, but only a full appellate panel may decide whether to impose it. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 126 (App. 2008).

Besides Appellate Rule 46(c), disciplinary sanctions may also be imposed on an attorney through a complaint referred to the Chief Justice and docketed by the Chief Clerk, which then proceeds through the usual process in the Disciplinary Rules. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 126 & n.9 (App. 2008).

A single justice reprimand must be reversed since a single justice lacks the power to impose Rule 46(c) discipline. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 126 (App. 2008).

If a party used an expletive in its filing, the court would entertain the imposition of sanctions, but, if the reference to an expletive is a characterization on the other party's part, that characterization itself may be sanctionable if it departs from zealous advocacy that at the same time remains polite, professional discourse. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 483 n.4 (Pon. 2009).

When the Kosrae State Court is very concerned about a number of possible ethical violations committed by an attorney in handling a case in the FSM Supreme Court appellate division, the Kosrae State Court will not address these ethical rules but has a duty to inform the FSM Supreme Court of the possible violations. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 647 (Kos. S. Ct. Tr. 2009).

A court's firm and definite statement that an attorney acted unethically (as opposed to a statement that he may have acted unethically) appears to be a reprimand. A reprimand, which can be either public or private, is sanction that a court may impose on an attorney. In re Sanction of George, 17 FSM R. 613, 616-17 (App. 2011).

If a lawyer has knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, the lawyer must inform the Chief Clerk for referral to the Chief Justice. Mori v. Hasiguchi, 19 FSM R. 16, 21 n.3 (Chk. 2013).

Counsel is disingenuous and lacks candor toward the appellate tribunal when the trial court correctly cited and relied on a controlling appellate division decision but she chose to ignore this authority and

deliberately failed to address it in either the brief or during oral argument even though that decision was known to counsel because the trial court cited it and relied on it when it denied the motion for a default judgment. Damarlane v. Damarlane, 19 FSM R. 97, 104 & n.1 (App. 2013).

A sanction against an attorney who is not a party to the underlying case is immediately appealable if the sanctioned attorney proceeds under his or her own name and as the real party in interest. In re Sanction of George, 19 FSM R. 131, 133 (App. 2013).

A writ of prohibition cannot be used as a substitute for a pending appeal of attorney sanctions that is currently being briefed, especially when the sanctions have been stayed while that appeal proceeds. That is an adequate legal remedy for the attorney sanctions. Tilfas v. Aliksa, 19 FSM R. 181, 184 (App. 2013).

Considering the seriousness of an attorney disciplinary proceeding, the service on the attorney should be the same as that required for the service of process. In re Sanction of Sigrah, 19 FSM R. 305, 309 (App. 2014).

The imposition of disciplinary sanctions is subject to due-process scrutiny. Adequate notice and an opportunity to be heard are the essence of due process. In re Sanction of Sigrah, 19 FSM R. 305, 309 (App. 2014).

In an attorney discipline proceeding the facts must be proven by clear and convincing evidence and not by the lower preponderance-of-the-evidence standard. In re Sanction of Sigrah, 19 FSM R. 305, 312 n.3 (App. 2014).

The practice of "ghostwriting" refers to the conduct of an attorney who prepares pleadings and provides substantial legal assistance to a pro se litigant, but does not enter appearance or otherwise identify himself or herself in the litigation. Ghostwriting or drafting filings for a pro se litigant without that fact being disclosed violates an attorney's ethical obligation of candor toward the tribunal. The rationale for court disapproval of ghostwriting is that courts liberally construe pro se pleadings precisely because they were drafted without professional help and if a pro se litigant falsely appears to be without professional assistance, that litigant gains an unfair advantage. In re Sanction of Sigrah, 19 FSM R. 305, 312 (App. 2014).

The imposition of disciplinary sanctions is subject to due-process scrutiny. An attorney is entitled to appropriate notice and an opportunity to be heard before any sanction is imposed on her whether that sanction is imposed on her under the civil procedure rules, the criminal contempt statute, or some other court power. In re Sanction of Sigrah, 19 FSM R. 305, 313 (App. 2014).

An attorney relying on others, even non-attorneys, to do the research or drafting is not sanctionable since a lawyer is not prohibited from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. By signing a filing, the signer retains or assumes responsibility for the work. In re Sanction of Sigrah, 19 FSM R. 305, 313-14 (App. 2014).

A nonparty attorney who is held in contempt or otherwise sanctioned by the court in the course of litigation may appeal from the order imposing sanctions, either immediately or as part of the final judgment in the underlying case. Mori v. Hasiguchi, 19 FSM R. 414, 417-18 (App. 2014).

When the then disciplinary counsel failed to serve a formal complaint on the respondent attorney at the end of 2007 or in 2008 even though the respondent attorney's address and workplace were known, this weighs in the favor of dismissal of a disciplinary action still pending in 2014 when a complaint was finally served. In re Attorney Disciplinary Proceeding, 19 FSM R. 576, 578 (Pon. 2014).

To dismiss a disciplinary complaint for the long delay in prosecuting it, needs a showing that the

prejudice created by the delay is actual or specific prejudice; that is, the respondent attorney must show that because of the passage of time certain specific favorable witnesses are now unavailable or that certain evidence is no longer available. Prejudice is not shown when the defendant does not state that any one particular witness now has an impaired memory or is no longer available, or what that witness would testify to if his or her memory were not impaired. In re Attorney Disciplinary Proceeding, 19 FSM R. 576, 578 (Pon. 2014).

Even when the monetary discovery sanctions imposed on the respondent attorney's client and the client's eventual compliance with all discovery orders in that case serve as the full and final resolution of the discovery dispute from which a disciplinary referral case arose, this does not mean that an attorney cannot be disciplined if there is a pattern of discovery abuse by that attorney in a number of cases even if the clients in all of those cases were sanctioned and complied. In re Attorney Disciplinary Proceeding, 19 FSM R. 576, 578-79 (Pon. 2014).

A disciplinary complaint may be dismissed when the disciplinary complaint arose from a single case in which the respondent attorney abused the discovery process; since the attorney's duty is to zealously represent clients; since comprehensive discovery sanctions were imposed on the respondent attorney's client; and since there was long delay in contacting and serving the respondent attorney once the respondent attorney had been located in the United States. In re Attorney Disciplinary Proceeding, 19 FSM R. 576, 579 (Pon. 2014).

The FSM Supreme Court cannot impose reciprocal discipline on an attorney for the failure to pay annual bar dues in CNMI because this would not constitute misconduct in this jurisdiction since there are no annual bar dues in the FSM Supreme Court. The court cannot impose reciprocal discipline when the conduct disciplined in the other jurisdiction does not constitute misconduct in this jurisdiction. In re Buckingham, 19 FSM R. 582, 583 n.1 (Pon. 2014).

An attorney convicted in the Northern Marianas of use of public supplies, services, time, and personnel for campaign activities, use of the name of a government department or agency to campaign for a candidate running for public office, three counts of misconduct in public office, theft of services, and conspiracy to commit theft of services and suspended from the practice of law in the Northern Marianas and Colorado, will be suspended from the practice of law in the Federated States of Micronesia and may apply for reinstatement once his right to practice law has been reinstated in both the State of Colorado and the Commonwealth of the Northern Mariana Islands or once five years has elapsed, whichever is sooner. In re Buckingham, 19 FSM R. 582, 583-84 (Pon. 2014).

When an attorney's actions raise serious questions as to the attorney's ability to comply with the Chuuk Rules of Professional Conduct, the court is left with no other option than to refer the matter for a disciplinary action hearing on the matter on the attorney's conduct. Governor v. Chuuk House of Senate, 21 FSM R. 428, 438 (Chk. S. Ct. Tr. 2018).

An attorney who has left the FSM with no future prospect of practice here, may be considered retired. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 449 (Pon. 2018).

When the FSM Supreme Court has not previously construed an aspect of an FSM Model Rule of Professional Conduct, it may look to U.S. sources construing similar or identical rules for guidance in interpreting the rule. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 449 n.1 (Pon. 2018).

A law firm's name, even if it is a trade name, cannot be materially misleading. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 449 (Pon. 2018).

There is no ethical impropriety in the continued use of a firm name including a retired attorney's name so long as the retiring attorney's name was removed from the list of active attorneys on the firm's letterhead and in other communications, and, if the retired attorney has instead become "of counsel" – retired, but still

regularly available to the firm – that fact should be noted. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 449 (Pon. 2018).

A law firm's name may contain the name of a former co-owner attorney who has retired, but the law firm's communications must so indicate. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 449 (Pon. 2018).

Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 449 (Pon. 2018).

When an FSM law firm's communications do not indicate that an attorney is retired or no longer practices with the firm, the court is forced to conclude that the law firm must, in some form, remain that attorney's agent for service of FSM process, as he is represented as part of the organization. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 449 (Pon. 2018).

Since an attorney is the real party in interest for any sanction imposed on her personally, the court cannot include the sanction, for which the attorney's clients are not liable, in the judgment against the clients and will enter the sanction solely against the liable attorney. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 479 (Pon. 2020).

– Disqualification of Counsel

Under Rule 1.11 of the Truk State Code of Professional Responsibility, a lawyer may not represent a private client in connection with a matter in which the lawyer participated "personally and substantially" as a public officer or employee, unless the appropriate government agency consents after consultation. Nakayama v. Truk, 3 FSM R. 565, 570 (Truk S. Ct. Tr. 1987).

For purposes of Rule 1.11, an attorney who, as a government attorney, signs his name to a lease agreement, approving the lease "as to form," is personally and substantially involved. Nakayama v. Truk, 3 FSM R. 565, 571 (Truk S. Ct. Tr. 1987).

Where a member of the office of the public defender has a conflict of interest, based upon his familial relationship with the victim of the crime of which the defendant is accused, but where he is under no traditional obligation to cause harm to the defendant and has done nothing to make other members of the office feel that they are under any such obligation, and where there is no showing that the conflict would have any actual tendency to diminish the zeal of any other members of the office, the conflict of the first counsel is not imputed to the other members of the office. FSM v. Edgar, 4 FSM R. 249, 251 (Pon. 1990).

Although the trial court may grant a public defender's motion to withdraw as counsel pursuant to FSM Model Rule of Professional Conduct 1.7(b) because the public defender adopted the son of the victim's nephew, the trial court may deny the same public defender's motion to relieve the entire staff of the Public Defender's Office pursuant to Model Rule 1.10(a) because the public defender's conflict was personal and not imputed to the Public Defender staff. Office of Public Defender v. Trial Division, 4 FSM R. 252, 254 (App. 1990).

The imputed disqualification provision of Rule 1.10(a) of the FSM Model Rules of Professional Conduct is not a *per se* rule and where the other attorneys associated with the attorney who seeks disqualification are able to give full loyalty to the client it is proper for the court to find that the disqualifying condition is not imputed to others. Office of the Public Defender v. FSM Supreme Court, 4 FSM R. 307, 309 (App. 1990).

Under Rule 3.7 of the Model Rules of Professional Conduct, when a party's counsel believes the opposing party's attorney should be required to testify as to information which may be prejudicial to the opposing party, it is appropriate for counsel for the first party to move to disqualify opposing counsel from further representation of the opposing party, but this is not the only procedure which may be followed and

counsel who fails to file such a motion may not be sanctioned for his failure in absence of harm to the opposing party or a showing of bad faith. Bank of Guam v. Sets, 5 FSM R. 29, 30 (Pon. 1991).

Prior representation of another party to contractual negotiations is not in and off itself sufficient to create a conflict of interest which would invalidate the negotiated contract unless it can be shown such representation was directly adverse to the other client or materially limited the interests of the present client. Billimon v. Chuuk, 5 FSM R. 130, 135 (Chk. S. Ct. Tr. 1991).

The FSM Attorney General's Office is not disqualified in an international extradition case where the accused is the plaintiff in a civil suit against one of its members because the Attorney General's office has no discretion in the matter. It did not initiate nor can it influence the course of the prosecution abroad, and the discretion of whether to extradite a citizen does not repose in the Attorney General's Office. In re Extradition of Jano, 6 FSM R. 12, 13-14 (App. 1993).

The rules, MRPC 1.10, for vicarious disqualification of attorneys in the same law firm do not apply to government lawyers who are governed by MRPC 1.11(c). MRPC 1.11 does not impute the disqualification of one member of a government office to the other members. In re Extradition of Jano, 6 FSM R. 26, 27 (App. 1993).

An attorney is not disqualified from representing multiple parties against a defendant on the grounds that he did not join as defendants former employees of some of the plaintiffs who would be liable if the defendant is liable. Pohnpei v. Kailis, 6 FSM R. 460, 462-63 (Pon. 1994).

Although an attorney is competent to testify as a witness on behalf of a client, testimony by an attorney representing a party, except in limited circumstances, creates a conflict of interest. An attorney under such a conflict has an ethical duty to withdraw from representation, except in limited cases, including where disqualification would cause an undue hardship to the client. Determining whether a conflict exists is primarily the responsibility of the lawyer involved. Triple J Enterprises v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 385, 386 (Pon. 1996).

A trial counselor who is a member of a plaintiff class that is seeking money damages from the state has a conflict and cannot represent the state and will be allowed to withdraw. Oster v. Bisalen, 7 FSM R. 414, 415 (Chk. S. Ct. Tr. 1996).

Model Rule 1.9 is inapplicable to cases where an attorney is representing two clients at the same time because it applies to a conflict arising from the representation of a former client. Kaminanga v. FSM College of Micronesia, 8 FSM R. 438, 440 (Chk. 1998).

Model Rule 1.7(b) allows representation of multiple clients if the lawyer reasonably believes his representation will not be adversely affected, and the client consents after consultation. Kaminanga v. FSM College of Micronesia, 8 FSM R. 438, 440 (Chk. 1998).

Model Rule 1.11(c) contemplates successive private and government employment so long as the lawyer does not participate in a matter in which he participated personally and substantially while in private practice so when steps have been taken to insure that a government lawyer would do no work related to his private employment the Model Rules have been complied with. Kaminanga v. FSM College of Micronesia, 8 FSM R. 438, 440-41 (Chk. 1998).

Allegations of foul language and intimidation in a settlement conference are alone insufficient grounds for removing an attorney from a case at a late stage of the litigation. Bank of Hawaii v. Helgenberger, 9 FSM R. 260, 262 (Pon. 1999).

Resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation. In litigation, a court may raise the question when there is reason to infer that the lawyer has

neglected the responsibility. In a criminal case, the court's inquiry is generally required when a lawyer represents multiple defendants. Nix v. Etscheit, 10 FSM R. 391, 396 (Pon. 2001).

The Model Rules are not designed to be used by one litigant to make prosecuting or defending the action more difficult for his adversary. Therefore, a court considers a motion to disqualify counsel with caution, considering the possibility that the motion is potentially being used as a technique of harassment. Nix v. Etscheit, 10 FSM R. 391, 396 (Pon. 2001).

The test for a lawyer to determine whether a conflict of interest exists in representing more than one client is found in MRPC Rule 1.7. Nix v. Etscheit, 10 FSM R. 391, 396 (Pon. 2001).

Because it is not always against a corporation's interests to dissolve, it is not necessarily true that because a party wants to dissolve a corporation her interests are adverse to the corporation's. Nix v. Etscheit, 10 FSM R. 391, 397 (Pon. 2001).

Even if a direct conflict exists between defendants' counsel's representation of an individual and a two corporations, Rule 1.7 allows a lawyer to represent all of the defendants if the lawyer reasonably believes the representation will not adversely affect the relationship with the other client and each client consents after consultation. Nix v. Etscheit, 10 FSM R. 391, 397 (Pon. 2001).

Disqualification of counsel is not warranted when counsel believes that his representation of all defendants will not adversely affect his representation of any one of the defendants; when the reasons for this belief were provided to all defendants in writing, and all defendants consented after consultation; when the plaintiffs have not introduced any evidence that would lead the court to doubt counsel's statement; and when the court also finds that his belief that counsel's representation of all defendants will not adversely affect the representation of any one of the defendants is legitimately reasonable. Nix v. Etscheit, 10 FSM R. 391, 397 (Pon. 2001).

If a corporation's consent to counsel's dual representation of it and of its official is required by Rule 1.7, the consent must be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders. There is no requirement that all directors of the corporation must consent. An acting general manager's consent on the corporation's behalf is sufficient. Nix v. Etscheit, 10 FSM R. 391, 397 (Pon. 2001).

When a legal organization (such as a corporation) is a client, the general rule is that a lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents. Nix v. Etscheit, 10 FSM R. 391, 397 (Pon. 2001).

An attorney may under certain circumstances represent a corporation at the same time as a director or officer of that corporation if the organization's consent is given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders. Nix v. Etscheit, 10 FSM R. 391, 397-98 (Pon. 2001).

Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's lawyer like any other suit, but if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty to the organization and the lawyer's relationship with the board of directors. In those circumstances, Rule 1.7 governs who should represent the directors and the organization. Nix v. Etscheit, 10 FSM R. 391, 398 (Pon. 2001).

When there are claims of serious misconduct leveled at the plaintiffs, who are corporate directors, and there are no misconduct claims against a defendant director, there is no conflict with the same attorneys representing the defendant director and the co-defendant corporations. Nix v. Etscheit, 10 FSM R. 391, 398 (Pon. 2001).

A lawyer cannot act as an advocate at a trial in which the lawyer is likely to be a witness except when: 1) the testimony relates to an uncontested issue; 2) the testimony relates to the nature and value of legal services rendered in the case; or 3) disqualification of the lawyer would work substantial hardship on the client. Nix v. Etscheit, 10 FSM R. 391, 398 (Pon. 2001).

Plaintiffs' desire to call opposing counsel as a witness does not represent a basis for opposing counsel's disqualification when, although counsel may have knowledge of evidence of material matters in the case, the plaintiffs have not established that opposing counsel is the only witness who could testify about such evidence, when the plaintiffs can introduce this evidence by other methods, and when it would constitute a substantial hardship to a defendant to disqualify her attorney of over fifteen years and require her to find another. Nix v. Etscheit, 10 FSM R. 391, 399 (Pon. 2001).

A lawyer who has formerly represented a client in a matter is not disqualified from representing an opposing party in another matter when that matter is not substantially related to the to the previous matter and when the lawyer has received no confidential information from the former client relating to the current matter. Nix v. Etscheit, 10 FSM R. 391, 399 (Pon. 2001).

There is no conflict of interest for Legislative Counsel to represent a Senator challenging a law passed by the Legislature when is not a challenge of the Legislature as an institution because it is the Executive that is charged with the duty of defending challenged laws, not the Legislature, and there is no conflict of interest for Legislative Counsel to represent a Senator asserting legislative privilege when the Senator and the Legislature have similar interests with respect to interpretation of the privilege provided by the Kosrae Constitution. Kosrae v. Sigrah, 11 FSM R. 26, 28 (Kos. S. Ct. Tr. 2002).

Rule 1.7 permits the attorney to continue representation even where the representation is adverse to two or more clients, so long as each client consents after consultation. Kosrae v. Sigrah, 11 FSM R. 26, 28 (Kos. S. Ct. Tr. 2002).

The relevant inquiry when conflicting representation is alleged is whether the subject matter of the two representations is substantially related. If the attorney could have obtained confidential information in representing one party that he could thereafter use in representing the second client, the interests are conflicting and the attorney must be disqualified. In re Nomun Weito Interim Election, 11 FSM R. 458, 460 (Chk. S. Ct. App. 2003).

A party alleging representation of conflicting interests must show that there is a substantial relationship between the subject matters of the representations. This is especially so where the party seeking the disqualification is only a "vicarious" client. In re Nomun Weito Interim Election, 11 FSM R. 458, 460 (Chk. S. Ct. App. 2003).

The principal duty of an attorney appointed as general counsel for a partnership is to the partnership itself, not to the general or limited partners as individuals. In re Nomun Weito Interim Election, 11 FSM R. 458, 460 (Chk. S. Ct. App. 2003).

If each member of the Chuuk Legislature could consider the Legislative Counsel his "personal lawyer," then the Legislative Counsel would have perpetual conflicts of interest which would prevent him from providing legal counsel and advice to his true client, the Legislature as a collective body. The fact that the Legislature retains counsel to serve its collective interests does not entitle every member to assert the disqualification of that counsel in an unrelated matter, where only the member's personal interests are involved. In re Nomun Weito Interim Election, 11 FSM R. 458, 460 (Chk. S. Ct. App. 2003).

A motion to disqualify appellant's counsel in an election contest will be denied when appellee's claim of "vicarious" representation fails due to a complete lack of evidence demonstrating that the counsel provided to the Sixth Chuuk Legislature is substantially related to the issues presented in this election contest, namely the election of a member to the House of Representatives for the Seventh Chuuk

Legislature. In re Nomun Weito Interim Election, 11 FSM R. 458, 460-61 (Chk. S. Ct. App. 2003).

When a summary judgment motion is clearly on behalf of two defendants and makes them adverse to a third defendant, it is clear that the third defendant needs to attempt to retain other counsel. Fredrick v. Smith, 12 FSM R. 150, 153 n.1 (Pon. 2003).

The question of disqualification of counsel, including prosecutors, is largely within the trial court's discretion. FSM v. Wainit, 12 FSM R. 172, 177 (Chk. 2003).

A government lawyer, like any lawyer, cannot represent a client if the representation of that client may be materially limited by the lawyer's own interests. The lawyer's own interests may include emotional interests. An emotional interest, in order to be disqualifying, must create a bias or hostility in the government lawyer sufficiently strong to interfere seriously with the lawyer's exercise of public responsibility. FSM v. Wainit, 12 FSM R. 172, 178 (Chk. 2003).

The court declines to establish a bright line rule that any prosecutor who has some involvement with another case involving the defendant must always be disqualified. To conclude that prosecutors who are allegedly later victims of offenses committed by someone they are prosecuting must always be disqualified from continuing to prosecute would set an unhealthy precedent. It would provide an unwanted incentive for a criminal defendant who sought to disqualify a certain prosecutor to obtain his disqualification through extralegal means. FSM v. Wainit, 12 FSM R. 172, 178-79 (Chk. 2003).

When prosecutors have a special emotional stake or interest in a case, their disqualification from any future involvement with the prosecution is warranted. The current prosecutor will therefore make certain that there is no contact with the former prosecutors about the case and that they have no access to the case file. The current prosecutor may be ordered to file and serve a notice detailing all steps taken to implement this precaution. FSM v. Wainit, 12 FSM R. 172, 179 (Chk. 2003).

Disqualification of all lawyers in a government office when one of them is disqualified is a question within the trial court's discretion. Unlike private law firms where the disqualification of one member of the firm requires the disqualification of the firm, the disqualification of all government attorneys in an office is not required when one of them is disqualified. FSM v. Wainit, 12 FSM R. 172, 179 (Chk. 2003).

There is no basis to disqualify the current prosecutor and the entire FSM Department of Justice when no member of the department is either an alleged victim or a witness in the case; when the current prosecutor was not a member of the department when the events occurred that ultimately lead to the disqualification of the other assistant attorneys general; when neither of the disqualified attorneys have any supervisory power over the current prosecutor and he is not subordinate to them; and when, if he has not already done so, he can and will be ordered to have no contact with them concerning the case and to keep all case files segregated from all other department files so that no other department employee can obtain access to them. FSM v. Wainit, 12 FSM R. 172, 180 (Chk. 2003).

A lawyer must not represent a client if the representation will be "materially limited" by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interest, unless the lawyer reasonably believes the representation will not be adversely affected, and the client consents after consultation. George v. Nena, 12 FSM R. 310, 318 (App. 2004).

Rule 1.9 is aimed at protecting the former client rather than the current client. It is the former client who is the one who may consent or refuse to consent if the positions are adverse. George v. Nena, 12 FSM R. 310, 318-19 (App. 2004).

When there has been no showing that the appellant's attorney had an actual conflict, and, even if there was some conflict, the appellant must demonstrate that the trial judge committed plain error by failing to disqualify counsel from representing him. George v. Nena, 12 FSM R. 310, 319 (App. 2004).

An appellant is not entitled to reversal and the trial judge did not commit any plain error when the judge did not inquire into the appellant's attorney's potential conflict of interest and when the appellant made no showing that the alleged conflict adversely affected counsel's performance since the attorney competently presented witnesses, entered evidence and made relevant objections. A conflict of interest is a conflict that affects counsel's performance – as opposed to a mere theoretical division of loyalties and without such a showing, the appellant cannot demonstrate that his attorney's connection to previous stages of the proceedings, related to an adjacent land parcel, affected the trial de novo's fairness or integrity. George v. Nena, 12 FSM R. 310, 319 (App. 2004).

A government lawyer, like any other lawyer, cannot represent the government if the representation of that client may be materially limited by the lawyer's own interests. A lawyer's own interests may include emotional interests. An emotional interest, in order to be disqualifying, must create a bias or hostility in the government lawyer sufficiently strong to interfere seriously with the lawyer's exercise of public responsibility. FSM v. Wainit, 12 FSM R. 360, 363 (Chk. 2004).

Since a government lawyer's public responsibility involves the exercise of discretion, a prosecutor may be disqualified when the prosecutor suffers from a conflict of interest which might prejudice him against the accused and thereby affect, or appear to affect, his ability to impartially perform the discretionary function of his office. FSM v. Wainit, 12 FSM R. 360, 363 (Chk. 2004).

Since a prosecutor has wide discretion in deciding whether to initiate a particular criminal prosecution, a prosecutor's emotional interest sufficiently strong to impair the impartial exercise of this discretion will disqualify the prosecutor from any participation in the matter, including filing the information. FSM v. Wainit, 12 FSM R. 360, 364 (Chk. 2004).

When prosecutors filed a case just two months after the frightening events allegedly caused by the defendant, and when it seems reasonable for them to have had emotional interests that would disqualify them from impartially exercising their discretion whether to prosecute the same defendant in any new cases, their failure to disqualify themselves raises an appearance of impropriety. Accordingly, a motion to disqualify those prosecutors will be granted. FSM v. Wainit, 12 FSM R. 360, 364 (Chk. 2004).

When an information was filed by two prosecutors who should have been disqualified from filing it or being involved in their official capacity in the bringing of charges against the defendant, then upon a timely objection, the information will be dismissed. FSM v. Wainit, 12 FSM R. 360, 364 (Chk. 2004).

A lawyer cannot act as advocate in a trial in which the lawyer is likely to be a necessary witness. FSM v. Wainit, 12 FSM R. 376, 380 (Chk. 2004).

A government lawyer cannot represent the government when representation of that client may be materially limited by the lawyer's own interests. A lawyer's own interests can include emotional interests. FSM v. Wainit, 12 FSM R. 376, 380 (Chk. 2004).

An emotional interest, in order to be disqualifying, must create a bias or hostility in the government lawyer sufficiently strong to interfere seriously with the lawyer's exercise of public responsibility. Being the victims in a crime in which force was allegedly used is just such a strong emotional interest to disqualify a government attorney from prosecuting that same crime. A prosecutor who has a conflict of interest cannot administer justice. FSM v. Wainit, 12 FSM R. 376, 380 (Chk. 2004).

A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9. Rules 1.7 and 1.9 deal with conflicts of interest. FSM v. Wainit, 12 FSM R. 376, 380 (Chk. 2004).

Since a lawyer's conflicts are usually imputed to all in the lawyer's office or firm, one member's

disqualification generally requires the entire firm's disqualification, but unlike private law firms, the disqualification of all government attorneys in an office is not required when one is disqualified. This different treatment for private and government law offices is considered to stem, in part, from government agency attorneys not being bound by a common profit motive as are lawyers in private practice, and in part because a prosecutor's duty is to seek justice, not merely to convict. FSM v. Wainit, 12 FSM R. 376, 380 & n.2 (Chk. 2004).

One who was the Attorney General when the Governor signed a release of property in a party's favor, and who in fact signed the release as Attorney General, is clearly barred by the Rules of Professional Conduct from representing a plaintiff in a suit over that property against the state and that party. Hartman v. Chuuk, 12 FSM R. 388, 394 & n.9 (Chk. S. Ct. Tr. 2004).

Since statutes and office policy prohibit a newly-hired assistant attorney general from continuing to represent clients in a suit with the state as a party-defendant, that attorney will be declared disqualified representing either the clients or the state and directed to immediately assist his former clients in obtaining substitute counsel. Hartman v. Chuuk, 12 FSM R. 388, 396 (Chk. S. Ct. Tr. 2004).

A former employee of the now defunct Kosrae State Land Commission who was not employed by the Land Commission in 1984 when the Determination of Ownership was issued for the subject parcel does not have any conflict of interest in this matter. Skilling v. Kosrae State Land Comm'n, 13 FSM R. 16, 18 (Kos. S. Ct. Tr. 2004).

When plaintiffs' counsel admitted that he had signed the verified complaint on behalf of another and that the other had been represented through proxy at a meeting during which the lawsuit was discussed and when, although that other later appeared and testified that he did not consider himself to be counsel's client for the civil action, that he did not give permission for the complaint to be filed on his behalf, and that he does not want to be involved in this lawsuit but in a deposition did state under oath that he asked the proxy to act on his behalf, the court may conclude that at the time the complaint was filed, plaintiffs's counsel had reasonable basis to accept the proxy's representation of the other and his approval to file the complaint on his behalf and counsel will not be disqualified on that basis. Allen v. Kosrae, 13 FSM R. 55, 57-58 (Kos. S. Ct. Tr. 2004).

Model Rule 7.3 prohibits the solicitation of professional employment from a prospective client with whom the lawyer had no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. But when a person attended and participated in a meeting regarding the subject of this matter and in doing so, expressed his interest in this matter, and when counsel's later contact with him after the meeting did not involve harassment or duress, counsel's contact with him does not provide an adequate basis for disqualification of counsel. Allen v. Kosrae, 13 FSM R. 55, 58 (Kos. S. Ct. Tr. 2004).

Plaintiff's counsel's employee's disruptive actions at a meeting at which a defendant presided do not provide an adequate basis for disqualification of plaintiffs' counsel because she was also a parent of children who attend Kosrae High School and therefore had adequate reason to attend that meeting as an interested parent and because the defendants did not present sufficient evidence to prove that her actions at that meeting were encouraged or supported by plaintiffs' counsel. Allen v. Kosrae, 13 FSM R. 55, 58 (Kos. S. Ct. Tr. 2004).

Defense counsel's delayed recognition that the victim was his second cousin, and his delayed notice to the court suggests that counsel's relationship to the victim does not result in a conflict of interest which would require counsel's disqualification. The court also retains its authority and discretion to deny withdrawal of counsel in the middle of a criminal proceeding. Kosrae v. Palik, 13 FSM R. 187, 189 (Kos. S. Ct. Tr. 2005).

When the prosecution of defense counsel for contempt was not in good faith and had the effect of

appearing unfair and interfering with the defendants' choice of counsel and when that prosecution was not demonstrated to be harmless, the prosecutor will be disqualified from prosecuting those defendants. FSM v. Kansou, 13 FSM R. 344, 350 (Chk. 2005).

Neither the prosecutor's search of another private law office on Pohnpei nor defense counsel's possible fee-forfeiture warrant the prosecutor's disqualification. Nor does defense counsel's civil suit against the prosecutor have any bearing on whether the prosecutor should be disqualified. FSM v. Kansou, 13 FSM R. 344, 350 (Chk. 2005).

The court will not establish a principle that the Department of Justice cannot prosecute a defendant accused of committing an offense against Department of Justice personnel. FSM v. Wainit, 13 FSM R. 433, 440 (Chk. 2005).

Under the Model Rules of Professional Responsibility (adopted by FSM GCO 1983-2), a government lawyer's disqualification is not imputed to the others in that government office. FSM v. Wainit, 13 FSM R. 433, 442 n.5 (Chk. 2005).

Individual rather than vicarious disqualification is the general rule but individual disqualification must be complete and any participation or anything less than complete abstention by a disqualified member of a prosecutor's office in a supervisory capacity would warrant the entire office's disqualification. FSM v. Wainit, 13 FSM R. 433, 442 (Chk. 2005).

The entire FSM Department of Justice will not be disqualified (and by implication the information dismissed) because one of its members will be a witness in the case. FSM v. Wainit, 13 FSM R. 433, 443 (Chk. 2005).

A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by FSM MRPC Rule 1.7 or Rule 1.9. Rules 1.7 and 1.9 deal with conflicts of interest. That members of the prosecutor's office are witnesses does not disqualify the entire office. FSM v. Wainit, 13 FSM R. 433, 443 (Chk. 2005).

Although a lawyer's conflicts are usually imputed to all in the lawyer's office or firm so that one member's disqualification requires the entire firm's disqualification, the disqualification of all government attorneys in an office, unlike private law firms, is not required when one is disqualified. This different treatment for private and government law offices stems, in part, from government attorneys not being bound by a common profit motive as are lawyers in private practice, and in part because a prosecutor's duty is to seek justice, not merely to convict. FSM v. Wainit, 13 FSM R. 433, 443 & n.6 (Chk. 2005).

A lawyer must not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client unless 1) the lawyer reasonably believes the representation will not be adversely affected; and 2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation must include explanation of the implications of the common representation and the advantages and risks involved. Nena v. Kosrae, 14 FSM R. 73, 79 (App. 2006).

In criminal cases the potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests is proper if the risk of adverse effect is minimal and FSM MRPC R. 1.6(b)'s requirements are met. Nena v. Kosrae, 14 FSM R. 73, 79 (App. 2006).

Rule 44 requires that the trial court inquire into possible conflicts when criminal defendants are charged or tried together and are represented by the same counsel or firm, and unless it appears that there is good cause to believe no conflict of interest is likely to arise, the court must take such measures as may

be appropriate to protect each defendant's right to counsel. Nena v. Kosrae, 14 FSM R. 73, 79-80 (App. 2006).

When the FSM Secretary of Justice approached a defendant to discuss, and did discuss, a possible plea agreement without the presence or prior consent of his attorney, but the incident was short and ended with the defendant saying he wanted to discuss it with his lawyer and when no prejudice was alleged or shown, the Secretary of Justice's actions did not form any part of the basis of the FSM Department of Justice's disqualification and the three defendants' severance, but the court had no choice but to refer the matter to the disciplinary process. FSM v. Kansou, 14 FSM R. 171, 174 (Chk. 2006).

The court cannot give any credence to a contention that a prosecutor's complete disqualification was not required because of the ground for the disqualification. A disqualification is a disqualification. FSM v. Kansou, 14 FSM R. 171, 174 (Chk. 2006).

The general rule is that the recusal or disqualification of an assistant attorney general does not require the recusal of the attorney general or his other assistants. Individual rather than vicarious disqualification is the general rule for prosecutors but individual disqualification must be complete. FSM v. Kansou, 14 FSM R. 171, 175 (Chk. 2006).

The result of a prosecutor's disqualification from prosecuting three co-defendants is that the government had a choice – it could either move to sever those three defendants and assign a different assistant attorney general to prosecute them and insulate the disqualified prosecutor from that prosecution, or it could have assigned a different assistant attorney general to prosecute all of the co-defendants. A detailed screening order is inappropriate when the government, at least theoretically, had a choice to make – a new prosecutor for the case, or seek severance into two cases. This is a choice that, at least initially, the prosecution, not the court, must make. FSM v. Kansou, 14 FSM R. 171, 175 (Chk. 2006).

Although the court was reluctant to disqualify the FSM Department of Justice from prosecuting three co-defendants and ordering their severance from the trial scheduled to start the same day, when no lesser sanction presented itself and the defendant has met his burden and established that a disqualified (former) prosecutor has assisted the current prosecutors in preparing the case against him and the government did not establish, or try to establish, that the disqualified former prosecutor was effectively screened from the prosecutors in the case, the entire FSM Department of Justice is therefore disqualified. FSM v. Kansou, 14 FSM R. 171, 176 (Chk. 2006).

The court must view with caution any motion to disqualify opposing counsel because such motions can be misused as a technique of harassment. McVey v. Etscheit, 14 FSM R. 207, 210 (Pon. 2006).

If opposing parties are only former clients, then counsel would be disqualified from representing the plaintiffs only if this is the same or a substantially related matter in which the plaintiffs' interests are materially adverse to the former client's interests unless the former client consents after consultation; or if counsel uses information relating to the representation to the former client's disadvantage except as FSM MRPC Rule 1.6 would permit with respect to a client or when the information has become generally known. McVey v. Etscheit, 14 FSM R. 207, 211 (Pon. 2006).

If any of the defendants is plaintiffs' counsel's current client, then he cannot represent the plaintiffs unless he reasonably believes the representation will not adversely affect the relationship with the other client; and each client consents after consultation. McVey v. Etscheit, 14 FSM R. 207, 211, 213 (Pon. 2006).

Counsel remains a client's attorney in a case when that case has not come to an end and the decision in it was apparently unsatisfactory to the client and since counsel never personally consulted with her after that decision about what further course of action she might want taken or even whether further possible action was desirable and neither took any steps to formally withdraw from that case. Counsel is therefore

disqualified from representing the plaintiffs against her because that would adversely affect his relationship with his earlier, and still current, client. McVey v. Etscheit, 14 FSM R. 207, 212 (Pon. 2006).

When a "supplement" to a motion to disqualify a law firm from representing one defendant, seeks to disqualify the law firm from representing any defendant in the case, it is properly considered a separate motion. McVey v. Etscheit, 14 FSM R. 207, 212 (Pon. 2006).

A motion to disqualify an attorney generally must be made at the earliest opportunity. When the motion was not made until shortly after a conflict arose that could support a disqualification motion and since the Model Rules contemplate that a disqualifying conflict may not arise until after representation has been undertaken, under the circumstances, the motion was timely. McVey v. Etscheit, 14 FSM R. 207, 213 (Pon. 2006).

Since loyalty is an essential element in the lawyer's relationship to a client, if an impermissible conflict of interest exists before representation is undertaken, the representation should be declined, and if such a conflict arises after representation has been undertaken, the lawyer should withdraw from the representation. McVey v. Etscheit, 14 FSM R. 207, 213-14 (Pon. 2006).

When a current client has not consented to a law firm's adverse representation of another client, this is an impermissible conflict in violation of FSM MRPC R. 1.7(a). When Rule 1.7(a) applies, it commands that a lawyer not represent the clients in question. This means that a lawyer must withdraw if the conflict is discovered after the concurrent representation is undertaken. McVey v. Etscheit, 14 FSM R. 207, 214 (Pon. 2006).

The lawyer must withdraw from even a long-standing, more remunerative client when that representation becomes adverse to another, newer client even if the law firm terminated its representation of the newer client in an attempt to avoid a conflict as soon as it knew that a conflict would arise because generally, an attorney cannot choose to withdraw from representing a client because he might then be able to represent another more desirable client. McVey v. Etscheit, 14 FSM R. 207, 214 & n.10 (Pon. 2006).

If two firms share a common lawyer they will be treated as a single firm for purposes of disqualification. Similarly, for purposes of imputed disqualification under Rule 1.10, the two firms will be considered as one entity. Accordingly, it is incumbent upon the two firms to develop a procedure for screening conflicts of interest which will recognize and respond to the unique circumstance created by sharing an attorney in their respective legal practices. McVey v. Etscheit, 14 FSM R. 207, 215 (Pon. 2006).

The court has not "qualified" an attorney to remain as a party's counsel in litigation when the court's order only noted that that counsel remained that party's counsel because no one had moved to disqualify him as her counsel. McVey v. Etscheit, 14 FSM R. 268, 271 (Pon. 2006).

Whether opposing counsel is disqualified from representing his wife, has no effect on whether moving counsel is disqualified from representing his clients. McVey v. Etscheit, 14 FSM R. 268, 271 (Pon. 2006).

When the court's alleged errors only raise further grounds to disqualify opposing counsel and that counsel already is disqualified, even if the appellate court were to find the arguments on those alleged errors persuasive, it could not possibly grant the relief sought – moving counsel's appearance as counsel for his clients. McVey v. Etscheit, 14 FSM R. 268, 271 (Pon. 2006).

When not only was there never an explicit consent by a client to an adverse representation, but the law firm also never explicitly requested such a consent and the only explicit communication regarding consent came after it became apparent that the representation was becoming very adverse to the client and that client explicitly refused to consent to the representation, the law firm cannot show prejudice from an "original consent" that they cannot show existed. McVey v. Etscheit, 14 FSM R. 268, 271 (Pon. 2006).

When a lawyer was prohibited from representing the clients by Rule 1.7, his disqualification was imputed to his partner because, while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), 1.9 or 2.2. McVey v. Etscheit, 14 FSM R. 268, 272 (Pon. 2006).

When attorneys now contend that the consent to the adverse representation was part of a quid pro quo – the adverse client would not object to the representation and in return the attorneys' other clients would not sue the adverse client – but cannot show any explicit request for the adverse client to consent to such a quid pro quo, they thus have not shown a substantial possibility of success on this ground entitling them to a stay. McVey v. Etscheit, 14 FSM R. 268, 272 (Pon. 2006).

A balance-the-equities analysis found in two U.S.cases is not required in attorney disqualification cases involving adverse representation because other cases to the contrary are more persuasive. McVey v. Etscheit, 14 FSM R. 268, 272 (Pon. 2006).

The court obeyed Rule 1.10(a)'s clear command and imputed a lawyer's disqualification to his partner, rather than trying the law firm's proposal to erect a Chinese wall between them. Because the law firm is a private firm, motivated by the profit incentive and, unlike government law offices, a "Chinese wall" is not an appropriate remedy for a private law office. The different treatment for private and government law offices is considered to stem, in part, from government agency attorneys not being bound by a common profit motive as are lawyers in private practice; thus, unlike private law firms, the disqualification of all government attorneys in an office is not required when one is disqualified. McVey v. Etscheit, 14 FSM R. 268, 272 (Pon. 2006).

When a law firm was disqualified from representing all of the defendants on other grounds, a claim that the conflict between the corporate defendant and the other defendants was waived does not have a substantial possibility of success entitling a petitioner for a writ of prohibition to a stay because the trial court never ruled on the issue. McVey v. Etscheit, 14 FSM R. 268, 273 (Pon. 2006).

The disqualification of all lawyers in a government office when one of them is disqualified is a question within the trial court's discretion. FSM v. Kansou, 14 FSM R. 273, 278 (Chk. 2006).

Disqualification of a party's counsel is not warranted because that counsel approved for legal sufficiency the notice of intent to adopt a regulation that included, unaltered from a previous regulation, the regulatory provision at issue in the action. Ehsa v. Pohnpei Port Auth., 14 FSM R. 505, 508-09 (Pon. 2006).

Since a trial court's decision to disqualify an attorney from participation in a given case is a decision falling within a trial court's inherent discretionary powers, and since a petition for a writ of mandamus fails when it seeks appellate review that is explicitly beyond the curative parameters of mandamus or prohibition, the petition will be denied. The trial court had no legal duty to admit an attorney in the case, since the challenged disqualification was wholly within the trial court's discretion. Etscheit v. Amaraich, 14 FSM R. 597, 601 (App. 2007).

An attempt to use a petition for writ of prohibition or mandamus to obtain a preemptory disqualification of an attorney not presently involved in the case is misplaced because, given the nature of the remedy of mandamus and prohibition and the caution exercised in affording it, the right sought to be enforced must be clear and certain. There must be an immediate right to have the act in question performed, and such right must be specific, well defined, and complete, so as not to admit of any reasonable controversy. As such, mandamus or prohibition relief cannot be used as a precaution against future events that may never occur. Etscheit v. Amaraich, 14 FSM R. 597, 601 n.1 (App. 2007).

When the Secretary of the FSM Department of Justice is an attorney in good standing with the court, there is no legal authority that would serve as a basis to disqualify the Secretary from participating in a court

case on the ground that she might have been referred to the disciplinary process in different case. FSM v. Zhang Xiaohui, 14 FSM R. 602, 613 (Pon. 2007).

Since the Disciplinary Rules provide for the confidentiality of all pending disciplinary matters, and since the defendant's various motions concerning possible disciplinary action against the Secretary of Justice have no bearing on the case's substantive outcome, the court, in its discretion, the various filings that refer in any way to a possible disciplinary matter, whether such a matter is pending or not, will be stricken from the record. FSM v. Zhang Xiaohui, 14 FSM R. 602, 613 (Pon. 2007).

The Model Rules of Professional Conduct provide rules of reason, which should be interpreted with reference to the purposes of legal representation and of the law itself. The rules are thus partly obligatory and disciplinary and partly constitutive and descriptive. The MRPC does not provide binding rules of law, but the numerous FSM cases addressing the issue of disqualification of government lawyers are binding the court according to the rule of *stare decisis*. Chuuk v. Robert, 15 FSM R. 419, 422 n.1 (Chk. S. Ct. Tr. 2007).

Except as law may otherwise expressly permit, a lawyer must not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after consultation. When a client is a government agency that agency is treated as a private client for the purposes of the rule if the lawyer thereafter represents another government agency. Chuuk v. Robert, 15 FSM R. 419, 422-23 & n.2 (Chk. S. Ct. Tr. 2007).

No lawyer in a firm with which a former government lawyer is associated may knowingly undertake or continue representation in a matter in which the former government lawyer participated personally and substantially as a public officer or employee unless 1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and 2) written notice is given as soon as practicable in order to give the government agency a reasonable opportunity to ascertain compliance with the rule. Chuuk v. Robert, 15 FSM R. 419, 423 & n.3 (Chk. S. Ct. Tr. 2007).

The policy behind the waiver and screening provisions are intended to provide a means for government lawyers to continue in public service by not unduly restricting changes in their employment. Thus the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government since the government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. The provisions for screening and waiver are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service. Thus, in the case of government lawyers, the notice and screening provisions provide a favored means to prevent the vicarious, or imputed, disqualification of an entire office when one of its lawyers has a conflict. Chuuk v. Robert, 15 FSM R. 419, 423 (Chk. S. Ct. Tr. 2007).

The disqualification of all lawyers in a government office when one of them is disqualified is a question within the trial court's discretion. Chuuk v. Robert, 15 FSM R. 419, 423 (Chk. S. Ct. Tr. 2007).

In deciding a motion to disqualify, the court must render its decision in a manner consistent with the FSM's social and geographical configuration. While the FSM is a nation of large geographical distances, it has a small land base, a small population, and limited resources and it also has a small government legal office and few other lawyers available. Thus the court, consistent with the FSM's social and geographical configuration, should not order the government to go outside its office for an attorney unless it is absolutely necessary. Chuuk v. Robert, 15 FSM R. 419, 423 (Chk. S. Ct. Tr. 2007).

The rules for vicarious disqualification of attorneys in the same law firm do not apply to government lawyers; disqualification of one government office member is not imputed to the other members. With respect to cases involving a disqualified supervising attorney, individual rather than vicarious disqualification is the general rule but individual disqualification must be complete and any participation or anything less

than complete abstention by a disqualified member of a prosecutor's office in a supervisory capacity would warrant disqualification of the entire office. Thus, unless the court is satisfied that a supervising attorney has not participated in and has completely abstained from a legal matter, the supervising attorney's entire office warrants disqualification. Chuuk v. Robert, 15 FSM R. 419, 424 (Chk. S. Ct. Tr. 2007).

Since cases where vicarious disqualification of government attorneys is warranted often are predicated on the supervising attorney's personal or emotional interest, bias, or involvement in the case and consequent issues regarding the supervising attorney's attempt to influence the case's outcome, when the disqualified Chief Public Defender did not have any actual communication with the FSM Public Defender's Office Chuuk branch regarding the substance of the case and the only contact he had with the Chuuk Branch Public Defender's Office was to assign the case according to the defendant's request; when there is no suggestion that he had a personal or emotional interest that would lead him to attempt to influence its outcome and the court is unable to discern that he had done anything other than completely abstain from any participation in the action; when the Chuuk branch is in a separate office hundreds of miles from the Chief Public Defender's Office in Pohnpei, which in effect creates a natural screen from any accidental disclosures between the FSM Public Defender's Office and its Chuuk branch office regarding the case's substance although they are part of the same "office" for MRPC and vicarious disqualification purposes, and since the policy behind Rule 1.11 is to ensure the continuing service of government attorneys when they change employment and to disqualify them only if it is absolutely necessary, disqualification of the entire FSM Public Defender's Office, including the Chuuk office, is not warranted since the court found no evidence the Chief Public Defender participated in handling the defense. Chuuk v. Robert, 15 FSM R. 419, 424 & n.5 (Chk. S. Ct. Tr. 2007).

A counsel's affidavit used to establish probable cause places counsel in the position of being called as a witness in the case and detracts from the evidence's reliability because it merely adds another layer of hearsay. In that instance, counsel would be in apparent violation of Model Rule of Professional Conduct 3.7 (1983), which, subject to limited exceptions, prohibits counsel from being an advocate at a trial in which counsel is likely to be called as a witness. Chuuk v. Chosa, 16 FSM R. 95, 99 (Chk. S. Ct. Tr. 2008).

Model Rule 1.7(b) allows representation of multiple clients if the lawyer reasonably believes his representation will not be adversely affected, and the client consents after consultation. When a joint notice of appeal has already been filed, the trial court will merely note the potential for conflict with respect to the substantive issues on appeal and leave for the appellate court any further resolution of a potential conflict of interest arising from counsel's joint representation. Chuuk v. William, 16 FSM R. 149, 152 (Chk. S. Ct. Tr. 2008).

If there is a present lawyer-client relationship with an adverse party, the perceived conflict would be analyzed under provisions of Model Rule of Professional Conduct 1.7, and if the law firm does not have a present lawyer-client with the adverse party but has represented the adverse party in the past, the adverse party is a former client and the perceived conflict would be analyzed under the provisions of Rule 1.9. The issue regarding whether a lawyer-client relationship existed is a question of fact. Weilbacher v. Taulung, 16 FSM R. 318, 321 (Kos. S. Ct. Tr. 2009).

An individual whose initial intake interview ended when the attorney advised the individual that the law firm was not going to assist him was neither a past nor present client of the law firm but was a prospective client seeking legal help that was turned down. Weilbacher v. Taulung, 16 FSM R. 318, 321 (Kos. S. Ct. Tr. 2009).

Prospective clients receive some protection. The issues of confidentiality and conflicts of interest are intertwined in determining whether a lawyer is disqualified from representing a client as a result of preliminary discussions with the other side. A duty of confidentiality exists and applies whenever a lawyer agrees to consider whether to take a prospective client's case. Weilbacher v. Taulung, 16 FSM R. 318, 321 (Kos. S. Ct. Tr. 2009).

Prospective clients should receive some, but not all, the protections given to a client because a lawyer's discussions with a prospective client are often limited in the time and depth of exploration, do not reflect full consideration of the prospective client's problems, and leave both prospective client and lawyer free (and sometimes required) to proceed no further. Weilbacher v. Taulung, 16 FSM R. 318, 321 (Kos. S. Ct. Tr. 2009).

Anything a lawyer learns during a consultation must be kept confidential and a determination of whether a lawyer-client relationship has been formed is undertaken. In determining whether this initial interview formed a client-lawyer relationship it is essential to know how much was disclosed in the initial meeting. Weilbacher v. Taulung, 16 FSM R. 318, 322 (Kos. S. Ct. Tr. 2009).

It is necessary for prospective clients to reveal information to attorneys during an initial consultation prior to the decision about formation of a client-lawyer relationship. The lawyer must learn such information to determine whether there is a conflict of interest with an existing client and whether the matter is one that the lawyer wants to undertake. The attorney has a duty not to use any information learned during this initial intake even if the attorney does not proceed with representation. Weilbacher v. Taulung, 16 FSM R. 318, 322 (Kos. S. Ct. Tr. 2009).

Initial intakes are vital in determining if a firm can represent a client or not and receiving this information is not, in itself, enough to trigger disqualification. Disqualification should not occur unless extensive or sensitive information about the potential representation was revealed. Only if the consultation involves information that could be significantly harmful to the person who consulted the lawyer will the lawyer be disqualified from representing someone else in the matter. Weilbacher v. Taulung, 16 FSM R. 318, 322 (Kos. S. Ct. Tr. 2009).

When the movant did not show that the information he told the law firm was of significant use or critical to the case and when the law firm did an effective screening job to prevent any conflict from occurring since no significantly harmful information was revealed, no conflict of interest exists and the law firm should not be disqualified, but anything the law firm did learn in the initial intake is confidential and it is under an obligation to keep it confidential. Weilbacher v. Taulung, 16 FSM R. 318, 322 (Kos. S. Ct. Tr. 2009).

Model Rule of Professional Conduct 1.9(a) prohibits an attorney who has represented a person from representing another person in a same or substantially related matter in which that person's interests are materially adverse to the former client's interests unless the former client consents after consultation. Doone v. Chuuk State Election Comm'n, 16 FSM R. 459, 461 (Chk. S. Ct. App. 2009).

An attorney is not disqualified from representing the real parties in interest in a 2009 state election contest brought by a former client who he had represented in the former client's attempt to be added to the ballot for the 2006 FSM congressional race since the issues are not the same or substantially related to the attorney's former representation. Doone v. Chuuk State Election Comm'n, 16 FSM R. 459, 461 (Chk. S. Ct. App. 2009).

Disqualification for an emotional interest because it causes a conflicting interference with the lawyer's exercise of public responsibility is limited to prosecutors since prosecutors are held to a higher standard. Marsolo v. Esa, 17 FSM R. 480, 484 n.1 (Chk. 2011).

Courts must view with caution any motion to disqualify opposing counsel because such motions can be misused as a harassment technique. Marsolo v. Esa, 17 FSM R. 480, 484 (Chk. 2011).

Resolving conflict-of-interest questions is primarily the responsibility of the lawyer undertaking the representation, but a court may, in civil litigation, raise the question when there is reason to infer that the lawyer has neglected the responsibility. Marsolo v. Esa, 17 FSM R. 480, 484 (Chk. 2011).

When an FSM court has not previously construed an FSM ethical rule, such as the issue of standing to

move to disqualify opposing counsel for violating a Model Rule which is identical or similar to a U.S. rule, it may consult U.S. sources for guidance. Marsolo v. Esa, 17 FSM R. 480, 484 n.2 (Chk. 2011).

Although generally only a client or a former client has standing to move to disqualify counsel in a civil case on the basis of a conflict of interest, even then a non-client may seek disqualification when the ethical breach so infects the litigation in which disqualification is sought that it impacts the moving party's interest in a just and lawful determination of her claims since she may have the constitutional standing needed to bring a motion to disqualify based on a third-party conflict of interest. Marsolo v. Esa, 17 FSM R. 480, 484-85 (Chk. 2011).

Opposing counsel may have standing to seek counsel's disqualification even though they are not representing an aggrieved client or former client because bar members have an ethical obligation and are authorized to report any ethical violations in a case. Marsolo v. Esa, 17 FSM R. 480, 485 (Chk. 2011).

No sound basis is apparent for disqualifying the Chuuk Attorney General's Office from representing the State of Chuuk when it has a statutory duty to represent the state and when the state asserts an absolute right to possession (at least temporarily) of certain funds that the national government has held and is disbursing. That the state also holds a particular view about which of the competing rivals is the duly elected mayor of Tolensom does not alter this since the case is not an election contest or an action in the nature of a petition for a writ of quo warranto challenging the right of a person to hold a particular office. The same principles apply to a suit by the Chuuk Governor in his official capacity since a claim against a government officer in his official capacity is, and should be treated as, a claim against the entity that employs the officer, thus a claim by a government officer in his official capacity is, and should also be treated as, a claim by the entity that employs the officer. Marsolo v. Esa, 17 FSM R. 480, 485 (Chk. 2011).

A lawyer cannot represent multiple clients with conflicting or potentially conflicting interests in the same matter unless the lawyer reasonably believes the representation will not be adversely affected and the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation must include explanation of the implications of the common representation and the advantages and risks involved. Marsolo v. Esa, 17 FSM R. 480, 486 (Chk. 2011).

Even though the Chuuk Attorney General's Office followed the proper procedure and had a consultation with all the plaintiffs and after the consultation, they all consented to the multiple representation, the court can still conclude that it must disqualify the Chuuk Attorney General's Office from representing two of the plaintiffs because, while the interests of all the plaintiffs are certainly aligned on what, in their view, constitutes the lawful Tolensom municipal government, it is by no means clear that their interests could be aligned on the pivotal issue of whether the lapsed CIP funds must pass through the Chuuk state general fund and the Chuuk appropriation process before arriving in the Tolensom municipal coffers and with the existence of a rival Tolensom municipal government, it is even less clear that the Chuuk Attorney General's Office is statutorily authorized to represent as plaintiffs one rival Tolensom mayor and government. Marsolo v. Esa, 17 FSM R. 480, 486 (Chk. 2011).

A party-plaintiff represented in his official capacity by the Chuuk Attorney General would need separate counsel to defend against a counterclaim when he is sued in his individual capacity since the Chuuk statute does not authorize the Chuuk Attorney General's Office to represent officials in their individual capacities or to litigate their personal interests and because the Chuuk Attorney General's brief asserts that his office only represents the party in his official capacity as Tolensom mayor. Marsolo v. Esa, 17 FSM R. 480, 486 n.3 (Chk. 2011).

When the statute authorizes the Chuuk Attorney General's representation of Chuuk subdivisions only when appropriate; when it is unclear whether two plaintiffs even qualify as a Chuuk subdivision or that the representation would be appropriate; and when to rule that they do would be to implicitly decide (in the plaintiffs' favor) one of the two major issues of the case before the adversary process has gotten underway, the fairness of the proceeding could reasonably be questioned if the Chuuk Attorney General's Office

continued to represent a rival plaintiff Tolensom mayor and municipal government. Since the Chuuk Attorney General's Office will remain counsel for the state plaintiffs, it will not be precluded from raising any issues, introducing any evidence, or advancing any arguments that it would otherwise have been able to do. The matter's timely disposition would also not be delayed. Marsolo v. Esa, 17 FSM R. 480, 486-87 (Chk. 2011).

Without a former client's consent, a lawyer cannot represent another person in a matter adverse to the former client when the lawyer represented the former client in the same matter or a substantially related matter. FSM Dev. Bank v. Ehsa, 18 FSM R. 388, 390 (Pon. 2012).

Unless the former client has consented after consultation, counsel would be disqualified from appearing in the same or a substantially related matter in which the client's interests are materially adverse to a former client's interests when an opposing party is a former client, but a lawyer who has formerly represented a client is not disqualified from representing an opposing party in another matter when that matter is not substantially related to the previous matter and when the lawyer has not received any confidential information from the former client relating to the current matter. FSM Dev. Bank v. Ehsa, 18 FSM R. 388, 390-91 (Pon. 2012).

Two concerns underlie the substantial relationship test – the duty to preserve confidences and the duty of loyalty to a former client. The existence of the duty of loyalty means that the substantial relationship test is not solely concerned with the adverse use of confidential information. FSM Dev. Bank v. Ehsa, 18 FSM R. 388, 391 (Pon. 2012).

Since the substantial relationship test is concerned with both a lawyer's duty of confidentiality and his duty of loyalty, a lawyer who has given advice in a substantially related matter must be disqualified whether or not he has gained confidences. FSM Dev. Bank v. Ehsa, 18 FSM R. 388, 391 (Pon. 2012).

Once the matters are shown to be substantially related, the former client is entitled to a conclusive presumption that confidences and secrets were imparted to the former attorney. FSM Dev. Bank v. Ehsa, 18 FSM R. 388, 391 n.4 (Pon. 2012).

In order to disqualify a former attorney, the former client need show no more than that the matters embraced within the pending suit wherein his former attorney appears on behalf of his adversary are substantially related to the matters or the cause wherein the attorney previously represented him, the former client. FSM Dev. Bank v. Ehsa, 18 FSM R. 388, 391 (Pon. 2012).

When considering disqualification under the substantial relationship test, more general legal representation can be relevant to a later litigation, but only if the later litigation fairly puts in issue the entire background of the movant. FSM Dev. Bank v. Ehsa, 18 FSM R. 388, 391 (Pon. 2012).

A court must be cautious when considering a motion to disqualify counsel because of the possibility that the motion may be abused as a technique of harassment. FSM Dev. Bank v. Ehsa, 18 FSM R. 388, 391 (Pon. 2012).

Since an attorney's disqualification is in the public interest, the court cannot act contrary to that interest by permitting a party's delay in moving for disqualification to justify the continuance of a breach of legal ethics. The court has a duty, in accordance with the Model Rules of Professional Conduct, to regulate the conduct of the attorneys who practice before it, and this duty cannot be defeated by a private party's laches, although in an extreme case it may be given some weight. FSM Dev. Bank v. Ehsa, 18 FSM R. 388, 392 (Pon. 2012).

Since, generally, a lawyer must not act as advocate at a trial in which the lawyer is likely to be a necessary witness, it follows that a party should not be able to potentially disqualify another litigant's advocate by making the other litigant's lawyer into a witness by noticing that advocate's deposition. Luen

Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41d (Pon. 2015).

The test for a lawyer to determine whether a conflict of interest exists in representing more than one client is found in FSM MRPC Rule 1.7. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 169, 172 (Pon. 2015).

A lawyer cannot represent a client if the representation of that client will be directly adverse to another client, unless the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and each client consents after consultation. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 169, 172 (Pon. 2015).

When, during a hearing, counsel argued against the State in defense of his attempt to depose the State's Assistant Attorney General and when counsel argues that a conflict of interest exists between the Governor and the Attorney General's Office because the Attorney General's Office is admitting liability on the State's behalf, and imputed that liability upon counsel's client, a tenant of the State, this issue of imputing liability from the State to counsel's client clearly shows a conflict of interest which would bar counsel from transferring his representation between the two defendants. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 169, 172-73 (Pon. 2015).

When counsel's representation of the State would be materially adverse to his current client's interest and no evidence was provided that would show otherwise and when there is no proof of consent by each of the defendants after consultation, counsel's motion to withdraw from his client will be denied and his notice of entry of appearance on the State's behalf will be stricken from the record as will his other filings on the State's behalf. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 169, 173 (Pon. 2015).

As a general proposition, loyalty to a client prohibits undertaking representation directly adverse to that client without that client's consent. Thus, a lawyer ordinarily may not act as advocate against a person the lawyer represents in some other matter, even if it is wholly unrelated. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 169, 173 n.3 (Pon. 2015).

Under Model Rule of Professional Conduct 1.11, a lawyer must not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after consultation. Jacob v. Johnny, 20 FSM R. 612, 615 (Pon. 2016).

To be disqualified, a former government lawyer's participation must have been personal and substantial. "Indirectly involved" is not equivalent to "participated personally and substantially." Jacob v. Johnny, 20 FSM R. 612, 615 (Pon. 2016).

A former government lawyer may represent a private party when the appropriate government agency has consented during a hearing. Jacob v. Johnny, 20 FSM R. 612, 615 (Pon. 2016).

A court must be wary when considering a motion to disqualify opposing counsel because of the possibility that the motion may be abused as a harassment technique, and because court resources are sorely taxed by the increasing use of disqualification motions as harassment and dilatory tactics. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 451 (Pon. 2018).

Although a corporation may appear only through licensed counsel, there is no requirement that such licensed attorney must not be an employee of the corporation that he or she represents. The licensed attorney may be an employee of the corporation. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 451 (Pon. 2018).

When a law firm is a party to litigation, one of its member attorneys may represent it. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 451-52 (Pon. 2018).

When an attorney is representing himself or herself, or the attorney's law firm is representing the attorney, the Rule 3.7(a) prohibition of being an advocate in a proceeding in which he or she is also a witness, does not apply. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 452 (Pon. 2018).

As a party litigant, a lawyer can represent himself if he so chooses. Implicit in the right of self-representation is the right of representation by retained counsel of one's choosing. A party litigant does not lose this right merely because he is a lawyer. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 452 (Pon. 2018).

When it is a party litigant, a law firm may chose to be represented by one of its member attorneys, just as any other business entity or corporation could be represented by one of its employees if that employee is a licensed attorney. The law firm does not lose that right merely because the business it engages in is the practice of law or because its members are subject to the FSM Model Rules of Professional Conduct. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 453 (Pon. 2018).

That the plaintiffs had to hire and pay an attorney to pursue the suit while the law firm defendant will represent itself, and will not incur legal expenses as a result, does not constitute prejudice, or at least the type of prejudice that would require the court to disqualify opposing counsel. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 453 (Pon. 2018).

A major factor in determining whether there is potential for adverse effect requiring counsel's disqualification is the likelihood that actual conflict will arise and the likely prejudice to the client from the conflict if it does arise. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 453 (Pon. 2018).

The moving party bears the burden of proving facts that establish the necessary factual prerequisite for disqualification. Counsel will not be disqualified simply because the opposing party alleges the possibility of differing interests. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 453 (Pon. 2018).

A lawyer who formerly represented a client in a matter must not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the former client's interests unless the former client consents after consultation. When lawyers are associated in a firm, none of them can knowingly represent a client if any one of them practicing alone would be prohibited from doing so. A legal services organization is considered one such firm. Peter v. Gouland, 22 FSM R. 404, 407 (Chk. S. Ct. Tr. 2019).

A motion for disqualification of counsel solely because the client is a wealthy senator whose income exceeds the income level of a person that the legal services organization may represent is improper. A more proper remedy is to complain to the legal services organization's executive director instead. Peter v. Gouland, 22 FSM R. 404, 407 (Chk. S. Ct. Tr. 2019).

A litigant qualifies as a former client when he spoke with two different counselors from the firm, handed over papers, discussed his case's merits, and shared confidential information which may have resulted in an internal discussion before he was referred to another law firm. Thus, when the litigant approached the firm about representing him as a plaintiff in the very same trespass action in which the firm now defends two persons with positions adverse to him and he objects to the firm's representation of one of the defendants, the court need not ponder the reasons behind the litigant's objection because the firm's continued representation of that defendant violates Rule 1.9, which prohibits a lawyer from knowingly representing a client against a former client in the same matter if the clients' interests are adverse and if the former client has not consented after consultation. Peter v. Gouland, 22 FSM R. 404, 407-08 (Chk. S. Ct. Tr. 2019).

Conflicts of interest regarding former clients are imputed to all the lawyers within a law firm. Thus, even if the former client spoke with two of the firm's counsel without their sharing any information with the lawyer currently representing an adverse party in the matter, those conflicts are still imputed onto the

current counsel since he is part of the same legal services organization. Even if current counsel lacked prior knowledge of the former client's interactions with the firm, once he knows of this circumstance, it is unethical for him to continue to represent the adverse party in the case. Peter v. Gouland, 22 FSM R. 404, 408 (Chk. S. Ct. Tr. 2019).

When a former client has consented on the record to the law firm's continued representation of one adverse co-defendant, the current representation of that party does not appear to violate the Model Code, although, under at least one possible future circumstance, that continued representation might do so, even after its withdrawal from representing the other adverse co-defendant. The court will therefore give counsel time to determine whether, after withdrawing from representing that client's co-defendant, he can continue to represent that client in compliance with the code of conduct after which counsel will either file a motion to withdraw from that representation as well or do nothing and remain the counsel of record. Peter v. Gouland, 22 FSM R. 404, 408 (Chk. S. Ct. Tr. 2019).

– Legal Malpractice

Although certain consequences flow from the failure to file a brief, appellees' attorneys are not otherwise under an obligation to the court to file briefs, but may be under a professional ethical obligation to their clients to do so, or may be subject to malpractice liability if an appellee is in the end prejudiced by his attorney's failure to file. In re Sanction of Woodruff, 9 FSM R. 414, 415 (App. 2000).

When a case has been dismissed for the plaintiff's failure to prosecute, the plaintiff's possible remedies are either to appeal the dismissal or a Rule 60(b) motion for relief from judgment (the more viable, quicker, and usual remedy) if he wishes to have the dismissal set aside. (Filing a new case when there has been a dismissal on the merits is not a possible remedy.) Success by either method would reinstate the case at the point it was dismissed. If neither of these routes is taken successfully, the plaintiff, depending on his ability to prove that he would have succeeded at trial, may have a cause of action against his counsel. Kishida v. Aizawa, 13 FSM R. 281, 284 (Chk. 2005).

Dismissal for an attorney's inexcusable neglect in failing to file an opening brief is handled differently in civil and criminal appeals. Appellate courts are much more reluctant to dismiss a criminal appeal for an attorney's inexcusable neglect because a criminal defendant has no other remedy. In a civil appeal, when the appeal is dismissed for inexcusable neglect in prosecuting the appeal, if the party whose appeal is thus dismissed is thereby aggrieved, his remedy will be against his attorney. A criminal appellant has no such remedy. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 114 (App. 2008).

Dismissal for an attorney's inexcusable neglect in failing to file an opening brief must be handled differently in civil and criminal appeals. Appellate courts are much more reluctant to dismiss a criminal appeal for an attorney's inexcusable neglect because a criminal defendant has no other remedy. When a civil appeal is dismissed for inexcusable neglect in prosecuting the appeal, if the party whose appeal is thus dismissed is thereby aggrieved, his remedy will be against his attorney. A criminal appellant has no such remedy. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 129-30 (App. 2008).

Legal malpractice is a generic term for at least three distinct causes of action available to clients who suffer damages because of their lawyers' misbehavior. Clients wronged by their lawyers may sue for damages based on breach of contract, breach of fiduciary duty, or negligence. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644 (Kos. S. Ct. Tr. 2009).

Regardless of whether the cause of action is based on negligence, breach of contract, or breach of fiduciary duty, the central purpose of the law of legal malpractice is to guard against and to remedy exploitation of the power lawyers possess over their clients' lives and property. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644 (Kos. S. Ct. Tr. 2009).

An attorney has a duty to provide competent legal advice and representation. An action against an

attorney for malpractice may be brought in contract or in tort because when the attorney was chargeable with negligence or unskillfulness, his contract was violated. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644 (Kos. S. Ct. Tr. 2009).

When the plaintiffs suing their appellate attorney are seeking to recover damages in the amount they paid their attorney to handle their appeal and are not seeking to recover the amount of the land that was at issue in the appeal, the plaintiffs' claim is one for breach of contract and not legal malpractice. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644 (Kos. S. Ct. Tr. 2009).

When the court is not looking at negligence in handling the case or the manner in which the brief was written as there was no brief written or submitted to the FSM Supreme Court appellate division and when the attorney did not guarantee a specific result, promise, warrant or specify an outcome in the appeals case, the case is a "do nothing" case where the promisor-attorney had promised to perform a certain activity, to represent the plaintiffs in handling of an appeal, and the failure to complete that action exposed the promisor-attorney to liability for breach of contract. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644-45 (Kos. S. Ct. Tr. 2009).

The most frequent attorney error that may be the subject of a successful legal malpractice action is the attorney's failure to comply with a statute of limitation. Aunu v. Chuuk, 18 FSM R. 467, 469 n.2 (Chk. 2012).

Merely neglecting to calendar deadlines as well as maintain control over files created for undertaking client representation does not constitute excusable neglect. Instead, such actions reflect a level of activity that falls below the standards imposed upon members of the legal profession. Samuel v. Kolonia Town, 22 FSM R. 397, 399 (Pon. 2019).

– Withdrawal of Counsel

Although the trial court may grant a public defender's motion to withdraw as counsel pursuant to FSM Model Rule of Professional Conduct 1.7(b) because the public defender adopted the son of the victim's nephew, the trial court may deny the same public defender's motion to relieve the entire staff of the Public Defender's Office pursuant to Model Rule 1.10(a) because the public defender's conflict was personal and not imputed to the Public Defender staff. Office of Public Defender v. Trial Division, 4 FSM R. 252, 254 (App. 1990).

Although an attorney is competent to testify as a witness on behalf of a client, testimony by an attorney representing a party, except in limited circumstances, creates a conflict of interest. An attorney under such a conflict has an ethical duty to withdraw from representation, except in limited cases, including where disqualification would cause an undue hardship to the client. Determining whether a conflict exists is primarily the responsibility of the lawyer involved. Triple J Enterprises v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 385, 386 (Pon. 1996).

A trial counselor who is a member of a plaintiff class that is seeking money damages from the state has a conflict and cannot represent the state and will be allowed to withdraw. Oster v. Bisalen, 7 FSM R. 414, 415 (Chk. S. Ct. Tr. 1996).

A court cannot allow defense counsel to withdraw so that the defendant can seek new counsel to resume trial when the trial is well into the defendant's case-in-chief and when that new counsel was not present during trial and has not heard either the prosecution's witnesses' testimony or that of the defense witnesses who have already testified. FSM v. Jano, 9 FSM R. 470a, 470b (Pon. 2000).

Defense counsel cannot, in the middle of a criminal trial, precipitously accept other employment, without making the acceptance of employment conditional, commit himself to begin work "immediately," and then move for withdrawal because defense counsel is under an ethical obligation to continue as

counsel until the criminal trial ends, even if that means postponement of his departure for new employment. FSM v. Jano, 9 FSM R. 470a, 470b (Pon. 2000).

When ordered to by a tribunal, defense counsel is ethically obligated to continue the representation even if good cause to withdraw is present. Should the criminal trial end in a conviction, new counsel may be obtained for sentencing. FSM v. Jano, 9 FSM R. 470a, 470b (Pon. 2000).

Denying withdrawal of counsel in the middle of a criminal trial is within the court's discretion, and as long as counsel is providing effective assistance, a criminal defendant has the choice of either continuing with that counsel or representing himself pro se. FSM v. Jano, 9 FSM R. 470a, 470b (Pon. 2000).

An attorney's motion to withdraw after advising his clients at depositions will be denied because the record contains no evidence that defendants discharged him at the depositions' end, or withdrew their authorization for him to represent them in all aspects of this proceeding; because a client's failure to contact counsel has no effect on representation especially when counsel has provided no evidence of his efforts to contact the client; because counsel's failure to secure a fee agreement between himself and his clients is not a basis for terminating representation; and because the case is ready for trial, and withdrawal of counsel at this juncture would materially compromise defendants' interests. Beal Bank S.S.B. v. Salvador, 11 FSM R. 349, 350 (Pon. 2003).

When the court has not been notified on the record at the representation's start that counsel's representation was limited, counsel then must seek the court's permission to withdraw when he believes his representation has come to an end. He then remains counsel of record until, and if, the court grants him permission to withdraw. Atesom v. Kukkun, 11 FSM R. 400, 402 (Chk. 2003).

Counsel's failure to follow the rules in withdrawing from a case can come back to haunt him. Atesom v. Kukkun, 11 FSM R. 400, 402 (Chk. 2003).

Counsel's merely relying on his hope that verbally informing the clerk that he was no longer counsel would be sufficient to withdraw as counsel is not enough. Atesom v. Kukkun, 11 FSM R. 400, 402 (Chk. 2003).

When a trial counselor defendant is still considered plaintiff's counsel since he has not withdrawn from the plaintiff's land matter, he should inform the plaintiff in writing of his withdrawal if he should seek to withdraw from representing the plaintiff based upon the parties' inability to work together. Ittu v. Palsis, 11 FSM R. 597, 599 (Kos. S. Ct. Tr. 2003).

When counsel who signed an answer to the amended complaint on behalf of both defendants and appeared for both defendants, only withdrew from representing one defendant, they remain counsel for the other. Jackson v. Pacific Pattern, Inc., 12 FSM R. 18, 19 (Pon. 2003).

Under the Model Rules of Professional Conduct, which regulates conduct of legal counsel admitted to practice law in the State of Kosrae, Rule 1.7 prohibits a counsel from representing a client if representation of that client may be materially limited by the counsel's responsibilities to a third person or the counsel's own interests. A counsel may not represent the state in prosecuting a criminal action, if the counsel's prosecution will be materially limited by his personal relationship to the defendant. Kosrae v. Nena, 12 FSM R. 20, 23 (Kos. S. Ct. Tr. 2003).

A prosecutor's duty is to zealously and diligently prosecute criminal charges which are supported by probable cause, in the public interest, and, in his position as a public servant, to serve the public interest, consistent with the Model Rules of Professional Conduct. If the prosecutor cannot fulfill his prosecutorial duties in a particular case due to a conflict, including a personal relationship to the defendant, then the prosecutor is obligated to withdraw from the case. Kosrae v. Nena, 12 FSM R. 20, 23 (Kos. S. Ct. Tr. 2003).

Counsel may withdraw from representation of a client if it could be accomplished without material adverse effect on the interests of the client or if: 1) the client continues conduct that the counsel believes is criminal or fraudulent, or 2) the client has used counsel's services to commit a crime or fraud; or 3) the client fails to substantially fulfill an obligation to the counsel regarding counsel's services and has been given warning (i.e. non-payment of fees, no cooperation in discovery); or 4) the client insists upon pursuing an objective that counsel believe is repugnant or imprudent; or 5) the representation will result in an unreasonable financial burden on the counsel, or 6) when other good cause exists. Wakuk v. Melander, 12 FSM R. 73, 74 (Kos. S. Ct. Tr. 2003).

A motion to withdraw as counsel will be denied when withdrawal from representation will have material adverse effect on the client's interests because the matter is pending for hearing and withdrawal is sought right before the hearing, and when counsel has failed to cite to, or provide any grounds under Model Rule of Professional Conduct 1.16 as the basis for withdrawal. Wakuk v. Melander, 12 FSM R. 73, 74-75 (Kos. S. Ct. Tr. 2003).

When ordered to do so by a tribunal, a lawyer must continue representation notwithstanding good cause for terminating the representation. Dereas v. Eas, 12 FSM R. 629, 631 (Chk. S. Ct. Tr. 2004).

That an appointed lawyer is busy is insufficient to permit his withdrawal since lawyers are generally busy and because one cause of this, the lawyer's status as a state constitutional convention delegate, is of limited duration and will end before this case progresses much further. FSM v. Kansou, 13 FSM R. 157, 158 (Chk. 2005).

That a criminal defendant is not comfortable with an appointed attorney because most of the counsel's experience was with civil cases and has asked counsel assist him in finding an attorney or attorneys with a criminal background is insufficient to permit withdrawal of counsel since every defendant facing prosecution would like an attorney with the most criminal experience possible and with more experience than the one they have got. But none are available that the court can appoint since the amount of legal talent available in the Federated States of Micronesia and admitted to practice before the FSM Supreme Court is limited. FSM v. Kansou, 13 FSM R. 157, 158 (Chk. 2005).

Defense counsel's delayed recognition that the victim was his second cousin, and his delayed notice to the court suggests that counsel's relationship to the victim does not result in a conflict of interest which would require counsel's disqualification. The court also retains its authority and discretion to deny withdrawal of counsel in the middle of a criminal proceeding. Kosrae v. Palik, 13 FSM R. 187, 189 (Kos. S. Ct. Tr. 2005).

Since, upon termination of representation, a lawyer must surrender papers and property to which the client is entitled and may retain papers as security for a fee only to the extent permitted by law, when an attorney does not contend that the parties owe him money and that he is retaining the files as security for his fee, he has no ground for retaining those files if the parties are former clients and they have asked for the files' return. Counsel may retain copies (not the originals) of any part of the files needed for future reference. McVey v. Etscheit, 14 FSM R. 207, 211-12 (Pon. 2006).

Merely mailing a client a copy of a decision is not enough to constitute a withdrawal. Something more must be done; otherwise she therefore remains his client. McVey v. Etscheit, 14 FSM R. 207, 212 (Pon. 2006).

Withdrawal does not immunize counsel from Rule 11 sanctions. Amayo v. MJ Co., 14 FSM R. 355, 363 n.4 (Pon. 2006).

When defense counsel files an answer for all defendants and then "withdraws" from representing one of the defendants because that defendant had never consulted with or consented to defense counsel's

representation, the better view is that defense counsel had never represented that defendant. Albert v. O'Sonis, 15 FSM R. 226, 230 & n.1 (Chk. S. Ct. App. 2007).

If counsel seeks to terminate representation after trial but before the appeal, steps must be taken to ensure the client's rights are protected to the extent reasonably practicable and, even then, notwithstanding good cause for withdrawal, the court may order counsel to continue representation. Chuuk v. William, 16 FSM R. 149, 151 (Chk. S. Ct. Tr. 2008).

Counsel may not simply refuse to pursue an appeal, without taking any further action to protect the client's rights. If counsel concludes that an appeal would not be meritorious, but the client still wishes to pursue the appeal, any withdrawal is conditioned upon the court's approval. Such approval may be conditioned on counsel's filing of an "Anders brief" referring to anything in the record that may arguably support appeal, whereupon the court should only grant withdrawal if it finds the appeal to be frivolous. Counsel may withdraw without the court's permission only if counsel was appointed solely to act as trial counsel. Chuuk v. William, 16 FSM R. 149, 152 (Chk. S. Ct. Tr. 2008).

When the public defender is the attorney of record in this case, unless and until the court recognizes his withdrawal, neither counsel nor his office is relieved of the duty of ensuring adequate representation for the client's appeal. The trial court may leave to the appellate court any ruling on whether the Public Defender's office may withdraw its representation of an appellant and what additional steps, if any, may be required before such withdrawal is approved. Chuuk v. William, 16 FSM R. 149, 152 (Chk. S. Ct. Tr. 2008).

Counsel may be permitted to withdraw once they have fulfilled the conditions set by the court. Kuch v. Mori, 18 FSM R. 337, 338 (Chk. S. Ct. App. 2012).

The court does not have to permit counsel's withdrawal if the client will be left in a position where the client's interests are impaired or where there is a material adverse effect on him. Lee v. FSM, 18 FSM R. 558, 562 (Pon. 2013).

The FSM ethical rules governing attorney conduct when seeking to withdraw provide that, except when ordered by a tribunal to continue representation notwithstanding good cause for terminating the representation, a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the client's interests, or if the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 569, 571 (Kos. 2013).

When a lawyer is permitted to withdraw because maintaining the litigation has become too costly, finding substitute counsel may well prove to be difficult or even impossible. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 569, 571 (Kos. 2013).

The court will deny an attorney's motion to withdraw for financial reasons when substitute counsel certainly cannot be found in time for the pre-judgment possession hearing or the depositions and the pre-judgment possession cannot and will not be delayed because it is statutorily an expedited proceeding. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 569, 571-72 (Kos. 2013).

An attorney's motion to withdraw as counsel may be denied when the legal issue before the court is difficult for a pro se litigant to adequately address. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 569, 572 (Kos. 2013).

Although the financial burden on counsel's law firm may constitute good cause, a court may order that he continue the representation and that he will not be permitted to withdraw because, given the statutorily-required expedited nature of the proceedings, counsel's withdrawal cannot be accomplished without material adverse effect on the defendants, but with this in mind, counsel may renew his motion to

withdraw at a later date if the situation warrants. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 569, 572 (Kos. 2013).

The withdrawal of counsel from the legal representation of a client is governed by FSM MRPC Rule 1.16. Bank of Hawaii v. Helgenberger, 19 FSM R. 584, 585 (Pon. 2014).

When the court has not been notified on the record at the representation's start that counsel's representation was limited, counsel then must seek the court's permission to withdraw when he believes his representation has come to an end. Bank of Hawaii v. Helgenberger, 19 FSM R. 584, 586 (Pon. 2014).

FSM MRPC Rule 1.16(d) is a nonexclusive list of steps that an attorney must take to protect a client's interests before the court will grant the withdrawal. The reasonably practicable efforts to protect a client's interests have been persuasively interpreted by our state courts to include assisting the client in obtaining substitute counsel. Bank of Hawaii v. Helgenberger, 19 FSM R. 584, 586 (Pon. 2014).

When counsel has represented a married couple who are now divorcing; when the clients are no longer cooperating or communicating with counsel nor have they paid any attorney fees; and when the husband has obtained new counsel of record who cannot represent the wife, counsel must continue to represent the wife until substitute counsel is found or counsel is otherwise released by the court since in such circumstances, the court usually requires the attorney to assist the client in finding substitute counsel or demonstrate why this is not reasonably practical to do so before granting the withdrawal. Bank of Hawaii v. Helgenberger, 19 FSM R. 584, 586-87 (Pon. 2014).

An attorney's withdrawal will not be permitted when he has not submitted any evidence to show that the client wishes to terminate his legal service in the matter and there is no indication that he has met the requirements under FSM MRPC R. 1.16(d) to protect the client's interest upon withdrawal. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 169, 172 (Pon. 2015).

When, during a hearing, counsel argued against the State in defense of his attempt to depose the State's Assistant Attorney General and when counsel argues that a conflict of interest exists between the Governor and the Attorney General's Office because the Attorney General's Office is admitting liability on the State's behalf, and imputed that liability upon counsel's client, a tenant of the State, this issue of imputing liability from the State to counsel's client clearly shows a conflict of interest which would bar counsel from transferring his representation between the two defendants. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 169, 172-73 (Pon. 2015).

When counsel's representation of the State would be materially adverse to his current client's interest and no evidence was provided that would show otherwise and when there is no proof of consent by each of the defendants after consultation, counsel's motion to withdraw from his client will be denied and his notice of entry of appearance on the State's behalf will be stricken from the record as will his other filings on the State's behalf. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 169, 173 (Pon. 2015).

ATTORNEYS' FEES

The rule that each party to a suit normally must pay its own attorney's fees is the proper foundation upon which the system in the Federated States of Micronesia should be built. Semens v. Continental Air Lines, Inc. (II), 2 FSM R. 200, 208 (Pon. 1986).

Forced disclosure of arrangements for payment of attorney's fees intrudes, in some degree, upon the attorney-client relationship and can be an "annoyance" within the meaning of the FSM Civil Rule 26(c) provisions concerning protective orders. Mailo v. Twum-Barimah, 3 FSM R. 179, 181 (Pon. 1987).

Unless the questioning party is able to show some basis for believing there may be a relationship between an attorney's fee and the subject matter of the pending action, objections to efforts to discover the

attorney's fee arrangement may be upheld. Mailo v. Twum-Barimah, 3 FSM R. 179, 181 (Pon. 1987).

Information concerning the source of funds for payment of attorney's fees of a particular party normally is not privileged information. Mailo v. Twum-Barimah, 3 FSM R. 179, 181 (Pon. 1987).

When there is no statutory or contractual basis for a request for attorney fees, each party will normally bear its own attorney's fees. FSM Telecomm. Corp. v. Worswick, 9 FSM R. 6, 18 (Yap 1999).

Even if the post-judgment motion for attorney's fees had been made within ten days of the judgment, it would not have been efficacious to extend the time for filing the notice of appeal. An attorney's fees motion is not one of the motions enumerated in Rule 4(a)(4) which changes the benchmark time extending the time for filing the notice of appeal. O'Sonis v. Bank of Guam, 9 FSM R. 356, 359 (App. 2000).

A motion for attorney's fees is unlike a motion to alter or amend a judgment. It does not imply a change in the judgment, but merely seeks what is due because of the judgment. It is, therefore, not governed by the provisions of Rule 59(e). O'Sonis v. Bank of Guam, 9 FSM R. 356, 359 (App. 2000).

A post-judgment motion for supplemental attorney's fees is not a motion to alter or amend judgment under FSM Civil Procedure Rule 59(e), and does not extend the time for the filing of the notice of appeal under Appellate Procedure Rule 4(a)(4). O'Sonis v. Bank of Guam, 9 FSM R. 356, 359 (App. 2000).

When no authority has been given for the court to appoint private counsel already retained by a defendant or to require that the Public Defenders' Office compensate that private counsel at his prevailing hourly rate and when appointed counsel usually serve pro bono, the request will be denied. FSM v. Kansou, 12 FSM R. 637, 641 (Chk. 2004).

When the movants have not been convicted of any charges, no assets have been ordered forfeited, no payments to movant's counsel have been identified as coming from forfeitable assets, and the government has not committed itself to seeking disgorgement of counsel's fees, and the record shows that the movants have sources of income and assets that the government has not alleged are forfeitable and from which attorney's fees might be paid, it is too speculative for the court to consider whether the possible forfeiture of attorney's fees will affect an accused's right to retain counsel of his choice and to effective assistance of that counsel. FSM v. Kansou, 12 FSM R. 637, 641 (Chk. 2004).

Concerns about the affect of possible forfeiture of defense counsel's attorney's fees do not apply to a defendant who is represented by a salaried employee of the Public Defenders' Office and who is only charged with one offense and forfeiture of assets is not a penalty that the court can impose for the conviction of that offense. FSM v. Kansou, 12 FSM R. 637, 641-42 (Chk. 2004).

Generally, a party bears its own attorney's fees, and this rule is the proper foundation upon which the system in the FSM should be built. An exception to this general rule is that attorney's fees have been awarded for a breach of fiduciary duty. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 449 (Pon. 2009).

Yap statutory provisions that no attorney representing a party against the State or public entity can charge, demand, receive or collect attorney's fees from the State or public entity and that an attorney, in suits against Yap, cannot, unless a court orders otherwise, charge, demand, receive or collect" fees higher than 30% of any judgment rendered or any award, compromise, or settlement, are clearly intended to protect both the people who, under the Yap Constitution and statute, have a right to sue Yap for redress and compensation and Yap from unscrupulous or avaricious attorneys and impose criminal penalties of a fine up to $2,000, or imprisonment for not more than one year, or both on an attorney for violating these provisions. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 318, 324 (Yap 2017).

A sanction award, even when calculated by determining a party's reasonable attorney's fees, is not the

payment of that attorney's fees or a payment of fees to that attorney. An attorney fee award is not an award to an attorney because a fee award is the client's, not the attorney's. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 318, 324 (Yap 2017).

– Court-Awarded

Procedural statute 6 F.S.M.C. 1018, providing that the court may tax any additional costs incurred in litigation against the losing party other than fees of counsel, applies only to Trust Territory courts and not to courts of the Federated States of Micronesia, and therefore does not preclude the FSM Supreme Court from awarding attorney's fees as costs. Semens v. Continental Air Lines, Inc. (II), 2 FSM R. 200, 205 (Pon. 1986).

Recognizing that courts in most of the world normally do award attorney's fees to the prevailing party, the rule allowing a prevailing party to obtain an award of attorney's fees should perhaps be applied more liberally in the Federated States of Micronesia than in the United States. Semens v. Continental Air Lines, Inc. (II), 2 FSM R. 200, 208 (Pon. 1986).

There is flexibility to modify the normal rule that each party pays its own attorney's fees when justice requires, and thus attorney's fees may be assessed for willful violation of a court order, when a party acts vexatiously, or in bad faith, presses frivolous claims, or employs oppressive litigation practices, or when the successful efforts of a party have generated a common fund or extended substantial benefits to a class. Semens v. Continental Air Lines, Inc. (II), 2 FSM R. 200, 208 (Pon. 1986).

There is no established market for legal services in Kosrae which could be used to determine a reasonable hourly rate for attorneys in civil rights cases. Tolenoa v. Alokoa, 2 FSM R. 247, 254 (Kos. 1986).

As a general rule, attorney's fees will be awarded as an element of costs only if it is shown that such fees were traceable to unreasonable or vexatious actions of the opposing party, but where the basic litigation flows from a reasonable difference of interpretation of a lease, the court is disinclined to attempt to sort out or isolate particular aspects of one claim or another of the parties and to earmark attorney's fees awards for those specific aspects. Salik v. U Corp., 4 FSM R. 48, 49-50 (Pon. 1989).

The clerk's office only has authority to grant default judgments for a sum certain or for a sum which can by computation be made certain. Any award of attorney's fees must be based upon a judicial finding and thus is not for a sum certain and cannot be granted by the clerk. Bank of the FSM v. Bartolome, 4 FSM R. 182, 184 (Pon. 1990).

Any award of attorney's fees must be based upon a showing, and a judicial finding, that the amount of the fees is reasonable. Bank of the FSM v. Bartolome, 4 FSM R. 182, 184 (Pon. 1990).

In the absence of statutory authority there is a general presumption against attorney's fees awards, and they should not be awarded as standard practice. Bank of Guam v. Nukuto, 6 FSM R. 615, 617 (Chk. 1994).

Where the defendant has breached her fiduciary duty, and converted to her own personal use funds of others, has made no claim of right to any of the funds or offered any defense, and blame thus lies wholly with the defendant, the plaintiff will be allowed to recover its attorney's fees in order to make the victim whole. This is a narrowly drawn exception to the general rule parties will bear their own attorney's fees. Bank of Guam v. Nukuto, 6 FSM R. 615, 617-18 (Chk. 1994).

Where attorney's fees are to be paid out of funds collected and deposited with the court, motions for fee awards will be denied without prejudice when no funds have yet been collected. Mid-Pacific Constr. Co. v. Semes, 7 FSM R. 522, 528 (Pon. 1996).

When allowing attorney's fee awards courts have broad discretion based on a standard of reasonableness in light of the case's circumstances. A trial court has an obligation to see that the attorney's fee awards that it approves are reasonable even if the awards are made pursuant to contract or statute, and it should provide reasons on the record to explain its exercise of discretion in awarding the figure it selects. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 673 (App. 1996).

It is an abuse of the trial court's discretion to award attorney's fees and costs without first determining their reasonableness. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 673 (App. 1996).

Each party normally bears its own attorney fees. This flexible rule allows for the imposition of attorney's fees where a party acts vexatiously, in bad faith, presses frivolous claims, or employs oppressive litigation practices, or when a party's successful efforts have generated a common fund or extended substantial benefits to a class. Normally, in the absence of a statute to the contrary, a court will proceed on the assumption that the parties will bear their own attorney's fees. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM R. 388, 392 (Kos. 1998).

When at the early juncture of the parties' cross motions for summary judgment it appears that the defendant's writing of bad checks may have been in bad faith or it may have been negligent, an attorney's fees award is not appropriate in the absence of a finding that defendant's conduct was vexatious or in bad faith. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM R. 388, 392 (Kos. 1998).

The fact that a defendant prevails in a motion for summary judgment in such a way as to defeat a significant portion of a plaintiff's claim is a fact that a court should consider relative to the plaintiff's claim for attorney's fees. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM R. 388, 392 (Kos. 1998).

Attorney's fees are not recoverable as costs under Appellate Rule 39. Santos v. Bank of Hawaii, 9 FSM R. 306, 307 (App. 2000).

Attorney fee awards that are part of money judgments are entitled to bear interest at the judgment rate until satisfied. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM R. 569, 570 (Chk. 2000).

Attorney's fees awarded as an element of costs are not to be confused with the award of attorney's fees recoverable as a part of damages pursuant to either statute or contract. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 223 (Chk. S. Ct. App. 2001).

Attorney's fees are not a part of recoverable costs under the common law. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 223 (Chk. S. Ct. App. 2001).

When the election law lacks a statutory definition of costs either specifically including or excluding attorney's fees, the court can only conclude that the Legislature did not intend to use the term "costs" in other than its usual and familiar sense, which does not include attorney's fees. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 223 (Chk. S. Ct. App. 2001).

In fashioning a fee award, it has always been the court's function to determine what attorney's fees are reasonable and to award no more than that. When necessary, the court will reduce an attorney fee request to an amount it determines reasonable instead of denying any fee recovery at all. Udot Municipality v. FSM, 10 FSM R. 498, 500 (Chk. 2002).

An attorneys' fee award of $120 per hour is reasonable when there have been other fee awards of $120 per hour in the FSM, when the attorneys' work was of high quality, the case was a difficult one, and novel issues were presented and the relief sought was ultimately achieved. Udot Municipality v. FSM, 10 FSM R. 498, 500 (Chk. 2002).

Any post-judgment charges for attorney's fees and costs – any attorney's fees and costs beyond those awarded in the judgments themselves – must first be determined as reasonable and awarded by the court before the judgment-creditors are entitled to these amounts. In re Engichy, 11 FSM R. 520, 534 (Chk. 2003).

Attorney fee awards in the FSM Supreme Court are generally limited to those authorized either by statute or by contract. LPP Mortgage Ltd. v. Maras, 12 FSM R. 112, 113 (Chk. 2003).

Since for every hour in-house counsel spent on the plaintiff's successful motion to compel his employer lost an hour of legal services that could have been spent on other matters, it is therefore appropriate to award the employer reasonable attorney's fees under Rule 37. FSM Dev. Bank v. Kaminanga, 12 FSM R. 454, 455 (Chk. 2004).

To award a party its attorney fees based upon its in-house counsel's salary prorated for the time spent on a successful motion to compel would be to confer a benefit on the non-prevailing party because the prevailing party choose to use in-house, rather than outside, counsel to do the work. There is no reason in law or equity that the non-prevailing party, or in the case of sanctions, the wrongdoer, should benefit from this choice. FSM Dev. Bank v. Kaminanga, 12 FSM R. 454, 455 (Chk. 2004).

The entitlement to reasonable attorneys' fees is that of the client, not of his attorney. The amount the client actually pays his attorney is irrelevant, since the determination of what is a "reasonable" fee is to be made without reference to any prior agreement between the client and its attorney. The appropriate lodestar rate is thus the community market rate charged by attorneys of equivalent skill and experience for work of similar complexity. FSM Dev. Bank v. Kaminanga, 12 FSM R. 454, 455-56 (Chk. 2004).

An attorney's fees award for in-house counsel will be no different than if the party had retained outside counsel for the work. FSM Dev. Bank v. Kaminanga, 12 FSM R. 454, 456 (Chk. 2004).

The court is generally without authority to award attorney's fees in the absence of a specific statute or contractual provision allowing recovery of such fees. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 471 (Pon. 2004).

When no statute or contractual provision has been put forth to support an attorney's fees award to a prevailing party, the basis for an award must be found in some exception to the general rule that the parties must pay their own attorney's fees. Such an exception is where attorney's fees are awarded as an element of costs when it is shown that such fees were traceable to the opposing party's unreasonable or vexatious actions, or when a party acts vexatiously, or in bad faith, presses frivolous claims, or employs oppressive litigation practices. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 471 (Pon. 2004).

Courts have permitted attorney's fee awards under the vexatious conduct exception when the plaintiff has proven the defendant's breach of the implied covenant or implied duty of good faith and fair dealing (also called the bad faith tort). If a plaintiff were to prevail on a bad faith tort claim against an insurer, the insurer would be liable to him for reasonable attorney's fees that are proximately caused by the bad faith conduct. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 471 (Pon. 2004).

In a narrowly drawn exception to the general rule that the parties will bear their own attorney's fees, attorney's fees have been awarded as part of costs when a defendant has breached her fiduciary duty to the plaintiff. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 472 (Pon. 2004).

As a general rule, the parties bear their own attorney's fees unless a contract between them provides otherwise, or they are awardable under a statute or court rule. In addition, attorney's fees may be assessed against a litigant for vexatious and oppressive litigation practices. Civil Procedure Rule 37 provides a specific mechanism for sanctioning vexatious discovery conduct. Adams v. Island Homes Constr., Inc., 12 FSM R. 541, 543 (Pon. 2004).

When, pursuant to Rule 37, the court has already assessed attorney's fees, as well as liability on the underlying cause of action as a sanction for a party's willful, bad faith discovery conduct, the court will award no further fees based on a claim of that party's generally vexatious conduct in the trial court. Adams v. Island Homes Constr., Inc., 12 FSM R. 541, 543 (Pon. 2004).

The trial court has no jurisdiction to award attorney's fees as a sanction for frivolous appeals under FSM Appellate Rule 38. Adams v. Island Homes Constr., Inc., 12 FSM R. 541, 543 (Pon. 2004).

The general rule is that absent bad faith, a plaintiff is entitled to attorney's fees in a collection case in an amount not to exceed 15% of the principal and interest of the amount sought to be collected. The 15% is not a guaranteed minimum by any means, but it does operate, in the absence of bad faith on the part of the party against whom the fees are sought, as a ceiling. Adams v. Island Homes Constr., Inc., 12 FSM R. 644, 646 (Pon. 2004).

A client may contract with a firm of attorneys for specified legal services, and commit itself to pay the amounts billed in accordance with the terms of the contract. But with respect to the court's determination of a reasonable fee amount, what the client agrees to pay is irrelevant, since the reasonableness determination is arrived at without referring to any fee agreement that may be in place between the parties. Adams v. Island Homes Constr., Inc., 12 FSM R. 644, 647 (Pon. 2004).

When awarding attorney's fees, a court has broad discretion based on a standard of reasonableness in light of the case's circumstances. A fee application must be based on detailed supporting documentation showing the date, the work done, and the time spent on each service provided. The court must determine the amount of a reasonable fee and award no more than that. Where required, the court will reduce the amount of the award sought as opposed to denying the request altogether. The reasonableness determination is arrived at without referring to any fee agreement that may be in place between the parties. AHPW, Inc. v. FSM, 13 FSM R. 36, 39 (Pon. 2004).

A plaintiff has waived any claim for attorney's fees when it submitted a form of judgment for a sum certain for the clerk's signature under FSM Civil Rule 55(b)(1). Attorney's fees may only be awarded upon a judicial finding that the fees sought are reasonable. FSM Social Sec. Admin. v. Lelu Town, 13 FSM R. 60, 62 (Kos. 2004).

A trial court retains jurisdiction to issue an order assessing fees and costs even if issued after an appeal has been filed. Pohnpei v. AHPW, Inc., 13 FSM R. 159, 161 (App. 2005).

While a prevailing plaintiff is entitled to the costs of suit as of course, a prevailing plaintiff is not automatically entitled to an attorney's fees award because the court is generally without authority to award attorney's fees in the absence of a specific statute or contractual provision allowing recovery of such fees. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 277 n.1 (Chk. 2005).

Attorney fee awards in the FSM Supreme Court are generally limited to those authorized either by statute or by contract. Albatross Trading Co. v. Aizawa, 13 FSM R. 380, 382 (Chk. 2005).

The court is without authority to award attorney's fees in the absence of a specific statute or contractual provision allowing recovery of such fees, so that when the plaintiff has not presented any evidence of a statutory or contractual provision which would allow him to recover his attorney's fees from the defendant, his request for the recovery of attorneys' is without merit and must be denied. Isaac v. Palik, 13 FSM R. 396, 402 (Kos. S. Ct. Tr. 2005).

When a request for attorney's fees contained no points and authorities to support its request and was not argued at the hearing, the request is deemed waived and abandoned. Mailo v. Chuuk, 13 FSM R. 462, 470 (Chk. 2005).

A trial court's request for clarification of the attorneys' fee request documentation was not a grant of relief from judgment or analogous to relief from judgment, and a trial court's permitting the submission of the attorney fee request one day late was within its discretion. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 22 (App. 2006).

Attorney's fees are not part of recoverable costs under the common law. DJ Store v. Joe, 14 FSM R. 83, 86 (Kos. S. Ct. Tr. 2006).

A party's statement that the lawyer should assume responsibility for technical and legal tactical issues and its assertion that it was not involved in the discovery disputes, only its counsel was, is not enough for an appellate court to say the trial court abused its discretion in not applying the attorney's fees sanctions against the party's former attorney himself rather than against the party. FSM Dev. Bank v. Adams, 14 FSM R. 234, 254 (App. 2006).

Attorney's fees are awarded to the prevailing party only if authorized by contract or by statute. FSM Dev. Bank v. Adams, 14 FSM R. 234, 256 (App. 2006).

The court will not award attorney's fees of $200 an hour, counsel's usual hourly rate on Guam because FSM court awards of reasonable attorney's fees are based on the customary fee in the locality in which the case is tried. One hundred ten to one hundred twenty dollars an hour would be in the range reasonable for a case tried on Pohnpei. Amayo v. MJ Co., 14 FSM R. 355, 361 (Pon. 2006).

The court's power to award attorney's fees for vexatious conduct, will usually be exercised to include an attorney's fees award as a part of damages in a final judgment, not to impose sanctions at a pretrial stage. Amayo v. MJ Co., 14 FSM R. 355, 364 (Pon. 2006).

The usual method of determining reasonable attorney's fees awards is based on the fair hourly rate in the locality where the case was tried. Since any attorney's fees award must be based upon a showing and a judicial finding, that the amount of fees is reasonable, the plaintiffs must therefore submit detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which a claim for compensation is made. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 421 (Yap 2006).

No attorneys' fees can be awarded to plaintiffs that have acted pro se. Hartman v. Krum, 14 FSM R. 526, 532 (Chk. 2007).

Attorney fee awards are generally limited to those authorized either by statute or contract. Otherwise, parties bear their own attorney's fees. Hartman v. Krum, 14 FSM R. 526, 532 (Chk. 2007).

When an attorney's fee award has been requested, matters concerning attorney's fees are generally not privileged and a blanket refusal to disclose to opposing counsel any supporting documentation showing the date, the work done, and the amount of time spent on each service for which a compensation claim was made, goes far beyond any possible assertion of attorney-client or work-product privilege. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 62 (Yap 2007).

It is error and a due process violation for a trial court to award attorney's fees without giving the opposing party (who will be paying the fee award) notice and an opportunity to challenge the proposed award's reasonableness. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 62 (Yap 2007).

The party seeking an attorney's fees award always bears the burden of providing sufficient evidence to prove its claim. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 63 (Yap 2007).

An appropriate fee consists of reasonable charges for reasonable services. Thus, to justify a fee, more must be presented than a mere compilation of hours multiplied by a fixed hourly rate or bills issued to the client since this type of data, without more, does not provide the court with sufficient information as to their reasonableness – a matter which cannot be determined on the basis of conjecture or conclusions of the attorney seeking the fees. Rather the fee request must specify the services performed, by whom they were performed, the time expended thereon and the hourly rate charged therefor. Because of the importance of these factors, it is incumbent upon the requester to present detailed records maintained during the course of the litigation concerning facts and computations upon which the charges are predicated. Without itemization, a court will not approve any attorney fee claims. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 63 (Yap 2007).

A summary of the total hours worked by the attorneys and their individual billing rates and a lawyer's affidavit that the summary was correct, is inadequate to support an attorney fee award. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 63 (Yap 2007).

A client may contract with an attorney for specified legal services and commit itself to pay the amounts billed in accordance with the contract's terms, but what the client has agreed to pay is not relevant to the court's determination of a reasonable fee since the court makes its reasonableness determination without reference to any prior fee agreement between the attorney and client. This is because the entitlement to a reasonable attorneys' fees award is that of the client, not of his attorney. The amount the client actually pays his attorney is irrelevant. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 63 (Yap 2007).

A class action fee award should not be based solely on a percentage of the recovery, since the court should consider several other factors in order to decide what is an appropriate fee. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 64 (Yap 2007).

When the court is making its reasonableness determination for a plaintiffs' attorney fee award, it must disregard the contingent fee agreement's terms. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 64 (Yap 2007).

The court will give no weight to a contention that there was no contingent fee agreement in place because the fee agreement states that the clients are the Municipalities of Rull and Gilman and the plaintiff class is composed of Rull and Gilman residents when neither municipality is a corporate body or has an established municipal government and these municipalities exist as social constructs and when the court's decisions must conform to Micronesia's social configuration. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 64 n.3 (Yap 2007).

Since any attorney's fees award must be based upon a showing and a judicial finding that the amount of fees is reasonable, the court must require the submission of detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which a claim for compensation is made, so that the opposing party will have notice and an opportunity to challenge the reasonableness of the fee claim. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 64 (Yap 2007).

In determining an attorney fee award's reasonableness, the appellate division has considered two different, but similar sets of factors. One involving twelve factors, is drawn from civil rights caselaw, and the other, involving eight factors, is drawn from the FSM Model Rules of Professional Conduct Rule 1.5(a) and is thus used to determine whether a fee is unreasonable and unethical. The only real differences between these two tests is that the twelve-factor test includes consideration of the case's undesirability and awards in similar cases and the eight-factor test makes consideration of whether the acceptance of the particular employment will preclude other employment by the lawyer dependent upon whether that preclusion was apparent to the client and limits the fee to the customary fee in the case's locality. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 65 (Yap 2007).

The twelve-factor attorney-fee test considers: 1) the time and labor required; 2) the novelty and difficulty of the questions; 3) the skill requisite to perform the legal service properly; 4) the preclusion of other employment by the attorney due to acceptance of the case; 5) the customary fee; 6) whether the fee is fixed or contingent; 7) time limitations imposed by the client or the circumstances; 8) the amount involved and the results obtained; 9) the attorneys' experience, reputation, and ability; 10) the case's "undesirability"; 11) the nature and length of the professional relationship with the client; and 12) awards in similar cases. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 65 (Yap 2007).

The whether-the-fee-is-fixed-or-contingent factor in the twelve-factor and eight-factor tests, does not contradict the court's statement that a reasonable attorney fee award is determined without reference to any fee agreement's terms because this factor considers the risk the attorney undertook that he might not have a fee to collect – that is, whether the fee was contingent – not what the actual terms of the (contingent or fixed) agreement were. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 65 n.4 (Yap 2007).

The eight-factor attorney-fee test considers: 1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; 2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; 3) the fee customarily charged in the locality for similar legal services; 4) the amount involved and the results obtained; 5) the time limitations imposed by the client or by the circumstances; 6) the nature and length of the professional relationship with the client; 7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and 8) whether the fee is fixed or contingent. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 65 (Yap 2007).

For an attorney fee award, the fair hourly rate in the locality is used, and the starting point of a reasonable attorney's fee calculation is done by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate. This is the lodestar approach. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 65 (Yap 2007).

A difficulty with using time as the lodestar is that there is an incentive to maximize the time devoted to the case. The court can guard against this by disallowing hours deemed unnecessary or performed in a grossly inefficient fashion. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 66 n.5 (Yap 2007).

It does not follow that the time an attorney actually expended is the amount of time reasonably expended. To determine the number of hours reasonably spent, the court must first determine the number of hours actually spent and then subtract from that figure hours which were duplicative, unproductive, excessive, or otherwise unnecessary. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 66 (Yap 2007).

Redundant, or otherwise unnecessary hours must be excluded from the amount claimed because courts are charged with deducting for redundant hours. Redundant hours generally occur where more than one attorney represented a client. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 66 (Yap 2007).

The test for attorney fee compensation is whether a given step was necessary to attain the relief afforded. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 66 (Yap 2007).

Time devoted to intra-office consultations between attorneys that duplicated the other's time will be reduced. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 66 (Yap 2007).

Hours spent researching governmental liability for navigational aids will be disallowed when no governmental entity was ever a party to the case or ever held liable because fees are to be recovered only from the party against whom liability has been established, and only for hours reasonably devoted to

establishing that liability. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 66-67 (Yap 2007).

Defendants who are found liable are not required to compensate the plaintiffs for attorney hours spent against others who were not found liable. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 67 (Yap 2007).

In determining a reasonable attorney's fees award, time devoted to travel is not included. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 67 (Yap 2007).

Time spent on review of "unrelated" cases, which also involved oil spill damage and were thus relevant, will not be disallowed and whether the lead plaintiffs in a class action can receive "incentive" payments, although an issue not tried, is one which may eventually need to be addressed during any fairness hearing on the as yet unproposed distribution plan so those hours will not be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 67 (Yap 2007).

Since different rates of compensation are awarded dependent on the litigation task performed and not strictly according to the position of the person performing it, when most of the preparation of the fee request was in the nature of bookkeeping or accounting, the court will reduce the 17.7 hours at the attorney fee rate to 2 hours at the attorney fee rate to achieve the same result instead of having to determine what should be a proper rate for the bookkeeping tasks. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 67-68 (Yap 2007).

Time spent conferring between attorneys and to respond to a plaintiff's inquiry concerning this case's status after it had been submitted to the court and the parties were awaiting the court's decision, were essentially conferences about whether the court had issued a decision yet and thus unnecessary. Those hours will be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 68 (Yap 2007).

Since settlement discussions that took place before the end of trial may have helped to materially advance the litigation, those hours will not be disallowed except for those hours that appear excessive. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 68 (Yap 2007).

When the punitive damages issue was not tried and appears to apply only to a former party against whom no liability was found, time spent on that claim will be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 68 (Yap 2007).

When the time spent on the issue of piercing the corporate veil was not tried, but the research advanced the litigation and was needed to frame litigation strategy, those hours will not be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 68 (Yap 2007).

When PCB contamination claims were not tried and were abandoned early on after the plaintiffs determined that the facts did not warrant such a claim, the hours devoted to PCB claims will be disallowed since a PCB contamination claim is factually different from an oil contamination claim. Where the claims do not share a common basis in fact or are not legally related, the court need not award fees if the claims prove unsuccessful. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 68 (Yap 2007).

When attorneys invoiced hours for conferring with one or more other attorneys in the same firm, the duplicate hours will be disallowed and when the other law firm's lead attorney invoiced time for conferencing with an attorney from the first firm for which that attorney also invoiced time, the first firm's time will be reduced by 50%. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 69 (Yap 2007).

When an attorney invoiced a half hour for delivering case materials for the lead plaintiff to a hotel, this is delivery work, and delivery work is valued at delivery service rates, not attorney rates, regardless of

whether an attorney preformed the task. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 69 (Yap 2007).

While a party may legitimately oppose the admission *pro hac vice* of opposing counsel, when the time spent on opposing the admission was excessive and without any sound basis, the court will disallow the hours spent on this. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 70 (Yap 2007).

Time spent on an attorney's education so that he may competently handle the case may be excluded from an attorney fee award. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 70 (Yap 2007).

The hours an attorney spent, not on the attorney's continuing legal education, but on research into scientific areas about which the defendants' experts would testify at trial, will not be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 70 (Yap 2007).

Time spent to warn the attorney's clients not to comment to the press will not be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 70 (Yap 2007).

Administrative work is considered part of overhead, and the court will disallow hours devoted to administrative, instead of legal, tasks. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 70 (Yap 2007).

Finding and retaining co-counsel and making his fee arrangements or the hiring of needed staff is not compensable as attorneys' fees even if needed only to prosecute a particular case. When the search for co-counsel ultimately resulted in the retention of eminently qualified co-counsel whose participation materially advanced the litigation, those hours will be reduced since non-legal tasks must be compensated at lower rates or the hours reduced to achieve the same results. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 70-71 (Yap 2007).

The essentially bookkeeping portion of the fee request will not be computed at the full attorney fee rate, but the hours that appear to be legal work will. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 71 (Yap 2007).

Compensation for time and expenses in a state court can only be sought (if at all possible) in that state court. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 71 (Yap 2007).

When time spent on anthropological research and on research into the ability of Yap municipalities to sue materially advanced the litigation and was necessary for the plaintiffs to frame their pleadings and arguments concerning the nature of the plaintiffs' rights to the resources affected by the oil spill and the hours spent do not appear excessive, they will not be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 71 (Yap 2007).

When time spent on investigation into Compact of Free Association, FSM limitation of liability legislation, FSM maritime lien statute, P & I coverage is necessary background information for a proceeding in admiralty *in rem*, and materially advanced the litigation, it will not be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 71 (Yap 2007).

Time spent on work done to establish the liability of one against whom no liability was found will be disallowed and time spent on professional responsibility research that is unexplained, will also be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 71 (Yap 2007).

There is no basis in law or fact to require the defendants to compensate the plaintiffs for drafting or lobbying for legislation even if such legislation was to assist the plaintiffs by legislative means. Therefore all hours devoted to legislative work will be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa

Violet, 15 FSM R. 53, 71 (Yap 2007).

Although the court can take the across-the-board percentage reduction of the attorneys' invoiced time approach to eliminate redundant, excessive, and unnecessary hours if the attorney fee records are voluminous, when the attorney fee records, while voluminous, are not so large as to preclude the court's entry-by-entry examination, it will not. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 72 (Yap 2007).

When a law firm has attorneys who are admitted before the FSM Supreme Court and the lead attorney has an office in the FSM, the attorneys must expect to be considered local FSM attorneys whose fee award would be measured by the prevailing local rates and whose legal expertise must also be considered as available in the FSM. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 72 (Yap 2007).

When the one private attorney in Yap now averages $110 per hour and when, in 2002, $120 per hour was found to be a reasonable fee for a difficult case in which novel issues were presented and the relief sought was ultimately achieved, $125 per hour is an appropriate lodestar rate in Yap for this case. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 72 (Yap 2007).

In determining a fee award, the plaintiffs' success is to be measured qualitatively as well as quantitatively so that when the plaintiffs succeeded on their central claim – damage to Yap's natural marine resources – their attorneys' fees award will not be reduced because of their initial, overly-optimistic estimation of part of their damages claim. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 72 (Yap 2007).

After a determination of what would be a normal fee for the services of each attorney, adjustments should be made upwards or downwards to reflect special considerations such as contingency, complexity, amount of recovery, relative recovery to members of the class, inducement to counsel to serve as private attorneys general, duplication of services, public service considerations, etc. However, even in contingency cases, a fee enhancement is the exception, and not the rule. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 73 (Yap 2007).

When one co-counsel shouldered the expense of funding the litigation and thus bore the bulk of the risk involved and when that co-counsel provided needed and otherwise unavailable (in the FSM or the Western Pacific) legal expertise, that co-counsel's time should be enhanced by a multiplier. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 73 (Yap 2007).

When a fees and costs order was hand carried, along with some other papers, by a traveler to Yap and those other papers were received, as expected, by the court staff in Yap on the next day, March 23, 2007 and an inquiry the next day satisfied the court that the papers had been received and dealt with, but the fees and costs award did not come to the clerk's attention, or into her possession, until June 5, and was then entered on June 6, 2007, the court can direct that the order awarding fees and costs be entered *nunc pro tunc* as of March 23, 2007, the day the court expected the order to be, and thought it had been, entered because a court may issue an order *nunc pro tunc* to supply a record of an action previously done but omitted from the record through inadvertence or mistake, to have effect as of the former date. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 133, 134 (Yap 2007).

When an attorney's fee award is sought, the retainer agreement is not relevant; it is not even discoverable because there is generally no relationship between the attorney's fees and the subject matter of a pending action. The retainer agreement will therefore not be considered in deciding an attorney fee request. George v. George, 15 FSM R. 270, 275 (Kos. S. Ct. Tr. 2007).

Attorney's fees are allowable against the opposing party if a party acts vexatiously, in bad faith, presses frivolous claims, or employs oppressive litigation practices, or when a party's successful efforts have generated a common fund or extended substantial benefits to a class. George v. George, 15 FSM R. 270,

275-76 (Kos. S. Ct. Tr. 2007).

Normally, in the absence of a statute to the contrary, a court will proceed on the assumption that the parties will bear their own attorney's fees because the usual rule is that each party pays its own attorney's fees. George v. George, 15 FSM R. 270, 276 (Kos. S. Ct. Tr. 2007).

When an attorney's fee award is sought, the retainer agreement is not relevant; it is not even discoverable because there is generally no relationship between the attorney's fees and the subject matter of a pending action. The retainer agreement will therefore not be considered in deciding an attorney fee request. George v. Albert, 15 FSM R. 323, 328 (Kos. S. Ct. Tr. 2007).

Attorneys fees are allowable against the opposing party if a party acts vexatiously, in bad faith, presses frivolous claims, or employs oppressive litigation practices, or when a party's successful efforts have generated a common fund or extended substantial benefits to a class. George v. Albert, 15 FSM R. 323, 328 (Kos. S. Ct. Tr. 2007).

Normally, in the absence of a statute to the contrary, a court will proceed on the assumption that the parties will bear their own attorney's fees because the usual rule is that each party pays its own attorney's fees. George v. Albert, 15 FSM R. 323, 328 (Kos. S. Ct. Tr. 2007).

To determine the legal fees' reasonableness, the court would need evidence of the services performed, by whom they were performed, the time expended thereon and the hourly rate charged therefor because an appropriate fee consists of reasonable charges for reasonable services. When there is nothing, other than the client's affirmation of debt while he was seeking counsel for a pending criminal appeal, to prove the reasonable value of the services rendered, the affirmation is insufficient. Merely because a client affirmed that a specified amount was due is not enough to prove the services' reasonable value. Saimon v. Wainit, 16 FSM R. 143, 148 (Chk. 2008).

Attorneys' fees are not costs. Lewis v. Rudolph, 16 FSM R. 278, 280 (Chk. S. Ct. App. 2009).

Generally, a party bears its own attorney's fees, and this rule is the proper foundation upon which the system in the FSM should be built. An exception to this general rule is that attorney's fees have been awarded for a breach of fiduciary duty. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 449 (Pon. 2009).

Attorney's fees will not be awarded to the plaintiff insurer when the conversion arose as part of the insurer's agents' efforts to address customer concerns about the time it took for policy holders to receive their checks for loans taken out on their policies or for their policies' partial or full surrender value when a substantial amount of the cash obtained from the premium checks was distributed to policy holders and when, once the problem was identified, the current agent was cooperative in helping the insurer determine what sums were missing. Nor will attorney's fees be awarded against the business that cashed the checks, since it acted in reliance on the insurer's agents' representations when its employees cashed the checks. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 449 (Pon. 2009).

A court may award attorney's fees against a party when that party acts vexatiously, in bad faith, presses frivolous claims, or employs oppressive litigation practices. Jano v. Fujita, 16 FSM R. 502, 503 (Pon. 2009).

When the plaintiff failed to present at trial any evidence on two elements of his causes of action; when the plaintiff alone testified and his testimony itself was speculative, conclusory, and lacking in foundation; when given the testimony's overall lack of credibility, as well as the lack of other evidence presented at trial to sustain the plaintiff's burden of proof, the court can conclude that the plaintiff brought the lawsuit vexatiously and in bad faith, and, accordingly, the defendant may be awarded his attorney's fees incurred in the course of the lawsuit. Jano v. Fujita, 16 FSM R. 502, 504 (Pon. 2009).

The usual rule is that the parties are responsible for their own attorney's fees. Generally, a prevailing party will be awarded attorney's fees only if they are authorized by contract or by statute, or when the opposing party has acted vexatiously, or in bad faith, or presses frivolous claims, or employs oppressive litigation practices. George v. Albert, 17 FSM R. 25, 34 (App. 2010).

The prevailing plaintiff will not be awarded attorney's fees when the defendant did not act vexatiously or in bad faith, or press frivolous claims, or employ oppressive litigation practices and when no statute or contractual provision authorized attorney's fees in the case. George v. Albert, 17 FSM R. 25, 34 (App. 2010).

Whether a defendant is liable to the plaintiff for an attorney's fee award is properly part of the matters that must be heard at trial and decided before judgment. The amount of the attorney's fees to be awarded will, however, be determined in response to a post-judgment motion. George v. Albert, 17 FSM R. 25, 34 (App. 2010).

When making an attorney fees award, the court will award reasonable attorney's fees based on the customary fee in the locality in which the case is, or will be, tried. For a case tried on Pohnpei, the court will award fees on the basis of $125 an hour. FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 89 (Pon. 2010).

When making an attorney fees award, the court will award reasonable attorney's fees based on the customary fee in the locality in which the case is, or will be, tried. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 100, 101 (Yap 2010).

When a review of the billing attachment reveals that 3.6 hours were spent obtaining the order to compel a deposition, the court will award sanctions at $125 an hour for a total of $450. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 100, 101 (Yap 2010).

A Guam gross revenue tax or a GRT equivalent cannot be included in a court-awarded attorney's fee or as a sanctions expense since it is levied on the attorney and not on the client, and it is thus already included in an attorney's hourly charge. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 100, 102 (Yap 2010).

While a prevailing plaintiff is entitled to the costs of suit as of course, a prevailing party is not automatically entitled to an attorney's fees award because the court is generally without authority to award attorney's fees in the absence of a specific statute or contractual provision allowing recovery of such fees since attorneys' fees are not costs under Rule 54(d) or the common law. FSM Dev. Bank v. Ayin, 18 FSM R. 190, 192 (Yap 2012).

When a defendant was successful in having an action against him in the FSM Supreme Court dismissed without prejudice to any Yap State Court adjudication on the merits of the plaintiff's claims against him, he is not entitled to an attorney fee award under FSM Civil Procedure Rule 54(d). When he does not seek any other expenses that might be considered costs and since he does not cite a statutory or contractual provision that would entitle him to an attorney's fee award, his attorney's fee application must be denied. FSM Dev. Bank v. Ayin, 18 FSM R. 190, 192 (Yap 2012).

When a defendant's dismissal was without prejudice, if the plaintiff pursues the matter in the Yap State Court some of the defendant's fees may be recoverable there if he prevails on the merits since some of his attorney's work involved the merits, which the FSM Supreme Court did not consider, but, on the other hand, if the plaintiff were to prevail in the state court on the merits, an award of fees in the FSM Supreme Court might then be inequitable. FSM Dev. Bank v. Ayin, 18 FSM R. 190, 192 (Yap 2012).

To determine the number of hours reasonably spent, the court must first determine the number of hours actually spent and then subtract from that figure hours that were duplicative, unproductive, excessive,

or otherwise unnecessary. Unnecessary hours and expenses are not compensable or awardable. Kaminanga v. Chuuk, 18 FSM R. 216, 219 (Chk. 2012).

A court has an obligation to see that the attorney's fee awards that it approves are reasonable even if the awards are made pursuant to statute. The test for attorney fee compensation is whether a given step was necessary to attain the relief afforded. Kaminanga v. Chuuk, 18 FSM R. 216, 219 (Chk. 2012).

One difficulty with using time as the lodestar is that there is an incentive to maximize the time devoted to the case, but the court can guard against this by disallowing hours deemed unnecessary. Kaminanga v. Chuuk, 18 FSM R. 216, 219 (Chk. 2012).

Pro se litigants are not entitled to attorney's fees awards. Jacob v. Johnny, 18 FSM R. 226, 234 n.2 (Pon. 2012).

It is error for a trial court to make a $5,000 award for attorney's fees without citing a contractual provision or a statute that would authorize such an award, especially when the FSM civil rights statute cited in the plaintiff's complaint would not apply to the case since the case is not a civil rights case but is a property dispute. Phillip v. Moses, 18 FSM R. 247, 252 (Chk. S. Ct. App. 2012).

Since the Chuuk eminent domain statute specifically prohibits an award for the expenses of litigation for either side in an eminent domain case, no attorney's fees or other costs of litigation can be awarded in an eminent domain case. In re Lot No. 029-A-47, 18 FSM R. 456, 460 (Chk. S. Ct. Tr. 2012).

A prevailing party is not automatically entitled to attorneys' fees because the court is generally without authority to award such fees in the absence of a specific statute or contractual provision allowing recovery. Ihara v. Vitt, 18 FSM R. 516, 531 (Pon. 2013).

Each party normally bears its own attorneys' fees. This flexible rule allows for the imposition of attorneys' fees when a party acts vexatiously, in bad faith, presses frivolous claims, or employs oppressive litigation practices. In the absence of a statute to the contrary, a court will normally proceed on the assumption that the parties will bear their own attorney's fees. Ihara v. Vitt, 18 FSM R. 516, 531 (Pon. 2013).

In the absence of statutory authority, there is a general presumption against attorney fees awards and they should not be awarded as standard practice. Ihara v. Vitt, 18 FSM R. 516, 531 (Pon. 2013).

Costs are always available to the party who ultimately prevails, but attorney's fees are not available for pro se litigants even if they prevail. Berman v. Pohnpei, 19 FSM R. 111, 117 (App. 2013).

When an unlawful detention was a violation of the plaintiff's right to due process, it was a civil rights violation, which under 11 F.S.M.C. 701(3) entitles him to reasonable attorney's fees and costs. Inek v. Chuuk, 19 FSM R. 195, 200 (Chk. 2013).

Generally, a court will award attorney's fees only when such fees are provided for by statute or in a contract between the parties. But if the defendant acts vexatiously, or in bad faith, or presses frivolous claims, or employs oppressive litigation practices, the trial court may award attorney's fees to the prevailing party even when no statute or contractual provision authorizes attorney's fees. George v. Sigrah, 19 FSM R. 210, 218 (App. 2013).

The mere non-payment of a judgment does not constitute the vexatiousness or bad faith needed to entitle a judgment creditor to an attorney's fees and costs award. There must be something more. George v. Sigrah, 19 FSM R. 210, 218 (App. 2013).

A party seeking an attorney's fee award must submit supporting documentation showing the attorney's

hourly rate, the date, the work done, and the amount of time spent on each service for which a claim for compensation is made. George v. Sigrah, 19 FSM R. 210, 218 (App. 2013).

When the record is adequate to show that the judgments did not go unpaid because of the appellees' bad faith or vexatious behavior, the trial court's denials of attorney's fees requests may be affirmed. George v. Sigrah, 19 FSM R. 210, 218 (App. 2013).

Even though no opposition was filed to an appellate bill of costs, it still must be considered by a judge when it asks for attorney's fees since attorney's fees can only be determined by a judge, not a clerk. Nena v. Saimon, 19 FSM R. 393, 395 (App. 2014).

A request for attorney's fees sought as costs must be denied because attorney's fees are not recoverable as costs under Appellate Rule 39. Attorney's fees are traditionally not considered part of costs. Nena v. Saimon, 19 FSM R. 393, 395 (App. 2014).

6 F.S.M.C. 1017 does not grant the court power to award attorney's fees. It only refers to court fees and the like. Nena v. Saimon, 19 FSM R. 393, 395 (App. 2014).

A request for attorney's fees sought as costs must be denied since attorney's fees are not recoverable as costs under Appellate Rule 39. Attorney's fees are traditionally not considered part of costs. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

6 F.S.M.C. 1017 does not grant the court power to award attorney's fees. It only refers to court fees and the like. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

Although, as a general rule, attorney's fees can be awarded as an element of costs only if it is shown that such fees were traceable to the opposing party's unreasonable or vexatious actions, but, even if attorney's fees could be awarded under Appellate Rule 39, they would not be when no such vexatious actions were shown during the course of the appeal. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

Attorney's fees are awarded to the prevailing party only if authorized by contract or by statute. FSM v. Muty, 19 FSM R. 453, 462 (Chk. 2014).

The court, when making an attorney's fee award, can only award reasonable attorney's fees based on the customary fee in the locality where the case is, or will be tried. In re Contempt of Jack, 20 FSM R. 452, 467 (Pon. 2016).

The FSM Development Bank may recover an attorney's fee award under Rule 37. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 575 (Pon. 2016).

If, and when, a party is awarded its expenses under Rule 37, and if that party is not paid those expenses reasonably promptly, that expense award will, at final judgment, be deducted from any money judgment awarded to the opposing party or added to any money judgment awarded to the party. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 575 (Pon. 2016).

In general, in debt collection cases, reasonable attorney's fees are limited to not more than 15% of the principal amount due. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 174 (Pon. 2017).

The starting point of a reasonable attorney's fee calculation is done by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate. FSM Dev. Bank v. Gilmete, 21 FSM R. 236, 238 (Pon. 2017).

When the market rate is not one set figure but a range from $100 to $125 an hour; when the court is

confident that with its large presence and large volume of legal work, the bank, if it were to contract out its legal work to the private bar, could negotiate a favorable rate; but when the litigation involved some novel issues beyond the usual run-of-the-mill collection work, the court will set $112 an hour as the reasonable rate to be awarded to the bank this time. FSM Dev. Bank v. Gilmete, 21 FSM R. 236, 238 (Pon. 2017).

To determine the number of hours reasonably spent, the court must first determine the number of hours actually spent and then subtract from that figure hours which were duplicative, unproductive, excessive, or otherwise unnecessary. Redundant, or otherwise unnecessary hours must be excluded from the amount claimed because courts are charged with deducting for redundant hours. FSM Dev. Bank v. Gilmete, 21 FSM R. 236, 238 (Pon. 2017).

Attorney's fees for travel time are not allowed. FSM Dev. Bank v. Gilmete, 21 FSM R. 236, 238 (Pon. 2017).

It is settled law that an attorney's fee award cannot be made to a pro se litigant regardless of whether the litigant is a lawyer or a lay person. Attorney's fees are not available to pro se litigants even when they prevail. Berman v. Pohnpei, 22 FSM R. 377, 382 (Pon. 2019).

Any claim including attorney's fees is not one for a sum certain, because attorney's fees may only be awarded upon a judicial finding that the fees sought are reasonable. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 495, 497 (Pon. 2020).

When a plaintiff requests a default judgment that includes $1,200 in legal fees (attorney's fees), the default judgment it requests is not for a sum certain, and the clerk cannot grant it. Only the court can grant it. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 495, 497 (Pon. 2020).

A stipulation in a promissory note for attorney's fees is valid and will be enforced, but only to the extent it is reasonable. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 495, 497 (Pon. 2020).

Except in an unusual case (such as vexatious litigation tactics by a judgment-debtor), 15% is the upward limit for, the court, in a debt collection case, to deem an attorney's fee reasonable when it is awarded pursuant to a contractual agreement to pay attorney's fees. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 495, 497 (Pon. 2020).

Creditors must establish that the attorney's fees, that are to be charged to a debtor pursuant to a promissory note provision, are reasonable in relation to the amount of the debt as well as to the services rendered. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 495, 497 (Pon. 2020).

The requirement, that attorney's fees awards will be included in a judgment only after the court has determined that the fees sought are reasonable, applies regardless of how the attorney's fees are characterized – whether the fees are to be added on to the debt in the judgment, or capitalized as part of the debt's principal, or are the sole subject matter of the lawsuit. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 495, 497 (Pon. 2020).

A creditor plaintiff cannot, by adding its attorney's fees to the debt's principal, circumvent the court's duty to first determine those fees' reasonableness before imposing them on a debtor defendant. It is an abuse of the trial court's discretion to award attorney's fees without first determining their reasonableness. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 495, 497 (Pon. 2020).

Any party seeking attorney's fees always bears the burden of providing sufficient evidence to prove its claim. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 495, 497 (Pon. 2020).

When, because the court referred the matter for administrative review, the plaintiff had an opportunity to vindicate its rights and the Secretary reevaluated his previous decisions and reversed himself, the error

was corrected through the administrative review process, which is consistent with the procedure's purpose. The court thus cannot find a reason to award the plaintiff damages or attorney's fees, especially when the plaintiff waited a year before exercising its rights under the statute, which greatly increased its attorney's fees due to the need to obtain injunctive relief. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 634-35 (Pon. 2020).

The civil rights statute, 11 F.S.M.C. 701(3), does not authorize the award of attorney's fees for administrative proceedings, even for administrative proceedings that were a prerequisite to a later court action (the exhaustion of administrative remedies requirement) because the statute only authorizes an attorney's fee award for actions (court cases) brought under 11 F.S.M.C. 701(3). New Tokyo Medical College v. Kephas, 22 FSM R. 625, 635 (Pon. 2020).

– Court-Awarded – Common Fund

There is flexibility to modify the normal rule that each party pays its own attorney's fees when justice requires, and thus attorney's fees may be assessed for willful violation of a court order, when a party acts vexatiously, or in bad faith, presses frivolous claims, or employs oppressive litigation practices, or when the successful efforts of a party have generated a common fund or extended substantial benefits to a class. Semens v. Continental Air Lines, Inc. (II), 2 FSM R. 200, 208 (Pon. 1986).

Each party normally bears its own attorney fees. This flexible rule allows for the imposition of attorney's fees where a party acts vexatiously, in bad faith, presses frivolous claims, or employs oppressive litigation practices, or when a party's successful efforts have generated a common fund or extended substantial benefits to a class. Normally, in the absence of a statute to the contrary, a court will proceed on the assumption that the parties will bear their own attorney's fees. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM R. 388, 392 (Kos. 1998).

Attorneys fees are allowable against the opposing party if a party acts vexatiously, in bad faith, presses frivolous claims, or employs oppressive litigation practices, or when a party's successful efforts have generated a common fund or extended substantial benefits to a class. George v. George, 15 FSM R. 270, 275-76 (Kos. S. Ct. Tr. 2007).

Attorneys fees are allowable against the opposing party if a party acts vexatiously, in bad faith, presses frivolous claims, or employs oppressive litigation practices, or when a party's successful efforts have generated a common fund or extended substantial benefits to a class. George v. Albert, 15 FSM R. 323, 328 (Kos. S. Ct. Tr. 2007).

While the lodestar method, which multiples the number of attorney-work hours reasonably expended by an hourly rate appropriate for the FSM and the lawyer's experience, is the proper method in statutory (or in contractual) fee-shifting cases, the percentage-of-recovery method is generally used in common fund cases on the theory that class members would be unjustly enriched if they did not adequately compensate the counsel responsible for generating the fund, although it is within a trial court's discretion to use the lodestar instead of the percentage-of-recovery method to calculate attorney's fees in a common fund case. When the percentage-of-recovery method is used, the court must specify the percentage it has utilized in determining the fee award. There is no set standard, however, for determining a reasonable percentage. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 203-04 (Yap 2010).

The court has general equitable powers to award fees out of a settlement fund to those attorneys who have brought benefit to class members. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 204 (Yap 2010).

Although courts are reluctant to disturb contingent fee arrangements freely entered into by knowledgeable and competent parties, an attorney's contingent fee must still be reasonable or the court may reduce it. This is especially true when the contingent fee sought is in a class action. People of Tomil

ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 204 (Yap 2010).

The trial court in a class-action settlement is not bound by the parties' agreement as to the amount of attorney fees. A thorough judicial review of fee applications is required in all class action settlements. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 204 (Yap 2010).

In the context of a class-action settlement, when determining whether plaintiffs' counsel is in fact entitled to fees, and if so, in what amount, the court must be sensitive to the potential conflict of interest between plaintiffs and their counsel, and must be particularly careful to insure that the ultimate division of funds is fair to absent class members. This is because, even if the court finds, under Rule 23(e), that the settlement is fair and reasonable to absent class members, the court still has an unbending duty to ensure that counsel is not unreasonably benefited by the award of an exorbitant fee, and therefore must scrutinize attorney fee applications with a jealous regard for the rights of those who are interested in the class action settlement fund since the divergence in financial incentives always creates the danger that the lawyers might urge a class settlement at a low figure or on a less-than-optimal basis in exchange for red-carpet treatment on fees. Thus, under Rule 23(e), a trial court must scrutinize any fee agreement that would be enforced as part of the agreement, because those agreements necessarily put counsel and clients in an adversary relationship. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 204 (Yap 2010).

When a contingent fee contract is to be satisfied from a settlement fund approved by the trial judge pursuant to Rule 23(e), the court has an even greater necessity to review the fee arrangement for this rule imposes upon it a responsibility to protect the interests of the class members from abuse. In such circumstances, the attorneys' role is drastically altered; they then stand in essentially an adversarial relation to their clients who face a reduced award to the extent that counsel fees are maximized. Moreover, because of the nature of class representation, the clients may be poorly equipped to defend their interests against those of their attorneys. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 205 (Yap 2010).

The court's fee application review must consider not only just compensation for attorneys but also the necessity to protect the rights of the class members. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 205 (Yap 2010).

In a common fund case where the attorneys' fees and the clients' award stem from the same source and the fees are based on a percentage amount of the clients' settlement, the trial court should consider: 1) the size of the fund and the number of persons benefitted; 2) the presence or absence of substantial objections by members of the class to the fees requested by counsel; 3) the skill and efficiency of the attorneys involved; 4) the litigation's complexity and duration; 5) the risk of nonpayment; 6) the amount of time plaintiffs' counsel devoted to the case; and 7) the awards in similar cases. These factors need not be applied in a formulaic way since each case is different. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 205 (Yap 2010).

As a general rule, as the size of a fund increases, the appropriate percentage to be awarded to counsel decreases although sometimes the increase in the recovery is merely due to the size of the class and has no direct relationship to counsel's efforts. And a fund size may be so large as to require the court to decrease the percentage award. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 205 (Yap 2010).

The brevity of the litigation before settlement (for instance, a case in which no formal discovery has been conducted before a quick settlement) would require a reduction in attorney fees. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 205 (Yap 2010).

Courts generally use lodestar calculations to "cross-check" percentage-of-recovery fee awards. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206 (Yap 2010).

Class action counsel in common fund cases are entitled to reimbursement for expenses adequately documented and reasonably and appropriately incurred in the prosecution of the class action. The litigation expenses that may be allowed in such cases are thus more extensive than the costs routinely taxed and awarded to prevailing parties under Rule 54(d). People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206 (Yap 2010).

– Court-Awarded – Contractual

It is especially important for the court to scrutinize carefully and strictly construe contractual provisions which relate to the payment of attorney's fees. Bank of the FSM v. Bartolome, 4 FSM R. 182, 185 (Pon. 1990).

The FSM Supreme Court will consider an unambiguous provision in a promissory note for the payment of reasonable attorney's fees in debt collection cases as valid in the Federated States of Micronesia. Bank of Hawaii v. Jack, 4 FSM R. 216, 219 (Pon. 1990).

Because agreements in promissory notes for the payment of attorney's fees are essentially indemnity clauses, they will be given effect only to the extent that expenses and losses are actually incurred, as demonstrated by detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which a claim for compensation is made. Bank of Hawaii v. Jack, 4 FSM R. 216, 219 (Pon. 1990).

Provisions in promissory notes for the payment of attorney's fees will be enforced only to the extent that the fees demanded are reasonable. Bank of Hawaii v. Jack, 4 FSM R. 216, 219 (Pon. 1990).

It is necessary for each creditor to establish that attorney's fees to be charged to a debtor pursuant to an agreement in a promissory note are reasonable in relation to the amount of the debt as well as to the services rendered. Bank of Hawaii v. Jack, 4 FSM R. 216, 220 (Pon. 1990).

Where attorney's fees claimed pursuant to a contractual provision are excessive or otherwise unreasonable, it is within the equitable and discretionary power of the court to reduce or even deny the award, despite the contractual provision. Bank of Hawaii v. Jack, 4 FSM R. 216, 220 (Pon. 1990).

Except in unusual circumstances, the amount awarded pursuant to a stipulation for the payment of attorney's fees in debt collection cases in the FSM will be limited to a reasonable amount not in excess of fifteen percent of the outstanding principal and interest. Bank of Hawaii v. Jack, 4 FSM R. 216, 221 (Pon. 1990).

Where a debtor/account receivable to an insolvent corporation is liable to the corporation's creditors the debtor cannot challenge the arrangement for attorney's fees made between the creditors, counsel, and the court for collection of the insolvent corporation's accounts receivable. Creditors of Mid-Pac Constr. Co. v. Senda, 6 FSM R. 140, 142 (Pon. 1993).

In collection cases, creditors must establish that the attorney's fees to be charged are reasonable in relation to the amount of the debt as well as to the services rendered. Generally, plaintiff's attorney's fees in a debt collection case, barring bad faith on the defendant's part, will be limited to a reasonable amount not to exceed fifteen percent of the outstanding principal and interest. J.C. Tenorio Enterprises, Inc. v. Sado, 6 FSM R. 430, 432 (Pon. 1994).

An FSM court may reduce the amount of attorney's fees provided for under a foreign judgment, where that judgment is unenforceable as against public policy to the extent that the attorney fees in excess of 15% of debt are repugnant to fundamental notions of what is decent and just in the FSM. J.C. Tenorio Enterprises, Inc. v. Sado, 6 FSM R. 430, 432 (Pon. 1994).

When a plaintiff's interest and attorney's fee claim rests on a paragraph on the bottom left portion of each invoice and none of the invoices bears the defendant's signature, an issue of fact exists as to whether this pre-judgment interest and fee clause ever formed a material part of the open account agreement between the parties. Summary judgment is therefore denied on the issue. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 79 (Kos. 1999).

An attorney's fee must be reasonable, and the court must make such a finding. Except in unusual circumstances, an attorney's fee in debt collection cases will be limited to a reasonable amount not to exceed 15% of the amount due on the loan at the time of default. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103 (Kos. 2001).

The rationale for limiting attorney's fees in collection cases, whether the attorney's fees result from a loan agreement or a stipulated judgment, to a reasonable percentage of the amount collected is so that a debtor is not ultimately faced with an obligation far in excess of that originally anticipated, and to provide certainty to debtors and creditors alike. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103 (Kos. 2001).

An award of attorney's fees, depending as it does upon a finding of reasonableness, is an exercise in equity. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103 (Kos. 2001).

When a debtor has engaged in the unreasonable conduct that he has no further liability on the judgment, it is equitable to award an attorney's fee of 30% of the remaining amount due on the loan for work done to collect on the judgment, rather than the 15% allowed in Bank of Hawaii v. Jack. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103 (Kos. 2001).

When a debtor's unreasonable conduct occurred in opposing the collection of the remainder of a judgment after the bulk of it had been paid and the creditor is entitled to reasonable attorney's fees, it is equitable to award the creditor reasonable attorney's fees not to exceed 15% for work done in collecting the bulk of the judgment, and reasonable attorney's fees not to exceed 30% of the judgment's remainder, rather than attorney's fees not exceeding 15% of the total judgment. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103-04 (Kos. 2001).

Contract provisions for the payment of attorney's fees will be enforced only to the extent that the fees demanded are reasonable. In debt collection cases, the amount awarded for attorney's fees should not exceed 15 percent of the outstanding principal and interest. Jackson v. George, 10 FSM R. 523, 526 (Kos. S. Ct. Tr. 2002).

The court must first determine the reasonableness of a plaintiff's claim for attorney's fees and costs. Any award of attorney's fees must be based upon a showing and a judicial finding, that the amount of fees is reasonable based on detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which compensation is claimed. Jackson v. George, 10 FSM R. 523, 527 (Kos. S. Ct. Tr. 2002).

An attorney's fee must be reasonable, and the court must make such a finding. Therefore, contract provisions for the payment of attorney's fees will be enforced only to the extent that the fees demanded are reasonable. In debt collection cases, the amount awarded for attorney's fees should not exceed 15 percent of the outstanding principal and interest. Jackson v. George, 10 FSM R. 531, 532-33 (Kos. S. Ct. Tr. 2002).

The court must first determine the reasonableness of the plaintiff's claim for attorney's fees and costs. Any attorney's fees award must be based upon a showing and a judicial finding, that the amount of fees is reasonable based on detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which a claim for compensation is made. Jackson v. George, 10 FSM R. 531, 533 (Kos. S. Ct. Tr. 2002).

The Kosrae State Court will adopt the 15% limitation established in Bank of Hawaii v. Jack, and when the total amount of the plaintiff's attorney fees claim is excessive, but the plaintiff's claim for trial preparation, representation at trial and preparation of the written summation is reasonable, a 15% attorney fees award is reasonable and just. Jackson v. George, 10 FSM R. 531, 533 (Kos. S. Ct. Tr. 2002).

It is an abuse of the trial court's discretion to award attorney's fees without first determining their reasonableness, and it is especially important for the court to scrutinize carefully and to strictly construe contractual provisions which relate to the payment of attorney's fees. LPP Mortgage Ltd. v. Maras, 12 FSM R. 112, 113 (Chk. 2003).

The court is the final arbiter of whether an attorney fee award it orders is reasonable. Merely because an attorney has billed his client for a certain amount does not make that amount reasonable for a court-ordered award. LPP Mortgage Ltd. v. Maras, 12 FSM R. 112, 113 (Chk. 2003).

Except for unusual circumstances, 15% is the upward limit for an attorney's fee to be deemed reasonable when it is awarded pursuant to a stipulation for the payment of attorney's fees in a debt collection case. LPP Mortgage Ltd. v. Maras, 12 FSM R. 112, 113 (Chk. 2003).

Attorney's fees that are awarded on the basis of contract become part of the plaintiffs' damages in its case. When the one party's wrongful act has involved him in litigation with another, and the other must pursue a legal remedy, then the attorney's fees so incurred should be treated as damages that flow from the original wrongful act. Adams v. Island Homes Constr., Inc., 12 FSM R. 541, 543 (Pon. 2004).

Attorney's fees will not be awarded in a default judgment when nowhere in the pleadings does it allege or indicate that any contract between the parties makes the defendant liable for attorney's fees. Albatross Trading Co. v. Aizawa, 13 FSM R. 380, 382 (Chk. 2005).

Even when attorney's fees awards are made pursuant to contract or statute, a trial court has an obligation to see that any award it approves is reasonable, and it is an abuse of the trial court's discretion to award fees without first determining their reasonableness. The court must carefully scrutinize and strictly construe contractual provisions relating to the payment of attorney's fees. The court is the final arbiter of whether a court-ordered attorney fee award is reasonable. Albatross Trading Co. v. Aizawa, 13 FSM R. 380, 382 (Chk. 2005).

Except in unusual circumstances, the amount awarded pursuant to a stipulation for the payment of attorney's fees in debt collection cases in the FSM will be limited to a reasonable amount not to exceed fifteen percent of the outstanding principal and interest. Fifteen percent is not an amount an attorney is automatically entitled to as a fee in debt collection case. It is the upper limit, or ceiling, on what the court can consider to be reasonable and beyond which a fee is presumed to be unreasonable. Albatross Trading Co. v. Aizawa, 13 FSM R. 380, 382 (Chk. 2005).

Fifteen percent is the usual maximum allowed for attorney's fees in a collection case under FSM Supreme Court caselaw. FSM Dev. Bank v. Adams, 14 FSM R. 234, 244 n.4 (App. 2006).

When the trial court awarded attorney's fees against a defendant based on 15% of the judgment against him and a co-defendant was jointly and severally liable for only part of that judgment, if the co-defendant were liable for attorney's fees, its liability would be limited to 15% of the part of the judgment it was liable for. FSM Dev. Bank v. Adams, 14 FSM R. 234, 256 n.8 (App. 2006).

A contract's intended third-party beneficiary can recover attorney's fees under a contract providing for attorney's fees if it has to sue to enforce its third-party beneficiary rights and prevails. Similarly, a prevailing party can recover attorney's fees from an intended third-party beneficiary litigant if that beneficiary could have recovered attorney's fees from that party under the contract. FSM Dev. Bank v. Adams, 14 FSM R.

234, 256 (App. 2006).

When it was the appellees' contract with another that provided for attorney's fees for a successful litigant and the appellant was not an intended beneficiary of that agreement; and when the trial court declined to shift the attorney fee burden to the appellant based on its vexatious conduct, no contract or statute authorized the fees the appellant was awarded. When the trial court, in awarding these attorney's fees after the trial on damages, made no finding that attorney's fees were damages in the contemplation of both parties as the probable result of the breach at the time they made the contract, the fees could not have been awarded as consequential damages. The fee award thus must be reversed. FSM Dev. Bank v. Adams, 14 FSM R. 234, 256 (App. 2006).

Generally, parties must bear their own attorney's fees unless otherwise authorized by law or by contract between the parties. Thus, when the sales contract provides that the buyer will pay the seller's attorney's fees and costs if an attorney is hired to collect the debt, the court will determine and award the seller its reasonable attorney's fees, which, except in unusual circumstances involving bad faith and vexatious litigation, will not exceed 15% of the outstanding principal and interest. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 225 (Chk. 2008).

A sales contract provision that the buyer "agrees to pay all attorney's collection and court fees and an additional 33% of the principal amount and accrued interest in the event this invoice is referred to an attorney or collection agency for collection" appears, since it is included in the same sentence as "all attorney's collection and court fees," to not only constitute "double-dipping" or double recovery of attorney's fees, but it would also award attorney's fees greatly in excess of the 15% maximum usually allowed in collection cases, and will therefore not be awarded. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 225 (Chk. 2008).

A summary of the total hours worked by the attorneys and their individual billing rates and a lawyer's affidavit that the summary was correct is inadequate to support an attorney fee award, and the party seeking an attorney's fees award always bears the burden of providing sufficient evidence to prove its claim. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 470 (Chk. 2009).

The starting point of a reasonable attorney's fee calculation is done by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate. To determine the number of hours reasonably spent, the court must first determine the number of hours actually spent and then subtract from that figure hours which were duplicative, unproductive, excessive, or otherwise unnecessary. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 470 (Chk. 2009).

Redundant, or otherwise unnecessary hours must be excluded from the amount of attorneys' fees claimed because courts are charged with deducting redundant hours, which generally occur when more than one attorney represents a client. Time devoted to intra-office consultations between attorneys, which duplicated the other's time will be reduced. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 470 (Chk. 2009).

Since the test for attorney fee compensation is whether a given step was necessary to attain the relief afforded, the court will disallow the hours spent negotiating a lien release with an attorney who did not represent any party in the litigation, concerning a matter unrelated to obtaining a money judgment against the defendants in the case. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 470 (Chk. 2009).

File maintenance and reorganization and an intra-office conference with staff about it is administrative work. Administrative work is considered part of overhead and attorney time devoted to administrative, instead of legal, tasks will be disallowed. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 470 (Chk. 2009).

Going to the airport to find a passenger to hand-carry a package to Chuuk or running to find someone

to hand-carry documents to Chuuk for filing and the like is courier or delivery work, and delivery work is valued at delivery service rates, not attorney rates, regardless of whether an attorney performs the task. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 470 (Chk. 2009).

Unexplained time that does not appear to be related to the relief sought or attained by the litigation will be disallowed from an attorney fee request. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 470-71 (Chk. 2009).

An award of reasonable attorney's fees to the prevailing party is based on the customary fee in the locality in which the case is tried. Thus when the case was filed in and decided in Chuuk and the customary fee in Chuuk currently ranges from $100 to $125 an hour, the court will award attorneys' fees at $125 per hour. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 471 (Chk. 2009).

A "business privilege tax" that is part of the cost of being in business on Guam and is either part of a law firm's overhead, which cannot be taxed as a cost, or an increase in or part of the attorney's hourly rate and thus already considered under the reasonable attorney fee award. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 471 (Chk. 2009).

Even if a law firm client has agreed to compensate the law firm for its gross receipts tax liability on income received from the client, the court will not award it because what the client has agreed to pay is not relevant to the court's determination of a reasonable fee. The court makes its reasonableness determination without reference to any prior fee agreement between the attorney and client since the entitlement to a reasonable attorneys' fees award is the client's, not his attorney's, and the amount the client actually pays his attorney is irrelevant. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 471 (Chk. 2009).

The FSM Development Bank can be entitled to reasonable attorney's fees even when it uses in-house counsel. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 173 (Pon. 2017).

When the borrowers promised to pay to the bank all reasonable attorney's fees, expenses, and costs of collection, the borrowers were liable for the costs of collecting from them, but they were not liable for the bank's attorney's fees either defending against a third party's claims against the bank or reviewing the litigation between the third party and the borrowers since those fees are not part of the cost of collecting from the borrowers. Those hours will be disallowed. FSM Dev. Bank v. Gilmete, 21 FSM R. 236, 238 (Pon. 2017).

Attorney's fees in collection cases ordinarily should not exceed 15% of the outstanding principal and interest, and an award will be reduced accordingly. FSM Dev. Bank v. Gilmete, 21 FSM R. 236, 238-39 (Pon. 2017).

– Court-Awarded – Private Attorney General

The "private attorney general" theory for an award of attorney's fees whereby a successful party is awarded attorney's fees when it has vindicated an important public right that required private enforcement and benefitted a large number of people has never been applied in the FSM. Damarlane v. United States, 8 FSM R. 45, 55 (App. 1997).

The "private attorney general" theory has never been judicially applied in the FSM, nor has it been judicially prohibited. Udot Municipality v. FSM, 10 FSM R. 354, 361 (Chk. 2001).

When the prevailing party has vindicated and enforced an important right affecting the public interest that will potentially benefit the general public and a large number of people, which required private enforcement, and which was of societal importance and the cost to prevailing party appears to outweigh the potential benefits it achieved, the case is a suitable one for the equitable application of the "private attorney

general" doctrine and it is proper to adopt the principle. Udot Municipality v. FSM, 10 FSM R. 354, 361-62 (Chk. 2001).

The private attorney general theory permits government reimbursement of a party's attorney fees when it must hire its own attorney to enforce a right shared by a large number of people, when it is in the public interest. The theory recognizes that the government does not always adequately protect the rights of citizens, and that people who successfully defend the rights of the public at their own cost deserve to have their attorney fees paid for, as if they had been provided the services of a "private attorney general." FSM v. Udot Municipality, 12 FSM R. 29, 36 n.4 (App. 2003).

The private attorney general theory should be available for prevailing litigants to recover their attorney fees in bringing an action if they meet the criteria because when government officials' acts are contrary to the Constitution, and these same officials have access to the significant resources of the national government to defend their actions, there is a danger that the courts may become inaccessible to members of the public. The government does have finite and scarce resources, but these are not wasted on litigation that benefits the public interest and vindicates important societal rights. FSM v. Udot Municipality, 12 FSM R. 29, 55 (App. 2003).

The standards for application of the private attorney general theory are rigorous, and only in cases where a litigant is successful in pursuing a case that confers a substantial benefit on the public will the government be liable for attorney fees. FSM v. Udot Municipality, 12 FSM R. 29, 55 (App. 2003).

The private attorney general theory should apply in the FSM, provided that the criteria are strictly met. FSM v. Udot Municipality, 12 FSM R. 29, 55 (App. 2003).

A party seeking attorney's fees under the private attorney general theory must demonstrate that it vindicated a right that benefits a large number of people, that the right sought to be enforced required private enforcement, and it must prove that the right is of societal importance. FSM v. Udot Municipality, 12 FSM R. 29, 56 (App. 2003).

A prevailing municipality may recover its attorney's fees under a private attorney general theory when the case addressed significant constitutional and other issues of public importance; when the whole population of the FSM benefitted from requiring greater accountability in the use of public project funds and requiring the Congress to legislate within constitutional limitations, especially when the legislation involves appropriation of large sums of funds intended for public projects; and when the case required private enforcement, as municipal governments in the FSM do not have the resources or facilities to maintain legal offices on the same scale as the state or national governments and, when the rights of a municipality's residents are affected, they must spend municipal funds to hire a private attorney. FSM v. Udot Municipality, 12 FSM R. 29, 56 (App. 2003).

Although a case of first impression, equity favors the party that has successfully established all of the factors to meet the test for application of the private attorney general theory. When it has undertaken to litigate an important case of vital interest to the nation and has expended resources which are substantial in proportion to its gain, it should be reimbursed for its reasonable expenses in litigating. FSM v. Udot Municipality, 12 FSM R. 29, 57 (App. 2003).

The equitable private attorney general doctrine allows a prevailing party to recover attorneys' fees where the party vindicates an important right that affects the public interest, confers a significant benefit upon the general public or a large number of people, and requires private enforcement. FSM v. Udot Municipality, 12 FSM R. 622, 624 n.1 (App. 2004).

When the appellate court has already held that the private attorney general doctrine will apply in the FSM, provided that the criteria are strictly met and when it has concluded that the criteria were met and upheld the trial court's award of attorneys' fees based on the private attorney general theory, and when the

appellate level dealt with the same case, criteria, and circumstances as the trial court, the appellate court may conclude that attorney's fees for the appeal should be awarded based on the private attorney general theory and remand the case to the trial court for a determination of the amount of attorney's fees and costs to be awarded. A trial court attorney's fees award based on the private attorney general theory would be diminished if the party could not also defend the case at the appellate level. FSM v. Udot Municipality, 12 FSM R. 622, 624-25 (App. 2004).

The general rule is that when there is no statutory or contractual basis for a request for attorney fees, each party will normally bear its own attorney's fees. One exception to this rule is the private attorney general theory. A party seeking attorney's fees under the private attorney general theory must demonstrate that it has vindicated a right that benefits a large number of people, that the right sought to be enforced required private enforcement, and it must prove that the right is of societal importance. The private attorney general theory applies in the FSM, provided that these criteria are strictly met. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 421 (Yap 2006).

When a class action has vindicated rights that benefit a large number of people; when these rights required private enforcement since the State of Yap was not in the position to vindicate the private rights of the people of Rull and Gilman; when, considering Yapese society's heavy reliance on the inner lagoon's marine resources, the rights enforced were of great societal importance; and when Yapese society's dependence on the resources of the shoreline, inner reefs, and mangrove stands is a salient feature of Yap's social and geographical configuration; the use of the private attorney general theory conforms to the Constitution's Judicial Guidance Clause that court decisions are to be consistent with the social and geographical configuration of Micronesia. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 421 (Yap 2006).

When an order awarded attorneys' fees on the private attorney general theory and those fees are added to the judgment to be borne by the defendants, the issue of whether the fee award under the private attorney general theory will also stand as the fee award to plaintiffs' counsel in a final distribution is an issue that is not now before the court and will not be before the court until a proposal for a final distribution is before the court. Until then, anything the court might say would be in the nature of an advisory opinion, and the court does not have the authority to issue advisory opinions. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 133, 134-35 (Yap 2007).

An attorney's fees award under a private attorney general theory can only be made, if at all, at the litigation's conclusion. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 161-62 (Yap 2007).

The private attorney-general doctrine makes no distinction in the award of attorney's fees based upon the overall amount of damages that are awarded, nor does it differentiate between an award of monetary damages from injunctive relief. Attorney's fees not otherwise awardable, may be awarded under the private attorney general doctrine only when the lawsuit has met certain requirements, including vindicating rights that benefit a large number of people, when the private parties were required to file suit to enforce those rights because a government authority was unable to do so, and when the rights enforced are of great social importance. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 65 (App. 2008).

When private citizens are pursuing purely civil claims – the tort of negligence – against other private citizens and the Yap government could not have undertaken any action to vindicate the plaintiffs' rights pursued, an award of attorney's fees under the private attorney-general doctrine is erroneous. It is thus an abuse of discretion for the trial court to award attorney's fees and costs under the private attorney-general doctrine in a case in which the government could not have taken any action to vindicate the rights of the people affected. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 65 (App. 2008).

The private attorney general theory permits government reimbursement of a party's attorney fees when it must hire its own attorney to enforce a right shared by a large number of people, when it is in the public interest. The theory recognizes that the government does not always adequately protect the rights of

citizens, and that people who successfully defend the rights of the public at their own cost deserve to have their attorney fees paid for, as if they had been provided the services of a "private attorney general." M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 65 (App. 2008).

A private party cannot seek an award under a private attorney general theory when it is suing for purely civil claims involving money damages that only vindicate the rights of just one plaintiff. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 606 (Pon. 2009).

A party will not be entitled to a private attorney general fee and cost award when it is a private party suing for purely civil claims involving money damages which will only vindicate the rights of just one plaintiff, itself. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 591 (Pon. 2011).

The elements for a private attorney general fee award are that the prevailing party has vindicated and enforced an important right affecting the public interest that will potentially benefit the general public and a large number of people, which required private enforcement, and which was of societal importance. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 35 (Pon. 2011).

No award of attorney's fees and costs can be made under the private attorney general principle when the plaintiff has not yet prevailed in its pursuit of the declaratory judgment. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 35 (Pon. 2011).

A respondent in an eminent domain action cannot recover attorney's fees under a private attorney general theory since the court's ruling monetarily benefits only him. In re Lot No. 029-A-47, 18 FSM R. 456, 460 (Chk. S. Ct. Tr. 2012).

– Court-Awarded – Statutory

Because the social and economic situation in the Federated States of Micronesia is radically different from that of the United States, rates for attorney's fees set by United States courts in connection with civil rights actions there are of little persuasive value for a court seeking to set an appropriate attorney's fee award in civil rights litigation within the Federated States of Micronesia. Tolenoa v. Alokoa, 2 FSM R. 247, 255 (Kos. 1986).

Attorney's fee awards to prevailing parties in civil rights litigation should be sufficiently high at a minimum to avoid discouraging attorneys from taking such cases and should enable an attorney who believes that a civil rights violation has occurred to bring a civil rights case without great financial sacrifice. Tolenoa v. Alokoa, 2 FSM R. 247, 255 (Kos. 1986).

Despite the fact that some of the arguments made by plaintiff in successful civil rights litigation were rejected by the court, time devoted by counsel to these issues may be included in the civil rights legislation attorney's fee award to the plaintiff where all of the plaintiff's claims in the case involved a common core of related legal theories. Tolenoa v. Alokoa, 2 FSM R. 247, 259 (Kos. 1986).

Where an action is brought pursuant to 11 F.S.M.C. 701(3), allowing civil liability against any person who deprives another of his constitutional rights, the court may award reasonable attorney's fees to the prevailing party based on the customary fee in the locality in which the case is tried. Tolenoa v. Kosrae, 3 FSM R. 167, 173 (App. 1987).

In an action brought under 11 F.S.M.C. 701(1) forbidding any person from depriving another of his civil rights, where it is shown that the attorney for the prevailing party customarily charges attorney's fees of $100 per hour for legal services in the community in which the case is brought, and when this is at or near the hourly fee rate charged by other attorneys in the locality, the court may award the prevailing party an attorney's fee based upon the $100 hourly rate. Tolenoa v. Kosrae, 3 FSM R. 167, 173 (App. 1987).

11 F.S.M.C. 701(3) is comprehensive and contains no suggestion that publicly-funded legal services are outside the clause or should be treated differently than other legal services. Plais v. Panuelo, 5 FSM R. 319, 320-21 (Pon. 1992).

The government does not pay twice when it violates someone's civil rights and then is forced to pay attorney's fees. It pays only once – as a violator of civil rights. Its role as a provider of public services is distinct from its role as a defendant in a civil case. Thus an award of costs and reasonable attorney's fees should be made to a publicly funded legal services organization whose client prevailed in a civil rights action. Plais v. Panuelo, 5 FSM R. 319, 321 (Pon. 1992).

A taxpayer who owes social security taxes to the government as employer contributions under the FSM Social Security Act is liable for reasonable attorney's fees if the tax delinquency is referred to an attorney for collection; however, the court may exercise discretion in determining the reasonableness of the fees assessed in light of the particular circumstances of the case. FSM Social Sec. Admin. v. Mallarme, 6 FSM R. 230, 232 (Pon. 1993).

Among the factors which the court may consider in determining the amount of attorney's fees recoverable in an action brought under 53 F.S.M.C. 605 is the nature of the violation, the degree of cooperation by the taxpayer, and the extent to which the Social Security Administration prevails on its claims. FSM Social Sec. Admin. v. Mallarme, 6 FSM R. 230, 232-33 (Pon. 1993).

A taxpayer is liable to the Social Security Administration for reasonable attorney's fees and costs when unpaid taxes are referred to an attorney for collection to the extent which the Social Security Administration prevails on its claims. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 442, 447 (Pon. 1996).

A trial court may, pursuant to 53 F.S.M.C. 605(4), award attorney's fees and collection costs, including fees for a successful appeal, to the Social Security Administration. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM R. 129, 134 (App. 1997).

A successful plaintiff under the civil rights statute, 11 F.S.M.C. 701(3), is entitled to an award for costs and reasonable attorney's fees. Davis v. Kutta, 8 FSM R. 218, 220 (Chk. 1997).

The initial estimate of a reasonable attorney's fee is properly calculated by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate. Davis v. Kutta, 8 FSM R. 218, 220 (Chk. 1997).

In determining the amount of attorney's fees to award the prevailing party in a civil rights suit the court should consider United States civil rights decisions without being bound by them. Davis v. Kutta, 8 FSM R. 218, 221 (Chk. 1997).

An hourly fee is not an arbitrary ceiling with respect to attorney's fees recoverable under an 11 F.S.M.C. 701(3) civil rights action. Davis v. Kutta, 8 FSM R. 218, 222 (Chk. 1997).

When a party has entered into a contingent fee agreement reasonable under FSM MRPC Rule 1.5 and the contingent recovery is more than a fee calculated by an hourly rate times the hours expended, a court, in awarding civil rights attorney's fees, may award a reasonable fee pursuant to the agreement's terms. Davis v. Kutta, 8 FSM R. 218, 223 (Chk. 1997).

The purpose of the FSM civil rights fee provision is to permit an FSM civil rights litigant to employ reasonably competent counsel to pursue civil rights litigation without cost to him or herself. Davis v. Kutta, 8 FSM R. 218, 223 (Chk. 1997).

Because the point of departure for determining a reasonable fee in civil rights litigation is to look at the amount of time spent, counsel should maintain careful records of time actually spent, notwithstanding the

existence of a contingency fee agreement. Davis v. Kutta, 8 FSM R. 218, 224 (Chk. 1997).

Civil rights attorney fee awards and awards of costs may be entered against multiple defendants in the same proportions as those in the original judgment. Davis v. Kutta, 8 FSM R. 218, 224 (Chk. 1997).

Interest on a judgment is payable under 6 F.S.M.C. 1401 at nine percent a year. 11 F.S.M.C. 701(3), which provides for an award of attorney's fees in a civil rights action, should be construed to permit interest on an unpaid fee award. Davis v. Kutta, 8 FSM R. 338, 341 n.2 (Chk. 1998).

In determining a reasonable attorney's fees award, the fair hourly rate in the locality is used; time devoted to travel is not included; and time records for intra-office consultations between attorneys, which duplicated the others time were reduced. Bank of Guam v. O'Sonis, 9 FSM R. 106, 110 (Chk. 1999).

In any civil rights action the court may award costs and reasonable attorney's fees to the prevailing party. Bank of Guam v. O'Sonis, 9 FSM R. 106, 113 (Chk. 1999).

Judicial immunity does not apply against the imposition of prospective injunctive relief. The right to attorney's fees applies when prospective relief is granted against a judge pursuant to the civil rights statute. Bank of Guam v. O'Sonis, 9 FSM R. 106, 113 (Chk. 1999).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages. Estate of Mori v. Chuuk, 10 FSM R. 6, 14 (Chk. 2001).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages, and liability for attorney's fees will be assessed among the defendants in proportion to their responsibility for the judgment. Atesom v. Kukkun, 10 FSM R. 19, 23 (Chk. 2001).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages. Estate of Mori v. Chuuk, 10 FSM R. 123, 124 (Chk. 2001).

So long as a party has prevailed in a civil rights suit as a whole, that party is entitled to fees for all time reasonably spent on the matter, including the time spent on pendent state law claims that would not otherwise be statutorily entitled to a fee award, when the pendent claims arise out of a common nucleus of operative fact. Estate of Mori v. Chuuk, 10 FSM R. 123, 124 (Chk. 2001).

When the election law lacks a statutory definition of costs either specifically including or excluding attorney's fees, the court can only conclude that the Legislature did not intend to use the term "costs" in other than its usual and familiar sense, which does not include attorney's fees. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 223 (Chk. S. Ct. App. 2001).

Plaintiffs may recover all of their attorney's fees although the bulk of the damages was awarded on the state law claim and even though the entitlement to those fees arises from the civil rights statute because for attorney fee purposes in such an instance, it is sufficient that the non-fee claims (i.e., the state law claims) and the fee claims (i.e., the civil rights claims) arise out of a common nucleus of operative fact. Estate of Mori v. Chuuk, 11 FSM R. 535, 537-38 (Chk. 2003).

When both the civil rights claim and the wrongful death claim arose from a common nucleus of operative fact, for purposes of enforcing the judgment, and to be consistent with the principle that plaintiffs are entitled to all of their attorney's fees under 11 F.S.M.C. 701 even though they prevailed on a state law claim as well as a civil rights claim, the court will treat the judgment as though it is in its entirety based on a civil rights claim. Estate of Mori v. Chuuk, 11 FSM R. 535, 538 (Chk. 2003).

When the plaintiff has requested supplementary attorney's fees and the defendant has not objected and when this goes to an issue that is not subject to the pending appeal, the trial court has jurisdiction to

grant the motion. Estate of Mori v. Chuuk, 12 FSM R. 3, 13 (Chk. 2003).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages. The usual method is to award fees based on the hourly rate. Thus the initial estimate of a reasonable attorney's fee is properly calculated by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate. Herman v. Municipality of Patta, 12 FSM R. 130, 137 (Chk. 2003).

While a continency fee is not an arbitrary ceiling with respect to attorney's fees recoverable under an 11 F.S.M.C. 701(3) civil rights action, neither is it a floor. A contingency fee may be used as a basis for an attorney fee award when there are no contemporaneous records of the time the attorney had spent on the case, but since the point of departure for determining a reasonable fee under 11 F.S.M.C. 701(3) is to look at the amount of time spent, counsel in civil rights litigation should maintain careful records of time actually spent, notwithstanding the existence of any contingency fee agreement. Herman v. Municipality of Patta, 12 FSM R. 130, 137 (Chk. 2003).

When plaintiffs are awarded reasonable fees and costs as compensatory damages under 11 F.S.M.C. 701(3), the liability for this will be assessed upon the defendants in proportion to their total liability on the rest of the judgment. Herman v. Municipality of Patta, 12 FSM R. 130, 137-38 (Chk. 2003).

Any person who proves a violation of 32 F.S.M.C. 302 or 32 F.S.M.C. 303 may recover reasonable attorney's fees. AHPW, Inc. v. FSM, 13 FSM R. 36, 39 (Pon. 2004).

A court may award a plaintiff reasonable attorney's fees in litigating a statutory cause of action that provides for award of attorney's fees to the prevailing party even though the plaintiff obtains only nominal damages. The fact that only nominal damages are awarded however may be considered in determining the amount of the attorney's fees. AHPW, Inc. v. FSM, 13 FSM R. 36, 39-40 (Pon. 2004).

When a statute provides for attorney's fees to the prevailing party, a plaintiff need not receive all of the relief that he seeks in order to be eligible for attorney's fees so long as he prevails on a significant issue. AHPW, Inc. v. FSM, 13 FSM R. 36, 40 (Pon. 2004).

A fee application must be supported by detailed supporting documentation showing the date, the work done, and the amount time spent on each service. AHPW, Inc. v. FSM, 13 FSM R. 36, 40 (Pon. 2004).

In Micronesia, an attorney's fee of $120 an hour has been found to be reasonable where there have been other fee awards of that amount and the attorney's work was of high quality, the case was a difficult one, and novel issues were presented. AHPW, Inc. v. FSM, 13 FSM R. 36, 41 (Pon. 2004).

When the court is unaware of any FSM case in which a fee of greater than $120 an hour was awarded and no authority has been provided to support the contention that in the current economic climate of the FSM, an attorney's fee of more than twice the hourly rate previously recognized as reasonable may be found to be reasonable, the fee award will be reduced to $120 an hour. AHPW, Inc. v. FSM, 13 FSM R. 36, 41 (Pon. 2004).

When the lack of details provided in an attorney's fee affidavit is problematic, but Congress felt that the policy concerns underlying 32 F.S.M.C. 301 *et seq.* were strong, because a successful plaintiff may recover both reasonable attorney's fees and treble damages and the plaintiff has successfully vindicated an interest protected by this statute and when the case presented complex, novel issues and the relief sought was ultimately achieved, in lieu of denying a fee request altogether, the court may reduce the amount of the fee claimed. AHPW, Inc. v. FSM, 13 FSM R. 36, 41 (Pon. 2004).

An hourly fee of $75 is reasonable and is well within the limits that have been recognized in the FSM. AHPW, Inc. v. FSM, 13 FSM R. 36, 43 (Pon. 2004).

Even though the parties stipulated to the amount of attorney's fees and to the judgment the court must still make a determination of reasonableness for fees to be entered in a judgment. FSM Social Sec. Admin. v. Jonas, 13 FSM R. 171, 170 (Kos. 2005).

A contingency fee agreement in a civil rights case acts as neither a floor nor a ceiling on attorney's fees awarded under the statute. Such a rule serves the purpose of helping to insure that an attorney will not be undercompensated where important civil rights have been vindicated, and increases the likelihood that a plaintiff who has a meritorious claim will have access to the courts. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 524, 526 (Pon. 2005).

An hourly rate of $120 is a reasonable hourly rate for trial time in civil rights action, and a rate of $100 per hour is a reasonable hourly rate for the out-of-courtroom time in a civil rights case. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 524, 526 (Pon. 2005).

When, in a civil rights case had all of the plaintiff's witnesses been deposed in advance of trial, the trial time would have been shortened, since the questioning of the plaintiff's undeposed witnesses was conducted in the manner of a discovery deposition, the court will estimate the reduction in trial time at 20 percent, and will treat 20 percent of the court time as research time that could have been spent deposing witnesses and award the research rate of $100 an hour for that time instead of the $120 an hour rate for trial time. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 524, 526-27 (Pon. 2005).

The anticompetitive practices statute itself provides the basis for the plaintiff to recover damages together with reasonable attorneys' fees and the costs of suit. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 21 (App. 2006).

Even assuming the pro se plaintiff had successfully prosecuted his discrimination claim and sought attorney's fees under the civil rights statute, the attorney's fees claim would still have been denied. A prevailing pro se litigant is not entitled to an award of attorney's fees even if he is an attorney or legal practitioner. Hauk v. Lokopwe, 14 FSM R. 61, 66 (Chk. 2006).

The prevailing party in civil rights actions under 11 F.S.M.C. 701(3) is entitled to reasonable attorney fees and costs of suit as part of compensatory damages. The court must first determine the reasonableness of any claim for attorney's fees and costs. The usual method of determining reasonable attorney's fees awards is based on an hourly rate. Thus the initial estimate of a reasonable attorney's fee is properly calculated by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. Walter v. Chuuk, 14 FSM R. 336, 340-41 (Chk. 2006).

Any award of attorney's fees must be based upon a showing and a judicial finding, that the amount of fees is reasonable. The plaintiffs must therefore submit detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which a claim for compensation is made. Walter v. Chuuk, 14 FSM R. 336, 341 (Chk. 2006).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages. So long as a party has prevailed in a civil rights suit as a whole, that party is entitled to fees for all time reasonably spent on the matter, including the time spent on pendent state law claims that would not otherwise be statutorily entitled to a fee award, if the pendent claims arise out of a common nucleus of operative fact as the civil rights claim. Lippwe v. Weno Municipality, 14 FSM R. 347, 354 (Chk. 2006).

A plaintiff who is awarded nominal damages is a prevailing party. As prevailing parties in a civil rights action, the plaintiffs are entitled to their fees and costs. Robert v. Simina, 14 FSM R. 438, 444 (Chk. 2006).

When the defendant state court judge's actions upon which the plaintiffs base this suit were judicial in

nature and the state court is a court of general jurisdiction, which would have had the jurisdiction to consider a motion for relief of judgment if one had been filed, the judge did not act in complete absence of jurisdiction. But when he did clearly act grossly in excess of his jurisdiction and when the plaintiffs obtained permanent prospective relief against him in this case, they are entitled to their expenses including attorney's fees and costs under 11 F.S.M.C. 701(3) for bringing this action and are thus entitled to judgment as a matter of law on their civil rights claim for attorney's fees and costs. The costs and fees allowed will be for work in this case and not that for work in the related state court cases. Ruben v. Petewon, 15 FSM R. 605, 608-09 (Chk. 2008).

A ship captain will be awarded his attorney's fees and costs incurred in successfully bringing his counterclaim for civil rights violation and may submit his affidavit in support of his claim for fees and costs, which should meet the specificity standard. FSM v. Koshin 31, 16 FSM R. 350, 355 (Pon. 2009).

A prevailing party in a civil rights lawsuit is, under 11 F.S.M.C. 701(3), entitled to costs and reasonable attorney's fees even when the attorneys are from a non-profit legal services corporation since the right to a reasonable attorneys' fees award is the client's not the attorney's, and the amount that the client actually pays (or whether the client actually pays) his attorney is irrelevant. Sandy v. Mori, 17 FSM R. 92, 96-97 (Chk. 2010).

When a plaintiff has prevailed on its civil rights claim, the court may award it costs and reasonable attorney's fees. Since any attorney's fees award must be based upon a showing and a judicial finding that the amount of fees requested is reasonable, the plaintiff may file and serve detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which it makes a compensation claim so that the defendant may have notice and an opportunity to challenge the reasonableness of the fees and costs sought by the plaintiff. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 111 (Pon. 2010).

When the plaintiff prevailed on its civil rights claims against one defendant but did not prevail on its civil rights claims against the other two defendants (although it did prevail on a trespass claim against them), the one defendant that the plaintiff prevailed against on civil rights claims should not be liable for the plaintiff's attorney's fees incurred in prosecuting its claims against the other two defendants or for fees incurred in its defense of claims that other two defendants prosecuted against the plaintiff. This is because 11 F.S.M.C. 701(3) allows civil liability against any person who deprives another of his constitutional rights, which includes an award of reasonable attorney's fees to the prevailing party, but otherwise the general rule is that the parties bear their own attorney's fees. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 148, 150 (Pon. 2010).

Because the FSM statute is based upon the United States model, the FSM Supreme Court should consider United States court decisions under 42 U.S.C. § 1983 and § 1988 for guidance in determining the intended meaning of, and governmental liability under 11 F.S.M.C. 701(3). Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 148, 150 n.2 (Pon. 2010).

In a civil rights action, the court may award costs and reasonable attorney's fees to the prevailing party when a review of the relevant case law and the statute's permissive language indicate that such an award is merited. Higgins v. Kolonia Town, 17 FSM R. 254, 263 (Pon. 2010).

There are sound policy reasons for a rule denying a pro se litigant, whether a lay person or an attorney, an attorney fee award: 1) the statutory language makes any other construction unlikely because the phrase "reasonable attorney's fees" presupposes the existence of an attorney-client relationship; 2) a pro se litigant (whether a lawyer or a lay person) will not have the expense of compensating another for legal representation; 3) if the FSM Congress had intended that a pro se litigant be granted a fee award, it could easily have said so, but it did not; 4) awarding "attorney's fees" to pro se litigants may unwholesomely encourage the creation of a "cottage industry" of filing lawsuits with little merit in the hope of a fee award; 5) attorneys representing themselves might be tempted to protract litigation for their own financial betterment;

6) it would discourage pro se litigants from employing an independent and detached professional who is not emotionally involved in the case and who could make sure reason, not emotion, dictated the litigation strategy and tactics; and 7) the public would see the FSM justice system as unfair and one-sided if prevailing pro se lawyer plaintiffs were treated more favorably and are eligible to receive an additional award beyond what a pro se lay person would be granted. Berman v. Pohnpei, 17 FSM R. 360, 375-76 (App. 2011).

Granting pro se non-lawyers an attorney fee award would raise the concern of the difficulty in valuing the non-attorney's time spent performing legal services, *i.e.*, the problem of overcompensating pro se litigants for excessive hours spent thrashing about on uncomplicated matters. Berman v. Pohnpei, 17 FSM R. 360, 375 n.6 (App. 2011).

An attorney's fee award should not be made to pro se litigants regardless of whether they are lawyers or lay persons. Berman v. Pohnpei, 17 FSM R. 360, 376 (App. 2011).

When the plaintiffs have not alleged facts from which the court can make out a claim against Pohnpei for civil rights violations and when they have not prevailed in their requests for injunctive relief, the court must deny their request for attorney's fees under 11 F.S.M.C. 702(8). Berman v. Pohnpei, 18 FSM R. 67, 73 (Pon. 2011).

A civil rights fee award statute controls what the losing defendant must pay, not what the prevailing plaintiff must pay his lawyer. What a plaintiff may be bound to pay and what an attorney is free to collect under a fee agreement are not necessarily measured by the "reasonable attorney's fee" that a defendant must pay pursuant to a court order. Kaminanga v. Chuuk, 18 FSM R. 216, 219 (Chk. 2012).

Subsection 701(3) is a fee-shifting statute that shifts the liability for attorney's fees from the client, the party usually liable under a fee agreement, to a non-prevailing party. In an FSM civil rights case, the court "may award costs and reasonable attorney's fees to the prevailing party." But it does not follow that the time an attorney actually expended on the case is the amount of time reasonably expended or that the hourly rate is reasonable. Kaminanga v. Chuuk, 18 FSM R. 216, 219 (Chk. 2012).

An $100 hourly rate is certainly a reasonable rate for attorney work in a civil rights case when attorney's fees are awarded under 11 F.S.M.C. 701(3). Kaminanga v. Chuuk, 18 FSM R. 216, 219 (Chk. 2012).

Time expended on a rehearing petition that was summarily denied was thus completely unproductive and otherwise unnecessary and did not afford any relief and the 3.4 hours spent on it must be disallowed. Kaminanga v. Chuuk, 18 FSM R. 216, 220 (Chk. 2012).

A prevailing party must be one who has succeeded on any significant claim affording it some of the relief sought. At a minimum, to be considered a prevailing party within the meaning of the civil rights fee-shifting statute, the plaintiff must be able to point to a resolution of the dispute which changes the legal relationship between itself and the defendant. Beyond this absolute limitation, a technical victory may be so insignificant as to be insufficient to support prevailing party status. Kaminanga v. Chuuk, 18 FSM R. 216, 220 (Chk. 2012).

Nevertheless, that a plaintiff has once established prevailing party status does not make all later work compensable. Compensability is subject to several limitations. These limitations are: 1) the fee award should take into account the plaintiff's success in the case as a whole; 2) an earlier established prevailing party status extends to post judgment work only if it is a necessary adjunct to the initial litigation, and 3) plaintiffs cannot over-litigate. Kaminanga v. Chuuk, 18 FSM R. 216, 221 (Chk. 2012).

Postjudgment litigation, like all work under the fee-shifting statutes, must be reasonable in degree, and in analyzing a fee request for protracted litigation, it is helpful to divide the time period into phases. Kaminanga v. Chuuk, 18 FSM R. 216, 221 (Chk. 2012).

When the plaintiff has pled civil rights violations and the court has found a violation of the plaintiff's due process rights, the plaintiff can be awarded his attorney's fees and costs. Poll v. Victor, 18 FSM R. 235, 246 (Pon. 2012).

In a civil rights case, a prevailing plaintiff is entitled to an award of costs and reasonable attorney's fees as part of compensatory damages. Alexander v. Pohnpei, 18 FSM R. 392, 401 (Pon. 2012).

The FSM civil rights statute's purpose is to allow a civil rights litigant to employ reasonably competent counsel to pursue civil rights litigation without cost to herself, particularly when the damages are small or uncertain and would not otherwise induce an attorney to pursue the matter. Alexander v. Pohnpei, 18 FSM R. 392, 401 (Pon. 2012).

The civil rights statute provides that in an action brought under it, the court may award costs and reasonable attorney's fees to the prevailing party. Poll v. Victor, 18 FSM R. 402, 404 (Pon. 2012).

The court determines what is a reasonable fee without reference to any fee agreement between the client and the attorney and without reference to what the attorney is actually paid. This determination is based on the customary fee in the locality in which the case is tried. Poll v. Victor, 18 FSM R. 402, 404 (Pon. 2012).

$100 an hour rate is reasonable for an attorney's fee award in a civil rights case. Poll v. Victor, 18 FSM R. 402, 404 (Pon. 2012).

Since the FSM civil rights statute was patterned after U.S. civil rights statutes, the FSM Supreme Court may consider U.S. jurisprudence under 42 U.S.C. § 1983 and § 1988 to help determine the intended meaning of 11 F.S.M.C. 701(3) and governmental liability thereunder. Poll v. Victor, 18 FSM R. 402, 404 (Pon. 2012).

When the FSM civil rights statute is not as expansive as 42 U.S.C. § 1988 because it allows an attorney's fee award only in an action brought under 11 F.S.M.C. 701(3) and when an "action" is a court case while a "proceeding" includes both administrative and judicial proceedings, 11 F.S.M.C. 701(3) does not authorize the award of attorney's fees for administrative proceedings, even for administrative proceedings that were a prerequisite to a later court action (the exhaustion of administrative remedies requirement). It authorizes an attorney's fee award only for actions (court cases) brought under 11 F.S.M.C. 701(3). Poll v. Victor, 18 FSM R. 402, 405 (Pon. 2012).

Attorney's fees and expenses are not recoverable under 11 F.S.M.C. 701(3) in an eminent domain case filed by the petitioner state since it is not a civil rights case and the respondent is receiving the process due him under the Chuuk statute and Constitution and thus his civil rights have not been violated In re Lot No. 029-A-47, 18 FSM R. 456, 460 (Chk. S. Ct. Tr. 2012).

A wrongfully discharged employee is entitled to the equitable remedy of reinstatement to his former position. Reinstatement is appropriate even if the position has been filled by another employee since, if a replacement's existence constituted a complete defense against reinstatement, then reinstatement could be effectively blocked in every case simply by immediately hiring an innocent third-party after the unlawful discharge has occurred, thus rendering the reinstatement remedy's deterrent effect a nullity. Manuel v. FSM, 19 FSM R. 382, 392 (Pon. 2014).

In an action brought under the civil rights statute, the court may award costs and reasonable attorney's fees to the prevailing party. Kon v. Chuuk, 19 FSM R. 463, 467 (Chk. 2014).

Under 11 F.S.M.C. 701(3), the court may award costs and reasonable attorney's fees to the prevailing party in a civil rights case. Carlos Etscheit Soap Co. v. McVey, 20 FSM R. 81, 82 (Pon. 2015).

Since the FSM civil rights statute is not as expansive as 42 U.S.C. § 1988 because it allows an attorney's fee award only in an "action" brought under 11 F.S.M.C. 701(3) and since an "action" is a court case while a "proceeding" includes both administrative and judicial proceedings, 11 F.S.M.C. 701(3) does not authorize the award of attorney's fees incurred for administrative proceedings, even for administrative proceedings that are a prerequisite to a later court action (the exhaustion of administrative remedies requirement). Carlos Etscheit Soap Co. v. McVey, 20 FSM R. 81, 83 (Pon. 2015).

Since the statute authorizes an attorney's fee award only for actions (court cases) brought under 11 F.S.M.C. 701(3), fees for attorney time spent preparing for, participating in, and reviewing administrative proceedings before an agency and before the Governor will be disallowed. Carlos Etscheit Soap Co. v. McVey, 20 FSM R. 81, 83-84 (Pon. 2015).

When the defendant is not liable for the attorney's fees incurred in the plaintiff's litigation against other parties against whom the plaintiff did not have a viable civil rights claim, the court will disallow an attorney fee request for work solely in response to motions filed by those other defendant parties. Carlos Etscheit Soap Co. v. McVey, 20 FSM R. 81, 84 (Pon. 2015).

The court will allow fees for attorney time spent reviewing the appellate court's mandate as that was part of the process leading to trial on civil rights damages. Carlos Etscheit Soap Co. v. McVey, 20 FSM R. 81, 84 (Pon. 2015).

In an action brought under 11 F.S.M.C. 701(3), the court may award costs and reasonable attorney's fees to the prevailing party. Linter v. FSM, 20 FSM R. 553, 562 (Pon. 2016).

– Paid by Client

A client is free to contract with counsel along any lines reasonable under FSM MRPC Rule 1.5, and such a fee, if it is reasonable, is enforceable against the client regardless of the fee awarded by the court. Davis v. Kutta, 8 FSM R. 218, 224 (Chk. 1997).

The first step in resolving a fee dispute between an attorney and a former client is to consult the written fee agreement between the parties, if there is one. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 496 (Chk. 2002).

Construction of a contract for an attorney's compensation is governed by the same rules that apply to contracts generally and interpretation of contract terms are matters of law to be determined by the court. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 496 (Chk. 2002).

When the attorney-client contract is at an end without liability for breach on either side, the attorney remains entitled to compensation according to the contract terms for the services performed to date. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 497 (Chk. 2002).

An attorney fee contract term for "20% of the gross amount henceforth collected by the client" was reasonable when every attorney who takes cases on a contingency basis runs the risk that he will be paid little or nothing for his work, when the 20% fee is lower than many contingent fees, but the attorney's contractual obligations (pursue to judgment) were also less than usual, when the delinquent loans had been charged off because the bank had done all that it could to collect the loans, and when the cases were not promising. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 497 (Chk. 2002).

When an attorney is recovering his fees under the contract's terms and not under quantum meruit, he may enforce a common law charging lien in the original case instead of having to seek his fees in a separate lawsuit. Generally, an attorney is entitled to a common law lien for his fees upon his client's cause of action and the funds it recovers. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 497

(Chk. 2002).

An attorney's charging lien is not created by statute, but has its origin in the common law, and is governed by equitable principles and is based on the equitable doctrine that an attorney should be paid out of the proceeds of the judgment secured by that attorney. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 497 (Chk. 2002).

A counsel's fee must be reasonable. The Rules strongly suggest that a fee arrangement be made in writing and given to the client. This makes the fee arrangement clear and reduces the possibility of confusion. Ittu v. Palsis, 11 FSM R. 597, 598 (Kos. S. Ct. Tr. 2003).

The Rules allow a counsel to require advance payment of a fee by the client, but the counsel is required to return any portion which has not been earned. Ittu v. Palsis, 11 FSM R. 597, 598 (Kos. S. Ct. Tr. 2003).

In order for a law firm to prevail on a summary judgment motion on an account-stated claim for attorney's fees, it has to show that, as a matter of law, the defendant personally was the client for whom all the legal services were performed or that he had agreed to pay for all such services rendered. But that does not end the inquiry. Saimon v. Wainit, 16 FSM R. 143, 147 (Chk. 2008).

Although fee suits appear from a distance to be basically suits to recover on a breach of contract or, in some instances, to recover for the reasonable value of personal services, on closer inspection, the law is clear that lawyers suing clients are not treated as are merchants suing former trading partners. The procedural landscape is much narrower and more tightly regulated. The burden is on the lawyer to present detailed evidence of services actually rendered. Saimon v. Wainit, 16 FSM R. 143, 147 (Chk. 2008).

There are two principal ways in which attorney-fee suits differ from other kinds of collection suits between commercial strangers. One is that the court, exercising its supervisory powers over lawyers, can reduce the amount charged, and the other is that the defenses available to clients are expanded. Saimon v. Wainit, 16 FSM R. 143, 147 (Chk. 2008).

An attorney seeking to recover unpaid attorney fees on the theory of account stated must prove the reasonable value of the services rendered if the fee agreement was entered into during the course of the attorney-client relationship. This is because when the account stated is for legal services, there is a presumption of undue influence when entered between an attorney and client during their fiduciary relationship. The attorney has the burden of showing that the transaction was fair and regular and entered voluntarily by the client with full knowledge of the facts. Saimon v. Wainit, 16 FSM R. 143, 147 (Chk. 2008).

Although a written agreement may provide for a specified attorney fee, the courts may inquire into the reasonableness of the fee. Thus, even when enforcing a fee contract, the attorney's fee must still be reasonable or the court may reduce it because the fee charged under the fee contract is always subject to reduction by the court in the exercise of a supervisory power over lawyers. Saimon v. Wainit, 16 FSM R. 143, 148 (Chk. 2008).

Just like any plaintiff, any party seeking attorney's fees, including a plaintiff law firm suing for the fees it claims to have earned, always bears the burden of providing sufficient evidence to prove its claim. More must be presented than bills issued to the client (or a mere compilation of hours multiplied by a fixed hourly rate) since this type of data does not provide the court with enough information about their reasonableness – a matter which the court cannot determine on the basis of conjecture or conclusions of the attorney seeking the fees. Saimon v. Wainit, 16 FSM R. 143, 148 (Chk. 2008).

When an attorney failed to perform his duties as the plaintiffs' appellate lawyer, he breached the

contract because he did not complete what he stated he would do which was to provide legal representation, the "handling of an appeal," since he never filed a brief and because of this, the FSM appeal case was dismissed. The attorney thus breached his contract. The services promised were not performed and because no brief was filed, the attorney cannot bill the plaintiffs for hours he worked on the brief as there was no brief filed or evidence of work. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646 (Kos. S. Ct. Tr. 2009).

When an attorney cannot provide any proof of his hours of work, he cannot prove his fees and his client should not have been charged for these and since the court cannot find evidence to prove the attorney's breach of contract counterclaim based on a preponderance of the evidence, his counterclaim for attorney's fees will be dismissed. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646 (Kos. S. Ct. Tr. 2009).

A court may order the refund of an unearned portion of any retainer fee, even a fee designated as "nonrefundable." Nonrefundable retainers are disfavored on public policy grounds. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 647 (Kos. S. Ct. Tr. 2009).

The court has general equitable powers to award fees out of a settlement fund to those attorneys who have brought benefit to class members. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 204 (Yap 2010).

The civil rights statute itself does not interfere with the enforceability of an attorney-client fee contract, even one such as an hourly rate agreement. Kaminanga v. Chuuk, 18 FSM R. 216, 219 (Chk. 2012).

Rule 1.5(b) of the FSM-adopted Model Rules of Professional Conduct states a preference for written representation agreements. Damarlane v. Damarlane, 19 FSM R. 519, 523 n.2 (Pon. 2014).

Since, when interpreting the meaning of the ambiguous term "share of the costs," the court will look to the course of performance between the parties and since throughout the course of attorney's representation and for more than a decade since, the client did not offer the attorney any compensation and the attorney did not demand compensation until the clients' unrelated activities raised her ire, the court may infer that, based on this course of performance between the parties, the client's share of the costs under the 1991 verbal contract is zero dollars. Damarlane v. Damarlane, 19 FSM R. 519, 525 (Pon. 2014).

– Paid by Client – Contingent

A contingency fee, like any attorney's fee, must meet the requirements of Rule 1.5 of the Model Rules of Professional Conduct, which provides that a lawyer's fee shall be reasonable. Davis v. Kutta, 8 FSM R. 218, 222 (Chk. 1997).

A contingent fee agreement shall be in writing and state the method by which the fee is to be determined, and upon conclusion of the matter the lawyer shall provide the client with a written statement stating the outcome and, if there is a recovery, showing the remittance to the client and the method of determination. Davis v. Kutta, 8 FSM R. 218, 222 (Chk. 1997).

Contingency fees are prohibited in both domestic relations and criminal matters. Davis v. Kutta, 8 FSM R. 218, 222 (Chk. 1997).

When a party has entered into a contingent fee agreement reasonable under FSM MRPC Rule 1.5 and the contingent recovery is more than a fee calculated by an hourly rate times the hours expended, a court, in awarding civil rights attorney's fees, may award a reasonable fee pursuant to the agreement's terms. Davis v. Kutta, 8 FSM R. 218, 223 (Chk. 1997).

A contingent fee agreement must be in writing and must state the method by which the fee is to be

determined. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 496 (Chk. 2002).

Contingent fee contracts, with some exceptions, are acceptable in the FSM. A contingent fee agreement is the freely negotiated expression both of a client's willingness to pay more than a particular hourly rate to secure effective representation, and of an attorney's willingness to take the case despite the risk of nonpayment. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 496 (Chk. 2002).

Courts should be reluctant to disturb contingent fee arrangements freely entered into by knowledgeable and competent parties. Nevertheless, an attorney's fee must still be reasonable or the court may reduce it. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 496 (Chk. 2002).

When a written fee agreement, freely negotiated between competent and knowledgeable parties, does not require the attorney to preform any work after judgment is entered, and expressly states that the attorney's fee is "20% of the gross amount henceforth collected by the client," not 20% of the gross amount collected by the attorney, and when the attorney has performed all of the acts that his contract required of him, the attorney is entitled to compensation according to the contract's terms. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 496-97 (Chk. 2002).

An attorney fee contract term for "20% of the gross amount henceforth collected by the client" was reasonable when every attorney who takes cases on a contingency basis runs the risk that he will be paid little or nothing for his work, when the 20% fee is lower than many contingent fees, but the attorney's contractual obligations (pursue to judgment) were also less than usual, when the delinquent loans had been charged off because the bank had done all that it could to collect the loans, and when the cases were not promising. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 497 (Chk. 2002).

Courts cannot deny a motion to proceed in forma pauperis because the movant's attorney is employed on a contingent fee basis. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 518 (Pon. 2002).

While a continency fee is not an arbitrary ceiling with respect to attorney's fees recoverable under an 11 F.S.M.C. 701(3) civil rights action, neither is it a floor. A contingency fee may be used as a basis for an attorney fee award when there are no contemporaneous records of the time the attorney had spent on the case, but since the point of departure for determining a reasonable fee under 11 F.S.M.C. 701(3) is to look at the amount of time spent, counsel in civil rights litigation should maintain careful records of time actually spent, notwithstanding the existence of any contingency fee agreement. Herman v. Municipality of Patta, 12 FSM R. 130, 137 (Chk. 2003).

A contingency fee agreement in a civil rights case acts as neither a floor nor a ceiling on attorney's fees awarded under the statute. Such a rule serves the purpose of helping to insure that an attorney will not be undercompensated where important civil rights have been vindicated, and increases the likelihood that a plaintiff who has a meritorious claim will have access to the courts. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 524, 526 (Pon. 2005).

When the court is making its reasonableness determination for a plaintiffs' attorney fee award, it must disregard the contingent fee agreement's terms. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 64 (Yap 2007).

The court will give no weight to a contention that there was no contingent fee agreement in place because the fee agreement states that the clients are the Municipalities of Rull and Gilman and the plaintiff class is composed of Rull and Gilman residents when neither municipality is a corporate body or has an established municipal government and these municipalities exist as social constructs and when the court's decisions must conform to Micronesia's social configuration. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 64 n.3 (Yap 2007).

After a determination of what would be a normal fee for the services of each attorney, adjustments should be made upwards or downwards to reflect special considerations such as contingency, complexity,

amount of recovery, relative recovery to members of the class, inducement to counsel to serve as private attorneys general, duplication of services, public service considerations, etc. However, even in contingency cases, a fee enhancement is the exception, and not the rule. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 73 (Yap 2007).

Contingent fee contracts are, with some exceptions, acceptable in the FSM since a contingent fee agreement is the freely negotiated expression both of a client's willingness to pay more than a particular hourly rate to secure effective representation, and of an attorney's willingness to take the case despite the risk of nonpayment. A contingent fee agreement must be in writing and must state the method by which the fee is to be determined. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 204 (Yap 2010).

Although courts are reluctant to disturb contingent fee arrangements freely entered into by knowledgeable and competent parties, an attorney's contingent fee must still be reasonable or the court may reduce it. This is especially true when the contingent fee sought is in a class action. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 204 (Yap 2010).

When a contingent fee contract is to be satisfied from a settlement fund approved by the trial judge pursuant to Rule 23(e), the court has an even greater necessity to review the fee arrangement for this rule imposes upon it a responsibility to protect the interests of the class members from abuse. In such circumstances, the attorneys' role is drastically altered; they then stand in essentially an adversarial relation to their clients who face a reduced award to the extent that counsel fees are maximized. Moreover, because of the nature of class representation, the clients may be poorly equipped to defend their interests against those of their attorneys. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 205 (Yap 2010).

ATTORNEYS GENERAL

The Truk Attorney General represents the government in legal actions and is given the statutory authority pursuant to TSL 5-32 to conduct and control the proceedings on behalf of the government and, in absence of explicit legislative or constitutional expression to the contrary, possesses complete dominion over litigation including power to settle the case in which he properly appears in the interest of the state. Truk v. Robi, 3 FSM R. 556, 561-63 (Truk S. Ct. App. 1988).

Courts may not speculate as to the powers and duties of the office of the Attorney General, but must look to the wording of the relevant law, and further, may not speculate as to the probable intent of the legislature apart from the words. Truk v. Robi, 3 FSM R. 556, 562 (Truk S. Ct. App. 1988).

The discretion vested in the office of the Attorney General to settle a civil action brought against Truk State is provided for by law, which does not require consent of the Governor before the Attorney General may settle a civil suit against Truk State. Truk v. Robi, 3 FSM R. 556, 561-63 (Truk S. Ct. App. 1988).

The FSM Attorney General's Office is not disqualified in an international extradition case where the accused is the plaintiff in a civil suit against one of its members because the Attorney General's office has no discretion in the matter. It did not initiate nor can it influence the course of the prosecution abroad, and the discretion of whether to extradite a citizen does not repose in the Attorney General's Office. In re Extradition of Jano, 6 FSM R. 12, 13-14 (App. 1993).

Because the Office of the Chuuk Attorney General is not a constitutional officer but rather is a principal officer of the executive and advisor to the governor and serves at his pleasure the Chuuk Attorney General cannot prosecute the governor. That would be the constitutional responsibility of the Independent Counsel. In re Legislative Subpoena, 7 FSM R. 259, 260 (Chk. S. Ct. Tr. 1995).

The governor does not have free rein to use the Attorney General's Office to litigate private matters

outside the scope of his duties as governor, but until such time as he ceases to be able to act as governor pursuant to a bill of impeachment or other constitutional process he may utilize that office's services to litigate such matters as concern his acts as governor. In re Legislative Subpoena, 7 FSM R. 259, 261 (Chk. S. Ct. Tr. 1995).

A proceeding for enforcement of a CNMI child support order in the FSM is properly filed in state court by the state attorney general, not in national court by the FSM Attorney General. Burke v. Torwal, 7 FSM R. 531, 535-36 (Pon. 1996).

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

It is settled doctrine that the power vested in the office of the Attorney General empowers settlement of litigation in which the Attorney General has supervision and control. Ham v. Chuuk, 8 FSM R. 300i, 300k (Chk. S. Ct. App. 1998).

The Chuuk Attorney General has no duty to act on a successful plaintiff's behalf in collecting the plaintiff's judgment against the state. Judah v. Chuuk, 9 FSM R. 41, 41-42 (Chk. S. Ct. Tr. 1999).

The Office of the Attorney General is not a public officer – it is a public office. In order to meet the mandamus requirement of a public officer, the Attorney General should have been named as a respondent. Benjamin v. Attorney General Office Kosrae, 10 FSM R. 566, 568 (Kos. S. Ct. Tr. 2002).

Based on the traditional state jurisdiction over matters of domestic relations and on the applicable statutory provisions' language and history, a proceeding for enforcement of a foreign support order is properly commenced in the state court in which the defendant resides, rather than in the FSM Supreme Court and for the same reasons, these cases are properly prosecuted by the Pohnpei Attorney General's office, rather than by the FSM Attorney General's office. Villazon v. Mafnas, 11 FSM R. 309, 310-11 (Pon. 2003).

In domestic relations matters, the national court should abstain from exercising jurisdiction until the state court has had the opportunity to rule on the issues presented when it is a proceeding for enforcement of a foreign support order. These cases are properly commenced in the state court in which the defendant resides, rather than in the FSM Supreme Court and are properly prosecuted by a state attorney general, rather than by the FSM Attorney General. Anson v. Rutmag, 11 FSM R. 570, 571-72 (Pon. 2003).

There is no basis to disqualify the current prosecutor and the entire FSM Department of Justice when no member of the department is either an alleged victim or a witness in the case; when the current prosecutor was not a member of the department when the events occurred that ultimately lead to the disqualification of the other assistant attorneys general; when neither of the disqualified attorneys have any supervisory power over the current prosecutor and he is not subordinate to them; and when, if he has not already done so, he can and will be ordered to have no contact with them concerning the case and to keep all case files segregated from all other department files so that no other department employee can obtain access to them. FSM v. Wainit, 12 FSM R. 172, 180 (Chk. 2003).

One who was the Attorney General when the Governor signed a release of property in a party's favor, and who in fact signed the release as Attorney General, is clearly barred by the Rules of Professional Conduct from representing a plaintiff in a suit over that property against the state and that party. Hartman v. Chuuk, 12 FSM R. 388, 394 & n.9 (Chk. S. Ct. Tr. 2004).

Since statutes and office policy prohibit a newly-hired assistant attorney general from continuing to represent clients in a suit with the state as a party-defendant, that attorney will be declared disqualified

representing either the clients or the state and directed to immediately assist his former clients in obtaining substitute counsel. Hartman v. Chuuk, 12 FSM R. 388, 396 (Chk. S. Ct. Tr. 2004).

The general rule is that the recusal or disqualification of an assistant attorney general does not require the recusal of the attorney general or his other assistants. Individual rather than vicarious disqualification is the general rule for prosecutors but individual disqualification must be complete. FSM v. Kansou, 14 FSM R. 171, 175 (Chk. 2006).

The Pohnpei Port Authority has demonstrated irreparable injury by showing that the Governor's February 22, 2008 executive directive would require it to act inconsistently with the applicable state statutes because it purports to assert authority – that of obtaining legal counsel for PPA – that only PPA, acting by its general manager, may assert and it also potentially impairs the general counsel's contract with PPA by unilaterally terminating it and because, even though PPA may use the services of Pohnpei government attorneys to serve as PPA attorneys, this decision clearly lies with the PPA pursuant to its enabling statute and a decision to use the Pohnpei Attorney General's Office may not be imposed by an executive directive inconsistent with applicable state law. Pohnpei Port Auth. v. Pohnpei, 15 FSM R. 541, 544 (Pon. 2008).

The FSM Attorney General cannot be required to obtain permission from (or even consult) a foreign government official because her office was once a member of an (advisory) board that no longer exists and which had no power to express an opinion on the subject even when it did exist. Arthur v. Pohnpei, 16 FSM R. 581, 590 (Pon. 2009).

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

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

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

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

No sound basis is apparent for disqualifying the Chuuk Attorney General's Office from representing the State of Chuuk when it has a statutory duty to represent the state and when the state asserts an absolute right to possession (at least temporarily) of certain funds that the national government has held and is disbursing. That the state also holds a particular view about which of the competing rivals is the duly elected mayor of Tolensom does not alter this since the case is not an election contest or an action in the nature of a petition for a writ of quo warranto challenging the right of a person to hold a particular office. The same principles apply to a suit by the Chuuk Governor in his official capacity since a claim against a government officer in his official capacity is, and should be treated as, a claim against the entity that employs the officer, thus a claim by a government officer in his official capacity is, and should also be treated as, a claim by the entity that employs the officer. Marsolo v. Esa, 17 FSM R. 480, 485 (Chk. 2011).

Even though the Chuuk Attorney General's Office followed the proper procedure and had a consultation with all the plaintiffs and after the consultation, they all consented to the multiple representation, the court can still conclude that it must disqualify the Chuuk Attorney General's Office from

representing two of the plaintiffs because, while the interests of all the plaintiffs are certainly aligned on what, in their view, constitutes the lawful Tolensom municipal government, it is by no means clear that their interests could be aligned on the pivotal issue of whether the lapsed CIP funds must pass through the Chuuk state general fund and the Chuuk appropriation process before arriving in the Tolensom municipal coffers and with the existence of a rival Tolensom municipal government, it is even less clear that the Chuuk Attorney General's Office is statutorily authorized to represent as plaintiffs one rival Tolensom mayor and government. Marsolo v. Esa, 17 FSM R. 480, 486 (Chk. 2011).

A party-plaintiff represented in his official capacity by the Chuuk Attorney General would need separate counsel to defend against a counterclaim when he is sued in his individual capacity since the Chuuk statute does not authorize the Chuuk Attorney General's Office to represent officials in their individual capacities or to litigate their personal interests and because the Chuuk Attorney General's brief asserts that his office only represents the party in his official capacity as Tolensom mayor. Marsolo v. Esa, 17 FSM R. 480, 486 n.3 (Chk. 2011).

When the statute authorizes the Chuuk Attorney General's representation of Chuuk subdivisions only when appropriate; when it is unclear whether two plaintiffs even qualify as a Chuuk subdivision or that the representation would be appropriate; and when to rule that they do would be to implicitly decide (in the plaintiffs' favor) one of the two major issues of the case before the adversary process has gotten underway, the fairness of the proceeding could reasonably be questioned if the Chuuk Attorney General's Office continued to represent a rival plaintiff Tolensom mayor and municipal government. Since the Chuuk Attorney General's Office will remain counsel for the state plaintiffs, it will not be precluded from raising any issues, introducing any evidence, or advancing any arguments that it would otherwise have been able to do. The matter's timely disposition would also not be delayed. Marsolo v. Esa, 17 FSM R. 480, 486-87 (Chk. 2011).

To the extent that the discovery a party seeks constitutes internal workings of the Attorney General's Office – attorney work product – it is privileged and not discoverable. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41d (Pon. 2015).

AVIATION

Fishing and international air transport are areas of foreign investment regulation that are subject to exclusive regulation by the national government. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 334 (Pon. 2007).

The Marine Resources Act of 2002 amended the prior fisheries law for the purpose of ensuring the sustainable development, conservation and use of the marine resources in the exclusive economic zone by promoting development of, and investment in, fishing and related activities. Included in the definition of "fishing" under the Act is the actual or attempted searching for fish; the placing of any fish aggregating device or associated electronic equipment such as radio beacons; and the use of an aircraft in relation to any activity described in this subsection. "Fishing gear" is equipment or other thing that can be used in the act of fishing, including any aircraft or helicopter. Helicopters, which are used to search for fish and to place radio devices near schools of fish to assist fishing boats in locating fish, fall within the express definition of fishing equipment. Therefore, since fishing in the FSM's EEZ is subject to the exclusive national government jurisdiction and regulation, and since a company's helicopters, based on fishing vessels and piloted by the company's employees, are used to search for fish within the FSM's EEZ, those helicopters are engaged in fishing for purposes of the statutory definition and thus the helicopters, which the company charters to the purse seine operators, and their pilots are subject to the national government's exclusive regulation. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 334-35 (Pon. 2007).

A service tax on plane passengers does not have only an incidental effect on foreign commerce; its only effect is on foreign commerce. A tax on shipping cargo or freight affects only foreign commerce or interstate commerce since the airline does not fly to anywhere in Chuuk except Weno. Since state and local governments are prohibited from imposing taxes which restrict interstate commerce, to the extent that

the tax is imposed on freight or cargo shipped from Chuuk to other FSM states, would appear to be specifically barred by the Constitution and to the extent it is imposed on cargo or freight shipped elsewhere, it would be regulation of foreign commerce – in effect, an export tax. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 160 (Chk. 2010).

Although Chuuk may "own" the airport, airport runway, tarmac, and terminal buildings, and these are all services an airline uses, the airline already pays the State for the use of the various airport facilities through landing fees for its aircraft, rental fees for office space, and other service fees (and it also pays a 3% gross revenue tax to the national government, half of which is shared with the states), and its passengers departing Chuuk already pay for Chuuk's airport services through a $20 departure fee collected at the airport. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 160-61 & n.1 (Chk. 2010).

The Chuuk service tax on plane passengers does not have only an incidental effect on foreign commerce. Its main effect (and its sole intended effect) is on foreign commerce. By its terms, it is to be imposed only on those passengers whose "final destination" would be "outside of the FSM." The Chuuk service tax on outgoing paying airline passengers is thus an unconstitutional regulation of foreign commerce. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 531-32 (Chk. 2011).

"Courier services" is a much more limited concept than all freight and cargo. Courier services are generally those services that provide expedited delivery of small, high-value goods or documents. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 533 (Chk. 2011).

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

Article 15 of the 1944 Convention on International Aviation, which bars fees, dues, or other charges being imposed by any contracting State in respect solely of the right of transit over or entry into or exit from its territory of any aircraft of a contracting State or persons thereon, does not bar a tax only on outgoing passengers, freight, or cargo from Chuuk. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 533-34 (Chk. 2011).

Aircraft have the nationality of the State in which they are registered. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 457 (Pon. 2020).

The FSM adhered to the Chicago Convention on International Civil Aviation on September 27, 1988. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 457 n.5 (Pon. 2020).

A helicopter that was registered, at all times, in the United States had U.S. nationality at all times, and as such, would be subject to U.S. regulations wherever in the world it flew. A U.S. certificate of aircraft registration is conclusive evidence of the U.S. nationality of an aircraft for international purposes, and, because it is a civil aircraft of the United States and has U.S. nationality, and the U.S. may exercise extraterritorial jurisdiction over it. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 457 (Pon. 2020).

An aircraft's FSM certificate of registration is conclusive evidence of FSM nationality for international purposes. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 457 n.6 (Pon. 2020).

A foreign corporation is permitted to register an aircraft in the FSM so long as such aircraft is based and primarily used in the FSM. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 457 n.7 (Pon. 2020).

As a matter of international law, an aircraft can only be registered in one country at a time. An aircraft cannot be validly registered in more than one State, but its registration may be changed from one State to another. Implicit in this principle is the concept that civil aircraft must be registered in some country. In re

Wrecked/Damaged Helicopter, 22 FSM R. 447, 458 (Pon. 2020).

The registration or transfer of registration of aircraft in any State contracting to the Chicago Convention on International Civil Aviation must be made in accordance with its laws and regulations. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 458 n.9 (Pon. 2020).

Every aircraft engaged in international air navigation must bear its appropriate nationality and registration marks. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 458 n.10 (Pon. 2020).

An aircraft is engaged in international air navigation when it is navigating in airspace outside its country of registration. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 458 n.10 (Pon. 2020).

Foreign aircraft benefit from the privileges that 20 F.S.M.C. 1104 afforded to aircraft registered in other nations. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 458 (Pon. 2020).

A helicopter owner will be estopped from asserting that the U.S. lacked jurisdiction or authority over the helicopter that it had registered with the U.S., and from asserting that it did not have to comply with the U.S.'s applicable regulations or U.S. aviation law. It should not now be able to assert that the U.S. has no jurisdiction over its helicopter when it registered that helicopter with the U.S. and maintained its U.S. registration thereafter and derived whatever benefits that the U.S. registration afforded. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 459 (Pon. 2020).

While it is true that parties cannot confer or divest a court of jurisdiction by stipulation or by assumption, a helicopter buyer who had to register that helicopter somewhere (some country) and chose to register it in the U.S., will be estopped from denying the U.S.'s regulatory authority over its helicopter. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 459 (Pon. 2020).

An FSM search warrant application established that there was probable cause to believe that a serious offense had been committed against the laws of a foreign state (the U.S.) when it showed that a U.S. registered helicopter was no longer in a flyable condition – no longer airworthy – because the helicopter had had either an "aircraft accident" as there was substantial damage to it, or because there had been a "serious incident" caused by "ground damage," to the helicopter's tail and U.S. law required that U.S. registered aircraft immediately report such events and the helicopter owner did not. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 460 (Pon. 2020).

BAIL

FSM Appellate Rule 9's purpose is to permit a defendant held in custody, or subjected to conditions of release, to receive expedited review of that restriction of his freedom. There is no suggestion in the rule nor in any other authority indicating that the government is entitled to appeal from the pretrial release of a defendant. FSM v. Yal'Mad, 1 FSM R. 196, 198 (App. 1982).

The object in determining conditions of pretrial release is to assure the defendant's presence at trial so that justice may be done while keeping in mind the presumption of innocence and permitting the defendant the maximum amount of pretrial freedom. The FSM Supreme Court should attempt to weigh the various forces likely to motivate a defendant to stay and face trial against those forces likely to impel him to leave. FSM Crim. R. 46(a)(2). FSM v. Jonas (I), 1 FSM R. 231a, 233 (Pon. 1982).

When the highest prior bail was $1,500, imposition of bail in the amount of $10,000, on the basis of disputed and unsubstantiated government suggestions that the defendant has cash and assets available to him, would be unwarranted. FSM v. Jonas (I), 1 FSM R. 231a, 236 (Pon. 1982).

Relief from improperly set or denied bail must be speedy to be effective. In re Iriarte (II), 1 FSM R. 255, 265 (Pon. 1983).

The bearer of the title of Nahniken, by virtue of his position's deep ties to Ponapean society, may be expected to appear and stand trial if accused of crime and to submit to sentence if found guilty. Bail, therefore should be granted. In re Iriarte (II), 1 FSM R. 255, 265 (Pon. 1983).

A nahniken, just as any ordinary citizen, is entitled to bail and due process. In re Iriarte (II), 1 FSM R. 255, 272 (Pon. 1983).

Legal standards for setting bail are established by the Constitution and Criminal Procedure Rule 46. FSM v. Etpison, 1 FSM R. 370, 372 (Pon. 1983).

The FSM Supreme Court must approach the question of whether bail is "excessive" with a recognition that the defendant is presumed innocent, is to be treated with dignity, and needs a reasonable opportunity to prepare his defense. At the same time the judicial officer must keep in mind his responsibility to the public to assure that the defendant will be made to respond to the charges leveled at him. FSM v. Etpison, 1 FSM R. 370, 373 (Pon. 1983).

Once a justice certifies an accused as extraditable, the justice must then commit the person to the proper jail until surrendered. The extradition statute does not give the court the authority to release a person on bail pending any judicial review of the certification. In re Extradition of Jano, 6 FSM R. 62, 63 (App. 1993).

In an international extradition case, bail can be granted only if "special circumstances" are shown. Neither risk of flight nor the availability of a suitable custodian are primary considerations. Rather the primary consideration is the ability of the government to surrender the accused to the requesting government. In re Extradition of Jano, 6 FSM R. 62, 64 (App. 1993).

The FSM Supreme Court appellate division has no authority to review an application for release from jail pending appeal until the court appealed from has refused release or imposed conditions. Nimwes v. FSM, 8 FSM R. 297, 298-99 (App. 1998).

Because a prosecutor's assessment of probable cause is not sufficient alone to justify restraint of liberty pending trial, a preliminary hearing would be required if the defendant were to be detained pending trial or if significant restraints were to be placed on his liberty. FSM v. Wainit, 10 FSM R. 618, 622 (Chk. 2002).

The government is required to make a probable cause showing at a hearing before pretrial restraints on the defendant's liberty can be granted. This is because a fair and reliable determination of probable cause is a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest. Affidavits can be used, if properly introduced, as evidence at that hearing to make the probable cause showing. FSM v. Wainit, 10 FSM R. 618, 622 (Chk. 2002).

Because a probable cause determination is not a constitutional prerequisite to the charging decision, it is constitutionally required only for those suspects who suffer restraints on liberty other than the condition that they appear for trial. FSM v. Wainit, 10 FSM R. 618, 622 (Chk. 2002).

When an appeal was from an order revoking pretrial release and the issue on appeal was the right to pretrial release, the appellant's subsequent conviction and release makes the appeal moot. Reddy v. Kosrae, 11 FSM R. 595, 596 (App. 2003).

Failure to return a .22 rifle to a criminal defendant does not show bias when the defendant's release conditions do not allow him to possess firearms, since if the government had returned the rifle to him, he would have been put in the position of violating his own bail bond release. That is not a position the

government should be permitted to put any defendant into. FSM v. Wainit, 12 FSM R. 172, 177 (Chk. 2003).

When a person is the subject of more than one criminal prosecution and has different release conditions in each case, that person must obey the most stringent of the release conditions. Likewise, if in one prosecution, the defendant is ordered held without bail, it does not matter whether in another prosecution the defendant has been released on bail or even on his own recognizance, he will be held without bail to answer the case for which he was ordered held. FSM v. Wainit, 12 FSM R. 172, 178 (Chk. 2003).

Having sought the same release conditions for a defendant in two separate prosecutions does not constitute a hopeless intertwining of the two cases. Release conditions in two otherwise unrelated cases are easily separable. FSM v. Wainit, 12 FSM R. 172, 178 & n.3 (Chk. 2003).

A defendant may appeal from an interlocutory order denying him bail. Robert v. Kosrae, 12 FSM R. 523, 524 (App. 2004).

While denial of bail because a defendant, who was charged with driving under the influence, posed a danger to the community since he might operate a vehicle under the influence at some point in the future may possibly be correct under Kosrae Criminal Procedure Rule 46(a)(1), it contravenes Kosrae State Code Section 6.401, which permits a court to deny a defendant bail only if the defendant is intoxicated and will be offensive to the general public. Robert v. Kosrae, 12 FSM R. 523, 524 (App. 2004).

Rules of procedure generally may not abridge substantive rights created by statute. Thus, to the extent Kosrae Criminal Procedure Rule 46(a)(1) purports to abridge a defendant's right to bail under Kosrae State Code Section 6.401, the Rule is likely void and of no effect. Robert v. Kosrae, 12 FSM R. 523, 524 (App. 2004).

When the trial court's decision to deny a defendant bail under Kosrae Rule of Criminal Procedure 46(a)(1) even though Section 6.401 appears to have entitled him to bail may be error, given the likelihood that the defendant will prevail on the merits of his appeal, he may be released from incarceration pending the outcome of his appeal. Robert v. Kosrae, 12 FSM R. 523, 524 (App. 2004).

The court is obligated to set pretrial release conditions for defendants when they make their initial appearance. At an initial appearance, the court is required to, among other things, inform a defendant of his rights, including his right to retain counsel, or to request the assignment of counsel if the defendant is unable to obtain counsel, and will, if requested, direct the appointment of counsel. FSM v. Kansou, 12 FSM R. 637, 642 (Chk. 2004).

Pretrial release orders do not await the assignment of counsel. A defendant is entitled to release after his initial appearance, if at all possible, rather than face the bleak prospect of being jailed until counsel has been appointed and appeared. A defendant may seek modification of his or her pretrial release order at any time. FSM v. Kansou, 12 FSM R. 637, 642 (Chk. 2004).

A release condition that the defendants report money sent abroad is not contrary to the purpose of pretrial release conditions to ensure the defendant's appearance at trial and assure the community's safety when among the possible penalties, if convicted of the offenses charged, is the forfeiture of certain assets allegedly wrongfully acquired; when the provisions help assure that the res that might be subject to forfeiture is not transferred from its current owners or does not depart the jurisdiction – it helps assure the presence of the res; and when it is a less drastic measure than that sought by the government, which was to freeze the movants' assets and not permit any remittances abroad without prior court approval. FSM v. Kansou, 12 FSM R. 637, 643 (Chk. 2004).

When the rationale behind the reporting requirement is that potentially forfeitable assets not be spirited

out of the jurisdiction and one defendant is charged with only one count of conspiracy and forfeiture of assets is not a penalty that may be imposed for conviction of that offense, his pretrial release conditions will be modified to eliminate the provisions concerning reporting funds sent abroad and restricting the sale of property. FSM v. Kansou, 12 FSM R. 637, 644 (Chk. 2004).

Criminal Rule 46(a)(1) through (6) deals with pretrial release. Rule 46(a)(1) requires the court to release a defendant "pending trial on his personal recognizance or upon the execution of an unsecured appearance bond" unless such a release will not reasonably assure the defendant's appearance in court or the victim's or the community's protection from physical violence. FSM v. Petewon, 14 FSM R. 463, 467 (Chk. 2006).

Criminal Rule 46(c) does not apply to a person who has been sentenced to imprisonment and has filed a notice of appeal. Criminal Rule 38(a)(2) and Appellate Rule 9 specifically apply to such situations. Criminal Rule 46 applies generally to release on bail while Criminal Rule 38(a)(2) (and by reference Appellate Rule 9) applies specifically to release pending appeal after a sentence of imprisonment has been imposed. FSM v. Petewon, 14 FSM R. 463, 467 (Chk. 2006).

Criminal Rule 46(c) is not a nullity since it applies to the release of a defendant who has been found guilty – "convicted" – but not yet sentenced. Such a defendant, although no judgment of conviction has been entered, may file a notice of appeal which will become effective once the defendant has been sentenced because a notice of appeal filed after the announcement of a decision, sentence or order but before entry of the judgment is treated as filed after such entry and on the day thereof. FSM v. Petewon, 14 FSM R. 463, 467-68 (Chk. 2006).

Since a judgment of conviction must set forth the plea, the findings, and the adjudication and sentence, a judgment of conviction cannot be entered until after the defendant has been sentenced. Thus, a notice of appeal may be filed after a finding of guilty but before a judgment of conviction has been entered. Criminal Rule 46(c) applies to this time span. FSM v. Petewon, 14 FSM R. 463, 468 (Chk. 2006).

If a criminal defendant files a notice of appeal after the court publicly announced its finding of guilty but before the sentence of imprisonment is imposed and the judgment of conviction entered, the notice of appeal would become valid on the date the judgment is entered and Criminal Rule 46(c) would have applied to whether he should have been on release from when the notice of appeal was actually filed until the entry of judgment. Once a judgment of conviction imposing a sentence of imprisonment is entered, Criminal Rule 38(a)(2) and Appellate Rule 9(b) and 9(c) apply to any application for release pending appeal. FSM v. Petewon, 14 FSM R. 463, 468 (Chk. 2006).

When the medical evaluations in the file offer no assurance of safety to the defendant or to the person or property of others, the court will consider evidence of his dangerousness to himself and to the person or property of another at a hearing on fitness to proceed, and pending that hearing the defendant will remain in custody as previously ordered. Kosrae v. Charley, 14 FSM R. 470, 473 (Kos. S. Ct. Tr. 2006).

An accused's claim that he was previously put in jeopardy and is about to be tried again for the same offense is a collateral order that is immediately appealable because it is a final decision, as is the denial of an accused's motion for reduction of bail on the ground that it is unconstitutionally excessive. Zhang Xiaohui v. FSM, 15 FSM R. 162, 167 & n.2 (App. 2007).

The government must make a probable cause showing at a hearing before pretrial restraints on the defendant's liberty can be granted. This is because a fair and reliable determination of probable cause is a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest. Affidavits can be used, if properly introduced, as evidence at that hearing to make the probable cause showing. The finding of probable cause may be based on hearsay evidence. Chuuk v. Sipenuk, 15 FSM R. 262, 264-65 (Chk. S. Ct. Tr. 2007).

An appeal from bail orders brought pursuant to FSM Appellate Rule 9(a) may be heard by a single justice of the appellate division. Nedlic v. Kosrae, 15 FSM R. 435, 437 (App. 2007).

An appeal from an order denying bail is to be determined upon such papers, affidavits, and portions of the record as the parties present, including any statement of the reasons of the court appealed from explaining the denial of release, or conditions. Nedlic v. Kosrae, 15 FSM R. 435, 437, 438 (App. 2007).

The standard of review for an appeal from an order denying bail is that the reviewing court will undertake an independent review of the detention decision, giving deference to the trial court's determination, and, if, after its independent review of the facts and the trial court's reasons, the appellate court concludes that the trial court should have reached a different result, then the reviewing court may amend or reverse the detention order, but if the appellate court does not reach such a conclusion – even if it sees the decisional scales as evenly balanced – then the trial judge's determination should stand. Nedlic v. Kosrae, 15 FSM R. 435, 437-38 (App. 2007).

Under Kosrae statute, one has a right to pretrial release on bail unless he is under the influence of intoxicating drugs and the court determines that he will be offensive to the general public. Nedlic v. Kosrae, 15 FSM R. 435, 438 (App. 2007).

The application of the Kosrae Rules of Evidence is expressly excluded from proceedings with respect to release on bail. Nedlic v. Kosrae, 15 FSM R. 435, 438 (App. 2007).

When it is demonstrably the case that bail was set for each of the appellants in the amount of $1,000, the issue on appeal is not whether they are entitled to bail, but rather the issue is whether the bail amount is excessive. Nedlic v. Kosrae, 15 FSM R. 435, 438 (App. 2007).

The protection of the victim or the community from danger or physical violence posed by a defendant is a factor the court may consider in setting or denying bail. Nedlic v. Kosrae, 15 FSM R. 435, 438 (App. 2007).

When, after the appellate court's independent review of all of the matter which it is entitled to consider under FSM Appellate Rule 9(a), along with the trial court's statement of its reasons for setting bail in the amount it did, the appellate court cannot conclude that the trial court should have reached a different result, the appellants' motions to overturn the trial court bail orders will therefore be denied. Nedlic v. Kosrae, 15 FSM R. 435, 438-39 (App. 2007).

Subsection 46(c) provides for release pending sentence and for release pending appeal. It states that a person who has been convicted of an offense and is either awaiting sentence or has filed an appeal will be treated in accordance with the provisions of Rule 46(a)(1) through (6), which provide for conditions of pre-trial release and address the nature of information supporting orders issued under the rule. Criminal Rule 46(c) does not apply to a person who has been sentenced to imprisonment and has filed a notice of appeal; it applies to the release of a defendant who has been found guilty – "convicted" – but not yet sentenced. Rule 46 applies generally to release on bail. Chuuk v. Billimon, 17 FSM R. 313, 316 (Chk. S. Ct. Tr. 2010).

BANKRUPTCY

Exhibit A and Form 4 are official forms that are only to be filed by corporate debtors in chapter 3 reorganization cases, not by an individual applying for bankruptcy relief under chapter 2. Amayo v. MJ Co., 14 FSM R. 535, 537 (Pon. 2007).

A bankruptcy application must be accompanied by the debtor's statement of financial condition, as well as schedules of debts, assets and exemptions of the debtor. Amayo v. MJ Co., 14 FSM R. 535, 538 (Pon. 2007).

Under the Bankruptcy Rules, the debtor's schedules and statements must, in a voluntary case, be filed with the application or if the application is accompanied by a list of all the debtor's creditors and their addresses, within 15 days thereafter, except as otherwise provided. Amayo v. MJ Co., 14 FSM R. 535, 538 (Pon. 2007).

A "creditor" is someone who has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor and a "claim" is any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured. Amayo v. MJ Co., 14 FSM R. 535, 538 (Pon. 2007).

Persons with a claim to a disputed, unsecured, unliquidated debt owed by the debtor which arose before the debtor applied for bankruptcy relief are "interested parties" who may appear in the bankruptcy proceeding and who may (and must) pursue any sanctions of the debtor and relief from the automatic stay within the bankruptcy case. Amayo v. MJ Co., 14 FSM R. 535, 538 (Pon. 2007).

The bankruptcy court may choose to try the plaintiffs' previously-filed claim itself although the claim was previously filed in another case. Amayo v. MJ Co., 14 FSM R. 535, 539 (Pon. 2007).

In a bankruptcy case, a "creditor" is someone who has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor, and a "claim" is any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured. An unliquidated claim is one whose amount has not been determined or calculated. In re Panuelo, 15 FSM R. 23, 26 (Pon. 2007).

An "interested party" who may appear in a bankruptcy proceeding includes any creditor of the debtor. In re Panuelo, 15 FSM R. 23, 26 (Pon. 2007).

Words and phrases used in the FSM Code (of which the Bankruptcy Act is a part) must be read with their context and must be construed according to their common and approved English language usage. In re Panuelo, 15 FSM R. 23, 27 n.1 (Pon. 2007).

The Bankruptcy Act gives the bankruptcy court three choices in the case of disputed claims: the court may summarily determine the matter upon motion, conduct a trial on the claim, or refer the matter to another court for determination. In re Panuelo, 15 FSM R. 23, 28 (Pon. 2007).

A bankruptcy court's summary determination of disputed claims is properly reserved for those cases where there are no debtor's assets left to make any payments to the unsecured creditors so the amount of the debtor's liability matters little since there will never be any money to pay it. In re Panuelo, 15 FSM R. 23, 28 (Pon. 2007).

A creditor's disputed claim could be tried as part of a bankruptcy case, but when that would entail a full-blown trial with witnesses and evidence and another trial would still have to be conducted because the debtor is not the only defendant to the lawsuit, that would be a wasteful use of scarce judicial resources and leave the danger of inconsistent judgments. In re Panuelo, 15 FSM R. 23, 29 (Pon. 2007).

The Bankruptcy Act's stated purpose is to fairly balance the interests of creditors and debtors and to give the court substantial latitude to deal with abuses of the bankruptcy system. In re Panuelo, 16 FSM R. 339, 344 (Pon. 2009).

When a debtor has failed to file supplemental schedules with corrected information about his property as required, the receiver should be permitted to do it based on the information she has uncovered and any further information she may develop. In re Panuelo, 16 FSM R. 339, 345 (Pon. 2009).

Since the FSM Supreme Court has jurisdiction to entertain a bankruptcy proceeding over a debtor's estate if the debtor resides in or has a domicile in the FSM or has a place of business or property in the FSM, the court has jurisdiction over a debtor's estate and may afford him bankruptcy protection when the debtor alleged in his original bankruptcy application that he has property in Pohnpei and it appeared that his application for bankruptcy protection arose from a failed business operation in Pohnpei and when although the debtor may currently be resident in the Philippines, he is a domiciliary of Pohnpei. In re Mix, 18 FSM R. 600, 602 (Pon. 2013).

The bankruptcy court is granted comprehensive jurisdiction to deal with all matters concerning the bankruptcy estate as long as the court has jurisdiction over the applicant debtor. In re Mix, 18 FSM R. 600, 602 (Pon. 2013).

The court may issue such orders as are enforceable in the FSM and although the court cannot enforce its orders in another country, the court does have a certain extraterritorial reach. The bankruptcy court can, in appropriate circumstances, hold in contempt a debtor or dismiss the debtor's bankruptcy application when the debtor has not obeyed a court order to sell property the debtor has in another country and remit the proceeds to the receiver of the debtor's estate. In re Mix, 18 FSM R. 600, 602 & n.2 (Pon. 2013).

Since a debtor's estate consists of all property owned by the debtor on the date of the application, a debtor's estate will include property owned by the debtor anywhere in the world on the date of the bankruptcy application and the court can make orders to the debtor that affect that property. In re Mix, 18 FSM R. 600, 602 n.2 (Pon. 2013).

A claim by the Marshall Islands Social Security Administration against a debtor in the FSM is not a secured debt – a claim in which the creditor has a security interest in collateral. It is an unsecured claim. In re Mix, 18 FSM R. 600, 603 (Pon. 2013).

Since a corporation's directors have a duty to act in the corporation's best interest and when, regardless of whether the judgment existed, the corporation had debts that greatly exceeded its assets and it was unable to pay those debts as they became due, bankruptcy was probably in the corporation's best interest, and the court cannot give any weight to the argument that this meant that the directors had accepted the judgment when they directed the corporation to seek bankruptcy protection. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 613 (Pon. 2013).

A party's failure to oppose a motion constitutes that party's consent to the granting of the motion, but even if there is no opposition, the court still needs good grounds before it can grant the motion. In re Mix, 19 FSM R. 63, 64 (Pon. 2013).

When no defendant has started a case under bankruptcy law, the defendants cannot have the case dismissed because bankruptcy law would provide the legal framework for the case. FSM Dev. Bank v. Setik, 19 FSM R. 233, 236 (Pon. 2013).

The Bankruptcy Code, Title 31 of the FSM Code, stays the collection of judgments against the debtor who has sought bankruptcy protection and requires that all debt collection from the debtor take place within the bankruptcy proceeding wherein the bankrupt debtor's liability for his debts will either be satisfied or be discharged. FSM Dev. Bank v. Ehsa, 20 FSM R. 608, 612 (Pon. 2016).

Since one debtor's bankruptcy will not afford a different debtor protection from liability for his own indebtedness or his own liability, a corporation's bankruptcy will thus not release a guarantor from his personal liability for the judgment against him. FSM Dev. Bank v. Ehsa, 20 FSM R. 608, 612 (Pon. 2016).

The Bankruptcy Code creates for the debtor, who meets the requirements of the law, an opportunity to get a fresh start where he might otherwise face a protracted struggle with debt beyond his ability to pay. A successful bankruptcy application absolves the debtor of liability for unmatured interest and for punitive

damages. The Code gives to the courts substantial latitude in managing the bankruptcy proceeding to protect the interests of both creditors and debtors, to deal with abuses of the bankruptcy system, and to establish a case schedule that takes into consideration the interests of all parties. In re Mix, 21 FSM R. 454, 456 (Pon. 2018).

Congress's power to regulate bankruptcy and insolvency is an exclusive national power, and bankruptcy cases are, by law, assigned to the FSM Supreme Court trial division. Panuelo v. Sigrah, 22 FSM R. 341, 351 (Pon. 2019).

Any claim that a bankruptcy receiver was overcompensated is solely a matter of national (bankruptcy) law, and a claim that a bankruptcy receiver paid the creditors of a debtor, who had sought bankruptcy protection, more than was their due is also a matter arising only under national bankruptcy law. Panuelo v. Sigrah, 22 FSM R. 341, 351 (Pon. 2019).

Under FSM bankruptcy law, only a corporation can apply for chapter 3 (reorganization) bankruptcy protection. Panuelo v. Sigrah, 22 FSM R. 341, 353 n.3 (Pon. 2019).

When the debtor is an individual, an "insider" is a relative of the debtor, who is related by blood or marriage within the third degree as determined by common law, or a person who is considered a close relative under applicable Micronesian custom, or a step or adoptive relationship within such third degree. Panuelo v. Sigrah, 22 FSM R. 341, 353 n.4 (Pon. 2019).

An "interested party" is the debtor, any creditor of the debtor and any other party the court supervising the bankruptcy application may determine to have a right to be heard on issues pertaining to that application. Panuelo v. Sigrah, 22 FSM R. 341, 356 n.6 (Pon. 2019).

An individual lacks standing and should be dismissed when she has no sufficient stake in the outcome of a dispute over a bankruptcy receiver's compensation or payments to creditors because she was neither an "interested party" nor a co-debtor, but, since her involvement with the case was as an insider who had improperly received property of the debtor's estate and converted it to her use, she as an individual, arguably, as the insider recipient of a fraudulent transfer, may be an "interested party" solely with respect to the fraudulently transferred property. Panuelo v. Sigrah, 22 FSM R. 341, 356 (Pon. 2019).

The debtor, as an interested party, has sufficient stake in the matter for standing to try to reopen his own bankruptcy case. Panuelo v. Sigrah, 22 FSM R. 341, 356 (Pon. 2019).

Although under Bankruptcy Rule 5010, a case may be reopened on motion of the debtor or other interested party pursuant to 31 F.S.M.C. 311(2), a lawsuit is not a motion and 31 F.S.M.C. 311(2) applies only to a corporate debtor that is unable to implement a part of its reorganization plan or comply with a provision of the court's confirmation order. Bankruptcy Rule 5010 does not apply to an individual debtor or to a liquidation case. Panuelo v. Sigrah, 22 FSM R. 341, 356-57 (Pon. 2019).

Bankruptcy Rule 9024 permits reopening a bankruptcy case by providing that FSM Civil Procedure Rule 60 applies in cases under Title 31. Panuelo v. Sigrah, 22 FSM R. 341, 357 (Pon. 2019).

The administratrix of an estate of a former debtor would have standing to seek relief under Bankruptcy Rule 9024 for alleged overpayments to creditors and to the bankruptcy receiver because she seeks reconsideration of, or relief from, the bankruptcy case orders allowing those claims by the creditors and the receiver. Panuelo v. Sigrah, 22 FSM R. 341, 357 (Pon. 2019).

A new lawsuit obviously cannot be a motion to reopen a case under Bankruptcy Rule 9024 (or for relief from judgment under Civil Procedure Rule 60), since such a motion would necessarily be filed in the original bankruptcy case, but Civil Procedure Rule 60 (and thus Bankruptcy Rule 9024) authorizes one other procedure for relief – an independent action for relief. Rule 60(b) does not limit a court's power to entertain an independent action to relieve a party from a judgment. Panuelo v. Sigrah, 22 FSM R. 341,

357 (Pon. 2019).

When the debtor's administratrix named only the bankruptcy receiver as the sole defendant, she would have standing in the action, to recover alleged overpayments to the receiver, but to recover alleged overpayments to the creditors, she would have to proceed against those creditors. Panuelo v. Sigrah, 22 FSM R. 341, 357 (Pon. 2019).

It seems likely that the six-year, catch-all statute of limitations would apply to purely monetary damages. Panuelo v. Sigrah, 22 FSM R. 341, 358 & n.8 (Pon. 2019).

Laches is an important consideration in bankruptcy proceedings because the chief purpose of the bankruptcy laws is to secure a prompt and effectual administration of and settlement of the estate of all bankrupts within a limited period. Panuelo v. Sigrah, 22 FSM R. 341, 358 (Pon. 2019).

A suit that seeks to vacate or alter the bankruptcy court's orders in the bankruptcy case, but is not a motion to reopen that case under either Bankruptcy Rule 5010 or 9024, could be an independent action for relief as allowed by Bankruptcy Rule 9024 adopting Civil Procedure Rule 60(b) by reference. Panuelo v. Sigrah, 22 FSM R. 341, 359 (Pon. 2019).

When an FSM court has not previously construed an FSM bankruptcy rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. Panuelo v. Sigrah, 22 FSM R. 341, 359-60 n.9 (Pon. 2019).

– Automatic Stay

By operation of law, the moment a person files an application for relief under the Bankruptcy Act of 2004 (Title 31 of the FSM Code), all legal proceedings against that applicant-debtor are automatically stayed with the exception of criminal proceedings and proceedings by a governmental entity to enforce a police or regulatory power. No court order or notice is needed or issued for the stay to take effect. Amayo v. MJ Co., 14 FSM R. 535, 537 (Pon. 2007).

Persons with a claim to a disputed, unsecured, unliquidated debt owed by the debtor which arose before the debtor applied for bankruptcy relief are "interested parties" who may appear in the bankruptcy proceeding and who may (and must) pursue any sanctions of the debtor and relief from the automatic stay within the bankruptcy case. Amayo v. MJ Co., 14 FSM R. 535, 538 (Pon. 2007).

The Bankruptcy Act sets forth the proper procedure to be followed by anyone who desires relief from the automatic stay. Relief from the automatic stay may be sought by applying to the bankruptcy court, and if that court grants the relief from the stay and determines that the disputed claim against the debtor should be referred to and determined by the court in which the case was already filed, that court will proceed with trial of the claim against the debtor. Amayo v. MJ Co., 14 FSM R. 535, 538 (Pon. 2007).

Unless and until the bankruptcy court grants relief from the automatic stay and refers the matter to the court in which the claim was filed to determine the amount of the claim allowable, the court can take no further action on the claim against the debtor. A plaintiffs' request to the court in that case cannot be considered a request for relief from the automatic stay since it bypasses the bankruptcy court, the only proper forum in which to seek such relief. Only the bankruptcy court can lift the automatic stay. Amayo v. MJ Co., 14 FSM R. 535, 538 (Pon. 2007).

The trial court has no power to enter a default on the issue of the debtor's liability or to try damages (damages would still need to be proven in an evidentiary proceeding) while the Bankruptcy Act's automatic stay is in effect. Amayo v. MJ Co., 14 FSM R. 535, 538 (Pon. 2007).

When an automatic stay has taken effect because one defendant applied for bankruptcy relief, trial could sill proceed as scheduled on the plaintiffs' claims against the other two defendants, but when the

court considers that to be a needless waste of scarce judicial resources and an unnecessary financial burden on the plaintiffs to have to try the case first against those defendants, and then against the debtor, the court may continue the trial. Amayo v. MJ Co., 14 FSM R. 535, 539 (Pon. 2007).

An affected party may seek relief from the automatic stay by applying to the bankruptcy court and that court, for cause shown, shall either grant relief from stay or grant such other relief as will provide adequate protection for the party requesting relief from stay. In re Panuelo, 15 FSM R. 23, 26 (Pon. 2007).

The bankruptcy court will grant relief from the automatic stay and permit "another court" to try creditors' disputed claims against the debtor and determine the amount of the debtor's liability (if any) to the creditors when it is in the interests of judicial economy and the expeditious and economical resolution of litigation and the parties were ready for trial before the bankruptcy application; when the impact of the stay on, and the harm to, the creditors is great, while the only harm to the debtor is that his attorney will have to try the case, something he was already prepared to do; when relief would result in complete resolution of the issues between the creditors and the debtor (except, of course, payment of any judgment); and when the litigation involves third parties and would not appear to prejudice the debtor's other creditors since any judgment against the debtor in that case must be pursued only in this bankruptcy case since the stay will not be lifted so as to permit the enforcement of any judgment obtained against the debtor in any forum other than this bankruptcy case. In re Panuelo, 15 FSM R. 23, 29 (Pon. 2007).

When a debtor's voluntary bankruptcy application is dismissed (and the receivership dissolved) and his debts that were the subject of that application not discharged, the stay against commencement or continuation of legal proceedings against the debtor that took effect automatically by operation of law because of the bankruptcy application, ends since the bankruptcy proceedings are terminated. All judgment creditors and any other creditors are then free to pursue their claims as if no bankruptcy application had been made. In re Mix, 21 FSM R. 454, 457 (Pon. 2018).

– Debtor's Estate

The debtor's estate that is subject to a bankruptcy receivership consists of, subject to the exemptions contained in section 209 of the Bankruptcy Act, all property owned by the debtor on the date of the application. In re Panuelo, 15 FSM R. 23, 27 (Pon. 2007).

Whether property is exempt from bankruptcy creditors is an issue that should be brought up after the appointment of a Receiver. A claim that the property is exempt is not an excuse for failing to list it in the official forms since a debtor must list property claimed as exempt under on the schedule of assets required to be filed by Bankruptcy Rule 1007. This allows creditors to object to the debtor's claim of exemption. In re Panuelo, 15 FSM R. 23, 27 (Pon. 2007).

When the Bankruptcy Act states the debtor's estate consists of "all property owned by the debtor on the date of the application," the Act should not be interpreted to mean something other than what it says. "All" means "all." Since statutes are to be interpreted according to their plain meaning, and when a statute's language is plain and unambiguous, it declares its own meaning and there is no room for construction. The meaning of "all" is plain and unambiguous." In re Panuelo, 15 FSM R. 23, 27 (Pon. 2007).

Since the Bankruptcy Act's purpose is to fairly balance the interests of creditors and debtors in circumstances where the debtor is unable to meet his financial obligations when due, it would be inherently unfair to the creditors' interests if only a debtor's property that happened to be in the FSM when the bankruptcy application was filed were included in the debtor's estate (and the debtor's property elsewhere not included). In re Panuelo, 15 FSM R. 23, 27 (Pon. 2007).

Since the FSM Code provisions are construed according to the fair construction of their terms with a view to effect its object and to promote justice, to construe the phrase "all property," to include the debtor's property outside the FSM would construe the Bankruptcy Act and 31 F.S.M.C. 203(1)(a) according to the

fair construction of their terms or with a view to effect the Bankruptcy Act's object and to promote justice. In re Panuelo, 15 FSM R. 23, 28 (Pon. 2007).

A debtor's receivership estate consists of all property owned by the debtor on the date of the application, all property acquired by the debtor through bequest, devise, or inheritance, or as beneficiary of a life-insurance policy in the 180 days after the bankruptcy application, and all property acquired by the receivership estate after the date of application. In re Panuelo, 16 FSM R. 339, 343 (Pon. 2009).

Income earned by a debtor after his bankruptcy application is not part of the receivership estate, but property that was owned by the debtor when he applied for bankruptcy protection is part of the receivership as must be the return (or unearned income) generated by that property. In re Panuelo, 16 FSM R. 339, 343 (Pon. 2009).

Proceeds of property of the receivership estate generated (or acquired) by receivership estate property after the debtor's application, goes to and is part of the receivership estate. In re Panuelo, 16 FSM R. 339, 343 (Pon. 2009).

It would make little sense if the receiver could avoid a fraudulent transfer made one day before the debtor applied for bankruptcy protection but could not avoid a fraudulent transfer made one day after. In re Panuelo, 16 FSM R. 339, 344 (Pon. 2009).

A transfer of property out of the debtor's estate, especially to insiders, without the return to the estate of reasonably equivalent or fair market value, is a fraudulent transfer or a transfer with intent to defraud. In re Panuelo, 16 FSM R. 339, 344 (Pon. 2009).

Bankruptcy Code Section 209(2)(b), which exempts from the debtor's receivership estate all tools, implements, utensils, two work animals and equipment necessary to enable the debtor to carry on his usual occupation, does not apply to individual filings where the debt is primarily of a business nature. A debtor cannot exempt such business tools from his receivership estate, especially when he is no longer in business. In re Mix, 19 FSM R. 63, 64 (Pon. 2013).

Fishing coolers, fishing gear, lures, rod and reel, fishing lines, fishing net spear gun, .410 shotgun, TV-flat screen, laptop, PC, 23 ft boat, trailer, 75hp motor, life jackets for the boat and boating accessories are not items that qualify as exempt personal and household goods under 31 F.S.M.C. 209(2)(a). In re Mix, 19 FSM R. 63, 64 (Pon. 2013).

A boat and its motor are exempt to the combined value not in excess of $2,500 and a motor vehicle is exempt not to exceed $1,500 in value, and if the vehicle exceeds the $1,500 exempt valuation and the boat and motor exceed their $2,500 exempt valuation, then they can be sold with the excess going to the creditors and the debtor keeping the exempt value. In re Mix, 19 FSM R. 63, 64-65 (Pon. 2013).

Since a son falls within the definition of an insider, a debtor's transfers of property to his son at any time after one year before the debtor's bankruptcy filing are voidable as preferences or as fraudulent transfers. The Receiver shall recover these items or their cash value from the son if they are in his possession. In re Mix, 19 FSM R. 63, 65 (Pon. 2013).

One of the debtor's duties is to cooperate with the trustee or receiver in the administration of the estate. In re Mix, 21 FSM R. 454, 456 (Pon. 2018).

The bankruptcy receiver is required, subject to court order, to administer the assets of the receivership estate, and, with the court's approval, to distribute those assets to the debtor's creditors pursuant to the priorities set out in 31 F.S.M.C. 107 and 108. And, to accomplish those ends, the receiver is granted, but not limited to, certain powers, including the powers to void preferences and fraudulent transfers. Panuelo v. Sigrah, 22 FSM R. 341, 362 (Pon. 2019).

The receivership estate consists of all of the debtor's property at the time of the bankruptcy application, except exempt property, plus certain other property acquired afterwards. Panuelo v. Sigrah, 22 FSM R. 341, 362 n.11 (Pon. 2019).

The debtor's death does not abate a liquidation case under chapter 2 of Title 31. In such event, the estate will be administered and the case concluded in the same manner, so far as possible, as though the death had not occurred. Panuelo v. Sigrah, 22 FSM R. 341, 363 (Pon. 2019).

– Discharge

A debtor is not entitled to a discharge from creditors' claims if the debtor has transferred property with intent to defraud after date of application and the debtor may also be denied a discharge for a fraudulent transfer of a debtor's interest in property incurred within one year before the application for receivership. In re Panuelo, 16 FSM R. 339, 344 & n.1 (Pon. 2009).

The Bankruptcy Act's purpose is to fairly balance the interests of creditors and debtors in circumstances where the debtor is unable to meet his financial obligations when due, and to do this a receiver is required to marshal all of the debtor's non-exempt assets and to manage those assets, during the pendency of the proceeding, in the estate's best interest, and at the end of the proceeding, give the debtor who has not abused the bankruptcy system an opportunity to get a fresh start. But a debtor who has abused the bankruptcy system is not entitled to a discharge of his debts and a fresh start. In re Panuelo, 16 FSM R. 339, 344-45 (Pon. 2009).

The court can discharge in the FSM the debt owed to the Marshall Islands because a discharge operates as an injunction against the continuation of any act or action to collect a debt as a personal liability of the debtor, but since the discharge or injunction would be enforceable only in the FSM, the Marshall Islands Social Security Administration might still seek to collect its claim in the Republic of the Marshall Islands or in some other foreign country, constrained only by the application of comity by those countries' courts. In re Mix, 18 FSM R. 600, 602-03 (Pon. 2013).

The debtor's failure to cooperate and the unauthorized transfer of property out of the debtor's estate can result in the denial of the debtor's bankruptcy application and the dismissal of the bankruptcy case without discharging any of the applicant's debts. In re Mix, 21 FSM R. 454, 456 (Pon. 2018).

The clerk shall serve a "notice of no discharge" on all creditors who have either filed proofs of claim or who were listed as creditors when a debtor's voluntary bankruptcy application is dismissed without a discharge of the debtor's debts. In re Mix, 21 FSM R. 454, 457 (Pon. 2018).

The defenses of fraud, misrepresentation, and illegality are unavailable as defenses to an action on a judgment unless they are part of the recognized defenses – payment, release, accord and satisfaction, or the statute of limitations (the court also recognizes that a discharge in bankruptcy of a judgment debt would likely constitute a good defense as a release) – but fraud would be an available defense if there was fraud on the court in obtaining the judgment. FSM Dev. Bank v. Carl, 22 FSM R. 365, 374 (Pon. 2019).

– Dismissal

The court may dismiss a bankruptcy application if it is in "the best interests of the debtor and the creditors" or if the debtor's application was in bad faith. In re Panuelo, 15 FSM R. 23, 28 (Pon. 2007).

It may be that the Bankruptcy Code's only remedy for unauthorized transfers of property in the debtor's estate after the start of a bankruptcy case is to dismiss the case without a discharge of the debtor's debts. In re Panuelo, 16 FSM R. 339, 344 (Pon. 2009).

A debtor in bankruptcy is required to cooperate with the receiver, and his failure to cooperate with the

receiver may subject his bankruptcy application to a dismissal for substantial abuse without any of his debts being discharged. In re Panuelo, 16 FSM R. 339, 344 (Pon. 2009).

A debtor's transfers of his property to others after the commencement of a bankruptcy can result in the dismissal of his application for bankruptcy protection without the discharge of his debts. In re Panuelo, 16 FSM R. 339, 344 (Pon. 2009).

The court may issue such orders as are enforceable in the FSM and although the court cannot enforce its orders in another country, the court does have a certain extraterritorial reach. The bankruptcy court can, in appropriate circumstances, hold in contempt a debtor or dismiss the debtor's bankruptcy application when the debtor has not obeyed a court order to sell property the debtor has in another country and remit the proceeds to the receiver of the debtor's estate. In re Mix, 18 FSM R. 600, 602 & n.2 (Pon. 2013).

The debtor's failure to cooperate and the unauthorized transfer of property out of the debtor's estate can result in the denial of the debtor's bankruptcy application and the dismissal of the bankruptcy case without discharging any of the applicant's debts. In re Mix, 21 FSM R. 454, 456 (Pon. 2018).

If a bankruptcy case is dismissed without a discharge of the applicant's debts, then the interest that was unmatured when the application was filed but which, without the bankruptcy application, would have accrued during the proceeding's pendency, will mature and the debtor will be liable for it. In re Mix, 21 FSM R. 454, 456 n.1 (Pon. 2018).

A voluntary bankruptcy case where the debtor has neither contacted the receiver nor offered to assist in the marshaling and sale of his non-exempt assets, cannot continue in this manner. In re Mix, 21 FSM R. 454, 457 (Pon. 2018).

When a debtor's voluntary bankruptcy application is dismissed (and the receivership dissolved) and his debts that were the subject of that application not discharged, the stay against commencement or continuation of legal proceedings against the debtor that took effect automatically by operation of law because of the bankruptcy application, ends since the bankruptcy proceedings are terminated. All judgment creditors and any other creditors are then free to pursue their claims as if no bankruptcy application had been made. In re Mix, 21 FSM R. 454, 457 (Pon. 2018).

– Priorities

For the purpose of administering a bankruptcy estate in the FSM, a foreign government's unsecured claim, even though reduced to judgment, will be relegated to the class of allowed unsecured claims in 31 F.S.M.C. 108(1)(e). In re Mix, 18 FSM R. 600, 603 (Pon. 2013).

– Receiver/Trustee

A receiver's proposed compensation of $125 an hour with a cap on the amount paid based on a percentage of the amount disbursed to creditors, even though the proposal places an upper limit on the compensation, this proposed compensation is still based solely on time-referenced billing, which the court is statutorily barred from approving. In re Panuelo, 15 FSM R. 640, 641 (Pon. 2008).

When a $125 per hour compensation rate is barred because the statute prohibits compensation based solely on time-referenced billing; when $125 an hour seems to be proposed merely because it is the prevailing rate for private attorneys on Pohnpei and the receiver is a lawyer; and when much of the work needed in administering a debtor's estate in bankruptcy may not be lawyer work and non-lawyer work is not compensated at lawyer rates even when done by a lawyer, the receiver will be asked to submit a new compensation proposal. In re Panuelo, 15 FSM R. 640, 641-42 (Pon. 2008).

Bankruptcy Rule 2008 refers only to blanket bonds in Rule 2010 which may be authorized when a

trustee or receiver is qualified in a number of cases. A bond will not be required when the receiver has been qualified in only one case, and when the bond requirement is discretionary, especially in this early stage of development of bankruptcy law and the small number of persons who might be able to qualify as a bankruptcy receiver or trustee and the lack of insurance companies that could issue a bond. In re Panuelo, 15 FSM R. 640, 642 (Pon. 2008).

A receiver can move to compel the attendance of persons at a creditors' meeting because interested parties can make such motions, and the receiver stands in the debtor's shoes and the debtor is included in the definition of an "interested party." In re Panuelo, 16 FSM R. 339, 343 (Pon. 2009).

The receiver is statutorily empowered to avoid preferences paid to creditors made on or within 90 days, or within one year if the creditor was an insider, before the bankruptcy application, and to avoid fraudulent transfers made within one year before the application for receivership, and to recover the transferred property for the estate's benefit. In re Panuelo, 16 FSM R. 339, 343 (Pon. 2009).

It would make little sense if the receiver could avoid a fraudulent transfer made one day before the debtor applied for bankruptcy protection but could not avoid a fraudulent transfer made one day after. In re Panuelo, 16 FSM R. 339, 344 (Pon. 2009).

When a debtor has failed to file supplemental schedules with corrected information about his property as required, the receiver should be permitted to do it based on the information she has uncovered and any further information she may develop. In re Panuelo, 16 FSM R. 339, 345 (Pon. 2009).

One of the debtor's duties is to cooperate with the trustee or receiver in the administration of the estate. In re Mix, 21 FSM R. 454, 456 (Pon. 2018).

Creditor interests are served by the appointment of a receiver to marshal all of the debtor's non-exempt assets and to manage those assets, during the pendency of the proceeding, in the best interests of the estate. In re Mix, 21 FSM R. 454, 456 (Pon. 2018).

The FSM bankruptcy statute specifically bars receiver's compensation based solely on time referenced billing. Panuelo v. Sigrah, 22 FSM R. 341, 353 (Pon. 2019).

The bankruptcy receiver is required, subject to court order, to administer the assets of the receivership estate, and, with the court's approval, to distribute those assets to the debtor's creditors pursuant to the priorities set out in 31 F.S.M.C. 107 and 108. And, to accomplish those ends, the receiver is granted, but not limited to, certain powers, including the powers to void preferences and fraudulent transfers. Panuelo v. Sigrah, 22 FSM R. 341, 362 (Pon. 2019).

BANKS AND BANKING

The FSM Development Bank is an instrumentality of the national government and part of the national government for the purposes of FSM Constitution article XI, section 6(a), giving the trial division of the Supreme Court exclusive jurisdiction over cases in which the national government is a party. FSM Dev. Bank v. Estate of Nanpei, 2 FSM R. 217, 221 (Pon. 1986).

Questions regarding the validity of the provisions of promissory notes for personal loans, executed with a national bank operating in each state of the FSM and having in part foreign ownership, are closely connected to the powers of the national legislature to regulate banking, foreign and interstate commerce, and bankruptcy, and to establish usury limits, and they have a distinctly national character. The FSM Supreme Court therefore will formulate and apply rules of national law in assessing such issues. Bank of Hawaii v. Jack, 4 FSM R. 216, 218 (Pon. 1990).

The FSM Supreme Court will consider an unambiguous provision in a promissory note for the payment of reasonable attorney's fees in debt collection cases as valid in the Federated States of Micronesia. Bank

of Hawaii v. Jack, 4 FSM R. 216, 219 (Pon. 1990).

Because agreements in promissory notes for the payment of attorney's fees are essentially indemnity clauses, they will be given effect only to the extent that expenses and losses are actually incurred, as demonstrated by detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which a claim for compensation is made. Bank of Hawaii v. Jack, 4 FSM R. 216, 219 (Pon. 1990).

Provisions in promissory notes for the payment of attorney's fees will be enforced only to the extent that the fees demanded are reasonable. Bank of Hawaii v. Jack, 4 FSM R. 216, 219 (Pon. 1990).

Where attorney's fees claimed pursuant to a contractual provision are excessive or otherwise unreasonable, it is within the equitable and discretionary power of the court to reduce or even deny the award, despite the contractual provision. Bank of Hawaii v. Jack, 4 FSM R. 216, 220 (Pon. 1990).

Except in unusual circumstances, the amount awarded pursuant to a stipulation for the payment of attorney's fees in debt collection cases in the FSM will be limited to a reasonable amount not in excess of fifteen percent of the outstanding principal and interest. Bank of Hawaii v. Jack, 4 FSM R. 216, 221 (Pon. 1990).

A municipal license fee ordinance which separately defines banking and insurance businesses and specifically imposes a different rate upon those businesses than would be imposed upon other kinds of businesses on its face appears to be an effort to regulate banking and insurance and is unconstitutional and void. Actouka v. Kolonia Town, 5 FSM R. 121, 122 (Pon. 1991).

The statutory scheme emphasizes the location of the business activity which generates the revenue in question. Therefore revenue derived from banking investment transactions in Honolulu and Chicago are not taxable since they are not derived from sources or transactions within the Federated States of Micronesia. Bank of the FSM v. FSM, 5 FSM R. 346, 349 (Pon. 1992).

Where licenses are to be issued to each bank branch, and each bank branch must be scrutinized as to its qualifications for a license, it is a reasonable statutory interpretation that the regulatory license fee must be paid for each bank branch. Bank of the FSM v. FSM, 6 FSM R. 5, 8 (Pon. 1993).

The context of Chapter 5 of Title 29 requires that the term "bank" be understood to mean bank branch when used in 29 F.S.M.C. 502 and 504. Therefore scrutiny for license qualifications and payment of license fees are to be on a per branch basis. Bank of the FSM v. FSM, 6 FSM R. 5, 8 (Pon. 1993).

A financial institution, such as a credit union, that holds money from depositors does have an on-going fiduciary duty to its depositors. Wakuk v. Kosrae Island Credit Union, 7 FSM R. 195, 197 (Kos. S. Ct. Tr. 1995).

An instrument that is not a promissory note because it fails to contain words of negotiability may still be enforceable as a contract between the parties. Nanpei v. Kihara, 7 FSM R. 319, 323 (App. 1995).

When a bank requires, as a condition of the loan, that a borrower have his employer make the loan repayments out of the borrower's paycheck the borrower's employer is acting as the agent of the borrower. Bank of the FSM v. O'Sonis, 8 FSM R. 67, 69 (Chk. 1997).

The FSM Development Bank is authorized to engage in all banking functions that will assist the economic advancement of the Federated States of Micronesia. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 71 (Pon. 2001).

30 F.S.M.C. 104 does not require the FSM Development Bank to provide technical assistance to

persons the bank loans money to, but simply permits it to provide such assistance. The bank has no duty to provide technical assistance. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 76 (Pon. 2001).

The statute, 30 F.S.M.C. 104, does not impose a duty upon the FSM Development Bank to provide technical assistance to debtors to whom it has already made a loan, nor to assignees of those debtors. Nor does it give rise to a private cause of action. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 76-77 (Pon. 2001).

Generally, money deposited in a bank account is a debt that the bank owes to the depositor – the bank is obligated to repay the money to the depositor, either on demand or at a fixed time. Money deposited in a bank account is thus not property mortgaged to the bank. Bank of the FSM v. Asugar, 10 FSM R. 340, 342 (Chk. 2001).

Banks generally have a common law right to a setoff against depositors. Bank of the FSM v. Asugar, 10 FSM R. 340, 342 (Chk. 2001).

When a bank has a contractual right to setoff because the promissory note contains a provision granting the bank a right to setoff and in that provision, the borrowers authorize the bank's use of setoff, and the borrowers are on notice that if payments are not made that the bank may exercise a setoff against the borrower's bank deposits. And when the note provides that the bank may forgo or delay enforcing any of its rights or remedies without losing them, the bank was within its rights to setoff sums in the borrowers' bank accounts against the monthly payments as each became due and remained unpaid instead of declaring the loan in default and accelerating payment of the entire amount. Bank of the FSM v. Asugar, 10 FSM R. 340, 342 (Chk. 2001).

30 F.S.M.C. 104(b) does not create a duty for the FSM Development Bank to provide technical assistance, but rather authorizes the FSM Development Bank to provide such assistance as a part of its functions. FSM Dev. Bank v. Ifraim, 10 FSM R. 342, 345 (Chk. 2001).

An irrevocable standby letter of credit provides the same security as a commercial letter of credit, as it provides a guarantee of payment in the event that a party does not perform according to a contract's terms. A time certificate of deposit for the amount of performance of a contract, with possession of the certificate surrendered to the state, would also provide the state with full security and evidence of funds available. Nagata v. Pohnpei, 11 FSM R. 265, 272 (Pon. 2002).

When the lender bank was in charge of the disbursement of the loan proceeds and when the contract language provided that no loan proceeds would be disbursed until the bank had received evidence that all labor and materials have been paid for, the bank assumed the duty under the agreement not to disburse loan proceeds until it had received verification that the suppliers had been paid. When, if the bank had met its commitment in this regard, it would have been impossible for the project to be completed without the suppliers being fully paid, the suppliers were as a matter of law intended third-party beneficiaries of the loan agreement. In such a case, the third-party may enforce the contract against the promisor. The bank's promise not to disburse loan proceeds until it had received confirmation that the suppliers had been paid, is enforceable against the bank. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 239-40 (Pon. 2003).

The stated purpose of the FSM Development Bank under 30 F.S.M.C. 104(1) is to assist in the Federated States of Micronesia's economic advancement. Adams v. Island Homes Constr., Inc., 12 FSM R. 348, 353 (Pon. 2004).

Under 30 F.S.M.C. 104(2), the Development Bank does not have a duty to provide technical support for the project for which the money was loaned because 30 F.S.M.C. 104 does not confer a private cause of action, and the Bank does not have a duty under this statute to provide technical assistance to debtors to whom it has already made a loan. FSM Dev. Bank v. Jonah, 13 FSM R. 522, 523 (Kos. 2005).

The Constitution does not contain a right of privacy or financial or business privilege in bank records emanating from Article IV, Section 5 of the FSM Constitution. FSM Dev. Bank v. Adams, 14 FSM R. 234, 247 (App. 2006).

Congress has the express power to regulate banking, but it has not legislated in the area of bank customer confidentiality. FSM Dev. Bank v. Adams, 14 FSM R. 234, 247 (App. 2006).

The general rule appears to be that there exists no common law privilege with respect to bank customer information, but a court should indulge in a careful balancing of the right of civil litigants to discover relevant facts, on the one hand, with the right of bank customers to maintain reasonable privacy regarding their financial affairs, on the other. FSM Dev. Bank v. Adams, 14 FSM R. 234, 247 (App. 2006).

The Foreign Investment Act of 1997 establishes a system of Categories of economic sectors for the purposes of implementing the FSM policy to welcome foreign investment in all sectors of the FSM economy. Three of these categories are made up of economic sectors that are of special national significance and therefore fall within the national government's jurisdiction in respect of foreign investment regulation. The first is the National Red List. No foreign investment is permitted in the activities specified on this list, which includes the minting of money and arms manufacture. The second is the National Amber List. Banking (other than as defined in Title 29 of the FSM Code) and insurance are included on this list. Certain criteria specified in the FSM Foreign Investment Regulations must be met before investment is permitted in these areas. A third category of activities that fall within the jurisdiction of the national government appear on the National Green List. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 333-34 (Pon. 2007).

The Investment Development Fund was created with money appropriated by the United States. The Federated Development Authority administers the IDF. The FSM Development Bank, pursuant to the FDA's direction, is responsible for administering all IDF loans and IDF money is restricted to financing development projects. Although each state has an earmarked subaccount within the IDF (there is also a private-sector reserve subaccount) and any state may propose a project to be financed from its earmarked subaccount, loans from these subaccounts must be approved by the FDA, and by the Development Bank. Thus, IDF funds are not a state's property, to do with as it chooses. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 634 (Pon. 2008).

The FSM Development Bank, in administering an IDF loan, is statutorily an agent of the Federated Development Authority and of the Investment Development Fund, not of the State of Pohnpei, even though the loan funds came from Pohnpei's earmarked subaccount. The mere fact that Pohnpei's approval was also needed if the loan funds came from the subaccount earmarked for Pohnpei, is not enough to make the Bank Pohnpei's agent because, by statute, the IDF, not the State of Pohnpei, profits from the repayment of an IDF loan since all repayments of principal and interest and penalties on loans made from the Fund, all cash assets recovered on loans made from the Fund, and all fees, charges, and penalties collected in relation to administration of the Fund must be deposited into the Fund and the money deposited into the Fund is then available for lending to other entrepreneurs or developers, who are the ultimate beneficiaries of any loan repayment. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 634-35 (Pon. 2008).

Whenever a bank lends money, it always assumes a risk that the borrower will not repay it. The bank tries to manage or lessen its risk by requiring certain information about the borrower and the money's intended use and by evaluating that information before any money is lent. Even if satisfied that the borrower is creditworthy, a bank may also lessen its risk by attaching certain conditions to the loan and by acquiring a security interest in the borrower's collateral. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 286 (Chk. 2009).

When the statute of limitations has expired on all loan instalment payments that became due before July 20, 2001 and when only two instalment payments were due after that date, the lender is, as a matter of law, entitled to judgment for only those two payments. FSM Dev. Bank v. Chuuk Fresh Tuna, Inc., 16 FSM

R. 335, 338 (Chk. 2009).

It is a corporation's usual practice to deposit checks payable to it in a bank account Given this consideration, when a person is asked to cash a check bearing a corporate endorsement he is put on his guard and should verify that the endorsement is authentic, and should take the necessary steps to make certain that the person attempting to cash the check is authorized to do so by the payee corporation. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 440 (Pon. 2009).

Funds in the Investment Development Fund are owned and administered exclusively by the FSM government and are thus not "U.S. funds" but are FSM funds. Arthur v. Pohnpei, 16 FSM R. 581, 589-90 (Pon. 2009).

The Investment Development Fund was created by an enactment of the FSM Congress, and thus was an instrumentality of the FSM national government. Arthur v. Pohnpei, 16 FSM R. 581, 590 (Pon. 2009).

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

The Investment Development Fund consists wholly of funds granted by the United States to Federated States of Micronesia for certain development projects lending, and the FSM Development Bank is charged with the administration and documentation of IDF loans. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 657 (App. 2009).

The FSM Development Bank and the State of Pohnpei are not one and the same. The bank is a creature of national statute, with its duties and functions delineated. In contrast, the State of Pohnpei is a constitutionally organized state of the FSM. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 659 (App. 2009).

The FSM Development Bank was not Pohnpei's agent in making the loan, in receiving the loan repayments, or in suing the guarantors when the borrower defaulted because until FSM Public Law No. 12-75 was enacted over the President's veto, Pohnpei could not even consider that any IDF funds might be its own money. If it had been Pohnpei's money, then Congress would not have had to enact a law to give it to Pohnpei. That Congress later decided to wind up IDF subaccount activity and allow the transfer of those funds to the states does not magically and retroactively relieve the guarantors of their judicially-determined liability to the bank and it does not create a new cause of action or cause a new claim to accrue upon which the plaintiffs can now sue for the first time. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 10 (Pon. 2011).

As a matter of law, no individual can ever have the apparent authority to cash a check that has a corporation as the payee, and, as a matter of law, any business that cashes such a check with a corporate payee is not engaged in a commercially reasonable business practice. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 359-60 (App. 2012).

Under a plain reading of the statute, the FSM Development Bank is not required to obtain permission on a case-by-case basis before starting collection actions for Federated Development Authority loans, and the court will not broaden the statute beyond the meaning of the law as written. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 378, 380 (Kos. 2012).

A plain reading of the statutes, in context, includes a case-by-case requirement for refinancing FDA loans and by its specific inclusion excludes that requirement from collection efforts. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 378, 380 (Kos. 2012).

Even as restructured, the FSM Development Bank is still imbued solely with a public purpose because it exists and is operated solely for the public's benefit and is authorized to engage in all banking functions

that will assist in the FSM's economic advancement. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 616 (Pon. 2013).

While the restructured FSM Development Bank differs from its earlier incarnation, it does not differ enough for it to be considered no longer an FSM national government instrumentality for Section 6(a) purposes because it is still imbued with a public purpose; it is still governed by a special act at title 30 of the FSM Code, rather than by the general banking statutes at title 29; there is still no private ownership of the Bank; 98.7%, of its shares are owned by the national government, making the FSM national government the shareholder that chooses the board of directors, with the exception of the Bank's president who is an ex officio member of the board and who is chosen by the other board members; the Bank is thus still under the control of the FSM national government that created it and still submits annual reports to the national government although now this is in the national government's capacity as a shareholder; and because in every fiscal year but one, Congress has appropriated funds for the restructured Bank's use. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 617 (Pon. 2013).

The restructured FSM Development Bank is fiscally independent of the national government as are a number of other national government instrumentalities and agencies – FSM Social Security Administration; National Fisheries Corporation; FSM Telecommunications Corporation; MiCare Health Insurance; and FSM Petroleum Corporation. This fiscal autonomy removes these FSM national government instrumentalities from the national government's every day political influence and control, but these instrumentalities were created by the national government and are still under its control, first as a shareholder or the shareholder, and second since Congress can, at any time, amend the statutes that created the restructured Bank, or any of these other instrumentalities, to exert or enforce some new national policy preference. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 617 (Pon. 2013).

The FSM Development Bank exists solely for the public's benefit. It does not operate for a private purpose and it is not a profit-seeking venture. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 617 (Pon. 2013).

That the national government is not legally responsible for the FSM Development Bank's debts, does not prevent the bank from being a national government instrumentality since other national government instrumentalities have similar status. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 617 (Pon. 2013).

As befits a national government agency or instrumentality, the FSM Development Bank is exempt from any taxes (except import taxes) or assessments on its property or operations, and similar statutory provisions exist for other national government instrumentalities and agencies. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 617 (Pon. 2013).

The restructured FSM Development Bank remains, regardless of the name given it and the other details of form, subject to the article XI, § 6(a) constitutional provision and, as with similar national government instrumentalities, it should be treated as part of the national government for jurisdiction purposes because it is an organization created by the national government for a public purpose and over which the national government can exercise control when it chooses. It is not an organization that the national government merely licensed or authorized to operate for private purposes. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 618 (Pon. 2013).

Even if the FSM Development Bank were not an FSM national government agency, the FSM Supreme Court would still have subject-matter jurisdiction over the case as one between a plaintiff corporation with Chuuk and Kosrae citizenship and Pohnpei citizen defendants. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 618 (Pon. 2013).

The FSM Development Bank is not defunct because if the public law that restructured it were unconstitutional, then the previous FSM Development Bank statute would apply. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 618 (Pon. 2013).

The Constitution expressly delegates to Congress the power to regulate banking and foreign and interstate commerce. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 619 (Pon. 2013).

The Constitution's broadly-stated express grants of power to regulate banking and foreign and interstate commerce contain within them innumerable incidental or implied powers as well as certain inherent powers. These incidental and implied powers include the power to form public corporations, such as the FSM Development Bank or the FSM Telecommunications Corporation, even in the absence of the express power to do so. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 619 (Pon. 2013).

The creation of the restructured FSM Development Bank was a valid exercise of Congress's power to regulate banking and to regulate interstate and foreign commerce. Development banking is also a power of national character beyond the power of a state to control or provide and so is a national power. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 619 (Pon. 2013).

Since the making payments at the Pohnpei branch bank office was not a material part of loan agreement and since the bank provided a means so that loan payments and other services might still be made locally, the bank did not deprive the borrower of any benefit under the promissory note and, since the borrower provided no evidence showing that he did not know where or how to continue to make the required loan payments, he did not show that the bank's conduct rendered his performance under the contract difficult or impossible. Bank of Hawaii v. Susaia, 19 FSM R. 66, 71-72 (Pon. 2013).

A bank did not breach a material provision of the contract when the bank notified the borrower of the bank branch's closure and the borrower knew of alternative agents and locations of making payments due on the loan. Bank of Hawaii v. Susaia, 19 FSM R. 66, 72 (Pon. 2013).

When a promissory note, by its express terms, did not require the obligor to pay at the Pohnpei branch office but stated that payments were to be made "to our branch address above, or at any of our other branches" and the "branch address above" was "PO BOX 280, KOLONIA, POHNPEI FM 96941," under the note's terms, payment at any branch office will do. When it is undisputed that the bank still had an office on Pohnpei, the bank cannot have breached its contract by moving its office to another location on Pohnpei. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 144 (App. 2013).

Where the obligor on a promissory note is to make his payments does not relate to a matter of vital importance or go to the contract's essence since the note provides a number of options for place of payment, and since the obligor was not deprived of the benefits he expected to receive under the contract – his use of the bank's money (the loan) for a specified period of time. He knew he had an obligation to pay the bank and he knew (or should have known) where to pay and if he did not know it was his duty to find out where. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 145 (App. 2013).

A bank does not have to contact each borrower personally and negotiate separately with each borrower to get each borrower to agree to amend the note to require or to allow payment somewhere other than at the closed Pohnpei retail branch office. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 146 (App. 2013).

A borrower's duty is to repay his loan and to seek a bank office in order to make those payments. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 146 (App. 2013).

A bank does not breach its agreement with a borrower by closing its retail branch office on Pohnpei, and if it did it was not a material breach excusing performance. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 146 (App. 2013).

The FSM Development Bank is an instrumentality of the national government, and should be treated as if the national government itself is the actor. It, therefore, has an independent basis for jurisdiction under the Constitution article XI, § 6(a) and the national forum is available to it. FSM Dev. Bank v. Estate of

Edmond, 19 FSM R. 425, 433 (App. 2014).

The FSM Development Bank may fully adjudicate many matters in the national court until land is at issue. At that time, unless, a separate and additional source of jurisdiction can be found, the case must be dismissed and returned to the state court, or alternately, held in abeyance until the land issue is certified. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 433 (App. 2014).

Since the nation's statutes are presumed to be constitutional, a bank is not required to challenge, on a depositor's behalf, the tax lien statute's constitutionality. The bank may rely on the statute. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

It is not a bank's duty to challenge the tax authorities' assessment of the amount of tax due from a taxpayer depositor. It is the taxpayer's responsibility to dispute any tax assessed that it disagrees with and for the taxpayer to resolve the issue with the FSM tax authorities. It also is not the bank's responsibility to challenge the constitutionality of 54 F.S.M.C. 153 or the FSM's interpretation of that statute. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

As long as the notice of levy and execution from the Division of Customs and Tax Administration is regular on its face, a bank is obligated to honor it. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

A bank depositor's complaint against a bank fails to state a claim on which it can obtain relief and will be dismissed when the bank honored, in conformance with 54 F.S.M.C. 153, a Division of Customs and Tax Administration Notice of Levy and Execution that was regular on its face since that is not an unauthorized withdrawal from the depositor's account or the result of the bank's negligence of any kind and since it cannot be a breach of any contract between the depositor and the bank because the bank cannot contract to violate FSM law or statutes. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

At the start of a typical loan repayment, the installment payments are usually not much larger than the amount of interest accrued and due. The bulk of the installment payment is then applied to interest and the remaining amount goes to reducing the principal so that at the next installment payment, if made on time, a little less is needed to pay the accrued interest and a little more can go to the reduction of principal. This does not constitute usury unless the interest rate itself is higher than permitted by statute. Salomon v. Mendiola, 20 FSM R. 138, 140-41 (Pon. 2015).

If the loan payments are late, more interest will accumulate and more of the payment will go to cover the interest and less will go to reducing the principal. Enough late payments or a missed payment and the next payment may end being applied all to accrued interest with nothing left over to apply to the principal. Salomon v. Mendiola, 20 FSM R. 138, 141 (Pon. 2015).

Title 30, which governs the FSM Development Bank, does not give rise to a private cause of action. Thus, even if the bank violated Title 30, a private party's claims based on Title 30 violations do not state a claim on which relief may be granted. Salomon v. Mendiola, 20 FSM R. 138, 141 (Pon. 2015).

Since the FSM Development Bank was formed by the national government to undertake a public purpose and is subject to its creator's control, the reconfigured FSM Development Bank constitutes a national government instrumentality within Article XI, § 6(a), and is accorded the status equivalent to that of the national government. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 515 (App. 2016).

A loan application is an invitation by the applicant for the bank to make an offer to lend the applicant money. The bank may then decline to make an offer (deny the application) or it may make an offer (propose to lend money on certain terms), which the loan applicant may then accept (forming a contract) or reject. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 169 (Pon. 2017).

"Predatory lending" is a term generally used to characterize a range of abusive and aggressive lending practices, including deception or fraud, charging excessive fees or interest rates, making loans without regard to a borrower's ability to repay, or refinancing loans repeatedly over a short period of time to incur additional fees without any economic gain to the borrower. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 170 (Pon. 2017).

The predatory lending tort is usually either created by statute or relies on an existing statute as a basis for the cause of action. Neither Pohnpei nor the FSM national government has enacted a statute that could make predatory lending a cause of action. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 170 (Pon. 2017).

The regulation of banking and of commercial paper are powers expressly delegated to the national government. "Commercial paper" is any instrument, other than cash, for the payment of money and is generally viewed as synonymous with negotiable paper or bills. Promissory notes are commercial paper. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 170 n.4 (Pon. 2017).

A bank does not have a duty to dispute a depositor's tax assessment, nor to challenge the constitutionality of 54 F.S.M.C. 153, as these are the account holder's responsibilities, and the bank is obliged to comply with the statutory levy, or face penalties under the law. Fuji Enterprises v. Jacob, 21 FSM R. 355, 362 (App. 2017).

Congress created the FSM Development Bank and gave it the power to lend money either with or without security, and if with security upon such terms as may from time to time seem expedient. Setik v. FSM Dev. Bank, 21 FSM R. 505, 519 (App. 2018).

A claim that the FSM Development Bank should not be trying to make a profit is neither a ground for relief from judgment nor a meritorious defense. Setik v. FSM Dev. Bank, 21 FSM R. 505, 519 (App. 2018).

Title 30, which governs the FSM Development Bank, does not give rise to a private cause of action for borrowers or others. Setik v. Mendiola, 21 FSM R. 537, 556 (App. 2018).

The borrowers' claim that the bank's chairman of the board and members breached their fiduciary duties owed to the bank's shareholders, even if proven, cannot state a claim on which the borrowers could be granted relief. This is because a party cannot raise third persons' claims. A party may raise only its own claims and must assert its own legal rights and interests; it cannot rest its claim to relief on third parties' legal rights or interests. Setik v. Mendiola, 21 FSM R. 537, 557 (App. 2018).

FSM Development Bank loans that are determined to be no longer collectable are subject to write-off, but when the mortgaged parcel securing the loan is still generating income, in the form of monthly rent, the loan is still deemed to be capable of being paid off. FSM Dev. Bank v. Carl, 21 FSM R. 640, 643-44 (Pon. 2018).

A borrower's death does not automatically make an FSM Development Bank loan subject to a write-off. Rather, the death is only one criteria to be considered. FSM Dev. Bank v. Carl, 21 FSM R. 640, 644 (Pon. 2018).

An Act of Congress created the FSM Development Bank as a corporate entity. That statute, now FSM Code Title 30, operates as the bank's articles of incorporation, charter, and corporate registration. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 184-85 (Pon. 2019).

The power to regulate banking is expressly delegated to Congress. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 329, 330 (Pon. 2019).

In creating the FSM Development Bank, the FSM government intended to establish an independent

financial institution operating under its own Board of Directors but conducting its activities within the framework of the national government's general economic plans, policies, and priorities. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 330 (Pon. 2019).

Since it is the government's intent that the FSM Development Bank have and retain the legal capacity to acquire, own title to, dispose of, and otherwise deal in FSM land and waters, no stock in the Bank may be owned by any person or entity whose partial ownership of the Bank would cause the Bank to lose such capacity under applicable law, and any transfer of Bank stock to such a person or entity will be null, void, and of no effect. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 330 (Pon. 2019).

The enactment of FSM Code, Title 30 falls squarely within the Congress's express powers as delegated by the FSM Constitution. That 30 F.S.M.C. 137 deals with the FSM Development Bank's ability to acquire title to land places this activity squarely in the category of indisputedly national government powers. To function, the Bank must be able to deal with mortgages, as well as deeds and land titles, as land is the primary collateral possessed by most Micronesians. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 330 (Pon. 2019).

Powers that are indisputedly national include the national government's power to buy land, and, as an instrumentality of the national government, the FSM Development Bank has the authority to act in that capacity according to laws enacted by the Congress under its express and implied powers under the Constitution. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 330 (Pon. 2019).

Since the FSM Congress specified in 30 F.S.M.C. 137 that the FSM Development Bank must have and retain the legal capacity to acquire, own title to, dispose of, and otherwise deal in land and waters in the FSM, restrictions imposed by Pohnpei must fail as applied to the Bank's ability to acquire title to Pohnpei land. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 330 (Pon. 2019).

If the FSM Development Bank's right to acquire, own title to, dispose of, and otherwise deal in FSM land and waters could be impaired in different ways by each of the four states, based on the states' Constitutions or statutes, it would eviscerate the national government's power to regulate the Bank under the express powers granted to it under the FSM Constitution. If each state could deny the Bank the right to acquire land, its essential functions would be impaired, and it would be unable to achieve the stated purpose of operating as an independent financial institution within the framework of the national government's general economic plans, policies, and priorities. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 330-31 (Pon. 2019).

The FSM Development Bank's ability to hold title to land enables it to be flexible when negotiating with borrowers who are behind or in default on collateralized loans. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 331 (Pon. 2019).

That the FSM Development Bank has an alternative means to collect debts without holding title to land in Pohnpei is not relevant when the Bank seeks to acquire fee simple title to land, which it is entitled to do under 30 F.S.M.C. 137. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 332 (Pon. 2019).

A 9% interest rate is not usurious. The court thus has no power to disregard it, or to otherwise vary it, lower it, or raise it because the parties agreed to the 9% rate – the bank offered to lend the loan applicants money at 9%, and those applicants, who borrowed money, agreed to borrow it at 9%. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 474 n.1 (Pon. 2020).

The FSM Development Bank has the statutory authority to lend money either with or without security, and if with security upon such terms as may from time to time seem expedient. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 477 (Pon. 2020).

Under Pohnpei law, when a bank is entitled to a foreclosure of the mortgaged land as a matter of law,

and the full judgment amount is not paid into court within three months of the judgment date, the court may, order the foreclosed property sold for the mortgagee's (the bank's) benefit. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 478 (Pon. 2020).

When the borrowers' assignment of income and of exclusive possession was used to secure their indebtedness to the bank and the assignments allowed the borrowers to retain their income and possession of the business premises so long as the loan it secured did not go into default, the bank is entitled to a judgment on its claim to enforce the assignments once the borrowers have defaulted. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 478 (Pon. 2020).

Section 128, Title 30 grants the FSM Development Bank tax exemption and prohibits it from paying dividends because the bank exists and operates "solely for the benefit of the public." It does not create a private cause of action against the FSM Development Bank, and thus a borrower cannot raise it as an affirmative defense. FSM Dev. Bank v. Talley, 22 FSM R. 587, 594 (Kos. 2020).

Congress created the FSM Development Bank, and gave it the power to lend money either with or without security, and if with security upon such terms as may from time to time seem expedient. The bank's ability to set terms is, of course, limited by the usury statutes. Those statutes prohibit (make usurious) credit transactions that directly or indirectly exceed an annual interest rate of 24%. FSM Dev. Bank v. Talley, 22 FSM R. 587, 594 (Kos. 2020).

A bank expects to be paid the amount the bank would be owed (and paid) if all installment payments were made precisely on time and in full. The bank, of course, expects to be paid more (and the note provides for it) if any of the installment payments were late or short. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 606 (Pon. 2020).

BUSINESS ORGANIZATIONS

Any business entity in which any ownership interest is held by a person who is not a citizen of the FSM is a non-citizen. Island Dev. Co. v. Yap, 9 FSM R. 220, 223 & n.1 (Yap 1999).

Business entities take three general forms – a sole proprietorship, a partnership of some form, or a corporation. In re Estate of Setik, 12 FSM R. 423, 429 (Chk. S. Ct. Tr. 2004).

Business expenses (such as rent, utilities, or support-staff salaries) that cannot be allocated to a particular product or service; fixed or ordinary operating costs are considered overhead. Smith v. Nimea, 19 FSM R. 163, 171 n.4 (App. 2013).

When the tax lien on a sole proprietorship's property was effectuated under 53 F.S.M.C. 607, well before the business transformed and became incorporated, the court will not create an avenue where an individual operating as a business avoids debt by simply morphing into an entity with the same name, albeit a different structure and characteristics. For the court to allow this would be detrimental to statutorily created entities attempting to collect taxes owed. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 276, 278 (Pon. 2015).

– Cooperatives

In the Federated States of Micronesia Income Tax Law, 54 F.S.M.C. 111 *et seq.*, cooperatives are not singled out in any way within the definition of business and there is no indication in the tax law that cooperatives are to be treated differently than corporations or any other forms of businesses. KCCA v. Tuuth, 5 FSM R. 68, 70 (Pon. 1991).

A cooperative may be dissolved administratively by the FSM Registrar of Corporations and trustees appointed to wind up the cooperative's affairs. In re Kolonia Consumers Coop. Ass'n, 9 FSM R. 297, 300

(Pon. 2000).

All violations of the FSM Regulations under which the FSM Registrar of Corporations may appoint trustees in dissolution for winding up an association's affairs are enjoinable. In re Kolonia Consumers Coop. Ass'n, 9 FSM R. 297, 300 (Pon. 2000).

Cases involving a dissolved cooperative association may be consolidated and assigned a new docket number. In re Kolonia Consumers Coop. Ass'n, 9 FSM R. 297, 300 (Pon. 2000).

– Corporations

The Federated States of Micronesia Income Tax Law confirms that it is the nature of the services performed and the person performing the services, rather than the stated identity of the contracting party, which determines the tax treatment for the compensation under the contract. It is of no import that the "contractor" was identified as a corporation rather than as an individual when the contract makes clear that the primary services to be rendered were those of an individual and the corporation was merely a name under which the individual conducted business. Heston v. FSM, 2 FSM R. 61, 64 (Pon. 1985).

The Constitution specifically bars noncitizens from acquiring title to land or waters in Micronesia and includes within the prohibition any corporation not wholly owned by citizens. Federated Shipping Co. v. Ponape Transfer & Storage (III), 3 FSM R. 256, 259 (Pon. 1987).

Noncitizen corporations are those which are not wholly owned by Federated States of Micronesia citizens. Federated Shipping Co. v. Ponape Transfer & Storage (III), 3 FSM R. 256, 259 (Pon. 1987).

For purposes of diversity jurisdiction under article XI, section 6(b) of the Constitution, a corporation is considered a foreign citizen when any of its shareholders are not citizens of the Federated States of Micronesia. Federated Shipping Co. v. Ponape Transfer & Storage (III), 3 FSM R. 256, 260 (Pon. 1987).

The Trust Territory of the Pacific Islands, which still exists and has governmental powers in the Republic of Palau, is now "foreign" to the Federated States of Micronesia and a corporation organized under the laws of the Trust Territory may itself be regarded as foreign for purposes of diversity of citizenship jurisdiction. U Corp. v. Salik, 3 FSM R. 389, 392 (Pon. 1988).

Power to regulate the incorporation and operation of corporations falls within the constitutional power of the national government to regulate foreign and interstate commerce. Mid-Pac Constr. Co. v. Senda, 4 FSM R. 376, 380 (Pon. 1990).

The Corporations, Partnership and Agency regulations were adopted pursuant to, and affect the reach of, the Trust Territory statute regulating corporations and, since those statutory provisions are part of FSM national law by virtue of the Transition Clause of the FSM Constitution, the regulations too must retain their effect until they are amended or repealed pursuant to FSM law. Mid-Pac Constr. Co. v. Senda, 4 FSM R. 376, 381 (Pon. 1990).

The determination of whether stockholders and directors should be protected at the expense of the general public and the employees of the corporation is a policy choice of the kind that legislatures are better equipped than courts to make. Mid-Pac Constr. Co. v. Senda, 4 FSM R. 376, 385 (Pon. 1990).

The de facto doctrine, which is employed by courts to treat a business as a corporation even though it has not met all legal requirements for incorporation, is of no relevance to the regulatory prohibition against the corporation engaging in business until the corporation meets minimum capital requirements. Mid-Pac Constr. Co. v. Senda, 4 FSM R. 376, 385 (Pon. 1990).

Regulations prescribed by the registrar of corporations have "the force and effect of law." KCCA v.

FSM, 5 FSM R. 375, 377 (App. 1992).

A corporation is a person who may recover damages for violation of its civil rights when it is deprived of its property interests, such as contract rights, without due process of law. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 127-28 (Pon. 1993).

The Corporation, Partnership and Association Regulations incorporated by 37 TTC 52 (1980) remain in effect as FSM national law by virtue of the Transition Clause, FSM Const. art. XV, § 1, until they are amended or repealed by Congress. Mid-Pacific Constr. Co. v. Semes (II), 6 FSM R. 180, 187 (Pon. 1993).

Corporate regulation is governed by national law unless or until the states undertake to establish corporate codes of their own. Mid-Pacific Constr. Co. v. Semes, 7 FSM R. 102, 105 (Pon. 1995).

A sole proprietorship differs from a corporation. It does not have the advantages of a corporation, such as a corporation's separate capacity to hold property, to contract, to sue and be sued, and to act as a distinct legal entity. A sole proprietor does not have the protection of the corporate veil by which the corporation's owners, the shareholders, are exempt from liability for the corporation's acts. A sole proprietorship has no legal existence separate from that of its owner. Its acts and liabilities are those of its owner. Its owner's acts and liabilities are those of the sole proprietorship. FSM v. Webster George & Co., 7 FSM R. 437, 441 (Kos. 1996).

A corporation that has any foreign ownership at all is a noncitizen of the FSM for diversity purposes. Island Dev. Co. v. Yap, 9 FSM R. 220, 223 (Yap 1999).

Corporations of necessity must always act by their agents. Kosrae v. Worswick, 10 FSM R. 288, 292 (Kos. 2001).

A corporation's president's statement that he bought the barge made eight years after the event and which accurately describes his activity on the corporation's behalf is insufficient to create an issue of material fact precluding summary judgment in his favor when it is consistent with his acting on the corporation's behalf and when the evidence shows that neither he nor the corporation ever took interest in the barge because the purchase was canceled. Kosrae v. Worswick, 10 FSM R. 288, 292 (Kos. 2001).

If a corporation's consent to counsel's dual representation of it and of its official is required by Rule 1.7, the consent must be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders. There is no requirement that all directors of the corporation must consent. An acting general manager's consent on the corporation's behalf is sufficient. Nix v. Etscheit, 10 FSM R. 391, 397 (Pon. 2001).

When a legal organization (such as a corporation) is a client, the general rule is that a lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents. Nix v. Etscheit, 10 FSM R. 391, 397 (Pon. 2001).

An attorney may under certain circumstances represent a corporation at the same time as a director or officer of that corporation if the organization's consent is given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders. Nix v. Etscheit, 10 FSM R. 391, 397-98 (Pon. 2001).

Under generally prevailing law, a corporation's shareholders or members may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over the corporation's management. Nix v. Etscheit, 10 FSM R. 391, 398 (Pon. 2001).

Most derivative actions are a normal incident of an organization's affairs, to be defended by the

organization's lawyer like any other suit, but if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty to the organization and the lawyer's relationship with the board of directors. In those circumstances, Rule 1.7 governs who should represent the directors and the organization. Nix v. Etscheit, 10 FSM R. 391, 398 (Pon. 2001).

When there are claims of serious misconduct leveled at the plaintiffs, who are corporate directors, and there are no misconduct claims against a defendant director, there is no conflict with the same attorneys representing the defendant director and the co-defendant corporations. Nix v. Etscheit, 10 FSM R. 391, 398 (Pon. 2001).

When the statutory provisions intend and ensure that an entity is run as a corporation with its own management and employees, and not as a Kosrae state government agency and when, although the state government remains its sole shareholder, the state government does not assume its debts, does not own its assets, and has no control over its day to day operations, it is not a "state actor," and its termination of an employee is therefore not a "state action." Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 666-67 (Kos. S. Ct. Tr. 2002).

A clan or lineage in some respects functions as a corporation – it is, or can be, composed of many members, but is considered a single legal entity, capable of owning land, suing and being sued, and performing other acts, and which must necessarily act through its representatives. In this respect a corporation and a clan or lineage are analogous. Marcus v. Truk Trading Corp., 11 FSM R. 152, 161 (Chk. 2002).

The designation "d/b/a" means "doing business as" but is merely descriptive of the person or corporation who does business under some other name. Doing business under another name does not create an entity distinct from the person operating the business. The individual who does business as a sole proprietor under one or several names remains one person, personally liable for all his obligations. So also with a corporation which uses more than one name. Jackson v. Pacific Pattern, Inc., 12 FSM R. 18, 20 (Pon. 2003).

That a corporation is insolvent does not mean that it lacks the capacity to sue or be sued. Goyo Corp. v. Christian, 12 FSM R. 140, 147 (Pon. 2003).

When a corporation and its predecessor sole proprietorship are identical as a practical matter because the business remained essentially unchanged as a result of incorporation, both the predecessor sole proprietorship and the successor corporation are jointly and severally liable for the sole proprietorship's debt. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 239 (Pon. 2003).

A corporation is an artificial person created by law as the representative of persons who contribute to or become holders of shares in the property entrusted to it for a common purpose. In re Estate of Setik, 12 FSM R. 423, 429 (Chk. S. Ct. Tr. 2004).

That a business venture is a partnership of some form, rather than a corporation, is indicated when there is no evidence which would imply or prove the creation of a corporate entity – no evidence of a board of directors, of registration with a government as a corporation, of officers, or by-laws which – would indicate a corporate existence. In re Estate of Setik, 12 FSM R. 423, 429 (Chk. S. Ct. Tr. 2004).

If a business enterprise is a corporation, it is a different person than the owner himself. A corporation is an artificial person created by law as the representative of persons who contribute to or become holders of shares in it. Albatross Trading Co. v. Aizawa, 13 FSM R. 380, 382 (Chk. 2005).

The Pohnpei Business Corporation Act of 1994 provides an avenue of relief for a dissenting minority shareholder in certain situations whereby the dissenting shareholders can demand that the corporation pay them the fair value of their shares, and that they shall then cease to have any interest in the corporation.

McVey v. Etscheit, 13 FSM R. 473, 476 (Pon. 2005).

A corporation has the capacity to sue and be sued in its own name. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 158 (Pon. 2006).

A contention that a corporation does not have the proper foreign investment permit to allow it to do the type of business that the movants suppose it would conduct, may be a defense that the movants can raise in an answer, but it is not a ground for dismissal at the pre-answer stage on the contention that the corporation lacked legal capacity. Only if it lacked the power to sue and be sued could its complaint be dismissed at this stage for the lack of legal capacity. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 158 (Pon. 2006).

A corporation is a juridical, or artificial person with a perpetual existence until properly dissolved and as such is sued *in personam*. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

A corporation is a juridical person separate from its owner. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 112 (Pon. 2010).

A d/b/a is not a party because a d/b/a is just another name under which a person operates a business or by which the person or business is known. A corporation, however, is a juridical person separate from its owner and would therefore be a separate party. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 329 n.1 (Pon. 2011).

A corporation, a juridical person, must act through a natural person. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 331 (Pon. 2011).

A corporation is not a d/b/a, even if it is wholly owned by one person. It is an artificial, juridical person separate from its owner and is therefore a different person and thus a separate party. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

A corporation is not a human being but a creature created by the government and subject to its regulation and control, including the rule that in court proceedings a corporation must be represented by a licensed attorney. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

Just as natural persons, appearing pro se, are not permitted to act as "attorneys" and represent other natural persons, by the same token, non-attorney agents are not allowed to represent corporations in litigation, for a wholly unintended exception to the rules against unauthorized practice of law would otherwise result. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

A corporation obviously cannot appear pro se and represent itself since it is not a natural person and it cannot physically appear in court or draft pleadings or the like. Someone must appear for the corporation. Corporations of necessity must always act through their agents. In a court case, that someone would ordinarily be an attorney admitted to appear before the court. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

The widely-recognized general rule is that a corporation can only appear through an attorney and that a corporation may not represent itself through nonlawyer employees, officers, or shareholders. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

When a business accepts the advantages of incorporation, it must also bear the burdens, including the need to hire counsel to sue or defend in court. Corporations are required to appear through attorneys because a corporation is a hydra-headed entity and its shareholders are insulated from personal responsibility. There must therefore be a designated spokesman accountable to the court. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

Unlike lay agents of corporations, attorneys are subject to professional rules of conduct and are amenable to disciplinary action by the courts for violations of ethical standards. Therefore, attorneys, being fully accountable to the courts, are properly designated to act as the representatives of corporations. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

A corporation cannot appear in the FSM Supreme Court and represent itself either "pro se" or by its nonlawyer officers or employees. It can only appear through an attorney licensed to practice law. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

Often when a shareholder files a derivative action against a corporation, the corporation's regular attorney may defend it as he would an other suit. But when a corporation does not have a regular corporate counsel and neither the plaintiff nor a defendant corporation control the majority of the corporation's shares (each owning 50%) and because they are adverse to each other, neither the plaintiff nor the defendant should choose and hire an attorney to represent that corporation since its corporate interests would likely differ from those of both of its two shareholders. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 412 (Pon. 2011).

An attorney that represents a corporation represents the organization itself, and does not represent the organization's constituents such as its shareholders or its officers. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 412 (Pon. 2011).

It is extremely rare that the court will assign counsel in a civil case. It may be worth a try when the plaintiff and an adverse defendant each own 50% of a corporation that needs representation. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 412 (Pon. 2011).

A corporation is a juridical person distinct from its owner while a trade name under which a person conducts business is a person's personal property. Saimon v. Wainit, 18 FSM R. 211, 215 (Chk. 2012).

Since a corporation can only be represented by counsel, any possibility that a corporation could proceed pro se is precluded. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 569, 572 (Kos. 2013).

Since a corporation's directors have a duty to act in the corporation's best interest and when, regardless of whether the judgment existed, the corporation had debts that greatly exceeded its assets and it was unable to pay those debts as they became due, bankruptcy was probably in the corporation's best interest, and the court cannot give any weight to the argument that this meant that the directors had accepted the judgment when they directed the corporation to seek bankruptcy protection. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 613 (Pon. 2013).

Even if it is wholly owned by one person, a corporation is not and cannot be a d/b/a because a corporation is an artificial, juridical person separate from its owner(s) and is thus a separate party. Smith v. Nimea, 19 FSM R. 163, 173 (App. 2013).

Pohnpei statutory law prohibits corporations from lending money to the corporation's directors or employees without shareholder authorization given only if the board of directors decides that such loan or assistance may benefit the corporation. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 242 (Pon. 2014).

A parent corporation named as a defendant on the theory that it was liable for the conduct of the board members and executive director of its subsidiary corporation, will be dismissed when there is no evidence that it is the alter ego of the parent corporation and when there is no evidence (or even allegation) that it is a shell corporation with no assets and that therefore there is a need to pierce the corporate veil in order to obtain any relief. George v. Palsis, 19 FSM R. 558, 570 (Kos. 2014).

A corporation is an artificial person created by law, as the representative of persons who contribute to or become holders of shares in it. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 103 (Chk. 2015).

The defendants' transfer of assets from their partnership into a corporation, implies the corporation's assumption of the preexisting debt accrued by the prior family partnership, just as when a corporation and its predecessor sole proprietorship were, as a practical matter, identical since the business remained essentially unchanged as a result of incorporation, and both the predecessor and successor corporation were jointly and severally liable with respect to the debt incurred by the former. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 103 (Chk. 2015).

A corporation, by having accepted the benefit of the contract, may be estopped to deny an officer's authority to act on its behalf. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 104 (Chk. 2015).

A corporation's citizenship, for diversity purposes, is the citizenship of its shareholders and only minimal diversity need exist. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 516 (App. 2016).

A corporation's citizenship, for diversity purposes, is the citizenship of its shareholders and only minimal diversity need exist. Setik v. Perman, 21 FSM R. 31, 36 (Pon. 2016).

Although a corporation may appear only through licensed counsel, there is no requirement that such licensed attorney must not be an employee of the corporation that he or she represents. The licensed attorney may be an employee of the corporation. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 451 (Pon. 2018).

Title 54, chapter 3, the Corporate Income Tax Act of 2004, is the FSM's tax regime for major corporations, which are defined as those corporations that are not principally engaged in business in the Federated States of Micronesia as a bank, that were formed after January 1, 2005, and whose shareholders' equity or paid in capital is $1 million or more, or whose control group has a shareholders' equity or paid in capital of $10 million or more, or that are Title 37 captive insurance companies. These, otherwise foreign, entities incorporate in, and pay income taxes to, the FSM on their world-wide taxable revenue. Chuuk v. FSM, 22 FSM R. 85, 89 (Chk. 2018).

For a number of years after the FSM's creation, and after the end of the Trust Territory government's authority, the national government was the only entity that registered and dissolved corporations until the states gradually developed that ability, and even now, it is still possible to get a corporate charter from the national government. Chuuk v. FSM, 22 FSM R. 85, 94 (Chk. 2018).

The alter ego doctrine treats two entities that are nominally separate as the same when a corporation has acted unjustly or fraudulently, and specific factors that are determinative include substantially identical management, business purpose, operation, equipment, customers, supervision, and ownership. Smith v. Nimea, 22 FSM R. 131, 135 (Pon. 2019).

Generally, a corporation and its shareholders are deemed separate entities and shareholders are not liable to third parties beyond their initial investment in the corporation's stock, but, when the shareholders treat the corporation not as a separate entity but rather as an instrument to conduct their own personal business, the court may pierce the corporate veil for purposes of liability. Smith v. Nimea, 22 FSM R. 131, 135 (Pon. 2019).

A corporation's citizenship, for diversity purposes, is the citizenship of its shareholders. Apostol v. Maniquiz, 22 FSM R. 146, 148 (Chk. 2019).

If a non-profit corporation has no shareholders, its citizenship for diversity purposes should be the citizenship of its members, or, if it has no members, of its incorporators. Apostol v. Maniquiz, 22 FSM R.

146, 148 (Chk. 2019).

An Act of Congress created the FSM Development Bank as a corporate entity. That statute, now FSM Code Title 30, operates as the bank's articles of incorporation, charter, and corporate registration. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 184-85 (Pon. 2019).

– Corporations – Dissolution

Because it is not always against a corporation's interests to dissolve, it is not necessarily true that because a party wants to dissolve a corporation her interests are adverse to the corporation's. Nix v. Etscheit, 10 FSM R. 391, 397 (Pon. 2001).

Under the Pohnpei Business Corporation Act of 1994, courts in a shareholder's action when it is established that the acts of the directors or those in control are illegal, oppressive, or fraudulent; or when the corporate assets are being misapplied or wasted, have the power to issue an injunction, appoint a receiver, or receiver pendente lite, to preserve the corporate assets and carry on the corporation's business until a full hearing can be had. The appointed receiver may then, under the court's supervision, liquidate the corporation's assets and dissolve the corporation. McVey v. Etscheit, 13 FSM R. 473, 475 (Pon. 2005).

Since the Pohnpei Legislature probably never intended that the Pohnpei Business Corporation Act's involuntary liquidation and dissolution provisions were to be used by a competitor to eliminate its competition, the court must tread warily in such a case. McVey v. Etscheit, 13 FSM R. 473, 476 (Pon. 2005).

A corporation has a perpetual existence until dissolved by the appropriate authority. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 158 (Pon. 2006).

A corporation is a juridical, or artificial person with a perpetual existence until properly dissolved and as such is sued *in personam*. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

Under Pohnpei state law, the court has the full power to order a corporation's assets and business liquidated if certain statutory conditions have been established in a lawsuit by a shareholder. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 241 (Pon. 2014).

Under Pohnpei state law, it is sufficient ground for the court to order a corporation's liquidation if the shareholders are deadlocked in voting power and have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 241 (Pon. 2014).

It is sufficient ground for the court to order the corporation's liquidation when the two shareholders, each having 50% of the votes, are deadlocked in voting power and when the shareholders have been unable to elect successor directors at a shareholders' meeting for more than two consecutive annual meeting dates since no shareholder meetings have been held for almost ten years because one shareholder has absented itself from any shareholders' meeting, thus depriving the meeting of a quorum. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 241 (Pon. 2014).

The protracted inability of the shareholders to obtain a quorum for a shareholders' meeting is, of itself, a hopeless deadlock. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 242 (Pon. 2014).

It is sufficient ground for the court to order a corporation's liquidation when the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and when irreparable injury to the corporation is being suffered or is threatened by reason of the deadlock. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 242 (Pon. 2014).

When each of the two shareholders had two members of the board that supported their shareholder's position on financing expansion and when neither side could agree on the selection of a fifth director or appears to have tried, this was a true deadlock. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 242 (Pon. 2014).

When no further board action is possible because no quorum for a board of directors meeting is possible since there are now only two directors; when, under Pohnpei state law, a majority (that is, three) is the quorum needed for a board meeting to conduct business; and when none of the board vacancies can be filled since one shareholder has, by its absence, prevented any shareholders' meetings from being held, the board of directors is unable to conduct business since it cannot obtain a quorum. The shareholder deadlock creates a directors' deadlock – inability to conduct business. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 242 (Pon. 2014).

The court can order a corporation's liquidation when the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 242 (Pon. 2014).

For a 50% shareholder to run a corporation as if it were his sole proprietorship is oppressive to the other 50% shareholder, and for the corporation to refuse to cooperate with an accounting firm to facilitate its audit review of the corporation is also oppressive behavior. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 242 (Pon. 2014).

A corporation's liquidation may be ordered when the corporate assets are being misapplied or wasted. A corporation's unauthorized $30,000 non-interest bearing loan to a company, which was and is controlled by a director, was a misapplication or a waste of the corporation's corporate assets, and the corporation's refusal to cooperate with an accounting firm to facilitate its audit review of the corporation leaves the impression that other corporate assets may have been wasted or misapplied. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 242 (Pon. 2014).

Under Pohnpei law, a liquidating receiver can be appointed only after a hearing on notice. At the hearing, the court will consider what powers and duties the liquidating receiver should have so that the appointment order can, as required by statute, clearly state what those powers are and the receiver's compensation. A liquidating receiver may be required to post a bond. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 243 & n.2 (Pon. 2014).

An audit will be part of any liquidating receiver's duties. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 243 (Pon. 2014).

Under Pohnpei law, the court appointing a liquidating receiver for a corporation shall have exclusive jurisdiction of the corporation and its property, wherever situated. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 243 (Pon. 2014).

Once the liquidating receiver is appointed, liquidation (sale) of the corporation will proceed thereafter unless the circumstances drastically change and it is established that cause for liquidation no longer exists. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 244 (Pon. 2014).

– Corporations – Liability

Although many family-incorporated enterprises commingle family and business affairs, the Pohnpei Supreme Court will not make a family's personal assets available to satisfy a judicially mandated monetary award because there is still limited knowledge of business laws in Pohnpei. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 70 (Pon. S. Ct. Tr. 1986).

The C.P.A. regulations mandate that corporate directors and incorporators will be held liable for the

corporation's debts if the corporation engages in business without meeting the minimum capital requirements. Mid-Pac Constr. Co. v. Senda, 4 FSM R. 376, 385 (Pon. 1990).

The estoppel doctrine, which is applied when justice demands intervention on behalf of a person misled by the conduct of the person estopped, is not available as a defense to a board member of a corporation where the board member knowingly misled regulatory officials and creditors of the corporation. Mid-Pac Constr. Co. v. Senda, 4 FSM R. 376, 385 (Pon. 1990).

Any incorporator or director is liable for violations of the regulations governing incorporation unless he can prove an affirmative defense. Mid-Pacific Constr. Co. v. Semes, 7 FSM R. 522, 526 (Pon. 1996).

The de facto corporation defense is insufficient as a matter of law when a company has received its corporate charter. Mid-Pacific Constr. Co. v. Semes, 7 FSM R. 522, 527 (Pon. 1996).

Because a corporate principal may be held criminally liable for its agent's conduct when the agent acts within the scope of its authority for the principal's benefit, a foreign fishing agreement party may be held criminally liable for the conduct of its authorized vessel. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 176 (Pon. 1997).

An authorized vessel's master's knowledge is attributable to its foreign fishing agreement party because knowledge held by an agent or employee of a corporation may be attributed to its principal. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 180 (Pon. 1997).

If a board of directors, upon learning of an officer's unauthorized transaction, does not promptly attempt to rescind or revoke the action previously taken by the officer, the corporation is bound on the transaction on a theory of ratification. Asher v. Kosrae, 8 FSM R. 443, 452 (Kos. S. Ct. Tr. 1998).

An officer's authority to contract for a corporation may be actual or apparent, and may result from the officer's conduct and the acquiescence thereto by the directors. The corporation may be estopped to deny the officer's authority by having accepted the benefit of the contract. Generally, an officer's authority to act for his corporation with reference to contracts is a question of fact to be determined by the trier of fact. Asher v. Kosrae, 8 FSM R. 443, 452 (Kos. S. Ct. Tr. 1998).

A corporation's directors may ratify any unauthorized act or contract. A corporation's ratification need not be manifested by any vote or formal resolution of the board of directors. An implied ratification can arise if the corporate principal, with full knowledge and recognition of the material facts, exhibits conduct demonstrating an adoption and recognition of the contract as binding, such as acting in the contract's furtherance. It is well established that if a corporation, with knowledge of its officer's unauthorized contract and the material facts concerning it, receives and retains the benefits resulting from the transaction, it thereby ratifies the transaction. A corporation may not accept a transaction's benefit and at the same time attempt to escape its consequences on the ground that the transaction was not authorized. Asher v. Kosrae, 8 FSM R. 443, 452-53 (Kos. S. Ct. Tr. 1998).

When the board of directors did not act promptly to rescind or revoke the agreement made by its general manager; when all its subsequent actions have been consistent with the agreement's terms; when it had knowledge of the unauthorized contract and of the material facts concerning it; when it received, retained, and continues to receive and retain the benefits resulting from the transaction; it is clear that the board of directors has ratified the agreement. The corporation may not accept the agreement's benefits and at the same time escape its liabilities. Asher v. Kosrae, 8 FSM R. 443, 453 (Kos. S. Ct. Tr. 1998).

Under ordinary circumstances, a parent corporation will not be held liable for the obligations of its subsidiary. Senda v. Semes, 8 FSM R. 484, 505 (Pon. 1998).

The mere fact of a loan to a subsidiary is not sufficient to confer liability for the loan on the parent.

Senda v. Semes, 8 FSM R. 484, 506 (Pon. 1998).

A party jointly and severally liable for a corporation's debts is not liable for contribution for a subsidiary's debt paid by a guarantor when the corporation was not a coguarantor of the subsidiary's loan. Senda v. Semes, 8 FSM R. 484, 506 (Pon. 1998).

The *alter ego* doctrine treats two entities that are nominally separate as the same where one corporation has acted unjustly or fraudulently. Specific factors which are determinative on this point include substantially identical management, business purpose, operation, equipment, customers, supervision, and ownership. Adams v. Island Homes Constr., Inc., 10 FSM R. 611, 614 (Pon. 2002).

Even if a corporate official did not have the authority to execute a lease, his execution of the lease was ratified by the corporation's long acceptance of the lease's benefits. Marcus v. Truk Trading Corp., 11 FSM R. 152, 158 (Chk. 2002).

An entity, such as a corporation, which must act through agents or representatives, can, by its conduct, ratify an unauthorized agreement. A lineage or a clan is a similar entity in that it is recognized by courts in Chuuk as a personable entity – a entity capable of suing and being sued and of entering into contracts. This parallels and recognizes the clan's or lineage's position under custom and tradition in which the clan or lineage is an entity capable of owning, acquiring, and alienating land. Marcus v. Truk Trading Corp., 11 FSM R. 152, 160 (Chk. 2002).

When a corporate resolution agreed to guarantee another corporation's loan and that guaranty included any and all of the borrower's indebtedness to the lender and was used in the most comprehensive sense and means and included any and all of the borrower's liabilities then existing or thereafter incurred or created, the guaranty was sufficiently broad to include any restructuring of the loan even if the restructuring was considered a debt thereafter incurred or created, and thus, no later corporate resolution was needed for the guaranty to cover the restructuring. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 287 (Chk. 2009).

The *alter ego* doctrine treats two entities that are nominally separate as the same when one corporation has acted unjustly or fraudulently. Specific factors which are determinative on this point include substantially identical management, business purpose, operation, equipment, customers, supervision, and ownership. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 297, 300-01 (Yap 2012).

When one reasonable inference is that Yuh Yow Fishery is the alter ego of the corporation that owns the vessel thus establishing a genuine issue of fact, the court cannot grant Yuh Yow Fishery's summary judgment motion that it is not liable for damages that may flow from a vessel's grounding since summary judgment is not available when the facts lead to differing reasonable inferences. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 297, 301 (Yap 2012).

The alter ego doctrine treats two entities that are nominally separate as the same when one corporation has acted unjustly or fraudulently and specific factors which are determinative on this point include substantially identical management, business purpose, operation, equipment, customers, supervision, and ownership. Smith v. Nimea, 19 FSM R. 163, 174 (App. 2013).

When no clear answer to the alter ego question can be determined from the record before the appellate court, it will remand the matter to the trial court for it to determine whether the trial court judgment is against the individual defendant and the corporate defendant, jointly and severally, or just against the corporate defendant and why. Then, if the trial court decides that the judgment was or should now be entered only against the corporation, the plaintiff must be given the opportunity to try to pierce the corporate veil, especially if the corporation is an empty shell, and proceed against the individual personally as the corporation's alter ego. Smith v. Nimea, 19 FSM R. 163, 174 (App. 2013).

A corporation is an artificial, juridical person separate from its owners and is thus a separate party. Thus, when a corporation enters into a contract under its name, and the contract is executed for the corporation "by" an individual, that individual, members of the corporate board, and employees of the corporation are not liable for any breach, absent unjust or fraudulent behavior. Hartman v. Henry, 22 FSM R. 292, 296 (Pon. 2019).

– Corporations – Stock and Stockholders

Par value and stated value of stock are arbitrarily chosen figures which often bear no relationship to the price paid. These figures may be considerably less than the actual value of the stock and have little significance to creditors or others seeking to determine the financial strength of a corporation in the FSM. FSM v. Ponape Builders Constr. Inc., 2 FSM R. 48, 51 (Pon. 1985).

In the Federated States of Micronesia, distribution of dividends in cash or in property may be made only from earned surplus. FSM v. Ponape Builders Constr. Inc., 2 FSM R. 48, 52 (Pon. 1985).

The $1,000 original capital requirement specified in part 2.7 of the Corporations, Partnerships and Associations Regulations as a condition for engaging in business is met by bona fide, irrevocable transfers of cash or property, giving the corporation capital, as contrasted to earned surplus, with a net value of not less than $1,000, so long as there is issued and outstanding authorized capital stock representing ownership of the corporation. FSM v. Ponape Builders Constr. Inc., 2 FSM R. 48, 52 (Pon. 1985).

The fact that stock issued by a corporation and formerly owned by a judgment debtor has been sold to a third party at a judicial sale of the debtor's assets does not make the corporation a party to the litigation concerning distribution of the assets of the insolvent debtor for purposes of determining whether the shares were validly issued and outstanding shares of the corporation. Sets v. Island Hardware, 3 FSM R. 365, 368 (Pon. 1988).

In the absence of any law or regulation in the Federated States of Micronesia which provides a specific limitation on actions to collect unpaid stock subscriptions, the applicable period is six years. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM R. 157, 159 (Pon. 1989).

Where the rights of a corporation have been assigned to its creditors in previous litigation, the creditors' rights as against the shareholders or subscribers of stock in the corporation are derived from the rights of the corporation itself, and the creditors will be able to enforce the shareholders' liability only to the extent that the corporation could have enforced it before the assignation. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM R. 157, 159 (Pon. 1989).

In an action to enforce an unpaid stock subscription, the statute of limitations begins to run against the creditors when it runs against the corporation. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM R. 157, 159 (Pon. 1989).

When a stock subscription specifies the date of payment, including payment in installments at specified times, the corporation has no cause of action until the date specified and at that time the statute of limitations begins to run. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM R. 157, 159 (Pon. 1989).

Stock subscriptions which are silent as to the date and terms of payment do not become due until a call has been issued by the corporation or, if the corporation becomes insolvent without ever issuing such a call, then the cause of action to collect unpaid subscriptions accrues when the creditors, by authority of the court, first demand payment. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM R. 157, 161 (Pon. 1989).

The determination of whether stockholders and directors should be protected at the expense of the general public and the employees of the corporation is a policy choice of the kind that legislatures are

better equipped than courts to make. Mid-Pac Constr. Co. v. Senda, 4 FSM R. 376, 385 (Pon. 1990).

The real party in interest in a civil action is the party who possesses the substantive right to be enforced. The mere fact that a shareholder may substantially benefit from a monetary recovery by a corporation does not make the shareholder a real party in interest entitled to seek monetary recovery in a civil action. A claim of such a shareholder will be dismissed. Kyowa Shipping Co. v. Wade, 7 FSM R. 93, 96-97 (Pon. 1995).

A case that is not a suit by the corporations' shareholders or members to compel the corporations' directors to perform their legal obligations in the supervision of the organization is not a derivative action. Nix v. Etscheit, 10 FSM R. 391, 398 (Pon. 2001).

A shareholder's derivative action is one to enforce a corporation's right when the corporation has failed to enforce a right which it may properly assert. Mori v. Hasiguchi, 17 FSM R. 630, 638 (Chk. 2011).

A stockholder, instituting a stockholder's derivative suit, must plead and prove that a request to institute action was made on the corporation and refused, or that there was matter or matters which excused the making of the request, but when a stockholder sues in his own individual right, no demand upon the corporation itself is necessary. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

The purpose of requiring that the complaining shareholder demand action from the board of directors before bringing suit under Rule 23.1 is related to the concept that a shareholder derivative suit is a device to be used only when it is clear that the corporation will not act to redress the alleged injury to itself. Mori v. Hasiguchi, 17 FSM R. 630, 640 (Chk. 2011).

The Rule 23.1 requirement that stockholders first address their grievance to corporate authority serves numerous practical purposes, such as forcing shareholders to exhaust their intracorporate remedies; permitting the corporation to pursue alternative remedies; permitting the termination of meritless actions designed to vex or harass the corporation; permitting the corporation, with superior knowledge and financial resources, to assume control of the suit; and avoiding unnecessary judicial involvement in the organization's internal affairs. Mori v. Hasiguchi, 17 FSM R. 630, 640 (Chk. 2011).

It is sufficient ground for the court to order the corporation's liquidation when the two shareholders, each having 50% of the votes, are deadlocked in voting power and when the shareholders have been unable to elect successor directors at a shareholders' meeting for more than two consecutive annual meeting dates since no shareholder meetings have been held for almost ten years because one shareholder has absented itself from any shareholders' meeting, thus depriving the meeting of a quorum. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 241 (Pon. 2014).

Pohnpei state law requires that corporations conduct annual shareholders' meetings and provides that a majority of the shares entitled to vote, represented in person or by proxy constitute a quorum at a shareholders' meeting. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 241 (Pon. 2014).

When no further board action is possible because no quorum for a board of directors meeting is possible since there are now only two directors; when, under Pohnpei state law, a majority (that is, three) is the quorum needed for a board meeting to conduct business; and when none of the board vacancies can be filled since one shareholder has, by its absence, prevented any shareholders' meetings from being held, the board of directors is unable to conduct business since it cannot obtain a quorum. The shareholder deadlock creates a directors' deadlock – inability to conduct business. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 242 (Pon. 2014).

Pohnpei statutory law prohibits corporations from lending money to the corporation's directors or employees without shareholder authorization given only if the board of directors decides that such loan or assistance may benefit the corporation. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 242

(Pon. 2014).

Only a corporation's board of directors has the power to either declare and pay a dividend or pay a capital distribution, and then only if certain circumstances exist. An audit may need to be conducted to determine if those conditions exist. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 243 (Pon. 2014).

Since it is the government's intent that the FSM Development Bank have and retain the legal capacity to acquire, own title to, dispose of, and otherwise deal in FSM land and waters, no stock in the Bank may be owned by any person or entity whose partial ownership of the Bank would cause the Bank to lose such capacity under applicable law, and any transfer of Bank stock to such a person or entity will be null, void, and of no effect. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 330 (Pon. 2019).

– Joint Enterprises

An affidavit unsupported by factual detail is not sufficient to cast doubt on the proposition that a project manager of a joint venture, who is in charge of all activities of a corporate member of the joint venture within a state, is a managing or general agent of that corporation. Luda v. Maeda Road Constr. Co., 2 FSM R. 107, 110 (Pon. 1985).

A project that has a number of acts or objectives for a limited period of time and is entered into by associates under such circumstances that all have an equal voice in directing the conduct of the enterprise, is a joint enterprise. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 65 (Pon. S. Ct. Tr. 1986).

The Pohnpei Supreme Court will apply an English principle to the situation of a joint enterprise such that when parties to a joint enterprise, or their agents, perform work on another man's property and cause damage to the other man or his property through failure to exercise due care, then they are liable. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 67 (Pon. S. Ct. Tr. 1986).

A joint venture, without the powers to sue or be sued in the name of the association and without limited liability of the individual members of the association, is not a citizen of Truk State for diversity purposes even though its principal place of business is in Truk State. International Trading Corp. v. Hitec Corp., 4 FSM R. 1, 2 (Truk 1989).

A joint venture is defined as a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit. Island Dev. Co. v. Yap, 9 FSM R. 220, 223 (Yap 1999).

There is no statutory or decisional authority in the FSM which would permit a joint venture to be considered a citizen of the state where its principal place of business is located. Island Dev. Co. v. Yap, 9 FSM R. 220, 223 (Yap 1999).

Partnerships take various forms. A joint venture is a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for profit. In re Estate of Setik, 12 FSM R. 423, 429 (Chk. S. Ct. Tr. 2004).

– Partnerships

A joint venture is defined as a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit. Island Dev. Co. v. Yap, 9 FSM R. 220, 223 (Yap 1999).

A general partnership is a foreign citizen for diversity purposes when any ownership interest is held by a foreign citizen. Island Dev. Co. v. Yap, 9 FSM R. 220, 223-24 (Yap 1999).

The principal duty of an attorney appointed as general counsel for a partnership is to the partnership itself, not to the general or limited partners as individuals. In re Nomun Weito Interim Election, 11 FSM R. 458, 460 (Chk. S. Ct. App. 2003).

That a business venture is a partnership of some form, rather than a corporation, is indicated when there is no evidence which would imply or prove the creation of a corporate entity – no evidence of a board of directors, of registration with a government as a corporation, of officers, or by-laws which – would indicate a corporate existence. In re Estate of Setik, 12 FSM R. 423, 429 (Chk. S. Ct. Tr. 2004).

Partnerships take various forms. A joint venture is a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for profit. In re Estate of Setik, 12 FSM R. 423, 429 (Chk. S. Ct. Tr. 2004).

A partnership is an association of two or more persons to carry on as co-owners a business for profit. In re Estate of Setik, 12 FSM R. 423, 429 (Chk. S. Ct. Tr. 2004).

Partners are those persons who contribute either property or money to carry on a joint business for their common benefit, and who own and share its profits in certain proportions. In re Estate of Setik, 12 FSM R. 423, 429 (Chk. S. Ct. Tr. 2004).

A limited partnership is a legal fiction usually created by statute. Thus in a business arrangement based upon an oral agreement, the business is a general partnership. In re Estate of Setik, 12 FSM R. 423, 430 (Chk. S. Ct. Tr. 2004).

A partnership created by oral agreement is considered a "partnership at will," with no definite term, which may be terminated at any time by the express will of any one partner. In re Estate of Setik, 12 FSM R. 423, 430 n.16 (Chk. S. Ct. Tr. 2004).

Designating one general partner as the managing partner does not destroy the unity of interest necessary for the creation of a partnership. In re Estate of Setik, 12 FSM R. 423, 430 (Chk. S. Ct. Tr. 2004).

Once it is established that a partnership exists, there is a presumption that the partnership continues until the contrary is shown, or until it is dissolved and its affairs are wound up, or until knowledge of its termination comes to persons dealing with the partnership. In re Estate of Setik, 12 FSM R. 423, 430 (Chk. S. Ct. Tr. 2004).

When the primary force behind the growth of a business over the years was the decedent, and that another's role was as a passive investor, it is reasonable to conclude that the decedent's share of the partnership exceeded his paid in capital share and included a significant interest arising out of his creation of and his services to the partnership. Thus, to the extent that the decedent's interest included substantial services to the partnership, it is not unreasonable to conclude that the other had a partnership interest significantly less than the actual share of his financial contribution. In re Estate of Setik, 12 FSM R. 423, 430 (Chk. S. Ct. Tr. 2004).

An unincorporated business entity owned by two persons is a partnership. FSM v. Kansou, 12 FSM R. 637, 643 (Chk. 2004).

Under the right against self-incrimination, neither a partnership nor the individual partners are shielded from compelled production of partnership records on self-incrimination grounds. FSM v. Kansou, 12 FSM R. 637, 643 (Chk. 2004).

The defendants' transfer of assets from their partnership into a corporation, implies the corporation's assumption of the preexisting debt accrued by the prior family partnership, just as when a corporation and

its predecessor sole proprietorship were, as a practical matter, identical since the business remained essentially unchanged as a result of incorporation, and both the predecessor and successor corporation were jointly and severally liable with respect to the debt incurred by the former. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 103 (Chk. 2015).

If a party is an unincorporated association, then its citizenship is the citizenship of the association's individual members. Apostol v. Maniquiz, 22 FSM R. 146, 148 (Chk. 2019).

– Sole Proprietorships

A sole proprietorship differs from a corporation. It does not have the advantages of a corporation, such as a corporation's separate capacity to hold property, to contract, to sue and be sued, and to act as a distinct legal entity. A sole proprietor does not have the protection of the corporate veil by which the corporation's owners, the shareholders, are exempt from liability for the corporation's acts. A sole proprietorship has no legal existence separate from that of its owner. Its acts and liabilities are those of its owner. Its owner's acts and liabilities are those of the sole proprietorship. FSM v. Webster George & Co., 7 FSM R. 437, 441 (Kos. 1996).

A sole proprietorship cannot be charged as a principal if there are no acts or omissions committed by its owner, but it can be found culpable as an accessory if it is specifically charged with vicarious liability for the acts of another. FSM v. Webster George & Co., 7 FSM R. 437, 441 (Kos. 1996).

When a person is liable for a business' debts because he is the sole proprietor of a business, the sale of the business to another who has agreed to assume the business' liabilities will not relieve him of liability if the creditor has not agreed to the assignment. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 74 (Pon. 2001).

The designation "d/b/a" means "doing business as" but is merely descriptive of the person or corporation who does business under some other name. Doing business under another name does not create an entity distinct from the person operating the business. The individual who does business as a sole proprietor under one or several names remains one person, personally liable for all his obligations. So also with a corporation which uses more than one name. Jackson v. Pacific Pattern, Inc., 12 FSM R. 18, 20 (Pon. 2003).

When a corporation and its predecessor sole proprietorship are identical as a practical matter because the business remained essentially unchanged as a result of incorporation, both the predecessor sole proprietorship and the successor corporation are jointly and severally liable for the sole proprietorship's debt. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 239 (Pon. 2003).

If more than one person has an interest, of some form and extent, in a business entity, the entity cannot be considered a "sole" proprietorship. In re Estate of Setik, 12 FSM R. 423, 429 (Chk. S. Ct. Tr. 2004).

A d/b/a is not a party. A d/b/a is just another name under which a person operates a business or by which the person or business is known. The individual who does business as a sole proprietor under one or several names remains one person, personally liable for all his obligations. Albatross Trading Co. v. Aizawa, 13 FSM R. 380, 381 (Chk. 2005).

A pro se party can, of course, represent his own business when that business is merely a d/b/a because a "d/b/a" is not a separate person or party since a d/b/a is just another name under which a person operates the business or by which the person or business is known. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

A person operating as a d/b/a is a sole proprietorship that has no legal existence separate from that of its owner and its acts and liabilities are those of its owner and its owner's acts and liabilities are those of the sole proprietorship. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

A corporation is a juridical person distinct from its owner while a trade name under which a person conducts business is a person's personal property. Saimon v. Wainit, 18 FSM R. 211, 215 (Chk. 2012).

CHOICE OF LAW

Where the plaintiff is a Pohnpei resident, one of the defendants, a party to the contract at issue, is a corporation having its principal place of business in Pohnpei, and where the contract at issue governs work to be conducted in Pohnpei, and the injury which has brought the clause under consideration occurred in Pohnpei, the indemnification clause should be interpreted, and the issues of tort liability determined, in accordance with the law of Pohnpei. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 137 (Pon. 1985).

Although the FSM Supreme Court has often decided matters of tort law without stating explicitly that state rather than national law controls, there, of course, has been acknowledgment that state law controls in the resolution of contract and tort issues. When the Supreme Court, in the exercise of its jurisdiction, decides a matter of state law, its goal should be to apply the law the same way the highest state court would. Edwards v. Pohnpei, 3 FSM R. 350, 360 n.22 (Pon. 1988).

An FSM Supreme Court decision applying state law in a case before it is final and res judicata; but if in a subsequent case a state court decides the same issue differently, the state decision in that subsequent case is controlling precedent and the national courts should apply the state court rule in future cases. Edwards v. Pohnpei, 3 FSM R. 350, 360 n.22 (Pon. 1988).

Since general contract law falls within powers of the state, state law will be used to resolve contract disputes. Federated Shipping Co. v. Ponape Transfer & Storage Co., 4 FSM R. 3, 9 (Pon. 1989).

Procedural matters in litigation before the FSM Supreme Court are governed by the FSM Rules of Civil Procedure and national statutes, rather than by state law. Salik v. U Corp., 4 FSM R. 48, 49-50 (Pon. 1989).

Generally, in cases requiring the interpretation or construction of contracts, the national courts would be called on to apply state law. Bank of Hawaii v. Jack, 4 FSM R. 216, 218 (Pon. 1990).

Questions regarding the validity of the provisions of promissory notes for personal loans, executed with a national bank operating in each state of the FSM and having in part foreign ownership, are closely connected to the powers of the national legislature to regulate banking, foreign and interstate commerce, and bankruptcy, and to establish usury limits, and they have a distinctly national character. The FSM Supreme Court therefore will formulate and apply rules of national law in assessing such issues. Bank of Hawaii v. Jack, 4 FSM R. 216, 218 (Pon. 1990).

State law is to be applied in domestic relations cases. Pernet v. Aflague, 4 FSM R. 222, 224 (Pon. 1990).

The FSM Supreme Court should apply FSM law to determine a claim brought in an FSM court pursuant to FSM statutory authorization by an FSM citizen asserting that FSM officials failed to fulfill the commitments of the FSM national government, and this is so even when key events at issue happened outside of the FSM. Leeruw v. FSM, 4 FSM R. 350, 357 (Yap 1990).

Although the death, and all key events giving rise to the wrongful death claim, occurred in Guam, damages should be determined under FSM law when the claim is brought under 6 F.S.M.C. 503, the FSM wrongful death statute. Leeruw v. FSM, 4 FSM R. 350, 365 (Yap 1990).

In a diversity of citizenship case the FSM Supreme Court will normally apply state law. Youngstrom v.

Youngstrom, 5 FSM R. 335, 337 (Pon. 1992).

Since state law generally controls the resolution of tort issues the duty of the FSM Supreme Court in a diversity case involving tort law is to try to apply the law the same way the highest state court would. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 455 (Chk. 1994).

Even when a national court places itself in the shoes of the state court and interprets state law, the state court is always the final arbiter of the meaning of a state law. State court interpretations of state law which contradict prior rulings of the national courts are controlling. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM R. 594, 601 (Pon. 1994).

Because tort law is primarily state law a negligence action will be governed by the substantive state law and the FSM Supreme Court's duty is to try to apply the law the same way the highest state court would. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 63, 64-65 (Chk. 1997).

Because the primary lawmaking powers for the field of torts lie with the states, not the national government, the FSM Supreme Court's duty in an invasion of privacy case on Pohnpei is to try to apply the law the same way the highest state court in Pohnpei would. This involves an initial determination of whether it is contrary to, or consistent with, Pohnpei state law to recognize a right of privacy and an action for that right's violation. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 248, 251-52 (Pon. 1998).

Should Pohnpeian custom and tradition not be determinative, the FSM Supreme Court will look to its earlier holding and decisions of United States courts for guidance as to relevant common law tort principles, and will evaluate the persuasiveness of the reasoning in these decisions against the background of pertinent aspects of Micronesian society and culture in Pohnpei. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 248, 253 (Pon. 1998).

State law controls in the resolution of contract and tort issues. When the Supreme Court, in the exercise of its jurisdiction, decides a matter of state law, its goal should be to apply the law the same way the highest state court would. When no existing case law is found the FSM Supreme Court must decide issues of tort law by applying the law as it believes the state court would. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 294-95 (Pon. 1998).

The national courts of the FSM have frequently been obliged to decide state law issues without the benefit of prior state court decisions. In such instances, the national courts strive to apply the law in the same way the highest state court would. Subsequently, should the state's highest court decide the issue differently in a different case, then prospectively that case will serve as controlling precedent for the national court on that state law issue. Island Dev. Co. v. Yap, 9 FSM R. 18, 22 (Yap 1999).

The states' role in tort law is predominant. Phoenix of Micronesia, Inc. v. Mauricio, 9 FSM R. 155, 158 (App. 1999).

The FSM Supreme Court's function and goal in diversity cases where state law provides the rule of decision is to apply the law the same way the highest state court would, and that if there is a decision of the highest state court it is controlling and the FSM Supreme Court will apply it. But if there is no such state court decision the FSM Supreme Court must still exercise its jurisdiction and try to decide the case according to how it thinks the highest state court would. In the future, the highest state court could decide the issue differently and future decisions of the FSM Supreme Court would then apply that decision. Phoenix of Micronesia, Inc. v. Mauricio, 9 FSM R. 155, 158 (App. 1999).

State law generally determines tort issues, and the FSM Supreme Court in diversity cases must attempt to apply the law in the manner that the highest state court would. Amayo v. MJ Co., 10 FSM R. 244, 253-54 (Pon. 2001).

That a contract was formed in another jurisdiction does not deprive a court of jurisdiction over a dispute over or enforcement of that contract. It may, however, involve a choice of law problem – contract questions may need to be resolved by resort to the substantive law of the jurisdiction in which the contract was formed, but not necessarily by resort to that jurisdiction's courts. First Hawaiian Bank v. Engichy, 10 FSM R. 536, 537-38 (Chk. S. Ct. Tr. 2002).

When the Supreme Court, in the exercise of its jurisdiction, decides a matter of state law, its goal should be to apply the law the same way the highest state court would. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 635 (Pon. 2002).

Because a divorce case involves the parties' status or condition and their relationship to others, the law to be applied is that of the domicile. Thus in a divorce between a Pohnpeian, who now resides in Hawaii, and an American citizen who resides in Pohnpei and the parties lived in Pohnpei during their marriage, the court will apply Pohnpei substantive law. Ramp v. Ramp, 11 FSM R. 630, 641 (Pon. 2003).

The creation of laws relating to contracts is not identified in the Constitution as falling within the national government's powers. Rather, it is generally presumed to be a power of the state. Accordingly, state law determines the statute of limitations in a contract case. Youngstrom v. NIH Corp., 12 FSM R. 75, 77 (Pon. 2003).

When a consolidated case is before the FSM Supreme Court trial division under its diversity jurisdiction – because of the parties' diverse citizenship – state law will usually provide the rules of decision. This is especially true in real property cases. Enlet v. Bruton, 12 FSM R. 187, 189 (Chk. 2003).

When the FSM Supreme Court, in the exercise of its jurisdiction, decides a matter of state law, the court's goal should be to apply the law the same way the highest state court would. But a state court trial division case that was not decided by the highest state court may be deemed not to be controlling, if it appears that the highest state court would decide the question differently. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 508 (App. 2005).

A case that came before the court based on the court's exclusive jurisdiction over cases when the national government is a party and where the plaintiff's asserted claims primarily arose under national law, is not a diversity case where state law provides the rules of decision. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 16 (App. 2006).

State law controls in the resolution of contract and tort issues. When the FSM Supreme Court, in the exercise of its diversity jurisdiction decides a matter of state law, its goal is to apply the law the same way the highest state court would. Hartman v. Krum, 14 FSM R. 526, 530 (Chk. 2007).

While the interplay between national and state power does mean that, in land cases, the court must apply state law, or certify unsettled questions to the state courts, when the national court has maintained jurisdiction, national rules of procedure prevail. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 325 (Kos. 2011).

When the FSM Supreme Court decides a matter of state law its goal is to apply the law the same way the highest state court would. If there is a decision of the highest state court it is controlling. If there is no controlling state law, then the court would decide the case according to how it thinks the highest state court would. Should the state's highest court later decide the issue differently, then that case will prospectively serve as controlling precedent for the national court on that state law issue. Berman v. Lambert, 17 FSM R. 442, 446 (App. 2011).

When a breach of contract cause of action arose on Pohnpei, Pohnpei's statute of limitations should be used. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 354 (App. 2012).

There are no grounds to use a foreign statute of limitations period to bar on a laches ground a cause of action arising on Pohnpei under Pohnpei state law. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 354 (App. 2012).

A state law requiring a lawsuit to contain a statement in a form approved by the Pohnpei Attorney General informing the state employee sued of his rights and responsibilities under Title 58, chapter 2 of the Pohnpei Code is a matter of procedure, and even when the rule of decision in a case before the FSM Supreme Court is governed by state law, procedural matters are governed by the FSM Rules of Civil Procedure and national statutes, rather than by state law. Dismissal will therefore not be required in a suit in the FSM Supreme Court when such a statement was not included. Perman v. Ehsa, 18 FSM R. 452, 454 (Pon. 2012).

When the FSM Supreme Court decides matters of tort and contract law, it will apply, in the same way the highest state court would, the state's substantive law, which includes its common law as well as its statutory law. Peniknos v. Nakasone, 18 FSM R. 470, 479 & n.5 (Pon. 2012).

When the FSM Supreme Court is deciding matters of tort and contract law, it will apply in the same way the highest state court would the state's substantive state law, which includes the state's common law as well as its statutory law. Ihara v. Vitt, 18 FSM R. 516, 524 & n.3 (Pon. 2013).

Comity is a recognition which one nation extends within its own territory to the legislative, executive, or judicial acts of another, and it is not a rule of law, but one of practice, convenience, and expediency. Every nation must be the final judge for itself, not only of the nature and extent of the duty, but of the occasions on which it may be justly demanded. Dison v. Bank of Hawaii, 19 FSM R. 157, 162 (App. 2013).

Under principles of comity, courts will enforce foreign judgments, but not when the foreign court lacked jurisdiction, or where enforcement of the foreign judgment would violate a public policy, or where granting comity would result in prejudice to the forum's citizens. Dison v. Bank of Hawaii, 19 FSM R. 157, 162 (App. 2013).

Comity analysis involves the balancing of three interests and a threshold question. The threshold question in a comity analysis is whether there is in fact a true conflict between domestic and foreign law. When there is a conflict, a court performs a tripartite analysis that considers the interests of the domestic sovereign, the interests of the foreign sovereign, and the mutual interests of all nations in a smoothly functioning international legal regime. Dison v. Bank of Hawaii, 19 FSM R. 157, 162 (App. 2013).

There is no true conflict between the U.S. statues exempting U.S. military retirement benefits and U.S. social security benefits and the FSM exempt property statute because the U.S. statutes provide exemptions from judgments rendered and enforced in the U.S., and the FSM statute provides what property is exempt from judgments rendered and enforced in the FSM. Dison v. Bank of Hawaii, 19 FSM R. 157, 162 (App. 2013).

When national law merely provides the forum, the national courts must strive to apply the law in the same way the highest state court would. Zacchini v. Hainrick, 19 FSM R. 403, 411 n.2 (Pon. 2014).

When national law merely provides the forum, the national courts must strive to apply the law in the same way the highest state court would. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 435 (App. 2014).

When presented with an issue of first impression and the absence of FSM case law on point, the court will examine relevant U.S. decisions for guidance and may look to authorities from other jurisdictions in the common law tradition. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

The FSM Supreme Court need not dwell on apparent conflicts between two lines of cases in the U.S., but should search for reconciling principles which will serve as a guide to FSM courts. People of Eauripik

ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 226 (App. 2017).

Since tort law is primarily state law, a tort action will be governed by the substantive law of the state where the injury occurred. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 28 (Pon. 2018).

When there is diversity of citizenship between the parties, litigation involving domestic relations issues, including custody and child support, falls within the FSM Supreme Court's jurisdiction, even though state law will furnish the rules of decision. O'Sonis v. O'Sonis, 22 FSM R. 268, 269 (Chk. 2019).

Pohnpei state law provides that the rules of the common law, as expressed in the restatements of the law, shall be the rules of decision in the courts of the state of Pohnpei in applicable cases, in the absence of written law applicable to the state of Pohnpei or applicable local customary law. Panuelo v. FSM, 22 FSM R. 498, 506 (Pon. 2020).

A decision of the highest state court about a state law matter is controlling and the FSM Supreme Court will apply it. A state court trial division decision may be deemed not to be controlling if it appears that the highest state court would decide the question differently. If there is no controlling state case law, then the court should decide the case according to how it thinks the highest state court would, and if the state's highest court later decides the issue differently, then that case will prospectively serve as controlling precedent for the national court on that state law issue. Panuelo v. FSM, 22 FSM R. 498, 506-07 n.3 (Pon. 2020).

CITIZENSHIP

Citizenship may affect, among other legal interests, rights to own land, to engage in business or be employed, and even to reside within the Federated States of Micronesia. In re Sproat, 2 FSM R. 1, 6 (Pon. 1985).

Article III, Sections l and 2, of the FSM Constitution are self-executing and do not contemplate, or imply the need for, court action to confirm citizenship where no challenge exists. In re Sproat, 2 FSM R. 1, 7 (Pon. 1985).

The Citizenship and Naturalization Act places primary responsibility for administrative implementation upon the President, and contemplates that the Executive Branch, not the Judiciary, normally will determine and certify citizenship. In re Sproat, 2 FSM R. 1, 7 (Pon. 1985).

Where there exists an actual controversy involving a concrete threat to citizenship rights and interests, the FSM Supreme Court could be constitutionally required to determine whether a person is or is not a citizen. In re Sproat, 2 FSM R. 1, 7 (Pon. 1985).

Courts in the United States have ruled on citizenship status where that status determines the propriety of official administrative action and administrative remedies have been exhausted. In re Sproat, 2 FSM R. 1, 7 (Pon. 1985).

Until 7 F.S.M.C. 204 goes into effect, it may be appropriate to take a liberal view in determining when a court ruling on citizenship status may be required to prevent injustice or to permit an individual to proceed with his own business or personal affairs. In re Sproat, 2 FSM R. 1, 8 (Pon. 1985).

A person's parentage will make him an FSM citizen because a person born of parents one or both of whom are FSM citizens is an FSM citizen and national by birth. Hartmann v. Department of Justice, 20 FSM R. 619, 621 (Chk. 2016).

An FSM passport usually has a five-year duration. Hartmann v. Department of Justice, 20 FSM R. 619, 623 (Chk. 2016).

A nineteen-year-old with one FSM citizen parent, despite any claim he may have had to another country's citizenship and passport, would unquestionably be an FSM citizen entitled to an FSM passport, even if he also held a another country's passport since he would not lose his FSM citizenship and become an FSM national instead until he turns twenty-one. Hartmann v. Department of Justice, 20 FSM R. 619, 623 (Chk. 2016).

A statutory rebuttable presumption that an FSM passport-holder that has had his or her passport renewed twice in a row, has renounced the citizenship of another nation and that he or she is solely an FSM citizen, has been overcome when a person has conceded that he has not formally renounced any claim he may have to U.S. citizenship and does not wish to do so now. Hartmann v. Department of Justice, 20 FSM R. 619, 623 (Chk. 2016).

A naturalization applicant, who is an FSM national, must submit a declaration on "Form I" showing the applicant's intent to become an FSM citizen and attach various documents, including proof of renunciation of foreign citizenship. The Division of Immigration then reviews and investigates all the documents' authenticity and conducts a criminal background check of the applicant. After that, the applicant undergoes the indigenous language examination. All the supporting documents are then forwarded to the President's office, which sends a letter to the applicant inviting the applicant to a naturalization ceremony, where the applicant will take the oath of citizenship ("Form II"). The last step includes the filing with the Department of Justice the Federated States of Micronesia Certification of Naturalization ("Form III"). Once all these steps are successfully completed, the FSM national applicant becomes an FSM citizen. Hartmann v. Department of Justice, 20 FSM R. 619, 624 (Chk. 2016).

An FSM national applicant for naturalization must first renounce, and prove that he or she has renounced, his or her other citizenship, but apparently can still be denied FSM citizenship (if the applicant has been convicted of a felony or does not pass the indigenous language test). Hartmann v. Department of Justice, 20 FSM R. 619, 624 (Chk. 2016).

All FSM citizens are FSM nationals, but not all FSM nationals are FSM citizens. FSM v. Siega, 21 FSM R. 291, 298 & n.5 (Chk. 2017).

A person's own admission that he has not formally renounced his claim to United States citizenship and that he does not wish to do so even now, that person, pursuant to the Constitution, would not be recognized as a citizen, but only a national, of the FSM. Hartmann v. Department of Justice, 21 FSM R. 468, 475 (Chk. 2018).

Article III, sections 1 and 2 of the FSM Constitution are self-executing and do not contemplate, or imply the need for, court action to confirm citizenship where no challenge exists. Hartmann v. Department of Justice, 21 FSM R. 468, 475 (Chk. 2018).

Within three years of his eighteenth birthday, an FSM citizen, who is also a citizen of another nation, must register his intent to remain an FSM citizen and must renounce his citizenship of another nation. Failure to comply with these requirements means that the person automatically, by operation of constitutional law, becomes a national of the FSM. Hartmann v. Department of Justice, 21 FSM R. 468, 476 (Chk. 2018).

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

Article III, section 3 of the FSM Constitution is self-executing in that it can be given effect without the aid

of legislation and there is nothing to indicate that legislation is intended to make it operative. Hartmann v. Department of Justice, 21 FSM R. 468, 476-77 (Chk. 2018).

CIVIL PROCEDURE

Except in the most extraordinary circumstances, a court should not accept one party's unsupported representations that another party to the litigation has no further interest in the case. In re Nahnsen, 1 FSM R. 97, 100 (Pon. 1982).

The court must try to apply the Court Rules of Civil Procedure in a way that is consistent with local customary practice. Hadley v. Board of Trustees, 3 FSM R. 14, 16 (Pon. S. Ct. Tr. 1985).

Procedural matters in litigation before the FSM Supreme Court are governed by the FSM Rules of Civil Procedure and national statutes, rather than by state law. Salik v. U Corp., 4 FSM R. 48, 49-50 (Pon. 1989).

Courts have inherent power, and an obligation, to monitor the conduct of counsel and to enforce compliance with procedural rules. Leeruw v. Yap, 4 FSM R. 145, 150 (Yap 1989).

Under Civil Rule 54(c) the court has full authority except in default judgments, to award the party granted judgment any relief to which it is entitled whether that party prayed for it or not. Billimon v. Chuuk, 5 FSM R. 130, 137 (Chk. S. Ct. Tr. 1991).

Time requirements set by court rules are more subject to relaxation than are those established by statute. Charley v. Cornelius, 5 FSM R. 316, 318 (Kos. S. Ct. Tr. 1992).

When a defendant cites certain defenses, but makes no argument as to how they apply and their application is not self-evident, the court may decline to speculate as to how they apply. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 119 (Pon. 1993).

When a party believes that error has occurred in a trial, its remedy is by way of appeal, not by commencing a second action. Maruwa Shokai Guam, Inc. v. Pyung Hwa 31, 6 FSM R. 238, 240 (Pon. 1993).

Where a party at trial claims surprise, and the judge offers that party a chance to cure any prejudice this might have caused and they make the tactical choice to decline the opportunity, it is a tactical choice the party must live with and is not a basis for reversal. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 351-52 (App. 1994).

A court will not limit its review of the validity of a claim for relief to the arguments presented by the parties where the claim raises public policy concerns, and the defendant is a pro se litigant. J.C. Tenorio Enterprises, Inc. v. Sado, 6 FSM R. 430, 432 (Pon. 1994).

When an FSM Rule of Civil Procedure is nearly identical to a U.S. Federal Rule of Civil Procedure and the FSM Rule has not previously been construed by the FSM Supreme Court it may look to the U.S. federal courts for guidance in interpreting the rule. Senda v. Mid-Pacific Constr. Co., 6 FSM R. 440, 444 (App. 1994).

A judge cannot adopt a procedure not provided for by the rules because the Constitution grants the Chief Justice, and Congress, the power to establish rules of procedure. FSM v. M.T. HL Achiever (II), 7 FSM R. 256, 258 (Chk. 1995).

When a defendant's answer has placed all the plaintiff's allegations into issue and even though the defendant did not appear at trial the plaintiff still has the burden of proving his case by a preponderance of evidence. Kaminaga v. Chuuk, 7 FSM R. 272, 274 (Chk. S. Ct. Tr. 1995).

In the Chuuk State Supreme Court a trial judge has the discretion to order on his own motion a hearing for the plaintiff to prove to the court by the applicable legal standard the amount of damages or other relief sought to be awarded by an offer of judgment. Rosokow v. Chuuk, 7 FSM R. 507, 509-10 (Chk. S. Ct. App. 1996).

A showing of excusable neglect is required to grant a request for enlargement of time made after the time allowed had elapsed. Counsel's failure to make a note to remind him of the answer's due date and his attention to other matters, both personal and professional, does not establish excusable neglect. Bank of Guam v. Ismael, 8 FSM R. 197, 198 (Pon. 1997).

A defendant's motion to enlarge time to file an answer may be granted, even though excusable neglect has not been shown, when it would be conducive to a speedy and inexpensive determination of the action, the delay has not been long, and no prejudice to the plaintiff is apparent. Bank of Guam v. Ismael, 8 FSM R. 197, 198 (Pon. 1997).

Because until a final judgment has been entered a trial court has plenary power over its interlocutory orders, it may, without regard to the restrictive time limits in Rule 59, alter, amend, or modify such orders any time prior to the entry of judgment. Youngstrom v. Phillip, 8 FSM R. 198, 201 (Kos. S. Ct. Tr. 1997).

When considering a motion to modify its orders, particularly in a long-pending case, a court, in furthering the interest of finality, looks to what has been done, not to what might have been done. Youngstrom v. Phillip, 8 FSM R. 198, 202 (Kos. S. Ct. Tr. 1997).

Under Civil Rule 70, the court may direct an act to be done at the cost of a disobedient party by some other person appointed by the court. Louis v. Kutta, 8 FSM R. 228, 230 (Chk. 1998).

Failure to file any response to an opponent's submission and failure to file a motion for enlargement of time before or after a court-ordered deadline constitutes consent to the content of the opponent's submission. Langu v. Kosrae, 8 FSM R. 455, 459 (Kos. S. Ct. Tr. 1998).

When an FSM court rule, such as General Court Order 1992-2 governing removal, has not be construed by the FSM Supreme Court and is similar or nearly identical to a U.S. counterpart, the court may look to U.S. practice for guidance. Porwek v. American Int'l Co. Micronesia, 8 FSM R. 463, 466 n.1 (Chk. 1998).

Any decision made before a final judgment adjudicating all parties' claims and rights is subject to revision. Porwek v. American Int'l Co. Micronesia, 8 FSM R. 463, 466 (Chk. 1998).

The FSM Rules of Civil Procedure shall be construed to secure the just, speedy, and inexpensive determination of every action. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 477 (Pon. 1998).

Whether a court has subject matter jurisdiction is an issue that may be raised at any time. Abraham v. Kosrae, 9 FSM R. 57, 59 (Kos. S. Ct. Tr. 1999).

When an FSM Rule of Civil Procedure is nearly identical to a U.S. Federal Rule of Civil Procedure, the FSM Supreme Court may look to the U.S. federal courts for guidance in interpreting the rule. Tom v. Pohnpei Utilities Corp., 9 FSM R. 82, 87 n.2 (App. 1999).

A court may alter or amend a judgment under Rule 59 on any of four grounds: 1) to correct a manifest error of law or fact upon which the judgment is based; 2) the court is presented with newly discovered or previously unavailable evidence; 3) to prevent a manifest injustice; or 4) there is an intervening change in the controlling law. Chuuk v. Secretary of Finance, 9 FSM R. 99, 100 (Pon. 1999).

A plaintiff must prove the allegations of the complaint by a preponderance of admissible evidence in

order to prevail. Chipen v. Reynold, 9 FSM R. 148, 149 (Chk. S. Ct. Tr. 1999).

For cause shown, the court may, within its discretion, order the enlargement of a period of time, but when the movant does not specify why it needs additional time, no cause has been shown. Bank of Hawaii v. Helgenberger, 9 FSM R. 260, 262 (Pon. 1999).

The Kosrae Rules of Civil Procedure shall be construed to secure the just, speedy, and inexpensive determination of every action. Palik v. Henry, 9 FSM R. 267, 269 (Kos. S. Ct. Tr. 1999).

When the FSM moves for a stay of a civil case to preserve the defendants' rights in a related criminal case and the defendants oppose the motion and claim that they would suffer substantial prejudice from a delayed prosecution of the civil action and when the FSM had the prosecutorial discretion to file both the civil and criminal cases simultaneously, although there is nothing in the statute requiring that, the motion to stay will be denied and, in the absence of good cause, the civil case will go forward. FSM v. Zhong Yuan Fishery Co., 9 FSM R. 351, 353 (Kos. 2000).

Proceedings in a suit against a foreign government may be postponed in order to give the FSM Department of Foreign Affairs the opportunity to decide whether the court should recognize the foreign government's sovereign state immunity from suit. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 373-74 (Kos. 2000).

Rules of court properly promulgated, and not exceeding the limitation of the court's rulemaking power, have the force of law. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 371 (Kos. 2000).

When an FSM Civil Procedure Rule is nearly identical to a U.S. Federal Rule of Civil Procedure and the FSM Supreme Court has not previously construed the FSM Rule, it may look to U.S. federal practice for guidance in interpreting the rule. FSM Dev. Bank v. Gouland, 9 FSM R. 375, 377 n.1 (Chk. 2000).

When an FSM Civil Procedure Rule is nearly identical to a U.S. Federal Rule of Civil Procedure the FSM Supreme Court may look to the U.S. federal courts for guidance in interpreting the rule. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 413 n.3 (App. 2000).

Before the Chuuk State Supreme Court can enter a judgment against the state's public funds pursuant to an offer and acceptance of judgment under Civil Procedure Rule 68, a hearing for the purpose of having the benefit of evidence or hearing testimony as to the value of the plaintiff's claim, or the validity thereof, is an absolute necessity. Kama v. Chuuk, 9 FSM R. 496, 499 (Chk. S. Ct. Tr. 1999).

A party cannot simply leave the jurisdiction to avoid a lawsuit. A party aware she has litigation pending against her, should, prior to leaving the court's jurisdiction, provide her attorney with a means to contact her. A party cannot expect a court to wait and see if she will return before rendering judgment. Harden v. Primo, 9 FSM R. 571, 574 (Pon. 2000).

When an FSM Civil Procedure Rule is nearly identical to a U.S. Federal Civil Procedure Rule and the FSM Supreme Court has not previously construed the FSM Rule, it may look to the U.S. federal practice for guidance in interpreting the rule. Moses v. M.V. Sea Chase, 10 FSM R. 45, 49 n.1 (Chk. 2001).

When someone is accorded none of these due process guarantees with respect to a "judgment" against it, the judgment and ensuing order in aid of judgment and writ of execution are void as a matter of law, and these procedural infirmities inherent in the judgment are subject to attack at any time, and thus are outside the adjudicative framework established by the rules of procedure. Hartman v. Bank of Guam, 10 FSM R. 89, 97 (App. 2001).

Because a habeas corpus petition is a civil action (although the proceeding is unique), the clerk will assign the petition a civil action number and enter it on the civil side of the docket. Sangechik v. Cheipot,

10 FSM R. 105, 106 (Chk. 2001).

When the FSM Supreme Court has not already construed an FSM court rule which is similar or nearly identical to a U.S. rule, it may look to U.S. practice for guidance. Medabalmi v. Island Imports Co., 10 FSM R. 217, 219 n.1 (Chk. 2001).

When an FSM Civil Procedure Rule is nearly identical to a U.S. Federal Civil Procedure Rule and the FSM Rule has not previously been construed, the FSM Supreme Court may look to U.S. federal practice for guidance. Moses v. Oyang Corp., 10 FSM R. 273, 275 n.1 (Chk. 2001).

The Professional Conduct Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies, and are not designed to be a basis for civil liability. The Rules' purpose can be subverted when they are invoked by opposing parties as procedural weapons. Nix v. Etscheit, 10 FSM R. 391, 395 (Pon. 2001).

Neither Rule 68, nor any principle of contract law, requires an acceptance to be on a different piece of paper from the offer of judgment in order for it to be valid. Kama v. Chuuk, 10 FSM R. 593, 599 (Chk. S. Ct. App. 2002).

While a Rule 68(b) hearing to give the court the benefit of evidence or hearing testimony concerning the claim's value may be both highly desirable and very useful, it is not an absolute necessity because the court may, on its own motion and in its discretion, order that a hearing be held. Kama v. Chuuk, 10 FSM R. 593, 599 (Chk. S. Ct. App. 2002).

While it is true in construction of statutes and rules that the word "may" as opposed to "shall" is indicative of discretion or a choice between two or more alternatives, the context in which the word appears must be the controlling factor. Kama v. Chuuk, 10 FSM R. 593, 599 (Chk. S. Ct. App. 2002).

When the word "may" is used in Chuuk Civil Rule 68(b) and the rule adds even further qualifiers ("a hearing be held if in the discretion of the court") that reveal the discretionary nature of the hearing, the context is clear – the word "may" in Rule 68(b) denotes discretion. Kama v. Chuuk, 10 FSM R. 593, 599 (Chk. S. Ct. App. 2002).

When the original trial judge had the discretion to hold, or not to hold, a Rule 68(b) hearing and when it appears that, based on the memorandum submitted with the offer and acceptance and the attorney general's authority to settle claims against the state, the trial judge exercised his discretion not to hold a Rule 68(b) hearing and instead issued the judgment, the holding that a Rule 68(b) hearing was an absolute necessity was an erroneous conclusion of law. Kama v. Chuuk, 10 FSM R. 593, 599 (Chk. S. Ct. App. 2002).

A defendant who has failed to raise any affirmative defenses in his answer, or to amend his answer to add any, or to assert at trial any counterclaims or crossclaims, or third party claims, has waived and lost his right to assert at trial affirmative defenses and to assert any counterclaims or crossclaims, or third party claims. Shrew v. Killin, 10 FSM R. 672, 674 (Kos. S. Ct. Tr. 2002).

An order that did not adjudicate any of the claims against the defendants or adjudicate any of the defendants' defenses and did not dispose of or dismiss either the case or the complaint, but only disposed of and dismissed the plaintiffs' and both sets of intervenors' claims against each other was therefore not a judgment because all it did was to combine both sets of intervenors and the plaintiffs together as joint plaintiffs against the two defendants. Stephen v. Chuuk, 11 FSM R. 36, 40-41 (Chk. S. Ct. Tr. 2002).

When the FSM Supreme Court has not construed an FSM court rule which is similar or identical to a U.S. rule, it may look to U.S. practice for guidance. Ifenuk v. FSM Telecomm. Corp., 11 FSM R. 201, 203 n.2 (Chk. 2002).

When an FSM court has not previously construed a Civil Procedure Rule that is similar to a U.S. rule, it may look to U.S. sources for guidance in interpreting the FSM rule. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM R. 319, 321 n.1 (Pon. 2003).

Although the court must first look to sources of law in the FSM rather than begin with a review of cases decided by other courts, when an FSM court has not previously construed FSM civil procedure rules which are identical or similar to U.S. counterparts, the court may look to U.S. sources for guidance in interpreting the rules. Beal Bank S.S.B. v. Maras, 11 FSM R. 351, 353 n.1 (Chk. 2003).

Absent compelling reasons to the contrary, form must ever subserve substance. A thing is what it is regardless of what someone chooses to call it. Viewed in this light, a letter that stated an unequivocal legal opinion based on certain facts and cited points and authorities to support that opinion is the functional equivalent of an amicus curiae brief. McIlrath v. Amaraich, 11 FSM R. 502, 505-06 (App. 2003).

Although the court must first look to FSM sources of law rather than begin with a review of cases decided by other courts, when the court has not previously construed an FSM Civil Rule which is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 518 n.2 (Chk. 2003).

Although the FSM Supreme Court must first look to sources of law rather than begin with a review of cases decided by other courts, when the court has not previously construed an FSM civil procedure rule which is identical or similar to a U.S. rule, the court may look to U.S. sources for guidance in interpreting the rule. In re Engichy, 11 FSM R. 520, 527-28 n.1 (Chk. 2003).

When the court has not previously construed an FSM civil procedure rule which is identical or similar to a U.S. rule, it may look to U.S. sources for guidance in interpreting the rule. In re Engichy, 11 FSM R. 555, 557 n.1 (Chk. 2003).

No hearing on a name change petition will normally be required, unless objections to the petition are properly filed with the court within the time period required. If objections are filed, the court will schedule a hearing at the earliest possible opportunity, and the Clerk of the Court shall give notice of the hearing by the best means available to apprize the objectors of the hearing's date and time. In the absence of objection, and upon confirmation that the name change petition contains all necessary information, the court will grant the petition without hearing, and will give notice to the petitioner that the petition has been granted. In re Suda, 11 FSM R. 564, 567 (Chk. S. Ct. Tr. 2003).

Pleadings, discovery, summary judgment motions, and trial are all prejudgment procedures and are thus inapplicable to an entirely a post-judgment matter. In re Engichy, 12 FSM R. 58, 66 (Chk. 2003).

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

A court cannot order a stay in cases in another court with parties not before it and who have had no notice and opportunity to be heard; nor should it prevent other, unknown persons from seeking future court relief. Even for cases where the parties are the same, there is no authority for such extraordinary relief. Enlet v. Bruton, 12 FSM R. 187, 191 (Chk. 2003).

Although the court must first look to FSM sources of law rather than begin with a review of cases from other courts, when the court has not previously construed an FSM civil procedure rule which is identical or similar to a U.S. rule, it may look to U.S. sources for guidance in interpreting the rule. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 196 n.2 (Yap 2003).

A cardinal principle of statutory construction is to avoid an interpretation which may call into question the statute's, or the rule's, constitutionality. Adams v. Island Homes Constr., Inc., 12 FSM R. 348, 353 (Pon. 2004).

Unlike the appellate rules, neither the civil nor criminal procedure rules provide for an amicus curiae's appearance, although the court has in the past invited amicus curiae briefs in civil cases. FSM v. Sipos, 12 FSM R. 385, 387 (Chk. 2004).

A preference exists for resolution of matters on the merits and that, within the bounds of reason, and except when a specific rule, law, or a party's or his counsel's conduct directs a different result, this preference should be given effect. Fan Kay Man v. Fananu Mun. Gov't, 12 FSM R. 492, 497 (Chk. 2004).

Although the court must first look to FSM sources of law rather than begin with a review of other courts' cases, when a court has not previously construed an FSM civil procedure rule which is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 7 n.2 (Pon. 2004).

While a court may, in the interests of the orderly administration of justice, accommodate, if possible, counsel's reasonable requests and travel plans, such notices are not binding on the courts. Counsel must accept the fact that things may arise that will require their attention at times when they would rather not be bothered. Goya v. Ramp, 13 FSM R. 100, 107 n.8 (App. 2005).

On a motion to dismiss brought by the FSM Development Bank, the bank's claim of sovereign immunity will be considered first since, if the bank prevails on this ground, the merits of the bank's other claims need not be considered. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 125 (Chk. 2005).

Although the court must first look to FSM sources of law rather than begin with a review of other courts' cases, when it has not previously construed an FSM civil procedure rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. Lee v. Lee, 13 FSM R. 252, 256 n.1 (Chk. 2005).

In a prima facie case, a party has produced enough evidence to allow the fact-finder to infer the fact at issue and rule in the party's favor. Hauk v. Lokopwe, 14 FSM R. 61, 64 n.1 (Chk. 2006).

A litigant is permitted to make arguments in the alternative. FSM Dev. Bank v. Adams, 14 FSM R. 234, 246 (App. 2006).

Although the court must first look to FSM sources of law, when an FSM court has not previously construed aspects of an FSM civil procedure rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting those aspects. Amayo v. MJ Co., 14 FSM R. 355, 362 n.2 (Pon. 2006).

Although the court must first look to FSM sources of law, when the court has not previously considered certain aspects of an FSM civil procedure rule that is identical to a U.S. rule, it may look to U.S. sources for guidance in interpreting the rule. FSM v. Kana Maru No. 1, 14 FSM R. 368, 374 n.1 (Chk. 2006).

When an FSM Rule of Civil Procedure is nearly identical to a U.S. Federal Rule of Civil Procedure and the FSM Supreme Court has not previously construed the FSM Rule, the court may look to the U.S. federal practice for guidance in interpreting the rule. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 394 n.1 (App. 2006).

The Constitution permits the Chief Justice to promulgate civil procedure rules, which Congress may amend by statute. Since Congress has the authority to amend or create procedural rules by statute, when Congress has enacted a procedural rule, it is valid. The Chief Justice does not have the authority to amend Congressionally-enacted statutes. Therefore, if the statute applies and the statute and the rule conflict, the statute must prevail. Tipingeni v. Chuuk, 14 FSM R. 539, 542 n.1 (Chk. 2007).

The civil procedure rules generally do not apply in the appellate division. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 575, 577 (Chk. S. Ct. App. 2007).

Civil Rule 65 and the Civil Procedure Rules in general apply to civil proceedings in the trial division, not to appellate division proceedings. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

Rule 52(a) requires a trial judge, after trial, to make special findings of fact and separate conclusions of law. Mathias v. Engichy, 15 FSM R. 90, 95 (Chk. S. Ct. App. 2007).

The requirement that the trial court "find the facts specially" serves three major purposes: 1) to aid appellate court review by affording it a clear understanding of the ground or basis of the trial court's decision; 2) to make definite precisely what the case has decided in order to apply the doctrines of estoppel and res judicata in future cases and promote confidence in the trial judge's decision-making; and 3) to evoke care on the trial judge's part in ascertaining the facts. Mathias v. Engichy, 15 FSM R. 90, 95 (Chk. S. Ct. App. 2007).

When a court has not previously construed an civil procedure rule which is identical or similar to a U.S. rule, it may look to U.S. sources for guidance in interpreting the rule. Mathias v. Engichy, 15 FSM R. 90, 96 n.5 (Chk. S. Ct. App. 2007).

The trial court satisfies its responsibility to make specific findings of fact when the findings are sufficiently detailed to inform the appellate court of the basis of the decision and to permit intelligent appellate review, but the trial court need not mention evidence it considers of little or no value. As long as the trial court clearly relates the findings of fact upon which the decision rests and articulates in a readily intelligible manner the conclusions it draws by applying the controlling law to the facts as found, no more is needed. The trial court has the obligation to ensure that the basis for its decision is set out with enough clarity to enable the reviewing court to perform its function. Mathias v. Engichy, 15 FSM R. 90, 96 (Chk. S. Ct. App. 2007).

Stare decisis is the doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same points of law arise again in litigation. Stare decisis requires that the same rule of law previously announced be applied to any succeeding cases with similar facts. Nakamura v. Chuuk, 15 FSM R. 146, 149-50 (Chk. S. Ct. App. 2007).

It is appropriate for a court to modify or otherwise relieve a party from a prior order where there has been mistake, inadvertence, surprise, or excusable neglect. Jano v. Fujita, 15 FSM R. 494, 496 (Pon. 2008).

An option for enforcing a judgment as provided by statute is the filing of a new civil action based on the judgment. This option is most appropriate avenue and is likely to lead to an efficient and just resolution when the earlier judgment dismissed claims raised by the plaintiff in connection with a land use agreement he had entered into with the defendant and the defendant, some two decades later, seeks to use this judgment to prevent the others, who are not parties to the action and seemingly not involved in the underlying dispute until recently, from using land that may or may not be subject to the judgment and a dispute clearly exists as to whether the other should be deprived of using the land in dispute even if that land is subject to the judgment because new evidence is needed to resolve this dispute between the defendant and the other. Salik v. U Corp., 15 FSM R. 534, 538 (Pon. 2008).

When interpreting FSM Civil Rule 63 and applying it to a matter, it is appropriate to consider the treatment of similar rules of procedure as they are found in American jurisdictions. Salik v. U Corp., 15 FSM R. 534, 539 (Pon. 2008).

When none of the trial court's rulings on legal issues, such as the existence of contracts and no liability for interest or attorney's fees, were appealed, they remain the law of each case on remand. Albert v. George, 15 FSM R. 574, 581 n.2 (App. 2008).

When an FSM court has not previously construed the interplay between Civil Procedure Rules 59 and 60 which are identical or similar their U.S. counterparts, the court may look to U.S. sources for guidance in interpreting the rules. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 n.1 (App. 2008).

Although the court must first look to FSM sources of law rather than start with a review of other courts' cases, when an FSM court has not previously construed a civil procedure rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. Alanso v. Pridgen, 15 FSM R. 597, 600 n.2 (App. 2008).

When an FSM court has not previously construed aspects of an FSM Civil Procedure Rule which is identical or similar to a U.S. rule, it may look to U.S. sources for guidance. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 632 n.2 (Pon. 2008).

Whenever process in rem is issued, the execution of such process shall be stayed, or the property released, on the giving of security. "On the giving of security" refers to the situation where the defendant has "given security to respond in damages," and refers to the bond or other security posted to obtain the release of the property in the first instance, not the property itself. The fact that the FSM is holding the seized vessel does not mean that security has been given within the meaning of Admiralty Rule E(6)(d). FSM v. Koshin 31, 16 FSM R. 15, 20 (Pon. 2008).

When the court has not previously construed an FSM civil procedure rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 137 n.1 (Pon. 2008).

When courts in the FSM have not specifically construed the application of a procedural rule, the court may look for guidance to American jurisprudence interpreting a similar or identical rule's application. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 218 n.1 (Chk. S. Ct. Tr. 2008).

When the court has not previously construed an FSM civil procedure rule which is identical or similar to a U.S. rule, it may look to U.S. sources for guidance in interpreting the rule. Nakamura v. Mori, 16 FSM R. 262, 267 n.3 (Chk. 2009).

Once the court, after trial, has reviewed the testimony and other evidence of record in the matter, it must make findings of fact and conclusions of law pursuant to FSM Civil Rule of Civil Procedure 52(a). Jano v. Fujita, 16 FSM R. 323, 325 (Pon. 2009).

A litigant may not sit idly by during the course of litigation and then seek to present additional defenses in the event of an adverse outcome. Arthur v. Pohnpei, 16 FSM R. 581, 599 (Pon. 2009).

The procedure for small claims is set out in the Kosrae Rules of Civil Procedure Rule 87 and the GCO's that apply. Any civil action under $3,000 is considered under Rule 87 and the purpose of the procedure is to enable small claims to be justly decided and fully disposed of with less formality, paper work, and expenditure of time than is required by the ordinary procedure for larger claims. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 641 (Kos. S. Ct. Tr. 2009).

If an FSM civil procedure rule that is identical or similar to a U.S. counterpart has not previously been construed, an FSM court may look to U.S. sources for guidance in interpreting the rule. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 650 n.2 (Pon. 2009).

Although to establish legal requirements FSM courts must first look to FSM sources of law rather than begin with a review of other courts' cases, when no FSM court has previously construed a Kosrae procedural rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. George v. Albert, 17 FSM R. 25, 31 n.1 (App. 2010).

When an FSM court has not previously construed an FSM civil procedure rule that is similar to a U.S. rule, the court may look to U.S. sources for guidance in interpreting the FSM rule. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 46 n.4 (Chk. 2010).

Although the court must first look to FSM sources of law rather than start by reviewing other courts' decisions, when the court has not previously considered whether a deponent and an attorney may be jointly held liable for Rule 37(a)(4) sanctions and that FSM civil procedure rule is identical or similar to a U.S. rule, the court may look to U.S. sources for guidance. FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 91 n.3 (Pon. 2010).

There is no requirement that a civil plaintiff appear in person at trial. Sandy v. Mori, 17 FSM R. 92, 95 n.2 (Chk. 2010).

In a civil case, the plaintiff has the burden of proving each element of the plaintiff's cause of action by a preponderance of the evidence, and if the plaintiff fails to prove any one element, judgment will be entered against the plaintiff. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 119, 123 (Chk. 2010).

While the court must first consult FSM sources of law rather than begin with a review of foreign sources, when an FSM civil procedure rule that was drawn from a U.S. counterpart, has not previously been construed, the court may look to U.S. sources for guidance. FSM v. GMP Hawaii, Inc., 17 FSM R. 192, 194 n.1 (Pon. 2010).

Where appropriate, such as when FSM law is silent as to an issue, the court can and should consider decisions and reasoning of United States courts and other jurisdictions in arriving at its own decisions so that when an FSM court has not previously construed a Civil Procedure Rule that is similar to a U.S. rule, it may look to U.S. sources for guidance in interpreting the FSM rule. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 223 (Kos. 2010).

Although the court must first consult FSM sources of law rather than start with a review of other courts' cases, when the court has not previously construed certain aspects of an FSM civil procedure rule that is identical or similar to a U.S. counterpart, the court may consult U.S. sources for guidance. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 330 n.2 (Pon. 2011).

A document or a filing is what it is regardless of what it has been labeled since form must not be elevated over substance because absent compelling reasons to the contrary, form must ever subserve substance. Berman v. Pohnpei Legislature, 17 FSM R. 339, 352 n.5 (App. 2011).

A trial court can enter a final judgment on less than all claims in a case only if the trial court makes an express determination that there is no just cause for delay and if it then also expressly directs entry of judgment. Both elements must be present to give a partial adjudication final judgment status. When either element is absent, even if only because of oversight or a failure to appreciate that the case is one that is within Rule 54(b), the partial adjudication does not carry final judgment status. Iriarte v. Individual Assurance Co., 17 FSM R. 356, 358 (App. 2011).

A statute takes precedence over the procedural rules because while the chief justice has the power to promulgate procedural rules, the rules may be amended by statute, and since the chief justice does not have the power to amend a statute, when Congress has enacted a procedural rule, it is valid. People of Tomil ex rel. Mar v. M/V Mell Sentosa, 17 FSM R. 478, 479 (Yap 2011).

While the court must first consult FSM sources of law rather than begin by reviewing foreign ones, when an FSM civil procedure rule that was drawn from a U.S. rule has not previously been construed, the court may look to U.S. sources for guidance. Mori v. Hasiguchi, 17 FSM R. 630, 638 n.1 (Chk. 2011).

The FSM Rules of Civil Procedure are generally drawn from the U.S. Federal court rules. Thus when the FSM Supreme Court can find no directly applicable FSM caselaw on the point, but there are numerous United States cases addressing it or similar issues, the court may look to interpretations of the applicable U.S. Federal Rules of Civil Procedure for guidance in interpreting the FSM rule. FSM v. Shun Tien 606, 18 FSM R. 79, 81 (Pon. 2011).

FSM Evidence Rule 611(b) allows the court to permit a procedure where the plaintiff would call the witnesses but each party would be able to treat each witness as if the witness were its own, that is, each defendant could ask each witness any relevant question regardless of whether that question was within the scope of the plaintiff's direct examination. In effect, each party put on its case-in-chief simultaneously with the others. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 117 & n.2 (App. 2011).

Mere form cannot be elevated over actual function. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 117 (App. 2011).

Once the parties have finished presenting all their evidence, the trial court's duty is to weigh the evidence and make its findings of fact and conclusions of law and to render judgment on whether the plaintiff has shown a right to relief. Thus, a Rule 41(b) motion to dismiss during closing arguments is pointless. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 117 (App. 2011).

By its terms, a statute enacted by the U.S. Congress that permits declarations in place of affidavits affects only U.S. rules and regulations. When the FSM Congress has not enacted an equivalent statute and no procedural rule has been promulgated to bring about the same result, an unsworn declaration, even when the declarant avers or asserts that it is made "under the penalty of perjury," is not the equivalent of an affidavit required by the FSM rules. This is not a matter of interpreting an FSM procedural rule similar to a U.S. rule, but is rather a matter of not applying a foreign statute that has no FSM counterpart. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 297, 300 & n.1 (Yap 2012).

If there is any conflict between Admiralty Rule F(1) and the limitation statute, then the statute must prevail since the Constitution permits the Chief Justice to promulgate procedural rules, which Congress may amend by statute. Since Congress has the authority to amend or create procedural rules by statute and the Chief Justice does not have the authority to amend Congressionally-enacted statutes, if the statute applies and the statute and the rule conflict, the statute must prevail. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 312-13 n.4 (Yap 2012).

When a final judgment is entered, temporary orders cease to be valid, subsisting orders. In general, a trial court's temporary orders issued during the pendency of a proceeding are superseded by the trial court's final order. Temporary orders are always subject to revision or repeal by the final judgment, even if not explicitly mentioned in that judgment. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 373-74 (App. 2012).

Under the Chuuk Eminent Domain statute, the applicable Rules of Civil Procedures for the Chuuk State Supreme Court govern the procedure for the condemnation of private lands under the power of eminent domain, except as otherwise provided in the statute. In re Lot No. 029-A-16, 18 FSM R. 422, 424 (Chk. S. Ct. Tr. 2012).

A state law requiring a lawsuit to contain a statement in a form approved by the Pohnpei Attorney General informing the state employee sued of his rights and responsibilities under Title 58, chapter 2 of the Pohnpei Code is a matter of procedure, and even when the rule of decision in a case before the FSM Supreme Court is governed by state law, procedural matters are governed by the FSM Rules of Civil Procedure and national statutes, rather than by state law. Dismissal will therefore not be required in a suit in the FSM Supreme Court when such a statement was not included. Perman v. Ehsa, 18 FSM R. 452, 454 (Pon. 2012).

The FSM Rules of Civil Procedure apply in *in rem* admiralty cases except to the extent they are inconsistent with the FSM Supplemental Rules for Certain Admiralty and Maritime Claims, in which case the supplemental rules govern. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 464 n.2 (Yap 2012).

The Kosrae Rules of Appellate Procedure govern procedure in the Kosrae State Court trial division when considering an appeal from the Kosrae Land Court. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 545 n.1 (App. 2013).

Although the court must first look to FSM sources of law, when an FSM court has not previously construed an FSM civil procedure rule which is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. Lee v. FSM, 18 FSM R. 558, 561 n.1 (Pon. 2013).

FSM civil procedure rules discourage litigation by ambush. Lee v. FSM, 18 FSM R. 558, 562 (Pon. 2013).

While Congress has the authority to amend rules by statute, the Chief Justice does not have the authority to amend statutes by creating rules. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 595 (Kos. 2013).

Although the court must first look to FSM sources of law, FSM Const. art. XI, § 11, when an FSM court has not previously construed an FSM civil procedure rule which is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 659 n.1 (Pon. 2013).

When there has been no trial yet, there can be no mistrial. Mori v. Hasiguchi, 19 FSM R. 222, 225 (Chk. 2013).

When a court in the FSM has not previously construed a civil procedure rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. In re Sanction of Sigrah, 19 FSM R. 305, 311 n.1 (App. 2014).

Under FSM Civil Rule 16, the court has the authority to hold pretrial conferences. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 551, 557 (Pon. 2014).

In deciding whether to stay a civil proceeding parallel to a criminal case, the decision maker should consider 1) the plaintiff's interest in proceeding expeditiously with the litigation or any particular aspect of it, and the potential prejudice to plaintiffs of a delay, 2) the burden which any particular aspect of the proceedings may impose on defendants; 3) the court's convenience in the management of its cases, and the efficient use of judicial resources; 4) the interests of persons not parties to the civil litigation; and 5) the public's interest in the pending civil and criminal litigation. Notably, the judicial economy factor in not duplicating the efforts in both the civil and criminal case is frequently used to justify a stay. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 627 (Pon. 2014).

When a civil matter and a criminal matter are inextricably interwoven, when the parties are the same; when both cases are based on the same alleged conduct; when both are alleged violations of the same FSM fisheries law; when the only distinction is that the civil action seeks civil penalties while the criminal action seeks criminal penalties; and when the defendants admitted to trying to use civil depositions to acquire discovery information, but that what they really seek is the fishery observer's report and not only is this report not privileged in the criminal matter but also must be disclosed under Criminal Rule 16, there is no reason why this particular discovery material should be stayed or withheld in the civil proceeding. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 628 (Pon. 2014).

Although the court must first look to FSM sources of law and circumstances rather than begin with a review of other courts' cases, when an FSM court has not previously construed an FSM Civil Procedure

Rule 56(b) which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. Fuji Enterprises v. Jacob, 20 FSM R. 121, 125 n.1 (Pon. 2015).

Although the court must look first to FSM sources of law rather than begin reviewing other courts' cases, when an FSM court has not previously construed an aspect of an FSM civil procedure rule that is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance. Pillias v. Saki Stores, 20 FSM R. 391, 395 n.1 (Chk. 2016).

Stare decisis is the doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same points of law arise again in litigation. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 514-15 (App. 2016).

Although the court must first look to FSM sources of law rather than begin with a review of other courts' cases, when an FSM court has not previously analyzed an aspect of an FSM procedural rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in applying the rule. Onanu Municipality v. Elimo, 20 FSM R. 535, 542 n.5 (Chk. 2016).

When the current matter is in the post-judgment phase and a separate civil action raises claims that the debt has been discharged, the court will defer those issues to be determined in that other civil action and deny the defendant's motion for court order declaring satisfaction of account. FSM Dev. Bank v. Carl, 20 FSM R. 592, 594 (Pon. 2016).

A proposition that it is mandatory that separate sections specifically entitled "Findings of Fact" and "Conclusions of Law" appear within an order, is misguided. Kosrae Civil Procedure Rule 52 plainly states that if an opinion or memorandum of decision is filed, it is sufficient if the findings of fact and conclusion of law appear therein. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 119 (App. 2017).

A presiding judge is under no obligation to reduce his findings and conclusions to writing, so long as he has stated the findings and conclusions orally in open court. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 119 (App. 2017).

Once the parties have finished presenting all their evidence, the trial court's duty is to weigh the evidence and make its findings of fact and conclusions of law and to render judgment on whether the plaintiff has shown a right to relief. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 119 (App. 2017).

Although the court must first look to FSM sources of law rather than begin with a review of other courts' cases, when an FSM court has not previously construed an FSM procedural rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. FSM Dev. Bank v. Salomon, 21 FSM R. 327, 329 n.1 (Pon. 2017).

A decree *nisi* is a court's decree that will become absolute unless the adversely affected party shows the court, within a specified time, why it should be set aside. Fuji Enterprises v. Jacob, 21 FSM R. 355, 360 n.4 (App. 2017).

When an FSM court has not previously construed an FSM procedural rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 451 n.2 (Pon. 2018).

Although the court must first look to FSM sources of law rather than start with a review of other courts' cases, an FSM court may look to U.S. sources for guidance in interpreting a civil procedure rule when it has not yet considered an aspect of an FSM rule that is identical or similar to the U.S. counterpart. Estate of Gallen v. Governor, 21 FSM R. 477, 483 n.3 (Pon. 2018).

An action alleging fraud or negligence or due process violation and in which the plaintiffs seek to regain

the registered title to a land parcel their predecessor once held and in which the defendants seek to retain the registered title in their predecessor's name so that, in the future, they will become the parcel's registered owners, is a dispute over the parcel's title and is thus a matter concerning the title of land and the interests therein, over which the Kosrae Land Court has original jurisdiction. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 578-79 (App. 2018).

In the interest of judicial economy, efficiency, and past precedent, the FSM Supreme Court can, in appropriate cases, request that parties submit a draft order for its consideration. The court may or may not, at its discretion, adopt the contents, or parts of the contents, of the draft order, in order to formulate a decision with a legal basis, based on legal reasoning. FSM Dev. Bank v. Carl, 21 FSM R. 640, 642 (Pon. 2018).

An order is not void simply because it was prepared by a litigant and signed by the court rather than drafted by the court itself. FSM Dev. Bank v. Carl, 21 FSM R. 640, 642 (Pon. 2018).

Although it must look first to FSM sources of law, when an FSM court has not previously construed an aspect of an FSM civil procedure rule that is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. Pacific Int'l, Inc. v. FSM, 21 FSM R. 662, 664 n.3 (Pon. 2018).

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if filed later before a court that could also take jurisdiction. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 12 (Pon. 2018).

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if filed later before a court that could also take jurisdiction. O'Sonis v. O'Sonis, 22 FSM R. 268, 270 (Chk. 2019).

In a civil case, the plaintiff has the burden of proving each element of the plaintiff's cause of action by a preponderance of the evidence, and if the plaintiff fails to prove any one element, judgment will be entered against the plaintiff. Pelep v. Lapaii, 22 FSM R. 482, 486 (Pon. 2020).

"Law of the case" refers to the principle that once issues are decided in a case, they will not be redetermined later in the same case. This is a policy relied on by courts out of concern for judicial economy and to avoid the confusion that would result if a court reversed its own decisions during the course of a case. In the absence of a statute, the phrase, "law of the case," as applied to the effect of previous orders on the later action of the court rendering them in the same case, merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit to their power. FSM v. Kuo Rong 113, 22 FSM R. 515, 521 (App. 2020).

Under the law of the case doctrine, unless corrected by an appellate tribunal, a legal decision made at one stage of a civil or criminal case constitutes the law of the case throughout the pendency of the litigation. Strictly speaking, the doctrine is not implicated for interlocutory orders because they remain open to trial court reconsideration, and do not constitute the law of the case. FSM v. Kuo Rong 113, 22 FSM R. 515, 521-22 (App. 2020).

– Admissions

A request for admission as to the genuineness of a letter, excludable as evidence under Kosrae Evidence Rule 408 because it relates to settlement negotiations, is reasonably calculated to lead to evidence which could be admissible, and an objecting party may not obtain a protective order pursuant to Kosrae Civil Rule 26 to avoid responding to the request. Nena v. Kosrae, 3 FSM R. 502, 507 (Kos. S. Ct. Tr. 1988).

Although the court may allow for an enlargement or a restriction of the time in which to respond to a request for admissions, a complete failure to respond within that allotted time automatically constitutes an

admission, without any need for the requesting party to move for a declaration by the court that the matters are deemed admitted. Leeruw v. Yap, 4 FSM R. 145, 148 (Yap 1989).

Once matters have been admitted through a failure to respond to a request for admissions, a motion by the responding party to file a late response to the request for admissions will be treated as a motion to withdraw and amend the admissions. Leeruw v. Yap, 4 FSM R. 145, 148 (Yap 1989).

One purpose of requests for admissions is to relieve the parties of having to prove facts which are not really in dispute. Leeruw v. Yap, 4 FSM R. 145, 149 (Yap 1989).

If a requesting party relies on admissions to its prejudice, it would be manifestly unjust to allow the responding party to amend its responses at a later time, but the sort of prejudice contemplated by the rule regards the difficulty the requesting party may have in proving the facts previously admitted, because of lack of time or unavailability of witnesses or evidence, not simply that the party who initially obtained the admission will now have to convince the fact finder of its truth. Leeruw v. Yap, 4 FSM R. 145, 149 (Yap 1989).

FSM Civil Rule 36, regarding requests for admissions, is intended to expedite discovery and trial, to simplify issues and make litigation more efficient. Leeruw v. Yap, 4 FSM R. 145, 149 (Yap 1989).

When a party who has admitted matters through a failure to respond to a request for admissions later moves to withdraw and amend its response, and the requesting party has not relied on the admissions to its detriment, the imposition of penalties other than conclusive admission is a sensible approach, as it both avoids binding a party to an untrue and unintended admission and yet helps insure respect for the importance of the rules of procedure and the need for the efficient administration of justice. Leeruw v. Yap, 4 FSM R. 145, 149-50 (Yap 1989).

FSM Civil Rule 36(b) permits a withdrawal of admissions, including admissions by omission, when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Pohnpei v. Kailis, 7 FSM R. 27, 28 (Pon. 1995).

When delay in filing answers to requests for admissions was not caused by bad faith and no prejudice in maintaining the action is caused the requesting party, the late filing may be allowed, under conditions, as a withdrawal or amendment of answers obtained by omission. Pohnpei v. Kailis, 7 FSM R. 27, 29 (Pon. 1995).

Admissions obtained through a failure to respond to requests for admissions may be used as the factual basis for summary judgment. Mailo v. Bae Fa Fishing Co., 7 FSM R. 83, 85 (Chk. 1995).

A court, on motion, may permit withdrawal or amendment of an admission when the presentation of the merits will be subserved thereby and the party who obtained the admission cannot satisfy the court that it will be prejudiced by the withdrawal or amendment. In such a circumstance the court may impose other sanctions. Mailo v. Bae Fa Fishing Co., 7 FSM R. 83, 85-86 (Chk. 1995).

Although a motion to file a late response to the requests for admissions is considered a motion to amend or withdraw, an untimely response to a summary judgment motion cannot be deemed a motion to withdraw or amend. Mailo v. Bae Fa Fishing Co., 7 FSM R. 83, 86 (Chk. 1995).

In principle there is no difference in treating a motion to allow late filing of admissions as a Rule 36(b) motion to withdraw or amend admissions and of treating the late filing itself as a Rule 36(b) motion. Eko v. Bank of Guam, 7 FSM R. 164, 165-66 (Chk. 1995).

Where the only prejudice to the defendant was the attorney's necessary expenses and in order to

permit a presentation of the case on the merits, a court may allow the plaintiff's late filing of answers to requests for admissions conditioned upon his deposit with the court of a sum equal to the expenses incurred. Eko v. Bank of Guam, 7 FSM R. 164, 166 (Chk. 1995).

A court may consider as evidence against pleader, in the action in which they are filed, a party's earlier admissions in its responsive pleadings even though it was later withdrawn or superseded by amended pleadings. A court may take judicial notice of them as part of the record. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 249 (Chk. 1995).

A defendant who fails to file a timely response to plaintiff's requests for admission, is deemed to have admitted the matter sought to be admitted. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 442, 445 (Pon. 1996).

Under Rule 36(a), if a party to whom requests for admission are directed fails to answer the requests within 30 days after service, the matter that is the subject of the requests is deemed admitted. It is irrelevant that the request sought admission of so-called ultimate facts. Rule 36(a) neither expressly nor implicitly excepts such facts from its requirements. Mathebei v. Ting Hong Oceanic Enterprises, 9 FSM R. 23, 25 (Yap 1999).

A party's requests to admit are deemed admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the requesting party a written answer or objection addressed to the matter. Harden v. Primo, 9 FSM R. 571, 573 (Pon. 2000).

When the sanction of deeming all the facts admitted as plaintiff urges in his motion for summary judgment is a severely harsh sanction for defendant's failure to respond to plaintiff's requests to admit, the court may order defendant to submit responses to plaintiff's requests to admit within 30 days, and if defendant fails to respond to plaintiff's requests to admit, or provides an inadequate response, the court may, upon plaintiff's proper motion, deem admitted all of the requested facts and also require defendant to pay plaintiff's attorney's fees in bringing an additional motion. Harden v. Primo, 9 FSM R. 571, 574 (Pon. 2000).

A court may order on its own motion that overdue responses not be deemed admissions of fact because the fashioning of remedies and sanctions for a party's failure to comply with discovery requirements is a matter within the court's discretion. Overdue responses to requests for admission are not customarily treated as having been admitted in the absence of a showing of actual prejudice to the propounding party combined with no showing of excusable neglect by the responding party. O'Sullivan v. Panuelo, 9 FSM R. 589, 598 (Pon. 2000).

When a defendant has not complied with all of the discovery requests as directed in a court order, the court will consider sanctions, including Civil Rule 37(b)(2) sanctions that designated facts will be taken to be established for the purposes of the action in accordance with the plaintiff's claim, and that defendant ought to be aware that deeming certain facts established is tantamount to entering a default judgment. AHPW, Inc. v. FSM, 10 FSM R. 507, 508 (Pon. 2002).

When requests for admission are irrelevant, improper, scandalous and inflammatory, they will be stricken from the record. Talley v. Talley, 10 FSM R. 570, 573 (Kos. S. Ct. Tr. 2002).

In answering requests for admission, it is proper, indeed required, for the party answering to admit facts which are already known to the requester if the answering party knows those facts to be true. That is the very purpose of requests for admission, to refine and reduce the number of disputed issues for trial. AHPW, Inc. v. FSM, 10 FSM R. 615, 617 (Pon. 2002).

An answer to a request for admission that responds in a cavalier, flip manner: "If such a fact is known

to AHPW why should AHPW waste its time to propound this particular question?" is unacceptable, and inimical both to the letter and spirit of Rule 36. AHPW, Inc. v. FSM, 10 FSM R. 615, 617 (Pon. 2002).

Rule 36 requires specificity, a detailed explanation when a truthful answer cannot be framed, good faith, and fairness. AHPW, Inc. v. FSM, 10 FSM R. 615, 617 (Pon. 2002).

A response which fails to admit or deny a proper request for admission does not comply with Rule 36(a)'s requirements if the answering party has not, in fact, made reasonable inquiry, or if information readily obtainable is sufficient to enable him to admit or deny the matter. AHPW, Inc. v. FSM, 10 FSM R. 615, 617 (Pon. 2002).

When a party has responded to requests for admission with evasive answers, the court may give that party one more chance and order it to answer the requests for admission in a manner that conforms with the letter and spirit of Rule 36, and order that if that party fails to comply with the order, the requests for admission will be deemed admitted. AHPW, Inc. v. FSM, 10 FSM R. 615, 617 (Pon. 2002).

Rule 37(b) provides that the court may impose sanctions based upon a party's failure to comply with a court order to compel, and, pursuant to Rules 36(a) and 37(b)(2)(A), the court may deem the facts alleged in a request for admission of facts as admitted for the purposes of the action. Tolenoa v. Timothy, 11 FSM R. 485, 486 (Kos. S. Ct. Tr. 2003).

When the requests for admission seek either facts about events on which the claim is based or facts concerning the authenticity of documents, the requests do not involve attorney work product and the plaintiff will answer the requests. Sigrah v. Microlife Plus, 13 FSM R. 375, 378 (Kos. 2005).

If a party fails to respond to another party's requests for admission by a court-ordered date, each request for admission will be deemed admitted by the party unless it calls for admission of a pure matter of law or asks for a legal conclusion. Mailo v. Chuuk, 13 FSM R. 462, 470-71 (Chk. 2005).

Any requests deemed admitted may be used only against the party deemed admitting it. This is because admissions obtained under Rule 36 may be offered in evidence, but are subject to all pertinent objections to admissibility that may be interposed. It is only when the admission is offered against the party that made it that it comes within the exception to the definition of hearsay as an admission of a party opponent. Mailo v. Chuuk, 13 FSM R. 462, 471 (Chk. 2005).

A party may serve upon any other party a written request for the admission of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to the statements or opinions of fact or of the application of law to fact and that each matter will be deemed admitted unless, within 30 days after service of the request, or within such other time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter. Stephen v. Chuuk, 13 FSM R. 529, 531 (Chk. 2005).

The court will order the defendant to respond to the plaintiff's requests for admissions by a certain date, and if it does not respond, all of those requests will be deemed admitted, except for any specific request that calls for a legal conclusion. A request for admission that calls for a legal conclusion is beyond the scope of Rule 36 because requests for admissions are not to be used to answer questions of law or to have the responding party ratify the legal conclusions the requestors attach to the case's operative facts. Stephen v. Chuuk, 13 FSM R. 529, 531 (Chk. 2005).

Rule 37(a) attorney fee awards do not apply to a failure to respond to a request for admissions, because the automatic admission from the failure to respond is a sufficient remedy for the requesting party, so when part of the motion to compel concerned the movant's request for admissions, the court will reduce the attorney fee award requested for the motion to compel discovery. Stephen v. Chuuk, 13 FSM R. 529, 532 (Chk. 2005).

When a defendant did not provide responses to the plaintiffs' requests for admissions, the requests should be deemed admitted and admissions obtained through such a failure to respond to requests for admissions may be used as the factual basis for summary judgment. Barker v. Chuuk, 16 FSM R. 537, 538-39 (Chk. S. Ct. Tr. 2009).

The late filing of responses to requests for admission is treated as a Rule 36(b) motion to withdraw or amend admissions. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 330 (Pon. 2011).

Under Rule 36(b), "the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits," and this test for withdrawal of admissions is more precisely tailored to Rule 36's general purpose than the test generally appropriate under Rule 6(b)(2) for enlargement of time after the period has expired, so that the admission that otherwise would result from the failure to make timely answer should be avoided when to do so will aid in the presentation of the action's merits and will not prejudice the requesting party. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 330 (Pon. 2011).

Since Rule 36's purpose is to expedite trial by removing uncontested issues, an admission in the case of an untimely reply should not be automatic. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 330 (Pon. 2011).

Allowing withdrawal of admissions made by the defendants' untimely response would facilitate the normal, orderly presentation of the case on its merits, which is precisely the objective of Rule 36(b); while denying withdrawal would result in a final judgment for plaintiff without a hearing as to the merits. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 331 (Pon. 2011).

When the movant has not shown that a nineteen-day delay in responding to his requests for admission would prejudice him in any manner and when allowing the withdrawal of admissions made by an untimely response would facilitate the normal, orderly presentation of the case on its merits, the requests for admission deemed admitted because the responses were not filed by September 30, 2010, would be deemed withdrawn and amended by the October 19, 2010 response. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 331 (Pon. 2011).

Under the rules, the matter is admitted unless, within 30 days after service of the request for admission, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney. Thus, a party intending to admit all of a set of requests for admission directed to it, does not have to respond to those requests because its non-response will be deemed an admission. Eot Municipality v. Elimo, 20 FSM R. 482, 487 (Chk. 2016).

If a party to whom requests for admission are directed does not answer the requests within 30 days after service, the matter that is the subject of the requests is deemed admitted, and it is irrelevant if the request sought admission of so-called ultimate facts since Rule 36(a) neither expressly nor implicitly excepts such facts from its requirements. Eot Municipality v. Elimo, 20 FSM R. 482, 487 (Chk. 2016).

Any matter admitted under Rule 36 is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Eot Municipality v. Elimo, 20 FSM R. 482, 487 (Chk. 2016).

– Affidavits

An affidavit unsupported by factual detail is not sufficient to cast doubt on the proposition that a project manager of a joint venture, who is in charge of all activities of a corporate member of the joint venture within a state, is a managing or general agent of that corporation. Luda v. Maeda Road Constr. Co., 2 FSM R.

107, 110 (Pon. 1985).

There are varying degrees of familial relationships and Micronesian legislative bodies have consistently instructed the courts that not every family relationship requires disqualification. An affidavit, stating that an administrative decision-maker is a relative of a party, but not saying whether he is a near relative and failing to set out the degree of relationship, is insufficient to constitute a claim of statutory violation. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 92, 100 (Kos. S. Ct. Tr. 1987).

An affidavit which merely sets out conclusions or beliefs of the affiant, but shows no specific factual basis therefor, is inadequate. Ittu v. Charley, 3 FSM R. 188, 193 (Kos. S. Ct. Tr. 1987).

Hearsay is not admissible in a hearing or trial. Hearsay is an out-of-court statement offered as evidence to prove the truth of the matter asserted. A statement is an oral or written assertion. An affidavit is hearsay which is inadmissible unless allowed by an exception to the hearsay rule. In re Disqualification of Justice, 7 FSM R. 278, 279 (Chk. S. Ct. Tr. 1995).

A court may discount inherently unreliable evidence. The more levels of hearsay or the more hearsay statements contained within an affidavit, which is hearsay itself, the more unreliable the evidence is. FSM v. Yue Yuan Yu No. 708, 7 FSM R. 300, 304 (Kos. 1995).

An affidavit may be stricken when it does not satisfactorily explain how the affiant has personal knowledge of the facts set forth therein. Chuuk v. Secretary of Finance, 7 FSM R. 563, 570 n.8 (Pon. 1996).

In summary judgment motion, supporting and opposing affidavits must be made on personal knowledge, set forth such facts as would be admissible in evidence, and show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of his pleading, but must respond by affidavits setting forth specific facts showing that there is a genuine issue for trial. Ueda v. Stephen, 9 FSM R. 195, 197 (Chk. S. Ct. Tr. 1999).

A plaintiff has not met the necessary burden of proof when the affidavit offered by plaintiff to prove her claim is highly suspect in that the plaintiff's father, whom she claims gave the property to her, did not appear in person before the Clerk of Court when he signed the document and the plaintiff presented conflicting evidence in court at which place or where the document was signed. Lukas v. Stanley, 10 FSM R. 365, 366 (Chk. S. Ct. Tr. 2001).

For a summary judgment motion, supporting and opposing affidavits must be made on personal knowledge, and must set forth such facts as would be admissible in evidence. An adverse party may not rest upon the mere allegations or denials of his pleading, but must set forth by affidavit or otherwise, specific facts showing that there is a genuine issue for trial. The facts are viewed in the light most favorable to the nonmovant. Skilling v. Kosrae, 10 FSM R. 448, 450 (Kos. S. Ct. Tr. 2001).

A notary only confirms that the person appeared before him or her, was identified by the notary, and signed the affidavit (or other document) in the presence of the notary. Identity is confirmed by personal knowledge or by appropriate documentation. The identity and signature of the person signing the affidavit are verified by the notary public, and so noted on the document. In re Phillip, 11 FSM R. 243, 245 (Kos. S. Ct. Tr. 2002).

When defendants' counsel supplied his own opinion that the plaintiff no longer exists based on a review of documents that were prepared by one person and translated by a second person, neither of whom supplied affidavits signifying that the statements were sworn and based on personal knowledge, defendants' counsel's affidavit clearly is not based on his personal knowledge and cannot be considered competent evidence for purposes of opposing plaintiff's summary judgment motion or to support defendants' cross-motion for summary judgment and motion to dismiss. And when the plaintiff submits

affidavits of its bankruptcy trustee and its Guam representative, which are based on these individuals' personal knowledge and clearly establish that it was not liquidated, the defendants have not provided competent evidence to make the fact of the plaintiff's corporate status a material dispute, and the defendants' summary judgment motion must be denied. Goyo Corp. v. Christian, 12 FSM R. 140, 149 (Pon. 2003).

A notarized affidavit may be authenticated without the affiant's testimony, as it is presumed to be authentic so long as it is acknowledged in the manner provided for by law. A clerk of court's manner of acknowledging an affidavit is for the affiant to swear to it under oath in the clerk's presence. Peter v. Jessy, 17 FSM R. 163, 173-74 (Chk. S. Ct. App. 2010).

Before a notary can apply the notary seal to an affidavit, the notary must confirm that the affiant has personally appeared to sign the affidavit before the notary, the affiant must be identified at that time by the notary, and the affiant must sign the affidavit in the notary's presence. The notary confirms the affiant's identity by personal knowledge or by reviewing appropriate documentation. When applying the notary seal, the notary notes on the affidavit that the affiant's identity and signature have been verified. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

The act of notarizing a document is in itself a verification of the identity and signature of the person who signed the document. If an affiant is not present, however, the notary cannot make the necessary verifications and should under no circumstances notarize the document, and is subject to liability for misconduct of a notary public. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

When the affidavit was not acknowledged in the manner provided for by law since the affiant was not present at the time that the affidavit was acknowledged, the trial court's determination that the presumption of self-authentication had been rebutted and that the affidavit was not otherwise authenticated was proper. There was therefore no abuse of discretion in the trial court's denial of the affidavit's admission into evidence for the reason that it was not authenticated. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

Even if an affidavit were admitted, the proponents have the burden to come forward with a preponderance of credible evidence to establish the document's veracity because notarization does not conclusively establish the truth of the statements made in the document, but only the identity and signature of the person who signed the document. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

The plaintiffs' burden of proof to show the truth of the statements in a notarized affidavit is not met when the purported affiant did not appear in person to have the document notarized and there is no other evidence regarding the circumstances of its signing. Without even testimony to authenticate her signature, let alone the circumstances surrounding her signature, the trial court, as finder of fact, had no way to determine whether the purported affiant fully understood and freely signed the document, or whether she signed it under coercion, mistake, or as a result of fraud, or misunderstanding, let alone whether it was indeed her who signed her name to it. Thus, the affidavit, even if it had been admitted into evidence, would rightly be accorded little weight since significant questions were raised regarding its authenticity, reliability, and veracity. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

Under FSM Civil Rule 56(e), supporting and opposing affidavits must be made on personal knowledge, must set forth such facts as would be admissible in evidence, and must show affirmatively that the affiant is competent to testify to the matters stated therein. The first requisite is that the information the affidavits contain (as opposed to the affidavits themselves) would be admissible at trial. Thus, ex parte affidavits, which are not admissible at trial, are appropriate on a summary-judgment hearing to the extent they contain admissible information. FSM v. GMP Hawaii, Inc., 17 FSM R. 192, 193-94 (Pon. 2010).

The function of summary-judgment motion affidavits is not to resolve disputed factual issues but only to determine if any factual issues are in dispute. It is the policy of rule 56(e) to allow the affidavit to contain

evidentiary matter, which if the affiant were in court and testified on the stand, would be admissible as part of his testimony. FSM v. GMP Hawaii, Inc., 17 FSM R. 192, 194 (Pon. 2010).

There is no requirement that a summary judgment affiant submit to a deposition in order for his affidavit to be properly before the court for the purpose of the summary judgment motion. There is also no requirement that the affiant later testify at trial or his summary judgment affidavit will retroactively be stricken if he is unable to. Therefore affidavits filed in already-decided motions or in a pending motion will not be stricken from the record regardless of whether affiant completes his deposition. FSM v. GMP Hawaii, Inc., 17 FSM R. 192, 194 (Pon. 2010).

Although affidavits are a common form of evidentiary support for factual contentions, no FSM case law requires that evidentiary support take that form in particular and Rule 6, which addresses general issues of timing in motion practice, uses the word "when" in describing situations where a motion is supported or opposed by affidavit. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 224 (Kos. 2010).

An affidavit opposing summary judgment must be made on personal knowledge and when it is not it is not competent evidence and cannot rebut a prima facie showing that the movant is entitled to summary judgment. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 582 (Pon. 2011).

To the extent that a deponent's later affidavit contradicts his deposition testimony, it cannot be used to create factual issues to defeat summary judgment because a party cannot create a triable issue in opposition to summary judgment simply by contradicting his deposition testimony with a subsequent affidavit. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 583 (Pon. 2011).

By its terms, a statute enacted by the U.S. Congress that permits declarations in place of affidavits affects only U.S. rules and regulations. When the FSM Congress has not enacted an equivalent statute and no procedural rule has been promulgated to bring about the same result, an unsworn declaration, even when the declarant avers or asserts that it is made "under the penalty of perjury," is not the equivalent of an affidavit required by the FSM rules. This is not a matter of interpreting an FSM procedural rule similar to a U.S. rule, but is rather a matter of not applying a foreign statute that has no FSM counterpart. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 297, 300 & n.1 (Yap 2012).

An affidavit, not introduced at trial and which the defendants never had the opportunity to address or to cross-examine a witness concerning its contents, will be stricken as evidence since the opposing party cannot properly examine or counter evidence offered after trial and since the burden is on the party offering the evidence to demonstrate good cause why the evidence should be admitted. George v. Palsis, 20 FSM R. 111, 114 (Kos. 2015).

Just because an affidavit was filed while the court was considering cross motions for summary judgment does not mean that it is automatically admitted into evidence at the later trial. To be evidence that the court can consider, the affidavit should be offered at trial in the usual manner. Then it might be admitted in the usual manner, or it might be objected to and the objection sustained, or the affiant himself might instead be called to testify. George v. Palsis, 20 FSM R. 111, 114 (Kos. 2015).

A statement that is unsigned and not notarized does not constitute an affidavit. George v. Palsis, 20 FSM R. 157, 159 (Kos. 2015).

An affidavit must be made on personal knowledge and when it is not it is not competent evidence. George v. Palsis, 20 FSM R. 157, 159 (Kos. 2015).

In the FSM, a "declaration under the penalty of perjury" is not the equivalent of an affidavit as it would be in the United States where a statute makes it so. George v. Palsis, 20 FSM R. 174, 177 (Kos. 2015).

Since, by its terms, a statute enacted by the U.S. Congress that permits declarations in place of

affidavits affects only U.S. rules and regulations and since the FSM Congress has not enacted an equivalent statute and no procedural rule has been promulgated to bring about the same result, an unsworn declaration, even when the declarant avers or asserts that it is made "under the penalty of perjury," is not the equivalent of an affidavit required by the FSM rules. George v. Palsis, 20 FSM R. 174, 177 (Kos. 2015).

In the FSM, an unsworn declaration, even when the declarant avers or asserts that it is made "under the penalty of perjury," is not the equivalent of an affidavit required by the rules. This is not a matter of interpreting a procedural rule similar to a U.S. rule, but is rather a matter of not applying a foreign statute that has no FSM counterpart. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 318, 322 (Yap 2017).

When a movant has provided an affidavit verifying an attached payment history and no contrary evidence is provided, the court normally would accept this evidence as an accurate account of what was owed if the affidavit and the ledger sheet were regular on their face, but the court will not if it is apparent that the numbers do not add up. FSM Dev. Bank v. Carl, 22 FSM R. 365, 376 (Pon. 2019).

– Class Actions

Rule 23(b)(2) certification is improper when the case is primarily one for money damages. Rule 23(b)(2) class actions do not extend to cases in which the appropriate final relief relates exclusively or predominately to money damages, but if the predominant purpose of the suit is injunctive the fact that a claim for damages is included does not preclude certification under Rule 23(b)(2). Graham v. FSM, 7 FSM R. 529, 531 (Chk. 1996).

A party invoking Rule 23 has the burden of showing that all four prerequisites – numerosity, commonality, typicality, and adequacy of representation – to utilizing the class action procedure have been satisfied. A class action can then be maintained only if the court finds that questions of law or fact that pertain to the class members predominate over those questions affecting only individual members, and class action is superior to other available methods for fair and efficient adjudication of controversy. Lavides v. Weilbacher, 7 FSM R. 591, 593 (Pon. 1996).

Courts are accorded broad discretion in determining whether a suit should proceed as a class action. Lavides v. Weilbacher, 7 FSM R. 591, 594 (Pon. 1996).

Parties invoking Rule 23 must show that the four prerequisites – numerosity, commonality, typicality, and adequacy of representation – for a class action have been satisfied. A class action may then be maintained only if the court finds that questions of law or fact that pertain to the class members predominate over those questions affecting only individual members and a class action is superior to other available methods for fair and efficient adjudication of the case. Saret v. Chuuk, 10 FSM R. 320, 321 (Chk. 2001).

The plaintiffs bear the burden of showing that all the requirements for a class action have been met. Under Rule 23, all class actions must satisfy all four prerequisites in section (a), and any one of the three subsections in section (b). Thus parties invoking Rule 23 must show that the section (a) prerequisites – numerosity, commonality, typicality, and adequacy of representation – for a class action have been satisfied, and then a subsection (b)(3) class action can be maintained only if the court finds that the class members' common questions of law or fact predominate and that a class action is superior to other methods of adjudication. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 196 (Yap 2003).

A class action is superior to other available methods when no realistic alternative exists. The superiority requirement does not require that all issues be common to all parties, merely that resolution of the common questions affect all or a substantial number of the class members. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 198 (Yap 2003).

Courts are accorded broad discretion in determining whether a suit should proceed as a class action, and will not be overruled absent abuse of discretion. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 200 (Yap 2003).

The plaintiffs bear the burden of showing that all the requirements for a class action have been met. Under Rule 23, all class actions must satisfy all four prerequisites in section (a), and any one of the three subsections in section (b). People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 613, 616 (Yap 2004).

Parties invoking Rule 23 must show that all the section (a) requirements – numerosity, commonality, typicality, and adequacy of representation – for a class action have been satisfied. These are prerequisites to certification, and the failure to meet any one of them precludes class certification. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 613, 616 (Yap 2004).

A Rule 23(b)(3) class action can be maintained only if the court finds that the class members' common questions of law or fact predominate and that a class action is superior to other methods of adjudication. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 613, 616 (Yap 2004).

If the court decides that the class suggested or described in the complaint does not meet the minimum standards of definiteness, the trial court has the discretion to limit or redefine the class in an appropriate manner to bring the action within Rule 23. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 613, 618 (Yap 2004).

Although the court must first look to FSM sources of law rather than begin with a review of other courts' cases, when the court has not previously construed an FSM civil procedure rule which is identical or similar to a U.S. rule, it may look to U.S. sources for guidance in interpreting the rule. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 613, 618 n.2 (Yap 2004).

Courts are accorded broad discretion in determining whether a suit should proceed as a class action, and will not be overruled absent abuse of discretion. Rule 23 is to be liberally construed so that in doubtful cases, a court should decide in favor of a class action. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 613, 618 (Yap 2004).

Should an order defining and certifying a class action later prove inadequate, the order may be altered or amended before the decision on the merits. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 613, 618 (Yap 2004).

If the court decides that the class suggested or described in the complaint does not meet the minimum standards of definiteness, the trial court has the discretion to limit or redefine the class in an appropriate manner to bring the action within Rule 23. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 415 n.1 (Yap 2006).

When the plaintiffs "own" the natural resources through the *tabinaw*, the plaintiffs' exclusive rights to use and exploit the marine resources of the area affected by a grounding and subsequent oil spill give them standing to maintain a class action with respect to the issues at trial – damages to the marine resources from the grounding and oil spill. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 415 (Yap 2006).

Causation and damages can appropriately be proven on a class basis when the basis for each resident's claim is the same: a shared traditional ownership of the right to use the marine natural resources appertaining to the municipalities of which each is resident and each class member is seeking to recover for a trespass or nuisance injury to their shared use right interest and the type of injury is common to all class members, such as inability to use or consume marine resources from the inner lagoon because of the necessary government ban on these and injury to particular resources because of the grounding and

oil spill, *i.e.*, the reef and mangrove areas. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 417 (Yap 2006).

A class action fee award should not be based solely on a percentage of the recovery, since the court should consider several other factors in order to decide what is an appropriate fee. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 64 (Yap 2007).

When an order awarded attorneys' fees on the private attorney general theory and those fees are added to the judgment to be borne by the defendants, the issue of whether the fee award under the private attorney general theory will also stand as the fee award to plaintiffs' counsel in a final distribution is an issue that is not now before the court and will not be before the court until a proposal for a final distribution is before the court. Until then, anything the court might say would be in the nature of an advisory opinion, and the court does not have the authority to issue advisory opinions. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 133, 134-35 (Yap 2007).

The plaintiffs bear the burden of showing that all the requirements for a class action have been met. Under Rule 23, all class actions must satisfy all four prerequisites in subsection (a) – numerosity, commonality, typicality, and adequacy of representation – and any one of the three subsections in subsection (b). The failure to meet any one of the prerequisites precludes class certification. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 156-57 (Yap 2007).

A subsection (b)(3) class action can be maintained only if the court finds that the class members' common questions of law or fact predominate and that a class action is superior to other methods of adjudication. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 157 (Yap 2007).

If the trial court decides that the class suggested or described in the complaint does not meet the minimum standards of definiteness, the court has the discretion to limit or redefine the class in an appropriate manner to bring the action within Rule 23. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 157, 161 (Yap 2007).

Since a *tabinaw* member can only exploit marine resources in the marine area that appertains to his *tabinaw*, the court can and will redefine the class to include only those residents whose *tabinaw* membership gives them exclusive exploitation or use rights in the affected reef area, regardless of whether the state is the ultimate owner of the reef. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 157 (Yap 2007).

Although the court must first look to FSM sources of law rather than start with a review of other courts' cases, when the court has not previously construed certain aspects of FSM Civil Procedure Rule 23 which is similar to U.S. Federal Rule of Civil Procedure 23, it may look to U.S. sources for guidance in interpreting the rule. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 158 n.1 (Yap 2007).

An allegation that the named plaintiffs are the three highest chiefs in Weloy is sufficient to allege that they are Weloy residents. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 158 (Yap 2007).

Since Rule 23 is to be liberally construed so that in doubtful cases, a court should decide in favor of a class action, the court can conditionally certify a class subject to the plaintiffs providing further information about the potential size of the plaintiff class (numerosity) who claim rights in the area of the reef affected by the alleged grounding and on whether the named plaintiffs are adequate class representatives with typical claims or to name new class representative(s). People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 161 (Yap 2007).

Since each class must have a class representative of its own and must be represented by someone who claims the same injuries as the absent class members, a second class cannot be certified with the same person as class representative as the first class. People of Gilman ex rel. Tamagken v. M/V

Nationwide I, 16 FSM R. 34, 37 (Yap 2008).

The plaintiffs bear the burden of showing that all the requirements for a class action have been met. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 38 (Yap 2008).

Under Civil Procedure Rule 23, all class actions must satisfy all four prerequisites in subsection (a) – numerosity, commonality, typicality, and adequacy of representation – and the requirements of any one of the three parts in subsection (b). The failure to meet any one of these prerequisites will preclude class certification. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 38 (Yap 2008).

In a lawsuit for damage to the reef in a Yap municipality, a plaintiff class of all municipal residents is not sufficiently definite when the rights to exploit the reef are vested in only certain *tabinaw* and the *tabinaw*'s members. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 38-39 (Yap 2008).

When a trial court decides that the class suggested or described in the complaint does not meet the minimum standards of definiteness, the court has the discretion to limit or redefine the class in an appropriate manner to bring the action within Rule 23. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 39, 41 (Yap 2008).

The mere fact that there is someone outside the class who believes that they also have an interest in the damaged marine space would not preclude an award of damages to the class plaintiffs, provided the class could demonstrate that they had such an interest. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 60 (App. 2008).

When the plaintiff class was certified to include only those people who "owned" the natural resources and who were unable to use those resources as a result of the oil spill and when the services provided by the chiefs, by contrast, are not a natural resources, much less a resource that is "owned"; when the chiefs are not even compensated for their services; and when no evidence demonstrated that anyone was unable to use the chiefs' services while their attention was purportedly diverted due to the oil spill, the trial court's refusal to issue a separate award of damages to the plaintiff class for the "diverted services" of the Yap chiefs, who were purportedly drawn away from their traditional duties to tend to the maritime mishap, is not error. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 61-62 (App. 2008).

While the lodestar method, which multiples the number of attorney-work hours reasonably expended by an hourly rate appropriate for the FSM and the lawyer's experience, is the proper method in statutory (or in contractual) fee-shifting cases, the percentage-of-recovery method is generally used in common fund cases on the theory that class members would be unjustly enriched if they did not adequately compensate the counsel responsible for generating the fund, although it is within a trial court's discretion to use the lodestar instead of the percentage-of-recovery method to calculate attorney's fees in a common fund case. When the percentage-of-recovery method is used, the court must specify the percentage it has utilized in determining the fee award. There is no set standard, however, for determining a reasonable percentage. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 203-04 (Yap 2010).

Although courts are reluctant to disturb contingent fee arrangements freely entered into by knowledgeable and competent parties, an attorney's contingent fee must still be reasonable or the court may reduce it. This is especially true when the contingent fee sought is in a class action. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 204 (Yap 2010).

As a general rule, as the size of a fund increases, the appropriate percentage to be awarded to counsel decreases although sometimes the increase in the recovery is merely due to the size of the class and has no direct relationship to counsel's efforts. And a fund size may be so large as to require the court to decrease the percentage award. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 205 (Yap 2010).

Courts generally use lodestar calculations to "cross-check" percentage-of-recovery fee awards.

People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206 (Yap 2010).

Class action counsel in common fund cases are entitled to reimbursement for expenses adequately documented and reasonably and appropriately incurred in the prosecution of the class action. The litigation expenses that may be allowed in such cases are thus more extensive than the costs routinely taxed and awarded to prevailing parties under Rule 54(d). People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206 (Yap 2010).

The $200 for service of a writ of attachment and levy; the $100 for Yapese translation of the class notices; and the $238.75 for the required publication of legal notice are expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of a class action and are expenses which would have been taxable as Rule 54(d) costs if such costs had been taxed separately. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206 (Yap 2010).

The $80.50 listed as purchases of beer, bottled water, and the like from a Yap hotel mini-bar; the $2.95 for DVD rental; $34 listed as "no receipts (investigator's beer)" are disallowed since they are not expenses reasonably and appropriately incurred in the prosecution of the class action. The $16.95 listed as breakfast and lunch "no receipts" is disallowed since it is not adequately documented. The $111.91 for groceries purchased in a Guam supermarket is unexplained and therefore disallowed. The $408.80 in charges for internet access from a Yap hotel, even if used for occasional legal research or case-related e-mail, are excessive and therefore disallowed. The $620.50 claim for "expenses in the form of legal research subscription charges, and long distance phone charges" is undocumented and therefore disallowed and "legal research subscription," although since it is undocumented the court cannot be certain, appears that it may properly be part of overhead and not case specific. Also undocumented, and therefore disallowed, is $521.25 in photocopying and postage fees for filing and service. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206 (Yap 2010).

Expenses to travel to the case's venue have usually been allowed as costs when there has been a showing that there were no local attorneys or law firm available. This is a sound principle which should also be followed in awarding class action expenses. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206-07 (Yap 2010).

The moving plaintiffs bear the burden of showing that all the requirements for a class action have been met. Under Civil Procedure Rule 23, all class actions must satisfy all four prerequisites in subsection (a) – numerosity, commonality, typicality, and adequacy of representation – and any one of the three subsections in subsection (b). The failure to meet any one of these prerequisites precludes class certification. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 266 (Yap 2012).

A subsection (b)(3) class action can be maintained only if the court finds that the class members' common questions of law or fact predominate and that a class action is superior to other methods of adjudication. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 266 (Yap 2012).

Class certification must take place as soon as practicable after the commencement of an action brought as a class action, and the court should make its class determination before turning to the case's merits. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 266 (Yap 2012).

When certain factual disputes may have some bearing on the matter's ultimate resolution on the merits, but they do not appear to have any bearing on whether the plaintiffs can be certified as a class, the court will disregard these factual disputes for the purpose of the pending class certification motion. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 267 (Yap 2012).

Tabinaw are a salient social feature of the main island of Yap, but may not be in Yap's outer islands or on Eauripik. Thus, the failure to mention *tabinaw* membership in the plaintiffs' proposed class definition

may not make the class designation indefinite. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 267 (Yap 2012).

The court can conditionally find that the typicality and adequacy prerequisites have been met, subject to later evidence that either confirms that or negates that. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 268 (Yap 2012).

A Rule 23(b)(3) class action can be maintained only if the court finds that the class members' common questions of law or fact predominate and that a class action is superior to other methods of adjudication. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 269 (Yap 2012).

For a case to proceed under Rule 23(b)(3), the court must find that the questions in common to the class predominate over those affecting only individual class members. In determining whether the predominance standard is met, courts focus on the issue of liability. If the liability issue is common to the class, common questions are held to predominate over individual ones. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 269 (Yap 2012).

When the liability issue is common to the class because the liability to the plaintiffs is based on the common events related to the grounding of a fishing vessel on the atoll's reef and the subsequent attempted salvage of the vessel, a class action is superior to any other method of adjudication because it is difficult to see how the action could be maintained and adjudicated any way other than as a class action. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 269 (Yap 2012).

Rule 23 is to be liberally construed so that in doubtful cases, a court should decide in favor of a class action, and, if an order defining and certifying a class action later proves inadequate, the court may alter or amend the order before the decision on the merits. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 269 (Yap 2012).

If a later submission affects the accuracy of the class definition, the court has the discretion to limit or redefine the class in an appropriate manner to bring the action within Rule 23. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 269 (Yap 2012).

Since a plaintiff class is analogous to a corporate body and a class representative is analogous to a corporation's officer or attorney and with due deference to the Constitution's Judicial Guidance Clause and the FSM's geographical configuration, a class representative's verification of the complaint was sufficient compliance with Supplemental Rule C's requirement that the in rem complaint be verified even though he was not present when the incident occurred. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 57 (Yap 2013).

While the court must first look to FSM sources of law rather than start with a review of other courts' cases, when the court has not previously construed certain aspects of FSM Civil Procedure Rule 23 which is similar to U.S. Federal Rule of Civil Procedure 23, it may look to U.S. sources for guidance in interpreting the rule. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 231 n.1 (Yap 2013).

– Class Actions – Adequacy

An action brought by the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. People of Satawal ex rel. Ramoloilug v. Mina Maru No. 3, 10 FSM R. 337, 338 (Yap 2001).

Because court decisions are mandated to be consistent with the social configuration of Micronesia, persons holding traditional leadership positions have been named representatives in class actions in the

State of Yap. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 199 (Yap 2003).

To satisfy constitutional due process concerns, absent class members must be afforded adequate representation before entry of a judgment which binds them. Resolution of two questions determines legal adequacy: 1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and 2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class? The second part of this question may also be stated in the affirmative as that it must appear that the class representatives will vigorously prosecute the interests of the class through qualified counsel. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 199 (Yap 2003).

When no conflicts of interest have been brought to the court's attention and the court has already determined that the named plaintiffs are class members who share the other members' interests in an oil spill case and when any doubts the court would have had concerning counsel's qualifications and resources to vigorously pursue the matter were dispelled by the plaintiffs' counsel's recent association with a certified proctor in admiralty and plaintiff's counsel in other oil spill cases including the well-known *Exxon Valdez* spill, the plaintiffs have satisfied the adequacy of representation prerequisite. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 199-200 (Yap 2003).

When all the named representatives are members of one class they cannot be named class representatives of a second class. Certification of the second class must thus be denied. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 200 (Yap 2003).

When the chiefs have a claim that is not in common with the other class members or a claim within the class claims as the class was certified but is a very different claim, if this claim were permitted, the chiefs would have to pursue it outside the certified class, either as a separate class or individually. Either way, they would then have to be removed as class representatives of, and membership in, the class certified in this action and some other person(s), who could adequately protect the class interests, would then have to be named as class representative(s) and the chiefs would then not be permitted to participate in, or receive, or share any of the damages awarded to the certified class. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 419 (Yap 2006).

Since each class must have a class representative of its own and must be represented by someone who claims the same injuries as the absent class members, and since a class cannot be certified if the same person is the representative of two different classes, the court will consider certifying only one class when all three named plaintiffs are alleged to represent the same class. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 156 (Yap 2007).

A disparity in the amount of damages claimed by the class representative and other class members will not defeat certification. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 159 (Yap 2007).

If a named plaintiff is a member of, or chief of any of the one or more *tabinaw* that may claim the allegedly affected reef, that named plaintiff is an adequate class representative and his claims are typical of the class claims, but each named plaintiff must qualify as a class representative on his own merits and does not automatically qualify because another named plaintiff has. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 159 & n.3 (Yap 2007).

Being a recognized community leader does not prevent a person from being an adequate class representative. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 159 (Yap 2007).

If the chiefs named as plaintiffs are not qualified, some other chief(s) who can satisfy the typicality and adequacy requirement may need to appear as class representative(s). People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 159 (Yap 2007).

Trial is too late for the plaintiffs to prove that the named plaintiffs' ability to be class representatives. Class certification should take place much earlier in the process than that. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 159 (Yap 2007).

The prerequisite that the named plaintiff will fairly and adequately protect the interests of the class is met when the representative shares, without conflict, the interests of the unnamed class members and the court is assured that the representative will vigorously prosecute the rights of the class through qualified counsel. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 159 (Yap 2007).

Since the court may make a class certification order conditional, the court will conditionally find that the named plaintiffs are adequate class representatives with typical claims, subject to the submission of later satisfactory evidence for each named plaintiff or to name new class representative(s). People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 159 (Yap 2007).

Each named plaintiff must qualify as a class representative on his own merits and will not automatically qualify because another named plaintiff has. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 39-40 (Yap 2008).

The prerequisite that a named plaintiff will fairly and adequately protect the interests of the class is met when the representative shares, without conflict, the interests of the unnamed class members and the court is assured that the representative will vigorously prosecute the rights of the class through qualified counsel. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 40 (Yap 2008).

When a named plaintiff is a member of, or a chief of, any of the one or more *tabinaw* that claim rights to the allegedly affected reef, that named plaintiff is an adequate class representative and his claims are typical of the class claims. But if only two named plaintiffs are shown to be *tabinaw* members and there is no averment that a third named plaintiff is a member of an affected *tabinaw*, the third named plaintiff will be dismissed as a named plaintiff unless satisfactory evidence that the third named plaintiff is an adequate class representative with typical class claims is submitted. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 40 (Yap 2008).

The court is assured that class counsel will vigorously pursue the rights of the class when he has done so in several other maritime tort class actions, and he appears to be otherwise qualified. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 40 (Yap 2008).

Since court decisions are mandated to be consistent with the social configuration of Micronesia, persons holding traditional leadership positions have been confirmed as adequate named representatives in class actions in Yap, and the court is assured that class counsel will vigorously pursue the rights of the class when he has done so in several other maritime tort class actions, and he appears to be qualified. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 268 (Yap 2012).

The prerequisite that a named plaintiff will fairly and adequately protect the interests of the class is met when the class representative shares, without conflict, the interests of the unnamed class members and the court is assured that the representative will vigorously prosecute the rights of the class through qualified counsel. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 268 (Yap 2012).

If the chiefs named as plaintiff class representatives turn out not to be qualified to represent the class, some other chief(s) will then need to be named as class representatives. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 268 (Yap 2012).

If chiefs were considered state officers and thus a state authority and were permitted to espouse the Receiver of Wreck's claims, then they would have claims that they do not share with the other class members and since a person whose claims are not common to the class would have to be removed as class representatives of, and membership in, the certified class and some other person(s), who could

adequately protect the class interests, would have to be named as class representative(s), the chiefs would then not be permitted to participate in, or receive, or share any of the damages awarded to the certified class. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 232 (Yap 2013).

– Class Actions – Commonality

For a class action to be certified under subsection (b)(3), there must not only be questions of law or fact common to the class, but the court must find that the question of law or fact common to the members of the class predominate over any questions affecting only individual members and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 197 (Yap 2003).

Both the commonality prerequisite and the predominance requirements for a class action are met when the plaintiffs seeking class certification do not allege any individual personal injuries and all of the damages sought are economic damages, and when the liability question is common and central to all claimants and the causation and damages questions are also common to the class members because all class members' damages are based on their alleged loss of their subsistence use of the natural marine resources. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 198 (Yap 2003).

To meet the predominance requirement, it is not enough that the claims arise out of a common nucleus of operative fact. Instead the common questions must be central to all claims. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 198 (Yap 2003).

For a case to proceed under Rule 23(b)(3), the court must find that the questions in common to the class predominate over those affecting only individual class members. In determining whether the predominance standard is met, courts focus on the issue of liability. If the liability issue is common to the class, common questions are held to predominate over individual ones. But if there is present a likelihood that significant questions not only of damages but of liability and defenses to liability will arise affecting only individual members of the class in different ways, class action treatment is inappropriate. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 160 (Yap 2007).

Common issues of law and fact do not predominate for an infliction of emotional distress claim because this cause of action involves personal injury. A claim for infliction of emotional distress cannot be sustained without evidence of physical injury to the plaintiff or of a foreseeable physical manifestation or physical illness resulting from the plaintiffs' mental and emotional distress. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 160 (Yap 2007).

Causation and damages can appropriately be proven on a class basis when the basis for each person's claim is the same. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 160 (Yap 2007).

When the complaint does not allege that the class as a whole suffered a common physical injury, any compensable emotional distress must be each individual's physical manifestation or illness. Since the basis of each person's claim, and of the defendants' liability for that claim, is different for each class member and evidence of this necessary element for liability on an emotional distress claim would thus be highly individualized and unique to each class member and could only be proven on an individual basis, class certification of infliction of emotional distress claims would not be appropriate. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 160 (Yap 2007).

When each person's individual infliction of emotional distress claim would require a separate mini-trial, no class can be certified for this cause of action and any claims for the personal injury of infliction of emotional distress will have to proceed on an individual basis. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 160 (Yap 2007).

If the court is persuaded that no definable class is present, it may have the class allegations stricken and allow the action to proceed on an individual basis. Thus when no definable class is present for the infliction of emotional distress cause of action, the court will order that the complaint be amended to eliminate allegations that the named plaintiffs represent absent persons for any infliction of emotional distress claims and the named plaintiffs may proceed on their individual infliction of emotional distress claims, if they so choose. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 160-61 (Yap 2007).

A subsection (b)(3) class action can be maintained only if the court finds that the class members' common questions of law or fact predominate and that a class action is superior to other methods of adjudication. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 38 (Yap 2008).

For a case to proceed under Rule 23(b)(3), the court must find that the questions in common to the class predominate over those affecting only individual class members. In determining whether the predominance standard is met, the court will focus on the issue of liability, and, if the liability issue is common to the class, common questions will be held to predominate over individual ones, but if there is present a likelihood that significant questions not only of damages but of liability and defenses to liability will arise affecting only individual class members in different ways, class action treatment is inappropriate. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 40 (Yap 2008).

When the plaintiffs' causes of action all involve economic damages allegedly caused by vessels' negligent anchorage on Anoth village reef on May 22-25, 2006, common questions of law and fact predominate the liability issue. Causation and damages can appropriately be proven on a class basis when the basis for each class member's claim is the same. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 40 (Yap 2008).

If chiefs were considered state officers and thus a state authority and were permitted to espouse the Receiver of Wreck's claims, then they would have claims that they do not share with the other class members and since a person whose claims are not common to the class would have to be removed as class representatives of, and membership in, the certified class and some other person(s), who could adequately protect the class interests, would have to be named as class representative(s), the chiefs would then not be permitted to participate in, or receive, or share any of the damages awarded to the certified class. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 232 (Yap 2013).

– Class Actions – Notice

The mandatory notice requirements of Civil Rule 23(c)(2) do not apply to Rule 23(b)(1) and (2) actions even though the discretionary notice provisions of 23(d)(2) are applicable. Graham v. FSM, 7 FSM R. 529, 531 (Chk. 1996).

A Rule 23(c)(2) notice may be directed, in both English and Chuukese, to the members of the class as the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort, by being distributed with the FSM paychecks to class members, read on the radio, and posted at various prominent places where class members might reasonably be expected to see them. Saret v. Chuuk, 10 FSM R. 320, 322 (Chk. 2001).

When a plaintiff class has been certified, the best notice practicable under the circumstances must be given defining membership in the class, stating that it has been certified as plaintiffs in the action, identifying the action and the court it is in, and advising each member that A) the court will exclude the member from the class if the member so requests by a specified date; B) the judgment, whether favorable or not, will include all members who do not request exclusion; and C) any member who does not request exclusion may, if the member desires, enter an appearance through counsel. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 200 (Yap 2003).

When a class has been certified, plaintiffs' counsel shall prepare and have approved as to form by defendants' counsel, a notice, defining membership in the class, stating that it has been certified as plaintiffs in the action, identifying the action and the court it is in, and advising each member that the court will exclude the member from the class if the member so requests by a specified date; that the judgment, whether favorable or not, will include all members who do not request exclusion; and that any member who does not request exclusion may, if the member desires, enter an appearance through counsel. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 613, 619 (Yap 2004).

When a class has been conditionally certified, plaintiffs' counsel shall prepare and have approved as to form by defendants' counsel a notice defining membership in the class, stating that it has been certified as plaintiffs in this action, identifying this action and the court it is in, and advising each member that the court will exclude the member from the class if the member so requests by a specified date; the judgment, whether favorable or not, will include all members who do not request exclusion; and any member who does not request exclusion may, if the member desires, enter an appearance through counsel. The notice shall also include that if any person suffered physical injury or illness because of emotional distress caused by the defendants that person must pursue his or her claim individually and must enter their own appearance. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 161 (Yap 2007).

The best notice to the class practicable under the circumstances must include at a minimum, but not be limited to, notice by frequent, periodic announcements on the state radio station over a period of two weeks, publication in at least two issues of the local newspaper, the posting of copies in the village meeting place in each and every village in the municipality, and the posting of copies in all public places, such as the courthouse, the post office, and the library, and other places where public notices may be posted. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 161 (Yap 2007).

When the court has certified a class, it will order plaintiffs' counsel to prepare and have approved as to form by defendants' counsel a notice stating that a class has been certified as plaintiffs in the action and defining membership in the class, identifying the action and the court it is in, and advising each class member that the court will exclude the member from the class if the member so requests by a specified date; that the judgment, whether favorable or not, will include all members who do not request exclusion; and that any member who does not request exclusion may, if the member desires, enter an appearance through counsel. The plaintiffs' proposed notice and a proposed order shall require the best notice practicable under the circumstances. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 41 (Yap 2008).

When a class has been certified, plaintiffs' counsel must prepare and have approved as to form by defendants' counsel a notice defining membership in the class, stating that it has been certified as plaintiffs in the action, identifying the action and the court it is in, and advising each member that 1) the court will exclude the member from the class if the member so requests by a specified date; 2) the judgment, whether favorable or not, will include all members who do not request exclusion; and 3) any member who does not request exclusion may, if the member desires, enter an appearance through counsel. The plaintiffs must submit to the court the proposed notice and a proposed order requiring the best notice practicable under the circumstances and when most class members reside a great distance from the main island, counsel shall include additional methods of notice designed to effect Rule 23(c)(2). People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 269-70 (Yap 2012).

– Class Actions – Numerosity

A class action may be maintained only if the class is so numerous that joinder of all members is impracticable. Practicability of joinder depends on the size of the class, ease of identifying numbers and determining their addresses, facility of making service on members joined and their geographic dispersion. There are no arbitrary rules regarding the size of classes. Lavides v. Weilbacher, 7 FSM R. 591, 593-94 (Pon. 1996).

While numbers alone are not usually determinative, a very small class may not meet the numerosity requirement for class certification because joinder of all members is practicable. Lavides v. Weilbacher, 7 FSM R. 591, 594 (Pon. 1996).

Where joinder of nineteen plaintiffs was already accomplished when plaintiffs instituted suit, a later request for certification as a class action will be denied although the plaintiffs later became geographically dispersed. Lavides v. Weilbacher, 7 FSM R. 591, 594 (Pon. 1996).

A class action may be maintained only if the class is so numerous that joinder of all members is impracticable. Practicability of joinder depends on the size of the class, ease of identifying numbers and determining their addresses, facility of making service on members joined and their geographic dispersion. Saret v. Chuuk, 10 FSM R. 320, 322 (Chk. 2001).

When the plaintiff class numbers well over a hundred, some of whom reside on outer islands, it is numerous, and may be certified as a class action. Saret v. Chuuk, 10 FSM R. 320, 322 (Chk. 2001).

A class action may be maintained only if the class is so numerous that joinder of all members is impracticable. Practicability of joinder depends on the size of the class, ease of identifying members and determining their addresses, facility of making service on members joined and their geographic dispersion. There are no arbitrary rules regarding the size of classes. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 157-58 (Yap 2007).

Mere speculation as to the number of parties involved is not sufficient to satisfy Rule 23(a)(1). People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 158 (Yap 2007).

A class action may be maintained only if the class is so numerous that joinder of all members is impracticable. Practicability of joinder depends on the size of the class, ease of identifying members and determining their addresses, facility of making service on members joined and their geographic dispersion. There are no arbitrary rules regarding the size of classes. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 39 (Yap 2008).

When a traditional chief's position in the affected municipality and as a member of an affected *tabinaw* ought to give him a reasonable basis upon which to fairly accurately estimate the number of affected individuals and he estimates that approximately 232 municipal residents were affected by the loss to the reef and natural resources, the class is too large for practical joinder and the numerosity requirement is satisfied even though there appears to be little or no geographical dispersion. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 39 (Yap 2008).

A class action may be maintained only if the class is so numerous that joinder of all members is impracticable, but there are no arbitrary rules regarding the size of classes. This is because practicability of joinder depends on the size of the class, ease of identifying numbers and determining their addresses, facility of making service on members joined and their geographic dispersion. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 267-68 (Yap 2012).

The numerosity requirement appears to have been met when the class purportedly numbers about a hundred, almost all of whom reside on an outer island, thus making it difficult to identify the number in the class, to determine addresses for service, and to make individual service on each plaintiff on Eauripik and on any plaintiffs sojourning elsewhere. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 268 (Yap 2012).

– Class Actions – Settlement

Rule 23(e) requires that a class action cannot be settled without the court's approval, and that notice of the proposed settlement must be given to all class members in such manner as the court directs. Rule 23(e)'s provisions are mandatory and serve to invalidate a settlement judgment when absent class

members were not notified of the pending approval of the settlement. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 443, 445 (Yap 2007).

Since a suit maintained as a class action under Rule 23 has res judicata effect on all class members, due process requires that notice of a proposed settlement be given to the class. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 443, 445 (Yap 2007).

A notice must state the terms of the proposed settlement and the options open to the class members. The notice on its face must be scrupulously neutral and emphasize that the court is expressing no opinion on the merits of the case or the amount of the settlement. The notice may consist of a very general description of the proposed settlement, including a summary of the monetary or other benefits that the class would receive and an estimation of attorneys' fees and other expenses. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 443, 445 (Yap 2007).

Unless a method can be identified that is more reasonably calculated under the circumstances to apprise the interested parties of the class action's pendency and settlement and to afford them an opportunity to present their objections or to opt out, notice will be by publication. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 443, 445 (Yap 2007).

When it evaluates whether a class action settlement is fair, adequate, and reasonable, the court considers: 1) the complexity, expense and likely duration of the litigation; 2) the reaction of the class to the settlement; 3) the stage of the proceedings and the amount of discovery completed; 4) the risks of establishing liability; 5) the risks of establishing damages; 6) the risks of maintaining the class action through trial; 7) the defendants' ability to withstand a greater judgment; 8) the range of reasonableness of the settlement fund in light of the best possible recovery; and 9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 202 (Yap 2010).

Although the court must first consult FSM sources of law rather than begin with a review of other courts' cases, when the court has not previously construed the extent of its duty under FSM Civil Procedure Rule 23(e) (identical to a U.S. rule) to approve or reject class action settlements and attendant attorneys' fee and expense awards, the court may look to U.S. sources for guidance in interpreting the rule. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 203 n.1 (Yap 2010).

The approval of a plan of allocation of a class action settlement fund is governed by the same standards of review applicable to the approval of the settlement as a whole: the distribution plan must be fair, reasonable, and adequate, and the court should insure that the interests of counsel and the named plaintiffs are not unjustifiably advanced at the expense of unnamed class members. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 203 (Yap 2010).

If a payment to the named plaintiffs comes from the attorney fee award [not the attorney expense award] instead of the rest of the common fund, it would not be subject to intense judicial scrutiny. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 203 n.2 (Yap 2010).

The court has general equitable powers to award fees out of a settlement fund to those attorneys who have brought benefit to class members. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 204 (Yap 2010).

The trial court in a class-action settlement is not bound by the parties' agreement as to the amount of attorney fees. A thorough judicial review of fee applications is required in all class action settlements. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 204 (Yap 2010).

In the context of a class-action settlement, when determining whether plaintiffs' counsel is in fact entitled to fees, and if so, in what amount, the court must be sensitive to the potential conflict of interest between plaintiffs and their counsel, and must be particularly careful to insure that the ultimate division of

funds is fair to absent class members. This is because, even if the court finds, under Rule 23(e), that the settlement is fair and reasonable to absent class members, the court still has an unbending duty to ensure that counsel is not unreasonably benefited by the award of an exorbitant fee, and therefore must scrutinize attorney fee applications with a jealous regard for the rights of those who are interested in the class action settlement fund since the divergence in financial incentives always creates the danger that the lawyers might urge a class settlement at a low figure or on a less-than-optimal basis in exchange for red-carpet treatment on fees. Thus, under Rule 23(e), a trial court must scrutinize any fee agreement that would be enforced as part of the agreement, because those agreements necessarily put counsel and clients in an adversary relationship. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 204 (Yap 2010).

When a contingent fee contract is to be satisfied from a settlement fund approved by the trial judge pursuant to Rule 23(e), the court has an even greater necessity to review the fee arrangement for this rule imposes upon it a responsibility to protect the interests of the class members from abuse. In such circumstances, the attorneys' role is drastically altered; they then stand in essentially an adversarial relation to their clients who face a reduced award to the extent that counsel fees are maximized. Moreover, because of the nature of class representation, the clients may be poorly equipped to defend their interests against those of their attorneys. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 205 (Yap 2010).

The court's fee application review must consider not only just compensation for attorneys but also the necessity to protect the rights of the class members. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 205 (Yap 2010).

In a common fund case where the attorneys' fees and the clients' award stem from the same source and the fees are based on a percentage amount of the clients' settlement, the trial court should consider: 1) the size of the fund and the number of persons benefitted; 2) the presence or absence of substantial objections by members of the class to the fees requested by counsel; 3) the skill and efficiency of the attorneys involved; 4) the litigation's complexity and duration; 5) the risk of nonpayment; 6) the amount of time plaintiffs' counsel devoted to the case; and 7) the awards in similar cases. These factors need not be applied in a formulaic way since each case is different. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 205 (Yap 2010).

As a general rule, as the size of a fund increases, the appropriate percentage to be awarded to counsel decreases although sometimes the increase in the recovery is merely due to the size of the class and has no direct relationship to counsel's efforts. And a fund size may be so large as to require the court to decrease the percentage award. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 205 (Yap 2010).

The brevity of the litigation before settlement (for instance, a case in which no formal discovery has been conducted before a quick settlement) would require a reduction in attorney fees. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 205 (Yap 2010).

Generally, a non-settling defendant lacks standing to object to approval of a settlement because the non-settling defendant is not affected by that settlement. Standing exists only where the non-settling defendant can show that it will sustain some formal legal prejudice as a result of the settlement. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 231 (Yap 2013).

The defendants do suffer some formal legal prejudice as a result of a proposed settlement between the class plaintiffs and an intervenor when the class plaintiffs, if the settlement is approved, will bring legal claims against the defendants that the class plaintiffs had not previously been able to assert against them and will seek forms of relief that the class plaintiffs have not been able to assert against the defendants while certain defendants will still face claims brought by the intervenor. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 231 (Yap 2013).

When the class plaintiffs ask the court to approve a settlement between them and the plaintiff-in-intervention; when the class plaintiffs have not pled any claims against the intervenor; when the class plaintiffs have not alleged any causes of action against the intervenor; when the class plaintiffs have not pled a cross-claim against the intervenor; when the class plaintiffs have not prayed for any relief against the intervenor; and when the intervenor is neither a defendant nor a cross-defendant, the court is unable to give a proposed settlement agreement preliminary approval and set a fairness hearing date because the class plaintiffs ask the court to give preliminary approval to a "settlement" between plaintiffs. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 231 (Yap 2013).

Fairness hearings are required when a claim by a plaintiff class is compromised against one or more defendants so that the court must review the compromise for fairness, adequacy, and reasonableness. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 231 (Yap 2013).

A motion for preliminary approval of a settlement must be denied when the class plaintiffs seek approval of a compromise of a hypothetical cause of action that they have not pled against a party that is neither a defendant nor a cross-defendant. Because there is no case or dispute for the settlement agreement to settle, the settlement agreement cannot be approved since there is no real settlement to approve or reject and since the court cannot make hypothetical rulings. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 231 (Yap 2013).

The law generally favors and encourages the settlement of class action lawsuits. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 231 (Yap 2013).

When there is no class action lawsuit against the plaintiff in intervention to be compromised or settled, no preliminary approval can be given and no fairness hearing can be held since the class plaintiffs' proposed settlement with the intervenor is not a dismissal or compromise within the meaning of Civil Rule 23(e). People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 231-32 (Yap 2013).

Even if there were actual class action claims against the FSM by a certified plaintiff class, the court still could not approve a compromise and settlement when the FSM's statutory claims are not claims that are held in common with the claims of the class plaintiffs and the agreement contains unlawful provisions. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 232 (Yap 2013).

No statute authorizes the Secretary of Transportation and Communications to delegate his statutory duties as Receiver of Wreck to private persons, let alone named and unnamed persons in a plaintiff class. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 232 (Yap 2013).

Since a statutory receiver or public officer cannot, even with a court's approval, delegate his powers or duties, or surrender assets which the law compels him to administer and since the Receiver of Wreck is both a statutory receiver and a public officer (the Secretary of Transportation and Communications), the delegation of the Receiver's duties to private persons (the class plaintiffs) would be unlawful because the statute only permits delegation to "relevant state authority" and cannot be approved as a class action settlement agreement. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 232-33 (Yap 2013).

The court cannot approve any class action settlement agreement that includes an obviously illegal provision. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 233 (Yap 2013).

A court cannot approve only the part of a proposed class action settlement agreement that is not illegal because the court cannot modify the proposed settlement's terms; rather, the court must approve or disapprove of the proposed settlement as a whole. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 233 (Yap 2013).

– Class Actions – Typicality

To satisfy the typicality prerequisite, a class representative must be part of the class and possess the same interest and suffer the same injury as the class members. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 199 (Yap 2003).

When there are no personal injuries alleged and all claimed economic damages are for subsistence use of the natural marine resources and the difference between the subsistence resources is not so great that common issues would not predominate, the named class representatives, who have subsistence economic interests in the relatively small area similar to other class members' interests, are typical of the class members' interests. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 199 (Yap 2003).

Each class, or subclass, must have a named class representative(s) of its own. Each class or subclass must be represented by someone who claims the same injuries as the absent class or subclass members, otherwise the typicality requirement is not met and the class or subclass cannot be certified. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 200 (Yap 2003).

To satisfy the typicality prerequisite, a class representative must be part of the class and possess the same interest and suffer the same injury as the class members. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 613, 617 (Yap 2004).

Each class, or subclass, must have a named class representative(s) of its own. Each class or subclass must be represented by someone who claims the same injuries as the absent class or subclass members, otherwise the typicality requirement is not met and the class or subclass cannot be certified. A person cannot be the named representative of two different classes at the same time. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 613, 617 (Yap 2004).

To satisfy the typicality prerequisite, a class representative must be a member of the class and must possess the same interest and suffer the same injury as the class members. This prerequisite is inherent in the real party in interest requirement prescribed by Rule 17(a). People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 159 (Yap 2007).

If the chiefs named as plaintiffs are not qualified, some other chief(s) who can satisfy the typicality and adequacy requirement may need to appear as class representative(s). People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 159 (Yap 2007).

To satisfy the typicality prerequisite, a class representative must be a member of the class and must possess the same interest and suffer the same injury as the class members. This prerequisite is also inherent in the real party in interest requirement prescribed by Civil Procedure Rule 17(a). People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 39 (Yap 2008).

To satisfy the typicality prerequisite, a class representative must be a member of the class and must possess the same interest and suffer the same injury as the class members. This prerequisite is also inherent in the real party in interest requirement found in Civil Procedure Rule 17(a). People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 268 (Yap 2012).

– Collateral Estoppel

When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or different claim under the doctrine of collateral estoppel or issue preclusion, but in a judgment entered by confession, consent, or default none of the issues is actually litigated. Mid-Pacific Constr. Co. v. Semes (II), 6 FSM R. 180, 185 & n.3 (Pon. 1993).

A plaintiff who has previously litigated and lost his claim to a legal interest in a certain property is collaterally estopped from claiming damages as a result of loss of ownership or possession of the land because under the principle of collateral estoppel, a cause of action which could have been litigated in the course of the original case between the same parties is treated as litigated and decided with the former cause of action. Nahnken of Nett v. United States (III), 6 FSM R. 508, 516 (Pon. 1994).

Where a party had imputed and actual notice of the dimensions of the land in dispute in a previous litigation the same party cannot later attack the judgment for either vagueness of description or lack of notice. Nahnken of Nett v. United States (III), 6 FSM R. 508, 520 (Pon. 1994).

A party who has litigated an action in his personal capacity cannot escape the application of collateral estoppel and relitigate the action simply by claiming to act in a different capacity. Nahnken of Nett v. United States (III), 6 FSM R. 508, 520 (Pon. 1994).

Courts stand ready to assist litigants with claims that are well-grounded in law and diligently brought. At the same time the courts must strive to ensure that the final judgments fairly rendered are upheld, so that all interested parties may know when an issue has been justly concluded. Parties are entitled to rely on the conclusiveness of prior decisions. Nahnken of Nett v. United States (III), 6 FSM R. 508, 529 (Pon. 1994).

The doctrine of collateral estoppel provides that a right, question, or fact which is distinctly put in issue and directly determined as a ground of recovery by a court of competent jurisdiction cannot be disputed in a subsequent action between the same parties, even if the subsequent action is on a different cause of action. The prior judgment is not, however, conclusive as to matters which might have been, but were not, litigated and determined in the prior action. Berman v. FSM Supreme Court (II), 7 FSM R. 11, 16 (App. 1995).

When dismissal of a related criminal case is without prejudice, there is no judgment on the merits. Therefore the doctrines of res judicata and collateral estoppel, which rely on an underlying final judgment, cannot be applied to the same matters in a civil case. FSM v. Yue Yuan Yu No. 346, 7 FSM R. 162, 164 (Chk. 1995).

When defendants have been granted judgment after trial, a codefendant severed for trial may be granted judgment on the same grounds through the doctrine of issue preclusion (collateral estoppel) or the doctrine of law of the case. Damarlane v. United States, 7 FSM R. 350, 354 (Pon. 1995).

Even if a party is not collaterally estopped from relitigating a different issue between parties to a prior judgment, res judicata will still bar relitigation of those claims that might have been raised and adjudged in the first action. Nahnken of Nett v. United States, 7 FSM R. 581, 587 (App. 1996).

The doctrine of collateral estoppel or issue preclusion holds that when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim. It therefore does not apply to a criminal contempt proceeding for acts after earlier civil contempt proceedings and because the burden of proof is different in a criminal proceeding and because it is not a subsequent action between the same parties. FSM v. Cheida, 7 FSM R. 633, 637-38 (Chk. 1996).

Collateral estoppel is an affirmative defense which bars a party from relitigating an issue determined against that party in an earlier action, even if the second action differs significantly from the first one. This is also referred to as issue preclusion. Defensive collateral estoppel is an estoppel asserted by a defendant to prevent a plaintiff from relitigating an issue previously decided against the plaintiff and for another defendant. Nakamura v. Chuuk, 15 FSM R. 146, 150 (Chk. S. Ct. App. 2007).

When neither res judicata, stare decisis, nor collateral estoppel can apply another judgment to this

case, it was error for the trial court to decide this case on that basis. Since the trial court finding that the two cases' facts are the same is clearly erroneous and its following legal conclusion was thus in error, the trial court should instead have made its own findings of fact and conclusions of law before reaching its decision. Nakamura v. Chuuk, 15 FSM R. 146, 150 (Chk. S. Ct. App. 2007).

Res judicata and collateral estoppel are closely related doctrines. Under collateral estoppel, a plaintiff who has previously litigated and lost his claim to a legal interest in a certain property is collaterally estopped from claiming damages as a result of loss of ownership or possession of the land because a cause of action which could have been litigated in the course of the original case between the same parties is treated as litigated and decided with the former cause of action. Thus, when the parties, or their predecessors in interest, had at least two opportunities to address the ownership of this land, their issues and claims either were already addressed or could have been addressed in the prior litigation, the doctrine of collateral estoppel would bar the plaintiff from relitigating ownership. Andon v. Shrew, 15 FSM R. 315, 322 (Kos. S. Ct. Tr. 2007).

Evidence Rule 803(22) merely makes a person's conviction admissible evidence. To make that evidence conclusive in a summary judgment motion, a plaintiff must rely on a legal principle known as collateral estoppel or issue preclusion. FSM v. Muty, 19 FSM R. 453, 458 (Chk. 2014).

The collateral estoppel doctrine provides that a right, question, or fact which is distinctly put in issue and directly determined by a court of competent jurisdiction cannot be disputed in a subsequent action between the same parties, even if the subsequent action is on a different cause of action. The prior judgment is not, however, conclusive as to matters which might have been, but were not, litigated and determined in the prior action. FSM v. Muty, 19 FSM R. 453, 458 (Chk. 2014).

When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or different claim under the doctrine of collateral estoppel or issue preclusion, but not when a judgment is entered by stipulation or default since none of the issues are actually litigated. FSM v. Muty, 19 FSM R. 453, 458 (Chk. 2014).

A prior criminal proceeding operates as an estoppel in a later civil proceeding so long as the question involved was distinctly put in issue and determined. Thus, when an issue is resolved in the government's favor in a criminal prosecution, the defendant may not contest that same issue in a subsequent civil suit brought by the government. FSM v. Muty, 19 FSM R. 453, 458 (Chk. 2014).

The collateral estoppel doctrine applies to issues litigated in a criminal case which a party seeks to relitigate in a subsequent civil proceeding. In some instances, the criminal conviction may be a plea agreement: a defendant is precluded from retrying issues necessary to his plea agreement in a later civil suit. FSM v. Muty, 19 FSM R. 453, 459 (Chk. 2014).

A party who has pled guilty to a crime is collaterally estopped from relitigating elements of that crime in a subsequent civil proceeding. FSM v. Muty, 19 FSM R. 453, 459 (Chk. 2014).

A plea of no contest or nolo contendere, a plea in which an accused does not expressly admit guilt but consents to be punished as if guilty, is insufficient to satisfy the actually litigated requirement and thus cannot be used to apply collateral estoppel or issue preclusion in a later civil proceeding. FSM v. Muty, 19 FSM R. 453, 459 n.3 (Chk. 2014).

The FSM has conclusively established that there are no triable issues of material fact that a defendant had fraudulently converted $24,252.80 when the wrongdoing to which the defendant pled guilty and was convicted involved obtaining the $24,252.80 but the FSM has not established the remaining part of its current claim that the defendant is liable to it for $38,501.76 since that was not was not a question distinctly put at issue and determined in the defendant's prior criminal case so collateral estoppel or issue preclusion

cannot be used to establish the defendant's liability for that larger sum. Any wronging involved in obtaining the rest of the $38,501.76 was not what the defendant pled guilty to and thus was not a question distinctly put at issue and determined in that criminal case. FSM v. Muty, 19 FSM R. 453, 459 (Chk. 2014).

A defendant is collaterally estopped from arguing that the funds converted – the salary overpayments to her – were not national government funds, when that was an element of the offenses to which she pled guilty. That being so, she is precluded from denying that those funds were national government funds. FSM v. Muty, 19 FSM R. 453, 460 (Chk. 2014).

A plaintiff cannot use collateral estoppel to obtain summary judgment for an amount that was not a question distinctly put at issue and determined in the defendant's prior criminal case but can obtain partial summary judgment for the amount that was put at issue in the prior case with credit for the amount she had already paid. FSM v. Muty, 19 FSM R. 453, 461-62 (Chk. 2014).

A party who has litigated an action in his personal capacity, cannot escape the application of collateral estoppel and relitigate the action, simply by claiming to act in a different capacity. Setik v. Mendiola, 20 FSM R. 236, 242 (Pon. 2015).

An administratrix cannot choose to file certain claims in the initial case and given an adverse outcome, then proceed to pursue a second matter on behalf of remaining heirs; especially since the additional issues were hardly novel, but instead were readily available and capable of having been raised in the first instance. Even if a party is not collaterally estopped from relitigating a different issue between parties to a prior judgment, res judicata will still bar relitigation of those claims that might have been raised and adjudicated in the first action. Setik v. Mendiola, 20 FSM R. 236, 242 (Pon. 2015).

Given the adverse outcome in the first action, the plaintiffs cannot escape the application of collateral estoppel, by simply claiming to act on behalf of different heirs or complainants in the subsequent cause of action. Setik v. Mendiola, 20 FSM R. 236, 244 (Pon. 2015).

Collateral estoppel, also called issue preclusion, is a defense that bars a party from relitigating an issue determined against that party in an earlier action, even if the second action differs significantly from the first one, and defensive collateral estoppel is an estoppel asserted by a defendant to prevent a plaintiff from relitigating an issue previously decided against the plaintiff and for another defendant. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 285 n.3 (Chk. 2016).

Res judicata and its offspring, collateral estoppel, are not statutory defenses; they are equitable defenses adopted by the courts in furtherance of prompt and efficient administration of the business that comes before them. They are grounded on the theory that one litigant cannot unduly consume the court's time at the other litigants' expense, and that, once the court has finally decided an issue, a litigant cannot demand that it be decided again. Waguk v. Waguk, 21 FSM R. 60, 68 (App. 2016).

Collateral estoppel is a judgment's binding effect as to matters actually litigated and determined in one action on later controversies between the parties involving a different claim from that on which the original judgment was based. Waguk v. Waguk, 21 FSM R. 60, 69 (App. 2016).

Res judicata actually comprises two doctrines concerning a prior adjudication's preclusive effect. The first is claim preclusion, or true res judicata, which treats a judgment once rendered as the full measure of relief to be accorded between the same parties on the same claim or cause of action. The second, collateral estoppel or issue preclusion, recognizes that suits addressed to particular claims may present issues relevant to suits on other claims. Waguk v. Waguk, 21 FSM R. 60, 69 (App. 2016).

In order to effectuate the public policy in favor of minimizing redundant litigation, issue preclusion bars the litigation of issues actually adjudicated, and essential to the judgment, in a prior litigation between the same parties. Waguk v. Waguk, 21 FSM R. 60, 69 (App. 2016).

The collateral estoppel doctrine provides that a right, question, or fact which is distinctly put in issue and directly determined as a ground of recovery by a court of competent jurisdiction cannot be disputed in a subsequent action between the same parties, even if the subsequent action is on a different cause of action. Waguk v. Waguk, 21 FSM R. 60, 69 (App. 2016).

Simply put, res judicata applies to claims and collateral estoppel applies to issues. Waguk v. Waguk, 21 FSM R. 60, 69-70 (App. 2016).

Preclusion can rest only on a judgment that is valid, final, and on the merits. Waguk v. Waguk, 21 FSM R. 60, 70 (App. 2016).

When an issue of fact or law is actually litigated and determined by a valid and final judgment and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim. Waguk v. Waguk, 21 FSM R. 60, 74 (App. 2016).

When the judgment on which issue preclusion was said to rest was neither valid, final, nor on the merits, and the factual issues were never actually litigated or determined, issue preclusion cannot be invoked to bar the issue's litigation. Waguk v. Waguk, 21 FSM R. 60, 74 (App. 2016).

Although res judicata and collateral estoppel can be raised *sua sponte*, it should not be, and it is an abuse of discretion to apply those doctrines when the judgment on which it rests was neither valid, final, nor on the merits. Waguk v. Waguk, 21 FSM R. 60, 74 (App. 2016).

Although res judicata and collateral estoppel can be raised *sua sponte*, it is an abuse of discretion to apply those doctrines when the judgment on which it rests was neither valid, final, nor on the merits. Waguk v. Waguk, 21 FSM R. 60, 74 (App. 2016).

A court's misgivings (against the backdrop of the collateral estoppel doctrine) about a successive civil action are well-founded when, in the successive civil action, the complaint maintains that the certificates of title to a parcel were improperly issued despite having previously acknowledged the parcel's conveyance to a party as a gift. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 101 (App. 2016).

Collateral estoppel is a judgment's binding effect as to matters actually litigated and determined in one action on later controversies between the parties involving a different claim from that on which the original judgment was based, and it is a doctrine barring a party from relitigating an issue determined against that party in an earlier action, even if the second action differs significantly from the first one. Pohnpei Arts & Crafts, Inc. v. Narruhn, 21 FSM R. 366, 369 (Pon. 2017).

A litigant that has previously litigated and lost its claim to a legal interest in certain property is collaterally estopped from claiming damages as a result of loss of ownership or possession of the property because, under the principle of collateral estoppel, a cause of action which could have been litigated in the course of the original case between the same parties is treated as litigated and decided with the former cause of action. Pohnpei Arts & Crafts, Inc. v. Narruhn, 21 FSM R. 366, 369 (Pon. 2017).

When rights to the property sought returned have already been adjudicated in an action and the plaintiff's claim was found deficient, collateral estoppel bars the plaintiff's claims against the same adversary in a new case, and when all of the plaintiff's claims against other defendants are dependent on it succeeding on its claim against the original adversary, the plaintiff, as a matter of law, cannot succeed on those derivative claims even though the second action differs significantly from the first. Pohnpei Arts & Crafts, Inc. v. Narruhn, 21 FSM R. 366, 370 (Pon. 2017).

Res judicata and collateral estoppel are affirmative defenses. Estate of Gallen v. Governor, 21 FSM R. 477, 482 (Pon. 2018).

Res judicata and collateral estoppel are affirmative defenses that must be pled. The purpose of such pleading is to give the opposing party notice of the plea and a chance to argue, if it can, why the imposition of an estoppel would be inappropriate. Estate of Gallen v. Governor, 21 FSM R. 477, 483 (Pon. 2018).

When a defendant, although it did not expressly use the term "res judicata" or "collateral estoppel" in its answer, did describe the res judicata and collateral estoppel principles accurately enough that the plaintiffs should have been put on notice of its potential affirmative defense, it has pled the affirmative defense's substance, and that is usually enough. Estate of Gallen v. Governor, 21 FSM R. 477, 483 (Pon. 2018).

The collateral estoppel doctrine provides that a right, question, or fact which is distinctly put in issue and directly determined as a ground of recovery by a court of competent jurisdiction cannot be disputed in a subsequent action between the same parties, even if the subsequent action is on a different cause of action. Estate of Gallen v. Governor, 21 FSM R. 477, 487 (Pon. 2018).

When persons were not parties to, or in privity with a party to, the prior litigation, the res judicata doctrine will not bar them from pursuing their claims as designees in a later lawsuit. The same is true of the collateral estoppel doctrine. Estate of Gallen v. Governor, 21 FSM R. 477, 489 (Pon. 2018).

– Consolidation

The moving party bears the burden of persuading the court that consolidation of cases is desirable. Etscheit v. Mix, 6 FSM R. 248, 250 (Pon. 1993).

Cases involving a dissolved cooperative association may be consolidated and assigned a new docket number. In re Kolonia Consumers Coop. Ass'n, 9 FSM R. 297, 300 (Pon. 2000).

The relief requested in the motion to strike a claim in a complaint on the ground that it is the same as a claim in the amended complaint in different civil action is more appropriately granted through consolidation of both actions because, since the claims are the same, the actions involve a common question of law or fact. Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM R. 112, 115-16 (Kos. 2001).

The moving party bears the burden of persuading the court that consolidation is appropriate, and the court has broad discretion in determining whether to consolidate cases. FSM Dev. Bank v. Arthur, 10 FSM R. 293, 295 (Pon. 2001).

A motion to consolidate two cases will be denied when little if any commonality of fact or law questions is evident from the face of the complaints in the two cases and when the motion's general allegations fail to identify a specific common question of law or fact which would make consolidation appropriate. FSM Dev. Bank v. Arthur, 10 FSM R. 293, 295 (Pon. 2001).

Cases may be consolidated when they involve a common question of law or fact. The granting of a motion to consolidate rests with the trial court's broad judicial discretion. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 463, 464 (Pon. 2001).

When the one common thread in cases sought to be consolidated is that they share similar general principles of tort law since they all involve an alleged defective product that resulted in injuries, but when the cases involve four different accidents (although two of the suits involve kerosene stove accidents, the stoves were not the same) that occurred at different times over the course of approximately a year, in different places, and involved different victims, the level of factual commonality needed for consolidation is of a higher order than is present. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 463, 464-65 (Pon. 2001).

Cases have been consolidated when they stemmed from a common accident. Suldan v. Mobil Oil

Micronesia, Inc., 10 FSM R. 463, 465 (Pon. 2001).

When the fundamental underlying issue in this action and two other actions is the ownership of that land known as "Epinipis," and when in order to determine the rights of the parties (and those not yet parties) the chain of title to "Epinipis" must be determined, it makes no sense to have three separate actions all of which must rely for a determination on one issue – the ownership of the land "Epinipis," therefore the three actions will be consolidated for all purposes. Pastor v. Ngusun, 11 FSM R. 281, 285 (Chk. S. Ct. Tr. 2002).

In consolidated cases that have become a quiet title action, the proper and indispensable parties to the action include without limitation all persons who the record indicates may claim any interest, wherever derived, in any portion of the land. Pastor v. Ngusun, 11 FSM R. 281, 286 (Chk. S. Ct. Tr. 2002).

A major purpose for granting consolidation of judgments is to establish the payment priority for the consolidated judgments and to implement an orderly payment plan involving one, instead of multiple, orders in aid of judgments. In re Engichy, 11 FSM R. 520, 527 (Chk. 2003).

When cases have been consolidated and a party to the consolidated case, files a "third party complaint" against a party consolidated into the case it cannot actually be a third party complaint, regardless of what the "third party plaintiff" calls it, because a third party complaint is a device used to bring a non-party into a case. Claims against an opposing party are counterclaims, regardless of whether counsel has labeled them correctly. Claims against a co-party are cross-claims. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 625 n.1 (App. 2003).

A partial adjudication in a consolidated case generally falls within Rule 54(b). Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 628 (App. 2003).

When the provisions of the trial court's consolidation order and later order assigning one docket number indicated that the cases were consolidated for all purposes including trial, and when the trial court dismissed the claims between certain parties but did not make the required findings under Rule 54(b), that dismissal was not a final judgment and thus the plaintiff in one of the consolidated actions remained a party to the consolidated action for purposes of later appeal. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 629 (App. 2003).

In a consolidated case, when claims between a plaintiff and the defendants in one of the original cases were dismissed, but the decision on the claims between the plaintiff and the plaintiff in the case consolidated with it remained a part of the consolidated case, the first plaintiff remained a party to the case and would thus be a party to an appeal. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 629 (App. 2003).

The court may consolidate a civil action with another civil action where one civil action seeks a declaratory judgment that an agency has exceeded its rule-making authority when it promulgated the regulations that lie at the base of the claims in the other civil action, which seeks to enjoin the enforcement of those regulations, since it will serve judicial economy to address all these related issues in one case. Ehsa v. Pohnpei Port Auth., 14 FSM R. 567, 570 (Pon. 2007).

It is the Chief Justice's responsibility to make the orderly assignment of cases. When no justice had taken any action in Civil Actions No. 36-2000 and 229-2000 before they were consolidated with Civil Action No. 64-98 and the three cases all involved title to Unupuku and the same parties, consolidation was appropriate under Civil Procedure Rule 42(a). Ruben v. Hartman, 15 FSM R. 100, 113 (Chk. S. Ct. App. 2007).

Consolidation of cases involving the same land is desirable to avoid the possibility of inconsistent decisions, to expedite the ultimate resolution of the matter, and to avoid expensive and unnecessary duplication. Ruben v. Hartman, 15 FSM R. 100, 113 (Chk. S. Ct. App. 2007).

Since once a case has been assigned to a particular justice, that justice has jurisdictional priority over the parties and issues of the case to the exclusion of all other trial division justices, and that while the case is pending, the priority extends to any other case involving the same parties and issues, it was proper to consolidate the three cases concerning ownership of Unupuku with the first case filed, and have the justice assigned to that case handle the consolidated case. Ruben v. Hartman, 15 FSM R. 100, 113 (Chk. S. Ct. App. 2007).

A request to consolidate cases should be made by written motion stating with particularity the grounds for relief and the relief or order sought. Failure to do so is considered a waiver of the motion. Doone v. Simina, 16 FSM R. 487, 489 (Chk. S. Ct. Tr. 2009).

The court may consolidate actions involving a common question of law or fact. Pacific Sky Lite Hotel v. Penta Ocean, 18 FSM R. 109, 110 (Pon. 2011).

A motion for consolidation will be granted when common questions of law and fact are involved in both civil matters, when it is in the interest of judicial economy and efficiency, when it will avoid unnecessary costs or delay, and when there is no opposition. Pacific Sky Lite Hotel v. Penta Ocean, 18 FSM R. 109, 110 (Pon. 2011).

The court will deny a motion to consolidate because an argument that a case must be consolidated with another so that the court can order the FSM Secretary of Human Resources to order the appropriate relief is a specious, spurious, and mendacious when the Secretary is not a defendant in either case and the plaintiffs' grievances against the defendants are based in state law, related to but independent of the claims in other case. Damarlane v. Damarlane, 18 FSM R. 177, 181 (Pon. 2012).

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing. Perman v. Ehsa, 18 FSM R. 432, 435 n.1 (Pon. 2012).

Since the grant of a motion to consolidate rests with the trial court's broad judicial discretion, an appellate court will review the trial court's denial of consolidation on an abuse of discretion standard. Damarlane v. Damarlane, 19 FSM R. 97, 106 (App. 2013).

Although a person must be joined as a party if in the person's absence complete relief cannot be accorded among those already parties, the trial court did not abuse its discretion by refusing to consolidate the case with another when the court can accord complete relief between the parties in the case without consolidation with another case because the plaintiffs' allegations set out facts, which, if proven, state causes of action for the common law torts of nuisance and trespass against the two operators of a private business plus a common law breach of contract claim and none of the defendants in the other case are parties in this case and other than the FSM national police holding a party one night, the plaintiffs' claims in the other case are otherwise unrelated to the claims in this case. Damarlane v. Damarlane, 19 FSM R. 97, 106 (App. 2013).

Since the granting of a motion to consolidate rests with the trial court's broad judicial discretion, an appellate court reviews the trial court's denial of consolidation on an abuse of discretion standard. Berman v. FSM Nat'l Police, 19 FSM R. 118, 126 (App. 2013).

Although a person must be joined as a party if in the person's absence complete relief cannot be accorded among those already parties, consolidation will be denied when complete relief between the parties in both cases can be afforded between the parties in those cases without consolidation. Berman v. FSM Nat'l Police, 19 FSM R. 118, 126 (App. 2013).

The trial court's denial of the motion to consolidate was not an abuse of discretion when the trial court could easily resolve the issues between the plaintiffs and the national government without the need to join the private business operators on the berm against whom they (along with one additional plaintiff) have very

different claims and when the trial court can also resolve the claims in the other case without consolidation with this case. Berman v. FSM Nat'l Police, 19 FSM R. 118, 126 (App. 2013).

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if filed later before a court that would also have jurisdiction, but when the court has already ordered that the two cases be consolidated, the issue has become moot. Salomon v. Mendiola, 20 FSM R. 138, 142 (Pon. 2015).

The purpose of possessing the power to consolidate cases is to give the court broad discretion to decide how cases on its docket are to be tried so that the business of the court may be dispatched with expedition and economy while providing justice to the parties. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 391 (App. 2016).

When the court has consolidated actions involving a common question of law or fact, it may use its power to make such orders concerning proceedings therein to rearrange parties, and thus their claims, where the consolidated cases had different, and adverse, plaintiffs. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 571 (Pon. 2016).

The court can, in a proper case, after notice and after severing a previously consolidated case, then dismiss that severed case, but when there was no order of severance, the cases remained consolidated and any dismissals were the partial adjudication of one (consolidated) case. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 180 (Pon. 2019).

– Declaratory Relief

The power to issue declaratory judgments is within the judicial power vested in the FSM Supreme Court by article XI, section 1 of the Constitution and confirmed by the Judiciary Act of 1979. The FSM Supreme Court may exercise jurisdiction over an action seeking a declaratory judgment so long as there is a "case" within the meaning of article XI, section 6(b). Ponape Chamber of Commerce v. Nett Mun. Gov't, 1 FSM R. 389, 400 (Pon. 1984).

When a party has been specifically warned by the attorney general that he is required to obtain a foreign investment permit under national statute which imposes criminal sanctions for failure to comply, the question of whether a permit is required is sufficiently ripe to support a suit seeking declaratory judgment. Michelsen v. FSM, 3 FSM R. 416, 418-19 (Pon. 1988).

When a public officer is requested to perform a duty mandated by law which he feels would violate the constitution, he has standing to apply to the court for a declaratory judgment declaring the statute unconstitutional. Siba v. Sigrah, 4 FSM R. 329, 334 (Kos. S. Ct. Tr. 1990).

On a claim for declaratory relief from an unconstitutional excise tax, the FSM Supreme Court trial division will not abstain, where the issue could later be certified to the FSM Supreme Court appellate division and result in delay, where the trial court has already retained the case longer than contemplated, where the issue is narrowly posed and not capable of varying resolutions, and where it appears that a greater service may be provided by deciding the issue. Gimnang v. Yap, 4 FSM R. 212, 214 (Yap 1990).

A party may seek declaratory relief from the Chuuk State Supreme Court even though it may have another available remedy, but there must be an actual controversy between the parties and the matter must be within the court's jurisdiction. The court has discretion to entertain such actions if appropriate. Truk Shipping Co. v. Chuuk, 7 FSM R. 337, 339, 342 (Chk. S. Ct. Tr. 1995).

A litigant may seek a declaratory judgment without first exhausting its administrative remedies where the jurisdiction of the taxing authorities is challenged on the ground that the statute is unconstitutional or that the statute by its own terms does not apply in a given case. Dorval Tankship Pty, Ltd. v. Department of

Finance, 8 FSM R. 111, 115 (Chk. 1997).

When the government is attempting to enforce against the plaintiffs tax statutes which the plaintiffs believe, by the statutes' own terms, do not properly apply to them, and the plaintiffs have been warned that they are potentially subject to criminal and civil penalties if they do not comply, it is a case or dispute sufficiently ripe for the plaintiffs to seek a declaratory judgment. Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM R. 111, 115 (Chk. 1997).

The test whether the court has jurisdiction to hear a declaratory judgment against the national government is whether there is a case or dispute within the meaning of article XI, section 6(b). Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM R. 111, 115 (Chk. 1997).

Declaratory relief is inappropriate when the plaintiff has already succeeded in procuring permanent injunctive relief based on the nonexistence of any genuine issue of any material fact involving deprivation of the plaintiff's constitutional rights and violation of statute and the settled principle of res judicata. In this regard, declaratory relief would be redundant. Bank of Guam v. O'Sonis, 8 FSM R. 301, 306 (Chk. 1998).

Because duly enacted laws are presumed constitutional in the first instance, confirmation through a suit for declaratory relief of what is already presumed is not a fruitful exercise when there is no certainty that such a declaration would alter the parties' legal interests. Kosrae v. Seventh Kosrae State Legislature, 10 FSM R. 668, 671 (Kos. S. Ct. Tr. 2002).

Further declaratory relief may not be appropriate when the plaintiff has already obtained by stipulation a judgment for the taxes, interest, and penalties sought in the complaint. FSM Social Sec. Admin. v. Jonas, 13 FSM R. 171, 173 (Kos. 2005).

When the plaintiffs seek a declaration that they are the legal winners of an election but have not named as defendants the candidates that opposed them and that presumably question their right to office and since these other candidates are not only real parties in interest but also indispensable parties to such a declaration, the case may be dismissed for failure to join indispensable parties. Puchonong v. Chuuk, 14 FSM R. 67, 69 (Chk. 2006).

When the plaintiff seeks declaratory relief, the court has jurisdiction to issue a declaratory judgment so long as there is a case or dispute within the meaning of Chuuk Constitution, article VII, §§ 3 and 4. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 219 (Chk. S. Ct. Tr. 2008).

When a party is asserting a breach of contract counterclaim, it has standing to seek a declaration from the court of its rights under the contract. If the determination of the rights of others is necessary to determine the party's rights and obligations, then the party may seek a court declaration of the contract's terms as those affect the party. The party, however, cannot seek a determination of matters that do not affect it. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 606 (Pon. 2009).

When Chuuk has warned Continental that it is required to collect a service tax as set forth in a regulation implementing a tax statute and that criminal penalties may be imposed on Continental or its employees for failure to comply, the question of whether the Chuuk service tax on Continental passengers and freight shippers is lawful is sufficiently ripe to support a suit seeking declaratory judgment. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 157-58 (Chk. 2010).

The test whether the court can render a declaratory judgment is whether there is a case or dispute within the meaning of article XI, section 6(b) of the Constitution. Additionally, the granting of a declaratory judgment rests in the trial court's sound discretion exercised in the public interest. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 590 (Pon. 2011).

Although the court must first look to FSM sources of law, rather than foreign authorities, when an FSM

court has not previously construed an aspect of FSM Civil Procedure Rule 57, which governs declaratory judgments and which is similar to U.S. Federal Rule of Civil Procedure 57, it may consult U.S. sources for guidance in interpreting the rule. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 590 n.22 (Pon. 2011).

When none of the four states, the entities that would normally assert third-party beneficiary status, are parties to the action; when the contract itself is plain and unambiguous; and when all of the issues in the declaratory judgment request are also before the court in the parties' direct actions, the court sees no need for a declaratory judgment on whether the four states are third-party beneficiaries of the contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 591 (Pon. 2011).

When a public law's statutory language seems to speak only in prospective terms and certainly does not expressly state or clearly, explicitly, positively, unequivocally, unmistakably, and unambiguously show legislative intent to make the statute retroactive or for it to be applied retrospectively to previously-awarded public contracts, the movant is entitled to summary judgment and a declaration that the public law does not apply to the parties' earlier contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 592 (Pon. 2011).

Generally, the court avoids unnecessary constitutional adjudication. Thus, when the court has resolved the underlying administrative appeal without the need to address the constitutionality of Pohnpei's tax statute, any declaratory relief as to the tax statute's constitutionality would be inappropriate. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 35 (Pon. 2011).

Since the court may, upon the filing of an appropriate pleading, declare the right and other legal relations of any interested party seeking such declaration, a declaratory judgment is available only upon the filing of an appropriate pleading and not a motion which is distinguished in the rules from a pleading. Berman v. Pohnpei, 18 FSM R. 67, 70 (Pon. 2011).

The power to issue declaratory judgments is within the FSM Supreme Court's judicial power pursuant to FSM Const. art. XI, § 1, and the court may exercise jurisdiction over an action seeking a declaratory judgment so long as there is a case within the meaning of FSM Const. art. XI, § 6(b). Kallop v. Pohnpei, 18 FSM R. 130, 133 (Pon. 2011).

In a case of actual controversy within its jurisdiction, the court, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration will have the force and effect of a final judgment or decree and be reviewable as such. Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment. Panuelo v. FSM, 20 FSM R. 62, 66 n.4 (Pon. 2015).

Because no one shall report to work nor receive a salary unless that person has been previously certified on an appropriate eligible list by the Personnel Officer or his authorized representative, and selected by a Department or agency head, an applicant is not entitled to declaratory relief that he should be hired when, although he was placed on the eligible list, the Secretary, as the result of interviews, found, in writing, no one was available or acceptable and the Personnel Officer did not find the Secretary's reasons inadequate and return the list. Panuelo v. FSM, 20 FSM R. 62, 67-68 (Pon. 2015).

The court will consider a motion for emergency declaratory relief filed without an appropriate pleading under the requirements of a summary judgment motion. Pacific Int'l, Inc. v. FSM, 20 FSM R. 346, 348 (Pon. 2016).

A litigant may seek a declaratory judgment without first exhausting its administrative remedies. The test whether the court can render a declaratory judgment is whether there is a case or dispute within the meaning of article XI, section 6(b) of the Constitution. Eperiam v. FSM, 20 FSM R. 351, 356 (Pon. 2016).

The grant of a declaratory judgment, like other forms of equitable relief, rests in the trial court's sound discretion exercised in the public interest. Eperiam v. FSM, 20 FSM R. 351, 356 (Pon. 2016).

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

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

The court will grant partial declaratory relief requiring the resumption of the administrative proceedings, and will dismiss the plaintiff's petition with all counterclaims until the administrative remedies have been exhausted. If the plaintiff is not satisfied following the administrative proceedings' final decision, she may refile a petition in the court with new pleadings that reflect the administrative deficiency, but the court cannot grant further declaratory relief, and no common law causes of action can be heard. Eperiam v. FSM, 20 FSM R. 351, 357 (Pon. 2016).

A declaratory judgment is not a money judgment and does not need to mention interest. Kama v. Chuuk, 20 FSM R. 522, 533 (Chk. S. Ct. App. 2016).

An action for declaratory relief is moot when the government has rescinded the orders that the plaintiff sought to have declared unlawful. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 630 (Pon. 2020).

– Default and Default Judgments

Courts generally disfavor default judgments and readily set them aside rather than deprive a party of the opportunity to contest a claim on the merits. Lonno v. Trust Territory (III), 1 FSM R. 279, 281 (Kos. 1983).

A judgment of a court having jurisdiction of the parties and of the subject matter operates as res judicata, in the absence of fraud or collusion, even if obtained upon a default. Ittu v. Charley, 3 FSM R. 188, 191 (Kos. S. Ct. Tr. 1987).

In the interest of the finality of legal proceedings, the court will not set aside a default judgment in a case in which the defendant had access to legal advice yet failed to make a timely defense of the case and presented no meritorious defense, although the plaintiff could not be prejudiced if the default judgment were set aside. Truk Transp. Co. v. Trans Pacific Import Ltd., 3 FSM R. 440, 444 (Truk 1988).

Where the defendant had satisfied a default judgment and the judgment was later set aside, the court will order the amount received by the plaintiff paid into an account under the control of the court pending final disposition of the case on the merits, where it appears that the plaintiff's health and place of residence are uncertain, and where the passage of time renders the plaintiff's ability to produce the amount more uncertain, should the outcome of the case require this. Morris v. Truk, 3 FSM R. 454, 458 (Truk 1988).

Under circumstances where the defendant has failed to set forth a meritorious defense and has exhibited culpable conduct, defendant will not succeed on a motion to set aside a judgment of default.

Truk Transp. Co. v. Trans Pacific Import Ltd., 3 FSM R. 512, 514 (Truk 1988).

A motion to set aside a default judgment is addressed to the discretion of the court. In the exercise of discretion the court is guided by the principle that cases should normally be decided after trials on the merits. Truk Transp. Co. v. Trans Pacific Import Ltd., 3 FSM R. 512, 515 (Truk 1988).

The criteria to be met in order to justify the setting aside of a default judgment are whether the default was willful, caused by culpable conduct of the defendant, whether there is meritorious defense, and whether setting aside the default would prejudice the plaintiff. Truk Transp. Co. v. Trans Pacific Import Ltd., 3 FSM R. 512, 515 (Truk 1988).

Entry of a default judgment is a two step process. There must first be an entry of default before a default judgment can be entered. A default judgment can then be entered, by the clerk if it is for a sum certain; otherwise it must be entered by the court. Poll v. Paul, 6 FSM R. 324, 325 (Pon. 1994).

An improperly filed amended complaint cannot serve as the basis for a default judgment. Berman v. FSM Supreme Court (II), 7 FSM R. 11, 16 (App. 1995).

There is no obstacle to the removal of a defaulted case so long as it is done within the time limit set by the General Court Order 1992-2. Porwek v. American Int'l Co. Micronesia, 8 FSM R. 463, 466 (Chk. 1998).

Although removal after a default judgment is proper if done within time, it cannot be taken to supersede the default judgment which must be regarded as valid until set aside. Porwek v. American Int'l Co. Micronesia, 8 FSM R. 463, 466-67 (Chk. 1998).

In the Chuuk State Supreme Court, a hearing for judgment after a default is entered that is held to allow the plaintiff to present to the court further evidence to establish the plaintiff's right to a claim or relief, includes the court's determination of whether the action was brought within the limitation period provided by law. Sipia v. Chuuk, 8 FSM R. 557, 558, 560 (Chk. S. Ct. Tr. 1998).

No judgment by default shall be entered against the State of Chuuk or an officer or agency thereof in the Chuuk State Supreme Court unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. Hartman v. Chuuk, 8 FSM R. 580, 581 (Chk. S. Ct. Tr. 1998).

A plaintiff's uncontroverted testimony coupled with the defendant's failure to offer testimony or evidence of any fact, may leave a court with no alternative but to grant the plaintiff's petition for a judgment. Hartman v. Chuuk, 8 FSM R. 580, 581 (Chk. S. Ct. Tr. 1998).

If, in order to enable the court to enter a default judgment, it is necessary to determine the amount of damages by evidence the court may conduct such evidentiary hearings as it deems necessary and proper. Mathebei v. Ting Hong Oceanic Enterprises, 9 FSM R. 23, 25 (Yap 1999).

Default judgments and stipulated or agreed judgments against the State of Chuuk are to be subjected to close scrutiny by the court. Kama v. Chuuk, 9 FSM R. 496, 499 (Chk. S. Ct. Tr. 1999).

A default judgment will be set aside when one defendant was served the complaint and summons not by a policeman or some other specially appointed person in compliance with Civil Procedure Rule 4(c) but by plaintiff's counsel and the other defendant was not served at all. Simina v. Rayphand, 9 FSM R. 500, 501 (Chk. S. Ct. Tr. 1999).

Although failure to make proof of service does not affect the validity of the service, it does mean that the clerk cannot enter a default because before a clerk will enter a default against a defendant, the record must show that that defendant was properly served. Medabalmi v. Island Imports Co., 10 FSM R. 32, 34

(Chk. 2001).

A court must be assured that it has acquired personal jurisdiction over a defendant before it enters a default against him, and a court does not have personal jurisdiction over a defendant unless or until he has been properly served. Medabalmi v. Island Imports Co., 10 FSM R. 32, 34 (Chk. 2001).

Courts ordinarily favor resolving cases on their merits rather than on procedural grounds. Medabalmi v. Island Imports Co., 10 FSM R. 32, 35 (Chk. 2001).

Because default judgments will be vacated under proper circumstances so that cases can be decided on their merits, and because when only a default has been entered, the policy in favor of vacating the default and deciding the case on its merits is even stronger, the policy in favor of deciding a case on its merits when no default has been entered and the answer merely filed a few days late must be much stronger. Medabalmi v. Island Imports Co., 10 FSM R. 32, 35 (Chk. 2001).

Serving an answer three days late, and filing it four days late is not the type of prejudice that would allow a plaintiff to prevail while avoiding the case being decided on its merits because public policy favors court judgments be on the merits. Medabalmi v. Island Imports Co., 10 FSM R. 32, 35 (Chk. 2001).

A common statement of the criteria to set aside a default judgment is whether the default was willful, that is, caused by culpable conduct of the defendant, whether there is a meritorious defense, and whether setting aside the default judgment would prejudice the plaintiff. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 180 (Pon. 2001).

When there was no default entered separate from the default judgment itself and when the complaint seeks general damages requiring a hearing under Rule 55(b), a default judgment should not have been entered and will be vacated and the court will proceed on the basis that no party was in default. Amayo v. MJ Co., 10 FSM R. 244, 249 n.1 (Pon. 2001).

No default can be entered against a party which has either filed a response indicating its intent to defend the action or engaged in other behavior which constitutes an active defense. Customarily, a party expresses its intent to defend by filing a motion or an answer to the complaint, but it is not uncommon for an unrepresented party to respond by mailing a letter to the court, and the court's practice has long been to recognize such submissions as an expression of a party's intent to defend, thereby preventing entry of default. Whether a party's written response or other behavior satisfies the Rule 55 requirement that the party must "plead or otherwise defend" to prevent entry of default is made on a case by case basis. O'Sullivan v. Panuelo, 10 FSM R. 257, 260 (Pon. 2001).

A default judgment may only be entered against a party following entry of that party's default. Where no default has been entered, no judgment by default is available. O'Sullivan v. Panuelo, 10 FSM R. 257, 260 (Pon. 2001).

Courts generally disfavor default judgments and readily set them aside rather than deprive a party of the opportunity to contest a claim on the merits. O'Sullivan v. Panuelo, 10 FSM R. 257, 260 (Pon. 2001).

Default proceedings protect diligent parties from delay and uncertainty caused by unresponsive parties. O'Sullivan v. Panuelo, 10 FSM R. 257, 261, 262 (Pon. 2001).

A default ensures that litigants who are vigorously pursuing their cases are not hindered by those who are not, in an environment of limited judicial resources. O'Sullivan v. Panuelo, 10 FSM R. 257, 261 (Pon. 2001).

Whether a default judgment should be entered will be considered only if any defendant is in default and it is appropriate to enter default against that defendant. O'Sullivan v. Panuelo, 10 FSM R. 257, 261

(Pon. 2001).

No default judgments will be entered against defendants who have timely filed their answer to the plaintiff's amended complaint or against a defendant who had actively defended his position against the earlier complaint, against whom no default had been entered by the clerk, and whose answer was filed late, but before the motion for default judgment was filed. O'Sullivan v. Panuelo, 10 FSM R. 257, 261 (Pon. 2001).

A default and default judgment will not be entered against a defendant who, although he did not respond to plaintiff's amended complaint, has been active in his defense and who in his answer to the original complaint asserted defenses to each factual allegation in the first amended complaint, which complaint varies only slightly from the original and in a way that is not material the to claims for relief against him. O'Sullivan v. Panuelo, 10 FSM R. 257, 261-62 (Pon. 2001).

When a defendant has adequately defended against the complaint so as to prevent the entry of default, and considering the liberal standard for setting aside a default judgment, and recognizing the court's desire to permit matters to proceed on their merits, a defendant's opposition to a motion for a default judgment for failure to respond to an amended complaint will be taken as a request for leave of court to file an answer to plaintiff's first amended complaint and the defendant will be directed to file a responsive pleading. O'Sullivan v. Panuelo, 10 FSM R. 257, 262 (Pon. 2001).

When none of the defendants appeared on the day set for trial on damages, the defendants were in default under Rule 55(a), and the trial could then proceed as a hearing under Rule 55(b)(2) to determine plaintiffs' damages. People of Satawal ex rel. Ramoloilug v. Mina Maru No. 3, 10 FSM R. 337, 338 (Yap 2001).

Whether to grant a motion for entry of default judgment is discretionary with the court, and not a matter of right. In making this determination, the court may consider a variety of factors including the merits of the plaintiff's substantive claim. Amayo v. MJ Co., 10 FSM R. 371, 385 (Pon. 2001).

If the court grants a motion for default judgment at the commencement of trial, then, when the plaintiffs are seeking general damages and not a sum certain under Rule 55(b)(1), the next step would be for plaintiffs to prove up their damages under Rule 55(b)(2). Amayo v. MJ Co., 10 FSM R. 371, 385 (Pon. 2001).

In a default situation, the court may conduct such hearings as it deems necessary and proper in order to determine damages. But when the nature of plaintiffs' claims is substantial, it may be appropriate for the court to consider the merits of those claims as part of that hearing, which can be accomplished when the plaintiffs go forward with their proof on both liability and damages. Amayo v. MJ Co., 10 FSM R. 371, 385 (Pon. 2001).

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend and that fact is made to appear by affidavit or otherwise, the clerk shall enter that party's default, but when the plaintiff did not seek a default, no default is entered. Carlos Etscheit Soap Co. v. Gilmete, 10 FSM R. 436, 439 (Pon. 2001).

Under proper circumstances, default judgments will be vacated so that cases can be decided on their merits and when only a default has been entered, the policy in favor of vacating the default and deciding the case on its merits is even stronger. Logically, the policy in favor of deciding a case on its merits when no default has been entered and the answer merely filed late must be much stronger. Carlos Etscheit Soap Co. v. Gilmete, 10 FSM R. 436, 439 (Pon. 2001).

Having to prosecute a case when the defendants filed and served their answer only days late, is not the type of prejudice that would allow a plaintiff to prevail while avoiding the case being decided on its merits.

Public policy favors court judgments be on the merits. Carlos Etscheit Soap Co. v. Gilmete, 10 FSM R. 436, 439 (Pon. 2001).

When no default has already been entered against a defendant and that defendant has filed a late response clearly indicating an intention to defend against the plaintiff's claim, the court, in the interest of deciding the case on the merits, will not enter a default against that defendant. Carlos Etscheit Soap Co. v. Gilmete, 10 FSM R. 436, 439 (Pon. 2001).

When a court has denied the plaintiffs' motion to strike defendants' responsive filings, and also denied the plaintiffs' motion to enter defaults, the court cannot enter a judgment by default against the defendants. Carlos Etscheit Soap Co. v. Gilmete, 10 FSM R. 436, 440 (Pon. 2001).

When service of process has been made outside the territorial jurisdiction of the FSM Supreme Court (that is, outside of the FSM), no default shall be entered until the expiration of at least 30 days after service. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 121 (Chk. 2002).

Even when service on the defendants was proper, they may still obtain relief from a default judgment if they qualify under Rule 60. Courts generally disfavor default judgments and will, in proper Rule 60(b) cases, readily set them aside rather than deprive a party of the opportunity to contest, and the court to resolve, a claim on its merits, instead of on procedural grounds. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 122 (Chk. 2002).

The criteria to be met in order to justify setting aside a default judgment are whether the default was willful, caused by the defendant's culpable conduct, whether the defendant has a meritorious defense, and whether setting aside the default would prejudice the plaintiff. Relief from judgment is addressed to the discretion of the court, which must balance the policy in favor of hearing a litigant's claims on the merits against the policy in favor of finality. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 122 (Chk. 2002).

In order to obtain relief from a default judgment, the defendant must have a meritorious defense. A defense that would constitute a complete defense to the action if proven at trial would be a meritorious defense justifying relief from judgment when some evidence to support the defense has been produced, although more evidence may be needed to prevail at trial. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 123 (Chk. 2002).

Default, under Rule 55, is typically granted when a defendant has failed to answer or respond to a complaint within the prescribed time limit. A default judgment under Rule 55 will not be granted for the plaintiff's failure to timely respond to a summary judgment motion. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 171 (Kos. S. Ct. Tr. 2002).

No service on a defendant of a motion for entry of a default judgment is necessary under the rules, and nothing in the rules requires that notice of hearings on default matters be given to a defaulting defendant. Konman v. Esa, 11 FSM R. 291, 293-94 (Chk. S. Ct. Tr. 2002).

When there was no entry of default, there could not have been any hearing on a request for a default judgment. Entry of a default judgment is a two step process, requiring the entry of default before a default judgment can be entered. Hartman v. Chuuk, 12 FSM R. 388, 393 n.7 (Chk. S. Ct. Tr. 2004).

A default judgment must be vacated when the Chuuk State Supreme Court never had jurisdiction over the action to determine ownership of real property in the first place because, despite being framed as a declaratory relief action, the case sought a determination of ownership of land lying within a land registration area and only the Land Commission has jurisdiction to determine ownership of land within a land registration area. Hartman v. Chuuk, 12 FSM R. 388, 398-99 (Chk. S. Ct. Tr. 2004).

When the plaintiff served a corrected summons and complaint were served on the defendant on June

3, 2004 and the defendant filed his answer on July 14, 2004, the defendant's contention that the error in the plaintiff's original May 7, 2004 summons (erroneously citing Chuuk instead of Pohnpei as the place to file an answer) caused him to be confused about how and when to respond to the plaintiff's complaint and his contention that the defendant was not in default because he had 30 days, not 20 to answer, offer no possible basis on which the court can find good cause to relieve him from a default entered by the clerk on June 24, 2004. Boston Agrex, Inc. v. Helgenberger, 12 FSM R. 611, 612-13 (Pon. 2004).

In a default judgment, the plaintiff cannot be awarded a $2,500 loan fee because it is the subject of a separate promissory note between the plaintiff and the defendants, which the plaintiff did not allege in his complaint. As a result, it cannot serve as a basis for relief in this litigation. The same is true of the $4,269.52 in interest on that note that the plaintiff seeks to include in the judgment. Walter v. Damai, 12 FSM R. 648, 649 (Pon. 2004).

A plaintiff has waived any claim for attorney's fees when it submitted a form of judgment for a sum certain for the clerk's signature under FSM Civil Rule 55(b)(1). Attorney's fees may only be awarded upon a judicial finding that the fees sought are reasonable. FSM Social Sec. Admin. v. Lelu Town, 13 FSM R. 60, 62 (Kos. 2004).

When a party against whom judgment by default is sought has appeared in the action, that party must be served with written notice of the application for judgment at least three days prior to the hearing on such application. Lee v. Lee, 13 FSM R. 68, 70 (Chk. 2004).

When a defendant's sole action in the case was to file a paper that did not respond in any way to the original complaint, but disagreed with factual assertions in a co-defendant's motion to dismiss and when he is a defendant against whom a judgment for affirmative relief is sought, he is in default since he has failed to plead or otherwise defend because the comment on the co-defendant's motion did not constitute a pleading or a defense as otherwise provided by the civil procedure rules as it was not an answer to the plaintiff's complaint (the only type of pleading the defendant could make) or a defense provided by the rules. Lee v. Lee, 13 FSM R. 252, 258 (Chk. 2005).

A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 277 (Chk. 2005).

When prejudgment interest is mentioned nowhere in the body of the complaint and is not prayed for in the demand for judgment at the end of the complaint, the court has no choice but to refuse to enter a default judgment that includes prejudgment interest. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 277 (Chk. 2005).

If the court enters a default judgment different in kind from or exceeds in amount the relief that was prayed for in the demand for judgment, such a default judgment would be void and subject to collateral attack. Serious due process questions would be raised. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 277 (Chk. 2005).

Although FSM's notice pleading standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims, these procedures are neither available nor utilized in obtaining a default judgment when the defendant has never appeared. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 277 (Chk. 2005).

Civil Rule 54(c)'s clear command is that a default judgment cannot be different in kind from or exceed in amount that prayed for in the demand for judgment. This is in contrast to a case decided on the merits where every final judgment will grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 277-78 (Chk. 2005).

A complaint's prayer for "such other and further relief as may be deemed just and proper" cannot serve to incorporate an unpled prejudgment interest claim and circumvent Rule 54(c)'s clear command that a default judgment must not be different in kind from or exceed in amount that prayed for in the demand for judgment. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 278 (Chk. 2005).

A court, in entering a default judgment, cannot take a blind leap of faith that a defendant would know, or should know, that the lawsuit was also seeking unpled prejudgment interest. Likewise, a defendant, in deciding whether to defend a case filed against him or to do nothing and let a default judgment be entered against him, ought to be able to rely on the demand for judgment prayed for in the complaint and the complaint's contents to determine what his liability will be if a default judgment is entered. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 278 (Chk. 2005).

A default judgment that included damages for claims not raised in the complaint or sums not prayed for by the plaintiff and that was rendered against a defendant who never appeared would violate due process. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 278 (Chk. 2005).

The standard for analyzing whether relief from a default judgment is warranted is whether the default was willful, that is, caused by the defendant's culpable conduct, whether there is a meritorious defense, and whether setting aside the default judgment would prejudice the plaintiff, so when a plaintiff does not want the opportunity to contest a claim or assert a meritorious defense to a claim but wants to add a claim, the inapplicability of this standard to the case highlights the novelty of what the plaintiff is trying to do. No cases support the claim that Rule 60(b) relief is available for a prevailing plaintiff to be granted relief from a default judgment in its favor when the defendant had not appeared in the case prior to the default judgment. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 279 (Chk. 2005).

A plaintiff should seek to amend its complaint to ask for prejudgment interest before asking for a default judgment if it wants an unpled interest claim included in the judgment. When it does not do so, the court cannot grant it leave to amend its complaint after the default judgment has been entered because that would make meaningless Rule 54(c)'s clear command limiting default judgments to the kind and the amount prayed for in the demand for judgment. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 279 (Chk. 2005).

A defendant who has been served with a complaint and summons has twenty days after service to serve an answer or otherwise defend under Rule 12. Albatross Trading Co. v. Aizawa, 13 FSM R. 380, 381 (Chk. 2005).

Attorney's fees will not be awarded in a default judgment when nowhere in the pleadings does it allege or indicate that any contract between the parties makes the defendant liable for attorney's fees. Albatross Trading Co. v. Aizawa, 13 FSM R. 380, 382 (Chk. 2005).

When a default judgment is sought against a party that has appeared in the action, that party must be served with written notice of the application for default judgment at least three days before a hearing on the application. When the motion for a default judgment was served by mail on both the defendant and its counsel of record, the requisite notice was given. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 553 (Chk. 2005).

When the clerk has entered a default, the grant of a default judgment is not automatic, but left to the court's sound discretion. The party making the request is not entitled to a default judgment as of right. If the court determines that the defendant is in default, the complaint's factual allegations, except those relating to the amount of damages, will be taken as true. It is not always necessary to present testimony on the liability issue, although liability is not deemed established simply because of default and the court, in its discretion, may require proof of facts that must be established in order to determine liability. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 553-54 (Chk. 2005).

When the court has not previously construed some aspects of Rule 55(b)(2), an FSM procedural rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 554 n.1 (Chk. 2005).

A default judgment's determination of damages may require the court to interpret a contract's terms. Interpretations of contract terms are matters of law to be determined by the court. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 554 (Chk. 2005).

When the complaint did not plead that the defendant knew that its allegations were false, or that they were made with malice, or that they were made with a reckless disregard of the truth, and even taking the facts as pled in the complaint as true, the facts alleged are insufficient as a matter of law for the court to find the defendant liable for libel under the higher public figure standard, especially when the communications appear to be privileged. Liability for libel is not deemed established merely because the defendant defaulted. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 557 (Chk. 2005).

Courts ordinarily favor resolving cases on their merits rather than on procedural grounds. K&I Enterprises v. Francis, 15 FSM R. 414, 417 (Chk. S. Ct. Tr. 2007).

Once the court clerk has entered a default, the grant of a default judgment is not automatic, but left to the court's sound discretion. The requesting party is not entitled to a default judgment as of right. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 224 (Chk. 2008).

When a court determines that a defendant is in default, the complaint's factual allegations, except those relating to the amount of damages, will be taken as true, but liability is not deemed established simply because of the default. The court therefore must consider each of the items sought as damages before determining the amount of damages for which the defaulting defendants will be held liable. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 224-25 (Chk. 2008).

Since 18% per annum is not a usurious rate of interest under FSM law, the defaulting defendants will be liable for this item of damages when the defaulting defendants agreed, by their agent's signature on the invoices, to pay this rate on overdue accounts. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 225 (Chk. 2008).

When the clerk has entered a defendant's default, the grant of a default judgment is not automatic, but left to the court's sound discretion. The party making the request is not entitled to a default judgment as of right. George v. Albert, 17 FSM R. 25, 31-32 (App. 2010).

If a defendant is determined to be in default, the complaint's factual allegations, except those relating to the amount of damages, are taken as true. Although liability is not deemed established simply because of the default, it is not always necessary to present testimony on the liability issue, but the court, in its discretion, may require proof of facts that must be established in order to determine liability. George v. Albert, 17 FSM R. 25, 32 (App. 2010).

When, even if a default had been entered, an evidentiary hearing, such as the damages "trial" that was held would still have been required since the factual allegations relating to the amount of damages are not taken as true, any error in calling it a trial instead of a damages hearing, was harmless error. George v. Albert, 17 FSM R. 25, 32 (App. 2010).

The thirty-day time period to answer or otherwise defend before a default can be entered found in 4 F.S.M.C. 204(3) and in Supplemental Admiralty and Maritime Rule B(2)(b) is the applicable time frame in an admialty case. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 83 & n.2 (Yap 2010).

When two vessels were never arrested or seized in the FSM and no substitute *res*, a bond or letter of

undertaking, has been provided to the court so that the court can exercise *in rem* jurisdiction through the substitute, the court lacks jurisdiction over the vessels regardless of the service on the vessels' agent, and no default can be entered against either vessel. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

Under the FSM Rules of Civil Procedure, a default may be entered when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and a default judgment may be entered by the clerk or the court if certain requirements are met. Narruhn v. Chuuk, 17 FSM R. 289, 298 (App. 2010).

A default judgment is not a judgment obtained on the merits. In fact, it makes no claim as to the merits of the case at all. Instead, defaults and default judgments are procedural mechanisms which enable courts to avoid delay by an unresponsive party and to deter parties from using delay as a litigation strategy. Narruhn v. Chuuk, 17 FSM R. 289, 298 (App. 2010).

A default judgment must normally be viewed as available only when the adversary process has been halted because of an essentially unresponsive party. In that instance, the diligent party must be protected lest he be faced with interminable delay and continued uncertainty as to his rights. The default judgment remedy serves as such a protection. Furthermore, the possibility of a default is a deterrent to those parties who choose delay as part of their litigative strategy. Narruhn v. Chuuk, 17 FSM R. 289, 299 n.3 (App. 2010).

In entering a default judgment, the court's power is used to enter and enforce judgments regardless of the merits of the case, purely as a penalty for delays in filing or other procedural error. Narruhn v. Chuuk, 17 FSM R. 289, 299 (App. 2010).

An entry of default simply requires that all material allegations of the plaintiff's complaint be taken as true, so that judgment by default can be properly rendered without proof of the plaintiff's claim. Narruhn v. Chuuk, 17 FSM R. 289, 299 (App. 2010).

FSM law does not favor the entry of default judgments; courts ordinarily favor resolving cases on their merits rather than on procedural grounds. Narruhn v. Chuuk, 17 FSM R. 289, 299 (App. 2010).

The Civil Rule 55(a) twenty-day time limit does not apply in an admiralty case where the court is able to exercise personal jurisdiction over the *in personam* defendants under the long-arm statute. People of Tomil ex rel. Mar v. M/V Mell Sentosa, 17 FSM R. 478, 479 (Yap 2011).

The applicable time frame before a default can be entered in an admiralty case is the thirty-day time period to answer or otherwise defend found in 4 F.S.M.C. 204(3) and in Supplemental Admiralty and Maritime Rule B(2)(b). People of Tomil ex rel. Mar v. M/V Mell Sentosa, 17 FSM R. 478, 479 (Yap 2011).

When, because the thirty-day time period applies, the defendants still have time within which to respond to the plaintiffs' complaint, the plaintiffs' requests for entries of default will be denied, and since no default will be entered, the plaintiffs' motion for a default judgment must also be denied. People of Tomil ex rel. Mar v. M/V Mell Sentosa, 17 FSM R. 478, 479-80 (Yap 2011).

A default judgment is not a judgment obtained on the merits. In fact, it makes no claim as to the merits of the case at all. Stephen v. Chuuk, 17 FSM R. 496, 499 (App. 2011).

No default can be entered against a party which has either filed a response indicating its intent to defend the action or engaged in other behavior which constitutes an active defense. Mori v. Hasiguchi, 17 FSM R. 630, 643 (Chk. 2011).

If a party against whom judgment by default is sought has appeared in the action, that party must be

served with written notice of the application for judgment so when a renewed motion for entry of default judgment was not served on a party who had undisputedly appeared in the action or served on his former counsel, the motion for a default judgment against him will be denied without prejudice for lack of service of the motion on him. Mori v. Hasiguchi, 17 FSM R. 630, 643-44 (Chk. 2011).

While a default judgment is not an adjudication on the merits of a claim, it is a final judgment with res judicata and claim preclusion effect. Mori v. Hasiguchi, 17 FSM R. 630, 644 (Chk. 2011).

When the mortgage foreclosure portion of the action is being dismissed without prejudice pursuant to the mortgage's forum selection clause and when that dismissal leaves no other cause of action against a co-mortgagor, the court will deem it advisable to deny the plaintiff's motion for a default judgment against the co-mortgagor, and, since there is no cause of action left against the co-mortgagor, he must also be dismissed as a defendant. The bank's motion is therefore be denied as moot. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 95 (Yap 2011).

Since a defendant must receive notice of all claims for relief on which the court might find him liable and enter judgment against him, a default judgment that was rendered against a defendant who never appeared and that included damages for claims not raised in the complaint served on him or sums not prayed for by the plaintiff would violate due process. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 412, 416 (Yap 2012).

If the class plaintiffs wish to obtain a judgment against a defendant based on the second amended complaint they must effect service of process of that complaint on him, but if they are content to obtain a default judgment against him based on the first amended complaint, they will not be required to serve the second amended complaint on him. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 412, 416 (Yap 2012).

As a general rule, when one of several defendants who is alleged to be jointly liable defaults, judgment should not be entered against that defendant until the matter has been adjudicated with regard to all defendants, or all defendants have defaulted because when the relationship between the parties requires vicarious liability, finding one defendant liable and the others not liable would be an inconsistent judgment. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 412, 417 (Yap 2012).

Even if a default judgment could be entered against just the defaulting defendant instead of included in a later judgment with all defendants, damages should not be established, or any evidence taken on damages, against the defaulting defendant until the other defendants' liability has been determined in order to avoid the possibility of inconsistent damage awards. As there would be no damages amount, there would be no Rule 54(b) language directing its entry as a final judgment. This would leave the "default judgment" subject to revision at any time before the entry of a final judgment adjudicating all the claims and the rights and liabilities of all the parties. This "default judgment" would be an interlocutory order that is neither enforceable nor appealable. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 412, 417 (Yap 2012).

A defendant who is in default may participate in a damages hearing if necessary and proper to determine the amount of damages. FSM Civil Procedure Rule 55(b)(2) gives the court that discretion because it provides that if, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper. Lee v. FSM, 18 FSM R. 558, 560-61 (Pon. 2013).

When defendant contests the amount of the claim, a full hearing may be required on the issue of damages, since a default does not concede the amount demanded. This proceeding is the same as any other trial except that it is limited to the question of damages. Lee v. FSM, 18 FSM R. 558, 561 (Pon. 2013).

A default judgment entered after a damages hearing cannot be different in kind from or exceed in amount that prayed for in the demand for judgment. Lee v. FSM, 18 FSM R. 558, 561 (Pon. 2013).

A default judgment cannot be entered against the FSM unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. Rule 55(e) does not bar default judgments against the FSM in all circumstances, it only bars them when the claimant has not established his or her claim by evidence satisfactory to the court. The satisfactory or substantial evidence needed under Rule 55(e) does not have to rise to the same level needed in other cases against the FSM. Lee v. FSM, 18 FSM R. 558, 561 (Pon. 2013).

After an entry of default against the FSM government, the quantum and quality of evidence that might satisfy a court can be less than that normally required. Lee v. FSM, 18 FSM R. 558, 561 (Pon. 2013).

In a default judgment damages hearing against the FSM, it may seem necessary and proper that the court conduct a damages hearing at which the plaintiffs' affidavits and documents may be used but also at which the FSM will have the opportunity to present testimony and other evidence to refute the amount of the plaintiffs' damage claims because, in this case, it is impractical for each of the plaintiffs to appear in person and they should not be required to do so when the FSM has defaulted and the plaintiffs have travel costs from their homes in the mid-western United States that are disproportionate to their claimed possible recovery. Lee v. FSM, 18 FSM R. 558, 561-62 (Pon. 2013).

Since FSM civil procedure rules discourage litigation by ambush, the court may order the parties, if they have not already done so, to provide the other side with the documentary evidence that side intends to use at the default judgment damages hearing and a list of the witnesses, if any, which they intend to call along with a short summary of each witness's anticipated testimony. Lee v. FSM, 18 FSM R. 558, 562 (Pon. 2013).

The defendant's assertion that it cannot be held liable unless there is an apportionment of fault between it and the non-party driver of its vehicle does not seem to be a meritorious defense because that driver is not a party and a trial on the merits would only determine if the defendant were itself liable. Lee v. FSM, 18 FSM R. 631, 633-34 (Pon. 2013).

While it is uncertain how willful the original default was, the defendant's later lack of diligence was willful when it asked for 30 days' enlargement to file an answer but did not, at any time within that 30 days, prepare and file an answer or prepare and file a motion to vacate the default and file its proposed answer with it and when it did not move for a further enlargement or attempt to do anything in the following months so the court finally denied the motion to enlarge over four months later. Lee v. FSM, 18 FSM R. 631, 634 (Pon. 2013).

Although a defendant has defaulted, the plaintiffs are still required to prove damages before a default judgment can be entered. Lee v. FSM, 19 FSM R. 80, 82-83 (Pon. 2013).

As a general rule, when one of several defendants who is alleged to be jointly liable defaults, judgment should not be entered against that defendant until the matter has been adjudicated with regard to all defendants, or all defendants have defaulted. This principle guards against inconsistent judgments when the relationship between the parties requires joint and several liability. Damarlane v. Damarlane, 19 FSM R. 97, 110 (App. 2013).

Past precedent holds that a judgment by default shall not be different in kind from that prayed for in the demand for judgment. Damarlane v. Damarlane, 19 FSM R. 519, 523 (Pon. 2014).

The court will accept the material allegations against a defaulting defendant as true, but the factual allegations relating to the amount of damages will not be accepted as true. The court thus must consider

each of the items sought as damages before determining the amount of damages for which the defaulting defendant will be held liable. Damarlane v. Damarlane, 19 FSM R. 519, 523 (Pon. 2014).

When the clerk has entered a defendant's default, the grant of a default judgment is not automatic, but left to the court's sound discretion. The party making the request is not entitled to a default judgment as of right, but if a defendant is determined to be in default, the complaint's factual allegations, except those relating to the amount of damages, are taken as true. Pohnpei v. M/V Ping Da 7, 20 FSM R. 1, 2 (Pon. 2015).

Although liability is not deemed established simply because of a default, it is not always necessary to present testimony on the liability issue, but the court, in its discretion, may require proof of facts that must be established in order to determine liability. Thus, although a defendant has defaulted, the plaintiffs are still required to prove damages before a default judgment can be entered. Pohnpei v. M/V Ping Da 7, 20 FSM R. 1, 2 (Pon. 2015).

When a plaintiff has not furnished any evidence that it has suffered any damages conducting salvage operations to a useful and beneficial result, no salvage damages can be awarded even though the defendants are in default. Pohnpei v. M/V Ping Da 7, 20 FSM R. 1, 3 (Pon. 2015).

When Pohnpei did not plead a salvage cause of action under Title 19, either specifically, or in the facts it alleged, it cannot recover any salvage damages in a default judgment because a judgment by default cannot be different in kind from or exceed in amount that prayed for in the demand for judgment. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 78 (Pon. 2015).

Government expenses as a result of a ship grounding are not a cost of litigation and when they were neither plead as a cause of action nor prayed for as relief, these expenses are not recoverable either as costs or as damages in a default judgment since a default judgment cannot be different in kind from or exceed in amount that prayed for in the demand for judgment. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 80 (Pon. 2015).

The res judicata doctrine stands for the proposition that a judgment entered in a cause of action conclusively settles that cause of action as to all matters which were or might have been litigated and adjudged therein, and a default judgment constitutes a final judgment with res judicata and claim preclusion effect. Setik v. Mendiola, 20 FSM R. 236, 241 (Pon. 2015).

A judgment in a default case that awards relief that either is more than or different in kind from that requested originally is null and void. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 292 (Pon. 2016).

A default judgment is not different in kind from and does not exceed in amount that prayed for in the complaint's demand for judgment when the demand for judgment clearly asked for a money judgment against each defendant in amount of the unpaid notes and a default judgment was entered for a money judgment in that amount and when the prayer for relief made reference to the causes of action in the complaint's body in which it pled the defendants' personal liability since the plaintiff did not have to repeat the theory of liability in its demand for judgment. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 292 (Pon. 2016).

The *res judicata* doctrine stands for the proposition that a judgment entered in a case conclusively settles that cause of action, as to all matters that were brought or could have been litigated and adjudged therein. A default judgment constitutes a final judgment with *res judicata* and claim preclusion effect. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 506 (App. 2016).

When the clerk has entered a defendant's default, the grant of a default judgment is not automatic, but left to the court's sound discretion. Onanu Municipality v. Elimo, 20 FSM R. 535, 541 (Chk. 2016).

The party making the request is not entitled to a default judgment as of right, but if a defendant is

determined to be in default, the complaint's factual allegations, except those relating to the amount of damages, are taken as true, but liability is not deemed established simply because of a default. Onanu Municipality v. Elimo, 20 FSM R. 535, 541 (Chk. 2016).

In evaluating a motion for a default judgment, the court accepts as true all well-pled facts in the complaint but must reach its own legal conclusions. Onanu Municipality v. Elimo, 20 FSM R. 535, 541 (Chk. 2016).

While the factual allegations in a complaint, except those as to damages, are treated as conceded by the defendant for purposes of a default judgment, legal issues remain subject to the court's adjudication. Onanu Municipality v. Elimo, 20 FSM R. 535, 542 (Chk. 2016).

Even after default, it remains for the court to consider whether the unchallenged facts constitute a legitimate cause of action, since a party in default does not admit mere conclusions of law. Onanu Municipality v. Elimo, 20 FSM R. 535, 542 (Chk. 2016).

When part of the plaintiff's damages claim rests on their legal conclusion that interest can be imposed and included in a money judgment against the state, but this legal conclusion is incorrect, a default judgment against the State of Chuuk will be entered, but no interest will accrue on the judgment amount. Onanu Municipality v. Elimo, 20 FSM R. 535, 543 (Chk. 2016).

The entry of a co-party's default is not likely to alter the outcome of the plaintiff's case against the co-parties because when a default is entered against a party whose liability would be joint and several with a co-party, the court will generally not enter a default judgment against that party until the case against the co-party has been resolved and then a default judgment (or dismissal) consistent with the judgment against (or dismissal for) the joint and several co-party can be entered simultaneously. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 575-76 (Pon. 2016).

The res judicata doctrine stands for the proposition, that a judgment entered in a cause of action conclusively settles that cause of action, as to all matters which were or might have been litigated and adjudged therein. A default judgment constitutes a final judgment with res judicata and claim preclusion effect. Setik v. Perman, 21 FSM R. 31, 40-41 (Pon. 2016).

Preclusive effect is given to many decisions that have not actually been litigated on the merits – for example if it is the subject of a stipulation between the parties, or a judgment entered by confession, or consent, or default, where none of the issues is actually litigated. Waguk v. Waguk, 21 FSM R. 60, 72 (App. 2016).

Although a default judgment is not an adjudication on a claim's merits, it is a final judgment with res judicata and claim preclusion effect. Setik v. Mendiola, 21 FSM R. 537, 554-55 (App. 2018).

A default judgment can be entered against a defendant for discovery abuse, but such a remedy is available only when the party, against whom the default judgment is sought, has disobeyed a court order to provide discovery, and even then, courts have traditionally administered justice with mercy and allowed the non-complying party a second chance to comply with the discovery rules and the court orders made under them. Chuuk v. FSM, 22 FSM R. 85, 89-90 (Chk. 2018).

The court will not enter a default judgment as a discovery sanction when, not only has the defendant not disobeyed a court order compelling discovery (as no such order was sought or issued), but it also responded to the plaintiff's document production request and provided (quite tardily) what appear to be the requested documents, which the plaintiff has not indicated to be not responsive to its request, or incomplete, or otherwise deficient or unsatisfactory. Chuuk v. FSM, 22 FSM R. 85, 90 (Chk. 2018).

Rule 37 sanctions may be imposed for non-compliance with the court's orders concerning discovery, and the court in which the action is pending may make an order striking out pleadings or parts thereof, or

staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 181-82 (Pon. 2019).

– Default and Default Judgments – Entry of Default

An entry of default requires that all material allegations of the plaintiff's complaint be taken as true, so that judgment by default can be properly rendered without proof of the plaintiff's claim except as may be required to establish damages. Primo v. Refalopei, 7 FSM R. 423, 427 (Pon. 1996).

An entry of default does not relieve a plaintiff of the burden of proving the damages that flowed from the liability thus established. Primo v. Refalopei, 7 FSM R. 423, 428 (Pon. 1996).

Where the defendant is outside the FSM, no default can be entered until the expiration of at least 30 days after service. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 373 n.3 (Kos. 2000).

A court may find service upon a foreign government sufficient when the plaintiff sent it the complaint and summons by registered mail and the foreign government had actual notice of the complaint, since it filed a motion to dismiss, but the court will deny an entry of default when the plaintiffs cannot offer a formal proof of service, such as registered mail return receipt, because they cannot confirm service on the foreign government before it filed its motion to dismiss. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 373 (Kos. 2000).

Failure by a plaintiff to meet deadlines set out in an order may result in dismissal under Civil Procedure Rule 41(b), while a similar failure by a defendant may be met with an entry of default under Civil Procedure Rule 55(a). Kosrae v. Worswick, 9 FSM R. 536, 540 (Kos. 2000).

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by the rules and that fact is made to appear by affidavit or otherwise, the clerk must enter that party's default. The term "default" simply means the defendant has failed to plead or otherwise defend within the time required by the rules. O'Sullivan v. Panuelo, 10 FSM R. 257, 260 (Pon. 2001).

A motion is not required prior to entry of default. However, entry of default does not occur automatically. The entry of default must be requested and the request must be accompanied by proof of default demonstrating the defendant "has failed to plead or otherwise defend." When the fact of default is established by "affidavit or otherwise" the court clerk is required to enter it. O'Sullivan v. Panuelo, 10 FSM R. 257, 260 (Pon. 2001).

Until a default is entered by the court clerk, a party still may appear in the action and the clerk must accept for filing defendant's pleadings or motions, even if filed outside the times prescribed by the rules. Once a defendant's pleadings or motions are filed, it is too late for the entry of default, and the defendant is entitled to proceed with its defense. O'Sullivan v. Panuelo, 10 FSM R. 257, 260 (Pon. 2001).

A default judgment may only be entered against a party following entry of that party's default. Where no default has been entered, no judgment by default is available. O'Sullivan v. Panuelo, 10 FSM R. 257, 260 (Pon. 2001).

If service in Guam was all that a plaintiff had to rely upon, then the entry of default and the default judgment 25 days after service was made on Guam, would have been premature, but when service of process has been made within the FSM as well, a default may be entered after twenty days have elapsed after service and the defendant has not answered or otherwise defended. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 121 (Chk. 2002).

An entry of default may be sought by request. No motion is necessary for entry of default, whereas a

motion is necessary for entry of a judgment by default. Hartman v. Chuuk, 12 FSM R. 388, 393 n.6 (Chk. S. Ct. Tr. 2004).

A motion for entry of default will be denied when there is insufficient proof of service of notice of the complaint. George v. Albert, 15 FSM R. 323, 325 (Kos. S. Ct. Tr. 2007).

Kosrae Civil Rule 55(b)(2) provides that a party is entitled to at least three days written notice before a hearing on a motion for default. An entry of default will be denied when the plaintiff had six months in which to make the motion but waited until discovery had been completed and it was the day before trial; when both parties had already participated in discovery and were prepared to proceed with trial and had submitted pre-trial briefs and subpoenaed witnesses; and since, if, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence, the court may conduct such hearings as it deems necessary even if a default judgment had been granted, a hearing would have been necessary to determine the amount of damages and that hearing would have produced the same evidence and the same outcome as the trial. George v. Albert, 15 FSM R. 323, 327 (Kos. S. Ct. Tr. 2007).

Until a default is entered by the court clerk, a party still may appear in the action and the clerk must accept for filing the defendant's pleadings or motions even if filed outside the times prescribed by the rules. No default can be entered against a party which has either filed a response, such as a motion or an answer to the complaint, indicating its intent to defend the action, or engaged in other behavior which constitutes an active defense. Whether a party's written response or other behavior satisfies the Rule 55 requirement that the party must "plead or otherwise defend" to prevent entry of default is made on a case by case basis. K&I Enterprises v. Francis, 15 FSM R. 414, 417 (Chk. S. Ct. Tr. 2007).

An entry of default does not relieve a plaintiff of the burden of proving the damages that flowed from any liability thus established. George v. Albert, 17 FSM R. 25, 32 (App. 2010).

An entry of default simply requires that all material allegations of the plaintiff's complaint be taken as true, so that judgment by default can be properly rendered without proof of the plaintiff's claim. Narruhn v. Chuuk, 17 FSM R. 289, 299 (App. 2010).

When a default has been entered with a default judgment pending the determination of damages, it is inappropriate for the court to allow a third party complaint to be filed or to give declaratory relief involving a third party not named as a defendant in the matter. Lee v. FSM, 18 FSM R. 106, 108 (Pon. 2011).

It is the generally accepted rule that petitions to add a third party to a case once a trial is about to begin, or once it has begun, is untimely and will be denied, and that any efforts to implead a third party after the entry of default is also untimely and the request is moot. Lee v. FSM, 18 FSM R. 106, 108 (Pon. 2011).

An entry of default is similar to a finding of liability but it is not a final judgment. The entry of default does not relieve plaintiffs of their burden of proving the damages that flowed from any liability thus established. Lee v. FSM, 18 FSM R. 558, 560 (Pon. 2013).

When a defendant who has been properly served has not appeared and answered or otherwise defended within the allotted time and the plaintiff has made that fact to appear to the court clerk, the clerk must, right then, enter the default. The plaintiff does not have to serve a copy of that request on the defendant because the defendant has by then failed to appear or otherwise defend and therefore has no grounds on which to oppose the plaintiff's request. Lee v. FSM, 18 FSM R. 631, 633 (Pon. 2013).

When the summons served with the complaint had warned the defendant that if it did not appear or defend within twenty days of service of the complaint a default judgment could be taken against it, that constitutes the notice to the defendant and the defendant's opportunity to respond that is required by due process of law, and because the defendant had its chance to appear but did not, the defendant is not entitled to a second notice and warning that since it has not answered or otherwise defended, the plaintiff is

now going to get an entry of default and a default judgment. That notice has already been given and the opportunity to be heard has been afforded and has passed. Lee v. FSM, 18 FSM R. 631, 633 (Pon. 2013).

Before entering a default, the clerk must examine the affidavits filed and find that they meet Rule 55(a)'s requirements. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 659 (Pon. 2013).

A request for entry of default must be supported by affidavit because while the clerk will know when the summons and complaint were served on the defendant (assuming that a return of service was filed), the clerk will not know if the answer was served on the plaintiff within the 20-day period provided for in Rule 12. This, of course, is because plaintiff's attorney will know whether he has been served with a copy of a defendant's answer or not. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 659 (Pon. 2013).

The plaintiff must establish the fact of default by evidence, and this evidence can take the form of an affidavit showing the time and service of the summons and complaint, and averring that an answer was not served within the allowed time. The practice seems generally to make a request, supported by affidavit, and the burden of preparing an affidavit appears minimal. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 659 (Pon. 2013).

Since an entry of default is similar to a finding of liability but it is not a final judgment, an entry of default does not relieve a plaintiff of its burden of proving the damages that flowed from any liability thus established. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41c (Pon. 2015).

The court's long-standing usual practice has been to take any response by a pro se defendant as an answer precluding a default judgment and to require the plaintiff to proceed accordingly. Carius v. Johnson, 20 FSM R. 143, 145 (Pon. 2015).

A default can be entered against a party only when that party, against whom a judgment for affirmative relief is sought, has failed to plead or otherwise defend and that fact is made to appear by affidavit or otherwise. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 450 (Pon. 2018).

The plaintiffs' request for entry of default will be denied when the plaintiffs did not make their request, and the clerk did not enter a default, before the defendant filed its answer. Estate of Gallen v. Governor, 21 FSM R. 477, 484 n.7 (Pon. 2018).

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

Where a plaintiff files an amended complaint without leave of court and no motion for leave was ever filed the court may order the amended complaint stricken from the record. An entry of default based on such stricken amended complaint will be set aside. Berman v. FSM Supreme Court, 6 FSM R. 109, 112-13 (Pon. 1993).

The standard for setting aside an entry of default under Rule 55(c) is the liberal and less rigorous "good cause" standard rather than the more restrictive standard of excusable neglect for setting aside a default judgment under Rule 60(b). FSM Dev. Bank v. Gouland, 9 FSM R. 375, 377-78 (Chk. 2000).

The "good cause" threshold for Rule 55(c) relief is lower, ergo more easily overcome, than that which obtains under Rule 60(b) and the trial court should not read "good cause" too grudgingly. This more flexible approach reflects a policy decision that a default judgment should enjoy a greater degree of finality and, therefore, should be more difficult to disturb than a mere default. FSM Dev. Bank v. Gouland, 9 FSM R. 375, 378 (Chk. 2000).

Generally, "good cause" is a broader and more liberal standard that frees the court from some of the restraints imposed by the excusable neglect requirement. A motion for relief pursuant to Rule 55(c) must be liberally construed. The Rule 55(c) standard is lenient. FSM Dev. Bank v. Gouland, 9 FSM R. 375,

378 (Chk. 2000).

In determining whether good cause to vacate an entry of default exists a court evaluates whether the default was willful, whether setting it aside would prejudice the adversary, and whether a meritorious defense is presented. A court may also examine into such things as the proffered explanation for the default, the good faith of the parties, the amount of money involved, and the timing of the motion. FSM Dev. Bank v. Gouland, 9 FSM R. 375, 378 (Chk. 2000).

For the purpose of a Rule 55 motion to vacate an entry of default, the meritorious defense factor has a low threshold of adequacy and may be met although a court finds a defendant's meritorious defense argument tenuous. FSM Dev. Bank v. Gouland, 9 FSM R. 375, 378 (Chk. 2000).

Because of the strong policies favoring resolution on the merits, the trial court has only a narrow scope of discretion, so that in a close case, a trial court should resolve its doubts in favor of a party seeking relief from the entry of a default. FSM Dev. Bank v. Gouland, 9 FSM R. 375, 378-79 (Chk. 2000).

Because default judgments will be vacated under proper circumstances so that cases can be decided on their merits, and because when only a default has been entered, the policy in favor of vacating the default and deciding the case on its merits is even stronger, the policy in favor of deciding a case on its merits when no default has been entered and the answer merely filed a few days late must be much stronger. Medabalmi v. Island Imports Co., 10 FSM R. 32, 35 (Chk. 2001).

An entry of default may be set aside for good cause shown. Rule 55 distinguishes between relief from default, which is an interlocutory matter, and relief from a judgment by default, which involves final judicial action. Thus, a more liberal standard is applied to reviewing entry of default, as opposed to default judgments. Adams v. Island Homes Constr., Inc., 10 FSM R. 159, 162 (Pon. 2001).

The court may refuse to set aside a default when the default is due to willfulness or bad faith or where the defendant offers no excuse at all for the default. Adams v. Island Homes Constr., Inc., 10 FSM R. 159, 162 (Pon. 2001).

An entry of default may be vacated when the defendant relied on the representation of another defendant's employee that it would handle his defense in the case, and that after he learned that this was not so he obtained his own counsel who then filed the motion to vacate the entry of default. Adams v. Island Homes Constr., Inc., 10 FSM R. 159, 162 (Pon. 2001).

Any of the reasons sufficient to justify the vacation of a default judgment normally will justify relief from a default entry and in various situations a default entry may be set aside for reasons that would not be enough to open a default judgment. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 180 (Pon. 2001).

For good cause shown, the court may set aside an entry of default. When, even though the defendant's counsel has not sought to explain why she failed to request an enlargement of time and her failure to ask either opposing counsel or the court for an enlargement of time to answer was not excusable, the standard to be applied when determining whether to set aside an entry of default suggests that the defendants should not be penalized for the inexcusable neglect of their attorney where giving sufficient time to the defendants will provide necessary information to assist the court in a complicated case involving hundreds of thousands of dollars, and when the plaintiff has not opposed the request, the court will set aside an entry of default. Individual Assurance Co. v. Iriarte, 12 FSM R. 215, 216 (Pon. 2003).

Since the standard for setting aside an entry of default under Rule 55(c) is the liberal and less rigorous "good cause" standard rather than the more restrictive standard of excusable neglect for setting aside a default judgment under Rule 60(b), the court will find good cause to set aside entry of default based on the defendants' demonstrated intent to defend in the action by their filing numerous motions, including their first

motion for an enlargement, filed a day after the deadline for filing an answer to the complaint and before entry of default and their motion to set aside entry of default filed almost immediately after the default was entered. K&I Enterprises v. Francis, 15 FSM R. 414, 417 (Chk. S. Ct. Tr. 2007).

When the defendants' default was entered before they filed their answer and when the default was not subsequently set aside under Civil Procedure Rule 55(c), the court cannot take cognizance of the later-filed answer. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 224 (Chk. 2008).

In determining whether good cause to vacate an entry of default exists, a court evaluates whether the default was willful, whether setting it aside would prejudice the adversary, and whether a meritorious defense is presented, and the court may also examine such things as the proffered explanation for the default, the good faith of the parties, the amount of money involved, and the timing of the motion. FSM Social Sec. Admin. v. Chuuk Public Utility Corp., 16 FSM R. 333, 334 (Chk. 2009).

For the purpose of a Rule 55 motion to vacate an entry of default, the meritorious defense factor has a low threshold of adequacy and may be met although a court finds a defendant's meritorious defense argument tenuous. But while the meritorious defense factor has a low threshold of adequacy in a motion to vacate a default, that threshold is not non-existent. Some meritorious defense must be asserted. FSM Social Sec. Admin. v. Chuuk Public Utility Corp., 16 FSM R. 333, 334 (Chk. 2009).

A Rule 55 motion to vacate an entry of default will be denied when the defendant does not cite a meritorious defense in its motion and does not even assert that it has one. FSM Social Sec. Admin. v. Chuuk Public Utility Corp., 16 FSM R. 333, 334 (Chk. 2009).

In order to vacate an entry of default, the defendant must show good cause – a liberal and less rigorous standard under Rule 55(c) rather than the more restrictive standard of excusable neglect for setting aside a default judgment under Rule 60(b). In determining whether good cause to vacate an entry of default exists a court evaluates 1) whether the default was willful, 2) whether setting it aside would prejudice the adversary, and 3) whether a meritorious defense is presented. Lee v. FSM, 18 FSM R. 631, 633 (Pon. 2013).

Setting aside a default would prejudice the plaintiffs when a witness who made a key admission that goes to the issue of liability, a core issue which the defense seeks to contest on the merits, has, in the four years since the default was entered, passed away; when, although the plaintiffs may be able to obtain similar evidence by other difficult means, would not have the benefit of his testimony; when, if the defendant had not defaulted, the plaintiffs could have deposed this witness in order to preserve his testimony, but by defaulting, this deposition became superfluous and unnecessary; and when because of the passage of the four years, only one of the six expatriate plaintiffs is currently in the FSM, thus making it difficult and burdensome for the plaintiffs to present their case at a trial on the merits when it would not have been three years earlier. This prejudice to the plaintiffs alone is sufficient to deny vacating the default. Lee v. FSM, 18 FSM R. 631, 633 (Pon. 2013).

Rule 55(c) governs the setting aside of a default, but when a default judgment was already entered, FSM Civil Rule 60 applies. Bank of Hawaii v. Susaia, 19 FSM R. 66, 69 n.1 (Pon. 2013).

Since the standard of review of a trial court's ruling on a motion for relief from judgment is whether the trial court has abused its discretion, the standard of review for a relief from an entry of default logically should also be abuse of discretion. Damarlane v. Damarlane, 19 FSM R. 97, 104 (App. 2013).

The standard for setting aside an entry of default under Rule 55(c) is the liberal and less rigorous "good cause" standard rather than the more restrictive excusable neglect standard used for setting aside a default judgment under Rule 60(b). "Good cause" is a broader and more liberal standard that frees the court from some of the restraints imposed by the excusable neglect requirement. Damarlane v. Damarlane, 19 FSM R. 97, 104-05 (App. 2013).

In determining whether good cause to vacate an entry of default exists, a court evaluates whether the default was willful, whether setting it aside would prejudice the adversary, and whether a meritorious defense is presented and the court may also examine such things as the proffered explanation for the default, the good faith of the parties, the amount of money involved, and the motion's timing. Damarlane v. Damarlane, 19 FSM R. 97, 105 (App. 2013).

For the purpose of a Rule 55(c) motion to vacate an entry of default, the meritorious defense factor has a low threshold of adequacy and may be met even though a court finds a defendant's meritorious defense argument tenuous. Damarlane v. Damarlane, 19 FSM R. 97, 105 (App. 2013).

When, since the plaintiffs' claims were not for a sum certain, the clerk very properly did not enter a default judgment against either defendant and since only an entry of default was in place, the trial court properly used the lenient good cause standard to consider and grant the motion to set aside the entry of default because the movant did present tenuous but meritorious defenses and because his default was not willful and the five-month delay did not prejudice the plaintiffs. Damarlane v. Damarlane, 19 FSM R. 97, 105 (App. 2013).

The standard for setting aside an entry of default under Rule 55(c) is the liberal and less rigorous "good cause" standard rather than the more restrictive standard of excusable neglect for setting aside a default judgment under Rule 60(b). The "good cause" threshold for Rule 55(c) relief is lower, ergo more easily overcome, than that which obtains under Rule 60(b) and the trial court should not read "good cause" too grudgingly. This more flexible approach reflects a policy decision that a default judgment should enjoy a greater degree of finality and, therefore, should be more difficult to disturb than a mere default. Pohnpei Transfer & Storage, Inc. v. Shoniber, 19 FSM R. 614, 616 (Pon. 2014).

Because of the strong policies favoring resolution on the merits, the trial court has only a narrow scope of discretion, so that in a close case, a trial court should resolve its doubts in favor of a party seeking relief from the entry of a default. Pohnpei Transfer & Storage, Inc. v. Shoniber, 19 FSM R. 614, 616 (Pon. 2014).

When, upon receiving the complaint, the defendant visited an attorney for assistance and that attorney told the defendant that he was not admitted to practice in the FSM Supreme Court, and that he would seek other assistance to represent her; when, based on this advice, the defendant left Pohnpei, only to return a few years later to find that she was in default; and when her motion to set aside the default is unopposed, the defendant has met the good cause standard to set aside the entry of default. Pohnpei Transfer & Storage, Inc. v. Shoniber, 19 FSM R. 614, 616 (Pon. 2014).

An application under Rule 55(c) to set aside a default entry or judgment is addressed to the court's sound discretion, and the judge's determination normally will not be disturbed on appeal unless the appellate court finds an abuse of discretion or concludes that the judge was clearly wrong. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 306, 307-08 (Pon. 2016).

Under Civil Procedure Rule 55(c), relief from an entry of default may be granted for good cause shown. A default entry may thus be set aside for reasons that would not be enough to open a default judgment, but, although good cause is a mutable standard, varying from situation to situation, and is likewise a liberal one, it is not so elastic as to be devoid of substance. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 306, 308 (Pon. 2016).

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

When the motion to set aside the default was not brought until nearly two and a half years after default was entered, and when the movant's arguments do not address the length of delay in filing the motion to set aside but argue that another defendant failed to protect its interest, the court finds that the default was willful. The court may refuse to set aside a default when the default is due to willfulness or bad faith or where the defendant offers no excuse at all for the default. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 306, 308 (Pon. 2016).

A Rule 55 motion to vacate an entry of default will be denied when the defendant does not cite a meritorious defense in its motion and does not even assert that it has one. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 306, 308 (Pon. 2016).

A motion to set aside an entry of default will be denied when the motion was not brought until nearly two and a half years after the default was entered; when, although if the motion to set aside had filed at an early stage of the lawsuit the prejudice to the plaintiff would have been minimal, granting the motion now would be prejudicial to the plaintiff because the plaintiff has actively litigated the matter for nearly three years; when the defendant does not assert a meritorious defense in its motion; and when, after a prior court order addressed the default, it was seven months before the motion to set aside was filed. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 306, 308-09 (Pon. 2016).

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

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

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

Rule 55(c) governs only the setting aside of an entry of default. It is Rule 60(b) that governs the setting aside of a default judgment (and all other judgments). If a court determines that, under Rule 60(b)'s requirements, a default judgment should be set aside, then the entry of default will also be set aside. That is because, if the Rule 60(b)'s higher requirements for relief from judgment have been met, then Rule 55(c)'s lower requirement of good cause is also met. Setik v. FSM Dev. Bank, 21 FSM R. 505, 514 (App. 2018).

When relief is sought only from the entry of default the standard is "good cause," and when relief is also sought from the entry of a default judgment the "reasons" set forth in Rule 60(b) may supply the good cause. Setik v. FSM Dev. Bank, 21 FSM R. 505, 514 (App. 2018).

Any of the reasons sufficient to justify the vacation of a default judgment under Rule 60(b) normally will justify relief from an entry of default and in various situations an entry of default may be set aside for reasons that would not be enough to open a default judgment. Setik v. FSM Dev. Bank, 21 FSM R. 505, 514 (App. 2018).

The "good cause" threshold for Rule 55(c) relief is a lower, and more easily overcome, than that which

obtains under Rule 60(b) and this approach reflects a policy decision that a default judgment must enjoy a greater degree of finality and, therefore, should be more difficult to disturb than a mere entry of default. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 604 (Pon. 2020).

Rule 55(c) governs the setting aside of a default, but when a default judgment has already been entered, FSM Civil Rule 60(b) applies and must be used to set aside the default judgment. But, if a court determines that, under Rule 60(b)'s requirements, a default judgment should be set aside, then the entry of default will also be set aside, as a matter of course, because, if the Rule 60(b)'s higher requirements for relief from judgment are met, then Rule 55(c)'s lower requirement of good cause is also met. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 604 (Pon. 2020).

– Default and Default Judgments – Sum Certain

The clerk's office only has authority to grant default judgments for a sum certain or for a sum which can by computation be made certain. Any award of attorney's fees must be based upon a judicial finding and thus is not for a sum certain and cannot be granted by the clerk. Bank of the FSM v. Bartolome, 4 FSM R. 182, 184 (Pon. 1990).

Entry of a default judgment is a two step process. There must first be an entry of default before a default judgment can be entered. A default judgment can then be entered, by the clerk if it is for a sum certain; otherwise it must be entered by the court. Poll v. Paul, 6 FSM R. 324, 325 (Pon. 1994).

A plaintiff has waived any claim for attorney's fees when it submitted a form of judgment for a sum certain for the clerk's signature under FSM Civil Rule 55(b)(1). Attorney's fees may only be awarded upon a judicial finding that the fees sought are reasonable. FSM Social Sec. Admin. v. Lelu Town, 13 FSM R. 60, 62 (Kos. 2004).

A court clerk cannot enter a default judgment for a sum certain when no affidavit of the amount due, as required by Rule 55(b)(1), was attached to the default judgment request. A court clerk also cannot enter a default judgment when the defendant appeared in the case and participated in discovery and motions and his default would thus not be for failure to appear but for failure to properly file his responsive pleading because, by its terms, Rule 55(b)(1), only applies if the defendant has been defaulted for failure to appear. George v. Albert, 17 FSM R. 25, 30 (App. 2010).

Any claim including attorney's fees is not one for a sum certain. George v. Albert, 17 FSM R. 25, 30 (App. 2010).

When the complete ledger sheets and the open account agreement were not attached to the amended complaint, even just the principal and interest would not constitute a sum certain or liquidated damages. George v. Albert, 17 FSM R. 25, 30 (App. 2010).

A claim for prejudgment interest, when it lies within the court's discretion because it is not specifically provided for in the parties' prior agreement (as it would be in a bank loan), is not a claim for a sum certain, for which the clerk could enter a default judgment. George v. Albert, 17 FSM R. 25, 30 (App. 2010).

In the Rule 55 context, a claim is not a sum certain unless there is no doubt as to the amount to which a plaintiff is entitled as a result of the defendant's default. George v. Albert, 17 FSM R. 25, 31 (App. 2010).

The Rule 55(b)(1) term "sum certain" contemplates a situation in which, once liability has been established, there can be no doubt as to the amount due, as in actions on money judgments and negotiable instruments, or similar actions where damages can be determined without resort to extrinsic proof. George v. Albert, 17 FSM R. 25, 31 (App. 2010).

Merely requesting a specific amount in the complaint or statement of damages does not fulfill the sum

certain requirement. George v. Albert, 17 FSM R. 25, 31 (App. 2010).

Courts are clear that a claim is not for a "sum certain" merely because the demand in the complaint is for a specific dollar amount. A contrary holding would permit almost any unliquidated amount to be transformed into a claim for a sum certain simply by placing a monetary figure on the item of claimed damage, even though that amount was not fixed, settled, or agreed upon by the parties and regardless of the nature of the claim. George v. Albert, 17 FSM R. 25, 31 (App. 2010).

The term "sum certain" contemplates a situation where the amount due cannot be reasonably disputed, is settled with respect to amount, ascertained and agreed upon by the parties, or fixed by operation of law. A claim is not for a "sum certain" merely because the claim is stated as a specific dollar amount in a complaint, verified complaint, or affidavit. George v. Albert, 17 FSM R. 25, 31 (App. 2010).

As with a "sum certain," a hearing is not normally required if the claim is "liquidated." The term "sum certain" has been held to have a meaning similar to "liquidated amount." "Liquidated" means adjusted, certain, settled with respect to amount, fixed. A claim is liquidated when the amount thereof has been ascertained and agreed upon by the parties or fixed by operation of law. George v. Albert, 17 FSM R. 25, 31 (App. 2010).

Whether the damages sought in a default judgment constitute a sum certain is a matter of law which is reviewed de novo. Damarlane v. Damarlane, 19 FSM R. 97, 104 (App. 2013).

A claim is not for a "sum certain" merely because the claim is stated as a specific dollar amount in a complaint, verified complaint, or affidavit. Damarlane v. Damarlane, 19 FSM R. 97, 104 (App. 2013).

The Rule 55(b)(1) term "sum certain" contemplates a situation in which, once liability has been established, there can be no doubt as to the amount due, as in actions on money judgments and negotiable instruments, or similar actions where damages can be determined without resort to extrinsic proof, that is, it contemplates a situation where the amount due cannot be reasonably disputed, is settled with respect to amount, and is either ascertained and agreed upon by the parties or fixed by operation of law. Damarlane v. Damarlane, 19 FSM R. 97, 104 (App. 2013).

When the asserted damages were not agreed upon by the parties or fixed by operation of law and when they can reasonably be disputed, not only in amount but also whether any of these "estimated costs" are for items that could properly be used as a measure of damages in the case, the clerk had no power to enter a default judgment since there was no sum certain. Damarlane v. Damarlane, 19 FSM R. 97, 104 (App. 2013).

Default judgments entered by the clerk (but not for default judgments entered by the court) are the only judgments for which a sum certain is a requirement. Setik v. FSM Dev. Bank, 21 FSM R. 505, 515 (App. 2018).

For the clerk to enter a default judgment without a judge's participation the plaintiff's claim against the defendant must be for a sum certain or for a sum which can by computation be made certain, and this can only be done on the plaintiff's request and upon affidavit of the amount due. Setik v. FSM Dev. Bank, 21 FSM R. 505, 515 (App. 2018).

Bank loans and promissory notes are classic examples of a sum certain. The parties have agreed to the loan's terms and, when the loan remains unpaid, the amount due can be made certain by computation according to the loan's agreed terms. Setik v. FSM Dev. Bank, 21 FSM R. 505, 515 (App. 2018).

The court clerk may enter a default judgment only if it is for a sum certain or for a sum which can by computation be made certain. Bank loans and promissory notes are classic examples of a sum certain. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 495, 496-97 (Pon. 2020).

Any claim including attorney's fees is not one for a sum certain, because attorney's fees may only be awarded upon a judicial finding that the fees sought are reasonable. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 495, 497 (Pon. 2020).

When a plaintiff requests a default judgment that includes $1,200 in legal fees (attorney's fees), the default judgment it requests is not for a sum certain, and the clerk cannot grant it. Only the court can grant it. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 495, 497 (Pon. 2020).

A sum that included, among other things, $1,200 in attorney's fees that had been added to the loan principal, is not a sum certain because an amount that includes attorney's fees can never be a sum certain. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 603 (Pon. 2020).

– Depositions

Where the court set aside a default judgment upon the payment by defendant to plaintiff of air fare to attend the trial, no modification will be granted to require the defendant to pay the costs of the plaintiff's counsel to go to plaintiff's residence to take his deposition which is being noticed by the plaintiff, especially where there is no showing that plaintiff could not attend the trial, nor will the court decide before trial whether such deposition could be used at trial. Morris v. Truk, 3 FSM R. 454, 456-57 (Truk 1988).

Where plaintiff initially appeared for deposition and thereafter missed several continued dates within a two week time span because of funerals at which he was required to officiate, the failure to appear on the rescheduled dates was substantially justified so as to make sanctions under FSM Civil Rule 37(d) inappropriate. Nahnken of Nett v. United States (II), 6 FSM R. 417, 419-20 (Pon. 1994).

Ordinarily the court will not grant motions for protective orders to substitute interrogatories for depositions in view of the recognized value and effectiveness of oral over written examinations. Nahnken of Nett v. United States (II), 6 FSM R. 417, 422 (Pon. 1994).

A defendant is entitled to examine a plaintiff in the jurisdiction where the plaintiff has chosen to file the lawsuit. A court may grant an exception to the rule requiring plaintiffs to submit to depositions in the jurisdiction where the suit is pending when a plaintiff makes a good faith application based on hardship. McGillivray v. Bank of the FSM (II), 6 FSM R. 486, 488 (Pon. 1994).

Where the plaintiff has failed to obey the court's discovery orders, and has repeatedly refused to submit to a deposition although the court has tried to accommodate plaintiff's claim of financial hardship, and failed to make a good faith effort to respond to interrogatories, the plaintiff has demonstrated an express lack of a good faith effort to move the litigation forward, leaving the court no choice but to dismiss the case with prejudice. McGillivray v. Bank of the FSM, 7 FSM R. 19, 23-26 (Pon. 1995).

Leave of court is required to depose a party within 30 days of service of summons and complaint on that party. Pacific Agri-Products, Inc. v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 291, 292 (Pon. 1995).

In order for a deposition to be admissible a deponent must physically appear before someone who can identify and administer the oath even if the deposition is taken telephonically. FSM v. Skico, Ltd. (III), 7 FSM R. 558, 559 (Chk. 1996).

The deposition of a corporation generally must be held where its corporate offices are. FSM v. Skico, Ltd. (IV), 7 FSM R. 628, 629 (Chk. 1996).

Objection to the qualification of the officer before whom the deposition is taken is waived unless made beforehand, or as soon thereafter as possible. FSM v. Skico, Ltd. (IV), 7 FSM R. 628, 630 (Chk. 1996).

If objections in manner of taking deposition are not made so that they may be promptly cured, the

objection is waived. FSM v. Skico, Ltd. (IV), 7 FSM R. 628, 630 (Chk. 1996).

Where it would be unjust to sanction defendants whose whereabouts are unknown when what might have been discovered had their depositions gone forward was limited to information concerning insurance coverage, which could have been obtained by cheaper and simpler forms of discovery, the court will issue a protective order that the defendants need not appear for deposition, but that the document production request relating to insurance policies be honored. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 150, 154 (Pon. 1999).

A party may in the party's notice and in a subpoena name as the deponent a governmental agency and describe with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. This procedure should be distinguished from the situation in which a party wants to take the deposition of a particular individual associated with a governmental agency. Pohnpei v. KSVI No. 3, 9 FSM R. 273, 276 (Pon. 1999).

Once a deposition notice is served under Rule 30(b)(6), it is the duty of the governmental agency to name one or more persons who consent to testify on its behalf and these persons must testify as to matters known or reasonably available to the agency. Pohnpei v. KSVI No. 3, 9 FSM R. 273, 276 (Pon. 1999).

It is appropriate to allow the deposition of a party's attorney either when 1) the deposition is the only practical means of obtaining the information, 2) the information sought will not invade the attorney-client privilege or the work product doctrine, and 3) the information sought is relevant and the need for it outweighs the disadvantages inherent in deposing a party's attorney; or when it is shown that no other means exist to obtain the information, and that the information sought is crucial to the preparation of the case. Pohnpei v. KSVI No. 3, 9 FSM R. 273, 278 (Pon. 1999).

A protective order will be granted preventing the deposition of defendants' counsel and his production of documents when there are other means by which the information can be obtained, when the information does not appear to be as relevant and necessary as suggested, and when the information involves counsel's opinions in a work he co-authored 25 years before. The plaintiff's need for the information is outweighed by the hardship on defendants, who would be forced to confront the possibility of obtaining different counsel at a late stage of the litigation. Pohnpei v. KSVI No. 3, 9 FSM R. 273, 278 (Pon. 1999).

Deposition costs will be allowed when the transcription was done and the deposition was admitted into evidence at trial even though the documentation for the deposition charge was a check made payable to an attorney in the Philippines, and noted as such on the check stub. Amayo v. MJ Co., 10 FSM R. 371, 385-86 (Pon. 2001).

Any party may serve upon any other party written interrogatories to be answered by the party served. Depositions may be taken of any person but interrogatories are limited to parties. AHPW, Inc. v. FSM, 10 FSM R. 420, 426 (Pon. 2001).

The Rule 31 procedure for depositions upon written questions is that a copy of the questions is delivered to the court reporter who then takes the deposition in accordance with Rule 30(c), (e), and (f). Written cross, redirect, and recross questions are thereafter propounded within the time provided by the rule. While a deposition on written questions may be useful in certain circumstances, this procedure is inflexible, and as a result, infrequently used. All things considered, depositions upon written questions are not as effective as oral depositions in eliciting spontaneous answers. AHPW, Inc. v. FSM, 10 FSM R. 420, 426 (Pon. 2001).

Generally, the designated representative of a party who is not a natural person, and parties who are natural persons, may attend depositions. Adams v. Island Homes Constr., Inc., 10 FSM R. 510, 512 (Pon.

2002).

In the case of corporations, partnerships, associations, or governmental agencies, the organization so named must designate one or more officers, directors, or managing agents, or other persons who consent to testify at depositions on its behalf. Adams v. Island Homes Constr., Inc., 10 FSM R. 510, 512-13 (Pon. 2002).

When one party has agreed to accept a personal representative for the larger question of deposing a sole proprietor party, it has also accepted him for the secondary purpose of attending other depositions as a representative where the sole proprietor would otherwise be entitled to be present. Adams v. Island Homes Constr., Inc., 10 FSM R. 510, 514 (Pon. 2002).

Depositions upon written questions under Rule 31 are an alternative to oral depositions. The Civil Procedure Rules contemplate that either an oral or written deposition will be taken, and not both. A party therefore waived its right to propound written deposition questions to another party at the same time it waived its right to take her oral deposition, but if information is sought, other discovery methods are available under the Rules. Adams v. Island Homes Constr., Inc., 10 FSM R. 510, 514 n.3 (Pon. 2002).

If parties intend to continue a deposition at a later time, the deposition transcript itself will so indicate. In the absence of such clear direction, the deposition is complete at its conclusion. Adams v. Island Homes Constr., Inc., 10 FSM R. 510, 514 (Pon. 2002).

Unless it appears that the witness's absence was procured by the party offering the deposition, a deposition of a witness, whether or not a party, may be used by any party for any purpose, if the court finds that the witness is off of the island at which the trial or hearing is being held. AHPW, Inc. v. FSM, 12 FSM R. 544, 557 (Pon. 2004).

Since Rule 32(a) provides that a deposition or part thereof may be used at trial so far as admissible under the evidence rules against any party who was present or represented at the deposition's taking or who had reasonable notice thereof; when the defendant was personally served with a notice of the plaintiff's deposition and he did not object in any way to the deposition being taken in the Philippines and he did not attend the deposition, he had reasonable notice of the deposition. Further, Rule 32(a)(3) provides that the deposition of a witness, whether or not a party, may be used for any purpose if the court finds that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment. Whether circumstances exist such that a plaintiff's deposition may be used at trial in lieu of live testimony is to be made at the time of trial, and not months beforehand. Amayo v. MJ Co., 13 FSM R. 242, 245 (Pon. 2005).

When the plaintiff suffers from paraplegia and that that condition is ongoing, and when, although the court would have preferred the treating physician's opinion that he was unable to travel, it is also undeniable that paraplegia is a serious ongoing medical condition, the plaintiff meets the illness/infirmity provision of Rule 32(a)(3) so that his deposition may be used at trial in lieu of live testimony. Amayo v. MJ Co., 13 FSM R. 242, 246 (Pon. 2005).

A deposition may be used for any purpose if the witness is off of the island at which the trial or hearing is being held, unless it appears that the absence of the witness was procured by the party offering the deposition. Amayo v. MJ Co., 13 FSM R. 242, 246 (Pon. 2005).

A party may use his or her own deposition at a trial. When a party is seeking to use his or her own deposition at trial, the court may consider all the circumstances relating to the party's absence to determine whether the deposition may be used. Amayo v. MJ Co., 13 FSM R. 242, 246 (Pon. 2005).

When the plaintiff is off of the island (Pohnpei) where the trial is being held and is in the Philippines where he resides, the fact that he resides there does not mean that he has "procured" his own absence from the place of the trial in the sense contemplated by Rule 32. Since the plaintiff was referred to the

Philippines for medical care shortly after his injury preventing him from continuing to work in Pohnpei, the fact that he is absent from Pohnpei under these conditions supports the admission of his deposition at the re-trial, subject to any of the evidentiary objections that would obtain if he were testifying in person. Amayo v. MJ Co., 13 FSM R. 242, 246 (Pon. 2005).

When, during discovery that preceded the first trial, the defendant had the opportunity to take the plaintiff's deposition but did not; when he did not propound any other discovery; when he did not object when plaintiff's counsel noticed plaintiff's deposition in the Philippines and did not attend that deposition; when he did not comply fully with the plaintiff's discovery requests and the court ordered him to comply, but he did not and was subject to a $495.50 sanction; when, after the case was remanded for a new trial, the court set terms and conditions for conducting discovery, the first of which was that he pay the outstanding $495.50 discovery sanction before undertaking any further discovery, but it was not paid until five months after the discovery cutoff date; and when, by a motion filed twenty-six days before the re-trial was scheduled, the defendant sought leave to take the plaintiff's deposition, the defendant's motion to exclude the plaintiff's deposition from being offered at trial will be denied. Amayo v. MJ Co., 13 FSM R. 242, 246-47 (Pon. 2005).

Civil Rule 32(a)(3) permits any party to use a witness's deposition for any purpose if the court finds that the witness is off of the island at which the trial or hearing is being held, unless it appears that the witness's absence was procured by the party offering the deposition. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 19 (App. 2006).

If objections in the manner of taking deposition, including disqualification of the officer taking the deposition, are not made so that they may be promptly cured, the objection is waived. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 19 (App. 2006).

A mere assertion that a potential deponent lacks knowledge is not a ground for granting a protective order. The party seeking discovery is not required to establish that the person whose deposition it seeks has information about which he or she could testify at trial. Indeed one important purpose of discovery is to ascertain who has such information. FSM Dev. Bank v. Adams, 14 FSM R. 234, 254 (App. 2006).

Age and ill health is often a ground to take a deposition in order to preserve testimony for trial in case the witness is unavailable at that time. FSM Dev. Bank v. Adams, 14 FSM R. 234, 254 (App. 2006).

It would be an extraordinary case where examination of other witnesses would take the place of the examination of a party. FSM Dev. Bank v. Adams, 14 FSM R. 234, 254 (App. 2006).

When a motion for a protective order did not assert that the bank had waived the right to depose a party by going forward with her son's deposition – only that the son was knowledgeable and available and the party was not – the motion's opposition was substantially justified and the trial court abused its discretion when it awarded fees and expenses for bringing the protective order motion. That award will be reversed. FSM Dev. Bank v. Adams, 14 FSM R. 234, 254-55 (App. 2006).

Deposition costs will be allowed when the transcribed deposition was admitted into evidence at trial. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 74 (Yap 2007).

When the plaintiff contends that the depositions of the president, vice president, and former president would yield admissible evidence about the discussions during high-level national-state government meetings on replacing the plaintiff as the Project Management Unit since the presidents and vice president were the only persons present at all of those meetings and should thus have unique, relevant testimony, the plaintiff has not met its burden to show that information about those meetings cannot be obtained through alternative sources or less burdensome means since a number of other persons were present at each of those meetings. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512 (Pon. 2009).

When the president has unique, personal knowledge of an essential relevant issue because only the president, and no alternative source, is available to corroborate testimony, the court will limit discovery from the president to this one narrow topic. Since discovery will be limited to this one narrow point, the president's oral deposition will be more burdensome than needed. The court will therefore craft a protective order so that another means of discovery will be used – the plaintiff may seek discovery from the president through either a Rule 31 deposition upon written questions or through Rule 33 written interrogatories, whichever the plaintiff finds best-suited to its purposes. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512-13 (Pon. 2009).

Unless manifest injustice would result, the court will require that the party seeking discovery pay the opposing party's expert a reasonable fee for time spent in responding to discovery. Since the time spent cannot be known with certainty until after it has been spent, Rule 26(b)(4)(C) contemplates that, as a matter of general practice, payment will not be tendered to the opposing party's expert witness until after the discovery deposition has been completed. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 650 (Pon. 2009).

A party deposing the opposing party's expert witness is not required to pay expert fees for the deponent's time in advance of the deposition, absent an agreement to do so, and no rule permits a party to terminate a deposition for the failure to pay expert witness fees in advance. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 650 (Pon. 2009).

A party is not entitled to an order requiring that its expert witness receive payments in advance of, or during, a discovery deposition and since it is not entitled to such an order, its motion to impose sanctions because the opposing party has not made advance payments and to compel advance payments will be denied. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 650-51 (Pon. 2009).

Since an expert witness deponent's refusal to continue his deposition without advance payment was unjustified and contrary to the rules, the court will order that the deponent resume his deposition, and the party deposing him may notice his deposition. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 651 (Pon. 2009).

A sanction award imposed on a deponent may be setoff against the expert fees owed him after his deposition has been completed. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 652 (Pon. 2009).

A motion to exclude an expert witness's deposition testimony is premature when it is made before his deposition has been completed, and any motion to exclude his trial testimony on the ground of relevance before the deposition is complete is also premature. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 652 (Pon. 2009).

Leave of court to take a deposition is required only if it is taken before 30 days after the complaint and summons were served on a defendant. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 64, 67 (Yap 2010).

Any party seeking to depose any person upon oral examination must give reasonable notice in writing to every other party to the action. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 64, 67 (Yap 2010).

When defense counsel's office is in Greater Manila, Philippines, written notice given defense counsel on August 21, 2009, for a deposition in Yap on August 25, 2009, is not the "reasonable notice" required by Rule 30(a) and will be quashed since this was not enough advance notice for defense counsel to prepare for the deposition, make travel arrangements, and arrive in Yap, thousands of miles away on the opposite side of the Philippine Sea and where, given the flight schedules, he might not have been able to get to in time for the scheduled deposition. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 64, 68 (Yap 2010).

Since parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject

matter involved in the pending action, the plaintiffs were entitled to depose the tug's captain as he was a witness with relevant information and since pretrial depositions are an expected and normal part of pretrial discovery. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 64, 68 (Yap 2010).

Ordinarily, the court will not grant motions for protective orders to substitute written interrogatories for oral depositions in view of the recognized value and effectiveness of oral over written examinations. While a deposition on written questions may be useful in certain circumstances, this procedure is inflexible, and as a result, infrequently used since depositions upon written questions are not as effective as oral depositions in eliciting spontaneous answers. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 64, 68 (Yap 2010).

Written depositions are used primarily to obtain routine information that is not in substantial dispute or in suits where the amount involved is small. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 64, 68 (Yap 2010).

When none of the factors listed in FSM Civil Rule 26(c) for granting a protective order – i.e. "annoyance, embarrassment, oppression, or undue burden or expense" – are present, the court will deny a request that a deposition be taken by means of written, instead of oral, questions. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 64, 68 (Yap 2010).

The defendants' insistence that a witness not be deposed without a court order is completely unjustified when the defendants give no colorable ground for their position. The court will accordingly grant the plaintiffs' motion to compel the deposition and encourage the parties to agree on a date and time for it that is mutually convenient but, if the parties are unable to agree on an earlier date and time, the oral deposition will start at on a court-set date. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 64, 68-69 (Yap 2010).

When the court does not find that the defendants' opposition to the plaintiffs' motion to compel a deposition was substantially justified and it has not been shown that other circumstances make an expenses award unjust, the court must order the defendants to pay the plaintiffs' reasonable attorney fees in obtaining the order. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 64, 69 (Yap 2010).

When counsel supported the deponent in his unreasonable demands, did not advise the deponent that his demands were unjustified, and did advise the deponent that he could leave the deposition, in effect, advising the deponent not to answer, this advice (to leave – to not testify) was not substantially justified. FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 91 (Pon. 2010).

A party needs to finish deposing the opposing party's witness far enough ahead of trial so that it would have a fair opportunity to meet that witness's expected expert opinion testimony. FSM v. GMP Hawaii, Inc., 17 FSM R. 192, 194 (Pon. 2010).

To the extent that a deponent's later affidavit contradicts his deposition testimony, it cannot be used to create factual issues to defeat summary judgment because a party cannot create a triable issue in opposition to summary judgment simply by contradicting his deposition testimony with a subsequent affidavit. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 583 (Pon. 2011).

It is expected that a party in civil litigation will be deposed during the course of discovery. This is particularly true of a plaintiff. Mori v. Hasiguchi, 18 FSM R. 188, 190 (Chk. 2012).

The President, even as a private litigant, is not an ordinary person. He must be granted some accommodation while at the same time balancing that accommodation with the adverse parties' right to discovery from a plaintiff. Mori v. Hasiguchi, 18 FSM R. 188, 190 (Chk. 2012).

When the deposition subpoena of the President, as a private civil plaintiff, has been quashed only to the extent that the deposition date is vacated, the parties' counsel shall confer to agree on a date and time when it is expected that the plaintiff President will be able to devote several hours to being deposed. Mori v. Hasiguchi, 18 FSM R. 188, 190 (Chk. 2012).

Rule 30(b)(1), requires that "reasonable notice" be provided to any witness served with a subpoena. Also, the court may quash or modify the subpoena if it is unreasonable and oppressive. There is no fixed rule as to what constitutes reasonable notice, and in every case individual circumstances must be taken into account. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 624 (Pon. 2014).

The general rule is that without a showing of special need for haste, less than two days' notice of a deposition is unreasonable. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 624 (Pon. 2014).

One of the purposes of the two days rule is to give the parties the opportunity to effectively prepare in order to cross-examine the deponent. Significantly, this two-day rule is for full working days and does not include weekends or holidays because it is not reasonable to expect counsel to work on weekends unless a special need for haste is shown. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 625 (Pon. 2014).

In some circumstances when exigent circumstances are shown, less than one day's notice is not per se unreasonable. This often occurs in pending maritime cases, when deponents will be unavailable because they are about to leave on a voyage at sea and unlikely to return to the jurisdiction. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 625 (Pon. 2014).

When the typical exigent circumstances in maritime cases – that the deponents would be unavailable if not immediately deposed – were not shown and when an attempt to acquire information in the criminal proceeding must be made in that case, and not by using the discovery process in the parallel civil proceeding, the reason for haste did not justify deviating from the two-day rule and the less than half a working day's notice given was not reasonable notice. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 626 (Pon. 2014).

It is common to stay the depositions in a civil case when the criminal case is pending and both proceedings involve essentially the same parties and conduct. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 626 (Pon. 2014).

When civil depositions would trigger a variety of procedural prejudices; when the defendants cannot use the more lenient rules of civil procedure to depose the witnesses before the criminal case; when the depositions raise significant conflicts with the defendants' own constitutional right against self-incrimination; and when the depositions will likely not be needed following the criminal hearing and thus potentially a duplicative waste of judicial resources, there is good cause to stay the depositions until after the criminal probable cause hearing, but a full stay is not warranted. Due to the vessel's significant value and business losses that are occurring in the civil matter, the substantial prejudice to the defendants outweighs granting a complete stay in the civil action until the criminal case's conclusion. In the interest of justice and judicial economy, the court will exercise procedural flexibility to stay only those matters, such as depositions, that would cause conflicts with the criminal proceeding. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 628 (Pon. 2014).

When the parties were not given reasonable notice for the depositions, those depositions will be quashed. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 628 (Pon. 2014).

It is appropriate to depose another party's attorney only when 1) the deposition is the only practical means of obtaining the information, 2) the information sought will not invade the attorney-client privilege or the work product doctrine, and 3) the information sought is relevant and the need for it outweighs the disadvantages inherent in deposing a party's attorney; or when it has been shown that no other means exist to obtain the information, and that the information sought is crucial to the case's preparation. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41d (Pon. 2015).

Since, generally, a lawyer must not act as advocate at a trial in which the lawyer is likely to be a necessary witness, it follows that a party should not be able to potentially disqualify another litigant's advocate by making the other litigant's lawyer into a witness by noticing that advocate's deposition. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41d (Pon. 2015).

An assertion that the pleadings and discovery responses contain sufficient information is not a valid ground for a party to avoid being deposed. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 437 (Pon. 2016).

A party has the right to depose opposing parties to learn the extent of their knowledge. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 437 (Pon. 2016).

It would be an extraordinary case where other sources of information would take the place of deposing a party. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 437 (Pon. 2016).

It is expected that a party in civil litigation will be deposed during the course of discovery. This is particularly true of a plaintiff. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 437 (Pon. 2016).

Pretrial depositions are an expected and normal part of pretrial discovery. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 437 (Pon. 2016).

A party's illness does not preclude taking her deposition. Rather than being a reason not to take a deposition, ill health is often a ground to take a deposition in order to preserve testimony for trial in case the witness is unavailable at that time. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 438 (Pon. 2016).

Under FSM Evidence Rule 601, every person is competent to testify, and, if challenged on the basis of impairment, the general rule is that competency is presumed. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 438 (Pon. 2016).

Generally, a party is entitled to its expenses in bringing a motion to compel depositions if the motion is granted. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 438 (Pon. 2016).

Only in the rarest of cases would a party not be subject to a deposition at another party's request. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 573 (Pon. 2016).

Age or ill health are grounds to take a deposition. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 573 (Pon. 2016).

By trying to take a party's deposition, the parties can reach an informed opinion about that party's competence to testify. Whether she is physically or mentally incapable of testifying is a factual, not a legal, question which can be resolved by taking her deposition. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 573 (Pon. 2016).

It is only in the rarest of instances that a party would not be subject to a deposition at another party's request. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 174 (Pon. 2017).

When the court is not yet convinced that a party could have been deposed at much less expense if the deposition had been conducted telephonically, the court will award the costs and expenses of conducting the party's deposition (court reporter, subpoena, transcript fees, appearance fees, etc.), but not the expenses of counsel's travel to Honolulu. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 174 (Pon. 2017).

There are major differences between the rules for depositions in civil cases and Rule 15, which authorizes, in exceptional circumstances, depositions in criminal cases. In civil litigation, depositions may be taken as a matter of right at any party's instance and may be for discovery or to obtain evidence, but

under Criminal Rule 15, depositions may be taken in a criminal case only upon court order and are not for discovery of information but only to preserve evidence. FSM v. Wolphagen, 21 FSM R. 272, 274 (Pon. 2017).

The FSM Supreme Court may issue a subpoena directed to an FSM citizen, who is present in a foreign country, to appear to testify at a deposition, as well as to appear and testify at a trial or hearing. FSM Dev. Bank v. Salomon, 21 FSM R. 327, 329 (Pon. 2017).

The court may limit a deposition to two full days of deposition testimony when that should be enough for parties to make exhaustive discovery and elicit any needed information without unduly burdening the party-deponent. But if, after that time is finished, the parties deposing the witness feel that there are important areas about which they have not yet been able to examine the witness, they may apply to the court for more deposition time, stating specifically what further questions they need to ask, why the deponent is the best or only source of that information, and how much longer they expect the deposition to last. FSM Dev. Bank v. Salomon, 21 FSM R. 327, 330 (Pon. 2017).

When the would-be deponent is the chief executive officer of a sovereign state, the court will issue a protective order barring the deposition since the party seeking discovery has not shown that relevant evidence on essential issues could not be obtained through alternative sources or less burdensome means. If, at some later time, that party shows that the Governor has relevant evidence on essential issues that cannot be obtained through alternative sources or less burdensome means, the court will consider limited alternative discovery means on that narrow topic. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 410, 411 (Yap 2017).

– Derivative Actions

A case that is not a suit by the corporations' shareholders or members to compel the corporations' directors to perform their legal obligations in the supervision of the organization is not a derivative action. Nix v. Etscheit, 10 FSM R. 391, 398 (Pon. 2001).

A shareholder's derivative action is one to enforce a corporation's right when the corporation has failed to enforce a right which it may properly assert. Mori v. Hasiguchi, 17 FSM R. 630, 638 (Chk. 2011).

Shareholder derivative actions have pleading requirements beyond those in Civil Rule 8(a) since under Rule 23.1, the special derivative action pleading requirements include allegations about the special prerequisites for such actions. Mori v. Hasiguchi, 17 FSM R. 630, 638 (Chk. 2011).

A complaint in a shareholder action must be verified, and must include statements to the effect that the plaintiff was shareholder at the time of the transaction of which he complains or that his shares thereafter devolved on him by operation of law, that the action is not a collusive one to confer jurisdiction, and that he has undertaken efforts to have his grievances redressed by the corporation's directors or shareholders and the reasons why he failed to obtain that relief. Mori v. Hasiguchi, 17 FSM R. 630, 638 (Chk. 2011).

If a derivative action plaintiff has not undertaken action to have his grievances redressed then he must allege the reasons for not making the effort. Mori v. Hasiguchi, 17 FSM R. 630, 638 (Chk. 2011).

A plaintiff in a derivative action must fairly and adequately represent the interests of the shareholders similarly situated in enforcing the corporation's right. Mori v. Hasiguchi, 17 FSM R. 630, 638 (Chk. 2011).

Since a plaintiff shareholder is presumed to be an adequate representative and since the burden is on the defendant to show that the plaintiff is inadequate, the plaintiff in a derivative action does not need to allege he is an adequate representative. Mori v. Hasiguchi, 17 FSM R. 630, 638 (Chk. 2011).

A derivative action plaintiff must allege that, at the time of the transactions complained of, he owned

shares in the corporation or that the shares thereafter devolved on him by the operation of law. Mori v. Hasiguchi, 17 FSM R. 630, 638 (Chk. 2011).

A derivative action complaint, or the part of the complaint that alleges a derivative action, must be verified, that is, confirmed or substantiated by oath or affidavit whereby the truth of the statements in the complaint is sworn to. Mori v. Hasiguchi, 17 FSM R. 630, 639 & n.2 (Chk. 2011).

The purpose of Rule 23.1's verification requirement is to ensure that the court will not be used for "strike suits" and that the plaintiff has investigated the charges and found them to be of substance. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

The failure to verify the complaint in a shareholders' derivative action is a technical defect that can be cured by amendment. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

The failure to verify a derivative action complaint will not entitle defendants to an immediate dismissal or to a summary judgment because the Civil Procedure Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

A derivative action complaint does not have to be dismissed for noncompliance with the verification requirement when the court can require the plaintiff to verify it by filing an affidavit within a reasonable time, and even then, if the plaintiff fails to take advantage of the court's invitation to correct the deficiency, the dismissal should not be with prejudice inasmuch as the merits of the case have not been adjudicated. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

If a derivative action complaint lacks the proper allegation that it is not a collusive action it is subject to dismissal although a reasonable opportunity to amend should be permitted. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

A derivative action plaintiff who has failed to both verify the complaint and to allege the absence of collusion may be given a reasonable time to cure both defects rather than have his derivative action dismissed. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

A derivative action must allege with particularity what efforts the plaintiff has made to obtain relief from the corporation's directors. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

A stockholder, instituting a stockholder's derivative suit, must plead and prove that a request to institute action was made on the corporation and refused, or that there was matter or matters which excused the making of the request, but when a stockholder sues in his own individual right, no demand upon the corporation itself is necessary. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

The purpose of requiring that the complaining shareholder demand action from the board of directors before bringing suit under Rule 23.1 is related to the concept that a shareholder derivative suit is a device to be used only when it is clear that the corporation will not act to redress the alleged injury to itself. Mori v. Hasiguchi, 17 FSM R. 630, 640 (Chk. 2011).

The Rule 23.1 requirement that stockholders first address their grievance to corporate authority serves numerous practical purposes, such as forcing shareholders to exhaust their intracorporate remedies; permitting the corporation to pursue alternative remedies; permitting the termination of meritless actions designed to vex or harass the corporation; permitting the corporation, with superior knowledge and financial resources, to assume control of the suit; and avoiding unnecessary judicial involvement in the organization's internal affairs. Mori v. Hasiguchi, 17 FSM R. 630, 640 (Chk. 2011).

In a derivative action, it must appear from the complaint that plaintiff acted in good faith in seeking corporate action and exercised diligence in exhausting his remedies within the corporation. Mori v. Hasiguchi, 17 FSM R. 630, 640 (Chk. 2011).

A derivative action must be dismissed when a plaintiff has not demanded action by the corporation's directors unless the court finds that Rule 23.1's demand requirements are excused under the rule's alternative provision that the plaintiff explain his reasons for not making the effort. Courts have allowed recourse to this reasons "for not making the effort" clause when a demand would be futile, useless, unavailing, or an idle ceremony. Mori v. Hasiguchi, 17 FSM R. 630, 640 (Chk. 2011).

As is true of pleading demand and refusal, what must be shown in the complaint to justify excusing compliance with the demand requirement is a matter of judicial discretion. At a minimum, the plaintiff must plead facts explaining the lack of a demand – it is not enough for plaintiff to state in conclusory terms that he made no demand because it would have been futile. Mori v. Hasiguchi, 17 FSM R. 630, 640 (Chk. 2011).

A motion to dismiss derivative action allegations will be granted when the complaint has not alleged and shown that the plaintiff made a proper demand for redress and was refused or alleged and shown that such a demand would have been futile. Mori v. Hasiguchi, 17 FSM R. 630, 640-41 (Chk. 2011).

– Discovery

Unless the questioning party is able to show some basis for believing there may be a relationship between an attorney's fee and the subject matter of the pending action, objections to efforts to discover the attorney's fee arrangement may be upheld. Mailo v. Twum-Barimah, 3 FSM R. 179, 181 (Pon. 1987).

Although Kosrae Evidence Rule 408 does not require the exclusion of factual evidence "otherwise discoverable" simply because it was presented during compromise negotiations, a statement made in a letter seeking to settle a dispute, which statement is clearly connected to and part of the settlement offer, is not otherwise discoverable. Nena v. Kosrae, 3 FSM R. 502, 507 (Kos. S. Ct. Tr. 1988).

An attorney who fails to make timely requests for enlargement of time to complete discovery beyond the deadline set by court order; who has someone other than the client sign answers to interrogatories; and who fails to serve the answers properly on opposing counsel while filing a proof of service with the court is sanctionable on the court's own motion. Paul v. Hedson, 6 FSM R. 146, 148 (Pon. 1993).

The fashioning of remedies and sanctions for a party's failure to comply with discovery requirements is a matter within the trial court's discretion and should not be disturbed by an appellate court absent a showing that the trial court's action has unfairly resulted in substantial hardship and prejudice to a party. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 349 (App. 1994).

While a defendant's motion to strike portions of a complaint as immaterial or impertinent is untimely if not filed before the defendant's answer a court, in its discretion, may still consider it because the court may, on its own initiative at any time, order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. McGillivray v. Bank of the FSM (I), 6 FSM R. 404, 406 (Pon. 1994).

A trial judge has considerable discretion on the question of relevancy of discovery materials and his order should not be disturbed unless there has been an abuse of discretion or unless the action taken is improvident and affects the substantial rights of the parties. McGillivray v. Bank of the FSM (II), 6 FSM R. 486, 489 (Pon. 1994).

Under FSM Civil Rule 26 evidence may be discovered even if it would inadmissible on relevancy grounds at trial, as long as the information sought appears reasonably calculated to lead to the discovery of admissible evidence. However, the discovery of material to be used for impeachment purposes is

generally not permissible unless the impeaching material is also relevant or material to the issues in the case. McGillivray v. Bank of the FSM (II), 6 FSM R. 486, 490 (Pon. 1994).

Parties are entitled to discovery regarding any matter, not privileged, which is relevant and reasonably calculated to lead to the discovery of admissible evidence, but a plan may be implemented to minimize the burden of producing a large number of documents. Chuuk v. Secretary of Finance, 7 FSM R. 563, 570 (Pon. 1996).

Under FSM Civil Rule 26, parties are entitled to discovery regarding any matter, not privileged, which is relevant and reasonably calculated to lead to the discovery of admissible evidence. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 287 (Pon. 1998).

Any party may serve upon any other party written interrogatories to be answered by the party served. There is no requirement that two parties be directly adverse in order for one to seek discovery against another. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 287 (Pon. 1998).

Generally, discovery should be permitted under Rule 26 when the information sought is relevant to the claim or defense of the party seeking discovery, or to the claim or defense of any other party. Discovery should be allowed under the "relevancy" standard set forth in Rule 26 unless it is clear that the information sought can have no possible bearing upon the subject matter of the action. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 287 (Pon. 1998).

The fashioning of remedies and sanctions for failure of a party to comply with discovery requirements is a matter within the trial court's discretion. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 290 (Pon. 1998).

Under Rule 37(b), if a party fails to obey an order to permit or provide discovery, a court may order, among other things, that facts be designated as admitted, that the disobedient party not be allowed to support or oppose designated claims, that pleadings or parts thereof be stricken, or that a party be held in contempt of court. In addition, or in lieu of any of these, the court shall require a disobedient party, or the party's attorney or trial counselor, or both, to pay reasonable expenses (including attorney's fees) caused by the disobedient party's failure to obey the court's order. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 290-91 (Pon. 1998).

Instead of ordering that certain facts be designated as admitted as requested by a party that had previously obtained a court order requiring another party to comply with its discovery requests, a court may order that for failure to comply with that discovery order that the disobedient party pay all of the moving party's reasonable expenses in preparing, filing, and defending its motions for sanctions. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 291 (Pon. 1998).

Under the work product doctrine, even if a plaintiff demonstrates substantial need for factual information contained in the report of a consulting expert whose services a defendant sought in anticipation of litigation, he would have to show exceptional circumstances under FSM Civil Rule 26(b)(4)(B) before being entitled to discover the consulting expert's opinions. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 476 (Pon. 1998).

A question, taken literally, that calls for information on any kerosene related incident involving damage to property or injury to persons occurring anywhere in the world throughout the existence of three corporate defendants is on its face, a request so broad that it clearly exceeds the scope of permissible discovery. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 478 (Pon. 1998).

If a person is to be used by the defendants as a testifying expert, the plaintiff would be entitled to all the discovery authorized by FSM Civil Rule 26(b)(4)(A), and all documents the expert considered in forming his opinions would be discoverable as well. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 483 (Pon.

1998).

The court may allow a supplemental discovery response to be amended to obtain a declarant's signature on the response. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 150, 153 (Pon. 1999).

When a court's purpose in re-opening discovery on the limited subject of insurance coverage was to give the parties some perspective on whether continued prosecution of the lawsuit would be beneficial to them, the court will not give a party an unfair procedural advantage by allowing it to seek testimony from witnesses it knows to be unavailable and then to ask for sanctions on the basis of that unavailability. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 150, 154 (Pon. 1999).

A court, on a party's motion, may limit discovery in avoidance of oppression, undue burden or expense in order to secure the just, speedy, and inexpensive determination of every action. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 150, 154 (Pon. 1999).

A defendant's financial condition is relevant to a punitive damages claim and a proper subject of discovery, if, under the applicable law, the defendant's financial condition has a bearing on the amount of punitive damages to be awarded. Elymore v. Walter, 9 FSM R. 251, 253 (Pon. 1999).

If a defendant is found liable for punitive damages, a court cannot make an award having a meaningfully deterrent effect unless the court knows the extent of the defendant's wealth. The greater or lesser the degree of defendant's wealth, the greater or lesser would be the amount of the punitive award, since a small award relative to overall wealth would not meaningfully deter, whereas a large award relative to overall wealth would be unduly onerous. Elymore v. Walter, 9 FSM R. 251, 253 (Pon. 1999).

A defendant facing a claim for punitive damages may be required to answer discovery concerning current net worth, but cannot be compelled to reveal his financial status for the previous five years. The court may order plaintiffs' counsel not to divulge this information to anyone until such time as the court determines punitive damages liability, at which time the court will order what is to be done with the discovered information. Elymore v. Walter, 9 FSM R. 251, 254 (Pon. 1999).

Parties are entitled to discovery regarding any matter, not privileged, which is relevant and reasonably calculated to lead to the discovery of admissible evidence. Generally, discovery should be permitted under Rule 26 when the information sought is relevant to the claim or defense of the party seeking discovery, or to any other party's claim or defense. Pohnpei v. KSVI No. 3, 9 FSM R. 273, 276 (Pon. 1999).

There is no reason that answers could not be filed in due course during the pendency of an abstention motion, and there is also no reason that discovery could not have been ongoing during an abstention motion's pendency, since discovery was just as inevitable as the answer. Island Dev. Co. v. Yap, 9 FSM R. 279, 284 (Yap 1999).

When a represented party is required to respond to discovery, the party's attorney must undertake some effort to ensure that the client makes a reasonable inquiry into the subject matters covered by the given request. An attorney's responsibility to actively participate in information gathering for discovery purposes is heightened when the client is not an individual but a legal entity such as a corporation or a governmental body. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 316, 325 (Pon. 2000).

Where the attorney is a party's employee, who has at minimum a degree of control over the party's procedural approach to prosecuting the lawsuit, proper compliance with discovery obligations may require him to personally assist in a diligent search for information available or under the possession or control of his client. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 316, 325 (Pon. 2000).

The choice of an appropriate sanction to be applied when a party fails to comply with a discovery obligation is committed to the court's sound discretion. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 316,

327 (Pon. 2000).

Civil Rule 37 provides sanctions for the failure to comply with a discovery order, including making such orders in regard to the failure as are just. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 316, 327-28 (Pon. 2000).

When Rule 37 sanctions have proven futile in resolving a discovery dispute and because they do not provide a remedy for the waste of a court's time and resources, a court may invoke its inherent power to control the orderly and expeditious disposition of cases and proper compliance with its lawful mandates. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 316, 329 (Pon. 2000).

No party is expected to engage in discovery for the benefit of another party. Kosrae v. Worswick, 9 FSM R. 437, 441 (Kos. 2000).

A court may order on its own motion that overdue responses not be deemed admissions of fact because the fashioning of remedies and sanctions for a party's failure to comply with discovery requirements is a matter within the court's discretion. Overdue responses to requests for admission are not customarily treated as having been admitted in the absence of a showing of actual prejudice to the propounding party combined with no showing of excusable neglect by the responding party. O'Sullivan v. Panuelo, 9 FSM R. 589, 598 (Pon. 2000).

When confronting violations of the discovery rules (or alleged misuse of the discovery process) courts strive to apply sanctions commensurate with the degree of neglect or wrongdoing viewed in light of any harm suffered by the aggrieved party. Sanctions as harsh as those which would in effect establish a defendant's liability are generally issued only upon a finding of deliberate disregard of the rules or following a pattern of discovery abuse or related misconduct. O'Sullivan v. Panuelo, 9 FSM R. 589, 598 (Pon. 2000).

FSM Civil Rule 37(b)(2) gives the court the authority to levy sanctions against a party, including dismissal, for failure to obey a discovery order, and Rule 41(b) allows the court to dismiss a plaintiff's complaint for failure to comply with a court order. Ting Hong Oceanic Enterprises v. Ehsa, 10 FSM R. 24, 29 (Pon. 2001).

The standard of review of a court's imposition of sanctions under its inherent powers is for abuse of discretion. This accords with the abuse of discretion standards for review of Rule 11 attorney sanctions and for review of discovery sanctions. In re Sanction of Woodruff, 10 FSM R. 79, 86 (App. 2001).

When the delay was within the movants' counsel's reasonable control, when the movants' inability to propound discovery because they failed to timely request it, will not affect their rights at trial – *e.g.*, they may still cross-examine the plaintiffs' witnesses, object to proffered evidence, and subpoena witnesses and documents, and when, taking account of all relevant circumstances surrounding the movants' omission, they have failed to show the excusable neglect that would justify enlarging their time to make discovery requests, an untimely motion to enlarge time for them to propound discovery requests will be denied. Medabalmi v. Island Imports Co., 10 FSM R. 217, 219-20 (Chk. 2001).

A party may not derive benefit post trial from tendering evidence that which he was under a discovery obligation to produce pre-trial, and did not. Amayo v. MJ Co., 10 FSM R. 371, 385 (Pon. 2001).

Matter is discoverable if it is relevant and not privileged. Information is discoverable if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Adams v. Island Homes Constr., Inc., 10 FSM R. 430, 432 (Pon. 2001).

When each paragraph of a discovery request begins by using the phrase "relating to" in a general sense, and each paragraph goes on to describe specific categories of information, the request is not

overbroad. Adams v. Island Homes Constr., Inc., 10 FSM R. 430, 432 (Pon. 2001).

If a party has any of the documents asked for in a discovery request, it should produce them; if it does not, it should so indicate. Adams v. Island Homes Constr., Inc., 10 FSM R. 430, 432 (Pon. 2001).

Rule 37(a)(4) requires an opportunity for hearing before attorney's fees are awarded to a party who has prevailed on a motion to compel discovery. Courts may comply with this requirement either by holding an oral hearing on adequate notice, or by considering written submission from the affected parties. Adams v. Island Homes Constr., Inc., 10 FSM R. 430, 432 (Pon. 2001).

Generally discovery orders are interlocutory in character and review may be obtained only through means of the contempt process or through appeal of the final judgment in the underlying action. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 469 (Pon. 2001).

Even though a discovery order may compel a party to perform certain actions, such an order is not injunctive in nature because it does not grant or withhold substantive relief. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 470 (Pon. 2001).

The appropriate means by which someone may challenge a discovery order is to subject themselves to a contempt proceeding. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 470 (Pon. 2001).

A discovery order is not appealable. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 470 (Pon. 2001).

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, and it is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 471 (Pon. 2001).

Information which leads to admissible evidence is, by definition, relevant within the meaning of that word as used in Rule 26. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 471 (Pon. 2001).

Relevancy is very broadly defined, including both directly relevant material and material likely to lead to the discovery of admissible evidence. If requested materials lead to discovery of admissible evidence, the discovery request is relevant. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 471 (Pon. 2001).

What is relevant in discovery is different from what is relevant at trial, in that the concept at the discovery state is much broader. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 471 (Pon. 2001).

Discovery should ordinarily be allowed under the concept of relevance unless it is clear the information sought can have no possible bearing upon the subject matter of the action. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 471 (Pon. 2001).

A defendant cannot limit the scope of the plaintiffs' legitimate discovery by either denying the complaint's allegations, or by the way in which it characterizes those allegations. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 472 (Pon. 2001).

When a party has contended that plainly relevant information is not relevant, and has done so in the face of clear law that is contrary to its position, the question becomes whether the party's relevancy argument is so wide of the mark as to be frivolous. This is a prima facie case of a Rule 11 violation. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 474 (Pon. 2001).

When a party fails to comply with an order compelling discovery under Rule 37(a), the court may order that the matters regarding which the order was made or any other designated facts will be taken to be

established for the purposes of the action in accordance with the claim of the party obtaining the order. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 474 (Pon. 2001).

When a defendant has not complied with all of the discovery requests as directed in a court order, the court will consider sanctions, including Civil Rule 37(b)(2) sanctions that designated facts will be taken to be established for the purposes of the action in accordance with the plaintiff's claim, and that defendant ought to be aware that deeming certain facts established is tantamount to entering a default judgment. AHPW, Inc. v. FSM, 10 FSM R. 507, 508 (Pon. 2002).

When a party has yet to comply with the court's discovery order and discovery has been outstanding for an extended period, then that is one fact that the court will consider when contemplating sanctions if compliance is not forthcoming. AHPW, Inc. v. FSM, 10 FSM R. 507, 508 (Pon. 2002).

When only one of a defendant's offices has produced any discovery documents and when it is unlikely that other affected offices would have no documents related to the litigation, it raises the issue of the thoroughness of the searches done by the offices involved. The court will therefore order that defendant's counsel to designate an appropriate individual in each of the offices to conduct a search of relevant records to determine if any such documents exist and who will prepare an affidavit indicating what was done to locate relevant documents, and the result of that search. AHPW, Inc. v. FSM, 10 FSM R. 507, 509 (Pon. 2002).

The FSM Development Bank is an agency of the FSM government for purposes of discovery when the request for production plainly comprehends documents within the possession of the Bank, which is specifically named. AHPW, Inc. v. FSM, 10 FSM R. 507, 509 (Pon. 2002).

Pohnpei may be held liable for discovery sanctions of motion related expenses such as attorney's fees, but the FSM is exempt from such sanctions under Rule 37(f). AHPW, Inc. v. FSM, 10 FSM R. 507, 509 (Pon. 2002).

When a defendant has unprofessionally refused to comply with the plaintiffs' discovery requests without any justification for doing so, in the limited context of discovery proceedings, its hands are unclean and it is in no position to make a case under rescission or other equitable principle. Adams v. Island Homes Constr., Inc., 10 FSM R. 510, 513 (Pon. 2002).

When a party's response to a request for documents is evasive and non-responsive, he will be ordered to answer the request, either by providing copies of the requested documents, or by making the requested documents available for review and copying. Talley v. Talley, 10 FSM R. 570, 572 (Kos. S. Ct. Tr. 2002).

If a defendant has already produced the documents requested by subpoena, then nothing remains to be done by the defendant other than to advise the plaintiffs of that fact because the law does not take notice of trifling matters. Adams v. Island Homes Constr., Inc., 10 FSM R. 611, 613 (Pon. 2002).

A duty to supplement discovery responses may be imposed at any time prior to trial through new requests for supplementation of prior responses. Adams v. Island Homes Constr., Inc., 10 FSM R. 611, 613 (Pon. 2002).

Subpoenas under Rule 45 may be issued to parties or non-parties, although Rule 34 is used for production of documents, etc., from parties. Adams v. Island Homes Constr., Inc., 10 FSM R. 611, 613 n.1 (Pon. 2002).

When, if the court quashed the plaintiffs' subpoena and directed them to reform the request made by subpoena through a supplementary request for production under Rule 26(e)(3), the end result would be the same as if the subpoena were left in place, and when the balance of the discovery equities weigh against the defendant, the subpoena will not be quashed. But that should not be construed to the effect that a

subpoena is generally a substitute for a supplementation request because this denial is based on the equitable considerations generated by the defendant's conduct. Adams v. Island Homes Constr., Inc., 10 FSM R. 611, 614 & n.3 (Pon. 2002).

Discovery is not a game to be played for anyone's amusement. It is a serious undertaking requiring serious, considered responses. AHPW, Inc. v. FSM, 10 FSM R. 615, 617 (Pon. 2002).

Any party may serve on any other party a request to permit entry upon designated land or other property in the requested party's possession or control for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b), and if the requested party fails to permit inspection as requested, the party seeking discovery may move for an order compelling inspection in accordance with the request, and if granted, the court may, after opportunity for hearing, require the party whose conduct necessitated the motion to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees. Ambros & Co. v. Board of Trustees, 10 FSM R. 645, 647 (Pon. 2002).

When the plaintiffs failed to respond to a defendant's request for inspection of the property as required by Rule 34(b), their opposition to defendant's motion to compel inspection that the real intent of the request was to ask for plaintiffs to pay a portion of the survey's cost was inappropriate when made for the first time in the opposition, and, when even if timely made, it was not persuasive because the question of the property's ownership is central to the litigation and determining the respective properties' boundaries would be important evidence. The motion to compel the prpoertty inspection will therefore be granted. Ambros & Co. v. Board of Trustees, 10 FSM R. 645, 647 (Pon. 2002).

A bank's internal confidentiality policy is not dispositive as to whether its records are subject to discovery. Adams v. Island Homes Constr., Inc., 11 FSM R. 130, 131 (Pon. 2002).

Discovery restrictions may be broadened when a nonparty is the target. Adams v. Island Homes Constr., Inc., 11 FSM R. 130, 131 (Pon. 2002).

Records which are confidential, but not asserted to be privileged, are discoverable because parties may obtain discovery regarding any matter, not privileged, which is relevant to the pending action's subject matter. Adams v. Island Homes Constr., Inc., 11 FSM R. 130, 132 (Pon. 2002).

The party resisting discovery has the burden of clarifying and explaining its objections and to provide support therefor. Adams v. Island Homes Constr., Inc., 11 FSM R. 130, 132 (Pon. 2002).

The mere fact that discovery is burdensome is not a sufficient objection to that discovery provided the information sought is relevant or may lead to discovery of admissible evidence. Adams v. Island Homes Constr., Inc., 11 FSM R. 130, 132 (Pon. 2002).

A party, assuming that it is being truthful, may refuse discovery on the basis that it does not have the documents requested because it cannot produce documents that it does not have, but it must produce documents regardless of whether they are named by the document's actual title or not because it may not evade discovery through semantic equivocation. Adams v. Island Homes Constr., Inc., 11 FSM R. 130, 132 (Pon. 2002).

When a party has stated it has already produced the documents, it need not produce those documents again, but it must specifically identify the documents previously produced that are responsive to the requests. Adams v. Island Homes Constr., Inc., 11 FSM R. 130, 132 (Pon. 2002).

There is a real, substantial dichotomy between a privilege and a privacy interest, because if matter is privileged, it is not discoverable under Civil Procedure Rule 26(b)(1), which expressly provides that parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in

the pending action. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 227 (Pon. 2002).

There is no banker-client (i.e., customer) privilege, and no analytical reason to raise an understandably confidential commercial situation of principal-agent or customer-banker to a privilege. A privacy or confidentiality interest must be balanced against a litigant's interest in obtaining relevant and probative information even if the privacy interest implicated is that of non-parties. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 227 (Pon. 2002).

A party may not refuse to produce relevant discovery materials in order to prevent information damaging to it from coming to light. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 229 (Pon. 2002).

Personal conflicts between counsel do not excuse the failure to produce a document. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 230 (Pon. 2002).

When a party's record of discovery obduracy speaks for itself, the court may award attorney's fees and expenses as reasonable under all the facts and circumstances. Adams v. Island Homes Constr., Inc., 11 FSM R. 445, 447 (Pon. 2003).

When, given the scope and depth of the discovery disputes generated by a party's conduct, the court, in awarding fees to opposing counsel, will not find several billing entries showing work by both attorneys working together to be inordinate. Adams v. Island Homes Constr., Inc., 11 FSM R. 445, 448 (Pon. 2003).

In order to achieve the end of discouraging obstructionist discovery conduct, the "expenses," that are imposed as a sanction for failure to comply with discovery is to be given a more expansive meaning than the "costs" that are awarded as part of a civil rights judgment. Adams v. Island Homes Constr., Inc., 11 FSM R. 445, 448 (Pon. 2003).

When a party's actions necessitated discovery sanction attorney fee awards, that party cannot complain about being held to account for them under Rule 37(a)(4). Such awards are not limited to the 15% generally awarded in collection cases. Adams v. Island Homes Constr., Inc., 11 FSM R. 445, 448 (Pon. 2003).

If a motion to compel discovery is granted, the court shall, after opportunity for hearing, require payment of the moving party's reasonable expenses incurred in obtaining the order, including attorney or trial counselor fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust. Actouka Executive Ins. Underwriters v. Walter, 11 FSM R. 508, 509 (Pon. 2003).

When a defendant has not paid a court-ordered sanction for costs related to the plaintiff's motion to compel discovery, the court may order that, if the sanction is not paid immediately, the defendant's answer be stricken. Actouka Executive Ins. Underwriters v. Walter, 11 FSM R. 508, 510 (Pon. 2003).

If a motion to compel answers to discovery is granted, the court must, after opportunity for hearing, require the party (or the party's attorney, or both) whose conduct necessitated the motion to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust. Primo v. Semes, 11 FSM R. 603, 606 (Pon. 2003).

When a party has received a copy of an instrument evidencing the property transfer that she now claims was concealed from her, notwithstanding this omission, and regardless of the fact that the opponent answered the interrogatory "no," when the only correct answer was "yes," it remains that the discovery responses that were served on her attorney of record and are a part of the court file contain a copy of the document conveying the half interest. Thus, she cannot now say this transaction was not disclosed to her.

At most, the inconsistency between the request for production and the interrogatory created an issue for resolution by further discovery. In light of the property transfer document, even the patently incorrect interrogatory answer does not entitle her to any relief under the fraud on the court provision. Ramp v. Ramp, 11 FSM R. 630, 638-39 (Pon. 2003).

When a party is precluded from contesting its liability on an oral agreement as a result of its willful, bad faith discovery misconduct and when the plaintiffs' damages are also fully awardable under the plaintiffs' third-party beneficiary claim quite apart from any liability under the agreement, the party's contention that it is not liable under the agreement is wholly lacking in merit. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 241 (Pon. 2003).

Rule 69, which governs procedure on execution, is meant to benefit a judgment creditor, not a judgment debtor. It was intended to establish an effective and efficient means of securing the execution of judgments. As part of the process, it provides for the securing of information relating to the judgment-debtor's assets. Adams v. Island Homes Constr., Inc., 12 FSM R. 644, 646 (Pon. 2004).

When certain requested documents did not exist and therefore could not be provided and the plaintiffs had provided those responsive documents which were in existence at the time of issuance of the subpoena duces tecum, there is no basis for the defendants' motion to compel and accordingly it will be denied. Allen v. Kosrae, 13 FSM R. 55, 58 (Kos. S. Ct. Tr. 2004).

When, during discovery that preceded the first trial, the defendant had the opportunity to take the plaintiff's deposition but did not; when he did not propound any other discovery; when he did not object when plaintiff's counsel noticed plaintiff's deposition in the Philippines and did not attend that deposition; when he did not comply fully with the plaintiff's discovery requests and the court ordered him to comply, but he did not and was subject to a $495.50 sanction; when, after the case was remanded for a new trial, the court set terms and conditions for conducting discovery, the first of which was that he pay the outstanding $495.50 discovery sanction before undertaking any further discovery, but it was not paid until five months after the discovery cutoff date; and when, by a motion filed twenty-six days before the re-trial was scheduled, the defendant sought leave to take the plaintiff's deposition, the defendant's motion to exclude the plaintiff's deposition from being offered at trial will be denied. Amayo v. MJ Co., 13 FSM R. 242, 246-47 (Pon. 2005).

When the defendant engaged in the dubious practice, at best, of filing contingent motions concerning discovery six months after the court-ordered discovery cutoff date and did not file his pretrial motions within the time specified and since, under Rule 37(a)(4), the court "shall" award attorney's fees against the party moving to compel discovery if the motion is denied and the court made no finding that the motion was substantially justified or that other circumstances make an award of expenses unjust, no reason exists under Rule 37(a)(4) why attorney's fees should not be awarded. The plaintiff's fee request will be granted. Amayo v. MJ Co., 13 FSM R. 242, 247 (Pon. 2005).

When a defendant seeks to have the plaintiff produce medical records in her possession and her response is that the defendant already has those records through the subpoena process, and since the records are relevant, the court will order the parties to confer in order to insure that the defendant has a copy of all medical records in the plaintiff's possession and the plaintiff will deliver copies of any records which the defendant does not already have. Sigrah v. Microlife Plus, 13 FSM R. 375, 377 (Kos. 2005).

When the plaintiff did not propound discovery so that the 30-day period within which to respond fell before the court-ordered discovery cutoff deadline and when the defendant did not object to the late request since it served discovery responses, the court, in the usual case, would deem the responses as a waiver of the untimeliness of that discovery, and permit the plaintiff to name the additional witnesses, but since the defendant now understandably asserts that it wants to depose the additional witnesses, which would mean reopening discovery, the court will not permit this and the plaintiff will be limited at trial to the one witness it already disclosed. Sigrah v. Microlife Plus, 13 FSM R. 375, 377 (Kos. 2005).

Rule 37(a)(4) provides that when a motion to compel is granted, the court shall, after opportunity for hearing, require the party whose conduct necessitated the motion or the party, attorney, or trial counselor advising such conduct or both of them to pay the moving party the reasonable expenses incurred in obtaining the order, including attorney or trial counselor fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust. This requirement of the rule is mandatory, and the hearing requirement is satisfied if the party has the opportunity to respond in writing to a potential assessment of attorney's fees for its failure to respond to discovery. Sigrah v. Microlife Plus, 13 FSM R. 375, 378 (Kos. 2005).

A party that prevails on a motion to compel discovery is usually entitled to reasonable attorney's fees and costs as a sanction for the necessity to bring such a motion. Mailo v. Chuuk, 13 FSM R. 462, 471 (Chk. 2005).

A party whose motion to compel discovery is granted is entitled to reasonable expenses incurred in obtaining the order, including attorney fees and when counsel's supporting affidavit attached to the motion, asks for an award of $130 attorney fees for 1.3 hours of attorney work at $100 per hour as his reasonable expense incurred in obtaining this order, the non-movant had notice of the amount sought as a sanction and had an opportunity to be heard, not only on the motion itself, but also as to the requested fee sanction's reasonableness. Stephen v. Chuuk, 13 FSM R. 529, 531-32 (Chk. 2005).

Rule 37(a) attorney fee awards do not apply to a failure to respond to a request for admissions, because the automatic admission from the failure to respond is a sufficient remedy for the requesting party, so when part of the motion to compel concerned the movant's request for admissions, the court will reduce the attorney fee award requested for the motion to compel discovery. Stephen v. Chuuk, 13 FSM R. 529, 532 (Chk. 2005).

Previously awarded attorney's fees as sanctions for repeated non-compliance with the court's orders compelling discovery will, if unpaid, be added to the judgment. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 556 (Chk. 2005).

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. FSM Dev. Bank v. Adams, 14 FSM R. 234, 246 (App. 2006).

The general rule appears to be that there exists no common law privilege with respect to bank customer information, but a court should indulge in a careful balancing of the right of civil litigants to discover relevant facts, on the one hand, with the right of bank customers to maintain reasonable privacy regarding their financial affairs, on the other. FSM Dev. Bank v. Adams, 14 FSM R. 234, 247 (App. 2006).

The discovery rules encourage the parties to conduct discovery with a minimum of court involvement or intervention. Sanctions are provided to discourage an abuse or breakdown of the discovery process that would require court involvement. FSM Dev. Bank v. Adams, 14 FSM R. 234, 248 (App. 2006).

A court cannot award sanctions under Rule 11 for discovery matters subject to Rules 26 to 37, for which Rule 37 sanctions can be imposed. Nor can a court resort to its inherent powers when Rule 37 applies because Rule 37 is the exclusive remedy for failure to comply with a production order. Rule 37 sanctions for the failure to make discovery are the only relief available for failure to make discovery. FSM Dev. Bank v. Adams, 14 FSM R. 234, 251 (App. 2006).

The only proper remedy for a party's initial refusal to produce a document would be the imposition of attorney's fees because the opposing party had to bring a motion to compel the document's production. FSM Dev. Bank v. Adams, 14 FSM R. 234, 251 (App. 2006).

Rule 37(b)(2)(A) sanctions could not properly be applied for a party's earlier refusal to produce a

document because that document was eventually produced, but could be, and were, properly applied for not permitting the inspection of the designated records as ordered by the court. The limitations on a court's discretion under Rule 37(b) is that the sanction imposed must be just and it must be specifically related to the particular claim which was at issue in the court's order to provide discovery. FSM Dev. Bank v. Adams, 14 FSM R. 234, 252 (App. 2006).

That some lesser sanction should have been considered first and imposed under Rule 37 is frequently the most advisable course of action, but Rule 37 does not require that, especially when the sanctioned party has a history of discovery abuse. FSM Dev. Bank v. Adams, 14 FSM R. 234, 252 (App. 2006).

Civil contempt may be employed to coerce compliance with the trial court's orders compelling discovery. FSM Dev. Bank v. Adams, 14 FSM R. 234, 253 (App. 2006).

When the defendants had eight months after he plaintiff filed its motion to amend to move to reopen discovery; when the parties stipulated to the facts necessary for the trial court to reach a decision on the promissory note and guaranty claims; and when the defendants admitted there was nothing to discover, the defendants cannot have been prejudiced by a lack of opportunity for discovery. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 396 (App. 2006).

When the court says discovery shall be completed by a certain date, it means both propounded and answered. Ehsa v. Pohnpei Port Auth., 14 FSM R. 567, 569 (Pon. 2007).

Six days is added to the 30 day time period to respond when service of the interrogatories and production requests occurs by mail. Ehsa v. Pohnpei Port Auth., 14 FSM R. 567, 569 (Pon. 2007).

A defendant's motion to compel discovery will be granted when no good cause has been shown for the plaintiff's failure to comply. Ehsa v. Pohnpei Port Auth., 14 FSM R. 567, 570-71 (Pon. 2007).

To respond to interrogatories, requests for production or requests for admission, a party is allowed either 30 days or 45 days from service of the summons and complaint. K&I Enterprises v. Francis, 15 FSM R. 414, 416 n.1 (Chk. S. Ct. Tr. 2007).

When a plaintiff moves to enlarge time to conduct discovery on allegedly newly-raised "novel" defenses and to file a response based thereon, but the "novel" defenses to which the plaintiff refers are merely arguments based on the law that fell within the scope of the denials set forth in the defendant's answer to the complaint, the motion to enlarge is without good cause and will be denied. Berman v. Pohnpei Legislature, 16 FSM R. 492, 498 (Pon. 2009).

Since the rule with respect to privileges applies at all stages of all actions, cases, and proceedings, it therefore applies during discovery. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 511 (Pon. 2009).

The government, by instituting an action, does not waive any privilege it may have and thereby submit to unlimited discovery. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 511 (Pon. 2009).

A party seeking discovery, who is confronted with an executive privilege claim, may overcome that claim if the discovery would 1) lead to admissible evidence; 2) is essential to the party's case; 3) is not available through any alternative source or less burdensome means; and 4) will not significantly interfere with the official's ability to perform his governmental duties. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512 (Pon. 2009).

When the plaintiff has corroborating testimony from two witnesses, it has not shown why the former president's testimony on the same subject is essential to its case or that what it seeks to obtain from him it has not already obtained from the alternative sources. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512 (Pon. 2009).

Unless manifest injustice would result, the court will require that the party seeking discovery pay the opposing party's expert a reasonable fee for time spent in responding to discovery. Since the time spent cannot be known with certainty until after it has been spent, Rule 26(b)(4)(C) contemplates that, as a matter of general practice, payment will not be tendered to the opposing party's expert witness until after the discovery deposition has been completed. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 650 (Pon. 2009).

A party is not entitled to an order requiring that its expert witness receive payments in advance of, or during, a discovery deposition and since it is not entitled to such an order, its motion to impose sanctions because the opposing party has not made advance payments and to compel advance payments will be denied. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 650-51 (Pon. 2009).

Pretrial discovery has three major purposes: 1) to preserve relevant information that might not be available at trial, 2) to ascertain the issues that are actually in dispute between the parties, and 3) to allow a party to obtain information that will lead to admissible evidence on the issues that are in fact disputed. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 64, 68 (Yap 2010).

Opposing counsel are expected to cooperate in the discovery process. The discovery rules encourage the parties to conduct discovery with a minimum of court involvement or intervention, and sanctions are provided to discourage an abuse or breakdown of the discovery process that would require court involvement. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 64, 68 (Yap 2010).

Discovery is designed to prevent litigation by ambush. Just as a plaintiff cannot use an opposition to a defendant's summary judgment motion to effect a de facto amendment to its pleadings to assert a new claim, a plaintiff ought not to be able to use the summary judgment process to, in effect, amend its discovery responses without allowing the defendant to conduct necessary discovery into the basis and circumstances of that new allegation. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 575 (Pon. 2011).

A party should disclose a new allegation once it becomes aware of it since the party is under a duty seasonably to amend a prior discovery response if it obtains information upon the basis of which it knows that the response was incorrect when made, or it knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 575 (Pon. 2011).

When a party has failed to disclose an alleged incident and seems to have knowingly concealed it until it had to respond to the opposing party's summary judgment motion, it should not be allowed to put this allegation before the court. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 575 (Pon. 2011).

Since narrowing issues actually in dispute is one function of discovery, a party may not benefit at the summary judgment stage by tendering evidence it was under a discovery obligation to produce, but did not. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 575 (Pon. 2011).

When a party was asked in discovery for the instances where it was alleged to have offered or given gratuities and the opposing party disclosed only one incident, the opposing party is limited to that instance and cannot seek to introduce evidence of another instance in its summary judgment opposition. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 575 (Pon. 2011).

When the court has not previously considered aspects of discovery procedure and the interplay between the discovery rules and the summary judgment rule and when the civil procedure rules covering discovery and summary judgment are similar to U.S. rules, the court may look to U.S. authorities for guidance. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 575 n.6 (Pon. 2011).

As a general proposition, a party may obtain discovery of any matter, not privileged, that is relevant to

his claims and that is admissible as evidence or calculated to lead to admissible evidence. Mori v. Hasiguchi, 17 FSM R. 630, 641 (Chk. 2011).

When the documents sought, if relevant, would have been relevant only to the plaintiff's derivative action claims and when the court's order dismisses those claims, the plaintiff is not entitled to have these documents produced. Mori v. Hasiguchi, 17 FSM R. 630, 642 (Chk. 2011).

In a suit over the transfer of shares, the corporation's policy for issuance of new stock certificates after transfer is certainly relevant and should be (and was) produced, but no other policy, whether adopted by the board or otherwise, appears relevant unless it involves the formalities needed for the transfer of shares, so only any further such policies should be produced. Mori v. Hasiguchi, 17 FSM R. 630, 642 (Chk. 2011).

The President, even as a private litigant, is not an ordinary person. He must be granted some accommodation while at the same time balancing that accommodation with the adverse parties' right to discovery from a plaintiff. Mori v. Hasiguchi, 18 FSM R. 188, 190 (Chk. 2012).

The discovery rules encourage the parties to conduct discovery with a minimum of court involvement or intervention. Mori v. Hasiguchi, 18 FSM R. 188, 190 (Chk. 2012).

The discovery rules encourage the parties to conduct discovery with a minimum of court involvement or intervention. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 12 (Pon. 2013).

Inadmissible evidence is still discoverable if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 12 (Pon. 2013).

When, because of her failure to answer the opposing party's interrogatories the court ordered that those interrogatories will be deemed answered a certain way if the party has still failed to respond after 30 days and there was no response, the court may deem those interrogatories as answered a certain way and the opposing party may use those answers as a basis for summary judgment. Mori v. Hasiguchi, 19 FSM R. 16, 24 (Chk. 2013).

Since the discovery rules encourage the parties to conduct discovery with a minimum of court involvement or intervention, the parties may be instructed to consult and submit a joint plan for the completion of discovery, and, if the parties cannot agree on a joint plan, they must submit separate proposals and the court will set the discovery and motion deadlines. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 96 (Yap 2013).

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

Even when the monetary discovery sanctions imposed on the respondent attorney's client and the client's eventual compliance with all discovery orders in that case serve as the full and final resolution of the discovery dispute from which a disciplinary referral case arose, this does not mean that an attorney cannot be disciplined if there is a pattern of discovery abuse by that attorney in a number of cases even if the clients in all of those cases were sanctioned and complied. In re Attorney Disciplinary Proceeding, 19 FSM R. 576, 578-79 (Pon. 2014).

A litigant should not be allowed to make use of the liberal discovery procedures applicable to a civil suit as a dodge to avoid the restrictions on criminal discovery and thereby obtain documents he would not otherwise be entitled to for use in his criminal case, but in the absence of substantial prejudice to the rights

of the parties involved, parallel proceedings are unobjectionable. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 627 (Pon. 2014).

Attempting to obtain, under the civil discovery rules, either through a deposition or otherwise, discovery materials that the parties could not obtain under the more restrictive criminal discovery process, is one of the primary reasons for granting a stay of the parallel civil case. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 627 (Pon. 2014).

Discovery differs greatly in civil and criminal cases. A party to a civil litigation is presumptively entitled to obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending case, but a criminal defendant is entitled to those documents which are material to the preparation of the defendant's defense or are intended for use by the government as evidence in chief at the trial. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 627 n.10 (Pon. 2014).

When the prejudice to the defendants in the civil proceedings is too great to allow for a complete stay, and those proceedings will continue in tandem with the criminal procedures, but certain procedures may be delayed based on the court's own sua sponte initiative or by motion of the parties. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 629 (Pon. 2014).

Since a defendant who is in default may participate in a damages hearing if necessary and proper to determine the damages amount, it would seem that a defaulting defendant might be able to conduct some discovery in that regard. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41c (Pon. 2015).

When it comes to a subpoena commanding the production of documents, the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may quash or modify the subpoena if it is unreasonable and oppressive. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41c-41d (Pon. 2015).

Since any communication made to or from an attorney can always be sought from the person or entity on the other end of the communication, there should always be another practical means of obtaining the substance of that communication if it does not violate attorney-client privilege or the work product doctrine. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41d (Pon. 2015).

Under Rule 69, post-judgment discovery is available only to judgment creditors. FSM Dev. Bank v. Carl, 20 FSM R. 70, 73 (Pon. 2015).

The right to post-judgment discovery is limited to judgment creditors, who are usually, but not always, plaintiffs who succeeded in obtaining a money judgment. Rule 69 is meant to benefit a judgment creditor, not a judgment debtor. FSM Dev. Bank v. Carl, 20 FSM R. 70, 73-74 (Pon. 2015).

Rule 69 applies only to money judgments. Thus, it is generally not applicable to judgments that direct specific acts, which are covered by Rule 70. FSM Dev. Bank v. Carl, 20 FSM R. 70, 74 n.2 (Pon. 2015).

A judgment debtor has no discovery rights under Rule 69, which makes sense because once a money judgment has been rendered, the only relevant factual inquiry is the debtor's ability to pay the judgment and the fastest manner in which the debtor can reasonably pay it. FSM Dev. Bank v. Carl, 20 FSM R. 70, 74 (Pon. 2015).

When a defendant has not provided sufficient answers to the plaintiff's discovery request made on May 29, 2014 as ordered by the court on October 23, 2014, the plaintiff's second motion to compel will be granted. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 128, 129 (Pon. 2015).

When a defendant has not provided sufficient answers to the plaintiff's discovery request as ordered by the court, the defendant and her counsel may be jointly and severally liable for the plaintiff's expenses

incurred in bringing a second motion to compel is granted. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 128, 129 (Pon. 2015).

Under FSM Civil Rule 26, parties are entitled to discovery regarding any matter, not privileged, which is relevant and reasonably calculated to lead to the discovery of admissible evidence. FSM Dev. Bank v. Carl, 20 FSM R. 329, 333 (Pon. 2016).

The rules governing discovery are quite permissive, and the scope of examination is very broad. FSM Dev. Bank v. Carl, 20 FSM R. 329, 333 (Pon. 2016).

Post-judgment discovery from any person is expressly available. The judgment creditor or a successor in interest when that interest appears of record, may, in aid of the judgment or execution, obtain discovery from any person, including the judgment debtor. The judgment creditor is allowed discovery to find out about assets on which execution can issue or about assets that have been fraudulently transferred or are otherwise beyond the reach of execution. FSM Dev. Bank v. Carl, 20 FSM R. 329, 333 (Pon. 2016).

Discovery is designed to prevent litigation by ambush. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 437 (Pon. 2016).

The three major purposes for conducting pretrial discovery are: 1) to preserve relevant information that might not be available at trial, 2) to ascertain the issues that are actually in dispute between the parties, and 3) to allow a party to obtain information that will lead to admissible evidence on the issues that are in fact disputed. Failure to provide discovery frustrates these purposes. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 437 (Pon. 2016).

It is expected that a party in civil litigation will be deposed during the course of discovery. This is particularly true of a plaintiff. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 437 (Pon. 2016).

Pretrial depositions are an expected and normal part of pretrial discovery. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 437 (Pon. 2016).

That a document can also be obtained elsewhere is not a ground for a party to refuse produce a document requested by another party. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 439, 441 (Pon. 2016).

Traditionally, the courts have administered justice with mercy. They have allowed a party a second opportunity to comply with the discovery rules and orders made under them. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 439 (Pon. 2016).

Since, in discovery matters, courts often make conditional orders intended to encourage compliance rather than punish a failure, the court, instead of striking a party's answer and dismissing that party's other claims, may order that party to file and serve under oath the party's appropriate responses to interrogatories and produce the documents requested of the party by a date certain and grant the opposing party's motion if discovery is not provided by then, and the court may also order that the movant is entitled to its expenses in bringing the motion to strike the pleadings. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 439 (Pon. 2016).

If documents are available from a party, it has been thought preferable to have them obtained from that party pursuant to Rule 34 rather than subpoenaing them from a nonparty witness. This is because witnesses who are not parties to the action should not be burdened with the annoyance and expense of producing the documents sought unless the plaintiff is unable to discover them from the defendant. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 441-42 (Pon. 2016).

The mere fact that producing documents would be burdensome and expensive and would interfere with a party's normal operations is not inherently a reason to refuse an otherwise legitimate discovery

request. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 442 (Pon. 2016).

While requests for the production of documents are generally complied with by providing the requestor with copies of the documents requested, that is not the only method to comply with a request. The requested party may permit the requesting party to inspect and copy the documents. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 442 (Pon. 2016).

A party may serve on another party a request to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect and copy any designated documents which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 442 (Pon. 2016).

Any confidential patient-doctor's information can be redacted from documents provided in discovery. The fact that a medical clinic received certain sums as payments for medical services should be discoverable, but what those medical services were and for which patients, need not be provided. That the clinic received an aggregate total payment of some amount for a particular type of service may be provided without violating doctor-patient privilege. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 442 (Pon. 2016).

The proper procedure for the inspection of documents is that the party upon whom the request is served must state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated, and the party who produces documents for inspection must produce them as they are kept in the usual course of business or may organize and label them to correspond with the categories in the request. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 442 (Pon. 2016).

The mere allegation that the work product doctrine applies, is insufficient to claim the privilege. The party who asserts the work product privilege must demonstrate that the doctrine applies. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 443 (Pon. 2016).

Because the work product doctrine is intended only to guard against divulging the attorney's strategies and legal impressions, it does not protect facts concerning the creation of work product or facts contained within work product. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 443 (Pon. 2016).

When the matters requested are either facts concerning the creation of work product or facts contained within work product and are thus discoverable, the responding party should not have objected to the request but produced his documents. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 443 (Pon. 2016).

Even when a party is entitled to the relief it has requested – dismissal of certain claims and defenses – as discovery sanctions, the court, under Rule 37(a)(3) practice, has discretion in determining whether to instead order further answers. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 443 (Pon. 2016).

The general rule is that if a party has the documents sought, it is always preferable that those documents be obtained from the party rather than burden a nonparty. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 574 (Pon. 2016).

Since an order denying or granting discovery ordinarily does not present a controlling question of law so as to allow immediate appeal, it is thus a nonappealable interlocutory order reviewable only upon final judgment or order. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 574 (Pon. 2016).

If a party fails to obey an order to provide or permit discovery, the court may make such orders about that failure as are just, including an order striking out pleadings or parts thereof. Thus, if a party continues to disobey the court's order to provide discovery (including an order to appear at a deposition), the court unquestionably has the authority to strike out the parts of her joint pleadings that pertain to her. Her co-party's pleadings would remain. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 575 (Pon. 2016).

Under Rule 69, the judgment creditor, in aid of the judgment or execution, may obtain discovery from any person, including the judgment debtor. Rule 69 was intended to establish an effective and efficient means of securing the execution of judgments. As part of the process, it provides for securing information relating to the judgment-debtor's assets. FSM Dev. Bank v. Carl, 20 FSM R. 592, 594-95 (Pon. 2016).

Since parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, a request for communication documents to and from an attorney are shielded by the attorney-client privilege and a motion to compel their production will be denied, but a motion to compel the production of communication documents to and from an engineer co-project manager will be granted. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 668 (Pon. 2016).

Generally, an order granting or denying discovery is a non-appealable interlocutory order reviewable only through an appeal of the final judgment since an order denying or granting discovery ordinarily does not present a controlling question of law so as to allow immediate appeal under Appellate Rule 5(a). People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 232 (App. 2017).

When a court has jurisdiction over a case, it therefore also has the power to impose sanctions for discovery misconduct by any party to the case. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 318, 325 (Yap 2017).

A default judgment can be entered against a defendant for discovery abuse, but such a remedy is available only when the party, against whom the default judgment is sought, has disobeyed a court order to provide discovery, and even then, courts have traditionally administered justice with mercy and allowed the non-complying party a second chance to comply with the discovery rules and the court orders made under them. Chuuk v. FSM, 22 FSM R. 85, 89-90 (Chk. 2018).

The court will not enter a default judgment as a discovery sanction when, not only has the defendant not disobeyed a court order compelling discovery (as no such order was sought or issued), but it also responded to the plaintiff's document production request and provided (quite tardily) what appear to be the requested documents, which the plaintiff has not indicated to be not responsive to its request, or incomplete, or otherwise deficient or unsatisfactory. Chuuk v. FSM, 22 FSM R. 85, 90 (Chk. 2018).

Rule 37 sanctions may be imposed for non-compliance with the court's orders concerning discovery, and the court in which the action is pending may make an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 181-82 (Pon. 2019).

The court has the inherent power to control its own docket and to fashion such orders and remedies as may be necessary to ensure the expeditious and just resolution of actions before it, but a court cannot resort to its inherent powers when Rule 37 applies because Rule 37 is the exclusive remedy for failure to comply with a production order. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 182 n.8 (Pon. 2019).

When neither the FSM Social Security Administration nor FSM Customs and Tax is a party to the action, it is the parties who should produce their tax and social security records documents. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 182 (Pon. 2019).

Although the Social Security Administrator is required to receive and maintain files and records of all employers and all employees, such records shall not be disclosed to any person except as may be required to administer the FSM Social Security laws. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 183 (Pon. 2019).

Department of Finance and Administration personnel cannot be required to produce in any court any

matter or thing relating to the income taxes imposed except when it is necessary to do so for the purpose of enforcing the FSM tax laws. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 183 (Pon. 2019).

Discovery is designed to be the cooperative sharing of information between the parties, with the expectation that this will lead to a more just result. Parties are expected to make a good faith effort to resolve their discovery disputes themselves and to turn to court intervention as a last resort. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 183 (Pon. 2019).

It is the parties, not the non-parties, that must produce documents in discovery. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 184 (Pon. 2019).

A pretrial statement that states that the identity of the witnesses "will be supplemented as soon as possible," is insufficient for the purpose of holding trial. Samuel v. Kolonia Town, 22 FSM R. 397, 399 (Pon. 2019).

A new trial will be ordered when the plaintiff admitted during the summary judgment hearing that he had evidence that the defendant had asked for in discovery but which the plaintiff had not produced and which the plaintiff intended to use in trial, it was plain error that was obvious and substantial for the trial court to proceed immediately to trial after denying summary judgment at the hearing's end because the trial's fairness and the integrity was seriously affected by the plaintiff's failure to disclose his trial evidence. The trial court should have, after the summary judgment hearing if not earlier, ordered the plaintiff to disclose the evidence that he said, during the summary judgment hearing, that he intended to use at trial and which had been requested in discovery. The defendant then should have been afforded the time and opportunity to review that evidence and to determine if it needed to conduct further investigation and discovery or how else best to prepare to counter that evidence at trial, and if the defendant did ask to conduct such further discovery, the trial court should have granted it adequate time to do so and continued the trial. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 623-24 (Chk. S. Ct. App. 2020).

A litigant's obligation to provide another party with the discovery that it requested does not end when the discovery deadline passes. To hold otherwise would only encourage future bad behavior by counsel and parties. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 624 (Chk. S. Ct. App. 2020).

– Discovery – Protective Order

Forced disclosure of arrangements for payment of attorney's fees intrudes, in some degree, upon the attorney-client relationship and can be an "annoyance" within the meaning of the FSM Civil Rule 26(c) provisions concerning protective orders. Mailo v. Twum-Barimah, 3 FSM R. 179, 181 (Pon. 1987).

A request for admission as to the genuineness of a letter, excludable as evidence under Kosrae Evidence Rule 408 because it relates to settlement negotiations, is reasonably calculated to lead to evidence which could be admissible, and an objecting party may not obtain a protective order pursuant to Kosrae Civil Rule 26 to avoid responding to the request. Nena v. Kosrae, 3 FSM R. 502, 507 (Kos. S. Ct. Tr. 1988).

Because methods of discovery may be used in any sequence, and courts rarely order that a deposition not be taken at all and where there has been inexcusable delay in responding to interrogatories the court will not issue a protective order barring the taking of a deposition until after less burdensome means have been tried. Instead the court will set deadlines for compliance with the outstanding discovery requests. McGillivray v. Bank of the FSM (I), 6 FSM R. 404, 408 (Pon. 1994).

Official duties or employment obligations do not of themselves constitute a valid basis for a party to obtain a blanket protective order against being deposed in a lawsuit. Nahnken of Nett v. United States (II), 6 FSM R. 417, 422 (Pon. 1994).

Absent a showing of any of the factors listed in FSM Civil Rule 26(c), the court will not intrude at the deposition stage at the insistence of a party to declare what is relevant information that may be sought. Nahnken of Nett v. United States (II), 6 FSM R. 417, 422 (Pon. 1994).

Upon motion by a party or by the person against whom discovery is sought, and for good cause shown, a court may issue an order, which justice requires, to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including that certain matters not be inquired into, or that the scope of discovery be limited to certain matters. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 287 (Pon. 1998).

Relevant information is discoverable unless it is privileged. FSM Civil Rule 26(b)(3) protects against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party concerning the litigation. Information prepared in anticipation of litigation is discoverable only upon a showing of "good cause." Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 287-88 (Pon. 1998).

Generally, a party should move for a protective order before the date set for discovery because a party may not remain completely silent when it regards discovery as improper. If it desires not to respond it must object properly or seek a protective order. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 290 (Pon. 1998).

The appropriate test to determine the scope of work product protection to be afforded a document which serves the dual purpose of assisting with future litigation the outcome of which may be affected by a business decision, is that documents should be deemed prepared in anticipation of litigation if in light of the nature of the document and the factual situation in the particular case, the document can fairly be said to have been prepared or obtained because of the prospect of litigation. Where a document is created because of the prospect of litigation, analyzing the likely outcome of that litigation, it does not lose protection under this formulation merely because it is created to assist with a business decision. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 479 (Pon. 1998).

Work product protection extends to subsequent litigation as long as the materials sought were prepared by or for a party to the subsequent litigation. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 481 (Pon. 1998).

Rule 26 does not authorize any discovery concerning experts who the other party does not intend to call as a trial witness absent a showing of exceptional circumstances. It would be "unfair" to allow a party to extract his adversaries' consulting expert's knowledge or opinion without having to bear any of the financial cost of retaining that expert and to take unwarranted advantage of the opponent's trial preparation or investigations. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 482-83 (Pon. 1998).

Absent the requisite showing of exceptional circumstances, FSM Civil Rule 26 does not permit a party to obtain any information specific to an adversary's nontestifying experts through interrogatories. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 483 (Pon. 1998).

Where it would be unjust to sanction defendants whose whereabouts are unknown when what might have been discovered had their depositions gone forward was limited to information concerning insurance coverage, which could have been obtained by cheaper and simpler forms of discovery, the court will issue a protective order that the defendants need not appear for deposition, but that the document production request relating to insurance policies be honored. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 150, 154 (Pon. 1999).

A trial judge abuses his discretion when he denies a motion to compel production of financial information in a case where punitive damages are claimed, if the plaintiff submits factual support for the claim and the defendant fails to demonstrate good cause for a protective order preventing discovery; but the defendant is usually entitled to a protective order that the information only be revealed to the discovering

party's counsel or representative, that demands be limited only to information needed to determine the defendant's present net worth, and that the information be sealed or otherwise restricted to use in the current proceeding only. Elymore v. Walter, 9 FSM R. 251, 254 (Pon. 1999).

A court may make such orders as justice requires to protect a party from undue burden or expense with respect to discovery sought from that party. Elymore v. Walter, 9 FSM R. 251, 254 (Pon. 1999).

Upon motion by a party or by the person against whom discovery is sought, a court may issue an order, which justice requires, to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including that certain matters not be inquired into, or that the scope of discovery be limited to certain matters. Pohnpei v. KSVI No. 3, 9 FSM R. 273, 276 (Pon. 1999).

A protective order will be granted when defendants seek information related to other reef damage cases in which Pohnpei has brought suit or entered into settlement agreements that has no relevance and is not within the scope of Rule 26 because it has no bearing on facts surrounding the ship's grounding, the defendants' liability, or possible damages, it does not relate to either party's claims or defenses, and to require Pohnpei to produce such information would be oppressive and burdensome. Pohnpei v. KSVI No. 3, 9 FSM R. 273, 277 (Pon. 1999).

A protective order will be granted preventing the deposition of defendants' counsel and his production of documents when there are other means by which the information can be obtained, when the information does not appear to be as relevant and necessary as suggested, and when the information involves counsel's opinions in a work he co-authored 25 years before. The plaintiff's need for the information is outweighed by the hardship on defendants, who would be forced to confront the possibility of obtaining different counsel at a late stage of the litigation. Pohnpei v. KSVI No. 3, 9 FSM R. 273, 278 (Pon. 1999).

Because a court may order that a trade secret or other confidential commercial information should not be disclosed or should be disclosed only in a designated way, the crafting of an appropriate order to protect the disclosure of confidential information lies within the trial court's discretion. AHPW, Inc. v. FSM, 10 FSM R. 277, 278 (Pon. 2001).

A court may order confidential commercial material disclosed to opposing counsel to review and to submit to the court a list of the individuals who require access to the material and for what general purposes, and to also apprise the court generally of the quantity of material involved. If the proposed further disclosure appears reasonable under all the circumstances, the court may then direct the named individuals to submit affidavits, stating that they will use the information only for the limited purpose of the litigation and that they agree not to disclose the information to or discuss it with persons other than the attorney and the persons appearing on the list submitted to the court. All persons given access to the confidential information will be subject to sanction if they violate the protective order. AHPW, Inc. v. FSM, 10 FSM R. 277, 278-79 (Pon. 2001).

On the question of attorney work product, Rule 26(b)(3) protects against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney, trial counselor, or other representative of a party concerning the litigation. The party who asserts the work product privilege must demonstrate that the doctrine applies. Merely alleging that the doctrine applies is not sufficient. Sigrah v. Microlife Plus, 13 FSM R. 375, 378 (Kos. 2005).

Because the work product doctrine is intended only to guard against divulging the attorney's strategies and legal impressions, it does not protect facts concerning the creation of work product or facts contained within work product. Sigrah v. Microlife Plus, 13 FSM R. 375, 378 (Kos. 2005).

When, instead of making its own *in camera* review, the trial court ordered the bank to make the records for the other specified construction projects available to plaintiffs' counsel for a preliminary examination and that plaintiffs' counsel was to keep confidential any information gathered and not reveal it to anyone (even his clients) without a further court order, the trial court did issue a protective order concerning those records

and did not abuse its discretion by framing its own protective order that was designed to achieve the same goal as the bank's suggested *in camera* review – maintaining the records' confidentiality. FSM Dev. Bank v. Adams, 14 FSM R. 234, 247-48 (App. 2006).

A mere assertion that a potential deponent lacks knowledge is not a ground for granting a protective order. The party seeking discovery is not required to establish that the person whose deposition it seeks has information about which he or she could testify at trial. Indeed one important purpose of discovery is to ascertain who has such information. FSM Dev. Bank v. Adams, 14 FSM R. 234, 254 (App. 2006).

When a motion for a protective order did not assert that the bank had waived the right to depose a party by going forward with her son's deposition – only that the son was knowledgeable and available and the party was not – the motion's opposition was substantially justified and the trial court abused its discretion when it awarded fees and expenses for bringing the protective order motion. That award will be reversed. FSM Dev. Bank v. Adams, 14 FSM R. 234, 254-55 (App. 2006).

A plaintiff's motion for a protective order to bar all discovery will be denied when the defendant's motion to compel discovery was granted. A defendant is not barred from discovery because it opposed an extension of time for answering discovery, or because it filed a motion to compel discovery. Since discovery in a factually-intensive case will be commensurately extensive, the plaintiff in such a case will not be granted a protective order when he urges that the discovery will be lengthy, detailed, unduly oppressive, and expensive but offers no specifics in support. Ehsa v. Pohnpei Port Auth., 14 FSM R. 567, 571 (Pon. 2007).

When the president has unique, personal knowledge of an essential relevant issue because only the president, and no alternative source, is available to corroborate testimony, the court will limit discovery from the president to this one narrow topic. Since discovery will be limited to this one narrow point, the president's oral deposition will be more burdensome than needed. The court will therefore craft a protective order so that another means of discovery will be used – the plaintiff may seek discovery from the president through either a Rule 31 deposition upon written questions or through Rule 33 written interrogatories, whichever the plaintiff finds best-suited to its purposes. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512-13 (Pon. 2009).

Ordinarily, the court will not grant motions for protective orders to substitute written interrogatories for oral depositions in view of the recognized value and effectiveness of oral over written examinations. While a deposition on written questions may be useful in certain circumstances, this procedure is inflexible, and as a result, infrequently used since depositions upon written questions are not as effective as oral depositions in eliciting spontaneous answers. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 64, 68 (Yap 2010).

When none of the factors listed in FSM Civil Rule 26(c) for granting a protective order – i.e. "annoyance, embarrassment, oppression, or undue burden or expense" – are present, the court will deny a request that a deposition be taken by means of written, instead of oral, questions. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 64, 68 (Yap 2010).

The proper mechanism to block discovery requests is a protective order for good cause shown under FSM Civil Rule 26(c) and not by motion to strike under FSM Civil Rule 12(f). GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 551, 556 (Pon. 2014).

A party may not ask for an order to protect the rights of another party or witness because a party ordinarily does not have standing to challenge a subpoena issued to a nonparty unless the party claims some personal right or privilege in the information sought by the subpoena. FSM Dev. Bank v. Carl, 20 FSM R. 329, 331 (Pon. 2016).

Non-parties are not without the court's protection since a non-party under subpoena may move to

quash the subpoena directed to him. FSM Dev. Bank v. Carl, 20 FSM R. 329, 332 (Pon. 2016).

For good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Accordingly, the court may require: 1) that the discovery not be had; 2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; 3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery, 4) that certain matters not be inquired into, or 5) that the scope of the discovery be limited to certain matters. FSM Dev. Bank v. Carl, 20 FSM R. 329, 332-33 (Pon. 2016).

A court may quash or modify a subpoena if it is unreasonable and oppressive, but in view of the broad test of relevancy at the discovery stage, such a motion will ordinarily be denied. FSM Dev. Bank v. Carl, 20 FSM R. 329, 333 (Pon. 2016).

Generally, a protective order is granted only when it clearly appears that the information sought is wholly irrelevant and could have no possible bearing on the issue, and a witness cannot escape examination by claiming that he has no knowledge of any relevant facts, since the party seeking to take the deposition is entitled to test his lack of knowledge. FSM Dev. Bank v. Carl, 20 FSM R. 329, 333 (Pon. 2016).

The general rule is that a protective order will not likely issue at the discovery stage unless the information sought is privileged or wholly irrelevant. FSM Dev. Bank v. Carl, 20 FSM R. 329, 333 (Pon. 2016).

When the information sought targets the judgment-debtor's sources of income and the subpoenas are reasonably calculated to uncover assets not previously disclosed, good cause to issue a protective order is not shown. FSM Dev. Bank v. Carl, 20 FSM R. 329, 333 (Pon. 2016).

When the would-be deponent is the chief executive officer of a sovereign state, the court will issue a protective order barring the deposition since the party seeking discovery has not shown that relevant evidence on essential issues could not be obtained through alternative sources or less burdensome means. If, at some later time, that party shows that the Governor has relevant evidence on essential issues that cannot be obtained through alternative sources or less burdensome means, the court will consider limited alternative discovery means on that narrow topic. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 410, 411 (Yap 2017).

When a plaintiff seeks an order in aid of judgment, the court must inquire into the defendant's ability to pay, and when the information the plaintiff seeks pertains to the defendant's income, finances, and could reasonably uncover assets not previously disclosed, the court will deny the defendant's motion to quash the plaintiff's subpoena and subpoena duces tecum. Bank of the FSM v. Ohwa Christian High Sch., 21 FSM R. 645, 648 (Pon. 2018).

A defendant, that seeks to quash a subpoena and a subpoena duces tecum, must meet its burden by clarifying and explaining its objections to those subpoenas. Bank of the FSM v. Ohwa Christian High Sch., 21 FSM R. 645, 648 (Pon. 2018).

The court may quash or modify a subpoena if the subpoena is unreasonable and oppressive, but generally, a protective order will be granted only when the information sought is wholly irrelevant and could not have any possible bearing on the issue. Bank of the FSM v. Ohwa Christian High Sch., 21 FSM R. 645, 648 (Pon. 2018).

Generally, a protective order will likely not be issued during discovery unless the information being sought is privileged or wholly irrelevant. Bank of the FSM v. Ohwa Christian High Sch., 21 FSM R. 645, 648 (Pon. 2018).

When a subpoena duces tecum seeks documents that are reasonable and unoppressive and can address the defendant's ability to reasonably satisfy the judgment, the defendant has not provided good cause for the court to issue a protective order. Bank of the FSM v. Ohwa Christian High Sch., 21 FSM R. 645, 648 (Pon. 2018).

– Dismissal

When there are significant issues of fact which may affect the defendant's statute of limitations defense in a civil action, a motion to dismiss on statute of limitations grounds must be denied. Lonno v. Trust Territory (III), 1 FSM R. 279, 281-82 (Kos. 1983).

Dismissal of actions for attorney misconduct is generally disfavored in light of the judicial preference for adjudication on the merits whenever possible so as to allow parties a reasonable opportunity to present their claims and defenses. Paul v. Hedson, 6 FSM R. 146, 147 (Pon. 1993).

Dismissal with prejudice is a drastic sanction to be applied only in extreme situations. McGillivray v. Bank of the FSM, 7 FSM R. 19, 23 (Pon. 1995).

Where just, the court has discretion to enter a judgment of default based on a party's failure to obey an order or permit discovery, FSM Civ. R. 37(b)(2)(C), or based on a plaintiff's failure to prosecute his case, FSM Civ. R. 41(b). McGillivray v. Bank of the FSM, 7 FSM R. 19, 23 (Pon. 1995).

The sanction of dismissal with prejudice should be allowed only in the face of a clear record of delay or contumacious conduct by the plaintiff, or upon a serious showing of willful default. McGillivray v. Bank of the FSM, 7 FSM R. 19, 23 (Pon. 1995).

Where the plaintiff has failed to obey the court's discovery orders, and has repeatedly refused to submit to a deposition although the court has tried to accommodate plaintiff's claim of financial hardship, and failed to make a good faith effort to respond to interrogatories, the plaintiff has demonstrated an express lack of a good faith effort to move the litigation forward, leaving the court no choice but to dismiss the case with prejudice. McGillivray v. Bank of the FSM, 7 FSM R. 19, 23-26 (Pon. 1995).

Motions to dismiss for failure to state a claim upon which relief can be granted filed after an answer has been filed are considered motions for judgment on the pleadings. In ruling on a motion for judgment on the pleadings a court must presume the non-moving party's factual allegations to be true and view the inferences drawn therefrom in the light most favorable to the non-moving party. Semwen v. Seaward Holdings, Micronesia, 7 FSM R. 111, 113 (Chk. 1995).

Dismissal with prejudice of a plaintiff's prior action constitutes a judgment on the merits, which has a res judicata effect, barring the relitigation of all issues that were or could have been raised in that action. Union Indus. Co. v. Santos, 7 FSM R. 242, 244 (Pon. 1995).

Dismissal may be ordered when plaintiffs have not complied with a lesser sanction designed to relieve prejudice to a defendant caused by plaintiffs' fault. Damarlane v. United States, 7 FSM R. 350, 354-55 (Pon. 1995).

It is not an abuse of discretion for a trial court to order payment of a sanction instead of dismissal when the plaintiffs failed to comply with a court order to prepare a proper pretrial statement and then dismiss the case when the sanction was not paid. Damarlane v. United States, 8 FSM R. 45, 58-59 (App. 1997).

A motion to dismiss because the forum selection clause in the agreement selects a different court to hear the dispute is properly seen as a motion to dismiss for improper forum. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 125 (Pon. 1999).

When the stakeholder can demonstrate that it is disinterested, it is appropriate for the court to dismiss the stakeholder from the action following the deposit of the funds at issue or the posting of a bond. Bank of Hawaii v. Helgenberger, 9 FSM R. 260, 263 (Pon. 1999).

When contracts between the parties provide that any legal proceedings instituted by either party must be filed and heard in the FSM Supreme Court with no other court having jurisdiction and that should the FSM Supreme Court not accept jurisdiction must the parties' dispute be resolved by arbitration, the FSM Supreme Court, not having declined jurisdiction, will not dismiss or stay the case pending arbitration because arbitration is mandated in a dispute arising from the agreements only when the FSM Supreme Court has declined jurisdiction. Mobil Oil Micronesia, Inc. v. Helgenberger, 9 FSM R. 295, 296 (Pon. 1999).

A motion to dismiss based on an allegation that the plaintiff's trial testimony was untruthful and intentionally misrepresented material facts concerning the ownership of the land beneath his hotel and restaurant will be denied when the plaintiff had ownership rights to some of the land and a land use agreement for the rest and neither defendant asked whether there were other owners of the land and the plaintiff did not volunteer this information. This omission does not make the plaintiff's testimony an intentional misrepresentation. Jonah v. Kosrae, 9 FSM R. 332, 333-34 (Kos. S. Ct. Tr. 2000).

Delay in a case that is attributed to the time taken to designate a justice and for the clerk's preparation of the record, is not the type of delay that can be properly attributed to the appellant and be a ground for dismissal. In re Lot No. 014-A-21, 9 FSM R. 484, 491 (Chk. S. Ct. Tr. 1999).

A suit over an incident involving a foreign vessel, will not be dismissed when the vessel was engaged in commercial activity, and not in sovereign acts. Kosrae v. Kingdom of Tonga, 9 FSM R. 522, 523 (Kos. 2000).

A motion to vacate an order of dismissal under Rule 60(b) that is not brought under any of the six enumerated bases set out in Rule 60(b), and reurges the same points made in the response to the original motion to dismiss is plainly not a Rule 60(b) motion, but is considered as a motion for reconsideration. Kosrae v. Worswick, 9 FSM R. 536, 538 (Kos. 2000).

A party is precluded from moving to dismiss on the basis of a stale summons and amended complaint, since by not filing a Rule 12(b) motion on the point, nor asserting it in his answer to the amended complaint, he has waived any defect in this regard. Kosrae v. Worswick, 9 FSM R. 536, 539 (Kos. 2000).

Failure by a plaintiff to meet deadlines set out in an order may result in dismissal under Civil Procedure Rule 41(b), while a similar failure by a defendant may be met with an entry of default under Civil Procedure Rule 55(a). Kosrae v. Worswick, 9 FSM R. 536, 540 (Kos. 2000).

A motion to dismiss for failure to join necessary parties may be denied without prejudice when it is at too early a stage of the proceedings to determine whether complete relief among the parties cannot be obtained without the joinder of others. Moses v. M.V. Sea Chase, 10 FSM R. 45, 49 (Chk. 2001).

A Rule 12(b)(7) motion to dismiss for failure to join an indispensable party under Rule 19 is a defense that is, by rule, specifically preserved and may be raised as late in the proceedings as at the trial on the merits. Moses v. M.V. Sea Chase, 10 FSM R. 45, 49 (Chk. 2001).

When the complaint states that it is an admiralty and maritime action and that the plaintiffs are invoking the court's *in rem* and *in personam* jurisdiction, plaintiffs' failure to style their action against a vessel as *in rem* in the caption is merely a formal error and not a fatal defect, and the caption can always be amended to correct technical defects. Moses v. M.V. Sea Chase, 10 FSM R. 45, 51 (Chk. 2001).

When a complaint's first cause of action is dismissed for lack of jurisdiction, and its only other cause of action is dismissed for failure to state a claim upon which relief may be granted, the complaint is thereby

dismissed. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 122 (Pon. 2001).

A plaintiff in a civil lawsuit seeking affirmative relief has the burden of pursuing that relief with reasonable diligence. Initially, the burden of showing some excuse for any delay in prosecution ought to be borne by the plaintiff. If the excuse is anything but frivolous, the burden shifts to the defendant to show prejudice from the delay. If prejudice is demonstrated, the burden shifts back to the plaintiff to show that the force of its excuse outweighs any prejudice to the defendant. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 140 (App. 2001).

Dismissal under Rule 41(b), like Rule 37, should be allowed only in the face of a clear record of delay or contumacious conduct by the plaintiff, or upon a serious showing of willful default. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 140 (App. 2001).

When there was no evidence presented at trial that two defendants had made any promise to the plaintiff and they were not a parties to any agreement or promise with the plaintiff, the plaintiff has not carried his burden of proof with respect to claims made against them and justice requires that the complaint against them be dismissed. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 197 (Kos. S. Ct. Tr. 2001).

A defendant may not move for a voluntary dismissal of the plaintiff's action. Livaie v. Kosrae Sea Ventures, Inc., 10 FSM R. 206, 208 (Kos. 2001).

Under the terms of a dismissal with prejudice, a defendant secures the same relief as it would have had the case gone to trial and it had prevailed. Livaie v. Kosrae Sea Ventures, Inc., 10 FSM R. 206, 209 (Kos. 2001).

A breach of contract and warranty claim that all defendants had warranted that the construction project would be a reasonably safe workplace will be dismissed when the contract does not contain such a warranty, and no other evidence supports the allegation that such an express warranty was made. Amayo v. MJ Co., 10 FSM R. 244, 249 (Pon. 2001).

When a defendant is granted summary judgment on the complaint against him, that defendant's cross-claim for contribution and indemnification from another defendant in the event that he is found liable on the complaint will be dismissed since he has no basis to seek indemnification or contribution because the summary judgment order dismissed the complaint against him. Kosrae v. Worswick, 10 FSM R. 288, 292 (Kos. 2001).

When the plaintiffs have never qualified for the public office for which they seek compensation, their case will be dismissed. Songeni v. Fanapanges Municipality, 10 FSM R. 308, 309 (Chk. S. Ct. Tr. 2001).

A case that appears to rest on the assertion that the Land Commission gave title to the land in question to a clan will be dismissed when the Determination of Ownership names a person as the sole owner of the land. Enengeitaw Clan v. Shirai, 10 FSM R. 309, 311 (Chk. S. Ct. Tr. 2001).

A motion to dismiss will be denied when the parties' later stipulation to entry of partial judgment made moot any contention that the defendants' subsequent payments entitled them to a dismissal of the bank's claim to foreclose and sell the vessels, and when the pleadings and the mortgage terms on their face entitle the bank to such a remedy if its factual allegations are taken as true, as they must be on a motion to dismiss or for judgment on the pleadings. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 331 (Pon. 2001).

In *in personam* actions, there is no authority to proceed against unknown persons in the absence of a statute or rule, and the FSM has no rule or statute permitting the use of fictitious names to designate defendants. Accordingly, John Doe defendants will be dismissed. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 412 n.1 (Pon. 2001).

Dismissal of John Doe defendants does not prohibit the plaintiff from seeking to amend its complaint if it does ascertain other parties should be named defendants. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 412 n.1 (Pon. 2001).

When state law clearly provides that no action shall be brought against the state for any actions or omissions of the Chuuk Coconut Authority and that the Authority's debts or obligations shall not be debts or obligations of the Legislature or state government, and neither will be responsible for the same, the state and the governor will be dismissed as defendants from a suit against the Authority because as a matter of law no action lies against the state and no liability attaches. Konman v. Adobad, 11 FSM R. 34, 35 (Chk. S. Ct. Tr. 2002).

The separation of powers doctrine precludes the Chuuk State Supreme Court from exercising jurisdiction over the claims that the plaintiff should be speaker of a municipal legislature and will dismiss the action. Anopad v. Eko, 11 FSM R. 287, 290 (Chk. S. Ct. Tr. 2002).

By not granting a defendant's motion to dismiss on the grounds that plaintiffs lacked standing, the court does not somehow imply that it, at that stage of the proceedings, has made any findings of ownership or right to possession of the property in question. Ambros & Co. v. Board of Trustees, 11 FSM R. 333, 336 (Pon. 2003).

A plaintiffs' attorney's failure to properly plead their claims is not a sufficient justification to prevent the plaintiffs from being able to bring their claims at all because a complaint should not be dismissed and a party precluded from relief when a plaintiff's lawyer has misconceived the proper legal theory of the claim. If the complaint shows that the plaintiff is entitled to any relief which the court can grant, regardless of whether it asks for the proper relief, the complaint is sufficient. Ambros & Co. v. Board of Trustees, 11 FSM R. 333, 336 (Pon. 2003).

When the plaintiff failed to file any papers to advise the court of the defendant's failure to complete his performance as ordered and when the plaintiff also failed to request a delay of the dismissal, to accommodate the additional time needed to obtain permits, the court properly assumed that the land filling had been completed as agreed to by the parties and as ordered by the court, and the court's dismissal of the case was proper and in accordance with its earlier order. James v. Lelu Town, 11 FSM R. 337, 339 (Kos. S. Ct. Tr. 2003).

Once a party's death has been suggested on the record under Civil Procedure Rule 25(a)(1), the ninety-day deadline for making a motion for substitution of that deceased party starts running, and when the ninety days has passed and no motion for substitution or for enlargement of time has been filed, that party will be dismissed. Beal Bank S.S.B. v. Maras, 11 FSM R. 351, 354 (Chk. 2003).

If an indispensable party cannot be made a party, the court must determine whether in equity and good conscience the action should proceed among the parties before it or whether it must be dismissed. The factors the court must consider include: 1) to what extent a judgment rendered in the person's absence might be prejudicial to that person or those already parties; 2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; 3) whether a judgment rendered in the person's absence will be adequate; and 4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. Ifenuk v. FSM Telecomm. Corp., 11 FSM R. 403, 404-05 (Chk. 2003).

A trespass case will be dismissed for failure to join the land's co-owners as indispensable parties plaintiff because any judgment rendered in the co-owners' absence will be prejudicial to the defendant since any of the other co-owners could sue for the same trespass, thus subjecting the defendant to multiple judgments for the same acts; because even a judgment in the defendant's favor would not prevent another co-owner from suing for the same acts; because there are no protective provisions that could be included in a judgment that would lessen the prejudice; and because the plaintiff has an adequate remedy since the

dismissal is without prejudice – he may refile the case with the co-owners included. Ifenuk v. FSM Telecomm. Corp., 11 FSM R. 403, 405 (Chk. 2003).

When a judgment was entered in a plaintiff's favor and against a defendant prior to the defendant's death, dismissal of the matter is not appropriate as the claim has not been extinguished. The unsatisfied portion of the judgment still exists. Bank of the FSM v. Rodriguez, 11 FSM R. 542, 544 (Pon. 2003).

A dismissal with prejudice constitutes a judgment on the merits. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 628 (App. 2003).

Absent an order dismissing it, a defendant is still a party despite its deletion from the case caption. Jackson v. Pacific Pattern, Inc., 12 FSM R. 18, 19 (Pon. 2003).

A case against one defendant will not be dismissed because that defendant will be a witness in the case since a party to a civil action is expected to be a witness in his own case. LPP Mortgage Ltd. v. Maras, 12 FSM R. 27, 27 (Chk. 2003).

A dismissal must be with prejudice when a plaintiff cannot under any theory state a claim for which relief can be granted. Hartman v. Chuuk, 12 FSM R. 388, 399 (Chk. S. Ct. Tr. 2004).

Even if the court permitted the inclusion of Doe defendants, in order to replace a Doe defendant with a named party, the plaintiffs would still have to move, under Civil Procedure Rule 15, to amend the pleadings to replace the Doe defendant with a named defendant, and that to do so, all the Rule 15's specifications must be met, and since even in the absence of John Doe defendants, the plaintiffs can still move to amend their pleadings should the plaintiffs identify through discovery other persons who may be liable on the plaintiffs' claims in a case, the court will dismiss without prejudice the Doe defendants when no reference was made to them in the complaint's body. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 506, 508 (Yap 2004).

The "statute of limitations" is an affirmative defense which must be raised in either the answer or in a motion to dismiss. A plaintiff's failure to timely oppose a defendant's motion to dismiss is deemed a consent to the motion. However, even without opposition, the court still needs good grounds before it can grant the motion. Skilling v. Kosrae State Land Comm'n, 13 FSM R. 16, 19 (Kos. S. Ct. Tr. 2004).

When a determination of ownership by the Land Commission is subject to appeal to the Court within 120 days from the date of receipt of notice of the determination and when it is alleged that the plaintiff never received notice of the determination of ownership, accepting the alleged facts as true, then the appeal time limit of 120 days never began to run. Skilling v. Kosrae State Land Comm'n, 13 FSM R. 16, 19 (Kos. S. Ct. Tr. 2004).

Claims against the Land Commission for violation of statute and violation of due process are subject to a limitations period of six years. When claims against the Land Commission based upon Land Commission actions which took place in 1984 and before occurred more than six years ago, they are barred by the statute of limitations and should be dismissed. Skilling v. Kosrae State Land Comm'n, 13 FSM R. 16, 19 (Kos. S. Ct. Tr. 2004).

The statute of limitations is an affirmative defense which must be raised in either the answer or in a motion to dismiss. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 80 (Kos. S. Ct. Tr. 2004).

When the plaintiff did not file any timely opposition to the defendant's motion to dismiss, the plaintiff's failure to file a memorandum in opposition to the motion to dismiss is deemed a consent to the motion. However, even without opposition, the court still needs good grounds before it can grant the motion. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 80 (Kos. S. Ct. Tr. 2004).

When the allegations made in the complaint are for causes of action that accrued more than seven years ago, and when claims against the Kosrae State Land Commission for violation of statute and violation of due process are subject to a limitations period of six years, the claims based upon Land Commission actions which took place in 1997 are therefore barred by the statute of limitations and defendants Kosrae State Land Commission and Kosrae state government will be dismissed from the action. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 81 (Kos. S. Ct. Tr. 2004).

The doctrine of claim preclusion (a form of res judicata) does not bar a later action when the court order denying the plaintiff's intervention (in part) in an earlier action shows that intervention was denied because the intervenor had no interest in the subject matter of the litigation, and a motion to dismiss on that ground or on the grounds that that the court lacks subject matter jurisdiction because the earlier court already had the case, or that the plaintiff is barred by his alleged "unclean hands" because he omitted mention of the earlier action allegedly to circumvent the other court's jurisdiction are therefore without merit. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 126 (Chk. 2005).

A plaintiff's tort claim will not be dismissed as duplicative of his civil rights claim without the benefit of trial because it would be premature to dismiss either claim since the plaintiff has yet to prove the necessary elements of one or both of his two distinct claims and because at this juncture the contention that the tort and civil rights claims are duplicative is without merit. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 154, 156 (Pon. 2005).

A plaintiff's state law claims will not be dismissed because he is seeking a large amount of damages. The amount of damages sought does not determine whether a claim is to be dismissed. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 154, 156 (Pon. 2005).

Because the allegations of the plaintiff's own complaint demonstrate that certain of its claims are subject to the defense of statute of limitations, the court may chose to dismiss those claims on the statute of limitations, although it is an affirmative defense. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 228 (Pon. 2005).

When the court gave the plaintiff notice that res judicata might apply and an opportunity to respond and when the previous case was dismissed under Rule 41(b) for failure to prosecute and was thus an adjudication on the merits, the plaintiff is barred from relitigating or filing a new case involving the same parties and subject matter – the matter is res judicata – and the court may dismiss it. Kishida v. Aizawa, 13 FSM R. 281, 284 (Chk. 2005).

Motions to dismiss are not pleadings and oppositions to such motions are not responsive pleadings. Sipos v. Crabtree, 13 FSM R. 355, 360 (Pon. 2005).

When the plaintiffs seek a declaration that they are the legal winners of an election but have not named as defendants the candidates that opposed them and that presumably question their right to office and since these other candidates are not only real parties in interest but also indispensable parties to such a declaration, the case may be dismissed for failure to join indispensable parties. Puchonong v. Chuuk, 14 FSM R. 67, 69 (Chk. 2006).

Although not listed in Civil Rule 8(c), failure to exhaust administrative remedies is an affirmative defense. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 157 (Pon. 2006).

Because the Kosrae State Court only has the authority to hear appeals from Land Court and it cannot act until the Land Court has adjudicated the matter and an appeal has been filed, a case concerning a claim of title to land filed in the Kosrae State Court will be dismissed without prejudice to allow the plaintiffs to file their claim in the Land Court, whose jurisdiction includes all matters concerning the title of land and any interests therein. Alanso v. Pridgen, 14 FSM R. 479, 480 (Kos. S. Ct. Tr. 2006).

Unnamed persons listed as John Doe defendants who were never identified or served process will be dismissed. Hauk v. Emilio, 15 FSM R. 476, 478 (Chk. 2008).

A timely-filed motion to reconsider an order of dismissal is considered a Rule 59(e) motion to alter or amend a judgment. Alanso v. Pridgen, 15 FSM R. 597, 600 (App. 2008).

When the complaint names Chuuk's Governor, acting in his official capacity, as a defendant and alleges that he had a duty to pay for the insurance in question, but the evidence presented supported a claim against the State of Chuuk itself and not against the Governor in his official capacity, the complaint will be dismissed with prejudice as to the Governor of Chuuk in his official capacity. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 656 (Pon. 2008).

Rule 4(j) provides that if service of the summons and complaint is not made on a defendant within 120 days after the filing of the complaint, the action will be dismissed as to that defendant without prejudice upon motion or on the court's own initiative, but dismissal for lack of service is also possible under Rule 41(b). A case against a defendant may be dismissed under Rule 41(b) for lack of personal jurisdiction over that defendant, that is, because that defendant was never properly served the summons and complaint and the court thus never acquired personal jurisdiction over that defendant. Dismissal under Rule 41(b) for lack of jurisdiction is without prejudice. Nakamura v. Mori, 16 FSM R. 262, 269 (Chk. 2009).

When each party seeks relief solely against the other, and there is no allegation that the United States is liable for either party's alleged breach of contract, or liable to the defendant for the plaintiff's alleged violations of due process, or other claims and when, even assuming the United States has some interest in the subject of the action because it is the funding source, but there is no suggestion by either party that the United States cannot protect its own interests and there is no claim that either of the parties has a substantial risk of incurring double, multiple or inconsistent obligations, the plaintiff is not entitled to have the counterclaims dismissed on the ground that the United States is an indispensable party. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 482-83 (Pon. 2009).

The four factors in Rule 19(b) the court must consider before finding the case cannot proceed without an indispensable party are: 1) the extent to which a judgment rendered in the person's absence might be prejudicial to that person or those already parties; 2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; 3) whether a judgment rendered in the person's absence will be adequate; and 4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 483 n.1 (Pon. 2009).

There is no legal basis for a motion to dismiss for failure to join a indispensable party when the person the defendant asserts is an indispensable real party in interest is in fact a party as he is one of the plaintiff heirs of Edmond Tulenkun and when it is not correct that the person who funded the $500 in issue is an indispensable party since this person was not a party to the contract. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 643 (Kos. S. Ct. Tr. 2009).

A corporation has no valid cross-claim against a co-party and its cross-claims will be dismissed when it was not a party to the lease upon which the cross-claims are based and was not named as an intended third-party beneficiary in the lease. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 112 (Pon. 2010).

When there is a prior Chuuk State Supreme Court case that deals with the ownership issue and in which the alleged trespasser may soon be joined, and when the state court, unlike Chuuk Land Commission, has the power to issue monetary awards, the later-filed FSM Supreme Court trespass case will be dismissed without prejudice. Setik v. Pacific Int'l, Inc., 17 FSM R. 304, 307 (Chk. 2010).

When the court file does not contain a return of service for a summons and for either the original complaint or the first amended complaint on two named defendants, the court has nothing before it from

which it can conclude that the court has personal jurisdiction over either of them. The court will therefore give the plaintiff time to show that the court has personal jurisdiction over those two defendants; otherwise, they may be subject, under Civil Procedure Rule 4(j), to dismissal for lack of service of process on them. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 329 (Pon. 2011).

The dismissal of "John Doe" defendants will not prevent a plaintiff from later seeking to amend her complaint if she ascertains that others should also be named defendants. Berman v. Pohnpei, 17 FSM R. 360, 366 n.1 (App. 2011).

While a vacated sua sponte dismissal without notice may mean that a later dismissal after notice is more likely to be a further abuse of discretion than a dismissal made on the court's own motion but only after notice, it does not automatically follow that every dismissal after a vacated sua sponte dismissal must also be an abuse of discretion. Nevertheless, courts should tread carefully here because, to an impartial observer, the process may by then seem tainted. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 629 (App. 2011).

A plaintiff is not precluded from relief just because the party's lawyer has misconceived the proper legal theory of the claim since a plaintiff need not even advance a legal theory. Mori v. Hasiguchi, 17 FSM R. 630, 637 (Chk. 2011).

The failure to verify a derivative action complaint will not entitle defendants to an immediate dismissal or to a summary judgment because the Civil Procedure Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

A derivative action complaint does not have to be dismissed for noncompliance with the verification requirement when the court can require the plaintiff to verify it by filing an affidavit within a reasonable time, and even then, if the plaintiff fails to take advantage of the court's invitation to correct the deficiency, the dismissal should not be with prejudice inasmuch as the merits of the case have not been adjudicated. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

A derivative action plaintiff who has failed to both verify the complaint and to allege the absence of collusion may be given a reasonable time to cure both defects rather than have his derivative action dismissed. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

A derivative action must be dismissed when a plaintiff has not demanded action by the corporation's directors unless the court finds that Rule 23.1's demand requirements are excused under the rule's alternative provision that the plaintiff explain his reasons for not making the effort. Courts have allowed recourse to this reasons "for not making the effort" clause when a demand would be futile, useless, unavailing, or an idle ceremony. Mori v. Hasiguchi, 17 FSM R. 630, 640 (Chk. 2011).

A motion to dismiss derivative action allegations will be granted when the complaint has not alleged and shown that the plaintiff made a proper demand for redress and was refused or alleged and shown that such a demand would have been futile. Mori v. Hasiguchi, 17 FSM R. 630, 640-41 (Chk. 2011).

A plaintiff who did not assert a cause of action against a person later named as a third-party defendant by a defendant-third-party plaintiff may move to strike the third-party claim, or for its severance, or separate trial. Mori v. Hasiguchi, 17 FSM R. 630, 643 (Chk. 2011).

A partial summary judgment motion will be denied when it asks that the individual defendants be dismissed because the corporate defendant's presence in the case is solely as an interpleader – as a party who has joined in one case all those persons with claims to any of the 2,160 shares so that all their rights can be adjudicated and the corporation will abide the result – ignores the plaintiff's tort claims of attempted

improper interference with his purchase of the stock and that at least one individual defendant seems central to those claims and the corporation may also be involved. Mori v. Hasiguchi, 17 FSM R. 630, 645 (Chk. 2011).

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

A motion to dismiss for failure to join indispensable parties will be denied when the court has not been shown that it cannot accord complete relief between the parties already present in the action without the joinder of others. Marsolo v. Esa, 18 FSM R. 59, 63 (Chk. 2011).

A Rule 12(b)(7) motion to dismiss for failure to join an indispensable party under Rule 19 is a defense that is, by rule, specifically preserved and may be raised as late in the proceedings as at the trial on the merits. A motion to dismiss for failure to join necessary parties is accordingly denied without prejudice and may be renewed if the circumstances warrant. Marsolo v. Esa, 18 FSM R. 59, 63 (Chk. 2011).

The President has absolute immunity from damages liability for his official acts. Furthermore, the court does not have the jurisdiction to enjoin the President in the performance of his official duties such as enforcing a Congressionally enacted statute. Since suits contesting the actions of the executive branch should be brought against the President's subordinates, not against the President himself, a motion to dismiss the President will therefore be granted. Marsolo v. Esa, 18 FSM R. 59, 65 (Chk. 2011).

When no extraordinary circumstances are present in a suit over the enforcement of a statute, public officers, in their individual capacities, will be dismissed from the suit, but since injunctive relief can be had against them in their official capacities, they will not be dismissed in their official capacities. Marsolo v. Esa, 18 FSM R. 59, 65 (Chk. 2011).

Although the rule permits dismissal if a case is filed in an improper venue, a more likely remedy, particularly when the litigation has progressed beyond its early stages, is not to dismiss the case but for the court to, on its own motion or otherwise, transfer it to any venue in which the matter might properly have been brought. Marsolo v. Esa, 18 FSM R. 59, 65 (Chk. 2011).

The court will enforce a forum selection clause when the bank drafted the real estate mortgage and the bank chose to include the forum selection clause as one of the terms it insisted upon in the preprinted mortgage form it used to execute the mortgage; when a mortgagor not only does not expressly waive the bank's forum selection but he affirmatively insists upon the forum selection clause's enforcement; and when no other valid reason is apparent or has been asserted by the bank that would allow the clause's waiver. The bank may thus assert its real estate mortgage foreclosure remedy in the Yap State Court, the forum it chose, and the mortgagor may raise his defenses to the mortgage's validity there and the FSM Supreme Court will adjudicate the bank's action on the promissory note and on the chattel mortgage. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 94 (Yap 2011).

When the mortgage foreclosure portion of the action is being dismissed without prejudice pursuant to the mortgage's forum selection clause and when that dismissal leaves no other cause of action against a co-mortgagor, the court will deem it advisable to deny the plaintiff's motion for a default judgment against the co-mortgagor, and, since there is no cause of action left against the co-mortgagor, he must also be dismissed as a defendant. The bank's motion is therefore be denied as moot. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 95 (Yap 2011).

Standing must be found for each count of a complaint or that count will be dismissed. Kallop v. Pohnpei, 18 FSM R. 130, 133 (Pon. 2011).

Since an action will be dismissed as to a deceased party if no motion for substitution is made within 90 days after the suggestion of death, when the court has not received a motion for substitution, and the plaintiffs do not appear to intend to file such a motion, the court will dismiss the deceased party from the case and order that the caption in future filings reflect such dismissal. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 155 (Pon. 2012).

The court did not dismiss a plaintiff's claims sua sponte when the court did not decide its own motion but granted summary judgment as the result of a defendant's motion to dismiss, to which the plaintiff did not file an opposition. Welle v. Chuuk Public Utility Corp., 18 FSM R. 203, 205 (Chk. 2012).

"Forum shopping," the practice of choosing the most favorable jurisdiction or court in which a claim might be heard, is not a ground for summary judgment. At most, it is a claim that the case should be dismissed without prejudice so that the parties could pursue it in some other forum. Tarauo v. Arsenal, 18 FSM R. 270, 274 (Chk. 2012).

A defendant, who has asserted in its answer the lack of personal jurisdiction over it as a defense, has preserved that defense for determination before trial and it may move for the issue's determination as a preliminary matter. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 287-88 (Yap 2012).

If a vessel was never seized and brought under the court's control and is not in, or is no longer in, the FSM, the court has not acquired in rem jurisdiction over it and all claims against it will be dismissed without prejudice unless a letter of undertaking or a bond has been made a substitute *res* for the vessel in lieu of its seizure. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288 (Yap 2012).

When a tug is not present in the FSM and was not arrested when it was present and when no bond or letter of undertaking has been posted to provide a substitute res over which the court could exercise jurisdiction, the complaint against it must be dismissed without prejudice. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288 (Yap 2012).

Since the failure to verify a complaint is a technical defect that can be cured by amendment, it would not entitle the defendants to an immediate dismissal or to a summary judgment because the Civil Procedure Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. This same principle should hold for an in rem admiralty proceeding and the plaintiffs be given a reasonable time to amend their complaint by verifying it by affidavit. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288-89 (Yap 2012).

When, in their answers, all of the appearing defendants asserted the plaintiffs' failure to join indispensable parties as a defense, they preserved that Rule 12(7) defense for determination before trial. Moreover, a Rule 12(b)(7) motion to dismiss for failure to join an indispensable party under Rule 19 is a defense that, by rule, is specifically preserved and may be raised as late in the proceedings as at the trial on the merits. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 289 (Yap 2012).

In determining whether a case ought to be dismissed because necessary and indispensable parties are not joined, the court must consider: 1) to what extent a judgment rendered in the person's absence might be prejudicial to that person or to those already parties; 2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; 3) whether a judgment rendered in the person's absence will be adequate; and 4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. If an indispensable party cannot be made a party, the court must determine whether in equity and good conscience the action should proceed among the parties before it or whether it must be dismissed, but a motion to dismiss for failure to join indispensable parties will be denied when the court has not been shown that it cannot afford complete relief between the

parties already present in the action without the joinder of others. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 289-90 (Yap 2012).

Since an agent is not an indispensable party to a vicarious liability claim against the principal, the principal will not be prejudiced if the complaint against it included a vicarious liability claim against the principal for an agent's acts even if the plaintiffs do not also sue the agent. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 290 (Yap 2012).

Joint tortfeasors are not indispensable parties. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 290 (Yap 2012).

A necessary party is one who has an identifiable interest in the action and should normally be made a party to the lawsuit, but whose interests are separable from the rest of the parties or whose presence cannot be obtained; whereas an indispensable party is one to whom any judgment, if effective, would necessarily affect his interest, or would, if his interest is eliminated, constitute unreasonable, inequitable, or impractical relief. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 290 (Yap 2012).

A party will appeared to have preserved the defense of lack of personal jurisdiction for determination by motion before trial when the answer denies the plaintiffs' averment that the party was "subject to *in personam* jurisdiction in this Court." People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 297, 301 (Yap 2012).

When the only relief pleaded by the respondent in his answer that could possibly be considered a counterclaim was his prayer for attorney's fees and costs and when the eminent domain statute precludes this type of relief, even if this part of the respondent's prayer for relief is considered a counterclaim, it is a counterclaim that the statute clearly forbids and therefore should not hinder a dismissal under Rule 41(a)(2). In re Lot No. 029-A-16, 18 FSM R. 422, 424 (Chk. S. Ct. Tr. 2012).

When the Pohnpei statute does not provide that immediate dismissal is explicitly required if a plaintiff fails to name Pohnpei as a defendant and since a suit against a person in his or her official capacity is treated as a suit against the entity that employs that officer, Pohnpei is, in effect, already a party-defendant when its Governor was sued in his official capacity. The court will therefore deny a motion to dismiss and give the plaintiffs leave to amend their complaint to add the State of Pohnpei as a defendant. Perman v. Ehsa, 18 FSM R. 432, 437-38 (Pon. 2012).

Civil Rule 4(j) authorizes the dismissal without prejudice of any defendant not served with process within 120 days. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 464 (Yap 2012).

A motion to stay the dismissal of a defendant for lack of service is considered a motion to enlarge time to serve process on that defendant. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 (Yap 2012).

An *in rem* defendant ought not to be able to have the complaint against it dismissed for lack of service merely by keeping the *res* out of the court's jurisdiction for 120 days. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 466 (Yap 2012).

When some defendants were never served with the complaint and summons, the court never had personal jurisdiction over them and the plaintiffs' case against them was considered abandoned and dismissed. William v. Kosrae State Hosp., 18 FSM R. 575, 579 n.1 (Kos. 2013).

When the appellate court vacates a trial court dismissal, the case will be returned to the trial court in the same posture it was in when the trial court dismissed it. Damarlane v. Damarlane, 19 FSM R. 97, 110

(App. 2013).

When after notice that the case was subject to dismissal for failure to prosecute, the plaintiffs acquiesced to a dismissal so that they could "appeal forthwith," they necessarily must have abandoned their remaining nuisance claim because they could have responded that they wanted trial on the remaining claim and reminded the court that they had earlier asked that trial take place four weeks after their motions were decided but they did not. Berman v. FSM Nat'l Police, 19 FSM R. 118, 127 (App. 2013).

The plaintiffs, having acquiesced to a dismissal so they could appeal, cannot revive on appeal, by asserting that the dismissal was a trial court error, a claim for which they agreed to a dismissal even though if they had proceeded to trial and proved their allegations, they could have been awarded money damages. Berman v. FSM Nat'l Police, 19 FSM R. 118, 127 (App. 2013).

When, in response to the defendants' interrogatories asking the plaintiff about all facts that gave rise to the certain defendants' liability both individually and as board members, the plaintiff responded that he had none, those defendants will be dismissed. George v. Palsis, 19 FSM R. 558, 571 (Kos. 2014).

When there are no factual allegations that a defendant took any actions or failed to take any action in an individual capacity, he will be dismissed as a defendant in his individual capacity. George v. Palsis, 19 FSM R. 558, 571 (Kos. 2014).

When the defendants have not shown that they have a right, as a matter of law to a corporate official's dismissal in his official capacity, he will be dismissed only in his individual capacity, but when the plaintiff has alleged actions by another official that, if true and if proven, would give rise to tort liability for the violation of the plaintiff's civil rights, that person will not be dismissed as a defendant. George v. Palsis, 19 FSM R. 558, 571 (Kos. 2014).

A dismissal with prejudice constitutes a judgment on the merits. Saito v. Siro, 19 FSM R. 650, 654 (Chk. S. Ct. Tr. 2015).

Because the goal is to protect the rights of infants, a complaint should not be dismissed with prejudice as to the minor. The minor may himself sue as a plaintiff, either pro se or by counsel, within two years after he turns eighteen years old, but before then his father may not appear without counsel on his behalf. Pillias v. Saki Stores, 20 FSM R. 391, 396 (Chk. 2016).

Under Civil Rule 25(a)(1), when a party dies, the court may order substitution of the parties, but once the death is suggested on the record, a ninety-day time frame is triggered to file the substitution motion and if this deadline is not met, the action will be dismissed as to the deceased party. Johnson v. Rosario, 21 FSM R. 7, 9 (Pon. 2016).

When an action is merely an attempt to cast the same facts and claims in a different light in order to try to sneak under the bar of res judicata, it will be dismissed. Setik v. Perman, 21 FSM R. 31, 41 (Pon. 2016).

Under Kosrae Civil Rule 41(b), the court may dismiss a claim for the plaintiff's failure to prosecute or to comply with the court's rules or with any court order. Waguk v. Waguk, 21 FSM R. 60, 66 (App. 2016).

Generally, a court may not raise the res judicata defense on its own motion. But, in the interest of judicial economy, a court may properly raise the issue when both actions have been brought in the same court. Waguk v. Waguk, 21 FSM R. 60, 67 (App. 2016).

Judicial initiative is appropriate in special circumstances. Most notably, if a court is on notice that it has previously decided the issue presented, the court may dismiss the action *sua sponte*, even though the defense has not been raised. This is fully consistent with the policies underlying res judicata: it is not based solely on the defendant's interest in avoiding the burdens of twice defending a suit, but is also based

on the avoidance of unnecessary judicial waste. Waguk v. Waguk, 21 FSM R. 60, 68 (App. 2016).

Even though it is an affirmative defense, a court may choose to dismiss claims based on the statute of limitations, when the allegations of the plaintiff's own complaint demonstrate that certain of its claims are subject to the defense. Tilfas v. Kosrae, 21 FSM R. 81, 87 (App. 2016).

When it is clear that the allegations in the plaintiff's own complaint demonstrate that his claims are subject to the statute of limitations defense, the court may dismiss those claims as time-barred even though the statute of limitations is an affirmative defense. But when there are significant factual issues that may affect the defendant's statute of limitations defense, a motion to dismiss on statute of limitations grounds must be denied. Tilfas v. Kosrae, 21 FSM R. 81, 91 (App. 2016).

The decision to dismiss a case is committed to the trial court's sound discretion. Lonno v. Heirs of Palik, 21 FSM R. 103, 106 (App. 2016).

At the pleader's option, Rule 12(b) defenses may either be raised in a separate motion before pleading or may be raised in the responsive pleading. Lonno v. Heirs of Palik, 21 FSM R. 103, 107 (App. 2016).

When a complaint's allegations are subject to the defense that the statute of limitation has lapsed, a court may choose to dismiss the action, even though it is an affirmative defense. Lonno v. Heirs of Palik, 21 FSM R. 103, 107 (App. 2016).

Counsel should be well aware that although a motion to dismiss may stand unopposed, and while failure to oppose a motion is generally deemed a consent to that motion, the court still needs good grounds before it can grant the motion. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 21 FSM R. 150, 154 (Pon. 2017).

A party cannot revive a previously dismissed counterclaim by moving for summary judgment on that counterclaim. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 170 (Pon. 2017).

Any action or proceeding brought against an individual who is entitled to diplomatic immunity with respect to such action or proceeding under any FSM law extending diplomatic privileges and immunities, must be dismissed. Such immunity may be established upon motion or suggestion by or on behalf of the individual, or as otherwise permitted by law or applicable rules of procedure. Estate of Gallen v. Governor, 21 FSM R. 457, 461 (Pon. 2018).

When an embassy has, as permitted by statute, established its immunity by motion, it must be dismissed as a party. No pleading defect, real or imagined, can alter that and produce a different result. Estate of Gallen v. Governor, 21 FSM R. 457, 462 (Pon. 2018).

Since an embassy is immune from suit, a case against it will be dismissed. Since the court cannot exercise jurisdiction over it, the embassy, as a prevailing party, is also entitled to its costs. Estate of Gallen v. Governor, 21 FSM R. 457, 462 (Pon. 2018).

When all actions, or inactions, complained of, were taken by persons in their capacities as bank officers, dismissal of them in their individual capacities was proper. Setik v. Mendiola, 21 FSM R. 537, 556 (App. 2018).

When the insured's remaining claims are all based on the insurer's denial of insurance coverage and when that denial was lawful, the insured's remaining claims will be dismissed. Donre v. FSM Nat'l Gov't Employees' Health Ins. Plan, 21 FSM R. 592, 598 (Pon. 2018).

Rule 41(b) authorizes dismissals in only two circumstances – after the plaintiffs' presentation of evidence at trial and for the plaintiffs' failure to prosecute their case. Alik v. Heirs of Alik, 21 FSM R. 606, 617 (App. 2018).

The court can, in a proper case, after notice and after severing a previously consolidated case, then dismiss that severed case, but when there was no order of severance, the cases remained consolidated and any dismissals were the partial adjudication of one (consolidated) case. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 180 (Pon. 2019).

When the dismissals were a partial adjudication of a consolidated case, Civil Procedure Rule 54(b) applies. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 180 (Pon. 2019).

When both Rule 54(b) elements are absent from a partial adjudication because the court did not make any determination that there was no just reason for delay and did not direct the clerk to enter a final judgment on those claims, the order is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties, should circumstances ever arise that would warrant its revision. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 181 (Pon. 2019).

The court can, under Civil Procedure Rule 37, impose sanctions, including partial or complete dismissals, against parties who disobey court orders regarding discovery. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 181 (Pon. 2019).

Rule 37 sanctions may be imposed for non-compliance with the court's orders concerning discovery, and the court in which the action is pending may make an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 181-82 (Pon. 2019).

When some claims and parties have been dismissed, henceforth, only the current plaintiff and defendants should appear in the case caption to reflect the case's current posture. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 186 (Pon. 2019).

The law does not favor involuntary dismissal. Dismissal under Rule 41(b) should be allowed only when there is a clear record of delay or contumacious conduct by the plaintiff or a serious showing of willful default. Jackson v. Siba, 22 FSM R. 224, 231 (App. 2019).

When the plaintiff's averments in his proposed first amended complaint do not cure the complaint's indispensable party problem, the best course is to dismiss this case without prejudice to any future litigation by all of the land's co-owners (whoever they then are), claiming that the defendants are trespassing on the land. Nicky v. Chuuk Public Utility Corp., 22 FSM R. 239, 243 (Chk. 2019).

– Dismissal – After Plaintiff's Evidence

When a plaintiff at trial failed to introduce evidence that would show one defendant's liability, that defendant may be dismissed and excused from the remainder of the trial, and when the other defendant fails to object to that defendant's withdrawal the court may accept that as the other defendant's abandonment of its cross claims against that defendant. Jonah v. Kosrae, 9 FSM R. 335, 344-45 (Kos. S. Ct. Tr. 2000).

It was not error for the trial court to deny a Rule 41(b) motion to dismiss when, after the plaintiff completed the presentation of its evidence, the defendant moved for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief but not only made out a prima facie case for unjust enrichment sufficient to defeat the defendant's motion, but went further, and established by a preponderance of the evidence each element of its case. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 518 (App. 2005).

A defendant may, without waiving defendant's right to offer evidence in the event the motion is not

granted, move to dismiss the plaintiff's case after the plaintiff has completed his case-in-chief on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court must make findings as provided in Rule 52(a). Hauk v. Lokopwe, 14 FSM R. 61, 64 (Chk. 2006).

The court must first look to FSM sources of law rather than begin with a review of other courts' cases, but when an FSM court has not previously construed the involuntary dismissal at the close of the plaintiff's case-in-chief portion of Civil Rule 41(b) which is identical or similar to the U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. Hauk v. Lokopwe, 14 FSM R. 61, 64 n.2 (Chk. 2006).

On a Rule 41(b) motion to dismiss after presentation of the plaintiff's case-in-chief, in determining whether the plaintiff has shown a right to relief, the court is not required to view the facts in the light most favorable to the plaintiff but can draw permissible inferences. If the court determines that the plaintiff has not made out a prima facie case – has shown no right to relief, the defendant is entitled to have the plaintiff's case dismissed. Even if the plaintiff has made out a prima facie case, the court, as the trier of fact, may weigh the evidence, resolve any conflicts in it, and decide for itself where the preponderance of the evidence lies and grant a Rule 41(b) motion to dismiss. Hauk v. Lokopwe, 14 FSM R. 61, 64 (Chk. 2006).

If a Rule 41(b) motion is made at the close of the plaintiff's case, the court may then determine the facts and, if the court concludes that the plaintiff has not made out a case, render judgment against the plaintiff or decline to render any judgment at all until the close of all evidence. If the court dismisses the case after the plaintiff has presented his case-in-chief, the court must make its findings of fact. Hauk v. Lokopwe, 14 FSM R. 61, 64-65 (Chk. 2006).

A prima facie case is not always enough to defeat a Rule 41(b) motion to dismiss at the end of plaintiff's case-in-chief. A plaintiff has failed to present even a prima facie case when on none of his asserted causes of action, did he proffer any evidence as to the amount of damages he allegedly suffered and when he failed to show that any defendant's alleged wrongful act or omission caused damages to him although necessary elements of most of the plaintiff's causes of action were that a wrongful act caused damages in some amount that the court can reasonably calculate. Causation and reasonably calculable damages must be shown as part of a prima facie case. Hauk v. Lokopwe, 14 FSM R. 61, 65 (Chk. 2006).

When a plaintiff complained of a series of acts by various defendants that he felt were discriminatory, that is, that did not treat him in the manner to which he thought he was entitled, but he did not allege, nor did he put on any evidence, that he was discriminated against on the basis of sex, race, ancestry, national origin, language, or social status and no evidence was adduced that any of the acts complained of caused the plaintiff any damages, the court therefore dismissed this cause of action. Hauk v. Lokopwe, 14 FSM R. 61, 65 (Chk. 2006).

When a case is dismissed at the close of the plaintiff's case-in-chief, the defendants, as prevailing parties, are entitled to their costs of action. Hauk v. Lokopwe, 14 FSM R. 61, 66 (Chk. 2006).

When the defendant did not move for dismissal at the conclusion of the plaintiff's case, but instead incorporated its motion to dismiss under FSM Civil Rule 41(b) in its written closing argument that it submitted post trial, the motion will be denied because that rule provides that a defendant may move for dismissal of an action after the plaintiff has concluded its case without prejudice to the defendant's right to present evidence in the event the motion is denied. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 656 (Pon. 2008).

If, after the plaintiff has completed the presentation of plaintiff's evidence, the defendant, without waiving the defendant's right to offer evidence in the event the motion is not granted, moves for a dismissal

on the ground that upon the facts and the law the plaintiff has shown no right to relief, and if the court then renders judgment on the merits against the plaintiff, the court must make findings as provided in Rule 52(a). Ehsa v. Kinkatsukyo, 16 FSM R. 450, 453 (Pon. 2009).

A defendant may, under Rule 41(b), move to dismiss the plaintiff's case after the plaintiff has completed his case-in-chief. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 45 (Chk. 2010).

When a defendant has moved for dismissal after the plaintiff has completed its evidence, the court, in determining whether the plaintiff has shown a right to relief, is not required to view the facts in the light most favorable to the plaintiff but can draw permissible inferences. If the court determines that the plaintiff has not made out a prima facie case, the defendant is entitled to have the plaintiff's case dismissed. But even if the plaintiff has made out a prima facie case, the court, as the trier of fact, may weigh the evidence, resolve any conflicts in it, and decide for itself where the preponderance of the evidence lies and grant a Rule 41(b) motion to dismiss. That is, the court must view the evidence with an unbiased eye, without any attendant favorable inferences. The evidence must be sifted and balanced and given such weight as the court deems fit. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 46 (Chk. 2010).

When a Rule 41(b) motion is made at the close of the plaintiffs' case, the court then determines the facts and, if the court concludes that the plaintiffs have not made out a case, renders judgment against the plaintiffs or the court may decline to render any judgment at all until the close of all evidence. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 46 (Chk. 2010).

The trial court, when ruling on a Rule 41(b) motion to dismiss after the close of the plaintiff's case, can find facts and grant dismissal for less than the whole case and continue trial on the remaining claims. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 46-47 (Chk. 2010).

When there was no evidence before the court from which it could find that the defendant's contractor intentionally failed to perform a manifest duty in reckless disregard of the consequences or that its act was accompanied by fraud, ill will, actual malice, recklessness, wantonness, oppressiveness, or willful disregard of the plaintiffs' rights, a motion to dismiss the plaintiffs' punitive damages claim will be granted. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 49 (Chk. 2010).

The court, when declining to render judgment on a Rule 41(b) motion to dismiss, may indicate its legal reasoning and highlight the evidence which supports it. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 49 (Chk. 2010).

When, after the presentation of the plaintiffs' evidence, the court partially denied a motion to dismiss and when, on the record as it now stands, the plaintiffs may be entitled to some relief, the court awaits the defense and third-party defenses presentations and nothing contained in the court's memorandum is intended to foreclose the defendant of its opportunity to be heard because what may now be reasonable and logical inferences from the evidence may be shown to be something entirely different. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 50 (Chk. 2010).

The findings of fact made at the end of trial may differ somewhat from those the court made after the close of the plaintiffs' case-in-chief for the purpose of the defense Rule 41(b) motion since then it still awaited the presentations of the defendant and third-party defendant; since nothing contained in the court's Rule 41(b) memorandum was intended to foreclose the defendant and the third-party defendant of their opportunity to be heard; and since what may then have been reasonable and logical inferences from the evidence might later be shown to be something entirely different. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 119, 121 & n.1 (Chk. 2010).

The burden of producing evidence in a civil trial generally lies with the plaintiff, who must establish a prima facie case to avoid dismissal. To make out a prima facie case, the party carrying the burden of proof must provide enough evidence to allow the fact-finder to infer the fact at issue and rule in the party's favor. Peter v. Jessy, 17 FSM R. 163, 170 (Chk. S. Ct. App. 2010).

Once the plaintiffs concluded their case-in-chief and the defendants moved for a Rule 41(b) dismissal for failure upon the facts and law to show a right to relief, the court as trier of the facts then had the authority to determine the facts and render judgment against the plaintiff or could decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiffs, the court is required to make findings of fact as provided in Rule 52(a). Peter v. Jessy, 17 FSM R. 163, 170 (Chk. S. Ct. App. 2010).

In ruling on a 41(b) motion to dismiss, the trial court, in determining whether the plaintiff has shown a right to relief, is not required to view the facts in the light most favorable to the plaintiff but draws permissible inferences. If the court determines that the plaintiff has not made out a prima facie case, the defendant is entitled to have the case dismissed. Even if a plaintiff makes out a prima facie case, the court as the trier of fact, may, in assessing the evidence on a Rule 41(b) motion, weigh the evidence, resolve any conflicts in it, and decide for itself where the preponderance of the evidence lies. In weighing the evidence, the trial court is required to view the evidence with an unbiased eye, without any attendant favorable inferences, but it is also required to sift and to balance the evidence, and to give the evidence such weight as it deems fit. Peter v. Jessy, 17 FSM R. 163, 171 (Chk. S. Ct. App. 2010).

Once a plaintiff has finished presenting evidence during her case-in-chief, a defendant may, without waiving its right to present evidence if the motion is not granted, move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court, as the factfinder, may then determine the facts and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 210 (Chk. 2010).

Rule 41(b) permits a defendant to move for judgment as a matter of law after the plaintiff has completed the presentation of plaintiff's evidence. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 17 FSM R. 247, 249 (Yap 2010).

Since Rule 41(b) permits a motion to dismiss – a motion for a judgment that upon the facts and the law the plaintiff has shown no right to relief – to be made after the close of the plaintiff's evidence and before the defendant's evidence, a motion for judgment as matter of law made after trial cannot be made under Rule 41(b) because, as a Rule 41(b) motion, it comes too late. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 17 FSM R. 247, 250 (Yap 2010).

A Rule 52(b) motion is one that asks the court to amend the findings of fact that the court has already made as required by Rule 52(a). The Rule 52(b) term "motion for judgment," when referring to a motion made after the start of trial, refers to a Rule 41(b) motion, not to a motion made after closing arguments. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 17 FSM R. 247, 250 (Yap 2010).

A Rule 41(b) motion after the plaintiff has completed the presentation of plaintiff's evidence can be written or oral because motions, unless made during a hearing or trial, must be made in writing. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 117 (App. 2011).

Rule 41(b) permits a motion to dismiss – a motion for a judgment that upon the facts and the law the plaintiff has shown no right to relief – to be made after the close of the plaintiff's evidence and before the defendant's evidence. But a similar "Rule 41(b)" motion cannot be made after trial because, as a Rule 41(b) motion, it comes too late. Rule 41(b)'s purpose is to allow a trial court, once the plaintiff has presented its evidence, to find for the defendant and render judgment for the defendant thereby relieving the defendant of the burden of putting on a defense or presenting any evidence since, based on the evidence already presented, the defendant will prevail anyway. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 117 (App. 2011).

Once the parties have finished presenting all their evidence, the trial court's duty is to weigh the evidence and make its findings of fact and conclusions of law and to render judgment on whether the

plaintiff has shown a right to relief. Thus, a Rule 41(b) motion to dismiss during closing arguments is pointless. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 117 (App. 2011).

A contention that the trial court erred by not granting a party's motion to dismiss the case after the plaintiff had presented its case-in-chief is baseless when the trial court decision is affirmed on its merits. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 364 (App. 2012).

When a Rule 41(b) motion comes as a part of a closing argument, it comes too late and must be denied because now is the time to decide whether the plaintiff has shown a right to relief. If a plaintiff has truly not shown any right to relief then, after closing arguments, the defendant will be granted judgment in its favor on the merits, not a Rule 41(b) dismissal. Inek v. Chuuk, 19 FSM R. 195, 198 (Chk. 2013).

Under Civil Procedure Rule 41(b), once a plaintiff has finished presenting evidence during the plaintiff's case-in-chief, a defendant may, without waiving its right to present evidence if the motion is not granted, move for a dismissal on the ground that upon the facts and the law the plaintiff has not shown any right to relief. The court, as the fact-finder, may then either determine the facts and render judgment against the plaintiff or it may decline to render any judgment until the close of all the evidence. George v. Palsis, 20 FSM R. 111, 115 (Kos. 2015).

When a defendant has moved for dismissal after the plaintiff has completed its evidence, the court, in determining whether the plaintiff has shown a right to relief, is not required to view the facts in the light most favorable to the plaintiff but can draw permissible inferences, and if the court determines that the plaintiff has not made out a prima facie case, the defendant is entitled to have the plaintiff's case dismissed. George v. Palsis, 20 FSM R. 111, 115 (Kos. 2015).

Even if the plaintiff has made out a prima facie case, the court, as the trier of fact, may weigh the evidence, resolve any conflicts in the evidence, and decide for itself where the preponderance of the evidence lies and, and, based on where the preponderance lies, grant a Rule 41(b) motion to dismiss. The court must view the evidence with an unbiased eye, without any attendant favorable inferences and must sift and balance the evidence and give it such weight as it deems fit. George v. Palsis, 20 FSM R. 111, 115 (Kos. 2015).

When the plaintiff had the burden to prove by a preponderance of the evidence that his employer's termination of his employment was not for just cause and he failed to do so, he has not shown upon the facts and the law a right to relief and the defendants' motion to dismiss will therefore be granted. George v. Palsis, 20 FSM R. 111, 116 (Kos. 2015).

A plaintiff has failed to present even a prima facie case when, although necessary elements of his causes of action were that a wrongful act caused damages in some amount that the court can reasonably calculate, he did not proffer any evidence about the amount of damages he allegedly suffered on any of his asserted causes of action. Reasonably calculable damages must be shown as part of a prima facie case. George v. Palsis, 20 FSM R. 111, 117 (Kos. 2015).

If a plaintiff does not make out a prima facie case for all the elements of his cause of action during his own case-in-chief, then the defendants do not need to present any further evidence in order to be entitled to a Rule 41(b) dismissal at the close of the plaintiff's evidence. And, even if a prima facie case is presented but the preponderance of the evidence is such that judgment can only be awarded to the moving defendants, the defendants have no need to put on a case-in-chief. George v. Palsis, 20 FSM R. 174, 178 (Kos. 2015).

Once a plaintiff has finished presenting evidence during her case-in-chief, a defendant may, without waiving its right to present evidence if the motion is not granted, move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court, as the factfinder, may then determine the facts and render judgment against the plaintiff or may decline to render any judgment until

the close of all the evidence. Pelep v. Mai Xiong Inc., 21 FSM R. 182, 191 (Pon. 2017).

Because, absent compelling reasons to the contrary, form must ever be subservient to substance and a thing is what it is regardless of what a party chooses to call it, counsel's labeling of its filing as a motion for directed verdict and the trial court's interpretation of that motion as a motion for dismissal at the close of plaintiff's case under Rule 41(b) does not constitute an error by the trial court. George v. Palsis, 22 FSM R. 165, 173 (App. 2019).

Rule 41(b)'s language and context permits a defendant to move for judgment as a matter of law after the plaintiff has completed his case in chief. George v. Palsis, 22 FSM R. 165, 173 (App. 2019).

A defendant may use a Rule 41(b) motion to seek a dismissal when the plaintiff has shown no right to relief because a defendant may, after the plaintiff has finished the presentation of his evidence, move for judgment as a matter of law. George v. Palsis, 22 FSM R. 165, 173 (App. 2019).

A plaintiff has the burden to persuade the court with competent evidence about the amount of damages. Reasonably calculated damages must be shown as part of a *prima facie* case. George v. Palsis, 22 FSM R. 165, 174 (App. 2019).

When a plaintiff fails to offer evidence of calculated damages at trial, the trial court may use its discretion to strike a document listing damages that was submitted after trial, and, in striking that submitted documentation, the trial court does not abuse its discretion because the opposing party cannot properly examine or counter evidence offered after trial. George v. Palsis, 22 FSM R. 165, 174 (App. 2019).

– Dismissal – Before Responsive Pleading

A motion under FSM Civil Rule 12(b) to dismiss for failure to state a claim upon which relief may be granted maybe upheld only if it appears to a certainty that no relief could be granted under any state of facts which could be proved in support of the claim. Mailo v. Twum-Barimah, 2 FSM R. 265, 267 (Pon. 1986).

A motion to dismiss for failure to state a claim for which relief can be granted brought under FSM Civil Rule 12(b)(6) will be granted only if it appears to a certainty that no relief can be granted under any state of facts which could be proven in support of the claim. In making its determination the court is to assume the allegations in the complaint to be true and give the plaintiff the benefit of all reasonable inferences. Jano v. King, 5 FSM R. 388, 390 (Pon. 1992).

A motion under FSM Civil Rule 12(b) to dismiss for failure to state a claim may be granted only if it appears to a certainty that no relief could be granted under any state of facts which could be proven in support. Faw v. FSM, 6 FSM R. 33, 37 (Yap 1993).

A motion to dismiss, unlike a pleading, must state with particularity the grounds for dismissal, be made before pleading, and be argued with clarity and relevance. In re Parcel No. 046-A-01, 6 FSM R. 149, 152 (Pon. 1993).

A motion to dismiss is not to be granted unless it appears to a certainty that the non-moving party is entitled to no relief under any state of facts which could be proved in support of the claim, and if on the motion to dismiss matters outside the pleading are presented to and not excluded by the court, the motion shall then be treated as one for summary judgment. Etscheit v. Adams, 6 FSM R. 365, 386 (Pon. 1994).

The purpose of the rules addressing process and service of process in civil cases is to assure that a defendant receives sufficient notice of all causes of action that are filed against him and thus has a fair and adequate opportunity to defend. Where a plaintiff fails to properly serve a defendant, the court does not have jurisdiction over that defendant, and the case may not proceed, but will be dismissed without prejudice. Berman v. Santos, 6 FSM R. 532, 534 (Pon. 1994).

Motions to dismiss for failure to state a claim upon which relief can be granted filed after an answer has been filed are considered motions for judgment on the pleadings. In ruling on a motion for judgment on the pleadings a court must presume the non-moving party's factual allegations to be true and view the inferences drawn therefrom in the light most favorable to the non-moving party. Semwen v. Seaward Holdings, Micronesia, 7 FSM R. 111, 113 (Chk. 1995).

Punitive damages are a derivative, not an independent cause of action, and must rest upon some other, underlying cause of action because it is merely an element of damages in that cause of action. Thus, if all other causes of action are dismissed then punitive damages must necessarily also be dismissed. Semwen v. Seaward Holdings, Micronesia, 7 FSM R. 111, 113 (Chk. 1995).

A complaint should not be dismissed and a party precluded from relief because a plaintiff's lawyer has misconceived the proper legal theory of the claim. If the complaint shows that the plaintiff is entitled to any relief which the court can grant, regardless of whether it asks for the proper relief, the complaint is sufficient. Semwen v. Seaward Holdings, Micronesia, 7 FSM R. 111, 114 (Chk. 1995).

A motion to dismiss that contains matters outside the pleadings shall be treated as a motion for summary judgment. Wainit v. Weno, 7 FSM R. 121, 122 (Chk. S. Ct. Tr. 1995).

A court evaluates a Rule 12(b)(6) motion to dismiss only on whether a plaintiff's claim has been adequately stated in the complaint, and does not resolve the facts or merits of the case. A court's review is limited to the complaint's contents and the court must assume the facts alleged therein are true and view them in the light most favorable to the plaintiff. Dismissal can only be granted if it appears to a certainty that no relief could be granted under any facts which could be proven in support of the complaint. Latte Motors, Inc. v. Hainrick, 7 FSM R. 190, 192 (Pon. 1995).

Averment of a foreign judgment states a claim upon which relief could be granted. Allegations that the foreign judgment was obtained without notice are outside the complaint and cannot be considered in evaluating a Rule 12(b)(6) motion to dismiss. Latte Motors, Inc. v. Hainrick, 7 FSM R. 190, 192 (Pon. 1995).

When a party in support of or in opposition to a Rule 12(b)(6) motion to dismiss submits matters outside of the pleadings a court has complete discretion to exclude those matters from consideration or to accept those matters and treat the motion as one for summary judgment. Latte Motors, Inc. v. Hainrick, 7 FSM R. 190, 192 (Pon. 1995).

A motion to dismiss for failure to state a claim will be granted only if it appears to a certainty that no relief can be granted under any state of facts that could be proven in support of the claim, and a court must assume that the facts alleged in the complaint are true, and the facts and inferences drawn from the complaint must be viewed by the court in the light most favorable to party opposing the motion to dismiss the complaint. Union Indus. Co. v. Santos, 7 FSM R. 242, 244 (Pon. 1995).

In ruling on a Rule 12(b) motion to dismiss, a court assumes the allegations in the complaint are true and gives the plaintiff the benefit of all reasonable inferences. A motion to dismiss for failure to state a claim may thus be granted only if it appears to a certainty that no relief could be granted under any state of facts which could be proven in support of that claim. Chuuk v. Secretary of Finance, 7 FSM R. 563, 569-70 (Pon. 1996).

When reviewing the grant of a motion to dismiss the appellate court must take as true the facts alleged and view them and their reasonable inferences in the light most favorable to the party opposing the dismissal. Nahnken of Nett v. United States, 7 FSM R. 581, 586 (App. 1996).

A motion to dismiss should not be granted unless it appears to a certainty that no relief could be

granted under any state of facts that can be proved in support of the claim. Nahnken of Nett v. United States, 7 FSM R. 581, 586 (App. 1996).

A court evaluates a motion to dismiss for failure to state a claim only on whether a plaintiff's case has been adequately stated in the complaint, and does not resolve the facts or merits of the case. A court deciding such a motion must assume that the facts alleged in the complaint are true and view them in a light most favorable to the plaintiff, and then dismiss the complaint only if it appears certain that no relief could be granted under any facts which could be proven in support of the complaint. Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM R. 111, 114 (Chk. 1997).

Because dismissal under Rule 12(b)(5), unlike most Rule 12(b) dismissals, is without prejudice and with leave to renew, courts will often quash service instead of dismissing the action. That way only the service need be repeated. Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM R. 111, 115 (Chk. 1997).

A motion to dismiss for failure to state a claim may be granted only if it appears to a certainty that no relief could be granted under any state of facts which could be proven in support. Damarlane v. FSM, 8 FSM R. 119, 121 (Pon. 1997).

Claims for damages for violation of the FSM Environmental Protection Act and for damage based on an alleged property interest in the reef and lagoon adjoining plaintiffs' land will be dismissed for failure to state a claim for which relief may be granted. Damarlane v. FSM, 8 FSM R. 119, 121 (Pon. 1997).

Under Rule 4(j) a complaint that has not been served within 120 days of being filed can only be dismissed upon motion or the court's own initiative. Service made after 120 days but before a motion or court initiative to dismiss is good service and dismissal will not be granted on a later motion. Alik v. Moses, 8 FSM R. 148, 151 (Pon. 1997).

In evaluating a motion to dismiss, a court must accept as true the allegations in the complaint. Relief should be granted only if it appears certain that no relief could be granted under any facts which could be proven in support of the complaint. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 291 (Pon. 1998).

A complaint's allegations that officials' knowing interference prevented two ships from refloating their ship after it had grounded on a reef, that the ship's crew were arrested by the officials without cause, and that this actively and unreasonably prevented rescue the vessel's by other boats, and that that interference was the direct cause of the boat's damage, set forth a claim in negligence and are sufficient to survive a motion to dismiss. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 294 (Pon. 1998).

A civil rights claim against a municipal government will be dismissed when it fails to allege that the officials were acting pursuant to governmental policy or custom when the allegedly unconstitutional actions occurred or when it fails to allege that the violations were caused by the officials who were responsible for final policy making, and when those officials made a deliberate choice to follow a course of action chosen from various alternatives. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 296 (Pon. 1998).

When a plaintiff has not shown good cause for his failure to serve the summons and complaint on a foreign defendant within 120 days as required by FSM Civil Rule 4(j) or pursuant to one of the alternative methods for service in a foreign country allowed by FSM Civil Rule 4(i) the court will dismiss the complaint against without prejudice. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 477 (Pon. 1998).

When a plaintiff has not shown good cause for his failure to timely serve a defendant, a motion to dismiss without prejudice will be granted. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 484 (Pon. 1998).

In reviewing a motion to dismiss for failure to state a claim, a court must assume that the facts alleged

in the complaint are true and view them in the light most favorable to the plaintiff. Pau v. Kansou, 8 FSM R. 524, 526 (Chk. 1998).

Because failure to make proof of service does not affect the validity of the service, a motion to dismiss for a defect in a return of service will be denied. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 125 (Pon. 1999).

For purposes of the motion to dismiss, the plaintiff has the burden of showing a prima facie case of personal jurisdiction, and the allegations in the complaint are taken as true except where controverted by affidavit, in which case any conflicts are construed in the non-moving party's favor. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 127 (Pon. 1999).

In ruling on a motion to dismiss, the court must assume the truth of the allegations in the complaint, with the benefit of all reasonable inferences to be given to the plaintiff. AHPW, Inc. v. FSM, 9 FSM R. 301, 303 (Pon. 2000).

Whether Pohnpei's power to regulate trochus means that any action which has an arguably regulatory effect on trochus cannot constitute an anticompetitive practice is an issue for trial, and a motion to dismiss in this respect must be denied. AHPW, Inc. v. FSM, 9 FSM R. 301, 304 (Pon. 2000).

When a defendant draws its own legal conclusions from the complaint's alleged facts, its comments are not a sufficient basis on which to dismiss a complaint, and the facts as alleged present issues for trial because the court must take the complaint's allegations as true. AHPW, Inc. v. FSM, 9 FSM R. 301, 305-06 (Pon. 2000).

The court lacks jurisdiction over the subject matter or the complaint does not state a claim or cause of action upon which relief can be granted when it asks the court to hold the removal of the Speaker and Vice-Speaker null and void. Christlib v. House of Representatives, 9 FSM R. 503, 506-07 (Chk. S. Ct. Tr. 2000).

A third-party due process claim against the Land Commission will be dismissed when, although the Land Commission was named as a third-party defendant in the caption, it was never served with a Third-Party Complaint and Summons in accordance with the Kosrae Civil Procedure Rules. Jonas v. Paulino, 9 FSM R. 519, 521-22 (Kos. S. Ct. Tr. 2000).

A party is precluded from moving to dismiss on the basis of a stale summons and amended complaint, since by not filing a Rule 12(b) motion on the point, nor asserting it in his answer to the amended complaint, he has waived any defect in this regard. Kosrae v. Worswick, 9 FSM R. 536, 539 (Kos. 2000).

In considering a motion to dismiss, a court must assume the allegations in the complaint to be true and give the plaintiff the benefit of all reasonable inferences. A motion to dismiss for failure to state a claim for which relief can be granted will be granted only if it appears to a certainty that no relief can be granted under any set of facts which could be proven in support of the claim. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 556 (Pon. 2000).

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

A motion, styled a motion to strike (under Rule 12(f)), that may more accurately be characterized as one to dismiss for failure to state a claim upon which relief can be granted (under Rule 12(b)(6)), shall, when matter outside the pleading is presented to and not excluded by the court, be treated as one for summary judgment and disposed of as provided in Rule 56. Moses v. M.V. Sea Chase, 10 FSM R. 45, 50 (Chk. 2001).

A motion to dismiss for failure to state a claim may be granted only if it appears to a certainty that no relief could be granted under any state of facts which could be proven in support of the claim. Moses v. M.V. Sea Chase, 10 FSM R. 45, 52 (Chk. 2001).

When no national or state statute or contractual provision authorizes a third party's suit against or joinder of an insurer, an injured party's causes of action against and joinder of an insurer will be dismissed. Moses v. M.V. Sea Chase, 10 FSM R. 45, 52-53 (Chk. 2001).

Dismissal is only appropriate if it appears to a certainty that no relief could be granted under any facts which could be proven in support of the complaint. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 67 (Pon. 2001).

When a party moving to dismiss for failure to state a claim states that an agreement is referred to in the complaint, and that by attaching a copy to its motion, it does not intend to present matter outside the pleadings, regardless of intent, the agreement is "matter outside the pleadings" under Rule 12(b)(6), and the court will therefore treat the motion to dismiss as one for summary judgment under Rule 56, as is expressly provided for by Rule 12(b). Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM R. 112, 114 (Kos. 2001).

A defense of failure to state a claim upon which relief can be granted may be made in a pleading, or in a motion for judgment on the pleadings, or at the trial on the merits. There is no requirement that such a defense only be raised, if at all, in a motion to dismiss filed prior to filing a responsive pleading. Ambros & Co. v. Board of Trustees, 11 FSM R. 17, 23 (Pon. 2002).

A court evaluates a Rule 12(b)(6) motion to dismiss only on whether a plaintiff's claim has been adequately stated in the complaint, and does not resolve the facts or merits of the case. A court's review is limited to the complaint's contents and the court must assume the facts alleged therein are true and view them in the light most favorable to the plaintiff. Dismissal can only be granted if it appears to a certainty that no relief could be granted under any facts which could be proven in support of the complaint. Ambros & Co. v. Board of Trustees, 11 FSM R. 17, 24 (Pon. 2002).

A Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted must be made before the defendant files its answer to the complaint and when a defendant did not file such a motion until almost seven months after it filed its answer, the motion must be denied on that ground. William v. Director of Public Works, 11 FSM R. 45, 46-47 (Chk. S. Ct. Tr. 2002).

When it appears that triable issues of fact would still exist that would compel denial of the motion even if the court were to convert the motion from one to dismiss for failure to state a claim to one for summary judgment because matter outside the pleadings was included, the court will instead exercise its discretion to set the case for trial at the earliest opportunity. William v. Director of Public Works, 11 FSM R. 45, 47 (Chk. S. Ct. Tr. 2002).

After a default judgment has been entered, a motion to dismiss cannot be granted unless the motion to set aside the default is successful. Konman v. Esa, 11 FSM R. 291, 294 n.2 (Chk. S. Ct. Tr. 2002).

A statute of limitations defense is not one of the enumerated defenses that may be brought by motion under Rule 12(b), but rather is one of the specific defenses named in Rule 8(c) where a party must set forth affirmatively in the answer, the statute of limitations and any other matter constituting an avoidance or affirmative defense. Segal v. National Fisheries Corp., 11 FSM R. 340, 342 (Kos. 2003).

When a plaintiff fails to properly serve a defendant, the court does not have jurisdiction over that defendant, and the case may not proceed and can be dismissed without prejudice, but because a dismissal under Rule 12(b)(5), unlike most Rule 12(b) dismissals, is without prejudice and with leave to renew, courts will often quash service instead of dismissing the action. That way only the service need be repeated.

Reg v. Falan, 11 FSM R. 393, 399 (Yap 2003).

When a defendant has received sufficient notice of all causes of action and had a fair and adequate opportunity to defend, and when the plaintiff later properly served defendant with a copy of the summons and complaint, the court will not dismiss the case under Rule 12(b)(5). Reg v. Falan, 11 FSM R. 393, 399 (Yap 2003).

On a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted, the court must accept plaintiff's allegations to be true. Reg v. Falan, 11 FSM R. 393, 399 (Yap 2003).

A complaint will not be dismissed for failure to state a claim upon which relief may be granted when, if the plaintiff is able to prove his allegations that his termination was wrongful and violated the FSM Constitution since he had no opportunity for a hearing and was not provided sufficient notice of his rights at the time of the termination, the plaintiff would be able to establish a violation of his rights secured under the FSM Constitution. Reg v. Falan, 11 FSM R. 393, 400 (Yap 2003).

A cross-claim that sets out a legal conclusion and that does not provide a short and plain statement of the facts on which the legal conclusion rests, lacks sufficient factual allegations and a motion to dismiss it will be granted. Adams v. Island Homes Constr., Inc., 11 FSM R. 445, 449 (Pon. 2003).

Each of the familiar elements of a cause of action for negligence – duty, breach of duty, proximate cause, and damages – should be alleged, and a negligence counterclaim that does not is deficient and a motion to dismiss it will be granted. Adams v. Island Homes Constr., Inc., 11 FSM R. 445, 449 (Pon. 2003).

In ruling on a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6), the court must presume the non-moving party's allegations to be true, and view inferences drawn from the allegations in a light most favorable to the non-moving party. Dismissal may only be granted if it appears to a certainty that no relief could be granted under any facts which could be proven in support of the complaint. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 577-78 (Chk. S. Ct. Tr. 2003).

A motion to dismiss for failure to state a claim will be denied when it is more in the nature of an affirmative defense that requires that certain facts be proven and certain rulings of law made before it can be effective. A motion to dismiss for failure to state a claim must be based solely on the plaintiffs' allegations in their complaint. Naoro v. Walter, 11 FSM R. 619, 621 (Chk. 2003).

An action against a promissory note's cosigner is one for which a court can grant relief. LPP Mortgage Ltd. v. Maras, 12 FSM R. 27, 28 (Chk. 2003).

That a promissory note's co-signer did not receive the loan proceeds, but the other signers did and they spent it, is not a defense to an action on the note or a ground for dismissal of the case against the co-signer. LPP Mortgage Ltd. v. Maras, 12 FSM R. 27, 28 (Chk. 2003).

Defendant co-signer's allegation that he did not sign the promissory note is not a ground for dismissal but a disputed fact which must be proven at trial. LPP Mortgage Ltd. v. Maras, 12 FSM R. 27, 28 (Chk. 2003).

When a defendant's motion to dismiss has been denied, he has 10 days within which to file his answer to the amended complaint. LPP Mortgage Ltd. v. Maras, 12 FSM R. 27, 28 (Chk. 2003).

If a plaintiff fraudulently conceals allegedly defective construction methods, the six-year limitations period does not begin to run until the date on which the defendant discovered or had a reasonable opportunity to discover the alleged defect. It is not appropriate for the court, at the juncture of a motion to dismiss, to rule on an essentially factual matter. The trial's purpose will be to determine whether the

construction methods that are alleged were, in fact, utilized; whether those methods were improper; and if they were, at what point the defendant knew or should have known of them. Youngstrom v. NIH Corp., 12 FSM R. 75, 77-78 (Pon. 2003).

When reviewing arguments that a plaintiff has failed to state a claim upon which relief can be granted, the standard is onerous: a claim will not be dismissed on this ground unless it can be said, to a certainty, that no relief can be granted under any facts that could be proven by the plaintiff in support of its claims. Furthermore, the court must assume that the facts alleged in the complaint are true, and it must view the facts and inferences drawn from the complaint in the light most favorable to the party opposing the motion to dismiss. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 91 & n.2 (Pon. 2003).

When in an equal protection claim, the record contains a document in which the defendant agency expressly referred to the claimants' race, the defendants have not met their burden under the applicable standard of review for dismissal for failure to state a claim because the question is not whether the plaintiff has proven its claim, but whether under any set of facts it could do so. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 91 (Pon. 2003).

When the plaintiff received notice of the hearing and had an opportunity to present its arguments to the agency, when, although the agency would have done well to explain its reasons for rejecting plaintiff's arguments, it was not legally required to do so, and when the record shows that a hearing was held, a rehearing was held, the parties were allowed to have their attorneys present, the parties were given the opportunity to file written briefs and did so, and the agency thereafter issued a 13-page written decision, the plaintiff's claim that its due process rights were violated will be dismissed for failure to state a claim, as will a civil rights claim inextricably tied to the due process claim. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 91-92 (Pon. 2003).

When there is a factual dispute on the plaintiff's unjust enrichment claim, and when it cannot be said with certainty that no relief can be granted if the facts alleged by the plaintiff are proven, the claim cannot be dismissed. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 92 (Pon. 2003).

When the plaintiff alleges facts regarding a defendant having familial ties that gave him either inside information or favorable treatment in the proceeding below that dissolved the plaintiff's public land assignment, under the relevant standard of review, the tortious interference with contract claim cannot be dismissed at this point. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 92 (Pon. 2003).

When the plaintiff's complaint seems to plead fraud, and a defendant moves to dismiss for failure to state a claim but the argument is that this claim should be dismissed because it was not plead with particularity, the court may treat that as a request for a more definite statement, grant the request, and require the plaintiff to amend its complaint to state with greater clarity which facts it believes constitute fraud. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 92 (Pon. 2003).

Causes of action are dismissed when no relief could be granted on the allegations pled even if those allegations were proven. AHPW, Inc. v. FSM, 12 FSM R. 164, 168 (Pon. 2003).

A defendant cannot file successive Rule 12 motions to dismiss that raise different defenses. Sipos v. Crabtree, 13 FSM R. 355, 360 (Pon. 2005).

To what extent a defendant can amend an existing motion to dismiss is unclear. However, when an amended motion to dismiss adds only a more detailed discussion of a case, which was cited in the original motion and thus already before the court, plus some other trivial changes, there is no real difference in defenses raised in each motion. Because of this and when the parties have proceeded, without discussion, on the basis that the amended motion is what is before the court, the court need not determine which is the operable filing. Sipos v. Crabtree, 13 FSM R. 355, 360 (Pon. 2005).

A court evaluates a Rule 12(b)(6) motion to dismiss only on whether a plaintiff's claim has been adequately stated in the complaint, and does not resolve the case's facts or merits. The court's review is limited to the complaint's contents. A motion to dismiss cannot be granted unless it appears to a certainty that no relief could be granted under any state of facts that can be proven in support of the claim, and in making its determination, the court must assume that the complaint's allegations are true and view all reasonable inferences drawn therefrom in the light most favorable to the plaintiff. Sipos v. Crabtree, 13 FSM R. 355, 362 (Pon. 2005).

When no responsive pleading has been filed in a case, but only a Rule 12(b) motion to dismiss, which is not a responsive pleading, has been filed, the plaintiff could have amended his complaint without leave of court at anytime before the court acted on the motion to dismiss. Since he chose not to do so, the court will not grant him leave to do now what he has had the opportunity to do for over a year. Sipos v. Crabtree, 13 FSM R. 355, 367 (Pon. 2005).

An answer is a pleading, and a party may amend the party's pleading once as a matter of course before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Lack of personal jurisdiction may be asserted in the answer to the complaint or by motion made before answering. An amended answer containing a motion to dismiss served five days after service of the original answer, is well within the 20-day period specified in Rule 15(a) for amending a pleading as a matter of right. Yap v. M/V Cecilia I, 13 FSM R. 403, 407 (Yap 2005).

Motions to abstain cannot be brought before the defendants have pled by filing an answer. The only motions to dismiss that a defendant may file before answering the complaint are those based on 1) lack of subject matter jurisdiction, 2) lack of personal jurisdiction, 3) improper venue, 4) insufficiency of process, 5) insufficiency of service of process, 6) failure to state a claim upon which relief can be granted, or 7) failure to join a party under Rule 19. McVey v. Etscheit, 13 FSM R. 473, 476-77 (Pon. 2005).

Defendants are allowed to file only one Rule 12(b) motion to dismiss and any ground not included in that one motion (with certain exceptions) is waived. McVey v. Etscheit, 13 FSM R. 473, 477 (Pon. 2005).

In ruling on a motion to dismiss, the court assumes the truth of the allegations, with all reasonable inferences to be made in the plaintiff's favor. Emmanual v. Kansou, 13 FSM R. 527, 529 (Chk. 2005).

A complaint fails to state a claim against both Congress and the FSM when, accepting as true the fact that Congress provided the funding for the school truck operated by the Chuuk Department of Education, that fact alone is insufficient as a matter of law to confer liability upon either Congress or the FSM for the injury sustained when someone fell off the back of the truck. The alleged injury is too remote. Thus, no relief against the Congress and the FSM could be granted even if the allegations pled in the complaint were proven. The action will therefore be dismissed. Emmanual v. Kansou, 13 FSM R. 527, 529 (Chk. 2005).

A case may be dismissed for insufficiency of service of process. Because dismissal under Rule 12(b)(5), unlike most Rule 12(b) dismissals, is without prejudice and with leave to renew, a court will, when a defendant has moved for dismissal for insufficiency of service of process, often quash service instead of dismissing the action and order that the service be repeated within a certain time. Puchonong v. Chuuk, 14 FSM R. 67, 69 (Chk. 2006).

A motion to dismiss for failure to state a claim should not be granted unless it appears to a certainty that no relief could be granted under any state of facts that can be proved in support of the claim. A court evaluates a motion to dismiss for failure to state a claim only on whether the complaint adequately states the plaintiff's case, and does not resolve the case's facts or merits. A court deciding such a motion must assume that the facts alleged in the complaint are true and view them in a light most favorable to the plaintiff, and then dismiss the complaint only if it appears certain that no relief could be granted under any facts which could be proven in support of the complaint. Carlos Etscheit Soap Co. v. Do It Best Hardware,

14 FSM R. 152, 157 (Pon. 2006).

When none of the cited administrative remedies were remedies that could address the plaintiff's claimed injury and since it is not necessary to exhaust administrative remedies before filing suit in court when it would be futile to try to do so, failure to exhaust one's administrative remedies would thus not be a ground for the case's dismissal. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 158 (Pon. 2006).

A contention that a corporation does not have the proper foreign investment permit to allow it to do the type of business that the movants suppose it would conduct, may be a defense that the movants can raise in an answer, but it is not a ground for dismissal at the pre-answer stage on the contention that the corporation lacked legal capacity. Only if it lacked the power to sue and be sued could its complaint be dismissed at this stage for the lack of legal capacity. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 158 (Pon. 2006).

In determining whether a plaintiff has failed to state a claim, the court must accept as true the allegations made in his complaint and will grant the defendants' motion to dismiss only if it appears to a certainty that no relief could be granted under any set of facts which could be proven in support of the claim. Annes v. Primo, 14 FSM R. 196, 200 (Pon. 2006).

When matters outside the pleadings are presented to and not excluded by the court, a motion to dismiss shall be treated as one for summary judgment, but when the parties have presented matters outside the pleadings and neither party desires summary adjudication or that the court convert the motion, the court may exercise its discretion to exclude the matters outside the pleadings and treat the motion as one to dismiss. Annes v. Primo, 14 FSM R. 196, 200 (Pon. 2006). Annes v. Primo, 14 FSM R. 196, 200 (Pon. 2006).

In ruling on a motion to dismiss, the court must accept as true the plaintiff's version of the facts. Thus the court cannot dismiss a case on the ground the plaintiff's facts are incorrect, especially when the facts upon which the defendants urge dismissal are not dispositive. Annes v. Primo, 14 FSM R. 196, 201 (Pon. 2006).

Although the complaint is not artfully drafted, the court will not dismiss the claims made under a count headed "due process" simply because the count is "overstuffed" since notice pleading requires only a short and plain statement of the claim and fair notice of the factual wrong on the basis of the facts asserted. A plaintiff need not even advance a legal theory. Nor must the theory, if advanced, be correct. Annes v. Primo, 14 FSM R. 196, 203 (Pon. 2006).

When the plaintiff asserts a tort claim for assault and battery by the police officers, although the claim should have been set forth independently, the facts alleged in the complaint were sufficient to place the defendants on notice of an assault and battery claim. Annes v. Primo, 14 FSM R. 196, 203 (Pon. 2006).

When a plaintiff alleges that he was arrested without cause, not that the officer failed to inform him of the grounds for the arrest, the difference in the two allegations is more than semantic, because a plaintiff may claim that an arrest was without just cause even when the arresting officer recites the grounds for the arrest. Whether there was cause for the arrest presents a factual matter that cannot be resolved at the Rule 12(b)(6) motion stage of the proceedings. Annes v. Primo, 14 FSM R. 196, 203-04 (Pon. 2006).

Generally, the question of whether a police officer acted within the scope of employment is a question of fact, rather than a legal question, although, if the facts are undisputed and can support only one conclusion, the inquiry becomes legal. Thus to survive a defendant's motion to dismiss, it is enough that the plaintiff has alleged assault and battery by a government employee cloaked with the authority of the state. Annes v. Primo, 14 FSM R. 196, 204 & n.3 (Pon. 2006).

A plaintiff's failure to specify the appropriate level of care and to prove that the level of care provided by the state was deficient does not warrant dismissal of his claim when the plaintiff has alleged injury by a state police officer and failure to train by the state because the plaintiff must be given the opportunity to put forth evidence in support of his claim and a motion to dismiss may be granted only if it appears to a certainty that no relief could be granted under any facts which could be proven in support of the complaint. Annes v. Primo, 14 FSM R. 196, 205 (Pon. 2006).

An argument that the plaintiff is responsible for any injury he has suffered because he became combative with the police officer is an attempt to engage the court in a factual analysis that is not appropriate at the Rule 12(b)(6) motion for dismissal stage. Annes v. Primo, 14 FSM R. 196, 205 (Pon. 2006).

Although punitive damages claims against the state will be dismissed, when the state is not the only defendant, an unchallenged punitive damage claim against a police officer will not be stricken. Annes v. Primo, 14 FSM R. 196, 206 (Pon. 2006).

In reviewing a motion to dismiss for failure to state a claim, a court must assume that the facts alleged in the complaint are true and view them in a light most favorable to the plaintiff, and then dismiss the complaint only if it appears certain that no relief could be granted under any facts which could be proven in support of the complaint. Esa v. Elimo, 14 FSM R. 216, 218 (Chk. 2006).

When, accepting the plaintiffs' allegations as true, which the court must on a Rule 12(b)(6) motion to dismiss, the plaintiffs state a claim that their civil rights were violated by an illegal act under the color of law, their case will not be dismissed. A determination of whether a case arises under the national constitution or national law is based on the plaintiff's statement of his case in his complaint, and, although a state court may exercise jurisdiction over such cases, a plaintiff has the constitutional right to bring such claims in the national court. Esa v. Elimo, 14 FSM R. 216, 219 (Chk. 2006).

Whether the Chuuk State Supreme Court trial division lacked jurisdiction to consider the municipal election contest claims that the defendants brought there is irrelevant to a motion to dismiss a case in the FSM Supreme Court that relies on that state court decision because if that court lacked jurisdiction, it is now too late for the defendants to contest the municipal election in any other forum and the municipal election commission's decision will stand as a basis upon which the plaintiffs' complaint can state a claim for which relief may be granted and if that court had jurisdiction, then that court's final (and unappealed) judgment will stand as the basis on which the plaintiffs' complaint can state a claim for which relief can be granted. Esa v. Elimo, 14 FSM R. 216, 219 (Chk. 2006).

A court evaluates a motion to dismiss for failure to state a claim only on whether a plaintiff's case has been adequately stated in the complaint, and does not resolve the facts or merits of the case. A court deciding such a motion must assume that the complaint's factual allegations are true and view them in a light most favorable to the plaintiff, and then dismiss the complaint only if it appears certain that no relief could be granted under any facts which could be proven in support of the complaint. Harper v. William, 14 FSM R. 279, 281 (Chk. 2006).

When, viewing the allegations in the light most favorable to the plaintiffs, the complaint does not state a civil rights cause of action and when no other basis for subject matter jurisdiction, such as diversity of citizenship, is alleged, the complaint does not state a claim upon which the FSM Supreme Court can grant relief, and the defendant's motion to dismiss will be granted. Harper v. William, 14 FSM R. 279, 282 (Chk. 2006).

A Rule 12(b)(6) motion to dismiss cannot be granted unless it appears to a certainty that no relief could be granted under any state of facts that can be proved in support of the claim. In reviewing a motion to dismiss for failure to state a claim, a court must assume that the facts alleged in the pleading are true, and view them in the light most favorable to the claimant. FSM v. Kana Maru No. 1, 14 FSM R. 368, 371-72

(Chk. 2006).

A motion to dismiss for failure to state a claim will be denied when it is more in the nature of an affirmative defense that requires that certain facts be proven and certain rulings of law made before it can be effective since a motion to dismiss for failure to state a claim must be based solely on the allegations in the pleading. FSM v. Kana Maru No. 1, 14 FSM R. 368, 372 (Chk. 2006).

If the pleading shows that the claimant is entitled to any relief which the court can grant, regardless of whether it asks for the proper relief, the pleading is sufficient. A claim will not be dismissed and a party precluded from relief because the claimant's lawyer has misconceived the proper legal theory of the claim, and a party may be granted the relief to which he is entitled even if the party has not demanded such relief in the party's pleadings. FSM v. Kana Maru No. 1, 14 FSM R. 368, 372 (Chk. 2006).

When the arguments raised in support of a motion to dismiss for the failure to state a claim are in the nature of defenses to that count and require that certain facts be proven and certain rulings of law made first, the court therefore cannot say that there are no set of facts that could be proven in support of the claim and the motion to dismiss will be denied. FSM v. Kana Maru No. 1, 14 FSM R. 368, 372 (Chk. 2006).

Civil Rule 8(a)'s purpose is to put the opposing party on notice of the nature of the claim against it. Its pleading requirements are interpreted liberally, and a claim that alleges facts sufficient to put the defendant on notice as to the nature and basis of the claim being made sufficiently complies with the rule. Thus, while a decision by policy-making officials causing the alleged violations is a necessary element of the claim, a count claiming due process violations satisfies the pleading requirement when a set of facts could be proven in regard to the vessel's stop and seizure and later detention that would support the due process claim. FSM v. Kana Maru No. 1, 14 FSM R. 368, 372 (Chk. 2006).

When whether 6 F.S.M.C. 702(2), which does not limit the FSM's liability to a certain dollar amount, or 6 F.S.M.C. 702(4), which limits recovery on an individual claim in that subsection to $20,000, applies, must await the presentation of facts not yet in evidence and requires that certain facts be proven and certain rulings of law made before it can be resolved, the claims against the FSM of over $20,000 will not be dismissed for failure to state a claim. FSM v. Kana Maru No. 1, 14 FSM R. 368, 373 (Chk. 2006).

While a policy-making official's decision causing the alleged violations is a necessary element of a due process claim, that, at the litigation's start, the claimant might not know which policy-making official decided what does not mean that he has failed to state a claim. It may be that after discovery and trial, he might not be able to prove this element and so his claim will fail, but before the government has answered, all he needs to do is put the government on notice as to the claim's nature. Thus the court cannot say that no set of facts that could be proven would not support this claim and will therefore not dismiss it for failure to state a claim. FSM v. Kana Maru No. 1, 14 FSM R. 368, 373 (Chk. 2006).

A claim that alleges that the claimants and their agents have been harassed by the government will not be dismissed for the failure to state a claim because, although there is no tort or cause of action denominated as "harassment" there are a number of torts that have harassment as a significant component and if a pleading shows that the claimant is entitled to any relief which the court can grant, regardless of whether it asks for the proper relief, the pleading is sufficient and the claim will not be dismissed because the claimant's lawyer has misconceived the proper legal theory of the claim. FSM v. Kana Maru No. 1, 14 FSM R. 368, 373 (Chk. 2006).

A motion to strike a punitive damages claim against the FSM on the ground that, under FSM law, punitive damages are not recoverable against the national government on any theory, although styled as a motion to strike under Rule 12(f), may more accurately be characterized as one (under Rule 12(b)(6)) to dismiss for failure to state a claim upon which relief can be granted. FSM v. Kana Maru No. 1, 14 FSM R. 368, 374 (Chk. 2006).

Rule 12(f) motions to strike may be used to strike from any pleading any insufficient defense. They cannot be used to "strike" legally insufficient claims, for which Rule 12(b)(6) is the appropriate vehicle. FSM v. Kana Maru No. 1, 14 FSM R. 368, 374 (Chk. 2006).

A Rule 12(f) motion to strike is neither an authorized nor a proper way to procure the dismissal of all or of a part of a complaint, or a counterclaim, or to strike affidavits. FSM v. Kana Maru No. 1, 14 FSM R. 368, 374 (Chk. 2006).

In evaluating a Rule 12(b)(6) motion, the court must accept the complaint's allegations as true and the motion may be granted only if it appears to a certainty that no relief could be granted under any state of facts that could be proven in support of the claim. But when matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment. Ehsa v. Pohnpei Port Auth., 14 FSM R. 481, 484 (Pon. 2006).

When the single legal issue presented is whether the defendant's regulations require it to make a demand for payment prior to denying port entry; when resolution of this issue will necessarily lead to a factual question: whether the defendant in fact made a demand for payment prior to threatening denial of, or denying, port entry; when the court cannot reach this factual question if it treats the motion as one to dismiss; and when both the dispositive questions may be resolved based on the pleadings and submissions already attached to the pleadings, the court will exercise its discretion to convert the Rule 12(b)(6) motion to one for summary judgment under Rule 56. Ehsa v. Pohnpei Port Auth., 14 FSM R. 481, 484 (Pon. 2006).

When reviewing a Rule 12(b) motion to dismiss for failure to state a claim, a court must assume that the facts alleged in the pleading are true, and view them in the light most favorable to the claimant. A Rule 12(b) motion to dismiss cannot be granted unless it appears to a certainty that no relief could be granted under any state of facts that could be proven in support of the claim. John v. Chuuk Public Utility Corp., 15 FSM R. 169, 171 (Chk. 2007).

The statute of limitations is generally an affirmative defense that may be pled in the answer. A statute of limitations defense is not one of the enumerated defenses under Rule 12(b), but rather is one of the specific defenses named in Rule 8(c), where a party must set forth affirmatively in the answer, the statute of limitations and any other matter constituting an avoidance or affirmative defense. The statute of limitations defense may, however, be raised by a Rule 12(b)(6) motion, or, if affidavits are filed with the motion, by a Rule 56 summary judgment motion, as well as by answer, but if there is a question of fact about the defense's existence, the issue then cannot be determined on affidavits, and must be raised in the answer. John v. Chuuk Public Utility Corp., 15 FSM R. 169, 171-72 (Chk. 2007).

If a statutory remedy provides as a condition precedent to enforce the remedy that it must be started within a prescribed time, it is jurisdictional and the statute of limitations may be raised in a Rule 12(b)(6) motion to dismiss. John v. Chuuk Public Utility Corp., 15 FSM R. 169, 172 (Chk. 2007).

When a Rule 12(b)(1) motion to dismiss raised a preliminary issue, the court's subject matter jurisdiction, the court had to address that before any trial on the merits could proceed or any decision on the merits could be made. The motion even had to be ruled upon before the defendants could be required to answer the complaint and thus put the case at issue on the merits. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 224 (Chk. S. Ct. App. 2007).

In ruling on a motion to dismiss, the court must assume the truth of the allegations in the complaint, with the benefit of all reasonable inferences to be given to the plaintiff. Jano v. Fujita, 15 FSM R. 405, 407 (Pon. 2007).

In ruling on a motion to dismiss, the court must assume the truth of the allegations in the complaint, with the benefit of all reasonable inferences to be given to the plaintiff. Jano v. Fujita, 15 FSM R. 494, 496 (Pon. 2008).

A dismissal for failure to state a claim under Kosrae Civil Procedure Rule 12(b)(6) will be treated as a summary judgment if it presents matters outside the pleadings. Allen v. Allen, 15 FSM R. 613, 618 (Kos. S. Ct. Tr. 2008).

On a motion to dismiss brought under FSM Civil Rule 12(b), all of the allegation of the complaint are taken as true, and viewed in the light most favorable to the claimant. FSM v. Fu Yuan Yu 096, 16 FSM R. 1, 2 (Pon. 2008).

When a defendant has been improperly served, the court lacks jurisdiction over the defendant and the case will be dismissed without prejudice, but, since a dismissal under Rule 12(b)(5) is without prejudice, a court will often quash service instead of dismissing the case so that only service need be repeated. FSM v. Fu Yuan Yu 096, 16 FSM R. 1, 3 (Pon. 2008).

On a Rule 12(b)(6) motion, the well-pled facts are accepted as true, with all inferences to be made in favor of the party opposing the motion to dismiss. FSM v. Koshin 31, 16 FSM R. 15, 18 (Pon. 2008).

When a Rule 12(b)(6) movant points to no factual deficiencies in the complaint, whose allegations are deemed true for purposes of the motion to dismiss, and when, taking as true, the complaint's material allegation that the captain switched on the automatic locating device or transponder as the vessel was boarded, the transponder was not on at the time of boarding, which constitutes a violation of 24 F.S.M.C. 611(4), and the complaint thus states a claim for a 24 F.S.M.C. 611(4) violation. FSM v. Koshin 31, 16 FSM R. 15, 19 (Pon. 2008).

When the defendants' counterclaim for wrongful arrest is dismissed and the defendants' claim for punitive damages is based on the claim for wrongful arrest, the punitive damages claim is likewise dismissed because punitive damages are derivative and must rest on another underlying cause of action. FSM v. Koshin 31, 16 FSM R. 15, 20 (Pon. 2008).

A motion to dismiss under Rule 12(b) proceeds on the assumption that the allegations of the complaint are true. Similarly, the complaint's allegations are deemed true for purposes of a motion to remand a removed case to the state court on the basis that the FSM Supreme Court lacks subject matter jurisdiction. San Nicholas v. Neth, 16 FSM R. 70, 72 (Pon. 2008).

A motion to dismiss for lack of standing is a claim that the court lacks subject matter jurisdiction and is properly filed in lieu of an answer under Rule 12(b)(1), or as a motion to dismiss under Rule 12(h)(3), which can be raised at any time, even after judgment. It is the plaintiff's burden to show that the court has jurisdiction, and that a colorable claim exists. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 217 (Chk. S. Ct. Tr. 2008).

It is within the court's discretion to allow or disallow affidavits and other matters outside the pleadings to be brought in when considering a motion to dismiss challenging the court's subject matter jurisdiction. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 217 (Chk. S. Ct. Tr. 2008).

In ruling on a 12(b)(6) motion, the court is limited to evaluating whether a plaintiff's case has been adequately stated in the complaint. It is not appropriate for the court to resolve factual disputes or the case's merits; rather, the court must presume the non-moving party's allegations to be true, and view inferences drawn from the allegations in a light most favorable to the non-moving party. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 218 (Chk. S. Ct. Tr. 2008).

A motion to dismiss for failure to state a claim may be granted only if it appears to a certainty that no relief could be granted under any state of facts which could be proven in support of the claim. Therefore, when there are significant issues of fact, the motion to dismiss must be denied. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 218 (Chk. S. Ct. Tr. 2008).

The court has the discretion to include or exclude matters outside the pleadings on a motion to dismiss for failure to state a claim, and if matters outside the pleading are presented to and not excluded by the court, the motion is treated as one for summary judgment. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 218 (Chk. S. Ct. Tr. 2008).

Unlike a 12(b)(6) motion to dismiss, a 12 (b)(1) motion to dismiss may not be converted into a motion for summary judgment. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 218 n.2 (Chk. S. Ct. Tr. 2008).

If the court converts a motion to dismiss to one for summary judgment, the parties must be given a reasonable opportunity to prepare so that no party is taken by surprise, and if issues of fact remain after the conversion, the court will deny the motion and set the case for trial. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 218, 221 n.4 (Chk. S. Ct. Tr. 2008).

The issue of standing is a threshold issue going to a court's subject matter jurisdiction and therefore standing is properly challenged in the form of a motion to dismiss brought under Rule 12(b)(1) because when a plaintiff does not have standing to pursue an action, the court lacks subject matter jurisdiction over the action and the case will be dismissed. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 219 (Chk. S. Ct. Tr. 2008).

When the facts establish only two defendants had contracts with the plaintiff, the plaintiff's complaint alleging that all defendants breached a contract with the plaintiff will be dismissed with respect to all defendants except the two. Yoruw v. Ira, 16 FSM R. 464, 466 (Yap 2009).

When a civil rights counterclaim neither alleges that the actions were pursuant to governmental policy or custom, nor that the actions were taken by officials responsible for final policy-making, it fails to state a claim upon which relief may be granted and will be dismissed. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 484 (Pon. 2009).

When a movant has not shown, as a matter of law, that the cause of action should be dismissed, and has cited no authority for the proposition, the motion will be denied. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 485 (Pon. 2009).

Generally, a motion for the FSM Supreme Court to abstain from all or part of a case should proceed as a post-answer motion, and not a motion in lieu of answer under FSM Civil Procedure Rule 12(b) since abstention is not one of the enumerated grounds for a Rule 12(b) motion. But when, in one of those rare instances, where the material facts are not in dispute and an answer would not help to identify or to narrow the factual issues since only legal matters are contested, it may be appropriate to permit an abstention motion without an answer. Narruhn v. Chuuk, 16 FSM R. 558, 561 (Chk. 2009).

When a party in support of or in opposition to a Rule 12(b)(6) motion to dismiss submits matters outside of the pleadings, a court has complete discretion to exclude those matters from consideration or to accept those matters and treat the motion as one for summary judgment. Arthur v. Pohnpei, 16 FSM R. 581, 593 (Pon. 2009).

In evaluating a Rule 12(b)(6) motion, the court must accept the complaint's allegations as true and may grant the motion only if it appears to a certainty that no relief could be granted under any state of facts that could be proven in support of the claim, but when matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment. Arthur v. Pohnpei, 16 FSM R. 581, 593 (Pon. 2009).

On a Rule 12(b)(6) motion to dismiss, only the well-pled or well-pleaded facts are to be accepted as true, and, no matter how artfully the allegations may be crafted, the court does not assume the truth of legal conclusions merely because they are cast in the form of factual allegations since conclusory allegations or legal allegations masquerading as factual conclusions will not suffice to prevent a motion to

dismiss. Furthermore, the court need not accept as true allegations that contradict facts which may be judicially noticed; for example, the court may consider matters of public record including pleadings, orders and other papers filed with the court. And the court does not have to credit invective, bald assertions, unsupportable conclusions, periphrastic circumlocutions, and the like. Arthur v. Pohnpei, 16 FSM R. 581, 593 (Pon. 2009).

Although the court must first look to FSM sources of law rather than start with a review of other courts' cases, when an FSM court has not previously construed an aspect of an FSM civil procedure rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule, such as when aspects of what constitutes well-pleaded allegations under Rule 12(b) have not been previously considered. Arthur v. Pohnpei, 16 FSM R. 581, 593 n.8 (Pon. 2009).

Although the court may take judicial notice of documents filed in earlier related cases without converting the Rule 12(b)(6) motion to a summary judgment motion, the court, when it has given notice in open court that it would consider the motions as summary judgment motions, will follow that course. Arthur v. Pohnpei, 16 FSM R. 581, 593 (Pon. 2009).

Since civil conspiracy is not a cause of action unless an underlying civil wrong has been committed and caused damage, when certain tort counterclaims have survived dismissal motions, the civil conspiracy counterclaim, limited to those underlying torts, will survive a motion to dismiss. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 605 (Pon. 2009).

If a party prevails upon its contract counterclaim and if none of the contract money damage remedies are applicable, specific performance is a possible remedy, even if the party has not prayed for it since, except for default judgments, every final judgment must grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings. Since specific performance, even when an unlikely remedy, is dependent upon the success of a breach of contract counterclaim and could be awarded even if it were dismissed, the dismissal of what is essentially a part of the prayer for relief will be denied. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 606 (Pon. 2009).

A "counterclaim" against non-parties will be dismissed since a third-party complaint, not a counterclaim, is the proper vehicle for defendants to raise claims against non-parties. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 610, 612 (Yap 2009).

The legal standard for the dismissal of a counterclaim is the same as that for the dismissal of a complaint. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 610, 612 (Yap 2009).

A counterclaim may be dismissed as a matter of law for two reasons: 1) lack of a cognizable legal theory or 2) insufficient facts under a cognizable legal theory. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 610, 612-13 (Yap 2009).

An ad damnum clause that is properly considered as a part of the counterclaimants' prayer or demand for the relief sought under Rule 8(a)(3), and not as a part of the counterclaim's factual basis under Rule 8(a)(2), may be disregarded when testing the sufficiency of a counterclaim since the court will only award relief to which the party in whose favor it is rendered is entitled even if the party has not demanded such relief in the party's pleadings. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 610, 613 (Yap 2009).

A counterclaim cannot be dismissed simply because the counterclaimant has failed to state precisely all elements that give rise to the alleged legal basis for recovery; otherwise, a party's counterclaim could be lost by its attorney's failure to draft the counterclaim properly despite the counterclaim's potential validity and it would also effectively eliminate the "notice" pleading theory embedded in the Civil Procedure Rules. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 610, 613 (Yap 2009).

A defendant's request for a dismissal for a plaintiff's breach of contract is actually not a claim for dismissal, but rather a counterclaim as the defendant argues that the plaintiff breached the contract. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 642 (Kos. S. Ct. Tr. 2009).

A Kosrae Civil Rule 12(b)(6) motion to dismiss for failure to state a claim for which relief can be granted will be granted only if it appears to a certainty that no relief can be granted under any state of facts which could be proven in support of the claim. In making its determination the court is to assume the allegations in the complaint to be true and give the plaintiff the benefit of all reasonable inferences. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 642 (Kos. S. Ct. Tr. 2009).

If matters outside the pleadings are referred to or presented and not excluded by the court, a motion to dismiss for failure to state a claim upon which relief can be granted will be treated as one for summary judgment under Rule 56. Regardless of intent, if a document is presented that is outside the pleadings, the motion to dismiss will be treated as one for summary judgment under Rule 56 as provided in Kosrae Rules of Civil Procedure Rule 12(b). Heirs of Tulenkun v. Simon, 16 FSM R. 636, 643 (Kos. S. Ct. Tr. 2009).

When the plaintiff has standing, the court has jurisdiction over the plaintiff's challenge of a statute's constitutionality which thus states a claim for which the court may grant relief if the plaintiff's contentions are correct. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 187 & n.3 (Pon. 2010).

A court may grant a Rule 12(b) motion to dismiss for failure to state a claim upon which relief may be granted only if it appears to a certainty that no relief could be granted under any state of facts which could be proved in support of the claim. Ladore v. Panuel, 17 FSM R. 271, 275 (Pon. 2010).

When the court dismisses causes of action for the failure to state claims on which the FSM Supreme Court can grant relief and the remaining causes of action are all based in tort, which are properly the domain of state law, the court will grant the motion to dismiss with regard to the rest of the complaint because without at least one viable national law cause of action from which to hang, there is no pendent jurisdiction for the state law issues. Ladore v. Panuel, 17 FSM R. 271, 276 (Pon. 2010).

For purposes of a motion for judgment on the pleadings, all well-pleaded material allegations of the opposing party's pleadings are taken as true and all allegations of the moving party that have been denied are taken as false, and judgment is granted only if the movant is clearly entitled to judgment on the facts as so admitted. Setik v. Pacific Int'l, Inc., 17 FSM R. 277, 280 (Chk. 2010).

If, when a judgment that a party has paid is reversed on appeal or otherwise set aside, that party then has a restitution or unjust enrichment cause of action, then it follows that when a judgment has been affirmed on appeal and not otherwise set aside, that party does not have cause of action for restitution or unjust enrichment for sums paid on the judgment. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 7 (Pon. 2011).

If a plaintiff has not had the judgment set aside or reversed, then the plaintiff's unjust enrichment claim fails to state a claim on which relief can be granted since the plaintiff cannot allege that it would be inequitable for the defendant to retain the benefit without paying for it because the plaintiff cannot truthfully allege that the judgment has been set aside. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 7 (Pon. 2011).

When the plaintiffs' other claim for relief is the injury they allege they suffered as a result of a judgment, their injury claims are premised on that judgment being found inequitable and unenforceable or otherwise invalid and when their claim that the judgment was invalid or unenforceable has failed, these injury allegations fail to state a claim for which the court can grant relief. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 10 (Pon. 2011).

Usually when service is defective, the court will either dismiss without prejudice and with leave to refile or quash service and grant the plaintiff a number of days within which to effect proper service. Narruhn v.

Chuuk State Election Comm'n, 18 FSM R. 16, 19 (Chk. S. Ct. Tr. 2011).

When the respondent filed a proper and timely motion to dismiss for lack of proper service together with a dispositive motion, the inadequate service will not, because of the importance of the case, bar a ruling on the alternative dispositive motion to dismiss for the failure to state a claim. The court will decide the dispositive motions. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

If it were clear that the allegations in the plaintiff's own complaint demonstrate that his claims are subject to the defense of statute of limitations, the court may dismiss those claims as time-barred even though the statute of limitations is an affirmative defense. But when there are significant factual issues that may affect the defendant's statute of limitations defense, a motion to dismiss on statute of limitations grounds must be denied. Aunu v. Chuuk, 18 FSM R. 48, 50-51 (Chk. 2011).

A court must take the plaintiffs' allegations as true when considering a Rule 12(b) motion to dismiss. Marsolo v. Esa, 18 FSM R. 59, 64 (Chk. 2011).

While the court may permit matter outside the pleadings to be considered, thus converting a Rule 12(b)(6) motion to dismiss for failure to state a claim to a Rule 56 summary judgment motion, the motion will be denied when that does not seem advisable until after the relevant matters have been put before the court and the record properly developed. When that has been done, any party is free to move for summary judgment on any or all claims still outstanding. Marsolo v. Esa, 18 FSM R. 59, 66-67 (Chk. 2011).

It is doubtful whether a movant, who is a defendant only in the second cause of action, has standing to move to dismiss the third or the first cause of action. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 93 (Yap 2011).

An FSM Civil Rule 12(b)(6) motion to dismiss may, at the pleader's option, be made either as a motion before the answer or as part of the answer. Damarlane v. U Mun. Gov't, 18 FSM R. 96, 99 (Pon. 2011).

In reviewing a motion to dismiss, the court must accept the complaint's allegations as true and may grant the motion only if it appears to a certainty that no relief could be granted under any state of facts that could be proven in support of the claim. Damarlane v. U Mun. Gov't, 18 FSM R. 96, 99 (Pon. 2011).

If matters outside the pleadings are presented to and not excluded by the court, a motion to dismiss must be treated as one for summary judgment; otherwise, only the well-pled or well-pleaded facts are to be accepted as true. Damarlane v. U Mun. Gov't, 18 FSM R. 96, 99 (Pon. 2011).

Since due process and civil rights limit government but do not require any minimal level of security, much less other services and since the plaintiffs allege that the government defendants did nothing, if, as the plaintiffs suggest, the business on the causeway obtained a business license from U and then operated that business to permit consumption of alcohol without an appropriate alcoholic beverages consumption license in violation of state law, the fault is with the business, not with U, and the case will be dismissed for failure to state a claim because, even if all the facts alleged in the complaint can be proved true, no arrangement of any of these facts would give rise to a cause of action upon which this court could grant relief against either defendant. Damarlane v. U Mun. Gov't, 18 FSM R. 96, 99 (Pon. 2011).

When a motion to dismiss presents matters outside the pleading and the court does not exclude those matters, the motion will be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties will be given reasonable opportunity to present all material made pertinent to such a motion by that rule. When neither party has propounded discovery during the eight months after the civil action's start, but the amended complaint contained copious amounts of exhibits, the parties have had reasonable opportunity to present such evidence. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 155 (Pon. 2012).

For the purpose of Rule 12(b)(6) motions to dismiss, the court must accept the plaintiff's allegations as true with all reasonable inferences to be made in her favor since she is the party opposing the motion to dismiss. The court will then grant dismissal only if it appears to a certainty that no relief could be granted under any state of facts which could be proven in support of her claim. Jacob v. Johnny, 18 FSM R. 226, 229 (Pon. 2012).

When a plaintiff has not made any allegations that a defendant official directed or participated in the alleged acts that she complains of, she has not stated a claim against him in his individual or personal capacity and that defendant, in his individual capacity only, will be dismissed from the action. Jacob v. Johnny, 18 FSM R. 226, 232 (Pon. 2012).

When a Pohnpei Supreme Court judge is immune from suit and thus from the imposition of compensatory damages, the compensatory damages claims against him must be dismissed. But when the plaintiff's factual allegations against the judge, viewed in the light most favorable to the plaintiff, are claims that the judge acted in excess of his jurisdiction and violated the plaintiff's civil rights in doing so, the court will not dismiss her claims against the judge for injunctive relief and for 11 F.S.M.C. 701(3) reasonable attorney's fees and costs incurred in obtaining that relief, since she alleges sufficient facts which, if proven that the judge acted in excess of his jurisdiction, state a claim for which the FSM Supreme Court can grant her some relief. Jacob v. Johnny, 18 FSM R. 226, 233-34 (Pon. 2012).

The appropriate standard for reviewing a Rule 12(b) motion to dismiss is for the court to assume the allegations in the complaint to be true and give the plaintiff the benefit of all reasonable inferences and grant the motion only if it appears to a certainty that no relief can be granted under any state of facts which could be proven in support of the claim. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 378, 379 (Kos. 2012).

A state law requiring a lawsuit to contain a statement in a form approved by the Pohnpei Attorney General informing the state employee sued of his rights and responsibilities under Title 58, chapter 2 of the Pohnpei Code is a matter of procedure, and even when the rule of decision in a case before the FSM Supreme Court is governed by state law, procedural matters are governed by the FSM Rules of Civil Procedure and national statutes, rather than by state law. Dismissal will therefore not be required in a suit in the FSM Supreme Court when such a statement was not included. Perman v. Ehsa, 18 FSM R. 452, 454 (Pon. 2012).

The failure to deny an averment in a pleading constitutes an admission only for averments in a pleading to which a responsive pleading is required. A motion to dismiss is not a pleading. Perman v. Ehsa, 18 FSM R. 452, 454-55 (Pon. 2012).

A motion to dismiss for failure to state a claim should not be granted unless, presuming that the plaintiff's allegations are true and giving the plaintiff the benefit of all reasonable inferences, it appears to a certainty that no relief could be granted under any state of facts that can be proved in support of the claim. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 505 (Chk. 2013).

A court will understand a defendant's assertion in its motion to dismiss that the plaintiffs do not make any specific allegations against it to mean that the plaintiffs fail to state a claim against that defendant for which the plaintiffs may be granted relief and therefore the complaint against it ought to be dismissed under Civil Procedure Rule 12(b)(6). Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 573, 574 (Pon. 2013).

A court must accept the facts as alleged in the plaintiffs' complaint as true when it considers a Rule 12(b)(6) motion to dismiss. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 573, 575 (Pon. 2013).

Allegations that the process leading to the Miju Mulsan lease was invalid and that therefore Miju

Mulsan does not have any rightful interest in the leasehold or any rights under the lease do state a claim for which the court may grant the plaintiffs relief. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 573, 575 (Pon. 2013).

A motion to dismiss for failure to state a claim will be granted only if it appears to a certainty that no relief can be granted under any state of facts that could be proven in support of the claim, and a court must assume that the facts alleged in the complaint are true, and the facts and inferences drawn from the complaint must be viewed by the court in the light most favorable to the party opposing the motion to dismiss the complaint. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 257 (Pon. 2014).

When the allegations of the plaintiff's own complaint demonstrate that its claims are subject to the statute of limitations defense, the court may dismiss those claims on the statute of limitations ground, even though it is an affirmative defense. Palikkun v. FSM Social Sec. Admin., 19 FSM R. 314, 317 (Kos. 2014).

An answer or a Rule 12(b) motion is not untimely and will not be disregarded or stricken when no default has yet been requested and entered. Killion v. Chuuk, 19 FSM R. 539, 540 (Chk. 2014).

Res judicata is listed as an affirmative defense under Rule 8(c), and, as such, it must be pleaded as an affirmative defense in an answer. However, res judicata, like the statute of limitations, is an affirmative defense that may be presented in a motion to dismiss. Saito v. Siro, 19 FSM R. 650, 653 (Chk. S. Ct. Tr. 2015).

Res judicata can be raised in the context of a Rule 12(b)(6) motion when the prior action's preclusive effect can be determined from the face of the complaint. Saito v. Siro, 19 FSM R. 650, 653 (Chk. S. Ct. Tr. 2015).

When the plaintiff's attorney served the summons and complaint, service of process of those documents was insufficient under Rule 4(c)(1) because the attorney is deemed as a party to the action. The failure to effect service of the summons and complaint on the defendant makes the case subject to dismissal under Rule 12(b)(5), but because dismissal under Rule 12(b)(5), unlike most Rule 12(b) dismissals, is without prejudice and with leave to renew, often the service will be quashed instead of dismissing the action. That way only the service need be repeated. Heirs of Jonah v. Department of Transp. & Infrastructure, 20 FSM R. 118, 120 (Kos. 2015).

A bank depositor's complaint against a bank fails to state a claim on which it can obtain relief and will be dismissed when the bank honored, in conformance with 54 F.S.M.C. 153, a Division of Customs and Tax Administration Notice of Levy and Execution that was regular on its face since that is not an unauthorized withdrawal from the depositor's account or the result of the bank's negligence of any kind and since it cannot be a breach of any contract between the depositor and the bank because the bank cannot contract to violate FSM law or statutes. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

When the FSM Attorney General was never served, service of process has not been effected on the FSM national government nor has service of process been effected on the national government officers on whom the complaint and summons were served because the additional service on the FSM Attorney General was not made. Failure to satisfy this service requirement makes the case against FSM defendants subject to dismissal under Rule 12(b)(5). Fuji Enterprises v. Jacob, 20 FSM R. 121, 127 (Pon. 2015).

Because, unlike most Rule 12(b) dismissals, a Rule 12(b)(5) dismissal is without prejudice and with leave to renew, courts will often quash service instead of dismissing the action. That way only the service need be repeated. Fuji Enterprises v. Jacob, 20 FSM R. 121, 127 (Pon. 2015).

Title 30, which governs the FSM Development Bank, does not give rise to a private cause of action. Thus, even if the bank violated Title 30, a private party's claims based on Title 30 violations do not state a

claim on which relief may be granted. Salomon v. Mendiola, 20 FSM R. 138, 141 (Pon. 2015).

When properly raised, personal jurisdiction is an important threshold issue since a court that lacks personal jurisdiction over a defendant cannot enter a valid judgment against that defendant. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 209 (Yap 2015).

When, assuming the allegations in the complaint about the defendants named individually, along with the inferences drawn therefrom, are true; when the plaintiffs are precluded from bringing the present cause of action against the individuals' employer on several grounds; and when, given the individual defendants were all acting on their employer's behalf and within the scope of their employment, vicarious liability is not available and the claims leveled against the individual defendants must also fall. Setik v. Mendiola, 20 FSM R. 236, 243-44 (Pon. 2015).

A motion to dismiss for failure to state a claim upon which relief can be granted, may not be granted unless it appears to a certainty that no relief could be granted under any state of facts which could be proved in support of the claim. Ramirez v. College of Micronesia, 20 FSM R. 254, 260 (Pon. 2015).

The facts alleged by the party asserting the claim sought to be dismissed are to be taken as true, and the court must view those facts and the inferences drawn therefrom in the light most favorable to the party opposing the motion to dismiss. The court evaluates the motion to dismiss only on whether the complaint has adequately stated the plaintiff's claim, and does not resolve the facts or merits of the case. Ramirez v. College of Micronesia, 20 FSM R. 254, 260-61 (Pon. 2015).

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

Res judicata can be raised in a motion to dismiss made before an answer has been filed when the prior action's preclusive effect can be determined from the face of the complaint. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 284-85 (Chk. 2016).

Taking as true the facts alleged by the party asserting the claim sought to be dismissed and viewing these facts and the inferences to be drawn therefrom in the light most favorable to the party opposing the motion, the court may not grant a motion to dismiss unless it appears to a certainty that no relief could be granted under any state of facts which could be proved in support of the claim. A court evaluates a motion to dismiss only on whether a plaintiff's claim has been adequately stated in the complaint, and does not resolve the facts or merits of the case. Eperiam v. FSM, 20 FSM R. 351, 354 (Pon. 2016).

The court will grant partial declaratory relief requiring the resumption of the administrative proceedings, and will dismiss the plaintiff's petition with all counterclaims until the administrative remedies have been exhausted. If the plaintiff is not satisfied following the administrative proceedings' final decision, she may refile a petition in the court with new pleadings that reflect the administrative deficiency, but the court cannot grant further declaratory relief, and no common law causes of action can be heard. Eperiam v. FSM, 20 FSM R. 351, 357 (Pon. 2016).

Those parts of the amended complaint's prayer for relief that seek relief for the State of Pohnpei, which is not a party, can be dismissed or stricken as surplusage. Chuuk v. FSM, 20 FSM R. 373, 377 (Chk. 2016).

A complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face, but a plaintiff's allegation that there was a "sheer possibility" that her termination was based on petty and insufficient grounds, is inadequate, as far as withstanding a Rule 12(b)(6) challenge.

Solomon v. FSM, 20 FSM R. 396, 401 (Pon. 2016).

A plaintiff's allegation of a defendant's failure to respond to the plaintiff's salutations; of projecting "bad vibes;" of purportedly not assigning an adequate work load; of a disproportionate amount of scrutiny supposedly placed on her tardiness, in juxtaposition to fellow employees and allegedly noting the employee's requests for leave, hardly rise to the level of "extreme and outrageous" conduct on the defendants' part, and as a result, falls short of a claim on which relief might be granted. Solomon v. FSM, 20 FSM R. 396, 403 (Pon. 2016).

On a Rule 12(b)(6) motion to dismiss, only a well pled or well-pleaded facts are to be accepted as true and no matter how artfully the allegations may be crafted, the court does not assume the truth of legal conclusions merely because they are cast in the form of factual allegations, since conclusory allegations or legal allegations masquerading as factual conclusions will not suffice to prevent a motion to dismiss. Solomon v. FSM, 20 FSM R. 396, 403 (Pon. 2016).

When the causes of action alleged and the factual averments in support are vague and lack the particularity which would place defendants on notice about what to respond to and thereby interpose an answer; when simply claiming the plaintiff's termination was based on "petty and insufficient reasons," without citing to the purported failings within the relevant Administrative Review Decision that approved the employee's dismissal, is inadequate; when the causes of action based on an alleged statutory or regulatory violation additionally lack this underpinning; and when absent articulating how the defendants' conduct constituted an "unlawful termination," the causes of action sounding in a violation of substantive due process and civil rights also fail to survive, the court will grant a motion to dismiss for failure to state a claim upon which relief can be granted. Solomon v. FSM, 20 FSM R. 396, 403 (Pon. 2016).

In evaluating a motion to dismiss, a court must accept the complaint's allegations as true and should grant the motion only if it appears certain that no relief could be granted under any facts which could be proven in support of the claim. Gilmete v. Peckalibe, 20 FSM R. 444, 447 (Pon. 2016).

If, on a motion to dismiss, matters outside the pleading are presented to and not excluded by the court, the motion shall then be treated as one for summary judgment. Gilmete v. Peckalibe, 20 FSM R. 444, 447 (Pon. 2016).

The court's power to dismiss, under Rule 12(b)(6) some of a plaintiff's claims (or to grant partial summary judgment, under Rule 56(c), when a Rule 12(b)(6) motion is converted to a summary judgment motion because matters outside the pleadings were considered), because, even when viewing the plaintiff's factual allegations in the light most favorable to the plaintiff, the complaint's factual allegations fail to state a claim on which relief can be granted, is too well established to merit discussion. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 571 & n.2 (Pon. 2016).

On a Rule 12(b)(6) motion to dismiss for failure to state a claim, only the well-pled or well-pleaded facts are to be accepted as true. The court will not assume the truth of legal conclusions merely because they are cast in the form of factual allegations since legal allegations masquerading as factual conclusions will not suffice to prevent a motion to dismiss. Chuuk v. Weno Municipality, 20 FSM R. 582, 584 (Chk. 2016).

When the FSM was not a successor-in-interest to the lands in question because, as a matter of law, the Trust Territory government never transferred to the FSM national government any of the Trust Territory's interest in that land; when the only basis, asserted or apparent, for the FSM Supreme Court's jurisdiction is that the FSM national government is a party; and when the FSM was never properly a party because it had no interest in the land, the plaintiff has not stated a claim over which the FSM Supreme Court can exercise jurisdiction or for which it can grant relief and the FSM's motion to dismiss will therefore be granted and the FSM is dismissed and since the court never had jurisdiction over the case, it is dismissed without prejudice to any proceeding in a court of competent jurisdiction. Chuuk v. Weno

Municipality, 20 FSM R. 582, 585 (Chk. 2016).

When a party in support of or in opposition to a Rule 12 motion to dismiss submits matters outside the pleadings and the court does not exclude those matters, the motion will be treated as one for summary judgment and will be disposed of as provided in Rule 56, once all parties have been given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. Hartmann v. Department of Justice, 20 FSM R. 619, 624 (Chk. 2016).

On a Rule 12(b)(6) motion to dismiss, only the well pled or well-pleaded facts are to be accepted as true. No matter how artfully allegations may be crafted, the court does not assume the truth of legal conclusions merely because they are cast in the form of factual allegations. Conclusory allegations masquerading as factual conclusions will not suffice to prevent a motion to dismiss. Setik v. Perman, 21 FSM R. 31, 39 (Pon. 2016).

At the pleader's option, Rule 12(b) defenses may either be raised in a separate motion before pleading or may be raised in the responsive pleading. Lonno v. Heirs of Palik, 21 FSM R. 103, 107 (App. 2016).

The standard that a motion to dismiss should be denied unless it appears to a certainty that no relief could be granted is routinely applied to motions to dismiss under Civil Rule 12(b)(6) for failure to state a claim upon which relief can be granted, but this rule of interpretation has no bearing on a motion to dismiss under Civil Rule 12(b)(2), where the burden is on the plaintiff to prove a prima facie showing of personal jurisdiction. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 233-34 (App. 2017).

An FSM Civil Rule 12(b)(6) motion to dismiss for failure to state a claim for which relief can be granted will be granted only if it appears to a certainty that no relief could be granted under any state of facts which could be proven in support of the claim. Such a motion is viewed with disfavor and is rarely granted because few complaints fail to meet the liberal pleading requirements set forth in FSM Civil Rule 8(a). Chuuk Health Care Plan v. FSM Dev. Bank, 21 FSM R. 300, 303 (Chk. 2017).

In ruling on a FSM Civil Rule 12(b)(6) motion to dismiss, the court assumes the allegations in the complaint as true and gives the plaintiff the benefit of all reasonable inferences. The motion is evaluated only on whether a plaintiff's case has been adequately stated in the complaint without resolving the facts or merits of the case. Chuuk Health Care Plan v. FSM Dev. Bank, 21 FSM R. 300, 303 (Chk. 2017).

A formulaic recitation of the elements of a cause of action, and nothing more, will not suffice to survive a motion to dismiss because a court is not bound to accept as true a legal conclusion couched as a factual allegation. Chuuk Health Care Plan v. FSM Dev. Bank, 21 FSM R. 300, 304 (Chk. 2017).

A plaintiff's failure to reference state regulations enacted pursuant to the state's enabling legislation is not fatal to its complaint since state law need not be expressly pled. Chuuk Health Care Plan v. FSM Dev. Bank, 21 FSM R. 300, 304 (Chk. 2017).

A plaintiff's averment that the defendant engaged in practices designed to discourage employee enrollment in health insurance is merely a conclusory allegation insufficient to state a claim because there are no facts alleged in support of the conclusion. Chuuk Health Care Plan v. FSM Dev. Bank, 21 FSM R. 300, 309 (Chk. 2017).

On a Rule 12(b)(6) motion, only the well-pled or well-pleaded facts are to be accepted as true. Conclusory allegations or legal allegation masquerading as factual conclusions will not suffice to prevent a motion to dismiss, and, the court also does not have to credit invective, bald assertions, unsupportable conclusions, periphrastic circumlocutions, and the like. Chuuk Health Care Plan v. FSM Dev. Bank, 21 FSM R. 300, 309 (Chk. 2017).

Although Rule 8(a)'s pleading requirements are very liberal, more detail often is required than the plaintiff's bald statement that he has a valid claim of some type against the defendant. Chuuk Health Care Plan v. FSM Dev. Bank, 21 FSM R. 300, 309 (Chk. 2017).

A plaintiff's claim for penalties that simply states that the defendant is engaged in the prohibited activities is vague, conclusory, and unsupported by material facts, and, for that reason, the plaintiff's action for penalties based on that allegation must fail. Chuuk Health Care Plan v. FSM Dev. Bank, 21 FSM R. 300, 309 (Chk. 2017).

When either party, in support or in opposition to a Rule 12(b)(6) motion, submits matters to the court outside of the pleadings, the court has two options. The court may either accept those outside matters and treat the motion as one for summary judgment pursuant to Rule 56 or it may exclude those matters and continue to treat the motion as one for dismissal for failure to state a claim upon which relief can be granted. Fuji Enterprises v. Jacob, 21 FSM R. 355, 363 (App. 2017).

A post-answer Rule 12(b)(6) motion is untimely and some other vehicle, such as a motion for judgment on the pleadings or for summary judgment, must be used to challenge the plaintiff's failure to state a claim for relief Fuji Enterprises v. Jacob, 21 FSM R. 355, 363 (App. 2017).

The filing of a Rule 12(b)(6) motion to dismiss before filing an answer is allowed under Rule 12(b). Fuji Enterprises v. Jacob, 21 FSM R. 355, 364 (App. 2017).

When, on a motion to dismiss for the failure to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion must be treated as one for summary judgment and disposed of as per Rule 56. Pohnpei Arts & Crafts, Inc. v. Narruhn, 21 FSM R. 366, 369 (Pon. 2017).

If, on a motion to dismiss, matters outside the pleading are presented to and not excluded by the court, the motion will then be treated as one for summary judgment. Phillip v. Pohnpei, 21 FSM R. 439, 442 (Pon. 2018).

When there are no facts alleged in the complaint that, if proven, would constitute a procedural due process violation, the defendant is thus entitled to dismissal of the due process claims for failure to state a claim. Phillip v. Pohnpei, 21 FSM R. 439, 444 (Pon. 2018).

A motion to quash service of process is a motion brought on an insufficiency of service claim. As such, it is a Rule 12(b)(5) motion to dismiss, which courts often, instead of granting a dismissal, just quash the service and grant further time to effect service of process. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 450 (Pon. 2018).

Rule 12(f) allows striking from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter, but neither a motion to dismiss nor a motion to quash service of process is a pleading. Thus, a party cannot move under Rule 12(f) to strike a motion to dismiss or other Rule 12(b) motion, or any motion. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 450 (Pon. 2018).

When the allegations of a plaintiff's own complaint demonstrate that its claims are subject to the statute of limitations defense, the court may dismiss those claims on the statute of limitations ground, even though it is an affirmative defense. Setik v. Mendiola, 21 FSM R. 537, 554 (App. 2018).

Res judicata, although an affirmative defense, can be raised in a motion to dismiss made before an answer has been filed when the prior action's preclusive effect can be determined from the complaint's face. Setik v. Mendiola, 21 FSM R. 537, 555 (App. 2018).

A plaintiff will not be precluded from relief merely because her lawyer has misconceived the claim's proper legal theory. If the complaint shows that the plaintiff is entitled to any relief which the court can

grant, regardless of whether it asks for the proper relief, the complaint is sufficient. Setik v. Mendiola, 21 FSM R. 537, 555 (App. 2018).

The borrowers' claim that the bank's chairman of the board and members breached their fiduciary duties owed to the bank's shareholders, even if proven, cannot state a claim on which the borrowers could be granted relief. This is because a party cannot raise third persons' claims. A party may raise only its own claims and must assert its own legal rights and interests; it cannot rest its claim to relief on third parties' legal rights or interests. Setik v. Mendiola, 21 FSM R. 537, 557 (App. 2018).

When a plaintiff's allegations, at a bare minimum, state a constitutional claim over which the FSM Supreme Court could have subject-matter jurisdiction, the motion to dismiss will be denied. Robert v. Chuuk Public Utility Corp., 21 FSM R. 599, 600 (Chk. 2018).

Whether a trial court erred by dismissing a complaint for failure to state a claim is an issue of law, which is reviewed de novo. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

When the alleged fraudulent registration of a parcel is based on the alleged misrepresentation in the "deed of gift" that the "grantor" had the ability to grant and convey full title to parcel to the grantee, the plaintiffs have stated a claim for which they could be granted relief. Alik v. Heirs of Alik, 21 FSM R. 606, 619-20 (App. 2018).

A court should not grant a motion to dismiss unless it appears to a certainty that no relief could be granted under any state of facts that can be proven in support of the claim. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 10 (Pon. 2018).

When a civil rights claim neither alleges that the actions were pursuant to governmental policy or custom, nor that the actions were taken by officials responsible for final policy-making, it fails to state a claim upon which relief may be granted and will be dismissed because the plaintiffs fail to state a claim that their civil right to due process was violated. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 11 (Pon. 2018).

When there is no allegation that any defendant deprived either plaintiff of, or injured, oppressed, threatened, or intimidated either plaintiff in the free exercise or enjoyment of any right, privilege, or immunity secured to them by the FSM Constitution or laws, the plaintiffs fail to state a claim that their civil rights were violated. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 11 (Pon. 2018).

When the allegations of the plaintiff's own complaint demonstrate that its claims are subject to the statute of limitations defense, the court may dismiss those claims on the statute of limitations ground, even though it is an affirmative defense. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 12 (Pon. 2018).

Every defendant has the option of raising certain defenses (if it has them) by either a Rule 12(b) motion to dismiss or by including those defenses in an answer. Setik v. Perman, 22 FSM R. 105, 117 (App. 2018).

An intervenor is entitled to litigate fully on the merits once intervention has been granted. The intervenor may move to dismiss the proceeding and may challenge the court's subject-matter jurisdiction. Setik v. Perman, 22 FSM R. 105, 117 (App. 2018).

An intervenor, who has become a party-defendant, may move to dismiss the proceeding. Setik v. Perman, 22 FSM R. 105, 117 (App. 2018).

Civil Procedure Rule 12(d) requires that Rule 12(b)(6) motions be decided before trial. Setik v. Perman, 22 FSM R. 105, 117 (App. 2018).

When, on a Rule 12(b)(6) motion to dismiss, the trial court considers matter outside the pleadings and

does not exclude that matter, the trial court should consider the Rule 12(b)(6) motion to dismiss to be converted to a Rule 56 motion for summary judgment. Setik v. Perman, 22 FSM R. 105, 117 n.11 (App. 2018).

As a general proposition, the "hearing" contemplated in Rule 12 or Rule 56 does not necessarily include oral argument. Setik v. Perman, 22 FSM R. 105, 118 (App. 2018).

Rule 12(b)(6) motions (even if converted to Rule 56 summary judgment motions) are, even if argued orally, always decided without an evidentiary hearing because Rule 12(b)(6) motions to dismiss (or Rule 56 summary judgment motions) raise only issues of law, not of fact. Setik v. Perman, 22 FSM R. 105, 118 (App. 2018).

Once the state court granted an intervention as a party-defendant, that party had the same capacity as any party to quickly remove the case to the FSM Supreme Court, if the FSM court had jurisdiction, and to move to dismiss the case for the failure to state a claim, if it thought that was a viable defense. Setik v. Perman, 22 FSM R. 105, 119 (App. 2018).

When a court dismisses a case because it lacks subject-matter jurisdiction, the court has no jurisdiction to rule on whether the complaint states a claim that could be granted relief. Apostol v. Maniquiz, 22 FSM R. 146, 149-50 (Chk. 2019).

Rule 12(b)(2) dismissal for lack of jurisdiction over the person raises a question as to whether the controversy or the defendant has sufficient contacts, ties, or relationships with the forum to give the court the right to exercise judicial power over the defendant. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 195 (Pon. 2019).

A motion to dismiss because of a contract's forum selection clause is properly made under Rule 12(b)(3) – improper venue – and (usually) also Rule 12(b)(6) for failure to state a claim upon which relief can be granted, and the common law doctrine of forum non conveniens. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 195 (Pon. 2019).

A motion to dismiss because an agreement's forum selection clause names a different court to hear the dispute is a motion to dismiss for improper forum – improper venue. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 195 (Pon. 2019).

If, on a motion to dismiss, matters outside the pleading are presented to and not excluded by the court, the motion will then be treated as one for summary judgment. Panuelo v. Sigrah, 22 FSM R. 341, 352 (Pon. 2019).

Res judicata, although an affirmative defense, can be raised in a motion to dismiss made before an answer has been filed when the prior action's preclusive effect can be determined from the complaint's face. Panuelo v. Sigrah, 22 FSM R. 341, 358-59 (Pon. 2019).

When, even assuming the plaintiff's allegations are true, she does not state that she relied upon the misrepresentations she alleges to be the basis of the fraud, much less that her reliance induced her to act to her detriment, and when she does not state that the defendant prevented her from presenting her case to the court, the court, viewing the facts and inferences in the light most favorable to the non-movant, cannot but conclude that the defendant is entitled to judgment as a matter of law. Panuelo v. Sigrah, 22 FSM R. 341, 361 (Pon. 2019).

If a fraud allegation, that failed to adequately plead a regular fraud cause of action, was meant to be an allegation of fraud on the court, which is a further ground to set aside a judgment that Bankruptcy Rule 9024 (by adopting Civil Procedure Rule 60) permits to be brought in an independent action, that allegation will also be wanting because the doctrine of fraud upon the court is narrow and limited in scope and not

every allegation of fraud rises to the level of fraud upon the court. Panuelo v. Sigrah, 22 FSM R. 341, 361 (Pon. 2019).

When all of the claims upon which the court's subject-matter jurisdiction is premised are dismissed, under Rule 12(b)(6), for the failure to state a claim for which the court can grant relief, the court will, under Rule 12(b)(1), dismiss without prejudice the remaining state law claims for the lack of subject-matter jurisdiction. Sonden v. Pohnpei, 22 FSM R. 465, 467 (Pon. 2020).

A civil conspiracy cause of action will likely not be dismissed for the failure to state a claim if the complaint also states a claim for one or more of the alleged underlying torts. Panuelo v. FSM, 22 FSM R. 498, 504 (Pon. 2020).

Rule 12(b)(6) motions to dismiss for failure to state a claim upon which relief can be granted are routinely denied unless it appears to a certainty that no relief could be granted. Panuelo v. FSM, 22 FSM R. 498, 506 (Pon. 2020).

A plaintiff will not be precluded from relief merely because her lawyer has misconceived the claim's proper legal theory. If the complaint shows that the plaintiff is entitled to any relief which the court can grant, regardless of whether it asks for the proper relief, the complaint is sufficient. Panuelo v. FSM, 22 FSM R. 498, 506 (Pon. 2020).

In reviewing a motion to dismiss, the court must accept the complaint's allegations as true and may grant the motion only if it appears to a certainty that no relief could be granted under any state of facts that could be proven to support the claim. Panuelo v. FSM, 22 FSM R. 498, 507 (Pon. 2020).

The failure to allege an essential element of a cause of action means that that cause of action will not survive a Rule 12(b)(6) motion to dismiss for the failure to state a claim for which the court can grant relief. Panuelo v. FSM, 22 FSM R. 498, 509 (Pon. 2020).

When a plaintiff did not allege that her humiliation or emotional distress caused her any physical manifestation, she did not allege an essential element of the tort, and the court must dismiss this claim for the failure to state a claim for which it can grant relief. Panuelo v. FSM, 22 FSM R. 498, 509-10, 512 (Pon. 2020).

When the movants seek to dismiss a slander cause of action for the failure to state a claim and their ground is a factual defense, the court, accepting the plaintiff's factual allegations as true and the inferences drawn therefrom in her favor, cannot dismiss that cause of action on that ground. Panuelo v. FSM, 22 FSM R. 498, 510 (Pon. 2020).

When, before the defendants have even answered, the FSM Supreme Court dismisses, for the failure to state claims on which the court can grant relief, all of the claims that confer subject matter jurisdiction on the FSM Supreme Court, and all the causes of action that remain are the pendent state law claims, the court should dismiss the rest of the complaint without prejudice and allow the state law claims to proceed in state court. Panuelo v. FSM, 22 FSM R. 498, 513 (Pon. 2020).

– Dismissal – By the Parties

Civil proceedings typically can be concluded by the parties without court action or approval of any kind pursuant to Rule 41 of the FSM Supreme Court's Rules of Civil Procedure. FSM v. Ocean Pearl, 3 FSM R. 87, 91 (Pon. 1987).

Plaintiffs are permitted to dismiss an action without the order of the court provided they file a stipulation signed by all parties who have appeared in the action. Therefore where plaintiffs file a stipulation of dismissal including all but one defendant and later file another stipulation of dismissal with that one

defendant a court may recognize that the plaintiffs have reached agreements with all defendants and enter the stipulated judgment and dismissal. Labra v. Makaya, 7 FSM R. 75, 76 (Pon. 1995).

There are two types of voluntary dismissal under Rule 41(a): dismissals under 41(a)(1) do not require a court order; dismissals under 41(a)(2) do. Subsection (a)(1) permits dismissal by notice of dismissal when the notice is filed before the filing of an answer or a summary judgment motion, whichever occurs first, or by the stipulation of all parties who have appeared in the action. Subsection (a)(2) governs all other circumstances when a plaintiff seeks to dismiss a lawsuit and applies when a defendant opposes dismissal. Under Rule 41(a)(2) an action will not be dismissed at the plaintiff's instance save upon court order and upon such terms and conditions as the court deems proper. Livaie v. Kosrae Sea Ventures, Inc., 10 FSM R. 206, 208 (Kos. 2001).

A stipulated dismissal signed by the counsel who represented all the parties who had appeared in the case until then operates as a voluntary dismissal of the case without the need for further action. Moses v. Oyang Corp., 10 FSM R. 273, 275 (Chk. 2001).

Entry of a stipulated dismissal under Rule 41(a)(1)(ii) is effective automatically and does not require judicial approval. Moses v. Oyang Corp., 10 FSM R. 273, 275 (Chk. 2001).

Settlement negotiations are not adequate grounds for dismissal of a matter. Generally when parties do settle a matter, they jointly request the court for dismissal. Talley v. Talley, 10 FSM R. 570, 573 (Kos. S. Ct. Tr. 2002).

A Rule 41(a)(1) dismissal signed by all parties who appeared in the original action is ineffective when as a result of a consolidation order, other parties had appeared in the action. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 628 (App. 2003).

– Dismissal – By Plaintiff

Where there is dismissal of an action, even though the dismissal is voluntary and without prejudice, the defendant is the prevailing party within the meaning of Rule 54(d) which provides for awards of costs to the prevailing party. Mailo v. Twum-Barimah, 3 FSM R. 411, 413 (Pon. 1988).

When a party incurs considerable expense in preparation for trial and the other party seeks for dismissal, the court may specify the conditions under which dismissal will be allowed, but dismissal need not be accepted by a party who finds the conditions too onerous. Mailo v. Twum-Barimah, 3 FSM R. 411, 414 (Pon. 1988).

Where a plaintiff seeks dismissal of her own complaint without prejudice under Rule 41(a)(2), it is generally thought that the court should at least require the plaintiff to pay the defendant's costs of the litigation as a condition to such dismissal and these costs may include travel expenses of plaintiff's attorney. Mailo v. Twum-Barimah, 3 FSM R. 411, 415 (Pon. 1988).

Plaintiffs are permitted to dismiss an action without the order of the court provided they file a stipulation signed by all parties who have appeared in the action. Therefore where plaintiffs file a stipulation of dismissal including all but one defendant and later file another stipulation of dismissal with that one defendant a court may recognize that the plaintiffs have reached agreements with all defendants and enter the stipulated judgment and dismissal. Labra v. Makaya, 7 FSM R. 75, 76 (Pon. 1995).

There are two types of voluntary dismissal under Rule 41(a): dismissals under 41(a)(1) do not require a court order; dismissals under 41(a)(2) do. Subsection (a)(1) permits dismissal by notice of dismissal when the notice is filed before the filing of an answer or a summary judgment motion, whichever occurs first, or by the stipulation of all parties who have appeared in the action. Subsection (a)(2) governs all other circumstances when a plaintiff seeks to dismiss a lawsuit and applies when a defendant opposes dismissal.

Under Rule 41(a)(2) an action will not be dismissed at the plaintiff's instance save upon court order and upon such terms and conditions as the court deems proper. Livaie v. Kosrae Sea Ventures, Inc., 10 FSM R. 206, 208 (Kos. 2001).

The decision to grant or deny a voluntary dismissal under Rule 41(a)(2) is addressed to the sound discretion of the court and unless otherwise specified in the order, a dismissal under this paragraph is without prejudice. Livaie v. Kosrae Sea Ventures, Inc., 10 FSM R. 206, 208 (Kos. 2001).

Consideration of the terms and conditions appropriate for dismissal under Rule 41(a)(2) centers on the interests of parties before the court, not on a party's procuring a strategic advantage in future litigation with a different plaintiff or plaintiffs. Livaie v. Kosrae Sea Ventures, Inc., 10 FSM R. 206, 209 (Kos. 2001).

When the plaintiff and other defendant and the third-party defendant seek dismissal with prejudice and a defendant/third-party plaintiff opposes and when the third-party claim is solely for indemnification, the defendant/third party plaintiff would have no liability on which to base an indemnification claim if the case were dismissed with prejudice. Dismissal of the entire action is then appropriate. Livaie v. Kosrae Sea Ventures, Inc., 10 FSM R. 206, 209 (Kos. 2001).

While Rule 42(a)(2) expressly provides protection against the dismissal of counterclaims, no such protection is provided for cross-claims, or for third-party claims. The pendency of the third-party claim for indemnification is thus not a bar to dismissal. Livaie v. Kosrae Sea Ventures, Inc., 10 FSM R. 206, 209 (Kos. 2001).

Since a plaintiff cannot file a notice of dismissal in a case under Rule 41(a)(1)(i) when the adverse party has already served an answer, the court must therefore consider the petitioner's notice of dismissal filed after the respondent has served an answer to be a motion to dismiss. In re Lot No. 029-A-16, 18 FSM R. 422, 424 (Chk. S. Ct. Tr. 2012).

– Dismissal – Forum non Conveniens

A claim that civil matters should be dealt with in the defendant's country and that since both he and the plaintiff were Koreans, the court should dismiss this case is an assertion of forum non conveniens. Forum non conveniens is not a claim that the court lacks jurisdiction over the case, but is a doctrine that the court may, as a matter of its discretion, decline jurisdiction and dismiss a case when the parties' and the witnesses' convenience and the ends of justice would be better served if the action were brought and tried in another forum in which the action could be heard. Lee v. Lee, 13 FSM R. 252, 257 n.5 (Chk. 2005).

Forum non conveniens is a common law doctrine which allows a court the discretion to refuse to hear a case, even though personal jurisdiction and venue are properly established, if the forum is inappropriate or inconvenient for the defendant. Lee v. Han, 13 FSM R. 571, 576 (Chk. 2005).

Forum non conveniens is not a claim that the court lacks jurisdiction over the case, but is a doctrine that the court may, as a matter of its sound discretion, decline jurisdiction and dismiss a case when the parties' and the witnesses' convenience and the ends of justice would be better served if the action were brought and tried in another forum in which the action could be heard. Lee v. Han, 13 FSM R. 571, 576 (Chk. 2005).

Generally, a court with jurisdiction over a case is bound to decide it. The forum non conveniens doctrine is the rare exception to this principle, and the defendant's burden on a forum non conveniens motion to dismiss is a strong one. The doctrine does not come into play unless the court in which the action was brought has both subject matter and personal jurisdiction and is a proper venue. Lee v. Han, 13 FSM R. 571, 577 (Chk. 2005).

The objection of forum non conveniens is not a defense of improper venue, which must be asserted by preliminary motion or answer. It is simply a motion which may be addressed to the discretion of the court

at any time. It may be raised after as well as before answer, but the objection should be taken with reasonable promptness. Lee v. Han, 13 FSM R. 571, 577 (Chk. 2005).

There is no time limit on when a motion to dismiss on the ground of forum non conveniens can be made. However, if the litigation has progressed significantly in the court a defendant's belated assertion that that forum is inconvenient is likely to be dimly viewed by the court. Lee v. Han, 13 FSM R. 571, 577 (Chk. 2005).

When, although it has been quite some time since the suit was filed, only the issues of personal jurisdiction over a defendant and whether he had defaulted have been litigated; no discovery has been requested; and trial is months away, the court cannot say that the litigation has progressed significantly with respect to that defendant. Thus that defendant's forum non conveniens motion is not too late and the issue has not been waived. Lee v. Han, 13 FSM R. 571, 577 (Chk. 2005).

There is one mandatory prerequisite and a number of factors that the court must consider before granting a forum non conveniens motion to dismiss. The forum non conveniens doctrine can only be applied if the plaintiff has an adequate alternative forum. The factors to be considered include both private and public interests. The private interest factors are: 1) the relative ease of access to sources of proof; 2) the availability of compulsory process for the attendance of unwilling witnesses; 3) the costs of obtaining the attendance of willing witnesses; 4) the possibility of a site view, if appropriate to the case; and 5) any other practical problems that make a case's trial easy, inexpensive, and expeditious. The public interest factors to consider include: 1) administrative difficulties from court congestion; 2) the local interest in having localized disputes decided locally; 3) the interest in having a diversity case tried in a forum at home with the law that must govern the action; and 4) avoidance of any unneeded problems in the conflict of laws or the application of foreign law. Lee v. Han, 13 FSM R. 571, 577 (Chk. 2005).

When most of the parties to a contract, and all of the parties that that contract required future payment to, and payment from, are Korean citizens and residents although at the time the contract was executed most were resident in Chuuk; when this, and the Korean, lawsuit are all about that payment; when the parties to the Korean lawsuit (with the exception of a d/b/a of a Korean citizen and resident which is located in Texas) are all Korean citizens and residents; when the plaintiff in this case, and his wife and another Korean citizen and resident, are the plaintiffs in the Korean case; when the two Korean defendants in this case are the defendants in the Korean case; when all of the probable witnesses, with the exception of one (and maybe one other Chuukese), are present in Korea and no compulsory process is available to bring any of them to Chuuk if they are unwilling; when the cost to bring willing witnesses to Chuuk is higher than to bring the one possible witness in Chuuk to Korea, and if his testimony were needed, his deposition could have been noticed and taken here anytime while this case was pending in this court, but was not; when the sources of proof, to the extent they are documents from the parties' business records from when they were all in business together in Chuuk, are available in Korea and a site view is not needed; trying the case here would not be as easy, inexpensive, or expeditious as the current case in Korea, and it appears that it would be duplicative. The private interest factors thus strongly favor a forum non conveniens dismissal. Lee v. Han, 13 FSM R. 571, 577-78 (Chk. 2005).

When, although the dispute originated in Chuuk, it cannot be said that it is a local dispute in which there is local interest even though Chuuk contract law would apply; and when the FSM Supreme Court would be more at home with Chuuk contract law than a Korean court, but there appears to be no reason why the Korean court would not be capable of adequately applying Chuuk contract law since it is based primarily on common law principles, widely known and discoverable, although Korea is not a country in the common law tradition, the public interest factors do not preclude the application of the forum non conveniens doctrine. Lee v. Han, 13 FSM R. 571, 578 (Chk. 2005).

When there is an adequate, alternative forum in Korea (in which the principal parties are actively litigating the issue); when the private interest factors strongly favor Korea as the most convenient forum and Chuuk as being an inconvenient forum; and when the public interest factors do not contradict this, the court

concludes that this case should be dismissed under the forum non conveniens doctrine. Lee v. Han, 13 FSM R. 571, 578 (Chk. 2005).

When the plaintiff has actively pursued litigation in a Korean court, both before and during the time the litigation was pending here, and the defendant actively defended that action, it would be unreasonable and unjust to require the Korean defendants to litigate this case twice, with the second time in a forum where, although it (Chuuk) was convenient when it was chosen and all the parties had business interests here, is no longer convenient, reasonable, or just. Under the circumstances, the plaintiff has waived enforcement of the forum selection clause. Limited to this case's particular facts and circumstances, the forum selection clause will not bar dismissal of this case without prejudice under the forum non conveniens doctrine. Lee v. Han, 13 FSM R. 571, 579 (Chk. 2005).

"Forum shopping," the practice of choosing the most favorable jurisdiction or court in which a claim might be heard, is not a ground for summary judgment. At most, it is a claim that the case should be dismissed without prejudice so that the parties could pursue it in some other forum. Tarauo v. Arsenal, 18 FSM R. 270, 274 (Chk. 2012).

Even when a dismissal is not proper under a forum selection clause, a court may still dismiss a case under the forum non conveniens doctrine. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 198 (Pon. 2019).

Forum non conveniens is a common law doctrine that allows a court the discretion, if the forum is inappropriate or inconvenient for the defendant, to refuse to hear a case even though the court has subject-matter jurisdiction and personal jurisdiction and venue are both properly established. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 198 (Pon. 2019).

Forum non conveniens is not a claim that the court lacks jurisdiction over the case, but is a doctrine that the court may, as a matter of its sound discretion, decline jurisdiction and dismiss a case when the parties' and the witnesses' convenience and the ends of justice would be better served if the action were brought and tried in another forum where the action could be heard. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 198 (Pon. 2019).

A permissive forum selection clause may be enforced when a dismissal under the forum non conveniens doctrine is also appropriate. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 198 n.6 (Pon. 2019).

When a party does not contend that the court has jurisdiction but that it is inappropriate or inconvenient for it or for any witnesses, and instead, contends that the court either lacks subject-matter jurisdiction or should enforce the contract's forum selection clause as mandatory, the party's reliance on the forum non conveniens doctrine is misconceived. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 199 (Pon. 2019).

Australia is not a forum that could be more convenient than Pohnpei to the parties or to the witnesses when the parties operate in the FSM (and in the FSM Exclusive Economic Zone), and the witnesses are, or were, all on Pohnpei or on vessels operating out of Pohnpei. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 199 (Pon. 2019).

– Dismissal – Lack of Jurisdiction

When it appears that the court lacks subject matter jurisdiction the case will be dismissed. Trance v. Penta Ocean Constr. Co., 7 FSM R. 147, 148 (Chk. 1995).

A judgment entered upon a dismissal for lack of jurisdiction should recite that fact, so as to make clear that the dismissal is without prejudice to a different suit in a court that does have jurisdiction. Similar

reasoning applies to the granting of a motion to dismiss for improper forum. National Fisheries Corp. v. New Quick Co., 9 FSM R. 147, 148 (Pon. 1999).

Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. Thus subject matter jurisdiction may never be waived, and may be raised at any time, even after judgment. Island Dev. Co. v. Yap, 9 FSM R. 220, 222 (Yap 1999).

When a vessel has not been seized and is not in the FSM, the court has not obtained jurisdiction over it and the complaint as to the vessel must be dismissed. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 370 (Kos. 2000).

A motion to dismiss for lack of subject matter jurisdiction is properly considered under Civil Procedure Rule 12(h)(3) and may be raised at any time. The motion is treated as a suggestion that the court lacks subject matter jurisdiction. Udot Municipality v. FSM, 9 FSM R. 560, 562 (Chk. 2000).

When the court's jurisdiction is placed at issue, it is the plaintiff's burden to show that the Supreme Court does have jurisdiction, and that a colorable claim exists. Udot Municipality v. FSM, 9 FSM R. 560, 562 (Chk. 2000).

When a vessel was never seized and brought under the court's jurisdiction and is no longer present in the jurisdiction, a court cannot exercise *in rem* jurisdiction over it and all such claims against the vessel will be dismissed without prejudice. Moses v. M.V. Sea Chase, 10 FSM R. 45, 52 (Chk. 2001).

Dismissal of an *in rem* suit against a vessel does not act to dismiss the suit against its captain and crew as that is an action *in personam*, not *in rem*. Moses v. M.V. Sea Chase, 10 FSM R. 45, 52 (Chk. 2001).

Because the FSM Supreme Court generally (with some exceptions) lacks jurisdiction over a moot cause of action, it must be dismissed. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 119 (Pon. 2001).

When a court has both subject matter and personal jurisdiction over a case, a motion to dismiss on jurisdictional grounds will be denied. First Hawaiian Bank v. Engichy, 10 FSM R. 536, 538 (Chk. S. Ct. Tr. 2002).

When the plaintiff does not have standing to pursue an action for a preliminary injunction, the court lacks subject matter jurisdiction over the action and the case will be dismissed. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 501 (Kos. 2003).

If it appears that the court lacks jurisdiction over the complaint's subject matter, it shall dismiss the action. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 578 (Chk. S. Ct. Tr. 2003).

A motion to dismiss for lack of subject matter jurisdiction is properly brought pursuant to Rule 12(b)(1), or as a motion to dismiss pursuant to Rule 12(h)(3), which can be raised at any time. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 578 n.3 (Chk. S. Ct. Tr. 2003).

A motion to dismiss for lack of jurisdiction will be denied when the plaintiffs' complaint alleges claims that arise under national law and the national constitution because the FSM Supreme Court exercises jurisdiction over such cases, and, although state courts may also exercise jurisdiction over such cases, the plaintiffs have a constitutional right to bring such cases in the FSM Supreme Court if they so desire. Naoro v. Walter, 11 FSM R. 619, 621 (Chk. 2003).

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

Sec. Admin., 12 FSM R. 78, 81 (Kos. 2003).

Rule 12(h)(3) provides that whenever it appears by the parties' suggestion or otherwise that the court lacks jurisdiction of the subject matter, the court must dismiss the action. Hartman v. Chuuk, 12 FSM R. 388, 399 (Chk. S. Ct. Tr. 2004).

Whenever it appears by the parties' suggestion or otherwise that the court lacks subject matter jurisdiction, the court must dismiss the action. Geoffrey Hughes (Export) Pty, Ltd. v. America Ducksan Co., 12 FSM R. 413, 414 (Chk. 2004).

When all parties to an action are foreign citizens, diversity jurisdiction is not present, and if no other basis for FSM Supreme Court jurisdiction is apparent, the case will be dismissed without prejudice. Geoffrey Hughes (Export) Pty, Ltd. v. America Ducksan Co., 12 FSM R. 413, 415 (Chk. 2004).

For purposes of a motion to dismiss for lack of personal jurisdiction over a defendant, the allegations of the complaint are accepted as true, except where those allegations have been controverted by affidavit, in which event conflicts are construed in the non-moving party's favor. Allegations based on information and belief are insufficient to support in personam jurisdiction, except where the truth of those allegations are admitted in the responsive pleading. Yap v. M/V Cecilia I, 13 FSM R. 403, 407 (Yap 2005).

In analyzing a motion to dismiss for lack of personal jurisdiction, the court must undertake a particularized inquiry into the allegations that support personal jurisdiction. The complaint's allegations are accepted as true for a motion to dismiss, except where those allegations have been controverted by affidavit, in which event conflicts are construed in the non-moving party's favor. Yap v. M/V Cecilia I, 13 FSM R. 403, 411 (Yap 2005).

When a vessel owner never purposefully availed himself of the privilege of conducting activities in the FSM because of the bareboat charter of his vessel, for the court to exercise in personam jurisdiction over the vessel owner would violate well established notions of fair play and substantial justice. The vessel owner's motion to dismiss will be granted and he will be dismissed as a defendant. Yap v. M/V Cecilia I, 13 FSM R. 403, 412 (Yap 2005).

When the remand or reference to the Board of Trustees was analogous to this court's power to appoint a special master to make factual findings, which the court may or may not adopt as its own findings and was also similar to those cases that were initiated in the FSM Supreme Court in Chuuk and then "remanded" to the Chuuk Land Commission for certain factual determinations and those cases then either "appealed" back to, or referred back to, the FSM Supreme Court trial division when those determinations were either completed or some other issue came up that required court determination, and when the Board, in effect, acted as a special master – a court-designated fact finder. When the FSM Supreme Court had subject-matter jurisdiction over the complaint's allegations when it was filed, the court still retained that jurisdiction and the remand or reference is thus not a ground upon which to grant dismissal. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 157 (Pon. 2006).

If it appears that the court lacks subject matter jurisdiction, the case must be dismissed since any judgment rendered by a court without subject matter jurisdiction would be void. Harper v. William, 14 FSM R. 279, 281 (Chk. 2006).

A court may, on its own motion, dismiss an action for lack of jurisdiction since the lack of subject matter jurisdiction is an issue that can be raised at any time and can appear by suggestion of the parties or otherwise. Alanso v. Pridgen, 14 FSM R. 479, 480 (Kos. S. Ct. Tr. 2006).

When a Rule 12(b)(1) motion to dismiss raised a preliminary issue, the court's subject matter jurisdiction, the court had to address that before any trial on the merits could proceed or any decision on the merits could be made. The motion even had to be ruled upon before the defendants could be required to

answer the complaint and thus put the case at issue on the merits. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 224 (Chk. S. Ct. App. 2007).

When a defendant has been improperly served, the court lacks jurisdiction over the defendant and the case will be dismissed without prejudice, but, since a dismissal under Rule 12(b)(5) is without prejudice, a court will often quash service instead of dismissing the case so that only service need be repeated. FSM v. Fu Yuan Yu 096, 16 FSM R. 1, 3 (Pon. 2008).

A motion to dismiss filed in the Chuuk State Supreme Court asserting non-consent to the court's jurisdiction will not, by its invocation of the FSM court's jurisdiction, deprive the Chuuk State Supreme court of its jurisdiction. Rather, in diversity cases, state courts otherwise having jurisdiction pursuant to state law are not divested of jurisdiction unless or until a removal petition is timely filed, prompt written notice of such filing is served upon all parties, and a copy of the petition is filed with the state court clerk. Thus, when an action is originally filed in state court, the state court retains its jurisdiction, despite the diversity of parties, so long as the same action is not filed in or removed to the FSM court. An allegation of diversity jurisdiction is not a proper basis for a defendant's motion to dismiss. Muller v. Enlet, 16 FSM R. 92, 94 (Chk. S. Ct. Tr. 2008).

When jurisdictional issues are inextricably intertwined with the case's merits and issues of fact remain, a motion to dismiss for lack of subject matter jurisdiction will be denied, and if a motion to dismiss for lack of standing is denied, the court does not somehow imply that, at that stage of the proceedings, it has made any findings on a claim's merits. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 219 (Chk. S. Ct. Tr. 2008).

When a vessel was never seized and brought under the court's control and is not in, or is no longer in, the FSM, the court cannot exercise *in rem* jurisdiction over it and all claims against the vessel will be dismissed without prejudice unless a letter of undertaking or a bond has been made a substitute *res* for the vessel in lieu of the vessel's seizure, thus permitting the court to exercise *in rem* jurisdiction. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

When the court has not acquired *in rem* jurisdiction over the two vessels and since service on an agent cannot create jurisdiction over a vessel, the complaint against the two vessels will be dismissed without prejudice. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 85 (Yap 2010).

When the court has not acquired *in rem* jurisdiction over the two vessels and since service on an agent cannot create jurisdiction over a vessel, the complaint against the two vessels will be dismissed without prejudice. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 85 (Yap 2010).

A plaintiff's request that the court issue a declaratory judgment against defendant Election Commission stating that the scheduled revote election violates plaintiff's due process rights will be dismissed for lack of jurisdiction when that Election Commission decision is already being reviewed by the Appellate Division. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 490 (Chk. S. Ct. Tr. 2011).

The court may, at any time and on its own motion, move to dismiss a case when it appears that the court lacks subject-matter jurisdiction. FSM Dev. Bank v. Kansou, 17 FSM R. 605, 608 (Chk. 2011).

Even though the defendants have not challenged the court's jurisdiction over a matter, jurisdiction is always relevant, such that a judgment may be void if the court that rendered it lacked subject-matter or personal jurisdiction. Damarlane v. U Mun. Gov't, 18 FSM R. 96, 98 (Pon. 2011).

A court will address the part of a motion to dismiss concerning subject-matter jurisdiction first since if the movant were to prevail on this ground any court ruling on the other grounds would be nothing more than advisory opinions, and the court does not have the authority to render advisory opinions. Iwo v. Chuuk, 18 FSM R. 182, 183-84 (Chk. 2012).

After notice, an action is subject to dismissal without prejudice whenever it appears that the court lacks jurisdiction of the subject matter. Iwo v. Chuuk, 18 FSM R. 182, 184 (Chk. 2012).

When, besides moving to dismiss for lack of subject-matter jurisdiction, a defendant has also pled and moved for dismissal on statute of limitations grounds, rather than further complicate the resolution of that issue by a dismissal and a refiling, a better use of the court's resources would be for the court to stay its ruling on the pending summary judgment motion and motion to dismiss in order to allow the plaintiff, if he so desires, an opportunity to use that time frame to move to amend his complaint to plead the court's jurisdiction with greater particularity. Iwo v. Chuuk, 18 FSM R. 182, 184 (Chk. 2012).

When the defendant has filed a summary judgment motion and a motion to dismiss for lack of jurisdiction, the court will consider the motion to dismiss first because if the court were to grant the motion to dismiss, any ruling the court made on the summary judgment motion would, at best, be an advisory opinion since it would have been made without jurisdiction and the FSM Supreme Court does not have the authority to render advisory opinions. Hauk v. Mijares, 18 FSM R. 185, 186-87 (Chk. 2012).

When a fair reading of the complaint does not show a cause of action against the one diverse defendant, that person is thus merely a nominal party present only so that the plaintiff can plead the court's diversity jurisdiction. When the plaintiff has, for the sole purpose of attempting to create diversity of citizenship, named a person as a defendant against whom he asserts no cause of action or claim for relief, the court will dismiss the nominal diverse defendant from the case as improperly joined and then dismiss the complaint for lack of subject-matter jurisdiction because there was no actual diversity of citizenship when the case was filed. Hauk v. Mijares, 18 FSM R. 185, 187 (Chk. 2012).

In analyzing a motion to dismiss for lack of personal jurisdiction, the court must undertake a particularized inquiry into the allegations that support personal jurisdiction. The complaint's allegations are accepted as true for a motion to dismiss, except when those allegations have been controverted by affidavit, in which event conflicts are construed in the non-moving party's favor. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 297, 302 (Yap 2012).

A motion to dismiss Yuh Yow Fishery will be denied when the allegations in the amended complaint are sufficient to show personal jurisdiction over Yuh Yow Fishery if the plaintiffs succeed in proving the alter ego allegations that Yuh Yow Fishery is the alter ego of the corporations that own the vessels since Yuh Yow Fishery would have operated vessels that are alleged to have caused damage while in FSM waters. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 297, 302 (Yap 2012).

When the FSM Supreme Court does not have any subject-matter jurisdiction over the case, it will dismissed without prejudice to any adjudication in the state court. Chuuk Health Care Plan v. Chuuk Public Utility Corp., 18 FSM R. 409, 411 (Chk. 2012).

Whenever a case is dismissed for lack of subject-matter jurisdiction, it is dismissed without prejudice to a determination on the merits by a tribunal that has subject-matter jurisdiction over the case. This should make sense because a dismissal with prejudice is considered a ruling on the case's merits, and if a court lacks subject-matter jurisdiction over a case, the court is without any authority to make any ruling on the merits. Kuch v. Mori, 18 FSM R. 442, 443 (Chk. S. Ct. App. 2012).

A trial court's dismissal "with prejudice" for lack of subject-matter jurisdiction is either reversible error or it only addresses the determination of the trial court's subject-matter jurisdiction, not the merits of the plaintiff's case. It has no other effect. Kuch v. Mori, 18 FSM R. 442, 444 (Chk. S. Ct. App. 2012).

When the plaintiff does not have standing to pursue an action for a preliminary injunction, the court lacks subject matter jurisdiction over the action and the case will be dismissed. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 504 (Chk. 2013).

A plaintiff has a personal stake in the litigation's outcome when the Plan's insurance premiums are taken from his senatorial salary and when, since he is one of the two co-equal heads of the Chuuk Legislature, it appears that he has standing in his representative capacity. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 505 (Chk. 2013).

One FSM Supreme Court trial division justice does not have subject matter jurisdiction to set aside orders entered in another separate trial division case, nor does he hold subject matter jurisdiction to grant injunctive relief against another trial division justice. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 257 (Pon. 2014).

When the case is not a case arising under the FSM Constitution or national laws, the only grounds asserted for jurisdiction, the FSM Supreme Court does not have subject-matter jurisdiction over it, and when the FSM Supreme Court does not have any subject-matter jurisdiction over a case, the case will be dismissed without prejudice to any later adjudication in a state court. Isamu Nakasone Store v. David, 20 FSM R. 53, 58 (Pon. 2015).

When there are no material facts in dispute and the defendants are entitled to judgment or to a dismissal on their affirmative defense of lack of subject-matter jurisdiction, the court will render summary judgment in the defendants' favor on the jurisdictional issue because whenever it appears by suggestion of the parties or otherwise that the FSM Supreme Court lacks jurisdiction of the subject matter, it must dismiss the action without prejudice to any case that the plaintiffs may file in a state court of competent jurisdiction. Isamu Nakasone Store v. David, 20 FSM R. 53, 58 (Pon. 2015).

Whenever it appears by the parties' suggestion or otherwise that the court lacks subject-matter jurisdiction, the court must dismiss the action. Ramirez v. College of Micronesia, 20 FSM R. 254, 260 (Pon. 2015).

Whenever it appears by suggestion of the parties or otherwise, including being raised as an affirmative defense in the answer, that the court lacks jurisdiction of the subject matter the court must dismiss the action. Eperiam v. FSM, 20 FSM R. 351, 354 & n.1 (Pon. 2016).

A dismissal for lack of jurisdiction, for improper venue, or for failure to join a party is not an adjudication upon the merits. Waguk v. Waguk, 21 FSM R. 60, 73 (App. 2016).

A dismissal for lack of subject-matter jurisdiction does not preclude a second action on the same claim. Waguk v. Waguk, 21 FSM R. 60, 73 (App. 2016).

A court may, out of cautionary respect for the fact that whenever it appears that the court lacks subject-matter jurisdiction, the court must dismiss the action, be favorably disposed towards hearing a second motion to dismiss, despite having heard and granted in part and denied in part the previous motions to dismiss, if subject-matter jurisdiction is the ground. The hearing and determination of any subsequently filed Civil Rule 12(b) motions will, however, be deferred until the trial unless the court otherwise determines that an immediate preliminary hearing is necessary to prevent manifest injustice. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 21 FSM R. 150, 153 n.1 (Pon. 2017).

Whether a lawsuit is brought in bad faith has no bearing on jurisdiction. The bad faith issue is better suited for the defendant's counter-claims. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 21 FSM R. 150, 155 (Pon. 2017).

A defendant, who has properly asserted lack of personal jurisdiction over it, may move for the issue's determination as a preliminary matter. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 233 (App. 2017).

When neither the plaintiffs nor the court sought discovery about the court's personal jurisdiction over a defendant, that the trial court erred in not allowing the plaintiffs to conduct discovery before considering and granting a motion to dismiss for lack of personal jurisdiction, is not a controlling question of law properly certified for interlocutory review. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 233 (App. 2017).

No substantial basis for difference of opinion exists about a defendant's right to move before trial for dismissal based on lack of personal jurisdiction. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 233 (App. 2017).

The issue is well settled that affidavits and other evidence may be submitted in support of or opposition to a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 233 (App. 2017).

The standard that a motion to dismiss should be denied unless it appears to a certainty that no relief could be granted is routinely applied to motions to dismiss under Civil Rule 12(b)(6) for failure to state a claim upon which relief can be granted, but this rule of interpretation has no bearing on a motion to dismiss under Civil Rule 12(b)(2), where the burden is on the plaintiff to prove a prima facie showing of personal jurisdiction. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 233-34 (App. 2017).

When a plaintiff, since she lacks standing to sue, cannot identify any specific interests that her son would assert if her interest was transferred to him, the matter will be dismissed without prejudice to allow the son to assert any claims he may have against the FSM Social Security Administration. Welson v. FSM Social Sec. Admin., 21 FSM R. 348, 351 (Pon. 2017).

Since the court must dismiss the action whenever it appears by the parties' suggestion or otherwise that the court lacks jurisdiction of the subject matter, the court will dismiss a civil rights action by a municipality against the state without prejudice to any future action in the state court. Kitti Mun. Gov't v. Pohnpei Utilities Corp., 21 FSM R. 408, 409 (Pon. 2017).

When a court dismisses a case because it lacks subject-matter jurisdiction, the court has no jurisdiction to rule on whether the complaint states a claim that could be granted relief. Apostol v. Maniquiz, 22 FSM R. 146, 149-50 (Chk. 2019).

A dismissal for lack of jurisdiction is without prejudice. Apostol v. Maniquiz, 22 FSM R. 146, 150 (Chk. 2019).

Whenever it appears that the court lacks subject matter jurisdiction, the court must dismiss the action, and the dismissal will, of course, be without prejudice to any litigation filed in another court. Helgenberger v. Helgenberger, 22 FSM R. 244, 247 (Pon. 2019).

When the court lacks subject-matter jurisdiction over a case, the court may still adjudicate the counterclaim if the court has an adequate independent basis for subject-matter jurisdiction over the counterclaim. Helgenberger v. Helgenberger, 22 FSM R. 244, 248 (Pon. 2019).

When all of the plaintiffs' claims, other than its claim that a state statute is a bill of attainder, are claims that are outside of the court's jurisdiction, and when the statute is not a bill of attainder, the case will be dismissed for lack of subject-matter jurisdiction. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 267 (Chk. 2019).

The FSM Supreme Court must deny a motion to dismiss for lack of subject-matter jurisdiction when the FSM Development Bank is a party because the court has jurisdiction when the FSM Development Bank is a party. FSM Dev. Bank v. Carl, 22 FSM R. 365, 371 (Pon. 2019).

A statutory bar does not mean that the court would lack subject-matter jurisdiction over the case, but instead it would be an affirmative defense that would bar the plaintiff's claim and require that a judgment be entered for the defendant. FSM Dev. Bank v. Carl, 22 FSM R. 365, 371 (Pon. 2019).

When all of the claims upon which the court's subject-matter jurisdiction is premised are dismissed, under Rule 12(b)(6), for the failure to state a claim for which the court can grant relief, the court will, under Rule 12(b)(1), dismiss without prejudice the remaining state law claims for the lack of subject-matter jurisdiction. Sonden v. Pohnpei, 22 FSM R. 465, 467 (Pon. 2020).

When the parties' stipulation to enter a judgment would result in a void judgment, the court must reject the stipulation for judgment and dismiss the case for the lack of subject-matter jurisdiction because whenever it appears that the court lacks jurisdiction of the subject matter, the court must dismiss the action. Suzuki v. Chuuk, 22 FSM R. 491, 494 (Chk. 2020).

– Dismissal – Lack of Prosecution

When the plaintiff has been given reasonable notice of his trial and he and his attorney failed to appear to adduce evidence and prosecute the claim, his inactivity amounts to abandonment of his claim and it is subject to dismissal under FSM Civil Rule 41(b). Etpison v. Perman, 1 FSM R. 405, 414-15 (Pon. 1984).

Dismissal of a claim for failure of the plaintiff to prosecute normally operates as an adjudication on the merits. Ittu v. Charley, 3 FSM R. 188, 191 (Kos. S. Ct. Tr. 1987).

Where just, the court has discretion to enter a judgment of default based on a party's failure to obey an order or permit discovery, FSM Civ. R. 37(b)(2)(C), or based on a plaintiff's failure to prosecute his case, FSM Civ. R. 41(b). McGillivray v. Bank of the FSM, 7 FSM R. 19, 23 (Pon. 1995).

The purpose of the rule allowing dismissal for failure to prosecute is to guard against delay in litigation and harassment of the defendant, as well as preventing undue delays in disposition of pending cases and avoiding congestion in trial court calendars. McGillivray v. Bank of the FSM, 7 FSM R. 19, 23 (Pon. 1995).

Cases may be dismissed for the plaintiff's failure to prosecute or to comply with the rules or any order of court. Sally v. Andon, 9 FSM R. 55, 56 (Chk. S. Ct. Tr. 1999).

Where grounds exist, an action is subject to dismissal, as a general rule, on the court's own motion and the trial court has power to dismiss an action, sua sponte, for want of prosecution. Sally v. Andon, 9 FSM R. 55, 56 (Chk. S. Ct. Tr. 1999).

Courts in the exercise of their inherent powers may dismiss an action in which a plaintiff refuses to comply with an order of the court or the setting of a case for trial. In dismissing an action the court may consider the importance of a judge maintaining control of his calendar and that a trial, once set, should be continued only for the most compelling reasons. Sally v. Andon, 9 FSM R. 55, 56 (Chk. S. Ct. Tr. 1999).

When all parties have been duly served notice of a scheduled hearing and none appear, the case may be dismissed with prejudice because the plaintiff failed to appear and prosecute his case and is deemed to have abandoned his claim. Sally v. Andon, 9 FSM R. 55, 56 (Chk. S. Ct. Tr. 1999).

Rule 41(b) requires prosecution of a civil lawsuit with reasonable diligence to avoid dismissal. The burden of prosecuting a civil lawsuit lies with any party seeking affirmative relief. O'Sullivan v. Panuelo, 9 FSM R. 229, 231 (Pon. 1999).

There has been a clear record of delay justifying dismissal for failure to prosecute when substantial delay has resulted from plaintiff's failure to act during the period from December, 1994 until September,

1999, and from plaintiff's subsequent failure to act with the due dispatch required by the court's November 25, 1999 order. Kosrae v. Worswick, 9 FSM R. 437, 441-42 (Kos. 2000).

When a court order required the plaintiff-appellee to file within 30 days a written request for trial on his trespass claim if he wished to prosecute the claim, and he did not, the trespass claim is dismissed. Jonas v. Paulino, 9 FSM R. 519, 522 (Kos. S. Ct. Tr. 2000).

When the court dismissed the case in material part on the basis of the plaintiff's failure to proceed with "all due dispatch," as required by the court's order and when, with the benefit of hindsight, "all due dispatch" was an inadequate choice of directives because it did not set out precisely what was expected of counsel and when, and when although the plaintiff did nothing to prosecute the case for nearly five years, the court did not intervene to get the case back on track before the notice of trial setting was issued, reconsidering all the circumstances, the better course is to vacate the dismissal. Kosrae v. Worswick, 9 FSM R. 536, 538 (Kos. 2000).

Unless the court otherwise specifies, an involuntary dismissal pursuant to Rule 41(b) acts as an adjudication upon the merits, and is generally reviewed for abuse of discretion. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 137 (App. 2001).

The abuse of discretion standard is usually applied in reviewing a Rule 41(b) dismissal when there is no substantial dispute over the facts underlying the trial court's determination that the plaintiff had failed to prosecute the action. In such instances the analysis turns instead on whether the circumstances surrounding the delay justify dismissal. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 138 (App. 2001).

When reviewing a trial court's Rule 41(b) dismissal order on sufficiency of the evidence, the appropriate standard of review is whether the findings of fact are clearly erroneous. A finding is clearly erroneous when the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 138 (App. 2001).

When an appellant takes issue with both the trial court's findings of fact and its subsequent dismissal order, it requires a two tier analysis. The appellate court first reviews the trial court's findings of fact for clear error. Thereafter, it applies the facts found that are not clearly erroneous, together with those shown by the record as undisputed, and reviews the Rule 41(b) dismissal order under an abuse of discretion standard. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 138 (App. 2001).

Dismissal under Rule 41(b), like Rule 37, should be allowed only in the face of a clear record of delay or contumacious conduct by the plaintiff, or upon a serious showing of willful default. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 140 (App. 2001).

Although ultimately the granting or denial of involuntary dismissal rests in the sound discretion of the court, the record must still support a finding of delay attributable to plaintiff's conduct. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 140 (App. 2001).

When plaintiff's counsel did not receive formal notice of the Kosrae trial date until six days before trial and he acted reasonably in attempting to travel to Kosrae, and given the effort counsel previously made to try these cases, counsel's inability to make the flight did not justify the trial court's dismissal order because counsel had not acted willfully or out of disdain for the trial court's authority. Considering the minimal three day continuance requested by counsel and the absence of prejudice to the defendants, the trial court abused its discretion in ordering the cases' dismissal. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 140 (App. 2001).

When six months have elapsed since the plaintiffs first asked for time to find new counsel and a court order explicitly stated what the consequences would be if new counsel did not file a notice of appearance by

March 30, 2001, the plaintiffs' remaining punitive damages claim, absent a showing of good cause and excusable neglect, will be dismissed, and, given the purpose of punitive damages, a final judgment entered. Elymore v. Walter, 10 FSM R. 166, 168-69 (Pon. 2001).

While the court is reluctant to hold a party responsible for the party's attorney's failure to act in time but when it was plaintiffs themselves who were acting to find new counsel, in the absence of a showing of excusable neglect for their failure to do so, the court will hold the plaintiffs responsible for their own actions and dismiss the punitive damages claim so that judgment may be entered. Elymore v. Walter, 10 FSM R. 166, 168-69 (Pon. 2001).

When on the day set for trial the defendants were not present to proceed on their counterclaim, the counterclaim is dismissed. People of Satawal ex rel. Ramoloilug v. Mina Maru No. 3, 10 FSM R. 337, 338 (Yap 2001).

Under Civil Procedure Rule 41(b), the court may dismiss a case for the plaintiff's failure to prosecute and such a dismissal operates as a final judgment on the merits unless the court in its dismissal order specifies otherwise. Kishida v. Aizawa, 13 FSM R. 281, 283 (Chk. 2005).

When a plaintiff has been served with notice from the court that, if further steps were not taken to prosecute a case against a defendant, the case against him would be subject to dismissal for want of prosecution and when no steps have been taken to further prosecute the case against that defendant, the case against that defendant will be dismissed with prejudice for lack of prosecution. Lee v. Han, 13 FSM R. 571, 579 (Chk. 2005).

Parties' claims, however denominated, may be dismissed with prejudice pursuant to Civil Rule 41(b) and (c) for lack of prosecution. RRG (FSM) Ltd. v. Maezoto, 15 FSM R. 243, 244 (Pon. 2007).

To avoid dismissal for failure to prosecute, civil lawsuits must be prosecuted with reasonable diligence. The purpose of the rule allowing dismissal for failure to prosecute is to guard against delay in litigation and harassment of the defendant, as well as preventing undue delays in disposition of pending cases and avoiding court congestion. Courts in the exercise of their inherent powers may therefore dismiss an action in which a plaintiff refuses to comply with a court order. Bisaram v. Oneisom Election Comm'n, 16 FSM R. 475, 477 (Chk. S. Ct. App. 2009).

When the plaintiff has been given reasonable notice of his trial and he and his attorney fail to appear to adduce evidence and prosecute the claim, his inactivity amounts to abandonment of his claim subjecting it to dismissal for failure to prosecute. In dismissing an action, the court may consider the importance of a judge maintaining control of his calendar; trial continuances should be granted only for the most compelling reasons. Bisaram v. Oneisom Election Comm'n, 16 FSM R. 475, 477-78 (Chk. S. Ct. App. 2009).

Failure to proceed against the remaining *in rem* defendant can lead to its dismissal for want of prosecution. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 81 (Pon. 2015).

When the counsel for the plaintiff, who had passed away on May 25, 2013, was put on notice, on July 27, 2016, that if further steps to prosecute the case were not taken, dismissal was warranted for failure to prosecute; and when counsel, on August 26, 2016, moved for a 330-day extension to file and complete probate but no probate action was initiated, the ninety-day window for moving to substitute has long since closed. Johnson v. Rosario, 21 FSM R. 7, 11 (Pon. 2016).

Civil lawsuits must be prosecuted with reasonable diligence to guard against delay in litigation and harassment of the defendant, as well as preventing undue delays in disposition of pending cases and avoiding court congestion. Since inactivity amounts to abandonment of a claim, the court, in dismissing an action, may consider the importance of a judge maintaining control of his or her calendar. Johnson v. Rosario, 21 FSM R. 7, 13 (Pon. 2016).

The dilatory approach exhibited by not filing a substitution motion, even though the named plaintiff passed away almost three and a half years earlier, coupled with a representation that "a probate needs to be filed" in the future, is clearly not the type of "extraordinary circumstances" contemplated by Civil Rule 60(b)(6) for relief from judgment. Johnson v. Rosario, 21 FSM R. 7, 13 (Pon. 2016).

Under Kosrae Civil Rule 41(b), the court may dismiss a claim for the plaintiff's failure to prosecute or to comply with the court's rules or with any court order. Waguk v. Waguk, 21 FSM R. 60, 66 (App. 2016).

Involuntary dismissals under Kosrae Civil Rule 41(b) are reviewed for abuse of discretion, with adjudication dependent on whether the circumstances surrounding the delay justify dismissal. An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous or 4) the record contains no evidence on which the court rationally could have based its decision. Such abuses must be unusual and exceptional; an appellate court will not merely substitute its judgment for that of the trial court. Jackson v. Siba, 22 FSM R. 224, 229-30 (App. 2019).

When reviewing a trial court's Rule 41(b) dismissal on sufficiency of the evidence, the appropriate standard of review is whether the findings of fact are clearly erroneous. Jackson v. Siba, 22 FSM R. 224, 230 (App. 2019).

The law does not favor involuntary dismissal. Dismissal under Rule 41(b) should be allowed only when there is a clear record of delay or contumacious conduct by the plaintiff or a serious showing of willful default. Jackson v. Siba, 22 FSM R. 224, 231 (App. 2019).

Rule 41(b) contemplates a reasonable diligence standard. A plaintiff seeking affirmative relief has the burden of pursuing that relief with reasonable diligence. Initially, the plaintiff bears the burden of showing some excuse for any delay in prosecution. If the excuse is anything but frivolous, the burden shifts to the defendant to show prejudice from the delay. If prejudice is demonstrated, the burden shifts back to the plaintiff to show that the force of its excuse outweighs any prejudice to the defendant. In making this analysis, granting or denial of involuntary dismissal ultimately rests in the court's sound discretion. Nevertheless, the record must still support a finding of delay attributable to plaintiff's conduct. Jackson v. Siba, 22 FSM R. 224, 231 (App. 2019).

The plaintiffs are not solely responsible for the delays in a matter when all of the continuances that were granted were attributable to either the court, acting on its own, or to the parties' mutual agreement. Jackson v. Siba, 22 FSM R. 224, 232 (App. 2019).

When it was an error of law for the trial court to apply the fourteen-day rule; when it was a clearly erroneous finding of fact that the previous delays were all, or were mostly attributable to the plaintiffs, it was therefore an abuse of the trial court's discretion not to grant the enlargement under the "cause shown" standard. Jackson v. Siba, 22 FSM R. 224, 233 (App. 2019).

An appellate court will not address a lower court's denial of the plaintiffs' motion for reconsideration when it has vacated the lower court's order of dismissal. Jackson v. Siba, 22 FSM R. 224, 233 (App. 2019).

– Filings

Trial courts have considerable discretion in ruling on motions for extension of filing deadlines. A court which has already extended a filing deadline does not abuse its discretion by refusing to grant successive extensions. McGillivray v. Bank of the FSM (II), 6 FSM R. 486, 488 (Pon. 1994).

Filing and service of pre-trial briefs by the court ordered deadline are mandatory and not optional. Violation of court orders with respect to the filing of pre-trial briefs, or any other required action, may result

in sanctions against that party. All requests for an enlargement of time to file pre-trial briefs must be made in writing. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 193 (Kos. S. Ct. Tr. 2001).

The phrase "et al." or such other similar indication is not permitted in the caption of a complaint although it may be used on later filings. Moses v. Oyang Corp., 10 FSM R. 210, 212 (Chk. 2001).

Until a default is entered by the court clerk, a party still may appear in the action and the clerk must accept for filing defendant's pleadings or motions, even if filed outside the times prescribed by the rules. Once a defendant's pleadings or motions are filed, it is too late for the entry of default, and the defendant is entitled to proceed with its defense. O'Sullivan v. Panuelo, 10 FSM R. 257, 260 (Pon. 2001).

When an act is required or allowed to be done at or within a specific time, the court for cause shown may at any time in its discretion upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect. The court will find excusable neglect and deny a motion to strike papers filed out of time when the filer did not seek a further enlargement, but had a motion for enlargement pending, as far as he knew, until January 3, 2003, and he promptly filed his papers as soon as he was able on January 6, 2003, and when two enlargements of time had been requested because of catastrophic damage done to the filer's office by a super-typhoon and the court would have granted another limited enlargement had it been requested. Goyo Corp. v. Christian, 12 FSM R. 140, 143-44 (Pon. 2003).

When citing to sources not available in FSM libraries, counsel are expected to provide copies to the court and opposing counsel. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 468 n.1 (Pon. 2004).

Regardless of what a party chooses to call the papers they have filed, those papers are what they are based upon their function or the relief they seek. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 138 n.4 (Pon. 2008).

Filing in duplicate is required and opposing parties must each be served a copy. FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 90 (Pon. 2010).

Under Rule 11, an attorney's signature in a pleading, motion, or other paper certifies, inter alia, that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, the pleading, motion, or other paper is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 223 (Kos. 2010).

Under the Rule 11 idea of "well grounded in fact," it is not necessary that an investigation into the facts be carried to the point of absolute certainty. The investigation need merely be reasonable under the circumstances. In applying Rule 11 to motions, legal arguments should be accompanied by evidentiary support and where evidentiary support is lacking, the moving party should specifically identify those factual contentions. Following this clear standard when filing pleadings, motions, or other papers are filed with the court will help secure the just, speedy, and inexpensive determination of every action. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 224 (Kos. 2010).

Every summons signed by the clerk should state the name, address and telephone number of the plaintiff's attorney or trial counselor, if any, otherwise the plaintiff's address and telephone number, and the court clerk is supposed to determine before filing that a paper subsequent to the summons and complaint has a certificate of service and contains the mailing address and telephone number of the party filing the paper or the party's attorney. Jacob v. Johnny, 18 FSM R. 226, 230 n.1 (Pon. 2012).

The court will not penalize a party for a court employee's omission in failing to see that a filing contained the filer's phone number. Jacob v. Johnny, 18 FSM R. 226, 230 n.1 (Pon. 2012).

When no reason is provided for late filing and an enlargement of time is never sought, responsive papers will, on the opposing party's unopposed motion to strike, be stricken from the record as untimely. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 255 (Pon. 2014).

A party who files a motion to enlarge time and files that motion out of time, must demonstrate excusable neglect for the delay. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 256 (Pon. 2014).

When a typhoon disrupted power and shut down all offices, courts, and utilities between October 17 and October 18, 2013, precluding the plaintiffs from properly serving the defendants, it is clear that the plaintiffs were justified in filing their motion *ex parte*, and have demonstrated excusable neglect, as the delay was caused by a *force majeure* event. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 256 (Pon. 2014).

If a submission is signed in violation of Rule 11, the court must impose an appropriate sanction on the person who signed it, a represented party, or both. The decision whether to impose sanctions for violation of Rule 11 on the attorney or the client is at the court's sound discretion. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 371 (Pon. 2014).

The purpose of Rule 11 sanctions is to deter baseless or frivolous filings. Both bad faith arguments and frivolous, good faith arguments are sanctionable. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 371 (Pon. 2014).

An attorney's signature on a filing constitutes a certificate by the signer that the signer has read the filing and that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 580-81 (Pon. 2014).

The duty to make a "reasonable inquiry" means an inquiry reasonable under all the case's circumstances. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581 (Pon. 2014).

All papers after the complaint that are required to be served on a party must be filed with the court, in duplicate, either before service or within a reasonable time thereafter and must be accompanied by certificate of service of copies on all other parties. Helgenberger v. Chung, 20 FSM R. 519, 521 (Pon. 2016).

A certificate of service must be filed with the court when the relevant paper is filed, and the court must rely on a certificate of service attached to a filing and presume that it is correct, but that may be rebutted by admissible evidence. Helgenberger v. Chung, 20 FSM R. 519, 521 (Pon. 2016).

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

An attorney is duty-bound, in accordance with Rule 11, to conduct due diligence before affixing his or her signature to a document. Under Rule 11, a court must determine whether the document is signed and to the best of the signer's knowledge, information, and belief, formed after reasonable inquiry, is well grounded in fact, as well as warranted by law and not interposed for any improper purpose such as delay or harassment. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 27 (App. 2016).

When a motion was served on the plaintiff on November 16, 2016, the plaintiff's responsive papers were due no later than November 26, 2016, but, because that date was a Saturday, the opposition was due the following Monday, November 28, 2016, and the plaintiff's opposition, filed November 28, 2016, was thus timely. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 21 FSM R. 150, 154 (Pon. 2017).

A motion or a filing is what it is regardless of what the party filing it has labeled it. Setik v. FSM Dev.

Bank, 21 FSM R. 505, 520 (App. 2018).

A Rule 68 settlement offer may only be filed if accepted by the other party. When the plaintiff rejects an offer, there is no need to file the rejected offer of judgment with the court before the court issues a judgment in the matter. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 434, 436 (Chk. S. Ct. Tr. 2019).

– Filings – By Facsimile

Telecommunication facsimiles are an unacceptable means of filing with the FSM Supreme Court. In re Marquez, 5 FSM R. 381, 383 n.1 (Pon. 1992).

Fax transmissions cannot be received for filing. Maruwa Shokai Guam, Inc. v. Pyung Hwa 31, 6 FSM R. 238, 240 (Pon. 1993).

Permission for parties to file documents by fax transmission may be given for special cause and shall only apply to the case until otherwise ordered. O'Sullivan v. Panuelo, 9 FSM R. 229, 232 (Pon. 1999).

When, although a copy has been faxed to the court, a motion has never been filed and when no application for filing by facsimile pursuant to Civil Procedure Rule 5(e) has been made, the motion is not before the court. FSM Dev. Bank v. Gouland, 9 FSM R. 605, 606 (Chk. 2000).

Filing by fax is permitted only by order of a justice for special cause given. The rule allowing fax filing for special cause is not an excuse to wait for the filing deadline and then fax the papers to the court. Waiting to the last minute because it can then be faxed does not constitute "special cause." In re Engichy, 11 FSM R. 450, 451 (Chk. 2003).

The court may, without notice upon a party's request for cause shown, order an enlargement of time to file if the request is made before the expiration of the period previously ordered by the court. The higher standard of "special cause given" is required for fax filing. In re Engichy, 11 FSM R. 450, 451 (Chk. 2003).

When a deadline is approaching, motions may customarily be accompanied by a motion to file by fax. Ramp v. Ramp, 12 FSM R. 228, 230 (Pon. 2003).

General Court Order 1990-1 does not apply to filing by facsimile transmission in civil cases because the (later promulgated) applicable portion of Civil Procedure Rule 5(e) has superseded it. It may retain some vitality in criminal cases since the criminal rules do not contain a provision concerning fax filing. However, Civil Rule 5(e)'s pertinent part is identical to section 2 of General Court Order 1990-1. Goya v. Ramp, 13 FSM R. 100, 105 & n.3 (App. 2005).

In absence of an order of a justice, given for special cause, the clerk of court will not accept for filing any document transmitted to the clerk through a telecommunication facsimile. Goya v. Ramp, 13 FSM R. 100, 105 (App. 2005).

Neither General Court Order 1990-1 nor Civil Rule 5(e) delineates the method(s) whereby an order to file by fax can be obtained or by which a request to file by fax is to be made. Neither expressly prohibit a request to file by fax from being made by fax. Goya v. Ramp, 13 FSM R. 100, 105 (App. 2005).

A faxed "motion" to file by fax remains an unfiled request for an order to file by fax unless and until a justice grants the request and orders the "motion" and accompanying papers filed. Goya v. Ramp, 13 FSM R. 100, 106 (App. 2005).

Since "special cause" is a higher standard than mere "cause shown," but a different standard than "good cause shown," the implication is that "special cause" will usually arise from either short, or very short, court-ordered deadlines, or as the result of an unforeseen, unexpected, or unanticipated event or

circumstance. Applying by fax for an order to file by fax would seem the only sensible method when the "special cause" shown is an unforeseen, unexpected, or unanticipated circumstance or event. Goya v. Ramp, 13 FSM R. 100, 106 (App. 2005).

When a partially legible document was received by facsimile transmission but no motion to file it by fax was received and when no original and a copy for filing were ever received, that document was not filed and the court will not consider it since filing by fax is permitted only by court order for special cause given. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 630 n.1 (Pon. 2008).

Motions to file by facsimile do not require detailed evidentiary support, only a showing of "special cause." FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 224 (Kos. 2010).

– Frivolous Actions

Although it is ultimately proved that plaintiff has no solid claim or theory against a defendant, plaintiff's action against that defendant is not vexatious or frivolous where 1) plaintiff reasonably believed at the outset of litigation that defendant might be liable, 2) a considerable amount of discovery was required to establish that defendant was not liable, 3) plaintiff did not stubbornly insist on defendant's liability in the face of defendant's motion for summary judgment, and 4) other defendants would presumably have named defendant in the case in any event, so that defendant would have incurred substantial attorney's fees regardless of plaintiff's actions. Semens v. Continental Air Lines, Inc. (II), 2 FSM R. 200, 209 (Pon. 1986).

The court strongly disapproves of as frivolous and a waste of the court's resources the same plaintiff, represented by the same counsel, in an action involving the same land, repeatedly asserting previously denied theories. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 180 (Pon. 1995).

A litigant pleading non-frivolous along with frivolous claims cannot expect to avoid all sanctions under Rule 11 merely because the pleading or motion under scrutiny was not entirely frivolous. In re Sanction of Berman, 7 FSM R. 654, 657 (App. 1996).

When the plaintiffs' amended complaint sets forth a serious claim that the defendant was violating its own regulations, it cannot easily be dismissed as frivolous even though the court granted the defendant summary judgment since the fact that the court agrees with the defendant on the factual issue does not necessarily make the plaintiffs' claim frivolous. Ehsa v. Pohnpei Port Auth., 14 FSM R. 481, 486 (Pon. 2006).

A court may award attorney's fees against a party when that party acts vexatiously, in bad faith, presses frivolous claims, or employs oppressive litigation practices. Jano v. Fujita, 16 FSM R. 502, 503 (Pon. 2009).

When the plaintiff failed to present at trial any evidence on two elements of his causes of action; when the plaintiff alone testified and his testimony itself was speculative, conclusory, and lacking in foundation; when given the testimony's overall lack of credibility, as well as the lack of other evidence presented at trial to sustain the plaintiff's burden of proof, the court can conclude that the plaintiff brought the lawsuit vexatiously and in bad faith, and, accordingly, the defendant may be awarded his attorney's fees incurred in the course of the lawsuit. Jano v. Fujita, 16 FSM R. 502, 504 (Pon. 2009).

When the plaintiffs' claim is one for breach of contract and there are factual allegations that are in dispute; when the parties entered into a contract for legal services and the plaintiffs claim that the defendant did not perform what he promised to do; when the defendant claims that the plaintiffs brought suit against the defendant knowing that they were in breach of contract; and when this is not a valid legal argument and the plaintiffs were not aware they were in breach of contract and felt that defendant was in breach, the plaintiffs' claim is not frivolous. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 642 (Kos. S. Ct. Tr. 2009).

The purpose of Rule 11 sanctions is to deter baseless or frivolous filings and the decision to impose them is addressed to the trial court's discretion. When a claim is asserted by the same plaintiff, represented by the same counsel, in an action involving the same land, repeatedly asserting previously denied theories, the court will consider that claim frivolous. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 52, 57 (Pon. 2011).

A legal contention is not warranted by existing law if it is based on legal theories that are plainly foreclosed by well-established legal principles and authoritative precedent, unless the advocate plainly states that he or she is arguing for a reversal or change of law and presents a nonfrivolous argument in support of that position. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 371 (Pon. 2014).

When the plaintiffs' complaints seek the same relief that had previously been denied by both the trial and appellate divisions, their efforts to stop the bank's judgment enforcement actions through this case represent frivolous and vexatious efforts by the same parties that have previously failed in both trial and appellate divisions, and when they were aware at the time of filing that these complaints offered no reasonable chance of relief, the court must infer that the complaints were filed for the improper purposes of causing unnecessary delay of bank's judgment enforcement actions and for causing needless increase in its litigation costs. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 373 (Pon. 2014).

– Injunctions

FSM Civil Rule 65 providing for issuance of temporary restraining orders and preliminary injunctions pending final decisions by the court, is drawn from rule 65 of the United States Federal Rules of Civil Procedure, so decisions of the United States courts under that rule are a legitimate source of guidance as to the meaning of FSM Civil Rule 65. Ponape Transfer & Storage v. Pohnpei State Public Lands Auth., 2 FSM R. 272, 275 (Pon. 1986).

In considering motions for temporary restraining order or for preliminary injunction, courts weigh the possibility of irreparable injury to the plaintiff, the balance of possible injuries between the parties, the movant's possibility of success on the merits, and the impact of any requested action upon the public interest. Ponape Transfer & Storage v. Pohnpei State Public Lands Auth., 2 FSM R. 272, 276-77 (Pon. 1986).

The trial court is required to exercise broad discretion and weigh carefully the interests of both sides in order to arrive at a fair and equitable result. Ponape Transfer & Storage v. Federated Shipping Co., 3 FSM R. 174, 177 (Pon. 1987).

Courts generally consider the likelihood of success on the merits of the party seeking injunctive relief, the possibility of irreparable injury as well as the balance of possible injuries or inconvenience to the parties which would flow from granting or denying the relief, and any impact upon the public interest. Ponape Transfer & Storage v. Federated Shipping Co., 3 FSM R. 174, 177 (Pon. 1987).

It is not appropriate to abstain from deciding a claim for injunctive relief where it is undisputed that the court has jurisdiction and where the interests of time can be of pressing importance. Gimnang v. Yap, 4 FSM R. 212, 214 (Yap 1990).

The right to appeal an interlocutory order which affects an injunction is an exception to the general rule that permits appeals only from final decisions. The exception reflects the importance of prompt action when injunctions are involved since the threat of irreparable harm is a prerequisite to injunctive relief. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 332, 334 (App. 1992).

A court may modify an injunction to preserve the status quo during the pendency of an appeal. Ponape Enterprises Co. v. Luzama, 6 FSM R. 274, 276-77 (Pon. 1993).

In exercising its broad discretion in considering whether to grant a preliminary injunction the court looks to four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the moving party, 3) the balance of possible injuries or inconvenience to the parties which would flow from granting or denying the relief, and 4) any impact on the public interest. The object of a preliminary injunction is to preserve the status quo pending the litigation on the merits. Ponape Enterprises Co. v. Bergen, 6 FSM R. 286, 288 (Pon. 1993).

An injunction allowing defendants in a trespass action to remain on the land, harvest their crops, but preventing them from destroying any trees or expanding their cultivations or further entrenching their positions will prevent irreparable harm to the plaintiffs, balance the interests of the parties, and serve the public interest by preserving the status quo while the litigation is pending. Ponape Enterprises Co. v. Bergen, 6 FSM R. 286, 289-90 (Pon. 1993).

Where there is little likelihood that of success on the merits, where economic loss does not represent irreparable harm, where the balance of interests weighs against the plaintiff, and where the public interest favors regulation of alcohol sales, no preliminary injunctive relief will be granted the plaintiff ordering the defendant state grant it an alcoholic beverage license which would not preserve the status quo pending the litigation. Simon v. Pohnpei, 6 FSM R. 314, 316-18 (Pon. 1994).

Where a stipulated preliminary injunction is void because of the judge's disqualification and because of the stipulated dismissal of the court case in which it was issued, factual questions must be resolved before deciding whether it is enforceable as an independent contract. Etscheit v. Adams, 6 FSM R. 365, 391-92 (Pon. 1994).

Whether the lower court erred by issuing a preliminary injunction that did not require the return of funds obtained in violation of a TRO involves a trial court's exercise of discretion and is reviewed using an abuse of discretion standard. Onopwi v. Aizawa, 6 FSM R. 537, 539 (Chk. S. Ct. App. 1994).

Injunctive relief is an equitable remedy for which a court must use a balance-of-hardship test with a flexible interplay among four factors – the likelihood of irreparable harm to the plaintiff without an injunction; likelihood of harm to the defendant with an injunction; plaintiff's likelihood of success on the merits; and the public interest. Striking a fair balance between the two more important factors, the likelihood of harm to the competing sides, is largely a matter of the facts of each situation and is thus a matter peculiarly for the discretion of the trial judge. Onopwi v. Aizawa, 6 FSM R. 537, 539 (Chk. S. Ct. App. 1994).

A court must weigh three factors other than irreparable harm when considering injunctive relief. Those are: the relative harm to the plaintiff and to the defendant, the public interest, and the likelihood of success by the plaintiff in the underlying case. Where none of those factors weigh so strongly in the plaintiff's favor to overcome the lack of irreparable harm injunctive relief will not be granted. Wiliander v. Siales, 7 FSM R. 77, 80 (Chk. 1995).

Preliminary injunctions are granted or denied based on a court's consideration of four factors: a) the possibility of irreparable harm to the plaintiff, b) the balance of possible injuries to the parties, c) the movant's possibility of success on the merits, and d) the impact of any requested action upon the public interest. In arriving at a fair and equitable result a court exercises broad discretion and weighs carefully the interests of both sides. Wakuk v. Kosrae Island Credit Union, 7 FSM R. 195, 196-97 (Kos. S. Ct. Tr. 1995).

Where plaintiff's poverty is disputed thus not showing irreparable injury to him for failure to redeem his shares, where the balance of harms favors the credit union, where the plaintiff's likelihood of prevailing on the merits is likely but uncertain without knowing the contents of the credit union's by-laws, and where the public interest favors a sound credit union there will be no injunctive relief ordering the credit union to redeem plaintiff's shares. Wakuk v. Kosrae Island Credit Union, 7 FSM R. 195, 197-98 (Kos. S. Ct. Tr. 1995).

When a final judgment has been entered on the merits, a preliminary injunction comes to an end and is superseded by the final order. Damarlane v. United States, 8 FSM R. 45, 54 (App. 1997).

When there is an Appellate Rule 4(a)(1)(B) appeal from the grant of an injunction the trial court loses its power to vacate the order when the notices of appeal are filed. However, as with Rule 59(e) and 60(b) motions, the trial court may consider and deny the motion, or, if it were inclined to grant the motion, so indicate on the record so as to allow the movant an opportunity to request a remand from the appellate division so that it could proceed to grant the motion. Stinnett v. Weno, 8 FSM R. 142, 145 & n.2 (Chk. 1997).

Pursuant to FSM Appellate Rule 4(a)(1)(B) the FSM Supreme Court appellate division has jurisdiction to hear an appeal from an interlocutory order granting a permanent injunction. Stinnett v. Weno, 8 FSM R. 142, 145 n.2 (Chk. 1997).

Rule 62(c) giving the trial court the authority to "suspend, modify, restore, or grant an injunction during the pendency of the appeal" does not give any authority to vacate an order granting an injunction that has been appealed. It only allows a trial court in its discretion to issue such orders as are necessary to preserve the status quo while the appeal is pending. Jurisdiction has otherwise passed to the appellate court. Stinnett v. Weno, 8 FSM R. 142, 145 (Chk. 1997).

In considering whether to grant a motion for preliminary injunction, a court looks to four factors: 1) the possibility of irreparable injury to the plaintiff; 2) the balance of possible injuries between the parties; 3) the movant's likelihood of success on the merits; and 4) the impact of any requested action upon the public interest. Carlos Etscheit Soap Co. v. Epina, 8 FSM R. 155, 161 (Pon. 1997).

Injunctive relief will be granted when three of the four factors to be considered favor granting the preliminary injunction, particularly when the plaintiffs have demonstrated a substantial likelihood of success at trial. Carlos Etscheit Soap Co. v. Epina, 8 FSM R. 155, 164 (Pon. 1997).

In order for the appellate division to hear an appeal in the absence of a final judgment there must be some other source of jurisdiction, such as FSM Appellate Rule 4(a)(1)(B) which allows appeals from FSM Supreme Court trial division interlocutory orders granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions. Iriarte v. Etscheit, 8 FSM R. 231, 235 (App. 1998).

As a general rule in an interlocutory appeal of an injunction an appellate court concerns itself only with the order from which the appeal is taken, and reviews other issues only if they are inextricably bound up with the injunction. Thus an appellate court has jurisdiction to review a summary judgment on the merits when the appellants are subject to a permanent injunction which is inextricably bound up with the underlying summary judgment. Iriarte v. Etscheit, 8 FSM R. 231, 235 (App. 1998).

A non-party is entitled to permanent injunctive relief against the issuance of a writ of execution when its due process rights are violated because no adequate remedy at law exists when the non-party has no right to appeal, cannot move for the judge's disqualification, or a stay of the writ pending appeal, and a motion to intervene as a party was never acted upon, and because the injury is irreparable in that if the writ is enforced, there is no assurance that the financial loss could be recovered. Bank of Guam v. O'Sonis, 8 FSM R. 301, 305-06 (Chk. 1998).

The mere fact that a statute is alleged to be invalid will not entitle a party to have its enforcement enjoined. Further circumstances must appear which bring the case under some recognized head of equity jurisdiction and present some actual or threatened and irreparable injury to complainant's rights for which there is no adequate legal remedy. Esechu v. Mariano, 8 FSM R. 555, 556 (Chk. S. Ct. Tr. 1998).

When issues of fact must be decided in the proper forum before the validity of a municipal ordinance can be determined and other cases are pending that will decide those issues, plaintiffs have an adequate remedy at law. Therefore, when it does not clearly appear from specific facts alleged that immediate and

irreparable injury will result to plaintiffs before the defendants can be heard in opposition, a request for a temporary restraining order will be denied and the defendants must be served with a copy of the complaint forthwith so that a hearing on the plaintiffs' preliminary injunction request can be held. Esechu v. Mariano, 8 FSM R. 555, 556-57 (Chk. S. Ct. Tr. 1998).

A court may not grant a plaintiff's request for injunctive or other equitable relief when there has been no showing of irreparable harm or that there is no adequate remedy at law and when the court has taken judicial knowledge of the use to which the government has put the land and the public detriment that would result from an injunction prohibiting such use. Hartman v. Chuuk, 8 FSM R. 580, 581 (Chk. S. Ct. Tr. 1998).

Rule 65(b) of the Kosrae Rules of Civil Procedure contemplates that a verified complaint will be filed along with a motion for temporary restraining order and preliminary injunction. In the usual situation, the filing of a complaint along with the motion puts the party against whom injunctive relief is sought on notice as to the nature of the moving party's claim against him, but when injunctive relief is sought in a case with a long prior litigation history, it would not seem strictly necessary that a formal claim be filed in the action in order to put the other party on notice as to the nature of the claim. Palik v. Henry, 9 FSM R. 267, 269 (Kos. S. Ct. Tr. 1999).

All violations of the FSM Regulations under which the FSM Registrar of Corporations may appoint trustees in dissolution for winding up an association's affairs are enjoinable. In re Kolonia Consumers Coop. Ass'n, 9 FSM R. 297, 300 (Pon. 2000).

A court considers four criteria in determining whether to grant a preliminary injunction: 1) the likelihood of success on the merits of the party seeking injunctive relief; 2) the possibility of irreparable injury; 3) the balance of possible injuries or inconvenience to the parties which would result from granting or denying relief; and 4) any impact on the public interest. Preserving the status quo pending litigation on the merits is the purpose of a preliminary injunction. Palik v. Henry, 9 FSM R. 309, 312 (Kos. S. Ct. Tr. 2000).

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

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

Four factors are considered to determine if an injunction is proper: the relative harm to the defendant and to the plaintiff, the likelihood of success on the merits, the public interest and (often stated first) the threat of irreparable harm to the plaintiff. Udot Municipality v. FSM, 9 FSM R. 418, 420 (Chk. 2000).

A preliminary injunction will issue when it is difficult to say that the defendants are harmed by requiring them to withhold action on the unconstitutional application of a public law, when it appears likely that the plaintiff will succeed on the merits at trial, when the public has a great interest that the national government adhere to divisions of political power set forth in the Constitution, and when the plaintiff has shown irreparable harm. Udot Municipality v. FSM, 9 FSM R. 418, 420 (Chk. 2000).

A municipality and its election commissioner will be restrained from enforcing added qualifications for municipal office when a short time remains to file as a candidate and the harm is irreparable to those potential candidates who are denied nominating petitions because they do not meet the unlawful added qualifications, when there is no harm to the municipality or the election commissioner if they are required to

allow the candidacies, and when the public interest is served if eligible citizens are able to present themselves for election. Chipen v. Election Comm'r of Losap, 10 FSM R. 15, 18 (Chk. 2001).

When the court stated in its order granting a preliminary injunction that it would consider at the time of trial all of the admissible evidence which was presented at the preliminary injunction hearing, the court thereby made that evidence part of the record. It is thus also appropriate to consider this uncontroverted evidence to decide summary judgment motions. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 183 n.3 (Pon. 2001).

Until such time as the plaintiff demonstrates the allegedly defamatory nature of the publications at issue, either by way of trial or proper motion accompanied by admissible supporting evidence, a permanent injunction cannot lawfully issue against the publication of speech that the defendants contend is true and which involves matters of public concern. O'Sullivan v. Panuelo, 10 FSM R. 257, 262 (Pon. 2001).

Specific powers are given to each branch of the government and a public law that abridges the executive's power to execute and implement national laws may be enjoined. Udot Municipality v. FSM, 10 FSM R. 354, 357 (Chk. 2001).

National government sovereign immunity is waived for claims for injunction arising out of alleged improper administration of FSM statutory laws, or any regulations issued pursuant to such statutory laws. Udot Municipality v. FSM, 10 FSM R. 354, 359 (Chk. 2001).

Because Congress has the statutory authority to name allottees other than the President or his designee, the court will deny a request for an order prohibiting defendants from ever again being allottees of FSM money. Udot Municipality v. FSM, 10 FSM R. 354, 359 (Chk. 2001).

Courts rarely grant mandatory injunctions because courts are ill-equipped to involve themselves in day-to-day administration and because of the difficulty of enforcing such injunctions. Courts generally enter prohibitory injunctions – an injunction forbidding some act. Udot Municipality v. FSM, 10 FSM R. 354, 360 (Chk. 2001).

When a party has standing, a court may order an accounting of public funds because the Financial Management Act requires that public funds be properly accounted. Udot Municipality v. FSM, 10 FSM R. 354, 361 (Chk. 2001).

In reviewing a motion for preliminary injunction, the court weighs four factors: 1) the possibility of irreparable injury to the plaintiff; 2) the balance of possible injuries between the parties; 3) the movant's likelihood of success on the merits; and 4) the impact of any requested action upon the public interest. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 416 (Pon. 2001).

Even though a discovery order may compel a party to perform certain actions, such an order is not injunctive in nature because it does not grant or withhold substantive relief. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 470 (Pon. 2001).

Every temporary restraining order expires by its terms within such time after entry, not to exceed 14 days, as the court fixes, unless within the time fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. Alafanso v. Suda, 10 FSM R. 553, 556 (Chk. S. Ct. Tr. 2002).

When a TRO was issued June 29, 2001 and was apparently extended by stipulation only until a hearing to be held on July 23, 2001, even if the TRO had been extended for a like period of the original 14 days, it could not have been in effect after July 27, 2001. Alafanso v. Suda, 10 FSM R. 553, 556 (Chk. S. Ct. Tr. 2002).

A motion for a preliminary injunction may be denied without prejudice when it fails to contain the

movant's certification that a reasonable effort has been made to obtain the agreement or acquiescence of the opposing party and that no such agreement has been forthcoming. Ambros & Co. v. Board of Trustees, 10 FSM R. 639, 645 (Pon. 2001).

The object of a preliminary injunction is to preserve the status quo pending the litigation on the merits. Seventh Kosrae State Legislature v. Sigrah, 11 FSM R. 110, 113 (Kos. S. Ct. Tr. 2002).

The long established standard for issuance of a preliminary injunction is that the court must consider four criteria in determining whether to grant a preliminary injunction: 1) the likelihood of success on the merits of the party seeking injunctive relief; 2) the possibility of irreparable injury; 3) the balance of possible injuries or inconveniences to the parties which would result from granting or denying relief; and 4) impact on the public interest. Seventh Kosrae State Legislature v. Sigrah, 11 FSM R. 110, 113 (Kos. S. Ct. Tr. 2002).

The issuance of a preliminary injunction is largely a matter of the facts of each situation and thus a matter for the trial judge's discretion. Seventh Kosrae State Legislature v. Sigrah, 11 FSM R. 110, 113 (Kos. S. Ct. Tr. 2002).

Injunctive relief will be granted when three of the four, or four of the four, factors to be considered favor the granting of the preliminary injunction. Seventh Kosrae State Legislature v. Sigrah, 11 FSM R. 110, 113, 115 (Kos. S. Ct. Tr. 2002).

In determining whether to issue a preliminary injunction, a reviewing court considers: 1) the possibility of irreparable injury to the moving party; 2) the balance of possible injuries between the parties; 3) the movant's likelihood of success on the merits; and 4) any impact on the public interest. Ambros & Co. v. Board of Trustees, 11 FSM R. 262a, 262g-62h (Pon. 2002).

When, upon weighing all of the factors, a court finds that it would be appropriate to issue an injunction, but during testimony, a party suggested what might be an acceptable solution, the court, before issuing an injunction, may give the parties an opportunity to work together to find a solution acceptable to both. Ambros & Co. v. Board of Trustees, 11 FSM R. 262a, 262i (Pon. 2002).

In reviewing a motion for preliminary injunction, the court weighs four factors: 1) the possibility of irreparable injury to the plaintiff; 2) the balance of possible injuries between the parties; 3) the movant's likelihood of success on the merits; and 4) the impact of any requested action upon the public interest. Yang v. Western Sales Trading Co., 11 FSM R. 607, 613 (Pon. 2003).

A court may issue a preliminary injunction when certain portions of commercial speech are misleading to consumers and merchants. Yang v. Western Sales Trading Co., 11 FSM R. 607, 615 (Pon. 2003).

When the trial court ordered an injunction to prevent further dissipation of existing appropriated funds because it found that 1) the broad language in the appropriations contained little guidance as to what specific projects were to be funded; 2) there were no fair and transparent procedures to apply for such funds; 3) an unlawful implementation procedure was being used; and 4) that there was a lack of oversight and compliance with the Financial Management Act and related regulations, the trial court acted entirely within its discretion. There was no abuse of discretion in issuing the injunction enjoining the allottees from obligating funds and the FSM from disbursing funds until such time as new procedures were put in place. FSM v. Udot Municipality, 12 FSM R. 29, 52-53 (App. 2003).

The elements for a court to consider in determining a request for injunctive relief include: 1) the possibility of irreparable injury to the moving party; 2) the balance of possible injuries between the parties; 3) the movant's likelihood of success on the merits; and 4) any impact on the public interest. Ambros & Co. v. Board of Trustees, 12 FSM R. 124, 127 (Pon. 2003).

A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if 1) it clearly appears from specific facts shown by affidavit or by the verified complaint

that immediate injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and 2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. Ambros & Co. v. Board of Trustees, 12 FSM R. 124, 127 (Pon. 2003).

Another requirement for a temporary restraining order's issuance is that the applicant's attorney certify to the court the efforts, if any, which have been made to give notice or the reasons supporting the claim that notice should not be required. Thus, when, in reviewing the applicant's attorney's affidavit, the court does not see that any efforts were made to notify the other parties to the lawsuit about the filing of the restraining order motion or any reasons why notice should not be required, the temporary restraining order motion will be denied since the Rule 65(b) requirements were not met. Ambros & Co. v. Board of Trustees, 12 FSM R. 124, 127-28 (Pon. 2003).

The Kosrae Director of Education will be temporarily restrained from administering an FSM National Standard Test for Teachers for profiling purposes because there is no legal requirement for a teacher to take the test (although it is desirable to get as many teachers as possible to take it), when the Kosrae teachers will be irreparably harmed because of the teachers' mistaken belief and understanding that the test's completion is now required by law or regulation that successful completion of the test will result in that teacher's certification and because of the potential discipline to, and potential loss of salary by, any teacher who fails to take the exam. Mackwelung v. Robert, 12 FSM R. 161, 162-63 (Kos. S. Ct. Tr. 2003).

When a person has entered the plaintiff's parcel on at least two occasions and harvested crops in violation of the court's decision that the plaintiff is the fee simple owner of the parcel, an injunction will issue against that person and the defendants which prohibits further trespass and taking of crops from the parcel, and the defendants will be given a reasonable time to remove a local hut that they have constructed on parcel. Edwin v. Heirs of Mongkeya, 12 FSM R. 220, 222 (Kos. S. Ct. Tr. 2003).

Failure to comply with an order in aid of judgment and an injunction can be grounds for a contempt proceeding. Edwin v. Heirs of Mongkeya, 12 FSM R. 220, 222 (Kos. S. Ct. Tr. 2003).

In exercising its broad discretion in considering a motion for a preliminary injunction, the court looks to four factors: 1) the possibility of the irreparable injury to the movant; 2) the balance of the possible injury as between the parties; 3) the movant's possibility of ultimate success on the merits; and 4) the impact upon the public interest. In re FSM Telecomm. Corp. Cellular Tower, 12 FSM R. 243, 246 (Chk. 2003).

A preliminary injunction will issue when all of the four factors to be considered in a motion for a preliminary injunction favor its issuance, and the plaintiffs and any other person or entity acting on their behalf, will be prohibited from interfering in or attempting to interfere with the operation of the Sapuk cellular telecommunications tower constructed on a disputed lot. In re FSM Telecomm. Corp. Cellular Tower, 12 FSM R. 243, 247 (Chk. 2003).

A plaintiff, who failed to prove monetary damages, is still entitled to a permanent injunction, against the Governor, the Director of Personnel, the Director of Budget, and any designee acting on their behalf or in their stead, permanently enjoining them from interfering in any way or manner with plaintiff's lawful exercise of all of the duties, obligations and responsibilities of his office. Tomy v. Walter, 12 FSM R. 266, 273 (Chk. S. Ct. Tr. 2003).

The Kosrae State Court must consider four criteria in determining whether to grant injunctive relief: 1) the likelihood of success on the merits of the party seeking injunctive relief; 2) the possibility of irreparable injury to the plaintiff; 3) the balance of possible injuries or inconvenience to the parties which would result from granting or denying injunctive relief; and 4) the impact upon the public interest. Sigrah v. Kosrae, 12 FSM R. 513, 518 (Kos. S. Ct. Tr. 2004).

Preserving the status quo pending litigation on the merits is the purpose of injunctive relief. In arriving

at a fair and equitable result this court carefully weighs the interests of both sides and exercises broad discretion. Sigrah v. Kosrae, 12 FSM R. 513, 518 (Kos. S. Ct. Tr. 2004).

Rule 65(b) requires that the plaintiff show by affidavit or verified complaint that immediate and irreparable injury, loss or damage will result. When the plaintiffs' complaint is signed by both plaintiffs, but is not notarized, the complaint is not verified and does not meet Rule 65(b)'s requirements; when the plaintiffs' affidavit does not allege the details of immediate and irreparable injury, loss, or damage; and when the plaintiffs' application is defective as it does not contain any memorandum of points and authorities, the plaintiffs have not provided legal authority for granting of injunctive relief. Benjamin v. Youngstrom, 13 FSM R. 72, 74 (Kos. S. Ct. Tr. 2004).

A court must consider four criteria in determining whether to grant a preliminary injunction: 1) likelihood of success on the merits of the party seeking injunctive relief; 2) the possibility of irreparable injury; 3) the balance of possible injuries or inconvenience to the parties which would result from granting or denying relief; and 4) any impact upon the public interest. Injunctive relief will be granted when three of the four, or four of the four factors favor granting of the preliminary injunction. Benjamin v. Youngstrom, 13 FSM R. 72, 75 (Kos. S. Ct. Tr. 2004).

When it would be inconvenient to plaintiffs to live without electricity or to be required to move from the parcel, as demanded by the defendant and when it would also be inconvenient to defendant, who holds prima facie title to the parcel, to be prohibited from acting as the true owner of the property, this factor is weighted equally between the plaintiffs and the defendant. Benjamin v. Youngstrom, 13 FSM R. 72, 76 (Kos. S. Ct. Tr. 2004).

When the plaintiff did not name the real party in interest as a party defendant in a civil suit in which he sought a temporary restraining order, the court may include the real party in interest's counsel in the temporary restraining order motion hearing on the supposition that no injunctive relief should, or could, be granted that would adversely affect the real party in interest without prior notice to him. Asugar v. Edward, 13 FSM R. 209, 211 n.1 (Chk. 2005).

When it appears that the motion for a temporary restraining order and the pleadings were not served on one or both defendants so as to give them adequate notice of the hearing and the issues to be heard and when no showing having been made that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party can be heard in opposition and no written certification having been made of the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required, the court will set a hearing on the temporary restraining order motion and issue a notice to that effect. Asugar v. Edward, 13 FSM R. 209, 212 (Chk. 2005).

When the three factors other than irreparable injury that the court must weigh before issuing a restraining order – the relative harm to the plaintiff and to the defendant, the public interest, and the likelihood of success by the plaintiff in the underlying case – also do not favor the restraining order's issuance because none of those factors weigh so strongly in the plaintiff's favor so as to overcome the lack of irreparable harm, no injunctive relief can be granted. Asugar v. Edward, 13 FSM R. 209, 213 (Chk. 2005).

The election law states the time at which the court has the right to entertain an appeal is from the National Election Director's final action. No statutory or constitutional provision grants the court the power to interfere with the election machinery and issue injunctive relief at a point in the electoral process prior to the election officials' completion of their responsibilities. Asugar v. Edward, 13 FSM R. 209, 213 (Chk. 2005).

The long-established standard for the issuance of a preliminary injunction is that the court must consider four criteria in determining whether to grant a preliminary injunction: 1) the likelihood of success on the merits of the party seeking injunctive relief; 2) the possibility of irreparable injury; 3) the balance of possible injuries or inconveniences to the parties from granting or denying relief; and 4) the impact on the

public interest. Akinaga v. Heirs of Mike, 13 FSM R. 296, 298 (Kos. S. Ct. Tr. 2005).

When all factors except the balance of the injuries weigh in the plaintiff's favor, a preliminary injunction will issue enjoining the defendants from any action to plant crops, construct improvements, complete or conduct burials on the land, but permitting them to continue harvesting crops already planted there and permitting the plaintiff to conduct development on all three subject parcels, so long as her development activities do not interfere with the defendants' existing improvements and existing crops. Akinaga v. Heirs of Mike, 13 FSM R. 296, 300 (Kos. S. Ct. Tr. 2005).

The long-established standard for issuance of a preliminary injunction is that the court must consider four criteria in determining whether to grant one: 1) the likelihood of success on the merits of the party seeking injunctive relief; 2) The possibility of irreparable injury; 3) the balance of possible injuries or inconveniences to the parties from granting or denying relief; and 4) the impact on the public interest. Norita v. Tilfas, 13 FSM R. 321, 323 (Kos. S. Ct. Tr. 2005).

When exercising its broad discretion in considering whether to grant a preliminary injunction, the court looks to four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the moving party, 3) the balance of possible injuries or inconvenience to the parties which would flow from granting or denying the relief, and 4) any impact on the public interest. The object of a preliminary injunction is to preserve the status quo pending the litigation on the merits. Ruben v. Petewon, 13 FSM R. 383, 386 (Chk. 2005).

Civil Rule 71 only permits enforcement of orders and judgments against non-parties "when obedience to an order may be lawfully enforced against a person who is not a party." The key word here is "lawfully." Ordinarily a judgment may be enforced only against a party. However, an injunction may be enforced upon parties to the action, their officers, agents, servants, employees and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise. Ruben v. Petewon, 13 FSM R. 383, 389 (Chk. 2005).

In the case of an injunction, non-parties who are persons who are the defendant's "officers, agents, servants, employees and attorneys," or "persons in active concert or participation" with the defendant and successors to a party, are the only non-parties against whom judgments and orders may be lawfully enforced, that is, enforced without violating the non-party's constitutional right to due process and Rule 71. Ruben v. Petewon, 13 FSM R. 383, 389 (Chk. 2005).

The general rule is that orders cannot be enforced against non-parties without violating the non-parties' constitutional rights to due process, and if an order can lawfully be enforced against someone it is because either that person is a party or it is an injunction being enforced and that person is a party's "officers, agents, servants, employees and attorneys," or a person "in active concert or participation" with a party. Ruben v. Petewon, 13 FSM R. 383, 390 (Chk. 2005).

When the only decision a judge made was whether a preliminary injunction should issue to maintain the status quo until the Chuuk state court could resolve the matter, although in deciding that, the judge had to make some determination of the likelihood of success on the merits of the parties seeking the preliminary injunction, the merits were not decided nor were any determinations of the parties' rights made. In the normal course of events, such a ruling never precludes a judge from making a later ruling on the merits, that is, whether a permanent injunction and final judgment should issue. Ruben v. Petewon, 14 FSM R. 141, 145 (Chk. S. Ct. App. 2006).

In ruling upon a motion for a temporary restraining order, the court must consider and weigh four factors: 1) the possibility of irreparable harm to the moving party; 2) the balance of injuries between the parties; 3) the likelihood of the movant's success on the merits; and 4) any impact on the public interest. GE Seaco Servs., Ltd. v. Federated Shipping Co., 14 FSM R. 159, 162 (Pon. 2006).

When a plaintiff's complaint appears serious and non-frivolous, and when because there is no contract between the plaintiff and the defendant, the plaintiff has a very good chance of succeeding on the merits. GE Seaco Servs., Ltd. v. Federated Shipping Co., 14 FSM R. 159, 163 (Pon. 2006).

A *res judicata* argument cannot be made about a preliminary injunction because a preliminary injunction cannot have preclusive effect since it is not a decision on the merits. Ruben v. Petewon, 14 FSM R. 177, 183 (Chk. S. Ct. App. 2006).

In exercising its broad discretion in considering whether to grant a preliminary injunction, a court looks to four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the moving party, 3) the balance of possible injuries or inconvenience to the parties which would flow from granting or denying the relief, and 4) any impact on the public interest. A preliminary injunction's object is to preserve the status quo pending litigation on the merits. Carlos Etscheit Soap Co. v. McVey, 14 FSM R. 458, 461 (Pon. 2006).

When the movant's likelihood of success on the merits of its due process claim is almost certain; when the other three factors do not outweigh the likelihood-of-success-on-the-merits factor; and when the movant faces irreparable injury if the defendants develop the property for their own uses, a preliminary injunction will be granted to maintain the status quo. Carlos Etscheit Soap Co. v. McVey, 14 FSM R. 458, 462 (Pon. 2006).

When there is little likelihood of success on the merits; when the claimed economic loss that the movant's business sales volume will not be able to grow as quickly or as large as it otherwise would, is speculative and does not represent irreparable harm; when the balance of interests does not weigh in the movant's favor; when the public interest does not favor the injunction; and when it would not preserve the status quo pending the litigation, the movant will not be granted preliminary injunctive relief. Carlos Etscheit Soap Co. v. McVey, 14 FSM R. 458, 462-63 (Pon. 2006).

In exercising its broad discretion in considering a motion for a temporary restraining order, the court looks to four factors: 1) the possibility of the irreparable injury to the movant; 2) the balance of the possible injury as between the parties; 3) the movant's possibility of ultimate success on the merits; and 4) the impact upon the public interest. Doone v. National Election Comm'r, 14 FSM R. 489, 492 (Chk. 2006).

No temporary restraining order will issue ordering the National Election Director to accept the late filing of a candidate's nomination papers even though the candidate was misadvised as to the filing deadline. Doone v. National Election Comm'r, 14 FSM R. 489, 493 (Chk. 2006).

When the plaintiffs, having filed multiple motions – including the motion to disqualify, which, if granted, would prolong resolution of this matter – have effectively conceded the absence of an emergency warranting a temporary restraining order, their motion for a temporary restraining order will be denied as moot. Ehsa v. Pohnpei Port Auth., 14 FSM R. 505, 509 (Pon. 2006).

An injunction barring the plaintiffs from executing on their judgment against property the state owns in Hawaii will be denied when the state has not furnished any authority that what it calls a preliminary injunction can be issued in this circumstance – after a (consent) judgment has been entered and no appeal is pending (or contemplated); when no foreclosure proceeding has been filed in a Hawaii court; when court has insufficient information before it to conclude that the state is likely to succeed on a sovereign immunity defense to foreclosure, which would be determined by Hawaii and U.S. federal law; when, since no foreclosure proceeding has been filed, no injury to the state is yet possible; when, even if the plaintiffs sought foreclosure, the injury alleged is not to the state itself but to non-parties – to patients who would be inconvenienced by having to find other living arrangements; when the balance of possible injuries favors neither side; and when only the public interest factor might favor the state. Thus, even if the court could issue an injunction in this circumstance, the court, balancing the four factors, will conclude they would not favor injunctive relief. Tipingeni v. Chuuk, 14 FSM R. 539, 543-44 (Chk. 2007).

The FSM Supreme Court cannot enjoin a Hawaii court. Tipingeni v. Chuuk, 14 FSM R. 539, 544 (Chk. 2007).

In considering motions for a temporary restraining order, courts weigh the possibility of irreparable injury to the plaintiff, the balance of possible injuries between the parties, the movant's possibility of success on the merits, and the impact of any requested action upon the public interest. Billimon v. Marar, 15 FSM R. 87, 88 (Chk. 2007).

A trial court judge is required by Rule 52(a) to make findings of fact and conclusions of law when granting or refusing a preliminary injunction. Mathias v. Engichy, 15 FSM R. 90, 95 n.4 (Chk. S. Ct. App. 2007).

An order or judgment that may be lawfully enforced against someone who is not a party is an injunction may be enforced upon parties to the action, their officers, agents, servants, employees and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise and against a non-party opponent for costs incurred by his misbehavior. Ruben v. Hartman, 15 FSM R. 100, 112 (Chk. S. Ct. App. 2007).

A court must weigh three factors other than irreparable harm when considering injunctive relief. Those are: the relative harm to the plaintiff and to the defendant, the public interest, and the plaintiff's likelihood of success in the underlying case. When none of those factors weigh so strongly in the plaintiff's favor to overcome the lack of irreparable harm, injunctive relief will not be granted. Bisaram v. Suta, 15 FSM R. 250, 254 (Chk. S. Ct. Tr. 2007).

In an election dispute, the person whose right to the office is contested is the real party in interest. When a plaintiff is contesting the right of a candidate to participate in an election but fails to name the candidate as a party in the complaint, the court will deny injunctive relief because the real parties in interest are not parties to the action, since without naming the candidates as parties to this action, and giving them the benefit of due process of law, the court is unwilling and unable to adjudicate their rights in the proceeding. Bisaram v. Suta, 15 FSM R. 250, 255 (Chk. S. Ct. Tr. 2007).

The issuance of an order for injunctive relief is largely a matter of the facts of each situation and thus a matter for the trial judge's discretion. The object of seeking injunctive relief, including a temporary restraining order, is to preserve the *status quo* pending the litigation on the merits. Chuuk Public Utilities Corp. v. Billimon, 15 FSM R. 290, 292 (Chk. S. Ct. Tr. 2007).

When a final judgment has been entered, temporary injunctive relief comes to an end and is superseded by the final order. Chuuk Public Utilities Corp. v. Billimon, 15 FSM R. 290, 292-93 (Chk. S. Ct. Tr. 2007).

A plaintiff's motion for a temporary restraining order filed after judgment had already been entered against the defendant and after the plaintiff had already requested an order in aid of judgment will be denied since the plaintiff has an available remedy in its motion for an order in aid of judgment and since it seeks to restrain funds in the hands of a third party without a specific determination as to the defendant's right to any part of those funds. Chuuk Public Utilities Corp. v. Billimon, 15 FSM R. 290, 293 (Chk. S. Ct. Tr. 2007).

In exercising its broad discretion in considering a motion for a temporary restraining order, the court looks to four factors: 1) the possibility of immediate and irreparable injury if the TRO is not issued; 2) the balance of potential injury to the parties; 3) the likelihood of success on the merits by the party seeking the TRO; and 4) the impact of the requested action on the public interest. Pohnpei Port Auth. v. Pohnpei, 15 FSM R. 541, 544 (Pon. 2008).

When considering whether to afford an applicant the remedy of a temporary restraining order, the court considers four factors: 1) the possibility of immediate and irreparable injury in the event the TRO is not issued; 2) the balance of potential injury to the parties; 3) the likelihood of success on the merits; and 4) the impact of the requested action on the public. Pohnpei Port Auth. v. Pohnpei, 15 FSM R. 563, 565 (Pon. 2008).

The familiar factors that a court will consider in deciding whether to issue a temporary restraining order are: 1) the requesting party's likelihood of success on the merits; 2) the possibility of irreparable injury to the moving party; 3) the balance of possible injury or inconvenience to the parties that would result from injunctive relief; and 4) any impact on the public interest. Pohnpei Port Auth. v. Ehsa, 16 FSM R. 11, 13 (Pon. 2008).

In exercising its broad discretion in considering a motion for a temporary restraining order, the court looks to four factors: 1) the possibility of the irreparable injury to the movant; 2) the balance of the possible injury as between the parties; 3) the movant's possibility of ultimate success on the merits; and 4) the impact upon the public interest. The threat of irreparable harm is a prerequisite to injunctive relief. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 358 (Chk. 2009).

Injunctive relief is a remedy available in proper cases. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 486 (Pon. 2009).

Determination of whether a party is entitled to injunctive relief would require an evidentiary hearing concerning the likelihood of success on the merits and other factors to be considered before granting an injunction. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 486 (Pon. 2009).

In exercising its broad discretion in considering whether to grant a preliminary injunction, the court will look to four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience to the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. A preliminary injunction's object is to preserve the status quo pending litigation on the merits. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 159-60 (Chk. 2010).

To support a preliminary injunction, a movant must show that irreparable injury will occur if the relief is not granted to maintain the status quo until a final adjudication on the merits and that there is a reasonable probability of success on the merits. Setik v. Pacific Int'l, Inc., 17 FSM R. 277, 279 (Chk. 2010).

When the non-movant has been using and quarrying the land since December 2009 and the plaintiff did not seek injunctive relief until September 2010 although he filed this case on March 2, 2010, enjoining the non-movant's continued use of the land would not preserve the status quo because the status quo was the non-movant's continued use of the land. Setik v. Pacific Int'l, Inc., 17 FSM R. 277, 279 (Chk. 2010).

In granting or refusing interlocutory injunctions the court must set forth the findings of fact and conclusions of law which constitute the grounds of its action. Setik v. Pacific Int'l, Inc., 17 FSM R. 277, 279 (Chk. 2010).

In exercising its broad discretion whether to grant a preliminary injunction, the court will weigh and balance four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience to the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. A preliminary injunction's object is to preserve the status quo pending litigation on the merits. Marsolo v. Esa, 17 FSM R. 377, 381 (Chk. 2011).

The court will not enjoin the national government or its officers from releasing municipal CIP funds to the various Chuuk municipalities when no Chuuk municipality, other than Tolensom, is a party to the action and the plaintiffs do not claim that the national government still holds any Tolensom CIP funds. Marsolo v.

Esa, 17 FSM R. 377, 381 (Chk. 2011).

When the other three factors weigh strongly in favor of a preliminary injunction freezing the Tolensom CIP funds, the plaintiffs' likelihood of success on the merits does not need to be great in order for an injunction to issue because a court may grant a preliminary injunction even if the moving party is not more likely than not to prevail, as long as the movant's position appears sufficiently sound to raise serious, non-frivolous issues. Even if the parties moving for preliminary injunction relief do not appear more likely than not to succeed on the merits, which would be a factor weighing against granting such relief, it is only one of four factors and is not necessarily determinative when the other factors point toward such relief, and thus the court does not need to determine the plaintiffs' likelihood of success on the merits of the action. It only needs to determine that they have some likelihood of success since if they had absolutely no likelihood of success, no injunction could issue. Marsolo v. Esa, 17 FSM R. 377, 381-82 (Chk. 2011).

It is the nature of the political process that elections typically yield a single winner and one or more losers. Absent a showing of foul play or procedural irregularity, a defeated election contestant has no claim before any court of law. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 491 (Chk. S. Ct. Tr. 2011).

When, at least procedurally, the law governing appeals of administrative decisions on contested elections has been properly complied with, a plaintiff's petition requesting an injunction against the revote ordered by the Election Commission is wholly without merit and can only serve to frustrate the legal process underway in appellate division. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 491 (Chk. S. Ct. Tr. 2011).

When a plaintiff fails to show that any of the factors considered weigh strongly enough in his favor to overcome the lack of irreparable harm, his motion for a temporary restraining order will be denied. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 491 (Chk. S. Ct. Tr. 2011).

In exercising its broad discretion in considering whether to grant a preliminary injunction, the court will consider four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience to the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 593 (Pon. 2011).

Since the court does not have the jurisdiction to enjoin the President in the performance of his official duties such as enforcing a statute, a preliminary injunction granted earlier by the court will be dissolved only as directed against the President and remain in effect against the other public officials. Marsolo v. Esa, 18 FSM R. 59, 65 (Chk. 2011).

A motion claiming newly-discovered evidence but that actually alleges the new fact of the addition of the latrine and that seeks relief from an eighteen-month old order that denied injunctive relief is properly a second or renewed motion for injunctive relief, and the court considers the motion as such. Berman v. Pohnpei, 18 FSM R. 67, 73 (Pon. 2011).

The court will deny a second or renewed motion for injunctive relief when the addition of a latrine does not change the plaintiffs' likelihood of success on the merits because the court order they rely on was dissolved in 1995 and that dissolution was affirmed on appeal so that their likelihood of success remains at nil; when the addition of the latrine tends to shift the balance of possible injuries further away from the plaintiffs because removing the latrine would represent an additional onus on the defendant while its presence provides a device by which the effluvia of which the plaintiffs complain can be sequestered; when the addition of the latrine tends to help the public interest; and when the addition of the latrine does not increase the injury to the movants although this factor remains in their favor of Berman because the addition of the latrine changes little in the court's weighing of the factors, and what little it changes tends to favor Pohnpei. Berman v. Pohnpei, 18 FSM R. 67, 74 (Pon. 2011).

The power to grant injunctive relief is discretionary, and in considering a motion for a temporary restraining order, a court looks to: 1) the likelihood of success on the merits; 2) the possibility of irreparable injury to the moving party; 3) the balance of possible injuries; and 4) the public interest. Berman v. FSM Nat'l Police, 18 FSM R. 103, 105 (Pon. 2011).

When the complained-about inaction on the part of the FSM Government has not changed since 1991 and when the applicable statute of limitations for such a claim is six years, the cause of action is barred and consequently, the court cannot grant injunctive relief. Berman v. FSM Nat'l Police, 18 FSM R. 103, 105-06 (Pon. 2011).

In reviewing a motion for a preliminary injunction, the court weighs four factors: 1) the possibility of irreparable harm to the moving party; 2) the balance of injuries between the parties; 3) likelihood of success on the merits; and 4) the public interest. FSM Dev. Bank v. Abello, 18 FSM R. 192, 196 (Pon. 2012).

When each of the factors for injunctive relief weighs in the bank's favor, the court will grant the bank's motion for injunction and order the defendant to remove all statements alleging fraud on the bank's part, whether on the Internet or in hard copy, and refrain from making such statements until the bank's auction has been completed. FSM Dev. Bank v. Abello, 18 FSM R. 192, 198 (Pon. 2012).

When the court has enjoined the defendant from the activity that is the source of the bank's grievance against him, the court will hold the show cause motion in abeyance until such time as the bank either requests a show cause hearing or withdraws the motion. FSM Dev. Bank v. Abello, 18 FSM R. 192, 198 (Pon. 2012).

Judicial immunity does not prevent a judge from being subject to prospective injunctive relief when the judge has acted, not in complete absence of jurisdiction, but in excess of jurisdiction. Judicial immunity does not apply against the imposition of prospective injunctive relief because no common law precedent ever granted such immunity. Jacob v. Johnny, 18 FSM R. 226, 233 (Pon. 2012).

Preliminary injunctions do not have a preclusive effect since they are not decisions on the merits. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 374 (App. 2012).

When a May 1991 interlocutory order and a March 1991 preliminary injunction were neither included in the 1995 final judgment nor made into a separate final judgment, they were overruled, superseded, or made irrelevant by the 1995 amended judgment dissolving the injunction even though the May 17, 1991 order was not explicitly mentioned in the judgment. They ceased to be valid orders. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 375 (App. 2012).

Under Appellate Rule 8(a), the appellate court may grant an injunction during the pendency of an appeal. An injunction during the pendency of an appeal is a preliminary injunction. Berman v. Pohnpei, 18 FSM R. 418, 420 (App. 2012).

When affidavits are not attached to a motion for injunction during pendency of appeal but reference is made to affidavits filed earlier in the trial division that might be found in various places in the trial court record and when the other parts of the record that the movants deem relevant to their motion are also not attached to the motion, the movants have failed to comply with Appellate Rule 8(a)'s technical requirements. Berman v. Pohnpei, 18 FSM R. 418, 421 (App. 2012).

When the appellate court has not previously construed Appellate Rule 8(a)'s provisions about the issuance of injunctions, it may consult U.S. authority for guidance because FSM Rule 8(a) is drawn from a similar U.S. rule. Berman v. Pohnpei, 18 FSM R. 418, 421 n.2 (App. 2012).

Litigants should not lightly seek injunctions pending appeal. Berman v. Pohnpei, 18 FSM R. 418, 421

(App. 2012).

An appellate court, in ruling on a request for an injunction pending appeal, must engage in the same inquiry as when it reviews the grant or denial of a preliminary injunction, and in considering whether to grant a preliminary injunction, courts consider four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience to the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. Generally, the purpose of an injunction pending appeal is to maintain the status quo while the appeal is heard and decided. Berman v. Pohnpei, 18 FSM R. 418, 421 (App. 2012).

In granting or refusing interlocutory injunctions, the court must set forth the findings of fact and conclusions of law which constitute the grounds of its action. Perman v. Ehsa, 18 FSM R. 432, 435 (Pon. 2012).

The court, in exercising its discretion in considering whether to grant a preliminary injunction, must weigh four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience between the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. Perman v. Ehsa, 18 FSM R. 432, 438 (Pon. 2012).

When all of the four factors weigh in the plaintiffs' favor, a preliminary injunction will issue. Perman v. Ehsa, 18 FSM R. 432, 440 (Pon. 2012).

When the plaintiff does not have standing to pursue an action for a preliminary injunction, the court lacks subject matter jurisdiction over the action and the case will be dismissed. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 504 (Chk. 2013).

In exercising its broad discretion in considering whether to grant a preliminary injunction, a court considers four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience to the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 505 (Chk. 2013).

To support a preliminary injunction, a movant must show that there is a reasonable probability of success on the merits and that irreparable injury will occur unless injunctive relief is granted to maintain the status quo until a final adjudication on the merits. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 505-06 (Chk. 2013).

A preliminary injunction's object is to preserve the status quo pending litigation on the merits. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 506 (Chk. 2013).

When the plaintiff's application for a preliminary injunction is denied, the issue of whether he is entitled to a permanent injunction will await final adjudication on the merits. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 506 (Chk. 2013).

In granting or refusing interlocutory injunctions the court must set forth the findings of fact and conclusions of law which constitute the grounds of its action. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 566 (Pon. 2013).

In exercising its broad discretion in considering whether to grant a preliminary injunction, a court considers four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience to the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 567 (Pon. 2013).

To support a preliminary injunction, a movant must show that there is a reasonable probability of success on the merits and that irreparable injury will occur unless injunctive relief is granted to maintain the status quo until a final adjudication on the merits. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 567 (Pon. 2013).

When the court has weighed the four factors and found them to favor the issuance of a preliminary injunction to maintain the status quo, it may announce from the bench that the preliminary injunction will issue. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 568 (Pon. 2013).

A court may issue a preliminary injunction where the following four factors are met and the exigencies of the situation demand such relief: 1) a substantial likelihood of success on the merits of the case; 2) a substantial threat of irreparable injury if the preliminary injunction is denied; 3) the benefit to the plaintiff in obtaining the injunction outweighs the harm the defendants will experience; and 4) granting the preliminary injunction will not disserve the public interest. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 584, 587 (Chk. S. Ct. Tr. 2013).

The moving party bears the burden of proof in a motion for injunctive relief. Injunctive relief is preventative in nature and it is not necessary to wait for the actual occurrence of the injury. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 584, 587 (Chk. S. Ct. Tr. 2013).

A court may issue a preliminary injunction where the following four factors are met and the exigencies of the situation demand such relief: 1) a substantial likelihood of success on the merits of the case; 2) a substantial threat of irreparable injury if the preliminary injunction is denied; 3) the benefit to the plaintiff in obtaining the injunction outweighs the harm the defendants will experience; and 4) granting the preliminary injunction will not disserve the public interest. The moving party bears the burden of proof in a motion for injunctive relief. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 649, 651 (Chk. S. Ct. Tr. 2013).

Injunctive relief is preventative in nature and it is not necessary to wait for the actual occurrence of the injury. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 649, 651 (Chk. S. Ct. Tr. 2013).

When a final judgment has been entered on the merits, a preliminary injunction comes to an end and is superseded by the final order. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 649, 651 (Chk. S. Ct. Tr. 2013).

In the absence of a statute requiring dismissal and in the interests of judicial economy and of lessening the parties' financial burden, the best way to specifically enforce the arbitration clause's intent is not to dismiss the case in the hope that a foreign arbitration will proceed smoothly and not require further judicial enforcement. The best way to specifically enforce the arbitration clause is to stay the judicial proceedings and maintain the status quo while the parties go through arbitration. A preliminary injunction will therefore remain in effect and the case will remain open while the arbitration proceeds. Once an arbitration decision is rendered, the court can then enforce that decision as a judgment or final order of this court and take such further steps as may be necessary and appropriate to conclude this litigation. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 658 (Pon. 2013).

The appellate court reviews the issue of whether a trial court erred in issuing, modifying, or denying an injunction by using the abuse of discretion standard. Damarlane v. Damarlane, 19 FSM R. 97, 105 (App. 2013).

An evidentiary hearing must be conducted before the abatement of a nuisance or injunction can issue (or be denied). This evidentiary hearing may be consolidated with the trial on the merits if the trial is advanced, but one must be held on the application for an injunction. Damarlane v. Damarlane, 19 FSM R. 97, 110 (App. 2013).

A trial court decision issuing, modifying, or denying an injunction is reviewed using an abuse of

discretion standard. A trial court's abuse of discretion occurs when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. Berman v. Pohnpei, 19 FSM R. 111, 114-15 (App. 2013).

The FSM Environmental Protection Act, 25 F.S.M.C. 501 *et seq.*, and its enforcement provisions, 25 F.S.M.C. 703-707, do not, as a matter of law, provide for a private cause of action or a citizen's claim for money damages but may support a claim for injunctive relief. Berman v. Pohnpei, 19 FSM R. 111, 116 (App. 2013).

The appellate rules authorize interlocutory appeals from interlocutory orders of the FSM Supreme Court trial division granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions. Berman v. FSM Nat'l Police, 19 FSM R. 118, 123 (App. 2013).

A party to an order refusing an injunction has the option of either pursuing an interlocutory appeal or, if still aggrieved after the final judgment, appealing the entire matter then. The opportunity to take an interlocutory appeal under Appellate Rule 4(a)(1)(B) is not an obligation to do so; if the parties are content to preserve the status quo while the trial court decides the case, they retain their right to comprehensive review at the end. Berman v. FSM Nat'l Police, 19 FSM R. 118, 123 (App. 2013).

Appellants can raise the matter of the orders denying their injunction requests when they timely appealed from the final judgment into which the interlocutory orders denying their injunction requests had merged. Berman v. FSM Nat'l Police, 19 FSM R. 118, 124 (App. 2013).

Neither the appellate nor the trial court could order the halt of all bar activity on a berm or the removal of a toilet or sleeping huts put there by private persons who are not parties and who are not national government employees but are members of the general public over whom the national government has no control and no right to exercise control. An injunction against the FSM would not affect the bar's operation or its patrons or their behavior. The trial court thus did not abuse its discretion when it denied issuing an injunction barring the public from using the berm and its allegedly illegal bar and party business. Berman v. FSM Nat'l Police, 19 FSM R. 118, 124 (App. 2013).

When the plaintiffs did not produce any evidence that the FSM national police intended to or might choose to have another party there, the trial court did not abuse its discretion by refusing to issue an injunction barring the police from holding parties on the berm because the FSM police's actions were non-continuing – there was no future action to enjoin. Berman v. FSM Nat'l Police, 19 FSM R. 118, 124 (App. 2013).

When no injunction could compel the issuance of a earthmoving permit since there was no application for one; when no injunction was needed to bar the FSM police from holding a party on the berm since the police did not have any plans to do so again; and when no injunction could issue ordering non-parties to cease certain activities or to perform certain acts since they were not parties and not the agents of any party, the trial court did not abuse its discretion by denying injunctive relief. Berman v. FSM Nat'l Police, 19 FSM R. 118, 125 (App. 2013).

In exercising its broad discretion in considering whether to grant a preliminary injunction, the court will consider four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience to the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 152 (Chk. 2013).

When the public has a strong interest in seeing that the state's essential services are adequately funded and remain running and, to that end, that taxpayers are not allowed to ignore the state's tax laws and when the public also has an interest in seeing that the state does not overstep its bounds in imposing taxes or in levying execution on them, but when any tax paid under protest will, if the taxpayer prevails, be

returned, there appears to be an adequate safeguard and the public interest factor will weigh in the state's favor. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 156 (Chk. 2013).

When a court decides not to issue a preliminary injunction in the plaintiff's favor, it does not mean that it is certain that the plaintiff will not prevail on the merits in a final judgment. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 156 (Chk. 2013).

Whether a trial court erred in issuing an injunction is reviewed using the abuse of discretion standard. A trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence on which the court could rationally have based its decision. Nena v. Saimon, 19 FSM R. 317, 324 (App. 2014).

Where the court did not have personal jurisdiction over a person when it held a temporary injunction hearing and when it issued a preliminary injunction, the preliminary injunction can be vacated on that ground alone. Nena v. Saimon, 19 FSM R. 317, 325 (App. 2014).

A temporary restraining order cannot last for more than fourteen days and can be renewed only once for another fourteen days. If a temporary restraining order is issued and a preliminary injunction hearing is not held, the temporary restraining order expires. If the parties stipulate to its extension for a longer time, they have actually consented to a preliminary injunction. But even if no temporary restraining order is issued, the court can still set a hearing on a preliminary injunction and either grant or deny it. Nena v. Saimon, 19 FSM R. 317, 325 (App. 2014).

Issuing both a preliminary injunction and a temporary restraining order at the same time makes no sense because a temporary restraining order is issued before a preliminary injunction is issued, not with one. A court cannot simultaneously issue both a preliminary injunction and a temporary restraining order. Nena v. Saimon, 19 FSM R. 317, 325-26 n.2 (App. 2014).

When the notice of the hearing did not mention that the subject of the hearing was the plaintiffs' request for a temporary restraining order and a preliminary injunction, the defendant's opportunity to be heard at the hearing was rather meaningless, especially when shortly into the hearing the trial judge stated that he had enough in the file to issue a temporary restraining order preventing the defendant from entering the land. Since the defendant had inadequate notice of the hearing and its subject matter, he did not have an adequate opportunity to be heard before the decision to grant a temporary restraining order was announced during the hearing or before the preliminary injunction entered the next day. Nena v. Saimon, 19 FSM R. 317, 326 (App. 2014).

A court, in exercising its discretion in considering whether to grant a preliminary injunction, must weigh four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience between the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. A preliminary injunction's object is to preserve the status quo pending litigation on the merits. Nena v. Saimon, 19 FSM R. 317, 326 (App. 2014).

A weighing of all four factors would result in the denial of a temporary restraining order or of a preliminary when the plaintiffs are not threatened with irreparable harm, the most important factor and a prerequisite, and when the balance-of-injuries factor weighs heavily in the defendant's favor. Nena v. Saimon, 19 FSM R. 317, 329-30 (App. 2014).

Since the preservation of the status quo is a preliminary injunction's primary purpose, when the defendant's previous entry, use, and occupancy was the status quo, a preliminary injunction would have only enjoined the defendant from building any new structures on the land instead of ordering the defendant not to enter land he had been entering, using, and allegedly occupying for over a half century. Nena v. Saimon, 19 FSM R. 317, 330 (App. 2014).

A trial court abuses its discretion by issuing a preliminary injunction without proper notice and an opportunity to be heard; by issuing a preliminary injunction when there was no irreparable injury to the movants and the balance of harms strongly favored the non-movant; and by issuing a preliminary injunction without requiring or considering a bond. That preliminary injunction will be reversed. Nena v. Saimon, 19 FSM R. 317, 330 (App. 2014).

Permanent injunctions are only issued as a result of or as part of a final judgment. Andrew v. Heirs of Seymour, 19 FSM R. 331, 337 (App. 2014).

There are civil procedure mechanisms to address situations where the Kosrae State Court would be in the position of being asked to enforce contradictory judgments. Under Kosrae Civil Procedure Rule 60(b)(5), on motion and on such terms as are just, the Kosrae State Court may relieve a party or a party's legal representative from a final judgment, order, or proceeding when a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application. Thus, a party could be relieved from an inconsistent permanent injunction as a final order that it is no longer equitable that it should have prospective application. Andrew v. Heirs of Seymour, 19 FSM R. 331, 341 & n.7 (App. 2014).

In exercising its broad discretion in considering whether to grant a preliminary injunction, the court will consider four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience to the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. Killion v. Chuuk, 19 FSM R. 539, 541 (Chk. 2014).

To obtain a temporary restraining order or a preliminary injunction, a petitioner must show: 1) the possibility of irreparable injury; 2) the balance of possible injuries between the parties; 3) the petitioner's likelihood of success on the merits; and 4) any impact on the public interest. In re Estate of Setik, 19 FSM R. 544, 546 (Chk. S. Ct. Tr. 2014).

When each of the four factors favors denying a motion for a temporary restraining order, it will be denied. In re Estate of Setik, 19 FSM R. 544, 548 (Chk. S. Ct. Tr. 2014).

A motion to temporarily restrain an election will be denied as moot when that election was held as scheduled. Simina v. Chuuk State Election Comm'n, 19 FSM R. 572, 573 (Chk. S. Ct. App. 2014).

A trial court judge is required by Rule 52(a) to make findings of fact and conclusions of law when granting or refusing a preliminary injunction. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 647 n.1 (Chk. S. Ct. Tr. 2015).

Injunctive relief is an equitable remedy for which a court must use a balance-of-hardship test with a flexible interplay among four factors – the likelihood of irreparable harm to the plaintiff without an injunction; likelihood of harm to the defendant with an injunction; the plaintiff's likelihood of success on the merits; and the public interest. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 648 (Chk. S. Ct. Tr. 2015).

Striking a fair balance between the two more important factors, the likelihood of harm to the competing sides, and thus the issuance of injunctive relief is largely a matter of the facts of each situation and is thus a matter peculiarly for the trial judge's discretion. The object of seeking injunctive relief is to preserve the status quo pending the litigation on the merits. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 648 (Chk. S. Ct. Tr. 2015).

When the parties all agreed that since the court's last order confirming that the preliminary injunction remained in place, the defendants had been complying with the injunction and that therefore, except possibly for some damages that might have accrued, there was no need to proceed on the show cause

motion because it was moot. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41c (Pon. 2015).

Injunctive relief will be denied when the movants seek to enjoin the ongoing development and perceived deleterious effect on a parcel of property, the certificate of title for which is properly held by the individual undertaking the renovation and when the court-approved sale of this piece of real estate was proper, as it constituted an asset of the debtor corporation which could, under 6 F.S.M.C. 1410(2), be sold with payment of the net proceeds to the plaintiff in satisfaction of the outstanding judgment. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 105 (Chk. 2015).

In exercising its broad discretion in deciding whether to grant a preliminary injunction, the court must consider four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience to the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. Mailo v. Lawrence, 20 FSM R. 201, 203 (Chk. 2015).

When, weighing the four factors, the court does not find enough in the movant's favor to grant a preliminary injunction, the request for a preliminary injunction will be denied and the current temporary restraining order dissolved. Mailo v. Lawrence, 20 FSM R. 201, 205 (Chk. 2015).

A court, in exercising its broad discretion in considering whether to grant a temporary restraining order, must weigh four factors: 1) the possibility of irreparable injury to the movant; 2) the movant's likelihood of success on the merits; 3) the balance of possible injuries or inconveniences between the parties; and 4) the impact of any requested action upon the public interest. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 550 (Pon. 2016).

When a temporary restraining order enjoins the conduct, endorsement, or coordination of any further commercial sea cucumber harvesting in Pohnpei waters and the sale or purchase of sea cucumbers harvested in Pohnpei waters, it may also provide that any sea cucumber already harvested before the order's date may be sold and purchased pursuant to the laws and regulations and that any sea cucumber coming into the buyer's possession which was harvested before the order's date may be handled accordingly so as to prevent the unnecessary waste of those sea cucumbers. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 553 (Pon. 2016).

A party may appeal from FSM Supreme Court trial division interlocutory orders granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions or the party to an order concerning injunctive relief, or the party may await final judgment (and the entry or denial of a permanent injunction) and appeal the entire matter then. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 585, 587 (App. 2016).

In an interlocutory appeal of an injunction, an appellate court will concern itself only with the order from which the appeal is taken, but will review other issues only if they are inextricably bound up with the injunction. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 585, 588 (App. 2016).

Since, unlike 26 Pon. C. § 5-115 which expressly grants to the Attorney General the right to bring a suit to enjoin a person who is in "imminent violation," the citizen suit provision of 26 Pon. C. § 5-117 only allows a person to commence a civil suit to enjoin a person who is "alleged to be in violation" of § 5-107," the plain statutory language can only be read to allow the Attorney General the power to seek equitable relief for an imminent violation but not private persons who do not allege facts that are sufficient to grant traditional constitutional standing when it has not asserted injury to itself. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 647 (Pon. 2016).

In exercising its broad discretion to decide whether to grant a preliminary injunction, a court will consider four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience to the

parties that would flow from granting or denying the relief, and 4) any impact on the public interest. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 126 (Chk. 2017).

Although all four factors do not have to weigh in the applicant's favor for an applicant to be granted a preliminary injunction, when all four factors do favor the preliminary injunction's issuance, the preliminary injunction motion will be granted. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 128 (Chk. 2017).

An application for a preliminary injunction may be consolidated with the trial on the merits. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 21 FSM R. 150, 158 (Pon. 2017).

When the defendants have stipulated to the extension of the temporary restraining order several times, they have thereby effectively converted it into a preliminary injunction. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 21 FSM R. 150, 158 n.4 (Pon. 2017).

A court, in exercising its discretion whether to grant a preliminary injunction, must weigh four factors: 1) the possibility of irreparable injury to the movant, 2) the likelihood of success on the merits of the party seeking injunctive relief, 3) the balance of possible injuries or inconvenience between the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. Rodriguez v. Ninth Pohnpei Legislature, 21 FSM R. 276, 279 (Pon. 2017).

A preliminary injunction seeking to enjoin the possible impeachment of the Pohnpei Chief Justice, will be denied when there is no possibility of success on the merits because the case involves a non-justiciable political question, and the equities all favor the Pohnpei Legislature, and the public interest will be served by permitting the Legislature's investigation of a possible impeachment to proceed. Rodriguez v. Ninth Pohnpei Legislature, 21 FSM R. 276, 281 (Pon. 2017).

For a trial court to consider a motion for a temporary restraining order, there must be a verified complaint pending before the court. Setik v. Mendiola, 21 FSM R. 537, 559 (App. 2018).

The trial court properly denied a motion for a temporary restraining order when the trial court had already dismissed the complaint, and that complaint had not been verified. Setik v. Mendiola, 21 FSM R. 537, 559 (App. 2018).

If, instead of a temporary restraining order, a preliminary injunction is sought, the complaint does not need to be verified, but the court still needs a pending complaint, not a complaint that has already been dismissed. Setik v. Mendiola, 21 FSM R. 537, 559 (App. 2018).

When there is no pending case left because the complaint has already been dismissed, the denial of a temporary restraining order motion is a purely formal housekeeping matter to tie up a loose end. Setik v. Mendiola, 21 FSM R. 537, 559-60 (App. 2018).

An FSM Supreme Court trial division justice in one case does not have jurisdiction to set aside or overrule orders entered in a different trial division case. Nor does a judge have jurisdiction to grant injunctive relief against a trial division judge's acts in another case. Setik v. Mendiola, 21 FSM R. 537, 560 (App. 2018).

When a claim for injunctive relief is contingent on a claim for declaratory relief that has been dismissed, the court will not consider the injunctive relief claim. Donre v. FSM Nat'l Gov't Employees' Health Ins. Plan, 21 FSM R. 592, 594 n.1 (Pon. 2018).

When a defendant is found negligent, the remedy is money damages, but if irreparable future harm is threatened, a court, by injunction, may also act to prevent future damage. Alik v. Heirs of Alik, 21 FSM R. 606, 620 & n.6 (App. 2018).

The object of a preliminary injunction is to preserve the status quo pending the litigation on the merits. In re Gross Revenue Tax, 22 FSM R. 124, 127-28 (Pon. 2018).

The issuance of a preliminary injunction is a matter of the facts of each situation and thus a matter for the trial judge's discretion. In re Gross Revenue Tax, 22 FSM R. 124, 128 (Pon. 2018).

In exercising its broad discretion in deciding on the motion for injunctive relief, the court applies the long established standard, a four-factor test. The four factors are: 1) the likelihood of success on the merits of the party seeking injunctive relief; 2) the possibility of irreparable injury to the moving party; 3) the balance of possible injuries or inconveniences to the parties which would result from granting or denying relief; and 4) any impact on the public interest. In re Gross Revenue Tax, 22 FSM R. 124, 128 (Pon. 2018).

Injunctive relief can be granted if three of the four factors favor the granting of the preliminary injunction. In re Gross Revenue Tax, 22 FSM R. 124, 128 (Pon. 2018).

Because a preliminary injunction can be granted on basis of procedures that are less formal and evidence that is less complete than in a trial on the merits, the evidence rules are relaxed when considering requests for a temporary restraining order or preliminary injunction. In re Gross Revenue Tax, 22 FSM R. 124, 129 (Pon. 2018).

Because a preliminary injunction hearing is less formal than a full trial, less complete evidence is required for an injunction than at trial. Therefore, a petitioner's affidavits submitted on the record may be sufficient evidence when considering a temporary restraining order or a preliminary injunction. In re Gross Revenue Tax, 22 FSM R. 124, 129 (Pon. 2018).

One objective of a temporary and preliminary injunction is to maintain and preserve the status quo pending litigation on the merits. In re Gross Revenue Tax, 22 FSM R. 124, 130 (Pon. 2018).

A motion for preliminary injunction can be granted with the issuance of the preliminary injunction held in abeyance and authorized only upon the posting of a bond in accordance with Rule 65(c). In re Gross Revenue Tax, 22 FSM R. 124, 130-31 (Pon. 2018).

In making the determination whether or not to grant injunctive or other equitable relief, a court of equity must use a balance-of-hardship test. This decision should be based upon a flexible interplay among all factors to be considered. Those factors are: the likelihood of irreparable harm to the plaintiff without an injunction; likelihood of harm to the defendant with an injunction; plaintiff's likelihood of success on the merits; and the public interest. Ruben v. Chuuk, 22 FSM R. 130m, 130o (Chk. S. Ct. Tr. 2018).

The framing of an injunction appropriate to the facts of a case is a matter peculiarly for the trial judge's discretion. Ruben v. Chuuk, 22 FSM R. 130m, 130o (Chk. S. Ct. Tr. 2018).

One who seeks an injunction pending appeal must show irreparable injury. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 203, 206 (Pon. 2019).

Under Appellate Rule 8(a), the appellate court may grant an injunction during the pendency of an appeal. An injunction during the pendency of an appeal is a preliminary injunction. In re Decision of Nat'l Election Dir., 22 FSM R. 221, 223 (App. 2019).

When ruling on a request for an injunction pending appeal, an appellate court engages in the same inquiry as when it reviews the grant or denial of a preliminary injunction. In making this inquiry, the court considers four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience to the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. In re Decision of Nat'l Election Dir., 22 FSM R. 221, 223 (App. 2019).

In exercising its broad discretion in considering whether to grant an injunction, a court considers four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience to the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. In re Wrecked/Damaged Helicopter, 22 FSM R. 580, 584 (Pon. 2020).

– Injunctions – Balance of Injuries

In evaluating the balance of possible injuries factor, a court compares the threatened harm to each party if the requested injunctive relief is granted or if it is denied. Carlos Etscheit Soap Co. v. Epina, 8 FSM R. 155, 162 (Pon. 1997).

When a $7,000 loan had been taken out to build a house on now disputed land, the construction is complete except for the roof, and the repayment of the loan plus interest is underway, the balance of injury criterion weighs determinatively in the home builder's favor and the temporary restraining order enjoining further construction will be dissolved. Palik v. Henry, 9 FSM R. 309, 312 (Kos. S. Ct. Tr. 2000).

When the defendant has no valid counterclaim for unfair competition under a common law theory, and the plaintiff is likely to prevail in at least some of its claims, the balance of harms favors the plaintiff. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 419 (Pon. 2001).

The balance of injuries weigh in the movant's favor when it stands to lose its significant investments in the cellular telecommunications tower's construction and the start-up of its cellular telephone system in Chuuk should the tower be tampered with or removed, and when the plaintiffs, should they prevail on the merits, are in a position to recover the land and have it restored to the condition it was in before the tower was built there and they were not making any particular use of the land before the tower was put there. In re FSM Telecomm. Corp. Cellular Tower, 12 FSM R. 243, 247 (Chk. 2003).

When the plaintiffs claim serious and irreparable damage to their land and crops from the state due to its trespass, clearing, grading and quarrying related activities on the site and the state has failed to demonstrate why a delay of a few more weeks in producing gravel would result in irreparable harm to the state, the balance weighs in favor of granting relief for the plaintiffs. Sigrah v. Kosrae, 12 FSM R. 513, 520 (Kos. S. Ct. Tr. 2004).

When, if injunctive relief is denied, the plaintiff will continue to experience interference with her development of the subject parcels as defendants will continue to occupy those parcels, and, if injunctive relief is granted, the defendants will suffer injuries and inconveniences by being forced to vacate the parcel and losing resources for residence and farming and the plaintiff seeks court assistance only years after obtaining title to the subject parcels, and has allowed the defendants' activities to continue until this request for injunctive relief and the defendants rely upon the land for farming and food resources and claim that an immediate removal would cause substantial hardship, the balance of possible injuries or inconveniences to the parties weighs in the defendants' favor. Akinaga v. Heirs of Mike, 13 FSM R. 296, 299-300 (Kos. S. Ct. Tr. 2005).

When the plaintiff will continue to experience interference with her development of the subject parcel as defendants will continue to access and utilize the parcel, and, if injunctive relief is granted, the defendants may continue to suffer damage to their gravesite and the surrounding area, the balance of possible injuries or inconveniences to the parties weighs in favor of granting injunctive relief. Norita v. Tilfas, 13 FSM R. 321, 324 (Kos. S. Ct. Tr. 2005).

When to disturb the status quo now would only cause irreparable harm to the movants and little harm would come to the defendant from maintaining the status quo and any damage to the defendant would be compensable by reasonable money damages, the balance of the injuries weighs in the movants' favor.

Ruben v. Petewon, 13 FSM R. 383, 391 (Chk. 2005).

In evaluating the balance-of-injuries factor, the court must compare the threatened harm to each party if injunctive relief is granted or denied. GE Seaco Servs., Ltd. v. Federated Shipping Co., 14 FSM R. 159, 163 (Pon. 2006).

The balancing of the harm to the parties favors the PPA plaintiffs when there is none resulting to the defendants, since they would be enjoined from engaging in conduct that is inconsistent with applicable state law, but the harm to plaintiffs is that they would effectively be compelled to act inconsistently with applicable state law and would be subjected to the potential consequences of doing so and that the PPA general counsel's handling of current court matters would also be potentially delayed and affected to PPA's detriment. Pohnpei Port Auth. v. Pohnpei, 15 FSM R. 541, 544 (Pon. 2008).

When the movant's alleged harm is that which flows from his inability to meet one of his creditor's valid demands, it is not the sort of harm, standing alone, for which injunctive relief is intended as a remedy; and when if the port authority is enjoined from its enforcement efforts, it will suffer harm by being enjoined from carrying out its legal obligations under state law to manage Pohnpei's port facility, the balance-of-the-injuries factor favors the port authority. Pohnpei Port Auth. v. Ehsa, 16 FSM R. 11, 14 (Pon. 2008).

The balance of possible injuries favors the movant when its possible injuries are numerous and, in some respects, onerous and when the only possible injury to the State is that it would, during the pendency of the case, be precluded from creating a new source of revenue and this harm would be almost completely alleviated by the requirement of a bond in the approximate amount of what sums it would have collected on the tax while the case is pending and when such security will be required. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 162 (Chk. 2010).

The balance of injuries favors freezing the Tolensom CIP funds that have already been remitted by the national government when, if the funds are frozen there will be no injury to the national government defendants and the injury to defendants who are officers in the purported Tolensom municipal government that currently has those funds, is not onerous since, as purported municipal officials, it is their duty to preserve municipal funds from unwarranted claims and since, at worst, it may only delay payment of some Tolensom municipal obligations. Marsolo v. Esa, 17 FSM R. 377, 381 (Chk. 2011).

When the Election Commission has ordered a revote and that order has been appealed, the relative harm to each party, or even that either party faces an impending harm at all, is difficult to fathom. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 490 (Chk. S. Ct. Tr. 2011).

When the movant's potential and possible injuries are more imminent and lasting than any injury to the defendant from an injunction prohibiting, until after the sale of the lot, publication of allegedly defamatory statements – the injunction would be a lesser injury than the injury to the movant if it could not conduct the sale or if the bidders lower their bids or decline to attend the auction. FSM Dev. Bank v. Abello, 18 FSM R. 192, 196 (Pon. 2012).

The balance-of-injuries factor will not weigh in the movants' favor when the movants ask that Pohnpei be ordered to take certain actions against non-parties at an unknown cost and with an unknown exposure by Pohnpei to potential liability to those non-parties while leaving the movants free of any expense or liability. Berman v. Pohnpei, 18 FSM R. 418, 422 (App. 2012).

The balance-of-injuries factor favors the plaintiffs when the Governor's possible injury is slight since the Governor is not injured by an injunction prohibiting him from doing what he does not have the power to do. Since the Board members' terms end soon and the Governor has already nominated their replacements, the harm to the plaintiffs is much greater because the General Manager has been prevented from exercising, as required under state law, the duties and responsibilities of his office, as have the Board members. Perman v. Ehsa, 18 FSM R. 432, 439-40 (Pon. 2012).

The balance-of-harms factor favors the defendant when the harm that it would suffer is that it would receive 16⅔% less revenue than it had expected or budgeted for on the basis of the 3% contribution it has been collecting instead of the 2½% that the plaintiff asks the court to enforce and when the harm to the plaintiff is the extra ½% contribution he is paying which could be credited to future health insurance premium contributions if found unlawful. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 506 (Chk. 2013).

In evaluating the balance-of-possible-injuries factor, a court compares the threatened harm to each party if the requested injunctive relief is granted or if it is denied. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 567 (Pon. 2013).

The balance-of-harms factor favors the plaintiffs when a defendant has hired a few local employees and readied a container for shipment to Pohnpei and is not irreparably harmed because it apparently can use an alternate site; when the defendant State is not harmed if as long as there is a tenant on the site running the fish processing facilities using local employees; and when the plaintiffs will be irreparably harmed and they also employ 110 local hires. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 567-68 (Pon. 2013).

When the Commissioners' travel authorization was for travel originating in Chuuk on March 1, 2013, and therefore, any prior expenditure of funds, not directly attributable to the travel, cannot be then ascribed to a preliminary injunction's issuance; when the status quo for state government travel is to purchase full fare tickets which are therefore refundable with a minimal fee imposed and when hotel accommodations and car rentals are generally fully refundable given twenty-four hour notice and other costs associated with the election can generally be transferred to the parties that will travel in place of the Commissioners; when the Commissioners' impartiality is necessary to protect the elections' integrity while protecting the plaintiff candidates' and other individuals' fundamental rights; and when the Commissioners stated that they will attempt to be "honest" but that alone is insufficient because impartiality is required, the balance of the equities tips overwhelmingly in the plaintiffs' favor to enjoin the Commissioners' travel to supervise polling places. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 584, 588-89 (Chk. S. Ct. Tr. 2013).

In evaluating the balance-of-injuries factor, a court must compare the threatened harm to each party if injunctive relief is granted or denied. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 156 (Chk. 2013).

When the irreparable-harm factor does not favor the movant, the balance-of-injuries factor does not favor him either. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 156 (Chk. 2013).

Since the balance-of-the-injuries factor is about the balance of possible injuries, the trial court was, in addition to considering the harm to the plaintiffs, required to also consider the possible injuries to the defendant. Nena v. Saimon, 19 FSM R. 317, 329 (App. 2014).

Removal of someone from land that person has used or occupied for over 60 years is, on balance, a much greater harm than the plaintiffs having to wait a relatively short time before the litigation is over to fulfill their desire to now develop the land that they have not tried to develop for the last 60 years. Nena v. Saimon, 19 FSM R. 317, 329 (App. 2014).

A trial court abuses its discretion by misunderstanding the balance-of-injuries factor and by considering only the speculative injury to the plaintiffs and completely failing to consider the actual injuries to the defendant. Nena v. Saimon, 19 FSM R. 317, 329 (App. 2014).

The balance-of-injuries factor favors a plaintiff who is faced with irreparable harm by the state dredging his remaining unfilled tideland while the harm to the state is not so great since it must only find and use some other site, including the nearby tideland to dredge the coral it wants to use for road maintenance and

sale. Killion v. Chuuk, 19 FSM R. 539, 541 (Chk. 2014).

With respect to the balance-of-possible-injuries requirement, when any potential harm suffered by the petitioner is minimal considering that she cannot establish a likelihood of success on the merits, the nonmovants would bear the risk. In re Estate of Setik, 19 FSM R. 544, 548 (Chk. S. Ct. Tr. 2014).

A defendant is harmed by having to defend a lawsuit in which it has no real interest and while the plaintiff's harm may be considerable, it is one of its own making when it choose the FSM Supreme Court as the forum and the FSM Secretary of Finance as the party from which to seek relief. Mailo v. Lawrence, 20 FSM R. 201, 204 (Chk. 2015).

The balance of the injuries weighs in the movants' favor when to disturb the status quo to allow continued sea cucumber harvesting would only cause irreparable harm to the movants and when the harm that would come to the defendants from maintaining the status quo would be compensable by reasonable money damages, except for the potential harm to one defendant's international business reputation, which is less as weighed against the potential harm to the movants since the temporary restraining order will remain in effect for only fourteen days and its fisheries resource license provides until April 2017 to complete the fourteen-day open harvest season. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 551-52 (Pon. 2016).

The balance-of-possible-injuries factor favors the plaintiff when the plaintiff spent $200,000 in order to acquire a leasehold on an adjoining lot so that it may expand its operation, but is not able to actually proceed with its expansion or to have its sizeable expenditure refunded and the defendant's potential injury is not being able to use the far end of the lot to run a small store, which if the alleged contract breach is cured, would be further ameliorated by $5,000 quarterly payments to the defendant. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 128 (Chk. 2017).

When the petitioner has a substantial risk of potential irreparable harm if injunctive relief is not granted and the harm that the respondent faces in comparison is only minimal because the worst case scenario is that the respondent will not be allowed to execute the levy on the petitioner's bank accounts and if the court later rules in the respondent's favor, then the respondent will be able to collect the tax the petitioner owes. In re Gross Revenue Tax, 22 FSM R. 124, 129-30 (Pon. 2018).

When to disturb the status quo now would only cause the movant irreparable harm and little harm would come to the respondent from maintaining the status quo and any damage to the respondent would be compensable by reasonable money damages, the balance of the injuries weighs in the movant's favor. In re Gross Revenue Tax, 22 FSM R. 124, 130 (Pon. 2018).

– Injunctions – Bond

Chuuk State Supreme Court Rule of Civil Procedure 65(c) requires security for the issuance of a temporary restraining order. Island Cable TV-Chuuk v. Aizawa, 8 FSM R. 104, 105 (Chk. 1997).

A modification of a permanent injunction pending appeal may be conditioned upon the posting of an appeal bond. College of Micronesia-FSM v. Rosario, 10 FSM R. 296, 298 (Pon. 2001).

A party may apply for a preliminary injunction, but no preliminary injunction will issue except upon the giving of security by the applicant, in such sum, if any, as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined. Ambros & Co. v. Board of Trustees, 11 FSM R. 262a, 262g (Pon. 2002).

Civil Procedure Rule 65(c) requires security for the issuance of a temporary restraining order. A motion for a temporary restraining order may be denied for not complying with Rule 65(c)'s requirement that the applicant give security before the issuance of a restraining order or preliminary injunction. Bisaram v. Suta, 15 FSM R. 250, 255 (Chk. S. Ct. Tr. 2007).

The balance of possible injuries favors the movant when its possible injuries are numerous and, in some respects, onerous and when the only possible injury to the State is that it would, during the pendency of the case, be precluded from creating a new source of revenue and this harm would be almost completely alleviated by the requirement of a bond in the approximate amount of what sums it would have collected on the tax while the case is pending and when such security will be required. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 162 (Chk. 2010).

Under Civil Procedure Rule 65(c), no preliminary injunction can issue except upon the giving of security by the applicant, in such sum, if any, as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. The security, if ordered, may be in the form of a cash bond, or an irrevocable letter of credit, or an insurance company surety bond, or some other form of security if the defendants find that form acceptable, and if a cash bond is provided, the cash will be placed in an interest-bearing account with the interest to ultimately go to whoever receives the principal. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 162 (Chk. 2010).

When the injunction will consist of freezing Tolensom municipal CIP funds no bond will be necessary and the movants will not be required to post a cash bond as the security for such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained since the damages would be the inability to use those funds and, if defendants prevail, then those funds would be released for Tolensom municipal use. Marsolo v. Esa, 17 FSM R. 377, 382 (Chk. 2011).

A very substantial cash bond may be required in order to grant a preliminary injunction that is mandatory in nature. Berman v. Pohnpei, 18 FSM R. 418, 422 (App. 2012).

When the movants offered to provide a bond for the preliminary injunction in whatever amount the court deemed necessary and when the defendant did not ask for bond or specify any certain amount or even comment on the point, a bond will be required, but because of the injunction's preliminary nature and because much of the injunction may become obsolete once a new PUC Board takes office in the near future and starts to exercise its functions, the court will require a bond of only $1,000 to be tendered within ten days. Perman v. Ehsa, 18 FSM R. 432, 440 (Pon. 2012).

Under Civil Procedure Rule 65(c), no preliminary injunction can issue except upon the applicant giving of security, in such sum, if any, as the court deems proper, for the payment of such costs and damages as are incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 568 (Pon. 2013).

When the trial court never considered requiring a bond and especially since its preliminary injunction was not aimed at preserving the status quo, the failure to require a bond is a further ground to hold the preliminary injunction invalid and its issuance an abuse of the trial court's discretion. Nena v. Saimon, 19 FSM R. 317, 330 (App. 2014).

Rule 65(c) gives the court discretion in setting the bond amount for a temporary restraining order. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 552 (Pon. 2016).

A preliminary injunction should not issue unless the applicant has given security, in such sum, if any, as the court deems proper, for the payment of such costs and damages as are incurred or suffered by any party who is found to have been wrongfully enjoined or restrained, and the parties may agree to the amount. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 128 (Chk. 2017).

A motion for preliminary injunction can be granted with the issuance of the preliminary injunction held in abeyance and authorized only upon the posting of a bond in accordance with Rule 65(c). In re Gross Revenue Tax, 22 FSM R. 124, 130-31 (Pon. 2018).

– Injunctions – Ex Parte

A temporary restraining order may only be granted without notice if there is a showing that notice should not be required and of any attempts to give notice to the opponent. Island Cable TV-Chuuk v. Aizawa, 8 FSM R. 104, 107 (Chk. 1997).

To seek the issuance of a temporary restraining order without notice, a plaintiff must, by citing specific facts, clearly show by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and the applicant's attorney must certify to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. Asugar v. Edward, 13 FSM R. 209, 211-12 (Chk. 2005).

Under Rule 65(b), the court cannot grant an *ex parte* temporary restraining order without a showing that notice should not be required or of any attempts to give notice to the opponent. When a plaintiff has not filed the required Rule 65(b) certification his motion for an *ex parte* temporary restraining order can be denied. Bisaram v. Suta, 15 FSM R. 250, 254-55 (Chk. S. Ct. Tr. 2007).

An application for a TRO must be verified only for temporary restraining orders entered without notice. Pohnpei Port Auth. v. Pohnpei, 15 FSM R. 541, 545 (Pon. 2008).

An ex parte temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if both 1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and 2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required but those arguments are superfluous when the defendant has been notified. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 490 (Chk. S. Ct. Tr. 2011).

While a temporary restraining order may issue without notice and expires within 14 days unless extended by the court for good cause or by consent of the restrained party, a preliminary injunction cannot issue without notice and usually remains in effect until a final determination on the merits. In re Estate of Setik, 19 FSM R. 544, 546 (Chk. S. Ct. Tr. 2014).

Two preliminary factors must be met when seeking an ex-parte injunction: 1) it must clearly appear from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and 2) the applicant's attorney must certify to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required. Ruben v. Chuuk, 22 FSM R. 130m, 130p (Chk. S. Ct. Tr. 2018).

When the complaint and motion allege that an irreparable injury has already occurred, as opposed to one which is going to occur immediately, the plaintiff has failed to meet the first of the preliminary factors required for granting an ex-parte temporary restraining order so as to override the law's general requirement that the adverse party ought to be provided a chance to be heard in opposition. Ruben v. Chuuk, 22 FSM R. 130m, 130p (Chk. S. Ct. Tr. 2018).

When irreparable harm allegations are all of past injuries, which perhaps may be irreparable, these allegations fail to show an irreparable injury, loss, or damage as required by Rule 65(b) because the plaintiff has not demonstrated that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition. Ruben v. Chuuk, 22 FSM R. 130m, 130p (Chk. S. Ct. Tr. 2018).

– Injunctions – Irreparable Harm

A prerequisite for the granting of injunctive relief is that the party seeking protection must be faced with the threat of irreparable harm before conclusion of the litigation unless the injunction is granted, and if money damages or other relief upon conclusion of the litigation will fully compensate for the threatened interim action, then the preliminary injunction should be denied. Ponape Transfer & Storage v. Pohnpei State Public Lands Auth., 2 FSM R. 272, 276 (Pon. 1986).

To obtain a temporary restraining order there must be a clear showing that immediate and irreparable injury or loss or damage would occur otherwise. An injury is not irreparable if there is an adequate alternative remedy. Kony v. Mori, 6 FSM R. 28, 29 (Chk. 1993).

In requesting a Temporary Restraining Order a plaintiff has to show that his damage will be irreparable, that is, that it cannot be remedied in any way except by the rather drastic measure of a restraining order. Wiliander v. Siales, 7 FSM R. 77, 80 (Chk. 1995).

Where the election law provides for remedies that have not yet been used a candidate cannot show irreparable harm necessary for the issuance of a temporary restraining order. Wiliander v. Siales, 7 FSM R. 77, 80 (Chk. 1995).

In order for injunctive relief to be granted, the party seeking protection must be faced with the threat of irreparable harm before the conclusion of the litigation unless the injunction is granted. If money damages or other relief will fully compensate for any threatened interim harm, the preliminary injunction should be denied. Carlos Etscheit Soap Co. v. Epina, 8 FSM R. 155, 161 (Pon. 1997).

A threat of irreparable injury exists when threats of physical violence and assertion of control over land deprives plaintiffs of access to their land in a way that money damages or other relief cannot completely compensate for. Carlos Etscheit Soap Co. v. Epina, 8 FSM R. 155, 162 (Pon. 1997).

In order for the court to issue a temporary restraining order, the party seeking the order must show that he will suffer irreparable injury, and that the only remedy is the somewhat drastic one of a restraining order. Irreparable injury is that for which there is no adequate alternative remedy. Palik v. Henry, 9 FSM R. 267, 269 (Kos. S. Ct. Tr. 1999).

An injury which tends to destroy an estate, such as the construction of a concrete house on disputed land, will be treated as an irreparable injury justifying the issuance of a temporary restraining order. Palik v. Henry, 9 FSM R. 267, 269 (Kos. S. Ct. Tr. 1999).

Irreparable harm for the purpose of issuing an injunction may be found when, although there is no immediate or certain loss to the plaintiff if a preliminary injunction is denied, if an injunction is not issued all the remaining funds may be obligated without any limitation. So the irreparable harm is that the plaintiff does not have the opportunity of possibly obtaining any of the unobligated funds. Thus, when the other three factors clearly tend towards the issuance of the injunction and to deny the preliminary injunction would be to tell the plaintiff that it must apply and get any appropriations that it can by following unconstitutional steps, the preliminary injunction will issue. Udot Municipality v. FSM, 9 FSM R. 418, 420 (Chk. 2000).

The loss of goodwill, loss of customers and potential customers, lost sales, and similar harms, are not readily compensable by money damages, and thus are precisely the type of harm a preliminary injunction is intended to prevent because economic damages based on such harms are extremely difficult to calculate. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 417 (Pon. 2001).

For the court to issue a preliminary injunction, the party seeking protection must be faced with the threat of irreparable harm before the conclusion of the litigation unless it is granted. There must be a clear showing that immediate and irreparable injury or loss or damages would otherwise occur, and there must be no adequate alternative remedy. Seventh Kosrae State Legislature v. Sigrah, 11 FSM R. 110, 113-14

(Kos. S. Ct. Tr. 2002).

Constant and excessive noise caused by refrigerator fans operating on and off for 24 hours a day, although extremely difficult to quantify, can constitute irreparable injury. Ambros & Co. v. Board of Trustees, 11 FSM R. 262a, 262h (Pon. 2002).

Although a party has shown that he is suffering a continuing irreparable injury due to the operation of refrigeration machines, the court must consider the harm that the issuance of an injunction would cause to the other party before it can issue an injunction. Ambros & Co. v. Board of Trustees, 11 FSM R. 262a, 262h (Pon. 2002).

Irreparable injury may include the loss of goodwill, loss of customers and potential customers, lost sales, and similar harms because they are not readily compensable by money damages, and thus are precisely the type of harm a preliminary injunction is intended to prevent since economic damages based on such harms are extremely difficult to calculate. Yang v. Western Sales Trading Co., 11 FSM R. 607, 616 (Pon. 2003).

An entity is not irreparably injured by an injunction which prohibits it from accusing another of unsubstantiated illegal conduct, and threatening unspecified legal action against those who purchase goods from the other. Yang v. Western Sales Trading Co., 11 FSM R. 607, 617 (Pon. 2003).

The first requirement for the issuance of a temporary restraining order is that it clearly appear from specific facts shown by affidavit that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition. This requirement has not been met when it is not clear that immediate and irreparable injury will result to the applicant by virtue of the agency's hearing proceeding as scheduled because even if the agency ruled against him at the hearing, he has a number of options at his disposal in regards to any agency decision. The possibility that the agency might issue an adverse decision does not constitute the immediate and irreparable injury to the applicant required for the issuance of a restraining order. Ambros & Co. v. Board of Trustees, 12 FSM R. 124, 127 (Pon. 2003).

Significant irreparable injury and loss to the movant may be found when its tower would be tampered with or removed and the cellular telephone system shut down and when the plaintiffs do not appear to have the financial resources to adequately compensate it if the tower were removed and if such removal were later determined to be improper or unlawful. In re FSM Telecomm. Corp. Cellular Tower, 12 FSM R. 243, 247 (Chk. 2003).

An injury which tends to destroy an estate will be treated as an irreparable injury justifying the issuance of a temporary retraining order. Clearing, bulldozing and grading land, damage and destruction of crops are injuries which tend to destroy an estate, and are accepted as irreparable injuries. Sigrah v. Kosrae, 12 FSM R. 513, 520 (Kos. S. Ct. Tr. 2004).

The granting of injunctive relief requires the possibility of irreparable injury. Permanent damage to property is irreparable injury. Benjamin v. Youngstrom, 13 FSM R. 72, 76 (Kos. S. Ct. Tr. 2004).

When the plaintiffs do not allege a specific irreparable injury and when they seek injunctive relief to stop the defendant's interference and potential disconnection of electricity from the subject parcel, but they fail to show how these actions will result in irreparable injury, the disconnection of electricity, without more, does not constitute irreparable injury and the possibility of irreparable injury weighs in the defendant's favor. Benjamin v. Youngstrom, 13 FSM R. 72, 76 (Kos. S. Ct. Tr. 2004).

The essential requirement for the issuance of a temporary restraining order is that the applicant must clearly show that immediate and irreparable injury or loss or damage would occur if the temporary restraining order is not granted. In requesting a temporary restraining order, a plaintiff must show that his

damage will be irreparable, that is, that it cannot be remedied in any way except by the drastic measure of a restraining order. Asugar v. Edward, 13 FSM R. 209, 212 (Chk. 2005).

When a congressional candidate seeks the issuance of a temporary restraining order prior to balloting he will be denied since he cannot show irreparable injury because the Election Code provides an aggrieved candidate with sufficient alternate and adequate remedies. When the election law provides for remedies that have not yet been used a candidate cannot show the irreparable harm necessary for the issuance of a temporary restraining order. Asugar v. Edward, 13 FSM R. 209, 212 (Chk. 2005).

Assuming that, as a result of the revote, that the candidate seeking to enjoin the revote is not declared the winning candidate (an assumption that the court cannot make), he still has all the avenues provided by the statutory provisions governing election contests, and once the administrative remedies before the National Election Director have run their course, a candidate still aggrieved may, at that time, seek relief from the FSM Supreme Court appellate division. Since this is an adequate alternative remedy, the candidate cannot show irreparable harm. Asugar v. Edward, 13 FSM R. 209, 212-13 (Chk. 2005).

The party seeking injunctive protection must be faced with irreparable harm before the conclusion of the litigation. There must be a clear showing that immediate and irreparable injury or loss or damages would otherwise occur, and there must be no adequate alternative remedy. Akinaga v. Heirs of Mike, 13 FSM R. 296, 299 (Kos. S. Ct. Tr. 2005).

When, although the plaintiff has waited nearly 20 years since she has been awarded title to the land before bringing this action, any of the defendants' future actions to plant crops or conduct burials on the subject land will constitute irreparable harm, the plaintiff has shown potential irreparable harm to the subject parcels by defendants' future actions and this factor weighs in the plaintiff's favor. Akinaga v. Heirs of Mike, 13 FSM R. 296, 299 (Kos. S. Ct. Tr. 2005).

The party seeking protection must be faced with irreparable harm before the litigation's conclusion. There must be a clear showing that immediate and irreparable injury or loss or damages would otherwise occur, and there must be no adequate alternative remedy. Norita v. Tilfas, 13 FSM R. 321, 324 (Kos. S. Ct. Tr. 2005).

When the defendants have completed a burial and gravesite and continue to care for the gravesite on the parcel; when the plaintiff is unable to develop the parcel while the defendants utilize the parcel; and when the defendants would suffer immediate and irreparable harm due to plaintiffs' damage to the defendants' graves on the subject parcel, the court will conclude that both the plaintiff and the defendants have shown irreparable harm to the subject parcel and the gravesite by their actions. This factor weighs in favor of granting injunctive relief. Norita v. Tilfas, 13 FSM R. 321, 324 (Kos. S. Ct. Tr. 2005).

To have a certificate of title to and one judgment for a property in their favor, but to have another judgment enforced against them which they are told they cannot challenge because they are not parties to it and that they cannot be made parties and never had notice or an opportunity to be heard before that other judgment was originally entered, and to now have no opportunity to be heard and contest either the merits or the enforcement of that other judgment, is an irreparable injury. Ruben v. Petewon, 13 FSM R. 383, 390 (Chk. 2005).

Irreparable harm is the single most dispositive factor in determining whether injunctive relief should be granted. Irreparable harm is harm that cannot be remedied in any way except by the rather drastic measure of a restraining order. Stated another way, irreparable injury is that for which there is no adequate alternative remedy. GE Seaco Servs., Ltd. v. Federated Shipping Co., 14 FSM R. 159, 162 (Pon. 2006).

An injury cannot accurately be deemed irreparable when the court concludes that money damages would fully compensate the plaintiff for any loss it has sustained since the claimed loss is neither uncertain

nor impossible to calculate because the containers rent for $1.25 per day and, even if all of the containers have each container has a replacement value. GE Seaco Servs., Ltd. v. Federated Shipping Co., 14 FSM R. 159, 162 (Pon. 2006).

An election contestant cannot show irreparable harm, a necessary prerequisite to the issuance of a temporary restraining order and a major factor to be weighed before granting a preliminary injunction, when he has the election appeal process available to him within which he could properly seek redress, and although it is true that if Congress seats a candidate unconditionally the election contest becomes non-justiciable, not once has the court failed to decide an election contest appeal before the statutorily-mandated May 11 date for the newly-elected Congress to start. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

The essential requirement to obtain a temporary restraining order is that the applicant must clearly show that immediate and irreparable injury or loss or damage would occur if the temporary restraining order is not granted – the plaintiff must show that his damage will be irreparable – that it cannot be remedied in any way except by the drastic measure of a restraining order. An injury is not irreparable if there is an adequate alternative remedy. Billimon v. Marar, 15 FSM R. 87, 89 (Chk. 2007).

When the movant could seek relief from judgment under Chuuk Civil Procedure Rule 60(b) or he could appeal and seek a stay pending appeal by having the sum garnished paid into the state court's registry to remain there until the outcome of any appellate proceedings, he has adequate legal remedies and injunctive releif will be denied. Furthermore, injunctive relief should be denied when money damages or other relief upon the litigation's conclusion will fully compensate for the threatened interim action. Billimon v. Marar, 15 FSM R. 87, 89 (Chk. 2007).

The essential requirement to obtain a temporary restraining order is that the applicant must clearly show that immediate and irreparable injury or loss or damage would occur if the temporary restraining order is not granted – the plaintiff must show that his damage will be irreparable – that it cannot be remedied in any way except by the drastic measure of a restraining order. An injury is not irreparable if there is an adequate alternative remedy. Billimon v. Marar, 15 FSM R. 87, 89 (Chk. 2007).

In order for the court to grant a temporary restraining order it is essential that there is a clear showing that immediate and irreparable injury or loss or damage would occur if the temporary restraining order is not granted. Irreparable injury means there is no adequate alternative remedy. Bisaram v. Suta, 15 FSM R. 250, 253-54 (Chk. S. Ct. Tr. 2007).

There may be cases in which the court would enter an election matter before the election process has been completed. But when, assuming the plaintiff fails to get elected, any irregularities in the election results can be addressed by filing a complaint with the State Election Commission to seek a recount or to aside the election, the plaintiff has not demonstrated that he is in danger of immediate, irreparable harm. Bisaram v. Suta, 15 FSM R. 250, 254 (Chk. S. Ct. Tr. 2007).

The Pohnpei Port Authority has demonstrated irreparable injury by showing that the Governor's February 22, 2008 executive directive would require it to act inconsistently with the applicable state statutes because it purports to assert authority – that of obtaining legal counsel for PPA – that only PPA, acting by its general manager, may assert and it also potentially impairs the general counsel's contract with PPA by unilaterally terminating it and because, even though PPA may use the services of Pohnpei government attorneys to serve as PPA attorneys, this decision clearly lies with the PPA pursuant to its enabling statute and a decision to use the Pohnpei Attorney General's Office may not be imposed by an executive directive inconsistent with applicable state law. Pohnpei Port Auth. v. Pohnpei, 15 FSM R. 541, 544 (Pon. 2008).

When, if the Governor should remove any Pohnpei Port Authority board member without cause, that member would have recourse in the courts and thus the injury in that case would not necessarily be irreparable; when the Governor does not have authority to terminate PPA's general manager or general counsel because the authority to terminate PPA's general manager rests by law with the PPA Board and

the authority to terminate PPA's general counsel rests by law with the PPA general manager; and when, if the Governor demands that the PPA Board do this, those with the legal authority to take such actions may simply refuse to do so, the threatened injuries – the Governor forcing the PPA Board to summarily remove the PPA general manager and general counsel and/or forcing the Board to resign under threat of removing the Board and in retaliation of being sued, thereby disrupting PPA's operations – are not immediate, concrete or irreparable, especially since the PPA Board has decided that they will not submit their resignations and they will not take any action toward terminating the general manager and the general counsel. Pohnpei Port Auth. v. Pohnpei, 15 FSM R. 563, 566 (Pon. 2008).

When the threatened injuries set forth in the plaintiff's supplement are not sufficiently certain, immediate, and irreparable to justify the injunctive relief requested and the other three factors for a TRO do not sufficiently support the issuance of any further injunctive relief in addition to the TRO already issued and extended, further injunctive relief pursuant to the supplement will be denied. Pohnpei Port Auth. v. Pohnpei, 15 FSM R. 563, 567 (Pon. 2008).

When the port authority's actions reflect its valid efforts to regulate the use of port facilities, and to collect fees imposed for that use, any financial loss resulting to the movant is a type fundamentally different from the sort necessary to a showing of irreparable harm under FSM Civil Rule 65(b). Pohnpei Port Auth. v. Ehsa, 16 FSM R. 11, 14 (Pon. 2008).

An election contestant cannot show irreparable harm, a necessary prerequisite to the issuance of a temporary restraining order and a major factor to be weighed before granting a preliminary injunction, when he has the election appeal process available to him through which he could properly seek redress. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 358 (Chk. 2009).

When the relief sought is obtainable from the National Election Director before certification since a recount or a revote is a remedy within the National Election Director's power to order during the election contest appeal process, the plaintiff cannot show irreparable harm and his motion for a temporary restraining order may be denied on that ground alone. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 358-59 (Chk. 2009).

An election contestant cannot show irreparable harm, a necessary prerequisite to the issuance of a temporary restraining order and a major factor to be weighed before granting a preliminary injunction, when he has the election appeal process available to him through which he could properly seek redress. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 392, 394 (Chk. 2009).

A movant faces irreparable injury when, if no injunction is issued the movant must then inform all of the world's computer passenger reservation systems of the special pricing requirements for paying passengers leaving Chuuk and must then compensate those reservation systems for their reprogramming expenses; when, for its cargo or freight shipping service, a new computer software, whose cost is very substantial, would need to be written and installed; when these costs are not recoverable if the movant should prevail (although new computer software for cargo may have some benefits of its own); and when other costs – compliance costs, tax collection costs, remittance costs – would also not be recoverable if it prevails. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 161 (Chk. 2010).

Irreparable injury may include the loss of goodwill, loss of customers and potential customers, lost sales, and similar harms since they are not readily compensable by money damages, and thus are precisely the type of harm a preliminary injunction is intended to prevent because economic damages based on such harms are extremely difficult to calculate. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 162 (Chk. 2010).

An irreparable and certainly unquantifiable harm would occur if Continental collected the service tax, the tax was ruled unlawful, and Continental was then faced with the difficult, if not insurmountable, task of refunding the tax charge to all the passengers from whom it had collected the unlawful tax, and it then

would also face a second set of reprogramming costs to change the world's computer reservation systems back to their previous state by deleting the new special Chuuk tax codes. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 162 (Chk. 2010).

If Continental does not comply with Chuuk's demands that it start collecting the tax immediately, it and its employees face civil and criminal penalties, which would constitute irreparable harm if imposed and if Continental then prevailed on the merits. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 162 (Chk. 2010).

A movant has not made a showing that irreparable injury will occur if injunctive relief is not granted when his complaint seeks only money damages since if money damages will fully compensate for the threatened interim action, then the preliminary injunction should be denied because, under such circumstances, the injury cannot accurately be deemed irreparable. Setik v. Pacific Int'l, Inc., 17 FSM R. 277, 279 (Chk. 2010).

When the national government has already remitted Tolensom's share of the residual CIP funds to a bank account controlled by one of the two purported mayors and municipal governments of Tolensom, irreparable harm would occur if these funds were spent and it later turned out that those expenditures were not made to satisfy the Tolensom municipal government's rightful obligations but were spent by an entity purporting to be the Tolensom municipal government for purposes not authorized by the proper Tolensom municipal government. Marsolo v. Esa, 17 FSM R. 377, 381 (Chk. 2011).

When the election law provides for remedies that have not yet been used, a candidate cannot show irreparable harm necessary for the issuance of a temporary restraining order. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 490 (Chk. S. Ct. Tr. 2011).

Since section 131 of Chuuk State Law No. 3-95-26 provides for trials in the Chuuk State Supreme Court Appellate Division when review of Election Commission decisions regarding contested elections is sought and since the plaintiff has availed himself of that remedy, he cannot show irreparable harm. But a court must weigh three factors other than irreparable harm when considering injunctive relief – the relative harm to the plaintiff and to the defendant, the public interest, and the likelihood of success by the plaintiff in the underlying case – and when none of those factors weigh so strongly in the plaintiff's favor to overcome the lack of irreparable harm injunctive relief will not be granted. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 490 (Chk. S. Ct. Tr. 2011).

When the trial court is without jurisdiction to either decide or second guess the reasoning underpinning future appellate division decisions and, whatever the results of the revote, neither party is likely to suffer a harm of such import that cannot potentially be redressed through the procedures set forth under our laws. The plaintiff does not stand to lose anything of a magnitude so great as to justify issuance of an order enjoining the election from taking place at all because if the defendant prevails in the appeal, there may be utility in the revote and if the plaintiff prevails in the appeal, the revote becomes a nullity. Under either scenario, the results of the revote may be administratively and, if necessary, judicially appealed. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 491 (Chk. S. Ct. Tr. 2011).

The threat of irreparable harm before the litigation's conclusion is a prerequisite to preliminary injunctive relief. When money damages or other relief will fully compensate for the threatened interim action, a preliminary injunction should be denied. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 593 (Pon. 2011).

Since either expectancy damages (lost profits) or reliance damages should make GMP whole on its counterclaims against the FSM, the court cannot find that the harm will be irreparable even if Compact funds are expended instead of enjoined since there will still be a source of funds from which to pay any damages awarded because the FSM has other revenue sources and the court is unaware of any judgment against the FSM that has ever gone unpaid. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 593 (Pon. 2011).

Irreparable harm may include the loss of goodwill, loss of customers and potential customers, lost sales, and similar harms because they are not readily compensable by money damages. The court does not need to compute the exact degree to which the movant will suffer loss of goodwill, customers and potential customers when the other party clearly intends to cause it to suffer these harms. Since the court need only examine the possibility of irreparable harm, not merely the probability, it is enough that the movant has suffered harm and that the party to be enjoined intends irreparable harms. FSM Dev. Bank v. Abello, 18 FSM R. 192, 196 (Pon. 2012).

One who seeks an injunction pending appeal must show irreparable injury. Berman v. Pohnpei, 18 FSM R. 418, 421 (App. 2012).

When what the movants seek to enjoin is not trespass and nuisance on their land but on a causeway or berm which is not their land and when the trial court denied their initial motion for injunction on January 7, 2009, they did not appeal that denial as they could have under Appellate Rule 4(a)(1)(B), the movants have not shown irreparable harm or injury. Berman v. Pohnpei, 18 FSM R. 418, 421-22 (App. 2012).

In order for a party to obtain injunctive relief, it must be faced with the threat of irreparable harm before the litigation is concluded. Irreparable harm is harm that cannot be fully compensated by money damages. Perman v. Ehsa, 18 FSM R. 432, 439 (Pon. 2012).

Irreparable harm exists when the Governor is exercising, through an executive order, power that applicable state law firmly vests in the PUC Board and in the PUC General Manager that the Board hires and supervises because money damages cannot remedy these harms. Perman v. Ehsa, 18 FSM R. 432, 439 (Pon. 2012).

The threat of irreparable harm before the litigation's conclusion is a prerequisite to preliminary injunctive relief and when money damages or other relief will fully compensate for the threatened interim action, irreparable harm does not exist and a preliminary injunction should be denied. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 506 (Chk. 2013).

When a plaintiff seeks to enjoin payment of money to a defendant, money damages ought to constitute full compensation if the payments are later held unconstitutional. The perceived difficulty in obtaining a refund from the defendant would not make the threatened injury irreparable because the defendant could easily accommodate any refunds to the enrolled wage-earners by allowing them credits on future premium payments. On this ground alone the preliminary injunction application can be denied. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 506 (Chk. 2013).

Irreparable harm is the single most dispositive factor in determining whether injunctive relief should be granted. Irreparable harm is harm that cannot be remedied in any way except by the rather drastic measure of injunctive relief, that is, irreparable injury is a harm for which there is no adequate alternative remedy. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 567 (Pon. 2013).

The threat of irreparable harm before the litigation's conclusion is a prerequisite to preliminary injunctive relief, but if money damages will fully compensate for the threatened interim action, there is no irreparable harm and a preliminary injunction should be denied. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 567 (Pon. 2013).

A plaintiff will be irreparably harmed when the disruption to its business by having to vacate the site in February 2013 will cause it the loss of goodwill and loss of customers and potential customers, for which monetary damages are extremely difficult to measure and it will also be irreparably harmed if not given the time (90-120 days) to relocate its business and its movable assets and inventory to another suitable location, which currently cannot be found on Pohnpei. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 567 (Pon. 2013).

If an injunction is not issued, a plaintiff will suffer irreparable harm because if another company moves onto the site it will be very difficult to then remove that company and move onto the site and because it would then also be difficult to get the business running quickly on that site if the current tenant's movable assets are no longer there. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 567 (Pon. 2013).

Since the deprivation of a fundamental right outweighs any threatened harm that an injunction might cause a defendant, the plaintiffs have shown that they are likely to suffer irreparable harm in the absence of a preliminary injunction when the Election Commissioners are scheduled to fly out on March 1, 2013, to conduct the March 5, 2013 elections, which is a clear demonstration of an imminent harm and the harm is actual as the harmful conduct will occur allowing for the Commissioners to bathe in the appearance of impropriety constituting irreparable harm. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 584, 587-88 (Chk. S. Ct. Tr. 2013).

When, under the State Tax Act, amounts paid under protest must be kept and deposited in a separate and restricted account which must be returned to the taxpayer if he prevails and since any funds levied by the state to pay the movant's assessed tax liability are rightly considered partial payments under protest and are therefore deposited into "a separate and restricted account," it does not seem that the movant will be irreparably harmed if an injunction does not issue because the return of his money would seem to adequately compensate him. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 153 (Chk. 2013).

The threat of irreparable harm before the litigation's conclusion is a prerequisite to preliminary injunctive relief, but when money damages or other relief will fully compensate for the threatened interim action, a preliminary injunction should be denied. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 153 (Chk. 2013).

The party seeking a preliminary injunction must be faced with irreparable harm before the litigation's conclusion and there must be a clear showing that immediate and irreparable injury or loss or damages would otherwise occur, and there must be no adequate alternative remedy. When money damages or other relief will fully compensate for the threatened interim action, a preliminary injunction should be denied. Nena v. Saimon, 19 FSM R. 317, 328-29 (App. 2014).

When the trial court did not make any findings that would support the idea that the plaintiffs would suffer irreparable harm if the preliminary injunction did not issue and when it probably could not find that the plaintiffs faced irreparable harm when the plaintiffs did not specify how they intended to develop the land and how the defendant's presence would thwart that development, and since the threat of irreparable harm before the litigation's conclusion is a prerequisite to preliminary injunctive relief, the preliminary injunction should not have been issued because the plaintiffs did not face irreparable harm. Nena v. Saimon, 19 FSM R. 317, 329 (App. 2014).

The threat of irreparable harm before the litigation's conclusion is a prerequisite to preliminary injunctive relief. When money damages or other relief will fully compensate for the threatened interim action, irreparable harm does not exist and a preliminary injunction should be denied. Killion v. Chuuk, 19 FSM R. 539, 541 (Chk. 2014).

A plaintiff whose tideland is being dredged by another is threatened with irreparable harm because once a tideland has been dredged its very nature is altered and cannot easily be restored and because, analogously, harm to land is often considered irreparable since land is unique. Killion v. Chuuk, 19 FSM R. 539, 541 (Chk. 2014).

The possibility that the FSM Court will issue an order denying stay motions and/or affirming on appeal the decision to sell the property does not constitute the possibility of irreparable injury required for the issuance of a temporary restraining order. An unwelcome outcome is among the everyday risks of

litigation and does not constitute irreparable injury for purposes of a temporary restraining order. In re Estate of Setik, 19 FSM R. 544, 547 (Chk. S. Ct. Tr. 2014).

The sale of the property does not create irreparable harm when it can be fully remedied with money damages if the petitioner is ultimately able to prevail on appeal and reverse the sale order. In re Estate of Setik, 19 FSM R. 544, 547 (Chk. S. Ct. Tr. 2014).

A temporary restraining order motion will be denied when the movant has failed to meet his burden to show that irreparable injury/harm would result from denial of the temporary restraining order. Simina v. Chuuk State Election Comm'n, 19 FSM R. 572, 573 (Chk. S. Ct. App. 2014).

A court may not grant a plaintiff's request for injunctive or other equitable relief when there has been no showing of irreparable harm or that there is no adequate remedy at law. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 648 (Chk. S. Ct. Tr. 2015).

Irreparable harm could occur if a preliminary injunction is not granted since the plaintiff's remedy, if successful, is her reinstatement as Director, and since, if another person is nominated and confirmed as the Director of Education in the meantime, the Department and the State would be in the untenable position of having two Executive Directors simultaneously. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 649 (Chk. S. Ct. Tr. 2015).

The harm to the petitioner may not be irreparable when there is an adequate remedy, both legal and equitable, in a different forum. Mailo v. Lawrence, 20 FSM R. 201, 204 (Chk. 2015).

The threat of irreparable harm before the underlying litigation's conclusion is a prerequisite to preliminary injunctive relief and when money damages or other relief will fully compensate for the threatened interim action, irreparable harm does not exist and a preliminary injunction or temporary restraining order should be denied. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 550-51 (Pon. 2016).

Irreparable harm may be threatened when, once the sea cucumber population is significantly impacted, it will take several years for the population to recover, if at all, and when the very nature of the surrounding ecosystem will suffer negative consequences as a result. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 551 (Pon. 2016).

Harm to land is often considered irreparable because land is unique. The same should hold true of the reef and surrounding environment where harvesting is to occur as well as the precious population of sea cucumbers. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 551 (Pon. 2016).

The threat of irreparable harm before the litigation's conclusion is a prerequisite to preliminary injunctive relief, and when money damages or other relief will fully compensate for the threatened interim action, irreparable harm does not exist and a preliminary injunction should be denied. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 126 (Chk. 2017).

A harm involving land is often considered irreparable since land is unique. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 126 (Chk. 2017).

The harm is irreparable when there is no other suitable or equivalent adjacent or adjoining property into which the movant might be able to expand its facilities and when the landowner does not have the present ability to return the lease payment. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 127 (Chk. 2017).

Actual harm need not exist in order for a temporary restraining order or prohibitory injunction to remain in place. Only an imminent threat of actual harm is required. Mwoalen Wahu Ileile en Pohnpei v.

Peterson, 21 FSM R. 150, 158 (Pon. 2017).

The threat of irreparable harm before the litigation's conclusion is generally considered a prerequisite to preliminary injunctive relief. Rodriguez v. Ninth Pohnpei Legislature, 21 FSM R. 276, 279 (Pon. 2017).

For the court to grant a preliminary injunction, the party seeking protection must be faced with the threat of irreparable harm before the litigation's conclusion unless the injunction is granted. In re Gross Revenue Tax, 22 FSM R. 124, 128 (Pon. 2018).

When the petitioner avers that he has children abroad who are dependent upon him for financial support, there is substantial threat of irreparable harm to the petitioner's children because, in Micronesia, our very survival and ability to pursue education sharply contrasts those of other cultures and because familial support, whether it be emotional, physical, or financial, is of vital importance to our success. Because of the children's continuous need for their father's financial support, they could face un-compensable damage and harm without the petitioner's support and their future could potentially be unnecessarily cut short if relief is not granted before completion of judicial review. In re Gross Revenue Tax, 22 FSM R. 124, 129 (Pon. 2018).

When the complaint and motion allege that an irreparable injury has already occurred, as opposed to one which is going to occur immediately, the plaintiff has failed to meet the first of the preliminary factors required for granting an ex-parte temporary restraining order so as to override the law's general requirement that the adverse party ought to be provided a chance to be heard in opposition. Ruben v. Chuuk, 22 FSM R. 130m, 130p (Chk. S. Ct. Tr. 2018).

When irreparable harm allegations are all of past injuries, which perhaps may be irreparable, these allegations fail to show an irreparable injury, loss, or damage as required by Rule 65(b) because the plaintiff has not demonstrated that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition. Ruben v. Chuuk, 22 FSM R. 130m, 130p (Chk. S. Ct. Tr. 2018).

One who seeks an injunction pending appeal must show irreparable injury. The party seeking a preliminary injunction must be faced with irreparable harm before the litigation's end and there must be a clear showing that immediate and irreparable injury would otherwise occur, and there must be no adequate alternative remedy. In re Decision of Nat'l Election Dir., 22 FSM R. 221, 223 (App. 2019).

A "winning" candidate cannot show that a revote constitutes irreparable harm because, after the revote is held, that candidate may still be declared and certified as the winning candidate – the revote might not alter the ultimate outcome. In re Decision of Nat'l Election Dir., 22 FSM R. 221, 223 (App. 2019).

Since irreparable harm before the litigation's end is a prerequisite to preliminary injunctive relief, when irreparable harm does not exist, a preliminary injunction should be denied. In re Decision of Nat'l Election Dir., 22 FSM R. 221, 223 (App. 2019).

A party seeking a preliminary injunction must clearly show that an immediate and irreparable injury would otherwise occur and that there is no adequate alternative remedy. In re Decision of Nat'l Election Dir., 22 FSM R. 234, 236 (App. 2019).

A showing that a candidate might end up losing an election that the candidate had seemingly already won, does not show irreparable harm. In re Decision of Nat'l Election Dir., 22 FSM R. 234, 236 (App. 2019).

Irreparable harm is a prerequisite for temporary or for preliminary injunctive relief. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 267 (Chk. 2019).

– Injunctions – Likelihood of Success

The fact that the party moving for preliminary injunction relief does not appear more likely than not to succeed on the merits is a factor weighing against granting of such relief but it is only one of four factors and is not necessarily determinative when the other factors point toward such relief. Ponape Transfer & Storage v. Pohnpei State Public Lands Auth., 2 FSM R. 272, 278 (Pon. 1986).

A court may grant a preliminary injunction even if the moving party is not more likely than not to prevail, as long as the movant's position appears sufficiently sound to raise serious, nonfrivolous issues. Ponape Enterprises Co. v. Bergen, 6 FSM R. 286, 289 (Pon. 1993).

As to the likelihood of success on the merits, a court may grant a preliminary injunction so long as the movant's position raises serious, nonfrivolous issues. Palik v. Henry, 9 FSM R. 309, 312 (Kos. S. Ct. Tr. 2000).

When it is not clear whether the plaintiff can demonstrate the type of illegal "combination" contemplated by 32 F.S.M.C. 302, and there is no relevant case law found in the FSM which interprets the anti-competitive practices law and when the court does not have before it any evidence of the parties' relative market shares, it is difficult to evaluate the likelihood of success of plaintiff's claims under 32 F.S.M.C. 301 *et seq*. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 417 (Pon. 2001).

Where the issue is whether the defendant's actions were a good faith effort to protect a legally cognizable interest under FSM law, when it had no standing to enforce this particular law, and where the defendant not only does not have a legally cognizable interest under FSM law, but also its actions were not in good faith, the plaintiff's likelihood of success in this case weighs in favor of granting the preliminary injunction. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 418-19 (Pon. 2001).

As to the likelihood of success on the merits, a court may grant a preliminary injunction so long as the movant's position raises serious, nonfrivolous issues. Seventh Kosrae State Legislature v. Sigrah, 11 FSM R. 110, 113 (Kos. S. Ct. Tr. 2002).

When the party seeking an injunction has made out a prima facie case for nuisance against the other, the likelihood of success on the merits factor weighs in favor of the issuance of an injunction. Ambros & Co. v. Board of Trustees, 11 FSM R. 262a, 262i (Pon. 2002).

When the court has before it no evidence that the plaintiff acted unlawfully or that the defendants' actions were justified, the likelihood-of-success factor weighs in favor of granting a preliminary injunction. Yang v. Western Sales Trading Co., 11 FSM R. 607, 618 (Pon. 2003).

With regard to the movant's possibility of success on the merits, its actions to construct a cellular telecommunications tower only after undertaking a survey and a search of land commission records on the property where the tower is now located, and after obtaining an easement, demonstrates that it acted prudently before proceeding with the tower's construction. In re FSM Telecomm. Corp. Cellular Tower, 12 FSM R. 243, 247 (Chk. 2003).

As to the likelihood of success on the merits, a court may grant injunctive relief so long as the movant's position raises serious, non-frivolous issues. A court may grant injunctive relief even if the moving party is not more likely than not to prevail, so long as the plaintiffs' position appears sufficiently sound to raise serious non-frivolous issues. Sigrah v. Kosrae, 12 FSM R. 513, 518 (Kos. S. Ct. Tr. 2004).

Since the state's statutory authority to acquire interests in land through court action has never been utilized to forcibly purchase an interest in private land for a public purpose, the court cannot conclude that the state is likely to prevail on the merits of its claim due to a complete absence of court decisions applying or interpreting this authority. Sigrah v. Kosrae, 12 FSM R. 513, 519 (Kos. S. Ct. Tr. 2004).

As to the likelihood of success on the merits, a court may grant a preliminary injunction so long as the movant's position raises serious, nonfrivolous issues. Benjamin v. Youngstrom, 13 FSM R. 72, 75 (Kos. S. Ct. Tr. 2004).

When the plaintiffs' predecessor in interest no longer held title to the parcel in April 2002, when he wrote his will, he could not transfer any interest in the parcel, by will or otherwise, to the plaintiffs or to anyone else and therefore the plaintiffs do not have likelihood of success on the merits. This factor weighs strongly in the defendants' favor. Benjamin v. Youngstrom, 13 FSM R. 72, 75-76 (Kos. S. Ct. Tr. 2004).

Since a certificate of title is prima facie evidence of ownership and courts are required to attach a presumption of correctness to a certificate of title, a plaintiff with a certificate of title is presumed to be an owner of the subject parcels and thus the factor of the likelihood of success on the merits weighs in the plaintiffs' favor. Akinaga v. Heirs of Mike, 13 FSM R. 296, 299 (Kos. S. Ct. Tr. 2005).

When the plaintiff has not presented a certificate of title for the subject parcel, but has presented a determination of ownership that is more than ten years old and the defendant claims that he is the owner of the subject parcel through a land exchange completed with the late land owner and that a transaction was completed to transfer title of the exchanged parcels, the plaintiff's likelihood of success on the merits is unclear, based upon lack of clear representation of all the heirs, based upon lack of conclusive title through a certificate of title, and based upon the defendant's claim to title of the subject parcel through a land exchange. Norita v. Tilfas, 13 FSM R. 321, 323 (Kos. S. Ct. Tr. 2005).

While it is entirely likely that non-parties could succeed on the merits of an action seeking an injunction without ever being parties in another case with a judgment because failure to join an indispensable party may subject a judgment to collateral attack, there are those rare cases where intervention is timely under Rule 24 even though it is after entry of judgment. Ruben v. Petewon, 13 FSM R. 383, 390 (Chk. 2005).

A holder of a certificate of title derived from another certificate of title that was litigated has a good chance of success on the merits in a dispute over title. Ruben v. Petewon, 13 FSM R. 383, 390 (Chk. 2005).

A contention that a movant has no likelihood of success on the merits plainly fails when the movant has succeeded on the merits because the court has granted the movant's summary judgment motion and determined that it has a valid lease for the land. Therefore the movant's motion to amend the preliminary injunction will be granted. Mailo v. Chuuk, 13 FSM R. 462, 471-72 (Chk. 2005).

A temporary restraining order is a drastic remedy. A court cannot, in good conscience, grant such relief when the plaintiff has failed to make a showing of irreparable harm and only one of the four factors – likelihood of success on the merits – weighs in its favor. GE Seaco Servs., Ltd. v. Federated Shipping Co., 14 FSM R. 159, 164 (Pon. 2006).

Success on the merits appears likely since the plaintiffs may not be forced to undertake action inconsistent with applicable state law either at their own instigation or under the guise of complying with an executive directive and since the PPA general counsel has a contract with PPA and certain rights flowing from that contractual relationship may not be impaired absent due process. Pohnpei Port Auth. v. Pohnpei, 15 FSM R. 541, 544-45 (Pon. 2008).

Even though when delinquent vessels are not permitted port entry means that the movant is deprived of the potential revenue that would result from the vessels' continued use of the port facilities, which results in reduced cash flow to him, and impairs his ability to pay the arrearages that he owes on behalf of the delinquent vessels, that financial hardship may result to the movant is immaterial because if financial hardship alone were the determining factor, then every financially strapped debtor could ask a court to enjoin an opposing party from engaging in actions which the opposing party has the right to undertake to

pursue claims against the debtor. The factor of success on the merits thus weighs in the non-movant's favor. Pohnpei Port Auth. v. Ehsa, 16 FSM R. 11, 14 (Pon. 2008).

When the other three factors weigh strongly in favor of a preliminary injunction freezing the Tolensom CIP funds, the plaintiffs' likelihood of success on the merits does not need to be great in order for an injunction to issue because a court may grant a preliminary injunction even if the moving party is not more likely than not to prevail, as long as the movant's position appears sufficiently sound to raise serious, non-frivolous issues. Even if the parties moving for preliminary injunction relief do not appear more likely than not to succeed on the merits, which would be a factor weighing against granting such relief, it is only one of four factors and is not necessarily determinative when the other factors point toward such relief, and thus the court does not need to determine the plaintiffs' likelihood of success on the merits of the action. It only needs to determine that they have some likelihood of success since if they had absolutely no likelihood of success, no injunction could issue. Marsolo v. Esa, 17 FSM R. 377, 381-82 (Chk. 2011).

A court cannot, for lack of jurisdiction, weigh the likelihood of plaintiff's success on the merits when, pursuant to state law, the merits of his appeal are not before the court because they were duly presented in their proper forum of the appellate division. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 491 (Chk. S. Ct. Tr. 2011).

Without touching on the question of likelihood of success on the merits of the underlying case, a motion for injunctive relief in which the moving party asks the court to prevent a complained-of conduct or activity from occurring, but which is filed after the completion of the conduct or activity, cannot succeed when the conduct or activity is non-continuing. Berman v. FSM Nat'l Police, 18 FSM R. 103, 105 (Pon. 2011).

The bank has therefore shown that it is likely to succeed on the merits of its motion for an order to show cause why the defendant should not be held in contempt when, in continuing publicly to assert, against the evidence, that the bank had engaged in fraudulent conduct in obtaining not just the amended order of assignment, which is a final order, but also the stipulated judgment from which his grievances arise, which is a final judgment, the defendant intends not only to obstruct the administration of justice, but also to disobey or resist the court's lawful writ, process, order, rule or command. FSM Dev. Bank v. Abello, 18 FSM R. 192, 197 (Pon. 2012).

When the movants do not seek to maintain the status quo pending appeal but seek to substantially alter or even reverse the status quo by obtaining a mandatory injunction against Pohnpei requiring it to take certain actions to prevent the activities of persons not parties to the case, on that ground alone the movants' likelihood of success is poor. Berman v. Pohnpei, 18 FSM R. 418, 421 (App. 2012).

The likelihood that the plaintiffs will prevail on the issue of the Governor's executive orders is great since the Governor cannot "terminate" or "suspend" the PUC General Manager and since the Governor's directive to an "acting" General Manager and his actions in compliance with the Governor's orders will not stand legal scrutiny because the Governor has no authority to order a PUC general manager to do anything. Perman v. Ehsa, 18 FSM R. 432, 438 (Pon. 2012).

Since the Governor cannot exercise the PUC Board's powers under any circumstance, the plaintiffs' likelihood of success on the PUC bid evaluation process and the conclusion of an MOU with a bidder is great. Perman v. Ehsa, 18 FSM R. 432, 438 (Pon. 2012).

When the Governor's letters to PUC Directors stated that they were suspended for fifteen days and proposed their removal from office and when one director brought his delinquent account up-to-date and the other had supplied evidence that he had not been delinquent for over three months their likelihood of success, while not as great as that of the other plaintiffs, is still substantial and not frivolous since one director's evidence tends to show that there was no good cause to remove him and the other was only removed after he had eliminated his delinquency and thus eliminated good cause to remove him before the

date on which he was removed and so may have a viable estoppel theory for relief. Perman v. Ehsa, 18 FSM R. 432, 439 (Pon. 2012).

A plaintiff has a reasonable probability of success on the merits that insurance premiums will be ruled an income tax when the contributions are computed as a percentage of income earned as wages or salaries. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 506 (Chk. 2013).

A plaintiff has a good chance of success on the merits when its contract with the State provided for "the first right to negotiate," and "mandatory and binding arbitration," since these clauses would be meaningless if they were not enforceable after the contract's expiration date. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 567 (Pon. 2013).

The plaintiffs have a good likelihood of success on the merits when for the one plaintiff seeking specific performance money damages would be very difficult to calculate and when for the other plaintiff the process used to recommend another as the only qualified bidder was questionable and its bid to lease the site was clearly separate from its additional, optional proposal for a lease of a different site. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 567 (Pon. 2013).

When, even in the absence of a statute mandating the Election Commission's impartiality, the Commission must still be impartial, the plaintiffs have shown a likelihood of prevailing on the merits of their due process claim since the court is not persuaded by the defendants' contentions that since 2005, a "status quo" has been established in which the Commissioners have traveled to the polling places in order to conduct the election, and consequently, the this new "status quo" must remain undisturbed. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 584, 587 (Chk. S. Ct. Tr. 2013).

The presence of others on the land for over 60 years who had never been notified of the land registration proceedings would lessen the plaintiffs' likelihood of success on the merits of a trespass action because persons who have been openly residing on land for a long time are persons who must be given notice of any land registration proceedings for that land, otherwise the determination of ownership (and any subsequent certificate of title) is not valid – when a person has a claim to the land and was not given notice of the registration proceedings as required by law, the determination of ownership and the certificate of title for that land is not conclusive as upon him. Nena v. Saimon, 19 FSM R. 317, 328 (App. 2014).

Since certificates of title are prima facie evidence of ownership against all persons who did not have notice of the registration proceedings, any certificates of title for the land may mean that the likelihood-of-success factor would weigh in the plaintiffs' favor since in an action for trespass, a plaintiff with a certificate of title for the parcel usually has a greater possessory interest to the disputed property, but the likelihood-of-success factor may be strongly outweighed by the irreparable-harm and the balance-of-the-injuries factors. Nena v. Saimon, 19 FSM R. 317, 328 (App. 2014).

A plaintiff's likelihood of success on the merits, while not certain, is great when he has a deed to the tideland and his ownership was not questioned for at least twenty years after his purchase of it although his claim to ownership was open and notorious and when he could also possibly prevail under an adverse possession theory to the tidelands. Killion v. Chuuk, 19 FSM R. 539, 541 (Chk. 2014).

When the petitioner has acknowledged she may not prevail on appeal and has failed to identify a single error of the FSM Court in entering the sale order, the petitioner has failed to show that she has likelihood of success on the merits. In re Estate of Setik, 19 FSM R. 544, 548 (Chk. S. Ct. Tr. 2014).

When at a minimum, the Education Director should have been given notice of the allegations and evidence on which the Board based its resolution to terminate her, and she should have been given an opportunity to respond or to explain her actions or omissions and to rebut any false allegations but was not, her likelihood of success on her due process claim seems almost certain because this is the essence of due process – notice and an opportunity to be heard. Macayon v. Chuuk State Bd. of Educ., 19 FSM R.

644, 649 (Chk. S. Ct. Tr. 2015).

When the respondent is the FSM Secretary of Finance who is not in the position to address the interplay between the Chuuk executive and Chuuk legislative branches under the Chuuk Constitution, this impacts the legislature's likelihood of success on the merits in the FSM Supreme Court. Mailo v. Lawrence, 20 FSM R. 201, 204 (Chk. 2015).

The FSM Constitution's Article VII, section 2 provides no basis for a party to seek relief in the FSM Supreme Court and no basis on which the party is likely to prevail when the party does not argue that the Chuuk has an undemocratic constitution but instead contends that the Chuuk executive branch is expending Chuuk state funds (albeit originally appropriated by Congress) without an appropriation of those funds by the Chuuk Legislature and that this is a violation of Chuuk's democratic constitution. Mailo v. Lawrence, 20 FSM R. 201, 204 (Chk. 2015).

As long as the movant's position appears sufficiently sound to raise serious, nonfrivolous issues, a court may grant injunctive relief even if the moving party is not more likely than not to prevail. The likelihood of success need not be certain or even more likely than not, only that the claims set forth in the complaint are non-negligible and have some chance of success on the merits. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 551 (Pon. 2016).

The likelihood of success, although not certain, favors the plaintiffs when a recent study concluded that data shows that harvesting sea cucumbers is not recommended at present because of low densities of large species and no substantial recovery of small species since their populations declined in 2013, because the plaintiffs have provided sufficient proof that the State failed to develop a management plan or conduct appropriate assessments of the current harvest's sustainability; and because, as a result, there is a distinct possibility that these interests were not properly balanced. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 551 (Pon. 2016).

A court may grant a preliminary injunction even if the court is not convinced that the moving party will more likely than not prevail, as long as the movant's position appears sufficiently sound to raise serious, nonfrivolous issues. In re Gross Revenue Tax, 22 FSM R. 124, 128 (Pon. 2018).

As to the likelihood of success on the merits, a court may grant a preliminary injunction so long as the movant's position raises serious nonfrivolous issues. In re Gross Revenue Tax, 22 FSM R. 124, 128 (Pon. 2018).

When money damages cannot possibly remedy the harm that the petitioner could face if relief is not granted and when, on the other hand, the respondent can be compensated if any potential inconvenience actually exists, the balance-of-injuries factor weighs in the petitioner's favor. In re Gross Revenue Tax, 22 FSM R. 124, 130 (Pon. 2018).

When a state statute is not a bill of attainder and the court otherwise lacks jurisdiction, the plaintiffs' likelihood of success on the merits of their claims is zero. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 267 (Chk. 2019).

– Injunctions – Mandatory

Courts rarely grant mandatory injunctions because courts are ill-equipped to involve themselves in day-to-day administration and because of the difficulty of enforcing such injunctions. Courts generally enter prohibitory injunctions – an injunction forbidding some act. Udot Municipality v. FSM, 10 FSM R. 354, 360 (Chk. 2001).

Courts generally enter prohibitory injunctions – an injunction forbidding some act. Courts rarely grant mandatory injunctions because courts are ill-equipped to involve themselves in day-to-day administration

and because of the difficulty of enforcing such injunctions. Berman v. Pohnpei, 18 FSM R. 418, 421 (App. 2012).

When the movants do not seek to maintain the status quo pending appeal but seek to substantially alter or even reverse the status quo by obtaining a mandatory injunction against Pohnpei requiring it to take certain actions to prevent the activities of persons not parties to the case, on that ground alone the movants' likelihood of success is poor. Berman v. Pohnpei, 18 FSM R. 418, 421 (App. 2012).

A very substantial cash bond may be required in order to grant a preliminary injunction that is mandatory in nature. Berman v. Pohnpei, 18 FSM R. 418, 422 (App. 2012).

The trial court could not order a mandatory injunction for the FSM to issue an earthmoving permit to remove a berm when no one had applied to the FSM for one. While injunctions can be mandatory, mandatory injunctions are disfavored, and when the proposed mandatory injunction would require the FSM to issue an earthmoving permit to Pohnpei or to the Pohnpei Transportation Authority which would then be ordered to remove the berm and neither the state nor the PTA was a party to the case below, the trial court could not issue any orders directed to those non-parties. Berman v. FSM Nat'l Police, 19 FSM R. 118, 124-25 (App. 2013).

Injunctions can be mandatory in nature. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 333 (Pon. 2019).

A mandatory injunction is one which: 1) commands the defendant to do some positive act or particular thing; 2) prohibits him from refusing (or persisting in a refusal) to do or permit some act to which the plaintiff has a legal right; or 3) restrains the defendant from permitting his previous wrongful act to continue to be operative, thus virtually compelling him to undo it. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 333 (Pon. 2019).

Courts rarely grant mandatory injunctions because courts are ill-equipped to involve themselves in day-to-day administration and because of the difficulty of enforcing them. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 333 (Pon. 2019).

A case is appropriate for a mandatory injunction when it requires a one-time action by the defendants and does not involve the court in any "day-to-day administration" or present any enforcement difficulties. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 333 (Pon. 2019).

Since the FSM Development Bank is not subject to restrictions imposed by Pohnpei on its ability to acquire title to land, it is appropriate that the Pohnpei Court of Land Tenure be restrained from permitting its previous wrongful act (its earlier denial of the Bank's application for title) to continue to be operative. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 333 (Pon. 2019).

– Injunctions – Public Interest

Earthmoving regulations themselves represent a governmental determination as to the public interest, and the clear violation of such regulations may therefore be enjoined without a separate court assessment of the public interest and balancing of hardships between the parties. Damarlane v. Pohnpei Transp. Auth., 4 FSM R. 347, 349 (Pon. 1990).

The public interest weighs in favor of granting a preliminary injunction when the harm to the public that the defendant alleges remains fully protectable by consumers who may be confused, or by the Attorney General and when the public interest is best served by maintaining competition in the corned beef market pending the litigation's outcome. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 419 (Pon. 2001).

When the Legislative Counsels' continued services to the Legislature will not interfere with the

executive's duties to faithfully execute the laws, and no fiscal issues are involved because their salaries are already appropriated, the balance of possible injuries favors issuance of the preliminary injunction, as does the strong public interest in the continued functioning of the Legislative branch with legal counsel, particularly during their session. Seventh Kosrae State Legislature v. Sigrah, 11 FSM R. 110, 114-15 (Kos. S. Ct. Tr. 2002).

The public interest weighs in favor of issuing a preliminary injunction when the injunction is limited in scope to protect the public from defendants' statements which are more likely to mislead than to inform the public. Yang v. Western Sales Trading Co., 11 FSM R. 607, 618 (Pon. 2003).

The potential for significant impact on the public interest exists when the cellular telephone system is already in use in Chuuk and is providing service to persons who previously had none and in places where telephone service was previously not possible and when the telephone services' expansion through the cellular system affects the Chuuk public's health, safety and welfare and economy in a positive manner. Having the system discontinued or severely restricted is not in the public interest. In re FSM Telecomm. Corp. Cellular Tower, 12 FSM R. 243, 247 (Chk. 2003).

When, because of the special importance that land has in Kosraean society, the state has substantial interests in assuring that land issues are settled fairly, it is the public interest that the state deal fairly with issues involving land and to respect rights of owners of private land and comply with state laws in acquiring an interest in private land, and it is not in the public interest for the state to commit torts such as trespass, negligence, property or crop damage, or to engage in acts that will subject the state to liability; and when it is also in the public interest to assure that materials such as gravel are available for road maintenance and construction projects as this assists continued employment in the construction trade and provides benefits the people of Kosrae, the public interest weighs in favor of the state protecting rights of owners of private land, assuring compliance with state laws and avoiding liability through its actions and thus the public interest weighs in favor of granting relief for the plaintiffs. Sigrah v. Kosrae, 12 FSM R. 513, 520-21 (Kos. S. Ct. Tr. 2004).

Since the public interest supports the acceptance of prima facie evidence of property ownership through the certificate of title, to which the court must attach a presumption of correctness, and supports the validity and integrity of the Kosrae land registration process and registration of title documents and documents that transfer an interest in land, the public interest weighs in the titleholder's favor. Benjamin v. Youngstrom, 13 FSM R. 72, 76 (Kos. S. Ct. Tr. 2004).

When there is strong public interest in the protection of the land registration and ownership determination process and the court's upholding of a certificate of title's presumption of correctness, the finality of land ownership decisions, and the rights of fee owners of land to assert their ownership rights, including seeking ejection of trespassers from their land, this factor weighs in the plaintiff's favor. Akinaga v. Heirs of Mike, 13 FSM R. 296, 300 (Kos. S. Ct. Tr. 2005).

Since there is strong public interest in the protection of the land registration and ownership determination process, in the court's upholding of the finality of land ownership decisions, and in the rights of fee owners of land to assert their ownership rights, and since there is also strong public interest in the continuing protection of the grave sites for our ancestors, consistent with Kosraean custom and tradition, the public interest factor weighs in favor of injunctive relief. Norita v. Tilfas, 13 FSM R. 321, 324 (Kos. S. Ct. Tr. 2005).

The public interest factor weighs in the movants' favor since the impact on the public interest encourages an orderly judicial process in which all interested parties may be heard, their views properly considered, and their rights honored and when injunctive relief would advance that public interest and allow the matter to proceed in an orderly and deliberative fashion in the state court appellate division. Ruben v. Petewon, 13 FSM R. 383, 391 (Chk. 2005).

When the matter does not directly affect the public and any impact on the public interest, whether injunctive relief is granted or denied, would be negligible, the public-interest factor does not warrant extraordinary relief. GE Seaco Servs., Ltd. v. Federated Shipping Co., 14 FSM R. 159, 163-64 (Pon. 2006).

The impact-on-the-public-interest factor favors neither side when although one side is more eager to put the lot to immediate productive use in accordance with the purpose of commercial leaseholds in Kolonia, the public has an interest in seeing that the Board of Trustees adheres to its public land lease regulations and its decisions. Carlos Etscheit Soap Co. v. McVey, 14 FSM R. 458, 462 (Pon. 2006).

The public interest requires that laws be obeyed and the issuance of an executive directive, to the extent that it purports to interfere with the proper execution of applicable state law is against the public interest. Pohnpei Port Auth. v. Pohnpei, 15 FSM R. 541, 545 (Pon. 2008).

When, even if the movant has met his legal obligations to the port authority in the past, that does not change the fact that he presently owes substantial sums to it and when the port authority is a public corporation organized to promote the public's interest in the effective administration of Pohnpei's port facilities, it is in the public interest that the port authority seek to enforce its regulations and to recover sums owed to it in an efficient and fiscally responsible manner, and the public interest factor will favor the non-movant port authority. Pohnpei Port Auth. v. Ehsa, 16 FSM R. 11, 15 (Pon. 2008).

When one strong public interest would favor the development of sound source of revenue for the state government to improve its financial condition and another public interest would favor keeping the ticket prices lower so as to encourage travel and tourism to Chuuk to benefit the local economy and increase local tax revenue that way, it is difficult to tell which side the public interest would favor. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 162 (Chk. 2010).

The public interest would strongly favor that Tolensom public funds be spent only for Tolensom public purposes as duly authorized by the appropriate authorities and that Tolensom public obligations not go unsatisfied because its public funds were spent improperly. Marsolo v. Esa, 17 FSM R. 377, 381 (Chk. 2011).

When a plaintiff argues that the District No. 11 constituents should not incur the expenses of a revote where there is a likelihood that the appellate court will set aside the results, the public interest is best served if due process is allowed to run its course. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 491 (Chk. S. Ct. Tr. 2011).

The public interest weighs in favor of issuing an injunction when it is limited in scope to protect the public from statements which are more likely to mislead than to inform the public. FSM Dev. Bank v. Abello, 18 FSM R. 192, 198 (Pon. 2012).

The public interest factor weighs in the bank's favor when there has not been any judicial determination that the bank has done anything improper and there have been judicial determinations against the defendant's claims of fraud against the bank as insufficiently pled, otherwise improper, unsubstantiated, or barred under res judicata and when the defendant's actions show an intent not only to obstruct the administration of justice but also to disobey or resist the court's lawful writ, process, order, rule, or command and continued pursuit of this course of action undermines public trust in the judicial system by undermining court orders and denying finality of judgment. FSM Dev. Bank v. Abello, 18 FSM R. 192, 198 (Pon. 2012).

A preliminary injunction will not be issued when, regardless of where the public interest lies, that factor cannot overcome the other three and cause the issuance of the preliminary injunction sought. Berman v. Pohnpei, 18 FSM R. 418, 422 (App. 2012).

The public interest factor favors the plaintiffs since the public interest should favor a fair and thorough, but not rushed, evaluation of the power generation bids which ends with the PUC Board of Directors approving a contract with the bidder with the best plan because it involves proposals for a long-term improvement of PUC's power generation capacity and the expenditure of a large sum. The public interest also favors adherence to the Pohnpei statutes that govern an independent public corporation such as PUC, rather than a blatant disregard of PUC's independent nature. Perman v. Ehsa, 18 FSM R. 432, 440 (Pon. 2012).

Because the Chuuk Health Care Plan provides universal coverage, the public interest would favor its continued and uninterrupted funding as currently budgeted. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 506 (Chk. 2013).

The public interest favors a bidding process that is fair and transparent. It also favors that foreign investors be seen to be treated fairly and thus encouraged to invest in Pohnpei to the State's benefit. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 568 (Pon. 2013).

A declaratory judgment and an injunction are the only adequate means of protecting the public interest, the integrity of the competitive bidding process, and the individual bidder's rights to challenge a contract award under the public bidding statutes. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 568 (Pon. 2013).

Allowing the Election Commissioners to travel to conduct the elections will not serve the public interest since the commissioners' need to be physically present at the polling sites to conduct the election is a mischaracterization of the law because subordinate officers and employees are designated duties for the efficient performance of functions and duties and because the law requires impartiality, whether explicitly or implicitly, and the Commissioners' physical presence at the polling sites defeats impartiality and clouds the Election Commission with the appearance of impropriety. Consequently, an injunction will serve the public interest in a manner, which preserves the integrity of elections by ensuring that the Election Commissioners remain impartial while being available for any necessary quorums and require adequate planning for the elections. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 584, 589 (Chk. S. Ct. Tr. 2013).

While the public interest might favor the state's continuing road maintenance, that interest is not harmed by enjoining the state from dredging the plaintiff's tideland because of the availability of other coral sources. Killion v. Chuuk, 19 FSM R. 539, 541 (Chk. 2014).

When, based on the petitioner's arguments in her motion, it is unclear how the public interest would be served by entering a temporary restraining order, the court cannot find, based on the petitioner's unsupported allegations (which are not evidence), that a temporary restraining order is warranted. In re Estate of Setik, 19 FSM R. 544, 548 (Chk. S. Ct. Tr. 2014).

The public interest favors the resolution of a dispute between the Chuuk state government's two political branches in the forum of the judicial branch of the Chuuk state government, not the FSM Supreme Court. Mailo v. Lawrence, 20 FSM R. 201, 204 (Chk. 2015).

The potential for a significant impact on the public interest exists when Pohnpei's entire population will be directly and adversely affected by an unsustainable sea cucumber harvest, potentially affecting Pohnpei's public health, welfare, and economy in a negative manner since allowing a potentially environmentally devastating sea cucumber harvest is certainly not in the public interest. There is strong public interest in protecting Pohnpei's precious environment and natural resources. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 552 (Pon. 2016).

When the plaintiff contends that the public interest is in its favor because an expanded storage operation would allow it to lower gas and fuel prices in Chuuk and also that the public has an interest in seeing the agreements made with public entities are upheld, and when the defendant does not contend that

the public interest favors denying the injunction but merely contends that the plaintiff has not proven the four factors, the public interest favors the preliminary injunction's issuance. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 128 (Chk. 2017).

The public interest encourages orderly judicial process in which all interested parties may be heard, their view properly heard, and their rights honored. In re Gross Revenue Tax, 22 FSM R. 124, 130 (Pon. 2018).

– Interpleader

One purpose of the rule regarding interpleader is to protect stakeholders from being forced to determine the validity of competing claims against a fund. When a stakeholder has no interest in the fund, the purpose of the interpleader rule is to force competing claimants to contest a controversy between them without involving the stakeholder in litigation and subjecting the stakeholder to multiple liability. Bank of Hawaii v. Helgenberger, 9 FSM R. 260, 263 (Pon. 1999).

When the stakeholder can demonstrate that it is disinterested, it is appropriate for the court to dismiss the stakeholder from the action following the deposit of the funds at issue or the posting of a bond. Bank of Hawaii v. Helgenberger, 9 FSM R. 260, 263 (Pon. 1999).

The purpose of the interpleader rule is to force competing claimants to contest a dispute between them without involving the stakeholder in litigation and subjecting the stakeholder to potential multiple liability. Bank of the FSM v. Aisek, 13 FSM R. 162, 164 (Chk. 2005).

Interpleader is a two-step process. During the first stage, the court must make a determination whether the party invoking the remedy of interpleader has met its burden to establish its right to interplead the defendants. If it has, the court will order the sums deposited in the court's registry and, upon deposit, will then discharge the plaintiff. The action then proceeds to its second stage. This usually consists of enjoining the parties from prosecuting any other proceeding related to the same subject matter, and then proceeding to determine the remaining parties' respective rights to the money. Bank of the FSM v. Aisek, 13 FSM R. 162, 164-65 (Chk. 2005).

When all parties acknowledge in their pleadings that the plaintiff bank is subject to competing claims for the rental payments for the land because both of two different defendants claim to own the land on which the bank sits and thus to be the rightful recipient for any rental payments for the land's use, the plaintiff has established that it legitimately fears that it will be subject to competing claims for the same rental payments and is potentially subject to double or conflicting liabilities. It has thus established its right to the interpleader remedy. Bank of the FSM v. Aisek, 13 FSM R. 162, 165 (Chk. 2005).

Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. Bank of the FSM v. Aisek, 13 FSM R. 162, 165 (Chk. 2005).

When it is undisputed that only one defendant paid for the improvements to the property, and it is also undisputed that only she pays for the property's maintenance and upkeep and for insurance on it; and when it is undisputed that the other defendant made no improvements to the land, the plaintiff's motion for interpleader remedy will be granted with the condition that only the portion of the rent attributable to the land, and not the portion attributable to her improvements, should be deposited in the court's registry. Bank of the FSM v. Aisek, 13 FSM R. 162, 165 (Chk. 2005).

– Interrogatories

Any party may serve upon any other party written interrogatories to be answered by the party served. There is no requirement that two parties be directly adverse in order for one to seek discovery against

another. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 287 (Pon. 1998).

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact. Many legal conclusions require the application of law to fact and are appropriate under Rule 33. The only type of interrogatory that is objectionable, without more, as a legal conclusion, is one that extends to legal issues unrelated to the facts of the case. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 288 (Pon. 1998).

A question, taken literally, that calls for information on any kerosene related incident involving damage to property or injury to persons occurring anywhere in the world throughout the existence of three corporate defendants is, on its face, a request so broad that it clearly exceeds the scope of permissible discovery. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 478 (Pon. 1998).

It is incumbent upon a party propounding interrogatories not to pose questions calling for information outside the scope of permissible discovery. An attorney's responsibility in this regard is controlled by FSM Civil Rule 26(g). Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 478 (Pon. 1998).

Absent the requisite showing of exceptional circumstances, FSM Civil Rule 26 does not permit a party to obtain any information specific to an adversary's nontestifying experts through interrogatories. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 483 (Pon. 1998).

Subject to limitations found elsewhere in the rules, Rule 33 defines the scope of information a party is required to provide when answering interrogatories as such information as is available to the party. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 316, 324-25 (Pon. 2000).

Rule 33 provides an answering party with the alternative option of making records available if the burden of gathering the information would be substantially the same for either party. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 316, 325 (Pon. 2000).

If a party satisfies its duty to make a reasonable search and diligent inquiry for discoverable information contained in an interrogatory and comes up empty, it is entirely satisfactory to respond by stating that the information is unknown. When this is done, however, the responding party should further indicate whether the information is believed to exist but has not yet been located or that the information cannot be provided because the responding party does not believe it to exist. If the latter response is provided, the responding party should further indicate whether the information was ever believed to exist and if so, where, when and in what form. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 316, 326 (Pon. 2000).

It is also appropriate for a party answering "unknown" to an interrogatory to specify that discovery and investigation continues, and that the party will provide updated answers as soon as the information is located or in compliance with Rule 26(e)(2). Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 316, 326 (Pon. 2000).

Whether a party is directed by a court order to answer an interrogatory or not, it is never acceptable not to provide a response unless a motion for protective order is timely filed under Rule 26. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 316, 326 (Pon. 2000).

Any party may serve upon any other party written interrogatories to be answered by the party served. Depositions may be taken of any person but interrogatories are limited to parties. AHPW, Inc. v. FSM, 10 FSM R. 420, 426 (Pon. 2001).

Each interrogatory is to be answered separately and fully in writing under oath, and when they are not answered under oath, they may be stricken and ordered filed and served in compliance with the rules. Talley v. Talley, 10 FSM R. 570, 572 (Kos. S. Ct. Tr. 2002).

A party may be ordered to answer an interrogatory he failed to answer. Talley v. Talley, 10 FSM R. 570, 572 (Kos. S. Ct. Tr. 2002).

When none of the arguments put forward in opposition to a motion to compel discovery establish that there was any legitimate justification for the opposition to the plaintiffs' motion to compel or the failure to timely respond to the interrogatories, the defendant should pay the plaintiffs the reasonable expenses incurred in obtaining the order compelling interrogatory responses. Primo v. Semes, 11 FSM R. 603, 606 (Pon. 2003).

When the plaintiff makes the mere allegation that the work product doctrine applies, this is insufficient to claim the privilege. When the defendant is seeking facts about the state of the decedent's health when he applied for the insurance policy, and the privilege does not protect facts, the plaintiff will answer the interrogatories. Sigrah v. Microlife Plus, 13 FSM R. 375, 378 (Kos. 2005).

When the court says discovery shall be completed by a certain date, it means both propounded and answered. Ehsa v. Pohnpei Port Auth., 14 FSM R. 567, 569 (Pon. 2007).

Six days is added to the 30 day time period to respond when service of the interrogatories and production requests occurs by mail. Ehsa v. Pohnpei Port Auth., 14 FSM R. 567, 569 (Pon. 2007).

Each interrogatory must be answered separately and fully in writing under oath, unless it is objected to. The answers must be signed by the person making them, and the objections must be signed by the attorney or trial counselor making them. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 331 (Pon. 2011).

When a corporation is answering interrogatories, the person answering for it must be either an officer or an agent of the corporation. The corporation's agent answering interrogatories and signing the answers may be the corporation's attorney. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 331 (Pon. 2011).

While counsel was a proper person to sign the answers to interrogatories on the corporate defendant's behalf, she could not sign the answers on behalf of either of the parties who are natural persons. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 331-32 (Pon. 2011).

In order for the interrogatory answers to be the answers of natural persons, those persons must sign the answers to interrogatories and they must sign them under oath. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 332 (Pon. 2011).

A court may, in its discretion, order that unverified interrogatory answers be refiled under oath or that an affidavit be filed to verify previous answers. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 332 (Pon. 2011).

An interrogatory about an event after the suit was filed is irrelevant unless it would lead to admissible evidence about earlier events. Mori v. Hasiguchi, 17 FSM R. 630, 641 (Chk. 2011).

When a defendant partially answered an interrogatory by noting that the Transco policy of requiring court probate orders to determine the heirs of deceased shareholders had been used numerous times but objected to providing the names, dates of probate proceedings in which courts, and the number of shares involved as overly broad and intrusive, the court does not think it overly broad or intrusive for a list to be provided of the names of the deceased shareholders for whom probate orders have been provided Transco since 2004, but anything more would be unnecessary. Mori v. Hasiguchi, 17 FSM R. 630, 642 (Chk. 2011).

A party must respond to interrogatories directed to her. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 438 (Pon. 2016).

Interrogatories addressed to an individual party must be answered by that party. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 438 (Pon. 2016).

Although it must look first to FSM sources of law rather than start by reviewing other courts' cases, the court may look to U.S. sources for guidance when an FSM court has not previously construed an aspect of an FSM civil procedure rule that is identical or similar to a U.S. counterpart, such as Civil Procedure Rule 33 on interrogatories since the court has seldom needed to construe it because litigants' use of that discovery tool has generally not been problematic. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 438 n.1 (Pon. 2016).

A responding party must answer interrogatories in writing and sign the answers under oath. The answers to interrogatories must be responsive, full, complete, and unevasive. The answering party cannot limit his or her answers to matters within his or her own knowledge and ignore information immediately available to him or her or under his or her control. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 438-39 (Pon. 2016).

If an appropriate interrogatory is propounded, the answering party will be required to give the information available to him or her, if any, through his or her attorney, investigators employed by him or her or on his or her behalf or other agents or representatives, whether personally known to the answering party or not. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 439 (Pon. 2016).

If the answering party lacks necessary information to make a full, fair and specific answer to an interrogatory, it should state under oath and should set forth in detail the efforts made to obtain the information. Allegations made in pleadings do not meet this standard. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 439 (Pon. 2016).

Since, in discovery matters, courts often make conditional orders intended to encourage compliance rather than punish a failure, the court, instead of striking a party's answer and dismissing that party's other claims, may order that party to file and serve under oath the party's appropriate responses to interrogatories and produce the documents requested of the party by a date certain and grant the opposing party's motion if discovery is not provided by then, and the court may also order that the movant is entitled to its expenses in bringing the motion to strike the pleadings. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 439 (Pon. 2016).

An interrogatory response asserting that detailed explanations were already provided in the complaint's factual statements, is an inadequate and unacceptable response to an interrogatory. Incorporation of a pleading's allegations by reference is not a responsive and sufficient answer to an interrogatory. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 440 (Pon. 2016).

Interrogatory answers must be responsive, full, complete and unevasive. Insofar as practical they should be complete within themselves. Material outside the answers and their addendum ordinarily should not be incorporated by reference. If information from other answers is incorporated in a particular answer to avoid repetition, references should be specific rather than general. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 440 (Pon. 2016).

Interrogatories should be answered directly and without evasion in accordance with information that the answering party possesses after due inquiry. As a general rule, a party in answering interrogatories must furnish information that is available to it and that can be given without undue labor and expense, and if a party is unable to give a complete answer to an interrogatory, it should furnish any relevant information that is available. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 440 (Pon. 2016).

If some of the interrogatories are objected to, the reasons for objection must be stated, an answer provided to the unobjectionable parts, and the objections signed by the attorney raising them. FSM Dev.

Bank v. Salomon, 20 FSM R. 431, 440-41 (Pon. 2016).

If the answer to an interrogatory involves the use of extensive business records, then it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries. A specification must be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 441 (Pon. 2016).

A clearly relevant interrogatory should be answered with the information requested. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 441 (Pon. 2016).

A response to the bank's interrogatory that sought information about a specific named person (who apparently had endorsed at least one of the bank's refund checks), that that was a document that the party had received from the bank so the party did not know anything about it, is completely non-responsive to the question, which asked who the named person was and where he could be found, and was evasive and inadequate and thus a sanctionable response. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 441 (Pon. 2016).

When interrogatories are served by mail, the 30-day response date is extended by six days. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 318, 322 (Yap 2017).

The court may allow a shorter or longer time than the time frame the rule sets for interrogatory responses. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 318, 322 (Yap 2017).

Each interrogatory must be answered separately and fully in writing under oath, unless it is objected to, but a declaration that the answers were made "under the penalty of perjury," while it may be an acceptable practice in the United States, does not meet FSM requirements for being "under oath." Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 318, 322 (Yap 2017).

Since an interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, objections to interrogatories on the ground that the answer would call for a legal conclusion are thus incomplete. An incomplete answer is to be treated as a failure to answer. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 318, 323 (Yap 2017).

A motion to compel discovery will be granted when there was not only a "failure to answer" interrogatories under oath due to incomplete replies, but also since answering interrogatories after a motion to compel their answer has been filed does not preclude sanctions. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 318, 324 (Yap 2017).

– Intervention

Rules 19(a) and 24(a) of the FSM Rules of Civil Procedure refer to similar "interests." Decisions under Rule 19(a) provide additional understanding of the meaning of "interest" in Rule 24(a). Wainit v. Truk (I), 2 FSM R. 81, 84 (Truk 1985).

The interest of the speaker of a state legislature in upholding validity of laws enacted by that legislature, and in obtaining funds for the legislature pursuant to the tax legislation challenged in litigation, is not the kind of interest which will support a right to intervene in the litigation pursuant to FSM Civil Rule 24(a) in order to enforce the legislation through cross-claims and counterclaims. Wainit v. Truk (I), 2 FSM R. 81, 85 (Truk 1985).

Under FSM Civil Rule 24(b), the interest needed for permissive intervention is not as great as that needed under FSM Civil Rule 24(a). Wainit v. Truk (I), 2 FSM R. 81, 85 (Truk 1985).

Where the speaker of a legislature seeks to intervene in order to deny the plaintiff's claim that legislation enacted by the legislature is invalid, his proposed denial, with the complaint, presents a single or common question of law within the meaning of FSM Civil Rule 24(b), and the intervention may be permitted so long it will not cause undue delay, or prejudice adjudication of the rights of the original parties. Wainit v. Truk (I), 2 FSM R. 81, 85 (Truk 1985).

Where one seeking to intervene under FSM Civil Rule 24(b) would not raise new and difficult issues through a proposed answer but would do so through proposed cross-claims and counterclaims, the court may properly limit the participation of the intervenor to defense against the plaintiff's claims. Wainit v. Truk (I), 2 FSM R. 81, 86 (Truk 1985).

Where a party on appeal challenges the intervention in the appeal of another party, and the issue on the merits is decided in favor of the challenging party, no harm is visited on the challenging party by allowing the intervention, and the court is not required to rule on the propriety of that intervention. Innocenti v. Wainit, 2 FSM R. 173, 180 (App. 1986).

An intervenor must make a three part showing to qualify for intervention as a matter of right: an interest, impairment of that interest, and inadequacy of representation by existing parties. A tax lien holder and a judgment creditor with an unsatisfied writ of execution may intervene as a matter of right where an assignee is compromising a debtor's accounts receivable. California Pac. Assocs. v. Alexander, 7 FSM R. 198, 200 (Pon. 1995).

The purposes of intervention are to protect the interests of those who may be affected by the judgment and to avoid delay, circuitry of action, and similar, repetitive lawsuits. Langu v. Kosrae, 8 FSM R. 455, 457 (Kos. S. Ct. Tr. 1998).

The procedure for intervention is usually specified by statute or by court rules. In the Kosrae State Court, a motion to intervene must be served upon the parties and the grounds for the motion stated. When no such motion has been made, the procedural requirements for intervention are not satisfied, and intervention should not be permitted. Langu v. Kosrae, 8 FSM R. 455, 458 (Kos. S. Ct. Tr. 1998).

Both intervention of right and permissive intervention must be upon timely application. Tom v. Pohnpei Utilities Corp., 9 FSM R. 82, 88 (App. 1999).

Timeliness must be determined from all the circumstances of the case. There are four factors to consider when determining whether a motion to intervene is timely: 1) how long the applicant knew or should have known of his interest before making the motion; 2) the prejudice to existing parties resulting from any delay; 3) the prejudice to the applicant if the motion is denied; and 4) any unusual circumstances militating for or against a finding of timeliness. Tom v. Pohnpei Utilities Corp., 9 FSM R. 82, 88 (App. 1999).

An application to intervene is untimely when the would-be intervenors knew or should have known of their interest against the potential defendant, the prejudice to the potential defendant was that it could be liable for a large sum for a claim for which it would not otherwise be liable because the statute of limitations had run, the prejudice to the would-be intervenors was that they would receive no more compensation than the $105,311.27 they had already received in a settlement, and the unusual circumstances militating against a finding of timeliness was that the would-be intervenors were the original plaintiffs in the lawsuit and had filed their case and had notice of the potential defendant well before the statute of limitations had run. Tom v. Pohnpei Utilities Corp., 9 FSM R. 82, 88 (App. 1999).

An intervenor must make a three part showing to qualify for intervention as a matter of right under Rule 24(a): an interest, an impairment of that interest, and the inadequacy of representation by existing parties.

Moses v. Oyang Corp., 10 FSM R. 210, 212 (Chk. 2001).

Both intervention of right and permissive intervention must be upon timely application. An application when the litigation is still in its initial stages and no prejudice to the existing parties is apparent is timely. Moses v. Oyang Corp., 10 FSM R. 210, 212 (Chk. 2001).

When the state claims an ownership interest in some or all of the marine space claimed by the two plaintiffs that filed the initial complaint and neither the existing plaintiffs, nor any defendant, can adequately represent the state's claimed interest, which would impair or impede the state's ability to protect its interest, and when the application is timely, the state is entitled to in intervene as a plaintiff in the case. Moses v. Oyang Corp., 10 FSM R. 210, 212 (Chk. 2001).

Generally, when a party is permitted to intervene in a pending case he joins the litigation as it stands and subject to the proceedings that have already occurred. Moses v. Oyang Corp., 10 FSM R. 210, 212 (Chk. 2001).

Timeliness is not the sole prerequisite for intervention of right. There must be an existing litigation into which to intervene, because intervention may not be utilized to revive a moribund lawsuit. Intervention contemplates an existing lawsuit and cannot be permitted to breathe life into a non-existent suit. Moses v. Oyang Corp., 10 FSM R. 273, 275 (Chk. 2001).

Because stipulations of dismissal are effective when filed, once they are filed there is no action left in which to intervene and later motions to intervene are moot. Moses v. Oyang Corp., 10 FSM R. 273, 275-76 (Chk. 2001).

Even if the motion to intervene had been filed before the parties' stipulated dismissal was filed, the parties' stipulated dismissal would be effective without the movant's consent in the absence of a court-ordered stay. Moses v. Oyang Corp., 10 FSM R. 273, 276 (Chk. 2001).

The mere filing of a motion to intervene will not give a person party status because persons seeking to intervene in a case cannot be considered parties until their motion to intervene has been granted. Motions to intervene are not granted automatically, nor does their filing constitute an automatic stay. Moses v. Oyang Corp., 10 FSM R. 273, 276 (Chk. 2001).

Would-be intervenors, whose motions to intervene have not yet been granted, are not parties who have appeared in the action, and because stipulated dismissals are effective when filed, their motions to intervene will then be denied as moot. Moses v. Oyang Corp., 10 FSM R. 273, 276 (Chk. 2001).

Although there are those rare cases where it may be proper to allow intervention even after judgment has been entered, a case that was voluntarily dismissed before any judgment was entered is not such a case because the parties stipulated to a dismissal, not to a judgment and no judgment was, or will be, entered. Moses v. Oyang Corp., 10 FSM R. 273, 276 (Chk. 2001).

Both intervention of right and permissive intervention must be upon timely application. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 364 (Chk. 2003).

A motion to intervene must be accompanied by a pleading setting forth the claim. The motion can be denied solely on procedural grounds for failure to comply with the rule and supply a proposed pleading. Such a denial would be without prejudice. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 364 (Chk. 2003).

An intervenor must make a three part showing to qualify for intervention as a matter of right under Rule 24(a): a substantial interest, impairment of that interest, and inadequacy of representation by existing parties. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 364-65 (Chk. 2003).

When a bank's chattel mortgage purchase money liens are not enforceable against third parties who have had no notice of them and are therefore not enforceable against and do not have priority over an execution lien, even if the bank were permitted to intervene, it could not prevail. Since that is so, the bank does not have an interest in the litigation that would be impaired if it were not allowed to intervene and therefore does not satisfy the elements required to intervene of right. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 365-66 (Chk. 2003).

Permissive intervention may be granted when the applicant's claim or defense and the main action have a question of law or fact in common and if the intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 366 (Chk. 2003).

Permissive intervention will be denied when the intervenor's claim has no questions of law or fact in common with the main action and its sole claim is that it disputes whether the judgment can be enforced against certain of the defendants' assets and when the court has already determined that the claim must fail. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 366 (Chk. 2003).

There are rare cases when it may be proper to allow intervention even after judgment has been entered. Courts are reluctant to allow intervention after entry of judgment and require a strong showing by the applicant. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 518 (Chk. 2003).

The rule is that intervention may be allowed after a final judgment or decree if it is necessary to preserve some right which cannot otherwise be protected, but such intervention will not be permitted unless a strong showing is made. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 518 (Chk. 2003).

Both intervention of right and permissive intervention must be upon timely application, but a permissive intervention motion under Rule 24(b) filed after all rights to appeal have expired is never timely. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 518 (Chk. 2003).

In addition to timeliness, an intervenor must make a three part showing to qualify for intervention as a matter of right under Rule 24(a): an interest, an impairment of that interest, and the inadequacy of representation by existing parties. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 518 (Chk. 2003).

Generally, absent extraordinary and unusual circumstances, intervention by a party who did not participate in the litigation giving rise to the judgment should not be permitted. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 518 (Chk. 2003).

An attempt to intervene after final judgment is ordinarily looked upon with a jaundiced eye. The rationale underlying this general principle is the assumption that allowing intervention after judgment will either prejudice the rights of the existing parties to the litigation or substantially interfere with the court's orderly processes. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 518 (Chk. 2003).

Intervention after judgment has been entered carries with it inherent procedural disruption, and a high risk of prejudice to the original parties by undercutting litigation strategies planned without reference to the intervenor. It is well in such cases to deny intervention to an applicant who does not act promptly to protect his interest in the case, once he learns of it. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 518 (Chk. 2003).

When a would-be intervenor has no interest in the litigation's subject matter, but only claims an interest in the funds that were generated to pay the judgment, he has other remedies to recover the funds already paid. To allow him to intervene would substantially interfere with the court's orderly process by inserting new causes of action in to post-judgment consolidated cases, which include parties with no interest in any of his claims, and who would be prejudiced by having their collection efforts unnecessarily involved with a

landowning dispute. This would create procedural disruption. The would-be intervenor's remedy is to assert whatever causes of action and claims, he deems appropriate, against such defendant(s), as he is advised, in a new action. His application to intervene must therefore be denied. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 519 (Chk. 2003).

It seems proper to permit an applicant's intervention for the limited purpose of protecting whatever interest he and his lineage may have in the undistributed funds on deposit with the court. As long as the funds remain on deposit, the present parties are not prejudiced. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 519 (Chk. 2003).

An applicant's motion to intervene will be denied with the exception of his and his lineage's claim to funds on deposit with the court. Intervention will be permitted for the limiting purpose of protecting his and his lineage's claim to those funds if he files and serves a pleading asserting only his claim to the funds deposited with the court. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 519 (Chk. 2003).

A motion to intervene must state the grounds therefor and be accompanied by a pleading setting forth the claim or defense for which intervention is sought. In re Engichy, 11 FSM R. 555, 557 (Chk. 2003).

A denial of a motion to intervene can be solely on the ground that no proposed pleading accompanies the intervention motion, but such a denial would be without prejudice. The motion could be refiled with a proposed pleading attached. In re Engichy, 11 FSM R. 555, 557 (Chk. 2003).

Although the formal requirements of Rule 24(c) state that a proposed pleading should accompany the attempt to intervene, when the papers filed give adequate notice to the parties of the claim and clearly state the ground for it, they have fulfilled the substance of Rule 24's requirements. Noncompliance with Rule 24(c)'s strict requirements does not bar consideration of the motion's merits. In re Engichy, 11 FSM R. 555, 557 (Chk. 2003).

There are rare cases where it is proper to allow intervention even after judgment has been entered. Courts are reluctant to allow intervention after judgment and require a strong showing by the applicant. In re Engichy, 11 FSM R. 555, 557 (Chk. 2003).

Intervention may be allowed after a final judgment or decree when it is necessary to preserve some right which cannot otherwise be protected. In re Engichy, 11 FSM R. 555, 557 (Chk. 2003).

While the court has previously allowed intervention for the sole purpose of asserting a claim to funds on deposit with the court, when the court is not currently in possession of any funds and does not expect to be and when the entity from which the funds are claimed is no longer a party to the case, a motion to intervene to claim such funds will be denied. In re Engichy, 11 FSM R. 555, 558 (Chk. 2003).

If a party is permitted to intervene in a pending case it joins the litigation as it stands and subject to the proceedings that have already occurred. In re Engichy, 11 FSM R. 555, 558 (Chk. 2003).

When the court is not in possession of any funds to which a would-be intervenor might assert its claim and the would-be intervenor has no interest in the subject matter of the case, its remedy, if it wishes to resort to judicial proceedings, is to file a separate action against either whoever it believes may be liable to it on its claim. In re Engichy, 11 FSM R. 555, 558 (Chk. 2003).

Although there is authority that it was the moving party's burden to insure compliance with the Rule 24(c) requirement that the attorney general be notified of challenges to a statute's constitutionality, the language of the rule provides that the court "shall notify" the attorney general, and the better course would have been for the court to insure that the FSM attorney general's office had received notice. However, the failure to notify the attorney general does not deprive the court of jurisdiction. Estate of Mori v. Chuuk, 12 FSM R. 3, 8 (Chk. 2003).

When writs of garnishment that formally designated the FSM as a "garnishee/defendant" were entered before the notices of appeal, the FSM was already a party and its motion to intervene is therefore moot. Estate of Mori v. Chuuk, 12 FSM R. 3, 8 (Chk. 2003).

The court cannot grant a motion to intervene after a notice of appeal has been filed, since it would have no jurisdiction to permit intervention once a notice of appeal has been filed. Estate of Mori v. Chuuk, 12 FSM R. 3, 8 n.2 (Chk. 2003).

Certification by the court to the attorney general that the constitutionality of a statute has been drawn into question and subsequent intervention may occur at any stage of a proceeding. Thus, the FSM could intervene as a matter of right in any appeal of the matter. Estate of Mori v. Chuuk, 12 FSM R. 3, 8-9 (Chk. 2003).

A motion to intervene must be accompanied by a pleading setting forth the claim or defense for which intervention is sought. Absent such a pleading, the motion is improper, and must be denied. Hartman v. Chuuk, 12 FSM R. 388, 402 (Chk. S. Ct. Tr. 2004).

Not only must proper procedures be followed in seeking intervention, any motion to intervene must also be timely. Timeliness must be decided on the facts presented, and depends on four factors: 1) how long the applicant knew or should have known of his interest before making the motion; 2) the prejudice to other parties should the motion be granted; 3) prejudice to the applicant if the motion is denied; and 4) any other factors militating for or against timeliness. Hartman v. Chuuk, 12 FSM R. 388, 402 (Chk. S. Ct. Tr. 2004).

Intervention may be denied when the existing parties will suffer prejudice if intervention is permitted since the court's decision has disposed of all issues raised by all current parties to the litigation and having new issues presented six years after the first case was filed, would not serve the ends of justice and would interfere with the parties' rights to a final resolution of their dispute and when the would-be intervenors will not prejudiced at all since they may pursue their claims before the Land Commission. Hartman v. Chuuk, 12 FSM R. 388, 402 (Chk. S. Ct. Tr. 2004).

While it is entirely likely that non-parties could succeed on the merits of an action seeking an injunction without ever being parties in another case with a judgment because failure to join an indispensable party may subject a judgment to collateral attack, there are those rare cases where intervention is timely under Rule 24 even though it is after entry of judgment. Ruben v. Petewon, 13 FSM R. 383, 390 (Chk. 2005).

A motion to intervene must be accompanied by a pleading setting forth the claim or defense for which intervention is sought. A motion to intervene that does not include such a pleading or is not amended to include such pleading before the court has ruled on it must be denied. Ruben v. Hartman, 15 FSM R. 100, 114-15 (Chk. S. Ct. App. 2007).

Like other motions in a pending action, a motion to intervene must be served according to the requirements of Rule 5. Additionally, Chuuk State Supreme Court GCO No. 01-06 requires that a certificate of service be filed with the motion. If and when the court grants a motion to intervene, then service of process of the intervener's complaint is performed according to the requirements of Rule 4. Kubo v. Ezra, 16 FSM R. 88, 90 (Chk. S. Ct. Tr. 2008).

A motion to intervene must state the grounds for intervention and be accompanied by a proposed pleading setting forth the claim or defense for which intervention is sought. Kubo v. Ezra, 16 FSM R. 88, 90 (Chk. S. Ct. Tr. 2008).

Rule 10(a) requires the designation of the parties in a caption. As a matter of good practice, mischaracterizations of the parties to an action should be avoided. The proposed interveners' caption to

their motion, should not mischaracterize themselves as parties when they have not yet been permitted to intervene. Kubo v. Ezra, 16 FSM R. 88, 90 (Chk. S. Ct. Tr. 2008).

A proposed pleading must set forth claims in numbered paragraphs the contents of which shall be limited as far as practicable to a statement of a single set of circumstances, as required by Civil Rule 10(b); otherwise the pleading's averments will be "vague" and "ambiguous" and not sufficiently "simple, concise, and direct" to reasonably require a responsive pleading. Although no technical form of pleadings is required, the complaint must have a caption. Kubo v. Ezra, 16 FSM R. 88, 90-91 (Chk. S. Ct. Tr. 2008).

When, in the form submitted, the would-be interveners' proposed complaint is too vague and ambiguous for defendants to reasonably frame a responsive pleading, the court will treat the combined motion and pleading as a motion to intervene only and conclude that the motion to intervene is deficient because it was not filed with an attached proposed pleading. Kubo v. Ezra, 16 FSM R. 88, 91 (Chk. S. Ct. Tr. 2008).

Since both intervention as of right and permissive intervention must be upon timely application and a permissive intervention motion under Rule 24(b) filed after judgment has been entered and all rights to appeal have expired can never be timely, post-judgment movants must qualify as intervenors as of right in order to be permitted to intervene. FSM Dev. Bank v. Kansou, 17 FSM R. 605, 607 & n.1 (Chk. 2011).

In addition to timeliness, intervenors must make a three part showing to qualify for intervention as a matter of right under Rule 24(a): an interest, an impairment of that interest, and the inadequacy of representation by existing parties, but, absent extraordinary and unusual circumstances, intervention by a party who did not participate in the litigation giving rise to the judgment should not be permitted. FSM Dev. Bank v. Kansou, 17 FSM R. 605, 608 (Chk. 2011).

Would-be intervenors do not qualify to intervene in a case where they cannot show an interest in the litigation about a defaulted bank loan and where they cannot show either an interest in this litigation's post-judgment remedy of mortgage foreclosure on land or an impairment of that interest since they cannot show that they have any interest in the mortgaged land when that land is not registered to them and other persons have a certificate of title to it. FSM Dev. Bank v. Kansou, 17 FSM R. 605, 608 (Chk. 2011).

In order to qualify for intervention as a matter of right, a movant must make a three-part showing, *to wit*: an interest, impairment of same, and inadequate representation of that interest by the existing parties. Pacific Int'l, Inc. v. FSM, 20 FSM R. 214, 217 (Pon. 2015).

An intervention, whether as of right or permissive, hinges upon whether the court can properly recognize the would-be intervenor's alleged interest in the subject cause of action. Pacific Int'l, Inc. v. FSM, 20 FSM R. 214, 218 (Pon. 2015).

To intervene to prosecute a third-party beneficiary claim when the movant lacks privity of contract and there is no existing statutory provision that the movant might be able to avail itself, the movant must make a showing that it has actually suffered a loss or injury, which would be capable of being redressed through its proposed intervention, and which is separate from the rights and claims asserted by the existing parties. Pacific Int'l, Inc. v. FSM, 20 FSM R. 214, 218 (Pon. 2015).

In order to intervene under Rule 24, an applicant must have an interest which is of such a direct and immediate character, that the proposed intervenor will either gain or lose by the immediate operative effect of that judgment, but when the would-be intervenor has no direct pecuniary interest in the litigation's outcome, it lacks the requisite standing to intervene as an interested party. Pacific Int'l, Inc. v. FSM, 20 FSM R. 214, 219 (Pon. 2015).

Both intervention of right and permissive intervention must be upon timely application. Pacific Int'l, Inc. v. FSM, 20 FSM R. 214, 219 (Pon. 2015).

When the would-be intervenor contemplates joining a third-party defendant, prejudicing the existing parties and their ongoing settlement efforts; when a current party has a vested interest in the performance of the subject contract and consequently the movant's interests are presently being represented in an adequate manner; when the movant's depiction of its interest and the impairment thereof is nebulous at best and fails to demonstrate that a current party's representation is inadequate; and when there was a five-month lapse before intervention was sought, the motion to intervene will be denied. Pacific Int'l, Inc. v. FSM, 20 FSM R. 214, 219 (Pon. 2015).

A non-party has sufficient interest in a case's outcome that it can intervene as of right when, if the plaintiffs prevailed, the non-party would face substantial financial liability to another defendant and when it has larger interests that would be affected and that extend far beyond any liability to any defendant, so that no named defendant was in a position to adequately defend its interests. Setik v. Perman, 22 FSM R. 105, 114 (App. 2018).

There is no such status as a "mere intervenor." When a non-party is granted the right to intervene in a suit, it becomes a party, that is, the former non-party intervenes as, and becomes, either a plaintiff or a defendant. Setik v. Perman, 22 FSM R. 105, 114 (App. 2018).

When a party intervenes, it becomes a full participant in the lawsuit and is treated just as if it were an original party. It has equal standing with the original parties. Setik v. Perman, 22 FSM R. 105, 114 (App. 2018).

When a non-party has been permitted to intervene as a party-defendant, it has, as an intervenor, subjected itself to the plaintiff's claims against the defendants, notwithstanding the plaintiff's failure to amend the complaint to include reference to the intervenor. Setik v. Perman, 22 FSM R. 105, 114 (App. 2018).

An intervenor is entitled to litigate fully on the merits once intervention has been granted. The intervenor may move to dismiss the proceeding and may challenge the court's subject-matter jurisdiction. Setik v. Perman, 22 FSM R. 105, 117 (App. 2018).

An intervenor, who has become a party-defendant, may move to dismiss the proceeding. Setik v. Perman, 22 FSM R. 105, 117 (App. 2018).

Once the state court granted an intervention as a party-defendant, that party had the same capacity as any party to quickly remove the case to the FSM Supreme Court, if the FSM court had jurisdiction, and to move to dismiss the case for the failure to state a claim, if it thought that was a viable defense. Setik v. Perman, 22 FSM R. 105, 119 (App. 2018).

– Joinder, Misjoinder, and Severance

An FSM Civil Procedure Rule 21 motion for misjoinder should not be granted when the claims against the joined parties arose out of the same occurrence and there are common questions of law and fact. Manahane v. FSM, 1 FSM R. 161, 164 (Pon. 1982).

When more than two years had elapsed in pending litigation before filing of a motion for leave to file third party complaint under FSM Civil Rule 14(a), when a pre-trial order closing discovery had been filed and the existing parties had declared themselves ready for trial, when filing of the complaint would introduce new issues, when no reason for delay in filing the motion has been given, and when the opposing party reasonably objects on grounds that the delay will prejudice that party's rights, the motion to file a third party complaint should be denied. Salik v. U Corp. (II), 3 FSM R. 408, 410 (Pon. 1988).

A motion for joinder under FSM Civil Rule 19 will be denied where it appears that complete relief

between the existing parties could be granted without the joinder and where there is no showing that the party sought to be joined claims an interest relating to the subject of the action. Salik v. U Corp. (II), 3 FSM R. 408, 410 (Pon. 1988).

A motion to add counterclaims and join new defendants will be denied where the new defendants and counterclaims are virtually identical to those in a separate pending action before the court and the moving party has failed to show that the relief sought by the opposing party is the same as that sought in an earlier decided case between the same parties. Nahnken of Nett v. United States (II), 6 FSM R. 417, 421-22 (Pon. 1994).

In some cases failure to join an indispensable party may subject a judgment to collateral attack, but failure to join a necessary party will not. A necessary party is one who has an identifiable interest in the action and should normally be made a party to the lawsuit, but whose interests are separable from the rest of the parties or whose presence cannot be obtained; whereas an indispensable party is one to whom any judgment, if effective, would necessarily affect his interest, or would, if his interest is eliminated, constitute unreasonable, inequitable, or impractical relief. Nahnken of Nett v. United States (III), 6 FSM R. 508, 517 (Pon. 1994).

The burden of joining absent parties rests with the party asserting their indispensability. Nahnken of Nett v. United States (III), 6 FSM R. 508, 518 (Pon. 1994).

Any party may move to strike a third-party claim, or for its severance or separate trial. The decision whether to sever a third-party complaint is left to the sound discretion of the trial court. In determining whether to sever a third-party complaint, a court considers whether continued joinder of claims will unduly complicate or delay the primary action. International Trading Corp. v. Ikosia, 7 FSM R. 17, 18 (Pon. 1995).

Where resolution of issues in a third-party complaint is unnecessary to the resolution of the primary claim and will result in a delay in the resolution of the primary claim, and the answer to the third-party complaint has added more complex issues, unrelated to the primary action, a motion to sever may be granted. International Trading Corp. v. Ikosia, 7 FSM R. 17, 19 (Pon. 1995).

The real party in interest in a civil action is the party who possesses the substantive right to be enforced. The mere fact that a shareholder may substantially benefit from a monetary recovery by a corporation does not make the shareholder a real party in interest entitled to seek monetary recovery in a civil action. A claim of such a shareholder will be dismissed. Kyowa Shipping Co. v. Wade, 7 FSM R. 93, 96-97 (Pon. 1995).

Although joinder may be permitted at any stage of the proceedings on such terms as are just, a person will not be joined as a plaintiff after trial when the plaintiffs were aware of that person's circumstance for four years of the litigation, that person had been a party defendant for a time, and there was no showing that that person's ability to protect his interest was impaired or impeded. Damarlane v. United States, 7 FSM R. 350, 353 (Pon. 1995).

No one is rendered an indispensable party who must be joined merely because if he is not his claim is time-barred. Damarlane v. United States, 7 FSM R. 350, 355 (Pon. 1995).

Compulsory joinder will be denied when the moving party has failed to explain exactly why it is that complete relief cannot be accorded among those already parties without the joinder, why the non-parties' interests would be impaired without joinder, or why failure to join would expose those who are already parties to inconsistent obligations. Lavides v. Weilbacher, 7 FSM R. 400, 403-04 (Pon. 1996).

Rule 21 motions to sever are often more properly brought as motions for separate trials under Rule 42(b). Severance of claims under Rule 21 converts them into independent actions, and is limited to cases in which the claims are separable enough to make appropriate a separate final judgment with its usual

consequences. Mid-Pacific Constr. Co. v. Semes, 7 FSM R. 522, 527-28 (Pon. 1996).

Separate trials should not be ordered unless such a disposition is clearly necessary. Thus it will not serve judicial convenience or economy to order separate trials when both plaintiffs must prove the same liability and where trial together would yield an equitable result. Mid-Pacific Constr. Co. v. Semes, 7 FSM R. 522, 528 (Pon. 1996).

Joinder is the act of uniting as parties to an action all persons who have the same rights or against whom rights are claimed as either co-plaintiffs or co-defendants. Lavides v. Weilbacher, 7 FSM R. 591, 594 n.2 (Pon. 1996).

An exceedingly high threshold must be met for joinder to be proper after judgment has been rendered, especially when there was ample opportunity to argue in favor of joinder before trial and when the parties who are now seeking joinder have repeatedly changed their position on the matter throughout the proceedings. Damarlane v. United States, 8 FSM R. 45, 56 (App. 1997).

When complete relief has already been accorded among the parties to the litigation, it is proper to deny joinder to another because he is not an indispensable party. Damarlane v. United States, 8 FSM R. 45, 56-57 (App. 1997).

While Rule 70 provides that the court may "appoint" a third party to undertake specified actions on the behalf of defendants, when a non-party has indicated its desire to participate in the litigation in more than the administerial way contemplated by Rule 70, the better course may be to add the non-party formally as a party defendant pursuant to Rule 21, which provides for the addition of parties "at any stage of the action and on such terms as are just." Louis v. Kutta, 8 FSM R. 228, 230 (Chk. 1998).

A branch campus of the College of Micronesia-FSM does not have the capacity to sue or be sued on its own and will be dismissed from an action where the College of Micronesia-FSM, a public corporation, is a party. Kaminanga v. FSM College of Micronesia, 8 FSM R. 438, 441 (Chk. 1998).

An agent and principal may be sued in the same action for the same cause of action even when the principal's liability is predicated solely on the agency. Kaminanga v. FSM College of Micronesia, 8 FSM R. 438, 442 (Chk. 1998).

Someone who has bought at least part of disputed land is a person who must be joined as a party in the land dispute because complete relief cannot be accorded among those already parties in the person's absence or because the person sought to be joined claims an interest relating to the subject of the action and that person's absence may impair or impede the person's ability to protect that interest or leave any of the parties subject to a substantial risk of inconsistent obligations. Palik v. Henry, 9 FSM R. 267, 270 (Kos. S. Ct. Tr. 1999).

A counterclaim may not be directed solely against persons who are not already parties to the original action, but must involve at least one existing party. Island Dev. Co. v. Yap, 9 FSM R. 288, 290 n.1 (Yap 1999).

Civil Procedure Rule 13(h) provides that persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rule 19 and 20. Island Dev. Co. v. Yap, 9 FSM R. 288, 290 (Yap 1999).

A defendant is not required to obtain leave of court before naming additional defendants on its counterclaim, when the counterclaim is brought in the original answer, but although not required by Rule 13(h), the general practice is to obtain a court order to join an additional party. Island Dev. Co. v. Yap, 9 FSM R. 288, 291 (Yap 1999).

When a defendant counterclaims against the original plaintiff and new additional parties, as to claims between the original parties the original plaintiff is designated plaintiff/counterdefendant while the original defendant is designated defendant/counterplaintiff, and as to new parties on the counterclaim, the original defendant is designated counterclaim plaintiff, while the new parties are designated counterclaim defendants. Island Dev. Co. v. Yap, 9 FSM R. 288, 291 (Yap 1999).

In the case of misjoinder, parties may be dropped or added by order of the court of its own initiative at any stage of the action. A party joined by the court in the mistaken belief that he was making a claim to land parcels involved in an action before the court will be dropped as a party when it is apparent his claim is to parcels distinct from those in the court action. Palik v. Henry, 9 FSM R. 309, 311 (Kos. S. Ct. Tr. 2000).

A motion to dismiss for failure to join necessary parties may be denied without prejudice when it is at too early a stage of the proceedings to determine whether complete relief among the parties cannot be obtained without the joinder of others. Moses v. M.V. Sea Chase, 10 FSM R. 45, 49 (Chk. 2001).

A Rule 12(b)(7) motion to dismiss for failure to join an indispensable party under Rule 19 is a defense that is, by rule, specifically preserved and may be raised as late in the proceedings as at the trial on the merits. Moses v. M.V. Sea Chase, 10 FSM R. 45, 49 (Chk. 2001).

In the absence of a contractual or statutory provision authorizing a direct action against or the joinder of a liability insurer, an injured person, for lack of privity between himself and the insurer, has no right of action at law against the insurer and cannot join the insured and the liability insurer as parties defendant. Moses v. M.V. Sea Chase, 10 FSM R. 45, 52 (Chk. 2001).

An insurance company that has no contractual obligation to persons other than its insured until a court determines its insured's liability, cannot be joined as a party to a lawsuit to determine that liability. Moses v. M.V. Sea Chase, 10 FSM R. 45, 52 (Chk. 2001).

Parties may be added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. A court usually has the discretion to refuse to join a new party at a late stage of the litigation. Phillip v. Moses, 10 FSM R. 540, 545 (Chk. S. Ct. App. 2002).

Although refusal to add a party defendant to an action is a matter of discretion for the trial court and absent a showing of abuse of discretion will not be disturbed, Rule 19(a) does require a court to join as a party someone who in his absence complete relief cannot be accorded among those already parties or someone who claims an interest in the subject of the action and whose absence may impair his ability to protect that interest or would leave those already parties subject to substantial risk of multiple or inconsistent obligations. Phillip v. Moses, 10 FSM R. 540, 545 (Chk. S. Ct. App. 2002).

If a clan claimed to own the tideland in dispute and had moved to intervene in the action, the trial court should then have joined the clan as a party. But when they did not move to intervene, and it appears that the clan may not even claim to own the tideland, the appellate court is not inclined to remand the case for a new trial with the clan, or its members, unwillingly joined as a party. Phillip v. Moses, 10 FSM R. 540, 546 (Chk. S. Ct. App. 2002).

When a judgment can be shaped to cure any prejudice to a party absent below, dismissal at the appellate stage is not required. An appellate court may also properly require suitable modification as a condition of affirmance. Phillip v. Moses, 10 FSM R. 540, 546 (Chk. S. Ct. App. 2002).

In a claim for damages to land, such as trespass, all the co-owners of the affected land are indispensable parties to the action and must be joined if they are not already parties; otherwise the defendant faces a substantial risk that it may be subject to multiple or inconsistent judgments if any of the other persons who claim to be co-owners decide to sue. Ifenuk v. FSM Telecomm. Corp., 11 FSM R. 201, 203-04 (Chk. 2002).

In Chuuk, it has been common practice for one joint owner to sue as a representative of himself and other joint owners, or for the lineage as a whole to sue as one party, but when neither is what was done in the case and the plaintiff's complaint asserted that he was the sole owner of the land allegedly trespassed upon, a defendant's motion to add the land's co-owners as parties-plaintiff must be granted. Ifenuk v. FSM Telecomm. Corp., 11 FSM R. 201, 204 (Chk. 2002).

Rule 14 allows a defendant to bring in third parties by causing a summons and complaint to be served upon persons not a party to the action who are or may be liable to the defendant for all or part of the plaintiff's claim against the defendant, but if those persons are added as parties plaintiff in the action, then they are parties, not third parties, and no third party complaint could possibly be brought against them. Ifenuk v. FSM Telecomm. Corp., 11 FSM R. 201, 204 (Chk. 2002).

If persons the defendant seeks to add as third parties become plaintiffs, then the "claims" the defendant seeks to bring against them can properly be raised as defenses to the plaintiffs' action, and a motion for leave to file a third party complaint against them must be denied. Ifenuk v. FSM Telecomm. Corp., 11 FSM R. 201, 204 (Chk. 2002).

A defendant is also allowed, at the court's discretion, to add as a permissive counterclaim any claim it has against the plaintiff that is unrelated to the plaintiff's claims. While the court may not be inclined to grant leave to add a counterclaim, not in the original answer, if adding it would cause further delay in the proceeding, but when it appears that the counterclaim is straight forward and will not delay matters and when it does not appear that much preparation for this claim will be needed so as to delay the scheduled trial, the motion to add a permissive counterclaim will be granted. Ifenuk v. FSM Telecomm. Corp., 11 FSM R. 201, 204-05 (Chk. 2002).

If an indispensable party cannot be made a party, the court must determine whether in equity and good conscience the action should proceed among the parties before it or whether it must be dismissed. The factors the court must consider include: 1) to what extent a judgment rendered in the person's absence might be prejudicial to that person or those already parties; 2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; 3) whether a judgment rendered in the person's absence will be adequate; and 4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. Ifenuk v. FSM Telecomm. Corp., 11 FSM R. 403, 404-05 (Chk. 2003).

A trespass case will be dismissed for failure to join the land's co-owners as indispensable parties plaintiff because any judgment rendered in the co-owners' absence will be prejudicial to the defendant since any of the other co-owners could sue for the same trespass, thus subjecting the defendant to multiple judgments for the same acts; because even a judgment in the defendant's favor would not prevent another co-owner from suing for the same acts; because there are no protective provisions that could be included in a judgment that would lessen the prejudice; and because the plaintiff has an adequate remedy since the dismissal is without prejudice – he may refile the case with the co-owners included. Ifenuk v. FSM Telecomm. Corp., 11 FSM R. 403, 405 (Chk. 2003).

Since, if the court determines that the Chuuk State Election Commission is constitutionally required to conduct all elections in Chuuk, including all municipal elections, the Chuuk State Election Commission will be required to bear substantial additional burdens and obligations, the Chuuk State Election Commission is thus a necessary party to the litigation as provided in Chuuk Civil Rule 19(a). Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 581 (Chk. S. Ct. Tr. 2003).

Co-owners of land are generally considered indispensable parties to any litigation involving that land. This should be especially true when full title to the land is at stake, and even more important when the land will be registered and a certificate of title issued for it because a certificate of title, once issued, is conclusive upon a person who had notice of the proceedings and a person claiming under him and is prima facie

evidence of ownership. This is because a cotenant cannot be divested of his interest by a proceeding against all the co-owners of the common property unless he is made a party to the proceeding and served with legal process. Anton v. Heirs of Shrew, 12 FSM R. 274, 278-79 (App. 2003).

A party who seeks to quiet title to a piece of land must join all known persons who are claiming title in order to settle the property's ownership without additional litigation. Anton v. Heirs of Shrew, 12 FSM R. 274, 279 (App. 2003).

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

All co-tenants are indispensable parties to the litigation when someone else claims complete ownership of the land. Otherwise, the co-tenants would either be deprived of their property interest without due process of law or they would be forced to share their property with a hostile co-owner who believes he should be the sole owner. Anton v. Heirs of Shrew, 12 FSM R. 274, 279 (App. 2003).

All co-tenants would not be indispensable parties if a litigant were claiming only one co-tenant's share and not the other shares. Then only that co-tenant need be joined. Anton v. Heirs of Shrew, 12 FSM R. 274, 279 (App. 2003).

A debtor is not an indispensable party under Rule 19 in an action to enforce a guaranty of payment. A lender holding a guaranty of payment can sue a guarantor directly, without naming the borrower. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

When a suit is being brought by three of the representative committee members within the clan and is not a suit being brought by the clan as a whole and thus did not require authorization by the clan; when the interest of the plaintiffs who represent part of the clan may be adverse to the interests of the other clan committee members, who may not be proper plaintiffs based on the causes of actions alleged in the suit; and when complete relief can be accorded among those already parties without the joinder of the other committee members, a motion to join those other committee members as indispensable parties will be denied. Edgar v. Truk Trading Corp., 13 FSM R. 112, 115 (Chk. 2005).

When the plaintiffs seek a declaration that they are the legal winners of an election but have not named as defendants the candidates that opposed them and that presumably question their right to office and since these other candidates are not only real parties in interest but also indispensable parties to such a declaration, the case may be dismissed for failure to join indispensable parties. Puchonong v. Chuuk, 14 FSM R. 67, 69 (Chk. 2006).

When title to land is at issue, all known persons who are claiming title must be joined in order to settle ownership without additional litigation. The policy supporting this rule is that all persons needed for a full, fair, and just adjudication should be part of the case and have an opportunity to be heard. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 494, 496 (Kos. S. Ct. Tr. 2006).

When the appellants are interested parties and therefore will receive notice and opportunity to be heard in the proceedings in Land Court during the remand of a related case involving the same parties and land, the Kosrae State Court will decline to place the parties at risk of inconsistent obligations and to require them to participate in multiple litigation over title to the same parcel and will therefore will not address the appellants' claims in but order them to participate in the remanded case at Land Court, if this has not already occurred. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 494, 496 (Kos. S. Ct. Tr. 2006).

In any action where a party seeks relief that would result in that party being declared the winner of an election rather than some other person, that other person is an indispensable party whose absence would

make any judgment void and subject to collateral attack. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 224 (Chk. S. Ct. App. 2007).

In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Salik v. U Corp., 15 FSM R. 534, 540 (Pon. 2008).

Rule 19(a) provides two circumstances under which a person can be joined as a party to an action: 1) if in the person's absence complete relief cannot be accorded among those already parties and 2) if the person claims an interest relating to the subject of the action. Salik v. U Corp., 15 FSM R. 534, 540 (Pon. 2008).

When the court is not convinced that complete relief under the original judgment cannot be afforded the defendant without joining non-parties as parties plaintiff; when filing a new civil action based upon the judgment is an available option and more properly suited to this situation involving a third person who was not, under any theory advanced, connected with the action during its first decade of litigation; when it is unclear whether the non-parties are claiming an interest in the land that is subject to the action and the action is not the proper forum for making such a determination; there is no need to join the non-parties as parties plaintiff in a post-judgment matter and the court will continue the action by the original plaintiff as explicitly provided for by Rule 25(c). Salik v. U Corp., 15 FSM R. 534, 540 (Pon. 2008).

A motion to join non-parties is procedurally defective when there is no certification that it has been served upon the plaintiff, as required, and when there is no certification that the defendant sought the plaintiff's acquiescence, as required, to joining the non-parties as plaintiffs before so moving the court. Salik v. U Corp., 15 FSM R. 534, 540 (Pon. 2008).

Failure to sue the borrower as well as, or instead of, the guarantors cannot be considered a "mistake" subject to relief from judgment under Rule 60(b)(1) because, as a general legal principle, a lender holding a guaranty of payment can sue a guarantor directly, without naming the borrower and because the terms of the guaranty, under which the guarantors were found liable, permitted the bank, in the case of a loan default, to sue the guarantors without suing the borrower. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 632 (Pon. 2008).

Both the requirement that the claim arise from the same transaction or occurrence and the requirement that there be a question of law or fact common to all defendants must be satisfied in order to sustain party joinder of defendants under Rule 20(a). Herman v. Municipality of Patta, 16 FSM R. 167, 171 (Chk. 2008).

Rule 18 permits the joinder in a single action of as many claims, legal, equitable, or maritime, as the party has against an opposing party even if those claims are unrelated. But when the claims that the plaintiffs seek to add are not against any opposing party, but are against persons the plaintiffs seek to add as new defendants eight years after the complaint they seek to amend was filed and five years after judgment was entered on that complaint, the joinder will not granted. Herman v. Municipality of Patta, 16 FSM R. 167, 171-72 (Chk. 2008).

Any candidate who would be adversely affected by the relief an aggrieved candidate seeks would be an indispensable party to the action and must be joined before a court could grant any relief or a dismissal will ensue. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 359 (Chk. 2009).

When each party seeks relief solely against the other, and there is no allegation that the United States is liable for either party's alleged breach of contract, or liable to the defendant for the plaintiff's alleged violations of due process, or other claims and when, even assuming the United States has some interest in the subject of the action because it is the funding source, but there is no suggestion by either party that the United States cannot protect its own interests and there is no claim that either of the parties has a substantial risk of incurring double, multiple or inconsistent obligations, the plaintiff is not entitled to have the

counterclaims dismissed on the ground that the United States is an indispensable party. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 482-83 (Pon. 2009).

The four factors in Rule 19(b) the court must consider before finding the case cannot proceed without an indispensable party are: 1) the extent to which a judgment rendered in the person's absence might be prejudicial to that person or those already parties; 2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; 3) whether a judgment rendered in the person's absence will be adequate; and 4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 483 n.1 (Pon. 2009).

A plaintiff who did not assert a cause of action against a person later named as a third-party defendant by a defendant-third-party plaintiff may move to strike the third-party claim, or for its severance, or separate trial. Mori v. Hasiguchi, 17 FSM R. 630, 643 (Chk. 2011).

A plaintiff's motion to dismiss a third-party defendant is a motion to strike the defendants' third-party claim against that party, but whenever a motion to dismiss or to strike, or to vacate, or for a judgment on the pleadings, or for a summary judgment actually challenges the desirability of the impleader, it will be treated accordingly. Mori v. Hasiguchi, 17 FSM R. 630, 643 (Chk. 2011).

The Legislature is not an indispensable party when a petition seeks a writ commanding the State Election Commission to perform an act, not the Legislature to perform an act. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

A plaintiff may join in one action all the claims it has against the party being sued. Stephen v. Chuuk, 18 FSM R. 22, 25 n.3 (Chk. 2011).

A motion to dismiss for failure to join indispensable parties will be denied when the court has not been shown that it cannot accord complete relief between the parties already present in the action without the joinder of others. Marsolo v. Esa, 18 FSM R. 59, 63 (Chk. 2011).

A Rule 12(b)(7) motion to dismiss for failure to join an indispensable party under Rule 19 is a defense that is, by rule, specifically preserved and may be raised as late in the proceedings as at the trial on the merits. A motion to dismiss for failure to join necessary parties is accordingly denied without prejudice and may be renewed if the circumstances warrant. Marsolo v. Esa, 18 FSM R. 59, 63 (Chk. 2011).

When a default has been entered with a default judgment pending the determination of damages, it is inappropriate for the court to allow a third party complaint to be filed or to give declaratory relief involving a third party not named as a defendant in the matter. Lee v. FSM, 18 FSM R. 106, 108 (Pon. 2011).

If it is filed no more than 10 days after the original answer is filed, a defending party may, without the leave of the court, cause a summons and third-party complaint be served on a person not party to the case who may be liable to the third party plaintiff for all or part of the plaintiff's claim. If the third-party complaint is not filed within ten days after the defendant's original answer is served, then the defendant must ask the trial court for leave to implead, and the decision whether to implead a third-party defendant is addressed to the trial court's sound discretion. Lee v. FSM, 18 FSM R. 106, 108 (Pon. 2011).

It is the generally accepted rule that petitions to add a third party to a case once a trial is about to begin, or once it has begun, is untimely and will be denied, and that any efforts to implead a third party after the entry of default is also untimely and the request is moot. Lee v. FSM, 18 FSM R. 106, 108 (Pon. 2011).

When, in their answers, all of the appearing defendants asserted the plaintiffs' failure to join indispensable parties as a defense, they preserved that Rule 12(7) defense for determination before trial. Moreover, a Rule 12(b)(7) motion to dismiss for failure to join an indispensable party under Rule 19 is a

defense that, by rule, is specifically preserved and may be raised as late in the proceedings as at the trial on the merits. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 289 (Yap 2012).

In determining whether a case ought to be dismissed because necessary and indispensable parties are not joined, the court must consider: 1) to what extent a judgment rendered in the person's absence might be prejudicial to that person or to those already parties; 2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; 3) whether a judgment rendered in the person's absence will be adequate; and 4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. If an indispensable party cannot be made a party, the court must determine whether in equity and good conscience the action should proceed among the parties before it or whether it must be dismissed, but a motion to dismiss for failure to join indispensable parties will be denied when the court has not been shown that it cannot afford complete relief between the parties already present in the action without the joinder of others. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 289-90 (Yap 2012).

Since an agent is not an indispensable party to a vicarious liability claim against the principal, the principal will not be prejudiced if the complaint against it included a vicarious liability claim against the principal for an agent's acts even if the plaintiffs do not also sue the agent. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 290 (Yap 2012).

Joint tortfeasors are not indispensable parties. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 290 (Yap 2012).

A necessary party is one who has an identifiable interest in the action and should normally be made a party to the lawsuit, but whose interests are separable from the rest of the parties or whose presence cannot be obtained; whereas an indispensable party is one to whom any judgment, if effective, would necessarily affect his interest, or would, if his interest is eliminated, constitute unreasonable, inequitable, or impractical relief. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 290 (Yap 2012).

Where the evidentiary hearing or trial mandated by the appellate court is to determine the plaintiff's actual damages for the defendant's violation of the plaintiff's civil rights when it terminated the lot lease five months early, and where damages beyond the five-month period are contingent on whether the plaintiff should be granted a new or renewed lease to the lot, that is not the subject of the trial but is the subject of what will be a different proceeding. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 378 (Pon. 2014).

An issue that is not part of the trial mandated by the appellate court and that may not be appropriate for trial since there may not be disputed material facts, might be resolved by a summary adjudication without the need of a trial so, rather than delay the mandated trial further, the court will separate the issue from the civil rights damages trial. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 379 (Pon. 2014).

Although only Congress has the power to determine the percentage of the states' revenue share and only Congress has the power to appropriate public funds or to authorize withdrawals from general and special funds, Congress is not an indispensable party to a suit by a state seeking only the constitutionally mandated 50% of revenue because the state is not asking for a percentage higher the constitutionally mandated 50%. Chuuk v. FSM, 20 FSM R. 373, 376-77 (Chk. 2016).

Those parts of the amended complaint's prayer for relief that seek relief for the State of Pohnpei, which is not a party, can be dismissed or stricken as surplusage. Chuuk v. FSM, 20 FSM R. 373, 377 (Chk. 2016).

The titleholder is an indispensable party to any action to set aside, void, nullify, or alter the titleholder's certificate of title because due process makes that person an indispensable party to the action. Courts generally hold court orders void when the real party of interest was not present and the matter concerned

the removal of that (indispensable) party from a certificate of title. Einat v. Chuuk Land Comm'n, 22 FSM R. 130j, 130L (Chk. S. Ct. Tr. 2018).

A co-owner's trespass case will be dismissed for failure to join the land's other co-owner as an indispensable party plaintiff because any judgment rendered in the other co-owner's absence would prejudice the defendant(s). This is because the other co-owner could later sue for the same trespass, thus subjecting the defendant(s) to multiple judgments for the same acts; because even a judgment in the defendant's favor would not prevent another co-owner from suing for the same acts; because no protective provisions could be included in a judgment that would lessen the defendant's prejudice; and because the plaintiff has an adequate remedy since the dismissal is without prejudice, and he may then refile the case with all the other co-owners included as plaintiffs. Nicky v. Chuuk Public Utility Corp., 22 FSM R. 239, 242 (Chk. 2019).

In a claim for damages to land, such as trespass, all the affected land's co-owners are indispensable parties to the action and must be joined if they are not already parties; otherwise the defendant faces the substantial risk that it may be subject to multiple or inconsistent judgments if any of the other co-owners later sue. Nicky v. Chuuk Public Utility Corp., 22 FSM R. 239, 242 n.4 (Chk. 2019).

In a claim for damages to land, such as trespass, all the co-owners of the affected land are indispensable parties to the action and must be joined if they are not already parties. Otherwise, the defendant faces a substantial risk that it may be subject to multiple or inconsistent judgments if any of the other persons who claim to be co-owners decide to sue. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 621 (Chk. S. Ct. App. 2020).

– Judgment on the Pleadings

Normally a Rule 12(c) motion for judgment on the pleadings is granted or denied upon the entire complaint, and the rule does not provide for partial judgment as in Rule 56(d) summary judgment, but where the briefing was exhaustive, full argument made, and such a judgment promotes an expeditious disposition of matters placed before the court, partial judgment may be granted. Damarlane v. United States, 6 FSM R. 357, 359 (Pon. 1994).

The standard for evaluating a motion for judgment on the pleadings is almost identical to that for evaluating a motion for summary judgment. A motion for judgment on the pleadings shall be granted only when the movant has demonstrated that there are no issues of material fact, and that the movant is entitled to judgment as a matter of law. The moving party must carry its burden by reference solely to the pleadings, and the court must evaluate all facts and inferences in the light most favorable to the non-moving party. Kyowa Shipping Co. v. Wade, 7 FSM R. 93, 96 (Pon. 1995).

Motions to dismiss for failure to state a claim upon which relief can be granted filed after an answer has been filed are considered motions for judgment on the pleadings. In ruling on a motion for judgment on the pleadings a court must presume the non-moving party's factual allegations to be true and view the inferences drawn therefrom in the light most favorable to the non-moving party. Semwen v. Seaward Holdings, Micronesia, 7 FSM R. 111, 113 (Chk. 1995).

A Rule 12(c) motion for judgment on the pleadings, unlike a Rule 56(d) summary judgment motion, is normally granted or denied upon the entire complaint, but where a partial judgment would promote an expeditious disposition of matters placed before the court, it may be granted. Semwen v. Seaward Holdings, Micronesia, 7 FSM R. 111, 114 (Chk. 1995).

For purposes of a motion for judgment on the pleadings, all well-pleaded material allegations of the opposing party's pleadings are taken as true and all allegations of the moving party which have been denied are taken as false. Judgment is granted only if the moving party is clearly entitled to judgment on the facts as so admitted. In re Kuang Hsing 182, 7 FSM R. 465, 467 (Yap 1996).

Judgment on the pleadings cannot be granted when nonmovant's factual allegations are taken as true or on movant's affirmative defenses because affirmative defenses are deemed denied by operation of Civil Rule 8(d). In re Kuang Hsing 182, 7 FSM R. 465, 468 (Yap 1996).

Partial judgment on a motion for judgment on the pleadings may be granted when the full argument allows the court to understand the parties' position and such a judgment promotes an expeditious disposition of matters before the court. Oster v. Cholymay, 7 FSM R. 598, 599 (Chk. S. Ct. Tr. 1996).

A court grants judgment on the pleadings if, based on contents of the pleadings alone, it is apparent that either an affirmative defense completely bars plaintiff's claim, or that the sole defense relied upon by defendant is insufficient as a matter of law. An appellate court reviews motions for judgments on the pleadings de novo, as it does all rulings of law. Damarlane v. United States, 8 FSM R. 45, 52 (App. 1997).

A motion to dismiss will be denied when the parties' later stipulation to entry of partial judgment made moot any contention that the defendants' subsequent payments entitled them to a dismissal of the bank's claim to foreclose and sell the vessels, and when the pleadings and the mortgage terms on their face entitle the bank to such a remedy if its factual allegations are taken as true, as they must be on a motion to dismiss or for judgment on the pleadings. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 331 (Pon. 2001).

A motion for judgment on the pleadings will be granted only if the movant has demonstrated that there are no issues of material fact, and that the movant is entitled to judgment as a matter of law. The moving party must carry its burden by reference solely to the pleadings, and the court must evaluate all facts and inferences in the light most favorable to the non-moving party. Marcus v. Truk Trading Corp., 10 FSM R. 346, 347-48 (Chk. 2001).

Judgment on the pleadings cannot be granted for the defendant on the grounds of a valid lease agreement, or for laches, or for the statute of limitations, when the plaintiff's pleading alleges facts, which if true and they must be taken as true for the propose of the motion, would bring the signed lease's validity into question, would justifiably account for the delay in bringing the suit, and which would make it an action for a continuing trespass, for which the contract statute of limitations would not apply. Marcus v. Truk Trading Corp., 10 FSM R. 346, 348 (Chk. 2001).

A motion to dismiss for failure to state a claim may be brought after an answer has been filed by a motion for judgment on the pleadings or at the trial on the merits. But when the movant presents matter outside the pleadings as part of his motion to dismiss, then under Rule 12(c), the motion will be treated as one for summary judgment and disposed of as provided in Rule 56. Richmond Wholesale Meat Co. v. George, 11 FSM R. 86, 88 (Kos. 2002).

A court grants judgment on the pleadings if, based on contents of the pleadings alone, it is apparent that either an affirmative defense completely bars the plaintiff's claim, or that the sole defense relied upon by the defendant is insufficient as a matter of law. But when the court will not dismiss two of the plaintiff's causes of action, judgment on the pleadings is not proper. Jano v. Fujita, 15 FSM R. 405, 409 (Pon. 2007).

When both parties submitted, in support of their respective positions, a substantial number of exhibits culled from the administrative record and the plaintiff's last response included other exhibits, a motion for judgment on the pleadings will be treated as one for summary judgment and disposed of as provided in Rule 56. Alokoa v. FSM Social Sec. Admin., 16 FSM R. 271, 276 (Kos. 2009).

Kosrae Rules of Civil Procedure Rule 12(c) governs a motion for a judgment on the pleadings and if, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion will be treated as one for summary judgment and disposed of as provided in Rule 56. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 643 (Kos. S. Ct. Tr. 2009).

For purposes of a motion for judgment on the pleadings, all well-pleaded material allegations of the opposing party's pleadings are taken as true and all allegations of the moving party that have been denied are taken as false, and judgment is granted only if the movant is clearly entitled to judgment on the facts as so admitted. Setik v. Pacific Int'l, Inc., 17 FSM R. 277, 280 (Chk. 2010).

When, taking the non-movant's well-pleaded material allegations as true, a dispute exists over the title to the leased land, the court cannot grant judgment on the pleadings or dismiss the complaint on the ground that it fails to state a claim. Setik v. Pacific Int'l, Inc., 17 FSM R. 277, 280 (Chk. 2010).

When matters outside the pleadings are presented, a motion for judgment on the pleadings is actually a summary judgment motion. Mori v. Hasiguchi, 17 FSM R. 630, 644 (Chk. 2011).

A plaintiff's "renewed" motion for judgment on the pleadings will be denied without prejudice when the third-party defendants were not served although their rights would be affected; when the renewed motion, incorporated by reference deep in another document, may have slipped by the other parties without notice since none responded; and when the situation has changed since the motion was originally made. Mori v. Hasiguchi, 17 FSM R. 630, 644 (Chk. 2011).

If matters outside the pleadings are presented along with a motion for judgment on the pleadings, that motion becomes a summary judgment motion. Ruben v. Chuuk, 18 FSM R. 425, 428 (Chk. 2012).

When it is clear that material questions of law and fact remain, a motion for judgment on the pleadings must be denied. Harden v. Inek, 18 FSM R. 551, 553 (Pon. 2013).

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. Such a motion must be granted if the moving party demonstrates that no material fact is in dispute and that it is entitled to judgment as a matter of law but, when matters outside the pleadings are presented in the motion for judgment on the pleadings, the court must treat the motion as one for summary judgment under Rule 56. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 649, 651 (Chk. S. Ct. Tr. 2013).

The standard for evaluating a motion for judgment on the pleadings is almost identical to that for evaluating a summary judgment motion. A motion for judgment on the pleadings must be granted only when the movant has demonstrated that there are no issues of material fact, and that the movant is entitled to judgment as a matter of law. The moving party must carry its burden by reference solely to the pleadings, and the court must evaluate all facts and inferences in the light most favorable to the non-moving party. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 649, 651 (Chk. S. Ct. Tr. 2013).

When the parties rely on declarations beyond the pleadings themselves, the court will treat the plaintiffs' motion for judgment on the pleadings as a summary judgment motion. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 649, 652 (Chk. S. Ct. Tr. 2013).

Normally, a Rule 12(c) motion for judgment on the pleadings, unlike a Rule 56(d) summary judgment motion, is granted or denied on the entire complaint, but when a partial judgment would promote an expeditious disposition of matters placed before the court, it may be granted. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 17 (Pon. 2015).

When matters outside the pleadings are included in a motion for judgment on the pleadings, the court will treat the motion as a summary judgment motion. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 17 (Pon. 2015).

The standard for evaluating a motion for judgment on the pleadings is almost identical to that for evaluating a motion for summary judgment. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM

R. 13, 17 (Pon. 2015).

The standard for evaluating a motion for judgment on the pleadings is almost identical to that for evaluating a summary judgment motion. A motion for judgment on the pleadings will be granted only when the movant has demonstrated that there are no issues of material fact and that the movant is entitled to judgment as a matter of law. The movant must carry its burden solely by reference to the pleadings, and the court must evaluate all facts and inferences in the light most favorable to the non-moving party. Panuelo v. FSM, 20 FSM R. 62, 66 (Pon. 2015).

A motion for judgment on the pleadings can only be made after the pleadings are closed, and the pleadings are not closed when the defendant has not pled by filing an answer. Fuji Enterprises v. Jacob, 20 FSM R. 121, 124 (Pon. 2015).

– Motions

Under the Rules of Civil Procedure a party opposing a motion has ten days to file a response. Six days may be added if service was by mail. The time period does not commence running from date of notice for hearing on the motion, but from the date of the motion itself. Maruwa Shokai Guam, Inc. v. Pyung Hwa 31, 6 FSM R. 238, 240 (Pon. 1993).

Motions may be served on other parties prior to being filed. Setik v. FSM, 6 FSM R. 446, 448 (Chk. 1994).

A movant's inaction is insufficient to notify the court (or other parties) that a motion has been dropped. Only a notice of withdrawal of motion will do that. Otherwise a motion may be decided without hearing and without further request. Setik v. FSM, 6 FSM R. 446, 448 (Chk. 1994).

A motion filed in a related criminal case for the release of a vessel, which is only a defendant in a civil forfeiture action, will be denied as not properly before the court. FSM v. Wu Ya Si, 6 FSM R. 573, 574 (Pon. 1994).

A court may grant a motion nunc pro tunc to supply a record of an action previously done but omitted from the record through inadvertence or mistake, to have effect as of the former date. A motion nunc pro tunc cannot be used to supply an action omitted by the court. Western Sales Trading Co. v. Ponape Federation of Coop. Ass'ns, 6 FSM R. 592, 593-94 (Pon. 1994).

A party opposing a motion has ten days after service of the motion to file and serve responsive papers. Six days are added to this period when the service was done by mail. The court may at its discretion enlarge the time for filing for cause shown. Where no reason is given for late filing and an enlargement of time is not sought, responsive papers will be stricken from the record as untimely. Mailo v. Bae Fa Fishing Co., 7 FSM R. 83, 84 (Chk. 1995).

The FSM Civil Procedure Rules do not provide for the filing of replies to oppositions to motions, but they do not prohibit them either. It has been the general practice of the trial division to accept such filings although in a particular case the court may direct otherwise. Damarlane v. FSM, 7 FSM R. 383, 385 (Pon. 1996).

An opposition to a removal petition, regardless of how it is styled, is actually a motion to remand the case to state court on the ground that it was improvidently removed. Porwek v. American Int'l Co. Micronesia, 8 FSM R. 436, 438 (Chk. 1998).

In the Kosrae State Court, motions for relief from judgment or to alter or amend a judgment are non-hearing motions. Langu v. Kosrae, 8 FSM R. 455, 457 (Kos. S. Ct. Tr. 1998).

A motion, although obviously filed as a result of an opponent's objection to an earlier motion for enlargement, but which requests affirmative relief different from the motion for enlargement, may stand as an independent motion, and may be seen as the withdrawal of the earlier motion to enlarge. Island Dev. Co. v. Yap, 9 FSM R. 279, 282 (Yap 1999).

While the FSM Rules of Civil Procedure do not provide for replies to responses to motions, they do not prohibit them either, and it has been the general practice of FSM Supreme Court's trial division to consider them in the absence of an order directing differently. A court may consider replies to the extent that they address the response, and not to the extent that the reply may raise issues extraneous to the original motion or the response. Island Dev. Co. v. Yap, 9 FSM R. 279, 282 (Yap 1999).

Every defense, in law or fact, to a claim for relief in any pleading must be asserted in the responsive pleading thereto except for the defenses list in Rule 12(b), which may be raised by motion made before pleading. If a Rule 12(b) motion is denied the responsive pleading must be made within 10 days after notice of the court's action. Island Dev. Co. v. Yap, 9 FSM R. 279, 283 (Yap 1999).

A motion to stay most closely analogizes to a motion to abstain, and such a motion is not a pre-answer motion, but a pre-trial motion. Island Dev. Co. v. Yap, 9 FSM R. 279, 284 (Yap 1999).

Although the Civil Procedure Rules do not specifically provide for the filing of replies to oppositions to motions, the Rules do not prohibit the practice, and the usual practice has been to accept them. AHPW, Inc. v. FSM, 9 FSM R. 301, 303 (Pon. 2000).

The FSM Civil Procedure Rules 5, 6 and 7 set forth the requirements governing service, filing and the form of motions. In accordance with Rule 5, all motions filed with the court must also be served on each party to the action. Similarly, each paper filed must be accompanied by certification of service of copies upon all other parties. O'Sullivan v. Panuelo, 9 FSM R. 589, 592 (Pon. 2000).

A motion is deficient in multiple respects when it does not appear that it was served on any party to the action including the very party it was directed toward, when it was not accompanied by certification of service upon all other parties, when it was supported by an affidavit which was filed one day after the motion was filed and the affidavit was not accompanied by certification of service upon all other parties as required by Rule 5(d), nor was it served with the motion as required by Rule 6(d), and when the motion did not contain a certification that a reasonable effort had been made to obtain the agreement or acquiescence of the opposing party and that no such agreement had been forthcoming. O'Sullivan v. Panuelo, 9 FSM R. 589, 595 (Pon. 2000).

Notice that the court has been requested to issue an order affecting a litigant's rights and an opportunity for that party to be heard are constitutionally mandated by the due process clause. O'Sullivan v. Panuelo, 9 FSM R. 589, 595 (Pon. 2000).

When, although a copy has been faxed to the court, a motion has never been filed and when no application for filing by facsimile pursuant to Civil Procedure Rule 5(e) has been made, the motion is not before the court. FSM Dev. Bank v. Gouland, 9 FSM R. 605, 606 (Chk. 2000).

Motions to strike under Rule 12(f) are viewed with disfavor and are infrequently granted. Medabalmi v. Island Imports Co., 10 FSM R. 32, 35 (Chk. 2001).

Pleadings are defined as the complaint, answer, reply to a counterclaim, answer to a cross-claim, third-party complaint, and third-party answer. No other pleadings are allowed, except that the court may order a reply to an answer or a third-party complaint. No other paper will be considered a pleading and a motion in any form cannot stand as a pleading. Adams v. Island Homes Constr., Inc., 10 FSM R. 159, 161 (Pon. 2001).

The court may consider and will not strike a response by a party other than the one against whom a motion is directed since any party may oppose another party's motion. Adams v. Island Homes Constr., Inc., 10 FSM R. 159, 161 (Pon. 2001).

It is not the court's practice generally to hear oral argument on pre-trial motions. Livaie v. Kosrae Sea Ventures, Inc., 10 FSM R. 206, 208 (Kos. 2001).

The phrase "the endless stream of discovery drivel emanating from plaintiffs' quarter" in a written response has no place in the civil colloquy (especially in the course of written discourse which permits the authoring party time to reflect) within the bounds of which professional, zealous advocacy takes place. Such comments are no substitute for convincing arguments that follow from the careful marshaling of facts, and the application to those facts of carefully researched principles of law. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 473-74 (Pon. 2001).

Counsel, who also signed another party's motion even though it did not involve a live dispute with respect to his client, should be prepared to address why at least nominal sanctions should not be imposed against him in the event that a Rule 11 violation occurred. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 474 (Pon. 2001).

A pending motion to dismiss that involves only matters of law can be decided without hearing. Konman v. Adobad, 11 FSM R. 34, 35 (Chk. S. Ct. Tr. 2002).

The court may decide motions based on the written filings. Stephen v. Chuuk, 11 FSM R. 36, 39 (Chk. S. Ct. Tr. 2002).

Under Kosrae Civil Procedure Rule 12, a motion to dismiss is directed to a pleading, not a motion. Rule 6(d) uses the term "responsive papers" to designate how a motion is responded to. A reply, though not provided for under Rule 6(d), has been employed by those wishing to address new matter raised in a response. Kosrae v. Seventh Kosrae State Legislature, 11 FSM R. 56, 59-60 (Kos. S. Ct. Tr. 2002).

A written motion, other than one which may be served ex parte and notice of the hearing thereof shall be served, with a memorandum of points and authorities, not later than 14 days before the time specified for the hearing, unless a different period is fixed by these rules or by court order. Such an order may for cause shown be made on ex parte application. FSM Social Sec. Admin. v. David, 11 FSM R. 262j, 262L (Pon. 2002).

Civil Rule 6(d) addresses when a written motion must be filed. It does not address notice or service, which is addressed by Rule 5. FSM Social Sec. Admin. v. David, 11 FSM R. 262j, 262L (Pon. 2002).

Every written motion and similar paper must be served upon each of the parties. No service need to be made on the parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served in the manner provided for service of summons in Rule 4. FSM Social Sec. Admin. v. David, 11 FSM R. 262j, 262L (Pon. 2002).

Except in extraordinary circumstances, due process requires that parties receive notice of motions because all parties must be served with all papers unless the party is in default, and the default is for a failure to ever appear at any stage of the proceeding. FSM Social Sec. Admin. v. David, 11 FSM R. 262j, 262L (Pon. 2002).

When the plaintiff has failed to establish that the relief requested in its motion may be had on an ex parte basis, the court will order the plaintiff to serve its motion on the defendant. FSM Social Sec. Admin. v. David, 11 FSM R. 262j, 262L (Pon. 2002).

A motion to relieve a person of the effect of a court order will be denied as moot when a later order directed another to undertake the task. Davis v. Kutta, 11 FSM R. 545, 548 (Chk. 2003).

A new claim that constitutionally only the state election commission can conduct municipal elections in Chuuk will not be considered unless the municipal defendants are represented separately from the state when past practice in Chuuk has been that municipal officials have run municipal elections, when this new claim is only hypothetical as the state election commission, a non-party, has not asserted that it intends to and will conduct or that it has the sole authority to conduct municipal elections in the future, and when the defendant Governor and the municipal defendants are represented by the same counsel, a state employee, but may likely have differing views on the point. Even then, the court would desire a separate appearance by the state election commission before considering the issue. Buruta v. Walter, 12 FSM R. 289, 295 (Chk. 2004).

Since court decisions are constitutionally required to be consistent with the geographical configuration of Micronesia, which includes the relative isolation of various outer island communities, a fifteen-day delay caused by the inability of a mayor from an outer island with no air service to Chuuk Lagoon to travel to the Lagoon to sign legal papers will be considered excusable neglect. Fan Kay Man v. Fananu Mun. Gov't, 12 FSM R. 492, 495-96 (Chk. 2004).

Since there is no authority that a litigant may "reserve" an unspecified objection by stating that it is reserving its right to comment and object to an attorney's fees submission until such time that the appellate division has finally determined the appealed case including the propriety of the award of attorney's fees and costs, such a notice of reservation is deemed a waiver of any objection to counsel's amended attorney's fee statement. AHPW, Inc. v. FSM, 13 FSM R. 36, 40 (Pon. 2004).

The FSM Civil Procedure Rules neither specifically provide for the filing of replies to oppositions to motions nor bar them, and it has been the trial division's general practice to accept such filings. A court may thus consider replies to the extent that they address the opposition, and not to the extent that the reply raises issues extraneous to the original motion or the opposition. A response to a reply can only be termed a surreply. Surreplies are uncommon, but the court will consider them on the same terms and for the same reasons that it considers replies. Sipos v. Crabtree, 13 FSM R. 355, 360-61 (Pon. 2005).

Any request or application made to the court for relief is considered a motion. Kiniol v. Kansou, 13 FSM R. 456, 459 n.2 (Chk. 2005).

Kosrae Rule 11 requires that every pleading of a party represented by an attorney or trial counselor must be signed by at least one attorney or trial counselor of record in his individual name and a party who is not represented by an attorney or trial counselor must sign his pleading. Thus, when a defendant, and not his trial counselor, signed a motion for dismissal himself, the signing of the motion did not comply with Rule 11. George v. Phillip, 13 FSM R. 520, 521 (Kos. S. Ct. Tr. 2005).

A filing that asks the court to do something is considered a motion because a request to the court asking for an order is a motion regardless of what the party has chosen to call it. Lee v. Han, 13 FSM R. 571, 575 & n.1 (Chk. 2005).

When a "supplement" to a motion to disqualify a law firm from representing one defendant, seeks to disqualify the law firm from representing any defendant in the case, it is properly considered a separate motion. McVey v. Etscheit, 14 FSM R. 207, 212 (Pon. 2006).

Generally, fourteen days notice must be given before hearing a motion, but that time may be shortened by court order. FSM Dev. Bank v. Adams, 14 FSM R. 234, 250 (App. 2006).

A filing, although styled a response, was actually a motion when it asked the court for an order to strike since any application to the court for an order is a motion. Robert v. Simina, 14 FSM R. 257, 259 (Chk. 2006).

An opposition to declaratory judgment motion will not be stricken because it is based on Rule 56 (summary judgment) whereas the motion is grounded in Rule 57 (declaratory judgments) when the arguments incorporated into the opposition are relevant. Ehsa v. Pohnpei Port Auth., 14 FSM R. 505, 508 (Pon. 2006).

When the third-party defendants' motion to dismiss was signed by the plaintiff's counsel, the motion to dismiss is an unsigned paper under Rule 11 which provides that an unsigned pleading, motion, or other paper will be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. Accordingly, the third-party motion to dismiss shall be stricken unless it is signed and the signature indicates that counsel is signing as attorney for the third-party defendants. Ehsa v. Pohnpei Port Auth., 14 FSM R. 567, 572 (Pon. 2007).

A court abuses its discretion by an unexplained failure to exercise its discretion within a reasonable time. Thus, failures to rule on motions were an abuse of the trial justice's discretion and led to further reversible error in the trial justice's rulings. Ruben v. Hartman, 15 FSM R. 100, 109 (Chk. S. Ct. App. 2007).

A motion to join non-parties is procedurally defective when there is no certification that it has been served upon the plaintiff, as required, and when there is no certification that the defendant sought the plaintiff's acquiescence, as required, to joining the non-parties as plaintiffs before so moving the court. Salik v. U Corp., 15 FSM R. 534, 540 (Pon. 2008).

A letter that does not certify that it has been served upon the plaintiff as required and that does not certify that the defendant sought the plaintiff's acquiescence, as required, is procedurally deficient because the court will treat the letter as a motion for amended judgment and/or supplemental findings. Salik v. U Corp., 15 FSM R. 534, 540 (Pon. 2008).

Regardless of what a party chooses to call the papers they have filed, those papers are what they are based upon their function or the relief they seek. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 138 n.4 (Pon. 2008).

Although a right to reply to an opposition is not explicitly afforded by the FSM Rules of Civil Procedure, a motion to permit a reply will be granted when the movant certifies that opposing counsel has agreed to it. Smith v. Nimea, 16 FSM R. 186, 189 (Pon. 2008).

Although the FSM Rules of Civil Procedures neither specifically provide for nor bar replies to oppositions, the general practice has been to accept them and consider them to the extent that they address the opposition, and not to the extent that they raise issues extraneous to the original motion or the opposition. Smith v. Nimea, 17 FSM R. 125, 128 (Pon. 2010).

Without a de minimis showing of the law upon which the opposition relies, an opposition must be considered not to have been filed, and without an opposition, the reply to the opposition must likewise be considered not to have been filed. Smith v. Nimea, 17 FSM R. 125, 128 (Pon. 2010).

The elements of a complete motion are: 1) a memorandum of points and authorities; 2) appropriate evidentiary support, such as affidavits or exhibits, for factual contentions; and 3) a certification of agreement or acquiescence. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 223, 228 (Kos. 2010).

Practitioners should endeavor to provide well-formatted motions. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 227 (Kos. 2010).

When a movant fails to plead the necessary elements of civil contempt and when the movant fails to provide evidentiary support for factual contentions and because of the motion's nature, a motion to show cause why a defendant should not be held in contempt is insufficient. FSM Social Sec. Admin. v.

Weilbacher, 17 FSM R. 217, 228 (Kos. 2010).

Rule 11 provides for sanctions against an attorney for filing frivolous and baseless motions. Rule 11 requires that before affixing her signature to a document, an attorney must undertake a reasonable inquiry to determine whether the pleading, motion, or other paper is well-grounded in fact and warranted either by current law, or a good faith argument of what the law ought to be. A purely frivolous argument, even if made in good faith, may be sanctionable. Damarlane v. Pohnpei Transp. Auth., 17 FSM R. 307, 312 & n.2 (Pon. 2010).

When a moving party requests certain judgments and argues that it is entitled to them as a matter of law, the motion is one for summary judgment, regardless of the motion's title. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 435 (App. 2011).

The court's discretion lies in determining whether the busy lawyer (since all lawyers claim to be busy) was busy enough to be considered good cause. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 627 (App. 2011).

A Rule 41(b) motion after the plaintiff has completed the presentation of plaintiff's evidence can be written or oral because motions, unless made during a hearing or trial, must be made in writing. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 117 (App. 2011).

The inability to serve a show cause motion on a defendant means that a court cannot grant that motion without depriving the accused of due process rights. A wiser course of action, with respect to show cause motions, would be to serve the motion first, and then to file the motion and certificate of service within a reasonable time after service, an option expressly provided by the rules of civil procedure. In light of this alternative, and because circumstances may have changed since November 12, 2008, denial of the November 12, 2008 show cause motion is appropriate. Dateline Exports, Inc. v. George, 18 FSM R. 147, 149 (Kos. 2012).

Although the absence of opposition is generally deemed consent, a court still needs good grounds before it can grant an unopposed motion. FSM Dev. Bank v. Paul, 18 FSM R. 149, 150 (Pon. 2012).

Since a party may amend its pleading once as a matter of course at any time before a responsive pleading is served if the pleading is one to which a responsive pleading is permitted, the plaintiffs were entitled to amend their complaint once as a matter of course when the defendant filed a motion to dismiss the original complaint since a motion is not a pleading. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 155 (Pon. 2012).

Since any application to the court for an order is a motion, when a shipowner filed an application for the limitation of its liability in a pending case, it is a motion, which, unless lengthened or shortened by court order or rule, a party has ten days to respond to. Thus, when the other parties were not allowed the ten days to respond to shipowner's limitation motion because the court granted the motion and issued the orders after only five or six days, they were not given the procedural due process afforded them by the civil procedure rules and for that reason alone, the orders should be considered voidable and vacated. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 313 (Yap 2012).

A motion to enforce a trial court's previous interlocutory order must be denied when it was not included in the final judgment or explicitly made a separate final judgment under Civil Rule 54(b). Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 374 (App. 2012).

By rule, the court deems failure to oppose a motion as consent to the motion, but even then the court still needs good grounds before it can grant an unopposed motion. Chuuk Health Care Plan v. Chuuk Public Utility Corp., 18 FSM R. 409, 410-11 (Chk. 2012).

Since a plaintiff cannot file a notice of dismissal in a case under Rule 41(a)(1)(i) when the adverse party has already served an answer, the court must therefore consider the petitioner's notice of dismissal filed after the respondent has served an answer to be a motion to dismiss. In re Lot No. 029-A-16, 18 FSM R. 422, 424 (Chk. S. Ct. Tr. 2012).

A motion to stay the dismissal of a defendant for lack of service is considered a motion to enlarge time to serve process on that defendant. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 (Yap 2012).

When good cause, rooted in the principles of judicial economy, exists, the court may grant a motion to defer decision. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 658 (Pon. 2013).

Regardless of what a movant calls a motion, the court will look to the actual relief sought and decide the motion on the basis of what it actually is, not what it is labeled. Mori v. Hasiguchi, 19 FSM R. 222, 225-26 (Chk. 2013).

When a typhoon disrupted power and shut down all offices, courts, and utilities between October 17 and October 18, 2013, precluding the plaintiffs from properly serving the defendants, it is clear that the plaintiffs were justified in filing their motion *ex parte*, and have demonstrated excusable neglect, as the delay was caused by a *force majeure* event. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 256 (Pon. 2014).

When the plaintiffs' motion to strike motions is actually one to disqualify opposing counsel since that is the major remedy that the motion seeks, the court will analyze the motion as such, because a document or a filing is what it is regardless of what the party filing it has labeled it since form must not be elevated over substance. Absent compelling reasons to the contrary, form must ever subserve substance. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 451 (Pon. 2018).

A motion to strike a memorandum supporting an opposition is not a Rule 12(f) motion to strike matter from pleadings, but rather falls under the general motion practice of Rule 7(b), which provides that an application to the court for an order shall be by motion and shall set forth the relief or order sought. Hartmann v. Department of Justice, 21 FSM R. 468, 472 n.1 (Chk. 2018).

As form must not be elevated over substance, a motion or a filing is what it is regardless of what the party filing it has labeled it. Estate of Gallen v. Governor, 21 FSM R. 477, 482 (Pon. 2018).

When a defendant seeks an adjudication, as a matter of law, on the merits of its res judicata and collateral estoppel defenses, its "motion to dismiss" is actually a motion for summary judgment on those affirmative defenses. Estate of Gallen v. Governor, 21 FSM R. 477, 482 (Pon. 2018).

A motion or a filing is what it is regardless of what the party filing it has labeled it. Setik v. FSM Dev. Bank, 21 FSM R. 505, 520 (App. 2018).

A written motion, except one that may be heard ex parte, and notice of the hearing thereof shall be served, with a memorandum of points and authorities, not later than 14 days before the time specified for the hearing. Alik v. Heirs of Alik, 21 FSM R. 606, 617 (App. 2018).

A motion that can be made "without notice" is a motion that can made ex parte. Alik v. Heirs of Alik, 21 FSM R. 606, 617 (App. 2018).

A defendant, that seeks to quash a subpoena and a subpoena duces tecum, must meet its burden by clarifying and explaining its objections to those subpoenas. Bank of the FSM v. Ohwa Christian High Sch., 21 FSM R. 645, 648 (Pon. 2018).

A contention that, instead of ruling on several motions in one combined order, the trial court should

have issued its rulings in separate orders, or on separate days, or after separate hearings, is wholly frivolous. Setik v. Perman, 22 FSM R. 105, 116 (App. 2018).

When the parties have had the opportunity to be heard by filing written submissions, it is within the court's discretion to decide motions without an oral hearing. Setik v. Perman, 22 FSM R. 105, 117-18 (App. 2018).

A stipulated motion, that proffers no proof of service on the real party of interest, but asks the court to void the real party in interest's years-old, un-appealed determination of ownership and thus seeks to dispossess her of her property rights without notice or hearing, asks the court to issue an order in violation of the real party in interest's due process rights. The court will deny any such motion because voiding a determination of ownership based on stipulation that fails to provide notice to the real party of interest violates the real party of interest's due process rights under the Chuuk Constitution. Einat v. Chuuk Land Comm'n, 22 FSM R. 130j, 130m (Chk. S. Ct. Tr. 2018).

Any application to the court for an order is a motion. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 202 n.12 (Pon. 2019).

– Motions – For Enlargement

A filed stipulation to extend time to respond to a motion will be treated as a motion for an enlargement of time, but will be denied when filed after the time respond has expired and no excusable neglect has been shown. Elwise v. Bonneville Constr. Co., 6 FSM R. 570, 572 (Pon. 1994).

Requests for postponements are properly made by a motion for an enlargement of time. Such a motion may be made even after the time specified for action has passed when the failure to act was due to excusable neglect. FSM Telecomm. Corp. v. Worswick, 7 FSM R. 420, 422 (Yap 1996).

A showing of excusable neglect is required to grant a request for enlargement of time made after the time allowed had elapsed. Counsel's failure to make a note to remind him of the answer's due date and his attention to other matters, both personal and professional, does not establish excusable neglect. Bank of Guam v. Ismael, 8 FSM R. 197, 198 (Pon. 1997).

A defendant's motion to enlarge time to file an answer may be granted, even though excusable neglect has not been shown, when it would be conducive to a speedy and inexpensive determination of the action, the delay has not been long, and no prejudice to the plaintiff is apparent. Bank of Guam v. Ismael, 8 FSM R. 197, 198 (Pon. 1997).

An enlargement of time to oppose a motion may be granted when the mail service has been delayed and erratic. Kaminanga v. FSM College of Micronesia, 8 FSM R. 438, 441 (Chk. 1998).

A motion, although obviously filed as a result of an opponent's objection to an earlier motion for enlargement, but which requests affirmative relief different from the motion for enlargement, may stand as an independent motion, and may be seen as the withdrawal of the earlier motion to enlarge. Island Dev. Co. v. Yap, 9 FSM R. 279, 282 (Yap 1999).

When motions to enlarge time are made before the expiration of the period prescribed by a court order to do some thing, they may be granted just for cause shown. Medabalmi v. Island Imports Co., 10 FSM R. 217, 218 (Chk. 2001).

When a motion to enlarge time is filed after the time set by an order has expired, the court must determine whether the movants' failure to timely act was the result of excusable neglect. Medabalmi v. Island Imports Co., 10 FSM R. 217, 219 (Chk. 2001).

The determination of what sorts of neglect that can be considered "excusable" is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These include the danger of prejudice to the nonmovant, the length of delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was in the reasonable control of the movant, and whether the movant acted in good faith. Medabalmi v. Island Imports Co., 10 FSM R. 217, 219 (Chk. 2001).

To establish excusable neglect a movant must show good faith and a reasonable basis for noncompliance. Medabalmi v. Island Imports Co., 10 FSM R. 217, 219 (Chk. 2001).

The burden is on the movant to establish that the failure to act timely was the result of excusable neglect. Medabalmi v. Island Imports Co., 10 FSM R. 217, 219 (Chk. 2001).

Merely being a busy lawyer does not constitute excusable neglect justifying an enlargement of time. Medabalmi v. Island Imports Co., 10 FSM R. 217, 219 (Chk. 2001).

When the delay was within the movants' counsel's reasonable control, when the movants' inability to propound discovery because they failed to timely request it, will not affect their rights at trial – *e.g.*, they may still cross-examine the plaintiffs' witnesses, object to proffered evidence, and subpoena witnesses and documents, and when, taking account of all relevant circumstances surrounding the movants' omission, they have failed to show the excusable neglect that would justify enlarging their time to make discovery requests, an untimely motion to enlarge time for them to propound discovery requests will be denied. Medabalmi v. Island Imports Co., 10 FSM R. 217, 219-20 (Chk. 2001).

Rule 6(b) requires that when requesting an enlargement to perform an act when the period has expired, the moving party must show excusable neglect. Primo v. Semes, 11 FSM R. 603, 606 (Pon. 2003).

The Rule 6(d) requirement that motions "contain certification by the movant that a reasonable effort has been made to obtain the agreement or acquiescence of the opposing party and that no such agreement has been forthcoming" does not apply to Rule 6(b)(1) requests to enlarge time (requests made before time has expired) since such requests may be made, and granted, without notice. Such certification is necessary for Rule 6(b)(2) requests to enlarge time once the deadline has passed since such requests must be made on motion with notice. Church of the Latter Day Saints v. Esiron, 12 FSM R. 473, 474 (Chk. 2004).

When a party files a motion for enlargement of time under Rule 6(b) after the time for doing the act has expired, he must show excusable neglect. Merely being a busy lawyer does not establish excusable neglect and a motion to enlarge brought on that basis will be denied. Clarence v. FSM Social Sec. Admin., 13 FSM R. 34, 35 (Kos. 2004).

Rule 6(b) requires that, absent a showing of excusable neglect, a motion for enlargement of time must be filed within the period set forth by subpart (d). FSM Dev. Bank v. Neth, 17 FSM R. 131, 133 (Pon. 2010).

Primarily salient to a court's analysis of an assertion of excusable neglect are: 1) an explanation of the movant's diligent and good faith efforts and 2) the lack of prejudice to the opposing party, but good-cause efforts and lack of prejudice are not enough to justify a finding of excusable neglect. Excusable neglect does not exist when there are possible methods by which the situation may have been avoided. FSM Dev. Bank v. Neth, 17 FSM R. 131, 134 (Pon. 2010).

The standard for reviewing excusable neglect is stricter than the standard of good cause. FSM Dev. Bank v. Neth, 17 FSM R. 131, 134 (Pon. 2010).

When the defendants were served a motion after their attorney left the island on April 6, 2010, and the

deadline for filing an opposition lapsed before her return, there was no practical way to oppose the motion, even though the defendants had notified the court and all attorneys of their attorney's departure before she departed the island. Had the analysis stopped here, the defendants' motion to enlarge time to oppose would have merited a finding of excusable neglect. But when, upon their attorney's return the defendants did not immediately file a request for enlargement but waited an additional ten days to file a request for an enlargement to May 7, 2010, and when that date passed and the defendants had yet to file an opposition memorandum, the court is unable to find the defendants' neglect was excusable. FSM Dev. Bank v. Neth, 17 FSM R. 131, 134 (Pon. 2010).

Motions for enlargement of time to file briefs are timely because they are filed before the briefs are due when they are filed on the same day the briefs were due. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 626 (App. 2011).

An early enlargement motion can be useful in showing good faith, and a motion two or three days beforehand may be most helpful if it can provide an accurate estimate of the time needed. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 626 (App. 2011).

"Good cause" is a legally sufficient reason. It is the burden placed on the litigant, usually by court rule or order, to show why a request should be granted. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 627 (App. 2011).

While merely being a busy lawyer does not constitute excusable neglect justifying an enlargement of time (although when other factors are also present, the neglect may be excusable), the "good cause" standard is a broader and more liberal standard than "excusable neglect." Since the "good cause" standard frees courts from some of the restraints imposed by the excusable neglect requirement, there thus would be times when being a busy lawyer would satisfy the good cause standard where it obviously could not satisfy the higher excusable neglect standard. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 627 (App. 2011).

A motion for enlargement is within the court's discretion and such a grant is not mandatory and will be denied when the court has noted the history of delays in the matter because of counsel's consultation via e-mail with her client who lives in California, but since he is confined by his doctors and not allowed to travel, counsel should have little problem locating him via an international phone call. Heirs of Mackwelung v. Heirs of Mongkeya, 18 FSM R. 12, 13 (Kos. S. Ct. Tr. 2011).

When there were at least three power outages and additional unscheduled outages during the first week of February which imposed difficulties on the defendants in producing the required documents and because the power outages were out of the defendants' control and the defendants had no reason or way to know of the unscheduled power outages, the defendants' failure to file their opposition by February 10, 2012, was due to excusable neglect and the court will grant an enlargement since a court may enlarge time to perform an act after the expiration of the period if the failure to do the act within the period was the result of excusable neglect. FSM Dev. Bank v. Abello, 18 FSM R. 192, 196 (Pon. 2012).

A motion to stay the dismissal of a defendant for lack of service is considered a motion to enlarge time to serve process on that defendant. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 (Yap 2012).

Rule 4(j) sets a time frame of 120 days from when a complaint is filed for process to be served on the defendant. This time limit, like other time limits in the FSM Civil Procedure Rules, may be enlarged by the court for "cause shown" if request therefor was made before the expiration of the period originally prescribed or, on motion made after the expiration of the specified period if the failure to act was the result of "excusable neglect." People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465-66 (Yap 2012).

The Rule 6(b)(1) "cause shown" standard is a lower standard than the "good cause shown" standard.

People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 466 n.4 (Yap 2012).

A motion to stay the dismissal of a defendant for lack of service is considered a motion to enlarge time to serve process on that defendant. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 (Yap 2012).

For the court to grant an enlargement under Rule 6(b)(1) for cause shown, a party must demonstrate some justification for the issuance of the enlargement order. However, an application for the enlargement of time under Rule 6(b)(1) will normally be granted in the absence of bad faith on the part of the party seeking relief or prejudice to the adverse party. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 466 (Yap 2012).

Although the court must first look to FSM sources of law rather than begin with a review of foreign sources when the FSM court has not previously construed the standard to determine "cause shown" under Rule 6(b)(1), an FSM civil procedure rule which is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 466 n.5 (Yap 2012).

A party who files a motion to enlarge time and files that motion out of time, must demonstrate excusable neglect for the delay. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 256 (Pon. 2014).

The court has the discretionary authority to grant enlargements. When timely filed, such requests may be granted just for cause shown. Under the cause shown standard, the moving party must simply demonstrate some justification. These motions will normally be granted in the absence of bad faith on the part of the party seeking relief or prejudice to the adverse party. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 551, 556-57 (Pon. 2014).

A timely-filed motion for an enlargement will be granted when additional time to complete discovery is needed before a summary judgment decision can be made; when the motion is made in good faith, and not only will the opposing party not be prejudiced by delay but that the interest of justice makes such a delay necessary. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 551, 557 (Pon. 2014).

A motion to enlarge time to answer probably should have been granted since it was timely and had shown cause. Carius v. Johnson, 20 FSM R. 143, 145 (Pon. 2015).

When no reason is provided for late filing and an enlargement of time is never sought, responsive papers may be stricken from the record as untimely and the motion considered unopposed. However, when the party has not moved for an enlargement of time, but has provided legitimate reasons for the delay in filing its opposition and when no reason was provided showing that the court's consideration of the untimely opposition would prejudice the movant at all, and because the opponent's reasons would constitute excusable neglect, the motion to strike will be denied. Hartmann v. Department of Justice, 21 FSM R. 468, 472-73 (Chk. 2018).

A motion to continue is a motion to enlarge time, and if made before the time prescribed, is a motion that may, under Rule 6(b)(1), be made ex parte. Alik v. Heirs of Alik, 21 FSM R. 606, 617 (App. 2018).

A motion to continue should not be denied for the reason that it was made five days before the hearing when it certainly had shown cause for a continuance by showing that counsel were physically unable to appear at the prescribed time. Alik v. Heirs of Alik, 21 FSM R. 606, 617 (App. 2018).

When counsel has filed a motion to continue a status conference, the continuance motion constitutes an admission of actual notice of the conference and a waiver of any requirement for record service. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 185 (Pon. 2019).

A continuance motion should suggest a date and time, or dates and times, to which the conference could be continued that would be more convenient to the movants' counsel or to both counsel. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 185-86 (Pon. 2019).

Rule 41(b) contemplates a reasonable diligence standard. A plaintiff seeking affirmative relief has the burden of pursuing that relief with reasonable diligence. Initially, the plaintiff bears the burden of showing some excuse for any delay in prosecution. If the excuse is anything but frivolous, the burden shifts to the defendant to show prejudice from the delay. If prejudice is demonstrated, the burden shifts back to the plaintiff to show that the force of its excuse outweighs any prejudice to the defendant. In making this analysis, granting or denial of involuntary dismissal ultimately rests in the court's sound discretion. Nevertheless, the record must still support a finding of delay attributable to plaintiff's conduct. Jackson v. Siba, 22 FSM R. 224, 231 (App. 2019).

Implicit in an opposing counsel's assent to a request for a continuance is an acknowledgment that the prejudice does not outweigh the burden of a continuance. Jackson v. Siba, 22 FSM R. 224, 232 (App. 2019).

The plaintiffs are not solely responsible for the delays in a matter when all of the continuances that were granted were attributable to either the court, acting on its own, or to the parties' mutual agreement. Jackson v. Siba, 22 FSM R. 224, 232 (App. 2019).

Under both Rules 6(b) and 6(d), relief may be granted for "cause shown." The Rule 6(b)(1) "cause shown" standard is a lower standard than the "good cause shown" standard. "Good cause" is a legally sufficient reason. It is the burden placed on the litigant, usually by court rule or order, to show why a request should be granted. Jackson v. Siba, 22 FSM R. 224, 233 (App. 2019).

A motion for enlargement can be granted at any time, and, if made before the time period has expired, can be granted without notice – that is, ex parte. Jackson v. Siba, 22 FSM R. 224, 233 (App. 2019).

For a court to grant an enlargement under Rule 6(b)(1) for cause shown, a party must demonstrate some justification for the enlargement order's issuance. However, an application for the enlargement of time under Rule 6(b)(1) will normally be granted in the absence of bad faith on the part of the party seeking relief or prejudice to the adverse party. Jackson v. Siba, 22 FSM R. 224, 233 (App. 2019).

When it was an error of law for the trial court to apply the fourteen-day rule; when it was a clearly erroneous finding of fact that the previous delays were all, or were mostly attributable to the plaintiffs, it was therefore an abuse of the trial court's discretion not to grant the enlargement under the "cause shown" standard. Jackson v. Siba, 22 FSM R. 224, 233 (App. 2019).

When any act is allowed or permitted to take place, the court, in its discretion upon a showing of cause, may enlarge the time period for undertaking the act. If the time period for undertaking the act has already transpired, then the time period for taking the action in question can only be enlarged upon a showing of excusable neglect. Samuel v. Kolonia Town, 22 FSM R. 397, 399 (Pon. 2019).

Counsel's explanation that he intended to take his copy of his case file with him when he traveled to Chuuk, but that he inadvertently failed to do so, does not demonstrate excusable neglect. Samuel v. Kolonia Town, 22 FSM R. 397, 399 (Pon. 2019).

Merely neglecting to calendar deadlines as well as maintain control over files created for undertaking client representation does not constitute excusable neglect. Instead, such actions reflect a level of activity that falls below the standards imposed upon members of the legal profession. Samuel v. Kolonia Town, 22 FSM R. 397, 399 (Pon. 2019).

Counsel's failure to make a note to remind him of the answer's due date and his attention to other

matters, both personal and professional, does not establish excusable neglect. Samuel v. Kolonia Town, 22 FSM R. 397, 399 (Pon. 2019).

When a movant fails to demonstrate any form of excusable neglect to explain why a pretrial statement was not timely filed, the requested enlargement of time will be denied, and the late-filed pretrial statement may be stricken from the record. Samuel v. Kolonia Town, 22 FSM R. 397, 399 (Pon. 2019).

– Motions – For Reconsideration

A motion to vacate an order of dismissal under Rule 60(b) that is not brought under any of the six enumerated bases set out in Rule 60(b), and reurges the same points made in the response to the original motion to dismiss is plainly not a Rule 60(b) motion, but is considered as a motion for reconsideration. Kosrae v. Worswick, 9 FSM R. 536, 538 (Kos. 2000).

The ten day time limit for a motion to alter or amend a judgment does not apply to an order which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties because that order does not terminate the action as to any of the claims or parties, and is subject to revision at any time before the entry of judgment. The appropriate means by which to raise concerns about such an order is not by a Rule 59 motion to alter or amend judgment, but by a Rule 54 motion for reconsideration. A motion for reconsideration can be brought any time before entry of judgement, and is not subject to the 10 day limit. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 470 (Pon. 2001).

When there is no judgment in the case but only an interlocutory order confirming a settlement agreement between fewer than all the parties to the action, a motion for relief from judgment will properly be characterized, not as one for relief from judgment under Rule 60(b), but as one to reconsider an interlocutory order. A party cannot seek relief from a judgment that does not exist. Stephen v. Chuuk, 11 FSM R. 36, 43 (Chk. S. Ct. Tr. 2002).

In the absence of the Rule 60(b) finality requirement, the court will deem a putative Rule 60(b) motion as one for reconsideration of the court's order. Richmond Wholesale Meat Co. v. George, 11 FSM R. 86, 88 (Kos. 2002).

When the deceased's brother failed to provide the court with evidence of his representation of the deceased's heirs in the matter, his appearance is accepted as a pro se representation of himself and his claimed interests, but when the brother is not an heir, he does not have standing to file a motion for reconsideration on his own behalf because he is not a party to the matter, and on this basis his motion will be denied. Edwin v. Heirs of Mongkeya, 12 FSM R. 220, 222 (Kos. S. Ct. Tr. 2003).

Since a party cannot seek relief from a judgment that does not exist, a motion for relief from a partial summary judgment is therefore properly characterized, not as one for relief from judgment under Rule 60(b), but as one to reconsider an interlocutory order. Dereas v. Eas, 15 FSM R. 135, 138 (Chk. S. Ct. Tr. 2007).

A motion to reconsider that was filed 22 days after the judgment had been entered, cannot be a Rule 54(b) motion to reconsider since those motions must be made before entry of judgment, or a Rule 59(e) motion to alter or amend judgment since a Rule 59(e) motion must "be served not later than 10 days after entry of the judgment." It can only be a Rule 60(b) motion for relief from judgment. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 588 (App. 2008).

An order granting partial summary judgment may be characterized as final only upon an express determination that there is no just cause for delay and upon an express direction for the entry of judgment. When no such determination or direction appears in an order, a plaintiff's motion for relief from judgment is one to reconsider an interlocutory order, and cannot rest on Rule 60(b). Smith v. Nimea, 17 FSM R. 125, 128-29 (Pon. 2010).

When the court has acted on and previously denied a similarly mischaracterized motion to reconsider, the court must properly consider that the plaintiff's "supplement," which sets out a novel argument, is a second motion to reconsider. Smith v. Nimea, 17 FSM R. 125, 129 (Pon. 2010).

When the plaintiff has made five motions to reconsider, all of which this court has denied and when, including the original order, the court has ruled six times that his claims for unpaid wages, overtime and wrongful termination were not properly before the court, he is well within his rights, if he continues to feel that the court has committed error, to appeal this decision, but the trial court will not entertain further motions to reconsider the dismissal of the wrongful termination, unpaid wages and overtime claims. Smith v. Nimea, 17 FSM R. 333, 338 (Pon. 2011).

A plaintiff's "renewed" motion for judgment on the pleadings will be denied without prejudice when the third-party defendants were not served although their rights would be affected; when the renewed motion, incorporated by reference deep in another document, may have slipped by the other parties without notice since none responded; and when the situation has changed since the motion was originally made. Mori v. Hasiguchi, 17 FSM R. 630, 644 (Chk. 2011).

When the movant has provided no new evidence or case law to persuade the court to amend its earlier order that all of the facts and issues he raises were heard, decided, appealed, and affirmed over 14 years ago and are precluded from being re-raised under the doctrine of res judicata his motion for the court to reconsider its order will be denied. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 52, 56 (Pon. 2011).

When there is no final judgment in a case but only an interlocutory order, a motion for relief from the interlocutory order will properly be characterized, not as one for relief from judgment under Rule 60(b), but as one to reconsider an interlocutory order under Rule 54(b). People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 312 (Yap 2012).

When a trial court has already ruled against the plaintiffs on all the issues and arguments they raised in their summary judgment motion, it could refuse to reopen what it had already been decided unless there was new evidence presented or a there had been a change in the controlling law. This is true even though any decision, however designated, which adjudicates fewer than all the claims does not terminate the action as to any of the claims or parties, and is subject to revision at any time before the entry of judgment adjudicating all the claims. Berman v. FSM Nat'l Police, 19 FSM R. 118, 126-27 (App. 2013).

A summary judgment motion and a motion to reconsider were, since no final judgment had yet been entered and regardless of how the plaintiffs or the court styled them, Rule 54(b) motions to reconsider and to grant the plaintiffs further relief if the reconsideration was favorable. Although the trial court erred in calling the summary judgment motion "moot," the trial court was within its rights to deny that motion when it had already decided the issues the motion raised and those decisions were the law of the case and were unfavorable to the plaintiffs. Berman v. FSM Nat'l Police, 19 FSM R. 118, 127 (App. 2013).

A timely filed motion to reconsider a final order is considered an FSM Civil Rule 59(e) motion to alter or amend a judgment. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 422 (Pon. 2014).

Motions for reconsideration must be narrowly construed and strictly applied in order to discourage litigants from making repetitive arguments on the same issues that have been thoroughly considered by the court. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 423, 424 (Pon. 2014).

A Rule 59(e) motion may not be used to relitigate old matters, and arguments that could have been raised before may not be raised for the first time in a motion for reconsideration. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 423 (Pon. 2014).

Since the plaintiffs' argument that the delay in the imposition of sanctions is evidence of the

reasonableness of their complaint is an extension of their argument of a meritorious complaint, it will be considered on a motion for reconsideration, but when the plaintiffs' argument that the delay in imposing sanctions prejudiced them is clearly a new argument that could and should have been raised in their original opposition, this latter timeliness argument is a new issue that the court must decline to consider. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 424 (Pon. 2014).

Mere disagreement with the court's application of the standard for imposing Rule 11 sanctions does not support a motion to reconsider. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 424 (Pon. 2014).

When the court's earlier denial of a request for a further $4 million default judgment was not a final judgment, the court may readily reconsider that denial. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 78 (Pon. 2015).

When almost a month has elapsed from the July 17th entry of an order and the August 14th filing of a motion to set it aside, coupled with the redress sought therein, the court will characterize it as a motion under FSM Civil Rule 60(b) seeking relief from an order. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 227 (Chk. 2015).

A motion to reconsider is not expressly identified within the FSM Rules of Civil Procedure. FSM Dev. Bank v. Setik, 20 FSM R. 315, 317 (Pon. 2016).

A motion for reconsideration may not be used to marshal arguments for the first time that could have been raised before. FSM Dev. Bank v. Setik, 20 FSM R. 315, 319 (Pon. 2016).

A motion to reconsider should state, with particularity, the points of law or fact the moving party contends the court overlooked or misapprehended *vis a vi*s an attempt to reargue a question that has previously been considered and ruled upon. A motion for reconsideration must also be narrowly construed and strictly applied, in order to discourage litigants from making repetitive arguments on the same issue that the court has already thoroughly considered. FSM Dev. Bank v. Setik, 20 FSM R. 315, 319 (Pon. 2016).

When there is no final judgment but only an interlocutory order, a motion for relief from the interlocutory order will properly be characterized, not as one for relief from judgment under Rule 60(b), but as one to reconsider an interlocutory order under Rule 54(b). Hartmann v. Department of Justice, 21 FSM R. 468, 474 (Chk. 2018).

When, in a partial summary judgment, the court did not make an express determination that there is no just reason for delay and direct the entry of a judgment, that order is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of the parties and cannot be a final judgment. Hartmann v. Department of Justice, 21 FSM R. 468, 474 (Chk. 2018).

When there is no final judgment in the matter but only an interlocutory order, a party's motion for relief from the interlocutory order is properly characterized, not as one for relief from judgment under Rule 60(b), but as one to reconsider, under Rule 54(b), the interlocutory order granting partial summary judgment. Hartmann v. Department of Justice, 21 FSM R. 468, 474 (Chk. 2018).

A motion to reconsider a final order made over ten days after entry of that order is a Rule 60(b) motion for relief from judgment. Alik v. Heirs of Alik, 21 FSM R. 606, 617 (App. 2018).

The denial of a motion for reconsideration is something of a misnomer when, in denying the Salomons' motion to reconsider, the court actually reconsiders the dismissals, but then reaches the same result. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 179 & n.2 (Pon. 2019).

When the dismissals were a partial adjudication of a consolidated case, Civil Procedure Rule 54(b) applies. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 180 (Pon. 2019).

During an appeal, the respondent's pending motion for reconsideration and petitioners' pending motion for an order to show cause why the respondent should not be held in contempt, continue to be within the trial court's jurisdiction. Timsina v. FSM, 22 FSM R. 383, 386 (Pon. 2019).

Motions for reconsideration must be narrowly construed and strictly applied in order to discourage litigants from making repetitive arguments on the same issues that have been thoroughly considered by the court. Timsina v. FSM, 22 FSM R. 383, 388 (Pon. 2019).

The respondents' motion for reconsideration will be denied when there is no compelling new legal authority on which to vacate the court's grant of petitioners' motion for a writ of habeas corpus, and when there has been no executive or legislative action to address the issue of refugees that may arrive in the FSM, because the court retains the authority, on a case-by-case basis, to address alleged FSM Constitutional violations with respect to the government's treatment of refugees. Timsina v. FSM, 22 FSM R. 383, 388 (Pon. 2019).

– Motions – Points and Authorities

Failure to file a memorandum in opposition to a motion is deemed a consent to the motion. Actouka v. Etpison, 1 FSM R. 275, 276 (Pon. 1983).

Failure to file a memorandum of points and authorities with a motion constitutes a waiver of the motion. Actouka v. Etpison, 1 FSM R. 275, 277 (Pon. 1983).

The failure of the nonmoving party's memorandum to set forth points and authorities constitutes a consent to the granting of the motion. FSM Civ. R. 6(d). Enlet v. Truk, 3 FSM R. 459, 461 (Truk 1988).

A memorandum of points and authorities filed by a party opposing a motion must set forth the law upon which the party relies and his theory as to the application of that law to the facts of the case. Enlet v. Truk, 3 FSM R. 459, 462 (Truk 1988).

A memorandum of points and authorities filed in opposition to a motion should set forth the law upon which the party relies and his theory as to how that law should be applied to the facts of the case. Island Cable TV v. Gilmete, 9 FSM R. 264, 266 (Pon. 1999).

A written motion shall be served with a memorandum of points and authorities, and the moving party's failure to file the memorandum of points and authorities shall be deemed a waiver by the moving party of the motion. Island Cable TV v. Gilmete, 9 FSM R. 264, 266 (Pon. 1999).

The moving party has the same standard as the responding party with respect to the content of the memorandum of points and authorities – it must set forth the applicable law and apply that law to the facts of the case. Island Cable TV v. Gilmete, 9 FSM R. 264, 266 (Pon. 1999).

No bright-line test is appropriate for determining what is a sufficient memorandum of points and authorities under Civil Procedure Rule 6(d) and a court necessarily assesses a memorandum's sufficiency on the facts and law of a given motion. Island Cable TV v. Gilmete, 9 FSM R. 264, 266 (Pon. 1999).

A motion to strike a memorandum supporting a motion and a response to an opposition is not a motion to strike matter from pleadings subject to Rule 12(f), but rather, falls under the general motion practice of Rule 7(b) which provides that an application to the court for an order shall be by motion and shall set forth the relief or order sought. Adams v. Island Homes Constr., Inc., 10 FSM R. 159, 161 (Pon. 2001).

Because the Rules must be construed to secure the just, speedy, and inexpensive determination of every action the court may deny striking a memorandum filed 18 days after the motion it supported when

the memorandum provides the court with additional relevant information. Adams v. Island Homes Constr., Inc., 10 FSM R. 159, 161 (Pon. 2001).

When a request for attorney's fees contained no points and authorities to support its request and was not argued at the hearing, the request is deemed waived and abandoned. Mailo v. Chuuk, 13 FSM R. 462, 470 (Chk. 2005).

When the movant has failed to provide any authority to support its motion, it will be denied. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 486 (Pon. 2009).

As a general principle, failure to file a memorandum of points and authorities with a motion constitutes a waiver of the motion, and, similarly, the failure of the nonmoving party's memorandum to set forth points and authorities constitutes a consent to the granting of the motion. Although there is no bright-line test appropriate for determining what a sufficient memorandum of points and authorities is, a court necessarily assesses a memorandum's sufficiency on the facts and law of a given motion. Still, a memorandum of points and authorities filed in opposition to a motion should set forth the law upon which the party relies and his theory as to how that law would be applied to the facts of the case. Smith v. Nimea, 17 FSM R. 125, 128 (Pon. 2010).

Of the three elements of a complete motion, the FSM Civil Procedure Rules explicitly mandate only the memorandum of points and authorities and the certification of agreement or acquiescence, and the court is most insistent on a memorandum of points and authorities, such that failure to file one in a motion constitutes a waiver of the motion and failure to file one in an opposition to a motion constitutes a consent to the granting of the motion. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 223 (Kos. 2010).

Given that a written motion's basic requirement is that it state with particularity the grounds therefor, the motion's memorandum of points and authorities is of prime importance. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 223 (Kos. 2010).

Since there is no bright-line test appropriate for determining what a sufficient memorandum of points and authorities is, a court necessarily assesses a memorandum's sufficiency on the facts and law of a given motion. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 223, 228 (Kos. 2010).

Since the Rules must be construed to secure the just, speedy, and inexpensive determination of every action, the court may deny striking a memorandum filed 18 days after the motion it supported when the memorandum provides the court with additional relevant information. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 223 (Kos. 2010).

Motions to file by facsimile do not require detailed evidentiary support, only a showing of "special cause." FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 224 (Kos. 2010).

Although affidavits are a common form of evidentiary support for factual contentions, no FSM case law requires that evidentiary support take that form in particular and Rule 6, which addresses general issues of timing in motion practice, uses the word "when" in describing situations where a motion is supported or opposed by affidavit. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 224 (Kos. 2010).

Any affidavit in support of a motion or responsive paper must be served with the motion or responsive paper. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 227 n.9 (Kos. 2010).

The diligent practitioner is responsible for providing sufficient facts, points of law, and analyses, as appropriate to the motion's nature. Clarity and attention to detail will facilitate the administration of justice. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 227 (Kos. 2010).

When the court accepts that the motion to dismiss may be properly considered a motion for summary

judgment under FSM Civil Rule 56, it will not conjecture why the movant referenced FSM Civil Rule 12(b)(6) although the memorandum of points and authorities that accompanied the motion discussed the legal standard for summary judgment. Berman v. Pohnpei, 18 FSM R. 67, 71-72 (Pon. 2011).

Although Rule 6(d) requires that motions contain both a memorandum of points and authorities and a certification that a reasonable effort has been made to obtain the opposing party's "agreement or acquiescence" and whether it has been obtained, only the failure to include points and authorities results in the motion's mandatory denial. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 152 (Chk. 2013).

– Motions – Rule 6(d) Certification

All motions must contain the movant's certification that a reasonable effort has been made to obtain the opposing party's agreement or acquiescence and that no such agreement has been forthcoming. Motions without such certification may be denied without prejudice on that basis alone. Calvary Baptist Church v. Pohnpei Bd. of Land Trustees, 9 FSM R. 238, 239 (Pon. 1999).

Compliance with the rule requiring motions to contain a movant's certification that a reasonable effort has been made to obtain the opposing party's agreement initiates a dialogue between the parties and decreases the cost of litigation by minimizing paperwork and eliminating unnecessary court appearances when compromises are reached, and in turn reduces the court's workload thereby increasing its ability to attend to other matters and minimize delays. Calvary Baptist Church v. Pohnpei Bd. of Land Trustees, 9 FSM R. 238, 239 (Pon. 1999).

The requirement that reasonable efforts be made by a moving party to obtain the opposing party's agreement before filing a motion is a particularly important one. O'Sullivan v. Panuelo, 9 FSM R. 589, 595 (Pon. 2000).

Compliance with the rule requiring motions to contain a movant's certification that a reasonable effort has been made to obtain the opposing party's agreement initiates a dialogue between the parties and decreases litigation costs by minimizing paperwork and eliminating unnecessary court appearances when compromises are reached, and in turn reduces the court's workload thereby increasing its ability to attend to other matters and minimize delays. O'Sullivan v. Panuelo, 9 FSM R. 589, 595-96 (Pon. 2000).

A plaintiff's summary judgment motion that fails to comply with the certification requirements of Civil Procedure Rule 6(d) may, for this reason alone, be denied without prejudice and may be renewed subject to plaintiff making reasonable attempts to reach agreements on its disposition with the defendants affected by any order requested. O'Sullivan v. Panuelo, 9 FSM R. 589, 597 (Pon. 2000).

Motions failing to comply with requirements of Rule 6(d) should be denied without prejudice. O'Sullivan v. Panuelo, 9 FSM R. 589, 599 (Pon. 2000).

In determining what must be done to satisfy the Rule 6(d) requirement that a reasonable effort has been made to obtain the opposing party's agreement, it is appropriate to consider the circumstances of a given case, and a reasonable effort to obtain agreement may include an explanation clarifying the issue involved and explaining the likely outcome of the motion from both a procedural and substantive perspective. O'Sullivan v. Panuelo, 9 FSM R. 589, 600 (Pon. 2000).

When the parties are not in disagreement on every issue addressed by a motion, compliance with FSM Civil Rule 6(d) would have served its intended purpose of generating a compromise without court intervention. Damarlane v. Pohnpei Supreme Court Appellate Division, 9 FSM R. 601, 603 (Pon. 2000).

Compliance with the rule requiring motions to contain a movant's certification that a reasonable effort has been made to obtain the opposing party's agreement initiates a dialogue between the parties and

decreases litigation costs by minimizing paperwork and eliminating unnecessary court appearances when compromises are reached, and in turn reduces the court's workload thereby increasing its ability to attend to other matters and minimize delays. Damarlane v. Pohnpei Supreme Court Appellate Division, 9 FSM R. 601, 603-04 (Pon. 2000).

The Rule 6(d) requirement that motions "contain certification by the movant that a reasonable effort has been made to obtain the agreement or acquiescence of the opposing party and that no such agreement has been forthcoming" does not apply to Rule 6(b)(1) requests to enlarge time (requests made before time has expired) since such requests may be made, and granted, without notice. Such certification is necessary for Rule 6(b)(2) requests to enlarge time once the deadline has passed since such requests must be made on motion with notice. Church of the Latter Day Saints v. Esiron, 12 FSM R. 473, 474 (Chk. 2004).

Rule 6(d) requires that motions be accompanied by a memorandum of points and authorities and that the moving party's failure to file the memorandum of points and authorities shall be deemed the moving party's waiver of the motion. Fan Kay Man v. Fananu Mun. Gov't, 12 FSM R. 492, 496 (Chk. 2004).

Although Rule 6(d) requires that motions must contain both a memorandum of points and authorities and a certification that a reasonable effort has been made to obtain the opposing party's "agreement or acquiescence" and whether it has been obtained, only the failure to include points and authorities results in a mandatory denial of the motion. Whether the court denies a motion because it lacks a certification concerning the opposing party's "agreement or acquiescence," is a matter left to the court's discretion. Fan Kay Man v. Fananu Mun. Gov't, 12 FSM R. 492, 496 (Chk. 2004).

When there are other grounds to deny a motion, the absence of a certification that a reasonable effort has been made to obtain the opposing party's "agreement or acquiescence" will be used as a secondary ground of denial. Fan Kay Man v. Fananu Mun. Gov't, 12 FSM R. 492, 496 (Chk. 2004).

When the motion is sought *ex parte* or is one that may be sought *ex parte* or without notice, no certification that a reasonable effort has been made to obtain the opposing party's "agreement or acquiescence" is needed. Otherwise, when the certification is absent, the court will generally not rule either way on the motion until the time (generally ten days, or if served by mail, sixteen) allowed for responses has expired, unless the opposing party has filed a response before then. Fan Kay Man v. Fananu Mun. Gov't, 12 FSM R. 492, 496 (Chk. 2004).

A movant who fails to include a certification concerning the opposing party's agreement or acquiescence, takes the risk that, because of the certification's absence, the motion may be denied and that, as a result of the passage of time, the possibility of taking alternative action or of renewing the motion may be gone or its possible scope or effectiveness may be narrowed. Fan Kay Man v. Fananu Mun. Gov't, 12 FSM R. 492, 496 (Chk. 2004).

Often, seeking the opposing party's consent is simply good practice because, although agreement by counsel does not mean that the court will, or must, grant the agreed motion, it does increase the likelihood it will be granted. Fan Kay Man v. Fananu Mun. Gov't, 12 FSM R. 492, 496 (Chk. 2004).

In the case of certain motions, such as a Rule 11 motions for sanctions, the court, in its discretion, has, and will, overlook the lack of a certification when it is apparent from the motion's nature that no agreement would ever be considered by, or forthcoming from, the opposing party and that any attempt to seek such an agreement would be futile. Fan Kay Man v. Fananu Mun. Gov't, 12 FSM R. 492, 496 & n.3 (Chk. 2004).

Civil Rule 6(d) provides that all motions shall contain certification by the movant that a reasonable effort has been made to obtain the opposing party's agreement or acquiescence and that no such agreement has been forthcoming, but a motion for an order in aid of judgment, which is what the court must consider a motion for a writ of garnishment to be, is governed by statute, and that statute does not require

that a movant first seek the opposing party's agreement or acquiescence before moving for an order in aid of judgment. The procedural rules are not meant to alter that statutory scheme. Tipingeni v. Chuuk, 14 FSM R. 539, 542 (Chk. 2007).

In the case of certain motions, the court, in its discretion, has, and will, overlook the lack of a formal Rule 6(d) certification when it is apparent from the motion's nature that no agreement would ever be considered by, or forthcoming from, the opposing party and that any attempt to seek such an agreement would be futile. Tipingeni v. Chuuk, 14 FSM R. 539, 542 (Chk. 2007).

The purpose of prior consultation to obtain the non-movant's agreement or acquiescence to the relief being sought is to decrease litigation costs when compromises are reached, and in turn reduce the court's workload, thereby increasing its ability to attend to other matters and minimize delays. The court, however, is not required to deny a motion because it lacks certification that the opposing party's agreement or acquiescence was previously sought, and such a decision is within the court's discretion. Smith v. Nimea, 16 FSM R. 186, 188 (Pon. 2008).

Of the two elements of a complete motion explicitly mandated in the FSM Rules of Civil Procedure, the certification of agreement or acquiescence, is not absolutely mandatory since there are situations where Rule 6(d) certification may not make sense. In the case of certain motions, the court, in its discretion, has, and will, overlook the lack of a formal Rule 6(d) certification when it is apparent from the motion's nature that no agreement would ever be considered by, or forthcoming from, the opposing party and that any attempt to seek such an agreement would be futile. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 224 (Kos. 2010).

Since a movant is least likely to procure agreement or acquiescence for a hostile or adversarial motion, and since there are few motions more hostile or adversarial than one for an order to show cause why the opposing party should not be held in contempt, it is clear that no agreement would ever be considered by, or forthcoming from, the opposing party in such a situation. Thus, although the movant takes the risk that the absence of the certification might result in the motion's denial, the court, in its discretion, may find that lack of formal certification was not fatal to the motion. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 228 (Kos. 2010).

The FSM Civil Rule 6(d) requirement of acquiescence is not absolute, particularly where the motion is of a nature that acquiescence would not be forthcoming. When the factual allegations in the movant's supplement to its motion to dismiss satisfies the court that no acquiescence would have been forthcoming, and that any attempt would have been futile, the court will not deny the motion on this ground. Berman v. Pohnpei, 18 FSM R. 67, 71 (Pon. 2011).

Although Rule 6(d) requires that motions contain both a memorandum of points and authorities and a certification that a reasonable effort has been made to obtain the opposing party's "agreement or acquiescence" and whether it has been obtained, only the failure to include points and authorities results in the motion's mandatory denial. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 152 (Chk. 2013).

Whether the court denies a motion because it lacks a certification concerning the opposing party's "agreement or acquiescence," is a matter left to the court's discretion, and, in the case of certain motions, the court has, and will, overlook the lack of a certification when it is apparent from the motion's nature that no agreement would ever be forthcoming from the opposing party and that any attempt to seek such an agreement would be futile. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 152 (Chk. 2013).

Since the Rule 6(d) requirement of acquiescence is not absolute, particularly when the motion is of a nature that acquiescence would not be forthcoming, when the court is satisfied that no acquiescence would have been forthcoming and that any attempt would have been futile, the court will not deny a motion on this

ground. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 152 (Chk. 2013).

The certification requirement of FSM Civil Rule 6(d) is not mandatory when it is apparent from the motion's nature that no agreement would ever be considered by or forthcoming from plaintiffs and that any attempt to seek such an agreement would be futile. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 370 (Pon. 2014).

– Motions – Sua Sponte

A court's failure to provide adequate notice and the opportunity to be heard when imposing sanctions *sua sponte* in itself provides the ground for reversal of an order imposing sanctions. In re Sanction of Michelsen, 8 FSM R. 108, 110 (App. 1997).

A trial judge abuses his discretion when, without due process of law, he *sua sponte* imposes a Rule 11 sanction on an attorney. In re Sanction of Michelsen, 8 FSM R. 108, 111 (App. 1997).

When the trial court *sua sponte* set aside a judgment without notice and an opportunity to be heard, it set aside the judgment without due process of law. Kama v. Chuuk, 10 FSM R. 593, 598 (Chk. S. Ct. App. 2002).

A trial court abuses its discretion when it sua sponte sets aside a judgment because the court, and not a party or his legal representative made the motion; when the judgment holder was denied due process because he was not given notice and an opportunity to be heard before the decision against him was announced; and when the decision was based upon an erroneous conclusion of law that a trial court Rule 68(b) hearing was an absolute necessity before this judgment could be entered. Kama v. Chuuk, 10 FSM R. 593, 599 (Chk. S. Ct. App. 2002).

When a court makes a motion sua sponte, it generally gives the parties notice and an opportunity to respond before it decides; just as when a party makes a motion the other party is generally given an opportunity to respond before the court rules. Notice and an opportunity to be heard is the essence of due process. Wainit v. Weno, 10 FSM R. 601, 606 (Chk. S. Ct. App. 2002).

When an appellant had no notice of the court's sua sponte motion to dismiss the appeal before the dismissal order was entered, the dismissal was a violation of the appellant's right to due process because of the lack of notice and an opportunity to be heard. Wainit v. Weno, 10 FSM R. 601, 606 (Chk. S. Ct. App. 2002).

A court hears before it condemns, and that while a court that has announced a decision without notice and an opportunity to be heard can always be asked to recall its decision and listen to argument this opportunity is a poor substitute for the right to be heard before the decision is announced. Wainit v. Weno, 10 FSM R. 601, 606 (Chk. S. Ct. App. 2002).

A sua sponte summary judgment motion is proper so long as the court provides adequate notice to the parties and adequate opportunity to respond to the court's motion. FSM Social Sec. Admin. v. Jonas, 13 FSM R. 171, 173 (Kos. 2005).

Generally, a court may not raise the defense of res judicata on its own motion. However, in the interest of judicial economy, a court may properly raise the issue of res judicata when both actions have been brought in the same court. Kishida v. Aizawa, 13 FSM R. 281, 284 (Chk. 2005).

When a court makes a motion sua sponte, it must give the parties notice and an opportunity to respond before it decides; just as when a party makes a motion, the other party generally must be given an opportunity to respond before the court rules. Albert v. O'Sonis, 15 FSM R. 226, 234 (Chk. S. Ct. App. 2007).

When an order constituted the *sua sponte* motion to dismiss and the notice to the appellants of the motion to dismiss and when, although it did not cite Rule 27(c), the order did give notice that the appeal was subject to dismissal and the factual basis (failure to file a brief and thus failure to comply with Rule 31) for the possible dismissal, the appellants had notice of the facts they had to respond to and the probable result if they were unable to show cause. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 113 (App. 2008).

When a sanction is the result of the court's own motion, it must be vacated if the trial court did not give notice that it was making a motion because a trial judge abuses his discretion when, without prior notice and an opportunity to be heard, the court sua sponte imposes a Rule 11 sanction on an attorney. The manner in which Rule 11 sanctions are imposed must comport with due process requirements, and, at a minimum, notice and an opportunity to be heard are required. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 376 (App. 2012).

When a court (sua sponte) makes its own motion, it must give the parties notice and an opportunity to be heard before it grants or denies its own motion just as when a party makes a motion, the other party generally must be given notice and an opportunity to respond before the court rules. This does not include motions that the rules permit to be made *ex parte* or without notice, but motions for sanctions always require notice. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 376 & n.4 (App. 2012).

Generally, a court may not raise the res judicata defense on its own motion. But, in the interest of judicial economy, a court may properly raise the issue when both actions have been brought in the same court. Waguk v. Waguk, 21 FSM R. 60, 67 (App. 2016).

Under certain circumstances, res judicata can be raised sua sponte. Waguk v. Waguk, 21 FSM R. 60, 67 (App. 2016).

Judicial initiative is appropriate in special circumstances. Most notably, if a court is on notice that it has previously decided the issue presented, the court may dismiss the action *sua sponte*, even though the defense has not been raised. This is fully consistent with the policies underlying res judicata: it is not based solely on the defendant's interest in avoiding the burdens of twice defending a suit, but is also based on the avoidance of unnecessary judicial waste. Waguk v. Waguk, 21 FSM R. 60, 68 (App. 2016).

A court, whether trial or appellate, is obliged to notice want of jurisdiction, on its own motion. Suzuki v. Chuuk, 22 FSM R. 491, 494 (Chk. 2020).

– Motions – Unopposed

Where a defendant has not filed a response to a motion for summary judgment within the ten days provided by FSM Civil Rule 6(d), the defendant is deemed to have consented to the granting of the motion and the court may decline to hear oral argument. Actouka v. Kolonia Town, 5 FSM R. 121, 123 (Pon. 1991).

Although failure to oppose a motion operates as a consent by the opposing party to the granting of the motion, the court is not bound to grant motion simply because it is unopposed. For a motion to be granted, even if unopposed, it must be well grounded in law and fact, and not interposed for delay. In re Parcel No. 046-A-01, 6 FSM R. 149, 153 (Pon. 1993).

Where there is no timely opposition filed after the service of a motion, the opposing party is considered to have consented to the motion. Maruwa Shokai Guam, Inc. v. Pyung Hwa 31, 6 FSM R. 238, 240 (Pon. 1993).

While it is true that failure to file a timely opposition is deemed a consent to the granting of the motion, FSM Civ. R. 6(d), proper grounds for the granting of the motion must still exist before a court may grant it.

Senda v. Mid-Pacific Constr. Co., 6 FSM R. 440, 442 (App. 1994).

Although failure to timely file an opposition to a motion is deemed a consent to the motion, proper grounds for the granting of the motion must still exist before the court may grant it. Bank of Guam v. Nukuto, 6 FSM R. 615, 616 (Chk. 1994).

A court may not grant a motion unless proper grounds to do so exist even though the nonmoving party has failed to timely oppose the motion and is deemed to have consented to it. Mailo v. Bae Fa Fishing Co., 7 FSM R. 83, 85 (Chk. 1995).

While failure to file a timely opposition is deemed a consent to the granting of the motion there still must be proper grounds for granting of motion before a court may do so. Bank of the FSM v. O'Sonis, 8 FSM R. 67, 68 (Chk. 1997).

Because failure to file an opposition to a motion is deemed a consent to it a party failing to file an opposition will not be allowed to argue it orally. Bank of the FSM v. O'Sonis, 8 FSM R. 67, 68 (Chk. 1997).

When defendants do not oppose a motion, they are deemed to have consented to it, but before a motion can be granted, proper grounds must exist. Bank of Guam v. O'Sonis, 8 FSM R. 301, 304 (Chk. 1998).

Failure to oppose a portion of a motion may be considered a consent to that portion of the motion, but a court still needs proper grounds to grant the motion. Pau v. Kansou, 8 FSM R. 524, 526 (Chk. 1998).

Failure of the opposing party to file responsive papers shall be considered by the court as consent to the granting of the motion. Welle v. Walter, 8 FSM R. 572, 573 (Chk. S. Ct. Tr. 1998).

Even though failure to timely oppose a motion is deemed a consent to that motion, a court still needs proper grounds before it can grant the motion. Bank of Guam v. O'Sonis, 9 FSM R. 197, 198 (Chk. 1999).

Failure to respond to a motion generally operates as consent to the granting of the motion; at the same time, the motion will not automatically be granted, and must be well grounded in law and fact. Island Cable TV v. Gilmete, 9 FSM R. 264, 266 (Pon. 1999).

Failure to timely oppose a motion is deemed a consent to that motion, but a court still needs proper grounds before it can grant an unopposed motion. Marar v. Chuuk, 9 FSM R. 313, 314 (Chk. 2000).

When no response to a summary judgment motion appears in the record and the opposing party does not appear at the noticed hearing the motion is due to be granted for that reason alone. Udot Municipality v. Chuuk, 9 FSM R. 586, 587 (Chk. S. Ct. Tr. 2000).

Even though failure to timely oppose a motion is deemed a consent to that motion, a court still needs proper grounds before it may grant the motion. Medabalmi v. Island Imports Co., 10 FSM R. 32, 34 (Chk. 2001).

Even though failure to timely oppose a motion is deemed a consent to that motion, a court still needs proper grounds before it can grant the motion. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 172 (Chk. 2001).

Even though failure to timely oppose a motion is deemed a consent to that motion, the court still needs proper grounds before it may grant the motion. Moses v. Oyang Corp., 10 FSM R. 273, 275 (Chk. 2001).

Failure to timely oppose a motion is deemed a consent to that motion. Even so, a court still needs proper grounds before it can grant that motion. FSM Dev. Bank v. Ifraim, 10 FSM R. 342, 345 (Chk. 2001).

Failure to timely oppose a motion is deemed a consent to that motion, but good grounds are still needed before the motion may be granted. Marcus v. Truk Trading Corp., 10 FSM R. 387, 389-90 (Chk. 2001).

Failure to file a memorandum in opposition to a motion is deemed a consent to the motion, but the motion must have proper grounds before it can be granted. Shrew v. Kosrae, 10 FSM R. 533, 534 (Kos. S. Ct. Tr. 2002).

Failure to oppose a motion is deemed a consent to the motion. Talley v. Talley, 10 FSM R. 570, 571, 572 (Kos. S. Ct. Tr. 2002).

Failure to respond to a motion may be deemed a consent to granting the motion, but even when a party fails to respond, the motion may be granted only if it is grounded both in law and fact. Bank of the FSM v. Mori, 11 FSM R. 13, 14 (Chk. 2002).

Failure to file a timely opposition is deemed a consent to the granting of the motion, but proper grounds to grant the motion must still exist before a court can grant it. Kelly v. Lee, 11 FSM R. 116, 117 (Chk. 2002).

Failure to oppose a motion is generally deemed a consent to the motion, but even if there is no opposition, the court still needs good grounds before it can grant the motion. Farata v. Punzalan, 11 FSM R. 175, 177 (Chk. 2002).

Failure to oppose a motion to enlarge time is generally deemed a consent to the motion. Naoro v. Walter, 11 FSM R. 619, 621 (Chk. 2003).

If the court were to consider an untimely filed response to a motion as a failure to file an opposition, such failure to oppose is generally deemed a consent to the motion, but even when there is no opposition, the court still needs good grounds before it can grant a motion. For a motion to be granted, even if unopposed, it must be well grounded in law and fact, and not interposed for delay. Enlet v. Bruton, 12 FSM R. 187, 190 (Chk. 2003).

Failure to respond to a motion may be deemed consent to the granting of the motion, but there still must be a basis in law and fact justifying the relief requested in order for the court to grant the motion in the absence of a response. Adams v. Island Homes Constr., Inc., 12 FSM R. 348, 350 (Pon. 2004).

Failure to oppose a motion is generally deemed a consent to the motion, but even when there is no opposition, the court still needs good grounds before it can grant the motion. Fan Kay Man v. Fananu Mun. Gov't, 12 FSM R. 492, 495 (Chk. 2004).

Even when a party toward whom a motion is directed does not respond, there must be a good basis in law and fact for the granting of the motion. Clarence v. FSM Social Sec. Admin., 12 FSM R. 635, 637 (Kos. 2004).

Failure to file a timely opposition to a motion (not later than ten days after service of the motion) is deemed a consent to the motion and the court, may in its discretion, refuse to hear oral argument in opposition to the motion. Skilling v. Kosrae State Land Comm'n, 13 FSM R. 16, 18 (Kos. S. Ct. Tr. 2004).

The "statute of limitations" is an affirmative defense which must be raised in either the answer or in a motion to dismiss. A plaintiff's failure to timely oppose a defendant's motion to dismiss is deemed a consent to the motion. However, even without opposition, the court still needs good grounds before it can grant the motion. Skilling v. Kosrae State Land Comm'n, 13 FSM R. 16, 19 (Kos. S. Ct. Tr. 2004).

Nonresponse may be deemed consent to the motion, but there still must be a basis in law and fact for granting the motion. Clarence v. FSM Social Sec. Admin., 13 FSM R. 34, 35 (Kos. 2004).

Failure to oppose a motion is generally deemed a consent to the motion, but even if there is no opposition, the court still needs good grounds before it can grant the motion. For a motion to be granted, even if unopposed, it must be well grounded in law and fact. Lee v. Lee, 13 FSM R. 68, 70 (Chk. 2004).

When the plaintiff did not file any timely opposition to the defendant's motion to dismiss, the plaintiff's failure to file a memorandum in opposition to the motion to dismiss is deemed a consent to the motion. However, even without opposition, the court still needs good grounds before it can grant the motion. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 80 (Kos. S. Ct. Tr. 2004).

Failure to file responsive papers to a motion is deemed a consent to the motion, and a party failing to file responsive papers to a motion will not be allowed to argue it orally. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 123-24 (Chk. 2005).

When no opposition has been filed to a motion, it is generally deemed a consent to that motion. Bank of the FSM v. Aisek, 13 FSM R. 162, 165 (Chk. 2005).

Failure to oppose a motion is generally deemed a consent to the motion, but even if there is no opposition, the court still needs good grounds before it can grant the motion, which must be well grounded in law and fact. Zion v. Nakayama, 13 FSM R. 310, 312 (Chk. 2005).

Failure to oppose a motion is generally deemed a consent to the motion. Kiniol v. Kansou, 13 FSM R. 456, 459 (Chk. 2005).

Failure to oppose a motion is generally deemed a consent to the motion. But even if there is no opposition, the court still needs good grounds before it can grant the motion. Naka v. Simina, 13 FSM R. 460, 461 (Chk. 2005).

Failure to oppose a motion is generally deemed a consent to the motion. But even if there is no opposition, the court still needs good grounds before it can grant the motion. Mailo v. Chuuk, 13 FSM R. 462, 470, 471, 472 (Chk. 2005).

When no opposition has been filed to a motion, it is generally deemed a consent to the motion, but even if there is no opposition, the court still needs good grounds before it can grant the motion. For a motion to be granted, even if unopposed, it must be well grounded in law and fact, and not interposed for delay. Etscheit v. McVey, 13 FSM R. 477, 479 (Pon. 2005).

Failure to respond to a motion is deemed consent to the granting of the motion. However, in the absence of a response there still must be a basis in law and fact for granting the motion. Emmanual v. Kansou, 13 FSM R. 527, 528 (Chk. 2005).

Failure to oppose a motion is generally deemed a consent to the motion, but even if there is no opposition, the court still needs good grounds before it can grant the motion. For a motion to be granted, even if unopposed, it must be well grounded in law and fact. Stephen v. Chuuk, 13 FSM R. 529, 531 (Chk. 2005).

Failure to oppose a motion is generally deemed a consent to the motion, but even when there is no opposition, the court still needs good grounds before it can grant the motion. For even an unopposed motion to be granted, it must be well grounded in law and fact. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 553 (Chk. 2005).

Failure to oppose a motion is generally deemed a consent to the motion. But even if there is no

opposition, the court still needs good grounds before it can grant the motion. Lee v. Han, 13 FSM R. 571, 576 (Chk. 2005).

Because failure to timely respond to a motion is deemed a consent to that motion, a motion to strike may be granted when the defendants had ten days to respond to it and did not. Robert v. Simina, 14 FSM R. 257, 259 (Chk. 2006).

When the plaintiffs had ten days from the date of service to respond to the motion if served personally and sixteen days to respond if served by mail, but no opposition was filed, their failure to oppose a motion is deemed a consent to the motion. But even if there is no opposition, the court still needs good grounds before it can grant the motion. Harper v. William, 14 FSM R. 279, 281 (Chk. 2006).

The failure to oppose a motion is generally deemed a consent to the motion, but even if there is no opposition, the court still needs good grounds before it can grant a motion. Western Sales Trading Co. (Phils) v. B & J Corp., 14 FSM R. 423, 425 (Chk. 2006).

When no response was filed to a motion, the non-response is deemed consent to the granting of the motion. A basis in law and fact must nevertheless exist to grant the motion. RRG (FSM) Ltd. v. Maezoto, 15 FSM R. 243, 244 (Pon. 2007).

Even though failure to timely oppose a motion is deemed consent to the motion, a court still needs good, proper grounds before it may grant the motion. Nakamura v. Sharivy, 15 FSM R. 409, 412 (Chk. S. Ct. Tr. 2007).

Failure to oppose a motion is generally deemed a consent to the motion, but even when there is no opposition, the court still needs good grounds before it can grant the motion. For the court to grant a motion, even if it is unopposed, it must be well grounded in law and fact. Ruben v. Petewon, 15 FSM R. 605, 607 (Chk. 2008).

Although failure to oppose a motion is generally deemed a consent to the motion, the court still needs good grounds before it can grant the motion. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 284 (Chk. 2009).

Failure to oppose a motion is generally deemed a consent to the motion, but even if there is no opposition, the court still needs good grounds before it can grant the motion. FSM Social Sec. Admin. v. Chuuk Public Utility Corp., 16 FSM R. 333, 334 (Chk. 2009).

Under FSM Civil Rule 6(d), failing to oppose a motion is deemed consent to the motion, however, the court must still determine that there is a basis in fact and law for the requested relief before granting the motion. Yoruw v. Ira, 16 FSM R. 464, 465 (Yap 2009).

Failure to oppose a motion is generally deemed a consent to the motion, but even if there is no opposition, the court still needs good grounds before it can grant the motion. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 469 (Chk. 2009).

Failure to oppose a motion is generally deemed a consent to the motion, but even if there is no opposition, the court still needs good grounds before it can grant the motion. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 633, 634 (Yap 2009).

Failure to oppose a motion is deemed a consent to the motion, but, in order for the court to grant it, the motion still must have a sound basis in law and fact. Dungawin v. Simina, 17 FSM R. 51, 55 (Chk. 2010).

Despite a failure to file a timely opposition being deemed as consent to granting of the motion, proper grounds for granting the motion must still exist before a court may grant it. Smith v. Nimea, 17 FSM R.

125, 128 (Pon. 2010).

Although failure to oppose a motion is generally deemed a consent to the motion, even when there is no opposition, the court still needs good grounds before it can grant the motion. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 148, 149 (Pon. 2010).

When no opposition has been filed to a motion, the failure to oppose is generally deemed a consent to the motion, but even when there is no opposition, the court still needs good grounds before it can grant the motion. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 176, 178 (Pon. 2010).

For a motion to be granted, even if unopposed, it must be well grounded in law and fact, and not interposed for delay. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 176, 178 (Pon. 2010).

Failure to oppose a motion is generally deemed a consent to the motion, but even if there is no opposition, the court still needs good grounds before it can grant the motion. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 186 (Pon. 2010).

Failure to file an opposition is generally deemed a consent to the motion, but even when there is no opposition, the court still needs good grounds before it can grant the motion, especially when the non-movants were permitted, without objection, to orally oppose the motion. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 330 (Pon. 2011).

Even when a motion is unopposed, a court still needs good grounds in order to grant it. Berman v. Pohnpei, 17 FSM R. 360, 374 (App. 2011).

Failure to oppose a motion is generally deemed a consent to the motion. But even when there is no opposition, the court still needs good grounds before it can grant the motion. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 409 (Pon. 2011).

By rule, the court deems failure to oppose a motion as consent to the motion, but even then, the court still needs good grounds before it can grant the motion. Kaminanga v. Chuuk, 18 FSM R. 216, 218 (Chk. 2012).

Although the failure to file an opposition is deemed, by rule, to be a consent to a motion, the court cannot automatically grant an unopposed summary judgment motion because there must still be a sound basis in law and in fact upon which to grant the motion. Aunu v. Chuuk, 18 FSM R. 467, 468 (Chk. 2012).

Although the failure to oppose a motion is generally deemed a consent to the motion, the court still needs good grounds before it can grant an unopposed motion. For a motion to be granted, even if unopposed, it must be well grounded in law and fact. Ruben v. Chuuk, 18 FSM R. 637, 639 (Chk. 2013).

By rule, the failure to oppose a motion is generally deemed a consent to the motion, but even if there is no opposition, the court still needs good grounds before it can grant the motion. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 58 (Yap 2013).

When the plaintiffs have not filed a timely opposition to the defendants' motions to dismiss, they are deemed to have consented to those motions. However, the court still needs to establish that proper grounds exist before it may grant those motions. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 257 (Pon. 2014).

When the plaintiff timely filed an unopposed motion for enlargement of time to file closing arguments because his counsel was traveling in Chuuk and since the defendant consented to the motion by electing not to respond, the motion for enlargement of time was granted *nunc pro tunc*. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 471 (Pon. 2014).

While, by rule, the failure to oppose a motion is generally deemed a consent to the motion, the court still needs good grounds before it can grant an unopposed motion. Even for an unopposed motion to be granted, it must be well grounded in law and fact. Eot Municipality v. Elimo, 20 FSM R. 7, 9 (Chk. 2015).

By rule, the failure to oppose a motion is generally deemed a consent to the motion, but even then the court still needs good grounds before it can grant the unopposed motion. Isamu Nakasone Store v. David, 20 FSM R. 53, 56 (Pon. 2015).

When there is no timely opposition filed after proper service of a motion, the adverse party is considered to have consented to the motion. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 103 (Chk. 2015).

A motion sounding in an attorney's purported negligence does not constitute a basis for Rule 60(b) relief from judgment, as clients are held accountable for their attorney's acts or omissions. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 103 (Chk. 2015).

Failure to timely oppose a motion is deemed a consent to that motion, but a court still needs proper grounds before it can grant an unopposed motion. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 199 (Pon. 2015).

The court is not bound to grant motions as a matter of course simply because they are unopposed. Even when unopposed, a motion must be well grounded in law and fact, and not interposed for delay. Ramirez v. College of Micronesia, 20 FSM R. 254, 265 (Pon. 2015).

By rule, the failure to oppose a motion is generally deemed a consent to the motion, but even then, the court still needs good grounds before it can grant the unopposed motion. Thus, even if the court were to consider a renewed motion unopposed because, although the plaintiff filed an opposition to the original motion, it did not file an opposition to the renewed motion, the court would still need to determine if good grounds exist to grant it. Chuuk v. FSM, 20 FSM R. 373, 375 (Chk. 2016).

By rule, the failure to oppose a motion is generally deemed a consent to the motion, but even if there is no opposition, the court still needs good grounds before it can grant the motion. Pillias v. Saki Stores, 20 FSM R. 391, 393 (Chk. 2016).

Although the absence of opposition is generally deemed consent, a court still needs good grounds before it can grant an unopposed motion. Pohnpei Transfer & Storage, Inc. v. Shoniber, 20 FSM R. 492, 496 (Pon. 2016).

Failure to oppose a motion is deemed consent to the motion, but even without opposition, the court will not grant the motion unless it is well grounded in fact and law. Helgenberger v. Chung, 20 FSM R. 519, 520 (Pon. 2016).

By rule, the failure to oppose a motion is generally deemed a consent to the motion, but even then the motion must be well grounded in law and fact before the court can grant the unopposed motion. Onanu Municipality v. Elimo, 20 FSM R. 535, 541 (Chk. 2016).

When there is no timely opposition filed after proper service of a motion, the adverse party is deemed to have consented to the motion, but even then, the court still needs good grounds before it can grant the motion. Chuuk v. Weno Municipality, 20 FSM R. 582, 584 (Chk. 2016).

When an opposing party has not filed a response to a summary judgment motion, that party is deemed to have consented to the motion's grant, and the court may decline to hear oral argument from that party. Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 627 (Yap 2016).

Even when there is no opposition filed and consent deemed given, the court still needs good grounds before it can grant the motion, especially when the non-movant was permitted, without objection, to orally oppose the motion. Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 627 (Yap 2016).

By rule, failure to oppose a motion is deemed a consent thereto, but even then, the court still needs good grounds before it can grant the motion. Pacific Fin. Corp. v. David, 21 FSM R. 5, 6 (Chk. 2016).

Counsel should be well aware that although a motion to dismiss may stand unopposed, and while failure to oppose a motion is generally deemed a consent to that motion, the court still needs good grounds before it can grant the motion. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 21 FSM R. 150, 154 (Pon. 2017).

When no reason is provided for late filing and an enlargement of time is never sought, responsive papers may be stricken from the record as untimely and the motion considered unopposed. However, when the party has not moved for an enlargement of time, but has provided legitimate reasons for the delay in filing its opposition and when no reason was provided showing that the court's consideration of the untimely opposition would prejudice the movant at all, and because the opponent's reasons would constitute excusable neglect, the motion to strike will be denied. Hartmann v. Department of Justice, 21 FSM R. 468, 472-73 (Chk. 2018).

The failure to oppose a motion is, by rule, deemed a consent to the motion, but even then, the court still needs good grounds before it can grant the motion. Luhk v. Anthon, 22 FSM R. 69, 70 (Pon. 2018).

If a party fails to file a response to a motion, it usually will not be allowed to argue that motion orally. Chuuk v. FSM, 22 FSM R. 85, 92 (Chk. 2018).

When an opposing party has not responded to a motion, that party is, by rule, deemed to have consented to the motion, but even then the court still needs a sound basis in law and in fact on which to grant the motion. Apostol v. Maniquiz, 22 FSM R. 146, 148 (Chk. 2019).

When an opposing party has not filed a response to a summary judgment motion, that party is, by rule, deemed to have consented to the motion's grant, but the court cannot automatically grant an unopposed summary judgment motion since there must still be a sound basis in law and in fact upon which to grant the motion. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 153 (Chk. 2019).

Failure to oppose a motion is deemed consent to the motion, but even then, the court still needs good grounds before it can grant the motion. Macayon v. FSM, 22 FSM R. 317, 319 (Chk. 2019).

By rule, a party's failure to oppose a motion is deemed that party's consent to the motion, but even then, proper grounds to grant the motion must exist before the court can grant it. Panuelo v. Sigrah, 22 FSM R. 341, 349 (Pon. 2019).

When a party fails to respond in writing to a written motion, not only is it deemed that party's consent to the motion, but it is also deemed that party's waiver of the right to orally respond to or oppose the motion, but the court may allow the party to orally argue even though she did not file a written opposition. Panuelo v. Sigrah, 22 FSM R. 341, 350 (Pon. 2019).

Although the absence of opposition is generally deemed consent, a court still needs good grounds before it can grant an unopposed motion. Timsina v. FSM, 22 FSM R. 383, 387 (Pon. 2019).

Usually, when a party fails to file a response to a written motion, that party will not be allowed to argue that motion orally. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 472 (Pon. 2020).

When no opposition has been filed to a summary judgment motion, the opposing parties are deemed

to have consented to the motion, but even then, a court still needs a sound basis in law and fact before it can grant the summary judgment motion, especially when the non-movant was permitted to orally oppose the motion. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 473 (Pon. 2020).

The failure to oppose a motion is deemed a consent to the motion, but even when there is no opposition, the court still needs good grounds before it can grant the motion. Yoruw v. FSM Dep't of Educ., 22 FSM R. 596, 598 (Yap 2020).

– New Trial

A motion for a new trial may be filed before the entry of judgment. Walter v. Meippen, 7 FSM R. 515, 517 (Chk. 1996).

A new trial may be granted to all or any of the parties and on all or part of the issues for manifest error of law or fact, or for newly discovered evidence. Conrad v. Kolonia Town, 8 FSM R. 215, 216 (Pon. 1997).

It is not a manifest error of fact requiring a new trial that certain evidence that parties felt was compelling was not recited in the court's decision or given the weight they thought proper, when the parties were afforded a full hearing and the court considered all evidence on the record in reaching its decision. Conrad v. Kolonia Town, 8 FSM R. 215, 217 (Pon. 1997).

It is not a manifest error of law or fact requiring a new trial that the court held police officers liable for battery without determining exactly which officer's action caused plaintiff's injury when the court found that each of the defendants had participated in plaintiff's arrest, the court discussed the issues of justifiable force and privilege throughout its decision, and found that defendants had acted with intent to bring about a harmful or offensive contact with plaintiff, which was not justified under the circumstances. Conrad v. Kolonia Town, 8 FSM R. 215, 217-18 (Pon. 1997).

A motion for a new trial will be denied when the movant has not demonstrated that a manifest error of law or fact existed. Conrad v. Kolonia Town, 8 FSM R. 215, 218 (Pon. 1997).

A motion for a new trial will be denied when medical expenses were properly awarded as an element of damages against a negligent tortfeasor and when no legal error resulted from the court's reliance on another case because the court's finding that the plaintiff was working for the movant, and being supervised by his foreman when the accident occurred was similar to facts of the other case. Amayo v. MJ Co., 10 FSM R. 371, 377 (Pon. 2001).

Rule 59 provides a means for relief in cases in which a party has been unfairly made the victim of surprise, but relief will be denied if the party failed to seek a continuance. Surprise, along with excusable neglect, is also addressed by Rule 60(b)(1). Thus, if a party is surprised at trial he is amply protected by Rules 59(a) and 60(b). Amayo v. MJ Co., 10 FSM R. 371, 383 (Pon. 2001).

A Rule 59 motion must be brought within ten days of entry of judgment and can either be for a new trial or to alter or amend the judgment. Farata v. Punzalan, 11 FSM R. 175, 177 (Chk. 2002).

A new trial is granted only for manifest error of law or fact, or for newly discovered evidence, and will be denied when the movant has not identified any manifest error of law or fact or any newly discovered evidence. Farata v. Punzalan, 11 FSM R. 175, 177 (Chk. 2002).

A motion for new trial may be filed before the entry of judgment. Tolenoa v. Kosrae, 11 FSM R. 179, 182 (Kos. S. Ct. Tr. 2002).

A motion for new trial will be denied when the movant has not demonstrated that a manifest error of law or fact existed. Tolenoa v. Kosrae, 11 FSM R. 179, 182 (Kos. S. Ct. Tr. 2002).

The trial court may deny a motion for new trial when the motion's basis is the judge's failure to recuse himself and the party making the motion was, since the beginning of the case, aware of the information upon which the motion is based. Tolenoa v. Kosrae, 11 FSM R. 179, 184 (Kos. S. Ct. Tr. 2002).

When a justice was not required to recuse himself from a matter, his failure to recuse himself does not constitute manifest error of law and a motion for a new trial on that basis will be denied. Tolenoa v. Kosrae, 11 FSM R. 179, 185 (Kos. S. Ct. Tr. 2002).

The defendants have not presented adequate grounds to support their motion to alter judgment or for a new trial when there has been no manifest error of law or fact made by the court in its memorandum and judgment and when there has been no newly discovered evidence presented by the defendants in support of their motion. Livaie v. Weilbacher, 13 FSM R. 249, 251 (Kos. S. Ct. Tr. 2005).

In a case that has been reversed and remanded a new trial may not be necessary when a complete trial transcript was prepared for the appeal, but if the trial court deems it necessary, it may take further evidence. Kileto v. Chuuk, 15 FSM R. 16, 18 (Chk. S. Ct. App. 2007).

When a petition for a rehearing is based on the court's ruling in a trial *de novo*, the petition is analogous to a motion for a new trial under the Chuuk Civil Rules of Procedure. The only legal grounds for a new trial are when there is a manifest error of law or fact, or for newly discovered evidence. A motion for a new trial will be denied when the movant has not identified any manifest error of law or fact or any newly discovered evidence. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 426, 428 (Chk. S. Ct. App. 2007).

When the parties were afforded a full hearing and the court considered all evidence on the record in reaching its decision, it is not a manifest error of fact requiring a new trial that certain evidence that parties felt was compelling was not recited in the court's decision or given the weight they thought proper, and, if for some reason, a party is unable to produce relevant evidence at the time set for trial, the problem should be brought to the court's attention before the trial has begun. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 426, 428 & n.1 (Chk. S. Ct. App. 2007).

When no valid reason was given why a party was unable to present particular evidence at trial, it will not be considered "newly discovered." The reason for only allowing a rehearing where there is bona fide newly discovered evidence is that the court cannot afford litigants the opportunity to try again and again, on a hit and miss basis, to present evidence upon a particular issue. Thus, when no valid reason is given for failing to produce evidence at trial and no new evidence is presented that was located after the close of trial, it will not be fruitful to plow the same ground again, and a motion for a new trial will be denied. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 426, 428 (Chk. S. Ct. App. 2007).

When the only discernable bases for a petition for a new trial are that the court should have been more persuaded by the evidence the petitioner submitted and that he could have submitted other evidence if he had known it would have been persuasive and that the court should have helped him discover evidence supporting his case, none of these bases qualifies as either a manifest error of law or fact or "newly discovered" evidence, and the petitioner's motion for a new trial will be denied since he is asking that the court give him another trial because his counselor did not present all the available evidence in the first trial. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 426, 429 (Chk. S. Ct. App. 2007).

It is not the province of the court to prepare a party's case but that of counsel. Clients must be held accountable for their attorneys' acts or omissions. Parties who freely choose their attorneys should not be allowed to avoid the ramification of the acts or omissions of their chosen counsel because to grant relief in such circumstances would penalize the nonmoving party for the conduct of the moving party's counsel. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 426, 429 (Chk. S. Ct. App. 2007).

If by reason of the disability of the judge before whom an action was been tried, the judge is unable to perform the court's duties after findings of fact and conclusions of law are filed, then any other judge regularly sitting in or assigned to the court in which the action was tried may perform those duties unless the other judge is satisfied that such other judge cannot perform those duties because such other judge did not preside at the trial or for any other reason the other judge may in his or her discretion grant a new trial. Salik v. U Corp., 15 FSM R. 534, 539 (Pon. 2008).

Small claims cases are heard in the Kosrae State Court trial division under a simplified small claims procedure since a separate division or department was not created within the State Court for small claims. A small claims judgment is not the final action that can be taken in the State Court trial division since either party to a small claim judgment may have a new trial in the same court according to the usual trial procedure for large claims by filing a request for new trial within 30 days after the small claims judgment. Simon v. Heirs of Tulenkun, 17 FSM R. 646, 648-49 (App. 2011).

The word "may" as opposed to "shall" is indicative of discretion or a choice between two or more alternatives, but the context in which the word appears must be the controlling factor and in Kosrae Civil Procedure Rule 87(i), the discretion is exercised by a small claims judgment-party. The judgment-party decides whether there will be a new trial. If the party asks within 30 days, then there must or shall be a new trial following the usual procedures for civil cases. The procedure is, if a party in a small claims action is dissatisfied by the judgment, the party can get, by asking within 30 days, a new trial that follows the regular civil action procedure. Simon v. Heirs of Tulenkun, 17 FSM R. 646, 649 (App. 2011).

The grounds on which a court may grant a new trial or alter or amend the judgment is either when the court has made a manifest error of law or fact, or for newly discovered evidence. Senate v. Elimo, 18 FSM R. 199, 201 (Chk. S. Ct. Tr. 2012).

When no valid reason was given why a party was unable to present particular evidence at trial, it will not be considered "newly discovered." The reason for allowing a rehearing only when there is bona fide newly discovered evidence is that the court cannot afford litigants the opportunity to try again and again, on a hit or miss basis, to present evidence upon a particular issue. Thus, when no valid reason is given for failing to produce evidence at trial and no new evidence is presented that was located after the close of trial, it will not be fruitful to plow the same ground again, and a motion for a new trial will be denied. Senate v. Elimo, 18 FSM R. 199, 201-02 (Chk. S. Ct. Tr. 2012).

The defendants do not present adequate grounds to support a motion to alter judgment or a motion for a new trial when there has been no manifest error of law or fact made by the court in its memorandum and judgment and when there has been no newly discovered evidence presented by the defendants in support of their motion. Moylan's Ins. Underwriters (FSM), Inc. v. Gallen, 20 FSM R. 3, 6 (Pon. 2015).

A Rule 59 motion for a new trial must be served not later than ten days after entry of the judgment, but a motion that purports to be a Rule 59(b) motion for a new trial will not be denied merely because it is untimely since a Rule 59 motion served after the ten days has expired will be, and can only be, considered a Rule 60(b) motion for relief from judgment. George v. Palsis, 20 FSM R. 174, 176 (Kos. 2015).

A motion for a new trial or for relief from judgment will be denied when none of the purported "newly discovered evidence" that it relies upon qualifies as newly discovered evidence which by due diligence could not have been discovered earlier. George v. Palsis, 20 FSM R. 174, 176-77 (Kos. 2015).

Evidence, that by its very nature, was in the plaintiff's possession the whole time cannot be considered "newly discovered" evidence especially when the motion for a new trial or relief from judgment does not address the plaintiff's complete failure to produce the evidence at trial. George v. Palsis, 20 FSM R. 174, 177 (Kos. 2015).

Regardless of whether the issued writ of habeas corpus is a final order, the court may entertain FSM

Civil Rule 59 and 60 motions while the matter is subject to an appeal and, if it determines such motion(s) shall prevail, it must so indicate in the record for the appellate court's consideration. Timsina v. FSM, 22 FSM R. 383, 386 (Pon. 2019).

– Notice

Constructive notice is a concept through which actual notice is imputed to a party regardless of whether that party has actual knowledge of the imputed facts. A party has constructive notice when from all the facts and circumstances known to him at the relevant time, he has such information as would prompt a person exercising a reasonable care to acquire knowledge of the fact in question or to infer its existence. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 177 n.11 (Pon. 1995).

Substantial, open and notorious occupation of land is constructive notice of occupant's claim and puts all persons on inquiry as to the nature of occupant's claim, and whoever willfully avoids learning of such trespass will be charged with constructive notice. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 177-78 (Pon. 1995).

A plaintiff cannot contend that he had no notice of his causes of action until a certain date when before that date he had filed a prior suit involving the same claims and land. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 181-82 (Pon. 1995).

An attorney, who stated that he was appearing temporarily for a party and only for the purposes of that one brief, in chambers, off-the-record status conference and who did not file a notice of appearance either then or subsequently, did not appear of record. And when that attorney did nothing officially of record in the case until he came to court with the party for the trial's afternoon session, he was not the party's counsel of record as of the date the notice of trial was served, and it is immaterial whether he received the notice of trial. Amayo v. MJ Co., 10 FSM R. 371, 378-79 (Pon. 2001).

No hard and fast rule for determining what notice of trial is adequate can be made, as any such rule would be arbitrary. While the law requires that adequate notice be given, it does not require that any particular type or kind of notice be given, so that a written notice is not required; a party's actual knowledge of the trial date is sufficient. Amayo v. MJ Co., 10 FSM R. 371, 379 (Pon. 2001).

Personal service on a party of a trial subpoena that gave clear, unambiguous notice to that party of the time and place of trial more than seven weeks before trial, constituted adequate timely notice of trial. Amayo v. MJ Co., 10 FSM R. 371, 379 (Pon. 2001).

There was no defect in service when a person who had been subpoenaed for trial as a witness, was also a party to the litigation, who was representing himself. As such, he is to be credited with knowing that "trial" means exactly that, a final determination of the merits of the case. Amayo v. MJ Co., 10 FSM R. 371, 380 (Pon. 2001).

No service on a defendant of a motion for entry of a default judgment is necessary under the rules, and nothing in the rules requires that notice of hearings on default matters be given to a defaulting defendant. Konman v. Esa, 11 FSM R. 291, 293-94 (Chk. S. Ct. Tr. 2002).

Even when a litigant was provided with a subpoena by opposing counsel, which accurately stated the trial date, it is essential that the trial court insure that its own notice procedures satisfy the requirements of due process, especially where *pro se* litigants are involved. When unrepresented parties are deluged with legal documents drafted by attorneys on the opposing side, it is conceivable that confusion will result. Panuelo v. Amayo, 12 FSM R. 365, 374 (App. 2004).

Except as otherwise provided in the rules or by court order, every written notice must be served upon each of the parties. It is mandatory for the court to serve notices on parties, unless they are in default.

The court must insure that its own notices and orders are properly served on *pro se* litigants – *pro se* litigants should not be compelled to rely upon opposing counsel to inform them of a trial date. Panuelo v. Amayo, 12 FSM R. 365, 374 (App. 2004).

When the trial court easily could have concluded a trial on the full merits of the case by extending or delaying the proceedings for a few extra hours, but chose instead to base its determination of liability upon evidence that a litigant did not have an opportunity to oppose because of lack of court-issued notice of trial, and when the law favors the disposition of cases on their merits, the trial court's error in failing to insure that it provided the litigant with notice of the trial date and time brings into question the fairness, integrity, and public reputation of judicial proceedings. Panuelo v. Amayo, 12 FSM R. 365, 375 (App. 2004).

A corporation has received notice when its officers promptly received a default notice in which all the information was correct except the P.O. box number and the names in the greeting and when, even if those flaws were not in strict compliance with the written notice requirement, the accuracy of the rest of the document constitutes constructive notice. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 10 (Pon. 2004).

A party has constructive notice when from all the facts and circumstances known to him at the relevant time, he has such information as would prompt a person exercising a reasonable care to acquire knowledge of the fact in question or to infer its existence. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 10 (Pon. 2004).

When a guaranty itself does not require a notice of the principal's default to the guarantors and when the relationship between the debtor and the guarantors is such that the guarantors may be charged with notice of the debtor's situation without a formal notice of default, separate notice to the guarantors is not required. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 10 (Pon. 2004).

Defective notice issued by the Land Commission, if repeated by the Land Court, merely becomes defective notice issued by the Land Court. The Land Court has a statutory obligation to independently determine who are the claimants to a parcel, and who are entitled to notice of the proceedings. Heirs of Lonno v. Heirs of Lonno, 13 FSM R. 421, 423 (Kos. S. Ct. Tr. 2005).

The notice required by state law is intended to reach all parties, claimants and provide notice to the general public on the schedule of proceedings. The statutory notice required includes notice to the public: posting of the notice in at least three conspicuous places or at least two areas of public access and further notice to the public is required by posting at the municipal building of the municipality where the property is located and through announcements on the Kosrae radio station on several occasions. Notice to parties, claimants, and public is provided by at least two separate postings of the notice in different locations, and notice by radio broadcast. These substantial requirements for notice of land proceedings reflect the Kosrae Land Court's calculated goal to reach as many claimants, parties and members of the general public as possible. Kun v. Heirs of Abraham, 13 FSM R. 558, 561 (Kos. S. Ct. Tr. 2005).

When a default notice mailed by the to AHPW which had an incorrect box number and salutation but was received by an appellant and the information in the notice (AHPW's name, the correct loan account number, the original loan amount, the agreed repayment amount, the amount in arrears, the number of days in arrears, and the date of the last payment) was sufficient to put him on notice that AHPW had defaulted on its loan, the trial court correctly found that AHPW had both actual and constructive notice of the default and that the guaranty itself did not require notice to the guarantors, but that they nevertheless had notice of the default in light of their positions as AHPW's directors. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 397 (App. 2006).

A person's certificate of title on file at the Chuuk Land Commission constituted notice to the world of that person's ownership of all of the land it was for and that certificate and the Plat No. cited constituted notice of the boundaries of the ownership. Dereas v. Eas, 14 FSM R. 446, 457 (Chk. S. Ct. Tr. 2006).

Constructive notice is a concept through which actual notice is imputed to a party regardless of whether that party has actual knowledge of the imputed facts. A party has constructive notice when from all the facts and circumstances known to him at the relevant time, he has such information as would prompt a person exercising reasonable care to acquire knowledge of the fact in question or to infer its existence. Dereas v. Eas, 14 FSM R. 446, 457 (Chk. S. Ct. Tr. 2006).

Substantial, open, and notorious occupation of land is constructive notice of the occupant's claim and puts all persons on inquiry as to the nature of the occupant's claim, and whoever willfully avoids learning of such trespass will be charged with constructive notice. Dereas v. Eas, 14 FSM R. 446, 457 (Chk. S. Ct. Tr. 2006).

Actual notice as required by statute must be given for preliminary and formal hearings at the Land Commission. Notice is required because it gives a chance to be heard. However, the consequences for failing to give notice of decisions are different. The party has had a chance to be heard and to present evidence. Serving notice of an adjudication, or decision, is required in order to give the party a chance to appeal. If a party is not properly served notice of a determination of ownership, the statutory appeals period that an appeal shall be made within sixty days of the written decision's service upon the party, does not run. Heirs of Tara v. Heirs of Kurr, 14 FSM R. 521, 525 (Kos. S. Ct. Tr. 2007).

It is essential that the trial court insure that its own notice procedures satisfy the requirements of due process. In order to comply with due process, Chuuk State Supreme Court Civil Procedure Rule 5(a) requires that service of all notices and other papers must be made upon each party affected. Under Rule 5(b), service must be made on a party's counsel, if represented, and may be effectuated either by "delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of court." Rule 5(b) further specifies that delivery of "a copy" means handing it to counsel; or leaving it at his office with his clerk of other person in charge thereof; or if there is no one in charge, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion residing therein. Service by placing a notice in a counsel's box in the clerk's office is not a method of service recognized by Rule 5(b). Farek v. Ruben, 16 FSM R. 154, 156-57 (Chk. S. Ct. App. 2008).

Service of a notice of trial by placing the notice in a counsel's box in the clerk's office is deficient service and tantamount to non-service when it results in a party's failure to be informed of the noticed trial date. When a court's notice of trial on the merits is not served on a party, that party's rights to due process of law under the Chuuk and FSM constitutions are violated, and the trial court's failure to serve notice of a trial date and time is plain error. Farek v. Ruben, 16 FSM R. 154, 157 (Chk. S. Ct. App. 2008).

Notice served on a represented party's attorney of record is notice to the party because clients must be held accountable for their attorneys' acts or omissions. Saimon v. Wainit, 18 FSM R. 211, 214 (Chk. 2012).

When the original complaints were served on the Governor and the Pohnpei Attorney General and when, if the State had been named as a defendant, service of process on the State would have been made on the Pohnpei Attorney General, the state therefore had actual notice of the suit and actual notice of the preliminary injunction hearing. Perman v. Ehsa, 18 FSM R. 452, 454 (Pon. 2012).

When the Receiver takes possession of wreck, he must cause a description of the wreck to be: 1) broadcast on at least one radio station in each state; 2) published in the local newspaper, if any; 3) posted by notice describing the wreck at the Department and in appropriate public places in each state capital. This is notice to the public or the world. Notice to the owner, captain, and crew is another matter. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 58 (Yap 2013).

The defendant's receipt of documents about the arrest of its vessel and its participation in the arrest proceedings before the court did not, regardless of the effect of those proceedings on the class plaintiffs'

claims against certain defendants, constitute notice to anyone that the FSM Receiver had taken possession of the stranded vessel. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 58 (Yap 2013).

Even if the 19 F.S.M.C. 907 notice was never given to the public, actual notice to the owner is sufficient for a claim against the owner. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 58 (Yap 2013).

When a party has had actual notice of the receivership it cannot complain that the notice is defective because it did not also get notice by publication or constructive notice that, if given, might still never come to the party's attention. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 58 (Yap 2013).

The law does not favor the willfully blind. Willful blindness is usually considered as the legal equivalent of actual knowledge. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 145 (App. 2013).

When there are no transfers or encumbrances registered against the mortgaged parcels except for the bank's mortgages and a separate conveyance of a property interest in the land to the bank; when all the parties with an interest in the parcels are parties to the litigation; and when it is undisputed that the named defendants were duly served with a summons and complaint, an argument that the bank failed to comply with the statutory notice requirements must fail. FSM Dev. Bank v. Setik, 19 FSM R. 233, 235 (Pon. 2013).

Notice served on a represented party's attorney of record is notice to the party. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 103 (Chk. 2015).

When counsel has filed a motion to continue a status conference, the continuance motion constitutes an admission of actual notice of the conference and a waiver of any requirement for record service. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 185 (Pon. 2019).

– Parties

Either the husband or the wife may prosecute or defend a civil action in which one or both are parties, provided that he or she has informed his or her spouse of the representation. O'Sonis v. Truk, 3 FSM R. 516, 518 (Truk S. Ct. Tr. 1988).

Plaintiffs' children are not entitled to recover damages when they are not named as plaintiffs to the action. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 542 (Pon. 1998).

Natural persons generally have the capacity to sue or be sued. Kaminanga v. FSM College of Micronesia, 8 FSM R. 438, 442 (Chk. 1998).

Actions are prosecuted in the name of the real party in interest. An assignment passes title to the assignee so that he is the owner of any claim arising from the chose and should be treated as the real party in interest. When all rights to a claim have been assigned, courts generally have held that the assignor no longer may sue. Tom v. Pohnpei Utilities Corp., 9 FSM R. 82, 86 n.1 (App. 1999).

When a defendant counterclaims against the original plaintiff and new additional parties, as to claims between the original parties the original plaintiff is designated plaintiff/counterdefendant while the original defendant is designated defendant/counterplaintiff, and as to new parties on the counterclaim, the original defendant is designated counterclaim plaintiff, while the new parties are designated counterclaim defendants. Island Dev. Co. v. Yap, 9 FSM R. 288, 291 (Yap 1999).

The only way a vessel can be a defendant in a civil action is if the proceeding against it is *in rem*. The FSM Supreme Court may exercise *in rem* jurisdiction over a vessel for damage done by that vessel. Moses v. M.V. Sea Chase, 10 FSM R. 45, 51 (Chk. 2001).

A judgment may not be rendered in favor of or against a person who was not made party to the action. A party to an action is a person whose name is designated on the record as a plaintiff or defendant. A person may not be made a party to a proceeding simply by including his name in the judgment. Hartman v. Bank of Guam, 10 FSM R. 89, 97 (App. 2001).

All parties must be named in the complaint. The only exception the rules allow to this requirement that parties be named, rather than just described, is that a public officer who sues or is sued in an official capacity may be described as a party by the officer's official title rather than by name. Moses v. Oyang Corp., 10 FSM R. 210, 213 (Chk. 2001).

The mere filing of a motion to intervene will not give a person party status because persons seeking to intervene in a case cannot be considered parties until their motion to intervene has been granted. Motions to intervene are not granted automatically, nor does their filing constitute an automatic stay. Moses v. Oyang Corp., 10 FSM R. 273, 276 (Chk. 2001).

An action's title should include the names of all the parties but the caption is not determinative as to parties to action. If the body of the complaint correctly identifies the parties, courts will generally allow amendment to correct technical defects in the caption. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM R. 367, 369 n.1 (Chk. 2001).

All plaintiffs should be named in the complaint's caption, and certainly in the complaint's body as well. The defendants have a right to know the identity of those suing them. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM R. 367, 369 n.1 (Chk. 2001).

When the plaintiffs' prayer for injunctive relief that sought to bar the defendants from interfering with the plaintiffs' claimed ownership interests in tideland and when it was the defendants' destruction of a *mechen* sign that caused the plaintiffs to resort to court action and seek injunctive relief, the defendants, who as *afokur* may have themselves claimed some property use rights in the tideland, were thus proper parties to the suit even once they declined to claim ownership for themselves. Phillip v. Moses, 10 FSM R. 540, 545 (Chk. S. Ct. App. 2002).

A person may act as a clan representative and be a party-plaintiff in his representative capacity when he was an acknowledged lineage representative prior to and during the negotiations over the lineage land and was named as a lineage representative on the land's certificate of title. Marcus v. Truk Trading Corp., 11 FSM R. 152, 158-59 (Chk. 2002).

In Chuuk, it has been common practice for one joint owner to sue as a representative of himself and other joint owners, or for the lineage as a whole to sue as one party, but when neither is what was done in the case and the plaintiff's complaint asserted that he was the sole owner of the land allegedly trespassed upon, a defendant's motion to add the land's co-owners as parties-plaintiff must be granted. Ifenuk v. FSM Telecomm. Corp., 11 FSM R. 201, 204 (Chk. 2002).

A judgment may be vacated for nonjoinder of a necessary or indispensable party or where it affects persons who were never made parties to the suit. Pastor v. Ngusun, 11 FSM R. 281, 285 (Chk. S. Ct. Tr. 2002).

In consolidated cases that have become a quiet title action, the proper and indispensable parties to the action include without limitation all persons who the record indicates may claim any intererst, wherever derived, in any portion of the land. Pastor v. Ngusun, 11 FSM R. 281, 286 (Chk. S. Ct. Tr. 2002).

An assignee is generally the real party in interest. Beal Bank S.S.B. v. Maras, 11 FSM R. 351, 353 (Chk. 2003).

Every action must be prosecuted in the name of the real party in interest. But no action will be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution will have the same effect as if the action had been commenced in the name of the real party in interest. Beal Bank S.S.B. v. Maras, 11 FSM R. 351, 353 (Chk. 2003).

Absent an order dismissing it, a defendant is still a party despite its deletion from the case caption. Jackson v. Pacific Pattern, Inc., 12 FSM R. 18, 19 (Pon. 2003).

A d/b/a is not a party. Jackson v. Pacific Pattern, Inc., 12 FSM R. 18, 20 (Pon. 2003).

A party who was originally a defendant but who is not named as a defendant in the plaintiffs' first amended complaint will remain a party to the action by virtue of his counterclaims against a plaintiff. Ambros & Co. v. Board of Trustees, 12 FSM R. 124, 126 n.1 (Pon. 2003).

When a plaintiff files a lawsuit against a Pohnpei state employee or public officer arising out of an act or omission within the scope of his or her public duties or employment either in his or her official capacity or as an individual, and that lawsuit alleges any tort, tax or contract claims, claims for injuries or damages, or actions which seek injunctive relief or writ of mandamus, the state itself must also be named as a defendant, but in an appeal from an administrative agency decision, the plaintiff is permitted, but not required, to name the state as a party to the action. Cuipan v. Pohnpei Foreign Inv. Bd., 12 FSM R. 184, 185 (Pon. 2003).

When the deceased's brother failed to provide the court with evidence of his representation of the deceased's heirs in the matter, his appearance is accepted as a pro se representation of himself and his claimed interests, but when the brother is not an heir, he does not have standing to file a motion for reconsideration on his own behalf because he is not a party to the matter, and on this basis his motion will be denied. Edwin v. Heirs of Mongkeya, 12 FSM R. 220, 222 (Kos. S. Ct. Tr. 2003).

When determinations of ownership for adjoining land show that title to those lands is held not only by the named parties but by their brothers and sisters as well, these persons should be named in a boundary dispute and trespass case's pleadings and at least once in the caption, because as co-owners, they may be indispensable parties. In re FSM Telecomm. Corp. Cellular Tower, 12 FSM R. 243, 248 (Chk. 2003).

When an entity is in possession of a plot of land because its tower sits on it, and the plaintiffs seek relief against it, and since it has an interest in maintaining its possession of the plot, it is, or should be, a party-defendant. Kiniol v. Kansou, 12 FSM R. 335, 336 (Chk. 2004).

When the Heirs of Nelson was a claimant and a party before the Kosrae Land Court and is the party who was served the Kosrae Land Court decision, an individual heir, as an individual, was not a claimant nor a party before the Kosrae Land Court. Sigrah v. Heirs of Nena, 13 FSM R. 192, 195-96 (Kos. S. Ct. Tr. 2005).

Co-owners of land are generally considered indispensable parties to any litigation involving the land. A party who seeks to quiet title to a piece of land must join all known persons who are claiming title in order to settle the property's ownership. Sigrah v. Heirs of Nena, 13 FSM R. 192, 196 (Kos. S. Ct. Tr. 2005).

A d/b/a is not a party. A d/b/a is just another name under which a person operates a business or by which the person or business is known. The individual who does business as a sole proprietor under one or several names remains one person, personally liable for all his obligations. Albatross Trading Co. v. Aizawa, 13 FSM R. 380, 381 (Chk. 2005).

No law requires a civil litigant to be physically present in the courtroom during trial if that party is

present through counsel. Amayo v. MJ Co., 14 FSM R. 355, 361 n.1 (Pon. 2006).

In any lawsuit to remove someone's name from a certificate of title, that is, to deprive a person of ownership of the registered land that the certificate represents, due process requires that that person is an indispensable party to the action. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

No court can set aside, void, nullify, invalidate, or alter a person's certificate of title to land without that person first having been made a party to the action before the court. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

As a general rule, a certificate of title can be set aside only on the grounds of fraudulent registration. While the Land Commission may be a necessary party to such an action, the titleholder is an indispensable party to any action to set aside, void, nullify, or alter the titleholder's certificate of title who must be joined, or any ensuing adjudication is void. Dereas v. Eas, 14 FSM R. 446, 455 n.3 (Chk. S. Ct. Tr. 2006).

A court is not competent to rule on the validity of a certificate of title to land when the court does not have (by its own statement) subject matter jurisdiction over the case and does not have personal jurisdiction over indispensable parties (the titleholders) or give them notice or an opportunity to be heard. Its orders were void and an order invalidating a person's certificate of title may even be void on its face when it held that that person was an indispensable party who was not present in the case and then proceeded to invalidate his certificate of title without him having been made a party to the case. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

In any lawsuit to, in effect, remove someone's name from a certificate of title, that is, to change the registered ownership of the land that the certificate represents and deprive the certificate titleholder of the titleholder's property interest, due process requires that that person is an indispensable party to the action. Any action that seeks to claim an interest in land for which a certificate of title or a determination of ownership has already been issued, must, at a minimum, name the registered titleholder as a party. Ruben v. Hartman, 15 FSM R. 100, 110 (Chk. S. Ct. App. 2007).

Since, in any lawsuit that would remove someone's name from a certificate of title or that would deprive a person of ownership of the registered land that the certificate or determination represents, the constitutional right to due process requires that that person is an indispensable party to the action, an August 20, 1998 judgment that was rendered without either titleholder having been made a party to the case and having had an opportunity to be heard is thus void, and could be collaterally attacked by later civil actions. Ruben v. Hartman, 15 FSM R. 100, 110 (Chk. S. Ct. App. 2007).

When the Trust Territory leased Unupuku in 1956 and had indefinite land use rights under the lease, but did not claim to own Unupuku, but indefinite land use agreements were abolished by Article XIII, section 5 of the FSM Constitution and became void on July 12, 1984, five years after the FSM Constitution's effective date, and when the state executed a fifteen-year lease for Unupuku in 1984 and it did not claim to own Unupuku, in any suit claiming title to Unupuku, the state was not the party to sue since it did not claim title to Unupuku. Unupuku's titleholders were. Ruben v. Hartman, 15 FSM R. 100, 111 (Chk. S. Ct. App. 2007).

A lineage is an entity similar to a corporation in that it is recognized by courts in Chuuk as a personable entity – a entity capable of suing and being sued and of entering into contracts. This parallels the lineage's position under Chuukese custom and tradition in which a lineage is an entity capable of owning, acquiring, and alienating land. Nakamura v. Moen Municipality, 15 FSM R. 213, 219 (Chk. S. Ct. App. 2007).

A cause of action based on tort will not be lost or abated because of the death of the tort-feasor or other person liable. An action thereon may be brought or continued against the deceased person's personal representative, but punitive or exemplary damages may not be awarded nor penalties adjudged in the action. Dereas v. Eas, 15 FSM R. 446, 448 (Chk. S. Ct. Tr. 2007).

Since a statute in force in the State of Chuuk on the effective date of the Chuuk Constitution continues in effect to the extent it is consistent with the Chuuk Constitution, or until it is amended or repealed; since nothing in the Trust Territory survival of actions statute is inconsistent with the Chuuk Constitution; and since the statute has not been amended or repealed, 6 TTC 151(1) remains the law in Chuuk. Dereas v. Eas, 15 FSM R. 446, 448 (Chk. S. Ct. Tr. 2007).

When the court is not convinced that complete relief under the original judgment cannot be afforded the defendant without joining non-parties as parties plaintiff; when filing a new civil action based upon the judgment is an available option and more properly suited to this situation involving a third person who was not, under any theory advanced, connected with the action during its first decade of litigation; when it is unclear whether the non-parties are claiming an interest in the land that is subject to the action and the action is not the proper forum for making such a determination; there is no need to join the non-parties as parties plaintiff in a post-judgment matter and the court will continue the action by the original plaintiff as explicitly provided for by Rule 25(c). Salik v. U Corp., 15 FSM R. 534, 540 (Pon. 2008).

A dba is not a party. Pohnpei Port Auth. v. Ehsa, 16 FSM R. 11, 12 n.1 (Pon. 2008).

When one of two defendants against whom a judgment is to be entered is a d/b/a of the other, the other is essentially the only defendant against whom the judgment will be entered. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 223 n.1 (Chk. 2008).

Since joint tortfeasors are not indispensable parties, leave to amend a complaint to drop an alleged joint tortfeasor from the suit should be freely given. Nakamura v. Mori, 16 FSM R. 262, 267 (Chk. 2009).

When confronted with a situation where a principal may be held vicariously liable for its agent's acts, a plaintiff, at the plaintiff's option, may sue either the principal, the agent, or both. Thus, an agent is not an indispensable or necessary party to a vicarious liability claim against the principal. Nakamura v. Mori, 16 FSM R. 262, 268 (Chk. 2009).

When a plaintiff has filed a lawsuit as "Perdus Ehsa dba Pohnpei Foods and Services," he has filed the lawsuit as an individual and not on behalf of any of his companies or corporations since a dba cannot be a party to a civil action. Since no other corporation owned or operated by the plaintiff is a party to this case, the court must treat the action as having been brought by the plaintiff individually. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 456 (Pon. 2009).

There is no legal basis for a motion to dismiss for failure to join a indispensable party when the person the defendant asserts is an indispensable real party in interest is in fact a party as he is one of the plaintiff heirs of Edmond Tulenkun and when it is not correct that the person who funded the $500 in issue is an indispensable party since this person was not a party to the contract. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 643 (Kos. S. Ct. Tr. 2009).

The FSM Development Bank and the State of Pohnpei are not one and the same. The bank is a creature of national statute, with its duties and functions delineated. In contrast, the State of Pohnpei is a constitutionally organized state of the FSM. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 659 (App. 2009).

A suit against the Land Commission (or successor institution) cannot end with a land title transferred to a successful plaintiff. Only a successful suit against the current titleholder, a necessary and indispensable party to any suit over title, could result in the transfer of the land title to the successful plaintiff although a successful suit against a Land Commission might result in a money damages award. Allen v. Allen, 17 FSM R. 35, 40 (App. 2010).

In any lawsuit that, in effect, seeks to change the registered ownership of the land that a certificate of title represents and deprive the certificate titleholder of the titleholder's property interest, due process would

require that that person be an indispensable party to the action. Any action that seeks to claim an interest in land for which a certificate of title or a determination of ownership has been issued, must, at a minimum, name the registered titleholder as a party. Setik v. Pacific Int'l, Inc., 17 FSM R. 304, 306 (Chk. 2010).

When the plaintiff urges the court to hold the lessors' certificate of title null and void ab initio, the lessors, as registered titleholders, would need to be joined if the suit for trespass against the lessee were to proceed. Setik v. Pacific Int'l, Inc., 17 FSM R. 304, 307 (Chk. 2010).

Public policy cannot abide by the perverse result that would never leave a title quiet if the court were to recognize an indefinite expectancy right for a person to inherit his living parent's land and require a complainant to name all the landowner's children. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 325 (Kos. 2011).

When a landowner's children do not have a vested interest in the land, the foreclosure statute does not require a judgment creditor to name them as defendants. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 325 (Kos. 2011).

Unless that party has been subpoenaed as a witness, a civil litigant is not required to be physically present for trial if that party is present through counsel. FSM v. Kana Maru No. 1, 17 FSM R. 399, 402 (Chk. 2011).

A person operating as a d/b/a is a sole proprietorship that has no legal existence separate from that of its owner and its acts and liabilities are those of its owner and its owner's acts and liabilities are those of the sole proprietorship. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

A Rule 12(b)(7) motion to dismiss for failure to join an indispensable party under Rule 19 is a defense that is, by rule, specifically preserved and may be raised as late in the proceedings as at the trial on the merits. A motion to dismiss for failure to join necessary parties is accordingly denied without prejudice and may be renewed if the circumstances warrant. Marsolo v. Esa, 18 FSM R. 59, 63 (Chk. 2011).

The *alter ego* doctrine treats two entities that are nominally separate as the same where one corporation has acted unjustly or fraudulently. Specific factors which are determinative on this point include substantially identical management, business purpose, operation, equipment, customers, supervision, and ownership. Adams v. Island Homes Constr., Inc., 10 FSM R. 611, 614 (Pon. 2002).

When the Governor was sued in his official capacity and when the original complaints were served on the Governor and the state attorney general so that the state had actual notice of the suit, the state was a party in all but name when the preliminary injunction motions were heard. Perman v. Ehsa, 18 FSM R. 452, 454 (Pon. 2012).

A plaintiff, who challenges another's right to an interest in land and seeks to exercise an interest in land that excludes that other's supposed rights to the land, ought to, as a matter of due process, name that other as a party defendant. Otherwise that other party will be deprived of its interest without notice and an opportunity to be heard. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 573, 575 (Pon. 2013).

A party that believes that it has a leasehold interest in a site is a necessary and very probably an indispensable party to the lawsuit when, if the plaintiffs are successful in the lawsuit, the party will not have any leasehold interest in the site. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 573, 575 (Pon. 2013).

The successful bidder on a public contract is a necessary and indispensable party to litigation by an unsuccessful bidder that challenges the public bidding process. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 573, 575 (Pon. 2013).

The FSM Supreme Court's subject-matter jurisdiction cannot be determined by reference to the

Constitution's detailed command to the Public Auditor about the breadth and depth of the tasks that the Public Auditor must undertake. The exclusive jurisdiction that the FSM Supreme Court exercises when the national government is a party cannot be avoided, and was never meant to be avoided, by the mere device of naming a branch, or a department, or an agency, or a statutory authority of the national government as a party instead of naming the national government itself as a party. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 614 (Pon. 2013).

When a complaint is against an individual d/b/a as a corporation, despite any indications to the contrary, there are, as a matter of law, two defendants in the trial court case and two cross-appellants in this appeal – the individual and the corporation. Smith v. Nimea, 19 FSM R. 163, 173 (App. 2013).

The purpose of the rule permitting an executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute to sue in that person's own name without joining the party for whose benefit the action is brought, is to relax the strict common law rules requiring an action at law be brought by, or in the name of, the person holding legal title, and at the same time to assure the defendant of the judgment's finality and protection from further harassment or vexation at the hands of other claimants to the same demand. The rule's failure to refer to the benefitted party in its list of persons qualified as real parties of interest does not have the effect of preventing that party from suing. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 435 (App. 2014).

The real party of interest in a civil action is the party who possesses the substantive right to be enforced. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 435 (App. 2014).

The real party in interest rule neither enlarges nor restricts a party's substantive right to recover in a particular action; thus, the substantive right to make the alleged claim must be found to exist before issue of appropriateness of the parties comes to the fore. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 435 (App. 2014).

When the FSM Development Bank has an unpaid judgment entered by the FSM Supreme Court trial division and the debt was secured by a mortgage, the bank is the beneficiary and has a right to collect judgments and foreclose on property pursuant to state law. This substantive right creates the status of real party in interest for the bank in the national courts. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 435 (App. 2014).

As an instrumentality of the government, the FSM Development Bank is, under Civil Rule 17's third party beneficiary clause, a real party in interest for the purposes collecting judgments from a party, limited by the land clause exception in article XI, § 6(a), and whenever "land is at issue" the national forum is no longer available so that if and when title to the land is disputed by the parties, the proceedings on that issue must be dismissed, or alternatively, the issue may be certified to the state court. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 435-36 (App. 2014).

Under Civil Rule 17's third party beneficiary clause, judgment creditors are real parties in interest when pursuing many preliminary and auxiliary matters relating to the probate of estates. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 436 (App. 2014).

A parent corporation named as a defendant on the theory that it was liable for the conduct of the board members and executive director of its subsidiary corporation, will be dismissed when there is no evidence that it is the alter ego of the parent corporation and when there is no evidence (or even allegation) that it is a shell corporation with no assets and that therefore there is a need to pierce the corporate veil in order to obtain any relief. George v. Palsis, 19 FSM R. 558, 570 (Kos. 2014).

When, in response to the defendants' interrogatories asking the plaintiff about all facts that gave rise to the certain defendants' liability both individually and as board members, the plaintiff responded that he had

none, those defendants will be dismissed. George v. Palsis, 19 FSM R. 558, 571 (Kos. 2014).

When there are no factual allegations that a defendant took any actions or failed to take any action in an individual capacity, he will be dismissed as a defendant in his individual capacity. George v. Palsis, 19 FSM R. 558, 571 (Kos. 2014).

When the defendants have not shown that they have a right, as a matter of law to a corporate official's dismissal in his official capacity, he will be dismissed only in his individual capacity, but when the plaintiff has alleged actions by another official that, if true and if proven, would give rise to tort liability for the violation of the plaintiff's civil rights, that person will not be dismissed as a defendant. George v. Palsis, 19 FSM R. 558, 571 (Kos. 2014).

Criminal cases are in personam proceedings, and brought against a person rather than property. Only civil actions may be brought in rem, or "against a thing." FSM v. Kimura, 19 FSM R. 617, 619 n.1 (Pon. 2014).

Although penalties can only be assessed against persons – natural persons or business enterprises or similar entities – and the definition of person does not include a vessel *in rem*, the vessel or a bond posted for the vessel's release, may be considered the property or assets of an owner or operator from which a judgment against the owner or operator may be satisfied so that the vessel, as security for the bond, is therefore properly a party to the action. FSM v. Kuo Rong 113, 20 FSM R. 27, 35 (Yap 2015).

When all alleged acts by the defendants sued in their official and personal capacities were acts servicing the loan that they could only have done in their official capacities, the defendants, in their individual capacities, will be dismissed as parties. Salomon v. Mendiola, 20 FSM R. 138, 142 (Pon. 2015).

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

While it may be true that an agent and a principal may be sued in the same case for the same cause of action even when the principal's liability is predicated solely on the agency, when the principal's liability is not based on the agency but is based on a statute, the Chuuk Health Care Act of 1994, that imposes the liability only on the principal – the employer – and absolves the employee from any liability, the employee agent is not a proper party to the litigation. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 284 (Chk. 2016).

The court must presume the plaintiff's continued existence and that it is a proper party when passive acceptance or possible ignorance of a letter from one traditional leader on the other paramount leaders' behalf, without more, is not sufficient to convince the court that a majority consensus of the paramount leaders (a requirement for the traditional leaders' council to act) intended to withdraw from or disband the council; when only one leader responded to the court's letter inquiring about the named plaintiff's representation of the council; when the council's existence is confirmed by its attendance lists, agendas, and financial records; when the state government continues to acknowledge its existence by dispersing stipends to its members and maintaining the state government position of liaison specialist to it; when the movant has previously argued that those holding traditional titles other than Nahnmwarki can be council members; and when there is sufficient evidence in the record to support the finding that the named plaintiff, whether or not a traditional, honorary, de facto, or non-member of the group, has ostensible authority to represent the council. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 21 FSM R. 150, 156-57 (Pon. 2017).

A mother cannot sue, as "next of kin," on behalf of her son when her son has reached the age of majority. Welson v. FSM Social Sec. Admin., 21 FSM R. 348, 350-51 (Pon. 2017).

All persons, whether male or female, residing in the state of Pohnpei, who have attained the age of 18 years are regarded as of legal age and their period of minority to have ceased. Welson v. FSM Social Sec. Admin., 21 FSM R. 348, 351 n.1 (Pon. 2017).

In the complaint, the title of the action must include the names of all the parties, and every action must be prosecuted in the name of the real party in interest. Setik v. Mendiola, 21 FSM R. 537, 549 (App. 2018).

The trial court should have inquired into the identity of parties designated as "heirs," and required that they be named and joined or dismissed since no action can be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest. Setik v. Mendiola, 21 FSM R. 537, 549 & n.2 (App. 2018).

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

When the plaintiffs do not seek money damages, but only seek undisturbed registered title to a parcel, the entity alleged to be negligent, the Kosrae Land Court, should not be a party to the action. Alik v. Heirs of Alik, 21 FSM R. 606, 620 (App. 2018).

A lower court should not be made a defendant when seeking judicial review of its actions in a higher court. Judicial review of a lower court's acts or omissions is properly accomplished by an appeal to a higher court or, on rare occasion, by a petition for a prerogative writ, such as prohibition or mandamus. Alik v. Heirs of Alik, 21 FSM R. 606, 620 (App. 2018).

The Land Court is not a proper party – a real party in interest – to any dispute over title because no judgment against the Land Court could ever give the plaintiffs the relief they seek – ownership of a parcel, which can only be done by an action against the current registered owner or his heirs, if he is deceased. Alik v. Heirs of Alik, 21 FSM R. 606, 620 (App. 2018).

When no particular powers were expressed in an administrator's temporary appointment, although he was expected to help resolve the "overlappings" between two estates, and when the subsequent order granted extensive powers to the co-administrators without making any distinction between the two full co-administrators and the temporary one, the court must, solely for the purpose of the pending motions, take as true the temporary administrator's assertion that he remains the estate's co-administrator and assume that since his administrator's powers were not otherwise limited, he has the power to sue on the estate's behalf to preserve the estate's assets. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 9 (Pon. 2018).

There is no such status as a "mere intervenor." When a non-party is granted the right to intervene in a suit, it becomes a party, that is, the former non-party intervenes as, and becomes, either a plaintiff or a defendant. Setik v. Perman, 22 FSM R. 105, 114 (App. 2018).

When a party intervenes, it becomes a full participant in the lawsuit and is treated just as if it were an original party. It has equal standing with the original parties. Setik v. Perman, 22 FSM R. 105, 114 (App. 2018).

Original parties to a lawsuit are either plaintiffs or defendants. Setik v. Perman, 22 FSM R. 105, 114 (App. 2018).

The alter ego doctrine treats two entities that are nominally separate as the same when a corporation has acted unjustly or fraudulently, and specific factors that are determinative include substantially identical management, business purpose, operation, equipment, customers, supervision, and ownership. Smith v. Nimea, 22 FSM R. 131, 135 (Pon. 2019).

Generally, a corporation and its shareholders are deemed separate entities and shareholders are not liable to third parties beyond their initial investment in the corporation's stock, but, when the shareholders treat the corporation not as a separate entity but rather as an instrument to conduct their own personal business, the court may pierce the corporate veil for purposes of liability. Smith v. Nimea, 22 FSM R. 131, 135 (Pon. 2019).

When some claims and parties have been dismissed, henceforth, only the current plaintiff and defendants should appear in the case caption to reflect the case's current posture. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 186 (Pon. 2019).

The administrator of a decedent's estate, is undisputedly the decedent's successor in interest. FSM Dev. Bank v. Carl, 22 FSM R. 365, 372 (Pon. 2019).

– Parties – "John Doe"

Because the use of John Doe plaintiffs is limited to those rare cases where for privacy concerns of a highly personal and sensitive nature the plaintiff's identity is kept secret, when no such privacy considerations are present and the defendants ask the court to add fictitious plaintiffs that are unknown and quite probably nonexistent, joinder of John Does as party plaintiffs will be denied. Moses v. M.V. Sea Chase, 10 FSM R. 45, 49 (Chk. 2001).

Replacing an unnamed or "John Doe" party with a named party in effect constitutes a change in the party sued and can only be accomplished when the specifications of Rule 15(c) are met. Thus the presence, or addition, of described, but unnamed defendants would serve no purpose. Moses v. Oyang Corp., 10 FSM R. 210, 213 (Chk. 2001).

No statute or rule specifically countenances the naming of fictitious, or "John Doe," defendants. The better practice is to move under Rule 15 of the FSM Rules of Civil Procedure for leave of court to add parties as their identities become known. Amayo v. MJ Co., 10 FSM R. 244, 254 (Pon. 2001).

In *in personam* actions, there is no authority to proceed against unknown persons in the absence of a statute or rule, and the FSM has no rule or statute permitting the use of fictitious names to designate defendants. Accordingly, John Doe defendants will be dismissed. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 412 n.1 (Pon. 2001).

Since any judgment *in personam* against an unknown defendant would be void, the court will dismiss John Doe defendants. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 412-13 n.1 (Pon. 2001).

Proceeding against unknown defendants has not been authorized by the FSM Rules of Civil Procedure. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 506, 507 (Yap 2004).

When a verified complaint makes no allegations against persons known or thought to exist but whose identities are unknown and the Doe defendants are only mentioned in the caption, it does not appear any purpose would be served by leaving them in the caption. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 506, 508 (Yap 2004).

Even if the court permitted the inclusion of Doe defendants, in order to replace a Doe defendant with a

named party, the plaintiffs would still have to move, under Civil Procedure Rule 15, to amend the pleadings to replace the Doe defendant with a named defendant, and that to do so, all the Rule 15's specifications must be met, and since even in the absence of John Doe defendants, the plaintiffs can still move to amend their pleadings should the plaintiffs identify through discovery other persons who may be liable on the plaintiffs' claims in a case, the court will dismiss without prejudice the Doe defendants when no reference was made to them in the complaint's body. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 506, 508 (Yap 2004).

A motion to dismiss John Doe defendants will be granted. Naming John Doe defendants is not a pleading practice recognized in the FSM. The John Doe defendants will be deleted from the caption and the caption on the parties' future filings will be consistent with the order. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 154, 155 (Pon. 2005).

Unnamed persons listed as John Doe defendants who were never identified or served process will be dismissed. Hauk v. Emilio, 15 FSM R. 476, 478 (Chk. 2008).

There is no authority to proceed against unknown persons in the absence of a statute or rule, and since the FSM has no rule or statute permitting the use of fictitious names to designate defendants, the naming of "John Doe" defendants in *in personam* actions is not a pleading practice recognized in the FSM. Berman v. Pohnpei, 17 FSM R. 360, 366 n.1 (App. 2011).

Since, in order to replace a "John Doe" defendant with a named party, a plaintiff would still have to move, under Civil Procedure Rule 15, to amend the pleadings to replace the John Doe defendant with a named defendant, and that to do so, all of Rule 15's specifications still must be met, and since, even in the absence of John Doe defendants, a plaintiff can move to amend her pleadings should she identify through discovery other persons who may be liable on her claims, the presence of "John Doe" defendants serves no purpose and a trial court should dismiss them without prejudice. Berman v. Pohnpei, 17 FSM R. 360, 366 n.1 (App. 2011).

Since any judgment *in personam* against an unknown defendant would be void, the retention of "John Doe" defendants is pointless. Berman v. Pohnpei, 17 FSM R. 360, 366 n.1 (App. 2011).

Since the FSM has no rule or statute permitting the use of fictitious names to designate defendants, the listing of "John Doe" defendants in in personam actions is not a pleading practice recognized in the FSM; therefore the presence of "John Doe" defendants serves no purpose and a trial court should dismiss them without prejudice. George v. Palsis, 19 FSM R. 558, 570 (Kos. 2014).

Just as anonymous defendants are greatly disfavored since "John Doe" defendants serve no purpose and trial courts should dismiss them without prejudice, unnamed, pseudonymous plaintiffs are even more disfavored since defendants have a due process right to know who is suing them. That is so they may prepare their defense and know against whom a final judgment will be res judicata. Setik v. Mendiola, 21 FSM R. 537, 550 (App. 2018).

– Parties – Juridical Persons

A branch campus of the College of Micronesia-FSM does not have the capacity to sue or be sued on its own and will be dismissed from an action where the College of Micronesia-FSM, a public corporation, is a party. Kaminanga v. FSM College of Micronesia, 8 FSM R. 438, 441 (Chk. 1998).

The *alter ego* doctrine treats two entities that are nominally separate as the same where one corporation has acted unjustly or fraudulently. Specific factors which are determinative on this point include substantially identical management, business purpose, operation, equipment, customers, supervision, and ownership. Adams v. Island Homes Constr., Inc., 10 FSM R. 611, 614 (Pon. 2002).

A lineage is an entity similar to a corporation in that it is recognized by courts in Chuuk as a personable

entity – a entity capable of suing and being sued and of entering into contracts. This parallels the lineage's position under Chuukese custom and tradition in which a lineage is an entity capable of owning, acquiring, and alienating land. Nakamura v. Moen Municipality, 15 FSM R. 213, 219 (Chk. S. Ct. App. 2007).

A corporation is a juridical person separate from its owner. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 112 (Pon. 2010).

A d/b/a is not a party because a d/b/a is just another name under which a person operates a business or by which the person or business is known. A corporation, however, is a juridical person separate from its owner and would therefore be a separate party. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 329 n.1 (Pon. 2011).

A corporation is not a d/b/a, even if it is wholly owned by one person. It is an artificial, juridical person separate from its owner and is therefore a different person and thus a separate party. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

Even if it is wholly owned by one person, a corporation is not and cannot be a d/b/a because a corporation is an artificial, juridical person separate from its owner(s) and is thus a separate party. Smith v. Nimea, 19 FSM R. 163, 173 (App. 2013).

The alter ego doctrine treats two entities that are nominally separate as the same when one corporation has acted unjustly or fraudulently and specific factors which are determinative on this point include substantially identical management, business purpose, operation, equipment, customers, supervision, and ownership. Smith v. Nimea, 19 FSM R. 163, 174 (App. 2013).

When no clear answer to the alter ego question can be determined from the record before the appellate court, it will remand the matter to the trial court for it to determine whether the trial court judgment is against the individual defendant and the corporate defendant, jointly and severally, or just against the corporate defendant and why. Then, if the trial court decides that the judgment was or should now be entered only against the corporation, the plaintiff must be given the opportunity to try to pierce the corporate veil, especially if the corporation is an empty shell, and proceed against the individual personally as the corporation's alter ego. Smith v. Nimea, 19 FSM R. 163, 174 (App. 2013).

– Parties – Minors

In law, an "infant" is a minor, anyone under the age at which they legally become an adult. In the Federated States of Micronesia, an infant would be anyone under the age of eighteen. Tarauo v. Arsenal, 18 FSM R. 270, 273 n.1 (Chk. 2012).

An infant or incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. In law, an "infant" is a minor, anyone under the age at which they legally become an adult, which in the FSM is age eighteen. Pillias v. Saki Stores, 20 FSM R. 391, 394 (Chk. 2016).

A minor lacks the capacity to sue on his own, but may sue by next friend. A next friend is a person who appears in a lawsuit to act for the benefit of an incompetent or minor plaintiff but who is not a party to the lawsuit and is not appointed guardian ad litem. Pillias v. Saki Stores, 20 FSM R. 391, 394 (Chk. 2016).

If the plaintiff was appearing through an attorney, the naming of the parent as the plaintiff appearing on behalf of an injured minor could be overlooked as an error of form, not of substance. Pillias v. Saki Stores, 20 FSM R. 391, 394 (Chk. 2016).

A non-attorney parent must be represented by counsel in bringing an action on behalf of his or her child since the choice to appear *pro se* is not a true choice for minors. Pillias v. Saki Stores, 20 FSM R.

391, 395 (Chk. 2016).

A minor child cannot bring suit through a parent acting as a next friend if the parent is not represented by an attorney. Pillias v. Saki Stores, 20 FSM R. 391, 395 (Chk. 2016).

The requirement that a minor be represented by counsel is based on two cogent policy considerations. First, there is a strong governmental interest in regulating the practice of law. The second consideration is the importance of the rights at issue during litigation and the final nature of any adjudication on the merits. Pillias v. Saki Stores, 20 FSM R. 391, 395 (Chk. 2016).

A non-attorney parent must be represented by counsel in bringing an action on behalf of a child. Pillias v. Saki Stores, 20 FSM R. 391, 395 (Chk. 2016).

Because the goal is to protect the rights of infants, a complaint should not be dismissed with prejudice as to the minor. The minor may himself sue as a plaintiff, either pro se or by counsel, within two years after he turns eighteen years old, but before then his father may not appear without counsel on his behalf. Pillias v. Saki Stores, 20 FSM R. 391, 396 (Chk. 2016).

– Parties – Official Capacity

All parties must be named in the complaint. The only exception the rules allow to this requirement that parties be named, rather than just described, is that a public officer who sues or is sued in an official capacity may be described as a party by the officer's official title rather than by name. Moses v. Oyang Corp., 10 FSM R. 210, 213 (Chk. 2001).

When a plaintiff files a lawsuit against a Pohnpei state employee or public officer arising out of an act or omission within the scope of his or her public duties or employment either in his or her official capacity or as an individual, and that lawsuit alleges any tort, tax or contract claims, claims for injuries or damages, or actions which seek injunctive relief or writ of mandamus, the state itself must also be named as a defendant, but in an appeal from an administrative agency decision, the plaintiff is permitted, but not required, to name the state as a party to the action. Cuipan v. Pohnpei Foreign Inv. Bd., 12 FSM R. 184, 185 (Pon. 2003).

A public officer who sues or is sued in an official capacity may be described as a party by the officer's official title rather than by name. Herman v. Bisalen, 16 FSM R. 293, 295 (Chk. 2009).

A claim against a government officer in his official capacity is, and should be treated as, a claim against the entity that employs the officer. A claim against a person "in his former official capacity" has no meaning. If the claimant seeks to hold the offender personally responsible, the claim is against the person in his individual capacity. Since a claim against an offender in his official capacity is, and should be treated as, a claim against the entity that employs the officer, a suit against an individual in his or her "former official capacity" is nonsensical. Herman v. Bisalen, 16 FSM R. 293, 295-96 (Chk. 2009).

The capacity to be sued is usually correlative of the capacity to sue. A person cannot be sued in his "former official capacity" anymore than a person can sue in his or her "former official capacity" because that person no longer represents the entity that once employed him or her. Herman v. Bisalen, 16 FSM R. 293, 296 (Chk. 2009).

A suit against an offender in his or her official capacity is treated as a claim against the entity that employs that officer, but a public official that leaves office may still be liable for money damages in his or her personal capacity. Thus, an official capacity claim against a former official is meaningless unless it continues as a claim against that person's successor in office in the successor's official capacity. The office continues and is responsible for, and is presumed to have knowledge of, its earlier acts. Herman v. Bisalen, 16 FSM R. 293, 296 (Chk. 2009).

Neither the predecessor nor the successor public official has to be named – the plaintiffs may just describe the title or public office being sued. Herman v. Bisalen, 16 FSM R. 293, 296 (Chk. 2009).

When a defendant has been sued in his official and personal capacities and ceases to hold office, his successor in office is automatically substituted for the defendant in his official capacity, but the defendant will remain as a party-defendant in his personal capacity and may potentially be held personally liable. Herman v. Bisalen, 16 FSM R. 293, 296-97 (Chk. 2009).

A suit by a party "in his official capacity" is, and should be treated as, a suit by the entity that employs him. Marsolo v. Esa, 17 FSM R. 480, 485-86 (Chk. 2011).

A suit against an official in his or her official capacity is a suit against that official's office. Marsolo v. Esa, 18 FSM R. 59, 66 (Chk. 2011).

A suit against a person "in his official capacity" is, and should be treated as, a suit against the entity that employs that officer. Therefore a suit against a person in his official capacity as director of the Pohnpei state police is and should be treated as a suit against the Pohnpei state police. Jacob v. Johnny, 18 FSM R. 226, 231-32 (Pon. 2012).

A suit for damages against someone in his official capacity is a claim against the entity or agency that employs that person. Hence, a suit against the Director of Public Safety in his official capacity is a claim against the Pohnpei Department of Public Safety. Alexander v. Pohnpei, 18 FSM R. 392, 400 (Pon. 2012).

When the Pohnpei statute does not provide that immediate dismissal is explicitly required if a plaintiff fails to name Pohnpei as a defendant and since a suit against a person in his or her official capacity is treated as a suit against the entity that employs that officer, Pohnpei is, in effect, already a party-defendant when its Governor was sued in his official capacity. The court will therefore deny a motion to dismiss and give the plaintiffs leave to amend their complaint to add the State of Pohnpei as a defendant. Perman v. Ehsa, 18 FSM R. 432, 437-38 (Pon. 2012).

A suit against someone in his official capacity is a suit against the entity that employs that person. George v. Palsis, 19 FSM R. 558, 571 (Kos. 2014).

When all alleged acts by the defendants sued in their official and personal capacities were acts servicing the loan that they could only have done in their official capacities, the defendants, in their individual capacities, will be dismissed as parties. Salomon v. Mendiola, 20 FSM R. 138, 142 (Pon. 2015).

Since Rule 25(d)(1) makes the substitution of public officers automatic, it does not require a motion and the grant of the motion for the substitution to take effect. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 573 (Pon. 2016).

A major reason for automatic substitution of public officers in their official capacity or, alternatively, for the use of the officer's official title rather than the officer's name, is that the holders of public office change frequently, and the substitution of one public officer for another would, at best, be a time-consuming formality. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 573 n.3 (Pon. 2016).

No person can be sued in their "former official capacity." FSM Dev. Bank v. Salomon, 20 FSM R. 565, 573 (Pon. 2016).

When all actions, or inactions, complained of, were taken by persons in their capacities as bank officers, dismissal of them in their individual capacities was proper. Setik v. Mendiola, 21 FSM R. 537, 556 (App. 2018).

A person sued in his official capacity will be automatically replaced by the current officeholder.

Berman v. Pohnpei, 22 FSM R. 377, 380 n.2 (Pon. 2019).

– Parties – Pro Se

When the deceased's brother failed to provide the court with evidence of his representation of the deceased's heirs in the matter, his appearance is accepted as a pro se representation of himself and his claimed interests, but when the brother is not an heir, he does not have standing to file a motion for reconsideration on his own behalf because he is not a party to the matter, and on this basis his motion will be denied. Edwin v. Heirs of Mongkeya, 12 FSM R. 220, 222 (Kos. S. Ct. Tr. 2003).

Even when a litigant was provided with a subpoena by opposing counsel, which accurately stated the trial date, it is essential that the trial court insure that its own notice procedures satisfy the requirements of due process, especially where *pro se* litigants are involved. When unrepresented parties are deluged with legal documents drafted by attorneys on the opposing side, it is conceivable that confusion will result. Panuelo v. Amayo, 12 FSM R. 365, 374 (App. 2004).

Except as otherwise provided in the rules or by court order, every written notice must be served upon each of the parties. It is mandatory for the court to serve notices on parties, unless they are in default. The court must insure that its own notices and orders are properly served on *pro se* litigants – *pro se* litigants should not be compelled to rely upon opposing counsel to inform them of a trial date. Panuelo v. Amayo, 12 FSM R. 365, 374 (App. 2004).

Counsel are put on notice that ghostwriting will be considered a violation of ethical and procedural rules of the Kosrae State Court. Counsel may assist pro se litigants in drafting and filing an answer to a summons and complaint, to avoid the entry of default. In cases where counsel assist pro se litigants with drafting and filing an answer, the answer shall reflect the counsel's limited assistance in preparing the answer, and shall sign the answer in that capacity, along with the signature of the pro se litigant. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 82 (Kos. S. Ct. Tr. 2004).

Even assuming the pro se plaintiff had successfully prosecuted his discrimination claim and sought attorney's fees under the civil rights statute, the attorney's fees claim would still have been denied. A prevailing pro se litigant is not entitled to an award of attorney's fees even if he is an attorney or legal practitioner. Hauk v. Lokopwe, 14 FSM R. 61, 66 (Chk. 2006).

In the trial court, a party has the right to appear pro se. To appear "pro se" means to appear on one's own behalf; without a lawyer. A person appearing pro se thus appears only for himself and does not represent any other person or anyone else. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

A pro se party can, of course, represent his own business when that business is merely a d/b/a because a "d/b/a" is not a separate person or party since a d/b/a is just another name under which a person operates the business or by which the person or business is known. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

A party appearing pro se cannot represent anyone else. That would be the unauthorized practice of law. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

Even if pleadings or other filings are "ghostwritten" there is no authority that a ghostwritten filing must be stricken. The usual result would be that the court would no longer give the pro se litigant the leeway normally given unrepresented lay parties and would require either that the ghostwriter file an appearance or that the ghostwriting attorney's identity be disclosed. In re Sanction of Sigrah, 19 FSM R. 305, 313 (App. 2014).

As a general rule, pro se parties are allowed greater leeway and their pleadings are construed more

liberally because of their lack of legal training. Andrew v. Heirs of Seymour, 19 FSM R. 331, 339 (App. 2014).

As a general rule, a pro se party's filings are construed more liberally because of their lack of legal training. Carius v. Johnson, 20 FSM R. 143, 145 (Pon. 2015).

The court's long-standing usual practice has been to take any response by a pro se defendant as an answer precluding a default judgment and to require the plaintiff to proceed accordingly. Carius v. Johnson, 20 FSM R. 143, 145 (Pon. 2015).

If the plaintiff was appearing through an attorney, the naming of the parent as the plaintiff appearing on behalf of an injured minor could be overlooked as an error of form, not of substance. Pillias v. Saki Stores, 20 FSM R. 391, 394 (Chk. 2016).

To appear "pro se" means to appear on one's own behalf, without a lawyer. A person appearing pro se thus appears only for himself or herself and does not represent any other person or anyone else. Pillias v. Saki Stores, 20 FSM R. 391, 394 (Chk. 2016).

Because pro se means to appear for one's self, a person may not appear on another person's behalf in the other's cause. Pillias v. Saki Stores, 20 FSM R. 391, 394 (Chk. 2016).

Since a person must be litigating an interest personal to him. For example, a lay person may not appear on behalf of his or her own minor child. Thus, the threshold question becomes whether a given matter is the pro se plaintiff's own case or one that belongs to another. Pillias v. Saki Stores, 20 FSM R. 391, 394 (Chk. 2016).

A non-attorney parent must be represented by counsel in bringing an action on behalf of his or her child since the choice to appear *pro se* is not a true choice for minors. Pillias v. Saki Stores, 20 FSM R. 391, 395 (Chk. 2016).

The rule forbidding a next friend to litigate pro se on behalf of another person is to protect the rights of the represented party. Pillias v. Saki Stores, 20 FSM R. 391, 395 (Chk. 2016).

The requirement that a minor be represented by counsel is based on two cogent policy considerations. First, there is a strong governmental interest in regulating the practice of law. The second consideration is the importance of the rights at issue during litigation and the final nature of any adjudication on the merits. Pillias v. Saki Stores, 20 FSM R. 391, 395 (Chk. 2016).

– Parties – Substitution of

The substitution of a party upon the death of a party plaintiff requires an affirmative showing that the cause of action survived the death. Damarlane v. FSM, 8 FSM R. 10, 12 (Pon. 1997).

When a party has died, a statement suggesting the party's death may be placed upon the record and served in compliance with the rules for service of motions, and if a motion for substitution is not made within 90 days afterward then the action shall be dismissed as to the deceased party. Damarlane v. FSM, 8 FSM R. 10, 12 (Pon. 1997).

Rule 25(a) clearly contemplates appointment of legal representatives, such as an executor or an administrator for substitution for a deceased party. Relatives of the deceased who are not legal representatives cannot be substituted as parties. The identity of an administrator is not presumed from an intestacy statute. There must be some designation by a court. The proper party for substitution is either the executor or the administrator of the deceased's estate ("representative"), or, if the estate has been distributed by the time the motion to substitute is made, the distributee ("successor"). Damarlane v. FSM, 8 FSM R. 10, 12 (Pon. 1997).

Rule 60(a) allows the correction of clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission. It may be inapplicable when plaintiff's counsel, who, through oversight, was unaware of the exact identity of his own client, seeks to substitute the real party in interest for the originally-named plaintiffs. While Rule 60(a) may be utilized to correct mistakes by the parties as well as those committed by the clerk or by the court, including the misnomer of a party (usually a defendant), it does not appear that the rule may be used to substitute a party plaintiff for the other entities mistakenly named as plaintiffs. Beal Bank S.S.B. v. Maras, 11 FSM R. 351, 353 (Chk. 2003).

The purpose of Rule 17(a) is to allow an assignee to sue in its own name, and it has, more importantly, come to also protect the defendant against later action by the party actually entitled to recover and thus insures that a judgment will have its proper final (res judicata) effect. Beal Bank S.S.B. v. Maras, 11 FSM R. 351, 354 (Chk. 2003).

Rule 17(a) controls the substituion of the real party in interest when the interest was transferred before the suit was filed, while Rule 25(c) applies if the transfer occurred after the start of the suit. Beal Bank S.S.B. v. Maras, 11 FSM R. 351, 354 (Chk. 2003).

When the plaintiffs' motion asks that another entity be substituted in as plaintiff because it is the real party in interest and the motion does not seek to change any claim or the cause of action, the motion will be granted. Beal Bank S.S.B. v. Maras, 11 FSM R. 351, 354 (Chk. 2003).

Substitution of plaintiffs is allowed under Rule 15 when the substitution does not change the claim or cause of action. Beal Bank S.S.B. v. Maras, 11 FSM R. 351, 354 (Chk. 2003).

Once a party's death has been suggested on the record under Civil Procedure Rule 25(a)(1), the ninety-day deadline for making a motion for substitution of that deceased party starts running, and when the ninety days has passed and no motion for substitution or for enlargement of time has been filed, that party will be dismissed. Beal Bank S.S.B. v. Maras, 11 FSM R. 351, 354 (Chk. 2003).

If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties, and unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death, the action shall be dismissed as to the deceased party. Bank of the FSM v. Rodriguez, 11 FSM R. 542, 544 (Pon. 2003).

The Secretary of Justice's name will be substituted for that of the former Acting Secretary of Justice because when a public officer is a party to an action in an official capacity and during its pendency ceases to hold office, the officer's successor is automatically substituted as a party and proceedings following the substitution will be in the name of the substituted party. Sipos v. Crabtree, 13 FSM R. 355, 360 (Pon. 2005).

In case of any transfer of interest, the action may be continued by the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. The motion for substitution may be made by any party and shall be served on the parties in the manner provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. Lee v. Han, 13 FSM R. 571, 575 (Chk. 2005).

Before the court can act on a motion to substitute a party, the motion would have to be served on all other parties and also on the non-party sought to be substituted and proof of this service should be filed with the court. Lee v. Han, 13 FSM R. 571, 575 (Chk. 2005).

A tort cause of action survives the defendant's death and continues against his personal representative. Dereas v. Eas, 15 FSM R. 446, 448 (Chk. S. Ct. Tr. 2007).

The administrator of the deceased's estate is generally the proper party for substitution rather than relatives of the deceased who are not legal representatives. If the estate has been distributed, then a "successor" may be a proper party. If the representative or successors of the estate were not named, a motion to substitute will be denied. George v. Johnithan, 15 FSM R. 455, 457 (Kos. S. Ct. Tr. 2007).

A court may exercise its discretion to deny substitution of parties if circumstances have arisen rendering it unfair. Thus, when the plaintiff was specifically ordered to file proof of whether a proper party for substitution existed, such as a copy of an order appointing administrator, and to properly file and serve a motion for substitution addressing whether the cause of action survived the defendant's death or was extinguished, but failed to submit evidence to show that the defendant's widow was a proper party and failed to submit evidence to show the claim was not extinguished and when there is no administrator or legal representative of the estate and no evidence showing inheritable interests or even suggesting there was property to distribute, a substitution of the deceased's relatives under Rule 25(a)(1) will be denied. George v. Johnithan, 15 FSM R. 455, 457 (Kos. S. Ct. Tr. 2007).

When a public officer is a party to an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Hauk v. Emilio, 15 FSM R. 476, 478 (Chk. 2008).

In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Salik v. U Corp., 15 FSM R. 534, 540 (Pon. 2008).

Since FSM Civil Rule 25(d)(1) provides that if a public officer is a party to a proceeding, and he ceases to hold office, the name of his successor is automatically substituted as a party, when the filed complaint named a state governor as a party and the current governor is a different person, the caption will be changed to reflect the substitution. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 646 (Pon. 2008).

Since the FSM drew from United States counterparts both the civil rights statute the plaintiffs are suing under and the Rules of Civil Procedure, including Rule 25(d), it is appropriate to consult U.S. sources in determining whether the plaintiffs may sue someone in his former official capacity or whether Rule 25(d)(1) automatically substituted the current office-holder in his stead. Herman v. Bisalen, 16 FSM R. 293, 295 (Chk. 2009).

When a defendant has been sued in his official and personal capacities and ceases to hold office, his successor in office is automatically substituted for the defendant in his official capacity, but the defendant will remain as a party-defendant in his personal capacity and may potentially be held personally liable. Herman v. Bisalen, 16 FSM R. 293, 296-97 (Chk. 2009).

A successor in the Governor's office will be automatically substituted as a party for the former Governor. Marsolo v. Esa, 18 FSM R. 59, 62 n.1 (Chk. 2011).

Substitution of parties due to a party's death is governed by Civil Procedure Rule 25(a), which clearly contemplates appointment of legal representatives, such as an executor or an administrator. Relatives of the deceased who are not legal representatives cannot be substituted as parties. An administrator's identity is not presumed from an intestacy statute. There must be some designation by a court. The proper party for substitution is either the executor or the administrator of the deceased's estate ("representative"), or, if the estate has been distributed by the time the motion to substitute is made, the distributee ("successor"). FSM Dev. Bank v. Paul, 18 FSM R. 149, 150-51 (Pon. 2012).

The court cannot substitute unknown and unnamed persons as parties defendant. A motion for substitution is deficient when it does not name a proper party to be substituted since the court and the other parties must know the names and identities of the parties to be substituted so that they may be properly

served. FSM Dev. Bank v. Paul, 18 FSM R. 149, 151 (Pon. 2012).

Since proceeding against unknown defendants is not authorized by the FSM Rules of Civil Procedure, a case cannot proceed against unknown heirs or devisees. Therefore a motion to substitute "the heirs and devisees" of a deceased party will be denied. FSM Dev. Bank v. Paul, 18 FSM R. 149, 151 (Pon. 2012).

Since an action will be dismissed as to a deceased party if no motion for substitution is made within 90 days 1after the suggestion of death, when the court has not received a motion for substitution, and the plaintiffs do not appear to intend to file such a motion, the court will dismiss the deceased party from the case and order that the caption in future filings reflect such dismissal. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 155 (Pon. 2012).

When a defendant was sued both personally and in his official capacity as Director of Public Safety but now is no longer director, the current director is automatically substituted as a defendant in his official capacity, but the original defendant remains a defendant in his personal capacity. Alexander v. Pohnpei, 18 FSM R. 392, 396 n.1 (Pon. 2012).

Since all civil actions should be prosecuted by the real party in interest, when the real party in interest is no longer a minor, he will be substituted as the sole plaintiff in the place of his mother who had appeared as plaintiff as his next friend. Tarauo v. Arsenal, 18 FSM R. 441, 442 (Chk. 2012).

The proper party for substitution for a deceased party is either the executor or the administrator of the deceased's estate ("representative"), or, if the estate has been distributed by the time the motion to substitute is made, the distributee ("successor"). An administrator's identity cannot be presumed; there must be some designation by a court. In re Estate of Edmond, 19 FSM R. 59, 60-61 (Kos. 2013).

By operation of Civil Procedure Rule 25(d)(1), when a public officer is a party to an action in an official capacity and during its pendency ceases to hold office, the officer's successor is automatically substituted as a party. Fuji Enterprises v. Jacob, 20 FSM R. 279, 281 n.1 (Pon. 2015).

Whether FSM Development Bank officials can be considered public officers for the purpose of Rule 25(d)(1) is neither a controlling issue of law nor a matter of first impression. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 572 (Pon. 2016).

Since Rule 25(d)(1) makes the substitution of public officers automatic, it does not require a motion and the grant of the motion for the substitution to take effect. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 573 (Pon. 2016).

A major reason for automatic substitution of public officers in their official capacity or, alternatively, for the use of the officer's official title rather than the officer's name, is that the holders of public office change frequently, and the substitution of one public officer for another would, at best, be a time-consuming formality. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 573 n.3 (Pon. 2016).

Under Civil Rule 25(a)(1), when a party dies, the court may order substitution of the parties, but once the death is suggested on the record, a ninety-day time frame is triggered to file the substitution motion and if this deadline is not met, the action will be dismissed as to the deceased party. Johnson v. Rosario, 21 FSM R. 7, 9 (Pon. 2016).

When the counsel for the plaintiff, who had passed away on May 25, 2013, was put on notice, on July 27, 2016, that if further steps to prosecute the case were not taken, dismissal was warranted for failure to prosecute; and when counsel, on August 26, 2016, moved for a 330-day extension to file and complete probate but no probate action was initiated, the ninety-day window for moving to substitute has long since closed. Johnson v. Rosario, 21 FSM R. 7, 11 (Pon. 2016).

The onus for failing to meet the Civil Rule 25(a)(1) timing requirement falls squarely upon the movant. Johnson v. Rosario, 21 FSM R. 7, 12 (Pon. 2016).

The dilatory approach exhibited by not filing a substitution motion, even though the named plaintiff passed away almost three and a half years earlier, coupled with a representation that "a probate needs to be filed" in the future, is clearly not the type of "extraordinary circumstances" contemplated by Civil Rule 60(b)(6) for relief from judgment. Johnson v. Rosario, 21 FSM R. 7, 13 (Pon. 2016).

When a plaintiff, since she lacks standing to sue, cannot identify any specific interests that her son would assert if her interest was transferred to him, the matter will be dismissed without prejudice to allow the son to assert any claims he may have against the FSM Social Security Administration. Welson v. FSM Social Sec. Admin., 21 FSM R. 348, 351 (Pon. 2017).

The trial court should have inquired into the identity of parties designated as "heirs," and required that they be named and joined or dismissed since no action can be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest. Setik v. Mendiola, 21 FSM R. 537, 549 & n.2 (App. 2018).

When a business defendant is now operating under a new banner, any party may move to substitute it as the original defendant's successor in interest; otherwise the action will continue against the original defendant. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 137, 139 n.1 (Pon. 2019).

A person sued in his official capacity will be automatically replaced by the current officeholder. Berman v. Pohnpei, 22 FSM R. 377, 380 n.2 (Pon. 2019).

– Pleadings

FSM Civil Rule 3 confirms that the filing of a complaint is the essential first step for instituting civil litigation. The Rules of Civil Procedure specify no other method for a party to obtain judicial action from the court in civil litigation. Koike v. Ponape Rock Products Co., 1 FSM R. 496, 500 (Pon. 1984).

When issues which were not raised in the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Edwin v. Kosrae, 4 FSM R. 292, 301 (Kos. S. Ct. Tr. 1990).

The pleading requirements of FSM Civil Rule 8(a) are to be interpreted liberally, and a complaint which states the grounds of jurisdiction and alleges facts sufficient to put the defendant on notice as to the nature and basis of the claim being made sufficiently complies with the rule. Faw v. FSM, 6 FSM R. 33, 36-37 (Yap 1993).

The rules allow for notice pleading and require a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief to which he deems himself entitled. The pleadings must give the opposing party fair notice of the nature and grounds for the claim, and a general indication of the type of litigation involved. Apweteko v. Paneria, 6 FSM R. 554, 557 (Chk. S. Ct. App. 1994).

If no understanding by the parties appears in the record that evidence admitted at trial was aimed at an unpled issue, it is an abuse of discretion for a court to base its decision on issues not pled. An adverse party must have sufficient notice to properly prepare to oppose the claim. Apweteko v. Paneria, 6 FSM R. 554, 557 (Chk. S. Ct. App. 1994).

A court commits reversible error by basing its decision on a theory of recovery that was not raised by the pleadings nor tried by consent or understanding of the parties. Apweteko v. Paneria, 6 FSM R. 554,

558 (Chk. S. Ct. App. 1994).

The rules require only notice pleading, and are flexible and informal rather than technical. The complaint need only be a short and plain statement of the claim and give the defendant fair notice of the factual wrong on the basis of the facts asserted. The legal theory advanced, if one is advanced, need not be correct. Semwen v. Seaward Holdings, Micronesia, 7 FSM R. 111, 113-14 (Chk. 1995).

A complaint should not be dismissed and a party precluded from relief because a plaintiff's lawyer has misconceived the proper legal theory of the claim. If the complaint shows that the plaintiff is entitled to any relief which the court can grant, regardless of whether it asks for the proper relief, the complaint is sufficient. Semwen v. Seaward Holdings, Micronesia, 7 FSM R. 111, 114 (Chk. 1995).

Where a plaintiff in response to interrogatories does not list "funding" as one of the defendant's acts constituting a violation and plaintiffs' amended pretrial statement does not state that "funding" is a ground for liability, plaintiffs' allegation in their complaint that "funding" gave rise to liability will be deemed abandoned. Damarlane v. United States, 7 FSM R. 167, 169 (Pon. 1995).

A court may consider as evidence against pleader, in the action in which they are filed, a party's earlier admissions in its responsive pleadings even though it was later withdrawn or superseded by amended pleadings. A court may take judicial notice of them as part of the record. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 249 (Chk. 1995).

Issues not specifically raised in pleading may be tried by parties' implied consent. Davis v. Kutta, 7 FSM R. 536, 543 (Chk. 1996).

Issues not raised in the pleadings may be tried by consent of the parties. Implied consent may be demonstrated by a party's failure to object to evidence directly pertaining to the issue or by the party against whom the issue is asserted being the first to raise the issue and submit evidence on it. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 619 (App. 1996).

Issues raised in pleadings are not waived by a party's failure to discuss them in briefs. Senda v. Semes, 8 FSM R. 484, 494 n.6 (Pon. 1998).

Pleadings are designed to develop and present the precise points in dispute between parties and should narrow and focus issues for trial, not provide a vehicle for scattering legal theories to the wind in the hope that the trial process will eventually winnow some few grains from the cloud of chaff. With respect to affirmative matter under Rule 8(c), counsel should come to trial knowing what affirmative defenses or "any other matter constituting an avoidance" the facts support, and present evidence accordingly. Senda v. Semes, 8 FSM R. 484, 494 (Pon. 1998).

Every defense, in law or fact, to a claim for relief in any pleading must be asserted in the responsive pleading thereto except for the defenses list in Rule 12(b), which may be raised by motion made before pleading. If a Rule 12(b) motion is denied the responsive pleading must be made within 10 days after notice of the court's action. Island Dev. Co. v. Yap, 9 FSM R. 279, 283 (Yap 1999).

A defense is that which is offered and alleged by the party proceeded against in an action or suit, as a reason in law or fact why plaintiff should not recover or establish what he seeks. A motion for abstention has little common ground with the concept of a defense because abstention by no means precludes a plaintiff from obtaining the requested relief but rather goes to the question of the appropriate forum in which to pursue that relief. Island Dev. Co. v. Yap, 9 FSM R. 279, 283 (Yap 1999).

Abstention is not a defense to a lawsuit in the sense used in Rule 12(b). In abstention practice, the movant is asking the court to exercise its discretion to abstain from hearing the action for the express purpose that another court may hear the lawsuit. Island Dev. Co. v. Yap, 9 FSM R. 279, 283 (Yap 1999).

A motion to stay most closely analogizes to a motion to abstain, and such a motion is not a pre-answer motion, but a pre-trial motion. Island Dev. Co. v. Yap, 9 FSM R. 279, 284 (Yap 1999).

There is no reason that answers could not be filed in due course during the pendency of an abstention motion, and there is also no reason that discovery could not have been ongoing during an abstention motion's pendency, since discovery was just as inevitable as the answer. Island Dev. Co. v. Yap, 9 FSM R. 279, 284 (Yap 1999).

An abstention motion before the FSM Supreme Court should proceed as a post-answer motion, and not a motion in lieu of answer under Rule 12(b) of the FSM Civil Procedure Rules. Island Dev. Co. v. Yap, 9 FSM R. 279, 284 (Yap 1999).

General denials are disfavored, but when the pleader does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial subject to the obligations of honesty in pleading set forth in Rule 11. Marar v. Chuuk, 9 FSM R. 313, 314 n.1 (Chk. 2000).

The term "at issue" has been defined as, whenever the parties come to a point in the pleadings which is affirmed on one side and denied on the other, they are said to be at an issue. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 4 (Chk. 2001).

If a defendant has never been properly served with a complaint and summons, that defendant cannot possibly file a late or untimely answer because the twenty-day time to answer allowed in Civil Procedure Rule 12(a), or the thirty-day time to answer allowed in 4 F.S.M.C. 204(3), does not start running until valid service of the complaint and summons has been made. Medabalmi v. Island Imports Co., 10 FSM R. 32, 34 (Chk. 2001).

In the complaint the title of the action shall include the names of all the parties. Moses v. M.V. Sea Chase, 10 FSM R. 45, 49 (Chk. 2001).

When the pleadings clearly name a person as the *de facto* keeper of the detention facility where the petitioner is currently incarcerated and the petitioner seeks a writ of habeas corpus directed to that person in that capacity, that person is properly named as the respondent to the petition. Sangechik v. Cheipot, 10 FSM R. 105, 106 (Chk. 2001).

Pleadings are defined as the complaint, answer, reply to a counterclaim, answer to a cross-claim, third-party complaint, and third-party answer. No other pleadings are allowed, except that the court may order a reply to an answer or a third-party complaint. No other paper will be considered a pleading and a motion in any form cannot stand as a pleading. Adams v. Island Homes Constr., Inc., 10 FSM R. 159, 161 (Pon. 2001).

The FSM Supreme Court's practice has been to consider any written response from an unrepresented defendant as an answer or a pleading. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 172 (Chk. 2001).

The phrase "et al." or such other similar indication is not permitted in the caption of a complaint although it may be used on later filings. Moses v. Oyang Corp., 10 FSM R. 210, 212 (Chk. 2001).

Because technical defects in a caption can always be amended, the failure to name a party as a defendant in the caption does not mean the action cannot be maintained against him if the complaint makes a number of explicit references to him and he was served. Moses v. Oyang Corp., 10 FSM R. 210, 212 (Chk. 2001).

All parties must be named in the complaint. The only exception the rules allow to this requirement that parties be named, rather than just described, is that a public officer who sues or is sued in an official capacity may be described as a party by the officer's official title rather than by name. Moses v. Oyang Corp., 10 FSM R. 210, 213 (Chk. 2001).

Replacing an unnamed or "John Doe" party with a named party in effect constitutes a change in the party sued and can only be accomplished when the specifications of Rule 15(c) are met. Thus the presence, or addition, of described, but unnamed defendants would serve no purpose. Moses v. Oyang Corp., 10 FSM R. 210, 213 (Chk. 2001).

Defenses cannot be raised for the first time in a written closing argument when they were not raised in the answer and were not tried by express or implied consent of the parties. Defenses not raised in a responsive pleading are waived. Amayo v. MJ Co., 10 FSM R. 244, 250 (Pon. 2001).

Until a default is entered by the court clerk, a party still may appear in the action and the clerk must accept for filing defendant's pleadings or motions, even if filed outside the times prescribed by the rules. Once a defendant's pleadings or motions are filed, it is too late for the entry of default, and the defendant is entitled to proceed with its defense. O'Sullivan v. Panuelo, 10 FSM R. 257, 260 (Pon. 2001).

When non-pleading issues are tried by the parties' consent, those issues shall be treated as raised in the pleadings. Amayo v. MJ Co., 10 FSM R. 371, 377 (Pon. 2001).

When the plaintiff's complaint claimed he performed "over 714 hours of overtime work," the defendant was given notice of the plaintiff's overtime claims. The defendant thus cannot exclude evidence that the plaintiff worked 1184.5 overtime hours, and the plaintiff does not need to amend his complaint, because 1184.5 hours is more than 714 hours. Palsis v. Kosrae, 10 FSM R. 551, 552 (Kos. S. Ct. Tr. 2002).

Rule 8(a) provides that a pleading shall assert a short and plain statement of the claim showing that the pleader is entitled to relief. Under this rule, the claimant need not set forth any legal theory justifying the relief sought on the facts alleged, but the rule does require sufficient factual averments to show that the claimant may be entitled to some relief. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 230 (Pon. 2002).

The plaintiffs' factual averments and the claims resting on them are dispositive, not the legal theories assigned to the claims. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 230 (Pon. 2002).

A plaintiffs' attorney's failure to properly plead their claims is not a sufficient justification to prevent the plaintiffs from being able to bring their claims at all because a complaint should not be dismissed and a party precluded from relief when a plaintiff's lawyer has misconceived the proper legal theory of the claim. If the complaint shows that the plaintiff is entitled to any relief which the court can grant, regardless of whether it asks for the proper relief, the complaint is sufficient. Ambros & Co. v. Board of Trustees, 11 FSM R. 333, 336 (Pon. 2003).

When a case has been properly removed from a municipal court where no complaint was filed, the FSM Supreme Court will require the plaintiff to file a complaint and allow the case to proceed therefrom. Damarlane v. Sato Repair Shop, 11 FSM R. 343, 344 (Pon. 2003).

Our rules of pleading are informal and flexible, and a pleading need only set forth a short and plain statement of the wrong alleged based on the facts asserted. Even if a legal theory is advanced, it does not have to be the correct one and a claimant does not have to set out in detail the facts on which the claim for relief is based, but must provide a statement sufficient to put the opposing party on notice of the claim. Adams v. Island Homes Constr., Inc., 11 FSM R. 445, 449 (Pon. 2003).

A defense perfunctorily raised in an answer but never explained, documented, or developed through

argument and citation to the law, ultimately carries little or no weight. LPP Mortgage, Ltd. v. Ladore, 11 FSM R. 601, 603 (Pon. 2003).

When a defendant's motion to dismiss has been denied, he has 10 days within which to file his answer to the amended complaint. LPP Mortgage Ltd. v. Maras, 12 FSM R. 27, 28 (Chk. 2003).

When the defendants' answer imprecisely attempts to incorporate by reference in its response to the complaint's paragraphs 15-18 that incorporate all of the complaint's preceding paragraphs by reference, given the answer's denials of those preceding paragraphs, the facts alleged in the complaint's paragraphs 15-18 will be deemed denied. Fredrick v. Smith, 12 FSM R. 150, 152 (Pon. 2003).

Pleadings must contain a short and plain statement of the claim showing that the pleader is entitled to relief. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 613, 617 (Yap 2004).

Counsel are put on notice that ghostwriting will be considered a violation of ethical and procedural rules of the Kosrae State Court. Counsel may assist pro se litigants in drafting and filing an answer to a summons and complaint, to avoid the entry of default. In cases where counsel assist pro se litigants with drafting and filing an answer, the answer shall reflect the counsel's limited assistance in preparing the answer, and shall sign the answer in that capacity, along with the signature of the pro se litigant. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 82 (Kos. S. Ct. Tr. 2004).

Pleading practice in the FSM is notice pleading. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 277 (Chk. 2005).

Although FSM's notice pleading standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims, these procedures are neither available nor utilized in obtaining a default judgment when the defendant has never appeared. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 277 (Chk. 2005).

The contents of a letter that was not attached to or served with the original complaint cannot be considered as incorporated by reference in the pleading. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 278 (Chk. 2005).

A complaint's prayer for "such other and further relief as may be deemed just and proper" cannot serve to incorporate an unpled prejudgment interest claim and circumvent Rule 54(c)'s clear command that a default judgment must not be different in kind from or exceed in amount that prayed for in the demand for judgment. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 278 (Chk. 2005).

A court, in entering a default judgment, cannot take a blind leap of faith that a defendant would know, or should know, that the lawsuit was also seeking unpled prejudgment interest. Likewise, a defendant, in deciding whether to defend a case filed against him or to do nothing and let a default judgment be entered against him, ought to be able to rely on the demand for judgment prayed for in the complaint and the complaint's contents to determine what his liability will be if a default judgment is entered. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 278 (Chk. 2005).

Motions to dismiss are not pleadings and oppositions to such motions are not responsive pleadings. Sipos v. Crabtree, 13 FSM R. 355, 360 (Pon. 2005).

If a detrimental reliance cause of action was pled and tried, or tried by the parties' express or implied consent, the plaintiff is entitled to have the trial court rule on this cause of action when the plaintiff's judgment is reversed for the statutory claim. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 26 (App. 2006).

If a complaint shows that the plaintiff is entitled to any relief which the court can grant, regardless of whether the complaint asks for the proper relief, the complaint is sufficient, and since, (except as to a party

against whom a judgment is entered by default), every final judgment must grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings, the trial court should consider whether to find liability and award damages on a cause of action not specifically named in the complaint but for which evidence was presented at trial. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 26 (App. 2006).

When two causes of action were not pled in the complaint and the plaintiff did not seek any amendment of the complaint to add these causes of action prior to trial and no motion made after trial to amend the pleadings to conform to these causes of action, the court may not base its decision on a theory of recovery that was not raised by the pleading nor tried by consent with subsequent amendment to the pleading and since the parties' trial stipulations agreed that this case presented a cause of action for negligence, the other causes of action will not be considered. Phillip v. Kosrae, 14 FSM R. 109, 113 (Kos. S. Ct. Tr. 2006).

Although the complaint is not artfully drafted, the court will not dismiss the claims made under a count headed "due process" simply because the count is "overstuffed" since notice pleading requires only a short and plain statement of the claim and fair notice of the factual wrong on the basis of the facts asserted. A plaintiff need not even advance a legal theory. Nor must the theory, if advanced, be correct. Annes v. Primo, 14 FSM R. 196, 203 (Pon. 2006).

When the plaintiff asserts a tort claim for assault and battery by the police officers, although the claim should have been set forth independently, the facts alleged in the complaint were sufficient to place the defendants on notice of an assault and battery claim. Annes v. Primo, 14 FSM R. 196, 203 (Pon. 2006).

The purpose of including a prayer for relief in a complaint is to give notice to the court and to the parties of the claims being presented and the relief being sought. Annes v. Primo, 14 FSM R. 196, 205 (Pon. 2006).

A pleading's purpose is simply to give the opposing party notice of the essence of its claim with sufficient clarity to enable it to answer, that is, fair notice of factual wrong openly stated on the basis of facts asserted. The rules are flexible and informal rather than technical, and only require notice pleading. The pleading need only be a short and plain statement of the claim and give the opposing party fair notice of the factual wrong on the basis of the facts asserted. The legal theory advanced, if one is advanced, need not be correct. Thus, if a cognizable cause of action can be discerned from the facts as pled, the pleading party has complied with Civil Procedure Rule 8(a)'s notice pleading requirement. FSM v. Kana Maru No. 1, 14 FSM R. 368, 372 (Chk. 2006).

When motions to dismiss, to strike, and to require a more definite statement are denied, the movant has ten days after service of the order to serve its answer to the counts involved. FSM v. Kana Maru No. 1, 14 FSM R. 368, 375 (Chk. 2006).

General denials are disfavored, but when the pleader does intend to controvert all of the complaint's averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial subject to the obligations of honesty in pleading set forth in Rule 11. FSM Social Sec. Admin. v. Fefan Municipality, 14 FSM R. 544, 546 (Chk. 2007).

When a complaint alleges that the plaintiff was denied equal protection of the laws, the suit will be deemed a private cause of action under 11 F.S.M.C. 701 for violation of civil rights guaranteed under the FSM Constitution even though the statute is not expressly cited in the complaint. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 78 (Pon. 2007).

There is no such pleading as a "complaint for summary judgment." A pleading thus entitled is therefore a complaint, since a filing is what it is regardless of what the party who filed it chooses to call it. Albert v. O'Sonis, 15 FSM R. 226, 230 n.2 (Chk. S. Ct. App. 2007).

A defendant who is not an attorney admitted to practice before the court, may not answer on anyone's behalf but his own, and his answer will be stricken to the extent that it purports to be on other defendants' behalf. Berman v. Rosario, 15 FSM R. 429, 431 (Pon. 2007).

An answer that denies all of a complaint's factual allegations is an answer in the nature of a general denial. General denials, while disfavored, are permissible when proper, but are subject to the obligations of honesty set forth in Rule 11. Counsel are cautioned that pleadings that deny facts known by the pleader to be true subject counsel to possible sanctions under Rule 11. Albert v. George, 15 FSM R. 574, 577 n.1 (App. 2008).

The rules require only notice pleading, and are flexible and informal rather than technical. The complaint need only be a short and plain statement of the claim and give the defendant fair notice of the factual wrong on the basis of the facts asserted and the legal theory advanced, if one is advanced, need not be correct. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 595 (App. 2008).

Foreign law is a fact which must be pled and proven. But state law does not need to be expressly pled, because the court may take judicial notice of any state law. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 595 (App. 2008).

A proposed pleading must set forth claims in numbered paragraphs the contents of which shall be limited as far as practicable to a statement of a single set of circumstances, as required by Civil Rule 10(b); otherwise the pleading's averments will be "vague" and "ambiguous" and not sufficiently "simple, concise, and direct" to reasonably require a responsive pleading. Although no technical form of pleadings is required, the complaint must have a caption. Kubo v. Ezra, 16 FSM R. 88, 90-91 (Chk. S. Ct. Tr. 2008).

Rule 18 permits the joinder in a single action of as many claims, legal, equitable, or maritime, as the party has against an opposing party even if those claims are unrelated. But when the claims that the plaintiffs seek to add are not against any opposing party, but are against persons the plaintiffs seek to add as new defendants eight years after the complaint they seek to amend was filed and five years after judgment was entered on that complaint, the joinder will not granted. Herman v. Municipality of Patta, 16 FSM R. 167, 171-72 (Chk. 2008).

When the defendants' default was entered before they filed their answer and when the default was not subsequently set aside under Civil Procedure Rule 55(c), the court cannot take cognizance of the later-filed answer. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 224 (Chk. 2008).

The amount of damages a plaintiff requests in the complaint's ad damnum clause does not limit the amount which a plaintiff may be awarded, even without an amendment to the ad damnum clause. The one exception is that a default judgment cannot exceed in amount that prayed for in the demand for judgment, although, in a default judgment, the court may determine that the damages are less than the amount prayed for. Nakamura v. Mori, 16 FSM R. 262, 267 (Chk. 2009).

An ad damnum clause is a party's statement at the end of a pleading of the monetary amount claimed due to the party as damages by virtue of the facts stated. Nakamura v. Mori, 16 FSM R. 262, 267 n.2 (Chk. 2009).

Although, for punitive damages to be awarded, there must be evidence of gross negligence, it is not necessary for such proof to be set forth in the complaint. Nakamura v. Mori, 16 FSM R. 262, 268 (Chk. 2009).

The Civil Procedure Rules authorize only seven pleadings: 1) a complaint; 2) an answer; 3) a reply to a counterclaim denominated as such; 4) an answer to a cross-claim, if the answer contains a cross-claim; 5) a third-party complaint, if a person who was not an original party is summoned under the provisions of rule

14; and 6) a third-party answer, if a third-party complaint is served; and 7) no other pleading is allowed except that the court may order a reply to an answer or a third-party answer. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 284 (Chk. 2009).

If a party prevails upon its contract counterclaim and if none of the contract money damage remedies are applicable, specific performance is a possible remedy, even if the party has not prayed for it since, except for default judgments, every final judgment must grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings. Since specific performance, even when an unlikely remedy, is dependent upon the success of a breach of contract counterclaim and could be awarded even if it were dismissed, the dismissal of what is essentially a part of the prayer for relief will be denied. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 606 (Pon. 2009).

In Kosrae small claims, a docket card is kept showing the pleadings, actions of the court, payments, or other reports and this docket card ordinarily constitutes the entire record. The plaintiff may state the nature and amount of the claim to the clerk who notes this on the docket card and the plaintiff signs this which, under the Small Claims Rules, constitutes the complaint. No other written pleading is required unless the court orders otherwise. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 641 (Kos. S. Ct. Tr. 2009).

In an action filed as a small claim case, the plaintiff is only required to state the nature and amount of his claim to the clerk who then reduces it to writing very briefly on the docket card under the date the statement is made and then it is signed. The docket card signed by the plaintiff constitutes the complaint and no other written pleading is required. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644 (Kos. S. Ct. Tr. 2009).

There is no authority to proceed against unknown persons in the absence of a statute or rule, and since the FSM has no rule or statute permitting the use of fictitious names to designate defendants, the naming of "John Doe" defendants in *in personam* actions is not a pleading practice recognized in the FSM. Berman v. Pohnpei, 17 FSM R. 360, 366 n.1 (App. 2011).

A contention that a trial court could not make as a ground for relief a claim that was not in the plaintiff's complaint is incorrect because, except as to a party against whom a judgment is entered by default, every final judgment must grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings. Berman v. Pohnpei, 17 FSM R. 360, 373 n.5 (App. 2011).

A plaintiff is not precluded from relief just because the party's lawyer has misconceived the proper legal theory of the claim since a plaintiff need not even advance a legal theory. Mori v. Hasiguchi, 17 FSM R. 630, 637 (Chk. 2011).

Shareholder derivative actions have pleading requirements beyond those in Civil Rule 8(a) since under Rule 23.1, the special derivative action pleading requirements include allegations about the special prerequisites for such actions. Mori v. Hasiguchi, 17 FSM R. 630, 638 (Chk. 2011).

A complaint in a shareholder action must be verified, and must include statements to the effect that the plaintiff was shareholder at the time of the transaction of which he complains or that his shares thereafter devolved on him by operation of law, that the action is not a collusive one to confer jurisdiction, and that he has undertaken efforts to have his grievances redressed by the corporation's directors or shareholders and the reasons why he failed to obtain that relief. Mori v. Hasiguchi, 17 FSM R. 630, 638 (Chk. 2011).

If a derivative action plaintiff has not undertaken action to have his grievances redressed then he must allege the reasons for not making the effort. Mori v. Hasiguchi, 17 FSM R. 630, 638 (Chk. 2011).

Since a plaintiff shareholder is presumed to be an adequate representative and since the burden is on the defendant to show that the plaintiff is inadequate, the plaintiff in a derivative action does not need to

allege he is an adequate representative. Mori v. Hasiguchi, 17 FSM R. 630, 638 (Chk. 2011).

A derivative action plaintiff must allege that, at the time of the transactions complained of, he owned shares in the corporation or that the shares thereafter devolved on him by the operation of law. Mori v. Hasiguchi, 17 FSM R. 630, 638 (Chk. 2011).

A derivative action complaint, or the part of the complaint that alleges a derivative action, must be verified, that is, confirmed or substantiated by oath or affidavit whereby the truth of the statements in the complaint is sworn to. Mori v. Hasiguchi, 17 FSM R. 630, 639 & n.2 (Chk. 2011).

A verification is used as a conclusion for all pleadings that are required to be sworn. Mori v. Hasiguchi, 17 FSM R. 630, 639 n.2 (Chk. 2011).

The purpose of Rule 23.1's verification requirement is to ensure that the court will not be used for "strike suits" and that the plaintiff has investigated the charges and found them to be of substance. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

The failure to verify a derivative action complaint will not entitle defendants to an immediate dismissal or to a summary judgment because the Civil Procedure Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

A derivative action complaint does not have to be dismissed for noncompliance with the verification requirement when the court can require the plaintiff to verify it by filing an affidavit within a reasonable time, and even then, if the plaintiff fails to take advantage of the court's invitation to correct the deficiency, the dismissal should not be with prejudice inasmuch as the merits of the case have not been adjudicated. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

A derivative action must allege with particularity what efforts the plaintiff has made to obtain relief from the corporation's directors. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

A stockholder, instituting a stockholder's derivative suit, must plead and prove that a request to institute action was made on the corporation and refused, or that there was matter or matters which excused the making of the request, but when a stockholder sues in his own individual right, no demand upon the corporation itself is necessary. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

The purpose of requiring that the complaining shareholder demand action from the board of directors before bringing suit under Rule 23.1 is related to the concept that a shareholder derivative suit is a device to be used only when it is clear that the corporation will not act to redress the alleged injury to itself. Mori v. Hasiguchi, 17 FSM R. 630, 640 (Chk. 2011).

In a derivative action, it must appear from the complaint that plaintiff acted in good faith in seeking corporate action and exercised diligence in exhausting his remedies within the corporation. Mori v. Hasiguchi, 17 FSM R. 630, 640 (Chk. 2011).

As is true of pleading demand and refusal, what must be shown in the complaint to justify excusing compliance with the demand requirement is a matter of judicial discretion. At a minimum, the plaintiff must plead facts explaining the lack of a demand – it is not enough for plaintiff to state in conclusory terms that he made no demand because it would have been futile. Mori v. Hasiguchi, 17 FSM R. 630, 640 (Chk. 2011).

A motion to dismiss derivative action allegations will be granted when the complaint has not alleged and shown that the plaintiff made a proper demand for redress and was refused or alleged and shown that

such a demand would have been futile. Mori v. Hasiguchi, 17 FSM R. 630, 640-41 (Chk. 2011).

Pleadings are limited to a complaint, an answer, counterclaims, a reply to a counterclaim, a cross-claim, an answer to a cross-claim, a third-party complaint, and a third-party answer and no other pleading will be allowed, except that the court may order a reply to an answer or a third-party answer. Berman v. Pohnpei, 18 FSM R. 67, 70 (Pon. 2011).

The FSM requires only notice pleading – a complaint need only be a short and plain statement of the claim and give a defendant fair notice of the factual wrong on the basis of the facts asserted. Berman v. Pohnpei, 18 FSM R. 67, 72 (Pon. 2011).

An FSM Civil Rule 12(b)(6) motion to dismiss may, at the pleader's option, be made either as a motion before the answer or as part of the answer. Damarlane v. U Mun. Gov't, 18 FSM R. 96, 99 (Pon. 2011).

When the plaintiff alleges that the state took his property without just compensation, but he only cites to the Chuuk Constitution provision barring Chuuk from taking property without just compensation and does not allege that Chuuk's alleged acts violated any FSM Constitutional provision, his complaint does not appear to allege claims arising under national law and thus does not show FSM Supreme Court jurisdiction. Iwo v. Chuuk, 18 FSM R. 182, 184 (Chk. 2012).

Although pleading requirements are interpreted liberally, it is the plaintiff's responsibility to see that his complaint states the grounds of jurisdiction. Iwo v. Chuuk, 18 FSM R. 182, 184 (Chk. 2012).

A defendant, who has asserted in its answer the lack of personal jurisdiction over it as a defense, has preserved that defense for determination before trial and it may move for the issue's determination as a preliminary matter. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 287-88 (Yap 2012).

Since the failure to verify a complaint is a technical defect that can be cured by amendment, it would not entitle the defendants to an immediate dismissal or to a summary judgment because the Civil Procedure Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. This same principle should hold for an in rem admiralty proceeding and the plaintiffs be given a reasonable time to amend their complaint by verifying it by affidavit. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288-89 (Yap 2012).

General denials are disfavored, but when a pleader does intend to controvert all the complaint's averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial subject to the obligations of honesty in pleading set forth in Rule 11. An answer consisting of a general denial will be available to a party acting in good faith only in the most exceptional cases. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 289 (Yap 2012).

When, in their answers, all of the appearing defendants asserted the plaintiffs' failure to join indispensable parties as a defense, they preserved that Rule 12(7) defense for determination before trial. Moreover, a Rule 12(b)(7) motion to dismiss for failure to join an indispensable party under Rule 19 is a defense that, by rule, is specifically preserved and may be raised as late in the proceedings as at the trial on the merits. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 289 (Yap 2012).

A party will appeared to have preserved the defense of lack of personal jurisdiction for determination by motion before trial when the answer denies the plaintiffs' averment that the party was "subject to *in personam* jurisdiction in this Court." People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 297, 301 (Yap 2012).

Since a party may state as many separate claims or defenses as the party has regardless of consistency and whether based on legal, equitable, or maritime grounds, a party may plead in the alternative, and the inconsistent pleadings are not a ground to deny amendment to a complaint. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 315 (Yap 2012).

The failure to deny an averment in a pleading constitutes an admission only for averments in a pleading to which a responsive pleading is required. A motion to dismiss is not a pleading. Perman v. Ehsa, 18 FSM R. 452, 454-55 (Pon. 2012).

An answer is not a pleading to which a responsive pleading is required. The pleadings to which a responsive pleading is required are complaints, counterclaims and cross-claims, and a court may, on extremely rare occasions, order a reply. Perman v. Ehsa, 18 FSM R. 452, 455 n.2 (Pon. 2012).

Since Rule 8(d) provides that averments in a pleading to which no responsive pleading is required or permitted must be taken as denied or avoided, averments in an answer would, by rule, be considered denied or avoided. Perman v. Ehsa, 18 FSM R. 452, 455 n.2 (Pon. 2012).

The FSM is a notice pleading as opposed to a code pleading jurisdiction (in a code pleading jurisdictions, certain forms are to be followed or the case gets dismissed). Peniknos v. Nakasone, 18 FSM R. 470, 488 & n.10 (Pon. 2012).

On summary judgment, a plaintiff cannot rely on a notice pleading requirement which is generally used for the complaint or the initiation of a claim under the civil procedure rules. Peniknos v. Nakasone, 18 FSM R. 470, 488 (Pon. 2012).

The FSM pleading rules are flexible and informal rather than technical and thus require only notice pleading. FSM Civil Rule 8(a)'s pleading requirements are to be interpreted liberally, and a complaint which states the grounds of jurisdiction and alleges facts sufficient to put the defendant on notice as to the nature and basis of the claim being made sufficiently complies with Rule 8(a). But just because a pleading is sufficient to withstand a Rule 12(b) motion to dismiss for failure to state a claim does not mean that it meets the standard to withstand a Rule 56(b) summary judgment motion. Peniknos v. Nakasone, 18 FSM R. 470, 488 (Pon. 2012).

While foreign law is a fact which must be pled and proven, national (or state law) does not need to be expressly pled since the court may take judicial notice of any national (or state) law. Thus, the FSM salvage contract statute's application cannot be avoided by trying to characterize a salvage contract as some other kind of contract. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 8 (Pon. 2013).

Complaints in Admiralty Rule B, C, and D actions must be verified upon oath or solemn affirmation by a party or by an authorized officer of a corporate party but complaints in other in personam admiralty actions against natural and juridical persons do not have to be verified. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 56 (Yap 2013).

Since a plaintiff class is analogous to a corporate body and a class representative is analogous to a corporation's officer or attorney and with due deference to the Constitution's Judicial Guidance Clause and the FSM's geographical configuration, a class representative's verification of the complaint was sufficient compliance with Supplemental Rule C's requirement that the in rem complaint be verified even though he was not present when the incident occurred. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 57 (Yap 2013).

When a complaint is against an individual d/b/a as a corporation, despite any indications to the contrary, there are, as a matter of law, two defendants in the trial court case and two cross-appellants in this appeal – the individual and the corporation. Smith v. Nimea, 19 FSM R. 163, 173 (App. 2013).

The Pohnpei Mortgage Law requires that the complaint name all persons having or claiming an interest in the property subordinate to the mortgage interest. FSM Dev. Bank v. Setik, 19 FSM R. 233, 235 (Pon. 2013).

Even if pleadings or other filings are "ghostwritten" there is no authority that a ghostwritten filing must be stricken. The usual result would be that the court would no longer give the pro se litigant the leeway normally given unrepresented lay parties and would require either that the ghostwriter file an appearance or that the ghostwriting attorney's identity be disclosed. In re Sanction of Sigrah, 19 FSM R. 305, 313 (App. 2014).

As a general rule, pro se parties are allowed greater leeway and their pleadings are construed more liberally because of their lack of legal training. Andrew v. Heirs of Seymour, 19 FSM R. 331, 339 (App. 2014).

Regardless of what a litigant designates something in the litigant's pleadings, it must be treated as what it really is. Andrew v. Heirs of Seymour, 19 FSM R. 331, 340 n.6 (App. 2014).

The term "at issue" is defined as whenever the parties come to a point in the pleadings which is affirmed on one side and denied on the other, they are said to be at an issue. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 432 (App. 2014).

Although general denials are disfavored, a pleader may make a general denial subject to the obligations of honesty in pleading set forth in Rule 11. An answer consisting of a general denial is available to a party acting in good faith only in the most exceptional cases. FSM v. Muty, 19 FSM R. 453, 457-58 n.2 (Chk. 2014).

Pleadings do not have to be consistent. A party may plead in the alternative. FSM v. Muty, 19 FSM R. 453, 461 (Chk. 2014).

An answer or a Rule 12(b) motion is not untimely and will not be disregarded or stricken when no default has yet been requested and entered. Killion v. Chuuk, 19 FSM R. 539, 540 (Chk. 2014).

The duty to make a "reasonable inquiry" means an inquiry reasonable under all the case's circumstances. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581 (Pon. 2014).

A party is ordinarily entitled to rely on the notarized signature on an agreement when it sues on that agreement, but if the party knows before filing suit that the defendant claims not to have signed the agreement or to know anything about the agreement, the plaintiff cannot base his suit on the presumption arising from the notarized signature. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581 (Pon. 2014).

The term "at issue" means that whenever the parties come to a point in the pleadings which is affirmed on one side and denied on the other, they are said to be at issue. FSM v. Falan, 20 FSM R. 59, 61 (Pon. 2015).

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

Those parts of the amended complaint's prayer for relief that seek relief for the State of Pohnpei,

which is not a party, can be dismissed or stricken as surplusage. Chuuk v. FSM, 20 FSM R. 373, 377 (Chk. 2016).

A pleading shall assert a short and plain statement of the claim showing that the pleader is entitled to relief. The claimant need not set forth any legal theory justifying the relief sought on the facts alleged, but sufficient factual averments to show that the claimant may be entitled to some relief are required. The plaintiffs' factual averments and the claims resting upon them are dispositive, not the legal theories assigned to them. Solomon v. FSM, 20 FSM R. 396, 400 (Pon. 2016).

A complaint's purpose is simply to give the defendant notice of the essence of the plaintiff's claim with sufficient clarity to enable the defendant to answer, that is, fair notice of factual wrong openly stated on the basis of the facts asserted. Solomon v. FSM, 20 FSM R. 396, 401 (Pon. 2016).

A complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face, but a plaintiff's allegation that there was a "sheer possibility" that her termination was based on petty and insufficient grounds, is inadequate, as far as withstanding a Rule 12(b)(6) challenge. Solomon v. FSM, 20 FSM R. 396, 401 (Pon. 2016).

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

It is not enough to simply cite a set of regulations and claim the alleged acts ran afoul of this compendium. A mere conclusion that these regulations were breached, which neglects to supply the necessary factual allegations in support thereof, is inadequate, and when the factual averments were solely applicable to one defendant and hence do not support the other cause of action, more specificity is required and absent some reasonable facsimile of particularity, the other cause of action fails to notify the defendants of the alleged infraction; thereby impeding their ability to interpose an answer. Solomon v. FSM, 20 FSM R. 396, 402 (Pon. 2016).

When the plaintiff's reasoning neglects to cite what constituted an alleged illegal termination since the only factual averments which depict allegedly untoward conduct on the defendants' part, albeit nebulous, only apply to one defendant, the requisite nexus to support a substantive due process violation is wanting. Solomon v. FSM, 20 FSM R. 396, 402 (Pon. 2016).

The legal theory advanced in a complaint, if one is advanced, need not be correct. Solomon v. FSM, 20 FSM R. 396, 403 (Pon. 2016).

Pleadings are designed to develop and present the precise points in dispute between parties and should narrow and focus issues for trial, not provide a vehicle for scattering legal theories to the wind in the hope that the trial process will eventually winnow some few grains from the cloud of chaff. Solomon v. FSM, 20 FSM R. 396, 403-04 (Pon. 2016).

A trial judge is not required to limit his analysis to the causes of action pled in the complaint because, under the rules, except as to a party against whom a judgment is entered by default, every final judgment must grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 430 (App. 2016).

Because it is the plaintiffs who invoke the court's jurisdiction, it is the plaintiffs' burden to prove that standing exists. Therefore, when the defendants challenge standing in a motion to dismiss or as an affirmative defense, the plaintiffs' complaint must contain facts that, if true, would be sufficient to establish that standing exists. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 640 (Pon. 2016).

A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged, but when a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief. Lonno v. Heirs of Palik, 21 FSM R. 103, 108 (App. 2016).

If the pleading shows that both admiralty and another basis of subject matter jurisdiction exist, the suit will be treated as an admiralty claim for purposes of the special admiralty procedures and remedies only if the pleading or count setting forth the matter contains a statement identifying the claim as an admiralty claim. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 227 (App. 2017).

The rules require only notice pleading, and are flexible and informal rather than technical. Chuuk Health Care Plan v. FSM Dev. Bank, 21 FSM R. 300, 304 (Chk. 2017).

The complaint need only be a short and plain statement of the claim and give the defendant fair notice of the factual wrong on the basis of the facts asserted, and the legal theory advanced, if one is advanced, need not be correct or even averred. Chuuk Health Care Plan v. FSM Dev. Bank, 21 FSM R. 300, 304 (Chk. 2017).

State law does not need to be expressly pled because the court may take judicial notice of any state law. Chuuk Health Care Plan v. FSM Dev. Bank, 21 FSM R. 300, 304 (Chk. 2017).

"Pleadings" are defined as the complaint, answer, reply to a counterclaim, answer to a cross-claim, third-party complaint, and third-party answer. Fuji Enterprises v. Jacob, 21 FSM R. 355, 364 n.9 (App. 2017).

No rule requires a defendant to wait for any specified time period before answering a complaint. Gallen v. Moylan's Ins. Underwriters (FSM) Inc., 21 FSM R. 380, 384 (App. 2017).

The only pleadings allowed are set forth in Civil Procedure Rule 7(a). Hartmann v. Department of Justice, 21 FSM R. 468, 472 n.1 (Chk. 2018).

In the complaint, the title of the action must include the names of all the parties, and every action must be prosecuted in the name of the real party in interest. Setik v. Mendiola, 21 FSM R. 537, 549 (App. 2018).

Just as anonymous defendants are greatly disfavored since "John Doe" defendants serve no purpose and trial courts should dismiss them without prejudice, unnamed, pseudonymous plaintiffs are even more disfavored since defendants have a due process right to know who is suing them. That is so they may prepare their defense and know against whom a final judgment will be res judicata. Setik v. Mendiola, 21 FSM R. 537, 550 (App. 2018).

A plaintiff will not be precluded from relief merely because her lawyer has misconceived the claim's proper legal theory. If the complaint shows that the plaintiff is entitled to any relief which the court can grant, regardless of whether it asks for the proper relief, the complaint is sufficient. Setik v. Mendiola, 21 FSM R. 537, 555 (App. 2018).

When a non-party has been permitted to intervene as a party-defendant, it has, as an intervenor, subjected itself to the plaintiff's claims against the defendants, notwithstanding the plaintiff's failure to amend the complaint to include reference to the intervenor. Setik v. Perman, 22 FSM R. 105, 114 (App. 2018).

In a removed case, the FSM Supreme Court properly treats the complaint that the plaintiffs filed in the state court as if it had been filed in the FSM Supreme Court. Setik v. Perman, 22 FSM R. 105, 117 (App. 2018).

Defendants do not have claims. They have defenses. (A defendant may have counterclaims in addition to defenses.) Setik v. Perman, 22 FSM R. 105, 117 (App. 2018).

Every defendant has the option of raising certain defenses (if it has them) by either a Rule 12(b) motion to dismiss or by including those defenses in an answer. Setik v. Perman, 22 FSM R. 105, 117 (App. 2018).

A plaintiff generally cannot assert the rights of a third party as her own. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 154 (Chk. 2019).

No defendant in a trespass action can plead the *jus tertii* – the right of possession outstanding in some third person – as against the fact of possession in the plaintiff. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 154 (Chk. 2019).

Whether an allegedly defamatory pleading in a case filed in a national court is privileged or actionable should be decided as a matter of national law and is thus a matter arising under national law. Helgenberger v. Helgenberger, 22 FSM R. 244, 249 (Pon. 2019).

Statements contained in pleadings, affidavits, depositions and other documents directly related to the case partake of this privilege; they cannot serve as the basis for an action for defamation. Since this privilege is absolute and the immunity is complete, whether counsel made a reasonable inquiry into the facts before filing the complaint is irrelevant. Helgenberger v. Helgenberger, 22 FSM R. 244, 250 (Pon. 2019).

Statements in pleadings, if relevant and pertinent to the issues, are absolutely privileged even if the statements are false and made maliciously. Helgenberger v. Helgenberger, 22 FSM R. 244, 250 (Pon. 2019).

Generally, a party must assert her only own legal rights and interests, and cannot rest her claim to relief on the legal rights or interests of a third party. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 264 n.6 (Chk. 2019).

When the court must deny a defendant's motion for relief from, or to set aside, the default judgment, the court must also deny his motion to enlarge time to file an answer. FSM Dev. Bank v. Talley, 22 FSM R. 587, 595 (Kos. 2020).

– Pleadings – Affirmative Defenses

Pure conjecture is not the appropriate standard for the assertion of an affirmative defense. An affirmative defense may be pled only when to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, the defense is well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. Lavides v. Weilbacher, 7 FSM R. 400, 405 (Pon. 1996).

Plaintiff's waiver of a portion of its monetary claim cannot summarily disprove an affirmative defense of usury. Richmond Wholesale Meat Co. v. Kolonia Consumer Coop. Ass'n (III), 7 FSM R. 453, 455 (Pon. 1996).

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

Counsel does not risk waiver of affirmative defenses if she does not list them immediately because additional time may obtained in which to respond to a complaint, or after an answer is filed the answer may be amended within twenty days without leave of court. If pretrial investigation and discovery uncovers an unanticipated defense, a defendant can move to amend the pleading, for which leave will be freely given

when justice so requires. Finally, the pleadings do not necessarily bind the parties because issues not raised in the pleadings may be tried by the paries' express or implied consent. In re Sanction of Berman, 7 FSM R. 654, 657 (App. 1996).

Generally, affirmative defenses that are not pled are waived. Consequently, a pleader normally will not be penalized for exercising caution when he sets up affirmative matter that technically may not be an affirmative defense but nonetheless might fall within the residuary clause of Rule 8(c) of the Rules of Civil Procedure. Senda v. Semes, 8 FSM R. 484, 493 (Pon. 1998).

When an affirmative defense has not been pled but is raised after trial has begun, it is not waived when opposing counsel consents to its being raised. Senda v. Semes, 8 FSM R. 484, 493 (Pon. 1998).

Affirmative defenses that in each instance are tied to specific factual allegations do not present an instance of blanket pleading of frivolous affirmative defenses without regard to the facts of the case. Senda v. Semes, 8 FSM R. 484, 493-94 (Pon. 1998).

Pleadings are designed to develop and present the precise points in dispute between parties and should narrow and focus issues for trial, not provide a vehicle for scattering legal theories to the wind in the hope that the trial process will eventually winnow some few grains from the cloud of chaff. With respect to affirmative matter under Rule 8(c), counsel should come to trial knowing what affirmative defenses or "any other matter constituting an avoidance" the facts support, and present evidence accordingly. Senda v. Semes, 8 FSM R. 484, 494 (Pon. 1998).

Normally a defense that is not pled is waived, but an affirmative defense is not waived when it is raised after trial has begun, and opposing counsel consents to its being raised. Senda v. Semes, 8 FSM R. 484, 499-500 (Pon. 1998).

Affirmative defenses that the court has ruled against earlier and affirmative defenses for which no evidence was presented at trial must fail. Senda v. Semes, 8 FSM R. 484, 501-02 (Pon. 1998).

When a party has mistakenly designated a counterclaim as a defense, the court, on such terms as justice requires, shall treat the pleading as if there had been a proper designation. Senda v. Semes, 8 FSM R. 484, 503 (Pon. 1998).

Every defense, in law or fact, to a claim for relief in any pleading must be asserted in the responsive pleading thereto except for the defenses list in Rule 12(b), which may be raised by motion made before pleading. If a Rule 12(b) motion is denied the responsive pleading must be made within 10 days after notice of the court's action. Island Dev. Co. v. Yap, 9 FSM R. 279, 283 (Yap 1999).

A defendant who has failed to raise any affirmative defenses in his answer, or to amend his answer to add any, or to assert at trial any counterclaims or crossclaims, or third party claims, has waived and lost his right to assert at trial affirmative defenses and to assert any counterclaims or crossclaims, or third party claims. Shrew v. Killin, 10 FSM R. 672, 674 (Kos. S. Ct. Tr. 2002).

The statute of limitations is an affirmative defense which must be raised in the defendant's answer, and when it has not been, the defendant has waived its statute of limitations defense. Tolenoa v. Kosrae, 11 FSM R. 179, 185 (Kos. S. Ct. Tr. 2002).

A statute of limitations defense is not one of the enumerated defenses that may be brought by motion under Rule 12(b), but rather is one of the specific defenses named in Rule 8(c) where a party must set forth affirmatively in the answer, the statute of limitations and any other matter constituting an avoidance or affirmative defense. Segal v. National Fisheries Corp., 11 FSM R. 340, 342 (Kos. 2003).

The statute of limitations is an affirmative defense which must be raised in either the answer or in a

motion to dismiss. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 80 (Kos. S. Ct. Tr. 2004).

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

Res judicata is an affirmative defense. An affirmative defense generally must be pled by the defendant or it is waived. Kishida v. Aizawa, 13 FSM R. 281, 284 (Chk. 2005).

The statute of limitations is an affirmative defense which must be raised in a responsive pleading, such as an answer. It is an expressly stated affirmative defense to an action under Civil Rule 8(c), and as such, it is waived if it is not pled, or if it is not raised in a Rule 12(b)(6) motion for failure to state a claim. FSM Social Sec. Admin. v. Fefan Municipality, 14 FSM R. 544, 546 (Chk. 2007).

A defendant who has failed to raise any affirmative defenses in his answer, or to amend his answer to add any, has waived and lost his right to assert affirmative defenses. FSM Social Sec. Admin. v. Fefan Municipality, 14 FSM R. 544, 546 (Chk. 2007).

When the defendant has waived any statute of limitations defense, the limitations statute will not, as a matter of law, bar a summary judgment for the plaintiff. FSM Social Sec. Admin. v. Fefan Municipality, 14 FSM R. 544, 547(Chk. 2007).

The statute of limitations is generally an affirmative defense that may be pled in the answer. A statute of limitations defense is not one of the enumerated defenses under Rule 12(b), but rather is one of the specific defenses named in Rule 8(c), where a party must set forth affirmatively in the answer, the statute of limitations and any other matter constituting an avoidance or affirmative defense. The statute of limitations defense may, however, be raised by a Rule 12(b)(6) motion, or, if affidavits are filed with the motion, by a Rule 56 summary judgment motion, as well as by answer, but if there is a question of fact about the defense's existence, the issue then cannot be determined on affidavits, and must be raised in the answer. John v. Chuuk Public Utility Corp., 15 FSM R. 169, 171-72 (Chk. 2007).

The affirmative defense of statute of limitations is to be raised affirmatively in the responsive pleading; it is not a defense that may be brought by a Rule 12(b) motion. George v. George, 15 FSM R. 270, 273 (Kos. S. Ct. Tr. 2007).

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

The right to insert additional affirmative defenses in the indefinite future when additional information is revealed is not itself an affirmative defense. It is only an assertion that the party might want to plead an additional, currently unknown affirmative defense at some unknown later date. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 495 (Chk. 2013).

Rule 8(c) requires that affirmative defenses be raised in a responsive pleading (an answer) if not raised in a pre-answer motion. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 495-96 (Chk. 2013).

When a party has already filed an answer, that answer should contain all of the party's affirmative defenses. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 496 (Chk. 2013).

Failure to exhaust administrative remedies and failure to timely file a suit for judicial review are both

affirmative defenses which have to be asserted in the answer otherwise that affirmative defense is waived. Kosrae v. Edwin, 18 FSM R. 507, 513 (App. 2013).

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

The statute of limitations is an affirmative defense which, if not pled, is waived. Bank of Hawaii v. Susaia, 19 FSM R. 66, 69 n.2 (Pon. 2013).

The FSM Secretary of Finance cannot raise any defenses the Chuuk Governor, who is not a party to the litigation, may have; she can only defend by saying that when the proper paperwork is presented, Finance is obligated to pay – that FSM Finance is only the money's custodian. Mailo v. Lawrence, 20 FSM R. 201, 204 (Chk. 2015).

Res judicata and collateral estoppel are affirmative defenses. Estate of Gallen v. Governor, 21 FSM R. 477, 482 (Pon. 2018).

An affirmative defense is the defendant's assertion of facts and arguments that, if true, will defeat the plaintiff's claim, even if all the allegations in the complaint are true. Estate of Gallen v. Governor, 21 FSM R. 477, 482 n.2 (Pon. 2018).

Generally, an affirmative defense not set forth in a responsive pleading is deemed waived. Estate of Gallen v. Governor, 21 FSM R. 477, 482-83 (Pon. 2018).

Res judicata and collateral estoppel are affirmative defenses that must be pled. The purpose of such pleading is to give the opposing party notice of the plea and a chance to argue, if it can, why the imposition of an estoppel would be inappropriate. Estate of Gallen v. Governor, 21 FSM R. 477, 483 (Pon. 2018).

Rule 8(c)'s purpose is to put opposing parties on notice of affirmative defenses and to afford them the opportunity to respond to the defenses, but an affirmative defense need not be articulated with any rigorous degree of specificity and is sufficiently raised for purposes of Rule 8 by its bare assertion. Estate of Gallen v. Governor, 21 FSM R. 477, 483 (Pon. 2018).

When a defendant, although it did not expressly use the term "res judicata" or "collateral estoppel" in its answer, did describe the res judicata and collateral estoppel principles accurately enough that the plaintiffs should have been put on notice of its potential affirmative defense, it has pled the affirmative defense's substance, and that is usually enough. Estate of Gallen v. Governor, 21 FSM R. 477, 483 (Pon. 2018).

If a defendant had pled that "the issues that are now brought before this court have already been litigated and decided by the Trust Territory High Court or the Pohnpei State Supreme Court" as an affirmative defense instead of "reserving the right" to raise it later, the court would have no difficulty concluding that that answer articulated the defendant's affirmative defenses with sufficient specificity to give the plaintiffs adequate notice of that defense. In such a case, the court could not conclude that the defense was waived. Estate of Gallen v. Governor, 21 FSM R. 477, 483-84 (Pon. 2018).

Since a defendant's mere recitation in an answer of a reservation of a "right" to assert additional affirmative defenses sometime in the future if additional information is revealed is not itself an affirmative defense, but is only a statement that the party might want to plead an additional, currently unknown affirmative defense at some unknown later date, the court can only disregard the defendant's "reservation" of the right to assert additional affirmative defenses, and require the defendant to adhere to Rule 15(a) if and when it wished to assert an additional affirmative defense. Estate of Gallen v. Governor, 21 FSM R. 477, 484 (Pon. 2018).

Ideally, a defendant, if it did not assert its affirmative defense in its original answer, should first move to amend the answer (if it had not already amended its answer as of right within twenty days of filing the original answer), and then once the amendment was granted, move for summary judgment on the affirmative defense. Estate of Gallen v. Governor, 21 FSM R. 477, 484 (Pon. 2018).

A statement in an answer that the defendant reserves the right to amend its affirmative defenses upon further investigation, is a nullity. Macayon v. FSM, 22 FSM R. 544, 550 n.4 (Chk. 2020).

Because the burden of a plaintiff moving for summary judgment extends to affirmative defenses as well as to the plaintiff's own positive allegations, the plaintiff must not only show that there is no issue of material fact, but must also show that the affirmative defenses are insufficient as a matter of law. Macayon v. FSM, 22 FSM R. 544, 554 (Chk. 2020).

Generally, a party that has pled an affirmative defense but does not raise that defense in response to a summary judgment motion has waived or abandoned that defense. Macayon v. FSM, 22 FSM R. 544, 555 (Chk. 2020).

In all averments of fraud the circumstances constituting fraud must be stated with particularity. This requirement to plead fraud with particularity includes not only a plaintiff pleading a fraud claim in its complaint, but also a defendant pleading fraud as an affirmative defense in its answer. Macayon v. FSM, 22 FSM R. 544, 555 (Chk. 2020).

Unlike most other affirmative defenses, fraud is an affirmative defense that must be pled with particularity. Defendants must satisfy Rule 9(b) when they plead affirmative defenses sounding in fraud. Macayon v. FSM, 22 FSM R. 544, 555 (Chk. 2020).

When an FSM court has not previously construed whether Rule 9(b) applies to affirmative defenses, an FSM civil procedure rule that is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting or applying the FSM rule. Macayon v. FSM, 22 FSM R. 544, 555 n.9 (Chk. 2020).

Pleading fraud without more as an affirmative defense does not meet the particularity requirements of Rule 9(b). A defendant who alleges no facts to support its conclusory statement of "fraud" as an affirmative defense, wholly fails to satisfy the heightened pleading standard set forth by Rule 9(b), and it will be stricken accordingly. Macayon v. FSM, 22 FSM R. 544, 555 (Chk. 2020).

Affirmative defenses cannot be pled with only a conclusory statement; facts must also be pled. Macayon v. FSM, 22 FSM R. 544, 555 n.10 (Chk. 2020).

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

When the court has not previously considered whether an affirmative defense omitted from the answer (especially an affirmative defense that is not specifically named in Rule 8(c)) may be raised after the answer has been filed without a motion to amend the answer having also been made and it involves an FSM Civil Procedure Rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting or applying the rule. Basu v. Amor, 22 FSM R. 557, 563 (Pon. 2020).

The waiver rule that has developed in the practice under Rule 8(c) is not applied automatically with regard to omitted affirmative defenses. The substance of many unpled Rule 8(c) affirmative defenses may be asserted by pretrial motions, particularly in the absence of any showing of prejudice to the opposing party and assuming it has had an opportunity to respond. Basu v. Amor, 22 FSM R. 557, 563 (Pon. 2020).

Since Rule 8(c)'s purpose is to give the opposing party notice of the affirmative defense and a chance to respond, the failure to raise an affirmative defense by responsive pleading does not always result in waiver. Basu v. Amor, 22 FSM R. 557, 563 (Pon. 2020).

An affirmative defense can frequently be raised by a pretrial motion to which the plaintiff will be able to respond. A defendant does not waive an affirmative defense if he raises the issue at a pragmatically sufficient time, and the plaintiff was not prejudiced in its ability to respond. Basu v. Amor, 22 FSM R. 557, 563-64 (Pon. 2020).

An affirmative defense is the defendant's assertion of facts and arguments that, if true, will defeat the plaintiff's claim, even if all the allegations in the complaint are true. FSM Dev. Bank v. Talley, 22 FSM R. 587, 593 n.1 (Kos. 2020).

Section 128, Title 30 grants the FSM Development Bank tax exemption and prohibits it from paying dividends because the bank exists and operates "solely for the benefit of the public." It does not create a private cause of action against the FSM Development Bank, and thus a borrower cannot raise it as an affirmative defense. FSM Dev. Bank v. Talley, 22 FSM R. 587, 594 (Kos. 2020).

An affirmative defense cannot be pled with only a conclusory statement but must, in each instance, be tied to specific factual allegations. FSM Dev. Bank v. Talley, 22 FSM R. 587, 594 (Kos. 2020).

An affirmative defense cannot be pled with only a conclusory statement, but must, in each instance, be tied to specific factual allegations so as to give the plaintiff notice of the defense. A defendant cannot claim to have meritorious defenses by just listing the possible affirmative defenses to the plaintiff's causes of action without supporting factual allegations. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 605 (Pon. 2020).

Fraud, unlike most other affirmative defenses, is an affirmative defense that must be pled with particularity. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 605 (Pon. 2020).

– Pleadings – Amendment

Where a plaintiff files an amended complaint without leave of court and no motion for leave was ever filed the court may order the amended complaint stricken from the record. An entry of default based on such stricken amended complaint will be set aside. Berman v. FSM Supreme Court, 6 FSM R. 109, 112-13 (Pon. 1993).

A party may not amend its pleadings after trial to include another issue unless it was tried by the express or implied consent of the parties. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 120 (Pon. 1993).

When an issue not raised in the pleadings is raised at trial without objection by either party and evidence is admitted on the matter, the issue is to be considered tried by implied consent per FSM Civil Rule 15(b). Wito Clan v. United Church of Christ, 6 FSM R. 129, 133 (App. 1993).

Pleadings may be amended as a matter of right anytime before a responsive pleading is served, with written consent of the adverse party, or by order of court, which should be liberally granted. Once the pleading is complete and all amendments have been filed the matters raised by the pleadings normally form the issues to be determined at trial. Apweteko v. Paneria, 6 FSM R. 554, 557 (Chk. S. Ct. App. 1994).

When issues not raised by the pleading are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and any party may make a motion to amended the pleadings to conform to the evidence and issues tried by such consent. Apweteko v. Paneria, 6 FSM R. 554, 557 (Chk. S. Ct. App. 1994).

If an unpled theory of recovery is fully tried by consent of the parties, the trial court may base its decision on that theory and may deem the pleadings amended accordingly, even though the theory was not set forth in the pleading or the pretrial order. Apweteko v. Paneria, 6 FSM R. 554, 557 (Chk. S. Ct. App.

1994).

When a court has granted leave to file an amended complaint attached to movant's motion to amend, and the movant later files a different amended complaint, no leave has been granted for that complaint and its filing is improper. Berman v. FSM Supreme Court (II), 7 FSM R. 11, 15 (App. 1995).

An amended pleading, which is complete in itself and which does not refer to or adopt a former pleading as a part of it, supersedes the former pleading. Berman v. FSM Supreme Court (II), 7 FSM R. 11, 15 (App. 1995).

A court has discretion to allow an amendment to the pleadings. In the case of a post-trial motion to amend, the court must find that the unpled theory or issue has been tried by the express or implied consent of the parties. If it has not, then it is reversible error for the court to base its judgment on the unpled theory. Alafonso v. Sarep, 7 FSM R. 288, 290 (Chk. S. Ct. Tr. 1995).

A complaint cannot be amended to include allegations already ruled against on summary judgment. Damarlane v. United States, 7 FSM R. 350, 353 (Pon. 1995).

A complaint cannot be amended after trial when the movants make no showing at all what it was that was tried by express or implied consent of the parties that would justify the amendment. Damarlane v. United States, 7 FSM R. 350, 356 (Pon. 1995).

Counsel does not risk waiver of affirmative defenses if she does not list them immediately because additional time may obtained in which to respond to a complaint, or after an answer is filed the answer may be amended within twenty days without leave of court. If pretrial investigation and discovery uncovers an unanticipated defense, a defendant can move to amend the pleading, for which leave will be freely given when justice so requires. Finally, the pleadings do not necessarily bind the parties because issues not raised in the pleadings may be tried by the paries' express or implied consent. In re Sanction of Berman, 7 FSM R. 654, 657 (App. 1996).

When a party requests leave of the court to amend pleadings, leave shall be freely given. In addition, such amendment of the pleadings as may be necessary to cause them to conform to the evidence may be made upon motion of any party at any time. Sellem v. Maras, 9 FSM R. 36, 38 (Chk. S. Ct. App. 1999).

Although a court should exercise its discretion liberally to allow amended pleadings, a motion to amend a complaint may be denied if it is futile. One reason a motion to amend would be futile is if the claims sought to be added are barred by the relevant statute of limitations. Tom v. Pohnpei Utilities Corp., 9 FSM R. 82, 87 (App. 1999).

An amended pleading in a personal injury suit filed after the two year statute of limitations ran out would be futile unless it can be related back to an earlier date. Tom v. Pohnpei Utilities Corp., 9 FSM R. 82, 87 (App. 1999).

A mistake of identity as used in Rule 15(c) applies to misnomers, incorrect names, and mistakes concerning which official body is the proper defendant, but a mistake of legal judgment concerning who is responsible for the tort, where the plaintiff was fully aware of the identities of the defendant and potential defendants, is not the type of mistake of identity which can be corrected under Rule 15(c), with the amended pleading to relate back. Tom v. Pohnpei Utilities Corp., 9 FSM R. 82, 87 (App. 1999).

When the plaintiffs were fully aware of the identity of the third-party defendant at least since the third-party complaint was filed, but do not seek to amend their complaint to proceed against that party until after the statute of limitations has run, they made no mistake of identity correctable under Rule 15(c) and the motion to amend is properly denied because the amendment is futile. Tom v. Pohnpei Utilities Corp., 9 FSM R. 82, 87 (App. 1999).

A plaintiff may amend a complaint once without leave of court anytime before a responsive pleading is filed and a Rule 12 motion to dismiss is not a responsive pleading. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 410 (App. 2000).

Generally, leave to amend a complaint ought to be freely given. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 413 (App. 2000).

In the absence of any apparent or declared reason, such as undue delay, bad faith or dilatory motive on the movant's part, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the amendment's allowance, or futility of amendment, leave to amend should, as the rules require, be "freely given." Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 413 (App. 2000).

It is an abuse of discretion for a trial court to deny leave to amend pleadings without stating its reasons on the record because outright refusal to grant leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 413 (App. 2000).

It is not an abuse of discretion to deny a motion to amend when the amendment would not cure a complaint's defects, and when the reasons are readily apparent that the amendment will obviously not cure a defective complaint, a trial court does not abuse its discretion by denying the amendment without declared reasons. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 413 (App. 2000).

Although when the reasons are readily apparent it is not a per se abuse of discretion to omit them, the better practice is for the trial court to state on the record its reasons for denying a motion to amend. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 413 (App. 2000).

Although a court should exercise its discretion liberally to allow amended pleadings, when a proposed amendment to a complaint would be futile because it still would not state a claim upon which the FSM Supreme Court could grant relief, the court may deny the motion to amend. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 413 (App. 2000).

Because leave to amend a pleading shall be freely given when justice so requires, a plaintiff may be granted leave to amend its complaint to present its argument that the statute of limitations may have been tolled based upon its request that the parties submit their dispute to arbitration when the defendant has not presented any arguments that would show any injustice if the plaintiff amended its complaint. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 559 (Pon. 2000).

A caption may be changed to reflect the defendants' name corrections in the plaintiff's motion to amend complaint, and to reflect the plaintiff's request in the opening statement at trial, that the caption be altered to conform to the pleadings. Estate of Mori v. Chuuk, 10 FSM R. 6, 9 (Chk. 2001).

When the complaint states that it is an admiralty and maritime action and that the plaintiffs are invoking the court's *in rem* and *in personam* jurisdiction, plaintiffs' failure to style their action against a vessel as *in rem* in the caption is merely a formal error and not a fatal defect, and the caption can always be amended to correct technical defects. Moses v. M.V. Sea Chase, 10 FSM R. 45, 51 (Chk. 2001).

Errors in a case's caption can always be amended to correct technical defects. Sangechik v. Cheipot, 10 FSM R. 105, 106 (Chk. 2001).

Any proposed amended complaint seeking to add a civil fraud charge against a defendant must state the circumstances constituting fraud with particularity. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 333 (Pon. 2001).

Dismissal of John Doe defendants does not prohibit the plaintiff from seeking to amend its complaint if it does ascertain other parties should be named defendants. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 412 n.1 (Pon. 2001).

The court will grant defendants leave to amend their responsive pleadings when one defendant has not stated in short and plain terms her defenses to each claim asserted and has not admitted nor denied the plaintiffs' averments rely and the other defendant had not obtained leave to amend his answer, so the court could not permit him to avail himself of the affirmative defenses filed later. Carlos Etscheit Soap Co. v. Gilmete, 10 FSM R. 436, 440 (Pon. 2001).

A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim and a pleading may be amended with leave of court to include a counterclaim when the counterclaim either matured or was acquired by the pleader after serving his pleading or when a pleader failed to set it up through oversight, inadvertence, or excusable neglect, or when justice requires. Youngstrom v. NIH Corp., 11 FSM R. 60, 62 (Pon. 2002).

When a defendant seeks to amend its answer to include a permissive counterclaim and the plaintiff opposes on the basis that the statute of limitations has run on the proposed counterclaim, and when considerations of judicial economy weigh in favor of granting defendant's motion for leave to amend, the court will not address the issue of statute of limitations on the proposed counterclaim because this is a defense that could be the basis for a motion to dismiss the counterclaim, rather than a basis to oppose defendant's motion to amend. Youngstrom v. NIH Corp., 11 FSM R. 60, 62 (Pon. 2002).

A party may seek leave of court to amend a pleading to include an omitted counterclaim, and leave will be freely given when justice so requires. Youngstrom v. NIH Corp., 11 FSM R. 60, 62 (Pon. 2002).

After a pleading has been responded to, leave shall be freely given to amend a pleading when justice so requires. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 230-31 (Pon. 2002).

When at a late stage in the litigation, the plaintiffs can only allege on no more concrete basis than mere information and belief that an unseen contract may make non-parties liable for unpaid-for building materials, it is insufficient at this point to state an unjust enrichment or third-party beneficiary claim, and the motion to add these non-parties and claims will be denied. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 232 (Pon. 2002).

A motion to amend a complaint to add an unjust enrichment claim will be denied when it is based upon a defendant's failure to abide by the alleged agreements' terms because these are express agreements, and unjust enrichment is a theory applicable to implied contracts. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 232 (Pon. 2002).

When the loan agreement was produced in discovery seven months before the motion to amend was filed, but the motion was brought within the time permitted for filing pretrial motions; when the opponent bank was also responsible for considerable delays through its own resistance to discovery; and when the bank cannot claim surprise, since the loan agreement is its own document, a motion to amend the complaint to add a third-party beneficiary claim against the bank based on the loan agreement will be granted. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 232 (Pon. 2002).

When the applicable statute of limitations is six years and the construction agreement between the Permans and Felix is dated January 10, 1997 and other operative events occurred in September and October 1997, a July 23, 2002 motion to amend the complaint to add Felix and claims against him is not time barred. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 233 (Pon. 2002).

A strong presumption exists under FSM law for deferring land matters to local land authorities, along with federalism principles and concerns for judicial harmony. The FSM Supreme Court can certify such questions of state law to the state courts. But when, if the equitable or mechanic's lien claims had been presented in the original complaint, the court could then have certified the questions to the state court to determine whether such liens exist under state law and when the original complaint's factual allegations support such claims, there was no reason why that claim could not have been made then with discovery on-going while the state court considered the question. But when, considering the circumstances, it has become too late to bring this claim, a motion to amend the complaint to add a declaratory judgment claim that the plaintiffs have such a lien will be denied. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 233 (Pon. 2002).

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served. But if a responsive pleading has been served, a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. Ambros & Co. v. Board of Trustees, 11 FSM R. 333, 336 (Pon. 2003).

Rule 15 mandates that leave to amend a party's pleading shall be freely given by the court. Ambros & Co. v. Board of Trustees, 11 FSM R. 333, 336 (Pon. 2003).

When deciding whether justice requires that a plaintiff be permitted to amend its complaint, a trial court must navigate the conflicting principals that litigation must be brought to an end and that justice should be done. Ambros & Co. v. Board of Trustees, 11 FSM R. 333, 336 (Pon. 2003).

Although a defendant's motion to dismiss certain of plaintiffs' claims was granted because plaintiffs' counsel pled claims upon which relief could not be granted, this does not necessarily imply that plaintiffs have no claims against the defendant upon which relief might be granted. Thus, justice is better served by allowing the plaintiffs to amend their complaint than to preclude them from so doing. Ambros & Co. v. Board of Trustees, 11 FSM R. 333, 336 (Pon. 2003).

A proposed copy of plaintiffs' first amended complaint, attached as an exhibit to the plaintiffs' motion to amend complaint, will not be considered by the court to be the plaintiffs' operative pleading. When a motion to amend is granted, the plaintiffs must file and serve a separate pleading. Ambros & Co. v. Board of Trustees, 11 FSM R. 333, 337 & n.3 (Pon. 2003).

That alleged contracts may have extended from June 5, 1995, to July 5, 1996, does not permit the plaintiffs to pursue all of their alleged claims in a complaint filed on July 4, 2002. The relevant inquiry is when the alleged contract breaches occurred and the consequent causes of action accrued, not when the alleged contracts expired. When all of the claims except those for wages first payable on or after July 4, 1996, accrued more than six years from the filing of the complaint, the complaint will be dismissed, but without prejudice to the filing of an amended complaint for any wage claims that accrued on or after July 4, 1996. Under Civil Rule 15(c), the filing of any such amended complaint will relate back to July 4, 2002, the original complaint's filing date. Segal v. National Fisheries Corp., 11 FSM R. 340, 343 (Kos. 2003).

A party may amend its pleading once as a matter of course at any time before a responsive pleading is served. Otherwise a party may amend the its pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. Truk Trading Co. (Pohnpei) v. Department of Treasury, 12 FSM R. 1, 2 (Pon. 2003).

A party must plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders. Truk Trading Co. (Pohnpei) v. Department of Treasury, 12 FSM R. 1, 2 (Pon. 2003).

A motion to amend a complaint to add the FSM as a party will be granted when the original complaint

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

Should the plaintiffs seek to prove and recover damages for an oil spill not mentioned in their complaint, they will need to amend their pleadings because an oil spill damaging more than just the reef on which the vessel ran aground is a claim sufficiently different from the one of damage to the reef from an allision that it requires such pleading notice to the defendants. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 613, 617 (Yap 2004).

By its terms, Rule 15(b) applies after evidence has been introduced, either at an evidentiary hearing held in connection with a pretrial motion, in the course of trial, after the close of testimony, after the return of the verdict or entry of judgment, and on rehearing or on remand following an appeal. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 7 (Pon. 2004).

A motion to amend the pleadings brought, and granted, before the trial or any evidentiary hearing was held falls under Rule 15(a). FSM Dev. Bank v. Arthur, 13 FSM R. 1, 7 (Pon. 2004).

Under Rule 15(a), a court should generally exercise its discretion liberally to allow amended pleadings when justice so requires. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 7 (Pon. 2004).

In the absence of any apparent or declared reason, such as undue delay, bad faith or dilatory motive on the movant's part, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the amendment's allowance, or futility of amendment, leave to amend should, as the rules require, be freely given. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 7 (Pon. 2004).

Rule 15's purpose is to provide maximum opportunity for each claim to be decided on the merits rather than on procedural technicalities. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 7-8 (Pon. 2004).

When the defendants have never specified the defenses they believe that a non-party may have other than a reference in earlier filings to a defense that the court has rejected on other occasions and, more importantly, when the defendants, under the terms of the guaranty, waive any right to the non-party borrower's defenses, no undue prejudice to the defendants appears that would preclude the court from allowing the pleadings to be amended. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 8 (Pon. 2004).

Even if a motion were brought under Rule 15(b) and had been made after trial, the court could still permit the amendment of the pleadings despite the defendants' objection because if evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 8 (Pon. 2004).

A motion to strike amended pleadings and evidence concerning it will be denied when the court has determined that justice required amendment of the pleadings and that the presentation of the action's merits would be subserved thereby. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 8 (Pon. 2004).

Although generally leave to amend a complaint should be freely granted, once judgment has been entered, the filing of an amended complaint is not permissible until the judgment has been set aside or

vacated under Rule 59(e) or 60(b). The merit of this approach is that to hold otherwise would enable the liberal amendment policy of Rule 15(a) to be employed in a way that is contrary to the philosophy favoring the finality of judgments and the expeditious termination of litigation. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 278 (Chk. 2005).

A plaintiff should seek to amend its complaint to ask for prejudgment interest before asking for a default judgment if it wants an unpled interest claim included in the judgment. When it does not do so, the court cannot grant it leave to amend its complaint after the default judgment has been entered because that would make meaningless Rule 54(c)'s clear command limiting default judgments to the kind and the amount prayed for in the demand for judgment. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 279 (Chk. 2005).

When the defendants have not appeared and served responsive pleadings, the plaintiff can amend its pleadings once as a matter of course and without leave of court. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 279 (Chk. 2005).

When no responsive pleading has been filed in a case, but only a Rule 12(b) motion to dismiss, which is not a responsive pleading, has been filed, the plaintiff could have amended his complaint without leave of court at anytime before the court acted on the motion to dismiss. Since he chose not to do so, the court will not grant him leave to do now what he has had the opportunity to do for over a year. Sipos v. Crabtree, 13 FSM R. 355, 367 (Pon. 2005).

An answer is a pleading, and a party may amend the party's pleading once as a matter of course before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Lack of personal jurisdiction may be asserted in the answer to the complaint or by motion made before answering. An amended answer containing a motion to dismiss served five days after service of the original answer, is well within the 20-day period specified in Rule 15(a) for amending a pleading as a matter of right. Yap v. M/V Cecilia I, 13 FSM R. 403, 407 (Yap 2005).

Personal jurisdiction as a defense is waived only if the party raising it fails to raise it in a motion permitted by Rule 12(b), in his answer, or in an amendment to the answer permitted under Rule 15(a). Personal jurisdiction may not be raised in an amendment that requires leave of court. Yap v. M/V Cecilia I, 13 FSM R. 403, 407 (Yap 2005).

In the absence of any apparent or declared reason, such as undue delay, bad faith or dilatory motive on the movant's part, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the amendment's allowance, or futility of amendment, leave to amend should, as the rules require, be freely given. Mailo v. Chuuk, 13 FSM R. 462, 472 (Chk. 2005).

A movant's motion to amend its answer will be granted when the movant's new cross-claims and counterclaim are either related to its previous cross-claim and based on the same nucleus of operative fact, or are based on an event that has occurred since the case started and is closely related to the litigation so none of the grounds for denial are apparent, and when the one declared ground – futility of amendment – has been rejected. Mailo v. Chuuk, 13 FSM R. 462, 472 (Chk. 2005).

An amended complaint can filed as a matter of course before an answer to the original complaint has been filed. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 492 (Pon. 2005).

Although when issues not raised by the pleadings are tried by express or implied consent of the parties, they will be treated in all respects as if they had been raised in the pleadings, but when the plaintiff had a plain right under the case's facts to pursue a defendant for unjust enrichment and the action was tried as it was pled, which is to say an action for unjust enrichment, it is of no moment whether the parties consented under Rule 15(b) to try this matter as a contract action. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 517 (App. 2005).

Rule 15(a) states that leave to amend the complaint "shall be freely given when justice so requires." The purpose of the rule is to provide maximum opportunity for each claim to be decided on the merits rather than on procedural technicalities. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 394 (App. 2006).

In the absence of any apparent or declared reason, such as undue delay, bad faith or dilatory motive on the movant's part, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the amendment's allowance, or futility of amendment, leave to amend should, as the rules require, be "freely given." This does not mean that a showing of undue delay, for example, means that a court should deny leave to amend. Prejudice to the opposing party, not the moving party's diligence, is the crucial factor in determining whether or not to grant leave to amend the complaint. If the court is persuaded that no prejudice will accrue, the amendment should be allowed. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 395 (App. 2006).

Delay in seeking amendment is alone not sufficient to show bad faith when the movant's delay in asserting a guaranty claim resulted from its own files being "difficult to locate" and the Federated Development Authority's destruction or loss of records. While this explanation might not excuse a delay where there was some evidence of a motive to harass or of bad faith, it is sufficient here because no motive for the movant to delay was shown or appears. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 395 (App. 2006).

It is unlikely that a defendant will be prejudiced where the facts underlying a claim sought to be added are substantially similar to those underlying the original claim. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 395 (App. 2006).

Prejudice is not shown by a speculative argument concerning a denial of consolidation with another case when it is unclear how the state's tort liability to another is a defense to the appellee's contract claim against the appellants or how that tort liability would offset the appellee's recovery since not consolidating the cases did not prevent the appellants from introducing into this case any relevant evidence relating to that case. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 395-96 (App. 2006).

When the defendants had eight months after he plaintiff filed its motion to amend to move to reopen discovery; when the parties stipulated to the facts necessary for the trial court to reach a decision on the promissory note and guaranty claims; and when the defendants admitted there was nothing to discover, the defendants cannot have been prejudiced by a lack of opportunity for discovery. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 396 (App. 2006).

If the court is persuaded that no definable class is present, it may have the class allegations stricken and allow the action to proceed on an individual basis. Thus when no definable class is present for the infliction of emotional distress cause of action, the court will order that the complaint be amended to eliminate allegations that the named plaintiffs represent absent persons for any infliction of emotional distress claims and the named plaintiffs may proceed on their individual infliction of emotional distress claims, if they so choose. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 160-61 (Yap 2007).

Although Rule 15(a) provides that a party may amend the party's pleading by leave of court or by the adverse party's written consent and that leave shall be freely given when justice so requires, Rule 15(a) is not applicable when the motion is brought post-judgment for events that occurred after the complaint was filed and seeks to add two new defendants and a new cause of action solely against those two. Herman v. Municipality of Patta, 16 FSM R. 167, 170 (Chk. 2008).

When a Rule 15(a) motion to amend is brought post-judgment, it must comply with the Rule 60(b) timing requirements and it will generally be accompanied by a Rule 60(b) motion for relief from judgment because once a judgment is entered the filing of an amendment cannot be allowed until the judgment is set

aside or vacated under Rule 59 or Rule 60. Herman v. Municipality of Patta, 16 FSM R. 167, 170 & n.3 (Chk. 2008).

An amended pleading is designed to include matters occurring before the filing of the complaint but either overlooked or not known at the time. A supplemental pleading, however, is designed to cover matters subsequently occurring but pertaining to the original cause. Herman v. Municipality of Patta, 16 FSM R. 167, 170 (Chk. 2008).

Rule 71 only permits enforcement of orders and judgments against non-parties when obedience to an order may be lawfully enforced against a person who is not a party. It does not support joinder of non-parties as parties or a motion to amend a complaint. Herman v. Municipality of Patta, 16 FSM R. 167, 172 (Chk. 2008).

The rule governing amendments of pleadings is designed to provide maximum opportunity for each claim to be decided on the merits rather than on procedural technicalities. Smith v. Nimea, 16 FSM R. 186, 188 (Pon. 2008).

A party may amend the party's pleading only by leave of court, or by the adverse party's written consent, and leave shall be freely given when justice so requires. In the absence of any apparent or declared reason, such as undue delay, bad faith or dilatory motive on the movant's part, repeated failure to cure deficiencies by amendment previously allowed, undue prejudice to the opposing party by virtue of the amendment's allowance, or futility of amendment, leave to amend should, as the rules require, be freely given. Smith v. Nimea, 16 FSM R. 186, 189 (Pon. 2008).

When the affirmative defenses that the defendants seek to add could not have been raised at the time the original answer was filed as the administrative hearing at issue had not yet taken place; there is no undue delay, bad faith or dilatory motive on the defendants' part, as well as no undue prejudice to the plaintiff; and when it is the defendants' first request for amendment and it is reasonably calculated to ensure that all appropriate claims are adjudicated on the merits, the amended answer will be permitted. Smith v. Nimea, 16 FSM R. 186, 189 (Pon. 2008).

When only two parties were named as defendants in the original complaint's caption, but a third was clearly named as a defendant in the complaint's text and it was served a separate summons, the third is a party-defendant because the failure to name a party as a defendant in the caption does not mean the action cannot be maintained against that party if the complaint makes a number of explicit references to that party and that party was served since a caption's technical defects can always be amended. Nakamura v. Mori, 16 FSM R. 262, 266 n.1 (Chk. 2009).

In the absence of undue delay, bad faith or dilatory motive on the movant's part; or the movant's repeated failure to cure deficiencies by amendments previously allowed; or undue prejudice to the opposing party by virtue of the amendment's allowance; or futility of amendment, leave to amend should, as the rule requires, be freely given. Nakamura v. Mori, 16 FSM R. 262, 266-67 (Chk. 2009).

Since joint tortfeasors are not indispensable parties, leave to amend a complaint to drop an alleged joint tortfeasor from the suit should be freely given. Nakamura v. Mori, 16 FSM R. 262, 267 (Chk. 2009).

Leave is freely given to amend complaints to change the theory of recovery and to add new claims when those new theories and claims are based upon the same facts and occurrences that were pled in the original complaint. Nakamura v. Mori, 16 FSM R. 262, 268 (Chk. 2009).

Since a plaintiff need not advance a legal theory or, if the plaintiff does advance one, it need not be correct, and since every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings, defendants generally will not be prejudiced by an amendment adding new claims or causes of action based on the same factual

allegations as the original complaint. Nakamura v. Mori, 16 FSM R. 262, 268 (Chk. 2009).

A negligence cause of action may be amended to add a punitive damages claim subject to proof at trial and, in the absence of such proof, the defendants may move to disallow any punitive damages award. Nakamura v. Mori, 16 FSM R. 262, 268 (Chk. 2009).

Since an agent is not an indispensable party to a vicarious liability claim against the principal, the principal would not be prejudiced if leave were granted to amend the complaint against it to include a vicarious liability claim against it for an agent's acts even if the plaintiffs do not also sue the agent. Nakamura v. Mori, 16 FSM R. 262, 268 (Chk. 2009).

A motion to amend a complaint may be denied if it is futile. Nakamura v. Mori, 16 FSM R. 262, 269 (Chk. 2009).

When there is nothing inherently abnormally dangerous about road drainage systems, a proposed amendment to add a strict liability claim for damages from a road drainage system would be denied as futile since it would not be able to withstand a summary judgment motion. Nakamura v. Mori, 16 FSM R. 262, 269 (Chk. 2009).

When the original complaint alleged that the defendants' negligence damaged the plaintiffs' property and interfered with their use and enjoyment of their dwelling, the defendants will not be prejudiced by an amended complaint including a nuisance theory of recovery. Nakamura v. Mori, 16 FSM R. 262, 269 (Chk. 2009).

When, in the original complaint, the plaintiffs sought damages for pain and suffering, they inartfully pled an emotional distress claim, and a clarification of this claim in an amended complaint will not prejudice the defendants. Nakamura v. Mori, 16 FSM R. 262, 269 (Chk. 2009).

An attempt to reinstate a defendant dismissed for lack of service by including it in an amended complaint after it has been dismissed, cannot be considered a motion to amend the complaint to add a new party but must be considered, at least as far as the dismissed defendant is concerned, to be a motion to reinstate a party earlier dismissed for lack of service of process on that party, in other words, a motion to enlarge time to effect service on the dismissed defendant. Nakamura v. Mori, 16 FSM R. 262, 270 (Chk. 2009).

Rule 15 (amendment of pleadings and relation back) cannot be used to subvert the principles that underlie Rule 4(j) – prompt service of process. The purpose of allowing complaints to be amended is to enable the pleadings to be conformed to the developing evidence rather than to extend the time for service indefinitely. Nakamura v. Mori, 16 FSM R. 262, 270 (Chk. 2009).

Rule 4(j) is intended to force parties and their attorneys to be diligent in prosecuting their causes of action. Filing an amended complaint does not justify the lack of prior service of process on a defendant in a multi-defendant case. The normal and expected procedure is to serve the unserved defendant first and then amend the complaint. Nakamura v. Mori, 16 FSM R. 262, 270 (Chk. 2009).

When the plaintiffs offer no explanation whatsoever why they did not, at anytime, serve the summons and complaint on a defendant later dismissed for lack of service or why they never sought additional time to serve that defendant, the court will not give the plaintiffs leave to file a proposed first amended complaint that includes the previously-dismissed party-defendant. Nakamura v. Mori, 16 FSM R. 262, 270 (Chk. 2009).

It is improper for a party to use summary judgment briefs to effect a *de facto* amendment of its pleadings to assert new causes of action. Therefore a claim that falls outside the scope of the plaintiff's complaint is not properly before the court in a summary judgment motion and will be disregarded. Berman

v. Pohnpei Legislature, 16 FSM R. 492, 498 (Pon. 2009).

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served and the defendants' motion to dismiss is not a responsive pleading. Ladore v. Panuel, 17 FSM R. 271, 274 (Pon. 2010).

Even if the defendants had filed an answer and raised their Rule 12(b) defenses in the answer, the court may still grant leave for the plaintiffs to amend their complaint, and Rule 15(c) instructs the court clearly that leave shall be freely given when justice so requires. It does not serve justice by denying a complaint where there may be a source of jurisdiction, and the amendment of a single letter in the complaint may be the difference between dismissal and a foot in the door of justice – the plaintiffs should not be punished for their counsel's inexplicable clerical error. Ladore v. Panuel, 17 FSM R. 271, 274 (Pon. 2010).

When the trial court declined to rule on cross summary judgment motions on the plaintiff's retaliation claim because it reasoned that the claim was not properly before it because her claim fell outside the scope of her complaint, the plaintiff could have then sought to amend her pleadings either by leave of court or by written consent of the adverse party, but did not. Berman v. Pohnpei Legislature, 17 FSM R. 339, 350 (App. 2011).

When the proper procedure to assert a new claim is for the plaintiff to move to amend the complaint in accordance with Civil Rule 15(a),and that was not done even though a month and a half elapsed between the trial court's decision on the cross summary judgments motions and its order setting trial and a further month and a half elapsed before trial and when, although courts exercise their discretion liberally to allow pleadings to be amended out of time, the plaintiff did not, before trial, ask for leave to amend the pleadings to include her free speech-retaliation claim and the factual allegations underpinning it, the claim was not then before the court for trial. Berman v. Pohnpei Legislature, 17 FSM R. 339, 350 (App. 2011).

When an FSM court has not previously construed whether a plaintiff may use a Rule 56 summary judgment motion to make additional claims instead of amending the pleadings through Rule 15 and when those rules are identical or similar to U.S. counterparts, the court may look to U.S. sources for guidance in interpreting the rules. Berman v. Pohnpei Legislature, 17 FSM R. 339, 350 n.3 (App. 2011).

When an issue not raised in the pleadings is raised at trial without objection by either party and evidence is admitted on the matter, the issue is to be considered tried by implied consent per FSM Civil Rule 15(b). Berman v. Pohnpei Legislature, 17 FSM R. 339, 350 (App. 2011).

If an issue was actually tried and evidence on the matter admitted with the parties' implied or express consent, it must be treated as if it was raised by the pleadings and the trial court should have ruled on it and granted whatever relief, if any, the plaintiff had proven herself entitled to. But when, without a transcript, it is impossible for the appellate court to determine if the retaliation issue was actually tried with the parties' consent, express or implied, the appellate court will not consider this assignment of error because there is nothing to show that it was ever properly before the trial court since the plaintiff never sought to amend the pleadings to include it although she had ample opportunity to do so, and there is no evidence that it was ever tried by the parties' express or implied consent. Berman v. Pohnpei Legislature, 17 FSM R. 339, 350-51 (App. 2011).

Since, in order to replace a "John Doe" defendant with a named party, a plaintiff would still have to move, under Civil Procedure Rule 15, to amend the pleadings to replace the John Doe defendant with a named defendant, and that to do so, all of Rule 15's specifications still must be met, and since, even in the absence of John Doe defendants, a plaintiff can move to amend her pleadings should she identify through discovery other persons who may be liable on her claims, the presence of "John Doe" defendants serves no purpose and a trial court should dismiss them without prejudice. Berman v. Pohnpei, 17 FSM R. 360, 366 n.1 (App. 2011).

The dismissal of "John Doe" defendants will not prevent a plaintiff from later seeking to amend her complaint if she ascertains that others should also be named defendants. Berman v. Pohnpei, 17 FSM R. 360, 366 n.1 (App. 2011).

The failure to verify the complaint in a shareholders' derivative action is a technical defect that can be cured by amendment. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

If a derivative action complaint lacks the proper allegation that it is not a collusive action it is subject to dismissal although a reasonable opportunity to amend should be permitted. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

A derivative action plaintiff who has failed to both verify the complaint and to allege the absence of collusion may be given a reasonable time to cure both defects rather than have his derivative action dismissed. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

The court will allow the defendant to amend its answer when the action is still in the discovery stage since it is in the interest of justice to allow the amendment and leave to amend a pleading shall be freely given when justice so requires. Pacific Sky Lite Hotel v. Penta Ocean, 18 FSM R. 109, 110 (Pon. 2011).

Leave to amend should be freely given in the absence of undue delay, bad faith, or dilatory motive on the movant's part, or the movant's repeated failure to cure deficiencies by amendments previously allowed; or undue prejudice to the opposing party by virtue of the amendment's allowance; or futility of amendment. Harden v. Continental Air Lines, Inc., 18 FSM R. 141, 144 (Pon. 2012).

Although a court should exercise its discretion liberally to allow amended pleadings, a motion to amend a complaint may be denied if it is futile. An amendment may be futile if the claim(s) sought to be added are barred by the relevant statute of limitations or if the amendment to the complaint fails to state a claim. Harden v. Continental Air Lines, Inc., 18 FSM R. 141, 144 (Pon. 2012).

Since a party may amend its pleading once as a matter of course at any time before a responsive pleading is served if the pleading is one to which a responsive pleading is permitted, the plaintiffs were entitled to amend their complaint once as a matter of course when the defendant filed a motion to dismiss the original complaint since a motion is not a pleading. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 155 (Pon. 2012).

Leave to amend a complaint must be freely given if justice so requires, but the court must deny leave to amend when the amendment would be futile. One reason an amendment would be futile is if the claims are barred by the relevant statute of limitations. Iwo v. Chuuk, 18 FSM R. 252, 254 (Chk. 2012).

When a defendant's alleged promise of compensation and its alleged subsequent repudiation of that promise may have tolled the running of the statute of limitations are undated, the plaintiff's cause of action might not, depending on the circumstances, be time-barred, and thus his proposed amended complaint is not futile on its face. Iwo v. Chuuk, 18 FSM R. 252, 255 (Chk. 2012).

Since leave to amend is freely given, when it is not apparent from the proposed amended complaint's face that the amended complaint is futile, the plaintiff's motion to amend his complaint will be granted. Iwo v. Chuuk, 18 FSM R. 252, 255 (Chk. 2012).

As a threshold matter, the court must determine if allowing an amendment will result in injustice and prejudice to the opposing party. Ramp v. Panuelo, 18 FSM R. 256, 260 (Pon. 2012).

In the absence of any apparent or declared reason, such as undue delay, bad faith, or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue

prejudice to the opposing party by virtue of the allowance of the amendment, futility of amendment, etc., the leave sought to amend pleadings should, as the rule requires, be freely given. Ramp v. Panuelo, 18 FSM R. 256, 260 (Pon. 2012).

When the amendments sought arose out of conduct, transaction, or occurrence of events between same plaintiff and defendants at different intervals and are inextricably linked, FSM Civil Rule 15(c) provides for the relation back of claims asserted in an amendment even if a different theory of recovery is presented. Ramp v. Panuelo, 18 FSM R. 256, 260 (Pon. 2012).

It is unlikely that a defendant will be prejudiced where the facts underlying a claim sought to be added are substantially similar to those underlying the original claim. Ramp v. Panuelo, 18 FSM R. 256, 260 (Pon. 2012).

When there is no apparent bad faith, mere delay is not enough of itself to bar an amendment. Ramp v. Panuelo, 18 FSM R. 256, 261 (Pon. 2012).

A showing of undue delay does not mean that a court should deny leave to amend. Prejudice to the opposing party, not the moving party's diligence, is the crucial factor in determining whether or not to grant leave to amend the complaint. If the court is persuaded that no prejudice will accrue, the amendment should be allowed. Ramp v. Panuelo, 18 FSM R. 256, 261 (Pon. 2012).

When a party requests leave of the court to amend pleadings, leave shall be freely given. In addition, such amendment of the pleadings as may be necessary to cause them to conform to the evidence may be made upon motion of any party at any time. Ramp v. Panuelo, 18 FSM R. 256, 261 (Pon. 2012).

Under Rule 15(a), a court should generally exercise its discretion liberally to allow amended pleadings when justice so requires. Ramp v. Panuelo, 18 FSM R. 256, 261 (Pon. 2012).

Leave is freely given to amend complaints to change the theory of recovery and to add new claims when those new theories and claims are based upon the same facts and occurrences that were pled in the original complaint. Ramp v. Panuelo, 18 FSM R. 256, 261 (Pon. 2012).

Since a plaintiff need not advance a legal theory or, if the plaintiff does advance one, it need not be correct and since every final judgment must grant the relief to which the party in whose favor it is rendered is entitled even if the party has not demanded such relief in the party's pleadings, defendants generally will not be prejudiced by an amendment adding new claims or causes of action based on the same factual allegations as the original complaint since the purpose of allowing complaints to be amended is to enable the pleadings to be conformed to the developing evidence and to provide maximum opportunity for each claim to be decided on the merits rather than procedural technicalities. Ramp v. Panuelo, 18 FSM R. 256, 261 (Pon. 2012).

It is the long-established rule in admiralty cases that omissions and deficiencies in pleadings may be supplied and errors and mistakes in practice in matters of substance, as well as of form may be corrected at any stage of the proceedings for the furtherance of justice. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288 (Yap 2012).

An amended pleading is designed to include matters occurring before the filing of the complaint but either overlooked or not known when the original pleading was filed, while a supplemental pleading is designed to cover matters subsequently occurring but pertaining to the original cause. The amendment of pleadings is governed by Civil Procedure Rule 15(a) (and in some instances, 15(b)), while Rule 15(d) governs supplemental pleadings. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 315 (Yap 2012).

Leave to amend a complaint ought to be freely given. The purpose is to provide maximum opportunity for each claim to be decided on the merits rather than on procedural technicalities. People of Eauripik ex

rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 315 (Yap 2012).

Although a court should exercise its discretion liberally to allow amended pleadings, it must deny a motion to amend a complaint if it is futile, and whether an amendment to a complaint would be futile is determined by whether the proposed amendment states a claim on which the FSM Supreme Court could grant relief. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 315 (Yap 2012).

While undue delay or bad faith on the movant's part are grounds on which to deny amendment of a complaint, delay alone in seeking to amend a complaint is not sufficient to show bad faith. To be a ground for denial the delay must have caused prejudice to the adverse party. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 315 (Yap 2012).

Since a party may state as many separate claims or defenses as the party has regardless of consistency and whether based on legal, equitable, or maritime grounds, a party may plead in the alternative, and the inconsistent pleadings are not a ground to deny amendment to a complaint. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 315 (Yap 2012).

Even though a court must exercise its discretion liberally to grant leave to amend a complaint, the court should deny a motion to amend when it would be futile to amend the complaint to add diverse parties from whom no relief can be obtained since they are not statutorily liable to plaintiff. Chuuk Health Care Plan v. Chuuk Public Utility Corp., 18 FSM R. 409, 411 (Chk. 2012).

Ordinarily, an amended pleading supersedes the former pleading and renders it of no legal effect. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 412, 415 (Yap 2012).

When a plaintiff has served a defendant with a complaint before filing an amended pleading, the earlier complaint is superseded only when the plaintiff serves the amended complaint on that defendant. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 412, 415 (Yap 2012).

There is nothing improper about holding one defendant in default of one complaint and the other defendants liable on a later amended complaint. Otherwise, if an amended complaint superseded the prior complaint with respect to all defendants once the plaintiff served it on a single defendant, a plaintiff might be unable to obtain a judgment against a defendant, who although properly served with the earlier complaint, evades service of an amended complaint because then the plaintiff would no longer have an effective complaint against any defendant who had not yet been served the amended pleading. Requiring a plaintiff to gamble on the likelihood of obtaining service would discourage amendments, which is contrary to the liberal amendment policy of Civil Procedure Rule 15. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 412, 415 (Yap 2012).

Civil Procedure Rule 5(a) provides that no service needs to be made on the parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them must be served on them in the manner provided for service of summons in Rule 4. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 412, 416 (Yap 2012).

The class plaintiffs may obtain a default judgment against one defendant on the first amended complaint since that is the one that was served on him and that he failed to appear to answer or otherwise defend. Since the second amended complaint, even if it alleges no new facts, does contain new or additional claims for relief and potential increased financial liability for that one defendant, it must be served on him if the class plaintiffs intend to hold him liable on the second amended complaint's new legal theories and claims. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 412, 416 (Yap 2012).

If the class plaintiffs wish to obtain a judgment against a defendant based on the second amended

complaint they must effect service of process of that complaint on him, but if they are content to obtain a default judgment against him based on the first amended complaint, they will not be required to serve the second amended complaint on him. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 412, 416 (Yap 2012).

When the Pohnpei statute does not provide that immediate dismissal is explicitly required if a plaintiff fails to name Pohnpei as a defendant and since a suit against a person in his or her official capacity is treated as a suit against the entity that employs that officer, Pohnpei is, in effect, already a party-defendant when its Governor was sued in his official capacity. The court will therefore deny a motion to dismiss and give the plaintiffs leave to amend their complaint to add the State of Pohnpei as a defendant. Perman v. Ehsa, 18 FSM R. 432, 437-38 (Pon. 2012).

An amendment to add the state as a defendant was more one of form than one of substance because the State of Pohnpei was, in effect, already a party-defendant since the Governor had been sued in his official capacity and a suit against a Governor in his official capacity is treated as a suit against the State. The order permitting the plaintiffs to amend their complaints merely acknowledged that fact. Perman v. Ehsa, 18 FSM R. 452, 454 (Pon. 2012).

Since an answer is not a pleading for which a responsive pleading is required, a party filing an answer has only 20 days within which to amend its answer without seeking and obtaining either the leave of court or the written consent of the adverse party. The answering party cannot avoid Rule 15 by reserving the right to unilaterally amend its pleadings whenever it feels like it. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 495 (Chk. 2013).

If a party decides that it needs to assert an affirmative defense that was not pled in its answer, it may amend its answer as a matter of right only within 20 days of its answer. Otherwise, to amend its answer to add another affirmative defense, the party must seek and obtain either the leave of court or the adverse party's written consent. A party must adhere to Rule 15(a) if and when it wishes to assert an additional affirmative defense. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 496 (Chk. 2013).

Civil Procedure Rule 15(a) provides that leave to amend the complaint "shall be freely given when justice so requires." The rule's purpose is to allow maximum opportunity for each claim to be decided on the merits rather than on procedural technicalities. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 92 (Yap 2013).

In the absence of any apparent or declared reason, such as undue delay, bad faith or dilatory motive on the movant's part, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the amendment's allowance, or futility of amendment, leave to amend should, as the rule requires, be "freely given." People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 92 (Yap 2013).

A showing of undue delay, for example, does not mean that a court should deny leave to amend. Delay in seeking amendment is alone not sufficient to show bad faith when there is no evidence of a motive to harass or of bad faith and no motive for the movant to delay was shown or appears. Prejudice to the opposing party, not the moving party's diligence, is the crucial factor in determining whether to grant leave to amend the complaint. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 93 (Yap 2013).

In order to determine if the threat of prejudice is sufficient to deny leave to amend, the court will consider both parties' positions and the effect the request will have on them. This entails an inquiry into the hardship to the moving party if leave to amend is denied, the reasons for the moving party failing to include in the original pleading the material to be added, and the resulting injustice to the opposing party if leave to amend is granted. If the court is persuaded that no prejudice will accrue, the amendment should be allowed. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 93 (Yap 2013).

Although a court should liberally allow amended pleadings, it must deny a motion to amend a complaint if it is futile. Whether an amendment to a complaint would be futile is determined by whether the proposed amendment states a claim on which the FSM Supreme Court could grant relief. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 93 (Yap 2013).

A proposed amended complaint that narrows the possible reasons why a defendant failed to refloat a vessel should not prejudice the defendant because it narrows the scope of relevant discovery and the possible grounds for liability. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 93 (Yap 2013).

When the only dilatory motive that the defendants suggest is that the 9% prejudgement interest on any future judgment in this case will continue to accrue to the defendants' detriment but since a limitation of liability fund has been constituted, any judgment covered by that fund would not include any further prejudgment interest; when alter ego theories have been a part of this case since at least the second amended complaint, if not the first; and when the hardship to the plaintiffs if the corporate defendants are unable to pay a judgment is considerable, the court will, since amendment ought to be freely given, allow amendment to add the corporations' owners as defendants with conditions limiting discovery so as to mitigate any potential prejudicial delay to the existing defendants. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 93-94 (Yap 2013).

In the absence of any ground to include or reinstate a defendant whose earlier dismissal the plaintiffs had acquiesced to, the court cannot allow the plaintiffs to file an amended complaint reinstating the earlier dismissed defendant. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 94 (Yap 2013).

When no undue prejudice to the already appearing defendants is apparent, the court may allow the plaintiffs to amend its complaint to name a new defendant on the condition that the discovery sought from that defendant is limited. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 94 (Yap 2013).

When the plaintiff does not allege to have conducted any salvage operations or obtained any useful result, it would be futile for the plaintiff to amend its complaint to include a salvage claim because it would not state a claim for which the court could grant it relief. Futile amendments are not allowed. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 96 (Yap 2013).

An amended pleading, FSM Civ. R. 15(a), is designed to include matters occurring before the complaint was filed but either overlooked or not known at the time, while a supplemental pleading, FSM Civ. R. 15(d), is designed to cover matters occurring later but pertaining to the original cause. Smith v. Nimea, 19 FSM R. 163, 167 n.1 (App. 2013).

Civil Procedure Rule 15(b) permits issues tried by implied consent to be considered as amendments to the pleadings. Smith v. Nimea, 19 FSM R. 163, 174 n.5 (App. 2013).

Although a court should exercise its discretion liberally to allow amended pleadings, when a proposed amendment to a complaint would be futile because it still would not state a claim upon which the FSM Supreme Court could grant relief, the court may deny the motion to amend. Mori v. Hasiguchi, 19 FSM R. 222, 226 (Chk. 2013).

When the proposed amended complaint adding a claim for conspiracy does not allege any underlying torts, the amendment would be futile and the motion to amend would accordingly be denied. Mori v. Hasiguchi, 19 FSM R. 222, 226 (Chk. 2013).

While an amended pleading, once served, would render a prior pleading of no effect, if a court denies

a motion to amend a pleading, the prior pleading must remain as the operative pleading, as is. Mori v. Hasiguchi, 19 FSM R. 222, 226 (Chk. 2013).

When the court denies a plaintiff's motion to amend his complaint, his prior pleading remains in effect and the defendants must defend against it and the torts alleged in it. Mori v. Hasiguchi, 19 FSM R. 222, 226 (Chk. 2013).

Under Rule 15(c), whenever the claim or defense asserted in an amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. Rule 15(c) is based on the notion that once litigation involving particular conduct or a given transaction or occurrence has been instituted, the parties are not entitled to the protection of the statute of limitations against the later assertion by amendment of defenses or claims that arise out of the same conduct, transaction, or occurrence as set forth in the original pleading. Chuuk Health Care Plan v. Department of Educ., 19 FSM R. 435, 438-39 (Chk. 2014).

When, if claims for health insurance premium contributions due before March 16, 2006, had been included in the original complaint and if the FSM had asserted the six-year statute of limitations defense, the statutory defense would have barred their recovery, the proposed amended complaint's relation back to the original filing date of March 16, 2012, cannot revive those claims. The court will therefore permit the proposed amended complaint but bar the plaintiff from seeking any health insurance premium contributions due before March 16, 2006. Chuuk Health Care Plan v. Department of Educ., 19 FSM R. 435, 439 (Chk. 2014).

When the plaintiff's claim for damages to his car from a break-in were not tried by the parties' consent during the trial on the plaintiff's claim for failure to repair his car; when the break-in damages claim was not raised by the pleadings and admitting evidence about it would prejudice the defendant who had not had adequate notice that the issue would be tried; when excluding the evidence about the break-in would not prejudice the plaintiff; and when the break-in was not part of a common nucleus of operative fact with the defendant's alleged behavior in failing to properly repair the plaintiff's vehicle but represented an entirely new claim that the plaintiff could file against the defendant for failure to properly safeguard his property, all evidence that pertained to the alleged break-in would be excluded and not considered. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 466, 469-70 (Pon. 2014).

When the FSM's initial reliance on section 906(2) was in error but that mistake was merely a technical error in pleading since the catch-all cause of action under 24 F.S.M.C. 920 applied, and when granting leave to amend would not prejudice the defendants because the revised cause of action does not place any new facts in dispute, would not result in the need for additional discovery and would not otherwise delay the case's disposition, leave to amend the prayer for relief in four counts to seek a fine in the maximum amount of $100,000 under 24 F.S.M.C. 920 instead of $500,000 under 24 F.S.M.C. 906(2) will be granted. FSM v. Kuo Rong 113, 20 FSM R. 27, 33 (Yap 2015).

By its terms, Rule 15(b) applies after evidence has been introduced, either at an evidentiary hearing held in connection with a pretrial motion, in the course of trial, after the close of testimony, after the return of the verdict or entry of judgment, or on rehearing or on remand following an appeal. Pohnpei Transfer & Storage, Inc. v. Shoniber, 20 FSM R. 492, 496 (Pon. 2016).

Even if a Rule 15(b) motion were made after trial, the court could still permit the amendment of the pleadings despite the defendants' objection because if evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the action's merits will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence. Pohnpei Transfer & Storage, Inc. v. Shoniber, 20 FSM R. 492, 496-97 (Pon. 2016).

When the defendant was not prejudiced because, although someone was not named in a list in the complaint, the amount of his ticket was calculated into the damages set forth in the complaint; when, if the name of were added to the complaint, the damages amount would remain the same; when it is unlikely that a defendant will be prejudiced where the facts underlying a claim sought to be added are substantially similar to those underlying the original claim; when the name's omission in the complaint was an oversight; and when there is no apparent bad faith, leave to amend the complaint will be granted since mere delay is not enough of itself to bar an amendment. The amendment will relate back to the original pleading and will conform to the evidence as presented during trial. Pohnpei Transfer & Storage, Inc. v. Shoniber, 20 FSM R. 492, 497-98 (Pon. 2016).

Under Civil Procedure Rule 13(f), when a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment. Neth v. Peterson, 21 FSM R. 269, 270 (Pon. 2017).

The argument for allowing amendment is especially compelling when the omitted counterclaim is compulsory. Neth v. Peterson, 21 FSM R. 269, 270 (Pon. 2017).

Although the court must first look to FSM sources of law, when it has not previously interpreted Rule 13(f) or considered the aspects of Rule 15(a) and 15(c) as they relate to Rule 13(f), and when those aspects are identical to a U.S. rule, the court may look to U.S. sources for guidance in interpreting those aspects. Neth v. Peterson, 21 FSM R. 269, 271 n.1 (Pon. 2017).

The mere passage of time between an original filing and an attempted amendment is not a sufficient reason for denial of the motion. FSM Civil Procedure Rule 15(a) provides that a party may amend the party's pleadings by leave of court, and that this leave shall be freely given when justice so requires. Neth v. Peterson, 21 FSM R. 269, 271 (Pon. 2017).

Rules 13(f) and 15(a) are interpreted liberally, in line with the Rules' overall goal of resolving disputes, insofar as possible, on the merits and in a single judicial proceeding. Amendments under Rule 13(f) relate back to the original pleading under Rule 15(c) so long as the adverse party had adequate notice of the transactions forming a basis for the amended counterclaim. Neth v. Peterson, 21 FSM R. 269, 271 (Pon. 2017).

In a close case, the court would most probably adhere to the Rules' spirit that it is preferable that cases be decided on the merits rather than on procedural points, and grant leave to amend a pleading. Estate of Gallen v. Governor, 21 FSM R. 477, 484 & n.6 (Pon. 2018).

Ideally, a defendant, if it did not assert its affirmative defense in its original answer, should first move to amend the answer (if it had not already amended its answer as of right within twenty days of filing the original answer), and then once the amendment was granted, move for summary judgment on the affirmative defense. Estate of Gallen v. Governor, 21 FSM R. 477, 484 (Pon. 2018).

A party, seeking to amend its pleading, is expected to include the proposed amended pleading with its motion to amend. Otherwise, the court would not know what it is ruling on. Estate of Gallen v. Governor, 21 FSM R. 477, 485 (Pon. 2018).

Absent any apparent or declared reason, such as undue delay, bad faith, or dilatory motive on the movant's part, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the amendment's allowance, or futility of amendment, leave to amend should, and will, as Rule 15(a) requires, be freely given. Estate of Gallen v. Governor, 21 FSM R. 477, 485 (Pon. 2018).

Under Rule 15(a), a court should, and will, exercise its discretion liberally to allow amended pleadings when justice so requires. This is because Rule 15's purpose is to provide maximum opportunity for each

claim to be decided on the merits rather than on procedural technicalities. Estate of Gallen v. Governor, 21 FSM R. 477, 485 (Pon. 2018).

Undue prejudice to the opposing party, not the moving party's diligence, is the crucial factor in determining whether to grant leave to amend a pleading. Estate of Gallen v. Governor, 21 FSM R. 477, 485 (Pon. 2018).

A plaintiff's voluntary reduction, in his closing arguments, in damages sought from the defendant is a Rule 15(b) motion to amend his complaint to conform to the evidence, and, when there has been no objection, the court will grant the amendment. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 31 (Pon. 2018).

When the plaintiff's averments in his proposed first amended complaint do not cure the complaint's indispensable party problem, the best course is to dismiss this case without prejudice to any future litigation by all of the land's co-owners (whoever they then are), claiming that the defendants are trespassing on the land. Nicky v. Chuuk Public Utility Corp., 22 FSM R. 239, 243 (Chk. 2019).

– Pleadings – Counterclaims and Cross-Claims

When a party has mistakenly designated a counterclaim as a defense, the court, on such terms as justice requires, shall treat the pleading as if there had been a proper designation. Senda v. Semes, 8 FSM R. 484, 503 (Pon. 1998).

A counterclaim may not be directed solely against persons who are not already parties to the original action, but must involve at least one existing party. Island Dev. Co. v. Yap, 9 FSM R. 288, 290 n.1 (Yap 1999).

Civil Procedure Rule 13(h) provides that persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rule 19 and 20. Island Dev. Co. v. Yap, 9 FSM R. 288, 290 (Yap 1999).

A defendant is not required to obtain leave of court before naming additional defendants on its counterclaim, when the counterclaim is brought in the original answer, but although not required by Rule 13(h), the general practice is to obtain a court order to join an additional party. Island Dev. Co. v. Yap, 9 FSM R. 288, 291 (Yap 1999).

A pleading must state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim. Youngstrom v. NIH Corp., 11 FSM R. 60, 61 (Pon. 2002).

A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim and a pleading may be amended with leave of court to include a counterclaim when the counterclaim either matured or was acquired by the pleader after serving his pleading or when a pleader failed to set it up through oversight, inadvertence, or excusable neglect, or when justice requires. Youngstrom v. NIH Corp., 11 FSM R. 60, 62 (Pon. 2002).

A defendant's "cross-claim" against a plaintiff should properly be titled as a "counterclaim" and not a "cross-claim." Primo v. Semes, 11 FSM R. 324, 325 n.1 (Pon. 2003).

A cross-claim that sets out a legal conclusion and that does not provide a short and plain statement of the facts on which the legal conclusion rests, lacks sufficient factual allegations and a motion to dismiss it will be granted. Adams v. Island Homes Constr., Inc., 11 FSM R. 445, 449 (Pon. 2003).

When cases have been consolidated and a party to the consolidated case, files a "third party

complaint" against a party consolidated into the case it cannot actually be a third party complaint, regardless of what the "third party plaintiff" calls it, because a third party complaint is a device used to bring a non-party into a case. Claims against an opposing party are counterclaims, regardless of whether counsel has labeled them correctly. Claims against a co-party are cross-claims. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 625 n.1 (App. 2003).

A "third-party complaint" is actually a counterclaim when it is made against someone already a party because a third-party complaint is a device used to bring a non-party into a case. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 506 n.1 (App. 2005).

A defendants' "reply" to the plaintiff's reply to the defendants' counterclaims is not an authorized pleading and will be stricken since a "pleading" unauthorized under the civil procedure rules and practice may be stricken. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 284 (Chk. 2009).

A compulsory counterclaim is any claim which at the time of serving the pleading the pleader has against any opposing party if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 610, 612 (Yap 2009).

A claim against someone who is not an opposing party cannot be a counterclaim. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 610, 612 (Yap 2009).

A "counterclaim" against non-parties will be dismissed since a third-party complaint, not a counterclaim, is the proper vehicle for defendants to raise claims against non-parties. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 610, 612 (Yap 2009).

The legal standard for the dismissal of a counterclaim is the same as that for the dismissal of a complaint. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 610, 612 (Yap 2009).

A counterclaim may be dismissed as a matter of law for two reasons: 1) lack of a cognizable legal theory or 2) insufficient facts under a cognizable legal theory. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 610, 612-13 (Yap 2009).

An ad damnum clause that is properly considered as a part of the counterclaimants' prayer or demand for the relief sought under Rule 8(a)(3), and not as a part of the counterclaim's factual basis under Rule 8(a)(2), may be disregarded when testing the sufficiency of a counterclaim since the court will only award relief to which the party in whose favor it is rendered is entitled even if the party has not demanded such relief in the party's pleadings. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 610, 613 (Yap 2009).

A counterclaim cannot be dismissed simply because the counterclaimant has failed to state precisely all elements that give rise to the alleged legal basis for recovery; otherwise, a party's counterclaim could be lost by its attorney's failure to draft the counterclaim properly despite the counterclaim's potential validity and it would also effectively eliminate the "notice" pleading theory embedded in the Civil Procedure Rules. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 610, 613 (Yap 2009).

A defendant's request for a dismissal for a plaintiff's breach of contract is actually not a claim for dismissal, but rather a counterclaim as the defendant argues that the plaintiff breached the contract. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 642 (Kos. S. Ct. Tr. 2009).

A cross-claim is where one party can bring a claim against a co-party. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644 (Kos. S. Ct. Tr. 2009).

A counterclaim is a valid claim when it is a compulsory counterclaim because the counterclaim arose

out of the same transaction or occurrence that is the subject matter of the opposing party's claim. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644 (Kos. S. Ct. Tr. 2009).

Regardless of whether the pleadings have labeled them correctly, claims against an opposing party are counterclaims and claims against a co-party are cross-claims. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 107 n.3 (Pon. 2010).

A breach of contract counterclaim by loan guarantors against the bank would have a six-year limitation period. But, as that would have been a Civil Rule 13(a) compulsory counterclaim, the guarantors had to raise it in their earlier lawsuit or that claim was waived. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 9 (Pon. 2011).

When the only relief pleaded by the respondent in his answer that could possibly be considered a counterclaim was his prayer for attorney's fees and costs and when the eminent domain statute precludes this type of relief, even if this part of the respondent's prayer for relief is considered a counterclaim, it is a counterclaim that the statute clearly forbids and therefore should not hinder a dismissal under Rule 41(a)(2). In re Lot No. 029-A-16, 18 FSM R. 422, 424 (Chk. S. Ct. Tr. 2012).

Paragraphs in an answer that do not contain any factual allegations on which a claim for relief could be based but which, if carefully read in conjunction with the movants' cross-claim against the pleader, are an answer to the movants' own cross-claim and are not a new cross-claim by the pleader, and thus, a motion to dismiss the "cross-claim" in those paragraphs will be denied. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 494-95 (Chk. 2013).

Whether a lawsuit is brought in bad faith has no bearing on jurisdiction. The bad faith issue is better suited for the defendant's counter-claims. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 21 FSM R. 150, 155 (Pon. 2017).

Under Civil Procedure Rule 13(f), when a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment. Neth v. Peterson, 21 FSM R. 269, 270 (Pon. 2017).

The argument for allowing amendment is especially compelling when the omitted counterclaim is compulsory. Neth v. Peterson, 21 FSM R. 269, 270 (Pon. 2017).

Although the court must first look to FSM sources of law, when it has not previously interpreted Rule 13(f) or considered the aspects of Rule 15(a) and 15(c) as they relate to Rule 13(f), and when those aspects are identical to a U.S. rule, the court may look to U.S. sources for guidance in interpreting those aspects. Neth v. Peterson, 21 FSM R. 269, 271 n.1 (Pon. 2017).

Rules 13(f) and 15(a) are interpreted liberally, in line with the Rules' overall goal of resolving disputes, insofar as possible, on the merits and in a single judicial proceeding. Amendments under Rule 13(f) relate back to the original pleading under Rule 15(c) so long as the adverse party had adequate notice of the transactions forming a basis for the amended counterclaim. Neth v. Peterson, 21 FSM R. 269, 271 (Pon. 2017).

When, if the plaintiffs' "causes of action" were not good defenses but rather separate claims, they would have been compulsory counterclaims that would have had to have been raised as counterclaims in the answer. They cannot sit idly by while the bank's promissory note claim goes to a default judgment and then later raise the compulsory counterclaims as defenses warranting relief in an independent action. Setik v. Mendiola, 21 FSM R. 537, 558 (App. 2018).

Spousal and child support and child visitation and custody rights are, under Chuuk State Supreme Court Civil Procedure Rule 13(a), compulsory counterclaims that must be pled in the earlier state court

divorce action, if they have not been already pled there. O'Sonis v. O'Sonis, 22 FSM R. 268, 270 (Chk. 2019).

Any claim which is filed as an independent, separate action by one spouse during the pendency of a prior claim filed by the other spouse and which may be denominated a compulsory counterclaim under Rule 13(a), may not be independently prosecuted during the pendency of the prior action but must be dismissed with the leave to file it as a counterclaim in the prior action or stayed until final judgment has been entered in that action. O'Sonis v. O'Sonis, 22 FSM R. 268, 270 (Chk. 2019).

The failure to assert counterclaims in the case where they belong puts the counterclaims at risk that they will all be barred upon the entry of judgment in the case in which they were required to be pled. O'Sonis v. O'Sonis, 22 FSM R. 268, 270 (Chk. 2019).

– Pleadings – Impleader

Any party may move to strike a third-party claim, or for its severance or separate trial. The decision whether to sever a third-party complaint is left to the sound discretion of the trial court. In determining whether to sever a third-party complaint, a court considers whether continued joinder of claims will unduly complicate or delay the primary action. International Trading Corp. v. Ikosia, 7 FSM R. 17, 18 (Pon. 1995).

Where resolution of issues in a third-party complaint is unnecessary to the resolution of the primary claim and will result in a delay in the resolution of the primary claim, and the answer to the third-party complaint has added more complex issues, unrelated to the primary action, a motion to sever may be granted. International Trading Corp. v. Ikosia, 7 FSM R. 17, 19 (Pon. 1995).

A third-party due process claim against the Land Commission will be dismissed when, although the Land Commission was named as a third-party defendant in the caption, it was never served with a Third-Party Complaint and Summons in accordance with the Kosrae Civil Procedure Rules. Jonas v. Paulino, 9 FSM R. 519, 521-22 (Kos. S. Ct. Tr. 2000).

Third-party practice under Rule 14 is the procedure by which a defendant can bring in as a third-party defendant one alleged to be liable to him for all or part of plaintiff's claim against him. Rule 14 is intended to provide a mechanism for disposing of multiple claims arising from a single set of facts in one action expeditiously and economically. On the other hand, Rule 19(a) is directed to factually complex, multi-party litigation where the joinder issue involves an analysis of greater subtlety. Kosrae v. Worswick, 9 FSM R. 536, 539 (Kos. 2000).

Rule 14 allows a defendant to bring in third parties by causing a summons and complaint to be served upon persons not a party to the action who are or may be liable to the defendant for all or part of the plaintiff's claim against the defendant, but if those persons are added as parties plaintiff in the action, then they are parties, not third parties, and no third party complaint could possibly be brought against them. Ifenuk v. FSM Telecomm. Corp., 11 FSM R. 201, 204 (Chk. 2002).

If persons the defendant seeks to add as third parties become plaintiffs, then the "claims" the defendant seeks to bring against them can properly be raised as defenses to the plaintiffs' action, and a motion for leave to file a third party complaint against them must be denied. Ifenuk v. FSM Telecomm. Corp., 11 FSM R. 201, 204 (Chk. 2002).

When cases have been consolidated and a party to the consolidated case, files a "third party complaint" against a party consolidated into the case it cannot actually be a third party complaint, regardless of what the "third party plaintiff" calls it, because a third party complaint is a device used to bring a non-party into a case. Claims against an opposing party are counterclaims, regardless of whether counsel has labeled them correctly. Claims against a co-party are cross-claims. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 625 n.1 (App. 2003).

A "third-party complaint" is actually a counterclaim when it is made against someone already a party because a third-party complaint is a device used to bring a non-party into a case. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 506 n.1 (App. 2005).

A "counterclaim" against non-parties will be dismissed since a third-party complaint, not a counterclaim, is the proper vehicle for defendants to raise claims against non-parties. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 610, 612 (Yap 2009).

A plaintiff who did not assert a cause of action against a person later named as a third-party defendant by a defendant-third-party plaintiff may move to strike the third-party claim, or for its severance, or separate trial. Mori v. Hasiguchi, 17 FSM R. 630, 643 (Chk. 2011).

A plaintiff's motion to dismiss a third-party defendant is a motion to strike the defendants' third-party claim against that party, but whenever a motion to dismiss or to strike, or to vacate, or for a judgment on the pleadings, or for a summary judgment actually challenges the desirability of the impleader, it will be treated accordingly. Mori v. Hasiguchi, 17 FSM R. 630, 643 (Chk. 2011).

When a default has been entered with a default judgment pending the determination of damages, it is inappropriate for the court to allow a third party complaint to be filed or to give declaratory relief involving a third party not named as a defendant in the matter. Lee v. FSM, 18 FSM R. 106, 108 (Pon. 2011).

If it is filed no more than 10 days after the original answer is filed, a defending party may, without the leave of the court, cause a summons and third-party complaint be served on a person not party to the case who may be liable to the third party plaintiff for all or part of the plaintiff's claim. If the third-party complaint is not filed within ten days after the defendant's original answer is served, then the defendant must ask the trial court for leave to implead, and the decision whether to implead a third-party defendant is addressed to the trial court's sound discretion. Lee v. FSM, 18 FSM R. 106, 108 (Pon. 2011).

It is the generally accepted rule that petitions to add a third party to a case once a trial is about to begin, or once it has begun, is untimely and will be denied, and that any efforts to implead a third party after the entry of default is also untimely and the request is moot. Lee v. FSM, 18 FSM R. 106, 108 (Pon. 2011).

– Pleadings – More Definite Statement

When a pleading is alleged to be too vague and ambiguous for the adverse party to respond the appropriate motion is one for a more definite statement, not one to strike. Chen Ho Fu v. Salvador, 7 FSM R. 306, 309-10 (Pon. 1995).

In view of the liberal discovery rules and procedures available, motions for more definite statement are generally disfavored, and are granted, not if a better affirmative pleading would enable the movant to provide a more enlightening or accurate response, but only if the pleadings addressed are so vague that they cannot be responded to. Whether such a motion should be granted is generally a matter within the court's discretion. FSM Dev. Bank v. Nait, 7 FSM R. 397, 399 (Pon. 1996).

When the plaintiff's complaint seems to plead fraud, and a defendant moves to dismiss for failure to state a claim but the argument is that this claim should be dismissed because it was not plead with particularity, the court may treat that as a request for a more definite statement, grant the request, and require the plaintiff to amend its complaint to state with greater clarity which facts it believes constitute fraud. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 92 (Pon. 2003).

If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading and the motion shall point out the defects complained of and the

details desired, but, in view of the liberal discovery rules and procedures available, motions for more definite statement are generally disfavored. FSM v. Kana Maru No. 1, 14 FSM R. 368, 374 (Chk. 2006).

Motions for a more definite statement are granted only if the pleadings addressed are so vague that they cannot be responded to, not if a better affirmative pleading would enable the movant to provide a more enlightening or accurate response. Therefore, if a pleading meets the requirements of Rule 8 and fairly notifies the opposing party of the nature of the claim, a motion for more definite statement will not be granted. FSM v. Kana Maru No. 1, 14 FSM R. 368, 374 (Chk. 2006).

Rule 12(e) is designed to strike at unintelligibility rather than want of detail. A motion for a more definite statement should not be used to test an opponent's case by requiring him to allege certain facts or retreat from his allegations and it should not be granted merely to require more evidentiary detail that may be the subject of discovery. FSM v. Kana Maru No. 1, 14 FSM R. 368, 374 (Chk. 2006).

When a due process allegation is not so vague and ambiguous that the government cannot frame a response to it and when the government asks the court to require the defendants to inform it of which defendants were harmed, what due process rights they were deprived of, and which policy-making official(s) caused this deprivation, and when these are details that the government can seek to learn through discovery, the government's motion for a more definite statement will be denied. FSM v. Kana Maru No. 1, 14 FSM R. 368, 375 (Chk. 2006).

When the defendant asks that the plaintiff be required to add to his pleadings further allegations about the dates his pay was withheld, what pay periods were covered, how his pay was withheld from him, how the defendant authorized and executed the withholding, and what other employees were treated differently from him before it makes an answer, the motion will be denied because, while this information may be useful as the litigation progresses, its absence does not appear to leave the complaint so vague that the defendant cannot frame a response. Aunu v. Chuuk, 18 FSM R. 48, 51 (Chk. 2011).

Rule 12(e) is designed to strike at unintelligibility rather than want of detail. A motion for a more definite statement should not be used to test an opponent's case by requiring him to allege certain facts or retreat from his allegations and it should not be granted merely to require more evidentiary detail that may be the subject of discovery. Aunu v. Chuuk, 18 FSM R. 48, 51 (Chk. 2011).

– Pleadings – Striking Pleadings

Where a plaintiff files an amended complaint without leave of court and no motion for leave was ever filed the court may order the amended complaint stricken from the record. An entry of default based on such stricken amended complaint will be set aside. Berman v. FSM Supreme Court, 6 FSM R. 109, 112-13 (Pon. 1993).

Where a wife is not a party to an action the court may strike from the complaint references to harm to her because she is not a party to the litigation and therefore damages for harm to her cannot be obtained as part of the action. It would be unfair to allow the plaintiff to seek damages for harm to his wife while maintaining that she is a non-party who is not subject to the pleading, discovery, and evidentiary rules that a party is bound by. McGillivray v. Bank of the FSM (I), 6 FSM R. 404, 407 (Pon. 1994).

Any party may move to strike a third-party claim, or for its severance or separate trial. The decision whether to sever a third-party complaint is left to the sound discretion of the trial court. In determining whether to sever a third-party complaint, a court considers whether continued joinder of claims will unduly complicate or delay the primary action. International Trading Corp. v. Ikosia, 7 FSM R. 17, 18 (Pon. 1995).

A court has inherent power to strike those portions of a pretrial statement that do not comport with its order for pretrial statements. Damarlane v. United States, 7 FSM R. 167, 170 (Pon. 1995).

When a pleading is alleged to be too vague and ambiguous for the adverse party to respond the appropriate motion is one for a more definite statement, not one to strike. Chen Ho Fu v. Salvador, 7 FSM R. 306, 309-10 (Pon. 1995).

Upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or immaterial matter. Rule 12(f) is a useful vehicle for disposing of both legally and factually deficient defenses. The former defenses are those which would not under the facts alleged, constitute a valid defense to the action, while the latter are irrelevant defenses appropriately disposed of under that portion of Rule 12(f) dealing with immaterial matter. Senda v. Semes, 8 FSM R. 484, 494-95 (Pon. 1998).

Motions to strike under Rule 12(f) are viewed with disfavor and are infrequently granted. Medabalmi v. Island Imports Co., 10 FSM R. 32, 35 (Chk. 2001).

Motions to strike redundant matter under Rule 12(f) are viewed with disfavor and are infrequently granted because the mere presence of redundant matter is not usually a sufficient ground and because a motion to strike for redundancy ought not to be granted in the absence of a clear showing of prejudice to the movant. Moses v. M.V. Sea Chase, 10 FSM R. 45, 50 (Chk. 2001).

A court may order stricken from any pleading any redundant matter. Generally, courts will strike a claim as redundant when it essentially repeats another claim in the same complaint. Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM R. 112, 115 (Kos. 2001).

Rule 12(f) motions to strike are directed toward a complaint's internal redundancy, not toward non-internal redundancy where the claim is redundant to one in a different action. Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM R. 112, 115 (Kos. 2001).

The relief requested in the motion to strike a claim in a complaint on the ground that it is the same as a claim in the amended complaint in different civil action is more appropriately granted through consolidation of both actions because, since the claims are the same, the actions involve a common question of law or fact. Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM R. 112, 115-16 (Kos. 2001).

A motion to strike a memorandum supporting a motion and a response to an opposition is not a motion to strike matter from pleadings subject to Rule 12(f), but rather, falls under the general motion practice of Rule 7(b) which provides that an application to the court for an order shall be by motion and shall set forth the relief or order sought. Adams v. Island Homes Constr., Inc., 10 FSM R. 159, 161 (Pon. 2001).

Late filed responsive pleadings will not be stricken when the plaintiffs have failed to show any prejudice from defendants' failure to respond within 20 days of service of the plaintiffs' complaint and when the policy of deciding cases on the merits outweighs the prejudice to plaintiffs, but the defendants will be required to amend their responsive pleadings and file responses to plaintiffs' complaint that comply with Rule 8(b). Carlos Etscheit Soap Co. v. Gilmete, 10 FSM R. 436, 439-40 (Pon. 2001).

A motion to strike amended pleadings and evidence concerning it will be denied when the court has determined that justice required amendment of the pleadings and that the presentation of the action's merits would be subserved thereby. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 8 (Pon. 2004).

Rule 12(f) motions to strike may be used to strike from any pleading any insufficient defense. They cannot be used to "strike" legally insufficient claims, for which Rule 12(b)(6) is the appropriate vehicle. FSM v. Kana Maru No. 1, 14 FSM R. 368, 374 (Chk. 2006).

A Rule 12(f) motion to strike is neither an authorized nor a proper way to procure the dismissal of all or of a part of a complaint, or a counterclaim, or to strike affidavits. FSM v. Kana Maru No. 1, 14 FSM R. 368, 374 (Chk. 2006).

If the court is persuaded that no definable class is present, it may have the class allegations stricken and allow the action to proceed on an individual basis. Thus when no definable class is present for the infliction of emotional distress cause of action, the court will order that the complaint be amended to eliminate allegations that the named plaintiffs represent absent persons for any infliction of emotional distress claims and the named plaintiffs may proceed on their individual infliction of emotional distress claims, if they so choose. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 160-61 (Yap 2007).

A defendant who is not an attorney admitted to practice before the court, may not answer on anyone's behalf but his own, and his answer will be stricken to the extent that it purports to be on other defendants' behalf. Berman v. Rosario, 15 FSM R. 429, 431 (Pon. 2007).

A defendants' "reply" to the plaintiff's reply to the defendants' counterclaims is not an authorized pleading and will be stricken since a "pleading" unauthorized under the civil procedure rules and practice may be stricken. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 284 (Chk. 2009).

Under Civil Procedure Rule 12(f), the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 186 (Pon. 2010).

Since an allegation that a Congressman who signed the congressional committee report recommending that Congress reject the plaintiff's successor access agreement had a conflict of interest because he or his relatives own a competing agency on Pohnpei, is immaterial and impertinent to the question of a statute's constitutionality and may also be scandalous, that allegation will be stricken. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 186 (Pon. 2010).

A plaintiff who did not assert a cause of action against a person later named as a third-party defendant by a defendant-third-party plaintiff may move to strike the third-party claim, or for its severance, or separate trial. Mori v. Hasiguchi, 17 FSM R. 630, 643 (Chk. 2011).

A plaintiff's motion to dismiss a third-party defendant is a motion to strike the defendants' third-party claim against that party, but whenever a motion to dismiss or to strike, or to vacate, or for a judgment on the pleadings, or for a summary judgment actually challenges the desirability of the impleader, it will be treated accordingly. Mori v. Hasiguchi, 17 FSM R. 630, 643 (Chk. 2011).

Even if pleadings or other filings are "ghostwritten" there is no authority that a ghostwritten filing must be stricken. The usual result would be that the court would no longer give the pro se litigant the leeway normally given unrepresented lay parties and would require either that the ghostwriter file an appearance or that the ghostwriting attorney's identity be disclosed. In re Sanction of Sigrah, 19 FSM R. 305, 313 (App. 2014).

Rule 12(f) allows striking from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter, but neither a motion to dismiss nor a motion to quash service of process is a pleading. Thus, a party cannot move under Rule 12(f) to strike a motion to dismiss or other Rule 12(b) motion, or any motion. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 450 (Pon. 2018).

Motions to strike pleadings under Rule 12(f) are viewed with disfavor and are rarely granted. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 451 (Pon. 2018).

A motion to strike a memorandum supporting an opposition is not a Rule 12(f) motion to strike matter from pleadings, but rather falls under the general motion practice of Rule 7(b), which provides that an application to the court for an order shall be by motion and shall set forth the relief or order sought. Hartmann v. Department of Justice, 21 FSM R. 468, 472 n.1 (Chk. 2018).

– Pleadings – Supplemental

A court has discretion to determine whether it is just to allow a party to serve additional, supplemental pleadings upon an opposing party based on happenings since the date of the pleading sought to be supplemented. Damarlane v. Pohnpei State Court, 6 FSM R. 561, 563 (Pon. 1994).

Where a party has obtained all the relief he originally requested it is not just for a court to allow that party to supplement his pleadings to seek additional relief because he is dissatisfied with the relief he received. Damarlane v. Pohnpei State Court, 6 FSM R. 561, 563 (Pon. 1994).

Under Rule 15(d) a court may, upon reasonable notice and upon such terms as are just, permit the moving party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Herman v. Municipality of Patta, 16 FSM R. 167, 170 (Chk. 2008).

An amended pleading is designed to include matters occurring before the filing of the complaint but either overlooked or not known at the time. A supplemental pleading, however, is designed to cover matters subsequently occurring but pertaining to the original cause. Herman v. Municipality of Patta, 16 FSM R. 167, 170 (Chk. 2008).

When an FSM court has not previously construed certain aspects of pleading practice that are controlled by FSM procedural rules that are identical or similar to U.S. rules, the court may consult U.S. sources for guidance. Herman v. Municipality of Patta, 16 FSM R. 167, 171 n.4 (Chk. 2008).

While leave to permit supplemental pleading is favored, it cannot be used to introduce a separate, distinct and new cause of action. A supplemental pleading is designed to obtain relief along the same lines, pertaining to the same cause, and based on the same subject matter or claim for relief, as set out in the original pleading. Herman v. Municipality of Patta, 16 FSM R. 167, 171 (Chk. 2008).

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

A suit that was filed after the complaint was filed in this case is not part of the plaintiff's claims in this case since the plaintiff never moved for, or was granted leave to, file a supplemental pleading under Civil Rule 15(d). Mori v. Hasiguchi, 17 FSM R. 630, 641 (Chk. 2011).

An amended pleading is designed to include matters occurring before the filing of the complaint but either overlooked or not known when the original pleading was filed, while a supplemental pleading is designed to cover matters subsequently occurring but pertaining to the original cause. The amendment of pleadings is governed by Civil Procedure Rule 15(a) (and in some instances, 15(b)), while Rule 15(d) governs supplemental pleadings. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 315 (Yap 2012).

Leave to permit supplemental pleading is favored although it cannot be used to introduce a separate, distinct and new cause of action. A supplemental pleading is designed to obtain relief along the same lines, pertaining to the same cause, and based on the same subject matter or claim for relief, as set out in the original pleading. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 315 (Yap 2012).

An amended pleading, FSM Civ. R. 15(a), is designed to include matters occurring before the complaint was filed but either overlooked or not known at the time, while a supplemental pleading, FSM

Civ. R. 15(d), is designed to cover matters occurring later but pertaining to the original cause. Smith v. Nimea, 19 FSM R. 163, 167 n.1 (App. 2013).

– Pleadings – With Particularity

Rule 9(b) requires that in allegations of fraud that the circumstances constituting the fraud shall be stated with particularity. The extent of the particularity is guided by FSM Civil Rule 8(a) which requires a short and plain statement of the claim. Pohnpei v. Kailis, 6 FSM R. 460, 462 (Pon. 1994).

When pleading fraud the pleader must state the time, place, and content of the false misrepresentation, the fact misrepresented and what was obtained as a consequence of the fraud. Pacific Agri-Products, Inc. v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 291, 293 (Pon. 1995).

The extent of the particularity required when pleading fraud is guided by FSM Civil Rule 8(a), which requires a "short and plain statement of the claim." Chen Ho Fu v. Salvador, 7 FSM R. 306, 309 (Pon. 1995).

In all averments of fraud the circumstances constituting fraud must be stated with particularity. Medabalmi v. Island Imports Co., 10 FSM R. 32, 35 (Chk. 2001).

Any proposed amended complaint seeking to add a civil fraud charge against a defendant must state the circumstances constituting fraud with particularity. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 333 (Pon. 2001).

Rule 9(b) requires that in allegations of fraud, the circumstances constituting the fraud be stated with particularity. The extent of particularity requires a short and plain statement of the claim. When pleading fraud, the pleader must state the time, place, and content of the false misrepresentation, the fact misrepresented, and what was obtained as a consequence of the fraud. Kinere v. Sigrah, 13 FSM R. 562, 567 (Kos. S. Ct. Tr. 2005).

When the plaintiff has not satisfied the procedural requirements for pleading fraud because she has failed to state the time, place and content of the false misrepresentation made by the defendants, the fraud cause of action must fail due to the lack of pleading with particularity as required by Rule 9(b). Kinere v. Sigrah, 13 FSM R. 562, 567 (Kos. S. Ct. Tr. 2005).

There are a few matters which must be specifically pleaded or pled with particularity – the circumstances constituting fraud or mistake, and special damage. FSM v. Kana Maru No. 1, 14 FSM R. 368, 375 (Chk. 2006).

In all averments of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity, although a person's malice, intent, knowledge, or other condition of mind may be averred generally. Dereas v. Eas, 14 FSM R. 446, 458 (Chk. S. Ct. Tr. 2006).

The circumstances constituting fraud must be stated with particularity. Mori v. Hasiguchi, 17 FSM R. 630, 638 (Chk. 2011).

A party cannot, by raising a new fraud claim in a summary judgment opposition, bypass the Rule 9(b) provision that the circumstances constituting fraud must be pled with particularity and effect a de facto amendment to its pleading. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 586 (Pon. 2011).

A party averring fraud or mistake must plead the circumstances constituting fraud or mistake with particularity. The extent of particularity is governed by Rule 8(a). Sorech v. FSM Dev. Bank, 18 FSM R. 151, 158 (Pon. 2012).

Rule 9(b) requires that, in allegations of fraud, the circumstances constituting the fraud must be pled

with particularity. When fraud is alleged, particularity is a pleading requirement that applies with equal force to independent actions brought under Rule 60(b). Setik v. Mendiola, 21 FSM R. 537, 556 (App. 2018).

In a claim for fraud, the pleader must state the time, place, and content of the false misrepresentation, the fact misrepresented, and what was obtained or given up as a consequence of the fraud. FSM v. Mikel, 22 FSM R. 33, 37 (Chk. 2018).

When alleging with the required particularity the circumstances constituting fraud, a plaintiff must identify particular statements and actions and specify why they are fraudulent. Conclusory allegations will not satisfy the requirement to plead with particularity and will subject the pleader to dismissal. Thus, someone pleading fraud should state the time, place, and content of the misrepresentation, the fact misrepresented, and what was obtained as a consequence of the fraud. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 202 (Pon. 2019).

A complaint does not plead a fraud cause of action with the requisite particularity when it does not identify any misrepresentation that a defendant made to the plaintiff with the intent to induce action (or non-action) by the plaintiff, and which then reasonably induced that action (or non-action) by the plaintiff, to the plaintiff's detriment and when, at most, it alleges misrepresentations made to government agencies with the intent to induce non-action by those agencies. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 202 (Pon. 2019).

Civil Procedure Rule 9(b) requires that in allegations of fraud that the circumstances constituting the fraud must be stated with particularity, and the extent of this particularity is guided by Rule 8(a), which requires a short and plain statement of the claim. Panuelo v. Sigrah, 22 FSM R. 341, 360-61 (Pon. 2019).

When alleging fraud, a plaintiff must state with particularity the circumstances constituting fraud and must identify particular statements and actions and specify why they are fraudulent. Conclusory allegations do not satisfy the requirements of Rule 9(b) and subject the pleader to dismissal. Panuelo v. Sigrah, 22 FSM R. 341, 361 (Pon. 2019).

In all averments of fraud the circumstances constituting fraud must be stated with particularity. This requirement to plead fraud with particularity includes not only a plaintiff pleading a fraud claim in its complaint, but also a defendant pleading fraud as an affirmative defense in its answer. Macayon v. FSM, 22 FSM R. 544, 555 (Chk. 2020).

Unlike most other affirmative defenses, fraud is an affirmative defense that must be pled with particularity. Defendants must satisfy Rule 9(b) when they plead affirmative defenses sounding in fraud. Macayon v. FSM, 22 FSM R. 544, 555 (Chk. 2020).

When an FSM court has not previously construed whether Rule 9(b) applies to affirmative defenses, an FSM civil procedure rule that is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting or applying the FSM rule. Macayon v. FSM, 22 FSM R. 544, 555 n.9 (Chk. 2020).

Pleading fraud without more as an affirmative defense does not meet the particularity requirements of Rule 9(b). A defendant who alleges no facts to support its conclusory statement of "fraud" as an affirmative defense, wholly fails to satisfy the heightened pleading standard set forth by Rule 9(b), and it will be stricken accordingly. Macayon v. FSM, 22 FSM R. 544, 555 (Chk. 2020).

Fraud, unlike most other affirmative defenses, is an affirmative defense that must be pled with particularity. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 605 (Pon. 2020).

– Res Judicata

Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in the that action. Ittu v. Charley, 3 FSM R. 188, 190 (Kos. S. Ct. Tr. 1987).

Under common law res judicata principles, an order of dismissal with prejudice bars reassertion of the dismissed claim at a later date. Ittu v. Charley, 3 FSM R. 188, 191 (Kos. S. Ct. Tr. 1987).

A judgment of a court having jurisdiction of the parties and of the subject matter operates as res judicata, in the absence of fraud or collusion, even if obtained upon a default. Ittu v. Charley, 3 FSM R. 188, 191 (Kos. S. Ct. Tr. 1987).

The need for finality of judgment, which is the inspiration of the res judicata doctrine, exists within the FSM. Ittu v. Charley, 3 FSM R. 188, 191 (Kos. S. Ct. Tr. 1987).

Judgment entered pursuant to compromise and settlement is treated as a judgment on the merits barring any other action for the same cause. Truk v. Robi, 3 FSM R. 556, 564 (Truk S. Ct. App. 1988).

A fundamental principle of the common law, traditionally referred to in common law jurisdictions as res judicata, is that once judgment has been issued and the appeal period has expired or the decision is affirmed on appeal, the parties are precluded from challenging that judgment or from litigating any issues that were or could have been raised in that action. United Church of Christ v. Hamo, 4 FSM R. 95, 106 (App. 1989).

The FSM Supreme Court normally will refuse to review the correctness of an earlier Trust Territory High Court judgment, which has become final through affirmance on appeal or through lack of a timely appeal, and claims that the earlier judgment is ill-reasoned, unfair or even beyond the jurisdiction of the High Court typically will not be sufficient to escape the doctrine of res judicata. United Church of Christ v. Hamo, 4 FSM R. 95, 107 (App. 1989).

The determination of jurisdiction itself normally qualifies for protection under the common law principle of res judicata, requiring a second court to presume that the court which issued the judgment did properly exercise its own jurisdiction, but plain usurpation of power by a court which wrongfully extends its jurisdiction beyond the scope of its authority, is outside of the doctrine and does not qualify for res judicata protection. United Church of Christ v. Hamo, 4 FSM R. 95, 107-08 (App. 1989).

In light of the Trust Territory High Court's insistence on maintaining control over cases within the Federated States of Micronesia in disregard of Secretarial Order 3039 and to the exclusion of the new constitutional courts, its characterizations of Joint Rule No. 1 as "simply a memorandum" and of the words "active trial" in Secretarial Order 3039 as merely "administrative guidance," its acceptance of appeals after it was precluded from doing so by Secretarial Order 3039, its decision of appeals after Secretarial Order 3039 was terminated and its continued remand of cases to the High Court trial division for further action even after November 3, 1986, there can be no doubt that for purposes of res judicata analysis, the High Court was a court lacking capacity to make an adequately informed determination of a question concerning its own jurisdiction. United Church of Christ v. Hamo, 4 FSM R. 95, 118 (App. 1989).

Although final judgment in a case has been entered by the Trust Territory High Court, because any effort by a party to have the High Court consider its own jurisdiction would have been futile, it is procedurally fair to later afford the party an opportunity to question that jurisdiction. United Church of Christ v. Hamo, 4 FSM R. 95, 118-19 (App. 1989).

Where the Trust Territory High Court's exercise of jurisdiction was a manifest abuse of authority, allowing the judgment of the High Court to stand would undermine the decision-making guidelines and policies reflected in the judicial guidance clauses of the national and state constitutions and would thwart the efforts of the framers of the Constitution to reallocate court jurisdiction within the Federated States of

Micronesia by giving local decision-makers control over disputes concerning ownership of land. United Church of Christ v. Hamo, 4 FSM R. 95, 119 (App. 1989).

Decisions regarding res judicata and the transitional activities of the Trust Territory High Court typically should be made on the basis of larger policy considerations rather than the equities lying with or against a particular party. United Church of Christ v. Hamo, 4 FSM R. 95, 120 (App. 1989).

Actions of the Trust Territory High Court taken after the establishment of functioning constitutional courts in the Federated States of Micronesia, and without a good faith determination after a full and fair hearing as to whether the "active trial" exception permitted retention of the cases, were null and void, even though the parties failed to object, because the High Court was without jurisdiction to act and its conduct constituted usurpation of power. United Church of Christ v. Hamo, 4 FSM R. 95, 122 (App. 1989).

A party is precluded from rearguing, under another theory of liability, a claim it has already pursued to a final adjudication. Berman v. FSM Supreme Court, 6 FSM R. 109, 112 (Pon. 1993).

The doctrine of merger holds that a plaintiff cannot maintain an action on a claim or part of a claim for which he has already recovered a valid final judgment since the original claim becomes merged in the judgment and thereafter plaintiff's rights are upon the judgment, not the original claim. Mid-Pacific Constr. Co. v. Semes (II), 6 FSM R. 180, 184 & n.2 (Pon. 1993).

Res judicata does not apply when different land is involved than the previous case and only one of the parties is the same. Dobich v. Kapriel, 6 FSM R. 199, 201 (Chk. S. Ct. Tr. 1993).

The doctrine of res judicata is recognized in the FSM. The primary reason for its value is repose. The general rule is that a final decision on the "merits" of a claim bars a subsequent action on that same claim or any part thereof, including issues which were not but could have been raised as part of the claim. A plaintiff must raise his entire "claim" in one proceeding. "Claim" is defined to cover all the claimant's rights against the particular defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose. Maruwa Shokai Guam, Inc. v. Pyung Hwa 31, 6 FSM R. 238, 241 (Pon. 1993).

A claim for damages not proven at trial is not renewable at some later point in a different proceeding since res judicata clearly applies to the failed claim. Wito Clan v. United Church of Christ, 6 FSM R. 291, 292 (App. 1993).

In some cases failure to join an indispensable party may subject a judgment to collateral attack, but failure to join a necessary party will not. A necessary party is one who has an identifiable interest in the action and should normally be made a party to the lawsuit, but whose interests are separable from the rest of the parties or whose presence cannot be obtained; whereas an indispensable party is one to whom any judgment, if effective, would necessarily affect his interest, or would, if his interest is eliminated, constitute unreasonable, inequitable, or impractical relief. Nahnken of Nett v. United States (III), 6 FSM R. 508, 517 (Pon. 1994).

Where land is not public land and where the Land Commission and TT High Court had jurisdiction to adjudicate land claims even over public lands because the authorized adjudicatory body for public lands had not yet been created the TT High Court's land adjudication will have res judicata effect. Nahnken of Nett v. United States (III), 6 FSM R. 508, 518 (Pon. 1994).

Only truly exceptional cases warrant an exception to the normal presumption of res judicata, and such exceptions are to be confined within narrow limits. Where there is no evidence a TT High Court judgment was obtained unfairly or worked a serious injustice an FSM court cannot grant relief from it. Nahnken of Nett v. United States (III), 6 FSM R. 508, 519 (Pon. 1994).

FSM courts are not bound to follow the precedents or reasoning of the TT High Court in deciding cases, but must respect the resolution or outcome of a case as between the parties and subject matter of the particular action adjudicated absent constitutional defect or obvious injustice such as a plain usurpation of power. Nahnken of Nett v. United States (III), 6 FSM R. 508, 519-20 (Pon. 1994).

For a matter to be considered adjudged so that the doctrine of res judicata is applicable, there must be an existing, final judgment that has been decided on the merits without fraud or collusion by a court or tribunal of competent jurisdiction. The doctrine bars any further litigation of the same issues between the same parties or anyone claiming under those parties. Ungeni v. Fredrick, 6 FSM R. 529, 531 (Chk. S. Ct. App. 1994).

The decisions of the Land Commission are not final judgments for purposes of res judicata until after the time for appeal from a determination of ownership has expired without an appeal or after a properly taken appeal has been determined. Once the trial court granted a trial de novo on the question of ownership the Land Commission's determination of ownership ceased to exist for purposes of res judicata. Ungeni v. Fredrick, 6 FSM R. 529, 531 (Chk. S. Ct. App. 1994).

Under the doctrine of res judicata a judgment entered in a cause of action conclusively settles that cause of action as to all matters that were or might have been litigated and adjudged therein. The doctrine exists to ensure efficient litigation and use of judicial resources, and to promote the reliability and certainty of judgments. Berman v. FSM Supreme Court (II), 7 FSM R. 11, 16 (App. 1995).

While the doctrine of res judicata formally addresses situations involving prior and subsequent lawsuits, its reasoning and purpose apply with equal force where a litigant attempts to revisit an earlier phase of a lawsuit that has already been adjudged. Berman v. FSM Supreme Court (II), 7 FSM R. 11, 16 (App. 1995).

While, as a general rule, res judicata applies only to parties, and their privies, to an earlier proceeding, a Torrens system land registration Certificate of Title is, by statute, prima facie evidence of ownership stated therein as against the world, and conclusive upon all persons who had notice and those claiming under them. As a general rule a Certificate of Title can be set aside only on the grounds of fraudulent registration. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 50-51 (App. 1995).

Parties are precluded from raising any issues that were or could have been raised in a previous proceeding. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 51 (App. 1995).

When dismissal of a related criminal case is without prejudice, there is no judgment on the merits. Therefore the doctrines of res judicata and collateral estoppel, which rely on an underlying final judgment, cannot be applied to the same matters in a civil case. FSM v. Yue Yuan Yu No. 346, 7 FSM R. 162, 164 (Chk. 1995).

Dismissal with prejudice of a plaintiff's prior action constitutes a judgment on the merits, which has a res judicata effect, barring the relitigation of all issues that were or could have been raised in that action. Union Indus. Co. v. Santos, 7 FSM R. 242, 244 (Pon. 1995).

Although the FSM Supreme Court is not bound to accept the findings of the Trust Territory courts, it may consider their rationale and elect to adopt their reasoning. Rulings of the FSM Supreme Court appellate division are not binding specifically upon a nonparty under the doctrine of *res judicata*, they are binding on the court under the doctrine of *stare decisis*. Etscheit v. Nahnken of Nett, 7 FSM R. 390, 396 (Pon. 1996).

A municipal court judgment will not be given res judicata effect when the judgment was suspended by the state court. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 492 (App. 1996).

Once a judgment has been issued and the time to appeal has expired, or the decision was affirmed on appeal, the parties are precluded from challenging that judgment or litigating any issue that was or could

have been raised in that action. Nahnken of Nett v. United States, 7 FSM R. 581, 586 (App. 1996).

FSM courts will apply the doctrine of res judicata to uphold and enforce Trust Territory High Court decisions. Nahnken of Nett v. United States, 7 FSM R. 581, 586 (App. 1996).

Even when an individual brings suit in a different capacity res judicata still bars the suit where the right sought to be enforced was necessarily litigated in an earlier proceeding so that entertaining the latter contention would in substance be a relitigation of the matter. Nahnken of Nett v. United States, 7 FSM R. 581, 586-87 (App. 1996).

Even if a party is not collaterally estopped from relitigating a different issue between parties to a prior judgment, res judicata will still bar relitigation of those claims that might have been raised and adjudged in the first action. Nahnken of Nett v. United States, 7 FSM R. 581, 587 (App. 1996).

The FSM Supreme Court does not sit in review of Trust Territory High Court decisions and res judicata bars relitigation of its judgments. Nahnken of Nett v. United States, 7 FSM R. 581, 588 (App. 1996).

The doctrine of res judicata bars the relitigation by parties or their privies of all matters that were or could have been raised in a prior action that was concluded by a final judgment on the merits, which has been affirmed on appeal or for which time for appeal has expired. Damarlane v. FSM, 8 FSM R. 119, 120 (Pon. 1997).

The doctrine of res judicata bars the relitigation by parties or their privies of all matters that were or could have been raised in a prior action that was concluded by a final judgment on the merits, which has been affirmed on appeal or for which time for appeal has expired. Iriarte v. Etscheit, 8 FSM R. 231, 236-37 (App. 1998).

Res judicata bars any further litigation of the same issues between the same parties or anyone claiming under those parties. Senda v. Semes, 8 FSM R. 484, 504 (Pon. 1998).

Both res judicata and laches are affirmative defenses and must be asserted in responsive pleading. If affirmative defenses are not raised in the answer or other responsive pleading, the defenses are waived. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 94 (Kos. S. Ct. Tr. 1999).

A judgment that applied only to the lower, oceanside parcels of land is not res judicata to upper inland parcels. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 94 (Kos. S. Ct. Tr. 1999).

As a general rule, a judgment for a defendant based on lack of jurisdiction does not bar the plaintiff from bringing another action on the same cause in another court having jurisdiction. National Fisheries Corp. v. New Quick Co., 9 FSM R. 147, 148 (Pon. 1999).

Res judicata prevents parties to an action from relitigating an issue which has been already been fully litigated. Bank of the FSM v. Hebel, 10 FSM R. 279, 285 (Pon. 2001).

Once a judgment has been issued and the appeal period has expired or the decision is affirmed on appeal, the parties are precluded from challenging that judgment or from litigating any issues that were or could have been raised in that action. Bank of the FSM v. Hebel, 10 FSM R. 279, 285 (Pon. 2001).

The doctrine of res judicata generally does not operate to affect strangers to a judgment, that is, to affect the rights of those who are neither parties nor in privity with a party therein. Res judicata only applies to those who were parties to a prior litigation. Bank of the FSM v. Hebel, 10 FSM R. 279, 285 (Pon. 2001).

A party to a prior litigation cannot use the doctrine of res judicata as a shield to prevent a party to a subsequent litigation (who was not a party to the prior action) from litigating an issue which was not litigated

in the prior action. Bank of the FSM v. Hebel, 10 FSM R. 279, 285 (Pon. 2001).

When a divorced couple is jointly responsible on a promissory note, no agreement they could make between them could possibly prevent the creditor from pursuing its claims against either or both of them, and since the issue of whether one of the defendants could have relieved himself or herself from responsibility to the creditor could not have been litigated in the divorce proceeding, the creditor cannot be precluded from litigating that issue. Bank of the FSM v. Hebel, 10 FSM R. 279, 286 (Pon. 2001).

Final judgments, as a rule, generally bind only the parties to the case and all those in privity with them. If a judgment is final, then the doctrine of res judicata applies, and that doctrine bars any further litigation of the same issues between the same parties or anyone claiming under those parties. Phillip v. Moses, 10 FSM R. 540, 546 (Chk. S. Ct. App. 2002).

When an earlier Trust Territory High Court judgment clearly stated that someone owned only half of a land parcel and the plaintiff's only claim to the land is through his purchase of that person's rights, he cannot own any more of the land than the half that the seller owned, and when that judgment was res judicata and binding on the parties to that case and all claiming under them, there was no genuine issue of fact as to whether the plaintiff owned half or all of the land. He owned only half, and the defendants were therefore entitled, as a matter of law, to a summary judgment to that effect. Bualuay v. Rano, 11 FSM R. 139, 150 (App. 2002).

If diversity of citizenship among the parties were not present and there were no other basis of jurisdiction, the FSM Supreme Court would be without subject matter jurisdiction, and any judgment it might render would be void and without any res judicata effect because all proceedings that had taken place would have been for naught, and the plaintiffs would have to start all over again in state court if they still wished to pursue the matter. Marcus v. Truk Trading Corp., 11 FSM R. 152, 155 n.1 (Chk. 2002).

A Kosrae district Trust Territory High Court judgment in a trespass action will not be set aside as invalid because it was in a designated land registration area when the registration area designation was not filed in the Kosrae district High Court and the prevailing defendants did not ask that title be issued to them, but only that the complaint be dismissed. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 172-73 (Kos. S. Ct. Tr. 2002).

The Kosrae State Court has always accepted and enforced Trust Territory High Court decisions as valid and binding, consistent with the Kosrae constitutional provisions on transition of government. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 173 (Kos. S. Ct. Tr. 2002).

The purpose of Rule 17(a) is to allow an assignee to sue in its own name, and it has, more importantly, come to also protect the defendant against later action by the party actually entitled to recover and thus insures that a judgment will have its proper final (res judicata) effect. Beal Bank S.S.B. v. Maras, 11 FSM R. 351, 354 (Chk. 2003).

The doctrine of claim preclusion (a form of res judicata) does not bar a later action when the court order denying the plaintiff's intervention (in part) in an earlier action shows that intervention was denied because the intervenor had no interest in the subject matter of the litigation, and a motion to dismiss on that ground or on the grounds that that the court lacks subject matter jurisdiction because the earlier court already had the case, or that the plaintiff is barred by his alleged "unclean hands" because he omitted mention of the earlier action allegedly to circumvent the other court's jurisdiction are therefore without merit. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 126 (Chk. 2005).

The res judicata doctrine bars the relitigation by parties or their privies of all matters that were or could have been raised in a prior action that was concluded by a final judgment on the merits, which has been affirmed on appeal or for which time for appeal has expired. Kishida v. Aizawa, 13 FSM R. 281, 283 (Chk. 2005).

Res judicata is an affirmative defense. An affirmative defense generally must be pled by the defendant or it is waived. Kishida v. Aizawa, 13 FSM R. 281, 284 (Chk. 2005).

Generally, a court may not raise the defense of res judicata on its own motion. However, in the interest of judicial economy, a court may properly raise the issue of res judicata when both actions have been brought in the same court. Kishida v. Aizawa, 13 FSM R. 281, 284 (Chk. 2005).

When the court gave the plaintiff notice that res judicata might apply and an opportunity to respond and when the previous case was dismissed under Rule 41(b) for failure to prosecute and was thus an adjudication on the merits, the plaintiff is barred from relitigating or filing a new case involving the same parties and subject matter – the matter is res judicata – and the court may dismiss it. Kishida v. Aizawa, 13 FSM R. 281, 284 (Chk. 2005).

When a case has been dismissed for the plaintiff's failure to prosecute, the plaintiff's possible remedies are either to appeal the dismissal or a Rule 60(b) motion for relief from judgment (the more viable, quicker, and usual remedy) if he wishes to have the dismissal set aside. (Filing a new case when there has been a dismissal on the merits is not a possible remedy.) Success by either method would reinstate the case at the point it was dismissed. If neither of these routes is taken successfully, the plaintiff, depending on his ability to prove that he would have succeeded at trial, may have a cause of action against his counsel. Kishida v. Aizawa, 13 FSM R. 281, 284 (Chk. 2005).

When a settlement agreement was reached by the parties in a case, it represents a new agreement between the parties. The failure to comply with the settlement agreement is a new claim, separate and independent of the original claim. Settlement agreements are contracts which are enforceable by a court. Therefore, the doctrine of res judicata does not apply to a settlement agreement and accordingly a motion for dismissal must be denied. George v. Phillip, 13 FSM R. 520, 521 (Kos. S. Ct. Tr. 2005).

A *res judicata* argument cannot be made about a preliminary injunction because a preliminary injunction cannot have preclusive effect since it is not a decision on the merits. Ruben v. Petewon, 14 FSM R. 177, 183 (Chk. S. Ct. App. 2006).

All causes of action arising out of the same event (and all defenses to a cause of action) must be raised in one case or else they are barred. A plaintiff cannot file one suit claiming title based on a will and then be allowed to file a second lawsuit for title to the same land claiming fraud and breach of contract. He must raise all causes of action for title to the land in the same case. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 494, 496 (Kos. S. Ct. Tr. 2006).

The need for finality in litigation is particularly important for claims to land. The process can take years; the wearisome disputes lead to uncertainty and discord among relatives and neighbors; land may not be used efficiently or for its best purpose; and the parties are not free to exercise their rights. The statute covering designation of registration areas recognizes this need and provides that a justice cannot adjudicate a matter previously decided by a court between the same parties or those under whom the parties claim which dispute involves the same parcel and that the Land Court must accept prior judgments as res judicata and determine those issues without receiving evidence. Heirs of Livaie v. Palik, 14 FSM R. 512, 515 (Kos. S. Ct. Tr. 2006).

The doctrine of res judicata bars repetitious litigation. Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. Heirs of Livaie v. Palik, 14 FSM R. 512, 515 (Kos. S. Ct. Tr. 2006).

Trust Territory Court decisions are valid and binding, consistent with the Kosrae constitutional provisions on transition of government. The doctrine of res judicata applies and Trust Territory Court decisions must be upheld. Therefore, the Land Court lacked jurisdiction to receive additional evidence and issue a new decision in a case where the Trust Territory Court, in three previous cases, had established the

ownership and boundaries of the land in question. Heirs of Livaie v. Palik, 14 FSM R. 512, 516 (Kos. S. Ct. Tr. 2006).

The doctrine of res judicata bars repetitious litigation. Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. Heirs of Tulenkun v. George, 14 FSM R. 560, 562 (Kos. S. Ct. Tr. 2007).

When the appellants participated in the Land Commission proceedings and in the appeal on ownership of Parcel 069M05, they are barred from re-litigating the ownership of any portion of that parcel under the doctrine of res judicata. Heirs of Tulenkun v. George, 14 FSM R. 560, 562 (Kos. S. Ct. Tr. 2007).

For the doctrine of res judicata to apply, there must be an existing, final judgment that has been decided on the merits without fraud or collusion by a court or tribunal of competent jurisdiction. The doctrine bars any further litigation of the same issues between the same parties or anyone claiming under those parties. Nakamura v. Chuuk, 15 FSM R. 146, 149 (Chk. S. Ct. App. 2007).

Final judgments, as a rule, generally bind only the parties to the case and all those in privity with them. If a judgment is final, then the doctrine of res judicata applies, and that doctrine bars any further litigation of the same issues between the same parties or anyone claiming under those parties. Nakamura v. Chuuk, 15 FSM R. 146, 149 (Chk. S. Ct. App. 2007).

Res judicata does not apply when different land is involved than the previous case and the defendants are different. Nakamura v. Chuuk, 15 FSM R. 146, 149 (Chk. S. Ct. App. 2007).

When neither res judicata, stare decisis, nor collateral estoppel can apply another judgment to this case, it was error for the trial court to decide this case on that basis. Since the trial court finding that the two cases' facts are the same is clearly erroneous and its following legal conclusion was thus in error, the trial court should instead have made its own findings of fact and conclusions of law before reaching its decision. Nakamura v. Chuuk, 15 FSM R. 146, 150 (Chk. S. Ct. App. 2007).

The doctrine of res judicata bars repetitious litigation. Under res judicata, a final judgment on an action's merits precludes the parties or their privies from relitigating issues that were or could have been raised in that action. Andon v. Shrew, 15 FSM R. 315, 321 (Kos. S. Ct. Tr. 2007).

The need for finality in litigation is particularly important for claims to land. The statute covering designation of registration areas, recognizes this need and provides 1) that a justice must not adjudicate a matter previously decided by a court between the same parties or those under whom the parties claim which dispute involves the same parcel and 2) that the Land Court must accept prior judgments as res judicata and determine those issues without receiving evidence. Andon v. Shrew, 15 FSM R. 315, 321 (Kos. S. Ct. Tr. 2007).

Although Trust Territory court decisions routinely relied on hand drawn maps since there was limited access to precisely drawn maps and accurate surveys, this does not mean that these earlier decisions are to be disregarded. Heirs of Tulenkun v. Heirs of Seymour, 15 FSM R. 342, 346 (Kos. S. Ct. Tr. 2007).

The doctrine of res judicata bars repetitious litigation. Under res judicata, a final judgment on an action's merits precludes the parties or their privies from relitigating issues that were or could have been raised in that action. The doctrine of res judicata should and does apply in Kosrae. Heirs of Tulenkun v. Heirs of Seymour, 15 FSM R. 342, 347 (Kos. S. Ct. Tr. 2007).

A manifest abuse of authority, a judgment obtained unfairly or working a serious injustice, or fraud or collusion by a court, in addition to fraud and lack of jurisdiction have been considered grounds to ignore the finality of a judgment in the FSM. But, a judgment that is final through the lack of a timely appeal, and

claims that the earlier judgment is ill-reasoned, unfair, or even beyond the jurisdiction does not escape the doctrine of res judicata. Heirs of Tulenkun v. Heirs of Seymour, 15 FSM R. 342, 347 (Kos. S. Ct. Tr. 2007).

When the appellants do not argue manifest abuse of authority, fraud, collusion by the court, or a lack of jurisdiction but only argue that their own failure to timely pursue an appeal should not be held against them now, this is not sufficient grounds to overcome the finality of a judgment, particularly after more than twenty years. Heirs of Tulenkun v. Heirs of Seymour, 15 FSM R. 342, 347 (Kos. S. Ct. Tr. 2007).

Even if the judgment in was based on the parties' agreement, when there is no suggestion of fraud, lack of jurisdiction, or other serious injustice; only that the appellants themselves failed to timely pursue their case in the past and they claim that this should not be held against them but they recognize that they had two previous opportunities to pursue their case and that their own inaction led to the prior appeal's dismissal, under these circumstances, the policy supporting finality of judgments should apply and the earlier stipulated judgment should be treated as a final judgment precluding relitigation of ownership. Heirs of Tulenkun v. Heirs of Seymour, 15 FSM R. 342, 347 (Kos. S. Ct. Tr. 2007).

The doctrine of res judicata applies to Trust Territory High Court decisions, and when, the Kosrae State Court's order does not run afoul of the Trust Territory judgment, it will not be overturned on that basis. Akinaga v. Heirs of Mike, 15 FSM R. 391, 398 (App. 2007).

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

There is some authority that if a Rule 60(b) motion for relief from judgment is denied solely as untimely, that denial does not act as res judicata precluding an independent action since the denial was not on the merits. Otherwise the two Rule 60(b) remedies (motion or independent action) are alternative, not cumulative, remedies, and res judicata applies to successive Rule 60(b) motions and independent Rule 60(b) actions. Arthur v. Pohnpei, 16 FSM R. 581, 596 (Pon. 2009).

The plaintiffs in an independent action have the burden to allege such fraud as to support an independent action for relief from judgment. Without the existence of the requisite fraud, an independent action in equity may not be brought. Instead, res judicata prevails. Arthur v. Pohnpei, 16 FSM R. 581, 597 (Pon. 2009).

When the guarantors steadfastly maintained, from the start and throughout the former litigation and subsequent appeal, their position that a corporation was the borrower and that they were only the guarantors, the guarantors cannot now pretend that, because the former judgment and appeal were unfavorable to them, they were instead the borrowers on the loan, something they had consistently denied throughout. If the guarantors were permitted to now assert that they were the borrowers, they would be relitigating the entire case from the beginning, and that they cannot do in an independent action, and, since the corporation was the borrower, the guarantors' allegations that can be taken as true fail to state a claim for fraud. Because the guarantors' allegation cannot make out a fraud claim, summary judgment could be granted in the bank's favor on this ground alone since, without the existence of the requisite fraud, res judicata prevails. Arthur v. Pohnpei, 16 FSM R. 581, 598 (Pon. 2009).

An independent action cannot be made a vehicle for relitigation of issues. A party is precluded by res judicata from relitigation in the independent equitable action issues that were open to litigation in the former

action where he had a fair opportunity to make his claim or defense in that action. Arthur v. Pohnpei, 16 FSM R. 581, 599-600 (Pon. 2009).

When it is clear that an "independent action" is only an attempt to relitigate issues already litigated and decided by a trial court and affirmed by the appellate court and when the "fraud" allegation is merely an attempt to cast the same facts and claims in a different light in order to try to sneak under the bar of res judicata, there are no material facts genuinely in dispute and, as a matter of law, the independent action is barred by res judicata. Arthur v. Pohnpei, 16 FSM R. 581, 600 (Pon. 2009).

Once a judgment has been issued and the decision is affirmed on appeal, the parties are precluded from challenging that judgment or litigating any issue that was or could have been raised in that action. Damarlane v. Pohnpei Transp. Auth., 17 FSM R. 307, 311-12 (Pon. 2010).

When the plaintiffs' arguments in their motion for contempt proceedings and subsequent filings were all made or could have been made during the pendency of Civil Action No. 1990-075 and the plaintiffs either failed to raise these arguments during trial or raised them and failed to succeed on the merits, the *res judicata* doctrine precludes the plaintiffs from raising these arguments again. Damarlane v. Pohnpei Transp. Auth., 17 FSM R. 307, 312 (Pon. 2010).

A statement by a court that, to the extent that it is not dicta, is a finding of fact, a conclusion of law, and a reprimand, cannot be used as a basis for any future action when it is vacated on appeal. In re Sanction of George, 17 FSM R. 613, 617 (App. 2011).

While a default judgment is not an adjudication on the merits of a claim, it is a final judgment with res judicata and claim preclusion effect. Mori v. Hasiguchi, 17 FSM R. 630, 644 (Chk. 2011).

The res judicata doctrine bars the parties or their privies from relitigating all matters that were or could have been raised in a prior action that was concluded by a final judgment on the merits and which has been affirmed on appeal or for which time to appeal has expired. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 8 (Pon. 2011).

Any claim based on the effect of an FSM public law's enactment on February 3, 2003, is a claim that, at the latest should have been (and certainly could have been) raised in a 2008 civil action if not earlier in a March 27, 2008 Rule 60(b) motion in another civil action. Since the FSM public law could have been raised in one of these instances (and in both of those instances, parties certainly made arguments which the public law could have been used to support), res judicata bars raising it now. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 10 (Pon. 2011).

Res judicata bars parties from relitigating all matters that were or could have been raised in prior actions, not just those that were actually raised. To escape the bar of res judicata, it is not enough that the issue has not been raised before. The issue must be one that could not have been raised before. Litigants may not sit idly by during the course of litigation and then seek to present additional defenses in the event of an adverse outcome. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 10 (Pon. 2011).

When the movant has provided no new evidence or case law to persuade the court to amend its earlier order that all of the facts and issues he raises were heard, decided, appealed, and affirmed over 14 years ago and are precluded from being re-raised under the doctrine of res judicata his motion for the court to reconsider its order will be denied. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 52, 56 (Pon. 2011).

Res judicata is a fundamental doctrine of our legal system. As much as every citizen is entitled to bring a claim against a defendant, citizens are entitled not to be harassed by a plaintiff once that claim is finally decided. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 52, 56 (Pon. 2011).

Once a judgment has been issued and the decision is affirmed on appeal, the parties are precluded

from challenging that judgment or litigating any issue that was or could have been raised in that action. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 52, 56 (Pon. 2011).

When the case and the applicable issues were heard, decided, appealed, and affirmed over 14 years ago, the court will not address the questions raised in a January 10, 2011 request for clarification since they are an attempt to challenge the September 12, 1995 final judgment by introducing new issues that should have been raised in the original complaint. If new issues have arisen that could not have been litigated in the original claim, the plaintiff is entitled to file a new cause of action. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 52, 56 (Pon. 2011).

The doctrine of res judicata stands for the notion that a judgment entered in a cause of action conclusively settles that cause of action as to all matters that were or might have been litigated and adjudged therein, and it bars relitigation by parties of all matters that were or could have been raised in a prior action that was concluded by a final judgment on the merits for which time for appeal has expired. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 156 (Pon. 2012).

While a stipulated judgment may not give rise to the doctrine of res judicata, a later court contemplating a civil action based on the same underlying facts may adopt the findings of fact in the stipulated judgment and any conclusions of law in the order granting the stipulated judgment, and in so doing finally adjudicate the matter. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 156 (Pon. 2012).

It was error for the trial court to not consider or even mention an earlier trial court decision about title to the same land especially when the defendant clearly asserted the applicability of that decision in his answer. The trial court must address that decision in some fashion. Phillip v. Moses, 18 FSM R. 247, 251 (Chk. S. Ct. App. 2012).

When an earlier trial court decision and the appellate opinion affirming it clearly stated in no uncertain terms that that case only concerned a tideland and did not concern the adjacent filled land; when the appellate opinion court noted that the owner of dry land is not necessarily the owner of the adjacent tideland; and when that entire proceeding was premised on the supposition that certain persons owned the filled land that they were living on, no plausible reading of the earlier decision can support a claim that it ruled that another was the owner of the filled land because only the most twisted logic could pervert that decision, in which the filled land's ownership was presumed undisputed, into a decision that awarded title of that land to that other. Phillip v. Moses, 18 FSM R. 247, 251 (Chk. S. Ct. App. 2012).

Under the res judicata doctrine, a prior action's final decision on the merits that has been affirmed on appeal, or for which the time to appeal has expired, bars a subsequent action on that same claim or any part thereof, including issues which were not but could have been raised as part of the claim. When the claims are not raised in a second action, but are raised in the original action, res judicata does not apply. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 373 (App. 2012).

While the res judicata doctrine formally addresses situations involving prior and subsequent lawsuits, its reasoning and purpose may apply in a lawsuit that has already been adjudged since under the doctrine of merger, all interlocutory orders merge into the final judgment. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 373 (App. 2012).

Interlocutory orders do not survive, but merge in, the final judgment. They are not accorded res judicata effect or final judgment status since interlocutory orders made in the course of an action or proceeding are not binding on the trial court when fashioning the controversy's final adjudication. This should be clear from the operation of FSM Civil Procedure Rule 54(b). Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 374 (App. 2012).

Preliminary injunctions do not have a preclusive effect since they are not decisions on the merits. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 374 (App. 2012).

The statute's use of the indefinite article "a" before the word "court" instead of the definite article "the" indicates that in this particular instance no specific court is referred to and thus other tribunals are included in § 11.612(6)'s reference to "a court." Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 301-02 (App. 2014).

Under the Kosrae statute, a judgment from a Trust Territory court with jurisdiction over Kosrae land matters should be accorded res judicata status. Even if it did not, the general legal doctrine of res judicata, which the statute does not abolish, would accord res judicata status to Trust Territory High Court judgments when the elements are met. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

The Compact of Free Association requires that, subject to the constitutional power of FSM courts to grant relief from judgments in appropriate cases, res judicata status be given to Trust Territory judgments. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

The doctrine of res judicata applies to Trust Territory High Court decisions, and FSM courts will apply the doctrine of res judicata to uphold and enforce Trust Territory High Court decisions. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

Final judgments, as a rule, generally bind only the parties to the case and all those in privity with them. If a judgment is final, then the doctrine of res judicata applies, and that doctrine bars any further litigation of the same issues between the same parties or anyone claiming under those parties. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

For the doctrine of res judicata to apply, there must be an existing, final judgment that has been decided on the merits without fraud or collusion by a court or tribunal of competent jurisdiction. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

A Trust Territory High Court judgment is entitled to res judicata effect unless (or until) that judgment is successfully collaterally attacked. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 303 (App. 2014).

As recognized by general law and as provided for in Compact of Free Association § 176, Trust Territory judgments that are final, although accorded res judicata status, can be subject to collateral attack or to relief from judgment. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 304 (App. 2014).

Parties can, as a defense to the application of res judicata, collaterally attack a Trust Territory High Court judgment and should be permitted the opportunity to try to do so. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 305 (App. 2014).

Trust Territory High Court judgments should be afforded res judicata status but, like any judgment, those judgments may be subject to collateral attack on due process grounds. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 305 (App. 2014).

Under the res judicata effect as enshrined by Kosrae statute, a Land Court justice must not adjudicate a matter previously decided by a court between the same parties or those under whom the parties claim which dispute involves the same parcel. The Kosrae Land Court must accept prior judgments as res judicata and determine those issues without evidence. Andrew v. Heirs of Seymour, 19 FSM R. 331, 339 (App. 2014).

A Trust Territory High Court case that renders a judgment about ownership of land between certain parties does not, by itself, entitle one of those parties (or a party claiming under that party) to a certificate of title for that land because there may be other persons who have claims, even better claims to ownership than the parties in the Trust Territory case. Andrew v. Heirs of Seymour, 19 FSM R. 331, 340 (App. 2014).

An argument that the appellants are bound by a Trust Territory High Court judgment but cannot attack that judgment because they were not parties to that case is nonsense and must be rejected. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 367 (App. 2014).

When a previous court case has res judicata effect and status, it is conclusive only between the parties to the case and those claiming under them and no one else. But there could be persons who were not parties to the court case and who do not claim under those parties but who have their own claim to the land. The Land Court must still go through all of its usual procedures to determine if there are other claimants and, if there are, adjudicate their claims, before it can issue a determination of ownership and, if there is no appeal or if its decision is affirmed on appeal, a certificate of title. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 367 (App. 2014).

Res judicata is listed as an affirmative defense under Rule 8(c), and, as such, it must be pleaded as an affirmative defense in an answer. However, res judicata, like the statute of limitations, is an affirmative defense that may be presented in a motion to dismiss. Saito v. Siro, 19 FSM R. 650, 653 (Chk. S. Ct. Tr. 2015).

Res judicata can be raised in the context of a Rule 12(b)(6) motion when the prior action's preclusive effect can be determined from the face of the complaint. Saito v. Siro, 19 FSM R. 650, 653 (Chk. S. Ct. Tr. 2015).

For a matter to be considered adjudged so that the doctrine of res judicata is applicable, there must be an existing, final judgment that has been decided on the merits without fraud or collusion by a court or tribunal of competent jurisdiction. If these requirements are met, the doctrine applies and bars any further litigation of the same issues between the same parties or anyone claiming under those parties. Saito v. Siro, 19 FSM R. 650, 653 (Chk. S. Ct. Tr. 2015).

In determining the validity of a plea of res judicata three questions are pertinent: Was the issue decided in the prior adjudication identical with the one presented in the action in question? Was there a final judgment on the merits? Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication? Saito v. Siro, 19 FSM R. 650, 653 (Chk. S. Ct. Tr. 2015).

When the lawsuit is over ownership to lands adjudicated in three prior cases; when the most recent case was a dismissal with prejudice because the matter had already been litigated in a Trust Territory High Court case; and when the prior action involved the same parties or their privies, the doctrine of res judicata applies and the motion to dismiss will be granted since the prior action's preclusive effect can be determined from the complaint's face. Saito v. Siro, 19 FSM R. 650, 653-54 (Chk. S. Ct. Tr. 2015).

The res judicata doctrine stands for the proposition that a judgment entered in a cause of action conclusively settles that cause of action as to all matters which were or might have been litigated and adjudged therein, and a default judgment constitutes a final judgment with res judicata and claim preclusion effect. Setik v. Mendiola, 20 FSM R. 236, 241 (Pon. 2015).

An independent action cannot be made a vehicle for relitigation of issues. A party is precluded by res judicata from relitigation in the independent equitable action that were open to litigation in the former action, where he had a far opportunity to make his claim or defense in that action. Setik v. Mendiola, 20 FSM R. 236, 241-42 (Pon. 2015).

An administratrix cannot choose to file certain claims in the initial case and given an adverse outcome, then proceed to pursue a second matter on behalf of remaining heirs; especially since the additional issues were hardly novel, but instead were readily available and capable of having been raised in the first instance. Even if a party is not collaterally estopped from relitigating a different issue between parties to a prior judgment, res judicata will still bar relitigation of those claims that might have been raised and adjudicated in the first action. Setik v. Mendiola, 20 FSM R. 236, 242 (Pon. 2015).

A litigant may not sit idly by during the course of litigation and then seek to present additional defenses in the event of an adverse outcome. Setik v. Mendiola, 20 FSM R. 236, 242 (Pon. 2015).

Allegations in an independent action, which could have been previously broached consequently run counter to the doctrine of res judicata. Setik v. Mendiola, 20 FSM R. 236, 243 (Pon. 2015).

The res judicata doctrine bars the relitigation by parties or their privies of all matters that were or could have been raised in a prior action that was concluded by a final decision on the merits and has been affirmed on appeal or for which time for appeal has expired. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 284 (Chk. 2016).

Res judicata can be raised in a motion to dismiss made before an answer has been filed when the prior action's preclusive effect can be determined from the face of the complaint. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 284-85 (Chk. 2016).

When the legal issue of whether the foreign citizen CPUC Chief Executive Officer could be a defendant in a lawsuit by the Chuuk Health Care Plan to collect unpaid health insurance premiums, thereby creating diversity jurisdiction, was previously litigated and a final decision rendered concluding that it could not be done; when the time to appeal that decision has expired; and when the same parties are present, res judicata bars the action in the FSM Supreme Court and the case will be dismissed without prejudice to any action in the Chuuk State Supreme Court. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 285 (Chk. 2016).

When the legal issue of whether the foreign citizen CPUC Chief Executive Officer could be a defendant in a lawsuit by the Chuuk Health Care Plan to collect unpaid health insurance premiums, thereby creating diversity jurisdiction, was previously litigated and a final decision rendered concluding that it could not be done; when the time to appeal that decision has expired; and when the same parties are present, res judicata bars the action in the FSM Supreme Court and the case will be dismissed without prejudice to any action in the Chuuk State Supreme Court. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 285 (Chk. 2016).

A judgment for a defendant based on lack of jurisdiction does not bar the plaintiff from bringing another action on the same cause in another court having jurisdiction. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 285 n.4 (Chk. 2016).

The *res judicata* doctrine stands for the proposition that a judgment entered in a case conclusively settles that cause of action, as to all matters that were brought or could have been litigated and adjudged therein. A default judgment constitutes a final judgment with *res judicata* and claim preclusion effect. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 506 (App. 2016).

Like *res judicata*, the concept of jurisdiction over the subject matter is based upon public policy: one dictates the finality of judgments and the other requires litigation to be addressed in the proper forum. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

The res judicata doctrine stands for the proposition, that a judgment entered in a cause of action conclusively settles that cause of action, as to all matters which were or might have been litigated and adjudged therein. A default judgment constitutes a final judgment with res judicata and claim preclusion effect. Setik v. Perman, 21 FSM R. 31, 40-41 (Pon. 2016).

In determining whether the causes of action are the same, a court must compare the substance of the actions, not their form. For res judicata purposes, if the later case arises out of the same nucleus of operative facts or is based on the same factual predicate as the former action, then the two cases are really the same claim or cause of action. Setik v. Perman, 21 FSM R. 31, 41 (Pon. 2016).

The objective of the judicial process is to decide issues according to judicially determined facts and not to give a disgruntled litigant the opportunity to continue disputing them. Res judicata thus encourages reliance on judicial decisions, bars vexatious litigation, and frees the court to resolve other disputes. Setik v. Perman, 21 FSM R. 31, 41 (Pon. 2016).

When an action is merely an attempt to cast the same facts and claims in a different light in order to try to sneak under the bar of res judicata, it will be dismissed. Setik v. Perman, 21 FSM R. 31, 41 (Pon. 2016).

Generally, a court may not raise the res judicata defense on its own motion. But, in the interest of judicial economy, a court may properly raise the issue when both actions have been brought in the same court. Waguk v. Waguk, 21 FSM R. 60, 67 (App. 2016).

In the Kosrae State Court, both res judicata and laches are affirmative defenses that must be asserted in responsive pleadings, and, if affirmative defenses are not raised in the answer or other responsive pleading, the defenses are waived. Waguk v. Waguk, 21 FSM R. 60, 67 (App. 2016).

Under certain circumstances, res judicata can be raised sua sponte. Waguk v. Waguk, 21 FSM R. 60, 67 (App. 2016).

Judicial initiative is appropriate in special circumstances. Most notably, if a court is on notice that it has previously decided the issue presented, the court may dismiss the action *sua sponte*, even though the defense has not been raised. This is fully consistent with the policies underlying res judicata: it is not based solely on the defendant's interest in avoiding the burdens of twice defending a suit, but is also based on the avoidance of unnecessary judicial waste. Waguk v. Waguk, 21 FSM R. 60, 68 (App. 2016).

Res judicata and its offspring, collateral estoppel, are not statutory defenses; they are equitable defenses adopted by the courts in furtherance of prompt and efficient administration of the business that comes before them. They are grounded on the theory that one litigant cannot unduly consume the court's time at the other litigants' expense, and that, once the court has finally decided an issue, a litigant cannot demand that it be decided again. Waguk v. Waguk, 21 FSM R. 60, 68 (App. 2016).

When raising res judicata *sua sponte*, due process requires that the court give the opposing party notice and an opportunity to respond. Waguk v. Waguk, 21 FSM R. 60, 68 (App. 2016).

Res judicata is defined as an issue that has been definitively settled by judicial decision. It is also more narrowly defined as an affirmative defense barring a second lawsuit on the same claim, or any other claim arising from the same transaction or series of transactions and that could have been – but was not – raised in the first suit. Waguk v. Waguk, 21 FSM R. 60, 68-69 (App. 2016).

Res judicata actually comprises two doctrines concerning a prior adjudication's preclusive effect. The first is claim preclusion, or true res judicata, which treats a judgment once rendered as the full measure of relief to be accorded between the same parties on the same claim or cause of action. The second, collateral estoppel or issue preclusion, recognizes that suits addressed to particular claims may present issues relevant to suits on other claims. Waguk v. Waguk, 21 FSM R. 60, 69 (App. 2016).

When the plaintiff obtains a judgment in his favor, his claim "merges" in that judgment; he may seek no further relief on that claim in a separate action. Waguk v. Waguk, 21 FSM R. 60, 69 (App. 2016).

When a judgment is rendered for a defendant, the plaintiff's claim is extinguished; the judgment acts as a "bar." Waguk v. Waguk, 21 FSM R. 60, 69 (App. 2016).

Under the res judicata doctrine, a judgment entered in a cause of action conclusively settles that cause of action as to all matters that were or might have been litigated and adjudged therein. Waguk v. Waguk,

21 FSM R. 60, 69 (App. 2016).

Simply put, res judicata applies to claims and collateral estoppel applies to issues. Waguk v. Waguk, 21 FSM R. 60, 69-70 (App. 2016).

Preclusion can rest only on a judgment that is valid, final, and on the merits. Waguk v. Waguk, 21 FSM R. 60, 70 (App. 2016).

Res judicata is a final judgment on the merits of an action that precludes the parties or their privies from relitigating issues that were or could have been raised in that action. Implicitly, this presumes that the underlying judgment was made without fraud or collusion by a court or tribunal of competent jurisdiction. Waguk v. Waguk, 21 FSM R. 60, 70 (App. 2016).

As with practically all broad principles of the law, the common law principle of res judicata admits of some exceptions. There are rare circumstances in which judgments will not be protected against attack. Ordinarily, a judgment puts an end to the cause of action, which cannot again be brought into litigation between the parties upon any ground whatever, absent fraud or some other factor invalidating the judgment. Waguk v. Waguk, 21 FSM R. 60, 70 (App. 2016).

Three exceptions to res judicata are: 1) when a fundamental change in the applicable law after the first decision was rendered made application of estoppel in the second action inappropriate, 2) when there is corruption contrary to public policy, and 3) when, through deficient notice, there was a total lack of opportunity of petitioner to participate in first action affecting his legal interests. Ultimately, this is a non-exclusive list and for any equitable reason courts may refuse to apply the res judicata doctrine to avoid manifest injustice. Waguk v. Waguk, 21 FSM R. 60, 71 (App. 2016).

A manifest abuse of authority, a judgment obtained unfairly or working a serious injustice, fraud or collusion by a court, fraud, and lack of jurisdiction have been considered grounds to ignore a judgment's validity. Validity fundamentally includes the court's competence to adjudicate the matter with regard to subject-matter jurisdiction, territorial jurisdiction, and notice. Waguk v. Waguk, 21 FSM R. 60, 71 (App. 2016).

There is a sharp conflict about whether a judgment from which an appeal is pending has the finality requisite for the application of the res judicata doctrine. Waguk v. Waguk, 21 FSM R. 60, 71 (App. 2016).

The res judicata doctrine bars the relitigation by parties or their privies of all matters that were or could have been raised in a prior action that was concluded by a final judgment on the merits, and which has been affirmed on appeal or for which time for appeal has expired. Waguk v. Waguk, 21 FSM R. 60, 71 (App. 2016).

When an appeal is pending, the underlying decision is generally not considered final for the purposes of claim preclusion. Waguk v. Waguk, 21 FSM R. 60, 71 (App. 2016).

Substantial difficulties result from a rule that a final trial court judgment operates as res judicata while an appeal is pending. These difficulties suggest that ordinarily it is better to avoid the res judicata question by dismissing the second action or staying trial and perhaps pretrial proceedings pending the resolution of the first action's appeal, but sidestepping the issue through a dismissal without prejudice or a stay pending appeal is not always wise and the court should consider the underlying circumstances of each case before making such a determination. Waguk v. Waguk, 21 FSM R. 60, 71-72 (App. 2016).

The general rule is that a final decision on the merits of a claim bars a subsequent action on that same claim or any part thereof, including issues that were not but could have been raised as part of the claim. The modern trend is to insist, first, that a plaintiff raise his entire claim in one proceeding, and second, to define claim to cover all the claimant's rights against the particular defendant with respect to all or any part

of the transaction, or series of connected transactions, out of which the action arose. Waguk v. Waguk, 21 FSM R. 60, 72 (App. 2016).

Preclusive effect is given to many decisions that have not actually been litigated on the merits – for example if it is the subject of a stipulation between the parties, or a judgment entered by confession, or consent, or default, where none of the issues is actually litigated. Waguk v. Waguk, 21 FSM R. 60, 72 (App. 2016).

A dismissal for lack of jurisdiction, for improper venue, or for failure to join a party is not an adjudication upon the merits. Waguk v. Waguk, 21 FSM R. 60, 73 (App. 2016).

A dismissal for lack of subject-matter jurisdiction does not preclude a second action on the same claim. Waguk v. Waguk, 21 FSM R. 60, 73 (App. 2016).

Claim preclusion cannot be invoked to bar a claim when the dismissal was for lack of subject-matter jurisdiction. Waguk v. Waguk, 21 FSM R. 60, 74 (App. 2016).

Although res judicata and collateral estoppel can be raised *sua sponte*, it is an abuse of discretion to apply those doctrines when the judgment on which it rests was neither valid, final, nor on the merits. Waguk v. Waguk, 21 FSM R. 60, 74 (App. 2016).

When there has been no disposition of an appeal before the Kosrae State Court, and when a separate later civil action is inextricably intertwined with that appeal, the Kosrae State Court is precluded from entertaining the civil action while the appeal is still pending. A civil action in the Kosrae State Court cannot be a substitute for an appeal from the Land Court. Nor can it be a second appeal of a Land Court decision. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 100 (App. 2016).

Res judicata prevents a party raising any issues which were open to litigation in the former action, where an opportunity was present to raise such claim(s) at that previous juncture. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 100 (App. 2016).

When the appellants participated in the appeal on ownership of a specific parcel, they are barred from relitigating the ownership of any part of that parcel under the doctrine of res judicata. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 100 (App. 2016).

All causes of action arising out of the same event (and all defenses to a cause of action) must be raised in one case or else they are barred. A plaintiff cannot file one suit claiming title based on a will and then be allowed to file a second lawsuit for title to the same land claiming fraud and breach of contract. He must raise all causes of action for title to the land in the same case. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 100 (App. 2016).

The modern trend with respect to the defense of former adjudication is to insist, first, that a plaintiff raise his entire claim in one proceeding, and second, to define "claim" to cover all the claimant's rights against the particular defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 100 (App. 2016).

When an independent action for relief from judgment fails, then res judicata applies. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 310, 314 (App. 2017).

When a defendant seeks an adjudication, as a matter of law, on the merits of its res judicata and collateral estoppel defenses, its "motion to dismiss" is actually a motion for summary judgment on those affirmative defenses. Estate of Gallen v. Governor, 21 FSM R. 477, 482 (Pon. 2018).

Res judicata and collateral estoppel are affirmative defenses. Estate of Gallen v. Governor, 21 FSM

R. 477, 482 (Pon. 2018).

Res judicata and collateral estoppel are affirmative defenses that must be pled. The purpose of such pleading is to give the opposing party notice of the plea and a chance to argue, if it can, why the imposition of an estoppel would be inappropriate. Estate of Gallen v. Governor, 21 FSM R. 477, 483 (Pon. 2018).

When a defendant, although it did not expressly use the term "res judicata" or "collateral estoppel" in its answer, did describe the res judicata and collateral estoppel principles accurately enough that the plaintiffs should have been put on notice of its potential affirmative defense, it has pled the affirmative defense's substance, and that is usually enough. Estate of Gallen v. Governor, 21 FSM R. 477, 483 (Pon. 2018).

If a defendant had pled that "the issues that are now brought before this court have already been litigated and decided by the Trust Territory High Court or the Pohnpei State Supreme Court" as an affirmative defense instead of "reserving the right" to raise it later, the court would have no difficulty concluding that that answer articulated the defendant's affirmative defenses with sufficient specificity to give the plaintiffs adequate notice of that defense. In such a case, the court could not conclude that the defense was waived. Estate of Gallen v. Governor, 21 FSM R. 477, 483-84 (Pon. 2018).

The res judicata doctrine bars the relitigation by parties or their privies of all matters that were or could have been raised in a prior action that was concluded by a final judgment on the merits, which has been affirmed on appeal or for which time for appeal has expired. Estate of Gallen v. Governor, 21 FSM R. 477, 487 (Pon. 2018).

Final judgments, as a rule, generally bind only the parties to the case and all those in privity with them, and, when a judgment is final, res judicata then applies. That doctrine bars any further litigation of the same issues between the same parties or anyone claiming under those parties. Estate of Gallen v. Governor, 21 FSM R. 477, 487 (Pon. 2018).

As a general rule, res judicata applies only to parties, and their privies, to an earlier proceeding. It generally does not operate to affect strangers to a judgment, that is, to affect the rights of those who are neither parties nor in privity with a party therein. Estate of Gallen v. Governor, 21 FSM R. 477, 487 (Pon. 2018).

When persons were not parties to, or in privity with a party to, the prior litigation, the res judicata doctrine will not bar them from pursuing their claims as designees in a later lawsuit. The same is true of the collateral estoppel doctrine. Estate of Gallen v. Governor, 21 FSM R. 477, 489 (Pon. 2018).

Although a default judgment is not an adjudication on a claim's merits, it is a final judgment with res judicata and claim preclusion effect. Setik v. Mendiola, 21 FSM R. 537, 554-55 (App. 2018).

Res judicata, although an affirmative defense, can be raised in a motion to dismiss made before an answer has been filed when the prior action's preclusive effect can be determined from the complaint's face. Setik v. Mendiola, 21 FSM R. 537, 555 (App. 2018).

An underlying judgment's res judicata effect is not a proper defense to, or an appropriate ground on which to grant a dismissal of, an independent action because an independent action seeks to set aside a judgment in another case that is presumed to be final and res judicata unless the independent action succeeds. Setik v. Mendiola, 21 FSM R. 537, 555 (App. 2018).

The denial of a Rule 60(b) motion for relief from judgment may have res judicata effect on a subsequent independent action to set aside a judgment, if the subsequent action is brought on the same ground as the earlier motion. Setik v. Mendiola, 21 FSM R. 537, 555 (App. 2018).

Res judicata, although an affirmative defense, can be raised in a motion to dismiss made before an answer has been filed when the prior action's preclusive effect can be determined from the complaint's face. Panuelo v. Sigrah, 22 FSM R. 341, 358-59 (Pon. 2019).

The res judicata doctrine bars the relitigation by parties or their privies of all matters that were or could have been raised in a prior action that was concluded by a final judgment on the merits, and which has been affirmed on appeal or for which time for appeal has expired. Panuelo v. Sigrah, 22 FSM R. 341, 359 (Pon. 2019).

Under the res judicata doctrine, a judgment entered in a cause of action conclusively settles that cause of action as to all matters that were or might have been litigated and adjudged therein. Panuelo v. Sigrah, 22 FSM R. 341, 359 (Pon. 2019).

Res judicata would bar any suit by an administratrix of a decedent's estate, over a closed bankruptcy proceeding unless the suit is an independent action for relief because an independent action seeks to set aside a judgment in another case that is presumed to be final and res judicata unless the independent action succeeds. Panuelo v. Sigrah, 22 FSM R. 341, 359 (Pon. 2019).

When a valid and final personal judgment is rendered in the plaintiff's favor, the plaintiff cannot thereafter maintain an action on the original claim or any part thereof, although the plaintiff may be able to maintain an action upon the judgment. FSM Dev. Bank v. Carl, 22 FSM R. 365, 371-72 (Pon. 2019).

– Res Judicata – Privity

When an earlier civil action heard and determined the subject land's ownership and the plaintiff was in privity to one of the parties, he cannot relitigate the subject land's ownership. The earlier case determined ownership in a final judgment and, based on res judicata, the plaintiff is barred from re-litigating that case again. The Land Commission was statutorily created to address disputes about ownership and to issue a Torrens Title that is conclusively correct as to the parties and presumptively correct as to everyone else. When the plaintiff's interests are derived from a party in the Land Commission proceedings, that title is conclusive as to his interests and he is barred, under the statutorily adopted doctrine of res judicata, from relitigating an ownership claim already determined. Andon v. Shrew, 15 FSM R. 315, 321-22 (Kos. S. Ct. Tr. 2007).

A privy is a person having a legal interest of privity in any action, matter, or property. Privity is the connection or relationship between two parties, each having a legally recognized interest in the same subject matter (such as a transaction, proceeding, or piece of property). Estate of Gallen v. Governor, 21 FSM R. 477, 487 n.10 (Pon. 2018).

Traditionally, there are six types of privies: 1) privies in blood, such as an heir and an ancestor; 2) privies in representation, such as an executor and a testator or an administrator and an intestate person; 3) privies in estate, such as a grantor and grantee or lessor and lessee; 4) privies in respect to a contract – the parties to a contract; 5) privies in respect of estate and contract, such as a lessor and lessee where the lessee assigns an interest, but the contract between lessor and lessee continues because the lessor did not accept the assignee; and 6) privies in law, such as husband and wife. Estate of Gallen v. Governor, 21 FSM R. 477, 488 (Pon. 2018).

The term "privity" also appears in the context of litigation. In this sense, it includes someone who controls a lawsuit though not a party to it; someone whose interests are represented by a party to the lawsuit; and a successor in interest to anyone having a derivative claim. Estate of Gallen v. Governor, 21 FSM R. 477, 488 (Pon. 2018).

A person, who is a privy in representation because he is an administrator of a decedent's estate, may, in another capacity, not be a privy, and the claim in that other status will not be barred. Estate of Gallen v. Governor, 21 FSM R. 477, 488 (Pon. 2018).

To be a privy in the context of litigation for res judicata purposes, the nonparty must be so connected with the party that the interests of both were affected by the judgment in the prior litigation. Estate of Gallen v. Governor, 21 FSM R. 477, 488 (Pon. 2018).

Privity is created when two or more persons have a mutual or successive relationship to the same rights of property. The privity relationship generally involves a party so identified in interest with the other party that they represent one single, legal right. Estate of Gallen v. Governor, 21 FSM R. 477, 488-89 (Pon. 2018).

An administratrix of a decedent's estate is the successor in interest to the decedent, and is his privy. Panuelo v. Sigrah, 22 FSM R. 341, 359 (Pon. 2019).

– Sanctions

It is inappropriate to deny a defendant the right to assert a statute of limitations defense by way of punishment for tardiness in filing its answer. Lonno v. Trust Territory (III), 1 FSM R. 279, 280 (Kos. 1983).

Where the information desired from another party's lawyer as a witness was material and necessary and unobtainable elsewhere and the party desiring it had not acted in bad faith in the late service of a subpoena, a motion for sanctions may be denied at the court's discretion. In re Island Hardware, Inc., 5 FSM R. 170, 174-75 (App. 1991).

A sanction against an attorney who is not a party to the underlying case is immediately appealable if the sanctioned attorney proceeds under her own name and as the real party in interest. In re Sanction of Berman, 7 FSM R. 654, 656 (App. 1996).

An objection to the amount of a monetary sanction cannot be raised for the first time on appeal. In re Sanction of Berman, 7 FSM R. 654, 658 (App. 1996).

A sanction of $135 is not an abuse of discretion because it is presumptively within the ability of an attorney in private practice to pay. In re Sanction of Berman, 7 FSM R. 654, 658 (App. 1996).

An attorney is entitled to appropriate notice and an opportunity to be heard before any sanction is imposed on him, whether that sanction is imposed on him under the civil procedure rules, the criminal contempt statute, or some other court power. In re Sanction of Woodruff, 10 FSM R. 79, 84 (App. 2001).

In addition to its statutory contempt power, the FSM Supreme Court does retain inherent powers to sanction attorneys. In re Sanction of Woodruff, 10 FSM R. 79, 85 (App. 2001).

A court must exercise its inherent powers with caution, restraint, and discretion and must comply with the mandates of due process. In re Sanction of Woodruff, 10 FSM R. 79, 85 (App. 2001).

A finding of bad-faith conduct is necessary before a court can use its inherent powers to sanction. In re Sanction of Woodruff, 10 FSM R. 79, 85-86 (App. 2001).

The standard of review of a court's imposition of sanctions under its inherent powers is for abuse of discretion. This accords with the abuse of discretion standards for review of Rule 11 attorney sanctions and for review of discovery sanctions. In re Sanction of Woodruff, 10 FSM R. 79, 86 (App. 2001).

Sanctions imposed personally on an attorney must be based on that attorney's personal actions or omissions, not on the court's frustration, no matter how justified, with previous counsel's actions or omissions, or with a recalcitrant client's actions or omissions that are beyond an attorney's control or influence. In re Sanction of Woodruff, 10 FSM R. 79, 87 (App. 2001).

No proper personal sanction against an attorney should include any consideration of the amount of time and work the court spent on earlier motions when the attorney was not responsible for or personally involved with the case at the time the court's work was done. In re Sanction of Woodruff, 10 FSM R. 79, 87 (App. 2001).

The proper standard of proof for inherent power sanctions is clear and convincing evidence standard rather than the lower standard of preponderance of the evidence standard. This heightened standard of proof is particularly appropriate because most inherent power sanctions are fundamentally punitive and because an inherent power sanction requires a finding of bad faith, and a bad faith finding requires heightened certainty. In re Sanction of Woodruff, 10 FSM R. 79, 88 (App. 2001).

For those inherent power sanctions that are fundamentally penal – and default judgments, as well as contempt orders, awards of attorneys' fees and the imposition of fines – the trial court must find clear and convincing evidence of the predicate misconduct. In re Sanction of Woodruff, 10 FSM R. 79, 88 (App. 2001).

The clear and convincing evidence standard of an inherent powers sanction is also consistent with the standard of proof needed to discipline an attorney. It would be inequitable if a court could avoid the heightened standard of a disciplinary proceeding by instead resorting to its inherent powers to sanction an attorney. In re Sanction of Woodruff, 10 FSM R. 79, 88 (App. 2001).

The trial court abused its discretion by its failure to make a specific finding of bad faith, its apparent use of an improper standard of proof, and because the short time span for which the attorney was personally responsible for the case therefore, as a matter of law, he could not be personally sanctioned using the court's inherent powers. In re Sanction of Woodruff, 10 FSM R. 79, 88 (App. 2001).

The standard for the imposition of sanctions using the court's inherent powers is extremely high. The court must find that the very temple of justice has been defiled by the sanctioned party's conduct. In re Sanction of Woodruff, 10 FSM R. 79, 88 (App. 2001).

The court may impose no further sanctions when a party is in contempt for its failure to abide by a court order because it knew of the order, had the ability to comply with the order, and decided not to comply, but Rule 37 sanctions have already been imposed. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 229 (Pon. 2002).

To award a party its attorney fees based upon its in-house counsel's salary prorated for the time spent on a successful motion to compel would be to confer a benefit on the non-prevailing party because the prevailing party choose to use in-house, rather than outside, counsel to do the work. There is no reason in law or equity that the non-prevailing party, or in the case of sanctions, the wrongdoer, should benefit from this choice. FSM Dev. Bank v. Kaminanga, 12 FSM R. 454, 455 (Chk. 2004).

The entitlement to reasonable attorneys' fees is that of the client, not of his attorney. The amount the client actually pays his attorney is irrelevant, since the determination of what is a "reasonable" fee is to be made without reference to any prior agreement between the client and its attorney. The appropriate lodestar rate is thus the community market rate charged by attorneys of equivalent skill and experience for work of similar complexity. FSM Dev. Bank v. Kaminanga, 12 FSM R. 454, 455-56 (Chk. 2004).

An attorney's fees award for in-house counsel will be no different than if the party had retained outside counsel for the work. FSM Dev. Bank v. Kaminanga, 12 FSM R. 454, 456 (Chk. 2004).

It is ordinarily inappropriate to look beyond the clearly delineated procedure of Rule 37 for the imposition of sanctions in the discovery context. Generally, Rule 37 is the sole source of sanctions for the discovery violations described in that rule. FSM Dev. Bank v. Adams, 14 FSM R. 234, 251 (App. 2006).

A court cannot award sanctions under Rule 11 for discovery matters subject to Rules 26 to 37, for which Rule 37 sanctions can be imposed. Nor can a court resort to its inherent powers when Rule 37 applies because Rule 37 is the exclusive remedy for failure to comply with a production order. Rule 37 sanctions for the failure to make discovery are the only relief available for failure to make discovery. FSM Dev. Bank v. Adams, 14 FSM R. 234, 251 (App. 2006).

The question before an appellate court is not whether the appellate court would have imposed the sanction the trial court did, but whether the trial court abused it discretion in doing so. FSM Dev. Bank v. Adams, 14 FSM R. 234, 252 (App. 2006).

Punishment, through criminal contempt, cannot be employed where Rule 37 sanctions may be. FSM Dev. Bank v. Adams, 14 FSM R. 234, 253 (App. 2006).

The trial court may impose fee sanctions on the party, attorney, or trial counselor advising improper conduct or both of them. FSM Dev. Bank v. Adams, 14 FSM R. 234, 254 (App. 2006).

When the court ordered that during the pendency of appellate proceedings, a defendant would make payments of $500 a month to the plaintiffs' counsel as part of the conditions the parties agreed to in order for the court to stay trial proceedings while appellate review was pending, but no appellate proceedings were ever pending and when on November 1, 2005, at the plaintiffs' request, the court vacated the stay order, the defendant was not under any court-ordered obligation to pay $500 a month for any month after October 2005 and will not be sanctioned for his failure to do so. Amayo v. MJ Co., 14 FSM R. 355, 360 (Pon. 2006).

The court will not award attorney's fees of $200 an hour, counsel's usual hourly rate on Guam because FSM court awards of reasonable attorney's fees are based on the customary fee in the locality in which the case is tried. One hundred ten to one hundred twenty dollars an hour would be in the range reasonable for a case tried on Pohnpei. Amayo v. MJ Co., 14 FSM R. 355, 361 (Pon. 2006).

Trial preparation is time that counsel would need to do prepare before any eventual retrial in the case, and so should not be part of any sanction award relating to a stay. Amayo v. MJ Co., 14 FSM R. 355, 361-62 (Pon. 2006).

No sanctions will be awarded under Rule 16(f) because the FSM Supreme Court Rules of Civil Procedure do not contain a Rule 16(f) or an equivalent of Rule 16(f) of the U.S. Federal Rules of Civil Procedure. The rule does not exist. Amayo v. MJ Co., 14 FSM R. 355, 362 (Pon. 2006).

When the court has not found that either the defendant or his counsel acted in bad faith when they initially requested the stay for appellate review, the court cannot use its inherent powers to impose sanctions because a finding of bad-faith conduct is necessary before a court can use its inherent powers to sanction. Amayo v. MJ Co., 14 FSM R. 355, 363-64 (Pon. 2006).

The court's power to award attorney's fees for vexatious conduct, will usually be exercised to include an attorney's fees award as a part of damages in a final judgment, not to impose sanctions at a pretrial stage. Amayo v. MJ Co., 14 FSM R. 355, 364 (Pon. 2006).

The general proposition is that sanctions as such do not bear interest, but the Rule 37 sanctions scheme presumes that when sanctions are imposed they will be promptly paid, generally well before the case has proceeded to judgment. Once final judgment has been entered in a matter, any unpaid Rule 37 sanctions previously imposed should be considered costs. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 475 (Pon. 2006).

If the awarded sanctions are unpaid at judgment and payable to the prevailing party they should be

included as taxable costs. If the sanctions are unpaid at judgment and payable to the non-prevailing party, they ought to be deducted from the money judgment due the prevailing party. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 475 (Pon. 2006).

All money judgments bear nine percent interest. As part of the judgment, taxable costs bear that same interest imposed by statute and attorney's fee sanctions are a form of "costs" which will bear interest after judgment has been entered. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 475 (Pon. 2006).

Since a previously-awarded $770 discovery sanction will be incorporated into the final judgment as a matter of course, summary judgment for this amount is redundant, and will accordingly be denied. Berman v. Rosario, 15 FSM R. 429, 431 (Pon. 2007).

When making an attorney fees award, the court will award reasonable attorney's fees based on the customary fee in the locality in which the case is, or will be, tried. For a case tried on Pohnpei, the court will award fees on the basis of $125 an hour. FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 89 (Pon. 2010).

When making an attorney fees award, the court will award reasonable attorney's fees based on the customary fee in the locality in which the case is, or will be, tried. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 100, 101 (Yap 2010).

When a review of the billing attachment reveals that 3.6 hours were spent obtaining the order to compel a deposition, the court will award sanctions at $125 an hour for a total of $450. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 100, 101 (Yap 2010).

A Guam gross revenue tax or a GRT equivalent cannot be included in a court-awarded attorney's fee or as a sanctions expense since it is levied on the attorney and not on the client, and it is thus already included in an attorney's hourly charge. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 100, 102 (Yap 2010).

A trial court order stating that future sanctions "shall" be in the amount of $150 or greater and shall include contempt proceedings, prejudges the extent and severity of future violations before they occur and will be vacated since a court must hear before it condemns. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 376 (App. 2012).

Sanctions of $312.50 in attorney's fees imposed on "Damarlane" were imposed, jointly and severally, on all of the plaintiffs since the trial court began its order with a statement that the plaintiffs, Kadalino Damarlane et al., would be referred to as "Damarlane" throughout the rest of the sanction order and thus the sanction imposed on "Damarlane" was imposed on all of the plaintiffs collectively. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 377 (App. 2012).

Even if pleadings or other filings are "ghostwritten" there is no authority that a ghostwritten filing must be stricken. The usual result would be that the court would no longer give the pro se litigant the leeway normally given unrepresented lay parties and would require either that the ghostwriter file an appearance or that the ghostwriting attorney's identity be disclosed. In re Sanction of Sigrah, 19 FSM R. 305, 313 (App. 2014).

If a disbarred or suspended attorney drafts a paper and an admitted attorney signs and files it, the attorney signature on the filing constitutes assisting a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law. That would subject the signing attorney to discipline under Model Rule 5.5(b), which prohibits an attorney from assisting a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law. In re Sanction of Sigrah, 19 FSM R. 305, 313 (App. 2014).

An attorney's research and drafting of a brief filed by another counsel for represented parties does not

constitute the ethical lapse of "ghostwriting." In re Sanction of Sigrah, 19 FSM R. 305, 313 (App. 2014).

The imposition of disciplinary sanctions is subject to due-process scrutiny. An attorney is entitled to appropriate notice and an opportunity to be heard before any sanction is imposed on her whether that sanction is imposed on her under the civil procedure rules, the criminal contempt statute, or some other court power. In re Sanction of Sigrah, 19 FSM R. 305, 313 (App. 2014).

An attorney relying on others, even non-attorneys, to do the research or drafting is not sanctionable since a lawyer is not prohibited from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. By signing a filing, the signer retains or assumes responsibility for the work. In re Sanction of Sigrah, 19 FSM R. 305, 313-14 (App. 2014).

Since a writ of prohibition can only issue from a superior court against an inferior court, when, although the plaintiffs' complaint requested injunctive relief rather than specifically requesting a writ of prohibition, it is clear that they in actuality were requesting a writ of prohibition, any possibility of relief is plainly foreclosed. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 371-72 (Pon. 2014).

A motion to reconsider the imposition of sanctions on counsel will be denied when the movants have not demonstrated that reconsideration is necessary in order to correct a manifest error of law or fact on which the judgment is based; when their timeliness argument should have been raised earlier and so will not be considered on a motion for reconsideration; when their alternative argument was thoroughly discussed and rejected in an earlier order; and when they do not cite any authority in support of their contention that the court should modify its sanctions order in light of the harm to counsel's professional reputation. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 424 (Pon. 2014).

When a defendant has not provided sufficient answers to the plaintiff's discovery request as ordered by the court, the defendant and her counsel may be jointly and severally liable for the plaintiff's expenses incurred in bringing a second motion to compel is granted. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 128, 129 (Pon. 2015).

When the filing of a seemingly independent action is replete with inaccurate recitations of the parties and contains specious, untimely causes of action that challenge the formulation and enforcement of a defaulted loan on which a judgment had been entered, the conduct exhibited by the plaintiffs' attorney is vexatious under a clear and convincing analysis; thereby tantamount to bad faith. Setik v. Mendiola, 20 FSM R. 320, 327-28 (Pon. 2016).

The court has the power to regulate and control the litigation and the litigants before it, and this includes the power to impose sanctions, however calculated, on the parties legitimately before it. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 318, 325 n.6 (Yap 2017).

Parties that fail to abide by the terms of the court's pretrial order may be sanctioned. Samuel v. Kolonia Town, 22 FSM R. 397, 399 (Pon. 2019).

– Sanctions – Rule 11

An attorney shall be sanctioned under FSM Civil Rule 11 when it is apparent to the court that counsel had no arguable basis in fact or law in bringing a motion or pleading. Berman v. Kolonia Town, 6 FSM R. 242, 245-46 (Pon. 1993).

A motion will be regarded as frivolous (and sanctionable) if at the time of filing it offered no reasonable possibility of relief. Berman v. Kolonia Town, 6 FSM R. 242, 246 (Pon. 1993).

Although the language of FSM Civil Rule 11 directs that the court shall impose sanctions on an

attorney when a violation of the rule has been shown, the nature and amount of penalty is left to the court's discretion. Berman v. Kolonia Town, 6 FSM R. 242, 247 (Pon. 1993).

Rule 11 mandates a reasonable inquiry by the attorney as to whether the pleading or motion is well grounded in fact and warranted either by current law, or, alternatively, by a good faith argument that that is what the law ought to be. A bad faith argument, although still sanctionable, is thus not the only action sanctionable under this provision. A purely frivolous, good faith argument is also sanctionable. Berman v. Kolonia Town, 6 FSM R. 433, 435 (App. 1994).

The purpose of Rule 11 is to deter baseless filings. Berman v. Kolonia Town, 6 FSM R. 433, 436 (App. 1994).

Appeals of Rule 11 sanctions are reviewed under an abuse of discretion standard. Berman v. Kolonia Town, 6 FSM R. 433, 436 (App. 1994).

It is an abuse of discretion to deem a motion frivolous and sanctionable when it was a case of first impression in this jurisdiction, no contrary authority can be cited from another jurisdiction, and no authority was cited by the trial court, and where the appellant made a good faith argument for the extension of existing law. Berman v. Kolonia Town, 6 FSM R. 433, 436-37 (App. 1994).

An argument, although plainly incorrect, may be insufficiently frivolous as to warrant sanctions under FSM Civil Rule 11. Berman v. Santos, 7 FSM R. 231, 241 (Pon. 1995).

An attorney may be sanctioned under Rule 11 when, although citing the correct rule, she makes no attempt to demonstrate how the circumstances meet the provisions of that rule, her position is contrary to her earlier position, and she repeatedly misstates the court's conclusions; when a motion for reconsideration raises matters already decided and offers no new arguments; and when everything a posttrial motion to amend the complaint seeks to add are matters already adjudicated against the plaintiffs. Damarlane v. United States, 7 FSM R. 350, 356-57 (Pon. 1995).

Rule 11 sanctions can be granted only for violating one of the three elements of Rule 11 – is the document 1) signed, or 2) is to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it well grounded in fact and warranted by law, or 3) is it interposed for any improper purpose such as delay or harassment. Damarlane v. FSM, 7 FSM R. 383, 384 (Pon. 1996).

Sanctions will not be imposed for a motion not well-researched and supported only by the language of what most likely is the wrong rule of civil procedure when it was not a deliberate attempt to harass and increase the cost of litigation. Lavides v. Weilbacher, 7 FSM R. 400, 404 (Pon. 1996).

Sanctions will be imposed for the assertion of a long list of inapplicable affirmative defenses for which no reasonable inquiry was conducted. Sanctions may be both monetary and non-monetary. Lavides v. Weilbacher, 7 FSM R. 400, 406 (Pon. 1996).

An attorney who argues that his motion need not be served on an opposing party or an attempt be made to obtain that party's consent to the motion because the opposing party has defaulted when no default judgment has been entered may be sanctioned. Bank of the FSM v. Bergen, 7 FSM R. 595, 597 (Pon. 1996).

Rule 11 sanction orders are reviewed under an objective abuse of discretion standard. In re Sanction of Berman, 7 FSM R. 654, 656 (App. 1996).

Rule 11 requires that an attorney undertake a reasonable inquiry before signing to determine whether a pleading, motion, or other paper is well-grounded in fact and warranted either by current law, or a good faith argument of what the law ought to be. A purely frivolous, though good faith, argument is

sanctionable. A reasonable inquiry means an inquiry reasonable under all the circumstances of the case. An attorney whose answer copied the list of affirmative defenses directly from Civil Rule 8(c), giving no thought to the applicability of any one defense to the particular facts or issues of the case, has not made a reasonable inquiry. In re Sanction of Berman, 7 FSM R. 654, 656-57 (App. 1996).

A litigant pleading non-frivolous along with frivolous claims cannot expect to avoid all sanctions under Rule 11 merely because the pleading or motion under scrutiny was not entirely frivolous. In re Sanction of Berman, 7 FSM R. 654, 657 (App. 1996).

Merely because a motion is legally deficient in some respect does not make it a frivolous motion subject to sanctions. Damarlane v. FSM, 8 FSM R. 10, 13 (Pon. 1997).

An attorney, before signing a document, must undertake a reasonable inquiry to determine whether the document is well-grounded in fact and warranted either by current law, or a good faith argument of what the law ought to be. A purely frivolous argument, even if made in good faith, may be sanctionable. Damarlane v. United States, 8 FSM R. 45, 57-58 (App. 1997).

Rule 11 sanction orders are reviewed under an abuse of discretion standard, using an objective standard, rather than assessing an attorney's subjective intent. Damarlane v. United States, 8 FSM R. 45, 58 (App. 1997).

A Rule 11 attorney sanction order is immediately appealable, but only if the sanctioned attorney proceeds under his own name, and as the real party in interest. In re Sanction of Michelsen, 8 FSM R. 108, 110 (App. 1997).

Rule 11 sanction orders are reviewed under an abuse of discretion standard. In re Sanction of Michelsen, 8 FSM R. 108, 110 (App. 1997).

Rule 11 sanctions are usually sought by a party, but a court may impose sanctions on its own initiative. In re Sanction of Michelsen, 8 FSM R. 108, 110 (App. 1997).

The manner in which Rule 11 sanctions are imposed must comport with due process requirements. At a minimum, notice and an opportunity to be heard are required. In re Sanction of Michelsen, 8 FSM R. 108, 110 (App. 1997).

A court's failure to provide adequate notice and the opportunity to be heard when imposing sanctions *sua sponte* in itself provides the ground for reversal of an order imposing sanctions. In re Sanction of Michelsen, 8 FSM R. 108, 110 (App. 1997).

A trial judge abuses his discretion when, without due process of law, he *sua sponte* imposes a Rule 11 sanction on an attorney. In re Sanction of Michelsen, 8 FSM R. 108, 111 (App. 1997).

Arguing the facts is different from representing the facts as being what they are not. That is simple prevarication sanctionable under Civil Procedure Rule 11. Kosrae v. Worswick, 9 FSM R. 536, 539 (Kos. 2000).

An attorney's signature constitutes the signer's certificate that the signer has read the pleading, motion, or other paper and that to the best of the signer's knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 474 (Pon. 2001).

When a party has contended that plainly relevant information is not relevant, and has done so in the face of clear law that is contrary to its position, the question becomes whether the party's relevancy

argument is so wide of the mark as to be frivolous. This is a prima facie case of a Rule 11 violation. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 474 (Pon. 2001).

Counsel, who also signed another party's motion even though it did not involve a live dispute with respect to his client, should be prepared to address why at least nominal sanctions should not be imposed against him in the event that a Rule 11 violation occurred. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 474 (Pon. 2001).

Sanctions under Kosrae Rule 11 are applicable only to legal counsel, not pro se litigants. Talley v. Talley, 10 FSM R. 570, 573 (Kos. S. Ct. Tr. 2002).

A court retains jurisdiction over a Rule 11 motion for sanctions even though the action has been dismissed. Kosrae v. Seventh Kosrae State Legislature, 11 FSM R. 56, 58 (Kos. S. Ct. Tr. 2002).

The Kosrae Rule 11 provides that an offending attorney may be subject to appropriate disciplinary action for a wilful violation of the rule. FSM Rule 11 on the other hand contains no wilfulness requirement and provides that the court must impose an appropriate sanction. Kosrae v. Seventh Kosrae State Legislature, 11 FSM R. 56, 58 (Kos. S. Ct. Tr. 2002).

A party seeking sanctions under the Kosrae Rule 11 must show that the filer of the offending pleading knew that the pleading violated the rule and intended, or meant, to violate the rule by filing it. Kosrae Rule 11 is reserved for instances where the filer deliberately presses an unfounded claim or defense. The filer's knowledge of the pleading's defects and his intent to violate the rule, along with the other elements of a Rule 11 violation, must be shown by clear and convincing evidence. Kosrae v. Seventh Kosrae State Legislature, 11 FSM R. 56, 58-59 (Kos. S. Ct. Tr. 2002).

Because Kosrae Admission Rule 4(2) provides that the Chief Justice may, after notice and hearing, discipline an attorney for violation of the Admission Rules, a Rule 11 motion for sanctions may be denied without prejudice to the initiation of the appropriate disciplinary proceedings under Rule 4(2). Kosrae v. Seventh Kosrae State Legislature, 11 FSM R. 56, 59 (Kos. S. Ct. Tr. 2002).

To the extent that the hearing requirement of Practice Rule 4(2) has any application to a motion under Kosrae Civil Procedure Rule 11, it means that the court may comply with this requirement either by holding an oral hearing on adequate notice, or by considering written submissions from the affected parties. Kosrae v. Seventh Kosrae State Legislature, 11 FSM R. 56, 59 (Kos. S. Ct. Tr. 2002).

When there are no monetary Rule 11 sanctions against party's counsel and he is not appealing in his own name as the real party in interest and the Rule 11 sanctions run to the party and are identical to the Rule 37 sanctions (which can only be appealed after entry of a final judgment) imposed on the party, the Rule 11 sanctions are not properly before the court in an interlocutory appeal. FSM Dev. Bank v. Adams, 12 FSM R. 456, 461 (App. 2004).

Accurate citations to legal authority are required by Rule 11. Kinere v. Sigrah, 13 FSM R. 562, 569 (Kos. S. Ct. Tr. 2005).

A court cannot award sanctions under Rule 11 for discovery matters subject to Rules 26 to 37, for which Rule 37 sanctions can be imposed. Nor can a court resort to its inherent powers when Rule 37 applies because Rule 37 is the exclusive remedy for failure to comply with a production order. Rule 37 sanctions for the failure to make discovery are the only relief available for failure to make discovery. FSM Dev. Bank v. Adams, 14 FSM R. 234, 251 (App. 2006).

Rule 11 sanctions may be imposed on a party or his attorney or both. Since the constitutional guarantee of due process requires that the person, upon whom a sanction might be imposed, must be given notice of that possibility and the opportunity to be heard before any sanction can be imposed, before

the court could consider the sanctions motion as a whole, the party's former counsel, who had withdrawn before the sanctions motions were filed, had to be given notice that Rule 11 sanctions might be imposed and an opportunity to be heard on the issue as it might relate to him. The court therefore ordered that the motion be served on former counsel, and that the clerk serve a copy of the court order on him. Amayo v. MJ Co., 14 FSM R. 355, 359 (Pon. 2006).

Under Rule 11, a party's or an attorney's signature on a paper is the signer's certification that, among other things, it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. When a paper is signed in violation of Rule 11, the court must impose upon the person who signed it, a represented party, or both, an appropriate sanction. Amayo v. MJ Co., 14 FSM R. 355, 362 (Pon. 2006).

Under Rule 11, the court's discretion includes the power to impose sanctions on the client alone, solely on counsel, or on both. This is desirable because there are circumstances in which one of these actions is more appropriate than the other two. For example, when the offending conduct relates to work that lies within the counsel's supposed competence, especially when it is beyond the client's understanding, it is the former who should be sanctioned, not the latter. Amayo v. MJ Co., 14 FSM R. 355, 362 (Pon. 2006).

Since seeking appellate review and a stay may be characterized as work that lies within the counsel's supposed competence and could be beyond the client's understanding, if Rule 11 sanctions were imposed, counsel rather than client may be the appropriate person to sanction. Amayo v. MJ Co., 14 FSM R. 355, 362 (Pon. 2006).

Although bad faith is not a necessary element for Rule 11 sanctions, bad faith will, of course, subject a party, the party's attorney, or both to Rule 11 sanctions. Amayo v. MJ Co., 14 FSM R. 355, 363 n.3 (Pon. 2006).

When the defendant fulfilled the portion of the bargained-for stay that the stay required him to do personally (by making the $500 monthly payments) and when he cannot be expected to grasp that while review of the recusal issue could be sought through an original action in the appellate division by way of a petition for an extraordinary writ (of prohibition), appellate review of the other issues was dependent on the trial court's Appellate Rule 5(a) certification and then on the appellate court's exercise of its discretion to permit an appeal, it appears that if Rule 11 sanctions are to be imposed, they must be imposed on the defendant's former counsel. Amayo v. MJ Co., 14 FSM R. 355, 363 (Pon. 2006).

Withdrawal does not immunize counsel from Rule 11 sanctions. Amayo v. MJ Co., 14 FSM R. 355, 363 n.4 (Pon. 2006).

For Rule 11 purposes, counsel's conduct should be appraised at the time the signed paper was filed. Amayo v. MJ Co., 14 FSM R. 355, 363 (Pon. 2006).

Counsel cannot be sanctioned for merely being wrong about the law or having an exaggerated sense of the probability of success on the line he was pursuing. But counsel cannot avoid the sting of Rule 11 sanctions under the guise of a pure heart and empty head. Amayo v. MJ Co., 14 FSM R. 355, 363 (Pon. 2006).

A court may decline to impose Rule 11 sanctions where the mistake is inadvertent, although many cases hold that sanctions are mandatory when a Rule 11 violation is found. Amayo v. MJ Co., 14 FSM R. 355, 363 (Pon. 2006).

The purpose of Rule 11 sanctions is to deter baseless or frivolous filings. The decision to impose or not impose Rule 11 sanctions is addressed to the trial court's discretion. Ehsa v. Pohnpei Port Auth., 14 FSM R. 481, 486 (Pon. 2006).

An answer that denies all of a complaint's factual allegations is an answer in the nature of a general denial. General denials, while disfavored, are permissible when proper, but are subject to the obligations of honesty set forth in Rule 11. Counsel are cautioned that pleadings that deny facts known by the pleader to be true subject counsel to possible sanctions under Rule 11. Albert v. George, 15 FSM R. 574, 577 n.1 (App. 2008).

When the plaintiffs believed in good faith that a claim existed and that this claim fell under the existing law of contracts; when their small claims lawsuit was not used to harass or cause unnecessary delay and is grounded in fact; and when the plaintiffs' claim is not frivolous, the defendant's claim for sanctions will be denied. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 642 (Kos. S. Ct. Tr. 2009).

Rule 11 provides for sanctions against an attorney for filing frivolous and baseless motions. Rule 11 requires that before affixing her signature to a document, an attorney must undertake a reasonable inquiry to determine whether the pleading, motion, or other paper is well-grounded in fact and warranted either by current law, or a good faith argument of what the law ought to be. A purely frivolous argument, even if made in good faith, may be sanctionable. Damarlane v. Pohnpei Transp. Auth., 17 FSM R. 307, 312 & n.2 (Pon. 2010).

An attorney may be sanctioned for raising matters already decided and offering no new arguments. Damarlane v. Pohnpei Transp. Auth., 17 FSM R. 307, 312 (Pon. 2010).

The manner in which Rule 11 sanctions are imposed must comport with due process requirements. At a minimum, notice and an opportunity to be heard are required. Damarlane v. Pohnpei Transp. Auth., 17 FSM R. 307, 312 (Pon. 2010).

When the court is generally inclined to grant the defendants' motion for sanctions on the grounds of *res judicata* and the complete lack of merit in the plaintiffs' arguments but recognizes a possibility, however remote, that the plaintiffs genuinely and inadvertently misconstrued the relationship between the March 15, 1991 preliminary injunction and the May 17, 1991 order, the court, in its discretion, may deny the defendants' motion for sanctions and warn the plaintiffs that it may not look so charitably upon future filings of this type and caution their counsel to carefully review Civil Rule 11 and its requirements before filing further motions in the case. Damarlane v. Pohnpei Transp. Auth., 17 FSM R. 307, 312 (Pon. 2010).

Rule 11 requires that every submission by a party represented by an attorney must be signed by an attorney of record. The attorney's signature is a certificate by the signer that, to the best of the signer's knowledge, information, and reasonable belief, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and that it is not submitted for any improper purpose. If a submission is signed in violation of Rule 11, the court, upon motion or upon its own initiative, must impose upon the person who signed it, a represented party, or both, an appropriate sanction. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 52, 57 (Pon. 2011).

The purpose of Rule 11 sanctions is to deter baseless or frivolous filings and the decision to impose them is addressed to the trial court's discretion. When a claim is asserted by the same plaintiff, represented by the same counsel, in an action involving the same land, repeatedly asserting previously denied theories, the court will consider that claim frivolous. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 52, 57 (Pon. 2011).

Sanctions will not be imposed when the plaintiff has failed to show that the defendant's arguments are either unfounded or in bad faith since the res judicata doctrine was an affirmative defense available to it as the matter was final over 14 years ago. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 52, 57 (Pon. 2011).

Sanctions will not be imposed on the defendant for its attempt to interpret the plaintiff's motivations and objectives because that is not a sanctionable offense. Damarlane v. Pohnpei Transp. Auth., 18 FSM R.

52, 57 (Pon. 2011).

Sanctions will be imposed on the plaintiff when plaintiff's counsel has deliberately distorted the facts, orders, opinions, and judgments of both the trial court and the appellate division throughout the matter's life and afterlife; when such cherry-picking of the facts and language from the opinion might have been excusable since that opinion was over 20 years old had some other party represented by some other counsel done so; when less than one year ago, the court reminded the plaintiff that the May 17, 1991 order did not require the defendant to take any particular action and that he had incorrectly characterized the court's actions; when this pattern of distortion dates as far back as counsel's use of inapplicable laws in a June 2, 1994 amended pretrial statement; and when the April 30, 1992 appellate division opinion and the trial court's December 29, 2010 order have twice explained that the May 17, 1991 order has no weight but counsel continues to argue the same inapplicable issues and facts. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 52, 58 (Pon. 2011).

Sanctions will be denied when the supplement complained of was a request for ruling on a renewed motion and it did not cause unnecessary delay because the party seeking sanction spent only one hour and ten minutes in responding to the supplement. Berman v. Pohnpei, 18 FSM R. 67, 74-75 (Pon. 2011).

Sanctions will be denied when the arguments complained of were clearly supported by law despite the movants' singular inability to comprehend that. Berman v. Pohnpei, 18 FSM R. 67, 75 (Pon. 2011).

Appeals of Rule 11 sanctions are reviewed under an abuse of discretion standard, using an objective standard rather than assessing an attorney's subjective intent. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 372 (App. 2012).

Rule 11 sanctions can be imposed only for violating one of the three elements of Rule 11 – 1) is the document signed, or 2) is it, to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, well grounded in fact and warranted by law, or 3) is it interposed for any improper purpose such as delay or harassment. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 372 (App. 2012).

When a paper is signed in violation of Rule 11, the court must impose upon the person who signed it, a represented party, or both, an appropriate sanction. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 372 (App. 2012).

The purpose of Rule 11 sanctions is to deter baseless or frivolous filings, and although bad faith is not a necessary element for Rule 11 sanctions, it will subject a party, the party's attorney, or both to Rule 11 sanctions. A good-faith argument that is purely frivolous is also sanctionable. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 372 (App. 2012).

Although Rule 11 sanctions cannot be imposed for merely being wrong about the law or having an exaggerated sense of the likelihood of success, the sting of Rule 11 sanctions cannot be avoided under the guise of a pure heart and an empty head. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 373 (App. 2012).

Sanctions were proper when, using an objective standard, a reconsideration motion was without merit and the movants could never certify that the motion, ostensibly to enforce no longer valid 1991 interlocutory orders as decisions and orders which were the outcome of the litigation, was well grounded in fact and warranted by existing law or a good faith argument for its extension, especially since the trial court had earlier rejected the same claim. The 1991 interlocutory orders were not decisions and orders which were the litigation's outcome since the litigation's outcome was that the 1991 temporary orders ceased to be valid. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 375 (App. 2012).

Sanctions are proper when, even though the plaintiffs may have a valid claim against the defendants,

such a claim cannot be enforced by moving to hold the defendants in contempt of an interlocutory order that has ceased to have the force of law and which was issued in a case that not only has been closed for well over a decade but which also resulted in a final judgment, affirmed on appeal, adverse to the plaintiffs. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 375 (App. 2012).

The discretion to not impose sanctions when a Rule 11 violation occurs is very limited, and whether a sanction is imposed should not be dependent on what month of the year the Rule 11 motion is decided. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 375 n.3 (App. 2012).

A party's written Rule 11 motion constituted notice that it was seeking sanctions in the form of attorney's fees and the adverse parties' written opposition was their opportunity to be heard and they were heard on the papers. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 376 (App. 2012).

When a sanction is the result of the court's own motion, it must be vacated if the trial court did not give notice that it was making a motion because a trial judge abuses his discretion when, without prior notice and an opportunity to be heard, the court sua sponte imposes a Rule 11 sanction on an attorney. The manner in which Rule 11 sanctions are imposed must comport with due process requirements, and, at a minimum, notice and an opportunity to be heard are required. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 376 (App. 2012).

When a court (sua sponte) makes its own motion, it must give the parties notice and an opportunity to be heard before it grants or denies its own motion just as when a party makes a motion, the other party generally must be given notice and an opportunity to respond before the court rules. This does not include motions that the rules permit to be made *ex parte* or without notice, but motions for sanctions always require notice. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 376 & n.4 (App. 2012).

Barring future filings in a case or the filing of new cases in the same matter can be proper Rule 11 sanctions. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 376 (App. 2012).

When the defendants asked the plaintiffs' counsel to withdraw the offending motion or it would seek Rule 11 sanctions and their later Rule 11 motion was precise about what it sought sanctions for, the plaintiffs had the appropriate notice. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 377 (App. 2012).

As for the plaintiffs avoiding future sanctions, the order cannot be too vague since they are barred from filing any papers in Civil Action No. 1990-075 without first obtaining leave of court and have been since December 1995. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 377 (App. 2012).

Rule 11 sanction orders are reviewed using the abuse of discretion standard. A trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. In re Sanction of Sigrah, 19 FSM R. 305, 310 (App. 2014).

The signature required by Rule 11 does not certify that the signer prepared or wrote the document. It only certifies that the signer has read it and that the signer has made a reasonable inquiry into whether it is well grounded in fact and warranted by law. In re Sanction of Sigrah, 19 FSM R. 305, 310 (App. 2014).

An attorney may rely on someone else to do the research and, based on past experience with that researcher or by double-checking the researcher's research, be able to certify that the filing was well-grounded in fact and warranted by law or by a good faith argument that this is what the law should be. In re Sanction of Sigrah, 19 FSM R. 305, 310 (App. 2014).

An attorney does not violate Rule 11 by signing and filing a brief drafted by another attorney. In re Sanction of Sigrah, 19 FSM R. 305, 311 (App. 2014).

Rule 11, by its terms, only requires that a filing be signed by at least one attorney or trial counselor of record in that counsel's individual name. It does not require that all of the attorneys who worked on the filing sign it. In re Sanction of Sigrah, 19 FSM R. 305, 311 (App. 2014).

Sanctions for violating Rule 11 can only be imposed on the counsel who signed the filing, not on other counsel. In re Sanction of Sigrah, 19 FSM R. 305, 311 (App. 2014).

If a submission is signed in violation of Rule 11, the court must impose an appropriate sanction on the person who signed it, a represented party, or both. The decision whether to impose sanctions for violation of Rule 11 on the attorney or the client is at the court's sound discretion. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 371 (Pon. 2014).

The purpose of Rule 11 sanctions is to deter baseless or frivolous filings. Both bad faith arguments and frivolous, good faith arguments are sanctionable. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 371 (Pon. 2014).

Rule 11 Sanctions can be imposed when 1) a pleading, motion, or other paper is not, to the best of the signer's knowledge, information, and belief formed after reasonable inquiry well grounded in fact and warranted by law or a good faith argument for extension, modification, or reversal of existing law, or 2) when the document is for any improper purpose such as delay or harassment. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 371 (Pon. 2014).

A legal contention is not warranted by existing law if it is based on legal theories that are plainly foreclosed by well-established legal principles and authoritative precedent, unless the advocate plainly states that he or she is arguing for a reversal or change of law and presents a nonfrivolous argument in support of that position. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 371 (Pon. 2014).

A legal contention that is made in spite of the obvious preclusive effect of a judgment in prior litigation is not warranted by existing law. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 372 n.2 (Pon. 2014).

An argument for a change of law is frivolous if no reasonable argument can be advanced for the change. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 372 (Pon. 2014).

The plaintiffs' arguments are all the more frivolous when they fail to advance any argument for a modification of the law, and instead argue for a modification of the law as if it were existing law. Such an approach would not necessarily give rise to Rule 11 sanctions if a reasonable argument for modification of the law could be made, but not when it is impossible to advance a reasonable argument for modification of the appellate precedent. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 372 (Pon. 2014).

When the plaintiffs' complaints seek the same relief that had previously been denied by both the trial and appellate divisions, their efforts to stop the bank's judgment enforcement actions through this case represent frivolous and vexatious efforts by the same parties that have previously failed in both trial and appellate divisions, and when they were aware at the time of filing that these complaints offered no reasonable chance of relief, the court must infer that the complaints were filed for the improper purposes of causing unnecessary delay of bank's judgment enforcement actions and for causing needless increase in its litigation costs. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 373 (Pon. 2014).

FSM Civil Rule 11 directs that the court shall impose sanctions when a violation of the rule has been shown, leaving the nature and the amount of penalty to the court's discretion. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 373 (Pon. 2014).

It is within the court's discretion to apportion the sanction between an attorney and his client, and the court will impose a sanction on the attorney rather than his client when the offending conduct relates to

work that lies within the supposed competence of counsel. The decision to seek a writ of prohibition from a court despite binding precedent that speaks to that court's lack of jurisdiction is assuredly work that lies within the supposed competence of counsel. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 373 (Pon. 2014).

When it is clear that the complaints were not supported by law and were filed for the purpose of delay or harassment, the court will grant the opposing party's motion for sanctions in the form of costs including reasonable attorney's fees. These sanctions shall be imposed against the plaintiffs' counsel of record. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 373 (Pon. 2014).

Mere disagreement with the court's application of the standard for imposing Rule 11 sanctions does not support a motion to reconsider. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 424 (Pon. 2014).

An attorney's signature on a filing constitutes a certificate by the signer that the signer has read the filing and that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 580-81 (Pon. 2014).

The duty to make a "reasonable inquiry" means an inquiry reasonable under all the case's circumstances. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581 (Pon. 2014).

When the attorney signing the complaint was unaware of operative facts to discover that the notarized signature of one of the defendants was not hers, the attorney made, under the case's circumstances, a reasonable inquiry before the complaint was signed and filed, and, a reasonable inquiry having been made, the defendants' motion for Rule 11 sanctions for filing the complaint will be denied. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581-82 (Pon. 2014).

Imposition of Rule 11 sanctions on the defendants will be denied when the defendants could have labored under the impression that they conceivably might, if they prevailed in their entreaties for relief from previously issued judgments, still maintain an interest in the property whose development they sought to enjoin. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 106 (Chk. 2015).

No Rule 11 sanctions will be imposed when the court cannot say that the plaintiff's attempt was not a good faith argument for the extension, modification, or reversal of existing law, although that would not hold true if there are any future such attempts of the same nature. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 285 (Chk. 2016).

A court retains jurisdiction over a Rule 11 motion for sanctions even though the action has been dismissed. Setik v. Mendiola, 20 FSM R. 320, 322, 328 (Pon. 2016).

In determining the appropriateness of meting out Rule 11 sanctions, a two-pronged analysis must be undertaken regarding the conduct of plaintiffs' counsel in bringing the subject cause of action. Under Rule 11, the court must determine whether: 1) the pleading was signed, to the best of this attorney's knowledge, information and belief, formed after reasonable inquiry, well grounded in fact and warranted by law and 2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or to increase the litigation's cost. Setik v. Mendiola, 20 FSM R. 320, 323 (Pon. 2016).

Counsel's conduct is viewed under an objective standard, as opposed to assessing the attorney's subjective intent. Setik v. Mendiola, 20 FSM R. 320, 324 (Pon. 2016).

A signatory's conduct will be examined at the time the relevant document was executed. Setik v. Mendiola, 20 FSM R. 320, 324 (Pon. 2016).

When counsel chose to pursue an independent action in the wake of an unsuccessful Rule 60(b) motion for relief from judgment and when counsel had actual knowledge of the existing law prohibiting that, this behavior would belie any semblance of having conducted a "reasonable inquiry" into whether the

pleading was "warranted by existing law." Setik v. Mendiola, 20 FSM R. 320, 324 (Pon. 2016).

A "reasonable inquiry" implies being conversant with all the circumstances of the case. Setik v. Mendiola, 20 FSM R. 320, 326 (Pon. 2016).

A belated independent action predicated on an erroneous factual perception that the December 24, 2013 judgment and ensuing July 1, 2015 order did not exist, refutes any indication that the plaintiffs' counsel undertook the requisite "reasonable inquiry," about whether the independent action's complaint was "well grounded in fact." Setik v. Mendiola, 20 FSM R. 320, 327 (Pon. 2016).

When a complaint was brought as an independent action attacking a judgment that had already been unsuccessfully challenged twice, the attorney may be sanctioned for raising matters already decided and offering no new arguments. Setik v. Mendiola, 20 FSM R. 320, 327 (Pon. 2016).

The underlying reason for imposing Rule 11 sanctions is to deter baseless and frivolous filings. Setik v. Mendiola, 20 FSM R. 320, 327 (Pon. 2016).

Rule 11 sanctions will be imposed when the court finds that a "reasonable inquiry" into whether the complaint was "well grounded in fact and warranted by existing law" was wanting and when the pleading was "interposed for an improper purpose," namely, to cause unnecessary delay. Setik v. Mendiola, 20 FSM R. 320, 328 (Pon. 2016).

Whether to impose Rule 11 sanctions is subject to the trial court's discretion. As such, an abuse of discretion standard is utilized to review lower court decisions that address the propriety of these sanctions. Such abuses must be unusual and exceptional; an appellate court will not merely substitute its judgment for that of the trial court. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 26 (App. 2016).

In addition to appeals of Rule 11 sanction orders being reviewed under an abuse of discretion standard, an objective standard is employed, as opposed to assessing an attorney's subjective intent. Since the underlying reason for imposing Rule 11 sanctions is to deter baseless and frivolous filings, an appellate court will objectively scrutinize the lower court's analysis about the merits of imposing Rule 11 sanctions. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 26-27 (App. 2016).

An attorney is duty-bound, in accordance with Rule 11, to conduct due diligence before affixing his or her signature to a document. Under Rule 11, a court must determine whether the document is signed and to the best of the signer's knowledge, information, and belief, formed after reasonable inquiry, is well grounded in fact, as well as warranted by law and not interposed for any improper purpose such as delay or harassment. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 27 (App. 2016).

A reasonable inquiry entails an inquiry that is reasonable under all the circumstances. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 27 (App. 2016).

A court may decline to impose Rule 11 sanctions for an understandable mistake where the mistake is inadvertent. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 28 (App. 2016).

A signatory's conduct will be examined at the time the relevant document was executed. It is not necessary that an investigation into the facts be carried to the point of certainty. The investigation need merely be reasonable under the circumstances. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 28 (App. 2016).

Simply because, when the trial court denied the imposition of Rule 11 sanctions on the bank's attorney, it did not specifically articulate its reasoning for not imposing Rule 11 sanctions on the bank, does not necessarily imply that due consideration was lacking, in terms of such a prospect. A trial court need not state why it did not consider an issue or fact, it need only make a finding of such essential facts, as provide for a basis for the decision. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 28 (App. 2016).

When there was more than ample evidence that the bank, as well as its attorney, conducted due diligence and thereby, reasonable inquiry into the documents' signatories, an appellate court should be reluctant to substitute its judgment for that of the trial judge. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 28 (App. 2016).

Recognition of a notarized signature as indicia of reliability, is consistent with the governing statute(s), the rules of evidence, and case law; thereby meeting the reasonable inquiry requirement set forth in Rule 11. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 29 (App. 2016).

A disqualified justice should recuse herself rather than rule on a Rule 11 motion because it is neither a housekeeping nor a ministerial matter, and because her impartiality might reasonably be questioned even though the Rule 11 motion could not substantially affect her uncle's interest. Setik v. Mendiola, 21 FSM R. 537, 560 (App. 2018).

In order to be "controlling law," the precedent must be a binding precedent. A binding precedent is a precedent that a court must follow. For example, a lower court is bound by an applicable holding of a higher court in the same jurisdiction. Setik v. Mendiola, 21 FSM R. 537, 560-61 (App. 2018).

When the same counsel represented a defendant in an earlier case, but she did not appeal that adverse ruling, no binding precedent was created, and counsel was free to pursue, and cannot be sanctioned under Rule 11 for the same tactic in another case, and if the ruling in that case is again adverse, she may (if her client is willing) appeal that ruling for a definite and binding precedent, one way or the other. Setik v. Mendiola, 21 FSM R. 537, 561 (App. 2018).

A counsel's declaration should be sufficient to provide evidence of her illness because, under Kosrae Civil Procedure Rule 11, it is presumptively valid since an attorney's signature constitutes a certificate by the signer that the signer has read the filing and that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith. Jackson v. Siba, 22 FSM R. 224, 231 (App. 2019).

Whether an objectively reasonable inquiry was made into the facts before filing a paper is part of the Rule 11 sanctions standard, but is not applicable when there has been no Rule 11 motion. Helgenberger v. Helgenberger, 22 FSM R. 244, 250 n.6 (Pon. 2019).

– Sanctions – Rule 37

Under Rule 37(b), if a party fails to obey an order to permit or provide discovery, a court may order, among other things, that facts be designated as admitted, that the disobedient party not be allowed to support or oppose designated claims, that pleadings or parts thereof be stricken, or that a party be held in contempt of court. In addition, or in lieu of any of these, the court shall require a disobedient party, or the party's attorney or trial counselor, or both, to pay reasonable expenses (including attorney's fees) caused by the disobedient party's failure to obey the court's order. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 290-91 (Pon. 1998).

Instead of ordering that certain facts be designated as admitted as requested by a party that had previously obtained a court order requiring another party to comply with its discovery requests, a court may order that for failure to comply with that discovery order that the disobedient party pay all of the moving party's reasonable expenses in preparing, filing, and defending its motions for sanctions. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 291 (Pon. 1998).

When a trial court has determined a party's liability for an attorney's fees sanction but has not determined the amount of that liability, it is not a final order because the trial court could not execute on the order when the amount of attorney fees had not been fixed. Only once the fees have been fixed will the

order become final and appealable. Santos v. Bank of Hawaii, 9 FSM R. 285, 287 (App. 1999).

When Rule 37 sanctions have proven futile in resolving a discovery dispute and because they do not provide a remedy for the waste of a court's time and resources, a court may invoke its inherent power to control the orderly and expeditious disposition of cases and proper compliance with its lawful mandates. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 316, 329 (Pon. 2000).

FSM Civil Rule 37(b)(2) gives the court the authority to levy sanctions against a party, including dismissal, for failure to obey a discovery order, and Rule 41(b) allows the court to dismiss a plaintiff's complaint for failure to comply with a court order. Ting Hong Oceanic Enterprises v. Ehsa, 10 FSM R. 24, 29 (Pon. 2001).

Rule 37(a)(4) requires an opportunity for hearing before attorney's fees are awarded to a party who has prevailed on a motion to compel discovery. Courts may comply with this requirement either by holding an oral hearing on adequate notice, or by considering written submission from the affected parties. Adams v. Island Homes Constr., Inc., 10 FSM R. 430, 432 (Pon. 2001).

When a party fails to comply with an order compelling discovery under Rule 37(a), the court may order that the matters regarding which the order was made or any other designated facts will be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 474 (Pon. 2001).

When a defendant has not complied with all of the discovery requests as directed in a court order, the court will consider sanctions, including Civil Rule 37(b)(2) sanctions that designated facts will be taken to be established for the purposes of the action in accordance with the plaintiff's claim, and that defendant ought to be aware that deeming certain facts established is tantamount to entering a default judgment. AHPW, Inc. v. FSM, 10 FSM R. 507, 508 (Pon. 2002).

When a party has yet to comply with the court's discovery order and discovery has been outstanding for an extended period, then that is one fact that the court will consider when contemplating sanctions if compliance is not forthcoming. AHPW, Inc. v. FSM, 10 FSM R. 507, 508 (Pon. 2002).

Pohnpei may be held liable for discovery sanctions of motion related expenses such as attorney's fees, but the FSM is exempt from such sanctions under Rule 37(f). AHPW, Inc. v. FSM, 10 FSM R. 507, 509 (Pon. 2002).

Any party may serve on any other party a request to permit entry upon designated land or other property in the requested party's possession or control for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b), and if the requested party fails to permit inspection as requested, the party seeking discovery may move for an order compelling inspection in accordance with the request, and if granted, the court may, after opportunity for hearing, require the party whose conduct necessitated the motion to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees. Ambros & Co. v. Board of Trustees, 10 FSM R. 645, 647 (Pon. 2002).

When a motion to compel discovery is either granted or denied, the court must, after opportunity for hearing, award to the prevailing party its reasonable expenses incurred, including attorney or trial counselor fees, unless the court finds that the non-prevailing party's position was substantially justified or that other circumstances make an award of expenses unjust. The opportunity for hearing is complied with by considering written submissions from the affected parties. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 228 (Pon. 2002).

In addition to the sanction of fees and expenses provided for in Rule 37(a)(4), Rule 37(b)(2)(A) provides that the court may enter an order refusing to allow the disobedient party to oppose designated claims or defenses. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 229 (Pon. 2002).

The court may order as a sanction that the matters regarding which an order compelling discovery was made or any other designated facts will be taken to be established for purposes of the action in accordance with the claim of the party obtaining the order. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 229 (Pon. 2002).

When a party's refusal to produce a document in discovery was sufficiently egregious that the facts necessary to establish the party's liability to the plaintiffs are deemed established, the only issue remaining for trial will be that of damages. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 229 (Pon. 2002).

When a court has imposed Rule 37 discovery sanctions and finds that Rule 11 has also been violated, it may make the sanctions imposed under Rule 37 also stand as those imposed under Rule 11. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 229 (Pon. 2002).

The court may impose no further sanctions when a party is in contempt for its failure to abide by a court order because it knew of the order, had the ability to comply with the order, and decided not to comply, but Rule 37 sanctions have already been imposed. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 229 (Pon. 2002).

When a party's record of discovery obduracy speaks for itself, the court may award attorney's fees and expenses as reasonable under all the facts and circumstances. Adams v. Island Homes Constr., Inc., 11 FSM R. 445, 447 (Pon. 2003).

When, given the scope and depth of the discovery disputes generated by a party's conduct, the court, in awarding fees to opposing counsel, will not find several billing entries showing work by both attorneys working together to be inordinate. Adams v. Island Homes Constr., Inc., 11 FSM R. 445, 448 (Pon. 2003).

In order to achieve the end of discouraging obstructionist discovery conduct, the "expenses," that are imposed as a sanction for failure to comply with discovery is to be given a more expansive meaning than the "costs" that are awarded as part of a civil rights judgment. Adams v. Island Homes Constr., Inc., 11 FSM R. 445, 448 (Pon. 2003).

When a party's actions necessitated discovery sanction attorney fee awards, that party cannot complain about being held to account for them under Rule 37(a)(4). Such awards are not limited to the 15% generally awarded in collection cases. Adams v. Island Homes Constr., Inc., 11 FSM R. 445, 448 (Pon. 2003).

Rule 37(b) provides that the court may impose sanctions based upon a party's failure to comply with a court order to compel, and, pursuant to Rules 36(a) and 37(b)(2)(A), the court may deem the facts alleged in a request for admission of facts as admitted for the purposes of the action. Tolenoa v. Timothy, 11 FSM R. 485, 486 (Kos. S. Ct. Tr. 2003).

If a motion to compel discovery is granted, the court shall, after opportunity for hearing, require payment of the moving party's reasonable expenses incurred in obtaining the order, including attorney or trial counselor fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust. Actouka Executive Ins. Underwriters v. Walter, 11 FSM R. 508, 509 (Pon. 2003).

When a defendant has not paid a court-ordered sanction for costs related to the plaintiff's motion to compel discovery, the court may order that, if the sanction is not paid immediately, the defendant's answer be stricken. Actouka Executive Ins. Underwriters v. Walter, 11 FSM R. 508, 510 (Pon. 2003).

If a motion to compel answers to discovery is granted, the court must, after opportunity for hearing, require the party (or the party's attorney, or both) whose conduct necessitated the motion to pay to the

moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust. Primo v. Semes, 11 FSM R. 603, 606 (Pon. 2003).

When none of the arguments put forward in opposition to a motion to compel discovery establish that there was any legitimate justification for the opposition to the plaintiffs' motion to compel or the failure to timely respond to the interrogatories, the defendant should pay the plaintiffs the reasonable expenses incurred in obtaining the order compelling interrogatory responses. Primo v. Semes, 11 FSM R. 603, 606 (Pon. 2003).

When efforts to settle the case, or set a schedule for discovery, motions and trial, or proceed with a hearing on the sanctions motion, were rendered impossible by the unexplained absence of parties, the court, under FSM Civil Rule 37(d), has the authority to strike the parties' answer to third-party complaint or enter a default against them. Damerlane v. Sato Repair Shop, 12 FSM R. 231, 232 (Pon. 2003).

Failure to attend depositions, court hearings and conferences, and failure to answer discovery requests, are impermissible acts that subject the non-complying party to sanctions, ultimately including punishment that is as severe as imprisonment for acts that are deemed in contempt of court. Damerlane v. Sato Repair Shop, 12 FSM R. 231, 232 (Pon. 2003).

Since for every hour in-house counsel spent on the plaintiff's successful motion to compel his employer lost an hour of legal services that could have been spent on other matters, it is therefore appropriate to award the employer reasonable attorney's fees under Rule 37. FSM Dev. Bank v. Kaminanga, 12 FSM R. 454, 455 (Chk. 2004).

If a motion for discovery sanctions is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner. Fan Kay Man v. Fananu Mun. Gov't, 12 FSM R. 492, 497 (Chk. 2004).

As a general rule, the parties bear their own attorney's fees unless a contract between them provides otherwise, or they are awardable under a statute or court rule. In addition, attorney's fees may be assessed against a litigant for vexatious and oppressive litigation practices. Civil Procedure Rule 37 provides a specific mechanism for sanctioning vexatious discovery conduct. Adams v. Island Homes Constr., Inc., 12 FSM R. 541, 543 (Pon. 2004).

When, pursuant to Rule 37, the court has already assessed attorney's fees, as well as liability on the underlying cause of action as a sanction for a party's willful, bad faith discovery conduct, the court will award no further fees based on a claim of that party's generally vexatious conduct in the trial court. Adams v. Island Homes Constr., Inc., 12 FSM R. 541, 543 (Pon. 2004).

When the defendant engaged in the dubious practice, at best, of filing contingent motions concerning discovery six months after the court-ordered discovery cutoff date and did not file his pretrial motions within the time specified and since, under Rule 37(a)(4), the court "shall" award attorney's fees against the party moving to compel discovery if the motion is denied and the court made no finding that the motion was substantially justified or that other circumstances make an award of expenses unjust, no reason exists under Rule 37(a)(4) why attorney's fees should not be awarded. The plaintiff's fee request will be granted. Amayo v. MJ Co., 13 FSM R. 242, 247 (Pon. 2005).

A party that prevails on a motion to compel discovery is usually entitled to reasonable attorney's fees and costs as a sanction for the necessity to bring such a motion. Mailo v. Chuuk, 13 FSM R. 462, 471 (Chk. 2005).

The discovery rules encourage the parties to conduct discovery with a minimum of court involvement or intervention. Sanctions are provided to discourage an abuse or breakdown of the discovery process that

would require court involvement. FSM Dev. Bank v. Adams, 14 FSM R. 234, 248 (App. 2006).

Rule 37(b)(2) sanctions can be imposed only if a party fails to obey an order to provide or permit discovery, including an order made under Rule 37(a) or Rule 35, or if a party fails to obey an order under Rule 26(f). Rule 37(b)(2) sanctions cannot be imposed upon a party for its initial refusal to provide a document when that party had provided that document after the court had ordered it to. FSM Dev. Bank v. Adams, 14 FSM R. 234, 249 (App. 2006).

The trial court can impose the Rule 37(b)(2) sanctions for the bank's refusal, despite the court-ordered safeguards, to permit inspection of the non-party borrower records which the court had ordered it to allow opposing counsel to inspect. Rule 37(b)(2) sanctions can be appropriate sanctions to impose for that refusal. FSM Dev. Bank v. Adams, 14 FSM R. 234, 249-50 (App. 2006).

When a party had at least six days notice that it might be found in contempt and that Rule 37(b)(2)(A) sanctions might be imposed and those six days should have been sufficient and when the party took the opportunity to file various papers concerning the issues raised but did not directly address the prospect of contempt or of Rule 11 or Rule 37(b)(2)(A) sanctions although it was on notice they would be considered at the hearing, thus if the party was not heard on the Rule 37(b) sanctions, it was not because it did not have an opportunity to be heard after it was on notice that Rule 37(b)(2) sanctions would be considered. FSM Dev. Bank v. Adams, 14 FSM R. 234, 250-51 (App. 2006).

It is ordinarily inappropriate to look beyond the clearly delineated procedure of Rule 37 for the imposition of sanctions in the discovery context. Generally, Rule 37 is the sole source of sanctions for the discovery violations described in that rule. FSM Dev. Bank v. Adams, 14 FSM R. 234, 251 (App. 2006).

A court cannot award sanctions under Rule 11 for discovery matters subject to Rules 26 to 37, for which Rule 37 sanctions can be imposed. Nor can a court resort to its inherent powers when Rule 37 applies because Rule 37 is the exclusive remedy for failure to comply with a production order. Rule 37 sanctions for the failure to make discovery are the only relief available for failure to make discovery. FSM Dev. Bank v. Adams, 14 FSM R. 234, 251 (App. 2006).

The only proper remedy for a party's initial refusal to produce a document would be the imposition of attorney's fees because the opposing party had to bring a motion to compel the document's production. FSM Dev. Bank v. Adams, 14 FSM R. 234, 251 (App. 2006).

Rule 37(b)(2)(A) sanctions could not properly be applied for a party's earlier refusal to produce a document because that document was eventually produced, but could be, and were, properly applied for not permitting the inspection of the designated records as ordered by the court. The limitations on a court's discretion under Rule 37(b) is that the sanction imposed must be just and it must be specifically related to the particular claim which was at issue in the court's order to provide discovery. FSM Dev. Bank v. Adams, 14 FSM R. 234, 252 (App. 2006).

That some lesser sanction should have been considered first and imposed under Rule 37 is frequently the most advisable course of action, but Rule 37 does not require that, especially when the sanctioned party has a history of discovery abuse. FSM Dev. Bank v. Adams, 14 FSM R. 234, 252 (App. 2006).

The most severe Rule 37 sanction must be available not just to penalize those whose conduct warrants it but also to deter those who might be tempted to such conduct in the absence of a deterrent. FSM Dev. Bank v. Adams, 14 FSM R. 234, 252 (App. 2006).

A detailed or comprehensive explanation of the reasons should be included in the trial court order imposing Rule 37(b) sanctions. FSM Dev. Bank v. Adams, 14 FSM R. 234, 252 (App. 2006).

Punishment, through criminal contempt, cannot be employed where Rule 37 sanctions may be. FSM

Dev. Bank v. Adams, 14 FSM R. 234, 253 (App. 2006).

When the trial court had abandoned any further attempts at coercion and imposed Rule 37(b)(2) and 37(b)(2)(A) sanctions and, although it is uncertain whether the contempt sanction was actually ever imposed because the trial court let the Rule 37 sanctions "stand" as the contempt sanctions, if the contempt sanctions were, in fact, imposed, they were not civil in nature and must be reversed, and if none were imposed, then, in light of the Rule 37(b)(2) sanctions, the contempt finding must be vacated because no further purpose can be served by their imposition. FSM Dev. Bank v. Adams, 14 FSM R. 234, 253 (App. 2006).

Rule 37(b)(2) sanctions are not inherently criminal in nature and criminal due process protections do not have to be followed before they can be imposed. FSM Dev. Bank v. Adams, 14 FSM R. 234, 253 (App. 2006).

Attorney's fees are probably the most common Rule 37 sanction imposed. They are routinely awarded to successful movants seeking to compel discovery unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust. The great operative principle of Rule 37(a)(4) is that the loser pays. The trial court is to make the award against the losing party on the motion unless the court finds that its opposition to, or making of, the motion was substantially justified or that other circumstances make an award of expenses unjust. Thus the rule is mandatory unless one of these conditions for not making an award is found to exist. FSM Dev. Bank v. Adams, 14 FSM R. 234, 253 (App. 2006).

A party's statement that the lawyer should assume responsibility for technical and legal tactical issues and its assertion that it was not involved in the discovery disputes, only its counsel was, is not enough for an appellate court to say the trial court abused its discretion in not applying the attorney's fees sanctions against the party's former attorney himself rather than against the party. FSM Dev. Bank v. Adams, 14 FSM R. 234, 254 (App. 2006).

The question on appeal is not whether it was an abuse of the trial court's discretion to quash a deposition subpoena for a party, but whether the trial court abused its discretion in awarding expenses and attorney's fees as sanctions for quashing the subpoena. FSM Dev. Bank v. Adams, 14 FSM R. 234, 254 (App. 2006).

When a motion for a protective order did not assert that the bank had waived the right to depose a party by going forward with her son's deposition – only that the son was knowledgeable and available and the party was not – the motion's opposition was substantially justified and the trial court abused its discretion when it awarded fees and expenses for bringing the protective order motion. That award will be reversed. FSM Dev. Bank v. Adams, 14 FSM R. 234, 254-55 (App. 2006).

Deferring ruling on Rule 37 attorney fee requests is not a good idea. The purpose of Rule 37(a)(4)'s cost-shifting is to reduce the burden on the courts by deterring parties from making unjustified motions for discovery and by deterring their opponents from resisting discovery without justification. This deterrence is not as effective if the court defers the sanctions awards. FSM Dev. Bank v. Adams, 14 FSM R. 234, 255 (App. 2006).

The court will not impose a sanction for the failure to pay a $722.23 sanction when the order imposing the sanction did not set a deadline for its payment and the party has stated his willingness to pay any court-ordered sums. Instead, the court will set a deadline and if the defendant has not made that court-ordered payment by that date, the court will entertain a motion to strike his pleadings and enter a default. Amayo v. MJ Co., 14 FSM R. 355, 361 (Pon. 2006).

Rule 37(b) sanctions may be imposed on a party only if the party fails to obey an order to provide or permit discovery and cannot be imposed for conduct that did not involve the party's failure to obey an order

to provide or permit discovery. Amayo v. MJ Co., 14 FSM R. 355, 364 (Pon. 2006).

The general proposition is that sanctions as such do not bear interest, but the Rule 37 sanctions scheme presumes that when sanctions are imposed they will be promptly paid, generally well before the case has proceeded to judgment. Once final judgment has been entered in a matter, any unpaid Rule 37 sanctions previously imposed should be considered costs. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 475 (Pon. 2006).

When unpaid Rule 37 sanctions are not specifically named and included as costs in either the judgment or the later order that fixed and entered the costs and fees that were to be added to the judgment, they should be included in the original judgment by implication, if not specifically, since the court was unaware that the sanctions fixed seven months earlier had not been paid. It would be better practice for the plaintiffs to ask that the amount of unpaid sanctions be specifically included in the court's judgment. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 475-76 (Pon. 2006).

Since, if costs are allowed without express mention in the judgment, the date of the judgment starts the accrual of interest on the costs due, therefore earlier awarded Rule 37 attorney fee sanctions would bear interest from the date the judgment was entered because failing to allow attorneys' fees awards to bear interest would give parties against whom such awards have been entered an artificial and undesirable incentive to appeal or otherwise delay payment. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 476 (Pon. 2006).

Affirmed Rule 37 sanctions are considered costs that should be included in the money judgment and bear nine percent interest from the date judgment is entered until paid. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 476 (Pon. 2006).

An award of fees against the losing party on a motion to compel discovery is mandatory absent a finding that the opposition to the motion was substantially justified. The opportunity to be heard specified in Rule 37(a)(4) is satisfied either by holding an oral hearing after adequate notice, or by providing the affected parties the opportunity to file a written submission. Ehsa v. Pohnpei Port Auth., 14 FSM R. 567, 571-72 (Pon. 2007).

Since a previously-awarded $770 discovery sanction will be incorporated into the final judgment as a matter of course, summary judgment for this amount is redundant, and will accordingly be denied. Berman v. Rosario, 15 FSM R. 429, 431 (Pon. 2007).

A party is not entitled to an order requiring that its expert witness receive payments in advance of, or during, a discovery deposition and since it is not entitled to such an order, its motion to impose sanctions because the opposing party has not made advance payments and to compel advance payments will be denied. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 650-51 (Pon. 2009).

Although Rule 37 sanctions cannot be imposed on the FSM except to the extent permitted by statute, when the FSM's opposition to the sanctions motion was not substantially justified and an award of expenses is not otherwise unjust, the court may order the deponent whose conduct necessitated the sanctions motion or the attorney advising such conduct or both of them to pay the reasonable expenses incurred in obtaining the sanctions order. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 651-52 (Pon. 2009).

Rule 37(a)(4) requires an opportunity for hearing before a fees and expenses sanction is imposed and courts may comply with this requirement either by holding an oral hearing on adequate notice or by considering written submissions from the affected persons. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 652 (Pon. 2009).

A sanction award imposed on a deponent may be setoff against the expert fees owed him after his deposition has been completed. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 652 (Pon. 2009).

When the court does not find that the defendants' opposition to the plaintiffs' motion to compel a deposition was substantially justified and it has not been shown that other circumstances make an expenses award unjust, the court must order the defendants to pay the plaintiffs' reasonable attorney fees in obtaining the order. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 64, 69 (Yap 2010).

Rule 37(a)(4) requires an opportunity for hearing before attorney's fees are awarded to a prevailing party on a motion to compel discovery and courts may comply with this requirement either by holding an oral hearing on adequate notice or by considering written submissions from the affected parties. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 64, 69 (Yap 2010).

If a discovery sanctions motion is granted in part and denied in part, the court may apportion among the parties and persons in a just manner the reasonable expenses incurred in relation to the motion. FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 89 n.1 (Pon. 2010).

Besides awarding reasonable expenses to a prevailing movant on a sanctions motion, Rule 37(a)(4) also provides that if a sanctions motion is denied, the court must, after opportunity for hearing, require the moving party, the attorney advising the motion or all of them to pay to the party who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney fees. So when the attorney work done in opposing the plaintiff's sanctions motion was necessary for the defendant to prevail on its sanctions motion and the two were so closely intertwined as to be inseparable, the expenses for work done in opposing the plaintiff's sanctions motion were thus expenses incurred in obtaining the sanctions order denying the plaintiff's and granting the defendant's sanctions motion. FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 89 (Pon. 2010).

The great operative principle of Rule 37(a)(4) is that the loser on sanctions motions pays and the rule is mandatory unless one of the conditions for not making an award is found to exist. The loser may be either the movant or the motion's opponent. FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 89 (Pon. 2010).

Although, in order to achieve Rule 37(a)(4)'s purpose of discouraging obstructionist discovery conduct, the "expenses" that are imposed as a sanction for discovery misconduct are to be given a more expansive meaning than the "costs" that are awarded as part of a judgment, even those "expenses" should not include normal overhead, such as Westlaw fees or in-house copying costs within a law office. FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 90 (Pon. 2010).

Postage expenditure will be allowed as a Rule 37(a)(4) sanctions expense. FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 90 (Pon. 2010).

Although the court must first look to FSM sources of law rather than start by reviewing other courts' decisions, when the court has not previously considered whether a deponent and an attorney may be jointly held liable for Rule 37(a)(4) sanctions and that FSM civil procedure rule is identical or similar to a U.S. rule, the court may look to U.S. sources for guidance. FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 91 n.3 (Pon. 2010).

When counsel supported the deponent in his unreasonable demands, did not advise the deponent that his demands were unjustified, and did advise the deponent that he could leave the deposition, in effect, advising the deponent not to answer, this advice (to leave – to not testify) was not substantially justified. FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 91 (Pon. 2010).

Rule 37(a)(4) does not require that the court find that the attorney instigated the discovery misconduct nor does it require a finding of bad faith before sanctions may be imposed upon an attorney. FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 91 (Pon. 2010).

When counsel's advice to a deponent was not substantially justified and was, in fact, unjustified, he and

the deponent will be jointly and severally liable for the Rule 37(a)(4) sanctions thereafter imposed. FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 91 (Pon. 2010).

Generally, a party is entitled to its expenses in bringing a motion to compel depositions if the motion is granted. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 438 (Pon. 2016).

Rule 37 provides, in part, that if a party fails to obey an order to provide or permit discovery, the court in which the action is pending may make an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 439 (Pon. 2016).

Traditionally, the courts have administered justice with mercy. They have allowed a party a second opportunity to comply with the discovery rules and orders made under them. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 439 (Pon. 2016).

Since, in discovery matters, courts often make conditional orders intended to encourage compliance rather than punish a failure, the court, instead of striking a party's answer and dismissing that party's other claims, may order that party to file and serve under oath the party's appropriate responses to interrogatories and produce the documents requested of the party by a date certain and grant the opposing party's motion if discovery is not provided by then, and the court may also order that the movant is entitled to its expenses in bringing the motion to strike the pleadings. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 439 (Pon. 2016).

A response to the bank's interrogatory that sought information about a specific named person (who apparently had endorsed at least one of the bank's refund checks), that that was a document that the party had received from the bank so the party did not know anything about it, is completely non-responsive to the question, which asked who the named person was and where he could be found, and was evasive and inadequate and thus a sanctionable response. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 441 (Pon. 2016).

Even when a party is entitled to the relief it has requested – dismissal of certain claims and defenses – as discovery sanctions, the court, under Rule 37(a)(3) practice, has discretion in determining whether to instead order further answers. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 443 (Pon. 2016).

The FSM Development Bank may recover an attorney's fee award under Rule 37. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 575 (Pon. 2016).

If, and when, a party is awarded its expenses under Rule 37, and if that party is not paid those expenses reasonably promptly, that expense award will, at final judgment, be deducted from any money judgment awarded to the opposing party or added to any money judgment awarded to the party. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 575 (Pon. 2016).

The appropriate time to seek appellate review of a Rule 37 expense award would be after final judgment. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 575 (Pon. 2016).

If a party fails to obey an order to provide or permit discovery, the court may make such orders about that failure as are just, including an order striking out pleadings or parts thereof. Thus, if a party continues to disobey the court's order to provide discovery (including an order to appear at a deposition), the court unquestionably has the authority to strike out the parts of her joint pleadings that pertain to her. Her co-party's pleadings would remain. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 575 (Pon. 2016).

A party that provides discovery responses after a motion to compel discovery responses has been filed and served, does not, by virtue of providing responses, make moot the motion to compel, thereby

precluding the award of sanctions. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 318, 323 (Yap 2017).

A tardy response to interrogatories does not relieve a party of the consequences of Rule 37(a)(4). Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 318, 323 (Yap 2017).

A motion to compel discovery will be granted when there was not only a "failure to answer" interrogatories under oath due to incomplete replies, but also since answering interrogatories after a motion to compel their answer has been filed does not preclude sanctions. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 318, 324 (Yap 2017).

A sanction award, even when calculated by determining a party's reasonable attorney's fees, is not the payment of that attorney's fees or a payment of fees to that attorney. An attorney fee award is not an award to an attorney because a fee award is the client's, not the attorney's. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 318, 324 (Yap 2017).

When a court has jurisdiction over a case, it therefore also has the power to impose sanctions for discovery misconduct by any party to the case. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 318, 325 (Yap 2017).

The court can, under Civil Procedure Rule 37, impose sanctions, including partial or complete dismissals, against parties who disobey court orders regarding discovery. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 181 (Pon. 2019).

Rule 37 sanctions may be imposed for non-compliance with the court's orders concerning discovery, and the court in which the action is pending may make an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 181-82 (Pon. 2019).

The court has the inherent power to control its own docket and to fashion such orders and remedies as may be necessary to ensure the expeditious and just resolution of actions before it, but a court cannot resort to its inherent powers when Rule 37 applies because Rule 37 is the exclusive remedy for failure to comply with a production order. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 182 n.8 (Pon. 2019).

When neither the FSM Social Security Administration nor FSM Customs and Tax is a party to the action, it is the parties who should produce their tax and social security records documents. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 182 (Pon. 2019).

The Rule 37 sanctions scheme presumes that, when sanctions are imposed, the sanctions will be promptly paid, generally well before the case has gone to judgment, but once a final judgment has been entered in a matter, any unpaid Rule 37 sanctions previously imposed should be included as costs. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 479 (Pon. 2020).

Since an attorney is the real party in interest for any sanction imposed on her personally, the court cannot include the sanction, for which the attorney's clients are not liable, in the judgment against the clients and will enter the sanction solely against the liable attorney. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 479 (Pon. 2020).

– Service

The acts of hand-delivering a subpoena to a deponent, reading its relevant portions in English and translating it into Pohnpeian, informing the deponent of the date time and location of his appearance, and stating that the order was signed by the court satisfy the requirement of Rule 45(c) of the FSM Rules of Civil Procedure that reasonable attempts be made to explain the subpoena to the person to be served. Alfons

v. FSM, 5 FSM R. 402, 405 (App. 1992).

Motions may be served on other parties prior to being filed. Setik v. FSM, 6 FSM R. 446, 448 (Chk. 1994).

Certificates of service should state whether service was effected personally or by mail. Chen Ho Fu v. Salvador, 7 FSM R. 306, 308 n.4 (Pon. 1995).

All parties must be served with pleadings and papers unless the party is in default, and the default is for a failure to ever appear at any stage of the proceeding. Bank of the FSM v. Bergen, 7 FSM R. 595, 596 (Pon. 1996).

Service of a suggestion of death and a motion to substitute a party for a deceased party, if made by a party's attorney, must be made on the other parties (may be done through their attorneys) and personally (not upon their or the decedent's attorney) upon the nonparties who are to be substituted. The suggestion and motion can also be made by an attorney for the estate's representative, naming the estate's representative or decedent's successors, and served on all the parties' attorneys. An attorney for a decedent cannot file a suggestion of death or motion to substitute unless she has the status as a legal representative of the deceased party's estate. Damarlane v. FSM, 8 FSM R. 10, 13 & n.2 (Pon. 1997).

The rules require a certification of service upon all other parties. Porwek v. American Int'l Co. Micronesia, 8 FSM R. 436, 438 (Chk. 1998).

Service upon a party of all papers and pleadings subsequent to the original complaint shall be made by delivering a copy to that person or by mailing it to that person's last known address. Under Rule 5 service by mail is complete upon mailing and a party's nonacceptance of the papers generally does not affect its validity. Service by registered mail is not required – ordinary mail suffices. People of Satawal ex rel. Ramoloilug v. Mina Maru No. 3, 9 FSM R. 241, 242 (Yap 1999).

The FSM Civil Procedure Rules 5, 6 and 7 set forth the requirements governing service, filing and the form of motions. In accordance with Rule 5, all motions filed with the court must also be served on each party to the action. Similarly, each paper filed must be accompanied by certification of service of copies upon all other parties. O'Sullivan v. Panuelo, 9 FSM R. 589, 592 (Pon. 2000).

A motion is deficient in multiple respects when it does not appear that it was served on any party to the action including the very party it was directed toward, when it was not accompanied by certification of service upon all other parties, when it was supported by an affidavit which was filed one day after the motion was filed and the affidavit was not accompanied by certification of service upon all other parties as required by Rule 5(d), nor was it served with the motion as required by Rule 6(d), and when the motion did not contain a certification that a reasonable effort had been made to obtain the agreement or acquiescence of the opposing party and that no such agreement had been forthcoming. O'Sullivan v. Panuelo, 9 FSM R. 589, 595 (Pon. 2000).

Serving an answer three days late, and filing it four days late is not the type of prejudice that would allow a plaintiff to prevail while avoiding the case being decided on its merits because public policy favors court judgments be on the merits. Medabalmi v. Island Imports Co., 10 FSM R. 32, 35 (Chk. 2001).

Service upon legal counsel may be made by leaving a copy of the document at his office with his clerk or other person in charge thereof. It is proper to serve a person who has an office at or is employed at the Kosrae State Legislature by leaving a copy of the document with the Administrative Secretary at the Legislature. It is the legal counsel's professional responsibility and duty to follow up with the Administrative Secretary regarding any documents that may have been served upon him at the Legislature during his absence from the Legislature. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 193 (Kos. S. Ct. Tr. 2001).

Counsel must act with reasonable diligence and promptness in representing a client. Reasonable diligence requires follow up by legal counsel to determine whether any documents have been served upon him at his office. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 193 (Kos. S. Ct. Tr. 2001).

When counsel personally accepted the court's order and signed the return of service he had received actual and personal hand delivery of the order. Under these circumstances, the argument that he was not properly served with this document is without merit. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 193 (Kos. S. Ct. Tr. 2001).

Personal service on a party of a trial subpoena that gave clear, unambiguous notice to that party of the time and place of trial more than seven weeks before trial, constituted adequate timely notice of trial. Amayo v. MJ Co., 10 FSM R. 371, 379 (Pon. 2001).

When serving a subpoena, reasonable attempts shall be made to explain the meaning of the subpoena and what the person is required to do. Amayo v. MJ Co., 10 FSM R. 371, 380 (Pon. 2001).

There was no defect in service when a person who had been subpoenaed for trial as a witness, was also a party to the litigation, who was representing himself. As such, he is to be credited with knowing that "trial" means exactly that, a final determination of the merits of the case. Amayo v. MJ Co., 10 FSM R. 371, 380 (Pon. 2001).

Serving the defendant himself and failure to serve defendant's counsel with documents was not improper conduct entitling the defendant to Rule 60(b)(3) relief from judgment when that defendant had no counsel of record and was appearing pro se. Amayo v. MJ Co., 10 FSM R. 371, 380 (Pon. 2001).

FSM Rule 45 does not require notice of a trial subpoena to be served on the opposing party. Amayo v. MJ Co., 10 FSM R. 371, 380 (Pon. 2001).

Service of a motion upon an opposing party is expressly required under Civil Procedure Rule 6(d). Such is not the case with a trial subpoena. Therefore, in the absence of any pre-trial order requiring it, failure to serve trial subpoenas on an opposing party does not constitute improper conduct justifying relief from judgment under Rule 60(b)(3). Amayo v. MJ Co., 10 FSM R. 371, 381 (Pon. 2001).

When, service was done by servers employed at various times by plaintiffs' counsel, but who were duly appointed process servers and charged separate fees for the service, they were acting as private process servers. Fees charged by private process servers may be recoverable as costs. Amayo v. MJ Co., 10 FSM R. 371, 385 (Pon. 2001).

Service costs are always allowable to the prevailing party. Udot Municipality v. FSM, 10 FSM R. 498, 501 (Chk. 2002).

When the actual defendants are natural persons, service may be accomplished by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode or of business with some person of suitable age and discretion then residing or employed therein. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 121 (Chk. 2002).

No service on a defendant of a motion for entry of a default judgment is necessary under the rules, and nothing in the rules requires that notice of hearings on default matters be given to a defaulting defendant. Konman v. Esa, 11 FSM R. 291, 293-94 (Chk. S. Ct. Tr. 2002).

Civil Rule 6(d) addresses when a written motion must be filed. It does not address notice or service, which is addressed by Rule 5. FSM Social Sec. Admin. v. David, 11 FSM R. 262j, 262L (Pon. 2002).

Every written motion and similar paper must be served upon each of the parties. No service need to be made on the parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served in the manner provided for service of summons in Rule 4. FSM Social Sec. Admin. v. David, 11 FSM R. 262j, 262L (Pon. 2002).

When the plaintiff has failed to establish that the relief requested in its motion may be had on an ex parte basis, the court will order the plaintiff to serve its motion on the defendant. FSM Social Sec. Admin. v. David, 11 FSM R. 262j, 262L (Pon. 2002).

Although a court must rely on a certificate of service attached to a filing and presume that it is correct, such a presumption may be rebutted by admissible evidence. Fan Kay Man v. Fananu Mun. Gov't, 12 FSM R. 492, 495 (Chk. 2004).

When a subpoena was not served on the plaintiff himself, as required by Rule 45(c), but rather on his counsel and when the subpoena did not comport with FSM Civil Rule 45(e), which provides that an FSM court may issue a subpoena directed to an FSM national or resident who is in a foreign country, because the plaintiff is a Filipino citizen residing in the Philippines, the court will grant a motion to quash the subpoena. Amayo v. MJ Co., 13 FSM R. 242, 245 (Pon. 2005).

Since Rule 45 does not provide for attorney's fees in the event a subpoena is quashed, a request for attorney's fees for successfully bringing a motion to quash will be denied. Amayo v. MJ Co., 13 FSM R. 242, 245 (Pon. 2005).

For filings subsequent to the original complaint, every pleading, every paper relating to discovery, every written motion, notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. Service upon the party's attorney or trial counselor or upon a party (if unrepresented) must be made by delivering a copy to that person or by mailing it to that person's last known address. Lee v. Lee, 13 FSM R. 252, 258 (Chk. 2005).

The FSM Supreme Court can issue subpoenas to persons in foreign countries only to those who are FSM nationals or residents. Lee v. Han, 13 FSM R. 571, 578 n.3 (Chk. 2005).

Failure to make proof of service does not affect the validity of the service. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 575, 577 (Chk. S. Ct. App. 2007).

Like other motions in a pending action, a motion to intervene must be served according to the requirements of Rule 5. Additionally, Chuuk State Supreme Court GCO No. 01-06 requires that a certificate of service be filed with the motion. If and when the court grants a motion to intervene, then service of process of the intervener's complaint is performed according to the requirements of Rule 4. Kubo v. Ezra, 16 FSM R. 88, 90 (Chk. S. Ct. Tr. 2008).

It is essential that the trial court insure that its own notice procedures satisfy the requirements of due process. In order to comply with due process, Chuuk State Supreme Court Civil Procedure Rule 5(a) requires that service of all notices and other papers must be made upon each party affected. Under Rule 5(b), service must be made on a party's counsel, if represented, and may be effectuated either by "delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of court." Rule 5(b) further specifies that delivery of "a copy" means handing it to counsel; or leaving it at his office with his clerk of other person in charge thereof; or if there is no one in charge, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion residing therein. Service by placing a notice in a counsel's box in the clerk's office is not a method of service recognized by Rule 5(b). Farek v. Ruben, 16 FSM R. 154, 156-57 (Chk. S. Ct. App. 2008).

Service of a notice of trial by placing the notice in a counsel's box in the clerk's office is deficient

service and tantamount to non-service when it results in a party's failure to be informed of the noticed trial date. When a court's notice of trial on the merits is not served on a party, that party's rights to due process of law under the Chuuk and FSM constitutions are violated, and the trial court's failure to serve notice of a trial date and time is plain error. Farek v. Ruben, 16 FSM R. 154, 157 (Chk. S. Ct. App. 2008).

Filing in duplicate is required and opposing parties must each be served a copy. FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 90 (Pon. 2010).

When the procedures which the Land Court followed in giving notice of the February 23, 2010 proceeding were adequate and complied with the requirements of Kos. S.C. § 11.613; when Winfred had not made his off-island mailing address known to the Land Court despite being aware of the decades-long proceedings; when, in his brief, Winfred acknowledges that the Land Court followed all of the steps of Kos. S.C. § 11.613 except for the final step, which requires that any claimant who is residing off-island and has informed the Land Court, in writing, of an off-island mailing address will be notified 45 days before a hearing by certified mail, return receipt requested; and when if Winfred had doubts as to the Heirs' counsel's ability properly to represent him, he should have let the Land Court know but did not, Winfred has received adequate notice pursuant to Kos. S.C. § 11.613. Heirs of Mackwelung v. Heirs of Mongkeya, 18 FSM R. 12, 14-15 (Kos. S. Ct. Tr. 2011).

A notice of trial is defective when it is not properly served. Phillip v. Moses, 18 FSM R. 247, 250 (Chk. S. Ct. App. 2012).

Service of papers by leaving them in the counsel's box at the clerk's office is not good service and does not constitute proper notice and is tantamount to non-service. Phillip v. Moses, 18 FSM R. 247, 250 (Chk. S. Ct. App. 2012).

When a court's notice of trial on the merits is not served on a party, that party's rights to due process of law under the Chuuk and FSM Constitutions are violated, and the failure to serve notice of a trial date and time is plain error. Phillip v. Moses, 18 FSM R. 247, 250 (Chk. S. Ct. App. 2012).

All papers after the complaint that are required to be served on a party must be filed with the court, in duplicate, either before service or within a reasonable time thereafter and must be accompanied by certificate of service of copies on all other parties. Helgenberger v. Chung, 20 FSM R. 519, 521 (Pon. 2016).

The principal importance of the certificate of service is to provide the court with clear proof that service has been accomplished. Helgenberger v. Chung, 20 FSM R. 519, 521 (Pon. 2016).

A certificate of service must be filed with the court when the relevant paper is filed, and the court must rely on a certificate of service attached to a filing and presume that it is correct, but that may be rebutted by admissible evidence. Helgenberger v. Chung, 20 FSM R. 519, 521 (Pon. 2016).

The rules do not authorize electronic service via e-mail. Helgenberger v. Chung, 20 FSM R. 519, 521 (Pon. 2016).

When the actual service of an answer is not contested, there is little point to invalidating that pleading for lack of a certificate of service because that invalidation would serve no purpose except to fruitlessly extend the litigation's length. Helgenberger v. Chung, 20 FSM R. 519, 522 (Pon. 2016).

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

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

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

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

The Kosrae Land Court's written decision must be served on all claimants who appeared at the hearing, pursuant to the State Court rules prescribing service requirements. Esau v. Penrose, 21 FSM R. 75, 80 (App. 2016).

When service of the Land Court decision was made on someone who did not reside with the appellant, that service was insufficient, and the fact that the appellant became aware of the Land Court's decision later is not equivalent to being properly served to safeguard her due process rights. If a party was not served notice and was then denied the right to appeal, his or her due process rights are violated. Esau v. Penrose, 21 FSM R. 75, 80-81 (App. 2016).

The court's rules do not allow for service by e-mail. Hartmann v. Department of Justice, 21 FSM R. 468, 472 (Chk. 2018).

Although a court must rely on a certificate of service attached to a filing and presume that it is correct, such a presumption may be rebutted by admissible evidence that a party was never properly served. Hartmann v. Department of Justice, 21 FSM R. 468, 472 (Chk. 2018).

– Service of Process

Determination of whether an individual is a managing or general agent for purposes of FSM Civil Rule 4(d)(3) is made on the basis of whether person served can fairly be expected to know what to do with the papers so that the organization will have notice of the filing of the action. A person of authority and responsibility in an organization's operation is a managing or general agent for purposes of the rule. Luda v. Maeda Road Constr. Co., 2 FSM R. 107, 109 (Pon. 1985).

The purpose of the rules addressing process and service of process in civil cases is to assure that a defendant receives sufficient notice of all causes of action that are filed against him and thus has a fair and adequate opportunity to defend. Where a plaintiff fails to properly serve a defendant, the court does not have jurisdiction over that defendant, and the case may not proceed, but will be dismissed without prejudice. Berman v. Santos, 6 FSM R. 532, 534 (Pon. 1994).

Where a state official was sued in his individual capacity and service of the complaint and summons was made on the governor's office and the state attorney general, it is not good service because service upon an individual is made by delivery to the individual personally or by leaving copies at the individual's dwelling house or usual place of abode or of business or by delivery to an agent authorized to receive service of process. Berman v. Santos, 6 FSM R. 532, 534 (Pon. 1994).

Although the civil rules do not provide for a specific method of service upon a state officer in his official capacity, service upon a state officer in his official capacity requires that he receive notice of the suit. Berman v. Santos, 6 FSM R. 532, 534-35 & nn.3, 4 (Pon. 1994).

Proof of service of process should be made to the court promptly and in any event within the time during which the person served must respond. Berman v. Santos, 6 FSM R. 532, 535 (Pon. 1994).

For personal service of a complaint and summons to be effective when the defendant refuses to accept the papers the complaint and summons must be left where they might reasonably be found and the process server must make an attempt to describe generally the meaning of the papers in a language the defendant can understand. Rodale's Scuba Diving Magazine v. Billimon, 8 FSM R. 18, 19 (Chk. 1997).

The duties of an agent for the service of process are not the same as those of an attorney. Practically anyone may serve in the capacity as an agent. It may entail little more than receiving legal papers and promptly forwarding them on to the principal. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 93, 94 (Chk. 1997).

When a law firm has been designated as an agent for service of process by a foreign corporation required to appoint one in the FSM, the law firm may remain the corporation's agent for service even if the corporation has left the FSM and the firm is no longer its attorney. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 93, 94-95 (Chk. 1997).

Failure to effect service of the summons and complaint on the FSM Attorney General, as required by FSM Civil Rule 4(d)(4) and (5), as well as the national government agency and officer that are the defendants makes the case subject to dismissal under Rule 12(b)(5). Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM R. 111, 115 (Chk. 1997).

Because dismissal under Rule 12(b)(5), unlike most Rule 12(b) dismissals, is without prejudice and with leave to renew, courts will often quash service instead of dismissing the action. That way only the service need be repeated. Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM R. 111, 115 (Chk. 1997).

Because a person may have more than one place of residence and a person's legal residence is his place of domicile or permanent abode, as distinguished from temporary residence, an FSM citizen temporarily working abroad is the legal resident of some state in the Federated States of Micronesia, and thus may be served process in any manner permitted by the FSM rules, such as by certified mail. Alik v. Moses, 8 FSM R. 148, 150 (Pon. 1997).

The service requirements of the long-arm statute are more stringent than those of the rules of civil procedure. Service of process may be by personal service, and the service of summons must be made in like manner as service within the Federated States of Micronesia and must be made by an officer or person authorized to make service of summons in the state or jurisdiction where the defendant is served. Alik v. Moses, 8 FSM R. 148, 150 (Pon. 1997).

Under Rule 4(j) a complaint that has not been served within 120 days of being filed can only be dismissed upon motion or the court's own initiative. Service made after 120 days but before a motion or court initiative to dismiss is good service and dismissal will not be granted on a later motion. Alik v. Moses, 8 FSM R. 148, 151 (Pon. 1997).

When a plaintiff has not shown good cause for his failure to serve the summons and complaint on a foreign defendant within 120 days as required by FSM Civil Rule 4(j) or pursuant to one of the alternative methods for service in a foreign country allowed by FSM Civil Rule 4(i) the court will dismiss the complaint against without prejudice. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 477 (Pon. 1998).

The 120 day time limit to effect service does not apply to service in a foreign country pursuant to Rule 4(i). This exception was clearly intended to cover situations where the difficulties in accomplishing service make it impracticable to complete the task in that time. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R.

471, 483 (Pon. 1998).

When a plaintiff has not shown good cause for his failure to timely serve a defendant, a motion to dismiss without prejudice will be granted. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 484 (Pon. 1998).

In addition to the personal service provided in 4 F.S.M.C. 204(2), service may be accomplished for the purpose of the long arm statute by any of the means provided for in Rule 4 of the FSM Rules of Civil Procedure. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 124 (Pon. 1999).

Service of the summons and complaint may be made on a foreign corporation not an inhabitant of or found within the state by registered or certified mail, return receipt requested. If service was by mail, the person serving process shall show in the proof of service the date and place of mailing. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 124 (Pon. 1999).

Because failure to make proof of service does not affect the validity of the service, a motion to dismiss for a defect in a return of service will be denied. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 125 (Pon. 1999).

Under 4 F.S.M.C. 204, service of process may be made upon any person subject to the Supreme Court's jurisdiction by personally serving the summons upon the defendant outside the Federated States of Micronesia and service of summons under 4 F.S.M.C. 204 must be made in like manner as service within the Federated States of Micronesia by any officer or person authorized to make service of summons in the state or jurisdiction where the defendant is served. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 370-71 (Kos. 2000).

Since a summons and complaint must be served together, "process" in 4 F.S.M.C. 204(2) necessarily means both the complaint and the summons. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 371 (Kos. 2000).

If a plaintiff opts for personal service on a defendant outside the FSM, it must be accomplished by a person authorized to do so under 4 F.S.M.C. 204. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 371 (Kos. 2000).

Nothing contained in 4 F.S.M.C. 204 limits or affects the right to serve any process in any other manner now or hereafter provided by law, such as by registered mail with a signed receipt as provided for in FSM Civil Procedure Rule 4(i). Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 371 (Kos. 2000).

The FSM Civil Procedures Rules do not specifically address the question of service upon a foreign government or its agents. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 371-72 (Kos. 2000).

The question of proper service is different from the question of the validity of an immunity defense. The issue of sovereign immunity does not involve a jurisdictional defect in the same sense as does improper service of process. Rather, the sovereign immunity defense technically comes into consideration only after jurisdiction is acquired and simply provides a ground for relinquishing jurisdiction previously acquired. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 372 n.2 (Kos. 2000).

Because the Supreme Court has the power to make rules and orders, and do all acts, not inconsistent with law or with the rules of procedure as may be necessary for the due administration of justice, it may, in a case, prescribe the manner in which service may be had on the foreign government of Tonga and its agents. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 372 (Kos. 2000).

Fax service is not a method recognized by FSM Civil Procedure Rule 4. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 372 (Kos. 2000).

A court may find service upon a foreign government sufficient when the plaintiff sent it the complaint and summons by registered mail and the foreign government had actual notice of the complaint, since it filed a motion to dismiss, but the court will deny an entry of default when the plaintiffs cannot offer a formal proof of service, such as registered mail return receipt, because they cannot confirm service on the foreign government before it filed its motion to dismiss. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 373 (Kos. 2000).

A default judgment will be set aside when one defendant was served the complaint and summons not by a policeman or some other specially appointed person in compliance with Civil Procedure Rule 4(c) but by plaintiff's counsel and the other defendant was not served at all. Simina v. Rayphand, 9 FSM R. 500, 501 (Chk. S. Ct. Tr. 1999).

The failure of any person to perform service of process when that duty is imposed by the court or by law is subject to severe sanctions. Nameta v. Cheipot, 9 FSM R. 510, 511 (Chk. S. Ct. Tr. 2000).

Although failure to make proof of service does not affect the validity of the service, it does mean that the clerk cannot enter a default because before a clerk will enter a default against a defendant, the record must show that that defendant was properly served. Medabalmi v. Island Imports Co., 10 FSM R. 32, 34 (Chk. 2001).

If a defendant has never been properly served with a complaint and summons, that defendant cannot possibly file a late or untimely answer because the twenty-day time to answer allowed in Civil Procedure Rule 12(a), or the thirty-day time to answer allowed in 4 F.S.M.C. 204(3), does not start running until valid service of the complaint and summons has been made. Medabalmi v. Island Imports Co., 10 FSM R. 32, 34 (Chk. 2001).

The venue provision of 32 F.S.M.C. 306(2) must be read in conjunction with the service provisions of the FSM "long-arm statute," 4 F.S.M.C. 204, and with the FSM Code's venue provisions. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204 (Pon. 2001).

A venue provision that permits a civil action against a defendant who does not live in the FSM to be brought in a court within whose jurisdiction the defendant can be served or his property can be attached does not limit the FSM Supreme Court's subject matter jurisdiction, and does not render the long-arm statute superfluous. Such provisions do not preclude actions which are made procedurally possible by the long-arm statute, which gives litigants the means to effect service on entities not found within the FSM. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204 (Pon. 2001).

The long-arm statute provides how service may be effected, outside of the FSM Supreme Court's territorial jurisdiction, against those who have done certain acts which subject them to the personal jurisdiction of the FSM Supreme Court, and such service has the same force and effect as though it had been personally made within the FSM. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204 (Pon. 2001).

A foreign corporation served pursuant to 4 F.S.M.C. 204 may be sued within the FSM for violations of 32 F.S.M.C. 302 or 303, regardless of where the service occurs, so long as that foreign corporation has done specific acts within the FSM to bring it within the jurisdiction of the FSM Supreme Court. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204-05 (Pon. 2001).

Ordinarily a person's usual place of abode is the place where the party is actually living, except for temporary absences, at the time service is made, but it is possible for a person to have two or more dwelling houses or usual places of abode for the purpose of Rule 4(d)(1) service. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 121 (Chk. 2002).

If defendants wish to maintain that they reside at a certain address for "Department of Motor Vehicles purposes" but actually dwell elsewhere, it would seem that they cannot then contend that they should not be served process there. Certainly if they had been served traffic citations at that address, it is unlikely that their argument would prevail. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 121 (Chk. 2002).

Service may be made at a defendant's usual place of business by leaving a copy with a person of suitable age and discretion employed at the place of business even though it is disputed whether the person who received the papers was employed in a managerial capacity. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 122 (Chk. 2002).

Service of a summons and complaint shall be made by any person who is not a party and is not less than 18 years of age. Service shall be made upon an individual by delivering a copy of the summons and complaint to the individual or by leaving copies thereof at the individual's usual place of business with some person employed therein of suitable age and discretion then employed therein. Reg v. Falan, 11 FSM R. 393, 399 (Yap 2003).

The purpose of the rules addressing process and service of process in civil cases is to assure that a defendant receives sufficient notice of all causes of action that are filed against him and thus has a fair and adequate opportunity to defend. Reg v. Falan, 11 FSM R. 393, 399 (Yap 2003).

When a plaintiff fails to properly serve a defendant, the court does not have jurisdiction over that defendant, and the case may not proceed and can be dismissed without prejudice, but because a dismissal under Rule 12(b)(5), unlike most Rule 12(b) dismissals, is without prejudice and with leave to renew, courts will often quash service instead of dismissing the action. That way only the service need be repeated. Reg v. Falan, 11 FSM R. 393, 399 (Yap 2003).

When a defendant has received sufficient notice of all causes of action and had a fair and adequate opportunity to defend, and when the plaintiff later properly served defendant with a copy of the summons and complaint, the court will not dismiss the case under Rule 12(b)(5). Reg v. Falan, 11 FSM R. 393, 399 (Yap 2003).

If a plaintiff must use a disfavored form of service, such as service by publication, it should, at a minimum, be held to strict compliance with the statute authorizing that form of service. Northern Marianas Housing Corp. v. Finik, 12 FSM R. 441, 445 (Chk. 2004).

The statute that gives a defendant 30 days to respond to a complaint instead of the 20 days required under the Rules of Civil Procedure applies only to process served on defendants who are not within the FSM's territorial limits. Boston Agrex, Inc. v. Helgenberger, 12 FSM R. 611, 613 (Pon. 2004).

Service of process – service of the complaint and summons, with one exception, may not be effected by the plaintiff himself, but generally must be made by some authorized, disinterested person. The only method by which a plaintiff may himself serve a complaint and summons is by registered or certified mail, return receipt requested and delivery restricted to the addressee. Lee v. Lee, 13 FSM R. 252, 256 (Chk. 2005).

The alternatives for service of process upon persons in a foreign country do not permit a plaintiff himself to serve process. Lee v. Lee, 13 FSM R. 252, 256 (Chk. 2005).

Serving the complaint and summons by DHL Express does not comply with any of the permitted methods of service of process. DHL Express is not an authorized process server and service by DHL Express does not constitute service by mail. Lee v. Lee, 13 FSM R. 252, 257 (Chk. 2005).

A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived, if it is not raised either in the defendant's answer or in a Rule

12 motion to dismiss made before the answer is filed. Objections to personal jurisdiction or to service of process must be raised in a timely fashion, i.e., as a party's first pleading in the case, or they are waived. Lee v. Lee, 13 FSM R. 252, 257 (Chk. 2005).

When a defendant's answer did not raise as a defense either lack of personal jurisdiction, insufficiency of process, or insufficiency of service of process, he waived those defenses and a judgment against him is therefore not void on the ground of lack of personal jurisdiction over him or insufficiency of service of process upon him. Lee v. Lee, 13 FSM R. 252, 257 (Chk. 2005).

Service of an the amended complaint on a defendant, who has already appeared in the case to plead or otherwise defend, was proper when the amended complaint was served by mail. Lee v. Lee, 13 FSM R. 252, 258 (Chk. 2005).

No service need to be made on the parties in default for failure to appear except that pleadings asserting new or additional claim for relief against them shall be served upon them in the manner provided for service of summons in Rule 4. Lee v. Lee, 13 FSM R. 252, 258 (Chk. 2005).

Although no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them must be served upon them in the manner provided for service of summons in Rule 4, a proposed amended complaint should be served on defendants in default in conformity with Rule 4 since it is a pleading that asserts a new or additional claim for relief against the defendants. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 279 (Chk. 2005).

A summons must be served with the complaint on each defendant. Puchonong v. Chuuk, 14 FSM R. 67, 69 (Chk. 2006).

A case may be dismissed for insufficiency of service of process. Because dismissal under Rule 12(b)(5), unlike most Rule 12(b) dismissals, is without prejudice and with leave to renew, a court will, when a defendant has moved for dismissal for insufficiency of service of process, often quash service instead of dismissing the action and order that the service be repeated within a certain time. Puchonong v. Chuuk, 14 FSM R. 67, 69 (Chk. 2006).

When a defendant has been improperly served, the court lacks jurisdiction over the defendant and the case will be dismissed without prejudice, but, since a dismissal under Rule 12(b)(5) is without prejudice, a court will often quash service instead of dismissing the case so that only service need be repeated. FSM v. Fu Yuan Yu 096, 16 FSM R. 1, 3 (Pon. 2008).

In a civil action, service of process must be performed in compliance with Chuuk Civil Rule 4. Rule 4(a) specifies that service of process can be performed only after the filing of the complaint and the clerk's issuance of a summons. Muller v. Enlet, 16 FSM R. 92, 93 (Chk. S. Ct. Tr. 2008).

Unless specially appointed by the court, plaintiff's counsel is not a person who can properly serve process. Muller v. Enlet, 16 FSM R. 92, 94 (Chk. S. Ct. Tr. 2008).

Rule 4(j) provides that if service of the summons and complaint is not made on a defendant within 120 days after the filing of the complaint, the action will be dismissed as to that defendant without prejudice upon motion or on the court's own initiative, but dismissal for lack of service is also possible under Rule 41(b). A case against a defendant may be dismissed under Rule 41(b) for lack of personal jurisdiction over that defendant, that is, because that defendant was never properly served the summons and complaint and the court thus never acquired personal jurisdiction over that defendant. Dismissal under Rule 41(b) for lack of jurisdiction is without prejudice. Nakamura v. Mori, 16 FSM R. 262, 269 (Chk. 2009).

An attempt to reinstate a defendant dismissed for lack of service by including it in an amended complaint after it has been dismissed, cannot be considered a motion to amend the complaint to add a new

party but must be considered, at least as far as the dismissed defendant is concerned, to be a motion to reinstate a party earlier dismissed for lack of service of process on that party, in other words, a motion to enlarge time to effect service on the dismissed defendant. Nakamura v. Mori, 16 FSM R. 262, 270 (Chk. 2009).

Rule 15 (amendment of pleadings and relation back) cannot be used to subvert the principles that underlie Rule 4(j) – prompt service of process. The purpose of allowing complaints to be amended is to enable the pleadings to be conformed to the developing evidence rather than to extend the time for service indefinitely. Nakamura v. Mori, 16 FSM R. 262, 270 (Chk. 2009).

Rule 4(j) is intended to force parties and their attorneys to be diligent in prosecuting their causes of action. Filing an amended complaint does not justify the lack of prior service of process on a defendant in a multi-defendant case. The normal and expected procedure is to serve the unserved defendant first and then amend the complaint. Nakamura v. Mori, 16 FSM R. 262, 270 (Chk. 2009).

Time to serve a summons and complaint on a defendant may be enlarged for good cause shown if the enlargement is sought before the 120-day period has expired, or for excusable neglect if sought after the 120-day period has passed. Nakamura v. Mori, 16 FSM R. 262, 270 (Chk. 2009).

When the plaintiffs offer no explanation whatsoever why they did not, at anytime, serve the summons and complaint on a defendant later dismissed for lack of service or why they never sought additional time to serve that defendant, the court will not give the plaintiffs leave to file a proposed first amended complaint that includes the previously-dismissed party-defendant. Nakamura v. Mori, 16 FSM R. 262, 270 (Chk. 2009).

Vessels are not subject to service of process under Rule 4(d)(3) (service on corporations), but must be proceeded against *in rem* because they are things, not corporations. This is unlike the vessels' owner, which is a corporation. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

A natural person, not a corporation or juridical person should be served process in any manner authorized for service of process on individuals under Rule 4(d)(1), or Rule 4(d)(8), or Rule 4(i)(1). People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 85 (Yap 2010).

When the court file does not contain a return of service for a summons and for either the original complaint or the first amended complaint on two named defendants, the court has nothing before it from which it can conclude that the court has personal jurisdiction over either of them. The court will therefore give the plaintiff time to show that the court has personal jurisdiction over those two defendants; otherwise, they may be subject, under Civil Procedure Rule 4(j), to dismissal for lack of service of process on them. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 329 (Pon. 2011).

No ruling can be made against persons over whom the court does not have personal jurisdiction. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 332 (Pon. 2011).

It is unclear whether a complaint and summons must be served with a petition for a writ of mandamus, but, service of the petition was defective because a summons should have been issued and served. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 19 (Chk. S. Ct. Tr. 2011).

While service on the Chuuk Attorney General's Office was proper, the State Election Commission should have also been served separately. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 19 (Chk. S. Ct. Tr. 2011).

Usually when service is defective, the court will either dismiss without prejudice and with leave to refile or quash service and grant the plaintiff a number of days within which to effect proper service. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 19 (Chk. S. Ct. Tr. 2011).

When the respondent filed a proper and timely motion to dismiss for lack of proper service together with a dispositive motion, the inadequate service will not, because of the importance of the case, bar a ruling on the alternative dispositive motion to dismiss for the failure to state a claim. The court will decide the dispositive motions. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

Insufficient service of process only affects personal jurisdiction – jurisdiction over the person of the defendants or respondents who should have been served properly. It does not affect subject-matter jurisdiction. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

Every summons signed by the clerk should state the name, address and telephone number of the plaintiff's attorney or trial counselor, if any, otherwise the plaintiff's address and telephone number, and the court clerk is supposed to determine before filing that a paper subsequent to the summons and complaint has a certificate of service and contains the mailing address and telephone number of the party filing the paper or the party's attorney. Jacob v. Johnny, 18 FSM R. 226, 230 n.1 (Pon. 2012).

A successful process server's pay should not be dependent on a law firm's later litigation success. Poll v. Victor, 18 FSM R. 402, 405 n.1 (Pon. 2012).

Service of process costs will be allowed when the plaintiff's attorney's fee request states that his attorney reviewed the affidavits of service of the complaint on five named persons and on two national government offices and this corresponds to the $140 ($20 $\times$ 7 services of process) sought for service of the summons and complaint. Poll v. Victor, 18 FSM R. 402, 406 (Pon. 2012).

Civil Procedure Rule 5(a) provides that no service needs to be made on the parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them must be served on them in the manner provided for service of summons in Rule 4. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 412, 416 (Yap 2012).

The class plaintiffs may obtain a default judgment against one defendant on the first amended complaint since that is the one that was served on him and that he failed to appear to answer or otherwise defend. Since the second amended complaint, even if it alleges no new facts, does contain new or additional claims for relief and potential increased financial liability for that one defendant, it must be served on him if the class plaintiffs intend to hold him liable on the second amended complaint's new legal theories and claims. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 412, 416 (Yap 2012).

When the original complaints were served on the Governor and the Pohnpei Attorney General and when, if the State had been named as a defendant, service of process on the State would have been made on the Pohnpei Attorney General, the state therefore had actual notice of the suit and actual notice of the preliminary injunction hearing. Perman v. Ehsa, 18 FSM R. 452, 454 (Pon. 2012).

Civil Rule 4(j) authorizes the dismissal without prejudice of any defendant not served with process within 120 days. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 464 (Yap 2012).

Service of process on a defendant vessel is usually effected by the vessel's arrest unless a substitute security, such as a letter of undertaking, has been arranged. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 (Yap 2012).

When a vessel has been abandoned and is situated such that the taking of actual possession is impracticable, the FSM national police must execute the process by affixing a copy thereof to the property in a conspicuous place and by leaving a copy of the complaint and process with the person having possession

or the person's agent. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 n.3 (Yap 2012).

A motion to stay the dismissal of a defendant for lack of service is considered a motion to enlarge time to serve process on that defendant. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 (Yap 2012).

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Unlike *in personam* defendants, who may under certain circumstances be validly served process in foreign countries, valid service of process on an *in rem* defendant can only be made within the court's territorial jurisdiction. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 (Yap 2012).

A court cannot order an *in personam* defendant to bring a vessel into the jurisdiction so that a plaintiff may then have it arrested and brought within the court's jurisdiction and made a separate defendant *in rem* because a court's authority to exercise *in rem* jurisdiction does not carry with it a concomitant derivative power to enter *in personam* orders. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 (Yap 2012).

Rule 4(j) sets a time frame of 120 days from when a complaint is filed for process to be served on the defendant. This time limit, like other time limits in the FSM Civil Procedure Rules, may be enlarged by the court for "cause shown" if request therefor was made before the expiration of the period originally prescribed or, on motion made after the expiration of the specified period if the failure to act was the result of "excusable neglect." People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465-66 (Yap 2012).

The plaintiffs have shown more than ample cause for an enlargement of time for process to be served on a defendant vessel and they cannot be said to be acting in bad faith when they have presented some justification to enlarge time to serve process on the vessel because no effort by them would have succeeded in effecting a valid arrest of the vessel since the vessel is not in the FSM and since the plaintiffs have no control over the vessel's movements while it is absent from FSM waters, and when no prejudice to the adverse party, the vessel, from the added time to serve it process is apparent because its owners and operators are already *in personam* defendants and they have actual notice of the civil action against the vessel. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 466 (Yap 2012).

An *in rem* defendant ought not to be able to have the complaint against it dismissed for lack of service merely by keeping the *res* out of the court's jurisdiction for 120 days. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 466 (Yap 2012).

The time for the plaintiffs to serve process on an *in rem* defendant vessel may be enlarged so as to allow the plaintiffs to perfect service *in rem* on the vessel if, at any time before the *in personam* action goes to trial, the vessel may be found and arrested within the court's jurisdiction. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 466 (Yap 2012).

When, in a case filed in January 2011, a copy of the complaint and summons was served on the acting Secretary of Health on February 15, 2012, two days after the trial court denied the plaintiffs' motions in part because the Secretary was not a party and when the FSM Attorney General was not given the required notice of this "service" on a new party, this "service" was ineffective to make the Secretary a party in the case. Berman v. FSM Nat'l Police, 19 FSM R. 118, 125 (App. 2013).

A court obtains personal jurisdiction over a defendant when service of process – service of the

complaint and summons – is properly made on that defendant. A court must have personal jurisdiction over a party before its orders can bind that party. Nena v. Saimon, 19 FSM R. 317, 324 (App. 2014).

For personal service of a complaint and summons to be effective when a defendant refuses to accept the papers, the complaint and summons must be left with the defendant or where they might reasonably be found and the process server must make an attempt to describe generally the meaning of the papers in a language the defendant can understand. Nena v. Saimon, 19 FSM R. 317, 324-25 (App. 2014).

When a person refused to accept the complaint and summons and the papers were not left with him, he was not properly served with the complaint and summons and the court therefore did not acquire personal jurisdiction over him. Nena v. Saimon, 19 FSM R. 317, 325 (App. 2014).

Service of a summons and complaint can be made by any person who is not a party and is not less than 18 years of age. Heirs of Jonah v. Department of Transp. & Infrastructure, 20 FSM R. 118, 120 (Kos. 2015).

Service of the complaint and summons, with one exception, may not be effected by the plaintiff himself, but generally must be made by some authorized, disinterested person. The only method by which a plaintiff may himself serve a complaint and summons is by registered or certified mail, return receipt requested and delivery restricted to the addressee. Heirs of Jonah v. Department of Transp. & Infrastructure, 20 FSM R. 118, 120 (Kos. 2015).

When the plaintiff's attorney served the summons and complaint, service of process of those documents was insufficient under Rule 4(c)(1) because the attorney is deemed as a party to the action. The failure to effect service of the summons and complaint on the defendant makes the case subject to dismissal under Rule 12(b)(5), but because dismissal under Rule 12(b)(5), unlike most Rule 12(b) dismissals, is without prejudice and with leave to renew, often the service will be quashed instead of dismissing the action. That way only the service need be repeated. Heirs of Jonah v. Department of Transp. & Infrastructure, 20 FSM R. 118, 120 (Kos. 2015).

To effect valid service of process on a national government officer or agency, that officer or agency must be served with the complaint and summons and the national government must also be served a complaint and summons, and to effect service of process on the national government, the FSM Attorney General must be served (as well as any non-party officer or agency whose action or omission is being challenged). Fuji Enterprises v. Jacob, 20 FSM R. 121, 127 (Pon. 2015).

When the FSM Attorney General was never served, service of process has not been effected on the FSM national government nor has service of process been effected on the national government officers on whom the complaint and summons were served because the additional service on the FSM Attorney General was not made. Failure to satisfy this service requirement makes the case against FSM defendants subject to dismissal under Rule 12(b)(5). Fuji Enterprises v. Jacob, 20 FSM R. 121, 127 (Pon. 2015).

"Process" is a summons or writ issued in order to bring a defendant into court. "Service" usually refers to the formal delivery of some other legal notice, such as a pleading or a motion or other documents. FSM v. Itimai, 20 FSM R. 232, 233 n.1 (Pon. 2015).

The failure to make proof of service of process does not affect the validity of the service, and any defense of insufficiency of process, or insufficiency of service of process is waived if not made in the answer or in a Rule 12(b) motion to dismiss made before the answer. Gallen v. Moylan's Ins. Underwriters (FSM) Inc., 21 FSM R. 380, 384 (App. 2017).

When an FSM law firm's communications do not indicate that an attorney is retired or no longer practices with the firm, the court is forced to conclude that the law firm must, in some form, remain that

attorney's agent for service of FSM process, as he is represented as part of the organization. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 449 (Pon. 2018).

A motion to quash service of process is a motion brought on an insufficiency of service claim. As such, it is a Rule 12(b)(5) motion to dismiss, which courts often, instead of granting a dismissal, just quash the service and grant further time to effect service of process. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 450 (Pon. 2018).

– Special Masters

While Civil Rule 60(a) may be used to correct clerical errors in a judgment such as those of transcription, copying, or calculation it cannot be used to obtain relief for acts deliberately done. Therefore where the court deliberately intended to enter in a judgment the amount prayed for in a party's motion and that amount is based on a special master's report not before the court, the party cannot obtain relief under Rule 60(a) for errors in the special master's report. Senda v. Mid-Pacific Constr. Co., 6 FSM R. 440, 444-45 (App. 1994).

It is constitutional error for the trial court to rely on a special master's report, not a part of the record, without prior notice to the parties and an opportunity for the parties to comment on it. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 669 (App. 1996).

The standard of review of a trial court's adoption of a special master's report is whether the adoption of the special master's findings was clearly erroneous. This same standard of review applies to a special master's report. Thus, if a special master's report is clearly erroneous, then it, like a trial court opinion, may be set aside. Thomson v. George, 8 FSM R. 517, 521 (App. 1998).

A special master commits reversible error when its decision has relied on unidentified sketches not a part of the record and about which there was not extensive testimony and cross examination. Thomson v. George, 8 FSM R. 517, 523 (App. 1998).

There is no need to remand a matter for a new trial judge to consider the summary judgment motions when the knowledge that the defendants lived on part of the land was in the record and did not stem from an extrajudicial source; when there was no extrajudicial conduct because the trial judge received information from the former special master when both counsel were present; when trial counsel as well as the judge engaged in appeals to divine aid at the motion hearing; and when the judge encouraged settlement. Bualuay v. Rano, 11 FSM R. 139, 148-49 (App. 2002).

Even though the FSM does not have a bankruptcy code, the FSM Supreme Court has previously recognized the appointment of receivers or special masters to engage in collection efforts on behalf of insolvent corporate entities. A trustee's purpose in a bankruptcy proceeding is similar to the appointment of a receiver or collection agent to act on behalf of an insolvent corporation, and the fact of a corporation's insolvency does not affect the ability of a trustee, receiver, or collection agent to proceed on a corporation's behalf to recover assets in the corporation's name, and for the benefit of the corporation's creditors or shareholders. Goyo Corp. v. Christian, 12 FSM R. 140, 147 (Pon. 2003).

When the remand or reference to the Board of Trustees was analogous to this court's power to appoint a special master to make factual findings, which the court may or may not adopt as its own findings and was also similar to those cases that were initiated in the FSM Supreme Court in Chuuk and then "remanded" to the Chuuk Land Commission for certain factual determinations and those cases then either "appealed" back to, or referred back to, the FSM Supreme Court trial division when those determinations were either completed or some other issue came up that required court determination, and when the Board, in effect, acted as a special master – a court-designated fact finder. When the FSM Supreme Court had subject-matter jurisdiction over the complaint's allegations when it was filed, the court still retained that jurisdiction and the remand or reference is thus not a ground upon which to grant dismissal.

Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 157 (Pon. 2006).

In its minimal use of special masters, the FSM Supreme Court may seek guidance from U.S. counterpart, Rule 53 of the U.S. Federal Rules of Civil Procedure. Salomon v. FSM, 21 FSM R. 522, 524 (Pon. 2018).

Generally, a special master is given the authority to regulate all proceedings; to take all appropriate measures to perform the assigned duties fairly and efficiently; and if conducting an evidentiary hearing, to exercise the appointing court's power to compel, take and record evidence. Salomon v. FSM, 21 FSM R. 522, 524 (Pon. 2018).

While the FSM Supreme Court has the power to appoint a special master to make factual findings, it is not required to adopt that report as its own findings. Salomon v. FSM, 21 FSM R. 522, 524 (Pon. 2018).

The parties are expected to fully cooperate with and provide assistance to the special master when the court has appointed one. Salomon v. FSM, 21 FSM R. 522, 524 (Pon. 2018).

A special master is expected to file, and serve upon all parties, a written report with a complete record of the information and documents considered in his findings along with his recommendations on the resolution of the disputed claims. Salomon v. FSM, 21 FSM R. 522, 524 (Pon. 2018).

– Summary Judgment

Rule 56 of the FSM Rules of Civil Procedure is drawn from United States federal court rules. The court therefore may look to the interpretations of Rule 56 of the Federal Rules of United States Civil Procedure for guidance in seeking the proper interpretations of the FSM rule. FSM v. Ponape Builders Constr. Inc., 2 FSM R. 48, 52 (Pon. 1985).

A motion to dismiss is not to be granted unless it appears to a certainty that the non-moving party is entitled to no relief under any state of facts which could be proved in support of the claim, and if on the motion to dismiss matters outside the pleading are presented to and not excluded by the court, the motion shall then be treated as one for summary judgment. Etscheit v. Adams, 6 FSM R. 365, 386 (Pon. 1994).

When a party in support of or in opposition to a Rule 12(b)(6) motion to dismiss submits matters outside of the pleadings a court has complete discretion to exclude those matters from consideration or to accept those matters and treat the motion as one for summary judgment. Latte Motors, Inc. v. Hainrick, 7 FSM R. 190, 192 (Pon. 1995).

A motion to dismiss pursuant to Rule 12(b)(6) may be transformed into a motion for summary judgment if matters outside the pleadings are presented to and not excluded by the court. The burden is on the movant. A court, in reviewing a motion for summary judgment, must view the facts and any inferences deduced therefrom in the light most favorable to the party opposing the summary judgment, and before summary judgment will be granted it must be clear what the truth is, and any doubt as to the existence of a genuine issue of material fact will be resolved against the movant. Berman v. Santos, 7 FSM R. 231, 235 (Pon. 1995).

An order of partial summary adjudication, a finding that certain issues exist without controversy, is not an order granting partial summary judgment. An interlocutory order summarily granting adjudication of a portion of a party's claim cannot be transformed into a final judgment because issues of fact remain to be resolved. Richmond Wholesale Meat Co. v. Kolonia Consumer Coop. Ass'n (II), 7 FSM R. 407, 408 (Pon. 1996).

An appellate court applies the same standard in reviewing a trial court's grant of a summary judgment motion as that initially employed by the trial court under Rule 56(c). Thus, the review is *de novo*. Iriarte v. Etscheit, 8 FSM R. 231, 236 (App. 1998).

An appellate court applies the same standard in reviewing a trial court's grant of a summary judgment motion as that initially employed by the trial court under Rule 56(c). Thus, the review is *de novo*. Taulung v. Kosrae, 8 FSM R. 270, 272 (App. 1998).

When a party moving to dismiss for failure to state a claim states that an agreement is referred to in the complaint, and that by attaching a copy to its motion, it does not intend to present matter outside the pleadings, regardless of intent, the agreement is "matter outside the pleadings" under Rule 12(b)(6), and the court will therefore treat the motion to dismiss as one for summary judgment under Rule 56, as is expressly provided for by Rule 12(b). Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM R. 112, 114 (Kos. 2001).

A motion to dismiss for failure to state a claim may be brought after an answer has been filed by a motion for judgment on the pleadings or at the trial on the merits. But when the movant presents matter outside the pleadings as part of his motion to dismiss, then under Rule 12(c), the motion will be treated as one for summary judgment and disposed of as provided in Rule 56. Richmond Wholesale Meat Co. v. George, 11 FSM R. 86, 88 (Kos. 2002).

An appellate court may affirm the trial court's summary judgment on a different theory when the record contains adequate and independent support for that basis. Bualuay v. Rano, 11 FSM R. 139, 150 n.3 (App. 2002).

Default, under Rule 55, is typically granted when a defendant has failed to answer or respond to a complaint within the prescribed time limit. A default judgment under Rule 55 will not be granted for the plaintiff's failure to timely respond to a summary judgment motion. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 171 (Kos. S. Ct. Tr. 2002).

When matter outside the pleadings is presented to and not excluded by the court, a motion to dismiss for failure to state a claim upon which relief can be granted (under Rule 12(b)(6)), shall be treated as one for summary judgment under Rule 56. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 125 (Chk. 2005).

When matters outside the pleadings are presented to and not excluded by the court, a motion to dismiss shall be treated as one for summary judgment, but when the parties have presented matters outside the pleadings and neither party desires summary adjudication or that the court convert the motion, the court may exercise its discretion to exclude the matters outside the pleadings and treat the motion as one to dismiss. Annes v. Primo, 14 FSM R. 196, 200 (Pon. 2006).

When the movants seek summary judgment on the issue of a defendant's liability and rely, in most part, on evidence presented during a trial for a factual basis to support their motion and their motion ignores the appellate court's clear instruction that that trial was a nullity and the judgment had to be vacated and a new trial conducted, the appellate division clearly expects the trial court to resolve all liability and damages issues through the course of a new trial, not by reliance on the original trial. The court will not attempt to take shortcuts contrary to the appellate court's direction and will deny the summary judgment motion. Amayo v. MJ Co., 14 FSM R. 355, 364 (Pon. 2006).

In evaluating a Rule 12(b)(6) motion, the court must accept the complaint's allegations as true and the motion may be granted only if it appears to a certainty that no relief could be granted under any state of facts that could be proven in support of the claim. But when matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment. Ehsa v. Pohnpei Port Auth., 14 FSM R. 481, 484 (Pon. 2006).

When the single legal issue presented is whether the defendant's regulations require it to make a demand for payment prior to denying port entry; when resolution of this issue will necessarily lead to a factual question: whether the defendant in fact made a demand for payment prior to threatening denial of,

or denying, port entry; when the court cannot reach this factual question if it treats the motion as one to dismiss; and when both the dispositive questions may be resolved based on the pleadings and submissions already attached to the pleadings, the court will exercise its discretion to convert the Rule 12(b)(6) motion to one for summary judgment under Rule 56. Ehsa v. Pohnpei Port Auth., 14 FSM R. 481, 484 (Pon. 2006).

On appeal from a summary judgment based dismissal, the standard of review is a *de novo* determination that there was no genuine issue of material fact and that the party who prevailed below was entitled to judgment as a matter of law. In other words, the reviewing court applies the same standard that the trial court employed when it determined whether the moving party was entitled to summary judgment. Allen v. Kosrae, 15 FSM R. 18, 21 (App. 2007).

A grant of partial summary judgment is not a final judgment when the court did not expressly determine that there was no just reason for delay and did not then expressly direct the entry of a judgment, both of which are required for the entry of a partial final judgment. Dereas v. Eas, 15 FSM R. 135, 138 (Chk. S. Ct. Tr. 2007).

When there has been no express determination that there is no just cause for delay and no express direction to enter judgment, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment. Dereas v. Eas, 15 FSM R. 135, 138 (Chk. S. Ct. Tr. 2007).

A "Complaint for Summary Judgment" cannot be considered to be a summary judgment motion since a summary judgment motion cannot be made until after the expiration of 20 days from the commencement of the action, and an action is commenced by the filing of a complaint. Albert v. O'Sonis, 15 FSM R. 226, 230 n.2 (Chk. S. Ct. App. 2007).

There is no such pleading as a "complaint for summary judgment." A pleading thus entitled is therefore a complaint, since a filing is what it is regardless of what the party who filed it chooses to call it. Albert v. O'Sonis, 15 FSM R. 226, 230 n.2 (Chk. S. Ct. App. 2007).

Since a previously-awarded $770 discovery sanction will be incorporated into the final judgment as a matter of course, summary judgment for this amount is redundant, and will accordingly be denied. Berman v. Rosario, 15 FSM R. 429, 431 (Pon. 2007).

When trial court judgments were issued without a trial, they were summary judgments. The trial court should therefore have applied the summary judgment standard to its rulings. Albert v. George, 15 FSM R. 574, 579 (App. 2008).

Trial court judgments issued without a trial are summary judgments to which the trial court should have applied the summary judgment standard to its rulings. The appellate court's standard of review of those rulings thus must be the one used to review summary judgments. It must apply *de novo* the same standard that a trial court uses in its determination of a summary judgment motion, which is that summary judgment is proper only when, viewing the facts in the light most favorable to the party against whom judgment is sought, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Albert v. George, 15 FSM R. 574, 579 (App. 2008).

There is no constitutional due process right to a trial if the matter may properly be resolved by summary judgment. Trial is a process used to resolve disputed issues of material fact. A court must deny a summary judgment motion unless, viewing the facts in the light most favorable to the party against whom judgment is sought, it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Thus a decision without trial would violate due process rights only if there was a genuine issue of material fact that would preclude summary judgment because that issue would need to be tried. It is also an abuse of the trial court's discretion to grant summary judgment if a genuine

issue of material fact is present. Albert v. George, 15 FSM R. 574, 579-80 (App. 2008).

A dismissal for failure to state a claim under Kosrae Civil Procedure Rule 12(b)(6) will be treated as a summary judgment if it presents matters outside the pleadings. Allen v. Allen, 15 FSM R. 613, 618 (Kos. S. Ct. Tr. 2008).

The court has the discretion to include or exclude matters outside the pleadings on a motion to dismiss for failure to state a claim, and if matters outside the pleading are presented to and not excluded by the court, the motion is treated as one for summary judgment. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 218 (Chk. S. Ct. Tr. 2008).

Unlike a 12(b)(6) motion to dismiss, a 12 (b)(1) motion to dismiss may not be converted into a motion for summary judgment. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 218 n.2 (Chk. S. Ct. Tr. 2008).

When both parties submitted, in support of their respective positions, a substantial number of exhibits culled from the administrative record and the plaintiff's last response included other exhibits, a motion for judgment on the pleadings will be treated as one for summary judgment and disposed of as provided in Rule 56. Alokoa v. FSM Social Sec. Admin., 16 FSM R. 271, 276 (Kos. 2009).

It is improper for a party to use summary judgment briefs to effect a *de facto* amendment of its pleadings to assert new causes of action. Therefore a claim that falls outside the scope of the plaintiff's complaint is not properly before the court in a summary judgment motion and will be disregarded. Berman v. Pohnpei Legislature, 16 FSM R. 492, 498 (Pon. 2009).

When a party in support of or in opposition to a Rule 12(b)(6) motion to dismiss submits matters outside of the pleadings, a court has complete discretion to exclude those matters from consideration or to accept those matters and treat the motion as one for summary judgment. Arthur v. Pohnpei, 16 FSM R. 581, 593 (Pon. 2009).

In evaluating a Rule 12(b)(6) motion, the court must accept the complaint's allegations as true and may grant the motion only if it appears to a certainty that no relief could be granted under any state of facts that could be proven in support of the claim, but when matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment. Arthur v. Pohnpei, 16 FSM R. 581, 593 (Pon. 2009).

If matters outside the pleadings are referred to or presented and not excluded by the court, a motion to dismiss for failure to state a claim upon which relief can be granted will be treated as one for summary judgment under Rule 56. Regardless of intent, if a document is presented that is outside the pleadings, the motion to dismiss will be treated as one for summary judgment under Rule 56 as provided in Kosrae Rules of Civil Procedure Rule 12(b). Heirs of Tulenkun v. Simon, 16 FSM R. 636, 643 (Kos. S. Ct. Tr. 2009).

A trial court judgment issued without a trial or an evidentiary hearing is a summary judgment to which the trial court should apply the summary judgment standard – that summary judgment is proper only when, viewing the facts in the light most favorable to the party against whom judgment is sought, there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 108 (Pon. 2010).

An order granting partial summary judgment may be characterized as final only upon an express determination that there is no just cause for delay and upon an express direction for the entry of judgment. When no such determination or direction appears in an order, a plaintiff's motion for relief from judgment is one to reconsider an interlocutory order, and cannot rest on Rule 60(b). Smith v. Nimea, 17 FSM R. 125, 128-29 (Pon. 2010).

Since a trial's purpose is to resolve disputed factual issues and to determine the ultimate facts, no trial would have been needed if all the necessary facts had been stipulated. Berman v. Pohnpei Legislature, 17 FSM R. 339, 347 n.1 (App. 2011).

When a moving party requests certain judgments and argues that it is entitled to them as a matter of law, the motion is one for summary judgment, regardless of the motion's title. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 435 (App. 2011).

A movant's argument that it had not constructively requested a summary judgment is without merit when it asked the trial court to conclude as a matter of law that the Board decision must be set aside; when it relied on findings of fact made previously in the same trial court by a different judge; and when, by supplying no new facts, it could not claim that it was asking for anything but a summary judgment. Similarly, its request for further hearings on the question of the lessee's identity was a request for conclusions of law that follow logically from the conclusions made as requested. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 436 (App. 2011).

Discovery is designed to prevent litigation by ambush. Just as a plaintiff cannot use an opposition to a defendant's summary judgment motion to effect a de facto amendment to its pleadings to assert a new claim, a plaintiff ought not to be able to use the summary judgment process to, in effect, amend its discovery responses without allowing the defendant to conduct necessary discovery into the basis and circumstances of that new allegation. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 575 (Pon. 2011).

When the court has not previously considered aspects of discovery procedure and the interplay between the discovery rules and the summary judgment rule and when the civil procedure rules covering discovery and summary judgment are similar to U.S. rules, the court may look to U.S. authorities for guidance. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 575 n.6 (Pon. 2011).

When matters outside the pleadings are presented, a motion for judgment on the pleadings is actually a summary judgment motion. Mori v. Hasiguchi, 17 FSM R. 630, 644 (Chk. 2011).

While the court may permit matter outside the pleadings to be considered, thus converting a Rule 12(b)(6) motion to dismiss for failure to state a claim to a Rule 56 summary judgment motion, the motion will be denied when that does not seem advisable until after the relevant matters have been put before the court and the record properly developed. When that has been done, any party is free to move for summary judgment on any or all claims still outstanding. Marsolo v. Esa, 18 FSM R. 59, 66-67 (Chk. 2011).

When the court accepts that the motion to dismiss may be properly considered a motion for summary judgment under FSM Civil Rule 56, it will not conjecture why the movant referenced FSM Civil Rule 12(b)(6) although the memorandum of points and authorities that accompanied the motion discussed the legal standard for summary judgment. Berman v. Pohnpei, 18 FSM R. 67, 71-72 (Pon. 2011).

A request for injunctive relief must fail for lack of grounds upon which it can be granted when it was based on a court order that did not require the defendants to do anything and the preliminary injunction upon which that order relied was later dissolved. Berman v. Pohnpei, 18 FSM R. 67, 72 (Pon. 2011).

When a motion to dismiss presents matters outside the pleading and the court does not exclude those matters, the motion will be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties will be given reasonable opportunity to present all material made pertinent to such a motion by that rule. When neither party has propounded discovery during the eight months after the civil action's start, but the amended complaint contained copious amounts of exhibits, the parties have had reasonable opportunity to present such evidence. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 155 (Pon. 2012).

The court did not dismiss a plaintiff's claims sua sponte when the court did not decide its own motion

but granted summary judgment as the result of a defendant's motion to dismiss, to which the plaintiff did not file an opposition. Welle v. Chuuk Public Utility Corp., 18 FSM R. 203, 205 (Chk. 2012).

Any judgment rendered without an adversarial evidentiary hearing or trial is a summary judgment. Phillip v. Moses, 18 FSM R. 247, 250 (Chk. S. Ct. App. 2012).

If matters outside the pleadings are presented along with a motion for judgment on the pleadings, that motion becomes a summary judgment motion. Ruben v. Chuuk, 18 FSM R. 425, 428 (Chk. 2012).

When the parties rely on declarations beyond the pleadings themselves, the court will treat the plaintiffs' motion for judgment on the pleadings as a summary judgment motion. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 649, 652 (Chk. S. Ct. Tr. 2013).

A trial court may grant summary judgment, viewing facts and inferences drawn from them in the light most favorable to the nonmoving party, only if the moving party shows that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. Once the moving party presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce some competent evidence showing that a genuine issue of material fact remains for resolution. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 8 (Pon. 2013).

When facts are designated established and then those facts are used to render summary judgment, the judgment then rendered is a decision on the merits. Mori v. Hasiguchi, 19 FSM R. 16, 24 (Chk. 2013).

Liability for punitive damages is determined by the fact-finder after an evidentiary proceeding. This is in part because the tortfeasor's finances must be examined. Since the purpose of punitive damages is to punish the tortfeasor, not to compensate the victim, a defendant's financial condition is relevant to a punitive damages claim because the defendant's financial condition has a bearing on the amount of punitive damages that can be awarded. Punitive damages will therefore not be granted on summary judgment. FSM v. Muty, 19 FSM R. 453, 462 (Chk. 2014).

When matters outside the pleadings are included in a motion for judgment on the pleadings, the court will treat the motion as a summary judgment motion. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 17 (Pon. 2015).

The standard for evaluating a motion for judgment on the pleadings is almost identical to that for evaluating a motion for summary judgment. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 17 (Pon. 2015).

When a motion to dismiss presents matters outside the pleadings and the court does not exclude those matters, the motion will be treated as one for summary judgment and will be disposed of as provided in Rule 56, once all parties have been given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. Palasko v. Pohnpei, 20 FSM R. 90, 93 (Pon. 2015).

Although the court must first look to FSM sources of law and circumstances rather than begin with a review of other courts' cases, when an FSM court has not previously construed an FSM Civil Procedure Rule 56(b) which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. Fuji Enterprises v. Jacob, 20 FSM R. 121, 125 n.1 (Pon. 2015).

The court will consider a motion for emergency declaratory relief filed without an appropriate pleading under the requirements of a summary judgment motion. Pacific Int'l, Inc. v. FSM, 20 FSM R. 346, 348 (Pon. 2016).

In reviewing a summary judgment, an appellate court uses the same standard that the trial court initially used under Rule 56(c) when it determined the summary judgment motion – the appellate court

determines de novo whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Sam v. FSM Dev. Bank, 20 FSM R. 409, 415 (App. 2016).

If, on a motion to dismiss, matters outside the pleading are presented to and not excluded by the court, the motion shall then be treated as one for summary judgment. Gilmete v. Peckalibe, 20 FSM R. 444, 447 (Pon. 2016).

The court's power to dismiss, under Rule 12(b)(6) some of a plaintiff's claims (or to grant partial summary judgment, under Rule 56(c), when a Rule 12(b)(6) motion is converted to a summary judgment motion because matters outside the pleadings were considered), because, even when viewing the plaintiff's factual allegations in the light most favorable to the plaintiff, the complaint's factual allegations fail to state a claim on which relief can be granted, is too well established to merit discussion. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 571 & n.2 (Pon. 2016).

When a party in support of or in opposition to a Rule 12 motion to dismiss submits matters outside the pleadings and the court does not exclude those matters, the motion will be treated as one for summary judgment and will be disposed of as provided in Rule 56, once all parties have been given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. Hartmann v. Department of Justice, 20 FSM R. 619, 624 (Chk. 2016).

In considering a summary judgment motion, the court must view the facts and inferences in a light most favorable to the party opposing the motion. Pacific Int'l, Inc. v. FSM, 21 FSM R. 283, 286 (Pon. 2017).

When an FSM court has not previously construed an FSM civil procedure rule that is similar to a U.S. rule, it may look to U.S. sources for guidance in interpreting the FSM rule, such as when it has not previously considered the application of FSM Civil Rule 56 to litigation involving the termination of a government construction contract. Pacific Int'l, Inc. v. FSM, 21 FSM R. 283, 289 (Pon. 2017).

When either party, in support or in opposition to a Rule 12(b)(6) motion, submits matters to the court outside of the pleadings, the court has two options. The court may either accept those outside matters and treat the motion as one for summary judgment pursuant to Rule 56 or it may exclude those matters and continue to treat the motion as one for dismissal for failure to state a claim upon which relief can be granted. Fuji Enterprises v. Jacob, 21 FSM R. 355, 363 (App. 2017).

A post-answer Rule 12(b)(6) motion is untimely and some other vehicle, such as a motion for judgment on the pleadings or for summary judgment, must be used to challenge the plaintiff's failure to state a claim for relief Fuji Enterprises v. Jacob, 21 FSM R. 355, 363 (App. 2017).

When, on a motion to dismiss for the failure to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion must be treated as one for summary judgment and disposed of as per Rule 56. Pohnpei Arts & Crafts, Inc. v. Narruhn, 21 FSM R. 366, 369 (Pon. 2017).

If, on a motion to dismiss, matters outside the pleading are presented to and not excluded by the court, the motion will then be treated as one for summary judgment. Phillip v. Pohnpei, 21 FSM R. 439, 442 (Pon. 2018).

When, in a partial summary judgment, the court did not make an express determination that there is no just reason for delay and direct the entry of a judgment, that order is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of the parties and cannot be a final judgment. Hartmann v. Department of Justice, 21 FSM R. 468, 474 (Chk. 2018).

When there is no final judgment in the matter but only an interlocutory order, a party's motion for relief

from the interlocutory order is properly characterized, not as one for relief from judgment under Rule 60(b), but as one to reconsider, under Rule 54(b), the interlocutory order granting partial summary judgment. Hartmann v. Department of Justice, 21 FSM R. 468, 474 (Chk. 2018).

When, on a motion to dismiss, the court sees no reason to exclude the matters outside the pleading that are presented to the court, the motion must then be treated as one for summary judgment. Estate of Gallen v. Governor, 21 FSM R. 477, 486 n.9 (Pon. 2018).

When reviewing a summary judgment, an appellate court uses the same standard that the trial court initially used when it determined the summary judgment motion – the appellate court determines de novo whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 578 (App. 2018).

Laches is rarely subject to summary judgment, and can rarely be resolved without some preliminary evidentiary inquiry. Generally, when a defendant asserts the laches defense, a full hearing of testimony on both sides of the issue is required. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 581 (App. 2018).

To review a summary judgment, the appellate court uses the same standard that the trial court initially used when it determined the summary judgment motion – it determines de novo whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

Laches is rarely subject to summary judgment, and can rarely be resolved without some preliminary evidentiary inquiry. Generally, when a defendant asserts a laches defense, a full hearing of testimony on both sides of the issue is required. Alik v. Heirs of Alik, 21 FSM R. 606, 622 (App. 2018).

When the dispute is a legal issue, not a factual issue, the court can conclude that there are no material facts genuinely in dispute. Chuuk v. FSM, 22 FSM R. 85, 90 (Chk. 2018).

When, on a Rule 12(b)(6) motion to dismiss, the trial court considers matter outside the pleadings and does not exclude that matter, the trial court should consider the Rule 12(b)(6) motion to dismiss to be converted to a Rule 56 motion for summary judgment. Setik v. Perman, 22 FSM R. 105, 117 n.11 (App. 2018).

As a general proposition, the "hearing" contemplated in Rule 12 or Rule 56 does not necessarily include oral argument. Setik v. Perman, 22 FSM R. 105, 118 (App. 2018).

Rule 12(b)(6) motions (even if converted to Rule 56 summary judgment motions) are, even if argued orally, always decided without an evidentiary hearing because Rule 12(b)(6) motions to dismiss (or Rule 56 summary judgment motions) raise only issues of law, not of fact. Setik v. Perman, 22 FSM R. 105, 118 (App. 2018).

If, on a motion to dismiss, matters outside the pleading are presented to and not excluded by the court, the motion will then be treated as one for summary judgment. Panuelo v. Sigrah, 22 FSM R. 341, 352 (Pon. 2019).

For a movant to prevail on its summary judgment motion, it must overcome all of the defendants' affirmative defenses by either establishing their legal insufficiency or disproving them. FSM Dev. Bank v. Carl, 22 FSM R. 365, 371 (Pon. 2019).

When a court grants a partial summary judgment, generally, that partial summary judgment will not become a final judgment until the remaining issues are resolved and a final judgment entered. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 476 (Pon. 2020).

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

The appellate court uses the same standard to review a grant or denial of a summary judgment motion that the trial court initially used. Thus, if the appellate court concludes that a genuine issue of material fact was present, then it must rule that the summary judgment should have been denied; and if it concludes that a genuine issue is not present, then, viewing the facts in the light most favorable to the nonmovant, it will rule de novo on whether the movant was entitled to judgment as a matter of law. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 618 (Chk. S. Ct. App. 2020).

– Summary Judgment – For Nonmovant

When a party's motion for summary judgment has been denied as a matter of law and it appears the nonmoving party is entitled to judgment as a matter of law, the court may grant summary judgment to the nonmoving party in the absence of a cross motion for summary judgment if the original movant has had an adequate opportunity to show that there is a genuine issue and that his nonmoving opponent is not entitled to judgment as a matter of law. Truk Continental Hotel, Inc. v. Chuuk, 6 FSM R. 310, 311 (Chk. 1994).

Summary judgment may be granted in favor of the party opposing a summary judgment motion even where that party has not made a cross-motion under Rule 56. When summary judgment is granted in favor of the non-moving party, the facts and inferences to be drawn from them must be viewed in the light most favorable to the party that originally moved for summary judgment. Klavasru v. Kosrae, 7 FSM R. 86, 89 (Kos. 1995).

It is appropriate to grant summary judgment to the non-moving party when there are no material facts at issue and when the non-moving party is entitled to summary judgment as a matter of law. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 94 (Kos. S. Ct. Tr. 1999).

When a party's summary judgment motion has been denied as a matter of law and it appears the nonmoving party is entitled to judgment as a matter of law, a court may grant summary judgment to the nonmoving party in the absence of a cross motion for summary judgment if the original movant has had an adequate opportunity to show that there is a genuine issue and that his nonmoving opponent is not entitled to judgment as a matter of law. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 174-75 (Chk. 2001).

When a party's summary judgment motion has been denied as a matter of law and it appears the nonmoving party is entitled to judgment as a matter of law, the court may grant summary judgment to the nonmoving party in the absence of a cross motion for summary judgment if the original movant has had an adequate opportunity to show that there is a genuine issue and that his nonmoving opponent is not entitled to judgment as a matter of law. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 470 (Pon. 2004).

When a party's summary judgment motion has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, the court may grant summary judgment to the nonmoving party in the absence of a cross motion for summary judgment if the original movant has had an adequate opportunity to show that there is a genuine issue and that his nonmoving opponent is not entitled to judgment as a matter of law. Zion v. Nakayama, 13 FSM R. 310, 313 (Chk. 2005).

When the moving plaintiffs are denied summary judgment as a matter of law and the non-moving defendants are entitled, as a matter of law, to summary judgment that they are not liable to the plaintiffs for punitive damages even if they are liable for the underlying cause of action and since the plaintiffs have had an adequate opportunity to show that the defendants were not entitled to judgment as a matter of law, the defendants are granted summary judgment that they are not liable for punitive damages. Zion v.

Nakayama, 13 FSM R. 310, 314 (Chk. 2005).

When the plaintiffs have not put forward any grounds that could toll the running of the statute of limitations although they have had an adequate opportunity to do so since the defendants' answer put them on notice that the statute of limitations defense would be asserted and when the plaintiffs were thus not prejudiced by the defendants' failure to bring a separate motion asserting the defense because they had been on notice that they would be required to show why or which of their claims would not be barred by the statute of limitations, summary judgment for the defendants will be granted on the issue of statute of limitations. Zion v. Nakayama, 13 FSM R. 310, 314 (Chk. 2005).

When a party's motion for summary judgment has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, the court may grant summary judgment to the nonmoving party in the absence of a cross motion for summary judgment if the original movant has had an adequate opportunity to show that there is a genuine issue and that his nonmoving opponent is not entitled to judgment as a matter of law. Western Sales Trading Co. (Phils) v. B & J Corp., 14 FSM R. 423, 425 (Chk. 2006).

When the plaintiff movant has been denied summary judgment on its 1½% interest per month claim and when the defendants are entitled to judgment on that claim as a matter of law since no evidence is admissible to support that claim and since the plaintiff had an adequate opportunity to show that the defendants are not entitled to judgment as a matter of law on the interest claim because the plaintiffs knew the interest claim was a problem when its earlier motion for judgment on the pleadings was denied, the defendants are therefore granted summary judgment on the plaintiff's 1½% interest per month claim. Western Sales Trading Co. (Phils) v. B & J Corp., 14 FSM R. 423, 426 (Chk. 2006).

When a party's motion for summary judgment has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, the court may grant summary judgment to the nonmoving party in the absence of a cross motion for summary judgment if the original movant has had an adequate opportunity to show that there is a genuine issue and that his nonmoving opponent is not entitled to judgment as a matter of law. Dereas v. Eas, 15 FSM R. 446, 450 (Chk. S. Ct. Tr. 2007).

When the non-moving defendants have a valid defense to the tortious interference with a contractual relationship claim and when the moving plaintiff had an adequate opportunity to show that they did not, summary judgment in the defendants' favor is appropriate. Dereas v. Eas, 15 FSM R. 446, 450 (Chk. S. Ct. Tr. 2007).

When a party's summary judgment motion has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, the court may grant the nonmoving party summary judgment in the absence of a cross motion for summary judgment if the original movant has had an adequate opportunity to show that there is a genuine issue and that his nonmoving opponent is not entitled to judgment as a matter of law. Alokoa v. FSM Social Sec. Admin., 16 FSM R. 271, 277 (Kos. 2009).

When a party's motion for summary judgment has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, the court may grant summary judgment to the nonmoving party in the absence of a cross motion for summary judgment if the original movant has had an adequate opportunity to show that there is a genuine issue and that its nonmoving opponent is not entitled to judgment as a matter of law. FSM Dev. Bank v. Chuuk Fresh Tuna, Inc., 16 FSM R. 335, 338 (Chk. 2009).

When a movant has been denied summary judgment because it was, as a matter of law, barred by the statute of limitations, the non-movant is entitled to summary judgment that the applicable statute of limitation bars the movant's recovery of the other unpaid loan instalment payments. FSM Dev. Bank v. Chuuk Fresh Tuna, Inc., 16 FSM R. 335, 338 (Chk. 2009).

When a party's summary judgment motion has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, a court may grant summary judgment to the nonmoving party in the absence of a cross motion for summary judgment if the original movant has had an adequate opportunity to show that there is a genuine issue and that its nonmoving opponent is not entitled to judgment as a matter of law. Dungawin v. Simina, 17 FSM R. 51, 55 (Chk. 2010).

When summary judgment has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, the court may grant summary judgment to the nonmoving party in the absence of a cross motion for summary judgment if the original movant has had an adequate opportunity to show that there is a genuine issue and that its nonmoving opponent is not entitled to judgment as a matter of law. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 110 n.5 (Pon. 2010).

When a party's summary judgment motion has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, a court may grant summary judgment to the nonmoving party in the absence of a cross motion for summary judgment if the original movant has had an adequate opportunity to show that there is a genuine factual issue and that its opponent is not entitled to judgment as a matter of law. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 569 (Pon. 2011).

When a party's summary judgment motion has been denied as a matter of law and it appears the nonmoving party is entitled to judgment as a matter of law, the court may grant summary judgment to the nonmoving party in the absence of a cross motion for summary judgment if the original movant has had an adequate opportunity to show that there is a genuine issue and that his nonmoving opponent is not entitled to judgment as a matter of law. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 191 (Chk. 2013).

When summary judgment has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, the court may grant summary judgment to the nonmoving party in the absence of a cross motion for summary judgment if the original movant has had an adequate opportunity to show that there is a genuine issue and that its nonmoving opponent is not entitled to judgment as a matter of law. George v. Palsis, 19 FSM R. 558, 566 (Kos. 2014).

When a party's summary judgment motion has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, a court may grant summary judgment to the nonmoving party, even in the absence of a cross motion for summary judgment, if the original movant has had an adequate opportunity to show that there is a genuine factual issue and that its opponent is not entitled to judgment as a matter of law. Isamu Nakasone Store v. David, 20 FSM R. 53, 58 (Pon. 2015).

When there are no material facts in dispute and the defendants are entitled to judgment or to a dismissal on their affirmative defense of lack of subject-matter jurisdiction, the court will render summary judgment in the defendants' favor on the jurisdictional issue because whenever it appears by suggestion of the parties or otherwise that the FSM Supreme Court lacks jurisdiction of the subject matter, it must dismiss the action without prejudice to any case that the plaintiffs may file in a state court of competent jurisdiction. Isamu Nakasone Store v. David, 20 FSM R. 53, 58 (Pon. 2015).

When a party's motion for summary judgment has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, the court may grant summary judgment to the nonmoving party in the absence of a cross motion for summary judgment if the original movant has had an adequate opportunity to show that there is a genuine issue and that his nonmoving opponent is not entitled to judgment as a matter of law. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 275 (Pon. 2015).

When a party's summary judgment motion has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, the court may grant summary judgment to the nonmoving party, even in the absence of a cross motion for summary judgment, if the original movant has

had an adequate opportunity to show that there is a genuine factual issue and that its opponent is not entitled to judgment as a matter of law. Eot Municipality v. Elimo, 20 FSM R. 482, 491 (Chk. 2016).

When a party's summary judgment motion has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, the court may grant summary judgment to the nonmoving party, even in the absence of a cross motion for summary judgment, if the original movant has had an adequate opportunity to show that there is a genuine factual issue and that its opponent is not entitled to judgment as a matter of law. Onanu Municipality v. Elimo, 20 FSM R. 535, 544 (Chk. 2016).

When a party's summary judgment motion has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, a court may grant summary judgment to the nonmoving party, even in the absence of a cross motion for summary judgment, if the original movant has had an adequate opportunity to show that there is a genuine factual issue and that its opponent is not entitled to judgment as a matter of law. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 68 (Pon. 2018).

When a party's summary judgment motion has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, a court may grant summary judgment to the nonmoving party in the absence of a cross motion for summary judgment if the original movant has had an adequate opportunity to show that there is a genuine factual issue and that its opponent is not entitled to judgment as a matter of law. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 137, 145 n.7 (Pon. 2019).

When a party's summary judgment motion is denied as a matter of law and when it appears the nonmoving party is entitled to judgment as a matter of law, the court may, in the absence of a cross-motion for summary judgment, grant summary judgment to the nonmoving party if the original movant had an adequate opportunity to show that there is a genuine issue and that the nonmoving opponent is not entitled to judgment as a matter of law. Berman v. Pohnpei, 22 FSM R. 377, 382 (Pon. 2019).

– Summary Judgment – Grounds

A motion for summary judgment under Rule 56 may be granted only if the moving party shows that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. Manahane v. FSM, 1 FSM R. 161, 164 (Pon. 1982).

Under Rule 56 of the FSM Rules of Civil Procedure, a summary judgment shall be rendered only if the pleadings, depositions, answers, interrogatories, and admissions on files together with the affidavits, if any, show that there is no genuine issue as to the material facts and that the moving party is entitled to a judgment as a matter of law. FSM v. Ponape Builders Constr. Inc., 2 FSM R. 48, 52 (Pon. 1985).

Where there is no genuine issue of any material fact and the plaintiffs are entitled to judgment as a matter of law, summary judgment may be granted. Wainit v. Truk (II), 2 FSM R. 86, 87 (Truk 1985).

Where the nonmoving party admits allegations contained in the motion for summary judgment and there is nothing in the nonmoving party's answer or its response to the motion that suggests any factual issue in dispute, the moving party is entitled to summary judgment on those uncontested allegations. FSM Dev. Bank v. Rodriguez Corp., 2 FSM R. 128, 130 (Pon. 1985).

A motion for summary judgment must be denied unless the court finds there is no genuine dispute as to material facts, viewing the facts in the light most favorable to the nonmoving party, and that the moving party is entitled to judgment as a matter of law. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 360 (Kos. 1992).

Where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law, summary judgment must be granted. Kihara Real Estate, Inc. v. Estate of Nanpei (I), 6 FSM

R. 48, 52 (Pon. 1993).

A motion for summary judgment may be granted only if it is clear that there is no genuine issue of material fact, viewing the facts, and any inferences therefrom, in the light most favorable to the party against whom summary judgment is sought, and that the moving party must prevail as a matter of law. When the only issues to be decided in a case are issues of law, summary judgment is appropriate. Etscheit v. Adams, 6 FSM R. 365, 373 (Pon. 1994).

Where the facts lead to differing reasonable inferences, thus establishing a genuine issue of fact, summary judgment is not available. Adams v. Etscheit, 6 FSM R. 580, 583 (App. 1994).

Because conditions precedent are disfavored at law and require plain and unambiguous language to establish, when differing inferences create an issue of fact, summary judgment that a condition precedent exists is inappropriate. Adams v. Etscheit, 6 FSM R. 580, 584 (App. 1994).

Whether a proposed boundary line on a map is insufficiently definite and certain to be located on the ground is a material fact genuinely at issue, precluding summary judgment. Adams v. Etscheit, 6 FSM R. 580, 584 (App. 1994).

Where uncontested evidentiary submissions establish the existence of a contract, performance by the plaintiff, and breach by the defendant, the plaintiff may be granted summary judgment because no question of material fact has been raised. Urban v. Salvador, 7 FSM R. 29, 31-32 (Pon. 1995).

Where a moving party provides no documentation other than his own affidavit to support the existence of an agreement, denied by the defendant, to pay 12% interest on past due sums, there is a genuine issue of material fact requiring a court to deny summary judgment. Urban v. Salvador, 7 FSM R. 29, 32-33 (Pon. 1995).

A court must deny a motion for summary judgment unless the court, viewing the facts presented and the inferences made in the light most favorable to the non-moving party, finds there is no genuine issue as to any material fact. Thus if the appellants can show there was a genuine issue of material fact then the trial court's summary judgment must be reversed. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 48 (App. 1995).

A motion for summary judgment should be granted only when the evidence demonstrates that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. In considering a motion for summary judgment, the facts and inferences to be drawn from those facts must be viewed in the light most favorable to the party opposing the motion. Klavasru v. Kosrae, 7 FSM R. 86, 89 (Kos. 1995).

A motion for summary judgment is well grounded in fact and law and shall be granted when the moving party demonstrates that there are no questions of material fact and that the moving party is entitled to judgment as a matter of law. Kyowa Shipping Co. v. Wade, 7 FSM R. 93, 95 (Pon. 1995).

Summary judgment may be granted only if it is clear that there is no genuine issue of material fact and that the moving party must prevail as a matter of law. A court must view the facts presented and inferences made in the light most favorable to the nonmoving party. If summary judgment is not rendered for all the relief requested, a court may enter partial summary judgment on such material facts that exist without substantial controversy. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (I), 7 FSM R. 280, 283 (Yap 1995).

An appellate court applies the same standard in reviewing a trial court's grant of a summary judgment motion as that initially employed by the trial court under Rule 56(c) – summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

Thus, review is *de novo.* The facts must be viewed in the light most favorable to the party against whom judgment was entered. Tafunsak v. Kosrae, 7 FSM R. 344, 347 (App. 1995).

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Issues of statutory and constitutional construction and interpretation are not issues of material fact but matters of law. Sauder v. Chuuk State Legislature, 7 FSM R. 358, 360, 363 (Chk. S. Ct. Tr. 1995).

A court must deny a motion for summary judgment unless it finds there is no genuine issue as to any material issue and the moving party is entitled to judgment as a matter of law. The court must view the facts presented and inferences made in the light most favorable to the nonmoving party. Nahnken of Nett v. United States, 7 FSM R. 581, 586 (App. 1996).

In considering a summary judgment motion, a court is required to view facts and draw inferences in a light as favorable to the party against whom the judgment is sought as may reasonably be done. The motion may then be granted only if it is clear that there is no genuine issue of material fact and that the moving party must prevail as a matter of law. Gimnang v. Yap, 7 FSM R. 606, 608 (Yap S. Ct. Tr. 1996).

A motion for summary judgment shall be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 81 (Pon. 1997).

A court must deny a motion for summary judgment unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The facts must be viewed in the light most favorable to the party against whom judgment was entered. Iriarte v. Etscheit, 8 FSM R. 231, 236 (App. 1998).

When no affidavit or deposition is filed in opposition to a motion for summary judgment, there is no genuine issue presented as to any material fact and summary judgment will be affirmed. Iriarte v. Etscheit, 8 FSM R. 231, 240 (App. 1998).

A court must deny a summary judgment motion unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The facts must be viewed in the light most favorable to the party against whom judgment was entered. Taulung v. Kosrae, 8 FSM R. 270, 272 (App. 1998).

Cross motions for summary judgment on an exemplary damages claim will both be denied when neither motion has presented any evidence on the claim. Isaac v. Weilbacher, 8 FSM R. 326, 337 (Pon. 1998).

As to a motion and a cross-motion for summary judgment, the familiar standard for granting a summary judgment motion is that judgment should be granted in favor of the moving party only if the pleadings, depositions, answers to interrogatories, and admissions on file, taken together with any affidavits, demonstrate that there is no genuine issues as to any material fact, and that the movant is entitled to judgment as a matter of law. The court must view the facts and inferences in a light most favorable to the party against whom judgment is sought. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 77 (Kos. 1999).

Summary judgment under FSM Civil Procedure Rule 56 is appropriate when, viewing the facts in the light most favorable to the party against whom judgment is sought, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Weno v. Stinnett, 9 FSM R. 200, 206 (App. 1999).

A court must deny a motion for summary judgment unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The court must view the facts presented and inferences made in the light most favorable to the nonmoving party, and the burden of showing a lack of triable issues of fact belongs to the moving party. Marar v. Chuuk, 9 FSM R. 313, 314 (Chk. 2000).

An appellate court applies the same standard in reviewing a trial court's grant of a summary judgment motion that the trial court initially employed under Rule 56(c). An appellate court, viewing the facts in the light most favorable to the party against whom judgment was entered, determines *de novo* whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Chuuk v. Secretary of Finance, 9 FSM R. 424, 430 (App. 2000).

A court may grant a summary judgment motion only it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The facts and inferences must be viewed in the light most favorable to the party opposing the motion. Harden v. Primo, 9 FSM R. 571, 573 (Pon. 2000).

Summary judgment motions are only granted if there are no disputed issues of material fact pertinent to the given cause of action or affirmative defense addressed by the motion. If any material facts are in dispute, the parties are entitled to a trial on the merits of their causes of action or affirmative defenses. O'Sullivan v. Panuelo, 9 FSM R. 589, 597 (Pon. 2000).

A court must deny a motion for summary judgment unless it finds no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. The court must view the facts presented and inferences made in the light most favorable to the nonmoving party, and the burden of showing a lack of triable issues of fact belongs to the moving party. FSM Dev. Bank v. Gouland, 9 FSM R. 605, 607 (Chk. 2000).

When the only issues to be decided are issues of law, summary judgment is appropriate. Ting Hong Oceanic Enterprises v. Ehsa, 10 FSM R. 24, 31 (Pon. 2001).

A court must deny a motion for summary judgment unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The court must view the facts presented and inferences made in the light most favorable to the nonmoving party, and the burden of showing a lack of triable issues of fact belongs to the moving party. MGM Import-Export Co. v. Chuuk, 10 FSM R. 42, 44 (Chk. 2001).

A court, viewing the facts presented and inferences made in the light most favorable to the nonmoving party, must deny a motion for summary judgment unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Moses v. M.V. Sea Chase, 10 FSM R. 45, 50 (Chk. 2001).

Summary judgment will be entered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of any material fact and that the moving party is entitled to judgment as a matter of law. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 72 (Pon. 2001).

In considering a summary judgment motion, the court must view the facts and inferences in a light that is most favorable to the party opposing the motion. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 72 (Pon. 2001).

The presence of factual issues will not bar summary judgment if they are not material to the controlling legal issue of the case, and thus have no dispositive significance. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 77 (Pon. 2001).

Rule 56 provides for summary judgment in a movant's favor if the pleadings and facts properly before the court show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. For purposes of a summary judgment motion, the court views all facts in the light most favorable to the nonmovant. Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM R. 112, 114 (Kos. 2001).

Summary judgment is appropriate when, viewing the facts in the light most favorable to the party against whom judgment is sought, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Skilling v. Kosrae, 9 FSM R. 608, 610 (Kos. S. Ct. Tr. 2000).

A court must deny a summary judgment motion unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The court must view the facts presented and inferences made in the light most favorable to the nonmoving party, and the burden of showing a lack of triable issues of fact belongs to the moving party. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 172 (Chk. 2001).

A summary judgment motion must be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 183 (Pon. 2001).

A moving party is entitled to summary judgment when it has demonstrated that there are no genuine issues of material fact remaining, and that it is entitled to judgment as a matter of law. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 183 (Pon. 2001).

When all of the bases upon which a party seeks summary judgment are legally insufficient to create a prima facie case of entitlement to such judgment, that party's summary judgment motion will be denied. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 189 (Pon. 2001).

Summary judgment must be entered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of any material fact and that the moving party is entitled to judgment as a matter of law. In considering a summary judgment motion, a court must view the facts and inferences in a light that is most favorable to the party opposing the motion. Bank of the FSM v. Hebel, 10 FSM R. 279, 282 (Pon. 2001).

When the only issues to be decided in a case are issues of law, summary judgment is appropriate. Bank of the FSM v. Hebel, 10 FSM R. 279, 282 (Pon. 2001).

A party is entitled to summary judgment when factual support for an essential element of the claim being asserted against the movant is absent from the case record. Kosrae v. Worswick, 10 FSM R. 288, 291 (Kos. 2001).

Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which the party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. Kosrae v. Worswick, 10 FSM R. 288, 291-92 (Kos. 2001).

A moving party is "entitled to a judgment as a matter of law" when the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof. Kosrae v. Worswick, 10 FSM R. 288, 292 (Kos. 2001).

When opposing affidavits show the existence of a genuine issue of material fact, summary judgment

must be denied. Marcus v. Truk Trading Corp., 10 FSM R. 387, 389 (Chk. 2001).

Summary judgment will be denied when questions must be resolved before the movant can present a sufficient factual basis for a summary judgment. Marcus v. Truk Trading Corp., 10 FSM R. 387, 390 (Chk. 2001).

A moving party is entitled to summary judgment when it has demonstrated that there are no genuine issues of material fact remaining and that it is entitled to judgment as a matter of law. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 405 (Pon. 2001).

Summary judgment under Rule 56 is appropriate when, viewing the facts in the light more favorable to the party against whom judgment is sought, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Jonas v. Kosrae, 10 FSM R. 441, 442 (Kos. S. Ct. Tr. 2001).

The court shall grant summary judgment if the pleadings, discovery responses and affidavits show that there is no genuine issue to any material fact and that the moving party is entitled to judgment as a matter of law. Skilling v. Kosrae, 10 FSM R. 448, 450 (Kos. S. Ct. Tr. 2001).

The fact that a party's understanding of an agreement is at variance with its express terms does not raise an issue of fact precluding summary judgment. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 502, 505 (Pon. 2002).

On motion for summary judgment, facts and inferences therefrom should be viewed in a light most favorable to the opposing party, and when facts lead to differing reasonable inferences, then summary judgment is not appropriate. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 578 (Pon. 2002).

If genuine fact issues can be reasonably resolved only in the movant's favor, then summary judgment in movant's favor is appropriate, but if those same fact issues may be reasonably in favor of either party, summary judgment will be denied. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 578 (Pon. 2002).

Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 578 (Pon. 2002).

Summary judgment must be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. William v. Mobil Oil Micronesia, Inc., 10 FSM R. 584, 586 (Pon. 2002).

On motion for summary judgment, facts and inferences therefrom should be viewed in a light most favorable to the opposing party, and where facts lead to differing reasonable inferences, then summary judgment is not appropriate. William v. Mobil Oil Micronesia, Inc., 10 FSM R. 584, 586 (Pon. 2002).

When the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial. William v. Mobil Oil Micronesia, Inc., 10 FSM R. 584, 586 (Pon. 2002).

When it appears that there are no disputed genuine issues of material fact which remain to be tried in the case, the standard for granting summary judgment under KRCP Rule 56(c) has been satisfied. James v. Lelu Town, 10 FSM R. 648, 649 (Kos. S. Ct. Tr. 2002).

Summary judgment must be granted if the pleadings, discovery responses under oath, and affidavits

show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In considering a summary judgment motion, the court must view the facts and inferences in a light that is most favorable to the party opposing the motion. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 662 (Kos. S. Ct. Tr. 2002).

For purposes of a summary judgment motion, the court views all facts and inferences in the light most favorable to the party opposing the motion. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 99 (Pon. 2002).

When the only issues to be decided are issues of law, summary judgment is appropriate. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 99 (Pon. 2002).

The presence of factual issues will not bar summary judgment if they are not material to the case's controlling legal issue, and thus have no dispositive significance. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 99 (Pon. 2002).

If a genuine issue of material fact is present then the trial court has to deny the summary judgment motion. Bualuay v. Rano, 11 FSM R. 139, 149 (App. 2002).

An appellate court uses the same standard in reviewing the grant or denial of a summary judgment that the trial court initially did. Therefore, if the appellate court concludes that a genuine issue of material fact was present, then it must rule that the summary judgment should have been denied; and if it concludes that a genuine issue is not present, then, viewing the facts in the light most favorable to the nonmovant, it rules *de novo* on whether the movant was entitled to judgment as a matter of law. This is true even when the appeal comes from another appellate court. Bualuay v. Rano, 11 FSM R. 139, 149 (App. 2002).

When a genuine issue of material fact exists about where the boundary between the two halves of a piece of land lies, summary judgment on this issue is not possible, and the trial court's summary judgment concerning the boundary will be vacated, and that issue remanded to the trial court. Bualuay v. Rano, 11 FSM R. 139, 151 (App. 2002).

When a summary judgment was properly made in the defendants' favor, the plaintiff, as a matter of law, cannot be entitled to a contrary summary judgment. Bualuay v. Rano, 11 FSM R. 139, 151 (App. 2002).

Summary judgment must be granted if the pleadings, discovery responses under oath, and affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In considering a summary judgment motion, the court must view the facts and inferences in a light that is most favorable to the party opposing the motion. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 171 (Kos. S. Ct. Tr. 2002).

The same standard that a trial court uses in its determination of a motion for summary judgment is applied *de novo* by the appellate court. Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Kosrae v. Skilling, 11 FSM R. 311, 315 (App. 2003).

In reviewing the trial court's grant of summary judgment, the appellate court applies the same standard employed by the trial court under Civil Procedure Rule 56. Under that rule, unless a court finds that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law, the court must deny the motion. In considering a motion for summary judgment, the court views the facts and inferences in the light most favorable to the nonmoving party. Rosario v. College of Micronesia-FSM, 11 FSM R. 355, 358 (App. 2003).

In reviewing a summary judgment motion, the court will grant the motion if the pleadings, depositions,

answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. LPP Mortgage, Ltd. v. Ladore, 11 FSM R. 601, 602 (Pon. 2003).

Summary judgment is appropriate if the record before the court demonstrates that there is no genuine issue as to any material fact such that the moving party is entitled to summary judgment as a matter of law. AHPW, Inc. v. FSM, 12 FSM R. 114, 117 (Pon. 2003).

Summary judgment will be denied when the parties' two contentions, taken together, generate fact questions whether Pohnpei's conduct arises to the level of a constitutional violation; and when Pohnpei could not, in the guise of assisting pepper farmers, violate 32 F.S.M.C. 301 *et seq.* AHPW, Inc. v. FSM, 12 FSM R. 114, 124 (Pon. 2003).

A summary judgment motion will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Goyo Corp. v. Christian, 12 FSM R. 140, 145 (Pon. 2003).

A summary judgment motion will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Once the party moving for summary judgment presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing that a genuine issue of material fact remains for resolution. Fredrick v. Smith, 12 FSM R. 150, 151-52 (Pon. 2003).

When none of the exhibits that go towards proving defendants' liability is authenticated and the only evidence of defendants' alleged negligence, purportedly a police report is not authenticated and the report also contains hearsay statements that may not be admissible, even if authenticated, there are material issues of fact precluding entry of summary judgment in the plaintiff's favor. Fredrick v. Smith, 12 FSM R. 150, 152 (Pon. 2003).

Unauthenticated evidence is not competent, and cannot support a summary judgment motion. Fredrick v. Smith, 12 FSM R. 150, 153 (Pon. 2003).

No summary adjudication can be granted when a key issue of material fact is genuinely in dispute. Such a determination cannot be based on proffered conflicting affidavits, both based on personal knowledge. It must be based upon an adversarial proceeding, with cross-examination, before a judge. Enlet v. Bruton, 12 FSM R. 187, 190 (Chk. 2003).

A court, viewing the facts presented and inferences made in the light most favorable to the nonmoving party, must deny a motion for summary judgment unless it finds there is no genuine issue of any material fact and that the moving party is entitled to judgment as a matter of law. Ambros & Co. v. Board of Trustees, 12 FSM R. 206, 212 (Pon. 2003).

The presence of factual issues will not bar summary judgment if they are not material to the controlling legal issue of the case, and thus have no dispositive significance. Ambros & Co. v. Board of Trustees, 12 FSM R. 206, 212 (Pon. 2003).

When a party has failed to show that there are issues of material fact preventing the court from entering summary judgment against it on the trespass or nuisance claims, it is appropriate to enter summary judgment in the movant's favor. Ambros & Co. v. Board of Trustees, 12 FSM R. 206, 214 (Pon. 2003).

A court must deny a summary judgment motion unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Ambros & Co. v. Board of

Trustees, 12 FSM R. 206, 214 (Pon. 2003).

Summary judgment is appropriate where, viewing the facts in a light most favorable to the non-moving party, there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Summary judgment may be granted on the issue of liability alone. Wortel v. Bickett, 12 FSM R. 223, 225 (Kos. 2003).

Summary judgment will not be granted when the documentary evidence does not resolve the fact issues relative to that defendant's precise role in the cancellation of the plaintiff's permit. Wortel v. Bickett, 12 FSM R. 223, 227 (Kos. 2003).

Once a plaintiff has presented a *prima facie* case of entitlement to judgment on a cause of action, the burden shifts to the defendants to raise a question of material fact. Thus when the defendants have raised no such question, and where there is a duty of care, a breach of that duty, damage caused by the breach, and the value of the damage can be determined, liability as to the defendants' negligence has been established. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 308 (Pon. 2004).

A movant is entitled to summary judgment in the movant's favor if there is no genuine issue of material fact, and the movant is entitled to judgment as a matter of law. Sam v. Chief of Police, 12 FSM R. 587, 589 (Kos. 2004).

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. The court must view the facts presented and inferences made in the light most favorable to the nonmoving party. The burden of showing a lack of triable issues of fact belongs to the moving party. If a genuine issue of material fact is present then the trial court has to deny the summary judgment motion. Dereas v. Eas, 12 FSM R. 629, 632 (Chk. S. Ct. Tr. 2004).

When, viewing the facts presented and inferences made in the light most favorable to the nonmoving parties, a party has met his burden of showing a lack of triable issues of fact, when his motion and supporting evidence have made out a prima facie case of entitlement to summary judgment, and when the opposing parties have not presented any competent evidence to demonstrate that there is a genuine issue of fact, his summary judgment motion will be granted. Dereas v. Eas, 12 FSM R. 629, 632-33 (Chk. S. Ct. Tr. 2004).

A court must deny a motion for summary judgment unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The court must view the facts presented and inferences made in the light most favorable to the nonmoving party. The burden of showing a lack of triable issues of fact belongs to the moving party. Lee v. Lee, 13 FSM R. 68, 70 (Chk. 2004).

Laches and failure to mitigate damages are not grounds on which to grant summary judgment when a sufficient factual basis to support either ground has not yet been developed. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 127 (Chk. 2005).

Since a bank owed no duty of care to a plaintiff when it took a mortgage to secure a loan to another, and that mortgage, even if it is unenforceable, was not the proximate cause of the plaintiff's alleged damages, the bank is entitled to summary judgment as a matter of law on the plaintiff's negligence and void mortgage causes of action. Additional reasons for this are that the bank has not attempted to foreclose its mortgage and that the mortgage does not cover the lot for which the plaintiff has a determination of ownership. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 128 (Chk. 2005).

The court, viewing the facts presented and inferences made in the light most favorable to the nonmoving party, must deny a summary judgment motion unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The moving party has the burden of showing a lack of triable issues of fact, and a plaintiff, in order to succeed on a summary

judgment motion, must also overcome all affirmative defenses that the defendant has raised. Zion v. Nakayama, 13 FSM R. 310, 312 (Chk. 2005).

The standard for granting summary judgment is that the judgment sought must be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Sigrah v. Kosrae, 13 FSM R. 315, 317 (Kos. S. Ct. Tr. 2005).

Summary judgment must be granted if the pleadings, discovery responses under oath, and affidavits show that there is no genuine issue to any material fact and that the moving party is entitled to a judgment as a matter of law. In considering a summary judgment motion, the court must view the facts and inferences in a light that is most favorable to the party opposing the motion. The burden of showing a lack of triable issues of fact belongs to the moving party. Sigrah v. Kosrae, 13 FSM R. 315, 317 (Kos. S. Ct. Tr. 2005).

When plaintiff's counsel's assertions about a defendant's affirmative defense are not supported by any evidence as contemplated by Rule 56 of the FSM Rules of Civil Procedure and the plaintiff does not present any legal authority to support its position, issues of both fact and law remain, and the plaintiff is not entitled to judgment as a matter of law. Sigrah v. Microlife Plus, 13 FSM R. 375, 379 (Kos. 2005).

Summary judgment must be granted if the pleading, discovery responses under oath, and affidavits show that there is no genuine issue to any material fact and that the moving party is entitled to a judgment as a matter of law. In considering a summary judgment motion, the court must view the facts and inferences in a light that is most favorable to the party opposing the motion. The burden of showing a lack of triable issues of fact belongs to the moving party. Isaac v. Palik, 13 FSM R. 396, 399 (Kos. S. Ct. Tr. 2005).

A court must deny a summary judgment motion unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The court must view the facts presented and inferences made in the light most favorable to the nonmoving party, and the burden of showing a lack of triable issues of fact belongs to the movant. Mailo v. Chuuk, 13 FSM R. 462, 466 (Chk. 2005).

If, when determining whether a triable issue of material fact exists and viewing the facts presented and the inferences drawn from them in the light most favorable to the non-moving party, a court determines that there is only one reasonable conclusion that can be drawn from the undisputed facts, there is no question of material fact and the case is ripe for disposition by summary judgment. Mailo v. Chuuk, 13 FSM R. 462, 469 n.6 (Chk. 2005).

Summary judgment will be granted in a claim for money damages when no questions of fact that preclude summary judgment exist and when there is no issue of fact remaining with respect to the amount owed. FSM Dev. Bank v. Jonah, 13 FSM R. 522, 523-24 (Kos. 2005).

Summary judgment must be granted if the pleading, discovery responses under oath, and affidavits show that there is no genuine issue to any material fact and that the moving party is entitled to a judgment as a matter of law. In considering a summary judgment motion, the court must view the facts and inferences in a light that is most favorable to the party opposing the motion. The burden of showing a lack of triable issues of fact belongs to the moving party. Kinere v. Sigrah, 13 FSM R. 562, 566 (Kos. S. Ct. Tr. 2005).

Summary judgment is proper where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Kinere v. Sigrah, 13 FSM R. 562, 567 (Kos. S. Ct. Tr. 2005).

Summary judgment cannot be granted unless there is no genuine issue present as to any material fact

and the movants are entitled to judgment as a matter of law. Robert v. Simina, 14 FSM R. 257, 259 (Chk. 2006).

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. The court must view the facts presented and inferences made in the light most favorable to the nonmoving party. The moving party has the burden of showing a lack of triable issues of fact. Western Sales Trading Co. (Phils) v. B & J Corp., 14 FSM R. 423, 425 (Chk. 2006).

Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. The court must view the facts presented and inferences made in the light most favorable to the nonmoving party. The moving party has the burden of showing a lack of triable issues of fact. If a genuine issue of material fact is present then the trial court must deny the summary judgment motion. Dereas v. Eas, 14 FSM R. 446, 453 (Chk. S. Ct. Tr. 2006).

In order to succeed on a summary judgment motion, a plaintiff must also overcome all affirmative defenses that have been raised. Dereas v. Eas, 14 FSM R. 446, 453 (Chk. S. Ct. Tr. 2006).

In ruling on a summary judgment motion, a court must view all facts and inferences in the light most favorable to the nonmoving party. Summary judgment may be granted only if the court finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. It is the moving party's burden to prove the absence of triable issues. Ehsa v. Pohnpei Port Auth., 14 FSM R. 481, 484 (Pon. 2006).

A court must deny a motion for summary judgment unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law, but the court must view the facts presented and inferences made in the light most favorable to the nonmoving party, and the burden of showing a lack of triable issues of fact belongs to the moving party. Amayo v. MJ Co., 14 FSM R. 487, 488 (Pon. 2006).

When the facts lead to differing reasonable inferences, thus establishing a genuine issue of fact, summary judgment is not available. Amayo v. MJ Co., 14 FSM R. 487, 488 (Pon. 2006).

Summary judgment will be denied when the court, having carefully reviewed the parties' submissions, concludes that genuine issues of material fact do exist. Amayo v. MJ Co., 14 FSM R. 487, 488 (Pon. 2006).

Summary judgment will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 78 (Pon. 2007).

When the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law, when the moving papers present a single issue – whether the plaintiff, which has obtained a national foreign investment permit, is also required to obtain a state foreign investment permit – and when the parties agree that the facts are not in dispute, and that the case may be decided on summary judgment, summary judgment is appropriate. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 332 (Pon. 2007).

Under FSM Civil Rule 56(c), the court must grant the summary judgment when the pleadings together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law, such as when the parties do not dispute the material facts, all of which are contained in the parties' stipulation. FSM v. Katzutoku Maru, 15 FSM R. 400, 403 (Pon.

2007).

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. The court must view the facts presented and inferences made in the light most favorable to the nonmoving party, and the burden of showing a lack of triable issues of fact belongs to the moving party. K&I Enterprises v. Francis, 15 FSM R. 414, 417-18 (Chk. S. Ct. Tr. 2007).

If, when determining whether a triable issue of material fact exists and viewing the facts presented and the inferences drawn from them in the light most favorable to the non-moving party, a court determines that there is only one reasonable conclusion that can be drawn from the undisputed facts, there is no question of material fact and the case is ripe for disposition by summary judgment. K&I Enterprises v. Francis, 15 FSM R. 414, 418 (Chk. S. Ct. Tr. 2007).

A court must deny a motion for summary judgment unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The court must view the facts presented and inferences made in the light most favorable to the non-moving party. The burden of showing a lack of triable issues of fact rests with the moving party. Ruben v. FSM, 15 FSM R. 508, 513 (Pon. 2008).

A court grants summary judgment if the pleadings, discovery responses under oath, and affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In considering a summary judgment motion, the court must view the facts and inferences in a light that is most favorable to the party opposing the motion. Allen v. Allen, 15 FSM R. 613, 617 (Kos. S. Ct. Tr. 2008).

A moving party is entitled to a judgment as a matter of law when the nonmoving party has failed to make a sufficient showing on an essential element of the case with respect to which he has the burden of proof. In such a situation, there can be no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. Allen v. Allen, 15 FSM R. 613, 617-18 (Kos. S. Ct. Tr. 2008).

Argument alone cannot create a disputed fact that will defeat summary judgment. Allen v. Allen, 15 FSM R. 613, 618 (Kos. S. Ct. Tr. 2008).

A court must deny a summary judgment motion unless, viewing the facts presented and inferences made in the light most favorable to the nonmoving party, it finds that there is no genuine issue as to any material fact and the that moving party is entitled to judgment as a matter of law. The movant bears the burden of showing a lack of triable issues of fact. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 284-85 (Chk. 2009).

A mere factual allegation cannot create a genuine issue of material fact. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 364 n.1 (Yap 2009).

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law, such as when the issues involve only statutory and constitutional construction. Issues of statutory and constitutional construction and interpretation are not issues of material fact but matters of law. Doone v. Simina, 16 FSM R. 487, 490 (Chk. S. Ct. Tr. 2009).

Summary judgment must be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Berman v. Pohnpei Legislature, 16 FSM R. 492, 494 (Pon. 2009).

When genuine issues of material fact remain, summary judgment is not appropriate. Berman v.

Pohnpei Legislature, 16 FSM R. 492, 496 (Pon. 2009).

If a nonmoving party admits the allegations contained in a summary judgment motion and there is otherwise no factual issue in dispute, the moving party is entitled to summary judgment on the uncontested allegations. Barker v. Chuuk, 16 FSM R. 537, 538 (Chk. S. Ct. Tr. 2009).

A court, viewing the facts presented and inferences made in the light most favorable to the nonmoving party, must deny a summary judgment motion unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law, and it is the moving party's burden to show the lack of triable issues of fact. Arthur v. Pohnpei, 16 FSM R. 581, 593 (Pon. 2009).

Kosrae Civil Rule 56 provides for summary judgment in a movant's favor if the pleadings and facts properly before the court show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. For purposes of a summary judgment motion, the court views all facts in the light most favorable to the nonmovant. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 643 (Kos. S. Ct. Tr. 2009).

Summary judgment must be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In considering a summary judgment motion, the Kosrae State Court must view the facts and inferences in a light that is most favorable to the party opposing the motion. The burden of showing a lack of triable issues of fact belongs to the moving party. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 643 (Kos. S. Ct. Tr. 2009).

An appellate court applies the same standard in reviewing a trial court's grant of summary judgment that the trial court initially employed under Rule 56(c), that is, it views the facts in the light most favorable to the party against whom judgment was entered and it determines *de novo* whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Allen v. Allen, 17 FSM R. 35, 39 (App. 2010).

A court will deny a summary judgment motion unless, viewing the facts presented and inferences made in the light most favorable to the nonmoving parties, it finds that there is no genuine issue of material fact and the that moving party is entitled to judgment as a matter of law. The movant bears the burden of showing a lack of triable issues of fact. Dungawin v. Simina, 17 FSM R. 51, 53 (Chk. 2010).

A trial court judgment issued without a trial or an evidentiary hearing is a summary judgment to which the trial court should apply the summary judgment standard – that summary judgment is proper only when, viewing the facts in the light most favorable to the party against whom judgment is sought, there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 108 (Pon. 2010).

When no defendant opposed the plaintiff's motion in writing and although the failure to file an opposition is deemed to be a consent to a motion, the court cannot automatically grant the summary judgment motion since there must still be a sound basis in law and in fact upon which to grant the motion. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 108 (Pon. 2010).

Summary judgment must be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the movant is entitled to a judgment as a matter of law. A court considering a summary judgment motion must view facts and inferences drawn from those facts in the light most favorable to the party opposing the motion. Ladore v. Panuel, 17 FSM R. 271, 273 (Pon. 2010).

The existence of a genuine issue as to material facts means that the court need not reach the question of whether or not the plaintiff is entitled to judgment as a matter of law. Ladore v. Panuel, 17 FSM R. 271, 274 (Pon. 2010).

A trial court may grant summary judgment, viewing facts and inferences drawn from them in the light most favorable to the nonmoving party, only if the moving party shows that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. An appeals court applies the same standard in reviewing a trial court's grant of summary judgment as that applied by the trial court. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 434-35 (App. 2011).

When a party concedes a fact against its own legal interest, a trial court's finding of fact incorporating that concession as undisputed is not clearly erroneous. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 438 (App. 2011).

Summary judgment is only proper when, viewing the facts in the light most favorable to the party against whom judgment is sought, there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 529 (Chk. 2011).

Summary judgment cannot be granted if genuine issues of material fact are present, but the factual issues cited by the defendants are not material because what matters is that the service tax on passenger tickets constitutes regulation of foreign commerce, and, as such, is an impermissible exercise by the state of a national power, summary judgment may be granted. The factual issues of how burdensome the state's regulation is, is not material to the question of the regulation's constitutionality. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 532 (Chk. 2011).

A trial court may grant summary judgment, viewing facts and inferences drawn from them in the light most favorable to the nonmoving party, only if the moving party shows that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. An appeals court will apply the same standard in reviewing a trial court's grant of summary judgment as that applied by the trial court. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 545 (App. 2011).

Under Rule 56, the court must deny a summary judgment motion unless it, viewing the facts and inferences in the light most favorable to the nonmoving party, finds that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 569 (Pon. 2011).

When a plaintiff has failed to make a showing sufficient to establish the existence of any element essential to its case on which it will bear the burden of proof at trial, summary judgment in the defendant's favor is appropriate. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 573 (Pon. 2011).

The court will disregard an allegation when it is raised for the first time, and without factual support, in a written opposition to a summary judgment motion. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 582 (Pon. 2011).

To the extent that a deponent's later affidavit contradicts his deposition testimony, it cannot be used to create factual issues to defeat summary judgment because a party cannot create a triable issue in opposition to summary judgment simply by contradicting his deposition testimony with a subsequent affidavit. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 583 (Pon. 2011).

The failure to verify a derivative action complaint will not entitle defendants to an immediate dismissal or to a summary judgment because the Civil Procedure Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

A court must grant a motion for summary judgment if the pleadings, depositions, answers, interrogatories, and admissions on files together with the affidavits, if any, viewed in the light most favorable

to the nonmoving party, show that there is no genuine issue as to the material facts and that the moving party is entitled to a judgment as a matter of law. Berman v. Pohnpei, 18 FSM R. 67, 72 (Pon. 2011).

The court will grant the summary judgment requested if the pleadings, discovery, and affidavits show that there is no genuine issue as to any material fact and that the Bank is entitled to judgment as a matter of law. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 155 (Pon. 2012).

A court must deny a motion for summary judgment unless, viewing the facts presented and the inferences made in the light most favorable to the non-moving party, the court finds that there is no genuine issue as to any material fact. Tarauo v. Arsenal, 18 FSM R. 270, 272 (Chk. 2012).

The court, viewing the facts and inferences in a light most favorable to the party opposing the motion, must grant summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Helgenberger v. U Mun. Court, 18 FSM R. 274, 279 (Pon. 2012).

Since the failure to verify a complaint is a technical defect that can be cured by amendment, it would not entitle the defendants to an immediate dismissal or to a summary judgment because the Civil Procedure Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. This same principle should hold for an in rem admiralty proceeding and the plaintiffs be given a reasonable time to amend their complaint by verifying it by affidavit. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288-89 (Yap 2012).

A court must deny a motion for summary judgment unless it, viewing the facts presented and the inferences made in the light most favorable to the non-moving party, finds there is no genuine issue as to any material fact. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 297, 299-300 (Yap 2012).

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A fact is material when, under the substantive governing law, it affects the outcome of the case. Kama v. Chuuk, 18 FSM R. 326, 330-31 (Chk. S. Ct. Tr. 2012).

A court must deny a summary judgment motion unless the court, viewing the facts presented and the inferences made in the light most favorable to the non-moving party, finds that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. Ruben v. Chuuk, 18 FSM R. 425, 428 (Chk. 2012).

When a plaintiff has failed to make a showing sufficient to establish the existence of any element essential to its case on which it will bear the burden of proof at trial, summary judgment in the defendant's favor is appropriate. Ruben v. Chuuk, 18 FSM R. 425, 430 (Chk. 2012).

When there is no factual basis for the existence of a special duty, the defendants' summary judgment motion should be granted since one of the essential elements of negligence cannot be proven. Ruben v. Chuuk, 18 FSM R. 425, 431 (Chk. 2012).

When a plaintiff cannot prove that the defendants had a duty toward the decedent that the defendants breached, the plaintiff cannot prove an essential element of his case and the defendants must be granted summary judgment. Ruben v. Chuuk, 18 FSM R. 425, 431 (Chk. 2012).

Although the failure to file an opposition is deemed, by rule, to be a consent to a motion, the court

cannot automatically grant an unopposed summary judgment motion because there must still be a sound basis in law and in fact upon which to grant the motion. Aunu v. Chuuk, 18 FSM R. 467, 468 (Chk. 2012).

FSM Civil Rule 56(c) requires that summary judgment be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Peniknos v. Nakasone, 18 FSM R. 470, 478 (Pon. 2012).

FSM Civil Rule 56(c) mandates the entry of summary judgment after adequate time for discovery and upon motion against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial. In such a situation, there can be no genuine issues as to any material fact, since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. Peniknos v. Nakasone, 18 FSM R. 470, 478-79 (Pon. 2012).

In order for an issue of fact to be shown it must be supported by substantial probative evidence in the record, going beyond mere allegations. The evidence must be in the nature of facts, not conclusions, counsel's unsupported allegations, opposing party's own contradictions in the record, or opposing party's subjective characterizations. On a summary judgment motion, the court must penetrate the factual allegations contained in the pleadings and look to any evidential source to determine whether there is an issue of fact. Peniknos v. Nakasone, 18 FSM R. 470, 487 (Pon. 2012).

Unsupported statements of counsel at oral argument do not qualify as competent evidence upon which a court could find a genuine issue at trial. The court cannot be expected to draw inferences that are supported by only speculation or conjecture since the nonmoving party must do more than raise some metaphysical doubt as to the material facts: she must come forward with specific facts showing that there is a genuine issue for trial. Peniknos v. Nakasone, 18 FSM R. 470, 488 (Pon. 2012).

A mere factual allegation cannot create a genuine issue of material fact. Peniknos v. Nakasone, 18 FSM R. 470, 488 (Pon. 2012).

On summary judgment, a plaintiff cannot rely on a notice pleading requirement which is generally used for the complaint or the initiation of a claim under the civil procedure rules. Peniknos v. Nakasone, 18 FSM R. 470, 488 (Pon. 2012).

The FSM pleading rules are flexible and informal rather than technical and thus require only notice pleading. FSM Civil Rule 8(a)'s pleading requirements are to be interpreted liberally, and a complaint which states the grounds of jurisdiction and alleges facts sufficient to put the defendant on notice as to the nature and basis of the claim being made sufficiently complies with Rule 8(a). But just because a pleading is sufficient to withstand a Rule 12(b) motion to dismiss for failure to state a claim does not mean that it meets the standard to withstand a Rule 56(b) summary judgment motion. Peniknos v. Nakasone, 18 FSM R. 470, 488 (Pon. 2012).

Rule 56(c)'s plain language mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which the party will bear the burden of proof at trial. In such a situation, there can be no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is entitled to a judgment as a matter of law when the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof. Peniknos v. Nakasone, 18 FSM R. 470, 489 (Pon. 2012).

A promise to produce admissible evidence at some future time is not the production of admissible evidence in response to a summary judgment motion. A contention that evidence will be introduced and

that it will show certain things is hearsay, and hearsay is generally not admissible evidence and thus cannot be relied upon to create a material issue of fact when opposing a summary judgment motion. Peniknos v. Nakasone, 18 FSM R. 470, 489 (Pon. 2012).

When the summary judgment opponents do not offer any affidavits or exhibits or point to any other competent evidence that would support their position, they have not met their burden of showing by competent evidence that could be admitted at trial that there is a genuine issue of material fact since argument alone cannot create a disputed fact that will defeat summary judgment. Peniknos v. Nakasone, 18 FSM R. 470, 489 (Pon. 2012).

Under Rule 56, a court must deny a summary judgment motion unless it, viewing the facts and inferences in the light most favorable to the nonmovant, finds that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law, and, in order to succeed on a summary judgment motion, a movant plaintiff must also overcome all affirmative defenses that the defendant has raised. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 495 (Chk. 2013).

Under Rule 56, the court must deny a summary judgment motion unless it, viewing the facts and inferences in the light most favorable to the nonmovant, finds that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. In order to succeed on a summary judgment motion, a movant plaintiff must also overcome all affirmative defenses that the defendant has raised. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 538 (Yap 2013).

Summary judgment is inappropriate when the plaintiffs have not yet overcome the defendant's affirmative defense. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 540 (Yap 2013).

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. The court must view the facts presented and inferences made in the light most favorable to the nonmoving party. The moving party has the burden of showing a lack of triable issues of fact. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 649, 651-52 (Chk. S. Ct. Tr. 2013).

Summary judgment will be denied when the opposing parties present conflicting affidavits from the same non-moving party and the affidavit submitted by the movant was obtained under unexplained, dubious, and murky circumstances. Mori v. Hasiguchi, 19 FSM R. 16, 20-21 (Chk. 2013).

When, because of her failure to answer the opposing party's interrogatories the court ordered that those interrogatories will be deemed answered a certain way if the party has still failed to respond after 30 days and there was no response, the court may deem those interrogatories as answered a certain way and the opposing party may use those answers as a basis for summary judgment. Mori v. Hasiguchi, 19 FSM R. 16, 24 (Chk. 2013).

A summary judgment motion must be granted when, viewing the facts and inferences in a light most favorable to the party opposing the motion, the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 75-76 (Pon. 2013).

The appellate court applies the same standard in reviewing a trial court's grant of summary judgment that the trial court initially employed under Civil Procedure Rule 56(c), that is, it views the facts in the light most favorable to the party against whom judgment was entered and it determines de novo whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 143 (App. 2013).

In reviewing a grant or denial of summary judgment, an appellate court uses the same standard that the trial court initially used under Rule 56(c) in its determination of the summary judgment motion, which the court applies de novo to determine whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Smith v. Nimea, 19 FSM R. 163, 168-69 (App. 2013).

A court must deny a motion for summary judgment unless it, viewing the facts presented and the inferences made in the light most favorable to the non-moving party, finds there is no genuine issue as to any material fact. Eot Municipality v. Elimo, 19 FSM R. 290, 293-94 (Chk. 2014).

The appellate court applies the same standard in reviewing a trial court's grant of summary judgment that the trial court initially employed under Rule 56(c), that is, it views the facts in the light most favorable to the party against whom judgment was entered and it determines de novo whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Andrew v. Heirs of Seymour, 19 FSM R. 331, 337 (App. 2014).

A Kosrae State Court order cannot be a partial final judgment when the court failed to include the express determination required by Kosrae Civil Procedure Rule 54(b) "that there is no just reason for delay" and the "express direction for the entry of judgment" which would allow the entry of a partial final judgment. Andrew v. Heirs of Seymour, 19 FSM R. 331, 337-38 (App. 2014).

Since a permanent injunction is imposed only as part of a final judgment and since there is no final judgment in the absence of either a final judgment including the ruling on damages or an order containing express language that there is no just cause for delay and directing the clerk to enter a final judgment, the permanent injunction must be vacated, which would leave the earlier preliminary injunction in place. Andrew v. Heirs of Seymour, 19 FSM R. 331, 338 (App. 2014).

FSM Civil Rule 56(c) requires that summary judgment be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. The court must view facts and inferences in a light that is most favorable to the party opposing the judgment. A fact is material only if it might affect the outcome of the suit and the failure to prove an essential element of the nonmoving party's case necessarily renders all other facts immaterial. Zacchini v. Hainrick, 19 FSM R. 403, 410 (Pon. 2014).

When the party moving for summary judgment makes out a prima facie case which, if uncontroverted at trial, would entitle it to a directed verdict on the issue, then the burden shifts to the nonmoving party to offer some competent evidence that could be admitted at trial showing that there is a genuine issue of material fact. Unsupported statements of counsel at oral arguments do not qualify as competent evidence on which a court could find a genuine issue for trial. Unauthenticated evidence is not competent. Zacchini v. Hainrick, 19 FSM R. 403, 410 (Pon. 2014).

A court, viewing the facts presented and inferences made in the light most favorable to the nonmoving party, must deny a summary judgment motion unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The movant has the burden of showing a lack of triable issues of fact. FSM v. Muty, 19 FSM R. 453, 458 (Chk. 2014).

Evidence Rule 803(22) merely makes a person's conviction admissible evidence. To make that evidence conclusive in a summary judgment motion, a plaintiff must rely on a legal principle known as collateral estoppel or issue preclusion. FSM v. Muty, 19 FSM R. 453, 458 (Chk. 2014).

When only the construction of a contract is at issue, the legal effect and interpretation of the contract is a question of law, and summary judgment is proper. George v. Palsis, 19 FSM R. 558, 565 (Kos. 2014).

Unless a court, viewing the facts and inferences therefrom in the light most favorable to the nonmoving party, finds that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law, the court must deny the motion. But Rule 56(c) requires that summary judgment be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. George v. Palsis, 19 FSM R. 558, 566 (Kos. 2014).

When a plaintiff has failed to make a showing sufficient to establish the existence of any element essential to his case on which he will bear the burden of proof at trial, Rule 56(c) mandates the entry of summary judgment in the defendant's favor. In such a situation, there can be no genuine issue as to any material fact since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. George v. Palsis, 19 FSM R. 558, 566-67 (Kos. 2014).

When factual support for an essential element of the claim being asserted against the movant is absent from the case record, a party moving for summary judgment is entitled to a judgment as a matter of law because the nonmoving party has failed to make a sufficient showing on an essential element of his case with respect to which he has the burden of proof. George v. Palsis, 19 FSM R. 558, 567 (Kos. 2014).

A nonmovant's contention that evidence will be introduced sometime in the future or at trial and that it will show certain things is hearsay and since hearsay is generally not admissible evidence, it cannot be relied upon to create a material issue of fact when opposing a summary judgment motion. George v. Palsis, 19 FSM R. 558, 567 (Kos. 2014).

A grant or denial of summary judgment is reviewed using the same standard that the trial court initially used under Rule 56(c) in its determination of the summary judgment motion. Thus, the appellate court determines de novo whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Esiel v. FSM Dep't of Fin., 19 FSM R. 590, 593 (App. 2014).

An appellate court applies the same standard in reviewing a trial court's grant of summary judgment as that initially employed by the trial court under Rule 56(c). Thus, the standard of appellate review of a summary judgment is a de novo determination that there was no genuine issue of material fact and that the prevailing party was entitled to judgment as a matter of law. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 22 (App. 2015).

In reviewing a trial court's grant of summary judgment, the appellate court applies the same standard employed by the trial court under FSM Civil Rule 56. Under Rule 56, unless a court, viewing the facts and inferences in the light most favorable to the nonmoving party, finds that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law, the court must deny the motion. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 22 (App. 2015).

A court must grant a summary judgment motion under Rule 56(c) if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to a judgment as a matter of law. In considering a summary judgment motion, the facts and inferences to be drawn from those facts must be viewed by the court in the light most favorable to the party opposing the motion. FSM v. Kuo Rong 113, 20 FSM R. 27, 30 (Yap 2015).

Under Rule 56, the court must deny a summary judgment motion unless it, viewing the facts and inferences in the light most favorable to the nonmoving party, finds that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Palasko v. Pohnpei, 20 FSM R. 90, 93 (Pon. 2015).

A trial court, viewing facts and inferences drawn from them in the light most favorable to the nonmoving party, may grant summary judgment only if the moving party shows that there is no genuine

issue as to any material fact and that it is entitled to judgment as a matter of law, and once the party moving for summary judgment presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce some competent evidence showing that a genuine issue of material fact remains for resolution. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 199 (Pon. 2015).

A moving party is entitled to summary judgment when it has demonstrated that there are no genuine issues of material fact remaining and that it is entitled to judgment as a matter of law. Pacific Int'l, Inc. v. FSM, 20 FSM R. 220, 222 (Pon. 2015).

A court, viewing the facts and inferences in a light that is most favorable to the party opposing the judgment, will render summary judgment forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A fact is material only if it might affect the outcome of the suit and the failure to prove an essential element of the nonmoving party's case necessarily renders all other facts immaterial. Ramirez v. College of Micronesia, 20 FSM R. 254, 265 (Pon. 2015).

When a party has not responded to a summary judgment motion, the party is deemed to have consented to the granting of the motion, and the court may, in its discretion, decline to hear oral arguments from that party. While that failure to file a timely opposition is deemed a consent to the granting of the motion, there still must be proper grounds to grant the motion. Ramirez v. College of Micronesia, 20 FSM R. 254, 265 (Pon. 2015).

A trial court, viewing facts and inferences drawn from them in the light most favorable to the nonmoving party, may grant summary judgment only if the moving party shows that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 271 (Pon. 2015).

A moving party is entitled to summary judgment when it has demonstrated that there are no genuine issues of material fact remaining and that it is entitled to judgment as a matter of law. Pacific Int'l, Inc. v. FSM, 20 FSM R. 346, 350 (Pon. 2016).

Under FSM Civil Rule 56, a motion for summary judgment will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 366 (Pon. 2016).

A court must deny a summary judgment motion unless it, viewing the facts presented and inferences in the light most favorable to the nonmoving party, finds that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. When the trial court denies a summary judgment motion, it should delineate between those material facts that are in dispute and those that are not. Hairens v. Federated Shipping Co., 20 FSM R. 404, 407 (Pon. 2016).

A summary judgment motion will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 478 (Pon. 2016).

Although the failure to file an opposition is, by rule, deemed to be a consent to a motion, the court cannot automatically grant an unopposed summary judgment motion because there must still be a sound basis in law and in fact on which to grant the motion. Eot Municipality v. Elimo, 20 FSM R. 482, 488 (Chk. 2016).

A court, viewing the facts and inferences in a light that is most favorable to the non-moving party, will

render summary judgment when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Eot Municipality v. Elimo, 20 FSM R. 482, 488 (Chk. 2016).

An appellate court uses the same standard in reviewing the grant or denial of a summary judgment that the trial court initially did. Therefore, if it concludes that a genuine issue of material fact was present, then it must rule that the summary judgment should have been denied; and if it concludes that a genuine issue is not present, then, viewing the facts in the light most favorable to the nonmovant, it rules *de novo* on whether the movant was entitled to judgment as a matter of law. Kama v. Chuuk, 20 FSM R. 522, 528 (Chk. S. Ct. App. 2016).

A court, viewing the facts and inferences in a light that is most favorable to the non-moving party, must render summary judgment when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Onanu Municipality v. Elimo, 20 FSM R. 535, 543 (Chk. 2016).

Although the failure to file an opposition is deemed, by rule, to be a consent to a motion, the court cannot automatically grant an unopposed summary judgment motion since there must still be a sound basis in law and in fact on which to grant the motion. Onanu Municipality v. Elimo, 20 FSM R. 535, 543 (Chk. 2016).

When the complaint was filed on November 26, 2014, the six-year statute of limitations would bar the plaintiffs' claims unless their cause of action accrued on or after November 26, 2008, or some event or action tolled the running of the limitations period so that the six years did not end until November 26, 2014 or later. Thus, events that took place in 2007, cannot successfully overcome a statute of limitations affirmative defense. Onanu Municipality v. Elimo, 20 FSM R. 535, 545 (Chk. 2016).

A court, viewing the facts and inferences therefrom in the light most favorable to the nonmoving party, must grant summary judgment only if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue about any material fact and that the moving party is entitled to a judgment as a matter of law. Jacob v. Johnny, 20 FSM R. 612, 616-17 (Pon. 2016).

Regardless of whether the non-movants have filed a written opposition, a plaintiff, when moving for summary judgment, must also overcome all of the adverse parties' affirmative defenses in order to be entitled to summary judgment – the plaintiff must not only show that there is no issue of material fact but must also show that the affirmative defenses are insufficient as a matter of law. Pacific Fin. Corp. v. David, 21 FSM R. 5, 6 (Chk. 2016).

When no admissible evidence is submitted to prove the last item alleged in the defendant's account – an alleged October 21, 2011 payment – and when the plaintiff has submitted affidavits by its attorney and by its vice-president, that interest of 23.75% has accrued on the June 15, 2000 principal balance of $1,075.17 equaling $4,164.70 between then and October 6, 2016, the reasonable inference can be drawn that there were no payments on the defendant's promissory note after June 15, 2000. The plaintiff has thus failed to show that there are no genuine issues as to any material fact on the defendant's affirmative defense of statute of limitations. Pacific Fin. Corp. v. David, 21 FSM R. 5, 6 (Chk. 2016).

A court, viewing the facts and inferences drawn therefrom in the light most favorable to the nonmoving party, must grant summary judgment only if the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits, show that there is no genuine issue about any material fact and that the moving party is entitled to a judgment as a matter of law. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 168-69 (Pon. 2017).

A party cannot revive a previously dismissed counterclaim by moving for summary judgment on that counterclaim. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 170 (Pon. 2017).

When the counterclaimants cannot prevail on an essential element of the two torts (negligent lending and predatory lending) that they allege that the bank committed, those counterclaims must, as a matter of law, fail. This is because a complete failure of proof concerning one essential element of a party's claim necessarily renders all other facts immaterial, leaving no genuine issue about any material fact. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 171 (Pon. 2017).

Under FSM Civil Rule 56, a motion for summary judgment must be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue about any material fact and that the moving party is entitled to a judgment as a matter of law. Seiola v. FSM Social Sec. Admin., 21 FSM R. 205, 208 (Pon. 2017).

Under FSM Civil Rule 56, a summary judgment motion will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Celestine v. FSM Social Sec. Admin., 21 FSM R. 263, 265 (Pon. 2017).

A moving party is entitled to summary judgment when it has demonstrated that there are no genuine issues of material fact remaining and that it is entitled to judgment as a matter of law. Pacific Int'l, Inc. v. FSM, 21 FSM R. 283, 286 (Pon. 2017).

When the facts lead to differing reasonable inferences, thus establishing a genuine issue of fact, summary judgment is not available. Pacific Int'l, Inc. v. FSM, 21 FSM R. 283, 286 (Pon. 2017).

On motion for summary judgment, facts and inferences therefrom should be viewed in a light most favorable to the opposing party and when facts lead to differing reasonable inferences, summary judgment is not appropriate. Pacific Int'l, Inc. v. FSM, 21 FSM R. 283, 288 (Pon. 2017).

A court, viewing the facts presented and inferences made in the light most favorable to the nonmoving party, must deny a summary judgment motion unless it finds there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. It is the moving party's burden to show the lack of triable issues of fact. Pacific Int'l, Inc. v. FSM, 21 FSM R. 283, 288-89 (Pon. 2017).

In order to succeed on a summary judgment motion, a plaintiff must also overcome all affirmative defenses that have been raised. Pacific Int'l, Inc. v. FSM, 21 FSM R. 283, 290 (Pon. 2017).

Summary judgment motions are only granted if there are no disputed issues of material fact pertinent to the given cause of action or affirmative defense addressed by the motion. If any material facts are in dispute, the parties are entitled to a trial on the merits of their causes of action or affirmative defenses. Pacific Int'l, Inc. v. FSM, 21 FSM R. 283, 290 (Pon. 2017).

A summary judgment motion that is well grounded in fact and law will be granted if the moving party demonstrates that there are no questions of material fact and that the moving party is entitled to judgment as a matter of law. Robert v. FSM Social Sec. Admin., 21 FSM R. 490, 492 (Kos. 2018).

When an opposing party has not filed a response to a summary judgment motion, that party is, by rule, deemed to have consented to the motion's grant, but the court cannot automatically grant an unopposed summary judgment motion since there must still be a sound basis in law and in fact upon which to grant the motion. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 153 (Chk. 2019).

When factual support for an essential element of the claim being asserted against the movant is

absent from the case record, a party moving for summary judgment is entitled to a judgment as a matter of law because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof. A complete failure of proof concerning one essential element of the nonmoving party's case necessarily renders all other facts immaterial. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 155 (Chk. 2019).

Under FSM Rule 56, a summary judgment motion will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Barnabas v. Individual Assurance Co., 22 FSM R. 252, 254-55 (Pon. 2019).

A trial court, viewing facts and inferences drawn from them in the light most favorable to the nonmoving party, may grant summary judgment only if the moving party shows that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 327 (Pon. 2019).

When the only issues to be decided are issues of law, summary judgment is appropriate. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 327 (Pon. 2019).

When the court cannot find an adequate factual basis for it to conclude that, as a matter of law, the movant is entitled to summary judgment on certain claims, the court cannot grant summary judgment for those claims. Berman v. Pohnpei, 22 FSM R. 377, 381 (Pon. 2019).

When no opposition has been filed to a summary judgment motion, the opposing parties are deemed to have consented to the motion, but even then, a court still needs a sound basis in law and fact before it can grant the summary judgment motion, especially when the non-movant was permitted to orally oppose the motion. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 473 (Pon. 2020).

Under Rule 56, a court must view the facts and any inferences drawn therefrom in the light most favorable to the nonmoving party, and then grant summary judgment only if the pleadings, depositions, answers to interrogatories, admissions on file, and any affidavits, show that there is no genuine issue about any material fact and that the moving party is entitled to a judgment as a matter of law. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 473 (Pon. 2020).

Factual issues will not bar summary judgment if they are not material to the case's controlling legal issue, and thus have no dispositive significance. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 473 (Pon. 2020).

Summary judgment opponents cannot rely on mere allegations or denials in their pleadings or unsubstantiated claims or denials, but must present some competent evidence on the point. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 476-77 (Pon. 2020).

Regardless of whether the non-movants filed a written opposition, a plaintiff, when moving for summary judgment, must overcome all of the non-movants' affirmative defenses – must show that the affirmative defenses are insufficient as a matter of law – and overcome all of the adverse parties' counterclaims in order to be entitled to summary judgment. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 477 (Pon. 2020).

Under Rule 56, unless a court, viewing the facts and inferences in the light most favorable to the nonmoving party, finds that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law, the court must deny a motion for summary judgment. Macayon v. FSM, 22 FSM R. 544, 551-52 (Chk. 2020).

Under Rule 56, unless a court, viewing the facts and inferences in the light most favorable to the nonmoving party, finds that there is no genuine issue of material fact and that the moving party is entitled to

judgment as a matter of law, the court must deny a motion for summary judgment. Basu v. Amor, 22 FSM R. 557, 564 (Pon. 2020).

Although the summary judgment movant's lead network operator's affidavit states that the cause of the problem was not its fault, thus, in the movant's view, making out a prima facie that there was no triable issue of fact, and the non-movant failed to produce any competent evidence to the contrary, that affidavit is not so conclusive as to entitle the movant to summary judgment because it refers only to the causes of the 2017 backflow, not any of the earlier ones, and, while it stated that the May 31, 2017 backflow was caused by a broken check valve, it did not explicitly state that the check valve was not the movant's responsibility, although it might (or might not) be read to imply that and because each side argued, based on the check valve's location, that the other was responsible for it, thus leaving open a genuine issue of material fact. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 620 (Chk. S. Ct. App. 2020).

– Summary Judgment – Grounds – Particular Cases

A summary judgment may be granted for a state named as defendant in an action asserting that the state is liable for negligent preparation of a survey when it is clear from the pleadings and record that the state did not exist when the survey was prepared, and plaintiff offers no theory under which the state could be liable and the pleadings, depositions, answers, interrogations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Salik v. U Corp. (I), 3 FSM R. 404, 407 (Pon. 1988).

Conflicting affidavits show that the circumstances surrounding the execution of a document allegedly reflecting plaintiff's acceptance of a settlement and her release of defendant and others from liability for the death of her late husband are not sufficiently clear to permit summary judgment either as to the efficacy of that document or as to the application to the plaintiff's claims of the statute of limitations found at 6 F.S.M.C. 503(2). Sarapio v. Maeda Road Constr. Co., 3 FSM R. 463, 464 (Pon. 1988).

The issue of whether the rule of primogeniture that appeared on German standard form deeds applied to land not held under one of those deeds is a question of law that may be decided by the court at the summary judgment stage even if the question is seen as a determination of foreign law. Etscheit v. Adams, 6 FSM R. 365, 373 (Pon. 1994).

Where a party has not raised a material issue regarding the one factual question that might bear on the applicability of the rule of primogeniture, it is appropriate for the court to decide the rule's applicability at the summary judgment stage. Etscheit v. Adams, 6 FSM R. 365, 374 (Pon. 1994).

Where there is an issue of fact regarding the authenticity of a deed, summary judgment will not be granted to the parties claiming under the deed, and both sides will be allowed to present evidence on the issue. Etscheit v. Adams, 6 FSM R. 365, 389 (Pon. 1994).

The Social Security Administration is entitled to summary judgment for unpaid taxes when it supported its motion with an affidavit detailing the a taxpayer's audit and other evidence indicating the taxpayer's liability, and the taxpayer has provided no evidence to indicate otherwise. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 442, 445-46 (Pon. 1996).

Summary judgment will be granted on the issue of the state's liability for the its employee's act when there is no genuine issue of material fact that at the time of the accident the employee was negligent, that he was acting at the direction of his employer and within the scope of his employment, and that his conduct was not wanton or malicious. Glocke v. Pohnpei, 8 FSM R. 60, 61-62 (Pon. 1997).

Summary judgment on a contribution and indemnity claim is not precluded when the only issue remaining is the legal effect of the plaintiff's and defendant's court-filed settlement on the defendant's contribution claims against a third-party defendant. Joy Enterprises, Inc. v. Pohnpei Utilities Corp., 8 FSM R. 306, 310 (Pon. 1998).

Article IV, section 4 is designed to guarantee that similarly situated individuals are not treated differently due to some sort of invidious discrimination, but where there is no admissible competent evidence of any such intentional discrimination, a court will grant summary judgment against an equal protection claim. Isaac v. Weilbacher, 8 FSM R. 326, 336 (Pon. 1998).

On a motion for summary judgment, a court must consider the facts and inferences therefrom in a light as favorable to the non-moving party as is reasonable. Therefore summary judgment for payment of an invoice is precluded when there is a C.O.D. notation on the invoice, creating an issue of fact whether the goods were paid for before the defendant received them. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 79 (Kos. 1999).

When a plaintiff's interest and attorney's fee claim rests on a paragraph on the bottom left portion of each invoice and none of the invoices bears the defendant's signature, an issue of fact exists as to whether this pre-judgment interest and fee clause ever formed a material part of the open account agreement between the parties. Summary judgment is therefore denied on the issue. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 79 (Kos. 1999).

Affidavits containing disputed facts about custom and tradition do not preclude summary judgment when custom and tradition do not apply to the case. Chuuk v. Secretary of Finance, 9 FSM R. 99, 102 (Pon. 1999).

When the taxpayer has failed to meet its the burden of showing that the Secretary's assessment was incorrect and has failed to put forth competent evidence in opposition to the Secretary's summary judgment motion and its lengthy opposition contained only legal argument, the taxpayer has failed to submit evidence establishing that the Secretary's assessment was incorrect and summary judgment in the Secretary's favor is appropriate. Ting Hong Oceanic Enterprises v. Ehsa, 10 FSM R. 24, 31 (Pon. 2001).

When the undisputed facts show that a party clearly entered into a legally binding agreement whereby he agreed and promised to make payments to the bank in exchange for purchasing a taxi service and when he breached it by failing to make the required payments, the court will grant summary judgment to the taxi service seller. The fact that the taxi service was losing money does not excuse the buyer from his responsibility. Nor does the fact that it might have been a bad investment. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 78 (Pon. 2001).

When a fishing agreement requires that the signatory organizations must only take "necessary steps to ensure" that their members comply with the laws, regulations, and their permits and the government has made no allegation and introduced no evidence that the signatory has failed to take any of these "necessary steps," the government cannot seek to impose some sort of strict liability on the signatory for the actions of its members' employees because the fishing agreement's terms, without more, do not create liability for the signatory organizations for each and every violation of FSM fishery law or the foreign fishing agreement that their members commit. The government is therefore not entitled to summary judgment because, as a matter of law, the foreign fishing agreement's contractual terms do not impose vicarious liability on the signatory. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 173-74 (Chk. 2001).

A defense to a trespass action that someone other than the plaintiff owned the land would only be material if the defendant alleged that that someone authorized him to use the land. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 185 (Pon. 2001).

When a defendant produces only incompetent evidence, regarding other people and other tracts of land, wholly unrelated to the land on which he is allegedly trespassing, and when the speculative and conflicting statements contained in his pleadings are insufficient to create a material fact as to his right to possess any part of the land, there are no material issues of fact and the plaintiff is entitled to summary

judgment on its trespass claim. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 186 (Pon. 2001).

A trespass defendant's bald assertions of third party ownership does nothing to diminish a plaintiff's superior right to possession of the land as to him and is immaterial to the issue of which party to the trespass action has the superior right of possession. A plaintiff's summary judgment motion will therefore be granted as to this affirmative defense. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 187-88 (Pon. 2001).

A defendant's summary judgment motion based on assertions of the validity of a third party's potential claim is insufficient as a matter of law to establish a triable issue of fact as to the plaintiff's superior right of possession. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 188 (Pon. 2001).

A corporation's president's statement that he bought the barge made eight years after the event and which accurately describes his activity on the corporation's behalf is insufficient to create an issue of material fact precluding summary judgment in his favor when it is consistent with his acting on the corporation's behalf and when the evidence shows that neither he nor the corporation ever took interest in the barge because the purchase was canceled. Kosrae v. Worswick, 10 FSM R. 288, 292 (Kos. 2001).

When the state has not paid plaintiff employees as mandated by its state law and has alleged as affirmative defenses that a supervening cause prevented performance and that funds intended to pay lapsed, frustrating performance, these are defenses of payment, not liability, and the plaintiffs are entitled to judgment as a matter of law, the liability or obligation resting on the public law of the defendant state itself with the affirmative defenses being inadequate as a matter of law as to liability. Saret v. Chuuk, 10 FSM R. 320, 322-23 (Chk. 2001).

When the statute does not create a duty for the FSM Development Bank to provide technical assistance, and the movants have failed to put forth any competent evidence, such as affidavits or documentary evidence, to show that such a duty was created contractually or by justified detrimental reliance, their summary judgment motion based on that alleged duty must be denied because since they did not make out a prima facie case that the Bank had a duty to provide them technical assistance there was no factual basis for the motion and thus no proper grounds on which to grant it. FSM Dev. Bank v. Ifraim, 10 FSM R. 342, 346 (Chk. 2001).

When plaintiffs should have been classified at the time the state hired them in 1997 at the same pay level as the medical officers who the state hired as Staff Physicians I prior to the plaintiffs and when the plaintiffs' grievances were granted increasing their pay in 2000 only partially corrected the situation from May 1, 2000 forward, the plaintiffs are entitled to summary judgment for a retroactive adjustment to their entrance salary. Jonas v. Kosrae, 10 FSM R. 441, 444-45 (Kos. S. Ct. Tr. 2001).

When the plaintiff's expert's testimony does not set forth specific facts showing that there is a genuine issue of fact as to the kerosene contamination issue and since the defect's existence goes to a necessary element of the plaintiff's case, the plaintiff has failed to make a showing sufficient to establish the existence of an element essential to his case, and on which he will bear the burden of proof at trial and summary judgment in the defendants' favor is therefore appropriate. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 583 (Pon. 2002).

Facts that go to the question of a contamination source are rendered immaterial in light of the defendants' expert's competent, uncontroverted expert testimony that nothing about the combustion event that caused the injury led him to believe that the kerosene was contaminated. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 583-84 (Pon. 2002).

The plaintiff has not shown a causative link between the alleged contamination and her injury sufficient to withstand the defendants' summary judgment motion when, as between contaminated and uncontaminated kerosene, a reasonable trier of fact could not exclude the latter so as to conclude that it

was the former that caused her injury. William v. Mobil Oil Micronesia, Inc., 10 FSM R. 584, 586 (Pon. 2002).

When a reasonable trier of fact could not exclude the plaintiff's playing with matches and uncontaminated – as opposed to contaminated – kerosene as the cause of her injuries, it follows that the record taken as a whole could not lead a rational trier of fact to find for her and that the defendants' summary judgment motion must be granted. William v. Mobil Oil Micronesia, Inc., 10 FSM R. 584, 587 (Pon. 2002).

When the defendants' expert has testified, and the plaintiff conceded, that gasoline and kerosene are completely miscible, when the plain inference from expert's miscibility testimony is that the fuel which first burned normally was identical in its chemical makeup to the fuel which the plaintiff later claimed exploded, and when the defendant offers nothing in her response to address the anomaly created by the expert's specific testimony on the miscibility point as it relates to her memory of what occurred, in the absence of such evidence, and given the expert's competency to opine on a verifiable physical phenomenon like miscibility, no issue of fact exists on this specific point. George v. Mobil Oil Micronesia, Inc., 10 FSM R. 590, 592 (Pon. 2002).

Summary judgment will be granted against a terminated employee on his claim for breach of his verbal employment contract when he has failed to show that he had an assurance of continued employment through actions of a supervisor with authority to establish employment terms; when even assuming that former general manager did give the employee verbal assurances of continued employment, those verbal assurances ended with the general manager's termination; and when cause was not required for an employee's termination because the statute permitted employees to be terminated for other reasons, as the employer deemed appropriate. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 664 (Kos. S. Ct. Tr. 2002).

When failure to adopt a manual of administration was not a violation of statute because the statute does not set a time limit for the board to adopt one and when the employer is specifically exempted by statute from the Public Service System Act, summary judgment will be granted against a terminated employee on his claim that failure to adopt a manual made the employer liable for his termination. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 665 (Kos. S. Ct. Tr. 2002).

The defendant employer will be granted summary judgment on a plaintiff's due process claim when the plaintiff has not satisfied his burden showing that the employer is a state actor and that its termination of his employment was a state action because the due process clause may only be invoked through state action. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 667 (Kos. S. Ct. Tr. 2002).

When to dispute the plaintiffs' ownership of the property, the defendants have the burden of showing that the plaintiffs' certificates of title are not valid or authentic, or that the relevant certificate of title does not cover the land the defendants occupy, whether the land the defendants occupy was part of the land in a 1903 auction is not a genuine issue of material fact because the defendants' unsupported contention does not dispute the validity of the certificates showing the plaintiffs to be the property's owners. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 101 (Pon. 2002).

When the defendants have failed to show the elements of adverse possession have been met and have thus failed to show that they own or have a right to possess the property they presently occupy, the defendants' claim of long use and occupation of the land does not create a genuine issue as to a material fact since the defendants failed to establish that they acquired ownership or a right to possession. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 103 (Pon. 2002).

When it is irrelevant to the litigation's outcome who built the house on the land, this fact, though disputed, is not a genuine issue as to material fact which would prevent summary judgment from being entered. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 103 (Pon. 2002).

Whether a certificate of title issued in 1983 was voidable is not a genuine issue as to a material fact which would prevent the granting of summary judgment because the plaintiffs presently hold a certificate of title for the property defendants presently occupy. The party challenging the certificate's validity bears the burden of proving that it is not valid or authentic, and when the defendants have failed to show that the relevant certificate of title is invalid, their argument does not create a genuine issue of material fact. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 104 (Pon. 2002).

When the plaintiffs, by virtue of certificates of title, have established ownership of the property presently occupied by the defendants, and when the defendants have failed to show that they have acquired ownership or a right to possession of the property, the defendants have failed to show a genuine issue of material fact exists as to the property's ownership and they have not raised a genuine issue of material fact which would prevent the court from granting the plaintiffs summary judgment. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 104 (Pon. 2002).

When the defendants' contention that the certificate of title issued in 1983 is voidable is without merit, it does not show a genuine issue as to a material fact which would prevent summary judgment from being entered in plaintiffs' favor. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 104 (Pon. 2002).

There is no need to remand a matter for a new trial judge to consider the summary judgment motions when the knowledge that the defendants lived on part of the land was in the record and did not stem from an extrajudicial source; when there was no extrajudicial conduct because the trial judge received information from the former special master when both counsel were present; when trial counsel as well as the judge engaged in appeals to divine aid at the motion hearing; and when the judge encouraged settlement. Bualuay v. Rano, 11 FSM R. 139, 148-49 (App. 2002).

When an earlier Trust Territory High Court judgment clearly stated that someone owned only half of a land parcel and the plaintiff's only claim to the land is through his purchase of that person's rights, he cannot own any more of the land than the half that the seller owned, and when that judgment was res judicata and binding on the parties to that case and all claiming under them, there was no genuine issue of fact as to whether the plaintiff owned half or all of the land. He owned only half, and the defendants were therefore entitled, as a matter of law, to a summary judgment to that effect. Bualuay v. Rano, 11 FSM R. 139, 150 (App. 2002).

When the College presented competent evidence that the land to which a deed refers is located miles from the disputed property and when Rosario produced only incompetent evidence regarding other people and other tracts of land that was wholly unrelated to land at issue, the trial court correctly concluded that Rosario's evidence relating to his claim of a possessory interest was insufficient to create a genuine issue of material fact as to his right to possess any part of the land. Thus, as between the parties, the College has the greater right of possession. Rosario v. College of Micronesia-FSM, 11 FSM R. 355, 360-61 (App. 2003).

When the defendants have not alleged that the bank records are inadequate or incorrect and they do not allege that payments have been made but not credited to their account and when the defendants have not submitted documentation nor proffered proof of any type that establishes or even suggests that the bank records are in error, a defendant's flat denial of the amount, without any effort to show how or why the amount is incorrect, does not create a genuine issue of material fact. LPP Mortgage, Ltd. v. Ladore, 11 FSM R. 601, 602-03 (Pon. 2003).

An answer that alleges that they had made the monthly payments until a defendant became unemployed may be germane in a hearing on a motion for order in aid of judgment or other proceeding, but it does not create a genuine issue as to whether the defendants owe what they are alleged to owe, whether they stopped paying on that debt, and whether the plaintiff is entitled to recover the unpaid balance as a matter of law. LPP Mortgage, Ltd. v. Ladore, 11 FSM R. 601, 603 (Pon. 2003).

Summary judgment will be granted when, viewing the facts in the light most favorable to the plaintiff, the defendant national government's $40,000 appropriation did not, as a matter of law, violate any of the plaintiff's constitutional rights since the allotment was not a subsidy or other payment to pepper farmers that arguably reduced or otherwise affected its competitive advantage in a way that violated its constitutional rights and when the court does not construe this allotment as some form of financing of Pohnpei's allegedly unlawful activities. Any connection between the FSM allotment and the destruction of AHPW's pepper business is too remote since there is no showing that the allotment caused, or even contributed to the cause of, the destruction of its pepper operation. AHPW, Inc. v. FSM, 12 FSM R. 114, 118 (Pon. 2003).

When the FSM had no involvement in or authority over Pohnpei's decisions not to declare a trochus harvest, summary judgment in the FSM's favor is appropriate with respect to the alleged constitutional violations concerning the plaintiff's trochus business. AHPW, Inc. v. FSM, 12 FSM R. 114, 118-19 (Pon. 2003).

When the insurance contract language excludes bailment leases, a plaintiff vehicle rental business is not entitled to judgment as a matter of law on a claim that the defendants breached the insurance contract when they did not pay for a damaged rental vehicle. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 305 (Pon. 2004).

Summary judgment on a negligent misrepresentation claim will be granted when the uncontroverted and dispositive fact is that the defendants misled the plaintiff to believe that his rental fleet would be covered by the insurance policy if the vehicles were damaged while driven by renters, but the defendants failed to bind the type of coverage that was both requested and promised and when the defendants have not attempted to meet their burden of showing that there is a genuine issue of fact as to this claim. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 308-09 (Pon. 2004).

Summary judgment cannot be granted when there appears to be a genuine issue of material fact whether the pickup's damage was total, and, assuming that it was, what the amount of these total damages were. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 470-71 (Pon. 2004).

When, according to the complaint's allegations, the defendants' medical malpractice led to the deceased's death, and when, attached to the defendants' summary judgment motion is an affidavit of a medical doctor who is board certified in the field of family practice and the affidavit recites that the doctor has reviewed the medical records and that his opinion is that her diagnosed illness, tuberculosis of the spine, was so serious that in order to avoid paralysis, it would have been acceptable practice to administer the medications in question even if the deceased's treating doctors had been aware of her hepatitis history, the doctor's affidavit is relevant evidence based on an adequate foundation, that tends to show that the defendants did not violate the applicable standard of care. This evidence is of sufficient weight that left unopposed, no genuine issue of material fact exists under FSM Civil Rule 56, and the defendants are entitled to judgment as a matter of law. Since the plaintiffs have offered nothing to meet the evidence offered by the defendants, no genuine issues of material fact therefore exist, and the defendants are entitled to summary judgment in their favor. Joe v. Kosrae, 13 FSM R. 45, 47 (Kos. 2004).

When, viewing the facts in the light most favorable to the plaintiff and accepting his well-pled allegations (which remain to be proven) as true, a corporation (while under receivership) took dominion over the plaintiff's property; quarried it for rock; crushed the rock into aggregate; sold it; paid various expenses, including workers' wages, the operator's fees, and the receiver's fee; and then paid the royalties, to which the corporation was entitled, to the bank to reduce its indebtedness to the bank, the bank never took dominion over the property the plaintiff alleges is his and the bank is therefore entitled to summary judgment in its favor as a matter of law on the plaintiff's conversion and the "unauthorized sale of property" (the quarried aggregate) claims. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 129 (Chk. 2005).

When the bank's real property mortgage has never been enforced because receivership was the

chosen remedy; when no agent of the bank is alleged to have entered or to have quarried the property the plaintiff contends is his; when the receivership was not the bank's agent over which it had control, direction, or authority; when the execution of a mortgage, even an invalid mortgage, is not an "authorization" by the mortgagee for anyone to either enter the mortgaged land or to trespass on another's land, viewing the facts in the light most favorable to the plaintiff, the bank, by asking for and obtaining amended receivership terms to facilitate aggregate production to meet another's needs and to set up a payment plan for the judgment-creditors' benefit, did not commit or authorize a trespass. The bank is therefore entitled to summary judgment in its favor on the trespass cause of action. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 129-30 (Chk. 2005).

Summary judgment will be denied in a medical malpractice action when genuine issues of material fact exist with regard to the arrangements for the patient's follow-up after she returned to Kosrae and with regard to whether she took her medicine as directed that preclude judgment as a matter of law. William v. Kosrae State Hospital, 13 FSM R. 307, 309 (Kos. 2005).

On a summary judgment motion, while the asserted previous practice, if true (and it has not been proven), is some evidence that the plaintiffs' duties were hazardous, it is not sufficient to show that there is no genuine issue of material fact that their duties, for all hours worked, entailed unusual and extreme hazards entitling them to the hazardous pay differential. It thus remains a factual issue for trial whether each plaintiff's duties entailed unusual and extreme hazards and whether those hazards involved part or all of that plaintiff's hours worked and summary judgment will be denied on this issue. Zion v. Nakayama, 13 FSM R. 310, 313 (Chk. 2005).

When viewing the facts and inferences in the best light to the plaintiff, and accepting his argument that the additional tasks he performed were duties of another classified position of tradesman, the plaintiff's claim for compensation for performing those additional duties must be rejected since the defendant, as the moving party, has shown that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law because the salary of the journeyman tradesman position which normally includes the additional duties is not greater than the plaintiff's regular salary, which it must be for extra compensation. Sigrah v. Kosrae, 13 FSM R. 315, 320 (Kos. S. Ct. Tr. 2005).

When one party fails to perform his promise, there is a breach of contract. Thus, when the plaintiff performed his promise to pay the defendant the amount of $10,000, but the defendant failed to perform her promise to transfer her right, title and interest in two parcels to the plaintiff, the defendant breached the contract with the plaintiff by her failure to perform. The defendant is liable to the plaintiff for breach of contract and the plaintiff is entitled to summary judgment on the issue of defendant's liability for breach of contract. Isaac v. Palik, 13 FSM R. 396, 400 (Kos. S. Ct. Tr. 2005).

When a defendant has shown a superior right to present possession of a parcel and the plaintiff has not shown any right to immediate possession of any of the parcels he owns or any right to actual possession until 2019, the plaintiff cannot maintain a trespass action against the defendant and the defendant has the superior possessory right and is entitled to summary judgment as a matter of law against the plaintiff on the plaintiff's trespass cause of action. Mailo v. Chuuk, 13 FSM R. 462, 470 (Chk. 2005).

A party challenging a certificate of title bears the burden of proving that the certificate of title is not valid or authentic, and when the party has failed to show that the relevant certificate of title is invalid, their argument does not create a genuine issue of material fact. Kinere v. Sigrah, 13 FSM R. 562, 567 (Kos. S. Ct. Tr. 2005).

When there is no competent evidence that a defendant breached a duty owed to the plaintiff since his duty was to represent his late father's interests before the Land Commission, summary judgment will be awarded the defendant on the plaintiff's "fraud-act of mistake" – negligent misrepresentation cause of action. Kinere v. Sigrah, 13 FSM R. 562, 568-69 (Kos. S. Ct. Tr. 2005).

When the affidavit of the former Chief of the Division of the Personnel was conclusory and potentially self-serving affidavit since his employment situation and termination is the same as the plaintiffs' and when it averred that the plaintiffs were hired in their public service system positions as chiefs without the usual competitive examination because they were the only persons qualified for their jobs and that their positions required rare or special qualifications which did not permit competition and when there is no evidence presented that a non-competitive examination of any of the plaintiffs was ever held, the affidavit is thus insufficient to show that there is no genuine issue of material fact that, after the reorganization statute had abolished their former positions that the plaintiffs were lawfully hired to fill the new public service positions. Robert v. Simina, 14 FSM R. 257, 261 (Chk. 2006).

When the plaintiff has presented a prima facie case that it is entitled to summary judgment for its costs (including shipping, fees and taxes) for the goods it provided the defendant and for 50% of the profit from the sale of those goods after the costs were paid because those terms are found in the parties' written memorandum, the same cannot be said for the plaintiff's 1½% interest per month claim when that term is not included in the parties' written memorandum. Western Sales Trading Co. (Phils) v. B & J Corp., 14 FSM R. 423, 425 (Chk. 2006).

When there is no reasonable dispute of fact that the port authority satisfied its obligations to make a demand for payment and allow the plaintiffs thirty days to pay before denial of port entry and denial of port entry is the only action that the plaintiffs challenge, the port authority is entitled to summary judgment. Ehsa v. Pohnpei Port Auth., 14 FSM R. 481, 486 (Pon. 2006).

A genuine issue of material fact precluding summary judgment is whether, even if the Pohnpei construction industry's customary business practice did not include safety features that would have prevented or lessened the plaintiff's injuries, one or more of those safety feature(s) was so simple or so inexpensive in relation to the possible consequences that the Pohnpei construction industry ought to have adopted them and should be liable for the failure to adopt them. Amayo v. MJ Co., 14 FSM R. 487, 489 (Pon. 2006).

FSM Constitution Article IV, section 4 guarantees that similarly situated individuals not be treated differently due to some sort of invidious discrimination. When a plaintiff comes forward with no admissible, competent evidence to show invidious discrimination, summary judgment is then appropriate. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 80 (Pon. 2007).

When the college's part-time and full-time teachers are not similarly situated for equal protection analysis, and when, to the extent that the part-time and full-time teachers can be viewed as engaging in similar activities, the college's practice of paying its full-time and part-time teachers according to different pay scales for each credit-hour taught is rationally related to a legitimate government purpose, the college is entitled to summary judgment on a part-time teacher's equal protection claim. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 82 (Pon. 2007).

When the court has granted summary judgment on the basis that the plaintiff's helicopters are engaged in fishing, the court need not address the plaintiff's further contention that it is also subject to exclusive national regulation by virtue of the fact that its helicopters are engaged in interstate and international air transport and international shipping. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 336 (Pon. 2007).

Since the courts are the final authority on issues of statutory construction, when, based on the undisputed record and reasonable inferences drawn therefrom, the court concludes that the plaintiff is not selling imported items, the case is ripe for summary judgment on the issue of whether the tax statute applies to locally produced aggregate. K&I Enterprises v. Francis, 15 FSM R. 414, 418 (Chk. S. Ct. Tr. 2007).

Since a previously-awarded $770 discovery sanction will be incorporated into the final judgment as a

matter of course, summary judgment for this amount is redundant, and will accordingly be denied. Berman v. Rosario, 15 FSM R. 429, 431 (Pon. 2007).

When a defendant believed that he still owned ¾ or ¼ of a lot, he believed that he had a legally cognizable interest in some portion of that lot and thus his actions in asking the state not to pay the rent to the plaintiff and his actions in suing the state instead of the plaintiff, although wrong-headed or the result of poor legal advice or a misconception of the law, were taken in the good faith belief that he had a legally cognizable interest in the land. Therefore the plaintiff's motion for summary judgment on his tortious interference with a contractual relationship claim will be denied as a matter of law. Dereas v. Eas, 15 FSM R. 446, 449-50 (Chk. S. Ct. Tr. 2007).

When the defendants did not stipulate to their ledger sheets' accuracy, that would have left one genuine issue of material fact before the court for trial because an open account is not self-proving. An open account must be supported by an evidentiary foundation to demonstrate the account's accuracy. Albert v. George, 15 FSM R. 574, 581 (App. 2008).

Since, viewing the facts in the light most favorable to the party against whom judgment was sought, a genuine issue of material fact remained, it was improper for the trial court to grant summary judgment, that is, to grant judgment without a trial on the remaining factual issue. Once the trial judge had taken the cases under submission and reached this point, he ought to have determined that in each case the ledger sheet amounts' accuracy was a genuine issue of material fact, and, after ruling on the legal issues before him, set this factual issue for trial in each case. Albert v. George, 15 FSM R. 574, 581 (App. 2008).

Denial of a summary judgment motion in a contract case means that there are genuine issues of material fact that preclude judgment as a matter of law in the movant's favor. It does not lead to the conclusion that there was no contract, but rather that there were issues of fact precluding judgment as a matter of law on the point. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 652 (Pon. 2008).

When the court has not been supplied with the information necessary for the court to take judicial notice that life insurance was a state employee benefit when CPUC was created and what the insurance coverage's terms were or to conclude that CPUC has not adopted its own merit system with changed benefits, there are genuine issues of material fact that preclude either party being entitled to summary judgment: 1) whether state employees in 1997 were afforded life insurance benefits and on what terms (contributory, non-contributory; on the job only, 24-hour; etc.); 2) whether CPUC has since established its own merit system and then altered the benefits; and 3) whether, if notice of the lapse of insurance coverage was required, it was given for the July 2004 lapse. John v. Chuuk Public Utility Corp., 16 FSM R. 66, 69 (Chk. 2008).

When there is a factual dispute as to how much work the plaintiff contributed to the two projects on which he worked in relation to the work provided by other employees; when there is a factual dispute as to what deductions were properly taken from the projects' proceeds prior to commission being awarded; and when these factual disputes are material to the plaintiff's claim for unpaid commission, both parties' summary judgment motions on this claim will be denied. Smith v. Nimea, 16 FSM R. 186, 191 (Pon. 2008).

When the truth of the allegedly libelous letter is in dispute; when a factual dispute exists as to whether the allegedly libelous letter played a role in the denial of the plaintiff's application for a foreign investment permit, the business opportunity alleged to have been interfered with by the defendant; and when these factual disputes are material to the claim, both parties' summary judgment motions on the claim of libel and interference with business opportunity will be denied. Smith v. Nimea, 16 FSM R. 186, 191 (Pon. 2008).

When the plaintiff has alleged sufficient facts to support a defamation action and the defendants allege either that the statements were true, or for some defendants, that they did not make the statements, a

factual dispute exists as to who said what about the plaintiff, and whether the statements were false. Under these circumstances, there are facts to be determined at trial and summary judgment motions will be denied. Yoruw v. Ira, 16 FSM R. 464, 465 (Yap 2009).

When a plaintiff comes forward with no admissible, competent evidence to show invidious discrimination, then summary judgment is appropriate. Berman v. Pohnpei Legislature, 16 FSM R. 492, 496 (Pon. 2009).

When, taking the guarantors' factual allegations as true – that the bank misrepresented to plaintiffs that the documents were in accord with the loan, caused plaintiffs to rely upon said representations and knew plaintiffs would so rely – it is difficult to see how the guarantors were harmed thereby because, if the bank had prepared all the documents correctly, the documents would have shown that a corporation was the borrower and that the guarantors were guarantors with the result that the guarantors would be liable on their guaranty, and since this result is no different than that in the judgment rendered in the former litigation, any alleged reliance on the bank's representation could not have been to the guarantors' detriment since they were in no worse position than if the loan documents were accurately prepared. Arthur v. Pohnpei, 16 FSM R. 581, 597-98 (Pon. 2009).

Since the court cannot ignore the facts that the guarantors agreed were true and stipulated to in the former litigation – that a corporation was the borrower, that the promissory note was incorrectly completed, and that they signed a guaranty – and instead pretend, for the sake of this independent action, that those facts are not true, and that the guarantors were the borrowers, the guarantors' current allegation that they were the borrowers cannot be taken as true because it is a conclusion of law masquerading as a factual conclusion that the court cannot accept or, alternatively, it is a conclusory factual allegation that is contradicted by facts which the court may judicially notice – the court filings, record, and reported decision in the former action and the appellate affirmance of that decision. Either way, the court cannot accept this allegation as true because it is not. Arthur v. Pohnpei, 16 FSM R. 581, 598 (Pon. 2009).

When the guarantors steadfastly maintained, from the start and throughout the former litigation and subsequent appeal, their position that a corporation was the borrower and that they were only the guarantors, the guarantors cannot now pretend that, because the former judgment and appeal were unfavorable to them, they were instead the borrowers on the loan, something they had consistently denied throughout. If the guarantors were permitted to now assert that they were the borrowers, they would be relitigating the entire case from the beginning, and that they cannot do in an independent action, and, since the corporation was the borrower, the guarantors' allegations that can be taken as true fail to state a claim for fraud. Because the guarantors' allegation cannot make out a fraud claim, summary judgment could be granted in the bank's favor on this ground alone since, without the existence of the requisite fraud, res judicata prevails. Arthur v. Pohnpei, 16 FSM R. 581, 598 (Pon. 2009).

When the issue of the bank's faulty preparation of some of the loan documents that showed the guarantors as borrowers and the effects of those scrivener's errors on the guarantors' liability was fully litigated in the former civil action and, on appeal, the guarantors' contentions were again fully considered and the trial court's decision was affirmed; when the defense of mistake in the document preparation was fully litigated in the trial court and also considered by the appellate court; and when the guarantors did not raise a fraud defense at that time but they could have if they had chosen to since all the facts known to them now were also known to them then, there is no genuine issue of material fact about whether the guarantors were misled by the bank's errors on the loan documents to believe that they were the actual borrowers and not guarantors since they all believed that the corporation was the borrower, not they, and that they had signed a guaranty, and, in the former action, had stipulated to these facts as true and that these facts were undisputed. Arthur v. Pohnpei, 16 FSM R. 581, 598-99 (Pon. 2009).

When, in examining the case under a summary judgment standard and in viewing all facts in light most favorable to the plaintiffs, there is a genuine issue as to material facts because there is a controversy over the contract and services rendered, the defendant is not entitled to a judgment as a matter of law, and his

motion to dismiss on the ground that the plaintiffs failed to state a claim upon which relief may be granted will be denied. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 643 (Kos. S. Ct. Tr. 2009).

A sound basis in law and fact exists to grant the defendants' summary judgment motion when the plaintiff's cause of action accrued in December 2002, the applicable statute of limitations is six years, and the plaintiff filed his suit over six years after his cause of action accrued. Dungawin v. Simina, 17 FSM R. 51, 55 (Chk. 2010).

When requests deemed admitted by the defendants because their response was not filed by September 30, 2010 are later deemed withdrawn and when the plaintiff's partial summary judgment motion now lacks a factual basis upon which the court could grant it because it was based on those deemed admissions, genuine issues of material fact remain and the court must deny the motion for partial summary judgment. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 332 (Pon. 2011).

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

When the plaintiff's summary judgment motion asks the court to establish defendant's liability for its employees' health insurance premiums from July 1, 2009 to December 31, 2010 but the plaintiff's complaint asserts claims to premiums only from September 2009 to December 10, 2010, although it could charitably be read to include a claim for continuing liability after December 10, 2010 and when the plaintiff has not asked to amend its complaint to extend back to July 1, 2009 or forward beyond December 10, 2010, the plaintiff's motion for partial summary judgment will be granted for health insurance premiums from September 2009 through December 2010. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 541 (Chk. 2011).

When the movant has relied on inferences it drew when a name was not on a list of the nonmovant's employees produced during discovery and when it could not find anyone with his surname registered as a surveyor in either Guam or Hawaii, it has not produced any admissible evidence that the person was anything other than a employee and thus has not overcome the nonmovant's admissible evidence that that person was its salaried employee. Accordingly, the nonmovant will be entitled to summary judgment that its employment of that person did not breach the contract's subcontracting prohibition. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 570-71 (Pon. 2011).

Since, if a survey was not done as part of the required work under the contract, then the surveyor would not have been a subcontractor for that survey as he would not have been awarded part of an existing contract, whether any particular survey was work required under the contract is a genuine disputed factual issue, barring summary judgment for breach of the contract's subcontracting prohibition. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 572 (Pon. 2011).

Summary judgment on an allegation that the contract's subcontracting ban was breached will be denied when factual disputes remain on 1) whether the surveyor did any particular survey work as part of the required work under the contract or whether the surveys were undertaken to protect contractor from boundary line lawsuits; and 2) whether, for any survey proven to be a subcontract, the subcontracting proximately caused any damages and can those damages be proven or should nominal damages be awarded. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 573 (Pon. 2011).

When all the admissible evidence, depositions, and affidavits, indicate that an employee, not a subcontractor, prepared all the final designs and thus any damages to the FSM from those designs, even nominal damages, must necessarily be attributable to contractor itself and not to its unsuccessful attempt to

subcontract, the FSM has failed to make a showing sufficient to establish an essential element and the contractor is therefore entitled to summary judgment on this subcontracting allegation. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 574 (Pon. 2011).

When the movant offered evidence that certain entities were not its subcontractors and the nonmovant's opposition was silent about these alleged subcontractors and the nonmovant did not mention them during the hearing, the nonmovant has abandoned these allegations and the movant is entitled to summary judgment that it did not breach the contract by subcontracting work to these entities. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 574 (Pon. 2011).

When the FSM could have terminated GMP by written notice to GMP if, after notice and a hearing, the contracting officer found that GMP or its agent or representative had offered or given gratuities to any FSM officer or employee, but when the FSM never invoked this contractual procedure or gave notice or held a hearing, the FSM has waived any claim that it can use this alleged breach of contract to lawfully terminate the contract. Since the FSM failed to follow the contractual administrative procedure for termination when a gratuity allegation is made, GMP is entitled to summary judgment on the FSM's breach of contract claim based on allegations that GMP offered gratuities. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 574-75 (Pon. 2011).

When GMP used the wrong coordinate system for the Chuuk road survey work, it was a breach of the contract and when there was expert testimony that the survey could have been corrected by converting it to the proper coordinate system with the right computer software and some fieldwork, the court cannot presume that this would have been successful or that it could have been accomplished at no direct cost to the FSM, and GMP will thus be denied summary judgment on this claim and the FSM granted summary judgment that the contract was breached but not for its claim because whether the breach was material is a factual dispute – whether the measure of damages should be the cost of the new survey or what the cost would have been to convert the GMP survey to the Truk-Neoch Coordinate System or whether any damages, other than nominal, are due at all. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 577-78 (Pon. 2011).

When the court does not have before it evidence (and expert testimony would likely be needed) of what a design professional's duty entails when questions are raised about whether a proposal was over-designed or is unworkable under local conditions, the court will not speculate in that regard. The existence of these factual issues bars summary judgment on the professional malpractice allegation. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 581 (Pon. 2011).

When the court has nothing before it about what a design professional's duty is in relation to designing within a proposed budget, it will not speculate in that regard. Thus, whether the cost overruns in the design were such that they were the result of not exercising the reasonable care a professional in good standing would under similar conditions and like surrounding circumstances is a factual question barring summary judgment. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 582 (Pon. 2011).

Even when there is no FSM regulatory or statutory requirement that final design plans be stamped or that certain professionals stamp only certain plans, the court will not speculate about the standard against which to measure the civil engineer's acts in determining whether he acted properly in stamping electrical designs to indicate they were the final version rather than having an electrical engineer do it or indicating it in some other manner since evidence, most likely expert, must be produced about the standard professionals should be expected to follow in the FSM – in this case, not whether plans should be stamped by a professional but whether a civil engineer's stamp on electrical engineering plans is contrary to the degree of care a civil engineer should exercise. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 583 (Pon. 2011).

When, because the only evidence it produced was not competent, the nonmovant has not overcome the movant's admissible evidence that all the required plans were left behind and when the nonmovant gave the movant no opportunity to cure its omission, if in fact it had failed to leave every plan it should have,

the movant is entitled to summary judgment on the claim that it committed malpractice by failing to leave its plans behind. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 583-84 (Pon. 2011).

When the movant asked in discovery for how it was to have committed malpractice and the nonmovant did not mention assuring that construction contractors produced shop drawings, the nonmovant is limited to what instances of malpractice it alleged and disclosed and cannot seek to introduce in its summary judgment opposition another instance based on different facts and theory of liability. The movant is therefore entitled to summary judgment on the claim that it committed malpractice by failing to see that the construction contractors produced the required shop drawings. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 584 (Pon. 2011).

If the contractor had told the FSM that it done soil testing when it had not and if the FSM relied on that misrepresentation to its detriment, then that could have constituted an intentional material misrepresentation or fraud. But when the contractor informed the FSM that it had not done soil testing but had instead used the soil tests done elsewhere for its design preparations and the FSM then waived this requirement for these two projects; when the contractor included clauses in draft construction bid documents submitted to the FSM for its approval that the construction contractors conduct soil testing; and when, even if soil testing has been done in the design phase, soil testing is still necessary in the construction phase (and may have been particularly necessary here since the pre-design soil testing has been waived), there was thus no misrepresentation made to the FSM. The contractor is entitled to summary judgment on the FSM's fraud claim based on putting soil testing requirements in the bid documents. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 585 (Pon. 2011).

When the plaintiff does not identify any statement made during one incident that it detrimentally relied on or any damages caused by it and the other alleged incident is not properly before the court and was not pled with particularity, the defendant is entitled to summary judgment on the fraud or misrepresentation claim based on those allegations. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 585 (Pon. 2011).

When a project was never put out to bid and its bid documents never used, the plaintiff cannot show elements essential to its claim – that it relied on those bid documents to its detriment. Accordingly, the defendant is entitled to summary judgment on the fraud or misrepresentation claim based on allegations that the bid documents prepared by the defendant contained terms that they should not have. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 586 (Pon. 2011).

When the plaintiff has not shown that it relied to its detriment on the exculpatory language in bid documents prepared by the defendant, elements essential to its fraud claim, the defendant will be granted summary judgment on the fraud or misrepresentation claim based on allegations that the defendant prepared bid documents with exculpatory language. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 586 (Pon. 2011).

When the court has nothing before it from which it can determine whether any delayed payment was made within a reasonable time, it must deny summary judgment on the claim that the contract was breached by untimely payments. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 588 (Pon. 2011).

When neither side has provided the court with the regulations or other legal authority illustrating the mechanism by which and the circumstances under which the U.S. Department of the Interior can cut off previously authorized Compact funds and when the parties dispute whether a letter was legally effective to cut off existing funds so that the FSM would be unable to certify those funds availability, the court is unable to conclude, based on the undisputed facts, that, as a matter of law, that there were no funds available to be certified or that the FSM funds were available to be certified but that the FSM did not do so. Consequently, neither side can be granted summary judgment on this issue. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 589 (Pon. 2011).

When the court has granted the movant summary judgment on only some of the seven grounds that

the nonmovant asserted were grounds for termination of the contract for cause but that the movant asserted were pretextual, the court must deny the movant summary judgment on its counterclaim that the termination was a breach of contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 590 (Pon. 2011).

When whether the FSM failed to perform a duty to coordinate is a factual (or a mixed factual and legal) question, it is inappropriate for resolution at the summary judgment stage. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 591 (Pon. 2011).

When a public law's statutory language seems to speak only in prospective terms and certainly does not expressly state or clearly, explicitly, positively, unequivocally, unmistakably, and unambiguously show legislative intent to make the statute retroactive or for it to be applied retrospectively to previously-awarded public contracts, the movant is entitled to summary judgment and a declaration that the public law does not apply to the parties' earlier contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 592 (Pon. 2011).

A partial summary judgment motion will be denied when it asks that the individual defendants be dismissed because the corporate defendant's presence in the case is solely as an interpleader – as a party who has joined in one case all those persons with claims to any of the 2,160 shares so that all their rights can be adjudicated and the corporation will abide the result – ignores the plaintiff's tort claims of attempted improper interference with his purchase of the stock and that at least one individual defendant seems central to those claims and the corporation may also be involved. Mori v. Hasiguchi, 17 FSM R. 630, 645 (Chk. 2011).

When, even assuming the plaintiffs' allegations are true, they do not state that a plaintiff relied upon the misrepresentations the plaintiffs allege to be the basis of the collateral fraud, much less that her reliance induced her to act to her detriment, and when they do not state that the defendant prevented her from having a trial or from presenting her case to the court, the court, viewing the facts and inferences in the light most favorable to the plaintiffs, cannot but conclude that the defendant is entitled to judgment as a matter of law. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 160 (Pon. 2012).

When it is apparent from the pleadings that genuine issues of material fact are present and when it is apparent that the trial court's judgment included rulings on disputed factual issues, the case was not one that was appropriate for resolution by summary judgment and thus the trial court judgment must be vacated and the matter remanded for trial. Phillip v. Moses, 18 FSM R. 247, 250 (Chk. S. Ct. App. 2012).

Since, from what the court has before it, it cannot determine when the statute of limitations for the plaintiff's claim started to run or if it was tolled, there is an inadequate factual basis to grant the defendant's summary judgment motion on a statute of limitations ground. Iwo v. Chuuk, 18 FSM R. 252, 255 (Chk. 2012).

Since the defenses of laches, estoppel, and waiver generally require certain factual determinations about a party's acts or omissions, when those facts have not been established, there is an insufficient factual basis 711
on which to grant a movant summary judgment on these defenses. Iwo v. Chuuk, 18 FSM R. 252, 255 (Chk. 2012).

When it has not been shown, that the three-and-a-half-year time period, by itself, was an inexcusable delay and when it has not been shown, instead of merely speculating, that the delay has resulted in prejudice to the defendants, the defendants cannot be granted summary judgment on their laches defense and for the same reasons, they must also be denied summary judgment on their estoppel and waiver defense. Tarauo v. Arsenal, 18 FSM R. 270, 273 (Chk. 2012).

"Forum shopping," the practice of choosing the most favorable jurisdiction or court in which a claim might be heard, is not a ground for summary judgment. At most, it is a claim that the case should be dismissed without prejudice so that the parties could pursue it in some other forum. Tarauo v. Arsenal, 18

FSM R. 270, 274 (Chk. 2012).

When one reasonable inference is that Yuh Yow Fishery is the alter ego of the corporation that owns the vessel thus establishing a genuine issue of fact, the court cannot grant Yuh Yow Fishery's summary judgment motion that it is not liable for damages that may flow from a vessel's grounding since summary judgment is not available when the facts lead to differing reasonable inferences. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 297, 301 (Yap 2012).

When by the time the case was filed on January 14, 2010, the six-year statute of limitations would, even though it had been tolled by the filing of an earlier case, bar any claims arising before September 6, 2003, and when it is undisputed that all of the plaintiff's overtime claims were for 2002, the state has good grounds for and is entitled to summary judgment on its statute of limitations defense. Aunu v. Chuuk, 18 FSM R. 467, 470 (Chk. 2012).

When an employee had been requested to come into the work place to meet with management and did not and when the employee subsequently did not report to the work place for twelve days at which point she was administratively terminated, the existing evidence is sufficient for the employer to make out a prima facie case of entitlement for summary judgment. To survive summary judgment, the employee must establish that genuine issues of material fact exist as to whether she voluntarily abandoned her job and when she failed to offer any evidence setting forth specific facts to overcome the employer's voluntary job abandonment evidence, she has not shown that there exists any genuine issues of material fact for trial and the employer will be granted summary judgment that she abandoned her job. Peniknos v. Nakasone, 18 FSM R. 470, 481 (Pon. 2012).

In an action for defamation-republisher, a plaintiff's statement of facts are insufficient to show the essential element of republication by the defendant when the plaintiff does not name the defendant's employee(s) that made the republication of any defamatory communication, or state when, where, and how the communication(s) occurred or who were the communication's recipients. Peniknos v. Nakasone, 18 FSM R. 470, 486 (Pon. 2012).

Since a defendant moving for summary judgment may rely on the absence of evidence to support an essential element of the plaintiff's case, when the plaintiff has not sufficiently shown all of the elements necessary to sustain the count of defamation-republisher, there are no genuine issues of material fact and the defendant is entitled to a judgment as a matter of law. Peniknos v. Nakasone, 18 FSM R. 470, 486-87 (Pon. 2012).

One of the elements of an intentional infliction of emotional distress claim is that the plaintiff must have suffered some physical manifestation of the alleged infliction of emotional distress and when the plaintiff does not allege any physical ailments or manifestations resulting from her termination from employment and other claims, her claims fail a summary judgment challenge for the lack of a sufficient showing of an element of her causes of action. Peniknos v. Nakasone, 18 FSM R. 470, 490 (Pon. 2012).

When no specific evidence was brought forth to indicate that the plaintiff has suffered any physical manifestation of emotional distress and when the plaintiff presented no evidence that any of the defendant's acts she complained of caused her any physical injury; or that any mental anguish or emotional distress she might have had resulted in any physical manifestation; or that anyone intended or negligently inflicted emotional distress upon her, her infliction of emotional distress causes of action cannot withstand a summary judgment challenge. Peniknos v. Nakasone, 18 FSM R. 470, 490 (Pon. 2012).

When there are two express written contracts in which the parties' obligations are clearly set out: 1) the salvage contract between the vessel owner and the salvor and 2) the contract between insurer and the salvor that the insurer would pay the salvor the amounts due under the salvage contract on the presentation of an invoice and when there are additional, probably oral contracts for the $26,607.50 preparation work the salvor agreed to do that was outside the salvage contract's scope of work, the defendants are, with the exception of the $26,607.50 preparation work, entitled to summary judgment on the salvor's quantum

meruit claims. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 12 (Pon. 2013).

When, if the buyer had diligently inquired into or investigated the matter, all he would have found would have been a Pohnpei Supreme Court final distribution probate order transferring title to all the shares to the seller and stating that this was the final disposition of the case at bar, it was sufficient to create a prima facie case that the buyer was without notice of any prior adverse claims to seller's ownership of the shares and since the buyer paid good and valuable consideration for the shares he was a bona fide purchaser for value. Mori v. Hasiguchi, 19 FSM R. 16, 22 (Chk. 2013).

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When, although the defendants raised the defenses of unclean hands, estoppel, and waiver in their answer, they did not assert in their opposition to the plaintiffs' partial summary judgment motion that any of these defenses applied to the plaintiffs' claim for repayment of the Chuuk airport renovation loan, they have, for the loan repayment claim, waived these defenses. Eot Municipality v. Elimo, 19 FSM R. 290, 294 (Chk. 2014).

A defendant's inability to pay does not eliminate the defendant's liability to pay. Eot Municipality v. Elimo, 19 FSM R. 290, 295 (Chk. 2014).

When, since the State of Chuuk and its Governor cannot prevail on their limitations defense, the plaintiffs' motion for partial summary judgment will be granted against the defendant state because Chuuk was the borrower on the airport renovation loan but since the Governor is not liable on the loan partial summary judgment will not be granted against him. Eot Municipality v. Elimo, 19 FSM R. 290, 295-96 (Chk. 2014).

Summary judgment cannot be granted on a breach of contract claim when whether the plaintiff's termination was "reasonable" is a material issue of fact in dispute since the employment contract required the plaintiff to perform to the government's reasonable satisfaction. Zacchini v. Hainrick, 19 FSM R. 403, 410-11 (Pon. 2014).

When, even considered in the light most favorable to the plaintiff, only one of the elements of defamation can be met, the inability to prove the other elements of the claim, necessarily requires that summary judgment be granted for the defendants with regard to the defamation claim. Zacchini v. Hainrick, 19 FSM R. 403, 415 (Pon. 2014).

Summary judgment must be granted for the defendants on the plaintiff's defamation per se claim when, although the alleged defamatory remarks relate to the plaintiff's professional reputation, the business imputation is not apparent on the face of the words and the disparagement is only made by reference to the context and to innuendo to explain why those words are opprobrious. Zacchini v. Hainrick, 19 FSM R. 403, 415 (Pon. 2014).

The defendants must be granted summary judgment on the plaintiff's defamation per se claim when the plaintiff cannot meet the legal standards necessary to prove the four elements of defamation at trial. The inability to prove even one element bars the claim. Zacchini v. Hainrick, 19 FSM R. 403, 415 (Pon. 2014).

The FSM has conclusively established that there are no triable issues of material fact that a defendant had fraudulently converted $24,252.80 when the wrongdoing to which the defendant pled guilty and was

convicted involved obtaining the $24,252.80 but the FSM has not established the remaining part of its current claim that the defendant is liable to it for $38,501.76 since that was not was not a question distinctly put at issue and determined in the defendant's prior criminal case so collateral estoppel or issue preclusion cannot be used to establish the defendant's liability for that larger sum. Any wronging involved in obtaining the rest of the $38,501.76 was not what the defendant pled guilty to and thus was not a question distinctly put at issue and determined in that criminal case. FSM v. Muty, 19 FSM R. 453, 459 (Chk. 2014).

A plaintiff cannot use collateral estoppel to obtain summary judgment for an amount that was not a question distinctly put at issue and determined in the defendant's prior criminal case but can obtain partial summary judgment for the amount that was put at issue in the prior case with credit for the amount she had already paid. FSM v. Muty, 19 FSM R. 453, 461-62 (Chk. 2014).

One element of an intentional infliction of emotional distress claim is that the plaintiff must have suffered some physical manifestation of the alleged infliction of emotional distress, and when the plaintiff has not shown any physical ailments or manifestations resulting from his employment termination, his claim must fail for lack of proof and the defendants are entitled to summary judgment on this cause of action. George v. Palsis, 19 FSM R. 558, 567 (Kos. 2014).

Summary judgment will be granted for the defendants on the plaintiff's defamation and false light cause of action when the plaintiff has failed to make a sufficient showing on essential elements of his case with respect to which he has the burden of proof and when he, in his opposition to the summary judgment motion, has not shown that he has admissible evidence to support his claim, and the time for him to do that is now, or never. George v. Palsis, 19 FSM R. 558, 568 (Kos. 2014).

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

When the plaintiff's claims for false imprisonment, for destruction of standing in community, and for wrongful invasion of privacy – false light were all predicated on his mistaken supposition that he was entitled to retain another person's pigs until compensated and that therefore his arrest was unlawful, the defendants are entitled to summary judgment on these claims as well as summary judgment on his civil rights violations claims insofar as those claims are predicated on his arrest being unlawful. Palasko v. Pohnpei, 20 FSM R. 90, 96 (Pon. 2015).

The defendants are entitled to summary judgment on a plaintiff's trespass claim when unrebutted affidavit evidence defendants shows that the plaintiff told the police to get the pigs from his land and return them and shows that a resident of the property was there and gave him permission to enter the land and retrieve the pigs. Palasko v. Pohnpei, 20 FSM R. 90, 97 (Pon. 2015).

A plaintiff's allegation supported with his own affidavit, that he was physically injured when he was arrested by police officers, although not very specific, remains genuinely at issue when it was not rebutted by the defendants. Palasko v. Pohnpei, 20 FSM R. 90, 97 (Pon. 2015).

When the plaintiff did not plead any physical manifestation of emotional distress but did plead a physical injury – a battery – in connection with his arrest, whether that physical injury (battery) occurred (and also whether any emotional distress was inflicted) are a genuine issues of material fact precluding summary judgment on this claim. Palasko v. Pohnpei, 20 FSM R. 90, 98 (Pon. 2015).

The employer is entitled to a judgment as a matter of law when, even viewing the uncontested facts in

the light most favorable to the discharged employee, there are no genuine issues of material fact and the discharged employee cannot prevail on his breach of contract claim because he was properly laid off in accord with the contract terms incorporated from the personnel manual; because the employer had the right to layoff employees; because the employer created a specific layoff procedure in its personnel manual, and because the employee was laid off according to that procedure. Ramirez v. College of Micronesia, 20 FSM R. 254, 267 (Pon. 2015).

Summary judgment will be denied when there is a genuine issue of material fact to be determined through trial on the issue of light work available to the disability applicant, and because of the conflicting findings in the reports, abstracts, and testimonies on the applicant's disability. Seiola v. FSM Social Sec. Admin., 21 FSM R. 205, 213 (Pon. 2017).

Summary judgment will be denied when a genuine issue of fact exists about whether the contractor had met all material terms of the contract or that the delay was excusable and when the contract provides that if, after termination of the contractor's right to proceed, it is determined that the contractor was not in default or that the delay was excusable, the parties' rights and obligations will be the same as if the termination had been issued for the government's convenience. Pacific Int'l, Inc. v. FSM, 21 FSM R. 283, 290 (Pon. 2017).

Summary judgment (or dismissal) on a laches ground is particularly inappropriate when the plaintiffs' allegations, on their face, do not show that the plaintiffs neglected to or delayed in asserting their claims once they learned that another claimed to be the sole landowner and when there was no evidentiary inquiry in the trial court, although the case required one to prove the laches defense. Alik v. Heirs of Alik, 21 FSM R. 606, 622 (App. 2018).

When there was no evidence, particularly undisputed evidence, that the plaintiffs' conduct led the defendants to reasonably believe or to rely on that conduct, summary judgment on an estoppel defense was inappropriate because a determination of estoppel generally involves questions of fact. Alik v. Heirs of Alik, 21 FSM R. 606, 622-23 (App. 2018).

When the documentary evidence in the pleadings does not show that there is no genuine issue about whether all of the plaintiffs voluntarily and intentionally relinquished their known right to registered title to the parcel, summary judgment that waiver barred the plaintiffs' claim was inappropriate. Alik v. Heirs of Alik, 21 FSM R. 606, 623 (App. 2018).

While negligent conduct can give rise to a nuisance claim when the conduct has caused substantial interference with the use and enjoyment of another's property that causes substantial harm, when the amount of damage and whether there was substantial harm are genuine issues of material fact, summary judgment will be denied. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 21 (Yap 2018).

When the plaintiff has not put forth any admissible evidence that any of her chattels were damaged so that she is entitled to compensation for them; when she has not alleged that any specific chattel was damaged, or its value; and when she has not put forward any evidence that the defendant's interference with her chattels was intentional, the defendant is entitled to summary judgment on the plaintiff's trespass to chattels claim. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 155 (Chk. 2019).

It is unclear whether, in Chuuk, there must be an intentional act by the defendant for a plaintiff to be able to maintain a trespass action. It appears that may be needed in Pohnpei, and maybe Kosrae, but where one reported case appears to permit a trespass action when the defendant's act was reckless or negligent conduct, but even then trespass liability would attach only if harm was caused to the land. Thus, a defendant will be denied summary judgment when sewage was alleged to have been negligently deposited on the land. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 156 (Chk. 2019).

When the plaintiff makes no allegations that would support an equal protection claim, the defendant

may be granted summary judgment on that part of the plaintiff's civil rights claim. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 158 (Chk. 2019).

The court will deny summary judgment when it has previously held that if sewerage backflow rises above the level of mere negligence to the level of a public nuisance, it may constitute a taking of property without just compensation and the plaintiff claims that her possessory right to the land is a usufruct property right. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 158 (Chk. 2019).

The court will not grant the plaintiff summary judgment on her defamation claim when it has no basis to find as an undisputed fact that the inclusion of a false statement in a statement, the rest of which was true, caused any damage, especially because the court cannot find that that one false statement, and that false statement alone, caused damages. Berman v. Pohnpei, 22 FSM R. 377, 381-82 (Pon. 2019).

Summary judgment for the defendants on a plaintiff's defamation per se claim leaves the regular libel or defamation claim unresolved. Berman v. Pohnpei, 22 FSM R. 377, 382 (Pon. 2019).

– Summary Judgment – Procedure

A party moving for summary judgment has the burden of clearly establishing the lack of any triable issue of fact. FSM v. Ponape Builders Constr. Inc., 2 FSM R. 48, 52 (Pon. 1985).

In considering a motion for summary judgment under Rule 56, the facts and inferences to be drawn therefrom, must be viewed by the court in the light most favorable to the party opposing the motion for summary judgment. FSM v. Ponape Builders Constr. Inc., 2 FSM R. 48, 52 (Pon. 1985).

When a party to a civil action seeks summary judgment on the question of liability, it must initiate the inquiry even as to affirmative defenses. The moving party has the burden of clearly establishing the lack of any triable issue of fact and this burden extends to affirmative defenses as well as to the moving party's own positive allegations. FSM Dev. Bank v. Rodriguez Corp., 2 FSM R. 128, 130 (Pon. 1985).

When a party moves for summary judgment on an affirmative defense, putting forward arguments and evidence indicating that there is no material fact at issue and that the defense is insufficient as a matter of law, the opposing party must produce some evidence to rebut the moving party's evidence or the moving party is entitled to partial summary judgment. FSM Dev. Bank v. Rodriguez Corp., 2 FSM R. 128, 130 (Pon. 1985).

Where the party moving for partial summary judgment has done nothing to show that a factual basis for the opposing party's affirmative defenses is lacking or that the defenses are insufficient as a matter of law, the defenses remain at issue and the moving party is not entitled to partial summary judgment. FSM Dev. Bank v. Rodriguez Corp., 2 FSM R. 128, 131 (Pon. 1985).

Facts and inferences are to be viewed in the light most favorable to the party against whom summary judgment is sought and the motion may then be granted only if it is clear that there is no genuine issue of material fact and the moving party must prevail as a matter of law. Bank of Guam v. Island Hardware, Inc., 2 FSM R. 281, 284 (Pon. 1986).

Where the party moving for summary judgment makes out a prima facie case which, if uncontroverted at trial, would entitle it to a directed verdict on the issue, then the burden shifts to the nonmoving party to offer some competent evidence that could be admitted at trial showing that there is a genuine issue of material fact. Federated Shipping Co. v. Ponape Transfer & Storage Co., 4 FSM R. 3, 11 (Pon. 1989).

In considering a motion for summary judgment, the court is required to view facts and draw inferences in a light as favorable to the party against whom the judgment is sought as may reasonably be done, and the motion may then only be granted if it is clear that there is no genuine issue of material fact and that the

moving party must prevail as a matter of law. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 1, 3 (Pon. 1991).

Where the national government, in previous appearances and filings, stated that no valid earthmoving permit was in effect, the burden is on the national government at a motion for summary judgment to establish that there was a valid delegation of permit granting authority by the national government to the state officials. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 1, 7 (Pon. 1991).

Where a defendant has not filed a response to a motion for summary judgment within the ten days provided by FSM Civil Rule 6(d), the defendant is deemed to have consented to the granting of the motion and the court may decline to hear oral argument. Actouka v. Kolonia Town, 5 FSM R. 121, 123 (Pon. 1991).

In a motion for summary judgment the moving party has the initial burden of showing that there are no triable issues of fact. Once the moving party has done this, the burden then shifts to the nonmoving party to show that there is a triable issue. The nonmoving party must show that there is enough evidence supporting his position to justify a decision upholding his claim by a reasonable trier of fact. Alik v. Kosrae Hotel Corp., 5 FSM R. 294, 295 (Kos. 1992).

Without supporting affidavits the non-moving party cannot rely on inferences culled from the record to raise inferences as to the existence of genuine issues of material fact unless the non-movant has shown affidavits are unavailable. Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31, 6 FSM R. 1, 4 (Pon. 1993).

The burden of showing a lack of triable issues of fact belongs to the moving party. Kihara Real Estate, Inc. v. Estate of Nanpei (I), 6 FSM R. 48, 52 (Pon. 1993).

In determining whether triable issues exist, the court must view the facts presented and inferences made in the light most favorable to the party against whom summary judgment is sought. Kihara Real Estate, Inc. v. Estate of Nanpei (I), 6 FSM R. 48, 52 (Pon. 1993).

In a summary judgment motion plaintiff's burden of establishing the lack of any triable issue of fact extends to affirmative defenses as well as to plaintiff's own positive allegations. Kihara Real Estate, Inc. v. Estate of Nanpei (I), 6 FSM R. 48, 53 (Pon. 1993).

Where both the plaintiffs and defendant claim that the other party is liable and dispute the amounts, viewing the plaintiffs' motion for summary judgment in the light most favorable to the defendant, genuine issues of triable material fact remain precluding summary judgment. House of Travel v. Neth, 6 FSM R. 402, 403 (Pon. 1994).

A defendant's mere denial that the calendar was used for advertising purposes does not set forth specific facts to show that this is a genuine issue for trial as an adverse party must do when faced with a motion for summary judgment. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 459 (Chk. 1994).

A court must deny a motion for summary judgment unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The court must view the facts presented and inferences made in the light most favorable to the nonmoving party. The burden of showing a lack of triable issues of fact belongs to the moving party. Adams v. Etscheit, 6 FSM R. 580, 582 (App. 1994).

Where the resolution of the legal questions raised by a summary judgment motion will not perceptibly shorten the trial, and a determination at trial of the fact issues may eliminate the need for deciding the legal questions which the motion raises, a court may exercise its discretion to reserve judgment on the motion until after trial. This exercise of discretion is even more appropriate where the legal issues raised involve constitutional adjudication because unnecessary constitutional adjudication is to be avoided. Pohnpei v.

Kailis, 6 FSM R. 619, 620 (Pon. 1994).

Once a party moving for summary judgment has presented a *prima facie* case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing a genuine issue of material fact. The non-moving party may not rely on unsubstantiated denials of liability to carry its burden, but must present some competent evidence that would be admissible at trial that there is a genuine issue of material fact. Urban v. Salvador, 7 FSM R. 29, 30 (Pon. 1995).

Unsupported statements of counsel at oral argument do not qualify as competent evidence upon which a court could find a genuine issue for trial. Urban v. Salvador, 7 FSM R. 29, 32 (Pon. 1995).

Where the opposing party has not filed a timely response to a motion for summary judgment, that party is deemed to have consented to the granting of the motion and the court may decline to hear oral argument. Mailo v. Bae Fa Fishing Co., 7 FSM R. 83, 85 n.1 (Chk. 1995).

The series "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," found in Civil Rule 56 merely lists those items the court shall consider on a summary judgment motion if present in the file. Not all of these items need to be present for a court to grant summary judgment. Mailo v. Bae Fa Fishing Co., 7 FSM R. 83, 85 (Chk. 1995).

Admissions obtained through a failure to respond to requests for admissions may be used as the factual basis for summary judgment. Mailo v. Bae Fa Fishing Co., 7 FSM R. 83, 85 (Chk. 1995).

Although a motion to file a late response to the requests for admissions is considered a motion to amend or withdraw, an untimely response to a summary judgment motion cannot be deemed a motion to withdraw or amend. Mailo v. Bae Fa Fishing Co., 7 FSM R. 83, 86 (Chk. 1995).

Failure to file a response to a summary judgment motion constitutes a consent to the motion. But even when an opposing party consents to a motion, that motion may only be granted if it is well grounded in fact and law. Kyowa Shipping Co. v. Wade, 7 FSM R. 93, 95 (Pon. 1995).

Once the party moving for summary judgment presents a *prima facie* case of entitlement to judgment, the burden shifts to the non-moving party to raise some question of material fact. Kyowa Shipping Co. v. Wade, 7 FSM R. 93, 95 (Pon. 1995).

If, when determining whether a triable issue of material fact exists and viewing the facts presented and the inferences drawn from them in the light most favorable to the non-moving party, a court determines that there is only one reasonable conclusion that can be drawn from the undisputed facts, there is no question of material fact and the case is ripe for disposition by summary judgment. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 176 (Pon. 1995).

When the moving party has made out a prima facie case that there are no triable issues of fact and that it is entitled to summary judgment as a matter of law, the nonmoving party then has the burden to show by competent evidence that there is a triable issue of fact. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 249 (Chk. 1995).

If the adverse party does not respond to a motion for summary judgment with affidavits or other competent evidence, summary judgment, if appropriate, shall be entered against the adverse party. Black Micro Corp. v. Santos, 7 FSM R. 311, 314 (Pon. 1995).

A court must deny a motion for summary judgment unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The court must view the facts presented and inferences made in the light most favorable to the nonmoving party, and the burden of showing a lack of triable issues of fact belongs to the moving party. Nanpei v. Kihara, 7 FSM R. 319, 323

(App. 1995).

When the moving party has made out a prima facie case that there are no triable issues of fact and that it is entitled to summary judgment as a matter of law, the nonmoving party then has the burden to show by competent evidence that there is a triable material issue of fact. Nanpei v. Kihara, 7 FSM R. 319, 325 (App. 1995).

An order granting summary judgment does not constitute a judgment. Before an adjudication can become an effective judgment, the judgment must be set forth in writing on a separate document, and the judgment so set forth must be entered in the civil docket. Bank of the FSM v. Kengin, 7 FSM R. 381, 382 (Yap 1996).

When moving for a summary adjudication of all issues of a cause of action, including affirmative defenses, a plaintiff must put forth evidence that there is no issue of material fact and that the defense is insufficient as a matter of law. Richmond Wholesale Meat Co. v. Kolonia Consumer Coop. Ass'n (I), 7 FSM R. 387, 389 (Pon. 1996).

If a plaintiff moves for summary judgment on an affirmative defense, putting forth arguments and evidence indicating that there is no material fact at issue and that the affirmative defense is insufficient as a matter of law, the party asserting the affirmative defense must produce some evidence or the moving party is entitled to partial summary judgment. Etscheit v. Nahnken of Nett, 7 FSM R. 390, 394 (Pon. 1996).

Once the moving party has presented a *prima facie* case of entitlement to summary judgment, the non-moving party may not rely on unsubstantiated denials of liability to carry its burden, but must present some competent evidence that would be admissible at trial which demonstrates that there is a genuine issue of fact, and that there is enough evidence supporting its position to justify a decision upholding its claim by a reasonable trier of fact. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 442, 444 (Pon. 1996).

A plaintiff seeking an interlocutory adjudication of all issues of a cause of action must show that there is no issue of material fact and that the affirmative defenses raised are insufficient as a matter of law. Mid-Pacific Constr. Co. v. Semes, 7 FSM R. 522, 526-27 (Pon. 1996).

Argument alone cannot create a disputed fact that will defeat summary judgment. Nahnken of Nett v. United States, 7 FSM R. 581, 589 (App. 1996).

A statement, which if it had been made by the defendant would have been admissible as an admission of a party-opponent, is inadmissible hearsay when made by the defendant's then spouse as part of a traditional apology, and cannot be considered on a summary judgment motion. Glocke v. Pohnpei, 8 FSM R. 60, 62 (Pon. 1997).

Once the party moving for summary judgment presents a *prima facie* case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing that a genuine issue of material fact remains for resolution. The non-moving party may not rely on unsubstantiated denials of liability to carry its burden. It must present some competent evidence that would be admissible at trial to demonstrate that there is a genuine issue of fact, and that there is enough evidence supporting its position to justify a decision upholding its claim by a reasonable trier of fact. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 82 (Pon. 1997).

Once the party moving for summary judgment presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing that a genuine issue of material fact remains for resolution. The non-moving party may not rely on unsubstantiated denials of liability to carry its burden, but must present some competent evidence that would be admissible at trial to demonstrate that there is a genuine issue of fact, and that there is enough evidence supporting its position

to justify a decision upholding its claim by a reasonable trier of fact. Chuuk v. Secretary of Finance, 8 FSM R. 353, 362 (Pon. 1998).

In summary judgment motion, supporting and opposing affidavits must be made on personal knowledge, set forth such facts as would be admissible in evidence, and show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of his pleading, but must respond by affidavits setting forth specific facts showing that there is a genuine issue for trial. Ueda v. Stephen, 9 FSM R. 195, 197 (Chk. S. Ct. Tr. 1999).

When the moving party has made out a prima facie case that there are no triable issues of fact and that it is entitled to summary judgment as a matter of law, the nonmoving party cannot rely upon a general denial in its answer to overcome the affidavit and the documents produced by the moving party and may not rely on unsubstantiated denials of liability or inferences culled from the record to carry its burden, but must present some competent evidence that would be admissible at trial that there is a genuine issue of material fact. Marar v. Chuuk, 9 FSM R. 313, 314-15 (Chk. 2000).

When no response to a summary judgment motion appears in the record and the opposing party does not appear at the noticed hearing the motion is due to be granted for that reason alone. Udot Municipality v. Chuuk, 9 FSM R. 586, 587 (Chk. S. Ct. Tr. 2000).

A plaintiff's summary judgment motion that fails to comply with the certification requirements of Civil Procedure Rule 6(d) may, for this reason alone, be denied without prejudice and may be renewed subject to plaintiff making reasonable attempts to reach agreements on its disposition with the defendants affected by any order requested. O'Sullivan v. Panuelo, 9 FSM R. 589, 597 (Pon. 2000).

In a summary judgment motion the moving party has the initial burden of showing that there are no triable issues of fact. Once the moving party has done this, the burden then shifts to the nonmoving party to show that there is a triable issue. The nonmoving party must show that there is enough evidence supporting his position to justify a decision upholding his claim by a reasonable trier of fact. Ting Hong Oceanic Enterprises v. Ehsa, 10 FSM R. 24, 31 (Pon. 2001).

Once a party moving for summary judgment has presented a prima facie case of entitlement to summary judgment, the non-moving party may not rely on unsubstantiated denials of liability to carry its burden to produce evidence showing a genuine issue of material fact, but must present affidavits or some other competent evidence that would be admissible at trial that there is a genuine issue of material fact. Counsel's unsupported statements at oral argument do not qualify as competent evidence upon which a court could find a genuine issue for trial. Argument alone cannot create a disputed fact that will defeat summary judgment. Ting Hong Oceanic Enterprises v. Ehsa, 10 FSM R. 24, 31 (Pon. 2001).

Once the moving party has presented a *prima facie* case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing a genuine issue of material fact. The non-moving party may not rely on unsubstantiated denials of liability to carry its burden; it must present some competent evidence that would be admissible at trial which demonstrates that there is a genuine issue of fact. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 183, 184 (Pon. 2001).

In considering a summary judgment motion, a court must view the facts and the inferences to be drawn from those facts in the light most favorable to the party opposing the motion. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 183 (Pon. 2001).

When the court stated in its order granting a preliminary injunction that it would consider at the time of trial all of the admissible evidence which was presented at the preliminary injunction hearing, the court thereby made that evidence part of the record. It is thus also appropriate to consider this uncontroverted evidence to decide summary judgment motions. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 183 n.3 (Pon. 2001).

In order for an issue of fact to be material, it must be supported by substantial probative evidence in the record, going beyond the allegations. The evidence must be in the nature of facts – not conclusions, unsupported allegations of counsel, opposing party's own contradictions in the record, or opposing party's subjective characterizations. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 186 (Pon. 2001).

On a summary judgment motion, the court must penetrate the allegations of fact contained in pleadings and look to any evidential source to determine whether there is an issue of fact. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 186 (Pon. 2001).

If a plaintiff moves for summary judgment on an affirmative defense, putting forth arguments and evidence indicating that there is no material fact at issue and that the affirmative defense is insufficient as a matter of law, the party asserting the affirmative defense must produce some evidence or the moving party is entitled to partial summary judgment. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 186 (Pon. 2001).

When a summary judgment motion is made and supported, an adverse party may not rest upon the mere allegations or denials of his pleading, but must set forth specific facts, by affidavits or otherwise, showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, must be entered against the adverse party. Bank of the FSM v. Hebel, 10 FSM R. 279, 282 (Pon. 2001).

In a summary judgment motion, the moving party has the initial burden of showing that there are no triable issues of fact. Once the moving party has done this, the burden then shifts to the nonmoving party to show that there is a triable issue. The nonmoving party must show that there is enough evidence supporting his position to justify a decision upholding his claim by a reasonable trier of fact. Bank of the FSM v. Hebel, 10 FSM R. 279, 282 (Pon. 2001).

Once a party moving for summary judgment has presented a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing a genuine issue of material fact. The non-moving party may not rely on unsubstantiated denials of liability to carry its burden, but must present some competent evidence that would be admissible at trial that there is a genuine issue of material fact. Bank of the FSM v. Hebel, 10 FSM R. 279, 282-83 (Pon. 2001).

In order to be successful on a summary judgment motion, the plaintiff must also overcome all affirmative defenses that the defendants have raised. Bank of the FSM v. Hebel, 10 FSM R. 279, 284 (Pon. 2001).

When the plaintiff has presented a prima facie case of entitlement to summary judgment, the burden shifted to the defendant to produce evidence showing a genuine issue of material fact to defeat plaintiff's motion for summary judgment, and when the defendant has not shown there is a triable issue of fact which will defeat the plaintiff's summary judgment motion, the plaintiff is entitled to judgment as a matter of law. Bank of the FSM v. Hebel, 10 FSM R. 279, 286 (Pon. 2001).

In considering a summary judgment motion, the court must view the facts and the inferences to be drawn from those facts in a light as favorable to the non-moving party as reasonably may be done. Kosrae v. Worswick, 10 FSM R. 288, 291 (Kos. 2001).

When a movant makes out a prima facie case for summary judgment which, if uncontroverted at trial, would entitle it to a directed verdict on the issue, then the burden shifts to the nonmoving party to produce some competent evidence admissible at trial showing that there is a genuine issue of fact. Kosrae v. Worswick, 10 FSM R. 288, 291 (Kos. 2001).

The inquiry involved in a ruling on a motion for summary judgment or for a directed verdict necessarily

implicates the substantive evidentiary standard of proof that would apply at the trial on the merits. The process of evaluating the proof in this way takes place in the framework of viewing the facts in a light as favorable to the nonmovant as may reasonably be done. Kosrae v. Worswick, 10 FSM R. 288, 292 (Kos. 2001).

A summary judgment motion filed with the complaint is premature because a party seeking to recover upon a claim may only move for summary judgment after the expiration of 20 days from the action's commencement. FSM Dev. Bank v. Arthur, 10 FSM R. 293, 294 (Pon. 2001).

When a plaintiff seeks summary judgment on the question of liability, it must initiate the inquiry even as to affirmative defenses. FSM Dev. Bank v. Arthur, 10 FSM R. 293, 294 (Pon. 2001).

When the opposing party does not respond to a motion for summary judgment, the court must still ascertain that the basis for the motion is well grounded both in fact and law. To make this determination the court requires at least some quantum of factual material competent under Rule 56(c) on the question of the affirmative defenses or the motion will be denied. FSM Dev. Bank v. Arthur, 10 FSM R. 293, 294 (Pon. 2001).

An opposition to a summary judgment motion that merely states that the defendants do not understand how the plaintiff arrived at its figure and rely on their answer that they lack sufficient knowledge as to the exact amount owed does not create an genuine issue of material fact. FSM Dev. Bank v. Ifraim, 10 FSM R. 342, 344-45 (Chk. 2001).

When a moving party has made out a prima facie case that there are no triable issues of fact and that it is entitled to summary judgment as a matter of law, the non-moving party may not rely on unsubstantiated denials of liability or denials in its answer to carry its burden, but must present some competent evidence that would be admissible at trial that there is a genuine issue of material fact. FSM Dev. Bank v. Ifraim, 10 FSM R. 342, 345 (Chk. 2001).

When the defendants have presented no evidence, competent or otherwise, that the plaintiff's figure is incorrect, there is no genuine issue as to the amount owed. FSM Dev. Bank v. Ifraim, 10 FSM R. 342, 345 (Chk. 2001).

A plaintiff's motion for summary judgment has the obligation to clearly establish the lack of any triable issue of fact as to any affirmative defenses. FSM Dev. Bank v. Ifraim, 10 FSM R. 342, 345 (Chk. 2001).

A summary judgment motion that deals only with the note and the balance owed and fails to respond to the defendants' affirmative defenses will be denied. FSM Dev. Bank v. Ifraim, 10 FSM R. 342, 345 (Chk. 2001).

Once the moving party has presented a *prima facie* case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing a genuine issue of material fact. The non-moving party may not rely on unsubstantiated denials of liability to carry its burden, but must present some competent evidence that would be admissible at trial which demonstrates that there is a genuine issue of fact. The non-moving party must show that there is enough evidence supporting its position to justify a decision upholding his claim by a reasonable trier of fact. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 405 (Pon. 2001).

The court, in considering a summary judgment motion, must view the facts, and the inferences to be drawn from those facts, in the light most favorable to the party opposing the motion. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 405 (Pon. 2001).

For a summary judgment motion, supporting and opposing affidavits must be made on personal knowledge, and must set forth such facts as would be admissible in evidence. An adverse party may not

rest upon the mere allegations or denials of his pleading, but must set forth by affidavit or otherwise, specific facts showing that there is a genuine issue for trial. The facts are viewed in the light most favorable to the nonmovant. Skilling v. Kosrae, 10 FSM R. 448, 450 (Kos. S. Ct. Tr. 2001).

When an opposing party fails to respond to a motion for summary judgment, the court must still determine that there is a good basis both in law and in fact for the granting of the motion. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 475, 476 (Pon. 2001).

When a plaintiff seeks summary judgment on the question of liability, the plaintiff must initiate the inquiry even as to affirmative defenses. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 475, 476 (Pon. 2001).

In determining whether a genuine issue of material fact exists under Rule 56(c), a court will consider the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any. FSM Dev. Bank v. Arthur, 10 FSM R. 479, 480 (Pon. 2001).

When factual differences in the bank and development authority loan documents and the promissory note and loan agreement raise genuine issues of material fact, summary judgment for either party is precluded. FSM Dev. Bank v. Arthur, 10 FSM R. 479, 480-81 (Pon. 2001).

After the movant has made out a *prima facie* case for summary judgment, a shifting of the burden occurs which requires the responding party to come forward with evidence to show that a genuine issue of material fact exists, and in so doing the responding party may not look to unsubstantiated denial of liability but must come forward with competent evidence, admissible at trial, to establish that there is a genuine issue of fact. Unsupported factual assertions are insufficient to oppose a motion for summary judgment. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 579 (Pon. 2002).

A defendant moving for summary judgment may rely on the absence of evidence to support an essential element of the plaintiff's case. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 579 (Pon. 2002).

When a movant has demonstrated that no genuine issue of material fact exists, he must still show that applicable law entitles him to judgment in his favor. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 579 (Pon. 2002).

In responding to a summary judgment motion, an adverse party may not rest upon the mere allegations or denials of its pleading, but the adverse party's response, by affidavits or as otherwise provided in Rule 56, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, will be entered against the adverse party. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 579 (Pon. 2002).

Only when the opposing parties submit affidavits that set forth specific facts showing a genuine issue for trial will summary judgment be barred. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 579 (Pon. 2002).

In considering a summary judgment motion, the court will consider pleadings, depositions, answers to interrogatories, admissions on file, and affidavits, and the scope of the foregoing is sufficient to encompass sworn trial testimony where that testimony goes to the same contamination and subsequent causation issues raised in the instant case. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 580 (Pon. 2002).

To state an opinion is not to set forth specific facts. In the context of a summary judgment motion, an expert must back up his opinion with specific facts. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 580 (Pon. 2002).

No expert opinion arises simultaneously with the events that ultimately gives rise to that opinion, but comes to harvest in the course of a lawsuit and in the usual case is a gloss on the occurrence or events on which the lawsuit is based. In that sense an opinion is not a "fact" within the meaning of Civil Rule 56(e), but since Evidence Rules 702-704 expressly allow for expert witnesses' opinion testimony, the question is whether any given opinion is backed up with specific facts. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 580 (Pon. 2002).

The precise combustive characteristics of kerosene, gasoline, and mixtures of the two lie beyond the ordinary ken of the court. In these circumstances, an expert's opinion is indispensable to the finder of fact in determining whether questions of fact may be reasonably resolved only in favor of the moving party. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 581 (Pon. 2002).

When the expert opinion offered by the nonmovant does not go to the causation issue presented by the facts, and on which the movant's expert offered his opinion, it does not create a fact issue under Rule 56. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 582 (Pon. 2002).

The litigation process is designed not only to discover information, but also to reduce it to the essentials necessary to advance a party's case. When a lawsuit deals with scientific, technical, or other specialized knowledge, an expert's opinion is a useful tool in this paring process. Its value derives in no insubstantial part from the fact that it reflects a synthesis of relevant facts. When such an opinion goes to a necessary element of the case, and stands unopposed by a countervailing, factually supported expert opinion that fairly meets the moving party's opinion, it may be dispositive in the context of a summary judgment motion. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 582 (Pon. 2002).

When the plaintiff fails to guide the court to any part of the record that contains a competent opinion based on the facts of this case that contradicts the defendants' expert's competent opinion in a manner sufficient to raise an issue of fact, summary judgment for the defendants is appropriate. Adolip v. Mobil Oil Micronesia, Inc., 10 FSM R. 587, 590 (Pon. 2002).

When the plaintiff offered no objection to the defendants' expert's competent opinion and does not point to any part of the record that contains a countervailing, competent opinion based on the facts of the case that is sufficient to raise an issue of fact, summary judgment for the defendants is appropriate. George v. Mobil Oil Micronesia, Inc., 10 FSM R. 590, 592 (Pon. 2002).

A moving party is entitled to summary judgment when it has demonstrated that there are no genuine issues of material fact remaining, and that it is entitled to judgment as a matter of law. Once it has presented a *prima facie* case of entitlement to summary judgment, the burden shifts to the non-moving party to produce some competent evidence that would be admissible at trial which demonstrates that there is a genuine issue of fact. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 628 (Pon. 2002).

Argument alone cannot create a disputed fact that will defeat summary judgment. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 664 (Kos. S. Ct. Tr. 2002).

A summary judgment movant must go forward as to the nonmovant's affirmative defenses, since the burden of demonstrating that no triable fact issues exist encompasses affirmative defenses as well as the movant's own factual allegations. Bank of the FSM v. Mori, 11 FSM R. 13, 14 (Chk. 2002).

When it appears that triable issues of fact would still exist that would compel denial of the motion even if the court were to convert the motion from one to dismiss for failure to state a claim to one for summary judgment because matter outside the pleadings was included, the court will instead exercise its discretion to set the case for trial at the earliest opportunity. William v. Director of Public Works, 11 FSM R. 45, 47 (Chk. S. Ct. Tr. 2002).

When summary judgment is granted for a portion of the plaintiff's claim and when the court finds

pursuant to Rule 54(b) that as to this portion of the claim there is no just reason for delay, the court will expressly direct entry of final judgment for that amount. Richmond Wholesale Meat Co. v. George, 11 FSM R. 86, 88 (Kos. 2002).

When questions of fact and law exist as to liability for interest charges, a cross motion for summary judgment which seeks dismissal of the interest claim will be denied. Richmond Wholesale Meat Co. v. George, 11 FSM R. 86, 88 (Kos. 2002).

Once a movant has presented a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing a genuine issue of material fact. The non-moving party may not rely on unsubstantiated denials of liability to carry its burden, but must present some competent evidence that would be admissible at trial that there is a genuine issue of material fact. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 99 (Pon. 2002).

The plaintiffs have made a prima facie case for a trespass cause of action when they have established that they own the land pursuant to certificates of title and that the defendants are on the property without their consent, but in order to determine whether the plaintiffs should be granted summary judgment, the court needs to consider the defendants' arguments in opposition to the plaintiffs' motion, and if the defendants' arguments fail to establish a genuine issue of material fact exists, then it is appropriate for the court to enter summary judgment. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 100 (Pon. 2002).

A partial summary judgment motion will be denied when it does not address the non-movant's affirmative defenses, when there are issues of fact related to the movants' entitlement to recover, and when the movants have not established as a matter of law that the non-movants' affirmative defenses will not be successful. Island Homes Constr. Corp. v. Falcam, 11 FSM R. 414, 416 (Pon. 2003).

When the defendants have failed to file any opposition to the plaintiff's summary judgment motion, they are deemed to have consented to the granting of that motion. LPP Mortgage, Ltd. v. Ladore, 11 FSM R. 601, 603 (Pon. 2003).

Once the party moving for summary judgment presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing that a genuine issue of material fact remains for resolution. Goyo Corp. v. Christian, 12 FSM R. 140, 145-46 (Pon. 2003).

A party opposing a summary judgment motion may not rely on unsubstantiated denials of liability to carry its burden, but must present some competent evidence that would be admissible at trial which demonstrates that there is a genuine issue of material fact. When the non-moving party fails to present competent evidence in response to a properly supported summary judgment motion, the court must evaluate the moving party's evidentiary submissions and any other admissible evidence to determine if the movant has presented a prima facie case of entitlement to summary judgment. If the movant has presented such a prima facie case, the movant is entitled to summary judgment. Goyo Corp. v. Christian, 12 FSM R. 140, 146-47 (Pon. 2003).

Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Hearsay is generally not admissible, and therefore cannot be relied upon to create a material issue of fact when opposing a summary judgment motion. Goyo Corp. v. Christian, 12 FSM R. 140, 147 (Pon. 2003).

When the argument that the defendants should not be bound in their personal capacities but that only a corporation should be bound by the agreement, contradicts the promissory note's plain meaning, as it is worded, and when the individuals, in their depositions, acknowledged that they read and signed the agreement, they should not be permitted to claim that they did not understand the clear terms. And when at the same time the individuals clearly intended to encumber their personal property and assets, not merely those of the corporation, based upon the promissory note's plain, unambiguous language, the

plaintiff is entitled to summary judgment as to the affirmative defense of lack of capacity. Goyo Corp. v. Christian, 12 FSM R. 140, 148 (Pon. 2003).

When defendants' counsel supplied his own opinion that the plaintiff no longer exists based on a review of documents that were prepared by one person and translated by a second person, neither of whom supplied affidavits signifying that the statements were sworn and based on personal knowledge, defendants' counsel's affidavit clearly is not based on his personal knowledge and cannot be considered competent evidence for purposes of opposing plaintiff's summary judgment motion or to support defendants' cross-motion for summary judgment and motion to dismiss. And when the plaintiff submits affidavits of its bankruptcy trustee and its Guam representative, which are based on these individuals' personal knowledge and clearly establish that it was not liquidated, the defendants have not provided competent evidence to make the fact of the plaintiff's corporate status a material dispute, and the defendants' summary judgment motion must be denied. Goyo Corp. v. Christian, 12 FSM R. 140, 149 (Pon. 2003).

Failure to file a response to a summary judgment motion constitutes a consent to that motion; but even when an opposing party consents to a motion, that motion may only be granted if it is well grounded in fact and in law. Fredrick v. Smith, 12 FSM R. 150, 152 (Pon. 2003).

The party opposing a summary judgment motion may not rely on unsubstantiated denials of liability to carry its burden, but must present some competent evidence that would be admissible at trial which demonstrates that there is a genuine issue of material fact. Fredrick v. Smith, 12 FSM R. 150, 153 (Pon. 2003).

Civil Rule 56(d) provides that when summary judgment has been denied such that trial is necessary, the court shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. AHPW, Inc. v. FSM, 12 FSM R. 164, 168 (Pon. 2003).

Once a party moving for summary judgment has presented a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing a genuine issue of material fact. The non-moving party may not rely on unsubstantiated denials of liability to carry its burden, but must present some competent evidence that would be admissible at trial that there is a genuine issue of material fact. Ambros & Co. v. Board of Trustees, 12 FSM R. 206, 212 (Pon. 2003).

If summary judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court must if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. But when the material facts center on what the defendants actually believed at the relevant times, not to mention disputed questions about who said what to whom and when, and since the determination of these facts will turn on credibility, it is not practicable within the meaning of Rule 56(d) for the court to make a finding on what material facts exist without substantial controversy. This determination must await trial. Wortel v. Bickett, 12 FSM R. 223, 227-28 (Kos. 2003).

A court, viewing the facts presented and inferences made in the light most favorable to the nonmoving party, must deny a motion for summary judgment unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The burden of showing a lack of triable issues of fact belongs to the moving party, and when the moving party has made out a prima facie case that there are no triable issues of fact and that it is entitled to summary judgment as a matter of law, the nonmoving party then has the burden to show by competent evidence that there is a triable material issue of fact. Buruta v. Walter, 12 FSM R. 289, 293 (Chk. 2004).

When nothing in the record indicates under what tenure a person held the municipal election commissioner's office, the court cannot conclude as a matter of law that he held that position when he

conducted an election on August 1, 2003 and that his purported removal from office was unlawful. Summary judgment that the August 1st election was valid will therefore denied. Buruta v. Walter, 12 FSM R. 289, 295 (Chk. 2004).

Summary judgment may be granted only if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Once a *prima facie* case of entitlement to judgment has been presented, the burden shifts to the non-moving party to raise a question of material fact. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 304 (Pon. 2004).

Before an insurance company can obtain summary judgment on an action for enforcement of a premium note, the defenses available to the enforcement of a premium note must be addressed. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 309 (Pon. 2004).

Once the party moving for summary judgment presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing that a genuine issue of material fact remains for resolution. The non-moving party may not rely on unsubstantiated denials of liability to carry its burden, but must present some competent evidence that would be admissible at trial to demonstrate that there is a genuine issue of fact, and that there is enough evidence supporting its position to justify a decision upholding its claim by a reasonable trier of fact. Dereas v. Eas, 12 FSM R. 629, 632 (Chk. S. Ct. Tr. 2004).

Unsupported factual assertions are insufficient to oppose a motion for summary judgment. Dereas v. Eas, 12 FSM R. 629, 632 (Chk. S. Ct. Tr. 2004).

When a movant requests an extension of time to do additional discovery in order to resist a summary judgment motion, the movant must demonstrate that the proposed discovery would lead to facts essential to justify the opposition to the motion, but when, even with the benefit of additional time to make an offer of proof, the movant has come forward with nothing to show how an extension would lead to facts essential to opposing a summary judgment motion, the motion for an extension will be denied. Joe v. Kosrae, 13 FSM R. 45, 46-47 (Kos. 2004).

When there is a summary judgment motion pending to which no response has been filed, under Civil Procedure Rule 6(d), failure to respond to a motion is deemed consent to the granting of the motion. However, there still must exist a good basis in law and fact upon which to grant the motion. Joe v. Kosrae, 13 FSM R. 45, 47 (Kos. 2004).

When the moving party has made out a prima facie case that there are no triable issues of fact and that he is entitled to summary judgment as a matter of law, the nonmoving party then has the burden to show by competent evidence that there is a triable material issue of fact. A nonmovant's failure to respond to a summary judgment motion, is a failure to meet his burden to overcome the plaintiff's prima facie case. In order to succeed on a summary judgment motion, the plaintiff must also overcome all affirmative defenses that the defendant has raised. Lee v. Lee, 13 FSM R. 68, 71 (Chk. 2004).

A sua sponte summary judgment motion is proper so long as the court provides adequate notice to the parties and adequate opportunity to respond to the court's motion. FSM Social Sec. Admin. v. Jonas, 13 FSM R. 171, 173 (Kos. 2005).

Rule 56(d) provides that when a motion for summary judgment is denied, the court shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. Such a finding may facilitate the orderly litigation of certain cases. But if the court determines that entering a partial summary judgment by identifying the facts that no longer may be disputed would not materially expedite the adjudication process, it may decline to do so. William v. Kosrae State Hospital, 13 FSM R. 307, 309 (Kos. 2005).

When the case does not appear to be unduly complex notwithstanding the fact that medical malpractice is alleged, and when, in the interest of a smooth narrative at trial, it is the better course to consider each party's entire presentation at that time, the court finds that findings of fact under Rule 56(d) would not expedite the adjudication process in the case, and therefore declines to make such findings. William v. Kosrae State Hospital, 13 FSM R. 307, 309 (Kos. 2005).

Argument alone cannot create a disputed fact. The nonmoving party has the burden to show by competent evidence that there is a triable issue of fact. Allen v. Kosrae, 13 FSM R. 325, 329 (Kos. S. Ct. Tr. 2005).

When a case proceeds to trial, the burden of going forward with evidence as to affirmative defenses is normally on the defendant. However, when the plaintiff seeks summary judgment on the question of liability, the plaintiff must initiate the inquiry even as to affirmative defenses. The party moving for summary judgment has the burden of clearly establishing the lack of any triable issues of fact. The burden extends to affirmative defenses as well as to the plaintiff's own positive allegations. Sigrah v. Microlife Plus, 13 FSM R. 375, 379 (Kos. 2005).

A movant must address affirmative defenses in requesting summary judgment. FSM Dev. Bank v. Jonah, 13 FSM R. 522, 523 (Kos. 2005).

Once the party moving for summary judgment presents a prima facie case of its entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing that a genuine issue of material fact remains for resolution. A nonmovant's failure to respond to a summary judgment motion, is a failure to meet his burden to overcome the plaintiff's prima facie case. Western Sales Trading Co. (Phils) v. B & J Corp., 14 FSM R. 423, 425 (Chk. 2006).

Once the party moving for summary judgment has presented a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing that a genuine issue of material fact remains for resolution. An adverse party opposing summary judgment may not rest upon the mere allegations or denials of his pleading, but must respond by affidavits (or some competent evidence that would be admissible at trial) setting forth specific facts showing that there is a genuine issue for trial, and that there is enough evidence supporting its position to justify a decision upholding his claim by a reasonable trier of fact. Unsupported factual assertions are insufficient to oppose a summary judgment motion. Dereas v. Eas, 14 FSM R. 446, 453 (Chk. S. Ct. Tr. 2006).

If a plaintiff moves for summary judgment on an affirmative defense, putting forth arguments and evidence indicating that there is no material fact at issue and that the affirmative defense is insufficient as a matter of law, the party asserting the affirmative defense must produce some evidence or the moving party is entitled to partial summary judgment. Dereas v. Eas, 14 FSM R. 446, 453 (Chk. S. Ct. Tr. 2006).

An account of evidence adduced in a hearing in another case to which the movant was not a party and a hearing at which he was not present or had an opportunity to be heard, even presuming (which the court cannot do) that the evidence presented then is accurately characterized now, is not admissible and cannot be used against the movant's summary judgment motion. Dereas v. Eas, 14 FSM R. 446, 456 (Chk. S. Ct. Tr. 2006).

A summary judgment movant must go forward on the nonmovant's affirmative defenses, since the burden of demonstrating that no triable fact issues exist encompasses affirmative defenses as well as the movant's own factual allegations. FSM Social Sec. Admin. v. Fefan Municipality, 14 FSM R. 544, 546 (Chk. 2007).

When the moving party has made out a prima facie case that there are no triable issues of fact and that it is entitled to summary judgment as a matter of law, the nonmoving party cannot rely upon a general denial in its answer to overcome the affidavit and the documents produced by the moving party and may not

rely on unsubstantiated denials of liability or inferences culled from the record to carry its burden, but must present some competent evidence that would be admissible at trial that there is a genuine issue of material fact. FSM Social Sec. Admin. v. Fefan Municipality, 14 FSM R. 544, 547 (Chk. 2007).

When an adverse party fails to respond to a pending summary judgment motion, the party's failure to respond constitutes a consent to the granting of the motion, but does not automatically result in a granting of the motion. There still must exist a good basis in law and in fact upon which to grant the motion. American Trading Int'l, Inc. v. Helgenberger, 15 FSM R. 50, 52 (Pon. 2007).

In determining whether summary judgment is appropriate, the court must view the facts presented and inferences made in the light most favorable to the non-moving party. The burden of showing a lack of triable issues of fact rests with the moving party. Once the moving party has satisfied its burden, the non-moving party, in order to avoid summary judgment, must produce evidence showing that a genuine issue of material fact exists. To satisfy its burden, the non-moving party may not rely on unsubstantiated denials of liability but must present competent evidence, that would be admissible at trial and that shows there is a genuine issue of material fact. American Trading Int'l, Inc. v. Helgenberger, 15 FSM R. 50, 52 (Pon. 2007).

Unauthenticated exhibits to unverified complaints do not normally constitute admissible evidence. However, when the defendant's answer admits that the exhibits to the complaint represent true and correct copies of the invoices signed by him, in light of defendant's authenticating admission, the invoices attached to the unverified complaint constitute competent, admissible evidence that is properly considered by the court on a summary judgment motion. American Trading Int'l, Inc. v. Helgenberger, 15 FSM R. 50, 52 n.2 (Pon. 2007).

To overcome a *prima facie* case of entitlement to summary judgment, the non-moving party cannot rely on unsubstantiated denials to carry his burden, but must present some competent evidence that would be admissible at trial which demonstrates that there is a genuine issue of fact. Dereas v. Eas, 15 FSM R. 135, 140 (Chk. S. Ct. Tr. 2007).

In a summary judgment motion, supporting and opposing affidavits must be made on personal knowledge, set forth such facts as would be admissible in evidence, and show affirmatively that the affiant is competent to testify to the matters stated therein. Dereas v. Eas, 15 FSM R. 135, 140 (Chk. S. Ct. Tr. 2007).

A non-moving party cannot rest upon the allegations or mere denials in his pleading, but must respond by affidavits setting forth specific facts showing that there is a genuine issue for trial. When the non-movant has not produced any such evidence that would be admissible at trial, but has promised that he will introduce such evidence later, his mere representation that such evidence exists and will appear some time later and be introduced at trial does not constitute production of competent evidence. Dereas v. Eas, 15 FSM R. 135, 140 (Chk. S. Ct. Tr. 2007).

A promise to produce admissible evidence at some future time is not the production of admissible evidence in response to a summary judgment motion. A contention that evidence will be introduced and that it will show certain things is hearsay, and hearsay is generally not admissible evidence, and thus cannot be relied upon to create a material issue of fact when opposing a summary judgment motion. Dereas v. Eas, 15 FSM R. 135, 140 (Chk. S. Ct. Tr. 2007).

In ruling on a summary judgment motion, the court considers the pleadings, depositions, answers to interrogatories, admissions and affidavits that are present in the file although not all of these items need to be present for a court to grant summary judgment. Once the moving party has made out a *prima facie* case that there are no triable issues of fact and that it is entitled to summary judgment as a matter of law, the nonmoving party then has the burden to show by competent evidence that there is a triable issue of fact and cannot merely deny the summary judgment motion's allegations but must set forth specific evidence

that would be admissible at trial to show that there is a genuine issue for trial. K&I Enterprises v. Francis, 15 FSM R. 414, 418 (Chk. S. Ct. Tr. 2007).

A party responding to a summary judgment motion may not rely on a mere denial to stave off summary judgment in the movant's favor, but at the same time, the burden of showing a lack of issues of fact necessitating a trial lies with the moving party. Berman v. Rosario, 15 FSM R. 429, 431 (Pon. 2007).

Just as a non-movant may not rely on a mere denial to stave off summary judgment, so the movant may not rely on a mere allegation in the complaint to establish her prima facie case for purposes of a summary judgment motion since the court must look beyond the pleadings to the competent evidence presented to determine whether a genuine fact issue exists. Berman v. Rosario, 15 FSM R. 429, 431 (Pon. 2007).

When the moving party has made out a prima facie case that there are no triable issues of fact and that it is entitled to summary judgment as a matter of law, the non-moving party then has the burden to show by competent evidence that there is a triable material issue of fact. Ruben v. FSM, 15 FSM R. 508, 513 (Pon. 2008).

Although the plaintiffs' summary judgment motion was granted, no judgment will be entered at this time when one cause of action remains outstanding and unadjudicated. Ruben v. Petewon, 15 FSM R. 605, 609 (Chk. 2008).

When no response has been filed to a pending summary judgment motion, the non-movant's failure to respond is deemed a consent to the motion, but the motion still must have a sound basis in law and fact in order for the court to grant it, and even though the non-movant's non-response to a summary judgment motion constitutes a failure to overcome the plaintiff's prima facie case, the movant plaintiff still must also overcome all affirmative defenses that the defendant has raised in order to succeed on his summary judgment motion. Saimon v. Wainit, 16 FSM R. 143, 146 (Chk. 2008).

Summary judgment will be granted if the pleadings, depositions, answers to interrogatories, and admission on file, together with the affidavits, if any, show that there is no genuine issues as to any material fact and the moving party is entitled to judgment as a matter of law. Supporting and opposing affidavits must be made on personal knowledge, must set forth facts that would be admissible in evidence, and must show affirmatively that the affiant is competent to testify to the matters stated therein. When a summary judgment motion is made and supported as provided, the non-moving party may not rest upon mere allegations or denials of the adverse party's pleading, but the non-moving party's response, by affidavits or as otherwise provided, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, will be entered against the adverse party. Smith v. Nimea, 16 FSM R. 186, 189-90 (Pon. 2008).

When the trial court denies a summary judgment motion it should delineate between those material facts that are in dispute and those that are not, but when such an exercise would not materially expedite the adjudication process, the court may direct the parties to address the concerns themselves by a pre-trial order. Smith v. Nimea, 16 FSM R. 186, 191 (Pon. 2008).

The rules of civil procedure do not prevent the filing of a summary judgment motion before the filing of an answer. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 218 (Chk. S. Ct. Tr. 2008).

If the court converts a motion to dismiss to one for summary judgment, the parties must be given a reasonable opportunity to prepare so that no party is taken by surprise, and if issues of fact remain after the conversion, the court will deny the motion and set the case for trial. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 218, 221 n.4 (Chk. S. Ct. Tr. 2008).

There is no requirement that a party wait until after its discovery has been answered before moving for

summary judgment since a summary judgment motion may be filed at any time after the expiration of 20 days from the commencement of the action. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 284 (Chk. 2009).

A summary judgment movant must go forward not only on its allegations but also on the nonmovant's affirmative defenses, since the burden of demonstrating that no triable fact issues exist encompasses affirmative defenses as well as the movant's own factual allegations. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 285 (Chk. 2009).

When the moving party has made out a prima facie case that there are no triable issues of fact and that it is entitled to summary judgment as a matter of law, the nonmoving party then has the burden to show by competent evidence that could be admitted at trial, that there is a genuine issue of material fact. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 286 (Chk. 2009).

When the summary judgment opponents do not offer any affidavits or exhibits or point to any other competent evidence that would support their position, they have not met their burden of showing by competent evidence that could be admitted at trial that there is a genuine issue of material fact because argument alone cannot create a disputed fact that will defeat summary judgment. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 287 (Chk. 2009).

A court must deny a summary judgment motion unless, viewing the facts presented and inferences made in the light most favorable to the nonmoving party, it finds that there is no genuine issue as to any material fact and the that moving party is entitled to judgment as a matter of law. The movant bears the burden of showing a lack of triable issues of fact, and must go forward not only on its allegations but also on the nonmovant's affirmative defenses, since the burden of demonstrating that no triable fact issues exist encompasses affirmative defenses as well as the movant's own factual allegations. FSM Dev. Bank v. Chuuk Fresh Tuna, Inc., 16 FSM R. 335, 337 (Chk. 2009).

A denial of a request for reconsideration does not mean that a partial adjudication order is not subject to revision at any time. Even though the trial court may be very unlikely to revise it, the order remains legally capable of being revised (under the appropriate circumstances) any time before the trial court enters a final judgment. Smith v. Nimea, 16 FSM R. 346, 348 (App. 2009).

A court can enter judgment on less than all of the claims in a case only if the court makes both an express determination that there is no just cause for delay and an express direction for entry of judgment. Both elements must be present to give a partial adjudication final judgment status. When either element is absent, even if only because of oversight or a failure to appreciate that the case is one that is within Rule 54(b), the partial adjudication does not carry final judgment status. Smith v. Nimea, 16 FSM R. 346, 348-49 (App. 2009).

When a defendant did not provide responses to the plaintiffs' requests for admissions, the requests should be deemed admitted and admissions obtained through such a failure to respond to requests for admissions may be used as the factual basis for summary judgment. Barker v. Chuuk, 16 FSM R. 537, 538-39 (Chk. S. Ct. Tr. 2009).

Although an opposing party has consented to a motion, that motion may only be granted if it is well grounded in fact and law, so that when a defendant, in its written responses, admitted the allegations in the plaintiffs' requests for admissions, the plaintiffs' motion for partial summary judgment against that defendant is well grounded in fact and law. Barker v. Chuuk, 16 FSM R. 537, 539 (Chk. S. Ct. Tr. 2009).

Although the defendants may be deemed to have admitted damages in a certain amount, when partial summary judgment is granted to the plaintiffs on the defendants' liability, the court may require an evidentiary hearing to determine an appropriate damages award. Barker v. Chuuk, 16 FSM R. 537, 539 (Chk. S. Ct. Tr. 2009).

When the trial court granted summary judgment on statute of limitations grounds, the appellate court will, when considering the question of issues of material fact, consider only to those facts needed to determine whether the statute of limitations has run, and not whether the Land Commission process was improper or whether the 1986 determination should be vacated or whether the Land Commission should have ruled in the appellant's, instead of the appellee's, favor. Allen v. Allen, 17 FSM R. 35, 39 (App. 2010).

A summary judgment movant, since he bears the burden of showing a lack of triable issues of fact, must go forward not only on his allegations but also on the nonmovants' affirmative defenses, since the burden of demonstrating that no triable fact issues exist encompasses affirmative defenses as well as the movant's own factual allegations. Dungawin v. Simina, 17 FSM R. 51, 54 (Chk. 2010).

When there may be some facts in dispute with respect to other issues in a case, their presence will not bar summary judgment if they are not material to the issue presented for summary judgment. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 60 (Chk. S. Ct. Tr. 2010).

Because issues of statutory construction and constitutional construction are issues of law, courts have final authority over them, and the issues are ripe for summary judgment, which will be granted to the party that is entitled to it as a matter of law. In ruling on these issues of law, the language of the statutory and constitutional provisions is controlling and the court will construe and give effect to the provisions' plain meaning. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 60 (Chk. S. Ct. Tr. 2010).

In order to succeed on a summary judgment motion, the movant must also overcome all the non-movant's affirmative defenses. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 108 (Pon. 2010).

Under FSM Civil Rule 56(e), supporting and opposing affidavits must be made on personal knowledge, must set forth such facts as would be admissible in evidence, and must show affirmatively that the affiant is competent to testify to the matters stated therein. The first requisite is that the information the affidavits contain (as opposed to the affidavits themselves) would be admissible at trial. Thus, ex parte affidavits, which are not admissible at trial, are appropriate on a summary-judgment hearing to the extent they contain admissible information. FSM v. GMP Hawaii, Inc., 17 FSM R. 192, 193-94 (Pon. 2010).

The function of summary-judgment motion affidavits is not to resolve disputed factual issues but only to determine if any factual issues are in dispute. It is the policy of rule 56(e) to allow the affidavit to contain evidentiary matter, which if the affiant were in court and testified on the stand, would be admissible as part of his testimony. FSM v. GMP Hawaii, Inc., 17 FSM R. 192, 194 (Pon. 2010).

There is no requirement that a summary judgment affiant submit to a deposition in order for his affidavit to be properly before the court for the purpose of the summary judgment motion. There is also no requirement that the affiant later testify at trial or his summary judgment affidavit will retroactively be stricken if he is unable to. Therefore affidavits filed in already-decided motions or in a pending motion will not be stricken from the record regardless of whether affiant completes his deposition. FSM v. GMP Hawaii, Inc., 17 FSM R. 192, 194 (Pon. 2010).

A summary judgment, interlocutory in character, may be rendered on the issues of liability alone although there is a genuine issue as to the amount of damages, which means that, if there is a genuine issue as to the amount of damages but not as to liability, summary judgment may nevertheless be granted on an interlocutory basis, that is, the summary judgment would not be a final disposition of the entire case. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 436-37 (App. 2011).

The trial court has an obligation to view facts and reasonable inferences that can be made from those facts in the light most favorable to the party against whom summary judgment is sought. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 437 (App. 2011).

It would be a gross disservice to the interests of justice not ever to have a hearing on the issue of damages for a successful civil rights claim and when the trial court was silent as to this particular issue, the trial court cannot have foreclosed the claimant's right to a hearing on the actual damages flowing from the civil rights violation, so that the matter will be remanded to the trial court for further determination as to actual damages. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 438 (App. 2011).

In order to succeed on its summary judgment motion a movant plaintiff must also overcome all affirmative defenses that the defendant has raised. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 530 (Chk. 2011).

Where the court has rejected, either explicitly or implicitly, the defendants' affirmative defenses when it earlier denied the defendants' motion to dismiss, the movant's failure in its summary judgment motion to address the defendants' affirmative defenses is not fatal. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 530 & n.2 (Chk. 2011).

Under Rule 56, the court must deny a summary judgment motion unless it, viewing the facts and inferences in the light most favorable to the nonmovant, finds that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. In order to succeed on a summary judgment motion, a movant plaintiff must also overcome all affirmative defenses that the defendant has raised. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 538 (Chk. 2011).

Once a movant presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-movant to present some competent evidence that would be admissible at trial which demonstrates that there is a genuine issue of fact. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 570 (Pon. 2011).

At the summary judgment stage, the nonmovant plaintiff must show that it has admissible evidence of damages that were proximately caused by the contract breach. It does not need to prove the exact amount of damages or the extent of the damages. But it must show that it has admissible evidence that can. The time to do that is now, or never. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 572 (Pon. 2011).

When a party has failed to disclose an alleged incident and seems to have knowingly concealed it until it had to respond to the opposing party's summary judgment motion, it should not be allowed to put this allegation before the court. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 575 (Pon. 2011).

Since narrowing issues actually in dispute is one function of discovery, a party may not benefit at the summary judgment stage by tendering evidence it was under a discovery obligation to produce, but did not. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 575 (Pon. 2011).

When a party was asked in discovery for the instances where it was alleged to have offered or given gratuities and the opposing party disclosed only one incident, the opposing party is limited to that instance and cannot seek to introduce evidence of another instance in its summary judgment opposition. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 575 (Pon. 2011).

An affidavit opposing summary judgment must be made on personal knowledge and when it is not it is not competent evidence and cannot rebut a prima facie showing that the movant is entitled to summary judgment. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 582 (Pon. 2011).

When the movant asked in discovery for how it was to have committed malpractice and the nonmovant did not mention assuring that construction contractors produced shop drawings, the nonmovant is limited to what instances of malpractice it alleged and disclosed and cannot seek to introduce in its summary judgment opposition another instance based on different facts and theory of liability. The movant is therefore entitled to summary judgment on the claim that it committed malpractice by failing to see that the construction contractors produced the required shop drawings. FSM v. GMP Hawaii, Inc., 17 FSM R. 555,

584 (Pon. 2011).

A party cannot, by raising a new fraud claim in a summary judgment opposition, bypass the Rule 9(b) provision that the circumstances constituting fraud must be pled with particularity and effect a de facto amendment to its pleading. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 586 (Pon. 2011).

Since failure to oppose a motion is generally deemed a consent to the motion when a party has not filed a response to a summary judgment motion, that party is deemed to have consented to the granting of the motion, but even then, the court still needs good grounds before it can grant the motion. Welle v. Chuuk Public Utility Corp., 17 FSM R. 609, 610 (Chk. 2011).

Since a partial summary judgment is subject to revision at any time before the entry of final judgment on all the claims presented in the action, a party will have the opportunity, either upon a further motion for summary judgment or at trial, to show that the trial court's findings in a partial summary judgment are clearly erroneous or unsupported by any credible evidence. FSM v. Shun Tien 606, 18 FSM R. 79, 81-82 (Pon. 2011).

When the court is considering revision of a partial summary judgment, it must provide the parties with notice adequate to give them an opportunity to present evidence relating to any revived issues at trial. FSM v. Shun Tien 606, 18 FSM R. 79, 82 (Pon. 2011).

A litigant may, under Rule 59(e), move for reconsideration of an order granting summary judgment or move to alter or amend the judgment derived from that order and the court has a responsibility to hear that motion. Senate v. Elimo, 18 FSM R. 199, 201 (Chk. S. Ct. Tr. 2012).

Summary judgment will ordinarily not be altered or vacated on the basis of supplemental exhibits or affidavits filed after summary judgment is granted, particularly when the party seeking to alter or amend the judgment has made absolutely no showing that the additional evidence offered could not have been timely submitted in the exercise of reasonable diligence. Motions for reconsideration cannot in any case be employed as a vehicle to introduce new evidence that could have been adduced during pendency of the summary judgment motion. Senate v. Elimo, 18 FSM R. 199, 201 (Chk. S. Ct. Tr. 2012).

A motion to alter or amend judgment will be denied when no valid reason was given why the movant could not have produced, as part of his summary judgment motion or his opposition to his opponent's summary judgment motion, the evidence now relied on to seek reconsideration because it was all available to him before the cross motions for summary judgment were filed and before those motions were heard. Senate v. Elimo, 18 FSM R. 199, 202 (Chk. S. Ct. Tr. 2012).

Summary judgment will not be altered on the basis of a movant's supplemental exhibits and affidavits since that additional evidence could have been timely submitted if he had exercised due diligence. Senate v. Elimo, 18 FSM R. 199, 202 (Chk. S. Ct. Tr. 2012).

The party moving for summary judgment bears the initial burden of establishing the absence of genuine issues of material fact. If the moving party does not have the burden of proof at trial, it may carry its initial burden by producing evidence negating an essential element of the non-moving party's case, or, after suitable discovery, the moving party may show that the nonmoving party does not have enough evidence of an essential element of its claim or defense to carry its ultimate burden of persuasion at trial. Kama v. Chuuk, 18 FSM R. 326, 331 (Chk. S. Ct. Tr. 2012).

In considering a summary judgment motion, the court must view the facts and inferences in a light that is most favorable to the party opposing the motion. A moving party is entitled to summary judgment when it has demonstrated that there are no genuine issues of material fact remaining and that it is entitled to judgment as a matter of law. Once the moving party has presented a *prima facie* case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing a genuine

issue of material fact. The non-moving party may not rely on unsubstantiated denials of liability to carry its burden; it must present some competent evidence that would be admissible at trial which demonstrates that there is a genuine issue of fact. Peniknos v. Nakasone, 18 FSM R. 470, 478 (Pon. 2012).

When a summary judgment motion is made and supported, an adverse party may not rest upon mere allegations, but must in response, through affidavits or other competent evidence, set forth specific facts showing there is a genuine issue for trial, and, if the adverse party does not so respond, summary judgment, if appropriate must be entered against the adverse party. Peniknos v. Nakasone, 18 FSM R. 470, 486 (Pon. 2012).

In order for an issue of fact to be shown it must be supported by substantial probative evidence in the record, going beyond mere allegations. The evidence must be in the nature of facts, not conclusions, counsel's unsupported allegations, opposing party's own contradictions in the record, or opposing party's subjective characterizations. On a summary judgment motion, the court must penetrate the factual allegations contained in the pleadings and look to any evidential source to determine whether there is an issue of fact. Peniknos v. Nakasone, 18 FSM R. 470, 487 (Pon. 2012).

There is no requirement that a party wait until a scheduling order has been issued or until after its discovery has been answered before moving for summary judgment since a summary judgment motion may be filed at any time after the expiration of 20 days from the action's commencement. Peniknos v. Nakasone, 18 FSM R. 470, 489 (Pon. 2012).

FSM Civil Rule 56(d) provides that when summary judgment has been denied such that trial is necessary, the court must if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 540-41 (Yap 2013).

Once a moving party has made out a prima facie case that there are no triable issues of fact and that it is entitled to judgment as a matter of law, the nonmoving party then has the burden to show by competent evidence that there is a triable material issue of fact. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 143 (App. 2013).

The moving party has the burden of showing a lack of triable issues of fact, and a plaintiff, in order to succeed on a summary judgment motion, must also overcome all affirmative defenses that the defendant has raised. Eot Municipality v. Elimo, 19 FSM R. 290, 294 (Chk. 2014).

Regardless of whether the non-movants filed a written opposition, a movant plaintiff, when requesting summary judgment, must overcome all of the adverse parties' affirmative defenses and counterclaims in order to be entitled to summary judgment. Andrew v. Heirs of Seymour, 19 FSM R. 331, 340 (App. 2014).

When moving for a summary adjudication, a plaintiff must put forth evidence that there is no issue of material fact and that the affirmative defense is insufficient as a matter of law. Andrew v. Heirs of Seymour, 19 FSM R. 331, 340 (App. 2014).

Until the movants address the defendants' affirmative defense and the defendants have had the opportunity to show that their defense – their independent action for relief from a Trust Territory High Court judgment – presents a genuine issue of material fact and is not insufficient as a matter of law, the movants are not entitled to summary judgment on their trespass cause of action. Andrew v. Heirs of Seymour, 19 FSM R. 331, 341 (App. 2014).

In order to succeed on a summary judgment motion, a movant plaintiff must also overcome all affirmative defenses that the defendant has raised. FSM v. Muty, 19 FSM R. 453, 460 (Chk. 2014).

When the moving party has made out a prima facie case that there are no triable issues of fact and

that it is entitled to summary judgment as a matter of law, the nonmoving party then has the burden to show by competent evidence that there is a triable material issue of fact. George v. Palsis, 19 FSM R. 558, 566 (Kos. 2014).

When faced with a defendant's summary judgment motion, the court cannot give any heed to the nonmovant plaintiff's assertion that he intends to call witnesses at trial to support his emotional distress claim or to his assertion that a favorable judgment on his wrongful termination claims will amply support this claim because the plaintiff must show that he has admissible evidence to support his claim, and the time for him to do that is now, or never. George v. Palsis, 19 FSM R. 558, 567 (Kos. 2014).

The party moving for summary judgment has the initial burden of showing that there are no triable issues of fact, but once the moving party has done this, the burden then shifts to the nonmoving party to show that there is a triable issue. The nonmoving party cannot simply disagree with the moving party and attempt to show, through affidavits or otherwise, that there is a triable issue but must submit admissible, competent evidence setting forth specific facts such that there is enough evidence supporting his position to justify a decision upholding his claim by a reasonable finder of fact. FSM v. Kuo Rong 113, 20 FSM R. 27, 30-31 (Yap 2015).

Regardless of whether the non-movants filed a written opposition, a plaintiff, when moving for summary judgment, must overcome all of the adverse parties' affirmative defenses and counterclaims in order to be entitled to summary judgment. Isamu Nakasone Store v. David, 20 FSM R. 53, 57 (Pon. 2015).

A plaintiff, when moving for a summary adjudication, must show that there is no issue of material fact and must also show that the affirmative defenses are insufficient as a matter of law. Isamu Nakasone Store v. David, 20 FSM R. 53, 57 (Pon. 2015).

Lack of subject-matter jurisdiction is a defense that can be raised at any time by any party or by the court. Isamu Nakasone Store v. David, 20 FSM R. 53, 57 (Pon. 2015).

A summary judgment motion may be made at any time by a party against whom a claim is asserted. Thus, a defendant can make a summary judgment motion even though it has not yet filed an answer. Fuji Enterprises v. Jacob, 20 FSM R. 121, 124 (Pon. 2015).

A trial court, viewing facts and inferences drawn from them in the light most favorable to the nonmoving party, may grant summary judgment only if the moving party shows that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law, and once the party moving for summary judgment presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce some competent evidence showing that a genuine issue of material fact remains for resolution. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 199 (Pon. 2015).

In considering a summary judgment motion, the court must view the facts and inferences in a light most favorable to the party opposing the motion. Pacific Int'l, Inc. v. FSM, 20 FSM R. 220, 222 (Pon. 2015).

Once the movant presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce some competent evidence that depicts a genuine issue of material fact remains to be resolved. Pacific Int'l, Inc. v. FSM, 20 FSM R. 220, 222 (Pon. 2015).

Once the party moving for summary judgment presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce some competent evidence showing that a genuine issue of material fact remains for resolution. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 271 (Pon. 2015).

Once the party moving for summary judgment presents a prima facie case of entitlement to summary

judgment, the burden shifts to the non-moving party to produce evidence showing that a genuine issue of material fact remains for resolution. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 366 (Pon. 2016).

In determining the merit of a summary judgment motion, a court will consider all the facts in the light most favorable to the non-moving party. Hairens v. Federated Shipping Co., 20 FSM R. 404, 407 (Pon. 2016).

A court must deny a summary judgment motion unless it, viewing the facts presented and inferences in the light most favorable to the nonmoving party, finds that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. When the trial court denies a summary judgment motion, it should delineate between those material facts that are in dispute and those that are not. Hairens v. Federated Shipping Co., 20 FSM R. 404, 407 (Pon. 2016).

Once the party moving for summary judgment presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing that a genuine issue of material fact remains for resolution. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 478 (Pon. 2016).

Regardless of whether the non-movants have filed a written opposition, a plaintiff, when moving for summary judgment, must also overcome all of the adverse parties' affirmative defenses in order to be entitled to summary judgment. The plaintiff must not only show that there is no issue of material fact but must also show that the affirmative defenses are insufficient as a matter of law. Eot Municipality v. Elimo, 20 FSM R. 482, 489 (Chk. 2016).

Since the burden of a plaintiff moving for summary judgment extends to affirmative defenses as well as to the plaintiff's own positive allegations, the plaintiff must not only show that there is no issue of material fact but must also show that the affirmative defenses are insufficient as a matter of law. Onanu Municipality v. Elimo, 20 FSM R. 535, 544 (Chk. 2016).

To overcome a *prima facie* case of entitlement to summary judgment, the non-moving party cannot rely on mere allegations or denials in her pleading or unsubstantiated denials to carry her burden, but must present some competent evidence by affidavits or as otherwise provided in Rule 56, that would be admissible at trial set forth specific facts showing that there is a genuine issue of fact. If she does not so respond, summary judgment, if appropriate, will be entered against her. Jacob v. Johnny, 20 FSM R. 612, 618-19 (Pon. 2016).

When an opposing party has not filed a response to a summary judgment motion, that party is deemed to have consented to the motion's grant, and the court may decline to hear oral argument from that party. Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 627 (Yap 2016).

When a party moves for summary judgment, that party must also overcome all of the adverse parties' counterclaims in order to be entitled to summary judgment. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 169 (Pon. 2017).

Since the burden of a plaintiff moving for summary judgment extends to affirmative defenses as well as to the plaintiff's own positive allegations, the plaintiff must show that the defendant's affirmative defenses are insufficient as a matter of law. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 171-72 (Pon. 2017).

Once the party moving for summary judgment presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing that a genuine issue of material fact remains for resolution. Seiola v. FSM Social Sec. Admin., 21 FSM R. 205, 209 (Pon. 2017).

Once the party moving for summary judgment presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing that a genuine issue of material fact remains for resolution. Celestine v. FSM Social Sec. Admin., 21 FSM R. 263, 265 (Pon. 2017).

Once the movant presents a *prima facie* case of entitlement to summary judgment, the burden shifts to the non-moving party to produce some competent evidence that depicts a genuine issue of material fact remains to be resolved. Pacific Int'l, Inc. v. FSM, 21 FSM R. 283, 286 (Pon. 2017).

Once the party moving for summary judgment presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to show that a genuine issue of material fact remains for resolution. Barnabas v. Individual Assurance Co., 22 FSM R. 252, 255 (Pon. 2019).

Once the movant presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce some competent evidence showing that a genuine issue of material fact remains for resolution. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 327 (Pon. 2019).

To overcome a prima facie case of entitlement to summary judgment, the non-moving party cannot rely on unsubstantiated denials to carry her burden, but must present some competent evidence that would be admissible at trial which demonstrates that there is a genuine issue of fact, and, in responding to a summary judgment motion, an adverse party may not rest upon the mere allegations or denials in her pleading, but her response, by affidavits or as otherwise provided in Rule 56, must set forth specific facts showing a genuine issue for trial. If she does not so respond, summary judgment, if appropriate, will be entered against her. Panuelo v. Sigrah, 22 FSM R. 341, 355 (Pon. 2019).

Once the movant has made out a prima facie case that there are no triable issues of fact, the nonmovant then has the burden to show by competent evidence that there is a triable issue of material fact. Panuelo v. Sigrah, 22 FSM R. 341, 355 (Pon. 2019).

When the nonmovant did not respond in writing at all to the summary judgment motion, let alone produce any competent evidence that could show that there is a genuine issue of material fact in dispute, the court will turn to the question of whether the movant is entitled to judgment as a matter of law. Panuelo v. Sigrah, 22 FSM R. 341, 355 (Pon. 2019).

Even though it is an affirmative defense, a court may dismiss claims (or grant summary judgment thereon) based on the statute of limitations, when the allegations in the plaintiff's complaint demonstrate that its claims are subject to that defense. Panuelo v. Sigrah, 22 FSM R. 341, 357 (Pon. 2019).

Once the summary judgment movant presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing that a genuine issue of material fact remains for resolution. A plaintiff, when moving for summary judgment, must not only show that there is no issue of material fact but must also show that the affirmative defenses are insufficient as a matter of law. FSM Dev. Bank v. Carl, 22 FSM R. 365, 373 (Pon. 2019).

An action on a judgment is especially apt for resolution by means of a motion for summary judgment. Usually, the plaintiff establishes his prima facie case by producing certified copies of the judgment on which the action is based and the identity of the defendant as obligee. FSM Dev. Bank v. Carl, 22 FSM R. 365, 373 (Pon. 2019).

When, in an action on a judgment, the plaintiff has produced a copy of the judgment on which the action is based, but it is not certified, that deficiency may be disregarded where the original judgment on which the action is based was entered in the same court and venue in which the action on the judgment is filed, and thus the copy's accuracy can easily be verified. FSM Dev. Bank v. Carl, 22 FSM R. 365, 373 (Pon. 2019).

When one co-defendant's "affirmative defense" may more accurately be a cross-claim against its co-defendant, to which the co-defendant has not responded (or even been specifically asked to respond), it may be disregarded for the purpose of the plaintiff's summary judgment motion against the two

co-defendants. FSM Dev. Bank v. Carl, 22 FSM R. 365, 373 (Pon. 2019).

A party that has pled an affirmative defense but does not raise that defense in response to a summary judgment motion has waived or abandoned that defense. The non-movant facing a summary judgment motion must do more than merely mention the affirmative defense in its pleading or in its opposition. This is because there is no factual issue left for trial unless there is sufficient evidence favoring the non-moving party for the court to find for the non-movant. FSM Dev. Bank v. Carl, 22 FSM R. 365, 374 (Pon. 2019).

Although release and accord and satisfaction are both defenses that are available against an action on a judgment, when they were mentioned as affirmative defenses in a defendant's answer, but were neither raised nor mentioned in her opposition to the plaintiff's summary judgment motion, these defenses are deemed waived or abandoned. FSM Dev. Bank v. Carl, 22 FSM R. 365, 376 (Pon. 2019).

Once a summary judgment movant has made out a prima facie case which, if uncontroverted at trial, would entitle it to a judgment on the issue, the burden then shifts to the nonmoving parties to offer some competent evidence that could be admitted at trial showing that there is a genuine issue of material fact. The nonmoving parties cannot rely on mere allegations or denials in their pleadings or unsubstantiated denials to carry their burden, but must present some competent evidence, by affidavits or as Rule 56 otherwise provides, that would be admissible at trial and that sets forth specific facts showing that there is a genuine issue of fact, and if they do not so respond, summary judgment, if appropriate, will be entered against them. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 473 (Pon. 2020).

Regardless of whether the non-movants filed a written opposition, a plaintiff, when moving for summary judgment, must overcome all of the non-movants' affirmative defenses – must show that the affirmative defenses are insufficient as a matter of law – and overcome all of the adverse parties' counterclaims in order to be entitled to summary judgment. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 477 (Pon. 2020).

Because the burden of a plaintiff moving for summary judgment extends to affirmative defenses as well as to the plaintiff's own positive allegations, the plaintiff must not only show that there is no issue of material fact, but must also show that the affirmative defenses are insufficient as a matter of law. Macayon v. FSM, 22 FSM R. 544, 554 (Chk. 2020).

Generally, a party that has pled an affirmative defense but does not raise that defense in response to a summary judgment motion has waived or abandoned that defense. Macayon v. FSM, 22 FSM R. 544, 555 (Chk. 2020).

In ruling on a summary judgment motion, a court considers the pleadings, depositions, answers to interrogatories, admissions and affidavits that are present in the file although not all of these items need to be present for a court to grant summary judgment. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 619 (Chk. S. Ct. App. 2020).

The summary judgment movant bears the initial burden of establishing the absence of genuine triable issues of material fact, and, if the movant does not have the burden of proof at trial, it may carry its initial burden by producing evidence negating an essential element of the non-movant's case, or, after suitable discovery, the movant may show that the non-movant does not have enough evidence of an essential element of its claim or defense to carry its ultimate burden of persuasion at trial. Even then, the court must view the facts presented and inferences therefrom in the light most favorable to the nonmoving party. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 619 (Chk. S. Ct. App. 2020).

Once the movant has made out a prima facie case that there are no triable issues of fact and that it is entitled to summary judgment as a matter of law, the non-movant then has the burden to show by competent evidence that there is a triable issue of fact and cannot merely deny the summary judgment motion's allegations but must set forth specific evidence that would be admissible at trial to show that there

is a genuine issue for trial. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 619 (Chk. S. Ct. App. 2020).

When the non-movant has not produced any evidence that would be admissible at trial but has promised that he will produce such evidence later, his mere representation that such evidence exists and will be introduced later at trial does not constitute the production of competent evidence. Unsupported factual assertions are insufficient to oppose a motion for summary judgment. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 620 (Chk. S. Ct. App. 2020).

– Venue

In litigation brought by a mother seeking child support payments from the father, the court will not grant the defendant-father's motion to change the venue to the FSM state in which he now resides from the FSM state in which: 1) the mother initiated the litigation; 2) the couple was married and resided together; 3) their children were born and have always lived; and 4) the mother still resides. Pernet v. Aflague, 4 FSM R. 222, 224 (Pon. 1990).

In an admiralty and maritime case for the *in rem* forfeiture of a vessel, jurisdiction and venue are so interrelated that the government, or its agents, may not move a defendant vessel from the state in which it was arrested where the FSM admiralty venue statute does not anticipate transfer even though the civil rules allow improper venue to be raised as a defense or to be waived. It is unclear what the result of such a move would be. FSM v. M.T. HL Achiever (I), 7 FSM R. 221, 222-23 (Chk. 1995).

When an alleged tax liability arose in a state and the government attempted to collect the tax in that state, venue is proper in that state under 6 F.S.M.C. 301(2), which allows an action, other than contract, to be brought where the cause of action arose. Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM R. 111, 114 (Chk. 1997).

6 F.S.M.C. 304(3) allows part or all of a case to be heard in a state other than the one in which it was brought "if the interests of justice were served thereby." Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM R. 111, 114 (Chk. 1997).

Venue does not refer to jurisdiction at all. Jurisdiction of the court means the inherent power to decide a case, whereas venue designates the particular county or city in which a court with jurisdiction may hear and determine the case. On the other hand, forum means a place of jurisdiction. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 125 (Pon. 1999).

The venue provision of 32 F.S.M.C. 306(2) must be read in conjunction with the service provisions of the FSM "long-arm statute," 4 F.S.M.C. 204, and with the FSM Code's venue provisions. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204 (Pon. 2001).

A venue provision that permits a civil action against a defendant who does not live in the FSM to be brought in a court within whose jurisdiction the defendant can be served or his property can be attached does not limit the FSM Supreme Court's subject matter jurisdiction, and does not render the long-arm statute superfluous. Such provisions do not preclude actions which are made procedurally possible by the long-arm statute, which gives litigants the means to effect service on entities not found within the FSM. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204 (Pon. 2001).

An action not connected with a contract may be brought in a court within whose jurisdiction the cause of action arose. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204 & n.3 (Pon. 2001).

Pohnpei is the appropriate venue for a case against a foreign defendant when all of the claims asserted by plaintiff allegedly arose in Pohnpei. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204 (Pon. 2001).

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if filed later before a court that could also take jurisdiction. The rule, however, is not absolute, but is a principle of sound judicial administration that the first-filed suit should have priority absent special circumstances. Mori v. Hasiguchi, 16 FSM R. 382, 384 (Chk. 2009).

The court with jurisdiction over the first-filed case may exercise its discretion to stay proceedings, under the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. The first-filed rule is neither absolute nor mechanically applied but advances the inherently fair concept that the party that commenced the first suit generally ought to be the party to obtain its choice of venue. Mori v. Hasiguchi, 16 FSM R. 382, 384 (Chk. 2009).

When this suit and a later-filed suit were both filed in the FSM Supreme Court trial division but in different venues, the first in Chuuk and the second in Pohnpei; when the defendants are all present in Chuuk but have adopted a position analogous to an interpleader in that they are subject to competing claims for the same property and will comply with any court determination about its ownership; when the central issue to be resolved before any final judicial order is whether a bill of sale is enforceable or should be rescinded or reformed; and when this central issue is directly joined in the Pohnpei suit where the stock transfer and the events surrounding it took place, where the transferor and transferee both reside, and where the evidence and witnesses are present, this, at least to resolve this crucial central issue, would (based on judicial economy and economy of time and effort for counsel and for the litigants) favor a Pohnpei venue if it can be resolved there without undue delay. Since, even though complete relief for all the parties in this case cannot be granted in the Pohnpei suit, the Pohnpei suit should expeditiously resolve this suit's central issue without imposing hardship on the parties and leave this court to dispose of the peripheral issues, adjudication of this first-filed action will be stayed pending the resolution of the later-filed FSM Supreme Court suit in Pohnpei. Mori v. Hasiguchi, 16 FSM R. 382, 385-86 (Chk. 2009).

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if one is filed later before a court that could also take jurisdiction. The rule, although not absolute, is a principle of sound judicial administration under which the first-filed suit should have priority absent special circumstances. This salutary principle avoids unseemly conflicts that might arise between courts if they could, at the same time, make inconsistent or contradictory decisions relating to the same dispute and it protects litigants from the expense and harassment of multiple litigation. Setik v. Pacific Int'l, Inc., 17 FSM R. 277, 280 (Chk. 2010).

The general rule is that the first-filed lawsuit has priority over any other case involving the same parties and issues, even if one is filed later before a court that could also take jurisdiction. This rule, although not absolute, is a principle of sound judicial administration under which the first-filed suit should have priority absent special circumstances. This salutary principle avoids unseemly conflicts that might arise between courts if they could, at the same time, make inconsistent or contradictory decisions relating to the same dispute and it protects litigants from the expense and harassment of multiple litigation. Setik v. Pacific Int'l, Inc., 17 FSM R. 304, 306 (Chk. 2010).

Although the rule permits dismissal if a case is filed in an improper venue, a more likely remedy, particularly when the litigation has progressed beyond its early stages, is not to dismiss the case but for the court to, on its own motion or otherwise, transfer it to any venue in which the matter might properly have been brought. Marsolo v. Esa, 18 FSM R. 59, 65 (Chk. 2011).

Since a suit against an official in his or her official capacity is a suit against that official's office and since a national government office with nationwide scope and authority must be "found" or be "present" in some form in each state in the nation regardless of whether it has an actual year-round physical presence there, for the purpose of the venue statute, none of the defendant national government officials "reside" on Pohnpei. Marsolo v. Esa, 18 FSM R. 59, 66 (Chk. 2011).

Any action, other than one involving real estate, in which one of the parties is an FSM resident shall be

brought in the state in which one of the parties thereto lives or has his usual place of business or employment or, if the action is based upon a wrong not connected with a contract, it may be brought in the state in which the cause of action arose. Marsolo v. Esa, 18 FSM R. 59, 66 & n.5 (Chk. 2011).

When the matter being litigated is of great interest only to the public in Chuuk, the interests of justice would permit it to be heard in Chuuk. Marsolo v. Esa, 18 FSM R. 59, 66 (Chk. 2011).

The venue statute permits, if the interests of justice will be served thereby, the FSM Supreme Court to transfer a trial division case from one venue (state) within the trial division to another venue or to be heard in part in a venue other than the venue in which the case was originally filed. The statute does not require that the venue be changed but leaves to the court's discretion whether to hear all or part of the case in a venue other than where the case was filed. Mori v. Hasiguchi, 19 FSM R. 222, 224-25 (Chk. 2013).

A motion to try the plaintiff's remaining claim in a Pohnpei venue will, in the court's discretion, be denied when the venue statute required that he originally file his complaint in Chuuk because Chuuk was the state in which all the defendants could be found and the statute favors convenience for the defendants over convenience for the plaintiff. But because transporting the Pohnpei witnesses to Chuuk would work a distinct hardship on the plaintiff, the court will allow him three months to depose all the needed Pohnpei witnesses in order to preserve their testimony for trial and if he prevails at trial, the expenses of these depositions shall be taxed as costs payable by the defendants. Mori v. Hasiguchi, 19 FSM R. 222, 225 (Chk. 2013).

A dismissal for lack of jurisdiction, for improper venue, or for failure to join a party is not an adjudication upon the merits. Waguk v. Waguk, 21 FSM R. 60, 73 (App. 2016).

In an admiralty case, when the suit is against a vessel or other property, the proper venue is the state within which the ship, goods, or other thing involved can be seized. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 131 (Pon. 2017).

The only way a vessel can be a defendant in a civil action is if the proceeding against it is *in rem*. In order for a court to exercise *in rem* jurisdiction, the vessel over which jurisdiction is to be exercised (or its substitute, *e.g.*, a posted bond) must be physically present in the jurisdiction and seized by court process and under the court's control, whereby it is held to abide such order as the court may make concerning it. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 132 (Pon. 2017).

For a court to exercise *in rem* jurisdiction, the thing (*res*) over which jurisdiction is to be exercised (or its substitute) must be physically present in the jurisdiction and under the court's control where it will be held to abide further order. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 132 (Pon. 2017).

The venue statutes do not impair a court's jurisdiction over any matter involving a party who does not make timely and sufficient objection to the venue. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 132 n.1 (Pon. 2017).

For *in rem* actions, venue is jurisdictional. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 132 n.1 (Pon. 2017).

Under 6 F.S.M.C. 301(1), a civil action should be brought in a court within whose jurisdiction the largest number of defendants live, or have their usual places of business, or employment. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 132 (Pon. 2017).

For venue purposes, the FSM national government, as a matter of law, is present in every state. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 132 & n.2 (Pon. 2017).

When a matter is brought in the wrong venue, the court in which it is brought may, on its own motion or

otherwise, transfer it to any court in which the matter might properly have been brought. Thus, a case against a vessel present in Yap but filed in the FSM Supreme Court trial division, Pohnpei venue will be transferred from the Pohnpei venue to the Yap venue. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 132-33 (Pon. 2017).

Under the venue statute, 6 F.S.M.C. 301(1), the FSM Department of Justice is a defendant that is "found" or "present" in Chuuk and in Pohnpei where it also maintains a physical office. Hartmann v. Department of Justice, 21 FSM R. 468, 473 (Chk. 2018).

6 F.S.M.C. 304(3) allows part or all of a case to be heard in a state other than the one in which it was brought if the interests of justice will be served thereby. Hartmann v. Department of Justice, 21 FSM R. 468, 473 (Chk. 2018).

The defendant FSM national government's financial savings and a speculative potential for a more expeditious disposal of the matter are not sufficient reasons showing that the interests of justice will be served by granting the plaintiff's motion to change the venue from Chuuk to Pohnpei. Hartmann v. Department of Justice, 21 FSM R. 468, 473 (Chk. 2018).

Courts that have subject matter jurisdiction over a case but not venue, have the inherent power to transfer the case to a court with both. Alik v. Heirs of Alik, 21 FSM R. 606, 623 (App. 2018).

A motion to dismiss because of a contract's forum selection clause is properly made under Rule 12(b)(3) – improper venue – and (usually) also Rule 12(b)(6) for failure to state a claim upon which relief can be granted, and the common law doctrine of forum non conveniens. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 195 (Pon. 2019).

A motion to dismiss because an agreement's forum selection clause names a different court to hear the dispute is a motion to dismiss for improper forum – improper venue. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 195 (Pon. 2019).

CIVIL RIGHTS

Discrimination as it is experienced in the United States is not the same as is experienced in Pohnpei. Therefore, the decisions of this court will consider decisions of the United States and other common law jurisdictions, but the court will only apply them as may be appropriate in the individual circumstances. Paulus v. Pohnpei, 3 FSM R. 208, 215 (Pon. S. Ct. Tr. 1987).

The Due Process Clause of the Pohnpei State Constitution, art. IV, § 4, guarantees the right of due process articulated in the governing law. Micronesian Legal Servs. Corp. v. Ludwig, 3 FSM R. 241, 244 (Pon. S. Ct. Tr. 1987).

Where a person has not been tried, convicted and sentenced, no question of cruel and unusual punishment arises. Paul v. Celestine, 4 FSM R. 205, 208 (App. 1990).

Constitutional provisions applicable to a prisoner may vary depending on his status. A pre-trial detainee has a stronger right to liberty, which right is protected by the Due Process Clause, FSM Const. art. IV, § 3. A convicted prisoner's claims upon liberty have been diminished through due process so that person must rely primarily on article IV, section 8 which protects him from cruel and unusual punishment. Plais v. Panuelo, 5 FSM R. 179, 190 (Pon. 1991).

In a case where a convicted prisoner, who is also a pre-trial detainee, asserts civil rights claims arising out of ill-treatment after arrest, denial of access to family is a due process claim, and physical abuse involves due process as well as cruel and unusual punishment claims. Plais v. Panuelo, 5 FSM R. 179, 190 (Pon. 1991).

Because the FSM statute is based upon the United States model, the FSM Supreme Court should look to United States court decisions under 42 U.S.C. § 1983 for assistance in determining the liability of a governmental body under 11 F.S.M.C. 701(3). Plais v. Panuelo, 5 FSM R. 179, 204 (Pon. 1991).

Where a plaintiff has alleged his due process rights were violated but it is proven otherwise, the plaintiff cannot recover under the civil rights statute. Nena v. Kosrae, 5 FSM R. 417, 425 (Kos. S. Ct. Tr. 1990).

A corporation is a person who may recover damages for violation of its civil rights when it is deprived of its property interests, such as contract rights, without due process of law. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 127-28 (Pon. 1993).

The FSM civil rights statute has no retroactive effect. There is no liability under the FSM civil rights statute for events that took place prior to the effective date of the statute. Alep v. United States, 6 FSM R. 214, 219 (Chk. 1993).

The FSM civil rights law is intended to provide an effective remedy to FSM citizens when their constitutional rights are violated. A fundamental role of government, be it state or national, is to safeguard those rights. Louis v. Kutta, 8 FSM R. 312, 317 (Chk. 1998).

In any civil rights action the court may award costs and reasonable attorney's fees to the prevailing party. Bank of Guam v. O'Sonis, 9 FSM R. 106, 113 (Chk. 1999).

Because of the similarity between the U.S. civil rights statute and 11 F.S.M.C. 701, FSM courts should consider the decisions of the United States in arriving at a decision, without being bound by them. Bank of Guam v. O'Sonis, 9 FSM R. 106, 113 (Chk. 1999).

Civil rights are guaranteed to all FSM citizens under the Declaration of Rights, which is Article IV of the FSM Constitution. Congress conferred a cause of action for violation of civil rights by enacting 11 F.S.M.C. 701 *et seq.*, pursuant to subsection (3). Davis v. Kutta, 9 FSM R. 565, 568 (Chk. 2000).

A deprivation of rights under the FSM Civil Rights statute requires a finding of willfulness. Damarlane v. Pohnpei Supreme Court Appellate Division, 9 FSM R. 601, 603 (Pon. 2000).

Because the FSM statute is based upon the United States model, the FSM Supreme Court should consider United States court decisions under 42 U.S.C. § 1983 and § 1988 for assistance in determining the intended meaning of, and governmental liability under 11 F.S.M.C. 701(3). Estate of Mori v. Chuuk, 10 FSM R. 6, 13 (Chk. 2001).

Because the FSM statute is based upon the United States model, the FSM Supreme Court should consider United States court decisions under 42 U.S.C. § 1983 and § 1988 for assistance in determining the intended meaning of, and governmental liability under 11 F.S.M.C. 701(3). Estate of Mori v. Chuuk, 10 FSM R. 123, 124 (Chk. 2001).

The FSM Supreme Court exercised pendent jurisdiction over a wrongful death claim, a state law cause of action when the plaintiffs' claim for civil rights violation under 11 F.S.M.C. 701(3) arose from the same nucleus of operative fact so as to create the reasonable expectation that the claims would be tried in the same proceeding. Estate of Mori v. Chuuk, 11 FSM R. 535, 537 (Chk. 2003).

In any case brought under 11 F.S.M.C. 701 *et seq.*, a plaintiff must prove each element of his case by the preponderance of the evidence. In the case of a stipulated judgment under a settlement agreement, an equally basic jurisprudential principle dictates that a stipulated judgment will be entered only if it is well grounded both in law and in fact. Estate of Mori v. Chuuk, 12 FSM R. 24, 26 (Chk. 2003).

The FSM Supreme Court may exercise pendent jurisdiction over a state law wrongful death action when it arises from the same nucleus of operative fact and is such that it would be expected to be tried in the same judicial proceeding as the plaintiff's national civil rights claims. Herman v. Municipality of Patta, 12 FSM R. 130, 136 (Chk. 2003).

A state law cannot extinguish rights granted by an FSM statute, 11 F.S.M.C. 701 (civil rights cause of action), pursuant to rights guaranteed in the FSM Constitution, which is the supreme law of the land. Herman v. Municipality of Patta, 12 FSM R. 130, 136 (Chk. 2003).

A false imprisonment claim is separate and distinct from a civil rights claim. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 154, 156 (Pon. 2005).

A plaintiff's tort claim will not be dismissed as duplicative of his civil rights claim without the benefit of trial because it would be premature to dismiss either claim since the plaintiff has yet to prove the necessary elements of one or both of his two distinct claims and because at this juncture the contention that the tort and civil rights claims are duplicative is without merit. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 154, 156 (Pon. 2005).

As required by the FSM Constitution, in rendering a decision, a court must consult and apply sources of the Federated States of Micronesia, but where appropriate, the FSM Supreme Court can and should consider decisions and reasoning of United States courts and other jurisdictions in arriving at its own decisions. Because there is very little FSM law governing the enforcement of national civil rights judgments against the states, the court will look to case law of the United States for guidance, as civil rights protections in the United States and FSM are similar. Chuuk v. Davis, 13 FSM R. 178, 185-86 (App. 2005).

By not raising it until five years after relevant events, Pohnpei waived the cholera epidemic as a defense to its failure to insure that the plaintiff was taken before a judicial officer within 24 hours of arrest. But it would not make a difference even if the defense of the cholera epidemic were considered, when Pohnpei presented no showing of a causal link between the cholera epidemic and Warren's being held in jail for 63½ hours. Since jail staff was not reduced as a result of the epidemic, nor did any other epidemic-related factor prevent Warren from being taken before a magistrate within 24 hours of arrest. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 492 (Pon. 2005).

The civil rights statute, 11 F.S.M.C. 701, is a part of the National Criminal Code and became effective July 12, 1981. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 494 (Pon. 2005).

FSM civil rights law is derivative of the body of federal civil rights law in the United States, particularly 42 U.S.C. § 1983 and cases interpreting that statute. Annes v. Primo, 14 FSM R. 196, 206 n.6 (Pon. 2006).

Civil Rule 8(a)'s purpose is to put the opposing party on notice of the nature of the claim against it. Its pleading requirements are interpreted liberally, and a claim that alleges facts sufficient to put the defendant on notice as to the nature and basis of the claim being made sufficiently complies with the rule. Thus, while a decision by policy-making officials causing the alleged violations is a necessary element of the claim, a count claiming due process violations satisfies the pleading requirement when a set of facts could be proven in regard to the vessel's stop and seizure and later detention that would support the due process claim. FSM v. Kana Maru No. 1, 14 FSM R. 368, 372 (Chk. 2006).

While a policy-making official's decision causing the alleged violations is a necessary element of a due process claim, that, at the litigation's start, the claimant might not know which policy-making official decided what does not mean that he has failed to state a claim. It may be that after discovery and trial, he might not be able to prove this element and so his claim will fail, but before the government has answered, all he needs to do is put the government on notice as to the claim's nature. Thus the court cannot say that no set of facts that could be proven would not support this claim and will therefore not dismiss it for failure to state

a claim. FSM v. Kana Maru No. 1, 14 FSM R. 368, 373 (Chk. 2006).

Since the FSM civil rights statute is based upon the United States model, the FSM Supreme Court should consider United States jurisprudence under 42 U.S.C. § 1983 and § 1988 for assistance in determining the intended meaning of, and governmental liability under 11 F.S.M.C. 701(3). Robert v. Simina, 14 FSM R. 438, 443 n.1 (Chk. 2006).

The Chuuk State Supreme Court is perfectly competent to adjudicate a civil rights claim against the state made under 11 F.S.M.C. 701(3) (violation of national constitutional rights) and also claims made under Chuuk's own constitutional provision barring deprivation of property. Narruhn v. Chuuk, 16 FSM R. 558, 564 (Chk. 2009).

When a complaint alleges that the plaintiff was denied equal protection of the laws, the suit will be deemed a private cause of action under 11 F.S.M.C. 701 for violation of civil rights guaranteed under the FSM Constitution even though the statute is not expressly cited in the complaint. Berman v. Pohnpei, 16 FSM R. 567, 577 (Pon. 2009).

Since the FSM civil rights statute is based on the U.S. model, the FSM Supreme Court should consider U.S. jurisprudence under 42 U.S.C. § 1983 and § 1988 for assistance in determining the intended meaning of, and governmental liability under 11 F.S.M.C. 701(3). Sandy v. Mori, 17 FSM R. 92, 96 n.3 (Chk. 2010).

Because the FSM statute is based upon the United States model, the FSM Supreme Court should consider United States court decisions under 42 U.S.C. § 1983 and § 1988 for guidance in determining the intended meaning of, and governmental liability under 11 F.S.M.C. 701(3). Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 148, 150 n.2 (Pon. 2010).

Chapter 7 of Title 11 of the FSM Code creates a statutory cause of action for individuals whose constitutional rights have been violated. It was enacted to safeguard the rights guaranteed to all FSM citizens under Article IV of the FSM Constitution. Ladore v. Panuel, 17 FSM R. 271, 275 (Pon. 2010).

It would be a gross disservice to the interests of justice not ever to have a hearing on the issue of damages for a successful civil rights claim and when the trial court was silent as to this particular issue, the trial court cannot have foreclosed the claimant's right to a hearing on the actual damages flowing from the civil rights violation, so that the matter will be remanded to the trial court for further determination as to actual damages. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 438 (App. 2011).

When no "common nucleus of facts" exists between the trespass claims and the civil rights claims, the trial court did not err in assigning liability for trespass only to McVey and Do It Best and liability for the civil rights violation only to the Pohnpei Board of Trustees; thus the trial court's conclusions of law apportioning costs were not in error. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 440-41 (App. 2011).

When the parties never briefed the issue of takings in the trial court, that issue is not properly before the appellate court. Stephen v. Chuuk, 17 FSM R. 453, 463 (App. 2011).

Because the FSM civil rights statute is based on the United States model, the FSM Supreme Court should consider United States court decisions under 42 U.S.C. § 1983 and § 1988 for guidance in determining 11 F.S.M.C. 701(3)'s intended meaning and governmental liability thereunder. Kaminanga v. Chuuk, 18 FSM R. 216, 219 n.1 (Chk. 2012).

Since the FSM civil rights statute was patterned after U.S. civil rights statutes, the FSM Supreme Court may consider U.S. jurisprudence under 42 U.S.C. § 1983 and § 1988 to help determine the intended meaning of 11 F.S.M.C. 701(3) and governmental liability thereunder. Poll v. Victor, 18 FSM R. 402, 404 (Pon. 2012).

The limitations period for many types of civil rights lawsuits against Chuuk is two years, but for back pay claims it is six years. Aunu v. Chuuk, 18 FSM R. 467, 469 (Chk. 2012).

In addition to being potentially criminally liable to and subject to punishment by the FSM for the violation of 11 F.S.M.C. 701(1), a defendant could potentially also be civilly liable to the alleged victims in a suit under 11 F.S.M.C. 701(3). Three major differences exist between the criminal case and any potential civil case – in a civil case 1) the alleged victim(s) would be the plaintiff(s); 2) the burden of proof would be lower (preponderance of the evidence as opposed to beyond a reasonable doubt); and 3) the element of willfulness would not be required to establish civil liability. FSM v. Tipingeni, 19 FSM R. 439, 446 (Chk. 2014).

The Chuuk State Supreme Court is perfectly competent to adjudicate a civil rights claim against the state made under 11 F.S.M.C. 701(3) (violation of national constitutional rights) and also claims made under Chuuk's own constitutional provision barring deprivation of property. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 648 (Chk. S. Ct. Tr. 2015).

Since the FSM statute, 11 F.S.M.C. 701(3), is based on the United States statute, the FSM Supreme Court should consider United States court decisions under 42 U.S.C. § 1983 for assistance in determining the intended meaning of, and governmental liability under 11 F.S.M.C. 701(3). Eot Municipality v. Elimo, 20 FSM R. 482, 491 (Chk. 2016).

Municipalities cannot make civil rights claims against the state of which they are a part. Eot Municipality v. Elimo, 20 FSM R. 482, 491 (Chk. 2016).

While it is true that a municipal government is a "person" against whom relief can be (and has been) sought under the civil rights statute, a municipal government is not a person that can seek relief under the civil rights statute. Eot Municipality v. Elimo, 20 FSM R. 482, 491 (Chk. 2016).

Since the FSM civil right statute is based on the United States statute, the FSM Supreme Court should consider United States court decisions under 42 U.S.C. § 1983 for assistance in determining the intended meaning of, and governmental liability under 11 F.S.M.C. 701(3). Onanu Municipality v. Elimo, 20 FSM R. 535, 542 (Chk. 2016).

Political subdivisions generally are held to lack constitutional rights against the creating state. Onanu Municipality v. Elimo, 20 FSM R. 535, 542 (Chk. 2016).

While it is true that a municipal government is a "person" against whom relief can be (and has been) sought under the civil rights statute, a municipal government is not a person that can seek relief under the civil rights statute. Onanu Municipality v. Elimo, 20 FSM R. 535, 543 (Chk. 2016).

The civil rights statute's purpose is to create a federal remedy for private parties, not government bodies. Onanu Municipality v. Elimo, 20 FSM R. 535, 543 (Chk. 2016).

Since the FSM civil rights statute was patterned after U.S. civil rights statutes, the FSM Supreme Court may consider U.S. jurisprudence under 42 U.S.C. § 1983 and § 1988 to help determine the intended meaning of 11 F.S.M.C. 701(3) and governmental liability thereunder. Jacob v. Johnny, 20 FSM R. 612, 617 n.3 (Pon. 2016).

A customer of a government-owned utility does have a due process right to proper notice before the utility is disconnected, and must therefore also have other due process rights. Kitti Mun. Gov't v. Pohnpei Utilities Corp., 21 FSM R. 408, 409 (Pon. 2017).

A municipality does not have any national constitutional rights or national civil rights that it may enforce against the state of which it is a part. Kitti Municipality therefore cannot raise an FSM civil rights or

constitutional claim against Pohnpei, the state of which it is a part, or against one of Pohnpei's state agencies. Kitti Mun. Gov't v. Pohnpei Utilities Corp., 21 FSM R. 408, 409 (Pon. 2017).

Since the court must dismiss the action whenever it appears by the parties' suggestion or otherwise that the court lacks jurisdiction of the subject matter, the court will dismiss a civil rights action by a municipality against the state without prejudice to any future action in the state court. Kitti Mun. Gov't v. Pohnpei Utilities Corp., 21 FSM R. 408, 409 (Pon. 2017).

The FSM Supreme Court has held it may exercise jurisdiction over appeals from state administrative agencies when those appeals have included due process violation and civil rights claims arising under the FSM Constitution. Phillip v. Pohnpei, 21 FSM R. 439, 442 (Pon. 2018).

The due process clause may only be invoked through state action. Santos v. Pohnpei, 21 FSM R. 495, 500 (Pon. 2018).

A state governmental agency, entity, or subdivision does not have any national constitutional rights or national civil rights that it may enforce against the state (or one of its agencies) of which it is a part or which created it. Thus it cannot raise an FSM civil rights or constitutional claim against the state of which it is a part, since it has no such rights against the state that created it. This includes the constitutional right not to be subjected to a bill of attainder. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 263 (Chk. 2019).

A prevailing party is one who has succeeded on any significant claim affording it some of the relief sought. At a minimum, to be considered a prevailing party within the meaning of the civil rights fee-shifting statute, the plaintiff must be able to point to a resolution of the dispute which changes the legal relationship between itself and the defendant. Beyond this absolute limitation, a technical victory may be so insignificant as to be insufficient to support prevailing party status. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 635 (Pon. 2020).

In any civil rights action, the court may award costs and reasonable attorney's fees to the prevailing party. A plaintiff in a civil rights action, who is awarded nominal damages, is a prevailing party, and as a prevailing party, that plaintiff is entitled to its fees and costs. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 635 (Pon. 2020).

When the plaintiff was not the prevailing party in the court action and was therefore not awarded nominal damages because it had prevailed in administrative review, the plaintiff is not entitled to civil rights damages even though the FSM withdrew its letters closing the plaintiff. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 635 (Pon. 2020).

The civil rights statute, 11 F.S.M.C. 701(3), does not authorize the award of attorney's fees for administrative proceedings, even for administrative proceedings that were a prerequisite to a later court action (the exhaustion of administrative remedies requirement) because the statute only authorizes an attorney's fee award for actions (court cases) brought under 11 F.S.M.C. 701(3). New Tokyo Medical College v. Kephas, 22 FSM R. 625, 635 (Pon. 2020).

– Acts Violating

Actions of a police officer in stripping a prisoner to punish and humiliate him, then beating him and damaging his pickup truck, constituted violation of the prisoner's constitutional rights to be free from cruel and unusual punishment and his due process rights. Tolenoa v. Alokoa, 2 FSM R. 247, 250 (Kos. 1986).

A person's constitutional right to due process of law, and his right to be free from cruel and unusual punishment is violated when an officer instead of protecting the person from attack, threw him to the ground, and beat the person in the jail. Meitou v. Uwera, 5 FSM R. 139, 144 (Chk. S. Ct. Tr. 1991).

The use of force by police officers is not privileged or justified when the arrestee was so drunk and unstable to resist or defend himself and when the police officer used force because he was enraged at being insulted by the arrestee. Meitou v. Uwera, 5 FSM R. 139, 144 (Chk. S. Ct. Tr. 1991).

Where a prisoner is physically abused by an official with final policy-making authority, these acts are governmental and a statement of state policy concerning the prisoner. Plais v. Panuelo, 5 FSM R. 179, 207 (Pon. 1991).

Refusing to permit the public defender or the prisoner's mother to see him are violations of civil rights guaranteed under 12 F.S.M.C. 218(1) and (2) and constitute official actions for which a state must be held responsible under 11 F.S.M.C. 701(3). Plais v. Panuelo, 5 FSM R. 179, 207 (Pon. 1991).

Confining a prisoner in dangerously unsanitary conditions, which represent a broader government-wide policy of deliberate indifference to the dignity and well-being of prisoners, is a failure to provide civilized treatment or punishment, in violation of prisoners' protection against cruel and unusual punishment, and renders the state liable under 11 F.S.M.C. 701(3). Plais v. Panuelo, 5 FSM R. 179, 208 (Pon. 1991).

The national government is liable for violations of 6 F.S.M.C. 702(2) when it has abdicated its responsibility toward national prisoners. Plais v. Panuelo, 5 FSM R. 179, 210-11 (Pon. 1991).

An official state practice of allowing untrained and unqualified police officers to use deadly force may be shown from the chief of police's testimony that convicted felons were hired although regulations prohibited it and that requalification on firearms had been waived for at least three years although regulations required requalification when it is within his power to allow variation from written regulation, and from the lack of any internal discipline as the result of improper use of deadly force. If, as a result of this policy a person suffers serious bodily injury, it is a violation of her right to due process of law. Davis v. Kutta, 7 FSM R. 536, 548 (Chk. 1996).

Liability for failure to inform a person of the charge for which he is being arrested will not be imposed when he knew was dealing with police who could arrest him, that he was likely to be arrested and why. Conrad v. Kolonia Town, 8 FSM R. 183, 193 (Pon. 1997).

Wilful and malicious deprivation of a person's due process rights to notice and an opportunity to be heard, are a violation of that person's civil rights. Bank of Guam v. O'Sonis, 8 FSM R. 301, 304 (Chk. 1998).

It is a crime, under 11 F.S.M.C. 701(1), to willfully, whether or not acting under color of law, deprive another of, or injure, oppress, threaten, or to intimidate another in his free exercise or enjoyment of any right, privilege, or immunity secured to him by the FSM's Constitution or laws. A person who deprives another of any right or privilege protected under 11 F.S.M.C. 701 is civilly liable to the party injured. The element of willfulness is not required for the civil liability. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 411 (App. 2000).

A detainee may be deprived of his civil rights in violation of 11 F.S.M.C. 701(3) by the arbitrary and purposeless denial of medical care. Estate of Mori v. Chuuk, 10 FSM R. 6, 13 (Chk. 2001).

Deliberate indifference to a detainee's medical needs is policy when there is no training which would prepare a shift supervisor or other officers to evaluate an illness's or injury's severity and the decision to refer to the hospital resides in the shift supervisor's unlimited discretion. Estate of Mori v. Chuuk, 10 FSM R. 6, 13 (Chk. 2001).

When the failure to refer a detainee for medical treatment is arbitrary and purposeless, it constitutes punishment of someone who has not been convicted of any crime. This punishment is a denial of the right to due process. Estate of Mori v. Chuuk, 10 FSM R. 6, 13 (Chk. 2001).

A detainee has a civil right to be free of excessive force while detained in the custody. Use of excessive force may constitute a battery. Atesom v. Kukkun, 10 FSM R. 19, 22 (Chk. 2001).

The state violates a detainee's civil rights to appropriate care while detained through its use of untrained and inexperienced trainees as jailers, failure to supervise those trainees, and failure to refer an injured detainee for medical care. Atesom v. Kukkun, 10 FSM R. 19, 22 (Chk. 2001).

A detainee's civil right to appropriate care while detained is violated by a jailer's false report of the extent of the detainee's injury which prevented a possible medical referral. Atesom v. Kukkun, 10 FSM R. 19, 22 (Chk. 2001).

A civil rights claim against a municipal government will be dismissed when it fails to allege that the officials were acting pursuant to governmental policy or custom when the allegedly unconstitutional actions occurred or when it fails to allege that the violations were caused by the officials who were responsible for final policy making, and when those officials made a deliberate choice to follow a course of action chosen from various alternatives. Talley v. Lelu Town Council, 10 FSM R. 226, 238 (Kos. S. Ct. Tr. 2001).

Violating a person's civil right to be free from excessive force while detained by the municipal police, is a violation of 11 F.S.M.C. 701(3). Herman v. Municipality of Patta, 12 FSM R. 130, 135 (Chk. 2003).

A detainee has a civil right to be free of excessive force while detained in the custody. The use of excessive force results from the arrest by a person having the authority to do so but accomplished by the use of unreasonable force. Herman v. Municipality of Patta, 12 FSM R. 130, 136 (Chk. 2003).

A person commits an offense if he willfully, whether or not acting under color of law, deprives another of, or injures, oppresses, threatens, or intimidates another in the free exercise or enjoyment of, or because of his having so exercised any right, privilege, or immunity secured to him by the FSM Constitution or laws. Section 701(3) provides for civil liability, including attorney's fees, against any person engaging in the proscribed conduct. "Person" includes state governments. Wortel v. Bickett, 12 FSM R. 223, 225 (Kos. 2003).

The unilateral cancellation of a foreign investment permit in derogation of the procedures provided for under Kos. S.C. § 15.308(10) is arbitrary and grossly incorrect, and as such constitutes a violation of the national civil rights statute. Wortel v. Bickett, 12 FSM R. 223, 226 (Kos. 2003).

The actions of corrections officers in refusing to permit the plaintiff to use the phone to call an attorney or to contact one at his request; in refusing to allow the plaintiff to telephone his family or to contact them at his request and in refusing to permit his wife to speak to him when she called the jail; and in failing to insure that the plaintiff was brought before a judicial officer within 24 hours of his arrest constituted violations of 12 F.S.M.C. 218. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 491 (Pon. 2005).

That the plaintiff was not informed at or before the time of his arrest why he was being arrested constituted a violation. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 491 (Pon. 2005).

Corrections officers' failure to permit the use of restroom facilities while he was in jail and to provide him with food and water while he was in their custody was an inhumane condition of confinement constituting cruel and unusual punishment. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 491 (Pon. 2005).

When it was the Pohnpei Department of Public Safety's stated policy not to deny an arrested person the right to see family members or counsel at reasonable times; not to unreasonably refuse to an arrested person the right to use the telephone to call family members or counsel; and to insure that within 24 hours of arrest the arrested person was either released or charged and taken before a qualified magistrate, but when the actual policy was that arrestees could not see family members; that arrestees could make phone calls to or meet with a lawyer, but could not receive phone calls from or make phone calls to family

members, except in emergency situations such as funerals, the restrictions on contact with family members violated both the department regulations and 12 F.S.M.C. 213(2) and (3). The corrections officers' actions in denying the plaintiff the opportunity to contact family members; in refusing him permission to call a lawyer (except on the last day of his confinement); in failing to permit him to use the restroom; and in failing to provide him with food were products of decisions and action of persons with the final policy-making power concerning prisoners in that time and place. This constituted the actual policy at relevant times irrespective of stated policy and the failure to undertake any investigation of the plaintiff's complaints resulted in the ratification by the chief policy-maker of the challenged actions. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 491-92 (Pon. 2005).

When no investigation of the plaintiff's complaints were ever undertaken, nor were any officers disciplined; when none of the officers who participated in the violation of an individual's civil rights were either disciplined or had criminal charges brought against them, and where all of the officers who participated were back on duty the next day, the police officers' conduct was ratified as official policy of the Pohnpei Department of Public Safety. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 494 (Pon. 2005).

To be civilly liable for civil rights damages the element of willfulness is not required. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 494 (Pon. 2005).

An illegal arrest is actionable under 11 F.S.M.C. 701(3). Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 496 (Pon. 2005).

Even if the 24-hour deadline to bring a defendant before a court or release him were interpreted to mean within a reasonable time, holding a person in jail for 63½ hours without an appearance before a judicial officer will subject the state and its department of public safety to civil liability. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 498 (Pon. 2005).

When the only food provided the plaintiff during the approximately 63½ hours in jail was three donuts and a jar of water given to him by a prisoner and he was permitted to use the restroom only once during that time, and was obliged to urinate through the window, and to defecate into the pages of a magazine which he then discarded through the window, these inhumane conditions of confinement constitute cruel and unusual punishment, in derogation of the Declaration of Rights of the FSM Constitution. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 499 (Pon. 2005).

Since an allegation of police brutality implicates both the national and state constitutions and a plaintiff asserting a right arising under national law has a right to be heard in the FSM Supreme Court even if state courts may also assert jurisdiction, the fact that the Pohnpei Supreme Court may be equally equipped to decide the case will not divest the plaintiff of his day in the FSM Supreme Court. Annes v. Primo, 14 FSM R. 196, 201 (Pon. 2006).

In the FSM, claims of police brutality or excessive force generally implicate due process, rather than equal protection. Annes v. Primo, 14 FSM R. 196, 202 (Pon. 2006).

The express language of 11 F.S.M.C. 701(3) prohibits persons from depriving others of their civil rights. It does not apply only to states. Annes v. Primo, 14 FSM R. 196, 203 (Pon. 2006).

When a plaintiff alleges that he was arrested without cause, not that the officer failed to inform him of the grounds for the arrest, the difference in the two allegations is more than semantic, because a plaintiff may claim that an arrest was without just cause even when the arresting officer recites the grounds for the arrest. Whether there was cause for the arrest presents a factual matter that cannot be resolved at the Rule 12(b)(6) motion stage of the proceedings. Annes v. Primo, 14 FSM R. 196, 203-04 (Pon. 2006).

A claim of failure to inform an arrestee of his rights and denying him legal counsel and access to the

courts is a statutory claim, not a constitutional one. An arrested person's rights are codified at 12 F.S.M.C. 218, which provides that, at the time of arrest, a police officer must inform the arrestee of her rights, including the right to counsel, prior to any questioning and that the officer must either release the arrestee or bring her before a judicial officer within twenty-four hours of the arrest. Annes v. Primo, 14 FSM R. 196, 204 (Pon. 2006).

A plaintiff's failure to specify the appropriate level of care and to prove that the level of care provided by the state was deficient does not warrant dismissal of his claim when the plaintiff has alleged injury by a state police officer and failure to train by the state because the plaintiff must be given the opportunity to put forth evidence in support of his claim and a motion to dismiss may be granted only if it appears to a certainty that no relief could be granted under any facts which could be proven in support of the complaint. Annes v. Primo, 14 FSM R. 196, 205 (Pon. 2006).

A battery or wrongful death, by itself, does not constitute a civil rights violation. Harper v. William, 14 FSM R. 279, 282 (Chk. 2006).

Although the plaintiffs contend that they were not drunk but merely had hangovers and that they could not be arrested for being hungover, the police, based on what they personally could see, hear, and smell, had probable cause to believe that the plaintiffs were under the influence of alcohol in public and had probable cause to arrest the plaintiffs. Whether the plaintiffs were actually intoxicated or just hungover is irrelevant since the police had probable cause to believe they were intoxicated. Thus, the plaintiffs' arrest and transportation to the state jail on Weno did not violate their civil rights. Walter v. Chuuk, 14 FSM R. 336, 339-40 (Chk. 2006).

Confining a person in dangerously unsanitary conditions, which represents a broader government-wide policy of deliberate indifference to the person's dignity and well-being, is a failure to provide civilized treatment, in violation of detainees' due process protections, and renders the state liable under 11 F.S.M.C. 701(3). Walter v. Chuuk, 14 FSM R. 336, 340 (Chk. 2006).

The state has a duty to protect the persons it has confined from themselves and each other and violating a person's civil right to be free from excessive force while detained in a jail, is a violation of 11 F.S.M.C. 701(3). The state can violate that duty by failing to intervene and stop the prisoners' attacks on the arrestees. Walter v. Chuuk, 14 FSM R. 336, 340 (Chk. 2006).

When the decedent's civil right to be free from excessive force while a prisoner in Weno municipal jail was violated, this violation and the defendants' failure to monitor the plaintiff prisoner was the proximate cause of his wrongful death. The defendants' failure to monitor may also show a deliberate indifference to the prisoner's medical needs, which is also a violation of the FSM Civil Rights statute. Lippwe v. Weno Municipality, 14 FSM R. 347, 352 (Chk. 2006).

A prisoner has a civil right to be free of excessive force while in custody. Lippwe v. Weno Municipality, 14 FSM R. 347, 352 (Chk. 2006).

When a complaint alleges that the plaintiff was denied equal protection of the laws, the suit will be deemed a private cause of action under 11 F.S.M.C. 701 for violation of civil rights guaranteed under the FSM Constitution even though the statute is not expressly cited in the complaint. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 78 (Pon. 2007).

Plaintiffs' due process civil rights were violated when police officers beat them without reason or justification. Further due process violations occurred when one of them was detained and arrested without being told the reason, and when he was held in police custody for six hours. Hauk v. Emilio, 15 FSM R. 476, 479 (Chk. 2008).

A person commits an offense if he willfully, whether or not acting under color of law, deprives another

of, or injures, oppresses, threatens, or intimidates another in the free exercise or enjoyment of any right, privilege, or immunity secured to him by the FSM Constitution or laws and a private cause of action is provided for any such violation. Due process is a right secured by the FSM Constitution. Hauk v. Emilio, 15 FSM R. 476, 479 (Chk. 2008).

When a person is unlawfully detained against his will, a civil wrong is committed for which he may seek redress. Such a claim is separate and distinct from a civil rights claim, but, at the same time, such a claim may serve as a basis for deprivation of liberty under the FSM civil rights statute. The relevant concern in this regard is that damages should not be awarded for both claims, since to do so would be to permit a double recovery. FSM v. Koshin 31, 16 FSM R. 350, 355 (Pon. 2009).

"Color of law" means the appearance or semblance without the substance of legal right. Misuse of power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state is action taken under "color of state law." FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 483 n.3 (Pon. 2009).

To establish the FSM's liability under 11 F.S.M.C. 701, a party must allege and prove that it: 1) had a protected right; 2) FSM officials or employees acted to deprive that party of the right; and 3) the FSM officials or employees acted pursuant to governmental policy or custom, or were responsible for final policy-making. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 483 (Pon. 2009).

When a civil rights counterclaim neither alleges that the actions were pursuant to governmental policy or custom, nor that the actions were taken by officials responsible for final policy-making, it fails to state a claim upon which relief may be granted and will be dismissed. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 484 (Pon. 2009).

Although an arrestee, who was not informed of her rights to access to counsel when she was handcuffed, was told her full rights at the police station, this does not excuse the police's failure to advise her of rights regarding to access to counsel on the scene when she was first placed in handcuffs. Since the arrestee was not harmed by the failure to advise her, when she was first placed in handcuffs, of rights regarding to access to counsel, the state is liable to her for nominal damages in the amount of one dollar. Berman v. Pohnpei, 16 FSM R. 567, 576 (Pon. 2009).

When a plaintiff has alleged violation of her due process rights, but it is proven otherwise, the plaintiff cannot recover under the civil rights statute. When, at trial, the plaintiff did not present evidence that she was treated differently than any other person in the same class and did not present evidence that she was denied notice and an opportunity to be heard, the state is not liable to her on the claims of denial of equal protection of the laws, violation of due process, and violation of her civil rights. Berman v. Pohnpei, 16 FSM R. 567, 577 (Pon. 2009).

Defendants did not violate the plaintiff's civil rights when neither defendant was a government agency or was claiming to act under color of law or injured, oppressed, threatened, or intimidated the plaintiff's exercise or enjoyment of its civil rights and when neither was responsible for giving the plaintiff notice and an opportunity to be heard; neither prevented the plaintiff from being given notice; and neither injured, oppressed, threatened, or intimidated the plaintiff to prevent it from having an opportunity to be heard. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 110 (Pon. 2010).

When a defendant is not a governmental entity, is not someone alleged to have acted under color of law, and is not a private person (not acting under color of law) who injures, oppresses, threatens, or intimidates another in exercising or enjoying or having exercised or enjoyed one's civil rights, the claim against that defendant is not a civil rights claim. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 110 (Pon. 2010).

There are at least three kinds of civil rights violations: 1) cases involving physical injury or deprivation of liberty; 2) cases involving deprivation of preexisting property; and 3) cases involving deprivation of

statutorily vested property rights, such as entitlements and government employment. Stephen v. Chuuk, 17 FSM R. 453, 462 (App. 2011).

When the possible fourth type of civil rights violations – whether a court judgment (state or national) constitutes a property right under the FSM Constitution – was never addressed on the merits by the trial court and was not considered by the court on appeal; when the Barrett appellate decision does not stand for the proposition that a judgment is a property right which affords judgment-creditors due process rights under the national Constitution; and when the trial court appealed from did not state that the plaintiff had a property right in the state court judgment, the question is not properly before the appellate court. Stephen v. Chuuk, 17 FSM R. 453, 463 (App. 2011).

As a general proposition, a governmental entity's breach of a contract, without more, does not constitute a civil rights or due process violation. Stephen v. Chuuk, 18 FSM R. 22, 25 (Chk. 2011).

The police, as state officers, have no constitutional duty to rescue persons because due process considerations are not implicated when the state fails to help someone already in danger. Ruben v. Chuuk, 18 FSM R. 425, 429 (Chk. 2012).

A police officer's threat of arrest does not constitute a violation of constitutional rights, and merely investigating a suspicious occurrence or merely patrolling the area where someone fled is not a violation of any clearly established constitutional right. Ruben v. Chuuk, 18 FSM R. 425, 429 (Chk. 2012).

The FSM civil rights statute, 11 F.S.M.C. 701(3), creates a private cause of action for damages against any person, including a state government, who deprives another of his civil rights guaranteed by the FSM Constitution. Chuuk therefore liable to a prisoner for depriving him of his civil right to be free from cruel and unusual punishment and to due process of law when it kept him in jail for 161 days after his sentence ended. Kon v. Chuuk, 19 FSM R. 463, 466 (Chk. 2014).

A former employee's allegation that his termination violated public policy under the FSM Constitution and the right to be free of religious discrimination does not state a cause of action. To the extent that any defendant could be held civilly liable for the violation of public policy, it would be under 11 F.S.M.C. 701(3), and the public policy as expressed in the civil rights statute. George v. Palsis, 19 FSM R. 558, 569 (Kos. 2014).

When a plaintiff does not cite any particular constitution or specific statute, but does generally assert that when she was terminated her due process rights were violated, the court may hear, consider, and rule on her claim that her termination as Director of Education was unlawful since she was not afforded due process. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 648 (Chk. S. Ct. Tr. 2015).

When the plaintiff's claims for false imprisonment, for destruction of standing in community, and for wrongful invasion of privacy – false light were all predicated on his mistaken supposition that he was entitled to retain another person's pigs until compensated and that therefore his arrest was unlawful, the defendants are entitled to summary judgment on these claims as well as summary judgment on his civil rights violations claims insofar as those claims are predicated on his arrest being unlawful. Palasko v. Pohnpei, 20 FSM R. 90, 96 (Pon. 2015).

A customer of a government-owned utility does have a due process right to proper notice before the utility is disconnected. Wainit v. Chuuk Public Utility Corp., 20 FSM R. 135, 137 (Chk. 2015).

A complaint alleging that a public utility tortiously breached its duty to him and violated his due process civil rights when its linemen disconnected his electrical power without notice, causing food spoilage and personal hardship and inconvenience, and that when its linemen, without warning, eventually reconnected his electrical power, it tortiously caused a sudden power surge resulting in damaged equipment, does not state a claim for an equal protection civil rights cause of action. Wainit v. Chuuk Public Utility Corp., 20 FSM R. 135, 137 (Chk. 2015).

The civil rights statute's purpose is to create a federal remedy for private parties, not government bodies. Eot Municipality v. Elimo, 20 FSM R. 482, 491 (Chk. 2016).

A municipality, as a matter of law, cannot maintain a civil rights claim against the state of which it is a political subdivision. Onanu Municipality v. Elimo, 20 FSM R. 535, 544 (Chk. 2016).

When the government has willingly deprived the plaintiffs of wages that they are entitled to without due process of law, it is civilly liable under 11 F.S.M.C. 701(3) for violating the plaintiffs' civil rights. Linter v. FSM, 20 FSM R. 553, 559 (Pon. 2016).

When a civil rights claim neither alleges that the actions were pursuant to governmental policy or custom, nor that the actions were taken by officials responsible for final policy-making, it fails to state a claim upon which relief may be granted and will be dismissed because the plaintiffs fail to state a claim that their civil right to due process was violated. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 11 (Pon. 2018).

A private person can be liable for a civil rights violation and a private cause of action is provided for that violation when that private person commits an offense by willfully, whether or not acting under color of law, depriving another of, or injuring, oppressing, threatening, or intimidating another in the free exercise or enjoyment of any right, privilege, or immunity secured to him by the FSM Constitution or laws. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 11 (Pon. 2018).

When there is no allegation that any defendant deprived either plaintiff of, or injured, oppressed, threatened, or intimidated either plaintiff in the free exercise or enjoyment of any right, privilege, or immunity secured to them by the FSM Constitution or laws, the plaintiffs fail to state a claim that their civil rights were violated. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 11 (Pon. 2018).

A court's long, unexplained delay or its failure to exercise its discretion within a reasonable time is an abuse of discretion that denies a right to procedural due process. Luhk v. Anthon, 22 FSM R. 69, 70 (Pon. 2018).

The right not to be defamed, libeled, or slandered is not a right guaranteed by the Constitution or by the civil rights statute. Apostol v. Maniquiz, 22 FSM R. 146, 149 (Chk. 2019).

"Color of law" is the appearance or semblance without the substance of legal right. Apostol v. Maniquiz, 22 FSM R. 146, 149 n.1 (Chk. 2019).

When the defendant is not a governmental entity, is not alleged to have acted under color of law, and is not a private person (not acting under color of law) who injured, oppressed, threatened, or intimidated the plaintiff exercising or enjoying or having exercised or enjoyed any civil right, the plaintiff's claim is not a civil rights claim. Apostol v. Maniquiz, 22 FSM R. 146, 149 (Chk. 2019).

When the plaintiff makes no allegations that would support an equal protection claim, the defendant may be granted summary judgment on that part of the plaintiff's civil rights claim. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 158 (Chk. 2019).

The court will deny summary judgment when it has previously held that if sewerage backflow rises above the level of mere negligence to the level of a public nuisance, it may constitute a taking of property without just compensation and the plaintiff claims that her possessory right to the land is a usufruct property right. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 158 (Chk. 2019).

A state governmental agency, entity, or subdivision does not have any national constitutional rights or national civil rights that it may enforce against the state (or one of its agencies) of which it is a part or which

created it. Thus it cannot raise an FSM civil rights or constitutional claim against the state of which it is a part, since it has no such rights against the state that created it. This includes the constitutional right not to be subjected to a bill of attainder. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 263 (Chk. 2019).

A breach of contract claim (or an alternative quantum meruit and quantum valebant claim) does not involve the deprivation of preexisting property or the deprivation of statutorily vested property rights, and most certainly does not involve physical injury or deprivation of liberty. Sonden v. Pohnpei, 22 FSM R. 465, 467 (Pon. 2020).

Pohnpei's nonpayment on a contract claim did not deprive the plaintiff of preexisting property or of statutorily vested property rights because his right to payment has not yet been determined and certainly was not protected and had not vested, and not only does the plaintiff not have a protected right, but he also does not allege that Pohnpei government officials had acted to deprive him of the right, and that these officials acted pursuant to governmental policy or custom, or were responsible for final policy making. Sonden v. Pohnpei, 22 FSM R. 465, 467 (Pon. 2020).

Previous court decisions have uniformly held that a governmental entity's breach of contract, without more, does not constitute a due process or a civil rights violation. Sonden v. Pohnpei, 22 FSM R. 465, 467 (Pon. 2020).

A litigant's judgments against Chuuk are not vested property rights, and Chuuk's failure to pay those judgments is not a due process or civil rights violation. Suzuki v. Chuuk, 22 FSM R. 491, 494 (Chk. 2020).

When the only basis the plaintiff asserts for subject-matter jurisdiction is that his state court judgments are property and the state's failure to pay is a taking of his property without due process, the plaintiff's suit does not involve subject matter over which the FSM Supreme Court has jurisdiction because the plaintiff's state court judgments are not property, and the state's failure to pay his judgments against it does not violate his due process or civil rights. Suzuki v. Chuuk, 22 FSM R. 491, 494 (Chk. 2020).

A government official's decision or a governmental agency's decision, that an aggrieved party considers to be "wrong" or "incorrect," on the law or the facts does not, by itself, thereby automatically become a civil rights claim or violation (or entitle that party to skip or avoid administrative proceedings). Macayon v. FSM, 22 FSM R. 544, 556 (Chk. 2020).

A wrong or incorrect decision by a government official or body is not automatically a civil rights violation entitling the aggrieved party to relief under 11 F.S.M.C. 701(3). Basu v. Amor, 22 FSM R. 557, 567 (Pon. 2020).

A government official's decision or a government agency's decision, that an aggrieved party considers to be "wrong" or "incorrect," on the law or the facts does not automatically entitle that party to skip or avoid administrative proceedings and head straight to court alleging a civil rights violation so that the court will apparently have jurisdiction and the administrative agency will not. Thus, an additional pleading of a civil rights cause of action will not automatically preclude a remand (and a stay) to exhaust administrative proceedings. Basu v. Amor, 22 FSM R. 557, 567-68 (Pon. 2020).

– Persons Liable

A municipality which employs untrained persons as police officers, then fails to train them and authorizes their use of excessive force and summary punishment, will be held responsible for their unlawful acts, including abuse of a prisoner arrested without being advised of the charges or given an opportunity for bail, whose handcuffs were repeatedly tightened during his 14 hour detention in such a way that he was injured and unable to work for one month. Moses v. Municipality of Polle, 2 FSM R. 270, 271 (Truk 1986).

A municipality which employs untrained persons as police officers, fails to train them and authorizes

their use of excessive force and summary punishment, will be held responsible for their actions in stripping a prisoner, handcuffing his leg to a table and his arms behind his back, then kicking and abusing him. Alaphen v. Municipality of Moen, 2 FSM R. 279, 280 (Truk 1986).

In providing for civil liability under 11 F.S.M.C. 701(3), Congress intended that the word person would include governmental bodies. Plais v. Panuelo, 5 FSM R. 179, 204-05 (Pon. 1991).

The doctrine of respondeat superior is not to be used to determine whether a governmental entity is liable under 11 F.S.M.C. 701(3) for civil rights violations inflicted by government employees. The government entity may be held liable under 11 F.S.M.C. 701(3) when violations are caused by officials who are responsible for final policy making with respect to the of action chosen from various alternatives. Plais v. Panuelo, 5 FSM R. 179, 205-06 (Pon. 1991).

When a state government is acting on behalf of the national government by virtue of the joint administration of law enforcement act, the state's officers and employees are agents of the national government and are acting "under color of authority" within the meaning of 6 F.S.M.C. 702(5). Plais v. Panuelo, 5 FSM R. 179, 209-10 (Pon. 1991).

The national government is liable for violations of 6 F.S.M.C. 702(2) when it has abdicated its responsibility toward national prisoners. Plais v. Panuelo, 5 FSM R. 179, 210-11 (Pon. 1991).

The national government is a person within the meaning of 6 F.S.M.C. 702(2) and will be held liable under that section when civil rights violations are in substantial part due to a governmental policy of deliberate indifference to the constitutional rights of national prisoners and failure to attempt to assure civilized treatment to prisoners. Plais v. Panuelo, 5 FSM R. 179, 211 (Pon. 1991).

The FSM Supreme Court is immune from an award of damages, pursuant to 11 F.S.M.C. 701(3), arising from the performance by the Chief Justice of his constitutionally granted rule-making powers. Berman v. FSM Supreme Court (II), 5 FSM R. 371, 374 (Pon. 1992).

Government entities are included in the definition of the word "person" as used in the statute governing civil liability of persons for the violation of another's civil rights. Davis v. Kutta, 7 FSM R. 536, 548 (Chk. 1996).

Persons liable for civil rights violations include government entities. Conrad v. Kolonia Town, 8 FSM R. 183, 195 (Pon. 1997).

Statute law confers a private cause of action for damages against any person who deprives another of his civil rights. The word "person" embraces governmental organizations, including state governments. Louis v. Kutta, 8 FSM R. 208, 211 (Chk. 1997).

A civil rights claim against a municipal government will be dismissed when it fails to allege that the officials were acting pursuant to governmental policy or custom when the allegedly unconstitutional actions occurred or when it fails to allege that the violations were caused by the officials who were responsible for final policy making, and when those officials made a deliberate choice to follow a course of action chosen from various alternatives. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 296 (Pon. 1998).

Chapter 7 of Title 11 of the FSM Code creates a statutory cause of action for individuals whose constitutional rights have been violated, and imposes civil liability, including costs and attorney fees, on a person who deprives another of any right or privilege protected under that Section. The national government is a "person" to whom such civil liability may attach under this statute. Isaac v. Weilbacher, 8 FSM R. 326, 335 (Pon. 1998).

When none of the defendants is a governmental entity, or someone alleged to have acted under color of law, or a private person, not acting under color of law, but who injures, oppresses, threatens, or

intimidates another in exercising or enjoying or having exercised or enjoyed one's civil rights, it is not a civil rights case. Pau v. Kansou, 8 FSM R. 524, 526 (Chk. 1998).

Judicial immunity does not apply against the imposition of prospective injunctive relief. The right to attorney's fees applies when prospective relief is granted against a judge pursuant to the civil rights statute. Bank of Guam v. O'Sonis, 9 FSM R. 106, 113 (Chk. 1999).

A Public Safety Director, as the policy maker for the department, may, by failing to investigate the issue of accountability for a detainee's death, ratify the shift supervisor's and the jailer's actions. Estate of Mori v. Chuuk, 10 FSM R. 6, 14 (Chk. 2001).

A jailer is not liable for the arbitrary and purposeless failure to refer a detainee for medical treatment when he referred the matter to the shift supervisor who had the authority to authorize the referral because he could not have done anything more. Estate of Mori v. Chuuk, 10 FSM R. 6, 14 (Chk. 2001).

Persons liable for civil rights violations include government entities. Talley v. Lelu Town Council, 10 FSM R. 226, 236 (Kos. S. Ct. Tr. 2001).

A government entity may be held liable under 11 F.S.M.C. 701(3) when violations are caused by officials who are responsible for final policy making with respect to the action chosen from various alternatives. Herman v. Municipality of Patta, 12 FSM R. 130, 136 (Chk. 2003).

A person commits an offense if he willfully, whether or not acting under color of law, deprives another of, or injures, oppresses, threatens, or intimidates another in the free exercise or enjoyment of, or because of his having so exercised any right, privilege, or immunity secured to him by the FSM Constitution or laws. Section 701(3) provides for civil liability, including attorney's fees, against any person engaging in the proscribed conduct. "Person" includes state governments. Wortel v. Bickett, 12 FSM R. 223, 225 (Kos. 2003).

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

The Kosrae Office of the Attorney General enforces state penal laws, delegating enforcement to a department in its discretion. Thus the Kosrae attorney general is an individual with responsibility for determining final policy with regard to the matters committed to that office, and as such is liable on a personal basis if he violates a person's constitutional rights through making a deliberate choice to follow a course of action from among various alternatives. Wortel v. Bickett, 12 FSM R. 223, 226-27 (Kos. 2003).

Governmental entities, such as the State of Pohnpei and the Pohnpei Department of Public Safety, are "persons" within the meaning of 11 F.S.M.C. 701 *et seq*. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 491 (Pon. 2005).

A person who deprives another of any right or privilege protected by the FSM Constitution or laws will be civilly liable to the party injured in an action at law. The statute confers a private cause of action and it is plain that governmental entities such as the State of Pohnpei and the Pohnpei Department of Public Safety are "persons" within the statute's meaning. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 493 (Pon. 2005).

The state and its department of public safety are subject to civil liability for denying an arrestee the opportunity to contact either family members or an attorney. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 498 (Pon. 2005).

A state may be held liable if, through subsequent conduct, it ratifies the tort of an individual defendant. Annes v. Primo, 14 FSM R. 196, 204 n.4 (Pon. 2006).

A state may be held liable for alleged civil rights violations when policymakers are involved in the challenged action and have made a deliberate choice to follow a particular course of action. This type of liability is not vicarious; it is direct, but when a plaintiff has not alleged that an individual with policymaking authority was involved in his injury, there is no basis upon which to impose liability on the state for a police officer's alleged civil rights violations. Annes v. Primo, 14 FSM R. 196, 205 (Pon. 2006).

Although a state may not be held vicariously liable for the due process violations of its agents, it may be held liable in both tort and civil rights for failure to train. Annes v. Primo, 14 FSM R. 196, 205 (Pon. 2006).

Although a private person, not acting under color of law, may, under 11 F.S.M.C. 701, be held liable for civil rights violations if he injures, oppresses, threatens, or intimidates another in exercising or enjoying or having exercised or enjoyed one's civil rights, when the plaintiffs' complaint alleges no such actions and does not allege that the defendants were acting under color of law or were acting as agents of a government when committing the battery, the complaint does not allege a civil rights claim. Harper v. William, 14 FSM R. 279, 282 (Chk. 2006).

A government entity may be held liable under 11 F.S.M.C. 701(3) when violations are caused by officials who are responsible for final policy making with respect to the action chosen from various alternatives. Lippwe v. Weno Municipality, 14 FSM R. 347, 352 (Chk. 2006).

The Weno Chief of Police was the policy maker for the Weno municipal police and by his failing to investigate the issue of accountability for prisoner's death in jail, he ratified the jailer's actions or inactions. Lippwe v. Weno Municipality, 14 FSM R. 347, 352 (Chk. 2006).

A person who deprives another of any right or privilege protected under 11 F.S.M.C. 701 shall be civilly liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, without regard to whether a criminal case has been brought or conviction obtained. In an action brought 11 F.S.M.C. 701, the court may award costs and reasonable attorney's fees to the prevailing party. Wainit v. FSM, 15 FSM R. 43, 46 n.1 (App. 2007).

A person who, whether under the color of law or not, violates another's equal protection rights as guaranteed by sections 3 or 4 of Article 4 of the FSM Constitution would be civilly liable to the injured party. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 80 (Pon. 2007).

Since the College of Micronesia was created by national statute which gave it its nature and functions, and is a national government agency, and since the national government is a person for the purposes of the civil rights statute, the College is a person under the civil rights statute and would be civilly liable to a plaintiff if it violated that plaintiff's equal protection rights guaranteed by the FSM Constitution. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 80 (Pon. 2007).

A governmental entity is liable for battery by its police officers when the entity ratified the battery by failing to charge the officers and by the lack of any internal discipline whatsoever and a governmental entity that employs untrained police officers and permits their use of excessive force will be held responsible for the officers' unlawful acts for violation of the plaintiffs' civil rights. Hauk v. Emilio, 15 FSM R. 476, 479 (Chk. 2008).

Where the plaintiffs were set upon and beaten by police officers and one plaintiff was arrested and no reason was provided to that plaintiff when the officers detained and arrested him, nor was any reason subsequently given although 12 F.S.M.C. 214(1) provides that any person making an arrest must, at or before the time of arrest, make every reasonable effort to advise the person arrested as to the cause and authority of the arrest, the plaintiff's detention for six hours was without any justification, precisely the sort of

conduct that 11 F.S.M.C. 701 was meant to protect against. The assaulting police officers were acting under color of law and as agents of the defendant Chuuk Department of Public Safety, which is an agency of the defendant Chuuk state government. Thus these defendants are liable for the violation of the plaintiffs' civil rights under 11 F.S.M.C. 701. Hauk v. Emilio, 15 FSM R. 476, 479 (Chk. 2008).

Since the FSM drew from United States counterparts both the civil rights statute the plaintiffs are suing under and the Rules of Civil Procedure, including Rule 25(d), it is appropriate to consult U.S. sources in determining whether the plaintiffs may sue someone in his former official capacity or whether Rule 25(d)(1) automatically substituted the current office-holder in his stead. Herman v. Bisalen, 16 FSM R. 293, 295 (Chk. 2009).

A suit against an offender in his or her official capacity is treated as a claim against the entity that employs that officer, but a public official that leaves office may still be liable for money damages in his or her personal capacity. Thus, an official capacity claim against a former official is meaningless unless it continues as a claim against that person's successor in office in the successor's official capacity. The office continues and is responsible for, and is presumed to have knowledge of, its earlier acts. Herman v. Bisalen, 16 FSM R. 293, 296 (Chk. 2009).

In a civil rights action under 11 F.S.M.C. 701, a private person who is not acting under color of law but who deprives another of, or injures, oppresses, threatens, or intimidates another in the free exercise or enjoyment of, or because of his having so exercised any right, privilege, or immunity secured to him by the Constitution or laws of the Federated States of Micronesia, may be held civilly liable under 11 F.S.M.C. 701(3) for that violation. George v. Palsis, 19 FSM R. 558, 569 (Kos. 2014).

While it is true that a municipal government is a "person" against whom relief can be (and has been) sought under the civil rights statute, a municipal government is not a person that can seek relief under the civil rights statute. Eot Municipality v. Elimo, 20 FSM R. 482, 491 (Chk. 2016).

While it is true that a municipal government is a "person" against whom relief can be (and has been) sought under the civil rights statute, a municipal government is not a person that can seek relief under the civil rights statute. Onanu Municipality v. Elimo, 20 FSM R. 535, 543 (Chk. 2016).

A municipality, as a matter of law, cannot maintain a civil rights claim against the state of which it is a political subdivision. Onanu Municipality v. Elimo, 20 FSM R. 535, 544 (Chk. 2016).

An autonomous agency cannot be declared to be subject to the due process provisions of the FSM and state constitutions, and must be declared a private entity, and not a "state actor" for due process purposes. Santos v. Pohnpei, 21 FSM R. 495, 500 (Pon. 2018).

When the court finds that an entity operated independent of the state government, it is not a state actor for due process purposes, and the plaintiff will not prevail on a claim against it for violation of civil rights pursuant to 11 F.S.M.C. 701(3). Santos v. Pohnpei, 21 FSM R. 495, 501 (Pon. 2018).

– Remedies and Damages

An injured victim is entitled to recover for mental anguish, including humiliation, resulting from unlawful conduct in violation of the victim's civil rights. Meitou v. Uwera, 5 FSM R. 139, 146 (Chk. S. Ct. Tr. 1991).

The government does not pay twice when it violates someone's civil rights and then is forced to pay attorney's fees. It pays only once – as a violator of civil rights. Its role as a provider of public services is distinct from its role as a defendant in a civil case. Thus an award of costs and reasonable attorney's fees should be made to a publicly funded legal services organization whose client prevailed in a civil rights action. Plais v. Panuelo, 5 FSM R. 319, 321 (Pon. 1992).

Compensatory damages awarded a party for the violation of civil rights includes reasonable attorney

fees and costs of suit. Davis v. Kutta, 7 FSM R. 536, 549 (Chk. 1996).

State autonomy should be as wide-ranging as possible, but it is subject to the limits of the FSM Constitution. A state may not exceed the scope of its power by reliance on a state constitutional provision where to do so prevents enforcement of national civil rights legislation. Louis v. Kutta, 8 FSM R. 208, 212-13 (Chk. 1997).

The supremacy clause of the FSM Constitution does not admit a result where a state constitutional provision prevents the enforcement of a national statute which gives a private cause of action for rights guaranteed by the FSM Constitution, especially when it is the solemn obligation of state governments to uphold the principles of the FSM Constitution and to advance the principles of unity upon which the Constitution is founded. Louis v. Kutta, 8 FSM R. 208, 213 (Chk. 1997).

A state may not use its own constitution to defeat enforcement of a judgment entered on a civil rights claim brought pursuant to the mandate of the national constitution and statutes. Thus, a state constitutional provision will not prevent a civil rights plaintiff from using national execution procedures to obtain satisfaction of his judgment. Louis v. Kutta, 8 FSM R. 208, 213 (Chk. 1997).

A successful plaintiff under the civil rights statute, 11 F.S.M.C. 701(3), is entitled to an award for costs and reasonable attorney's fees. Davis v. Kutta, 8 FSM R. 218, 220 (Chk. 1997).

An hourly fee is not an arbitrary ceiling with respect to attorney's fees recoverable under an 11 F.S.M.C. 701(3) civil rights action. Davis v. Kutta, 8 FSM R. 218, 222 (Chk. 1997).

When a party has entered into a contingent fee agreement reasonable under FSM MRPC Rule 1.5 and the contingent recovery is more than a fee calculated by an hourly rate times the hours expended, a court, in awarding civil rights attorney's fees, may award a reasonable fee pursuant to the agreement's terms. Davis v. Kutta, 8 FSM R. 218, 223 (Chk. 1997).

The purpose of the FSM civil rights fee provision is to permit an FSM civil rights litigant to employ reasonably competent counsel to pursue civil rights litigation without cost to him or herself. Davis v. Kutta, 8 FSM R. 218, 223 (Chk. 1997).

Because the point of departure for determining a reasonable fee in civil rights litigation is to look at the amount of time spent, counsel should maintain careful records of time actually spent, notwithstanding the existence of a contingency fee agreement. Davis v. Kutta, 8 FSM R. 218, 224 (Chk. 1997).

Civil rights attorney fee awards and awards of costs may be entered against multiple defendants in the same proportions as those in the original judgment. Davis v. Kutta, 8 FSM R. 218, 224 (Chk. 1997).

When a state government, acting by its agents, steps out of its role of protector of a citizen's constitutional rights, and violates the very rights it is meant to guard, a money judgment is the only practical means by which the state can compensate its citizens for the damage it inflicts. Louis v. Kutta, 8 FSM R. 312, 317 (Chk. 1998).

Under 11 F.S.M.C. 701, a private cause of action is provided to any person whose constitutional rights are violated. In order for the remedy provided by 11 F.S.M.C. 701(3) to be effective, it must be enforceable. Where the defendant in a civil rights action is a state, this means that the remedy should not be dependent upon subsequent state legislative action, such as appropriation of funds, which would thwart the Congressional mandate that 11 F.S.M.C. 701 is meant to implement. Accordingly, the FSM Supreme Court is not precluded from issuing an order in aid of judgment against a state in the absence of a state legislative appropriation. Davis v. Kutta, 8 FSM R. 338, 341 (Chk. 1998).

Interest on a judgment is payable under 6 F.S.M.C. 1401 at nine percent a year. 11 F.S.M.C. 701(3), which provides for an award of attorney's fees in a civil rights action, should be construed to permit interest

on an unpaid fee award. Davis v. Kutta, 8 FSM R. 338, 341 n.2 (Chk. 1998).

Although Chuuk state law does not appear to recognize survival causes of action, the right to damages for civil rights violations under national law survives a victim's death. If it did not, the purpose of the civil rights cause of action would be thwarted. Estate of Mori v. Chuuk, 10 FSM R. 6, 13 (Chk. 2001).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages, and liability for attorney's fees will be assessed among the defendants in proportion to their responsibility for the judgment. Atesom v. Kukkun, 10 FSM R. 19, 23 (Chk. 2001).

The purpose of tort law is to afford a victim compensation for injuries sustained as the result of the unreasonable or socially harmful conduct of another. This is true whether the tort is statutorily created, as are the civil rights claims under 11 F.S.M.C. 701(3), or is a creature of the common law, as is a battery cause of action. Atesom v. Kukkun, 10 FSM R. 19, 23 (Chk. 2001).

Although a civil rights violation claim and a battery claim are separate causes of action, when they arise from the same incident and they cause the same personal injury and when the damage award for the civil rights violation fully compensates the plaintiff for his personal injury, the court cannot award additional damages for the battery because such an award would constitute double recovery and would be a windfall and overcompensate the plaintiff. Atesom v. Kukkun, 10 FSM R. 19, 23 (Chk. 2001).

A court has the power to issue an order to a state official to perform a purely ministerial act – the issuance of a check – in order to cause the state to conform its conduct to the requirements of both the FSM Constitution and the national statute at issue, 11 F.S.M.C. 701. Davis v. Kutta, 10 FSM R. 98, 99 (Chk. 2001).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages. Estate of Mori v. Chuuk, 10 FSM R. 123, 124 (Chk. 2001).

So long as a party has prevailed in a civil rights suit as a whole, that party is entitled to fees for all time reasonably spent on the matter, including the time spent on pendent state law claims that would not otherwise be statutorily entitled to a fee award, when the pendent claims arise out of a common nucleus of operative fact. Estate of Mori v. Chuuk, 10 FSM R. 123, 124 (Chk. 2001).

Plaintiffs may recover all of their attorney's fees although the bulk of the damages was awarded on the state law claim and even though the entitlement to those fees arises from the civil rights statute because for attorney fee purposes in such an instance, it is sufficient that the non-fee claims (i.e., the state law claims) and the fee claims (i.e., the civil rights claims) arise out of a common nucleus of operative fact. Estate of Mori v. Chuuk, 11 FSM R. 535, 537-38 (Chk. 2003).

When both the civil rights claim and the wrongful death claim arose from a common nucleus of operative fact, for purposes of enforcing the judgment, and to be consistent with the principle that plaintiffs are entitled to all of their attorney's fees under 11 F.S.M.C. 701 even though they prevailed on a state law claim as well as a civil rights claim, the court will treat the judgment as though it is in its entirety based on a civil rights claim. Estate of Mori v. Chuuk, 11 FSM R. 535, 538 (Chk. 2003).

When the only reasonably effective means by which to obtain payment of a civil rights judgment against the state is through an order of garnishment directed to the national government, the anti-garnishment statute is unconstitutional to the extent that it precludes a garnishment order to pay a judgment that is based in material part on civil rights claims under 11 F.S.M.C. 701. Estate of Mori v. Chuuk, 11 FSM R. 535, 541 (Chk. 2003).

A civil rights judgment must not depend on legislative action for satisfaction. Estate of Mori v. Chuuk,

11 FSM R. 535, 541 (Chk. 2003).

A court finding that 6 F.S.M.C. 707 is unconstitutional to the extent that it prevents satisfaction of a judgment based on a violation of constitutional rights is limited to the facts before the court and applies only to a judgment against the state that is based on civil rights claims under the national civil rights statute, which confers a cause of action for violation of rights guaranteed by the FSM Constitution. Estate of Mori v. Chuuk, 11 FSM R. 535, 541 (Chk. 2003).

In the usual case payment of a money judgment against the state must abide a legislative appropriation, but a judgment for the violation of rights guaranteed by the FSM Constitution is a species apart. If there is no meaningful remedy for such a violation, which means a judgment subject to satisfaction in a reasonably expeditious manner, then that right afforded constitutional protection is an illusion, and, if that right is reduced to an illusion, then our Constitution itself is reduced to a solemn mockery. Estate of Mori v. Chuuk, 11 FSM R. 535, 541 (Chk. 2003).

A garnishment order against the national government will issue to pay a civil rights judgment against Chuuk when the sum is less by at least an order of magnitude than the sums that Chuuk receives on a drawdown basis from the FSM when Chuuk accordingly has the ability to pay the judgment and when, based on the case's history, a garnishment order is the only means by which payment can reasonably be made. Estate of Mori v. Chuuk, 11 FSM R. 535, 542 (Chk. 2003).

Even if the Chuuk Financial Control Commission were at some future time to assume its responsibility to develop legislation for appropriation to address court judgments when it has thus far declined to do so, payment of the judgment would still have to await legislative appropriation, a state of affairs that the principle of supremacy of the FSM Constitution does not countenance where a judgment based on a civil rights violation is concerned. Davis v. Kutta, 11 FSM R. 545, 549 (Chk. 2003).

The remedy for violation of a constitutional right, to be meaningful, must be one that can be realized upon in a reasonably expeditious manner. When more than six and a half years have elapsed since the judgment was entered, 6 F.S.M.C. 707, which prohibits the garnishment of funds owed by the FSM to a state, is unconstitutional as it applies to the case's judgment for a violation of civil rights guaranteed by the FSM Constitution. In practical terms, that statute takes from the plaintiff the only means of securing a reasonably expeditious satisfaction of the judgment. Davis v. Kutta, 11 FSM R. 545, 549 (Chk. 2003).

Although a state constitutional and a statutory provisions barring payment without a legislative appropriation are neither facially objectionable, what is not constitutionally permissible is to use the requirement defensively to avoid payment of a judgment based on a civil rights claim brought under the national civil rights statute. Principles of supremacy under Article II of the FSM Constitution preclude this result. Estate of Mori v. Chuuk, 12 FSM R. 3, 11 n.5 (Chk. 2003).

A state trial court order that does not address the question of national court judgments based on the violation of civil rights guaranteed under the FSM Constitution cannot provide guidance with respect to enforcement of the FSM Supreme Court civil rights judgments. Estate of Mori v. Chuuk, 12 FSM R. 3, 12 (Chk. 2003).

Civil rights causes of action survive the victim's death because if it did not then the national civil rights statute's purpose would be thwarted. Herman v. Municipality of Patta, 12 FSM R. 130, 135 (Chk. 2003).

Civil rights damages may include damages for the victim's pain and suffering before his death. Calculating damages for pain and suffering is difficult because no fixed rules exist to aid in that determination, which lies in the court's sole discretion. Herman v. Municipality of Patta, 12 FSM R. 130, 137 (Chk. 2003).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees

and costs of suit as compensatory damages. The usual method is to award fees based on the hourly rate. Thus the initial estimate of a reasonable attorney's fee is properly calculated by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate. Herman v. Municipality of Patta, 12 FSM R. 130, 137 (Chk. 2003).

While a continency fee is not an arbitrary ceiling with respect to attorney's fees recoverable under an 11 F.S.M.C. 701(3) civil rights action, neither is it a floor. A contingency fee may be used as a basis for an attorney fee award when there are no contemporaneous records of the time the attorney had spent on the case, but since the point of departure for determining a reasonable fee under 11 F.S.M.C. 701(3) is to look at the amount of time spent, counsel in civil rights litigation should maintain careful records of time actually spent, notwithstanding the existence of any contingency fee agreement. Herman v. Municipality of Patta, 12 FSM R. 130, 137 (Chk. 2003).

When plaintiffs are awarded reasonable fees and costs as compensatory damages under 11 F.S.M.C. 701(3), the liability for this will be assessed upon the defendants in proportion to their total liability on the rest of the judgment. Herman v. Municipality of Patta, 12 FSM R. 130, 137-38 (Chk. 2003).

The court has granted writs of garnishment against funds held by the national government for the benefit of the State of Chuuk only in one instance, and that is where a judgment was entered against the state for violations of 11 F.S.M.C. 701 *et seq.*, the national civil rights statute. Barrett v. Chuuk, 12 FSM R. 558, 560 (Chk. 2004).

The FSM Congress has specifically acted to confer a cause of action for violation of civil rights, 11 F.S.M.C. 701 *et seq.*, and it is for judgments based on such claims that the court has issued writs of garnishment against the state. Barrett v. Chuuk, 12 FSM R. 558, 561 (Chk. 2004).

When issuing a writ of garnishment becomes necessary to satisfy a civil rights judgment, the judiciary is clearly empowered to do so. The fact that the garnished is a state within this federation (and the garnishee is the national government) does not change the analysis because the FSM Constitution guarantees this nation's citizens certain protections, and Congress has passed laws allowing its citizens to sue for damages where those rights have been violated. It is not for one state to roll back those rights and privileges afforded by the national government, and the court would be derelict in our duty to allow it to do so. The trial court's action case was thus appropriate and within the bounds of its authority. Chuuk v. Davis, 13 FSM R. 178, 186 (App. 2005).

The remedy for a victim of an illegal search is not the self-help of resistance. Resistance to such authority to search and seize by self-help is not recognized in courts of law. Whoever suffers the imposition of an unlawful police search has the assurance that any evidence so acquired is rendered inadmissible in a subsequent criminal trial by the exclusionary rule. And in any event damage remedies are available in the courts for violations of constitutional rights stemming from either an unlawful search or arrest. These remedies are present in the FSM. FSM v. Wainit, 13 FSM R. 433, 446 (Chk. 2005).

When the acts that comprise the false imprisonment tort are also the acts that constitute the civil rights violations, the court will not make a separate award of damages for this tort, since to do so would result in a double recovery. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 493 (Pon. 2005).

When the plaintiff was unlawfully denied the right to make contact with anyone outside the jail, but his right to communicate with family members was further compromised when his wife was not permitted to speak with him on the telephone, the court will award $500; when he was confined in unconstitutional conditions of confinement, the court will award $10 an hour, or $635 for 63½ hours; for the residual effects of his detention that he experienced during the two weeks after he was released, including stomach problems and lingering numbness in his hands resulting from being handcuffed, the court will award $150; for being held in excess of 24 hours, an unambiguous right, the court will award $3,000 for the more than two and a half days in jail (a separate award for not being brought before a judge within the statutorily-required time); an additional $500 resulting from the unlawful arrest and $200 awarded for an

unlawful search. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 499-500 (Pon. 2005).

A contingency fee agreement in a civil rights case acts as neither a floor nor a ceiling on attorney's fees awarded under the statute. Such a rule serves the purpose of helping to insure that an attorney will not be undercompensated where important civil rights have been vindicated, and increases the likelihood that a plaintiff who has a meritorious claim will have access to the courts. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 524, 526 (Pon. 2005).

An hourly rate of $120 is a reasonable hourly rate for trial time in civil rights action, and a rate of $100 per hour is a reasonable hourly rate for the out-of-courtroom time in a civil rights case. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 524, 526 (Pon. 2005).

When, in a civil rights case had all of the plaintiff's witnesses been deposed in advance of trial, the trial time would have been shortened, since the questioning of the plaintiff's undeposed witnesses was conducted in the manner of a discovery deposition, the court will estimate the reduction in trial time at 20 percent, and will treat 20 percent of the court time as research time that could have been spent deposing witnesses and award the research rate of $100 an hour for that time instead of the $120 an hour rate for trial time. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 524, 526-27 (Pon. 2005).

Even assuming the pro se plaintiff had successfully prosecuted his discrimination claim and sought attorney's fees under the civil rights statute, the attorney's fees claim would still have been denied. A prevailing pro se litigant is not entitled to an award of attorney's fees even if he is an attorney or legal practitioner. Hauk v. Lokopwe, 14 FSM R. 61, 66 (Chk. 2006).

Damages under the civil rights act generally include only compensatory damages. Annes v. Primo, 14 FSM R. 196, 206 (Pon. 2006).

The prevailing party in civil rights actions under 11 F.S.M.C. 701(3) is entitled to reasonable attorney fees and costs of suit as part of compensatory damages. The court must first determine the reasonableness of any claim for attorney's fees and costs. The usual method of determining reasonable attorney's fees awards is based on an hourly rate. Thus the initial estimate of a reasonable attorney's fee is properly calculated by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. Walter v. Chuuk, 14 FSM R. 336, 340-41 (Chk. 2006).

Any award of attorney's fees must be based upon a showing and a judicial finding, that the amount of fees is reasonable. The plaintiffs must therefore submit detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which a claim for compensation is made. Walter v. Chuuk, 14 FSM R. 336, 341 (Chk. 2006).

A civil rights cause of action survives the victim's death because, if it did not, the national civil rights statute's purpose would be thwarted. Lippwe v. Weno Municipality, 14 FSM R. 347, 352 (Chk. 2006).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages. So long as a party has prevailed in a civil rights suit as a whole, that party is entitled to fees for all time reasonably spent on the matter, including the time spent on pendent state law claims that would not otherwise be statutorily entitled to a fee award, if the pendent claims arise out of a common nucleus of operative fact as the civil rights claim. Lippwe v. Weno Municipality, 14 FSM R. 347, 354 (Chk. 2006).

An employee of a state or local government who is discharged in violation of the civil rights statutes has a duty to actively look for and accept any reasonable offer of employment, otherwise back pay damages cannot be awarded. Robert v. Simina, 14 FSM R. 438, 443 (Chk. 2006).

When there was no evidence of physical injury to any plaintiff or of any physical manifestation of

emotional distress by any plaintiff, there can be no award of damages for pain and suffering even if the plaintiffs had proven they had been wrongfully discharged in violation of their civil rights. Robert v. Simina, 14 FSM R. 438, 443 (Chk. 2006).

In order to recover compensatory damages, the plaintiffs must prove actual injury from the civil rights deprivation. When, if proper procedure had been followed, the plaintiffs still would have been terminated from their positions, there is no actual injury to compensate with back pay or other benefits. Nominal damages may, however, be awarded for the deprivation of the important right to procedural due process. Robert v. Simina, 14 FSM R. 438, 444 (Chk. 2006).

Common-law courts traditionally have vindicated deprivations of certain "absolute" rights that are not shown to have caused actual injury through the award of a nominal sum of money. By making the deprivation of such rights actionable for nominal damages without proof of actual injury, the law recognizes the importance to organized society that those rights be scrupulously observed; but at the same time, it remains true to the principle that substantial damages should be awarded only to compensate actual injury or, in the case of exemplary or punitive damages, to deter or punish malicious deprivation of rights. Because the right to procedural due process is "absolute" in the sense that it does not depend upon the merits of a claimant's substantive assertions, and because of the importance to organized society that procedural due process be observed, the denial of due process should be actionable for nominal damages without proof of actual injury. Robert v. Simina, 14 FSM R. 438, 444 (Chk. 2006).

A plaintiff who is awarded nominal damages is a prevailing party. As prevailing parties in a civil rights action, the plaintiffs are entitled to their fees and costs. Robert v. Simina, 14 FSM R. 438, 444 (Chk. 2006).

A person who deprives another of any right or privilege protected under 11 F.S.M.C. 701 shall be civilly liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, without regard to whether a criminal case has been brought or conviction obtained. In an action brought 11 F.S.M.C. 701, the court may award costs and reasonable attorney's fees to the prevailing party. Wainit v. FSM, 15 FSM R. 43, 46 n.1 (App. 2007).

In order to determine whether a judge is liable for damages for his actions, the court asks whether the judge was performing judicial acts and whether his court had jurisdiction. When the answer to both questions is yes, the judge was not acting in complete absence of all jurisdiction, even when he had clearly acted in excess of his jurisdiction, and the judge was therefore immune from any suit for compensatory or punitive damages for his actions, but that does not end the inquiry. When the plaintiff had obtained permanent prospective injunctive relief against the judge under the civil rights act, it was entitled to the attorney's fees and costs incurred in obtaining that relief in that case, but not for any expenses incurred in the state court case in which the judge had exceeded his jurisdiction even though the FSM Supreme Court had to enjoin him from conducting any further proceedings in it. Ruben v. Petewon, 15 FSM R. 605, 608 (Chk. 2008).

When the defendant state court judge's actions upon which the plaintiffs base this suit were judicial in nature and the state court is a court of general jurisdiction, which would have had the jurisdiction to consider a motion for relief of judgment if one had been filed, the judge did not act in complete absence of jurisdiction. But when he did clearly act grossly in excess of his jurisdiction and when the plaintiffs obtained permanent prospective relief against him in this case, they are entitled to their expenses including attorney's fees and costs under 11 F.S.M.C. 701(3) for bringing this action and are thus entitled to judgment as a matter of law on their civil rights claim for attorney's fees and costs. The costs and fees allowed will be for work in this case and not that for work in the related state court cases. Ruben v. Petewon, 15 FSM R. 605, 608-09 (Chk. 2008).

Reasonable travel costs are allowable when there is a showing that no counsel is available on the island where the litigation took place, but photocopying expenditures are generally disallowed, especially here where it cannot be determined what portion of those expense were incurred in bringing this action, and

state court appellate filing fees are also disallowed since they are another court's filing fees and recoverable in that court. Ruben v. Petewon, 15 FSM R. 605, 609 (Chk. 2008).

Although a compelling state interest exists in protecting the state from garnishment and execution of its funds as governments cannot effectively administrate essential public services with litigants constantly raiding their coffers, but since Congress has created a statutorily-based action for civil rights violations as these violations are particularly egregious in that they infringe upon what we commonly recognize as unalienable human rights, what must be struck is an adequate balance between protecting a government's ability to maintain sufficient funds to operate and the ability to hold the government accountable for violating its citizens' most basic rights. Barrett v. Chuuk, 16 FSM R. 229, 234 (App. 2009).

The FSM civil rights statute is intended to provide an effective remedy when constitutional rights are violated. A fundamental role of the government, be it state or national, is to safeguard those rights. Barrett v. Chuuk, 16 FSM R. 229, 234 (App. 2009).

A statute is unconstitutional to the extent that it prohibits garnishment of state funds to satisfy a civil rights judgment, including civil rights judgments involving purely economic damages as well as those involving physical injury damages. Barrett v. Chuuk, 16 FSM R. 229, 234 (App. 2009).

The FSM Constitution's supremacy clause does not permit a state law to prevent the enforcement of a national statute which gives a private cause of action for rights guaranteed by the FSM Constitution, especially when it is the solemn obligation of state governments to uphold the principles of the FSM Constitution and to advance the principles of unity upon which the Constitution is founded. Barrett v. Chuuk, 16 FSM R. 229, 234-35 (App. 2009).

A ship captain will be awarded his attorney's fees and costs incurred in successfully bringing his counterclaim for civil rights violation and may submit his affidavit in support of his claim for fees and costs, which should meet the specificity standard. FSM v. Koshin 31, 16 FSM R. 350, 355 (Pon. 2009).

Although an arrestee, who was not informed of her rights to access to counsel when she was handcuffed, was told her full rights at the police station, this does not excuse the police's failure to advise her of rights regarding to access to counsel on the scene when she was first placed in handcuffs. Since the arrestee was not harmed by the failure to advise her, when she was first placed in handcuffs, of rights regarding to access to counsel, the state is liable to her for nominal damages in the amount of one dollar. Berman v. Pohnpei, 16 FSM R. 567, 576 (Pon. 2009).

A prevailing party in a civil rights lawsuit is, under 11 F.S.M.C. 701(3), entitled to costs and reasonable attorney's fees even when the attorneys are from a non-profit legal services corporation since the right to a reasonable attorneys' fees award is the client's not the attorney's, and the amount that the client actually pays (or whether the client actually pays) his attorney is irrelevant. Sandy v. Mori, 17 FSM R. 92, 96-97 (Chk. 2010).

When a plaintiff has prevailed on its civil rights claim, the court may award it costs and reasonable attorney's fees. Since any attorney's fees award must be based upon a showing and a judicial finding that the amount of fees requested is reasonable, the plaintiff may file and serve detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which it makes a compensation claim so that the defendant may have notice and an opportunity to challenge the reasonableness of the fees and costs sought by the plaintiff. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 111 (Pon. 2010).

When the plaintiff prevailed on its civil rights claims against one defendant but did not prevail on its civil rights claims against the other two defendants (although it did prevail on a trespass claim against them), the one defendant that the plaintiff prevailed against on civil rights claims should not be liable for the plaintiff's attorney's fees incurred in prosecuting its claims against the other two defendants or for fees incurred in its

defense of claims that other two defendants prosecuted against the plaintiff. This is because 11 F.S.M.C. 701(3) allows civil liability against any person who deprives another of his constitutional rights, which includes an award of reasonable attorney's fees to the prevailing party, but otherwise the general rule is that the parties bear their own attorney's fees. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 148, 150 (Pon. 2010).

In a civil rights action, the court may award costs and reasonable attorney's fees to the prevailing party when a review of the relevant case law and the statute's permissive language indicate that such an award is merited. Higgins v. Kolonia Town, 17 FSM R. 254, 263 (Pon. 2010).

When the plaintiffs have not alleged facts from which the court can make out a claim against Pohnpei for civil rights violations and when they have not prevailed in their requests for injunctive relief, the court must deny their request for attorney's fees under 11 F.S.M.C. 702(8). Berman v. Pohnpei, 18 FSM R. 67, 73 (Pon. 2011).

The civil rights statute creates a civil cause of action, 11 F.S.M.C. 701(3), for the violation of any right, privilege, or immunity secured to him by the Constitution or laws of the Federated States of Micronesia. Iwo v. Chuuk, 18 FSM R. 182, 184 (Chk. 2012).

A civil rights fee award statute controls what the losing defendant must pay, not what the prevailing plaintiff must pay his lawyer. What a plaintiff may be bound to pay and what an attorney is free to collect under a fee agreement are not necessarily measured by the "reasonable attorney's fee" that a defendant must pay pursuant to a court order. Kaminanga v. Chuuk, 18 FSM R. 216, 219 (Chk. 2012).

Subsection 701(3) is a fee-shifting statute that shifts the liability for attorney's fees from the client, the party usually liable under a fee agreement, to a non-prevailing party. In an FSM civil rights case, the court "may award costs and reasonable attorney's fees to the prevailing party." But it does not follow that the time an attorney actually expended on the case is the amount of time reasonably expended or that the hourly rate is reasonable. Kaminanga v. Chuuk, 18 FSM R. 216, 219 (Chk. 2012).

An $100 hourly rate is certainly a reasonable rate for attorney work in a civil rights case when attorney's fees are awarded under 11 F.S.M.C. 701(3). Kaminanga v. Chuuk, 18 FSM R. 216, 219 (Chk. 2012).

Time expended on a rehearing petition that was summarily denied was thus completely unproductive and otherwise unnecessary and did not afford any relief and the 3.4 hours spent on it must be disallowed. Kaminanga v. Chuuk, 18 FSM R. 216, 220 (Chk. 2012).

A prevailing party must be one who has succeeded on any significant claim affording it some of the relief sought. At a minimum, to be considered a prevailing party within the meaning of the civil rights fee-shifting statute, the plaintiff must be able to point to a resolution of the dispute which changes the legal relationship between itself and the defendant. Beyond this absolute limitation, a technical victory may be so insignificant as to be insufficient to support prevailing party status. Kaminanga v. Chuuk, 18 FSM R. 216, 220 (Chk. 2012).

When the plaintiff has pled civil rights violations and the court has found a violation of the plaintiff's due process rights, the plaintiff can be awarded his attorney's fees and costs. Poll v. Victor, 18 FSM R. 235, 246 (Pon. 2012).

The FSM Supreme Court has issued writs of garnishment directed toward the assets of a state government when the underlying cause of action is based on a violation of the national civil rights statute, but it has declined to issue a writ of garnishment where the judgment debtor was a state government and the judgment was based on ordinary breach of contract. The rationale for the issued writs was the FSM Constitution's Supremacy Clause, which must control regardless of a state constitutional provision, or national law, to the contrary. Kama v. Chuuk, 18 FSM R. 326, 334 (Chk. S. Ct. Tr. 2012).

Regardless of whether civil liability can be imposed for failing to inform an arrestee of her rights or for failing to inform her of the cause and authority of her arrest, civil liability will be imposed when it was illegal to arrest her without a warrant where she was arrested. Alexander v. Pohnpei, 18 FSM R. 392, 400 (Pon. 2012).

In a civil rights case, a prevailing plaintiff is entitled to an award of costs and reasonable attorney's fees as part of compensatory damages. Alexander v. Pohnpei, 18 FSM R. 392, 401 (Pon. 2012).

The FSM civil rights statute's purpose is to allow a civil rights litigant to employ reasonably competent counsel to pursue civil rights litigation without cost to herself, particularly when the damages are small or uncertain and would not otherwise induce an attorney to pursue the matter. Alexander v. Pohnpei, 18 FSM R. 392, 401 (Pon. 2012).

The civil rights statute provides that in an action brought under it, the court may award costs and reasonable attorney's fees to the prevailing party. Poll v. Victor, 18 FSM R. 402, 404 (Pon. 2012).

When the FSM civil rights statute is not as expansive as 42 U.S.C. § 1988 because it allows an attorney's fee award only in an action brought under 11 F.S.M.C. 701(3) and when an "action" is a court case while a "proceeding" includes both administrative and judicial proceedings, 11 F.S.M.C. 701(3) does not authorize the award of attorney's fees for administrative proceedings, even for administrative proceedings that were a prerequisite to a later court action (the exhaustion of administrative remedies requirement). It authorizes an attorney's fee award only for actions (court cases) brought under 11 F.S.M.C. 701(3). Poll v. Victor, 18 FSM R. 402, 405 (Pon. 2012).

Attorney's fees and expenses are not recoverable under 11 F.S.M.C. 701(3) in an eminent domain case filed by the petitioner state since it is not a civil rights case and the respondent is receiving the process due him under the Chuuk statute and Constitution and thus his civil rights have not been violated In re Lot No. 029-A-47, 18 FSM R. 456, 460 (Chk. S. Ct. Tr. 2012).

In civil rights cases, the FSM Supreme Court has ordered garnishment of civil rights judgments from state funds held by the national government when civil rights judgments have gone unpaid for a long period of time. Alexander v. Pohnpei, 19 FSM R. 133, 135 (Pon. 2013).

When an unlawful detention was a violation of the plaintiff's right to due process, it was a civil rights violation, which under 11 F.S.M.C. 701(3) entitles him to reasonable attorney's fees and costs. Inek v. Chuuk, 19 FSM R. 195, 200 (Chk. 2013).

Where the evidentiary hearing or trial mandated by the appellate court is to determine the plaintiff's actual damages for the defendant's violation of the plaintiff's civil rights when it terminated the lot lease five months early, and where damages beyond the five-month period are contingent on whether the plaintiff should be granted a new or renewed lease to the lot, that is not the subject of the trial but is the subject of what will be a different proceeding. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 378 (Pon. 2014).

A wrongfully discharged employee is entitled to the equitable remedy of reinstatement to his former position. Reinstatement is appropriate even if the position has been filled by another employee since, if a replacement's existence constituted a complete defense against reinstatement, then reinstatement could be effectively blocked in every case simply by immediately hiring an innocent third-party after the unlawful discharge has occurred, thus rendering the reinstatement remedy's deterrent effect a nullity. Manuel v. FSM, 19 FSM R. 382, 392 (Pon. 2014).

A false imprisonment claim is separate and distinct from a civil rights claim, but, at the same time, it may serve as a basis for deprivation of liberty under the FSM civil rights statute. The relevant concern in this regard is that damages should not be awarded for both claims, since to do so would be to permit a

double recovery. Kon v. Chuuk, 19 FSM R. 463, 466-67 (Chk. 2014).

Valuing the loss of a person's liberty interest because he was subjected to the cruel and unusual punishment of being forced to remain in jail for 161 days after his sentence had ended, is, like trying to calculate damages for pain and suffering, difficult because no fixed rules exist to aid in that determination, which lies in the court's sole discretion. Kon v. Chuuk, 19 FSM R. 463, 467 (Chk. 2014).

In an action brought under the civil rights statute, the court may award costs and reasonable attorney's fees to the prevailing party. Kon v. Chuuk, 19 FSM R. 463, 467 (Chk. 2014).

Chapter 7 of Title 11 of the FSM Code creates a statutory cause of action for individuals whose constitutional rights have been violated. It was enacted to safeguard the rights guaranteed to all FSM citizens under Article IV of the FSM Constitution. Panuelo v. FSM, 20 FSM R. 62, 68 (Pon. 2015).

When a plaintiff has alleged his due process rights were violated but it is proven otherwise, the plaintiff cannot recover under the civil rights statute. Panuelo v. FSM, 20 FSM R. 62, 68 (Pon. 2015).

Under 11 F.S.M.C. 701(3), the court may award costs and reasonable attorney's fees to the prevailing party in a civil rights case. Carlos Etscheit Soap Co. v. McVey, 20 FSM R. 81, 82 (Pon. 2015).

Since the FSM civil rights statute is not as expansive as 42 U.S.C. § 1988 because it allows an attorney's fee award only in an "action" brought under 11 F.S.M.C. 701(3) and since an "action" is a court case while a "proceeding" includes both administrative and judicial proceedings, 11 F.S.M.C. 701(3) does not authorize the award of attorney's fees incurred for administrative proceedings, even for administrative proceedings that are a prerequisite to a later court action (the exhaustion of administrative remedies requirement). Carlos Etscheit Soap Co. v. McVey, 20 FSM R. 81, 83 (Pon. 2015).

Since the statute authorizes an attorney's fee award only for actions (court cases) brought under 11 F.S.M.C. 701(3), fees for attorney time spent preparing for, participating in, and reviewing administrative proceedings before an agency and before the Governor will be disallowed. Carlos Etscheit Soap Co. v. McVey, 20 FSM R. 81, 83-84 (Pon. 2015).

When the defendant is not liable for the attorney's fees incurred in the plaintiff's litigation against other parties against whom the plaintiff did not have a viable civil rights claim, the court will disallow an attorney fee request for work solely in response to motions filed by those other defendant parties. Carlos Etscheit Soap Co. v. McVey, 20 FSM R. 81, 84 (Pon. 2015).

The court will allow fees for attorney time spent reviewing the appellate court's mandate as that was part of the process leading to trial on civil rights damages. Carlos Etscheit Soap Co. v. McVey, 20 FSM R. 81, 84 (Pon. 2015).

An FSM statute, 11 F.S.M.C. 701(3), creates a private right of action against any person, including governmental entities, for the violation of rights guaranteed by the Constitution. Palasko v. Pohnpei, 20 FSM R. 90, 94 (Pon. 2015).

In a civil rights case, even if the plaintiff has failed to prove any actual damages, the court can award nominal damages because of the importance of vindicating certain fundamental rights, but when there was no evidence introduced from which the court could draw the inference that the plaintiff's termination was the result of religious discrimination, there was thus no prima facie case made out on the civil rights claim. George v. Palsis, 20 FSM R. 111, 117 (Kos. 2015).

The burden of proof is upon the plaintiffs to show the fact and extent of the injury and the amount or value of damages. Determination of damages is an essential element of the plaintiffs' cause of action, which, at trial, the plaintiffs must prove as to amount by a preponderance of evidence. Linter v. FSM, 20

FSM R. 553, 562 (Pon. 2016).

When the evidence shows that the plaintiffs did in fact perform work during the relevant time period and that the standard operating procedure for many years was to submit employee-created time sheets similar to those that the plaintiffs submitted and when the government concedes that, if there was a valid contract, the plaintiffs would have been paid based on the submission of the same time sheets, there is sufficient evidence to carry the plaintiffs' burden on damages. Linter v. FSM, 20 FSM R. 553, 562 (Pon. 2016).

In an action brought under 11 F.S.M.C. 701(3), the court may award costs and reasonable attorney's fees to the prevailing party. Linter v. FSM, 20 FSM R. 553, 562 (Pon. 2016).

Chapter 7 of Title 11 of the FSM Code creates a statutory cause of action for individuals whose constitutional rights have been violated. Santos v. Pohnpei, 21 FSM R. 495, 501 (Pon. 2018).

Actual damages are intended to redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 534 (App. 2018).

A monetary award is envisioned to compensate for actual losses which can be readily proved and the commensurate amount is to be based on the proven harm, loss or injury suffered by the plaintiff. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 534-35 (App. 2018).

When what the plaintiff needed to show, and did not, was that it would have undertaken the lot's development during the February through June 2005 time period, the evidence proffered by the plaintiff was deficient to be awarded the damages sought. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 535 (App. 2018).

Since the right to procedural due process is "absolute" in the sense that it does not depend upon the merits of a claimant's substantive assertions, and because of the importance to organized society that procedural due process be observed, the denial of due process is generally actionable for nominal damages without proof of actual injury. And a plaintiff who is awarded nominal damages in a civil rights action is also entitled to his attorney's fees and costs. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 67 (Pon. 2018).

Procedural due process is a constitutional civil right covered by 11 F.S.M.C. 701. When the right to procedural due process has been violated and there are no provable, actual damages (thus the damages are only nominal), it is a civil rights violation for which attorney's fees and costs may be awarded. Luhk v. Anthon, 22 FSM R. 69, 71 (Pon. 2018).

Since a plaintiff's civil rights cause of action survives the plaintiff's death, the original plaintiff's estate may maintain his claim after his death. Luhk v. Anthon, 22 FSM R. 69, 71 (Pon. 2018).

In a civil rights action, the court may award costs and reasonable attorney's fees to the prevailing party. Macayon v. FSM, 22 FSM R. 544, 556 (Chk. 2020).

A prevailing party is one who has succeeded on any significant claim affording it some of the relief sought. At a minimum, to be considered a prevailing party within the meaning of the civil rights fee-shifting statute, the plaintiff must be able to point to a resolution of the dispute which changes the legal relationship between itself and the defendant. Beyond this absolute limitation, a technical victory may be so insignificant as to be insufficient to support prevailing party status. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 635 (Pon. 2020).

In any civil rights action, the court may award costs and reasonable attorney's fees to the prevailing party. A plaintiff in a civil rights action, who is awarded nominal damages, is a prevailing party, and as a

prevailing party, that plaintiff is entitled to its fees and costs. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 635 (Pon. 2020).

When the plaintiff was not the prevailing party in the court action and was therefore not awarded nominal damages because it had prevailed in administrative review, the plaintiff is not entitled to civil rights damages even though the FSM withdrew its letters closing the plaintiff. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 635 (Pon. 2020).

The civil rights statute, 11 F.S.M.C. 701(3), does not authorize the award of attorney's fees for administrative proceedings, even for administrative proceedings that were a prerequisite to a later court action (the exhaustion of administrative remedies requirement) because the statute only authorizes an attorney's fee award for actions (court cases) brought under 11 F.S.M.C. 701(3). New Tokyo Medical College v. Kephas, 22 FSM R. 625, 635 (Pon. 2020).

COMMERCE

A statute of limitations begins to run when the cause of action accrues. When a complaint alleges that a defendant's anticompetitive actions forced the plaintiff out of business the cause of actions accrues when the plaintiff went out of business. AHPW, Inc. v. FSM, 9 FSM R. 301, 304 (Pon. 2000).

Whether Pohnpei's power to regulate trochus means that any action which has an arguably regulatory effect on trochus cannot constitute an anticompetitive practice is an issue for trial, and a motion to dismiss in this respect must be denied. AHPW, Inc. v. FSM, 9 FSM R. 301, 304 (Pon. 2000).

Title 32, sections 301 *et seq.* date from the Trust Territory period but continue in effect pursuant to the FSM Constitution's Transition Clause. AHPW, Inc. v. FSM, 9 FSM R. 301, 305 (Pon. 2000).

The State of Pohnpei is deemed a person within the meaning of section 306 of the Anticompetitive Practices statute and may be a defendant as well as a plaintiff in suits brought under the statute. AHPW, Inc. v. FSM, 9 FSM R. 301, 305 (Pon. 2000).

A party to a commercial transaction, not one primarily for personal, family, or household purposes, may not bring a cause of action under Title 34 of the FSM Code since Title 34 only provides for consumer protection. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 77 (Pon. 2001).

32 F.S.M.C. 306(2) creates a civil cause of action under national law for violations of the prohibitions against anti-competitive practices. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 203 (Pon. 2001).

A case that asserts five causes of action under 32 F.S.M.C. 301 *et seq.*, is one that "arises under national law" within the meaning of Article XI, section 6(b). Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 203 (Pon. 2001).

The venue provision of 32 F.S.M.C. 306(2) must be read in conjunction with the service provisions of the FSM "long-arm statute," 4 F.S.M.C. 204, and with the FSM Code's venue provisions. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204 (Pon. 2001).

A foreign corporation served pursuant to 4 F.S.M.C. 204 may be sued within the FSM for violations of 32 F.S.M.C. 302 or 303, regardless of where the service occurs, so long as that foreign corporation has done specific acts within the FSM to bring it within the jurisdiction of the FSM Supreme Court. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204-05 (Pon. 2001).

Any person who is injured by another's violation of 32 F.S.M.C. 302 or 303 may sue therefor where the defendant resides or where service may be obtained, and may recover three times the damages sustained

by him together with a reasonable attorney's fee and the costs of suit. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 413 (Pon. 2001).

There is no common law tort of unfair competition in the FSM because that field of law has been preempted by the Consumer Protection Act of 1970. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 414 (Pon. 2001).

Because the national government has the exclusive power to regulate foreign and interstate commerce, the Consumer Protection Act is the law of the FSM insofar as any advertising, sale, offer or distribution involves commerce between the states of the FSM or with any foreign entity. The Consumer Protection Act also is the law of the states of the FSM, insofar as it involves commerce which is intrastate and has not been repealed by the state legislatures. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 415 (Pon. 2001).

The Consumer Protection Act of 1970 exclusively provides the means by which unfair competition between businesses should be dealt with under both national and applicable state law. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 415 (Pon. 2001).

The Consumer Protection Act vests consumers with a civil cause of action against anyone engaged in activity which is deceptive or misleading, and authorizes the Attorney General to seek injunctive relief against such activity, to prosecute criminal violations of the Act, and to seek civil and criminal penalties against those who violate the Act. The Act does not provide a means for recourse by businesses against other competing businesses. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 415-16 Pon. 2001).

The Consumer Protection Act abolishes any common law action for unfair competition. Businesses do not have standing to sue competitors for violations of 34 F.S.M.C. 103, including passing off goods or services as those of another. Because Congress has legislated comprehensively in this field, it should be Congress that decides whether to provide businesses with a private cause of action against competitors for engaging in unfair competition. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 416 (Pon. 2001).

Attempts to threaten or induce merchants not to sell competing products violate 32 F.S.M.C. 303. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 417 (Pon. 2001).

When it is not clear whether the plaintiff can demonstrate the type of illegal "combination" contemplated by 32 F.S.M.C. 302, and there is no relevant case law found in the FSM which interprets the anti-competitive practices law and when the court does not have before it any evidence of the parties' relative market shares, it is difficult to evaluate the likelihood of success of plaintiff's claims under 32 F.S.M.C. 301 *et seq*. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 417 (Pon. 2001).

The Attorney General has the authority to prosecute violations of the Consumer Protection Act, but private business entities do not. The Act recognizes that unfair or deceptive trade practices are criminal, and also confers standing on consumers who are injured by the practices to recover their actual damages or $100, whichever is greater. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 418 (Pon. 2001).

In commercial credit transactions, no person may directly or indirectly receive or charge interest which exceeds an annual percentage rate of twenty-four percent. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 475, 477 (Pon. 2001).

The term "counterfeit" has a specific legal meaning: to forge; to copy or imitate, without authority or right, and with a view to deceive or defraud, by passing the copy or thing forged for that which is original or genuine. Yang v. Western Sales Trading Co., 11 FSM R. 607, 616 (Pon. 2003).

Goods received through unauthorized distribution networks often are referred to as "gray market" goods, or parallel products. Gray market goods are genuine products possessing a brand name protected by trademark or copyright, which are typically manufactured abroad and then purchased and imported by third parties, bypassing authorized distribution channels. Yang v. Western Sales Trading Co., 11 FSM R. 607, 617 (Pon. 2003).

Summary judgment will be granted when, viewing the facts in the light most favorable to the plaintiff, the defendant national government's $40,000 appropriation did not, as a matter of law, violate any of the plaintiff's constitutional rights since the allotment was not a subsidy or other payment to pepper farmers that arguably reduced or otherwise affected its competitive advantage in a way that violated its constitutional rights and when the court does not construe this allotment as some form of financing of Pohnpei's allegedly unlawful activities. Any connection between the FSM allotment and the destruction of AHPW's pepper business is too remote since there is no showing that the allotment caused, or even contributed to the cause of, the destruction of its pepper operation. AHPW, Inc. v. FSM, 12 FSM R. 114, 118 (Pon. 2003).

Since it is not competition, but anticompetitive practices that is proscribed and since nothing in the record suggests that at the time of its 1995 allotment to Pohnpei, the FSM had any knowledge that Pohnpei intended to engage in unfair competitive practices, the FSM's allotment did not constitute, as a matter of law, an anticompetitive practice. AHPW, Inc. v. FSM, 12 FSM R. 114, 119 (Pon. 2003).

Pohnpei is a "person" for purposes of the anticompetition statutes. AHPW, Inc. v. FSM, 12 FSM R. 114, 123 (Pon. 2003).

Competition is not what 32 F.S.M.C. 301 *et seq.* proscribes, but rather anticompetitive practices. AHPW, Inc. v. FSM, 12 FSM R. 114, 123 (Pon. 2003).

Title 32, chapter 3 of the FSM Code prohibits anticompetitive conduct, not competition. AHPW, Inc. v. FSM, 12 FSM R. 164, 168 (Pon. 2003).

The regulation of businesses is an exercise of the police power, recognized as necessary to protect the public health, morals and welfare. Regulation of intoxicating liquors pursuant to the police power is recognized in virtually every jurisdiction. Ceasar v. Uman Municipality, 12 FSM R. 354, 357 (Chk. S. Ct. Tr. 2004).

Since the police power is an incident of state sovereignty, municipal exercise of the police power may only occur when delegated by the state, and since municipalities ordinarily have no original police power, they have only such authority with respect to intoxicating liquors as is conferred upon them by the state, either in express terms or by implication. Thus, if a municipality is to have the legal right to regulate the possession and sale of alcoholic beverages, that right must have been delegated to it by the state legislature. Ceasar v. Uman Municipality, 12 FSM R. 354, 357-58 (Chk. S. Ct. Tr. 2004).

Chuuk municipalities once had the delegated right to regulate alcoholic beverage sales, but in 2001 the state legislature made major revisions to the law pertaining to intoxicating liquors and placed exclusive jurisdiction over the regulation of alcoholic beverages in the state. The Chuuk Legislature's enactment removed any prior municipal authority to regulate the possession and sale of alcoholic beverages – a municipality may not by imposition of licensing fees or taxes regulate the possession or sale of such substances. Ceasar v. Uman Municipality, 12 FSM R. 354, 358 (Chk. S. Ct. Tr. 2004).

Under 32 F.S.M.C. 302(3), it is illegal for one or more persons to create or use an existing combination of capital, skill, or acts the effect of which is to prevent competition in the manufacture, making, transportation, sale, or purchase of any merchandise, produce, or commodity. The State of Pohnpei is a "person" for purposes of this statute. AHPW, Inc. v. FSM, 12 FSM R. 544, 551 (Pon. 2004).

"Competition" means the effort of two or more parties, acting independently, to secure the business of a third party by the offer of the most favorable terms. "Merchandise" and "commodity" are similar enough in meaning to be interchangeable: "merchandise" is defined as each commodity bought and sold by merchants, while "commodity" is defined as any movable or tangible thing used in commerce as the subject of trade or barter. "Produce" as a noun means articles produced or grown from or on the soil. AHPW, Inc. v. FSM, 12 FSM R. 544, 551 (Pon. 2004).

When Pohnpei arbitrarily set the $1 a pound price for the purchase of pepper from the pepper farmers, a price that bore no relation to the world market price, it created a market condition with which Island Traders could not compete and was not able to purchase the raw pepper it required for its operations. Pohnpei thus prevented competition in the purchase of produce, and by preventing Island Traders from acquiring raw pepper for processing, Pohnpei also prevented competition in the manufacture of merchandise; the merchandise being the finished, processed pepper. Viewed in either light, Pohnpei violated 32 F.S.M.C. 302(3). AHPW, Inc. v. FSM, 12 FSM R. 544, 551-52 (Pon. 2004).

It is unlawful for a person to fix the price of a commodity. This prohibition against fixing the price charged for goods, merchandise, machinery, supplies, or commodities is directed toward sale, and not the purchase, of goods and does not apply when the facts do not involve selling of raw pepper, but conduct in purchasing raw pepper at an anticompetitive price. AHPW, Inc. v. FSM, 12 FSM R. 544, 552 (Pon. 2004).

Under 32 F.S.M.C. 302(2), it is illegal for one or more persons to create or use an existing combination of capital, skill, or acts the effect of which is to limit or reduce the production, or increase the price of, merchandise or any commodity. "Production" means that which is made; i.e. goods, or the fruit of labor, as the productions of the earth, comprehending all vegetables and fruits. AHPW, Inc. v. FSM, 12 FSM R. 544, 552 (Pon. 2004).

When Pohnpei's refusal to hold a trochus harvest allegedly stemmed from environmental concerns, but all of the reports addressing this issue recommended that a trochus harvest be held and the concern was not that there would be too little trochus, but that there would be too much, nothing stood in the way of reasonable limitations on the harvest that could have harmonized both Pohnpei's legitimate environmental concerns and the national law requirement that it not limit the production of any commodity. Failure to do so violated 32 F.S.M.C. 302(2). AHPW, Inc. v. FSM, 12 FSM R. 544, 552 (Pon. 2004).

Anticompetitive conduct is tortious in nature. AHPW, Inc. v. FSM, 12 FSM R. 544, 553 (Pon. 2004).

Loss of future profits is a well-established basis for determining the measure of economic injury resulting from an anticompetitive act which forces the victim out of business. AHPW, Inc. v. FSM, 12 FSM R. 544, 554, 555 (Pon. 2004).

In unfair trade practices cases, courts draw a distinction between the amount of proof necessary to show that some damages resulted from the wrong, and the amount of proof necessary to calculate the exact amount of the damages. A lower burden of proof applies because the most elementary conception of justice and public policy require that the wrongdoer shall bear the risk of the uncertainty which his own wrong has created. AHPW, Inc. v. FSM, 12 FSM R. 544, 554 (Pon. 2004).

In anticompetitive practices cases where causation is established, the burden of proving damages is much less severe. This rule of leniency with regard to proof of damages is necessary because any other rule would enable the wrong-doer to profit by his wrongdoing at his victim's expense. It would be an inducement to make wrongdoing so effective and complete in every case as to preclude any recovery, by rendering the measure of damages uncertain. Once the fact of damage is established with reasonable certainty, the amount of damages need only be shown with as much certainty as the tort's nature and the case's circumstances permit. In such cases, if it is uncertain and speculative and whether damages have been incurred, then damages will be denied; however, if it is only the amount of the damages that presents the uncertainty, then the court will allow recovery so long as there is proof of a reasonable basis from which

the amount can be approximated or inferred. AHPW, Inc. v. FSM, 12 FSM R. 544, 554 (Pon. 2004).

When there is no doubt about the violation of 32 F.S.M.C. 302(2), but when there is nothing of record to establish that even if a trochus harvest had been held after 1994, the plaintiff would have been successful in purchasing enough trochus so that it would have had an adequate source of supply for its button operation, the plaintiff has failed to establish that it was damaged by the defendant's conduct as proscribed 32 F.S.M.C. 302(2). Since that conduct was tortious in nature, the plaintiff is entitled only to nominal damages. AHPW, Inc. v. FSM, 12 FSM R. 544, 555 (Pon. 2004).

Damages under 32 F.S.M.C. 306(2) are subject to trebling. AHPW, Inc. v. FSM, 12 FSM R. 544, 555, 556 (Pon. 2004).

Averaging three years of normal operations when the pepper supply was continuous when the manufacturing process was uninterrupted to arrive at an annual profit, is a projection that provides a reasonable basis from which a plaintiff's lost profits can be approximated or inferred under the lower burden of proof applicable for damages in anticompetitive practices cases. AHPW, Inc. v. FSM, 12 FSM R. 544, 555 (Pon. 2004).

When the conduct's nature was discrete and specific, and would have been amenable to injunctive relief had the plaintiff sought it, once that relief had been awarded there could have been no prospective damages since the conduct giving rise to those damages would necessarily have ceased. There should be no recovery for further diminution of a business's value, predicated on the defendant's continuing wrongdoing, after the defendant has been enjoined. The court will thus not award prospective damages from the time of the lawsuit's filing onward because injunctive relief, to which the claim would have been amenable, would have terminated the conduct complained of. But since under the continuing tort doctrine, a plaintiff is entitled to recover all of the damages that result from on-going tortious conduct, even though the inception of the conduct lies outside the limitations period, the court will award damages from the start of the anticompetitive pepper processing operation in mid-1995 until the plaintiff filed suit. AHPW, Inc. v. FSM, 12 FSM R. 544, 555-56 (Pon. 2004).

When claims of damages for sums the plaintiff owed to third parties on the theory that since its business operations were destroyed by the defendant's conduct, it cannot pay back those amounts, would have depended for their repayment on profits that the operation would have made but for the defendant's conduct. Since future profits are the measure of the business's damages, to allow a separate recovery for these sums would be to permit a double recovery. AHPW, Inc. v. FSM, 12 FSM R. 544, 556 (Pon. 2004).

When the lack of details provided in an attorney's fee affidavit is problematic, but Congress felt that the policy concerns underlying 32 F.S.M.C. 301 *et seq.* were strong, because a successful plaintiff may recover both reasonable attorney's fees and treble damages and the plaintiff has successfully vindicated an interest protected by this statute and when the case presented complex, novel issues and the relief sought was ultimately achieved, in lieu of denying a fee request altogether, the court may reduce the amount of the fee claimed. AHPW, Inc. v. FSM, 13 FSM R. 36, 41 (Pon. 2004).

The usual cause of action when a governmental entity has exercised its regulatory powers improperly is a constitutional due process claim. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 15 (App. 2006).

A state must abide by the same rules as anyone else engaging in business or in the market. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 17 (App. 2006).

Even under national law, sovereigns, any sovereign, have sovereign immunity. But sovereigns are generally considered to have waived that immunity when the sovereign has acted as a participant in commerce instead of as a sovereign. It would seem unfair if a state, as a competitor in a commercial enterprise, could not be held liable and assessed the same damages that another commercial competitor, who committed the same acts, would be assessed. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 20 n.5 (App.

2006).

Commercial activity includes any type of business or activity which is carried on for a profit, and a non-commercial activity is one that is not carried on for a profit. Meninzor v. M/V Caroline Voyager, 15 FSM R. 540a, 540c (Pon. 2008).

The Constitution expressly grants the national government, not the state governments, the power to regulate foreign and interstate commerce, and taxation is a form of regulation. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 531 (Chk. 2011).

The court cannot accept an interpretation that operating a business within Pohnpei is, in and of itself, sufficient to establish the applicability of Pohnpei state tax law due to minimum contact analysis because to accept it would be to accept that a business whose task it is to act as an intermediary or broker between two clients – a producer and a consumer – who are both based outside the FSM would be assessed the Pohnpei first commercial sales tax, even if the tangible personal property never entered Pohnpei since this is the very heart and soul of international commerce. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 32 (Pon. 2011).

Goods cannot properly be deemed to have been sold until both parties to the sale have performed. Performance by the buyer requires payment in full or execution of some sort of instrument of credit which the seller is willing to accept in lieu of payment in full. Performance by the seller requires delivery. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 34 (Pon. 2011).

Whatever commercial banking business standards might apply to a bank cannot be the same as those for a retail/wholesale store. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 359 (App. 2012).

For a retail/wholesale store to cash checks with a corporate payee, particularly a large, off-island corporate payee with an off-island address printed on the check's face, with only an individual's personal endorsement and without written authorization from the corporate payee cannot possibly be considered a good faith commercial business standard. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 359 (App. 2012).

As a matter of law, no individual can ever have the apparent authority to cash a check that has a corporation as the payee, and, as a matter of law, any business that cashes such a check with a corporate payee is not engaged in a commercially reasonable business practice. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 359-60 (App. 2012).

COMMON LAW

There appears to be uniform acceptance by common law jurisdictions of the principle that government officials are considered employees for income tax purposes. This amounts to a common law rule of taxation and yields a result in harmony with the underlying principles of the taxation system established by the Federated States of Micronesia Income Tax Law. Rauzi v. FSM, 2 FSM R. 8, 12 (Pon. 1985).

By its terms, 1 F.S.M.C. 203 pointing to the *Restatements* as a guide for determining and applying the common law applies only to "courts of the Trust Territory." Since only courts established by the Trust Territory administration existed when the section was issued, it plainly was intended only for those courts at that time. In absence of any persuasive considerations to the contrary, it is logical to conclude that 1 F.S.M.C. 203 applies only to courts of the Trust Territory, not to courts of the Federated States of Micronesia or the various states. Rauzi v. FSM, 2 FSM R. 8, 14 (Pon. 1985).

1 F.S.M.C. 203, with its sweeping mandate that the *Restatements* and other common law rules as applied in the United States be the "rules of decision," would lure the courts in a direction other than that illuminated by the Constitution's Judicial Guidance Provisions, FSM Const. art. XI, § 11, which identifies as

the guiding star, not the *Restatement* or decisions of United States courts concerning common law, but the fundamental principle that decisions must be "consistent" with the "Constitution, Micronesian custom and tradition, and the social and geographical configuration of Micronesia." Rauzi v. FSM, 2 FSM R. 8, 14 (Pon. 1985).

The FSM Supreme Court can and should consider the *Restatement* and reasoning of courts in the United States and other jurisdictions in arriving at its own decisions although it is not bound by those decisions and must not fall into the error of adopting the reasoning of those decisions without independently considering suitability of that reasoning for the Federated States of Micronesia. Rauzi v. FSM, 2 FSM R. 8, 14-15 (Pon. 1985).

No common law rule has been applied universally in all contexts to determine the status of government officials. Rauzi v. FSM, 2 FSM R. 8, 15 (Pon. 1985).

The common law for the Federated States of Micronesia referred to at 54 F.S.M.C. 112(3) is not based upon the law of England at the time of the American Revolution but upon the law of the United States, the Trust Territory and other nations in the common law tradition up to the initiation of constitutional government in 1979. Rauzi v. FSM, 2 FSM R. 8, 17 (Pon. 1985).

Common law principles may be drawn from statutes as well as court decisions. While the common law is articulated through court decisions, it has its source in legislative action as well as court decisions. Rauzi v. FSM, 2 FSM R. 8, 17 (Pon. 1985).

Comparative negligence, which has displaced contributory negligence in most jurisdiction in the United States, should be given careful consideration by courts even though the *Restatement (Second) of Torts* refers only to contributory negligence and is silent about comparative negligence. There is reason to doubt that the FSM Supreme Court is bound by 1 F.S.M.C. 203 pointing to the *Restatements* as a guide for determining and applying the common law. Ray v. Electrical Contracting Corp., 2 FSM R. 21, 23 n.1 (App. 1985).

The Micronesian Constitutional Convention anticipated that judges in the new constitutional court system would find it necessary to draw on experience and decisions of courts in other nations to develop a common law of the Federated States of Micronesia. The framers recognized the desirability of such a search and amended the earlier draft of the provision to be sure to leave it open to the constitutional courts to do so. Nonetheless, judges now are not to consider the relationship between the common law of the United States and the legal system here in the same way that relationship was viewed prior to self-government. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 139 (Pon. 1985).

Common law decisions of the United States are an appropriate source of guidance for this court for contract and tort issues unresolved by statutes, decisions of constitutional courts here, or custom and tradition within the Federated States of Micronesia. Review of decisions of courts of the United States, and any other jurisdictions, must proceed however against the background of pertinent aspects of Micronesian society and culture. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 142 (Pon. 1985).

A generally recognized principle of the common law is that questions neither brought to the attention of the court nor ruled upon are not to be considered as having been decided so as to constitute precedents. Semens v. Continental Air Lines, Inc. (II), 2 FSM R. 200, 204 (Pon. 1986).

Common law decisions of the United States are an appropriate source of guidance in addressing claims of abuse of process within the Federated States of Micronesia. Mailo v. Twum-Barimah, 2 FSM R. 265, 268 (Pon. 1986).

In considering the law concerning secured transactions, the FSM Supreme Court must look for guidance of the pre-UCC common law and may only declare the existence of such security interests as

have been found by other courts to exist in the absence of statutes. Bank of Guam v. Island Hardware, Inc., 2 FSM R. 281, 288 (Pon. 1986).

When confronted with an issue of first instance, the Pohnpei Supreme Court may look beyond prior state experience for guidance, including looking towards the common law and United States precedents. People of Kapingamarangi v. Pohnpei Legislature, 3 FSM R. 5, 10 (Pon. S. Ct. Tr. 1985).

The Pohnpei Supreme Court may look to Pohnpeian customs and concepts of justice when there are no statutes governing the subject matter, but it may also draw from common law concepts when they are appropriate. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 64 (Pon. S. Ct. Tr. 1986).

A "general security agreement," without more does not establish a lien under common law or pursuant to any statute in the Federated States of Micronesia. In re Island Hardware, 3 FSM R. 332, 342 (Pon. 1988).

United States statutes regarding ships' mortgages will not be adopted as the common law of the Federated States of Micronesia, because their purposes are not applicable to the FSM and because their changing nature and complexity are not conducive to forming the basis of the common law of this nation. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 57, 59-60 (Truk 1989).

Where there are no directly controlling statutes, cases or other authorities within the Federated States of Micronesia, it may be helpful to look to the law of other jurisdictions, especially the United States, in formulating general principles for use in resolving legal issues bearing upon the rights of public employees and officers, in part because the structures of public employment within the Federated States of Micronesia are based upon the comparable governmental models existing in the United States. Sohl v. FSM, 4 FSM R. 186, 191 (Pon. 1990).

Statutory changes overruling previous judicial rulings may fundamentally alter the general law in the area newly governed by statute. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 372 (App. 1990).

Chuuk State has adopted common law tort principles as the law of Chuuk State where no specific constitutional or traditional impediment to its adoption exists. Epiti v. Chuuk, 5 FSM R. 162, 165 (Chk. S. Ct. Tr. 1991).

Under the common law the death of a criminal appellant pending appeal abates the proceedings ab initio – not only the appeal but all proceedings from the inception of the prosecution, thus requiring the appellate court to dismiss the appeal, and remand the case to the trial court to vacate the judgment and dismiss the information. Palik v. Kosrae, 6 FSM R. 362, 364 (App. 1994).

Common law tort principles from other jurisdictions have previously been adopted by the Chuuk State Supreme Court where there has been no constitutional or traditional impediment to doing so. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 455 (Chk. 1994).

Common law decisions of the United States are an appropriate source of guidance for the FSM Supreme Court for contract issues unresolved by statutes, decisions of the constitutional courts here, or custom and tradition within the Federated States of Micronesia, but review of decisions of courts of the United States or other jurisdictions, must proceed against the background of pertinent aspects of Micronesian society and culture. Black Micro Corp. v. Santos, 7 FSM R. 311, 314 (Pon. 1995).

The common law of the United States and other nations in the common law tradition, up to the initiation of constitutional self-government in the FSM in 1979, is an essential part of the common law of Yap, but a court ought not fall into the error of adopting the reasoning of other common law jurisdictions' decisions without independently considering their suitability for Yap. Gimnang v. Yap, 7 FSM R. 606, 609 (Yap S. Ct.

Tr. 1996).

United States common law decisions are an appropriate source of guidance for this court for contract and tort issues unresolved by statutes, decisions of constitutional courts here, or custom and tradition within the Federated States of Micronesia. United States courts have generally followed the provisions of the Restatement of Torts in situations where a plaintiff alleges that a defendant has negligently prevented a third party from rendering assistance. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 293-94 (Pon. 1998).

When FSM courts have not yet addressed an issue, the court may look to the Restatement and to decisions from jurisdictions in the common law tradition outside the FSM, all the while keeping in mind the suitability for the FSM of any given common law principle. Senda v. Semes, 8 FSM R. 484, 495 (Pon. 1998).

United States common law decisions are an appropriate source of guidance for the Kosrae State Court for tort issues unresolved by statutes, decisions of constitutional courts here, or custom and tradition within the Federated States of Micronesia. Talley v. Lelu Town Council, 10 FSM R. 226, 234, 236 (Kos. S. Ct. Tr. 2001).

The legislature has the power to modify or abolish common law rights or remedies and may supersede the common law without an express directive to that effect, as by adoption of a system of statutes comprehensively dealing with a subject to which the common law rule related. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 416 (Pon. 2001).

When the court looks to common law sources in considering the nature of the legislative privilege enjoyed by members of the Pohnpei Legislature, it is mindful of Article XI, section 11 of the FSM Constitution, which requires that FSM Supreme Court decisions be consistent with the Constitution, Micronesian customs and traditions, and the social and geographical configuration of Micronesia. AHPW, Inc. v. FSM, 10 FSM R. 420, 423 (Pon. 2001).

Although the court has previously recognized claims for indemnity based on contractual provisions between two parties, in the absence of a contractual provision it will not create a common law indemnity claim, therefore, in the absence of any contractual provisions between the parties, there is no basis for a claim of indemnity by a defendant against a plaintiff, the court will dismiss the defendant's counterclaim for indemnity. Primo v. Semes, 11 FSM R. 324, 329 (Pon. 2003).

At common law, a person is free to adopt and use any name he or she chooses, so long as there is no fraudulent purpose, and the name does not infringe on the rights of others. In re Suda, 11 FSM R. 564, 566 (Chk. S. Ct. Tr. 2003).

The right to assume any name, absent fraud or infringement of the rights of others, operates at common law independently of any court order. In the absence of a statute to the contrary, any person may ordinarily change his name at will, without any legal proceedings, merely by adopting another name. In re Suda, 11 FSM R. 564, 566 (Chk. S. Ct. Tr. 2003).

The court will recognize claims for indemnity based on contractual provisions between two parties, but, in the absence of a contractual provision, it will not create a common law indemnity claim. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM R. 337, 347 (Pon. 2004).

The court may employ a common law principle from other jurisdictions with a common law tradition when it is not contrary to the FSM Constitution, statutes, or custom and tradition and if it is suitable for adoption here. Lee v. Han, 13 FSM R. 571, 576 n.2 (Chk. 2005).

Although the FSM Code permits the restatements to be used when applying rules of common law in

the absence of written law, the court can give the Restatement no such weight when interpreting written law – a congressionally-enacted statute. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 24 (App. 2006).

U.S. courts' common law decisions are an appropriate source of guidance for the FSM Supreme Court for contract and tort issues unresolved by statutes, decisions of constitutional courts here, or custom and tradition within the FSM. The FSM Constitution's judicial guidance clause requires that the court's review of U.S. courts' decisions proceed against the background of pertinent aspects of Micronesian society and culture, but where the business activities which gave rise to the lawsuit are not of a local or traditional nature, and the work setting and the work itself are of a markedly non-local, international character, the court need not conduct an intense search for applicable customary laws and traditional rules when none have been brought to its attention by the parties and none are apparent. Reg v. Falan, 14 FSM R. 426, 430 n.1 (Yap 2006).

Stare decisis is the doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same points of law arise again in litigation. Stare decisis requires that the same rule of law previously announced be applied to any succeeding cases with similar facts. Nakamura v. Chuuk, 15 FSM R. 146, 149-50 (Chk. S. Ct. App. 2007).

When there is no guidance from FSM case law or statutes, it is appropriate to look to the common law of the United States because United States common law decisions are an appropriate source of guidance for contract and tort issues unresolved by statutes, decisions of constitutional courts here, or custom and tradition in the FSM. Jano v. Fujita, 15 FSM R. 405, 408 (Pon. 2007).

Where there is no specific precedent in FSM case law, the court may consider cases from other jurisdictions in the common law tradition. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 652 (Pon. 2008).

When no FSM case has discussed the specific elements of the causes of action for interference with contractual relations or interference with prospective business advantage, the court may consider authorities from other jurisdictions in the common law tradition. Jano v. Fujita, 16 FSM R. 323, 327 (Pon. 2009).

When prior FSM cases have not addressed a precise point, the court, in such instances, may look to authorities from other jurisdictions in the common law tradition. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 438 n.3 (Pon. 2009).

Although the FSM Supreme Court has recognized claims for indemnity based on contractual provisions between two parties, and required precise clarity in the indemnification clause language, it is not prepared to create a common law indemnity claim. Thus, even assuming the court had found any defendant liable, when no contractual provision for indemnification between the plaintiff and any of the defendants was presented to the court, the plaintiff's claim for indemnity fails. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 458 (Pon. 2009).

In instances where there is no FSM precedent, such as whether to require an attorney to appear for a corporation (although it has been a rather long-standing practice in the FSM Supreme Court), the court may consider cases from other jurisdictions in the common law tradition. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 n.2 (Pon. 2011).

Although the FSM Supreme Court may not be bound by 1 F.S.M.C. 203, which points to the Restatements as the rules of decision for courts in determining and applying the common law, that FSM Code provision does permit the Restatements to be used when applying common law rules in the absence of written law, while keeping in mind the suitability for the FSM of any given common law principle. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580 n.14 (Pon. 2011).

Courts are statutorily authorized to consider the common law as expressed in the ALI Restatements of

Law. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 n.3 (App. 2012).

Since, although courts are not bound to adopt common-law doctrines, they may, by statute, use the Restatements of the Law as the rules of decision to determine and apply the common law in the absence of written law while keeping in mind the suitability of any given common law principle for the FSM, if a court were to recognize an equitable indemnity cause of action, its elements would be those set forth in the Restatement. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 365 (App. 2012).

Statute law authorizes the court to consider the common law as expressed in the ALI Restatements of Law. Ruben v. Chuuk, 18 FSM R. 425, 430 n.1 (Chk. 2012).

Common law decisions from U.S. sources are an appropriate source of guidance for the FSM Supreme Court for contract and tort issues unresolved by statutes or decisions of constitutional courts within the FSM. Ihara v. Vitt, 18 FSM R. 516, 526 (Pon. 2013).

Customary law takes precedence over the common law. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 272 n.3 (Pon. 2015).

When presented with an issue of first impression and the absence of FSM case law on point, the court will examine relevant U.S. decisions for guidance and may look to authorities from other jurisdictions in the common law tradition. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

Before the 1979 initiation of constitutional government in the FSM, it may be said that the common law of the FSM was based on the law of the United States, the Trust Territory, and other nations in the common law tradition. Fuji Enterprises v. Jacob, 21 FSM R. 355, 364-65 (App. 2017).

In the absence of Micronesian precedent, the FSM Supreme Court can and should consider the reasoning from the courts of other common law jurisdictions. Fuji Enterprises v. Jacob, 21 FSM R. 355, 365 n.10 (App. 2017).

Although FSM courts are not bound to adopt common-law doctrines, they are statutorily authorized to use the ALI Restatements of the Law to consider, determine, and apply the common law in the absence of written law while keeping in mind the suitability of that common law principle for the FSM. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 201 n.11 (Pon. 2019).

Although FSM courts are not bound to adopt common-law doctrines, the courts can, by statute, use the Restatements of the Law as the rules of decision to determine and apply the common law in the absence of written law while keeping in mind any given common law principle's suitability for the FSM. Helgenberger v. Helgenberger, 22 FSM R. 244, 249 (Pon. 2019).

The rules of the common law, as expressed in the restatements of the law approved by the American Law Institute are the rules of decision in applicable cases. Helgenberger v. Helgenberger, 22 FSM R. 244, 249 (Pon. 2019).

A private litigant is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding, or in the institution of or during the course and as a part of, a judicial proceeding in which he participates, if the matter has some relation to the proceeding. This privilege is based upon the public interest in according to all men the utmost freedom of access to the courts of justice for the settlement of their private disputes. Like the privilege of an attorney, it is absolute. Helgenberger v. Helgenberger, 22 FSM R. 244, 249-50 (Pon. 2019).

At common law, parties to judicial proceedings are granted an absolute privilege to use defamatory language because of the overriding public interest that persons should speak freely and fearlessly in litigation, uninfluenced by the possibility of being brought to account in an action for defamation. This

common law principle is eminently suitable for the FSM because it is difficult to see how any court system could function otherwise. It is sound public policy. Helgenberger v. Helgenberger, 22 FSM R. 244, 250 (Pon. 2019).

While FSM courts are not bound to adopt common-law principles, they are authorized by statute to use the Restatements of the Law to determine and apply the common law in the absence of written law while keeping in mind the principle's suitability for the FSM. Courts are statutorily authorized, under both FSM national and Pohnpei state law, to consider the common law as expressed in the ALI Restatements of Law. FSM Dev. Bank v. Carl, 22 FSM R. 365, 372 n.1 (Pon. 2019).

FSM courts may look for guidance from U.S. common law decisions if there are no statutes or decisions of constitutional courts within the FSM. Robert v. FSM Social Sec. Admin., 22 FSM R. 388, 393 n.4 (Kos. 2019).

Pohnpei state law provides that the rules of the common law, as expressed in the restatements of the law, shall be the rules of decision in the courts of the state of Pohnpei in applicable cases, in the absence of written law applicable to the state of Pohnpei or applicable local customary law. Panuelo v. FSM, 22 FSM R. 498, 506 (Pon. 2020).

COMPACT OF FREE ASSOCIATION

Under the Compact of Free Association and the Federal Programs and Services Agreement, civilian employees of the United States government have immunity from civil and criminal process for wrongful acts and omissions done within the scope and in performance of official duty, unless expressly waived by the U.S. government. Samuel v. Pryor, 5 FSM R. 91, 95 (Pon. 1991).

A United States federal employee does not waive immunity from civil liability under the Compact of Free Association and the Federal Programs and Services Agreement when the civilian employee initiated litigation in the FSM Supreme Court in a separate lawsuit with different claims against different parties and where the affirmative misconduct is within the scope and in the performance of the official duty. Samuel v. Pryor, 5 FSM R. 91, 97 (Pon. 1991).

It is the duty of the FSM Supreme Court to review any national law, including a treaty such as the Compact of Free Association, in response to a claim that the law or treaty violates constitutional rights, and if any Compact provision is contrary to the Constitution, which is the supreme law of the land, then that provision must be set aside as without effect. Samuel v. Pryor, 5 FSM R. 91, 98 (Pon. 1991).

The Compact of Free Association's immunization provisions, which limit a plaintiff's right to sue a physician for malpractice, do not affect a fundamental right, and therefore, the provisions need not be subjected to a strict scrutiny, but instead should be tested under the less stringent rational relationship test. Samuel v. Pryor, 5 FSM R. 91, 104 (Pon. 1991).

The Compact of Free Association provides to the United States immunity from the jurisdiction of the FSM Supreme Court for claims arising from the activities of United States agencies or from the acts or omissions of the employees of such agencies. Samuel v. United States, 5 FSM R. 108, 111 (Pon. 1991).

By the terms of the Compact and its subsidiary extradition agreement the term "Signatory Government" includes not only the national, but also the state governments of the two nations. Therefore state as well as national law may be used to determine if the offense for which extradition is sought satisfies the dual criminality test–is criminal under the laws of both signatory governments. In re Extradition of Jano, 6 FSM R. 93, 102-03 (App. 1993).

Although the Compact waives the sovereign immunity of the U.S. government, it does not create new causes of action or fashion a remedy where one was previously not available. The Compact does not authorize monetary damages to individuals for breach of the Trusteeship Agreement. Alep v. United

States, 6 FSM R. 214, 218-19 (Chk. 1993).

Although the Compact of Free Association waives U.S. sovereign immunity it does not create new causes of action or remedies beyond what was available to private litigants before the Compact. Nahnken of Nett v. United States (III), 6 FSM R. 508, 526 (Pon. 1994).

The waiver of sovereign immunity clause in the Compact did not create any new causes of action, but merely waived sovereign immunity with respect to valid existing claims. Alep v. United States, 7 FSM R. 494, 497 (App. 1996).

The only new cause of action created by the Compact is where the U.S. government accepts responsibility for losses or damages arising out of nuclear testing in the Marshall Islands between 1946 and 1958. Alep v. United States, 7 FSM R. 494, 498-99 (App. 1996).

Nothing in the Compact suspends or tolls the statute of limitations. Alep v. United States, 7 FSM R. 494, 499 (App. 1996).

After the commencement of full self-government in 1986, the Federated States of Micronesia remained, from the United States's perspective, a foreign country. Under the Compact of Free Association with the United States, the Federated States of Micronesia is a sovereign and independent nation. In re Neron, 16 FSM R. 472, 474 (Pon. 2009).

The FSM's argument that the court is without jurisdiction to hear the defendant's counterclaims in the ground that they are nonjusticiable political questions because the Compact is a treaty between the FSM and the United States and the improvement of infrastructure through grants to the FSM is specifically contemplated by the Compact, the implementation of which must comply with requirements spelled out in the Compact, is without merit because, carried to its logical end, it would also bar the FSM from asserting its contract claims against the defendant since the contract was entered into to facilitate improving infrastructure in compliance with the Compact requirements attached to the FSM receiving the funds to pay for infrastructure improvements. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 482 (Pon. 2009).

When none of the questions to be decided by the court directly touch upon treaty relations between the FSM and the United States, the FSM Supreme Court may determine whether the FSM wrongfully provided false information to U.S. officials, whether, if proven, those actions were actionable, and if so, what damages the defendant-counterclaimant suffered since the court can also decide the issue of whether either party breached the contract, and if so, who owes what sums to the other. The mere existence of a funding mechanism agreed to by two sovereign nations cannot strip the court of jurisdiction to issue a decision on the merits of this case. Nor does the Compact intend to so hobble the court. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 484 (Pon. 2009).

Title 1 of the Compact governs the relationship between and amongst the parties to the Compact and its environmental protection section does not create a private cause of action since it provides that actions brought pursuant to that section may be initiated only by the FSM government. Damarlane v. Damarlane, 18 FSM R. 177, 179 (Pon. 2012).

The Compact of Free Association requires that, subject to the constitutional power of FSM courts to grant relief from judgments in appropriate cases, res judicata status be given to Trust Territory judgments. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

In an appropriate case, the Kosrae State Court has the power to grant a party relief from a Trust Territory High Court judgment through an independent action in equity. This has even been acknowledged by treaty with the United States. Andrew v. Heirs of Seymour, 19 FSM R. 331, 341 (App. 2014).

Under the Compact of Free Association, final judgments in civil cases rendered by any Trust Territory

court continue in full force and effect, subject to the constitutional power of the courts of the Federated States of Micronesia to grant relief from judgments in appropriate cases. Andrew v. Heirs of Seymour, 19 FSM R. 331, 341 (App. 2014).

While a state may be designated as the administrator and allottee of Compact sector funds that are used to pay state employees, those funds are appropriated by the FSM Congress and remain subject to the provisions of the FSM Financial Management Act and the Compact of Free Association financial controls. The FSM Secretary of Finance has full and complete oversight over, and at all times full and complete access to all financial records for, all Compact funds of the state and national governments of the FSM. FSM v. Muty, 19 FSM R. 453, 460 (Chk. 2014).

The FSM has standing to sue for conversion when it was Compact sector funds that were converted. FSM v. Muty, 19 FSM R. 453, 460 (Chk. 2014).

The Compact of Free Association has a provision by which sentences imposed by FSM courts on U.S. citizens may be served in U.S. penal institutions, but if they go through the diplomatic channels and comply with transfer procedures and eligibility, but the Compact does not have a section that deals with an FSM citizen under a sentence rendered by a FSM court who seeks to serve the remaining term of his sentence in a U.S. jurisdiction. FSM v. Bisalen, 20 FSM R. 471, 473 (Pon. 2016).

CONSTITUTIONAL LAW

A fundamental principle of statutory interpretation is that when a statute can be read in two ways, one raising constitutional issues and the other interpreting the language as affecting matters clearly within the constitutional reach of Congress, the latter interpretation should prevail so that the constitutional issue is avoided. FSM v. Boaz (II), 1 FSM R. 28, 32 (Pon. 1981).

When interpreting a statute, courts should try to avoid interpretations which may bring the constitutionality of the statute into doubt. Tosie v. Tosie, 1 FSM R. 149, 157 (Kos. 1982).

While courts will not refuse to pass on the constitutionality of statutes in a proceeding in which such a determination is involved, needless consideration of attacks on their validity and unnecessary decisions striking down statutes will be avoided. Legislative acts are presumed to be constitutional; where fairly possible a construction of a statute will be made that avoids constitutional questions. Truk v. Hartman, 1 FSM R. 174, 180-81 (Truk 1982).

Courts should avoid, where possible, selecting interpretations of a statute which may bring into doubt the constitutionality of that statute. In re Otokichy, 1 FSM R. 183, 190 (App. 1982).

Constitutional issues should not be decided if the statute in question may be interpreted in such a way as clearly to conform with constitutional requirements. Suldan v. FSM (I), 1 FSM R. 201, 205 (Pon. 1982).

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

The Constitution does not contemplate that FSM citizens must first petition any person or body outside the Federated States of Micronesia as a condition to consideration of their constitutional claims by courts established under this Constitution. In re Iriarte (II), 1 FSM R. 255, 267 (Pon. 1983).

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

Unnecessary constitutional adjudication is to be avoided. Suldan v. FSM (II), 1 FSM R. 339, 357 (Pon. 1983).

If construction of a statute by which a serious doubt of constitutionality may be avoided is fairly possible, a court should adopt that construction. Suldan v. FSM (II), 1 FSM R. 339, 357-58 (Pon. 1983).

Article III, sections l and 2, of the FSM Constitution are self-executing and do not contemplate, or imply the need for, court action to confirm citizenship where no challenge exists. In re Sproat, 2 FSM R. 1, 7 (Pon. 1985).

If a dispute properly may be resolved on statutory grounds without reaching potential constitutional issues and without discussing constitutional principles, the court should do so. FSM v. Edward, 3 FSM R. 224, 230 (Pon. 1987).

No clause in the FSM Constitution is equivalent to the eleventh amendment of the United States Constitution, which generally bars citizens from using United States federal courts to seek monetary damages against states. Edwards v. Pohnpei, 3 FSM R. 350, 361 (Pon. 1988).

When dealing with statutes, before discussing constitutional issues a court must first address any threshold issues of statutory interpretation which may obviate the need for a constitutional ruling. Michelsen v. FSM, 3 FSM R. 416, 419 (Pon. 1988).

As a matter of constitutional law, the authority to exercise executive, legislative and judicial powers came to the Federated States of Micronesia under the FSM Constitution, by operation of law, not through delegation of Trust Territory functions. United Church of Christ v. Hamo, 4 FSM R. 95, 103 (App. 1989).

The appellate court will not decide a constitutional issue if not raised below and because unnecessary constitutional adjudication is to be avoided. Jonah v. FSM, 5 FSM R. 308, 313 (App. 1992).

The Chapman rule, which holds that a constitutional error can be found harmless only when it is harmless beyond a reasonable doubt, is suitable for the FSM. Jonah v. FSM, 5 FSM R. 308, 314 (App. 1992).

A statute is repealed by implication by a constitutional provision when the legislature, under the new constitutional provision, no longer has the present right to enact statutes substantially similar to the statute in question. FSM v. Jano, 6 FSM R. 9, 11 (Pon. 1993).

In the absence of any authority or compelling policy arguments the court cannot conclude that a law, the enforcement of which entails a harsh result, is unconstitutional, and can only note that the creation of potentially harsh results is well within the province of the nation's constitutionally empowered legislators. Mid-Pacific Constr. Co. v. Semes, 7 FSM R. 102, 104 (Pon. 1995).

A court should avoid unnecessary constitutional adjudication. Louis v. Kutta, 8 FSM R. 228, 229 (Chk. 1998).

Acts of Congress are presumed to be constitutional. Chuuk v. Secretary of Finance, 8 FSM R. 353, 374, 387 (Pon. 1998).

Article I, section 1 of the Constitution defines the FSM's national boundaries, and section 2 defines the states' boundaries in the event marine resources revenues should accrue to the state wherein the resources are found, but the Constitution's framers did not intend to confer ownership of marine resources, or revenues derived from such resources, when they defined the state boundaries. Offshore marine resources, and the division between national and state power with respect to these resources, are addressed in other articles of the Constitution. Chuuk v. Secretary of Finance, 8 FSM R. 353, 367-68 (Pon. 1998).

The constitutional government works not to override custom, but works in cooperation with the traditional system in an atmosphere of mutual respect. Senda v. Semes, 8 FSM R. 484, 497 (Pon. 1998).

Micronesian custom, and the constitutional legal system established by the people of the FSM, flow from differing (not necessarily inconsistent) premises and purposes. These two systems, then, can be seen as supplementary and complementary, not contradictory. Each has a valuable role to perform, independent of the other. Senda v. Semes, 8 FSM R. 484, 499 (Pon. 1998).

The right guaranteed in the Chuuk Constitution to move and migrate within the State and the right in the FSM Constitution to travel and migrate within the Federated States, do not protect travel or migration outside these boundaries. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 48 (Chk. S. Ct. Tr. 1999).

A municipal ordinance restricting absentee voting in municipal elections to persons in the state of Chuuk is not unconstitutional. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 48 (Chk. S. Ct. Tr. 1999).

Internal waters are those waters on the landward side, or inside, of the baselines of the territorial sea. The exclusive economic zone starts twelve nautical miles seaward of the baseline and extending outward for another 188 nautical miles. A desire to maximize the area that might be included within the baselines, subject to the FSM's international treaty obligations, cannot be interpreted as a recognition of state ownership of the ocean resources 12 to 200 nautical outside of those baselines when drawn. Chuuk v. Secretary of Finance, 9 FSM R. 424, 430-31 (App. 2000).

The framers' intent that the equidistance method be used to establish fair and equitable marine boundaries between the states in the event marine resource revenue should accrue to the state wherein the resources are found does not indicate state resource ownership because the Constitution explicitly provides for an event when such revenues would accrue to the state – when ocean floor mineral resources are exploited. Chuuk v. Secretary of Finance, 9 FSM R. 424, 431 (App. 2000).

When the Constitution defined state boundaries, the Constitution's framers did not intend to confer on the states the ownership of the exclusive economic zone's resources or all the revenues derived from them. Chuuk v. Secretary of Finance, 9 FSM R. 424, 431 (App. 2000).

When a government has the power to collect money, it has the power to disburse that money at its discretion unless the Constitution or applicable laws should provide otherwise. Chuuk v. Secretary of Finance, 9 FSM R. 424, 431 (App. 2000).

The Constitution's broadly stated express grants of power to the national government contain within them innumerable incidental or implied powers, as well as certain inherent powers. Chuuk v. Secretary of Finance, 9 FSM R. 424, 431 n.2 (App. 2000).

Because regulating the ownership, exploration, and exploitation of the exclusive economic zone's natural resources is a power expressly and exclusively delegated to the national government and because the incidental power to collect assessments levied pursuant to that delegated power is indisputably a national power, the power to disburse those funds is also a national power, except where the Constitution provides otherwise (such as in Article IX, section 6). Thus even were the states the underlying owners of the exclusive economic zone's resources, such a conclusion would not entitle the states to the exclusive economic zone's revenues except where the Constitution so provides. Chuuk v. Secretary of Finance, 9 FSM R. 424, 431-32 (App. 2000).

Fishing fees are not assessed under the national government's constitutional authority to impose taxes on income. They are levied instead under the national government's constitutional authority to regulate the ownership, exploration, and exploitation of natural resources within the marine space of the Federated States of Micronesia beyond 12 miles from island baselines. Chuuk v. Secretary of Finance, 9 FSM R. 424, 434 (App. 2000).

Fishing fees are not income taxes because the national government's power to impose them does not

derive from its power to tax income. Chuuk v. Secretary of Finance, 9 FSM R. 424, 435 (App. 2000).

The Constitution provides three instances of mandatory unconditional revenue sharing with the states, which the framers evidently thought enough. Chuuk v. Secretary of Finance, 9 FSM R. 424, 435 (App. 2000).

If a statutory provision is unconstitutional and can be severed from the rest of the legislative act, only that provision will be struck down. MGM Import-Export Co. v. Chuuk, 10 FSM R. 42, 44 (Chk. 2001).

The FSM Constitution does not apply to a lawsuit in a CNMI court over a transaction that occurred in Saipan. Northern Marianas Housing Corp. v. Finik, 12 FSM R. 441, 444 (Chk. 2004).

The Constitution's broadly stated express grants of power to the national government contain within them innumerable incidental or implied powers, as well as certain inherent powers. Jano v. FSM, 12 FSM R. 569, 576 (App. 2004).

The power to provide for the national defense includes the inherent authority to protect the nation from threats both foreign and domestic. Protecting from these threats includes regulating the possession of firearms and ammunition. Jano v. FSM, 12 FSM R. 569, 576 (App. 2004).

A litigant may assert a claim in state or local court based upon a right provided under both a state and FSM Constitutions, and if a state constitution grants fewer rights than the FSM Constitution, a litigant may rely upon and assert his rights under the FSM Constitution. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 307 (App. 2007).

Although a state court's determination of a litigant's rights under that state's constitution may be final and not subject to review by the FSM Supreme Court, a state court's determination of a litigant's rights guaranteed under the FSM Constitution is subject to de novo review by the FSM Supreme Court since a state constitution cannot deprive the FSM Supreme Court of its jurisdiction granted under the FSM Constitution because the FSM Constitution is the supreme law of the land. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 307 (App. 2007).

The only explicit right to suffrage found in the FSM Constitution is the right to "vote in national elections." So an alleged denial of a right to suffrage in a Chuuk state election would be the denial of a right under the Chuuk Constitution's suffrage provisions, and not a denial of FSM constitutional right to suffrage. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 397 (Chk. 2009).

The FSM Constitution contains no privileges and immunities clause. In re Neron, 16 FSM R. 472, 474 (Pon. 2009).

Constitutional rights are generally prospective, not retroactive. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 304 (App. 2014).

The FSM Constitution's Article VII, section 2 provides no basis for a party to seek relief in the FSM Supreme Court and no basis on which the party is likely to prevail when the party does not argue that the Chuuk has an undemocratic constitution but instead contends that the Chuuk executive branch is expending Chuuk state funds (albeit originally appropriated by Congress) without an appropriation of those funds by the Chuuk Legislature and that this is a violation of Chuuk's democratic constitution. Mailo v. Lawrence, 20 FSM R. 201, 204 (Chk. 2015).

– Amendment

The National Constitutional Convention is given broad authority to revise the very foundation of government, and every institution and office of government may come within its reach. Constitutional

Convention 1990 v. President, 4 FSM R. 320, 326 (App. 1990).

The nature of a constitutional convention as authorized by the FSM Constitution, with direct control of the people over the identity of convention delegates, and ultimate acceptance of the products of the convention's efforts, and the fact that the framers view a constitutional convention as a standard and preferred amendment mechanism, preclude congressional control over the convention's decision-making. Constitutional Convention 1990 v. President, 4 FSM R. 320, 327 (App. 1990).

Congress has no power to specify voting requirements for the Constitutional Convention and therefore any attempt to exercise this power so as to uphold tradition is also outside the powers of Congress under article V, section 2 of the Constitution, which is not an independent source of congressional power but which merely confirms the power of Congress, in exercising national legislative powers, to make special provisions for Micronesian tradition. Constitutional Convention 1990 v. President, 4 FSM R. 320, 328 (App. 1990).

The national court should not abstain from deciding a criminal case where the crime took place before the effective date of the 1991 amendment removing federal jurisdiction over major crimes because of the firmly expressed intention by the Constitutional Convention delegates as to the manner of transition from national jurisdiction to state jurisdiction. In re Ress, 5 FSM R. 273, 276 (Chk. 1992).

An amendment to the Constitution may be proposed by a constitutional convention, popular initiative, or Congress in a manner provided by law. A proposed amendment becomes part of the Constitution when approved by ¾ of the votes cast on that amendment in each of ¾ of the states. These are the only methods by which the Constitution may be amended. Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 149 (App. 2005).

– Bill of Attainder

A bill of attainder is any legislative act that applies to either named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial by substitution of a legislative for a judicial determination of guilt. Robert v. Mori, 6 FSM R. 394, 401 (App. 1994).

A statute making all persons convicted of a felony in the Trust Territory courts ineligible for election to the FSM Congress does not constitute criminal punishment and does not substitute a legislative for a judicial determination of guilt and thus is not an unconstitutional bill of attainder. Robert v. Mori, 6 FSM R. 394, 401 (App. 1994).

The statutory ineligibility of persons convicted of Trust Territory felonies is a valid exercise of Congress's constitutional power to prescribe additional qualifications for election to Congress, and is not unconstitutional as a deprivation of a liberty interest without due process of law, or as an ex post facto law, or as a bill of attainder. Robert v. Mori, 6 FSM R. 394, 401 (App. 1994).

A case that alleges that a state law is, or contains, a bill of attainder in violation of the FSM Constitution is a claim that arises under the Constitution and over which the FSM Supreme Court may exercise jurisdiction. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 263 (Chk. 2019).

The Constitution's prohibition of bills of attainder in the Declaration of Rights applies to all legislative bodies within the FSM, not just to the FSM Congress. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 263 (Chk. 2019).

A bill of attainder is any legislative act that applies to either named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial by substituting a legislative determination of guilt for a judicial one. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 263 (Chk. 2019).

As the constitutional prohibition of bills of attainder bars all such legislative acts, if a state law is a bill of attainder, the FSM Supreme Court has the jurisdiction to strike it (or the part of it that is a bill of attainder) down as unconstitutional and to enjoin its enforcement. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 263 (Chk. 2019).

A state governmental agency, entity, or subdivision does not have any national constitutional rights or national civil rights that it may enforce against the state (or one of its agencies) of which it is a part or which created it. Thus it cannot raise an FSM civil rights or constitutional claim against the state of which it is a part, since it has no such rights against the state that created it. This includes the constitutional right not to be subjected to a bill of attainder. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 263 (Chk. 2019).

A legislature's suspension of a state commission's activities does not constitute either a finding of guilt or an imposition of punishment on the commission's members. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 264 (Chk. 2019).

Punishment is a prerequisite to an act's being a bill of attainder. The determination of the existence of the punishment element of a constitutionally prohibited bill of attainder is dependent for resolution upon the facts and circumstances of individual cases. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 265 (Chk. 2019).

There are three tests to determine the existence of punishment element of a bill of attainder – the historical experience test, the functional test, and the motivational test. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 265 (Chk. 2019).

Under the historical experience test, the punishment element of a bill of attainder is met if the named individual or the easily ascertained group member is subjected to any of the penalties associated with bills of attainder or with bills of pains and penalties in England or in colonial or pre-Constitution America – namely death, imprisonment, banishment, or confiscation or forfeiture of property to the sovereign. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 265 (Chk. 2019).

The punishment element of a bill of attainder can also be met under the historical experience test by barring designated individuals or groups from participation in specified employments or vocations, a mode of punishment commonly employed against those legislatively branded as disloyal. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 265 (Chk. 2019).

The functional test for the punishment element of a bill of attainder looks beyond mere historical experience and analyzes whether the law under challenge, viewed in terms of the type and severity of burdens imposed, reasonably can be said to further nonpunitive legislative purposes. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 265 (Chk. 2019).

A legislature has furnished a nonpunitive legislative purpose for the statute's enactment when it has relied on its responsibility to control the state's finances and expenditures and to align those expenditures with the state's available revenues. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 265 (Chk. 2019).

The third recognized test for the punishment element of a bill of attainder is strictly a motivational one: inquiring whether the legislative record evinces a legislative intent to punish. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 266 (Chk. 2019).

A statute that suspends a state commission's activities but that does not punish the commission, its members, or any particular commission member, is not a bill of attainder because it does not inflict any punishment, either of the kind normally imposed in criminal cases or any punitive civil sanctions. In re

Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 266 (Chk. 2019).

When a state statute is not a bill of attainder and the court otherwise lacks jurisdiction, the plaintiffs' likelihood of success on the merits of their claims is zero. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 267 (Chk. 2019).

– Case or Dispute

A case must be one appropriate for judicial determination, that is, a justiciable controversy, as distinguished from a difference or dispute of a hypothetical or abstract character, or one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. In re Sproat, 2 FSM R. 1, 5 (Pon. 1985).

One reason the judicial power is limited to cases or disputes is to prevent the Judiciary from intruding into areas committed to other branches of government. In re Sproat, 2 FSM R. 1, 7 (Pon. 1985).

The principal objectives of the case and dispute requirement are to enhance the ability of the courts to make fair and intelligent decisions, and to keep the judicial power within its proper role. Innocenti v. Wainit, 2 FSM R. 173, 178-79 (App. 1986).

A concrete case or dispute clearly exists where a state legislature contends that an act of the legislature requires payment of a tax on imports and others insist that the act is null and void, and, depending on the outcome of the controversy, money may or may not be collected, and penalties may or may not be imposed. Innocenti v. Wainit, 2 FSM R. 173, 179 (App. 1986).

Where there is no indication that the sentencing order in question is an attempt to modify or affect the powers of the Director of Public Safety, absent indications that the order prevents the director from doing anything he wishes, the order creates no case or dispute as to the scope of the director's powers, and the court is thus without jurisdiction to speak on the issue. Loch v. FSM, 2 FSM R. 224, 237 (App. 1986).

While the court has statutory authority to hear appeals regarding the conduct of elections, its power to grant relief is limited to ordering a recount or a revote. Only Congress can decide who is to be seated and once it has seated a member unconditionally the matter is nonjusticiable. Aten v. National Election Comm'r (III), 6 FSM R. 143, 145 & n.1 (App. 1993).

A suit against the national government by the states alleging that the states are constitutionally entitled to 50% of all revenues from the EEZ is justiciable because the Supreme Court must reconcile any conflict between sections of the Constitution. Chuuk v. Secretary of Finance, 7 FSM R. 563, 569 (Pon. 1996).

Our Constitution's "case or dispute" clause, FSM Const. art. XI, § 6, mirrors the U.S. Constitution's "case or controversy" clause. FSM v. Louis, 9 FSM R. 474, 481 (App. 2000).

Article XI, section 6 of the Constitution restricts the FSM Supreme Court's jurisdiction to cases and disputes and the court is thereby precluded from making policy pronouncements on the basis of hypothetical or academic issues. FSM v. Louis, 9 FSM R. 474, 481 (App. 2000).

While our Constitution's wording is otherwise similar to that in article III, section 2, clause 1 of the U.S. Constitution, the FSM national courts have jurisdiction over "cases" and "disputes" while the U.S. federal courts have jurisdiction over "cases" and "controversies," but no significance can be attached to the difference between controversies and disputes. The FSM Constitution's case or dispute clause is thus similar to the U.S. Constitution's case or controversy clause. FSM v. Louis, 9 FSM R. 474, 482 (App. 2000).

A case must be one appropriate for judicial determination, that is, a justiciable controversy, as

distinguished from a difference or dispute of a hypothetical or abstract character, or one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. FSM v. Louis, 9 FSM R. 474, 482 (App. 2000).

The Constitution does not authorize the FSM Supreme Court to declare the law anytime a justice feels moved to do so or authorize the court to respond to every request for a legal ruling directed to it by citizens. Instead, Article XI, section 6 of the Constitution grants jurisdiction, and the power to exercise judicial powers, only in five specific kinds of "disputes" and five types of "cases." FSM v. Louis, 9 FSM R. 474, 482 (App. 2000).

A case is not non-justiciable, one not proper for judicial review, when the plaintiff only seeks a fair chance to apply, through a constitutional procedure, for funds for which it is eligible. Udot Municipality v. FSM, 9 FSM R. 560, 563 (Chk. 2000).

The FSM Constitution's case or dispute clause is similar to the U.S. Constitution's case or controversy clause, and it has been determined that no significance could be attached to the difference between the terms "controversies" and "disputes." Enlet v. Bruton, 10 FSM R. 36, 40 (Chk. 2001).

One of the rationales for limiting a court's power to deciding the cases before it is to prevent the court from intruding into areas committed to the executive or legislative branches. Davis v. Kutta, 10 FSM R. 98, 99 (Chk. 2001).

Legislative houses are the final judges of their memberships and under the Chuuk Constitution each house is the sole judge of the election and qualification of its members. This does not make an election case about a member-elect non-justiciable until such time as the house has taken its final action. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 153 (Chk. S. Ct. App. 2001).

It is settled law in the FSM that the FSM Supreme Court has the ability to issue declaratory judgments so long as there is a case or dispute within the meaning of article XI, sections 6(a) or 6(b). Udot Municipality v. FSM, 10 FSM R. 354, 358 (Chk. 2001).

A court may decide only the case before it, and may not render an advisory opinion. A request for clarification that asks the court to opine on facts not before it, will be denied. Estate of Mori v. Chuuk, 12 FSM R. 24, 26 (Chk. 2003).

In order for a case to be "justiciable," or one over which the court has jurisdiction for purposes of rendering a decision, it must be one that is concrete and definite, and not abstract or hypothetical in nature. A case may not present questions that are moot or hypothetical, but rather must put forth issues that bear on the relationships of parties who have adverse legal interests. Urusemal v. Capelle, 12 FSM R. 577, 584 (App. 2004).

Although the extent and depth of either party's commitment to its view does not resolve the question of whether a justiciable dispute exists, the very divergence of those views highlights the fact that the important issues presented in the case bear in a fundamental way on the relationships between parties who have adverse legal interests. The issues resulting from these differing positions present a justiciable dispute. Urusemal v. Capelle, 12 FSM R. 577, 584-85 (App. 2004).

When a question is hypothetical, academic, or abstract, the court will not rule, and is generally precluded from ruling, on it. FSM v. Kansou, 12 FSM R. 637, 641 (Chk. 2004).

When the parties have stipulated to a judgment and one claim remains, in order for the court to exercise its jurisdiction to dispose of this one remaining claim, a case or dispute under Article XI, Section 6 of the FSM Constitution must exist. The case or dispute must exist at the time the court acts. FSM Social Sec. Admin. v. Jonas, 13 FSM R. 171, 173 (Kos. 2005).

While it is within Congress's sole power to determine, by statute, how, and for what, the national government will spend its funds, it is always within the judicial branch's power or jurisdiction to determine, in a proper case, whether those funds were spent in conformity with the statute. FSM v. Kansou, 14 FSM R. 128, 130 (Chk. 2006).

A trial justice may not, *sua sponte*, assert jurisdiction over a case which has been fully dismissed, particularly when that case was dismissed by another justice. When a case has been dismissed, there is no case or dispute remaining before the court. Ruben v. Petewon, 14 FSM R. 177, 183 (Chk. S. Ct. App. 2006).

The Constitution does not limit the grounds upon which the President can veto bills. The President can veto any bill for any reason he chooses. The Constitution requires the President to return to Congress, within ten days, a bill he has vetoed along with his objections. Congress then makes its own determination of whether those objections will stand by either overriding or sustaining the veto. Invalidation or nullification of a Presidential veto is textually committed by the Constitution to Congress because the power to override a Presidential veto is expressly delegated to Congress. Christian v. Urusemal, 14 FSM R. 291, 294 (App. 2006).

The President's reasons for vetoing a bill cannot be questioned in the judicial branch. The court has no jurisdiction to grant the relief of declaring the President's vetoes void regardless of what the President's objections were. Christian v. Urusemal, 14 FSM R. 291, 294 (App. 2006).

When the Congress Speaker asks the court, before any enactment process has been completed, to advise the parties on exactly where in the process they stand, the Speaker asks the court for an advisory opinion, which it cannot give. The Constitution restricts the FSM Supreme Court's jurisdiction to actual cases and disputes. It does not sit to render advisory opinions. Christian v. Urusemal, 14 FSM R. 291, 294 (App. 2006).

It is a basic principle of justiciability that a court will not render an advisory opinion. FSM v. Koshin 31, 16 FSM R. 15, 21 (Pon. 2008).

The FSM Supreme Court's jurisdiction is constitutionally limited to actual cases and disputes thereby precluding it from making pronouncements on hypothetical, abstract, or academic issues or when the matter is moot. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 398 (Chk. 2009).

When the constitutional issues the plaintiffs raise are either a part of an election contest over which the court has no jurisdiction or are hypothetical, abstract, or academic, the court lacks jurisdiction over the case. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 398 (Chk. 2009).

The legal principles of justiciability, separation of powers, the political question doctrine do not apply to a case that, at its core, is one in which each party alleges the other breached a contract, and in which the defendant also counterclaims for civil rights violation, abuse of process, civil conspiracy, intentional interference with contractual relations, libel, and slander. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 484 (Pon. 2009).

The FSM Supreme Court does not have the jurisdiction or power to render advisory opinions since the Constitution only grants the court jurisdiction to decide actual or concrete cases or disputes. Kosrae v. Benjamin, 17 FSM R. 1, 4 (App. 2010).

The court will not provide a decision in a case that is not currently before it and it will not render advisory opinions. Further, the court cannot opine on facts that are not currently before it. Lee v. FSM, 18 FSM R. 106, 108 (Pon. 2011).

A court will address the part of a motion to dismiss concerning subject-matter jurisdiction first since if the movant were to prevail on this ground any court ruling on the other grounds would be nothing more than advisory opinions, and the court does not have the authority to render advisory opinions. Iwo v. Chuuk, 18 FSM R. 182, 183-84 (Chk. 2012).

When the defendant has filed a summary judgment motion and a motion to dismiss for lack of jurisdiction, the court will consider the motion to dismiss first because if the court were to grant the motion to dismiss, any ruling the court made on the summary judgment motion would, at best, be an advisory opinion since it would have been made without jurisdiction and the FSM Supreme Court does not have the authority to render advisory opinions. Hauk v. Mijares, 18 FSM R. 185, 186-87 (Chk. 2012).

A motion for preliminary approval of a settlement must be denied when the class plaintiffs seek approval of a compromise of a hypothetical cause of action that they have not pled against a party that is neither a defendant nor a cross-defendant. Because there is no case or dispute for the settlement agreement to settle, the settlement agreement cannot be approved since there is no real settlement to approve or reject and since the court cannot make hypothetical rulings. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 231 (Yap 2013).

An appellate court does not sit to render decisions on abstract legal propositions or issue advisory opinions. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 513 (App. 2016).

Even when the court generally has jurisdiction over a case's subject matter, that case still must be justiciable in order for the court to be able to grant any relief. Rodriguez v. Ninth Pohnpei Legislature, 21 FSM R. 276, 280 (Pon. 2017).

– Case or Dispute – Mootness

A case must be one appropriate for judicial determination, that is, a justiciable controversy, as distinguished from a difference or dispute of a hypothetical or abstract character, or one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. In re Sproat, 2 FSM R. 1, 5 (Pon. 1985).

A claim becomes moot when the parties lack a legally cognizable interest in the outcome. If an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot. Berman v. FSM Supreme Court (II), 7 FSM R. 11, 16 (App. 1995).

A case must be one appropriate for judicial determination, that is, a justiciable controversy, as distinguished from a difference or dispute of a hypothetical or abstract character, or one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. FSM v. Louis, 9 FSM R. 474, 482 (App. 2000).

The FSM Supreme Court's lack of jurisdiction over, or inability to decide, a moot case is firmly rooted in the FSM Constitution's requirement that there be a case or a dispute. A case or dispute becomes moot when the parties lack a legally cognizable interest in the outcome. FSM v. Louis, 9 FSM R. 474, 482 (App. 2000).

If an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot. FSM v. Louis, 9 FSM R. 474, 482 (App. 2000).

When even if the court reversed the garnishment order, any relief it could grant the FSM on the sovereign immunity issue would be ineffectual since 6 F.S.M.C. 707 makes the FSM no longer subject to garnishment of funds it owes to a state, and when, although the general rule is that the payment of a judgment does not make an appeal moot, the FSM has stated that it will not seek repayment of the funds that it paid the plaintiff, the FSM would have no interest in the case's outcome and the issues it raised on

appeal are moot. FSM v. Louis, 9 FSM R. 474, 482-83 (App. 2000).

An exception to the mootness doctrine exists when there is a situation in which an otherwise moot case may have a continuing effect on future events, including future litigation. FSM v. Louis, 9 FSM R. 474, 483 (App. 2000).

When other trial division cases recognize the principle of sovereign immunity and the trial court decision appealed from only observed that in the absence of a specific expression by the legislature, sovereign immunity would not prevent the court from garnishing property held by the FSM for a state, when the constitutionality of the FSM's sovereign immunity statute was not before the court, and when the FSM served only as a mere garnishee in a situation which Congress has prevented from recurring by the enactment of 6 F.S.M.C. 707, the trial court decision will not effect future litigation involving the FSM and the FSM's appeal is thus moot. FSM v. Louis, 9 FSM R. 474, 483-84 (App. 2000).

When it appears that the problem will arise again, and would otherwise be incapable of review, the court has jurisdiction because the most notable exception to the mootness doctrine is a situation in which an otherwise moot case may have a continuing effect on future events, including future litigation. Udot Municipality v. FSM, 9 FSM R. 560, 562 (Chk. 2000).

Because the FSM Supreme Court generally (with some exceptions) lacks jurisdiction over a moot cause of action, it must be dismissed. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 119 (Pon. 2001).

Earmarking $50,000 of a prior appropriation to be spent in the plaintiff municipality does not take away the municipality's standing by making its claim moot when the appropriation still has an undifferentiated category called "other needs," and when the municipality's past inability to apply for funds already spent, and the likelihood that the situation would arise again, but be incapable of review, all favor a finding of continuing standing. Udot Municipality v. FSM, 10 FSM R. 354, 358 (Chk. 2001).

An argument that a party once had standing but no longer does is an argument that the case is now moot. One exception to the mootness doctrine is that the court retains jurisdiction when the problem will arise again, and would otherwise be incapable of review. Udot Municipality v. FSM, 10 FSM R. 354, 358 (Chk. 2001).

No justiciable controversy is presented if events subsequent to an appeal's filing make the issues presented in a case moot. A claim becomes moot when the parties lack a legally cognizable interest in the outcome, and if an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot. Enactment of a statute after judgment is entered and before the appeal is heard can make an appeal moot. Wainit v. Weno, 10 FSM R. 601, 610 (Chk. S. Ct. App. 2002).

An appellate court may receive proof or take notice of facts outside the record for determining whether a question presented to it is moot. Wainit v. Weno, 10 FSM R. 601, 610 (Chk. S. Ct. App. 2002).

When an appeal is dismissed as moot, the established rule is for the appellate court to reverse or vacate the judgment below and dismiss the case. Wainit v. Weno, 10 FSM R. 601, 611 (Chk. S. Ct. App. 2002).

The FSM Constitution's "case or dispute" clause restricts the FSM Supreme Court's jurisdiction to cases and disputes, and the court is thereby precluded from making policy pronouncements on the basis of hypothetical or academic issues. FSM Dev. Bank v. Yinug, 11 FSM R. 405, 409-10 (App. 2003).

The Supreme Court's lack of jurisdiction over, or inability to decide, a moot case is firmly rooted in the Constitution's requirement that there be a case or a dispute. A case or dispute becomes moot when the parties lack a legally cognizable interest in the outcome. If an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot. FSM Dev. Bank v. Yinug, 11 FSM R. 405, 410

(App. 2003).

When the issues presented in a petition for a writ of mandamus concerning the discovery of non-party borrower records have become moot because, by virtue of a trial court order, no further discovery will take place, the issuance of a writ of mandamus to the trial court to disallow or restrict the discovery would be ineffectual since there will be no further discovery. The petition will therefore be dismissed. FSM Dev. Bank v. Yinug, 11 FSM R. 405, 410 (App. 2003).

There may be exceptions to the mootness doctrine, *e.g.*, for situations in which an otherwise moot case may have a continuing effect on future events, including future litigation. FSM Dev. Bank v. Yinug, 11 FSM R. 405, 410 n.5 (App. 2003).

When the sole issue before the appellate court was whether the Director's rejection of an election petition as untimely was in compliance with the applicable statute and when the only relief the court could have granted would have been to vacate the Director's denial, remand the matter to the Director, and order the Director to consider the petition on the merits and when the Director himself has resolved this one issue in petitioner's favor and considered and ruled on the petition's merits, there is no further relief that the court could grant that the Director has not already granted. The appeal is moot. Fritz v. National Election Dir., 11 FSM R. 442, 444 (App. 2003).

If an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot. Fritz v. National Election Dir., 11 FSM R. 442, 444 (App. 2003).

Article XI, section 6 of the Constitution restricts the FSM Supreme Court's jurisdiction to actual cases and disputes. The court is thereby precluded from making pronouncements on the basis of hypothetical, abstract, or academic issues or when the matter is moot. Fritz v. National Election Dir., 11 FSM R. 442, 444 (App. 2003).

An appellate court does not sit to render decisions on abstract legal propositions or to render advisory opinions. Fritz v. National Election Dir., 11 FSM R. 442, 444 (App. 2003).

When any relief that a court would grant would be ineffective, then the court must deem the dispute moot. The mootness doctrine precludes a court from addressing a dispute's merits when the court can no longer grant any relief which would have any practical effect. McIlrath v. Amaraich, 11 FSM R. 502, 506 (App. 2003).

When the submission of a letter constitutes compliance with the court order to file a brief, the petitioners' central claim that it cannot be compelled to submit a brief is rendered moot, and in the usual case, this would preclude the consideration of any of the petition's issues because the FSM Supreme Court lacks jurisdiction over, and cannot decide, moot cases since the Constitution requires that there be a case or a dispute. But an exception to the mootness doctrine exists when an otherwise moot case may have a continuing effect on future events, including future litigation, and when it appears that the problem will arise again, and would otherwise be incapable of review, a court may still have jurisdiction under this exception. McIlrath v. Amaraich, 11 FSM R. 502, 506 (App. 2003).

A case or dispute becomes moot when the parties lack a legally cognizable interest in the outcome. McIlrath v. Amaraich, 11 FSM R. 502, 506 (App. 2003).

A claim is moot when the parties lack a legally cognizable interest in the outcome. A case must be one appropriate for judicial determination, as distinguished from an hypothetical or abstract dispute. The controversy must be definite and concrete, touching the legal relations of parties having adverse interests. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 580 (Chk. S. Ct. Tr. 2003).

Even when the real parties in interest have already taken office, both the plaintiffs and the real parties

in interest have a legally cognizable interest in the outcome, because if the election is declared unconstitutionally void, the plaintiffs may have another chance at victory and if the election is declared valid, then the real parties in interest may savor their victory and because it is not an abstract dispute, but a very real problem which threatens the very foundation of democracy, the right of the people to vote in free and fair and democratic elections. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 580 (Chk. S. Ct. Tr. 2003).

An exception to the mootness doctrine clearly applies when it appears to the court that the problem may rise again, and when a determination of the issues may have a continuing effect on future events, including future litigation. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 580 (Chk. S. Ct. Tr. 2003).

When an appeal was from an order revoking pretrial release and the issue on appeal was the right to pretrial release, the appellant's subsequent conviction and release makes the appeal moot. Reddy v. Kosrae, 11 FSM R. 595, 596 (App. 2003).

No justiciable controversy is presented if events subsequent to the filing of an appeal make the issues presented moot, and an appellate court may receive proof or take notice of facts outside the record for determining whether a question presented to it is moot. Reddy v. Kosrae, 11 FSM R. 595, 596-97 (App. 2003).

The court is without jurisdiction to consider and will dismiss a moot appeal. Reddy v. Kosrae, 11 FSM R. 595, 597 (App. 2003).

When the appellants have not in fact been required to perform any non-statutory accounting and another appellant has already submitted an accounting, the appellants' challenge of a trial court order that others complete a proper accounting is moot. FSM v. Udot Municipality, 12 FSM R. 29, 42 (App. 2003).

A dispute becomes moot when the parties lack a legally cognizable interest in the outcome and if any relief it could grant would be ineffectual. FSM v. Udot Municipality, 12 FSM R. 29, 42 (App. 2003).

When even if the issue of mootness had been raised, the case still fell within the exception to the mootness doctrine that it may have a continuing effect on future events, including future litigation and may be capable of repetition, yet evading review, the court will address the issue. FSM v. Udot Municipality, 12 FSM R. 29, 49 (App. 2003).

An interlocutory appeal may be considered moot when the trial court has issued a final judgment in the case below and the appellant has since filed a notice of appeal on the same issues. FSM Dev. Bank v. Adams, 12 FSM R. 456, 460 (App. 2004).

Under an exception to the mootness doctrine, when the court's rulings will have a continuing effect on future events and future litigation and will offer guidance to future litigants, which should have the positive effect of eliminating or lessening unwarranted attempts at interlocutory appeals, thus conserving judicial resources, the court will review the matter. FSM Dev. Bank v. Adams, 12 FSM R. 456, 460 (App. 2004).

A criminal defendant's claim that if he is not granted a stay of his sentence of imprisonment pending appeal his appeal will become moot can only be deemed frivolous or for the purpose of delay since even if a criminal appellant has finished his sentence before his appeal is decided, that will not render his appeal moot because of a criminal conviction's collateral consequences, such as the legal disabilities that ensue. FSM v. Petewon, 14 FSM R. 463, 469 (Chk. 2006).

A case becomes moot when the party raising an issue lacks a legally cognizable interest in the outcome of the issue, and if the relief sought would, if granted, be ineffectual. Wainit v. FSM, 14 FSM R. 476, 478 (App. 2006).

No justiciable controversy is presented if events subsequent to the filing of an appeal make the issues presented moot. The FSM Supreme Court lacks jurisdiction to consider cases or issues that are moot, and therefore must dismiss or deny the same. Wainit v. FSM, 14 FSM R. 476, 478 (App. 2006).

When the appellant has been released from jail on parole, any relief that the appellate court could grant the appellant on his request for release pending the outcome of his appeal, would be entirely ineffectual. As such, the appellant's request for release pending appeal is moot and will be denied as moot. Wainit v. FSM, 14 FSM R. 476, 478 (App. 2006).

Since an appellate court may receive proof or take notice of facts outside the record for determining whether a question presented to it is moot, the court therefore may take notice of the opinion in a related appeal case. Nikichiw v. Marsolo, 15 FSM R. 177, 178 (Chk. S. Ct. App. 2007).

No justiciable controversy is presented if events subsequent to an appeal's filing make the issues presented in a case moot. A claim becomes moot when the parties lack a legally cognizable interest in the outcome, and if an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot, and if the appeal has become moot, the court no longer has jurisdiction to hear and decide it. Nikichiw v. Marsolo, 15 FSM R. 177, 179 (Chk. S. Ct. App. 2007).

When the opinion and the writ of prohibition issued in a different appeal has already granted the appellants all of the relief that they first sought in this case, this appeal has become moot because any relief the court could now grant would be ineffectual, and a motion to dismiss will therefore be granted. Nikichiw v. Marsolo, 15 FSM R. 177, 179 (Chk. S. Ct. App. 2007).

When an appeal is dismissed as moot, the established rule is for the appellate court to reverse or vacate the judgment below and dismiss the case. Nikichiw v. Marsolo, 15 FSM R. 177, 179 (Chk. S. Ct. App. 2007).

An exception to the mootness doctrine clearly applies when it appears to the court that the problem may rise again, and when a determination of the issues may have a continuing effect on future events, including future litigation. Kinemary v. Siver, 16 FSM R. 201, 208 (Chk. S. Ct. App. 2008).

A case becomes moot when the party raising the issue lacks a legally cognizable interest in the issue's outcome, and if the relief sought would, if granted, be ineffectual. In re Mefy, 16 FSM R. 401, 403 (Chk. 2009).

When the issues raised in an application for a writ of habeas corpus are moot because the applicants have already been granted the relief sought – release from jail – any consideration or relief would thus be ineffectual. No justiciable case or dispute is presented when events subsequent to a case's filing make the issues presented moot. Since the FSM Supreme Court lacks jurisdiction to consider moot cases or issues, it must dismiss a moot application because, when the court lacks jurisdiction over a case, it should not remain lifelessly on the docket however harmless that may seem. In re Mefy, 16 FSM R. 401, 403 (Chk. 2009).

Even if the prosecution succeeded in convincing an appellate court that a trial court's rulings were erroneous, the prosecution would be constitutionally barred from retrying an accused found not guilty and that would make the prosecution appeal a moot appeal seeking an advisory opinion on statutory interpretation and the appellate court does not have jurisdiction to consider or decide moot appeals. Kosrae v. Benjamin, 17 FSM R. 1, 4 (App. 2010).

A case or dispute becomes moot when the parties lack a legally cognizable interest in the outcome. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 634, 635 (Chk. S. Ct. Tr. 2013).

A case must be one appropriate for judicial determination, that is, a justiciable controversy, as

distinguished from a difference or dispute of a hypothetical or abstract character or one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 634, 635 (Chk. S. Ct. Tr. 2013).

A case would fall within the exception to the mootness doctrine when it may have a continuing effect on future events, including future litigation, and may be capable of repetition yet evading review. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 634, 635-36 (Chk. S. Ct. Tr. 2013).

A motion to dismiss for mootness will be denied when the court record demonstrates that the action in question has occurred in the past, and but for the injunction, would have occurred in this instance absent the issue being considered, the action in question will likely occur in the future, thereby effectively evading review save for the application of the doctrine of "capable of repetition, yet evading review." Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 634, 636 (Chk. S. Ct. Tr. 2013).

A motion is not "moot" when the parties still have a legally cognizable interest in the case's outcome because a case or dispute becomes moot only when the parties lack a legally cognizable interest in the outcome. Berman v. FSM Nat'l Police, 19 FSM R. 118, 126 (App. 2013).

An appellate court may receive proof or take notice of facts outside the record to determine whether a question presented to it is moot, and, if events after an appeal is filed make the issue presented moot, no justiciable dispute is presented and the court is without jurisdiction to consider the appeal – it must dismiss a moot appeal. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 143-44 (App. 2013).

A claim becomes moot when the parties lack a legally cognizable interest in the litigation's outcome. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 144 (App. 2013).

A court is precluded from making pronouncements on the basis of a hypothetical, abstract, or academic issue or when the matter is moot. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 144 (App. 2013).

When an appellant asserts that the six-year statute of limitations means he is not legally liable for any payments that were due over six years before the lawsuit was filed and all the extra interest that accrued because those payments were missed and the appellee has conceded that the judgment against the appellant should be reduced by those amounts, the parties no longer have a legally cognizable dispute about this issue's outcome and the issue is moot. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 144 (App. 2013).

Since no justiciable case or dispute is presented when events after the filing of an appeal make the issues presented moot, the appellate court lacks jurisdiction to consider or decide moot appeals. Andrew v. Heirs of Seymour, 20 FSM R. 629, 631 (App. 2016).

An appeal will be dismissed if events after its filing make the issues presented moot because the court lacks jurisdiction to consider moot cases. Setik v. Perman, 22 FSM R. 105, 118 (App. 2018).

A moot case does not present a justiciable dispute. Setik v. Perman, 22 FSM R. 105, 118 (App. 2018).

An appellate court may receive proof of, or take notice of, facts outside the record to determine if an appeal has become moot. In most cases, it would be difficult to determine mootness any other way. Setik v. Perman, 22 FSM R. 105, 118 (App. 2018).

Among the circumstances that create mootness are rulings in other adjudicatory proceedings, including rulings by the same court in the same or companion proceedings. Generally, an intervening

judicial decision entered in a collateral proceeding will render moot a case or an issue arising therein when the decision resolved the controversy or the issue. Setik v. Perman, 22 FSM R. 105, 118 (App. 2018).

All the appellants' substantive claims are moot and will be dismissed when those claims no longer present a justiciable dispute because previous appellate decisions have resolved them in their entirety. Setik v. Perman, 22 FSM R. 105, 120 (App. 2018).

Although the usual result when an appeal becomes moot is for the appellate court to vacate the judgment below and order that the case be dismissed, when the case below has already been dismissed, no purpose would be served by vacating that dismissal and then dismissing it again. Setik v. Perman, 22 FSM R. 105, 120 (App. 2018).

Article XI, § 6 of the Constitution restricts the court's jurisdiction to only actual "cases" or "disputes." A case must be one appropriate for judicial determination, that is, a justiciable controversy, as distinguished from a difference or dispute of a hypothetical or abstract character, or one that is academic or moot. Timsina v. FSM, 22 FSM R. 383, 386-87 (Pon. 2019).

The court is precluded from making policy pronouncements on the basis of hypothetical or academic issues. If the court finds that any relief it could grant would be ineffectual, it must treat the case as moot. Timsina v. FSM, 22 FSM R. 383, 387 (Pon. 2019).

A well-established exception to the mootness doctrine exists when an otherwise moot case may have a continuing effect on future events, including future litigation. Timsina v. FSM, 22 FSM R. 383, 387 (Pon. 2019).

Although the appellant contends that if its helicopter is sent to Guam, its appeal is in danger of becoming moot, mootness is not even a consideration for all of the issues turning on U.S. federal law because those issues, if raised, will then be properly before the court where they should be determined, and, if there are any remaining issues restricted solely to FSM law, the appellant, if it chooses, can rely on the capable-of-repetition-yet-evading-review doctrine to avoid a dismissal based on mootness. In re Wrecked/Damaged Helicopter, 22 FSM R. 580, 585 (Pon. 2020).

– Case or Dispute – Political Question

Where there is in the Constitution a textually demonstrable commitment of the issue to a coordinate branch of government, such as Congress being the sole judge of the elections of its members, it is a nonjusticiable political question not to be decided by the court because of the separation of powers provided for in the Constitution. Aten v. National Election Comm'r (III), 6 FSM R. 143, 145 (App. 1993).

Placement of proposed constitutional amendments on the ballot does not transform a claim into a non-justiciable political question. It does not constitute a commitment of the issue to any of the branches of government. Chuuk v. Secretary of Finance, 9 FSM R. 73, 74-75 (Pon. 1999).

When there is in the Constitution a textually demonstrable commitment of an issue to a coordinate branch of government, such as Congress being the sole judge of the elections of its members, it is a nonjusticiable political question not to be decided by a court because of the separation of powers provided for in the Constitution. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 16-17 (App. 2006).

When there is no textually demonstrable constitutional commitment that declaring a trochus harvest is reserved solely to one branch of government without the involvement of any other branch or that the power to engage in commercial activity is reserved solely to one branch of government, the political question doctrine does not apply. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 17 (App. 2006).

An argument that the political question doctrine bars the court from becoming involved in a case

because a state law gives a state regulatory body the power followed to its logical conclusion would mean that no court could ever rule an executive action illegal because some law empowers the executive to make that decision. In other words, the principle of judicial review, enshrined in both the FSM and Pohnpei Constitutions, would be overthrown and the government's actions could never be questioned or reviewed in any court. That cannot be so. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 17 (App. 2006).

When there is in the Constitution a textually demonstrable commitment of the issue to a coordinate branch of government (such as Congress being the sole judge of the elections of its members) it is a nonjusticiable political question not to be decided by the court because of the separation of powers provided for in the Constitution. FSM v. Kansou, 14 FSM R. 128, 130 (Chk. 2006).

A President's reason for vetoing the bills passed during the Fourteenth Congress's Second Special Session is a non-justiciable issue because when the Constitution has a textually demonstrable commitment of an issue to a coordinate branch of government, it is a nonjusticiable political question not to be decided by the court because of the separation of powers provided for in the Constitution. Christian v. Urusemal, 14 FSM R. 291, 294 (App. 2006).

If Congress seats a candidate unconditionally an election contest becomes a non-justiciable political question. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 359 (Chk. 2009).

The FSM's argument that the court is without jurisdiction to hear the defendant's counterclaims in the ground that they are nonjusticiable political questions because the Compact is a treaty between the FSM and the United States and the improvement of infrastructure through grants to the FSM is specifically contemplated by the Compact, the implementation of which must comply with requirements spelled out in the Compact, is without merit because, carried to its logical end, it would also bar the FSM from asserting its contract claims against the defendant since the contract was entered into to facilitate improving infrastructure in compliance with the Compact requirements attached to the FSM receiving the funds to pay for infrastructure improvements. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 482 (Pon. 2009).

The legal principles of justiciability, separation of powers, the political question doctrine do not apply to a case that, at its core, is one in which each party alleges the other breached a contract, and in which the defendant also counterclaims for civil rights violation, abuse of process, civil conspiracy, intentional interference with contractual relations, libel, and slander. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 484 (Pon. 2009).

When the Constitution contains a textually demonstrable commitment of an issue to a coordinate branch of government, it is a nonjusticiable political question not to be decided by the court because of the Constitution's requirements for the separation of powers. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 186 (Pon. 2010).

Under the political question doctrine, when there is in the Constitution a textually demonstrable commitment of an issue to a coordinate branch of government, it is a nonjusticiable political question not to be decided by a court because of the separation of governmental powers provided for by the Constitution. Chuuk v. FSM, 20 FSM R. 373, 375 (Chk. 2016).

Among the formulations describing a political question is a case where there is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or the impossibility of a court's undertaking independent resolution without expressing lack of respect due coordinate branches of government; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question. Chuuk v. FSM, 20 FSM R. 373, 375-76 (Chk. 2016).

Since the national government, and therefore Congress, has no discretion but must remit the first 50% of the national tax collected to the state treasury of the state it was collected in, a dispute about that first

50% would not be a nonjusticiable political question, although a dispute over a percentage higher than 50% would be a nonjusticiable political question textually committed to a discretionary Congressional decision. Chuuk v. FSM, 20 FSM R. 373, 376 (Chk. 2016).

The matter does not present a nonjusticiable political question when it is not apparent why the constitutional mandate that 50% of national tax revenues be paid into the treasury of the state where collected would not be self-executing (except if Congress wants a higher percentage remitted to the states). Chuuk v. FSM, 20 FSM R. 373, 376 (Chk. 2016).

When the Constitution contains a textually demonstrable commitment of an issue to a coordinate branch of government, it is a non-justiciable political question not to be decided by a court because of the constitutionally mandated separation of powers. This is as true of the Pohnpei Constitution as it is of the FSM Constitution. Rodriguez v. Ninth Pohnpei Legislature, 21 FSM R. 276, 280 (Pon. 2017).

The Pohnpei Constitution clearly and demonstrably textually commits the investigation of, and the impeachment of Pohnpei state government officials, including the Pohnpei Chief Justice, to the Pohnpei Legislature. An impeachment proceeding's procedure, including its timing, is thus also a non-justiciable political question. Rodriguez v. Ninth Pohnpei Legislature, 21 FSM R. 276, 280 (Pon. 2017).

The Pohnpei Legislature's procedures for, including the timing of, its investigation and possible impeachment of the Pohnpei Chief Justice, are non-justiciable. Rodriguez v. Ninth Pohnpei Legislature, 21 FSM R. 276, 280 (Pon. 2017).

A preliminary injunction seeking to enjoin the possible impeachment of the Pohnpei Chief Justice, will be denied when there is no possibility of success on the merits because the case involves a non-justiciable political question, and the equities all favor the Pohnpei Legislature, and the public interest will be served by permitting the Legislature's investigation of a possible impeachment to proceed. Rodriguez v. Ninth Pohnpei Legislature, 21 FSM R. 276, 281 (Pon. 2017).

Whether Congress should discipline, or should have disciplined, a member is nonjusticiable – it is a political question that is beyond the court's power or authority. This is because when there is in the Constitution a textually demonstrable commitment of an issue to a coordinate branch of government, it is a nonjusticiable political question not to be decided by a court because of the separation of powers provided for in the Constitution, and the question of disciplining Congress members is textually and demonstrably committed to a coordinate branch of government – Congress itself. Panuelo v. FSM, 22 FSM R. 498, 511 (Pon. 2020).

The decision whether to discipline a member is a nonjusticiable political question left to Congress's discretion. Panuelo v. FSM, 22 FSM R. 498, 511 (Pon. 2020).

– Case or Dispute – Ripeness

When a party has been specifically warned by the attorney general that he is required to obtain a foreign investment permit under national statute which imposes criminal sanctions for failure to comply, the question of whether a permit is required is sufficiently ripe to support a suit seeking declaratory judgment. Michelsen v. FSM, 3 FSM R. 416, 418-19 (Pon. 1988).

When the government is attempting to enforce against the plaintiffs tax statutes which the plaintiffs believe, by the statutes' own terms, do not properly apply to them, and the plaintiffs have been warned that they are potentially subject to criminal and civil penalties if they do not comply, it is a case or dispute sufficiently ripe for the plaintiffs to seek a declaratory judgment. Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM R. 111, 115 (Chk. 1997).

When the plaintiff argues it is exempt from the tax under state and national law as an entity wholly

owned and operated by the national government functioning solely for public benefit and the state asserts that the plaintiff's corporate status exposes it to state taxation (regardless of the national government's stock ownership and indirect control) and claims that the FSM Constitution does not authorize the national government to prevent the imposition of a "use tax" on imported goods used or consumed in the state, and when the state requests a declaration that its use tax scheme does not violate the FSM Constitution and makes its motion aware that the court's resolution of the plaintiff's motion does not require it to address whether the use tax law conflicts with the FSM Constitution even though the plaintiff's complaint includes a cause of action raising that very argument, all of the issues addressed in the motions are properly raised by the pleadings and involve justiciable controversies of special public concern worthy of resolution at this time. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 292, 293-94 (Pon. 1999).

An objection based on lack of ripeness in a case concerning appropriated funds that have not yet been distributed cannot prevail when the manner of the funds' distribution appears (at this stage of the proceedings) to violate the Constitution. Udot Municipality v. FSM, 9 FSM R. 560, 562-63 (Chk. 2000).

The court lacks jurisdiction to hear an election appeal filed too soon because the statute does not grant the court jurisdiction over election cases until the administrative steps and time frames in 9 F.S.M.C. 902 have been adhered to. Such an appeal is therefore dismissed as premature (unripe). Wiliander v. National Election Dir., 13 FSM R. 199, 204 (App. 2005).

When the plaintiff's claims all derive from the common allegation that its facility will be taken from it at the end of the parties' lease, when the parties have signed a lease agreement that purports to confer ownership of the facility on the defendant at a specified time, and when the parties have a good faith dispute as to the validity of this result under the National Constitution, this renders the case ripe for adjudication. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 229 (Pon. 2005).

Standing is a threshold issue going to this court's subject matter jurisdiction and thus is addressed first. Standing must be found for each count of a complaint or that count will be dismissed. Ripeness is also a threshold issue. Sipos v. Crabtree, 13 FSM R. 355, 362 (Pon. 2005).

A matter must also be ripe for adjudication for there to be a case or dispute over which the court can exercise jurisdiction. Sipos v. Crabtree, 13 FSM R. 355, 366 (Pon. 2005).

When any attorney's fee forfeiture (which is the plaintiff's allegedly threatened injury) could not possibly occur until after trial and conviction of his clients in another case, and, since only if that occurs, the government might (but not even then, certainly) seek forfeiture of any fee earned by the plaintiff, the alleged injury is, at this time, too speculative and remote for this case to be ripe for adjudication. It is thus not a concrete controversy capable of adjudication now since none of the four counts, to the extent that they seek redress for or protection of the plaintiff's allegedly threatened fees, are ripe for adjudication. Sipos v. Crabtree, 13 FSM R. 355, 366 (Pon. 2005).

When the complaint either asserts the rights of others not a party to the case or seeks relief not available here or seeks redress for or protection of the plaintiff's allegedly threatened attorney's fees and the fee claim is not ripe for adjudication, the entire complaint will be dismissed for lack of standing and ripeness. Sipos v. Crabtree, 13 FSM R. 355, 366 (Pon. 2005).

Although it is doubtful whether the Constitution's Professional Services Clause protects an attorney's fee from forfeiture in any or all circumstances where the law would seem to allow it, that is an issue that must await another day when there is a case or dispute before the court ripe for adjudication. Sipos v. Crabtree, 13 FSM R. 355, 366 (Pon. 2005).

When Chuuk has warned Continental that it is required to collect a service tax as set forth in a regulation implementing a tax statute and that criminal penalties may be imposed on Continental or its employees for failure to comply, the question of whether the Chuuk service tax on Continental passengers

and freight shippers is lawful is sufficiently ripe to support a suit seeking declaratory judgment. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 157-58 (Chk. 2010).

Ripeness is also a threshold justiciability issue. For the FSM Supreme Court to exercise its jurisdiction, the issue raised must be ripe for adjudication. A matter is ripe when there is an actual, present controversy not merely a hypothetical or speculative conflict. Kallop v. Pohnpei, 18 FSM R. 130, 133 (Pon. 2011).

When the plaintiffs allege a possible, theoretical injury, but have asserted no real injury to them and when they have also not alleged a threatened injury, they have not alleged any actual harm to them under the aforementioned circumstances, and therefore as to this contention, the matter is not ripe for adjudication. Kallop v. Pohnpei, 18 FSM R. 130, 133 (Pon. 2011).

A party cannot sue until its cause of action has accrued. A matter must be ripe for adjudication for there to be a case or dispute over which the court can exercise jurisdiction. Onanu Municipality v. Elimo, 20 FSM R. 535, 545 (Chk. 2016).

For the FSM Supreme Court to exercise its jurisdiction, the issue raised must be ripe for adjudication. Ripeness is a threshold issue. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 10 (Pon. 2018).

A matter is ripe when there is an actual, present dispute not merely a hypothetical or speculative conflict. A matter must be ripe for adjudication for there to be a case or dispute over which the court can exercise jurisdiction. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 10 (Pon. 2018).

When, to whatever extent the plaintiff's claim is based on any defendant's alleged failure to comply with Pohnpei Supreme Court orders, the claim is not ripe for adjudication because the Pohnpei Supreme Court has not yet ruled whether the defendant was within its rights to take the action it did. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 11 (Pon. 2018).

– Case or Dispute – Standing

Standing to sue was an unsettled area of United States law when the FSM Constitution was ratified and the issue of standing to sue within the FSM is one that calls for independent analysis rather than rigid adherence to the decisions of United States courts construing that Constitution. Aisek v. Foreign Inv. Bd., 2 FSM R. 95, 98-99 (Pon. 1985).

In deciding who may litigate in the FSM Supreme Court, the goal is to develop principles consistent with the language of the Constitution and calculated to meet the needs of the people and institutions within the Federated States of Micronesia. Aisek v. Foreign Inv. Bd., 2 FSM R. 95, 100 (Pon. 1985).

Where dive shop operators allege actual or threatened economic injury as a result of increased competition flowing from business activities of a pleasure cruise ship providing diving opportunities in the same geographical area where the plaintiffs operate, and where they have placed before the court information sufficient to establish the reasonableness of their fear of economic injury, their law suit challenging the legality of the issuance of a foreign investment permit to a cruise ship may not be dismissed for lack of standing. Aisek v. Foreign Inv. Bd., 2 FSM R. 95, 100 (Pon. 1985).

Where plaintiffs seek to challenge issuance to a third party of a permit which plaintiffs reasonably allege will cause them harm, and where they allege that the actions of a national senator were crucial to issuance of the permit, those plaintiffs have standing to be heard on the question of whether the senator's membership on the board is violative of the "incompatibility clause," article IX, section 13 of the FSM Constitution. Aisek v. Foreign Inv. Bd., 2 FSM R. 95, 101 (Pon. 1985).

There is in the FSM no separate requirement that there be a nexus, that is, a logical connection between persons threatened by injury from the actions of an administrative agency and the statutory

provisions under which the agency is operating. Aisek v. Foreign Inv. Bd., 2 FSM R. 95, 102 (Pon. 1985).

The issue of standing to sue, because it was a particularly unsettled area in United States law when the FSM Constitution was drafted and ratified, is an area especially calling for independent analysis rather than adherence to decisions construing similar provisions in the United States Constitution. Innocenti v. Wainit, 2 FSM R. 173, 178-79 (App. 1986).

The standing requirement is not expressly stated in the Constitution but implied as an antecedent to the constitutional case or dispute requirement, and should be interpreted so as to implement the objectives of that requirement. Innocenti v. Wainit, 2 FSM R. 173, 179 (App. 1986).

Business people have standing to challenge the constitutionality of an excise tax based on imports where the addition of the tax increases the cost that business people must pay for goods intended for resale to consumers. Innocenti v. Wainit, 2 FSM R. 173, 180 (App. 1986).

Plaintiff's possessory interest in land is sufficient to maintain standing to bring action for damages wrought when a road was built across the land. Benjamin v. Kosrae, 3 FSM R. 508, 511 (Kos. S. Ct. Tr. 1988).

When a public officer is requested to perform a duty mandated by law which he feels would violate the constitution, he has standing to apply to the court for a declaratory judgment declaring the statute unconstitutional. Siba v. Sigrah, 4 FSM R. 329, 334 (Kos. S. Ct. Tr. 1990).

A party has standing to sue when that party has a sufficient stake or interest in an otherwise justiciable controversy to obtain judicial resolution of that controversy. The implied requirement that a party have standing should be interpreted so as to implement the objectives of the constitutional requirement that a case or dispute exist. In re Parcel No. 046-A-01, 6 FSM R. 149, 153 (Pon. 1993).

A leasehold interest in land is a sufficient possessory interest to give a party standing to maintain an action for trespass. In re Parcel No. 046-A-01, 6 FSM R. 149, 154 (Pon. 1993).

Private individuals lack standing to assert claims on behalf of the public. When the state government has certified ownership of land, and the traditional leaders' suit to have that land declared public land failed, private individuals cannot raise the same claim. In re Parcel No. 046-A-01, 6 FSM R. 149, 157 (Pon. 1993).

Noncitizen plaintiffs have standing to sue for trespass if they have a leasehold interest in the land. Ponape Enterprises Co. v. Soumwei, 6 FSM R. 341, 343 (Pon. 1994).

The FSM will not apply a Trust Territory rule based on Trust Territory Code provisions that only the government had standing to challenge title to land to deny standing to private persons challenging title to land under entirely separate FSM Constitutional provisions on citizenship, especially since the authority for the Trust Territory rule was derived from now-deleted language in an American legal encyclopedia. Etscheit v. Adams, 6 FSM R. 365, 383-84 (Pon. 1994).

A party who denies ownership of the seized items has no standing to ask for return of the property. Chuuk v. Mijares, 7 FSM R. 149, 150 (Chk. S. Ct. Tr. 1995).

A surviving co-obligor has standing to sue for failure to obtain credit life insurance for a deceased co-obligor. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 249 (Chk. 1995).

The states have standing to sue the national government where the states claim they are entitled to 50% of all revenues from the EEZ because it is an otherwise justiciable controversy in which they have a sufficient stake or interest. Chuuk v. Secretary of Finance, 7 FSM R. 563, 570 (Pon. 1996).

While it may be that in the usual case a judgment debtor would not have standing to contest or appeal the distribution of funds collected pursuant to the judgment, but where the result of the case will have a substantial financial impact on the judgment debtor, he is an aggrieved party with standing to appeal because standing exists where a party has a direct pecuniary interest in the outcome of the litigation. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 669 (App. 1996).

While it is generally true that parties may not assert the rights of third parties or non-parties, where the plaintiff ship charterers would be subject to the obligations and liabilities of an employer, such as withholding taxes, and that failure to perform those obligations would expose the plaintiffs to civil and criminal penalties if the crew is subject to FSM wage and salary taxes, the plaintiffs are attempting to assert only their own rights and have standing. Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM R. 111, 115 (Chk. 1997).

Private individuals lack standing to assert claims on behalf of the public and cannot bring claims against the state on behalf of the public with respect to state land. Therefore a private landowner does not have standing to sue the state with respect to black rocks deposited below the ordinary high water mark because that is state land, but he does have standing to sue with respect to black rocks located above the high water mark and on his land. Jonah v. Kosrae, 9 FSM R. 335, 341 (Kos. S. Ct. Tr. 2000).

When, at the formal hearings, a person testified that her father had willed the parcel at issue to her brother and she did not submit any testimony in support of her own personal claim even though she was given an opportunity at the end of her testimony to give a statement about any "last word will" made by her father, neither she, nor her daughter, now claiming under her, had a right to notice of the parcel's Determination of Ownership because she was not an interested party, and her daughter cannot now claim to be an interested party. Jonas v. Paulino, 9 FSM R. 513, 516 (Kos. S. Ct. Tr. 2000).

A municipality that is one of eight eligible to receive development funds has standing to raise whether it has been fairly allowed to apply for some of them. Udot Municipality v. FSM, 9 FSM R. 560, 562 (Chk. 2000).

Because the court must have a case or dispute before it in order to exercise jurisdiction, if a plaintiff lacks standing to bring a suit there is then no case or dispute to adjudicate. Moses v. M.V. Sea Chase, 10 FSM R. 45, 51 (Chk. 2001).

A contention that a plaintiff is not singled out and thus suffers no irreparable harm peculiar to itself because it is one of eight in the same boat, does not indicate a lack of standing on the plaintiff's part, but rather that any of the eight would also have had standing to sue if it so chose. Udot Municipality v. FSM, 10 FSM R. 354, 358 (Chk. 2001).

Earmarking $50,000 of a prior appropriation to be spent in the plaintiff municipality does not take away the municipality's standing by making its claim moot when the appropriation still has an undifferentiated category called "other needs," and when the municipality's past inability to apply for funds already spent, and the likelihood that the situation would arise again, but be incapable of review, all favor a finding of continuing standing. Udot Municipality v. FSM, 10 FSM R. 354, 358 (Chk. 2001).

An argument that a party once had standing but no longer does is an argument that the case is now moot. One exception to the mootness doctrine is that the court retains jurisdiction when the problem will arise again, and would otherwise be incapable of review. Udot Municipality v. FSM, 10 FSM R. 354, 358 (Chk. 2001).

A person may act as a clan representative and be a party-plaintiff in his representative capacity when he was an acknowledged lineage representative prior to and during the negotiations over the lineage land and was named as a lineage representative on the land's certificate of title. Marcus v. Truk Trading Corp., 11 FSM R. 152, 158-59 (Chk. 2002).

An *afokur* has no right to sue for himself over lineage land and will be dismissed from such a lawsuit as a party in his individual capacity, because even if the lineage should prevail in the suit, the court could not award the *afokur* anything since whatever he might personally receive would be contingent on the lineage granting him permission to share in its recovery. Marcus v. Truk Trading Corp., 11 FSM R. 152, 159 (Chk. 2002).

By not granting a defendant's motion to dismiss on the grounds that plaintiffs lacked standing, the court does not somehow imply that it, at that stage of the proceedings, has made any findings of ownership or right to possession of the property in question. Ambros & Co. v. Board of Trustees, 11 FSM R. 333, 336 (Pon. 2003).

Since a finding of contempt is final and appealable, the legality of the specific sanction of imprisonment should be reviewed at the same time in the interest of judicial economy. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 380 (App. 2003).

The standing issue is addressed first as it is a threshold issue going to a court's subject matter jurisdiction. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 496 (Kos. 2003).

The standing requirement is not expressly stated in the FSM Constitution, but is implied as an antecedent to the Article XI, Section 6 "case or dispute" requirement and should be interpreted so as to implement that requirement's objectives. The issue of standing to sue is an area which calls for the FSM Supreme Court's independent analysis rather than adherence to decisions construing similar provisions in the U.S. Constitution. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 496 (Kos. 2003).

A party has standing to sue when that party has a sufficient stake or interest in an otherwise justiciable controversy to obtain judicial resolution of that controversy. The implied requirement that a party have standing should be interpreted so as to implement the objectives of the constitutional requirement that a case or dispute exist. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 496 (Kos. 2003).

This court is mandated by Article XI, Section 11 of the Constitution to first consult and apply sources from within the FSM. The overall goal is to develop principles of standing which are consistent with the Constitution's language and designed to meet the needs of the nation's people and institutions. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 496-97 (Kos. 2003).

Two factors are central to the determination of whether a party has standing. First, the party must allege a sufficient stake in the outcome of the controversy and it must have suffered some threatened or actual injury resulting from the allegedly illegal action. Second, the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. While not constitutionally based, three additional factors or prudential principles need to be considered before the standing question can be resolved. First, generalized grievances shared by substantially the whole population do not normally warrant standing. Second, even when an injury sufficient to satisfy the constitutional requirement is alleged, the petitioner generally must assert its own legal rights and interests, and cannot rest its claim to relief on the legal rights or interests of third parties. Third, the petitioner's complaint must fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 497 (Kos. 2003).

The first standing factor to be addressed is whether the plaintiff has alleged a sufficient stake in the controversy's outcome and whether it has suffered some threatened or actual injury resulting from the defendant's allegedly illegal action. The injury must be an invasion of a legally protected interest which is concrete and particularized, and actual or imminent. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 497 (Kos. 2003).

The second standing factor is that there must be a causal connection between the injury and the

conduct complained of. The injury must be fairly traceable to the defendant's challenged action and not the result of the independent action of some third party not before the court. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 497 (Kos. 2003).

The Kosrae Legislature's alleged injury of not having its policy decisions abided by or infringed upon, cannot be fairly traced to the Development Bank's challenged actions under the Investment Development Act because while the bank has the responsibility to evaluate and comment upon a project's commercial feasibility and public infrastructure need, the FDA, not the bank has the loan's final approval. Therefore, the alleged injury cannot be traced to the bank's allegedly faulty or incomplete reports that may or may not have led to the loan's approval when the loan's approval was the result of independent action of the FDA which is not a party before the court. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 497-98 (Kos. 2003).

Another standing factor to be addressed is redressability. Will the relief requested make any legal difference that will redress the petitioner's injury? Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 498 (Kos. 2003).

When the statutory language states only that a state government shall submit a project and when no evidence was offered that the Kosrae Legislature had any formal role in the submittal process, either by way of formal approval or the ability to disapprove a project, the court can find no legally delineated role for the Kosrae Legislature in the submittal process and therefore no injury to it from the governor's submittal. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 499 (Kos. 2003).

Passage of a legislative resolution that submits a request to the Governor which the Governor may or may not carry out at his discretion creates no legally enforceable rights by which the Kosrae Legislature may compel the Governor's compliance, especially when the Governor is not a party to the action. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 499 (Kos. 2003).

A law enacted by the Kosrae Legislature is the highest form of setting forth the legislature's policy decisions and such laws can create legal rights that may be enforceable in the courts. But when the subject bill is not yet law, having been vetoed by the Governor, and the bill requires action by the Governor who is not a party to the action, there is no injury to the plaintiff created from noncompliance with the bill's provisions. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 499 (Kos. 2003).

The three additional factors to be examined for determining standing are: 1) generalized grievances shared by substantially the whole population do not normally warrant standing; 2) the petitioner generally must assert its own legal rights and interests, and cannot rest its claim to relief on third parties' legal rights or interests; and 3) the petitioner's complaint must fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 500 (Kos. 2003).

When the plaintiff's grievances with regard to possible harmful ramifications of the proposed disposition of the Kosrae IDF state earmarked subaccount funds, is the type of generalized grievance shared by substantially the whole population, such generalized grievances do not warrant standing. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 500 (Kos. 2003).

When the plaintiff's grievances with regard to the bank's inadequate and incomplete reporting to the FDA go to the FDA's legal rights or interests and not to the Kosrae Legislature's, and when it is purely speculative as to what effect more accurate and complete reports might have had on the FDA's decision making especially since the FDA had "pre-approved" the loan before the report was made, it is likely that the result would not be different. The report is therefore not reviewable and the injury not redressable. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 500 (Kos. 2003).

When a complaint does not fall within the zone of interests to be protected or regulated by the statute

or constitutional guarantee in question and neither the statute or constitutional provisions involved provide support for standing, the complaint does not fall within the zone of interest to be protected by the Investment Development Act's provisions which do not provide the plaintiff a cause of action where there was no intent by the FSM Congress to create one. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 500-01 (Kos. 2003).

When the Attorney General could not protect the state's interest since he was personally involved in the matter but when independent legal advice was offered by another attorney in the Attorney General's office who could have been used to protect the state's interest or alternatively, outside counsel could be retained for the same purpose, this does not give the Legislature as a co-equal branch of the state government, standing to sue to protect the state's interest. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 501 (Kos. 2003).

Since the Kosrae Legislature is not the intended beneficiary of the Investment Development Act's statutory provisions requiring the bank to make reports to the FDA, its alleged injury is not directly traceable to the bank's reports. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 501 (Kos. 2003).

When the plaintiff does not have standing to pursue an action for a preliminary injunction, the court lacks subject matter jurisdiction over the action and the case will be dismissed. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 501 (Kos. 2003).

Issues of standing are discussed first, for a party's standing is a potentially dispositive threshold issue going to the court's subject matter jurisdiction. FSM v. Udot Municipality, 12 FSM R. 29, 39 (App. 2003).

Whether a party has standing is a question of law reviewed *de novo* on appeal. FSM v. Udot Municipality, 12 FSM R. 29, 40 (App. 2003).

The standing requirement is not expressly stated in the Constitution, but is implied as an antecedent to the "case or dispute" requirement found in Article XI, section 6 of the Constitution, and should be interpreted so as to implement that requirement's objectives. FSM v. Udot Municipality, 12 FSM R. 29, 40 (App. 2003).

When deciding a question of standing, the FSM Supreme Court utilizes a case-specific analysis and as mandated by Article XI, section 11 of the Constitution, it first consults and applies sources from within the FSM. The overall goal is to develop principles of standing which are consistent with the Constitution's language and designed to meet the needs of our nation's people and institutions. FSM v. Udot Municipality, 12 FSM R. 29, 40 (App. 2003).

A party has standing to sue when that party has a sufficient stake or interest in an otherwise justiciable controversy to obtain judicial resolution of that controversy. The implied requirement that a party have standing should be interpreted so as to implement the objectives of the constitutional case or dispute requirement. FSM v. Udot Municipality, 12 FSM R. 29, 40 (App. 2003).

Two factors are central to the determination of whether a party has standing. First, the party must allege a sufficient stake in the controversy's outcome and it must have suffered some threatened or actual injury resulting from the allegedly illegal action or erroneous court ruling. Second, the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. FSM v. Udot Municipality, 12 FSM R. 29, 40 (App. 2003).

While not constitutionally based, three additional rules need to be applied before the question of standing can be resolved. First, generalized grievances shared by substantially the whole population do not normally warrant standing. Second, even when an injury sufficient to satisfy the constitutional requirement is alleged, the party generally must assert its own legal rights and interests, and cannot rest its claim to relief on the legal rights or interests of third parties. Third, the interests which the party is seeking to protect must fall within the zone of interests to be protected or regulated by the statute or constitutional

guarantee in question. FSM v. Udot Municipality, 12 FSM R. 29, 40 (App. 2003).

When some appellants' interests are sufficiently distinct from those of other appellants and when they have suffered some injury which would be redressible by appeal's resolution in their favor, they have standing to raise issues in the appeal that the other appellants did not raise. FSM v. Udot Municipality, 12 FSM R. 29, 41 (App. 2003).

When some appellants have interests, responsibilities, and functions that are distinguishable from the other appellants because Congress has delegated them authority to create legally enforceable contracts and because they have a significant role in implementing public projects, and when they have been injured in the performance of their duties by the trial court's order and their alleged injury can be traced to the challenged action and is not a generalized grievance shared by substantially the whole population, those appellants have competing contentions and are adversaries with sufficient interest in the outcome to have standing to challenge the trial court rulings on appeal. FSM v. Udot Municipality, 12 FSM R. 29, 42-44 (App. 2003).

A party has standing to challenge both the legality of the process and compliance with the Financial Management Act and related regulations to the extent that such compliance impacts upon the relief that it requests when it has more than a general interest in the legality of this process as it contends that, under a fair and transparent application process, it would receive at least the opportunity to apply for and receive some of the funds for its own projects. Thus, the trial court in finding standing properly recognized and focused on the party's threatened economic injury when the process by which the Faichuk appropriations were being administered was alleged to be unlawful. FSM v. Udot Municipality, 12 FSM R. 29, 45 (App. 2003).

Although the Financial Management Act does not create a private right of action for parties in general to contest violations of its provisions, a party has standing when it requests the opportunity to seek funding from the challenged public laws without participating in an unlawful process and the FSM's failure to comply with the Act and its related regulations impacts upon the relief that it requests and when, in order for it to seek funding, determination of what portion of funds remained unobligated and might still be available was necessary and an accounting was a necessary and appropriate tool to achieve this. FSM v. Udot Municipality, 12 FSM R. 29, 45 (App. 2003).

A municipality may have standing when it has demonstrated a threatened economic injury and a sufficient stake in the controversy's outcome and this threatened economic injury is a direct result of, and can be traced to, the illegality of the subject provision in the appropriation and the manner in which it was being implemented, when the injury would be redressed by a favorable decision, when the injury is not a generalized injury shared by substantially the whole population, but it is asserting its own legal rights and interests, and is not resting its claim to relief on the legal rights or interests of third parties, and when its complaint falls within the zone of interest to be protected by the statutory and constitutional provisions in question. FSM v. Udot Municipality, 12 FSM R. 29, 46 (App. 2003).

When a plaintiff obtained an assignment that was registered and subsequently dissolved by the Public Lands Board, the plaintiff was directly and adversely affected by the Board's decision, and thus has standing to sue the Board. There can be no question that the plaintiff is the real party in interest. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 90 (Pon. 2003).

When the deceased's brother failed to provide the court with evidence of his representation of the deceased's heirs in the matter, his appearance is accepted as a pro se representation of himself and his claimed interests, but when the brother is not an heir, he does not have standing to file a motion for reconsideration on his own behalf because he is not a party to the matter, and on this basis his motion will be denied. Edwin v. Heirs of Mongkeya, 12 FSM R. 220, 222 (Kos. S. Ct. Tr. 2003).

The two concepts of standing and justiciability interrelate, since standing is a prerequisite to a

justiciable "case or dispute" under Article XI, Section 6(a) and (b) of the Constitution. There can be no case or dispute if a party lacks standing to bring suit in the first place. Urusemal v. Capelle, 12 FSM R. 577, 583 (App. 2004).

While the requirement of standing is not set forth in so many words in the Constitution, it is implicit in the "case or dispute" requirement found in Article XI, Section 6 of the Constitution. A party has standing sufficient to allow him to sue when that party has a sufficient stake or interest in an otherwise justiciable case or dispute to obtain judicial resolution of the controversy. Urusemal v. Capelle, 12 FSM R. 577, 583 (App. 2004).

Two factors are central to the determination of whether a party has standing. First, the party must allege a sufficient stake in the outcome of the controversy and it must have suffered some threatened or actual injury resulting from the allegedly illegal action or erroneous court ruling. Second, the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. Urusemal v. Capelle, 12 FSM R. 577, 583 (App. 2004).

Since the President, as the country's Chief Executive and by virtue of that office the chief law enforcement officer, has a stake or interest in insuring that disruption of the judicial process does not occur from the delay in the administration of justice resulting from a specially assigned justice's disapproval, when he has suffered actual injury resulting from an allegedly illegal action, which can be traced to the challenged action and can be redressed by a court decision (that is to say by a judicial determination that both the resolution and the statute on which it is based are unconstitutional), he thus has a sufficient stake in the controversy's outcome to have standing. Urusemal v. Capelle, 12 FSM R. 577, 583 (App. 2004).

When the President is contesting, not the manner in which the special justice was assigned, but the manner in which he was removed, the delay resulting from a specially assigned justice's removal pursuant to 4 F.S.M.C. 104(2) is a real injury sufficient to bestow standing on the President to contest the constitutionality of that statute. Urusemal v. Capelle, 12 FSM R. 577, 584 (App. 2004).

A party has standing to sue where that party has a sufficient stake or interest in an otherwise justiciable controversy to obtain a judicial resolution of that controversy. Edgar v. Truk Trading Corp., 13 FSM R. 112, 115 (Chk. 2005).

The plaintiffs have a sufficient stake or interest to maintain a case when they allege that they were not paid a portion of the funds they were specifically entitled to under the terms of the agreement to sell land to the defendant, but that someone else wrongfully received those funds and when they claim as damages only those funds that they are entitled to, but were not paid. The court is thus in a position to resolve the matter by awarding appropriate damages. Edgar v. Truk Trading Corp., 13 FSM R. 112, 115 (Chk. 2005).

Standing is a threshold issue going to this court's subject matter jurisdiction and thus is addressed first. Standing must be found for each count of a complaint or that count will be dismissed. Ripeness is also a threshold issue. Sipos v. Crabtree, 13 FSM R. 355, 362 (Pon. 2005).

Although standing is not an expressly-stated requirement of the FSM Constitution, it is implied as an antecedent to the "case or dispute" requirement found in the Constitution's jurisdictional grant to the court, and must be interpreted so as to implement that requirement's objectives. That is, there must be a case or dispute in order for the FSM Supreme Court to have jurisdiction over the subject matter. Sipos v. Crabtree, 13 FSM R. 355, 362 (Pon. 2005).

The issue of standing to sue is an area which calls for this court's independent analysis rather than adherence to decisions construing similar provisions in the United States Constitution. Sipos v. Crabtree, 13 FSM R. 355, 363 (Pon. 2005).

For there to be standing, opposing parties must have sufficiently competing contentions and adverse interests such that the adversaries will thoroughly consider, research, and argue the points of law at issue.

The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. Two factors are central to the determination of whether a party has standing. First, he must allege a sufficient stake in the controversy's outcome and he must have suffered some threatened or actual injury resulting from the allegedly illegal action, and, second, the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. Sipos v. Crabtree, 13 FSM R. 355, 363 (Pon. 2005).

While not constitutionally based, three additional, prudential principles need to be considered before the standing question can be resolved. First, generalized grievances shared by substantially the whole population do not normally warrant standing. Second, even when an injury sufficient to satisfy the constitutional requirement is alleged, the plaintiff generally must assert his own legal rights and interests, and cannot rest its claim to relief on the legal rights or interests of third parties. Third, the plaintiff's complaint must fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. Sipos v. Crabtree, 13 FSM R. 355, 363 (Pon. 2005).

The first factor to be addressed in a standing inquiry is whether the plaintiff has alleged a sufficient stake in the controversy's outcome and whether he has suffered some threatened or actual injury resulting from defendants' allegedly illegal action. The injury must be an invasion of some legally protected interest which is concrete and particularized, and actual, or imminent. Sipos v. Crabtree, 13 FSM R. 355, 363 (Pon. 2005).

To have standing, a plaintiff must suffer some threatened or actual injury resulting from defendant's allegedly illegal action and the injury must be an invasion of a legally protected interest which is concrete and particularized, and actual or imminent, but when the plaintiff's assertion of injury that runs to all counts of his complaint is that his threatened injury of attorney fee forfeiture is too speculative, it does not pass the first factor of the standing test. Sipos v. Crabtree, 13 FSM R. 355, 363-64 (Pon. 2005).

When no fee forfeiture proceeding has been instituted against the plaintiff and the government has stated that it has no intention of seeking pre-conviction attachment or seizure of attorney fees and would consider seeking forfeiture only if the criminal defendants are convicted; when in spite of the plaintiff's assertion of a chilling effect on representation of those defendants, he entered an appearance on their behalf; when that case has yet to go to trial and no one has been convicted; and when no determination has been made of the status of any of the funds that might be subject to forfeiture, there is yet no injury or likelihood of any injury to the plaintiff and the dispute is purely of a hypothetical or abstract character. To be a threatened injury which is actual or imminent, the court would have to presume that the plaintiff's clients are guilty, before that has been proven, or that they will be convicted, before a verdict has been rendered. Since that case may end with the plaintiff's clients' acquittal or dismissal, the threatened injury may remain forever hypothetical, is thus neither actual nor imminent. Sipos v. Crabtree, 13 FSM R. 355, 364-65 (Pon. 2005).

The second factor in a standing inquiry is that the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. Part of this standing factor is redressability – will the relief requested make any legal difference that will redress the plaintiff's injury? Sipos v. Crabtree, 13 FSM R. 355, 365 (Pon. 2005).

A party cannot raise the claims of third persons; he may raise only his own claims. He generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties. Sipos v. Crabtree, 13 FSM R. 355, 365 (Pon. 2005).

Since the alleged wrongful interference with the plaintiff's ability to represent his clients is an alleged violation of his clients' rights, not of his rights, those rights are for his clients to assert. Thus to the extent that a cause of action is based on the violation of the rights of others, the plaintiff lacks standing to bring it because it is not redressible – he cannot seek redress for these allegations. Sipos v. Crabtree, 13 FSM R. 355, 365 (Pon. 2005).

When a request for relief is a declaration of when an attorney may accept a fee without the fee being subject to forfeiture at a later time by a confiscation order, it asks for an advisory opinion. The court has no jurisdiction to give advisory opinions, because to do so would violate the Constitution's case or dispute requirement. An advisory opinion is thus not a form of redress available to a plaintiff. Sipos v. Crabtree, 13 FSM R. 355, 365 (Pon. 2005).

When the plaintiff seeks as relief an order unsealing another case, even if it were his own rights he was asserting and not those of other non-parties, he would have to seek that relief in the court handling that case or a criminal case that arose from it, not in this case since that proposed relief does not redress the threatened injury – loss of attorney's fees – in this case. Sipos v. Crabtree, 13 FSM R. 355, 365 (Pon. 2005).

When the complaint either asserts the rights of others not a party to the case or seeks relief not available here or seeks redress for or protection of the plaintiff's allegedly threatened attorney's fees and the fee claim is not ripe for adjudication, the entire complaint will be dismissed for lack of standing and ripeness. Sipos v. Crabtree, 13 FSM R. 355, 366 (Pon. 2005).

It is generally true that a litigant cannot assert someone else's rights, but this does not apply when it is not a matter of asserting another's rights but of maintaining the integrity of the judicial process. McVey v. Etscheit, 14 FSM R. 207, 214 (Pon. 2006).

When the claim against the FSM asserts that the FSM published false and misleading information about certain crewmen and the vessel's captain is the only crew member who is a party to the action, the court must assume that this is his personal claim since a party must assert his own legal rights and interests, and cannot rest his claim to relief on third parties' legal rights or interests. FSM v. Kana Maru No. 1, 14 FSM R. 368, 373 (Chk. 2006).

A party has standing to sue when that party has a sufficient stake or interest in an otherwise justiciable controversy to obtain judicial resolution of that controversy. The implied requirement that a party have standing is interpreted so as to implement the objectives of the constitutional case or dispute requirement. Standing exists when a party has a direct pecuniary interest in the litigation's outcome. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 414 (Yap 2006).

When the plaintiffs "own" the natural resources through the *tabinaw*, the plaintiffs' exclusive rights to use and exploit the marine resources of the area affected by a grounding and subsequent oil spill give them standing to maintain a class action with respect to the issues at trial – damages to the marine resources from the grounding and oil spill. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 415 (Yap 2006).

A party has standing to challenge a certificate of title when, although he admits that some of the land was sold to others, he asserts that even after those sales, he still retained part of the land. Dereas v. Eas, 14 FSM R. 446, 453-54 (Chk. S. Ct. Tr. 2006).

Generally, a party has standing to sue when that party has a sufficient stake or interest in an otherwise justiciable controversy to obtain a judicial resolution of that controversy. Ehsa v. Pohnpei Port Auth., 14 FSM R. 481, 484 (Pon. 2006).

When the amended complaint names as plaintiffs Timakio Ehsa, PMS, and "all foreign fishing vessels (dba) FSM Access Agreement," and when PMS, whose financial viability depends on the services it provides the commercial vessels and the fees it collects from those vessels, has more than an incidental interest in the action's outcome, the court will decline to dismiss the complaint on the basis of lack of standing. Ehsa v. Pohnpei Port Auth., 14 FSM R. 481, 484 (Pon. 2006).

When the debt the defendant owes the plaintiff was assigned by the plaintiff to its credit insurer and thereafter the insurer paid $48,554.11 to the plaintiff pursuant to its insurance arrangement and then made attempts to collect the outstanding debt from the defendant but its collection efforts were unsuccessful and when the plaintiff then procured a reassignment of the debt from its insurer and agreed to reimburse the insurer first and in full from any recovery, net of reasonable attorney's fees incurred in the plaintiff's recovery attempts, the plaintiff, as a result of the reassignment, is the proper party in interest and has standing to bring the action to recover the debt from the defendant. American Trading Int'l, Inc. v. Helgenberger, 15 FSM R. 50, 51-52 (Pon. 2007).

A party cannot raise the claims of third persons. She may raise only her claims. She must assert her own legal rights and interests, and cannot rest her claim to relief on the legal rights or interests of a third party. Ruben v. Hartman, 15 FSM R. 100, 114 (Chk. S. Ct. App. 2007).

An insurance policy beneficiary has standing to sue for unpaid insurance policy benefits. John v. Chuuk Public Utility Corp., 15 FSM R. 169, 171 (Chk. 2007).

Whether a party has standing to sue is a question of law reviewed de novo on appeal. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 59 (App. 2008).

The issue of standing is a threshold issue going to a court's subject matter jurisdiction and therefore standing is properly challenged in the form of a motion to dismiss brought under Rule 12(b)(1) because when a plaintiff does not have standing to pursue an action, the court lacks subject matter jurisdiction over the action and the case will be dismissed. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 219 (Chk. S. Ct. Tr. 2008).

To the extent that the prisoners are asserting that Chuuk has a right to be paid money by the national government because of their incarceration in Chuuk state jail, the prisoners are asserting, not their own rights, but the State of Chuuk's rights, which they cannot do because they lack standing to raise a non-party's rights. FSM v. Sias, 16 FSM R. 661, 664 (Chk. 2009).

It is inconceivable that a party could be made to suffer criminal or civil penalties for the failure to collect a tax but would not have standing to challenge the tax's constitutionality (and thus the requirement that the party must collect it). The inability of a party required by law to collect a tax to challenge that tax's validity would deprive that party of its property (compliance costs, tax collection costs, remittance costs, etc.) without any due process of law. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 158-59 (Chk. 2010).

If the requirement of standing is given a narrow construction when there is involved constitutional or important statutory rights then there is, in effect, no practical remedy for anyone with an interest in enforcing the right – and the right becomes a mockery. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 159 (Chk. 2010).

Two factors are central to the determination of whether a party has standing: 1) the party must allege a sufficient stake in the dispute's outcome and it must have suffered some actual or threatened injury resulting from the allegedly illegal action, and 2) the injury must be such that it can be traced to the challenged action and must be of the kind a favorable decision will likely redress. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 159 (Chk. 2010).

When Continental has alleged a sufficient stake in the action's outcome and is threatened not only with substantial costs if it complies but also with civil and criminal penalties if it does not and these threatened injuries are all traceable to the Chuuk service tax and would be addressed by a favorable decision, it may therefore challenge the legal requirement that it collect the tax (and remit it to the State) even if technically, only the statutorily defined taxpayer has the legal ability to challenge the tax's validity. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 159 (Chk. 2010).

Whether Pohnpei had reasonable suspicion to stop someone or probable cause to arrest him is not an issue his wife has standing to raise. A party cannot rest her claim for relief on the rights of third persons since she lacks standing to raise a non-party's claims and rights. Berman v. Pohnpei, 17 FSM R. 360, 370 (App. 2011).

A party lacks standing to make any contention about an unequal application of state policy for completing accident reports when it is her husband's claim, and not hers, since that "policy" was not applied to her (she had not been in an "accident") but to her husband. Only he could raise a claim arising from an unequal application of accident report obligations. She lacks standing. Berman v. Pohnpei, 17 FSM R. 360, 370 (App. 2011).

Although generally only a client or a former client has standing to move to disqualify counsel in a civil case on the basis of a conflict of interest, even then a non-client may seek disqualification when the ethical breach so infects the litigation in which disqualification is sought that it impacts the moving party's interest in a just and lawful determination of her claims since she may have the constitutional standing needed to bring a motion to disqualify based on a third-party conflict of interest. Marsolo v. Esa, 17 FSM R. 480, 484-85 (Chk. 2011).

Opposing counsel may have standing to seek counsel's disqualification even though they are not representing an aggrieved client or former client because bar members have an ethical obligation and are authorized to report any ethical violations in a case. Marsolo v. Esa, 17 FSM R. 480, 485 (Chk. 2011).

A trustee, guardian, or custodian of funds has standing to sue to obtain control of or to prevent the loss of funds that it should be holding in trust, guarding, or having custody of, so it could discharge its legal duties and responsibilities toward the party for whose benefit it was holding those funds. Marsolo v. Esa, 18 FSM R. 59, 64 (Chk. 2011).

It is doubtful whether a movant, who is a defendant only in the second cause of action, has standing to move to dismiss the third or the first cause of action. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 93 (Yap 2011).

When the complaint alleges that a person is bound by the mortgage because another defendant, who signed the mortgage, held that person's power of attorney to act on his behalf in regard to the land, the plaintiff is estopped from and cannot deny that that person is a party to the mortgage and, since he is a party to the mortgage, he has standing to enforce its provisions. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 94 (Yap 2011).

Standing and justiciability are threshold issues going to the FSM Supreme Court's subject matter jurisdiction and thus are addressed first. Kallop v. Pohnpei, 18 FSM R. 130, 133 (Pon. 2011).

Standing must be found for each count of a complaint or that count will be dismissed. Kallop v. Pohnpei, 18 FSM R. 130, 133 (Pon. 2011).

A vessel owner's right to seek a limitation of its liability is created by an FSM statute, and as the vessel's owner at the time of its grounding and thus the potentially liable party, a company has standing to raise this statute as a defense to limit its liability for the vessel's grounding, regardless of any arguments that the FSM Secretary of Transportation and Communications, as the receiver of wrecked and abandoned vessels, may have current ownership rights over the vessel. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 312 (Yap 2012).

A plaintiff has a personal stake in the litigation's outcome when the Plan's insurance premiums are taken from his senatorial salary and when, since he is one of the two co-equal heads of the Chuuk Legislature, it appears that he has standing in his representative capacity. Mailo v. Chuuk Health Care

Plan, 18 FSM R. 501, 505 (Chk. 2013).

State employees suing for unpaid compensation for work they performed, obviously have a sufficient stake in the case's outcome when they allege that they each have suffered an actual injury (insufficient pay) and that that injury can be traced to the Director's challenged action and their claim is one that a favorable court decision can redress by awarding damages. Kosrae v. Edwin, 18 FSM R. 507, 514 (App. 2013).

When the State Tax Act provides that no person shall have a right of action to challenge the validity of any tax levied by the Act unless that person first pays to the state the tax in question, under protest, and when the state has seized by tax levy $2,931.29, and the state rightly considers that seizure to be a partial payment under protest, the court, without having to analyze it further, unquestionably has jurisdiction over a challenge to the cigarette tax because a cigarette tax payment was made under protest. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 152 (Chk. 2013).

The FSM has standing to sue for conversion when it was Compact sector funds that were converted. FSM v. Muty, 19 FSM R. 453, 460 (Chk. 2014).

An intervention, whether as of right or permissive, hinges upon whether the court can properly recognize the would-be intervenor's alleged interest in the subject cause of action. Pacific Int'l, Inc. v. FSM, 20 FSM R. 214, 218 (Pon. 2015).

To intervene to prosecute a third-party beneficiary claim when the movant lacks privity of contract and there is no existing statutory provision that the movant might be able to avail itself, the movant must make a showing that it has actually suffered a loss or injury, which would be capable of being redressed through its proposed intervention, and which is separate from the rights and claims asserted by the existing parties. Pacific Int'l, Inc. v. FSM, 20 FSM R. 214, 218 (Pon. 2015).

Standing exists when a party has a direct pecuniary interest in the litigation's outcome. Pacific Int'l, Inc. v. FSM, 20 FSM R. 214, 218 (Pon. 2015).

In order to intervene under Rule 24, an applicant must have an interest which is of such a direct and immediate character, that the proposed intervenor will either gain or lose by the immediate operative effect of that judgment, but when the would-be intervenor has no direct pecuniary interest in the litigation's outcome, it lacks the requisite standing to intervene as an interested party. Pacific Int'l, Inc. v. FSM, 20 FSM R. 214, 219 (Pon. 2015).

Although the standing requirement is not expressly delineated within the FSM Constitution, it is implied as an antecedent to the "case or dispute" requirement found in Article XI, § 6 and should be interpreted, so as to implement that requirement's objectives. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 511 (App. 2016).

Whether a party has standing is a question of law reviewed *de novo* on appeal. Since standing cannot be waived, an appellate court is obliged to conduct an independent inquiry, with respect to the parties' standing to challenge national laws, even though the parties have not raised, and the trial court not ruled on, the standing issue. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 511 (App. 2016).

Two factors are central to the determination of whether a party has standing. Initially, a party must allege a sufficient stake in the controversy's outcome and must have suffered some threatened or actual injury resulting from the allegedly illegal action or erroneous court ruling. Next, the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 511 (App. 2016).

While not constitutionally based, three additional rules need to be applied before the question of standing can be resolved. First, generalized grievances shared by substantially the whole population do not normally warrant standing. Second, even when an injury sufficient to satisfy the constitutional

requirement is alleged, the party must generally assert its own legal rights and interests and cannot rest its claim to relief on the legal rights and interests of third parties. Third, the interests which the party is seeking to protect, must fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 511-12 (App. 2016).

Generalized grievances shared by the public at large, do not confer standing on specific individuals. An interest in having the government conform to the limitations imposed by the Constitution, without more, is clearly a shared interest and therefore, the government's alleged failure represents a generalized grievance. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 512-13 (App. 2016).

In any matter before the court, the issue of standing should be addressed first as it is a threshold issue going to the court's subject matter jurisdiction. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 639 (Pon. 2016).

Although not expressly stated in the FSM Constitution, the "case or dispute" requirement in Article XI, Section 6 of the FSM Constitution is interpreted to imply the requirement that a party has standing to bring a suit. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 639 (Pon. 2016).

A party has standing to sue when that party has a sufficient stake or interest in an otherwise justiciable controversy to obtain judicial resolution of that controversy. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 639 (Pon. 2016).

The implied requirement that a party have standing should be interpreted so as to implement the objectives of the constitutional requirement that a case or dispute exist. Thus, the opposing parties must have sufficiently competing contentions and adverse interests such that the adversaries will thoroughly consider, research, and argue the points of law at issue, and the controversy must be definite and concrete, touching the legal relations of the parties having adverse legal interests. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 639-40 (Pon. 2016).

The two central factors for determining whether a party has standing are: 1) the party must allege a sufficient stake in the controversy's outcome and it must have suffered some threatened or actual injury resulting from the allegedly illegal action, and 2) the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. Three additional prudential principles also need to be considered: 1) generalized grievances shared by substantially the whole population do not normally warrant standing; 2) even when an injury is sufficient to satisfy the constitutional requirement is alleged, the petitioner generally must assert its own legal rights and interests, and cannot rest its claim on the legal rights or interests of third parties; and 3) the petitioner's complaint must fall within the zone of interest to be protected or regulated by the statute or constitutional guarantee in question. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 640 (Pon. 2016).

When deciding a question of standing, the FSM Supreme Court utilizes a case-specific analysis and as mandated by Article XI, Section 11 of the FSM Constitution, the court will first consult and apply sources from within the FSM. The overall goal is to develop principles of standing which are consistent with the Constitution's language and designed to meet the needs of our nation's people and institutions. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 640 (Pon. 2016).

Because it is the plaintiffs who invoke the court's jurisdiction, it is the plaintiffs' burden to prove that standing exists. Therefore, when the defendants challenge standing in a motion to dismiss or as an affirmative defense, the plaintiffs' complaint must contain facts that, if true, would be sufficient to establish that standing exists. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 640 (Pon. 2016).

The court recognizes the customary and traditional rights of municipalities, clans, families, and individuals to control the use of, or material in, marine areas below the ordinary high watermark and otherwise engage in the harvesting of fish and other marine resources from reef areas, but any traditional

and customary right to control the use of, or material in, marine areas below the ordinary high watermark is subject to, and limited by, the inherent rights of the Pohnpei Public Lands Trust as the owner of such marine areas. Accordingly, the Mwoalen Wahu does not have standing on the basis that there exists a customary law that gives the traditional leaders the right to control the use of marine areas in their respective municipalities. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 641-42 & n.1 (Pon. 2016).

To the extent a claimed customary right is still in effect, the Mwoalen Wahu members have a legal right under the Pohnpei Constitution to institute legal proceedings in order to protect their constitutionally protected interests. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

Standing to sue was an unsettled area of United States law when the FSM Constitution was ratified and the issue of standing to sue within the FSM is one that calls for independent analysis rather than rigid adherence to the decisions of United States courts construing that Constitution. Based on this, the court will continue applying the prudential standing principles in determining whether a particular plaintiff has standing. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 644 n.3 (Pon. 2016).

For there to be standing, the plaintiff must have suffered some threatened or actual injury resulting from the defendants' allegedly illegal action, and the injury must be an invasion of a legally protected interest which is concrete and particularized, and actual or imminent. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 644 (Pon. 2016).

For there to be standing, the "injury in fact" test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 644 (Pon. 2016).

The first prong of the test for standing is satisfied when the customary right to receive oferings from their constituents and subjects is shared among each member of the Mwoalen Wahu, is protected by the Pohnpei Constitution, and is imminently threatened by the defendants' allegedly illegal conduct because it has been shown that sea cucumber declines pose an intensified threat to Pohnpei's nearshore coral-reef ecosystem and thus all marine life within that ecosystem, thereby posing an increased threat to the Mwoalen Wahu members' rights to receive offerings from marine life that inhabit that ecosystem. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 644 (Pon. 2016).

The plaintiffs' reasonable fears of environmental pollution is sufficient injury-in-fact to support standing. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 645 (Pon. 2016).

Although the court is mandated to first consult and apply sources from within the FSM, it is appropriate to look to United States case law for guidance on a complex standing issue, while proceeding against the background of pertinent aspects of Micronesian law, society, and culture. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 645 n.4 (Pon. 2016).

For there to be standing, the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 645 (Pon. 2016).

When, without a sea cucumber harvest, the Mwoalen Wahu will remain in the same posture as in the past and its members will continue to receive offerings by their constituents and subjects whereas a sea cucumber harvest threatens to reduce the structure and habitat of Pohnpei's reefs and negatively impact marine life, including marine life that Mwoalen Wahu members have a customary right to receive from their people, the threatened injury is directly traced to the challenged action and would be redressed by a decision in the plaintiffs' favor. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 645 (Pon. 2016).

Standing's prudential principles do not necessarily go to the core of the court's jurisdiction based on the "case or dispute" constitutional principle, but rather reflect an effort by the court to determine whether it should exercise judicial self-restraint when it seems wise not to entertain a case. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 645 n.5 (Pon. 2016).

Generalized grievances shared by substantially the whole population do not normally warrant standing and the petitioner generally must assert its own legal rights and interests, and cannot rest its claim on the legal rights or interests of third parties, but organizational standing to sue based on the rights of its members is proper. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 645 (Pon. 2016).

For there to be standing, the petitioner's complaint must fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 646 (Pon. 2016).

When the customary right the Mwoalen Wahu seek to protect is clearly within the zone of interests sought to be protected under Article 5 of the Pohnpei Constitution which upholds, respects, and protects the customs and traditions of the traditional kingdoms of Pohnpei and when sea cucumber commercialization is regulated by Pohnpei statute, the plaintiffs' complaint has fallen within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 646 (Pon. 2016).

If the requirement of standing is given a narrow construction when constitutional rights are involved, then there is, in effect, no practical remedy for anyone with an interest in enforcing the right – and the right becomes a mockery. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 646 (Pon. 2016).

The plaintiffs have standing to bring the matter before the court when they have alleged facts establishing a concrete injury and a sufficient causal relationship between the injury and the alleged violation and if the injury can be remedied by a judicial decree. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 646 (Pon. 2016).

Under the Pohnpei Marine Sanctuary and Wildlife Refuge Act of 1999, any person may commence a civil suit on his own behalf to enjoin any person who is alleged to be in violation of § 5-107 of that Act, and "person" includes any individual, corporation, partnership, association or other entity, and any governmental entity including, but not limited to, the FSM or any of the FSM states or any political subdivision thereof, and any foreign government, subdivision of such government, or any entity thereof. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 647 (Pon. 2016).

Since, unlike 26 Pon. C. § 5-115 which expressly grants to the Attorney General the right to bring a suit to enjoin a person who is in "imminent violation," the citizen suit provision of 26 Pon. C. § 5-117 only allows a person to commence a civil suit to enjoin a person who is "alleged to be in violation" of § 5-107," the plain statutory language can only be read to allow the Attorney General the power to seek equitable relief for an imminent violation but not private persons who do not allege facts that are sufficient to grant traditional constitutional standing when it has not asserted injury to itself. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 647 (Pon. 2016).

When a plaintiff has not alleged a concrete injury and a sufficient causal relationship between the injury and the alleged "violation," its claims will be dismissed because standing must be found for each count of a complaint or that count will be dismissed. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 648 (Pon. 2016).

A standing issue is addressed first, as it is a threshold issue going to a court's subject matter jurisdiction. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 56 (App. 2016).

Although standing is not expressly stated within the FSM Constitution, it is implied as an antecedent to

the "case or dispute" requirement found in Article XI, § 6 and should be interpreted so as to implement the objectives of that requirement. Two factors are central to the determination of whether a party has standing: 1) the party must allege a sufficient stake in a controversy's outcome and it must have suffered some threatened or actual injury resulting from the allegedly illegal action or erroneous court ruling, and 2) the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 57 (App. 2016).

When the asserted ownership of a parcel constitutes a sufficient stake in the outcome; and when a challenge to the Kosrae State Court's ruling is capable of being redressed by a favorable decision in the FSM Supreme Court appellate division, an appellant, who did not appeal the Land Court decision to the Kosrae State Court, possesses standing to bring the present appeal. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 57 (App. 2016).

Whether a party has standing is a question of law, to be reviewed de novo on appeal. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 57 (App. 2016).

Standing and justiciability are threshold issues going to the FSM Supreme Court's subject-matter jurisdiction and thus are addressed first. Welson v. FSM Social Sec. Admin., 21 FSM R. 348, 350 (Pon. 2017).

Two factors are central to the determination of whether a party has standing. First, the party must allege a sufficient stake in the controversy's outcome and it must have suffered some threatened or actual injury resulting from the allegedly illegal action or erroneous court ruling. Second, the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. Welson v. FSM Social Sec. Admin., 21 FSM R. 348, 350 (Pon. 2017).

Even when an injury sufficient to satisfy the constitutional standing requirement is alleged, the party generally must assert its own legal rights and interests, and cannot rest its claim to relief on the legal rights or interests of third parties. Welson v. FSM Social Sec. Admin., 21 FSM R. 348, 350 (Pon. 2017).

A mother cannot sue, as "next of kin," on behalf of her son when her son has reached the age of majority. Welson v. FSM Social Sec. Admin., 21 FSM R. 348, 350-51 (Pon. 2017).

When a plaintiff, since she lacks standing to sue, cannot identify any specific interests that her son would assert if her interest was transferred to him, the matter will be dismissed without prejudice to allow the son to assert any claims he may have against the FSM Social Security Administration. Welson v. FSM Social Sec. Admin., 21 FSM R. 348, 351 (Pon. 2017).

An entity that claims to own certain property has standing to sue another for what it perceives as wrongful interference with its rights in that property. Pohnpei Arts & Crafts, Inc. v. Narruhn, 21 FSM R. 366, 368 (Pon. 2017).

A decedent's estate ceased to own Pohnpei land once the Pohnpei Court of Land Tenure ruled on the heirship petition for that land and the time to appeal that decision expired. Because the decedent's estate does not have, and, since Pohnpei Court of Land Tenure ruling, has not had, any interest in the property, it has no standing to seek the relief regarding that land. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

When the estate's ownership of the property ended in 2001 when the Pohnpei Court of Land Tenure issued its decision in the heirship proceeding for that property, the estate could not state a claim against the bank or its agents for events that occurred after the estate's ownership ended. It lacked standing. Setik v. Mendiola, 21 FSM R. 624, 626 (App. 2018).

When no particular powers were expressed in an administrator's temporary appointment, although he was expected to help resolve the "overlappings" between two estates, and when the subsequent order

granted extensive powers to the co-administrators without making any distinction between the two full co-administrators and the temporary one, the court must, solely for the purpose of the pending motions, take as true the temporary administrator's assertion that he remains the estate's co-administrator and assume that since his administrator's powers were not otherwise limited, he has the power to sue on the estate's behalf to preserve the estate's assets. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 9 (Pon. 2018).

A plaintiff generally cannot assert the rights of a third party as her own. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 154 (Chk. 2019).

Any person in the actual and exclusive possession of the property may maintain the trespass action, although the person has no legal title, and is in wrongful occupation, as for example under a void lease, or in mere adverse possession. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 155 (Chk. 2019).

Standing is a threshold issue. To have standing to bring a matter before a court, the plaintiff must allege facts establishing a concrete injury and a sufficient causal relationship between the injury and the alleged violation and that the injury can be remedied by a judicial decree. Panuelo v. Sigrah, 22 FSM R. 341, 356 (Pon. 2019).

To have standing, a party must allege a sufficient stake in the controversy's outcome and it must have suffered some threatened or actual injury resulting from the allegedly illegal action or erroneous court ruling. And, the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. Panuelo v. Sigrah, 22 FSM R. 341, 356 (Pon. 2019).

An individual lacks standing and should be dismissed when she has no sufficient stake in the outcome of a dispute over a bankruptcy receiver's compensation or payments to creditors because she was neither an "interested party" nor a co-debtor, but, since her involvement with the case was as an insider who had improperly received property of the debtor's estate and converted it to her use, she as an individual, arguably, as the insider recipient of a fraudulent transfer, may be an "interested party" solely with respect to the fraudulently transferred property. Panuelo v. Sigrah, 22 FSM R. 341, 356 (Pon. 2019).

If the decedent would, if living, have standing to bring the suit, then the administratrix of his estate would have standing to do so. Panuelo v. Sigrah, 22 FSM R. 341, 356 (Pon. 2019).

The debtor, as an interested party, has sufficient stake in the matter for standing to try to reopen his own bankruptcy case. Panuelo v. Sigrah, 22 FSM R. 341, 356 (Pon. 2019).

The administratrix of an estate of a former debtor would have standing to seek relief under Bankruptcy Rule 9024 for alleged overpayments to creditors and to the bankruptcy receiver because she seeks reconsideration of, or relief from, the bankruptcy case orders allowing those claims by the creditors and the receiver. Panuelo v. Sigrah, 22 FSM R. 341, 357 (Pon. 2019).

A party generally cannot assert the rights of a third party as its own when challenging a search warrant. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 464 (Pon. 2020).

– Certification of Issues

When a case in a state or local court involves a substantial question requiring the interpretation of the Constitution, national law, or a treaty, on application of a party or on its own motion the court shall certify the question to the Supreme Court appellate division. The Supreme Court appellate division may decide the case or remand it for further proceedings. Koike v. Ponape Rock Products Co., 1 FSM R. 496, 501 (Pon. 1984).

Under article XI, section 8 of the FSM Constitution, a state court receiving a proper motion is required

to certify any substantial constitutional question to the FSM Supreme Court appellate division for proper disposition. Koike v. Ponape Rock Products Co., 1 FSM R. 496, 501 (Pon. 1984).

Article XI, section 8 of the Constitution, providing for state court certification of issues of national law, gives the FSM Supreme Court appellate division another tool to oversee the development of national law jurisprudence, but also provides the option of remand so that the state court may address issues of national law. Bernard's Retail Store & Wholesale v. Johnny, 4 FSM R. 33, 35 (App. 1989).

Under normal circumstances, the decision as to whether to decide or remand a question certified under article XI, section 8 of the Constitution will be made only by the constitutionally appointed justices of the FSM Supreme Court, without convening a third judge and without oral argument. Bernard's Retail Store & Wholesale v. Johnny, 4 FSM R. 33, 35 (App. 1989).

Unless definite articulable reasons to the contrary appear, questions certified under article XI, section 8 of the Constitution normally will be remanded to the state court. Bernard's Retail Store & Wholesale v. Johnny, 4 FSM R. 33, 35 (App. 1989).

Where the issues certified to the FSM Supreme Court by a state court under article XI, section 8 of the FSM Constitution are narrowly framed and not capable of varying solutions, and it appears that a greater service may be provided by simply answering the questions posed by the state court, the FSM Supreme Court will not remand the certified questions to the state court. Bernard's Retail Store & Wholesale v. Johnny, 4 FSM R. 33, 35 (App. 1989).

Certified questions are decided by those constitutionally appointed justices who are not disqualified. Etscheit v. Adams, 6 FSM R. 608, 609 (App. 1994).

The Constitution provides that the FSM Supreme Court Appellate Division may decide questions certified from state and local courts, not from the FSM Supreme Court Trial Division. Etscheit v. Adams, 6 FSM R. 608, 610 (App. 1994).

Certification is normally granted by the court that will be applying the guidance sought to its decision, not yet made, not by the court that is requested to hear the certified question. Etscheit v. Adams, 6 FSM R. 608, 610 (App. 1994).

When the FSM Supreme Court appellate division receives a certified question from a state or local court it has the discretion to decide the question or to remand it for decision. Jackson v. Kosrae, 7 FSM R. 504, 505 (App. 1996).

Certified questions will normally be remanded to state court unless well-articulated reasons are presented for their resolution by the FSM Supreme Court appellate division. When the state court might resolve the case without reaching the certified constitutional question remand is proper. Jackson v. Kosrae, 7 FSM R. 504, 506 (App. 1996).

Certified questions narrowly framed and not capable of varying resolutions may be accepted by the FSM Supreme Court appellate division when a greater service would be provided by answering the questions posed. Pernet v. Woodruff, 10 FSM R. 239, 241 (App. 2001).

– Chuuk

Lease agreement executed by the Chuuk State is void insofar as it purports to "incur public indebtedness" without legislative authority by way of an appropriation or statute. Billimon v. Chuuk, 5 FSM R. 130, 135-36 (Chk. S. Ct. Tr. 1991).

The framers did not intend that the constitutional provision barring persons convicted of a felony from serving in the legislature, even if pardoned, to have retroactive effect so as to bar a person who was both

convicted and pardoned before the enactment of the Chuuk State Constitution from appearing on the official ballot for state legislator. Robert v. Mori, 6 FSM R. 178, 179-80 (Chk. S. Ct. Tr. 1993).

The Chuuk State Constitution recognizes all traditional rights and ownership over all reefs, tidelands, and other submerged lands subject to legislative regulation of their reasonable use. Nimeisa v. Department of Public Works, 6 FSM R. 205, 209 (Chk. S. Ct. Tr. 1993).

It was the intent of the framers of the Chuuk State Constitution to return the rights and ownership of all reefs, tidelands (all areas below the ordinary high watermark), and other submerged lands to the individual people of Chuuk State. Nimeisa v. Department of Public Works, 6 FSM R. 205, 210 (Chk. S. Ct. Tr. 1993).

Statutes and case law inherited from the Trust Territory are invalid to the extent that they are inconsistent with the state constitution which is the supreme law of Chuuk. Nimeisa v. Department of Public Works, 6 FSM R. 205, 210 (Chk. S. Ct. Tr. 1993).

The constitutional grant of ownership of the tidelands back to the rightful individual owners, shall be given prospective application only. Nimeisa v. Department of Public Works, 6 FSM R. 205, 212 (Chk. S. Ct. Tr. 1993).

The reversion of reefs, tidelands and other submerged lands to private owners granted by article IV, section 4 of the Chuuk Constitution does not apply to any tidelands that were previously filled or reclaimed. Nena v. Walter, 6 FSM R. 233, 236 (Chk. S. Ct. Tr. 1993).

Under the FSM Constitution the FSM Supreme Court may hear cases on appeal from the highest state court in which a decision may be had if that state's constitution permits it. The Chuuk State Constitution permits such appeals, which, in civil cases, Chuuk statute provides be made by certiorari. Gustaf v. Mori, 6 FSM R. 284, 285 (App. 1993).

A court begins its analysis with the presumption that all legislative enactments are constitutional. The burden is on the plaintiff to clearly demonstrate to the court that the ordinance is unconstitutional. Wainit v. Weno, 7 FSM R. 121, 122 (Chk. S. Ct. Tr. 1995).

The Chuuk Constitution protects persons from an unreasonable invasion of privacy. The right to privacy depends upon whether a person has a reasonable expectation that the thing, paper or place should remain free from governmental intrusion. A person's right to privacy is strongest when the government is acting in its law enforcement capacity. In re Legislative Subpoena, 7 FSM R. 261, 266 (Chk. S. Ct. Tr. 1995).

Under the Chuuk Constitution, statutory authorization is required as a predicate to expenditure of state funds, and the Chuuk state court does not have the power to issue an execution order against state property. Louis v. Kutta, 8 FSM R. 208, 210 (Chk. 1997).

The Chuuk Constitution provides that existing Chuukese custom and tradition shall be respected. Chuuk v. Sound, 8 FSM R. 577, 578 (Chk. S. Ct. Tr. 1998).

Because the Chuuk Constitution provides that Chuukese is the state language, but both Chuukese and English are official languages, a criminal appellant in the Chuuk State Supreme Court has no constitutional right to a transcript in both Chuukese and English. Reselap v. Chuuk, 8 FSM R. 584, 586 (Chk. S. Ct. App. 1998).

No resident entitled to vote may be denied the privilege to vote or be interfered with in voting. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 47 (Chk. S. Ct. Tr. 1999).

The right guaranteed in the Chuuk Constitution to move and migrate within the State and the right in

the FSM Constitution to travel and migrate within the Federated States, do not protect travel or migration outside these boundaries. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 48 (Chk. S. Ct. Tr. 1999).

A municipal ordinance restricting absentee voting in municipal elections to persons in the state of Chuuk is not unconstitutional. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 48 (Chk. S. Ct. Tr. 1999).

The secret ballot provision of Chuuk Constitution article XII, section 2 relates only to general elections and has no application to proceedings in the House of Representatives. Christlib v. House of Representatives, 9 FSM R. 503, 507 (Chk. S. Ct. Tr. 2000).

The Chuuk Constitution provides that no person, otherwise qualified to vote, may be denied the privilege to vote. The unreasonableness of candidate qualifying fees is an effective denial of the privilege to vote. Nameta v. Cheipot, 9 FSM R. 510, 512 (Chk. S. Ct. Tr. 2000).

While the Chuuk Constitution may not make voting abroad a constitutionally-protected right, it does not prohibit voting out-of-state. Such voting is a privilege that the Legislature may create and regulate by statute and it has done so. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 153 (Chk. S. Ct. App. 2001).

The prevailing rule is that when the Constitution provides no direct authority to establish qualifications for office in excess of those imposed by the Constitution, such qualifications were unconstitutional by their very terms and under equal protection, due process, and freedom of speech and assembly. Lokopwe v. Walter, 10 FSM R. 303, 306 (Chk. S. Ct. Tr. 2001).

Tideland ownership derives from the Chuuk Constitution's recognition (as of its effective date, October 1, 1989) of traditional rights in the tidelands. Phillip v. Moses, 10 FSM R. 540, 544 (Chk. S. Ct. App. 2002).

The Governor may declare a state of emergency and issue appropriate decrees if required to preserve public peace, health or safety at a time of extreme emergency caused by civil disturbance, natural disaster, or immediate threat of war or insurrection. A declaration of emergency may impair civil rights to the extent actually required for the preservation of peace, health or safety. In re Paul, 11 FSM R. 273, 277 (Chk. S. Ct. Tr. 2002).

Article XI, § 12(b) of the Chuuk Constitution clearly provides that citizens' civil rights may be impaired by a declaration of emergency, but that impairment rights may only occur to the extent actually required for the preservation of peace, health or safety, so that when the Governor's declaration of emergency made no reference to the suspension of civil rights, or of the need to do so to preserve peace, health or safety, it was solely addressed to the creation and implementation of emergency response and recovery efforts to Tropical Storm Chata'an. In re Paul, 11 FSM R. 273, 279 (Chk. S. Ct. Tr. 2002).

In circumstances short of war, rebellion, insurrection or invasion where suspension of the Chuuk citizens' civil rights is warranted require the Governor's clear and unambiguous statement in the declaration of emergency itself, and even if such a clear and unambiguous statement were made, a citizen's continued right to petition for a writ of habeas corpus, except in cases of war, rebellion, insurrection or invasion, would provide a remedy to any improper suspension of civil rights by the declaration of emergency. In re Paul, 11 FSM R. 273, 279 (Chk. S. Ct. Tr. 2002).

Where the Chuuk Constitution specifically authorizes the appointment of qualified attorneys in Chuuk as temporary appellate justices on a per case basis and the Constitution's framers therefore must have contemplated that counsel in one appeal may well be a temporary justice on a different appeal, the presence of qualified attorneys on an appellate panel is not a ground to grant a rehearing. Rosokow v. Bob, 11 FSM R. 454, 457 (Chk. S. Ct. App. 2003).

In keeping with the Chuuk Constitution Judicial Guidance Clause's requirement that court decisions

must be in conformity with "the social and geographical configuration of the State of Chuuk," parol evidence may be used to impeach a written election return that was based upon an oral communication by radio because Chuuk's geographical configuration is such that the transmission of election returns from the outer islands is oral (by radio). In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 477 (Chk. S. Ct. App. 2003).

There will be an independent Election Commission, vested with powers, duties and responsibilities, as prescribed by statute, for the administration of elections in Chuuk. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 576 (Chk. S. Ct. Tr. 2003).

The Chuuk Constitution's supremacy clause provides that the Chuuk Constitution is the supreme law of the state, and that an act of government in conflict with it is invalid to the extent of the conflict. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 577 (Chk. S. Ct. Tr. 2003).

The Chuuk Constitution bans taxes on real property. In re Engichy, 12 FSM R. 58, 69 n.6 (Chk. 2003).

In determining the extent of the powers of the judiciary under a state constitution, the rule is that the state constitution confers on the judicial department all the authority necessary to exercise powers as a co-ordinate department of the government. Kupenes v. Ungeni, 12 FSM R. 252, 262 (Chk. S. Ct. Tr. 2003).

With regard to grants of legislative and judicial power by state constitutions, and especially regarding the principle barring implied limitations on such powers, the whole of such legislative and judicial power reposing in the sovereignty is granted to those bodies, except as it may be restricted in the same instrument. Thus the state courts have and should maintain vigorously all the inherent and implied powers necessary to function properly and effectively as a separate department in the scheme of government. Kupenes v. Ungeni, 12 FSM R. 252, 262-63 (Chk. S. Ct. Tr. 2003).

The relevant Chuuk constitutional provisions do not bar the Legislature from providing by statute for an appeal directly from the Chuuk State Election Commission to the Chuuk State Supreme Court appellate division. The Constitution does provide for appeals from administrative agencies to the Chuuk State Supreme Court trial division, but the Constitution does not make the trial division's jurisdiction exclusive, and the trial division's jurisdiction is further qualified with the proviso "as may be provided by law." Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 589 (Chk. S. Ct. App. 2007).

The Legislature, under its power to prescribe by statute for the regulation of the certification of elections and under its power to provide by law for review of administrative agency decisions, has the power to place the jurisdiction to review Election Commission decisions in the Chuuk State Supreme Court appellate division rather than in the trial division with an appeal to the appellate division and a further possible appeal to the FSM Supreme Court appellate division. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 589 (Chk. S. Ct. App. 2007).

The court's only authority in election matters is to hear appeals from Chuuk State Election Commission decisions regarding the conduct of elections. Only a house of the Legislature can decide who is to be seated as a member. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 590 (Chk. S. Ct. App. 2007).

A member of the Chuuk Legislature may hold no other public office or public or private employment with a few exceptions and membership on an election tribunal is not one of those exceptions. The Chuuk Constitution is the supreme law of Chuuk and a governmental act by a municipality that violates it is invalid to the extent of the violation. The inclusion of state legislature members on a municipal Special election tribunal commission violated the Chuuk Constitution and so that that body's composition was improper and its acts invalid. Esa v. Elimo, 15 FSM R. 198, 204 (Chk. 2007).

The Chuuk Board of Education has eight members who are appointed by the Governor with the advice

and consent of the Senate. The Education Department head, who is also appointed by the Governor with the advice and consent of the Senate, serves as the Board's executive director. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 60 (Chk. S. Ct. Tr. 2010).

The Director's responsibilities to the Board of Education include duties and functions as assigned by the Board, attendance at Board meetings, and providing logistical and administrative needs to the Board and other needs as declared by the Board, and the Board is the only authority that may remove the Director, which is by a majority vote of all Board members for misconduct, incompetency, neglect of duty, or other good cause. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 61 (Chk. S. Ct. Tr. 2010).

The FSM Constitution's Article VII, section 2 provides no basis for a party to seek relief in the FSM Supreme Court and no basis on which the party is likely to prevail when the party does not argue that the Chuuk has an undemocratic constitution but instead contends that the Chuuk executive branch is expending Chuuk state funds (albeit originally appropriated by Congress) without an appropriation of those funds by the Chuuk Legislature and that this is a violation of Chuuk's democratic constitution. Mailo v. Lawrence, 20 FSM R. 201, 204 (Chk. 2015).

When a Chuuk Criminal Procedure Rule conflicts with a Chuuk statute, the statute's language prevails because the Chuuk Constitution vests the Chief Justice with the authority to promulgate Criminal Procedure Rules, which the legislature may amend by statute, but the Chief Justice has no authority to amend a statute enacted by the legislature. Therefore, if the statute applies and the statute and the rule conflict, the statute must prevail. Chuuk v. Phillip, 22 FSM R. 425, 428 (Chk. S. Ct. Tr. 2019).

When a Chuuk Criminal Procedure Rule conflicts with a Chuuk statute, the statute's language prevails because the Chuuk Constitution vests the Chief Justice with the authority to promulgate Procedure Rules, which the legislature may amend by statute, but the Chief Justice has no authority to amend a statute enacted by the legislature. Therefore, if the statute applies and the statute and the rule conflict, the statute must prevail. Chuuk v. Fred, 22 FSM R. 429, 432 (Chk. S. Ct. Tr. 2019).

Chuuk State Constitution's transition clause provides that statutes in force at the time the Constitution took effect remain in effect to the extent they comply with the Constitution, or until amended or repealed. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 576 (Chk. S. Ct. App. 2020).

While the Chuuk Constitution provides the Chuuk State Supreme Court with concurrent jurisdiction over land disputes, Article VII, § 3(d) of the Chuuk Constitution allows the specific court to be prescribed by statute. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 576 (Chk. S. Ct. App. 2020).

– Chuuk – Case or Dispute

The judicial decision-making power is typically exercised by a court which has heard competing contentions of adversaries having sufficient interests in the outcome to thoroughly consider, research, and argue the points at issue. Even then, a court's declarations of law should be limited to rulings necessary to resolve the dispute before it. Thus, the case must be one appropriate for judicial determination, that is, a justiciable controversy, as distinguished from a difference or dispute of a hypothetical or abstract character, or one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 219 (Chk. S. Ct. Tr. 2008).

When the plaintiff seeks declaratory relief, the court has jurisdiction to issue a declaratory judgment so long as there is a case or dispute within the meaning of Chuuk Constitution, article VII, §§ 3 and 4. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 219 (Chk. S. Ct. Tr. 2008).

When the primary issue is whether the Board had legal authority to terminate a director at the time the termination was allegedly made and when that issue remains a living controversy regardless of who the

current Board members are, the action will continue unabated. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 221 (Chk. S. Ct. Tr. 2008).

An appellate court does not sit to render decisions on abstract legal propositions or to render advisory opinions. Selifis v. Robert, 22 FSM R. 569, 572 (Chk. S. Ct. App. 2020).

The appellate court will not consider a municipal election ordinance's validity when that ordinance's two alleged defects may be remedied or addressed before the next municipal election. Selifis v. Robert, 22 FSM R. 569, 572 (Chk. S. Ct. App. 2020).

– Chuuk – Case or Dispute – Mootness

Chuuk courts are restricted in hearing only "live" cases, meaning the case must be one appropriate for judicial determination. A matter is appropriate for judicial determination when there is a justiciable controversy, as distinguished from a difference or dispute of a hypothetical or abstract character, or one that is academic or moot. Selifis v. Robert, 21 FSM R. 352, 353 (Chk. S. Ct. App. 2017).

No justiciable controversy is presented when the parties lack a legally cognizable interest in the outcome, and if an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot. Selifis v. Robert, 22 FSM R. 569, 572 (Chk. S. Ct. App. 2020).

When an appeal is dismissed as moot, the established practice is for the appellate court to reverse or vacate the judgment below and dismiss the case, but when the case below has already been dismissed, no purpose is served by vacating that dismissal and then dismissing it again. In such cases, the appellate court will make no order about dismissal addressed to the trial court. Selifis v. Robert, 22 FSM R. 569, 572 (Chk. S. Ct. App. 2020).

An action for declaratory relief is moot when the government has rescinded the orders that the plaintiff sought to have declared unlawful. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 630 (Pon. 2020).

– Chuuk – Case or Dispute – Ripeness

Chuuk courts are restricted in hearing only "live" cases, meaning the case must be one appropriate for judicial determination. A matter is appropriate for judicial determination when there is a justiciable controversy, as distinguished from a difference or dispute of a hypothetical or abstract character, or one that is academic or moot. Thus, when a defendant has not yet stood trial and thus may not be convicted, the question of whether a potential sentence constitutes a cruel and unusual punishment is merely hypothetical and academic and not yet appropriate for judicial determination. Chuuk v. Silluk, 21 FSM R. 649, 656 (Chk. S. Ct. Tr. 2018).

– Chuuk – Case or Dispute – Standing

Although the standing requirement is not explicitly stated in the Chuuk constitution, the implied requirement that a party have standing should be interpreted to implement the constitutional requirement that a "case" or "dispute" exist. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 219 (Chk. S. Ct. Tr. 2008).

When jurisdictional issues are inextricably intertwined with the case's merits and issues of fact remain, a motion to dismiss for lack of subject matter jurisdiction will be denied, and if a motion to dismiss for lack of standing is denied, the court does not somehow imply that, at that stage of the proceedings, it has made any findings on a claim's merits. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 219 (Chk. S. Ct. Tr. 2008).

When the record is not sufficiently developed to enable the court to either resolve the factual and legal

issues as to whether Board members' terms had expired when the decision to terminate the director was made, or to determine if, as a matter of law, the Board members were legally entitled to act in a *de facto* capacity despite the expiration of their terms, there are still significant factual and legal issues that need resolution before the court can make a final determination on the Board's standing to sue the director. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 219-20 (Chk. S. Ct. Tr. 2008).

When the Board has a clear statutory mandate allowing it to terminate a director for cause; when there is no authority to support the argument that a governmental agency or department must obtain the Attorney General's consent in order to file suit over a matter that is committed to its discretion; and when the Attorney General is a defendant in the lawsuit, it would severely test the notion that the Board has certain matters committed to its discretion if it could not enforce the exercise of its discretion without an adversary's consent. When it is alleged that the Director failed to comply with the Board's decision to terminate his directorship, and the Board has the discretion to terminate the director for cause, the Board has standing to enforce the exercise of its discretion since whether the Board's exercise of its statutory duty to terminate the director was legal and enforceable is a justiciable controversy in which the Board has a direct interest. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 220 (Chk. S. Ct. Tr. 2008).

If the Attorney General did have exclusive authority to determine when suits could be brought by instrumentalities of the executive branch, then all matters committed to the discretion of executive officials would, in effect, really be within the Attorney General's discretion. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 220 n.3 (Chk. S. Ct. Tr. 2008).

When the Attorney General's office is representing an opposing party and therefore disqualified from representing the Board and when the question of whether the Board had the authority to terminate a directorship and of whether that termination was valid creates a case or dispute that is ripe for judicial determination, the Attorney General's consent is not required for there to be standing. And any issues regarding the Board's chosen counsel may be addressed through a motion to disqualify or other means, but it is not relevant to standing analysis. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 220-21 (Chk. S. Ct. Tr. 2008).

– Chuuk – Due Process

A person's constitutional right to due process of law, and his right to be free from cruel and unusual punishment is violated when an officer instead of protecting the person from attack, threw him to the ground, and beat the person in the jail. Meitou v. Uwera, 5 FSM R. 139, 144 (Chk. S. Ct. Tr. 1991).

Since retrospective application of a constitutional provision barring persons convicted of felonies, even if pardoned, from holding legislative office is not an invalid ex post facto law, retrospective application of the provision is also not invalid as a bill of attainder or a denial of due process. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 271-72 (Chk. S. Ct. Tr. 1993).

The FSM Constitution's due process provision protects persons from the governments, and those acting under them, established or recognized by the Constitution, and does not create causes of action against private parties. The Chuuk Constitution due process provision functions in the same manner. Rosokow v. Bob, 11 FSM R. 210, 215 (Chk. S. Ct. App. 2002).

Among the fundamental rights of Chuuk citizens set forth in Article III of the Chuuk Constitution is the right of due process of law. In re Paul, 11 FSM R. 273, 277 (Chk. S. Ct. Tr. 2002).

It is fundamental that no person may be deprived of liberty without due process of law. Due process of law, in the case of citizens accused of a crime, includes the right to be promptly brought before a Chuuk State Supreme Court justice, or other judicial officer, and to be informed of the charges being brought against him. In re Paul, 11 FSM R. 273, 278 (Chk. S. Ct. Tr. 2002).

One of the fundamental due process rights afforded to criminal defendants is the right to be brought without unnecessary delay before a judicial officer, and that the period of confinement prior to initial appearance cannot exceed, except in extraordinary cases, twenty-four hours. In re Paul, 11 FSM R. 273, 278 (Chk. S. Ct. Tr. 2002).

The right of a person arrested for the commission of a crime to due process of law, including the right to be promptly brought before a Chuuk State Supreme Court justice or other judicial officer for initial appearance within 24 hours of his arrest, is a fundamental right afforded to all Chuuk citizens. Only under the most extraordinary circumstances, and then only with a specific, clear, and unambiguous statement, may a Governor's declaration of emergency suspend this due process right or other civil rights of Chuuk citizens. In re Paul, 11 FSM R. 273, 280 (Chk. S. Ct. Tr. 2002).

Termination resulting from the decision of any government employee (other than a "principal officer" or "advisor") to run for public office violates that employee's free speech and association rights as guaranteed by the Chuuk Constitution, as well as depriving the employee of a property interest (his right to continued employment) without due process of law. Tomy v. Walter, 12 FSM R. 266, 271-72 (Chk. S. Ct. Tr. 2003).

When no court notice of the case's hearing on the merits was ever served on the defendants, the defendants' and the real party in interest's rights to due process of law under the Chuuk and FSM constitutions were violated because a trial court commits plain error, and violates a litigant's right to due process, when the court fails to serve the notice of a trial date and time on that litigant. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 224 (Chk. S. Ct. App. 2007).

Any order in aid of judgment may be modified by the court as justice may require, at any time, upon application of either party and notice to the other, or on the court's own motion. But a court cannot decide its own motion without first giving either party notice or an opportunity to be heard because that would violate a litigant's due process rights guaranteed by both the Chuuk and FSM Constitutions since notice and an opportunity to be heard is the essence of due process. Albert v. O'Sonis, 15 FSM R. 226, 234 (Chk. S. Ct. App. 2007).

When a court's notice of trial on the merits is not served on a party, that party's rights to due process of law under the Chuuk and FSM Constitutions are violated, and the failure to serve notice of a trial date and time is plain error. Phillip v. Moses, 18 FSM R. 247, 250 (Chk. S. Ct. App. 2012).

Notice and an opportunity to be heard is the essence of due process as guaranteed by both the Chuuk and FSM Constitutions. Phillip v. Moses, 18 FSM R. 247, 250 (Chk. S. Ct. App. 2012).

The Chuuk Constitution mandates that no person may be deprived of life, liberty, or property without due process of law, and the essence of due process is notice and an opportunity to be heard. Einat v. Chuuk Land Comm'n, 22 FSM R. 130j, 130l (Chk. S. Ct. Tr. 2018).

The titleholder is an indispensable party to any action to set aside, void, nullify, or alter the titleholder's certificate of title because due process makes that person an indispensable party to the action. Courts generally hold court orders void when the real party of interest was not present and the matter concerned the removal of that (indispensable) party from a certificate of title. Einat v. Chuuk Land Comm'n, 22 FSM R. 130j, 130L (Chk. S. Ct. Tr. 2018).

Default judgments against a real party of interest will be voided for lack of due process when that party lacked a notice and hearing before being disposed of its claim to a property – even when the real party of interest lacked a certificate of title. Einat v. Chuuk Land Comm'n, 22 FSM R. 130j, 130L (Chk. S. Ct. Tr. 2018).

A stipulated motion, that proffers no proof of service on the real party of interest, but asks the court to void the real party in interest's years-old, un-appealed determination of ownership and thus seeks to

dispossess her of her property rights without notice or hearing, asks the court to issue an order in violation of the real party in interest's due process rights. The court will deny any such motion because voiding a determination of ownership based on stipulation that fails to provide notice to the real party of interest violates the real party of interest's due process rights under the Chuuk Constitution. Einat v. Chuuk Land Comm'n, 22 FSM R. 130j, 130m (Chk. S. Ct. Tr. 2018).

Chuuk Public Utilities Corporation is a semi-public entity where the governor of Chuuk appoints its board of directors; it is thus a government actor whose actions are subject to the mandates found within the Chuuk Constitution – including the declaration of rights clause. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 424 (Chk. S. Ct. Tr. 2019).

Chuuk state law requires a public utility to consult with the land owner and announce entry before it works on public utilities – but provides no relief for failure to consult. Due process requires consultation with the landowner before installing a new structure on the land (or extending another easement through that land), but the replacement of existing pipes falls outside that due process requirement since that easement already existed. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 424 (Chk. S. Ct. Tr. 2019).

The respect for real property, as implicitly recognized under the Chuuk Constitution, requires that if the real property owner is known, a public utility must consult with the landowner before creating a new easement over a land – in part to alleviate the landowner's concerns and to create a practical easement which limits the easement's effect on the owner. But consultation with the real landowner may sometimes be impossible; so when the real property owner is absent or unknown, a public utility company may broadcast two radio announcements about its intent to place a new structure on a particular parcel of land and invite any parties who might have an ownership claim to attend a consultation meeting. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 424 (Chk. S. Ct. Tr. 2019).

– Chuuk – Equal Protection

The protection afforded by the Chuuk Constitution due process and equal protection provisions can only be asserted when the denials of such rights is based on account of race, sex, religion, language, dialect, ancestry, national origin, or social status. Christlib v. House of Representatives, 9 FSM R. 503, 507 (Chk. S. Ct. Tr. 2000).

A state court litigant's right to equal protection is not violated because he can only get a judgment in the state court and cannot get a judgment in the FSM Supreme Court. Kama v. Chuuk, 20 FSM R. 522, 533 (Chk. S. Ct. App. 2016).

Each court system, national and state, treats all persons before it equally under the law and the difference in each court system's jurisdictional requirements is not unequal treatment under the laws. Kama v. Chuuk, 20 FSM R. 522, 533 (Chk. S. Ct. App. 2016).

– Chuuk – Impairment of Contracts

The prohibition against the impairment of contracts is not absolute. The contract must be valid and enforceable when made. A contract which is illegal when made is unenforceable because no obligation arises from an illegal contract, thus there is no obligation that may be impaired. Truk Shipping Co. v. Chuuk, 7 FSM R. 337, 341 (Chk. S. Ct. Tr. 1995).

No obligation may arise from an agreement that lacks consideration, since consideration is required for a valid contract to exist. Therefore, the termination of a contract that lacks consideration does not violate the prohibition against impairment of the obligations of contracts. Truk Shipping Co. v. Chuuk, 7 FSM R. 337, 341 (Chk. S. Ct. Tr. 1995).

When the State of Chuuk is a party to a contract there is a distinction between a breach of a contract by the state and impairment of the obligation of the contract. The distinction depends on the availability of a remedy in damages. If the state's action does not preclude a damage remedy the contract has been breached and the non-breaching party can be made whole. The state has the same power as an individual to break or terminate contracts. As long as the private individual or company that is the other party has a remedy at law no impairment of the obligation of contracts occurs. Truk Shipping Co. v. Chuuk, 7 FSM R. 337, 341 (Chk. S. Ct. Tr. 1995).

Reading the constitutional provision barring impairment of contracts in harmony with the provision allowing general reduction of salaries, the exclusion of contract employees does not preclude the Chuuk Legislature from enacting a general reduction of salaries. Chuuk State Supreme Court v. Umwech (II), 7 FSM R. 630, 632 (Chk. S. Ct. Tr. 1996).

– Chuuk – Interpretation

When a constitutional provision is ambiguous and no constitutional convention journal was ever compiled then the constitutional convention reports may be consulted to discern the framers' intent. Nimeisa v. Department of Public Works, 6 FSM R. 205, 209 (Chk. S. Ct. Tr. 1993).

In deciding whether the new rule should be applied retroactively from the date of the court's judgment, or prospectively when rendering judgments on new constitutional rules, courts are to be guided by the following three factors: 1) the purpose to be served by the particular new rule; 2) the extent of reliance which had been placed upon the old rule; and 3) the effect on the administration of justice of a retroactive application of the new rule. Nimeisa v. Department of Public Works, 6 FSM R. 205, 210-11 (Chk. S. Ct. Tr. 1993).

Where there has been good-faith reliance on an old rule, and retroactive application of the new rule would defeat such reliance, and where retroactive application would only unjustifiedly burden the administration of justice with meritless claims doubting the good faith reliance on the old rule, the new constitutional rule will apply to the parties of the case and be given prospective effect. Nimeisa v. Department of Public Works, 6 FSM R. 205, 211-12 (Chk. S. Ct. Tr. 1993).

When the language of the Chuuk Constitution does not define the term "tidelands" contrary to the common usage of the word or its accepted legal definition, and the legislative history does not indicate that the framers intended another meaning the court will employ the meaning of the term consistent with its legal usage at the time of the Constitution's enactment. Nena v. Walter, 6 FSM R. 233, 236 (Chk. S. Ct. Tr. 1993).

Where constitutional language is borrowed from another constitution the borrowed language will be interpreted in the light of the interpretation of the original language, but insertion of new or different language must be interpreted to intend that some sort of new or different meaning be given to that altered portion of the constitutional text. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 265 (Chk. S. Ct. Tr. 1993).

Statutes and constitutional provisions must be read together when the statutes are pre-constitution and because they are only effective to the extent they are not in conflict with the Chuuk Constitution. Sana v. Chuuk, 7 FSM R. 252, 254-55 (Chk. S. Ct. Tr. 1995).

In interpreting a provision of the Chuuk Constitution that is identical to the same provision in the United States Constitution it is appropriate, in the absence of any local precedent, to look to the law of the jurisdiction from which the provision was drawn. Truk Shipping Co. v. Chuuk, 7 FSM R. 337, 341 (Chk. S. Ct. Tr. 1995).

It is true that when a provision of the Chuuk Constitution is ambiguous, and because no constitutional

convention journal was ever compiled, the constitutional convention reports may be consulted to discern the framers' intent. But the constitutional provision must first be ambiguous, unclear, or inconclusive before a court can proceed to the legislative history to determine the provision's meaning. Stinnett v. Weno, 8 FSM R. 142, 146 (Chk. 1997).

Statements prepared afterward for use in a lawsuit are not satisfactory legislative history and cannot be used to show the framers' intent. Stinnett v. Weno, 8 FSM R. 142, 146 (Chk. 1997).

Language in a committee report in support of language that did not become part of the constitution cannot be relied upon to discover the real intent of the framers. At best it can only be used to show what was not their intent. Stinnett v. Weno, 8 FSM R. 142, 147 (Chk. 1997).

When the meaning of a constitutional provision is forthright, a court will apply its analysis to the constitutional provision's language as it appears on its face. Weno v. Stinnett, 9 FSM R. 200, 207 (App. 1999).

The language, "and may delegate certain taxing powers to the municipal governments by statute," contemplates that municipal governments are invested with the power to tax only insofar as they receive that power from the state government. Without express delegation to a municipality of the authority to tax, the municipality lacked this power. Weno v. Stinnett, 9 FSM R. 200, 207 (App. 1999).

When the Chuuk Constitution says the state "may delegate certain taxing powers to the municipal governments by statute," it is plain that "certain" in this context means nothing more, and nothing less, than that the state government may delegate such of its taxing powers as it sees fit – the point is that the option is the state government's. Weno v. Stinnett, 9 FSM R. 200, 207 (App. 1999).

When a section of the Chuuk Constitution is clear on its face, consideration of this provision's legislative history is inappropriate. Weno v. Stinnett, 9 FSM R. 200, 208 (App. 1999).

A committee report that refers to language that is not in the Constitution and that accompanied a committee proposal that was killed by the Constitutional Convention cannot be relied upon to discover the real intent of the framers. At best it can only be used to show what was not their intent. Weno v. Stinnett, 9 FSM R. 200, 208 (App. 1999).

The only conclusion to be fairly drawn from the deletion of a sentence giving the municipal governments the exclusive power to levy head taxes and business license fees from the proposal as adopted is that the Chuuk Constitution's framers did not intend that the municipal governments should have the power to levy head taxes and business license fees. Weno v. Stinnett, 9 FSM R. 200, 208 (App. 1999).

When constitutional language is clear, no outside reference is needed to explain any ambiguity. Christlib v. House of Representatives, 9 FSM R. 503, 507 (Chk. S. Ct. Tr. 2000).

When a case's disposition and the plaintiffs' sought relief do not require construction of statute as to its constitutionality, courts will not undertake a decision based upon a constitutional issue. Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 545 (Chk. S. Ct. Tr. 2000).

While courts will not refuse to pass on the constitutionality of statutes in any proceeding in which such a determination is necessarily involved, the courts' invariable practice is not to consider the constitutionality of state legislation unless it is imperatively required, or unavoidable. Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 545 (Chk. S. Ct. Tr. 2000).

The principle of avoiding constitutional questions was conceived out of considerations of sound judicial administration and is in accord with the principle of separation of powers of government. Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 545 (Chk. S. Ct. Tr. 2000).

The court will not rule on a statute's constitutionality when it can limit the case's disposition to interpretation of the statute's language as it applies to the question. Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 545 (Chk. S. Ct. Tr. 2000).

Because the constitutional provision states that only one Chuuk State Supreme Court justice may hear or decide an appeal, and because "may" is permissive, not mandatory language, the Constitution contemplates that there may be an occasion when no Chuuk State Supreme Court justice would hear an appeal. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 151 (Chk. S. Ct. App. 2001).

Analysis of the constitution must start with the words of the constitutional provision. If these words are clear and permit only one possible result, the court should go no further. In re Paul, 11 FSM R. 273, 277 (Chk. S. Ct. Tr. 2002).

Any part of a constitution should be interpreted and considered against the background of other provisions of the same constitution. An effort should be made to reconcile all provisions so that none is deprived of meaning. In re Paul, 11 FSM R. 273, 278 (Chk. S. Ct. Tr. 2002).

If the wording of the constitutional provisions is unambiguous, the words should control, and when more than one constitutional provision has an effect on the question being decided, the varying provisions must be interpreted in a manner which gives effect to each provision, so that no provision of the constitution is rendered meaningless. In re Paul, 11 FSM R. 273, 278 (Chk. S. Ct. Tr. 2002).

In interpreting constitutional provisions, courts must seek to ensure that the purposes sought to be accomplished by the constitution are not defeated by the interpretation of any particular provision. No court is authorized to so construe any clause of a constitution as to defeat its obvious ends when another construction will enforce and protect it. A constitution must be interpreted so as to carry out the general purposes of the government, and not defeat them. Kupenes v. Ungeni, 12 FSM R. 252, 262 (Chk. S. Ct. Tr. 2003).

A constitution is to be liberally construed, not only according to its letter, but also according to its true spirit, to carry into effect the principles of government which it embodies and the general purpose of its enactment. Kupenes v. Ungeni, 12 FSM R. 252, 262 (Chk. S. Ct. Tr. 2003).

The principle of practicality provides that when two interpretations of constitutional language are available and one is productive of invalidity and chaos, while the other saves validity and avoids chaos, the latter interpretation will be adopted. Kupenes v. Ungeni, 12 FSM R. 252, 262 (Chk. S. Ct. Tr. 2003).

When a particular interpretation of a constitutional provision has been in effect for a long period without objection, any practice adopted through such an interpretation may create acceptance of the practice by acquiescence. A long-continued understanding and application of a provision amounts to a practical construction of it. Such a construction, acquiesced in for many years, is frequently resorted to by the courts because it is entitled to great weight and will not be disregarded unless it clearly appears that it is erroneous. The general rule is that the exercise of powers and general acquiescence therein for a long period of years, especially if commencing with the government's organization, may be treated as fixing the construction of the Constitution and as amounting to a contemporary and practical exposition of it. Kupenes v. Ungeni, 12 FSM R. 252, 262 (Chk. S. Ct. Tr. 2003).

Since the constitution must be interpreted in such a way as to carry out is purposes and since the purpose of the unified judiciary must be to ensure that fair and impartial justice be provided to every citizen of Chuuk, in a case where all sitting justices are disqualified, unavailable, or have recused themselves, fair and impartial justice will be unavailable unless the Chief Justice has some method available to ensure a fair and impartial hearing. Kupenes v. Ungeni, 12 FSM R. 252, 263 (Chk. S. Ct. Tr. 2003).

Since the constitution must be liberally, not restrictively, construed, any attempt to place limitations on the Chief Justice's power, where no words of limitation appear, would require a restrictive interpretation of the constitution, and would violate the rules of interpretation as applied to judiciaries. Kupenes v. Ungeni, 12 FSM R. 252, 263 (Chk. S. Ct. Tr. 2003).

Interpreting the Chief Justice's rule-making authority and his authority to "appoint and prescribe duties of other officers and employees, as prohibiting the appointment of a special trial justice unless the appointee meets the Article VII, § 9 qualifications of associate justices, would invite invalidity and chaos. Instead, the principle of acquiescence controls. Kupenes v. Ungeni, 12 FSM R. 252, 263-64 (Chk. S. Ct. Tr. 2003).

The Chuuk Constitution provides no guidance, positively or negatively, regarding whether special trial justices are permissible, and if so, what their minimum qualifications must be. Absent any words of limitation in the constitution, the Chief Justice has and should maintain vigorously all the inherent and implied powers necessary to permit the judiciary to function properly and effectively as a separate department in the scheme of government. These inherent and implied powers include the power to adopt general court orders for the appointment of special trial justices and to establish minimum qualifications for those special justices which equal the qualifications for temporary appellate justices under the constitution. Kupenes v. Ungeni, 12 FSM R. 252, 265 (Chk. S. Ct. Tr. 2003).

A constitutional provision that requires things to be done without prescribing the result that should follow if those things are not done, is directory in character, not mandatory. Buruta v. Walter, 12 FSM R. 289, 293 (Chk. 2004).

In analyzing constitutional questions, a court should consider all provisions of that constitution, because different sections may relate to the same subject matter, giving the specific provision questioned added meaning. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 225 (Chk. S. Ct. App. 2007).

Because issues of statutory construction and constitutional construction are issues of law, courts have final authority over them, and the issues are ripe for summary judgment, which will be granted to the party that is entitled to it as a matter of law. In ruling on these issues of law, the language of the statutory and constitutional provisions is controlling and the court will construe and give effect to the provisions' plain meaning. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 60 (Chk. S. Ct. Tr. 2010).

A court must be careful not to read into a constitution provisions which are not there nor rewrite a constitution to include provisions that seem to be omitted. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 22 (Chk. S. Ct. Tr. 2011).

The Chuuk Constitution is clear and unambiguous that when referring to the Governor's office, a Governor's "term" is a fixed four-year period. Thus, the phrase "current term" clearly means that if a governor is re-elected for a second four-year term, new nominations (or re-nominations) must be submitted to the Senate but otherwise a cabinet official may remain in office for a full four years unless the Governor earlier removes him (or he is impeached or he resigns). But when a new governor fills out the remainder of his predecessor's unexpired term, the new governor may retain the existing cabinet officials and special assistants without submitting their names for reconfirmation. Senate v. Elimo, 18 FSM R. 137, 139-40 (Chk. S. Ct. Tr. 2012).

The specific meaning of the phrase "current term" or "term" as used in the Chuuk Constitution means a fixed number of years, as set by the Constitution. From the Chuuk Constitution's context, "term" when applied to the executive branch office-holders can only refer to the fixed four-year period. Senate v. Elimo, 18 FSM R. 137, 140 (Chk. S. Ct. Tr. 2012).

In rendering a decision, the Chuuk State Supreme Court must first consult and apply legal sources of Chuuk State. Kama v. Chuuk, 18 FSM R. 326, 331 (Chk. S. Ct. Tr. 2012).

When it is an issue of first impression, U.S. court decisions may be used for guidance. Kama v. Chuuk, 18 FSM R. 326, 331 (Chk. S. Ct. Tr. 2012).

The Chuuk Constitution provides that the trial division of the State Supreme Court has "concurrent original jurisdiction with other courts to try all civil, criminal, probate, juvenile, traffic, and land cases." The word "concurrent" modifies the term "original jurisdiction" and when jurisdiction is concurrent, the appropriate court may be prescribed by statute. The appropriate court for land cases in declared land registration areas was prescribed by statute as an administrative agency, the Chuuk Land Commission. Aritos v. Muller, 19 FSM R. 574, 575 (Chk. S. Ct. App. 2014).

Because Chuuk's people have continuously recognized that "land is life"and because of the particular sacredness with which the Chuukese as a community, value land, this must be reflected in the court's interpretation of the Chuuk Constitution. The protections extended to "real property" under the Chuuk Constitution are more extensive than those guaranteed under the FSM Constitution. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 424 (Chk. S. Ct. Tr. 2019).

Unnecessary adjudication of Chuuk constitutional questions should be avoided, if possible. Selifis v. Robert, 22 FSM R. 569, 572 (Chk. S. Ct. App. 2020).

– Chuuk – Municipalities

The general grant of the taxing power to the state, which allows taxing power to be delegated to the municipalities, is not an exclusive grant preventing municipalities from levying taxes. Wainit v. Weno, 7 FSM R. 121, 123 (Chk. S. Ct. Tr. 1995).

A municipality in Chuuk has the power to tax so long as the state has not preempted the area. Wainit v. Weno, 7 FSM R. 121, 123 (Chk. S. Ct. Tr. 1995).

The power to tax is vested in the state which may delegate certain taxing powers to a municipality. Without such delegation a municipality has no power to tax. Stinnett v. Weno, 7 FSM R. 560, 561 (Chk. 1996).

The Chuuk Constitution provision that permits continued operation of existing municipalities pending the adoption of their own constitutions does not permit the continuation of functions outside "the limits prescribed by" the Chuuk Constitution. Stinnett v. Weno, 7 FSM R. 560, 562 (Chk. 1996).

A municipal ordinance levying taxes did not continue in effect after the effective date of the Chuuk Constitution because it is inconsistent with that Constitution. Stinnett v. Weno, 7 FSM R. 560, 562 (Chk. 1996).

Chuuk municipalities do not have the power to levy taxes until such time as that power has been delegated to them by statute. No such delegation has occurred. Stinnett v. Weno, 8 FSM R. 142, 147 (Chk. 1997).

The Chuuk Constitution provides for the creation of the state taxing power and its delegation, as the state government may elect, to the municipal governments. Article XIII, section 1 of the Chuuk Constitution provides that the two levels of government are state and municipal. As between these two levels of government the one holding the right to delegate is superior. Weno v. Stinnett, 9 FSM R. 200, 207 (App. 1999).

Because the express provision for delegation of the taxing authority is inconsistent with the notion that municipalities already had this power, in the absence of specific legislative action authorizing a municipality to impose taxes, the municipality does not have the authority to impose business license fees. Weno v. Stinnett, 9 FSM R. 200, 207 (App. 1999).

While under the Chuuk Constitution the "powers and functions of a municipality with respect to its local affairs and government are superior to statutory law," the key phrase in this constitutional provision is "local affairs." Gambling is of statewide concern and an area properly within the state legislative function and does not fall under the cloak of "local affairs." Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 546 (Chk. S. Ct. Tr. 2000).

The Chuuk Constitution provision granting municipalities "superior" powers is of such unique character that no similar constitutional provision has been found which gives municipalities such extensive control over legislative affairs. Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 546 (Chk. S. Ct. Tr. 2000).

Because the Chuuk Constitution gives municipalities full power over local affairs and government the Governor cannot, by Executive Order, require municipalities to relinquish any control over municipal employees. Udot Municipality v. Chuuk, 9 FSM R. 586, 588 (Chk. S. Ct. Tr. 2000).

Each municipality in Chuuk must adopt its own constitution, which must be democratic and may be traditional. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 576 (Chk. S. Ct. Tr. 2003).

Chuuk municipalities must adopt their own constitutions within limits prescribed by the Chuuk Constitution and by general law, but a municipality's powers and functions with respect to its local affairs and government are superior to statutory law. Neither term "general law" or "statutory law" is defined. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 581 n.6 (Chk. S. Ct. Tr. 2003).

The Chuuk Constitution provides for each existing municipality to adopt a municipal constitution within three years of the Chuuk Constitution's effective date and for the state legislature to enact enabling legislation to carry that out. Buruta v. Walter, 12 FSM R. 289, 292 (Chk. 2004).

The Chuuk Constitution provides that a municipality existing on the effective date of the Chuuk Constitution will continue to exercise its powers and functions under existing law, pending adoption of its constitution. Buruta v. Walter, 12 FSM R. 289, 292 (Chk. 2004).

There is no provision in Chuuk law to classify a municipality under the Chuuk Constitution as a "quasi-municipality." Buruta v. Walter, 12 FSM R. 289, 293 (Chk. 2004).

Both the constitutional and statutory provisions providing for Chuuk municipalities to adopt their own constitutions within three years of the state constitution's effective date are directory, not mandatory because neither prescribes what result should follow if a municipality fails to adopt a constitution within the allotted time and since the Chuuk Constitution provides that a municipality will continue to exercise its powers and functions under existing law, pending its adoption of a constitution. Buruta v. Walter, 12 FSM R. 289, 294 (Chk. 2004).

Neither the constitutional nor the statutory provision directs the Governor to implement the provisions that each municipality adopt its own constitution. The direction is aimed at the others – the municipalities and the Legislature. Buruta v. Walter, 12 FSM R. 289, 294 (Chk. 2004).

The Chuuk Constitution provides that final decisions of municipal courts may be appealed to the Chuuk State Supreme Court appellate division, and, in addition, the Chuuk Legislature, by statute, has conferred jurisdiction upon the trial division to hear appeals from municipal court criminal decisions. Ceasar v. Uman Municipality, 12 FSM R. 354, 356 (Chk. S. Ct. Tr. 2004).

While the Chuuk Constitution expressly authorizes appeals of municipal court decisions to the Chuuk State Supreme Court appellate division, and does not specifically confer authority in the Legislature to permit appeals to the trial division but is silent on the issue and does not prohibit it, and since the Legislature is empowered to enact any and all laws not inconsistent with the state and national constitutions, the trial

division thus has jurisdiction, by statute, over an appeal from a municipal court. Ceasar v. Uman Municipality, 12 FSM R. 354, 356-57 (Chk. S. Ct. Tr. 2004).

Chuuk municipalities are barred from imposing taxes except as specifically permitted by state statute. Municipalities have been delegated, by statute, the authority to require persons to obtain and pay for a business license before engaging or continuing in a business within the municipality in which the business is located. Ceasar v. Uman Municipality, 12 FSM R. 354, 358 (Chk. S. Ct. Tr. 2004).

– Chuuk – Taking of Property

To consider a lease valid when the lessee state government cannot be compelled to honor it would be unconstitutional taking of lessor's property. Billimon v. Chuuk, 5 FSM R. 130, 136 (Chk. S. Ct. Tr. 1991).

In an eminent domain case, just compensation must be fully tendered before a taking may occur and the Chuuk government must deposit in court, for the benefit of the landowners entitled thereto, the amount of just compensation stated in the declaration. In re Lot No. 029-A-47, 18 FSM R. 456, 458 (Chk. S. Ct. Tr. 2012).

Even if the Trust Territory statute requiring payment for the improvements on land taken by eminent domain, 67 TTC 453 and 454, has been repealed by implication (it was not expressly repealed), the constitutional provision requiring just compensation for property taken would require compensation for a permanent structure on the land at its fair market value. In re Lot No. 029-A-47, 18 FSM R. 456, 459 (Chk. S. Ct. Tr. 2012).

– Declaration of Rights

In developing the Constitution's Declaration of Rights, the Committee on Civil Rights, and subsequently the Constitutional Convention, drew almost exclusively upon constitutional principles under United States law. FSM v. Tipen, 1 FSM R. 79, 83 (Pon. 1982).

In interpreting the Declaration of Rights, courts should emphasize and carefully consider United States Supreme Court interpretations of the United States Constitution. FSM v. Tipen, 1 FSM R. 79, 85 (Pon. 1982).

The provisions in the Constitution's Declaration of Rights are to a substantial degree patterned upon comparable provisions in the United States Constitution; the FSM Supreme Court should consider carefully decisions of the United States courts interpreting the United States counterparts. Tosie v. Tosie, 1 FSM R. 149, 154 (Kos. 1982).

As the provisions set forth in the Constitution's Declaration of Rights are based on counterparts in the United States Constitution, it is appropriate to review decisions of United States courts, especially those in effect when the Constitution was approved and ratified, to determine the content of the words employed therein. In re Iriarte (I), 1 FSM R. 239, 249 (Pon. 1983).

Statutory provisions which carried over from the Trust Territory Code and were reproduced and referred to as a "Bill of Rights" in 1 F.S.M.C. 101-114, may retain some residual vitality in the unlikely event that they furnish protection beyond those available under the Constitution's Declaration of Rights. FSM v. George, 1 FSM R. 449, 454-55 (Kos. 1984).

The provisions in the Declaration of Rights in the FSM Constitution concerning due process and the right to be informed are traceable to the Bill of Rights of the United States Constitution. Engichy v. FSM, 1 FSM R. 532, 541 (App. 1984).

Because the Declaration of Rights is patterned after provisions of the United States Constitution, and

United States cases were relied on to guide the constitutional convention, United States authority may be consulted to understand the meaning. Afituk v. FSM, 2 FSM R. 260, 263 (Truk 1986).

While the constitutional provision barring invasion of privacy only protects persons from governmental intrusion into their affairs, not from intrusions by private persons, it does indicate a policy preference in favor of protection of privacy. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 455 (Chk. 1994).

The Declaration of Rights expresses ideals held sacred by all who cherish freedom and is the essential core of the FSM Constitution. Louis v. Kutta, 8 FSM R. 208, 212 (Chk. 1997).

The Declaration of Rights protects persons from acts of the governments, and those acting under them, established or recognized by the Constitution. Pau v. Kansou, 8 FSM R. 524, 526 (Chk. 1998).

Because the Declaration of Rights is to a substantial degree patterned after provisions of the U.S. Constitution, and U.S. cases were relied on to guide the constitutional convention, U.S. authority may be consulted to understand its meaning. FSM v. Joseph, 9 FSM R. 66, 72 (Chk. 1999).

The FSM Constitution's Declaration of Rights is based on the United States Constitution's Bill of Rights, and a court may look to United States precedent in this regard. FSM v. Moses, 9 FSM R. 139, 146 (Pon. 1999).

The Declaration of Rights (article IV of the FSM Constitution) protects persons from acts of the governments, and those acting under them, established or recognized by the Constitution, and does not create causes of action against private parties. Phoenix of Micronesia, Inc. v. Mauricio, 9 FSM R. 155, 157 (App. 1999).

When a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, United States authority may be consulted to understand its meaning. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 412 n.2 (App. 2000).

When a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, United States authority may be consulted to understand its meaning. FSM v. Inek, 10 FSM R. 263, 265 (Chk. 2001).

When an FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning, and where the FSM Constitution's framers borrowed phrases from the U.S. Constitution, it may be presumed that those phrases were intended to have the same meaning given them by the U.S. Supreme Court. FSM v. Wainit, 12 FSM R. 405, 409 (Chk. 2004).

The protection offered by the FSM Constitution against compulsory self-incrimination is traceable to the U.S. Constitution's fifth amendment, and when a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, United States authority may be consulted to understand its meaning. FSM v. Kansou, 12 FSM R. 637, 643 (Chk. 2004).

The FSM Constitution's Declaration of Rights search and seizure provision, FSM Const. art. IV, § 5, is similar to and drawn from a provision in the U.S. Constitution's Bill of Rights, U.S. Const. amend. IV. When an FSM Declaration of Rights provision is patterned after a U.S. Constitution provision, U.S. authority may be consulted to understand its meaning. FSM v. Wainit, 13 FSM R. 433, 444 (Chk. 2005).

When a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, U.S. authority may be consulted to understand its meaning. FSM v. Kansou, 14 FSM R. 136, 138 (Chk. 2006).

Since the article IV, section 7 protection against self-incrimination was based upon the fifth amendment

to the United States Constitution, FSM courts may look to United States decisions to assist in determining the meaning of article IV, section 7 because when an FSM Declaration of Rights provision is patterned after a U.S. Constitution provision, United States authority may be consulted to understand its meaning. FSM v. Kansou, 14 FSM R. 150, 151 n.1 (Chk. 2006).

The Constitution does not contain a right of privacy or financial or business privilege in bank records emanating from Article IV, Section 5 of the FSM Constitution. FSM Dev. Bank v. Adams, 14 FSM R. 234, 247 (App. 2006).

The Declaration of Rights protects persons from acts of the governments, and those acting under them, established or recognized by the Constitution. The constitutional provision barring the invasion of a person's privacy only protects persons from governmental intrusion into their affairs, not from intrusions by private persons. FSM Dev. Bank v. Adams, 14 FSM R. 234, 247 (App. 2006).

The Constitution's Declaration of Rights protects persons from acts of the governments, and those acting under them, established or recognized by the Constitution. Harper v. William, 14 FSM R. 279, 282 (Chk. 2006).

U.S. authority may be consulted to understand the meaning of a Declaration of Rights provision patterned after a U.S. Bill of Rights provision since the provisions in the Constitution's Declaration of Rights are traceable to the U.S. Constitution's Bill of Rights. Where the Constitution's framers drew upon the U.S. Constitution, it may be presumed that phrases so borrowed were intended to have the same meaning given to them by the U.S. Supreme Court. FSM v. Fritz, 14 FSM R. 548, 552 n.1 (Chk. 2007).

The provisions in the FSM Constitution's Declaration of Rights are traceable to the United States Constitution's Bill of Rights, and when a FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision, United States authority may be consulted to understand its meaning. The FSM speedy trial right is patterned after the United States Constitution. Chuuk v. William, 15 FSM R. 381, 387 n.1 (Chk. S. Ct. Tr. 2007).

Since the FSM Constitution's Declaration of Rights protection against unreasonable search and seizure is similar to and drawn from a provision in the U.S. Constitution's Bill of Rights, U.S. authority may be consulted to understand its meaning. FSM v. Aliven, 16 FSM R. 520, 527 n.2 (Chk. 2009).

Employment is not listed as a fundamental right in the Declaration of Rights and the court should be wary of requests that it identify as fundamental any rights beyond those specified in the Declaration of Rights. Berman v. Lambert, 17 FSM R. 442, 450 (App. 2011).

Although the court must first look to FSM sources of law to establish legal requirements in criminal cases rather than start with a review of other courts' cases, when an FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning since it may be presumed that the borrowed phrases were intended to have the same meaning given to them by the U.S. Supreme Court. FSM v. Kool, 18 FSM R. 291, 294 n.2 (Chk. 2012).

When an FSM Declaration of Rights provision is patterned after a U.S. Constitution provision (such as Section Five of the Declaration of Rights which is patterned after the U.S. Constitution's Fourth Amendment), U.S. authority may be consulted to understand its meaning. Alexander v. Pohnpei, 18 FSM R. 392, 398 n.4 (Pon. 2012).

While the court must first look to FSM sources of law to rather than begin with a review of other courts' decisions, when a FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision and when there is no FSM case law on point, United States authority may be consulted to understand its meaning. Kon v. Chuuk, 19 FSM R. 463, 466 n.1 (Chk. 2014).

The FSM Declaration of Rights was modeled after the U.S. Bill of Rights, and so the court may look to

U.S. sources for guidance in interpreting similar Declaration of Rights provisions, such as the right to confrontation, found in the FSM Constitution's Declaration of Rights in Article IV, section 6, and in the U.S. Constitution in its Sixth Amendment. FSM v. Halbert, 20 FSM R. 42, 46 n.3 (Pon. 2015).

While the court must first look to FSM sources of law rather than begin with a review of other courts' decisions, when an FSM Declaration of Rights provision is patterned after a U.S. Constitution provision, United States authority may be consulted to understand its meaning. FSM v. Jappan, 22 FSM R. 49, 53 n.2 (Chk. 2018).

The Constitution's prohibition of bills of attainder in the Declaration of Rights applies to all legislative bodies within the FSM, not just to the FSM Congress. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 263 (Chk. 2019).

The FSM Declaration of Rights provisions, FSM Const. art. IV, apply to all governments in the FSM. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 263 n.2 (Chk. 2019).

Because the FSM Declaration of Rights is to a substantial degree patterned after provisions in the U.S. Constitution and because U.S. cases were relied upon to guide the Micronesian constitutional convention that framed it, U.S. authority may be consulted to understand its meaning. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 264 n.4 (Chk. 2019).

Since Section Five of the Declaration of Rights is patterned after the U.S. Constitution's Fourth Amendment, U.S. authority may be consulted to understand its meaning. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 462 n.16 (Pon. 2020).

– Due Process

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

The words "due process of law" shall be viewed in the light of history and the accepted meaning of those words prior to and at the time the Constitution was written. Alaphonso v. FSM, 1 FSM R. 209, 216-17 (App. 1982).

The Constitution's Due Process Clause requires proof beyond a reasonable doubt as a condition for criminal conviction in the Federated States of Micronesia. Alaphonso v. FSM, 1 FSM R. 209, 217-23 (App. 1982).

As a matter of constitutional due process, a trial court presented with an alibi defense should consider evidence concerning the alibi along with all other evidence and shall not find the defendant guilty if after considering all of that evidence, the judge feels there is a reasonable doubt as to the defendant's guilt. Alaphonso v. FSM, 1 FSM R. 209, 223-25 (App. 1982).

Article XI, section 6(b) of the Federated States of Micronesia Constitution requires that the FSM Supreme Court consider a petition for writ of habeas corpus alleging imprisonment of a petitioner in violation of his rights of due process. In re Iriarte (I), 1 FSM R. 239, 243-44 (Pon. 1983).

Preservation of a fair decision-making process, and even the maintenance of a democratic system of government, requires that courts and individual judges be protected against unnecessary external pressures. In re Iriarte (I), 1 FSM R. 239, 247 (Pon. 1983).

Strict judicial observance of due process is necessary to insure respect for the law. In re Iriarte (I), 1

FSM R. 239, 248 (Pon. 1983).

In a habeas corpus proceeding, the court must apply due process standards to the actions of the courts which have issued orders of commitment. In re Iriarte (I), 1 FSM R. 239, 249 (Pon. 1983).

The Federated States of Micronesia Constitution does not contemplate that FSM citizens should be required to travel to Saipan or to petition anyone outside the FSM to realize rights guaranteed to them under the Constitution. In re Iriarte (I), 1 FSM R. 239, 253 (Pon. 1983).

The defendant of a criminal contempt charge is entitled to those procedural rights normally accorded other criminal defendants. In re Iriarte (II), 1 FSM R. 255, 260 (Pon. 1983).

The Constitution does not contemplate that FSM citizens must first petition any person or body outside the Federated States of Micronesia as a condition to consideration of their constitutional claims by courts established under this constitution. In re Iriarte (II), 1 FSM R. 255, 265 (Pon. 1983).

The FSM Supreme Court is entitled and required to assure that the Trust Territory High Court, exercising governmental powers within the Federated States of Micronesia, does not violate the constitutional rights of its citizens. In re Iriarte (II), 1 FSM R. 255, 268 (Pon. 1983).

A nahniken, just as any ordinary citizen, is entitled to bail and due process. In re Iriarte (II), 1 FSM R. 255, 272 (Pon. 1983).

Government employment that is "property" within the meaning of the Due Process Clause cannot be taken without due process. To be property protected under the Constitution, there must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Suldan v. FSM (II), 1 FSM R. 339, 351-52 (Pon. 1983).

The fundamental concept of procedural due process is that the government may not be permitted to strip citizens of life, liberty or property in an unfair, arbitrary manner. When such important individual interests are exposed to possible governmental taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision-making process. Suldan v. FSM (II), 1 FSM R. 339, 354-55 (Pon. 1983).

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

Due process demands impartiality on the part of adjudicators. Suldan v. FSM (II), 1 FSM R. 339, 362 (Pon. 1983).

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

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

When there is reason to believe that provisions of a public land lease may have been violated by the

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

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

The government in any criminal case is required, as a matter of due process, to prove all elements of the offense beyond a reasonable doubt. Ludwig v. FSM, 2 FSM R. 27, 35 (App. 1985).

The Due Process Clause, FSM Const. art. IV, § 3, is based upon the Due Process Clause of the United States Constitution and courts can look to interpretations under the United States Constitution for guidance. Ludwig v. FSM, 2 FSM R. 27, 35 (App. 1985).

A trial court may not simply presume that a person who possesses a firearm is not keeping it as a curio, ornament or for historical significance. This would be an irrational or arbitrary, hence unconstitutional, presumption or inference because one cannot determine from mere possession of a firearm alone the purpose or nature of that possession. Ludwig v. FSM, 2 FSM R. 27, 37 (App. 1985).

Where a seizure is for forfeiture rather than evidentiary purposes, the constitutional prohibitions against taking property without due process come into play. Ishizawa v. Pohnpei, 2 FSM R. 67, 76 (Pon. 1985).

The Constitution's Due Process Clause is drawn from the United States Constitution and FSM courts may look to decisions under that Constitution for guidance in determining the meaning of this Due Process Clause. Ishizawa v. Pohnpei, 2 FSM R. 67, 76 (Pon. 1985).

Any attempt to grant statutory authority to permit seizure of a fishing vessel upon a lesser standard than probable cause would raise serious questions of compatibility with article IV, sections 3 and 4 of the Constitution. Such an interpretation should be avoided unless clearly mandated by statute. Ishizawa v. Pohnpei, 2 FSM R. 67, 77 (Pon. 1985).

Due process does not require that a second judge decide motions for recusal where the trial judge accepts as true all of the factual allegations in the affidavit of the party seeking recusal, and must rule only on matters of law in making the decision to recuse or not recuse himself. Skilling v. FSM, 2 FSM R. 209, 213 (App. 1986).

The procedure for recusal provided in the FSM Code, whereby a party may file a motion for recusal with an affidavit, and the judge must rule on the motion, stating his reasons for granting or denying the motion, before any further proceeding is taken, allows the moving party due process. Skilling v. FSM, 2 FSM R. 209, 214 (App. 1986).

Actions of a police officer in stripping a prisoner to punish and humiliate him, then beating him and damaging his pickup truck, constituted violation of the prisoner's constitutional rights to be free from cruel and unusual punishment and his due process rights. Tolenoa v. Alokoa, 2 FSM R. 247, 250 (Kos. 1986).

A claim that decision-makers in a land adjudication were biased raises serious statutory and constitutional due process issues and is entitled to careful consideration. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 92, 99 (Kos. S. Ct. Tr. 1987).

There is no deprivation of due process in a case in which the government at the trial elicited testimony

revealing that it had custody of certain physical evidence but did not attempt to introduce it, and in which the defendant made no request that it be produced. Loney v. FSM, 3 FSM R. 151, 155 (App. 1987).

An expectation of being paid for work already performed is a property interest qualifying for protection under the Due Process Clause of the FSM Constitution. Falcam v. FSM, 3 FSM R. 194, 200 (Pon. 1987).

An expectation of continued government employment, subject only to removal by a supervisor, is a property interest qualifying for protection under the Due Process Clause of the FSM Constitution. Falcam v. FSM, 3 FSM R. 194, 200 (Pon. 1987).

The Due Process Clause of article VI, section 3 of the Constitution of the Federated States of Micronesia requires proof beyond a reasonable doubt as a condition for criminal convictions in the Federated States of Micronesia. Runmar v. FSM, 3 FSM R. 308, 311 (App. 1988).

Where purchasers at a judicial sale are not served by summons and complaint pursuant to FSM Civil Rule 3 but receive notice of a motion seeking confirmation of the sale and made by a creditor of the party whose property was sold, and where the purchasers do not object to the motion, confirmation of the sale is effective and binding on the purchasers and is not violative of their rights of due process. Sets v. Island Hardware, 3 FSM R. 365, 368 (Pon. 1988).

The National Public Service System Act and the FSM Public Service System Regulations establish an expectation of continued employment for nonprobationary national government employees by limiting the permissible grounds and specifying procedures necessary for their dismissal; this is sufficient protection of the right to continued national government employment to establish a property interest for nonprobationary employees which may not be taken without fair proceedings, or "due process." Semes v. FSM, 4 FSM R. 66, 73 (App. 1989).

Once it is determined that a statute establishes a property right subject to protection under the Due Process Clause of the FSM Constitution, constitutional principles determine what process is due as a minimum. Semes v. FSM, 4 FSM R. 66, 74 (App. 1989).

In the absence of statutory language to the contrary, the National Public Service System Act's mandate may be interpreted as assuming compliance with the constitutional requirements, because if it purported to preclude constitutionally required procedures, it must be set aside as unconstitutional. Semes v. FSM, 4 FSM R. 66, 74 (App. 1989).

In assessing the government's shorter term, preliminary deprivations of private property to determine what, if any procedures are constitutionally necessary in advance of the deprivation, the FSM Supreme Court will balance the degree of hardship to the person affected against the government interests at stake. Semes v. FSM, 4 FSM R. 66, 75 (App. 1989).

The Due Process Clause of the FSM Constitution's Declaration of Rights is based on the Due Process Clause of the United States Constitution. Paul v. Celestine, 4 FSM R. 205, 208 (App. 1990).

In determining whether the constitutional line of due process has been crossed, a court must look to such factors as the need for application of force, the relationship between the need and the amount of force that was used, the extent of the injury inflicted, and whether the force was applied in a good faith effort to maintain and restore discipline or maliciously and sadistically for the very purpose of causing harm. Paul v. Celestine, 4 FSM R. 205, 208-09 (App. 1990).

To be property protected under the Federated States of Micronesia and Kosrae State Constitutions, the employment right must be based on governmental assurance of continual employment or dismissal for only specified reasons as stated in statute, regulation, formal contract or actions of a supervisory person with authority to establish terms of employment. Edwin v. Kosrae, 4 FSM R. 292, 302 (Kos. S. Ct. Tr.

1990).

Although neither the Environmental Protection Act nor the earthmoving regulations contain any absolute requirement that a public hearing be held before an earthmoving permit may be issued, the issuance by national government officials of a permit authorizing earthmoving by a state agency without holding a hearing and based simply upon the application filed by the state agency and the minutes prepared by the state officials, is arbitrary and capricious where the dredging activities have been long continued in the absence of a national earthmoving permit and where the parties directly affected by those activities have for several months been vigorously opposing continuation of the earthmoving activities at the dredging site. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 1, 8 (Pon. 1991).

If a judge has participated as an advocate in related litigation touching upon the same parties, and in the course of that previous activity has taken a position concerning the issue now before him as a judge, the appearance of justice, as guaranteed by Due Process Clause, requires recusal. Etscheit v. Santos, 5 FSM R. 35, 43 (App. 1991).

There are certain circumstances or relationships which, as a *per se* matter of due process, require almost automatic disqualification, and, if a judge has a direct, personal, substantial, pecuniary interest in the outcome of the case, recusal is constitutionally mandated. Etscheit v. Santos, 5 FSM R. 35, 43 (App. 1991).

To prevent the "probability of unfairness," a former trial counselor or attorney must refrain from presiding as a trial judge over litigation involving his former client, and many of the same issues, and the same interests and the same land, with which the trial judge has been intimately involved as a trial counselor or attorney. Etscheit v. Santos, 5 FSM R. 35, 45 (App. 1991).

A person's constitutional right to due process of law, and his right to be free from cruel and unusual punishment is violated when an officer instead of protecting the person from attack, threw him to the ground, and beat the person in the jail. Meitou v. Uwera, 5 FSM R. 139, 144 (Chk. S. Ct. Tr. 1991).

Plaintiff's due process rights were not violated where the government did not use condemnation procedures specified in 67 TTC 451, but followed land registration procedures to obtain title and treated the plaintiff fairly and in the same way it treated other landowners. Palik v. Kosrae, 5 FSM R. 147, 152-54 (Kos. S. Ct. Tr. 1991).

Constitutional provisions applicable to a prisoner may vary depending on his status. A pre-trial detainee has a stronger right to liberty, which right is protected by the Due Process Clause, FSM Const. art. IV, § 3. A convicted prisoner's claims upon liberty have been diminished through due process so that person must rely primarily on article IV, section 8 which protects him from cruel and unusual punishment. Plais v. Panuelo, 5 FSM R. 179, 190 (Pon. 1991).

When a panel hearing in a summary dismissal was closed to the public and the injured party and counsel were present to attend and participate in the hearing and the panel accepted and considered all testimony and evidence offered by the parties, due process was not violated. Palsis v. Kosrae State Court, 5 FSM R. 214, 217 (Kos. S. Ct. Tr. 1991).

Variance between charge of striking police car windshield with fists and evidence adduced at trial of damaging headlights with a beer can is not so misleading and prejudicial that defendant was denied a fair trial or suffered from a lack of notice as to the evidence to be offered at trial on a charge of damaging the property of another. Otto v. Kosrae, 5 FSM R. 218, 222 (App. 1991).

The actions of a private corporation partly owned by a government should not be considered "state action" for the purposes of due process analysis. Alik v. Kosrae Hotel Corp., 5 FSM R. 294, 298 (Kos. 1992).

Under FSM law there is no property right to particular levels of tort compensation triggering due process protections. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 362-63 (Kos. 1992).

Aliens are persons protected by the due process and equal protection clause of the Constitution. Berman v. FSM Supreme Court (I), 5 FSM R. 364, 366 (Pon. 1992).

Employment opportunity is a liberty interest protected by due process. Berman v. FSM Supreme Court (I), 5 FSM R. 364, 366 (Pon. 1992).

When a landowner voluntarily signs a statement of intent for an easement for a road even though the state failed in is duty of care to inform him that he could refuse to sign, the state has not violated the landowner's due process rights. Nena v. Kosrae, 5 FSM R. 417, 424 (Kos. S. Ct. Tr. 1990).

When counsel is allowed such a short preparation time that counsel's effectiveness is impaired then the accused is deprived of due process and effective assistance of counsel. In re Extradition of Jano, 6 FSM R. 93, 101 (App. 1993).

Something more than a state merely misinterpreting its own law, such as that the state's interpretation was arbitrary, grossly incorrect, or motivated by improper purposes, is needed to raise a legitimate due process issue. Simon v. Pohnpei, 6 FSM R. 314, 316 (Pon. 1994).

The statutory ineligibility of persons convicted of Trust Territory felonies is a valid exercise of Congress's constitutional power to prescribe additional qualifications for election to Congress, and is not unconstitutional as a deprivation of a liberty interest without due process of law, or as an ex post facto law, or as a bill of attainder. Robert v. Mori, 6 FSM R. 394, 401 (App. 1994).

The constitutional guarantee of due process only protects persons from the governments, and those acting under them, established or recognized by the Constitution. Semwen v. Seaward Holdings, Micronesia, 7 FSM R. 111, 113 (Chk. 1995).

A plaintiff's firing by a private employer does not state a cause of action for unconstitutional deprivation of due process because no governmental entity or official is a defendant; the defendant is not alleged to be performing an essential governmental function; and a government action is not at issue. Semwen v. Seaward Holdings, Micronesia, 7 FSM R. 111, 113 (Chk. 1995).

Physical abuse committed by police officers may violate a prisoner's right to due process of law. Persons who are not suspects have no less protection from physical abuse and injury at the hands of the police. The right to due process of law is violated when a police officer batters a person instead of protecting her from harm because persons who are not in police custody have a due process interest in personal security that may be violated by the acts of police officers. Davis v. Kutta, 7 FSM R. 536, 547-48 (Chk. 1996).

The commission of the intentional tort of battery by police officers in the scope of their employment is a denial of due process of law. Davis v. Kutta, 7 FSM R. 536, 548 (Chk. 1996).

The failure of the state to adequately train police officers, and the excessive use of force used by officers is a violation of a victim's right to due process of law. Davis v. Kutta, 7 FSM R. 536, 548 (Chk. 1996).

An official state practice of allowing untrained and unqualified police officers to use deadly force may be shown from the chief of police's testimony that convicted felons were hired although regulations prohibited it and that requalification on firearms had been waived for at least three years although regulations required requalification when it is within his power to allow variation from written regulation, and from the lack of any internal discipline as the result of improper use of deadly force. If, as a result of this

policy a person suffers serious bodily injury, it is a violation of her right to due process of law. Davis v. Kutta, 7 FSM R. 536, 548 (Chk. 1996).

The FSM Constitution due process provision is derived from the United States Constitution and thus United States cases may be consulted for guidance in interpretation, emphasizing cases in effect at the times of the framing (1975) and the ratification (1978) of the FSM Constitution. FSM v. Skico, Ltd. (II), 7 FSM R. 555, 556-57 (Chk. 1996).

Because a government employee's pay is a form of property a government cannot deprive the employee of without due process of law, a state's failure to pay to the allottees money withheld from employees' paychecks for allotments constitutes a government deprivation of the employees' property without due process. Oster v. Cholymay, 7 FSM R. 598, 599 (Chk. S. Ct. Tr. 1996).

A due process challenge to a criminal contempt charge on the ground of the court's or its personnel's actions may be resolved by the judge's recusal and reassignment of the case to a judge whose impartiality has not been questioned. FSM v. Cheida, 7 FSM R. 633, 638-39 (Chk. 1996).

The FSM Supreme Court appellate division has jurisdiction over an appeal where a motion to recuse filed by the appellant in the state court appellate division raised an issue of due process under the FSM Constitution. Damarlane v. Pohnpei Legislature, 8 FSM R. 23, 27 (App. 1997).

A justice whose extrajudicial statements exhibit a bias towards a party's counsel must disqualify himself under Pohnpei statute, and failure to do so is a denial of due process. Damarlane v. Pohnpei Legislature, 8 FSM R. 23, 27-28 (App. 1997).

A trial judge abuses his discretion when, without due process of law, he *sua sponte* imposes a Rule 11 sanction on an attorney. In re Sanction of Michelsen, 8 FSM R. 108, 111 (App. 1997).

State law specifically prohibits persons with an interest from being members of a land registration team, but no such statute specifically requires the disqualification of land commissioners with an interest from reviewing the registration team's determination. This brings constitutional due process concerns into play. Wito Clan v. United Church of Christ, 8 FSM R. 116, 118 (Chk. 1997).

Adjudicatory decisions affecting property rights are subject to the procedural due process requirements of article IV, section 3 of the Constitution. Due process demands impartiality on the part of adjudicators, including quasi-judicial officials, such as land commissioners. Wito Clan v. United Church of Christ, 8 FSM R. 116, 118 (Chk. 1997).

Grounds that require a person's recusal from the land registration team also require his disqualification as a land commissioner reviewing the land registration team's adjudication. Wito Clan v. United Church of Christ, 8 FSM R. 116, 118 (Chk. 1997).

The commission of the intentional tort of battery by the police officers in the scope of their employment is a denial of due process of law. Physical abuse committed by police officers may violate a prisoner's right to due process of law. The right to due process of law is violated when a police officer batters a person. The public at large has the right to be free of invasions of their person and personal security by any government agent and suspects have the right to be free from the use of excessive force during their arrest. Conrad v. Kolonia Town, 8 FSM R. 183, 195 (Pon. 1997).

In order to assert due process, one must point to a property or liberty interest of one's own that is subject to due process. Louis v. Kutta, 8 FSM R. 228, 230 (Chk. 1998).

The Kosrae State Charter's due process clause, in effect in 1982, did not extend any greater protection than the FSM Constitution's. Taulung v. Kosrae, 8 FSM R. 270, 275 (App. 1998).

The essential features of procedural due process, or fairness, require notice and an opportunity to be heard. Taulung v. Kosrae, 8 FSM R. 270, 275 (App. 1998).

The procedural due process requirements of notice and an opportunity to be heard are met when Kosrae provides a limited-term employee being suspended for two weeks the notice mandated by 61 TTC 10(15)(a) and an opportunity to be heard by the official suspending him. Taulung v. Kosrae, 8 FSM R. 270, 275 (App. 1998).

The constitutional guarantees of due process and equal protection extend to aliens. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 295 n.8 (Pon. 1998).

It is a due process violation for a former trial counselor or attorney to preside as a trial judge over litigation involving the same issues and interests he had been intimately involved with as a trial counselor or attorney, particularly where he had represented one of the litigants. Bank of Guam v. O'Sonis, 8 FSM R. 301, 305 (Chk. 1998).

A party has a due process right to a hearing before an unbiased judge and a judge without an interest in the case's outcome. Bank of Guam v. O'Sonis, 8 FSM R. 301, 305 (Chk. 1998).

The fundamental concept of procedural due process is that the government may not be permitted to strip citizens of "life, liberty or property" in an unfair, arbitrary manner. Where such important individual interests are exposed to possible governmental taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision making process. Isaac v. Weilbacher, 8 FSM R. 326, 333 (Pon. 1998).

Title 52 F.S.M.C. 151-57 and PSS Regulation 18.4 establish an expectation of continuous employment for nonprobationary national government employees by limiting the permissible grounds, and specifying necessary procedures, for their dismissal. This is sufficient to establish a "property interest" for the nonprobationary employee which cannot be taken without fair proceedings, or "due process." Isaac v. Weilbacher, 8 FSM R. 326, 333 (Pon. 1998).

A permanent employee cannot be demoted to his former position based on a regulation which, by its terms, only applies to a temporary promotion. A permanent employee's constitutional right to due process is violated by the national government when it has thus demoted him. Isaac v. Weilbacher, 8 FSM R. 326, 335 (Pon. 1998).

In the vast majority of criminal contempt cases, the defendant is given substantially those procedural rights normally accorded to defendants in other criminal cases. In re Contempt of Skilling, 8 FSM R. 419, 424 (App. 1998).

Although the statutory time periods are directory and not mandatory, a significant delay in proceedings can deprive the Executive Service Appeals Board procedure of its meaningfulness, in violation of the due process rights protected by the Constitution. Langu v. Kosrae, 8 FSM R. 427, 435 (Kos. S. Ct. Tr. 1998).

It is a violation of a litigant's constitutional right to due process for a trial court to rely on evidence, not a part of the record, without prior notice to the parties and an opportunity for the parties to comment on it. Thomson v. George, 8 FSM R. 517, 523 (App. 1998).

It is error for a trial court to rely on exhibits never identified, described, or marked at trial. Thomson v. George, 8 FSM R. 517, 523 (App. 1998).

A special master commits reversible error when its decision has relied on unidentified sketches not a part of the record and about which there was not extensive testimony and cross examination. Thomson v. George, 8 FSM R. 517, 523 (App. 1998).

An illegally-hired public employee has a constitutionally protected interest in employment because the Secretary of Finance must give notice and an opportunity to be heard after taking the action to withhold his pay, and the government must terminate his employment after it determines his hiring had violated public policy, giving him notice and an opportunity to be heard. Failure to take such steps violated the employee's due process rights. FSM v. Falcam, 9 FSM R. 1, 5 (App. 1999).

As a general proposition, a governmental entity's breach of a contract, without more, does not constitute a due process violation. Island Dev. Co. v. Yap, 9 FSM R. 18, 20 (Yap 1999).

Voters' due process and equal protection rights are not violated by regulation or restriction of voting by absentee ballots. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 48 (Chk. S. Ct. Tr. 1999).

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

To obtain personal jurisdiction over a non-resident defendant in a diversity action, a plaintiff must show that jurisdiction is consistent with the "long arm" statute, 4 F.S.M.C. §§ 203-04, and that the exercise of jurisdiction does not deny the defendant due process of law as guaranteed by article IV, section 3 of the FSM Constitution. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 128 (Pon. 1999).

Because Article IV, section 3 is based on the Due Process Clause of the United States Constitution, FSM courts can look to interpretations of the United States Due Process Clause to determine the extent to which the FSM long-arm statute may be used consistently with due process to exert jurisdiction over a non-forum defendant. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 128-29 (Pon. 1999).

Under the doctrine of minimum contacts a defendant must have certain minimum contacts with a forum such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. The FSM Supreme Court applies a minimum contacts analysis to determine the extent to which the FSM long-arm statute may be used consistently with due process to exert jurisdiction over a non-forum defendant. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 129 (Pon. 1999).

The mere allegation that an out-of-state defendant has tortiously interfered with contractual rights or has committed other business torts that have allegedly injured a forum resident does not necessarily establish that the defendant possesses the constitutionally required minimum contacts. In order to resolve the jurisdictional question, a court must undertake a particularized inquiry as to the extent to which the defendant thus purposefully availed itself of the benefits of the forum's laws. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 129 (Pon. 1999).

Generalized legal conclusions in an affidavit have no bearing on the particularized inquiry, which a court must undertake in order to determine whether defendants have minimum contacts with the forum in order to make a prima facie case that the court has personal jurisdiction over the defendants. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 130 (Pon. 1999).

Two – possibly four – letters and unspecified phone calls sent into the FSM are insufficient in themselves to establish the minimum contacts necessary to establish personal jurisdiction. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 130 (Pon. 1999).

Personal jurisdiction is not established when the alleged tortious conduct resulted only in economic consequences in the FSM because mere economic injury suffered in the forum is not sufficient to establish the requisite minimum contacts so as to sustain long-arm jurisdiction. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 130 (Pon. 1999).

When the tortious conduct is not shown to have occurred in FSM, and the alleged harm flowing from the conduct cannot be said to have been "targeted" to the FSM, it does not persuade the court that the defendants have caused an "effect" in this forum sufficient to justify jurisdiction over them under the FSM long-arm statute. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 131 (Pon. 1999).

When the defendants are not parties to the contract they tortiously interfered with and have no meaningful presence in the FSM, although the economic harm was allegedly targeted to an FSM plaintiff, it is insufficient to establish personal jurisdiction over the defendants. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 132 (Pon. 1999).

Any reliance on the contents of a further investigation that have never been a part of the record is improper. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 172 (App. 1999).

A hearing cannot qualify as the full evidentiary hearing contemplated by Disciplinary Rule 5(b) when neither side had an opportunity to present evidence. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 174 (App. 1999).

A hearing cannot qualify as the full evidentiary hearing contemplated by Disciplinary Rule 5(b) when the decision finding the allegations of misconduct proven had been made and announced before the hearing was held. Such a hearing must take place before the decision is made. Otherwise it is a denial of due process. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 174 (App. 1999).

Since the Due Process Clause in the Declaration of Rights of the FSM Constitution is based on the Due Process Clause of the U.S. Constitution's Fourteenth Amendment, the FSM Supreme Court may properly consider U.S. cases in construing due process under the FSM Constitution. Weno v. Stinnett, 9 FSM R. 200, 213 (App. 1999).

Cases involving either prisoners or someone confronted with or being arrested by a police officer – someone in custody or being taken into custody – or cases involving intentional acts, are inapplicable to claims that other state actions that are either negligence, gross negligence or reckless disregard constitute a civil rights or due process violation. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 411-12 (App. 2000).

Historically, the guarantee of due process has been applied to deliberate decisions of government officials to deprive a person of life, liberty, or property. Mere negligence did not raise a constitutional violation. The Due Process Clause does not purport to supplant traditional tort law and does not transform every tort by a state actor into a constitutional violation. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 412 (App. 2000).

Neither the state defendants' alleged deliberate indifference to the dredging site's neighbors' safety nor their failure to warn those neighbors of any known risks can properly be characterized as a constitutional violation that would take the case out of the realm of ordinary tort law. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 412 (App. 2000).

When an amended complaint's deliberate indifference or negligence allegations do not rise to the level of a constitutional due process claim, it does not state a claim upon which the FSM Supreme Court can grant relief and the trial court's dismissal of the amended complaint will therefore be affirmed. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 412 (App. 2000).

Because conduct alone without regard to the doer's intent is often sufficient to convict someone of a crime, because there is wide latitude to declare an offense and to exclude elements of knowledge and diligence from its definition, and because the defendant knew, by his own admission, that he was not permitted to take a weapon on board the plane, the strict criminal liability imposed by 11 F.S.M.C. 1223(6) for boarding or attempting to board a commercial aircraft while carrying a firearm or dangerous device does not violate due process. Sander v. FSM, 9 FSM R. 442, 449-50 (App. 2000).

When the failure to refer a detainee for medical treatment is arbitrary and purposeless, it constitutes punishment of someone who has not been convicted of any crime. This punishment is a denial of the right to due process. Estate of Mori v. Chuuk, 10 FSM R. 6, 13 (Chk. 2001).

A court must exercise its inherent powers with caution, restraint, and discretion and must comply with the mandates of due process. In re Sanction of Woodruff, 10 FSM R. 79, 85 (App. 2001).

No one should ever be penalized or sanctioned by a court for successfully insisting upon those constitutional rights which are his due. In re Sanction of Woodruff, 10 FSM R. 79, 87 (App. 2001).

A judgment may not be rendered in favor of or against a person who was not made party to the action. A party to an action is a person whose name is designated on the record as a plaintiff or defendant. A person may not be made a party to a proceeding simply by including his name in the judgment. Hartman v. Bank of Guam, 10 FSM R. 89, 97 (App. 2001).

When someone is accorded none of these due process guarantees with respect to a "judgment" against it, the judgment and ensuing order in aid of judgment and writ of execution are void as a matter of law, and these procedural infirmities inherent in the judgment are subject to attack at any time, and thus are outside the adjudicative framework established by the rules of procedure. Hartman v. Bank of Guam, 10 FSM R. 89, 97 (App. 2001).

In land cases, statutory notice requirements must be followed. Personal service of the notice of hearing and the Determination of Ownership upon all parties shown by the preliminary inquiry to have an interest in the parcel is required. Failure to serve actual notice on a claimant is a denial of due process and violation of law, which will cause a Determination of Ownership to be set aside as void, and the case remanded to the Land Commission to hold the formal hearings and to issue the determination of ownership for that parcel. Kun v. Kilafwakun, 10 FSM R. 214, 216 (Kos. S. Ct. Tr. 2001).

To be property protected under the FSM and Kosrae Constitutions, the employment right must be based on governmental assurance of continual employment or dismissal for only specified reasons. A person who has been hired under an employment contract, for a specific length of time, with no provisions for renewal of the contract and no entitlement for renewal of the contract, does not have a property interest in his continued employment and is not entitled to a hearing before termination. Talley v. Lelu Town Council, 10 FSM R. 226, 237 (Kos. S. Ct. Tr. 2001).

A person who has been employed for twelve years under a series of one year contracts could prove that by that length of employment, there was unwritten claim to continued employment under tenure. Talley v. Lelu Town Council, 10 FSM R. 226, 237 (Kos. S. Ct. Tr. 2001).

As a general proposition, a governmental entity's breach of a contract, without more, does not constitute a due process violation. Talley v. Lelu Town Council, 10 FSM R. 226, 237 (Kos. S. Ct. Tr. 2001).

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

Due process demands impartiality on the part of adjudicators, such as land commissioners. Langu v. Heirs of Jonas, 10 FSM R. 547, 549 (Kos. S. Ct. Tr. 2002).

Due process generally requires some form of fair hearing and rational decision making process when an important interest is at stake. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 635 (Pon. 2002).

In evaluating an alleged due process violation, courts usually are looking at the procedure that was followed by the government when, for example, the government is denying a benefit or taking some property from a party. Three important elements in establishing a procedural due process claim are: 1) whether the government is involved; 2) whether there is a life, liberty or property interest at stake; and, if so, 3) whether adequate due process procedures are employed by the government before a party is deprived of such an interest. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 635 (Pon. 2002).

The constitutional guarantee of due process only protects parties from governments, and those acting under them. To establish a due process claim, a plaintiff must show that a government entity or official, or one acting at the direction of the government, is involved. When the defendants were merely acting as individuals and not as representatives of Congress, or at the direction of Congress, the plaintiff cannot demonstrate the requisite government involvement, and when there is no government action, there can be no due process violation. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 635 (Pon. 2002).

The wording of the due process provisions in both the FSM and Kosrae Constitutions are identical. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 665 (Kos. S. Ct. Tr. 2002).

Government employment that is "property" within the meaning of the due process clause cannot be taken without due process. To be property protected under the FSM and Kosrae Constitutions, there must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 665-66 (Kos. S. Ct. Tr. 2002).

The due process requirements applicable to employment that is a property interest are: to be property protected under the FSM and Kosrae Constitutions, the employment rights must be based on governmental assurance of continual employment or dismissal for only specified reasons as stated in statute, regulations, formal contract or actions of a supervisory person with authority to establish terms of employment. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 666 (Kos. S. Ct. Tr. 2002).

There is no assurance of continued employment given by statute when the statute provides that the Corporation may retain and terminate the services of employees, agents, attorneys, auditors, and independent contractors upon such terms and conditions as it deems appropriate, or given by regulation when no regulations exist. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 666 (Kos. S. Ct. Tr. 2002).

The due process clause prevents governmental authorities from depriving individuals of property interests without first giving an opportunity to be heard. The clause protects against governmental rather than private deprivations of property. The party alleging a due process violation has the burden of showing that the defendant is a state actor and that the conduct in question was a state action. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 666 (Kos. S. Ct. Tr. 2002).

The actions of a private corporation which is partly owned by a government are not "state action" for purposes of due process analysis. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 666 (Kos. S. Ct. Tr. 2002).

When the statutory provisions intend and ensure that an entity is run as a corporation with its own management and employees, and not as a Kosrae state government agency and when, although the state government remains its sole shareholder, the state government does not assume its debts, does not own its assets, and has no control over its day to day operations, it is not a "state actor," and its termination of an employee is therefore not a "state action." Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 666-67 (Kos. S. Ct. Tr. 2002).

A party alleging a due process violation has the burden of showing that the defendant is a state actor and that the conduct in question was a state action. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 667 (Kos. S. Ct. Tr. 2002).

The defendant employer will be granted summary judgment on a plaintiff's due process claim when the plaintiff has not satisfied his burden showing that the employer is a state actor and that its termination of his employment was a state action because the due process clause may only be invoked through state action. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 667 (Kos. S. Ct. Tr. 2002).

A trespass action is one for violation of possession, not for challenge to title. It is therefore not a proper proceeding for the defendant to challenge title and allege due process violations in the proceedings that determined the plaintiff's title to the parcel. The defendant may challenge the title through separate proceedings as appropriate. Shrew v. Killin, 10 FSM R. 672, 674-75 (Kos. S. Ct. Tr. 2002).

The personal nature of constitutional rights, and prudential limitations on adjudicating constitutional questions, preclude a criminal defendant from challenging a law on the basis that it may be unconstitutionally applied to others in situations not before the court. FSM v. Anson, 11 FSM R. 69, 75 (Pon. 2002).

The twenty year statute of limitation does not apply to claims against the Land Commission for violation of due process, violation of statute and for failure to apply an earlier judgment as they are not claims for the recovery of land. These claims are subject to a limitations period of six years and are barred by the statute of limitations and will be dismissed when the Land Commission actions all occurred more than six years ago. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 175 (Kos. S. Ct. Tr. 2002).

A claim of taking of property without due process of law is effective only against governmental entities or officials. The constitutional guarantee of due process only protects persons from the governments, and those acting under them, established or recognized by the Constitution. Rosokow v. Bob, 11 FSM R. 210, 215 (Chk. S. Ct. App. 2002).

The FSM Constitution's due process provision protects persons from the governments, and those acting under them, established or recognized by the Constitution, and does not create causes of action against private parties. The Chuuk Constitution due process provision functions in the same manner. Rosokow v. Bob, 11 FSM R. 210, 215 (Chk. S. Ct. App. 2002).

Once the governmental defendants were dismissed there was no one against which to bring due process claims and civil rights taking claims so those claims were thus properly dismissed. Rosokow v. Bob, 11 FSM R. 210, 215 (Chk. S. Ct. App. 2002).

A plaintiff's claims for damages resulting from violation of his due process rights depend upon whether the defendant's actions were "state action." Hauk v. Board of Dirs., 11 FSM R. 236, 240 (Chk. S. Ct. Tr. 2002).

If the court is unable to declare that the defendant authority is a quasi-governmental authority subject to the provisions of the due process clause of the Chuuk and FSM Constitutions, then the plaintiff's due process claims must fail. The plaintiff has the burden of proving that the defendant is a state actor. Hauk v. Board of Dirs., 11 FSM R. 236, 240 (Chk. S. Ct. Tr. 2002).

An Authority that has its own Board of Directors, is solely empowered to select its own officers, may sue and be sued in its own name and is responsible for its own debts, and owns its own assets is an autonomous agency that cannot be declared to be subject to the due process provisions of the FSM and state constitutions, and must be declared a private entity and not a "state actor" for due process purposes. Hauk v. Board of Dirs., 11 FSM R. 236, 240-41 (Chk. S. Ct. Tr. 2002).

Except in extraordinary circumstances, due process requires that parties receive notice of motions because all parties must be served with all papers unless the party is in default, and the default is for a failure to ever appear at any stage of the proceeding. FSM Social Sec. Admin. v. David, 11 FSM R. 262j, 262L (Pon. 2002).

When testimony presented at the first formal hearing was not heard by the full panel of adjudicators due to a Land Commissioner's late disqualification and the addition of temporary adjudicators, only one person of the adjudication panel heard that testimony. This resulted in a due process violation because the testimony was not heard by the full adjudication panel when the acting replacement commissioners did not hear the testimony, yet they participated in the findings of fact, opinion and decision. The Land Commission exceeded it constitutional and statutory authority by the adjudication panel's failure to hear all the evidence presented at the hearings. Heirs of Henry v. Palik, 11 FSM R. 419, 422 (Kos. S. Ct. Tr. 2003).

When counsel, who now claims he was surprised and unprepared by the scheduling of oral argument, did not ask for a couple of days' (or even a few hours') continuance when the case was called, although such a continuance would have been possible and when counsel argued ably, it is not a ground to grant a rehearing. Rosokow v. Bob, 11 FSM R. 454, 456 (Chk. S. Ct. App. 2003).

When the Land Commission did not exceed its constitutional or statutory authority, and did conduct a fair proceeding for determination of title, there was no violation of state law and no violation of constitutional and statutory due process based upon the Land Commission's failure to notify the appellant in writing of the planting of monuments. Tulenkun v. Abraham, 12 FSM R. 13, 16 (Kos. S. Ct. Tr. 2003).

A mortgagee's due process rights are not violated by a statute making another lien superior to its mortgage when the statute was enacted prior to the mortgage's execution. In re Engichy, 12 FSM R. 58, 65 (Chk. 2003).

The public entity responsible for public lands is required to make its decisions openly and after giving appropriate opportunity for participation by the public and interested parties. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 91 (Pon. 2003).

The fundamental concept of due process is that government may not take from a citizen his life, liberty, or property in an unfair or arbitrary fashion, but must follow procedures that ensure a fair and rational decision-making process. AHPW, Inc. v. FSM, 12 FSM R. 114, 118 (Pon. 2003).

To satisfy constitutional due process concerns, absent class members must be afforded adequate representation before entry of a judgment which binds them. Resolution of two questions determines legal adequacy: 1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and 2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class? The second part of this question may also be stated in the affirmative as that it must appear that the class representatives will vigorously prosecute the interests of the class through qualified counsel. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 199 (Yap 2003).

No court could grant as relief a sweeping request to nullify all certificates of title to all persons who are not heirs of legatees pursuant to a will when such a request would reverse long-settled, final cases not now before the court, with parties not now before the court, and award others title to land for which certificates of title have already been issued because that would have the court void certificates of title in a manner that would violate every notion of due process of law. Anton v. Heirs of Shrew, 12 FSM R. 274, 277 (App. 2003).

All co-tenants are indispensable parties to the litigation when someone else claims complete ownership of the land. Otherwise, the co-tenants would either be deprived of their property interest without due process of law or they would be forced to share their property with a hostile co-owner who believes he should be the sole owner. Anton v. Heirs of Shrew, 12 FSM R. 274, 279 (App. 2003).

An appellate court will first consider an appellant's due process contentions, when, if the appellant were to prevail on these, the decision below would be vacated (without the appellate court considering its merits), and the matter remanded for new proceedings. Anton v. Cornelius, 12 FSM R. 280, 284 (App.

2003).

An assertion that a Land Commission decision was tainted and a party denied due process because various members of the Land Commission and Land Registration Team were close relatives of the appellee or the appellee's wife is a serious allegation that, if true, would usually be enough to vacate the decision and remand the case to the Land Court for new proceedings with a new determination to be made by impartial adjudicators. Anton v. Cornelius, 12 FSM R. 280, 284 (App. 2003).

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

No court could grant as relief a far-reaching request to nullify all certificates of title to all persons who are not heirs of legatees pursuant to a will when such a request would reverse long-settled, final cases not now before the court, with parties not now before the court, and award others title to land for which certificates of title have already been issued because that would have the court void certificates of title in a manner that would violate every notion of due process of law. Anton v. Cornelius, 12 FSM R. 280, 288-89 (App. 2003).

The fundamental concept of procedural due process is that the government may not be permitted to strip citizens of "life, liberty or property" in an unfair, arbitrary manner. Before such important individual interests are exposed to possible governmental taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision making process. Panuelo v. Amayo, 12 FSM R. 365, 374 (App. 2004).

The omission of an adopted daughter's name from a verified probate petition, signed under oath by the petitioner, resulted in the failure to provide the adopted daughter her constitutional due process rights to be notified of the probate proceeding, have an opportunity to be heard and may have also affected her rights as an heir of the decedent. In re Skilling, 12 FSM R. 447, 449 (Kos. S. Ct. Tr. 2004).

When a plaintiff has a judgment based on a common law contract, and there is no FSM statute that affects ordinary contracts in a way that shows a substantial national interest in such matters, the law of contracts is generally one in which state law controls. A governmental entity's breach of a contract, without more, does not constitute a due process violation. Barrett v. Chuuk, 12 FSM R. 558, 561 (Chk. 2004).

Repeated, intentional instances of failure of a state to pay a judgment does not constitute a separate, constitutional claim for deprivation of property without due process where the original underlying claim is not constitutional in character, but is based on common law contract and when there is no constitutional claim that supports the judgment itself, nor a national statute applicable that implicates a "clear and substantial" national interest. Barrett v. Chuuk, 12 FSM R. 558, 561-62 (Chk. 2004).

A new law that results in a state employee's loss of his accumulated sick leave hours is not unconstitutional and a deprivation of property without due process because the right to take payment for sick leave to be taken in the future is a mere expectancy, and does not constitute a vested right entitling the employee to compensation. "Vested" means having the character or given the rights of absolute ownership. Sam v. Chief of Police, 12 FSM R. 587, 589 (Kos. 2004).

When there are multiple dates upon which an election result was certified, the date of making the certification public and notifying the candidates would comport best with due process as the certification

starting point for election contests. Wiliander v. National Election Dir., 13 FSM R. 199, 204 (App. 2005).

If the court enters a default judgment different in kind from or exceeds in amount the relief that was prayed for in the demand for judgment, such a default judgment would be void and subject to collateral attack. Serious due process questions would be raised. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 277 (Chk. 2005).

A default judgment that included damages for claims not raised in the complaint or sums not prayed for by the plaintiff and that was rendered against a defendant who never appeared would violate due process. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 278 (Chk. 2005).

In the case of an injunction, non-parties who are persons who are the defendant's "officers, agents, servants, employees and attorneys," or "persons in active concert or participation" with the defendant and successors to a party, are the only non-parties against whom judgments and orders may be lawfully enforced, that is, enforced without violating the non-party's constitutional right to due process and Rule 71. Ruben v. Petewon, 13 FSM R. 383, 389 (Chk. 2005).

The general rule is that orders cannot be enforced against non-parties without violating the non-parties' constitutional rights to due process, and if an order can lawfully be enforced against someone it is because either that person is a party or it is an injunction being enforced and that person is a party's "officers, agents, servants, employees and attorneys," or a person "in active concert or participation" with a party. Ruben v. Petewon, 13 FSM R. 383, 390 (Chk. 2005).

A defendant's statutory right to be brought before the court within the 24 hours period goes to the heart of the procedural due process guaranteed to FSM citizens. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 499 (Pon. 2005).

The FSM Constitution's due process provision protects persons from governments, and those acting under them, and does not create causes of action against private parties. The Kosrae Constitution due process provision functions in the same manner. A party alleging a due process violation has the burden of showing that the defendant is a state actor and that the conduct in question was a state action. Kinere v. Sigrah, 13 FSM R. 562, 569 (Kos. S. Ct. Tr. 2005).

The usual cause of action when a governmental entity has exercised its regulatory powers improperly is a constitutional due process claim. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 15 (App. 2006).

When the presiding Land Court justice was required to disqualify himself, his failure to recuse himself was a violation of due process making the Land Court's decision contrary to law because the Land Court proceeding's presiding justice failed to recuse himself, and the matter must be remanded to the Kosrae Land Court with instructions and guidance for re-hearing the matter. Isaac v. Saimon, 14 FSM R. 33, 36 (Kos. S. Ct. Tr. 2006).

In the FSM, claims of police brutality or excessive force generally implicate due process, rather than equal protection. Annes v. Primo, 14 FSM R. 196, 202 (Pon. 2006).

A public officer is not denied due process of law by the abolition of his office before his term expires or by his removal or suspension according to law. Esa v. Elimo, 14 FSM R. 216, 218 (Chk. 2006).

While procedural due process requires governmental decision-making to conform with the concept of what is fair and just, substantive due process, on the other hand, addresses the legislature's rationality. Substantive due process protects individual liberty interests against certain governmental actions regardless of the fairness of the procedure used to implement them. FSM Dev. Bank v. Adams, 14 FSM R. 234, 248 n.6 (App. 2006).

It is error for a trial court to rely on exhibits never marked at trial. A justice commits reversible error

when his decision has relied on a document that is not a part of the record. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 287, 289 (Kos. S. Ct. Tr. 2006).

In order to recover compensatory damages, the plaintiffs must prove actual injury from the civil rights deprivation. When, if proper procedure had been followed, the plaintiffs still would have been terminated from their positions, there is no actual injury to compensate with back pay or other benefits. Nominal damages may, however, be awarded for the deprivation of the important right to procedural due process. Robert v. Simina, 14 FSM R. 438, 444 (Chk. 2006).

Common-law courts traditionally have vindicated deprivations of certain "absolute" rights that are not shown to have caused actual injury through the award of a nominal sum of money. By making the deprivation of such rights actionable for nominal damages without proof of actual injury, the law recognizes the importance to organized society that those rights be scrupulously observed; but at the same time, it remains true to the principle that substantial damages should be awarded only to compensate actual injury or, in the case of exemplary or punitive damages, to deter or punish malicious deprivation of rights. Because the right to procedural due process is "absolute" in the sense that it does not depend upon the merits of a claimant's substantive assertions, and because of the importance to organized society that procedural due process be observed, the denial of due process should be actionable for nominal damages without proof of actual injury. Robert v. Simina, 14 FSM R. 438, 444 (Chk. 2006).

No court can grant as relief a request to set aside or nullify a certificate of title to a person who is not a party before the court and effectively award someone else ownership to some or all of the land for which the certificate of title was issued because that would have the court void a certificate of title in a manner that would violate every notion of due process of law. Dereas v. Eas, 14 FSM R. 446, 454 (Chk. S. Ct. Tr. 2006).

In any lawsuit to remove someone's name from a certificate of title, that is, to deprive a person of ownership of the registered land that the certificate represents, due process requires that that person is an indispensable party to the action. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

No court can set aside, void, nullify, invalidate, or alter a person's certificate of title to land without that person first having been made a party to the action before the court. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

One alleged due process violation does not justify an aggrieved party's retaliatory due process violations. Dereas v. Eas, 14 FSM R. 446, 455 n.4 (Chk. S. Ct. Tr. 2006).

When the parties received a Land Commission determination from the Land Court, which then granted the appellants' request for a continuance after issuing its decision and which agreed to consider the appellants' motion to vacate the determination, if it was filed in writing; when the appellants filed their appeal, the Kosrae State Court agreed to hear the matter; when the appellants had notice and an opportunity to be heard at the preliminary and formal hearings and they participated in both the preliminary and final hearings and presented evidence regarding the parcel's alleged transfer; and when they were not served with the Land Commission adjudication, the appeals period did not run, the Land Commission and Land Court complied with statutory requirements and conducted a fair proceeding. Heirs of Tara v. Heirs of Kurr, 14 FSM R. 521, 525 (Kos. S. Ct. Tr. 2007).

When no hearing was held before the court issued its December 14, 2001 order in aid of judgment and no finding was made on the debtor's ability to pay in December 2001, the December 14, 2001 order was issued in violation of the State's right to due process and the order constitutes an abuse of the trial court's discretion. Chuuk v. Andrew, 15 FSM R. 39, 42 (Chk. S. Ct. App. 2007).

It is error and a due process violation for a trial court to award attorney's fees without giving the opposing party (who will be paying the fee award) notice and an opportunity to challenge the proposed

award's reasonableness. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 62 (Yap 2007).

By failing to refer motions to recuse and to disqualify the presiding justice to another justice, as required by the State Judiciary Act, the trial justice violated the movants' rights to due process of law. Ruben v. Hartman, 15 FSM R. 100, 108 (Chk. S. Ct. App. 2007).

In any lawsuit to, in effect, remove someone's name from a certificate of title, that is, to change the registered ownership of the land that the certificate represents and deprive the certificate titleholder of the titleholder's property interest, due process requires that that person is an indispensable party to the action. Any action that seeks to claim an interest in land for which a certificate of title or a determination of ownership has already been issued, must, at a minimum, name the registered titleholder as a party. Ruben v. Hartman, 15 FSM R. 100, 110 (Chk. S. Ct. App. 2007).

The fundamental concept of due process is that government may not take from a citizen his life, liberty, or property in an unfair or arbitrary fashion, but must follow procedures that ensure a fair and rational decision-making process. Siba v. Noah, 15 FSM R. 189, 194 (Kos. S. Ct. Tr. 2007).

It is generally considered violative of the constitutional right to due process to apply a law retroactively that would divest someone of a vested right or property interest. Esa v. Elimo, 15 FSM R. 198, 205 (Chk. 2007).

In an election dispute, the person whose right to the office is contested is the real party in interest. When a plaintiff is contesting the right of a candidate to participate in an election but fails to name the candidate as a party in the complaint, the court will deny injunctive relief because the real parties in interest are not parties to the action, since without naming the candidates as parties to this action, and giving them the benefit of due process of law, the court is unwilling and unable to adjudicate their rights in the proceeding. Bisaram v. Suta, 15 FSM R. 250, 255 (Chk. S. Ct. Tr. 2007).

An argument that the trial court denied a litigant due process by depriving her of her property without allowing her to be heard is without merit when the trial court decision being appealed was handed down in response to the litigant's own summary judgment motion, through which she is assumed to have stated her position, and when a hearing was held on the motion at which the litigant was represented by counsel. She was afforded full opportunity to be heard. Akinaga v. Heirs of Mike, 15 FSM R. 391, 398 (App. 2007).

Plaintiffs' due process civil rights were violated when police officers beat them without reason or justification. Further due process violations occurred when one of them was detained and arrested without being told the reason, and when he was held in police custody for six hours. Hauk v. Emilio, 15 FSM R. 476, 479 (Chk. 2008).

A person commits an offense if he willfully, whether or not acting under color of law, deprives another of, or injures, oppresses, threatens, or intimidates another in the free exercise or enjoyment of any right, privilege, or immunity secured to him by the FSM Constitution or laws and a private cause of action is provided for any such violation. Due process is a right secured by the FSM Constitution. Hauk v. Emilio, 15 FSM R. 476, 479 (Chk. 2008).

Due process issues are questions of law, and questions of law are reviewed *de novo*. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

There is no constitutional due process right to a trial if the matter may properly be resolved by summary judgment. Trial is a process used to resolve disputed issues of material fact. A court must deny a summary judgment motion unless, viewing the facts in the light most favorable to the party against whom judgment is sought, it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Thus a decision without trial would violate due process rights only if there was a genuine issue of material fact that would preclude summary judgment because that issue would

need to be tried. It is also an abuse of the trial court's discretion to grant summary judgment if a genuine issue of material fact is present. Albert v. George, 15 FSM R. 574, 579-80 (App. 2008).

The due process concerns in a Rule 11 plea hearing do not apply with equal force to the context of a revocation of probation or supervised release. FSM v. William, 16 FSM R. 4, 8 (Chk. 2008).

A single justice's reprimand of a legal services corporation law firm must be reversed where it was based on a factual error that the attorney appearing for the appellants was appearing as a member of the law firm when he was appearing only on his own behalf and his close relatives. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 106-07 (App. 2008).

The Constitution's due process protections do not require appellate oral argument. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 111 (App. 2008).

The Constitution's due process protections do not require appellate oral argument. Oral argument on appeal is not an essential ingredient of due process. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 127 (App. 2008).

It is essential that the trial court insure that its own notice procedures satisfy the requirements of due process. In order to comply with due process, Chuuk State Supreme Court Civil Procedure Rule 5(a) requires that service of all notices and other papers must be made upon each party affected. Under Rule 5(b), service must be made on a party's counsel, if represented, and may be effectuated either by "delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of court." Rule 5(b) further specifies that delivery of "a copy" means handing it to counsel; or leaving it at his office with his clerk of other person in charge thereof; or if there is no one in charge, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion residing therein. Service by placing a notice in a counsel's box in the clerk's office is not a method of service recognized by Rule 5(b). Farek v. Ruben, 16 FSM R. 154, 156-57 (Chk. S. Ct. App. 2008).

A variance is a discrepancy or disagreement between the allegations of the charging instrument and the proof adduced at trial. Kasmiro v. FSM, 16 FSM R. 243, 245 (App. 2009).

When considering whether a variance warrants relief, the court must examine whether the variance was material or prejudicial, that is, whether it affected the substantial rights of the accused. Any error, defect, irregularity or variance which does not affect substantial rights is disregarded. The issue is whether the accused is given sufficient notice of the charges against him so as to be able to present his defense and not be taken by surprise by the evidence offered at the trial and also to be protected against another prosecution for the same offense. Kasmiro v. FSM, 16 FSM R. 243, 245 (App. 2009).

When the prosecution failed to incorporate the accused's alleged possession of a rifle into its prosecution even after witness testimony, choosing instead to remain within the parameters of its original allegations all the way through closing argument, namely that the accused's presence in the boat alone supported conviction, it is reasonable to conclude that the accused was never given proper notice of his alleged conduct, and, even if the accused was given notice of the conduct underlying the violation after the witness testimony, such notice coming midway through the FSM's case-in-chief is not sufficient notice for the accused to prepare his defense against the factual allegations ultimately used to convict him. Kasmiro v. FSM, 16 FSM R. 243, 246 (App. 2009).

Allegations in the information alleging a criminal violation must be proven in order to obtain a conviction. It is not sufficient that the evidence show a violation of the statute specified in the information if the actual violation is different from the one alleged. Kasmiro v. FSM, 16 FSM R. 243, 247 (App. 2009).

The Constitutions of both Kosrae and the Federated States of Micronesia state, in identical wording,

that a person may not be deprived of life, liberty, or property without due process of law and these two clauses are treated as identical in meaning and in scope and may be analyzed together. Palsis v. Kosrae, 16 FSM R. 297, 306 (Kos. S. Ct. Tr. 2009).

For the due process clause to apply, a life, property, or liberty interest must be implicated. In an employment case, to be property protected under the Constitution, the employment right must be supported by more than merely the employee's own personal hope. There must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Palsis v. Kosrae, 16 FSM R. 297, 307 (Kos. S. Ct. Tr. 2009).

A government's breach of a contract, without more, does not violate due process rights. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 484 (Pon. 2009).

Although an employment opportunity is a liberty interest protected by due process, the right to governmental employment in Pohnpei is not a constitutionally-protected fundamental right, requiring invoking a strict scrutiny test. Berman v. Pohnpei Legislature, 16 FSM R. 492, 497 (Pon. 2009).

Government employment that is "property" within meaning of Due Process Clause cannot be taken without due process, but, in order for property to be protected under FSM Constitution, there must be claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons, and when the plaintiff does not allege that she was ever given an assurance of any kind of continual employment beyond the specific dates set forth in her short-term contract, her claim will be dismissed with prejudice. Berman v. Pohnpei Legislature, 16 FSM R. 492, 497 (Pon. 2009).

A distinction exists between a mere opportunity for employment and employment itself. When a plaintiff was not denied any employment opportunity by the defendant and she was not guaranteed employment but was allowed to apply – on two separate occasions – for the position and interviewed after each such job application and was granted employment after the first job announcement but was not selected for employment after the second job announcement because the defendant deemed another the most qualified, the plaintiff's claim that she was denied, without due process, any opportunity to be employed by the defendant is without merit and will be dismissed with prejudice. Berman v. Pohnpei Legislature, 16 FSM R. 492, 497-98 (Pon. 2009).

An election contest petitioners' failure to name all real parties in interest in their pleadings can subject the court's rulings to being later challenged by the real parties in interest as a violation of their due process rights to defend their interest in the action. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 516 n.1, 517 (Chk. S. Ct. App. 2009).

It is constitutional error for a trial court to rely on exhibits never identified, described, or marked at trial, but the trial court does not commit reversible error when there was extensive testimony and cross-examination of witnesses concerning the exhibits' contents. In such an instance, it is the witness testimony that is the evidence before the court. George v. George, 17 FSM R. 8, 10 (App. 2010).

When the trial court did not rely on unadmitted evidence to reach its decision and when there was substantial trial testimony from which the trial court could reasonably find that the defendant owed the plaintiff $6,220.52, the trial court decision did not violate the defendant's due process rights and its factual finding that $6,220.52 was the amount owed was not clearly erroneous. George v. George, 17 FSM R. 8, 10 (App. 2010).

A litigant's constitutional right to due process is violated when a trial court relies on evidence, not a part of the record, without prior notice to the parties or without an opportunity for the parties to comment on it, and it is constitutional error for the court to rely on exhibits never identified, described or marked at trial. George v. Albert, 17 FSM R. 25, 32 (App. 2010).

Trial court judgments that were, in part, based on documents that were never authenticated by affidavit or by testimony and their accuracy was never vouched for by affidavit, or testimony, or other evidence will be vacated. George v. Albert, 17 FSM R. 25, 32 (App. 2010).

When the receipts relied upon by the trial court were never identified, marked, described, or admitted at trial or evidentiary hearing; when those receipts were provided to the court post-trial and were never authenticated, introduced, or admitted into evidence; and when neither side had the opportunity to examine witnesses, or to produce witnesses to testify, on the accuracy, meaning, or completeness of the receipts or about the receipts that the trial court disallowed because someone else had signed them, the documents supplied to the court after trial were not evidence that was properly before that court and thus were not evidence in the record and the trial court's use of these documents violated due process. There is therefore no substantial evidence in the record to support the judgment amount. The judgment amount finding is thus clearly erroneous, and the judgment will be vacated since that figure is not supported by substantial evidence in the record, and, in fact, is not supported by any evidence in the record. George v. Albert, 17 FSM R. 25, 32-33 (App. 2010).

It is inconceivable that a party could be made to suffer criminal or civil penalties for the failure to collect a tax but would not have standing to challenge the tax's constitutionality (and thus the requirement that the party must collect it). The inability of a party required by law to collect a tax to challenge that tax's validity would deprive that party of its property (compliance costs, tax collection costs, remittance costs, etc.) without any due process of law. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 158-59 (Chk. 2010).

The fundamental concept of procedural due process is that the government may not strip citizens of life, liberty, or property in an unfair, arbitrary manner. When such important individual rights are exposed to possible governmental taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision-making process. FSM v. Andrew, 17 FSM R. 213, 215 (Pon. 2010).

When a defendant has submitted no evidence showing that the government's failure to inform him of the state correctional facility's rules, procedures, and schedules unconstitutionally deprived him of a life, liberty, or property interest and when, since such an admonition is unnecessary, the "Prisoner Rights and Responsibilities" document which the defendant cites does not inform inmates that they have a responsibility to not commit unlawful acts while incarcerated, the defendant cannot claim that he did not know he was not permitted to leave the correctional facility premises without a court order or police escort while incarcerated and a motion for dismissal on that ground will be denied. FSM v. Andrew, 17 FSM R. 213, 215 (Pon. 2010).

Both the FSM and Kosrae Constitutions provide that "a person may not be deprived of life, liberty, or property without due process of law." The wording of each of these clauses is identical in meaning and scope. Palsis v. Kosrae, 17 FSM R. 236, 240 (App. 2010).

The fundamental concept of procedural due process is that the government may not deprive citizens of life, liberty or property in an unfair, arbitrary manner. A taking occurs whenever a public entity substantially deprives a private party of the beneficial use of his property for a public purpose. Ladore v. Panuel, 17 FSM R. 271, 275 (Pon. 2010).

In any lawsuit that, in effect, seeks to change the registered ownership of the land that a certificate of title represents and deprive the certificate titleholder of the titleholder's property interest, due process would require that that person be an indispensable party to the action. Any action that seeks to claim an interest in land for which a certificate of title or a determination of ownership has been issued, must, at a minimum, name the registered titleholder as a party. Setik v. Pacific Int'l, Inc., 17 FSM R. 304, 306 (Chk. 2010).

An arrestee's right to be informed of her right to counsel when arrested is a due process right.

Berman v. Pohnpei, 17 FSM R. 360, 371 (App. 2011).

Due process demands impartiality on the part of the adjudicators, including Kosrae Land Court judges. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 503 (App. 2011).

If a presiding Land Court judge fails to recuse himself when he is required to, it is a due process violation and the matter must be remanded to the Kosrae Land Court with instructions and guidance for re-hearing the matter. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 503-04 (App. 2011).

It generally violates the constitutional right to due process to apply a law retroactively that would divest someone of a vested right or property interest. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 592 (Pon. 2011).

As a general proposition, a governmental entity's breach of a contract, without more, does not constitute a civil rights or due process violation. Stephen v. Chuuk, 18 FSM R. 22, 25 (Chk. 2011).

Government inaction, or even deliberate indifference, is not a due process violation. Berman v. Pohnpei, 18 FSM R. 67, 73 (Pon. 2011).

The fundamental concept of procedural due process proscribes the government from stripping its citizens of property in an unfair or arbitrary manner. Kallop v. Pohnpei, 18 FSM R. 130, 134 (Pon. 2011).

A statute that restricts the sale of alcohol during the Christmas and New Year's holidays serves legitimate governmental purposes in the areas of the public health and welfare and the allowance of on-sale alcohol purchases during these holidays also support the operations of the hotels and cabarets who have a demand for such sales from its customers during the holidays. This legislation carries out the purposes for which the statute was amended by further regulating the sale of alcohol in a manner which promotes the State's legitimate governmental objectives. This statute regulating and restricting alcohol is within the scope of legislative authority, has a reasonable purpose, is not arbitrary, and carries out the purposes prescribed and is thus not unconstitutional. Kallop v. Pohnpei, 18 FSM R. 130, 135-36 (Pon. 2011).

Since property may not be taken by the government, even in aid of a judgment, without due process of law, due process of law in executing the writ may be assured by directing the executing officer to strictly comply with the statutory provisions for levying a writ of execution. Saimon v. Wainit, 18 FSM R. 211, 215 (Chk. 2012).

A pretrial detainee has a stronger right than a convicted prisoner to liberty, and that right is protected by the Due Process Clause while a convicted prisoner's claims upon liberty have been diminished through due process so the convicted prisoner must rely primarily on the protections from cruel and unusual punishment. Jacob v. Johnny, 18 FSM R. 226, 231 (Pon. 2012).

The fundamental concept of procedural due process is that the government may not strip a citizen of life, liberty, or property in an unfair, arbitrary manner. Before such important individual interests are exposed to possible governmental taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision making process. Poll v. Victor, 18 FSM R. 235, 245 (Pon. 2012).

When an impeached U official was arrested on the U Impeachment Panel's bench warrant and brought within 24 hours before the only court competent to try him for the contempt charge, the U Impeachment Panel, where he was heard and then convicted of contempt, he received the process of law due him. Helgenberger v. U Mun. Court, 18 FSM R. 274, 281 (Pon. 2012).

In order to prevail on a claim of deprivation of liberty or property without due process of law, a plaintiff must: 1) identify a liberty or property right which implicates the Due Process Clause; 2) identify a

governmental action which amounts to a deprivation of that liberty or property right; and 3) demonstrate that the deprivation occurred without due process of law. Kama v. Chuuk, 18 FSM R. 326, 333 (Chk. S. Ct. Tr. 2012).

When no property right can be ascribed to the judgment at issue; the due process standard is not applicable. Kama v. Chuuk, 18 FSM R. 326, 333 (Chk. S. Ct. Tr. 2012).

The police, as state officers, have no constitutional duty to rescue persons because due process considerations are not implicated when the state fails to help someone already in danger. Ruben v. Chuuk, 18 FSM R. 425, 429 (Chk. 2012).

A police officer's threat of arrest does not constitute a violation of constitutional rights, and merely investigating a suspicious occurrence or merely patrolling the area where someone fled is not a violation of any clearly established constitutional right. Ruben v. Chuuk, 18 FSM R. 425, 429 (Chk. 2012).

Although there was no Kosrae or FSM Constitution in 1960 and constitutional rights are generally prospective, not retroactive, the Trust Territory Bill of Rights, whose due process clause was presumed to have the same meaning as in the United States, was in effect then. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 304 (App. 2014).

Due process issues are generally questions of law that are reviewed de novo. In re Sanction of Sigrah, 19 FSM R. 305, 309 (App. 2014).

For either a trespass cause of action or a cause of action against a municipal government for due process violations, the plaintiffs did not have to prove title or ownership, just a greater right to possession. Andrew v. Heirs of Seymour, 19 FSM R. 331, 338 (App. 2014).

The fundamental concept of procedural due process is that the government may not strip a citizen of life, liberty, or property in an unfair, arbitrary manner. Before such important individual interests are exposed to possible governmental taking or deprivation the Constitution requires that the government follow procedures calculated to ensure a fair and rational decision making process. Manuel v. FSM, 19 FSM R. 382, 390-91 (Pon. 2014).

A prisoner's unlawful 161-day detention after the end of his sentence meant that he was deprived of his constitutional right not to be deprived of his liberty without due process of law. Kon v. Chuuk, 19 FSM R. 463, 466 (Chk. 2014).

Generally, the alleged mistreatment of pre-trial arrestees is subject to a due process analysis while that of convicted prisoners is analyzed under the cruel and unusual punishment standard. Kon v. Chuuk, 19 FSM R. 463, 466 (Chk. 2014).

A convicted prisoner whose sentence had already ended but who was still kept imprisoned for 161 more days can assert a procedural due process claim – he was denied his liberty without due process when, without a hearing or an opportunity to be heard, his prison term was effectively extended and his release date bypassed. Kon v. Chuuk, 19 FSM R. 463, 466 (Chk. 2014).

The constitutional guarantee of due process only protects persons from the governments, and those acting under them, established or recognized by the Constitution. Thus, a person's termination by a non-governmental employer does not state a cause of action for unconstitutional deprivation of due process because no governmental entity or official is a defendant; the defendant is not alleged to be performing an essential governmental function; and a government action is not at issue. George v. Palsis, 19 FSM R. 558, 569 (Kos. 2014).

An employer is not a governmental entity when it was not created by the FSM national government nor

by any government established or recognized (national, state, or local) by the FSM Constitution; when it is merely funded, in part, by the FSM national and four state governments; when it is incorporated in the United States Commonwealth of the Northern Marianas and its parent corporation was created by the act of the United States Congress so that even if it were a governmental entity, it would be an entity of a government to which the FSM Constitution's due process clause does not apply. It will therefore be entitled to summary judgment on a former employee's wrongful termination in violation of constitutional due process cause of action. George v. Palsis, 19 FSM R. 558, 569 (Kos. 2014).

There is no due process violation from the different composition of the two appellate panels when the first appellate panel had before it an interlocutory appeal and the later appeal was from a final judgment on the merits. There is no due process reason why a different panel could not be constituted for the second appeal case when the first panel had completed its work on the appeal case before it and then, after a new and final trial division decision, a different group of three judges was empaneled to hear the new appeal case. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 603, 607 (App. 2014).

In order to assert due process, one must point to a property or liberty interest of one's own that is subject to due process. Panuelo v. FSM, 20 FSM R. 62, 68 (Pon. 2015).

Government employment that is "property" within the meaning of the Due Process Clause cannot be taken without due process. To be property protected under the Constitution, the employment right must be supported by more than merely the employee's own personal hope. There must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Panuelo v. FSM, 20 FSM R. 62, 68 (Pon. 2015).

Since the full rights of continued employment only vest upon appointment, when an applicant was not selected from the certified list, was never appointed to the position he applied for, and no agreement for employment was entered into between the parties, he was never a public employee, and therefore his due process rights never vested. Panuelo v. FSM, 20 FSM R. 62, 68 (Pon. 2015).

An arrest based upon probable cause does not violate the constitutional right to due process. Palasko v. Pohnpei, 20 FSM R. 90, 96 (Pon. 2015).

Due process requires that for a warrant to issue, the report must demonstrate "probable cause" and this determination must be made by a judicial officer before jurisdiction is extended. Thus, the sentencing court takes primary responsibility for initiating probation revocation proceedings. To delegate that authority would be tantamount to abdicating the judiciary's sentencing responsibility to the executive. Ultimately, the court retains the discretion to reject or accept the probation officer's recommendations. FSM v. Edward, 20 FSM R. 335, 339 (Pon. 2016).

Regardless of the lesser standards that apply in revocation proceedings, due process is required. FSM v. Edward, 20 FSM R. 335, 340 (Pon. 2016).

A money judgment against the state is not a property interest but an existing, continuing liability against the state, and a failure to timely satisfy that judgment does not constitute a taking in violation of due process or equal protection. Kama v. Chuuk, 20 FSM R. 522, 534 (Chk. S. Ct. App. 2016).

The fundamental concept of due process is that the government may not be permitted to strip citizens of life, liberty or property in an unfair or arbitrary manner. When such interests are subject to possible government taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision-making process. Linter v. FSM, 20 FSM R. 553, 557 (Pon. 2016).

In order to prevail on a claim of deprivation of liberty or property without due process of law, a plaintiff must: 1) identify a liberty or property right which implicates the due process clause; 2) identify a governmental action which amounts to deprivation of that liberty or property right; and 3) demonstrate that

the deprivation occurred without due process of law. Linter v. FSM, 20 FSM R. 553, 557 (Pon. 2016).

When no property right can be ascribed to the alleged property at issue, the due process standard does not apply. Linter v. FSM, 20 FSM R. 553, 557 (Pon. 2016).

Government employment that is property within the meaning of the due process clause cannot be taken without due process. To be property protected under the FSM Constitution, there must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. These assurances may come from various sources, such as statute, formal contract, or actions of a supervisory person with authority to establish terms of employment. Linter v. FSM, 20 FSM R. 553, 558 (Pon. 2016).

Although a governmental entity's breach of contract, without more, does not constitute a civil rights or due process violation, a person who has been employed for twelve years under a series of one year contracts could prove that by that length of employment, there was an unwritten claim to continued employment. Linter v. FSM, 20 FSM R. 553, 558 (Pon. 2016).

When no one ever notified the plaintiffs that they must stop working in their respective positions or that they would not be paid for the work done from October 2014 to April 2015; when the government continued to assign them projects and retained the benefits conferred by their work, but did not compensate them for the work; when the plaintiffs never received notification from the government that their contracts had not or would not be renewed although the plaintiffs eventually became aware that the Project Control Documents that controlled their contracts were unsigned; when the government's consistent delay in renewing the contracts and disbursing wages was a common occurrence experienced by the plaintiffs during their previous years' contracts; and when the government continued to accept, approve, sign, and maintain the plaintiffs' submitted time sheets thereby implying assurances of forthcoming wages, the evidence, viewed in its entirety, presents a situation whereby the plaintiffs had a reasonable justified expectation to continued employment and, therefore, payment for those services rendered to the government's benefit between October 2014 and April 2015. Linter v. FSM, 20 FSM R. 553, 558 (Pon. 2016).

A government employee's pay is a form of property that a government cannot deprive the employee of without due process. Linter v. FSM, 20 FSM R. 553, 559 (Pon. 2016).

When the government has willingly deprived the plaintiffs of wages that they are entitled to without due process of law, it is civilly liable under 11 F.S.M.C. 701(3) for violating the plaintiffs' civil rights. Linter v. FSM, 20 FSM R. 553, 559 (Pon. 2016).

When the trial court clearly considered the petition for a writ of mandamus, it did not deprive the petitioner of his procedural due process by denying the writ without first having a hearing. Tilfas v. Kosrae, 21 FSM R. 81, 93 (App. 2016).

When the appellant's designated family representatives acted on her behalf and were her agents for the Land Court proceedings, she cannot aver that she was unaware of the proceeding and her due process deprivation claims are wanting. Lonno v. Heirs of Palik, 21 FSM R. 103, 108 (App. 2016).

Litigants cannot argue that, in their view, they were deprived of due process because the Pohnpei Supreme Court appellate division wrongly decided a matter of state law. A Pohnpei Supreme Court appellate division decision on Pohnpei state law is always correct. It is not correct because the Pohnpei Supreme Court appellate division is infallible. It is correct because, until the Pohnpei Supreme Court appellate division reverses or overrules its prior decision, it is final. Edwin v. Kohler, 21 FSM R. 133, 137 (App. 2017).

When the Pohnpei Supreme Court appellate division granted the appellant's requests for 124 days of enlargement to file her brief and when, a month after the brief had actually been filed, that court effectively

denied her timely request for the four days of enlargement by concluding that she "chose to remain silent in the end" and then dismissed her appeal, under these circumstances, this denial of the appellant's timely request to file her brief three or four days late was so arbitrary and capricious as to be an abuse of discretion that violated the appellant's right to due process under the FSM Constitution, and which would require reversal. Silbanuz v. Leon, 21 FSM R. 336, 341 (App. 2017).

When a defendant's claim for due process violation is unsubstantiated and uncorroborated except by the defendant's testimony, the defendant's motion to suppress and to dismiss his case in its entirety will be denied. FSM v. Isaac, 21 FSM R. 370, 377 (Pon. 2017).

The due process clause may only be invoked through state action. Santos v. Pohnpei, 21 FSM R. 495, 500 (Pon. 2018).

An autonomous agency cannot be declared to be subject to the due process provisions of the FSM and state constitutions, and must be declared a private entity, and not a "state actor" for due process purposes. Santos v. Pohnpei, 21 FSM R. 495, 500 (Pon. 2018).

When the owner of registered land sells or gifts registered land, all that is needed for a valid transfer is the delivery to the Land Court of a properly notarized deed (with each needed signature properly notarized) combined with the surrender of the grantor's old duplicate certificate of title. Proper and strict compliance with those requirements is the due process that is sufficient (and required) for the valid issuance of a new certificate of title to the grantee. Alik v. Heirs of Alik, 21 FSM R. 606, 619 (App. 2018).

When a person has not been tried, convicted, and sentenced, no question of cruel and unusual punishment arises. That is why the alleged mistreatment of pre-trial arrestees is subject to a due process analysis while that of convicted prisoners is analyzed under the cruel and unusual punishment standard. Chuuk v. Silluk, 21 FSM R. 649, 653, 656 (Chk. S. Ct. Tr. 2018).

The constitutional guarantee of due process only protects persons from the governments, and those acting under them, established or recognized by the Constitution. The due process guarantee does not apply to the actions of private parties. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 11 (Pon. 2018).

When a civil rights claim neither alleges that the actions were pursuant to governmental policy or custom, nor that the actions were taken by officials responsible for final policy-making, it fails to state a claim upon which relief may be granted and will be dismissed because the plaintiffs fail to state a claim that their civil right to due process was violated. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 11 (Pon. 2018).

A court may abuse its judicial discretion by an unexplained, lengthy delay or by the failure to exercise its discretion within a reasonable time because the failure to exercise discretion is an abuse of the discretion. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 67 (Pon. 2018).

Since the right to procedural due process is "absolute" in the sense that it does not depend upon the merits of a claimant's substantive assertions, and because of the importance to organized society that procedural due process be observed, the denial of due process is generally actionable for nominal damages without proof of actual injury. And a plaintiff who is awarded nominal damages in a civil rights action is also entitled to his attorney's fees and costs. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 67 (Pon. 2018).

A court's long, unexplained delay or its failure to exercise its discretion within a reasonable time is an abuse of discretion that denies a right to procedural due process. Luhk v. Anthon, 22 FSM R. 69, 70 (Pon. 2018).

Procedural due process is a constitutional civil right covered by 11 F.S.M.C. 701. When the right to procedural due process has been violated and there are no provable, actual damages (thus the damages are only nominal), it is a civil rights violation for which attorney's fees and costs may be awarded. Luhk v. Anthon, 22 FSM R. 69, 71 (Pon. 2018).

The constitutional guarantee of due process was established to protect persons from governmental actions and not private persons or entities not acting under the law. Micronesian Legal Services Corporation is not a governmental entity created by the national, state, or local government. George v. Palsis, 22 FSM R. 165, 175 (App. 2019).

The FSM Constitution's due process clause is derived from the U.S. Constitution and thus U.S. cases may be consulted for guidance in interpretation, emphasizing those cases in effect at the times of the FSM Constitution's framing (1975) and the ratification (1978). Wolphagen v. FSM, 22 FSM R. 96, 102 n.1 (App. 2018).

Since the knowing use of perjured testimony is fundamentally unfair, such a conviction must be set aside if there is any reasonable likelihood that the false testimony could have affected the fact-finder's judgment. Wolphagen v. FSM, 22 FSM R. 96, 102 (App. 2018).

The prosecution, as an entity, has a constitutional obligation not to deceive the fact-finder or to allow the fact-finder to be deceived by the prosecution's witnesses; thus, the prosecution cannot let false testimony by any of its witnesses stand uncorrected. Wolphagen v. FSM, 22 FSM R. 96, 102 (App. 2018).

If the evidence sought actually has no probative significance at all, no purpose would be served by requiring a new trial simply because an inept prosecutor incorrectly believed the prosecution was suppressing a fact that would be vital to the defense. Wolphagen v. FSM, 22 FSM R. 96, 102-103 (App. 2018).

If the prosecution's suppression of evidence results in constitutional error, it is because of the evidence's character, not the prosecutor's. Wolphagen v. FSM, 22 FSM R. 96, 103 (App. 2018).

The fundamental concept of procedural due process is that the government may not be permitted to strip citizens of life, liberty, or property in an unfair, arbitrary manner, and when such important individual interests are exposed to possible governmental taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision making process. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 633 (Pon. 2020).

The constitutional guarantees of due process and equal protection extend to aliens. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 633 n.8 (Pon. 2020).

– Due Process – Notice and Hearing

In criminal contempt proceedings, reasonable notice of a charge and an opportunity to be heard are basic in our system of jurisprudence; these rights include a right to examine witnesses against one, to offer testimony, and to be represented by counsel. In re Iriarte (I), 1 FSM R. 239, 250 (Pon. 1983).

A hearing on a charge of contempt is less critical to fairness where the events occur before the judge's own eyes and a reporter's transcript is available. In re Iriarte (I), 1 FSM R. 239, 250 (Pon. 1984).

A summary punishment always, and rightly, is regarded with disfavor. When conviction and punishment is delayed it is much more difficult to argue that action without notice or hearing of any kind is necessary to preserve order and enable the court to proceed with its business. In re Iriarte (I), 1 FSM R. 239, 251 (Pon. 1983).

Once a contemner has left the courtroom, there presumably is no immediate necessity to act without a

normal hearing to preserve the integrity of the court proceedings. In re Iriarte (I), 1 FSM R. 239, 251 (Pon. 1983).

When the accused disrupts courtroom proceedings and the judge must act immediately to restore order, a trial judge may immediately convict a defendant (the accused) through a "summary contempt" procedure, that is, without prior notice or hearing. In re Iriarte (II), 1 FSM R. 255, 260 (Pon. 1983).

The Constitution secures to the criminal defendant, as a minimum, the right to receive reasonable notice of the charges against the defendant, right to examine any witnesses against the defendant, and the right to offer testimony and be represented by counsel. In re Iriarte (II), 1 FSM R. 255, 260 (Pon. 1983).

No judge should mete out criminal punishment except upon notice and due hearing, unless overriding necessity precludes such indispensable safeguards for assuring fairness. In re Iriarte (II), 1 FSM R. 255, 262 (Pon. 1983).

Failure to proceed with a contempt hearing offered by the court without prior notice cannot be deemed a loss or waiver of the hearing right itself when no clear and unmistakable warning is issued that a failure to proceed immediately with the hearing will constitute a loss or waiver of that right. In re Iriarte (II), 1 FSM R. 255, 264-65 (Pon. 1983).

When the plaintiff has been given reasonable notice of his trial and he and his attorney failed to appear to adduce evidence and prosecute the claim, his inactivity amounts to abandonment of his claim and it is subject to dismissal under FSM Civil Rule 41(b). Etpison v. Perman, 1 FSM R. 405, 414-15 (Pon. 1984).

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

A fundamental requisite of due process of law is the opportunity to be heard. Etpison v. Perman, 1 FSM R. 405, 423 (Pon. 1984).

Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must be notified. Etpison v. Perman, 1 FSM R. 405, 423 (Pon. 1984).

Radio announcement is a common and generally effective method of notice. Yet radio notice alone of a proposed hearing to determine rights to future use of public lands is not constitutionally sufficient to a person who: 1) asserts a direct and serious claim based on his activities on, and actual possession of, the land; 2) had given written notice to the decision-maker of his wish to assert the claim; 3) lives relatively near the decision-maker's office; and 4) had a work location where telephone or written messages to him could have been received during the day. Etpison v. Perman, 1 FSM R. 405, 427 (Pon. 1984).

It is normally required that a hearing be held prior to seizure of a property. In extraordinary situations a seizure may take place prior to hearing, but the owner must be afforded a prompt post-seizure hearing at which the person seizing the property must at least make a showing of probable cause. Unreasonable delay in providing a post-seizure hearing may require that an otherwise valid seizure be set aside. Ishizawa v. Pohnpei, 2 FSM R. 67, 76 (Pon. 1985).

The Due Process Clause prevents governmental authorities from depriving an individual of property interests, without first according an opportunity to be heard as to whether the proposed deprivation is permissible. Falcam v. FSM, 3 FSM R. 194, 200 (Pon. 1987).

Only in extraordinary circumstances, where immediate action is essential to protect crucially important public interests, may private property be seized without a hearing. Falcam v. FSM, 3 FSM R. 194, 200 (Pon. 1987).

Any withholding of private property, such as a government employee's paycheck, without a hearing can be justified only so long as it takes the authorized payor to obtain a judicial determination as to the legality of the payment being withheld. Falcam v. FSM, 3 FSM R. 194, 200 (Pon. 1987).

A party is not deprived of due process of law in a case in which a judgment is entered against it on a cause of action raised by the trial court, where the party had notice and an opportunity to be heard, even though the cause of action does not appear in the pleadings and no amendment of the pleadings was made. United Church of Christ v. Hamo, 3 FSM R. 445, 453 (Truk 1988).

Only in extraordinary circumstances where immediate action is essential to protect crucially important public interests, may private property be seized without a prior hearing of some kind. Semes v. FSM, 4 FSM R. 66, 74 (App. 1989).

Constitutional due process requires that a nonprobationary employee of the national government be given some opportunity to respond to the charges against him before his dismissal may be implemented; including oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. Semes v. FSM, 4 FSM R. 66, 76 (App. 1989).

Implementation of the constitutional requirement that a government employee be given an opportunity to respond before dismissal is consistent with the statutory scheme of the National Public Service System Act, therefore the Act need not be set aside as contrary to due process. Semes v. FSM, 4 FSM R. 66, 77 (App. 1989).

A prisoner's rights to procedural due process have been violated when he received neither notice of the charges against him nor an opportunity to respond to those charges before or during confinement. Plais v. Panuelo, 5 FSM R. 179, 212 (Pon. 1991).

A person for whom extradition is sought must be brought before a justice that evidence of his criminality may be heard and considered so that he may be certified as extraditable. Such a person is entitled to notice of the hearing and an opportunity to be heard and to effective assistance of counsel. In re Extradition of Jano, 6 FSM R. 93, 99 (App. 1993).

Where a party attended the meeting at which the common boundary was set and thus had actual notice, and filed no adverse claim to the boundary location that would trigger the statutory right to notice, but claimed he was not aware of the adverse boundary until eight years later, and waited another four years before filing suit, the claimant's repeated failure to timely assert his rights does not demonstrate a due process violation. Setik v. Sana, 6 FSM R. 549, 553 (Chk. S. Ct. App. 1994).

One who receives actual notice cannot assert a constitutional claim that the method of notice was not calculated to reach him. Setik v. Sana, 6 FSM R. 549, 553 (Chk. S. Ct. App. 1994).

Where parties had no claims to the land at the time the title was determined they were not entitled to notice. The lack of notice to them does not raise a genuine issue of material fact as to the validity of a Certificate of Title. Where a court proceeding determined title, the lack of a record of notice in the Land Commission files does not raise a genuine issue of material fact as to the validity of the Certificate of Title because the Land Commission did not conduct the hearing on title and so would not have any record of notice. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 49 (App. 1995).

Where a vessel has been arrested pursuant to a warrant, a post-seizure hearing is required by the constitutional guarantee of due process. FSM v. M.T. HL Achiever (II), 7 FSM R. 256, 257 (Chk. 1995).

An owner of seized property cannot challenge the statute it was seized under as unconstitutional because the statute fails to provide for notice and a hearing, if procedural due process, notice and a right to

a hearing, are provided. FSM v. M.T. HL Achiever (II), 7 FSM R. 256, 258 (Chk. 1995).

The Due Process Clause does not require an immediate post-seizure probable cause hearing in advance of a civil forfeiture trial. It only requires that the government begin the forfeiture action within a reasonable time of the seizure. FSM v. Skico, Ltd. (II), 7 FSM R. 555, 557 (Chk. 1996).

A civil forfeiture statute is not unconstitutional in failing to set out a requirement for a post-seizure hearing and a notice of that right; nor is the government constitutionally required to inform the defendant of such notice and a right to a hearing. FSM v. Skico, Ltd. (II), 7 FSM R. 555, 557 (Chk. 1996).

It is constitutional error for the trial court to rely on a special master's report, not a part of the record, without prior notice to the parties and an opportunity for the parties to comment on it. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 669 (App. 1996).

Notice and an opportunity to be heard are the essence of due process of law. In re Sanction of Michelsen, 8 FSM R. 108, 110 (App. 1997).

The manner in which Rule 11 sanctions are imposed must comport with due process requirements. At a minimum, notice and an opportunity to be heard are required. In re Sanction of Michelsen, 8 FSM R. 108, 110 (App. 1997).

A court's failure to provide adequate notice and the opportunity to be heard when imposing sanctions *sua sponte* in itself provides the ground for reversal of an order imposing sanctions. In re Sanction of Michelsen, 8 FSM R. 108, 110 (App. 1997).

Normally, notice and an opportunity to be heard is given prior to governmental deprivation of property, but governments need not follow this in the case of taxes. Governments must, however, provide a post-deprivation opportunity to challenge the tax and a clear and certain remedy. Chuuk Chamber of Commerce v. Weno, 8 FSM R. 122, 126 (Chk. 1997).

Persons entitled to notice of a proceeding generally are those who are to be affected by a judgment or order therein and the requirement of notice applies only to those whose substantial interests are affected by the proceeding in question. Louis v. Kutta, 8 FSM R. 228, 230 (Chk. 1998).

When a party's possession of land was not hostile so as to give rise to an adverse possession or to a prescriptive *profit à prendre* claim, failure to give the party notice is not a violation of the party's due process rights. Iriarte v. Etscheit, 8 FSM R. 231, 240 (App. 1998).

When an appellant has failed to comply with the appellate rules' timing requirements for filing its opening brief, a single article XI, section 3 justice may, on his own motion, dismiss the appeal after the appellant has been afforded its constitutional due process right to notice and an opportunity to be heard. Ting Hong Oceanic Enterprises v. FSM, 8 FSM R. 264, 265 (App. 1998).

A non-party is deprived of due process of law when a case is started against it without notice or it having been made a party, when an order in aid of judgment has been issued against the non-party without a judgment and a hearing held following notice, and when a writ of execution has been issued against a non-party and without notice or hearing to determine the amount to be executed upon. Bank of Guam v. O'Sonis, 8 FSM R. 301, 304 (Chk. 1998).

Due process requires that the parties be given the opportunity to comment upon evidence. A fundamental requisite of due process of law is the opportunity to be heard. Notice and an opportunity to be heard are the essence of due process of law. Langu v. Kosrae, 8 FSM R. 455, 458 (Kos. S. Ct. Tr. 1998).

When a person, who has applied for registration of land included within the boundaries of an area on

which hearings are held and who, based upon his application, was, as required by 67 TTC 110, entitled to be served notice of the hearings, was not served notice of the hearings and was also not served a copy of the Determination of Ownership, there was no substantial compliance with the notice requirements specified by law. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 93 (Kos. S. Ct. Tr. 1999).

The Land Commission is required by statute to give actual, and not constructive notice for hearings to all interested parties, and is required to post notice on the land, at the municipal office and principal meeting place at least thirty days in advance of the hearing. Failure to provide notice to an interested party is violation of due process. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 93 (Kos. S. Ct. Tr. 1999).

In land cases, notice requirements must be followed. Failure to serve actual notice is a violation of due process of law and contrary to law. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 94 (Kos. S. Ct. Tr. 1999).

The policy reasons supporting actual notice of hearings to land claimants, as required by law, are very important. There is a substantial interest in assuring that land disputes are decided fairly because of the fundamental role that land plays in Kosrae and throughout Micronesia. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 94-95 (Kos. S. Ct. Tr. 1999).

In land cases, notice requirements shall be followed. Failure to serve actual notice on a claimant is a denial of due process and violation of law. Due to the violations of the statutory notice requirement, Determinations of Ownership and Certificates of Title will be set aside as void. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 95 (Kos. S. Ct. Tr. 1999).

When a person appeared as a witness at the formal hearing for a parcel and testified in support of another's claim to that parcel and did not make her own claim to the land, she was not entitled to notice of the Determination of Ownership for the parcel because she was not an "interested party." Jonas v. Paulino, 9 FSM R. 513, 516 (Kos. S. Ct. Tr. 2000).

When parties had no claims to the land at the time the title was determined they were not entitled to notice. Without a claim to the land in question there is no right to notice of a land commission proceeding or finding. Jonas v. Paulino, 9 FSM R. 513, 516 (Kos. S. Ct. Tr. 2000).

When a party had no claim to the land at the time ownership was determined, that party was not entitled to statutory notice of the determination of ownership for a parcel and she does not have standing to appeal the Land Commission's decision and the court does not have jurisdiction over her appeal claims. Jonas v. Paulino, 9 FSM R. 519, 521 (Kos. S. Ct. Tr. 2000).

The Land Commission is required by statute to give actual, and not constructive notice for hearings to all interested parties. Failure to provide notice to an interested party is violation of due process. Nena v. Heirs of Melander, 9 FSM R. 523, 525 (Kos. S. Ct. Tr. 2000).

When a person, entitled to be served notice of the hearing, was not served notice of the hearing and was also not served a copy of the Determination of Ownership, there was no substantial compliance with the notice requirements specified by law, and the Determination of Ownership will be set aside as void and remanded to the Land Commission to hold formal hearings. Nena v. Heirs of Melander, 9 FSM R. 523, 525 (Kos. S. Ct. Tr. 2000).

In land cases, statutory notice requirements must be followed. Failure to serve actual notice on a claimant is a denial of due process and violation of law. Due to the violations of the statutory notice requirement, Determinations of Ownership and Certificates of Title will be set aside as void. Nena v. Heirs of Nena, 9 FSM R. 528, 530 (Kos. S. Ct. Tr. 2000).

Personal service of the Determination of Ownership is required upon all parties shown by the

preliminary inquiry to have an interest in the parcel. Nena v. Heirs of Nena, 9 FSM R. 528, 530 (Kos. S. Ct. Tr. 2000).

When a party, who had shown an interest in the parcel, was not served the Determination of Ownership as required by law, the parcel's Determination of Ownership and the Certificate of Title will, due to the violations of the statutory notice requirement, be vacated and set aside as void and remanded to the Land Commission to again issue and serve the Determination of Ownership for the parcel in accordance with statutory requirements. Nena v. Heirs of Nena, 9 FSM R. 528, 530 (Kos. S. Ct. Tr. 2000).

When the land commission voids one person's certificate of title and issues a new certificate of title covering the same land to another person without notice to the first person and affording the first person an opportunity to be heard, it is a denial of due process and the certificates of title will be vacated and the case remanded to the land commission to conduct the statutorily-required hearings. Enlet v. Chee Young Family Store, 9 FSM R. 563, 564-65 (Chk. S. Ct. Tr. 2000).

Notice that the court has been requested to issue an order affecting a litigant's rights and an opportunity for that party to be heard are constitutionally mandated by the due process clause. O'Sullivan v. Panuelo, 9 FSM R. 589, 595 (Pon. 2000).

An attorney is entitled to appropriate notice and an opportunity to be heard before any sanction is imposed on him, whether that sanction is imposed on him under the civil procedure rules, the criminal contempt statute, or some other court power. In re Sanction of Woodruff, 10 FSM R. 79, 84 (App. 2001).

A court hears before it condemns, and that while a court that has announced a decision without notice and an opportunity to be heard can always be asked to recall its decision and listen to argument this opportunity, as every lawyer knows, is a poor substitute for the right to be heard before the decision is announced. In re Sanction of Woodruff, 10 FSM R. 79, 89 (App. 2001).

The basic tenets of due process of law are notice and an opportunity to be heard. As applied to judgments, this means that a judgment may not be rendered in violation of these constitutional limitations and guaranties. An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated to apprise interested parties of the pendency of the action, which is itself a corollary to another requisite of due process, the right to be heard. Hartman v. Bank of Guam, 10 FSM R. 89, 96-97 (App. 2001).

A judgment entered against a party without notice or an opportunity to be heard is void and is subject to direct or collateral attack at any time. Hartman v. Bank of Guam, 10 FSM R. 89, 97 (App. 2001).

The Land Commission does not conduct a fair proceeding when it issues a determination of ownership without compliance with statutory notice requirements. Nena v. Heirs of Melander, 10 FSM R. 362, 364 (Kos. S. Ct. Tr. 2001).

The Land Commission is required by statute to give actual, and not constructive notice for hearings to all interested parties. Failure to provide notice to an interested party is violation of due process. Nena v. Heirs of Melander, 10 FSM R. 362, 364 (Kos. S. Ct. Tr. 2001).

The registration team is required to service actual notice of the hearing, either by personal service or registered air mail, upon all parties shown by the preliminary inquiry to have an interest in the parcel, and is also required to serve actual notice of a determination of ownership upon all persons shown to have an interest in the parcel. Nena v. Heirs of Melander, 10 FSM R. 362, 364 (Kos. S. Ct. Tr. 2001).

When the land registration team was informed at the preliminary inquiry that someone was an interested party due to his boundary dispute, but the land registration team failed to serve him actual notice of the formal hearing and the determination of ownership issued for the parcel, there was no substantial

compliance with the notice requirements specified by law, and due to the violations of the statutory notice requirement, the determinations of ownership for both adjoining parcels must be set aside as void and remanded to the Land Commission. Nena v. Heirs of Melander, 10 FSM R. 362, 364 (Kos. S. Ct. Tr. 2001).

Notice and an opportunity to be heard is the essence of due process. Kama v. Chuuk, 10 FSM R. 593, 598 (Chk. S. Ct. App. 2002).

When the trial court *sua sponte* set aside a judgment without notice and an opportunity to be heard, it set aside the judgment without due process of law. Kama v. Chuuk, 10 FSM R. 593, 598 (Chk. S. Ct. App. 2002).

A trial court abuses its discretion when it sua sponte sets aside a judgment because the court, and not a party or his legal representative made the motion; when the judgment holder was denied due process because he was not given notice and an opportunity to be heard before the decision against him was announced; and when the decision was based upon an erroneous conclusion of law that a trial court Rule 68(b) hearing was an absolute necessity before this judgment could be entered. Kama v. Chuuk, 10 FSM R. 593, 599 (Chk. S. Ct. App. 2002).

When a court makes a motion sua sponte, it generally gives the parties notice and an opportunity to respond before it decides; just as when a party makes a motion the other party is generally given an opportunity to respond before the court rules. Notice and an opportunity to be heard is the essence of due process. Wainit v. Weno, 10 FSM R. 601, 606 (Chk. S. Ct. App. 2002).

When an appellant had no notice of the court's sua sponte motion to dismiss the appeal before the dismissal order was entered, the dismissal was a violation of the appellant's right to due process because of the lack of notice and an opportunity to be heard. Wainit v. Weno, 10 FSM R. 601, 606 (Chk. S. Ct. App. 2002).

A court hears before it condemns, and that while a court that has announced a decision without notice and an opportunity to be heard can always be asked to recall its decision and listen to argument this opportunity is a poor substitute for the right to be heard before the decision is announced. Wainit v. Weno, 10 FSM R. 601, 606 (Chk. S. Ct. App. 2002).

Due process generally requires that the government provide an individual with notice and an opportunity to be heard before taking away that person's liberty. A person has a liberty interest in not being criminally prosecuted without notice of what conduct is prohibited. A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law, as it fails to give people notice of what conduct is prohibited. FSM v. Anson, 11 FSM R. 69, 75 (Pon. 2002).

It would seem that due process would require that in any lawsuit to remove someone's name from a certificate of title that that person would be an indispensable party to the action. Marcus v. Truk Trading Corp., 11 FSM R. 152, 158 n.4 (Chk. 2002).

A judgment entered against a party without notice or an opportunity to be heard is void and subject to direct or collateral attack. Pastor v. Ngusun, 11 FSM R. 281, 285 (Chk. S. Ct. Tr. 2002).

The Land Commission is required by statute to give actual, and not constructive notice for hearings to all interested parties. Failure to provide notice as required by law to an interested party is violation of due process. Albert v. Jim, 11 FSM R. 487, 490 (Kos. S. Ct. Tr. 2003).

The registration team is required to serve actual notice of the hearing upon all parties shown to have an interest in the parcel either by personal service or registered air mail. Albert v. Jim, 11 FSM R. 487, 490

(Kos. S. Ct. Tr. 2003).

When a person, entitled to be served notice of the hearing, was not served actual notice of the hearing by personal service, there was no substantial compliance with the notice requirements specified by law and when there was no substantial compliance with the notice requirements specified by law, the Certificate of Title and the Determination of Ownership will be vacated and set aside as void, and the matter remanded to Kosrae Land Court for further proceedings. Albert v. Jim, 11 FSM R. 487, 490 (Kos. S. Ct. Tr. 2003).

When the two issues a party seeks reconsideration of were raised in the other parties' filings and at the scheduled conference (which it declined to attend), the party thus had the opportunity to (and did) respond to other parties' claims, then the party was given the process that was due it. In re Engichy, 12 FSM R. 58, 66 (Chk. 2003).

When the plaintiff received notice of the hearing and had an opportunity to present its arguments to the agency, when, although the agency would have done well to explain its reasons for rejecting plaintiff's arguments, it was not legally required to do so, and when the record shows that a hearing was held, a rehearing was held, the parties were allowed to have their attorneys present, the parties were given the opportunity to file written briefs and did so, and the agency thereafter issued a 13-page written decision, the plaintiff's claim that its due process rights were violated will be dismissed for failure to state a claim, as will a civil rights claim inextricably tied to the due process claim. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 91-92 (Pon. 2003).

A court cannot order a stay in cases in another court with parties not before it and who have had no notice and opportunity to be heard; nor should it prevent other, unknown persons from seeking future court relief. Even for cases where the parties are the same, there is no authority for such extraordinary relief. Enlet v. Bruton, 12 FSM R. 187, 191 (Chk. 2003).

It violates due process for the Land Commission to hold a hearing and adjudicate ownership of a parcel of land without giving notice to a party with a demonstrated interest in that land. George v. Nena, 12 FSM R. 310, 316 (App. 2004).

The trial court has an obligation to insure that a defendant was served with the notice of trial issued by the trial court, and on that basis an appellate court will reverse the trial court judgment and remand the case for a new trial. Panuelo v. Amayo, 12 FSM R. 365, 372 (App. 2004).

When the fundamental tenets of due process are violated by the trial court's failure to provide notice of the trial to a *pro se* litigant, the trial court's later denial of his motion for relief from judgment under Rule 60 is an abuse of discretion. Panuelo v. Amayo, 12 FSM R. 365, 374 (App. 2004).

Notice and an opportunity to be heard are the essence of due process of law. Panuelo v. Amayo, 12 FSM R. 365, 374 (App. 2004).

Specific requirements of due process may vary depending on the nature of decisions to be made and the circumstances. At the core however is the right to be heard. Panuelo v. Amayo, 12 FSM R. 365, 374 (App. 2004).

Even when a litigant was provided with a subpoena by opposing counsel, which accurately stated the trial date, it is essential that the trial court insure that its own notice procedures satisfy the requirements of due process, especially where *pro se* litigants are involved. When unrepresented parties are deluged with legal documents drafted by attorneys on the opposing side, it is conceivable that confusion will result. Panuelo v. Amayo, 12 FSM R. 365, 374 (App. 2004).

When the trial court easily could have concluded a trial on the full merits of the case by extending or delaying the proceedings for a few extra hours, but chose instead to base its determination of liability upon evidence that a litigant did not have an opportunity to oppose because of lack of court-issued notice of trial,

and when the law favors the disposition of cases on their merits, the trial court's error in failing to insure that it provided the litigant with notice of the trial date and time brings into question the fairness, integrity, and public reputation of judicial proceedings. Panuelo v. Amayo, 12 FSM R. 365, 375 (App. 2004).

The procedural due process guarantee of notice protects not only the parties involved but upholds the court's integrity as well. Panuelo v. Amayo, 12 FSM R. 365, 375 (App. 2004).

A trial court commits plain error, and violates the litigant's right to due process, when it fails to serve notice of a trial date and time on a *pro se* litigant. It therefore abuses its discretion when it denied the litigant's motion for a new trial. Panuelo v. Amayo, 12 FSM R. 365, 375 (App. 2004).

A sua sponte summary judgment motion is proper so long as the court provides adequate notice to the parties and adequate opportunity to respond to the court's motion. FSM Social Sec. Admin. v. Jonas, 13 FSM R. 171, 173 (Kos. 2005).

It is a violation of due process for the Land Commission to hold a hearing and adjudicate ownership of a parcel of land without giving notice to a party with a demonstrated interest in that land. Heirs of Wakap v. Heirs of Obet, 13 FSM R. 418, 420 (Kos. S. Ct. Tr. 2005).

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

That the Kosrae Land Court went beyond the statutory requirements for notice, and provided too many notices to persons who were not entitled to personal notice by law and that this "extra" notice created a dispute, does not result in or cause a violation of the appellant's constitutional due process protections. Kun v. Heirs of Abraham, 13 FSM R. 558, 560-61 (Kos. S. Ct. Tr. 2005).

When a party had at least six days notice that it might be found in contempt and that Rule 37(b)(2)(A) sanctions might be imposed and those six days should have been sufficient and when the party took the opportunity to file various papers concerning the issues raised but did not directly address the prospect of contempt or of Rule 11 or Rule 37(b)(2)(A) sanctions although it was on notice they would be considered at the hearing, thus if the party was not heard on the Rule 37(b) sanctions, it was not because it did not have an opportunity to be heard after it was on notice that Rule 37(b)(2) sanctions would be considered. FSM Dev. Bank v. Adams, 14 FSM R. 234, 250-51 (App. 2006).

Rule 11 sanctions may be imposed on a party or his attorney or both. Since the constitutional guarantee of due process requires that the person, upon whom a sanction might be imposed, must be given notice of that possibility and the opportunity to be heard before any sanction can be imposed, before the court could consider the sanctions motion as a whole, the party's former counsel, who had withdrawn before the sanctions motions were filed, had to be given notice that Rule 11 sanctions might be imposed and an opportunity to be heard on the issue as it might relate to him. The court therefore ordered that the motion be served on former counsel, and that the clerk serve a copy of the court order on him. Amayo v. MJ Co., 14 FSM R. 355, 359 (Pon. 2006).

The essence of due process is notice and an opportunity to be heard. Dereas v. Eas, 14 FSM R. 446, 454 (Chk. S. Ct. Tr. 2006).

A judgment (or final order) entered against a person without notice or an opportunity to be heard is void and is subject to direct or collateral attack at any time, and a court that lacks personal jurisdiction over a person cannot enter a valid judgment against that person. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

When the Board of Trustees gave a party a lease to Lot No. 014-A-08 (which was duly recorded at the State Land Registry) and took its lease payments for years up to and including the January, 2005 lease payment, even assuming that the Board's later ruling that the party's lease is invalid is correct, the Board is estopped from asserting that the party had no rights in Lot No. 14-A-08 in January 2005 and the party had a right to, at a minimum, notice and an opportunity to be heard when the Board was determining whether there was a valid lease to the lot or should it be advertised for lease. Carlos Etscheit Soap Co. v. McVey, 14 FSM R. 458, 461-62 (Pon. 2006).

When a party had some right to a lot, it was, at a minimum, entitled to notice that the Board of Trustees believed the party's lease was invalid and that the Board intended to revoke the lease and put that lot up for public bid. The party was also entitled to notice and an opportunity to be heard on the issue of the lease's validity before the Board revoked the lease. When the Board did not give the party any notice and revoked its lease and issued a lease to another, this lack of notice to the party would thus make the later issuance of a lease invalid. Carlos Etscheit Soap Co. v. McVey, 14 FSM R. 458, 462 (Pon. 2006).

Actual notice as required by statute must be given for preliminary and formal hearings at the Land Commission. Notice is required because it gives a chance to be heard. However, the consequences for failing to give notice of decisions are different. The party has had a chance to be heard and to present evidence. Serving notice of an adjudication, or decision, is required in order to give the party a chance to appeal. If a party is not properly served notice of a determination of ownership, the statutory appeals period that an appeal shall be made within sixty days of the written decision's service upon the party, does not run. Heirs of Tara v. Heirs of Kurr, 14 FSM R. 521, 525 (Kos. S. Ct. Tr. 2007).

If a party was not served notice and was then denied the right to appeal, his due process rights are violated. Heirs of Tara v. Heirs of Kurr, 14 FSM R. 521, 525 (Kos. S. Ct. Tr. 2007).

The issuance of an order against the State without permitting the State both notice and an opportunity to be heard, either orally at a hearing or by giving sufficient time to submit a written response, violates the State's right to due process. Chuuk v. Andrew, 15 FSM R. 39, 42 (Chk. S. Ct. App. 2007).

Since, in any lawsuit that would remove someone's name from a certificate of title or that would deprive a person of ownership of the registered land that the certificate or determination represents, the constitutional right to due process requires that that person is an indispensable party to the action, an August 20, 1998 judgment that was rendered without either titleholder having been made a party to the case and having had an opportunity to be heard is thus void, and could be collaterally attacked by later civil actions. Ruben v. Hartman, 15 FSM R. 100, 110 (Chk. S. Ct. App. 2007).

Civil Rule 71 does not (and cannot) overthrow the due process clauses of the Chuuk and FSM Constitutions. Notice and an opportunity to be heard is the essence of due process of law. No court can grant as relief a request that would nullify a certificate of title to a person who is not before the court and award different person with the title to land for which a certificate of title had already been issued because that would have the court void certificates of title in a manner that would violate every notion of due process of law. Ruben v. Hartman, 15 FSM R. 100, 111 (Chk. S. Ct. App. 2007).

When the appellants' counsel was given notice of the hearing and chose not to appear, request a continuance, or take any other action, the appellants' due process rights were not violated because due process requires notice and an opportunity to be heard and this was provided. Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 144 (Kos. S. Ct. Tr. 2007).

When, before issuing title to someone else, the Land Court never gave the plaintiff notice or an opportunity to be heard on his claim of ownership based on a subdivision and since having notice and an opportunity to be heard are the core requirements of due process and fundamental fairness, the Land Commission and Land Court deprived the plaintiff of his right to due process when title was issued in 2002 without giving the plaintiff notice or an opportunity to be heard on his claim of ownership filed with the Land

Commission in 1987, and therefore, the 2002 title is not valid as to the plaintiff. Siba v. Noah, 15 FSM R. 189, 194-95 (Kos. S. Ct. Tr. 2007).

When no court notice of the case's hearing on the merits was ever served on the defendants, the defendants' and the real party in interest's rights to due process of law under the Chuuk and FSM constitutions were violated because a trial court commits plain error, and violates a litigant's right to due process, when the court fails to serve the notice of a trial date and time on that litigant. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 224 (Chk. S. Ct. App. 2007).

Any order in aid of judgment may be modified by the court as justice may require, at any time, upon application of either party and notice to the other, or on the court's own motion. But a court cannot decide its own motion without first giving either party notice or an opportunity to be heard because that would violate a litigant's due process rights guaranteed by both the Chuuk and FSM Constitutions since notice and an opportunity to be heard is the essence of due process. Albert v. O'Sonis, 15 FSM R. 226, 234 (Chk. S. Ct. App. 2007).

When a court makes a motion sua sponte, it must give the parties notice and an opportunity to respond before it decides; just as when a party makes a motion, the other party generally must be given an opportunity to respond before the court rules. Albert v. O'Sonis, 15 FSM R. 226, 234 (Chk. S. Ct. App. 2007).

Since a suit maintained as a class action under Rule 23 has res judicata effect on all class members, due process requires that notice of a proposed settlement be given to the class. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 443, 445 (Yap 2007).

The statute requires that a notice of a land registration hearing be given to all interested parties and claimants, and to the public. "Interested parties" is not defined. Claimants are presumably those persons who are known to have filed a claim to register the land. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

In a Torrens land registration system, it is in the land owner's interest for notice to be given as broadly as possible since the certificate of title the landowner gets at the end of the process is conclusive upon any person who had notice of the proceedings and all those claiming under that person, but only prima facie evidence of ownership against all others. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

Adjoining landowners, even if not claimants, would, because of their common boundaries, be interested parties, along with anyone else who holds some interest in the land, such as a mortgagee, an easement holder, or a holder of a covenant running with the land. But even if the adjoining landowners were not interested parties, Land Court notice to them is not contrary to law. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

Notice of land registration hearings must be given to the public in general. The hearings are public, and anyone may attend. Land Court proceedings are not ones which only the known claimants may attend. One purpose of public notice at various stages of the registration process is to reach as many persons as possible so that, at the end, the certificate of title will be conclusive against as many persons as possible, which is to the certificate holder's considerable benefit. The statute requiring that actual notice be given to claimants, is a minimum requirement, not the maximum permissible. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 572 (App. 2008).

Once a new claim arose, the other claimants were entitled to notice of it and to have a preliminary map showing the claims in dispute posted during a formal hearing. Due process requires that the new claim be surveyed, a new preliminary map prepared showing the overlapping claims, and a new, or second, formal hearing held with the new preliminary map posted. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567,

572 (App. 2008).

It is a due process violation and constitutional error for a court to base its decision, in whole or in part, on evidence of which a party has not had both notice and the opportunity to be heard. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 573 (App. 2008).

The process due to land claimants under the Kosrae Land Court Rules requires that a preliminary map showing all claims be posted at a formal hearing so that the presiding judge and the witnesses can view it and the claimants have an opportunity to be heard on any disputes. When the Land Court based its decision on a map prepared long after the formal hearing and on which the appellants had no opportunity to comment and no map showing the overlapping claims was available at the hearing, a second formal hearing should have been held once the new (second) preliminary map was prepared showing both sides' claims. The matter will therefore be remanded to the Land Court for that court to hold another formal hearing at which a map showing all the claimed boundaries must be posted and at which the parties will have the opportunity to be heard on the matter of the overlapping claims and the two preliminary maps and for which the Land Court will give actual notice to all claimants and to all interested parties. Interested parties shall be interpreted to include the adjoining landowners. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 573 (App. 2008).

Imposition of Rule 46(c) disciplinary sanctions is subject to due-process scrutiny. Adequate notice and an opportunity to be heard are the essence of due process. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 107 (App. 2008).

When, although the notice did not cite any of the Rules of Professional Conduct that the reprimand found that the attorney violated, it was adequate notice because it did state what act or omission of counsel may lead to discipline and cited the relevant appellate rule. The attorney ought to have been aware that he was facing some sort of sanction for not timely filing a brief and that the sanction would be imposed under Rule 46(c). Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 108 (App. 2008).

Motions may be decided without oral argument. Where argument would not be helpful to the decisional process, it will not be required on a dismissal issue when the appellants have had, and have taken, their opportunity to be heard by filing written submissions. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 111 (App. 2008).

When the court, through a single justice, has made its own motion to dismiss as a matter of docket management, it cannot decide its own motion without first giving the parties notice and an opportunity to be heard because that would violate a litigant's due process rights guaranteed by the FSM Constitution since notice and an opportunity to be heard is the essence of due process. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 113 (App. 2008).

When an order constituted the *sua sponte* motion to dismiss and the notice to the appellants of the motion to dismiss and when, although it did not cite Rule 27(c), the order did give notice that the appeal was subject to dismissal and the factual basis (failure to file a brief and thus failure to comply with Rule 31) for the possible dismissal, the appellants had notice of the facts they had to respond to and the probable result if they were unable to show cause. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 113 (App. 2008).

Imposition of Appellate Rule 46(c) disciplinary sanctions is subject to due-process scrutiny. Adequate notice and an opportunity to be heard is therefore required. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 123 (App. 2008).

An order that never mentions the legal services corporation law firm was inadequate on its face to serve as notice to sanction the firm, and when it was not served separately on the firm so that the firm could respond, the firm thus had no notice of any possible sanction. Although the firm is definitely responsible for supervising its attorneys, its reprimand, no matter how deserving, must be reversed because of the

complete absence of any separate notice to it. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 123 (App. 2008).

Although the notice provided to an attorney in an order did not cite any of the Rules of Professional Conduct that the later reprimand found that the attorney violated, when it was notice that, if the attorney could not show good cause why no opening brief had been filed, he would then be subject to disciplinary action under Rule 46(c). Since it stated what act or omission of counsel may lead to discipline and cited Rule 46(c), the notice given was adequate for the attorney to have understood that he was facing a possible sanction for not timely filing a brief, and that, if it were imposed, the sanction would be imposed under Appellate Rule 46(c). Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 123 (App. 2008).

Motions may be decided without oral argument. When it does not appear that argument would help the decisional process, oral argument is not required on a dismissal issue, when the appellant has had, and has taken, his opportunity to be heard by filing written submissions. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 127 (App. 2008).

The court may, through a single justice, make its own motion to dismiss as a matter of appellate docket management. A court cannot decide its own motion without first giving the parties notice and an opportunity to be heard because that would violate a litigant's due process rights guaranteed by the FSM Constitution since notice and an opportunity to be heard is the essence of due process. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 128-29 (App. 2008).

Service of a notice of trial by placing the notice in a counsel's box in the clerk's office is deficient service and tantamount to non-service when it results in a party's failure to be informed of the noticed trial date. When a court's notice of trial on the merits is not served on a party, that party's rights to due process of law under the Chuuk and FSM constitutions are violated, and the trial court's failure to serve notice of a trial date and time is plain error. Farek v. Ruben, 16 FSM R. 154, 157 (Chk. S. Ct. App. 2008).

A judgment or final order entered against a person without notice or an opportunity to be heard is void and is subject to direct or collateral attack at any time. Farek v. Ruben, 16 FSM R. 154, 157 (Chk. S. Ct. App. 2008).

A trial court's failure to notify the appellants of trial was plain error and the judgment that was entered is therefore void. Farek v. Ruben, 16 FSM R. 154, 157 (Chk. S. Ct. App. 2008).

Although appellants could have addressed the issue of deficient notice of trial with an appropriate filing in the trial court, they were not required to before filing an appeal since a trial court may not shirk its responsibility to provide notice in compliance with due process merely because a party has a measure of recourse when notice is deficient. Farek v. Ruben, 16 FSM R. 154, 157 (Chk. S. Ct. App. 2008).

Where a plain error is involved that is obvious and substantial and that seriously affects the fairness, integrity, or public reputation of judicial proceedings, a party will not be deemed to have waived the right to challenge the issue on appeal. In such cases, where the court's integrity is brought into question because the court did not follow its own procedures for providing notice of trial, the only remedy is to permit a new trial where adequate notice is given. Farek v. Ruben, 16 FSM R. 154, 157-58 (Chk. S. Ct. App. 2008).

Although Kosrae statutes do not specifically state that a pre-dismissal hearing is required, constitutional due process in the FSM does require that a governmental, non-probationary employee be given some opportunity to respond to the charges against him before his dismissal may be implemented, which includes: oral or written notice of the charges against him, an explanation of the employer's evidence and an opportunity to present his side of the story. Palsis v. Kosrae, 16 FSM R. 297, 306 (Kos. S. Ct. Tr. 2009).

Although Kosrae statutes do not specifically state that a pre-dismissal hearing is required, once it is determined that the statute establishes a property right subject to protection under the due process clause,

constitutional principles determine what process is due as a minimum. Palsis v. Kosrae, 16 FSM R. 297, 306 (Kos. S. Ct. Tr. 2009).

The constitution is consistent with the Kosrae State Code and the Public Service System statutes which will not be set aside as contrary to due process since, in the absence of statutory language to the contrary, the statutory mandate may be interpreted as assuming compliance with the constitutional requirements. Thus, when the Kosrae State Code states that written notice setting forth the specific reasons for the dismissal or demotion and the employee's rights of appeal must be transmitted to the employee but is silent as to whether a dismissal may be implemented before some kind of hearing is provided, this is not read as an attempt to authorize immediate dismissal for all purposes without giving the employee a right to respond but instead as an indication of solicitude, demonstrating the intention to assure that employees' rights be observed. Palsis v. Kosrae, 16 FSM R. 297, 306-07 (Kos. S. Ct. Tr. 2009).

When, at the time of her termination, the plaintiff was a permanent state employee and since a "regular employee" or "permanent employee" means an employee who has been appointed to a position in the public service and who has successfully completed a probation period, the plaintiff's claim to employment was supported by more than her mere personal hope of employment and the state had a legal obligation to employ the plaintiff. Thus, the plaintiff had a property right which was protected by the due process clause. Procedural due process requires notice and an opportunity to be heard, so as to protect the employee's rights and insure that discipline is not enforced in an arbitrary manner. Palsis v. Kosrae, 16 FSM R. 297, 307 (Kos. S. Ct. Tr. 2009).

A state employee with a property right is entitled to a pre-termination hearing that includes notice and an opportunity to be heard. The employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. Palsis v. Kosrae, 16 FSM R. 297, 307 (Kos. S. Ct. Tr. 2009).

An essential principle of due process is that a deprivation of life, liberty, or property be preceded by notice and an opportunity for hearing appropriate to the nature of the case. This requires some type of hearing prior to the discharge of an employee who has a constitutionally-protected interest in his or her employment. The pre-termination hearing, though necessary, need not be elaborate. The formality and procedural requisites for the hearing can vary, depending upon the importance of the interest involved and the nature of the subsequent proceedings that are available. In general, something less than a full evidentiary hearing is sufficient prior to adverse administrative action. The pre-termination hearing does not definitively resolve the propriety of discharge, but is an initial check against mistaken decisions. The essential requirements are notice and an opportunity to respond. The state employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story and to require more than this prior to termination would intrude to an unwarranted extent on the government's interest in quickly removing an unsatisfactory employee. Palsis v. Kosrae, 16 FSM R. 297, 309 (Kos. S. Ct. Tr. 2009).

Since a state employee's pre-termination hearing need not be elaborate and since a notice of a hearing can be oral and is highly informal, given that the employee is given the opportunity for a post-deprivation hearing, where the employee was given notice on August 7, 2007 when she received a notice-of-dismissal letter and the dismissal did not become effective until August 30, 2007 and thus she was not deprived of benefits until then, an August 7, 2007 meeting constituted a pre-termination hearing as did a later August 15, 2007 meeting because, at both meetings, she was given an opportunity to respond to the charges against her and she had not yet been deprived of benefits and because the meetings served as an initial check of the charges since she was given an opportunity to explain her side of the story and the Director discussed the evidence for dismissal as stated in the termination letter and was open to questions regarding the reasons for dismissal. Also, when, at the August 15, 2007 meeting, her representative took the opportunity to be heard on her behalf, asked questions to the Director; tried to negotiate a settlement; and presented her side of the story, the requirements of notice and an opportunity to respond were met. Because she had notice and an opportunity to be heard prior to dismissal, her due process rights were not

violated as a pre-termination hearing was held. Palsis v. Kosrae, 16 FSM R. 297, 311 (Kos. S. Ct. Tr. 2009).

There was no reversible error when the parties certainly had adequate notice of a "subdivision" before the October 18, 2005 Land Court hearing since they knew of it before the 2003 appeal and the 2005 remand and hearing; when one side's assertion that they were not "given the chance to stake out their claims" before the land was subdivided would be a cause of concern if they had claimed less than the entire land, but they claimed the whole unsurveyed land, as did the other side; and since, if the Land Commission erred, it was harmless error because neither side can show that they were prejudiced by this "subdivision" and both sides had the opportunity to assert and to prove their respective claims to both parcels and because the "subdivision" did not prevent or hinder either side from claiming, and trying to prove, that they had title to both parcels. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 376 (Kos. S. Ct. Tr. 2009).

Even if the Land Commission thinks it is only correcting its own error, due process still requires that it give notice and an opportunity to be heard to any party which the "correction" might appear to adversely affect. Although the Land Commission may think it is only correcting its own error, it is always possible that its "correction" could be an error. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 554 (Chk. S. Ct. App. 2009).

When a plaintiff has alleged violation of her due process rights, but it is proven otherwise, the plaintiff cannot recover under the civil rights statute. When, at trial, the plaintiff did not present evidence that she was treated differently than any other person in the same class and did not present evidence that she was denied notice and an opportunity to be heard, the state is not liable to her on the claims of denial of equal protection of the laws, violation of due process, and violation of her civil rights. Berman v. Pohnpei, 16 FSM R. 567, 577 (Pon. 2009).

When the plaintiff's lease had not been voided after notice and an opportunity to be heard before its leased lot was advertised for immediate commercial lease, the Board violated the plaintiff's civil rights because it denied the plaintiff the due process of law when it did not give the plaintiff prior notice and an opportunity to be heard on the validity of its lease. This is because notice and an opportunity to be heard are the essence of due process of law. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 110 (Pon. 2010).

Defendants did not violate the plaintiff's civil rights when neither defendant was a government agency or was claiming to act under color of law or injured, oppressed, threatened, or intimidated the plaintiff's exercise or enjoyment of its civil rights and when neither was responsible for giving the plaintiff notice and an opportunity to be heard; neither prevented the plaintiff from being given notice; and neither injured, oppressed, threatened, or intimidated the plaintiff to prevent it from having an opportunity to be heard. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 110 (Pon. 2010).

Determination of a land's exact boundaries, certification of a survey map for the area, and the issuance of a certificate of title for the land, are all acts that a court is legally unable to do when the court would need before it all the current owners of the part of the land not claimed by the plaintiff, all owners of all property abutting the land's purported boundaries, and any other landowners in the vicinity whose property or property lines would have to appear on a certified survey map for the land and when none of these necessary parties, with the exception of the defendant are before the court and because the court cannot make rulings that would affect or determine their rights without their presence or participation. Church of the Latter Day Saints v. Esiron, 17 FSM R. 229, 233 (Chk. 2010).

A court does not need the presence of all owners of all property abutting the land's purported boundaries, and any other landowners in the vicinity whose property or property lines would have to appear on a certified survey map to decide the limited issue raised by a plaintiff's cause of action for trespass, that is, to decide whether the defendant is trespassing or occupying land to which the plaintiff church has a

better right to possess or occupy. The court does not need to (and without the other necessary parties cannot) determine where all of the other boundaries lie because the only issue properly before the court, and the only issue the court may rule upon without violating the due process rights of non-parties, is whether it is more likely than not that the land the plaintiff leased was owned by the lessor and because the determination of boundaries of any other parts of the land which the plaintiff does not claim a leasehold or of the boundaries of any other parcels of land in the area is not before the court. Church of the Latter Day Saints v. Esiron, 17 FSM R. 229, 233-34 (Chk. 2010).

Procedural due process, or fairness, requires notice and an opportunity to be heard. Fundamentally, the government may not strip its citizens of property in an unfair or arbitrary manner; the Constitution requires the government to follow procedures calculated to assure a fair and rational decision-making process. Palsis v. Kosrae, 17 FSM R. 236, 240 (App. 2010).

The essential features of procedural due process require notice and opportunity to be heard. Palsis v. Kosrae, 17 FSM R. 236, 241 (App. 2010).

When a terminated state employee, since she was given an immediate opportunity to respond and another opportunity to respond one week later, had two opportunities to be heard after being informed of the reasons for her dismissal, and when after these two opportunities, she had two full post-termination evidentiary hearings that analyzed the Hospital's decision to terminate her employment, her procedural due process rights were not violated. Palsis v. Kosrae, 17 FSM R. 236, 242 (App. 2010).

Before a land registration team commences hearing with respect to any claim, the Land Commission must provide notice at least thirty (30) days in advance. Specific notice must be served upon all parties shown by the preliminary inquiry to be interested. Setik v. Ruben, 17 FSM R. 465, 473 (App. 2011).

In failing to make a reasonable inquiry as to the Setiks' occupation of the land, in failing to provide notice to the Setiks of the determination of ownership hearing, and in issuing the determination of ownership to another without an application by her, the Land Commission deprived the Setiks of due process. The determination of ownership was thus not valid, and the matter must be remanded to the Land Commission for a new determination. Setik v. Ruben, 17 FSM R. 465, 474 (App. 2011).

A court hears before it condemns, and that while a court that has announced a decision without notice and an opportunity to be heard can always be asked to recall its decision and listen to argument this opportunity, as every lawyer knows, is a poor substitute for the right to be heard before the decision is announced. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 629 (App. 2011).

When the court is considering revision of a partial summary judgment, it must provide the parties with notice adequate to give them an opportunity to present evidence relating to any revived issues at trial. FSM v. Shun Tien 606, 18 FSM R. 79, 82 (Pon. 2011).

The National Public Service System Act and the Public Service System Regulations establish continued employment for non-probationary national government employees by limiting the permissible grounds and specifying the necessary procedures for their dismissal. This is sufficient protection of the right to continued national government employment to establish a non-probationary employee's property interest which may not be taken without due process, including notice and an opportunity to be heard. Poll v. Victor, 18 FSM R. 235, 244 (Pon. 2012).

When a court's notice of trial on the merits is not served on a party, that party's rights to due process of law under the Chuuk and FSM Constitutions are violated, and the failure to serve notice of a trial date and time is plain error. Phillip v. Moses, 18 FSM R. 247, 250 (Chk. S. Ct. App. 2012).

Notice and an opportunity to be heard is the essence of due process as guaranteed by both the Chuuk and FSM Constitutions. Phillip v. Moses, 18 FSM R. 247, 250 (Chk. S. Ct. App. 2012).

Since any application to the court for an order is a motion, when a shipowner filed an application for the limitation of its liability in a pending case, it is a motion, which, unless lengthened or shortened by court order or rule, a party has ten days to respond to. Thus, when the other parties were not allowed the ten days to respond to shipowner's limitation motion because the court granted the motion and issued the orders after only five or six days, they were not given the procedural due process afforded them by the civil procedure rules and for that reason alone, the orders should be considered voidable and vacated. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 313 (Yap 2012).

A party's written Rule 11 motion constituted notice that it was seeking sanctions in the form of attorney's fees and the adverse parties' written opposition was their opportunity to be heard and they were heard on the papers. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 376 (App. 2012).

When a sanction is the result of the court's own motion, it must be vacated if the trial court did not give notice that it was making a motion because a trial judge abuses his discretion when, without prior notice and an opportunity to be heard, the court sua sponte imposes a Rule 11 sanction on an attorney. The manner in which Rule 11 sanctions are imposed must comport with due process requirements, and, at a minimum, notice and an opportunity to be heard are required. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 376 (App. 2012).

Since a defendant must receive notice of all claims for relief on which the court might find him liable and enter judgment against him, a default judgment that was rendered against a defendant who never appeared and that included damages for claims not raised in the complaint served on him or sums not prayed for by the plaintiff would violate due process. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 412, 416 (Yap 2012).

It is a due process violation and constitutional error for a court to base its decision, in whole or in part, on evidence of which a party has not had both notice and the opportunity to be heard, but when the defendants were served with all documents since the beginning of the matter and had the opportunity to respond but failed to do so, their claim for a violation of due process has no merit. Helgenberger v. FSM Dev. Bank, 18 FSM R. 498, 501 (App. 2013).

A plaintiff, who challenges another's right to an interest in land and seeks to exercise an interest in land that excludes that other's supposed rights to the land, ought to, as a matter of due process, name that other as a party defendant. Otherwise that other party will be deprived of its interest without notice and an opportunity to be heard. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 573, 575 (Pon. 2013).

Notice and an opportunity to be heard are the essence of due process of law. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 155 (Chk. 2013).

Due process would seem to require a prompt post-seizure hearing before the administrative agency that has administratively levied execution of unpaid taxes. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 155 (Chk. 2013).

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

The imposition of disciplinary sanctions is subject to due-process scrutiny. Adequate notice and an opportunity to be heard are the essence of due process. In re Sanction of Sigrah, 19 FSM R. 305, 309 (App. 2014).

When the notice of the hearing did not mention that the subject of the hearing was the plaintiffs' request for a temporary restraining order and a preliminary injunction, the defendant's opportunity to be heard at the hearing was rather meaningless, especially when shortly into the hearing the trial judge stated that he had enough in the file to issue a temporary restraining order preventing the defendant from entering the land. Since the defendant had inadequate notice of the hearing and its subject matter, he did not have an adequate opportunity to be heard before the decision to grant a temporary restraining order was announced during the hearing or before the preliminary injunction entered the next day. Nena v. Saimon, 19 FSM R. 317, 326 (App. 2014).

The National Public Service System Act and the Public Service System Regulations establish continued employment for non-probationary national government employees by limiting the permissible grounds, and specifying the necessary procedures for their dismissal. This is sufficient protection of the right to continued employment to establish a property interest for non-probationary employees which may not be taken without due process, including notice and an opportunity to be heard. Manuel v. FSM, 19 FSM R. 382, 390 (Pon. 2014).

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

When at a minimum, the Education Director should have been given notice of the allegations and evidence on which the Board based its resolution to terminate her, and she should have been given an opportunity to respond or to explain her actions or omissions and to rebut any false allegations but was not, her likelihood of success on her due process claim seems almost certain because this is the essence of due process – notice and an opportunity to be heard. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 649 (Chk. S. Ct. Tr. 2015).

A customer of a government-owned utility does have a due process right to proper notice before the utility is disconnected. Wainit v. Chuuk Public Utility Corp., 20 FSM R. 135, 137 (Chk. 2015).

Notice and an opportunity to be heard constitute the core requirements of due process and fundamental fairness. Ittu v. Ittu, 20 FSM R. 178, 187 (App. 2015).

It is a due process violation and constitutional error for a court to base its decision, in whole or in part, on evidence to which a party has not been provided both notice and an opportunity to be heard. Ittu v. Ittu, 20 FSM R. 178, 187 (App. 2015).

A land claimant was dutifully allowed to be heard on his claim, when he actively participated in the proceedings, when during the Land Court hearing, he proceeded to "open the door," in terms of an attempt to transform the complexion of the relief sought from a boundary dispute into a claim encompassing an entire parcel; when it was undisputed between the parties, that he owned land situated on a plat, which lies adjacent to the parcel; and when the Land Court received testimony regarding that adjacent plat in order to determine the exact location of the respective properties. Ittu v. Ittu, 20 FSM R. 178, 187 (App. 2015).

When the right of way determination was part of the 1997 remand and therefore cannot be characterized as a surprise to the appellant; when he was provided ample opportunity to be heard and present evidence, with respect to where the boundary between land he owned and that of the appellee was located; when he took the opportunity to claim a boundary that would award him the entire parcel; and when there was zealous participation on his part during the relevant proceedings, he received both notice and an opportunity to be heard. Ittu v. Ittu, 20 FSM R. 178, 187 (App. 2015).

A party's assertion, sounding in a deprivation of an individual's unassailable right to be afforded both notice and an opportunity to be heard, is refuted by the fact that he actively participated in the subject proceedings. Ittu v. Ittu, 20 FSM R. 178, 187 (App. 2015).

An allegation of a procedural due process violation, that takes issue with a purported lack of notice, strains credulity when it is belied by previously-filed, repeatedly unsuccessful motions to stave off the transfer of ownership that show that, not only were the claimants provided adequate notice, but they were also afforded ample opportunity to be heard and took full advantage of such participation. Setik v. Perman, 21 FSM R. 31, 38-39 (Pon. 2016).

When raising res judicata *sua sponte*, due process requires that the court give the opposing party notice and an opportunity to respond. Waguk v. Waguk, 21 FSM R. 60, 68 (App. 2016).

When service of the Land Court decision was made on someone who did not reside with the appellant, that service was insufficient, and the fact that the appellant became aware of the Land Court's decision later is not equivalent to being properly served to safeguard her due process rights. If a party was not served notice and was then denied the right to appeal, his or her due process rights are violated. Esau v. Penrose, 21 FSM R. 75, 80-81 (App. 2016).

It is well established, that when a judgment has been entered against a party without notice or an opportunity to be heard, it is void and subject to direct or collateral attack at any time. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 121 (App. 2017).

A customer of a government-owned utility does have a due process right to proper notice before the utility is disconnected, and must therefore also have other due process rights. Kitti Mun. Gov't v. Pohnpei Utilities Corp., 21 FSM R. 408, 409 (Pon. 2017).

Due process requires that a non-probationary government employee be given some opportunity to respond to the charges against him before his dismissal may be implemented; including oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. Phillip v. Pohnpei, 21 FSM R. 439, 444 (Pon. 2018).

Even though the lessee's inertia could lead the Board to reasonably conclude that the leased lot would remain undeveloped, this dormancy did not relieve the Board from providing notice and an opportunity to be heard with regard to the improperly executed lease to a different lessee. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 534 (App. 2018).

When the owner of registered land sells or gifts registered land, all that is needed for a valid transfer is the delivery to the Land Court of a properly notarized deed (with each needed signature properly notarized) combined with the surrender of the grantor's old duplicate certificate of title. Proper and strict compliance with these requirements is the due process that is sufficient (and required) for the issuance of a new certificate of title to the grantee. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 582 (App. 2018).

Notice and opportunity to be heard are the core requirements of due process and fundamental fairness, and, although specific requirements of due process may vary depending on the nature of decisions to be made and the circumstances, the right to be heard is at the core. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 633 (Pon. 2020).

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

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

– Due Process – Substantive

Because there is a rational basis, linked to legitimate government purposes of increasing the availability of health care services, for providing immunity from patient suits to U.S. Public Health Service physicians, the Federal Programs and Services Agreement's immunity provisions are not in violation of a plaintiff's due process rights. Samuel v. Pryor, 5 FSM R. 91, 106 (Pon. 1991).

Among the rational bases supporting the constitutionality of a state statute capping wrongful death recovery are a desire to create foreseeable limits on government liability; to promote insurance; to encourage settlement of claims; and to ease the burden on courts and families of valuing losses incurred through the death of a family member. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 363 (Kos. 1992).

A Governor's proclamation that continues municipal officials in office indefinitely, violates the people's rights to substantive due process, in that they have no say in their municipal government since all of its officials are now appointed by and now hold office due to the Governor; and to equal protection of the laws, in that the municipal citizens are treated differently based on their ancestry (they and their ancestors are from Romalum) from citizens of other Chuuk municipalities in not being allowed an elected municipal government. Buruta v. Walter, 12 FSM R. 289, 295 (Chk. 2004).

While procedural due process requires governmental decision-making to conform with the concept of what is fair and just, substantive due process, on the other hand, addresses the legislature's rationality. Substantive due process protects individual liberty interests against certain governmental actions regardless of the fairness of the procedure used to implement them. FSM Dev. Bank v. Adams, 14 FSM R. 234, 248 n.6 (App. 2006).

With substantive due process, the court looks at the rationale or legitimacy of the governmental interest. In subjecting a statute or court rule to the requirement of substantive due process, the court asks: 1) Does the government have power to regulate the subject matter? If the statute or rule is not within the power of the government, such statute or rule will be struck down. 2) If the government has the power to regulate, the court next asks if what the statute or rule proposes to do bears a rational relationship to the implementation of the legislative goal. 3) Finally, where the statute or rule involved arguably infringes upon individuals' fundamental rights, the court must ask how important is the legislative objective. The court must ask if there is a compelling governmental interest to justify holding the statute or rule valid, even though the statute might limit fundamental rights. FSM Dev. Bank v. Adams, 14 FSM R. 234, 248 n.6 (App. 2006).

When the plaintiff's reasoning neglects to cite what constituted an alleged illegal termination since the only factual averments which depict allegedly untoward conduct on the defendants' part, albeit nebulous, only apply to one defendant, the requisite nexus to support a substantive due process violation is wanting. Solomon v. FSM, 20 FSM R. 396, 402 (Pon. 2016).

Substantive due process protects individual liberty interests against certain governmental actions regardless of the fairness of the procedure used to implement them. Phillip v. Pohnpei, 21 FSM R. 439, 444 (Pon. 2018).

While procedural due process requires governmental decision-making to conform with the concept of

what is fair and just, substantive due process, on the other hand, addresses the rationality of the legislature. With substantive due process, the court basically looks at the rationale or legitimacy of the governmental interest. Phillip v. Pohnpei, 21 FSM R. 439, 444 (Pon. 2018).

– Due Process – Vagueness

A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law. FSM v. Nota, 1 FSM R. 299, 304 (Truk 1983).

A criminal statute must not be so vague and indefinite as to fail to give fair notice of what acts will be punished but the right to be informed of the nature of the accusation does not require absolute precision or perfection of criminal statutory language. Laion v. FSM, 1 FSM R. 503, 507 (App. 1984).

The right to be informed of the nature of the accusation requires that a statute be sufficiently explicit to prescribe the offense with reasonable certainty and not be so vague that persons of common intelligence must necessarily guess at its meaning. Laion v. FSM, 1 FSM R. 503, 507 (App. 1984).

The required degree of precision under the right to be informed of the nature of the accusation may be affected by considerations such as limits upon the capacity for human expression and difficulties inherent in attempts to employ alternative methods of stating the concept. Laion v. FSM, 1 FSM R. 503, 508 (App. 1984).

Some generality may be inescapable in proscribing conduct but the standard of precision required under the right to be informed of the nature of the accusation is greater in criminal statutes than in civil statutes. Laion v. FSM, 1 FSM R. 503, 508 (App. 1984).

Courts are far more inclined to set aside as unconstitutionally vague statutes or ordinances reaching into marginal areas of human conduct such as prohibitions against loitering or vagrancy aimed at conduct often thought of as offensive or undesirable, but not directly dangerous to others. Laion v. FSM, 1 FSM R. 503, 509 (App. 1984).

Prohibitions against assaults with dangerous weapons fall within the more traditional realm of criminal law and therefore are entitled to greater deference by courts in determining whether they are unconstitutionally vague. Laion v. FSM, 1 FSM R. 503, 509 (App. 1984).

Commonly accepted meanings arising out of prior court interpretations in the jurisdictions from which statutes are borrowed may be considered in testing a claim that the statute is unconstitutionally vague. Laion v. FSM, 1 FSM R. 503, 509-10 (App. 1984).

There is no suggestion in the Constitutional Convention Journal that the framers of the FSM Constitution wanted to depart from or expand upon United States constitutional principles concerning particularity and definitions in criminal statutes. Reliance in the Report of the Committee on Civil Liberties upon United States court decisions in explaining the words confirms that the intent was to adopt the American approach concerning the statutory specificity needed so as not to be unconstitutionally vague. Laion v. FSM, 1 FSM R. 503, 513 (App. 1984).

In considering whether the term "dangerous weapon" is so vague as to render 11 F.S.M.C. 919 unconstitutional, it is relevant that a court in the United States has held that term sufficiently definite to meet United States constitutional standards. Laion v. FSM, 1 FSM R. 503, 513 (App. 1984).

"Dangerous device" as defined under the Weapons Control Act is not unconstitutionally vague. The language, properly interpreted, affords sufficient notice so that conscientious citizens may avoid inadvertent violations, and constructs sufficiently definite standards to prevent arbitrary law enforcement. Joker v. FSM, 2 FSM R. 38, 45 (App. 1985).

When an information alleges violation of a statute, that statute must be drawn so as to give a person of ordinary intelligence fair notice that the contemplated conduct was forbidden. Laws must provide explicit standards for those who apply them. FSM v. Moses, 9 FSM R. 139, 145 (Pon. 1999).

When a vague statute abuts upon sensitive areas of basic freedoms, it operates to inhibit the exercise of those freedoms. Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked. FSM v. Moses, 9 FSM R. 139, 146 (Pon. 1999).

Congress did not exceed its constitutional authority when it defined a national crime as one committed "against a national public servant in the course of, in connection with, or as a result of that person's employment or service;" nor was this definition so vague that it does not give reasonable notice of what conduct is prohibited, or encourages arbitrary and discriminatory enforcement. FSM v. Anson, 11 FSM R. 69, 73 (Pon. 2002).

Due process generally requires that the government provide an individual with notice and an opportunity to be heard before taking away that person's liberty. A person has a liberty interest in not being criminally prosecuted without notice of what conduct is prohibited. A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law, as it fails to give people notice of what conduct is prohibited. FSM v. Anson, 11 FSM R. 69, 75 (Pon. 2002).

The right to be informed of the nature of the accusation requires that a statute be sufficiently explicit to prescribe the offense with reasonable certainty and not be so vague that persons of common intelligence must necessarily guess at its meaning. Some generality may be inescapable in proscribing conduct, but the standard of precision required under the right to be informed of the nature of the accusation is greater in criminal statutes than in civil statutes. FSM v. Anson, 11 FSM R. 69, 75 (Pon. 2002).

Certain types of criminal prohibitions are subject to greater scrutiny on grounds of vagueness. Courts are far more inclined to set aside as unconstitutionally vague statutes or ordinances reaching into marginal areas of human conduct such as prohibitions against loitering or vagrancy aimed at conduct often thought of as offensive or undesirable, but not directly dangerous to others, but prohibitions against assaults with dangerous weapons, for example, fall within the more traditional realm of criminal law and are therefore entitled to greater deference by courts in determining whether they are unconstitutionally vague. FSM v. Anson, 11 FSM R. 69, 75 (Pon. 2002).

There are two aspects to consider in determining whether a criminal statute is unconstitutionally vague. First, the statute must ensure fair notice to the citizenry, and second it must provide standards for enforcement by the police, judges and juries. FSM v. Anson, 11 FSM R. 69, 75 (Pon. 2002).

Because it is assumed that people are free to steer between lawful and unlawful conduct, it is necessary that laws give the people of ordinary intelligence a reasonable opportunity to know what is prohibited, so that they may act accordingly. Vague laws may trap the innocent by not providing fair warning. FSM v. Anson, 11 FSM R. 69, 75-76 (Pon. 2002).

If arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application. FSM v. Anson, 11 FSM R. 69, 76 (Pon. 2002).

A statute that provides clear notice and fair warning that an assault on a national public servant while she is working in her national government office is conduct prohibited by national law. FSM v. Anson, 11 FSM R. 69, 76 (Pon. 2002).

Laws cannot define the boundaries of impermissible conduct with mathematical certainty. Whenever the law draws a line there will be cases very near to each other on the opposite side. The precise course of the line may be uncertain, but no one can come near it without knowing that he does so. FSM v. Anson, 11 FSM R. 69, 76 (Pon. 2002).

When the purpose, intent and meaning of the Act can be ascertained by reading the disjunctive provisions of the statute together, and it is clear that Congress intended that conduct like that charged in this case be prohibited under national law the law is not unconstitutionally vague. FSM v. Anson, 11 FSM R. 69, 76 (Pon. 2002).

The definition of the offense of "defamation" does not provide detailed warning of what type of speech is regulated whereas in other criminal offenses where speech is regulated, the specified words constituting the offense are listed. Kosrae v. Waguk, 11 FSM R. 388, 391 (Kos. S. Ct. Tr. 2003).

The offense of defamation does not provide adequate notice of what speech is regulated. A statute, properly interpreted, must give sufficient notice so that conscientious citizens may avoid inadvertent violations. The statute must also provide sufficiently definite standards to prevent arbitrary law enforcement. Kosrae v. Waguk, 11 FSM R. 388, 391 (Kos. S. Ct. Tr. 2003).

When an information alleges violation of a statute, that statute must be drawn so as to give a person of ordinary intelligence fair notice that the contemplated conduct is forbidden. Laws must provide explicit standards for those who apply them. Kosrae v. Waguk, 11 FSM R. 388, 391-92 (Kos. S. Ct. Tr. 2003).

The Kosrae criminal offense of "defamation" does not contain specific language defining the conduct or speech which forms the offense. There are no specific words or conduct listed in the offense which forms the basis for the defamatory conduct. Kosrae v. Waguk, 11 FSM R. 388, 392 (Kos. S. Ct. Tr. 2003).

Since the Kosrae criminal defamation statute does not protect tradition, it may not impair a defendant's fundamental right of freedom of expression. The defamation statute impairs the fundamental right of freedom of expression because it fails to provide a specific standard of criminal conduct, thereby persons would not have adequate notice of what type of speech was regulated under it. Kosrae v. Waguk, 11 FSM R. 388, 392 (Kos. S. Ct. Tr. 2003).

The standard for consideration whether a statute is unconstitutionally vague is that a criminal statute must give fair notice of what acts are criminal conduct and subject to punishment; and the statute must be sufficiently explicit to prescribe the offense with reasonable certainty and not be so vague that person of common intelligence must necessarily guess at its meaning. However, it is accepted that some generality may be necessary in describing the prohibited conduct. Kosrae v. Phillip, 13 FSM R. 285, 289 (Kos. S. Ct. Tr. 2005).

The criminal offense of driving under the influence, as defined in Kosrae State Code, Section 13.710, is not unconstitutionally vague. The term "under the influence" does give people of ordinary intelligence a reasonable opportunity to know and understand what conduct is prohibited and how to avoid violation. Kosrae v. Phillip, 13 FSM R. 285, 291 (Kos. S. Ct. Tr. 2005).

A criminal statute must not be so vague and indefinite as to fail to give fair notice of what acts will be punished but the right to be informed of the nature of the accusation does not require absolute precision or perfection of criminal statutory language. When the statute complained of, while not mathematically precise, gives fair notice of the acts that will be punished, payment for expenses other than expenses incurred in the course of official public relations, entertainment activities or constituent services necessary to advance the national government's purposes and goals, the prosecution will not be dismissed on the ground that the statute was unconstitutionally vague. FSM v. Kansou, 14 FSM R. 128, 130 (Chk. 2006).

Kosrae State Code § 13.313 is unconstitutionally vague because it fails to provide a specific standard of criminal conduct and therefore does not give adequate notice of what type of speech is being regulated since a statute must be drawn so as to give a person of ordinary intelligence fair notice that the contemplated conduct is forbidden and Kosrae State Code § 13.313 does not. Kosrae v. Taulung, 14 FSM R. 578, 580-81 (Kos. S. Ct. Tr. 2007).

Since statutory vagueness is a due process concept and since the wording of the Due Process Clauses of the Kosrae Constitution and of the FSM Constitution is identical, these two constitutional provisions may be treated as identical in meaning and in scope. The appellate court will proceed as if the statute is challenged under both. Phillip v. Kosrae, 15 FSM R. 116, 119 (App. 2007).

Whether a challenged statute is unconstitutionally vague is a two-part analysis. The statute must provide fair notice to members of the public, and it must also furnish police and judges with adequate enforcement standards. Fair notice means that the law gives an individual of ordinary intelligence a reasonable opportunity to understand the proscribed activity, and to conform his conduct to the law's requirements. A law permits arbitrary and discriminatory enforcement if it does not provide explicit enforcement standards, and a vague law's defect is that it allows law officers and judges to subjectively determine basic policy questions on a case-by-case basis. Phillip v. Kosrae, 15 FSM R. 116, 119 (App. 2007).

Cases upholding the constitutionality of statutes criminalizing driving "under the influence" reflect the fact that alcohol, its consumption, and effects have long been a part of human experience. DUI statutes enacted with the arrival of the motor vehicle take that experience into account. Phillip v. Kosrae, 15 FSM R. 116, 120 (App. 2007).

The Kosrae DUI statute does not violate the vagueness doctrine because it employs the phrase "under the influence." It provides both law enforcement officers and judges with the necessary enforcement standards. "Driving under the influence" is commonly understood to mean driving in a state of intoxication that lessens a person's normal ability for clarity and control. A police officer will know that he may take enforcement action where he observes an individual exhibiting this commonly understood behavior. That a police officer must exercise his judgment in evaluating this behavior does not render the statute vague. Phillip v. Kosrae, 15 FSM R. 116, 120 (App. 2007).

"Driving under the influence" provides a judge with a sufficient enforcement standard. Based upon the evidence that a judge hears and is entitled to consider, he may determine whether a defendant was "under the influence" such that he was driving in a state of intoxication that lessened his normal ability for clarity and control. The statute thus passes constitutional muster. Phillip v. Kosrae, 15 FSM R. 116, 120-21 (App. 2007).

When the accused either was or was not driving "under the influence," and it was the arresting officer's job to exercise his judgment to determine whether there was probable cause to believe the accused's ability for clarity and control had been lessened by his consumption of alcohol, or in other words, whether the accused was driving "under the influence," and when Kosrae's statute did not require the accused to offer an explanation for his conduct and any such exculpatory explanation would have been immaterial to his objective state of sobriety or lack thereof, the Kosrae DUI statute is not void for vagueness and does not violate the Due Process Clause of either the Kosrae Constitution or the FSM Constitution. Phillip v. Kosrae, 15 FSM R. 116, 121 (App. 2007).

A defendant's right to be informed of the nature of the accusations against him requires that a statute be sufficiently explicit to prescribe the offense with reasonable certainty and not be so vague that persons of common intelligence must necessarily guess at its meaning. Chuuk v. Menisio, 15 FSM R. 276, 281 (Chk. S. Ct. Tr. 2007).

A criminal statute must not be so vague and indefinite as to fail to give fair notice of what acts will be

punished but the right to be informed of the nature of the accusation does not require absolute precision or perfection of criminal statutory language, but the statute must be sufficiently explicit to prescribe the offense with reasonable certainty and not be so vague that persons of common intelligence must necessarily guess at its meaning. Although some generality may be inescapable in proscribing conduct, the standard of precision required under the right to be informed of the nature of the accusation is greater in criminal statutes than in civil statutes. FSM v. Aiken, 16 FSM R. 178, 182 (Chk. 2008).

When an information alleges violation of a statute, that statute must be drawn so as to give a person of ordinary intelligence fair notice that the contemplated conduct was forbidden. Laws must also provide explicit standards for those who apply them. When the statute complained of, even though not mathematically precise, gives fair notice of the acts that will be punished, the prosecution will not be dismissed on the ground that the statute was unconstitutionally vague. FSM v. Aiken, 16 FSM R. 178, 182 (Chk. 2008).

There are two aspects to consider in determining whether a criminal statute is unconstitutionally vague – first, the statute must ensure fair notice to the citizenry, and second it must provide standards for enforcement by the police and judges. FSM v. Aiken, 16 FSM R. 178, 182 (Chk. 2008).

A criminal statute's use of the term "under the influence of alcohol" does not render that statute void for vagueness and does not violate the FSM Constitution's Due Process Clause. FSM v. Aiken, 16 FSM R. 178, 182-83 (Chk. 2008).

When criminal liability is explicitly imposed for the use of a firearm "in connection with or in aid of the commission of any crime against the laws of the Federated States of Micronesia," the use of the term "laws of the Federated States of Micronesia" does not make the statute unconstitutionally vague. This term refers to any or all criminal laws in the Federated States of Micronesia, national, state, or local because if it were otherwise, it would not be possible for the statute to have its obviously intended purpose and effect – to discourage the use of, and to punish the use of, firearms during the commission of other crimes. The plural form of the word "laws" further compels this conclusion. FSM v. Aiken, 16 FSM R. 178, 183 (Chk. 2008).

When the defendants asked the plaintiffs' counsel to withdraw the offending motion or it would seek Rule 11 sanctions and their later Rule 11 motion was precise about what it sought sanctions for, the plaintiffs had the appropriate notice. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 377 (App. 2012).

As for the plaintiffs avoiding future sanctions, the order cannot be too vague since they are barred from filing any papers in Civil Action No. 1990-075 without first obtaining leave of court and have been since December 1995. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 377 (App. 2012).

When a statute's language is plain and unambiguous, it declares its own meaning and there is no room for construction. However, a statute that either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law. A statute that is so vague and ill-defined that the acts prohibited cannot be understood by people of ordinary intelligence, cannot serve as a basis for criminal prosecution. Chuuk v. Silluk, 21 FSM R. 649, 652 (Chk. S. Ct. Tr. 2018).

The standard for statutes to comply with a defendant's "right to be informed" is that a criminal statute must be sufficiently explicit to prescribe the offense with reasonable certainty and not be so vague that persons of common intelligence must necessarily guess at its meaning. The constitutional clauses speak of rights to be informed of the nature of the charges and to receive due process. This is not language calculated to require absolute precision or even the best possible statement of the charge or violation. Chuuk v. Silluk, 21 FSM R. 649, 653 (Chk. S. Ct. Tr. 2018).

The "definite, unambiguous, and certain" analysis is usually applied to statutory language which prohibits conduct as opposed to sentencing language. Courts are more deferential as to determining what constitutes a definite statement when sentencing guidelines are concerned. Chuuk v. Silluk, 21 FSM R. 649, 654-55 (Chk. S. Ct. Tr. 2018).

The court is subject to certain limits in sentencing when the state law sets a precise minimum of no less than five years imprisonment while the maximum sentence, as set by the FSM and Chuuk Constitutions, is life in prison because the Constitutions ban capital punishment. Chuuk v. Silluk, 21 FSM R. 649, 655 (Chk. S. Ct. Tr. 2018).

A statute that sets only a minimum sentence does not allow the court unbridled discretion to implement cruel and unusual punishments because the court is constrained by the FSM and Chuuk Constitutions; because the court has a traditional role of adjudication based on equity that involves the considering mitigating and aggravating factors before imposing sentence; and because all statutes are presumptively constitutional. Thus, this statute is not so unconstitutionally vague or ambiguous as to violate a defendant's due process rights to be free from cruel and unusual punishment. Chuuk v. Silluk, 21 FSM R. 649, 655-56 (Chk. S. Ct. Tr. 2018).

When determining a statute's vagueness or ambiguity, the court must look to a statute that prescribes an offense that either forbids or requires the doing of an act. Thus, a sentencing requirement that states, "imprisonment for not less than five years, or a fine of not less than $5,000.00, or both" is not subject to a due process analysis for violating the defendant's right to know the nature and cause of the accusation against him because the statute's sentencing provision is not the part of the statute that forbids or requires the doing of an act. In order to attack a statute's vagueness, the court is restricted to looking at the statute that prescribes an offense or that forbids or requires the doing of an act. Chuuk v. Silluk, 21 FSM R. 649, 656 (Chk. S. Ct. Tr. 2018).

There is no requirement that a statutory sentencing provision's language contain absolute precision or perfection. Informing a defendant that the sentence constitutes a minimum of five years imprisonment is sufficient notice because the sentencing statute provides a clear and explicit notice of a monetary and sentencing minimum for the defendant and leaves the court the equitable power to set a cap upon the sentencing as justice demands and as restricted by the Chuuk and FSM Constitutions. Thus, the statute provides notice to the defendant that he may be sentenced to between five years and life. Chuuk v. Silluk, 21 FSM R. 649, 657 (Chk. S. Ct. Tr. 2018).

– Equal Protection

Under the equal protection clause of the Declaration of Rights in the FSM Constitution, indigency alone should not disadvantage an accused in our system of criminal justice. Gilmete v. FSM, 4 FSM R. 165, 169 (App. 1989).

A patient's equal protection rights were not violated when there was no showing that the patient was treated differently from any other patient on the basis of her sex, ancestry, national origin, or social status. Samuel v. Pryor, 5 FSM R. 91, 106 (Pon. 1991).

Families of wrongful death victims do not constitute a suspect class for purposes of equal protection analysis. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 362 (Kos. 1992).

Among the rational bases supporting the constitutionality of a state statute capping wrongful death recovery are a desire to create foreseeable limits on government liability; to promote insurance; to encourage settlement of claims; and to ease the burden on courts and families of valuing losses incurred through the death of a family member. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 363 (Kos. 1992).

Aliens are persons protected by the due process and equal protection clauses of the Constitution. Berman v. FSM Supreme Court (I), 5 FSM R. 364, 366 (Pon. 1992).

Congress and the President respectively have the power to regulate immigration and conduct foreign affairs while the Chief Justice may make rules governing the admission of attorneys. Therefore a rule of admission that treats aliens unequally, promulgated by the Chief Justice, implicates powers expressly delegated to other branches. Berman v. FSM Supreme Court (I), 5 FSM R. 364, 366 (Pon. 1992).

Without a rational valid basis for the rule limiting the number of times an alien may take the bar exam it will be held unconstitutional even if it would be constitutional if the regulation were made by Congress or the President. Berman v. FSM Supreme Court (I), 5 FSM R. 364, 367 (Pon. 1992).

The constitutional guarantees of equal protection apply if the discrimination is based on the individual's membership in one of the classes enumerated in article IV, section 4, or if the discrimination affects a "fundamental right." The law is then subject to a strict scrutiny review, under which it will be upheld only if the government can demonstrate that the classification upon which that law is based bears a close rational relationship to some compelling governmental interest. But if the law does not concern an enumerated class or a fundamental right, the question becomes whether the classification is rationally related to a legitimate governmental purpose. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 137, 146 (Pon. 1995).

The equal protection analysis and standards that apply to a discriminatory law also apply to a neutral and non-discriminatory law when it is being applied in a discriminatory fashion. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 137, 146 (Pon. 1995).

Because the equal protection clause is designed to guarantee that similarly situated individuals are not treated differently due to some sort of invidious discrimination a victim of a stray police bullet who cannot show any evidence of discrimination has no equal protection claim. Davis v. Kutta, 7 FSM R. 536, 547 (Chk. 1996).

The constitutional guarantees of due process and equal protection extend to aliens. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 295 n.8 (Pon. 1998).

Article IV, section 4 is designed to guarantee that similarly situated individuals are not treated differently due to some sort of invidious discrimination, but where there is no admissible competent evidence of any such intentional discrimination, a court will grant summary judgment against an equal protection claim. Isaac v. Weilbacher, 8 FSM R. 326, 336 (Pon. 1998).

Voters' due process and equal protection rights are not violated by regulation or restriction of voting by absentee ballots. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 48 (Chk. S. Ct. Tr. 1999).

The FSM Constitution provides that equal protection under the laws may not be denied or impaired on account of sex, race, ancestry, national origin, language or social status. This provision is designed to guarantee that similarly situated individuals are not treated differently due to some sort of invidious discrimination. Youp v. Pingelap, 9 FSM R. 215, 217 (Pon. 1999).

When the plaintiff has not alleged that he was battered based upon his sex, race, ancestry, national origin, language or social status, but has merely alleged that the police, in battering him violated his equal protection rights, The plaintiff's equal protection claim will be dismissed. Youp v. Pingelap, 9 FSM R. 215, 217 (Pon. 1999).

Unlawfully added education qualifications for mayor and assistant mayor improperly deprive candidates and those similarly situated of the equal protection of the law as guaranteed by the FSM Constitution. Chipen v. Election Comm'r of Losap, 10 FSM R. 15, 18 (Chk. 2001).

The equal protection provisions of the FSM Constitution are in large part derived from those in the U.S.

Constitution. FSM v. Wainit, 11 FSM R. 1, 7 (Chk. 2002).

The elements of an equal protection claim of discriminatory or selective enforcement are: other similarly situated persons who generally have not been prosecuted; the defendant was intentionally or purposefully singled out for prosecution; and the prosecution was based on an arbitrary or invidious classification. FSM v. Wainit, 11 FSM R. 1, 7 (Chk. 2002).

If a criminal defendant is to make out a selective prosecution equal protection claim, he must identify any persons similarly situated to him that the government could have prosecuted, but has failed to, and he must show that his prosecution is based on an invidious classification such as sex, race, ancestry, national origin, language, or social status. FSM v. Wainit, 11 FSM R. 1, 8 (Chk. 2002).

To overcome the presumption that a decision to prosecute a particular person is motivated solely by proper considerations, a criminal defendant has a heavy burden to establish *prima facie* the elements of an impermissible selective prosecution so as to shift the burden to the government to demonstrate that the prosecution was not premised on an invidious objective. FSM v. Wainit, 11 FSM R. 1, 8 (Chk. 2002).

A criminal defendant who presents clear evidence that shows that his prosecution violates his right to equal protection (is impermissible discrimination) would be entitled to a dismissal. FSM v. Wainit, 11 FSM R. 1, 8-9 (Chk. 2002).

When in an equal protection claim, the record contains a document in which the defendant agency expressly referred to the claimants' race, the defendants have not met their burden under the applicable standard of review for dismissal for failure to state a claim because the question is not whether the plaintiff has proven its claim, but whether under any set of facts it could do so. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 91 (Pon. 2003).

Article IV, section 4 of the FSM Constitution guarantees that similarly situated individuals are not treated differently due to invidious discrimination. AHPW, Inc. v. FSM, 12 FSM R. 114, 118 (Pon. 2003).

A Governor's proclamation that continues municipal officials in office indefinitely, violates the people's rights to substantive due process, in that they have no say in their municipal government since all of its officials are now appointed by and now hold office due to the Governor; and to equal protection of the laws, in that the municipal citizens are treated differently based on their ancestry (they and their ancestors are from Romalum) from citizens of other Chuuk municipalities in not being allowed an elected municipal government. Buruta v. Walter, 12 FSM R. 289, 295 (Chk. 2004).

When a plaintiff complained of a series of acts by various defendants that he felt were discriminatory, that is, that did not treat him in the manner to which he thought he was entitled, but he did not allege, nor did he put on any evidence, that he was discriminated against on the basis of sex, race, ancestry, national origin, language, or social status and no evidence was adduced that any of the acts complained of caused the plaintiff any damages, the court therefore dismissed this cause of action. Hauk v. Lokopwe, 14 FSM R. 61, 65 (Chk. 2006).

Equal protection of the law means the protection of equal laws. The clause requires that those similarly situated must be similarly treated. Equal protection forbids only invidious discrimination. Annes v. Primo, 14 FSM R. 196, 202 (Pon. 2006).

Both sections 3 and 4 of Article IV are designed to protect individuals from discrimination based on their membership in a class. A plaintiff's failure to allege intent to discriminate based on his membership in a particular class is fatal to his equal protection claim. Annes v. Primo, 14 FSM R. 196, 202 (Pon. 2006).

The failure to allege class-based discrimination may be fatal only to strict scrutiny analysis, that is, a plaintiff who fails to allege class-based discrimination is not dismissed but receives only rational basis

review, but when the plaintiff is not challenging any particular law, the case is not susceptible to rational basis review. Annes v. Primo, 14 FSM R. 196, 202 n.1 (Pon. 2006).

In the FSM, claims of police brutality or excessive force generally implicate due process, rather than equal protection. Annes v. Primo, 14 FSM R. 196, 202 (Pon. 2006).

A selective-prosecution claim is not a defense on the merits to the criminal charge itself, but an independent assertion that the prosecutor has brought the charge for reasons forbidden by the Constitution. FSM v. Fritz, 14 FSM R. 548, 552 (Chk. 2007).

The elements of an equal protection claim of discriminatory or selective enforcement are: other similarly situated persons who generally have not been prosecuted; the defendant was intentionally or purposefully singled out for prosecution; and the prosecution was based on an arbitrary or invidious classification. FSM v. Fritz, 14 FSM R. 548, 552 (Chk. 2007).

To make out a selective prosecution equal protection claim, an accused must identify any persons similarly situated to him that the government could have prosecuted, but has failed to, and he must show that his prosecution is based on an invidious classification of either sex, race, ancestry, national origin, language, or social status. FSM v. Fritz, 14 FSM R. 548, 552 (Chk. 2007).

When the defendants do not claim that they were singled out for prosecution based upon their sex, race, ancestry, national origin, or language, but assert that they are being arbitrarily prosecuted based upon their "social status," and when they do not clearly state what their social status is that is the basis of the prosecution's alleged invidious classification and discrimination, it cannot be their status as high government officials (congressmen or former congressmen) because that is the same status as one (ex-president) who was not prosecuted and who the defendants claim was similarly situated so they cannot have been prosecuted based on the membership in that "classification." Furthermore, the choice to prosecute someone because of his or her status as a high government official is not an invidious classification because of the deterrent effect of such prosecutions and because of such prosecutions' effect to maintain the public confidence that public officials are not above the law. FSM v. Fritz, 14 FSM R. 548, 553 (Chk. 2007).

A person's position in government does not constitute "social status." The term "social status" refers to a person's rank or place in society. In traditional Micronesian societies, this could include a person's place or rank within his or her lineage, what caste he or she is a part of, whether and what traditional title the person might hold, or whether the person has chiefly [social] status. FSM v. Fritz, 14 FSM R. 548, 553 (Chk. 2007).

When the defendants cannot identify an invidious classification (which they assert is their "social status"), they cannot make out that element of a selective prosecution claim, especially when the court has doubts whether the purported examples of persons similarly situated are actually that. FSM v. Fritz, 14 FSM R. 548, 553 (Chk. 2007).

A person who, whether under the color of law or not, violates another's equal protection rights as guaranteed by sections 3 or 4 of Article 4 of the FSM Constitution would be civilly liable to the injured party. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 80 (Pon. 2007).

FSM Constitution Article IV, section 4 guarantees that similarly situated individuals not be treated differently due to some sort of invidious discrimination. When a plaintiff comes forward with no admissible, competent evidence to show invidious discrimination, summary judgment is then appropriate. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 80 (Pon. 2007).

For equal protection purposes, a comparison between the pay of part-time college teachers and full-time teachers is not valid when the equal protection claim rests on the difference in the pay scales for

part-time and full-time teachers because the part-time and full-time teachers are not similarly situated and the FSM Constitution equal protection guarantee requires a showing that individuals subject to the alleged discrimination be similarly situated. Nor are part-time teachers an enumerated class in Article IV, section 4 and that classification does not concern a fundamental right. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 81-82 (Pon. 2007).

When no Article IV, section 4 class is at issue and no fundamental right is involved, the question is whether the classification bears a rational relationship to a legitimate governmental purpose. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 82 (Pon. 2007).

Paying full-time and part-time teachers at different rates per credit-hour bears a rational relationship to a legitimate governmental purpose because it allows the college flexibility with respect to its need to provide teachers on an ad hoc basis for over-enrolled classes and with its costs. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 82 (Pon. 2007).

Even assuming that the Pohnpei Wage and Hour Law applies to a governmental organization employer and assuming that a claim under the statute was pled although the statute was not mentioned in the complaint, the claim is without merit when the court has determined that the positions of full-time and part-time teachers are different and the college may maintain different pay scales for them. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 82 (Pon. 2007).

When the college's part-time and full-time teachers are not similarly situated for equal protection analysis, and when, to the extent that the part-time and full-time teachers can be viewed as engaging in similar activities, the college's practice of paying its full-time and part-time teachers according to different pay scales for each credit-hour taught is rationally related to a legitimate government purpose, the college is entitled to summary judgment on a part-time teacher's equal protection claim. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 82 (Pon. 2007).

The Equal Protection Clause protects a person against discrimination based on account of sex, race, ancestry, national origin, language or social status, but a person's position in government employment does not constitute "social status." The term "social status" refers to a person's rank or place in society, not to his position in government. In traditional Micronesian societies, social status could include a person's place or rank within his or her lineage, what caste he or she is part of, whether and what traditional title the person might hold, or whether the person has chiefly (social) status. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 314-15 (App. 2007).

A selective prosecution claim does not provide a basis for dismissal of the information because it is not a defense to the merits to the criminal charge itself, but an independent claim. Chuuk v. Robert, 15 FSM R. 419, 425 (Chk. S. Ct. Tr. 2007).

The Constitution's Declaration of Rights has two equal protection guarantees. Section 3 provides that a person may not be denied the equal protection of the laws and section 4 provides that equal protection of the laws may not be denied or impaired on account of sex, race, ancestry, national origin, language, or social status. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 591 (App. 2008).

If the discrimination is based on the individual's membership in one of the Article IV, section 4 enumerated classes, or if the discrimination affects a "fundamental right," the law or regulation is subject to strict scrutiny review. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 591 (App. 2008).

"Heightened scrutiny" is a level of scrutiny below strict scrutiny but above the rational relationship test that U.S. courts use in sex discrimination cases since sex is not an enumerated class in the U.S. Constitution's equal protection clause. In the FSM, sex is an enumerated class and the higher strict scrutiny analysis is applied. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 591 n.2 (App. 2008).

Since Article IV, section 4 prohibits discrimination based on sex, race, ancestry, national origin, language, or social status, any governmental action that classifies according to sex, race, ancestry, national origin, language, or social status constitutes an inherently suspect criteria. As such, the government must prove a compelling governmental interest in the classification. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 591 (App. 2008).

When the appellant compares herself to two different male teachers with the same level of education, who were paid more than she because they were full-time teachers; when the only apparent reason for the pay difference is that they were full-time, not part-time, teachers; when no part-time teacher was paid more than the appellant was so that no male part-time teachers with the same level of education were paid more than she was and no FSM-citizen part-time teachers were paid more than she was; when the appellant does not claim that her status as a part-time teacher instead of being a full-time teacher was based on discrimination on the basis of sex or national origin, she has not made out a *prima facie* case of discrimination based on either sex or national origin and the trial court thus properly granted summary judgment in the College's favor on her sex and national origin discrimination claims. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 591-92 (App. 2008).

Equal protection of the law means the protection of equal laws. The clause requires that those similarly situated must be similarly treated. It seems also that application of the law must be equal. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 592 (App. 2008).

Equal protection requires that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances; and that no greater burdens should be laid upon one than are laid upon others in the same calling and condition. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 592 (App. 2008).

Equal protection forbids only invidious discrimination. Where relevant differences exist between classes, different treatment by the state is permissible. However, any statute that classifies and affords different treatment is subject to the same tests as those under substantive due process: 1) Does the legislature have power to enact the statute that classifies? 2) Does the classification bear a rational relationship to the legislative goal? The classification is presumed to be valid and the burden of proving that the statute is without a rational relationship to the legislative objective is on the challenger of the classification. 3) Where fundamental rights are involved, the classification constitutes a suspect criteria. As such, the burden of proving that the classification bears a close rational relationship to some compelling governmental interests shifts to the government. Fundamental rights are presumed to be absolute until the government proves a compelling governmental interest to curtail or restrain them. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 592 (App. 2008).

Employment is not listed as a fundamental right in the Declaration of Rights although a case has referred to "employment opportunity" as a "liberty interest." But when the interest in contention is employment pay not the opportunity for employment, being paid a lower rate than another involves a fundamental right if the reason for the lower pay is the employee's sex, race, ancestry, national origin, language, or social status. Being paid at a lower rate for some other reason does not involve a fundamental right. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 592 (App. 2008).

If the law does not concern an enumerated class or a fundamental right, the question becomes whether the classification is rationally related to a legitimate governmental purpose. The rational relationship test examines whether there is a reasonable justification for permitting a law or regulation that discriminates against certain classes or groups. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 592-93 (App. 2008).

A full-time teacher's added duties, the need to forgo other employment, and the long-term commitment (three years as opposed to one semester) to teaching at the College, makes a full-time

teaching position a substantially different job from a part-time teaching position. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 593 (App. 2008).

Regardless of the applicability of a U.S. case, the appeal of the denial of the plaintiff's equal pay claim turns on whether full-time teaching positions and part-time teaching positions are similar positions and on whether there is a rational relationship between a full-time teacher's pay and a part-time teacher's pay. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 593-94 (App. 2008).

A full-time teacher's added duties, the need to forgo other employment, and long-term commitment (three years as opposed to one semester) to teaching at the College – are legitimate factors from which the court may conclude that full-time and part-time teachers are not similarly situated even though both are paid depending on their education and experience. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 594 (App. 2008).

The appellant's assertion that she has made out a *prima facie* case of sex discrimination would hold water only if part-time and full-time teachers were similarly situated, thus allowing her to compare herself to a full-time teacher. It did not because, contrary to her assertions, full-time and part-time teachers are not similarly situated; because she has not claimed that she was paid less than a similarly-situated (part-time) male teacher; and because she was, in fact, the highest paid part-time teacher. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 594 (App. 2008).

The pay difference between full-time and part-time teachers passes the rational relationship test because the full-time teacher's added duties, the need to forgo other employment, and the long-term commitment (three years as opposed to one semester) to teaching at the College are all rational and legitimate reasons for the College to pay full-time teachers at a higher rate than part-time teachers and because it is undisputed that the College had legitimate and rational reasons to employ part-time teachers, as and when needed, rather than hiring just full-time teachers. The payment of full-time teachers at the part-time rate for excess and summer classes does not change the analysis because those classes are beyond the duties that full-time teachers are obligated to perform. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 594 (App. 2008).

A plaintiff cannot show any discrimination for summer classes pay when, for summer classes, her pay was equal or higher than any other summer instructor including those classified as full-time teachers. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 594 (App. 2008).

For a part-time teacher to make out a *prima facie* case of sex discrimination she would have had to have shown that she was paid less than a male part-time teacher with the same level of education. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 595 (App. 2008).

When full-time teachers and part-time teachers are not similarly situated, a plaintiff does not have a factual basis for relief under the Pohnpei Wage and Hour Law when the claim is that she was paid less than male full-time teachers because she did not perform the same work as a full-time teacher. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 595 (App. 2008).

The College is an instrumentality of the national government in the same way that the FSM Development Bank is even though its employees are not considered government employees. The College was created by Congress and is subject to suit only in the manner provided for and to the extent that suits may be brought against the National Government. So, since the national government is not subject to suit under the Pohnpei Wage and Hour Law, neither is the College. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 596 (App. 2008).

The FSM Constitution's Declaration of Rights has two equal protection guarantees. Section 3 provides that a person may not be denied the equal protection of the laws, and section 4 provides that equal protection of the laws may not be denied or impaired on account of sex, race, ancestry, national

origin, language, or social status. This is a constitutional guarantee that similarly situated individuals not be treated differently due to some sort of invidious discrimination. Berman v. Pohnpei Legislature, 16 FSM R. 492, 496 (Pon. 2009).

When a plaintiff comes forward with no admissible, competent evidence to show invidious discrimination, then summary judgment is appropriate. Berman v. Pohnpei Legislature, 16 FSM R. 492, 496 (Pon. 2009).

In order to establish a prima facie claim of sex discrimination in the hiring process, a plaintiff must establish that 1) she is a member of a protected class; 2) she applied for and was qualified for a position for which her employer was seeking applicants; 3) despite her qualifications she was rejected; and 4) thereafter the position remained open and the employer continued to seek applicants with plaintiff's qualifications. If the plaintiff establishes the existence of these four elements, the burden shifts to defendant to articulate some legitimate, nondiscriminatory reason for the employee's rejection. Berman v. Pohnpei Legislature, 16 FSM R. 492, 496 (Pon. 2009).

A plaintiff has failed to establish a prima facie case of sex discrimination in the hiring process when she was not rejected for the job, but was interviewed for the position and then hired. Berman v. Pohnpei Legislature, 16 FSM R. 492, 496 (Pon. 2009).

The plaintiff's claim of invidious discrimination and that the defendant violated the FSM Constitution because the plaintiff had to fill out an employment application to be hired and while she was working for the defendant another was rehired and not required to resubmit a new job application since his resignation paperwork had not been processed, is not supported by the law and will be dismissed with prejudice. Berman v. Pohnpei Legislature, 16 FSM R. 492, 497 (Pon. 2009).

An employment applicant was not discriminated against when the employer chose an applicant more qualified than she. Berman v. Pohnpei Legislature, 16 FSM R. 492, 497 (Pon. 2009).

When a complaint alleges that the plaintiff was denied equal protection of the laws, the suit will be deemed a private cause of action under 11 F.S.M.C. 701 for violation of civil rights guaranteed under the FSM Constitution even though the statute is not expressly cited in the complaint. Berman v. Pohnpei, 16 FSM R. 567, 577 (Pon. 2009).

The FSM Constitution at Article IV, Section 4, guarantees that similarly situated individuals not be treated differently due to some sort of invidious discrimination. Berman v. Pohnpei, 16 FSM R. 567, 577 (Pon. 2009).

When a plaintiff has alleged violation of her due process rights, but it is proven otherwise, the plaintiff cannot recover under the civil rights statute. When, at trial, the plaintiff did not present evidence that she was treated differently than any other person in the same class and did not present evidence that she was denied notice and an opportunity to be heard, the state is not liable to her on the claims of denial of equal protection of the laws, violation of due process, and violation of her civil rights. Berman v. Pohnpei, 16 FSM R. 567, 577 (Pon. 2009).

When the plaintiff and her co-worker were not similarly situated because she had no prior legislative counsel experience and he did and when she was hired for and given lesser job responsibilities and assignments, she was thus not entitled to the same wages and benefits as the other. Berman v. Pohnpei Legislature, 17 FSM R. 339, 348 (App. 2011).

When the plaintiff was not equally qualified and had a lower level of responsibility than the other counsel, her lower pay did not violate the Legislature Manual's equal pay provisions since she had neither equal qualifications nor levels of responsibility. Berman v. Pohnpei Legislature, 17 FSM R. 339, 349 (App. 2011).

Equal protection of the law means the protection of equal laws and requires that those similarly situated must be similarly treated. Berman v. Pohnpei Legislature, 17 FSM R. 339, 349 (App. 2011).

When the trial court found as fact, which fact remains on appeal, that the plaintiff was not similarly situated to the Legislature's other attorneys because they had prior experience doing legal work for legislative bodies and she had none, she cannot prevail on an equal protection claim based on being hired as a temporary employee on short-term contracts although a permanent long-term position had been advertised. Berman v. Pohnpei Legislature, 17 FSM R. 339, 349 (App. 2011).

In order to establish a prima facie claim of sex discrimination in the hiring process, a plaintiff must establish that: 1) she is a member of a protected class; 2) she applied for and was qualified for a position for which her employer was seeking applicants; 3) despite her qualifications she was rejected; and 4) thereafter the position remained open and the employer continued to seek applicants with plaintiff's qualifications. If the plaintiff establishes the existence of these four elements, the burden shifts to the defendant to articulate some legitimate, nondiscriminatory reason for the employee's rejection. Berman v. Pohnpei Legislature, 17 FSM R. 339, 349 (App. 2011).

When the trial court found as fact that the defendant Legislature did meet its burden when it articulated legitimate, non-discriminatory reasons for the plaintiff's rejection – she was not similarly qualified since she did not have any prior experience as counsel to a legislative body and all the other male attorneys who were hired did, as well as a female attorney who was offered, but declined, employment, the plaintiff's equal protection contention is without merit. Berman v. Pohnpei Legislature, 17 FSM R. 339, 349 (App. 2011).

Aliens are persons protected by the equal protection clause of the FSM Constitution. Berman v. Lambert, 17 FSM R. 442, 449-50 (App. 2011).

Equal protection analysis within the FSM has adopted a two-tiered test. The first tier is a rational basis test. Under this test a law will be upheld if it is rationally related to a state interest. Under the second tier, laws that involve a "suspect" class of persons or touch on a "fundamental interest" are subject to strict scrutiny and are struck down unless justified by a compelling state interest. Berman v. Lambert, 17 FSM R. 442, 450 (App. 2011).

Non-citizen does not equate to "national origin" in the Equal Protection Clause and allow non-citizens suspect class status. Berman v. Lambert, 17 FSM R. 442, 450 (App. 2011).

A statute establishing a hiring and promotion preference for legal residents of Pohnpei and FSM citizens, which bears a rational relationship to legitimate governmental purposes of encouraging and preserving job opportunities for legal residents, of the establishment and growth of the local work force, of combating unemployment in Pohnpei, and of training its citizens to work towards self-government, does not violate the FSM Constitution's equal protection clause. Berman v. Lambert, 17 FSM R. 442, 450 (App. 2011).

Since selective prosecution is a defense in a criminal case, when a civil defendant asserts that it was singled out for enforcement and was the only employer being sued for unpaid health insurance premiums, the court will read this as an equal protection claim. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 538-39 (Chk. 2011).

The Constitution's Declaration of Rights contains two equal protection guarantees. Section 3 provides that a person may not be denied the equal protection of the laws and section 4 provides that equal protection of the laws may not be denied or impaired on account of sex, race, ancestry, national origin, language, or social status. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 539 (Chk. 2011).

When no Article IV, section 4 class is at issue and no fundamental right is involved, the question is

whether the classification is rationally related to a legitimate governmental purpose. The rational relationship test examines whether there is a reasonable justification for permitting the discrimination. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 539 (Chk. 2011).

It is entirely rational that the Chuuk Health Care Plan first sue the largest non-complying employer before suing other non-compliant employers, especially when the others are trying to bring themselves into compliance. Someone must be first. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 539 (Chk. 2011).

The FSM Constitutional guarantees of equal protection apply if the discrimination is based on the individual's membership in one of the classes enumerated in the FSM Const. art. IV, § 4, or if the discrimination affects a "fundamental right." The law is then subject to a strict scrutiny review, under which it will be upheld only if the government can demonstrate that the classification upon which that law is based bears a close rational relationship to some compelling governmental interest. But if the law does not concern an enumerated class or a fundamental right, the question becomes whether the classification is rationally related to a legitimate governmental purpose. Kallop v. Pohnpei, 18 FSM R. 130, 134 (Pon. 2011).

The rational basis standard will be applied to an analysis of a plaintiff's equal protection claims about the regulation of alcohol sales. A rational basis analysis requires statutes restricting alcohol to have a legitimate, reasonable purpose, to not be arbitrary, and the legislation carries out the purposes prescribed. Kallop v. Pohnpei, 18 FSM R. 130, 134 (Pon. 2011).

A statute that restricts the sale of alcohol during the Christmas and New Year's holidays serves legitimate governmental purposes in the areas of the public health and welfare and the allowance of on-sale alcohol purchases during these holidays also support the operations of the hotels and cabarets who have a demand for such sales from its customers during the holidays. This legislation carries out the purposes for which the statute was amended by further regulating the sale of alcohol in a manner which promotes the State's legitimate governmental objectives. This statute regulating and restricting alcohol is within the scope of legislative authority, has a reasonable purpose, is not arbitrary, and carries out the purposes prescribed and is thus not unconstitutional. Kallop v. Pohnpei, 18 FSM R. 130, 135-36 (Pon. 2011).

A complaint alleging that a public utility tortiously breached its duty to him and violated his due process civil rights when its linemen disconnected his electrical power without notice, causing food spoilage and personal hardship and inconvenience, and that when its linemen, without warning, eventually reconnected his electrical power, it tortiously caused a sudden power surge resulting in damaged equipment, does not state a claim for an equal protection civil rights cause of action. Wainit v. Chuuk Public Utility Corp., 20 FSM R. 135, 137 (Chk. 2015).

A state court litigant's right to equal protection is not violated because he can only get a judgment in the state court and cannot get a judgment in the FSM Supreme Court. Kama v. Chuuk, 20 FSM R. 522, 533 (Chk. S. Ct. App. 2016).

Each court system, national and state, treats all persons before it equally under the law and the difference in each court system's jurisdictional requirements is not unequal treatment under the laws. Kama v. Chuuk, 20 FSM R. 522, 533 (Chk. S. Ct. App. 2016).

A money judgment against the state is not a property interest but an existing, continuing liability against the state, and a failure to timely satisfy that judgment does not constitute a taking in violation of due process or equal protection. Kama v. Chuuk, 20 FSM R. 522, 534 (Chk. S. Ct. App. 2016).

The Constitution provides that equal protection under the laws may not be denied or impaired on account of sex, race, ancestry, national origin, language or social status. This provision guarantees that similarly situated individuals are not treated differently due to some sort of invidious discrimination. When a

person does not argue or submit evidence to show that he is being discriminated upon as a member of a protected class, or that he is being treated differently from similarly situated individuals, his equal protection claim is unsupported. FSM v. Isaac, 21 FSM R. 370, 376-77 (Pon. 2017).

When the plaintiff makes no allegations that would support an equal protection claim, the defendant may be granted summary judgment on that part of the plaintiff's civil rights claim. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 158 (Chk. 2019).

The constitutional guarantees of due process and equal protection extend to aliens. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 633 n.8 (Pon. 2020).

– Excessive Fines

It is premature to challenge a statute as unconstitutional for imposing excessive fines until a fine has been imposed. FSM v. Cheng Chia-W (I), 7 FSM R. 124, 126 (Pon. 1995).

– Ex Post Facto Laws

While every ex post facto law must necessarily be retrospective not every retrospective law is an ex post facto law. An ex post facto law is one which imposes punishment for past conduct, lawful at the time it was engaged in. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 266-67 (Chk. S. Ct. Tr. 1993).

Legislation is not an ex post facto law where the source of the legislative concern can be thought to be the activity or status from which the individual is barred, even though it may bear harshly upon one affected, but the contrary is the case where the statute in question is evidently aimed at the person or class of persons disqualified. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 268-69 (Chk. S. Ct. Tr. 1993).

A provision barring those convicted of a felony, even if pardoned, from membership in the legislature is concerned with the qualifications of legislative membership, and is not just for the purpose of punishing felons and those pardoned of a felony which would violate the constitutional ban on ex post facto laws. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 269-71 (Chk. S. Ct. Tr. 1993).

Regulations imposing civil disqualifications for past criminal conduct are not punishment barred by the constitutional ban against ex post facto laws. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 270-71 (Chk. S. Ct. Tr. 1993).

Since retrospective application of a constitutional provision barring persons convicted of felonies, even if pardoned, from holding legislative office is not an invalid ex post facto law, retrospective application of the provision is also not invalid as a bill of attainder or a denial of due process. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 271-72 (Chk. S. Ct. Tr. 1993).

The concept of ex post facto laws is limited to legislation which does any of the following: 1) makes criminal and punishable an act innocent when done; 2) aggravates a crime, or makes it greater than it was when committed; 3) increases the punishment for a crime and applies the increase to crimes committed before the enactment of the laws; or 4) alters the legal rules of evidence so that testimony insufficient to convict for the offense when committed would be sufficient as to that particular offense and accused person. The ban on ex post facto law applies to criminal acts only. This means retroactive noncriminal laws may be valid. Robert v. Mori, 6 FSM R. 394, 400 (App. 1994).

The mark of an ex post facto law is the imposition of punishment for past acts. The question is whether the legislative aim was to punish that individual for past activity, or whether the restriction of the individual comes about as a relevant incident to a regulation of a present situation, such as the proper

qualifications for a profession. Robert v. Mori, 6 FSM R. 394, 401 (App. 1994).

Since the legislative aim of a statute making ineligible for election to Congress those persons convicted of a felony in a Trust Territory court was not to punish persons for their past conduct it is a regulation of a present situation concerned solely with the proper qualifications for members of Congress. As such it is a reasonable means for achieving a legitimate governmental purpose. It is therefore not unconstitutional as an ex post facto law. Robert v. Mori, 6 FSM R. 394, 401 (App. 1994).

The statutory ineligibility of persons convicted of Trust Territory felonies is a valid exercise of Congress's constitutional power to prescribe additional qualifications for election to Congress, and is not unconstitutional as a deprivation of a liberty interest without due process of law, or as an ex post facto law, or as a bill of attainder. Robert v. Mori, 6 FSM R. 394, 401 (App. 1994).

An ex post facto decision is one that imposes punishment for past conduct, lawful at the time it was engaged in. The concept of ex post facto laws is limited to the following: 1) making criminal and punishable an act innocent when done; 2) aggravating a crime, or making it greater than it was when committed; 3) increasing the punishment for a crime and applying the increase to crimes committed before the enactment of the laws; or 4) altering the legal rules of evidence so that testimony insufficient to convict for the offense when committed would be sufficient as to that particular offense and accused person. Engichy v. FSM, 15 FSM R. 546, 555 (App. 2008).

There was no ex post facto violation in the appellants' conviction for conspiring to violate Section 529 (2001) when the conduct underlying violation of Section 529 was unlawful as of 1982 under the substantively identical Section 548 which was made law then, the appellants cannot maintain that their conduct in the late 1990's underlying the Section 529 conspiracy charge was lawful when they engaged in it; when, since Section 529's punishment provisions are identical to those of Section 548, conviction under Section 529 does not aggravate the crime to make it greater than it was when committed and does not increase the punishment; and when, since the statutes are substantively identical, the same evidence would be sufficient for conviction under both. Engichy v. FSM, 15 FSM R. 546, 555 (App. 2008).

Ex post facto laws are laws passed after the occurrence of a fact or the commission of an act, which thereby changes the legal consequences of the fact or act. An *ex post facto* law seeks to impose punishment on individuals for past acts. Kallop v. Pohnpei, 18 FSM R. 130, 133 (Pon. 2011).

– Foreign and Interstate Commerce

Although foreign and interstate commerce and shipping involve profound national interests, where Congress has not seen fit to assert those interests and there is no national regulation or law to enforce, the fact that a case affects interstate and foreign commerce and shipping is not sufficient to deny abstention if other strong grounds for abstention exist. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM R. 37, 47 (Pon. 1989).

Questions regarding the validity of the provisions of promissory notes for personal loans, executed with a national bank operating in each state of the FSM and having in part foreign ownership, are closely connected to the powers of the national legislature to regulate banking, foreign and interstate commerce, and bankruptcy, and to establish usury limits, and they have a distinctly national character. The FSM Supreme Court therefore will formulate and apply rules of national law in assessing such issues. Bank of Hawaii v. Jack, 4 FSM R. 216, 218 (Pon. 1990).

Power to regulate the incorporation and operation of corporations falls within the constitutional power of the national government to regulate foreign and interstate commerce. Mid-Pac Constr. Co. v. Senda, 4 FSM R. 376, 380 (Pon. 1990).

The Constitution prohibits state and local governments from imposing taxes which restrict interstate

commerce. Stinnett v. Weno, 6 FSM R. 312, 313 (Chk. 1994).

The national government has the express authority to regulate international commerce. International commerce is also a power of such an indisputably national character as to be beyond them power of a state to control because the customs and immigration borders of the country are controlled by agencies of the national government. FSM v. Fal, 8 FSM R. 151, 154 (Yap 1997).

Congress may legislate regulation of firearms and ammunition under the foreign and interstate commerce clause of article IX, section 2(g). FSM v. Fal, 8 FSM R. 151, 154 (Yap 1997).

Because the FSM Constitution expressly delegates to Congress the power to regulate interstate commerce and because the existence, availability and quality of telecommunication services in the FSM clearly impacts on interstate commerce, the FSM government is constitutionally authorized to establish the FSM Telecommunications Corporation and may similarly exempt it from taxes or assessments. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 380, 384 (Pon. 2000).

A state "use tax" calculated on the value of items brought into the state plus the cost of shipping, handling, insurance, labor or service cost, transportation charges or any expenses whatsoever, has nothing to do with benefits provided by the state associated with the use of the item and cannot be justified as having a substantial nexus with the state. It only serves as an unauthorized burden on interstate commerce. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 380, 386 (Pon. 2000).

Article IX, section 2(g) of the Constitution expressly delegates to Congress the power to regulate foreign and interstate commerce. A delegation of power to the national government under section 2 of Article IX is exclusive. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 581-82 (App. 2000).

As to interstate commerce, Article VIII, section 3 contains the negative counterpart to Article IX, section 2(g)'s positive grant of power by prohibiting state and local governments from imposing taxes which restrict interstate commerce. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 582 (App. 2000).

Since the event triggering the Pohnpei use tax is the unqualified "use or consumption" in Pohnpei of nonexempt goods, the statute applies to goods brought into Pohnpei from Yap, Chuuk, and Kosrae, as well as from locations outside the FSM. It is thus clear that the statute directly regulates or restricts interstate commerce in the same way it does imports. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 582 (App. 2000).

As to goods making their way from any of the other three states into Pohnpei, the direct nexus between the simultaneous arrival of the goods and imposition of the Pohnpei use tax points to direct regulation of interstate commerce. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 582 (App. 2000).

Even assuming that the Pohnpei use tax apportionment clause could be interpreted to remedy concerns about discrimination against interstate commerce, the fact remains that the use tax is indissolubly linked to the event of importation, and no semantic calisthenics liberate the tax from this inherent defect. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 583 (App. 2000).

A state tax that is unconstitutional as an import tax, if applied to interstate commerce, is also restrictive of interstate commerce. The Constitution does not permit a state to erect tax barriers to the free movement of goods among the states. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 583 (App. 2000).

Because the national government has the exclusive power to regulate foreign and interstate commerce, the Consumer Protection Act is the law of the FSM insofar as any advertising, sale, offer or distribution involves commerce between the states of the FSM or with any foreign entity. The Consumer Protection Act also is the law of the states of the FSM, insofar as it involves commerce which is intrastate

and has not been repealed by the state legislatures. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 415 (Pon. 2001).

When trochus was harvested to be sold for the export market and pepper was grown and processed for the export trade, that is foreign commerce. That Pohnpei arranged its affairs so that its purchases and sales were all in state does not take it out of the stream of foreign commerce. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 15-16 (App. 2006).

The national government is expressly delegated the power to regulate foreign and interstate commerce. Title 32 is a valid exercise of that power and the anticompetitive practices statute in Title 32 creates a statutory tort. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 16 (App. 2006).

When the imported materials in a Philippine slingshot are not manufactured abroad with the intent that they be assembled into a Philippine slingshot but are manufactured abroad as other articles or as parts of other articles and are legitimately imported for other purposes but are then recycled into Philippine slingshot parts, a Philippine slingshot is manufactured locally, out of locally available materials. It does not pass through foreign or interstate commerce. That some of those materials were once imported as something else to be used for some other purpose is not enough to implicate the national government's activity or function to regulate foreign commerce. FSM v. Masis, 15 FSM R. 172, 176 (Chk. 2007).

The Constitution grants the national government, not the state governments, the power to regulate foreign and interstate commerce and taxation is regulation just as prohibition is. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 160 (Chk. 2010).

A service tax on plane passengers does not have only an incidental effect on foreign commerce; its only effect is on foreign commerce. A tax on shipping cargo or freight affects only foreign commerce or interstate commerce since the airline does not fly to anywhere in Chuuk except Weno. Since state and local governments are prohibited from imposing taxes which restrict interstate commerce, to the extent that the tax is imposed on freight or cargo shipped from Chuuk to other FSM states, would appear to be specifically barred by the Constitution and to the extent it is imposed on cargo or freight shipped elsewhere, it would be regulation of foreign commerce – in effect, an export tax. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 160 (Chk. 2010).

The Constitution expressly grants the national government, not the state governments, the power to regulate foreign and interstate commerce, and taxation is a form of regulation. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 531 (Chk. 2011).

The Chuuk service tax on plane passengers does not have only an incidental effect on foreign commerce. Its main effect (and its sole intended effect) is on foreign commerce. By its terms, it is to be imposed only on those passengers whose "final destination" would be "outside of the FSM." The Chuuk service tax on outgoing paying airline passengers is thus an unconstitutional regulation of foreign commerce. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 531-32 (Chk. 2011).

The tax on shipping air cargo or air freight on Continental affects only foreign commerce or interstate commerce, and since state governments are prohibited from imposing taxes which restrict interstate commerce, to the extent that it is imposed on freight or cargo shipped from Chuuk to other FSM states, the Chuuk service tax would be specifically barred by the Constitution, and to the extent the tax is imposed on cargo or freight shipped elsewhere, it would be regulation of foreign commerce – an export regulation and tax. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 533 (Chk. 2011).

The Constitution expressly delegates to Congress the power to regulate banking and foreign and interstate commerce. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 619 (Pon. 2013).

Congress has the power to create institutions that engage in the activity that Congress has the power to

regulate. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 619 (Pon. 2013).

The Constitution's broadly-stated express grants of power to regulate banking and foreign and interstate commerce contain within them innumerable incidental or implied powers as well as certain inherent powers. These incidental and implied powers include the power to form public corporations, such as the FSM Development Bank or the FSM Telecommunications Corporation, even in the absence of the express power to do so. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 619 (Pon. 2013).

The creation of the restructured FSM Development Bank was a valid exercise of Congress's power to regulate banking and to regulate interstate and foreign commerce. Development banking is also a power of national character beyond the power of a state to control or provide and so is a national power. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 619 (Pon. 2013).

Only the national government can impose taxes on imports and no state may impose taxes that restrict interstate commerce. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 153 (Chk. 2013).

Since imported cigarettes are not taxable unless sold (or presumed sold) and may be nontaxable if not, the Chuuk cigarette tax appears to be a sales tax and not an import tax because the taxable event is their sale not their importation. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 154 (Chk. 2013).

A municipal "road service" fee is not a tax on imports since it does not vary based on the amount or value of the goods brought into the municipality and since it does it vary based on the origin of those goods. It is a flat annual fee or a tax that does not violate the Constitution's prohibition of local taxes which restrict interstate commerce because the road service fee does not restrict or hinder interstate commerce or impose an import tax, but it does restrict or hinder intrastate or inter-municipal commerce, a type of commerce the FSM Constitution does not grant the national government the power to regulate. Isamu Nakasone Store v. David, 20 FSM R. 53, 57-58 (Pon. 2015).

– Freedom of Expression

The right of citizens to express their views, including views critical of public officials, is fundamental to the development of a healthy political system. Therefore, courts are generally reluctant to find that expression of opinions asserted outside of the court itself, however intemperate or misguided, constitute contempt of court. In re Iriarte (I), 1 FSM R. 239, 247-48 (Pon. 1983).

If the preponderance of evidence shows that a government employee would have been terminated even in the absence of the protected free speech conduct the employee's termination should be upheld. Damarlane v. Pohnpei Legislature, 8 FSM R. 23, 28 (App. 1997).

It is not a violation of a person's free speech rights to be arrested when he was attempting to interfere with the arrest of his cousin, when he was drunk at the time, and when he was disturbing the peace. Conrad v. Kolonia Town, 8 FSM R. 183, 193 (Pon. 1997).

A political candidate's freedom of expression is guaranteed, as it is to all citizens, under section 1 of the FSM Constitution's Declaration of Rights. FSM v. Moses, 9 FSM R. 139, 146 (Pon. 1999).

The freedom to communicate is the rule and restraint is the exception. Censorship, a form of prior restraint, is the most suspect punishment in a free society; ideas do not even get to the marketplace to compete for recognition and acceptance. Censorship thus runs counter to the freedom of speech and press. FSM v. Moses, 9 FSM R. 139, 146 n.2 (Pon. 1999).

When a vague statute abuts upon sensitive areas of basic freedoms, it operates to inhibit the exercise of those freedoms. Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked. FSM v. Moses, 9 FSM R. 139, 146 (Pon.

1999).

To conclude that 9 F.S.M.C. 107(1) criminalizes either a candidate's conduct in submitting his campaign tape directly to a broadcast facility without previously submitting it to the national election commissioner, or to conclude that the owner and operator of the radio station faces a criminal penalty because it aired the tape would be to attribute an uncertain meaning to the statute, which might well cause candidates to steer far wider of the unlawful zone than they otherwise would, or should, in the important work of presenting their views to a public which needs to exercise its franchise in an intelligent manner. The court declines to credit such an uncertain meaning to the statute. FSM v. Moses, 9 FSM R. 139, 146 (Pon. 1999).

Until such time as the plaintiff demonstrates the allegedly defamatory nature of the publications at issue, either by way of trial or proper motion accompanied by admissible supporting evidence, a permanent injunction cannot lawfully issue against the publication of speech that the defendants contend is true and which involves matters of public concern. O'Sullivan v. Panuelo, 10 FSM R. 257, 262 (Pon. 2001).

A public employer may not discharge either a tenured or a non-tenured employee for the reasonable exercise of constitutional rights such as freedom of speech. Lokopwe v. Walter, 10 FSM R. 303, 306 (Chk. S. Ct. Tr. 2001).

While no law may deny or impair freedom of expression, traditions are also protected under the FSM Constitution. Kosrae v. Waguk, 11 FSM R. 388, 390 (Kos. S. Ct. Tr. 2003).

The Kosrae Constitution provides for the fundamental right of freedom of expression, and also permits denial or impairment of that fundamental right by a statute which protects tradition. Kosrae v. Waguk, 11 FSM R. 388, 390 (Kos. S. Ct. Tr. 2003).

No law may deny or impair freedom of expression, except by a statute which protects tradition. If a statute is one which protects tradition, it may deny or impair the fundamental right of freedom of expression provided by the FSM and Kosrae Constitutions. If it is not a statute which protects tradition, then the statute may not impair the fundamental right of freedom of expression. Kosrae v. Waguk, 11 FSM R. 388, 390-91 (Kos. S. Ct. Tr. 2003).

The offense of defamation was not enacted to protect tradition, and if the offense of defamation does not protect tradition, then the fundamental right of freedom of expression as guaranteed by the Kosrae Constitution may not be impaired or denied. Kosrae v. Waguk, 11 FSM R. 388, 392 (Kos. S. Ct. Tr. 2003).

Since the Kosrae criminal defamation statute does not protect tradition, it may not impair a defendant's fundamental right of freedom of expression. The defamation statute impairs the fundamental right of freedom of expression because it fails to provide a specific standard of criminal conduct, thereby persons would not have adequate notice of what type of speech was regulated under it. Kosrae v. Waguk, 11 FSM R. 388, 392 (Kos. S. Ct. Tr. 2003).

Flyers and newspaper advertisements may be interpreted as "press" for purposes of constitutional freedom of expression. Yang v. Western Sales Trading Co., 11 FSM R. 607, 614 (Pon. 2003).

Commercial speech is expression related solely to the economic interests of the speaker and its audience, or speech which does no more than propose a commercial transaction. Yang v. Western Sales Trading Co., 11 FSM R. 607, 614 (Pon. 2003).

No guidance is found in the Journal of the Constitutional Convention as to the specific protection the FSM Constitution's framers sought to give commercial speech, but it did recognize that some forms of speech deserve less protection than others. Yang v. Western Sales Trading Co., 11 FSM R. 607, 614-15 (Pon. 2003).

Commercial expression serves two different functions – it serves the economic interests of the speaker, and also assists consumers and furthers the societal interest in dissemination of information. It may be constitutionally protected from unwarranted governmental restriction; however, there are common sense distinctions between commercial speech, which proposes a commercial transaction, and other varieties of speech. Yang v. Western Sales Trading Co., 11 FSM R. 607, 615 (Pon. 2003).

Commercial speech deserves less constitutional protection than other varieties of speech. Commercial speech's societal benefits are directly related to the informational function; thus, there can be no constitutional objection to the suppression of commercial messages that do not accurately inform the public about a lawful activity. The government should be permitted to restrict commercial forms of communication more likely to deceive the public than to inform it. Yang v. Western Sales Trading Co., 11 FSM R. 607, 615 (Pon. 2003).

A court approaches arguments as to the unconstitutionality of any prior restraint on the right to free speech as follows: first, the distinction is drawn between those portions of the publications that legitimately provide consumers with information and those portions which are solely related to proposing a commercial transaction. The court accords the first category constitutional protection as it approximates pure speech. As for the commercial speech contained within the publications, it would not be afforded constitutional protection unless the court found that the speech concerned a lawful activity and was not misleading. Yang v. Western Sales Trading Co., 11 FSM R. 607, 615 (Pon. 2003).

A court may issue a preliminary injunction when certain portions of commercial speech are misleading to consumers and merchants. Yang v. Western Sales Trading Co., 11 FSM R. 607, 615 (Pon. 2003).

The public interest weighs in favor of issuing a preliminary injunction when the injunction is limited in scope to protect the public from defendants' statements which are more likely to mislead than to inform the public. Yang v. Western Sales Trading Co., 11 FSM R. 607, 618 (Pon. 2003).

The right of citizens to express their views, including views critical of public officials, is fundamental to development of a healthy political system. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 312 (App. 2007).

When a legislature employee aired his opinion about a number of issues concerning the Speaker in a letter that was submitted directly to the Speaker, with copies to the Governor and the Pohnpei Supreme Court Chief Justice, it did not constitute an employee grievance. When the employee's assertion that he was notifying the Speaker of his intention to seek redress over his missing raise was false because an earlier letter previously notified the Speaker about the initiation of such legal proceedings; and when the employee appears to have sent the letter in pursuit of matters of a purely personal interest and the letter's overall tone was one of a personal grievance about his pay raise and his cancelled travel plans to events in Guam and Florida, which other Legislature employees had attended, the overriding factor is the context in which the statements were made: in pursuit of matters of the employee's personal importance and not as protected free speech. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 312-13 (App. 2007).

In evaluating a government employee's speech, the issue is not whether the speaker's statements were true or false, but instead whether the speech is made in the context of a public citizen making statements about issues of public importance, or as an employee making statements about matters of personal interest. Thus, courts must begin by considering whether the expressions in question were made by the speaker as a public citizen. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 313 (App. 2007).

A state employee's speech that concerns genuine public issues would be protected, but his speech that relates to items of personal importance to the employee would not necessarily be protected. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 314 (App. 2007).

Considerations of constitutional law and free speech sometimes apply to defamation cases, as when the action involves a public official, a public figure, or a matter of substantial public controversy. In such cases, beyond the other elements of defamation, the plaintiff must show that the defendant knew that the defamatory statement was false, or acted with malice or a reckless disregard for the truth. Smith v. Nimea, 18 FSM R. 36, 46 (Pon. 2011).

Although falsity is included in the FSM's definition of defamation, falsity is not a traditional element of a plaintiff's prima facie case; rather, truth is an affirmative defense. Even so, a court must distinguish between statements of fact and assertions of opinion, because opinions, false or not, libelous or not, are constitutionally protected and may not be the subject of private damage actions, provided that the facts supporting the opinions are set forth. Smith v. Nimea, 18 FSM R. 36, 46 (Pon. 2011).

Free speech is not a limitless right. One limitation comes from defamation law. FSM Dev. Bank v. Abello, 18 FSM R. 192, 196 (Pon. 2012).

Considerations of constitutional law and free speech sometimes apply in defamation cases, as when the action involves a public official, a public figure, or a matter of substantial public controversy. In such cases, beyond the other elements of defamation, the plaintiff must show that the defendant knew that the defamatory statement was false, or acted with malice or a reckless disregard for the truth. FSM Dev. Bank v. Abello, 18 FSM R. 192, 197 (Pon. 2012).

A state employee's speech that concerns genuine public issues is protected speech. Tither v. Marar, 18 FSM R. 303, 306 (Chk. 2012).

A plaintiff's termination or discharge was not unlawful when, even if he had been able to prove that his constitutionally-protected conduct had been a substantial or motivating factor in his termination and the burden had have shifted to the defendants, he still would not prevail because the defendants demonstrated that they would have taken the same action in the absence of the protected conduct because of his probationary status and his unsatisfactory and unprofessional conduct prevented him from being converted from a probationary employee to a permanent employee and he would have been terminated anyway. Tither v. Marar, 18 FSM R. 303, 306 (Chk. 2012).

If the preponderance of evidence shows that a government employee would have been terminated even in the absence of the protected free speech conduct, then the employee's termination should be upheld. Alexander v. Hainrick, 20 FSM R. 377, 383 (App. 2016).

Free speech rights under the Declaration of Rights protection of "freedom of expression" should cover social media communications. Apostol v. Maniquiz, 22 FSM R. 146, 149 & n.2 (Chk. 2019).

"Freedom of expression" encompasses freedom of speech, freedom of the press, and the freedom to communicate. Apostol v. Maniquiz, 22 FSM R. 146, 149 n.2 (Chk. 2019).

– Fundamental Rights

Waiver of a fundamental right may not be presumed in ambiguous circumstances. FSM v. Edward, 3 FSM R. 224, 234 (Pon. 1987).

In adopting the Declaration of Rights as part of the Constitution of the Federated States of Micronesia and therefore the supreme law of the land, the people of Micronesia subscribed to various principles which place upon the judiciary the obligation, among others, to assure that arrests are based upon probable cause, that determinations of guilt are arrived at fairly, and that punishments for wrongdoing are proportionate to the crime and meet prescribed standards. Tammed v. FSM, 4 FSM R. 266, 281-82 (App. 1990).

When a trial court is asked to give special mitigative effect to customary punishment during its

sentencing proceedings, the court must first consider whether these customary activities have become so imbued with official state action so that the actions of the assailants are seen as actions of the state itself; if so the punishments must be tested by the same standards that would be applied if state officials carried out these punishments directly. Tammed v. FSM, 4 FSM R. 266, 283 (App. 1990).

The Compact of Free Association's immunization provisions, which limit a plaintiff's right to sue a physician for malpractice, do not affect a fundamental right, and therefore, the provisions need not be subjected to a strict scrutiny, but instead should be tested under the less stringent rational relationship test. Samuel v. Pryor, 5 FSM R. 91, 104 (Pon. 1991).

A defendant that has failed to raise and preserve the issue has waived his right to object to the admission of evidence, but when a plain error that affects the constitutional rights of the defendant has occurred the court may notice the error. Moses v. FSM, 5 FSM R. 156, 161 (App. 1991).

There is no fundamental interest in unbounded wrongful death recovery requiring strict scrutiny of a state law imposing a recovery cap. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 362 (Kos. 1992).

Since the FSM people's traditions may be protected by statute and if challenged as violative of the fundamental rights in Article IV, protection of Micronesian tradition shall be considered a compelling social purpose warranting such governmental action, Kosrae may pass a law which protects the Kosraean people's traditions. Kosrae v. Waguk, 11 FSM R. 388, 390 (Kos. S. Ct. Tr. 2003).

The right to marry is a fundamental constitutional right. Prisoners retain that right, but the right is subject to substantial restrictions as a result of imprisonment. Prisons may regulate the time and place of the wedding ceremony. Sigrah v. Noda, 14 FSM R. 295, 298 (Kos. S. Ct. Tr. 2006).

A fundamental right is some principle of justice so rooted in the traditions and conscience of our people as to be ranked fundamental and examples of which are the freedom of association, the right to vote, the right to travel, rights associated with certain criminal proceedings, and the right to privacy. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 82 (Pon. 2007).

Equal protection forbids only invidious discrimination. Where relevant differences exist between classes, different treatment by the state is permissible. However, any statute that classifies and affords different treatment is subject to the same tests as those under substantive due process: 1) Does the legislature have power to enact the statute that classifies? 2) Does the classification bear a rational relationship to the legislative goal? The classification is presumed to be valid and the burden of proving that the statute is without a rational relationship to the legislative objective is on the challenger of the classification. 3) Where fundamental rights are involved, the classification constitutes a suspect criteria. As such, the burden of proving that the classification bears a close rational relationship to some compelling governmental interests shifts to the government. Fundamental rights are presumed to be absolute until the government proves a compelling governmental interest to curtail or restrain them. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 592 (App. 2008).

The court should be wary of requests that it identify as fundamental any rights beyond those specified in the declaration of rights. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 592 (App. 2008).

Employment is not listed as a fundamental right in the Declaration of Rights although a case has referred to "employment opportunity" as a "liberty interest." But when the interest in contention is employment pay not the opportunity for employment, being paid a lower rate than another involves a fundamental right if the reason for the lower pay is the employee's sex, race, ancestry, national origin, language, or social status. Being paid at a lower rate for some other reason does not involve a fundamental right. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 592 (App. 2008).

Although an employment opportunity is a liberty interest protected by due process, the right to governmental employment in Pohnpei is not a constitutionally-protected fundamental right, requiring

invoking a strict scrutiny test. Berman v. Pohnpei Legislature, 16 FSM R. 492, 497 (Pon. 2009).

Equal protection analysis within the FSM has adopted a two-tiered test. The first tier is a rational basis test. Under this test a law will be upheld if it is rationally related to a state interest. Under the second tier, laws that involve a "suspect" class of persons or touch on a "fundamental interest" are subject to strict scrutiny and are struck down unless justified by a compelling state interest. Berman v. Lambert, 17 FSM R. 442, 450 (App. 2011).

Employment is not listed as a fundamental right in the Declaration of Rights and the court should be wary of requests that it identify as fundamental any rights beyond those specified in the Declaration of Rights. Berman v. Lambert, 17 FSM R. 442, 450 (App. 2011).

The right to work for the Pohnpei state government is not a constitutionally protected right, and, although there is a right to seek employment, there is no fundamental right for employment particularly to public employment. Berman v. Lambert, 17 FSM R. 442, 450 (App. 2011).

– Imprisonment for Debt

The constitutional provision prohibiting imprisonment for debt does not restrict the manner in which 6 F.S.M.C. 1412 is applied, although that statute includes imprisonment as one possible sanction for violating an order in aid of judgment. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 381 (App. 2003).

The constitutional prohibition prohibiting imprisonment for debt is a restriction on the courts against the enforcement of judgments of a certain character, but does not restrict a court's power to enforce its lawful orders by imprisonment for contempt. Even when the violation of the order is for failure to make payments for the recovery of a judgment enforceable by an order in aid of judgment, if the order is one which the court could lawfully make, the imprisonment is not for failure to pay the debt, but failure to obey a lawful court order. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 382 (App. 2003).

The prohibition on imprisonment for debt is to bar imprisonment for honest failure to pay contractual debts. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 382 (App. 2003).

A debtor who knows that he is under a court order to pay an amount certain, has the ability to pay the amount, and still refuses to pay it, acts against good morals and fair dealing. Such a situation amounts to being "tainted by fraud" and is within the exceptions to the prohibition on imprisonment for debt. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 382-83 (App. 2003).

– Indefinite Land Use Agreements

Read in the light of its legislative history, article XIII, section 5 of the Constitution of the Federated States of Micronesia was intended to cover leases, not easements, and therefore an easement that is indefinite in term does not violate this constitutional section. Melander v. Kosrae, 3 FSM R. 324, 330 (Kos. S. Ct. Tr. 1988).

The FSM Constitution terminated all existing indefinite term land use agreements five years after the effective date of the Constitution. After that date, without a new lease agreement the occupier becomes a trespasser on the land. Billimon v. Chuuk, 5 FSM R. 130, 132 (Chk. S. Ct. Tr. 1991).

Easements are not indefinite land use agreements prohibited by the Constitution because "indefinite land use agreement" is a term of art referring to Trust Territory leases for an indefinite term. Nena v. Kosrae, 5 FSM R. 417, 423 (Kos. S. Ct. Tr. 1990).

Land granted for "for so long as it is used for missionary purposes," is not a constitutionally prohibited indefinite land use agreement because the length of the term of the land use will continue, with all certainty, as long as a court determines that the land is still being used for missionary purposes. The term is definite,

because its termination can be determined with certainty. Dobich v. Kapriel, 6 FSM R. 199, 202 (Chk. S. Ct. Tr. 1993).

The Constitutional prohibition against indefinite land use agreements does not apply to an agreement where none of the parties are a non-citizen, a corporation not wholly owned by citizens, or a government. Dobich v. Kapriel, 6 FSM R. 199, 202 (Chk. S. Ct. Tr. 1993).

An easement for a road is not an indefinite land use agreement prohibited by the Constitution because it is perpetual. It is not indefinite in that it is effective into perpetuity. Nena v. Kosrae (I), 6 FSM R. 251, 254 (App. 1993).

An easement may be created for a permanent duration, or, as it is sometimes stated, in fee, which will ordinarily continue in operation and be enforceable forever. The grant of a permanent easement is for as definite a term as the grant of a fee simple estate. Both are permanent and not for a definite term. Nena v. Kosrae (II), 6 FSM R. 437, 439 (App. 1994).

A grant of a permanent or perpetual easement is definite in the same sense that a grant of a fee simple estate is definite – it is a permanent transfer of an interest in land. Nena v. Kosrae (III), 6 FSM R. 564, 568 (App. 1994).

Where no indefinite land use agreement existed when the Constitution took effect there was no agreement that had to have been renegotiated by 1984. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 491 (App. 1996).

All indefinite land use agreements are void after July 12, 1984, as being in violation of the FSM Constitution. Hartman v. Chuuk, 9 FSM R. 28, 33 (Chk. S. Ct. App. 1999).

Under the original version of Article XIII, section 5 of the FSM Constitution, FSM governments were barred from obtaining an agreement for the use of land for an indefinite term and that could have made a land purchase agreement unconstitutional because of a reversionary clause returning the land to the original land owner or successor at the end of an indefinite term of airport use, but, when that provision was amended in 1991 so that only land lease agreements for an indefinite term were prohibited, and that constitutional amendment was effective before the subject land purchase agreement was executed, Article XIII, section 5 does not prohibit the Land Purchase Agreement because it is not a lease. Uehara v. Chuuk, 14 FSM R. 221, 226 (Chk. 2006).

When the Trust Territory leased Unupuku in 1956 and had indefinite land use rights under the lease, but did not claim to own Unupuku, but indefinite land use agreements were abolished by Article XIII, section 5 of the FSM Constitution and became void on July 12, 1984, five years after the FSM Constitution's effective date, and when the state executed a fifteen-year lease for Unupuku in 1984 and it did not claim to own Unupuku, in any suit claiming title to Unupuku, the state was not the party to sue since it did not claim title to Unupuku. Unupuku's titleholders were. Ruben v. Hartman, 15 FSM R. 100, 111 (Chk. S. Ct. App. 2007).

– Interpretation

The FSM Supreme Court must remain sensitive to the unique circumstances of the Federated States of Micronesia and may not slavishly follow interpretations of similar language by United States, Trust Territory, or other tribunals in different contexts. Lonno v. Trust Territory (I), 1 FSM R. 53, 69 n.11 (Kos. 1982).

Because the Constitution of the Federated States of Micronesia has drawn upon numerous concepts established in the Constitution of the United States, interpretations of the United States Constitution, as of 1978 when the Constitution was ratified by plebiscite, are pertinent to determining the meaning of particular provisions in the FSM Constitution. To the extent that the FSM clearly patterned upon the United States

Constitution, the reasonable expectation of the framers would be that the words of the FSM Constitution would have substantially the effect those same words had been given in the United States Constitution as of the times that the convention was acting, or when the ratifying vote occurred. Lonno v. Trust Territory (I), 1 FSM R. 53, 69-70 (Kos. 1982).

Decisions of the Trust Territory courts may be a useful source of guidance in determining the meaning of particular provisions within the Constitution. The framers were working against the background of legal concepts recognized and applied by the Trust Territory High Court and may have been guided by those interpretations in selecting or rejecting certain provisions. Lonno v. Trust Territory (I), 1 FSM R. 53, 71 (Kos. 1982).

The FSM Supreme Court may look to the law of other nations, especially other nations of the Pacific community, to determine whether approaches employed there may prove useful in determining the meaning of particular provisions within the Constitution. Lonno v. Trust Territory (I), 1 FSM R. 53, 71 (Kos. 1982).

Analysis of the Constitution must start with the words of the constitutional provision. If these words are clear and permit only one possible result, the court should go no further. FSM v. Tipen, 1 FSM R. 79, 82 (Pon. 1982).

When the words of a constitutional provision are not conclusive as to its meaning, the next step in determining the intent of the framers is to review the Journal of the Micronesian Constitutional Convention to locate any discussion in the convention about the provision. FSM v. Tipen, 1 FSM R. 79, 82 (Pon. 1982).

If doubt as to the meaning of a constitutional provision still remains after careful consideration of the language and constitutional history, the court should proceed to other sources for assistance. These include interpretations of similar language in the United States Constitution, decisions of the Trust Territory High Court, generally held notions of basic justice within the international community, and consideration of the law of other nations, especially others within the Pacific community. FSM v. Tipen, 1 FSM R. 79, 83 (Pon. 1982).

In interpreting the Declaration of Rights, courts should emphasize and carefully consider United States Supreme Court interpretations of the United States Constitution. FSM v. Tipen, 1 FSM R. 79, 85 (Pon. 1982).

The provisions in the Constitution's Declaration of Rights are to a substantial degree patterned upon comparable provisions in the United States Constitution; the FSM Supreme Court should consider carefully decisions of the United States courts interpreting the United States counterparts. Tosie v. Tosie, 1 FSM R. 149, 154 (Kos. 1982).

As the provisions set forth in the Constitution's Declaration of Rights are based on counterparts in the United States Constitution, it is appropriate to review decisions of United States courts, especially those in effect when the Constitution was approved and ratified, to determine the content of the words employed therein. In re Iriarte (I), 1 FSM R. 239, 249 (Pon. 1983).

The framers of the Federated States of Micronesia Constitution drew upon the United States Constitution and it may be presumed that phrases so borrowed were intended to have the same meaning given to them by the United States Supreme Court. Jonas v. Trial Division, 1 FSM R. 322, 327 n.1 (App. 1983).

An analysis of constitutional grants of power must start with the constitutional language itself. Suldan v. FSM (II), 1 FSM R. 339, 342 (Pon. 1983).

The similarities of the FSM and the United States Constitutions mandate that the FSM Supreme Court,

in attempting to determine its role under the FSM Constitution, will give serious consideration to United States constitutional analysis at the time of the Micronesian Constitutional Convention. Suldan v. FSM (II), 1 FSM R. 339, 345 (Pon. 1983).

If the words of the Constitution are ambiguous or doubtful, it is a court's duty to seek out the intention of the framers. Suldan v. FSM (II), 1 FSM R. 339, 348 (Pon. 1983).

By using the United States Constitution as a blueprint, the framers created a presumption that they were adopting such a fundamental American constitutional principle as judicial review, found to be inherent in the language and very idea of the United States Constitution. Suldan v. FSM (II), 1 FSM R. 339, 348 (Pon. 1983).

A legitimate method for determining the meaning of a constitution is to trace the language to its source. When the language in the FSM Constitution and the United States Constitution is similar, it is appropriate to look to interpretations by United States courts, especially those in existence at the time of the Micronesian Constitutional Convention, as a guide to the intended meaning of the words employed in the Constitution of the FSM. Ponape Chamber of Commerce v. Nett Mun. Gov't, 1 FSM R. 389, 394 (Pon. 1984).

The FSM Supreme Court may look to decisions under the United States Constitution for guidance in determining the scope of jurisdiction since the jurisdictional language of the Federated States of Micronesia Constitution is similar to that of the United States. Etpison v. Perman, 1 FSM R. 405, 414 (Pon. 1984).

United States constitutional law at the time of the Micronesian Constitutional Convention furnishes guidance as to the intended scope of the FSM Constitution's double jeopardy clause. Laion v. FSM, 1 FSM R. 503, 523 (App. 1984).

Where the framers of the FSM Constitution have borrowed phrases from the Constitution of the United States for guidance, it may be presumed that those phrases were intended to have the same meaning given to them by the Supreme Court of the United States. Tammow v. FSM, 2 FSM R. 53, 56-57 (App. 1985).

Interpretative efforts for a clause in the FSM Constitution which has no counterpart in the United States Constitution must begin with recognition that such a clause presumably reflects a conscious effort by the framers to select a road other than that paved by the United States Constitution. The original focus must be on the language of the clause. If the language is inconclusive the tentative conclusion may be tested against the journals of the Micronesian Constitutional Convention and the historical background against which the clause was adopted. Tammow v. FSM, 2 FSM R. 53, 57 (App. 1985).

Interpretations of the FSM Constitution which strip constitutional clauses of substance and effect run against the norms of constitutional interpretation and are greatly disfavored. Tammow v. FSM, 2 FSM R. 53, 57 (App. 1985).

Departure from the form of the United States Constitution reveals an intention by the framers of the FSM Constitution to depart from the substance as well, so far as major crimes are concerned. Tammow v. FSM, 2 FSM R. 53, 58 (App. 1985).

General principles gleaned from an entire constitution and constitutional history may not be employed to defeat the clear meaning of an individual constitutional clause. Tammow v. FSM, 2 FSM R. 53, 59 (App. 1985).

Interpretations which strip clauses of substance and effect run against the norms of interpretation and are greatly disfavored. FSM v. George, 2 FSM R. 88, 94 (Kos. 1985).

Though the words used in article XI, section 6 of the FSM Constitution, including the case or dispute

requirements, are based on the similar case and controversy provisions set out in article III of the United States Constitution, courts within the FSM are not to consider themselves bound by the details and minute points of decisions of United States courts attempting to ferret out the precise meaning of article III. Aisek v. Foreign Inv. Bd., 2 FSM R. 95, 98 (Pon. 1985).

Many provisions of this Constitution are derived from the United States Constitution and the framers intended that interpretation of the words adopted would be influenced by United States decisions in existence when this Constitution was adopted in October 1975 and ratified on July 12, 1978. Yet the framers also surely intended that courts here would not place undue importance on decisions of United States courts but would employ the words and concepts used in the United States Constitution to develop a jurisprudence appropriate and applicable to the circumstances of the Federated States of Micronesia. Aisek v. Foreign Inv. Bd., 2 FSM R. 95, 98 (Pon. 1985).

Constitutional interpretation must start and end with the words of the provision when the words themselves plainly and unmistakably provide the answer to the issue posed. The court may not look to constitutional history nor to United States interpretations of similar constitutional language in this circumstance. Ponape Federation of Coop. Ass'ns v. FSM, 2 FSM R. 124, 126-27 (Pon. 1985).

Courts may look to the Journals of the Micronesian Constitutional Convention for assistance in determining the meaning of constitutional language that does not provide an unmistakable answer. The Journals provide no conclusion as to whether promises of leniency by the police should be regarded as having compelled a defendant to give statements and other evidence but shows that the article IV, section 7 protection against self-incrimination was based upon the fifth amendment to the United States Constitution. Therefore courts within the Federated States of Micronesia may look to United States decisions to assist in determining the meaning of article IV, section 7. FSM v. Jonathan, 2 FSM R. 189, 193-94 (Kos. 1986).

Differences in the language employed in parallel provisions of the FSM and United States Constitutions presumably reflect a conscious effort by the framers of the FSM Constitution to select a road other than that paved by the United States Constitution. FSM Dev. Bank v. Estate of Nanpei, 2 FSM R. 217, 219 n.1 (Pon. 1986).

Because the Declaration of Rights is patterned after provisions of the United States Constitution, and United States cases were relied on to guide the constitutional convention, United States authority may be consulted to understand the meaning. Afituk v. FSM, 2 FSM R. 260, 263 (Truk 1986).

In determining whether constitutional language is amenable to only one possible interpretation, courts should consider the words in the light of history and the accepted meaning of those words prior to and at the time the Constitution was written. Federated Shipping Co. v. Ponape Transfer & Storage (III), 3 FSM R. 256, 258 (Pon. 1987).

Exact scope of admiralty jurisdiction is not defined in the FSM Constitution or legislative history, but United States Constitution has a similar provision, so it is reasonable to expect that words in both Constitutions have similar meaning and effect. Weilbacher v. Kosrae, 3 FSM R. 320, 323 (Kos. S. Ct. Tr. 1988).

In interpreting the Constitution, each provision should be interpreted against the background of all other provisions in the Constitution, and an effort should be made to reconcile all provisions so that none is deprived of meaning. Bank of Guam v. Semes, 3 FSM R. 370, 378 (Pon. 1988).

Courts should interpret the national Constitution in such a manner that each provision is given effect. Carlos v. FSM, 4 FSM R. 17, 29 (App. 1989).

Because the jurisdiction provisions of the FSM Constitution are substantially similar to those of the United States but the words themselves provide no definite interpretation and no party has pointed either to

constitutional history or to other matters, such as custom or tradition, calling for a particular interpretation or for departure from the accepted meaning in the United States, it is appropriate to look to United States precedents for possible guidance in determining what the framers intended in adopting the provisions that now appear in the Constitution. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM R. 37, 41 (Pon. 1989).

Where the language of the FSM Constitution has been borrowed from the United States Constitution, the court may look to leading United States cases for guidance in interpreting that language, especially where the meaning is not self-evident from the words themselves; in particular, United States constitutional law at the time of adoption of the FSM Constitution can have special relevance in determining the meaning of similar constitutional language here. Paul v. Celestine, 4 FSM R. 205, 208 (App. 1990).

Analysis of Constitutional issues must begin with the words of the Constitution. Constitutional Convention 1990 v. President, 4 FSM R. 320, 325 (App. 1990).

Consideration of the general plan of the Constitution and the institutions created thereunder may be helpful in determining the proper interpretation of specific language within the FSM Constitution. Constitutional Convention 1990 v. President, 4 FSM R. 320, 326 (App. 1990).

When the meaning of the words in the FSM Constitution are not self-evident and it is apparent the words have been drawn from or are patterned upon language in the Constitution of the United States or of some other jurisdiction, the Supreme Court of the FSM may look to decisions of courts in that other jurisdiction for assistance in discerning the appropriate meaning of the words in the FSM Constitution. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 371 (App. 1990).

The decisions of United States courts are not binding upon the FSM Supreme Court as to the meaning of the FSM Constitution even when the words of the FSM Constitution plainly are based upon comparable language in the United States Constitution, and the FSM Supreme Court will not accept a United States interpretation which 1) was shaped by historical factors not relevant to the FSM; 2) was widely and persuasively criticized by commentators in the United States; and 3) was not specifically recognized or even alluded to by the framers of the FSM Constitution. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 371 (App. 1990).

In interpreting the provision against cruel and unusual punishment in the FSM Constitution, the court should consider the values and realities of Micronesia, but against a background of the law concerning cruel and unusual punishment and international standards concerning human rights. Plais v. Panuelo, 5 FSM R. 179, 196-97 (Pon. 1991).

Constitutional analysis always starts with the words of the Constitution. Where the wording is inconclusive and where the wording is unique to the FSM Constitution, then the court should look to the journals of the Constitutional Convention and the historical background at the time the clause was adopted for guidance. But when there is a conflict with the language of the Constitution, then the actual wording of the Constitution prevails. Nena v. Kosrae, 5 FSM R. 417, 422 (Kos. S. Ct. Tr. 1990).

The term "concurrent" in article XI, section 6(c) of the FSM Constitution has the same meaning as in section 6(b); i.e., that jurisdiction is concurrent as between the FSM Supreme Court and any other national courts that may be established by statute. It would be illogical and contrary to norms of constitutional interpretation to assume a different meaning for "concurrent" in section 6(c) than in section 6(b), since it is quite clear that the two sections are to be read together. Faw v. FSM, 6 FSM R. 33, 35 (Yap 1993).

Where the constitutional language is inconclusive or does not provide an unmistakable answer courts may look to the journal of the Constitutional Convention for assistance in determining the meaning of constitutional words. Robert v. Mori, 6 FSM R. 394, 397 (App. 1994).

Some weight may be given as well to the early Congresses' understanding of constitutional provisions given the continuity of elected representation in the early Congresses. Robert v. Mori, 6 FSM R. 394, 399 (App. 1994).

A litigant, in order to make arguments based on the legislative history of the constitutional provision, must first show the ambiguity in the constitutional provision. Only if the constitutional language is unclear or ambiguous can a court proceed to consult the constitutional convention journals and the historical background. Nena v. Kosrae (III), 6 FSM R. 564, 568 (App. 1994).

Where distinctions exist between the Constitution of the Federated States of Micronesia and the United States Constitution or other foreign authorities, court must not hesitate to depart from foreign precedent and develop its own body of law. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM R. 594, 600 (Pon. 1994).

If a matter may properly be resolved on statutory grounds without reaching potential constitutional issues, then the court should do so. FSM v. George, 6 FSM R. 626, 628 (Kos. 1994).

Analysis of constitutional issues must begin with the words of the Constitution, and where the framers of the FSM Constitution drew upon the Constitution of the United States it may be presumed that phrases so borrowed were intended to have the same meaning given to them by the Supreme Court of the United States. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 45 (App. 1995).

A committee report that refers to language that is not in the Constitution and that accompanied a committee proposal that was killed by the Constitutional Convention cannot be relied upon to discover the real intent of the framers. At best it can only be used to show what was not their intent. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 47 (App. 1995).

Where the constitutional language itself, following FSM precedents on constitutional interpretation, only requires minimal diversity for the national courts to have jurisdiction, and the constitutional journals do not reveal any intent to depart from the plain meaning of the constitutional language, there are no sound reasons why twelve years of FSM jurisprudence requiring only minimal diversity should be overturned. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 48 (App. 1995).

The primary source available to courts when engaging in constitutional interpretation are the words of the constitution itself, and, if those are capable of more than one meaning, then the legislative history. Assuming that these two sources, taken together, are dispositive of the issue in question, a court may not look to any other source. Tafunsak v. Kosrae, 7 FSM R. 344, 347 (App. 1995).

Courts are to interpret constitutions so as to give effect to each provision, because interpretations which strip constitutional clauses of substance and effect run against the norms of constitutional interpretation and are greatly disfavored. Tafunsak v. Kosrae, 7 FSM R. 344, 347 & n.4 (App. 1995).

FSM courts may look for guidance to decisions of United States courts construing words of the United States Constitution which are similar to those in the Constitution of the Federated States of Micronesia, but FSM courts need not follow them in areas where United States constitutional law has been particularly unsettled or where the decision relies on specific and unique historical factors that do not exist here. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 459-60 (App. 1996).

When the language of the Constitution is not conclusive as to the issue presented, it is proper to refer to the constitutional convention journal for the history of the provision. If the journal does not address the point, a court may next consult cases from the United States if the phrase in the U.S. Constitution suggests that the FSM borrowed the term, and the court can infer that the framers intended that the meaning here be given the same meaning as it was given in U.S. courts. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 463-64 (App. 1996).

The FSM Constitution due process provision is derived from the United States Constitution and thus United States cases may be consulted for guidance in interpretation, emphasizing cases in effect at the times of the framing (1975) and the ratification (1978) of the FSM Constitution. FSM v. Skico, Ltd. (II), 7 FSM R. 555, 556-57 (Chk. 1996).

A state court is competent to rule on FSM Constitution, but should avoid unnecessary adjudication of the FSM Constitution. Damarlane v. Pohnpei Legislature, 8 FSM R. 23, 28 (App. 1997).

When analyzing provisions of the FSM Constitution, a court must look first to the actual words of the Constitution. Where the words are clear and permit only one possible result, the court should go no further. Only where the words of the Constitution are not clear is it necessary to consult other sources. Chuuk v. Secretary of Finance, 8 FSM R. 353, 362-63 (Pon. 1998).

A court should consider all provisions of the Constitution, because different sections may relate to the same subject matter, giving the specific provision questioned added meaning. Chuuk v. Secretary of Finance, 8 FSM R. 353, 363, 368, 386 (Pon. 1998).

If a court finds that the words of the Constitution are not clear or do not permit only one possible result, the court should next consult the Journal of the Constitutional Convention to ascertain the intent of the framers in drafting that language. If these two sources are dispositive, the court may not look to any other source. If the Constitution's language considered together with the legislative history is not dispositive, the court should look to interpretation of comparable language in other constitutions and to custom and tradition for guidance. Given the continuity of elected representation in the early FSM Congresses, some weight may be given as well to early Congresses' understanding of constitutional provisions. Chuuk v. Secretary of Finance, 8 FSM R. 353, 363 (Pon. 1998).

The framers intended that the constitutional language delegating governmental functions to the FSM national government be strictly and narrowly construed and not used to excessively and unduly expand the power of the central government, but they did not intend that the general grant of power be ignored, with the effect of denying to the central government the power necessary to deal with problems which are national in scope. Chuuk v. Secretary of Finance, 8 FSM R. 353, 369 (Pon. 1998).

The Constitution must be interpreted so as to give effect to each provision, because interpretations which strip constitutional clauses of substance and effect run against the norms of constitutional interpretation, and are greatly disfavored. Chuuk v. Secretary of Finance, 8 FSM R. 353, 371 (Pon. 1998).

Because of the continuity of representation in the early Congresses of the FSM, courts can give some weight to the early Congresses' understanding of Constitutional provisions. Chuuk v. Secretary of Finance, 8 FSM R. 353, 374 (Pon. 1998).

The FSM Constitution contains a provision by which the net revenues from offshore mineral resources are to be divided equally between the states and the national government, FSM Const. art. IX, § 6. There would be no need to specify the division of income from such resources if such revenues were taxes to be automatically divided under article IX, section 5. Chuuk v. Secretary of Finance, 8 FSM R. 353, 386 (Pon. 1998).

Counsel's conversations with persons involved in drafting the Constitution are hearsay, especially when there is no competent evidence in the record, or in the Constitutional Convention Journal, to support counsel's assertion. Chuuk v. Secretary of Finance, 8 FSM R. 353, 386 n.27 (Pon. 1998).

Because the Declaration of Rights is to a substantial degree patterned after provisions of the U.S. Constitution, and U.S. cases were relied on to guide the constitutional convention, U.S. authority may be consulted to understand its meaning. FSM v. Joseph, 9 FSM R. 66, 72 (Chk. 1999).

When the court has analyzed the present meaning of the Constitution by recognized judicial standards of constitutional interpretation as long as the present language remains the court's conclusions carry full force and effect. Chuuk v. Secretary of Finance, 9 FSM R. 73, 75 (Pon. 1999).

The FSM Constitution's Declaration of Rights is based on the United States Constitution's Bill of Rights, and a court may look to United States precedent in this regard. FSM v. Moses, 9 FSM R. 139, 146 (Pon. 1999).

Since the Due Process Clause in the Declaration of Rights of the FSM Constitution is based on the Due Process Clause of the U.S. Constitution's Fourteenth Amendment, the FSM Supreme Court may properly consider U.S. cases in construing due process under the FSM Constitution. Weno v. Stinnett, 9 FSM R. 200, 213 (App. 1999).

When a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, United States authority may be consulted to understand its meaning. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 412 n.2 (App. 2000).

What is important is not how the states imagine it might have been in Trust Territory times, but what presently exists under the provisions of the Constitution, which the people of all four states ratified. Chuuk v. Secretary of Finance, 9 FSM R. 424, 431 (App. 2000).

Trust Territory statutes that mostly never took effect cannot be relied upon to interpret provisions of the FSM Constitution. Chuuk v. Secretary of Finance, 9 FSM R. 424, 432-33 (App. 2000).

A normal English language reading of the phrase "the revenues" in article IX, section 5's second sentence necessarily refers to those revenues mentioned in section 5's first sentence – national taxes. Chuuk v. Secretary of Finance, 9 FSM R. 424, 434 (App. 2000).

The Constitution delegates to the national government the power to impose only two types of taxes – that based on imports and that on income. Money collected through these forms of taxation are the revenues of which half must be paid into the treasury of the state where collected. Chuuk v. Secretary of Finance, 9 FSM R. 424, 434 (App. 2000).

A court can neither read into the Constitution nor rewrite the Constitution to contain a provision that is not there. Chuuk v. Secretary of Finance, 9 FSM R. 424, 436 (App. 2000).

In interpreting the Constitution, a court looks first to the language and words of the Constitution. When that language is plain and unambiguous, a court need not look any further. Chuuk v. Secretary of Finance, 9 FSM R. 424, 436 (App. 2000).

While our Constitution's wording is otherwise similar to that in article III, section 2, clause 1 of the U.S. Constitution, the FSM national courts have jurisdiction over "cases" and "disputes" while the U.S. federal courts have jurisdiction over "cases" and "controversies," but no significance can be attached to the difference between controversies and disputes. The FSM Constitution's case or dispute clause is thus similar to the U.S. Constitution's case or controversy clause. FSM v. Louis, 9 FSM R. 474, 482 (App. 2000).

In the usual case, a court will not decide a question on a constitutional ground if it may be resolved on a statutory or other basis. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 579 (App. 2000).

When the tax exemption issue is implicitly a constitutional one because the statute, to the extent viewed as seeking to impose a state tax upon the national government, goes to the constitutional relationship between the state and national governments and when as between the exemption issue and the interstate

commerce restriction issue, which is explicitly constitutional in character, the determination of one makes the other moot, and when if only the tax exemption issue were addressed it could resolve the dispute between the parties but would leave in place an injunction precluding all collection of the tax as unconstitutional, the court must decide the constitutional tax and commerce question in order to accord the appellant a meaningful remedy. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 579 (App. 2000).

When analyzing provisions of the FSM Constitution, a court must look first to the actual words of the Constitution. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 62 (Pon. 2001).

When a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, United States authority may be consulted to understand its meaning. FSM v. Inek, 10 FSM R. 263, 265 (Chk. 2001).

Because the FSM Declaration of Rights was modeled after the U.S. Bill of Rights, the court may look to U.S. sources for guidance in interpreting similar Declaration of Rights provisions, such as the right to confrontation. FSM v. Wainit, 10 FSM R. 618, 621 n.1 (Chk. 2002).

In resolving a constitutional question, first the court must look at plain meaning of words of the Constitution. If a particular provision is not clear, the court should attempt to ascertain the drafters' intent by looking at Constitutional Convention and the reasons expressed for including a particular provision in the Constitution. Finally, if there are constitutional provisions similar to provisions in other countries' constitutions, the court may look to other countries' case law for guidance, but is not bound. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 630 (Pon. 2002).

Where the framers of the FSM Constitution borrowed phrases from the United States Constitution for guidance, it may be presumed that those phrases were intended to have the same meaning given to them by the United States Supreme Court. Where the FSM Constitution's language has been borrowed from the United States Constitution, the court may look to leading United States cases for guidance in interpreting that language, especially where the meaning is not self-evident from the words themselves. Kosrae v. Sigrah, 11 FSM R. 26, 30 (Kos. S. Ct. Tr. 2002).

The court must begin with the presumption that acts of Congress are constitutional. FSM v. Anson, 11 FSM R. 69, 74 (Pon. 2002).

In interpreting a constitutional provision, a court must initially analyze the constitution's actual words. If those words are clear and permit only one possible result, then the court should go no further. But if a constitutional provision is not clear and does not permit only one possible result, a court should next consult the constitutional convention journal to ascertain the framers' intent in drafting the language. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 380-81 (App. 2003).

Since the words "involuntary servitude" are subject to various definitions, the constitutional provision is not clear and does not permit only one possible result. A court may consult the constitutional convention journal to ascertain the framers' intent in drafting this language. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 385 (App. 2003).

When the language in the FSM Constitution and the United States Constitution is similar, it is appropriate to look to interpretations by United States courts, especially those in existence at the time of the Micronesian Constitutional Convention, as a guide to the intended meaning of the words employed in the Constitution. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 385 (App. 2003).

The search and seizure provision of the FSM Constitution's Declaration of Rights is similar to and drawn from a provision in the U.S. Constitution's Bill of Rights, and when a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, U.S. authority may be consulted to

understand its meaning. FSM v. Wainit, 11 FSM R. 424, 434 (Chk. 2003).

The similarities of the FSM and the U.S. Constitutions mandate that the FSM Supreme Court will give particular consideration to U.S. constitutional analysis at the time of the Micronesian Constitutional Convention and the Constitution's adoption. FSM v. Wainit, 11 FSM R. 424, 434 (Chk. 2003).

Two old (1937 and 1924) cases that do not reflect U.S. constitutional analysis and practice at the time the FSM Constitution was drafted and adopted in the last half of the 1970's cannot be a basis for an FSM constitutional analysis of provisions adopted from and similar to a provision in the U.S. Constitution's Bill of Rights when those cases differ significantly from the constitutional analysis current in the 1970's. FSM v. Wainit, 11 FSM R. 424, 436 (Chk. 2003).

Statutes are presumed constitutional until challenged, and the burden is on the challenger to clearly demonstrate that a statute is unconstitutional. Parkinson v. Island Dev. Co., 11 FSM R. 451, 453 (Yap 2003).

Unnecessary constitutional adjudication is to be avoided. Parkinson v. Island Dev. Co., 11 FSM R. 451, 453 (Yap 2003).

When analyzing provisions of the FSM Constitution, a court must look first to the Constitution's actual words. When the words are clear and permit only one possible result, the court should go no further. After reviewing the Constitution's words, if the court finds that the words are not clear or do not permit only one possible result, the court should next consult is the Journal of the Constitutional Convention to ascertain the framers' intent in drafting that language. Yang v. Western Sales Trading Co., 11 FSM R. 607, 613 (Pon. 2003).

When there are no decisions by FSM courts which discuss which standard applies to conducting an investigatory stop of a vehicle, the court may look to the law of the United States for guidance. Kosrae v. Tosie, 12 FSM R. 296, 299 (Kos. S. Ct. Tr. 2004).

In the absence of Micronesian precedent, the FSM Supreme Court can and should consider the reasoning from the courts of other common law jurisdictions. When the FSM Constitution's language has been borrowed from the U.S. Constitution, the court may look to leading U.S. cases for guidance in interpreting that language, especially where the meaning is not self-evident from the words themselves; in particular, U.S. constitutional law at the time of adoption of the FSM Constitution can have special relevance in determining the meaning of similar constitutional language here. But in evaluating the reasoning of other courts, the court emphasizes that it must always independently consider the suitability of that reasoning for the FSM. Sigrah v. Kosrae, 12 FSM R. 320, 325 (App. 2004).

In construing a provision of the Declaration of Rights, our courts should carefully evaluate the way that the United States Supreme Court has interpreted the United States Constitution because a phrase appearing in our Constitution that was borrowed from the United States Constitution may be presumed to have a similar interpretive meaning. Sigrah v. Kosrae, 12 FSM R. 320, 327-28 (App. 2004).

It is appropriate to look to U.S. constitutional law and its courts' interpretations, especially those interpretations existing at the time of the Micronesian Constitutional Convention, as a guide to the intended meaning and scope of the FSM Constitution's words (such as the speedy trial right) since the provisions in the FSM Constitution's Declaration of Rights are traceable to the U.S. Constitution's Bill of Rights. FSM v. Wainit, 12 FSM R. 405, 409 (Chk. 2004).

When an FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning, and where the FSM Constitution's framers borrowed phrases from the U.S. Constitution, it may be presumed that those phrases were intended to have the same meaning given them by the U.S. Supreme Court. FSM v. Wainit, 12 FSM R. 405, 409 (Chk. 2004).

The nation's laws are presumed to be constitutional. A fundamental principle of statutory interpretation is that where a statute can be read in two ways, one raising constitutional issues and the other interpreting the language as affecting matters clearly within Congress's constitutional reach, the latter interpretation should prevail so that the constitutional issue is avoided. Jano v. FSM, 12 FSM R. 569, 572-73 (App. 2004).

Courts should, where possible, avoid selecting interpretations of a statute which may bring into doubt that statute's constitutionality. Jano v. FSM, 12 FSM R. 569, 573 (App. 2004).

The final test in determining whether a statute is repealed by implication by a new constitutional provision is: Has the legislature, under the new constitutional provision, the present right to enact statutes substantially like the statutes in question? Jano v. FSM, 12 FSM R. 569, 574 (App. 2004).

In the important process of construing the nation's formative document, we must first pay heed to the language of the Constitution itself. Urusemal v. Capelle, 12 FSM R. 577, 586 (App. 2004).

When the Constitution's words themselves are not determinative of a question, the court may look to the Micronesian Constitutional Convention journal to locate any discussion about the provision in question. Urusemal v. Capelle, 12 FSM R. 577, 586 (App. 2004).

It is plain from the framers' discussions at the time of the Constitution's creation that in order to insure the judiciary's independence, there should be only one removal process for justices, and that that process should be the one specified in the Constitution. Urusemal v. Capelle, 12 FSM R. 577, 586 (App. 2004).

The court cannot amend the Constitution by reading into it language that does not appear in it. To do so would be to amend the Constitution by judicial fiat, a course of action not only plainly inimical to Article XIV, Section 1 of the Constitution, but one upon which the court is constitutionally forbidden from embarking. Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 149-50 (App. 2005).

When our nation's highest court, the FSM Supreme Court appellate division, interprets a constitutional provision in a case before it, that interpretation is to be given full effect in all cases still open on direct review, and as to all events, regardless of when they occurred. Once it announces a new rule of law, the integrity of judicial review requires application of the new rule to all similar cases pending on review. Kosrae v. Sikain, 13 FSM R. 174, 177 (Kos. S. Ct. Tr. 2005).

When the funds garnished came from tax revenues already credited to the State of Chuuk and held by the FSM pending disbursement, and these are funds credited to the states in accordance with Title 54, Section 805, and are automatically paid into the state government treasury by statute and are simply held by the FSM national government, the state's argument that this money was not withdrawn from the national treasury "by law," is therefore incorrect. Chuuk v. Davis, 13 FSM R. 178, 184-85 (App. 2005).

The similarities of the FSM and the U.S. Constitutions mandate that the court give particular consideration to U.S. constitutional analysis at the time of the Micronesian Constitutional Convention and of the Constitution's adoption. FSM v. Wainit, 13 FSM R. 433, 444-45 (Chk. 2005).

When there are no reported decisions by FSM courts which discuss whether a person, who has been stopped for suspected driving under the influence, must be provided his or her Miranda rights prior to the administration of field sobriety tests, the court may look to United States law for guidance. Kosrae v. Phillip, 13 FSM R. 449, 452 (Kos. S. Ct. Tr. 2005).

Once a plaintiff's claim fails on its statutory grounds then the court should have considered either the plaintiff's common law ground or its constitutional grounds. On the general principle that constitutional adjudication should be avoided unless necessary, the trial court should first consider any non-constitutional

grounds that might resolve the issue. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 25-26 (App. 2006).

The protection in article IV, section 5 of the FSM Constitution against unreasonable search and seizure is based upon and drawn from the comparable provision in the U.S. Constitution's fourth amendment. The addition of the phrase "invasion of privacy" to the FSM version was not intended to expand the search and seizure protections in the FSM any further. It was intended to more adequately express its meaning. FSM v. Kansou, 14 FSM R. 136, 138 (Chk. 2006).

When a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, U.S. authority may be consulted to understand its meaning. FSM v. Kansou, 14 FSM R. 136, 138 (Chk. 2006).

When an FSM or Kosrae constitutional protection is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning. Neth v. Kosrae, 14 FSM R. 228, 233 (App. 2006).

U.S. authority may be consulted to understand the meaning of a Declaration of Rights provision patterned after a U.S. Bill of Rights provision since the provisions in the Constitution's Declaration of Rights are traceable to the U.S. Constitution's Bill of Rights. Where the Constitution's framers drew upon the U.S. Constitution, it may be presumed that phrases so borrowed were intended to have the same meaning given to them by the U.S. Supreme Court. FSM v. Fritz, 14 FSM R. 548, 552 n.1 (Chk. 2007).

When the language in an FSM rule or law is nearly identical to a United States counterpart, the court may look to the courts of the United States for guidance in interpreting the rule or law and may look to court decisions from the United States to assist in the interpretation of the double jeopardy clause set forth in the Declaration of Rights in the FSM Constitution, as that clause was drawn from the Bill of Rights of the United States Constitution. FSM v. Zhang Xiaohui, 14 FSM R. 602, 615 (Pon. 2007).

When no reported FSM case has dealt with alleged discrimination in an academic setting, the court may consider cases from other jurisdictions in the common law tradition. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 81 (Pon. 2007).

When the appellate court has not had previous occasion to consider the constitutionality of a DUI statute, the court may consider cases from other jurisdictions in the common law tradition. Phillip v. Kosrae, 15 FSM R. 116, 119 (App. 2007).

In determining the double jeopardy clause's scope and meaning the court first looks to the language of the Constitution itself. FSM v. Louis, 15 FSM R. 348, 354 (Pon. 2007).

Where the FSM Constitution's language has been borrowed from the United States Constitution, the court may look to leading United States cases for guidance in interpreting that language, especially where the meaning is not self-evident from the words themselves. The Double Jeopardy Clause, like most provisions of the Declaration of Rights, was drawn from the United States Constitution's Bill of Rights. Thus, United States constitutional law at the time of the Micronesian Constitutional Convention furnishes guidance as to the intended scope of the FSM Constitution's Double Jeopardy Clause. FSM v. Louis, 15 FSM R. 348, 354 (Pon. 2007).

Although the court must first look to FSM sources of law to establish legal requirements in criminal cases rather than begin with a review of other courts' decisions, when the language in the FSM Constitution and the U.S. Constitution is similar or identical, it is appropriate to look to United States constitutional law and its courts's interpretations, especially those interpretations existing at the time of the Micronesian Constitutional Convention, as a guide to the intended scope of the FSM Constitution's words. FSM v. Sam, 15 FSM R. 491, 493 n.1 (Chk. 2008).

The FSM Constitution is based in great part on the U.S. Constitution, but there are significant differences between the two, and where such differences exist, they presumably represent a conscious

effort by the framers to select a road other than that paved by the United States Constitution. In re Neron, 16 FSM R. 472, 474 (Pon. 2009).

The FSM Constitution's separation-of-powers structure is derived from that in the U.S. Constitution. The similarities of the FSM and the U.S. Constitutions mandate that the FSM Supreme Court will give particular consideration to U.S. constitutional analysis, especially at the time of the Micronesian Constitutional Convention and of the Constitution's adoption. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512 n.1 (Pon. 2009).

When an FSM or Kosrae constitutional protection, such as the FSM or Kosrae double jeopardy protection, is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning. Kosrae v. Benjamin, 17 FSM R. 1, 4 n.2 (App. 2010).

Although it may look to U.S. constitutional decisions for guidance, the FSM Supreme Court may not simply accept the U.S. court interpretations, but must instead independently consider whether U.S. court rulings are appropriate for application within the FSM. FSM v. Phillip, 17 FSM R. 413, 423 (Pon. 2011).

Because the FSM Supreme Court has previously looked to the principles underlying the U.S. Constitution's Fourth Amendment when analyzing the requirements necessary to establish consent sufficient to justify a warrantless search in the FSM, the court may engage in that analysis again. FSM v. Phillip, 17 FSM R. 413, 423 (Pon. 2011).

Although the court must first look to FSM sources of law to establish legal requirements in criminal cases rather than start with a review of other courts' cases, when an FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning since it may be presumed that the borrowed phrases were intended to have the same meaning given to them by the U.S. Supreme Court. FSM v. Kool, 18 FSM R. 291, 294 n.2 (Chk. 2012).

In resolving a Constitutional question, the Chuuk State Supreme Court must first look at plain meaning of the Constitution's words. If the Constitution is not clear as to a particular provision, the court should attempt to ascertain the drafters' intent by looking at Constitutional Convention and the reasons expressed for including a particular provision in the Constitution. Finally, if there are provisions in the FSM Constitution similar to provisions in other countries' constitutions, the court may look to case law of other countries for guidance, but is not bound. Kama v. Chuuk, 18 FSM R. 326, 331 (Chk. S. Ct. Tr. 2012).

When it is an issue of first impression, U.S. court decisions may be used for guidance. Kama v. Chuuk, 18 FSM R. 326, 331 (Chk. S. Ct. Tr. 2012).

The FSM Supreme Court's subject-matter jurisdiction cannot be determined by reference to the Constitution's detailed command to the Public Auditor about the breadth and depth of the tasks that the Public Auditor must undertake. The exclusive jurisdiction that the FSM Supreme Court exercises when the national government is a party cannot be avoided, and was never meant to be avoided, by the mere device of naming a branch, or a department, or an agency, or a statutory authority of the national government as a party instead of naming the national government itself as a party. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 614 (Pon. 2013).

While the court must first look to FSM sources of law to rather than begin with a review of other courts' decisions, when a FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision and when there is no FSM case law on point, United States authority may be consulted to understand its meaning. Kon v. Chuuk, 19 FSM R. 463, 466 n.1 (Chk. 2014).

A constitutional provision that requires things to be done without prescribing the result that will follow if those things are not done is directory in character. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 25 (App. 2015).

Article XII, Section 3(b)'s specific language merely signifies those entities which come within the penumbra of duties/responsibilities incumbent upon the Office of the Public Auditor. By the use of the phrase "every branch . . . of the national government," it is readily apparent the framers were listing a series of entities that would come within the ambit of the Office of the Public Auditor's duties and responsibilities. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 514 (App. 2016).

The FSM Supreme Court's exclusive jurisdiction over cases in which the national government is a party is not paralleled in the United States, and such differences presumably reflect a conscious effort by the framers to select a road other than that paved by the United States Constitution. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 517 (App. 2016).

A constitutional provision cannot be unconstitutional under the constitution it is a part of. Kama v. Chuuk, 20 FSM R. 522, 531 (Chk. S. Ct. App. 2016).

Since unnecessary constitutional adjudication is to be avoided, if a matter may properly be resolved on a statutory basis without reaching potential constitutional issues, then the court should do so. Linter v. FSM, 20 FSM R. 553, 559 (Pon. 2016).

The general principle is that constitutional adjudication should be avoided unless necessary, so the trial court should first consider any non-constitutional grounds that might resolve the issue. Chuuk v. Weno Municipality, 20 FSM R. 582, 584 (Chk. 2016).

If a matter may properly be resolved without reaching potential constitutional issues, then the court should do so, since unnecessary constitutional adjudication is to be avoided. Tilfas v. Kosrae, 21 FSM R. 81, 93 (App. 2016).

When the language of the FSM Constitution has been borrowed from the U.S. Constitution, the court may look to leading U.S. cases for guidance in interpreting that language, especially where the meaning is not self-evident from the words themselves; in particular, U.S. constitutional law at the time of adoption of the FSM Constitution can have special relevance in determining the meaning of similar constitutional language here. Fuji Enterprises v. Jacob, 21 FSM R. 355, 365 n.10 (App. 2017).

The FSM Constitution's due process clause is derived from the U.S. Constitution and thus U.S. cases may be consulted for guidance in interpretation, emphasizing those cases in effect at the times of the FSM Constitution's framing (1975) and the ratification (1978). Wolphagen v. FSM, 22 FSM R. 96, 102 n.1 (App. 2018).

Constitutional adjudication should be avoided unless necessary. The trial court should first consider any non-constitutional grounds that might resolve the issue. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 328 (Pon. 2019).

The court will not address the plaintiff's claims that the defendants directly violated three FSM Constitution provisions when the only necessary Constitutional inquiry is whether the national government exercised its power appropriately when it enacted a particular statute because, when the court concluded that that statute was lawfully enacted, the plaintiff's claim that the defendants violated a national statute was sufficient to resolve the parties' dispute. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 328-29 (Pon. 2019).

In rendering a decision, the court must first consult and apply FSM legal sources. In resolving a Constitutional question, first the court must look at the plain meaning of the Constitution's words. If the Constitution is not clear as to a particular provision, the court should ascertain the drafters' intent by examining the Constitutional Convention's records and the reasons expressed for including that particular Constitutional provision. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 331 (Pon. 2019).

A constitutional provision that requires things to be done without prescribing the result that will follow if those things are not done is directory in character. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 480 (Pon. 2020).

– Interpretation – Whether Self-Executing

Jurisdictional grants of power to the national courts in Article XI, § 6 appear to be self-executing, calling for no action by Congress. Since most U.S. Constitution jurisdictional provisions are not self-executing, determinations of U.S. courts' jurisdiction are typically based on statutory construction rather than constitutional interpretation, as in the FSM. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 517 n.5 (App. 2016).

In light of the self-executing grants of jurisdiction embodied within the FSM Constitution, the United States decisions, which address the underlying congressional intent, provide little guidance, in terms of analysis of the Article XI, Section 6(b) "arising under" language, against the backdrop of a constitutional provision. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 517 (App. 2016).

Article III, sections 1 and 2 of the FSM Constitution are self-executing and do not contemplate, or imply the need for, court action to confirm citizenship where no challenge exists. Hartmann v. Department of Justice, 21 FSM R. 468, 475 (Chk. 2018).

A constitutional provision is self-executing when no legislation is required to bring it into effect and when there is no indication that legislation is contemplated in order to render it operative. Hartmann v. Department of Justice, 21 FSM R. 468, 475 (Chk. 2018).

Constitutional provisions are self-executing if they supply a sufficient rule for their implementation, or when there is a manifest intention that they should go into immediate effect, and no ancillary legislation is necessary to the enjoyment of a right given, or the enforcement of a duty imposed. Hartmann v. Department of Justice, 21 FSM R. 468, 475 (Chk. 2018).

While a self-executing provision does not require any legislation to render it operative, minor details may be left for the legislature without impairing the constitutional provision's self-executing nature. Hartmann v. Department of Justice, 21 FSM R. 468, 475 (Chk. 2018).

That a right granted, or duty imposed, by a constitutional provision may be better or further protected by supplementary legislation does not of itself prevent that provision from being self-executing. Hartmann v. Department of Justice, 21 FSM R. 468, 475-76 (Chk. 2018).

A constitutional provision's self-executing character does not necessarily preclude legislation for the better protection of the right secured or legislation in furtherance of the provision's purposes, or of its enforcement. Hartmann v. Department of Justice, 21 FSM R. 468, 476 (Chk. 2018).

Constitutional provisions are not self-executing if they merely indicate a line of policy or principle, without supplying the means by which such policy or principles are to be carried into effect, or if the language of the constitution is directed to the legislature, or if it appears from the language used and the circumstances of its adoption that subsequent legislation was contemplated to carry it into effect. Hartmann v. Department of Justice, 21 FSM R. 468, 476 (Chk. 2018).

Whether a constitutional provision is self-executing is ultimately a question of the intention of the constitution's framers, and, in order to determine the intent, the general rule is that courts will consider the language used, the objects to be accomplished by the provision, and the surrounding circumstances. Hartmann v. Department of Justice, 21 FSM R. 468, 476 (Chk. 2018).

Constitutional provisions are presumed to be self-executing and are construed as such, rather than as requiring further legislation, unless the contrary clearly appears. Hartmann v. Department of Justice, 21

FSM R. 468, 476 (Chk. 2018).

A constitutional provision is self-executing insofar as it is susceptible of execution without supplemental legislation. Hartmann v. Department of Justice, 21 FSM R. 468, 476 (Chk. 2018).

Where a constitution asserts a certain right, or lays down a certain principle of law or procedure, it speaks for the entire people as their supreme law, and is full authority for all that is done in pursuance of its provision. In short, if complete in itself, it executes itself. Hartmann v. Department of Justice, 21 FSM R. 468, 476 (Chk. 2018).

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

Article III, section 3 of the FSM Constitution is self-executing in that it can be given effect without the aid of legislation and there is nothing to indicate that legislation is intended to make it operative. Hartmann v. Department of Justice, 21 FSM R. 468, 476-77 (Chk. 2018).

Not all constitutional provisions are self-executing. A constitutional provision is self-executing when no legislation is required to bring it into effect and when there is no indication that legislation is contemplated in order to render it operative. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 480 (Pon. 2020).

– Involuntary Servitude

Slavery and involuntary servitude are prohibited except to punish crime. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 384 (App. 2003).

While the Constitution's prohibition of slavery and involuntary servitude may have had its source in the Trust Territory Bill of Rights and the U.S. Constitution, it has particular meaning within the FSM's historical context of forced labor by former foreign administering authorities. Some still-living citizens of this nation have experienced firsthand the evils of slavery and involuntary servitude, and the constitutional provision was meant to ban those types of atrocities forever. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 384 (App. 2003).

Since the words "involuntary servitude" are subject to various definitions, the constitutional provision is not clear and does not permit only one possible result. A court may consult the constitutional convention journal to ascertain the framers' intent in drafting this language. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 385 (App. 2003).

The determination of what constitutes 'involuntary servitude' or what is regarded as "badges of slavery" is to be made in the context of well established Micronesian customs. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 385 (App. 2003).

Absent a violation of a criminal statute, the court cannot compel a person to labor for the liquidation of a debt to another with the threat of punishment for failure to perform. Involuntary servitude thus has been held to encompass peonage, where a person is bound to the service of a particular employer until an obligation to that person is satisfied. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 385 (App. 2003).

When a person claiming involuntary servitude is simply expected to seek and accept employment, if available, and is free to choose the type of employment and employer, and is also free to resign that employment if conditions are unsatisfactory or to accept other employment, none of the aspects of "involuntary servitude" are present. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 385 (App. 2003).

While the trial court does not violate the Constitution's involuntary servitude provision when it orders a judgment-debtor to seek immediate employment, when the judgment-debtor has presented evidence that

he is unable to work, the trial court must make specific findings with regard to his fitness for work before it orders him to seek immediate employment. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 386 (App. 2003).

"Practices similar to slavery" include forced marriage, and a victim's repeated sexual exploitation by the same person is something akin to a "forced marriage" without the status of being a spouse. FSM v. Siega, 21 FSM R. 291, 296 (Chk. 2017).

Under 11 F.S.M.C. 612, "exploitation" includes slavery and practices similar to slavery, and practices similar to slavery include debt bondage, serfdom, and forced marriage. FSM v. Shiro, 21 FSM R. 331, 333 (Chk. 2017).

Since, under the constitutional provision barring slavery, Congress clearly has the authority to legislate in the area of human trafficking, the FSM Supreme Court has subject matter jurisdiction over a criminal case whose charges are all under the Trafficking in Persons Act and allege exploitation. FSM v. Shiro, 21 FSM R. 331, 333 (Chk. 2017).

– Judicial Guidance Clause

The FSM Supreme Court must remain sensitive to the unique circumstances of the Federated States of Micronesia and may not slavishly follow interpretations of similar language by United States, Trust Territory, or other tribunals in different contexts. Lonno v. Trust Territory (I), 1 FSM R. 53, 69 n.11 (Kos. 1982).

The FSM Constitution is the supreme law and the decisions of the FSM Supreme Court must be consistent with it. Truk v. Hartman, 1 FSM R. 174, 176-77 (Truk 1982).

The FSM Supreme Court can and should consider decisions and reasoning of courts in the United States and other jurisdictions, including the Trust Territory courts, in arriving at its own decisions. It is not, however, bound by those decisions and must not fall into the error of adopting the reasoning of those decisions without independently considering suitability of that reasoning for the Federated States of Micronesia. Alaphonso v. FSM, 1 FSM R. 209, 212-13 (App. 1982).

1 F.S.M.C. 203, with its sweeping mandate that the *Restatements* and other common law rules as applied in the United States be the "rules of decision," would lure the courts in a direction other than that illuminated by the Constitution's Judicial Guidance Provisions, FSM Const. art. XI, § 11, which identifies as the guiding star, not the *Restatement* or decisions of United States courts concerning common law, but the fundamental principle that decisions must be "consistent" with the "Constitution, Micronesian custom and tradition, and the social and geographical configuration of Micronesia." Rauzi v. FSM, 2 FSM R. 8, 14 (Pon. 1985).

Under the FSM Constitution's Judicial Guidance Provision, FSM Const. art. XI, § 11, FSM Supreme Court decisions are to be consistent with the "social and geographical configuration of Micronesia." Ray v. Electrical Contracting Corp., 2 FSM R. 21, 26 (App. 1985).

The Constitution's judicial guidance clause cautions against simply adopting previous interpretations of other jurisdictions without careful analysis of its application to the circumstances of the Federated States of Micronesia. Luda v. Maeda Road Constr. Co., 2 FSM R. 107, 112 (Pon. 1985).

Common law decisions of the United States are an appropriate source of guidance for this court for contract and tort issues unresolved by statutes, decisions of constitutional courts here, or custom and tradition within the Federated States of Micronesia. Review of decisions of courts of the United States, and any other jurisdictions, must proceed however against the background of pertinent aspects of Micronesian society and culture. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 142 (Pon. 1985).

A message of the judicial guidance clause is that a court, when interpreting a contract, may not simply assume that reasonably intelligent Micronesians will perceive the same meaning as would reasonably intelligent Americans. Courts may not blind themselves to the pertinent aspects of Micronesian society, such as less facility in the English language, less exposure to business concepts, and paucity of legal resources, which might cause a reasonably intelligent Micronesian to perceive a meaning differently than would a person from some other nation. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 149 (Pon. 1985).

The judicial guidance clause, FSM Const. art. XI, § 11, is intended to insure, among other things, that this court will not simply accept decisions of the Trust Territory High Court without independent analysis. FSM v. Oliver, 3 FSM R. 469, 478 (Pon. 1988).

The judicial guidance clause prohibits a sentencing court from giving special effect to customary beatings administered to the defendant, unless the court finds that such recognition would be consistent with the protections guaranteed to individuals by the Declaration of Rights. Tammed v. FSM, 4 FSM R. 266, 284 (App. 1990).

The judicial guidance clause implies a requirement that courts consult the values of the people in finding principles of law for this new nation, and the fact that all state legislatures in the Federated States of Micronesia, and the Congress, have enacted Judiciary Acts adopting the Code of Judicial Conduct as the standard for judicial officials and authorizing departures from those standards only to impose tighter standards, suggests that courts should rely heavily on those standards in locating minimal due process protections against biased decision-making in judicial proceedings within the Federated States of Micronesia. Etscheit v. Santos, 5 FSM R. 35, 38-39 (App. 1991).

The judicial guidance clause, article XI, section 11 of the Constitution, requires that in searching for legal principles to serve the Federated States of Micronesia, courts must first look to sources of law and circumstances here within the Federated States of Micronesia rather than begin with a review of cases decided by other courts. Etscheit v. Santos, 5 FSM R. 35, 38 (App. 1991).

State and national legislation may be useful as a means of ascertaining Micronesian values in rendering decisions pursuant to the judicial guidance clause, particularly when more than one legislative body in the FSM has independently adopted similar law. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 361 (Kos. 1992).

Article XI, section 11 of the FSM Constitution mandates that the court look first to Micronesian sources of law – which includes the FSM Code and rules of the court – in reaching decisions. Alfons v. FSM, 5 FSM R. 402, 404-05 (App. 1992).

Extradition is founded upon treaties between sovereign nations involving mutual agreements and commitments. There is no counterpart in Micronesia custom and tradition that is applicable. In re Extradition of Jano, 6 FSM R. 23, 25 (App. 1993).

Determining the relevancy of custom in carrying out the mandate of article XI, section 11 of the FSM Constitution must proceed on a case-by-case basis. Wito Clan v. United Church of Christ, 6 FSM R. 129, 132 (App. 1993).

Where entitlement to customary relief has been proven and the means to execute such a remedy are within the trial court's authority and discretion, the trial court should as a matter of equity and constitutional duty grant the relief. Wito Clan v. United Church of Christ, 6 FSM R. 129, 133 (App. 1993).

FSM courts must consider customary law where relevant to a decision, but it is not error for a court to consider custom and find that it is not relevant to its decision because a Certificate of Title had been issued

for the land. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 50 (App. 1995).

A court must consult and apply sources of law in the FSM prior to rendering a decision, and would resort to local customary law before considering the common law of other nations. Ladore v. U Corp., 7 FSM R. 296, 299 (Pon. 1995).

The Judicial Guidance Clause requires that courts utilize the following analytic method. First, if a constitutional provision bears upon an issue, that provision will prevail over any other source of law. Second, any applicable Micronesian custom or tradition must be considered, and the court's decision must be consistent therewith. If there is no directly applicable constitutional provision, or custom or tradition, or if these sources are insufficient to resolve all issues in the case, then the court may look to the law of other nations. Chuuk v. Secretary of Finance, 8 FSM R. 353, 377 (Pon. 1998).

Certain issues are not of a local or traditional nature, and not amenable to determination based upon custom and tradition, such as issues related to business ventures in the FSM by non-citizens, foreign shipping agreements, and international extradition. Fishing fees derived from commercial fishing contracts, and collected primarily from foreign companies pursuant to agreements negotiated by the MMA are transactions and behaviors that are also distinctly non-customary and non-local. Chuuk v. Secretary of Finance, 8 FSM R. 353, 377 (Pon. 1998).

The FSM Constitution requires court decisions be consistent with Micronesian customs and traditions, and provides that the FSM Congress may enact statutes to protect the traditions of the people of the FSM. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 66 (Pon. 2001).

The Constitution admonishes that court decisions are to be consistent with the "social and geographical configuration of Micronesia," and a cause of action for loss of parental consortium is consistent with this admonition in that it acknowledges the important role played by the family in the many distinct cultures of Micronesia. Amayo v. MJ Co., 10 FSM R. 244, 253 (Pon. 2001).

When the court looks to common law sources in considering the nature of the legislative privilege enjoyed by members of the Pohnpei Legislature, it is mindful of Article XI, section 11 of the FSM Constitution, which requires that FSM Supreme Court decisions be consistent with the Constitution, Micronesian customs and traditions, and the social and geographical configuration of Micronesia. AHPW, Inc. v. FSM, 10 FSM R. 420, 423 (Pon. 2001).

The FSM Supreme Court can and should consider decisions and reasoning of United States courts and other jurisdictions in arriving at its own decisions. It is not, however, bound by those decisions and must not fall into the error of adopting reasoning of those decisions without independently considering suitability of that reasoning for the FSM. Panuelo v. Amayo, 10 FSM R. 558, 563 (App. 2002).

The judicial guidance clause requires that, in searching for legal principles to serve the FSM, courts must first look to sources of law and circumstances here within the FSM rather than begin with a review of cases decided by other courts. Panuelo v. Amayo, 10 FSM R. 558, 563 (App. 2002).

When the economic disparity between the indigent losing plaintiff and the successful defendants could not be more stark and when the plaintiff pursued his case in good faith and it was not frivolous, the defendants' motion to tax costs must be denied and no costs allowed. This result is consistent with the social configuration of Micronesia, as mandated by the Constitution's Judicial Guidance Clause. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM R. 319, 323 (Pon. 2003).

Under FSM constitutional jurisprudence, a person has no right, with some possible narrow exception, to resist a court-issued search warrant even if that search warrant turns out to be invalid. A person's remedies for being subjected to a search with an invalid search warrant are the suppression of any evidence seized, and, in the proper case, a civil suit for damages. The self-help of resistance is not a remedy and because of the Micronesian customary preference for the peaceful resolution of disputes, this

conclusion is consistent not only with the FSM Constitution, but also with the social configuration of Micronesia as is required by the Constitution's Judicial Guidance Clause. FSM v. Wainit, 11 FSM R. 424, 436-37 (Chk. 2003).

This court is mandated by Article XI, Section 11 of the Constitution to first consult and apply sources from within the FSM. The overall goal is to develop principles of standing which are consistent with the Constitution's language and designed to meet the needs of the nation's people and institutions. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 496-97 (Kos. 2003).

The FSM Constitution requires that court decisions be consistent with the Constitution, Micronesian customs and traditions, and the social and geographical configuration of Micronesia. Yang v. Western Sales Trading Co., 11 FSM R. 607, 613 (Pon. 2003).

Because the court is required to make decisions consistent with the FSM's social and geographical configuration and because the FSM is a large country in terms of geographical distances, but has a small land base, a small population, and limited resources with a small government legal office and few other lawyers available, the court thus should not order the government to go outside its Department of Justice for a prosecutor unless it is absolutely necessary. FSM v. Wainit, 12 FSM R. 172, 180 (Chk. 2003).

The FSM Supreme Court is ever mindful of the constitutional admonition that court decisions shall be consistent with the FSM Constitution, Micronesian custom and traditions, and Micronesia's social and geographical configuration and that in rendering a decision, a court shall consult and apply sources of the Federated States of Micronesia, and that the Kosrae Constitution also provides that court decisions shall be consistent with that constitution, state traditions and customs, and the state's social and geographical configuration. Sigrah v. Kosrae, 12 FSM R. 320, 325 (App. 2004).

When the project control document did not say otherwise, the community halls contemplated by the Uman Social Project project control document are the customary and traditional community hall (an *wuut* or *uut*) found in Uman (and throughout the Southern Namoneas and Chuuk Lagoon) because this is the meaning of the term community hall (*wuut* or *uut*) as understood by the defendants, who are all from the Southern Namoneas and because is this is not only the only logical conclusion to draw under the circumstances, this result is mandated by the Judicial Guidance Clause, which requires all judicial decisions to be consistent with custom and tradition. FSM v. Este, 12 FSM R. 476, 481 (Chk. 2004).

Since court decisions are constitutionally required to be consistent with the geographical configuration of Micronesia, which includes the relative isolation of various outer island communities, a fifteen-day delay caused by the inability of a mayor from an outer island with no air service to Chuuk Lagoon to travel to the Lagoon to sign legal papers will be considered excusable neglect. Fan Kay Man v. Fananu Mun. Gov't, 12 FSM R. 492, 495-96 (Chk. 2004).

As required by the FSM Constitution, in rendering a decision, a court must consult and apply sources of the Federated States of Micronesia, but where appropriate, the FSM Supreme Court can and should consider decisions and reasoning of United States courts and other jurisdictions in arriving at its own decisions. Because there is very little FSM law governing the enforcement of national civil rights judgments against the states, the court will look to case law of the United States for guidance, as civil rights protections in the United States and FSM are similar. Chuuk v. Davis, 13 FSM R. 178, 185-86 (App. 2005).

The court is required to make decisions consistent with the FSM's social and geographical configuration. While the FSM is a country of large geographical distances, it has a small land base, a small population, and limited resources. Likewise, it has a small government legal office and few other lawyers available. The court, consistent with the FSM's social and geographical configuration, thus should not order the government to go outside its Department of Justice for a prosecutor unless it is absolutely necessary. The disqualification of all lawyers in a government office when one of them is disqualified is a

question within the trial court's discretion. FSM v. Wainit, 13 FSM R. 433, 440 (Chk. 2005).

The court must make its decisions consistent with the FSM's social and geographical configuration. While the FSM is a nation of large geographical distances, it has a small land base, a small population, and limited resources. It also has a small government legal office and few other lawyers available. The court, consistent with the FSM's social and geographical configuration, thus should not order the government to go outside its Department of Justice for a prosecutor unless it is absolutely necessary. FSM v. Kansou, 14 FSM R. 273, 278 (Chk. 2006).

The Kosrae State Court recognizes the universal importance of marriage in our societies; the social and geographical configuration of Kosrae; and the importance of family relationships in our communities and of the building of new family relationships through marriages. Sigrah v. Noda, 14 FSM R. 295, 299 (Kos. S. Ct. Tr. 2006).

When a class action has vindicated rights that benefit a large number of people; when these rights required private enforcement since the State of Yap was not in the position to vindicate the private rights of the people of Rull and Gilman; when, considering Yapese society's heavy reliance on the inner lagoon's marine resources, the rights enforced were of great societal importance; and when Yapese society's dependence on the resources of the shoreline, inner reefs, and mangrove stands is a salient feature of Yap's social and geographical configuration; the use of the private attorney general theory conforms to the Constitution's Judicial Guidance Clause that court decisions are to be consistent with the social and geographical configuration of Micronesia. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 421 (Yap 2006).

U.S. courts' common law decisions are an appropriate source of guidance for the FSM Supreme Court for contract and tort issues unresolved by statutes, decisions of constitutional courts here, or custom and tradition within the FSM. The FSM Constitution's judicial guidance clause requires that the court's review of U.S. courts' decisions proceed against the background of pertinent aspects of Micronesian society and culture, but where the business activities which gave rise to the lawsuit are not of a local or traditional nature, and the work setting and the work itself are of a markedly non-local, international character, the court need not conduct an intense search for applicable customary laws and traditional rules when none have been brought to its attention by the parties and none are apparent. Reg v. Falan, 14 FSM R. 426, 430 n.1 (Yap 2006).

Customary business practice is distinguished from customary law, that is, from the "custom and tradition" enshrined in the Constitution. Amayo v. MJ Co., 14 FSM R. 487, 489 (Pon. 2006).

The court is bound by Article XI, Section 11, but when the respondent attorney has not pointed to any custom or tradition that either excuses his actions or provides the extraordinary circumstances necessary to prevent the court from suspending him and when he has been convicted of four felony violations of the Financial Management Act and an element of each of those crimes is that a government official act knowingly and willingly, there is conclusive evidence before the court (Disciplinary Rule 10(b) states that a final conviction is conclusive evidence of the crime) that the respondent attorney acted dishonestly and fraudulently since the legislature has decided that the actions taken by respondent attorney are bad, immoral, and unethical since they are crimes punishable by up to twenty years imprisonment. In re Fritz, 14 R. 563, 565 (Pon. 2007).

The court will give no weight to a contention that there was no contingent fee agreement in place because the fee agreement states that the clients are the Municipalities of Rull and Gilman and the plaintiff class is composed of Rull and Gilman residents when neither municipality is a corporate body or has an established municipal government and these municipalities exist as social constructs and when the court's decisions must conform to Micronesia's social configuration. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 64 n.3 (Yap 2007).

Decisions of the FSM Supreme Court must be consistent with Micronesian customs and traditions. Narruhn v. Aisek, 16 FSM R. 236, 242 (App. 2009).

The FSM Supreme Court may consider decisions and reasoning of U.S. courts and other jurisdictions in arriving at its decisions. It is not, however, bound by those decisions and must not fall into the error of adopting reasoning of those decisions without independently considering the suitability of that reasoning for the FSM. Berman v. Lambert, 17 FSM R. 442, 449 n.3 (App. 2011).

The court can take judicial notice that the social configuration of the outer islands in the State of Yap differs significantly from the Yap main island (even the vernacular language is significantly different) since it is a fact not subject to reasonable dispute in that it is generally known within the trial court's territorial jurisdiction and since the court's decisions are required to be consistent with the social and geographic configuration of Micronesia. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 267 (Yap 2012).

The FSM Constitution's judicial guidance clause requires that the court's review of U.S. courts' decisions proceed against the background of pertinent aspects of Micronesian society and culture, but when the business activities which give rise to the lawsuit are not of a local or traditional nature, and the work setting and the work itself are of a markedly non-local, international character, the court need not conduct an intense search for applicable customary laws and traditional rules when the parties have brought none to its attention and none are apparent. Ihara v. Vitt, 18 FSM R. 516, 526 (Pon. 2013).

The FSM Constitution's judicial guidance clause requires that the court's review of U.S. courts' decisions proceed against the background of pertinent aspects of Micronesian society and culture, but when the business activities which give rise to the lawsuit are not of a local or traditional nature, and the work setting and the work itself are of a markedly non-local, international character, the court need not conduct an intense search for applicable customary laws and traditional rules when none have been brought to its attention by the parties and none are apparent. Johnny v. Occidental Life Ins., 19 FSM R. 350, 357 (Pon. 2014).

Since the FSM Constitution requires that court decisions be consistent with the social and geographical configuration of Micronesia; since the geographical configuration of Micronesia is such that its population is scattered amongst numerous islands, and transportation between the distant islands of the FSM can be expensive, time consuming and unreliable, and since travel to and from the United States can be especially expensive and time consuming due to the vast distances involved and one commercial airline carrier's monopoly over transportation in the FSM, the FSM's unique geographical configuration generates a public policy impetus in favor of remote testimony by Skype that is lacking in the United States. FSM v. Halbert, 20 FSM R. 42, 48-49 (Pon. 2015).

The Judicial Guidance Clause's first command is that the court's decisions be consistent with the Constitution itself. FSM v. Fritz, 20 FSM R. 596, 600 (Chk. 2016).

When deciding a question of standing, the FSM Supreme Court utilizes a case-specific analysis and as mandated by Article XI, Section 11 of the FSM Constitution, the court will first consult and apply sources from within the FSM. The overall goal is to develop principles of standing which are consistent with the Constitution's language and designed to meet the needs of our nation's people and institutions. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 640 (Pon. 2016).

The FSM Supreme Court is indisputably charged with the duty of considering customary law when relevant to a decision since the constitutional government works not to override custom, but to work in cooperation with the traditional system in an atmosphere of mutual respect. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

Under the FSM Constitution's Judicial Guidance Clause, the FSM Supreme Court's decisions must be

consistent with, *inter alia*, Micronesian customs and traditions. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 643 (Pon. 2016).

Although the court is mandated to first consult and apply sources from within the FSM, it is appropriate to look to United States case law for guidance on a complex standing issue, while proceeding against the background of pertinent aspects of Micronesian law, society, and culture. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 645 n.4 (Pon. 2016).

Although it must look first to FSM sources of law, when an FSM court has not previously construed an aspect of an FSM civil procedure rule that is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. Pacific Int'l, Inc. v. FSM, 21 FSM R. 662, 664 n.3 (Pon. 2018).

In rendering a decision, the court must first consult and apply FSM legal sources. In resolving a Constitutional question, first the court must look at the plain meaning of the Constitution's words. If the Constitution is not clear as to a particular provision, the court should ascertain the drafters' intent by examining the Constitutional Convention's records and the reasons expressed for including that particular Constitutional provision. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 331 (Pon. 2019).

– Kosrae

Article VI, section 9 of the Kosrae State Constitution provides no basis for assuming that sovereign immunity is inherent in the Kosrae State Constitution because sovereign immunity was a creation of Trust Territory common law. Seymour v. Kosrae, 3 FSM R. 537, 541 (Kos. S. Ct. Tr. 1988).

In fiscal matters, the court must hear constitutional objections in order to save the state an expenditure of funds that may be unconstitutional. Siba v. Sigrah, 4 FSM R. 329, 335 (Kos. S. Ct. Tr. 1990).

The Kosrae Constitution empowers the state government to collect both tax and non-tax revenue, but that only the tax revenue must be shared with the municipality in which the funds are collected. Tafunsak v. Kosrae, 7 FSM R. 344, 347 (App. 1995).

Under the Kosrae Constitution tax revenue must be shared with the municipalities, and what constitutes non-tax, public money revenue need not be shared. A fee paid for use of airport facilities is non-tax public money. This follows a pattern widely recognized elsewhere of a distinction between taxes and user fees. Tafunsak v. Kosrae, 7 FSM R. 344, 348-49 (App. 1995).

Compensation of Kosrae State Court justices is prescribed by law. Compensation may not be increased or decreased during their terms of office, except by general law applying to all state government employees. Cornelius v. Kosrae, 8 FSM R. 345, 348 (Kos. S. Ct. Tr. 1998).

The Governor and Lieutenant Governor receive annual salaries as prescribed by law. The salaries may not be increased or decreased for their terms of office except by general law applying to all state government employees. Cornelius v. Kosrae, 8 FSM R. 345, 350 (Kos. S. Ct. Tr. 1998).

Senators receive compensation as prescribed by law. No law increasing compensation may take effect until the end of the term of office for which the Senators voting thereon were elected. Cornelius v. Kosrae, 8 FSM R. 345, 350 (Kos. S. Ct. Tr. 1998).

The phrase, "as prescribed by law," describes how the salaries of the senators; governor and lieutenant governor; and state court justices will be set in the first instance. Any subsequent increase or decrease as to the executive or judiciary will be by statute applicable to all state government employees; with respect to senators, any subsequent increase will occur by statute which becomes effective during a future term of office. Cornelius v. Kosrae, 8 FSM R. 345, 350 (Kos. S. Ct. Tr. 1998).

The phrase "all State Government employees" as it appears in article VI, section 5, means those employees whose salaries are "prescribed by law." Only those employees whose salaries are set in the first place by statute are the employees to whom subsequent statutory reductions should apply. Cornelius v. Kosrae, 8 FSM R. 345, 352 (Kos. S. Ct. Tr. 1998).

Although the Kosrae Constitution contains no impairment of contracts clause, it is not silent in this area. The Kosrae Transition Clause provides that contracts continue unaffected. Cornelius v. Kosrae, 8 FSM R. 345, 352 (Kos. S. Ct. Tr. 1998).

The phrase "all State Government employees" means employees whose compensation is determined by statute, and does not include those employees who have individual contracts with Kosrae. Therefore a state law reducing state public service system employees' pay can constitutionally be applied to a Kosrae State Court justice's pay. Cornelius v. Kosrae, 8 FSM R. 345, 352 (Kos. S. Ct. Tr. 1998).

The Kosrae Constitution provides that the state government protect the state's traditions as the public interest may require. Anton v. Heirs of Shrew, 10 FSM R. 162, 165 (Kos. S. Ct. Tr. 2001).

Since the normal sense or definition of the word "term" does not include term limits, the phrase "for the same term," in Article V, section 6 applies only to the Lieutenant Governor's four year term of office. It does not include any limitation on the number of consecutive terms of office that a person may serve as Lieutenant Governor. The term limits imposed on the Governor thus do not apply to the Lieutenant Governor. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 162, 164 (Kos. S. Ct. Tr. 2002).

The Kosrae Constitution requires court decisions to be consistent with state traditions and customs, and the state's social and geographical configuration. Tolenoa v. Kosrae, 11 FSM R. 179, 183 (Kos. S. Ct. Tr. 2002).

The requirements that a person's driver's license be in the immediate possession of the operator, and that the operator display his license to a police officer upon demand do not violate the Kosrae Constitution. Kosrae v. Sigrah, 11 FSM R. 249, 257 (Kos. S. Ct. Tr. 2002).

The Kosrae Constitution provides for the fundamental right of freedom of expression, and also permits denial or impairment of that fundamental right by a statute which protects tradition. Kosrae v. Waguk, 11 FSM R. 388, 390 (Kos. S. Ct. Tr. 2003).

The Kosrae Constitution permits certain conveyances of land to be subject to conditions. Article II, Section 3 provides that any conveyance of land from a parent or parents to a child or children, may be subject to such conditions as the parent or parents deem appropriate, provided, that such conditions are in writing at the time of conveyance and duly reflected in the certificate of title. Benjamin v. Youngstrom, 13 FSM R. 542, 546 (Kos. S. Ct. Tr. 2005).

Article II of the Kosrae Constitution provides for the constitutional rights of the people of Kosrae and also guarantees the right to be confronted by accusers. Kosrae v. Tilfas, 22 FSM R. 72, 75 (Kos. S. Ct. Tr. 2018).

– Kosrae – Case

A difference of opinion between parties is not in and of itself a sufficient basis on which the Kosrae State Court may assume jurisdiction over a dispute. Kosrae v. Seventh Kosrae State Legislature, 10 FSM R. 668, 670 (Kos. S. Ct. Tr. 2002).

The Kosrae State Court has original jurisdiction in all cases, except cases within the exclusive and original jurisdiction of inferior courts. "Case" means a justiciable controversy, which is another way of saying that it must be suitable for determination by a court. Kosrae v. Seventh Kosrae State Legislature, 10

FSM R. 668, 670 (Kos. S. Ct. Tr. 2002).

A court will not pass on questions that are abstract, moot, academic, or hypothetical. The constitutionality of yet-to-be-enacted legislation presents a hypothetical question that is not justiciable. Kosrae v. Seventh Kosrae State Legislature, 10 FSM R. 668, 670 (Kos. S. Ct. Tr. 2002).

Because duly enacted laws are presumed constitutional in the first instance, confirmation through a suit for declaratory relief of what is already presumed is not a fruitful exercise when there is no certainty that such a declaration would alter the parties' legal interests. Kosrae v. Seventh Kosrae State Legislature, 10 FSM R. 668, 671 (Kos. S. Ct. Tr. 2002).

– Kosrae – Case – Standing

Standing exists where a putative plaintiff has a sufficient stake or interest in a justiciable controversy so that he may obtain judicial resolution of that dispute. Kosrae v. Seventh Kosrae State Legislature, 10 FSM R. 668, 671 (Kos. S. Ct. Tr. 2002).

A public official who is called upon to perform a legally required duty which he concludes is violative of the constitution has standing to ask a court to declare the statute unconstitutional. Kosrae v. Seventh Kosrae State Legislature, 10 FSM R. 668, 671 (Kos. S. Ct. Tr. 2002).

When the Legislature could very well exercise its legislative prerogative to decline to enact the proposed legislation irrespective of any declaration by the court of the constitutionality of the proposed legislation, Kosrae does not have a stake or interest that is amenable to judicial resolution. Kosrae v. Seventh Kosrae State Legislature, 10 FSM R. 668, 671 (Kos. S. Ct. Tr. 2002).

To have standing, a plaintiff must show that he personally has suffered some actual or threatened injury as result of the defendant's putatively illegal conduct. Kosrae v. Seventh Kosrae State Legislature, 10 FSM R. 668, 671 (Kos. S. Ct. Tr. 2002).

To the extent that an alleged salary loss constitutes a stake or interest that is subject to judicial resolution, it belongs to the specified officials, and not to Kosrae. Kosrae v. Seventh Kosrae State Legislature, 10 FSM R. 668, 672 (Kos. S. Ct. Tr. 2002).

– Kosrae – Due Process

Written notice in a letter giving a limited-term employee three days notice of the reasons for his two week suspension from work is sufficient compliance with the requirement of 61 TTC 10(15)(a), which provides that a suspended employee must receive notice of the reasons for suspension, and is also sufficient compliance with the notice requirements of due process under the Kosrae Constitution. Taulung v. Kosrae, 3 FSM R. 277, 279 (Kos. S. Ct. Tr. 1988).

To be property protected under the Kosrae State Constitution, the employment right must be supported by more than merely the employee's own personal hope. There must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Taulung v. Kosrae, 3 FSM R. 277, 280 (Kos. S. Ct. Tr. 1988).

The Kosrae Executive Appeals Board is authorized to subpoena witnesses, and may do so on its own motion, over the protest of a party. For the Board to question such a witness in absence of a party to the hearing, when the party had notice but elected to walk out of the proceeding to seek a writ of prohibition, is not violative of due process. Palik v. Executive Serv. Appeals Bd., 4 FSM R. 287, 290 (Kos. S. Ct. Tr. 1990).

To be property protected under the Federated States of Micronesia and Kosrae State Constitutions, the employment right must be based on governmental assurance of continual employment or dismissal for

only specified reasons as stated in statute, regulation, formal contract or actions of a supervisory person with authority to establish terms of employment. Edwin v. Kosrae, 4 FSM R. 292, 302 (Kos. S. Ct. Tr. 1990).

Plaintiff's due process rights were not violated where the government did not use condemnation procedures specified in 67 TTC 451, but followed land registration procedures to obtain title and treated the plaintiff fairly and in the same way it treated other landowners. Palik v. Kosrae, 5 FSM R. 147, 152-54 (Kos. S. Ct. Tr. 1991).

When a panel hearing in a summary dismissal was closed to the public and the injured party and counsel were present to attend and participate in the hearing and the panel accepted and considered all testimony and evidence offered by the parties, due process was not violated. Palsis v. Kosrae State Court, 5 FSM R. 214, 217 (Kos. S. Ct. Tr. 1991).

The wording of the Due Process Clause of the Kosrae State Constitution is identical to the wording of the Due Process Clause of the FSM Constitution. Therefore the court will treat the clauses as identical in meaning and in scope. Alik v. Kosrae Hotel Corp., 5 FSM R. 294, 297 (Kos. 1992).

The wording of the due process clause of the Kosrae Constitution is the same as that of the FSM Constitution, and are equivalent in terms of scope and meaning, and, in turn, because the FSM Declaration of Rights, which contains the due process clause, is patterned after provisions of the United States Constitution, and United States cases were relied on to guide the Constitutional Convention, United States authority may be consulted to understand the meaning of these rights. Cornelius v. Kosrae, 8 FSM R. 345, 349 (Kos. S. Ct. Tr. 1998).

A summary order of contempt for non-appearance violates an accused's right to due process under the Kosrae Constitution. Accordingly, on appeal the conviction will be vacated and remanded. In re Contempt of Skilling, 8 FSM R. 419, 426 (App. 1998).

State employees are entitled to recover the base salary that they would have received during the periods of time that they were placed on leave without pay because the state's imposition of a "lay off" and leave without pay violated the employees' right to continued employment under the Kosrae Constitution and the Kosrae State Code. Langu v. Kosrae, 8 FSM R. 427, 436 (Kos. S. Ct. Tr. 1998).

A person may not be deprived of property without due process of law. Talley v. Lelu Town Council, 10 FSM R. 226, 237 (Kos. S. Ct. Tr. 2001).

To be property protected under the FSM and Kosrae Constitutions, the employment right must be based on governmental assurance of continual employment or dismissal for only specified reasons. A person who has been hired under an employment contract, for a specific length of time, with no provisions for renewal of the contract and no entitlement for renewal of the contract, does not have a property interest in his continued employment and is not entitled to a hearing before termination. Talley v. Lelu Town Council, 10 FSM R. 226, 237 (Kos. S. Ct. Tr. 2001).

Due process requires that the parties be given the opportunity to comment upon evidence. Ittu v. Heirs of Mongkeya, 10 FSM R. 446, 448 (Kos. S. Ct. Tr. 2001).

When a party was not given an opportunity to comment or rebut the evidence presented by the adverse claimants at the formal Land Commission hearing, and was not given an opportunity to cross examine adverse witnesses or an opportunity to present his own testimony to rebut adverse claims, this procedural failure is a violation of the due process protection provided by the Kosrae Constitution; and the issued determination of ownership will be set aside, and held null and void and the matter remanded to the Land Commission. Ittu v. Heirs of Mongkeya, 10 FSM R. 446, 448 (Kos. S. Ct. Tr. 2001).

When the Senior Land Commissioner failed to disqualify himself after the parcel was recorded for

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

The wording of the due process provisions in both the FSM and Kosrae Constitutions are identical. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 665 (Kos. S. Ct. Tr. 2002).

The due process requirements applicable to employment that is a property interest are: to be property protected under the FSM and Kosrae Constitutions, the employment rights must be based on governmental assurance of continual employment or dismissal for only specified reasons as stated in statute, regulations, formal contract or actions of a supervisory person with authority to establish terms of employment. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 666 (Kos. S. Ct. Tr. 2002).

Since the Kosrae State Court has not been shy in vacating and remanding Land Commission decisions for due process violations, including involvement of commissioners who should have disqualified themselves, Kosrae's social configuration should not prevent an appellant from timely raising the issue of disqualification of persons in the Land Commission proceedings. Anton v. Cornelius, 12 FSM R. 280, 285 (App. 2003).

Adjudicatory decisions affecting property rights, such as ownership, are subject to due process requirements of the state constitution. Due process demands impartiality on the part of the adjudicators, including a Land Court Presiding Justice. Edmond v. Alik, 13 FSM R. 413, 416 (Kos. S. Ct. Tr. 2005).

Since a judge must disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned, when the presiding justice's failure to recuse himself from the proceeding resulted in a violation of the appellant's due process rights, the decision determining ownership must be vacated and the matter remanded for further proceedings. Edmond v. Alik, 13 FSM R. 413, 417 (Kos. S. Ct. Tr. 2005).

The FSM Constitution's due process provision protects persons from governments, and those acting under them, and does not create causes of action against private parties. The Kosrae Constitution due process provision functions in the same manner. A party alleging a due process violation has the burden of showing that the defendant is a state actor and that the conduct in question was a state action. Kinere v. Sigrah, 13 FSM R. 562, 569 (Kos. S. Ct. Tr. 2005).

When the defendants are individuals and private parties; and not governments and the plaintiff has failed to show that the defendants are state actors and that the conduct in question was a state action, the plaintiff has failed to provide any authority in support of her cause of action based upon due process violation. Accordingly, the Kosrae Constitution due process provision does not create a cause of action against these defendants. Kinere v. Sigrah, 13 FSM R. 562, 569 (Kos. S. Ct. Tr. 2005).

Employment is a property right protected by the Kosrae Constitution when there is an assurance of continued employment or when dismissal is allowed for specified reasons. An employee's personal hope of continued employment or the expiration of a contract with no provisions for renewal does not give rise to a property interest. Thus, when the Tafunsak Constitution states that the position of Treasurer is a four-year term and the plaintiff's employment was terminated before the term's end, this is sufficient to show an assurance of continued employment and gives rise to a property right protected by due process under the Kosrae Constitution. Palsis v. Tafunsak Mun. Gov't, 14 FSM R. 517, 520 (Kos. S. Ct. Tr. 2006).

Once a property interest is found to exist, the next step is to determine if due process rights were violated. The court looks at whether the procedures used to apply the disciplinary action were fair based on the circumstances of the case; procedures must assure a rational decision making process. Municipal defendants are not required to follow the State of Kosrae's Public Service System laws and regulations and

are not required to adopt their own written procedures, but they must be fair considering all the circumstances and use a rational decision making process. Palsis v. Tafunsak Mun. Gov't, 14 FSM R. 517, 520 (Kos. S. Ct. Tr. 2006).

Where the plaintiff claims that he was not given an administrative remedy and did not have an opportunity to meet or rebut the allegations against him and when the defendants began by giving the plaintiff written notice listing specific issues and specifying their concerns about the plaintiff's failure to perform his duties and gave the plaintiff several months until late February 2004 to correct his behavior; when the plaintiff did not change his behavior to perform his job responsibilities and he spoke with the defendants about resigning from employment during this time period, thus demonstrating that he met with the defendants and had an opportunity to rebut the first letter's allegations; the Council gave him a copy of its March 2004 letter to the Mayor recommending termination of his employment; when the Mayor's letter to the plaintiff based on this recommendation again gave him an opportunity to bring forth any grievances, this procedure consistently gave the plaintiff notice of the defendants' specific reasons for concern and gave him several opportunities to meet and rebut allegations and bring forth grievances and was thus fair based on the circumstances and was based on a rational decision-making process. Palsis v. Tafunsak Mun. Gov't, 14 FSM R. 517, 520 (Kos. S. Ct. Tr. 2006).

When reviewing the Land Commission's actions after the plaintiff filed his request in 1987 and the issuance of title in 2002, the question is whether the Land Commission or Land Court deprived the plaintiff or any other party of property in an unfair fashion and whether the procedures used ensured a fair and rational decision-making process. This is consistent with the due process requirements of the Kosrae Constitution, Article II. Siba v. Noah, 15 FSM R. 189, 194 (Kos. S. Ct. Tr. 2007).

The Constitutions of both Kosrae and the Federated States of Micronesia state, in identical wording, that a person may not be deprived of life, liberty, or property without due process of law and these two clauses are treated as identical in meaning and in scope and may be analyzed together. Palsis v. Kosrae, 16 FSM R. 297, 306 (Kos. S. Ct. Tr. 2009).

Both the FSM and Kosrae Constitutions provide that "a person may not be deprived of life, liberty, or property without due process of law." The wording of each of these clauses is identical in meaning and scope. Palsis v. Kosrae, 17 FSM R. 236, 240 (App. 2010).

– Kosrae – Due Process – Notice and Hearing

The essential features of procedural due process, or fairness, require notice and opportunity to be heard. Ittu v. Heirs of Mongkeya, 10 FSM R. 446, 447 (Kos. S. Ct. Tr. 2001).

When a party not represented by legal counsel is not given the opportunity to present his claim in Land Court, pursuant to the requirements of GCO 2002-13, this procedural failure is a violation of the due process protection provided by the Kosrae Constitution. Edmond v. Alik, 13 FSM R. 413, 416 (Kos. S. Ct. Tr. 2005).

Procedural due process, or fairness, requires notice and an opportunity to be heard. Fundamentally, the government may not strip its citizens of property in an unfair or arbitrary manner; the Constitution requires the government to follow procedures calculated to assure a fair and rational decision-making process. Palsis v. Kosrae, 17 FSM R. 236, 240 (App. 2010).

When a terminated state employee, since she was given an immediate opportunity to respond and another opportunity to respond one week later, had two opportunities to be heard after being informed of the reasons for her dismissal, and when after these two opportunities, she had two full post-termination evidentiary hearings that analyzed the Hospital's decision to terminate her employment, her procedural due process rights were not violated. Palsis v. Kosrae, 17 FSM R. 236, 242 (App. 2010).

– Kosrae – Equal Protection

The protection afforded by the Kosrae Constitution equal protection provision can only be asserted when the denial of such rights are based on account of sex, race, ancestry, national origin, language or social status. The constitutional provisions providing equal protection of law apply similarly to laws and government actions. A party alleging an equal protection violation has the burden of showing that the defendant is a state actor and that the conduct in question was a state action or a law. Kinere v. Sigrah, 13 FSM R. 562, 569 (Kos. S. Ct. Tr. 2005).

When the plaintiff has failed to show that she was denied her rights based on account of her sex, race, ancestry, national origin, language or social status, and that the conduct in question was either based upon a law or upon a state action, she has failed to provide any authority whatsoever in support of her cause of action based upon violation of equal protection. Accordingly, the Kosrae Constitution equal protection provision does not create a cause of action against these defendants. Kinere v. Sigrah, 13 FSM R. 562, 569-70 (Kos. S. Ct. Tr. 2005).

– Kosrae – Interpretation

Article II, section 1(d) of the Kosrae State Constitution is similar to article IV, section 5 of the FSM Constitution and to the fourth amendment to the U.S. Constitution, and therefore, interpretations of these provisions may be useful for interpreting the provision in the Kosrae State Constitution. Kosrae v. Alanso, 3 FSM R. 39, 42 (Kos. S. Ct. Tr. 1985).

Because the Kosrae State Constitution does not provide an exact standard for determining whether a search is "reasonable," this court will first turn to the framers' intent. In the absence of an official journal of the First Constitutional Convention, this court will then look to FSM and U.S. judicial decisions interpreting the search and seizure provision in their respective constitutions. Kosrae v. Alanso, 3 FSM R. 39, 42 (Kos. S. Ct. Tr. 1985).

If language of a provision of the Kosrae State Constitution is susceptible to more than one meaning, the court should look to the legislative history, including the constitutional convention committee notes and journals, all other provisions of the Constitution, and cases from jurisdictions with similar constitutional provisions, to clarify the definitions of the ambiguous term. Seymour v. Kosrae, 3 FSM R. 537, 540 (Kos. S. Ct. Tr. 1988).

The movant is burdened with a high standard of proof in establishing the unconstitutionality of either state laws or the Constitution. Siba v. Sigrah, 4 FSM R. 329, 335 (Kos. S. Ct. Tr. 1990).

A practice which has been engaged in by a branch of government for a significant period of time is entitled to great weight in establishing the constitutionality of that practice. Siba v. Sigrah, 4 FSM R. 329, 342 (Kos. S. Ct. Tr. 1990).

The wording of the Due Process Clause of the Kosrae State Constitution is identical to the wording of the Due Process Clause of the FSM Constitution. Therefore the court will treat the clauses as identical in meaning and in scope. Alik v. Kosrae Hotel Corp., 5 FSM R. 294, 297 (Kos. 1992).

In analyzing constitutional provisions a court must initially look to the actual words of the constitution. The court should also consider all provisions of the constitution because other sections may touch on the same subject area, thus giving the questionable provision added meaning. If those words are clear and permit only one possible result, the court should go no further. Tafunsak v. Kosrae, 7 FSM R. 344, 347 (App. 1995).

If the language of a Kosrae constitutional provision or section is susceptible to more than one meaning, the court should look to the legislative history, including the Constitutional Committee Notes and the Journals, if available, to clarify the definition of the ambiguous term. Tafunsak v. Kosrae, 7 FSM R. 344,

347 (App. 1995).

The party that raises the issue has the burden of proof as to the unconstitutionality of a statute. This burden is high and heavy, and that party must negative every reasonable, conceivable basis which would support the constitutionality of the statute, because statutes are presumed to be constitutional. Tafunsak v. Kosrae, 7 FSM R. 344, 348 (App. 1995).

A court should avoid unnecessary constitutional adjudications. When interpreting a statute, courts should, where possible, avoid selecting interpretations of a statute which may bring into doubt the constitutionality of that statute. If construction of a statute by which a serious doubt of constitutionality may be avoided is fairly possible, a court should adopt that construction. Cornelius v. Kosrae, 8 FSM R. 345, 348 (Kos. S. Ct. Tr. 1998).

If a matter may properly be resolved on a statutory basis without reaching potential constitutional issues, then the court should do so. Unnecessary constitutional adjudication is to be avoided. Kosrae v. Langu, 9 FSM R. 243, 251 (App. 1999).

The framework for analysis of constitutional provisions has been clearly established by the FSM Supreme Court. The court must first look to the actual words of the Constitution. When the constitutional language is inconclusive or does not provide an unmistakable answer, the court may look to the journal of the Constitutional Convention for assistance in determining the meaning of the constitutional words. Kosrae v. Sigrah, 11 FSM R. 26, 29 (Kos. S. Ct. Tr. 2002).

The testimony of one Constitutional Convention delegate as to the meaning of a constitutional provision would reflect his personal opinions and beliefs on the interpretation of the subject constitutional provision, and not the opinions of the entire twenty-two member Convention, and will therefore not be admitted. Kosrae v. Sigrah, 11 FSM R. 26, 30 (Kos. S. Ct. Tr. 2002).

In analyzing constitutional provisions, a court must first look to the constitution's actual words. If those words are clear and permit only one result, the court should go no further, but if the language of a Kosrae constitutional provision or section is susceptible to more than one meaning, the court should look to the legislative history, including the Constitutional Committee notes and the journals, if available, to clarify the definition of the ambiguous term. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 162, 164 (Kos. S. Ct. Tr. 2002).

Words in constitutions are ordinarily given their natural, normal, usual, common, popular, general and ordinary sense. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 162, 164 (Kos. S. Ct. Tr. 2002).

When the constitutional language is clear and permits only one result, the court goes no further and does not consider its legislative history. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 162, 164 (Kos. S. Ct. Tr. 2002).

Acts of the Kosrae Legislature are presumed to be constitutional. Kosrae v. Sigrah, 11 FSM R. 249, 256 (Kos. S. Ct. Tr. 2002).

Courts should avoid, where possible, selecting interpretations of a statute which may bring into doubt the constitutionality of that statute. Accordingly, a defendant is burdened with a high standard of proof in establishing the unconstitutionality of a state law. Kosrae v. Sigrah, 11 FSM R. 249, 256 (Kos. S. Ct. Tr. 2002).

A practice which has been engaged in by a government for a significant period of time is entitled to great weight in establishing the constitutionality of that practice. Thus, when the licensing of vehicle operators and that the license be in the immediate possession of the driver has been required for at nearly forty years, this significant period of time and therefore the licensing and possession requirement is entitled

to great weight in establishing the constitutionality of that practice. Kosrae v. Sigrah, 11 FSM R. 249, 256 (Kos. S. Ct. Tr. 2002).

Since article II, section 1(d) of the Kosrae Constitution is similar to article IV, section 5 of the FSM Constitution Declaration of Rights and the fourth amendment to the U.S. Constitution, interpretations of these two provisions may be useful for interpreting the Kosrae Constitution provision, and when a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, U.S. authority may be consulted to understand its meaning. Sigrah v. Kosrae, 12 FSM R. 320, 327 (App. 2004).

A practice which has been engaged in by a branch of government for a significant period of time is entitled to great weight in establishing the constitutionality of that practice. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 421 (Kos. S. Ct. Tr. 2004).

When an FSM or Kosrae constitutional protection is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning. Neth v. Kosrae, 14 FSM R. 228, 233 (App. 2006).

When an FSM or Kosrae constitutional protection, such as the FSM or Kosrae double jeopardy protection, is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning. Kosrae v. Benjamin, 17 FSM R. 1, 4 n.2 (App. 2010).

Unnecessary constitutional adjudication is to be avoided. Andrew v. Heirs of Seymour, 19 FSM R. 331, 342 (App. 2014).

– Kosrae – Legislative Privilege

Historically the legislative privilege from arrest has not applied in criminal cases. Sigrah v. Kosrae, 12 FSM R. 320, 326 (App. 2004).

The Kosrae Constitution's drafters by no means intended the legislative privilege from arrest to be absolute. In addition to the stated exception for felony and breach of the peace that was incorporated into the privilege as adopted, the drafters felt that charges may still be filed against members at a time different from when a legislator is going to or coming from a legislative session. Sigrah v. Kosrae, 12 FSM R. 320, 326 (App. 2004).

The court declines to adopt a general rule that any Kosrae police officer who stops a motorist has a specific duty to inquire of the motorist whether he is a Kosrae legislator going to or returning from conducting official business. Sigrah v. Kosrae, 12 FSM R. 320, 326 (App. 2004).

The scope the Kosrae Constitution's legislative privilege is coterminous with the historical understanding of the phrase, "treason, felony, and breach of the peace," and that the privilege conferred by the Kosrae Constitution does not apply to criminal cases. Since the Kosrae Constitution's privilege of freedom from arrest does not apply to criminal cases, it is thus inapplicable to a category 4 misdemeanor, which is a criminal offense. Sigrah v. Kosrae, 12 FSM R. 320, 327 (App. 2004).

– Kosrae – Taking of Property

When a landowner voluntarily enters into a statement of intent to grant the state an easement the state has not violated the landowner's constitutional rights by "taking" his property without just compensation, and is not liable for trespass. Nena v. Kosrae, 5 FSM R. 417, 425 (Kos. S. Ct. Tr. 1990).

– Pohnpei

The tenor of the Pohnpei Constitution is that the government is to be responsible to the people. That Constitution does not provide for sovereign immunity. Panuelo v. Pohnpei (I), 2 FSM R. 150, 157-59 (Pon.

1986).

A constitutional provision is self-executing when no legislation is required to bring it into effect. Panuelo v. Pohnpei, 3 FSM R. 76, 82 (Pon. S. Ct. App. 1987).

The provisions of article 7, section 4 of the Pohnpei Constitution are not self-executing because they provide general principles or policy directives without providing the means to effectuate them. Panuelo v. Pohnpei, 3 FSM R. 76, 82 (Pon. S. Ct. App. 1987).

The government has the power to undertake projects in the areas set forth in article 7 of the Pohnpei Constitution, but the provisions of article 7 are merely directory rather than mandatory. Panuelo v. Pohnpei, 3 FSM R. 76, 81-82 (Pon. S. Ct. App. 1987).

Article 4 of the Pohnpei Constitution confers fundamental rights and is mandatory and enforceable by the courts; in contrast, article 7 does not vest individuals with legal rights that they can assert in the courts. The framers of the Constitution structured these two articles in different ways because they intended them to achieve different goals. Panuelo v. Pohnpei, 3 FSM R. 76, 81-82 (Pon. S. Ct. App. 1987).

The court may, in the interest of justice, make the application of its decision prospective where the court is overruling a previous decision or declaring a statute unconstitutional and the present ruling does not prejudice those who might have relied on such ruling or on such statute. Paulus v. Pohnpei, 3 FSM R. 208, 222 (Pon. S. Ct. Tr. 1987).

The Pohnpei Constitution provides protection for custom and tradition, and mandates that the Pohnpei government shall respect and protect the customs and traditions of Pohnpei. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

An act of government in conflict with the Pohnpei Constitution is invalid to the extent of the conflict. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

In order to be protected by the Pohnpei Constitution, the customary law must still exist. Custom is a practice that by its common adoption and long, unvarying habit has come to have the force of law. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

– Pohnpei – Due Process

The Pohnpei State Government has discretion in hiring or firing employees, but that discretion does not carry with it the right to its arbitrary exercise. Paulus v. Pohnpei, 3 FSM R. 208, 217 (Pon. S. Ct. Tr. 1987).

Substantive due process relates to the constitutional guarantee that no person shall be deprived of his life, liberty or property for arbitrary reasons. Such a deprivation is supportable constitutionally only if the conduct from which the deprivation flow is prescribed by reasonable legislation. The legislation shall be enacted within the scope of legislative authority and be reasonably applied for a purpose consonant with the purpose for which it was enacted. Paulus v. Pohnpei, 3 FSM R. 208, 221 (Pon. S. Ct. Tr. 1987).

Procedural due process relates to the requisite characteristics of proceedings tending toward a deprivation of life, liberty, or property and thus makes it necessary that a person whom it is sought to deprive of such a right must be given notice of this fact. An individual must be given an opportunity to defend himself before tribunal or office having jurisdiction of the cause, and the problem of the propriety of this deprivation, under the circumstances presented, must be resolved in a manner consistent with essential fairness, in accordance with the Pohnpeian concept of justice. Paulus v. Pohnpei, 3 FSM R. 208, 221 (Pon. S. Ct. Tr. 1987).

A statute providing that any person who has been convicted of a felony and who is currently under

sentence shall be terminated from public employment, constitutes an unconstitutional deprivation of procedural due process by allowing for an affected individual's termination without a hearing, and thus must be struck down. Paulus v. Pohnpei, 3 FSM R. 208, 221-22 (Pon. S. Ct. Tr. 1987).

The Due Process Clause of the Pohnpei State Constitution, art. IV, § 4, guarantees the right of due process articulated in the governing law. Micronesian Legal Servs. Corp. v. Ludwig, 3 FSM R. 241, 244 (Pon. S. Ct. Tr. 1987).

A statute does not violate the Pohnpei constitutional safeguards of due process if the provisions of the statute are reasonably clear and give fair notice of what acts or omission are prescribed. Hadley v. Kolonia Town, 3 FSM R. 267, 269 (Pon. S. Ct. App. 1987).

Whether statutory language is so unreasonably vague as to violate the Due Process Clause of the Pohnpei State Constitution is a question of degree, and when the law in question is a municipal ordinance greater leeway should be given to the municipality in recognition of the members' lack of prior training or experience in law or statutory drafting. Hadley v. Kolonia Town, 3 FSM R. 267, 269-70 (Pon. S. Ct. App. 1987).

The right to due process under the Pohnpei Constitution, like the FSM Constitution, only protects people from actions by the government. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 636 (Pon. 2002).

Under the Pohnpei Constitution, substantive due process relates to the constitutional guarantee that no person shall be deprived of his life, liberty, or property for arbitrary reasons. Such a deprivation is supportable constitutionally only if the conduct from which the deprivation flows is prescribed by reasonable legislation. The legislation must be enacted within the scope of legislative authority and be reasonably applied for a purpose consonant with the purpose for which it is enacted. Kallop v. Pohnpei, 18 FSM R. 130, 134 (Pon. 2011).

– Pohnpei – Equal Protection

A classification of ex-felons currently under sentence is not suspect within the suspect classifications of section 3, article 4 of the Constitution of Pohnpei. Paulus v. Pohnpei, 3 FSM R. 208, 216 (Pon. S. Ct. Tr. 1987).

Where the legislature has a rational basis for a statutorily non-suspect classification, the court will not inquire into the wisdom of that statute. Paulus v. Pohnpei, 3 FSM R. 208, 218 (Pon. S. Ct. Tr. 1987).

Section 14(1) of the State Public Service System Act of 1981 (2L-57-81) is impermissibly arbitrary and irrationally unfair in its blanket prohibition of employment of any person who has been convicted of a felony and is currently under sentence; such statutory prohibition fails to tailor its impact to those convicted felons who otherwise lack the habits of industry. Consequently, the section of the statute is violative of the Equal Rights Clause of the Pohnpei State Constitution by failing to demonstrate that the exclusion of all felons under sentence is necessary to achieve the articulated state goal. Paulus v. Pohnpei, 3 FSM R. 208, 220 (Pon. S. Ct. Tr. 1987).

– Pohnpei – Fundamental Rights

Article 4 of the Pohnpei Constitution confers fundamental rights and is mandatory and enforceable by the courts; in contrast, article 7 does not vest individuals with legal rights that they can assert in the courts. The framers of the Constitution structured these two articles in different ways because they intended them to achieve different goals. Panuelo v. Pohnpei, 3 FSM R. 76, 81-82 (Pon. S. Ct. App. 1987).

The right to governmental employment in Pohnpei is not a fundamental right, constitutionally protected,

requiring invoking a strict scrutiny test. Paulus v. Pohnpei, 3 FSM R. 208, 217 (Pon. S. Ct. Tr. 1987).

– Pohnpei – Interpretation

When confronted with an issue of first instance, the Pohnpei Supreme Court may look beyond prior state experience for guidance, including looking towards the common law and United States precedents. People of Kapingamarangi v. Pohnpei Legislature, 3 FSM R. 5, 10 (Pon. S. Ct. Tr. 1985).

In interpreting the Constitution, Pohnpeian and English versions must be construed together in harmony to determine the intent of the Constitutional Convention on any subject. Pohnpei v. Hawk, 3 FSM R. 17, 22-23 (Pon. S. Ct. Tr. 1986).

Whether article 7 of the Pohnpei Constitution is self-executing, creating substantive rights that individuals can seek to enforce in court of law, will depend upon the intent of the framers, as disclosed within the four corners of the Constitution when the words are given their ordinary meaning, as well as upon the nature of the acts and the goals they are to accomplish. Panuelo v. Pohnpei, 3 FSM R. 76, 80-81 (Pon. S. Ct. App. 1987).

The words of the Pohnpei Constitution are words in common use and are to be understood according to their ordinary meaning. Panuelo v. Pohnpei, 3 FSM R. 76, 81 (Pon. S. Ct. App. 1987).

A constitutional provision is self-executing when no legislation is required to bring it into effect. Panuelo v. Pohnpei, 3 FSM R. 76, 82 (Pon. S. Ct. App. 1987).

The provisions of article 7, section 4 of the Pohnpei Constitution are not self-executing because they provide general principles or policy directives without providing the means to effectuate them. Panuelo v. Pohnpei, 3 FSM R. 76, 82 (Pon. S. Ct. App. 1987).

In considering an issue of constitutional interpretation of an accused's right to a speedy trial in the light of Pohnpei's experience, manner and usage, and the concept of justice of the peoples of Pohnpei, it is helpful to review the application and development of the constitutional right to a speedy trial in other parts of the world. Pohnpei v. Weilbacher, 5 FSM R. 431, 435 (Pon. S. Ct. Tr. 1992).

Differences in procedure, history, customs and practice do not require similar construction and application of the rights to a speedy trial in Pohnpei as the clause is construed and applied in other jurisdictions. Pohnpei v. Weilbacher, 5 FSM R. 431, 449-50 (Pon. S. Ct. Tr. 1992).

– Pohnpei – Legislative Privilege

A member of the Pohnpei Legislature is responsible only to the Legislature for statements in the Legislature or a committee thereof. AHPW, Inc. v. FSM, 10 FSM R. 420, 424 (Pon. 2001).

A Pohnpei legislator may decline to answer any questions that fall within the legitimate legislative activity of the Pohnpei legislature. AHPW, Inc. v. FSM, 10 FSM R. 420, 425 (Pon. 2001).

Questions that are casually or incidentally related to legislative affairs but not a part of the legislative process itself, do not fall within the legislative privilege. Such questions, when otherwise appropriate under Rule 26(b)(1), should be answered. AHPW, Inc. v. FSM, 10 FSM R. 420, 426 (Pon. 2001).

– Pohnpei – Taking of Property

Under Pohnpei state law, owners of the land adjacent to the lagoon do not have sufficient property rights in the reef and the lagoon as to entitle them to monetary compensation or other relief for damage to the reef caused by unauthorized dredging activity in the lagoon near their land. Damarlane v. United

States, 7 FSM R. 56, 59-60 (Pon. S. Ct. App. 1995).

Under Pohnpei state law persons simply possessing a permit in the lagoon do not have sufficient property rights in the reef and the lagoon as to entitle them to monetary compensation or other relief for damage to the reef caused by unauthorized dredging activity in the lagoon near their land unless there has been some affirmative action such as prior written approval from the appropriate authority and effecting some development in the area in question. Damarlane v. United States, 7 FSM R. 56, 60 (Pon. S. Ct. App. 1995).

Under Pohnpei state law, if a reef is damaged by persons carrying out dredging activities authorized by state officials for a public purpose, adjacent or nearby coastal landowners are not entitled to a payment of just compensation for the depreciation of the value of the reef and fishing grounds. Damarlane v. United States, 7 FSM R. 56, 60 (Pon. S. Ct. App. 1995).

Under Pohnpei state law, if a fish maii [trap] is damaged by persons carrying out dredging activities authorized by state officials for a public purpose, adjacent or nearby coastal landowners are entitled to a payment of just compensation for the damage to a fish maii which they had constructed in the lagoon, if the fish maii was constructed pursuant to the dictate of customary law as a joint enterprise of the villagers, supervised by the village chief, managed, maintained and owned in common by the villagers; or, if an individual constructed the fish maii, prior written permission from the District Administrator, now the Pohnpei Public Land Board of Trustees, was obtained. Damarlane v. United States, 7 FSM R. 56, 60 (Pon. S. Ct. App. 1995).

Under Pohnpei law, damage to reefs or soil under the high water mark resulting from dredging activities, the object of which is for public purposes, does not justify compensation to abutting land owners. If the Pohnpei Public Land Board of Trustees had granted certain rights in writing to an individual or group of individuals, and acting on that grant the grantees erected or constructed certain improvements, including fish maii (fish trap) in shallow waters, and if destroyed or value reduced as a result of state dredging activities, the owners thereof may be entitled to just compensation in accordance with the Pohnpei Constitution. Damarlane v. United States, 7 FSM R. 56, 69 (Pon. S. Ct. App. 1995).

– Professional Services Clause

The Constitution vests the national government with power to act concerning health care and may place some affirmative health care obligations on it. Manahane v. FSM, 1 FSM R. 161, 172 (Pon. 1982).

Primary responsibility, perhaps even sole responsibility, for affirmative implementation of the Professional Services Clause, FSM Const. art. XIII, § 1, must lie with Congress. Carlos v. FSM, 4 FSM R. 17, 29 (App. 1989).

The Professional Services Clause of the Constitution demands that when any part of the national government contemplates action that may be anticipated to affect the availability of education, health care or legal services, the national officials involved must consider the right of the people to such services and make a reasonable effort to take "every step reasonable and necessary" to avoid unnecessarily reducing the availability of the services. Carlos v. FSM, 4 FSM R. 17, 30 (App. 1989).

Since Congress did not give any consideration to, or make any mention of, the services enumerated in article XIII, section 1 of the FSM Constitution in enacting the Foreign Investment Act, 32 F.S.M.C. 201-232, the avoidance of potential conflict with the Constitution calls for the conclusion that Congress did not intend the Foreign Investment Act to apply to noncitizen attorneys or to any other persons who provide services of the kind described in article XIII, section 1 of the Constitution. Carlos v. FSM, 4 FSM R. 17, 30 (App. 1989).

Since the Constitution's Professional Services Clause is a promise that the national government will take every step "reasonable and necessary" to provide health care to its citizens, a court should not lightly

accept a contention that 6 F.S.M.C. 702(4), which creates a $20,000 ceiling of governmental liability, shields the government against a claim that FSM government negligence prevented a person from receiving necessary health care. Leeruw v. FSM, 4 FSM R. 350, 362 (Yap 1990).

When considering a foreign investment permit application the Secretary of Resources and Development must consider "the extent to which the activity will contribute to the constitutional policy of making education, health care, and legal services available to the people of the Federated States of Micronesia." 32 F.S.M.C. 210(8). Michelsen v. FSM, 5 FSM R. 249, 254 (App. 1991).

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

Article XIII, section 1 is a general provision that recognizes the right of the people to education, health care, and legal services. It does not act as an exclusive duty to ensure the availability of attorney services in the FSM, and it does not prohibit a state from administering its own bar. Berman v. Santos, 7 FSM R. 231, 237 (Pon. 1995).

Although it is doubtful whether the Constitution's Professional Services Clause protects an attorney's fee from forfeiture in any or all circumstances where the law would seem to allow it, that is an issue that must await another day when there is a case or dispute before the court ripe for adjudication. Sipos v. Crabtree, 13 FSM R. 355, 366 (Pon. 2005).

The Office of the Public Defender was created by 2 F.S.M.C. 204(5). For at least the criminal side of the docket, this represents Congress's affirmative implementation of the Constitution's Professional Services Clause. The primary, perhaps even the sole, responsibility, for the Professional Services Clause's affirmative implementation lies with Congress. FSM v. Kansou, 13 FSM R. 392, 394 & n.1 (Chk. 2005).

The Professional Services Clause provides that the FSM national government recognizes the people's right to education, health care, and legal services and shall take every step reasonable and necessary to provide these services. The term "the people" refers only to natural persons, and does not include juridical persons such as corporations. FSM v. Kansou, 13 FSM R. 392, 394-95 (Chk. 2005).

The framers' intent in including the Professional Services Clause was to establish a national policy of providing the services when requested by individual citizens unable to provide for themselves, although these services would not necessarily be free. Thus the framers intended that these professional services were to be provided only to natural persons, not to artificial persons. Therefore neither the Office of the Public Defender's refusal to represent business entity defendants nor Public Defender Directive No. 19 barring such representation is unconstitutional. FSM v. Kansou, 13 FSM R. 392, 395 (Chk. 2005).

The Constitution's framers recognized that legislation would be needed to achieve the Professional Services Clause's policy goals. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 480 (Pon. 2020).

The Professional Services Clause establishes a national policy of providing the services contained in the clause as the FSM acquires the revenue necessary to implement this policy. Inevitably, some services will be provided before others, with Congress to determine the priority. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 480 (Pon. 2020).

The Professional Services Clause's intention is to declare a policy which is to be observed by the FSM government as resources become available, and its language is phrased so as to make it clear that as a matter of policy the government is to take reasonable and necessary steps to achieve the rights stated.

FSM Dev. Bank v. Salomon, 22 FSM R. 468, 480 (Pon. 2020).

The Professional Services Clause does not require the national government to take any particular action, or refrain from doing so, at any particular time. It states a policy direction. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 480 (Pon. 2020).

The Professional Services Clause does not bar actions that may have an occasional adverse effect on the provision of a professional service. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 480 (Pon. 2020).

If the FSM Development Bank has an affirmative obligation to give special consideration to creating or expanding FSM health care services, it seems to have met that obligation when it provided the original loan so that the borrower could get his medical practice up and running since, within its scope of action (development banking), it took a step reasonable and necessary to provide needed health care services. When the bank twice restructured that loan, its effort allowed the borrowers' clinic to continue providing health services, and had the effect of avoiding reducing health care availability. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 480-81 (Pon. 2020).

When the FSM Development Bank has a statutory right to reduce its claim to judgment and to foreclose its perfected security interest in the borrowers' medical equipment and also has the contractual right to do the same, the Constitution's Professional Services Clause does not make that contract illegal. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 481 (Pon. 2020).

The Professional Services Clause cannot, on one hand, encourage the FSM Development Bank to facilitate the provision of health care services by making loans that allow health care professionals to provide such services, and then, on the other hand, prohibit the bank from seeking repayment so that it will have funds to lend to others because, if the Professional Services Clause's policy is to encourage the bank to facilitate the provision of health services, it cannot discourage the bank from facilitating the provision of health services by making such loans riskier by severely restricting the bank's ability to compel repayment. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 481 (Pon. 2020).

At a minimum, the Professional Services Clause demands that Congress and other parts of the national government, including the court, give special consideration to these services and assure that their availability is not unreasonably or unnecessarily diminished by any national government action. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 481 (Pon. 2020).

When any part of the national government contemplates action that may be anticipated to affect the availability of education, health care, or legal services, the Constitution demands that the national officials involved must consider the people's right to such services and make a reasonable effort to take every step reasonable and necessary to avoid unnecessarily infringing upon that right or reducing the availability of those services. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 481 (Pon. 2020).

Since the court must make a reasonable effort to take every step reasonable and necessary to avoid unnecessarily reducing the availability of article XIII, section 1 health care services, the court will note that the FSM Development Bank is legally entitled to an order of sale for the mortgaged medical equipment and to an order enforcing the borrowers' assignments of income and exclusive possession of the medical clinic premises, but the court will not issue such orders contemporaneously with the judgment. The court will hesitate to issue such orders until all reasonable means of satisfying the judgment by other methods have been explored and exhausted, and will thus give special consideration to health care services and assure that their availability is not unreasonably or unnecessarily diminished by any action it takes. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 481-82 (Pon. 2020).

– Supremacy Clause

The FSM Constitution is the supreme law and the decisions of the FSM Supreme Court must be

consistent with it. Truk v. Hartman, 1 FSM R. 174, 176-77 (Truk 1982).

While the FSM Constitution is the supreme law of the land and the FSM Supreme Court may under no circumstances acquiesce in unconstitutional governmental action, states should be given a full opportunity to exercise their legitimate powers in a manner consistent with the commands of the Constitution without unnecessary intervention by national courts. Etpison v. Perman, 1 FSM R. 405, 428 (Pon. 1984).

Failure to apply a constitutional holding retroactively does not violate the supremacy clause of the Constitution, FSM Const. art. II, § 1. To the contrary, courts may choose between prospective and retroactive application in order to avert injustice or hardship. Innocenti v. Wainit, 2 FSM R. 173, 184-85 (App. 1986).

A state law provision attempting to place "original and exclusive jurisdiction" in the Yap State Court cannot divest a national court of responsibilities placed upon it by the national constitution, which is the "supreme law of the Federated States of Micronesia." Gimnang v. Yap, 5 FSM R. 13, 23 (App. 1991).

It is the duty of the FSM Supreme Court to review any national law, including a treaty such as the Compact of Free Association, in response to a claim that the law or treaty violates constitutional rights, and if any provision of the Compact is contrary to the constitution, which is the supreme law of the land, then that provision must be set aside as without effect. Samuel v. Pryor, 5 FSM R. 91, 98 (Pon. 1991).

The supremacy clause of the FSM Constitution does not admit a result where a state constitutional provision prevents the enforcement of a national statute which gives a private cause of action for rights guaranteed by the FSM Constitution, especially when it is the solemn obligation of state governments to uphold the principles of the FSM Constitution and to advance the principles of unity upon which the Constitution is founded. Louis v. Kutta, 8 FSM R. 208, 213 (Chk. 1997).

The FSM Constitution is the supreme law of the FSM, and any actions taken by the government which are in conflict with the FSM Constitution are invalid to the extent of conflict. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 630-31 (Pon. 2002).

Although a state constitutional and a statutory provisions barring payment without a legislative appropriation are neither facially objectionable, what is not constitutionally permissible is to use the requirement defensively to avoid payment of a judgment based on a civil rights claim brought under the national civil rights statute. Principles of supremacy under Article II of the FSM Constitution preclude this result. Estate of Mori v. Chuuk, 12 FSM R. 3, 11 n.5 (Chk. 2003).

Any conflict between the Pohnpei Constitution provision that no appeal of any matter relating to the Pohnpei Constitution, Pohnpei law, customs or traditions may be made to any court except the Pohnpei Supreme Court and the FSM Supreme Court's jurisdiction to hear cases under the FSM Constitution is resolved under the FSM Constitution's supremacy clause, which provides that any act of a government that conflicts with the FSM Constitution is invalid, to the extent of the conflict. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 307 (App. 2007).

A state constitution cannot control or restrict the actions of the national government, whose powers and limitations are derived solely from the national constitution, which is the supreme law of the land. Thus, a state constitution's protections cannot be invoked against the national government. FSM v. Aiken, 16 FSM R. 178, 182 (Chk. 2008).

The FSM Constitution's supremacy clause does not permit a state law to prevent the enforcement of a national statute which gives a private cause of action for rights guaranteed by the FSM Constitution, especially when it is the solemn obligation of state governments to uphold the principles of the FSM Constitution and to advance the principles of unity upon which the Constitution is founded. Barrett v. Chuuk, 16 FSM R. 229, 234-35 (App. 2009).

No national statute regulates a state's duties and functions, except to the extent that a national statute may limit the state's lawmaking ability in specific areas through the supremacy clause. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 659 (App. 2009).

While all public officials are sworn to uphold the Constitution, the Constitution places upon the courts the ultimate responsibility for interpreting the Constitution. The court is forsworn by the Supremacy Clause from enforcing national laws or treaties contrary to the Constitution itself. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 187 (Pon. 2010).

Under the FSM Constitution's Supremacy Clause, a national statute must control over a conflicting state statute. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 617, 619 (Chk. 2011).

A Yap state statute cannot divest the FSM Supreme Court of jurisdiction conferred on it by the FSM Constitution, which is the supreme law of the land. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 94 (Yap 2011).

The FSM Supreme Court has issued writs of garnishment directed toward the assets of a state government when the underlying cause of action is based on a violation of the national civil rights statute, but it has declined to issue a writ of garnishment where the judgment debtor was a state government and the judgment was based on ordinary breach of contract. The rationale for the issued writs was the FSM Constitution's Supremacy Clause, which must control regardless of a state constitutional provision, or national law, to the contrary. Kama v. Chuuk, 18 FSM R. 326, 334 (Chk. S. Ct. Tr. 2012).

The Constitution is the supreme law of the FSM, and an act of the government in conflict with it is invalid to the extent of conflict. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 329 (Pon. 2019).

– Taking of Property

Government employment that is "property" within the meaning of the Due Process Clause cannot be taken without due process. To be property protected under the Constitution, there must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Suldan v. FSM (II), 1 FSM R. 339, 351-52 (Pon. 1983).

The fundamental concept of procedural due process is that the government may not be permitted to strip citizens of life, liberty or property in an unfair, arbitrary manner. When such important individual interests are exposed to possible governmental taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision-making process. Suldan v. FSM (II), 1 FSM R. 339, 354-55 (Pon. 1983).

A temporary seizure is itself a significant taking of property, depriving the owner of possession, an important attribute of property. Ishizawa v. Pohnpei, 2 FSM R. 67, 75 (Pon. 1985).

Where a seizure is for forfeiture rather than evidentiary purposes, the constitutional prohibitions against taking property without due process come into play. Ishizawa v. Pohnpei, 2 FSM R. 67, 76 (Pon. 1985).

When a landowner voluntarily enters into a statement of intent to grant the state an easement the state has not violated the landowner's constitutional rights by "taking" his property without just compensation, and is not liable for trespass. Nena v. Kosrae, 5 FSM R. 417, 425 (Kos. S. Ct. Tr. 1990).

The mere act of the United States' funding the FSM and Pohnpei does not subject it to liability for a taking because its involvement was insufficiently direct and substantial to warrant such liability and because one government is not liable for a taking by officials of another government for merely advocating measures that other government should take. Damarlane v. United States, 7 FSM R. 167, 169-70 (Pon. 1995).

An unconstitutional taking occurs whenever a public entity substantially deprives a private party of the beneficial use of his property for a public purpose. Therefore where neither the Trust Territory nor a U.S. government agency could be considered a public entity in the FSM after the effective date of the Compact they are legally incapable of committing a taking after that date. Damarlane v. United States, 7 FSM R. 167, 170 (Pon. 1995).

The government does not engage in a taking where the interests lost are not private property. Damarlane v. United States, 8 FSM R. 45, 52 (App. 1997).

A claim of taking of property without due process of law is effective only against governmental entities or officials. The constitutional guarantee of due process only protects persons from the governments, and those acting under them, established or recognized by the Constitution. Rosokow v. Bob, 11 FSM R. 210, 215 (Chk. S. Ct. App. 2002).

A claim that some private party has taken or deprived someone of their property is, if it was personal property that was allegedly taken, a claim for conversion or for trespass to chattels, and, if it was real property that was allegedly taken by some private party, it is a claim for trespass (including actions for ejectment) or possibly for nuisance (interference with use and enjoyment of land). They are not due process or takings claims. Rosokow v. Bob, 11 FSM R. 210, 215 (Chk. S. Ct. App. 2002).

The fundamental concept of procedural due process is that the government may not deprive citizens of life, liberty or property in an unfair, arbitrary manner. A taking occurs whenever a public entity substantially deprives a private party of the beneficial use of his property for a public purpose. Ladore v. Panuel, 17 FSM R. 271, 275 (Pon. 2010).

The requirement of a public purpose for a taking means that the deprivation must have as its cause some sort of public purpose. Even if the court were to interpret "public purpose" liberally to include any government policy, no interpretation of the facts could make out a government policy or public purpose which caused the deprivation when the cause was a quotidian traffic accident which raises a question of tort, not due process. Ladore v. Panuel, 17 FSM R. 271, 275-76 (Pon. 2010).

When a tort claim – trespass – that the state occupied and continues to occupy the plaintiff's property to the exclusion of all others rises to the level of a constitutional claim and a civil rights violation, it is a taking of the plaintiff's property without just compensation. Stephen v. Chuuk, 18 FSM R. 22, 25 (Chk. 2011).

In order to prevail on a claim of deprivation of liberty or property without due process of law, a plaintiff must: 1) identify a liberty or property right which implicates the Due Process Clause; 2) identify a governmental action which amounts to a deprivation of that liberty or property right; and 3) demonstrate that the deprivation occurred without due process of law. Kama v. Chuuk, 18 FSM R. 326, 333 (Chk. S. Ct. Tr. 2012).

Although no state shall deprive any person of life, liberty, or property without due process of law is the mandate of the constitution, a party cannot be said to be deprived of his property in a judgment because at the time he is unable to collect it. Kama v. Chuuk, 18 FSM R. 326, 333 (Chk. S. Ct. Tr. 2012).

Plaintiffs are not deprived of their judgments, so long as they continue to be existing liabilities against the entity. Therefore a failure to timely fulfill a judgment does not constitute a taking in violation of the due process clause as there continues to be an existing liability against the state. Kama v. Chuuk, 18 FSM R. 326, 333 (Chk. S. Ct. Tr. 2012).

The state's failure to appropriate funds to pay a judgment debt does not constitute a taking in violation of the due process clause because the property right created by a judgment against a government entity is merely the recognition of a continuing debt of that government entity. Kama v. Chuuk, 20 FSM R. 522, 529

(Chk. S. Ct. App. 2016).

A money judgment against the state is not property such that its non-payment constitutes a taking, but a money judgment against the state is a recognition of the state government's continuing debt or obligation. Kama v. Chuuk, 20 FSM R. 522, 529-30 (Chk. S. Ct. App. 2016).

A money judgment against the state is not a property interest but an existing, continuing liability against the state, and a failure to timely satisfy that judgment does not constitute a taking in violation of due process or equal protection. Kama v. Chuuk, 20 FSM R. 522, 534 (Chk. S. Ct. App. 2016).

The fundamental concept of due process is that the government may not be permitted to strip citizens of life, liberty or property in an unfair or arbitrary manner. When such interests are subject to possible government taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision-making process. Linter v. FSM, 20 FSM R. 553, 557 (Pon. 2016).

In order to prevail on a claim of deprivation of liberty or property without due process of law, a plaintiff must: 1) identify a liberty or property right which implicates the due process clause; 2) identify a governmental action which amounts to deprivation of that liberty or property right; and 3) demonstrate that the deprivation occurred without due process of law. Linter v. FSM, 20 FSM R. 553, 557 (Pon. 2016).

When no property right can be ascribed to the alleged property at issue, the due process standard does not apply. Linter v. FSM, 20 FSM R. 553, 557 (Pon. 2016).

Government employment that is property within the meaning of the due process clause cannot be taken without due process. To be property protected under the FSM Constitution, there must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. These assurances may come from various sources, such as statute, formal contract, or actions of a supervisory person with authority to establish terms of employment. Linter v. FSM, 20 FSM R. 553, 558 (Pon. 2016).

When seweage backflow rises above the level of mere negligence to the level of a public nuisance, it may constitute a taking of property without just compensation. Robert v. Chuuk Public Utility Corp., 21 FSM R. 599, 600 (Chk. 2018).

A tort claim that the state's actions excludes all others from the plaintiff's property rises to the level of a constitutional claim and a civil rights violation because it is a taking of the plaintiff's property without just compensation. Robert v. Chuuk Public Utility Corp., 21 FSM R. 599, 600 (Chk. 2018).

The court will deny summary judgment when it has previously held that if sewerage backflow rises above the level of mere negligence to the level of a public nuisance, it may constitute a taking of property without just compensation and the plaintiff claims that her possessory right to the land is a usufruct property right. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 158 (Chk. 2019).

No person may be deprived of property without due process of law. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 422, 424 (Chk. S. Ct. Tr. 2019).

The fundamental concept of procedural due process is that the government may not be permitted to strip citizens of life, liberty, or property in an unfair, arbitrary manner, and when such important individual interests are exposed to possible governmental taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision making process. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 633 (Pon. 2020).

– Title to Land

Citizenship may affect, among other legal interests, rights to own land, to engage in business or be employed, and even to reside within the Federated States of Micronesia. In re Sproat, 2 FSM R. 1, 6 (Pon. 1985).

The Constitution specifically bars noncitizens from acquiring title to land or waters in Micronesia and includes within the prohibition any corporation not wholly owned by citizens. Federated Shipping Co. v. Ponape Transfer & Storage (III), 3 FSM R. 256, 259 (Pon. 1987).

Where a person is constitutionally prohibited from inheriting land that person's valid assignment of expectancy to a person who may acquire land will operate only to assign the non-land holdings in the expectancy. Etscheit v. Adams, 6 FSM R. 365, 382-83 (Pon. 1994).

The FSM Constitution mandates that a noncitizen may not acquire title to land or waters in Micronesia, but the Constitution does not prohibit a noncitizen from acquiring or holding some non-title interest in the land. Marcus v. Truk Trading Corp., 10 FSM R. 387, 390 (Chk. 2001).

The Constitution does not divest noncitizens of their title to land if they had acquired title to land before the Constitution's effective date. Marcus v. Truk Trading Corp., 10 FSM R. 387, 390 (Chk. 2001).

The Constitution does not prohibit a citizen landowner from becoming a citizen of another country and it does not strip a citizen landowner who does become a foreign citizen of title to land to which he acquired title when he was a citizen. Marcus v. Truk Trading Corp., 10 FSM R. 387, 390 (Chk. 2001).

A foreign citizen, is barred from acquiring legal title to land anywhere in the FSM. In re Engichy, 12 FSM R. 58, 68 (Chk. 2003).

Noncitizens cannot acquire title to land, but leasing land for 99 years does not constitute acquiring title to land. Church of the Latter Day Saints v. Esiron, 13 FSM R. 99a, 99d (Chk. 2004).

That a citizen-buyer obtains the funds used to acquire title to land from a noncitizen does not affect the citizen-buyer's title to the land. To hold otherwise would throw all land sales, and land titles derived from them, into question because there is no way to determine from the land records the funds' source. Church of the Latter Day Saints v. Esiron, 13 FSM R. 99a, 99d-99e (Chk. 2004).

– Yap

The Yap Constitution provides that the state recognizes traditional rights and ownership of natural resources and areas within the marine space of the State within 12 miles from island baselines and Yap statutory law provides that traditionally recognized fishing rights wherever located within the State Fishery Zone and internal waters must be preserved and respected and also preserves existing private rights of action for civil damages, for damage to coral reefs, seagrass areas, and mangroves. Thus 67 TTC 2 is no longer Yap state law. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 414 (Yap 2006).

– Yap – Interpretation

A constitutional provision that a thing shall be done in such a way "as provided by law" is not self-executing and requires legislation to implement it. Gimnang v. Yap, 7 FSM R. 606, 609 (Yap S. Ct. Tr. 1996).

CONTEMPT

Failure to proceed with a contempt hearing offered by the court without prior notice cannot be deemed a loss or waiver of the hearing right itself when no clear and unmistakable warning is issued that a failure to

proceed immediately with the hearing will constitute a loss or waiver of that right. In re Iriarte (II), 1 FSM R. 255, 264-65 (Pon. 1983).

The Judiciary Act of 1979 permits the court to both fine and imprison a person found to be in contempt of court, but does not permit the fine to exceed $1,000 or the term of imprisonment to go beyond six months. Soares v. FSM, 4 FSM R. 78, 84 (App. 1989).

In a contempt trial, the trial court may consider information in addition to evidence adduced in the contempt hearing itself when the other information came to the knowledge of the trial court in previous judicial hearings related to the matter which gave rise to the contempt charge, and when the judge identified the "outside" information and gave the defendant an opportunity to object but the defendant failed to do so. Semes v. FSM, 5 FSM R. 49, 52 (App. 1991).

While the Judiciary Act says relatively little about the appropriate distinctions between civil and criminal contempt proceedings, the statute does reveal a general expectation of Congress that the legal system here shall adhere generally to the same kinds of distinctions between civil and criminal contempt proceedings that have been established in other common law systems. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 62, 65 (Pon. 1991).

Criminal contempt under the FSM Code results from intentional disregard of a court order; the fact that the defendant was not specifically informed that he would be subject to punishment for disobedience does not negate a finding of requisite intent. Alfons v. FSM, 5 FSM R. 402, 406 (App. 1992).

Whether the lower court erred by not holding the appellee in contempt of court involves a trial court's exercise of discretion and is reviewed using an abuse of discretion standard. Onopwi v. Aizawa, 6 FSM R. 537, 539 (Chk. S. Ct. App. 1994).

Contempt is not a matter between opposing litigants; it is a matter between the offending person and the court, and the degree of punishment for contempt, if any, is within the sound discretion of the court. Onopwi v. Aizawa, 6 FSM R. 537, 540 (Chk. S. Ct. App. 1994).

The intentional disobedience required for a conviction for contempt necessarily includes an element of voluntariness. In re Contempt of Cheida, 7 FSM R. 183, 185 (App. 1995).

The tardiness of a person who appears before the court as a witness, not as an attorney, who was presented with an unexpected legitimate and confirmed conflict between the demands of two branches of government, and who made efforts to notify the court he would be late, cannot be considered intentional disobedience of the court's summons. In re Contempt of Cheida, 7 FSM R. 183, 186 (App. 1995).

Generally, a person who seeks to satisfy the court that his failure to obey an order or decree was due entirely to his inability to render obedience, without fault on his part, must prove such inability. The FSM Supreme Court places the burden on the movant to show that the debtor has the ability to comply. Once this burden has been met and the debtor has been held in contempt, it is then the debtor's burden to show that he no longer has the ability to comply through no fault of his own despite his exercise of due diligence. Hadley v. Bank of Hawaii, 7 FSM R. 449, 452-53 (App. 1996).

In order to hold a debtor in contempt for failure to comply with an order in aid of judgment it is not enough that the debtor's noncompliance was found to be willful. There must also be a recital, or a finding somewhere in the record, that the debtor was able to comply. Hadley v. Bank of Hawaii, 7 FSM R. 449, 453 (App. 1996).

Punishment of imprisonment for contempt is automatically stayed on appeal, unless the court finds that a stay of imprisonment will cause an immediate obstruction of justice. "Obstruction of justice" means to impede those who seek justice in court or to impede those who have duties or powers to administer justice.

In re Contempt of Umwech, 8 FSM R. 20, 22 (Chk. S. Ct. App. 1997).

When all parties are seeking to vindicate their positions in a court of law an immediate obstruction of justice is not present that would prevent the automatic stay of punishment of imprisonment for contempt. In re Contempt of Umwech, 8 FSM R. 20, 22 (Chk. S. Ct. App. 1997).

Any intentional disobedience or resistance to the court's lawful writ, process, order, rule, decree, or command is contempt of court, which the court has the power to punish. Johnny v. FSM, 8 FSM R. 203, 206 (App. 1997).

An officer of the court should be held to a higher standard for his contumacious behavior due to his intimate knowledge of the legal system. Cheida v. FSM, 9 FSM R. 183, 190 (App. 1999).

The test for compliance with court orders is that one have knowledge of the order and if such knowledge exists, it is irrelevant that the person has not been served. Nameta v. Cheipot, 9 FSM R. 510, 511 (Chk. S. Ct. Tr. 2000).

In addition to its statutory contempt power, the FSM Supreme Court does retain inherent powers to sanction attorneys. In re Sanction of Woodruff, 10 FSM R. 79, 85 (App. 2001).

In order for a person to be held in contempt, a court must find that he knew of the order and had the ability to comply with the order. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 102 (Kos. 2001).

Any adjudication of contempt is subject to appeal to the FSM Supreme Court appellate division. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 470 (Pon. 2001).

The appropriate means by which someone may challenge a discovery order is to subject themselves to a contempt proceeding. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 470 (Pon. 2001).

The court may impose no further sanctions when a party is in contempt for its failure to abide by a court order because it knew of the order, had the ability to comply with the order, and decided not to comply, but Rule 37 sanctions have already been imposed. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 229 (Pon. 2002).

Since a finding of contempt is final and appealable, the legality of the specific sanction of imprisonment should be reviewed at the same time in the interest of judicial economy. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 380 (App. 2003).

When a defendant who was found in contempt of court for failure to comply with an order in aid of judgment later dies, the court will vacate its order sentencing him to jail. Bank of the FSM v. Rodriguez, 11 FSM R. 542, 544 (Pon. 2003).

A motion to vacate a contempt order will be denied when nothing stated changes the previous finding. Davis v. Kutta, 11 FSM R. 545, 548 (Pon. 2003).

A possible, but drastic, means by which a party may immediately challenge an interlocutory court order is to not comply with it and thus subject themselves to a contempt proceeding and then appeal the contempt finding, if there is one. Usually in such cases, if the client chooses to follow the attorney's advice it is only the party disobeying the order, not the party's attorney, who is then subjected to a contempt proceeding, often as part of the same proceeding in which the disobeyed order was given. FSM v. Kansou, 13 FSM R. 344, 349 (Chk. 2005).

When FSM cases have not addressed a precise point (about contempt), in such an instance, the court may consider authorities from other jurisdictions in considering the question before it. RRG (FSM) Ltd. v.

Maezoto, 15 FSM R. 243, 244 (Pon. 2007).

The FSM contempt statute expressly provides that one who is in violation of a court order may be put in jail until such time as he or she conforms his or her conduct the court's lawful order. Before imposing a sentence for contempt, the court must determine that the person who is potentially liable for contempt knew of the order, and had the ability to obey it. Carlos Etscheit Soap Co. v. Gilmete, 15 FSM R. 285, 289 (Pon. 2007).

When FSM cases have not addressed the precise point of a non-party's contempt, the court may consider authority from other common law jurisdictions. Carlos Etscheit Soap Co. v. Gilmete, 15 FSM R. 285, 289 (Pon. 2007).

It is plain that a non-party may be in contempt of a court order. Carlos Etscheit Soap Co. v. Gilmete, 15 FSM R. 285, 289 (Pon. 2007).

No motion for a show cause hearing regarding contempt shall fail in the FSM for failure formally and explicitly to assert either existence of the order or failure to comply with that order. However, inclusion of these two elements is helpful to the court. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 225 (Kos. 2010).

Traditionally, the movant has the burden to show that the debtor has the ability to comply with the court order; once this burden has been met, it is then the debtor's burden to show that he no longer has the ability to comply through no fault of his own despite due diligence. Thus, it is the moving party's burden not only to submit a proper motion for a show cause hearing, but also, at the hearing, to prove by a preponderance that the judgment debtor has the ability to pay. If the movant cannot provide evidentiary support, or certify his information and belief that such support is likely after a reasonable opportunity for further investigation or discovery, the court must deny the motion, but if the court does set a hearing and order parties to appear, and if at the hearing the moving party presents such evidence, only then will the burden shift to the debtor to show that he does not in fact have the ability to pay. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 226-27 (Kos. 2010).

Since a movant is least likely to procure agreement or acquiescence for a hostile or adversarial motion, and since there are few motions more hostile or adversarial than one for an order to show cause why the opposing party should not be held in contempt, it is clear that no agreement would ever be considered by, or forthcoming from, the opposing party in such a situation. Thus, although the movant takes the risk that the absence of the certification might result in the motion's denial, the court, in its discretion, may find that lack of formal certification was not fatal to the motion. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 228 (Kos. 2010).

A person with a judgment may initiate contempt proceedings when enforcement of a favorable judgment is required to prevent irreparable injury to the winning party's interests and is otherwise in the interests of justice. Damarlane v. Pohnpei Transp. Auth., 17 FSM R. 307, 309 (Pon. 2010).

Final judgments may be enforced by contempt proceedings provided that enforcement at such time is required to prevent irreparable injury or multiple damage to the interests of the winning party and is otherwise in the interests of justice. Damarlane v. Pohnpei Transp. Auth., 17 FSM R. 307, 310 (Pon. 2010).

The relevant subsections of Chuuk State Law No. 190-08, § 27 provide that upon appeal, punishments of imprisonment for contempt will automatically be stayed unless the court finds cause to the contrary and renders its findings in writing. Chuuk v. Billimon, 17 FSM R. 313, 315 (Chk. S. Ct. Tr. 2010).

When the court has ordered counsel to submit a brief solely on the issue of whether the defendant's parcel is exempt from attachment and execution and counsel has chosen to ignore the court's order and proceeded to relitigate the issue of her ability to pay, normally, such intentional disobedience of the court's

lawful order may be sanctionable under 4 F.S.M.C. 119(1)(b). FSM Dev. Bank v. Jonah, 17 FSM R. 318, 323 (Kos. 2011).

The inability to serve a show cause motion on a defendant means that a court cannot grant that motion without depriving the accused of due process rights. A wiser course of action, with respect to show cause motions, would be to serve the motion first, and then to file the motion and certificate of service within a reasonable time after service, an option expressly provided by the rules of civil procedure. In light of this alternative, and because circumstances may have changed since November 12, 2008, denial of the November 12, 2008 show cause motion is appropriate. Dateline Exports, Inc. v. George, 18 FSM R. 147, 149 (Kos. 2012).

When the court has enjoined the defendant from the activity that is the source of the bank's grievance against him, the court will hold the show cause motion in abeyance until such time as the bank either requests a show cause hearing or withdraws the motion. FSM Dev. Bank v. Abello, 18 FSM R. 192, 198 (Pon. 2012).

Courts generally have the power, in proper circumstances, to hold a party, or an attorney, or a witness summoned to appear before it in contempt of court for acts committed in the court's presence or for failure to appear when ordered to. The power to punish for contempt of court may be regarded as an essential element of judicial authority. It existed at common law. Helgenberger v. U Mun. Court, 18 FSM R. 274, 281 (Pon. 2012).

Only the court whose order was violated can punish a person for contempt – one court does not have the power to punish someone for the contempt of another court's order. Helgenberger v. U Mun. Court, 18 FSM R. 274, 281 (Pon. 2012).

If a person has been given adequate notice that he or she is ordered or required to appear before a court at a certain date and time and fails to do so, that court may, usually upon request, issue a bench warrant to compel that person to appear by authorizing the police to arrest that person and bring him or her before the court. The court does not need to first issue a second order for that person to appear and to explain his or her absence (show cause) and then if that order to appear is not obeyed, issue a third order to appear and explain the second absence, and then a fourth and so on without end. Helgenberger v. U Mun. Court, 18 FSM R. 274, 281 (Pon. 2012).

When an impeached U official was arrested on the U Impeachment Panel's bench warrant and brought within 24 hours before the only court competent to try him for the contempt charge, the U Impeachment Panel, where he was heard and then convicted of contempt, he received the process of law due him. Helgenberger v. U Mun. Court, 18 FSM R. 274, 281 (Pon. 2012).

If a person's contempt conviction was unsafe, that is, if he should have been acquitted because there was no earlier order requiring his appearance or if he was not allowed to present a defense, or if he had some valid defense that should have resulted in an acquittal on the contempt charge, his remedy would have been an immediate appeal of the contempt conviction as a final collateral order. Helgenberger v. U Mun. Court, 18 FSM R. 274, 282 (Pon. 2012).

While an impeachment conviction may not be appealable, a contempt conviction certainly is. Helgenberger v. U Mun. Court, 18 FSM R. 274, 282 n.6 (Pon. 2012).

The imposition of disciplinary sanctions is subject to due-process scrutiny. An attorney is entitled to appropriate notice and an opportunity to be heard before any sanction is imposed on her whether that sanction is imposed on her under the civil procedure rules, the criminal contempt statute, or some other court power. In re Sanction of Sigrah, 19 FSM R. 305, 313 (App. 2014).

Contempt of court, under 4 F.S.M.C. 119(1)(a) and (b) is defined as any intentional obstruction of the administration of justice by any person, including an officer of the court acting in his official capacity, or any

intentional disobedience or resistance to the court's lawful writ. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 105 (Chk. 2015).

The court's first duty in reviewing a contempt judgment is to determine whether the nature of the contempt proceeding was civil or criminal. That the court earlier characterized the contempt as civil or criminal is not conclusive. In re Contempt of Jack, 20 FSM R. 452, 461 & n.5 (Pon. 2016).

There are four states of culpability which establish the requisite mental element: intentional, knowing, reckless, and negligent, but only the first two subjective states of mind, intent or knowledge, can be used to support a contempt finding. In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

In finding contempt, the court must first determine whether the contempt was a civil contempt or criminal contempt; second it must determine whether the contempt was direct or indirect – whether it was committed in the court's presence or not; and third, it must determine, by a clear and convincing standard, that the defendant intentionally disobeyed a court order. In re Contempt of Jack, 20 FSM R. 452, 467 (Pon. 2016).

An attorney who is again found in contempt in a case, may be subject to further payments to compensate the opposing party for any additional attorney's fees and costs. In re Contempt of Jack, 20 FSM R. 452, 467 (Pon. 2016).

The Chuuk Judiciary Act of 1990 defines contempt as any intentional disobedience or resistance to the court's lawful writ, process, order, rule, decree, or command. Governor v. Chuuk House of Senate, 21 FSM R. 428, 433 (Chk. S. Ct. Tr. 2018).

Contempt is not a matter between opposing litigants; it is a matter between the offending person and the court, and the degree of punishment for contempt, if any, is within the court's sound discretion. Governor v. Chuuk House of Senate, 21 FSM R. 428, 433 (Chk. S. Ct. Tr. 2018).

Before imposing a sentence for contempt, a court must determine that the person who is potentially liable for contempt knew of the order, and had the ability to obey it. In re Contempt of Fujita, 21 FSM R. 634, 637 (Pon. 2018).

– Acts Constituting

A counsel's decision to take steps which may cause him to be late for a scheduled court hearing, coupled with his failure to advise the court and opposing counsel of the possibility that he might be late to the hearing, may, when followed by failure to appear at the scheduled time, constitute an intentional obstruction of the administration of justice within the meaning of section 119(a) of the Judiciary Act, and may be contempt of court. 4 F.S.M.C. 119(a). In re Robert, 1 FSM R. 18, 20 (Pon. 1981).

The right of citizens to express their views, including views critical of public officials, is fundamental to the development of a healthy political system. Therefore, courts are generally reluctant to find that expression of opinions asserted outside of the court itself, however intemperate or misguided, constitute contempt of court. In re Iriarte (I), 1 FSM R. 239, 247-48 (Pon. 1983).

When the accused disrupts courtroom proceedings and the judge must act immediately to restore order, a trial judge may immediately convict a defendant (the accused) through a "summary contempt" procedure, that is, without prior notice or hearing. In re Iriarte (II), 1 FSM R. 255, 260 (Pon. 1983).

Voluntary acts or omissions by a person, done with knowledge of facts sufficient to warn the person that such acts or omission could create a substantial risk of court delay, may constitute intentional obstruction of the administration of justice. In re Tarpley, 2 FSM R. 221, 224 (Pon. 1986).

When counsel receives notice of a hearing, yet intentionally departs without making adequate efforts to reschedule the hearing or to assure that someone will appear on the client's behalf, he knowingly creates a substantial risk of obstruction of justice. In re Tarpley, 2 FSM R. 221, 224-25 (Pon. 1986).

"Intentional Obstruction," as specified in 4 F.S.M.C. 119, requires that the consequences of the act are the purpose for which it was done, or that the consequences were substantially certain to follow the act. In re Tarpley (II), 3 FSM R. 145, 149 (App. 1987).

One who acts negligently but whose actions do not create a substantial risk of obstruction, may not be deemed to have acted with the necessary intention to be found in contempt. In re Tarpley (II), 3 FSM R. 145, 150 (App. 1987).

Where the record reflects that assets were removed from an insolvent's warehouse by its president following the issuance of a writ of execution banning removal of the insolvent's property and no evidence was presented which showed that the assets removed were not the insolvent's property, a reasonable trier of fact could infer that the assets belonged to the insolvent and could base the president's conviction for contempt of court upon such a finding. Semes v. FSM, 5 FSM R. 49, 51 (App. 1991).

Where the record lacked any identifiable order directing a particular counsel to appear before the court, insofar as the court's expectation was that "somebody" from the Office of the Public Defender appear, no affirmative duty to appear existed; nor did any intentional obstruction of the administration of justice occur to support the lower court's finding of contempt against counsel. In re Powell, 5 FSM R. 114, 117 (App. 1991).

A garnishee who deliberately disobeys a court order may be held in contempt of court. Mid-Pac Constr. Co. v. Senda, 6 FSM R. 135, 136 (Pon. 1993).

An appellate court cannot hold a party in contempt for violating a trial court's orders because his actions were not a violation of the appellate court's orders or done in the appellate court's presence. Onopwi v. Aizawa, 6 FSM R. 537, 539 (Chk. S. Ct. App. 1994).

The inability of an alleged contemnor, without fault on his part to obey a court order generally absolves him from being held in contempt for violating that order, but such a defense is effective only where, after using due diligence, the person still is not able to comply with the order. The defense of inability to comply is not available where the contemnor has voluntarily created the incapacity. Hadley v. Bank of Hawaii, 7 FSM R. 449, 452 (App. 1996).

FSM law allows imprisonment of a debtor for "not more than six months" if he is "adjudged in contempt as a civil matter" for failure "without good cause to comply with any order in aid of judgment." 6 F.S.M.C. 1412. The inability of a judgment debtor to comply with an order in aid of judgment without fault on his part after his exercise of due diligence constitutes "good cause" within the meaning of the statute. Hadley v. Bank of Hawaii, 7 FSM R. 449, 452 (App. 1996).

Conduct proscribed by a court order may be punished as contempt even though authorized by an executive order because such activity is illegal, and under a government of laws, illegal conduct pays a price. Johnny v. FSM, 8 FSM R. 203, 208 (App. 1997).

In the Kosrae State Code, contempt of court is defined as intentionally obstructing court proceedings or court operations directly related to the administration of justice or intentionally disobeying or resisting the court's writ, process, order, rule, decree or command. In re Contempt of Skilling, 8 FSM R. 419, 424 (App. 1998).

In order to maintain order in the courtroom, courts have a limited power to make a finding of contempt "summarily" where the contemptuous conduct takes place during courtroom proceedings and is personally

observed by the judge. This exception is typically used when the accused disrupts courtroom proceedings and the judge must act immediately to restore order. Fewer procedural safeguards are required in such contexts because the events have occurred before the judge's own eyes and because a reporter's transcript is often available, a hearing is less critical to ensuring that the defendant is treated fairly. In re Contempt of Skilling, 8 FSM R. 419, 424 (App. 1998).

A debtor who knew of an order, since he stipulated to it, and who had some ability to pay, as evidenced by the payments that he did make, cannot be found in contempt for failing to meet the payments under the stipulated order when there was insufficient evidence presented to establish any income sufficient to confer on the debtor the ability to pay under the order because having some ability to pay is different from having the ability to make the payments specified in the order. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 102 (Kos. 2001).

Any intentional disobedience or resistance to the court's lawful order is contempt of court. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 475 (Pon. 2001).

When various recent financial exigencies have affected the judgment-debtor's ability to make the payments as pledged, and the judgment-debtor felt that a payment of no more than $50,000 could be made by the end of February, and that the remainder of the judgment could be paid by the end of the fiscal year, the court is satisfied that the judgment-debtor has not intentionally disobeyed the court's order. Davis v. Kutta, 10 FSM R. 505, 506 (Chk. 2002).

The statutory remedy for violations of an order in aid of judgment is that if any debtor fails without good cause to comply with any order in aid of judgment, he may be adjudged in contempt as a civil matter. The inability of a judgment debtor to comply with an order in aid of judgment without fault on his part after his exercise of due diligence constitutes "good cause." Rodriguez v. Bank of the FSM, 11 FSM R. 367, 374 (App. 2003).

Contempt of court is any intentional obstruction of the administration of justice by any person or any intentional disobedience or resistance to the court's lawful writ, process, order, rule, decree, or command. Atesom v. Kukkun, 11 FSM R. 400, 402 (Chk. 2003).

While the court cannot find, beyond a reasonable doubt, that an attorney intended either to obstruct the administration of justice or to disobey the court's order since he thought the order did not apply to him because he believed he was no longer counsel and he thought (at that time) that he had informed the court of that, it can conclude that the attorney's conduct falls below that expected of someone admitted to the FSM bar. Atesom v. Kukkun, 11 FSM R. 400, 402 (Chk. 2003).

When someone has no say over payment of judgments against the state beyond approving or disapproving vouchers that are submitted to the commission for payment he cannot be in contempt for failure to pay. Estate of Mori v. Chuuk, 11 FSM R. 535, 539 (Chk. 2003).

A person's failure to obey a witness summons is considered contempt of court, and may subject the offending witness to arrest and imprisonment. Kosrae v. Nena, 12 FSM R. 20, 23 (Kos. S. Ct. Tr. 2003).

When the defendants knew of two scheduled conference dates and were able to inform and/or seek leave of court to obtain a rescheduled conference date, but failed to take any action to do so prior to those conferences and when the defendants have intentionally and inexcusably delayed the litigation's progress, and since contempt of court is any intentional obstruction of the administration of justice by any person, or any intentional disobedience or resistance to the court's lawful writ, process, order, rule, decree, or command, the defendants are in civil contempt. FSM Dev. Bank v. Ladore, 12 FSM R. 169, 170-71 (Pon. 2003).

Failure to comply with an order in aid of judgment and an injunction can be grounds for a contempt proceeding. Edwin v. Heirs of Mongkeya, 12 FSM R. 220, 222 (Kos. S. Ct. Tr. 2003).

Neither the petitioner nor his counsel will be held in contempt of court when their failure to include the decedent's adopted daughter as an heir was not intentional since the petitioner did not inform counsel of the decedent's adopted child and counsel failed to ask the petitioner, who was a lay person not expected to know the law's requirements and expected to rely on his counsel, to verify all of the decedent's heirs. In re Skilling, 12 FSM R. 447, 449 (Kos. S. Ct. Tr. 2004).

Failure to pay a judgment in accordance with a court order may in the appropriate case constitute conduct that is sanctionable by an order of contempt under 4 F.S.M.C. 119. For such an order to issue, it must be shown that the putative contemnor had knowledge of the order and the ability to obey, and that he did not do so. Barrett v. Chuuk, 12 FSM R. 558, 561 (Chk. 2004).

When counsel's contentions are colorable and not made in bad faith, counsel is not subject to criminal liability merely because his or her interpretation or understanding of the law is incorrect. FSM v. Kansou, 13 FSM R. 344, 349 (Chk. 2005).

By failing to move from the land as they were ordered to do, a named party and another are in contempt of the court's permanent injunction because both knew of the injunction and had the ability to comply with it. Although the other was not a named party, he nevertheless knew of the order, and is subject to punishment for violating the order himself when he also encouraged the named party to stay on the land. Carlos Etscheit Soap Co. v. Gilmete, 15 FSM R. 285, 289 (Pon. 2007).

Contempt is any intentional obstruction of the administration of justice by any person, including any clerk or officer of the court acting in his official capacity; or any intentional disobedience or resistance to the court's lawful writ, process, order, rule, decree, or command. The FSM Code provides for differences between civil and criminal contempt, at least in terms of adjudication. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 225 (Kos. 2010).

The elements for establishing contempt for failure to comply with or obey a court order are well established: in order for a person to be held in contempt, a court must find that he knew of the order and had the ability to comply with the order. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 225 (Kos. 2010).

For a party to be held in contempt, the court must find that he knew of the order and had the ability to comply. Implicit in the charge that the party knows of the order is the requirement that the order is in existence and is valid and actionable. Damarlane v. Pohnpei Transp. Auth., 17 FSM R. 307, 310 (Pon. 2010).

Contempt of court is the intentional obstruction of administration of justice, or the intentional disobedience or resistance to the court's lawful writ, process, order, rule, decree, or command. FSM Dev. Bank v. Abello, 18 FSM R. 192, 197 (Pon. 2012).

Generally, the failure to obey a court's order is considered civil contempt, and when the refusal takes place outside of the court's presence, it is an indirect civil contempt. Because the court has no personal knowledge of the indirect contempt, the acts must be proven through the testimony of third parties or the contemnor. Thus minimal due process requirements apply to indirect contempts. In re Contempt of Jack, 20 FSM R. 452, 463-64 (Pon. 2016).

An attorney's absence alone does not constitute contempt, but if the attorney offers an insulting, frivolous, or clearly inadequate explanation, a direct contempt has been committed in the presence of the judge. Patently false, flippant, inconsistent, contradictory, and evasive replies support a contempt finding, as does an attorney's refusal to give any explanation for his or her absence or lateness in arriving for a trial or hearing since that is the equivalent of the lack of a valid excuse. In re Contempt of Jack, 20 FSM R. 452, 464 n.10 (Pon. 2016).

Contemptuous behavior includes not only intentionally avoiding a hearing, but also intentionally arriving late for a hearing. Thus, failure to appear or even tardiness may be treated as an indirect civil contempt pursuant to 4 F.S.M.C. 119(2)(a), or as an indirect criminal contempt pursuant to 4 F.S.M.C. 119(2)(b), or both. But in either case, it cannot be treated summarily. In re Contempt of Jack, 20 FSM R. 452, 464 (Pon. 2016).

A contemnor's intent must be ascertained from all the acts, words, and circumstances surrounding the occurrence. Ultimately, most *bona fide* representations tend to excuse, but cannot justify the act. Notably, an attorney's good faith belief that they were not obligated to appear at that time may be accepted or rejected. In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

Although an act of negligence is not sufficient to support a finding of contempt, an act of willful neglect is. Thus, while a single act of negligence is usually not sufficient by itself to support a finding of contempt, a pattern of neglect can give rise to the inference of an intentional design to disobey. In re Contempt of Jack, 20 FSM R. 452, 466 (Pon. 2016).

When an attorney's off-island notice was filed several weeks after a court order set the hearing date; when the off-island notice's filing indicates that the attorney knew of the conflict over a month in advance, but failed to notify the court until the last minute; and when the attorney never notified the opposing counsel, the off-island notice cannot be used to imply that the court scheduled the hearing in error since the attorney had a professional duty to not only notify the court, but also the opposing party in a timely manner in order to reschedule the hearing. While this alone is not contemptuous, it can be used as further support the inference of intent to disobey a court order when supported by a pattern or other similar acts and omissions drawn from the surrounding circumstances. Collectively, the attorney's acts and omissions form a pattern and indicate that she knew her duty, had the ability to perform it, and willfully neglected to perform it. In re Contempt of Jack, 20 FSM R. 452, 466 (Pon. 2016).

When an attorney failed to appear as required and the court held a show cause hearing to determine why she failed to appear at the scheduled hearing; when, after receiving her explanation, the court found her in contempt because she knew of the hearing and had the ability to appear, at least telephonically; and when this was supported in the record, clearly and convincingly, this was an act of intentional disobedience of a court order within the meaning of 4 F.S.M.C. 119(1)(b), and a sanction will be imposed that is not punitive but which is made to compensate the opposing party for losses he incurred. In re Contempt of Jack, 20 FSM R. 452, 467 (Pon. 2016).

An officer of the court should be held to a higher standard for his contumacious behavior due to his intimate knowledge of the legal system. Governor v. Chuuk House of Senate, 21 FSM R. 428, 434 (Chk. S. Ct. Tr. 2018).

A drastic means by which a party may immediately challenge an interlocutory court order is to not comply with it and thus subject themselves to a contempt proceeding and then appeal the contempt finding, if there is one. Usually in such cases, if the client chooses to follow the attorney's advice, it is only the party disobeying the order, not the party's attorney, who is then subjected to a contempt proceeding, often as part of the same proceeding in which the disobeyed order was given. Governor v. Chuuk House of Senate, 21 FSM R. 428, 434 (Chk. S. Ct. Tr. 2018).

The Chuuk State Supreme Court will apply the collateral bar rule to injunctions it issues. The collateral bar rule prevents defendants from defending themselves against a contempt charge on grounds that the court's injunction was unlawful or incorrect. The reason for implementing this doctrine in Chuuk is self-evident: there is a public interest in a peaceful and orderly resolution to disputes, and the orderly and peaceful resolution of disputes is completely frustrated when parties chose to disregard injunctions issued by a court while a case is pending – even if those parties allege that such injunctions are improper or unlawful. Micronesian society has customarily prized peaceful and orderly resolution of disputes.

Governor v. Chuuk House of Senate, 21 FSM R. 428, 434-35 (Chk. S. Ct. Tr. 2018).

When the Governor received notice of the court order enjoining him from interfering with CPUC's business; when he did nothing to ensure compliance with the court's injunction, such as revoking the executive order creating an interim CPUC board, upon clearly gaining knowledge of the injunction's content at a later time; when the Governor affirmatively created an interim board as an intentional violation of the court's injunction since the act of writing an executive order which created a new interim board clearly shows intent to impact CPUC's management; when, even if the Governor alleged a lack of notice originally, his continued entertainment of the board upon admitting to having receiving notice of the injunction, constituted an intentional violation of the injunction; since the Governor had the ability to comply with this order by merely refraining from interfering with the CPUC's business, but instead affirmatively signed an executive order which created a new "interim CPUC Board," and upon clearly having knowledge of the injunction. Thus, he did nothing to comply with that injunction, all the elements required for finding the Governor in both criminal and civil contempt have been established. Governor v. Chuuk House of Senate, 21 FSM R. 428, 436 (Chk. S. Ct. Tr. 2018).

Prior counsel is not in civil or criminal contempt when he conveyed the information from the court proceedings to his client and did not omit specifying the court's oral order; when his client knew of the order and asked his new counsel on whether it would violate the order to issue his own executive order; and when former counsel did not fail to communicate the court order to the client or avoid attempts by new counsel to contact him regarding the case's history. Governor v. Chuuk House of Senate, 21 FSM R. 428, 436-37 (Chk. S. Ct. Tr. 2018).

Current counsel is in contempt of court where he intentionally violated the court order when he drafted and advised the client to sign an executive order, which the client himself questioned whether he would violate the injunction and consulted counsel before signing the executive order, but counsel advised his client that he should go ahead without consulting the client's previous attorney and being aware that there was an injunction in place. Even if counsel lacked knowledge of the injunction, counsel's abstention from consulting with prior counsel constituted willful ignorance on a matter which he had an affirmative duty to know – he lacked good cause as to why he had not complied with the injunction, and his belief that the court injunction infringed on his client's rights lacks merit, since it is a defense that the court is precluded from considering under the collateral bar rule. Governor v. Chuuk House of Senate, 21 FSM R. 428, 437 (Chk. S. Ct. Tr. 2018).

Attorneys are held to a higher standard of conduct as compared to other parties when issues of contempt arise. Governor v. Chuuk House of Senate, 21 FSM R. 428, 437 (Chk. S. Ct. Tr. 2018).

The FSM Supreme Court has the power to punish for contempt of court based on any intentional disobedience or resistance to the court's lawful writ, process, order, rule, decree, or command. In re Contempt of Fujita, 21 FSM R. 634, 637 (Pon. 2018).

Contempt of court is any intentional obstruction of the administration of justice, including action by an officer of the court, or any intentional disobedience or resistance to the court's lawful writ. In re Contempt of Fujita, 21 FSM R. 634, 638 (Pon. 2018).

An attorney's instruction to a garnishee to disobey a lawful writ of garnishment requiring payment to the creditor and to remit the monthly rent to her clients instead constitutes contempt of court. In re Contempt of Fujita, 21 FSM R. 634, 638 (Pon. 2018).

A garnishee's payment of the monthly rent to the debtor or to his attorney does not excuse his non-compliance with the writ of garnishment, because clients are held accountable for their attorney's acts or omissions. In re Contempt of Fujita, 21 FSM R. 634, 638-39 (Pon. 2018).

A garnishee's attorney, as an officer of the court, is obligated to advise her garnishee client to comply

with the writ of garnishment, and to transmit the garnishee's monthly payments to the creditor and not to her other clients, who were not entitled to receive those funds. In re Contempt of Fujita, 21 FSM R. 634, 639 (Pon. 2018).

Any intentional disobedience or resistance to the court's lawful order is contempt of court, and a non-party may be in contempt of a court order. Thus, a garnishee who deliberately disobeys a court order may be held in contempt of court. In re Contempt of Fujita, 21 FSM R. 634, 639 (Pon. 2018).

A garnishee is in contempt of court for intentional disobedience of the writ of garnishment when he had assistance of counsel, had notice and knowledge of the writ of garnishment requiring payments to the creditor, and had the ability to comply with the writ because he gave the full amount of the monthly rent payments to other persons. In re Contempt of Fujita, 21 FSM R. 634, 639 (Pon. 2018).

When the matter concerned an order to show cause why a garnishee should not be held in contempt and evidence was obtained during the contempt hearing that the garnishee's attorney may also have been in violation of the court's writ of garnishment, the court may set an order to show cause hearing for attorney. In re Contempt of Fujita, 21 FSM R. 634, 640 (Pon. 2018).

– Civil

Before a trial court can hold a defendant in civil contempt of a court order it must find that the alleged contemnor knew of the court order and it must find that the alleged contemnor had the ability to comply with that order. Hadley v. Bank of Hawaii, 7 FSM R. 449, 452 (App. 1996).

The distinction between civil and criminal contempt is that the former is prospective, while the latter is retrospective, which is to say that a civil contempt proceeding's purpose is to bring about compliance with a court order, while the criminal contempt's purpose is to punish for past wrongful conduct. Davis v. Kutta, 10 FSM R. 125, 127 (Chk. 2001).

The court may not punish a contemnor for civil contempt where the contemnor lacks the ability, through no fault of his own, to comply with the order, or, in other words, where the contemnor lacks the ability to purge the contempt. Davis v. Kutta, 10 FSM R. 125, 127 (Chk. 2001).

When a person no longer has the ability to purge the contempt by complying with the court's orders, he is not subject to punishment for civil contempt. Davis v. Kutta, 10 FSM R. 125, 127 (Chk. 2001).

Before a trial court can hold a defendant in civil contempt of court for violating an order in aid of judgment on a debt, it must find that the alleged contemnor both knew of the court order and had the ability to comply with that order. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 373 (App. 2003).

Traditionally the burden has been on the movant to show that the debtor has the ability to comply with the court order. This has been deemed reasonable because in the FSM debtors usually appear *pro se* and creditors do not. Once this burden has been met, it is then the debtor's burden to show that he no longer has the ability to comply through no fault of his own despite his exercise of due diligence. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 373-74 (App. 2003).

A finding that a judgment debtor is in civil contempt will be set aside on appeal only if it is clearly erroneous. In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 374 (App. 2003).

Civil contempt is not punishment for the failure to pay a debt. It is a prospective remedial measure designed to encourage, or even coerce, compliance with a lawful court order when the contemnor has been found to have the ability to comply with that order. Rodriguez v. Bank of the FSM, 11 FSM R. 367,

382 (App. 2003).

A person sent to jail after being adjudged in civil contempt can get out of jail anytime he or she chooses merely by complying with the court order and thereby purging himself or herself of the contempt because 6 F.S.M.C. 1412 provides that upon an adjudication of civil contempt, the contemnor shall be committed to jail until he complies with the order. The purpose of a civil contempt adjudication is to secure compliance with a lawful court order when the contemnor has the ability to do so. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 382 (App. 2003).

A finding of civil contempt necessitates a finding that the defendant failed without good cause to comply with the court order. Good cause is the inability of a judgment debtor to comply with an order in aid of judgment without fault on his part after his exercise of due diligence. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 382 (App. 2003).

When the court has found the defendants in civil contempt, it may order them imprisoned until such time as they comply with the orders issued to date and/or pay an amount necessary to compensate the court and plaintiff for the wasted time and expense involved in having held and set over pretrial conferences that the defendants never timely rescheduled nor attended; but if, in the court's opinion, imprisonment is a less suitable punishment than a ruling that by its nature will move this litigation to its conclusion, and when the defendant's only asserted defense to having defaulted on the underlying promissory note was his unemployment and inability to pay and he is now employed, the court may order the defendants to settle the case and file a stipulated judgment or the court will strike defendants' answer and enter a default judgment against the defendants, grant a motion for order in aid of judgment, the plaintiff files one, hold a hearing thereon, make findings as to the defendants' ability to pay, and if warranted, order the defendants' wages garnished for such amount as the court deems appropriate in light of those findings. FSM Dev. Bank v. Ladore, 12 FSM R. 169, 171-72 (Pon. 2003).

Civil contempt is a prospective remedial measure designed to encourage, or even coerce, compliance with a lawful court order when the contemnor has been found to have the ability to comply with that order. On the other hand, criminal contempt is retrospective and is punishment for past wrongful conduct. It is not designed to secure compliance with a court order, but instead punishes the intentional violation of a lawful court order. FSM Dev. Bank v. Adams, 14 FSM R. 234, 252 (App. 2006).

Civil contempt may be employed to coerce compliance with the trial court's orders compelling discovery. FSM Dev. Bank v. Adams, 14 FSM R. 234, 253 (App. 2006).

The court will not issue an order to show cause why a defendant should not be held in contempt for his failure to appear at the start of trial on February 5, 2001 since civil contempt is inapplicable because the civil contempt is a remedial measure to coerce compliance, and the court can not now coerce the defendant to appear on time on February 5, 2001. Amayo v. MJ Co., 14 FSM R. 355, 361 (Pon. 2006).

One of the factors that the court must consider in making a finding of civil contempt is whether the relief requested is primarily for the benefit of the complainant. RRG (FSM) Ltd. v. Maezoto, 15 FSM R. 243, 244 (Pon. 2007).

When the relief sought is an order requiring payment of fees owed not to the movant, but to another, the relief sought is not primarily for the movant's benefit. Accordingly, the motion for an order for parties to show cause why they should not be held in contempt will be denied. RRG (FSM) Ltd. v. Maezoto, 15 FSM R. 243, 244 (Pon. 2007).

One difference between civil and criminal contempt revolves around intent. An essential element of a criminal contempt is the subjective intent to defy the court's authority. The requisite intent is specific intent, such that mere negligent failure to comply is not enough, but a finding of the requisite intent will not be negated because a defendant was not specifically informed of the consequences for disobedience. FSM

Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 225 (Kos. 2010).

Although civil contempt does not require a finding of specific intent, it is not enough to find that noncompliance was willful, as shown by knowledge of the order; there must also be a recital, or a finding in the record, that there was an ability to comply. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 225-26 (Kos. 2010).

By statute, contempt proceedings to enforce judgments and orders in aid of judgment are meant to be civil matters. Further, by statute, orders in aid of judgment require hearings in which the court determines the judgment debtor's ability to pay. Since a judgment debtor is present at such hearings, no order in aid of judgment can logically issue without the court's determination of the debtor's ability to pay and the debtor's knowledge of the order in aid. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 226 (Kos. 2010).

In the context of failure to comply with an order in aid of judgment, there are four points in time when there may be a question of ability to pay: 1) when the order in aid was issued; 2) when the debtor misses a payment; 3) when the motion is submitted; and 4) when the hearing is held. Because the court assesses ability to pay when the order in aid is issued, the first point is irrelevant and because civil contempt is not used to punish past misconduct, ability to pay at the second point is similarly irrelevant, unless the moving party wishes to request criminal contempt proceedings, in which case the court may refer the matter to the appropriate government prosecutor. The remaining times are when the motion is submitted, and when the hearing is held. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 226 (Kos. 2010).

If a debtor cannot overcome the moving party's evidence that the debtor in fact had the ability to pay when the motion was submitted, the court will find him in contempt only if he still has the same ability to pay at the time of the hearing; and in either case the moving party may request a separate adjudication as to criminal contempt. If the debtor did not have the ability to pay when the motion was submitted, the court will not entertain any request for a separate adjudication as to criminal contempt and will find him in contempt only if he has regained the same ability to pay at the time of the hearing. If the debtor's ability to pay at the time of the hearing is diminished, the court will not find him in contempt, but may issue a modified order in aid. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 227 (Kos. 2010).

When a movant fails to plead the necessary elements of civil contempt and when the movant fails to provide evidentiary support for factual contentions and because of the motion's nature, a motion to show cause why a defendant should not be held in contempt is insufficient. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 228 (Kos. 2010).

Civil contempt is a prospective remedial measure designed to encourage, or even coerce, compliance with a lawful court order when the contemnor has been found to have the ability to comply with that order, but criminal contempt is retrospective and is punishment for past wrongful conduct. Criminal contempt is not designed to secure compliance with a court order, but instead punishes the intentional violation of a lawful court order. Berman v. Pohnpei Legislature, 17 FSM R. 339, 352 (App. 2011).

For a civil contempt finding, it is not enough to find that noncompliance was willful, as shown by knowledge of the order; there still must also be a recital – a finding in the record – that there was an ability to comply. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 (App. 2011).

Since a finding or "recital" that there was an ability to comply is required for civil contempt, it must also be a necessary element of the more difficult to prove criminal contempt. Thus, when nowhere in its contempt order did the trial court make a finding or a "recital" that the contemnor had the ability to comply with its deadlines for filing a pretrial statement and for marking her exhibits with the clerk, the trial court's failure to find a necessary factual element is generally enough to reverse a contempt finding whether civil or criminal. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 (App. 2011).

A person accused of committing civil contempt has a right to notice of the charges and an opportunity to present a defense and mitigation. FSM Dev. Bank v. Abello, 18 FSM R. 192, 198 (Pon. 2012).

When the parties all agreed that since the court's last order confirming that the preliminary injunction remained in place, the defendants had been complying with the injunction and that therefore, except possibly for some damages that might have accrued, there was no need to proceed on the show cause motion because it was moot. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41c (Pon. 2015).

The major factor in determining whether a contempt is civil or criminal is the purpose for which the power is exercised. The purpose of a civil contempt is remedial or compensatory, while the purpose of a criminal contempt is punitive. In re Contempt of Jack, 20 FSM R. 452, 461 (Pon. 2016).

In contempt cases, both civil and criminal relief have aspects that can be seen as either remedial or punitive or both: when a court imposes fines and punishments on a contemnor, it is not only vindicating its legal authority but also seeking to give effect to the law's purpose of modifying the contemnor's behavior. The confusion between civil and criminal contempt arises as a result of civil contempt often having the incidental effect of vindicating the court's authority, while, conversely, criminal contempt may permit the movant to derive the incidental benefit of preventing future noncompliance. In re Contempt of Jack, 20 FSM R. 452, 461 n.7 (Pon. 2016).

The distinction between civil and criminal contempt is that the former is prospective, while the latter is retrospective, which is to say that a civil contempt proceeding's purpose is to bring about compliance with a court order, while the criminal contempt's purpose is to punish for past wrongful conduct. In re Contempt of Jack, 20 FSM R. 452, 461-62 (Pon. 2016).

The relief granted in civil contempt proceedings, is compensatory or coercive. This often takes the form of a fine in the amount of the damage sustained by the plaintiff and an award of costs and attorney's fees. In re Contempt of Jack, 20 FSM R. 452, 462 (Pon. 2016).

The sanction of civil contempt serves two remedial purposes, 1) to enforce compliance with a court order, and 2) to compensate for losses caused by noncompliance. In re Contempt of Jack, 20 FSM R. 452, 462 (Pon. 2016).

The distinction between civil and criminal contempt is somewhat elusive and has plagued the courts. Contempt proceedings, while usually called civil or criminal, are, strictly speaking, neither civil nor criminal but are instead *sui generis*. They partake of the characteristics of both but are procedurally different from other actions. Despite the verbiage used to designate them, they are neither wholly civil or criminal. Thus, criminal contempt is often said not to be a crime at all. In re Contempt of Jack, 20 FSM R. 452, 462-63 (Pon. 2016).

Generally, civil contempt invokes the rules of civil procedure, and criminal contempt invokes the rules of criminal procedure. In re Contempt of Jack, 20 FSM R. 452, 463 (Pon. 2016).

Even though the court chooses to sanction an attorney with a civil contempt, that does not prohibit the court from also sanctioning the attorney with a criminal contempt. The choice is not mutually exclusive and a single contumacious act may in fact necessitate both. In re Contempt of Jack, 20 FSM R. 452, 463 n.8 (Pon. 2016).

A contempt sanction is compensatory and correctly characterized as a civil contempt action when it goes directly to the aggrieved party's benefit, not to the state's; when the attorney's fee award is not a fixed fine, but is dependent on actual injuries incurred, and demonstrated in the record; and when the show cause hearing was ordered following a motion by the plaintiff, and not prosecuted separately by the government, nor brought *sua sponte* by the court itself. While it is true that the attorney did not have the ability to purge for her absence, as this is an act which has already occurred, the excuse is

contemporaneous with the finding. In re Contempt of Jack, 20 FSM R. 452, 463 (Pon. 2016).

Generally, the failure to obey a court's order is considered civil contempt, and when the refusal takes place outside of the court's presence, it is an indirect civil contempt. Because the court has no personal knowledge of the indirect contempt, the acts must be proven through the testimony of third parties or the contemnor. Thus minimal due process requirements apply to indirect contempts. In re Contempt of Jack, 20 FSM R. 452, 463-64 (Pon. 2016).

If the court elects to pursue an attorney's absence as a civil contempt under 4 F.S.M.C. 119(2)(a), the accused has a right to notice of the charges and an opportunity to present a defense and mitigation. In a civil contempt proceeding, this due process requirement is usually met through a show cause hearing where the defendant is given the opportunity to explain or justify the failure to appear. In re Contempt of Jack, 20 FSM R. 452, 464 (Pon. 2016).

The movant bears the burden of establishing the elements of civil contempt by clear and convincing evidence, which is a higher standard than the preponderance of the evidence standard, common in civil cases, although not as high as beyond a reasonable doubt. In re Contempt of Jack, 20 FSM R. 452, 464 (Pon. 2016).

The clear and convincing standard will be applied to the evidence in a civil contempt case. In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

The court has the power to punish any intentional disobedience or resistance to the court's lawful writ, process, order, rule, decree, or command and may do so either criminally or civilly, but the standard is not the same. In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

The civil standard of volition is "knew and had the ability to comply." Thus, the court may not punish a contemnor for civil contempt when the contemnor lacks the ability, through no fault of his own, to comply with the order. It is not enough to find that noncompliance was willful, as shown by knowledge of the order; there still must also be a recital – a finding in the record – that there was an ability to comply. In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

An attorney's representation that she forgot about the hearing, will not be accepted and the attorney will be found in contempt when she filed a motion to continue the hearing only a few days before the scheduled hearing and when, in her motion for relief, she represents that she assumed the court would grant her motion to continue and if she had known that the court would not approve her motion she would have called in telephonically. In re Contempt of Jack, 20 FSM R. 452, 466 (Pon. 2016).

The moving party must show that the contemnor knew and had the ability to comply. This culpable state of mind can be ascertained through the words, acts and surrounding circumstances of the case, including a previous pattern of delay and neglect. If the court so finds, a civil sanction compensating the other party for costs and attorney's fees is appropriate. In re Contempt of Jack, 20 FSM R. 452, 467 (Pon. 2016).

The standard for a civil contempt case is to find by the preponderance of the evidence that the party accused of contempt had notice of, could comply with, and never-the-less intentionally disobeyed a lawful court. Governor v. Chuuk House of Senate, 21 FSM R. 428, 433 (Chk. S. Ct. Tr. 2018).

The distinction between civil and criminal contempt is that the former is prospective, while the latter is retrospective, which is to say that a civil contempt proceeding's purpose is to bring about compliance with a court order, while the criminal contempt's purpose is to punish for past wrongful conduct. Governor v. Chuuk House of Senate, 21 FSM R. 428, 433 (Chk. S. Ct. Tr. 2018).

One factor that the court must consider in making a finding of civil contempt is whether the relief

requested is primarily for the complainant's benefit. Governor v. Chuuk House of Senate, 21 FSM R. 428, 433 (Chk. S. Ct. Tr. 2018).

A finding of civil contempt necessitates a finding that the defendant failed without good cause to comply with the court order. Governor v. Chuuk House of Senate, 21 FSM R. 428, 433 (Chk. S. Ct. Tr. 2018).

Anyone accused of committing a civil contempt has the right to notice, a defense, and mitigation. A person found in civil contempt may be imprisoned until such time as he complies with a court order or pays an amount necessary to compensate the injured party, or both. Governor v. Chuuk House of Senate, 21 FSM R. 428, 433 (Chk. S. Ct. Tr. 2018).

The civil contempt sanction serves two remedial purposes, 1) to enforce compliance with a court order, and 2) to compensate for losses caused by noncompliance. The relief granted in civil contempt proceedings, may be compensatory or coercive. It often takes the form of a fine in the amount of the damage sustained by the plaintiff and an award of costs and attorney's fees. Governor v. Chuuk House of Senate, 21 FSM R. 428, 434 (Chk. S. Ct. Tr. 2018).

Even though the court chooses to sanction an attorney with a civil contempt, that does not prohibit the court from also sanctioning the attorney with a criminal contempt. The choice is not mutually exclusive and a single contumacious act may in fact necessitate both. Governor v. Chuuk House of Senate, 21 FSM R. 428, 434 (Chk. S. Ct. Tr. 2018).

Civil contempt is a prospective remedial measure designed to coerce compliance with a lawful court order when the contemnor has been found to have the ability to comply with that order. In re Contempt of Fujita, 21 FSM R. 634, 639 (Pon. 2018).

A person found in civil contempt may be imprisoned until such time as he complies with the order or pays an amount necessary to compensate the injured party or both. The FSM contempt statute expressly provides that one who violates a court order may be put in jail until such time as he or she conforms his or her conduct the court's lawful order. In re Contempt of Fujita, 21 FSM R. 634, 639 (Pon. 2018).

A person found in contempt in a case may also be subject to payments to compensate the opposing party for any additional attorney's fees and costs. In re Contempt of Fujita, 21 FSM R. 634, 639 (Pon. 2018).

A contemnor may purge himself of civil contempt by paying the arrears. Upon adjudication of civil contempt, the court may order the contemnor imprisoned until such time as he complies with the orders issued to date and/or pays an amount necessary to compensate the court and plaintiff for the wasted time and expense. In re Contempt of Fujita, 21 FSM R. 634, 639 (Pon. 2018).

For a civil contempt finding, it is not enough to find that noncompliance was willful, as shown by knowledge of the order; there still must also be a recital – a finding in the record – that there was an ability to comply. In re Contempt of Fujita, 21 FSM R. 634, 639 n.3 (Pon. 2018).

During an appeal, the respondent's pending motion for reconsideration and petitioners' pending motion for an order to show cause why the respondent should not be held in contempt, continue to be within the trial court's jurisdiction. Timsina v. FSM, 22 FSM R. 383, 386 (Pon. 2019).

The court will not consider a motion to show cause why a party should be held in contempt when the movants' counsel has withdrawn it. Timsina v. FSM, 22 FSM R. 383, 387 (Pon. 2019).

– Criminal

The need to assure fairness in judicial proceedings is especially pronounced where, as in a criminal contempt proceeding, the court itself is the accuser. In re Iriarte (I), 1 FSM R. 239, 248 (Pon. 1983).

In criminal contempt proceedings, reasonable notice of a charge and an opportunity to be heard are basic in our system of jurisprudence; these rights include a right to examine witnesses against one, to offer testimony, and to be represented by counsel. In re Iriarte (I), 1 FSM R. 239 250 (Pon. 1983).

To insure that order is maintained in court proceedings, courts have a limited power to make a finding of contempt summarily, where the contemptuous conduct takes place during courtroom proceedings and is personally observed by the judge, and where the judge acts immediately. In re Iriarte (I), 1 FSM R. 239, 250 (Pon. 1983).

A hearing on a charge of contempt is less critical to fairness where the events occur before the judge's own eyes and a reporter's transcript is available. In re Iriarte (I), 1 FSM R. 239, 250 (Pon. 1984).

A summary punishment always, and rightly, is regarded with disfavor. When conviction and punishment is delayed it is much more difficult to argue that action without notice or hearing of any kind is necessary to preserve order and enable the court to proceed with its business. In re Iriarte (I), 1 FSM R. 239, 251 (Pon. 1983).

Once a contemner has left the courtroom, there presumably is no immediate necessity to act without a normal hearing to preserve the integrity of the court proceedings. In re Iriarte (I), 1 FSM R. 239, 251 (Pon. 1983).

Criminal contempt is normally considered a criminal case because the charge exposes the defendant to the possibility of imprisonment. In re Iriarte (II), 1 FSM R. 255, 260 (Pon. 1983).

A criminal contempt charge defendant is entitled to those procedural rights normally accorded other criminal defendants. In re Iriarte (II), 1 FSM R. 255, 260 (Pon. 1983).

When the accused disrupts courtroom proceedings and the judge must act immediately to restore order, a trial judge may immediately convict a defendant (the accused) through a "summary contempt" procedure, that is, without prior notice or hearing. In re Iriarte (II), 1 FSM R. 255, 260 (Pon. 1983).

The summary contempt power may be invoked even after some delay if it was necessary for a transcript to be prepared to substantiate the contempt charge, or when the contemner is an attorney and immediate contempt proceedings may result in a mistrial. In re Iriarte (II), 1 FSM R. 255, 261 (Pon. 1983).

When the necessity to restore order by immediate court action ends, the court's summary contempt power has expired. In re Iriarte (II), 1 FSM R. 255, 261 (Pon. 1983).

While the Judiciary Act says relatively little about the appropriate distinctions between civil and criminal contempt proceedings, the statute does reveal a general expectation of Congress that the legal system here shall adhere generally to the same kinds of distinctions between civil and criminal contempt proceedings that have been established in other common law systems. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 62, 65 (Pon. 1991).

Although judiciaries are vested with power to require or authorize initiation of criminal contempt proceedings, and may appoint private counsel to prosecute those proceedings, judiciaries typically attempt to appoint for that purpose government attorneys who are already responsible for public prosecutions. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 62, 66 (Pon. 1991).

A contempt motion brought, not to obtain leverage to force compliance with a existing court order, but instead to attempt to punish the party for a previous violation is criminal in nature. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 62, 66 (Pon. 1991).

Counsel for a party in a civil action may not be appointed to prosecute the opposing party for criminal contempt for violating an order in that action because the primary focus of the private attorney is likely to be, not on the public interest, but instead upon obtaining for his or her client the benefits of the court's order. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 62, 67 (Pon. 1991).

A prosecution for criminal contempt does not pose a double jeopardy problem when previous contempt proceedings were in the nature of civil contempt, nor does it violate the statutory prohibition against successive prosecutions for contempt. FSM v. Cheida, 7 FSM R. 633, 637 (Chk. 1996).

The doctrine of collateral estoppel or issue preclusion holds that when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim. It therefore does not apply to a criminal contempt proceeding for acts after earlier civil contempt proceedings and because the burden of proof is different in a criminal proceeding and because it is not a subsequent action between the same parties. FSM v. Cheida, 7 FSM R. 633, 637-38 (Chk. 1996).

A prosecution for criminal contempt will not be dismissed on statute of limitations grounds when the information is based in part on acts within the three month statute of limitations for contempt. FSM v. Cheida, 7 FSM R. 633, 638 (Chk. 1996).

When a defendant who testified in a civil contempt proceeding was not in custody, the civil contempt proceedings were not conducted to gather evidence for use in a subsequent criminal action and because a court is not required to warn a defendant of his right to counsel before giving testimony in a civil contempt proceeding, the defendant's testimony and voluntarily submitted pleadings in a civil contempt proceeding are admissible in a later criminal contempt proceeding. FSM v. Cheida, 7 FSM R. 633, 640 & n.2 (Chk. 1996).

The standard of review for a criminal contempt conviction, like the standard for any criminal conviction, is whether the appellate court can conclude that the trier of fact reasonably could have been convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. Johnny v. FSM, 8 FSM R. 203, 206 (App. 1997).

Section 6.1104 of the Kosrae Code expressly gives criminal contempt defendants certain due process safeguards. In re Contempt of Skilling, 8 FSM R. 419, 424 (App. 1998).

In the vast majority of criminal contempt cases, the defendant is given substantially those procedural rights normally accorded to defendants in other criminal cases. In re Contempt of Skilling, 8 FSM R. 419, 424 (App. 1998).

In order to maintain order in the courtroom, courts have a limited power to make a finding of contempt "summarily" where the contemptuous conduct takes place during courtroom proceedings and is personally observed by the judge. This exception is typically used when the accused disrupts courtroom proceedings and the judge must act immediately to restore order. Fewer procedural safeguards are required in such contexts because the events have occurred before the judge's own eyes and because a reporter's transcript is often available, a hearing is less critical to ensuring that the defendant is treated fairly. In re Contempt of Skilling, 8 FSM R. 419, 424 (App. 1998).

In situations in which attorneys or witnesses have been held in criminal contempt of court for failure to appear at court hearings, the FSM Supreme Court trial court has given notice that it was considering holding kthe defendant in criminal contempt, has taken testimony from the defendant, and has considered whether the defendant's conduct in missing the hearing was intentional. In re Contempt of Skilling, 8 FSM R. 419, 424-25 (App. 1998).

Summary contempt proceedings are viewed with disfavor. In re Contempt of Skilling, 8 FSM R. 419, 425 (App. 1998).

Contempt of court is not a matter between opposing litigants, it is a matter between the offending person and the court. In re Contempt of Skilling, 8 FSM R. 419, 426 (App. 1998).

Criminal contempt requires a specific intent to consciously disregard an order of the court, and willfulness does not exist where a defendant pursues in good faith a plausible though mistaken alternative. Mere negligent failure to comply with an order of the court is not enough. In re Contempt of Skilling, 8 FSM R. 419, 426 (App. 1998).

There must be an identifiable, specific order in the record creating an affirmative duty to appear in order for an alleged contemnor to be guilty of contempt for non-appearance. In re Contempt of Skilling, 8 FSM R. 419, 426 (App. 1998).

A summary order of contempt for non-appearance violates an accused's right to due process under the Kosrae Constitution. Accordingly, on appeal the conviction will be vacated and remanded. In re Contempt of Skilling, 8 FSM R. 411, 418 (App. 1998).

A criminal contempt proceeding is maintained to vindicate the authority of the court or to punish otherwise for conduct offensive to the public in violation of a court order. Cheida v. FSM, 9 FSM R. 183, 187 (App. 1999).

As a criminal contempt remedy is designed for individual deterrence, to punish for intentional disobedience of the court's orders, a defendant's status as a first time offender is not a mitigating factor in his sentencing. Cheida v. FSM, 9 FSM R. 183, 188 (App. 1999).

In the usual criminal contempt proceeding, the defendant is charged with criminal contempt by a government attorney. Cheida v. FSM, 9 FSM R. 183, 189 & n.3 (App. 1999).

Criminal contempt proceedings arising out of civil litigation are between the public and the defendant, and are not a part of the original cause. Cheida v. FSM, 9 FSM R. 183, 189 (App. 1999).

Criminal contempt proceedings are instituted to protect the public interest of maintaining respect for the judicial system, and are not merely a stronger form of civil contempt sanctions against a defendant. Cheida v. FSM, 9 FSM R. 183, 189 (App. 1999).

An attorney is entitled to appropriate notice and an opportunity to be heard before any sanction is imposed on him, whether that sanction is imposed on him under the civil procedure rules, the criminal contempt statute, or some other court power. In re Sanction of Woodruff, 10 FSM R. 79, 84 (App. 2001).

The distinction between civil and criminal contempt is that the former is prospective, while the latter is retrospective, which is to say that a civil contempt proceeding's purpose is to bring about compliance with a court order, while the criminal contempt's purpose is to punish for past wrongful conduct. Davis v. Kutta, 10 FSM R. 125, 127 (Chk. 2001).

A request that someone be punished for his failure to pay a judgment during the period when he did have the ability to comply with the court's orders, is, since the contention relies on past conduct, a request that the court find him in criminal contempt. Davis v. Kutta, 10 FSM R. 125, 127 (Chk. 2001).

Criminal contempt is not a specified remedy in 6 F.S.M.C. 1412, but is an available remedy under the general FSM contempt statute, 4 F.S.M.C. 119, under which the court may punish any intentional disobedience to a lawful court order. Davis v. Kutta, 10 FSM R. 125, 127 (Chk. 2001).

An essential element of a criminal contempt is the subjective intent to defy the court's authority. Davis

v. Kutta, 10 FSM R. 125, 127 (Chk. 2001).

A finance director's actions in attempting to achieve payment of a judgment indicates that he lacks the subjective intent necessary for criminal contempt and a court therefore cannot hold him in contempt. Davis v. Kutta, 10 FSM R. 125, 127 (Chk. 2001).

A criminal contemnor's intent must be ascertained from all the acts, words, and circumstances surrounding the occurrence. Davis v. Kutta, 10 FSM R. 125, 127 (Chk. 2001).

Criminal contempt (available under 4 F.S.M.C. 119) is retrospective and is punishment for past wrongful conduct. It is not designed to secure compliance with a court order, but instead punishes the intentional violation of a lawful court order. Except for summary cases when the contempt is before a judge and is needed to maintain courtroom decorum, criminal contempt cases are normally prosecuted by the government, and not by an opposing party. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 382 n.23 (App. 2003).

An attorney is not liable for criminal contempt for advising his client in good faith to assert his or her privilege against self-incrimination. For an attorney in the Federated States of Micronesia to be liable for criminal contempt for advising a client to assert his or her right to self-incrimination, the attorney must have given that advice in bad faith. FSM v. Kansou, 13 FSM R. 344, 349 (Chk. 2005).

Punishment, through criminal contempt, cannot be employed where Rule 37 sanctions may be. FSM Dev. Bank v. Adams, 14 FSM R. 234, 253 (App. 2006).

When the trial court had abandoned any further attempts at coercion and imposed Rule 37(b)(2) and 37(b)(2)(A) sanctions and, although it is uncertain whether the contempt sanction was actually ever imposed because the trial court let the Rule 37 sanctions "stand" as the contempt sanctions, if the contempt sanctions were, in fact, imposed, they were not civil in nature and must be reversed, and if none were imposed, then, in light of the Rule 37(b)(2) sanctions, the contempt finding must be vacated because no further purpose can be served by their imposition. FSM Dev. Bank v. Adams, 14 FSM R. 234, 253 (App. 2006).

Rule 37(b)(2) sanctions are not inherently criminal in nature and criminal due process protections do not have to be followed before they can be imposed. FSM Dev. Bank v. Adams, 14 FSM R. 234, 253 (App. 2006).

When an attorney's inappropriate, intemperate, and ill-conceived remarks about the court were neither included in the contempt charge nor mentioned in the information against him and when bad faith was not pled, reliance on the attorney's unmentioned improper remarks to allege his bad faith when that element was not pled in the criminal information is a belated rationalization. FSM v. Kansou, 14 FSM R. 273, 276 (Chk. 2006).

Any request in 2005 for an order to show cause why a defendant should not be held in criminal contempt for failure to appear at the start of the February 5, 2001 trial as required by the witness subpoena served on him, comes much too late since anyone charged with criminal contempt must be charged within three months of the contempt. Amayo v. MJ Co., 14 FSM R. 355, 361 (Pon. 2006).

Except for summary cases when the contempt is before a judge and is needed to maintain courtroom decorum, criminal contempt cases are normally prosecuted by the government, and not by an opposing party. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 225 (Kos. 2010).

One difference between civil and criminal contempt revolves around intent. An essential element of a criminal contempt is the subjective intent to defy the court's authority. The requisite intent is specific intent, such that mere negligent failure to comply is not enough, but a finding of the requisite intent will not be

negated because a defendant was not specifically informed of the consequences for disobedience. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 225 (Kos. 2010).

If a debtor cannot overcome the moving party's evidence that the debtor in fact had the ability to pay when the motion was submitted, the court will find him in contempt only if he still has the same ability to pay at the time of the hearing; and in either case the moving party may request a separate adjudication as to criminal contempt. If the debtor did not have the ability to pay when the motion was submitted, the court will not entertain any request for a separate adjudication as to criminal contempt and will find him in contempt only if he has regained the same ability to pay at the time of the hearing. If the debtor's ability to pay at the time of the hearing is diminished, the court will not find him in contempt, but may issue a modified order in aid. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 227 (Kos. 2010).

Since the defendant is entitled to those procedural rights normally accorded other criminal defendants, defendants in the vast majority of criminal contempt cases are given substantially those procedural rights normally accorded to defendants in other criminal cases. Criminal contempt convictions are not a special category of crime deserving of or requiring alternative considerations other than those specified under Chk. S.L. No. 190-08, § 27, Chk. Crim. R. 42, and case law. Chuuk v. Billimon, 17 FSM R. 313, 315-16 (Chk. S. Ct. Tr. 2010).

A trial court show cause order and hearing were all part of a criminal contempt proceeding when the proceeding's purpose was not to coerce a party's compliance with its order to file a pretrial statement and to mark her exhibits with the clerk since she had already done that in time for trial and the trial had been held on time. Instead, its sole purpose was to punish her for past wrongful conduct – her alleged failure to file a pretrial statement and to mark her exhibits by the dates ordered. Thus, even though it was not labeled as such and was silent on whether the trial court considered it civil or criminal, the trial court order was a criminal contempt finding of guilt and the $200 "sanction" was a criminal sentence – a fine. Berman v. Pohnpei Legislature, 17 FSM R. 339, 352 (App. 2011).

Since a notice of appeal filed after the announcement of a decision, sentence or order but before entry of the judgment must be treated as filed after such entry and on the day thereof, when a party in a civil case was held in criminal contempt of court, but the contempt finding was entered on the civil docket and not on the criminal docket, the ten-day period for criminal appeals has not begun to run since no entry has yet been made on the criminal docket, making a notice of appeal filed 37 days after the contempt finding timely under Appellate Rule 4(b). Berman v. Pohnpei Legislature, 17 FSM R. 339, 353 (App. 2011).

A Criminal Rule 33 motion for a new trial is not timely when it is made over seven days after the guilty finding and it thus cannot toll the time for a criminal appeal or nullify any notice of appeal filed before the motion was decided, which a timely-filed Rule 33 motion would do since if a timely motion for a new trial on any ground other than newly discovered evidence has been made, an appeal from a judgment of conviction may be taken within 10 days after the entry of an order denying the motion, but not before. Berman v. Pohnpei Legislature, 17 FSM R. 339, 353-54 & n.8 (App. 2011).

The standard of review for a criminal contempt conviction, as for any criminal conviction, is whether the appellate court can conclude that the trier of fact reasonably could have been convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 (App. 2011).

An element of criminal contempt is the subjective intent to defy the court's authority, and the requisite intent is specific intent. There is thus more to prove to show criminal contempt. There is also a higher burden of proof, beyond a reasonable doubt than the civil contempt burden of clear and convincing evidence of the predicate misconduct. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 (App. 2011).

Since a finding or "recital" that there was an ability to comply is required for civil contempt, it must also be a necessary element of the more difficult to prove criminal contempt. Thus, when nowhere in its

contempt order did the trial court make a finding or a "recital" that the contemnor had the ability to comply with its deadlines for filing a pretrial statement and for marking her exhibits with the clerk, the trial court's failure to find a necessary factual element is generally enough to reverse a contempt finding whether civil or criminal. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 (App. 2011).

A criminal contempt conviction would have to be vacated when neither the trial court's contempt finding nor its sentencing were done in open court because a criminal defendant's constitutional right to a public trial requires that the finding of guilt or innocence be made in open court and that, if there is a guilty finding, then the sentence must also be imposed in open court. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 n.10 (App. 2011).

Since the criminal contempt statute provides that no punishment of a fine of more than $100 or imprisonment can be imposed unless the accused is given a right to notice of the charges, to a speedy public trial, to confront the witnesses against him, to compel the attendance of witnesses in his behalf, and to have the assistance of counsel, this statute was violated when a $200 fine was imposed without a public trial and the party having the opportunity to be represented by a public defender. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 n.10 (App. 2011).

Notice that the convicted person has a right to appeal must be given orally when a criminal contempt sentence is imposed. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 n.10 (App. 2011).

In a criminal contempt proceeding, an order to show cause (the notice) why someone should not be held in contempt must describe the contempt charged as criminal contempt as required by Criminal Procedure Rule 42(b), which requires that the notice shall state the essential facts constituting the criminal contempt charged, describing it as such. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 n.10 (App. 2011).

The imposition of disciplinary sanctions is subject to due-process scrutiny. An attorney is entitled to appropriate notice and an opportunity to be heard before any sanction is imposed on her whether that sanction is imposed on her under the civil procedure rules, the criminal contempt statute, or some other court power. In re Sanction of Sigrah, 19 FSM R. 305, 313 (App. 2014).

Section 119, in Title 4, undisputedly by its terms provides for criminal as well as civil contempt. FSM v. Ehsa, 20 FSM R. 106, 110 (Pon. 2015).

That the criminal offense of contempt of court statute is in Title 4, instead of Title 11, is meaningless and no inference that it is not a crime can be drawn from it. This is because the classification of the titles, chapters, subchapters, and sections of the FSM Code, and the headings thereto, are made for the purpose of convenient reference and orderly arrangement, and no implication, inference, or presumption of a legislative construction can be drawn therefrom. FSM v. Ehsa, 20 FSM R. 106, 110 (Pon. 2015).

In the usual criminal contempt proceeding, the defendant is charged with criminal contempt by a government attorney. The FSM Department of Justice is the office that files an information accusing a defendant of criminal contempt of a national court. FSM v. Ehsa, 20 FSM R. 106, 110 (Pon. 2015).

The court rejects the notion that contempt of court is not a criminal offense and that the FSM Department of Justice cannot criminally prosecute alleged contemnors. FSM v. Ehsa, 20 FSM R. 106, 110 (Pon. 2015).

Even when the court is reluctant to refer the dispute for prosecution on contempt and social security tax evasion charges, Social Security itself may direct the matter to the FSM Department of Justice's attention for investigation and further action, including possible prosecution. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 128, 130 (Pon. 2015).

The major factor in determining whether a contempt is civil or criminal is the purpose for which the power is exercised. The purpose of a civil contempt is remedial or compensatory, while the purpose of a criminal contempt is punitive. In re Contempt of Jack, 20 FSM R. 452, 461 (Pon. 2016).

In contempt cases, both civil and criminal relief have aspects that can be seen as either remedial or punitive or both: when a court imposes fines and punishments on a contemnor, it is not only vindicating its legal authority but also seeking to give effect to the law's purpose of modifying the contemnor's behavior. The confusion between civil and criminal contempt arises as a result of civil contempt often having the incidental effect of vindicating the court's authority, while, conversely, criminal contempt may permit the movant to derive the incidental benefit of preventing future noncompliance. In re Contempt of Jack, 20 FSM R. 452, 461 n.7 (Pon. 2016).

The distinction between civil and criminal contempt is that the former is prospective, while the latter is retrospective, which is to say that a civil contempt proceeding's purpose is to bring about compliance with a court order, while the criminal contempt's purpose is to punish for past wrongful conduct. In re Contempt of Jack, 20 FSM R. 452, 461-62 (Pon. 2016).

Criminal contempt is retrospective and is punishment for past wrongful conduct. It is not designed to secure compliance with a court order, but instead punishes the intentional violation of a lawful court order. In re Contempt of Jack, 20 FSM R. 452, 462 (Pon. 2016).

The distinction between civil and criminal contempt is somewhat elusive and has plagued the courts. Contempt proceedings, while usually called civil or criminal, are, strictly speaking, neither civil nor criminal but are instead *sui generis*. They partake of the characteristics of both but are procedurally different from other actions. Despite the verbiage used to designate them, they are neither wholly civil or criminal. Thus, criminal contempt is often said not to be a crime at all. In re Contempt of Jack, 20 FSM R. 452, 462-63 (Pon. 2016).

Generally, civil contempt invokes the rules of civil procedure, and criminal contempt invokes the rules of criminal procedure. In re Contempt of Jack, 20 FSM R. 452, 463 (Pon. 2016).

Even though the court chooses to sanction an attorney with a civil contempt, that does not prohibit the court from also sanctioning the attorney with a criminal contempt. The choice is not mutually exclusive and a single contumacious act may in fact necessitate both. In re Contempt of Jack, 20 FSM R. 452, 463 n.8 (Pon. 2016).

The standard of review for a criminal contempt conviction under 4 F.S.M.C. 119(1)(b), like the standard for any criminal conviction, is whether the appellate court can conclude that the trier of fact reasonably could have been convinced beyond a reasonable doubt. In re Contempt of Jack, 20 FSM R. 452, 464 n.11 (Pon. 2016).

The court has the power to punish any intentional disobedience or resistance to the court's lawful writ, process, order, rule, decree, or command and may do so either criminally or civilly, but the standard is not the same. In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

The element that escalates contempt to criminal status is the level of willfulness associated with the conduct. Criminal intent is a specific intent to consciously disregard an order of the court. Criminal intent is defined by 11 F.S.M.C. 104(4) as acting with the conscious purpose to engage in the conduct specified. In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

Civil intent can be demonstrated by general intent, or by knowledge defined in 11 F.S.M.C. 104(5) as being aware of the nature of the conduct or omission which brings the conduct or omission within the provision of the code. This standard is expressly distinguished from mere negligence, a negligent act is one born of inattention or carelessness – the opposite of an intended act. An act, not willfully intending the result, creating a substantial risk of the unlawful result, is not an act done purposefully or intentionally. In

re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

An attorney's representation that she forgot about the hearing, will not be accepted and the attorney will be found in contempt when she filed a motion to continue the hearing only a few days before the scheduled hearing and when, in her motion for relief, she represents that she assumed the court would grant her motion to continue and if she had known that the court would not approve her motion she would have called in telephonically. In re Contempt of Jack, 20 FSM R. 452, 466 (Pon. 2016).

In order to find criminal contempt, the trier of fact must find beyond a reasonable doubt that the party accused of contempt had notice and intentionally disobeyed a lawful court order. Governor v. Chuuk House of Senate, 21 FSM R. 428, 433 (Chk. S. Ct. Tr. 2018).

The distinction between civil and criminal contempt is that the former is prospective, while the latter is retrospective, which is to say that a civil contempt proceeding's purpose is to bring about compliance with a court order, while the criminal contempt's purpose is to punish for past wrongful conduct. Governor v. Chuuk House of Senate, 21 FSM R. 428, 433 (Chk. S. Ct. Tr. 2018).

Criminal contempt under the FSM Code results from intentional disregard of a court order. The intentional disobedience required for a conviction for contempt necessarily includes an element of voluntariness. Governor v. Chuuk House of Senate, 21 FSM R. 428, 433 (Chk. S. Ct. Tr. 2018).

Even though the court chooses to sanction an attorney with a civil contempt, that does not prohibit the court from also sanctioning the attorney with a criminal contempt. The choice is not mutually exclusive and a single contumacious act may in fact necessitate both. Governor v. Chuuk House of Senate, 21 FSM R. 428, 434 (Chk. S. Ct. Tr. 2018).

Prosecution for criminal contempt does not pose a double jeopardy problem when previous contempt proceedings were in the nature of civil contempt, nor does it violate the statutory prohibition against successive prosecutions for contempt. Governor v. Chuuk House of Senate, 21 FSM R. 428, 434 (Chk. S. Ct. Tr. 2018).

Any person accused of criminal contempt has the right to notice of the charges and an opportunity to present a defense and mitigation; to a speedy public trial, to confront the witnesses against him, to compel the attendance of witnesses in his behalf, to have the assistance of counsel, and to be released on bail pending adjudication of the charges. He has the right to be charged within three months of the contempt and a right not to be charged twice for the same contempt. Governor v. Chuuk House of Senate, 21 FSM R. 428, 434 (Chk. S. Ct. Tr. 2018).

No one can be held in criminal contempt by the Pohnpei Supreme Court when the time is long past since the Pohnpei statute requires that a criminal contempt be charged within three months of the contempt. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 11 (Pon. 2018).

– Direct

In order to maintain order in the courtroom, courts have a limited power to make a finding of contempt "summarily" where the contemptuous conduct takes place during courtroom proceedings and is personally observed by the judge. This exception is typically used when the accused disrupts courtroom proceedings and the judge must act immediately to restore order. Fewer procedural safeguards are required in such contexts because the events have occurred before the judge's own eyes and because a reporter's transcript is often available, a hearing is less critical to ensuring that the defendant is treated fairly. In re Contempt of Skilling, 8 FSM R. 419, 424 (App. 1998).

The Kosrae Code and Rules of Criminal Procedure provide that a court may summarily punish a contempt committed in its presence if the justice directly saw or heard the conduct constituting the

contempt and so certifies. In re Contempt of Skilling, 8 FSM R. 419, 424 (App. 1998).

Under Kosrae state law, summary contempt is only appropriate when the contempt is committed in the court's presence, and when the presiding justice directly saw or heard the conduct constituting the contempt. In re Contempt of Skilling, 8 FSM R. 419, 425 (App. 1998).

The court's second duty in reviewing a contempt action is to determine if the contempt was direct or indirect. Each class of contempt has two subcategories, direct and indirect. Thus there are four possible classifications of contempt: direct-criminal, indirect-criminal, direct-civil, and indirect-civil. In re Contempt of Jack, 20 FSM R. 452, 463 (Pon. 2016).

A direct contempt is used by the court to protect itself against gross violations of decorum. All of the essential elements of the misconduct are under the eye of the court. Direct contempt includes words, acts, or omissions that present an imminent threat to the administration of justice; it must immediately imperil the judge in the performance of his judicial duty. In re Contempt of Jack, 20 FSM R. 452, 463 (Pon. 2016).

An attorney's absence alone does not constitute contempt, but if the attorney offers an insulting, frivolous, or clearly inadequate explanation, a direct contempt has been committed in the presence of the judge. Patently false, flippant, inconsistent, contradictory, and evasive replies support a contempt finding, as does an attorney's refusal to give any explanation for his or her absence or lateness in arriving for a trial or hearing since that is the equivalent of the lack of a valid excuse. In re Contempt of Jack, 20 FSM R. 452, 464 n.10 (Pon. 2016).

– Indirect

Under Kosrae law, summary contempt is not appropriate for someone's failure to appear on time. Since the alleged contempt is an indirect contempt – a contempt not in the presence of the judge – the court should schedule a show cause hearing to enable the accused to present his own defense. In re Contempt of Skilling, 8 FSM R. 419, 425 (App. 1998).

The court's second duty in reviewing a contempt action is to determine if the contempt was direct or indirect. Each class of contempt has two subcategories, direct and indirect. Thus there are four possible classifications of contempt: direct-criminal, indirect-criminal, direct-civil, and indirect-civil. In re Contempt of Jack, 20 FSM R. 452, 463 (Pon. 2016).

Generally, the failure to obey a court's order is considered civil contempt, and when the refusal takes place outside of the court's presence, it is an indirect civil contempt. Because the court has no personal knowledge of the indirect contempt, the acts must be proven through the testimony of third parties or the contemnor. Thus minimal due process requirements apply to indirect contempts. In re Contempt of Jack, 20 FSM R. 452, 463-64 (Pon. 2016).

Contemptuous behavior includes not only intentionally avoiding a hearing, but also intentionally arriving late for a hearing. Thus, failure to appear or even tardiness may be treated as an indirect civil contempt pursuant to 4 F.S.M.C. 119(2)(a), or as an indirect criminal contempt pursuant to 4 F.S.M.C. 119(2)(b), or both. But in either case, it cannot be treated summarily. In re Contempt of Jack, 20 FSM R. 452, 464 (Pon. 2016).

If the court elects to pursue an attorney's absence as a civil contempt under 4 F.S.M.C. 119(2)(a), the accused has a right to notice of the charges and an opportunity to present a defense and mitigation. In a civil contempt proceeding, this due process requirement is usually met through a show cause hearing where the defendant is given the opportunity to explain or justify the failure to appear. In re Contempt of Jack, 20 FSM R. 452, 464 (Pon. 2016).

CONTRACTS

A seaman's contract claim against the owner of the vessel upon which he served would be regarded as falling within the FSM Supreme Court's exclusive admiralty and maritime jurisdiction. Lonno v. Trust Territory (I), 1 FSM R. 53, 68-71 (Kos. 1982).

The Federated States of Micronesia Income Tax Law confirms that it is the nature of the services performed and the person performing the services, rather than the stated identity of the contracting party, which determines the tax treatment for the compensation under the contract. It is of no import that the "contractor" was identified as a corporation rather than as an individual when the contract makes clear that the primary services to be rendered were those of an individual and the corporation was merely a name under which the individual conducted business. Heston v. FSM, 2 FSM R. 61, 64 (Pon. 1985).

Common law decisions of the United States are an appropriate source of guidance for this court for contract and tort issues unresolved by statutes, decisions of constitutional courts here, or custom and tradition within the Federated States of Micronesia. Review of decisions of courts of the United States, and any other jurisdictions, must proceed however against the background of pertinent aspects of Micronesian society and culture. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 142 (Pon. 1985).

A message of the judicial guidance clause is that a court, when interpreting a contract, may not simply assume that reasonably intelligent Micronesians will perceive the same meaning as would reasonably intelligent Americans. Courts may not blind themselves to the pertinent aspects of Micronesian society, such as less facility in the English language, less exposure to business concepts, and paucity of legal resources, which might cause a reasonably intelligent Micronesian to perceive a meaning differently than would a person from some other nation. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 149 (Pon. 1985).

A telephone conversation between parties, in which the defendant related his desire to hire plaintiff's rental vehicle, coupled with plaintiff driving the vehicle from his place of business to defendant's place of employment, and defendant, after signing the rental agreement and returning the plaintiff to his business office, driving the vehicle away, satisfied the elements of a binding agreement. Phillip v. Aldis, 3 FSM R. 33, 36 (Pon. S. Ct. Tr. 1987).

Common law decisions of the United States are an appropriate source of guidance for the FSM Supreme Court for contract issues unresolved by statutes, decisions of constitutional courts or custom and tradition within the Federated States of Micronesia. FSM v. Ocean Pearl, 3 FSM R. 87, 90-91 (Pon. 1987).

In determining whether the terms of a contract should be enforced, the court will consider the parties' justified expectations, any forfeiture that would result if enforcement were denied, and any special public interest in the enforcement of the particular term. Falcam v. FSM, 3 FSM R. 194, 197-98 (Pon. 1987).

Although the FSM Supreme Court has often decided matters of tort law without stating explicitly that state rather than national law controls, there has been acknowledgment that state law controls in the resolution of contract and tort issues. When the Supreme Court, in the exercise of its jurisdiction, decides a matter of state law, its goal should be to apply the law the same way the highest state court would. Edwards v. Pohnpei, 3 FSM R. 350, 360 n.22 (Pon. 1988).

Since general contract law falls within powers of the state, state law will be used to resolve contract disputes. Federated Shipping Co. v. Ponape Transfer & Storage Co., 4 FSM R. 3, 9 (Pon. 1989).

A statement that one party to a contract has a rental obligation to a nonparty does not constitute a promise to the other party to the contract that the specific rental will be paid to that nonparty. Federated Shipping Co. v. Ponape Transfer & Storage Co., 4 FSM R. 3, 11-12 (Pon. 1989).

It is especially important for the court to scrutinize carefully and strictly construe contractual provisions which relate to the payment of attorney's fees. Bank of the FSM v. Bartolome, 4 FSM R. 182, 185 (Pon.

1990).

Where an agreement between two parties is so vague and uncertain that the court cannot determine who is the breaching party, or cannot fashion a remedy to enforce the agreement, there is no contract. Jim v. Alik, 4 FSM R. 198, 200 (Kos. S. Ct. Tr. 1989).

Restitution is a remedy which returns the benefits already received by a party to the party who gave them where the court can find no contract. Jim v. Alik, 4 FSM R. 198, 201 (Kos. S. Ct. Tr. 1989).

Generally, in cases requiring the interpretation or construction of contracts, the national courts would be called on to apply state law. Bank of Hawaii v. Jack, 4 FSM R. 216, 218 (Pon. 1990).

Where attorney's fees claimed pursuant to a contractual provision are excessive or otherwise unreasonable, it is within the equitable and discretionary power of the court to reduce or even deny the award, despite the contractual provision. Bank of Hawaii v. Jack, 4 FSM R. 216, 220 (Pon. 1990).

Where time of delivery was not of the essence of the contract and the contract was flexible in the agreed arrangements for delivery, a delivery of a bad container should not be seen as a failure of a condition to further obligations under the contract. Panuelo v. Pepsi Cola Bottling Co. of Guam, 5 FSM R. 123, 127 (Pon. 1991).

Prior representation of another party to contractual negotiations is not in and off itself sufficient to create a conflict of interest which would invalidate the negotiated contract unless it can be shown such representation was directly adverse to the other client or materially limited the interests of the present client. Billimon v. Chuuk, 5 FSM R. 130, 135 (Chk. S. Ct. Tr. 1991).

Lease agreement executed by the Chuuk state government is void insofar as it purports to "incur public indebtedness" without legislative authority by way of an appropriation or statute. Billimon v. Chuuk, 5 FSM R. 130, 135-36 (Chk. S. Ct. Tr. 1991).

Where the plaintiffs were performing their contractual obligations, neither the defendant's wishes to accommodate a municipality's environmental concerns nor the defendant's reliance upon a subsequently passed state law making the subject matter of the contract illegal but which exempts existing contracts, will prevent the defendant from being held liable for termination of the contract. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 124-25 (Pon. 1993).

Where a part of a contract provided that the state give a landowner leftover construction materials a trial court is fully warranted to believe that, by giving the landowner the opportunity to take whatever leftover materials he wanted, the state gave him the materials. Kinere v. Kosrae, 6 FSM R. 307, 309 (App. 1993).

Problems regarding the timing of performance, or the existence of vague terms will not necessarily interfere with the enforceability of a contract. Iriarte v. Micronesian Developers, Inc., 6 FSM R. 332, 335 (Pon. 1994).

Where a stipulated preliminary injunction is void because of the judge's disqualification and because of the stipulated dismissal of the court case in which it was issued, factual questions must be resolved before deciding whether it is enforceable as an independent contract. Etscheit v. Adams, 6 FSM R. 365, 391-92 (Pon. 1994).

The doctrine of unjust enrichment generally applies where there is an unenforceable contract due to impossibility, illegality, mistake, fraud, or another reason and requires a party to either return what has been received under the contract or pay the other party for it. The unjust enrichment doctrine is based on the idea one person should not be permitted unjustly to enrich himself at the expense of another. Etscheit v. Adams, 6 FSM R. 365, 392 (Pon. 1994).

Common law decisions of the United States are an appropriate source of guidance for the FSM Supreme Court for contract issues unresolved by statutes, decisions of the constitutional courts here, or custom and tradition within the Federated States of Micronesia, but review of decisions of courts of the United States or other jurisdictions, must proceed against the background of pertinent aspects of Micronesian society and culture. Black Micro Corp. v. Santos, 7 FSM R. 311, 314 (Pon. 1995).

A state as a party to a contract has the same rights as any party to a contract and may exercise all the rights that the parties have agreed upon in the contract itself. Truk Shipping Co. v. Chuuk, 7 FSM R. 337, 342 (Chk. S. Ct. Tr. 1995).

Since freedom of will is essential to the validity of a contract, an agreement obtained by duress, coercion, or intimidation is invalid. Nahnken of Nett v. United States, 7 FSM R. 581, 588 (App. 1996).

Where the existence of a contract is at issue, the trier of fact determines whether the contract did in fact exist. The standard of review for findings of fact is whether the trial court's findings are clearly erroneous. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 620 (App. 1996).

State law controls in the resolution of contract and tort issues. When the Supreme Court, in the exercise of its jurisdiction, decides a matter of state law, its goal should be to apply the law the same way the highest state court would. When no existing case law is found the FSM Supreme Court must decide issues of tort law by applying the law as it believes the state court would. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 294-95 (Pon. 1998).

Principles of contract are inapplicable to employment cases when the proper issue is whether plaintiff has shown a legal entitlement to permanent employment under the Truk State Public Service System Act. Hauk v. Terravecchia, 8 FSM R. 394, 396 (Chk. 1998).

An officer's authority to contract for a corporation may be actual or apparent, and may result from the officer's conduct and the acquiescence thereto by the directors. The corporation may be estopped to deny the officer's authority by having accepted the benefit of the contract. Generally, an officer's authority to act for his corporation with reference to contracts is a question of fact to be determined by the trier of fact. Asher v. Kosrae, 8 FSM R. 443, 452 (Kos. S. Ct. Tr. 1998).

When the parties did not reach a full understanding of what would be provided in exchange for the right to build an access road across the plaintiffs' land, but the defendant did agree to compensate the plaintiffs in some way, and when the defendant represented to the plaintiffs that the access road, once constructed, would be usable by the plaintiffs' vehicle, the defendant is liable to make the road passable by car or truck. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 539-40 (Pon. 1998).

An open account is not self-proving. An account must be supported by an evidentiary foundation to demonstrate the accuracy of the account. FSM Telecomm. Corp. v. Worswick, 9 FSM R. 6, 15 (Yap 1999).

Problems regarding the timing of performance will not necessarily interfere with the enforceability of a contract. O'Byrne v. George, 9 FSM R. 62, 64 (Kos. S. Ct. Tr. 1999).

An open account is an account based upon running or concurrent dealing between the parties which has not been closed, settled, or stated, and which is kept unclosed with the expectation of further transactions. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 78 (Kos. 1999).

In an action brought to recover the balance due upon a mutual and open account, or upon a cause of action on which partial payments have been made, the cause of action shall be considered to have accrued at the time of the last item proved in the account. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R.

75, 78 (Kos. 1999).

The statute of limitations for an action to collect the balance due on an open account is six years from the accrual date of the cause of action. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 78 (Kos. 1999).

When a plaintiff's interest and attorney's fee claim rests on a paragraph on the bottom left portion of each invoice and none of the invoices bears the defendant's signature, an issue of fact exists as to whether this pre-judgment interest and fee clause ever formed a material part of the open account agreement between the parties. Summary judgment is therefore denied on the issue. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 79 (Kos. 1999).

When the existence of a contract is at issue, the trier of fact determines whether the contract did in fact exist. Tulensru v. Utwe, 9 FSM R. 95, 98 (Kos. S. Ct. Tr. 1999).

Lessors are entitled to the unpaid rent from time lessees stopped paying rent until the time lessors terminated the lease, pursuant to the lease's terms, for lessees' failure to pay rent. Ueda v. Stephen, 9 FSM R. 195, 196 (Chk. S. Ct. Tr. 1999).

In determining whether the terms of a contract should be enforced, the court will consider the parties' justified expectations, any forfeiture that would result if enforcement were denied, and any special public interest in the enforcement of the particular term. Malem v. Kosrae, 9 FSM R. 233, 236 (Kos. S. Ct. Tr. 1999).

When matters outside the pleadings are presented to and not excluded by the court, the motion will be treated as one for summary judgment and disposed of as provided in Rule 56. Such consideration of extra-pleading material causes the "conversion" of the motion to dismiss to one for summary judgment, but parties have been allowed to go beyond the question of the complaint's formal sufficiency and introduce affidavits and other matters in conjunction with the Rule 12(b)(6) motion to ascertain whether there is any merit, to the claim, when the extra-pleading material offered by the plaintiffs, as respondents to the motion, tends merely to buttress the complaint's allegations. If the court finds that the complaint's allegations are sufficient to state a cause of action, it will not consider the extra-pleading material, and will treat the motion as titled, i.e., as a motion to dismiss, and not one for summary judgment, and denies the motion to dismiss. Adams v. Island Homes Constr., Inc., 9 FSM R. 530a, 530b-30c (Pon. 2000).

A plaintiff's claim for payment arises at the time that the payment became due because a cause of action arises when the right to bring suit on a claim is complete: the true test in determining when a claim arose is based upon when the plaintiff first could have maintained the action. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 556-57 (Pon. 2000).

When under the parties' contract, the defendant was to pay plaintiff within one year from the time that the defendant accepted the plaintiff's Master Plan and the Master Plan was accepted on October 3, 1994, the plaintiff's claim against defendant arose one year later on October 4, 1995. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 557 (Pon. 2000).

As a general proposition, an express contract and an implied contract for the same thing cannot exist at the same time. Where an express contract is in force, the law does not recognize an implied one. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 558 (Pon. 2000).

As a matter of law, the presence of an express written contract, which clearly sets forth the obligations of the parties, precludes a party from bringing a claim under quantum meruit. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 558 (Pon. 2000).

An agreement and promissory note that does not set out the exact amount of payments needed to

make a debt current, would not make performance of that agreement impossible when the party assuming the payments could easily have calculated the amount of the payments he would have to make to bring the loan current. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 76 (Pon. 2001).

When the existence of a contract is at issue, the trier of fact determines whether the contract did in fact exist. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 194 (Kos. S. Ct. Tr. 2001).

Where no contract exists, the court may use its inherent equity power to fashion a remedy under equitable doctrines. The doctrine of promissory estoppel allows enforcement of promises that induce reliance. The doctrine of promissory estoppel, also referred to as detrimental reliance, is summarized as: A promise which the promisor should reasonably expect to induce action on the part of the promisee, and which does induce such action, is binding if justice requires enforcement of the promise. The remedy for breach may be limited as justice requires. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 195 (Kos. S. Ct. Tr. 2001).

Under the doctrine of promissory estoppel, a person's reliance upon a promise may create rights and duties. The finding of detrimental reliance does not depend upon finding any agreement or consideration. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 195 (Kos. S. Ct. Tr. 2001).

Where no contract existed, a court may use its inherent equity power to fashion a remedy under the doctrine of restitution. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 195 (Kos. S. Ct. Tr. 2001).

The doctrine of unjust enrichment generally applies where there is an unenforceable contract. It requires a party to either return what has been received or pay the other party for it. The unjust enrichment doctrine is based on the idea one person should not be permitted unjustly to enrich himself at the expense of another. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 195 (Kos. S. Ct. Tr. 2001).

A breach of contract and warranty claim that all defendants had warranted that the construction project would be a reasonably safe workplace will be dismissed when the contract does not contain such a warranty, and no other evidence supports the allegation that such an express warranty was made. Amayo v. MJ Co., 10 FSM R. 244, 249 (Pon. 2001).

A parol agreement inconsistent with a written agreement made contemporaneously therewith is void and unenforceable, unless it was omitted from the written contract by fraud, accident, or mistake. FSM Dev. Bank v. Arthur, 10 FSM R. 479, 480 (Pon. 2001).

Neither the FSM nor Kosrae have yet adopted a Uniform Commercial Code (UCC) to govern sales of goods, although the UCC has been adopted in virtually every U.S. jurisdiction as state law. Edwin v. True Value Store, 10 FSM R. 481, 485 (Kos. S. Ct. Tr. 2001).

When the attorney-client contract is at an end without liability for breach on either side, the attorney remains entitled to compensation according to the contract terms for the services performed to date. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 497 (Chk. 2002).

Contract provisions for the payment of attorney's fees will be enforced only to the extent that the fees demanded are reasonable. In debt collection cases, the amount awarded for attorney's fees should not exceed 15 percent of the outstanding principal and interest. Jackson v. George, 10 FSM R. 523, 526 (Kos. S. Ct. Tr. 2002).

When there was no legal requirement for the lessor to offer insurance to the lessee in a car rental agreement, the lessor's failure to offer insurance to the lessee in a rental agreement does not serve as a defense to the damages assessed against the lessee for an accident. Jackson v. George, 10 FSM R. 523, 527 (Kos. S. Ct. Tr. 2002).

An attorney's fee must be reasonable, and the court must make such a finding. Therefore, contract

provisions for the payment of attorney's fees will be enforced only to the extent that the fees demanded are reasonable. In debt collection cases, the amount awarded for attorney's fees should not exceed 15 percent of the outstanding principal and interest. Jackson v. George, 10 FSM R. 531, 532-33 (Kos. S. Ct. Tr. 2002).

The Chuuk State Supreme Court is a court of general jurisdiction and has concurrent original jurisdiction to try all civil cases. As such, it may exercise, subject to the principle of forum non conveniens, jurisdiction over contract cases generally, regardless of where the contract was formed, unless exclusive jurisdiction for that particular contract resides in some other court. First Hawaiian Bank v. Engichy, 10 FSM R. 536, 537 (Chk. S. Ct. Tr. 2002).

That a contract was formed in another jurisdiction does not deprive a court of jurisdiction over a dispute over or enforcement of that contract. It may, however, involve a choice of law problem – contract questions may need to be resolved by resort to the substantive law of the jurisdiction in which the contract was formed, but not necessarily by resort to that jurisdiction's courts. First Hawaiian Bank v. Engichy, 10 FSM R. 536, 537-38 (Chk. S. Ct. Tr. 2002).

Neither Rule 68, nor any principle of contract law, requires an acceptance to be on a different piece of paper from the offer of judgment in order for it to be valid. Kama v. Chuuk, 10 FSM R. 593, 599 (Chk. S. Ct. App. 2002).

When a settlement contract for landfill of Muraka was formed between the parties that was not dependent on the case's active status, the contract is still enforceable because the case's status (pending or dismissed) was not part of the agreement. Therefore, the defendant is still liable to the plaintiff because the case's dismissal did not affect the parties' contract or the court's order when the court's order was based upon the parties' agreement and not upon any trial on damages. James v. Lelu Town, 11 FSM R. 337, 339-40 (Kos. S. Ct. Tr. 2003).

When a construction contract did not require the plaintiff contractor to perform or pay for any landfilling equipment or landfill materials or to be responsible for payment to any sub-contractor for landfilling equipment or landfill materials and when there was no written Contract Change Order, executed by the parties, as required by General Condition # 1 of the construction contract regarding payment for landfilling equipment or landfill materials, the plaintiff contractor, pursuant of the construction contract's terms, is not responsible for payment of the landfilling equipment costs or the landfill material costs. Youngstrom v. Mongkeya, 11 FSM R. 550, 553 (Kos. S. Ct. Tr. 2003).

An experienced, certified trial counselor admitted to practice law in Kosrae is held to a higher standard regarding knowledge of contract requirements. He should have known that a valid, enforceable contract requires the material term of the cost. Youngstrom v. Mongkeya, 11 FSM R. 550, 554 (Kos. S. Ct. Tr. 2003).

The creation of laws relating to contracts is not identified in the Constitution as falling within the national government's powers. Rather, it is generally presumed to be a power of the state. Accordingly, state law determines the statute of limitations in a contract case. Youngstrom v. NIH Corp., 12 FSM R. 75, 77 (Pon. 2003).

Pohnpei state law specifies limitation periods of two and twenty years for certain delineated causes of action and provides that all other actions – including contracts – must be commenced within six years after the cause of action accrues. Youngstrom v. NIH Corp., 12 FSM R. 75, 77 (Pon. 2003).

Given that a cause of action accrues when a suit can be successfully maintained thereon, it is indisputable that if the construction was in fact defective, a suit could have been maintained from the date that construction was completed. Youngstrom v. NIH Corp., 12 FSM R. 75, 77 (Pon. 2003).

Under the Pohnpei statute of limitations, if anyone who is liable to any action fraudulently conceals the cause of action from the knowledge of the person entitled to bring it, the action may be commenced at any time within the times limited within the statute after the person who is entitled to bring the same shall discover or shall have had reasonable opportunity to discover that he has such cause of action, and not afterwards. Youngstrom v. NIH Corp., 12 FSM R. 75, 77 (Pon. 2003).

If a plaintiff fraudulently conceals allegedly defective construction methods, the six-year limitations period does not begin to run until the date on which the defendant discovered or had a reasonable opportunity to discover the alleged defect. It is not appropriate for the court, at the juncture of a motion to dismiss, to rule on an essentially factual matter. The trial's purpose will be to determine whether the construction methods that are alleged were, in fact, utilized; whether those methods were improper; and if they were, at what point the defendant knew or should have known of them. Youngstrom v. NIH Corp., 12 FSM R. 75, 77-78 (Pon. 2003).

A promissory note and a security agreement are enforceable contractual agreements between the parties. Goyo Corp. v. Christian, 12 FSM R. 140, 146 (Pon. 2003).

When the argument that the defendants should not be bound in their personal capacities but that only a corporation should be bound by the agreement, contradicts the promissory note's plain meaning, as it is worded, and when the individuals, in their depositions, acknowledged that they read and signed the agreement, they should not be permitted to claim that they did not understand the clear terms. And when at the same time the individuals clearly intended to encumber their personal property and assets, not merely those of the corporation, based upon the promissory note's plain, unambiguous language, the plaintiff is entitled to summary judgment as to the affirmative defense of lack of capacity. Goyo Corp. v. Christian, 12 FSM R. 140, 148 (Pon. 2003).

An MOU that contains promises between two parties for the performance of mutual obligations is a legally binding, enforceable contract. Esau v. Malem Mun. Gov't, 12 FSM R. 433, 435 (Kos. S. Ct. Tr. 2004).

When the parties entered into an oral agreement, which was later reduced to writing, whereby the plaintiff leased his property to the defendant for a monthly rent and for repairs to be completed by defendant, it is an enforceable contract. Lonno v. Talley, 12 FSM R. 484, 486 (Kos. S. Ct. Tr. 2004).

Repeated, intentional instances of failure of a state to pay a judgment does not constitute a separate, constitutional claim for deprivation of property without due process where the original underlying claim is not constitutional in character, but is based on common law contract and when there is no constitutional claim that supports the judgment itself, nor a national statute applicable that implicates a "clear and substantial" national interest. Barrett v. Chuuk, 12 FSM R. 558, 561-62 (Chk. 2004).

When the plaintiffs allege two separate claims for the same damages in this suit and one sounds in contract and alleges a breach of a purchase agreement since part of the plaintiffs' agreed share of the purchase price was not paid to them and the other claim sounds in tort and alleges that the defendant was negligent in wrongfully releasing the remaining balance to someone else without taking such precautionary measures that a reasonably prudent person would be expected to take as a holder of funds that plaintiffs were entitled to, the court will analyze the contract claim first and finding a breach of the purchase agreement, need not address the plaintiffs' negligence tort claims. Edgar v. Truk Trading Corp., 13 FSM R. 112, 117 (Chk. 2005).

When the existence of a contract is at issue, the trier of fact determines whether the contract did in fact exist. Livaie v. Weilbacher, 13 FSM R. 139, 143 (App. 2005).

The Pohnpei Development Leasehold Act says that every development lease must contain a covenant stating that the lessor shall have the rights of future benefit to the improvements placed on the land by or on

behalf of the lessee and that, upon the lease's termination, existing improvements thereon shall become the property of the lessor thereof or his successor in interest without further cost or condition to be met by the lessor, the property's title holder or any successor in interest to said property. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 225 n.1 (Pon. 2005).

The term "charter party" is used in maritime law to designate the specialized form of contract for the hire of an entire ship, specified by name. "Charter party" is used synonymously with "charter." Three principal types are recognized: 1) under a time charter, the charterer engages for a fixed period of time a vessel, which remains manned and navigated by the vessel owner, to carry cargo wherever the charter instructs; 2) under a voyage charter, the charterer engages the vessel to carry goods only for a single voyage; and 3) under a demise, or bareboat charter, the charterer takes complete control of the vessel, mans it with his own crew, and is treated by law as its legal owner. Yap v. M/V Cecilia I, 13 FSM R. 403, 408 (Yap 2005).

A stipulated judgment is not a judicial determination or holding. Stipulated judgments, while they are judicial acts, also have the attributes of voluntarily-undertaken contracts. A stipulated judgment (also called a consent decree) although enforceable like any other judicial decree, is not a judicial determination of any litigated right. It may be defined as a contract of the parties acknowledged in open court and ordered to be recorded by a court of competent jurisdiction. Mailo v. Chuuk, 13 FSM R. 462, 467-68 (Chk. 2005).

A stipulated judgment is not a judicial determination, but is a contract between the parties entering into the stipulation. A consent decree or stipulated judgment does not constitute a resolution of parties' rights but is a mere recordation of their private agreement. Once a consent decree has been entered it is generally considered to be binding on the parties and it cannot be amended or varied without each party's consent. Mailo v. Chuuk, 13 FSM R. 462, 468 (Chk. 2005).

When it is necessary to construe a stipulated judgment or consent decree, courts resort to ordinary principles of contract interpretation. Mailo v. Chuuk, 13 FSM R. 462, 468 (Chk. 2005).

To say that a plaintiff's only remedy was to sue a defendant it had contracted with on a contract theory misses the point that it was the other defendant that was unjustly enriched, and to accept that the plaintiff's only remedy would be against long defunct enterprise defendant would confer upon the plaintiff an illusory remedy, and would confound its efforts to call to account the other defendant which actually received the money the plaintiff paid to the first defendant. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 516 (App. 2005).

When the existence of a contract is at issue, the trier of fact determines whether the contract did in fact exist. DJ Store v. Joe, 14 FSM R. 83, 85 (Kos. S. Ct. Tr. 2006).

When a lot was leased for the purpose of supporting air transportation and a fence's construction supported that purpose and the Lease Agreement permitted removal of soil and rock as allowed by Articles 6 through 19 of a 1984 Lease (incorporated by reference in the 1999 lease agreement), but the plaintiff neglected to submit that into evidence although by 1999 Lease Agreement's terms, Articles 6 through 19 were to be attached to it, the plaintiff has not proven that the security fence's construction, needed for airport purposes, was barred by the 1999 Lease Agreement without further compensation. Uehara v. Chuuk, 14 FSM R. 221, 226 (Chk. 2006).

In deciding contract cases, the Chuuk State Supreme Court has generally followed common law contract principles except when a Chuuk statute or constitutional provision is applicable. Hartman v. Krum, 14 FSM R. 526, 530 (Chk. 2007).

When the plaintiff claims ownership of the parcels based on a contract with him as grantee to exchange land for building materials and money, but the evidence supports only that the plaintiff was to

receive ownership of a portion of the land, not to the full parcels, and when the defendants' witness agreed that the plaintiff bought a portion of land that formerly belonged to them and had an agreement to extend the boundary of that land to a specific location, the plaintiff failed to prove that he had an enforceable contract to transfer ownership of both parcels to him. The evidence only shows he received the portion of the land and had an agreement to extend the boundary of that portion. Siba v. Noah, 15 FSM R. 189, 195 (Kos. S. Ct. Tr. 2007).

When there is no enforceable contract, a court may use its inherent equity power to fashion a remedy under doctrines such as unjust enrichment or detrimental reliance. The doctrine of unjust enrichment is based on the idea that one person should not be unjustly enriched at the expense of another. It usually applies when a party has partly performed under a contract that is later void for mistake, fraud, illegality, impossibility, or some other reason, or where there is an implied contract. Generally, the person must either return what has been received under the contract or pay for it. Siba v. Noah, 15 FSM R. 189, 195 (Kos. S. Ct. Tr. 2007).

When the court concludes that there was a contract between the plaintiff and the defendant, it will not address the plaintiff's alternative claims under unjust enrichment and promissory estoppel. George v. George, 15 FSM R. 270, 273 (Kos. S. Ct. Tr. 2007).

When the court concludes that there was a contract between the plaintiff and the defendant, it will do not address the plaintiff's alternative claims under unjust enrichment and promissory estoppel. George v. Albert, 15 FSM R. 323, 326 (Kos. S. Ct. Tr. 2007).

Where liability was conceded when the defendants listed as an undisputed fact in their pretrial briefs that they each had an "open/mutual account" with the plaintiff, but the extent of those liabilities were not conceded, trials on damages only, that is, only on the issue of each business ledger's accuracy, must be held. Albert v. George, 15 FSM R. 574, 581 (App. 2008).

Although fee suits appear from a distance to be basically suits to recover on a breach of contract or, in some instances, to recover for the reasonable value of personal services, on closer inspection, the law is clear that lawyers suing clients are not treated as are merchants suing former trading partners. The procedural landscape is much narrower and more tightly regulated. The burden is on the lawyer to present detailed evidence of services actually rendered. Saimon v. Wainit, 16 FSM R. 143, 147 (Chk. 2008).

There are two principal ways in which attorney-fee suits differ from other kinds of collection suits between commercial strangers. One is that the court, exercising its supervisory powers over lawyers, can reduce the amount charged, and the other is that the defenses available to clients are expanded. Saimon v. Wainit, 16 FSM R. 143, 147 (Chk. 2008).

A sales contract provision that the buyer "agrees to pay all attorney's collection and court fees and an additional 33% of the principal amount and accrued interest in the event this invoice is referred to an attorney or collection agency for collection" appears, since it is included in the same sentence as "all attorney's collection and court fees," to not only constitute "double-dipping" or double recovery of attorney's fees, but it would also award attorney's fees greatly in excess of the 15% maximum usually allowed in collection cases, and will therefore not be awarded. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 225 (Chk. 2008).

Attorney's fees and costs are not recoverable when the plaintiff has not prevailed on any of his other claims since recovery of fees and costs is dependent upon the plaintiff successfully prevailing on some other claim. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 367 (Yap 2009).

Subject to proof at trial, a breach of an implied covenant of good faith claim may sound, at least in part, in contract rather than in tort. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 605 (Pon. 2009).

When the first question is whether there is a valid contract, the plaintiff has the burden of proving each element of that claim by a preponderance of evidence. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 645 (Kos. S. Ct. Tr. 2009).

When Shigeto's contracted with Piisemwar municipality for the purchase of motors and the state was not a party to that contract and when Shigeto's Store has not raised any other basis for liability other than set-off between the contracts it had with Ruo and Piisemwar municipalities, judgment will enter for Shigeto's Store and against only Piisemwar municipality. Ruo Municipality v. Shigeto's Store, 17 FSM R. 195, 197-98 (Chk. S. Ct. Tr. 2010).

U.S. common law decisions are an appropriate source of guidance for contract issues unresolved by statutes, FSM court decisions, or FSM custom and tradition. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 570 n.1 (Pon. 2011).

A subcontractor is one who is awarded a portion of an existing contract by a contractor. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 (Pon. 2011).

An independent contractor is one who is entrusted to undertake a specific project but who is left free to do the assigned work and to choose the method for accomplishing it. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 (Pon. 2011).

The two terms – subcontractor and independent contractor – are not mutually exclusive. A subcontractor may or may not have an agency relationship with the contractor and that relationship does not control whether or not a subcontract has been struck. A party might be both an independent contractor and a subcontractor. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 (Pon. 2011).

A subcontractor's status, when compared to that of an employee, is ordinarily that of an independent contractor. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 (Pon. 2011).

Subcontracting is merely "farming out" to others all or part of work contracted to be performed by the original contractor. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 572 (Pon. 2011).

When an Hawaii-based architect undertook to perform part of the contractor's existing contract but his initial designs were never used and his later conceptual design work was not actually used since the final designs were prepared by an employee of the contractor and not by an independent contractor or other subcontractor, this transaction might better be described as an unsuccessful attempt to subcontract part of the contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 573 (Pon. 2011).

Common law decisions from U.S. sources are an appropriate source of guidance for the FSM Supreme Court for contract and tort issues unresolved by statutes or decisions of constitutional courts within the FSM. Ihara v. Vitt, 18 FSM R. 516, 526 (Pon. 2013).

A plaintiff has a good chance of success on the merits when its contract with the State provided for "the first right to negotiate," and "mandatory and binding arbitration," since these clauses would be meaningless if they were not enforceable after the contract's expiration date. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 567 (Pon. 2013).

When the salvage contract between the salvor and the vessel owner did not require that an invoice be presented in order that the salvor be paid, but the contract between the salvor and the insurer, the party that everyone expected would make the actual payment, did require that an invoice be presented, payment was due after an invoice was presented. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 10 (Pon. 2013).

A bona fide purchaser for value is someone who buys something for value without notice of another's

claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller's title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims. Mori v. Hasiguchi, 19 FSM R. 16, 21-22 (Chk. 2013).

As a general rule, in the absence of an agreement or stipulation to the contrary, a debt is payable at the place where the creditor resides, or at his place of business, if he has one, or wherever else he may be found; and ordinarily it is the duty of the debtor to seek the creditor for the purpose of making payment, provided the creditor is within the state of his residence when the payment is due. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 145 (App. 2013).

Where the obligor on a promissory note is to make his payments does not relate to a matter of vital importance or go to the contract's essence since the note provides a number of options for place of payment, and since the obligor was not deprived of the benefits he expected to receive under the contract – his use of the bank's money (the loan) for a specified period of time. He knew he had an obligation to pay the bank and he knew (or should have known) where to pay and if he did not know it was his duty to find out where. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 145 (App. 2013).

As a matter of law, the presence of an express written contract, which clearly sets forth the parties' obligations, precludes a party from bringing a claim in equity under quantum meruit. Smith v. Nimea, 19 FSM R. 163, 172 (App. 2013).

A court will enforce a contract's unambiguous terms. Smith v. Nimea, 19 FSM R. 163, 172 (App. 2013).

When the existence of a contract is at issue, the trier of fact determines whether the contract did in fact exist. Harden v. Inek, 19 FSM R. 244, 249 (Pon. 2014).

A defendant's inability to pay does not eliminate the defendant's liability to pay. Eot Municipality v. Elimo, 19 FSM R. 290, 295 (Chk. 2014).

The duty of good faith and fair dealing is implied in the performance and enforcement of all contracts. Johnny v. Occidental Life Ins., 19 FSM R. 350, 362 (Pon. 2014).

The court will consider United States decisions as an appropriate source of guidance in considering unresolved questions arising in the area of contracts, and, under 1 F.S.M.C. 203, the Restatements may be used when applying common law rules in the absence of written law. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 476 (Pon. 2014).

A party is ordinarily entitled to rely on the notarized signature on an agreement when it sues on that agreement, but if the party knows before filing suit that the defendant claims not to have signed the agreement or to know anything about the agreement, the plaintiff cannot base his suit on the presumption arising from the notarized signature. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581 (Pon. 2014).

A contract is a promise or set of promises for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 17 (Pon. 2016).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be an enforceable contract, there must be an offer, acceptance, consideration, and definite terms. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 17 (Pon. 2016).

Generally, an oral agreement is as enforceable as a written one. Reducing an agreement to writing, however, can assist the parties in assuring that all the necessary terms have been agreed to and are definite, or later assist a court in ascertaining what those terms were. Pohnpei Transfer & Storage, Inc. v.

Shoniber, 21 FSM R. 14, 18 n.3 (Pon. 2016).

A loan application is not a contract. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 169 (Pon. 2017).

Contracting parties are presumed to act for themselves. Therefore an intent to benefit a third person must be clearly expressed in the contract. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 175 (Pon. 2017).

A contract is a promise or set of promises for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. Pelep v. Mai Xiong Inc., 21 FSM R. 182, 190 (Pon. 2017).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable, there must be an offer, acceptance, consideration and definite terms. Pelep v. Mai Xiong Inc., 21 FSM R. 182, 191 (Pon. 2017).

A contract is a promise or set of promises for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. Hartman v. Henry, 22 FSM R. 292, 296 (Pon. 2019).

A contract is a promise between two parties for the future performance of mutual obligations. Hartman v. Henry, 22 FSM R. 292, 296 (Pon. 2019).

The obligation of contracts is generally limited to the parties making them. Hartman v. Henry, 22 FSM R. 292, 296 (Pon. 2019).

– Accord and Satisfaction

For there to be an accord and satisfaction, there must be an offer in full satisfaction of a debt accompanied by acts and declarations that amount to a condition that if the offer is accepted, it is in full satisfaction of the obligation. The condition must be such that the party to whom the offer is made is bound to understand that if it accepts the offer in full satisfaction, it does so subject to the condition imposed. Richmond Wholesale Meat Co. v. Kolonia Consumer Coop. Ass'n (I), 7 FSM R. 387, 389 (Pon. 1996).

An affirmative defense of accord and satisfaction negotiations being underway fails when no accord and satisfaction has been agreed to, in other words, when the negotiations were not successful. FSM Dev. Bank v. Chuuk Fresh Tuna, Inc., 16 FSM R. 335, 338 (Chk. 2009).

The necessary elements to establish accord and satisfaction are 1) a claim about whose amount there exists a good faith dispute between the parties; 2) an agreement between the parties that the payment is in full satisfaction of the (contested) obligation and 3) acceptance of the payment by creditor. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 276 (Pon. 2014).

Accord and satisfaction between the parties bars any further attempt to enforce claims on the obligations that had been satisfied. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 277 (Pon. 2014).

For there to be an accord and satisfaction, there must be an offer in full satisfaction of a debt, accompanied by acts and declarations that amount to a condition that if the offer is accepted, it is in full satisfaction of the obligation. Hairens v. Federated Shipping Co., 20 FSM R. 404, 409 (Pon. 2016).

Although release and accord and satisfaction are both defenses that are available against an action on a judgment, when they were mentioned as affirmative defenses in a defendant's answer, but were neither raised nor mentioned in her opposition to the plaintiff's summary judgment motion, these defenses are deemed waived or abandoned. FSM Dev. Bank v. Carl, 22 FSM R. 365, 376 (Pon. 2019).

– Account Stated

As a general rule a creditor may rely on its running account, produced in the normal course of it business, to establish a prima facie case, but in the face of contrary credible evidence, it is insufficient to sustain the creditor's burden of proof and each item, or each item not given credit for, must be proven. But the rule does not apply when to support its running account, the plaintiff introduced copies of the accounts sent to the defendant, its internal records of the account, the record of the calls that the defendant said made sense made during the first seven-month period, the testimony of its Yap accountant and of the chief of its division of collections, and when the defendant's own testimony contradicted the record she had prepared in advance of trial showing the calls she admitted making. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 464 (App. 2000).

An account stated is a species of contract action, in which the plaintiff must prove that the defendant agreed to pay a specific amount to the plaintiff. It is an agreement, based on prior transactions between the parties, that all terms of the account are true and that the balance struck is due and owing from one party to the other. An account stated is an agreement, expressed or implied, that an examination of the account between the parties has occurred, a statement of that account has been asserted, and accepted as correct. Saimon v. Wainit, 16 FSM R. 143, 146-47 (Chk. 2008).

The existence of an account stated need not be express and frequently is implied from the circumstances. For example, where a creditor renders a statement and the debtor fails to object in a reasonable time, the open account may be superseded by an account stated. Saimon v. Wainit, 16 FSM R. 143, 147 n.1 (Chk. 2008).

An attorney seeking to recover unpaid attorney fees on the theory of account stated must prove the reasonable value of the services rendered if the fee agreement was entered into during the course of the attorney-client relationship. This is because when the account stated is for legal services, there is a presumption of undue influence when entered between an attorney and client during their fiduciary relationship. The attorney has the burden of showing that the transaction was fair and regular and entered voluntarily by the client with full knowledge of the facts. Saimon v. Wainit, 16 FSM R. 143, 147 (Chk. 2008).

By Pohnpei statute, in an action brought to recover the balance due upon a mutual and open account, or upon a cause of action upon which partial payments have been made, the cause of action is considered to have accrued at the time of the last item proved in the account. Bank of Hawaii v. Susaia, 19 FSM R. 66, 70 n.3 (Pon. 2013).

An account stated is a species of contract action, in which the plaintiff must prove that the defendant agreed to pay a specific amount to the plaintiff. It is an agreement, based on prior transactions between the parties, that all terms of the account are true and that the balance struck is due and owing from one party to the other. An account stated is an agreement, expressed or implied, that an examination of the account between the parties has occurred, a statement of that account has been asserted, and accepted as correct. Pelep v. Mai Xiong Inc., 21 FSM R. 182, 190 (Pon. 2017).

When there was no evidence produced by the plaintiff, other than the defendant's check to the plaintiff that was clearly for the defendant's loan to the plaintiff and not a partial payment to the plaintiff for the destruction of the plaintiff's vehicles, the plaintiff's claim for account stated is unsupported. Pelep v. Mai Xiong Inc., 21 FSM R. 182, 190 (Pon. 2017).

– Assignment and Delegation

Liabilities arising from a contract are not assignable without the consent of the creditor, and the mere assumption of the debt by a third party is not sufficient to establish a novation of the original contract unless there is a clear assent by the creditor to the substitution of a new obligor. Black Micro Corp. v. Santos, 7

FSM R. 311, 314-15 (Pon. 1995).

When a person is liable for a business's debts because he is the sole proprietor of a business, the sale of the business to another who has agreed to assume the business's liabilities will not relieve him of liability if the creditor has not agreed to the assignment. Black Micro Corp. v. Santos, 7 FSM R. 311, 315 (Pon. 1995).

A party to a contract cannot relieve himself of the obligations which a contract imposed upon him merely by assigning the contract to a third person. Unless the obligee agrees otherwise, neither delegation of performance nor a contract to assume the duty made with the obligor by the person delegated discharges any duty or liability of the delegating obligor. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 74 (Pon. 2001).

Liabilities arising from a contract are not assignable without the consent of the creditor, and a third party's mere assumption of the debt is not sufficient to establish a novation of the original contract unless there is a clear assent by the creditor to the substitution of a new obligor. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 74 (Pon. 2001).

When a person is liable for a business' debts because he is the sole proprietor of a business, the sale of the business to another who has agreed to assume the business' liabilities will not relieve him of liability if the creditor has not agreed to the assignment. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 74 (Pon. 2001).

When a bank agreed to allow another to take on the obligations under a promissory note, but did not agree to allow the borrowers to be free from liability on that note once they had assigned their rights, and when the language of the assignment agreement and promissory note indicates that the parties (assignors and assignee) intended that the assignors would remain liable on the promissory note, the assignors remain liable, and if the assignors are in default on the note, the bank is entitled to summary judgment against the assignors based on their breach of the duty to pay as required. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 74 (Pon. 2001).

While the fact that as part of an assignment another agreed to assume all of a debtor's liabilities under a stipulated judgment may provide the debtor with recourse against the other, it does not affect the debtor's obligation to the creditor under the judgment and payment order. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103 (Kos. 2001).

– Breach

A breach of contract which is material justifies a halt in performance under the contract by the injured party. Whether a breach is material is a question of fact depending on several factors, particularly where the breach deprives the injured party of the benefits of the contract. Panuelo v. Pepsi Cola Bottling Co. of Guam, 5 FSM R. 123, 128 (Pon. 1991).

A breach of contract which is material justifies a halt in performance under the contract by the injured party. Whether a breach is material is a question of fact depending on several factors, particularly when the breach deprives the injured party of the benefits of the contract. O'Byrne v. George, 9 FSM R. 62, 65 (Kos. S. Ct. Tr. 1999).

When the defendant's estimate of the construction materials' cost was a material term in the parties' agreement and the plaintiff paid the defendant the total amount due for materials, the plaintiff's refusal to provide more funds for materials does not constitute a breach of the contract because the plaintiff did not have any obligation to pay defendant any additional sums for construction materials. Therefore the defendant breached his promise to provide all necessary construction materials for the sum the plaintiff paid him. O'Byrne v. George, 9 FSM R. 62, 65 (Kos. S. Ct. Tr. 1999).

A defendant who has completed substantial performance in constructing the plaintiff's house is entitled to payment for the second of three installments for labor and the plaintiff's failure to pay is a breach of her promise to pay the defendant the agreed amount for labor costs. O'Byrne v. George, 9 FSM R. 62, 65 (Kos. S. Ct. Tr. 1999).

When both parties have fulfilled their obligations under the contract, there is no breach of the contract by either party. Tulensru v. Utwe, 9 FSM R. 95, 98 (Kos. S. Ct. Tr. 1999).

When one party fails to perform their promise, there is a breach of contract. Malem v. Kosrae, 9 FSM R. 233, 236 (Kos. S. Ct. Tr. 1999).

Breach of contract claims against Pohnpei state have a two year statute of limitations. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 557 (Pon. 2000).

When estoppel serves as the basis for a plaintiff to file a breach of contract claim and that contract claim has been time barred, the plaintiff's estoppel claim is also barred. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 559 (Pon. 2000).

When the undisputed facts show that a party clearly entered into a legally binding agreement whereby he agreed and promised to make payments to the bank in exchange for purchasing a taxi service and when he breached it by failing to make the required payments, the court will grant summary judgment to the taxi service seller. The fact that the taxi service was losing money does not excuse the buyer from his responsibility. Nor does the fact that it might have been a bad investment. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 78 (Pon. 2001).

At trial, the plaintiff has the burden of proving each element of his breach of contract claim by a preponderance of the evidence. If he fails to do so, it is appropriate for the trial court to enter judgment against him. Tulensru v. Wakuk, 10 FSM R. 128, 132 (App. 2001).

As a general proposition, a governmental entity's breach of a contract, without more, does not constitute a due process violation. Talley v. Lelu Town Council, 10 FSM R. 226, 237 (Kos. S. Ct. Tr. 2001).

When the plaintiff paid the defendant $475 as consideration for the purchase of a washing machine and the defendant promised to sell a new, working washing machine to the plaintiff, who was not able to inspect the washing machine's working condition at the store because the washer was packaged in its original cardboard container, and when the plaintiff discovered that the washing machine did not work properly only after it was installed, the defendant breached the contract by failing to provide to the plaintiff a new, working washing machine because a new washing machine is expected to work properly to wash clothes. Edwin v. True Value Store, 10 FSM R. 481, 484-85 (Kos. S. Ct. Tr. 2001).

A contract is a promise between two parties for the future performance of mutual obligations, which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise (that which the performance is exchanged for). When one party fails to perform their promise, there is a breach of contract. Goyo Corp. v. Christian, 12 FSM R. 140, 146 (Pon. 2003).

When a plaintiff has a judgment based on a common law contract, and there is no FSM statute that affects ordinary contracts in a way that shows a substantial national interest in such matters, the law of contracts is generally one in which state law controls. A governmental entity's breach of a contract, without more, does not constitute a due process violation. Barrett v. Chuuk, 12 FSM R. 558, 561 (Chk. 2004).

When one party fails to perform his promise, there is a breach of contract. A breach of contract which is material justifies a halt in performance under the contract by the injured party. George v. Alik, 13 FSM R. 12, 15 (Kos. S. Ct. Tr. 2004).

When there was a binding purchase agreement between a land buyer and a clan land seller and the plaintiffs were intended beneficiaries of that contract and when that contract could only be modified by a consensus decision by the seller's clan members evidenced by the agreement of five or more of the six designated clan members but the purported modification did not contain five genuine signatures of the designated committee representatives, there was a breach of the purchase agreement entitling plaintiffs to damages. Edgar v. Truk Trading Corp., 13 FSM R. 112, 117-18 (Chk. 2005).

When one party fails to perform his promise, there is a breach of contract. Thus, when the plaintiff performed his promise to pay the defendant the amount of $10,000, but the defendant failed to perform her promise to transfer her right, title and interest in two parcels to the plaintiff, the defendant breached the contract with the plaintiff by her failure to perform. The defendant is liable to the plaintiff for breach of contract and the plaintiff is entitled to summary judgment on the issue of defendant's liability for breach of contract. Isaac v. Palik, 13 FSM R. 396, 400 (Kos. S. Ct. Tr. 2005).

Since, upon the execution of a valid and legal substituted agreement the original agreement merges into and is extinguished, and since failure to perform the substituted agreement will not revive the old agreement, a 1999 lease agreement that was extinguished by a 2001 land purchase agreement will not be revived by the state's breach of the land purchase agreement. Uehara v. Chuuk, 14 FSM R. 221, 226 (Chk. 2006).

A land seller cannot claim a forfeiture and at the same time receive the purchase money. Accordingly, there can be no doubt that a vendor by receiving money when past due is precluded from availing himself of any right of forfeiture which has arisen because of the failure to pay on time. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

When an insurance agent's contract with the insurer contains language regarding the agent's duty to make certain that the premium checks were sent to the insurer, the agent is liable to the insurer for breach of contract when the agent failed to fulfill the contractual obligation to send the premium checks to the insurer's office in Kansas City. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 437-38 (Pon. 2009).

When the facts establish only two defendants had contracts with the plaintiff, the plaintiff's complaint alleging that all defendants breached a contract with the plaintiff will be dismissed with respect to all defendants except the two. Yoruw v. Ira, 16 FSM R. 464, 466 (Yap 2009).

A government's breach of a contract, without more, does not violate due process rights. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 484 (Pon. 2009).

When the plaintiffs suing their appellate attorney are seeking to recover damages in the amount they paid their attorney to handle their appeal and are not seeking to recover the amount of the land that was at issue in the appeal, the plaintiffs' claim is one for breach of contract and not legal malpractice. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644 (Kos. S. Ct. Tr. 2009).

When the court is not looking at negligence in handling the case or the manner in which the brief was written as there was no brief written or submitted to the FSM Supreme Court appellate division and when the attorney did not guarantee a specific result, promise, warrant or specify an outcome in the appeals case, the case is a "do nothing" case where the promisor-attorney had promised to perform a certain activity, to represent the plaintiffs in handling of an appeal, and the failure to complete that action exposed the promisor-attorney to liability for breach of contract. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644-45 (Kos. S. Ct. Tr. 2009).

If a party fails to perform, then the contract is breached and damages may be awarded. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646 (Kos. S. Ct. Tr. 2009).

A breach of contract which is material justifies a halt in performance under the contract by the injured

party. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646 (Kos. S. Ct. Tr. 2009).

When an attorney had promised to handle an appeal case for the plaintiffs and when the attorney failed to file a brief in the case resulting in the appeal's dismissal, the attorney, by his failure to file a brief, breached his contract with the plaintiffs. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646 (Kos. S. Ct. Tr. 2009).

To succeed on a breach of contract claim, a plaintiff must show that the defendant breached the contract and that the breach was material. The elements of a breach of contract claim are: 1) a valid contract, 2) a material breach, and 3) resulting damages. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 570 (Pon. 2011).

The material breach of a contract justifies the injured party's halt of performance under the contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 570 (Pon. 2011).

Not every departure from a contract's literal terms is sufficient to be deemed a material breach of a contract requirement, thereby allowing the non-breaching party to cease its performance and seek appropriate remedy. The standard of materiality for the purposes of deciding whether a contract was breached is necessarily imprecise and flexible. A breach is material when it relates to a matter of vital importance, or goes to the essence of the contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 570 (Pon. 2011).

Whether a breach is material may be a question of fact depending on several factors, particularly when the breach deprives the injured party of the contract's benefits. In some cases, the determination of whether the breach is material is a mixed question of law and fact, but when the facts are undisputed, the determination of whether there has been a material non-compliance with a contract's terms is necessarily reduced to a question of law. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 570 (Pon. 2011).

At the summary judgment stage, the nonmovant plaintiff must show that it has admissible evidence of damages that were proximately caused by the contract breach. It does not need to prove the exact amount of damages or the extent of the damages. But it must show that it has admissible evidence that can. The time to do that is now, or never. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 572 (Pon. 2011).

Causation is an essential element of damages in a breach of contract action; and, as in tort, a plaintiff must prove that a defendant's breach directly and proximately caused his or her damages. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 573 (Pon. 2011).

Even if a contract breach causes no loss or if the amount of loss is not proved with sufficient certainty, the injured party can recover as nominal damages a small sum, commonly six cents or a dollar, fixed without regard to the amount of loss. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 573 (Pon. 2011).

When a subcontracting prohibition was deemed an important public policy and when, to avoid the risk of proving actual damages or being awarded nominal damages, the FSM could have included in the contract a liquidated damages provision for a breach of that prohibition but did not, the contractor's breach of the subcontracting ban could, even if there were no direct monetary damages, entitle the FSM to terminate the contract and to nominal damages and could stand as a possible defense to a breach-of-contract counterclaim. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 573 (Pon. 2011).

A claim that a design contractor used the wrong coordinate system for a road survey work seems more like, or as much a professional malpractice claim as a breach of contract claim. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 577 n.9 (Pon. 2011).

Ordinarily in a design contract or in a construction contract, it is expected that from time to time the contractor may be asked to re-do work that has not met the contract's specifications, that is, to cure any

defects, especially when a contract paragraph provides that the FSM is not obligated to pay until an assigned task has been satisfactorily completed, that is, the FSM was expected to tell the contractor to do the work over until the FSM was satisfied. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 578 n.10 (Pon. 2011).

It is difficult to see how the actions of a non-party, albeit a contract beneficiary, can be construed as a material breach of the contract by one of the two contracting parties. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 578 (Pon. 2011).

Being put in a politically awkward situation does not constitute a breach of contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 578 (Pon. 2011).

When a contract provision unequivocally authorizes a party's involvement in Asian Development Bank development projects since the ADB is a foreign donor organization and when there is no contractual provision requiring the party to contact foreign donor organizations only through the FSM diplomatic channels or requiring any particular procedure at all, the party's direct contact with the ADB may have caused puzzlement and delay by the ADB and become politically awkward for the FSM, but it was not a breach of the contract between the party and the FSM. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 579 (Pon. 2011).

When the parties' contract creates the deadlines, the tardy submission of reports, except in the most egregious cases, may be less professional malpractice than a contract breach, although even then the breach might not be material. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 582 n.16 (Pon. 2011).

When the court has nothing before it from which it can determine whether any delayed payment was made within a reasonable time, it must deny summary judgment on the claim that the contract was breached by untimely payments. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 588 (Pon. 2011).

When the court has granted the movant summary judgment on only some of the seven grounds that the nonmovant asserted were grounds for termination of the contract for cause but that the movant asserted were pretextual, the court must deny the movant summary judgment on its counterclaim that the termination was a breach of contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 590 (Pon. 2011).

As a general proposition, a governmental entity's breach of a contract, without more, does not constitute a civil rights or due process violation. Stephen v. Chuuk, 18 FSM R. 22, 25 (Chk. 2011).

When the contract clearly contemplates that the insurer's Pohnpei agents might, even in the absence of an administrative agreement, receive premium payments other than the first policy payment and when the agents' contractual obligation is clearly spelled out that the agents must immediately remit to the insurer, all money received or collected on its behalf, and that such money will be considered as the insurer's funds held in trust by the agents, the agents obviously breached this contract provision by cashing the insurer's premium checks on Pohnpei instead of immediately remitting to the insurer's home office those checks that they had received on its behalf. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 354 (App. 2012).

When a breach of contract cause of action arose on Pohnpei, Pohnpei's statute of limitations should be used. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 354 (App. 2012).

When the petitioners' breach-of-contract liability is based solely on the breach of their contractual obligation to immediately remit to the appellee all money received or collected on its behalf and when it is undisputed that they did not immediately remit to the appellee all money received on its behalf, the petitioners would still be liable to the appellee on its breach-of-contract cause of action and the judgment would remain unaltered. Iriarte v. Individual Assurance Co., 18 FSM R. 406, 408 (App. 2012).

To succeed on a breach of contract claim, a plaintiff must show: 1) an express, valid contract; 2) a

material breach of that contract; and 3) resulting damages. Kosrae v. Edwin, 18 FSM R. 507, 514 (App. 2013).

The standard of materiality for the purposes of deciding whether a contract was breached is necessarily imprecise and flexible. A breach is material when it relates to a matter of vital importance, or goes to the contract's essence. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 10 (Pon. 2013).

The salvor's failure to obtain an oil/water separator and to use it to process the slops was a material breach of the salvage contract when the acquisition of an oil/water separator and its use to separate the oil from the slops and return it to the vessel was a matter of vital importance the went to the salvage contract's essence; when an essential element of any modern salvage contract is the protection of the marine environment; and when the largest component of the contract price was for processing the slops. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 10 (Pon. 2013).

When the only component of a salvage contract that the salvor did not satisfactorily complete was the slops processing, the salvor's material breach of failing to obtain and use an oil/water separator does not excuse performance – payment – for the rest of the salvage contract components. Nor does it excuse performance (payment) for the work that the salvor was asked to do, and which it agreed to do, that was outside the salvage contract's scope of work, but it does excuse payment for the storage of the slops since that storage would have been unnecessary if the salvor had obtained and used an oil/water separator. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 11 (Pon. 2013).

Only a breach which is material, justifies a halt in performance by the injured party. A material breach is a question of fact which relies on several factors, but most particularly on whether the breach deprives the injured party of the contract's benefits. Bank of Hawaii v. Susaia, 19 FSM R. 66, 71 (Pon. 2013).

Since the making payments at the Pohnpei branch bank office was not a material part of loan agreement and since the bank provided a means so that loan payments and other services might still be made locally, the bank did not deprive the borrower of any benefit under the promissory note and, since the borrower provided no evidence showing that he did not know where or how to continue to make the required loan payments, he did not show that the bank's conduct rendered his performance under the contract difficult or impossible. Bank of Hawaii v. Susaia, 19 FSM R. 66, 71-72 (Pon. 2013).

A bank did not breach a material provision of the contract when the bank notified the borrower of the bank branch's closure and the borrower knew of alternative agents and locations of making payments due on the loan. Bank of Hawaii v. Susaia, 19 FSM R. 66, 72 (Pon. 2013).

Issues of whether an act was a material breach of a contract can be a mixed question of law and fact. An appellate court will review questions of law de novo and will review a trial court's factual determinations under a clearly erroneous standard. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 143 (App. 2013).

Not every departure from a contract's literal terms can be deemed a material breach of the contract thereby allowing the non-breaching party to cease its performance and seek an appropriate remedy. The standard of materiality for the purposes of deciding whether a contract was breached is necessarily imprecise and flexible. A breach is material when it relates to a matter of vital importance or goes to the contract's essence. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 144 (App. 2013).

Whether a breach is material may be a question of fact depending on several factors, particularly when the breach deprives the injured party of the contract's benefits. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 144 (App. 2013).

When a promissory note, by its express terms, did not require the obligor to pay at the Pohnpei branch office but stated that payments were to be made "to our branch address above, or at any of our other branches" and the "branch address above" was "PO BOX 280, KOLONIA, POHNPEI FM 96941," under the

note's terms, payment at any branch office will do. When it is undisputed that the bank still had an office on Pohnpei, the bank cannot have breached its contract by moving its office to another location on Pohnpei. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 144 (App. 2013).

A bank does not breach its agreement with a borrower by closing its retail branch office on Pohnpei, and if it did it was not a material breach excusing performance. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 146 (App. 2013).

The statute of limitations period for a breach of contract claim against the State of Chuuk is six years. Eot Municipality v. Elimo, 19 FSM R. 290, 294 (Chk. 2014).

A contract is a promise between two parties for the future performance of mutual obligations, which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise (that which the performance is exchanged for). When one party fails to perform their promise, there is a breach of contract. Johnny v. Occidental Life Ins., 19 FSM R. 350, 357 (Pon. 2014).

The insurer did not breach an insurance policy's terms when it denied coverage because the dependent was not a covered family member since, although she was under 25, she had not been enrolled as a full time student in a post-secondary institution of higher learning for five calendar months or more. Johnny v. Occidental Life Ins., 19 FSM R. 350, 358 (Pon. 2014).

Summary judgment cannot be granted on a breach of contract claim when whether the plaintiff's termination was "reasonable" is a material issue of fact in dispute since the employment contract required the plaintiff to perform to the government's reasonable satisfaction. Zacchini v. Hainrick, 19 FSM R. 403, 410-11 (Pon. 2014).

The defendant did not breach the contracts when it is clear that the parties' contracts required only that the defendant undertake reasonable efforts to repair the plaintiff's vehicle, but did not require the defendant to guarantee success. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 476 (Pon. 2014).

The defendant did not breach the contracts since the repairs performed by the defendant were completed within a reasonable time and since the price charged by the defendant was a reasonable price. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 476-77 (Pon. 2014).

When the $250 additional labor charge constituted the reasonable charge demanded by the defendant as compensation for work performed under valid contracts with the plaintiff, the plaintiff's claim for breach of contract must fail. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 477 (Pon. 2014).

Whether a breach of contract has occurred is generally not a question of law but is rather a factual question, but when the facts are undisputed, the determination of whether there has been a material non-compliance with a contract's terms is necessarily reduced to a question of law. George v. Palsis, 19 FSM R. 558, 564 (Kos. 2014).

When an owner has clearly breached a construction contract by not paying for the change orders within a reasonable time, that breach excuses the builder's breach of not completing the further change orders requested by the owner. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 181 (Pon. 2017).

For a breach of contract action, the claimant must identify the contractual obligations of each party. Fuji Enterprises v. Jacob, 21 FSM R. 355, 365 (App. 2017).

A contract is a promise between two parties for the future performance of mutual obligations, which the law will enforce in some way. For a promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise (that which the performance is exchanged for), and when

one party fails to perform their promise, there is a breach of contract. Donre v. FSM Nat'l Gov't Employees' Health Ins. Plan, 21 FSM R. 592, 597 (Pon. 2018).

A material breach of contract justifies the injured party's halt of performance under the contract. Whether a breach is material is a question of fact depending on several factors, particularly where the breach deprives the injured party of the contract's benefits. Donre v. FSM Nat'l Gov't Employees' Health Ins. Plan, 21 FSM R. 592, 597 (Pon. 2018).

When the insurer's denial of insurance benefits was lawful, the insured does not have a breach of contract claim. Donre v. FSM Nat'l Gov't Employees' Health Ins. Plan, 21 FSM R. 592, 598 (Pon. 2018).

When the FSM did not (and, because of separation of powers issues, probably could not) promise a defendant that all record of the matter would be completely expunged (presumably ordered sealed), but promised to support the defendant's expungement petition, and when the FSM did not breach that plea agreement promise, the defendant is not entitled to an expungement as specific performance (or to any other remedy) for his breach of contract claim. FSM v. Iriarte, 22 FSM R. 271, 275 (Pon. 2019).

A corporation is an artificial, juridical person separate from its owners and is thus a separate party. Thus, when a corporation enters into a contract under its name, and the contract is executed for the corporation "by" an individual, that individual, members of the corporate board, and employees of the corporation are not liable for any breach, absent unjust or fraudulent behavior. Hartman v. Henry, 22 FSM R. 292, 296 (Pon. 2019).

A breach of contract claim (or an alternative quantum meruit and quantum valebant claim) does not involve the deprivation of preexisting property or the deprivation of statutorily vested property rights, and most certainly does not involve physical injury or deprivation of liberty. Sonden v. Pohnpei, 22 FSM R. 465, 467 (Pon. 2020).

Pohnpei's nonpayment on a contract claim did not deprive the plaintiff of preexisting property or of statutorily vested property rights because his right to payment has not yet been determined and certainly was not protected and had not vested, and not only does the plaintiff not have a protected right, but he also does not allege that Pohnpei government officials had acted to deprive him of the right, and that these officials acted pursuant to governmental policy or custom, or were responsible for final policy making. Sonden v. Pohnpei, 22 FSM R. 465, 467 (Pon. 2020).

Previous court decisions have uniformly held that a governmental entity's breach of contract, without more, does not constitute a due process or a civil rights violation. Sonden v. Pohnpei, 22 FSM R. 465, 467 (Pon. 2020).

– Breach – Waiver

When, six months after the deadline for the state to either pay the plaintiff the balance of the purchase price or to deed the land back to the plaintiff, the state, having done neither, tendered to the plaintiff, and she accepted, a further payment of $24,787.50, by accepting this payment, the plaintiff is estopped from asserting that the land be deeded back to her because she has waived the breach and thus her right to enforce the land purchase agreement's "deed back" clause. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

The general rule is that when the contracting party, with knowledge of the breach of the other party, receives money in the performance of the contract, he will be held to have waived the breach. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

If the land vendor receives a partial payment of an amount past due, he is precluded from immediately asserting a forfeiture of the contract for default in payment, and a land seller, who long after all purchase payments have become due accepts a payment, that seller has waived his right to declare a forfeiture as of

the time of payment. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

When a fuel retailer seeks to be reimbursed for the value of gasoline from a leaky tank and to have its supplier perform or to bear the cost for all the environmental remediation work required by the Yap EPA before his service station can reopen and when these are claims that, under the supply contract's terms, the retailer waived by his admitted failure to perform the duties – to inspect the tanks daily for water accumulation, to record the volume of fuel in each tank, to keep a daily log of fuel inventory, and to reconcile daily the measured inventory with the meter readings – contractually required of him, the supplier is entitled to summary judgment on the claims for environmental remediation and for lost product. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 366 (Yap 2009).

Although the written contract required the plaintiffs to give the defendant a non-refundable retainer fee of $5,000, the defendant waived this requirement when he only required $500, altering the contract. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 647 (Kos. S. Ct. Tr. 2009).

When the contract itself permitted waivers of the subcontracting prohibition only by the FSM's "prior written consent" and then only within the FSM's discretion and "only in exceptional cases," the prohibition was of vital importance to the contract and went to the contract's essence so that a breach of this prohibition is likely a material breach. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 572 (Pon. 2011).

When the FSM could have terminated GMP by written notice to GMP if, after notice and a hearing, the contracting officer found that GMP or its agent or representative had offered or given gratuities to any FSM officer or employee, but when the FSM never invoked this contractual procedure or gave notice or held a hearing, the FSM has waived any claim that it can use this alleged breach of contract to lawfully terminate the contract. Since the FSM failed to follow the contractual administrative procedure for termination when a gratuity allegation is made, GMP is entitled to summary judgment on the FSM's breach of contract claim based on allegations that GMP offered gratuities. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 574-75 (Pon. 2011).

Where, under a construction contract, work is accepted with knowledge that it has not been done according to the contract, or under such circumstances that knowledge of its imperfect performance may be imputed, the acceptance will generally be deemed a waiver of the defective performance. But this rule does not apply to latent defects. The rule is not any different under a construction design contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 577 (Pon. 2011).

Since the FSM did not have to accept the 35% design and could have withheld payment and insisted that GMP first conduct soil tests on the actual sites but did not, it cannot contend that, by its actions, it did not intend to waive the soil testing requirements that one time and for the Utwe and Lelu school projects when the FSM waived in writing the pre-35% design soil testing requirements for just those projects. It thus cannot claim damages for breach because the pre-design soil tests were not done. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 577 (Pon. 2011).

Although the argument that acceptance of the 100% design and payment for it is waiver of any claims that the wastewater plant design was defective and that any alleged "defects" were not latent but were obvious and patent and known beforehand could prevail on a breach of contract claim, when this is a professional malpractice tort claim, the question is not whether the contractor breached the contract's terms but whether it violated its duty of reasonable care towards its client. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 581 (Pon. 2011).

A subordinate and separable part of the contract may be waived or modified by the parties without a cancellation of the whole contract. Harden v. Inek, 19 FSM R. 244, 250 (Pon. 2014).

Strict and full performance of a contract by one party may be waived by the other party. Harden v. Inek, 19 FSM R. 244, 251 (Pon. 2014).

Waiver must be made intentionally and with knowledge of the circumstances, and can be made expressly or may be implied from the acts of the parties. Harden v. Inek, 19 FSM R. 244, 251 (Pon. 2014).

Waiver is sometimes proved by a party's express declaration or by his undisputed acts or language so inconsistent with a purpose to stand on the contract provisions as to leave no opportunity for a reasonable inference to the contrary, in which case the waiver is established as a matter of law; but more often it is sought to be proved by various species of acts and conduct permitting different inferences and not directly, unmistakably or unequivocally establishing it, in which case it is a question for the finder of fact. Harden v. Inek, 19 FSM R. 244, 251 (Pon. 2014).

A party that has waived enforcement of a certain provision may renew the obligation by giving the other party notice of its intention to subsequently enforce the provision. Since a waiver is not based on consideration, it can be recalled at any time, subject to estoppel limitations. A plaintiff would be estopped from reinstating a contract provision if the defendants could show detrimental reliance on the waiver. Harden v. Inek, 19 FSM R. 244, 251 (Pon. 2014).

When the defendants did not present any evidence of detrimental reliance on the plaintiffs' waiver, the court must conclude that the plaintiffs had the right to reinstate the provisions of section 3 of the lease upon notice to the defendants, and when such notice was provided to the defendants in the form of a letter, the defendants, on receipt of that letter, were obligated to comply with the requirements of section 3 of the lease within a reasonable time. As the defendants have failed to comply with those provisions, they have breached that contract and the plaintiffs are entitled to relief from the court. Harden v. Inek, 19 FSM R. 244, 251 (Pon. 2014).

Since a waiver is not based on consideration, it can be recalled at any time, subject to estoppel limitations. Harden v. Inek, 19 FSM R. 278, 281 (Pon. 2014).

When the defendants must show detrimental reliance on the plaintiffs' waiver of exclusive possession of a town lot in order to establish the affirmative defense of equitable estoppel, the defendants' argument that burying a family member on the property in 2002 constituted detrimental reliance must fail because burying the family member on the property did not change the defendants' position to their detriment, and they fail to demonstrate that they buried him in reliance on the waiver from the plaintiffs. Harden v. Inek, 19 FSM R. 278, 281 (Pon. 2014).

Injury, detriment, or prejudice to the party claiming the estoppel is one of the essential elements of an equitable estoppel. Harden v. Inek, 19 FSM R. 278, 281 (Pon. 2014).

The defendants' decision to have additional children did not constitute detrimental reliance on the plaintiffs' waiver when no evidence was presented at trial that would allow the court to conclude that the defendants' family planning decisions were influenced in the slightest degree by reliance on the plaintiffs' waiver. Harden v. Inek, 19 FSM R. 278, 282 (Pon. 2014).

– Conditions

A "conditional sale" is one in which the vendee receives possession of and the right to use the goods sold, but transfer of the title depends upon the performance of a condition or the occurrence of a contingency, which is usually full payment of the purchase price. Phillip v. Aldis, 3 FSM R. 33, 37 (Pon. S. Ct. Tr. 1987).

The FSM Supreme Court will not recognize conditions to a contract where they are not created by its express terms or by clear or necessary implication, and where no reasonable construction of the agreement when considered in light of circumstances surrounding its execution points to any intention of the parties to create conditions. Federated Shipping Co. v. Ponape Transfer & Storage Co., 4 FSM R. 3, 10-11 (Pon. 1989).

In a contract for installment shipments of goods where the parties' agreement was not in writing and there was no oral agreement or other manifestation of intent that the buyer's obligation to accept shipments was to be conditioned upon each prior shipment having arrived in timely fashion and in good condition, a nonoccurrence of the event or act is a breach of promise which gives rise to a claim for damages, rather than a failure of a condition to performance, which frees the other party from any further duty to perform the promised acts. Panuelo v. Pepsi Cola Bottling Co. of Guam, 5 FSM R. 123, 127 (Pon. 1991).

Where time of delivery was not of the essence of the contract and the contract was flexible in the agreed arrangements for delivery, a delivery of a bad container should not be seen as a failure of a condition to further obligations under the contract. Panuelo v. Pepsi Cola Bottling Co. of Guam, 5 FSM R. 123, 127 (Pon. 1991).

Requisite clarity to establish a reference in a contract as a condition precedent may be created through plain and unambiguous language or necessary implication manifested by the contract itself. Kihara v. Nanpei, 5 FSM R. 342, 344 (Pon. 1992).

Conditions to contractual obligations are not favored in the law because they tend to have the effect of creating forfeitures. Kihara v. Nanpei, 5 FSM R. 342, 344 (Pon. 1992).

Where the parties to a proposed contract have agreed that the contract is not to be effective or binding until certain conditions are performed or occur, no binding contract will arise until the conditions specified have occurred or been performed. Etscheit v. Adams, 6 FSM R. 365, 388 (Pon. 1994).

Although conditions to contractual obligations are not favored in the law because they tend to have the effect of creating forfeitures, parties may create a condition to a contract through plain and unambiguous language, through necessary implication manifested by the contract itself, or in some other way that makes their intent to create a condition clear. In the absence of some such showing, courts find promises, not conditions to further performances. Adams v. Etscheit, 6 FSM R. 580, 582-83 (App. 1994).

Conditions precedent to a contract are not favored and the courts will not construe stipulations to be such unless required to do so by plain, unambiguous language or by necessary implication. Adams v. Etscheit, 6 FSM R. 580, 583 (App. 1994).

Because conditions precedent are disfavored at law and require plain and unambiguous language to establish, when differing inferences create an issue of fact, summary judgment that a condition precedent exists is inappropriate. Adams v. Etscheit, 6 FSM R. 580, 584 (App. 1994).

A contention that a contract provision is ambiguous defeats a contention that it creates a condition precedent. Conditions precedent to contractual obligations are not favored in the law and courts will not construe terms to be such unless required to do so by plain and unambiguous language or by necessary implication. Nanpei v. Kihara, 7 FSM R. 319, 324 (App. 1995).

When faced with an allegation that an ambiguous contract provision creates a condition, courts prefer either an interpretation that imposes on a party a duty to see that an event occurs, rather than one that makes the other party's duty conditional on the occurrence of the event, or an interpretation that will reduce an obligee's risk of forfeiture if the event does not occur. Nanpei v. Kihara, 7 FSM R. 319, 324 (App. 1995).

Contractual terms that provide that payment is due "when" or "not until" a stated event occurs are generally not considered to be conditions, but merely a means of measuring time, and if the stated event does not occur then the payment is nevertheless due after a reasonable time. Nanpei v. Kihara, 7 FSM R. 319, 324 (App. 1995).

The existence of quitclaim deeds is evidence that the parties had fulfilled their respective agreed conditions precedent to the transfer of land. Nahnken of Nett v. United States, 7 FSM R. 581, 588-89 (App. 1996).

The time for completion of a house is not a material term of the parties' agreement when nothing in the parties' oral agreement indicated that the "time was of the essence" for completion of the house within two months and when the plaintiff pointed out no particular day of completion as being crucial. Therefore, late completion of the house should not be seen as a failure of a condition to further obligations under the contract. O'Byrne v. George, 9 FSM R. 62, 64 (Kos. S. Ct. Tr. 1999).

The filing of the appeal over land was not a breach of the defendant's condition and was not a breach of a customary settlement when the appeal was filed before the customary settlement and condition were made; and when the appeal was not decided in the defendant's favor, the defendant's condition regarding his promised grant of a portion of land was satisfied and the customary settlement and the defendant's promise were therefore enforceable. Robert v. Semuda, 11 FSM R. 165, 168 (Kos. S. Ct. Tr. 2002).

Although conditions to contractual obligations are not favored in the law because they tend to have the effect of creating forfeitures, parties may create a condition to a contract through plain and unambiguous language, through necessary implication manifested by the contract itself, or in some other way that makes their intent to create a condition clear. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 555 (Chk. 2005).

Forfeitures are abhorrent to the law, and are construed strictly. Because the law abhors a forfeiture, the language effecting defeasance in a deed must clearly spell that fact out. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

When the land purchase agreement's forfeiture clause clearly states that title was to be returned to the seller if she was not paid in full by November 30, 2002, but that clause does not state that both the title and possession of the land were to be returned to the original land owner in the event of non-payment, the court cannot order the state to give possession of the lot to the original land owner, because contracts involving a forfeiture cannot be extended beyond the strict and literal meaning of the words used. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

A land seller cannot claim a forfeiture and at the same time receive the purchase money. Accordingly, there can be no doubt that a vendor by receiving money when past due is precluded from availing himself of any right of forfeiture which has arisen because of the failure to pay on time. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

If the land vendor receives a partial payment of an amount past due, he is precluded from immediately asserting a forfeiture of the contract for default in payment, and a land seller, who long after all purchase payments have become due accepts a payment, that seller has waived his right to declare a forfeiture as of the time of payment. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

When the plaintiff is not entitled to the state's forfeiture of the lot, she is entitled to damages. Her damages for the state's breach of the land purchase agreement are the unpaid balance of the purchase price, and if this is not paid within a reasonable time, her right to claim forfeiture of title, which was suspended by her acceptance of a late partial payment, may be revived. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

Contractual terms that provide that payment is due upon the occurrence of a stated event are generally not considered to be conditions indicating a forfeiture or a breach of contract but are merely a means of measuring time, and, if time is not of the essence of the contract, then the payment is due after a reasonable time, and what constitutes a reasonable time depends on the attendant circumstances in each case and is often based on factual determinations. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 587-88 (Pon. 2011).

Contractual terms that provide that payment is due upon the occurrence of a stated event are generally not considered to be conditions indicating a forfeiture or a material breach of contract but are merely a means of measuring time, and, if time is not of the essence of the contract, then the payment is due after a reasonable time, and what constitutes a reasonable time depends on the attendant circumstances in each case and is often based on factual determinations. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 10 (Pon. 2013).

When the parties to a proposed contract have agreed that the contract is not to be effective or binding until certain conditions are performed or occur, no binding contract will arise until the conditions specified have occurred or been performed. Pacific Int'l, Inc. v. FSM, 20 FSM R. 220, 224 (Pon. 2015).

– Consideration

No obligation may arise from an agreement that lacks consideration, since consideration is required for a valid contract to exist. Therefore, the termination of a contract that lacks consideration does not violate the prohibition against impairment of the obligations of contracts. Truk Shipping Co. v. Chuuk, 7 FSM R. 337, 341 (Chk. S. Ct. Tr. 1995).

The contract law pre-existing duty rule is that a promise to perform an act which is already required supplies no consideration for the return promise or performance. On that basis, a contract may fail for lack of consideration. But a contract provision cannot be examined in isolation to determine the sufficiency of consideration as a whole. Therefore the rule does not apply where there is sufficient other consideration flowing between the parties to support an agreement and all of its provisions. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 175 (Pon. 1997).

When there was nothing of value exchanged for a promise to allow a parcel of land to be used to build a house, there was no consideration for the promise. Since consideration for a promise is required for a promise to be enforceable as a contract, when there was no consideration given in exchange for the promise, the parties did not have an enforceable contract. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 194 (Kos. S. Ct. Tr. 2001).

Under the doctrine of promissory estoppel, a person's reliance upon a promise may create rights and duties. The finding of detrimental reliance does not depend upon finding any agreement or consideration. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 195 (Kos. S. Ct. Tr. 2001).

A pre-existing debt establishes sufficient consideration to support the formation of a contract. Goyo Corp. v. Christian, 12 FSM R. 140, 146 (Pon. 2003).

Courts do not generally inquire into the sufficiency of consideration offered pursuant to a promissory note – parties to an agreement are free to attach value to whatever is exchanged. Goyo Corp. v. Christian, 12 FSM R. 140, 148 (Pon. 2003).

When the plaintiff had a legal right to initiate a lawsuit against a corporate defendant for its unpaid debts at the time that the promissory note was executed in 1994, but instead of initiating a lawsuit, it agreed to certain terms of payment, and required individuals to personally guarantee that payment would be made, each of the parties gained something in the execution of the promissory note and security agreement. There was thus consideration exchanged by the parties when they entered into these agreements. Goyo Corp. v. Christian, 12 FSM R. 140, 149 (Pon. 2003).

Like other contracts, contracts of guaranty must be supported by consideration, and a guaranty will not be enforced unless the promise is supported by consideration. However, if the promise of the guarantor is shown to have been given as part of a transaction or arrangement which created the guaranteed debt or obligation, the promise is supported by the same consideration which supports the principal transaction.

FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

When a guaranty was given as a part of the same transaction by which the debt to the bank was created, no independent consideration was necessary. The guaranty was supported by the same consideration that supported the transaction between the debtor and the bank. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

To be enforceable, a guaranty, like other contracts, must be supported by consideration. However, if a guaranty is made as part of a transaction or arrangement which created the guaranteed debt or obligation, it is not essential to a recovery on the promise of guaranty that the promise shall have been supported by a consideration other than that of the principal debt. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 397 (App. 2006).

Courts generally do not inquire into the sufficiency of consideration. Mori v. Hasiguchi, 19 FSM R. 16, 22 n.4 (Chk. 2013).

Good and valuable consideration is an element in proving that a buyer was a bona fide purchaser for value. Good and valuable consideration is not the equivalent of fair market value; nor is it the equivalent of book value. Good and valuable consideration is often much lower than either of these values. Mori v. Hasiguchi, 19 FSM R. 222, 226 (Chk. 2013).

If a guaranty is made as part of a transaction or arrangement which created the guaranteed debt or obligation, it is not essential to a recovery on the promise of guaranty that the promise was supported by a consideration other than that of the principal debt. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

When security, such as a guaranty, is given as part of the same transaction that created the debt to the bank, no further or independent consideration is needed. The loan itself is sufficient consideration. This principle holds true when a mortgage is the security given for a loan to a third party. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

The consideration for a mortgage may consist of a loan to a third person. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

It is not essential to a mortgage's validity that the mortgagor should have received the consideration. It is sufficient that the mortgagee parted with consideration. The consideration need not go directly from the mortgagee to the mortgagor. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

– Damages

When a car rental agreement provides that the lessee shall pay to the lessor all costs and expenses incurred as a result of loss or damage to the rented vehicle regardless of fault, then the lessor has a duty to accept the damaged vehicle and simply charge the repair costs to the lessee. Phillip v. Aldis, 3 FSM R. 33, 36 (Pon. S. Ct. Tr. 1987).

The measure of damages is the difference between the agreed price buyer was to have paid and the general market price at which seller could sell to another buyer. Panuelo v. Pepsi Cola Bottling Co. of Guam, 5 FSM R. 123, 128 (Pon. 1991).

The equitable remedy of specific performance is one where the court orders a breaching party to do that which he has agreed to do, thereby rendering the non-breaching party the exact benefit which he expected. The remedy is available when money damages are inadequate compensation for the plaintiff – when damages cannot be computed or when a substitute cannot be purchased. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 126 (Pon. 1993).

Where a plaintiff makes damage claims in tort as well damage claims based on contract, contract clauses limiting the contract damages do not apply. McGillivray v. Bank of the FSM (I), 6 FSM R. 404, 409 (Pon. 1994).

The trial court has wide discretion in determining the amount of damages in a contract case. In a breach of contract case the non-breaching party is entitled to damages that will put the party in the position he or she would have been in if not for the breach. The plaintiff may be compensated for the injuries flowing from the breach either by awarding compensation for lost profits, or by awarding compensation for the expenditures made in reliance on the contract. Kihara Real Estate, Inc. v. Estate of Nanpei (III), 6 FSM R. 502, 505 (Pon. 1994).

The plaintiff has the burden of proving the damages, but once a prima facie showing of damages has been made it is the defendant's burden to prove that the injuries did not result from his omission. Kihara Real Estate, Inc. v. Estate of Nanpei (III), 6 FSM R. 502, 505 (Pon. 1994).

The right to recover expenditures made in reliance on the contract has limitations. If the plaintiff would have suffered the same losses even if the defendant had performed under the contract, then the plaintiff cannot recover them, since recovery would put the plaintiff in a better position than he would have been in had the defendant performed. Kihara Real Estate, Inc. v. Estate of Nanpei (III), 6 FSM R. 502, 505 (Pon. 1994).

In order to be recoverable, contract damages must be a proximate consequence of the defendant's breach. A proximate consequence is one that flows from the act complained of, unbroken by any independent cause. Thus, where the loss would have occurred even if the defendant had not breached the contract reliance damages are not recoverable. Kihara Real Estate, Inc. v. Estate of Nanpei (III), 6 FSM R. 502, 506 (Pon. 1994).

The measure of damages for the breach of an agreement to procure insurance is the amount of loss that would have been subject to indemnification by the insurer had the insurance been properly obtained. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 250 (Chk. 1995).

If a plaintiff cannot be compensated for the value it expected from a breached contract, it might then be compensated for its reliance expenditures and placed in as good a position as it would have been if it had not entered into the contract. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 623 (App. 1996).

Generally, interest is usually included as an element of damages as a matter of right when a debtor knows precisely what he is to pay and when he is to pay it. The complaining party has been deprived of funds to which he was entitled by virtue of the contract, the defaulting party knew the exact amount and terms of the debt, and the goal of compensation requires that the complainant be compensated for the loss of use of those funds. This compensation is made in the form of interest. In the absence of statute, an award of prejudgment interest is in the discretion of the court. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM R. 388, 392-93 (Kos. 1998).

Pre-judgment interest at the statutory, judgment rate of 9% is appropriate when the defendant wrote the insufficient funds checks to plaintiff because the defendant knew precisely the amount to which he was obligating himself, and the effective date of that commitment. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM R. 388, 393 (Kos. 1998).

The trial court has wide discretion in determining the amount of damages in a contract case. O'Byrne v. George, 9 FSM R. 62, 65 (Kos. S. Ct. Tr. 1999).

When the plaintiff has paid the defendant in full the entire sum due for construction materials and when because of the defendant's breach the plaintiff has hired a second contractor to finish her house and was

required to buy certain materials necessary to complete her house, the plaintiff has suffered damages in the amount of the materials purchased by the second contractor. O'Byrne v. George, 9 FSM R. 62, 65 (Kos. S. Ct. Tr. 1999).

A defendant who has completed substantial performance in constructing the plaintiff's house is entitled to payment for the second of three installments for labor and the plaintiff's failure to pay is a breach of her promise to pay the defendant the agreed amount for labor costs. O'Byrne v. George, 9 FSM R. 62, 65 (Kos. S. Ct. Tr. 1999).

When the defendant has breached its contract with the plaintiff, the plaintiff, who has completed the contract, is entitled to recover the difference between the contract amount and the amount the defendant has already paid. Malem v. Kosrae, 9 FSM R. 233, 236 (Kos. S. Ct. Tr. 1999).

Prejudgment interest is also recoverable in cases where the plaintiff is entitled to recover a liquidated sum of money. Malem v. Kosrae, 9 FSM R. 233, 236 (Kos. S. Ct. Tr. 1999).

When the amount awarded for prejudgment interest is more than the amount designated as usurious, it is excessive and must be reduced. Malem v. Kosrae, 9 FSM R. 233, 237 (Kos. S. Ct. Tr. 1999).

When there is no statutory rate for prejudgment interest and when there is no contract provision or limitation for the award of prejudgment interest, the court may use its discretion to determine the prejudgment interest rate and may accept as reasonable the statutory 9% post-judgment interest rate. Malem v. Kosrae, 9 FSM R. 233, 237 (Kos. S. Ct. Tr. 1999).

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

The trial court has wide discretion in determining the amount of damages in contract and quasi-contract cases involving equitable doctrines, such as promissory estoppel and restitution. The plaintiff may be compensated for the injuries by awarding compensation for the expenditures made in reliance on the promise. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 196 (Kos. S. Ct. Tr. 2001).

Claimed expenditures for food and beverages will not be awarded when the purchase and consumption of these items was not dependent upon the defendant's promise, and labor costs will not be allowed as damages when there was no evidence presented at trial that the plaintiff paid any person a specific sum for labor. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 196 (Kos. S. Ct. Tr. 2001).

Generally, pre-judgment interest is only included as an element of damages as a matter of right when a debtor knows precisely what he is to pay and when he is to pay it. This occurs when a party has been deprived of funds to which he was entitled by virtue of the contract, and the defaulting party knew the exact amount and terms of the debt. In those types of cases, the goal of compensation requires that the complaining party be compensated for the loss of use of those funds. This compensation is made in the form of interest. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 196 (Kos. S. Ct. Tr. 2001).

The court has wide discretion in the determination of the damages in a contract case. Edwin v. True Value Store, 10 FSM R. 481, 485 (Kos. S. Ct. Tr. 2001).

When the court finds the remedies provided by the UCC, Article 2, for sales of goods to be persuasive, and appropriate to provide substantial justice in a case, the court may adopt and apply its remedy principles to that case. Edwin v. True Value Store, 10 FSM R. 481, 485 (Kos. S. Ct. Tr. 2001).

A buyer has the right to revoke his acceptance of a unit where the unit is non-conforming and the unit's value is substantially impaired. The revocation must occur within a reasonable time. Revocation of acceptance by the buyer requires the buyer to return the non-conforming goods to the seller, and

substantial justice requires that the goods be returned in the same substantial condition as when accepted by the buyer. Edwin v. True Value Store, 10 FSM R. 481, 485 (Kos. S. Ct. Tr. 2001).

The buyer's measure of damages for breach in regard to accepted goods is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted. Edwin v. True Value Store, 10 FSM R. 481, 485 (Kos. S. Ct. Tr. 2001).

When a car rental agreement provides that the lessee shall pay to the lessor all costs and expenses incurred as a result of loss or damage to the rental vehicle, then the lessor has a duty to accept the damaged vehicle and simply charge the repair costs to the lessee. Jackson v. George, 10 FSM R. 523, 525 (Kos. S. Ct. Tr. 2002).

When the police accident report and testimony at the trial shows that the left front fender was not damaged in the accident, repair costs for the left front fender cannot be charged to the defendant. Jackson v. George, 10 FSM R. 523, 525 (Kos. S. Ct. Tr. 2002).

Generally, lost profits may be recovered in breach of contract cases, provided that certain evidentiary requirements are satisfied. Jackson v. George, 10 FSM R. 523, 526 (Kos. S. Ct. Tr. 2002).

The terms "lost profits" and "revenues" are not interchangeable as they have entirely different meanings. "Revenues" are the gross receipts of the business. The term "profits" means the gross proceeds of a business transaction less the costs of the transaction. In other words, profits equal the revenues minus the costs. Jackson v. George, 10 FSM R. 523, 526 (Kos. S. Ct. Tr. 2002).

Lost profits may be presumed to a natural result of a breach of contract, but a plaintiff's claim for lost profits must be clearly established. First, the plaintiff must show that there would have been a profit. The plaintiff must also prove costs of the business because it is impossible to prove profits without first proving costs. Jackson v. George, 10 FSM R. 523, 526 (Kos. S. Ct. Tr. 2002).

If the plaintiff fails to produce satisfactory evidence of costs, then the plaintiff's claim to lost profits must fail, because the trier of fact has no basis to compute profits. Jackson v. George, 10 FSM R. 523, 526 (Kos. S. Ct. Tr. 2002).

When the plaintiff breached a construction contract by not paying the defendant for the change order amount of $1,369 and when the defendant breached the contract by not paying a third party $1,000 for the design plan as agreed, the plaintiff is liable to the defendant for $1,369 for the change order and the defendant is liable to plaintiff for $1,000 for the design fee. In the final calculation, the plaintiff is liable to the defendant for $369 and the plaintiff is also liable to pay the third party directly for the $1,000 design fee. Mongkeya v. RV Constr., 11 FSM R. 234, 235-36 (Kos. S. Ct. Tr. 2002).

When a terminated employee was contractually entitled to sixty days notice of termination and he would have received $3,575 in gross salary during that period and when this sum must be reduced by the $2,000 the employee diverted, the employee is entitled to $1,575 damages from his employer arising from its breach of his employment contract. Hauk v. Board of Dirs., 11 FSM R. 236, 242 (Chk. S. Ct. Tr. 2002).

Generally, damages for breach by either party to a contract may be liquidated in the agreement, but only in an amount that is reasonable in light of the anticipated or actual loss caused by the breach and of the difficulties of proof of loss. A term fixing unreasonably large liquidated damages may be unenforceable on grounds of public policy as a penalty. Island Homes Constr. Corp. v. Falcam, 11 FSM R. 414, 416 (Pon. 2003).

When in discovery responses the amount of the plaintiffs' damages was stated as slightly more than the amount actually proven at trial, the invoices offered and received into evidence at trial establish by a preponderance of the evidence the amount of plaintiffs' damages. Adams v. Island Homes Constr., Inc.,

12 FSM R. 234, 241-42 (Pon. 2003).

An assignment agreement that sets forth the full amount of the open accounts due, does not preclude further liability for any goods and services purchased after the date of the assignment agreement. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 242 (Pon. 2003).

The court's pretrial order did not prevent the bank from adequately defending on the question of damages when all witnesses specified in the bank's pretrial statement whose testimony summaries indicated that they had testimony to offer relevant to the question of damages were permitted to testify. Further, when the bank did not object before trial to the court's limitation of its damages witnesses, it waived any objection in this regard. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 242 (Pon. 2003).

Since the only prejudgment interest recognized so far in breach of contract cases is where the contract itself specifically provides for such a remedy, the part of a foreign judgment containing such prejudgment interest may thus be unenforceable in the FSM as against public policy. Northern Marianas Housing Corp. v. Finik, 12 FSM R. 441, 447 (Chk. 2004).

Since a plaintiff is entitled to recover the difference between the contract amount and the amount that the defendant has already paid, the plaintiff is entitled to recover the $100 per month difference between the contract monthly rental amount of $250 and the monthly $150 payment made and the plaintiff is also entitled to recover the amount necessary to complete the repairs to the ceiling and the floor that the defendant had agreed to do. Lonno v. Talley, 12 FSM R. 484, 486 (Kos. S. Ct. Tr. 2004).

The trial court has wide discretion in determining the amount of damages in a contract case. In a breach of contract case, the non-breaching party is entitled to damages that will put the party in the position he would have been in if not for the breach. George v. Alik, 13 FSM R. 12, 15 (Kos. S. Ct. Tr. 2004).

When the defendant's obligation under the contract was to pay the plaintiff the amount of $2,400 in return for the damaged vehicle and the damages were mitigated by the plaintiff's sale of the vehicle for $800, the damages are reduced by $800 to $1,600, and judgment will be entered in the plaintiff's favor and against the defendant in the amount of $1,600. George v. Alik, 13 FSM R. 12, 15 (Kos. S. Ct. Tr. 2004).

When there is no authorization for compound interest in the settlement agreement and when it is apparent that the parties, in settling their prior lawsuit, intended to apply the legal or judgment rate of interest to any unpaid settlement balances, the plaintiff's damages must therefore be calculated on a simple interest basis. Lee v. Lee, 13 FSM R. 68, 71 (Chk. 2004).

When there has been a breach of a purchase agreement entitling the plaintiffs to damages, the plaintiffs are entitled to what they expected to receive if the purchase agreement had not been breached. Edgar v. Truk Trading Corp., 13 FSM R. 112, 118 (Chk. 2005).

In a breach of contract case, the non-breaching party is entitled to damages that will put the party in the position he would have been in if not for the breach. Once a party's entitlement to damages is established, the amount of damages is an issue of fact for the finder of fact. Isaac v. Palik, 13 FSM R. 396, 402 (Kos. S. Ct. Tr. 2005).

When the contract provision for repatriation costs is not an entitlement to be paid the amount it would cost to return to the point of hire, but an obligation for the employer to pay the actual repatriation costs to the point of hire or to some other chosen less costlier place, the plaintiff will be awarded as damages the cost of shipping his household goods to Saipan, and the travel costs for him and his family from Chuuk to Saipan instead of what it would have cost to send them to Florida. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 555 (Chk. 2005).

The court may take judicial notice that the airport departure fee from Chuuk is $15 per person and that

this is included in the contractual repatriation travel costs. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 555 (Chk. 2005).

On an award for unpaid salary, the defendant employer shall deduct the applicable wage and salary taxes before remitting the balance of this sum to the plaintiff employee and pay those deductions to the proper authorities. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 556 (Chk. 2005).

When the plaintiff is not entitled to the state's forfeiture of the lot, she is entitled to damages. Her damages for the state's breach of the land purchase agreement are the unpaid balance of the purchase price, and if this is not paid within a reasonable time, her right to claim forfeiture of title, which was suspended by her acceptance of a late partial payment, may be revived. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

Fifteen percent is the usual maximum allowed for attorney's fees in a collection case under FSM Supreme Court caselaw. FSM Dev. Bank v. Adams, 14 FSM R. 234, 244 n.4 (App. 2006).

When the trial court awarded attorney's fees against a defendant based on 15% of the judgment against him and a co-defendant was jointly and severally liable for only part of that judgment, if the co-defendant were liable for attorney's fees, its liability would be limited to 15% of the part of the judgment it was liable for. FSM Dev. Bank v. Adams, 14 FSM R. 234, 256 n.8 (App. 2006).

Attorney's fees are awarded to the prevailing party only if authorized by contract or by statute. FSM Dev. Bank v. Adams, 14 FSM R. 234, 256 (App. 2006).

When the personnel manual provides for an employee's involuntary dismissal two weeks after the director has recommended it, and when the employee was not afforded the two weeks of pay that he should have received had the procedure been followed, in this regard, the contract has been breached and the plaintiff is due his expectation damages under the contract, the amount he would have been paid for those two weeks. Reg v. Falan, 14 FSM R. 426, 435 (Yap 2006).

The court has the discretion to award pre-judgment interest, but it is not a matter of right unless the debtor knows precisely what he is to pay and when payment is due. The purpose of awarding interest is to compensate the complaining party for losing use of the funds. George v. George, 15 FSM R. 270, 275 (Kos. S. Ct. Tr. 2007).

When the parties have a written agreement stating that interest would be added to the unpaid balance, an award of pre-judgment interest has been upheld. George v. George, 15 FSM R. 270, 275 (Kos. S. Ct. Tr. 2007).

When the parties have a written agreement stating that interest would be added to the unpaid balance, an award of pre-judgment interest will be upheld. George v. Albert, 15 FSM R. 323, 328 (Kos. S. Ct. Tr. 2007).

When the defendant agreed to make regular payments but there was no written agreement to pay interest on the defendant's open account; when the ledger page showing payments contains a 25-cent charge at the time of each payment but this does not correspond to an interest calculation; and when there is no evidence to show interest was discussed or agreed to by the defendant, the plaintiff is not entitled to pre-judgment interest. George v. Albert, 15 FSM R. 323, 328 (Kos. S. Ct. Tr. 2007).

Damages for an insurer's claim for breach of fiduciary duty are the same as those for its contract claim, since the breach of fiduciary duty claim is also based on the breach of the agency contracts that the insurer had with its agents. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 446 (Pon. 2009).

In a contract case, the trial court has a wide discretion in determining the amount of damages since the

non-breaching party is entitled to damages that will put the party in the position he would have been if not for the breach. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646 (Kos. S. Ct. Tr. 2009).

When an attorney failed to perform his duties as the plaintiffs' appellate lawyer, he breached the contract because he did not complete what he stated he would do which was to provide legal representation, the "handling of an appeal," since he never filed a brief and because of this, the FSM appeal case was dismissed. The attorney thus breached his contract. The services promised were not performed and because no brief was filed, the attorney cannot bill the plaintiffs for hours he worked on the brief as there was no brief filed or evidence of work. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646 (Kos. S. Ct. Tr. 2009).

When an attorney cannot provide any proof of his hours of work, he cannot prove his fees and his client should not have been charged for these and since the court cannot find evidence to prove the attorney's breach of contract counterclaim based on a preponderance of the evidence, his counterclaim for attorney's fees will be dismissed. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646 (Kos. S. Ct. Tr. 2009).

When the plaintiffs had a contract with the defendant attorney and their appeal case was dismissed without the plaintiffs getting their day on court due to the attorney's failure to file required materials with the appellate court, the plaintiffs are entitled to a refund of the $500 retainer that they paid the attorney in the case and to the $10 filing fee because $510 is the amount to put the non-breaching party, the plaintiffs, in a position they would have been in but for the attorney's breach. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646-47 (Kos. S. Ct. Tr. 2009).

While it may be true that funds which are not timely obligated are returned to the General Fund, when Ruo municipality paid the funds before they lapsed but did not receive the goods owed for that obligation, the damage is to the municipality, not the state, and the damages to the municipality can be paid into the municipality's separate account. Ruo Municipality v. Shigeto's Store, 17 FSM R. 195, 197 (Chk. S. Ct. Tr. 2010).

Even if a contract breach causes no loss or if the amount of loss is not proved with sufficient certainty, the injured party can recover as nominal damages a small sum, commonly six cents or a dollar, fixed without regard to the amount of loss. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 573 (Pon. 2011).

The function of a liquidated damages provision is for the parties to agree in advance to a damages amount that will be assessed in the event of a certain contract breach where, for both parties, it may ease the calculation of risks and reduce the cost of proof; where it might be the only compensation possible to the injured party for a loss that cannot be proven with sufficient certainty; and where it would save litigation time and expense. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 573 n.5 (Pon. 2011).

The economic waste principle of contract law states that although a party has the right to insist on performance in strict compliance with the contract's specifications and can require a contractor to correct non-conforming work, the party should not be permitted to direct the replacement of work in situations where the cost of correction is economically wasteful and the work is otherwise adequate for its intended purpose. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 576 n.7 (Pon. 2011).

When GMP used the wrong coordinate system for the Chuuk road survey work, it was a breach of the contract and when there was expert testimony that the survey could have been corrected by converting it to the proper coordinate system with the right computer software and some fieldwork, the court cannot presume that this would have been successful or that it could have been accomplished at no direct cost to the FSM, and GMP will thus be denied summary judgment on this claim and the FSM granted summary judgment that the contract was breached but not for its claim because whether the breach was material is a factual dispute – whether the measure of damages should be the cost of the new survey or what the cost would have been to convert the GMP survey to the Truk-Neoch Coordinate System or whether any damages, other than nominal, are due at all. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 577-78 (Pon.

2011).

An injured party may be compensated for the injuries flowing from a contract breach either by awarding compensation for lost profits (expectancy damages), or by awarding compensation for the expenditures made in reliance on the contract (reliance damages). That is, if an injured party cannot be compensated for the value it had expected to receive from a breached contract, it might then be compensated for its reliance expenditures and placed in as good a position as it would have been if it had not entered into the contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 592 (Pon. 2011).

Damages are contractual in nature when they arose either from the various lease agreements between the plaintiff and the state or from the settlement agreement between them even though the settlement agreement included a claim for a state court partial (and thus probably not final and enforceable) judgment for some of the unpaid periods of the leases because this court used the parties' memorandum of understanding for its determination of damages. Thus the damages judgment in this case was not based on a state court "judgment" but on the parties' contractual stipulation about the amount the state owed the plaintiff as of March 9, 2006. Stephen v. Chuuk, 18 FSM R. 22, 25 & n.1 (Chk. 2011).

When the contract term that prorates compensation based on proportions of time applies to the plaintiff's breach of contract claim and absent complete figures for individual hours worked on each phase of the revenue subject to apportionment and absent an independent basis for determining the relative values of the actual hours worked by both the plaintiff and another, a comparison of the amount of rework the other had to perform is an equitable basis upon which to determine the appropriate proportions of hours the plaintiff and the other worked and therefore the amount due the plaintiff. Smith v. Nimea, 18 FSM R. 36, 43-44 (Pon. 2011).

When the plaintiffs did not present any evidence at trial of damages sustained as a result of the defendants' breach, the court will not award monetary damages against the defendants. Harden v. Inek, 19 FSM R. 244, 252 (Pon. 2014).

When, in general, the witnesses' emotional attachment to the lot is irrelevant to the plaintiff's actual damages from the Board's violation of its civil right to due process, and when, without knowing what the witnesses' testimony will be, it is unknown whether testimony about the lot's necessary background history will unavoidably include some mention of emotional attachment, the court cannot make a blanket ruling barring all mention of a witness's emotional attachment to the lot. During trial, the defendant may object to any irrelevant questions and move to strike any irrelevant matter in a witness's answer to a relevant question. That should be sufficient protection. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 377-78 (Pon. 2014).

A plaintiff has the burden to persuade the court, with competent evidence, as to the amount of his damages. Parties have the responsibility to put forward the evidence to support their case. This is not the court's responsibility. George v. Palsis, 20 FSM R. 111, 117 (Kos. 2015).

A plaintiff must introduce his evidence during his case-in-chief so the defendants will have an opportunity to address it, or to stipulate to it, or to challenge it and to cross-examine witnesses about it, and where, if the defendants feel the need, they can introduce evidence to counter it when it their turn comes. George v. Palsis, 20 FSM R. 111, 117 (Kos. 2015).

A court cannot award damages when there was no evidence at trial that would make those amounts sufficiently certain for a court to award those damages and when the plaintiff's post-trial affidavit outlining damages cannot be considered evidence properly introduced at trial or properly before the court. Helgenberger v. Chung, 21 FSM R. 404, 406 (Pon. 2017).

A trial court has wide discretion in determining damages in contract and quasi-contract cases involving equitable doctrines. The goal is to try to put the injured party in as good a position as he would have been

were it not for the breach of contract. Helgenberger v. Chung, 21 FSM R. 404, 407 (Pon. 2017).

Actual damages are intended to redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 534 (App. 2018).

A monetary award is envisioned to compensate for actual losses which can be readily proved and the commensurate amount is to be based on the proven harm, loss or injury suffered by the plaintiff. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 534-35 (App. 2018).

When a money award for actual damages should suffice and the amount is capable of being ascertained, specific performance is, by implication, an unsuitable remedy. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 536 (App. 2018).

A bank expects to be paid the amount the bank would be owed (and paid) if all installment payments were made precisely on time and in full. The bank, of course, expects to be paid more (and the note provides for it) if any of the installment payments were late or short. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 606 (Pon. 2020).

– Damages – Consequential

Consequential damages can only be awarded if the loss was such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract as the probable result of the breach of it. FSM Dev. Bank v. Adams, 14 FSM R. 234, 256 (App. 2006).

When a contract provides that in no event shall one party be liable for prospective profits or special, indirect, or consequential damages of the other and that that provision will survive any contract termination however arising, the parties have agreed that, regardless of the cause, one party would never be liable to the other for any claim for lost profits or other consequential damages. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 365-66 (Yap 2009).

Consequential damages can only be awarded if the loss was such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of the breach of it. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 377 (Pon. 2014).

In the absence of a contractual or statutory right of renewal, consequential damages for the failure to renew cannot have been in the contemplation of both parties. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 377 (Pon. 2014).

It cannot be said that consequential damages were contemplated for the termination of a lease five months early when the leased land had remained undeveloped for a long while and when it is difficult to see what development could have taken place in those five months that would have earned the plaintiff a profit during those five months, that is, whether there would be any consequential damages because the plaintiff was deprived of the use of an undeveloped lot for the last five months of its lease. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 377 (Pon. 2014).

Consequential damages are losses that do not flow directly and immediately from an injurious act but that result indirectly from the act. Helgenberger v. Chung, 21 FSM R. 404, 406 n.1 (Pon. 2017).

Consequential damages can only be awarded if the loss was such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it. Helgenberger v. Chung, 21 FSM R. 404, 407 (Pon. 2017).

When there is no evidence that both sides contemplated that if the defendants did not repair the plaintiff's vehicle, the defendants would then be liable for all the plaintiff's transportation expenses, the

plaintiff cannot be awarded those consequential damages. Helgenberger v. Chung, 21 FSM R. 404, 407 (Pon. 2017).

– Damages – Mitigation of

A court will not compensate an injured party for a loss that he could have avoided by making efforts appropriate, in the eyes of the court, to the circumstances. Panuelo v. Pepsi Cola Bottling Co. of Guam, 5 FSM R. 123, 129 (Pon. 1991).

In a breach of contract case, the injured party is expected to take appropriate actions to mitigate, or lessen, his damages. George v. Alik, 13 FSM R. 12, 15 (Kos. S. Ct. Tr. 2004).

When the defendant failed to buy, as agreed, for the plaintiff's damaged car, the plaintiff was expected to, and did, mitigate his damages by selling the car to someone else. The car's sale price was its fair market value at the time of the sale and the value of the plaintiff's mitigation. George v. Alik, 13 FSM R. 12, 15 (Kos. S. Ct. Tr. 2004).

In a breach of contract case, the injured party is expected to take appropriate actions to mitigate, or lessen, his damages. A court will not compensate an injured party for a loss that he could have avoided by making efforts appropriate, in the eyes of the court, to the circumstances. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 556 (Chk. 2005).

A court will not compensate an injured party for a loss that he could have avoided by making efforts appropriate, in the eyes of the court, to the circumstances. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 365 (Yap 2009).

When a buyer converted the remaining gasoline and diesel to his own personal use, he, in effect, sold himself the gasoline and diesel and thus mitigated his damages. When more stored kerosene remains available for the buyer to sell or convert to his own personal use, the seller is entitled to summary judgment that it will not be liable for the fuel the buyer converted to his own personal use or for the fuel he still retains since that would be a double recovery. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 365 (Yap 2009).

That a plaintiff has a duty to mitigate his damages is clear. He must take reasonable steps to minimize those damages. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 445 (Pon. 2009).

One sound reason for the mitigation principle is that it makes commercial sense to discourage a plaintiff from sitting back and letting damages get larger instead of stemming further losses. But an innocent party cannot be expected to take steps to mitigate damages before it was aware of the breach. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 361 (App. 2012).

Any inaction before the date the plaintiff became aware of the breach cannot be a failure to mitigate damages because the plaintiff did not know it had any to mitigate. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 361 (App. 2012).

Choosing to remain idle in Pohnpei for nearly three years while forgoing suitable work in the Philippines, is manifestly unreasonable under the circumstances. A court will not compensate an injured party for a loss that he could have avoided by making efforts appropriate in the eyes of the court to the circumstances. The rationale behind this rule is to encourage the injured party to make reasonable efforts to avoid loss. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 275-76 (Pon. 2014).

Even when the plaintiffs failed to make reasonable efforts to secure alternative employment, the burden of proof falls on the former employer to show that the former employees could have found alternative employment in their chosen field. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 276 (Pon. 2014).

When the former employer has demonstrated that suitable alternative employment was available and that the former employees failed to make reasonable efforts to secure alternative employment, the court must conclude that plaintiffs could not recover for breach of contract due to their failure to mitigate damages. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 276 (Pon. 2014).

Since the defendants pled the plaintiff's failure to mitigate damages as an affirmative defense, if the plaintiff had put on evidence of his damages, the burden would have shifted to the defendants to prove that the plaintiff failed to mitigate his damages or to prove to what extent he did mitigate his damages. But since the plaintiff put on no evidence about the amount of his damages, the burden of proof about damages never shifted to the defendants. George v. Palsis, 20 FSM R. 111, 116 (Kos. 2015).

– Damages – Punitive

Punitive damages are not a contract remedy, since only compensatory damages are allowed for breach. Amayo v. MJ Co., 10 FSM R. 244, 249 (Pon. 2001).

Generally, punitive damages are not a contract remedy, because only compensatory damages are usually allowed for breach of contract. Kelly v. Lee, 11 FSM R. 116, 117 (Chk. 2002).

Punitive damages will be denied when the plaintiffs' complaint makes no allegations that the defendants' actions were willful, wanton, or malicious or alleges facts that could constitute willfulness, wantonness, or malice, and when the cause of action is contract. Punitive damages are not a contract remedy since only compensatory damages are allowed for breach. Zion v. Nakayama, 13 FSM R. 310, 313 (Chk. 2005).

A plaintiff may not as a matter of law recover punitive damages from the State of Chuuk. This principle has been modified somewhat by the enactment section 6 of the Chuuk State Sovereign Immunity Act of 2000, but that Act did not become law until January 25, 2001, and it does not apply to damage claims before that time. Zion v. Nakayama, 13 FSM R. 310, 314 (Chk. 2005).

Generally, punitive damages are not a contract remedy, because only compensatory damages are usually allowed for breach of contract. Isaac v. Palik, 13 FSM R. 396, 401 (Kos. S. Ct. Tr. 2005).

Generally, punitive damages are not a contract remedy, because only compensatory damages are allowed for breach of contract. Nor can punitive damages be awarded under non-contract (i.e., tort) causes of action unless the defendant's actions were alleged and proven to be willful, wanton, and malicious or with deliberate violence. Hartman v. Krum, 14 FSM R. 526, 532 (Chk. 2007).

Punitive damages are derivative, in the sense that they derive from and depend on a separate and independent cause of action. They may be awarded when the acts complained of are wanton, reckless, malicious, and oppressive, but punitive damages are not awardable for breach of contract, since only compensatory damages are allowed in contract cases. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 441 (Pon. 2009).

– Definite Terms

Where no contract existed for lack of definite terms, the court may use its inherent equity power to fashion a remedy under the doctrine of restitution. Jim v. Alik, 4 FSM R. 198, 200 (Kos. S. Ct. Tr. 1989).

In order for an agreement to be binding an agreement must be definite and certain as to its terms and requirements, and it must identify the subject matter and spell out the essential commitments and agreements with respect thereto. Etscheit v. Adams, 6 FSM R. 365, 388 (Pon. 1994).

The court will not enforce a written settlement agreement as a verbal contract against a defendant who

has not signed it when because of conflicting affidavits the court finds that the settlement terms were not sufficiently definite to constitute an enforceable contract and when there are questions as to whether the settlement was freely and fairly negotiated by the parties thereto. Bank of Hawaii v. Helgenberger, 9 FSM R. 260, 262 (Pon. 1999).

In order to be binding, an agreement must be definite and certain as to its terms and requirements; it must identify the subject matter and spell out the essential commitment and agreements with respect thereto. Phillip v. Marianas Ins. Co., 11 FSM R. 559, 562 (Pon. 2003).

Where no contract existed for lack of definite terms, the court may use its inherent equity power to fashion a remedy under the doctrine of restitution. Youngstrom v. Mongkeya, 11 FSM R. 550, 554 (Kos. S. Ct. Tr. 2003).

When the parties have failed to make an enforceable contract due to the lack of definite terms, the court may use its equity power to grant a remedy under the doctrine of restitution. Restitution is a remedy which returns the benefits already received to the party who gave those benefits. Livaie v. Weilbacher, 11 FSM R. 644, 648 (Kos. S. Ct. Tr. 2003).

Issues regarding the timing of performance will not necessarily interfere with the enforceability of a contract. George v. Alik, 13 FSM R. 12, 14 (Kos. S. Ct. Tr. 2004).

When an agreement does not specify when the payment was to be made by the defendant to the plaintiff, it suggests that the parties did not regard any specific point in time as essential. Accordingly, the court will adopt a "reasonable time" as the time for performance of the contract. George v. Alik, 13 FSM R. 12, 14-15 (Kos. S. Ct. Tr. 2004).

When no contract exists for lack of definite terms, the court may use its inherent equity power to fashion a remedy under the doctrine of restitution. Restitution is the proper remedy when no enforceable contract exists. It requires the benefitted party to return what was received or to pay the other party for it. Livaie v. Weilbacher, 13 FSM R. 139, 143 (App. 2005).

In order for an agreement to be binding, an agreement must be definite and certain as to its terms and requirements, and it must identify the subject matter and spell out each party's essential commitments. DJ Store v. Joe, 14 FSM R. 83, 85 (Kos. S. Ct. Tr. 2006).

When the parties' discussion did not reach an agreement on the cement mixer's sale price and the cement mixer's sale price is a required definite term of the contract, as it would spell out the defendant's essential commitment to pay the plaintiff a certain amount, the agreement is unenforceable and not binding because the parties did not agree to a sales price. DJ Store v. Joe, 14 FSM R. 83, 85 (Kos. S. Ct. Tr. 2006).

When no contract exists for lack of definite terms, the court may use its inherent equity power to fashion a remedy under the doctrine of restitution and where no contract exists for lack of an agreed sale price, restitution is applicable. The doctrine of unjust enrichment generally applies when there is an unenforceable contract. It is based on the idea that one person should not be permitted unjustly to enrich himself at the expense of another. DJ Store v. Joe, 14 FSM R. 83, 85 (Kos. S. Ct. Tr. 2006).

Whether contractual terms are sufficiently certain to support contract formation is a field of inquiry rounded in the common law of contracts. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 475 (Pon. 2014).

The terms of a contract are sufficiently certain if they provide a basis for determining the existence of a breach and for giving an appropriate remedy. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 476 (Pon. 2014).

Absent a negotiated time of performance, when the contract calls for a single performance such as the rendering of a service or the delivery of goods, the time for performance is a "reasonable time." Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 476 (Pon. 2014).

When the parties intend to conclude a contract for the sale of goods and the price is not settled, the price is a reasonable price at the time of delivery if nothing is said as to price. Similar principles apply to contracts for the rendition of service where, if the parties manifest an intent to be bound, the price is a reasonable price at the time for doing the work. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 476 (Pon. 2014).

Because the defendant contacted the plaintiff before starting each additional repair so that the plaintiff's agreement to pay for the work could be secured and the plaintiff then agreed to each additional repair, knowing and intending to compensate the defendant for the work and the defendant then proceeded to undertake reasonable efforts to perform the repair, there was a series of valid contracts since the parties' behavior manifested their intent to be bound by such a contract, and for each contract, the parties agreed to perform within a reasonable time, and the price was set as a reasonable price at the time for doing the work. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 476 (Pon. 2014).

For an agreement to be binding, it must spell out the essential commitments and agreements with respect thereto. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 (Pon. 2016).

An agreement may lack definite terms when there is no indication as to a schedule of payment that would detail the amount to be paid and a duration or timeline for which payments are to be made. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 (Pon. 2016).

When no valid contract exists between the parties because of a lack of definite terms, a party may recover for the benefit conferred upon another pursuant to other legal remedies under the law of contracts. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 (Pon. 2016).

When no contract exists for lack of definite terms, the court may use its equity power to fashion a remedy under the restitution doctrine. The unjust enrichment doctrine also applies when there is an unenforceable contract. It is based upon the idea that one person should not be permitted unjustly to enrich himself at the expense of another. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 (Pon. 2016).

– Executory

When the sale of a barge was conditional upon inspection and was canceled after the inspection occurred, the agreement, prior to cancellation, remained an executory contract. Kosrae v. Worswick, 10 FSM R. 288, 291 (Kos. 2001).

When it is contemplated that something be done to complete the sale, such as weighing, selecting, delivery, or some other act, the contract is "executory," and title does not pass until the specific goods are ascertained and appropriated in the mode agreed on. Kosrae v. Worswick, 10 FSM R. 288, 291 (Kos. 2001).

An assignment executed between a bank and a borrower that provides that, in the event of a default, the bank is the sole and exclusive party entitled to possession of the subject property/premises and to operate the subject business and to receive all income therefrom is a right to possession and operation that, although a security interest, is not a security interest that can be, or was, perfected under Title 33, chapter 10, because it involves real property – the factory building – and the incorporeal right to operate the business from that building. On its face, this is an executory contract for which there was an offer, acceptance, definite terms, and consideration. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 598 (Kos. 2013).

– Formation

A contract is a promise between two parties for the future performance of mutual obligations which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise (that which the performance is exchanged for). When one party fails to perform their promise, there is a breach of contract. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 123 (Pon. 1993).

A valid and enforceable contract was formed when the state offered to permit plaintiffs to dredge if they would repair the causeway, the plaintiffs accepted the offer by starting repairs, and the material dredged formed the consideration and the terms were sufficiently definite as to the time length of contract because it was limited by the expiration of the U.S. Army Corps of Engineers dredging permit. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 620-21 (App. 1996).

A contract is a promise between two parties for the future performance of mutual obligations, which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise (that which the performance is exchanged for). When one party fails to perform their promise, there is a breach of contract. O'Byrne v. George, 9 FSM R. 62, 64 (Kos. S. Ct. Tr. 1999).

A contract is a promise between two parties for the future performance of mutual obligations which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise (that which the performance is exchanged for). Tulensru v. Utwe, 9 FSM R. 95, 98 (Kos. S. Ct. Tr. 1999).

A contract is a promise between two parties for the future performance of mutual obligations which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise. Malem v. Kosrae, 9 FSM R. 233, 236 (Kos. S. Ct. Tr. 1999).

An enforceable contract requires an offer, an acceptance, definite terms, and consideration. Bank of Hawaii v. Helgenberger, 9 FSM R. 260, 262 (Pon. 1999).

A contract is a promise between two parties for the future performance of mutual obligations, which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise. For an agreement to be binding it must be definite and certain as to its terms and requirements, and it must identify the subject matter and spell out the essential commitments and agreements with respect thereto. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 194 (Kos. S. Ct. Tr. 2001).

An agreement to waive a contractual provision is itself a contract, and the same offer and acceptance are required. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 407 (Pon. 2001).

When the defendant never accepted the plaintiff's offer to waive arbitration, no binding agreement to waive arbitration was ever entered into by the parties. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 407 (Pon. 2001).

When the parties settled rather than go to trial on damages a contract was formed between the parties – the defendant offered specific performance to fill land and in exchange, the plaintiff accepted the offer and agreed to not go to trial on the issue of damages. There was thus an offer and acceptance, consideration, and mutual assent by both parties. James v. Lelu Town, 11 FSM R. 337, 339 (Kos. S. Ct. Tr. 2003).

A contract is a promise between two parties for the future performance of mutual obligations which the

law will enforce in some way. For a promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise. Youngstrom v. Mongkeya, 11 FSM R. 550, 554 (Kos. S. Ct. Tr. 2003).

When in the parties' verbal promises, a critical definite terms was missing: the cost for the landfilling equipment and landfill materials were unknown, the parties did not form an enforceable contract with respect to the obligation to pay for the landfilling equipment and the landfill materials. Youngstrom v. Mongkeya, 11 FSM R. 550, 554 (Kos. S. Ct. Tr. 2003).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable, there must be an offer, acceptance, consideration and definite terms. Livaie v. Weilbacher, 11 FSM R. 644, 647 (Kos. S. Ct. Tr. 2003).

When the parties did not agree upon the amount, location, scope, timing or deadline to complete the land filling and were aware of the missing elements as they agreed to meet again to work out the details, but the parties did not meet again to finalize the details, one of the four elements necessary for an enforceable contract, definite terms, remained missing from the parties' understanding. Livaie v. Weilbacher, 11 FSM R. 644, 647-48 (Kos. S. Ct. Tr. 2003).

A contract is a promise between two parties for the future performance of mutual obligations, which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise (that which the performance is exchanged for). When one party fails to perform their promise, there is a breach of contract. Goyo Corp. v. Christian, 12 FSM R. 140, 146 (Pon. 2003).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable, there must be an offer, acceptance, consideration and definite terms. George v. Alik, 13 FSM R. 12, 14 (Kos. S. Ct. Tr. 2004).

When the plaintiff had accepted the defendant's condition that the jeep could not be returned to its original condition and continued to request that defendant work on the jeep, the plaintiff had accepted the defendant's condition regarding workmanship on the jeep and the defendant's inability to return the jeep to its original condition and the plaintiff is thus not entitled to recover his claim for additional work completed later by another. Palik v. PKC Auto Repair Shop, 13 FSM R. 93, 96 (Kos. S. Ct. Tr. 2004).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable there must be an offer, acceptance, consideration, and definite terms. Livaie v. Weilbacher, 13 FSM R. 139, 143 (App. 2005).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable there must be an offer, acceptance, consideration, and definite terms. Livaie v. Weilbacher, 13 FSM R. 139, 143 (App. 2005).

When a review of the record confirms that the parties did not discuss and there was no agreement about the amount, location, scope, timing or deadline to complete the fill and that the agreement was never reduced to writing (although no Kosrae law would require that it be reduced to writing), the record supports the trial court's finding that the parties failed to agree on definite terms and that therefore no contract was formed. Livaie v. Weilbacher, 13 FSM R. 139, 143 & n.1 (App. 2005).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable there must be an offer, acceptance, consideration, and definite terms, and for the agreement to be binding it must be definite and certain as to its terms and requirements, and it must identify the subject matter and spell out the essential commitments and agreements with respect thereto. Isaac v. Palik, 13 FSM R. 396, 399 (Kos. S. Ct. Tr. 2005).

When the plaintiff promised to pay the defendant the amount of $10,000 and the defendant promised to sell to the plaintiff certain parcels and convey all her rights therein and certified that she was the "legal title holder" of the subject parcels through certificates of title and as the legal basis for her promise to transfer her ownership rights in the two parcels, the subject matter, the essential commitments and the agreement were all definite and certain as to its terms and requirements. And since the "Quitclaim Deed" is evidence of the parties' agreement for the sale and transfer of title to the subject parcels, the Quitclaim Deed is an enforceable contract. Isaac v. Palik, 13 FSM R. 396, 399-400 (Kos. S. Ct. Tr. 2005).

An enforceable contract requires an offer, an acceptance, consideration and definite terms. For the agreement to be binding, it must spell out the essential commitments and agreements with respect thereto. Heirs of Nena v. Sigrah, 14 FSM R. 283, 285 (Kos. S. Ct. Tr. 2006).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable, there must be an offer, acceptance, consideration, and definite terms. Hartman v. Krum, 14 FSM R. 526, 530 (Chk. 2007).

No contract was created when the plaintiff's offer was not communicated to the defendant, thus no offer was ever made to the defendant, and there never was an acceptance of an offer by the defendant. Hartman v. Krum, 14 FSM R. 526, 530 (Chk. 2007).

A principal is bound by, and liable for his agent's acts if done with or within the actual or apparent authority from the principal and within the scope of the agent's employment, but when agreeing to pay rent for a cement mixer was not within the scope of the agent's "employment" as the principal's agent, no contract was formed between the principal and the plaintiffs through agency. Hartman v. Krum, 14 FSM R. 526, 530-31 (Chk. 2007).

The elements of an enforceable contract are an offer and acceptance, definite terms, and consideration between the parties. If a party fails to perform, then the contract is breached and damages may be awarded. Siba v. Noah, 15 FSM R. 189, 195 (Kos. S. Ct. Tr. 2007).

When the plaintiff exchanged goods with the defendant in exchange for the defendant agreeing to make payments on the account, the defendant indicated her acceptance of this exchange by making payments. These actions created an enforceable contract. George v. George, 15 FSM R. 270, 273 (Kos. S. Ct. Tr. 2007).

When the plaintiff exchanged goods with the defendant in exchange for the defendant agreeing to make payments on the account and the defendant indicated her acceptance of this exchange by making payments, their actions created an enforceable contract. George v. Albert, 15 FSM R. 323, 326 (Kos. S. Ct. Tr. 2007).

An insurance contract, like all contracts, requires an offer and acceptance to be effective, and, like any contract, an insurance contract is formed when an unrevoked offer by one person is accepted by another, thus satisfying the two prerequisites of mutual assent. Sigrah v. Micro Life Plus, 16 FSM R. 253, 257 (Kos. 2009).

An application for insurance standing alone does not constitute a contract upon which judgment can be recovered. It is merely an offer or request for insurance which may either be accepted or rejected by the insurer. An insurer is at liberty to choose its own risks and is not bound to accept an insurance application for insurance. Sigrah v. Micro Life Plus, 16 FSM R. 253, 258 (Kos. 2009).

An insurance contract may be established when one of the parties to the contract proposes to be insured and the other party agrees to insure, and the subject, the amount, and the rate of insurance are ascertained or understood and the premium is paid if demanded. Sigrah v. Micro Life Plus, 16 FSM R.

253, 258 (Kos. 2009).

A contract is a promise between two parties for the future performance of mutual obligations which the law will enforce in some way. For the promise to be enforceable there must be an offer, acceptance, consideration, and definite terms. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 645 (Kos. S. Ct. Tr. 2009).

When the contract is for an attorney to provide legal assistance for the plaintiffs' appeal case and when the terms are that the attorney will represent the plaintiffs and the plaintiffs will pay the attorney a $100 per hour, there is a promise between the two parties with an offer of performing legal services and the acceptance on the plaintiffs' behalf and there was mutual assent when the parties reached a meeting of the minds with the attorney making the offer and the plaintiffs accepting the offer. The consideration present for the promise was that the attorney offered his legal services to the plaintiffs in exchange for the plaintiffs' money. There was a bargained-for exchange between the parties and what was bargained for was considered of legal value. The contract terms were definite and therefore there was a valid written contract between the parties for the performance of legal services for a fee. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 645 (Kos. S. Ct. Tr. 2009).

When the previously agreed percentages for completed work should be sufficient for a court to determine a contract price for any work done during the contract's last three years; when there is no indication that these same percentages were not intended for use throughout the contract's remaining three years and the overall grant award from the U.S. had a set figure; and when, if the parties thought that the payment terms for the contract's last three years were uncertain, the contract could be amended at any time with or without additional consideration, the court cannot conclude that there was no contract beyond the first two years because no prices had been set for the last three years or that there was no consideration for the last three years. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 589 (Pon. 2011).

Duress takes two forms: physical and economic. Physical duress negates assent *ab initio*; economic duress makes a formed contract voidable. A contract is voidable for economic duress if: 1) a party's manifestation of assent is induced by an improper threat by the other party that leaves the victim no reasonable alternative; or 2) a party's manifestation of assent is induced by one who is not a party to the transaction, unless the other party to the transaction in good faith and without reason to know of the duress either gives value or relies materially on the transaction. Smith v. Nimea, 18 FSM R. 36, 41-42 (Pon. 2011).

When no evidence suggests that the defendant was responsible for any physical duress against the plaintiff; when the evidence shows that the plaintiff was desperate to get the work, but suggests that the situation is one largely of his own creation, or at least not the defendant's creation; when the plaintiff has not shown that the defendant made any threat, proper or improper, or did any act that left the plaintiff with no reasonable alternative, none of this evidence gives rise to the sort of improper threat and absence of reasonable alternatives upon which the court can find economic duress. Smith v. Nimea, 18 FSM R. 36, 42 (Pon. 2011).

A contract was formed by a salvor's June 16, 2007 e-mail offer and the insurer's June 19, 2007 letter acceptance with offer of additional term of an invoice, with the salvor's acceptance of the additional term by performance. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 9 (Pon. 2013).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable there must be an offer, acceptance, consideration and definite terms. Harden v. Inek, 19 FSM R. 244, 249 (Pon. 2014).

A lease agreement entered into by the parties was a valid contract because the promise to pay rent in exchange for exclusive use of the property constituted an offer, acceptance, and consideration and the agreement's terms were definite and enforceable. Harden v. Inek, 19 FSM R. 244, 249 (Pon. 2014).

When the existence of a contract is at issue, the trier of fact determines whether the contract did in fact

exist. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 276 (Pon. 2014).

A contract is a promise between two parties for the future performance of mutual obligations, which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise (that which the performance is exchanged for). When one party fails to perform their promise, there is a breach of contract. Johnny v. Occidental Life Ins., 19 FSM R. 350, 357 (Pon. 2014).

An insurance contract was formed when there was an invitation made by the insurer to provide life and cancer insurance coverage to the plaintiff and the plaintiff offered to enroll under the policy and the insurer accepted the offer by issuing life and cancer insurance policies and accepting premiums that the plaintiff paid through bi-weekly allotments. The parties' reasonable expectations were that the plaintiff would make timely payments on the policy, and that the insurer would provide coverage subject to the policy's terms. Johnny v. Occidental Life Ins., 19 FSM R. 350, 357 (Pon. 2014).

A contract is a promise between two parties for the future performance of mutual obligations, which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise. Zacchini v. Hainrick, 19 FSM R. 403, 410 (Pon. 2014).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable there must be an offer, acceptance, consideration and definite terms. When a contract's existence is at issue, the trier of fact determines whether the contract did in fact exist. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 475 (Pon. 2014).

A series of verbal agreements entered into by the parties may constitute a series of valid contracts. The terms of the agreements were the parties' intentions at the time they entered into the contracts. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 475 (Pon. 2014).

Agreements that lack price and duration terms may be found to be sufficiently certain to form a valid contract. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 475 (Pon. 2014).

Personnel handbook provisions can be enforceable as an employment contract if they meet the requirements for the formation of a unilateral contract, which are: the offer must be definite in form and must be communicated to the offeree. An employer's general statements of policy are no more than that and do not meet the contractual requirements for an offer. George v. Palsis, 19 FSM R. 558, 564 (Kos. 2014).

When a personnel policies manual is detailed and the court finds that it was intended to set the terms of employment; when a review of the employee handbook makes it clear that the employer intended its employees to be bound by the manual's terms and that it intended to bind itself to these terms, the personnel policies manual was meant to be an offer for a unilateral employment contract and an employee has accepted the offer through his continued employment. George v. Palsis, 19 FSM R. 558, 564 (Kos. 2014).

The general rule is that a party who signs an instrument manifests assent to it and may not later complain about not reading or not understanding it. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 127 (Chk. 2017).

Generally, one having the capacity to understand a written document who reads it, or one who, without reading it or having it read to him, signs it, is bound by his signature. Otherwise, no one could rely on a signed document if the other party could avoid the transaction by not reading or not understanding the document. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 127 (Chk. 2017).

A signatory to a contract has a duty to read it, or have it read to him, or a duty to understand what he is

signing. The duty to read even involves a person who is blind, illiterate, or unfamiliar with the language in which the contract is written and who has signed the document without having anyone read it aloud or explaining it. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 127 (Chk. 2017).

Except possibly in the case of an emergency, a party must employ self-protection by procuring someone to read aloud, explain, or translate the contract before he signs it. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 127 n.2 (Chk. 2017).

The "duty to read" a contract before signing it applies especially when the lease was the result of long negotiations during which the signer was represented by capable counsel, fluent in his native language, who he could ask for an explanation. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 127 (Chk. 2017).

A loan application is an invitation by the applicant for the bank to make an offer to lend the applicant money. The bank may then decline to make an offer (deny the application) or it may make an offer (propose to lend money on certain terms), which the loan applicant may then accept (forming a contract) or reject. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 169 (Pon. 2017).

A person, who did not sign the loan application but who accepted the bank's loan offer when he agreed to the offer by signing the promissory note and the mortgage, is a party to the promissory note and the mortgage contracts. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 169 (Pon. 2017).

The court can give no effect to a claim that a former employee did not read the contract or understand that it contained an at-will employment provision before he signed it. The general rule is that a party who signs an instrument manifests assent to it and may not later complain about not reading or not understanding it. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 176 (Pon. 2017).

Generally, one having the capacity to understand a written document who reads it, or, without reading it or having it read to him, signs it, is bound by his signature. Otherwise, no one could rely on a signed document if the other party could avoid the transaction by not reading or not understanding the document. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 176 (Pon. 2017).

A signatory to a contract has a duty to read, or have it read to him, or a duty to understand what he is signing. This "duty to read" even involves a person who is blind, illiterate or unfamiliar with the language in which the contract is written and who has signed a document without having anyone read it aloud or explaining it. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 176 n.7 (Pon. 2017).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable there must be an offer, acceptance, consideration, and definite terms. Fuji Enterprises v. Jacob, 21 FSM R. 355, 365 (App. 2017).

Since the Pohnpei Visitors Bureau is a non-governmental organization with duly enacted articles of incorporation and bylaws, whose funding is provided for under the Compact of Free Association, the Pohnpei state government had a ministerial duty to certify the plaintiff's employment contract after the Board's approval, because the discretion of whether to hire the plaintiff was with the PVB Board. "Ministerial" means of or relating to an act that involves obedience to instructions or laws instead of discretion, judgment, or skill. Santos v. Pohnpei, 21 FSM R. 495, 500 & n.4 (Pon. 2018).

– Forum Selection Clause

A motion to dismiss because the forum selection clause in the agreement selects a different court to hear the dispute is properly seen as a motion to dismiss for improper forum. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 125 (Pon. 1999).

Parties may by contract designate a forum in which any litigation is to take place. Forum selection

clauses are presumed valid, and enforcement will be ordered absent a strong showing that it should be set aside, and unless it clearly would be unreasonable and unjust, or that the clause is invalid for such reasons as fraud or overreaching. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 125 (Pon. 1999).

A forum selection clause may be subject to judicial scrutiny for fundamental fairness. In determining fundamental fairness, courts should consider such factors as: 1) whether the forum was selected by one party as a bad faith tactic to discourage pursuit of legitimate claims by the other; 2) whether consent to the forum selection clause was obtained by fraud or overreaching; or 3) whether the contesting party had no notice of the forum provision. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 126 (Pon. 1999).

A forum selection clause is not unfair and rendered unenforceable because the court selected is a neutral forum with no relation to the parties or their dispute. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 126 & n.1 (Pon. 1999).

A forum selection clause unaffected by fraud, undue influence, or overweening bargaining power should be given full effect. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 126 (Pon. 1999).

When parties engaged in an international business transaction unambiguously select a forum in a third country, they are to be credited with knowledge of the jurisdictional requirements of the chosen court. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 126 (Pon. 1999).

Once a forum selection clause is determined to be binding, its scope and effect should be determined under a contract law analysis. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 127 (Pon. 1999).

When the forum selection clause language uses "exclusive jurisdiction" in conjunction with the mandatory language, "hereby irrevocably consent," it establishes an intent to have any dispute resolved only by the other forum and it leaves no room for dispute over the clause's meaning in this respect. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 127 (Pon. 1999).

When contracts between the parties provide that any legal proceedings instituted by either party must be filed and heard in the FSM Supreme Court with no other court having jurisdiction and that should the FSM Supreme Court not accept jurisdiction must the parties' dispute be resolved by arbitration, the FSM Supreme Court, not having declined jurisdiction, will not dismiss or stay the case pending arbitration because arbitration is mandated in a dispute arising from the agreements only when the FSM Supreme Court has declined jurisdiction. Mobil Oil Micronesia, Inc. v. Helgenberger, 9 FSM R. 295, 296 (Pon. 1999).

Parties can designate by contract a forum in which any litigation is to take place, and such forum selection clauses are presumed valid and will be enforced unless there is a strong showing that it would be unreasonable or unjust or fraud or overreaching is involved. The clause must unambiguously name another forum. FSM Dev. Bank v. Gouland, 9 FSM R. 605, 607-08 (Chk. 2000).

When a forum selection clause names a court that no longer exists, but another court is in all respects its successor, it is expected that the case is meant to proceed in that court absent some valid reason it should not. FSM Dev. Bank v. Gouland, 9 FSM R. 605, 608 (Chk. 2000).

Parties can designate by contract a forum in which any litigation is to take place, and such forum selection clauses are presumed valid and will be enforced unless there is a strong showing that it would be unreasonable or unjust, or fraud or overreaching is involved. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 5 (Chk. 2001).

A forum selection clause must unambiguously name a forum. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 5 (Chk. 2001).

When a court by the name Truk State Court no longer exists, and had not existed for several years at

the time the mortgage with a forum selection clause naming the Truk State Court was executed and the Chuuk State Supreme Court was, and is, in all respects the Truk State Court's successor, a court must conclude that when they executed the mortgage the parties understood the phrase "Truk State Court" to mean the Chuuk State Supreme Court. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 5 (Chk. 2001).

When the mortgagors have not expressly waived their right to require the FSM Development Bank to abide by the forum selection it made when it drafted the mortgage they signed and absent some other valid reason, the foreclosure must proceed in the Chuuk State Supreme Court, even though the FSM Supreme Court will determine the amount, if any, of the mortgagors' indebtedness on the promissory note. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 5-6 (Chk. 2001).

Forum selection clauses are presumed valid and will be enforced unless there is a strong showing that it would be unreasonable or unjust, or fraud or overreaching is involved. The clause must unambiguously name another forum. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 109 (Chk. 2001).

Because a court by the name Truk State Court had not existed for several years at the time the mortgage was executed and because the Chuuk State Supreme Court was, and is, in all respects its successor, the parties, when they executed the mortgage, understood the phrase "Truk State Court" to mean the Chuuk State Supreme Court. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 109 (Chk. 2001).

There are two types of forum selection clauses – permissive and mandatory. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 109 (Chk. 2001).

A mandatory forum selection clause requires that all litigation between the parties be conducted in the named forum and nowhere else. To be mandatory, a clause must contain language that clearly designates a forum as the exclusive one. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 109 (Chk. 2001).

Forum selection clauses which give a court jurisdiction without clearly making that jurisdiction exclusive are permissive rather than mandatory. A permissive forum selection clause merely allows a chosen forum to exercise personal jurisdiction over the parties but does not bar litigation in another forum and will not alter the presumption in favor of the plaintiff's choice of forum. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 110 (Chk. 2001).

A forum selection clause cannot be interpreted so as to make it meaningless. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 110 (Chk. 2001).

Because only two courts can exercise jurisdiction over land in Chuuk, the only meaningful reason for the inclusion of a forum selection clause in a mortgage would be to make one court's jurisdiction exclusive. Such a forum selection clause can therefore only be interpreted as mandatory; otherwise it would be meaningless. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 110 (Chk. 2001).

When a forum selection clause in a mortgage was not the result of an arm's length transaction, but the bank dictated all the mortgage's terms, which it prepared in a pre-printed form with blanks in which to insert the borrowers' names and addresses, the amount borrowed and at what interest rate, the number and amount of monthly installment payments and their starting date, and the property mortgaged, it would be inequitable to allow the bank to now interpret the forum selection clause so as to make it meaningless. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 110-11 (Chk. 2001).

Ambiguity in a forum selection clause may be construed against its drafter. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 111 (Chk. 2001).

A forum selection clause is an agreement that disputes relating to the parties' contract will be heard by a designated court and unambiguously names a forum. A threshold question is whether contractual language at issue is a forum selection clause. Phillip v. Marianas Ins. Co., 11 FSM R. 559, 561 (Pon.

2003).

The FSM Supreme Court does not look kindly upon contractual provisions that can only be understood by individuals who possess an advanced degree in insurance law. Clear, understandable, precise language is a condition to a finding that an insured must bear the cost of litigating in a remote forum. Phillip v. Marianas Ins. Co., 11 FSM R. 559, 562 n.3 (Pon. 2003).

A properly drafted forum selection clause's purpose is to eliminate uncertainty as to where disputes between the parties will be litigated. Such clauses can further eliminate uncertainty by specifying the law that will be applied. When a clause accomplishes neither purpose, and when it would be fundamentally unfair to conclude that the contract provision's ambiguous language constitutes an agreement that claims may be litigated only in a certain place, it does not constitute a forum selection clause. Phillip v. Marianas Ins. Co., 11 FSM R. 559, 562 (Pon. 2003).

To the extent that a purported forum selection clause could be interpreted to require suit in a foreign country, it must be struck down as void as against public policy unless it is a freely negotiated, arms-length agreement between parties with relatively equal bargaining power. An insurance contract that seeks to oust the FSM Supreme Court's jurisdiction will not be upheld when the insured is an FSM citizen and resident, the insurance policy is obtained in the FSM from an FSM-based agent, the premiums are paid in the FSM to cover vehicles operating in the FSM, and the incident giving rise to a claim occurred in the FSM. The clause is against public policy because it impedes the administration of justice relating to insurance claims, and would undermine the public's confidence in business dealings if upheld. To require such lawsuits to be filed in a foreign country would not only be onerous, but would essentially render insurance companies immune from suit. Phillip v. Marianas Ins. Co., 11 FSM R. 559, 562-63 (Pon. 2003).

A forum selection clause will be stricken from a contract when it is unenforceably vague and ambiguous, and void as against public policy. The court will not make this decision lightly, as judicial restraint requires the exercise of extreme caution in striking down a portion of any contract that is entered into freely. Phillip v. Marianas Ins. Co., 11 FSM R. 559, 563 (Pon. 2003).

Parties may by contract designate a forum in which any litigation is to take place, and forum selection clauses are presumed valid, and enforcement will be ordered absent a strong showing that it should be set aside, and unless it clearly would be unreasonable and unjust, or that the clause is invalid for such reasons as fraud or overreaching. Lee v. Han, 13 FSM R. 571, 578 (Chk. 2005).

A forum selection clause would usually be given full effect, although a forum selection clause may be subject to judicial scrutiny for fundamental fairness. In determining fundamental fairness, courts consider such factors as: 1) whether the forum was selected by one party as a bad faith tactic to discourage pursuit of legitimate claims by the other; 2) whether consent to the forum selection clause was obtained by fraud or overreaching; or 3) whether the contesting party had no notice of the forum provision. Lee v. Han, 13 FSM R. 571, 579 (Chk. 2005).

When the plaintiff has actively pursued litigation in a Korean court, both before and during the time the litigation was pending here, and the defendant actively defended that action, it would be unreasonable and unjust to require the Korean defendants to litigate this case twice, with the second time in a forum where, although it (Chuuk) was convenient when it was chosen and all the parties had business interests here, is no longer convenient, reasonable, or just. Under the circumstances, the plaintiff has waived enforcement of the forum selection clause. Limited to this case's particular facts and circumstances, the forum selection clause will not bar dismissal of this case without prejudice under the forum non conveniens doctrine. Lee v. Han, 13 FSM R. 571, 579 (Chk. 2005).

The court will enforce a forum selection clause when the bank drafted the real estate mortgage and the bank chose to include the forum selection clause as one of the terms it insisted upon in the preprinted mortgage form it used to execute the mortgage; when a mortgagor not only does not expressly waive the

bank's forum selection but he affirmatively insists upon the forum selection clause's enforcement; and when no other valid reason is apparent or has been asserted by the bank that would allow the clause's waiver. The bank may thus assert its real estate mortgage foreclosure remedy in the Yap State Court, the forum it chose, and the mortgagor may raise his defenses to the mortgage's validity there and the FSM Supreme Court will adjudicate the bank's action on the promissory note and on the chattel mortgage. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 94 (Yap 2011).

A motion to dismiss because of a contract's forum selection clause is properly made under Rule 12(b)(3) – improper venue – and (usually) also Rule 12(b)(6) for failure to state a claim upon which relief can be granted, and the common law doctrine of forum non conveniens. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 195 (Pon. 2019).

A motion to dismiss because an agreement's forum selection clause names a different court to hear the dispute is a motion to dismiss for improper forum – improper venue. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 195 (Pon. 2019).

Parties may designate by contract a forum in which any litigation is to take place, and such forum selection clauses are presumed valid and will be enforced absent a strong showing that it would be unreasonable or unjust, or fraud or overreaching is involved. But a forum selection clause will be stricken when it is unenforceably vague and ambiguous or void as against public policy. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 196 (Pon. 2019).

There are two types of forum-selection clauses – mandatory and permissive. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 196 (Pon. 2019).

A mandatory forum selection clause requires that all litigation between the parties be conducted in the named forum and nowhere else – it must contain language that clearly designates a forum as the exclusive one. Mandatory forum selection clauses contain clear language that litigation will proceed exclusively in the designated forum. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 196 (Pon. 2019).

A permissive forum selection clause merely allows a chosen forum to exercise personal jurisdiction over the parties but does not bar litigation in another forum and will not alter the presumption in favor of the plaintiff's choice of forum. Forum selection clauses which give a court jurisdiction without clearly making that jurisdiction exclusive are permissive rather than mandatory. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 196 (Pon. 2019).

The forum selection clause must unambiguously name a forum. If it does not, then it is permissive, not mandatory. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 196 (Pon. 2019).

Mandatory forum selection clauses contain clear language showing that jurisdiction is appropriate only in the designated forum. In contrast, permissive forum selection clauses authorize jurisdiction in a designated forum but do not prohibit litigation elsewhere. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 196 (Pon. 2019).

A forum selection clause which states that "[t]he jurisdiction for . . . this contract shall be the Commonwealth of Australia" and that "all parties agree to submit to the jurisdiction of the Australian courts," does not unambiguously name a forum since it does not name any forum at all, or specify any venue, and does not prohibit any litigation elsewhere. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 197 (Pon. 2019).

The law is clear: when venue is specified in a forum selection clause with mandatory or obligatory language, the clause will be enforced; when only jurisdiction is specified the clause will generally not be enforced unless there is some further language indicating the parties' intent to make venue exclusive. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 197 (Pon. 2019).

A forum selection clause is permissive when the clause refers only to jurisdiction and does so in non-exclusive terms (e.g., there is no use of the terms "exclusive," "sole," or "only"). Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 197 (Pon. 2019).

When the parties agreed "to submit to the jurisdiction of the Australian courts," but did not make that submission exclusive or choose a venue, and, although "shall" is a mandatory term, the term "jurisdiction for . . . this contract shall be the Commonwealth of Australia," cannot mandate anything more than that (if suit was brought there) Australia has jurisdiction and the plaintiff could not object to litigating there, but it does not mean that the same subject matter cannot be litigated in any other court. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 197-98 (Pon. 2019).

A forum selection clause is clearly permissive when it does not unambiguously name a forum, or contain any clear, unequivocal mandatory language naming a forum (or even naming any forum at all) and making that venue exclusive, but mandates only that Australian courts could have jurisdiction if suit were filed there. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 198 (Pon. 2019).

Any ambiguity in a forum selection clause must be construed against its drafter. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 198 (Pon. 2019).

Even when a dismissal is not proper under a forum selection clause, a court may still dismiss a case under the forum non conveniens doctrine. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 198 (Pon. 2019).

A permissive forum selection clause may be enforced when a dismissal under the forum non conveniens doctrine is also appropriate. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 198 n.6 (Pon. 2019).

– Guaranty

When the allegations are sufficient to allege an independent, primary, and unconditional promise among the plaintiffs and the defendant bank that the bank would act to bring another's account with the plaintiffs current, and that it would make future disbursements directly to the plaintiffs, it is not a contract of guaranty. If the obligation sought to be enforced is a primary or unconditional promise so that the promisor is primarily liable regardless of the failure of some other party to perform his contractual duty, the conclusion is that the obligation is not a contract of guaranty. Adams v. Island Homes Constr., Inc., 9 FSM R. 530a, 530c (Pon. 2000).

A guaranty is an enforceable undertaking or promise on the part of one person which is collateral to a primary or principal obligation on the part of another, and which binds the obligor to performance in the event of nonperformance by such other, the latter being bound to perform primarily. Adams v. Island Homes Constr., Inc., 9 FSM R. 530a, 530c-30d (Pon. 2000).

When the leading object of a party promising to pay the debt of another is to promote his own interests, and not to become surety or guarantor, and the promise is made on sufficient consideration, it will be valid, although not in writing. Adams v. Island Homes Constr., Inc., 9 FSM R. 530a, 530d (Pon. 2000).

When the plaintiff had a legal right to initiate a lawsuit against a corporate defendant for its unpaid debts at the time that the promissory note was executed in 1994, but instead of initiating a lawsuit, it agreed to certain terms of payment, and required individuals to personally guarantee that payment would be made, each of the parties gained something in the execution of the promissory note and security agreement. There was thus consideration exchanged by the parties when they entered into these agreements. Goyo Corp. v. Christian, 12 FSM R. 140, 149 (Pon. 2003).

In a broad sense a guarantor or surety is one who promises to answer for the debt or default of another. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 10 (Pon. 2004).

Like other contracts, contracts of guaranty must be supported by consideration, and a guaranty will not be enforced unless the promise is supported by consideration. However, if the promise of the guarantor is shown to have been given as part of a transaction or arrangement which created the guaranteed debt or obligation, the promise is supported by the same consideration which supports the principal transaction. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

When a guaranty was given as a part of the same transaction by which the debt to the bank was created, no independent consideration was necessary. The guaranty was supported by the same consideration that supported the transaction between the debtor and the bank. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

The main distinction between a contract of surety and one of guaranty has been expressed by stating that a surety is primarily and jointly liable with the principal debtor, while a guarantor's liability is collateral and secondary and is fixed only by the inability of the principal debtor to discharge the primary obligation. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

The trial court did not err in finding a meeting of minds and no mutual mistake and that the mistake was in reducing the terms to writing when the facts suggest that the lender understood AHPW to liable on the loan and the parties stipulated that AHPW should have signed the promissory note and that the defendants intended to guarantee the loan. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 396 (App. 2006).

The trial court did not err when it reformed the loan documentation to reflect the parties' stipulated intent that AHPW be the obligor on the promissory note and that the appellants be guarantors of that obligation. As such, appellants were not guaranteeing their own obligation, they were guaranteeing AHPW's obligation on the promissory note. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 397 (App. 2006).

To be enforceable, a guaranty, like other contracts, must be supported by consideration. However, if a guaranty is made as part of a transaction or arrangement which created the guaranteed debt or obligation, it is not essential to a recovery on the promise of guaranty that the promise shall have been supported by a consideration other than that of the principal debt. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 397 (App. 2006).

When a corporate resolution agreed to guarantee another corporation's loan and that guaranty included any and all of the borrower's indebtedness to the lender and was used in the most comprehensive sense and means and included any and all of the borrower's liabilities then existing or thereafter incurred or created, the guaranty was sufficiently broad to include any restructuring of the loan even if the restructuring was considered a debt thereafter incurred or created, and thus, no later corporate resolution was needed for the guaranty to cover the restructuring. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 287 (Chk. 2009).

A guaranty is an enforceable undertaking or promise on the part of one person which is collateral to a primary or principal obligation on the part of another. A guaranty binds the guarantor to performance in the event of nonperformance by such other, the latter being bound to perform primarily. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 289 (Pon. 2016).

When the primary performer, the borrower, stopped making loan repayments to the bank and defaulted, the guarantors were then bound to perform on the loan repayments once the borrower had ceased to. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 289 (Pon. 2016).

The false notarization of a guaranty does not affect the guaranty's substantive provisions as it relates to the signer when the signer admits that he did sign the guaranty. This is because the purpose of

notarization is to verify the identity and signature of the person who signed the document. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 292 & n.8 (Pon. 2016).

If a guaranty is made as part of a transaction or arrangement which created the guaranteed debt or obligation, it is not essential to a recovery on the promise of guaranty that the promise was supported by a consideration other than that of the principal debt. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

When security, such as a guaranty, is given as part of the same transaction that created the debt to the bank, no further or independent consideration is needed. The loan itself is sufficient consideration. This principle holds true when a mortgage is the security given for a loan to a third party. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

There is substantial authority for the proposition that partial payments by a principal debtor do not toll the statute of limitations as to the note's guarantors. The rationale behind this general rule is that a guarantor's consent to the debtor's future conduct may not be presumed merely on the basis of the original guarantee. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

The general rule is that a payment by the principal before the action is time-barred, operates as a renewal as to the principal, and to a surety, but not to a guarantor. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

A payment by the principal debtor will not operate to toll the statute of limitations as to a guarantor of the debt, even though it might do so as to a surety. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

When the trial court correctly decided that the statute of limitations was tolled by the debtor's partial payments, but did not separately determine whether those partial payments also tolled the statute of limitations with respect to the guarantor mortgagors, the appellate court will vacate the trial court judgment against the mortgagors and remand the matter for the trial court to conduct further proceedings to make that determination since that determination may need factual findings about whether the mortgagors were aware that the debtor was making partial payments and whether they acquiesced to the acknowledgment of the debt, and the trial court is the place to address those factual issues. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

– Illegality

The court may not simply assume that an illegal contract is unenforceable, but must make its own determination as to whether public policy factors militating against enforcement so outweigh the interests in favor that enforcement must be refused. Falcam v. FSM Postal Serv., 3 FSM R. 112, 121 (Pon. 1987).

A contract ostensibly entered into by government officials on behalf of the government but in violation of applicable law is illegal. Ponape Transfer & Storage v. Federated Shipping Co., 3 FSM R. 174, 178 (Pon. 1987).

As a general rule, an illegal contract is unenforceable. Even when performance occurs and a benefit is conferred, no recovery in either expectation damages or quantum meruit may be had. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 125 (Pon. 1993).

The doctrine of unjust enrichment generally applies where there is an unenforceable contract due to impossibility, illegality, mistake, fraud, or another reason and requires a party to either return what has been received under the contract or pay the other party for it. The unjust enrichment doctrine is based on the idea one person should not be permitted unjustly to enrich himself at the expense of another. Etscheit v. Adams, 6 FSM R. 365, 392 (Pon. 1994).

A party to an illegal agreement will not be permitted to avail himself of its illegality until he restores to the other party all that has been received from such a party on the illegal agreement, and so long as he continues to enjoy the benefits of the agreement, he will not be allowed to set up its nullity. Nanpei v. Kihara, 7 FSM R. 319, 325 (App. 1995).

Contract provisions that exceed allowable interest rates, and are reached in violation of conflict of interest laws or the procedures prescribed by law, all concern possible violations of the law and may render the contract void as against public policy. Any contract that violates the law when made is not enforceable in the courts with respect to the illegality. Truk Shipping Co. v. Chuuk, 7 FSM R. 337, 340 (Chk. S. Ct. Tr. 1995).

The prohibition against the impairment of contracts is not absolute. The contract must be valid and enforceable when made. A contract which is illegal when made is unenforceable because no obligation arises from an illegal contract, thus there is no obligation that may be impaired. Truk Shipping Co. v. Chuuk, 7 FSM R. 337, 341 (Chk. S. Ct. Tr. 1995).

A claim of illegality cannot be raised by a party to nullify a contract until it restores to the other party all that it has received under the contract. Richmond Wholesale Meat Co. v. Kolonia Consumer Coop. Ass'n (I), 7 FSM R. 387, 389 (Pon. 1996).

Even though there is offer and acceptance and consideration exists, there is no contract when the agent signing the proposal was without authority to bind the principal, and the signing violated statutes, which rendered it illegal. Hauk v. Terravecchia, 8 FSM R. 394, 396 (Chk. 1998).

Whether a trial court correctly used the balancing of factors in weighing enforceability of part of an illegal employment contract, or whether the hiring, being in violation of public policy is unenforceable, is a matter of law, which is reviewed de novo. FSM v. Falcam, 9 FSM R. 1, 4 (App. 1999).

The general rule that illegal agreements are void is not without exceptions and restitution ought to be awarded in some situations. FSM v. Falcam, 9 FSM R. 1, 4 (App. 1999).

Because Congress has not explicitly made employment contracts which violate 11 F.S.M.C. 1305 unenforceable, the FSM Supreme Court may properly decide whether a contravention of public policy is grave enough to warrant unenforceabillty. FSM v. Falcam, 9 FSM R. 1, 4 (App. 1999).

The standard of review of whether the balancing factors for weighing enforceability of part of an illegal employment contract were weighed properly is whether the trial court abused its discretion. FSM v. Falcam, 9 FSM R. 1, 4 (App. 1999).

When there is no national precedent on the issue of the enforcement of an employment contract term which was violative of public policy, and there is no custom or tradition governing the matter, the FSM Supreme Court may look to the common law of the United States. FSM v. Falcam, 9 FSM R. 1, 5 (App. 1999).

Although there was a public interest in denying enforcement because the hiring violated public policy, this is outweighed by the special public interest of the government's failure to provide any hearing or opportunity to be heard concerning its failure to pay the employee or take any steps to terminate the contract, thus constituting a violation of due process rights; the employee's justified expectations of being paid; and the substantial forfeiture would result if enforcement were to be denied. Therefore the trial court did not abuse its discretion in its weighing of the factors on the issue of enforceability. FSM v. Falcam, 9 FSM R. 1, 5 (App. 1999).

A contract entered into by government officials on behalf of the government, but in violation of

applicable law, is illegal. Talley v. Lelu Town Council, 10 FSM R. 226, 233 (Kos. S. Ct. Tr. 2001).

A contract which is illegal when it is made is not enforceable because there is no obligation that arises from the illegal contract. There is thus no obligation that has been impaired. Talley v. Lelu Town Council, 10 FSM R. 226, 233 (Kos. S. Ct. Tr. 2001).

As a general rule, an illegal contract is unenforceable. Talley v. Lelu Town Council, 10 FSM R. 226, 233 (Kos. S. Ct. Tr. 2001).

When there was no promise or expectation of the plaintiff's continued employment by the municipal government after the contract's expiration; when the plaintiff makes no salary claim for unpaid work because, despite the fact that the second contract failed to receive the town council's support as required by the municipal charter and was therefore illegal, the plaintiff was paid for all work performed under the second written contract; public policy weighs in favor of enforcing the provisions of the municipal charter and weighs against enforcement of a contract made in violation of those charter provisions. Plaintiff's breach of contract claim thus fails. Talley v. Lelu Town Council, 10 FSM R. 226, 234 (Kos. S. Ct. Tr. 2001).

A defendant would be estopped from raising an illegality of contract as a defense to a negligence claim when as the other party to the allegedly illegal contract he had the benefit of it. Amayo v. MJ Co., 10 FSM R. 244, 250 (Pon. 2001).

A contract entered into by government officials on behalf of the government but in violation of applicable law is illegal, and as a general rule an illegal contract is unenforceable, even when a benefit has been conferred on the party against whom enforcement is sought. Billimont v. Chuuk, 11 FSM R. 77, 80, 81 (Chk. S. Ct. Tr. 2002).

In order for a lease to be a valid obligation of state funds, it is necessary that the funds be not only already appropriated and available, but appropriated to the specific purpose of funding the lease payments. It is not enough that there are some funds in some account which could be used to pay the lease, having not been used as originally appropriated. Billimont v. Chuuk, 11 FSM R. 77, 80 (Chk. S. Ct. Tr. 2002).

The Restrictive Measures Act, clearly and unambiguously, prohibits execution of housing leases for the benefit of state personnel following its effective date with the only possible exception for the benefit of expatriate professional employees. A lease for a Chuuk citizen does not fit the exception. Billimont v. Chuuk, 11 FSM R. 77, 81 (Chk. S. Ct. Tr. 2002).

When the contract at issue is in violation of two separate Chuuk state statutes, it is illegal, void, and unenforceable, and the plaintiff's breach of contract claim cannot be upheld. Judgment for the defendant on that claim is mandated. Billimont v. Chuuk, 11 FSM R. 77, 81 (Chk. S. Ct. Tr. 2002).

A contract that is entered into *ultra vires* is void and illegal. As a general rule, an illegal contract is unenforceable. Even when performance occurs and a benefit has been conferred, no recovery in either expectation damages or quantum meruit may be had. Nagata v. Pohnpei, 11 FSM R. 265, 271 (Pon. 2002).

A party to an illegal agreement will not be permitted to avail himself of its illegality until he restores to the other party all that has been received from such a party on the illegal agreement, and so long as he continues to enjoy the benefits of the agreement, he will not be allowed to set up its nullity. Goyo Corp. v. Christian, 12 FSM R. 140, 148 (Pon. 2003).

Generally, to avoid liability under an illegal contract, the party seeking to avoid liability must return the benefit received under the illegal contract. Thus, in the case of an illegal loan, a borrower seeking to avoid liability would have to return the loan principal. Arthur v. Pohnpei, 16 FSM R. 581, 599 n.13 (Pon. 2009).

A bank depositor's complaint against a bank fails to state a claim on which it can obtain relief and will be dismissed when the bank honored, in conformance with 54 F.S.M.C. 153, a Division of Customs and Tax Administration Notice of Levy and Execution that was regular on its face since that is not an unauthorized withdrawal from the depositor's account or the result of the bank's negligence of any kind and since it cannot be a breach of any contract between the depositor and the bank because the bank cannot contract to violate FSM law or statutes. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

The 38 U.S.C. § 5301 ban on assigning U.S. military retirement benefits does not constitute a meritorious defense because 38 U.S.C. § 5301 is a United States statute that is applicable wherever the United States is sovereign, but which has no effect in the separate and distinct sovereignty of the Federated States of Micronesia. Since there is no similar FSM statute in effect, the defendant's assignment is not an illegal contract. FSM Dev. Bank v. Talley, 22 FSM R. 587, 595 (Kos. 2020).

To avoid liability under an illegal contract, the party seeking to avoid liability must return the benefit received under the illegal contract; thus, in the case of an illegal loan, a borrower seeking to avoid liability would have to return the loan principal. FSM Dev. Bank v. Talley, 22 FSM R. 587, 595 n.3 (Kos. 2020).

– Implied Contracts

When passengers purchase passage in an ocean-going vessel for transportation, there is an implied maritime contract for passage even in the absence of written document. Weilbacher v. Kosrae, 3 FSM R. 320, 323 (Kos. S. Ct. Tr. 1988).

Where prior course of dealing and surrounding circumstances make it apparent that the parties' intention was that pay for unused vacation time would be an implied term of the contract, the former employee is entitled to the pay for unused vacation time minus the applicable taxes. Ponape Transfer & Storage, Inc. v. Wade, 5 FSM R. 354, 356 (Pon. 1992).

The doctrine of unjust enrichment has been expanded to cover cases where there is an implied contract, but a benefit officiously thrust upon one is not considered an unjust enrichment and restitution is denied in such cases. Etscheit v. Adams, 6 FSM R. 365, 392 (Pon. 1994).

When a defendant, after canceling her long distance phone telephone service, continues to make long distance calls because the plaintiff is slow in terminating the service, the defendant, having made those calls, is precluded from arguing that she should not pay for them. FSM Telecomm. Corp. v. Worswick, 9 FSM R. 6, 17 (Yap 1999).

As a general proposition, an express contract and an implied contract for the same thing cannot exist at the same time. Where an express contract is in force, the law does not recognize an implied one. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 558 (Pon. 2000).

The settled rule that the statute of limitations begins to run upon the accrual of a cause of action applies in actions on implied and quasi contracts. When compensation for services is to be made on a certain date, the statute of limitations on an implied or quasi contract begins to run at that time. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 559 (Pon. 2000).

Quantum meruit is an equitable doctrine, based on the concept that no one who benefits by the labor and materials of another should be unjustly enriched thereby; under those circumstances, the law implies a promise to pay a reasonable amount for the labor and materials furnished, even absent a specific contract therefor. The doctrine of unjust enrichment has been recognized in the FSM. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 232 (Pon. 2002).

A motion to amend a complaint to add an unjust enrichment claim will be denied when it is based upon

a defendant's failure to abide by the alleged agreements' terms because these are express agreements, and unjust enrichment is a theory applicable to implied contracts. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 232 (Pon. 2002).

The doctrine of unjust enrichment only applies where there is no enforceable contract; the doctrine of restitution may not be applied where there is a contract; and the doctrines of implied contract and quantum meruit do not apply where there is an enforceable written contract. Esau v. Malem Mun. Gov't, 12 FSM R. 433, 436 (Kos. S. Ct. Tr. 2004).

The equitable doctrine of unjust enrichment operates in the absence of an enforceable contract. The principle requires that the party receiving something of value either pay for it or return it, and is based on the notion that one individual should not be allowed to enrich himself at another's expense. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 515 (App. 2005).

Contracts are express agreements, and unjust enrichment is a theory applicable to implied contracts. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 515 (App. 2005).

To say that a plaintiff's only remedy was to sue a defendant it had contracted with on a contract theory misses the point that it was the other defendant that was unjustly enriched, and to accept that the plaintiff's only remedy would be against long defunct enterprise defendant would confer upon the plaintiff an illusory remedy, and would confound its efforts to call to account the other defendant which actually received the money the plaintiff paid to the first defendant. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 516 (App. 2005).

If a defendant had had capabilities and resources equal to the transaction it undertook – then when it did not perform its contract, the plaintiff may well have had an adequate remedy in suing it on its contract to supply outboard motors, but when it was never a viable business entity, but a shell enterprise the purpose of which was to funnel the money to the other defendant, under all the case's facts and circumstances, the plaintiff should be permitted to "follow the money." Precluding the plaintiff from doing so would result in the other defendant's unjust enrichment at the plaintiff's expense. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 516 (App. 2005).

Unjust enrichment relates to the doctrine of implied contracts, which is to say that the court will, in the absence of a legally enforceable contract, imply a contract in law in the absence of a contract in fact in order to avoid unjust enrichment. Neither the concept of unjust enrichment or the closely associated idea of an implied contract apply where there is an enforceable written contract, since an express contract and implied contract for the same thing cannot govern a legal relationship at the same time. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 651-52 (Pon. 2008).

Although an express contract and implied contract for the same thing cannot govern a legal relationship at the same time, this principle is subject to two exceptions. The first exception is that a party can recover when the implied-in-law contract, also known as a quasi contract, relates to matters outside the express contract or to issues arising after the express contract. The second exception is that a party may prevail in the appropriate case on a quasi-contract when a party has no rights under an enforceable contract. Examples of the second exception are where a contract has failed or was rescinded. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 652 (Pon. 2008).

An exception to the principle that an express contract and implied contract for the same thing cannot govern a legal relationship at the same time is when the implied-in-law contract relates to matters outside the express contract. It will apply when the broker's advancing the premiums fell outside the parties' binding contracts that the broker would obtain insurance coverage for the Chuuk-operated vessels and that Chuuk would pay for that coverage since the documents do not address whether the broker could, or would, advance the premiums and the broker advanced the premiums after the agreements were reached, and after Chuuk had failed to remit the premiums that it was obligated to pay under the contract. Actouka

Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 652 (Pon. 2008).

A marine insurance broker who advances fleet insurance premiums may obtain reimbursement from the insured on whose behalf it advanced those premiums under an implied-in-law contractual right to reimbursement of the premiums it advanced on another's behalf when the implied-in-law contractual right is integrally related both to the contract whereby the broker was to procure insurance and to the insurance contracts that resulted from that agreement. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 652 (Pon. 2008).

When, although Chuuk did not pay the premiums, they were paid by the broker on Chuuk's behalf and the policies were in full force and effect for the vessels operated by Chuuk, Chuuk is responsible for these premiums because the broker established by a preponderance of the evidence at trial that the broker and Chuuk had entered into an agreement whereby the broker would procure insurance for the Chuuk-operated vessels and that Chuuk would pay for that insurance. This express contract serves as the basis for an implied-in-law contract that Chuuk is liable for reimbursement to the broker. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 653 (Pon. 2008).

The existence of an account stated need not be express and frequently is implied from the circumstances. For example, where a creditor renders a statement and the debtor fails to object in a reasonable time, the open account may be superseded by an account stated. Saimon v. Wainit, 16 FSM R. 143, 147 n.1 (Chk. 2008).

6 F.S.M.C. 702(3) waives the FSM's sovereign immunity only for claims, whether liquidated or unliquidated, upon an express or implied contract with the FSM. But, although the equitable doctrine of unjust enrichment operates in the absence of an enforceable contract when a party has received something of value and neither paid for it or returned it, unjust enrichment is a theory applicable to implied contracts. Thus, depending upon the facts of a case, 6 F.S.M.C. 702(3) does not bar an unjust enrichment claim since it does waive the FSM's sovereign immunity for implied (as well as express) contract claims. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 605 (Pon. 2009).

The equitable doctrine of unjust enrichment, a theory applicable to implied contracts, operates in the absence of an enforceable contract and this principle requires that the party receiving something of value either pay for it or return it, and is based on the notion that one party should not be allowed to enrich himself at another's expense. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 119 (App. 2011).

A trial court has wide discretion in determining the amount of damages in contract and quasi-contract cases involving equitable doctrines, such as promissory estoppel and restitution and the plaintiff may be compensated for the injuries by awarding compensation for the expenditures made in reliance on the promise. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 120 (App. 2011).

When the equities involved include that the plaintiff falsely informed Chuuk that the marine insurance policy was not in effect when, in fact, it was in effect because the net premium had been paid to the insurer, promissory estoppel may instead be a better measure of the damages than implied contract or unjust enrichment. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 120 (App. 2011).

When the plaintiff was a new hire and had not completed her probationary period and when the employer included in its employee handbook a clear and unambiguous disclaimer that the handbook is not to be construed as a contract, the disclaimer is effective and the employee handbook does not create an implied employment contract and the plaintiff was an at-will employee who could have been terminated at any time within the introductory period with or without cause. Peniknos v. Nakasone, 18 FSM R. 470, 483-84 (Pon. 2012).

If there was a valid contact, a court cannot use an implied contract and an unjust enrichment analysis because the doctrines of unjust enrichment and implied contract do not apply when there is a valid,

enforceable written contract. The unjust enrichment doctrine applies only when there is an unenforceable contract due to impossibility, illegality, mistake, fraud, or other reason and is based on the idea one person should not be permitted to unjustly enrich himself at another's expense. Kosrae v. Edwin, 18 FSM R. 507, 514 (App. 2013).

Unjust enrichment is an equitable doctrine that relates to the doctrine of implied contracts in that the court will, in the absence of a legally enforceable contract, imply a contract in law in the absence of a contract in fact in order to avoid unjust enrichment. Kosrae v. Edwin, 18 FSM R. 507, 514 (App. 2013).

When the trial court concluded that Kosrae was liable because there was an implied contract and because Kosrae was unjustly enriched, it must necessarily have also concluded that there was no valid enforceable contract since if there were an express contract, the implied contract and unjust enrichment doctrines would not apply. Kosrae v. Edwin, 18 FSM R. 507, 514 (App. 2013).

The implied contract doctrine is a method by which a contract is derived from the parties' intentions and actions when there is no enforceable contract. Kosrae v. Edwin, 18 FSM R. 507, 515 (App. 2013).

Either the circumstances are such that a contract is implied in law or the circumstances are such that a contract cannot be implied in law and there is no contract at all. Kosrae v. Edwin, 18 FSM R. 507, 515 (App. 2013).

Unjust enrichment is a theory applicable to implied contracts. The unjust enrichment doctrine covers cases where there is an implied contract. But if a benefit is officiously thrust upon another, it is not considered an unjust enrichment and restitution is denied in such cases. Kosrae v. Edwin, 18 FSM R. 507, 515 (App. 2013).

When the appellees did not officiously thrust their services as vice-principals on Kosrae but had applied for the vice-principal position; thought they had been hired for the position (and did not know their contracts were invalid); and then performed the duties required by that position and as they were instructed by their superiors, Kosrae was unjustly enriched and therefore should compensate the appellees. Kosrae v. Edwin, 18 FSM R. 507, 515 (App. 2013).

Since it is an established rule in this jurisdiction that an express contract and an implied contract cannot govern a legal relationship at the same time and since the lease is an express contract that governs the legal relationship between the parties and has a provision which grants the plaintiffs sole physical possession of the property and a separate provision that speaks to the issue of utilities payments, the court may not recognize the existence of an implied in fact contract that would govern these same issues. Harden v. Inek, 19 FSM R. 244, 250-51 (Pon. 2014).

Unjust enrichment relates to the doctrine of implied contracts, which is to say that in order to avoid unjust enrichment the court will, in the absence of a legally enforceable contract, imply a contract in law in the absence of a contract in fact. Neither the concept of unjust enrichment or the closely associated idea of an implied contract apply when there is an enforceable written contract, since an express contract and implied contract for the same thing cannot govern a legal relationship at the same time. Johnny v. Occidental Life Ins., 19 FSM R. 350, 360 (Pon. 2014).

The doctrine of unjust enrichment does not apply when there is a legally binding agreement in the form of life and cancer insurance policies that the parties agreed to and executed. Johnny v. Occidental Life Ins., 19 FSM R. 350, 360 (Pon. 2014).

An action based on a judgment is an action based on contract. The judgment becomes a debt which the judgment debtor is obligated to pay and the law implies a contract on his part to pay it. FSM Dev. Bank v. Carl, 22 FSM R. 365, 372 (Pon. 2019).

– Indemnification

Where it is shown that the party seeking indemnification drafted the contract language, had greater bargaining power than the other party, had greater control over the work activities, or had considerably larger stake and expectation of profits from the endeavor, the courts become increasingly insistent upon ever more precise language in the indemnity clause as a condition to a finding that a non-negligent indemnitor is required by the clause to bear the burden of the indemnitee's negligence. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 146 (Pon. 1985).

Where there was no clear statement in a contractual indemnification clause that the indemnitee was to be protected against its own negligence, a reasonably intelligent FSM citizen aware of the general circumstances of the parties would not have perceived the English words used would require that the non-negligent party who had no control over, and relatively little economic stake in the work, must indemnify the major contractor against negligence of that major contractor. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 149 (Pon. 1985).

In indemnification provisions, in particular, the court requires pristine clarity in the language of the clause. Bank of the FSM v. Bartolome, 4 FSM R. 182, 185 (Pon. 1990).

Because agreements in promissory notes for the payment of attorney's fees are essentially indemnity clauses, they will be given effect only to the extent that expenses and losses are actually incurred, as demonstrated by detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which a claim for compensation is made. Bank of Hawaii v. Jack, 4 FSM R. 216, 219 (Pon. 1990).

A contract between a foreign fishing agreement party and the owner of vessels permitted under that agreement that the vessels' owner will be responsible for criminal and civil charges for fishing violations merely provides the foreign fishing agreement party with a contractual right of indemnity against the vessels' owner and does not bar the government's imposition of penalties for fishing agreement violations on the foreign fishing agreement party. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 89 (Pon. 1997).

Although the FSM Supreme Court has recognized claims for indemnity based on contractual provisions between two parties, and required precise clarity in the indemnification clause language, it is not prepared to create a common law indemnity claim. Joy Enterprises, Inc. v. Pohnpei Utilities Corp., 8 FSM R. 306, 311 (Pon. 1998).

When an agreement's indemnification provisions regarding the transfer of liability for causes of action and other claims are clear, the transferee is liable to indemnify the transferor for damages awarded for the transferor's negligence. Asher v. Kosrae, 8 FSM R. 443, 453 (Kos. S. Ct. Tr. 1998).

In the case of indemnity the defendant is liable for the whole damage springing from contract, while in contribution the defendant is chargeable only with a ratable proportion founded not on contract but upon equitable factors measured by equality of burden. Senda v. Semes, 8 FSM R. 484, 505 (Pon. 1998).

Although the court has previously recognized claims for indemnity based on contractual provisions between two parties, in the absence of a contractual provision it will not create a common law indemnity claim, therefore, in the absence of any contractual provisions between the parties, there is no basis for a claim of indemnity by a defendant against a plaintiff, the court will dismiss the defendant's counterclaim for indemnity. Primo v. Semes, 11 FSM R. 324, 329 (Pon. 2003).

Indemnification arises out of an express or implied contract by which a party held liable shifts the entire loss to another in order to prevent an unjust or unsatisfactory result. Adams v. Island Homes Constr., Inc., 11 FSM R. 445, 449 (Pon. 2003).

The court will recognize claims for indemnity based on contractual provisions between two parties, but, in the absence of a contractual provision, it will not create a common law indemnity claim. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM R. 337, 347 (Pon. 2004).

A hold-harmless agreement is a contract in which one party agrees to indemnify the other. "Indemnify" means to reimburse another for a loss suffered because of a third party's act or default; or to promise to reimburse another for such a loss; or to give another security against such a loss. Thus in a hold-harmless agreement, one of the two parties assumes any liability to third parties. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 364 (Yap 2009).

Logically indemnification cannot be applied to cases involving claims for losses that do not arise from liability to a third party. Where a party does not seek to be held harmless from a third party claim, but rather from the other party's own claim for damage to the other party's property and business, a contract's hold-harmless or indemnification provision does not apply. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 364-65 (Yap 2009).

Courts require crystal clarity in a contract's indemnification language before holding that a non-negligent indemnitor must bear the burden of the indemnitee's negligence. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 365 (Yap 2009).

Although the FSM Supreme Court has recognized claims for indemnity based on contractual provisions between two parties, and required precise clarity in the indemnification clause language, it is not prepared to create a common law indemnity claim. Thus, even assuming the court had found any defendant liable, when no contractual provision for indemnification between the plaintiff and any of the defendants was presented to the court, the plaintiff's claim for indemnity fails. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 458 (Pon. 2009).

When the 2009 Chuuk-FSM Joint Law Enforcement Agreement contains a clause whereby the FSM national government and the State of Chuuk "agree that at the end of each fiscal year the terms of this agreement shall continue in effect until such time it is terminated or renewed by the parties" and when neither party has given the required thirty days notice to terminate the 2009 Joint Law Enforcement Agreement, the agreement remains in effect. FSM v. Sias, 16 FSM R. 661, 663 (Chk. 2009).

A joint law enforcement agreement clause that states – "Any renewal shall be subject to the availability of funds." – applies only to a renewal, not to a continuation of the current agreement. FSM v. Sias, 16 FSM R. 661, 663 (Chk. 2009).

Although the FSM Supreme Court has recognized indemnity claims based on the parties' contractual provisions and has required precise clarity in the indemnification clause language, it has not been prepared to create a common law indemnity claim. Thus, when, even assuming the court were to find a defendant liable, there is no contractual provision for the plaintiff's indemnification by a defendant, a plaintiff's indemnity claim fails. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 112 (Pon. 2010).

When a lease's only indemnification provision is one by which the lessee is required, under certain circumstances, to indemnify the lessor, the lessee's indemnification cross-claim against the lessor accordingly fails and is dismissed. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 112 (Pon. 2010).

A hold-harmless agreement is a contract in which one party agrees to indemnify the other party, that is, to reimburse the other party for a loss suffered because of a third party's act or default; or to promise to reimburse the other party for such a loss; or to give another security against such a loss. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 353 (App. 2012).

The words "indemnify" and "hold harmless" are typically interpreted to apply to third-party claims. Logically, a contract's hold-harmless or indemnification provision cannot apply when the party invoking it

does not seek to be held harmless from a third-party claim but rather asserts its own claim against the other party for damage to its property or business. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 353 (App. 2012).

In a hold-harmless agreement, one of the two contracting parties assumes any liability to third parties. The hold-harmless provision thus allocates between the contracting parties the risk of liability to third parties. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 353 (App. 2012).

When a contracting party seeks damages, not for liability to a third-party, but for its own claim against the other contracting party for losses to its business by their failure to remit its funds to its home office, the contract's hold-harmless provision cannot be used as a basis for liability since it is a dispute between the contracting parties. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 353 (App. 2012).

– Installment Contracts

In a contract for installment shipments of goods where the parties' agreement was not in writing and there was no oral agreement or other manifestation of intent that the buyer's obligation to accept shipments was to be conditioned upon each prior shipment having arrived in timely fashion and in good condition, a nonoccurrence of the event or act is a breach of promise which gives rise to a claim for damages, rather than a failure of a condition to performance, which frees the other party from any further duty to perform the promised acts. Panuelo v. Pepsi Cola Bottling Co. of Guam, 5 FSM R. 123, 127 (Pon. 1991).

In an installment contract setting, the statute of limitations begins to run from the time that each installment is due. Segal v. National Fisheries Corp., 11 FSM R. 340, 342 (Kos. 2003).

An installment contract is one in which the agreed performance of at least one of the parties is to be rendered, not as a whole at one time and place, but piecemeal at different times or different places. Bank of Hawaii v. Susaia, 19 FSM R. 66, 70 (Pon. 2013).

A cause of action accrues and the statute of limitations begins to run, when a suit may be successfully maintained thereon. When a note is payable in installments, each installment is a distinct cause of action and the statute of limitations begins to run against each installment from the time it becomes due, that is, from the time when an action might be brought to recover it. Bank of Hawaii v. Susaia, 19 FSM R. 66, 70 (Pon. 2013).

The applicable statute of limitation period for an installment contract is six years. Bank of Hawaii v. Susaia, 19 FSM R. 66, 70 (Pon. 2013).

– Interpretation

When a purported state employment contract erroneously and consistently recites that it is between the employee and the Trust Territory of the Pacific Islands and contains other statements demonstrating that the contract words were not taken seriously and did not comport with reality, the document is unpersuasive evidence of the relationships among the employee, the state, and the national government. Manahane v. FSM, 1 FSM R. 161, 165-67 (Pon. 1982).

Where there is ambiguity within a contractual clause and there are various reasonable and practical alternative constructions available, it is necessary to employ rules of interpretation. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 147 (Pon. 1985).

The purpose of the common law rules of interpretation is to assist in reaching an objective interpretation, determining the meaning which reasonably intelligent people, knowing the circumstances, would place upon the words. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 148 (Pon. 1985).

Where two clauses within an agreement are inconsistent, the court should attempt to interpret the

agreement so that each provision has meaning, but the paramount rule is that the deed must be construed so as to give effect to the intention of the parties as collected from the whole instrument. Melander v. Kosrae, 3 FSM R. 324, 327 (Kos. S. Ct. Tr. 1988).

Where there are various reasonable and practical alternative constructions of a contractual provision available, rules of interpretation dictate that any ambiguities in a contract should be construed more strictly against the party who wrote it. Bank of the FSM v. Bartolome, 4 FSM R. 182, 185 (Pon. 1990).

Contracts are not interpreted on the basis of subjective uncommunicated views, or secret hopes of one of the parties, but on an objective basis, according to the reasonable expectations or understanding of parties based upon circumstances known to the parties and their words and actions, at the time the agreement was entered into. Kihara v. Nanpei, 5 FSM R. 342, 345 (Pon. 1992).

Where prior course of dealing and surrounding circumstances make it apparent that the parties' intention was that pay for unused vacation time would be an implied term the former employee is entitled to the pay for unused vacation time minus the applicable taxes. Ponape Transfer & Storage, Inc. v. Wade, 5 FSM R. 354, 356 (Pon. 1992).

The controlling factor in the interpretation of contracts is the intention of the parties at the time of the entering into of the contract. Ponape Transfer & Storage, Inc. v. Wade, 5 FSM R. 354, 356 (Pon. 1992).

When the language of a contract is ambiguous or uncertain a court may look beyond the words of the contract to the surrounding circumstances and the parties' intent without changing the writing. Ponape Transfer & Storage, Inc. v. Wade, 5 FSM R. 354, 356 (Pon. 1992).

Where the express language of the contract does not unambiguously require the employer to pay a terminated employee the equivalent of the cost of shipping household goods back to point of hire when no goods are actually shipped and where there are no surrounding circumstances or prior course of dealing indicating that this was the parties' intent the court will find that it was not the parties' intent and thus not a term of the contract that terminated employees be paid shipping costs for household goods not shipped. Ponape Transfer & Storage, Inc. v. Wade, 5 FSM R. 354, 357 (Pon. 1992).

Contracts frequently do not specify the time of performance and courts routinely decide what a reasonable time for performance is in those cases where no time has been specified. Iriarte v. Micronesian Developers, Inc., 6 FSM R. 332, 335 (Pon. 1994).

The presumption that a written contract that is complete on its face embodies the final and entire agreement between the parties may be rebutted by evidence presented at trial. Etscheit v. Adams, 6 FSM R. 365, 384 (Pon. 1994).

An instrument that is not a promissory note because it fails to contain words of negotiability may still be enforceable as a contract between the parties. Nanpei v. Kihara, 7 FSM R. 319, 323 (App. 1995).

Interpretations of terms in contracts are matters of law to be determined by the court. Nanpei v. Kihara, 7 FSM R. 319, 323 (App. 1995).

When the language of a contract is ambiguous or uncertain a court may look beyond the words of the contract to the surrounding circumstances to determine the parties' intent without changing the writing, and the court should attempt to determine meaning of words used rather than what signatory later says he intended. Nanpei v. Kihara, 7 FSM R. 319, 324 (App. 1995).

When faced with an allegation that an ambiguous contract provision creates a condition, courts prefer either an interpretation that imposes on a party a duty to see that an event occurs, rather than one that makes the other party's duty conditional on the occurrence of the event, or an interpretation that will reduce

an obligee's risk of forfeiture if the event does not occur. Nanpei v. Kihara, 7 FSM R. 319, 324 (App. 1995).

Unless it is clear from the agreement or the surrounding circumstances that the obligee has assumed the risk of forfeiture, courts prefer an interpretation that reduces that risk. Nanpei v. Kihara, 7 FSM R. 319, 324 (App. 1995).

Interpretations of contract terms are matters of law to be determined by the court, and are reviewed on appeal *de novo*. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 621 (App. 1996).

Contracts are not interpreted on the basis of subjective uncommunicated views, or secret hopes of one of the parties, but on an objective basis. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 86 (Pon. 1997).

The determining factor as to the rights of a third-party beneficiary is the intention of the parties who actually made the contract. The question whether a contract was intended for the benefit of a third person is generally regarded as one of construction of the contract. The parties' intention in this respect is determined by the terms of the contract as a whole, construed in the light of the circumstances under which it was made and with the apparent purpose that the parties are trying to accomplish. Mailo v. Penta Ocean Inc., 8 FSM R. 139, 141 (Chk. 1997).

The time for completion of a house is not a material term of the parties' agreement when nothing in the parties' oral agreement indicated that the "time was of the essence" for completion of the house within two months and when the plaintiff pointed out no particular day of completion as being crucial. Therefore, late completion of the house should not be seen as a failure of a condition to further obligations under the contract. O'Byrne v. George, 9 FSM R. 62, 64 (Kos. S. Ct. Tr. 1999).

The controlling factor in the interpretation of contracts is the intention of the parties at the time of the entering into the contract. Tulensru v. Utwe, 9 FSM R. 95, 98 (Kos. S. Ct. Tr. 1999).

Contracts are not interpreted on the basis of subjective uncommunicated views, or secret hopes of one of the parties, but on an objective basis. Contracts are interpreted according to the reasonable expectations or understanding of parties based upon circumstances known to the parties and their words and actions, at the time the agreement was entered into. Tulensru v. Utwe, 9 FSM R. 95, 98 (Kos. S. Ct. Tr. 1999).

When the parties made their verbal agreement promising that the plaintiff would provide fill materials from his quarry for various of the defendant's municipal projects and that the defendant would provide the plaintiff with two loads of fill material for each day of hauling, they formed a contract because these promises contained an offer, acceptance and consideration and the terms of the agreement were definite and enforceable. The parties' essential commitments and agreement were identified and definite. Therefore the agreement is binding. Tulensru v. Utwe, 9 FSM R. 95, 98 (Kos. S. Ct. Tr. 1999).

Once a forum selection clause is determined to be binding, its scope and effect should be determined under a contract law analysis. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 127 (Pon. 1999).

When the forum selection clause language uses "exclusive jurisdiction" in conjunction with the mandatory language, "hereby irrevocably consent," it establishes an intent to have any dispute resolved only by the other forum and it leaves no room for dispute over the clause's meaning in this respect. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 127 (Pon. 1999).

Contractual interpretation is a question of law to be reviewed de novo on appeal. Wolphagen v. Ramp, 9 FSM R. 191, 194 (App. 1999).

When a lease provides that the lessees have the right to build such structures as they see fit with the

buildings to become the lessor's property upon the lease termination and the lessees built two houses, they built such structures as they saw fit, and in doing so defined the nature of those structures. Once built, those structures became the lessor's property, although not until the lease's termination. At that time, the lessor was entitled to find himself the owner of dwellings, not a bar. He was within his rights to prevent the houses from being renovated for use in that manner. Wolphagen v. Ramp, 9 FSM R. 191, 195 (App. 1999).

It is a well established principle of contract construction that clauses which are knowingly incorporated into a contract should not be treated as meaningless. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 110 (Chk. 2001).

Ambiguity in a contract provision is generally construed against the drafter. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 111 (Chk. 2001).

In interpreting a contract, words are to be given their plain and ordinary meaning. Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM R. 112, 115 (Kos. 2001).

A contract provision that states that a fishing association will "take necessary steps to facilitate prompt and adequate settlement of any claim for loss or damage" against its member vessels cannot be read to mean that the association assumed liability for those claims because to "facilitate" a settlement of a claim or loss, without more, does not mean to assume liability for the claim or loss. Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM R. 112, 115 (Kos. 2001).

When contractual provisions differ significantly from similar ones in another contract they therefore must be interpreted differently, and a party's liability must be based on the language in the agreement it signed, not on the language in the agreement that another signed. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 173 (Chk. 2001).

Interpretations of contract terms are matters of law to be determined by the court. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 173 (Chk. 2001).

When a fishing agreement requires that the signatory organizations must only take "necessary steps to ensure" that their members comply with the laws, regulations, and their permits and the government has made no allegation and introduced no evidence that the signatory has failed to take any of these "necessary steps," the government cannot seek to impose some sort of strict liability on the signatory for the actions of its members' employees because the fishing agreement's terms, without more, do not create liability for the signatory organizations for each and every violation of FSM fishery law or the foreign fishing agreement that their members commit. The government is therefore not entitled to summary judgment because, as a matter of law, the foreign fishing agreement's contractual terms do not impose vicarious liability on the signatory. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 173-74 (Chk. 2001).

Construction of a contract for an attorney's compensation is governed by the same rules that apply to contracts generally and interpretation of contract terms are matters of law to be determined by the court. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 496 (Chk. 2002).

Contracts are not interpreted on the basis of one of the parties' subjective uncommunicated views or secret hopes. Instead, courts interpret and enforce agreements on an objective basis, according to the parties' reasonable expectations based upon the circumstances known to the parties and their words and actions, at the time the agreement was entered into. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 502, 504-05 (Pon. 2002).

The fact that a party's understanding of an agreement is at variance with its express terms does not raise an issue of fact precluding summary judgment. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 502, 505 (Pon. 2002).

Ambiguities in a contract must be construed against the drafter. Hauk v. Board of Dirs., 11 FSM R. 236, 241 (Chk. S. Ct. Tr. 2002).

In interpreting a contract, the words thereof are to be given their plain and ordinary meaning. Hauk v. Board of Dirs., 11 FSM R. 236, 241 (Chk. S. Ct. Tr. 2002).

When a contract provision for written notice of termination was inserted in the contract to assure that the employee had actual notice of the adverse action and when there is no dispute that the employee received actual notice of his termination, the employer's failure to provide written notice is not actionable breach of contract. Hauk v. Board of Dirs., 11 FSM R. 236, 242 (Chk. S. Ct. Tr. 2002).

When an employment contract has no provision for immediate termination under any circumstances, even where it is undisputed that the employer's property was misappropriated by an employee under contract, the court, construing the contract against the drafter, must conclude that the employer was required to provide the employee with sixty days written notice of his termination, which must run from the date of actual notice of impending termination. Hauk v. Board of Dirs., 11 FSM R. 236, 242 (Chk. S. Ct. Tr. 2002).

When interpreting a contract, the FSM judiciary may not simply assume that reasonably intelligent Micronesians will perceive the same meaning as would reasonably intelligent Americans. The court may not blind itself to the pertinent aspects of Micronesian society, such as less facility in the English language, less exposure to business concepts, and paucity of legal resources, which might cause a reasonably intelligent Micronesian to perceive a meaning differently than would a person from some other nation. Phillip v. Marianas Ins. Co., 11 FSM R. 559, 563 n.4 (Pon. 2003).

Contracts are not interpreted on the basis of subjective, uncommunicated views or secret hopes of one of the parties. Instead, courts interpret and enforce agreements on an objective basis, according to the parties' reasonable expectations or understanding based upon the circumstances known to the parties and their words and actions, at the time the agreement was entered into. Goyo Corp. v. Christian, 12 FSM R. 140, 146 (Pon. 2003).

Only when there is ambiguity within a contract and there are various reasonable and practical alternative constructions available is it necessary to employ rules of interpretation. Otherwise, a party may not seek to introduce evidence that shows that the clear and unambiguous terms of a written agreement are other than as shown on the face of the agreement. Such a prohibition preserves the security and credibility of those who contract with the good faith belief that what they sign is what they agree to. Goyo Corp. v. Christian, 12 FSM R. 140, 146 (Pon. 2003).

The word "shall" renders the indicated procedures mandatory. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 239 (Pon. 2003).

Contracts frequently do not specify the time of performance and courts routinely decide what is a "reasonable time" for performance in those cases. Therefore, if the timing of a party's performance under a contract is in dispute, it is the court's duty to determine what is a "reasonable time" for performance. Esau v. Malem Mun. Gov't, 12 FSM R. 433, 435 (Kos. S. Ct. Tr. 2004).

A default judgment's determination of damages may require the court to interpret a contract's terms. Interpretations of contract terms are matters of law to be determined by the court. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 554 (Chk. 2005).

When the contract addendum language is plain and unambiguous that the extra $3,000 per year pay was contingent upon the employer actually obtaining OMIP funding, not upon the plaintiff's trying his best or taking all possible steps to obtain that funding, the plaintiff's base annual pay was $55,000, not $58,000,

and $55,000 should be read into the contract in place of $58,000. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 555 (Chk. 2005).

Interpretation of contract provisions is a matter of law to be determined by the court. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 364 (Yap 2009).

A contract must be read as a whole in the light of the circumstances under which it was made and with the apparent purpose that the parties are trying to accomplish. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 365 (Yap 2009).

A court may not simply assume that reasonably intelligent Micronesians will perceive the same meaning as would reasonably intelligent Americans because the court will not blind itself to the pertinent aspects of Micronesian society, such as less facility in the English language, less exposure to business concepts, and paucity of legal resources, which might cause a reasonably intelligent Micronesian to perceive meaning differently than would a person from some other nation. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 365 n.2 (Yap 2009).

Disclaimers of the warranties of merchantability and fitness for a particular purpose for certain equipment, translated into plain English, mean that the equipment is not warrantied or guaranteed to be in the condition to be used for the purpose it is being supplied, that is, the equipment is supplied "as is." Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 367 (Yap 2009).

Since U.S. common law decisions are an appropriate source of guidance for contract and tort issues unresolved by statutes, decisions of FSM constitutional courts, or custom and tradition within the FSM, the Kosrae State Court will look to U. S. common law decisions for guidance on contract issues against the background of pertinent aspects of Micronesian society and culture. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644 (Kos. S. Ct. Tr. 2009).

A contract's prohibition of subcontracting includes independent contractors as well as those subcontractors over whom the contractor would exercise strict supervision and close control. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 (Pon. 2011).

Contracts are not interpreted and enforced on the basis of one party's subjective, uncommunicated views or secret hopes but on an objective basis based upon the parties' words and actions and the circumstances known to them when the contract was made. A court should try to determine the meaning of the contract's words rather than rely on what a signatory later says was intended. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 n.3 (Pon. 2011).

For the final expression of the parties' intent, the court relies primarily on the terms as expressed in the contract's words although when the contract language is ambiguous, it can look beyond the contract's words to the surrounding circumstances to determine the parties' intent without changing the writing. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 572 n.4 (Pon. 2011).

When waiver of the subcontracting prohibition can only be granted by the FSM's "prior written consent," the FSM's contracting officer's failure to object to subcontracting is not a waiver under the contract, nor can it be deemed an acceptance of subcontracting as in compliance with the contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 572 (Pon. 2011).

When a contract provision unequivocally authorizes a party's involvement in Asian Development Bank development projects since the ADB is a foreign donor organization and when there is no contractual provision requiring the party to contact foreign donor organizations only through the FSM diplomatic channels or requiring any particular procedure at all, the party's direct contact with the ADB may have caused puzzlement and delay by the ADB and become politically awkward for the FSM, but it was not a breach of the contract between the party and the FSM. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 579

(Pon. 2011).

When, in a contract, the nearest antecedent to the term "on a monthly basis" is "submission of duplicate invoices and progress reports," the phrase "on a monthly basis" qualifies when duplicate invoices and progress reports are due, not when payments are due because the grammatical construction of contracts generally requires that a qualifying or modifying phrase be construed as referring to its nearest antecedent. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 587 (Pon. 2011).

Contractual terms that provide that payment is due upon the occurrence of a stated event are generally not considered to be conditions indicating a forfeiture or a breach of contract but are merely a means of measuring time, and, if time is not of the essence of the contract, then the payment is due after a reasonable time, and what constitutes a reasonable time depends on the attendant circumstances in each case and is often based on factual determinations. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 587-88 (Pon. 2011).

Interpretations of contract terms are matters of law to be determined by the court. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 588 (Pon. 2011).

When the previously agreed percentages for completed work should be sufficient for a court to determine a contract price for any work done during the contract's last three years; when there is no indication that these same percentages were not intended for use throughout the contract's remaining three years and the overall grant award from the U.S. had a set figure; and when, if the parties thought that the payment terms for the contract's last three years were uncertain, the contract could be amended at any time with or without additional consideration, the court cannot conclude that there was no contract beyond the first two years because no prices had been set for the last three years or that there was no consideration for the last three years. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 589 (Pon. 2011).

Since interpretation of contract provisions is a matter of law to be determined by the court, an appellate court will review de novo the interpretation of contract provisions. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 143 (App. 2013).

Interpretation of contract provisions is a matter of law to be determined by the court, and an appellate court reviews issues of law de novo. Smith v. Nimea, 19 FSM R. 163, 169 (App. 2013).

Appellate courts interpret contract language de novo. Smith v. Nimea, 19 FSM R. 163, 171 (App. 2013).

When the contract language is clear and the record is clear, the appellate court may, on an alternate ground, affirm the trial court's decision denying an employee's claims for wages and overtime claims when the state administrative decision found as fact that he worked only on the projects for which he was paid a commission and when that decision was necessarily before the trial court when it was asked to grant partial summary judgment. Smith v. Nimea, 19 FSM R. 163, 171 (App. 2013).

When, under the employment contract, compensation is to be figured on the "net total amount for the specific job" not on the net total amount for only a part of the contract job, the employee's commission compensation must be figured on a contract job by contract job basis, not on a task-by-task basis within the contract job. Smith v. Nimea, 19 FSM R. 163, 172 (App. 2013).

A court will enforce a contract as written. Contracts are not interpreted and enforced on the basis of one party's subjective views or secret hopes but on an objective basis based upon the meaning of the contract's words rather than on what a signatory later says. Smith v. Nimea, 19 FSM R. 163, 172 (App. 2013).

When the contract's words mean that the employee's compensation must be based on a prorated

share of the time spent on the project, the trial court did not err by concluding that the employee's compensation was based on the proportion of the time spent since that is what the contract required. Smith v. Nimea, 19 FSM R. 163, 172 (App. 2013).

A contract must be interpreted on an objective basis, based upon the parties' intent at the time of contracting. Harden v. Inek, 19 FSM R. 244, 249-50 (Pon. 2014).

The controlling factor in interpretation of contracts is the parties' intention at the time of entering into the contract. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 274 (Pon. 2014).

When a contract's language is ambiguous or uncertain, a court may look beyond the words of the contract to the surrounding circumstances and the parties' intent without changing the writing. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 274 (Pon. 2014).

Contracts are not interpreted on the basis of subjective uncommunicated views or secret hopes of one of the parties, but on an objective basis according to the parties' reasonable expectations or understanding based upon circumstances known to the parties and their words and actions when the agreement was entered into. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 274 (Pon. 2014).

When, given the plaintiffs' work experience, the objective intent of the parties must have been for the plaintiffs to perform work on a barge, the only two possibilities of the parties' intent that are in any way supported by the contract's context are for the contract term "project" to refer either to the barge's conduction voyage or to its conduction voyage and subsequent dredging activity. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 274 (Pon. 2014).

Common law decisions of the United States are an appropriate source of guidance for the FSM Supreme Court for contract issues unresolved by statutes, decisions of constitutional courts, or custom and tradition within the FSM. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 275 (Pon. 2014).

The court's precedents establish the validity of the principle of *contra proferentem* – any ambiguity in a contract is to be construed against the drafter – in this jurisdiction. But the rule that language is interpreted against the party who chose it has no direct application to cases where the language is prescribed by law. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 275 (Pon. 2014).

When one party chooses a contract term he is likely to provide more carefully for the protection of his own interests than for those of the other party. However, when the government mandates the specific contract language, neither party can directly impact the language through superior bargaining power and so the rule of *contra proferentem* does not apply. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 275 (Pon. 2014).

A rationale for the rule of *contra proferentem* is that the party against whom it operates had the possibility of drafting the language so as to avoid the dispute. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 275 (Pon. 2014).

When the employer could not have drafted the contract's duration clause differently because the language was mandated by a government agency, the policy rationale behind the doctrine of *contra proferentem* is inapplicable and the court will not use it to interpret the term "project" in the contract's duration clause. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 275 (Pon. 2014).

When the defendant arranged accommodation for its crew at a hotel and the crew members signed a check-in form that specified the check-out date as January 15, 2011, and since the January, 15 2011 check-out date not an ambiguous term, the meaning of the term is a question of law. The court will interpret the term according to its plain meaning that as a matter of law the contract ran through January 15, 2011. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 277 (Pon. 2014).

When a court is presented with a valid contract that lacks a duration clause, it must construct one into the contract using the guideline of reasonableness. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 277 (Pon. 2014).

When, under the circumstances, a reasonable duration term would be that the parties intended the crew to remain until the defendant provided the hotel with notice that accommodations were no longer required and when two of the crew members departed before January 27, 2011, and the hotel duly checked them out of the hotel and closed their account, this course of performance aids the court in determining that the parties intended the contract's duration to be that the crew members remain until the hotel was notified that accommodations were no longer required. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 277 (Pon. 2014).

Contracts frequently do not specify the time of performance and courts routinely decide what a reasonable time for performance is when no time has been specified. Eot Municipality v. Elimo, 19 FSM R. 290, 295 (Chk. 2014).

When repayment of the airport renovation loan was due a reasonable time after the $500,104.65 partial payment and when, without identifying the exact date that would constitute a reasonable time after the partial payment that the repayment should be complete, the court is confident that, based on the attendant circumstances, that time frame would be within the six-year period before suit was filed on January 24, 2012. Eot Municipality v. Elimo, 19 FSM R. 290, 295 (Chk. 2014).

What constitutes a reasonable time depends on the attendant circumstances in each case and is often based on factual determinations. Eot Municipality v. Elimo, 19 FSM R. 290, 295 (Chk. 2014).

Contracts are not interpreted on the basis of subjective, uncommunicated views or secret hopes of one of the parties. Instead, courts interpret and enforce agreements on an objective basis, according to the parties' reasonable expectations or understanding based upon the circumstances known to the parties and their words and actions, at the time the agreement was entered into. Johnny v. Occidental Life Ins., 19 FSM R. 350, 357 (Pon. 2014).

Whether the term "costs" in a verbal contract between a client and his attorney included attorney's fees is a question of contract interpretation that must be resolved by the court as a matter of law. Damarlane v. Damarlane, 19 FSM R. 519, 523 (Pon. 2014).

Since a sophisticated lawyer negotiating against her own client should have reduced the agreement to writing and specified that "costs" included attorney's fees, the court will not reward the attorney's flawed conduct by imposing her interpretation of the term "costs" on her client more than 20 years after they entered into the representation agreement. Damarlane v. Damarlane, 19 FSM R. 519, 524 (Pon. 2014).

Whether a breach of contract has occurred is generally not a question of law but is rather a factual question, but when the facts are undisputed, the determination of whether there has been a material non-compliance with a contract's terms is necessarily reduced to a question of law. George v. Palsis, 19 FSM R. 558, 564 (Kos. 2014).

When only the construction of a contract is at issue, the legal effect and interpretation of the contract is a question of law, and summary judgment is proper. George v. Palsis, 19 FSM R. 558, 565 (Kos. 2014).

A written instrument, such as a contract, must be read as a whole and in the light of the circumstances under which it was made. George v. Palsis, 19 FSM R. 558, 565 (Kos. 2014).

When the Personnel Manual, read as a whole, authorizes the payment of the full amount (if it is 600 hours or less) of accrued annual leave to a former employee only when that employee has resigned with

two weeks' written notice, the result must be that an employee's right to accrued annual leave pay is contingent upon certain events and if those events do not occur, the right never becomes a vested property interest. When it is undisputed that those events (written resignation with two weeks' notice) never occurred, the former employee, as a matter of law, did not have a vested property interest in his accrued annual leave. George v. Palsis, 19 FSM R. 558, 566 (Kos. 2014).

A court should endeavor to determine the meaning of a contractor's words, rather than rely on what a signatory later says was intended. Pacific Int'l, Inc. v. FSM, 20 FSM R. 220, 223-24 (Pon. 2015).

The interpretation of terms within contracts constitutes a matter of law to be determined by the court. Hairens v. Federated Shipping Co., 20 FSM R. 404, 408 (Pon. 2016).

An insurance contract in the FSM that made reference to "the benefits provided under the Workers' Compensation of the CNMI," only intended to merely utilize 4 N. Mar. I. Code § 9310 to ascribe a dollar amount to the benefits to which an injured employee would be entitled, as opposed to adopting the entire CMNI Workers' Compensation Program. Hairens v. Federated Shipping Co., 20 FSM R. 404, 408 (Pon. 2016).

In interpreting a contract, the words thereof, are to be given their plain and ordinary meaning. Hairens v. Federated Shipping Co., 20 FSM R. 404, 408 (Pon. 2016).

Clauses that are knowingly incorporated into a contract should not be treated as meaningless. Hairens v. Federated Shipping Co., 20 FSM R. 404, 408 (Pon. 2016).

Any ambiguities in a contract provision should be construed more strictly against the party who wrote it. Hairens v. Federated Shipping Co., 20 FSM R. 404, 408 (Pon. 2016).

Questions of contract interpretation are matters of law to be determined by the court. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418 (App. 2016).

When a letter signed by both parties clearly states that the partial payments were a "repayment plan for the outstanding balance of the loan," it cannot be interpreted in any way other than as an acknowledgment of the whole debt and that the agreed $100 payments were partial payments on the whole debt. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418 (App. 2016).

Interpretation of contract provisions is a matter of law to be determined by the court. Eot Municipality v. Elimo, 20 FSM R. 482, 489 (Chk. 2016).

Since the Chuuk State Supreme Court has generally, except when a Chuuk statute or constitutional provision is applicable, followed common law contract principles in deciding contract cases, the court will apply common law contract rules. Common law decisions of the United States are thus an appropriate source of guidance for the FSM Supreme Court for contract issues unresolved by statutes, decisions of constitutional courts, or custom and tradition within the FSM. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 127 n.1 (Chk. 2017).

If a loan is in default and the promissory note contains an acceleration clause, the lender may choose to accelerate payment of the entire amount due and payable under the note. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 172 (Pon. 2017).

When a promissory note contains a clause under which the bank, in the event of a default, is entitled to reasonable attorney's fees, expenses and costs of collection, the borrowers thus agreed to the imposition of reasonable attorney's fees and costs of collection if they defaulted on their payment obligation to the bank. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 173 (Pon. 2017).

– Mistake and Misunderstanding

Where fraud or mistake are involved, the court can reform or cancel a deed, but relief will be denied in either situation if the misunderstanding of the aggrieved party was caused by his unexplained failure to read the necessary documents. Melander v. Kosrae, 3 FSM R. 324, 329 (Kos. S. Ct. Tr. 1988).

The doctrine of unjust enrichment generally applies where there is an unenforceable contract due to impossibility, illegality, mistake, fraud, or another reason and requires a party to either return what has been received under the contract or pay the other party for it. The unjust enrichment doctrine is based on the idea one person should not be permitted unjustly to enrich himself at the expense of another. Etscheit v. Adams, 6 FSM R. 365, 392 (Pon. 1994).

The parol evidence rule generally prohibits the introduction of any extrinsic evidence, whether oral or written, to vary, alter or add to the terms of an integrated written instrument, but parol evidence is generally held admissible to alter the terms of a written contract when it is shown that by reason of mutual mistake the parties' true intention is not expressed. FSM Dev. Bank v. Arthur, 10 FSM R. 479, 480 (Pon. 2001).

In the case of mutual mistake the adversely affected party may rescind or avoid the contract. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

A mutual mistake occurs when both parties are under substantially the same erroneous belief as to the facts. In a mutual mistake case, the party adversely affected must show that: 1) the mistake goes to a basic assumption on which the contract was made; 2) the mistake has a material effect on the agreed exchange of performances; and 3) the mistake is not one of which he bears the risk. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

When the mistake did not go to a basic assumption upon which the contract (loan) was made; when the mistake had no effect on the agreed exchange of performances – the loan terms offered by the bank and accepted and agreed to by the borrower were not a result of the "mistake"; and when both parties were not under substantially the same erroneous belief as to the facts that were the basis of the agreement, there was no mutual erroneous belief about the facts which were the basis for the loan and its terms and it is not a case of mutual mistake. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

Contracts are not reformed for mistake, writings are. The distinction is crucial. Courts have been tenacious in refusing to remake a bargain entered into because of mistake. They will, however, rewrite a writing which does not express the bargain. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

The classic case for reformation is a scrivener's or typist's error. Reformation is available in the case of the omission of a term agreed on, the inclusion of a term not agreed on, or the incorrect reduction of a term to writing. At the simplest level it is the mechanism for the correction of typographical and other similar inadvertent errors in reducing an agreement to writing. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

The variance between the original agreement and the writing may take any one of an infinity of conceivable forms. Often, the mistake is as to the legal effect of the writing; the parties' agreement called for a particular legal result. The writing, if enforced, produces a different result. Reformation is available. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

Where, because of mistake, a writing fails to accurately state the parties' agreement, reformation is the exclusive remedy. If the writing is inaccurate because of fraud, the alternative remedies of reformation and rescission are available. But when no allegation of fraud has been made, rescission is not an available remedy. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

– Modification

The parol evidence rule does not bar evidence of subsequent modification of the contract. FSM Dev.

Bank v. Bruton, 7 FSM R. 246, 251 (Chk. 1995).

The court will find that the parties' verbal agreement was not modified later by any of the parties' later actions when the plaintiff has failed to sustain his burden of proof with respect to those later actions. Tulensru v. Utwe, 9 FSM R. 95, 98 (Kos. S. Ct. Tr. 1999).

When both plaintiff and defendant were aware of the project's changed specifications; when defendant was present at the project site on the first day of construction and on several days throughout the project term; when defendant had ample notice and knowledge that the project specifications had been changed; and when defendant did not, at any time, notify, stop or interfere with plaintiff's work and completion of the project, it would be unfair to enforce the contract term that required a writing signed by both parties to amend the agreement's terms and conditions. The parol evidence rule does not bar evidence of subsequent modification of a contract. Malem v. Kosrae, 9 FSM R. 233, 236 (Kos. S. Ct. Tr. 1999).

When a contract was later modified verbally by the parties to require a monthly rental payment of $150 for the first year of the agreement, in addition to the agreed upon repairs to be completed by the defendant, this verbal modification of the lease agreement is enforceable. Lonno v. Talley, 12 FSM R. 484, 486 (Kos. S. Ct. Tr. 2004).

When there was a binding purchase agreement between a land buyer and a clan land seller and the plaintiffs were intended beneficiaries of that contract and when that contract could only be modified by a consensus decision by the seller's clan members evidenced by the agreement of five or more of the six designated clan members but the purported modification did not contain five genuine signatures of the designated committee representatives, there was a breach of the purchase agreement entitling plaintiffs to damages. Edgar v. Truk Trading Corp., 13 FSM R. 112, 117-18 (Chk. 2005).

Although the written contract required the plaintiffs to give the defendant a non-refundable retainer fee of $5,000, the defendant waived this requirement when he only required $500, altering the contract. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 647 (Kos. S. Ct. Tr. 2009).

Whether a contract has been modified by the parties thereto is ordinarily a question of fact for the finder of fact. Harden v. Inek, 19 FSM R. 244, 250 (Pon. 2014).

Since modification is a common law doctrine in the field of contracts, the court will consider United States decisions as an appropriate source of guidance in analyzing unresolved questions arising in the area of contracts. Under longstanding principles of common law, a contract may be modified with both parties' assent, provided that there is consideration for the new agreement or it is made under circumstances making consideration unnecessary. Harden v. Inek, 19 FSM R. 244, 250 (Pon. 2014).

A subordinate and separable part of the contract may be waived or modified by the parties without a cancellation of the whole contract. Harden v. Inek, 19 FSM R. 244, 250 (Pon. 2014).

When it is clear that the parties did not reach a meeting of the minds necessary to modify the contract, the absence of mutual assent makes the doctrine of modification inapplicable. Harden v. Inek, 19 FSM R. 244, 250 (Pon. 2014).

The Pohnpei statute of frauds provision bars the enforcement of oral contracts that could not be performed within one year from the making thereof. It does not bar modifying a contract more than one year after the contract's original formation or make that modification unenforceable. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 178 (Pon. 2017).

A borrower cannot make a bank liable for payment for further construction work (in effect, requiring the bank to make a further loan to the borrower) without the bank's consent. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 181 (Pon. 2017).

– Necessity of Writing

Under a statute of frauds writings are not required to make a contract, but to provide evidence that a contract has been made. A writing meets the statute of frauds if it contains the names of the parties, terms and conditions of the contract, a reasonable description of the subject of the contract and is signed by the party to be charged. It need not state the particulars of the contract so long as its substance or essential terms are stated, and it need not be a single document, but may be pieced together from separate writings. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 620 (App. 1996).

When the leading object of a party promising to pay the debt of another is to promote his own interests, and not to become surety or guarantor, and the promise is made on sufficient consideration, it will be valid, although not in writing. Adams v. Island Homes Constr., Inc., 9 FSM R. 530a, 530d (Pon. 2000).

There is no statute of frauds – a law requiring that certain agreements or contracts to be in writing before they are enforceable in court – in Chuuk. Customarily, any agreement, even that selling land, might be oral. Marcus v. Truk Trading Corp., 10 FSM R. 387, 389 (Chk. 2001).

There is no statute of frauds in Chuuk, that is, no legal requirement that there be a writing for there to be an enforceable contract. Under Chuukese customary law, no writing is needed to effect any contractual transaction, including the transfer of an interest in land. Nakamura v. Moen Municipality, 15 FSM R. 213, 217 (Chk. S. Ct. App. 2007).

There is no statute of frauds – a law requiring that certain agreements or contracts to be in writing before they are enforceable in court – in Chuuk. Customarily, any agreement, even that selling land, might be oral, but in some situations, a customary oral transfer must be registered to be enforceable. The reason is not that the Torrens land registration system must supplant custom and tradition. Rather, the reason is one of evidence because certificates of title are prima facie evidence of ownership as stated therein against the world. Setik v. Ruben, 17 FSM R. 465, 472 (App. 2011).

Chuuk does not have a statute of frauds. Killion v. Nero, 18 FSM R. 381, 384 (Chk. S. Ct. Tr. 2012).

There is no statute of frauds in the FSM Code. The relevant statutes do not require salvage contracts, or maritime contracts of any kind, to be in writing in order to be enforceable. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 9 (Pon. 2013).

It is generally true that salvage contracts may be oral. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 9 (Pon. 2013).

The Pohnpei statute of frauds covers a contract to charge any person upon any special promise to answer for the debt, default, or misdoing of another. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 9 n.3 (Pon. 2013).

Under a statute of frauds, writings are not required to make a contract, but to provide evidence that a contract has been made. A writing meets the statute of frauds if it contains the parties' names, terms and conditions of the contract, a reasonable description of the subject of the contract and is signed by the party to be charged. The writing need not state the contract's particulars so long as its substance or essential terms are stated, and it need not be a single document, but may be pieced together from separate writings. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 9 (Pon. 2013).

Generally, an oral agreement is as enforceable as a written one. Reducing an agreement to writing, however, can assist the parties in assuring that all the necessary terms have been agreed to and are definite, or later assist a court in ascertaining what those terms were. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 n.3 (Pon. 2016).

The Pohnpei statute of frauds provides that no action may be brought and maintained on any agreement that is not to be performed within one year from the making thereof unless the promise, contract, or agreement, upon which the action is brought or some memorandum or note thereof, is in writing, and is signed by the party to be charged therewith or by some person legally authorized to sign for that party. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 177 (Pon. 2017).

An alleged oral contract for a fifty-year term, which by its terms could not be performed within one year, is not actionable under the Pohnpei statute of frauds. This is true even if the oral contract could have been terminated within one year for cause. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 177 (Pon. 2017).

The Pohnpei statute of frauds provision bars the enforcement of oral contracts that could not be performed within one year from the making thereof. It does not bar modifying a contract more than one year after the contract's original formation or make that modification unenforceable. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 178 (Pon. 2017).

There is no statute of frauds – a law requiring that certain agreements or contracts to be in writing before they are enforceable in court – in Chuuk. Customarily, any agreement, even that selling land, might be oral. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 163 (Chk. 2019).

– Novation

The general rule is that parties to a contract may rescind it by making a new contract that is inconsistent with the original contract. Phillip v. Aldis, 3 FSM R. 33, 37 (Pon. S. Ct. Tr. 1987).

Liabilities arising from a contract are not assignable without the consent of the creditor, and the mere assumption of the debt by a third party is not sufficient to establish a novation of the original contract unless there is a clear assent by the creditor to the substitution of a new obligor. Black Micro Corp. v. Santos, 7 FSM R. 311, 314-15 (Pon. 1995).

Liabilities arising from a contract are not assignable without the consent of the creditor, and a third party's mere assumption of the debt is not sufficient to establish a novation of the original contract unless there is a clear assent by the creditor to the substitution of a new obligor. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 74 (Pon. 2001).

The term "novation" is used almost exclusively in contract law and denotes the parties' substitution of a new agreement for an old one that involves either a new obligation between the same parties, or a new debtor, or a new creditor. Walter v. Chuuk, 10 FSM R. 312, 315 (Chk. 2001).

Even assuming that the seller historically did not charge interest on its account with the buyer, nothing precludes the parties to a commercial transaction from coming to a new agreement regarding installment payments on the outstanding indebtedness that also included an interest component calculated over the prior 26 months period, so long as the interest rate charged did not contravene FSM public policy as set out in 34 F.S.M.C. 204. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 502, 504 (Pon. 2002).

Parties to a contract may agree to replace an existing contract with a new and different contract before the original contract's term has expired. The general rule is that parties to a contract may rescind it by making a new contract that is inconsistent with the original contract. Uehara v. Chuuk, 14 FSM R. 221, 226 (Chk. 2006).

Since, upon the execution of a valid and legal substituted agreement the original agreement merges into and is extinguished, and since failure to perform the substituted agreement will not revive the old agreement, a 1999 lease agreement that was extinguished by a 2001 land purchase agreement will not be

revived by the state's breach of the land purchase agreement. Uehara v. Chuuk, 14 FSM R. 221, 226 (Chk. 2006).

Parties to a contract may agree to replace an existing contract with a new and different contract before the original contract's term has expired. Welle v. Chuuk Public Utility Corp., 17 FSM R. 609, 611 (Chk. 2011).

The general rule is that parties to a contract may rescind it by making a new contract that is inconsistent with the original contract. Welle v. Chuuk Public Utility Corp., 17 FSM R. 609, 611 (Chk. 2011).

The parties' stipulated judgment in a state court action for breach of an easement agreement constituted a new contract – a new easement agreement – between the parties because it was a contract or agreement that was inconsistent with the original contract or agreement, especially when the amount stipulated to, $50,000, greatly exceeded the value of the undelivered 40 cubic yards of sand and 40 cubic yards of aggregates that constituted the breach. Welle v. Chuuk Public Utility Corp., 17 FSM R. 609, 611-12 (Chk. 2011).

When borrowers signed a November 17, 2014 promissory note that superseded and replaced an earlier April 20, 2012 promissory note after they requested that the original loan be restructured and the monthly payments lowered, the bank offered to do so under the terms in its response, and, by signing the bank's commitment letter and the November 17, 2014 amended and restated promissory note, the borrowers accepted that offer and agreed to those "restructured" terms and agreed and acknowledged that their remaining indebtedness to the bank was $17,831.33. Since the $17,831.33 credit the bank extended to the borrowers through the November 17, 2014 amended and restated promissory note paid off and retired the original April 20, 2012 promissory note and its debt, the borrowers' lament that the borrowers never received the $17,831.33 in cash is misguided. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 607 (Pon. 2020).

– Option Contract

An option contract is a unilateral contract where an offer is made and the offeree is invited to accept by rendering a performance instead of promising something in return. Once the offeree either tenders or begins the invited performance, the option contract is created. The offer then becomes irrevocable. Kihara Real Estate, Inc. v. Estate of Nanpei (I), 6 FSM R. 48, 53 (Pon. 1993).

The offeror may vary the common law rule by express provision in the contract; thus, he remains in control of his offer. Absent express provisions to the contrary, an option contract is binding on the offeror who must keep the offer open for a specified time period. The offeree is free to accept or reject within that period. Kihara Real Estate, Inc. v. Estate of Nanpei (I), 6 FSM R. 48, 53 (Pon. 1993).

– Parol Evidence

A party may not seek to introduce evidence that shows that the clear and unambiguous terms of a written agreement are other than as shown on the face of the agreement. Such a prohibition preserves the security and credibility of those who contract with good faith belief that what they sign is what they agree to. Kihara Real Estate, Inc. v. Estate of Nanpei (I), 6 FSM R. 48, 55 (Pon. 1993).

The parol evidence rule bars evidence of a contemporaneous or prior oral agreement that contradicts or alters the terms of the written agreement. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 250 (Chk. 1995).

Parol evidence of a collateral agreement that does not alter or contradict the written agreement is not barred by the parol evidence rule if the collateral agreement is one that in the circumstances might naturally be omitted from the writing. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 250 (Chk. 1995).

The parol evidence rule does not bar evidence of subsequent modification of the contract. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 251 (Chk. 1995).

When there is a single and final memorial of the understanding of the parties embodied in a written agreement, for evidentiary purposes all prior and contemporaneous negotiations are treated as having been superseded by that written memorial under the parol evidence rule. Fu Zhou Fuyan Pelagic Fishery Co. v. Wang Shun Ren, 7 FSM R. 601, 604-05 (Pon. 1996).

When both plaintiff and defendant were aware of the project's changed specifications; when defendant was present at the project site on the first day of construction and on several days throughout the project term; when defendant had ample notice and knowledge that the project specifications had been changed; and when defendant did not, at any time, notify, stop or interfere with plaintiff's work and completion of the project, it would be unfair to enforce the contract term that required a writing signed by both parties to amend the agreement's terms and conditions. The parol evidence rule does not bar evidence of subsequent modification of a contract. Malem v. Kosrae, 9 FSM R. 233, 236 (Kos. S. Ct. Tr. 1999).

The parol evidence rule generally prohibits the introduction of any extrinsic evidence, whether oral or written, to vary, alter or add to the terms of an integrated written instrument, but parol evidence is generally held admissible to alter the terms of a written contract when it is shown that by reason of mutual mistake the parties' true intention is not expressed. FSM Dev. Bank v. Arthur, 10 FSM R. 479, 480 (Pon. 2001).

A parol agreement inconsistent with a written agreement made contemporaneously therewith is void and unenforceable, unless it was omitted from the written contract by fraud, accident, or mistake. FSM Dev. Bank v. Arthur, 10 FSM R. 479, 480 (Pon. 2001).

The parol evidence rule bars evidence of a contemporaneous or prior oral agreement that contradicts or alters the terms of the written agreement, but parol evidence of a collateral agreement that does not alter or contradict the written agreement is not barred by the parol evidence rule if the collateral agreement is one that in the circumstances might naturally be omitted from the writing. Western Sales Trading Co. (Phils) v. B & J Corp., 14 FSM R. 423, 425 (Chk. 2006).

Since interest on unpaid amounts is not a collateral agreement that in the circumstances might naturally be omitted from the writing but is a term that would naturally be expected to be part of an agreement about payment for goods provided on an open account or on credit because it alters the written agreement between the parties, therefore evidence of a contract term that 1½% interest per month was due on unpaid amounts is inadmissible under the parol evidence rule. Western Sales Trading Co. (Phils) v. B & J Corp., 14 FSM R. 423, 425 (Chk. 2006).

The parol evidence rule bars evidence of a contemporaneous or prior oral agreement that contradicts or alters the terms of the written agreement. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 176 (Pon. 2017).

Parol evidence of a collateral agreement that does not alter or contradict the written agreement is not barred by the parol evidence rule if the collateral agreement is one that in the circumstances might naturally be omitted from the writing. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 176 (Pon. 2017).

Since an employment contract's duration, including termination, are not matters collateral to the employment contract, evidence of a prior oral contract with terms that contradict or alter the terms of the written employment contract that the employee signed, is barred. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 176 (Pon. 2017).

– Ratification

If a board of directors, upon learning of an officer's unauthorized transaction, does not promptly

attempt to rescind or revoke the action previously taken by the officer, the corporation is bound on the transaction on a theory of ratification. Asher v. Kosrae, 8 FSM R. 443, 452 (Kos. S. Ct. Tr. 1998).

A corporation's directors may ratify any unauthorized act or contract. A corporation's ratification need not be manifested by any vote or formal resolution of the board of directors. An implied ratification can arise if the corporate principal, with full knowledge and recognition of the material facts, exhibits conduct demonstrating an adoption and recognition of the contract as binding, such as acting in the contract's furtherance. It is well established that if a corporation, with knowledge of its officer's unauthorized contract and the material facts concerning it, receives and retains the benefits resulting from the transaction, it thereby ratifies the transaction. A corporation may not accept a transaction's benefit and at the same time attempt to escape its consequences on the ground that the transaction was not authorized. Asher v. Kosrae, 8 FSM R. 443, 452-53 (Kos. S. Ct. Tr. 1998).

When the board of directors did not act promptly to rescind or revoke the agreement made by its general manager; when all its subsequent actions have been consistent with the agreement's terms; when it had knowledge of the unauthorized contract and of the material facts concerning it; when it received, retained, and continues to receive and retain the benefits resulting from the transaction; it is clear that the board of directors has ratified the agreement. The corporation may not accept the agreement's benefits and at the same time escape its liabilities. Asher v. Kosrae, 8 FSM R. 443, 453 (Kos. S. Ct. Tr. 1998).

Even if a corporate official did not have the authority to execute a lease, his execution of the lease was ratified by the corporation's long acceptance of the lease's benefits. Marcus v. Truk Trading Corp., 11 FSM R. 152, 158 (Chk. 2002).

A clan or lineage in some respects functions as a corporation – it is, or can be, composed of many members, but is considered a single legal entity, capable of owning land, suing and being sued, and performing other acts, and which must necessarily act through its representatives. In this respect a corporation and a clan or lineage are analogous. Marcus v. Truk Trading Corp., 11 FSM R. 152, 161 (Chk. 2002).

Generally, any ratification of an unauthorized agreement must be in its entirety because an entity cannot accept the benefits of an unauthorized act, but reject its burdens. Marcus v. Truk Trading Corp., 11 FSM R. 152, 161 (Chk. 2002).

When a lineage as a whole has accepted all of the benefits of a lease – all of the payments that the lessee was required to make – up to the present and even beyond, it cannot now reject the burden of the lessee exercising its options to renew. Marcus v. Truk Trading Corp., 11 FSM R. 152, 161 (Chk. 2002).

It is possible for an agreement not authorized by all lineage members to be ratified by the later conduct of those who did not authorize it. Nakamura v. Moen Municipality, 15 FSM R. 213, 219 (Chk. S. Ct. App. 2007).

Lineage members' consent or acquiesce to the sale of lineage land can be shown by affirmative assent, or an acquiescence, or by ratification of the act. Nakamura v. Moen Municipality, 15 FSM R. 213, 219 (Chk. S. Ct. App. 2007).

Ratification is the approval of an otherwise unauthorized act or transaction. An implied ratification may take place if one, with full knowledge and understanding of the material facts, exhibits conduct that shows a recognition and adoption of the unauthorized act or transactions. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 443 (Pon. 2009).

The insurer ratified, or approved, the check cashing activities of its agents to the extent that they distributed the money obtained from the checks to policy holders for legitimate insurance purposes, and that the insurer gave credit to its agents for these distributions shows this conclusively. But the insurer

never ratified the agents' conversion of the funds that were not accounted for, or were not used for insurance purposes since the insurer's efforts to figure out what had happened, to stop it from happening, to arrive at an accounting for the missing money, and to restore order to its Pohnpei operation, manifest its disapproval of the practice of cashing premium checks initiated and continued by its agents. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 444 (Pon. 2009).

Generally, any ratification of an unauthorized agreement must be in its entirety because an entity cannot accept the benefits of an unauthorized act, but reject its burdens. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 360 (App. 2012).

When an insurer, by its acts, ratified only the unauthorized agreements between its agents and its eligible policy-holders – the distribution of cash advances to eligible policy-holders, it "recovered" those funds from its policy-holders and since the insurer is not entitled to a double recovery, it cannot hold others liable for those sums and must give them credit for those sums. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 360 (App. 2012).

Once the insurer ratified its agents' unauthorized agreements with its eligible policy-holders, it was barred from recovering any of that money from others because that would be a double recovery since the insurer had already "recovered" those funds from its policy-holders. Plaintiffs are not permitted a double recovery. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 360 (App. 2012).

An insurer did not ratify its agents' check-cashing agreements with a business by giving the business credit for its agents' cash advances to its eligible policy-holders. It merely recognized that it was not entitled to double recovery. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 360 (App. 2012).

When the insurer did not ratify any of its agents' check-cashing agreements but ratified only each of its agents' unauthorized agreements with its eligible policy-holders, no unauthorized agreement was partially ratified. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 361 (App. 2012).

– Reformation

Reformation of an insurance contract may be sought under a theory of mutual mistake or mistake or fraud of the insurance agent. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 470 (Pon. 2004).

Reformation is an equitable doctrine that allows a court to conform a contract (even an insurance contract) to the true agreement between the parties rather than the agreement as written. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 470 (Pon. 2004).

Contracts are not reformed for mistake, writings are. The distinction is crucial. Courts have been tenacious in refusing to remake a bargain entered into because of mistake. They will, however, rewrite a writing which does not express the bargain. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

The classic case for reformation is a scrivener's or typist's error. Reformation is available in the case of the omission of a term agreed on, the inclusion of a term not agreed on, or the incorrect reduction of a term to writing. At the simplest level it is the mechanism for the correction of typographical and other similar inadvertent errors in reducing an agreement to writing. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

The variance between the original agreement and the writing may take any one of an infinity of conceivable forms. Often, the mistake is as to the legal effect of the writing; the parties' agreement called for a particular legal result. The writing, if enforced, produces a different result. Reformation is available. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

Where, because of mistake, a writing fails to accurately state the parties' agreement, reformation is the

exclusive remedy. If the writing is inaccurate because of fraud, the alternative remedies of reformation and rescission are available. But when no allegation of fraud has been made, rescission is not an available remedy. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

Reformation will not be granted if its effect would be to curtail the rights of a bona fide purchaser for value or others who have relied upon the writing. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

When a loan agreement and promissory note that were the writings memorialized an agreement are reformed to accurately reflect the parties' agreement, the court is not creating an obligation where none currently exists by reforming the writings. The court is merely reforming the writings to reflect an obligation that already exists. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 10 (Pon. 2004).

The trial court did not err in finding a meeting of minds and no mutual mistake and that the mistake was in reducing the terms to writing when the facts suggest that the lender understood AHPW to liable on the loan and the parties stipulated that AHPW should have signed the promissory note and that the defendants intended to guarantee the loan. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 396 (App. 2006).

Reformation is available where there is an incorrect reduction of a term to a writing. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 397 (App. 2006).

The trial court did not err when it reformed the loan documentation to reflect the parties' stipulated intent that AHPW be the obligor on the promissory note and that the appellants be guarantors of that obligation. As such, appellants were not guaranteeing their own obligation, they were guaranteeing AHPW's obligation on the promissory note. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 397 (App. 2006).

When, even though the employment contract was printed with a Pohnpei state government letterhead, the Pohnpei Visitors Bureau's actual function and operation shows that it is independent of the Pohnpei state government; when the PVB's funding is provided for under the Compact of Free Association, but is deposited with the Pohnpei Department of Treasury and Administration for custodial purposes and disbursement; and when the PVB's actual decision-making lies with its Board, the PVB is an entity that operates independent of the state government, and its Board is responsible for its General Manager's hiring, thus making the state's non-renewal of the plaintiff's contract unlawful. Santos v. Pohnpei, 21 FSM R. 495, 499 (Pon. 2018).

Although the contract in question is a personal services contract which names the State of Pohnpei as the contracting party, because the Pohnpei Visitors Bureau operates and is controlled by its Board, and not by the state government, the agreement is between the plaintiff and the PVB, through its Board of Directors. Santos v. Pohnpei, 21 FSM R. 495, 499 (Pon. 2018).

– Rescission

The general rule is that parties to a contract may rescind it by making a new contract that is inconsistent with the original contract. Phillip v. Aldis, 3 FSM R. 33, 37 (Pon. S. Ct. Tr. 1987).

Rescission of an insurance contract would, if granted, absolve an insured from liability for the premium and could even entitle him to return of the premium paid. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 470 (Pon. 2004).

Where, because of mistake, a writing fails to accurately state the parties' agreement, reformation is the exclusive remedy. If the writing is inaccurate because of fraud, the alternative remedies of reformation and rescission are available. But when no allegation of fraud has been made, rescission is not an available remedy. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

An insurer seeking rescission of an insurance contract based on a misrepresentation in an insurance

application must tender the premiums back to the insured. Sigrah v. Micro Life Plus, 16 FSM R. 253, 260 (Kos. 2009).

An insurer seeking to rescind a life insurance policy upon a ground which rendered it voidable from the beginning must return or tender the premium paid thereunder because rescission of an insurance contract would, if granted, absolve an insured from liability for the premium and entitle him to return of the premium paid since the general rule is that a contract must be rescinded in whole and cannot be rescinded in part. Sigrah v. Micro Life Plus, 16 FSM R. 253, 260 (Kos. 2009).

If an insurer seeks to avoid liability for the policy death benefit because of the insured's misrepresentation in the application process, it must tender the premiums to the beneficiaries. If it does not, it cannot prevail on the defense that the insured's misrepresentation made the policy voidable. This is because, after an insured's death, if a tender of the premium in avoidance of the life insurance policy for misrepresentation is not made to the beneficiaries in a timely manner or within a reasonable time, the defense of fraud or misrepresentation is deemed waived, and if the beneficiaries refuse the tender, it should then be paid into court before the insurer seeks a decision on the merits of its defense of fraud or misrepresentation. Sigrah v. Micro Life Plus, 16 FSM R. 253, 260 (Kos. 2009).

The court will not hesitate to deny rescission and order enforcement of the contract when the party seeking rescission has not made a timely tender of the premiums (or benefit) it received under the contract. Sigrah v. Micro Life Plus, 16 FSM R. 253, 261 (Kos. 2009).

Lawyers are accustomed to seeing the word "restitution" in connection with the "rescission" or cancellation of a contract because when a contract is rescinded, each party is entitled to be restored what he gave the other, or in other words, is entitled to restitution. Killion v. Nero, 18 FSM R. 381, 385 (Chk. S. Ct. Tr. 2012).

Rescission will normally be accompanied by restitution on both sides. It is the general rule that rescission will be granted only on the condition that the party asking it restore to the other party, substantially, the consideration received. Killion v. Nero, 18 FSM R. 381, 385 (Chk. S. Ct. Tr. 2012).

When parties bind themselves by their lawful contracts, courts are usually unable to alter these agreements even if they later seem unfair to one of the parties. Generally, a contract's terms determine when commissions are computed and paid. Gallen v. Moylan's Ins. Underwriters (FSM) Inc., 21 FSM R. 380, 385 (App. 2017).

– Specific Performance

The equitable remedy of specific performance is one where the court orders a breaching party to do that which he has agreed to do, thereby rendering the non-breaching party the exact benefit which he expected. The remedy is available when money damages are inadequate compensation for the plaintiff – when damages cannot be computed or when a substitute cannot be purchased. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 126 (Pon. 1993).

The definiteness of the contract terms and the ease or difficulty of enforcement or supervision must be considered before awarding specific performance damages. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 623 (App. 1996).

When the parties have agreed in the court's presence to specific performance on the issue of damages, trial is not necessary on that issue. James v. Lelu Town, 10 FSM R. 648, 650 (Kos. S. Ct. Tr. 2002).

Specific performance is itself not a cause of action, but is rather a possible remedy for breach of contract under certain circumstances. Mailo v. Chuuk, 13 FSM R. 462, 472 n.7 (Chk. 2005).

Specific performance is a contract remedy that is available only when the usual measures of damages, expectancy, restitution, or reliance money damages, are inadequate compensation or cannot be computed or when a substitute cannot be purchased. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 606 (Pon. 2009).

If a party prevails upon its contract counterclaim and if none of the contract money damage remedies are applicable, specific performance is a possible remedy, even if the party has not prayed for it since, except for default judgments, every final judgment must grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings. Since specific performance, even when an unlikely remedy, is dependent upon the success of a breach of contract counterclaim and could be awarded even if it were dismissed, the dismissal of what is essentially a part of the prayer for relief will be denied. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 606 (Pon. 2009).

A common remedy for the breach of a land contract is specific performance – the transfer of the land to be acquired – since land is considered unique. Killion v. Nero, 18 FSM R. 381, 385 (Chk. S. Ct. Tr. 2012).

Specific performance is a contract remedy that is available only when the usual measures of damages – expectancy, or reliance, or restitution money damages – are inadequate compensation or cannot be computed or when a substitute cannot be purchased. Killion v. Nero, 18 FSM R. 381, 385 (Chk. S. Ct. Tr. 2012).

The court cannot order the specific performance that the plaintiff would receive his "expectancy" – the land that he was to have received in exchange when the defendants do not have the land to exchange. Killion v. Nero, 18 FSM R. 381, 385 (Chk. S. Ct. Tr. 2012).

Specific performance is a contract remedy that is available only when the usual measures of damages, expectancy, restitution, or reliance money damages, are inadequate compensation or cannot be computed or when a substitute cannot be purchased. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 567 (Pon. 2013).

Any court order enforcing the specific performance of a contract right to exclusive possession of a factory must await a final judgment on the merits. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 598 (Kos. 2013).

The FSM Supreme Court generally encourages parties to voluntarily agree to resolve their disputes through alternative means such as arbitration and will specifically enforce the parties contract to arbitrate. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 657 (Pon. 2013).

There are no FSM statutes governing arbitration, therefore only common law arbitration exists here. Nevertheless, when a contract clearly shows the parties' intent to submit disputes to arbitration, the court will allow and encourage the parties to freely contract to resolve their disputes in other forums, with the confidence that the court will enforce such agreements. The court will hold the parties to their agreement and specifically enforce the arbitration provisions in the contract. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 657-58 (Pon. 2013).

In the absence of a statute requiring it, the specific enforcement of the arbitration clause does not mandate that litigation be dismissed before the arbitration can proceed. Generally, judicial proceedings will instead be stayed pending the arbitration. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 658 (Pon. 2013).

In the absence of a statute requiring dismissal and in the interests of judicial economy and of lessening the parties' financial burden, the best way to specifically enforce the arbitration clause's intent is not to dismiss the case in the hope that a foreign arbitration will proceed smoothly and not require further judicial

enforcement. The best way to specifically enforce the arbitration clause is to stay the judicial proceedings and maintain the status quo while the parties go through arbitration. A preliminary injunction will therefore remain in effect and the case will remain open while the arbitration proceeds. Once an arbitration decision is rendered, the court can then enforce that decision as a judgment or final order of this court and take such further steps as may be necessary and appropriate to conclude this litigation. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 658 (Pon. 2013).

An agreement to arbitrate future contractual disputes is specifically enforceable, even if one party attempts to revoke the agreement. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 658 (Pon. 2013).

The equitable remedy of specific performance is where the court orders a breaching party to do that which he has agreed to do, thereby rendering the non-breaching party the exact benefit which he expected. The remedy is available when money damages are inadequate compensation for the plaintiff, or when damages cannot be computed. Harden v. Inek, 19 FSM R. 244, 251-52 (Pon. 2014).

When, if specific performance were ordered, the court would order that the plaintiff be allowed to resume possession of a lot for five more months, but when, because that lot was undeveloped and did not generate any revenue, five months of resumed occupation by the plaintiff would not affect the plaintiff's income and thus specific performance of the last five months of the lease would seem pointless, a money award for actual damages should suffice. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 378 (Pon. 2014).

The equitable remedy of specific performance is one where the court orders a breaching party to do that which he has agreed to do, thereby rendering the non-breaching party the exact benefit which he expected. The remedy is available when money damages are inadequate compensation for the plaintiff, when damages cannot be computed, or when a substitute cannot be purchased. Panuelo v. FSM, 20 FSM R. 62, 69 (Pon. 2015).

Specific performance is available only when the usual contract measures of damages, expectancy, restitution, or reliance money damages, are inadequate compensation or cannot be computed or when a substitute cannot be purchased. Panuelo v. FSM, 20 FSM R. 62, 69 (Pon. 2015).

By ordering the promisor to render the promised performance, the court attempts to produce, as nearly as is practicable, the same effect as if the contract had been performed, but a court will not order a performance that has become impossible, unreasonably burdensome, or unlawful, nor will it issue an order that can be frustrated by the defendant through exercise of a power of termination or otherwise. Panuelo v. FSM, 20 FSM R. 62, 69 (Pon. 2015).

Because specific performance is a remedy in equity under contract law, an applicant's claim for specific performance is unenforceable when no valid agreement exists between the applicant and the government since, for the court to order the Secretary to hire the applicant based on an invalid contract, through specific performance, would be unlawful and a violation of public policy. Panuelo v. FSM, 20 FSM R. 62, 69 (Pon. 2015).

Specific performance is a contract remedy that is available only when the usual measure of damages, expectancy, restitution, or reliance money damages are inadequate compensation, or cannot be computed, or when a substitute cannot be purchased. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 535 (App. 2018).

When a money award for actual damages should suffice and the amount is capable of being ascertained, specific performance is, by implication, an unsuitable remedy. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 536 (App. 2018).

Specific performance, however, should only be granted where no adequate remedy at law exists. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 536 (App. 2018).

– Surety

In a broad sense a guarantor or surety is one who promises to answer for the debt or default of another. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 10 (Pon. 2004).

The main distinction between a contract of surety and one of guaranty has been expressed by stating that a surety is primarily and jointly liable with the principal debtor, while a guarantor's liability is collateral and secondary and is fixed only by the inability of the principal debtor to discharge the primary obligation. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

When the defendants attempted to obtain an $8.1 million standby letter of credit through the Bank of the FSM, Colonia, Yap, but were unable to because that bank was institutionally unable to handle such a letter of credit for a sum larger than $2.5 million; when the possibility that the other bank in the FSM, the Bank of Guam, might be able to issue such a letter of credit was not explored; and the defendants submitted a surety bond from the Travelers Casualty and Surety Company of Hartford, Connecticut; and when the court issued its order, it was under the impression that a standby letter of credit could be issued through the Bank of the FSM, Yap, and if it had had any hint that such was not possible, the order would have specified a letter of credit through any bank in the FSM and only if that was unavailable would an alternative bond have been considered; the court will approve the Travelers surety bond that the defendants have already obtained and stay execution on the judgment pending appeal and further court order. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 533, 534-35 (Yap 2007).

The general rule is that a payment by the principal before the action is time-barred, operates as a renewal as to the principal, and to a surety, but not to a guarantor. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

A payment by the principal debtor will not operate to toll the statute of limitations as to a guarantor of the debt, even though it might do so as to a surety. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

A surety contract is a contract between the court and a third party, the surety, under which the surety ensures that the criminal defendant will appear before the court for all court proceedings and complies with all other terms listed – in exchange for the court granting the defendant freedom from incarceration until the court's final judgment. The contract ends, at latest, when the defendant is sentenced – although it may end earlier. Chuuk v. Dawe, 22 FSM R. 415, 416 (Chk. S. Ct. Tr. 2019).

When the State has not made any allegations that the criminal defendant violated his conditions of release before he was sentenced, but merely alleged that the defendant failed to abide by the conditions of his suspended sentence, the surety is not obligated for a breach of the surety contract because the surety contract expired when the defendant was sentenced and the surety had no duty to ensure that the defendant fulfilled the conditions of his suspended sentence. Chuuk v. Dawe, 22 FSM R. 415, 416 (Chk. S. Ct. Tr. 2019).

– Third-Party Beneficiary

A third person may, in his own right and name, enforce a promise made for his benefit even though he is a stranger both to the contract and to the consideration. This concept, originally an exception to the rule that no claim can be sued upon contractually unless it is a contract between the parties to the suit, has become so general and far-reaching in its consequences as to have ceased to be an exception, but is recognized as an affirmative rule, generally known as the third-party beneficiary doctrine. Mailo v. Penta Ocean Inc., 8 FSM R. 139, 141 (Chk. 1997).

The determining factor as to the rights of a third-party beneficiary is the intention of the parties who actually made the contract. The question whether a contract was intended for the benefit of a third person is generally regarded as one of construction of the contract. The parties' intention in this respect is determined by the terms of the contract as a whole, construed in the light of the circumstances under which it was made and with the apparent purpose that the parties are trying to accomplish. Mailo v. Penta Ocean Inc., 8 FSM R. 139, 141 (Chk. 1997).

When the third-party beneficiary is so described as to be ascertainable, it is not necessary that he be named in the contract in order to enforce the contract. Mailo v. Penta Ocean Inc., 8 FSM R. 139, 141-42 (Chk. 1997).

Where a contract is made especially for the benefit of a third person he may enforce it directly against the promisor. Mailo v. Penta Ocean Inc., 8 FSM R. 139, 142 (Chk. 1997).

An intended third party beneficiary may enforce a settlement agreement not to seek further compensation from the third party even though not all the compensation agreed to has been paid when the settlement agreement clearly contemplated that the compensation might be tardy and provided a remedy for such an occurrence. Mailo v. Penta Ocean Inc., 8 FSM R. 139, 142 (Chk. 1997).

A third party beneficiary can only recover if he is an intended beneficiary of the contract; he may not recover if he is only an incidental beneficiary of that contract. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 75 (Pon. 2001).

The determining factor as to a third party beneficiary's rights is the intention of the parties who actually made the contract. The question whether a contract was intended for a third person's benefit is generally regarded as one of construction of the contract. The parties' intention in this respect is determined by the contract's terms as a whole, construed in the light of the circumstances under which it was made and with the apparent purpose that the parties are trying to accomplish. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 75 (Pon. 2001).

When a contract's parties did not enter into that agreement primarily to benefit another, they were seeking to benefit themselves, and when their purpose was not to give the bank the benefit of their bargain, the bank is not the agreement's intended beneficiary and has no right to enforce that agreement. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 75 (Pon. 2001).

A third party beneficiary can only recover if he is an intended beneficiary of a contract. The determining factor as to a third party beneficiary's rights is the intention of the parties who actually made the contract. The question whether a contract was intended for the benefit of a third person is generally regarded as one of construction of the contract. The parties' intention in this respect is determined by the contract's terms as a whole, construed in the light of the circumstances under which it was made and with the apparent purpose that the parties are trying to accomplish. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 633 (Pon. 2002).

There must be a valid agreement between two parties to enable a third person, for whose benefit the promise is made, to sue upon it. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 633 (Pon. 2002).

A third person can, in his own name and claiming his own right, enforce a promise made to benefit him regardless of the fact that he is a stranger to the contract and the consideration. The determining factor in a third party beneficiary claim is the parties' intent, which is a question of the construction of the contract as determined by the contract's terms as a whole. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 228 (Pon. 2002).

A third person may enforce a contract for his own benefit when he is a stranger to the contract if the

contract shows the parties intended to benefit the third person. The question of the parties' intent is generally one of construction of the contract, and this intention is determined by the contract terms as a whole, construed in light of the circumstances of the contract's making and the parties' purpose. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 239 (Pon. 2003).

When a third-party beneficiary can be ascertained from the contract, he need not be named therein. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 239 (Pon. 2003).

A claimant may enforce a loan contract and require payment by the lender if he can prove that he was a third-party beneficiary of the loan contract. He must, however, sustain the essential elements of a third party beneficiary claim. There must be a legally enforceable contract, and the parties must have intended that the third party be benefited by the contract's performance. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 239 (Pon. 2003).

When the lender bank was in charge of the disbursement of the loan proceeds and when the contract language provided that no loan proceeds would be disbursed until the bank had received evidence that all labor and materials have been paid for, the bank assumed the duty under the agreement not to disburse loan proceeds until it had received verification that the suppliers had been paid. When, if the bank had met its commitment in this regard, it would have been impossible for the project to be completed without the suppliers being fully paid, the suppliers were as a matter of law intended third-party beneficiaries of the loan agreement. In such a case, the third-party may enforce the contract against the promisor. The bank's promise not to disburse loan proceeds until it had received confirmation that the suppliers had been paid, is enforceable against the bank. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 239-40 (Pon. 2003).

When, if the bank had met its obligation under the loan agreement the suppliers would have been fully paid upon completion of the project, the bank is liable to the suppliers. But since the bank, not the borrowers, made the promise not to disburse the loan proceeds until proof of payment to the suppliers, it follows that the suppliers may enforce the promise against the bank but not the borrowers because, at most, the borrowers may have had an unspecified duty to participate in the verification process, which is insufficient to render them liable to the suppliers as intended third-party beneficiaries. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 240 (Pon. 2003).

The absence of any express duty in a construction contract to insure the payment of the suppliers means that as a matter of law the parties to the construction agreement did not intend the suppliers to be third-party beneficiaries. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 241 (Pon. 2003).

When a party is precluded from contesting its liability on an oral agreement as a result of its willful, bad faith discovery misconduct and when the plaintiffs' damages are also fully awardable under the plaintiffs' third-party beneficiary claim quite apart from any liability under the agreement, the party's contention that it is not liable under the agreement is wholly lacking in merit. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 241 (Pon. 2003).

A third party beneficiary can only recover if he or she is an intended beneficiary of a contract. When a contract is made especially for the benefit of a third person, he or she may enforce it directly against the promisor. The determining factor in a third party beneficiary claim is the parties' intent, which is a question of the construction of the contract as determined by the contract's terms as a whole. Benjamin v. Youngstrom, 13 FSM R. 542, 547 (Kos. S. Ct. Tr. 2005).

When a quitclaim deed conveys all of the seller's rights, title and interest in a parcel to a buyer, his children and all his future heirs; when there is no reference made to the plaintiffs or to reservation of any rights for the plaintiffs; and when the quitclaim deed clearly indicates the parties' intent: the sale of all rights, title and interest in the parcel for $3000; the quitclaim deed was not made especially for the benefit of third persons. As the plaintiffs were not the intended beneficiaries on the contract, and do not satisfy the requirements of third party beneficiaries, they cannot recover on the breach of contract claim. Benjamin v.

Youngstrom, 13 FSM R. 542, 547 (Kos. S. Ct. Tr. 2005).

A contract's intended third-party beneficiary can recover attorney's fees under a contract providing for attorney's fees if it has to sue to enforce its third-party beneficiary rights and prevails. Similarly, a prevailing party can recover attorney's fees from an intended third-party beneficiary litigant if that beneficiary could have recovered attorney's fees from that party under the contract. FSM Dev. Bank v. Adams, 14 FSM R. 234, 256 (App. 2006).

A corporation has no valid cross-claim against a co-party and its cross-claims will be dismissed when it was not a party to the lease upon which the cross-claims are based and was not named as an intended third-party beneficiary in the lease. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 112 (Pon. 2010).

The usual reason for determining whether a non-contracting party is an intended third-party beneficiary to a contract is when that beneficiary is seeking to enforce some favorable contract provision or to collect damages for the contract's breach. This is because a third-party beneficiary can enforce a contract if it is an intended beneficiary of the contract, but it cannot if it is only an incidental beneficiary. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 591 & n.23 (Pon. 2011).

When none of the four states, the entities that would normally assert third-party beneficiary status, are parties to the action; when the contract itself is plain and unambiguous; and when all of the issues in the declaratory judgment request are also before the court in the parties' direct actions, the court sees no need for a declaratory judgment on whether the four states are third-party beneficiaries of the contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 591 (Pon. 2011).

The FSM cannot raise a sovereign immunity defense when it has statutorily waived its sovereign immunity for damages arising out of the improper administration of FSM statutory laws and when a sound basis for the FSM's waiver of sovereign immunity may be the waiver for claims, whether liquidated or unliquidated, upon an express or implied contract with the FSM because the Memorandum of Understanding between Chuuk and the FSM provides that the FSM handles, processes, and pays the Chuuk Special Education Program payroll. Since that express contract obligates the FSM to make all properly obligated withholdings from the employees' pay, the Chuuk Health Care Plan is, by statute, an intended third-party beneficiary of the contract between the FSM and Chuuk so that the Plan's claim is therefore a claim based on Chuuk's contract with the FSM. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 497 (Chk. 2013).

There is no hidden third-party beneficiary contract between an insurer and its insured for the benefit of a salvor when there is a contract between the salvor and the insurer in plain view. No discovery is needed to determine its existence and terms. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 9 (Pon. 2013).

There must be a valid agreement between two parties to enable a third person, for whose benefit the promise is made, to sue upon it. Johnny v. Occidental Life Ins., 19 FSM R. 350, 360 (Pon. 2014).

A third party beneficiary can only recover if he or she is an intended beneficiary of a contract. When a contract is made especially for the benefit of a third person, he or she may enforce it directly against the promisor. The determining factor in a third party beneficiary claim is the parties' intent, which is a question of the construction of the contract as determined by the contract's terms as a whole. Johnny v. Occidental Life Ins., 19 FSM R. 350, 360 (Pon. 2014).

When it is unclear what testimony or evidence forms the basis for the plaintiff's third-party beneficiary cause of action, she will not prevail on the claim. Johnny v. Occidental Life Ins., 19 FSM R. 350, 360 (Pon. 2014).

To intervene to prosecute a third-party beneficiary claim when the movant lacks privity of contract and there is no existing statutory provision that the movant might be able to avail itself, the movant must make a

showing that it has actually suffered a loss or injury, which would be capable of being redressed through its proposed intervention, and which is separate from the rights and claims asserted by the existing parties. Pacific Int'l, Inc. v. FSM, 20 FSM R. 214, 218 (Pon. 2015).

A third party beneficiary can recover if he or she is an intended beneficiary of a contract, but cannot enforce a contract or recover if he or she is only an incidental beneficiary and not an intended beneficiary of the contract. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 175 (Pon. 2017).

The determining factor in a third party beneficiary claim is the parties' intent, which is a question of the contract's construction as determined by the contract's terms as a whole. A person is an incidental beneficiary if the benefits accruing to him or her are merely incidental to the contract's performance. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 175 (Pon. 2017).

Contracting parties are presumed to act for themselves. Therefore an intent to benefit a third person must be clearly expressed in the contract. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 175 (Pon. 2017).

Employment contracts generally do not make the employee's family members or dependants intended third-party beneficiaries. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 175 (Pon. 2017).

When any benefits accruing to an employee's family members due to the employee's performance of his employment contract were merely incidental to that contract, the family members do not have a third-party beneficiary cause of action for breach of contract, even if the employee were to prove that his employer breached the contract. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 175 (Pon. 2017).

– Unconscionable

The traditional test for unconscionability is: a contract is unconscionable if it is such as no man in his senses and not under delusion would make on the one hand, and as no honest or fair man would accept, on the other. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 180 (Pon. 2017).

It is generally held that the unconscionability test involves the question of whether the provision amounts to the taking of an unfair advantage by one party over the other. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 180 (Pon. 2017).

To be unconscionable, the contract term must be so one-sided as to be oppressive. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 180 (Pon. 2017).

The determination of unconscionability is a question of law. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 180 (Pon. 2017).

– Undue Influence

A forum selection clause unaffected by fraud, undue influence, or overweening bargaining power should be given full effect. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 126 (Pon. 1999).

An attorney seeking to recover unpaid attorney fees on the theory of account stated must prove the reasonable value of the services rendered if the fee agreement was entered into during the course of the attorney-client relationship. This is because when the account stated is for legal services, there is a presumption of undue influence when entered between an attorney and client during their fiduciary relationship. The attorney has the burden of showing that the transaction was fair and regular and entered voluntarily by the client with full knowledge of the facts. Saimon v. Wainit, 16 FSM R. 143, 147 (Chk. 2008).

There are two broad classes of undue influence cases, and a third category involving attorneys. In the first, one party uses a dominant psychological position in an unfair manner to induce the subservient party

to consent to an agreement to which the other party would not have otherwise consented. In the second class, one uses a position of trust and confidence, rather than dominance, to unfairly persuade the other into a transaction. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 180 (Pon. 2017).

The key to undue influence contract cases is perhaps not the means, but the results. The foremost indicator of undue influence is an unnatural transaction resulting in the enrichment of one of the parties at the expense of the other. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 180 (Pon. 2017).

When there is nothing unnatural, oppressive, or grossly one-sided in the construction contract between the owner and the builder, it was not an unnatural transaction enriching one party at the other's expense through undue influence, since the owner received a well-built house and the builder adequate compensation for its construction work. The contract did not result in the builder's enrichment at the owner's expense because the owner got value for money – he got a well-built house. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 180 (Pon. 2017).

– Unilateral Contract

An option contract is a unilateral contract where an offer is made and the offeree is invited to accept by rendering a performance instead of promising something in return. Once the offeree either tenders or begins the invited performance, the option contract is created. The offer then becomes irrevocable. Kihara Real Estate, Inc. v. Estate of Nanpei (I), 6 FSM R. 48, 53 (Pon. 1993).

Provisions in a personnel handbook may be enforceable as an employment contract if they meet the requirements for the formation of a unilateral contract. The offer must be definite in form and must be communicated to the offeree. Whether a proposal is meant to be an offer for a unilateral contract is determined by the outward manifestations of the parties, not by their subjective intentions. An employer's general statements of policy are no more than that and do not meet the contractual requirements for an offer. Reg v. Falan, 14 FSM R. 426, 431 (Yap 2006).

It does not matter whether a personnel handbook was received at the time the employee was hired or at some later time because the distribution of the manual may act as an offer of a unilateral contract even if there was no unilateral contract offered at the time of hiring. This is because the consideration for the contract was supplied when the employee continued to work, after receipt of the manual, when he had no obligation to do so. Reg v. Falan, 14 FSM R. 426, 431 n.2 (Yap 2006).

When a personnel policies manual is detailed and the court finds that it was intended to set the terms of employment; when a review of the employee handbook makes it clear that the employer intended its employees to be bound by the manual's terms and that it intended to bind itself to these terms, the personnel policies manual was meant to be an offer for a unilateral employment contract and an employee has accepted the offer through his continued employment. Reg v. Falan, 14 FSM R. 426, 431-32 (Yap 2006).

When an employee is presented with an employee handbook, instructed to read and understand it, told to sign-off on it, and when the employee does so, the employee handbook will constitute a unilateral contract between the parties. Ihara v. Vitt, 18 FSM R. 516, 525 (Pon. 2013).

Personnel handbook provisions can be enforceable as an employment contract if they meet the requirements for the formation of a unilateral contract, which are: the offer must be definite in form and must be communicated to the offeree. An employer's general statements of policy are no more than that and do not meet the contractual requirements for an offer. George v. Palsis, 19 FSM R. 558, 564 (Kos. 2014).

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employees to be bound by the manual's terms and that it intended to bind itself to these terms, the personnel policies manual was meant to be an offer for a unilateral employment contract and an employee has accepted the offer through his continued employment. George v. Palsis, 19 FSM R. 558, 564 (Kos. 2014).

When an employee is presented with an employee handbook, instructed to read the handbook, told to sign off on the handbook, and when the employee does so, the employee handbook will constitute a unilateral contract between the parties. Ramirez v. College of Micronesia, 20 FSM R. 254, 266 (Pon. 2015).

COSTS

The determination of costs to be awarded to the prevailing party in litigation is a matter generally within the discretion of the trial court. Ray v. Electrical Contracting Corp., 2 FSM R. 21, 25 (App. 1985).

Procedural statute 6 F.S.M.C. 1018, providing that the court may tax any additional costs incurred in litigation against the losing party other than fees of counsel, applies only to Trust Territory courts and not to courts of the Federated States of Micronesia, and therefore does not preclude the FSM Supreme Court from awarding attorney's fees as costs. Semens v. Continental Air Lines, Inc. (II), 2 FSM R. 200, 205 (Pon. 1986).

The government does not pay twice when it violates someone's civil rights and then is forced to pay attorney's fees. It pays only once – as a violator of civil rights. Its role as a provider of public services is distinct from its role as a defendant in a civil case. Thus an award of costs and reasonable attorney's fees should be made to a publicly funded legal services organization whose client prevailed in a civil rights action. Plais v. Panuelo, 5 FSM R. 319, 321 (Pon. 1992).

Taxation of costs is not an additional award for the prevailing party. It is a reimbursement to the prevailing party of actual expenses (costs) incurred. A motion for taxation of costs must be denied if it fails to adequately verify appellee's actual costs. Nena v. Kosrae (III), 6 FSM R. 564, 569-70 (App. 1994).

Attorney's fees awarded as an element of costs are not to be confused with the award of attorney's fees recoverable as a part of damages pursuant to either statute or contract. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 223 (Chk. S. Ct. App. 2001).

Attorney's fees are not a part of recoverable costs under the common law. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 223 (Chk. S. Ct. App. 2001).

When the election law lacks a statutory definition of costs either specifically including or excluding attorney's fees, the court can only conclude that the Legislature did not intend to use the term "costs" in other than its usual and familiar sense, which does not include attorney's fees. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 223 (Chk. S. Ct. App. 2001).

If an appellee prevails on appeal it will be entitled to recover its trial court and appellate costs, and the court may add the trial court costs to the amount of the appeal bond required for a stay. College of Micronesia-FSM v. Rosario, 10 FSM R. 296, 298 (Pon. 2001).

The trial court may require an appellant to file a bond to cover costs on appeal. College of Micronesia-FSM v. Rosario, 10 FSM R. 296, 298 (Pon. 2001).

Costs are not synonymous with a party's expenses. Only certain types of expenses are cognizable as costs. Amayo v. MJ Co., 10 FSM R. 371, 385 (Pon. 2001).

Appellate Form 2's absence from the FSM Appellate Rules will not be a ground for denying an in forma pauperis motion when the affidavit shows the appellant's inability to pay fees and costs or to give

security therefor in the detail required by Rule 24(a) and shows that he is indigent and without any income or property. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 517-18 (Pon. 2002).

If the court appealed from grants the motion to proceed in forma pauperis, the party may proceed without further application to the FSM Supreme Court appellate division and without prepayment of fees and costs in either court or giving security therefor, except when the Public Defender Office or Micronesian Legal Services Corporation represents an indigent party the transcript fee is reduced to $1.25 per page, to be paid by the public agency, and not by the party personally. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 519 (Pon. 2002).

It is a matter to be resolved between the court reporters and the judicial branch whether the judiciary pays the costs for in forma pauperis litigants' transcripts. An in forma pauperis litigant is not required to prepay transcript costs, although if the in forma pauperis litigant is represented by the Public Defender or Micronesian Legal Services Corporation then that agency must prepay $1.25 per page. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 519 (Pon. 2002).

An in forma pauperis appellant is not required to tender payment in order to receive the transcript he has ordered. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 519 (Pon. 2002).

While costs cannot be awarded against the FSM, allottees are chargeable with costs of action when the allottees have interests sufficiently distinct from the FSM to confer on them standing in their own right. The rule prohibiting the trial court from charging the FSM with costs of this action does not prohibit the trial court from charging allottees with costs. FSM v. Udot Municipality, 12 FSM R. 29, 57 (App. 2003).

The general proposition is that sanctions as such do not bear interest, but the Rule 37 sanctions scheme presumes that when sanctions are imposed they will be promptly paid, generally well before the case has proceeded to judgment. Once final judgment has been entered in a matter, any unpaid Rule 37 sanctions previously imposed should be considered costs. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 475 (Pon. 2006).

If the awarded sanctions are unpaid at judgment and payable to the prevailing party they should be included as taxable costs. If the sanctions are unpaid at judgment and payable to the non-prevailing party, they ought to be deducted from the money judgment due the prevailing party. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 475 (Pon. 2006).

All money judgments bear nine percent interest. As part of the judgment, taxable costs bear that same interest imposed by statute and attorney's fee sanctions are a form of "costs" which will bear interest after judgment has been entered. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 475 (Pon. 2006).

Since, if costs are allowed without express mention in the judgment, the date of the judgment starts the accrual of interest on the costs due, therefore earlier awarded Rule 37 attorney fee sanctions would bear interest from the date the judgment was entered because failing to allow attorneys' fees awards to bear interest would give parties against whom such awards have been entered an artificial and undesirable incentive to appeal or otherwise delay payment. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 476 (Pon. 2006).

Affirmed Rule 37 sanctions are considered costs that should be included in the money judgment and bear nine percent interest from the date judgment is entered until paid. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 476 (Pon. 2006).

Taxation of costs is not an additional award for the prevailing party, but is a reimbursement to the prevailing party of actual expenses (costs) incurred. But costs are not synonymous with a party's expenses since only certain types of expenses are cognizable as costs. This is true even when the litigants have successfully recovered under a private attorney general theory. People of Rull ex rel. Ruepong v. M/V

Kyowa Violet, 15 FSM R. 53, 74 (Yap 2007).

When the appellants successfully sought to reverse trial division rulings in one appellee's favor and since the other named appellees were nominal parties unaffected by the appeal, all costs awarded the appellants will be taxable against that one appellee. Ruben v. Hartman, 15 FSM R. 240, 242 (Chk. S. Ct. App. 2007).

Class action counsel in common fund cases are entitled to reimbursement for expenses adequately documented and reasonably and appropriately incurred in the prosecution of the class action. The litigation expenses that may be allowed in such cases are thus more extensive than the costs routinely taxed and awarded to prevailing parties under Rule 54(d). People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206 (Yap 2010).

Costs are not synonymous with a party's litigation expenses since only certain types of expenses are cognizable as Rule 54(d) costs. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206 n.3 (Yap 2010).

A costs award is not an additional award to the prevailing party but is a reimbursement to the prevailing party of certain actual expenses (costs) incurred. Berman v. Pohnpei, 17 FSM R. 360, 374 (App. 2011).

When no "common nucleus of facts" exists between the trespass claims and the civil rights claims, the trial court did not err in assigning liability for trespass only to McVey and Do It Best and liability for the civil rights violation only to the Pohnpei Board of Trustees; thus the trial court's conclusions of law apportioning costs were not in error. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 440-41 (App. 2011).

The point of awarding costs is to award the prevailing party as a part of the final judgment, aside from reasonable attorney's fees, which may be awarded only by statute. It is a reimbursement to the prevailing party of actual expenses (costs) incurred. An award of fees and costs thus involves the party, not the particular firm. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 441 (App. 2011).

The point of a costs award is not to make an attorney or his law firm whole, but to make the prevailing party whole. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 441 (App. 2011).

If an appellee has not actually received a copy of the appellant's opening brief, he may ask the appellate clerk to make a copy for him with the copying cost to be, after the appeal has been decided, taxed by the court on the non-prevailing party. Phillip v. Moses, 18 FSM R. 85, 87 (Chk. S. Ct. App. 2011).

If the appellees wish the appellants to provide a bond necessary to ensure payment of costs on appeal, they must first apply to the court appealed from. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 210 (App. 2012).

Costs incurred in the preparation and transmission of the record and the costs of the reporter's transcript must be taxed in the court appealed from as costs of the appeal in favor of the party entitled to costs. George v. Sigrah, 19 FSM R. 210, 219 (App. 2013).

Costs are not synonymous with a party's expenses since only certain types of expenses are cognizable as costs. George v. Sigrah, 19 FSM R. 210, 219 (App. 2013).

When the appellant was only partially successful in his appeals, the court will order that the costs of the appeals be borne by the parties with the exception that, since the reporter's transcripts were particularly helpful, the appellant will be awarded the cost of the reporter's transcripts of the trial court's order-in-aid-of-judgment hearings. George v. Sigrah, 19 FSM R. 210, 221 (App. 2013).

A motion to try the plaintiff's remaining claim in a Pohnpei venue will, in the court's discretion, be

denied when the venue statute required that he originally file his complaint in Chuuk because Chuuk was the state in which all the defendants could be found and the statute favors convenience for the defendants over convenience for the plaintiff. But because transporting the Pohnpei witnesses to Chuuk would work a distinct hardship on the plaintiff, the court will allow him three months to depose all the needed Pohnpei witnesses in order to preserve their testimony for trial and if he prevails at trial, the expenses of these depositions shall be taxed as costs payable by the defendants. Mori v. Hasiguchi, 19 FSM R. 222, 225 (Chk. 2013).

6 F.S.M.C. 1017 does not grant the court power to award attorney's fees. It only refers to court fees and the like. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

Costs are not synonymous with a party's expenses since only certain types of expenses are cognizable as costs. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 79 (Pon. 2015).

– Allowed

The FSM Supreme Court's trial division is not precluded from allowing reasonable travel expenses of an attorney for a prevailing party as costs under 6 F.S.M.C. 1018 where there is a showing that no attorney is available on the island where the litigation is taking place. Ray v. Electrical Contracting Corp., 2 FSM R. 21, 26 (App. 1985).

Where plaintiff's complaint is written in English and the defendant requests a written translation into a local Micronesian language, and where it appears that this is the only language the defendant can speak or read, the trial judge may order that the court provide a written translation and that the expense of providing the translation shall be taxed as a cost to the party not prevailing in the action. Rawepi v. Billimon, 2 FSM R. 240, 241 (Truk 1986).

The provision that the cost of printing or otherwise producing necessary copies of briefs, appendices or copies of the record shall be taxable in the Supreme Court appellate division at rates not higher than those generally charged for such work in the area where the clerk's office is located, does not set the amount to be awarded; it sets a cap or upper limit on the actual costs incurred that can be reimbursed. Nena v. Kosrae (III), 6 FSM R. 564, 569-70 (App. 1994).

A prevailing party will be allowed costs for depositions and copying costs which represent payments to others for that service, but not the cost of copying within the law office. Long distance telephone and facsimile expenses incurred in communication between the lawyer who appeared and the client and other lawyers, claims for postage and courier expenses, and expenses not adequately explained are disallowed. Damarlane v. United States, 7 FSM R. 468, 470 (Pon. 1996).

It is the appellant's duty to prepare and file the appendix. But when the appellant has failed to prepare and file the appendix and the appellee instead does so, and the appellee prevails, the cost of producing copies of the appendix may be taxed in the appellee's favor. Santos v. Bank of Hawaii, 9 FSM R. 306, 308 n.2 (App. 2000).

Appellate Rule 39(c) permits the recovery of costs for producing necessary copies of briefs by word processor or photocopier, but not the costs for producing the original. The maximum amount allowable for word processed copies of briefs is limited to the amount allowed for photocopy services. Santos v. Bank of Hawaii, 9 FSM R. 306, 308 (App. 2000).

Costs for printing and copying are expenses that traditionally have been included within costs that are awarded to prevailing parties. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 224 (Chk. S. Ct. App. 2001).

When, service was done by servers employed at various times by plaintiffs' counsel, but who were duly

appointed process servers and charged separate fees for the service, they were acting as private process servers. Fees charged by private process servers may be recoverable as costs. Amayo v. MJ Co., 10 FSM R. 371, 385 (Pon. 2001).

Deposition costs will be allowed when the transcription was done and the deposition was admitted into evidence at trial even though the documentation for the deposition charge was a check made payable to an attorney in the Philippines, and noted as such on the check stub. Amayo v. MJ Co., 10 FSM R. 371, 385-86 (Pon. 2001).

Service costs are always allowable to the prevailing party. Udot Municipality v. FSM, 10 FSM R. 498, 501 (Chk. 2002).

Transcript and copying expenses are allowable costs when they represent payments to others for that service. Udot Municipality v. FSM, 10 FSM R. 498, 501 (Chk. 2002).

An attorney's reasonable travel expenses are allowable as costs when there is a showing that no attorney is available on the island where the litigation is taking place, especially when the attorneys' travel expenses were reasonable and the actual expenses pro-rated proportionally with other clients on whose behalf they also traveled. Udot Municipality v. FSM, 10 FSM R. 498, 501 (Chk. 2002).

If, for a telephone hearing, a party's counsel initiated the call and bore that expense as a telephone charge then that party, if the prevailing party, would be entitled to tax those telephone charges as a cost, but when it is impossible to tell from the submitted expense billings, which, if any, those telephone charges were, no charges will be allowed. Udot Municipality v. FSM, 10 FSM R. 498, 501 (Chk. 2002).

Costs that have been awarded in the FSM include service costs, transcript and copying costs when they represent payment to others for services, and reasonable travel expenses when there is a showing of no attorney available on the island where the litigation is taking place. AHPW, Inc. v. FSM, 13 FSM R. 36, 42 (Pon. 2004).

When an appellant fails to provide a necessary appendix and that appendix is provided by an appellee and the appellee prevails, the cost of producing the appendix may be taxed in the appellee's favor. Chuuk v. Davis, 13 FSM R. 178, 183 (App. 2005).

A prevailing party is entitled to costs taxable by FSM Civ. R. 54(d), such as expenses for service of process and service of subpoenas. Uehara v. Chuuk, 14 FSM R. 221, 228 (Chk. 2006).

A prevailing party will be allowed costs for depositions. Lippwe v. Weno Municipality, 14 FSM R. 347, 354 (Chk. 2006).

Fees charged by private process servers may be recoverable as costs, because service costs are always allowable to the prevailing party. Lippwe v. Weno Municipality, 14 FSM R. 347, 354 (Chk. 2006).

An attorney's reasonable travel expenses are allowable as costs when there is a showing that no attorney is available on the island where the litigation is taking place, especially when the attorneys' travel expenses were reasonable and the actual expenses pro-rated proportionally with other clients on whose behalf they also traveled. Lippwe v. Weno Municipality, 14 FSM R. 347, 354 (Chk. 2006).

Any expenses actually incurred in copying needed documents in the record will ultimately be taxed as costs to be borne by the non-prevailing party(ies) once the court has rendered its appellate opinion. Enengeitaw Clan v. Shirai, 14 FSM R. 621, 625 (Chk. S. Ct. App. 2007).

When it is shown that no attorney is available on the island where the litigation is taking place, the trial court may award as costs a prevailing party's reasonable travel expenses for its attorney. People of Rull

ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 74 (Yap 2007).

Deposition costs will be allowed when the transcribed deposition was admitted into evidence at trial. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 74 (Yap 2007).

The expense of a trial transcript is taxable when that transcript is necessarily obtained for use in a trial, particularly when the trial was long and the issues were complex. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 74 (Yap 2007).

Generally, although absent a statute or contract expert witness fees and research expenses are not taxable costs, successful litigants may be awarded their out-of-pocket expenses for an expert witness when the expert witness was an indispensable part of the trial and was crucial to the ultimate resolution of the issues and the costs were appropriate and not excessive. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 75 (Yap 2007).

Costs for printing and copying the brief, appendix, and reply brief are expenses that traditionally have been included within costs that are awarded to prevailing parties. Ruben v. Hartman, 15 FSM R. 240, 242 (Chk. S. Ct. App. 2007).

An attorney's reasonable travel expenses are allowable as costs when there is a showing that no attorney is available on the island where the litigation is taking place, especially when the attorneys' travel expenses were reasonable and the actual expenses pro-rated proportionally with other clients on whose behalf they also traveled. Ruben v. Hartman, 15 FSM R. 240, 242 (Chk. S. Ct. App. 2007).

When the prevailing parties' counsel's travel expenses were necessarily incurred for services which were actually and necessarily performed, his travel expenses will be awarded as costs because the court may allow and tax any additional items of actual disbursement, other than fees of counsel, which it deems just and finds to have been necessarily incurred for services which were actually and necessarily performed for the prevailing party. Ruben v. Hartman, 15 FSM R. 240, 242 (Chk. S. Ct. App. 2007).

Reasonable travel costs are allowable when there is a showing that no counsel is available on the island where the litigation took place, but photocopying expenditures are generally disallowed, especially here where it cannot be determined what portion of those expense were incurred in bringing this action, and state court appellate filing fees are also disallowed since they are another court's filing fees and recoverable in that court. Ruben v. Petewon, 15 FSM R. 605, 609 (Chk. 2008).

Service costs are awarded as a matter of course to the prevailing party. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 225 (Chk. 2008).

Costs may be allowed for copying costs which represent payments to others for that service, but not the cost of copying within the law office. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 471 (Chk. 2009).

Service of process expenses are always allowable as costs to the prevailing party. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 471 (Chk. 2009).

Plaintiffs awarded $500 damages are, as the prevailing party, also entitled to reimbursement of the court's $10 filing fee. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 647 (Kos. S. Ct. Tr. 2009).

Service costs are always allowable to the prevailing party. A prevailing party is entitled to costs taxable by FSM Civil Rule 54(d), such as expenses for service of process and service of subpoenas and service of process costs may be apportioned among the defendants. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 148, 151 (Pon. 2010).

The $200 for service of a writ of attachment and levy; the $100 for Yapese translation of the class notices; and the $238.75 for the required publication of legal notice are expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of a class action and are expenses which would have been taxable as Rule 54(d) costs if such costs had been taxed separately. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206 (Yap 2010).

Photocopying costs may be allowed if they represent payments to others for that service. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206 n.4 (Yap 2010).

Expenses to travel to the case's venue have usually been allowed as costs when there has been a showing that there were no local attorneys or law firm available. This is a sound principle which should also be followed in awarding class action expenses. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206-07 (Yap 2010).

Costs for service of process and service of subpoenas are routinely allowable to the prevailing party under Civil Rule 54(d). Berman v. Pohnpei, 17 FSM R. 360, 374 (App. 2011).

Service of process expenses are an exception in that they can always be awarded as costs. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 441 (App. 2011).

When it is shown that no attorney is available on the island where the litigation is taking place, the trial court may award a prevailing party its attorney's reasonable travel expenses. Kaminanga v. Chuuk, 18 FSM R. 216, 221 (Chk. 2012).

The court is particularly inclined to view travel costs as reasonable when the attorney's overall travel expenses were reasonable and the actual expenses were pro-rated proportionally with other clients on whose behalf the attorney also traveled. The court is not inclined to grant any travel costs that are not prorated. Kaminanga v. Chuuk, 18 FSM R. 216, 221 n.4 (Chk. 2012).

Service of process costs will be allowed when the plaintiff's attorney's fee request states that his attorney reviewed the affidavits of service of the complaint on five named persons and on two national government offices and this corresponds to the $140 ($20 $\times$ 7 services of process) sought for service of the summons and complaint. Poll v. Victor, 18 FSM R. 402, 406 (Pon. 2012).

When no explanation is made of why trial subpoenas were served twice but when it is apparent from the file that the duplicate service was necessitated by a change in the trial date after the first service was made, the full request for service of trial subpoenas will be allowed. Poll v. Victor, 18 FSM R. 402, 406 (Pon. 2012).

Appellate costs are awarded to the prevailing party under FSM Appellate Procedure Rule 39. Rule 39 costs are only those costs incurred because of the appeal, not costs incurred in the trial division proceedings. George v. Sigrah, 19 FSM R. 210, 218 (App. 2013).

Service costs and others that are generally allowed to a prevailing party should be taxed if proven. Certain other expenses, such as phone calls, postage, and in-house copying, are generally not allowed. The determination of costs awarded to the prevailing party is a matter generally within the trial court's discretion. George v. Sigrah, 19 FSM R. 210, 219 (App. 2013).

The cost of printing or otherwise producing necessary copies of briefs, appendixes or copies of records is taxable in the Supreme Court appellate division by stating them in an itemized and verified bill of costs which the party must file with the appellate clerk, with proof of service, within 14 days after the entry of the appellate judgment. George v. Sigrah, 19 FSM R. 210, 220 (App. 2013).

When the appellant was only partially successful in his appeals, the court will order that the costs of

the appeals be borne by the parties with the exception that, since the reporter's transcripts were particularly helpful, the appellant will be awarded the cost of the reporter's transcripts of the trial court order-in-aid-of-judgment hearings. George v. Sigrah, 19 FSM R. 210, 221 (App. 2013).

The clerk will tax costs of $91 in expenses for reproducing and serving the prevailing appellant's briefs when that amount was verified and appears reasonable. Nena v. Saimon, 19 FSM R. 393, 395 (App. 2014).

Since notice by advertisement in newspapers is required for *in rem* actions against vessels, those expenses will be allowed as costs when adequately documented. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 79 (Pon. 2015).

Costs for service of process and service of subpoenas are routinely allowed to the prevailing party under Civil Rule 54(d). Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 79 (Pon. 2015).

When adequately documented and both reasonable and necessary, a corporation search fee will be allowed as a cost since it is important that the correct parties be named as defendants. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 79 (Pon. 2015).

Translation expenses are generally allowed as costs. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 79 (Pon. 2015).

A prevailing party will usually be allowed costs for depositions unless they are shown to be unnecessary. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 79 (Pon. 2015).

Generally, expert witness fees and research expenses are not taxable costs, but successful litigants may be awarded their out-of-pocket expenses for an expert witness when the expert witness was an indispensable part of the trial and was crucial to the ultimate resolution of the issues and the costs were appropriate and not excessive, but when an expert's research and testimony went to support claims that the court rejected, that expert's research expenses for those claims are disallowed. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 79 (Pon. 2015).

When the experts' research and reports were necessary and indispensable for the plaintiff to establish and the court to grant a default judgment and the fees were appropriate and not excessive, they will be allowed as taxable costs. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 79-80 (Pon. 2015).

Since injured parties in admiralty and maritime tort cases are typically awarded prejudgment interest, when the plaintiff pled a claim for prejudgment interest, the 9% statutory interest will start on the damages award on the day the vessel ran aground. The 9% statutory interest will start on the costs award on the day the amended judgment is entered. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 80 (Pon. 2015).

– Disallowed

Expenses such as faxing and telephoning to and from counsel, and travel, incurred because the defendant selected off-island counsel, fall outside the kind of expenses traditionally payable by the losing party and will be disallowed as costs, except where there is a showing of the unavailability of local counsel. Salik v. U Corp., 4 FSM R. 48, 49 (Pon. 1989).

As a general rule, attorney's fees will be awarded as an element of costs only if it is shown that such fees were traceable to unreasonable or vexatious actions of the opposing party, but where the basic litigation flows from a reasonable difference of interpretation of a lease, the court is disinclined to attempt to sort out or isolate particular aspects of one claim or another of the parties and to earmark attorney's fees awards for those specific aspects. Salik v. U Corp., 4 FSM R. 48, 49-50 (Pon. 1989).

The court commits no error, when a question of sufficiency of witness fees is not brought promptly to the attention of the court, to consider the matter as an allowance of costs. In re Island Hardware, Inc., 5 FSM R. 170, 175 (App. 1991).

Where there are elements of victory and loss for both parties there is not a prevailing party to which costs could be allowed. In re Island Hardware, Inc., 5 FSM R. 170, 175 (App. 1991).

Taxation of costs is not an additional award for the prevailing party. It is a reimbursement to the prevailing party of actual expenses (costs) incurred. A motion for taxation of costs must be denied if it fails to adequately verify appellee's actual costs. Nena v. Kosrae (III), 6 FSM R. 564, 569-70 (App. 1994).

A prevailing party will be allowed costs for depositions and copying costs which represent payments to others for that service, but not the cost of copying within the law office. Long distance telephone and facsimile expenses incurred in communication between the lawyer who appeared and the client and other lawyers, claims for postage and courier expenses, and expenses not adequately explained are disallowed. Damarlane v. United States, 7 FSM R. 468, 470 (Pon. 1996).

A prevailing party will be allowed costs for depositions and copying costs which represent payments to others for that service, but not the cost of copying within the law office. Long distance telephone and facsimile expenses incurred in communication between the lawyer who appeared and the client and other lawyers, claims for postage and courier expenses, and expenses not adequately explained are disallowed. Damarlane v. United States, 7 FSM R. 468, 470 (Pon. 1996).

Costs that are an avoidable consequence of the prevailing party's actions will be disallowed. Bank of Guam v. O'Sonis, 9 FSM R. 106, 110 & n.1 (Chk. 1999).

Expenditures for photocopying, toll phone calls between lawyers, postage and courier services are disallowed. The extra expense of first class air travel is also disallowed. Bank of Guam v. O'Sonis, 9 FSM R. 106, 111 (Chk. 1999).

Attorney's fees are not recoverable as costs under Appellate Rule 39. Santos v. Bank of Hawaii, 9 FSM R. 306, 307 (App. 2000).

On appeals, copying costs are disallowed to the extent that they exceed those generally charged for such work in the area where the clerk's office is located, in this case – Pohnpei, where the FSM appellate clerk's office is located. Santos v. Bank of Hawaii, 9 FSM R. 306, 308 (App. 2000).

Expenses for postage and courier services are disallowed. They are not a part of the usual costs recoverable under Appellate Rule 39. Santos v. Bank of Hawaii, 9 FSM R. 306, 308 (App. 2000).

Costs are customarily awarded the prevailing party. However, costs for service on those defendants who were prevailing parties are not allowed to the plaintiff. Nor are costs for service in and filing fee for the case originally filed in state court allowed as costs are to be awarded only for the costs in this case to the prevailing party in this case. Estate of Mori v. Chuuk, 10 FSM R. 123, 125 (Chk. 2001).

Costs for an election defendant's airfare will be denied when it is for an uncertain amount and no evidence of this expense been provided to the court and when it is an expense he would have incurred anyway, because he would have had to return shortly from Honolulu to take his seat in the Legislature, and because it is an expense he would not have incurred if he had not voluntarily left Chuuk for Honolulu. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 223 (Chk. S. Ct. App. 2001).

Counsel's travel expenses to and from Pohnpei for litigation on Pohnpei may not be awarded as costs when counsel maintains a Pohnpei office and is thus local counsel. Amayo v. MJ Co., 10 FSM R. 371, 386 (Pon. 2001).

If, for a telephone hearing, a party's counsel initiated the call and bore that expense as a telephone charge then that party, if the prevailing party, would be entitled to tax those telephone charges as a cost, but when it is impossible to tell from the submitted expense billings, which, if any, those telephone charges were, no charges will be allowed. Udot Municipality v. FSM, 10 FSM R. 498, 501 (Chk. 2002).

The most common basis for denying costs to prevailing defendants is the indigency of the losing plaintiff, coupled with good faith of the indigent and the non-frivolous nature of the case. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM R. 319, 323 (Pon. 2003).

When no substantive law or contractual provision would permit the plaintiff to recover the type of costs he seeks, those costs will not be included in the judgment. Walter v. Damai, 12 FSM R. 648, 650 (Pon. 2004).

When insufficient information has been provided concerning the costs set out in an affidavit to enable the court to make an award of costs, none of these costs will be awarded. AHPW, Inc. v. FSM, 13 FSM R. 36, 42 (Pon. 2004).

When an affidavit sets out costs totaling $1,605.15, but no description is provided for the individual amounts beyond the notation "direct expense," the court can make no determination whether these expenses constitute awardable costs and none will be awarded. AHPW, Inc. v. FSM, 13 FSM R. 36, 43 (Pon. 2004).

Fax and long distance telephone charges are not recoverable as costs. Copying costs may be recoverable if the copies are not made in-house, and the costs represent payment to others. FSM Social Sec. Admin. v. Jonas, 13 FSM R. 171, 173 (Kos. 2005).

While a prevailing plaintiff is entitled to the costs of suit as of course, a prevailing plaintiff is not automatically entitled to an attorney's fees award because the court is generally without authority to award attorney's fees in the absence of a specific statute or contractual provision allowing recovery of such fees. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 277 n.1 (Chk. 2005).

When a successful litigant has made no showing that the $120 in copying costs he seeks were expenses incurred for copying done outside of counsel's office, this item of costs will be denied. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 524, 527 (Pon. 2005).

Attorney's fees are not part of recoverable costs under the common law. DJ Store v. Joe, 14 FSM R. 83, 86 (Kos. S. Ct. Tr. 2006).

Expenses such as faxing and telephoning to and from counsel, and travel, incurred because the defendant selected off-island counsel, fall outside the kind of expenses traditionally payable by the losing party and will be disallowed as costs, except where there is a showing of the unavailability of local counsel. Lippwe v. Weno Municipality, 14 FSM R. 347, 354 (Chk. 2006).

Fax and long distance telephone charges are not recoverable as costs, but copying costs may be recoverable if the copies are not made in-house, and the costs represent payment to others. Lippwe v. Weno Municipality, 14 FSM R. 347, 354 (Chk. 2006).

POL and transportation costs for the plaintiffs in their efforts to meet with the defendant to come to a resolution of this matter is a type of cost that is not normally recoverable. Hartman v. Krum, 14 FSM R. 526, 532 (Chk. 2007).

Prevailing plaintiffs cannot be awarded $1,000 for bringing the law suit since this type of cost is not normally awarded and no evidence of what was included in the $1,000 was provided. Hartman v. Krum,

14 FSM R. 526, 532 (Chk. 2007).

Compensation for time and expenses in a state court can only be sought (if at all possible) in that state court. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 71 (Yap 2007).

A $49.28 "court filing fee" will be disallowed when it is unexplained and since another court's filing fee will not be awarded as a cost. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 74 (Yap 2007).

The $25 cost for a certificate of good standing will be disallowed as a cost even though it was a necessary expenditure in order to apply to appear *pro hac vice* because it is considered part of overhead. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 74 (Yap 2007).

Expenditures for photocopying, toll phone calls, faxing, postage, and courier services are disallowed as costs. Internet expenses fall in the same category and are therefore also disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 74 (Yap 2007).

Westlaw electronic research charges are properly reflected as a part of a law firm's overhead, and as such, are included in the attorney's fees as opposed to ordinary costs and will be disallowed as costs. Law library research charges also fall into this category and will also be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 74 (Yap 2007).

Expenses not adequately explained are disallowed as costs, as are expenses that are either overhead items or are for personal use. "Working meals" are not allowed as costs since if that is what they were, the attorney was compensated for the time spent working. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 74-75 & n.8 (Yap 2007).

Generally, although absent a statute or contract expert witness fees and research expenses are not taxable costs, successful litigants may be awarded their out-of-pocket expenses for an expert witness when the expert witness was an indispensable part of the trial and was crucial to the ultimate resolution of the issues and the costs were appropriate and not excessive. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 75 (Yap 2007).

When an expert witness's research or testimony was not crucial to the resolution of any issue, but was helpful only to estimate the market cost for protein needed to replace the fish not harvested and the expert's work on this point relied on another expert witness's factual research for which that other expert billed $1,265.70, the court may find that $1,500 would be a fair and reasonable cost for the value of the expert's work that was indispensable to the resolution of the value of the lost fish harvest issue. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 75 (Yap 2007).

Attorneys' fees are not costs. Lewis v. Rudolph, 16 FSM R. 278, 280 (Chk. S. Ct. App. 2009).

Westlaw electronic research charges are properly reflected as a part of a law firm's overhead, and as such, are included in the attorney's fees as opposed to ordinary costs and will be disallowed as costs. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 471 (Chk. 2009).

Expenditures for toll phone calls, postage, and courier services are disallowed as costs. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 471 (Chk. 2009).

Costs may be allowed for copying costs which represent payments to others for that service, but not the cost of copying within the law office. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 471 (Chk. 2009).

A "business privilege tax" that is part of the cost of being in business on Guam and is either part of a law firm's overhead, which cannot be taxed as a cost, or an increase in or part of the attorney's hourly rate

and thus already considered under the reasonable attorney fee award. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 471 (Chk. 2009).

Even if a law firm client has agreed to compensate the law firm for its gross receipts tax liability on income received from the client, the court will not award it because what the client has agreed to pay is not relevant to the court's determination of a reasonable fee. The court makes its reasonableness determination without reference to any prior fee agreement between the attorney and client since the entitlement to a reasonable attorneys' fees award is the client's, not his attorney's, and the amount the client actually pays his attorney is irrelevant. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 471 (Chk. 2009).

Photocopying charges are generally disallowed as costs unless those charges represent payments to others for that service and are not for the cost of copying within the law office. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 148, 151 (Pon. 2010).

Extra charges for the attorney's gross revenue taxes on costs are disallowed. Gross revenue taxes are the attorney's responsibility and not the responsibility of the attorney's client or of an adverse party to whom the fee may be shifted. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 148, 152 (Pon. 2010).

The $80.50 listed as purchases of beer, bottled water, and the like from a Yap hotel mini-bar; the $2.95 for DVD rental; $34 listed as "no receipts (investigator's beer)" are disallowed since they are not expenses reasonably and appropriately incurred in the prosecution of the class action. The $16.95 listed as breakfast and lunch "no receipts" is disallowed since it is not adequately documented. The $111.91 for groceries purchased in a Guam supermarket is unexplained and therefore disallowed. The $408.80 in charges for internet access from a Yap hotel, even if used for occasional legal research or case-related e-mail, are excessive and therefore disallowed. The $620.50 claim for "expenses in the form of legal research subscription charges, and long distance phone charges" is undocumented and therefore disallowed and "legal research subscription," although since it is undocumented the court cannot be certain, appears that it may properly be part of overhead and not case specific. Also undocumented, and therefore disallowed, is $521.25 in photocopying and postage fees for filing and service. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206 (Yap 2010).

The court has long followed the principle that when awarding costs, costs may be allowed for copying expenses which represent payments to others for that service, but not the cost of copying within the law office. So when there is no indication that a copying charge is for payment to others for copying services, that charge will be disallowed. Sandy v. Mori, 17 FSM R. 245, 246 (Chk. 2010).

An attorney's travel expenses to Chuuk will be denied as costs when the attorney's law firm maintains a law office on Chuuk even though the attorney did not reside on Chuuk and only made occasional trips to Chuuk from Pohnpei. Sandy v. Mori, 17 FSM R. 245, 246-47 (Chk. 2010).

Photocopying costs are disallowed unless it can be shown that the photocopying was done outside of the law firm. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 441 (App. 2011).

A "gross revenue tax" surcharge will be disallowed as costs. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 441 (App. 2011).

While a prevailing plaintiff is entitled to the costs of suit as of course, a prevailing party is not automatically entitled to an attorney's fees award because the court is generally without authority to award attorney's fees in the absence of a specific statute or contractual provision allowing recovery of such fees since attorneys' fees are not costs under Rule 54(d) or the common law. FSM Dev. Bank v. Ayin, 18 FSM R. 190, 192 (Yap 2012).

When a review of the record shows that a transcript of a hearing was not necessary for the

determination of the appeal, its cost would be disallowed even if the appellant had prevailed on appeal. Kaminanga v. Chuuk, 18 FSM R. 216, 222 (Chk. 2012).

Costs are always available to the party who ultimately prevails, but attorney's fees are not available for pro se litigants even if they prevail. Berman v. Pohnpei, 19 FSM R. 111, 117 (App. 2013).

When nothing in the record indicates that the prevailing party ever timely filed his verified bills of costs with the appropriate court clerks and when it is now too late to file them, he has waived his right to the appellate costs by his failure to timely file verified bills of cost. George v. Sigrah, 19 FSM R. 210, 219 (App. 2013).

Service costs and others that are generally allowed to a prevailing party should be taxed if proven. Certain other expenses, such as phone calls, postage, and in-house copying, are generally not allowed. The determination of costs awarded to the prevailing party is a matter generally within the trial court's discretion. George v. Sigrah, 19 FSM R. 210, 219 (App. 2013).

Unexplained costs are disallowed. George v. Sigrah, 19 FSM R. 210, 219 (App. 2013).

A request for attorney's fees sought as costs must be denied because attorney's fees are not recoverable as costs under Appellate Rule 39. Attorney's fees are traditionally not considered part of costs. Nena v. Saimon, 19 FSM R. 393, 395 (App. 2014).

6 F.S.M.C. 1017 does not grant the court power to award attorney's fees. It only refers to court fees and the like. Nena v. Saimon, 19 FSM R. 393, 395 (App. 2014).

While, as a general rule, attorney's fees can be awarded as an element of costs only if it is shown that such fees were traceable to the opposing party's unreasonable or vexatious actions, even if attorney's fees could be awarded for vexatious actions during an appeal, an issue not decided, fees would not be awarded when, although much of the appellees' motion to dismiss was a petty attempt to avoid a ruling on the merits, the motion as a whole was not thoroughly unreasonable. Nena v. Saimon, 19 FSM R. 393, 395 (App. 2014).

A request for attorney's fees sought as costs must be denied since attorney's fees are not recoverable as costs under Appellate Rule 39. Attorney's fees are traditionally not considered part of costs. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

Although, as a general rule, attorney's fees can be awarded as an element of costs only if it is shown that such fees were traceable to the opposing party's unreasonable or vexatious actions, but, even if attorney's fees could be awarded under Appellate Rule 39, they would not be when no such vexatious actions were shown during the course of the appeal. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

When there was no appellee in the case, there is no one to tax costs against. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

While the Micronesian Legal Services Corporation Kosrae office was the party whose complaint led to the now reversed attorney sanction, the sanction was imposed by the Kosrae State Court, but, unlike sanction where the sanction is monetary and paid to an opposing party, there was no opposing party on the appeal because, although the Micronesian Legal Services Corporation Kosrae office did file a brief on the appeal, the court viewed the brief as more of an amicus curiae brief appearing because it was the complainant whose complaint led to the now reversed attorney disciplinary sanctions in the case below. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

When there is no appellee against whom the prevailing appellants may tax costs, the appellants' bill of

costs must be denied in its entirety. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

The expense of service of the briefs will be disallowed. Postage is considered overhead and generally not allowed as a cost so that expenses for postage and delivery services are disallowed. Andrew v. Heirs of Seymour, 19 FSM R. 451, 453 (App. 2014).

Generally, expert witness fees and research expenses are not taxable costs, but successful litigants may be awarded their out-of-pocket expenses for an expert witness when the expert witness was an indispensable part of the trial and was crucial to the ultimate resolution of the issues and the costs were appropriate and not excessive, but when an expert's research and testimony went to support claims that the court rejected, that expert's research expenses for those claims are disallowed. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 79 (Pon. 2015).

When an expert's fee was for an affidavit prepared in support of only a rejected damages claim, it will be disallowed. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 80 (Pon. 2015).

The court cannot award, disguised as costs, what are damages for an unsuccessful salvage contract cause of action that was neither pled nor tried. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 80 (Pon. 2015).

Government expenses as a result of a ship grounding are not a cost of litigation and when they were neither plead as a cause of action nor prayed for as relief, these expenses are not recoverable either as costs or as damages in a default judgment since a default judgment cannot be different in kind from or exceed in amount that prayed for in the demand for judgment. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 80 (Pon. 2015).

When a motion for costs and attorney's fees contains no supporting grounds for this request in the motion's text, the motion will be denied without prejudice to any claim for costs taxable under Appellate Rule 39(a). Andrew v. Heirs of Seymour, 20 FSM R. 629, 631 (App. 2016).

– Procedure

When a judgment is affirmed on appeal, costs are usually taxable against the appellant if the appellee timely files its bill of costs with the appellate division. A bill of costs for trial transcripts must be filed in trial court appealed from. Nena v. Kosrae (III), 6 FSM R. 564, 568-69 (App. 1994).

The filing of a petition for rehearing does not automatically extend the time for filing a bill of costs or for opposing a timely filed bill of costs, to a period beyond the ruling on the petition for rehearing. Nena v. Kosrae (III), 6 FSM R. 564, 569 n.5 (App. 1994).

A trial court has jurisdiction to issue an order assessing costs, even though it was issued after the notice of appeal was filed. Damarlane v. United States, 8 FSM R. 14, 17 (App. 1997).

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

Any post-judgment charges for attorney's fees and costs – any attorney's fees and costs beyond those awarded in the judgments themselves – must first be determined as reasonable and awarded by the court before the judgment-creditors are entitled to these amounts. In re Engichy, 11 FSM R. 520, 534 (Chk. 2003).

Rule 54(d) permits costs to be allowed against the non-prevailing party. Accordingly, a prevailing plaintiff may request costs to be awarded by filing an affidavit. DJ Store v. Joe, 14 FSM R. 83, 86 (Kos. S.

Ct. Tr. 2006).

When unpaid Rule 37 sanctions are not specifically named and included as costs in either the judgment or the later order that fixed and entered the costs and fees that were to be added to the judgment, they should be included in the original judgment by implication, if not specifically, since the court was unaware that the sanctions fixed seven months earlier had not been paid. It would be better practice for the plaintiffs to ask that the amount of unpaid sanctions be specifically included in the court's judgment. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 475-76 (Pon. 2006).

Transcript costs are not taxable by the appellate division, but (along with any fees for the appellants' filing of the notices of appeal) are taxable in the trial division. Ruben v. Hartman, 15 FSM R. 240, 242 (Chk. S. Ct. App. 2007).

Upon a post-judgment application, costs are routinely awarded to the prevailing party. George v. Albert, 17 FSM R. 25, 34 (App. 2010).

Since between a supporting affidavit and the returns of service filed by the process servers, it should be apparent on the record that the claims for service costs represented payments to others for service, and since this has been sufficient when cost awards for service have been sought, an attorney's affidavit plus a return of service in the record showing that someone other than the attorney's office performed the service will suffice although the better practice would be to also file receipts with the costs request rather than relying on the trial court to consult the record to see who performed the service. Berman v. Pohnpei, 17 FSM R. 360, 374 (App. 2011).

Costs are generally taxed against, not for, an unsuccessful appellant unless otherwise ordered, and appellate costs are ordinarily taxed in the appellate division except that transcript fees and the costs of the reporter's transcript, if necessary for the determination of the appeal are taxable in the trial division by the prevailing appellate litigant. Kaminanga v. Chuuk, 18 FSM R. 216, 221 (Chk. 2012).

A service cost request has always been sufficient when the request included the attorney's affidavit plus a return of service in the record showing that someone other than the attorney's office performed the service even though the better practice would have been to also file receipts with the request rather than relying on the trial court to consult the record to see who performed the service. Poll v. Victor, 18 FSM R. 402, 406 (Pon. 2012).

The cost of printing or otherwise producing necessary copies of briefs, appendixes or copies of records is taxable in the Supreme Court appellate division by stating them in an itemized and verified bill of costs which the party must file with the appellate clerk, with proof of service, within 14 days after the entry of the appellate judgment. George v. Sigrah, 19 FSM R. 210, 220 (App. 2013).

Costs for a reporter's transcripts are taxed in the court appealed from in the case that was appealed. George v. Sigrah, 19 FSM R. 210, 221 (App. 2013).

A party who desires costs to be taxed in an appeal case shall state them in an itemized and verified bill of costs which he shall file with the clerk, with proof of service, within 14 days after the entry of judgment. The appellate clerk will act on the bill of costs, at least when no opposition has been filed; when there is opposition, the matter is usually referred to the court or a judge thereof. Nena v. Saimon, 19 FSM R. 393, 394-95 (App. 2014).

The appellate panel's presiding justice may consider a bill of costs. A single justice's action may be reviewed by the court. Nena v. Saimon, 19 FSM R. 393, 395 (App. 2014).

Even though no opposition was filed to an appellate bill of costs, it still must be considered by a judge when it asks for attorney's fees since attorney's fees can only be determined by a judge, not a clerk. Nena v. Saimon, 19 FSM R. 393, 395 (App. 2014).

When a party desires that appellate costs be taxed, the party must state them in an itemized and verified bill of costs which must be filed with the clerk, with proof of service, within 14 days after the entry of judgment. The appellate clerk will act on the bill of costs, at least when no opposition has been filed, but when there is opposition, the matter is usually referred to the court or a judge thereof. In re Sanction of Sigrah, 19 FSM R. 396, 397-98 (App. 2014).

The appellate panel's presiding justice may consider an opposed bill of costs, but the single justice's action may be reviewed by the court. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

A prevailing party who desires costs to be taxed must state them in an itemized and verified bill of costs which must be filed with the clerk, with proof of service, within 14 days after the entry of the appellate judgment. The appellate clerk will act on the bill of costs, at least where no opposition has been filed; when there is opposition, the matter is usually referred to the court or a judge thereof. Andrew v. Heirs of Seymour, 19 FSM R. 451, 452 (App. 2014).

An appellate panel's presiding justice may consider an opposed bill of costs, but the single justice's action may be reviewed by the court. Andrew v. Heirs of Seymour, 19 FSM R. 451, 452-53 (App. 2014).

– When Taxable

Where there is dismissal of an action, even though the dismissal is voluntary and without prejudice, the defendant is the prevailing party within the meaning of Rule 54(d) which provides for awards of costs to the prevailing party. Mailo v. Twum-Barimah, 3 FSM R. 411, 413 (Pon. 1988).

FSM Civil Rule 68, allowing for taxation of costs against a plaintiff who declines the defendant's offer of judgment and who then obtains a judgment less favorable than the amount of the offer, does not apply when the litigation is dismissed. Mailo v. Twum-Barimah, 3 FSM R. 411, 413 (Pon. 1988).

Where a plaintiff seeks dismissal of her own complaint without prejudice under Rule 41(a)(2), it is generally thought that the court should at least require the plaintiff to pay the defendant's costs of the litigation as a condition to such dismissal and these costs may include travel expenses of plaintiff's attorney. Mailo v. Twum-Barimah, 3 FSM R. 411, 415 (Pon. 1988).

Where the court set aside a default judgment upon the payment by defendant to plaintiff of air fare to attend the trial, no modification will be granted to require the defendant to pay the costs of the plaintiff's counsel to go to plaintiff's residence to take his deposition which is being noticed by the plaintiff, especially where there is no showing that plaintiff could not attend the trial, nor will the court decide before trial whether such deposition could be used at trial. Morris v. Truk, 3 FSM R. 454, 456-57 (Truk 1988).

When a plaintiff's motion is denied on the merits, the defendant may recover costs under FSM Civil Rule 54(d) if properly verified. Berman v. Kolonia Town, 6 FSM R. 242, 244 (Pon. 1993).

When a judgment is affirmed on appeal, costs are usually taxable against the appellant if the appellee timely files its bill of costs with the appellate division. A bill of costs for trial transcripts must be filed in trial court appealed from. Nena v. Kosrae (III), 6 FSM R. 564, 568-69 (App. 1994).

Costs may be allowed to a party prevailing against an indigent or *in forma pauperis* plaintiff who raised irrelevant matters and engaged in vexatious procedures or whose actions were frivolous or malicious. Damarlane v. United States, 7 FSM R. 468, 469-70 (Pon. 1996).

Although it is especially important to avoid any approach calculated to favor the wealthy and deprive poor persons of access to the courts, that principle should not operate to penalize the indigents' opponent whose costs are increased because of frivolous claims and proceedings which are prolonged by repetition

of contentions already ruled upon. Damarlane v. United States, 7 FSM R. 468, 470 (Pon. 1996).

Unless the court directs otherwise, costs are allowed as of course to the prevailing party. A prevailing party is the one in whose favor the decision is ultimately rendered when the matter is finally set at rest, and does not depend upon the degree of success at different stages of the suit. Damarlane v. United States, 8 FSM R. 45, 54 (App. 1997).

When the trial court decides the matter on the merits, based on the evidence, in favor of the defendants and the plaintiffs are not granted a permanent injunction, the defendants are prevailing parties who are appropriately awarded costs. Damarlane v. United States, 8 FSM R. 45, 54 (App. 1997).

Civil rights attorney fee awards and awards of costs may be entered against multiple defendants in the same proportions as those in the original judgment. Davis v. Kutta, 8 FSM R. 218, 224 (Chk. 1997).

In any civil rights action the court may award costs and reasonable attorney's fees to the prevailing party. Bank of Guam v. O'Sonis, 9 FSM R. 106, 113 (Chk. 1999).

A prevailing party in an appeal is routinely entitled to its costs and when an appeal is dismissed, costs are to be taxed against appellant unless the parties otherwise agree or court orders otherwise. Santos v. Bank of Hawaii, 9 FSM R. 306, 307 (App. 2000).

If, on appeal the Chuuk State Supreme Court confirms the election, judgment shall be rendered against the contestants, for costs, in favor of the defendant. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 222 (Chk. S. Ct. App. 2001).

Costs are generally allowed as of course to the prevailing party. Udot Municipality v. FSM, 10 FSM R. 354, 362 (Chk. 2001).

While costs are allowed as of course to a prevailing party, costs against the FSM, its officers, and agencies are imposed only when authorized by statute. Udot Municipality v. FSM, 10 FSM R. 498, 501, 502 (Chk. 2002).

Being allowed to proceed in forma pauperis only relieves an appellant from prepayment of fees and costs, not from ultimate liability for those costs. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 519 (Pon. 2002).

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

Generally, unless the court directs otherwise, prevailing parties are entitled to costs. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM R. 319, 321 (Pon. 2003).

Determination of costs awarded to prevailing parties is generally a matter within the trial court's discretion, and a trial court has jurisdiction to issue an order assessing costs, even after a notice of appeal has been filed. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM R. 319, 321 (Pon. 2003).

Rule 54(d) presumes that costs will be allowed to the prevailing party. But this presumption may be overcome. The burden is on the unsuccessful party to show circumstances sufficient to overcome the presumption in favor of allowing costs to the prevailing party. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM R. 319, 321 (Pon. 2003).

Although a trial court has discretion when awarding costs, the discretion is narrowly confined because of the strong presumption created by Rule 54(d) that the prevailing party will recover costs. Generally, only the prevailing party's misconduct worthy of a penalty or the losing party's inability to pay will suffice to justify

denying costs. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM R. 319, 321-22 (Pon. 2003).

The presumption that the prevailing party will recover costs has been overcome and costs denied where there is a wide disparity between the parties' economic resources, particularly when the non-prevailing party is indigent. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM R. 319, 322 (Pon. 2003).

When the economic disparity between the indigent losing plaintiff and the successful defendants could not be more stark and when the plaintiff pursued his case in good faith and it was not frivolous, the defendants' motion to tax costs must be denied and no costs allowed. This result is consistent with the social configuration of Micronesia, as mandated by the Constitution's Judicial Guidance Clause. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM R. 319, 323 (Pon. 2003).

The principle of not imposing costs on losing indigents may appear to penalize solvency and to encourage other lawsuits against successful businesses because there is no risk of incurring costs if the action fails. However, this principle only applies when the action is pursued in good faith. Costs may be taxed when an indigent plaintiff's case is frivolous or malicious or when he has raised irrelevant matters and engaged in vexatious procedures. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM R. 319, 323 (Pon. 2003).

The most common basis for denying costs to prevailing defendants is the indigency of the losing plaintiff, coupled with good faith of the indigent and the non-frivolous nature of the case. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM R. 319, 323 (Pon. 2003).

When the election commission never properly certified anyone as the winning candidate, an appellate trial's result cannot confirm a candidate's election, but rather determines which of two contestants should have been declared elected. Therefore no judgment for costs will be awarded in anyone's favor. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 477-78 (Chk. S. Ct. App. 2003).

If the Supreme Court appellate division determines that an appeal is frivolous, it may award just damages and single or double costs, including attorney's fees, to the appellee. FSM Dev. Bank v. Adams, 12 FSM R. 456, 462 (App. 2004).

Rule 68 provides that if a defendant makes an offer of judgment, and the judgment ultimately obtained is not more favorable than the offer, then the offeree must pay the costs accrued after the offer. It does not apply when the offers of judgment are for the amount claimed in the original complaint and the case is tried and judgment entered for the higher amount claimed in the amended complaint. Adams v. Island Homes Constr., Inc., 12 FSM R. 644, 647 (Pon. 2004).

An award of costs depends upon a finding of reasonableness by the court. FSM Social Sec. Admin. v. Jonas, 13 FSM R. 171, 173 (Kos. 2005).

Rule 54(d) presumes that costs will be allowed to the prevailing party, unless the court directs otherwise. Accordingly, a prevailing plaintiff may file and serve his requests for costs to be taxed against the defendant, who shall respond to the request within 10 days of the request's service. The court shall thereafter rule on the request for allowance of costs. Isaac v. Palik, 13 FSM R. 396, 402 (Kos. S. Ct. Tr. 2005).

Costs are awarded as a matter of course to the prevailing party as a part of the final judgment. Mailo v. Chuuk, 13 FSM R. 462, 470 (Chk. 2005).

When a case is dismissed at the close of the plaintiff's case-in-chief, the defendants, as prevailing parties, are entitled to their costs of action. Hauk v. Lokopwe, 14 FSM R. 61, 66 (Chk. 2006).

Costs are awarded to prevailing parties as a matter of course. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 73 (Yap 2007).

Prevailing parties are entitled to their costs on appeal. Ruben v. Hartman, 15 FSM R. 240, 242 (Chk. S. Ct. App. 2007).

Generally, costs cannot be awarded for or against the state government. Ruben v. Hartman, 15 FSM R. 240, 242 n.1 (Chk. S. Ct. App. 2007).

When the defendant state court judge's actions upon which the plaintiffs base this suit were judicial in nature and the state court is a court of general jurisdiction, which would have had the jurisdiction to consider a motion for relief of judgment if one had been filed, the judge did not act in complete absence of jurisdiction. But when he did clearly act grossly in excess of his jurisdiction and when the plaintiffs obtained permanent prospective relief against him in this case, they are entitled to their expenses including attorney's fees and costs under 11 F.S.M.C. 701(3) for bringing this action and are thus entitled to judgment as a matter of law on their civil rights claim for attorney's fees and costs. The costs and fees allowed will be for work in this case and not that for work in the related state court cases. Ruben v. Petewon, 15 FSM R. 605, 608-09 (Chk. 2008).

Upon a post-judgment application, costs are routinely awarded to the prevailing party. George v. Albert, 17 FSM R. 25, 34 (App. 2010).

The civil rights statute provides that in an action brought under it, the court may award costs and reasonable attorney's fees to the prevailing party. Poll v. Victor, 18 FSM R. 402, 404 (Pon. 2012).

A successful process server's pay should not be dependent on a law firm's later litigation success. Poll v. Victor, 18 FSM R. 402, 405 n.1 (Pon. 2012).

Costs are always available to the party who ultimately prevails, but attorney's fees are not available for pro se litigants even if they prevail. Berman v. Pohnpei, 19 FSM R. 111, 117 (App. 2013).

Appellate costs are awarded to the prevailing party under FSM Appellate Procedure Rule 39. Rule 39 costs are only those costs incurred because of the appeal, not costs incurred in the trial division proceedings. George v. Sigrah, 19 FSM R. 210, 218 (App. 2013).

Plaintiffs, as the prevailing party, will be awarded their reasonable costs. Harden v. Inek, 19 FSM R. 244, 252 (Pon. 2014).

When the appellants prevailed by having the permanent injunction – a final decision – against them vacated and they are now in a position where either they or the other side may ultimately obtain a final judgment in their favor on remand, they are thus prevailing parties for the purpose of the appeal and costs will be taxed in their favor. Andrew v. Heirs of Seymour, 19 FSM R. 451, 453 (App. 2014).

When the defendant is the prevailing party, it shall be awarded its reasonable costs. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 478 (Pon. 2014).

When the defendants are the prevailing party, they shall be awarded their reasonable costs. Damarlane v. Damarlane, 19 FSM R. 519, 532 (Pon. 2014).

The general rule is that the prevailing party is entitled to costs per Rule 54(d), but Rule 54(d) also provides that "costs against the State of Chuuk, its officers, and agencies shall be imposed only to the extent permitted by law." Shigeto Corp. v. Land Comm'n, 19 FSM R. 542, 543 (Chk. S. Ct. Tr. 2014).

When no written documentation was submitted to show that the plaintiff would be entitled to recover its costs if the plaintiff prevailed against the state agency in a civil suit and when no statute authorizes a plaintiff to recover costs on a breach of contract claim against the State of Chuuk, the court will deny the plaintiff's

motion for costs. Shigeto Corp. v. Land Comm'n, 19 FSM R. 542, 543-44 (Chk. S. Ct. Tr. 2014).

Since an embassy is immune from suit, a case against it will be dismissed. Since the court cannot exercise jurisdiction over it, the embassy, as a prevailing party, is also entitled to its costs. Estate of Gallen v. Governor, 21 FSM R. 457, 462 (Pon. 2018).

Rule 68 provides that the defendant may serve an offer to allow judgment to be taken against the defendant for the money with costs then accrued. If within 10 days after the offer's service, the plaintiff serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof. If the plaintiff rejects this offer, and the judgment finally obtained by plaintiff is not more favorable than the offer, the plaintiff must pay the costs incurred after the offer was made. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 434, 436 (Chk. S. Ct. Tr. 2019).

When the defendant made a Rule 68 offer of judgment for $1,000 and when, after trial, the plaintiff was awarded nothing, the plaintiff is liable for the defendant's costs after the offer date. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 434, 436 (Chk. S. Ct. Tr. 2019).

Actions alleging due process violations involving land are not exempt from Rule 68 offer of judgment sanctions. Nor are proclamations of indigence. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 434, 436-37 (Chk. S. Ct. Tr. 2019).

Rule 68 exists to encourage compromise when a case lacks merit. When a plaintiff fails to see the lack of merit within his case, Rule 68 sanctions such failure by awarding costs to the party that made the settlement offer. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 434, 437 (Chk. S. Ct. Tr. 2019).

COURTS

Secretarial Order 3039, section 2 cleared the way for the assumption of jurisdiction by FSM courts by delegating the judicial functions of the government of the Trust Territory Pacific Islands to the Federated States of Micronesia. Thus, the High Court's previous exclusive jurisdiction under 6 TTC 251 was effectively delegated to the Federated States of Micronesia, insofar as the Constitution of the Federated States of Micronesia authorizes such jurisdiction. Lonno v. Trust Territory (I), 1 FSM R. 53, 57-58 (Kos. 1992).

The language of Secretarial Order 3039, section 5(a) contemplates continued Trust Territory High Court activity pursuant to the "present procedural and jurisdictional provisions of Trust Territory law" only until new functioning courts are established by the constitutional governments, and recognizes that the jurisdictional provisions of Trust Territory law will necessarily be revised when those courts have been established. Lonno v. Trust Territory (I), 1 FSM R. 53, 59 (Kos. 1982).

Interpretation of Secretarial Order 3039 as acquiescing in FSM Supreme Court jurisdiction over suits against the Trust Territory does not conflict with any residual United States obligation to oversee activities of the FSM courts pending termination of the Trusteeship Agreement nor does this interpretation imperil any interest the United States government may have in protecting the Trust Territory government against unfair or overreaching actions by courts of the new constitutional governments. Lonno v. Trust Territory (I), 1 FSM R. 53, 64 (Kos. 1982).

Trust Territory High Court appellate division jurisdiction by writ of certiorari over appeals from the courts of last resort of the respective jurisdictions of the Federated States of Micronesia, the Marshall Islands, and Palau eliminates any possible risk which might otherwise be posed to the United States or its interests or responsibilities here by the full exercise of constitutional jurisdiction by the courts of the constitutional government. Lonno v. Trust Territory (I), 1 FSM R. 53, 64-65 (Kos. 1982).

Until the state courts are established, the Trust Territory High Court retains that portion of its exclusive jurisdiction formerly held under 6 TTC 251 which does not fall within the constitutional jurisdiction of the

FSM Supreme Court. Lonno v. Trust Territory (I), 1 FSM R. 53, 68 (Kos. 1982).

State courts, rather than national courts, should normally resolve probate and inheritance issues especially where interests in land are at issue. In re Nahnsen, 1 FSM R. 97, 97 (Pon. 1982).

The Federated States of Micronesia Supreme Court is specifically given jurisdiction over disputes between citizens of a state and foreign citizens. FSM Const. art. XI, § 6(b). This jurisdiction is based upon the citizenship of the parties, not the subject matter of their dispute. In re Nahnsen, 1 FSM R. 97, 101 (Pon. 1982).

The Constitution places diversity jurisdiction in the Supreme Court, despite the fact that the issues involve matters within state or local, rather than national, legislative powers. FSM Const. art. XI, § 6(b). In re Nahnsen, 1 FSM R. 97, 102 (Pon. 1982).

The FSM Supreme Court is empowered to exercise authority in probate matters where there is an independent basis for jurisdiction under the Constitution. In re Nahnsen, 1 FSM R. 97, 104 (Pon. 1982).

There is no statutory limitation on the FSM Supreme Court's jurisdiction; the Judiciary Act of 1979 plainly contemplates that the FSM Supreme Court will exercise all the jurisdiction available to it under the Constitution. 4 F.S.M.C. 201-08. In re Nahnsen, 1 FSM R. 97, 106 (Pon. 1982).

It would be contrary to the desire of the framers of the Constitution that local officials retain control over local matters if the FSM Supreme Court were to relinquish jurisdiction over issues involving local and state powers to the Trust Territory High Court, which is the least local tribunal now existing in the Trust Territory. In re Nahnsen, 1 FSM R. 97, 110 (Pon. 1982).

The Constitution contemplates that decisions affecting the people of the Federated States of Micronesia will be decided by courts appointed by the constitutional governments of the Federated States of Micronesia. This in turn requires an expansive reading of the FSM Supreme Court's jurisdictional mandate while we await establishment of functioning state courts. In re Nahnsen, 1 FSM R. 97, 111 (Pon. 1982).

The FSM Supreme Court has inherent constitutional power to issue all writs; this includes the traditional common law writ of mandamus. 4 F.S.M.C. 117. Nix v. Ehmes, 1 FSM R. 114, 118 (Pon. 1982).

The FSM Supreme Court is not bound by decisions of United States courts; however, careful consideration should be given to United States decisions regarding court policies as the FSM national courts are modeled on those of the United States. Nix v. Ehmes, 1 FSM R. 114, 119 (Pon. 1982).

Any power the Trust Territory High Court, the District Courts and the Community Courts may have to exercise judicial powers within the Federated States of Micronesia is to be exercised not as that of autonomous foreign states but as integral parts of the domestic governments. Those courts continue to exercise trial court functions in Ponape only on an interim basis, until the State of Ponape establishes its own courts, either under its present state charter or under any constitution which Ponape may adopt. In re Iriarte (I), 1 FSM R. 239, 244 (Pon. 1983).

The FSM Supreme Court's constitutional jurisdiction to consider writs of habeas corpus is undiminished by the fact that the courts whose actions are under consideration, the Trust Territory High Court and a Community Court, were not contemplated by the Constitution of the Federated States of Micronesia. In re Iriarte (I), 1 FSM R. 239, 244, 246 (Pon. 1983).

The exercise of governmental powers by the Trust Territory High Court, the District Courts and the Community Courts must be carried out in a manner consistent with constitutional self-government and are subject to the safeguards erected by the Constitution for citizens of the Federated States of Micronesia. In

re Iriarte (I), 1 FSM R. 239, 245 (Pon.1983).

Preservation of a fair decision-making process, and even the maintenance of a democratic system of government, requires that courts and individual judges be protected against unnecessary external pressures. In re Iriarte (I), 1 FSM R. 239, 246 (Pon. 1983).

The FSM Supreme Court should not intrude unnecessarily in the efforts of the Trust Territory High Court to vindicate itself and other judges through court proceedings within the Trust Territory system. In re Iriarte (I), 1 FSM R. 239, 254 (Pon. 1983).

The Trust Territory High Court is an anomalous entity operating on an interim basis adjacent to a constitutional framework and consisting of judges appointed by officials of the United States Department of Interior. These and other considerations point toward the propriety and necessity of vigilance by the FSM Supreme Court to uphold the constitutional rights of FSM citizens. In re Iriarte (II), 1 FSM R. 255, 267 (Pon. 1983).

The FSM Supreme Court is entitled and required to assure that the Trust Territory High Court, exercising governmental powers within the Federated States of Micronesia, does not violate the constitutional rights of its citizens. In re Iriarte (II), 1 FSM R. 255, 268 (Pon. 1983).

The Trust Territory High Court must promote constitutional self-government to satisfy the provisions of the Trusteeship Agreement to which it is subject. In re Iriarte (II), 1 FSM R. 255, 268 (Pon. 1983).

Transfer of a case not in active trial in the Trust Territory High Court is mandatory unless the legal rights of a party are impaired by the transfer. U.S. Dep't Int. Sec'l Order 3039, § 5(a) (1979). Actouka v. Etpison, 1 FSM R. 275, 277 (Pon. 1983).

The Trust Territory High Court should leave final interpretation of the Constitution and public laws of the Federated States of Micronesia to the Supreme Court. Jonas v. Trial Division, 1 FSM R. 322, 327 & n.1 (App. 1983).

As a general proposition, a court system resolves disputes by considering and deciding between competing claims of two or more opposing parties. In re Sproat, 2 FSM R. 1, 4 (Pon. 1985).

It is thought that the judicial power to declare the law will more likely be exercised in enlightened fashion if it is employed only where the court is exposed to the differing points of view of adversaries. Thus judicial decision-making power is typically exercised by a court which has heard competing contentions of adversaries having sufficient interests in the outcome to thoroughly consider, research and argue the points at issue. Even then, a court's declarations of law should be limited to rulings necessary to resolve the dispute before it. In re Sproat, 2 FSM R. 1, 4 (Pon. 1985).

By its terms, 1 F.S.M.C. 203 pointing to the *Restatements* as a guide for determining and applying the common law applies only to "courts of the Trust Territory." Since only courts established by the Trust Territory administration existed when the section was issued, it plainly was intended only for those courts at that time. In absence of any persuasive considerations to the contrary, it is logical to conclude that 1 F.S.M.C. 203 applies only to courts of the Trust Territory, not to courts of the Federated States of Micronesia or the various states. Rauzi v. FSM, 2 FSM R. 8, 14 (Pon. 1985).

Since the Trust Territory High Court and District Courts were still active at the time of codification, provisions in the FSM Code referring only to them quite likely were intended only to regulate those courts. Rauzi v. FSM, 2 FSM R. 8, 14 (Pon. 1985).

Statutes governing procedures or decision-making approaches for Trust Territory courts might not apply to constitutional courts. Semens v. Continental Air Lines, Inc. (II), 2 FSM R. 200, 204 (Pon. 1986).

According to Secretarial Order No. 3039, § 5(a), all cases against the Trust Territory of the Pacific Islands and the High Commissioner that were filed in the FSM at the time the Truk State Court was certified will continue to remain within the exclusive jurisdiction of the High Court. Those cases filed after certification are not within the jurisdiction of the High Court. Suda v. Trust Territory, 3 FSM R. 12, 14 (Truk S. Ct. Tr. 1985).

Courts have an affirmative obligation to avoid erroneous rulings and may not be bound by incorrect legal premises upon which even all parties rely. Michelsen v. FSM, 3 FSM R. 416, 419 (Pon. 1988).

The FSM Constitution provides no authority for any court to act within the Federated States of Micronesia, other than the FSM Supreme Court, inferior courts to be established by statute, and state or local courts. United Church of Christ v. Hamo, 4 FSM R. 95, 105 (App. 1989).

The transitional actions of the FSM Congress, intended to adopt as law of the Federated States of Micronesia those portions of Secretarial Order 3039 relating to judicial functions within the FSM and permitting the Trust Territory courts to continue functioning within the FSM pending establishment of constitutional courts, were a necessary and proper exercise of Congress' power under the Constitution to provide for a smooth and orderly transition. United Church of Christ v. Hamo, 4 FSM R. 95, 105 (App. 1989).

The provisions of the FSM Constitution spelling out jurisdiction and vesting the entire judicial power of the national government in the FSM Supreme Court are self-executing, and the judicial power of the FSM Supreme Court is not dependent upon congressional action. United Church of Christ v. Hamo, 4 FSM R. 95, 105-06 (App. 1989).

To the extent that Secretarial Order 3039 can be read as permitting the Trust Territory High Court to continue, after the FSM Supreme Court had begun functioning, to control cases assigned by the FSM Constitution to the FSM Supreme Court, that exercise by Congress of the transitional power under the Constitution could run counter to other specific provisions of the Constitution, especially the judiciary article, and to fundamental principles of the separation of powers; any extension by the Trust Territory High Court of the powers assigned to it under Secretarial Order 3039 would violate those same constitutional provisions and principles. United Church of Christ v. Hamo, 4 FSM R. 95, 106 (App. 1989).

Actions of the Trust Territory High Court taken after the establishment of functioning constitutional courts in the Federated States of Micronesia, and without a good faith determination after a full and fair hearing as to whether the "active trial" exception permitted retention of the cases, were null and void, even though the parties failed to object, because the High Court was without jurisdiction to act and its conduct constituted usurpation of power. United Church of Christ v. Hamo, 4 FSM R. 95, 122 (App. 1989).

Courts have inherent power, and an obligation, to monitor the conduct of counsel and to enforce compliance with procedural rules. Leeruw v. Yap, 4 FSM R. 145, 150 (Yap 1989).

The appellate division of the Supreme Court of the FSM may accept direct filing of a case and an expedited briefing schedule may be established where there is limited time available and prompt resolution of the issues in the case is decidedly in the national interest. Constitutional Convention 1990 v. President, 4 FSM R. 320, 324 (App. 1990).

When the remanding appellate court has not mandated a hearing on remand, it is within the sound discretion of the trial court to decide whether or not to convene a post-remand hearing. FSM v. Hartman (I), 5 FSM R. 350, 351 (Pon. 1992).

Any judicial act, that has been done pursuant to a statute that does not confer the power to do that act, is void on its face. A judgment that is void on its face may be set aside by the court on its own motion. In

re Jae Joong Hwang, 6 FSM R. 331, 331-32 (Chk. S. Ct. Tr. 1994).

The Chuuk State Supreme Court is a unified court system with two constitutionally mandated divisions – the trial division and the appellate division. All justices are members of both divisions, but a justice does not serve in the appellate division until he has been designated by the Chief Justice to be the presiding justice on a specific case. The trial division is the state's court of general jurisdiction. Election Comm'r v. Petewon, 6 FSM R. 491, 497 (Chk. S. Ct. App. 1994).

All justices in the trial division have concurrent jurisdiction, but once a case has been assigned to a particular justice, that justice has exclusive jurisdiction over the parties and issues of the case until the case is terminated in the trial division. Election Comm'r v. Petewon, 6 FSM R. 491, 498 (Chk. S. Ct. App. 1994).

Even when a national court places itself in the shoes of the state court and interprets state law, the state court is always the final arbiter of the meaning of a state law. State court interpretations of state law which contradict prior rulings of the national courts are controlling. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM R. 594, 601 (Pon. 1994).

A court has an interest in insuring that its orders are heeded, and this interest exists apart from any interest the parties may have in the litigation. A court may take whatever reasonable steps are appropriate to insure compliance with its orders. It need not rely on the parties themselves to prescribe the way in which its orders will be carried out, or its judgments executed. Louis v. Kutta, 8 FSM R. 312, 318 (Chk. 1998).

One of our courts' express functions is to apply and interpret the duly enacted and promulgated laws and regulations which lie at the heart of a dispute. Our court system exists to speak to the very issues to which Pohnpeian custom and tradition are silent. In this way, the two systems complement each other. Senda v. Semes, 8 FSM R. 484, 499 (Pon. 1998).

A court has inherent powers to compel submission to its lawful mandates. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 150, 152 & n.1 (Pon. 1999).

Cases pending in a municipal court may be transferred to the Chuuk State Supreme Court trial division upon the request of any party and by order of the Chuuk State Supreme Court trial division. There is no authority for a municipal judge to transfer a case, sua sponte, to the Chuuk State Supreme Court without the request of any party. Phillip v. Phillip, 9 FSM R. 226, 228 (Chk. S. Ct. Tr. 1999).

Rules of court properly promulgated, and not exceeding the limitation of the court's rulemaking power, have the force of law. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 371 (Kos. 2000).

Chuuk state courts have the power to issue all writs for equitable and legal relief, except the power of attachment, execution and garnishment of public property. Kama v. Chuuk, 9 FSM R. 496, 497 (Chk. S. Ct. Tr. 1999).

Title 6, chapter 10, subchapter 1 of the FSM Code is replete with references to officials who either do not exist now or who no longer carry out the functions with which they are identified in the statute, and when confronted with such language in a section thereof, the FSM Supreme Court has generally ruled that the section applies only to the Trust Territory High Court. FSM v. Kuranaga, 9 FSM R. 584, 586 (Chk. 2000).

The witness fees in 6 F.S.M.C. 1011 apply only to the Trust Territory High Court. FSM v. Kuranaga, 9 FSM R. 584, 586 (Chk. 2000).

Only two courts have jurisdiction over the territory of Chuuk – the Chuuk State Supreme Court and the FSM Supreme Court. A mortgage foreclosure on land in Chuuk therefore could not be in any court other than those two. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 110 (Chk. 2001).

The Pohnpei Supreme Court is a court of general jurisdiction, not a court whose jurisdiction is limited and confined. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 120 (Pon. 2001).

The FSM Supreme Court trial division has no appellate or supervisory jurisdiction over either division of the Pohnpei Supreme Court, and no appeal lies from the Pohnpei Supreme Court to the FSM Supreme Court trial division. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 120 (Pon. 2001).

In our federal system of government, state courts are not inferior tribunals to the FSM Supreme Court trial division. The national and state court systems are separate systems created by and serving different sovereigns. Neither system is superior to the other. Rather the systems are parallel. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 120 (Pon. 2001).

The FSM Supreme Court trial division is not a superior tribunal to the Pohnpei Supreme Court, although in certain circumstances the FSM Supreme Court appellate division is such a superior tribunal. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 120 (Pon. 2001).

Only one Chuuk State Supreme Court justice may hear or decide an appeal in the appellate division. The other members of the appellate panel must be temporary justices appointed for the limited purpose of hearing the appeal. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 150 (Chk. S. Ct. App. 2001).

The constitutional language does not require that a Chuuk State Supreme Court justice sit on an appellate panel when none is available, only that no more than one can sit under any circumstance. But if there are Chuuk State Supreme Court justices who are not disqualified, one must preside over the panel in order for it to be properly constituted. If needed, a justice, who is not disqualified, has a professional and constitutional obligation to serve. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 151 (Chk. S. Ct. App. 2001).

The Pohnpei Supreme Court is a court of general jurisdiction, which has subject matter jurisdiction over a landlord/tenant dispute. Pernet v. Woodruff, 10 FSM R. 239, 242 (App. 2001).

Under the Chuuk Constitution, article VII, § 3(c), the Chuuk State Supreme Court has only appellate or review jurisdiction over the Land Commission, and thus a motion for review de novo of matters not raised before the Land Commission must be denied. Enengeitaw Clan v. Shirai, 10 FSM R. 309, 311 (Chk. S. Ct. Tr. 2001).

Where a remedy exists, the FSM Supreme Court has general power under the Judiciary Act of 1979 to effect that remedy. Amayo v. MJ Co., 10 FSM R. 433, 435 (Pon. 2001).

It is the Chuuk State Supreme Court's duty to enforce the constitution and laws of the state and the state's 40 municipalities and to see that the constitutions of the several municipalities are protected against unwarranted interference by any state official, regardless of motivation. In re Oneisomw Election, 11 FSM R. 89, 93 (Chk. S. Ct. Tr. 2002).

The Kosrae State Court has jurisdiction to issue writs and other process. Sigrah v. Speaker, 11 FSM R. 258, 260 (Kos. S. Ct. Tr. 2002).

The Kosrae State Court is given rule making authority that operates only in the limited sphere of the court's inherent authority to determine an orderly process for the disposition of cases that come before it for adjudication. Sigrah v. Speaker, 11 FSM R. 258, 262 (Kos. S. Ct. Tr. 2002).

The Chuuk Chief Justice must promulgate rules of evidence and rules governing the administration of

all state courts, the regulation of the judicial profession, and practice and procedure in civil and criminal matters. Kupenes v. Ungeni, 12 FSM R. 252, 257 n.3 (Chk. S. Ct. Tr. 2003).

When acting in his rule making capacity, the Chief Justice acts in a legislative capacity. Rules of court, properly promulgated, and not exceeding the limitation of the rule-making authority, have the force of law. Kupenes v. Ungeni, 12 FSM R. 252, 261 (Chk. S. Ct. Tr. 2003).

Acts in excess of a court's jurisdiction are void. Hartman v. Chuuk, 12 FSM R. 388, 399 (Chk. S. Ct. Tr. 2004).

The State of Kosrae's judicial power is vested in the State Court and such inferior courts as may be created by law. The Kosrae Land Court was established as an inferior court within the Kosrae State Court system. The State Court has jurisdiction to review all decisions of inferior courts. The Kosrae Constitution does not specify which division of the State Court is required to review decisions of inferior courts. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 420 (Kos. S. Ct. Tr. 2004).

The term "appellate court" is defined as the FSM Supreme Court appellate division. Kosrae State Court decisions may be appealed to the FSM Supreme Court appellate division. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 420 (Kos. S. Ct. Tr. 2004).

Since the Kosrae Constitution provides that appeals from the State Court trial division may be made to the State Court appellate division, as shall be prescribed by law, enabling legislation is required to implement appeals from the trial division to the State Court appellate division, and when no such legislation has been passed by the Legislature and signed into law, no constitutional or statutory authority exists to authorize appeals from trial division to the State Court appellate division. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 420 (Kos. S. Ct. Tr. 2004).

The Kosrae State Court has jurisdiction to review all decisions of inferior courts. Neither the Kosrae Constitution nor state law requires that Land Court decisions be appealed to the State Court appellate division. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 421 (Kos. S. Ct. Tr. 2004).

The State Court has the power to make rules and orders, and do all acts, not inconsistent with law or rule, required for the due administration of justice. It is specifically authorized to govern appeal procedures for appeals from the Land Court and procedures for Land Court appeals to the State Court are established in the Kosrae Rules of Appellate Procedure. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 421 (Kos. S. Ct. Tr. 2004).

The Kosrae State Court trial division has jurisdiction to review all decisions of inferior courts, including decisions entered by the Kosrae Land Court. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 421 (Kos. S. Ct. Tr. 2004).

A later general court order supersedes an earlier one. Goya v. Ramp, 13 FSM R. 100, 105 n.2 (App. 2005).

Any case over which the trial division has jurisdiction may be heard by any of the justices as assigned by the Chief Justice. Once a case has been assigned to a particular justice, that justice has jurisdictional priority over the parties and issues of the case to the exclusion of all other trial division justices. This exclusive jurisdiction continues until the case is terminated in the trial division. While the case is pending, the priority extends to any other case involving the same parties and issues, even if filed later before a court that could also take jurisdiction. Nikichiw v. O'Sonis, 13 FSM R. 132, 138 (Chk. S. Ct. App. 2005).

When the parties are identical in two civil actions and the plaintiffs sought the same relief in both civil actions – that the contents of certain ballot boxes not be counted and tabulated because of election irregularities and when the only difference in the later civil action was that the plaintiffs were contesting only two of the five boxes they contested in the first civil action and that the irregularities alleged in the later case

were discovered during and in the course of the litigation of the first civil action (that is, during the counting and tabulating ordered by the judge in the first civil action), such irregularities would be expected to be brought immediately before the judge on the case in which they were discovered. When they were not, but were instead filed as a separate case, once the trial judge on the first case became available, the case should have been left to him to act upon. Therefore the second trial judge's presiding over the second civil action was in excess of his jurisdiction since the first trial division justice had jurisdictional priority over the parties and the issues in that case to the exclusion of all other trial division justices. Nikichiw v. O'Sonis, 13 FSM R. 132, 138 (Chk. S. Ct. App. 2005).

The appellate court cannot fault a judge for acting on a temporary restraining order application when it was filed since the assigned special trial justice was unavailable in the outer islands and the request for a temporary restraining order needed prompt action, but once the special trial justice again became available, the case should have been left to the special trial justice to act upon. Nikichiw v. O'Sonis, 13 FSM R. 132, 138 (Chk. S. Ct. App. 2005).

Under the doctrine of *stare decisis,* once a point of law has been established by a court, that point of law will be followed by all courts of lower rank in subsequent cases where the same legal issue is raised. Kosrae v. Sikain, 13 FSM R. 174, 177 (Kos. S. Ct. Tr. 2005).

When our nation's highest court, the FSM Supreme Court appellate division, interprets a constitutional provision in a case before it, that interpretation is to be given full effect in all cases still open on direct review, and as to all events, regardless of when they occurred. Once it announces a new rule of law, the integrity of judicial review requires application of the new rule to all similar cases pending on review. Kosrae v. Sikain, 13 FSM R. 174, 177 (Kos. S. Ct. Tr. 2005).

New constitutional rules affecting procedures in criminal cases apply only to those cases which are pending on direct review or which are not yet final when the new rules are announced. Thus a new constitutional rule announced in a January, 2004 decision will apply to a May 2003 case still pending at that time. Kosrae v. Sikain, 13 FSM R. 174, 177 (Kos. S. Ct. Tr. 2005).

When, contrary to the requirements of GCO 2002-13, the presiding justice questioned the claimants instead of the land assessor and the same series of questions were not asked of each unrepresented claimant, which is required by GCO 2002-13 in order to provide an equal opportunity to each claimant to present his or her claim and the reasons therefor, the non-compliance jeopardizes the fairness of the proceeding by providing one claimant better opportunity, through specified questions, to present his or her claim. Edmond v. Alik, 13 FSM R. 413, 416 (Kos. S. Ct. Tr. 2005).

Courts have inherent power and obligation to monitor the conduct of parties and to enforce compliance with procedural rules. Edmond v. Alik, 13 FSM R. 413, 416 (Kos. S. Ct. Tr. 2005).

Anyone is entitled to attend the Kosrae Land Court hearings on a parcel, whether or not they were provided personal notice for the hearing. All hearings at the Land Court are open to the public, as a basic cornerstone of the constitutional protections provided by our democratic government. Thus, even if persons had not been provided personal notice of the hearing on the parcel, and had received only public notice provided through posting or broadcast, they were still entitled to attend the hearing, and, if they were claimants they were permitted to present testimony at the hearing. Kun v. Heirs of Abraham, 13 FSM R. 558, 561 (Kos. S. Ct. Tr. 2005).

Violation of the statutory deadline to issue a Land Court decision does not affect the decision's validity. Its late issuance only serves as grounds for the issuing justice's removal or other discipline. Kun v. Heirs of Abraham, 13 FSM R. 558, 561 (Kos. S. Ct. Tr. 2005).

Enforcement of a Chuuk municipal court judgment is properly sought from that court or from the Chuuk State Supreme Court, which has supervisory powers over the municipal courts, not from the FSM

Supreme Court. Puchonong v. Chuuk, 14 FSM R. 67, 69 (Chk. 2006).

The Kosrae Land Court should ensure the distribution to one or more heirs of the General Court Orders that one (or more) persons represent a group of heirs if they are not represented by legal counsel, and that govern the questioning of claimants not represented by legal counsel, so that they may receive notice and comply with the requirements before the hearing date. Heirs of Weilbacher v. Heirs of Luke, 14 FSM R. 99, 101 (Kos. S. Ct. Tr. 2006).

Because the Kosrae State Court only has the authority to hear appeals from Land Court and it cannot act until the Land Court has adjudicated the matter and an appeal has been filed, a case concerning a claim of title to land filed in the Kosrae State Court will be dismissed without prejudice to allow the plaintiffs to file their claim in the Land Court, whose jurisdiction includes all matters concerning the title of land and any interests therein. Alanso v. Pridgen, 14 FSM R. 479, 480 (Kos. S. Ct. Tr. 2006).

The Land Court took over the Land Commission's responsibilities and is required by statute to give effect to determinations issued by the Land Commission. It does not have the discretion to ignore a Land Commission determination because it is handwritten or because it has not yet been served on the parties. The Land Court's duty is to take over, or "succeed" to the Land Commission's responsibilities, not re-hear matters previously decided by it. Heirs of Tara v. Heirs of Kurr, 14 FSM R. 521, 525 (Kos. S. Ct. Tr. 2007).

When creating the Land Court, the Kosrae Legislature provided for the transition of cases from the Land Commission to the Land Court and the Land Court succeeded to all Land Commission responsibilities, registers, properties and assets and Land Commission land determinations and registrations are equivalent to Land Court title determinations and registrations. Heirs of George v. Heirs of Dizon, 14 FSM R. 556, 558 (Kos. S. Ct. Tr. 2007).

Since The Land Court took over the Land Commission's responsibilities and is required by statute to give effect to Land Commission determinations, it does not have the discretion to ignore a Land Commission determination even when the Commissioners signed an adjudication to indicate their decision rather than issue a separate document. The Land Court does not have the discretion to ignore a Land Commission determination because it has not yet been served on the parties. The Land Court's duty is to take over, or "succeed" the Land Commission's responsibilities, not re-hear matters previously decided by them. Heirs of George v. Heirs of Dizon, 14 FSM R. 556, 559 (Kos. S. Ct. Tr. 2007).

That the Land Commission determination was not timely served on the parties since it was signed in 1990 and not served until the Land Court took action to complete the matter in January 2006, is not a ground to set aside the determination or to ignore the record made by the Land Commission because Kosrae Code § 11.616 requires that the Land Court treat the Land Commission's determinations as equivalent to its own determinations and there is no language setting a time restriction on this requirement. Despite the extended delay in service, the Land Court correctly gave force and effect to the Land Commission's determination. Heirs of George v. Heirs of Dizon, 14 FSM R. 556, 559 (Kos. S. Ct. Tr. 2007).

The Chuuk State Supreme Court trial division has jurisdiction to review the actions of any state administrative agency, board, or Commission, as may be provided by law and the appellate division has jurisdiction to review all decisions of the trial division, of inferior state courts, and of the municipal courts. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 589 (Chk. S. Ct. App. 2007).

The Kosrae Land Court is statutorily created as an inferior court within the State Court. It was created for specific purposes – title investigation, title determination, and the registration of interests in lands within Kosrae and to provide one system of filing all recorded interests in land. Thus, it is a court granted specific, limited jurisdiction. It is not a court of general jurisdiction. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 662 (Kos. S. Ct. Tr. 2008).

Since the Land Court's jurisdiction includes all matters concerning the title to land and any interests therein, that would necessarily include whether *kewosr* was a tradition affecting land tenure when the alleged transfer took place and whether a *kewosr* did in fact occur. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 375 (Kos. S. Ct. Tr. 2009).

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if filed later before a court that could also take jurisdiction. The rule, however, is not absolute, but is a principle of sound judicial administration that the first-filed suit should have priority absent special circumstances. Mori v. Hasiguchi, 16 FSM R. 382, 384 (Chk. 2009).

The court with jurisdiction over the first-filed case may exercise its discretion to stay proceedings, under the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. The first-filed rule is neither absolute nor mechanically applied but advances the inherently fair concept that the party that commenced the first suit generally ought to be the party to obtain its choice of venue. Mori v. Hasiguchi, 16 FSM R. 382, 384 (Chk. 2009).

When this suit and a later-filed suit were both filed in the FSM Supreme Court trial division but in different venues, the first in Chuuk and the second in Pohnpei; when the defendants are all present in Chuuk but have adopted a position analogous to an interpleader in that they are subject to competing claims for the same property and will comply with any court determination about its ownership; when the central issue to be resolved before any final judicial order is whether a bill of sale is enforceable or should be rescinded or reformed; and when this central issue is directly joined in the Pohnpei suit where the stock transfer and the events surrounding it took place, where the transferor and transferee both reside, and where the evidence and witnesses are present, this, at least to resolve this crucial central issue, would (based on judicial economy and economy of time and effort for counsel and for the litigants) favor a Pohnpei venue if it can be resolved there without undue delay. Since, even though complete relief for all the parties in this case cannot be granted in the Pohnpei suit, the Pohnpei suit should expeditiously resolve this suit's central issue without imposing hardship on the parties and leave this court to dispose of the peripheral issues, adjudication of this first-filed action will be stayed pending the resolution of the later-filed FSM Supreme Court suit in Pohnpei. Mori v. Hasiguchi, 16 FSM R. 382, 385-86 (Chk. 2009).

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if one is filed later before a court that could also take jurisdiction. The rule, although not absolute, is a principle of sound judicial administration under which the first-filed suit should have priority absent special circumstances. This salutary principle avoids unseemly conflicts that might arise between courts if they could, at the same time, make inconsistent or contradictory decisions relating to the same dispute and it protects litigants from the expense and harassment of multiple litigation. Setik v. Pacific Int'l, Inc., 17 FSM R. 277, 280 (Chk. 2010).

The FSM Supreme Court trial division has no authority to tell the Chuuk State Supreme Court whether and how it should enforce its own ruling when the case in which the ruling was made is not currently before the FSM Supreme Court. Narruhn v. Chuuk, 17 FSM R. 289, 300 (App. 2010).

The general rule is that the first-filed lawsuit has priority over any other case involving the same parties and issues, even if one is filed later before a court that could also take jurisdiction. This rule, although not absolute, is a principle of sound judicial administration under which the first-filed suit should have priority absent special circumstances. This salutary principle avoids unseemly conflicts that might arise between courts if they could, at the same time, make inconsistent or contradictory decisions relating to the same dispute and it protects litigants from the expense and harassment of multiple litigation. Setik v. Pacific Int'l, Inc., 17 FSM R. 304, 306 (Chk. 2010).

When there is a prior Chuuk State Supreme Court case that deals with the ownership issue and in which the alleged trespasser may soon be joined, and when the state court, unlike Chuuk Land Commission, has the power to issue monetary awards, the later-filed FSM Supreme Court trespass case

will be dismissed without prejudice. Setik v. Pacific Int'l, Inc., 17 FSM R. 304, 307 (Chk. 2010).

The Chuuk State Supreme Court has the authority to issue a writ of mandamus in a proper case. The Chuuk Judiciary Act gives all state courts the power to issue all writs for equitable and legal relief. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

The Chuuk State Judiciary Act gives each Chuuk court the power to issue all writs for equitable an legal relief; except the power of attachment, execution and garnishment of public property. Kama v. Chuuk, 18 FSM R. 326, 334 (Chk. S. Ct. Tr. 2012).

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

The Kosrae State Court Chief Justice is not acting in excess of his jurisdiction by appointing himself to sit as a temporary judge on a Land Court case when all the Land Court judges are disqualified when the Land Court is an inferior court within a unified state court system and since there is no constitutional impediment to a Kosrae statute authorizing a Kosrae State Court justice to sit as a temporary justice in another (inferior) court within the unified Kosrae state court system. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 194-95 (App. 2013).

One FSM Supreme Court trial division justice does not have subject matter jurisdiction to set aside orders entered in another separate trial division case, nor does he hold subject matter jurisdiction to grant injunctive relief against another trial division justice. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 257 (Pon. 2014).

Since the Kosrae Constitution provides that appeals from the State Court trial division may be made to the State Court appellate division, as shall be prescribed by law, enabling legislation is required to implement appeals from the trial division to the State Court appellate division, and when no such legislation has become law, no constitutional or statutory authority exists to authorize appeals from the Kosrae State Court trial division to the non-existent Kosrae State Court appellate division. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 301 (App. 2014).

By statute, the Kosrae State Court can, if appropriate, order a rehearing in the Land Court for only a part of a case. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 303 (App. 2014).

The Pohnpei Supreme Court trial division does not have appellate jurisdiction over Pohnpei municipal or local courts, and therefore the Pohnpei Supreme Court appellate division lacks jurisdiction over a petition for a writ of mandamus directed to a municipal court. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 401, 402 (App. 2014).

The Chuuk Land Commission is not a court as that word is used in the Chuuk Constitution. It is an administrative agency that functions as a quasi-judicial tribunal. Aritos v. Muller, 19 FSM R. 612, 613 (Chk. S. Ct. App. 2014).

The Chuuk Legislature, by statute, has determined that a land case in a declared land registration area must first go through the Land Commission procedure before it can become a land case in the Chuuk State Supreme Court trial division. Aritos v. Muller, 19 FSM R. 612, 613 (Chk. S. Ct. App. 2014).

The constitutional grant of original court jurisdiction does not prevent the Legislature from prescribing by statute that certain land cases must first go to an administrative agency, the Chuuk Land Commission, before the trial court can exercise its original jurisdiction over them. Aritos v. Muller, 19 FSM R. 612, 613

(Chk. S. Ct. App. 2014).

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if filed later before a court that would also have jurisdiction, but when the court has already ordered that the two cases be consolidated, the issue has become moot. Salomon v. Mendiola, 20 FSM R. 138, 142 (Pon. 2015).

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if filed later before a court that could also take jurisdiction. Carius v. Johnson, 20 FSM R. 143, 146 (Pon. 2015).

While limited, the Kosrae Land Court's subject-matter jurisdiction is broad enough to encompass factual determinations of fraud and misrepresentation to the extent that they affect the validity of titles or conveyances of land. Indeed, that is the Land Court's very purpose. Waguk v. Waguk, 21 FSM R. 60, 73 (App. 2016).

When the Kosrae Land Court itself is implicated in the allegations of fraud, that court is not competent to adjudicate the subject matter. Waguk v. Waguk, 21 FSM R. 60, 74 (App. 2016).

A court has no more right to decline the exercise of jurisdiction which is given, than it does to usurp that which is not given. Waguk v. Waguk, 21 FSM R. 60, 74 (App. 2016).

The Kosrae State Court has the power to issue all writs and other process, and may entertain a petition for a writ of mandamus. Tilfas v. Kosrae, 21 FSM R. 81, 93 (App. 2016).

"Forum-shopping" is the practice of choosing the most favorable jurisdiction or court in which a claim might be heard. Forum shopping thus presupposes that more than one court could have jurisdiction over the "claim" being "forum-shopped." FSM v. Siega, 21 FSM R. 291, 299 (Chk. 2017).

A statute takes precedence over the procedural rules because, while the Chief Justice has the power to promulgate procedural rules, those rules may be amended by statute, and because the Chief Justice does not have the power to amend a statute, a Congressionally enacted procedural rule is valid. Setik v. FSM Dev. Bank, 21 FSM R. 505, 517 (App. 2018).

In order to be "controlling law," the precedent must be a binding precedent. A binding precedent is a precedent that a court must follow. For example, a lower court is bound by an applicable holding of a higher court in the same jurisdiction. Setik v. Mendiola, 21 FSM R. 537, 560-61 (App. 2018).

While trial division decisions are precedents, they are not binding precedents since they are only trial court decisions. They are thus not "controlling law." Setik v. Mendiola, 21 FSM R. 537, 561 (App. 2018).

The Kosrae Land Court's statutory jurisdiction includes all matters concerning the title of land and any interest therein. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 578 (App. 2018).

Although the Kosrae Legislature did not vest exclusive jurisdiction in the Kosrae Land Court, it did create the Land Court as the court with original jurisdiction over land matters, and reserved appellate jurisdiction in the Kosrae State Court. Alik v. Heirs of Alik, 21 FSM R. 606, 623 (App. 2018).

When the proper place for a suit to have started was the Kosrae Land Court, but it was filed on the Kosrae State Court, the Kosrae State Court should have dismissed the Kosrae Land Court and the Kosrae state government as parties and, since it is the superior court in a unified court system, transferred the case from its docket to the Land Court's docket. Alik v. Heirs of Alik, 21 FSM R. 606, 623 (App. 2018).

It is a well established principle of law that a court's jurisdiction does not extend beyond the boundaries

of the state of its creation. This is because the authority of every tribunal is necessarily restricted by the territorial limits of the state in which it is established, and any attempt to exercise authority beyond those limits would be deemed in every other forum an illegitimate assumption of power. Setik v. Mendiola, 21 FSM R. 624, 626 (App. 2018).

In the interest of judicial economy, efficiency, and past precedent, the FSM Supreme Court can, in appropriate cases, request that parties submit a draft order for its consideration. The court may or may not, at its discretion, adopt the contents, or parts of the contents, of the draft order, in order to formulate a decision with a legal basis, based on legal reasoning. FSM Dev. Bank v. Carl, 21 FSM R. 640, 642 (Pon. 2018).

An order is not void simply because it was prepared by a litigant and signed by the court rather than drafted by the court itself. FSM Dev. Bank v. Carl, 21 FSM R. 640, 642 (Pon. 2018).

Fraud upon the court is the most egregious misconduct directed to the court itself, such as bribery of a judge or fabrication of evidence by counsel, which must be supported by clear, unequivocal and convincing evidence. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 12 (Pon. 2018).

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if filed later before a court that could also take jurisdiction. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 12 (Pon. 2018).

When the Pohnpei state probate case was the first filed lawsuit and that case can afford a complete resolution of the issues between the parties; when the later-filed FSM Supreme Court case could, at best, afford only a partial resolution and certainly lacks jurisdiction to enforce a state court interlocutory order; and when the Pohnpei Supreme Court is perfectly competent to enforce its own orders and judgments and to take any further needed steps in the probate case pending before it, it is appropriate that that forum resolve the issues. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 13 (Pon. 2018).

A court may abuse its judicial discretion by an unexplained, lengthy delay or by the failure to exercise its discretion within a reasonable time because the failure to exercise discretion is an abuse of the discretion. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 67 (Pon. 2018).

A court may take judicial notice of its own files in related cases. Setik v. Perman, 22 FSM R. 105, 117 (App. 2018).

Upon the filing of a registration area with the court, courts cannot entertain any action with regard to interests in land within that registration area without a showing of special cause why action by a court is desirable before it is likely that the land commission can determine the matter. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 576 (Chk. S. Ct. App. 2020).

– Judges

Preservation of a fair decision-making process, and even the maintenance of a democratic system of government, requires that courts and individual judges be protected against unnecessary external pressures. In re Iriarte (I), 1 FSM R. 239, 247 (Pon. 1983).

Judges on the FSM Supreme Court are bound by the American Bar Association Code of Judicial Conduct incorporated into law by 4 F.S.M.C. 122. Andohn v. FSM, 1 FSM R. 433, 444 (App. 1984).

The Judiciary Act of 1979, in Title 4 of the FSM Code, and the Judiciary Article, article XI of the Constitution of the Federated States of Micronesia govern the structure and powers of the FSM Supreme Court, and make no provision for appointment of special judges to sit with a justice of the FSM Supreme Court trial division. 5 F.S.M.C. 514 has no application to proceedings before the FSM Supreme Court. In

re Raitoun, 1 FSM R. 561, 564-65 (App. 1984).

Where an appellate court has held that a trial judge is under a clear and non-discretionary duty to step aside from presiding over a case and the petitioner has a constitutional right to obtain compliance with that duty, all documents issued after the date of the appellate decision are null and void and shall be expunged from the record and the judge shall be enjoined from taking any further action as a judge in the case. Etscheit v. Santos, 5 FSM R. 111, 113 (App. 1991).

The Chief Justice may appoint an acting chief justice if he is unable to perform his duties. "Unable to perform his duties" refers to a physical or mental disability of some duration, not to the legal inability to act on one particular case. Jano v. King, 5 FSM R. 326, 331 (App. 1992).

In order for a Congressional statute to give the court valid authority in those areas which the Constitution grants the Chief Justice rule-making powers the Chief Justice does not first have to promulgate a rule before Congress may legislate on the same subject. Hartman v. FSM, 6 FSM R. 293, 297 (App. 1993).

Pursuant to the Chuuk Judiciary Act judges in Chuuk are required to adhere to the standards of the Code of Judicial Conduct of the American Bar Association which require judges to resign from judicial office upon becoming a candidate for a non-judicial office. In re Failure of Justice to Resign, 7 FSM R. 105, 108 (Chk. S. Ct. App. 1995).

Pursuant to the Chuuk Judiciary Act judges in Chuuk have a clear ministerial, non-discretionary duty to resign from judicial office upon becoming a candidate for a non-judicial office. A writ of mandamus is the specific remedy to compel the performance of such a legally required ministerial act. In re Failure of Justice to Resign, 7 FSM R. 105, 110 (Chk. S. Ct. App. 1995).

Judges, faithful to their oath of office, should approach every aspect of each case with a neutral and objective disposition and understand their duty to render decisions upon a proper record and to disregard earlier judicial contacts with a case or party. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 9 (App. 1997).

Compensation of Kosrae State Court justices is prescribed by law. Compensation may not be increased or decreased during their terms of office, except by general law applying to all state government employees. Cornelius v. Kosrae, 8 FSM R. 345, 348 (Kos. S. Ct. Tr. 1998).

The phrase "all State Government employees" means employees whose compensation is determined by statute, and does not include those employees who have individual contracts with Kosrae. Therefore a state law reducing state public service system employees' pay can constitutionally be applied to a Kosrae State Court justice's pay. Cornelius v. Kosrae, 8 FSM R. 345, 352 (Kos. S. Ct. Tr. 1998).

Trial judges are expected to suggest the desirability of possible settlement. That is a normal part of their job. Bualuay v. Rano, 11 FSM R. 139, 148 (App. 2002).

The prohibition against compelling a judge's testimony is reflected in a long-standing principle that a court speaks only through its orders. This ban on judges testifying has limits. Those limits are that a judge must be acting as a judge, and that it is information regarding his or her role as a judge that is sought. FSM v. Wainit, 11 FSM R. 424, 430 (Chk. 2003).

No one is eligible to serve as the Chuuk Chief Justice or as an associate justice unless at least 35 years of age, was a born Chuukese, has been a resident of the State of Chuuk for at least 25 years, is an FSM citizen, and has never been convicted of a felony. Other qualifications may be prescribed by statute. Kupenes v. Ungeni, 12 FSM R. 252, 256 n.1 (Chk. S. Ct. Tr. 2003).

The Chief Justice of the Chuuk State Supreme Court is the administrative head of the state judicial system, and he may appoint and prescribe duties of other officers and employees of the state judicial system. He is also obligated to promulgate rules governing the administration of all state courts, the regulation of the judicial profession, and practice and procedure in civil matters. Kupenes v. Ungeni, 12 FSM R. 252, 261 (Chk. S. Ct. Tr. 2003).

When acting in his rule making capacity, the Chief Justice acts in a legislative capacity. Rules of court, properly promulgated, and not exceeding the limitation of the rule-making authority, have the force of law. Kupenes v. Ungeni, 12 FSM R. 252, 261 (Chk. S. Ct. Tr. 2003).

The ABA Code of Judicial Conduct (1984 ed.) is the judicial ethics provision in effect in Kosrae today. Anton v. Cornelius, 12 FSM R. 280, 285-86 (App. 2003).

The Constitution provides that a Supreme Court justice may be removed from office for treason, bribery, or conduct involving corruption in office by a ⅔ vote of the members of Congress. When a justice of the Supreme Court is removed, the decision must be reviewed by a special tribunal composed of one state court judge from each state appointed by the state chief executive. The Constitution draws no distinction between permanent justices or specially assigned justices for purposes of removal. Urusemal v. Capelle, 12 FSM R. 577, 586 (App. 2004).

No Chuuk state justice may hear or decide an appeal of a matter heard by the justice in the trial division, but the issuance of a stay is a procedural matter that does not require the justice issuing it to hear or decide the appeal. Ruben v. Petewon, 13 FSM R. 383, 389 (Chk. 2005).

A judge's failure to rule, that is, his failure to exercise his discretion is itself an abuse of the judge's discretion because a court may abuse its discretion by an unexplained, lengthy delay or by failure to exercise its discretion within a reasonable time. Ruben v. Petewon, 13 FSM R. 383, 390 n.2 (Chk. 2005).

When an oral motion to disqualify one of the panel members was made, the other two members constitute the deciding majority in an appellate case and can decide a motion to disqualify the third member. Ruben v. Petewon, 14 FSM R. 141, 143-44 & n.1 (Chk. S. Ct. App. 2006).

A writ of prohibition directed to a Chuuk State Supreme Court trial division justice is not a matter that the justice is barred from hearing when it was not heard by such justice in the Chuuk State Supreme Court trial division, and in an FSM Supreme Court case, the justice was careful not to decide anything on the merits. Not having expressed an opinion on the merits or done more than issue a preliminary injunction, a justice is not precluded from sitting on a panel considering a petition for writ of prohibition. Ruben v. Petewon, 14 FSM R. 141, 145 (Chk. S. Ct. App. 2006).

If the Chief Justice is removed or disqualified, then the most senior associate justice who has not been removed or disqualified from the case will appoint the temporary justices, but if all Chuuk State Supreme Court justices are disqualified and there is no associate justice that could appoint a panel in the Chief Justice's stead and there is no provision for the Chief Justice to appoint a temporary justice to make the appointments, then the rule of necessity, in this limited circumstance, allows the Chief Justice to make the panel appointments. Ruben v. Petewon, 14 FSM R. 146, 148 (Chk. S. Ct. App. 2006).

When the trial judge's original appointment as chief justice established his qualifications for the office and the trial judge physically possessed the office of chief justice on February 28, 2006 and on that day discharged the duties of the office and when the trial judge's color of authority stems from his original appointment as chief justice, the dispute relates not to the fact of the trial judge's appointment to the bench but rather concerns the exact length of the trial judge's appointment as chief justice. Tulensru v. Kosrae, 15 FSM R. 122, 129 (App. 2007).

When the only relevant evidence in the record on appeal supports the conclusion that the judge's

appointment extended through the day of February 28, 2006, as he was clearly acting under the color of authority vested with him by his original appointment as chief justice and not as an unknown usurper attempting to wrestle authority from its appropriate guardian, and when an additional source for the trial judge's color of authority is derived from the fact that he presided over the trial in this matter and twice scheduled the sentencing hearing to take place before February 28, 2006, all acts which he undertook without protest from any party, this is the type of situation contemplated by the de facto principle as a safeguard against the unnecessary interruption of public governance. Thus, even if it were true that the trial judge's tenure with the court officially ended before February 28, 2006, the sentencing order of February 28, 2006 would remain valid as the act of a judge de facto. Tulensru v. Kosrae, 15 FSM R. 122, 129 (App. 2007).

A party may seek the addition of supplemental findings to a judgment within ten days of the judgment being entered. Such action should only be taken by the judge who presided over the proceedings and who entered the judgment and while the facts underlying the proceedings are fresh within the presiding judge's mind. A motion for amended judgment or supplemental findings under Rule 52(b), nearly two decades after entry of judgment and with a new presiding judge, is untimely and inappropriate. Salik v. U Corp., 15 FSM R. 534, 539 (Pon. 2008).

If by reason of the disability of the judge before whom an action was been tried, the judge is unable to perform the court's duties after findings of fact and conclusions of law are filed, then any other judge regularly sitting in or assigned to the court in which the action was tried may perform those duties unless the other judge is satisfied that such other judge cannot perform those duties because such other judge did not preside at the trial or for any other reason the other judge may in his or her discretion grant a new trial. Salik v. U Corp., 15 FSM R. 534, 539 (Pon. 2008).

When interpreting FSM Civil Rule 63 and applying it to a matter, it is appropriate to consider the treatment of similar rules of procedure as they are found in American jurisdictions. Salik v. U Corp., 15 FSM R. 534, 539 (Pon. 2008).

A successor judge may not make findings of fact and conclusions of law and enter judgment solely upon the record developed by his predecessor except upon agreement of the parties, and a second judge is prohibited from making factual determinations as to a first judge's intent when he interprets an order issued by the first judge. Salik v. U Corp., 15 FSM R. 534, 539 (Pon. 2008).

Kosrae state judges are subject to the 2000 version of the American Bar Association Code of Judicial Conduct as the basis for judicial ethics and disqualification because the State Code adopted by reference and applied to Kosrae judges the 1984 edition of the ABA Code of Judicial Conduct but allowed the Kosrae Chief Justice, by rule, to make the judicial conduct requirements stricter or to establish other standards consistent with the Code of Judicial Conduct, which was done through Kosrae General Court Order 2003-02 adopting the 2000 version of the ABA Code of Judicial Conduct. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 503 & n.1 (App. 2011).

If the Kosrae Chief Justice sits on a case in the Land Court and his decision is later appealed to the Kosrae State Court, the Chief Justice must then have no involvement in the case in the Kosrae State Court and the Kosrae State Court appeal would necessarily be handled by another justice. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 195 (App. 2013).

The only procedure available to seek restraint of or injunctive relief against an FSM Supreme Court Trial Division justice is to be found in Rule 21 of the FSM Rules of Appellate Procedure. It is established in this jurisdiction that a writ of prohibition must be directed to a court or tribunal inferior in rank to the one issuing the writ. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 257 (Pon. 2014).

The structure of the FSM Court system dictates that as a practical matter a writ against a trial division court may only be issued by the appellate division. Therefore, a writ of mandamus or prohibition, even if

characterized as an "injunction" or "setting aside an order" may not be issued by one trial division justice against another FSM Supreme Court trial division justice. Appellate Rule 21 writs of prohibition are the sole procedure available for seeking restraint of a trial court judge's actions in a pending case. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 257-58 (Pon. 2014).

FSM Supreme Court justices, even temporary justices, should be guided by permissible considerations rather than by one party's unsupported supposition that other justices would have ruled differently on a question of first impression. FSM v. Halbert, 20 FSM R. 49, 52 (Pon. 2015).

While it is appropriate for a Chief Justice to engage with all the relevant stake-holders in the process of promulgating a general court order, the decision making process is quite different for a justice called upon to render an evidentiary ruling in a criminal case. Even when a party raises a question of first impression, a judge presiding over a criminal case has a responsibility to apply the law to the case's facts, and it would be an abuse of judicial discretion to delay an evidentiary ruling in order to solicit advice from non-parties suggesting what the law should be. This judicial power is curtailed by the process of appellate review. FSM v. Halbert, 20 FSM R. 49, 53 (Pon. 2015).

A signature affixed by a judge by rubber stamp is valid because a signature is a person's name or mark written by that person or at the person's direction, or any name, mark, or writing used with the intent of authenticating a document – also termed a legal signature. George v. Palsis, 20 FSM R. 157, 159 (Kos. 2015).

In the absence of any provision in the FSM Code, Rules of Civil Procedure, or General Court Order, mandating a handwritten signature on an order issued by a justice, an argument that a judge's signature is deficient because it appears to be "rubber-stamped," is devoid of merit. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 228 (Chk. 2015).

Kosrae State Court judges are constitutionally required to retire upon attaining the age of sixty-five years. Andrew v. Heirs of Seymour, 20 FSM R. 629, 631 & n.2 (App. 2016).

In the absence of any provision in the FSM Code, Civil Procedure Rules, or General Court Order, mandating a handwritten signature on an order issued by a justice, arguments that a judge's signature is deficient because it is "rubber-stamped," are devoid of merit. FSM Dev. Bank v. Ehsa, 21 FSM R. 148, 149 (Pon. 2017).

A judge's rubber-stamped signatures are marks used to authenticate the judge's written orders, and are thus valid, original signatures. Contentions that they are fake, or invalid, or not legal signatures, are without merit. FSM Dev. Bank v. Ehsa, 21 FSM R. 148, 150 (Pon. 2017).

All Chuukese judges are required to adhere to the American Bar Association's Code of Judicial Conduct. Selifis v. Robert, 21 FSM R. 344, 346 (Chk. S. Ct. App. 2017).

The Chief Justice is required by statute to give notice to the President and the Congress upon the appointment of any temporary Justice. While the concurrent issuance of a separate order of assignment, filed in the relevant case, is undoubtedly the better practice, no law or rule requires it. Setik v. FSM Dev. Bank, 21 FSM R. 505, 517 (App. 2018).

Often a litigant will not know which judge has been assigned the case until that judge either issues his or her first written order or appears on the bench at the case's first hearing. That is when, if there are grounds for the motion, a litigant would usually move to disqualify the judge. Setik v. FSM Dev. Bank, 21 FSM R. 505, 517 (App. 2018).

A ministerial act is an act performed without the independent exercise of discretion or judgment. Ministerial means of or relating to an act that involves obedience to instructions or laws instead of discretion,

judgment, or skill. Setik v. FSM Dev. Bank, 21 FSM R. 505, 521 (App. 2018).

Litigants are not entitled to a judge of their own choosing; they are only entitled to an unbiased judge. Setik v. Mendiola, 21 FSM R. 537, 550 (App. 2018).

Often a litigant will not know which judge will be assigned a case until that judge either issues his or her first written order or appears on the bench for the case's first hearing. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

Kosrae state judges are bound by the 2000 version of the American Bar Association Code of Judicial Conduct, which forms the basis for judicial ethics and disqualification. Heirs of Sigrah v. George, 22 FSM R. 211, 219 (App. 2019).

– Judges – Judges De Facto

If someone constitutionally ineligible for appointment, is appointed a judge then his status is that of a de facto judge. A de facto judge is one who exercises the duties of the judicial office under the color of an appointment thereto. Where there is an office to be filled, and one, acting under color of authority, fills the office and discharges its duties, his actions are those of an officer de facto, and binding on the public. Hartman v. FSM, 6 FSM R. 293, 298-99 (App. 1993).

Since the acts of a de facto judge are valid against all except the sovereign and generally not subject to collateral attack, the proper method to question a de facto judge's authority is through a quo warranto proceeding brought by the sovereign. Hartman v. FSM, 6 FSM R. 293, 299 (App. 1993).

The view that the de facto doctrine, where applicable, should operate to prevent challenges to the authority of special judges, acting under color of right, by private litigants, in the proceedings before them is better suited for the social and geographical configuration of Micronesia. Hartman v. FSM, 6 FSM R. 293, 299 (App. 1993).

The acts of a judge de facto are generally valid and not subject to collateral attack. Alafanso v. Suda, 10 FSM R. 553, 556 (Chk. S. Ct. Tr. 2002).

The Chuuk State Supreme Court prefers to adopt the majority rule in the United States that a temporary judge cannot be a judge *de facto*, because a temporary judge merely serves for a particular case, whereas a judge *de facto* makes claim to a judicial office under color of authority. This majority rule, in defining a judge *de facto*, requires that a judge *de facto* have all of the qualifications to hold the office which he claims under color of authority, a requirement which cannot, as a matter of definition, apply to temporary judges, who have no claim to the office of judge *de jure*, but rather occupy it on a temporary basis, case by case. Kupenes v. Ungeni, 12 FSM R. 252, 260 (Chk. S. Ct. Tr. 2003).

A judge *de facto* occupies the position under "color of authority," which has been defined in this context as follows: "A de facto officer is one who is in possession of an office, and discharging its duties, under color of authority. By color of authority is meant authority derived from an election or appointment, however irregular or informal, so that the incumbent be not a mere volunteer. Kupenes v. Ungeni, 12 FSM R. 252, 260 (Chk. S. Ct. Tr. 2003).

Even if a special trial justice were not a lawfully appointed judicial officer, that is, a judge de jure, he was a de facto judicial officer since a de facto judge is one who exercises the duties of the judicial office under the color of an appointment thereto. A judge de facto's acts are generally valid and not subject to collateral attack. Ruben v. Hartman, 15 FSM R. 100, 114 (Chk. S. Ct. App. 2007).

A judge de facto must have all the qualifications to hold the office which he claims under color of authority. A de facto officer is one who is in possession of an office, and discharging its duties, under color

of authority. By color of authority is meant authority derived from an election or appointment, however irregular or informal, so that the incumbent be not a mere volunteer. Tulensru v. Kosrae, 15 FSM R. 122, 129 (App. 2007).

When the only relevant evidence in the record on appeal supports the conclusion that the judge's appointment extended through the day of February 28, 2006, as he was clearly acting under the color of authority vested with him by his original appointment as chief justice and not as an unknown usurper attempting to wrestle authority from its appropriate guardian, and when an additional source for the trial judge's color of authority is derived from the fact that he presided over the trial in this matter and twice scheduled the sentencing hearing to take place before February 28, 2006, all acts which he undertook without protest from any party, this is the type of situation contemplated by the de facto principle as a safeguard against the unnecessary interruption of public governance. Thus, even if it were true that the trial judge's tenure with the court officially ended before February 28, 2006, the sentencing order of February 28, 2006 would remain valid as the act of a judge de facto. Tulensru v. Kosrae, 15 FSM R. 122, 129 (App. 2007).

– Judges – Temporary Judges

The Chief Justice has the constitutional authority to make rules for the appointment of special judges, and Congress has the constitutional authority to amend them. Congress has provided the Chief Justice with the statutory authority to appoint temporary justices. Where Congress has acted pursuant to its constitutional authority to provide statutory authority to the court, the court need not have exercised its concurrent rule-making authority. Jano v. King, 5 FSM R. 326, 331 (App. 1992).

The constitutional language does not require that a Chuuk State Supreme Court justice sit on an appellate panel when none is available, only that no more than one can sit under any circumstance. But if there are Chuuk State Supreme Court justices who are not disqualified, one must preside over the panel in order for it to be properly constituted. If needed, a justice, who is not disqualified, has a professional and constitutional obligation to serve. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 151 (Chk. S. Ct. App. 2001).

Temporary Chuuk State Supreme Court justices, appointed for the limited purpose of hearing the appeal, may be a justice of the FSM Supreme Court, a judge of a court of another FSM state, or a qualified attorney in the State of Chuuk. FSM citizenship is not a constitutional requirement to be a temporary Chuuk State Supreme Court appellate justice and the Legislature cannot add it by statute. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 152 (Chk. S. Ct. App. 2001).

When a special trial division justice was appointed by the Chief Justice pursuant to the procedure contained in two 1994 general court orders, the special trial division justice appeared to be a properly installed judicial officer, and even if the special trial division justice were not a lawfully appointed judicial officer, that is, a judge de jure, he was a de facto judicial officer. Alafanso v. Suda, 10 FSM R. 553, 556 (Chk. S. Ct. Tr. 2002).

Where the Chuuk Constitution specifically authorizes the appointment of qualified attorneys in Chuuk as temporary appellate justices on a per case basis and the Constitution's framers therefore must have contemplated that counsel in one appeal may well be a temporary justice on a different appeal, the presence of qualified attorneys on an appellate panel is not a ground to grant a rehearing. Rosokow v. Bob, 11 FSM R. 454, 457 (Chk. S. Ct. App. 2003).

An appellate panel's composition of three temporary justices is proper in the sudden absence of the presiding Chuuk State Supreme Court justice when the other Chuuk State Supreme Court justices were disqualified and the matter could not wait for the original presiding justice's recovery from illness because the court was required by statute to decide on the contested election prior to April 15, 2003 and therefore a third temporary justice had to be appointed immediately. In re Mid-Mortlocks Interim Election, 11 FSM R.

470, 473 (Chk. S. Ct. App. 2003).

By general court order, when the other justices are disqualified or have been recused or there is a special need to have a special justice from outside the court to hear a case to avoid the appearance of impropriety, the Chuuk Chief Justice may appoint special justices (who meet the same requirements for the appointment of an appellate division temporary justice) and assign cases to him. Kupenes v. Ungeni, 12 FSM R. 252, 256 n.2 (Chk. S. Ct. Tr. 2003).

The Chuuk State Supreme Court prefers to adopt the majority rule in the United States that a temporary judge cannot be a judge *de facto*, because a temporary judge merely serves for a particular case, whereas a judge *de facto* makes claim to a judicial office under color of authority. This majority rule, in defining a judge *de facto*, requires that a judge *de facto* have all of the qualifications to hold the office which he claims under color of authority, a requirement which cannot, as a matter of definition, apply to temporary judges, who have no claim to the office of judge *de jure*, but rather occupy it on a temporary basis, case by case. Kupenes v. Ungeni, 12 FSM R. 252, 260 (Chk. S. Ct. Tr. 2003).

The Chuuk State Supreme Court adopts the U.S. majority rule that an special trial justice appointed pursuant to Chuuk GCO 2-94 is a temporary judge, a *judge pro hac vice de jure*, and that if the promulgation of GCO 2-94 is unconstitutional, then all acts of the special trial justice in the cases to which he has been assigned, are void and a nullity. Kupenes v. Ungeni, 12 FSM R. 252, 261 (Chk. S. Ct. Tr. 2003).

Chuuk GCO 2-94 authorizing the appointment of special trial justices is a constitutional exercise of the Chief Justice's rule-making authority since there are no express constitutional limitations on that authority other than that permitting the Legislature to amend rules promulgated by the Chief Justice. Kupenes v. Ungeni, 12 FSM R. 252, 263 & n.10 (Chk. S. Ct. Tr. 2003).

In order to qualify as a temporary justice on a Chuuk State Supreme Court appellate division panel, the temporary justice must be either 1) a justice of the FSM Supreme Court, 2) a judge of a court of another FSM state, or 3) a qualified attorney in the State of Chuuk. Judges of other courts and qualified attorneys, are sufficiently competent in the law to sit as members of a Chuuk State Supreme Court appellate panel, regardless of their nationality or citizenship. Kupenes v. Ungeni, 12 FSM R. 252, 264 (Chk. S. Ct. Tr. 2003).

The Chuuk Constitution provides no guidance, positively or negatively, regarding whether special trial justices are permissible, and if so, what their minimum qualifications must be. Absent any words of limitation in the constitution, the Chief Justice has and should maintain vigorously all the inherent and implied powers necessary to permit the judiciary to function properly and effectively as a separate department in the scheme of government. These inherent and implied powers include the power to adopt general court orders for the appointment of special trial justices and to establish minimum qualifications for those special justices which equal the qualifications for temporary appellate justices under the constitution. Kupenes v. Ungeni, 12 FSM R. 252, 265 (Chk. S. Ct. Tr. 2003).

In appointing a special trial justice, the Chuuk Chief Justice is not appointing a temporary associate justice. A special trial justice, does not make any claim to the office of associate justice. Kupenes v. Ungeni, 12 FSM R. 252, 265 (Chk. S. Ct. Tr. 2003).

Litigants in a case presided over by a specially assigned justice are entitled to a justice who is no less independent than a permanent justice. Urusemal v. Capelle, 12 FSM R. 577, 586 (App. 2004).

If a specially assigned justice may be removed for any reason at Congress's discretion after serving 90 days of service in a case, then the justice is not independent. His rulings are subject to the legislative branch's supervision. The Constitution's framers intended to prevent this result by providing that a justice may only be removed for cause under the procedures set out in Article IX, Section 7. Urusemal v. Capelle,

12 FSM R. 577, 587 (App. 2004).

Congress may not remove at its discretion a justice temporarily assigned to a case any time after that justice has served 90 days because any such resolution and the statute upon which it is based, 4 F.S.M.C. 104(2) violate Article IX, Section 7 of the Constitution. Urusemal v. Capelle, 12 FSM R. 577, 587 (App. 2004).

A trial justice specially assigned to a case by the Chief Justice has no authority to assign that (or any case) to the Chief Justice even if he were not disqualified. FSM v. Kansou, 12 FSM R. 637, 640 (Chk. 2004).

The Chuuk Constitution does not include a provision allowing the Legislature to add further qualifications to those required for temporary appellate justices. FSM citizenship is not a constitutional requirement to be a temporary Chuuk State Supreme Court appellate justice. The Legislature thus cannot add it by statute. When the Constitution sets forth the requirements for office and does not authorize the Legislature to add further requirements, it is barred from doing so. Ruben v. Petewon, 14 FSM R. 141, 144, 145 (Chk. S. Ct. App. 2006).

The Legislature cannot add qualifications for appellate division justices to those found in the Chuuk Constitution, article VII, section 5(b). Thus the statutory requirements that a temporary appellate justice be either a graduate of an accredited law school in that jurisdiction or have at least twenty years experience practicing law, is contrary to the Chuuk Constitution and cannot be enforced. Ruben v. Petewon, 14 FSM R. 141, 145 (Chk. S. Ct. App. 2006).

When all Chuuk State Supreme Court justices have been disqualified from presiding, an appellate panel will have to be constituted without a Chuuk State Supreme Court justice and with a temporarily-appointed justice to preside. Ruben v. Petewon, 14 FSM R. 146, 149 (Chk. S. Ct. App. 2006).

There is no authority that would require the justice making the appointment of temporary Chuuk State Supreme Court appellate division justices to make the appointments of temporary appellate justices in the order of seniority. Ruben v. Petewon, 14 FSM R. 146, 149 (Chk. S. Ct. App. 2006).

It is proper for temporary justices, otherwise meeting the requirements of Chuuk Constitution Article VII, section 5(b), to constitute the full appellate panel and to preside over Chuuk State Supreme Court appeals if Chuuk State Supreme Court justices are disqualified or not readily available. Mori v. Haruo, 16 FSM R. 556, 557 (Chk. S. Ct. App. 2009).

4 F.S.M.C. 124(2) by its own terms serves to disqualify a temporary justice only when the Congress taken an affirmative act of adopting a resolution after the justice has served at least three months, but 4 F.S.M.C. 124(2) cannot serve as a basis for disqualification of a temporary justice because the appellate division has ruled it to be in conflict with the FSM Constitution. FSM v. Halbert, 20 FSM R. 49, 51 (Pon. 2015).

Because the basis for the Urusemal v. Capelle court decision was its concern for safeguarding the independence of judicial decision making as envisioned in the FSM Constitution, the decision's reasoning is equally valid regardless of whether a temporary justice had previously sat on the FSM Supreme Court or is currently a judge of another court. FSM v. Halbert, 20 FSM R. 49, 51-52 (Pon. 2015).

FSM Supreme Court justices, even temporary justices, should be guided by permissible considerations rather than by one party's unsupported supposition that other justices would have ruled differently on a question of first impression. FSM v. Halbert, 20 FSM R. 49, 52 (Pon. 2015).

Since the Chief Justice is statutorily required to give notice to the President and the Congress upon the appointment of any temporary justice, the absence of an "order of assignment" is not improper when a

missive from the Acting Chief Justice was duly dispatched to Congress, apprizing that body of his designation of a judge to preside over the matter because Congress has provided the Chief Justice with the statutory authority to appoint temporary justices and Congress acted under its Constitutional authority to provide this statutory authority to the judiciary, the court need not exercise its concurrent rule-making authority; and because there is no pertinent rule which mandates issuance of a separate "order of assignment." FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 227-28 (Chk. 2015).

Since the Chief Justice by rule may give special assignments to retired Supreme Court justices and judges of state and other courts; since judicial rules may be amended by statute; and since a statute already exists setting out the procedure for giving special assignments to retired Supreme Court justices and judges of state and other courts, the Chief Justice must follow that procedure. Setik v. FSM Dev. Bank, 21 FSM R. 505, 517 (App. 2018).

Since the Chief Justice by rule may give special assignments to retired Supreme Court justices and judges of state and other courts; since judicial rules may be amended by statute; and since a statute already exists setting out a procedure for giving special assignments to retired Supreme Court justices and judges of state and other courts, the Chief Justice must follow that procedure. Setik v. Mendiola, 21 FSM R. 537, 550 (App. 2018).

The Chief Justice is required by statute to give notice to the President and the Congress upon the appointment of any temporary justice. While the concurrent issuance of a separate order of assignment, filed in the relevant case, may undoubtedly be the better practice, no law or rule requires it when the Chief Justice has appointed a temporary justice. Setik v. Mendiola, 21 FSM R. 537, 550-51 (App. 2018).

– Judicial Immunity

The FSM Supreme Court is immune from an award of damages, pursuant to 11 F.S.M.C. 701(3), arising from the performance by the Chief Justice of his constitutionally granted rule-making powers. Berman v. FSM Supreme Court (II), 5 FSM R. 371, 374 (Pon. 1992).

The Chief Justice, in making rules, is performing a legislative function and is immune from an action for damages. Berman v. FSM Supreme Court (II), 5 FSM R. 371, 374 (Pon. 1992).

The grant of immunity to the Chief Justice while performing his rule-making authority is to protect the independence of one exercising a constitutionally granted legislative power. Berman v. FSM Supreme Court (II), 5 FSM R. 371, 374 (Pon. 1992).

A judge is generally granted absolute civil immunity from civil liability for acts done in the exercise of a judicial function. Jano v. King, 5 FSM R. 388, 391 (Pon. 1992).

A judge loses the cloak of judicial immunity in only two instances. A judge is not immune for actions not taken in the judge's judicial capacity, and a judge is not immune for actions, though judicial in nature, taken in the absence of all jurisdiction. Jano v. King, 5 FSM R. 388, 391 (Pon. 1992).

An act performed by a judge does not have to be an adjudicatory act in order for it to be a judicial act. Judges and justices of the courts of the Federated States of Micronesia are protected by the cloak of judicial absolute immunity for judicial functions performed unless they are in complete absence of jurisdiction. Jano v. King, 5 FSM R. 388, 392-93 (Pon. 1992).

Judges and justices of the FSM are protected by the cloak of absolute immunity for judicial functions performed, unless the functions were performed in the complete absence of jurisdiction. Issuance of a search warrant is within the jurisdiction of FSM courts. Therefore it is a judicial act to which immunity attaches. Liwi v. Finn, 5 FSM R. 398, 400-01 (Pon. 1992).

A chief justice's actions in reviewing an attorney's application for admission is a judicial function that is entitled to absolute immunity from suit for damages. Berman v. Santos, 7 FSM R. 231, 240 (Pon. 1995).

A judge is generally granted absolute immunity from civil liability for acts done in the exercise of a judicial function. A judge loses the cloak of judicial immunity in only two events: First, a judge is not immune from non-judicial actions, i.e. actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. Bank of Guam v. O'Sonis, 9 FSM R. 106, 112 (Chk. 1999).

The factors determining whether an act by a judge is a judicial one relate to the nature of act itself, *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity. The second question in deciding whether immunity exists is whether the judge acted in complete absence of all jurisdiction. Bank of Guam v. O'Sonis, 9 FSM R. 106, 112 (Chk. 1999).

Judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly. A judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors. Bank of Guam v. O'Sonis, 9 FSM R. 106, 112 (Chk. 1999).

Judicial immunity does not apply against the imposition of prospective injunctive relief. The right to attorney's fees applies when prospective relief is granted against a judge pursuant to the civil rights statute. Bank of Guam v. O'Sonis, 9 FSM R. 106, 113 (Chk. 1999).

Judicial immunity protects from liability for punitive damages. Bank of Guam v. O'Sonis, 9 FSM R. 106, 113 (Chk. 1999).

A judge is generally granted absolute immunity from civil liability for acts done in the exercise of a judicial function. Few doctrines were more solidly established at common law than the immunity of judges for damages for acts committed within their judicial jurisdiction. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 121 (Pon. 2001).

Judges lose their judicial immunity only for non-judicial actions (actions not taken in the judge's judicial capacity), or for actions, though judicial in nature, taken in the complete absence of all jurisdiction. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 121 (Pon. 2001).

Two factors, both relating to the nature of act itself, determine whether an act by a judge is a judicial one: whether it is a function normally performed by a judge, and whether the parties dealt with the judge in his judicial capacity. The second question in deciding whether immunity exists is whether the judge acted in complete absence of all jurisdiction. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 121 (Pon. 2001).

Issuance of appellate opinions is a function normally performed by judges, and the timing of a decision is normally, if not always, a judicial decision. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 121 (Pon. 2001).

In order to determine whether a judge is liable for damages for his actions, the court asks whether the judge was performing judicial acts and whether his court had jurisdiction. When the answer to both questions is yes, the judge was not acting in complete absence of all jurisdiction, even when he had clearly acted in excess of his jurisdiction, and the judge was therefore immune from any suit for compensatory or punitive damages for his actions, but that does not end the inquiry. When the plaintiff had obtained permanent prospective injunctive relief against the judge under the civil rights act, it was entitled to the attorney's fees and costs incurred in obtaining that relief in that case, but not for any expenses incurred in

the state court case in which the judge had exceeded his jurisdiction even though the FSM Supreme Court had to enjoin him from conducting any further proceedings in it. Ruben v. Petewon, 15 FSM R. 605, 608 (Chk. 2008).

When the defendant state court judge's actions upon which the plaintiffs base this suit were judicial in nature and the state court is a court of general jurisdiction, which would have had the jurisdiction to consider a motion for relief of judgment if one had been filed, the judge did not act in complete absence of jurisdiction. But when he did clearly act grossly in excess of his jurisdiction and when the plaintiffs obtained permanent prospective relief against him in this case, they are entitled to their expenses including attorney's fees and costs under 11 F.S.M.C. 701(3) for bringing this action and are thus entitled to judgment as a matter of law on their civil rights claim for attorney's fees and costs. The costs and fees allowed will be for work in this case and not that for work in the related state court cases. Ruben v. Petewon, 15 FSM R. 605, 608-09 (Chk. 2008).

A judge is generally granted absolute immunity from civil liability for acts done in the exercise of a judicial function. A judge loses the cloak of judicial immunity in only two events: First, a judge is not immune from non-judicial actions, i.e. actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. Jacob v. Johnny, 18 FSM R. 226, 232 (Pon. 2012).

Few doctrines were more solidly established at common law than the immunity of judges for damages for acts committed within their judicial jurisdiction. Jacob v. Johnny, 18 FSM R. 226, 232 (Pon. 2012).

When analyzing whether a judge was performing judicial acts, the factors determining whether an act by a judge is a "judicial" one relate to the nature of act itself (whether it is a function normally performed by a judge) and to the expectations of the parties (whether they dealt with the judge in his judicial capacity). Issuing eviction orders, denying motions, and the like are all acts or functions normally performed by a judge. Jacob v. Johnny, 18 FSM R. 226, 232 (Pon. 2012).

When the Pohnpei Supreme Court is a court of general jurisdiction and when it is undisputed that the Pohnpei Supreme Court has jurisdiction over cases that the plaintiff filed there since she filed those cases there for the very reason that that court had jurisdiction, the plaintiff cannot allege that a Pohnpei justice acted in complete absence of jurisdiction when he issued orders in her cases even though she clearly alleges that he acted in excess of his jurisdiction. Jacob v. Johnny, 18 FSM R. 226, 232 (Pon. 2012).

Judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction and are alleged to have been done maliciously or corruptly, and a judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors. Jacob v. Johnny, 18 FSM R. 226, 232 (Pon. 2012).

Since a judge is absolutely immune from liability for his judicial acts even if those acts were done maliciously or corruptly or in excess of his jurisdiction or if his exercise of authority was flawed by the commission of grave procedural errors, he is thus immune from a plaintiff's compensatory damages claims. Jacob v. Johnny, 18 FSM R. 226, 233 (Pon. 2012).

Judicial immunity does not prevent a judge from being subject to prospective injunctive relief when the judge has acted, not in complete absence of jurisdiction, but in excess of jurisdiction. Judicial immunity does not apply against the imposition of prospective injunctive relief because no common law precedent ever granted such immunity. Jacob v. Johnny, 18 FSM R. 226, 233 (Pon. 2012).

When a Pohnpei Supreme Court judge is immune from suit and thus from the imposition of compensatory damages, the compensatory damages claims against him must be dismissed. But when the plaintiff's factual allegations against the judge, viewed in the light most favorable to the plaintiff, are

claims that the judge acted in excess of his jurisdiction and violated the plaintiff's civil rights in doing so, the court will not dismiss her claims against the judge for injunctive relief and for 11 F.S.M.C. 701(3) reasonable attorney's fees and costs incurred in obtaining that relief, since she alleges sufficient facts which, if proven that the judge acted in excess of his jurisdiction, state a claim for which the FSM Supreme Court can grant her some relief. Jacob v. Johnny, 18 FSM R. 226, 233-34 (Pon. 2012).

Judges are generally granted absolute immunity from civil liability for acts done in the exercise of a judicial function. Few common law doctrines were more solidly established than a judge's immunity for damages for acts committed within his judicial jurisdiction. Helgenberger v. U Mun. Court, 18 FSM R. 274, 283 (Pon. 2012).

A judge loses the cloak of judicial immunity in only two events: first, a judge is not immune from non-judicial actions, i.e. actions not taken in the judge's judicial capacity; and second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. The first question is whether the acts were judicial. Helgenberger v. U Mun. Court, 18 FSM R. 274, 283 (Pon. 2012).

The factors determining whether an act by a judge is a "judicial" one and therefore one for which the judge is immune from civil liability relate to the nature of act itself, *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity. The issuance of a bench warrant; the contempt finding; and, under U's constitutional setup, the impeachment trial, the conviction, the denial of the substitution of counsel, and the defendant's removal from office were all judicial acts, taken in a judicial capacity. Helgenberger v. U Mun. Court, 18 FSM R. 274, 283 (Pon. 2012).

The second question in deciding whether judicial immunity exists is whether the judge acted in complete absence of all jurisdiction because judges cannot be held civilly liable for their judicial acts, even when those acts were in excess of their jurisdiction, or are alleged to have been done maliciously or corruptly, and judges are also absolutely immune from civil liability when they committed grave procedural errors in their exercise of authority. Helgenberger v. U Mun. Court, 18 FSM R. 274, 283 (Pon. 2012).

A Pohnpei Supreme Court justice is generally immune from suit and from the imposition of money damages. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 67 (Pon. 2018).

Judges are generally granted absolute immunity from civil liability for acts done in the exercise of a judicial function. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 67 (Pon. 2018).

A judge loses the cloak of judicial immunity in only two events: 1) a judge is not immune from non-judicial actions, – actions not taken in the judge's judicial capacity, and 2) a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 67-68 (Pon. 2018).

A Pohnpei Supreme Court appellate division single justice's failure to rule on a motion for a stay of sentence is an act of a judicial nature and the grant or denial of a stay is an act wholly within the Pohnpei Supreme Court appellate division's jurisdiction. Thus, if the plaintiff were suing the single justice who failed to rule on his motion to stay, that justice would be immune from this suit for money damages, regardless of whether those damages were compensatory, nominal, or punitive. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 68 (Pon. 2018).

A plaintiff, no matter how worthy, cannot avoid the cloak of judicial immunity by suing the court where the judge sits instead of suing the immune judge. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 68 (Pon. 2018).

The FSM Supreme Court would look upon a true negligence suit against the Pohnpei Court of Land Tenure with great disfavor because, when a defendant is found negligent, the remedy is money damages,

and because the Pohnpei Court of Land Tenure is a court, and, as a court, it is immune from a suit for money damages for its judicial acts. Setik v. Perman, 22 FSM R. 105, 119 n.12 (App. 2018).

– Records

A court's inherent supervisory power over its own records includes the discretion to seal those records if it determines that the public's right to access is outweighed by legitimate competing needs for privacy and confidentiality. In re Property of Doe, 6 FSM R. 606, 607 (Pon. 1994).

A court will use a three step process designed to protect the public's interest in access to the its files to determine whether the records should be sealed: 1) the court will give the public adequate notice that the judicial records in question may be sealed; 2) the court will give all interested persons an opportunity to object; and 3) if, after considering all objections, the court decides that the records should be sealed, it will seal those records and state on the record the reasons supporting its decision. In re Property of Doe, 6 FSM R. 606, 607 (Pon. 1994).

When the court has posted public notices throughout the state and no member of the public, nor any interested party, objected, and the court has found good cause shown, the records in a case may be sealed. In re Property of Doe, 6 FSM R. 606, 607 (Pon. 1994).

Just as the courts in the judiciary confirm their role in society by adjudicating claims in civil matters, so to must the land commission. When a court fails to provide an adequate record of its proceedings, the role of the judiciary fails. Because claims over land are of no lesser importance than claims in civil matters, the requirement of a full and complete record applies to the land commission. In re Lot No. 014-A-21, 9 FSM R. 484, 493 (Chk. S. Ct. Tr. 1999).

It is the Kosrae State Court's statutory duty to certify Certificates of Live Birth and when the court has information that items on the certificate are incorrect, it will refuse to certify the certificate. In re Phillip, 11 FSM R. 243, 244 (Kos. S. Ct. Tr. 2002).

The subject himself cannot provide the factual basis for the date of his birth, as his knowledge of this information is based upon hearsay only. A person does not have personal knowledge of his date of birth. In re Phillip, 11 FSM R. 243, 245 (Kos. S. Ct. Tr. 2002).

Notarization of a document does not establish truth to the statements made in the document: notarization only verifies the identity and signature of the person who signed the document. Consequently, notarization of a document by a court employee does not represent any court endorsement or certification of the statements made in the document. In re Phillip, 11 FSM R. 243, 245 (Kos. S. Ct. Tr. 2002).

The Certificate of Live Birth is a document with critical legal importance. It forms the foundation upon which other important legal documents are issued. Therefore, the Certificate of Live Birth must be issued in accordance with a procedure, based upon credible factual information supporting the person's date of birth and other information entered on the certificate. In re Phillip, 11 FSM R. 301, 302-03 (Kos. S. Ct. Tr. 2002).

In order to protect the validity and reliability of birth certificates issued by the Kosrae state hospital, the hospital is ordered to issue a Certificate of Live Birth when the necessary information is properly authenticated and verified. The subject person of the certificate may not provide the only information that is relied upon by the hospital. The hospital shall review existing hospital records, other government records and other reliable records to establish the accuracy of information entered into each Certificate of Live Birth. Certificates which do not contain accurate information shall not be certified by the Kosrae State Court. In re Phillip, 11 FSM R. 301, 303 (Kos. S. Ct. Tr. 2002).

In Kosrae small claims, a docket card is kept showing the pleadings, actions of the court, payments, or

other reports and this docket card ordinarily constitutes the entire record. The plaintiff may state the nature and amount of the claim to the clerk who notes this on the docket card and the plaintiff signs this which, under the Small Claims Rules, constitutes the complaint. No other written pleading is required unless the court orders otherwise. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 641 (Kos. S. Ct. Tr. 2009).

– Recusal

No judge should sit in a case in which he is personally involved. In re Iriarte (II), 1 FSM R. 255, 262 (Pon. 1983).

Canon 3C of the ABA Code of Judicial Conduct applies in the FSM by virtue of 4 F.S.M.C. 122. There is no hint that Canon 3C as incorporated by the Judiciary Act of 1979, and 4 F.S.M.C. 124, were intended by Congress to have different meanings here. FSM v. Skilling, 1 FSM R. 464, 471 n.2 (Kos. 1984).

One guide to the kinds of facts which could lead a disinterested reasonable observer to harbor doubts about a judge's impartiality is 4 F.S.M.C. 124(2). FSM v. Skilling, 1 FSM R. 464, 475 (Kos. 1984).

4 F.S.M.C. 124(2) prescribes a subjective test under which a judge must disqualify himself if he subjectively concludes that he falls within the statutory provisions. Section 124(1), on the other hand provides an objective standard designed to guard against the appearance of impartiality. FSM v. Skilling, 1 FSM R. 464, 476 (Kos. 1984).

The bar against "public comment" by a judge regarding a case in trial, contained in 4 F.S.M.C. 122 and Canon 3A(6) of the American Bar Association Code of Judicial Conduct, is not violated by a trial court judge's encouraging a representative of the national official newspaper to publish his opinion on a motion for recusal, and such encouragement does not demonstrate partiality requiring recusal. Skilling v. FSM, 2 FSM R. 209, 215 (App. 1986).

The trial judge is justified in denying a motion for recusal on the basis of failure of the moving party to file an affidavit explaining the factual basis for the motion. Skilling v. FSM, 2 FSM R. 209, 216-17 (App. 1986).

The trial court judge's act of encouraging publication of his opinion on a motion for recusal in a national official newspaper, taken together with 1) the fining of defense counsel for tardiness, 2) the length of the sentence imposed, 3) the judge's comments about community support for defendant, explaining how that factor was taken into account in sentencing, and 4) the accelerated pace of sentencing proceedings, which was not contemporaneously objected to by defense counsel, do not indicate an abuse of discretion by the judge in denying the motion for recusal. Skilling v. FSM, 2 FSM R. 209, 217 (App. 1986).

The normal situation in which recusal may be required is when a judge's extrajudicial knowledge, relationship or dealings with a party or the judge's own personal or financial interests, might be such as to cause a reasonable person to question whether the judge could preside over and decide a particular case impartially. In re Main, 4 FSM R. 255, 260 (App. 1990).

If a judge has participated as an advocate in related litigation touching upon the same parties, and in the course of that previous activity has taken a position concerning the issue now before him as a judge, the appearance of justice, as guaranteed by Due Process Clause, requires recusal. Etscheit v. Santos, 5 FSM R. 35, 43 (App. 1991).

To prevent the "probability of unfairness," a former trial counselor or attorney must refrain from presiding as a trial judge over litigation involving his former client, and many of the same issues, and the same interests and the same land, with which the trial judge has been intimately involved as a trial counselor or attorney. Etscheit v. Santos, 5 FSM R. 35, 45 (App. 1991).

Even when sufficient allegations have not been made, a judge may disqualify himself if he believes sufficient grounds exist. Jano v. King, 5 FSM R. 266, 271 (Pon. 1992).

In order to overturn the trial judge's denial of a motion to recuse, the appellant must show an abuse of discretion by the trial judge. The appellate court will not merely substitute its judgment for that of the trial judge. Jano v. King, 5 FSM R. 326, 330 (App. 1992).

Even if neither party alleges or moves for disqualification a judge may disqualify himself if he believes sufficient grounds exist. Youngstrom v. Youngstrom, 5 FSM R. 385, 387 (Pon. 1992).

Before a judge disqualifies himself from a case he should also consider whether his disqualification will cause considerable delay, require substantial expense and effort, and cause undue disruption in the advancement of the matter. Youngstrom v. Youngstrom, 5 FSM R. 385, 387 (Pon. 1992).

Pursuant to Kosrae statute, judges of the Kosrae State Court are subject to the standards of the Code of Judicial Conduct approved by the American Bar Association. A trial judge who owns one or two shares in the plaintiff credit union must follow these standards in deciding whether to recuse himself. Waguk v. Kosrae Island Credit Union, 6 FSM R. 14, 16-17 (App. 1993).

A justice who was a member of a body that negotiated the Compact and related agreements and who was the one member that signed the Compact and Extradition Agreement is not disqualified from presiding over an extradition proceeding by the circumstance of that participation on the ground that his impartiality might reasonably be questioned. In re Extradition of Jano, 6 FSM R. 93, 97-98 (App. 1993).

In order for a justice to be recused for an interest in the subject matter in controversy not only must the justice have an interest, but also it must be such that the interest could be substantially affected by the outcome of the proceeding. Nahnken of Nett v. United States (I), 6 FSM R. 318, 321 (Pon. 1994).

A litigant's unsupported allegations that the trial judge may have subconscious misgivings is speculation and is insufficient to support the judge's disqualification. Nahnken of Nett v. United States (I), 6 FSM R. 318, 322 (Pon. 1994).

In order for a writ of prohibition to issue to require a judge to recuse himself it must be an abuse of discretion for the judge not to recuse himself. Where it is not apparent what interest of the judge could be substantially affected by the outcome of the proceeding or that the judge is biased or prejudiced the writ will not issue. Berman v. FSM Supreme Court (I), 7 FSM R. 8, 10 (App. 1995).

Normally a judge will not be disqualified when after the case has been submitted for decision a party files an unrelated lawsuit against the judge. Damarlane v. United States, 7 FSM R. 52, 55 (Pon. S. Ct. App. 1995).

A judge shall disqualify himself where he has served in governmental employment and in such capacity participated as counsel, adviser, or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy. Fu Zhou Fuyan Pelagic Fishery Co. v. Wang Shun Ren, 7 FSM R. 601, 604 (Pon. 1996).

A judge whose governmental employment ended before the facts arose that gave rise to the case in front of him is not disqualified from the case because he did not act as an adviser to or was a material witness to the agreement at issue. Fu Zhou Fuyan Pelagic Fishery Co. v. Wang Shun Ren, 7 FSM R. 601, 604 (Pon. 1996).

The standard to be applied in reviewing a request for disqualification under 4 F.S.M.C. 124(1) is whether a disinterested reasonable observer who knows all the circumstances would harbor doubts about the judge's impartiality. A motion for disqualification must be supported by an affidavit which clearly sets

forth the factual basis for the belief that grounds for disqualification exist. Fu Zhou Fuyan Pelagic Fishery Co. v. Wang Shun Ren, 7 FSM R. 601, 605 (Pon. 1996).

The power of a justice to recuse himself must be exercised conscientiously, and should not be employed merely to accommodate or placate nervous litigants or counsel. A party's speculation about the justice's unconscious frame of mind is insufficient to create a basis for disqualification. Fu Zhou Fuyan Pelagic Fishery Co. v. Wang Shun Ren, 7 FSM R. 601, 605 (Pon. 1996).

A due process challenge to a criminal contempt charge on the ground of the court's or its personnel's actions may be resolved by the judge's recusal and reassignment of the case to a judge whose impartiality has not been questioned. FSM v. Cheida, 7 FSM R. 633, 638-39 (Chk. 1996).

Because a judge has a ministerial, non-discretionary duty to state on the record his reasons for denying a motion to disqualify himself a writ of prohibition may issue to prevent him from proceeding further on a case until he has done so. Ting Hong Oceanic Enterprises v. Trial Division, 7 FSM R. 642, 643 (App. 1996).

A judge whose governmental employment ended before the events occurred that gave rise to the criminal case in front of him is not disqualified from the case because he did not act as an adviser to or was a material witness to the agreement at issue. FSM v. Ting Hong Oceanic Enterprises, 7 FSM R. 644, 649-51 (Pon. 1996).

A trial judge's discretion is limited by the disqualification statute, 4 F.S.M.C. 124, which prescribes under what circumstances he "shall disqualify himself." Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 4 (App. 1997).

A judge who sat on an appellate panel that reversed a criminal conviction on the ground of ineffective assistance of counsel is not necessarily disqualified from presiding over the retrial or a later appeal. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 5 (App. 1997).

Merely because the trial judge was once the sole official whose responsibility it was to sign a fishing agreement that contained similar and identical terms to a later agreement at issue in a case now before him is insufficient ground to disqualify him from trying this case. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 7 (App. 1997).

The general rule is that the disqualifying factors must be from an extrajudicial source. The normal situation in which recusal may be required is when a judge's extrajudicial knowledge, relationship or dealings with a party, or the judge's own personal or financial interests, might be such as to cause a reasonable person to question whether the judge could preside over and decide a particular case impartially. Even so, the judge may be disqualified from presiding further after a reversal if actual bias or prejudice or an appearance of partiality exists. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 7 (App. 1997).

A judge is not required to recuse himself from a retrial of convictions reversed because of ineffective assistance of counsel where one of his factual findings from the first trial relied upon an independent ground as well as arguably inadmissible evidence when the appellate court never ruled that the finding was clearly erroneous. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 8 (App. 1997).

A trial judge's view which the appellate court cannot be said to have been determined to be erroneous or based on evidence that must be rejected will not require his recusal from the retrial. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 9 (App. 1997).

When disqualification is not required in order to insure retrial before an impartial judge the fact that reassignment would entail minor waste and inconvenience would not change the result. Ting Hong

Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 9 (App. 1997).

A judge who represented a party in an earlier action involving the identical claim is required to recuse himself from the case. Bank of Guam v. O'Sonis, 8 FSM R. 301, 305 (Chk. 1998).

It is a due process violation for a former trial counselor or attorney to preside as a trial judge over litigation involving the same issues and interests he had been intimately involved with as a trial counselor or attorney, particularly where he had represented one of the litigants. Bank of Guam v. O'Sonis, 8 FSM R. 301, 305 (Chk. 1998).

A party has a due process right to a hearing before an unbiased judge and a judge without an interest in the case's outcome. Bank of Guam v. O'Sonis, 8 FSM R. 301, 305 (Chk. 1998).

When all Chuuk State Supreme Court justices have been disqualified from presiding, an appellate panel will have to be constituted without a Chuuk State Supreme Court justice and with a temporarily-appointed justice to preside. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 151 (Chk. S. Ct. App. 2001).

A justice's power to recuse himself must be exercised concientiously, and should not be used merely to accommodate nervous litigants or counsel. Kosrae State Code, § 6.1202 establishes the standards of conduct for Kosrae state justices, which includes the Code of Judicial Conduct of the American Bar Association. Kosrae v. Sigrah, 10 FSM R. 654, 657 (Kos. S. Ct. Tr. 2002).

Even if a judge has commented on certain issues of law when he was a government employee, the judge is not disqualified, so long as he has not prejudged the particular case before him. Kosrae v. Sigrah, 10 FSM R. 654, 657 (Kos. S. Ct. Tr. 2002).

The power of a justice to recuse himself must be exercised conscientiously, and should not be used merely to accommodate nervous litigants or counsel. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 133, 136 (Kos. S. Ct. Tr. 2002).

A justice is not required to recuse himself due to his former position as governor at the time that the plaintiff was moved into the teacher position in question. Tolenoa v. Kosrae, 11 FSM R. 179, 184-85 (Kos. S. Ct. Tr. 2002).

When a motion is included with an alternative motion to recuse the judge it is proper to consider the motion to recuse first even though the motion to recuse is termed an "alternative" because, except for purely procedural or housekeeping matters, once a motion to recuse has been filed, it must be ruled on and reasons given before the judge may proceed further. FSM v. Wainit, 11 FSM R. 424, 429 (Chk. 2003).

Generally, neither counsel nor a party may seek recusal of a judge by announcing that they intend to call the judge as a witness. The general rule is that since a court speaks only through its journal, a judge cannot testify about the meaning or intent of his decision in a case or explain aspects of the decision further. Nor can a judge be called to testify as to secret or unexplained reasons which led him to decide a case in a certain manner. FSM v. Wainit, 11 FSM R. 424, 429 (Chk. 2003).

Attempts to disqualify judges by indicating that the judge will be called as a witness are not favored and are rarely granted. Such an easy method of disqualifying a judge should not be encouraged or allowed. FSM v. Wainit, 11 FSM R. 424, 430 (Chk. 2003).

The prohibition against compelling a judge's testimony is reflected in a long-standing principle that a court speaks only through its orders. This ban on judges testifying has limits. Those limits are that a judge must be acting as a judge, and that it is information regarding his or her role as a judge that is sought. FSM v. Wainit, 11 FSM R. 424, 430 (Chk. 2003).

When it is the judge's actions as a judge issuing a search warrant that a party would have the judge testify about, the judge is not a potential witness concerning his issuance of a search warrant, and thus this cannot be a ground to grant the recusal motion. FSM v. Wainit, 11 FSM R. 424, 430 (Chk. 2003).

A Kosrae State Court judge's failure to disqualify himself, even though he was not asked to, does not constitute plain error requiring the appellate court to vacate and remand the matter to the Kosrae State Court when the case was not the same controversy as the case in which the judge had earlier acted as counsel because that case involved different land and different parties and its only apparent connection with this case was a will, but that will is inapplicable in this case and the prior case was dismissed on res judicata grounds without ever reaching any issues concerning the will. Anton v. Cornelius, 12 FSM R. 280, 286 (App. 2003).

Unsolicited letters from the public, expressing their views or requests on matters pending before the court, without anything more, cannot form the basis for disqualification of the justice to whom the letter was addressed. Unsupported allegations that the presiding judge may be influenced by an unsolicited letter is speculation and is insufficient to support the judge's disqualification. Allen v. Kosrae, 13 FSM R. 55, 59 (Kos. S. Ct. Tr. 2004).

When the trial judge is an unnamed member of a plaintiff class in another case, represented by the same counsel as the plaintiff in this case and defendant's counsel had notice of that more than one year before making a motion to recuse under 4 F.S.M.C. 124(1), and since a basis for a motion brought under section 124(1) is subject to waiver under section 4 F.S.M.C. 124(5), the basis for the judge's recusal was waived. Amayo v. MJ Co., 13 FSM R. 242, 248-49 (Pon. 2005).

Kosrae Land Court justices are required to adhere to the provisions of the Code of Judicial Conduct of the American Bar Association, which specifies that a justice is required to disqualify himself in all proceedings in which the justice's impartiality might reasonably be questioned. Isaac v. Saimon, 14 FSM R. 33, 35 (Kos. S. Ct. Tr. 2006).

That the judge has other criminal cases pending which he has not completed, and has granted continuances in other cases are meritless grounds to recuse the judge from sentencing the defendant on his final day as a judge when those matters are unrelated to this case and trial had been completed and the only action left is the imposition of sentence. Kosrae v. Tulensru, 14 FSM R. 115, 126-27 (Kos. S. Ct. Tr. 2006).

For the purpose of a recusal motion, a temporary justice is considered an FSM justice to whom 4 F.S.M.C. 124 applies. Goya v. Ramp, 14 FSM R. 303, 304 n.1 (App. 2006).

For the purpose of a recusal motion, a temporary justice is considered an FSM justice to which 4 F.S.M.C. 124 applies. Goya v. Ramp, 14 FSM R. 305, 308 n.3 (App. 2006).

Kosrae state judges are subject to the 2000 version of the American Bar Association Code of Judicial Conduct as the basis for judicial ethics and disqualification because the State Code adopted by reference and applied to Kosrae judges the 1984 edition of the ABA Code of Judicial Conduct but allowed the Kosrae Chief Justice, by rule, to make the judicial conduct requirements stricter or to establish other standards consistent with the Code of Judicial Conduct, which was done through Kosrae General Court Order 2003-02 adopting the 2000 version of the ABA Code of Judicial Conduct. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 503 & n.1 (App. 2011).

If a presiding Land Court judge fails to recuse himself when he is required to, it is a due process violation and the matter must be remanded to the Kosrae Land Court with instructions and guidance for re-hearing the matter. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 503-04 (App. 2011).

If the Kosrae Chief Justice sits on a case in the Land Court and his decision is later appealed to the Kosrae State Court, the Chief Justice must then have no involvement in the case in the Kosrae State Court and the Kosrae State Court appeal would necessarily be handled by another justice. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 195 (App. 2013).

The general rule is that the disqualifying factors must be from an extrajudicial source, and the normal situation in which a judge's disqualification may be required is when a judge's extrajudicial knowledge, relationship or dealings with a party, or the judge's own personal or financial interests, might be such as to cause a reasonable person to question whether the judge could preside over and decide a particular case impartially. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 195 (App. 2013).

A motion to disqualify a judge based on the judge's health is not a motion based on any of the grounds for disqualification listed in 4 F.S.M.C. 124, the FSM disqualification statute. George v. Palsis, 20 FSM R. 157, 159 (Kos. 2015).

All motions to disqualify a judge under 4 F.S.M.C. 124 must be filed before the trial or hearing unless good cause is shown for filing it at a later time. George v. Palsis, 20 FSM R. 157, 159 (Kos. 2015).

When a judge's health issues and physical limitations have been widely known or apparent for some time, including to the movant's counsel, a motion to disqualify a judge made only after an adverse final judgment has been rendered must be denied. George v. Palsis, 20 FSM R. 157, 159-60 (Kos. 2015).

A reasonable disinterested observer would require more evidence than that the judge and staff stayed at the same hotel as a defendant and his counsel and speculation concerning the defendant's activities. George v. Palsis, 20 FSM R. 174, 177 (Kos. 2015).

The mere fact that a presiding justice happens to be a "Palau Justice," ruling on a matter in the FSM, is inconsequential, and an unsupported allegation that the jurist may not be privy to supposed peculiar nuances of FSM law, constitutes rank speculation and is insufficient to support the justice's disqualification. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 229 (Chk. 2015).

When the movants have not shown a factual basis for an appearance of impropriety, in terms of the judge overseeing two separate cases involving the same party or shown a lack of competency to rule on FSM matters and as a result, the motion to disqualify the judge will be denied. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 229 (Chk. 2015).

Disqualification of a Supreme Court trial division justice is governed by 4 F.S.M.C. 124, which in § 124(1) requires disqualification if the justice's impartiality could reasonably be questioned, and in § 124(2) requires a justice's disqualification if the justice concludes that he falls within the statutory provisions, and in § 124(2)(a) requires disqualification when the justice has a personal bias or prejudice concerning a party or his counsel, or personal knowledge of disputed evidentiary facts concerning the proceeding. Halbert v. Manmaw, 20 FSM R. 245, 248 (App. 2015).

In order for the Supreme Court to issue an extraordinary writ of prohibition overruling a trial judge's denial of a motion to disqualify, the trial judge's ruling must be an abuse of discretion. Halbert v. Manmaw, 20 FSM R. 245, 248, 250 (App. 2015).

When a party moves to disqualify a trial judge, the party is attacking that judge's perceived bias or conflict of interest. Halbert v. Manmaw, 20 FSM R. 245, 249 (App. 2015).

A petitioner seeking a writ of prohibition to disqualify a trial judge must show an abuse of discretion, as the appellate court will not merely substitute its judgment for that of the trial judge. Halbert v. Manmaw, 20 FSM R. 245, 250 (App. 2015).

A petition for a writ of prohibition to disqualify a trial judge will be denied when it neither meets the burden of showing the that the judge harbors bias or prejudice nor shows that any disqualifying knowledge was derived from an extrajudicial source since the mere fact that the judge made an adverse evidentiary ruling and declared a mistrial does not mean the judge's impartiality might reasonably be questioned. Halbert v. Manmaw, 20 FSM R. 245, 251 (App. 2015).

A defendant whose trial ended in a mistrial is entitled to a new trial, but not a new judge. Halbert v. Manmaw, 20 FSM R. 245, 251 (App. 2015).

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

The standard for disqualification in a proceeding is whether a disinterested reasonable person, knowing all the circumstances, would harbor doubts about a judge's impartiality. There is a presumption that judicial officers are unbiased and the burden of proof rests with the party asserting an unconstitutional bias to demonstrate otherwise. In re Estate of Setik, 20 FSM R. 604, 606 (Chk. S. Ct. Tr. 2016).

A typical situation where recusal may be required is when a sitting judge's extrajudicial knowledge, relationship, or dealings with a party or the judge's own personal or financial interests might be such as to cause a reasonable person to question whether the judge could impartially preside over and decide a particular case. In re Estate of Setik, 20 FSM R. 604, 606 (Chk. S. Ct. Tr. 2016).

In an issue of first impression, U.S. court decisions about judicial disqualification can be used for guidance. In re Estate of Setik, 20 FSM R. 604, 607 (Chk. S. Ct. Tr. 2016).

A writ of prohibition clearly should not be granted based on a judge's adverse ruling that did not even remain adverse when the justice changed her mind and on factors that arose as part of the give and take during a contentious oral hearing on a controversial topic. Peterson v. Anson, 20 FSM R. 657, 659 (App. 2016).

Under 4 F.S.M.C. 124(1), a Supreme Court justice must disqualify himself in any proceeding where his impartiality might reasonably be questioned. The standard for disqualification is whether a disinterested reasonable person, knowing all the circumstances, would harbor doubts about a judge's impartiality. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 45 (App. 2016).

Accepting a loan from a lending institution in its regular course of business on the same terms available to the general public, is fully consistent with a judge's obligation to conduct personal activities so as to minimize the risk of conflicts that would result in frequent disqualifications. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 49 (App. 2016).

When a consumer loan was issued to the judge well before he was appointed to the appellate panel; when the bank does not aver any special circumstances necessitating the judge's disqualification since the loan was issued on standard terms available to the general public and were negotiated before his designation to the panel; and when the loan is current and not in default or delinquent nor at risk thereof, and is not currently being negotiated for extension, restructuring, or refinancing, the bank has not overcome the presumption that a judicial official is unbiased. Without more, a judge's consumer loan and the mere relationship between the bank and the judge as creditor-debtor, is insufficient to require the judge's disqualification. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 50 (App. 2016).

The Chuuk State Judiciary Act prohibits justices from presiding over matters when there is a general concern that his or her impartiality might reasonably be questioned, and it also sets forth more specific disqualifying circumstances including where the justice has a personal bias or prejudice concerning a party, or his counsel, or personal knowledge of dispute evidentiary facts concerning the proceeding. Selifis v. Robert, 21 FSM R. 344, 346 (Chk. S. Ct. App. 2017).

Often a litigant will not know which judge has been assigned the case until that judge either issues his or her first written order or appears on the bench at the case's first hearing. That is when, if there are grounds for the motion, a litigant would usually move to disqualify the judge. Setik v. FSM Dev. Bank, 21 FSM R. 505, 517 (App. 2018).

Although 4 F.S.M.C. 124 and the ABA Code of Judicial Conduct as made applicable to the FSM Supreme Court by 4 F.S.M.C. 122 define the circumstances that mandate the disqualification of FSM Supreme Court justices, those provisions neither prescribe nor prohibit any particular remedy for a violation of that duty. Setik v. FSM Dev. Bank, 21 FSM R. 505, 521 (App. 2018).

A conclusion that a violation of the recusal statute occurred does not end the inquiry. As in other areas of the law, there is surely room for harmless error, and there need not be a draconian remedy for every violation. Setik v. FSM Dev. Bank, 21 FSM R. 505, 521 (App. 2018).

A disqualified judge may perform purely ministerial tasks. An act is ministerial when the law requires that a duty be performed and leaves nothing to the exercise of discretion or judgment. Discretionary acts are those in which one has the right to determine between two or more courses of action. Simply put, an act which one must perform is ministerial, while an act which one may perform is discretionary. Setik v. FSM Dev. Bank, 21 FSM R. 505, 521 (App. 2018).

A disqualified judge is not prevented from making orders that are purely formal in character and may also issue housekeeping orders. Setik v. FSM Dev. Bank, 21 FSM R. 505, 521 (App. 2018).

When an order transferring title was in the nature of a ministerial or a housekeeping act because the justice did not have the discretion not to issue it since its prompt issuance once the successful qualified bidder had paid in full was mandated by an earlier order in aid of judgment that an order issue to transfer title so that the Pohnpei Court of Land Tenure could then perform its duties; and when, if another judge had been presented with the motion, the resulting order would not differ, the disqualified justice's order will not be vacated. Setik v. FSM Dev. Bank, 21 FSM R. 505, 521-22 (App. 2018).

A disqualified judge may perform purely ministerial tasks. An act is ministerial when the law requires that a duty be performed and leaves nothing to the exercise of discretion or judgment. Discretionary acts are those in which one has the right to determine between two or more courses of action. Simply put, an act which one must perform is ministerial, while an act which one may perform is discretionary. Setik v. Mendiola, 21 FSM R. 537, 559 (App. 2018).

A disqualified judge is not thereby prevented from making orders that are purely formal in character, including issuing housekeeping orders. Setik v. Mendiola, 21 FSM R. 537, 559 (App. 2018).

When a judge has sat in violation of an express statutory standard for disqualification, the usual remedy is that the disqualified judge's rulings are, on appeal, to be vacated. Setik v. Mendiola, 21 FSM R. 537, 560 (App. 2018).

A party's delay cannot, by itself, create a ground for that party to move for judicial disqualification. Setik v. Perman, 22 FSM R. 105, 111 n.3 (App. 2018).

The appellate court will disregard a contention that the appellants believe that the same FSM Supreme Court law clerk, who worked on their other trial court cases, worked on this case in the trial court when they do not explain how this would entitle them to any relief and when they do not point to any reason that disqualified this particular law clerk from assisting the FSM Supreme Court trial judge in this case. Setik v. Perman, 22 FSM R. 105, 118 (App. 2018).

A motion to disqualify the judge should be addressed first. FSM Dev. Bank v. Salomon, 22 FSM R.

175, 180 (Pon. 2019).

A statement that something is "likely" is speculation. Allegations, that are purely speculative, are insufficient to support a judge's disqualification. Macayon v. FSM, 22 FSM R. 317, 320 n.1 (Chk. 2019).

Law clerks are generally bound by the same ethical rules as the judges they serve. The clerk is forbidden to do all that is prohibited to the judge. Panuelo v. Sigrah, 22 FSM R. 341, 363 (Pon. 2019).

– Recusal – Bias or Partiality

Determination of a judge's bias, prejudice or partiality should be made on the basis of conduct or information which is extrajudicial in nature. FSM v. Jonas (II), 1 FSM R. 306, 317-18 (Pon. 1983).

The fact that answers given by the victim-witness in response to questions posed by the judge happened to strengthen the government's case did not, by itself, indicate that the judge was impermissibly helping the prosecution, or that he was biased against the defendant. Andohn v. FSM, 1 FSM R. 433, 446 (App. 1984).

Due process demands impartiality on the part of adjudicators. Suldan v. FSM (II), 1 FSM R. 339, 362 (Pon. 1983).

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

A judge has a duty to disqualify himself from presiding in a proceeding in which he entertains a bias or prejudice against a party. Andohn v. FSM, 1 FSM R. 433, 444 (App. 1984).

Questioning a judge's impartiality, under 4 F.S.M.C. 124(1), brings into issue possible favoritism, bias or some other interest of the judge for or against a party. This affords no basis, however, for disqualifying a judge because of his general attitudes, beliefs, or philosophy, even where it is apparent that those do not augur well for a particular litigant. FSM v. Skilling, 1 FSM R. 464, 472-73 (Kos. 1984).

In order that a judge's impartiality might reasonably be questioned there must be facts or reasons which furnish a rational basis for doubting the judge's impartiality. Reasonableness is to be considered from the perspective of a disinterested reasonable person. FSM v. Skilling, 1 FSM R. 464, 475 (Kos. 1984).

The test for determining if a judge's impartiality in a proceeding might reasonably be questioned is whether a disinterested reasonable person, knowing all the circumstances, would harbor doubts about the judge's impartiality. FSM v. Skilling, 1 FSM R. 464, 475 (Kos. 1984).

4 F.S.M.C. 124(2) prescribes a subjective test under which a judge must disqualify himself if he subjectively concludes that he falls within the statutory provisions. Section 124(1), on the other hand provides an objective standard designed to guard against the appearance of impartiality. FSM v. Skilling, 1 FSM R. 464, 476 (Kos. 1984).

4 F.S.M.C. 124(1) was designed to cover contingencies not foreseen by the draftsmen who set out specific grounds for disqualification in section 124(2). Despite its "catch all" nature, however, it remains necessary to show a factual basis, not just wide-ranging speculation or conclusions, for questioning a judge's impartiality. FSM v. Skilling, 1 FSM R. 464, 476-77 (Kos. 1984).

Courts normally adhere to the rule that any alleged judicial bias and prejudice, to be disqualifying, must

stem from an extrajudicial source. FSM v. Skilling, 1 FSM R. 464, 483 (Kos. 1984).

Where a trial justice is asked to recuse himself rather than continue to sit on remaining counts after receiving testimony concerning stricken counts, the issue presented is whether there exists either actual bias, or prejudice, or appearance of partiality. Jonas v. FSM, 2 FSM R. 238, 239 (App. 1986).

To apply a standard of judicial ethics established by statute in 1982 to prevent a judge in 1989 from presiding over a case because his conduct prior to 1982 suggests that he now may be biased against the party seeking recusal would be inappropriate, in the nature of an ex post facto violation, and would be contrary to "the policy favoring prospective application of court decisions [which] also applies to statutes." Adams v. Etscheit, 4 FSM R. 237, 240 (Pon. S. Ct. Tr. 1989).

Recusal of a trial judge from presiding over a criminal trial, because he has presided over a failed effort to end the case through a guilty plea, is not automatic, since bias, to be disqualifying, generally must stem from an extrajudicial source. In re Main, 4 FSM R. 255, 260 (App. 1990).

In determining whether a judge's impartiality might reasonably be questioned, the test is whether a disinterested reasonable person who knows all the circumstances would harbor doubts about the judge's impartiality. A reasonable disinterested observer would require more evidence than that one of the parties was seen at hotel where the judge had checked in. Jano v. King, 5 FSM R. 266, 270 (Pon. 1992).

In order for a judge's personal bias or prejudice to be disqualifying it must stem from an extrajudicial source or conduct, not from information learned or events occurring during the course of a trial. Youngstrom v. Youngstrom, 5 FSM R. 385, 387 (Pon. 1992).

Even where the circumstance does not give rise to a reasonable person questioning the justice's impartiality, if there is evidence of actual partiality disqualification would follow. In re Extradition of Jano, 6 FSM R. 93, 98 (App. 1993).

Where trial justice resides in housing rented by the national government and assigned to the trial justice as a statutory part of his compensation and the party before the court only seeks a monetary award for the alleged loss of the land upon which the trial justice resides the trial justice has no interest which might be substantially affected by any of the relief requested. It is therefore not an abuse of the trial justice's discretion to deny a motion to recuse for interest or bias. Nahnken of Nett v. Trial Division, 6 FSM R. 339, 340 (App. 1994).

For the questioning of a judge's impartiality to be reasonable it must be grounded upon facts or reasons which furnish a rational basis for doubting the judge's impartiality, and such reasonableness is not to be considered from the perspective of the litigant or of the judge, but of the disinterested reasonable observer. Damarlane v. United States, 7 FSM R. 52, 54 (Pon. S. Ct. App. 1995).

A judge's impartiality cannot reasonably be questioned when the judge had been chairman of an agency while it concluded an agreement with a party to a case now before him where only a later agreement is at issue and he had no part in negotiating the first agreement. Fu Zhou Fuyan Pelagic Fishery Co. v. Wang Shun Ren, 7 FSM R. 601, 605 (Pon. 1996).

Statements and rulings made by a judge in the course of judicial proceedings do not provide grounds for disqualification under 4 F.S.M.C. 124(1). There is a presumption that judicial officials are unbiased, and the burden of proof is on the party asserting an unconstitutional bias to demonstrate otherwise. A party requesting recusal on retrial must establish that actual bias or prejudice exists that comes from an extrajudicial source. FSM v. Ting Hong Oceanic Enterprises, 7 FSM R. 644, 649 (Pon. 1996).

Because a judicial official is presumed to be unbiased, a judge will not be required to recuse himself where the party seeking his recusal relies on presumptions and has not established a sufficient factual

basis. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 6 (App. 1997).

A charge of appearance of partiality must first have a factual basis. Recusal is then appropriate only if a disinterested reasonable person who knows all the circumstances would harbor doubts about the judge's impartiality. The facts must provide what an objective, knowledgeable member of the public would find to be a reasonable basis for doubting the judge's impartiality. The trial judge has a range of discretion in making this determination. But a trial judge is not to use the standard of mere suspicion. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 6-7 (App. 1997).

There may be times when each of the grounds raised are insufficient to reasonably question the trial judge's impartiality, but the combination of all would cause a reasonable, disinterested person to harbor doubts about the judge's impartiality. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 10 (App. 1997).

A justice whose extrajudicial statements exhibit a bias towards a party's counsel must disqualify himself under Pohnpei statute, and failure to do so is a denial of due process. Damarlane v. Pohnpei Legislature, 8 FSM R. 23, 27-28 (App. 1997).

The type of partiality at which 4 F.S.M.C. 124(1) is aimed is extrajudicial bias, or bias resulting from information received by the judge outside of the judicial proceeding or proceedings in which the judge has participated. Hartman v. Bank of Guam, 10 FSM R. 89, 96 (App. 2001).

It is not unusual for the same judge to hear interrelated matters involving one or more parties in common, and the fact that the same judge hears different cases involving the same party or parties and related issues does not automatically result in an appearance of partiality under 4 F.S.M.C. 124(1). Hartman v. Bank of Guam, 10 FSM R. 89, 97 & n.5 (App. 2001).

In the absence of a showing of any actual partiality or extrajudicial bias under 4 F.S.M.C. 124(1), a judge properly meets his obligation to hear the case. Hartman v. Bank of Guam, 10 FSM R. 89, 98 (App. 2001).

Claims that a trial justice has shown disfavor toward intervenors' counsel, or bias in rulings in the instant case or other cases can be dismissed as failing to provide valid grounds for disqualification. Kristoph v. Emin, 10 FSM R. 650, 654 (Chk. S. Ct. Tr. 2002).

A party is entitled to an unbiased judge, not to a judge of their choosing. A party is not permitted to use a motion to disqualify a judge as a means of forum shopping. Kosrae v. Sigrah, 10 FSM R. 654, 657 (Kos. S. Ct. Tr. 2002).

The Code of Judicial Conduct requires that a judge disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned. Kosrae v. Sigrah, 10 FSM R. 654, 658 (Kos. S. Ct. Tr. 2002).

In the absence of a showing of any actual partiality or extrajudicial bias, a judge properly meets his obligation to hear the case. Kosrae v. Sigrah, 10 FSM R. 654, 658-59 (Kos. S. Ct. Tr. 2002).

A party is entitled to an unbiased judge, not to a judge of their choosing. A party is not permitted to use a motion to disqualify a judge as a means of judge shopping. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 133, 135-36 (Kos. S. Ct. Tr. 2002).

The Code of Judicial Conduct requires that a judge disqualify himself in a proceeding in which the judge's impartiality must reasonably be questioned. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 133, 136 (Kos. S. Ct. Tr. 2002).

Even when a judge has had prior opinions regarding a legal issue, this alone does not disqualify a judge, and even if a judge has commented on certain issues of law when he was a government employee, the judge is not disqualified so long as he has not prejudged the particular case before him. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 133, 137 (Kos. S. Ct. Tr. 2002).

In the absence of a showing of any actual partiality or extrajudicial bias, a judge properly meets his obligation to hear the case. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 133, 137 (Kos. S. Ct. Tr. 2002).

The applicable recusal statute requires that a Supreme Court justice disqualify himself in any proceeding in which his impartiality might reasonably be questioned. FSM v. Wainit, 11 FSM R. 424, 430 (Chk. 2003).

Ex parte applications are allowed (and are usual) for warrant applications or motions to file under seal. No inference of a judge's partiality may be drawn from them. FSM v. Wainit, 11 FSM R. 424, 431 (Chk. 2003).

The type of partiality at which 4 F.S.M.C. 124(1) is aimed is extrajudicial, that is, resulting from information received by the judge outside of the judicial proceeding or proceedings in which the judge has participated. FSM v. Wainit, 11 FSM R. 424, 431 (Chk. 2003).

When the communications in question were not extrajudicial, the court's impartiality cannot be reasonably questioned because the government made *ex parte* applications it is allowed to make under the applicable law. This therefore cannot be a ground for recusal. FSM v. Wainit, 11 FSM R. 424, 431-32 (Chk. 2003).

A charge of appearance of partiality must first have a factual basis and recusal is then appropriate only if a disinterested reasonable person who knows all the circumstances would harbor doubts about the judge's impartiality. The facts must provide what an objective, knowledgeable member of the public would find to be a reasonable basis for doubting the judge's impartiality. While the trial judge has a range of discretion in making this determination, he cannot use a standard of mere suspicion. FSM v. Wainit, 11 FSM R. 424, 432 (Chk. 2003).

When a party has not shown a factual basis to reasonably question the judge's impartiality, but only raised a mere suspicion, and when he has not shown a factual basis for a claim of bias or prejudice; and when he cannot call the current judge as a witness to testify about his judicial acts; and when even the combination of these would not cause a reasonable, disinterested person to harbor doubts about the judge's impartiality, the court can find no basis upon which to grant the motion to recuse. FSM v. Wainit, 11 FSM R. 424, 432 (Chk. 2003).

The fact that the same judge hears different cases involving the same party or parties or related issues does not automatically result in an appearance of partiality under 4 F.S.M.C. 124(1). FSM v. Wainit, 11 FSM R. 424, 432 (Chk. 2003).

In the absence of a showing of any actual partiality or extrajudicial bias under 4 F.S.M.C. 124(1), a judge properly meets his obligation to hear the case. FSM v. Wainit, 11 FSM R. 424, 432 (Chk. 2003).

The standard to be applied when a judge's recusal is sought on the ground a judge's impartiality might reasonably be questioned is whether a disinterested reasonable observer who knows all the circumstances would question the judge's impartiality. Adams v. Island Homes Constr., Inc., 12 FSM R. 181, 183 (Pon. 2003).

Litigants are not entitled to a judge of their own choosing; they are only entitled to an unbiased judge. FSM v. Kansou, 12 FSM R. 637, 640 (Chk. 2004).

A charge of appearance of partiality must first have a factual basis. The standard to be applied is whether an objective, knowledgeable member of the public would find to be a reasonable basis for doubting the judge's impartiality. The standard of "mere suspicion" is inadequate to support disqualification. Allen v. Kosrae, 13 FSM R. 55, 59 (Kos. S. Ct. Tr. 2004).

The applicable statute requires that a Supreme Court justice must disqualify himself in any proceeding in which his impartiality might reasonably be questioned. FSM v. Wainit, 13 FSM R. 293, 294 (Chk. 2005).

Disqualification of a Land Court Justice is required when the justice's impartiality might reasonably be questioned. One specific basis for disqualification is where the justice has a personal bias or prejudice concerning a party, or has personal knowledge of disputed evidentiary facts concerning the proceeding. Edmond v. Alik, 13 FSM R. 413, 416 (Kos. S. Ct. Tr. 2005).

Adjudicatory decisions affecting property rights, such as ownership, are subject to due process requirements of the state constitution. Due process demands impartiality on the part of the adjudicators, including a Land Court Presiding Justice. Edmond v. Alik, 13 FSM R. 413, 416 (Kos. S. Ct. Tr. 2005).

The test for determining if a judge's impartiality in a proceeding might by reasonably be questioned is whether a disinterested reasonable person, knowing all the circumstances, would harbor doubts about the judge's impartiality. There may be a time when each of the actions is insufficient to reasonably question the judge's impartiality, but the combination of all would cause a reasonable disinterested person to harbor doubts about the judge's impartiality. Edmond v. Alik, 13 FSM R. 413, 417 (Kos. S. Ct. Tr. 2005).

Since a judge must disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned, when the presiding justice's failure to recuse himself from the proceeding resulted in a violation of the appellant's due process rights, the decision determining ownership must be vacated and the matter remanded for further proceedings. Edmond v. Alik, 13 FSM R. 413, 417 (Kos. S. Ct. Tr. 2005).

The test for determining whether a justice's impartiality in a proceeding might reasonably be questioned is whether a reasonable disinterested person, who knows all the circumstances, would have doubts about the justice's impartiality, and the general rule is that the disqualifying factors must be from an extrajudicial source. Isaac v. Saimon, 14 FSM R. 33, 35 (Kos. S. Ct. Tr. 2006).

When a justice excluded counsel from a chambers conference in a Pohnpei Supreme Court case where counsel was trying to appear to represent a different client, her exclusion from that conference is inadequate to, and cannot, show personal bias by that justice toward counsel since, typically, only the judge and court personnel, the parties, and their counsel are permitted to attend a chambers conference and that counsel was not admitted to practice before the Pohnpei Supreme Court and her motion to appear pro hac vice in that case had not been granted. A petition for writ of prohibition will therefore be denied. Goya v. Ramp, 14 FSM R. 303, 304-05 (App. 2006).

An "incident" involving a justice's exclusion of counsel from a chambers conference in a Pohnpei Supreme Court case where counsel was trying to appear to represent a different client is inadequate to, and cannot, show personal bias toward counsel by that justice because typically, only the judge and court personnel, the parties, and their counsel are permitted to attend a chambers conference and since counsel is not admitted to practice before the Pohnpei Supreme Court and her motion to appear pro hac vice in that case had not been granted, her exclusion from that chambers conference is not a ground to disqualify the justice. Goya v. Ramp, 14 FSM R. 305, 308 (App. 2006).

In the absence of a showing of any actual partiality or extrajudicial bias under 4 F.S.M.C. 124(1), a judge properly meets his obligation to hear the case. The type of partiality at which 4 F.S.M.C. 124(1) is aimed is extrajudicial bias, or bias resulting from information received by the judge outside of the judicial proceeding or proceedings in which the judge has participated. Damarlane v. Pohnpei Legislature, 14 FSM R. 582, 584 (App. 2007).

A justice whose extrajudicial statements exhibit a bias towards a party's counsel must disqualify himself. Damarlane v. Pohnpei Legislature, 14 FSM R. 582, 584 (App. 2007).

While a trial judge has a range of discretion in making his determination about whether he will disqualify himself, he cannot use a standard of mere suspicion. A charge of appearance of partiality must first have a factual basis. Disqualification is then appropriate only if a disinterested reasonable person who knows all the circumstances would harbor doubts about the judge's impartiality. The facts must provide what an objective, knowledgeable member of the public would find to be a reasonable basis for doubting the judge's impartiality. Damarlane v. Pohnpei Legislature, 14 FSM R. 582, 584-85 (App. 2007).

A party requesting disqualification must establish that actual bias or prejudice exists that comes from an extrajudicial source. A litigant's unsupported allegations that the trial judge may have subconscious misgivings is purely speculation, and is insufficient to support the judge's disqualification. Damarlane v. Pohnpei Legislature, 14 FSM R. 582, 585 (App. 2007).

When there is simply no evidence – beyond mere speculation – that a justice might harbor some element of partiality towards the appellant or his counsel, as such, and without any evidence beyond mere speculation as to my purported partiality, the justice must deny the appellant's request under 4 F.S.M.C. 124(1) to disqualify himself from participating in the matter, but recusal may be granted on other grounds. Damarlane v. Pohnpei Legislature, 14 FSM R. 582, 585 (App. 2007).

A Supreme Court Justice must disqualify himself in any proceeding in which his impartiality might reasonably be questioned. Berman v. Rosario, 15 FSM R. 337, 340, 341 (Pon. 2007).

In the absence of a showing of any actual partiality or extrajudicial bias under 4 F.S.M.C. 124(1), a judge properly meets his obligation to hear the case. Berman v. Rosario, 15 FSM R. 337, 341 (Pon. 2007).

The type of partiality at which 4 F.S.M.C. 124(1) is aimed is extrajudicial bias, or bias resulting from information received by the judge outside of the judicial proceeding or proceedings in which the judge has participated. A justice whose extrajudicial statements exhibit a bias towards a party's counsel must disqualify himself. On the other hand, while a trial judge has a range of discretion in making his determination about whether he will disqualify himself, he cannot use a standard of mere suspicion. Berman v. Rosario, 15 FSM R. 337, 341 (Pon. 2007).

A charge of appearance of partiality must first have a factual basis. Disqualification is then appropriate only if a disinterested reasonable person who knows all the circumstances would harbor doubts about the judge's impartiality. The facts must provide what an objective, knowledgeable member of the public would find to be a reasonable basis for doubting the judge's impartiality. Berman v. Rosario, 15 FSM R. 337, 341 (Pon. 2007).

A party requesting disqualification must establish that actual bias or prejudice exists that comes from an extrajudicial source. A litigant's unsupported allegations that the trial judge may have subconscious misgivings is purely speculation, and is insufficient to support the judge's disqualification. Berman v. Rosario, 15 FSM R. 337, 341 (Pon. 2007).

A determination of a judge's bias should be made on the basis of conduct or information which is extrajudicial in nature. FSM v. Halbert, 20 FSM R. 49, 52 (Pon. 2015).

Since it is in the very nature of our system of justice that judges must rule in favor of one party and against another, a judge does not engage in extrajudicial behavior merely by ruling in favor of one party and against another. FSM v. Halbert, 20 FSM R. 49, 52 (Pon. 2015).

The thesis that an adverse ruling from the bench can constitute extrajudicial behavior that warrants disqualification must be rejected. FSM v. Halbert, 20 FSM R. 49, 52 (Pon. 2015).

Courts adhere to the rule that any alleged judicial bias and prejudice, to be disqualifying, must stem from an extrajudicial source, and that a judge's adverse rulings in a case do not create grounds for disqualification from that case. George v. Palsis, 20 FSM R. 174, 177 (Kos. 2015).

The fact that the same judge hears different cases involving the same party or parties or related issues, does not automatically result in an appearance of partiality under 4 F.S.M.C. 124(1). FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 229 (Chk. 2015).

Information that a judge learned or events that occurred during the course of a judicial proceeding cannot disqualify the judge on the grounds that the events or information now cause him to be biased or prejudiced or create an appearance of impropriety. Halbert v. Manmaw, 20 FSM R. 245, 250 (App. 2015).

In determining whether a judge's impartiality might reasonably be questioned, the test is whether a disinterested reasonable person who knows all the circumstances would harbor doubts about the judge's impartiality. Pohnpei Transfer & Storage, Inc. v. Shoniber, 20 FSM R. 492, 495 (Pon. 2016).

The normal situation in which recusal may be required is when a judge's extrajudicial knowledge, relationship, or dealings with a party or the judge's own personal or financial interests, might be such as to cause a reasonable person to question whether the judge could preside over and decide a particular case impartially. Pohnpei Transfer & Storage, Inc. v. Shoniber, 20 FSM R. 492, 495 (Pon. 2016).

A justice with an outstanding bank loan can also decide for himself whether to recuse himself if the issue of impartiality arises. In re Estate of Setik, 20 FSM R. 604, 608 (Chk. S. Ct. Tr. 2016).

Factors disqualifying a justice for bias or prejudice generally must be established as coming from an extrajudicial source. Peterson v. Anson, 20 FSM R. 657, 659 (App. 2016).

Judicial officers are presumed to be unbiased and the burden of proof rests with the party asserting an unconstitutional bias to demonstrate otherwise. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 45 (App. 2016).

When unusual circumstances exist, questions about impartiality may arise. For example, if a judge were presently appealing to the bank for a loan or an extension for or restructuring of a loan, or if the loan is currently in default and is presently or soon will be litigated, there would exist a real question about the appearance of impropriety. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 49 (App. 2016).

The mere fact of a relationship between a judge and a financial institution as borrower/lender or mortgagor/mortgagee does not give rise to an inference that the judge's impartiality might reasonably be questioned. Something more than an ordinary financial transaction between the judge and financial institution must be present for disqualification to be necessary as when the financial relationship affords the judge services and benefits not generally available to the public. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 49 (App. 2016).

Merely because a justice presided over a different case, involving the same parties or related issues, does not, *ipso facto*, reflect an appearance of partiality, which would necessitate recusal. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 310, 314 (App. 2017).

In order to objectively determine whether a judge may be impartial, the effective test requires the court to determine whether a disinterested reasonable person, knowing all the circumstances, would harbor doubts about the judge's impartiality. Selifis v. Robert, 21 FSM R. 344, 346 (Chk. S. Ct. App. 2017).

When, given the loose familial ties between counsel and the justice, it is hard to find a sufficient familial or political connection between the justice and appellee's counsel that would warrant a disinterested, reasonable individual to doubt the justice's impartiality. Selifis v. Robert, 21 FSM R. 344, 347 (Chk. S. Ct.

App. 2017).

When the Attorney General's affidavit did not provide any basis for the belief that the justice and his family did not like his promotion to Chuuk State Supreme Court Associate Justice; when neither the motion nor its accompanying affidavit consider that being a Chuuk State Supreme Court justice has the effect of prohibiting the justice from having anything to do with the Attorney General outside of the courtroom for fear of the appearance of impropriety; when nothing in the arguments or affidavit shows that any specific transgressions occurred between the two; and when, based on the arguments, the justice would be wholly prohibited from presiding over any matter in which Chuuk was a party for the remainder of the Attorney General's tenure (a dangerous precedent to set on so little evidence), there was not a sufficient showing of personal bias between the justice and the Attorney General that would warrant a disinterested, reasonable individual to doubt the justice's impartiality. Selifis v. Robert, 21 FSM R. 344, 347-48 (Chk. S. Ct. App. 2017).

When the trial court justice should have known that her uncle had a substantial interest that might be affected by future rulings; and when she should also have realized that by then her impartiality might reasonably be questioned, she should have recused herself and not ruled on a motion to reconsider, and when she did not, that order will be vacated. Setik v. FSM Dev. Bank, 21 FSM R. 505, 522 (App. 2018).

Litigants are not entitled to a judge of their own choosing; they are only entitled to an unbiased judge. Setik v. Mendiola, 21 FSM R. 537, 550 (App. 2018).

When the justice would, or should, have first known – had actual knowledge – that a person in close relationship to her, her uncle, could be substantially affected by further substantive proceedings involving the property, there was now a conflict. Only then did her disqualification become an issue. It was also when her impartiality might first reasonably be questioned. Setik v. Mendiola, 21 FSM R. 537, 559 (App. 2018).

A disqualified justice should recuse herself rather than rule on a Rule 11 motion because it is neither a housekeeping nor a ministerial matter, and because her impartiality might reasonably be questioned even though the Rule 11 motion could not substantially affect her uncle's interest. Setik v. Mendiola, 21 FSM R. 537, 560 (App. 2018).

Merely because a justice presided over a different case, involving the same parties or related issues, does not, by itself, create an appearance of partiality that would necessitate the justice's recusal under 4 F.S.M.C. 124(1). Setik v. Perman, 22 FSM R. 105, 111 (App. 2018).

A judge must disqualify himself from a proceeding in which the judge's impartiality might reasonably be questioned. The disqualifying factors must be from an extrajudicial source. Heirs of Sigrah v. George, 22 FSM R. 211, 218 (App. 2019).

A charge of appearance of partiality must first have a factual basis. The standard to be applied is whether an objective, knowledgeable member of the public would find to be a reasonable basis for doubting the judge's impartiality. Heirs of Sigrah v. George, 22 FSM R. 211, 218 (App. 2019).

Generally, an affidavit is required to provide a factual basis for questioning a judge's impartiality, but other admissible evidence may be used to support a motion to recuse. When the presiding justice's own statements about his own knowledge of facts relating to the incident and the defendant's alleged conduct, were made on the record in the courtroom hearings, these statements may be used to question a justice's impartiality and be a basis for disqualification. Under such facts, the affidavit requirement is satisfied by other admissible evidence: the record of the hearings. Heirs of Sigrah v. George, 22 FSM R. 211, 218 (App. 2019).

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It is not unusual for the same judge to hear interrelated matters involving one or more parties in common, and the fact that the same judge hears different cases involving the same party or parties, and related issues does not automatically result in an appearance of partiality. Heirs of Sigrah v. George, 22 FSM R. 211, 218 (App. 2019).

A judge's disqualification is required when the judge's impartiality might reasonably be questioned, and one specific basis for disqualification is when the justice has personal knowledge of disputed evidentiary facts concerning the proceeding. Heirs of Sigrah v. George, 22 FSM R. 211, 218-19 (App. 2019).

A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. A judge's disqualification is required when the judge or the judge's spouse, or a person within the third degree of relationship to either of them, is a party to the proceeding. An uncle is within the third degree relationship. Relatives within the third degree of relationship are great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, or niece. Heirs of Sigrah v. George, 22 FSM R. 211, 219 & n.2 (App. 2019).

A Supreme Court justice must disqualify himself in any proceeding in which his impartiality might reasonably be questioned. Macayon v. FSM, 22 FSM R. 317, 320 (Chk. 2019).

The type of partiality at which 4 F.S.M.C. 124(1) is aimed is extrajudicial bias, or bias resulting from information received by the judge outside of the judicial proceeding or proceedings in which the judge has participated. Macayon v. FSM, 22 FSM R. 317, 320 (Chk. 2019).

A movant has not shown that a judge's impartiality might reasonably be questioned when it has not shown that a disinterested reasonable person, who knows all the circumstances, would harbor doubts about the judge's impartiality. A judge then is unable to disqualify himself under 4 F.S.M.C. 124(1). Macayon v. FSM, 22 FSM R. 317, 320 (Chk. 2019).

Absent a showing that the judge is disqualified under 4 F.S.M.C. 124, a judge is obligated to hear the cases assigned to that judge. This is because a judge must exercise the power to recuse himself conscientiously and cannot use it to avoid difficult or controversial cases or to merely accommodate nervous litigants or counsel. Macayon v. FSM, 22 FSM R. 317, 321 (Chk. 2019).

When it is not the judge's duty to disqualify himself from a case to which he has been assigned, it is the judge's duty to serve. Macayon v. FSM, 22 FSM R. 317, 321 (Chk. 2019).

When the movant has not shown that the judge is disqualified from hearing the case, and the judge is not aware of other grounds that would disqualify him, the judge is obligated to hear the case, and must deny the disqualification motion. Macayon v. FSM, 22 FSM R. 317, 321 (Chk. 2019).

The type of partiality at which 4 F.S.M.C. 124(1) is aimed is extrajudicial bias, or bias resulting from information received by the judge outside of the judicial proceeding or proceedings in which the judge has participated. Panuelo v. Sigrah, 22 FSM R. 341, 363-64 (Pon. 2019).

– Recusal – Close Relationship

Canon 3E(1) of the Code of Judicial Conduct, as adopted by Kosrae State Code, section 6.201,

requires that a justice be disqualified in certain cases, including those cases where the judge is within the third degree relationship to one of the parties. The term "third degree relationship" is defined in the Code of Judicial Conduct and does not include cousin. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 92 (Kos. S. Ct. Tr. 1999).

Disqualification under the Code of Judicial Conduct based upon the justice's family relationship to a party is not mandatory when the party is a cousin because the third degree relationship does not include cousin. So when there are no specific allegations of the justice's partiality and the justice has no personal interest in the outcome, a motion to recuse in a matter involving a cousin may be denied. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 92 (Kos. S. Ct. Tr. 1999).

A justice is required to disqualify himself in a proceeding in which a person within the third degree of relationship to the justice is to the justice's knowledge likely to be a material witness in the proceeding. Shrew v. Kosrae, 10 FSM R. 533, 535 (Kos. S. Ct. Tr. 2002).

When the justice's brother has been named as a witness for trial the justice, pursuant to Canon 3.E(l)(d)(iv), is now disqualified from the proceeding. Shrew v. Kosrae, 10 FSM R. 533, 535 (Kos. S. Ct. Tr. 2002).

A Chuuk State Supreme Court trial justice must be disqualified when the justice's impartiality might reasonably be questioned where he or his spouse, or a person within a close relationship to either of them, or the spouse of such person is a party to the proceeding. Kristoph v. Emin, 10 FSM R. 650, 652 (Chk. S. Ct. Tr. 2002).

The ABA Code of Judicial Conduct provides that a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including when the judge or the judge's spouse, or a person related to either within the third degree of relationship, or the spouse of such a person is a party to the proceeding. Kristoph v. Emin, 10 FSM R. 650, 652-53 (Chk. S. Ct. Tr. 2002).

In order to obtain a justice's disqualification based upon Chk. S.L. No. 190-08, section 22(2)(d)(i), the moving party must establish by admissible evidence that the alleged relationship is within the third degree of relationship. It is not sufficient for disqualification that a party show that a justice is related to a party or a party's spouse solely by virtue of their membership in the same clan. Kristoph v. Emin, 10 FSM R. 650, 653 (Chk. S. Ct. Tr. 2002).

When counsel's affidavit in support of a recusal motion fails to demonstrate in any way how he has personal knowledge of the relationships contained in his affidavit, rather than knowledge based upon statements made to him by others, his affidavit is deficient, and must be disregarded. Kristoph v. Emin, 10 FSM R. 650, 654 (Chk. S. Ct. Tr. 2002).

When it is impossible to determine from an affidavit whether the degree of relationship is within the third degree of consanguinity, a motion to disqualify will be denied because failure to establish the degree of relationship by admissible evidence is fatal to a motion to disqualify. Kristoph v. Emin, 10 FSM R. 650, 654 (Chk. S. Ct. Tr. 2002).

A justice is required to disqualify himself in a proceeding in which a person within the third degree of relationship to the justice is, to the justice's knowledge, likely to be a material witness in the proceeding, but when the justice's brother was never a witness in the case, was not named as a witness by either party, and did not testify at the trial, he was not a person likely to be a material witness in the proceeding and the justice's disqualification was not required on this basis. Tolenoa v. Kosrae, 11 FSM R. 179, 183 (Kos. S. Ct. Tr. 2002).

The Code of Judicial Conduct requires a judge's disqualification when the judge or judge's spouse, or

a person within the third degree of relationship to either of them, or the spouse of such a person is a party to the proceeding, or an officer, director or trustee of a party. But the phrase "director of a party" in the Code of Judicial Conduct is limited to corporations and business entities, and does not include directors in state government. Tolenoa v. Kosrae, 11 FSM R. 179, 183-84 (Kos. S. Ct. Tr. 2002).

A Supreme Court justice must disqualify himself when a person within a close relationship to him is a director of a party and also in any proceeding in which his impartiality might reasonably be questioned. Adams v. Island Homes Constr., Inc., 12 FSM R. 181, 182-83 (Pon. 2003).

The recusal statute provides that a justice shall disqualify himself if a closely related person is a director of a party, not has been or was at some point in the past. Therefore when the judge's brother's board membership and the judge's assignment to the case was never concurrent, there was not a time when 4 F.S.M.C. 124(2)(e)(i) was applicable, especially when the judge was not aware that his brother had been a member of party's board until so notified by the party's advice to the court. Adams v. Island Homes Constr., Inc., 12 FSM R. 181, 183 (Pon. 2003).

When it has now been just over three and a half years since the judge's brother was last a party's board member, and more than six and a half years since he first became one, and when the judge was not aware that his brother had been a board member until so advised by the party, the judge's thinking in the course of the case could not have been influenced by a fact of which he was not aware, and the court cannot conclude that a disinterested reasonable observer who knows all of these circumstances would question the judge's impartiality. Adams v. Island Homes Constr., Inc., 12 FSM R. 181, 183 (Pon. 2003).

Under Mortlockese custom, a person would be considered related to his relative's stepson, but the added generation that results from his relative being another's step-grandmother – as opposed to his step-mother – cuts off the relationship under Mortlockese custom so that in actual fact a person is not considered related to the other. In such circumstances, a judge would not need to disqualify himself since he lacks a relationship to the other. Berman v. Rosario, 15 FSM R. 337, 339 n.1 (Pon. 2007).

When the judge disqualified himself in another case because of his mistaken belief at the time that his relative was a party's step-mother; when, although the plaintiff in a second matter moved to disqualify the judge from presiding over that matter, he did not disqualify himself and would not have disqualified himself if he had ruled on the motion, but ultimately reassigned that case for administrative reasons; and when the judge had no relationship of any type with the parties in either case and thus there was no reasonable basis for anyone to question his impartiality in presiding over the case at bar, in which counsel in the other two cases is plaintiff; and when there is no evidence, beyond mere speculation, that the judge might harbor some element of impartiality towards the plaintiff, the judge will deny a request that he disqualify himself. Berman v. Rosario, 15 FSM R. 337, 341-42 (Pon. 2007).

A Chuuk State Supreme Court trial justice must be disqualified when the justice's impartiality might reasonably be questioned including when he or his spouse, or a person within a close relationship to either of them, or the spouse of such person, is a party to the proceeding. A close relationship means a person within the third degree of relationship. Nakamura v. Sharivy, 15 FSM R. 409, 413 (Chk. S. Ct. Tr. 2007).

In order to obtain a justice's disqualification based upon Chk. S.L. No. 190-08, section 22(2)(d)(i), the moving party must establish by admissible evidence that the alleged relationship is within the third degree of relationship. It is not sufficient for disqualification that a party show that a justice is related to a party or a party's spouse solely by virtue of their membership in the same clan. Nakamura v. Sharivy, 15 FSM R. 409, 413 (Chk. S. Ct. Tr. 2007).

A judge is disqualified to sit on a lawsuit when a party's counsel is the judge's sister-in-law. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 603, 606 (App. 2014).

The Code of Judicial Conduct requires that a justice be disqualified when the judge is within the third

degree relationship to one of the parties. The term third degree relationship as defined in the Code does not include cousin. Pohnpei Transfer & Storage, Inc. v. Shoniber, 20 FSM R. 492, 495 (Pon. 2016).

There are various degrees of familial relationships and not every family relationship requires disqualification. The FSM Judiciary Act of 1979 requires disqualification of a justice on the basis of "close relationship," not just any relationship, to a person involved in litigation. Pohnpei Transfer & Storage, Inc. v. Shoniber, 20 FSM R. 492, 495 (Pon. 2016).

When the familial relationship relied upon by the movant is too remote to cause any conflict of interest, the motion to recuse will be denied. Pohnpei Transfer & Storage, Inc. v. Shoniber, 20 FSM R. 492, 496 (Pon. 2016).

When counsel is the judge's wife's sister, it creates a non-waivable conflict of interest requiring the judge's recusal. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 549 (Pon. 2016).

Recusal is not required when counsel was the judge's former Pohnpei Supreme Court law clerk but the judge has had no relationship with him since his law clerk employment ended several years ago and has never worked on this particular matter with him because there is no actual or potential conflict of interest, notwithstanding that the State also waived any potential conflict. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 549 (Pon. 2016).

All FSM Supreme Court justices, including temporary justices while they sit, are subject to the FSM Judiciary Act, under which, an FSM Supreme Court justice must disqualify herself where she or her spouse, or a person within a close relationship to either of them, or the spouse of such a person, is known by the justice to have an interest that could be substantially affected by the outcome of the proceeding. Setik v. FSM Dev. Bank, 21 FSM R. 505, 520 (App. 2018).

The Judiciary Act requires Supreme Court justices to adhere to the standards of the Code of Judicial Conduct of the American Bar Association, and that Code defines close relationship as someone within the third degree of relationship. An uncle is within the third degree of relationship. Setik v. FSM Dev. Bank, 21 FSM R. 505, 520-21 (App. 2018).

When the trial court justice should have known that her uncle had a substantial interest that might be affected by future rulings; and when she should also have realized that by then her impartiality might reasonably be questioned, she should have recused herself and not ruled on a motion to reconsider, and when she did not, that order will be vacated. Setik v. FSM Dev. Bank, 21 FSM R. 505, 522 (App. 2018).

All FSM Supreme Court justices, including temporary justices while they sit, are subject to the FSM Judiciary Act, and, under that Act, an FSM Supreme Court justice must disqualify herself where she or her spouse, or a person within a close relationship to either of them, or the spouse of such a person is known by the justice to have an interest that could be substantially affected by the outcome of the proceeding. Setik v. Mendiola, 21 FSM R. 537, 558-59 (App. 2018).

The Judiciary Act requires Supreme Court justices to adhere to the standards of the Code of Judicial Conduct of the American Bar Association, and that Code defines close relationship as someone within the third degree of relationship. An uncle is within the third degree. Setik v. Mendiola, 21 FSM R. 537, 559 (App. 2018).

When the justice's uncle became the winning bidder of a court-ordered sale, a potential conflict emerged, although if virtually anyone else had been the winning bidder, no conflict would have arisen. Setik v. Mendiola, 21 FSM R. 537, 559 (App. 2018).

When the justice would, or should, have first known – had actual knowledge – that a person in close relationship to her, her uncle, could be substantially affected by further substantive proceedings involving

the property, there was now a conflict. Only then did her disqualification become an issue. It was also when her impartiality might first reasonably be questioned. Setik v. Mendiola, 21 FSM R. 537, 559 (App. 2018).

Disqualifying circumstances do not have retroactive effect when they could not have affected the justice's orders beforehand because until her uncle became the winning bidder, the justice would not have known that her uncle had an interest that the litigation could substantially affect. Setik v. Mendiola, 21 FSM R. 537, 559 (App. 2018).

A disqualified justice should recuse herself rather than rule on a Rule 11 motion because it is neither a housekeeping nor a ministerial matter, and because her impartiality might reasonably be questioned even though the Rule 11 motion could not substantially affect her uncle's interest. Setik v. Mendiola, 21 FSM R. 537, 560 (App. 2018).

Sufficient cause for a party to seek the presiding judge's disqualification after he has made his decision is shown when the presiding judge disclosed his uncle-nephew relationship with the parties while rendering his decision and further discussed a different, related case wherein he indicated that, because a party in that case lost, it was rightful that he also lose this case. Heirs of Sigrah v. George, 22 FSM R. 211, 217 (App. 2019).

The movants have met the standard for showing a factual basis for the judge's disqualification when they have provided an affidavit from a disinterested observer who has pointed to the close familial ties and friendship that the judge has with the case's parties. Heirs of Sigrah v. George, 22 FSM R. 211, 218 (App. 2019).

A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. A judge's disqualification is required when the judge or the judge's spouse, or a person within the third degree of relationship to either of them, is a party to the proceeding. An uncle is within the third degree relationship. Relatives within the third degree of relationship are great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, or niece. Heirs of Sigrah v. George, 22 FSM R. 211, 219 & n.2 (App. 2019).

– Recusal – Extrajudicial Knowledge

A judge who, at the beginning of a trial, is so influenced by other information that he knows he will not be capable of basing his decision solely on the properly admitted evidence in the case is under an ethical obligation to disqualify himself or herself from the litigation. FSM v. Jonas (II), 1 FSM R. 306, 320 n.1 (Pon. 1983).

The normal situation in which recusal may be required is when a judge's extrajudicial knowledge, relationship or dealings with a party or the judge's own personal or financial interests, might be such as to cause a reasonable person to question whether the judge could preside over and decide a particular case impartially. In re Main, 4 FSM R. 255, 260 (App. 1990).

The term "disputed evidentiary facts concerning the proceeding" does not apply to disputed legal issues in the case. Even where a judge may have had prior opinions regarding a legal issue, this alone does not disqualify a judge. Kosrae v. Sigrah, 10 FSM R. 654, 657 (Kos. S. Ct. Tr. 2002).

A judge's participation in a constitutional convention does not require his recusal for having personal knowledge of disputed evidentiary facts concerning a provision adopted in that convention because any knowledge gained during the convention is not a disputed evidentiary fact. Kosrae v. Sigrah, 10 FSM R. 654, 659 (Kos. S. Ct. Tr. 2002).

When the justice does not have personal knowledge of disputed evidentiary facts concerning the

proceeding; when he has not prejudged any legal issues in this case; and when a disinterested reasonable observer, knowing all the facts and circumstances, would not have doubts regarding his impartiality in this case based upon his participation as a Constitutional Convention delegate nearly twenty years ago, the justice's disqualification is not required under the Code of Judicial Conduct. Kosrae v. Sigrah, 10 FSM R. 654, 659 (Kos. S. Ct. Tr. 2002).

The Code of Judicial Conduct requires a justice to disqualify himself in a proceeding where the judge has personal bias or knowledge of disputed evidentiary facts concerning the proceeding. The term "disputed evidentiary facts concerning the proceeding" has been interpreted to mean facts involved in the actions or conduct of persons in a case. The term does not apply to the legal issues presented in the case. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 133, 136 (Kos. S. Ct. Tr. 2002).

When a justice does not have personal knowledge of disputed evidentiary facts concerning a case involving the interpretation of constitutional provisions because any knowledge gained during a constitutional convention is not personal knowledge of disputed evidentiary facts concerning the case, and when the justice has not prejudged any legal issues in the case, a disinterested reasonable observer, knowing all the facts and circumstances, would not have doubts regarding the justice's impartiality in the case, based upon his participation as a constitutional convention delegate. The justice's disqualification is therefore not required. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 133, 137 (Kos. S. Ct. Tr. 2002).

There is no need to remand a matter for a new trial judge to consider the summary judgment motions when the knowledge that the defendants lived on part of the land was in the record and did not stem from an extrajudicial source; when there was no extrajudicial conduct because the trial judge received information from the former special master when both counsel were present; when trial counsel as well as the judge engaged in appeals to divine aid at the motion hearing; and when the judge encouraged settlement. Bualuay v. Rano, 11 FSM R. 139, 148-49 (App. 2002).

Generally, an affidavit is required to provide a factual basis for questioning a judge's impartiality, but other admissible evidence may also by used to support a motion to recuse. When statements made by the presiding justice himself, regarding his own extrajudicial knowledge of facts relating to the subject incident and the defendant's alleged conduct, were made on the record in the courtroom at hearings, these statements can be used for questioning the justice's impartiality and a basis for recusal. Under these specific facts and in this case, the requirement for an affidavit is satisfied by other admissible evidence: the record of the hearings. Kosrae v. Langu, 13 FSM R. 269, 272 (Kos. S. Ct. Tr. 2005).

Disqualification of a the justice is required when the justice has personal knowledge of disputed evidentiary facts concerning the proceeding. The term "disputed evidentiary facts concerning the proceeding" has been interpreted to mean facts involved in the actions or conduct of persons in a case. Kosrae v. Langu, 13 FSM R. 269, 272 (Kos. S. Ct. Tr. 2005).

Since at trial, the defendant may defend the malicious mischief charge through disputing the elements of the offense, including the alleged damage to the glass at the school, and since the presiding justice's hearing glass being broken on the subject night at the school may be considered circumstantial evidence of defendant's conduct, the presiding justice's hearing glass being broken on the subject night at the school may be facts involved in the defendant's actions or conduct in this case and therefore disputed evidentiary facts concerning the proceeding. Accordingly, the trial justice recused himself. Kosrae v. Langu, 13 FSM R. 269, 272-73 (Kos. S. Ct. Tr. 2005).

Disqualifying factors must be from an extrajudicial source. When the only example a party gives of the court's supposed "extrajudicial knowledge" is the court's statement of its intention when it issued the search warrant that lead to the events in the case, it is a novel interpretation of the word "extrajudicial." Knowledge gained through the application for and issuance of a search warrant, by its nature, cannot be deemed extrajudicial knowledge. FSM v. Wainit, 13 FSM R. 293, 294-95 (Chk. 2005).

A judge's disqualification must be made on the basis of conduct which is extrajudicial in nature that is, on some basis other than what the judge learned from his participation in the case. Information learned, or events occurring during the course of a judicial proceeding cannot be used to recuse a judge on the grounds that the events or this information has now caused him to be biased or prejudiced or that it creates an appearance of impropriety. FSM v. Wainit, 13 FSM R. 293, 295 (Chk. 2005).

A justice, who at the beginning of a trial, is so influenced by other information that he knows he will not be capable of basing his decision solely on the properly admitted evidence is under an ethical obligation to disqualify himself from the proceedings. Edmond v. Alik, 13 FSM R. 413, 416-17 (Kos. S. Ct. Tr. 2005).

The normal situation in which recusal may be required is when a justice's extrajudicial knowledge, relationship or dealing with a party might be such as to cause a reasonable person to question whether the justice could preside over and decide a particular case impartially. Isaac v. Saimon, 14 FSM R. 33, 35-36 (Kos. S. Ct. Tr. 2006).

A justice must disqualify himself where he has served in governmental employment and in such capacity expressed an opinion concerning the merits of the particular case in controversy. The presiding Land Court justice's former position as Land Commissioner and his attendant statutory duties to review, approve and affirm adjudications for determination of ownership of land, including boundary determinations, serve as grounds for disqualification, based upon extrajudicial knowledge. When the presiding justice served in governmental employment as a Kosrae State Land Commissioner and affirmed the land registration team adjudication and determination of the parcel's boundaries, the presiding justice (as a Land Commissioner) did express an opinion concerning the merits of the parties' boundary claims. Isaac v. Saimon, 14 FSM R. 33, 36 (Kos. S. Ct. Tr. 2006).

Disqualification is required where the justice has "personal knowledge of disputed evidentiary facts concerning the proceeding." The term "disputed evidentiary facts concerning the proceeding" has been interpreted to mean facts involved in the actions or conduct of persons in a case. Kosrae v. Nena, 14 FSM R. 70, 71 (Kos. S. Ct. Tr. 2006).

When the justice did not hear or observe any of the defendant's alleged actions, either concerning the charged offenses, or relating to the alleged crash into the electric pole causing an island-wide power outage; when he did not mention the defendant's identity or name; and when he did not make any statement which suggested bias or prejudice against the defendant, but did reference the island-wide power outage, which the justice and all persons with electrical service on the island suffered and which is unrelated to the offenses that the defendant has been charged with, the exposure to an power outage, without more, cannot form the basis for the justice's disqualification and the justice's disqualification is not required. Kosrae v. Nena, 14 FSM R. 70, 72 (Kos. S. Ct. Tr. 2006).

A justice is barred from sitting on a case where he has personal knowledge of disputed evidentiary facts, but knowledge that does not stem from an extrajudicial source is not disqualifying. Ruben v. Petewon, 14 FSM R. 141, 145-46 (Chk. S. Ct. App. 2006).

The 2000 ABA Code of Judicial Conduct, Canon 3.E requires a judge's disqualification in a proceeding where the judge's impartiality might reasonably be questioned, and one specific basis for disqualification is when the justice has personal knowledge of disputed evidentiary facts concerning the proceeding. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 503 (App. 2011).

The general rule is that the disqualifying factors must be from an extrajudicial source, and the normal situation in which a judge's disqualification may be required is when a judge's extrajudicial knowledge, relationship or dealings with a party, or the judge's own personal or financial interests, might be such as to cause a reasonable person to question whether the judge could preside over and decide a particular case impartially. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 195 (App. 2013).

The general rule is that the jurist's knowledge of disqualifying facts must have originated from an extrajudicial source. A disqualification must be made on the basis of conduct which is extrajudicial in nature, that is, on some basis other than what the judge learned from his participation in the case. Halbert v. Manmaw, 20 FSM R. 245, 250 (App. 2015).

It has long been regarded as normal and proper for a judge to sit in the same case upon its remand. Halbert v. Manmaw, 20 FSM R. 245, 250 (App. 2015).

A typical situation where recusal may be required is when a sitting judge's extrajudicial knowledge, relationship, or dealings with a party or the judge's own personal or financial interests might be such as to cause a reasonable person to question whether the judge could impartially preside over and decide a particular case. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 45 (App. 2016).

Disqualification is required when the judge has personal knowledge of disputed evidentiary facts concerning the proceeding. The term "disputed evidentiary facts concerning the proceeding" means facts involved in the actions or conduct of the persons in a case. Heirs of Sigrah v. George, 22 FSM R. 211, 218, 219 (App. 2019).

A judge's disqualification is required when the judge's impartiality might reasonably be questioned, and one specific basis for disqualification is when the justice has personal knowledge of disputed evidentiary facts concerning the proceeding. Heirs of Sigrah v. George, 22 FSM R. 211, 218-19 (App. 2019).

A Supreme Court justice must disqualify himself when he has personal knowledge of disputed evidentiary facts concerning the proceeding. Personal knowledge is knowledge gained through firsthand observation or experience, as distinguished from a belief based on what someone else said. Macayon v. FSM, 22 FSM R. 317, 319-20 (Chk. 2019).

A judge has no personal knowledge – no firsthand observation or experience – when he was not present when any of them occurred, and when it is not clear that any of the case's operative facts will be disputed evidentiary facts. Macayon v. FSM, 22 FSM R. 317, 320 (Chk. 2019).

The general rule is that the jurist's knowledge of disqualifying facts must have originated from an extrajudicial source. Extrajudicial means outside court, outside the functioning of the court system. Macayon v. FSM, 22 FSM R. 317, 320 (Chk. 2019).

When a judge has no personal knowledge, or any extrajudicial knowledge, of the case's operative facts or of any disputed evidentiary facts, he is unable to use 4 F.S.M.C. 124(2)(a) to disqualify himself from the case. Macayon v. FSM, 22 FSM R. 317, 320 (Chk. 2019).

A judge's disqualifying ground must come from an extrajudicial source or conduct. The general rule is that the judge's knowledge of disqualifying facts must have originated from an extrajudicial source. Extrajudicial means outside court; outside the functioning of the court system. Panuelo v. Sigrah, 22 FSM R. 341, 363 (Pon. 2019).

– Recusal – Financial Interest

There are certain circumstances or relationships which, as a *per se* matter of due process, require almost automatic disqualification, and, if a judge has a direct, personal, substantial, pecuniary interest in the outcome of the case, recusal is constitutionally mandated. Etscheit v. Santos, 5 FSM R. 35, 43 (App. 1991).

Where the trial justice resides in housing provided for him by the national government by statute and is not an intended third-party beneficiary to the government's lease of the land and the action is only for

money damages concerning the land the trial justice has no financial or other interest in the matter that may serve to disqualify the justice. Nahnken of Nett v. United States (I), 6 FSM R. 318, 322 (Pon. 1994).

Since debt securities do not give rise to a financial interest in the debtor which issued the securities, a judge who is indebted to a bank in a routine loan transaction is not thereby disqualified from cases in which a bank is a party. In re Estate of Setik, 20 FSM R. 604, 607 (Chk. S. Ct. Tr. 2016).

Debt interests are not considered to give rise to a financial interest in the debtor that issued the security because the debt obligation does not convey ownership interest in the issuer. Therefore, disqualification is not required solely because a party in a matter before the judge is a corporation or governmental entity that has issued a debt security owned by the judge. In re Estate of Setik, 20 FSM R. 604, 607 (Chk. S. Ct. Tr. 2016).

Common sense compels the conclusion that a debt obligation to a bank is not a disqualifying interest since a routine debt like a mortgage, fully secured by real property of an appraised value in excess of the debt, cannot be affected by the outcome of litigation involving the bank that is a mortgagee because a loss for the bank, even if ruinous, would not extinguish or reduce the obligation of the mortgagor to repay, or undermine the value of the property securing the loan, or, similarly, a bank victory, regardless of how substantial, affords not possible benefit to the mortgagor. In re Estate of Setik, 20 FSM R. 604, 607 (Chk. S. Ct. Tr. 2016).

When the presiding judge has a personal bank loan and he is not in default, there is no reason to think that his decision in the case will in any way influence his loan with the bank, either way he decides, since his loan is no different than other loans given to people that are not judges. In re Estate of Setik, 20 FSM R. 604, 608 (Chk. S. Ct. Tr. 2016).

A justice with an outstanding bank loan can also decide for himself whether to recuse himself if the issue of impartiality arises. In re Estate of Setik, 20 FSM R. 604, 608 (Chk. S. Ct. Tr. 2016).

A typical situation where recusal may be required is when a sitting judge's extrajudicial knowledge, relationship, or dealings with a party or the judge's own personal or financial interests might be such as to cause a reasonable person to question whether the judge could impartially preside over and decide a particular case. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 45 (App. 2016).

Unless unusual circumstances exist, a judge is not obligated to disqualify himself or herself because the judge has a loan from a financial institution that is a litigant before the judge. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 45 (App. 2016).

Since 4 F.S.M.C. 124(1) is based on the United States model and its statutory language is verbatim thereto, the court should consider United States legal authority under 28 U.S.C. § 455 for guidance in determining 4 F.S.M.C. 124's meaning concerning recusal as a result of a financial relationship with a lending institution. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 46 (App. 2016).

If it is acceptable for a judge to accept an ordinary loan from a financial institution, the same should not serve as grounds for disqualification. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 46 (App. 2016).

Accepting a loan from a lending institution in its regular course of business on the same terms available to the general public, is fully consistent with a judge's obligation to conduct personal activities so as to minimize the risk of conflicts that would result in frequent disqualifications. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 49 (App. 2016).

When unusual circumstances exist, questions about impartiality may arise. For example, if a judge were presently appealing to the bank for a loan or an extension for or restructuring of a loan, or if the loan is currently in default and is presently or soon will be litigated, there would exist a real question about the

appearance of impropriety. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 49 (App. 2016).

The mere fact of a relationship between a judge and a financial institution as borrower/lender or mortgagor/mortgagee does not give rise to an inference that the judge's impartiality might reasonably be questioned. Something more than an ordinary financial transaction between the judge and financial institution must be present for disqualification to be necessary as when the financial relationship affords the judge services and benefits not generally available to the public. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 49 (App. 2016).

When a consumer loan was issued to the judge well before he was appointed to the appellate panel; when the bank does not aver any special circumstances necessitating the judge's disqualification since the loan was issued on standard terms available to the general public and were negotiated before his designation to the panel; and when the loan is current and not in default or delinquent nor at risk thereof, and is not currently being negotiated for extension, restructuring, or refinancing, the bank has not overcome the presumption that a judicial official is unbiased. Without more, a judge's consumer loan and the mere relationship between the bank and the judge as creditor-debtor, is insufficient to require the judge's disqualification. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 50 (App. 2016).

– Recusal – Judge's Duty

A judge has a duty to disqualify himself from presiding in a proceeding in which he entertains a bias or prejudice against a party. Andohn v. FSM, 1 FSM R. 433, 444 (App. 1984).

A justice's power to recuse himself must be exercised conscientiously and not be used to avoid difficult or controversial cases nor merely to accommodate nervous litigants or counsel. FSM v. Skilling, 1 FSM R. 464, 471 (Kos. 1984).

Where an appellate court has held that a trial judge is under a clear and non-discretionary duty to step aside from presiding over a case and the petitioner has a constitutional right to obtain compliance with that duty, all documents issued after the date of the appellate decision are null and void and shall be expunged from the record and the judge shall be enjoined from taking any further action as a judge in the case. Etscheit v. Santos, 5 FSM R. 111, 113 (App. 1991).

A justice's obligation to recuse himself is not dependent on the existence of a party's motion to disqualify him. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 5 (App. 1997).

In the usual case, a Chuuk State Supreme Court justice's temporary unavailability would not be grounds to consider him disqualified and unable to perform his professional and constitutional duty to preside on an appellate panel. But he is disqualified when the court is required by statute to decide the case by a certain date in the near future and the court would be unable to meet its statutory obligation if it had to await the justice's return. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 151 (Chk. S. Ct. App. 2001).

In the absence of a showing of any actual partiality or extrajudicial bias under 4 F.S.M.C. 124(1), a judge properly meets his obligation to hear the case. Hartman v. Bank of Guam, 10 FSM R. 89, 98 (App. 2001).

It is a judge's duty not to disqualify himself unless he believes that there are proper and reasonable grounds therefor. Tolenoa v. Kosrae, 11 FSM R. 179, 182 (Kos. S. Ct. Tr. 2002).

It is a judge's duty not to disqualify himself unless he believes that there are proper and reasonable grounds therefor. The grounds for disqualification of a Kosrae state justice are provided in the Model Code of Judicial Conduct. Kosrae v. Nena, 14 FSM R. 70, 71 (Kos. S. Ct. Tr. 2006).

When the justice sentencing the defendant has resigned from the court and it is the justice's final day of service as a justice, a motion for recusal from sentencing on that ground is meritless. It is within the judge's authority and is his duty to conduct the sentencing hearing especially since the sentencing hearing was delayed at the defendant's request to address the issue of admission of defendant's prior criminal record. Kosrae v. Tulensru, 14 FSM R. 115, 126 (Kos. S. Ct. Tr. 2006).

The duty to recuse may arise even in the absence of a motion to disqualify. Ruben v. Petewon, 14 FSM R. 177, 185 (Chk. S. Ct. App. 2006).

In the absence of a showing of any actual partiality or extrajudicial bias under 4 F.S.M.C. 124(1), a judge properly meets his obligation to hear the case. Berman v. Rosario, 15 FSM R. 337, 341 (Pon. 2007).

If a presiding Land Court judge fails to recuse himself when he is required to, it is a due process violation and the matter must be remanded to the Kosrae Land Court with instructions and guidance for re-hearing the matter. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 503-04 (App. 2011).

In the absence of a showing of any partiality or extrajudicial bias under 4 F.S.M.C. 124(1), a judge is obligated to hear cases assigned to that judge. Halbert v. Manmaw, 20 FSM R. 245, 250 (App. 2015).

Absent a depiction of partiality or extrajudicial bias, a judge is obligated to hear the cases assigned to him or her. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 310, 314 (App. 2017).

Except when the judge is disqualified under 4 F.S.M.C. 122 or 124, a judge is obligated to hear the cases assigned to that judge. This is because a judge must exercise the power to recuse conscientiously and cannot use it to avoid difficult or controversial cases or to merely accommodate nervous litigants or counsel. Panuelo v. Sigrah, 22 FSM R. 341, 364 (Pon. 2019).

When it is not the judge's duty to disqualify himself from a case to which he has been assigned, it is the judge's duty to serve. A judge cannot "voluntarily recuse" himself except when that recusal is required. Then it would be the judge's duty to do so. Panuelo v. Sigrah, 22 FSM R. 341, 364 (Pon. 2019).

– Recusal – Judicial Statements or Rulings

The fact that answers given by the victim-witness in response to questions posed by the judge happened to strengthen the government's case did not, by itself, indicate that the judge was impermissibly helping the prosecution, or that he was biased against the defendant. Andohn v. FSM, 1 FSM R. 433, 446 (App. 1984).

4 F.S.M.C. 124 furnishes no grounds for disqualifying a judge on the basis of statements or rulings made by him in his judicial capacity which reflect reasoned views derived from documents submitted, arguments heard, or testimony received in the course of judicial proceedings in the same case. FSM v. Skilling, 1 FSM R. 464, 473 (Kos. 1984).

A judge's adverse rulings in a case do not create grounds for disqualification from that case. FSM v. Skilling, 1 FSM R. 464, 484 (Kos. 1984).

A motion for disqualification ordinarily may not be predicated on the judge's rulings in the case or in related cases, nor on a demonstrated tendency to rule in a particular way, nor on a particular judicial leaning or attitude derived from his experience on the bench. Damarlane v. United States, 7 FSM R. 52, 54 (Pon. S. Ct. App. 1995).

Statements and rulings made by a judge in the course of judicial proceedings do not provide grounds for disqualification under 4 F.S.M.C. 124(1). There is a presumption that judicial officials are unbiased, and the burden of proof is on the party asserting an unconstitutional bias to demonstrate otherwise. A party

requesting recusal on retrial must establish that actual bias or prejudice exists that comes from an extrajudicial source. FSM v. Ting Hong Oceanic Enterprises, 7 FSM R. 644, 649 (Pon. 1996).

Claims that a trial justice has shown disfavor toward intervenors' counsel, or bias in rulings in the instant case or other cases can be dismissed as failing to provide valid grounds for disqualification. Kristoph v. Emin, 10 FSM R. 650, 654 (Chk. S. Ct. Tr. 2002).

Adverse rulings by a judge in a case do not create grounds for disqualification in that case. To be disqualifying, any alleged judicial bias and prejudice must be based upon an extrajudicial source. Tolenoa v. Kosrae, 11 FSM R. 179, 182 (Kos. S. Ct. Tr. 2002).

When the court did not *sua sponte* raise the issue of the search warrant's validity and only proceeded to that question after defense counsel had insisted on entering that area and the government had orally waived its right to oppose the motion in writing and when there was no proper challenge to, and the court has made no ruling on, the arrest warrant's validity, the court will not grant a recusal motion because the court's oral or written rulings on a search warrant's validity or its issuance of an arrest warrant cannot be basis upon which its impartiality may be reasonably questioned and recusal granted. FSM v. Wainit, 11 FSM R. 424, 430-31 (Chk. 2003).

A judge's statements and rulings made in the course of judicial proceedings do not provide grounds for disqualification under 4 F.S.M.C. 124(1) (appearance of partiality) and even a judge's adverse rulings made in the course of judicial proceedings do not provide grounds for disqualification under 4 F.S.M.C. 124(1). FSM v. Wainit, 11 FSM R. 424, 431 (Chk. 2003).

A judge must disqualify himself from a proceeding in which the judge's impartiality might reasonably be questioned, and in specific instances. The disqualifying factors must be from an extrajudicial source. Statements and rulings made by a judge in the course of judicial proceedings do not provide grounds for disqualification. Adverse rulings in a case are not grounds for disqualification of the presiding justice. The slow progress of the case is not based upon an extrajudicial source and therefore is not a basis for disqualification. Allen v. Kosrae, 13 FSM R. 55, 59 (Kos. S. Ct. Tr. 2004).

A judge's statements and rulings made in the course of judicial proceedings do not provide grounds for disqualification under 4 F.S.M.C. 124(1). Even a judge's adverse rulings made in the course of judicial proceedings do not provide grounds for disqualification under 4 F.S.M.C. 124(1). FSM v. Wainit, 13 FSM R. 293, 295 (Chk. 2005).

A judge's adverse rulings made in the course of judicial proceedings do not provide grounds for recusal. Nor may a recusal be based on the judge's rulings in a related case. Thus, whether a refiled case is considered the same case as the earlier (dismissed) case or a related case, the court's prior rulings are not a ground for recusal. FSM v. Wainit, 13 FSM R. 293, 295 (Chk. 2005).

Courts adhere to the rule that any alleged judicial bias and prejudice, to be disqualifying, must stem from an extrajudicial source, and that a judge's adverse rulings in a case do not create grounds for disqualification from that case. George v. Palsis, 20 FSM R. 174, 177 (Kos. 2015).

Rulings made by a judge in the course of prior proceedings do not provide grounds for disqualification. Halbert v. Manmaw, 20 FSM R. 245, 250 (App. 2015).

Adverse rulings made in the course of judicial proceedings do not provide grounds for disqualification under 4 F.S.M.C. 124(1). Halbert v. Manmaw, 20 FSM R. 245, 250 (App. 2015).

Under controlling FSM case law, the disqualifying factors must stem from an extrajudicial source. Unfavorable or adverse rulings in a case, are not an extrajudicial source and are not a ground to reasonably question the judge's impartiality in that case. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 569-70 (Pon. 2016).

When none of the rulings about which the movants complain were based on or were the result of any extrajudicial source, knowledge, or factor, they cannot be a ground for disqualification. Litigation (and thus impartial judging) by its very nature, invites judicial rulings unfavorable to one party, or another, or both since it is in the very nature of our system of justice that judges must rule in favor of one party and against another. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 570 (Pon. 2016).

A judge's unfavorable rulings are not grounds for disqualification even if those rulings are believed to be erroneous, since the appellate division may later correct a judge's erroneous ruling. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 570 (Pon. 2016).

Generally, a judge's adverse rulings in the course of judicial proceedings do not provide grounds to disqualify a judge. Peterson v. Anson, 20 FSM R. 657, 659 (App. 2016).

A judge's legal rulings, even if adverse, made in the course of judicial proceedings, whether in the same case, or a related case, (or even an unrelated case) do not disqualify that judge. Setik v. Perman, 22 FSM R. 105, 111 (App. 2018).

An appellate panel's legal rulings in the two earlier appeals, even though unfavorable, do not, and cannot, disqualify the panel members from sitting on a later, related appeal. Setik v. Perman, 22 FSM R. 105, 111 (App. 2018).

Since court rulings, by their nature, are almost always unfavorable to one or more parties, for a judge to be disqualified for no reason other than the judge had once made an unfavorable ruling against a party, would quickly lead to all judges being disqualified from most court cases. Setik v. Perman, 22 FSM R. 105, 111 n.2 (App. 2018).

Speculation that the result might be more favorable with a different judge is not a basis to disqualify a judge. Nor does a party's displeasure with a judge's decisions in one or more cases form a basis to disqualify a judge. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 180 (Pon. 2019).

A motion for disqualification ordinarily may not be predicated on the judge's rulings in the instant case or in related cases, nor on a demonstrated tendency to rule any particular way, nor on a particular judicial leaning or attitude derived from the judge's experience on the bench. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 180 (Pon. 2019).

A judge's statements and rulings made in the course of judicial proceedings do not provide grounds for disqualification. Adverse rulings in a case are not grounds for the presiding judge's disqualification. Heirs of Sigrah v. George, 22 FSM R. 211, 218 (App. 2019).

Judicial rulings, even if adverse, made in the course of other judicial proceedings are not grounds for disqualification under 4 F.S.M.C. 124(1). Panuelo v. Sigrah, 22 FSM R. 341, 364 (Pon. 2019).

When judicial rulings could not be a basis to disqualify either of the justices who presided over a case from presiding over a different case, their rulings cannot be a basis to disqualify a former law clerk for his service under them. Panuelo v. Sigrah, 22 FSM R. 341, 364 (Pon. 2019).

A judge's adverse rulings made in the course of judicial proceedings do not provide grounds for disqualification under 4 F.S.M.C. 124(1) which provides for a justice's disqualification when the justice's impartiality might reasonably be questioned. FSM Dev. Bank v. Talley, 22 FSM R. 608, 610 (Kos. 2020).

– Recusal – Procedure

Due process does not require that a second judge decide motions for recusal where the trial judge accepts as true all of the factual allegations in the affidavit of the party seeking recusal, and must rule only

on matters of law in making the decision to recuse or not recuse himself. Skilling v. FSM, 2 FSM R. 209, 213 (App. 1986).

The procedure for recusal provided in the FSM Code, whereby a party may file a motion for recusal with an affidavit, and the judge must rule on the motion, stating his reasons for granting or denying the motion, before any further proceeding is taken, allows the moving party due process. Skilling v. FSM, 2 FSM R. 209, 214 (App. 1986).

A party's motion to have a trial justice recuse himself is insufficient if not supported by affidavit as required by 4 F.S.M.C. 124(c). Jonas v. FSM, 2 FSM R. 238, 239 (App. 1986).

The fact that the Pohnpei Judiciary Act, 2L-160-82, §§ 30(1), (2), requires a judge to rule on a motion for recusal reveals that disqualification is not mandated but instead is at the discretion of the judge. Adams v. Etscheit, 4 FSM R. 226, 230-31 (Pon. S. Ct. Tr. 1989).

Disqualification of a judge under the Pohnpei Judiciary Act, 2L-160-82, minimally requires: 1) a written motion for disqualification filed before the trial or hearing unless good cause is shown otherwise; 2) a good faith affidavit showing factual grounds; and 3) grounds which originated after January 20, 1984 when the Act became effective, whereupon impartiality is to be assessed on the basis of whether a disinterested reasonable Pohnpeian who knows all the circumstances would harbor doubt about the judge's impartiality. Adams v. Etscheit, 4 FSM R. 226, 231-32 (Pon. S. Ct. Tr. 1989).

A motion requesting a trial court to reconsider its earlier ruling denying a motion for recusal may be denied where a party making the motion has been aware of the document upon which the motion is based for almost 10 years; where counsel who prepared the motion had done so without previously appearing before the trial judge to "assess the temper of that judge;" where the trial judge had studied the entire case "quite extensively" before the motion had been filed; and where there are "strong indications" that counsel is "judge-shopping," so that counsel's conduct "represents an example of a very serious and contemptuous misconduct" toward the court. Adams v. Etscheit, 4 FSM R. 237, 238-40 (Pon. S. Ct. Tr. 1989).

Mere argument by counsel, be it oral or set forth in a brief, is not the basis on which motions to disqualify are determined. Motions for recusal must be supported by affidavit stating the grounds for recusal. It is the movant's burden to go beyond wide-ranging speculation or conclusions and show a factual basis for recusal. Jano v. King, 5 FSM R. 266, 268 (Pon. 1992).

The court is required by statute to rule on a motion to disqualify the sitting justice before proceeding further on the matter. Nahnken of Nett v. United States (I), 6 FSM R. 318, 320 n.1 (Pon. 1994).

In order to overturn the trial judge's denial of a motion to recuse an appellant must show an abuse of the trial judge's discretion. The same standard of review applies to a petition for a writ of prohibition ordering a judge to recuse himself. Nahnken of Nett v. Trial Division, 6 FSM R. 339, 340 (App. 1994).

A person who is not a party cannot move for the disqualification of the trial judge because persons who are not parties of record to a suit have no standing which will enable them to take part in or control the proceedings. Shiro v. Pios, 6 FSM R. 541, 543 (Chk. S. Ct. App. 1994).

The proper method to obtain a writ of prohibition to disqualify a member of an appellate panel is to move for disqualification before that member, and, if the recusal motion is denied, to file a petition for a writ of prohibition as a separate matter to be considered by an appellate panel constituted pursuant to Appellate Rule 21(a). Berman v. FSM Supreme Court (I), 7 FSM R. 8, 10 (App. 1995).

In considering motions for recusal a court must carefully analyze the grounds in terms of the disqualification statute, and it need not lightly grant such motions simply to accommodate or placate litigants or their counsel, lest the judge be violating his judicial oath to administer justice. Damarlane v.

United States, 7 FSM R. 52, 54 (Pon. S. Ct. App. 1995).

Under the Pohnpei statute a party moving for disqualification of a judge must do so before the trial or hearings unless good cause is shown for filing it at a later time. Upon receipt of such a motion, the judge shall rule on it before proceeding further in the matter, stating his reasons for granting or denying it on the record. Damarlane v. United States, 7 FSM R. 52, 55 (Pon. S. Ct. App. 1995).

The Chuuk Judiciary Act requires that a motion for a justice's disqualification be supported by affidavits to establish a factual basis for the motion, and that there be a hearing at which the movant must prove his allegations. In re Disqualification of Justice, 7 FSM R. 278, 279 (Chk. S. Ct. Tr. 1995).

Allegations that are the basis for a motion for a justice's disqualification must be proven by admissible and competent evidence. Inadmissible affidavits are not enough. In re Disqualification of Justice, 7 FSM R. 278, 279 (Chk. S. Ct. Tr. 1995).

The standard to be applied in reviewing a request for disqualification under 4 F.S.M.C. 124(1) is whether a disinterested reasonable observer who knows all the circumstances would harbor doubts about the judge's impartiality. A motion for disqualification must be supported by an affidavit which clearly sets forth the factual basis for the belief that grounds for disqualification exist. Fu Zhou Fuyan Pelagic Fishery Co. v. Wang Shun Ren, 7 FSM R. 601, 605 (Pon. 1996).

Because a judge has a ministerial, non-discretionary duty to state on the record his reasons for denying a motion to disqualify himself a writ of prohibition may issue to prevent him from proceeding further on a case until he has done so. Ting Hong Oceanic Enterprises v. Trial Division, 7 FSM R. 642, 643 (App. 1996).

A motion to recuse is untimely when it is brought over five weeks after the deadline for pretrial motions and when the movant had known for months which judge would be presiding over the trial. FSM v. Ting Hong Oceanic Enterprises, 7 FSM R. 644, 647-48, 649 (Pon. 1996).

A denial of a motion to recuse may be reviewed by means of a petition for a writ of prohibition or mandamus. The standard of review is whether the trial judge abused his discretion in denying the motion to recuse. The petitioner must show that the trial judge clearly and indisputably abused his discretion when he denied the motion to disqualify. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 4 (App. 1997).

By statute, a motion to recuse should be brought before the trial or hearing unless good cause is shown for filing it at a later time. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 5 (App. 1997).

When the issue of recusal was brought to the trial judge's attention well before the date he set for pretrial motions, a judge's obligation to recuse himself is not dependent on bringing a motion, and the motion was timely by the terms of the statute because it was brought before trial even though brought after the date set for pretrial motions the motion to recuse cannot be denied as untimely. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 5 (App. 1997).

4 F.S.M.C. 124(6) provides that a party may move to disqualify a Supreme Court justice, and requires that such a motion be accompanied by an affidavit stating the reasons for belief that grounds for disqualification exist. Any disqualification motion must be filed before the trial or hearing, unless good cause is shown. Hartman v. Bank of Guam, 10 FSM R. 89, 95-96 (App. 2001).

A party in cases involving related issues is not entitled as a matter of right to a different judge for each case. Hartman v. Bank of Guam, 10 FSM R. 89, 97 (App. 2001).

Recusals are not required to be in writing. While the better practice would be that recusals be in writing, and the Legislature could require that practice if it so chose, there is currently no such statutory or constitutional requirement. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 151 (Chk. S. Ct. App. 2001).

A motion to recuse may be considered untimely when it is brought many weeks after the deadline for pretrial motions and where the movant has known for months which justice would be presiding over the trial. Shrew v. Kosrae, 10 FSM R. 533, 535 (Kos. S. Ct. Tr. 2002).

A motion to recuse should be brought before the trial or hearing unless good cause is shown filing it at a later time. Tolenoa v. Kosrae, 11 FSM R. 179, 182 (Kos. S. Ct. Tr. 2002).

An application for a trial judge's disqualification must be filed at the earliest opportunity. This rule will be strictly applied against a party who, having knowledge of the facts constituting a disqualification, does not seek to disqualify the judge until an unfavorable ruling has been made. Tolenoa v. Kosrae, 11 FSM R. 179, 184 (Kos. S. Ct. Tr. 2002).

The trial court may deny a motion for new trial when the motion's basis is the judge's failure to recuse himself and the party making the motion was, since the beginning of the case, aware of the information upon which the motion is based. Tolenoa v. Kosrae, 11 FSM R. 179, 184 (Kos. S. Ct. Tr. 2002).

A motion for disqualification of a Chuuk State Supreme Court justice must be supported by affidavits establishing a factual basis for the motion, and there must be a hearing where the moving party has the burden of proving the basis for the motion. Allegations that provide the basis for a motion to recuse must be proven by admissible and competent evidence. Kupenes v. Ungeni, 12 FSM R. 252, 259 (Chk. S. Ct. Tr. 2003).

A motion to disqualify a judge that is not supported by an affidavit which explains the factual basis for the motion is insufficient and will be denied. Allen v. Kosrae, 13 FSM R. 55, 59 (Kos. S. Ct. Tr. 2004).

An application for a trial judge's disqualification must be filed at the earliest opportunity. A motion to recuse should be brought before the trial or hearing unless good cause is shown for filing it at a later time. Kosrae v. Langu, 13 FSM R. 269, 271-72 (Kos. S. Ct. Tr. 2005).

It is necessary to show a factual basis – not just speculation or conclusions, for questioning a judge's impartiality. A factual basis must be provided by affidavit or other admissible evidence. Counsel's arguments are not evidence and therefore cannot form a "factual basis" for questioning a judge's impartiality. Kosrae v. Langu, 13 FSM R. 269, 272 (Kos. S. Ct. Tr. 2005).

Mere argument by counsel, verbal or written, is not the basis on which motions to recuse are determined. It is the movant's burden to go beyond speculation or conclusion and show a factual basis for recusal. Kosrae v. Langu, 13 FSM R. 269, 272 (Kos. S. Ct. Tr. 2005).

Generally, an affidavit is required to provide a factual basis for questioning a judge's impartiality, but other admissible evidence may also by used to support a motion to recuse. When statements made by the presiding justice himself, regarding his own extrajudicial knowledge of facts relating to the subject incident and the defendant's alleged conduct, were made on the record in the courtroom at hearings, these statements can be used for questioning the justice's impartiality and a basis for recusal. Under these specific facts and in this case, the requirement for an affidavit is satisfied by other admissible evidence: the record of the hearings. Kosrae v. Langu, 13 FSM R. 269, 272 (Kos. S. Ct. Tr. 2005).

The court must decide a recusal motion before it can consider and rule on substantive motions, although the court can probably entertain and decide merely procedural matters before ruling on the recusal motion. FSM v. Wainit, 13 FSM R. 293, 294 (Chk. 2005).

By state law, a motion to disqualify a justice must be referred to another justice for ruling. Ruben v. Petewon, 13 FSM R. 383, 388 (Chk. 2005).

If the Acting Chief Justice knows that a particular associate justice is disqualified there is no reason for him to take the pointless step of referring the matter to that associate justice for that justice to say so. Ruben v. Petewon, 14 FSM R. 146, 148 (Chk. S. Ct. App. 2006).

Upon receipt of a disqualification motion, the Chuuk State Supreme Court justice must refer the motion to another justice, to hear the motion and rule upon it. There is no room for discretion. Ruben v. Petewon, 14 FSM R. 177, 184 (Chk. S. Ct. App. 2006).

When a party files a motion to remove a trial justice from presiding over a case, irrespective of nomenclature, the party is attacking that justice's perceived bias or conflict of interest. For purposes of the referral procedure set forth in section 22(5) of the Chuuk Judiciary Act, a motion to recuse and one to disqualify are one and the same. Ruben v. Petewon, 14 FSM R. 177, 185 (Chk. S. Ct. App. 2006).

A Chuuk State Supreme Court justice exceeds his jurisdiction when he refuses to refer a recusal motion to another trial division justice. Ruben v. Petewon, 14 FSM R. 177, 185 (Chk. S. Ct. App. 2006).

When a petition addressed to an appellate justice asking that he disqualify himself has been denied by that justice, the party may file a petition for a writ of prohibition to prevent that justice from continuing to sit on the appeal. When the other two panel justices are of the opinion that the writ of prohibition clearly should not be granted, they will deny the petition. Goya v. Ramp, 14 FSM R. 303, 304 (App. 2006).

The FSM disqualification statute requires that a motion to disqualify a justice be filed before the trial or hearing unless good cause is shown for filing it later. When good cause was not shown for filing a disqualification motion four months after the hearing for which the movant seeks a justice's disqualification, it will be denied as untimely. Goya v. Ramp, 14 FSM R. 303, 304 (App. 2006).

When a party has filed a writ of prohibition directed to disqualify one appellate justice, the remaining members of the appellate panel may deny that petition if it clearly should not be granted. Goya v. Ramp, 14 FSM R. 305, 308 n.2 (App. 2006).

Since the FSM disqualification statute requires that a motion to disqualify a justice be filed before the trial or hearing unless good cause is shown for filing it at a later time, when good cause was not shown for filing a disqualification motion four months after the hearing for which the movant now seeks a justice's disqualification, it will be denied as untimely. Goya v. Ramp, 14 FSM R. 305, 308 (App. 2006).

By failing to refer motions to recuse and to disqualify the presiding justice to another justice, as required by the State Judiciary Act, the trial justice violated the movants' rights to due process of law. Ruben v. Hartman, 15 FSM R. 100, 108 (Chk. S. Ct. App. 2007).

A motion for a Chuuk State Supreme Court justice's disqualification must be supported by affidavit(s) establishing a factual basis for the motion. Mere argument by counsel, be it oral or set forth in a brief, is not the basis on which motions to disqualify are determined. It is the movant's burden to go beyond wide-ranging speculation or conclusions and show a factual basis for recusal by admissible competent evidence. Nakamura v. Sharivy, 15 FSM R. 409, 412 (Chk. S. Ct. Tr. 2007).

A trial judge is justified in denying a motion for recusal on the basis of the moving party's failure to file an affidavit explaining the factual basis for the motion. Nakamura v. Sharivy, 15 FSM R. 409, 412 (Chk. S. Ct. Tr. 2007).

An application for a trial judge's disqualification must be filed at the earliest opportunity. This rule will

be strictly applied against a party who, having knowledge of the facts constituting a disqualification, does not seek to disqualify the judge until an unfavorable ruling has been made. Nakamura v. Sharivy, 15 FSM R. 409, 412 (Chk. S. Ct. Tr. 2007).

A motion to recuse may be considered untimely when it is brought many weeks after the deadline for pretrial motions and when the movant has known for months which justice would be presiding over the trial. Nakamura v. Sharivy, 15 FSM R. 409, 412 (Chk. S. Ct. Tr. 2007).

By Chuuk statute, a disqualification motion filed after trial has begun must be denied unless there is a showing of good cause for filing it at a later time. Nakamura v. Sharivy, 15 FSM R. 409, 412 (Chk. S. Ct. Tr. 2007).

A motion to recuse is deficient and will be denied when it was filed without an accompanying affidavit as required by law because without an affidavit establishing the degree of relationship between the justice and the parties, the court has no basis to grant the motion, and when there has been no attempt to comply with the statutory requirement that good cause be shown for filing the motion after trial has already begun. Nakamura v. Sharivy, 15 FSM R. 409, 413 (Chk. S. Ct. Tr. 2007).

When the trial judge has a Rule 60(b) motion before him, which is within his jurisdiction to consider and deny even though the case is on appeal, and also a motion to recuse, and when, upon receipt of a recusal motion, a justice must rule on it before proceeding any further in the matter, the trial judge is required to rule on the recusal motion before proceeding on to the Rule 60(b) motion. The trial judge therefore had the jurisdiction to, and a duty to, rule on the recusal motion. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 (App. 2008).

When, while the judgment was on appeal, the appellant's recusal motion was filed at the same time as her Rule 60(b) motion for relief from judgment and the recusal motion had to be decided before any action could be taken on the Rule 60(b) motion, and when the appellant did not file a separate notice of appeal from the post-judgment order denying recusal, the appellate court accordingly lacks jurisdiction to review the recusal issue. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 (App. 2008).

An appellate court may first address the ground that the trial judge ought to have recused himself because if the appellant were to prevail on it, the case would be remanded for a new trial and no other issue would need to be addressed. Berman v. Pohnpei, 17 FSM R. 360, 367 (App. 2011).

An application to disqualify a trial judge ought to be filed at the earliest opportunity. This principle should be applied against a party who, having knowledge of the facts constituting a disqualification, does not seek to disqualify the judge until after an unfavorable ruling has been made. Berman v. Pohnpei, 17 FSM R. 360, 367 (App. 2011).

To permit a party to disqualify a judge after learning how the judge intended to rule on a matter would permit forum-shopping of the worst kind. It would also be inequitable, because it would afford the moving party an additional opportunity to achieve a favorable result while denying a similar opportunity to its adversary. For these reasons, it is generally agreed that a party who has a reasonable basis for moving to disqualify a judge should not be permitted to delay filing a disqualification motion in hope of first obtaining a favorable ruling, and then complain only if the result is unfavorable to his cause. Berman v. Pohnpei, 17 FSM R. 360, 367 (App. 2011).

The appellate court will not consider a recusal issue when, by her own account, the appellant knew of the factual basis for a recusal motion long before trial but she delayed raising the issue in the case until she filed her appellate brief. Berman v. Pohnpei, 17 FSM R. 360, 367-68 (App. 2011).

Following the judge's disclosure on the record of any basis for disqualification other than personal bias or prejudice concerning a party, the judge may ask the parties and their lawyers to consider, out of the

judge's presence, whether to waive disqualification, and, if the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement must be incorporated in the record of the proceeding. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 504 (App. 2011).

When the Land Court judge asked the parties and counsel to consider whether to waive his disqualification but there was no recess taken after the judge informed the parties's counsel of his possible disqualification and when it may be inferred that the Land Court judge participated in the waiver process and actively solicited a waiver and that an agreement by all parties and their counsel (assuming that there was one) on waiver was not, as required, made out of the judge's presence and without his participation, the Land Court judge's disqualification was not properly remitted and his decision will be vacated and the matter remanded. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 504-05 (App. 2011).

A motion for disqualification of a Chuuk State Supreme Court justice must be supported by affidavit(s) establishing a factual basis for the motion. Mere argument by counsel, be it oral or set forth in a brief, is not the basis on which motions to disqualify are determined. It is the movant's burden to go beyond wide-ranging speculation or conclusions and show a factual basis for recusal by admissible, competent evidence. In re Title to Two Parcels, 19 FSM R. 482, 485 (Chk. S. Ct. Tr. 2014).

A trial judge is justified in denying a motion for recusal on the basis of the moving party's failure to file an affidavit explaining the factual basis for the motion. In re Title to Two Parcels, 19 FSM R. 482, 485 (Chk. S. Ct. Tr. 2014).

An application for a trial judge's disqualification must be filed at the earliest opportunity. This rule will be strictly applied against a party who, having knowledge of the facts constituting a disqualification, does not seek to disqualify the judge until an unfavorable ruling has been made. In re Title to Two Parcels, 19 FSM R. 482, 485 (Chk. S. Ct. Tr. 2014).

A motion to recuse may be considered untimely when it is brought many weeks after the deadline for pretrial motions and when the movant has known for months which justice would be presiding over the trial. In re Title to Two Parcels, 19 FSM R. 482, 485 (Chk. S. Ct. Tr. 2014).

By Chuuk statute, a disqualification motion filed after trial has begun must be denied unless there is good cause for filing it at a later time. In re Title to Two Parcels, 19 FSM R. 482, 485 (Chk. S. Ct. Tr. 2014).

A disqualification motion is deficient and untimely when it is unclear what involvement, if any, the trial judge had in the instant matter; when it was only after a judgment had been rendered in another's favor, and after the denial of two motions to set aside the judgment, that the movant sought to disqualify the trial judge; when the movant has failed to establish "good cause" for filing the disqualification motion almost seven months after the judgment was rendered; and when, in support of its disqualification motion, the movant merely stated that it "did not have knowledge of the facts constituting a disqualification until about seven months, or this month, June 2014," since this statement, without anything further, is insufficient to meet the good cause standard. In re Title to Two Parcels, 19 FSM R. 482, 485-86 (Chk. S. Ct. Tr. 2014).

Generally, any application to disqualify a trial judge must be filed at the earliest opportunity, and this principle is applied against a party who, having knowledge of the facts constituting a disqualification, does not seek to disqualify the judge until after an unfavorable ruling has been made. Just as a litigant may not sit idly by during the course of litigation and then seek to present additional defenses in the event of an adverse outcome, a litigant may not sit idly by and seek to disqualify a judge only after an adverse final judgment has been rendered. George v. Palsis, 20 FSM R. 157, 159-60 (Kos. 2015).

A motion for a justice's disqualification must be supported by affidavit(s) establishing a factual basis for the motion. Mere argument by counsel, be it oral or set forth in a brief, is not the basis on which motions to

disqualify are determined. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 228 (Chk. 2015).

A motion to disqualify a judge that is not supported by an affidavit explaining the factual basis for the motion, is insufficient and will be denied. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 228 (Chk. 2015).

For the purpose of a recusal motion, a temporary justice is considered an FSM justice, to whom 4 F.S.M.C. 124 applies. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 228 (Chk. 2015).

A petition for a writ of prohibition to disqualify a trial court judge is procedurally deficient when it includes a lone exhibit which reflects the trial judge's order; when there is no affidavit stating the reasons for the belief that grounds for disqualification exist; when it lacks a memorandum of points and authorities; and when it includes a motion to stay that does not properly belong before the appellate division since it should have been filed in the trial court. Halbert v. Manmaw, 20 FSM R. 245, 249 (App. 2015).

A petitioner for a writ of prohibition must allege facts that show an appearance of partiality. Without a supporting affidavit, the purported facts underpinning the allegation are absent, and only the petitioner's subjective assertions remain, and when the petitioner's unsupported allegations that the judge is not impartial are purely speculative, they are insufficient to support his disqualification. Halbert v. Manmaw, 20 FSM R. 245, 250 (App. 2015).

When there are too many procedural deficiencies to overlook because the application for a writ of prohibition's certificate of service shows service only on the respondent judge at her office; because the real parties in interest were not served and were not named as real parties in interest in the application or in the case caption; because the petition does not contain a copy of the respondent judge's order denying her recusal, if there was a written order, or a transcript of the denial on the record if the denial was made orally; and because, although the relevant judicial disqualification statute requires that an application to disqualify a justice be accompanied by an affidavit stating the reasons for the belief that grounds for disqualification exist, no affidavit accompanied the petition although an "affidavit attached hereto" is mentioned in the application, the petition for a writ of prohibition will be denied without prejudice to any future application in which all of the procedural deficiencies have been cured. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 563, 564 (App. 2016).

A court must decide a disqualification motion and give its reasons for its decision before it can rule on any other matter. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 569 (Pon. 2016).

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

The standard for disqualification in a proceeding is whether a disinterested reasonable person, knowing all the circumstances, would harbor doubts about a judge's impartiality. There is a presumption that judicial officers are unbiased and the burden of proof rests with the party asserting an unconstitutional bias to demonstrate otherwise. In re Estate of Setik, 20 FSM R. 604, 606 (Chk. S. Ct. Tr. 2016).

The relevant judicial disqualification statute requires that an application to disqualify a justice, be accompanied by an affidavit stating the reasons for the belief that grounds for disqualification exist. Miju Mulsan Co. v. Carl-Worswick, 20 FSM R. 660, 662 (App. 2016).

It is a well recognized rule that an application for a trial judge's disqualification must be filed at the earliest opportunity. This rule is strictly applied against a party, who had knowledge of the facts that establish a disqualification, but did not ask for the judge's disqualification until an unfavorable ruling was made in the matter. Heirs of Sigrah v. George, 22 FSM R. 211, 217 (App. 2019).

A motion to recuse should be brought before the trial or hearing unless good cause is shown for filing at a later time. Heirs of Sigrah v. George, 22 FSM R. 211, 217 (App. 2019).

Sufficient cause for a party to seek the presiding judge's disqualification after he has made his decision is shown when the presiding judge disclosed his uncle-nephew relationship with the parties while rendering his decision and further discussed a different, related case wherein he indicated that, because a party in that case lost, it was rightful that he also lose this case. Heirs of Sigrah v. George, 22 FSM R. 211, 217 (App. 2019).

A party's motion to disqualify a judge must be supported by an affidavit. Heirs of Sigrah v. George, 22 FSM R. 211, 218 (App. 2019).

Generally, an affidavit is required to provide a factual basis for questioning a judge's impartiality, but other admissible evidence may be used to support a motion to recuse. When the presiding justice's own statements about his own knowledge of facts relating to the incident and the defendant's alleged conduct, were made on the record in the courtroom hearings, these statements may be used to question a justice's impartiality and be a basis for disqualification. Under such facts, the affidavit requirement is satisfied by other admissible evidence: the record of the hearings. Heirs of Sigrah v. George, 22 FSM R. 211, 218 (App. 2019).

The movants have met the standard for showing a factual basis for the judge's disqualification when they have provided an affidavit from a disinterested observer who has pointed to the close familial ties and friendship that the judge has with the case's parties. Heirs of Sigrah v. George, 22 FSM R. 211, 218 (App. 2019).

The statute requires that a disqualification motion be accompanied by an affidavit stating the reasons for the belief that grounds for disqualification exist. A disqualification motion may be denied solely on the ground that the movant failed to accompany it with an affidavit setting forth the motion's factual basis. Macayon v. FSM, 22 FSM R. 317, 319 (Chk. 2019).

The relevant statute requires that a disqualification motion shall be accompanied by an affidavit stating the reasons for the belief that grounds for disqualification exist. A disqualification motion may be denied solely because the movant failed to accompany it with an affidavit setting forth the motion's factual basis. Panuelo v. Sigrah, 22 FSM R. 341, 363 n.15 (Pon. 2019).

When there is an actual disqualification motion, the court would have to address it first. A contemporaneous denial should suffice when the denial and a substantive order are included in the same document and issued simultaneously. Panuelo v. Sigrah, 22 FSM R. 341, 363 n.15 (Pon. 2019).

The FSM Supreme Court has no mechanism whereby a motion to disqualify a justice may be referred to or assigned to another trial division justice for decision. The justice to whom the motion is addressed is expected to, and must, rule on the motion. FSM Dev. Bank v. Talley, 22 FSM R. 608, 610 (Kos. 2020).

– Recusal – Rule of Necessity

Practical and policy considerations relating to judicial administration in the FSM could be viewed as justifying invocation of the Rule of Necessity whereby judges are obliged to hear and decide cases from which they might otherwise recuse themselves if no other judge is available to hear the case. FSM v. Skilling, 1 FSM R. 464, 469-70 (Kos. 1984).

The Rule of Necessity has been held in the United States to prevail over the disqualification provisions of 28 U.S.C. § 455 and Canon 3C of the ABA Code of Judicial Conduct, both of which are nearly identical to the language of 4 F.S.M.C. 124(1) and (2). FSM v. Skilling, 1 FSM R. 464, 470-71 (Kos. 1984).

Given the social and geographical configuration of Micronesia the Rule of Necessity may oblige judges

to hear and decide cases from which they would otherwise recuse themselves. Factors to be considered include delay, expense, and impact on other cases. Nahnken of Nett v. United States (I), 6 FSM R. 318, 323-24 (Pon. 1994).

Because parties have a right to trial before a justice duly appointed by the President under Article XI of the Constitution the Rule of Necessity may be invoked to prevent recusal of a judge when no other judge is qualified to hear the case. FSM v. Ting Hong Oceanic Enterprises, 7 FSM R. 644, 648 (Pon. 1996).

The only time the Rule of Necessity may apply to allow a judge not to recuse himself is if no other judge is available to hear the case. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 5 (App. 1997).

The "rule of necessity" cannot be applied to force an otherwise disqualified justice to serve because as long as it is possible to appoint a temporary judge who is not disqualified, the rule of necessity has no application and cannot be resorted to. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 151 (Chk. S. Ct. App. 2001).

If the Chief Justice is a member of a Chuuk State Supreme Court appellate panel, or is so removed or disqualified, then the most senior associate justice who has not been removed or disqualified from the case shall appoint the temporary justices, but if all Chuuk State Supreme Court justices are disqualified and there is no associate justice that could appoint a panel in the Chief Justice's stead and there is no provision for the Chief Justice to appoint a temporary justice to make the appointments, then the rule of necessity, in this limited circumstance, allows the Chief Justice to make the panel appointments. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 152 (Chk. S. Ct. App. 2001).

The "rule of necessity" cannot be applied to force an otherwise disqualified justice to serve because as long as it is possible to appoint a temporary judge who is not disqualified, the rule of necessity has no application and cannot be resorted to. Ruben v. Petewon, 14 FSM R. 146, 148 n.1 (Chk. S. Ct. App. 2006).

The only time the "rule of necessity" may be applied to allow a judge not to recuse himself is if no other judge is available to hear the case. The "rule of necessity" cannot be applied to permit an otherwise disqualified justice to serve as long as it is possible to appoint a temporary judge who is not disqualified. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 603, 606 (App. 2014).

It is established law that the rule of necessity cannot be applied to permit an otherwise disqualified justice to serve as long as it is possible to appoint a temporary judge who is not disqualified. The "rule of necessity" may be applied to allow a judge not to recuse himself only if no other judge is available to hear the case. Heirs of Sigrah v. George, 22 FSM R. 211, 220 (App. 2019).

The rule of necessity does not apply when the other Kosrae State Court justice has not ruled whether he is disqualified and because, if all of the regularly-appointed Kosrae State Court justices are disqualified, the Kosrae State Code provides for the appointment of a temporary justice. Heirs of Sigrah v. George, 22 FSM R. 211, 220 (App. 2019).

CRIMINAL LAW AND PROCEDURE

It is doubtful that Congress would have the power to require that all criminal prosecutions be in the name of the Federated States of Micronesia. FSM v. Boaz (II), 1 FSM R. 28, 31 (Pon. 1981).

Familial relationships are an important segment, perhaps the most important component, of the custom and tradition referred to generally in the Constitution FSM Const. art. V, art. XI, § 11, and more specifically in the National Criminal Code. 11 F.S.M.C. 108, 1003. FSM v. Ruben, 1 FSM R. 34, 40 (Truk 1981).

Title 11 of the Trust Territory Code is not inconsistent with nor violative of the FSM Constitution; therefore 11 Trust Territory Code continued in effect after the effective date of the Constitution and until the National Criminal Code's effective date. Truk v. Otokichy, 1 FSM R. 127, 130 (Truk 1982).

The FSM Supreme Court is required by the National Criminal Code to recognize generally accepted customs and to determine the applicability and effect of customary law in a criminal case; it is not authorized to develop new customary law. 11 F.S.M.C. 108. FSM v. Mudong, 1 FSM R. 135, 140, 146-47 (Pon. 1982).

Section 102(2) of the National Criminal Code preserved all the substantive rights of defendants applicable in a guilt determination proceeding as of the time of the crime's commission. 11 F.S.M.C. 102(2). In re Otokichy, 1 FSM R. 183, 191-92 (App. 1982).

Change of forum for Title 11 Trust Territory Code cases from the Trust Territory High Court to the FSM Supreme Court is a procedural matter with no effect on the defendants' substantive rights. In re Otokichy, 1 FSM R. 183, 193 (App. 1982).

The court must first look to sources of law and circumstances here to establish legal requirements in criminal cases rather than begin with a review of cases decided by other courts. Alaphonso v. FSM, 1 FSM R. 209, 214 (App. 1982).

In the FSM, criminal cases are tried before the judge as fact finder. Andohn v. FSM, 1 FSM R. 433, 441 (App. 1984).

Although the Model Penal Code was the primary source for the National Criminal Code it was modified to suit the particular needs of the area. Laion v. FSM, 1 FSM R. 503, 511 (App. 1984).

When more than one offense or wrongful intent is charged in a single count, the trial court may require the government to select among the charges if failure to do so might result in prejudice to the defendant. However, this is a matter within the trial court's discretion. Laion v. FSM, 1 FSM R. 503, 517 (App. 1984).

The FSM Supreme Court Rules of Criminal Procedure were designed to avoid technicalities and gamesmanship in criminal pleading. They are to be construed to secure simplicity in procedure. Convictions should not be reversed, nor the information thrown out, because of minor, technical objections which do not prejudice the accused. Laion v. FSM, 1 FSM R. 503, 518 (App. 1984).

A trial court may in its discretion permit a case involving separate charges based upon the same act to proceed to trial. The court, however, should render a decision and enter a conviction only on the more major of the crimes proven beyond a reasonable doubt. After appeal, if any, has been completed, and the greater charge is reversed on appeal, the trial court may then find it necessary to enter a judgment on the lesser charge. Laion v. FSM, 1 FSM R. 503, 529 (App. 1984).

Rule 7 of the FSM Rules of Criminal Procedure is based upon Rule 7 of the Federal Rules of Criminal Procedure employed by the United States federal courts. Engichy v. FSM, 1 FSM R. 532, 541 (App. 1984).

Unchartered and unincorporated municipalities in Truk State have authority to enact curfew ordinances as long as they do not conflict with Truk State laws. David v. Fanapanges Municipality, 3 FSM R. 495, 497 (Truk S. Ct. App. 1988).

The function of the criminal law is to declare what conduct a society considers to be unacceptable and worthy of sanctions at the instigation of government on the society's behalf; the criminal law is thus the principal vehicle for the expression of the people's standards of right and wrong. Hawk v. Pohnpei, 4 FSM R. 85, 91 (App. 1989).

Under the equal protection clause of the Declaration of Rights in the FSM Constitution, indigency alone should not disadvantage an accused in our system of criminal justice. Gilmete v. FSM, 4 FSM R. 165, 169 (App. 1989).

In adopting the Declaration of Rights as part of the Constitution of the Federated States of Micronesia and therefore the supreme law of the land, the people of Micronesia subscribed to various principles which place upon the judiciary the obligation, among others, to assure that arrests are based upon probable cause, that determinations of guilt are arrived at fairly, and that punishments for wrongdoing are proportionate to the crime and meet prescribed standards. Tammed v. FSM, 4 FSM R. 266, 281-82 (App. 1990).

The Chapman rule, which holds that a constitutional error can be found harmless only when it is harmless beyond a reasonable doubt, is suitable for the FSM. Jonah v. FSM, 5 FSM R. 308, 314 (App. 1992).

Criminal statutes in effect on the effective date of the State of Chuuk Constitution (Oct. 1, 1989) that are consistent with the Constitution continue in effect. Chuuk v. Arnish, 6 FSM R. 611, 613 (Chk. S. Ct. Tr. 1994).

The law treats a company, although not an actual, living person, as a person for purposes of liability, and may hold it criminally liable. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 212 (Pon. 1995).

The unambiguous words of a statute which imposes criminal penalties cannot be altered by judicial construction to punish someone not otherwise within its reach, no matter how much he deserves punishment. FSM v. Webster George & Co., 7 FSM R. 437, 440 (Kos. 1996).

A general section in a statute cannot expand the class of principals to whom the more specific sections are directed. FSM v. Webster George & Co., 7 FSM R. 437, 440 (Kos. 1996).

A statute not cited in the information and not mentioned by the prosecution until closing argument cannot be the basis of criminal liability. FSM v. Webster George & Co., 7 FSM R. 437, 440 (Kos. 1996).

A sole proprietorship cannot be charged as a principal if there are no acts or omissions committed by its owner, but it can be found culpable as an accessory if it is specifically charged with vicarious liability for the acts of another. FSM v. Webster George & Co., 7 FSM R. 437, 441 (Kos. 1996).

Proceedings concerning the arrest or release of a vessel should take place in the civil action in which it is a defendant, not in a related criminal case. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 474 n.4, 475 n.5 (App. 1996).

The criminal conviction of two defendants who never appeared for trial is plain error, and their trial court convictions must be vacated. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 477 (App. 1996).

A judgment that is reversed and remanded stands as if no trial has yet been held. A party whose convictions have been reversed stands in the position of an accused who has not yet been tried. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 5 (App. 1997).

In an appeal of a criminal conviction, before the appellate court can conclude that a trial court error was harmless, the court must conclude that it was harmless beyond a reasonable doubt. Yinmed v. Yap, 8 FSM R. 95, 99 (Yap S. Ct. App. 1997).

When the Yap Legislature has not demonstrated a positive intent to authorize conviction for two crimes,

one of which requires proof of an additional fact, on the same facts, the trial court should render a decision and enter a conviction only on the more major of the crimes proven beyond a reasonable doubt. Therefore a conviction for aggravated assault should be vacated when for the same act there is a conviction for assault with a dangerous weapon, which requires proof of an additional fact. Yinmed v. Yap, 8 FSM R. 95, 101 (Yap S. Ct. App. 1997).

Congress has the express power to define national crimes, and until the Constitution was amended in 1991, Congress also had the express power to define major crimes. FSM v. Fal, 8 FSM R. 151, 153 (Yap 1997).

Because a corporate principal may be held criminally liable for its agent's conduct when the agent acts within the scope of its authority for the principal's benefit, a foreign fishing agreement party may be held criminally liable for the conduct of its authorized vessel. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 176 (Pon. 1997).

An authorized vessel's master's knowledge is attributable to its foreign fishing agreement party because knowledge held by an agent or employee of a corporation may be attributed to its principal. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 180 (Pon. 1997).

In reviewing a criminal conviction against an insufficiency of the evidence challenge, the appellate court must ask whether the trier of fact could reasonably have been convinced beyond a reasonable doubt by the evidence it had a right to believe and accept as true. Nelson v. Kosrae, 8 FSM R. 397, 401 (App. 1998).

The criminal law is not to be used to settle conflicting claims to property. Property disputes in Micronesia strain the social fabric of the communities in which they occur. The filing of a criminal action injects an element of criminality into a matter which is, at its core, civil, and increases that strain. Nelson v. Kosrae, 8 FSM R. 397, 406 (App. 1998).

The legislative history of Title 54 indicates that it was created as a system primarily aimed at recovering revenue rather than punishing wrongdoers with lengthy prison sentences and that the fines and criminal penalties adopted in it were thought to be commensurate with the specified wrongdoing. FSM v. Edwin, 8 FSM R. 543, 547 (Pon. 1998).

The National Criminal Code was primarily drawn from the Model Penal Code modified to suit the particular needs of the area. FSM v. Edwin, 8 FSM R. 543, 548 (Pon. 1998).

There is no clearly expressed Congressional intent for the criminal code to be used to prosecute tax crimes. Since the FSM had existing laws with comprehensive civil and criminal penalties applicable to tax crimes at the time the criminal code was adopted, the implication is that the criminal code was not intended for the purpose of prosecuting such crimes. FSM v. Edwin, 8 FSM R. 543, 549 (Pon. 1998).

A customary forgiveness ceremony resolving disputes among families or clans may not prevent the court system from determining the individual guilt of the defendant and considering whether societal notions of justice and the need to uphold law and order require fining, imprisonment or other restriction of the defendant's freedom. Chuuk v. Sound, 8 FSM R. 577, 579 (Chk. S. Ct. Tr. 1998).

When, in a three-year old criminal appeal, notice was served requiring appellant's opening brief to be filed and served by a certain date and the notice further stated that failure to do so would be grounds for dismissal of the appeal, no brief was ever filed and a motion bordering on frivolous was filed for more time, the motion may be denied and the case is remanded to the trial division for additional proceedings, including sentencing, as is provided for by law. Reselap v. Chuuk, 8 FSM R. 584, 586-87 (Chk. S. Ct. App. 1998).

The purpose of an information, summons or warrant is to inform the defendant of what he is called upon to defend. Chuuk v. Defang, 9 FSM R. 43, 45 (Chk. S. Ct. Tr. 1999).

The Chuuk State Supreme Court is authorized by law to do all acts as may be necessary for due administration of justice, including the issuance of a bench warrant. Chuuk v. Defang, 9 FSM R. 43, 45 (Chk. S. Ct. Tr. 1999).

The purpose of a preliminary examination is two-fold. The court must determine whether there is probable cause to believe that a criminal offense has been committed and that the arrested person committed it. FSM v. Moses, 9 FSM R. 139, 145 (Pon. 1999).

No probable cause to believe that a criminal offense has been committed exists when the defendants' alleged conduct as set out in the information has not been made criminal under any statute, rule, or regulation to which the court's attention has been directed. FSM v. Moses, 9 FSM R. 139, 145 (Pon. 1999).

When the FSM moves for a stay of a civil case to preserve the defendants' rights in a related criminal case and the defendants oppose the motion and claim that they would suffer substantial prejudice from a delayed prosecution of the civil action and when the FSM had the prosecutorial discretion to file both the civil and criminal cases simultaneously, although there is nothing in the statute requiring that, the motion to stay will be denied and, in the absence of good cause, the civil case will go forward. FSM v. Zhong Yuan Fishery Co., 9 FSM R. 351, 353 (Kos. 2000).

The statute that provides for joint law enforcement agreements between the national government and the states reflects a public policy in favor of cooperative law enforcement undertakings. FSM v. Zhong Yuan Fishery Co., 9 FSM R. 421, 423 (Kos. 2000).

The standard to be applied in reviewing a criminal conviction against an insufficiency of the evidence challenge is whether the appellate court can conclude that the trier of fact could reasonably have been convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. The appellate court must review the evidence in the light most favorable to the trial court's factual determination. A trial court's factual findings challenged for insufficiency are reviewed on a clearly erroneous standard, while the appellate court may disagree with and overrule the trial court's conclusions of law. Sander v. FSM, 9 FSM R. 442, 449 (App. 2000).

FSM Appellate Procedure Rule 9(c) sets forth the criteria for release pending an appeal from a criminal conviction. The burden of establishing the requisite criteria rests with the defendant. FSM v. Akapito, 10 FSM R. 255, 256 (Chk. 2001).

The legislative privilege doctrine has both substantive and evidentiary aspects. In substance, the doctrine renders legislators immune from civil and criminal liability based on either speech or debate in the course of proceedings in the legislature. From an evidentiary standpoint, a legislator may claim the privilege in declining to answer any questions outside the legislature itself where those questions concern how a legislator voted, acted, or decided on matters within the sphere of legitimate legislative activity. AHPW, Inc. v. FSM, 10 FSM R. 420, 425 (Pon. 2001).

Although the court must first look to sources of law and circumstances in the FSM to establish legal requirements in criminal cases rather than begin with a review of cases decided by other courts, when an FSM court has not previously construed an FSM criminal procedure rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. FSM v. Wainit, 11 FSM R. 1, 11 n.2 (Chk. 2002).

The Pohnpei state criminal statutes were intended to provide for criminal penalties for those who commit certain acts which are prohibited by the Act. The Pohnpei Crimes Act is not intended to create a basis for private parties to sue other parties, but to enable the Pohnpei state government to be able to punish those persons who violate provisions of the Act. Statutes which do not by their terms provide citizens with a cause of action for money damages cannot be the basis for private damages claims.

Ambros & Co. v. Board of Trustees, 11 FSM R. 17, 25 (Pon. 2002).

In a criminal appeal, the appropriate standard of review for sufficiency of the evidence questions is whether, reviewing the evidence in the light most favorable to the trial court's determinations of fact, there is sufficient evidence to convince a reasonable trier of fact of the defendant's guilt beyond a reasonable doubt. Yow v. Yap, 11 FSM R. 63, 65 (Yap S. Ct. App. 2002).

The word "demand" means "ask as by right." When a police officer did request and ask as by right for the defendant's driver's license, even though the officer did not use the word "demand," the officer's request to the defendant for his driver's license satisfies the statute's "demand" requirement. Kosrae v. Sigrah, 11 FSM R. 263, 264 (Kos. S. Ct. Tr. 2002).

It is fundamental that no person may be deprived of liberty without due process of law. Due process of law, in the case of citizens accused of a crime, includes the right to be promptly brought before a Chuuk State Supreme Court justice, or other judicial officer, and to be informed of the charges being brought against him. In re Paul, 11 FSM R. 273, 278 (Chk. S. Ct. Tr. 2002).

The right of a person arrested for the commission of a crime to due process of law, including the right to be promptly brought before a Chuuk State Supreme Court justice or other judicial officer for initial appearance within 24 hours of his arrest, is a fundamental right afforded to all Chuuk citizens. Only under the most extraordinary circumstances, and then only with a specific, clear, and unambiguous statement, may a Governor's declaration of emergency suspend this due process right or other civil rights of Chuuk citizens. In re Paul, 11 FSM R. 273, 280 (Chk. S. Ct. Tr. 2002).

When there are no reported decisions in the FSM interpreting a Chuuk Criminal Rule, the Chuuk State Supreme Court may look for guidance to cases addressing the issue from the U.S. Federal Circuits. Trust Territory v. Edgar, 11 FSM R. 303, 306 n.2 (Chk. S. Ct. Tr. 2002).

Logic dictates that certain events in the course of a criminal investigation and prosecution will involve ex parte communications with a judge. For example, giving advance notice of an impending search could defeat the purposes of the search where property permitted to be seized was located on the about-to-be searched premises. Similarly, giving a defendant notice of the filing of a criminal complaint or information prior to arrest could facilitate a defendant's avoidance of arrest were a defendant disinclined to cooperate with law enforcement. FSM v. Wainit, 11 FSM R. 411, 413 (Pon. 2003).

One subparagraph of a criminal rule should not be read so as to render another subparagraph unsusceptible to a meaning readily derived from the words employed at best, and indecipherable at worst. FSM v. Wainit, 11 FSM R. 511, 513 (Pon. 2003).

Prosecutions for offenses committed before the effective date of the new national criminal code are governed by the prior law, which is continued as if the new code were not in force. FSM v. Wainit, 12 FSM R. 105, 108 (Chk. 2003).

Although the court must first look to FSM sources of law and circumstances to establish legal requirements in criminal cases rather than begin with a review of cases decided by other courts, when an FSM court has not previously construed an FSM procedural rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. FSM v. Wainit, 12 FSM R. 105, 109 n.1 (Chk. 2003).

By deliberately using a different term in 11 F.S.M.C. 105(3)(b) from the one defined in 11 F.S.M.C. 104(11), the drafters can only have intended that the meaning be different, and, by not defining it, that the term's meaning should be the common, ordinary English language meaning of the term because words and phrases as used in the code must be read with their context and be construed according to the common and approved usage of the English language. FSM v. Wainit, 12 FSM R. 105, 110 (Chk. 2003).

When the statute's drafters deliberately chose the term "public officer" in an exception to the criminal statute of limitations instead of using the term "public servant," as they did in so many other criminal code sections, the statute's object and the drafters' intent was to apply this exception to all public officers, not just to those the criminal code defined as "public servants." This is the statute's plain and unambiguous meaning. If the drafters had intended to restrict the exception to just those persons that had been defined as "public servants," they could easily have inserted that term instead. FSM v. Wainit, 12 FSM R. 105, 111 (Chk. 2003).

As jeopardy does not attach in a criminal case until the first witness is sworn in to testify at trial, the trial court will therefore not stay pretrial proceedings while the defendant seeks appellate review because rulings on pretrial motions not yet filed may dispose of the case entirely in the defendant's favor. FSM v. Wainit, 12 FSM R. 201, 204 (Chk. 2003).

The only stay of a pending criminal case while appellate review is sought that the trial court could consider granting would be a stay of trial. For a stay to be granted, the appeal must be meritorious – a substantial likelihood that the applicant will prevail. A stay is normally granted only where the court is persuaded as to the probability of the movant's ultimate success. FSM v. Wainit, 12 FSM R. 201, 204 (Chk. 2003).

In order for a defendant to be granted a stay of a criminal proceeding while he seeks interlocutory appellate review, he must show that his appeal or his petition is meritorious and has a substantial likelihood of success on the merits. FSM v. Wainit, 12 FSM R. 201, 205 (Chk. 2003).

A person commits an offense if he willfully, whether or not acting under color of law, deprives another of, or injures, oppresses, threatens, or intimidates another in the free exercise or enjoyment of, or because of his having so exercised any right, privilege, or immunity secured to him by the FSM Constitution or laws. Section 701(3) provides for civil liability, including attorney's fees, against any person engaging in the proscribed conduct. "Person" includes state governments. Wortel v. Bickett, 12 FSM R. 223, 225 (Kos. 2003).

A court cannot infer criminal conduct when the FSM statute at issue is not tailored to prohibit general threats, but only those that expressly are for the purpose of influencing a decision of a public officer. When there are no applicable criminal prohibitions in the Code of the Federated States of Micronesia, it is Congress, not the court, that must act to more specifically prohibit such threatening statements or conduct. In re FSM Nat'l Police Case No. NP 10-04-03, 12 FSM R. 248, 251 (Pon. 2003).

Although the court must first look to FSM sources of law to establish legal principles in criminal cases rather than begin with a review of cases decided by other courts, the court may also look to U.S. sources for guidance in interpreting a rule when the FSM rule is identical or similar to a U.S. counterpart. FSM v. Wainit, 12 FSM R. 376, 381 n.3 (Chk. 2004).

The Constitution permits the Chief Justice to promulgate rules, including criminal procedure rules, which Congress may amend by statute. Congress has the authority to amend or create procedural rules by statute, and when Congress has enacted a procedural rule, it is valid. The Chief Justice does not have the authority to amend Congressionally-enacted statutes. Therefore, if the statute applies and the statute and the rule conflict, the statute must prevail. FSM v. Wainit, 12 FSM R. 376, 383 (Chk. 2004).

The statute, 12 F.S.M.C. 204, and the rule, FSM Crim. R. 4(a), applying to criminal complaints cannot be followed when no complaint was ever filed and when the government earlier filed a criminal information. FSM v. Wainit, 12 FSM R. 376, 383-84 (Chk. 2004).

A complaint is made upon oath before a judicial officer or a clerk of the court. FSM v. Wainit, 12 FSM R. 376, 384 (Chk. 2004).

Unlike the appellate rules, neither the civil nor criminal procedure rules provide for an amicus curiae's appearance, although the court has in the past invited amicus curiae briefs in civil cases. FSM v. Sipos, 12 FSM R. 385, 387 (Chk. 2004).

Although the court must first look to FSM sources of law and circumstances to establish legal requirements in criminal cases rather than begin with a review of cases decided by other courts, when the court has not previously construed an FSM criminal procedure rule which is identical or similar to a U.S. rule, it may look to U.S. sources for guidance. FSM v. Wainit, 12 FSM R. 405, 409 n.3 (Chk. 2004).

The national criminal code signed into law on January 25, 2001, does not apply to acts committed before its effective date, and prosecutions for offenses committed before the effective date are governed by the prior law, which is continued in effect for that purpose. FSM v. Ching Feng 767, 12 FSM R. 498, 501 (Pon. 2004).

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

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

As a general principle, a court must impose the least severe sanction that will accomplish the desired result of prompt and full compliance with applicable criminal procedure. FSM v. Kansou, 13 FSM R. 48, 50 (Chk. 2004).

Although the court must first look to FSM sources of law and circumstances to establish legal requirements in criminal cases rather than begin with a review of other courts' decisions, when an FSM court has not previously construed an FSM criminal procedure rule which is identical or similar to a U.S. rule, the court may look to U.S. sources for guidance in interpreting the rule. FSM v. Fritz, 13 FSM R. 85, 87 n.1 (Chk. 2004).

Although the court must first look to FSM sources of law and circumstances to establish legal requirements in criminal cases rather than begin with a review of other courts' decisions, when an FSM court has not previously construed an FSM criminal procedure rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. FSM v. Fritz, 13 FSM R. 88, 90 (Chk. 2004).

When our nation's highest court, the FSM Supreme Court appellate division, interprets a constitutional provision in a case before it, that interpretation is to be given full effect in all cases still open on direct review, and as to all events, regardless of when they occurred. Once it announces a new rule of law, the integrity of judicial review requires application of the new rule to all similar cases pending on review. Kosrae v. Sikain, 13 FSM R. 174, 177 (Kos. S. Ct. Tr. 2005).

New constitutional rules affecting procedures in criminal cases apply only to those cases which are pending on direct review or which are not yet final when the new rules are announced. Thus a new constitutional rule announced in a January, 2004 decision will apply to a May 2003 case still pending at that time. Kosrae v. Sikain, 13 FSM R. 174, 177 (Kos. S. Ct. Tr. 2005).

Criminal Rule 26.2 creates no right to production of statements of witnesses until the witness has testified on direct examination, but if the prosecution insists upon literal compliance with Rule 26.2(a) the

practical result is that a recess must be taken at the conclusion of the direct examination of every witness, and the court would very likely abuse its discretion if it refused to grant a recess. The usual practice in the FSM under Rule 26.2 has been that the prosecution voluntarily provides defense counsel access to witness statements in advance of their testimony and the court finds this a salutary and commendable practice. FSM v. Walter, 13 FSM R. 264, 267-68 (Chk. 2005).

Although the court must first look to FSM sources of law and circumstances to establish legal requirements in criminal cases rather than start with a review of other courts' decisions, when the court has not previously construed an FSM criminal procedure rule which is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. FSM v. Walter, 13 FSM R. 264, 267 n.1 (Chk. 2005).

When no reported FSM case has construed Criminal Rule 26.2(a), the court may use U.S. sources construing the identical U.S. Federal Rule of Criminal Procedure 26.2(a) and its predecessor statute, 18 U.S.C. § 3500(a) (the Jencks Act), as tools in construing FSM Criminal Rule 26.2(a). FSM v. Walter, 13 FSM R. 264, 267 n.1 (Chk. 2005).

Neither state law nor court rules require a criminal defendant to dispute any evidence relating to the allegations prior to trial. The defendant is permitted to dispute evidence presented by the state at trial, through cross-examination or by producing independent evidence. Kosrae v. Langu, 13 FSM R. 269, 272 (Kos. S. Ct. Tr. 2005).

Although the court must first look to FSM sources of law and circumstances to establish legal requirements in criminal cases rather than begin with a review of other courts' decisions, the court may look to U.S. sources for some help in interpreting the rule when FSM cases do not provide a full answer. FSM v. Wainit, 13 FSM R. 301, 304 n.1 (Chk. 2005).

It is in the public's interest that the judicial process should both appear fair and be fair in fact. FSM v. Kansou, 13 FSM R. 344, 350 (Chk. 2005).

A corporation, or unincorporated association, or other organization is a "person" under the criminal code. FSM v. Kansou, 13 FSM R. 392, 394 (Chk. 2005).

Under the January 25, 2001 national criminal code, prosecutions for offenses committed before that effective date are governed by the prior law, which is continued as if the new act were not in force. FSM v. Wainit, 13 FSM R. 532, 536 (Chk. 2005).

The court must first look to FSM circumstances and sources of law to establish legal requirements in criminal cases rather than begin with a review of other courts' cases, but when an FSM court has not previously construed an FSM criminal rule that is similar or identical to a U.S. rule, the court may use U.S. sources for guidance in interpreting the FSM rule. FSM v. Wainit, 13 FSM R. 532, 536 n.2 (Chk. 2005).

When none of the objections to admission of evidence are of the type that should be addressed in a pretrial motion to suppress, which is generally reserved for evidence allegedly obtained illegally, the motion to suppress should be denied and the issue of whether any of the evidence is admissible is a question that should, and will, come up in an orderly fashion during trial and be ruled upon if offered and objected to. FSM v. Kansou, 14 FSM R. 139, 141 (Chk. 2006).

Since the article IV, section 7 protection against self-incrimination was based upon the fifth amendment to the United States Constitution, FSM courts may look to United States decisions to assist in determining the meaning of article IV, section 7 because when an FSM Declaration of Rights provision is patterned after a U.S. Constitution provision, United States authority may be consulted to understand its meaning. FSM v. Kansou, 14 FSM R. 150, 151 n.1 (Chk. 2006).

Although the court must first look to FSM sources of law to establish legal requirements in criminal cases rather than begin with a review of other courts' cases, when an FSM court has not previously construed FSM Criminal Procedure Rule 14 which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. FSM v. Kansou, 14 FSM R. 171, 175 n.2 (Chk. 2006).

As a general principle, a court must impose the least severe sanction that will accomplish the desired result of prompt and full compliance with applicable criminal procedure. FSM v. Kansou, 14 FSM R. 171, 176 (Chk. 2006).

When an FSM (or Kosrae) criminal rule which is identical or similar to a U.S. rule has not previously been construed, a court may look to U.S. sources for guidance in interpreting the rule. Neth v. Kosrae, 14 FSM R. 228, 233 n.2 (App. 2006).

On December 15, 2000, the national criminal code enacted in 1982 (as amended) applied to criminal offenses. On January 25, 2001, a new national criminal code came into effect. It provided that prosecutions for offenses committed before the effective date of the new national criminal code are governed by the prior law, which is continued as if this act were not in force. FSM v. Nifon, 14 FSM R. 309, 312 (Chk. 2006).

Although the court must first look to FSM sources of law to establish legal requirements in criminal cases rather than start with a review of other courts' cases, when an FSM appellate rule is identical or similar to a U.S. counterpart and has not been previously construed, the court may look to U.S. sources for guidance in interpreting the rule. FSM v. Petewon, 14 FSM R. 320, 325 n.1 (Chk. 2006).

Although the court must first look to FSM sources of law to establish legal requirements in criminal cases rather than begin with a review of other courts' cases, an FSM court may consult U.S. sources for guidance in interpreting a criminal procedure rule, which is identical or similar to a U.S. counterpart, when it has not previously construed that FSM rule. FSM v. Sam, 14 FSM R. 328, 332 n.1 (Chk. 2006).

Although FSM courts must first look to FSM sources of law and circumstances to establish legal requirements in criminal cases rather than begin with a review of other courts' decisions, when a court has not previously construed a criminal procedure rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. Kinere v. Kosrae, 14 FSM R. 375, 382 n.1 (App. 2006).

Since Kosrae's Rules 11(e)(1) and 52(b) are derivative of their United States counterparts, the court therefore, may examine United States case law interpreting those rules. Kinere v. Kosrae, 14 FSM R. 375, 387 (App. 2006).

When any person who possesses or uses any firearm is guilty of a felony and the use of the firearm was the discharge of a handgun on a public road in a village at night, it is violent felony. Reg v. Falan, 14 FSM R. 426, 433 (Yap 2006).

Court-promulgated rules are interpreted using the principles of statutory construction. FSM v. Petewon, 14 FSM R. 463, 466 (Chk. 2006).

Criminal Rule 46(c) does not apply to a person who has been sentenced to imprisonment and has filed a notice of appeal. Criminal Rule 38(a)(2) and Appellate Rule 9 specifically apply to such situations. Criminal Rule 46 applies generally to release on bail while Criminal Rule 38(a)(2) (and by reference Appellate Rule 9) applies specifically to release pending appeal after a sentence of imprisonment has been imposed. FSM v. Petewon, 14 FSM R. 463, 467 (Chk. 2006).

A specific provision in the rules will control rather than a general rule to the extent that they conflict.

FSM v. Petewon, 14 FSM R. 463, 467 (Chk. 2006).

If two rules conflict, the more recent expression of the sovereign's will (that is, the most recently enacted statute or rule) prevails over the earlier to the extent of the conflict. FSM v. Petewon, 14 FSM R. 463, 468 n.1 (Chk. 2006).

The court must look first to FSM sources of law and circumstances to establish legal requirements in criminal cases rather than start with a review of other courts' cases, but when the court has not previously construed an FSM criminal procedure rule which is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. FSM v. Fritz, 14 FSM R. 548, 552 n.2 (Chk. 2007).

Although the court must first look to FSM sources of law and circumstances to establish legal requirements in criminal cases rather than begin with a review of other courts' cases, when an FSM court has not previously construed an FSM rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. Zhang Xiaohui v. FSM, 15 FSM R. 162, 167 n.3 (App. 2007).

When FSM courts have not yet addressed an issue, the court may look to decisions from jurisdictions outside the FSM for authority, as well as secondary authorities, all the while keeping in mind the suitability for the FSM of any given principle. Chuuk v. William, 15 FSM R. 483, 489 n.2 (Chk. S. Ct. Tr. 2008).

Although the court must first look to FSM sources of law to establish legal requirements in criminal cases rather than begin with a review of other courts' decisions, when the language in the FSM Constitution and the U.S. Constitution is similar or identical, it is appropriate to look to United States constitutional law and its courts's interpretations, especially those interpretations existing at the time of the Micronesian Constitutional Convention, as a guide to the intended scope of the FSM Constitution's words. FSM v. Sam, 15 FSM R. 491, 493 n.1 (Chk. 2008).

Kosrae Criminal Procedure Rule 5, as amended by GCO 2004-3, requires that a defendant have an initial appearance after arrest within a reasonable time. Kosrae v. Langu, 15 FSM R. 601, 603 (Kos. S. Ct. Tr. 2008).

Although the court must first look to FSM sources of law for legal requirements in criminal cases rather than start with a review of other courts' decisions, when the court has not previously construed Criminal Procedure Rule 11's applicability to probation revocation or Rule 32.1's scope and those rules are similar or identical to a U.S. rule, it may look to U.S. sources for guidance in interpreting those rules. FSM v. William, 16 FSM R. 4, 7-8 n.1 (Chk. 2008).

When the court has not previously construed Criminal Procedure Rule 12(a), which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. FSM v. Sato, 16 FSM R. 26, 28 n.1 (Chk. 2008).

A person accused of committing a national crime can rely only on his rights under the national constitution to protect himself from the actions of the national government and its agents. When the state is prosecuting national crimes in the national court, it is acting as the national government's agent pursuant to a joint law enforcement agreement, and the court will therefore only consider whether the accused's rights were violated under the FSM Constitution's due process and equal protection clauses. FSM v. Aiken, 16 FSM R. 178, 182 (Chk. 2008).

To the extent that the issues that the applicants for a writ of habeas corpus seek to raise in a moot application are significant and relevant to other issues to be raised and considered in a criminal case, they should be raised for consideration in that case in the proper manner or in a civil suit for damages. In re Mefy, 16 FSM R. 401, 403-04 (Chk. 2009).

When the 2009 Chuuk-FSM Joint Law Enforcement Agreement contains a clause whereby the FSM national government and the State of Chuuk "agree that at the end of each fiscal year the terms of this agreement shall continue in effect until such time it is terminated or renewed by the parties" and when neither party has given the required thirty days notice to terminate the 2009 Joint Law Enforcement Agreement, the agreement remains in effect. FSM v. Sias, 16 FSM R. 661, 663 (Chk. 2009).

A joint law enforcement agreement clause that states – "Any renewal shall be subject to the availability of funds." – applies only to a renewal, not to a continuation of the current agreement. FSM v. Sias, 16 FSM R. 661, 663 (Chk. 2009).

Although the court must first look to FSM sources of law for purposes of establishing legal requirements in criminal cases, when an FSM court has not previously construed an FSM evidence rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources on the United States Federal Rules of Evidence for guidance. Cholymay v. FSM, 17 FSM R. 11, 19 (App. 2010).

Subsection 46(c) provides for release pending sentence and for release pending appeal. It states that a person who has been convicted of an offense and is either awaiting sentence or has filed an appeal will be treated in accordance with the provisions of Rule 46(a)(1) through (6), which provide for conditions of pre-trial release and address the nature of information supporting orders issued under the rule. Criminal Rule 46(c) does not apply to a person who has been sentenced to imprisonment and has filed a notice of appeal; it applies to the release of a defendant who has been found guilty – "convicted" – but not yet sentenced. Rule 46 applies generally to release on bail. Chuuk v. Billimon, 17 FSM R. 313, 316 (Chk. S. Ct. Tr. 2010).

The court should not have to instruct attorneys that the court rules mean what they say. An attorney practicing before the court is expected to know the rules and abide by them. Chuuk v. Billimon, 17 FSM R. 313, 316 (Chk. S. Ct. Tr. 2010).

Chuuk Appellate Rule 9(b) makes no provision for reconsideration of a decision on a motion to stay made by the court appealed from in the first instance and specifically provides for the appellate division's review of such a determination. Were the trial court to consider a defendant's second motion as one made pursuant to Chuuk Criminal Rule 38(a)(2), it would do so in contravention of the Appellate Rules of Procedure. Chuuk v. Billimon, 17 FSM R. 313, 317 (Chk. S. Ct. Tr. 2010).

When a defendant has been convicted of a crime and that conviction still stands; when his sentence for the conviction, though stayed pending appeal, also remains intact; and when his release pending appeal is subject to conditions, to view him as a "free man with all his rights intact," as he now weathers the consequences of being a convicted criminal, is to take flight into fantasy. The stay of his sentence does not also serve to exonerate him. Chuuk v. Billimon, 17 FSM R. 313, 317 (Chk. S. Ct. Tr. 2010).

If the court were authorized to rule on a defendant's motion to release his passport while his conviction is on appeal, it would be hard pressed to see how he is less likely to flee the jurisdiction now than when the conditions of his release were first imposed since the weight of the evidence adduced at trial has demonstrated his guilt beyond reasonable doubt and since now he faces re-instatement of a six-month term of imprisonment. Chuuk v. Billimon, 17 FSM R. 313, 318 (Chk. S. Ct. Tr. 2010).

A document or a filing is what it is regardless of what it has been labeled since form must not be elevated over substance because absent compelling reasons to the contrary, form must ever subserve substance. Berman v. Pohnpei Legislature, 17 FSM R. 339, 352 n.5 (App. 2011).

For criminal matters, the court clerk must keep a book known as the "criminal docket" in which, among other things, must be entered each order or judgment of the court. Berman v. Pohnpei Legislature, 17 FSM R. 339, 353 n.7 (App. 2011).

An attorney practicing before the court is expected to know the rules and abide by them. Chuuk v. Alluki, 17 FSM R. 385, 387 (Chk. S. Ct. Tr. 2011).

Although to establish legal requirements in criminal cases, the court must first consult FSM sources of law rather than begin with a review of other courts' cases, the court may consult U.S. sources for guidance in interpreting an FSM criminal procedure rule when it has not previously construed the rule and the rule is identical or similar to a U.S. counterpart, such as when court has not previously considered some aspects of an information's sufficiency under Criminal Rule 7(c). FSM v. Esefan, 17 FSM R. 389, 394 n.1 (Chk. 2011).

When establishing legal requirements in criminal cases, the court must look first to FSM sources of law rather than start with a review of other courts' cases, but then the court can and should consider decisions and reasoning of courts in the United States and other jurisdictions in arriving at its own decisions. FSM v. Esefan, 17 FSM R. 389, 396-97 n.3 (Chk. 2011).

An attorney practicing before the court is expected to know the rules and abide by them. Chuuk v. William, 17 FSM R. 495, 496 (Chk. S. Ct. Tr. 2011).

The Chuuk State Supreme Court may consider unpublished cases when provided with copies certified by the clerk of court and when such copies are contemporaneously provided to opposing counsel. Chuuk v. Hauk, 17 FSM R. 508, 511 (Chk. S. Ct. Tr. 2011).

Although the court must first look to FSM sources of law to establish legal requirements in criminal cases rather than begin with a review of other courts' cases, when an FSM court has not previously construed an FSM criminal procedure rule which is identical or similar to a U.S. rule, it may look to U.S. sources for guidance in interpreting the rule. FSM v. Meitou, 18 FSM R. 121, 126 n.1 (Chk. 2011).

The court must first look to FSM sources of law to establish legal requirements in criminal cases rather than begin with a review of other courts' cases, but when an FSM court has not previously construed an FSM criminal procedure rule drawn from a similar U.S. rule, the court may look to U.S. sources for guidance in construing the rule. FSM v. Semwen, 18 FSM R. 222, 225 n.1 (Chk. 2012).

Although the court must first look to FSM sources of law to establish legal requirements in criminal cases rather than start with a review of other courts' cases, when an FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning since it may be presumed that the borrowed phrases were intended to have the same meaning given to them by the U.S. Supreme Court. FSM v. Kool, 18 FSM R. 291, 294 n.2 (Chk. 2012).

Criminal law and the law of torts (more than any other form of civil law) are related branches of the law; yet in a sense they are two quite different matters. Criminal law's aim is to protect the public against harm, by punishing harmful results of conduct or at least situations (not yet resulting in actual harm) which are likely to result in harm if allowed to proceed further. Tort law's function is to compensate someone who is injured for the harm he or she has suffered. FSM v. Tipingeni, 19 FSM R. 439, 446 (Chk. 2014).

Frequently a defendant's conduct makes him both civilly and criminally liable. FSM v. Tipingeni, 19 FSM R. 439, 446 (Chk. 2014).

When the defendant has not indicated what specific pieces of evidence he seeks to exclude and the prosecution does not appear to have informed the defendant what specific evidence it will seek to introduce at trial, the court is not in a position to rule on the evidence's admissibility and will deny the defendant's current motion in limine and will rule on the admissibility of any particular evidence that the defendant objects to if and when that issue comes properly before the court. FSM v. Tipingeni, 19 FSM R. 439, 447 (Chk. 2014).

Criminal cases are in personam proceedings, and brought against a person rather than property. Only civil actions may be brought in rem, or "against a thing." FSM v. Kimura, 19 FSM R. 617, 619 n.1 (Pon. 2014).

Title 24 imposes criminal liability on any person who commits an act prohibited by that title. A person is defined as any natural person or business enterprise or similar entity. It does not include a vessel in rem. By statute, a person specifically includes a corporation, partnership, cooperative, association, or government entity. Although not an actual, living person, the law treats a company as a person for the purposes of liability. FSM v. Kimura, 19 FSM R. 617, 619 n.1 (Pon. 2014).

When a vessel has been arrested in rem in a parallel civil proceeding but is not restrained in the criminal matter, the government's request that the vessel be seized as evidence in the criminal case, and not for forfeiture, is an unnecessary restriction to establish that the vessel was as an instrumentality used in a crime. FSM v. Kimura, 19 FSM R. 617, 620 (Pon. 2014).

In deciding whether to stay a civil proceeding parallel to a criminal case, the decision maker should consider 1) the plaintiff's interest in proceeding expeditiously with the litigation or any particular aspect of it, and the potential prejudice to plaintiffs of a delay, 2) the burden which any particular aspect of the proceedings may impose on defendants; 3) the court's convenience in the management of its cases, and the efficient use of judicial resources; 4) the interests of persons not parties to the civil litigation; and 5) the public's interest in the pending civil and criminal litigation. Notably, the judicial economy factor in not duplicating the efforts in both the civil and criminal case is frequently used to justify a stay. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 627 (Pon. 2014).

When a civil matter and a criminal matter are inextricably interwoven, when the parties are the same; when both cases are based on the same alleged conduct; when both are alleged violations of the same FSM fisheries law; when the only distinction is that the civil action seeks civil penalties while the criminal action seeks criminal penalties; and when the defendants admitted to trying to use civil depositions to acquire discovery information, but that what they really seek is the fishery observer's report and not only is this report not privileged in the criminal matter but also must be disclosed under Criminal Rule 16, there is no reason why this particular discovery material should be stayed or withheld in the civil proceeding. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 628 (Pon. 2014).

When civil depositions would trigger a variety of procedural prejudices; when the defendants cannot use the more lenient rules of civil procedure to depose the witnesses before the criminal case; when the depositions raise significant conflicts with the defendants' own constitutional right against self-incrimination; and when the depositions will likely not be needed following the criminal hearing and thus potentially a duplicative waste of judicial resources, there is good cause to stay the depositions until after the criminal probable cause hearing, but a full stay is not warranted. Due to the vessel's significant value and business losses that are occurring in the civil matter, the substantial prejudice to the defendants outweighs granting a complete stay in the civil action until the criminal case's conclusion. In the interest of justice and judicial economy, the court will exercise procedural flexibility to stay only those matters, such as depositions, that would cause conflicts with the criminal proceeding. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 628 (Pon. 2014).

Public policy supports justly resolving criminal cases while allocating resources efficiently within the criminal justice system. FSM v. Halbert, 20 FSM R. 42, 47 (Pon. 2015).

While it is appropriate for a Chief Justice to engage with all the relevant stake-holders in the process of promulgating a general court order, the decision making process is quite different for a justice called upon to render an evidentiary ruling in a criminal case. Even when a party raises a question of first impression, a judge presiding over a criminal case has a responsibility to apply the law to the case's facts, and it would be an abuse of judicial discretion to delay an evidentiary ruling in order to solicit advice from non-parties suggesting what the law should be. This judicial power is curtailed by the process of appellate review.

FSM v. Halbert, 20 FSM R. 49, 53 (Pon. 2015).

In matters of first impression, the court may look to case law of other jurisdictions, particularly the United States, for comparison and guidance. FSM v. Bisalen, 20 FSM R. 471, 473 (Pon. 2016).

A person may be convicted and sentenced under the laws of the FSM if he or she commits, or attempts to commit a crime, in whole or in part within the FSM. FSM v. Siega, 21 FSM R. 291, 298 (Chk. 2017).

When a statute's language is plain and unambiguous, it declares its own meaning and there is no room for construction. However, a statute that either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law. A statute that is so vague and ill-defined that the acts prohibited cannot be understood by people of ordinary intelligence, cannot serve as a basis for criminal prosecution. Chuuk v. Silluk, 21 FSM R. 649, 652 (Chk. S. Ct. Tr. 2018).

Criminal Rule 2 which requires that the Rules be construed to provide fairness in administration and the elimination of unjustified expense and delay in criminal proceedings. Kosrae v. Tilfas, 22 FSM R. 72, 75 (Kos. S. Ct. Tr. 2018).

Public policy supports justly resolving criminal cases while allocating resources efficiently within the criminal justice system. Kosrae v. Tilfas, 22 FSM R. 72, 76 (Kos. S. Ct. Tr. 2018).

Within common law jurisdictions, courts have always had an inherit power to administer their proceedings as well as the order of proof in the interest of efficiency and justice. Derived from the court's common law power to administer its proceedings, is the implied power to decide whether to allow a party to re-open its case in chief after closing, even though, as a general rule, parties are expected to produce all evidence available to them at the time scheduled for hearing. Chuuk v. Nowell, 22 FSM R. 130a, 130c (Chk. S. Ct. Tr. 2018).

Chuuk courts have referred to certain practices and decisions in other common law jurisdictions, mostly notably the U.S., as persuasive authority when a doctrine was applicable and supported by good policy to incorporate into FSM jurisprudence based on the realities present within the jurisdiction, and the vast number of decisions in common law jurisdictions provide a mechanism, under common law, for the court to use its discretion so as to consider allowing a state to reopen its case in chief after having closed that case. Chuuk v. Nowell, 22 FSM R. 130a, 130c-0d (Chk. S. Ct. Tr. 2018).

As a general rule, the state is expected to produce all evidence available to it at the time of trial. This rule exists for the purposes of judicial economy, an efficient disposition of cases, and to not delay the defendant's rights to a speedy trial. Some instances merit exception to this general rule. Chuuk v. Nowell, 22 FSM R. 130a, 130d (Chk. S. Ct. Tr. 2018).

When a Chuuk Criminal Procedure Rule conflicts with a Chuuk statute, the statute's language prevails because the Chuuk Constitution vests the Chief Justice with the authority to promulgate Criminal Procedure Rules, which the legislature may amend by statute, but the Chief Justice has no authority to amend a statute enacted by the legislature. Therefore, if the statute applies and the statute and the rule conflict, the statute must prevail. Chuuk v. Phillip, 22 FSM R. 425, 428 (Chk. S. Ct. Tr. 2019).

When a Chuuk Criminal Procedure Rule conflicts with a Chuuk statute, the statute's language prevails because the Chuuk Constitution vests the Chief Justice with the authority to promulgate Procedure Rules, which the legislature may amend by statute, but the Chief Justice has no authority to amend a statute enacted by the legislature. Therefore, if the statute applies and the statute and the rule conflict, the statute must prevail. Chuuk v. Fred, 22 FSM R. 429, 432 (Chk. S. Ct. Tr. 2019).

The court must first look to FSM sources of law to establish legal requirements in criminal cases, but, when the court has not construed aspects of an FSM criminal procedure rule that is similar to a U.S. rule, it may look to U.S. sources for guidance. FSM v. Teteeth, 22 FSM R. 438, 445 n.4 (Yap 2020).

Under the law of the case doctrine, unless corrected by an appellate tribunal, a legal decision made at one stage of a civil or criminal case constitutes the law of the case throughout the pendency of the litigation. Strictly speaking, the doctrine is not implicated for interlocutory orders because they remain open to trial court reconsideration, and do not constitute the law of the case. FSM v. Kuo Rong 113, 22 FSM R. 515, 521-22 (App. 2020).

Lawmakers have wide latitude to declare an offense and to exclude elements of knowledge and diligence from its definition. FSM v. Kuo Rong 113, 22 FSM R. 515, 525 (App. 2020).

That one section follows another in the FSM Criminal Code is not particularly relevant because the classification of the titles, chapters, subchapters, and sections in the code, and the headings thereto, are made for the purpose of convenient reference and orderly arrangement, and no implication, inference, or presumption of a legislative construction can be drawn therefrom. FSM v. Buchun, 22 FSM R. 529, 535-36 & n.5 (Yap 2020).

– Accessory

The offense of accessory requires proof beyond a reasonable doubt of a person who, knowing that an offense has been committed, receives, relieves, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment. Kosrae v. Nena, 12 FSM R. 525, 528 (Kos. S. Ct. Tr. 2004).

When the defendants, through their actions, did comfort and assist a relative in order to prevent his apprehension or arrest by a police lieutenant and they knew that that their relative had committed a criminal offense and that the police lieutenant was attempting to arrest him for that offense and the defendants admitted that they were trying to get him away so that he could be delivered to other relatives, the state has proved beyond a reasonable doubt all elements of the criminal offense of accessory. Kosrae v. Nena, 12 FSM R. 525, 528 (Kos. S. Ct. Tr. 2004).

Under Kosrae State Code section 13.201, the three elements needed for a conviction of accessory under Section 13.201 are: 1) that the accused knew that an offense had been committed; 2) that the accused knew of another's commission of an offense; and 3) that the accused's assistance must have been given to another personally for the purpose of hindering or preventing his apprehension. Nena v. Kosrae, 14 FSM R. 73, 81 (App. 2006).

Since a statutory provision's plain meaning must be given effect whenever possible and courts should not broaden statutes beyond the meaning of the law as written, when there is no requirement in Section 13.201's express language that the accused be absent at the time the offense was committed, absence is thus not an essential element of the offense of accessory. Nena v. Kosrae, 14 FSM R. 73, 82 (App. 2006).

Common sense dictates that a charge for "liability for the crimes of another" must state which "crimes of the other" the State intends to charge the defendant with. Stated differently, "liability for the crimes of another" is a charge that is always dependent on an independent charge towards another person – it thus may not stand as an independent charge without reference to another's criminal misconduct, coupled with the law allegedly violated. Chuuk v. Kincho, 22 FSM R. 411, 413 (Chk. S. Ct. Tr. 2019).

– Aggravated Assault

The requisite intent for aggravated assault cannot be found simply by determining that the defendant purposely engaged in conduct which caused serious bodily injury. The crime of aggravated assault

assumes at the very least disregard by the defendant for the well-being of the victim, and more typically, requires desire on the part of the defendant to injure the victim seriously. Laion v. FSM, 1 FSM R. 503, 519-20 (App. 1984).

Causal connection between an act done purposely and serious bodily injury to another is not sufficient to establish the crime of aggravated assault, even when the act is coupled with an intention to cause bodily injury. Serious bodily injury, not just an injury, must have been intended in order to commit aggravated assault. Laion v. FSM, 1 FSM R. 503, 520 (App. 1984).

In context of a claim of aggravated assault which calls for "causing serious bodily injury intentionally," the words, "engaged in the conduct," in 11 F.S.M.C. 104(4) mean engaging in the conduct of causing serious bodily injury. Section 104(4) means engaging in the conduct of causing serious bodily injury or to cause a result, which is itself serious bodily injury. Laion v. FSM, 1 FSM R. 503, 520 (App. 1984).

A person is guilty of acting recklessly with extreme indifference to the value of human life under the aggravated assault statute, 11 F.S.M.C. 916, if he voluntarily creates conditions or acts in such manner that a reasonable person would deem likely to result in serious injury to another. Machuo v. FSM, 6 FSM R. 40, 43 (App. 1993).

A defendant who holds a knife in his hands, engages in a fight while extremely drunk and knowing that at least one other person is in the immediate vicinity, and who strikes another with the knife causing serious physical harm is guilty of aggravated assault. Machuo v. FSM, 6 FSM R. 40, 44 (App. 1993).

When the Yap Legislature has not demonstrated a positive intent to authorize conviction for two crimes, one of which requires proof of an additional fact, on the same facts, the trial court should render a decision and enter a conviction only on the more major of the crimes proven beyond a reasonable doubt. Therefore a conviction for aggravated assault should be vacated when for the same act there is a conviction for assault with a dangerous weapon, which requires proof of an additional fact. Yinmed v. Yap, 8 FSM R. 95, 101 (Yap S. Ct. App. 1997).

Kosrae statute provides that aggravated assault is assaulting, striking, beating, or wounding another with a dangerous weapon, with an intent to kill, rape, rob, inflict grievous bodily harm or to commit any other felony. Palik v. Kosrae, 8 FSM R. 509, 513 (App. 1998).

A dangerous weapon is any object that, as used or attempted to be used, can endanger life or inflict great bodily harm. Shoes worn on the feet are dangerous weapons when used to kick a victim. Stationary objects can also be dangerous or deadly weapons. Palik v. Kosrae, 8 FSM R. 509, 513 (App. 1998).

The offense of aggravated assault is included in the resulting homicide. Accordingly, an aggravated assault conviction cannot be used to support a felony-murder conviction. Palik v. Kosrae, 8 FSM R. 509, 515 (App. 1998).

Aggravated assault in Yap is when a person attempts to cause serious bodily injury to another or causes serious bodily injury intentionally, knowingly, or recklessly under circumstances showing extreme indifference to the value of human life. Yow v. Yap, 11 FSM R. 63, 65 (Yap S. Ct. App. 2002).

Yap's aggravated assault statute requires a showing of serious bodily injury, and serious bodily injury, not just any injury, must have been intended. Serious bodily injury is bodily injury which creates a substantial risk of death or which causes serious, or permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ. The injury must be coupled with the specific intent to inflict that injury. Yow v. Yap, 11 FSM R. 63, 66 (Yap S. Ct. App. 2002).

Anyone who knowingly causes serious bodily injury has committed aggravated assault, but when a

person has acted intentionally to beat someone any difference between these two mental states does not add materially to the discussion. Yow v. Yap, 11 FSM R. 63, 66 (Yap S. Ct. App. 2002).

A person commits aggravated assault under the extreme indifference recklessness state of mind when he voluntarily creates conditions or engages in behavior that a reasonable person would consider likely to result in serious injury to another. "Likely" means of such nature or so circumstanced as to render something probable. Yow v. Yap, 11 FSM R. 63, 68 (Yap S. Ct. App. 2002).

The offense of aggravated assault requires proof beyond a reasonable doubt of assaulting, striking, beating, or wounding another with a dangerous weapon, with an intent to kill, rape, rob, inflict grievous bodily harm, or to commit any other felony. Kosrae v. Sigrah, 12 FSM R. 562, 566 (Kos. S. Ct. Tr. 2004).

When the defendant pushed the victim's face into the pillow but there was no evidence presented that the pillow was used to assault, strike, beat or wound the victim, the pillow was not used as a dangerous weapon within the elements of the offense of aggravated assault and the state thus has not proven beyond a reasonable doubt the criminal offense of aggravated assault. Kosrae v. Sigrah, 12 FSM R. 562, 566 (Kos. S. Ct. Tr. 2004).

Under Kosrae state law, aggravated assault is classified as a category one felony, which carries a maximum sentence of imprisonment of ten years. Kosrae v. Palik, 13 FSM R. 187, 189 (Kos. S. Ct. Tr. 2005).

The court will decline to draw a formal, arbitrary line about whether parts of the body can be dangerous weapons, or, about which parts of the body can be dangerous weapons. The analysis must be a functional one, looking at the capacity and manner of use and not the nature of whatever is used. Any object, article, substance, instrument, thing, item, or entity can become a dangerous weapon when it is used in a manner that may be anticipated to produce death or great bodily harm. Accordingly, teeth, depending on the manner in which they are used, may be a "dangerous weapon" under Kosrae State Code §13.303. This is primarily a question of fact and will depend on the presentation of evidence at trial. Kosrae v. Likiaksa, 14 FSM R. 618, 620 (Kos. S. Ct. Tr. 2007).

A dangerous weapon is any object that, as used or attempted to be used, can endanger life or inflict great bodily harm. Chuuk v. William, 15 FSM R. 483, 488 n.1 (Chk. S. Ct. Tr. 2008).

– Aiding and Abetting

11 F.S.M.C. 301 is one of a set of sections in Chapter 3 of the National Criminal Code specifying general principles of responsibility which apply implicitly to all substantive offenses but do not themselves enunciate substantive offenses. These are not subject to "violation" and are therefore not reached by Rule 7 of the FSM Rules of Criminal Procedure. These general principles are deemed applicable to all crimes, and mere failure to restate them in an Information is not a failure to inform or a violation of due process. Engichy v. FSM, 1 FSM R. 532, 542 (App. 1984).

In criminal proceedings where several persons are charged with the murder of the same victim, the plain implication is that while one person's act may have been the direct cause of the death of the victim, the government surely will be contending that all others have participated or aided or assisted the killing in some way. It is inherent in a prosecution against multiple defendants for a single murder that defendants will be confronted with charges that they either actually killed the victim or assisted one or more persons who did so. Engichy v. FSM, 1 FSM R. 532, 544 (App. 1984).

Under 11 F.S.M.C. 301(2) defendants are held responsible for the natural consequences of joining and encouraging others in unlawful use of dangerous weapons and brutal beatings of others. Engichy v. FSM, 1 FSM R. 532, 548 (App. 1984).

In a criminal prosecution under 11 F.S.M.C. 301, where defendant's overt actions indicated their

intention to aid those involved in attacks, and when it was reasonably foreseeable by them that somebody might be fatally injured as a probable consequences of the beatings that they aided and abetted, they may be held legally responsible for the death resulting from the assaults even if the defendants did not actually intend that the victims be killed or seriously injured. Engichy v. FSM, 1 FSM R. 532, 548 (App. 1984).

One who suggests to his drinking companions that they obtain additional liquor by taking a bottle from construction laborers in the area, and who then leads his companions in an effort to attack one of the workers, solicits more possibilities than just the taking of a bottle, and is guilty of aiding and abetting the robbery of a watch and money from another construction worker carried out by his companions while the original instigator is still pursuing the first laborer. FSM v. Hadley, 3 FSM R. 281, 284 (Pon. 1987).

It is reasonably foreseeable that a robbery of watch and money from a Korean construction worker may be a probable consequence of a common plan to take a bottle from "some Koreans," and the person who suggests the plan and initiates efforts to attack one of the construction workers may be held guilty of aiding and abetting the robbery of watch and money carried out by his companions against another Korean worker, immediately after the defendant initiated the first attack. FSM v. Hadley, 3 FSM R. 281, 284 (Pon. 1987).

Under 11 F.S.M.C. 301, defendants who are charged with being aided and abetted by others are not entitled to an allegation specifying the acts constituting the aiding and abetting. Hartman v. FSM, 5 FSM R. 224, 232 (App. 1991).

When there are verdicts that are inconsistent to such an extent that an essential element cannot be proven beyond a reasonable doubt a resulting conviction is reversible error. Thus when someone is convicted of a charge for which an essential element is being aided and abetted by another and that other is acquitted of being an aider and abettor the conviction is reversible error for failure of proof beyond a reasonable doubt of the essential element of being aided and abetted. Hartman v. FSM, 6 FSM R. 293, 300-01 (App. 1993).

A person can be criminally liable for the conduct of another if having a legal duty to prevent the commission of an offense, he fails to make proper effort to do so. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 212 (Pon. 1995).

The acts of agents, illegal or otherwise, are the acts of the principal itself provided that those acts are in the ordinary course of the agent's business relationship with its principal because under accepted principles of agency law a principal is responsible for the criminal acts of its agents provided that those acts where committed in furtherance of the agents' business relationship with the principal. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 212-13 (Pon. 1995).

When a law punishes criminal conduct only by a consignee and the government prosecutes agents of the consignee, it must proceed under the principles of vicarious criminal liability governed by 11 F.S.M.C. 301. FSM v. Webster George & Co., 7 FSM R. 437, 440 (Kos. 1996).

A person who allegedly aided and abetted another to commit an offense must be specifically charged with aiding and abetting in the information. FSM v. Webster George & Co., 7 FSM R. 437, 440 (Kos. 1996).

A sole proprietorship cannot be charged as a principal if there are no acts or omissions committed by its owner, but it can be found culpable as an accessory if it is specifically charged with vicarious liability for the acts of another. FSM v. Webster George & Co., 7 FSM R. 437, 441 (Kos. 1996).

A person is criminally liable under 11 F.S.M.C. 301(1)(d) if he, whether or not being present during the commission of the crime, intentionally aids, abets, advises, solicits, counsels, encourages, commands, threatens, menaces or coerces another to commit a crime, or conspires with or otherwise procures another to commit a crime. FSM v. Sam, 14 FSM R. 328, 332 (Chk. 2006).

The terms "aid" and "abet" are frequently used interchangeably, although they are not synonymous. To "aid" is to assist or help another. To "abet" means, in its legal sense, to encourage, advise, or instigate the commission of a crime. FSM v. Sam, 14 FSM R. 328, 332 (Chk. 2006).

Mere presence at the scene of a crime is not enough to hold someone criminally liable under an aiding or abetting theory. FSM v. Sam, 14 FSM R. 328, 332 (Chk. 2006).

In order to convict any defendant of either aiding or abetting another, the government will have to prove beyond a reasonable doubt that that defendant did something to, or was prepared to do something to, assist or help the other or to encourage, advise, or instigate the other in the commission of an offense charged. The government will have to do this for each count for each defendant or that defendant will be acquitted on that count. FSM v. Sam, 14 FSM R. 328, 332 (Chk. 2006).

Although the prior criminal code provided that no person could be convicted of aiding and abetting unless the information specifically alleged that the defendant aided and abetted and the information provided specific acts constituting the means of aiding and abetting so as to afford the defendant adequate notice to prepare his defense, that provision was eliminated when the current criminal code was enacted. It is thus no longer necessary for the information to recite each specific act each alleged aider and abetter allegedly committed. FSM v. Sam, 14 FSM R. 328, 333 (Chk. 2006).

Since there is no language in the aid or abet statute, 11 F.S.M.C. 301(1)(d), or in the firearms possession or use statutes, 11 F.S.M.C. 1023(5) and (7), that limits the application of one statute to the other, a defendant may be charged with aiding or abetting firearms possession or use. FSM v. Sam, 14 FSM R. 328, 333 (Chk. 2006).

A bargained-for dismissal as part of a plea agreement is not tantamount to an acquittal and the dismissal of charges pursuant to a plea agreement is clearly not a finding of the same order as an acquittal and should not have the same implications. Therefore, an accused's bargained-for dismissal of an illegal possession of ammunition charge against him does not warrant the dismissal of the aiding and abetting illegal possession of ammunition charges against other defendants. FSM v. Sam, 15 FSM R. 457, 462 (Chk. 2007).

In order to convict defendants of the aiding and abetting illegal possession of ammunition, the prosecution must first prove that another illegally possessed ammunition. But the dismissal of the illegal possession of ammunition charge against that other as the result of his bargained-for plea agreement in the other's case does not preclude the prosecution from proving, in this case, that the other illegally possessed ammunition, and then proving that the defendants aided and abetted him. FSM v. Sam, 15 FSM R. 457, 462 (Chk. 2007).

The government is not required to specifically allege what acts constituted each of the defendants' alleged aiding and abetting, but the government is required, as a practical matter, to reasonably inform the defendants of what acts or omissions may result in their criminal liability. Chuuk v. Rotenis, 16 FSM R. 398, 400 (Chk. S. Ct. Tr. 2009).

An information charging certain defendants with liability for another's crimes of assault with a dangerous weapon, aggravated assault, manslaughter, and murder will be dismissed when the only conduct clearly asserted against the defendants is that they participated in the transporting and disposal of the body after the killing To support the charges of liability for another's crimes, intent to participate in or ability to prevent the commission of those offenses must be shown, and, at a minimum, there must be some reasonable inference that the defendants had knowledge of or were present when the victim was struck. Liability for crimes of another cannot be based merely on conduct occurring after the crimes were already committed. But participation in the transporting and disposal of the body after the killing, if proven, results in criminal liability under other provisions of the Criminal Code. Chuuk v. Rotenis, 16 FSM R. 398, 400 (Chk. S. Ct. Tr. 2009).

Although, at one time, the FSM criminal code provided that no one could be convicted of aiding and abetting unless the information specifically alleged that the accused had aided and abetted and the information provided specific acts constituting the means of aiding and abetting, that provision was eliminated when the 2001 criminal code was enacted, making it no longer necessary for the information to recite the specific acts each alleged aider and abetter allegedly committed. But the FSM Supreme Court appellate division has held that it is a fatal variance between pleading and proof when an accused charged with aiding and abetting was not given proper notice of the conduct or acts underlying the violation since that could not give the accused sufficient notice for him to prepare his defense. FSM v. Aliven, 16 FSM R. 520, 531 (Chk. 2009).

When, in the information and supporting affidavit or in the material before the court during the pretrial motion hearing, no notice was given the defendants of any act or conduct by either of them that was alleged to constitute aiding and abetting, the aiding and abetting counts against them will be dismissed. FSM v. Aliven, 16 FSM R. 520, 532 (Chk. 2009).

When notice was given a defendant, and even relied upon by him in his motion, of his alleged conduct to aid and abet, the prosecution will be given time to either amend the information to include that conduct or to dismiss the aiding and abetting counts against him. FSM v. Aliven, 16 FSM R. 520, 532 (Chk. 2009).

As a general rule, a person has no legal duty to protect another from the criminal acts of third parties or to control the conduct of another. For criminal liability to be based upon a failure to act it must first be found that there is a duty to act – a legal duty and not simply a moral duty. Some criminal statutes themselves impose the legal duty to act. With other crimes the duty must be found outside the definition of the crime itself – perhaps in another statute, or in the common law, or in a contract. FSM v. Esefan, 17 FSM R. 389, 396-97 (Chk. 2011).

Under 11 F.S.M.C. 301(d), a person can be held liable as a principal if he "intentionally aids, abets, advises, solicits, counsels, encourages, commands, threatens, menaces or coerces another to commit a crime, or conspires with or otherwise procures another to commit a crime." FSM v. Esefan, 17 FSM R. 389, 397 (Chk. 2011).

Although the terms are frequently used interchangeably, to "aid" is to assist or help another, and to "abet" means, in its legal sense, to encourage, advise, or instigate the commission of a crime. FSM v. Esefan, 17 FSM R. 389, 397 (Chk. 2011).

The prosecution may pursue aiding and abetting charges against an accused when he is charged with being present and in the possession of a shotgun while another possessed a handgun and the accused encouraged the other to shoot certain persons. FSM v. Esefan, 17 FSM R. 389, 398 (Chk. 2011).

Like aiding and abetting, soliciting and conspiring are all bases for criminal liability for the acts of another found in 11 F.S.M.C. 301(1)(d). FSM v. Esefan, 17 FSM R. 389, 398 n.5 (Chk. 2011).

Even though the crimes being aided and abetted took place on Guam, the FSM Supreme Court, under 11 F.S.M.C. 103(2)(a), has jurisdiction to convict and punish a defendant on the aiding and abetting charges when the aiding and abetting took place in Chuuk. FSM v. Tipingeni, 19 FSM R. 439, 445 (Chk. 2014).

In order to prove the aiding and abetting charges, the FSM must not only prove beyond a reasonable doubt that the defendant did something to, or was prepared to do something to, assist or help the other or to encourage, advise, or instigate the other in the commission of a crime, but it must also first prove that another committed the underlying crime. FSM v. Tipingeni, 19 FSM R. 439, 447 (Chk. 2014).

In order to prove the aiding and abetting charges, the prosecution must prove, and therefore must introduce evidence of other crimes not charged in the information (the crimes the defendant is accused of

aiding and abetting the commission of), and thus must also introduce evidence about the other person(s) whose commission of those crimes he aided and abetted even when those underlying crimes did not occur in the FSM but happened in a foreign country. FSM v. Tipingeni, 19 FSM R. 439, 447 (Chk. 2014).

– Arrest and Custody

No right is held more sacred, or is more carefully guarded by the common law than the right of every individual to the possession and control of his own person, free from all restraints or interference of others, unless by clear and unquestionable authority of law. FSM v. Tipen, 1 FSM R. 79, 86 (Pon. 1983).

The law generally requires that a prisoner test the legality of his detention in a court of law rather than attempt to enforce his own claim to freedom. FSM v. Doone, 1 FSM R. 365, 368 (Pon. 1983).

Where a municipal police officer intending to make an arrest for unlawful drinking, informs the accused that he is going to "take him to a place" because he was drinking and where there are indications that the accused understands that the officer is seeking to effect an arrest, there is sufficient compliance with the requirement of 12 F.S.M.C. 214 that arresting officers "make every reasonable effort to advise the person arrested as to the cause and authority of the arrest." Loch v. FSM, 1 FSM R. 566, 569 (App. 1984).

A police officer is entitled under 12 F.S.M.C. 215 to respond to physical resistance or attacks against him as he attempts to make an arrest and he may use whatever force is reasonably necessary to defend himself or others from harm. However, the police officer may not use more force than he reasonably believes to be necessary, either to effect arrest or to defend himself. Loch v. FSM, 1 FSM R. 566, 570 (App. 1984).

When no Micronesian legislative body has addressed the rules concerning arrests and when no party suggests that the matter is influenced by customary law, the principles stated in the *Restatements of Torts* about the use of deadly force may be considered in determining, for purposes of a criminal case, the scope of a police officer's right to use force while making an arrest. Loch v. FSM, 1 FSM R. 566, 570 n.2 (App. 1984).

Society's interest in the life of its members, even though they be felons or reasonably suspected of felony, is so great that the use of force involving serious danger to them is privileged only as a last resort when it reasonably appears that there is no other alternative except abandoning his attempts to make the arrest. In determining whether the use of such force is privileged, the actor has not the same latitude of discretion which is permitted to him in determining whether it is necessary to use force which is intended or likely to cause less serious consequences. Loch v. FSM, 1 FSM R. 566, 571 (App. 1984).

Deadly force by a police officer attempting to effect an arrest, may be justified by evidence indicating the defendant reasonably believes that there is no alternative method of effecting the arrest and that deadly force is necessary as a last resort. Loch v. FSM, 1 FSM R. 566, 571-72 (App. 1984).

Reasonableness of a police officer's conduct in using deadly force while making an arrest must be assessed on the basis of the information the police officer had when he acted. Loch v. FSM, 1 FSM R. 566, 571-72 (App. 1984).

It is quite reasonable for a police officer, who uses a deadly weapon in deadly fashion against a person armed with a knife, to obtain a weapon that will afford him a means of protecting himself against the knife and intimidating the person to be arrested. Loch v. FSM, 1 FSM R. 566, 573 (App. 1984).

When a police officer arms himself with a weapon to arrest a man armed with a knife, and then uses the weapon in a deadly fashion without first giving the person an opportunity to submit and without determining whether the person intends to use the knife to prevent arrest, this use of force cannot be viewed as a last resort necessary to the arrest not as reasonably necessary to protect the police officer from

serious bodily injury. Loch v. FSM, 1 FSM R. 566, 573 (App. 1984).

While a police officer may use force to effect an arrest and to protect himself and other citizens, he may not use force simply to punish people he dislikes or those he decides have done wrong. The principal functions of the police officer are to preserve peace and order and to apprehend lawbreakers so that they may be tried by the courts and handled justly. Loch v. FSM, 1 FSM R. 566, 574-75 (App. 1984).

Punishment is no part of the police officer's assignment. A policeman who chooses to mete out punishment violates his office and does so at his own peril. Loch v. FSM, 1 FSM R. 566, 575 (App. 1984).

It is not unreasonable for a trial court to conclude that a police officer, claiming to effect an arrest, who hits a person four times with a mangrove coconut husker and kills him was trying to kill him. Loch v. FSM, 1 FSM R. 566, 576 (App. 1984).

A constitutional search may be conducted without a warrant if the search is incidental to a lawful arrest. Ludwig v. FSM, 2 FSM R. 27, 32 (App. 1985).

Suspicion of guilt can justify the extreme action of an arrest only when based upon reasonable grounds known to the arresting officer at the time of arrest so strong that a cautious man would "believe," that is, consider it more likely than not that the accused is guilty of the offense. Ludwig v. FSM, 2 FSM R. 27, 33 (App. 1985).

A police officer making an arrest has a limited right to conduct a search incident to that arrest. This right to search is for the limited purposes of preventing the arrested person from reaching concealed weapons to injure the officer or others, and from destroying evidence. Although the right to search is of limited scope, it plainly authorizes a reasonable search of the person being arrested. Ludwig v. FSM, 2 FSM R. 27, 34 (App. 1985).

Police may question persons who, while they are in police custody, fall under suspicion for another crime, without regard to the fact that other persons in a similar category would be released without questioning. FSM v. Jonathan, 2 FSM R. 189, 199 (Kos. 1986).

A police vehicle being used to transport an arrested person from the police station to the jail is a custodial facility within the meaning of 11 F.S.M.C. 505(3), and a person who, having been informed that he is under arrest, flees from such a vehicle and the custody of a police officer authorized to detain or arrest persons on behalf of the Federated States of Micronesia, is guilty of an escape under 11 F.S.M.C. 501(1). Doone v. FSM, 2 FSM R. 103, 106 (App. 1985).

A municipality which employs untrained persons as police officers, then fails to train them and authorizes their use of excessive force and summary punishment, will be held responsible for their unlawful acts, including abuse of a prisoner arrested without being advised of the charges or given an opportunity for bail, whose handcuffs were repeatedly tightened during his 14 hour detention in such a way that he was injured and unable to work for one month. Moses v. Municipality of Polle, 2 FSM R. 270, 271 (Truk 1986).

A municipality which employs untrained persons as police officers, fails to train them and authorizes their use of excessive force and summary punishment, will be held responsible for their actions in stripping a prisoner, handcuffing his leg to a table and his arms behind his back, then kicking and abusing him. Alaphen v. Municipality of Moen, 2 FSM R. 279, 280 (Truk 1986).

Under FSM law, courts will rarely be required to look to the Constitution to determine the scope of any right a person in custody may have to be advised of rights before questioning because national statute establishes the rights of persons accused of national crimes. 12 F.S.M.C. §§ 218, 220. FSM v. Edward, 3 FSM R. 224, 230 (Pon. 1987).

One should be considered "arrested," for the purposes of the right to be advised of his rights to remain silent when one's freedom of movement is substantially restricted or controlled by a police officer exercising official authority based upon the officer's suspicion that the detained persons may be, or may have been, involved in commission of a crime. FSM v. Edward, 3 FSM R. 224, 232 (Pon. 1987).

In making an otherwise lawful arrest, a police officer may use whatever force is reasonably necessary to effect the arrest, and no more; he must avoid using unnecessary violence. Meitou v. Uwera, 5 FSM R. 139, 143 (Chk. S. Ct. Tr. 1991).

A person's constitutional right to due process of law, and his right to be free from cruel and unusual punishment is violated when an officer instead of protecting the person from attack, threw him to the ground, and beat the person in the jail. Meitou v. Uwera, 5 FSM R. 139, 144 (Chk. S. Ct. Tr. 1991).

The use of force by police officers is not privileged or justified when the arrestee was so drunk and unstable to resist or defend himself and when the police officer used force because he was enraged at being insulted by the arrestee. Meitou v. Uwera, 5 FSM R. 139, 144 (Chk. S. Ct. Tr. 1991).

Constitutional provisions applicable to a prisoner may vary depending on his status. A pre-trial detainee has a stronger right to liberty, which right is protected by the Due Process Clause, FSM Const. art. IV, § 3. A convicted prisoner's claims upon liberty have been diminished through due process so that person must rely primarily on article IV, section 8 which protects him from cruel and unusual punishment. Plais v. Panuelo, 5 FSM R. 179, 190 (Pon. 1991).

In a case where a convicted prisoner, who is also a pre-trial detainee, asserts civil rights claims arising out of ill-treatment after arrest, denial of access to family is a due process claim, and physical abuse involves due process as well as cruel and unusual punishment claims. Plais v. Panuelo, 5 FSM R. 179, 190 (Pon. 1991).

A person arrested by the police must be brought before a justice of the state court without unnecessary delay, not to exceed twenty-four hours. Chuuk v. Arnish, 6 FSM R. 611, 613 (Chk. S. Ct. Tr. 1994).

An arrest is illegal if, at or before the time of arrest, the police make no reasonable effort to advise the person arrested as to the cause and authority of the arrest. FSM v. George, 6 FSM R. 626, 628 (Kos. 1994).

Police officers' authority to issue citations in lieu of complaints or information is provided by law. In any case in which a policeman may lawfully arrest a person without a warrant, he may instead, subject to such limitations as his superiors may impose, issue and serve a citation upon the person, if he deems that the public interest does not require an arrest. Chuuk v. Dereas, 8 FSM R. 599, 602 (Chk. S. Ct. Tr. 1998).

If a defendant fails to appear in response to a summons, a warrant shall issue. Chuuk v. Defang, 9 FSM R. 43, 45 (Chk. S. Ct. Tr. 1999).

A warrant must be signed by a judicial officer, contain the defendant's name, describe the offense, and command that the defendant be arrested and brought before a judicial officer. Chuuk v. Defang, 9 FSM R. 43, 45 (Chk. S. Ct. Tr. 1999).

Police must bring an arrested person before a state court justice without unnecessary delay, not to exceed 24 hours. Estate of Mori v. Chuuk, 10 FSM R. 6, 10 n.1 (Chk. 2001).

A person is considered arrested for the purpose of the right to be advised of his constitutional rights, when his freedom is substantially restricted or controlled by a police officer who is exercising official authority based upon the officer's suspicion that the person may have been involved in the commission of a crime. Kosrae v. Erwin, 11 FSM R. 192, 193 (Kos. S. Ct. Tr. 2002).

Where a person's freedom was substantially restricted by a police officer when he was placed into a police car and where that person was under the police officer's suspicion that he was involved in the crimes committed earlier that evening, he was considered arrested for the purpose of the right to be advised of his constitutional rights to remain silent and to have legal counsel. And when the police officers failed to advise him of his constitutional rights at the time he was placed in the police car and considered arrested, all his statements made to the police after his arrest and placement into the police car and before he was advised of his constitutional rights, are inadmissible against him. Kosrae v. Erwin, 11 FSM R. 192, 193-94 (Kos. S. Ct. Tr. 2002).

Kosrae state legislators are, in all cases except felony or breach of peace, privileged from arrest during their attendance at sessions or committee meetings of the Legislature, and in going to and returning from the same. Kosrae v. Sigrah, 11 FSM R. 249, 253 (Kos. S. Ct. Tr. 2002).

When an arrest occurs will depend on the facts of each case. A person should be considered "arrested" when one's freedom of movement is substantially restricted or controlled by a police officer exercising official authority, based upon the officer's suspicion that the detained persons may be or may have been involved in commission of a crime. Kosrae v. Sigrah, 11 FSM R. 249, 253 (Kos. S. Ct. Tr. 2002).

The validity of an arrest is judged by an objective standard, instead of accepting the police officer's personal motives. Factors which may be considered include a police officer's display of a weapon, threatening presence of several officers, or a police officer's use of language indicating compliance is required. Kosrae v. Sigrah, 11 FSM R. 249, 253 (Kos. S. Ct. Tr. 2002).

Arrest means placing any person under any form of detention by legal authority. Kosrae v. Sigrah, 11 FSM R. 249, 253 (Kos. S. Ct. Tr. 2002).

Where a person's freedom of movement was not substantially restricted or controlled when he was stopped at a roadblock and was issued a citation and where there was no display of weapon by the police officer and there was no threatening presence or language by the police officers who conducted the roadblock, based upon an objective standard, the person was not arrested when he was stopped at a roadblock and issued a citation. Evidence obtained under these circumstances at a roadblock was not obtained in violation of a Senator's immunity from arrest. Kosrae v. Sigrah, 11 FSM R. 249, 253 (Kos. S. Ct. Tr. 2002).

A person who is stopped for a routine traffic offense is not in custody for purposes of Miranda warnings. Kosrae v. Sigrah, 11 FSM R. 249, 255 (Kos. S. Ct. Tr. 2002).

The Kosrae Constitution, Article II, Section 1(e) provides that the defendant in a criminal case has a right to be informed of the nature of the accusation against him, and Kosrae State Code, Section 17.1102 further requires that at or before making an arrest, a person makes a reasonable attempt to inform the arrested person of the cause and authority of the arrest. Kosrae v. Anton, 12 FSM R. 217, 219 (Kos. S. Ct. Tr. 2003).

An arrest is illegal if, at or before the time of arrest, the police make no reasonable effort to advise the person arrested as to the cause and authority of the arrest. Kosrae v. Anton, 12 FSM R. 217, 219 (Kos. S. Ct. Tr. 2003).

When an arrest was executed in violation of law, the remedy is to suppress the defendant's statement to the police. Kosrae v. Anton, 12 FSM R. 217, 219 (Kos. S. Ct. Tr. 2003).

When a defendant understood through the statements made by the officer that he was being arrested for the incident which took place on the previous day, the defendant was given adequate information regarding the cause and authority for his arrest, and therefore there was no statutory or constitutional

violation of the defendant's right to be informed of the reason for his arrest. Kosrae v. Anton, 12 FSM R. 217, 219 (Kos. S. Ct. Tr. 2003).

Even assuming that there was an illegal arrest, a defendant is still not entitled to dismissal of the information. The remedy for an illegal arrest, for failure to provide cause and authority of the arrest, is suppression of any statements made by the defendant. When he did not make any statements to the police, there are no statements to suppress. Kosrae v. Anton, 12 FSM R. 217, 219-20 (Kos. S. Ct. Tr. 2003).

Under Kosrae statute, following commission of an offense a police officer who has reasonable grounds to believe that a particular person has committed the offense may arrest the person. This establishes the standard for the arrest of a person, but it does not establish the standard for the police to conduct an investigatory stop of a vehicle. Kosrae v. Tosie, 12 FSM R. 296, 299 (Kos. S. Ct. Tr. 2004).

When there are no decisions by FSM courts which discuss which standard applies to conducting an investigatory stop of a vehicle, the court may look to the law of the United States for guidance. Kosrae v. Tosie, 12 FSM R. 296, 299 (Kos. S. Ct. Tr. 2004).

Reasonable suspicion is required for police officers to make an investigatory stop of a vehicle. "Reasonable suspicion" is a particularized and objective basis for suspecting that a person is engaged in a criminal activity. Kosrae v. Tosie, 12 FSM R. 296, 299 (Kos. S. Ct. Tr. 2004).

Generally, an anonymous tip is not sufficient justification for a stop by the police. Police need sufficient reasonable articulated suspicion. Kosrae v. Tosie, 12 FSM R. 296, 299 (Kos. S. Ct. Tr. 2004).

A police officer may, as a general rule, consider any evidence in determining whether reasonable suspicion or probable cause exists. The information may be provided by an informer. Police should consider the underlying circumstances from which the informer drew his conclusion. Some of the underlying circumstances must show that the informant was reliable. However, evidence to establish reasonable suspicion or probable cause may be entirely based upon hearsay. The general rule is that virtually any evidence may be considered. Kosrae v. Tosie, 12 FSM R. 296, 299 (Kos. S. Ct. Tr. 2004).

When an officer has made a warrantless arrest by relying upon a tip from an informant, the reviewing court will evaluate the tip based upon the totality of the circumstances, including the informant's truthfulness and reliability, and the basis of his or her knowledge. Deficiency in one prong may be compensated for by a strong showing of the other. Kosrae v. Tosie, 12 FSM R. 296, 299 (Kos. S. Ct. Tr. 2004).

Once the police have reasonable suspicion that the Defendant has committed a criminal offense, they may conduct an investigatory stop, which is a temporary stop to confirm or dispel the suspicion which initially induced the investigatory stop. Investigatory stops are based upon less than probable cause and are temporary in nature. The information gained at the investigatory stop is then used to confirm or dispel the initial suspicion, and then either arrest or release the defendant. Kosrae v. Tosie, 12 FSM R. 296, 300 (Kos. S. Ct. Tr. 2004).

A criminal prosecution for driving under the influence will not be dismissed when the police officers had sufficient reasonable suspicion to conduct an investigatory stop of the defendant because the reasonable suspicion was supplied by an informant, whose identity, credibility, reputation and reliability were known. When at the investigatory stop, the police observed signs of the defendant's alcohol impairment, these signs provided grounds for the police to administer the field sobriety tests to the defendant, and when the defendant failed two field sobriety tests, it gave the police reasonable grounds and probable cause for defendant's commission of driving under the influence and probable cause to arrest the defendant. Kosrae v. Tosie, 12 FSM R. 296, 300 (Kos. S. Ct. Tr. 2004).

A roadblock stop where all oncoming traffic was stopped is not an arrest. Just as indubitably, such a stop is a "seizure" within the meaning of the proscription against unreasonable search and seizures.

Sigrah v. Kosrae, 12 FSM R. 320, 328 (App. 2004).

A defendant was not "in custody" prior to the administration of the field sobriety tests when he was instructed to perform the tests by the police officer, and was told by the police officer that if he failed two out of three tests, he may be arrested and taken to jail since he was not told that he would be taken to jail regardless of his performance of the tests. Kosrae v. Phillip, 13 FSM R. 449, 452 (Kos. S. Ct. Tr. 2005).

A person is "in custody" when a person's freedom is substantially restricted by a police officer. For example, where a person's freedom is substantially restricted by a police officer by being placed into a police car, based upon a police officer's suspicion that the person was involved in the crimes committed earlier that evening, that person is considered arrested for the purpose of the right to be advised of his constitutional rights to remain silent and to have legal counsel. Kosrae v. Phillip, 13 FSM R. 449, 452 (Kos. S. Ct. Tr. 2005).

A person who is stopped for a routine traffic offense is not in custody, for the purpose of requiring Miranda warnings, and persons who are stopped at a roadblock, where a person's freedom of movement is not substantially restricted or controlled, are not considered to be in custody and not considered to be arrested. Kosrae v. Phillip, 13 FSM R. 449, 452 (Kos. S. Ct. Tr. 2005).

When a defendant was followed by the Kosrae State Police, stopped at a traffic stop, questioned briefly and asked to perform field sobriety tests; when the traffic stop was conducted on a public road, where passersby could witness the interaction of the police officers and the defendant and was conducted by only two police officers, which created a non-threatening situation; when the officers did not tell the defendant that he would be going to jail; and when there was no needless delay in the administration of the field sobriety tests, the defendant, when he was asked to perform the field sobriety tests, was not considered arrested and was not in custody for the purposes of Miranda rights, and the state was not required to provide the defendant his Miranda rights prior to administration of the tests. Kosrae v. Phillip, 13 FSM R. 449, 453 (Kos. S. Ct. Tr. 2005).

That the plaintiff was not informed at or before the time of his arrest why he was being arrested constituted a violation. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 491 (Pon. 2005).

Any person making an arrest must, at or before the time of arrest, make every reasonable effort to advise the person arrested as to the cause and authority of the arrest. The onus is on the arresting officer to advise the person arrested as to the cause and authority of the arrest. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 496 (Pon. 2005).

When a criminal offense has been committed, and a policeman has reasonable ground to believe that the person to be arrested has committed it, such policeman may arrest the person without a warrant, but there may be one exception to this rule, however, and that is when a routine felony arrest takes place inside the suspect's home and there are no exigent circumstances (an emergency or a dangerous situation) to overcome the warrant requirement. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 496 n.4 (Pon. 2005).

The state and its department of public safety are subject to civil liability for denying an arrestee the opportunity to contact either family members or an attorney. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 498 (Pon. 2005).

Even if the 24-hour deadline to bring a defendant before a court or release him were interpreted to mean within a reasonable time, holding a person in jail for 63½ hours without an appearance before a judicial officer will subject the state and its department of public safety to civil liability. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 498 (Pon. 2005).

A defendant's statutory right to be brought before the court within the 24 hours period goes to the heart

of the procedural due process guaranteed to FSM citizens. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 499 (Pon. 2005).

Any person may perform a "citizen's arrest." Unlike an arrest by a law enforcement officer, a "citizen's arrest" cannot be based upon either a reasonable ground to believe or probable cause to believe a crime has been committed. A "citizen's arrest" is valid only if the one arrested was actually in the act of committing a criminal offense. FSM v. Wainit, 14 FSM R. 51, 55 n.2 (Chk. 2006).

If an arrested person refuses to submit or attempts to escape, the arresting person may use the force necessary to compel submission. In effecting an arrest, a police officer may not employ more force than he reasonably believes to be necessary. The reasonableness of a police officer's conduct while making an arrest must be assessed on the basis of information that the officer had when he acted. Nena v. Kosrae, 14 FSM R. 73, 82 (App. 2006).

Following commission of an offense, a police officer who has reasonable grounds to believe that a particular person has committed the offense may arrest the person. Kosrae v. Jonithan, 14 FSM R. 94, 97 (Kos. S. Ct. Tr. 2006).

When police officers viewed the defendant struggling and fighting and also heard the defendant swearing and yelling offensive words, based upon that conduct alone, the officers had reasonable grounds to believe that the defendant had committed one or more criminal offenses, including drunken and disorderly conduct, and disturbing the peace. The police officers' determination of reasonable grounds and probable cause is based upon their training and understanding of conduct which forms the basis of criminal offenses. Following an arrest of an accused, related or different criminal offenses may be charged in the information, based upon further investigation and research conducted by the state. Kosrae v. Jonithan, 14 FSM R. 94, 97 (Kos. S. Ct. Tr. 2006).

A claim of failure to inform an arrestee of his rights and denying him legal counsel and access to the courts is a statutory claim, not a constitutional one. An arrested person's rights are codified at 12 F.S.M.C. 218, which provides that, at the time of arrest, a police officer must inform the arrestee of her rights, including the right to counsel, prior to any questioning and that the officer must either release the arrestee or bring her before a judicial officer within twenty-four hours of the arrest. Annes v. Primo, 14 FSM R. 196, 204 (Pon. 2006).

In any case of arrest it is unlawful to fail either to release or charge an arrested person with a criminal offense within a reasonable time, which must under no circumstances exceed 24 hours. FSM v. Menisio, 14 FSM R. 316, 319 (Chk. 2006).

The remedy for an unlawful detention over 24 hours is not the dismissal of the information against the defendant or the suppression of all evidence and statements obtained from him. The only remedy in a criminal prosecution (as opposed to a civil suit) is suppression of any evidence obtained as a result of the illegal detention. FSM v. Menisio, 14 FSM R. 316, 319 (Chk. 2006).

Evidence obtained in violation of 12 F.S.M.C. 218 is rendered inadmissible by 12 F.S.M.C. 220. FSM v. Menisio, 14 FSM R. 316, 319 (Chk. 2006).

Evidence and statements lawfully obtained from a defendant before he had been illegally detained over 24 hours will be admissible. The defendant is entitled to the suppression of any evidence or statements obtained from him after the first 24 hours of his detention. FSM v. Menisio, 14 FSM R. 316, 320 (Chk. 2006).

Although the plaintiffs contend that they were not drunk but merely had hangovers and that they could not be arrested for being hungover, the police, based on what they personally could see, hear, and smell, had probable cause to believe that the plaintiffs were under the influence of alcohol in public and had

probable cause to arrest the plaintiffs. Whether the plaintiffs were actually intoxicated or just hungover is irrelevant since the police had probable cause to believe they were intoxicated. Thus, the plaintiffs' arrest and transportation to the state jail on Weno did not violate their civil rights. Walter v. Chuuk, 14 FSM R. 336, 339-40 (Chk. 2006).

The government must make a probable cause showing at a hearing before pretrial restraints on the defendant's liberty can be granted. This is because a fair and reliable determination of probable cause is a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest. Affidavits can be used, if properly introduced, as evidence at that hearing to make the probable cause showing. The finding of probable cause may be based on hearsay evidence. Chuuk v. Sipenuk, 15 FSM R. 262, 264-65 (Chk. S. Ct. Tr. 2007).

When a defendant fails to address the particular circumstances of his warrantless arrest or the bearing on the probable cause showing, if any, of the witness testimony contained in the police report referred to in the affidavit supporting the criminal information, the court can discern no legal basis for dismissing the case and even assuming the defendant's arrest was illegal, he is not entitled to dismissal of the information. The remedy for an illegal arrest is suppression of any statements made by the defendant. Chuuk v. Sipenuk, 15 FSM R. 262, 265 & n.2 (Chk. S. Ct. Tr. 2007).

One should be considered "arrested" within the meaning of 12 F.S.M.C. 218 when one's freedom of movement is substantially restricted or controlled by a police officer exercising official authority based upon the officer's suspicion that the detained person may be, or may have been, involved in commission of a crime. FSM v. Louis, 15 FSM R. 348, 352 (Pon. 2007).

When the police officers only viewed the accused as a potential witness in the matter of another person, not as a suspect; when the officers dropped him back off at the funeral where they originally met him instead of taking him to the police station and the officers never substantially restricted or controlled the accused's freedom of movement; when the accused agreed to take the officers to fetch the handgun at Palikir, and willingly went with them in the vehicle; and when there is simply no evidence that the officers threatened, demanded, or compelled the accused in any manner, the accused was not under arrest during the car ride to and from Palikir. Accordingly, the officers were not required to inform the accused of his rights under 12 F.S.M.C. 218. FSM v. Louis, 15 FSM R. 348, 353 (Pon. 2007).

It is unlawful for the government to fail either to release or charge an arrested person with a criminal offense within a reasonable time, which must under no circumstances exceed 24 hours. Thus, evidence, such as an accused's statement, obtained as a result of the defendant being detained for more than 24 hours without being charged or released must be excluded. FSM v. Sam, 15 FSM R. 491, 493 (Chk. 2008).

Evidence and statements lawfully obtained from a defendant before he had been illegally detained over 24 hours will be admissible, but the defendant is entitled to the suppression of any evidence or statements obtained from him after his first 24 hours of detention. FSM v. Sato, 16 FSM R. 26, 30 (Chk. 2008).

In accordance with the Chuuk Constitution provision against unreasonable searches, seizures, and invasions of privacy, no warrant may be issued but upon probable cause, supported by affidavit, specifically describing the place to be searched and the persons or things to be seized. An individual suspected of a crime must be released from detention unless the government can establish probable cause to hold that individual. Chuuk v. Chosa, 16 FSM R. 95, 97 (Chk. S. Ct. Tr. 2008).

A person is considered "arrested," for the purposes of the right to be advised of his right to remain silent when the person's freedom of movement is substantially restricted or controlled by a police officer exercising official authority based upon the officer's suspicion that the detained person may be, or may have been, involved in commission of a crime. FSM v. Sippa, 16 FSM R. 247, 249 (Chk. 2009).

Warrantless arrests are, under certain situations, lawful and authorized by statute. Arrest by police without a warrant is authorized when a criminal offense has been committed, and a policeman has reasonable ground to believe that the person to be arrested has committed it, or a policeman, even when it is not certain that a criminal offense has been committed, may detain for examination persons who may be found under such circumstances as justify a reasonable suspicion that they have committed or intend to commit a felony. FSM v. Aliven, 16 FSM R. 520, 527 (Chk. 2009).

The remedy for a defendant's unlawful detention over 24 hours is not the suppression of evidence lawfully obtained before the 24 hours passed. FSM v. Aliven, 16 FSM R. 520, 528 (Chk. 2009).

Once the police have reasonable suspicion that a suspect has committed a criminal offense, they may conduct an investigatory stop. An investigatory stop is a temporary stop of a car and its passengers that is used to confirm or dispel the suspicion that caused the investigatory stop. These stops are based on less than probable cause. Information gathered at the stop can be used to arrest or release the suspects. Berman v. Pohnpei, 16 FSM R. 567, 573-74 (Pon. 2009).

The police have a right to conduct a routine traffic stop, and when they, in order to investigate and confirm or refute their suspicions, stopped a car in which there was a passenger who they suspected had abandoned his Honda after driving it off the road while intoxicated, they did not conduct any unlawful search or seizure. Berman v. Pohnpei, 16 FSM R. 567, 574 (Pon. 2009).

Typically, before an arrest can be made, a warrant must be issued for that arrest. A warrant requires a showing of probable cause, and probable cause exists when there is evidence and information sufficiently persuasive such that a cautious person would believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. Berman v. Pohnpei, 16 FSM R. 567, 574 (Pon. 2009).

Pohnpei state law authorizes policemen to make an arrest without a warrant when 1) a breach of the peace or other criminal offense has been committed, and the offender is shall endeavoring to escape, he may be arrested by virtue of an oral order of any official authorized to issue a warrant, or without such order if no such official be present; 2) anyone is in the act of committing a criminal offense; 3) a criminal offense has been committed, and a policeman has reasonable ground to believe that the person to be arrested has committed it; and 4) even in cases where it is not certain that a criminal offense has been committed, arrest and detain for examination persons who may be found under such circumstances as justify a reasonable suspicion that they have committed or intend to commit a felony. Berman v. Pohnpei, 16 FSM R. 567, 574 (Pon. 2009).

A person arrested for obstructing justice because she refused to give the police officers access to her car and interfered with their peaceful attempts to talk with her husband, whom she locked inside the car, is arrested for an offense committed in the police officers' presence, and, that being the case, a warrant did not need to be issued prior to the arrest. Since the officers correctly determined that they had probable cause to arrest without a warrant because her conduct fell within the Pohnpei state law definition of obstruction of justice, they did not conduct an unlawful or false arrest of her. Berman v. Pohnpei, 16 FSM R. 567, 574 (Pon. 2009).

Although an arrestee sustained some bruising to her wrists, the bruising was not the result of any arresting officer's conduct since when the arrestee was handcuffed, the cuffs were loose enough that they could slide up and down her wrists and there was enough space between the metal of the cuff and her skin to fit a regular-sized ballpoint pen, but during the travel from the arrest site to the police station, she struggled with the handcuffs, resulting in their tightening further around her wrists. Since the tightening of the handcuffs was not the result of an officer's conduct, but of the arrestee's own movements, the police did not use any unreasonable force in arresting and handcuffing her. Berman v. Pohnpei, 16 FSM R. 567, 575 (Pon. 2009).

Upon arrest, the person arrested must be informed of his or her rights, including the right to remain silent and the right to counsel. Berman v. Pohnpei, 16 FSM R. 567, 575 (Pon. 2009).

Under Pohnpei state law, any person arrested must be advised that a) the individual has a right to remain silent; b) the police will, if the individual so requests, endeavor to call counsel to the place of detention and allow the individual to confer with counsel there before he is questioned further, and allow him to have counsel present while he is questioned by the police if he so desires; and c) the services of a public defender are available for these purposes without charge. Berman v. Pohnpei, 16 FSM R. 567, 575-76 (Pon. 2009).

An arrest is illegal if, at or before the time of arrest, the police make no reasonable effort to advise the person arrested the cause and authority for the arrest. Any person making the arrest must make every reasonable effort to advise the suspect why she is being arrested. Berman v. Pohnpei, 16 FSM R. 567, 576 (Pon. 2009).

When the police advised a person that she was being arrested for obstructing a police investigation at or before the time the handcuffs were placed on her wrists and also advised her that she was arrested for pushing a police sergeant, they did not unlawfully refuse to inform her of the reasons for her arrest and detention. Berman v. Pohnpei, 16 FSM R. 567, 576 (Pon. 2009).

It is unlawful for the police to keep an arrestee in custody for over 24 hours without bringing him before a judicial officer for a bail hearing unless the location of the nearest court makes such appearance impossible. An arrestee must be either released or charged with a criminal offense within a reasonable time, which under no circumstances shall exceed 24 hours. FSM v. Suzuki, 17 FSM R. 70, 73 (Chk. 2010).

When an accused has expressed a wish to meet with counsel before further questioning or to have counsel present during questioning, questioning must cease at once, and any attempt by police to ignore or override the accused's wish, or to dissuade him from exercising his right, violates 12 F.S.M.C. 218, and evidence obtained as a result of that violation is not admissible against an accused. FSM v. Suzuki, 17 FSM R. 70, 73-74 (Chk. 2010).

Although evidence and statements lawfully obtained from an accused before he has been detained over 24 hours will be admissible, the accused is entitled to the suppression of any evidence or statements obtained from him after the first 24 hours of his detention. FSM v. Suzuki, 17 FSM R. 70, 74 (Chk. 2010).

Once an accused has established a relationship between unlawful police activity and the evidence sought to be suppressed, the burden is on the prosecution to show that the evidence is still admissible. FSM v. Suzuki, 17 FSM R. 70, 74 (Chk. 2010).

Statements and evidence obtained from an accused during the first 24 hours after his arrest are not inadmissible merely because the accused ended up being detained for over 24 hours. FSM v. Suzuki, 17 FSM R. 70, 74 (Chk. 2010).

FSM law requires that any person making an arrest shall, at or before the time of arrest, make every reasonable effort to advise the person arrested as to the cause and authority of the arrest. FSM v. Suzuki, 17 FSM R. 114, 116 (Chk. 2010).

It would not have been reasonable for a police officer to have made an effort to advise a vehicle's occupants as to the cause and authority of the arrest before or during the arrests when the officer had every reason to believe that the two rifles in the vehicle were loaded and that one or more of the vehicle's occupants might be disposed to use those weapons. FSM v. Suzuki, 17 FSM R. 114, 116 (Chk. 2010).

The statute does not, nor will the court, require an arresting officer, at or before the time of a person's arrest, to advise that person of the cause and authority for the arrest when to do so would endanger or

imperil the arresting officer's life or safety or that of the general public. This is because the evident purpose of giving notice of the authority and cause for the arrest is to establish a procedure likely to result in a peaceable arrest. The failure to inform someone about to be arrested without a warrant of the authority and cause for the arrest does not invalidate that arrest. FSM v. Suzuki, 17 FSM R. 114, 116 (Chk. 2010).

There is no set ritual or formula that must be followed to comply with the requirement that any person making an arrest shall, at or before the time of arrest, make every reasonable effort to advise the person arrested as to the cause and authority of the arrest. The notice is sufficient when it is such as to inform a reasonable man of the authority and purpose of the one making the arrest, and the reason thereof. Circumstances, without express words, may afford sufficient notice. FSM v. Suzuki, 17 FSM R. 114, 117 (Chk. 2010).

Arrestees are not prejudiced if they are notified of the offense(s) with which they are to be charged soon after they are taken into custody and before giving a statement. FSM v. Suzuki, 17 FSM R. 114, 118 (Chk. 2010).

As a matter of good police practice, if a person is in the act of committing an offense or if it is too dangerous to make a reasonable effort to inform a person of the cause and authority of that person's arrest before or at the time of the arrest, the police should do so as soon as the person is safely in police custody. This should usually be before the arrestee is transported to a place of detention. FSM v. Suzuki, 17 FSM R. 114, 118 (Chk. 2010).

It is unlawful to fail to either release or charge an arrested person with a criminal offense within a reasonable time, which under no circumstances must exceed twenty-four hours. An unlawful detainment does not in itself entitle an accused to an acquittal, but no evidence obtained as a result of such violation may be used against the accused, and any person on the detainee's behalf may move the court for the detainee's immediate release upon expiration of twenty-four hours from the arrest. Chuuk v. Sipenuk, 17 FSM R. 135, 136 (Chk. S. Ct. Tr. 2010).

Resort to self-help by a detainee is inherently dangerous to the prisoner, the police, and to the public, as an attempted escape may result in circumstances where there is resort to force either by or against the detainee. Therefore, in cases of unlawful detainment, it is much preferred as a matter of public policy for counsel or other person to move the court for a detainee's immediate release. Chuuk v. Sipenuk, 17 FSM R. 135, 137 (Chk. S. Ct. Tr. 2010).

In criminal cases, pretrial detainees are entitled to such procedures as, the right to receive notice of the charges against them, an opportunity to respond to those charges before or during confinement, and the right to be brought before the court within 24 hours of arrest. FSM v. Andrew, 17 FSM R. 213, 215 (Pon. 2010).

Reasonable suspicion, not probable cause, is all that is required for police officers to make an investigatory stop of a vehicle. "Reasonable suspicion" is a particularized and objective basis for suspecting that a person is engaged in a criminal activity. Investigatory stops are based upon less than probable cause and are temporary in nature, and the information gained at the investigatory stop is used to confirm or dispel the initial suspicion, and then either arrest or release the person stopped. Berman v. Pohnpei, 17 FSM R. 360, 369-70 (App. 2011).

A traffic stop, no matter how brief, is a seizure. But this seizure is not a warrantless arrest such that probable cause is needed and the person stopped must immediately be advised of his or her rights. Berman v. Pohnpei, 17 FSM R. 360, 370 (App. 2011).

When the police had information from an off-duty police officer that gave them reason to suspect that a person had been involved in a car accident and that he was intoxicated, these facts equate to reasonable suspicion to stop him and investigate. Berman v. Pohnpei, 17 FSM R. 360, 370 (App. 2011).

Under Chuuk Criminal Procedure Rule 4(a), if it appears from the complaint, or from affidavit or affidavit filed with the complaint, that there is probable cause to believe that an offense has been committed and that the accused has committed it, a warrant for the accused's arrest shall issue to any officer authorized by law to execute it or, upon the government attorney's request, a summons instead of a warrant will issue. Chuuk v. Alluki, 17 FSM R. 385, 387-88 (Chk. S. Ct. Tr. 2011).

When the nature of the complaint that law enforcement received and responded to is unspecified either by hearsay or any other kind of evidence; when the accused is said to have been arrested and brought to DPS for processing as a result of police action triggered by the complaint but that arrest's details and circumstances are also unsubstantiated; and when the affidavit reads as a cursory afterthought to the arrest, incarceration, search, and ultimate seizure perpetrated by law enforcement on the accused, it could not, in and of itself, have supported a finding of probable cause prior to the arrest. Chuuk v. Alluki, 17 FSM R. 385, 388 (Chk. S. Ct. Tr. 2011).

An illegal arrest will not entitle a defendant to dismissal of the information. The remedy for an illegal arrest, for failure to provide cause and authority of the arrest, is suppression of any statements made by the defendant. Chuuk v. Hauk, 17 FSM R. 508, 512, 514 (Chk. S. Ct. Tr. 2011).

A warning is required when a custodial interrogation takes place and a suspect has been deprived of his freedom in a significant way. This differs from the situation where there was some evidence of illegal activity prior to the search, but it did not meet the probable cause standard necessary to arrest or search. In this type of situation, a search authorized by valid consent may be the only method by which evidence may be obtained. FSM v. Phillip, 17 FSM R. 595, 600 (Pon. 2011).

An eviction order is not an arrest warrant. Jacob v. Johnny, 18 FSM R. 226, 230 (Pon. 2012).

A pretrial detainee has a stronger right than a convicted prisoner to liberty, and that right is protected by the Due Process Clause while a convicted prisoner's claims upon liberty have been diminished through due process so the convicted prisoner must rely primarily on the protections from cruel and unusual punishment. Jacob v. Johnny, 18 FSM R. 226, 231 (Pon. 2012).

Police officers have a qualified official immunity from civil liability when they arrest someone for whom they have a facially-valid arrest warrant. Helgenberger v. U Mun. Court, 18 FSM R. 274, 282 (Pon. 2012).

The government must make a probable cause showing at a hearing before pretrial restraints on a defendant's liberty can be granted. This is because a fair and reliable determination of probable cause is a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest. Affidavits can be used, if properly introduced, as evidence at that hearing to make the probable cause showing. In re Anzures, 18 FSM R. 316, 320 n.7 (Kos. 2012).

Probable cause is a constitutional requirement for a warrant. In re Anzures, 18 FSM R. 316, 320 (Kos. 2012).

An individual suspected of a crime must be released from detention unless the government can establish "probable cause" to hold that individual. The standard for determining "probable cause" is whether there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. In re Anzures, 18 FSM R. 316, 324 (Kos. 2012).

Generally, no arrest can be made without first obtaining a warrant therefor except when otherwise authorized by law. A warrantless arrest may be made when a criminal offense has been committed and a policeman has a reasonable ground to believe that the person to be arrested has committed it. Alexander v. Pohnpei, 18 FSM R. 392, 397 (Pon. 2012).

Under the common law rule in many jurisdictions, the police could arrest without a warrant persons who may have committed a felony but could not make a warrantless arrest for a misdemeanor unless it was committed in the arresting officer's presence. Alexander v. Pohnpei, 18 FSM R. 392, 397 (Pon. 2012).

The FSM Constitution guarantees that the right of the people to be secure in their persons, houses, papers, and other possessions against unreasonable search, seizure, or invasion of privacy may not be violated. This protection prohibits the police from making a warrantless and nonconsenual entry into a suspect's home in order to make a routine felony arrest. Alexander v. Pohnpei, 18 FSM R. 392, 398 (Pon. 2012).

Merely entering a person's property is often not enough to violate a person's right to be secure in her house. For instance, if the police do not enter the home but wait for the occupant to emerge from the house before effecting an arrest, the right is not violated. Alexander v. Pohnpei, 18 FSM R. 392, 398 (Pon. 2012).

When police officers did not have an arrest warrant, they would have violated a person's constitutional right if, when arresting her, they had entered her dwelling house or her shower house since that was part of her home even though it was a separate structure. Alexander v. Pohnpei, 18 FSM R. 392, 398 (Pon. 2012).

A test for whether a particular area is constitutionally protected from unreasonable searches and seizures is whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by. Under this test, section five certainly protects a person's shower house area as the nature of its use is one in which there is a high expectation of privacy. Alexander v. Pohnpei, 18 FSM R. 392, 398 n.5 (Pon. 2012).

When the officers told the plaintiff, while she was still in her shower house, that they were there to arrest her and once the officers told her that that was what they were there for, she was not free to leave except in their custody. In other words, the police arrested her while she was in her shower house even though they were outside. Alexander v. Pohnpei, 18 FSM R. 392, 398 (Pon. 2012).

It is the location of the arrested person, and not the arresting agents, that determines whether an arrest occurs within a home. When the plaintiff was arrested while she was in an area protected by Section five of the Declaration of Rights (her shower house) and when the police did not have a warrant, her arrest was illegal because the police needed a warrant to arrest her where they did and they did not have one. Alexander v. Pohnpei, 18 FSM R. 392, 398-99 (Pon. 2012).

When the police clearly told a person that she was being arrested, but she was not told the complaint's details or the cause for her arrest beyond that there was a complaint against her, that was not enough to tell her the complaint's substance, and, under the Loch standard, not enough to comply with the requirement that she be told the cause and authority of her arrest. Alexander v. Pohnpei, 18 FSM R. 392, 399-400 (Pon. 2012).

Although Pohnpei state law makes twenty-four hours under arrest without being released or being before a court competent to try the offender for the offense charged per se unreasonable, it does not automatically make times shorter than twenty-four hours reasonable. Whether a shorter time is reasonable or unreasonable depends on the facts of the case. Alexander v. Pohnpei, 18 FSM R. 392, 400 n.6 (Pon. 2012).

The signing of an advice of rights form, by itself, cannot retroactively validate the earlier failure to inform an arrestee of her rights. Alexander v. Pohnpei, 18 FSM R. 392, 400 (Pon. 2012).

Regardless of whether civil liability can be imposed for failing to inform an arrestee of her rights or for failing to inform her of the cause and authority of her arrest, civil liability will be imposed when it was illegal to arrest her without a warrant where she was arrested. Alexander v. Pohnpei, 18 FSM R. 392, 400 (Pon. 2012).

A special relationship creating a duty of care exists when a person is in police custody, but when an officer pursues but does not have any actual contact with the person pursued, that person was never seized or in custody. Ruben v. Chuuk, 18 FSM R. 425, 430 (Chk. 2012).

One should be considered "arrested" when one's freedom of movement is substantially restricted or controlled by a police officer exercising official authority based upon the officer's suspicion that the detained person may be, or may have been, involved in commission of a crime. This standard comports with the statutory definition of arrest used in 12 F.S.M.C. 218. FSM v. Edward, 18 FSM R. 444, 449 & n.3 (Pon. 2012).

A person was not under arrest when he was told by the officers that they were informed that he might know something about a recent break-in and asked if he would be willing to go with them to the police station for questioning and he agreed but voluntarily entered the police vehicle and during the ride to the police station he sat with an officer in the back seat and was not handcuffed or otherwise restrained in any way. No arrest was made when he entered the police vehicle and was transported to the police station, as the break-in was still under investigation, as he was thought to know something about the break-in, and as the officer told him that he was not under arrest at that time, but that they wanted to know his story regarding the break-in. FSM v. Edward, 18 FSM R. 444, 449 (Pon. 2012).

In any case of arrest, it is unlawful to fail either to release or charge an arrested person with a criminal offense within a reasonable time, which must under no circumstances exceed 24 hours. FSM v. Edward, 18 FSM R. 444, 451 (Pon. 2012).

When the government had not complied with 12 F.S.M.C. 218 by releasing or charging the defendant within 24 hours of his arrest, the statements made and evidence retrieved thereafter until he was released will be suppressed because evidence obtained as a result of a violation of 12 F.S.M.C. 218 is not admissible against an accused. FSM v. Edward, 18 FSM R. 444, 451 (Pon. 2012).

Although evidence and statements lawfully obtained from an accused before he has been detained over 24 hours will be admissible, the accused is entitled to the suppression of any evidence of statements obtained from him after the first 24 hours of his detention. FSM v. Edward, 18 FSM R. 444, 451 (Pon. 2012).

The arrest of a prisoner on work release was not unlawful when the police had an eyewitness report that he had violated his work release conditions. The eyewitness report was enough on which to base an arrest of a probationer for a release conditions violation. A later judicial proceeding would determine the report's accuracy or bias. Inek v. Chuuk, 19 FSM R. 195, 199 (Chk. 2013).

When the most likely reason for the arrest and later court appearance of a prisoner on work release was not to charge him with a new crime but to revoke or modify his work release conditions, the rule concerning revocation of probation, rather than the statute concerning charging a crime, is the applicable law. Inek v. Chuuk, 19 FSM R. 195, 199 (Chk. 2013).

Since a convicted inmate is a probationer only when he is on work release and is otherwise properly in custody, the court must conclude that a preliminary probable cause hearing within 48 hours of the inmate's arrest for violating work release conditions would be prompt within the meaning of Chuuk Criminal Rule 32.1 and that a revocation hearing within 48 hours of the arrest for violation of probation would be within a reasonable time. Chuuk therefore cannot be held civilly liable for the arrestee detention from September 8, 2010 to September 10, 2010, of a prisoner arrested for a work release violation. Inek v. Chuuk, 19 FSM

R. 195, 199 (Chk. 2013).

Once a prisoner arrested for a work release violation has been detained in the arrestee holding area past 72 hours without being charged with work release violations under Chuuk Criminal Procedure Rule 32.1, his continued detention there becomes unlawful. Inek v. Chuuk, 19 FSM R. 195, 200 (Chk. 2013).

Once a prisoner arrested for a work release violation has been detained in the arrestee holding area past 72 hours without being charged with work release violations under Chuuk Criminal Procedure Rule 32.1, his continued detention there becomes unlawful. Inek v. Chuuk, 19 FSM R. 195, 200 (Chk. 2013).

When an unlawful detention was a violation of the plaintiff's right to due process, it was a civil rights violation, which under 11 F.S.M.C. 701(3) entitles him to reasonable attorney's fees and costs. Inek v. Chuuk, 19 FSM R. 195, 200 (Chk. 2013).

When the defendant was found in the area after hours and his answers to the officer's questions were inconsistent, that and the surrounding circumstances rise to the level of reasonable suspicion, but not the higher standard of probable cause, which is needed for a lawful arrest. "Reasonable suspicion" is formed by specific, articulable facts which, together with objective and reasonable inferences, form the basis for suspecting that the particular person detained is engaged in criminal activity. FSM v. Benjamin, 19 FSM R. 342, 347 & n.5 (Pon. 2014).

"Arrest" is defined as "placing any person under any form of detention by legal authority." 12 F.S.M.C. 101(3). A person is considered arrested for the purpose of the right to be advised of his constitutional rights when his freedom is substantially restricted or controlled by a police officer who is exercising official authority based upon the officer's suspicion that the person may have been involved in the commission of a crime. FSM v. Benjamin, 19 FSM R. 342, 347 (Pon. 2014).

One should be considered "arrested" when one's freedom of movement is substantially restricted or controlled by a police officer exercising official authority based upon the officer's suspicion that the detained person may be, or may have been, involved in commission of a crime. FSM v. Benjamin, 19 FSM R. 342, 347 (Pon. 2014).

When there was no probable cause to arrest the defendant, placing the defendant into the police car and taking him to the Pohnpei state police station in Kolonia and then questioning him on the way to the national police headquarters in Palikir without reading him his rights, violates his rights to remain silent and to the assistance of counsel. FSM v. Benjamin, 19 FSM R. 342, 347-48 (Pon. 2014).

Having substantially restricted the defendant's freedom when he was placed in the police vehicle and transported first to the Pohnpei police station in Kolonia and then to the national police headquarters in Palikir, the defendant was under arrest and should have been read his rights. By not doing so, any statement made by him on questioning by the police in their vehicle on the way to the national police headquarters in Palikir and before being read his rights will be suppressed. FSM v. Benjamin, 19 FSM R. 342, 348 (Pon. 2014).

A defendant must be advised of a full "panoply" of due process rights in addition to the right to remain silent and the right to counsel. These may be summarized as the right not to be denied access to counsel, family members, or other interested persons; the right to send a message, or other communications; the right to stop all questioning until such persons are present; the right to remain silent; and the right to be brought before a judge or released within a reasonable time. FSM v. Ezra, 19 FSM R. 497, 509 & n.4 (Pon. 2014).

Title 12 protects the right of a defendant to be informed, requiring that an arresting officer shall, at or before the time of the arrest, make every reasonable effort to advise the person arrested as to the cause and authority of the arrest. FSM v. Ezra, 19 FSM R. 497, 513 (Pon. 2014).

A person should be considered arrested when one's freedom of movement is substantially restricted or controlled by a police officer, or when the suspect is otherwise deprived of his freedom of action in any significant way. Thus an arrest can occur during a "custodial interrogation," even if the suspect never formally arrested. A custodial interrogation is one that is held in a police dominated atmosphere. The custody test is an objective test, determined in the totality of the circumstances and not based on the police officer's intention nor the subjective views harbored by the person being questioned. FSM v. Ezra, 19 FSM R. 497, 514 (Pon. 2014).

In adopting the Declaration of Rights as part of the FSM Constitution and therefore the supreme law of the land, the people of Micronesia subscribed to various principles which place upon the judiciary the obligation, among others, to assure that arrests are based upon probable cause. Probable cause has been defined as a reasonable ground for suspicion, sufficiently strong to warrant a cautious person to believe that a crime has been committed. FSM v. Ezra, 19 FSM R. 497, 514 (Pon. 2014).

Police questioning alone does not trigger the right to be informed. The police have the right make brief detentions, and ask questions without making an arrest. This determination is based on the totality of the circumstances, guided by common sense. Thus, when a defendant was definitively informed as to the nature of the questions at the police station, even if an arrest subsequently occurred in a custodial environment, the explanation given at that time was sufficient to meet the due process requirement under 12 F.S.M.C. 214. FSM v. Ezra, 19 FSM R. 497, 516 (Pon. 2014).

An arrest based upon probable cause does not violate the constitutional right to due process. Palasko v. Pohnpei, 20 FSM R. 90, 96 (Pon. 2015).

An individual suspected of a crime must be released from detention unless the government can establish "probable cause" to hold that individual. The standard for determining probable cause is whether there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. Palasko v. Pohnpei, 20 FSM R. 90, 96 (Pon. 2015).

The police had probable cause to arrest a person and that arrest was lawful when they knew that he had someone else's pigs and that he would not release them to their owner. Since his arrest was lawful, the resulting overnight detention was lawful and was not false imprisonment. Palasko v. Pohnpei, 20 FSM R. 90, 96 (Pon. 2015).

The usual remedy for a person's failure to be informed of his rights is the suppression of any evidence against him that resulted from that failure. Palasko v. Pohnpei, 20 FSM R. 90, 97 (Pon. 2015).

In effecting an arrest, a police officer may employ no more force than he reasonably believes to be necessary. Palasko v. Pohnpei, 20 FSM R. 90, 97 (Pon. 2015).

Police officers had probable cause to arrest a person, whose fingerprints were found at the crime scene, when he turned over the alleged stolen goods because probable cause is present when there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. FSM v. Isaac, 21 FSM R. 370, 374 (Pon. 2017).

The police have a reasonable suspicion about someone's involvement in the crime when they have a particularized and objective basis, supported by specific and articulable facts, for suspecting that person of criminal activity. FSM v. Isaac, 21 FSM R. 370, 374 & n.5 (Pon. 2017).

Even if the police officers have probable cause to make an arrest, nothing precludes them from further investigating someone before arresting him because questioning of witnesses and suspects is a necessary

tool for the effective enforcement of criminal laws, and without such investigation, those who were innocent might be falsely accused, those who were guilty might wholly escape prosecution, and many crimes would go unsolved. FSM v. Isaac, 21 FSM R. 370, 374 (Pon. 2017).

Once someone voluntarily led the investigating officers to and surrendered the alleged stolen items, probable cause existed to arrest him and no warrant was necessary. FSM v. Isaac, 21 FSM R. 370, 374 (Pon. 2017).

There is no set procedure that must be followed to comply with the requirement that any person making an arrest must, at or before the arrest, make every reasonable effort to advise the person arrested as to the cause and authority of the arrest. The notice is sufficient when it is such as to inform a reasonable man of the authority and purpose of the one making the arrest and the reason thereof. Circumstances, without express words, may afford sufficient notice. FSM v. Isaac, 21 FSM R. 370, 375 (Pon. 2017).

No violation of defendant's rights under 12 F.S.M.C. 214(1) occurred when the affidavits, oral testimony, along with the officers' years of experience, support the fact that the officers advised the defendant of his rights after his arrest and that the rights were given in the Pohnpeian language. FSM v. Isaac, 21 FSM R. 370, 375 (Pon. 2017).

The statutory and constitutional right to be advised of one's rights are owing to anyone arrested, and an arrest is the placing any person under any form of detention by legal authority. FSM v. Isaac, 21 FSM R. 370, 376 (Pon. 2017).

The statutory and constitutional rights to be advised of one's rights are owing to "one arrested," and to "any person arrested," and "arrest" is the placing any person under any form of detention by legal authority. FSM v. Mumma, 21 FSM R. 387, 402 (Kos. 2017).

One is be considered "arrested" within the meaning of 12 F.S.M.C. 218 when one's freedom of movement is substantially restricted or controlled by a police officer exercising official authority based upon the officer's suspicion that the detained person may be, or may have been, involved in commission of a crime. FSM v. Mumma, 21 FSM R. 387, 402 (Kos. 2017).

Article III of the Chuuk Constitution prohibits the court from issuing a warrant unless there is probable cause, supported by affidavit, specifically describing the person to be seized. Chuuk v. Hebwer, 22 FSM R. 542, 543 (Chk. S. Ct. Tr. 2020).

Chuuk Criminal Procedure Rule 4 only allows an arrest warrant or summons to issue when it appears from the complaint, or from affidavit or affidavit filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, and a warrant for the defendant's arrest will issue to any officer authorized by law to execute it. It further provides that a probable cause finding may be based upon hearsay evidence in whole or in part. Chuuk v. Hebwer, 22 FSM R. 542, 543 (Chk. S. Ct. Tr. 2020).

– Assault and Battery

When one person, encouraged by the defendant to commit an assault, carries out the assault and then proceeds to commit robbery by the taking of turtle meat from the possession of the assaulted person, the defendant is not guilty of robbery where: 1) he did not suggest taking of the turtle meat or anything of value; 2) there is no showing that he could have foreseen the assault would be followed by the taking of something of value; and 3) the defendant left the premises before the turtle meat was taken. FSM v. Carl, 1 FSM R. 1, 2 (Pon. 1981).

A simple assault, one without a weapon or the intent to inflict serious bodily injury, is punishable only by

six months' imprisonment. It is neither a major crime under the National Criminal Code, because it does not call for three years' imprisonment, nor a felony. FSM v. Boaz (I), 1 FSM R. 22, 24 n.* (Pon. 1981).

Under section 951 of the National Criminal Code the issue is not whether the defendant actually committed an assault or a battery, but whether he entered the house with the purpose of committing an assault. 11 F.S.M.C. 951(1). FSM v. Boaz (I), 1 FSM R. 22, 25-26 (Pon. 1981).

Because Congress defined a major crime under the National Criminal Code as one calling for imprisonment of three years or more and because assaults under Title 11 of the Trust Territory Code are punishable by only six months' imprisonment, it is clear that the assault provisions of the Trust Territory Code are left intact. FSM v. Boaz (II), 1 FSM R. 28, 30 (Pon. 1981).

The crimes of assault, and assault and battery, undoubtedly are necessarily included within the charges of assault with a dangerous weapon and aggravated assault, because they all relate to the protection of the same interests and are so related that in the general nature of these crimes, though not necessarily invariably, proof of the lesser offense is necessarily presented as part of the showing of the commission of the greater offense. Kosrae v. Tosie, 4 FSM R. 61, 63 (Kos. 1989).

When the Yap Legislature has not demonstrated a positive intent to authorize conviction for two crimes, one of which requires proof of an additional fact, on the same facts, the trial court should render a decision and enter a conviction only on the more major of the crimes proven beyond a reasonable doubt. Therefore a conviction for aggravated assault should be vacated when for the same act there is a conviction for assault with a dangerous weapon, which requires proof of an additional fact. Yinmed v. Yap, 8 FSM R. 95, 101 (Yap S. Ct. App. 1997).

When the defendant did not strike, beat, wound or otherwise cause bodily harm to the complainant, the state has failed to prove beyond a reasonable doubt that the defendant committed an assault and battery upon the complainant, and that charge must be dismissed. Kosrae v. Jonah, 10 FSM R. 270, 272 (Kos. S. Ct. Tr. 2001).

An assault and battery in Yap is when a person unlawfully strikes, beats, wounds or otherwise does bodily harm to another. Simple assault does not require proof of specific intent. Yow v. Yap, 11 FSM R. 63, 66 (Yap S. Ct. App. 2002).

An assault against a national public servant at the national government capitol complex in Palikir, in the middle of a workday, in the National Public Auditor's Office demonstrates precisely the national government's interests that Congress sought to protect by defining a crime against a national public servant in the course of the public servant's employment as a national crime. FSM v. Anson, 11 FSM R. 69, 74 (Pon. 2002).

Assault is defined as offering or attempting, with force or violence, to strike, beat, wound, or to do bodily harm to another. Kosrae v. Jackson, 12 FSM R. 93, 100 (Kos. S. Ct. Tr. 2003).

When the state has proven that the defendant also threatened the victim with a knife after the sexual assault, and told her not to tell anyone what had happened, the state has proven all the elements of the offense of assault beyond a reasonable doubt. Kosrae v. Jackson, 12 FSM R. 93, 100 (Kos. S. Ct. Tr. 2003).

The offense of assault and battery requires proof beyond a reasonable doubt of striking, beating, wounding, or otherwise doing bodily harm to another. Kosrae v. Sigrah, 12 FSM R. 562, 567 (Kos. S. Ct. Tr. 2004).

When the evidence is undisputed that the defendant held the victim down, placed his hand over her mouth, and prevented her escape from his attack upon her, and these actions resulted in bodily harm to the

victim, the state has proved beyond a reasonable doubt all of the elements of the criminal offense of assault and battery. Kosrae v. Sigrah, 12 FSM R. 562, 567 (Kos. S. Ct. Tr. 2004).

The proof of the lesser offense of assault is necessarily included as part of the showing of the greater offense of assault and battery. Kosrae v. Kilafwakun, 13 FSM R. 333, 335 (Kos. S. Ct. Tr. 2005).

When the defendant presented only his testimony in support of his argument that under Kosraean custom, he may strike his sister-in-law and niece-in-law and when the defendant did not take any steps to separate the women during their argument, nor take any other actions to promote peace or resolve the argument, the court will conclude that the defendant's self-serving testimony does not satisfy the evidentiary requirement of Kosrae State Code § 6.303, which requires that the court receive satisfactory evidence of tradition before it may utilize tradition in reaching a decision. The court will decline to accept the defendant's argument that, based solely upon his status as a male relative, he is entitled to commit a battery upon a female relative, and his defense of customary authority must fail. Kosrae v. Kilafwakun, 13 FSM R. 333, 336 (Kos. S. Ct. Tr. 2005).

When convictions are entered upon the two greater offenses of assault and battery, one count for each victim, the lesser included charges of assault, two counts, will be dismissed. Kosrae v. Kilafwakun, 13 FSM R. 333, 337 (Kos. S. Ct. Tr. 2005).

Under Pohnpei state law, both "felonious assault and battery," 61 Pon. C. § 5-133, and "assault and battery," 61 Pon. C. § 5-134, are felonies since they are punishable by a maximum term of imprisonment of ten years and two years respectively. Alexander v. Pohnpei, 18 FSM R. 392, 398 (Pon. 2012).

If both the use-of-a-slingshot offense and assault-with-a-dangerous-weapon offense are proven with respect to the same act, the court will enter a conviction on only the greater offense of assault with a dangerous weapon. Chuuk v. Koky, 19 FSM R. 479, 481 (Chk. S. Ct. Tr. 2014).

An assault is a lesser included offense of assault and battery. Ned v. Kosrae, 20 FSM R. 147, 154 (App. 2015).

Since sexual assault requires intentionally subjecting another person to sexual penetration against the other person's will and assault and battery requires striking, beating, wounding, or otherwise doing bodily harm to another, and since subjecting another person to sexual penetration against the other person's will is one of a number of ways to otherwise do bodily harm to another, assault and battery is a lesser included offense of sexual assault. Ned v. Kosrae, 20 FSM R. 147, 154 (App. 2015).

When A aims at B with intent to injure B but, missing B, hits and injures C, A is guilty of battery of C. Chuuk v. Roman, 21 FSM R. 138, 142 (Chk. S. Ct. Tr. 2017).

Under Chuuk state law, an individual commits assault with a dangerous weapon if the individual attempts to cause or purposely causes with a dangerous weapon bodily injury to another person. "Bodily injury" includes physical pain, illness, or any impairment of physical condition, and a "dangerous weapon" is any firearm, or other weapon, device, instrument, material, or substance, whether inanimate or animate, which, in the manner it is used or intended to be used, is capable of producing death or serious bodily injury. Chuuk v. Roman, 21 FSM R. 138, 143 (Chk. S. Ct. Tr. 2017).

Soone who unlawfully offers or attempts, with force or violence, to strike, beat, wound, or do bodily harm to another commits assault. Chuuk v. Roman, 21 FSM R. 138, 143 (Chk. S. Ct. Tr. 2017).

An assault and battery occurs when an individual unlawfully strikes, beats, wounds or otherwise does bodily harm to another. Chuuk v. Roman, 21 FSM R. 138, 143 (Chk. S. Ct. Tr. 2017).

Where, although the defendant did not intend to injure the actual victim, there is sufficient

circumstantial evidence showing that he intended to assault another with a dangerous weapon, this intent to harm the other was transferred the actual victim when the defendant's poor aim caused him to hit the four-year old daughter of his intended target. As a result, there was sufficient intent to find that that defendant purposely caused bodily injury to the victim with a dangerous weapon. Chuuk v. Roman, 21 FSM R. 138, 144-45 (Chk. S. Ct. Tr. 2017).

When the government established that the defendant took a machete and attempted to hack it at another person's neck, which would be a use of the machete in a manner capable of producing death or serious bodily injury, the government has met its burden to prove beyond a reasonable doubt that the defendant committed an assault with a dangerous weapon. Chuuk v. Roman, 21 FSM R. 138, 145 (Chk. S. Ct. Tr. 2017).

When, although the government did not present any direct evidence to prove its point, it presented compelling circumstantial evidence that before the victim was shot the defendant had been arguing with the witness, at which time he threatened her with non-specific bodily harm, and within seconds of his threat a dart was shot from the defendant's location toward the witness's location and hit her daughter, who she was holding in her arms, the government has met its burden to prove beyond a reasonable doubt that the defendant did unlawfully use a slingshot. Chuuk v. Roman, 21 FSM R. 138, 145 (Chk. S. Ct. Tr. 2017).

When, before the victim was shot the defendant had been arguing with the witness, at which time he threatened the witness with non-specific bodily harm and within seconds of this threat, a dart was shot from the defendant's location toward the witness's location and hit her daughter, who she had been holding in her arms, and when no one else was near the defendant when the dart was shot, the government sufficiently met its burden to prove beyond a reasonable doubt that he committed an assault against the victim. Chuuk v. Roman, 21 FSM R. 138, 145-46 (Chk. S. Ct. Tr. 2017).

When the government, relying on victim testimony during trial, proved beyond a reasonable doubt that the defendant ran at the victim with a machete, attempting to hack at his neck, and that when the victim attempted to knock the machete from the defendant's hands the defendant punched him in the nose, the government sufficiently met its burden to prove that the defendant committed an assault. Chuuk v. Roman, 21 FSM R. 138, 146 (Chk. S. Ct. Tr. 2017).

When, before the victim was shot the defendant had been arguing with the witness, at which time he threatened her with non-specific bodily harm and within seconds of this threat, a dart was shot from the defendant's location toward the witness's location and hit her daughter, who she was holding in her arms, and when no one else was near the defendant when the dart was shot, the government sufficiently met its burden and proved beyond a reasonable doubt that the defendant committed an assault and battery against the victim. Chuuk v. Roman, 21 FSM R. 138, 146 (Chk. S. Ct. Tr. 2017).

When the government, relying on victim testimony during trial, proved beyond a reasonable doubt that the defendant ran at the victim with a machete, attempting to hack at his neck, and that when the victim attempted to knock the machete from the defendant's hands the defendant punched him in the nose, the government sufficiently met its burden to prove that the defendant committed an assault and battery. Chuuk v. Roman, 21 FSM R. 138, 146 (Chk. S. Ct. Tr. 2017).

– Attempt

Because violation of 11 F.S.M.C. 1223(6) is not a case of an attempt to commit a crime but a case where "attempt to board" is an element of the offense, 11 F.S.M.C. 201 (the attempt statute) does not apply to the crime of attempting to board a commercial aircraft with a firearm. Sander v. FSM, 9 FSM R. 442, 448 (App. 2000).

An attempt to commit a crime is a lesser included offense that merges with the greater ("target") offense if the attempt is successful. Ned v. Kosrae, 20 FSM R. 147, 154 (App. 2015).

If the target crime is in fact committed, there can be no conviction for attempt, since the actor's prior conduct is deemed merged in the completed crime. Ned v. Kosrae, 20 FSM R. 147, 154 (App. 2015).

Since the court cannot convict a defendant for actions not constituting a crime under any circumstances, the same actions cannot be the basis for an attempt to commit the alleged underlying offense. FSM v. Mumma, 21 FSM R. 387, 399 (Kos. 2017).

An attempt consists of two elements: 1) an intent to engage in conduct that constitutes a crime; and 2) conduct constituting a substantial step towards commission of the crime. FSM v. Mumma, 21 FSM R. 387, 400 (Kos. 2017).

An attempt to commit a crime is an offense which is separate and distinct from the crime that was attempted. A person may be tried and convicted of an attempted crime whether or not he fails or succeeds in committing the attempted crime. FSM v. Mumma, 21 FSM R. 387, 400 (Kos. 2017).

An argument that the defendant never possessed the firearm is not fatal to a charge that he attempted to illegally possess a weapon. FSM v. Mumma, 21 FSM R. 387, 400-01 (Kos. 2017).

Attempt is a specific intent crime. The act constituting the attempt must be done with the intent to commit that particular crime because it is the intent to commit the crime, not the possibility of success, which determines whether the defendant's act or omission constitutes the crime of attempt. FSM v. Mumma, 21 FSM R. 387, 401 (Kos. 2017).

Since there can be no attempt to accomplish an unintended result, the defendant must act intentionally to commit the crime of attempt, as neither negligence nor recklessness includes the required specific intent. FSM v. Mumma, 21 FSM R. 387, 401 (Kos. 2017).

A defendant's contention that there was no attempt to commit the crime of possession of a firearm without a valid license because he applied for such license shortly after the firearm arrived in his postal box, may be raised at trial as evidence that he made no attempt to possess the firearm without a license, but the ultimate burden of persuasion remains with the government to prove the elements of attempt in spite of these assertions. FSM v. Mumma, 21 FSM R. 387, 401 (Kos. 2017).

Dismissal will be denied when the government has sufficiently alleged attempt in the information, because it must be given the opportunity to prove beyond a reasonable doubt the defendant's: 1) intent to commit the alleged crime; and 2) that he took action which constitutes a substantial step in a course of conduct planned to culminate in the commission of that crime. FSM v. Mumma, 21 FSM R. 387, 401 (Kos. 2017).

When both the defendant's intent and whether he committed an act sufficient to amount to an attempt are questions of fact inappropriate for determination before trial, the defendant's motion to dismiss the charge of attempt to possess a firearm without having a valid identification card will be denied. FSM v. Mumma, 21 FSM R. 387, 401 (Kos. 2017).

– Bill of Particulars

A request for a more definite statement is actually a motion for a bill of particulars. A motion for a bill of particulars may be made before the initial appearance or within ten days after the initial appearance or at such later time as the court may permit. FSM v. Kansou, 14 FSM R. 128, 131 (Chk. 2006).

A bill of particulars is not a matter of right. It rests within the trial court's sound discretion. FSM v. Sam, 14 FSM R. 398, 401 (Chk. 2006).

While the court must first look to FSM sources of law and circumstances in the FSM to establish legal requirements in criminal cases rather than begin with a review other courts' cases, the court may look to U.S. sources for guidance in interpreting FSM Criminal Procedure Rule 7(f) (bills of particulars) when the court has not previously construed that rule and it is identical or similar to the U.S. rule. FSM v. Sam, 14 FSM R. 398, 401 n.1 (Chk. 2006).

The purpose of the bill of particulars is to inform the defendant sufficiently about the charge so he can prepare his defense and can avoid surprise. The test on passing on a motion for a bill of particulars should be whether it is necessary that the defendant have the particulars sought in order that prejudicial surprise be avoided. The sole question should be whether adequate notice of the charge has been given the defendant. FSM v. Sam, 14 FSM R. 398, 401 (Chk. 2006).

A motion for a bill of particulars should make clear what relief the defendant is seeking, and should be worded definitely enough that if it is granted the court could enforce its order. A motion for a bill of particulars must be denied when the motion has failed to specify the particulars sought, or makes a catchall request for "particulars." FSM v. Sam, 14 FSM R. 398, 402 (Chk. 2006).

No bill of particulars is necessary if the government has provided the information needed in some other satisfactory form, such as when the government has adopted an "open file" discovery policy, giving the defendants the opportunity to inspect all relevant documentary and physical evidence. FSM v. Sam, 14 FSM R. 398, 402 (Chk. 2006).

A motion for a bill of particulars will be denied when no grounds were given for the motion's tardiness, when the motion fails to specify the particulars sought, and when it appears that the government has provided the information through other means. FSM v. Sam, 14 FSM R. 398, 402 (Chk. 2006).

If the information does not sufficiently inform the defendant of the charges against him, the defendant has the available remedy of filing for a bill of particulars pursuant to Chuuk Criminal Rule 7(e). The purpose of a bill of particulars is to inform the defendant sufficiently about the charge so he can prepare his defense and can avoid surprise. A bill of particulars is typically requested when the defendant is unable to determine from the information what the charges are against him. Chuuk v. Menisio, 15 FSM R. 276, 279 (Chk. S. Ct. Tr. 2007).

Under Rule 7(f), a motion for a bill of particulars may be made before the initial appearance or within ten days after arraignment or at such later time as the court may permit. Chuuk v. Menisio, 15 FSM R. 276, 279 n.2 (Chk. S. Ct. Tr. 2007).

A bill of particulars is not a matter of right. It rests within the trial court's sound discretion. The test on passing on a motion for a bill of particulars should be whether it is necessary that the defendant have the particulars sought in order that prejudicial surprise be avoided. The sole question should be whether adequate notice of the charge has been given the defendant. Chuuk v. Menisio, 15 FSM R. 276, 279-80 (Chk. S. Ct. Tr. 2007).

A motion for a bill of particulars should make clear what relief the defendant is seeking, and should be worded definitely enough that if it is granted the court could enforce its order. A motion for a bill of particulars must be denied when the motion has failed to specify the particulars sought, or makes a catchall request for "particulars." No bill of particulars is necessary if the government has provided the information needed in some other satisfactory form, such as when the government has adopted an "open file" discovery policy, giving the defendants the opportunity to inspect all relevant documentary and physical evidence. A motion for a bill of particulars will be denied, even if timely, when the motion fails to specify the particulars sought and when it appears that the government has provided the information through other means. Chuuk v. Menisio, 15 FSM R. 276, 280 (Chk. S. Ct. Tr. 2007).

The court can find no grounds for granting a motion for a bill of particulars when the government has

set forth its charges against the defendant in compliance with Rule 7(c)(1); when it has complied with the defendant's discovery requests to the extent of offering full disclosure of its case file against him; when the defendant does not specifically identify any "particulars" being sought; and when the defendant has not, in any case, set forth any grounds demonstrating that the particulars sought are necessary to avoid prejudicial surprise. Chuuk v. Menisio, 15 FSM R. 276, 280 (Chk. S. Ct. Tr. 2007).

While a defendant cannot be sentenced to consecutive sentences on a greater and lesser-included offense arising from the same act, the government does not have to identify which of its charges in its criminal information it intends to pursue prior to conviction. Rather, it is entitled to pursue, at trial, multiple claims based on the same act, and a defendant's motion for pretrial dismissal or for a bill of particulars will be denied. Chuuk v. Suzuki, 16 FSM R. 625, 631-32 (Chk. S. Ct. Tr. 2009).

The court may direct the filing of a bill of particulars. The purpose of a bill of particulars is to inform the defendant sufficiently about the charge so he can prepare his defense and can avoid surprise. FSM v. Chunn, 21 FSM R. 501, 504 (Pon. 2018).

A bill of particulars is typically requested when the defendant is unable to determine from the information what the charges against him are. FSM v. Chunn, 21 FSM R. 501, 504 (Pon. 2018).

A bill of particulars is the prosecutor's formal written statement providing details of the charges against the defendant. Its functions are to give the defendant notice of the essential facts supporting the crimes alleged in the information, and also to avoid prejudicial surprise to the defense at trial. FSM v. Chunn, 21 FSM R. 501, 504 (Pon. 2018).

A motion for a bill of particulars will be denied when the facts as alleged in four different, detailed affidavits include dates, locations, and amounts of money exchanged, and in addition to the charges as set forth in the information, give the defendant sufficient knowledge of the charges against him so that there will be no prejudicial surprise to him. FSM v. Chunn, 21 FSM R. 501, 504 (Pon. 2018).

A bill of particulars is not a matter of right. It rests within the trial court's sound discretion. FSM v. Chunn, 21 FSM R. 501, 505 (Pon. 2018).

If the information does not sufficiently inform the accused of the charges against him, he may file for a bill of particulars, although a bill of particulars in not necessarily a "right," and it is preconditioned on the State having listed actionable charges within the information against the accused. Chuuk v. Kincho, 22 FSM R. 411, 413 (Chk. S. Ct. Tr. 2019).

– Bribery

Since the maximum penalty for bribery is five years' imprisonment, the general limitation period for bribery is thus three years. FSM v. Kansou, 14 FSM R. 132, 135 (Chk. 2006).

– Burglary

Where there is no question that the defendant entered a building, the relevant question under the FSM burglary statute is whether the defendant's entry was accompanied by the purpose to commit any felony, assault, or larceny therein. 11 F.S.M.C. 951(1). FSM v. Boaz (I), 1 FSM R. 22, 23-24 (Pon. 1981).

Under section 951 of the National Criminal Code the issue is not whether the defendant actually committed an assault or a battery, but whether he entered the house with the purpose of committing an assault. 11 F.S.M.C. 951(1). FSM v. Boaz (I), 1 FSM R. 22, 25-26 (Pon. 1981).

A privilege to enter one's cousin's house cannot be exercised by pounding on the walls of house at two a.m. until a hole for entry is created and shouting threats at the occupants. FSM v. Boaz (I), 1 FSM R. 22, 26 (Pon. 1981).

The fact that one may have a general privilege to enter property does not necessarily mean that the privilege may be exercised at all times and in every conceivable manner. FSM v. Ruben, 1 FSM R. 34, 39 (Truk 1981).

The court is willing to assume that the homeowner whose wife's brother is seeking to enter the house by force late at night in a threatening manner should as a matter of customary law go lightly and use less force than he might to expel some other intruder. FSM v. Ruben, 1 FSM R. 34, 41 (Truk 1981).

Since under Yap statutory law trespass is a lesser included offense of burglary, a trespass conviction will be vacated when there is a burglary conviction for the same act. Yinmed v. Yap, 8 FSM R. 95, 101-02 (Yap S. Ct. App. 1997).

The criminal offense of burglary is defined as entering by force, stealth or trickery, the dwelling place or building of another with the intent to commit a felony, larceny, assault, or assault and battery therein. Kosrae v. Jackson, 12 FSM R. 93, 98 (Kos. S. Ct. Tr. 2003).

When the state has not proven the element of entering by force, stealth or trickery, the state has not proven all elements of the offense of burglary beyond a reasonable double. The burglary charge will accordingly be dismissed. Kosrae v. Jackson, 12 FSM R. 93, 98 (Kos. S. Ct. Tr. 2003).

The offense of burglary requires proof beyond a reasonable doubt of entering by force, stealth or trickery, the dwelling place or building of another with the intent to commit a felony, larceny, assault, or assault and battery therein. Kosrae v. Anton, 12 FSM R. 606, 609 (Kos. S. Ct. Tr. 2004).

When there was no evidence presented that the defendant touched or felt the victim in any way so as to infer his intent to commit a sexual assault or other felony upon her and there was no other evidence presented that the defendant committed any other acts to support the intent to commit a sexual assault, larceny, assault, assault and battery, or other felony, the state did not prove beyond a reasonable doubt the criminal offense of burglary and therefore, the defendant must be acquitted of that offense. Kosrae v. Anton, 12 FSM R. 606, 609 (Kos. S. Ct. Tr. 2004).

– Civil Rights Offenses

A person commits a crime if he or she willfully, whether or not acting under the color of law, deprives another of, or injures, oppresses, threatens, or intimidates another in the free exercise or enjoyment of, or because of his or her having so exercised any right, privilege, or immunity secured to him by the FSM Constitution or laws. Wainit v. FSM, 15 FSM R. 43, 45 n.1 (App. 2007).

The maximum sentence for violating 11 F.S.M.C. 701 was raised in the 2001 criminal code from three years to ten years. Wainit v. FSM, 15 FSM R. 43, 46 n.2 (App. 2007).

The trial court's imposition of a one year sentence of imprisonment for a violation of 11 F.S.M.C. 701 was not an abuse of discretion when there is nothing in the record which suggests that the sentence was anything but reasonable in light of the evidence presented to the court at the time of sentencing, and when, at the time of the defendant's conduct giving rise to his conviction, a violation of 11 F.S.M.C. 701 could result in a period of incarceration of up to 3 years. Wainit v. FSM, 15 FSM R. 43, 49 (App. 2007).

The phrase "whether or not acting under color of law" in the civil rights criminal statute plainly means that Congress, by enacting the statute, made it a crime for a private person to willfully deprive another of, or injure, oppress, threaten, or intimidate the other in the free exercise of his or her rights under the FSM Constitution or laws. FSM v. Tipingeni, 19 FSM R. 439, 445 (Chk. 2014).

"Color of law" means the appearance or semblance without the substance of legal right. "Color of

law" usually implies a misuse of power made possible only because the wrongdoer is clothed with the authority of the state. In the context of civil rights statutes or criminal law "color of law" and "state action" are synonymous. FSM v. Tipingeni, 19 FSM R. 439, 445 (Chk. 2014).

A person "not acting under the color of law" is a private individual – not a person who is clothed with governmental authority. Tile 11, subsection 701(1) makes certain conduct by purely private persons (as well as those clothed with governmental authority) a crime. FSM v. Tipingeni, 19 FSM R. 439, 446 (Chk. 2014).

The FSM always has standing to enforce its own criminal laws and to prosecute violators in order to protect the public against future harm and to punish wrongdoers for past harm. Criminal prosecutions shall be conducted in the name of the Federated States of Micronesia for violations of laws enacted by the FSM Congress, and this includes the criminal law and punishing civil rights violators. FSM v. Tipingeni, 19 FSM R. 439, 446 (Chk. 2014).

In addition to being potentially criminally liable to and subject to punishment by the FSM for the violation of 11 F.S.M.C. 701(1), a defendant could potentially also be civilly liable to the alleged victims in a suit under 11 F.S.M.C. 701(3). Three major differences exist between the criminal case and any potential civil case – in a civil case 1) the alleged victim(s) would be the plaintiff(s); 2) the burden of proof would be lower (preponderance of the evidence as opposed to beyond a reasonable doubt); and 3) the element of willfulness would not be required to establish civil liability. FSM v. Tipingeni, 19 FSM R. 439, 446 (Chk. 2014).

– Conspiracy

Evidence will not be stricken when most previously introduced evidence is unquestionably related to counts still before the court; when the description of the defendants' duties before and after July 12, 1981 did not vary significantly; when the auditor's activities uncovered illegal transactions both before and after July 12, 1981; when various Mobil employees' conversations before July 12, 1981 related to the existence of a pattern of conduct and planning and carrying out illegal transactions and are relevant about whether a conspiracy existed after July 12, 1981. FSM v. Jonas (II), 1 FSM R. 306, 310-12 (Pon. 1983).

Where the prosecution of an underlying offense is not time-barred, prosecution of conspiracy to commit that offense is not time-barred even if part of the conspiracy extends back in time to a point that would be time-barred. In re Extradition of Jano, 6 FSM R. 93, 107 (App. 1993).

A person commits the offense of conspiracy, if, with intent to promote or facilitate the commission of a national offense if he agrees with one or more persons that they, or one or more of them, will engage in or solicit the conduct or will cause or solicit the result specified by the definition of the offense; and he or another person with whom he conspired commits an overt act in pursuance of the conspiracy. FSM v. Este, 12 FSM R. 476, 483 (Chk. 2004).

The agreement in a conspiracy does not have to be explicit. A mere tacit understanding will suffice, and there need not be any written statement or even a speaking of words which expressly communicates the agreement. FSM v. Este, 12 FSM R. 476, 483 (Chk. 2004).

A conspiracy exists when either the agreement or the means contemplated for its achievement are unlawful. FSM v. Este, 12 FSM R. 476, 483 (Chk. 2004).

When it was unlawful and a national offense for any of the Uman Social Project funds to be spent on anything other than the construction of six new community halls on Uman, an agreement to do so would thus constitute the national offense of conspiracy. A single overt act committed by one of the co-conspirators before the end of the conspiracy is sufficient for there to be criminal liability for conspiracy. FSM v. Este, 12 FSM R. 476, 483 (Chk. 2004).

Conspiracy to commit a crime is an offense separate and distinct from the crime that is the object of the conspiracy. FSM v. Este, 12 FSM R. 476, 483 (Chk. 2004).

It is not necessary to prove the specific terms or the specific scope of the conspiratorial agreement or to prove that the conspiracy's substantive object was accomplished. FSM v. Este, 12 FSM R. 476, 483 (Chk. 2004).

The existence of, and participation in, a criminal conspiracy may be proved by circumstantial as well as by direct evidence, if it affords a reasonable inference as to the ultimate facts sought to be proved. There must be evidence of some participation or interest in the commission of the offense. FSM v. Este, 12 FSM R. 476, 483 (Chk. 2004).

The trial court is allowed great discretion in the reception of circumstantial evidence, for a conspiracy must be proved by a number of indefinite acts, conditions, and circumstances varying with the purpose to be accomplished. When it is shown that the defendants by their acts pursued the same object, one performing one part and the other performing another part so as to complete it or with a view to its attainment, the trier of fact will be justified in concluding that they were engaged in a conspiracy to effect that object. Most conspiracy convictions are based on circumstantial evidence. FSM v. Este, 12 FSM R. 476, 483 (Chk. 2004).

A finding by the court that there is insufficient evidence to convict all but one of the parties alleged to have participated in a conspiracy ordinarily requires the discharge of the one remaining defendant. FSM v. Este, 12 FSM R. 476, 484 (Chk. 2004).

A person commits the offense of conspiracy, if, with intent to promote or facilitate the commission of a national offense, he agrees with one or more persons that they, or one or more of them, will engage in or solicit the conduct or will cause or solicit the result specified by the definition of the offense; and he or another person with whom he conspired commits an overt act in pursuance of the conspiracy. FSM v. Kansou, 14 FSM R. 132, 134 (Chk. 2006).

The agreement in a conspiracy does not have to be explicit. A mere tacit understanding will suffice, and there need not be any written statement or even a speaking of words which expressly communicates the agreement and a conspiracy exists when either the agreement or the means contemplated for its achievement are unlawful. FSM v. Kansou, 14 FSM R. 132, 134 (Chk. 2006).

It is not necessary to prove the specific terms or the specific scope of the conspiratorial agreement or to prove that the conspiracy's substantive object was accomplished. A single overt act committed by one of the co-conspirators before the conspiracy's end is enough for there to be criminal liability for conspiracy. The existence of, and participation in, a criminal conspiracy may be proved by circumstantial as well as by direct evidence, if it affords a reasonable inference as to the ultimate facts sought to be proved. There must be evidence of some participation or interest in the commission of the offense. FSM v. Kansou, 14 FSM R. 132, 134 (Chk. 2006).

Conspiracy is regarded as a continuing offense, hence, the statutory period of limitation therefor begins to run from the time of the last provable overt act in furtherance of the conspiracy. FSM v. Kansou, 14 FSM R. 132, 134 (Chk. 2006).

Conspiracy is punishable by imprisonment for not more than one-half the maximum sentence which is provided for the most serious offense which was the object of the conspiracy if the maximum is less than life imprisonment. When the most serious offense charged as an object of the conspiracy carries a maximum of twenty years' imprisonment, the conspiracy charge thus has a maximum sentence of ten years and therefore a limitations period of three years. FSM v. Kansou, 14 FSM R. 132, 134-35 (Chk. 2006).

Even if the evidence is of events that took place in periods for which prosecution may be time-barred, it is not necessarily inadmissible. Nor is hearsay necessarily inadmissible. FSM v. Kansou, 14 FSM R. 139, 140-41 (Chk. 2006).

A statement by a party's co-conspirator made during the course and in furtherance of the conspiracy is not hearsay and is admissible. FSM v. Kansou, 14 FSM R. 139, 141 (Chk. 2006).

It is an affirmative defense that the defendant, under circumstances showing a complete and voluntary renunciation of his criminal intent, made a reasonable effort to prevent the conduct or result which is the object of the conspiracy. FSM v. Petewon, 14 FSM R. 320, 327 (Chk. 2006).

When no evidence was ever presented that a defendant made any effort, let alone a reasonable effort to prevent the conduct or result which is the object of the conspiracy, he cannot claim that the withdrawal or renunciation defense presents a substantial question since he did not present any evidence that might show that he could meet the defense's statutory requirements. FSM v. Petewon, 14 FSM R. 320, 327 (Chk. 2006).

Under the conspiracy law, the agreement to commit the crime need not be explicit and may be proven by circumstantial evidence. There is no requirement that there be even a written statement or speaking of words which expressly communicates the agreement. A mere tacit understanding between the parties is sufficient to show the agreement. Moses v. FSM, 14 FSM R. 341, 346 (App. 2006).

When, although no evidence was introduced which showed an explicit agreement, given the appellant's position as the Uman Social Project project manager, the responsibilities that position entailed, the relationship he had with the Southern Namoneas Development Authority executive director, the misuse of national funds under appellant's and the director's direction and management, and by appellant himself, and the fact that no new community halls were built by appellant's and the director's project, there is sufficient evidence in the record for a reasonable trier of fact to find beyond a reasonable doubt that the appellant agreed with the director to commit theft. Moses v. FSM, 14 FSM R. 341, 346 (App. 2006).

A claim that the statute of limitations has run that is raised as an insufficiency of the evidence claim – based on a contention that there is no evidence that any overt acts to further the conspiracy were committed within the statute of limitations applicable to the appellant because the appellant explains away all acts within the three years before the information was filed as totally innocent acts or acts to commit some other underlying offense – is not a close or substantial question because an overt act in the furtherance of a conspiracy may be in itself a totally innocent act, and not a crime at all. FSM v. Petewon, 14 FSM R. 463, 469 (Chk. 2006).

The agreement in a conspiracy does not have to be explicit. A mere tacit understanding will suffice, and there need not be any written statement or even a speaking of words which expressly communicates the agreement and a conspiracy exists when either the agreement or the means contemplated for its achievement are unlawful. FSM v. Fritz, 14 FSM R. 548, 554-55 (Chk. 2007).

The existence of, and participation in, a criminal conspiracy may be proved by circumstantial as well as by direct evidence, if it affords a reasonable inference as to the ultimate facts sought to be proved. FSM v. Fritz, 14 FSM R. 548, 555 (Chk. 2007).

The court may infer the existence of an agreement from circumstantial evidence and from the defendants' position and conduct. FSM v. Fritz, 14 FSM R. 548, 555 (Chk. 2007).

When there is sufficient evidence present from which the court may infer probable cause that an agreement existed and sufficient evidence of the requisite mens rea, there is sufficient evidence to establish probable cause that a conspiracy existed. FSM v. Fritz, 14 FSM R. 548, 555 (Chk. 2007).

For conspiracy two types of intent must be shown – the intent to agree and the intent to achieve the

objective. FSM v. Fritz, 14 FSM R. 548, 555 (Chk. 2007).

Just as the intent to agree can be shown by circumstantial evidence that there was an agreement, the intent to achieve the objective can also be shown by a person's actions. FSM v. Fritz, 14 FSM R. 548, 555 (Chk. 2007).

A longer delay is tolerable for a complex conspiracy, than for an ordinary crime. FSM v. Kansou, 15 FSM R. 180, 184 (Chk. 2007).

Absent a strong showing of prejudice, co-conspirators are customarily tried together. This is not only for reasons of judicial and prosecutorial economy and, in the FSM, public defender economy, but also to give the factfinder a fuller picture of the scheme, as well as to decrease the chance of inconsistent verdicts and allow witnesses to avoid the burden of having to testify at successive trials. FSM v. Kansou, 15 FSM R. 180, 186-87 (Chk. 2007).

Since, absent a strong showing of prejudice, co-conspirators are customarily tried together, when the movant has not made a strong showing and has not identified any defense he would raise but cannot because his case is joined with another, his motion to sever will be denied. FSM v. Kansou, 15 FSM R. 373, 380 (Chk. 2007).

A co-conspirator's criminal liability is not predicated on the last overt act that that co-conspirator committed, or even on whether that co-conspirator committed any overt act. It is based on an overt act having been taken by any co-conspirator. FSM v. Kansou, 15 FSM R. 481, 482 (Chk. 2008).

By claiming that he could not have committed any overt act in pursuance of the conspiracy after December 1999, a defendant appears to be asserting the defense of withdrawal from the conspiracy. That defense is very limited. It is an affirmative defense that the accused, under circumstances showing a complete and voluntary renunciation of his criminal intent, made a reasonable effort to prevent the conduct or result which is the object of the conspiracy. When no evidence was ever presented, and the accused never asserted, that he made any effort, let alone a reasonable effort to prevent the conduct or result which was the object of the conspiracy, he cannot claim withdrawal or renunciation as a ground for dismissal. FSM v. Kansou, 15 FSM R. 481, 483 (Chk. 2008).

When co-conspirators had the opportunity to cease furthering the conspiracy by not submitting the accounts receivable for collection, as those debts were illegally incurred, but handed over those accounts to another with the understanding that the other was going to attempt collection from the government equates to an overt act done to further the goal of the conspiracy, namely the improper obligation and expenditure of national government funds. Engichy v. FSM, 15 FSM R. 546, 554 (App. 2008).

A letter can be an overt act because requesting the government to approve and pay a balance due that included charges involved in a conspiracy was an attempt to further the conspiracy, even though the co-conspirator was making the request in his official capacity as allottee. Engichy v. FSM, 15 FSM R. 546, 554 (App. 2008).

When two independent actions were both overt acts committed by a member, or members, of the conspiracy within the three years preceding the information's filing, the government filed its information within the applicable statute of limitations. Engichy v. FSM, 15 FSM R. 546, 554 (App. 2008).

The trial court used a co-defendant's pre-trial, out-of-court affidavit only against the declarant since the judge's discourses with the prosecutor stated that it was only being offered or used against the declarant and the trial court's made specific findings with regard to the affidavit that only concerned the declarant co-defendant and since the court's special findings delineated other pieces of evidence, independent of that affidavit, that supported the other defendants' participation in the conspiracy. Engichy v. FSM, 15 FSM R. 546, 556-57 (App. 2008).

The conspiracy statute does not explicitly require the underlying offense to be a crime. Engichy v. FSM, 15 FSM R. 546, 558 (App. 2008).

A person commits the offense of conspiracy, if, with intent to promote or facilitate the commission of a national offense, he agrees with one or more persons that they, or one or more of them will engage in or solicit the conduct or will cause or solicit the result specified by the offense's definition; and he or another person with whom he conspired commits an overt act in pursuance of the conspiracy. Engichy v. FSM, 15 FSM R. 546, 558 (App. 2008).

The agreement in a conspiracy does not have to be explicit. A mere tacit understanding will suffice, and there need not be any written statement or even a speaking of words which expressly communicates the agreement. It is not necessary to prove the specific terms or the specific scope of the conspiratorial agreement or to prove that the conspiracy's substantive object was accomplished. The existence of, and participation in, a criminal conspiracy may be proved by circumstantial as well as by direct evidence, if it affords a reasonable inference as to the ultimate facts sought to be proved. Engichy v. FSM, 15 FSM R. 546, 558 (App. 2008).

The trial court is allowed great discretion in the reception of circumstantial evidence, for a conspiracy must be proved by a number of indefinite acts, conditions, and circumstances varying with the purpose to be accomplished. When it is shown that the defendants by their acts pursued the same object, one performing one part and the other performing another part so as to complete it or with a view to its attainment, the trier of fact will be justified in concluding that they were engaged in a conspiracy to effect that object. Most conspiracy convictions are based on circumstantial evidence. Engichy v. FSM, 15 FSM R. 546, 558 (App. 2008).

While appellate panels must always show deference to the inferences and conclusions drawn by a trial judge from evidence, this deference seems even greater in the context of a conspiracy trial, in which the trial judge is likely looking for the proverbial "wink and nod" that often ties a conspiracy together. It is with such considerable deference that an appellate court reviews the evidence explicitly relied upon by the trial court in reaching its guilty verdict. Engichy v. FSM, 15 FSM R. 546, 558-59 (App. 2008).

A motion for a pretrial acquittal on conspiracy counts based on the government's failure to prove an agreement will be denied as premature because the existence of such an agreement is subject to proof at trial. Chuuk v. Suzuki, 16 FSM R. 625, 632 (Chk. S. Ct. Tr. 2009).

A person commits the offense of conspiracy, if, with intent to promote or facilitate the commission of a national offense, he agrees with one or more persons that they, or one or more of them, will engage in or solicit the conduct or will cause or solicit the result specified by the definition of the offense; and he or another person with whom he conspired commits an overt act in pursuance of the conspiracy. Cholymay v. FSM, 17 FSM R. 11, 23 (App. 2010).

The agreement in a conspiracy does not have to be explicit. A mere tacit understanding will suffice, and there need not be any written statement or even a speaking of words which expressly communicates the agreement. It is not necessary to prove the specific terms or the specific scope of the conspiratorial agreement or to prove that the conspiracy's substantive object was accomplished. The existence of, and participation in, a criminal conspiracy may be proved by circumstantial as well as by direct evidence, if it affords a reasonable inference as to the ultimate facts sought to be proved. Cholymay v. FSM, 17 FSM R. 11, 23 (App. 2010).

The trial court is allowed great discretion in the reception of circumstantial evidence, for a conspiracy must be proved by a number of indefinite acts, conditions, and circumstances varying with the purpose to be accomplished. Cholymay v. FSM, 17 FSM R. 11, 24 (App. 2010).

When it is shown that the defendants by their acts pursued the same object, one performing one part

and the other performing another part so as to complete it or with a view to its attainment, the trier of fact will be justified in concluding that they were engaged in a conspiracy to effect that object. Most conspiracy convictions are based on circumstantial evidence. Cholymay v. FSM, 17 FSM R. 11, 24 (App. 2010).

While appellate panels must always show deference to the inferences and conclusions drawn by a trial judge from evidence, this deference seems even greater in the context of a conspiracy trial, in which the trial judge is likely looking for the proverbial "wink and nod" that often ties a conspiracy together. It is with such considerable deference that an appellate court reviews the evidence explicitly relied upon by the trial court in finding the defendants guilty. Cholymay v. FSM, 17 FSM R. 11, 24 (App. 2010).

When the circumstantial evidence establishes that the defendants by their acts pursued the same object, one performing one part and the other performing another part so as to complete the making of obligations in advance of availability of funds, obligating funds for other than their lawful purpose, and submitting fraudulent documents, the trier of fact was justified in concluding that the defendants were engaged in a conspiracy to achieve those objectives. Cholymay v. FSM, 17 FSM R. 11, 24 (App. 2010).

An allegation that the defendants "did unlawfully conspire" to do some act is an allegation that there was an agreement since the word "conspire" means to join in secret agreement to do an unlawful or wrongful act or to use such means to accomplish a lawful end. By alleging that the defendants "conspired to" do something, the information alleges that the defendants joined in an agreement. FSM v. Suzuki, 17 FSM R. 70, 76 (Chk. 2010).

If a person conspires to commit a number of offenses, he or she is guilty of only one conspiracy if the multiple offenses are the object of the same agreement or continuous conspiratorial relationship, but the prosecution may seek to charge and prosecute all alleged conspiracies, and, if it proves more than one of the conspiracy counts, a guilty finding will be entered on only one of the counts. FSM v. Suzuki, 17 FSM R. 70, 76 (Chk. 2010).

A solicitation charge will merge into a conspiracy charge when the person solicited agrees to the solicitation by acting on the request. FSM v. Esefan, 17 FSM R. 389, 398 n.5 (Chk. 2011).

Like aiding and abetting, soliciting and conspiring are all bases for criminal liability for the acts of another found in 11 F.S.M.C. 301(1)(d). FSM v. Esefan, 17 FSM R. 389, 398 n.5 (Chk. 2011).

A conspiracy count is sufficient if it alleges an agreement, and identifies the object towards which the agreement is directed and an overt act. But it is not necessary that the information state the object of the agreement with the detail required of an information charging the substantive offense, and it is not necessary in a conspiracy charge to allege with precision all the elements essential to the offense which is the object of a conspiracy; allegations clearly identifying the offense the defendants conspired to commit are sufficient. FSM v. Sorim, 17 FSM R. 515, 523 (Chk. 2011).

When, although the information could have been drawn with greater care, the accused is not misled to his prejudice because the prosecution failed to cite the statute(s) that the codefendants allegedly conspired to violate, the conspiracy count will not be dismissed. FSM v. Sorim, 17 FSM R. 515, 523 (Chk. 2011).

Since the existence of an agreement forming a conspiracy may be proven entirely by circumstantial evidence, circumstantial evidence can be sufficient to establish probable cause that such an agreement existed. FSM v. Sorim, 17 FSM R. 515, 524 (Chk. 2011).

Customarily, persons charged with conspiracy are tried together. FSM v. Sorim, 17 FSM R. 515, 524 (Chk. 2011).

A statement by a party's co-conspirator made during the course and in furtherance of a conspiracy is not hearsay and is admissible. FSM v. Sorim, 17 FSM R. 515, 525 n.3 (Chk. 2011).

A conspiracy exists when either the agreement or the means contemplated for its achievement are unlawful. Lee v. Kosrae, 20 FSM R. 160, 166 (App. 2015).

The crime of conspiracy requires proof of specific intent, actual or implied, to violate law. Specific intent requires more than a mere general intent to engage in certain conduct or to do certain acts. The specific intent required for the crime of conspiracy is the intent to advance or further the unlawful object of the conspiracy. Lee v. Kosrae, 20 FSM R. 160, 166 (App. 2015).

There is no such thing as liability without fault conspiracy. In order to be guilty of conspiring to commit an underlying strict liability offense, the defendant must have the specific intent to violate the underlying law. Lee v. Kosrae, 20 FSM R. 160, 167 (App. 2015).

When the prosecution did not prove the accused had the specific intent to operate without a Kosrae Island Resource Management Authority permit and did not prove that he agreed with anyone or intended to agree with anyone to run his sea cucumber operation without a KIRMA permit, his conspiracy conviction must be reversed and that charge be dismissed. Lee v. Kosrae, 20 FSM R. 160, 167 (App. 2015).

There are two essential elements a criminal information charging conspiracy must contain to satisfy due process standards – 1) an agreement with one or more persons that they, or one or more of them, will commit a crime and 2) an overt act in furtherance of the conspiracy by a party to the conspiracy. FSM v. Shiro, 21 FSM R. 195, 204 (Chk. 2017).

A conspiracy agreement need not be explicit, and the ultimate commission of the underlying offense need not be proved. FSM v. Shiro, 21 FSM R. 195, 204 (Chk. 2017).

Conspiracy to commit a crime is an offense separate and distinct from the crime that is the object of the conspiracy. FSM v. Shiro, 21 FSM R. 195, 204 (Chk. 2017).

A conspiracy count is sufficient if it alleges an agreement, identifies the object towards which the agreement is directed, and an overt act. It is not necessary that the information state the object of the agreement with the detail required of an information charging the substantive offense or that it allege with precision all the elements essential to the offense which is the conspiracy's object; allegations clearly identifying the offense the defendants conspired to commit are sufficient. FSM v. Shiro, 21 FSM R. 195, 204 (Chk. 2017).

For conspiracy, the agreement does not have to be explicit. A mere tacit understanding will suffice, and there need not be any written statement or even a speaking of words which expressly communicates the agreement. FSM v. Shiro, 21 FSM R. 195, 204 (Chk. 2017).

Merely because each defendant acted individually after the implicit agreement does not mean a conspiracy was not committed because any party to the conspiracy who then commits an overt act in furtherance of the conspiracy satisfies the statute's second essential element. FSM v. Shiro, 21 FSM R. 195, 205 (Chk. 2017).

Although the criminal information could have been drafted with greater care, the defendants are not misled to their prejudice based on the information's language charging them with conspiracy to commit trafficking in children when, from Counts I through VIII and the supporting affidavit, it should be clear that they are charged with conspiring to commit the offense of trafficking in children and when the conspiracy count (IX) describes the substantive underlying offense with enough specificity to sufficiently apprise the defendants of the charges which they must be prepared to defend and when it is detailed enough so that they may plead this case as a bar to future prosecutions for the same crime alleged. FSM v. Shiro, 21 FSM R. 195, 205 (Chk. 2017).

When the prosecution of an underlying offense is not time-barred, prosecution of conspiracy to commit that offense is not time-barred even if part of the conspiracy extends back in time to a point that would be time-barred. FSM v. Mumma, 21 FSM R. 387, 395, 397 (Kos. 2017).

A person commits the offense of conspiracy, if, with intent to promote or facilitate the commission of a national offense, he agrees with one or more person that they, or one or more of them, will engage in or solicit the conduct or will cause or solicit the result specified by the offense's definition; and he or another person with whom he conspired commits an overt act in pursuance of the conspiracy. FSM v. Mumma, 21 FSM R. 387, 399-400 (Kos. 2017).

A conspiracy can only exist when either the agreement or the means contemplated for its achievement are unlawful. A conspiracy to agree to do something that is not a crime cannot be criminal conspiracy. FSM v. Mumma, 21 FSM R. 387, 400 (Kos. 2017).

There cannot be a conspiracy when the achievement of the alleged conspiracy was the importation, without a valid identification card, of two firearms that are permitted to be licensed, which is not a national crime. FSM v. Mumma, 21 FSM R. 387, 400 (Kos. 2017).

A statement made by an alleged co-conspirator during the course of and in furtherance of the conspiracy is not hearsay and is admissible. FSM v. Jappan, 22 FSM R. 81, 84 n.2 (Chk. 2018).

– Controlled Substances

The Trust Territory Controlled Substance Act is based on the United States Uniform Controlled Substance Act, therefore United States Cases construing the law are examined because it is presumed that the law adopted from the U.S. will be given the same construction in the FSM. Kallop v. FSM, 4 FSM R. 170, 174 (App. 1989).

Because the legislative intent in defining cannabis sativa L. in 11 F.S.M.C. 1112(14) was to embrace all species of marijuana, the government need not prove a defendant guilty of dealing in cannabis sativa L., but only in marijuana. Kallop v. FSM, 4 FSM R. 170, 174 (App. 1989).

A trial court may properly infer from the quantity of marijuana possessed that the requisite intent existed to support a conviction of trafficking. Kallop v. FSM, 4 FSM R. 170, 175-76 (App. 1989).

The offense of unauthorized consuming, possessing or giving of alcoholic drink requires proof of consuming or possessing alcoholic drink without being in actual possession of a valid drinking permit. Kosrae v. Phillip, 14 FSM R. 42, 48 (Kos. S. Ct. Tr. 2006).

The offense of unauthorized consuming, possessing or giving of alcoholic drink is not inclusive of, or a lesser included offense of driving under the influence because the two offenses are committed with completely different actions and do not share even one common element. The offense of unauthorized consuming, possessing or giving of alcoholic drink does not require any involvement of a vehicle, whereas the offense of driving under the influence does not require possession of a alcoholic drink or non-possession of a valid drinking permit. Also, both offenses are classified as category one misdemeanors: neither offense is a classified as lesser than the other. Kosrae v. Phillip, 14 FSM R. 42, 48 (Kos. S. Ct. Tr. 2006).

The offense of unauthorized consuming, possessing, or giving of alcoholic drink requires proof of consuming or possessing alcoholic drink without attaining the age of twenty-one years. Kosrae v. Jonithan, 14 FSM R. 94, 96 (Kos. S. Ct. Tr. 2006).

The offense of drunken and disorderly conduct requires proof of being drunk and disorderly on any street, road, or other public place from the voluntary use of intoxicating liquor. Kosrae v. Jonithan, 14 FSM

R. 94, 97 (Kos. S. Ct. Tr. 2006).

The offense of unauthorized consuming, possessing or giving of alcoholic drink, Kos. S.C. § 13.517(4), requires proof of consuming an alcoholic drink or possessing an open container of alcoholic drink in a public place. Kosrae v. Tulensru, 14 FSM R. 115, 122 (Kos. S. Ct. Tr. 2006).

When it is undisputed that a public road is a public place and that the defendant was carrying and possessing an open beer can on the public road, the court can draw the inference from the facts in evidence that the open beer can possessed by the defendant on the public road was an open beer can containing beer, which is an alcoholic drink. Kosrae v. Tulensru, 14 FSM R. 115, 122 (Kos. S. Ct. Tr. 2006).

Possessing an open container of alcoholic drink in a public place except when such place is closed to the general public for the purpose of conducting a private party, reception or social gathering and admission is by invitation or as otherwise provided by law can constitute the offense of unauthorized consuming, possessing or giving of alcoholic drink. The statute does not require the defendant to consume or intend to consume alcoholic drink from the open container to be guilty of the offense. Possession is sufficient. Kosrae v. Tulensru, 14 FSM R. 115, 125 (Kos. S. Ct. Tr. 2006).

There was sufficient evidence apart from the field sobriety tests to sustain the conviction for driving under the influence because there were testimonies that the defendant appeared drunk and had the smell of alcohol on him, together with the fact that the defendant exhibited these characteristics when he emerged from his vehicle carrying an open can of Budweiser after going through a stop sign and colliding with another vehicle. Tulensru v. Kosrae, 15 FSM R. 122, 127 (App. 2007).

A trier of fact is entitled to rely on properly admitted evidence and reasonable inferences drawn from that evidence. A reasonable inference is that the accused, who smelled of alcohol and had appeared to be intoxicated, would not have emerged from a vehicle immediately after an accident carrying an empty Budweiser can with him when he had this can in hand when he was on the road, which is a public place. Thus there was sufficient evidence to convict the defendant for possessing an open can of alcohol in a public place. Tulensru v. Kosrae, 15 FSM R. 122, 127 (App. 2007).

– Criminal Intent

A defendant is not unfairly prejudiced or incapable of preparing an intelligent defense, simply because the government insisted on each of 11 F.S.M.C. §§ 918 and 919's three adjectives, "intentionally, knowingly and recklessly," as possibly accurate descriptions of a defendant's frame of mind. Laion v. FSM, 1 FSM R. 503, 518 (App. 1984).

The requisite intent for aggravated assault cannot be found simply by determining that the defendant purposely engaged in conduct which caused serious bodily injury. The crime of aggravated assault assumes at the very least disregard by the defendant for the well-being of the victim, and more typically, requires desire on the part of the defendant to injure the victim seriously. Laion v. FSM, 1 FSM R. 503, 519-20 (App. 1984).

A trial court may properly infer from the quantity of marijuana possessed that the requisite intent existed to support a conviction of trafficking. Kallop v. FSM, 4 FSM R. 170, 175-76 (App. 1989).

In the Kosrae Code there are two alternative mens rea elements under which the killing of another can be second-degree murder – the killing is either done with malice aforethought, or it is done while perpetrating or attempting to perpetrate a felony other than one which would statutorily incur liability for first-degree murder. Proof of either one of the two alternative mens rea elements is sufficient for a second-degree murder conviction. Palik v. Kosrae, 8 FSM R. 509, 514 (App. 1998).

A defendant's intention must be inferred from what he says and what he does. An inference is not permitted if it cannot reasonably be drawn from the facts in evidence. Kosrae v. Anton, 12 FSM R. 606, 609 (Kos. S. Ct. Tr. 2004).

When there was no evidence presented that the defendant touched or felt the victim in any way so as to infer his intent to commit a sexual assault or other felony upon her and there was no other evidence presented that the defendant committed any other acts to support the intent to commit a sexual assault, larceny, assault, assault and battery, or other felony, the state did not prove beyond a reasonable doubt the criminal offense of burglary and therefore, the defendant must be acquitted of that offense. Kosrae v. Anton, 12 FSM R. 606, 609 (Kos. S. Ct. Tr. 2004).

For conspiracy two types of intent must be shown – the intent to agree and the intent to achieve the objective. FSM v. Fritz, 14 FSM R. 548, 555 (Chk. 2007).

Just as the intent to agree can be shown by circumstantial evidence that there was an agreement, the intent to achieve the objective can also be shown by a person's actions. FSM v. Fritz, 14 FSM R. 548, 555 (Chk. 2007).

The crime of conspiracy requires proof of specific intent, actual or implied, to violate law. Specific intent requires more than a mere general intent to engage in certain conduct or to do certain acts. The specific intent required for the crime of conspiracy is the intent to advance or further the unlawful object of the conspiracy. Lee v. Kosrae, 20 FSM R. 160, 166 (App. 2015).

There is no such thing as liability without fault conspiracy. In order to be guilty of conspiring to commit an underlying strict liability offense, the defendant must have the specific intent to violate the underlying law. Lee v. Kosrae, 20 FSM R. 160, 167 (App. 2015).

The element that escalates contempt to criminal status is the level of willfulness associated with the conduct. Criminal intent is a specific intent to consciously disregard an order of the court. Criminal intent is defined by 11 F.S.M.C. 104(4) as acting with the conscious purpose to engage in the conduct specified. In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

Transferred intent is generally defined as, in the unintended-victim (or bad-aim) situation — where A aims at B but misses, hitting C — it is the view of the criminal law that A is just as guilty as if his aim had been accurate. Chuuk v. Roman, 21 FSM R. 138, 142 (Chk. S. Ct. Tr. 2017).

When A aims at B with a murderous intent to kill, but because of a bad aim he hits and kills C, A is guilty of the murder of C. Chuuk v. Roman, 21 FSM R. 138, 142 (Chk. S. Ct. Tr. 2017).

When A aims at B with intent to injure B but, missing B, hits and injures C, A is guilty of battery of C. Chuuk v. Roman, 21 FSM R. 138, 142 (Chk. S. Ct. Tr. 2017).

When the doctrine of transferred intent applies, the burden of proof still remains on the government, but the state need not prove the defendant intended to harm the actual victim, but merely the intended victim. Chuuk v. Roman, 21 FSM R. 138, 142 (Chk. S. Ct. Tr. 2017).

The state needs only to prove intent as to one of the intended victims and does not have to prove intent specifically directed at each of the actual victims. Chuuk v. Roman, 21 FSM R. 138, 143 (Chk. S. Ct. Tr. 2017).

Before a defendant can be convicted, it must first be shown that he had the intention to cause great bodily harm to someone. Merely because he shot the wrong person makes his crime no less heinous. It is only necessary that the state of mind exist, not that it be directed at a particular person. Chuuk v. Roman, 21 FSM R. 138, 143, 144 (Chk. S. Ct. Tr. 2017).

Where, although the defendant did not intend to injure the actual victim, there is sufficient circumstantial evidence showing that he intended to assault another with a dangerous weapon, this intent to harm the other was transferred the actual victim when the defendant's poor aim caused him to hit the four-year old daughter of his intended target. As a result, there was sufficient intent to find that that defendant purposely caused bodily injury to the victim with a dangerous weapon. Chuuk v. Roman, 21 FSM R. 138, 144-45 (Chk. S. Ct. Tr. 2017).

Attempt is a specific intent crime. The act constituting the attempt must be done with the intent to commit that particular crime because it is the intent to commit the crime, not the possibility of success, which determines whether the defendant's act or omission constitutes the crime of attempt. FSM v. Mumma, 21 FSM R. 387, 401 (Kos. 2017).

– Cruel and Unusual Punishment

Actions of a police officer in stripping a prisoner to punish and humiliate him, then beating him and damaging his pickup truck, constituted violation of the prisoner's constitutional rights to be free from cruel and unusual punishment and his due process rights. Tolenoa v. Alokoa, 2 FSM R. 247, 250 (Kos. 1986).

Where a person has not been tried, convicted and sentenced, no question of cruel and unusual punishment arises. Paul v. Celestine, 4 FSM R. 205, 208 (App. 1990).

A person's constitutional right to due process of law, and his right to be free from cruel and unusual punishment is violated when an officer instead of protecting the person from attack, threw him to the ground, and beat the person in the jail. Meitou v. Uwera, 5 FSM R. 139, 144 (Chk. S. Ct. Tr. 1991).

Constitutional provisions applicable to a prisoner may vary depending on his status. A pre-trial detainee has a stronger right to liberty, which right is protected by the Due Process Clause, FSM Const. art. IV, § 3. A convicted prisoner's claims upon liberty have been diminished through due process so that person must rely primarily on article IV, section 8 which protects him from cruel and unusual punishment. Plais v. Panuelo, 5 FSM R. 179, 190 (Pon. 1991).

In a case where a convicted prisoner, who is also a pre-trial detainee, asserts civil rights claims arising out of ill-treatment after arrest, denial of access to family is a due process claim, and physical abuse involves due process as well as cruel and unusual punishment claims. Plais v. Panuelo, 5 FSM R. 179, 190 (Pon. 1991).

In interpreting the provision against cruel and unusual punishment in the FSM Constitution, the court should consider the values and realities of Micronesia, but against a background of the law concerning cruel and unusual punishment and international standards concerning human rights. Plais v. Panuelo, 5 FSM R. 179, 196-97 (Pon. 1991).

Deliberate indifference to an inmate's medical needs can amount to cruel and unusual punishment. Plais v. Panuelo, 5 FSM R. 179, 199-200 (Pon. 1991).

Confining a prisoner in dangerously unsanitary conditions, which represent a broader government-wide policy of deliberate indifference to the dignity and well-being of prisoners, is a failure to provide civilized treatment or punishment, in violation of prisoners' protection against cruel and unusual punishment, and renders the state liable under 11 F.S.M.C. 701(3). Plais v. Panuelo, 5 FSM R. 179, 208 (Pon. 1991).

Revocation of probation of an alcohol dependent person because he consumed alcohol or because of alcohol related offenses for which he was convicted does not constitute cruel and unusual punishment in violation of the constitution. FSM v. Phillip, 5 FSM R. 298, 300 (Kos. 1992).

The FSM Constitution prohibits cruel and unusual punishment, but when a person has not been tried,

convicted and sentenced, no question of cruel and unusual punishment arises. Youp v. Pingelap, 9 FSM R. 215, 217 (Pon. 1999).

FSM cases addressing cruel and unusual punishment have consistently focused on claims made by prisoners. Youp v. Pingelap, 9 FSM R. 215, 217 (Pon. 1999).

When the plaintiff's alleged injuries occurred in connection with his arrest, and not as a result of any subsequent sentence he may have received, the plaintiff, as a matter of law, could not have been subjected to cruel and unusual punishment. His cruel and unusual punishment claim will therefore be dismissed. Youp v. Pingelap, 9 FSM R. 215, 217-18 (Pon. 1999).

When there is no constitutional provision which specifies the type of food to be provided to inmates and no statutory or regulatory provisions which specify the type of food to be provided to inmates, there is no clear ministerial duty of the Chief of Police which states the type of food to be provided to inmates. Talley v. Timothy, 10 FSM R. 528, 530 (Kos. S. Ct. Tr. 2002).

In interpreting the provision against cruel and unusual punishment, a court considers the value and realities of Micronesia, against a background of the law concerning cruel and unusual punishment and international standards concerning human rights. Talley v. Timothy, 10 FSM R. 528, 530 (Kos. S. Ct. Tr. 2002).

Deliberate indifference to an inmate's medical needs can amount to cruel and unusual punishment. Talley v. Timothy, 10 FSM R. 528, 530 (Kos. S. Ct. Tr. 2002).

When it appears that the Chief of Police has attended to a prisoner's medical needs with respect to food preparation and the medical recommendation for low salt and low fat foods, there has been no refusal by the state to provide to the prisoner's medical needs. Talley v. Timothy, 10 FSM R. 528, 530 (Kos. S. Ct. Tr. 2002).

When a prisoner has not shown deliberate indifference to his medical needs by the state, there was no cruel and unusual punishment. Talley v. Timothy, 10 FSM R. 528, 531 (Kos. S. Ct. Tr. 2002).

Corrections officers' failure to permit the use of restroom facilities while he was in jail and to provide him with food and water while he was in their custody was an inhumane condition of confinement constituting cruel and unusual punishment. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 491 (Pon. 2005).

When the only food provided the plaintiff during the approximately 63½ hours in jail was three donuts and a jar of water given to him by a prisoner and he was permitted to use the restroom only once during that time, and was obliged to urinate through the window, and to defecate into the pages of a magazine which he then discarded through the window, these inhumane conditions of confinement constitute cruel and unusual punishment, in derogation of the Declaration of Rights of the FSM Constitution. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 499 (Pon. 2005).

A detainee's claim that while in jail she was denied food and water and access to her family is not a cruel and unusual punishment claim because no question of cruel and unusual punishment arises when a person has not been tried, convicted, and sentenced. Jacob v. Johnny, 18 FSM R. 226, 231 (Pon. 2012).

A pretrial detainee has a stronger right than a convicted prisoner to liberty, and that right is protected by the Due Process Clause while a convicted prisoner's claims upon liberty have been diminished through due process so the convicted prisoner must rely primarily on the protections from cruel and unusual punishment. Jacob v. Johnny, 18 FSM R. 226, 231 (Pon. 2012).

When no evidence was introduced about what would constitute constitutionally acceptable jail

conditions in the FSM and in Chuuk and since little evidence was introduced about the actual conditions when the plaintiff was there, there is insufficient evidence for the court to conclude that the general Chuuk jail conditions constituted cruel and unusual punishment for the convicted prisoners. Inek v. Chuuk, 19 FSM R. 195, 200 (Chk. 2013).

When a prisoner was kept incarcerated in state jail after he has finished his maximum jail sentence and when state officials, after the matter was brought to their attention, showed deliberate indifference to his continued incarceration, the prisoner was subjected to cruel and unusual punishment in violation of the FSM Constitution. Kon v. Chuuk, 19 FSM R. 463, 465-66 (Chk. 2014).

Generally, the alleged mistreatment of pre-trial arrestees is subject to a due process analysis while that of convicted prisoners is analyzed under the cruel and unusual punishment standard. Kon v. Chuuk, 19 FSM R. 463, 466 (Chk. 2014).

Valuing the loss of a person's liberty interest because he was subjected to the cruel and unusual punishment of being forced to remain in jail for 161 days after his sentence had ended, is, like trying to calculate damages for pain and suffering, difficult because no fixed rules exist to aid in that determination, which lies in the court's sole discretion. Kon v. Chuuk, 19 FSM R. 463, 467 (Chk. 2014).

The FSM and Chuuk Constitutions both prohibit cruel and unusual punishment. Instances of cruel and unusual punishment include deliberate indifference to an inmate's medical needs; confining prisoner in dangerously unsanitary conditions; an officer instead of protecting a person from an attack, throwing him to the ground and beating the person in the jail; use of force by police officers when arrestee was so drunk and unstable to resist or defend himself; when a police officer uses force because he is enraged at being insulted by arrestee; when a municipality employs untrained persons as police officers, and fails to train them and authorizes their use of excessive force and summary punishment; corrections officers' failing to permit the use of restroom facilities or to provide food and water; and keeping an individual imprisoned for an additional 161 days after his sentence ended. Chuuk v. Silluk, 21 FSM R. 649, 652-53 (Chk. S. Ct. Tr. 2018).

When a person has not been tried, convicted, and sentenced, no question of cruel and unusual punishment arises. That is why the alleged mistreatment of pre-trial arrestees is subject to a due process analysis while that of convicted prisoners is analyzed under the cruel and unusual punishment standard. Chuuk v. Silluk, 21 FSM R. 649, 653, 656 (Chk. S. Ct. Tr. 2018).

A statute that sets only a minimum sentence does not allow the court unbridled discretion to implement cruel and unusual punishments because the court is constrained by the FSM and Chuuk Constitutions; because the court has a traditional role of adjudication based on equity that involves the considering mitigating and aggravating factors before imposing sentence; and because all statutes are presumptively constitutional. Thus, this statute is not so unconstitutionally vague or ambiguous as to violate a defendant's due process rights to be free from cruel and unusual punishment. Chuuk v. Silluk, 21 FSM R. 649, 655-56 (Chk. S. Ct. Tr. 2018).

Chuuk courts are restricted in hearing only "live" cases, meaning the case must be one appropriate for judicial determination. A matter is appropriate for judicial determination when there is a justiciable controversy, as distinguished from a difference or dispute of a hypothetical or abstract character, or one that is academic or moot. Thus, when a defendant has not yet stood trial and thus may not be convicted, the question of whether a potential sentence constitutes a cruel and unusual punishment is merely hypothetical and academic and not yet appropriate for judicial determination. Chuuk v. Silluk, 21 FSM R. 649, 656 (Chk. S. Ct. Tr. 2018).

The Chuuk and FSM Constitutions prohibit the infliction of cruel and unusual punishment. Chuuk v. Fred, 22 FSM R. 429, 432 (Chk. S. Ct. Tr. 2019).

Although there is a lack of a female holding cell in the Chuuk jail and no separate female showering and restroom facilities, a female prisoner is not subjected to a cruel and unusual punishment by virtue of her incarceration at the Chuuk jail with shared use of restroom facilities with male inmates – when she has a female police officer guarding her, her own separate sleeping quarters, and uses the shower at a different time from the male inmate population. Chuuk v. Fred, 22 FSM R. 429, 433 (Chk. S. Ct. Tr. 2019).

– Defamation

The criminal offense of "defamation" is an offense against the person and not an offense against tradition. Kosrae v. Waguk, 11 FSM R. 388, 391 (Kos. S. Ct. Tr. 2003).

The definition of the offense of "defamation" does not provide detailed warning of what type of speech is regulated whereas in other criminal offenses where speech is regulated, the specified words constituting the offense are listed. Kosrae v. Waguk, 11 FSM R. 388, 391 (Kos. S. Ct. Tr. 2003).

The offense of defamation does not provide adequate notice of what speech is regulated. A statute, properly interpreted, must give sufficient notice so that conscientious citizens may avoid inadvertent violations. The statute must also provide sufficiently definite standards to prevent arbitrary law enforcement. Kosrae v. Waguk, 11 FSM R. 388, 391 (Kos. S. Ct. Tr. 2003).

The Kosrae criminal offense of "defamation" does not contain specific language defining the conduct or speech which forms the offense. There are no specific words or conduct listed in the offense which forms the basis for the defamatory conduct. Kosrae v. Waguk, 11 FSM R. 388, 392 (Kos. S. Ct. Tr. 2003).

The offense of defamation was not enacted to protect tradition, and if the offense of defamation does not protect tradition, then the fundamental right of freedom of expression as guaranteed by the Kosrae Constitution may not be impaired or denied. Kosrae v. Waguk, 11 FSM R. 388, 392 (Kos. S. Ct. Tr. 2003).

Since the Kosrae criminal defamation statute does not protect tradition, it may not impair a defendant's fundamental right of freedom of expression. The defamation statute impairs the fundamental right of freedom of expression because it fails to provide a specific standard of criminal conduct, thereby persons would not have adequate notice of what type of speech was regulated under it. Kosrae v. Waguk, 11 FSM R. 388, 392 (Kos. S. Ct. Tr. 2003).

The complainant's right to bring a civil suit against the defendant for the tort of defamation is not impaired by the court's dismissal of the criminal defamation charges against her. Kosrae v. Waguk, 11 FSM R. 388, 392 (Kos. S. Ct. Tr. 2003).

When the evidence did not show it was the defendant's statements rather than another person's statements that resulted in "public hatred, contempt, or ridicule" of the victim and when there was no evidence to show the stronger feelings or behaviors of hatred, contempt, or ridicule from others towards the victim, the insufficient evidence on these elements, alone, offers grounds to acquit the defendant of defamation. Kosrae v. Taulung, 14 FSM R. 578, 580 (Kos. S. Ct. Tr. 2007).

Kosrae State Code § 13.313 is unconstitutionally vague because it fails to provide a specific standard of criminal conduct and therefore does not give adequate notice of what type of speech is being regulated since a statute must be drawn so as to give a person of ordinary intelligence fair notice that the contemplated conduct is forbidden and Kosrae State Code § 13.313 does not. Kosrae v. Taulung, 14 FSM R. 578, 580-81 (Kos. S. Ct. Tr. 2007).

Mean-spirited, accusatory words designed to harm another person, without regard to their truth or falsity are the kind of words that may result in a civil suit for the tort of defamation. However, the current criminal statute, Kosrae State Code § 13.313, may not be used to pursue a criminal prosecution for defamation because it does not clearly specify what types of speech are prohibited. Kosrae v. Taulung, 14

FSM R. 578, 581 (Kos. S. Ct. Tr. 2007).

– Defenses

A person, who was stunned at the time of the assault and was therefore unaware of his actions, cannot be held criminally liable for those actions. Nix v. Ehmes, 1 FSM R. 114, 125 (Pon. 1982).

As a matter of constitutional due process, a trial court presented with an alibi defense should consider evidence concerning the alibi along with all other evidence and shall not find the defendant guilty if after considering all of that evidence, the judge feels there is a reasonable doubt as to the defendant's guilt. Alaphonso v. FSM, 1 FSM R. 209, 223-25 (App. 1982).

When no custom is established by a preponderance of the evidence that the vile phrases used are sufficient provocation for a serious attack on the speaker, that alleged custom will not be considered in determining the criminal culpability of the person who attacks the one who has used vile phrases. FSM v. Raitoun, 1 FSM R. 589, 591-92 (Truk 1984).

Statutes which provided a defense in the form of exceptions to a general proscription do not reduce or remove the government's traditional burden of proving beyond a reasonable doubt every fact necessary to constitute the offense. Ludwig v. FSM, 2 FSM R. 27, 35 (App. 1985).

The government ultimately bears the burden of disproving the applicability of a statutory exception when it is properly presented as a defense. Ludwig v. FSM, 2 FSM 27, 35 (App. 1985).

Some exceptions under 11 F.S.M.C. 1203 whereunder possession of a firearm is permissible relate to considerations separate from the essential elements of the crime and require the defendant to place them in issue. A defendant claiming exemption as a law enforcement officer or United States military person engaged in official duty, §§ 1203(1), (4), or as a designated crocodile hunter, § 1203(5), is not disputing any element of the government's basic case. Instead, these exemption claims bring into play new facts, uniquely within the knowledge of the defendant, which the government could overlook by focusing on whether the conduct prohibited by the Weapons Control Act has occurred. The defendant is in a far better position to place these exemptions in issue and it is fair to require that he do so. Ludwig v. FSM, 2 FSM R. 27, 36 (App. 1985).

The 11 F.S.M.C. 1203(1), (4) and (5) exemptions whereunder possession of a firearm is permissible are defenses within the meaning of 11 F.S.M.C. 107, although they are not affirmative defenses for they are not so designated. The ultimate burden of persuasion remains with the government, but the defendant has the burden of going forward with sufficient evidence to raise these exemptions as issues. Ludwig v. FSM, 2 FSM R. 27, 36 (App. 1985).

The 11 F.S.M.C. 1203(2) exemption for curios, ornaments and historical pieces whereunder possession of a firearm is permissible requires findings that the firearm be in "unserviceable condition" and "incapable of being fired or discharged." Ludwig v. FSM, 2 FSM R. 27, 37 (App. 1985).

If there are defenses, proof of which would not negate any essential element of the crime itself, it is constitutionally permissible to place some burden of proof for those defenses upon defendant. Runmar v. FSM, 3 FSM R. 308, 311 (App. 1988).

11 F.S.M.C. 107 does not create any presumption as to mental health or lack thereof but merely establishes the standard of proof for a defense based upon mental disease, disorder, or defect, and places the burden of persuasion for that defense upon the defendant. Runmar v. FSM, 3 FSM R. 308, 314 (App. 1988).

Defendant who fails to request consideration of a lesser offense normally may not successfully appeal

from a conviction arrived at without such consideration, but where all elements for murder exist but homicide was caused under extreme mental or emotional disturbance for which there is reasonable explanation or excuse, defendant is entitled to be convicted of manslaughter rather than murder, without regard to whether request for consideration of manslaughter was made by either counsel. Runmar v. FSM, 3 FSM R. 308, 319 (App. 1988).

Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded. FSM Crim. R. 52(a). Otto v. Kosrae, 5 FSM R. 218, 222 (App. 1991).

Because Congress has neither adopted the de minimis defense found in the Model Penal Code nor any provision comparable to it that defense is not available in the FSM Supreme Court. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 179 (Pon. 1997).

A motion for judgment of acquittal on the ground the state had not sustained its burden of proof by proving all of the elements of the offense beyond a reasonable doubt because the state had not proven that police officer had "demanded" a driver's license from the defendant as required by statute, will be denied when the state proves that the officer did ask as by right for the defendant's driver's license. Kosrae v. Sigrah, 11 FSM R. 263, 264 (Kos. S. Ct. Tr. 2002).

The reasoning behind the principle barring physical resistance to an invalid search warrant is that while society has an interest in securing for its members the right to be free from unreasonable searches and seizures, society also has an interest in the orderly settlement of disputes between citizens and their government and it has an especially strong interest in minimizing the use of violent self-help in the resolution of those disputes particularly when a proper accommodation of those interests requires that a person claiming to be aggrieved by a search conducted pursuant to an allegedly invalid warrant test that claim in a court of law and not forcibly resist the warrant's execution at the place of search. This reasoning resonates even more strongly in Micronesia, where society has customarily prized peaceful and orderly resolution of disputes much higher than in the United States. FSM v. Wainit, 11 FSM R. 424, 436 (Chk. 2003).

At the time the FSM Constitution was framed and adopted, the prevailing U.S. constitutional analysis of its constitutional search and seizure provision, which the FSM constitutional provision was modeled after, was that persons had no right to resist a search warrant even if that warrant was invalid. FSM v. Wainit, 11 FSM R. 424, 436 (Chk. 2003).

A defective search warrant is not a defense to a prosecution for resisting the defective warrant. FSM v. Wainit, 11 FSM R. 424, 436 (Chk. 2003).

Under FSM constitutional jurisprudence, a person has no right, with some possible narrow exception, to resist a court-issued search warrant even if that search warrant turns out to be invalid. A person's remedies for being subjected to a search with an invalid search warrant are the suppression of any evidence seized, and, in the proper case, a civil suit for damages. The self-help of resistance is not a remedy and because of the Micronesian customary preference for the peaceful resolution of disputes, this conclusion is consistent not only with the FSM Constitution, but also with the social configuration of Micronesia as is required by the Constitution's Judicial Guidance Clause. FSM v. Wainit, 11 FSM R. 424, 436-37 (Chk. 2003).

The issue of a search warrant's validity is not a central, or even major issue in a case of resisting a search. It is not an available defense. FSM v. Wainit, 11 FSM R. 424, 437 (Chk. 2003).

Under common law, a person may resist a lawful arrest if the arresting officer uses unreasonable force. After careful consideration of public policy and the constitutional protection of individual rights, including protection against arrests involving excessive force, the Kosrae State Court recognizes and accepts the application of the defense. A police officer has a right to use force reasonably necessary to

effectuate an arrest. The reasonableness of a police officer's conduct while making an arrest must be assessed on the basis of information that the police officer had when he acted. Kosrae v. Nena, 12 FSM R. 525, 530 (Kos. S. Ct. Tr. 2004).

When the defendant presented only his testimony in support of his argument that under Kosraean custom, he may strike his sister-in-law and niece-in-law and when the defendant did not take any steps to separate the women during their argument, nor take any other actions to promote peace or resolve the argument, the court will conclude that the defendant's self-serving testimony does not satisfy the evidentiary requirement of Kosrae State Code § 6.303, which requires that the court receive satisfactory evidence of tradition before it may utilize tradition in reaching a decision. The court will decline to accept the defendant's argument that, based solely upon his status as a male relative, he is entitled to commit a battery upon a female relative, and his defense of customary authority must fail. Kosrae v. Kilafwakun, 13 FSM R. 333, 336 (Kos. S. Ct. Tr. 2005).

The remedy for a victim of an illegal search is not the self-help of resistance. Resistance to such authority to search and seize by self-help is not recognized in courts of law. Whoever suffers the imposition of an unlawful police search has the assurance that any evidence so acquired is rendered inadmissible in a subsequent criminal trial by the exclusionary rule. And in any event damage remedies are available in the courts for violations of constitutional rights stemming from either an unlawful search or arrest. These remedies are present in the FSM. FSM v. Wainit, 13 FSM R. 433, 446 (Chk. 2005).

The reasoning behind the principle barring physical resistance to an invalid search warrant is that society has an interest in securing for its members the right to be free from unreasonable searches and seizures. Society also has an interest, however, in the orderly settlement of disputes between citizens and their government; it has an especially strong interest in minimizing the use of violent self-help in the resolution of those disputes. A proper accommodation of those interests requires that a person claiming to be aggrieved by a search conducted by a peace officer pursuant to an allegedly invalid warrant test that claim in a court of law and not forcibly resist the execution of the warrant at the place of search. This reasoning resonates even more strongly in Micronesia, where society has customarily prized peaceful and orderly resolution of disputes much higher than in the United States. FSM v. Wainit, 13 FSM R. 433, 446 (Chk. 2005).

At the time the FSM Constitution was framed and adopted, the prevailing U.S. constitutional analysis of its constitutional search and seizure provision, which the FSM constitutional provision was modeled after, was that persons had no right to resist a search warrant even if that warrant was invalid. FSM v. Wainit, 13 FSM R. 433, 446 (Chk. 2005).

In the FSM, a person has no right to resist the execution of a search warrant by police or government agents even if the search warrant is later shown to be invalid. Consequently, a defendant may not assert as a defense that he has no liability and may resist a search warrant if he believes it is, or if it is, an invalid warrant. The law does not permit this. The search warrant's validity is irrelevant to the case and the court will refuse to hear testimony concerning it. FSM v. Wainit, 13 FSM R. 433, 446 (Chk. 2005).

As a matter of law, a search warrant's invalidity is not a defense under 11 F.S.M.C. 107(1) because it is not a fact or set of facts which removes or mitigates penal liability. Even a belief that a search warrant is invalid does not remove or mitigate penal liability. If a person believes that he has a legal right to resist an invalid search warrant that is a mistake or ignorance of law, not a mistake (or ignorance) of fact, and that is not a defense under section 301A(3). FSM v. Wainit, 13 FSM R. 433, 446 (Chk. 2005).

Only ignorance or mistake of fact is a defense under 11 F.S.M.C. 301A(3). A mistake of, or ignorance of, law is not a defense under the FSM statute. Nor is it generally a defense to penal liability. FSM v. Wainit, 13 FSM R. 433, 447 (Chk. 2005).

A criminal defendant may not use mistake or ignorance of the law as a defense. He therefore may

not use as a defense a mistaken belief that he had a legal right to resist a search warrant that he thought was invalid (even if it should later be shown to be invalid). FSM v. Wainit, 13 FSM R. 433, 447 (Chk. 2005).

Subsection 107(3) makes it a complete defense to a criminal charge that at the time of engaging in the wrongful conduct the defendant was legally incapable of committing a crime as defined in 11 F.S.M.C. 301A. Legal incapacity to commit a crime is often thought to include defenses such as insanity, mental incapacity, infancy, automatism, sometimes intoxication, and crimes where a certain status, not held by the defendant, is a necessary element of the offense. FSM v. Wainit, 13 FSM R. 433, 447 (Chk. 2005).

If a statute makes it an offense for a government employee to commit a certain act, a person who did not have the status of a government employee would be legally incapable of violating the statute. Usually this is analyzed as the inability to prove an element of the offense. FSM v. Wainit, 13 FSM R. 433, 447 n.8 (Chk. 2005).

Section 301A lists five instances where a person may be legally incapable of committing a crime – infancy; persons under another's legal conservatorship; persons whose conduct was the result of ignorance or mistake of fact, disproving criminal intent; persons who engaged in the wrongful conduct without being conscious; and persons whose actions were the result of life-threatening duress. FSM v. Wainit, 13 FSM R. 433, 447 (Chk. 2005).

A search warrant's invalidity, or a belief it is invalid, is not a defense to charges stemming from resistance to the search warrant's execution. FSM v. Wainit, 13 FSM R. 433, 447 (Chk. 2005).

Under FSM constitutional jurisprudence, a person has no right, with some possible narrow exception which the court has not decided whether it is a viable defense, to resist a court-issued search warrant even if that search warrant turns out to be invalid. FSM v. Wainit, 13 FSM R. 433, 448 (Chk. 2005).

When the defendant argued that the court should recognize custom regarding the relationship between him and the victim, but did not present any evidence of the relationship between victim and him, and did not present any evidence of custom, specifically evidence that due to the relationship between victim and the defendant, it would be customary for the defendant to show up drunk at a relative's home and commit a battery upon the relative, the court may not utilize tradition in reaching a decision because it has not received satisfactory evidence of the tradition. When a defendant has not provided any evidence of custom or tradition, it cannot be considered. Kosrae v. Tilfas, 14 FSM R. 27, 30-31 (Kos. S. Ct. Tr. 2006).

Since by statute, the classification of the titles, chapters, subchapters, and sections of the FSM Code, and the headings thereto, are made for the purpose of convenient reference and orderly arrangement, and since Congress has specifically prohibited that any implication, inference, or presumption of a legislative construction be drawn therefrom, the court can give no weight or credence to and must reject any argument, implication, inference, or presumption to be draw from a subchapter's heading or from a subsection's arrangement in that subchapter. FSM v. Wainit, 14 FSM R. 51, 54 (Chk. 2006).

When the government produced evidence that the defendant threatened eleven national police with the harm of loss of liberty – detention on Udot for an unspecified time – if they did not abandon their attempt to search his Udot residence and when Section 517(1)(c)'s language, by its specific terms, applies to threats to any public official, not just to judges or politicians, a motion to acquit on the ground no evidence was introduced of threatening harm to a public official with purpose to influence him or her to violate his or her known legal duty will be denied. FSM v. Wainit, 14 FSM R. 51, 54 (Chk. 2006).

When the defendant's qualified immunity defense was not disclosed in his response to the government's Rule 16(b)(1)(C) discovery request and it should have been because it goes beyond a claim that the government failed to prove all elements of the offense and because it is not a claim that he acted legally based on the facts but that he is immune from criminal liability even if he did not act legally, this

defense could be rejected on the ground of non-disclosure alone. FSM v. Wainit, 14 FSM R. 51, 55 (Chk. 2006).

Qualified immunity is not a defense to a criminal prosecution. "Qualified immunity" partially shields public officials performing discretionary functions from civil liability and damages. Public officials are not immune or exempt from criminal liability and prosecution. FSM v. Wainit, 14 FSM R. 51, 55 (Chk. 2006).

A law enforcement officer is one whose duty is to preserve the peace. A mayor has the duty to faithfully implement the municipality's laws and ordinances, but he does not have the power of arrest, and even if he were a law enforcement officer, he would not be immune from prosecution because a law enforcement officer may be prosecuted for an offense committed while he was arresting someone. FSM v. Wainit, 14 FSM R. 51, 55 (Chk. 2006).

A belief that a search warrant is invalid is not a defense to a prosecution for resisting a search warrant, even if it is an invalid search warrant. If a defendant believed the national police's search warrant was invalid or had expired, his only lawful actions or remedies were to not interfere with the search and then to move to suppress any evidence seized in the search, or to institute a civil suit for damages, or both. FSM v. Wainit, 14 FSM R. 51, 55-56 (Chk. 2006).

Although the remedy of self-help or resistance to a search thought to be unlawful is barred, the court has not decided whether there are some unlawful searches, with or without warrant, the circumstances of which would be so provocative to a reasonable man that the seriousness of the offense of resistance ought to be mitigated as a result of such provocation, and when the defendant had the opportunity to put on such evidence at trial but no such showing (by a preponderance of the evidence), was made, the court did not need to decide whether such an exception could be permitted since the search warrant execution attempt was neither provocative nor was the force used unreasonable. FSM v. Wainit, 14 FSM R. 51, 59-60 (Chk. 2006).

A contention that the other driver involved in the accident should have been arrested, and not the defendant, is not a defense because the criminal case charges the defendant, and not the other driver, and it is within the state's prosecutorial discretion to choose who to charge. Kosrae v. Tulensru, 14 FSM R. 115, 122 (Kos. S. Ct. Tr. 2006).

As summarized in a well-known adage – ignorance of the law is no excuse. Nor is it a substantial or close question on appeal. FSM v. Petewon, 14 FSM R. 320, 325 (Chk. 2006).

A mistake of, or ignorance of, law is not a defense under the FSM statute. It is generally not a defense to penal liability. FSM v. Petewon, 14 FSM R. 320, 325 (Chk. 2006).

It is an affirmative defense that the defendant, under circumstances showing a complete and voluntary renunciation of his criminal intent, made a reasonable effort to prevent the conduct or result which is the object of the conspiracy. FSM v. Petewon, 14 FSM R. 320, 327 (Chk. 2006).

While the ultimate burden of persuasion remains with the government, a defendant, asserting an affirmative defense, has some burden of proof or of going forward with sufficient evidence to raise the defense as an issue at trial. When custom is raised, it is usually more properly considered during sentencing than at other stages of a criminal prosecution. FSM v. Aliven, 16 FSM R. 520, 534 (Chk. 2009).

A defendant's motion to dismiss on the ground of custom will be denied, but he will be free to present evidence at trial concerning his defense(s), if applicable. FSM v. Aliven, 16 FSM R. 520, 534 (Chk. 2009).

Even if a defendant was unaware that escape was unlawful, ignorance of the law is no excuse for unlawful behavior. FSM v. Andrew, 17 FSM R. 213, 215 (Pon. 2010).

Three of the four 11 F.S.M.C. 1003 statutory exemptions for firearms possession are defenses within 11 F.S.M.C. 107 for which the accused has the burden of going forward with sufficient evidence to raise these exemptions as issues although the ultimate burden of persuasion still remains with the government. The prosecution does not have to make the initial showing but ultimately bears the burden of disproving the applicability of the exception when it is properly presented. FSM v. Meitou, 18 FSM R. 121, 128 (Chk. 2011).

A pretrial motion is generally capable of determination before trial if it involves questions of law rather than fact. A defense is thus capable of determination if trial of the facts surrounding the commission of the alleged offense would be of no assistance in determining the validity of the defense. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

As a general matter, the question of whether or not a particular defense may be raised by means of a Rule 12(b) motion turns on whether or not that defense may be decided solely on issues of law. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

Most defenses, such as self-defense, insanity, and entrapment require factual determinations that make pretrial disposition inappropriate. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

A motion to dismiss is not the proper way to raise a factual defense because if the pretrial claim is substantially founded upon and intertwined with evidence concerning the alleged offense, the motion must be deferred because it falls within the province of the factfinder at trial. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

Under 11 F.S.M.C. 1003(2), in order to be exempt from criminal liability for possession of a firearm, the court must be persuaded beyond a reasonable doubt that the firearm is: 1) unserviceable; 2) incapable of being fired or discharged; and 3) being kept as a curio, ornament, or for its historical value. All three of these requirements must be satisfied for this exemption to apply, and if any one of them is not met, this exception does not apply. FSM v. Sonis, 18 FSM R. 620, 622 (Chk. 2013).

When there is evidence before the court from which the court can infer that the handgun was serviceable – testimony of two officers that they had tried to and did get the firearm to work and from that evidence the court could infer that the handgun was capable of being fired or discharged; and when, from the circumstances under which the firearm was found and where it was found, abandoned by the accused in a mop bucket at Chuuk International Airport (right where he told the police he left it), the court could infer that he was not keeping the handgun as a curio, or as an ornament, or for its historical value but that his possession of the handgun must have been for some other reason. FSM v. Sonis, 18 FSM R. 620, 622 (Chk. 2013).

An accused's joblessness during the time period that the government was tardy in opposing his motion to dismiss, does not constitute prejudice in the legal sense since it did not adversely affect his legal position or his defense. FSM v. Itimai, 20 FSM R. 232, 234 (Pon. 2015).

In an FSM Supreme Court criminal case, a "forum shopping" claim must be rejected because only the FSM Supreme Court has jurisdiction over a national crime – its jurisdiction over the prosecution of national crimes is exclusive. There is no alternative forum in which to prosecute a national crime. FSM v. Siega, 21 FSM R. 291, 299 (Chk. 2017).

A defendant's contention that there was no attempt to commit the crime of possession of a firearm without a valid license because he applied for such license shortly after the firearm arrived in his postal box, may be raised at trial as evidence that he made no attempt to possess the firearm without a license, but the ultimate burden of persuasion remains with the government to prove the elements of attempt in spite of these assertions. FSM v. Mumma, 21 FSM R. 387, 401 (Kos. 2017).

– Defenses – Duress

Subsection 301A(5) is a codified version of the common law defense of duress. Duress, under the FSM statute, occurs when A causes B to believe that B would suffer immediate, life-threatening injury unless B acts as ordered by A, and B acts and a crime is committed against C. Duress is a defense similar to self-defense except that with self-defense the defendant's response is an attack on the threatening party, while the duress defense applies when the defendant saves himself by doing the threatener's bidding by harming another. FSM v. Wainit, 13 FSM R. 433, 447 (Chk. 2005).

Duress is a pertinent theory of defense when a third party, that is, a person other than the victim, is the coercer. FSM v. Wainit, 13 FSM R. 433, 447 (Chk. 2005).

Section 301A lists five instances where a person may be legally incapable of committing a crime – infancy; persons under another's legal conservatorship; persons whose conduct was the result of ignorance or mistake of fact, disproving criminal intent; persons who engaged in the wrongful conduct without being conscious; and persons whose actions were the result of life-threatening duress. FSM v. Wainit, 13 FSM R. 433, 447 (Chk. 2005).

Under the FSM statute, duress occurs when A causes B to believe that B would suffer immediate, life-threatening injury unless B acts as ordered by A, and B acts and a crime is committed against C. The duress defense is similar to self-defense except that with self-defense the defendant's response is an attack on the threatening party, while the duress defense applies when the defendant saves himself by doing the threatener's bidding by harming another. FSM v. Sam, 14 FSM R. 328, 334 (Chk. 2006).

Asserting a duress defense at a pretrial stage in the proceedings and on the basis of the showing that another was armed and the defendants were assumed not to be armed does not entitle the movants to a dismissal at this point. FSM v. Sam, 14 FSM R. 328, 334 (Chk. 2006).

A pretrial motion cannot use the statutorily-defined defense of duress to dismiss an information, since duress is a defense that must be determined at trial. Self-defense is similar in that it also is a factual defense that must be determined at trial. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

– Defenses – Insanity

Mental condition defense established by 11 F.S.M.C. 302(1) is an affirmative defense and therefore places squarely upon the defendant the burden to establish "the facts which negative liability" by a "preponderance of the evidence." 11 F.S.M.C. 107(1)(b). Runmar v. FSM, 3 FSM R. 308, 312 (App. 1988).

Mental condition defense established by 11 F.S.M.C. 302(1), and other affirmative defenses, do not lift from government the burden of establishing all essential elements of the crime beyond a reasonable doubt. Runmar v. FSM, 3 FSM R. 308, 312 (App. 1988).

Evidence that the defendant suffered from a physical or mental disease, disorder, or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is an element of the offense. Kosrae v. Kilafwakun, 12 FSM R. 590, 594 (Kos. S. Ct. Tr. 2004).

Under Kosrae statute, the affirmative defense of mental condition places the burden of proof upon the defendant to establish the facts which negative liability. The defendant must establish these facts by a preponderance of the evidence. Kosrae v. Kilafwakun, 12 FSM R. 590, 595 (Kos. S. Ct. Tr. 2004).

The court may appoint an expert witness to assist both the state and the defendant in evaluating a criminal defendant's mental condition. Kosrae v. Charley, 13 FSM R. 214, 215 (Kos. S. Ct. Tr. 2005).

Under Kosrae State Code § 13.104(2)(d), when the defendant is acquitted on the ground of physical or mental disease, disorder, or defect excluding responsibility, the verdict and the judgment should so state, which means when an acquittal based on this affirmative defense is made following a trial. Kosrae v. Charley, 14 FSM R. 470, 471-72 (Kos. S. Ct. Tr. 2006).

Because the need for the affirmative defense of insanity arises only if the state proves all elements, including intent, beyond a reasonable doubt, the affirmative defense is not capable of determination without a trial. Therefore a pretrial motion to dismiss a prosecution on the ground that the defendant is insane will be denied as premature and a final determination on the affirmative defense will be deferred until trial. Kosrae v. Charley, 14 FSM R. 470, 472 (Kos. S. Ct. Tr. 2006).

The affirmative defense of insanity is a different issue than the defendant's current capacity to understand the proceedings and participate in trial. Kosrae v. Charley, 14 FSM R. 470, 472 (Kos. S. Ct. Tr. 2006).

A defendant is presumed competent, but when genuine and serious concerns about his mental condition have been raised, the court will order a hearing held to determine if, due to physical or mental disease, disorder, or defect, the defendant lacks the capacity to understand the proceedings against him or to assist in his own defense. Kosrae v. Charley, 14 FSM R. 470, 472 (Kos. S. Ct. Tr. 2006).

When the medical evaluations in the file offer no assurance of safety to the defendant or to the person or property of others, the court will consider evidence of his dangerousness to himself and to the person or property of another at a hearing on fitness to proceed, and pending that hearing the defendant will remain in custody as previously ordered. Kosrae v. Charley, 14 FSM R. 470, 473 (Kos. S. Ct. Tr. 2006).

No person who, as a result of physical or mental disease, disorder, or defect, lacks capacity to understand the proceedings against him or to assist in his own defense can be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures. The incapacity must be demonstrated in either of two ways: 1) by a showing that the defendant lacks the capacity to understand the proceedings against him, or 2) by a showing that the defendant is unable to assist in his own defense. Chuuk v. Pwechar, 15 FSM R. 256, 258 (Chk. S. Ct. Tr. 2007).

When the medical report does not present any evidence that the defendant lacks the capacity to understand the proceedings against him as the result of physical or mental incapacity, but rather states that he does understand the proceedings against him, and when the medical report does not present any evidence that the defendant lacks the capacity to assist in his own defense, the court will deny a motion to suspend trial due to the defendant's incapacity but will not preclude the submission of additional evidence at trial of the defendant's mental and physical capacity as it relates either to the requisite intent required to prove the charges against him or to his fitness to stand trial. Chuuk v. Pwechar, 15 FSM R. 256, 258 (Chk. S. Ct. Tr. 2007).

The mental disease, disorder or defect defense established by 11 F.S.M.C. 302 is an affirmative defense. Under 11 F.S.M.C. 302(3), the party asserting this defense has the burden of proving the existence of the physical or mental disease, disorder, or defect by clear and convincing evidence. FSM v. Andrew, 17 FSM R. 213, 216 (Pon. 2010).

The statute requires that if a defendant is acquitted on the grounds of physical or mental disease, disorder, or defect excluding responsibility, the verdict and the judgment must so state. FSM v. Andrew, 17 FSM R. 213, 216 (Pon. 2010).

When an adjudication on the merits has not yet occurred and the case is still in the pretrial stage, a defendant's motion for acquittal on insanity grounds is premature and will be denied without prejudice since the FSM Code requires that, if a defendant is acquitted on the grounds of physical or mental disorder, the verdict and judgment must so state and since the court cannot issue a verdict and judgment until after a

trial on the merits, during which the prosecution must prove beyond a reasonable doubt all elements including intent. FSM v. Andrew, 17 FSM R. 213, 216 (Pon. 2010).

If, at trial, the government proves all elements of an offense, including intent, beyond a reasonable doubt, the defendant is entitled to raise the issue of his mental condition as an affirmative defense. FSM v. Andrew, 17 FSM R. 213, 216 (Pon. 2010).

Most defenses, such as self-defense, insanity, and entrapment require factual determinations that make pretrial disposition inappropriate. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

Evidence that the defendant suffered from a physical or mental disease, disorder, or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is an element of the crime. FSM v. Pillias, 22 FSM R. 334, 337 n.2 (Chk. 2019).

Once the court had adopted the medical professionals' conclusions and found that, when the defendant committed the crime, he was suffering from a mental disease, disorder, or defect – paranoid schizophrenia, even though, on occasion, that paranoid schizophrenia is circumscribed, the court could not take the approach that the defendant knew he possessed a firearm, and then found him guilty, and imposed the sentence the parties had agreed to in their plea agreement. FSM v. Pillias, 22 FSM R. 334, 338 (Chk. 2019).

No person can be convicted, sentenced, or otherwise punished for any crime committed while suffering from a physical or mental disease, disorder or defect, such that the disease, disorder or defect prevented that person from knowing the nature of the criminal act or that it was wrong. FSM v. Pillias, 22 FSM R. 334, 338 (Chk. 2019).

"Clear and convincing evidence" is the standard of proof required to prove the existence of a defendant's physical or mental disease, disorder, or defect. FSM v. Pillias, 22 FSM R. 334, 338 n.5 (Chk. 2019).

When the court has found that clear and convincing evidence proved the existence of the accused's mental disease, disorder, or defect when he committed the crime, the court is required by statute to enter a judgment of acquittal due to mental disease, disorder, or defect. But the court's responsibility does not end there. FSM v. Pillias, 22 FSM R. 334, 338-39 (Chk. 2019).

When a defendant is acquitted on the grounds of physical or mental disease, disorder, or defect excluding responsibility, the verdict and judgment must state that. FSM v. Pillias, 22 FSM R. 334, 339 (Chk. 2019).

When the defendant is acquitted on the grounds of physical or mental disease, disorder, or defect excluding responsibility, the court will retain jurisdiction over the defendant for a period not exceeding the maximum time of imprisonment allowed for the crime. The court will, subject to the law governing civil commitment or conditional release of persons suffering from mental disease, disorder, or defect, order the defendant to be committed or released on such conditions as the court determines necessary, and the court may, at regular intervals, review the defendant's condition and behavior and continue or revise any orders as the court determines necessary. FSM v. Pillias, 22 FSM R. 334, 339 (Chk. 2019).

A judgment in the defendant's favor must reflect the physical or mental disease, defect, or disorder suffered by the defendant when the crime was committed, the defendant's condition when the judgment is entered, and the course of treatment, if any is ordered. FSM v. Pillias, 22 FSM R. 334, 339 (Chk. 2019).

A court may enter a judgment of acquittal by reason of mental disease, disorder, or defect, despite the defendant's earlier guilty plea, where the defendant was suffering from paranoid schizophrenia when he committed the crime; and if, at the time of the acquittal, the defendant is still suffering from paranoid

schizophrenia, the court may include in its judgment of acquittal and its accompanying order of civil commitment, an order for a course of future treatment, and either party may, at any time, move to amend or revise this treatment order in any way deemed necessary. FSM v. Pillias, 22 FSM R. 334, 339-40 (Chk. 2019).

If the court ascertains upon competent medical or other evidence, that, when the accused committed the crime charged, he was so insane as not to know the nature and quality of his act, the court must record a finding of such fact and may make an order pursuant to section 6 F.S.M.C. 1802, which authorizes courts to commit an insane person to any hospital for the care and keeping of the insane. Custody by the Chuuk Department of Public Safety and treatment by the Chuuk State Behavioral and Wellness Clinic at the Chuuk Hospital was the closest the court could come to commitment to a hospital for the care and keeping of the insane. FSM v. Pillias, 22 FSM R. 334, 340 (Chk. 2019).

– Defenses – Intoxication

A contention that the defendant's voluntary intoxication absolves him of the legal consequences of his conduct by preventing him from forming the requisite intent to commit a crime is not a defense. The defendant, rather than the rest of the community should bear the risk of his own intoxication. FSM v. Boaz (I), 1 FSM R. 22, 27 (Pon. 1981).

Mere observation by a police officer of a person conducting himself in a manner generally associated with intoxication could be "reasonable grounds" for a cautious person to consider it more likely than not that the person has been consuming alcohol. This of course would depend upon the opportunity to observe actions and mannerisms usually associated with intoxication. Ludwig v. FSM, 2 FSM R. 27, 33 n.3 (App. 1985).

In the absence of evidence as to how much alcohol the defendant drank and how it affected his conduct, the court need not determine whether the defendant's intoxication negated his ability to form the intent to kill. Jonah v. FSM, 5 FSM R. 308, 312 (App. 1992).

Voluntary intoxication does not excuse a defendant from awareness of the risk of causing serious bodily injury to another through recklessly dangerous behavior. Machuo v. FSM, 6 FSM R. 40, 44 (App. 1993).

– Defenses – Selective Prosecution

The elements of an equal protection claim of discriminatory or selective enforcement are: other similarly situated persons who generally have not been prosecuted; the defendant was intentionally or purposefully singled out for prosecution; and the prosecution was based on an arbitrary or invidious classification. FSM v. Wainit, 11 FSM R. 1, 7 (Chk. 2002).

If a criminal defendant is to make out a selective prosecution equal protection claim, he must identify any persons similarly situated to him that the government could have prosecuted, but has failed to, and he must show that his prosecution is based on an invidious classification such as sex, race, ancestry, national origin, language, or social status. FSM v. Wainit, 11 FSM R. 1, 8 (Chk. 2002).

A selective-prosecution claim is not a defense on the merits to the criminal charge itself, but an independent assertion that the prosecutor has brought the charge for reasons forbidden by the Constitution. FSM v. Fritz, 14 FSM R. 548, 552 (Chk. 2007).

The elements of an equal protection claim of discriminatory or selective enforcement are: other similarly situated persons who generally have not been prosecuted; the defendant was intentionally or purposefully singled out for prosecution; and the prosecution was based on an arbitrary or invidious classification. FSM v. Fritz, 14 FSM R. 548, 552 (Chk. 2007).

To make out a selective prosecution equal protection claim, an accused must identify any persons similarly situated to him that the government could have prosecuted, but has failed to, and he must show that his prosecution is based on an invidious classification of either sex, race, ancestry, national origin, language, or social status. FSM v. Fritz, 14 FSM R. 548, 552 (Chk. 2007).

An accused must raise the selective-prosecution claim at the pretrial motion stage. Defects in the institution of a prosecution, which is what a selective (or vindictive) prosecution would be, must be raised by motion before trial. FSM v. Fritz, 14 FSM R. 548, 552 (Chk. 2007).

When the defendants do not claim that they were singled out for prosecution based upon their sex, race, ancestry, national origin, or language, but assert that they are being arbitrarily prosecuted based upon their "social status," and when they do not clearly state what their social status is that is the basis of the prosecution's alleged invidious classification and discrimination, it cannot be their status as high government officials (congressmen or former congressmen) because that is the same status as one (ex-president) who was not prosecuted and who the defendants claim was similarly situated so they cannot have been prosecuted based on the membership in that "classification." Furthermore, the choice to prosecute someone because of his or her status as a high government official is not an invidious classification because of the deterrent effect of such prosecutions and because of such prosecutions' effect to maintain the public confidence that public officials are not above the law. FSM v. Fritz, 14 FSM R. 548, 553 (Chk. 2007).

When the defendants cannot identify an invidious classification (which they assert is their "social status"), they cannot make out that element of a selective prosecution claim, especially when the court has doubts whether the purported examples of persons similarly situated are actually that. FSM v. Fritz, 14 FSM R. 548, 553 (Chk. 2007).

To establish a claim of vindictive prosecution, the defendant must make an initial showing that charges of increased severity were filed because the accused exercised a statutory, procedural or constitutional right in circumstances that gave rise to an appearance of vindictiveness. FSM v. Fritz, 14 FSM R. 548, 554 (Chk. 2007).

When the court cannot say that the charges were of increased severity and were filed because a defendant exercised a statutory, procedural or constitutional right in circumstances that gave rise to an appearance of vindictiveness since probation revocation merits were never considered and since the charges the defendant was convicted of and for which revocation of probation was sought carried a higher maximum penalty than the conspiracy charge in this case, and since the other defendant was not faced with charges of increased severity since he was not previously accused of any offense for his conduct in September, 2004, the defendants' motions to dismiss based on selective or vindictive prosecution will be denied. FSM v. Fritz, 14 FSM R. 548, 554 (Chk. 2007).

A selective prosecution claim does not provide a basis for dismissal of the information because it is not a defense to the merits to the criminal charge itself, but an independent claim. Chuuk v. Robert, 15 FSM R. 419, 425 (Chk. S. Ct. Tr. 2007).

Since selective prosecution is a defense in a criminal case, when a civil defendant asserts that it was singled out for enforcement and was the only employer being sued for unpaid health insurance premiums, the court will read this as an equal protection claim. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 538-39 (Chk. 2011).

The elements of an equal protection claim of discriminatory or selective prosecution are: 1) other similarly situated persons who generally have not been prosecuted; 2) the defendant was intentionally or purposefully singled out for prosecution; and 3) the prosecution was based on an arbitrary or invidious classification. Lee v. Kosrae, 20 FSM R. 160, 167 (App. 2015).

To make out a selective prosecution equal protection claim, an accused must identify any persons similarly situated to him that the government could have prosecuted but has failed to, and he must show that his prosecution is based on an invidious classification of either sex, race, ancestry, national origin, language, or social status. Lee v. Kosrae, 20 FSM R. 160, 167 (App. 2015).

A selective-prosecution claim is not a defense on the merits to the criminal charge itself, but an independent assertion that the prosecutor has brought the charge for reasons forbidden by the Constitution. Lee v. Kosrae, 20 FSM R. 160, 167 (App. 2015).

A selective prosecution claim fails when the accused and the other persons who have not been prosecuted are not similarly situated, as when the accused, who was in charge of the operation and the moving force behind it, was prosecuted and the lower level personnel were not. Just because they were all involved in the same overall enterprise does not necessarily make them similarly situated. Lee v. Kosrae, 20 FSM R. 160, 167-68 (App. 2015).

– Defenses – Self-Defense

The general rule is that a person can use no more force than is necessary to protect himself, his family, and his home and property from an intruder and to expel the intruder. FSM v. Ruben, 1 FSM R. 34, 37 (Truk 1981).

There is no automatic prohibition against use of a dangerous weapon to protect oneself and family against an intruder, even against an intruder without a weapon, so long as the weapon is not used in deadly fashion and the actual force employed is not more than would be reasonably necessary for purposes of protection. FSM v. Ruben, 1 FSM R. 34, 38 (Truk 1981).

The court is willing to assume that the homeowner whose wife's brother is seeking to enter the house by force late at night in a threatening manner should as a matter of customary law go lightly and use less force than he might to expel some other intruder. FSM v. Ruben, 1 FSM R. 34, 41 (Truk 1981).

Self-defense is not an affirmative defense. A defense is an affirmative defense only if it is so designated by the National Criminal Code or another statute. Engichy v. FSM, 1 FSM R. 532, 554 (App. 1984).

A police officer is entitled under 12 F.S.M.C. 215 to respond to physical resistance or attacks against him as he attempts to make an arrest and he may use whatever force is reasonably necessary to defend himself or others from harm. However, the police officer may not use more force than he reasonably believes to be necessary, either to effect arrest or to defend himself. Loch v. FSM, 1 FSM R. 566, 570 (App. 1984).

A person can use no more force than is reasonably necessary to protect himself, his family, home and property from an intruder, and to expel the intruder. Tosie v. FSM, 5 FSM R. 175, 177-78 (App. 1991).

Privilege to use reasonable force in defense of family, home and property may under the circumstances extend onto the road adjacent to the home. Tosie v. FSM, 5 FSM R. 175, 177 (App. 1991).

A claim of self-defense is meritless when the only provocation is an insulting gesture and there is no imminent threat of bodily harm. Alik v. Kosrae, 6 FSM R. 469, 472 (App. 1994).

There are two different standards used when reviewing a claim of self-defense. When one is threatened with imminent serious bodily harm or death by another he may justifiably use deadly force if necessary to protect himself from great bodily harm or death. When one is threatened with imminent unlawful bodily harm (but not serious bodily harm or death) he may justifiably use nondeadly force if force is necessary to prevent the unlawful bodily harm. Where there is no threat of deadly force the correct

standard is that the unlawful force must at least constitute imminent threat of an assault before one may defend oneself by force. The force employed must be reasonable in the light of the amount, degree and kind of force being used by the aggressor. Alik v. Kosrae, 6 FSM R. 469, 473 (App. 1994).

The defenses of provocation and self-defense are related. The standard for considering a claim of self-defense based upon provocation is that when one is threatened with imminent unlawful bodily harm, one may justifiably use nondeadly force if force is necessary to prevent the unlawful bodily harm. The unlawful force must at least constitute imminent threat of an assault before one may defend oneself by force. The force used must be reasonable in the light of the amount, degree and kind of force being used by the aggressor. Furthermore, a claim of self-defense is meritless when the only provocation is an insulting gesture and there is no imminent threat of bodily harm. Kosrae v. Kilafwakun, 13 FSM R. 333, 336 (Kos. S. Ct. Tr. 2005).

A person commits murder if he unlawfully causes the death of another human being intentionally or knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life. This can be broken down into five separate elements which the government must prove beyond a reasonable doubt: 1) the defendant, 2) unlawfully caused, 3) the death, 4) of another human being, 5) either intentionally or knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life. With respect to the second element, whether a defendant's "unlawfully caused" the victim's death, the defendant's acts in self-defense render their actions lawful or excusable. Chuuk v. William, 15 FSM R. 483, 487 (Chk. S. Ct. Tr. 2008).

Self-defense is not an affirmative defense and the burden of proof remains with the prosecution to prove each element of the offense when self-defense is asserted. Chuuk v. William, 15 FSM R. 483, 488 (Chk. S. Ct. Tr. 2008).

The general rule is that a person can use no more force than is necessary to protect himself, his family, and his home and property from an intruder and to expel the intruder. The force employed in self-defense must therefore be reasonable in the light of the amount, degree and kind of force being used by the aggressor. A claim of self-defense is meritless when there is no imminent threat of bodily harm. Chuuk v. William, 15 FSM R. 483, 488 (Chk. S. Ct. Tr. 2008).

In assessing a claim of self-defense involving use of a dangerous weapon, the court must also consider the extent to which use of a dangerous weapon is justified by circumstances. There is no automatic prohibition against use of a dangerous weapon to protect oneself in self-defense, even against an aggressor without a weapon, so long as the weapon is not used in deadly fashion and the actual force employed is not more than would be reasonably necessary for purposes of protection. Such use, however, substantially increases the likelihood that the harm to an aggressor will be greater than it would have otherwise been without a dangerous weapon, which in turn increases the likelihood that the court will find the force used was unreasonably severe. Chuuk v. William, 15 FSM R. 483, 488 (Chk. S. Ct. Tr. 2008).

If the court finds that the defendants' acts were in self-defense, but they employed unreasonable force, there is no compulsory reduction of a murder charge to manslaughter. Chuuk v. William, 15 FSM R. 483, 488 (Chk. S. Ct. Tr. 2008).

When a reasonable fact finder could find beyond a reasonable doubt that the defendants employed unreasonable force against the victim when he was no longer a threat to them, evidenced by their use of dangerous weapons against the victim when he no longer had a machete and their simultaneous beating of him when he was no longer offering resistance, the government has presented sufficient evidence that the victim's killing was unlawful. Chuuk v. William, 15 FSM R. 483, 488 (Chk. S. Ct. Tr. 2008).

If the court finds that the defendants killed the victim while in a state of extreme mental or emotional disturbance for which there is a reasonable explanation or excuse, the court will find them guilty of, at most,

manslaughter. Chuuk v. William, 15 FSM R. 483, 489 (Chk. S. Ct. Tr. 2008).

When, well after defendants subdued the victim and rendered him defenseless, they continued to beat him, use of force against the victim by a defendant claiming self-defense was not reasonably necessary for his self-defense because he did not face an imminent threat of serious bodily injury or death from the victim when the victim was killed. Chuuk v. William, 15 FSM R. 498, 502 (Chk. S. Ct. Tr. 2008).

When evidence of self-defense has been presented, the court must determine whether the circumstances surrounding the self-defense claim were sufficient to show that the defendant was provoked, with reasonable explanation or excuse, to commit the killing under a state of extreme emotional or mental distress. Chuuk v. William, 15 FSM R. 498, 502 (Chk. S. Ct. Tr. 2008).

If the attack on one defendant provoked his brother, with reasonable explanation or excuse, to use force against the victim, and if either defendant killed the victim while in a state of extreme emotional or mental disturbance due to sufficient provocation, the murder charge against him must be reduced to manslaughter. The provocation must also have existed up until the time the victim was killed and the defendants did not have an opportunity to cool off. Chuuk v. William, 15 FSM R. 498, 502 (Chk. S. Ct. Tr. 2008).

A pretrial motion cannot use the statutorily-defined defense of duress to dismiss an information, since duress is a defense that must be determined at trial. Self-defense is similar in that it also is a factual defense that must be determined at trial. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

Most defenses, such as self-defense, insanity, and entrapment require factual determinations that make pretrial disposition inappropriate. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

An accused's self-defense claim is a factual defense substantially founded upon and intertwined with evidence about the alleged offenses that requires trial of the general issue of the accused's guilt or innocence and that cannot be decided solely on issues of law. FSM v. Semwen, 18 FSM R. 222, 226 (Chk. 2012).

– Depositions

The burden of showing whether exceptional circumstances exist within the meaning of FSM Criminal Rule 15 is upon the defendant. To obtain a court order for taking of a deposition, the defendant must show that the witness is unavailable to attend the trial, that the testimony of the witness would be material and that such testimony would be in the interest of justice. Wolfe v. FSM, 2 FSM R. 115, 122 (App. 1985).

There are three elements a party in a criminal case seeking to take a deposition must satisfy – 1) there must be exceptional circumstances, 2) it must be in the interest of justice, and 3) it must be the party's own prospective witness whose testimony is to be preserved for use at trial. The movant has the burden of showing whether exceptional circumstances exist. What must be shown is that the witness is unavailable to attend the trial, that the witness's testimony would be material, and that such testimony would be for the moving party's benefit or in some other way in the interest of justice. FSM v. Wainit, 13 FSM R. 301, 304 (Chk. 2005).

Rule 15 allows a party, in exceptional circumstances, to depose his own material witness to preserve testimony for trial. It is not, however, a method of pretrial discovery. FSM v. Wainit, 13 FSM R. 301, 304 (Chk. 2005).

An accused has a constitutional right to be confronted with the witnesses against him. Both the Constitution and the criminal rules contemplate trial by live testimony, not by deposition. This is in part because of the desirability of having the factfinder observe the witnesses' demeanor. Exceptional circumstances are thus required for depositions in criminal cases. FSM v. Wainit, 13 FSM R. 301, 304

(Chk. 2005).

A defendant may obtain a witness's statement in the government's hands either through Rule 16 discovery or through Rule 26.2(a) procedures. It is not obtainable by deposition. FSM v. Wainit, 13 FSM R. 301, 304-05 (Chk. 2005).

Rule 15 only allows depositions to be taken to preserve testimony for use at trial. It does not permit a witness who is available to attend trial to be deposed beforehand. FSM v. Wainit, 13 FSM R. 301, 305 (Chk. 2005).

Rule 15 does not allow a deposition to be taken to discover evidence to be used solely to support a defendant's allegations in one of his pretrial motions on a collateral matter concerning matters that occurred within the Department of Justice after the date the offenses charged occurred. FSM v. Wainit, 13 FSM R. 301, 305 (Chk. 2005).

A criminal defendant may depose his own witness, even an adverse or hostile witness, in the interests of justice if exceptional circumstances exist. Exceptional circumstances may exist when the potential witness would be unavailable for trial. Unavailability for trial is defined by FSM Evidence Rule 804(a). FSM v. Wainit, 13 FSM R. 301, 305 (Chk. 2005).

A witness is unavailable if he is absent from the hearing and the proponent of his statement has been unable to procure his attendance by process or other reasonable means. A foreign resident's attendance at trial cannot be secured by process since the FSM Supreme Court's subpoena power does not extend into other countries. Merely being resident in a foreign country does not necessarily mean the witness is unavailable, but when the travel expenses are burdensome or when the witness unwilling to return for trial testimony, a possibility that may be more likely when he is an adverse, or even hostile, witness, a foreign resident may be considered unavailable and a deposition warranted. FSM v. Wainit, 13 FSM R. 301, 305-06 (Chk. 2005).

When a defendant has made no showing how a witness's testimony would be beneficial to him, but, it is a short time before the witness departs the FSM, and when the defendant has made a minimal showing it may be in the interests of justice and thus managed to meet his burden to show exceptional circumstances, the witness can be deposed although technically the witness might not be unavailable until he has actually left the FSM. The deposition should be limited to trial testimony and not to be used for discovery, or for collateral matters, or for matters that could not be considered trial testimony. FSM v. Wainit, 13 FSM R. 301, 306 (Chk. 2005).

Rule 15 permits the court to authorize a deposition in a criminal case when exceptional circumstances exist. It only allows depositions to be taken to preserve testimony for use at trial. It does not permit a witness who is available to attend trial to be deposed beforehand. Chuuk v. Emilio, 19 FSM R. 33, 36 (Chk. S. Ct. Tr. 2013).

There are three elements a party in a criminal case seeking to take a deposition must satisfy 1) there must be exceptional circumstances, 2) it must be in the interest of justice, and 3) it must be the party's own prospective witness whose testimony is to be preserved for use at trial. The movant has the burden of showing whether "exceptional circumstances" exist, and what must be shown is that the witness is unavailable to attend the trial, that the witness's testimony would be material, and that such testimony would be for the moving party's benefit or in some other way in the interest of justice. Chuuk v. Emilio, 19 FSM R. 33, 36 (Chk. S. Ct. Tr. 2013).

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An exceptional circumstances analysis must be conducted in order to establish whether a Rule 15 deposition is appropriate. The analysis must include whether 1) the witness is unavailable to testify at trial; 2) injustice will result because testimony material to the movant's case will be absent; and 3) countervailing factors render taking the deposition unjust to the nonmoving party. Chuuk v. Emilio, 19 FSM R. 33, 36 (Chk. S. Ct. Tr. 2013).

A witness that is currently beyond the Chuuk state court's subpoena powers combined with her unwillingness to return to Chuuk is unavailable under the meaning of Chuuk Criminal Procedure Rule 15. Chuuk v. Emilio, 19 FSM R. 33, 37 (Chk. S. Ct. Tr. 2013).

When the alleged incidents occurred in a room in the presence of both defendants and the witness and the events that transpired within the room can be verified by the room's occupants and the witness's testimony is the plaintiff's crux for the case against the defendants because the plaintiff expects the witness's testimony to refute the defendants' account of the occurrences, the witness's testimony is material to the plaintiff. Chuuk v. Emilio, 19 FSM R. 33, 37 (Chk. S. Ct. Tr. 2013).

There are no countervailing factors when the defendants have not opposed the prosecution's request for a deposition and there is no evidence, on the record, indicating that any countervailing factors exist that would render the taking of the witness's deposition unjust. Chuuk v. Emilio, 19 FSM R. 33, 37 (Chk. S. Ct. Tr. 2013).

Rule 15 depositions require a request by the party who is planning to call the prospective witness or a detained witness's request. Chuuk v. Emilio, 19 FSM R. 33, 37 (Chk. S. Ct. Tr. 2013).

When the government points out that the witness, as the alleged victim in the case, is necessarily a witness for the prosecution, and her deposition is necessary to make a case; when the government made the request under Rule 15; when there have been no objections to the depositions; when the government and the witness presented exceptional circumstances since the witness was both unable and unwilling to return to Chuuk due to her concerns regarding her safety and well being in Chuuk; and when the witness is therefore "unavailable," the necessary Rule 15 factors have been met as required and the court will grant the request for the deposition. Chuuk v. Emilio, 19 FSM R. 33, 37 (Chk. S. Ct. Tr. 2013).

A party in a criminal case seeking to take a deposition must satisfy three elements – 1) there must be exceptional circumstances, 2) it must be in the interest of justice, and 3) it must be the party's own prospective witness whose testimony is to be preserved for use at trial. FSM v. Tipingeni, 19 FSM R. 439, 448 (Chk. 2014).

To obtain a court order for taking of a deposition, the movant must show that the witness is unavailable to attend the trial, that the witness's testimony would be material, and that such testimony would be for the moving party's benefit or in some other way in the interest of justice. The movant bears the burden of showing whether exceptional circumstances exist within the meaning of FSM Criminal Rule 15. FSM v. Tipingeni, 19 FSM R. 439, 448 (Chk. 2014).

When the witnesses are apparently willing to testify for the prosecution but are all unavailable because they are all on Guam beyond the reach of the court's subpoena power and are all serving sentences of either incarceration or probation that prevent them from leaving Guam and one is incarcerated and serving a life sentence, this constitutes exceptional circumstances for taking a deposition. FSM v. Tipingeni, 19

FSM R. 439, 448 (Chk. 2014).

Although the court must first look to FSM sources of law to establish legal requirements in criminal cases rather than begin with a review of other courts' decisions, when the court has not previously interpreted certain aspects of an FSM criminal procedure rule regarding deposition, which is drawn from and identical or similar to a U.S. rule, it may look to U.S. sources for guidance in interpreting the rule. FSM v. Tipingeni, 19 FSM R. 439, 448 n.2 (Chk. 2014).

Although the alleged victims are unavailable since they are all outside the FSM and cannot be subpoenaed and are generally unwilling to travel to Chuuk to testify because of the events' notoriety and shame and because of concerns over their safety but their evidence is obviously material and it is in the interest of justice that it be preserved for trial, and while fear of testifying at trial may be a ground for finding exceptional circumstances, the court cannot rely on that point when insufficient evidence was provided to show that any particular victim-witness feared testifying at trial in Chuuk. Nevertheless, the victim-witnesses are beyond the reach of the court's subpoena power and cannot be compelled to come to Chuuk and the parties must travel to Guam to take other depositions, so exceptional circumstances exist and they be deposed as well. FSM v. Tipingeni, 19 FSM R. 439, 448 (Chk. 2014).

While some of the prosecution witnesses may, in fact, be both willing and able to travel to Chuuk to appear in court, the court will still permit them to be deposed in Guam along with the other prosecution witnesses because exceptional circumstances exist to justify their depositions – they could change their minds; they are beyond the reach of the court's subpoena power; and the parties must travel to Guam to take other depositions since their evidence is material and it is in the interests of justice that their testimony be preserved for trial. FSM v. Tipingeni, 19 FSM R. 439, 449 (Chk. 2014).

Rule 15 has elaborate provisions to make it possible for the defendant and his attorney to be present at the taking of a deposition. FSM v. Tipingeni, 19 FSM R. 439, 449 (Chk. 2014).

The prosecution may use Rule 15 to depose its witnesses because the FSM's Confrontation Clause does not always require a physical confrontation before the fact-finder, but the justification for using a deposition at a criminal trial as evidence against a defendant is much stronger if defendant has been present or if he or she has waived the right to be present. FSM v. Tipingeni, 19 FSM R. 439, 449 (Chk. 2014).

When the government conducts a Rule 15 deposition in a foreign land with a view toward introducing it at trial, the Confrontation Clause requires, at a minimum, that the government undertake diligent efforts to secure the defendant's presence. FSM v. Tipingeni, 19 FSM R. 439, 450 (Chk. 2014).

Whenever a deposition is taken at the instance of the government the court may direct that the that the FSM tender the defendant and his counsel with round-trip air transportation and with per diem for their anticipated stay at the deposition site and the cost of the deposition's transcript must also be paid by the government. FSM v. Tipingeni, 19 FSM R. 439, 450 (Chk. 2014).

A defendant's failure, absent good cause shown, to appear at the deposition of a government witness after notice and the government's tender of expenses constitutes a waiver of that right and of any objection to the taking and use of the deposition based upon that right. FSM v. Tipingeni, 19 FSM R. 439, 450 (Chk. 2014).

If, for whatever reason, a defendant does not wish to or is unable to attend the depositions of prosecution witnesses but does not want to waive his right of confrontation, the prosecution must arrange for his use of two telephone connections to the depositions, one to monitor the proceedings and the other a private line connected to his defense counsel so that he may confer with counsel when needed. The open line for the defendant to monitor the proceedings may be, but is not required to be, a video transmission line such as Skype. FSM v. Tipingeni, 19 FSM R. 439, 450 (Chk. 2014).

The scope and manner of examination and cross-examination during the Rule 15 depositions is the same as would be allowed in the trial itself. This includes the prosecution making available to the defendant or his counsel for examination and use during the deposition any statement of the witness being deposed which is in the government's possession and to which the defendant would be entitled at the trial. The deposition procedure will also include frequent pauses in the testimony so as to allow for translation for the defendant's benefit. The prosecution will be responsible for engaging and compensating a court-approved translator so that the defendant can follow the testimony and confer with his defense counsel. FSM v. Tipingeni, 19 FSM R. 439, 450 (Chk. 2014).

There are major differences between the rules for depositions in civil cases and Rule 15, which authorizes, in exceptional circumstances, depositions in criminal cases. In civil litigation, depositions may be taken as a matter of right at any party's instance and may be for discovery or to obtain evidence, but under Criminal Rule 15, depositions may be taken in a criminal case only upon court order and are not for discovery of information but only to preserve evidence. FSM v. Wolphagen, 21 FSM R. 272, 274 (Pon. 2017).

Rule 15(e)'s primary purpose is to safeguard the criminally accused's confrontation rights by limiting the use of deposition testimony to narrowly defined situations of unavailability. FSM v. Wolphagen, 21 FSM R. 272, 274 n.3 (Pon. 2017).

There are three elements a party in a criminal case seeking to take a deposition must satisfy: 1) there must be exceptional circumstances, 2) it must be in the interest of justice, and 3) it must be the party's own prospective witness whose testimony is to be preserved for use at trial. FSM v. Wolphagen, 21 FSM R. 272, 274 (Pon. 2017).

A movant seeking to take a deposition in a criminal case has the burden of showing whether exceptional circumstances exist. What must be shown is that the witness is unavailable to attend the trial, that the witness's testimony would be material, and that such testimony would be for the moving party's benefit or in some other way in the interest of justice. FSM v. Wolphagen, 21 FSM R. 272, 275 (Pon. 2017).

Depositions may be taken in criminal cases only by order of court, and then only in exceptional situations. FSM v. Wolphagen, 21 FSM R. 272, 275 (Pon. 2017).

When no motion to take depositions was filed, the absence of the required evidence of exceptional circumstances – that the witnesses are unavailable, as defined under FSM Evidence Rule 804(a), to testify at trial; that these witnesses' testimony is material; and that their testimony is for the defendant's benefit or in the interest of justice, means the depositions are inadmissible for trial or any hearing. Thus, a motion for the waiver of deposition fees for the depositions that were taken will be denied. FSM v. Wolphagen, 21 FSM R. 272, 275-76 (Pon. 2017).

– Discovery

Normally the trial court fashions remedies and sanctions for a party's failure to comply with discovery requirements. The exercise of the trial court's discretion should not be disturbed by an appellate court absent a showing that the trial court's action has unfairly resulted in substantial hardship and prejudice to a party. Engichy v. FSM, 1 FSM R. 532, 558 (App. 1984).

It is normally for the trial court to fashion remedies and sanctions for failure of a party to comply with discovery requirements and the exercise of the trial court's discretion should not be disturbed by an appellate court absent a showing that the trial court's action has unfairly resulted in substantial hardship and prejudice to a party. Bernardo v. FSM, 4 FSM R. 310, 313 (App. 1990).

Where defendants have no constitutional right to the discovery sought, an untimely motion to compel

discovery will be denied. FSM v. Cheng Chia-W (I), 7 FSM R. 124, 128 (Pon. 1995).

The prosecution has an ongoing obligation to supply to defendants any and all unprivileged evidence of an exculpatory nature. FSM v. Cheng Chia-W (I), 7 FSM R. 124, 128 n.4 (Pon. 1995).

The government has no affirmative obligation to provide the defendant with information concerning misdemeanor offenses committed by its potential witnesses. FSM v. Cheida, 7 FSM R. 633, 641 (Chk. 1996).

A subpoena duces tecum is not unreasonable and oppressive when it requires documents that were earlier produced in response to discovery and materials and documents not discoverable under Criminal Rule 16 because it is not a valid objection that documents required by the subpoenas are not discoverable under Rule 16, but any materials already furnished in discovery need not be produced pursuant to the subpoenas. FSM v. Kuranaga, 9 FSM R. 584, 585 (Chk. 2000).

A preliminary hearing is not a defendant's discovery tool. The preliminary hearing's purpose is to establish probable cause for detaining or requiring bail for an accused, not to create a discovery opportunity for the defendant (although some discovery may usually be a by-product of the hearing). The Criminal Procedure Rules provide other discovery methods for a defendant's use. FSM v. Wainit, 10 FSM R. 618, 623 (Chk. 2002).

The government can request discovery of a defendant in a criminal case in only three limited instances. FSM v. Wainit, 11 FSM R. 1, 9 (Chk. 2002).

The government can ask the nature of any defense which a criminal defendant intends to use at trial and the name and address of any person whom the defendant intends to call in support thereof. FSM v. Wainit, 11 FSM R. 1, 9 (Chk. 2002).

If, and only if, the defendant has already requested discovery under Rule 16(a)(1)(C) or (D), then the government can ask to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the defendant's possession, custody or control and which the defendant intends to introduce as evidence in chief at the trial, and it can also ask discovery of reports of scientific tests or experiments done which the defendant intends to introduce as evidence in chief at trial or which a witness the defendant intends to call will testify about. FSM v. Wainit, 11 FSM R. 1, 9 (Chk. 2002).

All the evidence that the government is entitled to request discovery of, is evidence that the defendant intends to introduce at trial. FSM v. Wainit, 11 FSM R. 1, 9 (Chk. 2002).

The government's right to discovery is, in part, limited due to constitutional concerns about an accused's right to protection against self-incrimination. FSM v. Wainit, 11 FSM R. 1, 10 (Chk. 2002).

One reason for limiting the government's right to discovery is the many other means the government has for obtaining needed information, such as the search warrant. FSM v. Wainit, 11 FSM R. 1, 10 (Chk. 2002).

Rule 16(b) only concerns the limited amount of information that the government may, in very limited circumstances, seek by discovery. It is not concerned with what the government may seek to obtain through the use of a search warrant – search warrants are not "discovery." FSM v. Wainit, 11 FSM R. 1, 10 (Chk. 2002).

If, before or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection, or discovers additional witnesses or defenses, that party must promptly notify the other party or that other party's attorney or the court of its existence. FSM v. Wainit, 11 FSM R. 186, 189 (Chk. 2002).

The rules contemplate that additional evidence and material might be discovered after the initial disclosure and prior to or even during trial that will need to be disclosed before being used at trial. The rules do not prohibit either side from finding more evidence for use at trial. Such late disclosure may be necessary for the just determination of a criminal proceeding. FSM v. Wainit, 11 FSM R. 186, 189-90 (Chk. 2002).

While it is understandable that the government may not want to include someone as a witness until it has had the chance to interview that person to see what their testimony might be, this does not override Rule 16(c)'s prompt notification requirement. FSM v. Wainit, 11 FSM R. 186, 190 (Chk. 2002).

If the government feels that disclosing material to a defendant would jeopardize other pending investigations before they were completed, it can comply with Rule 16(c)'s prompt disclosure requirement and address its legitimate concerns over a pending investigation's confidentiality by notifying the court. Such a notification would be by a written ex parte motion for a protective order to be viewed by the judge alone in camera. The movant's burden would be to make a sufficient showing that a protective order is needed. FSM v. Wainit, 11 FSM R. 186, 190 & n.1 (Chk. 2002).

When rather than seek a protective order, the government has deliberately chosen not to disclose the material to the defendant (and to the court) until it felt that its other investigation would not be jeopardized, some sanction must be imposed in such circumstances. FSM v. Wainit, 11 FSM R. 186, 190 (Chk. 2002).

When it has been brought to the court's attention that a party has failed to comply with Rule 16, the court may order that party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. FSM v. Wainit, 11 FSM R. 186, 190 (Chk. 2002).

The preferred remedy when the government makes a late disclosure of evidence is to offer the defendant a continuance to prepare to meet the additional evidence. FSM v. Wainit, 11 FSM R. 186, 190 (Chk. 2002).

A court should impose the least severe sanction that will accomplish the desired result of prompt and full compliance with the court's discovery orders and Rule 16(c). In exercising its discretion to fashion the appropriate remedy, the court should take into account the reasons why disclosure was not made, the extent of the prejudice, if any, to the opposing party, the feasibility of rectifying that prejudice by a continuance, and any other relevant circumstances. These factors must be weighed even where there is a clear discovery order. FSM v. Wainit, 11 FSM R. 186, 190-91 (Chk. 2002).

It can be an abuse of discretion to exclude evidence, instead of granting continuance, when the late disclosure of evidence was inadvertent. FSM v. Wainit, 11 FSM R. 186, 191 (Chk. 2002).

Less drastic remedies, such as a continuance are proper instead of suppression when the government's discovery violations are not in bad faith. FSM v. Wainit, 11 FSM R. 186, 191 (Chk. 2002).

Even when the government has not acted in bad faith, and although a continuance may normally be the most desirable remedy, a court may still properly suppress late-disclosed evidence for prophylactic purposes. FSM v. Wainit, 11 FSM R. 186, 191 (Chk. 2002).

Late-disclosed evidence may be suppressed for use in the government's case-in-chief, but allowed for use in rebuttal. FSM v. Wainit, 11 FSM R. 186, 191 (Chk. 2002).

There is no good reason to stay the completion of discovery in a criminal case while appellate review is sought when the defendant has already made his discovery request and because the amount of discovery that can be requested in a criminal case is so limited and the government cannot even request discovery

unless the defendant has already done so, it is difficult to conceive of any circumstances under which staying discovery in a criminal case would be proper. FSM v. Wainit, 12 FSM R. 201, 204 (Chk. 2003).

The government may file under seal an ex parte document, for the court to view in camera, explaining which discovery entries should be redacted and for what reasons. FSM v. Kansou, 13 FSM R. 167, 169 (Chk. 2005).

If the government feels that disclosing certain material to the defendants would jeopardize other pending investigations before they were completed it can comply with Rule 16(c)'s prompt disclosure requirement and address its legitimate concerns over the confidentiality of pending investigation(s) by notifying the court. Such a notification can be by a written ex parte motion for a protective order to be viewed by the judge alone in camera. FSM v. Kansou, 13 FSM R. 167, 169 (Chk. 2005).

Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. FSM v. Kansou, 13 FSM R. 167, 169 (Chk. 2005).

When the prosecution has voluntarily undertaken to provide witness statements in advance of trial by not objecting to the defendant's discovery request for them and by the then prosecutor turning over all of the witness statements he had then, the defense should not be expected or required to make a motion at the end of each prosecution witness's direct testimony for the production of a statement it had every reason to believe it already had. The defense's failure to move for the witness's prior statement after each had testified on direct is therefore excused. FSM v. Walter, 13 FSM R. 264, 268 (Chk. 2005).

Rule 26.2 does not restrict its command to the production of statements in the hands of, or known to, the particular prosecuting attorney assigned to the case. Its order is unqualified. It applies to any witness statement in the government's hands. FSM v. Walter, 13 FSM R. 264, 268 n.2 (Chk. 2005).

Pursuant to the parties' continuing duty to disclose evidence or material previously requested or ordered, once the prosecution has volunteered to provide witness statements before trial, it should have provided the Chuukese language witness statements versions as well. FSM v. Walter, 13 FSM R. 264, 268 (Chk. 2005).

When the prosecution has volunteered to provide prior witness statements before trial, a mistrial will be declared if the prosecution's failure to provide the Chuukese language witness statements before trial prejudiced the defendant. The failure to produce prior witness statements is analyzed under a strict harmless error standard. Since courts cannot speculate whether the statement of the witness could have been utilized effectively at trial, the harmless error doctrine must be strictly applied in these cases. FSM v. Walter, 13 FSM R. 264, 268 (Chk. 2005).

The proper standard in negligent nondisclosure cases should call for a new trial whenever the nondisclosed evidence might reasonably have affected the factfinder's judgment on some material point, without necessarily requiring a supplementary finding that it would also have changed its verdict. FSM v. Walter, 13 FSM R. 264, 268 (Chk. 2005).

The purpose of production of witness statements is to give defendants impeachment materials at a time when they can effectively use them. When the prosecution has failed to timely provide the statements, that objective can be fulfilled by the grant of a mistrial because when the denial of an opportunity to impeach a prosecution witness's highly damaging testimony is caused by the breach of the prosecutor's duty to produce the witness's prior statement, a new trial is necessitated. FSM v. Walter, 13 FSM R. 264, 268 (Chk. 2005).

If a witness's prior statement surfaces during the prosecution's case-in-chief, reopening the witness's testimony in the case-in-chief and permitting further cross-examination of the prosecution witness might be

an appropriate remedy. FSM v. Walter, 13 FSM R. 264, 269 (Chk. 2005).

To the extent any witness statement contains exculpatory material, the prosecution has an ongoing obligation to supply the defendant any and all unprivileged evidence of an exculpatory nature. Such exculpatory information includes material that bears on the credibility of a significant witness in the case since a witness's prior inconsistent statement bears on his credibility. FSM v. Walter, 13 FSM R. 264, 269 (Chk. 2005).

Rule 15 allows a party, in exceptional circumstances, to depose his own material witness to preserve testimony for trial. It is not, however, a method of pretrial discovery. FSM v. Wainit, 13 FSM R. 301, 304 (Chk. 2005).

A defendant may obtain a witness's statement in the government's hands either through Rule 16 discovery or through Rule 26.2(a) procedures. It is not obtainable by deposition. FSM v. Wainit, 13 FSM R. 301, 304-05 (Chk. 2005).

Criminal Rule 16(b)(1)(C) provides that the defendant, on the government's request, shall state the nature of any defense which he intends to use at trial and the name and address of any person whom the defendant intends to call in support thereof. When the government has properly made such a request and the defendant has not responded and his failure to comply 16 has been brought to the court's attention, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. FSM v. Wainit, 13 FSM R. 433, 443-44 (Chk. 2005).

Rule 16(a) provides that if the defendant requests disclosure of evidence from the state, then following such disclosure by the state, the defendant upon the state's request, must comply with the state's request for disclosure. Rule 16(b)(1) specifies the type of disclosures which may be requested by the state, and then be provided by the defendant. The government can ask, and the defendant must provide, the nature of any defense which a criminal defendant intends to use at trial and the name and address of any person whom he intends to call in support thereof. Kosrae v. Phillip, 14 FSM R. 42, 49 (Kos. S. Ct. Tr. 2006).

If additional evidence that has been requested, or witnesses, or defenses, which are subject to discovery, are discovered before or during trial, that party must promptly notify the other party, its counsel or the court of its existence. Kosrae v. Phillip, 14 FSM R. 42, 49 (Kos. S. Ct. Tr. 2006).

Pursuant to Kosrae General Court Order 2005-2, responses to request for discovery pursuant to sections (a) and (b) of Rule 16 must be served upon the requesting party within ten days of service of the request for discovery. Kosrae v. Phillip, 14 FSM R. 42, 49 (Kos. S. Ct. Tr. 2006).

When it has been brought to the court's attention that a party has failed to comply with Rule 16, the court may order that party to permit the discovery, permit a continuance, prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. Kosrae v. Phillip, 14 FSM R. 42, 49 (Kos. S. Ct. Tr. 2006).

When the state's reciprocal request for discovery was filed in January 2005, ten months prior to trial and GCO 2005-2, which specified the ten day response period, was adopted in July 2005 and effective immediately, but the state waited until the trial date, in October 2005, to inform the court of the defendant's non-compliance with Rule 16, the state's report was untimely and trial was held. Kosrae v. Phillip, 14 FSM R. 42, 49 (Kos. S. Ct. Tr. 2006).

When the defendant's qualified immunity defense was not disclosed in his response to the government's Rule 16(b)(1)(C) discovery request and it should have been because it goes beyond a claim that the government failed to prove all elements of the offense and because it is not a claim that he acted legally based on the facts but that he is immune from criminal liability even if he did not act legally, this

defense could be rejected on the ground of non-disclosure alone. FSM v. Wainit, 14 FSM R. 51, 55 (Chk. 2006).

The court has always considered the government's "open file" discovery system to be a commendable and salutary practice. FSM v. Sam, 14 FSM R. 398, 402 (Chk. 2006).

While neither discovery requests nor responses under Criminal Rule 16 should be filed with the court except to the extent necessary to enable the court to perform its regulatory role under Rule 16(d), the mere filing of discovery disclosures does not result in the admission as evidence of the documents filed. In order to be admitted as evidence, the plaintiff will have to introduce each document during trial in conformance with the Rules of Evidence. Thus, the plaintiff's filing of its disclosures does not result in any prejudice to the defendant and his motion to strike the discovery filings will be denied. FSM v. Louis, 15 FSM R. 206, 208 (Pon. 2007).

It is normally for the trial court to fashion remedies and sanctions for failure of a party to comply with discovery requirements and the exercise of the trial court's discretion should not be disturbed by an appellate court absent a showing that the trial court's action has unfairly resulted in substantial hardship and prejudice to a party. FSM v. Killion, 15 FSM R. 235, 236 (Chk. 2007).

When the defendant has not shown any substantial hardship or prejudice due to the untimely discovery disclosure because, if the defendant's motion to compel had not been responded to, he would have expected the court to order the discovery disclosure to be made by a date certain, but instead, the prosecution responded by making the appropriate disclosures, and when the court concluded that the prosecution's presentation at argument showed excusable neglect and that its prompt disclosure once its neglect had come to its attention showed good faith, the court accordingly granted the prosecution's oral motion to enlarge time for excusable neglect and denied the defendant's motion to dismiss. Nor will the disclosed evidence be excluded as sanction since its untimely disclosure was not deliberate. Therefore the alternative motion to exclude the discovery disclosures from trial will also be denied. FSM v. Killion, 15 FSM R. 235, 237 (Chk. 2007).

When e-mails between a former prosecutor, an attorney member of the prosecution for the purpose of the motion, and the FSM Department of Justice involved trial preparation, strategy, and locating and discussing relevant evidence among the 20,000 pages produced in discovery, it is all attorney work, and, as such, it constitutes internal workings of the Attorney General's Office, that is, it is attorney work product. Attorney work product, including attorney work product by prosecutors in a criminal case, is privileged and not discoverable. FSM v. Kansou, 15 FSM R. 373, 377 (Chk. 2007).

Generally, the government can be required to disclose discovery material held by government agencies other than the prosecutors. The duty to search for discoverable material particularly applies if the defendant has made an explicit request that certain files in be searched. FSM v. Kansou, 15 FSM R. 373, 377 (Chk. 2007).

The government's obligation to provide to an accused discoverable material that it would have to disclose if it were in the hands of an FSM government agency does not extend to material not in its possession, but in a foreign government's possession. Unless the material requested is currently in the FSM government's possession, the government is not required to obtain and disclose to the accused any statements made by him to the FBI, U.S. Marshals, and U.S. court personnel during any interview, custodial detention, or meeting. Thus a motion to compel production of the materials in the United States's possession will be denied, but if any such statements are in the FSM's hands, the prosecution must produce them. FSM v. Kansou, 15 FSM R. 373, 377 (Chk. 2007).

When the grounds for a motion to suppress and redact were that the government did not respond to discovery before the court-imposed deadline set in its scheduling order and the accused does not argue that the government's delays have been in bad faith, the motion will be denied because less drastic

remedies, such as a continuance are proper instead of suppression since the government's discovery violations are not in bad faith. Chuuk v. William, 15 FSM R. 381, 390 (Chk. S. Ct. Tr. 2007).

When the court cannot determine from its record whether the government complied with the accused's discovery request, an appropriate motion, if the government failed to timely respond to a discovery request, would be to move to compel answers to discovery under Chuuk Criminal Rule 16(d)(2), which sets forth the remedies for a party's failure to answer discovery requests. Chuuk v. Karen, 16 FSM R. 250, 252 (Chk. S. Ct. Tr. 2009).

Rule 12(b)(3) must be construed with Rule 12(d)(2), which provides a mechanism for a defendant to determine which evidence the prosecution intends to use at trial. Once the prosecution identifies what evidence it intends to use at trial, then suppression may be sought by pre-trial motion. Chuuk v. Karen, 16 FSM R. 250, 252 (Chk. S. Ct. Tr. 2009).

When there is no indication that the government intends to produce at trial the evidence sought to be suppressed, and until the government specifies that it intends to produce that evidence at trial, a motion to suppress that evidence is premature. The procedures set forth in Rules 12 and 16 need, as appropriate, to be followed before the court can reasonably address such issues. Chuuk v. Karen, 16 FSM R. 250, 252 (Chk. S. Ct. Tr. 2009).

Criminal Rule 16(b)(1)(C) provides that the defendant, on the government's request, must state the nature of any defense that he intends to use at trial and the name and address of any person whom the defendant intends to call in support thereof. If, before or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection, or discovers additional witnesses or defenses, that party must promptly notify the other party or that other party's attorney or the court of its existence. Chuuk v. Rotenis, 16 FSM R. 565, 566 (Chk. S. Ct. Tr. 2009).

When the government has properly made a Criminal Rule 16(b)(1)(C) request and the defendant has not responded and failure to comply has been brought to the court's attention, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. Chuuk v. Rotenis, 16 FSM R. 565, 566-67 (Chk. S. Ct. Tr. 2009).

When faced with a discovery violation, the court should impose the least severe sanction that will accomplish the desired result of prompt and full compliance with the court's discovery orders and Rule 16(c). In exercising its discretion to fashion an appropriate remedy, the court should take into account the reasons why disclosure was not made, the extent of the prejudice, if any, to the opposing party, the feasibility of rectifying the prejudice by a continuance, and any other relevant circumstances. These factors must be weighed even when there is a clear discovery order. Chuuk v. Rotenis, 16 FSM R. 565, 567 (Chk. S. Ct. Tr. 2009).

When the court is not convinced that defense counsels took adequate steps to ensure prompt disclosure of their witnesses and when, because a continuance has been granted, prejudice to the government in preparing for the belatedly-disclosed defense witnesses is to some degree alleviated, the government will be allowed to reopen its case-in-chief to call additional witnesses if it wishes, and, if the government intends to re-open its case-in-chief and call additional witnesses in light of defendants' late disclosures of their witnesses, it must file a notice that complies with Criminal Rule 16(a)(1)(E). Chuuk v. Rotenis, 16 FSM R. 565, 567 (Chk. S. Ct. Tr. 2009).

The prosecution is under a continuing duty to produce documents requested if any come to light, and is also under a continuing constitutional duty to disclose all exculpatory material that it has or may later obtain. FSM v. Suzuki, 17 FSM R. 70, 75 (Chk. 2010).

Prosecutors are constitutionally required to provide criminal defendants with any and all exculpatory

evidence they have regardless of whether the defendant has made a discovery request. This is a continuing obligation which does not cease at any deadline. FSM v. Kool, 18 FSM R. 291, 293-94 (Chk. 2012).

Evidence is exculpatory if it clears or tends to clear from alleged fault or guilt. FSM v. Kool, 18 FSM R. 291, 293 n.1 (Chk. 2012).

A prosecutor has an ethical obligation to make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal. FSM v. Kool, 18 FSM R. 291, 294 (Chk. 2012).

Regardless of whether an accused has requested discovery, a prosecutor must disclose to the defense evidence that is favorable to the accused, either because it is exculpatory or because it is impeaching. FSM v. Kool, 18 FSM R. 291, 294 (Chk. 2012).

Police are considered part of the prosecution team so that any evidence or information in the hands of the police is considered evidence or information in the prosecution's hands. FSM v. Kool, 18 FSM R. 291, 295 (Chk. 2012).

The FSM must provide the defendant with any prior witness statements once that witness has testified so that the defense may use it in any cross-examination. The FSM will usually, and is encouraged to, provide those statements far in advance of the witness's testimony. FSM v. Tipingeni, 19 FSM R. 439, 447 (Chk. 2014).

A litigant should not be allowed to make use of the liberal discovery procedures applicable to a civil suit as a dodge to avoid the restrictions on criminal discovery and thereby obtain documents he would not otherwise be entitled to for use in his criminal case, but in the absence of substantial prejudice to the rights of the parties involved, parallel proceedings are unobjectionable. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 627 (Pon. 2014).

Attempting to obtain, under the civil discovery rules, either through a deposition or otherwise, discovery materials that the parties could not obtain under the more restrictive criminal discovery process, is one of the primary reasons for granting a stay of the parallel civil case. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 627 (Pon. 2014).

Discovery differs greatly in civil and criminal cases. A party to a civil litigation is presumptively entitled to obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending case, but a criminal defendant is entitled to those documents which are material to the preparation of the defendant's defense or are intended for use by the government as evidence in chief at the trial. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 627 n.10 (Pon. 2014).

When the prejudice to the defendants in the civil proceedings is too great to allow for a complete stay, and those proceedings will continue in tandem with the criminal procedures, but certain procedures may be delayed based on the court's own sua sponte initiative or by motion of the parties. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 629 (Pon. 2014).

When it has been brought to the court's attention that a party has failed to comply with Rule 16, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. FSM v. Chunn, 21 FSM R. 587, 590 (Pon. 2018).

In exercising its discretion to fashion the appropriate remedy, a court should take into account the

reasons why disclosure was not made, the extent of the prejudice, if any, to the opposing party, the feasibility of rectifying that prejudice by a continuance, and any other relevant circumstances. FSM v. Chunn, 21 FSM R. 587, 590-91 (Pon. 2018).

When there is compliance under the discovery rules, the government did not intentionally withhold evidence from the defendant. FSM v. Chunn, 21 FSM R. 587, 591 (Pon. 2018).

The preferred remedy when the government makes a late disclosure of evidence is to offer the defendant a continuance to prepare to meet the additional evidence. This is because a court should impose the least severe sanction that will accomplish the desired result of prompt and full compliance with the court's discovery orders and Rule 16(c). FSM v. Chunn, 21 FSM R. 587, 591 (Pon. 2018).

When, at a pretrial hearing, the government did not call any of the witnesses that were listed in its recent submission, at this point, the prejudice to the defendant is minimal and not material to the hearing. Because the preferred remedy is to grant a continuance for the opposing party to consider the evidence, instead of excluding the discovery material, the court, in light of the new discovery material, will allow the defendants to file subsequent motions and to propose a schedule allowing them sufficient time to conduct their own examination and follow-up with the potential witnesses on their statements. FSM v. Chunn, 21 FSM R. 587, 591 (Pon. 2018).

One prosecutorial duty is the constitutional obligation to provide criminal defendants with any and all exculpatory evidence they have regardless of whether the defendant has made a discovery request, and this is a continuing obligation that does not end at any deadline. Wolphagen v. FSM, 22 FSM R. 96, 101 (App. 2018).

Regardless of whether an accused has requested discovery, a prosecutor must disclose to the defense evidence that is favorable to the accused, either because it is exculpatory, or because it is impeaching. Wolphagen v. FSM, 22 FSM R. 96, 101 (App. 2018).

A prosecutor is obligated to make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal. Wolphagen v. FSM, 22 FSM R. 96, 101 (App. 2018).

The prosecutor's obligation to produce exculpatory or impeaching evidence involves three types of situations. Wolphagen v. FSM, 22 FSM R. 96, 102 (App. 2018).

A prosecutor has an obligation to produce exculpatory or impeaching evidence when the undisclosed evidence demonstrates that the prosecution's case includes perjured testimony and that the prosecution knew, or should have known, of the perjury. Wolphagen v. FSM, 22 FSM R. 96, 102 (App. 2018).

Since the knowing use of perjured testimony is fundamentally unfair, such a conviction must be set aside if there is any reasonable likelihood that the false testimony could have affected the fact-finder's judgment. Wolphagen v. FSM, 22 FSM R. 96, 102 (App. 2018).

When there was a pretrial request for specific evidence, if the subject matter of such a request is material, or indeed if a substantial basis for claiming materiality exists, it is reasonable for the prosecution to respond either by furnishing the information or by submitting the problem to the trial judge. When the prosecutor receives a specific and relevant request, the failure to make any response is seldom, if ever, excusable. Wolphagen v. FSM, 22 FSM R. 96, 102 (App. 2018).

When there was a pretrial request for specific evidence or when there was no defense request at all or there was merely a generalized request for exculpatory material, the constitutional obligation is not

measured by the prosecutor's moral culpability or willfulness. If evidence highly probative of innocence is in the prosecutor's file, the prosecutor is presumed to recognize its significance even if the prosecutor has actually overlooked it. Wolphagen v. FSM, 22 FSM R. 96, 102 (App. 2018).

If the evidence sought actually has no probative significance at all, no purpose would be served by requiring a new trial simply because an inept prosecutor incorrectly believed the prosecution was suppressing a fact that would be vital to the defense. Wolphagen v. FSM, 22 FSM R. 96, 102-103 (App. 2018).

If the prosecution's suppression of evidence results in constitutional error, it is because of the evidence's character, not the prosecutor's. Wolphagen v. FSM, 22 FSM R. 96, 103 (App. 2018).

A primary limitation on a subpoena asking a witness to produce something is that it must be for "evidence," that is, information that will be admissible at trial. Such a subpoena may be challenged when the circumstances indicate that the defense's use is directed at a purpose other than a "good faith" effort to obtain evidence, but where the subpoena seeks a specific document that clearly is relevant, courts invariably conclude that the subpoena is proper. Wolphagen v. FSM, 22 FSM R. 96, 103 (App. 2018).

A defendant may request that the prosecution produce for his inspection, and any needed copying, a document material to the preparation of his case. Wolphagen v. FSM, 22 FSM R. 96, 104 (App. 2018).

A defendant may, at any time during the course of the proceedings, bring to the trial court's attention that he believes that the prosecution had not complied with his discovery request and seek appropriate relief, which could be a court order to permit the discovery, or inspection of the documents, or the grant of a continuance, or such other order as the court deems just under the circumstances. Wolphagen v. FSM, 22 FSM R. 96, 104 (App. 2018).

If the prosecution should find that it has exculpatory evidence, it must provide it, even though the defendant has already been convicted, because there is no deadline for the production of exculpatory evidence and the duty applies irrespective of the prosecution's prior good faith or bad faith. Wolphagen v. FSM, 22 FSM R. 96, 104 (App. 2018).

The court will dismiss charges for illegal possession of ammunition when the factual basis for the charges is entirely insufficient since no one in the FSM ever actually possessed the ammunition because customs officers seized it after postal officials notified them of an incoming package's contents. FSM v. Pelep, 22 FSM R. 400, 403 (Pon. 2019).

– Dismissal

Customary settlements do not require court dismissal of criminal proceedings if no exceptional circumstances are shown. FSM v. Mudong, 1 FSM R. 135, 140 (Pon. 1982).

After prosecution has been initiated, the court may dismiss litigation if there is no probable cause to believe that a crime has been committed. FSM v. Mudong, 1 FSM R. 135, 140 (Pon. 1982).

The prosecutor does not have authority to dismiss an existing prosecution on the basis of customary law but the court does have power to respond to a prosecutorial suggestion for dismissal because of customary considerations. FSM v. Mudong, 1 FSM R. 135, 141 (Pon. 1982).

At common law, repeal of a criminal statute abated all criminal prosecutions which had not reached final disposition in the highest court authorized to review them. In re Otokichy, 1 FSM R. 183, 189-90 n.4 (App. 1982).

Although the prosecution has broad discretion in determining whether to initiate litigation, once that litigation is initiated in the FSM Supreme Court, the court also has responsibility for assuring that actions

thereafter taken are in the public interest. Thus, criminal litigation can be dismissed only by obtaining leave of court. FSM v. Ocean Pearl, 3 FSM R. 87, 91 (Pon. 1987).

Although it is reasonable to analyze settlement agreements in civil actions on the basis of contract principles alone, important public policy considerations attach to the settlement of criminal cases. FSM v. Ocean Pearl, 3 FSM R. 87, 91 (Pon. 1987).

Where a court has dismissed a criminal case for lack of jurisdiction over the crimes for which the defendant was charged, the dismissal does not act as a discharge so as to preclude extradition on the charge. "Discharge" requires both personal and subject matter jurisdiction. In re Extradition of Jano, 6 FSM R. 93, 107-08 (App. 1993).

Under the common law the death of a criminal appellant pending appeal abates the proceedings ab initio – not only the appeal but all proceedings from the inception of the prosecution, thus requiring the appellate court to dismiss the appeal, and remand the case to the trial court to vacate the judgment and dismiss the information. Palik v. Kosrae, 6 FSM R. 362, 364 (App. 1994).

When a criminal defendant dies while his conviction is on appeal and where there was no discrete victim and where there are no collateral matters impinging upon the case requiring further court proceedings it is appropriate under the facts of the case to abate the proceedings ab initio and vacate the conviction. Palik v. Kosrae, 6 FSM R. 362, 364 (App. 1994).

Where counts in an information other than the one count dismissed also charge illegal fishing violations the dismissal of two other counts for which illegal fishing is an element will be denied. FSM v. Cheng Chia-W (I), 7 FSM R. 124, 126 (Pon. 1995).

A dismissal pursuant to FSM Crim. R. 48(a) is granted without prejudice and by leave of court. In considering whether to granted leave, a court must find that the dismissal is in the public interest. Factors among those customarily considered are whether the dismissal involved any harassment of the defendants and whether a bona fide reason, such as insufficient evidence to obtain a conviction, existed for the dismissal. FSM v. Yue Yuan Yu No. 346, 7 FSM R. 162, 163 (Chk. 1995).

An information that, as a practical matter, is not sufficiently certain and unambiguous so as to permit the defendant to prepare its defense, or to inform the court of what alleged acts or omissions of this particular defendant result in criminal liability is defective, and may be dismissed without prejudice. FSM v. Xu Rui Song, 7 FSM R. 187, 190 (Chk. 1995).

After prosecution has been initiated, it may be dismissed by a court if there is no probable cause – evidence giving a reasonable ground for suspicion sufficiently strong to warrant a cautious person to believe that the accused is guilty of the offense – to believe that a crime has been committed, or that the defendant has committed it. FSM v. Cheida, 7 FSM R. 633, 638 (Chk. 1996).

Because the trend of the application of customary settlements in the criminal justice system, is its use as excuse, justification or mitigation during the imposition of sentence after conviction for a crime and not as an element of guilt or the dismissal of an information and complaint charging a criminal offense, a motion for dismissal of a major criminal charge on the grounds that a customary settlement has been reached will be denied. Chuuk v. Sound, 8 FSM R. 577, 579-80 (Chk. S. Ct. Tr. 1998).

A motion to dismiss an information because the named defendant is not a formally constituted entity is moot when the government's motion to amend the information to change the defendant's name to its proper name is granted. FSM v. Moses, 9 FSM R. 139, 142 (Pon. 1999).

When there is no statutory requirement that a candidate submit his taped speech before it is aired and when there is no mention of criminal liability on the of the government broadcast facility should it do so,

there is no probable cause to believe a crime has been committed, and the information and criminal summons should be dismissed without prejudice. FSM v. Moses, 9 FSM R. 139, 145 (Pon. 1999).

A criminal prosecution for fishing in state waters will not be dismissed when even if the Foreign Fishing Agreement were to be construed as regulating commercial fishing in Kosrae's waters, the cooperative law enforcement public policy weighs in favor of Kosrae's ability to expressly ratify any such regulation by a specific request to institute a prosecution where the ratification facilitated the enforcement of a national law criminalizing conduct proscribed in the Foreign Fishing Agreement. FSM v. Zhong Yuan Fishery Co., 9 FSM R. 421, 423 (Kos. 2000).

A criminal defendant who presents clear evidence that shows that his prosecution violates his right to equal protection (is impermissible discrimination) would be entitled to a dismissal. FSM v. Wainit, 11 FSM R. 1, 8-9 (Chk. 2002).

The government may by leave of court file a dismissal of an information and thereupon terminate the prosecution. The purpose for requiring court approval of dismissal of a criminal case is to invest the court with sufficient discretion so that the court may determine that dismissal serves the public interest. FSM v. Tomiya Suisan Co., 11 FSM R. 15, 16 (Yap 2002).

Dismissal under Rule 48(a) is appropriate when the government represents that there is insufficient evidence to obtain a conviction. FSM v. Tomiya Suisan Co., 11 FSM R. 15, 16-17 (Yap 2002).

Reasons for which a court may exercise its discretion to dismiss a criminal case are: a plea agreement, the defendant's death, defendant's incompetency to stand trial, government security interests that might be placed at risk by disclosures at trial, when a defendant has cooperated with a prosecutorial investigation, and when the indictment has been superseded. FSM v. Tomiya Suisan Co., 11 FSM R. 15, 17 (Yap 2002).

The relationship between the defendant and victim is never a basis for dismissal of a criminal information. Kosrae v. Nena, 12 FSM R. 20, 22 (Kos. S. Ct. Tr. 2003).

A case will not be dismissed when the state's penal code does not excuse the criminal conduct alleged in the case based upon a father-daughter relationship. Many criminal cases with a variety of charges involving members of the same family as defendant-victim are prosecuted to final disposition. Kosrae v. Nena, 12 FSM R. 20, 22 (Kos. S. Ct. Tr. 2003).

Reconciliation is not a basis for dismissal of a criminal information. The law of our nation in this regard is clear. Custom, including customary apology and reconciliation, is to be considered during the sentencing of a criminal prosecution. Kosrae v. Nena, 12 FSM R. 20, 22 (Kos. S. Ct. Tr. 2003).

A prosecutor's request to dismiss a criminal information without any legal basis for such action and contrary to public policy will be denied. Kosrae v. Nena, 12 FSM R. 20, 23 (Kos. S. Ct. Tr. 2003).

A criminal case will not be dismissed if the whole FSM Department of Justice must be disqualified from prosecuting since a special prosecutor can be appointed. FSM v. Wainit, 12 FSM R. 172, 176 (Chk. 2003).

Even assuming that there was an illegal arrest, a defendant is still not entitled to dismissal of the information. The remedy for an illegal arrest, for failure to provide cause and authority of the arrest, is suppression of any statements made by the defendant. When he did not make any statements to the police, there are no statements to suppress. Kosrae v. Anton, 12 FSM R. 217, 219-20 (Kos. S. Ct. Tr. 2003).

It is the prosecutor's discretion to initiate, continue, or terminate a particular criminal prosecution. However, once prosecution has been initiated, the court also has responsibility to assure that all actions

taken thereafter are in the public interest. Public interest requires the court to examine the grounds for a dismissal request. Kosrae v. Tosie, 12 FSM R. 296, 298 (Kos. S. Ct. Tr. 2004).

Public interest requires the court to examine the grounds for dismissal request. The court may dismiss a criminal case on grounds that the court lacks jurisdiction over the crimes charged. The court may also dismiss a criminal case if there is insufficient evidence to obtain a conviction or if there is a lack of probable cause to believe that a crime has been committed by the defendant. Kosrae v. Tosie, 12 FSM R. 296, 298 (Kos. S. Ct. Tr. 2004).

A criminal prosecution for driving under the influence will not be dismissed when the police officers had sufficient reasonable suspicion to conduct an investigatory stop of the defendant because the reasonable suspicion was supplied by an informant, whose identity, credibility, reputation and reliability were known. When at the investigatory stop, the police observed signs of the defendant's alcohol impairment, these signs provided grounds for the police to administer the field sobriety tests to the defendant, and when the defendant failed two field sobriety tests, it gave the police reasonable grounds and probable cause for defendant's commission of driving under the influence and probable cause to arrest the defendant. Kosrae v. Tosie, 12 FSM R. 296, 300 (Kos. S. Ct. Tr. 2004).

When there is no way to determine if prosecutors who were not disqualified would have exercised their discretion to file these charges, the information must be dismissed to allow that to happen. This is because no matter how firmly and conscientiously a prosecutor may steel himself against the intrusion of a competing and disqualifying interest, he never can be certain that he has succeeded in isolating himself from the inroads on his subconscious. The defendant does not have to show actual prejudice, because on the basis of public policy, it will be presumed to exist as a matter of law. The purpose of this is to avoid the appearance of impropriety. This is designed not only to prevent the dishonest practitioner from improper conduct but also to preclude the honest practitioner from being put in a position where he will be forced to choose between conflicting duties. FSM v. Wainit, 12 FSM R. 360, 364 (Chk. 2004).

When a dismissal is not on the merits and the defendant has not been put in jeopardy, the dismissal is without prejudice. FSM v. Wainit, 12 FSM R. 360, 365 (Chk. 2004).

Since the statute and possibly the rules require sworn written statements to be filed with the information, when no such statements were attached, motions to dismiss on this ground will be granted. These dismissals are not on the merits. Neither defendant has been put in jeopardy. FSM v. Wainit, 12 FSM R. 376, 384 (Chk. 2004).

The dismissal of a criminal case because of a statutorily defective information is without prejudice. FSM v. Wainit, 12 FSM R. 376, 384 (Chk. 2004).

Rule 48(b) is the mechanism by which a defendant may assert his constitutional right to a speedy trial, although it also embraces the court's inherent power to dismiss for want of prosecution. The court's power to dismiss under Rule 48(b) is not limited to those situations in which the defendant's constitutional speedy trial right has been violated. The Rule is a restatement of the court's inherent power to dismiss a case for want of prosecution. It imposes a stricter standard of tolerable delay than does the Constitution. FSM v. Wainit, 12 FSM R. 405, 409 (Chk. 2004).

A four-factor balancing test for determining speedy trial violations: – length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant – is an appropriate tool to analyze the meaning of the FSM Constitution's speedy trial right. It is also an appropriate tool to use in analyzing a Rule 48(b) dismissal. FSM v. Wainit, 12 FSM R. 405, 410 (Chk. 2004).

In determining whether to exercise its discretionary power to dismiss under Rule 48(b), the court may consider the same factors relevant to a constitutional decision regarding denial of a speedy trial. FSM v. Wainit, 12 FSM R. 405, 410 (Chk. 2004).

The attorney for the government may by leave of court file a dismissal of an information or complaint. FSM v. Fu Yuan Yu 398, 12 FSM R. 487, 491 (Pon. 2004).

While the prosecution has broad discretion in determining whether to initiate litigation, once that litigation is instituted in court, the court also has responsibility for assuring that actions thereafter taken are in the public interest; therefore criminal litigation can be dismissed only by obtaining leave of the court. In a fishing case where criminal and civil cases are filed together, and the dismissal of the criminal proceeding(s) is obviously "integral" to the settlement agreement for which court approval is sought, the same policy considerations apply to the settlement of the civil proceeding(s) as apply to the criminal dismissal. FSM v. Fu Yuan Yu 398, 12 FSM R. 487, 491 (Pon. 2004).

Factors to examine when determining whether a dismissal is in the public interest include whether the dismissal involved any harassment of the defendants and whether a bona fide reason exists for the dismissal. FSM v. Fu Yuan Yu 398, 12 FSM R. 487, 491 (Pon. 2004).

The court is required to exercise sound judicial discretion in considering a request for dismissal. This requires that the court have factual information supporting the request. FSM v. Fu Yuan Yu 398, 12 FSM R. 487, 491 (Pon. 2004).

Rule 48 contemplates public exposure of the reasons for a prosecution's abandonment in order to prevent abuse of the power of dismissal. The court must be satisfied that the reasons advanced for dismissal are substantial and in the public interest and are the real grounds upon which the application is based, and it should not be content with mere conclusory statements that the dismissal is in the public interest, but will require a statement of the underlying reasons and underlying factual basis. FSM v. Fu Yuan Yu 398, 12 FSM R. 487, 491 (Pon. 2004).

Title 24 establishes agencies to conclude fishing agreements and establish regulations for the exploitation of FSM marine resources. In fishing cases, when the prosecution seeks a dismissal, the court should be presented with evidence that appropriate agencies have been involved in the resolution of the case(s). FSM v. Fu Yuan Yu 398, 12 FSM R. 487, 492 (Pon. 2004).

When, although the settlement contains fines which seem quite small in comparison to the potential fines the defendants face if found guilty, the particular violations are minor and somewhat technical violations of the law, rather than a blatant disregard of the law regulating foreign fishing vessels operating in FSM waters, and when the settlement amount includes an understanding by the FSM that its case is not a very strong one and it is very possible that it might not be able to prove its case against the defendants if it took the case to trial, the court finds sufficient reasons stated to justify dismissal of the action. FSM v. Fu Yuan Yu 398, 12 FSM R. 487, 492 (Pon. 2004).

The attorney for the government may by leave of court file a dismissal of an information or complaint. FSM v. Ching Feng 767, 12 FSM R. 498, 502 (Pon. 2004).

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Rule 48 contemplates public exposure of the reasons for a prosecution's abandonment in order to prevent abuse of the power of dismissal. The court must be satisfied that the reasons advanced for dismissal are substantial and are the real grounds upon which dismissal is required. FSM v. Ching Feng 767, 12 FSM R. 498, 504 (Pon. 2004).

Title 24 establishes agencies to conclude fishing agreements and establish regulations for the exploitation of FSM marine resources. In fishing cases where the prosecution seeks a dismissal, the court should be presented with evidence that appropriate agencies have been involved in the resolution of the case(s). FSM v. Ching Feng 767, 12 FSM R. 498, 504 (Pon. 2004).

Dismissal of a case is warranted when the statute of limitation applicable to both of the counts in the criminal information had elapsed before the case was filed. FSM v. Ching Feng 767, 12 FSM R. 498, 504-05 (Pon. 2004).

When a criminal information is not supported by written statement(s) under oath showing probable cause to the court's satisfaction before a penal summons (or an arrest warrant) is issued, there is no ground stated that would warrant dismissal of the information if there is nothing before the court that indicates that the information is not a "plain, concise and definite statement of the essential facts constituting the offense." But the summonses issued pursuant to such an information are improperly issued and the resulting initial appearances are as a consequence defective. FSM v. Kansou, 13 FSM R. 48, 50 (Chk. 2004).

The Governor's issuance of Declaration of Temporary State of Emergency and the Executive Decree, which prohibited the issuance of drinking permits, possession and consumption of alcoholic drinks by persons under the age of 35 and revoked drinking permits which had been issued to persons under the age of 35, exceeded the authority granted to him by the Kosrae Constitution, Article V, Section 13 because there was no civil disturbance, riot, typhoon, natural disaster or immediate threat of war or insurrection which constituted an "extreme emergency" and the Decree was therefore unconstitutional and void. Any criminal charges which have been based upon violation of the Executive Decree must be dismissed. Kosrae v. Nena, 13 FSM R. 63, 67 (Kos. S. Ct. Tr. 2004).

The offense of negligent driving requires proof of driving a vehicle in such a manner as to constitute a substantial deviation from the standard of care a reasonable person would exercise in the situation and when the state did not present any witnesses who saw the defendant driving his vehicle and there was no evidence presented to show the manner in which defendant was driving his vehicle and whether it was a substantial deviation from the appropriate standard of care and an officer testified that the defendant reported that he had a problem with his vehicle, it is reasonable to infer that this problem may caused the vehicle to leave the road and come to rest in the culvert. The state thus failed to present a prima facie case and the defendant's motion for acquittal on that count was granted and that count dismissed. Kosrae v. Alokoa, 13 FSM R. 82, 83 (Kos. S. Ct. Tr. 2004).

The offense of unauthorized operation of a motor vehicle requires proof of operating a motor vehicle on a road without possessing a valid license or learner's permit and when the state did not present any witnesses who saw the defendant operating his vehicle and did not present any evidence that the defendant did not possess a driver's license or learner's permit, there was no evidence presented to prove that the defendant operated his vehicle without a valid license or permit in his possession. The state thus failed to present a prima facie case and the defendant's motion for acquittal on that count was granted and that count dismissed. Kosrae v. Alokoa, 13 FSM R. 82, 83 (Kos. S. Ct. Tr. 2004).

Although the initial filing of the case as a criminal matter, and not as a juvenile proceeding, was in error, when as soon as the court was informed that the defendant was minor, the Juvenile Rules were immediately applied to the proceedings and all proceedings were then closed to the public, and the court ensured that a parent of the defendant was present at all proceedings, there was no prejudice to the defendant and the defendant's motion to dismiss on that ground will be denied. Kosrae v. Ned, 14 FSM R. 86, 90 (Kos. S. Ct. Tr. 2006).

A criminal statute must not be so vague and indefinite as to fail to give fair notice of what acts will be punished but the right to be informed of the nature of the accusation does not require absolute precision or perfection of criminal statutory language. When the statute complained of, while not mathematically precise, gives fair notice of the acts that will be punished, payment for expenses other than expenses incurred in the course of official public relations, entertainment activities or constituent services necessary to advance the national government's purposes and goals, the prosecution will not be dismissed on the ground that the statute was unconstitutionally vague. FSM v. Kansou, 14 FSM R. 128, 130 (Chk. 2006).

Since, under 11 F.S.M.C. 1023(7), the government must prove beyond a reasonable doubt that the firearm was used to commit a crime, when the amended information does not allege what crime or crimes, the firearm was used to commit, or even that it was used to commit any crime, it therefore fails to allege an essential element of 11 F.S.M.C. 1023(7), and that count of the amended information will be dismissed for failure to state an offense. FSM v. Sam, 14 FSM R. 328, 334 (Chk. 2006).

Asserting a duress defense at a pretrial stage in the proceedings and on the basis of the showing that another was armed and the defendants were assumed not to be armed does not entitle the movants to a dismissal at this point. FSM v. Sam, 14 FSM R. 328, 334 (Chk. 2006).

A four-factor balancing test – 1) length of delay, 2) the reason for the delay, 3) the defendant's assertion of his right, and 4) prejudice to the defendant – is used to analyze the meaning of the FSM Constitution's speedy trial right and to determine speedy trial violations; and it is also an appropriate tool to analyze whether a Rule 48(b) dismissal for unnecessary delay in prosecution is warranted. FSM v. Kansou, 14 FSM R. 497, 499 (Chk. 2006).

To determine whether to exercise its discretionary power to dismiss under Rule 48(b), a court may consider the same factors relevant to a constitutional decision regarding denial of a speedy trial. FSM v. Kansou, 14 FSM R. 497, 499 (Chk. 2006).

For speedy trial or unnecessary delay purposes, a defendant cannot take advantage of delays caused by his own conduct or consent, whether or not those delays were justified. The delay caused by a defendant's requests, although justified since the court granted relief based on his motions, thus cannot be used by the defendant to seek a dismissal on the ground that his speedy trial right was violated or that there has been unnecessary delay in bringing him to trial. FSM v. Kansou, 14 FSM R. 497, 500 (Chk. 2006).

Although a motion to dismiss stands unopposed, and while failure to oppose a motion is generally deemed a consent to the motion, the court still needs good grounds before it can grant the motion. FSM v. Zhang Xiaohui, 14 FSM R. 602, 609, 613 (Pon. 2007).

A defendant cannot be sentenced on both a greater and lesser-included offense. However, this is not grounds for dismissal of either charge prior to trial. If the state proves all elements of both offenses, then the court may enter a conviction and sentence for the greater offense. Kosrae v. Likiaksa, 14 FSM R. 618, 621 (Kos. S. Ct. Tr. 2007).

Denials of motions to dismiss on grounds such as a challenge to the sufficiency of the indictment are not immediately appealable by an accused, even if contained in a motion to dismiss on double jeopardy grounds. An order denying a motion to dismiss a charging document because it is defective is not "collateral" in any sense of that term because it goes to the heart of the issues to be resolved at trial.

Zhang Xiaohui v. FSM, 15 FSM R. 162, 168 (App. 2007).

Denial of a defense motion to dismiss ordinarily is not final. Thus, appeals from a denial of a defense motion to dismiss based on challenges to the charging document's sufficiency or failure to charge an offense or and many other grounds will be dismissed. Zhang Xiaohui v. FSM, 15 FSM R. 162, 168 (App. 2007).

When a defendant fails to address the particular circumstances of his warrantless arrest or the bearing on the probable cause showing, if any, of the witness testimony contained in the police report referred to in the affidavit supporting the criminal information, the court can discern no legal basis for dismissing the case and even assuming the defendant's arrest was illegal, he is not entitled to dismissal of the information. The remedy for an illegal arrest is suppression of any statements made by the defendant. Chuuk v. Sipenuk, 15 FSM R. 262, 265 & n.2 (Chk. S. Ct. Tr. 2007).

Chuuk Criminal Rule 48(a) provides that the attorney for the state may by leave of court file a dismissal of an information or complaint and the prosecution shall thereupon terminate, but it is not a proper authority for a defendant to request a dismissal. Chuuk v. Menisio, 15 FSM R. 276, 280 & 281 n.3 (Chk. S. Ct. Tr. 2007).

A defendant's motion to dismiss will be denied when the court is unable to ascertain, from its review of the motion and supporting memorandum, whether there is any factual or legal basis that may support it. Chuuk v. Menisio, 15 FSM R. 276, 281 (Chk. S. Ct. Tr. 2007).

A criminal information filed against a legislator who is the chairman of an impeachment committee while there is an article of impeachment currently being investigated will not be dismissed on the basis of a statute that provides criminal penalties for attempting to interfere with the impeachment process since the statute could not provide a blanket protection against prosecution for any member of an impeachment proceeding or it would lead to the absurd result that a member of an impeachment proceeding could commit any crime with impunity. Chuuk v. Robert, 15 FSM R. 419, 425 (Chk. S. Ct. Tr. 2007).

When a review of the amended informations and their supporting affidavits reveals no basis for the claim that the information fails to set forth the essential facts constituting the charges against the defendants, their motion to dismiss will be denied. FSM v. Sam, 15 FSM R. 457, 462 (Chk. 2007).

When the accused produced no evidence to substantiate his claim that the weapon he allegedly possessed was in unserviceable condition (such as producing the weapon itself, or even a witness's report on the weapon's condition) and that it was kept as a curio, an ornament, or for historical purposes, but instead, argued that despite his repeated discovery requests, the government had failed to provide access to the firearm that he allegedly possessed so that it could, in turn, be inspected, this argument is more appropriately suited for a motion to compel discovery, rather than a motion to dismiss. The accused is free to raise at trial the defense that the weapon he allegedly possessed falls within the exemption. FSM v. Tosy, 15 FSM R. 463, 466 (Chk. 2008).

When a prosecution was commenced within the time limits set by Kosrae State Code §13.106(2)(b), there is no statutorily-required dismissal. Kosrae v. Langu, 15 FSM R. 601, 604 (Kos. S. Ct. Tr. 2008).

Criminal Procedure Rule 12(a) abolished motions to quash an information, but any relief possible under the common law motions and pleas abolished by Rule 12(a) may be sought by motion under Criminal Rule 12(b). Thus, if a motion to quash information is filed, it will be considered a Rule 12(b) motion to dismiss the information. FSM v. Sato, 16 FSM R. 26, 28 (Chk. 2008).

After prosecution has been initiated, the court may dismiss the case if there is no probable cause to believe that a crime has been committed, but a finding of probable cause may be based upon hearsay evidence in whole or in part. FSM v. Sato, 16 FSM R. 26, 29 (Chk. 2008).

The remedy for a defendant's unlawful detention over 24 hours is not the dismissal of the information against him or the suppression of all evidence and statements obtained from him. His only remedy in a criminal prosecution (as opposed to a civil suit) is suppression of any evidence obtained as a result of the illegal detention. FSM v. Sato, 16 FSM R. 26, 30 (Chk. 2008).

Although, there may be cases when an affidavit containing multiple layers of hearsay is deemed sufficiently reliable to prove probable cause, when the affidavit fails even a minimal level of reliability that might be justified by exigent circumstances, which, in any case, were not present, the affidavit filed with the information was not reliable enough to prove probable cause and the defendant's motion to suppress the affidavit of probable cause and for dismissal was therefore granted, and the case was dismissed. Chuuk v. Chosa, 16 FSM R. 95, 99 (Chk. S. Ct. Tr. 2008).

Under Criminal Procedure 48(a), the government's attorney may by leave of court file a dismissal of an information or complaint and the prosecution will thereupon terminate. Although the government has broad discretion in determining whether to initiate a criminal prosecution, once that prosecution is started in the FSM Supreme Court, the court has responsibility for assuring that actions taken thereafter are in the public interest. FSM v. Fritz, 16 FSM R. 175, 176 (Chk. 2008).

Rule 48 contemplates public exposure of the reasons for a prosecution's abandonment in order to prevent abuse of the dismissal power. The court thus must be satisfied that the reasons advanced for dismissal are substantial and in the public interest and are the real grounds upon which the application is based, and it should not be content with mere conclusory statements that the dismissal is in the public interest, but require a statement of the underlying reasons and underlying factual basis. FSM v. Fritz, 16 FSM R. 175, 177 (Chk. 2008).

A cost-benefit analysis – that the government does not want to bear the expense of trying the case by sending an FSM assistant attorney general from Pohnpei with the attendant airfare, per diem, and car rental costs and with only $1,000 in the budget for witness expenses when the vehicle the defendants were alleged to have conspired to steal from the national government was in its possession, and, after four years' of use since the case was filed, had become rundown and inoperative – is more appropriately made when the prosecution is exercising its discretion in deciding whether to file criminal charges, and not as a ground for leave to dismiss. FSM v. Fritz, 16 FSM R. 175, 177 (Chk. 2008).

When a new prosecutor stated that she had reviewed the case file and had concluded that the government had insufficient evidence to sustain convictions against the defendants, this is a stronger ground for motion for leave to dismiss. Factors among those customarily considered when the court is determining whether to grant leave to dismiss under Rule 48(a), are whether the dismissal involves any harassment of the defendants and whether a bona fide reason, such as insufficient evidence to obtain a conviction, exists for the dismissal. FSM v. Fritz, 16 FSM R. 175, 177 (Chk. 2008).

The court may grant leave to file a dismissal when the government doubts it has the evidence to sustain convictions in this case and thus thinks it advisable not to expend more of its limited resources on a prosecution it concludes that it does not have a reasonable chance of completing successfully. The prosecution of the case will terminate once the government's dismissal is filed. FSM v. Fritz, 16 FSM R. 175, 177 (Chk. 2008).

An oral motion to dismiss the case because the prosecution, by not putting on any witnesses or evidence, failed to establish a prima facie case against the accused at the hearing will be denied when the hearing was not a preliminary examination or an initial appearance, or some other proceeding at which the government is required to make a prima facie showing of the case against the defendant but was a pretrial hearing on the defendant's Rule 12(b)(2) and (3) motions – motions alleging defects in the information and to suppress evidence. FSM v. Aiken, 16 FSM R. 178, 185 (Chk. 2008).

The dismissal of a case is warranted when the statute of limitations applicable to the count in the criminal information elapses before the case is filed. Kosrae v. George, 16 FSM R. 228a, 228e (Kos. S. Ct.

Tr. 2008).

When the statute of limitations to both counts in a criminal information had elapsed before the case was filed, the dismissal of the case is warranted. Kosrae v. George, 16 FSM R. 228a, 228e (Kos. S. Ct. Tr. 2008).

A motion to dismiss will be denied when motion contains only conclusory language that fails to specify the grounds with any particularity and when it speculates that the information was based on the movant's unlawfully-taken statement even though the information's supporting affidavit never mentions any statement. FSM v. Aliven, 16 FSM R. 520, 526 (Chk. 2009).

While a defendant cannot be sentenced to consecutive sentences on a greater and lesser-included offense arising from the same act, the government does not have to identify which of its charges in its criminal information it intends to pursue prior to conviction. Rather, it is entitled to pursue, at trial, multiple claims based on the same act, and a defendant's motion for pretrial dismissal or for a bill of particulars will be denied. Chuuk v. Suzuki, 16 FSM R. 625, 631-32 (Chk. S. Ct. Tr. 2009).

A motion to dismiss conspiracy counts will be denied when the affidavit stated the essential facts constituting the charges and was based on the first-hand knowledge of the affiant who was the investigating officer; when the information clearly stated the nature of the acts charged; and when, although the affidavit referred to witness statements that were suppressed, the affidavit also contained a considerable amount of other evidence, including the substance of the affiant's interviews with eye-witnesses, which supported probable cause. Such hearsay statements, if reliable, may support a finding of probable cause for instituting a prosecution. Chuuk v. Suzuki, 16 FSM R. 625, 632 (Chk. S. Ct. Tr. 2009).

The suppression of witness statements does not necessitate a dismissal when there is other evidence that supports probable cause for the charges. Chuuk v. Suzuki, 16 FSM R. 625, 632 (Chk. S. Ct. Tr. 2009).

When a count, even reading it together with the facts incorporated by reference and the supporting affidavit, does not include all the essential elements constituting the offense that the prosecution has charged, it must be dismissed. FSM v. Esefan, 17 FSM R. 389, 395 (Chk. 2011).

The pretrial dismissal of an information, or of counts in an information, does not, if the facts permit, bar the prosecution from filing a superseding information if the accused has not yet been put in jeopardy. FSM v. Esefan, 17 FSM R. 389, 398 n.6 (Chk. 2011).

An illegal arrest will not entitle a defendant to dismissal of the information. The remedy for an illegal arrest, for failure to provide cause and authority of the arrest, is suppression of any statements made by the defendant. Chuuk v. Hauk, 17 FSM R. 508, 512, 514 (Chk. S. Ct. Tr. 2011).

When an accused's motion to dismiss alleges, in the complete absence of supporting facts or reference to any legal standard under which such facts might be analyzed, that there is probable cause to believe the State has intentionally and maliciously instituted criminal actions against him, the court will not take such an allegation lightly as it implicates the integrity of the Chuuk State Attorney General's office and will order the defendant to show cause for making the allegation. Chuuk v. Hauk, 17 FSM R. 508, 514 (Chk. S. Ct. Tr. 2011).

A superseding information is proper unless it and the dismissal of the original information were done for the purpose of harassment. FSM v. Meitou, 18 FSM R. 121, 126 (Chk. 2011).

The principal object of the Rule 48(a) "leave of court" requirement for a dismissal without prejudice by the prosecution is apparently to protect a defendant against prosecutorial harassment, e.g., charging, dismissing, and recharging, when the prosecution moves to dismiss an indictment over the defendant's

objection. FSM v. Meitou, 18 FSM R. 121, 126 (Chk. 2011).

The dismissal of a prosecution without prejudice is proper when the information has been superseded since it is in the public interest that the prosecution accurately charges the offenses that may have been committed. FSM v. Meitou, 18 FSM R. 121, 126-27 (Chk. 2011).

Seven months from alleged offense to trial is not an undue delay entitling an accused to a Rule 48(b) dismissal. FSM v. Meitou, 18 FSM R. 121, 127 (Chk. 2011).

If, when a superseding information has been filed, more time to prepare a defense is needed, the proper remedy to cure that prejudice would be a continuance, not a dismissal. FSM v. Meitou, 18 FSM R. 121, 127 (Chk. 2011).

An information must charge all the essential elements of the offense, when it does not include all the essential elements constituting the offense that the prosecution has charged, it must be dismissed. FSM v. Meitou, 18 FSM R. 121, 129 (Chk. 2011).

A pretrial motion cannot use the statutorily-defined defense of duress to dismiss an information, since duress is a defense that must be determined at trial. Self-defense is similar in that it also is a factual defense that must be determined at trial. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

A motion to dismiss is not the proper way to raise a factual defense because if the pretrial claim is substantially founded upon and intertwined with evidence concerning the alleged offense, the motion must be deferred because it falls within the province of the factfinder at trial. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

Rule 48(b) embraces the court's inherent power to dismiss for want of prosecution. It is not limited to those situations in which the defendant's constitutional speedy trial right has been violated because it imposes a stricter standard of tolerable delay than does the Constitution. FSM v. Kool, 18 FSM R. 291, 295 (Chk. 2012).

Generally, in deciding whether the delay between the crime's commission and the filing of charges requires a dismissal, courts must find that the defendant has suffered actual prejudice due to the delay. Prejudice to an accused from delay may consist of: 1) oppressive pretrial incarceration; 2) the accused's pretrial anxiety; and 3) impairment of the defense, and of these, the most serious is the last. The burden of demonstrating actual prejudice is on the defendant and the proof must be definite and not speculative. FSM v. Kool, 18 FSM R. 291, 296 (Chk. 2012).

When an FSM court has not previously construed some aspects of an FSM criminal procedure rule, such as Rule 48(b), which is drawn from a similar U.S. rule, the court may look to U.S. sources for guidance in interpreting the rule. FSM v. Kool, 18 FSM R. 291, 296 n.3 (Chk. 2012).

When an accused did not demonstrate any actual prejudice to him due to the delay before charges were filed, the court must deny his Rule 48(b) motion to dismiss. FSM v. Kool, 18 FSM R. 291, 296 (Chk. 2012).

Dismissal under Rule 48(a) is appropriate when the government represents that there is insufficient evidence to obtain a conviction. Chuuk v. Ranik, 19 FSM R. 25, 26-27 (Chk. S. Ct. Tr. 2013).

A dismissal under Criminal Rule 48(a) is granted without prejudice and by leave of court. In considering whether to grant leave, a court must find that the dismissal is in the public interest. Factors among those customarily considered are whether the dismissal involved any harassment of the defendants and whether a bona fide reason, such as insufficient evidence to obtain a conviction, existed for the dismissal. Chuuk v. Ranik, 19 FSM R. 25, 27 (Chk. S. Ct. Tr. 2013).

When the court records indicate that the prosecution verbally moved for leave of the court to dismiss the case under Rule 48(a) of the Chuuk State Supreme Court Rules of Criminal Procedure and when the oral motion to dismiss coupled with the record fail to disclose any evidence of bad faith because the decision to terminate the prosecution was motivated by considerations that were not clearly contrary to manifest public interest, the dismissal will be granted. Chuuk v. Ranik, 19 FSM R. 25, 27 (Chk. S. Ct. Tr. 2013).

"Leave of court" in Rule 48(a) functions as a check on the prosecution's power to dispose of cases. Absent a demonstration of bad faith, the court has little discretion in regards to a Rule 48(a) motion to dismiss. Chuuk v. Ranik, 19 FSM R. 25, 27 (Chk. S. Ct. Tr. 2013).

A dismissal will be granted when the court cannot conclude that the government used Rule 48(a) to gain a tactical advantage, nor was there a demonstration of bad faith. Chuuk v. Ranik, 19 FSM R. 25, 27 (Chk. S. Ct. Tr. 2013).

The dismissal of a 2007 case is more than a mere attempt to enforce a scheduling order or to "clean up the docket" when it can reasonably be inferred from the lack of activity on the record that the prosecution had been deliberately proceeding in dilatory fashion. Chuuk v. Chopwa, 19 FSM R. 28, 31-32 (Chk. S. Ct. Tr. 2013).

When the four speedy trial factors, on balance, show that the defendant has suffered a violation of his right to a speedy trial because the record does not support any legitimate reasons for the delay, because an excessive length of time that has passed coupled with the absolute lack of diligence on the prosecution's part are sufficient to assume prejudice; when the delays were a direct result of the state failing to diligently prosecute the case, the case will be dismissed. Chuuk v. Chopwa, 19 FSM R. 28, 33 (Chk. S. Ct. Tr. 2013).

The better procedure is for the prosecution to insist on its need to have its day in court by filing a motion for reassignment, requesting a status conference, or scheduling of the case before a dismissal. Something more than nothing would be a necessary action to avoid dismissal. Chuuk v. Chopwa, 19 FSM R. 28, 33 (Chk. S. Ct. Tr. 2013).

The four-factor balancing test for determining speedy trial violations: 1) length of delay; 2) the reason for the delay; 3) the defendant's assertion of his right, and 4) prejudice to the defendant, is also an appropriate tool to use in analyzing a Rule 48(b) dismissal. Chuuk v. Noboru, 19 FSM R. 38, 41 (Chk. S. Ct. Tr. 2013).

The Chuuk State Supreme Court has the authority to dismiss a case sua sponte. This is a necessary corollary of the judge's authority to process criminal cases. Cases that have remained dormant due to inaction and meet the standard for dismissal, may be dismissed. Chuuk v. Noboru, 19 FSM R. 38, 41 (Chk. S. Ct. Tr. 2013).

When the prosecution simply failed to move the case forward, a dismissal is more than a mere attempt to enforce a scheduling order or to "clean up the docket" when it can reasonably be inferred from the lack of activity on the record that the prosecution had been deliberately proceeding in dilatory fashion. Chuuk v. Noboru, 19 FSM R. 38, 41 (Chk. S. Ct. Tr. 2013).

The court is not merely interested in "cleaning house" and dismissal is appropriate when the defendant would suffer a demonstrable prejudice or threat of prejudice from the excessive delay in the prosecution's bringing this case to trial because the case has been pending for over nine years and contains a stipulated dismissal from 2003, signed by both parties, which demonstrates the prosecution's desire to abandon the case rather than continue to prosecute, and because the prosecution has taken no action in the case since the stipulated motion's filing. Chuuk v. Noboru, 19 FSM R. 38, 42-43 (Chk. S. Ct. Tr. 2013).

When the record shows that the delays were a direct result of the prosecution failing to diligently prosecute the case; when the court is unwilling to encourage this behavior by the prosecution; and when something more than nothing would be a necessary action, the action will be dismissed without prejudice for lack of prosecution. Chuuk v. Noboru, 19 FSM R. 38, 43 (Chk. S. Ct. Tr. 2013).

A four-factor balancing test for determining speedy trial violations: 1) length of delay; 2) the reason for the delay; 3) the defendant's assertion of his right, and 4) prejudice to the defendant, is also an appropriate tool to use in analyzing a Rule 48(b) dismissal. Chuuk v. Haruo, 19 FSM R. 43, 46 (Chk. S. Ct. Tr. 2013).

When it can reasonably be inferred from the lack of activity on the record that the state had been deliberately proceeding in dilatory fashion, a dismissal is more than a mere attempt to enforce a scheduling order or to "clean up the docket." Chuuk v. Haruo, 19 FSM R. 43, 47 (Chk. S. Ct. Tr. 2013).

When the state offers no reason for its failure to comply with the defendant's constitutional right to a speedy trial; when it was only after the court issued a notice that the state requested leave to begin trial; when the state's failure to make the request on its own, further demonstrates a lack of diligence in prosecuting this case; and when, on three separate occasions, the prosecutor neglected to attend the trials, dismissal without prejudice is a relatively lenient penalty for the state's utter failure to prosecute the case since a dismissal without prejudice does not, in theory, irrevocably deprive the state of its day in court. Chuuk v. Haruo, 19 FSM R. 43, 47 (Chk. S. Ct. Tr. 2013).

The case will be dismissed without prejudice for lack of prosecution when, taking a look at the state's processing of the case before the dismissal, the four speedy trial factors, on balance, show that the defendant suffered a violation of his right to a speedy trial because the record does not support any legitimate reasons for the delay, because the record does show that the delays were a direct result of the state failing to diligently prosecute the case, and because the excessive length of time that has passed coupled with the absolute lack of diligence on the state's part are sufficient to assume prejudice. Chuuk v. Haruo, 19 FSM R. 43, 48 (Chk. S. Ct. Tr. 2013).

When in an information, one count requires proof of identical allegations (facts and elements) as another count, and would thus violate a defendant's double jeopardy protection if he were convicted of both and then punished for both, the proper remedy is not to dismiss before trial some counts based on what might happen since the government will not be denied the right to charge the separate offenses to guard against the risk that a conviction may not be obtained on one of the offenses. Benjamin v. Kosrae, 19 FSM R. 201, 208 (App. 2013).

When some evidence was obtained by means sufficiently distinguishable to be purged of the primary taint, it will not be suppressed, and therefore the court will not quash the information. FSM v. Benjamin, 19 FSM R. 342, 350 (Pon. 2014).

Generally, the filing of an information within the statute of limitations time frame weighs in favor of non-dismissal, unless evidence of bad faith reasons for the delay are shown. FSM v. Ezra, 19 FSM R. 497, 506 (Pon. 2014).

There is no authority that a crime is no longer a crime and the case must be dismissed once the accused has repaid all of the alleged financial losses, but, if the accused were found guilty, the repayment would likely have some effect on the degree of punishment. FSM v. Itimai, 20 FSM R. 131, 135 (Pon. 2015).

An accused's joblessness during the time period that the government was tardy in opposing his motion to dismiss, does not constitute prejudice in the legal sense since it did not adversely affect his legal position or his defense. FSM v. Itimai, 20 FSM R. 232, 234 (Pon. 2015).

The court will take an information's factual allegations as true for jurisdictional purposes and determine

whether those factual allegations do allege a crime over which the court can exercise jurisdiction. The government's allegations remain to be proven at trial. FSM v. Itimai, 20 FSM R. 232, 234 (Pon. 2015).

Since the FSM Supreme Court has jurisdiction over crimes committed by a national public official or public servant while that person is engaged in his or her official duties or in violation of a fiduciary duty, it will not dismiss a case where all of the acts and omissions the defendant is accused of committing, he did as a national government official or public servant while he was engaged in his official duty. FSM v. Itimai, 20 FSM R. 232, 235 (Pon. 2015).

When the FSM's failure to incorporate the fisheries management agreement provisions by reference in statute, or regulation, or in permits and access agreements leaves the law so vague and ill-defined that what are the acts prohibited cannot be understood by people of ordinary intelligence, and so it cannot serve as a basis for criminal prosecution, the court must grant the defendants' motion to dismiss those counts for the Information's failure to charge an offense. FSM v. Kimura, 20 FSM R. 297, 305 (Pon. 2016).

When a defendant's claim for due process violation is unsubstantiated and uncorroborated except by the defendant's testimony, the defendant's motion to suppress and to dismiss his case in its entirety will be denied. FSM v. Isaac, 21 FSM R. 370, 377 (Pon. 2017).

An information's fundamental purpose is to inform the defendant of the charges so that the defendant may prepare a defense, and to advise the court of the facts alleged so that the court may determine whether those facts, if proven, may support a conviction. An information deficient in these respects may be dismissed without prejudice. FSM v. Mumma, 21 FSM R. 387, 397 (Kos. 2017).

Dismissal will be denied when the government has sufficiently alleged attempt in the information, because it must be given the opportunity to prove beyond a reasonable doubt the defendant's: 1) intent to commit the alleged crime; and 2) that he took action which constitutes a substantial step in a course of conduct planned to culminate in the commission of that crime. FSM v. Mumma, 21 FSM R. 387, 401 (Kos. 2017).

When both the defendant's intent and whether he committed an act sufficient to amount to an attempt are questions of fact inappropriate for determination before trial, the defendant's motion to dismiss the charge of attempt to possess a firearm without having a valid identification card will be denied. FSM v. Mumma, 21 FSM R. 387, 401 (Kos. 2017).

The government may be granted leave to dismiss counts in an information when it does not have sufficient evidence to obtain or sustain a conviction on them. FSM v. Talley, 22 FSM R. 56, 60 (Kos. 2018).

If there is unnecessary delay in filing an information against a defendant who has been held to answer, or if there is unnecessary delay in bringing a defendant to trial, the court may dismiss the information or complaint. Rule 48(b) is the mechanism by which a defendant may assert his constitutional right to a speedy trial, although it also embraces the court's inherent power to dismiss for want of prosecution. FSM v. Talley, 22 FSM R. 56, 60 (Kos. 2018).

The court's power to dismiss under Rule 48(b) is not limited to those situations in which the defendant's constitutional speedy trial right has been violated. The Rule is a restatement of the court's inherent power to dismiss a case for want of prosecution and imposes a stricter standard of tolerable delay than does the Constitution. FSM v. Talley, 22 FSM R. 56, 60 (Kos. 2018).

Since Chuuk State Law No. 6-66 provides liability for the crime of another if the defendant intentionally aids, abets, advises, solicits, counsels, or conspires to commit an offense, or fails to follow a legal duty to prevent the offense's commission, or causes an innocent to engage in criminal conduct, when the affidavit of probable cause provides no facts to show that the accused did any of these things and, instead, it states that another's assault with a dangerous weapon crime occurred well before March 19, 2019, the accused's turning a boat around on March 19, 2019 could never qualify as aiding or abetting an act of alleged criminal

activity completed well before that date and therefore fails to meet the standard of probable cause that a crime had been committed. Since the Chuuk Constitution requires a showing of probable cause for the State to file a case, and where there is none, the Chuuk Constitution requires the court to dismiss the case. Chuuk v. Kincho, 22 FSM R. 411, 414 (Chk. S. Ct. Tr. 2019).

At common law, the prosecutor could enter a nolle prosequi [dismissal] without the court's approval, but Rule 48(a) alters that so that only by leave of court can the prosecution file a dismissal. But the decision to prosecute is essentially for the government's executive branch, and the court cannot require the government to file a dismissal. FSM v. Teteeth, 22 FSM R. 438, 443 n.2 (Yap 2020).

The reasons for which a court may, under Rule 48(a), exercise its discretion and grant the government leave to dismiss an information are: 1] a plea agreement; 2] the defendant's death; 3] the defendant's incompetency to stand trial; 4] when the government's security interests might be placed at risk by disclosures at trial; 5] when a defendant has cooperated with a prosecutorial investigation; and 6] when the information has been superseded. FSM v. Teteeth, 22 FSM R. 438, 444 (Yap 2020).

A dismissal properly taken under Rule 48(a) is without prejudice, and within the period of statute of limitations, a second information may be brought on the same charge. The result will be otherwise, and the dismissal will be with prejudice, if the government sought dismissal for an improper purpose, such as harassment of the defendant. Besides harassment, the court may also deny a motion to dismiss without prejudice if the motion is clearly contrary to manifest public interest. FSM v. Teteeth, 22 FSM R. 438, 445 (Yap 2020).

Prosecutorial harassment can occur when the prosecutor charges, dismisses, and recharges a defendant and moves to dismiss an information over the defendant's objection. But a request for a dismissal of the original information without prejudice once a superseding information has been filed is usually not in bad faith because it is in the public interest that the prosecution accurately charges the offenses that may have been committed. FSM v. Teteeth, 22 FSM R. 438, 445 (Yap 2020).

Leave to dismiss an information (or charges therein) without prejudice will, unless the accused has consented, be denied if the leave is sought after the accused has been put in jeopardy or has pled guilty. FSM v. Teteeth, 22 FSM R. 438, 445 (Yap 2020).

There are serious doubts that a defendant's not guilty plea would, by itself, ever be an adequate ground to deny a dismissal without prejudice after a superseding information has been filed. But a guilty plea would be a good reason because a guilty plea's waiver of trial means that jeopardy has attached. FSM v. Teteeth, 22 FSM R. 438, 445 n.5 (Yap 2020).

A 9mm handgun that was not kept as a curio, ornament, or for its historical significance or value is not exempt under 11 F.S.M.C. 1003(2). FSM v. Buchun, 22 FSM R. 529, 533 n.2 (Yap 2020).

If a defendant is charged with violating both 11 F.S.M.C. 1005(1) and 11 F.S.M.C. 1006(1) and the court finds the defendant guilty of either 11 F.S.M.C. 1005(1) or 11 F.S.M.C. 1006(1), the court must then dismiss the other count because 11 F.S.M.C. 1005(1) and 11 F.S.M.C. 1006(1) charge the same crime. FSM v. Buchun, 22 FSM R. 529, 536 (Yap 2020).

Since 11 F.S.M.C. 1007 requires proof that the weapon was carried, while 11 F.S.M.C. 1023(5) does not, and 11 F.S.M.C. 1023(5) requires proof that the firearm was illegal, while 11 F.S.M.C. 1007 does not, and since the two statutes are directed to different evils – Section 1023(5) is directed to the evil of prohibited firearms and 11 F.S.M.C. 1007 is directed to the evil of improper carrying of a firearm, a defendant can be convicted of both. FSM v. Buchun, 22 FSM R. 529, 538 (Yap 2020).

When the supporting affidavit fails to allege any involvement by the two co-defendants in a conspiracy with the lead defendant, no probable cause exists to pursue the matter against the co-defendants, and,

since no other counts are alleged against them, the two co-defendants will be dismissed. Chuuk v. Hebwer, 22 FSM R. 542, 543 (Chk. S. Ct. Tr. 2020).

– Disturbing the Peace

The offense of disturbing the peace requires proof beyond a reasonable doubt of wilfully committing any act which unreasonably annoys or disturbs another so that she is deprived of peace and quiet. Kosrae v. Sigrah, 12 FSM R. 562, 567 (Kos. S. Ct. Tr. 2004).

When the evidence is undisputed that the defendant intruded upon the victim while she was sleeping, committed acts to wake the victim from her sleep, restrained her and attacked her, and that she was deprived of her peace, quiet and sleep that night by the defendant's actions, the state has proven beyond a reasonable doubt all the elements of the criminal offense of disturbing the peace. Kosrae v. Sigrah, 12 FSM R. 562, 567 (Kos. S. Ct. Tr. 2004).

The criminal offense of disturbing the peace requires proof beyond a reasonable doubt of wilfully committing any act which unreasonably annoys or disturbs another so that he is deprived of peace and quiet. Kosrae v. Anton, 12 FSM R. 606, 610 (Kos. S. Ct. Tr. 2004).

When it is undisputed that the defendant did lay down next to a girl while she was sleeping and pulled the sheets from her and this act woke up her from her sleep and caused her to be frightened by the defendant's acts and when it is undisputed that the defendant's acts caused the girl's mother to be woken from her sleep by her daughter's calls, and that the defendant's acts unreasonably disturbed the mother, the state has proven beyond a reasonable doubt the elements of the criminal offense of disturbing the peace, against two victims. Kosrae v. Anton, 12 FSM R. 606, 610 (Kos. S. Ct. Tr. 2004).

Since the words "ulensumon" are so offensive such that they would unreasonably disturb a reasonable female and are so offensive such that they would provoke an immediate violent reaction in a reasonable female, a defendant who willfully stated the subject words "ulensumon" to a female complainant will be found guilty and convicted of the offenses of disturbing the peace and of offensive behavior in a public place. Kosrae v. Tilfas, 13 FSM R. 501, 502-03 (Kos. S. Ct. Tr. 2005).

Disturbing the peace is willfully committing any act which unreasonably annoys or disturbs another so that he is deprived of peace and quiet, or which provokes a breach of the peace. Kosrae v. Taulung, 14 FSM R. 578, 581 (Kos. S. Ct. Tr. 2007).

When the defendant telephoned the victim early in the morning and accused her of causing the death of a child and since such an alarming accusation had no purpose other than to disturb the person accused; when the call and the statement were not accidental or careless, but were intentional and willful and the timing of the call in the early morning and what was said demonstrated unreasonableness; and when the evidence that the victim was upset and disturbed by the call and statements, the elements of the charge of disturbing the peace were demonstrated beyond a reasonable doubt. Kosrae v. Taulung, 14 FSM R. 578, 581 (Kos. S. Ct. Tr. 2007).

Although in many jurisdictions (and in the Model Penal Code) disturbing the peace requires a public disturbance or annoyance, in some jurisdictions, such as Kosrae, the statute requires only a private annoyance. Benjamin v. Kosrae, 19 FSM R. 201, 209 (App. 2013).

Under the pleading theory, disturbing the peace is not a lesser included offense of sexual abuse when, as pled, to prove sexual abuse, Kosrae had to prove the genital licking and the fingering and that the victim was under 13 and to prove disturbing the peace, Kosrae had to prove the genital licking and that the victim was unreasonably disturbed or annoyed. Thus, the victim's age and the fingering were facts that Kosrae had to prove to obtain a sexual abuse conviction that it did not have to prove to obtain the disturbing the peace conviction. That the victim was unreasonably disturbed or annoyed was a fact that Kosrae had to

prove to obtain the disturbing the peace conviction that it did not have to prove for the sexual abuse conviction. Kosrae did not have to prove that the victim was unreasonably disturbed or annoyed to prove sexual abuse. Thus, the greater offense of sexual abuse could have been committed without committing the lesser offense of disturbing the peace. Benjamin v. Kosrae, 19 FSM R. 201, 209-10 (App. 2013).

To prove sexual assault, the victim's lack of consent is necessarily pled and proven, which would necessarily also require pleading and proving something that would constitute annoyance and disturbance to the victim. Ned v. Kosrae, 20 FSM R. 147, 154 (App. 2015).

Since disturbing the peace is willfully committing any act which unreasonably annoys or disturbs another so that she is deprived of peace and quiet, or which provokes a breach of the peace, and since every sexual assault – every intentional subjecting a person to sexual penetration against that person's will – is also the willful commission of an act which unreasonably annoys or disturbs another so that she is deprived of peace and quiet, disturbing the peace is a lesser included offense of sexual assault. Ned v. Kosrae, 20 FSM R. 147, 154-55 (App. 2015).

– Double Jeopardy

The principal purpose of the protection against double jeopardy established by FSM Constitution, article IV, section 7 is to prevent the government from making repeated attempts to convict an individual for the same alleged act. Laion v. FSM, 1 FSM R. 503, 521 (App. 1984).

The double jeopardy clause, FSM Const. art. IV, § 7, of the Declaration of Rights of the FSM Constitution was drawn from the Bill of Rights of the United States Constitution. Laion v. FSM, 503, 522 (App. 1984).

The double jeopardy clause of the FSM Constitution protects against a second prosecution for the same offense after acquittal, against a second prosecution for the same offense after conviction, and against multiple punishments for the same offense. Laion v. FSM, 1 FSM R. 503, 523 (App. 1984).

United States constitutional law at the time of the Micronesian Constitutional convention furnishes guidance as to the intended scope of the FSM Constitution's double jeopardy clause. Laion v. FSM, 1 FSM R. 503, 523 (App. 1984).

When the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not. If the test is met a dual conviction will not violate the constitutional protection against double jeopardy. Laion v. FSM, 1 FSM R. 503, 523-25 (App. 1984).

When assault with a dangerous weapon requires use or attempted use of a dangerous weapon, a fact not required for aggravated assault, and aggravated assault requires an intent to cause serious bodily injury, which need not be proved for conviction of assault with a dangerous weapon, conviction on both charges for the same wrongful act will not violate the double jeopardy clause of the Constitution. Laion v. FSM, 1 FSM R. 503, 524 (App. 1984).

When a trial court orders concurrent sentences of two convictions of different offenses flowing from a single wrongful act, there is not cumulative or multiple punishments that might violate the double jeopardy clause. Laion v. FSM, 1 FSM R. 503, 524 (App. 1984).

While Congress is not prevented by the double jeopardy clause from providing that two convictions of the same import may flow from a single wrongful act, a court will not merely assume such a congressional intention. Laion v. FSM, 1 FSM R. 503, 525 (App. 1984).

When two statutory provisions aimed at similar types of wrongdoing and upholding citizen and public

interests of the same nature would apply to a solitary illegal act, which caused only one injury, the statutes will be construed not to authorize cumulative convictions in absence of a clear indication of legislative intent. However, the government is not denied the right to charge separate offenses to guard against the risk that a conviction may not be obtained on one of the offenses. Laion v. FSM, 1 FSM R. 503, 529 (App. 1984).

The protection against double jeopardy in a second trial is not available until the person has first been tried in one trial. Jeopardy does not attach in a criminal trial until the first witness is sworn in to testify. FSM v. Cheng Chia-W (I), 7 FSM R. 124, 128 (Pon. 1995).

Where the defendant has not yet been convicted of any crime, the protection against double jeopardy does not attach. FSM v. Cheida, 7 FSM R. 633, 637 (Chk. 1996).

A prosecution for criminal contempt does not pose a double jeopardy problem when previous contempt proceedings were in the nature of civil contempt, nor does it violate the statutory prohibition against successive prosecutions for contempt. FSM v. Cheida, 7 FSM R. 633, 637 (Chk. 1996).

There is no violation of the double jeopardy clause of the FSM Constitution if each offense charged requires proof of a fact which the other does not. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 179 (Pon. 1997).

When the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not. If the test is met, a dual conviction will not violate the constitutional protection against double jeopardy. Palik v. Kosrae, 8 FSM R. 509, 514 (App. 1998).

If, for the same act, both a lesser included and a greater offense are proven, the court should then enter a conviction on only the greater offense. A defendant cannot be sentenced on both the higher and the lesser included offense arising out of the same criminal transaction. Palik v. Kosrae, 8 FSM R. 509, 516 (App. 1998).

The constitutional protection against double jeopardy protects against a second prosecution for the same offense after acquittal, against a second prosecution for the same offense after conviction, and against multiple punishments for the same offense. When the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not. Kosrae v. Kilafwakun, 12 FSM R. 590, 593-94 (Kos. S. Ct. Tr. 2004).

When the sexual abuse and sexual assault statutes each require proof of a fact which the other offense does not – the offense of sexual assault requires proof of the fact of intercourse, penetration, cunnilingus or fellatio; the offense of sexual abuse requires proof of the victim's age, but does not require proof of the fact of intercourse or penetration since sexual contact through touching is adequate – the court may enter findings and a decision on both offenses without violating double jeopardy protections. Kosrae v. Kilafwakun, 12 FSM R. 590, 594 (Kos. S. Ct. Tr. 2004).

If for the same act, both a lesser included and a greater offense are proven, the court should enter a conviction on only the greater offense. Kosrae v. Kilafwakun, 12 FSM R. 590, 594 (Kos. S. Ct. Tr. 2004).

If for the same act, both a lesser included and a greater offense are proven, the court should enter a conviction on only the greater offense. Kosrae v. Kilafwakun, 12 FSM R. 590, 596 (Kos. S. Ct. Tr. 2004).

The double jeopardy clause protects an accused against the following: 1) a second prosecution for the same for the same offense after acquittal; 2) a second prosecution for the same offense after conviction; and 3) against multiple punishments for the same offense. Kosrae v. Kinere, 13 FSM R. 230, 239 (Kos. S. Ct. Tr. 2005).

The test to determine whether the same act or transaction constitutes a violation of two distinct statutory provisions is whether each provision requires proof of a fact which the other does not. Kosrae v. Kinere, 13 FSM R. 230, 239 (Kos. S. Ct. Tr. 2005).

Generally, there can be only one prosecution for a continuing crime. However, a distinct repetition of a prohibited act constitutes a second offense and subjects the offender to an additional penalty. Separate and distinct crimes occur, even when they are very similar acts done many times to the same victim, they are chargeable individually as separate and distinct criminal conduct. Kosrae v. Kinere, 13 FSM R. 230, 239 (Kos. S. Ct. Tr. 2005).

Each instance of sexual penetration may be charged and prosecuted as a separate violation of Kosrae State Code, Section 13.311. Each factually distinguishable act of sexual penetration is subject to prosecution as a separate count, conviction and sentencing when the defendant committed three factually distinguishable acts of sexual penetration upon the same victim and the record reflects that each of the three acts that the defendant's conduct was separate in time and showed the defendant's new intent in his course of conduct. Kosrae v. Kinere, 13 FSM R. 230, 240 (Kos. S. Ct. Tr. 2005).

An argument that multiple acts of sexual penetration committed during a single continuous criminal episode can be subject only to conviction and sentencing on a single count is not supported by public policy. No principle exempts an accused from prosecution for all the offenses that were committed, just because the accused has the opportunity and willingness to multiply those offenses. Such a principle would encourage the more vicious and repeated criminal acts. The State Legislature could not have intended to grant immunity to a criminal who committed one sexual assault upon a minor victim, from prosecution and punishment for further criminal acts committed during the same encounter. When the defendant's conviction and sentencing upon three counts of sexual assault upon the same victim during the same criminal episode were based upon factually distinct acts and offenses, they are not multiple punishments for the same offense. Kosrae v. Kinere, 13 FSM R. 230, 241-42 (Kos. S. Ct. Tr. 2005).

Both the FSM and Kosrae constitutions contain protections against double jeopardy. The purpose of these provisions is to prevent the government from making repeated attempts to convict an individual for the same alleged act. They protect against a second prosecution for the same offense following conviction or acquittal and against multiple punishments for the same offense. Kinere v. Kosrae, 14 FSM R. 375, 383 (App. 2006).

There can be no cumulative punishment for a single offense absent clear legislative intent. Kinere v. Kosrae, 14 FSM R. 375, 383 (App. 2006).

When the defendant committed three distinct acts upon the victim and the act of fellatio occurred at a different time and in a different location than did the acts of anal intercourse and the two acts of anal intercourse were separated by an act of battery (a bite) the defendant penetrated the victim's body at least three times and he thus, did not receive multiple punishments for a single offense. On the contrary, he received multiple punishments for multiple offenses. The State was not required to prove that a significant amount of time elapsed between the three acts of penetration. Kinere v. Kosrae, 14 FSM R. 375, 384 (App. 2006).

A court will not approve any principle which exempts one from prosecution from all the crimes he commits because he sees fit to compound or multiply them. Such a principle would encourage the compounding and viciousness of the criminal acts. Kinere v. Kosrae, 14 FSM R. 375, 385 (App. 2006).

When, although the language of counts six and eight was identical, the two acts of anal penetration were separated by an act of battery and the defendant penetrated the victim three separate times and although counts six and eight should have included distinguishing language, the duplication in the information, in itself, did not compromise the defendant's constitutional right against double jeopardy.

Kinere v. Kosrae, 14 FSM R. 375, 386 (App. 2006).

Having concluded that counsel was not constitutionally ineffective for failing to raise the defense of double jeopardy, the court must conclude that it is irrelevant whether counsel would have raised the defense if he had pondered the case longer. Kinere v. Kosrae, 14 FSM R. 375, 386 (App. 2006).

The principal purpose of the protection against double jeopardy is to prevent the government from making repeated attempts to convict an individual for the same alleged act. Thus, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not. If the test is met a dual conviction will not violate the constitutional protection against double jeopardy. FSM v. Zhang Xiaohui, 14 FSM R. 602, 615 (Pon. 2007).

Where a trial court orders concurrent sentences of two convictions of different offenses flowing from a single wrongful act, there are no cumulative or multiple punishments that might violate the double jeopardy clause. FSM v. Zhang Xiaohui, 14 FSM R. 602, 615 (Pon. 2007).

If, for the same act, both a lesser included and greater offense are proven, the court should then enter a conviction on only the greater offense. A defendant cannot be sentenced on both a higher and lesser included offense arising out of the same criminal transaction. FSM v. Zhang Xiaohui, 14 FSM R. 602, 615 (Pon. 2007).

When the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not. If the test is met, a dual conviction will not violate the constitutional protection against double jeopardy. FSM v. Zhang Xiaohui, 14 FSM R. 602, 615 (Pon. 2007).

When the alleged violations are each the same, *i.e.*, violation of 19 F.S.M.C. 425, the merger doctrine which merges higher and lesser offenses arising from a single criminal act, does not apply. FSM v. Zhang Xiaohui, 14 FSM R. 602, 615 (Pon. 2007).

When the language in an FSM rule or law is nearly identical to a United States counterpart, the court may look to the courts of the United States for guidance in interpreting the rule or law and may look to court decisions from the United States to assist in the interpretation of the double jeopardy clause set forth in the Declaration of Rights in the FSM Constitution, as that clause was drawn from the Bill of Rights of the United States Constitution. FSM v. Zhang Xiaohui, 14 FSM R. 602, 615 (Pon. 2007).

When the unit of prosecution for 19 F.S.M.C. 425, as reflected in the legislative intent, is that there be a punishment for each violation of the law, as it relates to each person who is found at sea and who is in distress or capable of being lost at sea, but is denied assistance, the double jeopardy clause of the FSM Constitution, which parallels the double jeopardy clause of the United States Constitution, is not violated when a defendant, who commits the single act of failing to render assistance to a boat carrying four people – all of whom are purportedly in distress – is charged with four counts of violating the 19 F.S.M.C. 425. FSM v. Zhang Xiaohui, 14 FSM R. 602, 617 (Pon. 2007).

A defendant cannot be sentenced on both a greater and lesser-included offense. However, this is not grounds for dismissal of either charge prior to trial. If the state proves all elements of both offenses, then the court may enter a conviction and sentence for the greater offense. Kosrae v. Likiaksa, 14 FSM R. 618, 621 (Kos. S. Ct. Tr. 2007).

An accused's claim that he was previously put in jeopardy and is about to be tried again for the same offense is a collateral order that is immediately appealable because it is a final decision, as is the denial of an accused's motion for reduction of bail on the ground that it is unconstitutionally excessive. Zhang Xiaohui v. FSM, 15 FSM R. 162, 167 & n.2 (App. 2007).

Because reversal on appeal from a conviction following a second trial comes too late to afford an accused protection against being twice put to trial for the same offense, an order denying a motion to dismiss on the ground that the accused had previously been tried for that offense is a final decision and thus appealable. Zhang Xiaohui v. FSM, 15 FSM R. 162, 167 (App. 2007).

The right not to be tried more than once and the right not to receive multiple convictions and punishments for the same offense are both protected by the double jeopardy clause but they are conceptually distinct rights. Zhang Xiaohui v. FSM, 15 FSM R. 162, 167 (App. 2007).

When the double jeopardy claim involves protection against multiple punishment, not the protection against being put on trial a second time, the rationale for granting pretrial appeals does not apply. There is no right to an immediate appeal from a double jeopardy claim of multiple punishments because that right can be fully vindicated on an appeal following a final judgment and therefore is not an immediately appealable final decision. Zhang Xiaohui v. FSM, 15 FSM R. 162, 167 (App. 2007).

A pretrial double jeopardy appeal will be dismissed as not from a final decision when the double jeopardy claim is not based on a claim that the defendants had been previously put in jeopardy. The "collateral order" exception for double jeopardy claims is limited to former jeopardy claims and an appellate court lacks jurisdiction to entertain an immediate pretrial appeal of a trial court denial of a motion to dismiss based on multiple punishment grounds. Zhang Xiaohui v. FSM, 15 FSM R. 162, 167 (App. 2007).

When an appellant asks to be advised on whether, if he goes to trial, and if he is convicted on more than one count, and then if he is sentenced on more than one count, would his sentence then violate his right not to be subjected to double jeopardy, any ruling the appellate court could make would be in the nature of an advisory opinion and the court does not have the jurisdiction to issue advisory opinions. Zhang Xiaohui v. FSM, 15 FSM R. 162, 167-68 (App. 2007).

In determining the double jeopardy clause's scope and meaning the court first looks to the language of the Constitution itself. FSM v. Louis, 15 FSM R. 348, 354 (Pon. 2007).

Where the FSM Constitution's language has been borrowed from the United States Constitution, the court may look to leading United States cases for guidance in interpreting that language, especially where the meaning is not self-evident from the words themselves. The Double Jeopardy Clause, like most provisions of the Declaration of Rights, was drawn from the United States Constitution's Bill of Rights. Thus, United States constitutional law at the time of the Micronesian Constitutional Convention furnishes guidance as to the intended scope of the FSM Constitution's Double Jeopardy Clause. FSM v. Louis, 15 FSM R. 348, 354 (Pon. 2007).

Under the dual sovereignty doctrine, since the national government and its individual states are independent sovereigns, a state prosecution does not bar a subsequent national prosecution of the same person for the same acts, and a national prosecution does not bar a subsequent state prosecution. FSM v. Louis, 15 FSM R. 348, 354-55 (Pon. 2007).

The constitutional protection not to be twice placed in jeopardy does not apply to a revocation hearing because revocation and a criminal prosecution can both be based on the same transaction without implicating double jeopardy concerns. FSM v. William, 16 FSM R. 4, 9 (Chk. 2008).

The rule against double jeopardy provides three types of protection for criminal defendants: it protects against a second prosecution for the same offense after acquittal; it protects against a second prosecution for the same offense after conviction; and it protects against multiple punishments for the same offense. Chuuk v. Kasmiro, 16 FSM R. 404, 406 (Chk. S. Ct. Tr. 2009).

The dual sovereignty doctrine provides an important limitation on the application of double jeopardy to

related state and national prosecutions. Under the dual sovereignty doctrine, a state prosecution does not bar a subsequent national prosecution of the same person for the same acts, and a national prosecution does not bar a subsequent state prosecution. The reason is that the national government and its individual states are independent sovereigns, and prosecutions under the laws of those separate sovereigns do not subject a defendant to be twice put in jeopardy. If the constitutional protection against double jeopardy did apply to prosecutions under the laws of independent sovereigns, then prosecution by one sovereign for a relatively minor offense might bar prosecution by another sovereign for a much graver offense, effectively depriving the latter of the right to enforce its laws, and defendants would always race to stand trial in the court where the charges were less severe in order to bar the second action. Chuuk v. Kasmiro, 16 FSM R. 404, 406 (Chk. S. Ct. Tr. 2009).

Double jeopardy only applies against multiple punishments for the same offense. When the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not. Chuuk v. Kasmiro, 16 FSM R. 404, 406 (Chk. S. Ct. Tr. 2009).

Double jeopardy generally bars a second action if the defendant is acquitted on the merits, but the vacating of a conviction on the ground of a material variance between pleading and proof is not an acquittal on the merits. Rather, when there is a material variance between the pleadings and a court's findings that results in vacating a conviction, the defendant will not be in jeopardy against a subsequently filed information with new allegations because the defendant was never called to defend against those allegations. Chuuk v. Kasmiro, 16 FSM R. 404, 407 (Chk. S. Ct. Tr. 2009).

The FSM Constitution's double jeopardy clause protects 1) against a second prosecution for the same offense after acquittal, 2) against a second prosecution for the same offense after conviction, and 3) against multiple punishments for the same offense. FSM v. Aliven, 16 FSM R. 520, 530 (Chk. 2009).

When the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not, and, if the test is met a dual conviction will not violate the constitutional protection against double jeopardy. FSM v. Aliven, 16 FSM R. 520, 530 (Chk. 2009).

A criminal information's allegations must be proven in order to obtain a conviction, and it is not sufficient that the evidence show a violation of the statute specified in the information if the actual violation is different from the one alleged. Thus, when in an information, one count requires proof of identical allegations (facts and elements) as another count, it would violate a defendant's double jeopardy protection if he were convicted of both and then punished for both. The proper remedy, however, is not to dismiss before trial some counts based on what might happen because the government will not be denied the right to charge the separate offenses to guard against the risk that a conviction may not be obtained on one of the offenses. But if, after trial, the court finds the defendant guilty of both counts, a conviction will be entered only on one of those two counts. FSM v. Aliven, 16 FSM R. 520, 530-31 (Chk. 2009).

When two statutory provisions aimed at similar types of wrongdoing and at upholding public interests of the same nature would apply to a solitary illegal act that caused only one injury, the statutes will be construed as not to authorize cumulative convictions. FSM v. Aliven, 16 FSM R. 520, 531 (Chk. 2009).

When the same conduct may amount to more than one offense, the defendant may be prosecuted for each offense. But he may not be convicted of more than one offense if one offense is included in the other, or if one offense as defined prohibits a certain kind of conduct generally, and the other prohibits a specific instance of such conduct. FSM v. Aliven, 16 FSM R. 520, 531 (Chk. 2009).

While a defendant cannot be sentenced to consecutive sentences on a greater and lesser-included offense arising from the same act, the government does not have to identify which of its charges in its criminal information it intends to pursue prior to conviction. Rather, it is entitled to pursue, at trial, multiple

claims based on the same act, and a defendant's motion for pretrial dismissal or for a bill of particulars will be denied. Chuuk v. Suzuki, 16 FSM R. 625, 631-32 (Chk. S. Ct. Tr. 2009).

Constitutional constraints would bar the appellate reversal of a not guilty finding since both the FSM Constitution and the Kosrae Constitution protect an accused from being twice put in jeopardy for the same offense. Kosrae v. Benjamin, 17 FSM R. 1, 3 (App. 2010).

When an FSM or Kosrae constitutional protection, such as the FSM or Kosrae double jeopardy protection, is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning. Kosrae v. Benjamin, 17 FSM R. 1, 4 n.2 (App. 2010).

A pretrial dismissal of a criminal prosecution would not raise double jeopardy concerns if the appellate court were to order the case reinstated because the accused had not once been put in jeopardy. Jeopardy does not attach in a criminal trial until the first witness is sworn in to testify. Kosrae v. George, 17 FSM R. 5, 7 n.1 (App. 2010).

When faced with an accused's claim that it would violate his protection against double jeopardy if he were convicted of both of two charged counts and then sentenced for both, the proper remedy is not to dismiss before trial some counts based on what might happen. When two statutory provisions aimed at similar types of wrongdoing and at upholding public interests of the same nature would apply to a solitary illegal act that caused only one injury, the statutes will be construed as not to authorize cumulative convictions. The government, however, will not be denied the right to charge the separate offenses to guard against the risk that a conviction may not be obtained on one of the offenses. FSM v. Esefan, 17 FSM R. 389, 396 (Chk. 2011).

When faced with an accused's claim that it would violate his protection against double jeopardy if he were convicted of both on two counts and then sentenced for both, the proper remedy is not to dismiss before trial some counts based on what might happen. When two statutory provisions aimed at similar types of wrongdoing and at upholding public interests of the same nature would apply to a solitary illegal act that caused only one injury, the statutes will be construed as not to authorize cumulative convictions. The government, however, will not be denied the right to charge the separate offenses to guard against the risk that a conviction may not be obtained on one of the offenses. FSM v. Sorim, 17 FSM R. 515, 523 (Chk. 2011).

Jeopardy attaches only when the first witness is sworn in to testify at trial. FSM v. Meitou, 18 FSM R. 121, 126 (Chk. 2011).

The FSM Constitution's double jeopardy clause protects against a second prosecution for the same offense after acquittal, against a second prosecution for the same offense after conviction, and against multiple punishments for the same offense. The usual remedy for a successful double jeopardy claim is an order barring or dismissing the second prosecution or barring the imposition of the multiple punishment. Helgenberger v. U Mun. Court, 18 FSM R. 274, 279 (Pon. 2012).

When an official has been impeached, a trial on criminal charges is not foreclosed by the principle of double jeopardy. Helgenberger v. U Mun. Court, 18 FSM R. 274, 279 (Pon. 2012).

Since the FSM constitutional protection against double jeopardy is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning and scope. Helgenberger v. U Mun. Court, 18 FSM R. 274, 279 n.1 (Pon. 2012).

The remedy of impeachment has the single role of affecting only the right to hold office and is not intended to bar or delay another remedy for a public wrong. The other remedy is often a criminal prosecution. This is because the remedy of impeachment is not exclusive of any other public remedy for the same misbehavior, and if the cause for which the officer is punished is a public offense, he may also be indicted, tried, and punished. Helgenberger v. U Mun. Court, 18 FSM R. 274, 280 (Pon. 2012).

A single act of misconduct may offend the public interest in a number of areas and call for the appropriate remedy for each hurt. Thus it may require removal from office. It may also require criminal prosecution. Helgenberger v. U Mun. Court, 18 FSM R. 274, 280 (Pon. 2012).

Impeachment and removal from office is not criminal punishment under the FSM Constitution's double jeopardy clause. Helgenberger v. U Mun. Court, 18 FSM R. 274, 280 (Pon. 2012).

A government official's misconduct does not present a government with an irrevocable choice to either criminally prosecute the official or to impeach and try to remove that official from office. If the offending official has not resigned from office first, the government may do, and is usually expected to do, both. Helgenberger v. U Mun. Court, 18 FSM R. 274, 280 (Pon. 2012).

A former government official cannot claim he was subjected to double jeopardy because he was convicted of public offenses and then impeached and removed from office for those same offenses. Nor could he have claimed double jeopardy if he had first been impeached and removed from office and then prosecuted for the same public offenses. Helgenberger v. U Mun. Court, 18 FSM R. 274, 280 (Pon. 2012).

The FSM and Kosrae Constitutions' double jeopardy clauses protect a person from a second prosecution for the same offense after acquittal, from a second prosecution for the same offense after conviction, and from multiple punishments for the same offense. Benjamin v. Kosrae, 19 FSM R. 201, 208 (App. 2013).

When in an information, one count requires proof of identical allegations (facts and elements) as another count, and would thus violate a defendant's double jeopardy protection if he were convicted of both and then punished for both, the proper remedy is not to dismiss before trial some counts based on what might happen since the government will not be denied the right to charge the separate offenses to guard against the risk that a conviction may not be obtained on one of the offenses. Benjamin v. Kosrae, 19 FSM R. 201, 208 (App. 2013).

A criminal defendant is not in danger of being subjected to multiple punishments in the same prosecution until the defendant has been found guilty. A pretrial motion raising a double jeopardy claim of multiple punishments is premature because the defendant may be acquitted on one or all of the charges. Thus, multiple charges in an information is not a defect in the information and is not a claim that is required to be made before trial or it will be deemed waived. A defendant's multiple punishment double jeopardy claim is a claim that cannot be raised before trial but may be raised after guilty findings for more than one offense. Benjamin v. Kosrae, 19 FSM R. 201, 208 (App. 2013).

A double jeopardy claim that a person was or will be tried twice for the same offense may be raised (and appealed) at any time. Benjamin v. Kosrae, 19 FSM R. 201, 208 n.4 (App. 2013).

The applicable rule is that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not. Benjamin v. Kosrae, 19 FSM R. 201, 209 (App. 2013).

The test for determining whether an offense is the lesser-included of another is whether the greater offense can be committed without committing the lesser. Benjamin v. Kosrae, 19 FSM R. 201, 209 (App. 2013).

There are two theories under which a particular offense may be determined to be a lesser included offense of a charged offense – the "statutory theory" and the "pleading theory." Under the statutory theory, a crime may be a lesser included offense if its elements are necessarily included in the greater crime, as the greater crime is defined by statute. Under the pleading theory, a crime may be a lesser included

offense if the charging document alleges facts the proof of which necessarily includes proof of the elements of the lesser included offense. In effect, under the pleading theory, an offense is an included offense if it is alleged in the information as a means or element of the commission of the higher offense. The pleading theory is the broader theory. Benjamin v. Kosrae, 19 FSM R. 201, 209 (App. 2013).

Under the pleading theory, disturbing the peace is not a lesser included offense of sexual abuse when, as pled, to prove sexual abuse, Kosrae had to prove the genital licking and the fingering and that the victim was under 13 and to prove disturbing the peace, Kosrae had to prove the genital licking and that the victim was unreasonably disturbed or annoyed. Thus, the victim's age and the fingering were facts that Kosrae had to prove to obtain a sexual abuse conviction that it did not have to prove to obtain the disturbing the peace conviction. That the victim was unreasonably disturbed or annoyed was a fact that Kosrae had to prove to obtain the disturbing the peace conviction that it did not have to prove for the sexual abuse conviction. Kosrae did not have to prove that the victim was unreasonably disturbed or annoyed to prove sexual abuse. Thus, the greater offense of sexual abuse could have been committed without committing the lesser offense of disturbing the peace. Benjamin v. Kosrae, 19 FSM R. 201, 209-10 (App. 2013).

The principal purpose of the protection against double jeopardy established by the FSM Constitution is to prevent the government from making repeated attempts to convict an individual for the same alleged act. Chuuk v. Koky, 19 FSM R. 479, 480 (Chk. S. Ct. Tr. 2014).

The test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not. If the test is met a dual conviction will not violate the constitutional protection against double jeopardy. Similarly, where a trial court orders concurrent sentences of two convictions of different offenses flowing from a single wrongful act, there is no cumulative or multiple punishments that might violate the double jeopardy clause. Chuuk v. Koky, 19 FSM R. 479, 481 (Chk. S. Ct. Tr. 2014).

A defendant cannot be sentenced on both a higher and lesser included offense arising out of the same criminal transaction. Chuuk v. Koky, 19 FSM R. 479, 481 (Chk. S. Ct. Tr. 2014).

If both the use-of-a-slingshot offense and assault-with-a-dangerous-weapon offense are proven with respect to the same act, the court will enter a conviction on only the greater offense of assault with a dangerous weapon. Chuuk v. Koky, 19 FSM R. 479, 481 (Chk. S. Ct. Tr. 2014).

The FSM and Kosrae Constitutions prohibit double jeopardy. The purpose of these provisions is 1) to prevent the government from making repeated attempts to convict an individual for the same alleged act; 2) to prevent a second prosecution for the same offense following a conviction or a acquittal; and 3) to prevent multiple punishments for the same offense. Ned v. Kosrae, 20 FSM R. 147, 153 (App. 2015).

The test for determining whether an offense is a lesser-included offense of another is whether the greater offense can be committed without committing the lesser. Ned v. Kosrae, 20 FSM R. 147, 153-54 (App. 2015).

When the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not. Ned v. Kosrae, 20 FSM R. 147, 154 (App. 2015).

An attempt to commit a crime is a lesser included offense that merges with the greater ("target") offense if the attempt is successful. Ned v. Kosrae, 20 FSM R. 147, 154 (App. 2015).

If the target crime is in fact committed, there can be no conviction for attempt, since the actor's prior conduct is deemed merged in the completed crime. Ned v. Kosrae, 20 FSM R. 147, 154 (App. 2015).

An assault is a lesser included offense of assault and battery. Ned v. Kosrae, 20 FSM R. 147, 154 (App. 2015).

Under the statutory theory, a crime may be a lesser included offense if its elements are necessarily included in the greater crime, as the greater crime is defined by statute. Under the pleading theory, a crime may be a lesser included offense if the charging document alleges facts the proof of which necessarily includes proof of the elements of the lesser included offense. Ned v. Kosrae, 20 FSM R. 147, 154 (App. 2015).

To prove sexual assault, the victim's lack of consent is necessarily pled and proven, which would necessarily also require pleading and proving something that would constitute annoyance and disturbance to the victim. Ned v. Kosrae, 20 FSM R. 147, 154 (App. 2015).

Since sexual assault requires intentionally subjecting another person to sexual penetration against the other person's will and assault and battery requires striking, beating, wounding, or otherwise doing bodily harm to another, and since subjecting another person to sexual penetration against the other person's will is one of a number of ways to otherwise do bodily harm to another, assault and battery is a lesser included offense of sexual assault. Ned v. Kosrae, 20 FSM R. 147, 154 (App. 2015).

Since disturbing the peace is willfully committing any act which unreasonably annoys or disturbs another so that she is deprived of peace and quiet, or which provokes a breach of the peace, and since every sexual assault – every intentional subjecting a person to sexual penetration against that person's will – is also the willful commission of an act which unreasonably annoys or disturbs another so that she is deprived of peace and quiet, disturbing the peace is a lesser included offense of sexual assault. Ned v. Kosrae, 20 FSM R. 147, 154-55 (App. 2015).

Since the attempt to commit sexual assault merged into the completed sexual assault; since assault is a lesser included offense of assault and battery; and since assault and battery and disturbing the peace are both lesser included offenses of sexual assault, the convictions for all these lesser offenses must be vacated, and since the maximum sentence for sexual assault as a category two felony is five years, the accused's seven-year sentence, and therefore his convictions, for all offenses must be vacated and the case remanded for re-sentencing on, and thus for a conviction to be entered for, only the greater offense of sexual assault. Ned v. Kosrae, 20 FSM R. 147, 155 (App. 2015).

The double jeopardy clause provides three basic protections. It protects a person against a second prosecution for the same offense after an acquittal, against a second prosecution for the same offense after a conviction, and against multiple punishments for the same offense. FSM v. Kimura, 20 FSM R. 297, 300 (Pon. 2016).

When the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not, and, if the test is met a dual conviction will not violate the constitutional protection against double jeopardy. FSM v. Kimura, 20 FSM R. 297, 301 (Pon. 2016).

When there are counts that may duplicate another count and when a conviction on both counts would violate the protection against double jeopardy, the proper remedy is not to dismiss before trial some counts based on what might happen because the government will not be denied the right to charge separate offenses to guard against the risk that a conviction may not be obtained on one of the offenses. If the government obtains a guilty finding for the same defendant on two counts that do constitute the same offense, a conviction will be entered only on one of those two counts. FSM v. Kimura, 20 FSM R. 297, 301 (Pon. 2016).

If and when the defendants are found guilty on two or more counts they deem to constitute the same offense, they may then raise their double jeopardy concerns about being subjected to multiple punishments for the same offense and may argue the rule of lenity. FSM v. Kimura, 20 FSM R. 297, 301 (Pon. 2016).

Jeopardy only attaches once the first witness is sworn in to testify at trial. FSM v. Siega, 21 FSM R.

291, 299 (Chk. 2017).

When jeopardy has not yet attached in either of two prosecutions against an accused, it may be premature to address whether a double jeopardy claim exists for the contemporaneous cases. FSM v. Siega, 21 FSM R. 291, 299 (Chk. 2017).

Prosecution for criminal contempt does not pose a double jeopardy problem when previous contempt proceedings were in the nature of civil contempt, nor does it violate the statutory prohibition against successive prosecutions for contempt. Governor v. Chuuk House of Senate, 21 FSM R. 428, 434 (Chk. S. Ct. Tr. 2018).

Leave to dismiss an information (or charges therein) without prejudice will, unless the accused has consented, be denied if the leave is sought after the accused has been put in jeopardy or has pled guilty. FSM v. Teteeth, 22 FSM R. 438, 445 (Yap 2020).

Jeopardy does not attach until the first witness is sworn in at trial. FSM v. Teteeth, 22 FSM R. 438, 445 (Yap 2020).

There are serious doubts that a defendant's not guilty plea would, by itself, ever be an adequate ground to deny a dismissal without prejudice after a superseding information has been filed. But a guilty plea would be a good reason because a guilty plea's waiver of trial means that jeopardy has attached. FSM v. Teteeth, 22 FSM R. 438, 445 n.5 (Yap 2020).

When the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not. The assumption underlying this rule is that Congress ordinarily does not intend to punish the same offense under two different statutes. FSM v. Buchun, 22 FSM R. 529, 533 (Yap 2020).

The test for determining whether an offense is the lesser-included of another is whether the greater offense can be committed without committing the lesser. There are two theories about how to determine this – the statutory theory and the pleading theory. FSM v. Buchun, 22 FSM R. 529, 533 (Yap 2020).

Under the statutory theory, a crime may be a lesser included offense if its elements are necessarily included in the greater crime, as the greater crime is defined by statute. Under the pleading theory, a crime may be a lesser included offense if the charging document alleges facts the proof of which necessarily includes proof of the elements of the lesser included offense. FSM v. Buchun, 22 FSM R. 529, 533 (Yap 2020).

Under the pleading theory, an offense is an included offense if it is alleged in the information as a means or element of the commission of the higher offense. The pleading theory is the broader theory. FSM v. Buchun, 22 FSM R. 529, 533 (Yap 2020).

Neither 11 F.S.M.C. 1005(1) nor 11 F.S.M.C. 1006(1) is the lesser included offense of the other because both impose liability for possession of a firearm or ammunition without an identification card. Section 1005(1) imposes liability for acquiring a firearm or ammunition in any manner, while Section 1006(1) imposes liability only if the acquisition is by purchase, and Section 1006(1) imposes liability for the use of a firearm or ammunition, while Section 1005(1) does not, but it is difficult to see how someone could use a firearm or ammunition without actually also possessing that firearm or ammunition, and it is also difficult to see how a person could acquire or purchase a firearm or ammunition without also then necessarily actually possessing that firearm or ammunition. FSM v. Buchun, 22 FSM R. 529, 535 & n.4 (Yap 2020).

When a defendant has been convicted under two different statutes of what is the same crime, the court

must vacate one of the two convictions because for the purposes of applying the double jeopardy test, as a means of ascertaining congressional intent, punishment must be the equivalent of a criminal conviction and not simply the imposition of a concurrent sentence. FSM v. Buchun, 22 FSM R. 529, 536 (Yap 2020).

If a defendant is charged with violating both 11 F.S.M.C. 1005(1) and 11 F.S.M.C. 1006(1) and the court finds the defendant guilty of either 11 F.S.M.C. 1005(1) or 11 F.S.M.C. 1006(1), the court must then dismiss the other count because 11 F.S.M.C. 1005(1) and 11 F.S.M.C. 1006(1) charge the same crime. FSM v. Buchun, 22 FSM R. 529, 536 (Yap 2020).

Often a misdemeanor will be a lesser included offense of a felony. But that is not the case when the greater offense can be committed without committing the misdemeanor. FSM v. Buchun, 22 FSM R. 529, 537 (Yap 2020).

A person without an identification card can violate either 11 F.S.M.C. 1005(1) or 11 F.S.M.C. 1006(1) by acquiring or purchasing, or by possessing, or by using a firearm. But if that person, without a valid identification card, does any of those things but does not carry the firearm, that person has not committed the lesser misdemeanor of 11 F.S.M.C. 1007. The misdemeanor's key element is the carrying of a firearm. FSM v. Buchun, 22 FSM R. 529, 537 (Yap 2020).

The prosecution, to secure a 11 F.S.M.C. 1007 conviction, has to prove an element that it does not have to prove to convict under either 11 F.S.M.C. 1005(1) or 11 F.S.M.C. 1006(1). It must prove that not only did the defendant possess the firearm without holding an identification card, but that the defendant also carried the firearm, which is not an element of either 11 F.S.M.C. 1005(1) or 11 F.S.M.C. 1006. Section 1007 is directed to a different evil – the carrying of a firearm, either unsafely or by someone without a valid identification card (or both), while Sections 1006 and 1005(1) are directed toward the evil of possession of a firearm or ammunition without an identification card. FSM v. Buchun, 22 FSM R. 529, 537 (Yap 2020).

The Section 1007 misdemeanor is not a lesser included offense of 11 F.S.M.C. 1023(5) because that felony can easily be committed without violating 11 F.S.M.C. 1007 because, to violate 11 F.S.M.C. 1007, the firearm, whether legal or illegal, must be carried. FSM v. Buchun, 22 FSM R. 529, 537 (Yap 2020).

The Laion test determines whether there are two crimes or only one – it determines whether Congress intended that a defendant be punished under both statutes. When the same act violates two distinct criminal statutes, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not. FSM v. Buchun, 22 FSM R. 529, 538 (Yap 2020).

To obtain a conviction under either 11 F.S.M.C. 1005(1) or 11 F.S.M.C. 1006(1), the prosecution must prove that the person in possession of a firearm does not hold a valid identification card. To obtain a conviction under 11 F.S.M.C. 1023(5), the prosecution must prove that the person possesses an illegal firearm, such as a handgun. Thus, each statutory provision (treating 11 F.S.M.C. 1005(1) and 11 F.S.M.C. 1006(1) as one provision) requires the proof of a fact that the other does not. FSM v. Buchun, 22 FSM R. 529, 538 (Yap 2020).

Section 1023(5) is directed to the evil of prohibited firearms and 11 F.S.M.C. 1005(1) and 11 F.S.M.C. 1006(1) are directed to the evil of persons not obtaining a valid identification card before possessing firearms or ammunition. Thus, Congress clearly intended to address different evils with these different statutory provisions. FSM v. Buchun, 22 FSM R. 529, 538 (Yap 2020).

Since 11 F.S.M.C. 1007 requires proof that the weapon was carried, while 11 F.S.M.C. 1023(5) does not, and 11 F.S.M.C. 1023(5) requires proof that the firearm was illegal, while 11 F.S.M.C. 1007 does not, and since the two statutes are directed to different evils – Section 1023(5) is directed to the evil of prohibited firearms and 11 F.S.M.C. 1007 is directed to the evil of improper carrying of a firearm, a defendant can be convicted of both. FSM v. Buchun, 22 FSM R. 529, 538 (Yap 2020).

– Escape

The national escape statute's requirements are met where an escaped defendant was being held for law enforcement purposes by state police officers authorized to detain on behalf of the Federated States of Micronesia. 11 F.S.M.C. 505. FSM v. Doone, 1 FSM R. 365, 367 (Pon. 1983).

The law generally requires that a prisoner test the legality of his detention in a court of law rather than attempt to enforce his own claim to freedom. FSM v. Doone, 1 FSM R. 365, 368 (Pon. 1983).

A prisoner held illegally in a custodial facility is never permitted to escape. 11 F.S.M.C. 505(3). FSM v. Doone, 1 FSM R. 365, 368 (Pon. 1983).

Outside of a custodial facility, one illegally detained by a law officer acting in good faith is entitled to escape only if he can do so with "no substantial risk of harm to the person or property of anyone other than the defendant." FSM v. Doone, 1 FSM R. 365, 368 (Pon. 1983).

To minimize disruption and challenges to official police authority, the statutory exceptions to prohibitions against escape should be read restrictively. 11 F.S.M.C. 505. FSM v. Doone, 1 FSM R. 365, 368-69 (Pon. 1983).

A police car being used to maintain custody as well as transport a detainee from one custodial facility to another is a custodial facility within the meaning of 11 F.S.M.C. 505(3). FSM v. Doone, 1 FSM R. 365, 369 (Pon. 1983).

A police vehicle being used to transport an arrest person from the police station to the jail is a custodial facility within the meaning of 11 F.S.M.C. 505(3), and a person who, having been informed that he is under arrest, flees from such a vehicle and the custody of a police officer authorized to detain or arrest persons on behalf of the Federated States of Micronesia, is guilty of an escape under 11 F.S.M.C. 505(1). Doone v. FSM, 2 FSM R. 103, 106 (App. 1985).

Illegality of arrest or detention is no defense to a charge that one has unlawfully escaped from a custodial facility. Doone v. FSM, 2 FSM R. 103, 106 (App. 1985).

Escape from state police officers, authorized by a Joint Law Enforcement Agreement Between the National Government and the State to detain and arrest persons on behalf of the Federated States of Micronesia can be the foundation for an escape conviction under 11 F.S.M.C. 505(1), without regard to whether the detention was for a major crime. Doone v. FSM, 2 FSM R. 103, 106 (App. 1985).

In the absence of any explanation in the legislative history or from the government to justify a different interpretation, the only apparent reason for the deletion of the words "alleged to be found delinquent" from the Model Penal Code definition of official detention is that Congress wished to exclude detained juveniles from the national prohibitions against escape. 11 F.S.M.C. 505(1). In re Cantero, 3 FSM R. 481, 484 (Pon. 1988).

Juveniles alleged or found to be delinquent children are not under "official detention" within the meaning of 11 F.S.M.C. 505(1). In re Cantero, 3 FSM R. 481, 484 (Pon. 1988).

One of the elements of escape is that the person charged is under lawful custody. Chuuk v. Sipenuk, 17 FSM R. 135, 137 (Chk. S. Ct. Tr. 2010).

When an accused's custody had exceeded twenty-four hours at the time he committed the alleged escape and therefore the custody was not lawful and when the evidence to support the escape charge was obtained as a direct result of that unlawful detainment and was therefore inadmissible, escape could not be

proven. Chuuk v. Sipenuk, 17 FSM R. 135, 137 (Chk. S. Ct. Tr. 2010).

Resort to self-help by a detainee is inherently dangerous to the prisoner, the police, and to the public, as an attempted escape may result in circumstances where there is resort to force either by or against the detainee. Therefore, in cases of unlawful detainment, it is much preferred as a matter of public policy for counsel or other person to move the court for a detainee's immediate release. Chuuk v. Sipenuk, 17 FSM R. 135, 137 (Chk. S. Ct. Tr. 2010).

A finding that the arrest was without probable cause may also support dismissal of an escape charge since an arrest without probable cause does not constitute an authorized arrest which can serve as a predicate for an escape charge where the escape was without force. Chuuk v. Sipenuk, 17 FSM R. 135, 137 (Chk. S. Ct. Tr. 2010).

When a defendant has submitted no evidence showing that the government's failure to inform him of the state correctional facility's rules, procedures, and schedules unconstitutionally deprived him of a life, liberty, or property interest and when, since such an admonition is unnecessary, the "Prisoner Rights and Responsibilities" document which the defendant cites does not inform inmates that they have a responsibility to not commit unlawful acts while incarcerated, the defendant cannot claim that he did not know he was not permitted to leave the correctional facility premises without a court order or police escort while incarcerated and a motion for dismissal on that ground will be denied. FSM v. Andrew, 17 FSM R. 213, 215 (Pon. 2010).

– Expungement of Records

Without more, expungement is not appropriate when the court's order entered pursuant to a plea agreement specifically found sufficient factual basis to render a judgment of guilt against the defendant, and, although imposition of sentence was suspended pursuant to 11 F.S.M.C. 1002(4), the defendant served jail time, was under house arrest, and paid a total of $14,374.00 to the national treasury. FSM v. Kihleng, 8 FSM R. 323, 324-25 (Pon. 1998).

Expungement of criminal records falls generally within three categories: expungement pursuant to statute, expungement where it is necessary to preserve basic legal rights, and expungement based on acquittal. FSM v. Kihleng, 8 FSM R. 323, 325 (Pon. 1998).

Where the arrest itself was an unlawful one, or where the arrest represented harassing action by the police, or where the statute under which the arrestee was prosecuted was itself unconstitutional, courts have ordered expunction. FSM v. Kihleng, 8 FSM R. 323, 325 (Pon. 1998).

Although expungement calls for a balancing of the equities between the government's need to maintain extensive records in order to aid in general law enforcement and the individual's right to privacy, an acquittal, standing alone, is not in itself sufficient to warrant an expunction of an arrest record. FSM v. Kihleng, 8 FSM R. 323, 325 (Pon. 1998).

As the grant or denial of a motion to expunge the record of a Trust Territory convicytion lies solely within the court's discretion, as limited by law, no appearance is deemed necessary by Chuuk as the successor to the Trust Territory of the Pacific Islands government. The court can decide the motion without oral argument because no evidentiary proceeding is necessary, absent credible assertions of grounds, such as lack of competent counsel, innocence of the charges brought, or that the plea was not voluntarily made. Trust Territory v. Edgar, 11 FSM R. 303, 305 & n.1 (Chk. S. Ct. Tr. 2002).

The Chuuk State Supreme Court cannot vacate a criminal conviction, based upon a voluntary guilty plea, in order to circumvent the constitutional and statutory proscriptions against felons being candidates for the FSM Congress when the defendant does not now complain that he was not guilty of the crimes, or that he was not afforded due process of law when he was accused of, and then pleaded guilty to, two separate

felonies. Trust Territory v. Edgar, 11 FSM R. 303, 308 (Chk. S. Ct. Tr. 2002).

The Chuuk State Supreme Court has no power to strike from the public records all evidence of the charges against a defendant, and his convictions, who seeks a way around the constitutional and statutory proscriptions which is unavailable even to one who has been pardoned for his crimes. It will therefore deny his motion to expunge. Trust Territory v. Edgar, 11 FSM R. 303, 308 (Chk. S. Ct. Tr. 2002).

The expungement of criminal records seem to fall generally within three categories: expungement pursuant to statute, expungement where it is necessary to preserve basic legal rights, and expungement based on acquittal. FSM v. Erwin, 16 FSM R. 42, 43 (Chk. 2008).

A defendant, having pled guilty and been sentenced, does not fit into the category of expungement cases where the defendant was never convicted, and when she does not allege that her conviction stems from the unlawful conduct of law enforcement agents she does not fit into another situation where courts have exercised an inherent power to expunge records. FSM v. Erwin, 16 FSM R. 42, 44 (Chk. 2008).

A court exercising only its inherent power would need a very extraordinary and compelling case to expunge or seal not only the judicial branch's conviction records but also the arrest records maintained by the executive branch since that would implicate separation of powers concerns. FSM v. Erwin, 16 FSM R. 42, 44 (Chk. 2008).

When the defendant has pled guilty and been sentenced and any statement about the effect on her possible enrollment in a nursing school is, at this time, premature and purely speculative, the case is unlike those extraordinary and unusual cases where the remedy of expungement has a logical relationship to the injury to the defendant and the court has balanced the government's need for the records with the harm to the person that results from the government's maintaining the records. This right is a narrow one but can be used to vindicate rights secured by the Constitution or statute. FSM v. Erwin, 16 FSM R. 42, 44 (Chk. 2008).

Congress has granted the court the power to suspend jail sentences, to suspend the imposition of a sentence, and to parole prisoners after they have served part of their sentence, but it has not given the court the power to expunge convictions. FSM v. Erwin, 16 FSM R. 42, 45 (Chk. 2008).

Expunction of a criminal record can be applied 1) pursuant to statute; 2) where necessary to preserve basic legal rights, and 3) based on acquittal. In re Suka, 18 FSM R. 554, 556 (Chk. S. Ct. Tr. 2013).

The Chuuk State Supreme Court will deny a motion to expunge because it has no power to strike from the public records all evidence of the charges against (and the convictions of) a defendant, who seeks a way around the constitutional and statutory proscriptions which is unavailable even to one who has been pardoned for his crimes. In re Suka, 18 FSM R. 554, 556 (Chk. S. Ct. Tr. 2013).

While a person's assertion that, given his rehabilitation over time and his good work in the community and on behalf of his municipality in the years since his conviction, it is a "manifest injustice" that his felony conviction prohibits him from serving in Congress, may be grounds for a pardon, it is not a valid ground for setting aside a conviction and permitting withdrawal of a guilty plea under Rule 32(d). In re Suka, 18 FSM R. 554, 556-57 (Chk. S. Ct. Tr. 2013).

Although a criminal record burdens a person with social stigma and potential discrimination by prospective employers, absent the presence of a statutory infirmity in the underlying criminal proceeding, or an illegality in the arrest and following proceedings, the mere impediment to a person's ability to run for an office is insufficient to reach the threshold for a violation of a basic legal right. The qualifications for placing a name on the ballot were determined by Congress and the FSM Constitution, and an expunction, merely to meet the prescribed requirements, would not fall under the category of rights expunction may be used to preserve. In re Suka, 18 FSM R. 554, 557 (Chk. S. Ct. Tr. 2013).

Jurisdictions that are properly able to invoke the authority to expunge derive the power from a relevant statute. An enabling Chuuk state statute would be necessary to effectuate an expunction, but no such statute currently exists in Chuuk. If the legislature had intended for the Chuuk State Supreme Court to have the power to expunge a record, the legislature would have specifically provided that power. In re Suka, 18 FSM R. 554, 557 (Chk. S. Ct. Tr. 2013).

When state law does not provide for expunction of a criminal record, state courts may only consider expunction requests using ancillary jurisdiction, which is a court's jurisdiction to adjudicate claims and proceedings that arise out of a claim that is properly before the court. In re Suka, 18 FSM R. 554, 557 (Chk. S. Ct. Tr. 2013).

A court exercising only its inherent power would need a very extraordinary and compelling case to expunge and seal not only the judicial branch's conviction records but also the arrest records maintained by the executive branches since that would implicate separation of powers concerns. In re Suka, 18 FSM R. 554, 557 (Chk. S. Ct. Tr. 2013).

Irrespective of the source of power, courts relying on inherent judicial authority to expunge criminal records specify that said power should be sparingly used and no court has held that the government's interest in maintaining accurate criminal histories can be outweighed by an individual's right to privacy in any but exceptional circumstances. In re Suka, 18 FSM R. 554, 557-58 (Chk. S. Ct. Tr. 2013).

Absent explicit authorization from the Chuuk Legislature, the judiciary has no power to expunge a criminal record. The Chuuk State Supreme Court has generally regarded expunction of criminal records as a matter of legislative prerogative that may only be granted or withdrawn by the legislature. Expunction of such records is therefore a matter of legislative discretion, and when a petitioner has not attacked the validity of the underlying conviction, the court must reject his contention that it has inherent jurisdiction over his petition for expunction. In re Suka, 18 FSM R. 554, 558 (Chk. S. Ct. Tr. 2013).

The FSM counterpart to the United States "All Writs Act," 4 F.S.M.C. 117, does not give the court the power to order expungement unless the court already has jurisdiction to do so, and, absent a specific statute or invalid conviction, the court lacks such jurisdiction. FSM v. Innocenti, 20 FSM R. 293, 295 n.1 (Pon. 2016).

Courts can exercise the power to expunge records to preserve basic legal rights only when the defendant's conviction stems from the unlawful conduct of law enforcement agents. In the absence of a statute, a court's jurisdiction is limited to expunging the record of an unlawful arrest or conviction, or to correcting a clerical error. FSM v. Innocenti, 20 FSM R. 293, 295-96 (Pon. 2016).

The court lacks the authority to order expungement of the record of a valid and unchallenged conviction even though the defendant has been pardoned since a pardon does not create the factual fiction that the crime was never committed. FSM v. Innocenti, 20 FSM R. 293, 296 (Pon. 2016).

The FSM Supreme Court lacks the power to make persons granted a pardon of a felony conviction eligible for election to Congress because the Constitution reserves that power to Congress, and the court cannot exercise a power that only Congress has. FSM v. Innocenti, 20 FSM R. 293, 296 (Pon. 2016).

Since the FSM Supreme Court does not have the power to alter or amend another country's entry requirements, the United States could still decide to require a person to apply to its Embassy in order to travel to United States territory even if the court ordered expungement of FSM records because the court cannot order the alteration of another country's records. FSM v. Innocenti, 20 FSM R. 293, 296 (Pon. 2016).

A court's power to expunge criminal records falls into three general categories: 1) expungement

pursuant to a statute, 2) expungement when it is necessary to preserve basic legal rights, or 3) expungement based on an acquittal, although, in the case of an acquittal, the court doubts that expungement can be ordered based solely on the acquittal. FSM v. Fritz, 20 FSM R. 596, 599 & n.1 (Chk. 2016).

No FSM statute authorizes the expungement of records. FSM v. Fritz, 20 FSM R. 596, 600 (Chk. 2016).

Courts can exercise the power to expunge records to preserve basic legal rights only when the defendant's conviction stems from the unlawful conduct of law enforcement agents. In the absence of a statute, a court's inherent power is limited to expunging the record of an unlawful arrest or conviction, or to correcting a clerical error. FSM v. Fritz, 20 FSM R. 596, 600 (Chk. 2016).

If a Presidential pardon automatically entitled the pardoned person to an expungement of his criminal record, then the executive branch would have the power to interfere with the record-keeping of another co-equal branch of government (the judicial branch) while also preventing still another co-equal branch of government (Congress) from access to the judicial branch's records that would assist it in its constitutional duty to be the sole judge of the qualification of its members. FSM v. Fritz, 20 FSM R. 596, 601 (Chk. 2016).

Whether a pardoned felon's records are expunged cannot turn on the fact that he pled not guilty and later appealed while another pardoned felon who pled guilty is denied expungement. FSM v. Fritz, 20 FSM R. 596, 601 (Chk. 2016).

The court, following the Judicial Guidance Clause's mandate that its decisions be consistent with the Constitution, can order an expungement of criminal records of a pardoned felon, only if Congress grants it the authority to do so. FSM v. Fritz, 20 FSM R. 596, 601 (Chk. 2016).

Prior FSM caselaw recognizes the court's jurisdiction and authority to expunge criminal records in only three limited situations or categories, which are: 1) expungement pursuant to a statute, 2) expungement when it is necessary to preserve basic legal rights, or 3) expungement based on an acquittal, although, in the case of an acquittal, it is doubtful that expungement can be ordered based solely on the acquittal. FSM v. Iriarte, 22 FSM R. 271, 273 (Pon. 2019).

There is no FSM statute authorizing expungement of criminal records. FSM v. Iriarte, 22 FSM R. 271, 274 (Pon. 2019).

Although 4 F.S.M.C. 117 generally grants the court all powers needed to perform its functions, it does not grant the court the authority to expunge records unless the court already has such jurisdiction, and, absent a specific statute or invalid conviction, the court lacks such jurisdiction. FSM v. Iriarte, 22 FSM R. 271, 274 n.2 (Pon. 2019).

The court is especially wary of making new law in an area where Congress has considered legislating, but has not yet decided what, if anything, should be enacted into law since Congress may yet act and provide a statutory means to seek an expungement. FSM v. Iriarte, 22 FSM R. 271, 274 (Pon. 2019).

The court has the inherent power to expunge records when it is necessary to preserve basic legal rights or, in an unusual and exceptional case, based on an acquittal. FSM v. Iriarte, 22 FSM R. 271, 274 (Pon. 2019).

When the defendant's arrest or conviction was not in any way unlawful or invalid and when the government has not engaged in misconduct, the court does not have the inherent power to grant expungement. FSM v. Iriarte, 22 FSM R. 271, 274 (Pon. 2019).

The court does not have the power to expunge a record of a valid arrest and conviction solely for equitable considerations. Jurisdiction is limited to expunging the record of an unlawful arrest or conviction, or to correcting a clerical error. FSM v. Iriarte, 22 FSM R. 271, 275 (Pon. 2019).

The FSM promised that it would support the defendant's expungement petition if the FSM determined that all the sentencing conditions have been satisfied, and it kept that promise when, having determined that the defendant had satisfied the plea agreement's conditions, the FSM not only did not oppose the defendant's expungement petition, but it also affirmatively stated that it supported the petition. The FSM did not breach the plea agreement, and it also did not violate its plea agreement promise when it truthfully responded to the court's request for briefing about the current state of FSM law on expungement. FSM v. Iriarte, 22 FSM R. 271, 275 (Pon. 2019).

When the FSM did not (and, because of separation of powers issues, probably could not) promise a defendant that all record of the matter would be completely expunged (presumably ordered sealed), but promised to support the defendant's expungement petition, and when the FSM did not breach that plea agreement promise, the defendant is not entitled to an expungement as specific performance (or to any other remedy) for his breach of contract claim. FSM v. Iriarte, 22 FSM R. 271, 275 (Pon. 2019).

When the court currently has neither the jurisdiction nor the power to expunge a defendant's record in a matter, the defendant's petition for expungement will be denied. FSM v. Iriarte, 22 FSM R. 271, 276 (Pon. 2019).

– Falsification

To be criminally liable under 11 F.S.M.C. 524(1)(c) it is enough that the accused invite reliance on any writing which he knows to be lacking in authenticity. The statute does not require that he himself make the writing that is lacking in authenticity. FSM v. Sorim, 17 FSM R. 515, 522 (Chk. 2011).

– Felonies

A felony is an offense punishable by more than one year in prison and a misdemeanor is an offense punishable by more than 30 days imprisonment and up to one year. FSM v. Wainit, 12 FSM R. 105, 109 n.2 (Chk. 2003).

Under previous law, a felony is an offense which may be punished by imprisonment for more than one year; a petty misdemeanor is an offense which may be punished by imprisonment for not more than 30 days; and every other offense is a misdemeanor. FSM v. Ching Feng 767, 12 FSM R. 498, 501 (Pon. 2004).

Misdemeanors are offenses punishable by imprisonment for more than 30 days up to one year. Felonies are offenses punishable by more than one year in prison. FSM v. Wainit, 13 FSM R. 532, 536 n.1 (Chk. 2005).

A felony under the Kosrae State Code is an offense punishable by imprisonment for a period of more than one year and a category one felony can carry a sentence of imprisonment not exceeding or equaling ten years, a fine not exceeding twenty thousand dollars, or both. Kosrae v. George, 16 FSM R. 228a, 228d (Kos. S. Ct. Tr. 2008).

Under Pohnpei state law, a felony is defined as a crime or offense that may be punishable by imprisonment for a period of more than one year, and every other crime is a misdemeanor. Alexander v. Pohnpei, 18 FSM R. 392, 398 (Pon. 2012).

11 F.S.M.C. 1007 is a misdemeanor because anyone convicted of it cannot be imprisoned for more than one year and because a felony is any crime which is punishable by imprisonment for more than one year. FSM v. Buchun, 22 FSM R. 529, 536 n.7 (Yap 2020).

– Filings

The general court order concerning facsimile transmission rejected indiscriminate filing by fax because it concluded that an effort to accommodate counsel by accepting filing through the use of fax would impose an undue burden upon the clerks and could also result in additional paperwork, expense, duplication efforts, and confusion. Therefore, filing by fax is permitted only by order of a justice given for special cause. FSM v. Wainit, 12 FSM R. 405, 408 (Chk. 2004).

The general court order authorizing fax filing for special cause is not an excuse to wait for the filing deadline and then fax the papers to the court because waiting to the last minute so that it can then be faxed does not constitute "special cause." FSM v. Wainit, 12 FSM R. 405, 408 (Chk. 2004).

General Court Order 1990-1 does not apply to filing by facsimile transmission in civil cases because the (later promulgated) applicable portion of Civil Procedure Rule 5(e) has superseded it. It may retain some vitality in criminal cases since the criminal rules do not contain a provision concerning fax filing. However, Civil Rule 5(e)'s pertinent part is identical to section 2 of General Court Order 1990-1. Goya v. Ramp, 13 FSM R. 100, 105 & n.3 (App. 2005).

Since the Disciplinary Rules provide for the confidentiality of all pending disciplinary matters, and since the defendant's various motions concerning possible disciplinary action against the Secretary of Justice have no bearing on the case's substantive outcome, the court, in its discretion, the various filings that refer in any way to a possible disciplinary matter, whether such a matter is pending or not, will be stricken from the record. FSM v. Zhang Xiaohui, 14 FSM R. 602, 613 (Pon. 2007).

A court may, at its discretion, enlarge the time for filing for cause shown if the enlargement request is made before the expiration of the time period in which the papers are to be filed, and if the enlargement request is made after the expiration of the original time period in which the papers were due, then the court may grant an enlargement only upon a showing of excusable neglect. FSM v. Esefan, 17 FSM R. 389, 393 (Chk. 2011).

A prosecutor cannot show excusable neglect for a motion to enlarge time when he had enough time to file a request for enlargement before he left on his trip and when, failing that, another admitted attorney in the same office could have filed a request for enlargement before the time to oppose a defendant's motion had expired, but did not. Thus, even though if the prosecution had moved to enlarge time before the time period expired, the assigned prosecutor's previously scheduled trip would have qualified as cause shown, it did not qualify as excusable neglect under the circumstances, and the prosecution's motion to enlarge time will be denied. FSM v. Esefan, 17 FSM R. 389, 393 (Chk. 2011).

– Finding

A court's finding of guilt and sentencing would not render illegal, or prevent, customary forgiveness of the defendant by the victim's family or clan. Whatever the court does, customary settlement may remain desirable to resolve lingering hostility and disputes between the families. Chuuk v. Sound, 8 FSM R. 577, 579 (Chk. S. Ct. Tr. 1998).

Regardless of what the trial court chose to call it, a "judgment of conviction" that contains the plea, the findings (both general and special), and the adjudication, but it does not contain the sentence was not a judgment of conviction because a judgment of conviction must set forth the plea, the findings, and the adjudication and sentence. Neth v. Kosrae, 14 FSM R. 228, 231 (App. 2006).

When the trial court issued findings of guilt for the defendant's violation of both 11 F.S.M.C. 532 and 11 F.S.M.C. 701, but only entered a conviction for his violation of 11 F.S.M.C. 701 and thereafter, the defendant was sentenced to a term of one year in jail, again, only for his conviction of 11 F.S.M.C. 701, the

trial court's finding of guilt for the defendant's violation of 11 F.S.M.C. 532 is not at issue in the appeal. Wainit v. FSM, 15 FSM R. 43, 46 n.2 (App. 2007).

A guilty finding is not a "judgment of conviction" because in order to be a judgment of conviction, the "judgment of conviction" must set forth the plea, the findings, and the adjudication and sentence. Since a "judgment of conviction" must contain the sentence, it can only be entered after the sentence is pronounced. Benjamin v. Kosrae, 19 FSM R. 201, 204-05 n.1 (App. 2013).

A guilty finding, by itself, is not a conviction. For a document to be a judgment of conviction, it must set forth the plea, the findings, and the adjudication and sentence. Ned v. Kosrae, 20 FSM R. 147, 153 (App. 2015).

Regardless of what it is labeled, a document that contains the plea, the findings (both general and special), and the adjudication, but does not contain the sentence cannot be a judgment of conviction since a judgment of conviction must contain the plea, the findings, and the adjudication and the sentence. Lee v. Kosrae, 20 FSM R. 160, 164 n.1 (App. 2015).

The court must make a general finding and must in addition, on request made before the general finding, find the facts specially and make necessary conclusions of law. FSM v. Shiro, 21 FSM R. 627, 630 (Chk. 2018).

A defendant's motion for special findings made after the court had already entered its general findings is untimely and will be denied. FSM v. Shiro, 21 FSM R. 627, 630 (Chk. 2018).

– Forgery

Forgery, as defined by the Kosrae State Code, is falsely making or materially altering a writing or document of apparent legal weight and authenticity, with intent to defraud, and is classified as a category one felony. Kosrae v. George, 16 FSM R. 228a, 228d (Kos. S. Ct. Tr. 2008).

When the defendant was charged with two counts of forgery, both containing the element of fraud, the statute of limitations is, since fraud is an element of the crime, extended to allow prosecution to commence the action within one year of the discovery of the offense by the aggrieved party, but not in any case is the period of limitation otherwise applicable extended by more than three years. Kosrae v. George, 16 FSM R. 228a, 228e (Kos. S. Ct. Tr. 2008).

– Fraud

When existing facts having a material bearing upon the desirability of a proposed investment are intentionally misrepresented, the investor has been defrauded, even if the person who has induced the investors by false statements fervently hopes that related promises of future actions, developments or profitability will be fulfilled. Wolfe v. FSM, 2 FSM R. 115, 120 (App. 1985).

When a person makes statements calculated to create a false impression as to value in order to induce those who heard him to give him their money, and the statements did have that result, the person has purposely obtained property through deception within the meaning of 11 F.S.M.C. 932(6). Wolfe v. FSM, 2 FSM R. 115, 121 (App. 1985).

In order to find an accused guilty of cheating, the court must find that the accused: 1) unlawfully obtained the property, services or money of another; 2) by false pretenses, knowing the pretenses to be false; and 3) with the intent thereby to permanently defraud the owner thereof. Chuuk v. Robert, 16 FSM R. 73, 76, 81 (Chk. S. Ct. Tr. 2008).

When the accused obtained travel fund monies for a purpose not authorized by law, which was his taking of funds from the Speaker and staff travel fund for the expressed purpose of a medical referral;

when the accused represented that he was entitled to the funds through use of the representation fund account and the Speaker and staff travel fund account; when the accused altered the travel authorization and represented to the Department of Administrative Services that he was authorized to receive the funds in the altered travel authorization; and when the accused intended to permanently defraud the funds' owner seeking and obtaining public funds for an impermissible purpose and intended to convert the funds by taking an unauthorized amount of funds and failing to return or account for the funds, the accused is guilty of cheating. Chuuk v. Robert, 16 FSM R. 73, 81-82 (Chk. S. Ct. Tr. 2008).

Under the Kosrae State Code, a prosecution for a felony must be commenced within three years after the alleged crime was committed but an extension of the statute of limitations is allowed when an element of the offense is fraud. Kosrae v. George, 16 FSM R. 228a, 228e (Kos. S. Ct. Tr. 2008).

When the defendant was charged with two counts of forgery, both containing the element of fraud, the statute of limitations is, since fraud is an element of the crime, extended to allow prosecution to commence the action within one year of the discovery of the offense by the aggrieved party, but not in any case is the period of limitation otherwise applicable extended by more than three years. Kosrae v. George, 16 FSM R. 228a, 228e (Kos. S. Ct. Tr. 2008).

– Fugitives

Extradition treaties are to be construed liberally to effect their purpose of surrender of fugitives to be tried for their alleged offenses. In re Extradition of Jano, 6 FSM R. 93, 103 (App. 1993).

A criminal appeal involving a fugitive appellant, who has left the FSM in violation of three court orders, will be dismissed because the fugitive's ongoing disobedience to those orders precludes him from availing himself of the appellate process. He is thus disentitled to call upon the court for a review of his conviction. Walter v. FSM, 15 FSM R. 130, 132 (App. 2007).

Delay due to a co-defendant's unavailability is not attributed to the government, and this includes the time a co-defendant was a fugitive. FSM v. Kansou, 15 FSM R. 180, 187 (Chk. 2007).

When the facts are sufficient to show an accused's knowledge of the charges against him and for the court to infer that he intended to avoid further prosecution by leaving the jurisdiction, the accused is therefore a fugitive. FSM v. Jacob, 15 FSM R. 439, 441-42 (Chk. 2007).

The fugitive disentitlement doctrine is not limited only to appellate review of a criminal conviction or of a related civil forfeiture. It may also apply in trial court proceedings, such as pretrial motions made by fugitives in the trial courts. FSM v. Jacob, 15 FSM R. 439, 442 (Chk. 2007).

The fugitive disentitlement doctrine has come to signify the unwillingness of courts to waste time and resources exercising jurisdiction over litigants who will only comply with favorable court rulings. Simply stated, a fugitive's absence does not entitle him to an advantage. FSM v. Jacob, 15 FSM R. 439, 442 (Chk. 2007).

The doctrine of fugitive disentitlement rests on the principle of mutuality. The rationale is that a court should not afford a fugitive who is unwilling to submit to its jurisdiction and stand trial for an alleged crime, the opportunity to improve his position by challenging the jurisdiction of the court. FSM v. Jacob, 15 FSM R. 439, 442 (Chk. 2007).

A fugitive, in bringing motions, is trying to obtain favorable rulings from the court without risking any burden that may flow from an adverse ruling. If the rulings are unfavorable to him, he will remain a fugitive. Then, if the government wishes to pursue prosecuting him, it must go to the effort and expense of extraditing him assuming he has not fled to a jurisdiction with which the FSM does not have an extradition agreement. That bestows a benefit on the fugitive and violates the principle of mutuality and reaching the

merits of a fugitive's pretrial motions may encourage others in the same position to take flight from justice. Thus his motions will be denied without prejudice. FSM v. Jacob, 15 FSM R. 439, 443 (Chk. 2007).

A fugitive's pending motions will all be denied without prejudice. Once he has submitted to the court's jurisdiction by returning, he may reurge any motion not previously denied on the merits. The fugitive will be afforded due process and his right to a fair trial once he has returned. FSM v. Jacob, 15 FSM R. 439, 443 (Chk. 2007).

To be considered a fugitive, a person must have some knowledge of the charges against him or her and have then left or remained outside the court's jurisdiction. From that, the court may infer that the accused's intention is to avoid prosecution. He or she is then a fugitive. FSM v. Narruhn, 15 FSM R. 530, 532 (Chk. 2008).

When the court cannot find that an accused has any knowledge that he has been charged with an offense, or that he left the FSM in anticipation that he was about to be charged, or that he has even communicated with the counsel that now appears on his behalf, it is doubtful that the fugitive disentitlement doctrine could be applied to his counsel's motion. FSM v. Narruhn, 15 FSM R. 530, 532 (Chk. 2008).

– Homicide

In a criminal prosecution under 11 F.S.M.C. 301, where defendant's overt actions indicated their intention to aid those involved in attacks, and when it was reasonably foreseeable by them that somebody might be fatally injured as a probable consequences of the beatings that they aided and abetted, they may be held legally responsible for the death resulting from the assaults even if the defendants did not actually intend that the victims be killed or seriously injured. Engichy v. FSM, 1 FSM R. 532, 548 (App. 1984).

It is not unreasonable for a trial court to conclude that a police officer, claiming to effect an arrest, who hits a person four times with a mangrove coconut husker and kills him was trying to kill him. Loch v. FSM, 1 FSM R. 566, 576 (App. 1984).

When the defendant is fighting another person and uses a wrestling hold which causes the death of the other person, but when the court is unable to find that reasonable person would be aware that such a hold, as applied, would create a substantial risk of death, the defendant is not guilty of the crimes of manslaughter or negligent homicide. FSM v. Raitoun, 1 FSM R. 589, 590-92 (Truk 1984).

Under the law of the Federated States of Micronesia, manslaughter is a lesser degree of homicide included within the charge of murder. Runmar v. FSM, 3 FSM R. 308, 318 (App. 1988).

In order for trier of fact to be free to choose between the lesser offense, manslaughter, or a greater degree of homicide, there must be a factual element, the resolution of which will determine whether the greater or lesser offense is applicable. Runmar v. FSM, 3 FSM R. 308, 318 (App. 1988).

Defendant who fails to request consideration of a lesser offense normally may not successfully appeal from a conviction arrived at without such consideration, but where all elements for murder exist but homicide was caused under extreme mental or emotional disturbance for which there is reasonable explanation or excuse, defendant is entitled to be convicted of manslaughter rather than murder, without regard to whether request for consideration of manslaughter was made by either counsel. Runmar v. FSM, 3 FSM R. 308, 319 (App. 1988).

That a victim/aggressor scuffled with the defendant and chased the defendant with a rock in his hand before the defendant fatally stabbed the victim/aggressor is not such a mitigating factor as automatically to compel the reduction of a charge from murder to manslaughter. Bernardo v. FSM, 4 FSM R. 310, 315 (App. 1990).

A trial court must give specific consideration to the possibility of manslaughter where there is evidence suggesting that the person who caused a death was under the influence of mental or emotional disturbance and if the trial court then finds guilt for murder rather than manslaughter, it must make a specific finding, either orally or in writing, explaining why 11 F.S.M.C. 912 is not applicable. Bernardo v. FSM, 4 FSM R. 310, 315 (App. 1990).

Manslaughter is committed if death is caused by one acting recklessly. Robert v. FSM, 4 FSM R. 316, 318 (App. 1990).

If the acts which caused the death were in willful disregard of the attendant circumstances and unjustifiably created excessive risks, the acts need not have been done with the purpose of causing death or with substantial certainty that death would result. Robert v. FSM, 4 FSM R. 316, 319 (App. 1990).

A necessary element of proof in a prosecution for the homicide of an infant is that the infant was born alive. Welson v. FSM, 5 FSM R. 281, 285 (App. 1992).

In the absence of evidence as to how much alcohol the defendant drank and how it affected his conduct, the court need not determine whether the defendant's intoxication negated his ability to form the intent to kill. Jonah v. FSM, 5 FSM R. 308, 312 (App. 1992).

To act while disregarding something willfully or intentionally requires that the actor be aware of the information disregarded. Thus a conviction for reckless manslaughter may be upheld only if the circumstances known by the defendant at the time of acting created a substantial and unjustified risk of death and he nonetheless willfully and irresponsibly accepted this risk by acting in a manner considerably different from the conduct that might be expected of a well-meaning, law-abiding citizen. Alouis v. FSM, 6 FSM R. 83, 86 (App. 1993).

In assessing whether conduct which has caused death was reckless, courts must also determine whether the conduct was unjustifiable. Alouis v. FSM, 6 FSM R. 83, 88 (App. 1993).

Reckless manslaughter as defined in the FSM Code is intended to apply to willfully irresponsible, life-threatening behavior, actions which grossly deviate from the standards of conduct that a law-abiding person in the actor's situation would observe. Alouis v. FSM, 6 FSM R. 83, 88 (App. 1993).

In the Kosrae Code there are two alternative mens rea elements under which the killing of another can be second-degree murder – the killing is either done with malice aforethought, or it is done while perpetrating or attempting to perpetrate a felony other than one which would statutorily incur liability for first-degree murder. Proof of either one of the two alternative mens rea elements is sufficient for a second-degree murder conviction. Palik v. Kosrae, 8 FSM R. 509, 514 (App. 1998).

The primary function of the felony-murder doctrine is to relieve the prosecution of the necessity of proving, and the trier of fact of the necessity of finding, actual malice on the part of the defendant in the commission of the homicide. The malice involved in the perpetration or attempted perpetration of the felony is transferred or imputed to the commission of the homicide so that the accused can be found guilty of murder even though the killing is accidental. Palik v. Kosrae, 8 FSM R. 509, 514 (App. 1998).

The offense of aggravated assault is included in the resulting homicide. Accordingly, an aggravated assault conviction cannot be used to support a felony-murder conviction. Palik v. Kosrae, 8 FSM R. 509, 515 (App. 1998).

Malice is always presumed when a person deliberately injures another, and if a person uses a deadly weapon on another maliciousness must be inferred. Thus the malice aforethought required for a second-degree murder conviction may correctly be inferred from the deliberate use of three dangerous or deadly weapons. Palik v. Kosrae, 8 FSM R. 509, 515-16 (App. 1998).

A sentence of six years incarceration is not unduly severe on a manslaughter conviction. It may even be considered lenient. Chuuk v. Inos, 15 FSM R. 259, 261 (Chk. S. Ct. Tr. 2007).

A person commits murder if he unlawfully causes the death of another human being intentionally or knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life. This can be broken down into five separate elements which the government must prove beyond a reasonable doubt: 1) the defendant, 2) unlawfully caused, 3) the death, 4) of another human being, 5) either intentionally or knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life. With respect to the second element, whether a defendant's "unlawfully caused" the victim's death, the defendant's acts in self-defense render their actions lawful or excusable. Chuuk v. William, 15 FSM R. 483, 487 (Chk. S. Ct. Tr. 2008).

Self-defense is not an affirmative defense and the burden of proof remains with the prosecution to prove each element of the offense when self-defense is asserted. Chuuk v. William, 15 FSM R. 483, 488 (Chk. S. Ct. Tr. 2008).

If the court finds that the defendants' acts were in self-defense, but they employed unreasonable force, there is no compulsory reduction of a murder charge to manslaughter. Chuuk v. William, 15 FSM R. 483, 488 (Chk. S. Ct. Tr. 2008).

When a reasonable fact finder could find beyond a reasonable doubt that the defendants employed unreasonable force against the victim when he was no longer a threat to them, evidenced by their use of dangerous weapons against the victim when he no longer had a machete and their simultaneous beating of him when he was no longer offering resistance, the government has presented sufficient evidence that the victim's killing was unlawful. Chuuk v. William, 15 FSM R. 483, 488 (Chk. S. Ct. Tr. 2008).

If the court finds that the defendants killed the victim while in a state of extreme mental or emotional disturbance for which there is a reasonable explanation or excuse, the court will find them guilty of, at most, manslaughter. Chuuk v. William, 15 FSM R. 483, 489 (Chk. S. Ct. Tr. 2008).

A finding that the victim clearly was the aggressor and that one defendant's intervention to aid his brother adds additional weight to his claim of provocation, is sufficient to suggest that the defendants may have been acting under the influence of mental or emotional disturbance. Chuuk v. William, 15 FSM R. 483, 489 (Chk. S. Ct. Tr. 2008).

Unless the court finds that extreme emotional or mental disturbance existed at the time of the killing, there is no basis for reducing the murder charge to manslaughter. Chuuk v. William, 15 FSM R. 483, 489 (Chk. S. Ct. Tr. 2008).

The reasonableness of a defendant's response to a provocation shall be determined from the viewpoint of a person in the defendant's situation under the circumstances as he believes them to be. The passion aroused from the provocation need not be anger or rage, but can be any violent, intense, high-wrought, or enthusiastic emotion other than revenge. However, if sufficient time has elapsed between the provocation and fatal blow for passion to subside and reason return, the killing is not voluntary manslaughter. Chuuk v. William, 15 FSM R. 483, 489-90 (Chk. S. Ct. Tr. 2008).

If from any circumstances whatever, it appears that the defendant reflected, deliberated, or cooled any time before the fatal stroke was given, or if there was enough time or opportunity for a reasonable person to cool, the killing will amount to murder, being attributable to malice and revenge, and not to mental disturbance. Chuuk v. William, 15 FSM R. 483, 490 (Chk. S. Ct. Tr. 2008).

If a reasonable fact finder could find beyond a reasonable doubt that during the extended period between the victim's initial assault and the defendants' finally relenting from their beating of him, during

which the defendants had ample time to observe that the victim was suppliant, injured and helpless, then either the defendants had, in fact, regained their senses or reasonable persons in the defendants' situation would have cooled off and regained their senses. Chuuk v. William, 15 FSM R. 483, 490 (Chk. S. Ct. Tr. 2008).

For the purposes of motions for acquittal, the government has presented sufficient evidence of the requisite intent to satisfy that element of the murder charges when the defendants' use of dangerous weapons to repeatedly beat the victim alone creates a strong inference of the requisite intent and when there is evidence sufficient to support the specific intent requirement for murder based on the prolonged duration of the beating and other attendant circumstances arising after the victim's initial assault. Chuuk v. William, 15 FSM R. 483, 490 (Chk. S. Ct. Tr. 2008).

A person commits murder if he unlawfully causes the death of another human being intentionally or knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life. Chuuk v. William, 15 FSM R. 498, 500 (Chk. S. Ct. Tr. 2008).

A person commits the offense of manslaughter if he causes the death of another human being when acting recklessly; or a homicide which would otherwise be murder is committed under influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a person in the defendant's situation under the circumstances as he believes them to be. Chuuk v. William, 15 FSM R. 498, 500 (Chk. S. Ct. Tr. 2008).

In order to convict defendants on the counts of murder, for each defendant, the court must be convinced beyond a reasonable doubt of each element of the offense. The government must therefore prove: 1) the defendants 2) unlawfully caused 3) the death 4) of another human being 5) either intentionally or knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life. Chuuk v. William, 15 FSM R. 498, 501 (Chk. S. Ct. Tr. 2008).

Although it is apparent that one defendant and not the other struck the fatal blows, when the defendants acted together to kill the victim by continuing to beat the victim after he was helpless and by the other holding the victim down when the one struck the fatal blows, the evidence established beyond a reasonable doubt that it was defendants who caused the victim's death. Chuuk v. William, 15 FSM R. 498, 502 (Chk. S. Ct. Tr. 2008).

When, well after defendants subdued the victim and rendered him defenseless, they continued to beat him, use of force against the victim by a defendant claiming self-defense was not reasonably necessary for his self-defense because he did not face an imminent threat of serious bodily injury or death from the victim when the victim was killed. Chuuk v. William, 15 FSM R. 498, 502 (Chk. S. Ct. Tr. 2008).

Where the defendants together pinned the victim to the ground, rendering him defenseless, and used, respectively, a fresh coconut husk and fist-sized rock, to repeatedly strike him when he was obviously defenseless and where the defendants had long since rendered him helpless when the fatal blows were struck, such circumstances prove murderous intent. Chuuk v. William, 15 FSM R. 498, 502 (Chk. S. Ct. Tr. 2008).

When evidence of self-defense has been presented, the court must determine whether the circumstances surrounding the self-defense claim were sufficient to show that the defendant was provoked, with reasonable explanation or excuse, to commit the killing under a state of extreme emotional or mental distress. Chuuk v. William, 15 FSM R. 498, 502 (Chk. S. Ct. Tr. 2008).

If the attack on one defendant provoked his brother, with reasonable explanation or excuse, to use force against the victim, and if either defendant killed the victim while in a state of extreme emotional or mental disturbance due to sufficient provocation, the murder charge against him must be reduced to

manslaughter. The provocation must also have existed up until the time the victim was killed and the defendants did not have an opportunity to cool off. Chuuk v. William, 15 FSM R. 498, 502 (Chk. S. Ct. Tr. 2008).

When both defendants were acting under extreme mental or emotional disturbance for which they had a reasonable excuse or explanation at the time they caused the victim's death, although each of the elements of murder was met, each defendant's extreme mental or emotional disturbance at the time of the killing compels reduction of the murder charges to manslaughter. Chuuk v. William, 15 FSM R. 498, 503 (Chk. S. Ct. Tr. 2008).

When A aims at B with a murderous intent to kill, but because of a bad aim he hits and kills C, A is guilty of the murder of C. Chuuk v. Roman, 21 FSM R. 138, 142 (Chk. S. Ct. Tr. 2017).

When the statute requires that a defendant convicted of murder be sentenced to a minimum of term of not less than 40 year(s), and eligible for parole after 20, the term imprisonment, as used within the statute, means a punishment of not less than 40 years in prison. Otherwise, the term parole is left meaningless, since it can only refer to release from prison, as opposed to house arrest, or the lifting of a suspended sentence. Chuuk v. Jose, 21 FSM R. 566, 571 (Chk. S. Ct. Tr. 2018).

– Human Trafficking

When time is not an essential element in trafficking in children cases; when the pertinent statute does not require proof of an exact date; and when each count of the information alleges the offenses occurred in the latter months of 2015, including September and October, the criminal information alleges with sufficient specificity the time period the offenses were allegedly committed so as to satisfy the defendants' right to due process. FSM v. Shiro, 21 FSM R. 195, 202 (Chk. 2017).

Since location is not an essential element in trafficking in children cases and since the pertinent statute does not require proof of an exact location, when each count alleges the general areas on Patta Island of Chuuk where the offenses were allegedly committed, the criminal information alleges with sufficient specificity the locations that the offenses were allegedly committed so as to satisfy the defendants' right to due process. FSM v. Shiro, 21 FSM R. 195, 202 (Chk. 2017).

Since the human trafficking statute does not define recruiting, transporting, harboring, transferring, or receiving, these words' plain meaning will be used to determine whether the actions alleged in each count of the criminal information are included within the statute. FSM v. Shiro, 21 FSM R. 195, 203 (Chk. 2017).

When, without getting into a lesson in semantics, the statutory words' plain meanings lead to the conclusion that the human trafficking statute intended to include the actions allegedly taken by the defendants to secure access to the minor victim because the various methods by which they gained access to her were a form of recruitment and in each allegation the minor was received by the respective defendant. FSM v. Shiro, 21 FSM R. 195, 203 (Chk. 2017).

There is no bright-line division between human trafficking cases such that some can only be prosecuted under state statutes and the others cannot be prosecuted under a state statute but must be prosecuted by the national government. This is analogous to governmental criminalization of firearms possession in the FSM where both the national government and (most) states have weapons control statutes that criminalize many types of firearms possession. FSM v. Siega, 21 FSM R. 291, 295 (Chk. 2017).

None of the national human-trafficking statutes require interstate movement of either the victim or the accused as an element of the offense. This is in contrast to the human smuggling statutes, in which Congress made the intent to cross an international border an element of the offense. FSM v. Siega, 21 FSM R. 291, 295-96 (Chk. 2017).

The emphasis in the human trafficking statutes, as opposed to human smuggling statutes, is on the victim's exploitation, not on the movement of persons. FSM v. Siega, 21 FSM R. 291, 296 (Chk. 2017).

In human trafficking cases, the protection of the victims' fundamental rights is involved. FSM v. Siega, 21 FSM R. 291, 296 (Chk. 2017).

"Practices similar to slavery" include forced marriage, and a victim's repeated sexual exploitation by the same person is something akin to a "forced marriage" without the status of being a spouse. FSM v. Siega, 21 FSM R. 291, 296 (Chk. 2017).

Persons may be charged with the human trafficking offenses in the FSM Supreme Court when the alleged exploitation occurred herein (with "herein" meaning within the FSM), and they may also be prosecuted when the alleged offenses were committed against a victim who is an FSM national. FSM v. Siega, 21 FSM R. 291, 298 (Chk. 2017).

All FSM citizens are FSM nationals, but not all FSM nationals are FSM citizens. FSM v. Siega, 21 FSM R. 291, 298 & n.5 (Chk. 2017).

Section 621 of the FSM human trafficking statute does not restrict the court's jurisdiction; instead, it expands the court's human-trafficking jurisdiction by giving it extraterritorial reach. Section 621 expands (and was clearly intended to expand) the court's possible jurisdiction to include conduct constituting an offense that took place outside the FSM's jurisdiction – § 621 was intended to provide a means to prosecute persons in the FSM Supreme Court for acts they may have committed in places other than the FSM, and thus over which the court might otherwise not have had jurisdiction, but which have some connection to the FSM. FSM v. Siega, 21 FSM R. 291, 298 (Chk. 2017).

Under 11 F.S.M.C. 612, "exploitation" includes slavery and practices similar to slavery, and practices similar to slavery include debt bondage, serfdom, and forced marriage. FSM v. Shiro, 21 FSM R. 331, 333 (Chk. 2017).

Since, under the constitutional provision barring slavery, Congress clearly has the authority to legislate in the area of human trafficking, the FSM Supreme Court has subject matter jurisdiction over a criminal case whose charges are all under the Trafficking in Persons Act and allege exploitation. FSM v. Shiro, 21 FSM R. 331, 333 (Chk. 2017).

The human trafficking statute does not include the word "material" when describing benefits (it just says, "payments or benefits"). FSM v. Benedicto, 21 FSM R. 377, 380 (Chk. 2017).

The human trafficking statute reads in the disjunctive ("or"), not the conjunctive ("and"). For a guilty finding, it requires proof of the "giving or receiving of payments or benefits." It does not require that any one defendant do both the giving and receiving. FSM v. Benedicto, 21 FSM R. 377, 380 (Chk. 2017).

The prosecution does not have to prove a human trafficking defendant guilty of both giving and receiving payments and benefits. Finding the defendant guilty of the giving of payments or benefits is sufficient (although arguably he received the "benefit" of sex). FSM v. Benedicto, 21 FSM R. 377, 380 (Chk. 2017).

Receiving a child by any means for the purpose of exploitation includes the obtaining of financial or other material benefit from the prostitution of another person; or the exaction of forced labor or services, which were exacted under threat of any penalty and for which the person concerned has not offered himself or herself voluntarily, or the obtaining of labor or services through deceit, fraud, or by means of a material misrepresentation; or slavery or practices similar to slavery. FSM v. Shiro, 21 FSM R. 627, 632-33 (Chk. 2018).

– Immunity

The granting of immunity is traditionally a matter within the powers of the prosecution. This is so because grants of immunity call for the balancing of numerous factors and weighing of important prosecutorial policies. Engichy v. FSM, 1 FSM R. 532, 551 (App. 1984).

The FSM Supreme Court may have the power to grant immunity, but the granting of immunity is traditionally a matter of executive or prosecutorial discretion. In the Federated States of Micronesia, where there is no right to trial by jury and the trial judge is the trier of both fact and law, it seems especially unwise for the court to play an aggressive or active role concerning grants of immunity. Engichy v. FSM, 1 FSM R. 532, 552 (App. 1984).

Courts generally have recognized that they should grant immunity only under extraordinary circumstances. Engichy v. FSM, 1 FSM R. 532, 552 (App. 1984).

– Information

When an information's language is more specific than the language of the statute under which the offense is charged, the prosecution is required to establish those specific facts in addition to a violation of the statute. FSM v. Boaz (I), 1 FSM R. 22, 24 (Pon. 1981).

An information which claims that the defendant entered a building for the purpose of "fighting" rather than "assaulting" a person within the building does not render the information inadequate for a conviction. A desire to fight carries with it a desire to commit an assault. FSM v. Boaz (I), 1 FSM R. 22, 26 (Pon. 1981).

The government's failure to prove the assertion in its information that a dangerous weapon was used to cause the victim to submit to the sexual assault need not result in dismissal of the case. It merely prevents an application of the greater punishment available under 11 F.S.M.C. 914(3)(b). Buekea v. FSM, 1 FSM R. 487, 493-94 (App. 1984).

Allegations in the information alleging a criminal violation must be proven in order to obtain a conviction. It is not sufficient that the evidence show a violation of the statute specified in the Information if the actual violation is different from the one alleged. Buekea v. FSM, 1 FSM R. 487, 493-94 (App. 1984).

When an information sufficiently apprises the defendant of the charges against which he must be prepared to defend and is sufficiently detailed to enable him to plead his case as a bar to future prosecutions for the same offense, it is generally sufficient that an information set forth the offense in words of the statute itself. Laion v. FSM, 1 FSM R. 503, 516-17 (App. 1984).

The language of Rule 7(c) of the FSM Supreme Court Rules of Criminal Procedure has been interpreted by other courts as permitting the prosecution to charge commission of a single offense by different means, or by charging in the conjunctive actions prohibited disjunctively in a statute. Laion v. FSM, 1 FSM R. 503, 517 (App. 1984).

The FSM Supreme Court Rules of Criminal Procedure were designed to avoid technicalities and gamesmanship in criminal pleading. They are to be construed to secure simplicity in procedure. Convictions should not be reversed, nor the information thrown out, because of minor, technical objections which do not prejudice the accused. Laion v. FSM, 1 FSM R. 503, 518 (App. 1984).

11 F.S.M.C. 301 is one of a set of sections in Chapter 3 of the National Criminal Code specifying general principles of responsibility which apply implicitly to all substantive offenses but do not themselves enunciate substantive offenses. These are not subject to "violation" and are therefore not reached by Rule

7 of the FSM Rules of Criminal Procedure. These general principles are deemed applicable to all crimes, and mere failure to restate them in an Information is not a failure to inform or a violation of due process. Engichy v. FSM, 1 FSM R. 532, 542 (App. 1984).

Dropping one count from a criminal information does not prevent the prosecution from proving that count as an element of other pending charges. FSM v. Cheng Chia-W (I), 7 FSM R. 124, 126 (Pon. 1995).

Criminal defendants have the constitutional right to be informed of the nature of the accusation against them. This protection is implemented through Criminal Rule 7(c)(1), which requires that an information must "be a plain, concise and definite written statement of the essential facts constituting the offense charged." An information should not be thrown out because of minor, technical objections which do not prejudice the accused. FSM v. Xu Rui Song, 7 FSM R. 187, 189 (Chk. 1995).

The fundamental purpose of the information is to inform the defendant of the charge so that he may prepare his defense, and the test for sufficiency is whether it is fair to the defendant to require him to defend on the basis of the charge as stated in the particular information. Another purpose is to inform the court of the facts alleged so that it may decide whether they are sufficient in law to support a conviction, if one should be had. FSM v. Xu Rui Song, 7 FSM R. 187, 189 (Chk. 1995).

The information should be sufficiently definite, certain, and unambiguous as to permit the accused to prepare his defense. Common sense will be a better guide than arbitrary and artificial rules, and the sufficiency of the information will be determined on the basis of practical rather than technical considerations. In an information each count should stand on its own although facts alleged therein may be incorporated by reference. This is true as to each defendant. FSM v. Xu Rui Song, 7 FSM R. 187, 189-90 (Chk. 1995).

An information that is sufficient for one co-defendant may be insufficient and defective as to another. FSM v. Xu Rui Song, 7 FSM R. 187, 190 (Chk. 1995).

An information that, as a practical matter, is not sufficiently certain and unambiguous so as to permit the defendant to prepare its defense, or to inform the court of what alleged acts or omissions of this particular defendant result in criminal liability is defective, and may be dismissed without prejudice. FSM v. Xu Rui Song, 7 FSM R. 187, 190 (Chk. 1995).

A person who allegedly aided and abetted another to commit an offense must be specifically charged with aiding and abetting in the information. FSM v. Webster George & Co., 7 FSM R. 437, 440 (Kos. 1996).

A statute not cited in the information and not mentioned by the prosecution until closing argument cannot be the basis of criminal liability. FSM v. Webster George & Co., 7 FSM R. 437, 440 (Kos. 1996).

Although the government is not precluded from charging and trying, in one information, violations of two or more separate provisions of the FSM codes which arise from the same course of conduct, but when the case involves conduct specifically addressed by the tax code (which has comprehensive civil and criminal penalties established for a clearly stated purpose) the government cannot also seek to charge the defendant with alternative violations of criminal code sections providing for criminal penalties up to ten times greater than those allowed under the tax code and which were not clearly intended to apply to tax crimes. FSM v. Edwin, 8 FSM R. 543, 546 (Pon. 1998).

Relevant provisions of Title 12 of the Trust Territory Code regarding traffic citations' definition and procedure continue in effect as Chuuk state law on criminal procedure, as long as these provisions have not been amended or repealed and are consistent with the Chuuk Constitution. Chuuk v. Dereas, 8 FSM R. 599, 601 (Chk. S. Ct. Tr. 1998).

A "citation" is a written order to appear before a court at a time and place named therein to answer a

criminal charge briefly described in the citation. It contains a warning that failure to obey it will render the accused liable to have a complaint filed against him upon which an arrest warrant may be issued. Chuuk v. Dereas, 8 FSM R. 599, 601 (Chk. S. Ct. Tr. 1998).

The court may accept the statement of the charge or charges in a citation or a copy thereof in place of an information in any misdemeanor tried. Chuuk v. Dereas, 8 FSM R. 599, 601 (Chk. S. Ct. Tr. 1998).

In accepting the use of a citation in place of a complaint or information in an action, a court must review the statement of charge or charges that appear on the citations in conformity with the nature and contents of an information or complaint. The citation must be a plain, concise and definite written statement of the essential facts constituting the offense charged, and must state for each count of the citation, the statute, rule, regulation or other provision of law which the defendant is alleged to have violated. Chuuk v. Dereas, 8 FSM R. 599, 601 (Chk. S. Ct. Tr. 1998).

Police officers' authority to issue citations in lieu of complaints or information is provided by law. In any case in which a policeman may lawfully arrest a person without a warrant, he may instead, subject to such limitations as his superiors may impose, issue and serve a citation upon the person, if he deems that the public interest does not require an arrest. Chuuk v. Dereas, 8 FSM R. 599, 602 (Chk. S. Ct. Tr. 1998).

When defendants have been charged in a citation with misdemeanor offenses, it is lawfully appropriate for the court to pursue the charges in litigation in place of complaints or information because police officers' issuance of citations to defendants in lieu of complaints or information for violation of Chuuk State Motor Vehicle Code provisions is authorized. Chuuk v. Dereas, 8 FSM R. 599, 602 (Chk. S. Ct. Tr. 1998).

The statements that appear on citations fulfill the essential requirement of that of a complaint or information in a criminal case as provided in Chuuk Criminal Procedure Rule 7(c)(1). Chuuk v. Dereas, 8 FSM R. 599, 602 (Chk. S. Ct. Tr. 1998).

The purpose of an information, summons or warrant is to inform the defendant of what he is called upon to defend. Chuuk v. Defang, 9 FSM R. 43, 45 (Chk. S. Ct. Tr. 1999).

An information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. FSM v. Moses, 9 FSM R. 139, 145 (Pon. 1999).

The purpose of a criminal information is to inform the defendant of the charges against him so that he may prepare his defense, and to advise the court of the facts alleged so that the court may determine whether those facts, if proven, may support a conviction. An information that is deficient in these respects may be dismissed without prejudice. FSM v. Moses, 9 FSM R. 139, 145 (Pon. 1999).

When an information alleges violation of a statute, that statute must be drawn so as to give a person of ordinary intelligence fair notice that the contemplated conduct was forbidden. Laws must provide explicit standards for those who apply them. FSM v. Moses, 9 FSM R. 139, 145 (Pon. 1999).

No probable cause to believe that a criminal offense has been committed exists when the defendants' alleged conduct as set out in the information has not been made criminal under any statute, rule, or regulation to which the court's attention has been directed. FSM v. Moses, 9 FSM R. 139, 145 (Pon. 1999).

The use of affidavits to support the filing of a criminal information does not violate a criminal defendant's right to confrontation. The defendant will have the opportunity to confront the affiants if they are called as witnesses at trial by either the government or the defendant. FSM v. Wainit, 10 FSM R. 618, 621 (Chk. 2002).

The court is authorized to issue an arrest warrant or penal summons if the information is supported by one or more written statements under oath showing probable cause. FSM v. Wainit, 12 FSM R. 376, 383

(Chk. 2004).

The statute, 12 F.S.M.C. 204, and the rule, FSM Crim. R. 4(a), applying to criminal complaints cannot be followed when no complaint was ever filed and when the government earlier filed a criminal information. FSM v. Wainit, 12 FSM R. 376, 383-84 (Chk. 2004).

When applying for an arrest warrant, the person giving evidence under oath by telephone must physically appear before someone who can identify the witness and administer the oath. FSM v. Wainit, 12 FSM R. 376, 384 (Chk. 2004).

Since an information is not made under oath, that would leave only affidavits as the means to show the required "probable cause under oath" for informations. FSM v. Wainit, 12 FSM R. 376, 384 (Chk. 2004).

Since the statute and possibly the rules require sworn written statements to be filed with the information, when no such statements were attached, motions to dismiss on this ground will be granted. These dismissals are not on the merits. Neither defendant has been put in jeopardy. FSM v. Wainit, 12 FSM R. 376, 384 (Chk. 2004).

The dismissal of a criminal case because of a statutorily defective information is without prejudice. FSM v. Wainit, 12 FSM R. 376, 384 (Chk. 2004).

When a criminal information is not supported by written statement(s) under oath showing probable cause to the court's satisfaction before a penal summons (or an arrest warrant) is issued, there is no ground stated that would warrant dismissal of the information if there is nothing before the court that indicates that the information is not a "plain, concise and definite statement of the essential facts constituting the offense." But the summonses issued pursuant to such an information are improperly issued and the resulting initial appearances are as a consequence defective. FSM v. Kansou, 13 FSM R. 48, 50 (Chk. 2004).

Under 12 F.S.M.C. 210, the lack of sworn, written statements showing probable cause makes the issuance of the summonses defective. It does not make the information defective. FSM v. Kansou, 13 FSM R. 48, 50 (Chk. 2004).

When the differences between two informations are sufficient to show that the prosecutor who signed the new information, had exercised the considered, independent judgment that the court asked to be present in any refiled information, that most of the wording was drawn from the earlier information, presumed invalid for the purpose of the motion, is not a sufficient ground to invalidate the information. That a new information is based on or drawn from an earlier invalid information does not invalidate the new information. FSM v. Wainit, 13 FSM R. 433, 439 (Chk. 2005).

When police officers viewed the defendant struggling and fighting and also heard the defendant swearing and yelling offensive words, based upon that conduct alone, the officers had reasonable grounds to believe that the defendant had committed one or more criminal offenses, including drunken and disorderly conduct, and disturbing the peace. The police officers' determination of reasonable grounds and probable cause is based upon their training and understanding of conduct which forms the basis of criminal offenses. Following an arrest of an accused, related or different criminal offenses may be charged in the information, based upon further investigation and research conducted by the state. Kosrae v. Jonithan, 14 FSM R. 94, 97 (Kos. S. Ct. Tr. 2006).

FSM law provides that a prosecution commences when an information is filed, and the filing of an information is sufficient for statute of limitations purposes. FSM v. Kansou, 14 FSM R. 128, 131 (Chk. 2006).

Although the government filed a motion to clarify that the one felony charge included the interference

with the civil right to vote in not only the national election held March 2, 1999, but also the Chuuk state election held the same day, but since the information gave clear notice only that the felony charge arose from the national election, the government had to prove that the defendant unlawfully interfered with the right to vote in a national election because the information's allegations alleging a criminal violation must be proven in order to obtain a conviction. FSM v. Wainit, 14 FSM R. 164, 169 (Chk. 2006).

When the information cites 11 F.S.M.C. 313(2)(c), but quotes the language of 313(2)(b) as the offense charged, the "(c)" in the information is considered a minor typographical error that does not prejudice the accused. FSM v. Nifon, 14 FSM R. 309, 315 n.1 (Chk. 2006).

Defenses and objections based on defects in the information (other than that it fails to show jurisdiction in the court or to charge an offense) must be raised prior to trial. Any deficiency in the information not raised before trial has been waived and therefore cannot be a substantial or close question on appeal. FSM v. Petewon, 14 FSM R. 320, 326 (Chk. 2006).

Although the prior criminal code provided that no person could be convicted of aiding and abetting unless the information specifically alleged that the defendant aided and abetted and the information provided specific acts constituting the means of aiding and abetting so as to afford the defendant adequate notice to prepare his defense, that provision was eliminated when the current criminal code was enacted. It is thus no longer necessary for the information to recite each specific act each alleged aider and abetter allegedly committed. FSM v. Sam, 14 FSM R. 328, 333 (Chk. 2006).

An information is sufficient if it contains a plain, definite, and concise statement of the essential facts constituting the offense charged so that the defendant can prepare his defense and so that the defendant can avail himself of his conviction or acquittal as a bar to subsequent prosecutions. FSM v. Sam, 14 FSM R. 328, 333 (Chk. 2006).

Since, under 11 F.S.M.C. 1023(7), the government must prove beyond a reasonable doubt that the firearm was used to commit a crime, when the amended information does not allege what crime or crimes, the firearm was used to commit, or even that it was used to commit any crime, it therefore fails to allege an essential element of 11 F.S.M.C. 1023(7), and that count of the amended information will be dismissed for failure to state an offense. FSM v. Sam, 14 FSM R. 328, 334 (Chk. 2006).

When, although the language of counts six and eight was identical, the two acts of anal penetration were separated by an act of battery and the defendant penetrated the victim three separate times and although counts six and eight should have included distinguishing language, the duplication in the information, in itself, did not compromise the defendant's constitutional right against double jeopardy. Kinere v. Kosrae, 14 FSM R. 375, 386 (App. 2006).

An argument that the name of the "Secretary of the Department of Transportation, Communication and Infrastructure," rather than the name of the "Federated States of Micronesia" should be in the case's caption and that this defect deprives the court of subject-matter jurisdiction over the case is utterly lacking in merit. FSM v. Zhang Xiaohui, 14 FSM R. 602, 609 (Pon. 2007).

By requiring that an information be "filed in the name of the Secretary," Title 19, section 1307 merely requires that the information filed with the court be signed by the Secretary of the Department of Transportation, Communication and Infrastructure. FSM v. Zhang Xiaohui, 14 FSM R. 602, 610 (Pon. 2007).

An "information" is an accusation in the nature of an indictment, from which it differs only in being presented by a competent public officer on his oath of office, instead of a grand jury on their oath. The information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the attorney for the government. FSM v. Zhang Xiaohui, 14 FSM R. 602, 610 (Pon. 2007).

In the case of a violation of Title 19 of the FSM Code, any information filed with the court must be signed by the Secretary of the Department of Transportation, Communication and Infrastructure and the attorney for the government who is authorized to appear before the court. That information's caption, like all other pleadings filed in criminal matters, will be in the name of the "Federated States of Micronesia." FSM v. Zhang Xiaohui, 14 FSM R. 602, 610 (Pon. 2007).

An error in the citation or description or its omission shall not be ground for the dismissal of the information or for reversal of a conviction if the error or omission did not mislead the defendant to the defendant's prejudice. FSM v. Zhang Xiaohui, 14 FSM R. 602, 610 (Pon. 2007).

Regardless of how the information in this case might have otherwise been captioned, the FSM Supreme Court would not be deprived of its subject-matter jurisdiction over the case since the alleged violations are national offenses and the FSM Supreme Court has exclusive jurisdiction over cases in which the national government is a party. Thus, whether the information was filed in the name of the "Federated States of Micronesia" or "the Secretary of the Department of Transportation, Communication and Infrastructure" the national government would be a party. It is this controlling factor which serves as the basis for the court's subject-matter jurisdiction. FSM v. Zhang Xiaohui, 14 FSM R. 602, 610 (Pon. 2007).

Although Section 1306 of Title 19 of the FSM Code authorizes the Secretary of the Department of Transportation, Communication and Infrastructure to investigate violations, there is no provision in Title 19 that prescribes what action shall be taken if an investigation is not undertaken. As such, the requirement that an investigation be undertaken prior to the filing of an information is not mandatory. FSM v. Zhang Xiaohui, 14 FSM R. 602, 611 (Pon. 2007).

Although Section 1306(4) of Title 19 of the FSM Code does require notification of the maritime authority in the country where the vessel that the defendant purportedly masters is flagged, that provision of law, like all of section 1306 of Title 19, is not mandatory. The notification requirement imposed by Section 1306(4) is only required if the Secretary has caused an investigation to be undertaken, and only then if the investigation concerns a vessel. But when the only named defendant is an individual, and not a vessel, even if an investigation had been undertaken by the Secretary, there would have been no requirement to notify any foreign maritime authority. FSM v. Zhang Xiaohui, 14 FSM R. 602, 611 (Pon. 2007).

The government does not have to identify which of the six charges in a criminal information it intends to pursue since it is entitled to pursue multiple claims based on the same act. Chuuk v. Menisio, 15 FSM R. 276, 279 n.1 (Chk. S. Ct. Tr. 2007).

A criminal information must be a plain, concise and definite written statement of the essential facts constituting the offense charged. It must be signed by an attorney for the state and for each count there must be citation of the statute, rule, regulation or other provision of law which the defendant is alleged to have violated. Allegations against the defendant in one count may be incorporated by reference in another count. Chuuk v. Menisio, 15 FSM R. 276, 279 (Chk. S. Ct. Tr. 2007).

An information should be sufficiently definite, certain, and unambiguous as to permit the accused to prepare his defense, but an information should not be thrown out because of minor, technical objections which do not prejudice the accused. FSM v. Kansou, 15 FSM R. 373, 380 (Chk. 2007).

When the information is sufficiently definite to put the accused on notice that he is charged with, in his capacity as NNDA Executive Director, being a member of a conspiracy to violate 55 F.S.M.C. 221(2), 55 F.S.M.C. 221(3) and 11 F.S.M.C. 529 and when the court has previously stated that nothing before it indicates that the information is not a plain, concise and definite statement of the essential facts constituting the offense, the accused's motion to dismiss on the ground of defective information will be denied. FSM v. Kansou, 15 FSM R. 373, 380-81 (Chk. 2007).

When the affidavit(s) did not state that the victim was thrown overboard but instead stated that the

victim's body was thrown overboard after the victim was shot, the only fair inference that can be drawn from that allegation is that the prosecution alleges that the shooting killed the victim and the defendants are thus on notice that the government alleged that at least one of the offenses the firearm was used for was to commit a homicide. FSM v. Sam, 15 FSM R. 457, 460 n.1 (Chk. 2007).

The Kosrae State Court standard for measuring delay when filing an information and proceeding to trial is that the court presumes that there has been no unnecessary delay if the information is filed within six months of the alleged criminal act, but if the information is filed more than six months after the alleged act, then the prosecution must show that the delay in filing was reasonable or necessary. Kosrae v. Langu, 15 FSM R. 601, 604 (Kos. S. Ct. Tr. 2008).

A criminal information will not be dismissed on the ground that it fails to allege that the weapon in question was a handgun of .22 caliber or greater because the information alleges that the defendant possessed a .22 handgun and because a handgun's caliber is irrelevant since 11 F.S.M.C. 1023(5) prohibits the possession of any handgun, regardless of caliber. FSM v. Sato, 16 FSM R. 26, 28 (Chk. 2008).

An information's fundamental purpose is to inform the defendant of the charges so that he may prepare his defense, and to advise the court of the facts alleged so that the court may determine whether those facts, if proven, may support a conviction, and an information deficient in these respects may be dismissed without prejudice. The test for a particular information's sufficiency is whether it is fair to the defendant to require him to defend on the basis of the charge as stated therein. FSM v. Sato, 16 FSM R. 26, 29 (Chk. 2008).

To determine whether an information is deficient, the information and its supporting affidavit must be read together. FSM v. Sato, 16 FSM R. 26, 29 (Chk. 2008).

When the supporting affidavit specifically alleges that the defendant beat the victim on her head with the handgun, the information's assault allegation is more than adequate and the defendant's ground that the information fails to state with specificity the nature of the crime of assault alleged must be rejected. FSM v. Sato, 16 FSM R. 26, 29 (Chk. 2008).

When, at no time before closing argument did the defendant object to or seek clarification of the government's charges through a bill of particulars, motion to dismiss for failure to state a claim, or other means, any defect in the information, other than lack of jurisdiction or failure to state a claim, was waived by defendant's failure to raise the issue before trial. Chuuk v. Robert, 16 FSM R. 73, 80 n.7 (Chk. S. Ct. Tr. 2008).

The pleading rules were designed to ensure simplicity of proceedings and to avoid technicalities and gamesmanship. Chuuk v. Robert, 16 FSM R. 73, 80 n.7 (Chk. S. Ct. Tr. 2008).

Since, under 11 F.S.M.C. 1023(7), the government must prove beyond a reasonable doubt that the firearm was used in connection with or in aid of the commission of a crime, when the information does not allege what crime or crimes, the firearm was used to help commit, it fails to allege an essential element of 11 F.S.M.C. 1023(7), and that count of the information should be dismissed for failure to state an offense. FSM v. Aiken, 16 FSM R. 178, 183 (Chk. 2008).

A prosecution is commenced when an information is filed in court. Kosrae v. George, 16 FSM R. 228a, 228e (Kos. S. Ct. Tr. 2008).

A motion to dismiss the information will be denied when the information is sufficiently definite and unambiguous for the accused to be apprised of the charge against him and for him to prepare his defense and when it is sufficiently detailed to enable him to plead the case as a bar to any future prosecution for the same offense. FSM v. Sippa, 16 FSM R. 247, 249 (Chk. 2009).

An information will not be dismissed on the ground that the supporting affidavit was unreliable when the affidavit was prepared by an investigating officer who based his testimony on his own interviews with witnesses since hearsay statements of witnesses can establish probable cause. Chuuk v. Rotenis, 16 FSM R. 398, 401 (Chk. S. Ct. Tr. 2009).

A criminal information's allegations must be proven in order to obtain a conviction, and it is not sufficient that the evidence show a violation of the statute specified in the information if the actual violation is different from the one alleged. Thus, when in an information, one count requires proof of identical allegations (facts and elements) as another count, it would violate a defendant's double jeopardy protection if he were convicted of both and then punished for both. The proper remedy, however, is not to dismiss before trial some counts based on what might happen because the government will not be denied the right to charge the separate offenses to guard against the risk that a conviction may not be obtained on one of the offenses. But if, after trial, the court finds the defendant guilty of both counts, a conviction will be entered only on one of those two counts. FSM v. Aliven, 16 FSM R. 520, 530-31 (Chk. 2009).

When, in the information and supporting affidavit or in the material before the court during the pretrial motion hearing, no notice was given the defendants of any act or conduct by either of them that was alleged to constitute aiding and abetting, the aiding and abetting counts against them will be dismissed. FSM v. Aliven, 16 FSM R. 520, 532 (Chk. 2009).

When notice was given a defendant, and even relied upon by him in his motion, of his alleged conduct to aid and abet, the prosecution will be given time to either amend the information to include that conduct or to dismiss the aiding and abetting counts against him. FSM v. Aliven, 16 FSM R. 520, 532 (Chk. 2009).

A motion to dismiss conspiracy counts will be denied when the affidavit stated the essential facts constituting the charges and was based on the first-hand knowledge of the affiant who was the investigating officer; when the information clearly stated the nature of the acts charged; and when, although the affidavit referred to witness statements that were suppressed, the affidavit also contained a considerable amount of other evidence, including the substance of the affiant's interviews with eye-witnesses, which supported probable cause. Such hearsay statements, if reliable, may support a finding of probable cause for instituting a prosecution. Chuuk v. Suzuki, 16 FSM R. 625, 632 (Chk. S. Ct. Tr. 2009).

An allegation that the defendants "did unlawfully conspire" to do some act is an allegation that there was an agreement since the word "conspire" means to join in secret agreement to do an unlawful or wrongful act or to use such means to accomplish a lawful end. By alleging that the defendants "conspired to" do something, the information alleges that the defendants joined in an agreement. FSM v. Suzuki, 17 FSM R. 70, 76 (Chk. 2010).

An information will not be thrown out because of minor, technical objections which do not prejudice the accused. FSM v. Suzuki, 17 FSM R. 70, 77 (Chk. 2010).

When the defendant asserts that the investigating officer's affidavit was deficient because it is inconsistent with the date specified in the police report but this argument was not raised in the defendant's pre-trial motions as a challenge to the sufficiency of the affidavit of probable cause and therefore to the extent the defendant contends there was a defect in the information, that objection was waived. Chuuk v. Inek, 17 FSM R. 137, 143 (Chk. S. Ct. Tr. 2010).

A defendant's contention that as a result of the police report containing an inconsistent date of the offense, he was misled as to when the alleged offense took place, borders on the spurious because the information is the charging document that informs the defendant of the charge he is called upon to defend against and a police report that was not mentioned in the affidavit of probable cause and which no one sought to admit into evidence has no bearing on whether the defendant was sufficiently informed of the allegations. Chuuk v. Inek, 17 FSM R. 137, 144 (Chk. S. Ct. Tr. 2010).

If before trial a defendant asserts that an affidavit was deficient because the affiant did not indicate the sources of his investigation, and that there was no probable cause to support the allegations regarding the dates of the offense, the court could then have addressed the asserted deficiencies, but when he did not, issues regarding deficiencies in the information were waived. Chuuk v. Inek, 17 FSM R. 137, 144 (Chk. S. Ct. Tr. 2010).

A mere inconsistency between the allegations contained in the information and a document that the defendant did not seek to admit into evidence does not provide the court with a substantial question of law or fact. Chuuk v. Inek, 17 FSM R. 137, 144 (Chk. S. Ct. Tr. 2010).

In a criminal contempt proceeding, an order to show cause (the notice) why someone should not be held in contempt must describe the contempt charged as criminal contempt as required by Criminal Procedure Rule 42(b), which requires that the notice shall state the essential facts constituting the criminal contempt charged, describing it as such. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 n.10 (App. 2011).

When the affidavit in support of the information is simply too vague, it does not contain any evidence or factual information that might lead a cautious person to believe it likely that defendant committed a crime prior to being arrested and searched. Chuuk v. Alluki, 17 FSM R. 385, 388 (Chk. S. Ct. Tr. 2011).

An affidavit's failure to establish probable cause does not affect the information's charging or notice-providing component. An information's fundamental purpose is to inform the defendant of the charges so that he may prepare his defense, and to advise the court of the facts alleged so that the court may determine whether those facts, if proven, may support a conviction. An information deficient in these respects may be dismissed without prejudice. The test for a particular information's sufficiency is whether it is fair to the defendant to require him to defend on the basis of the charge as stated therein. Chuuk v. Alluki, 17 FSM R. 385, 388 (Chk. S. Ct. Tr. 2011).

When a factually-sufficient information is unsupported by an affidavit showing probable cause but at the motion hearing the State, although neither was the affiant, elicited testimony from an officer involved in the actual arrest and another involved in defendant's search and booking and the arresting officer provided sufficient detail to remedy the affidavit's defects; when the accused was given the opportunity, and in fact did, cross-examine both witnesses; when the court finds their testimony credible and is satisfied that ample probable cause existed for accused's arrest; and when there is nothing before the court to indicate that the accused would in any way be prejudiced if the sworn testimony elicited at the hearing were admitted for the purposes of demonstrating that law enforcement had probable cause to arrest and subsequently search the accused incident to his arrest, at the time he was arrested, the information's charging portion remains unaffected and the accused's motion to suppress will be denied. Chuuk v. Alluki, 17 FSM R. 385, 388 (Chk. S. Ct. Tr. 2011).

An information is sufficient if it is a plain, concise and definite written statement of the essential facts constituting the offense charged and if it sufficiently apprises the defendant of the charges against which he must be prepared to defend and is sufficiently detailed to enable him to plead this case as a bar to future prosecutions for the same offense. Each count in an information should stand on its own although facts alleged therein may be incorporated by reference, and this is true for each defendant. FSM v. Esefan, 17 FSM R. 389, 393 (Chk. 2011).

An information must state for each count the citation of the statute, rule, regulation or other provision of law which the defendant is alleged to have violated. FSM v. Esefan, 17 FSM R. 389, 393 (Chk. 2011).

The mere conclusion that the defendant violated the statute does not supply the necessary factful allegations to charge an offense. The general rule is that an information is insufficient if it states conclusions rather than the facts upon which the conclusions are based. However, such facts need not be

stated in detail. FSM v. Esefan, 17 FSM R. 389, 393-94 (Chk. 2011).

Although to establish legal requirements in criminal cases, the court must first consult FSM sources of law rather than begin with a review of other courts' cases, the court may consult U.S. sources for guidance in interpreting an FSM criminal procedure rule when it has not previously construed the rule and the rule is identical or similar to a U.S. counterpart, such as when court has not previously considered some aspects of an information's sufficiency under Criminal Rule 7(c). FSM v. Esefan, 17 FSM R. 389, 394 n.1 (Chk. 2011).

An information must charge all the essential elements of the offense, and, although liberality is the guide in testing an information's sufficiency, this applies to matters of form and not of substance. The omission of an essential element from the pleading cannot be cured by citing the statute. FSM v. Esefan, 17 FSM R. 389, 394 (Chk. 2011).

If a statute makes it an offense to do a certain act "contrary to law," it is not enough simply to cite the statute and to allege that the act was done contrary to law. The pleading must show what other law was violated, either by a citation or by a sufficient statement of facts. FSM v. Esefan, 17 FSM R. 389, 394 (Chk. 2011).

An information that charges that a defendant's shotgun possession is "unlawful" omits the essential element of a factual allegation that makes that possession unlawful when it cites a statute that provides that "[n]o person shall manufacture, purchase, sell, possess or carry any firearm, dangerous device, or ammunition other than as hereinafter provided" and several different following provisions create different ways a shotgun's possession could be unlawful and carry varying penalties. FSM v. Esefan, 17 FSM R. 389, 394 (Chk. 2011).

In assessing the factual specificity of a charging instrument, courts start from the assumption that the defendant is innocent and consequently has no knowledge of the facts charged against him. FSM v. Esefan, 17 FSM R. 389, 395 (Chk. 2011).

When a count, even reading it together with the facts incorporated by reference and the supporting affidavit, does not include all the essential elements constituting the offense that the prosecution has charged, it must be dismissed. FSM v. Esefan, 17 FSM R. 389, 395 (Chk. 2011).

Usually when a defendant challenges whether the supporting affidavit shows probable cause for a charged offense, the prosecution will call witnesses and possibly introduce exhibits in order to firmly establish probable cause for the offense charged since the prosecution has the burden to establish probable cause. FSM v. Esefan, 17 FSM R. 389, 395 (Chk. 2011).

When there is just barely enough evidence and information in the supporting affidavit sufficiently persuasive to warrant the court to believe it is more likely than not that the violation of the law occurred as charged and that the accused committed that violation, the motion to dismiss the challenged count will be denied. FSM v. Esefan, 17 FSM R. 389, 395-96 (Chk. 2011).

A challenge to a count that is merely a semantical word game must be rejected. FSM v. Esefan, 17 FSM R. 389, 397 (Chk. 2011).

FSM Criminal Rule 12(a) abolishes motions to quash an information. However, since under FSM law any relief possible under the common law motions and pleas abolished by Rule 12(a) may be sought by pretrial motion under FSM Criminal Rule 12(b), the court will consider a defendant's motion to quash the information as a Rule 12(b) motion to dismiss the information. FSM v. Phillip, 17 FSM R. 413, 425 (Pon. 2011).

A criminal information's primary purpose is to inform the defendant of the charges against him so that

he may prepare his defense, and to advise the court of the facts alleged so that the court may determine whether those facts, if proven, may support a conviction. An information deficient in these respects may be dismissed without prejudice. FSM v. Phillip, 17 FSM R. 413, 426 (Pon. 2011).

The test for whether a particular information is sufficient is whether it is fair to the defendant to require him to defend on the basis of the charge(s) as stated therein. To determine whether an information is deficient, the information and its supporting affidavit(s) must be read together. FSM v. Phillip, 17 FSM R. 413, 426 (Pon. 2011).

When the three officers' affidavits are sufficient to establish facts which, if proven, may support the defendant's conviction on the charges brought; when the connection between a customs officer and an informant, to the extent that it exists, is not necessary to show probable cause to arrest the defendant; and when the affidavits support the discovery of significant quantities of a leafy substance resembling marijuana in the defendant's backpack, as well as further tests of that substance which revealed that it was marijuana, these affidavits provide probable cause to believe that a crime was committed, and the defendant's motion to dismiss the information will be denied. FSM v. Phillip, 17 FSM R. 413, 426 (Pon. 2011).

When the affidavit identifies its author as a Chuuk State Public Safety Department police detective and indicates that the detective was assigned to investigate the offenses alleged in the information; when the affidavit does not identify informants but describes facts uncovered during the course of the investigation; and when the defendant admits that the affiant formed his conclusions based upon the alleged victim's representations, the affiant's failure to name sources of information does not render the affidavit defective, in part because the defendant admits that the affiant gathered information directly from the victim. The affidavit does not suffer from multiple layers of hearsay because the affiant identifies himself and attests to personally investigating the criminal violations alleged. Chuuk v. Hauk, 17 FSM R. 508, 513 (Chk. S. Ct. Tr. 2011).

An information is sufficient if: 1) it is a plain, concise and definite written statement of the essential facts constituting the offense charged; 2) it sufficiently apprises the defendant of the charges against which he must be prepared to defend; and 3) it is sufficiently detailed to enable him to plead the case as a bar to future prosecutions for the same offense. An information must also charge all the essential elements of the offense, and, although liberality is the guide in testing an information's sufficiency, this applies to matters of form and not of substance. FSM v. Sorim, 17 FSM R. 515, 519 (Chk. 2011).

Since the Criminal Procedure Rules are designed to avoid technicalities and gamesmanship in criminal pleading and are to be construed to secure simplicity in procedure, an information will not be thrown out because of minor, technical objections which do not prejudice the accused. The Rules do not countenance the practice of fine combing or nit picking a criminal information for verbal and technical omissions; substantial compliance is sufficient. FSM v. Sorim, 17 FSM R. 515, 519-20 (Chk. 2011).

Although the court must first look to FSM sources of law to establish legal requirements in criminal cases rather than start with a review of other courts' cases, when the court has not previously considered certain aspects of a criminal information's sufficiency under Criminal Rule 7, an FSM criminal procedure rule that is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance. FSM v. Sorim, 17 FSM R. 515, 520 n.1 (Chk. 2011).

Each count in an information should stand on its own although the facts alleged therein may be incorporated by reference, and this is true for each defendant. FSM v. Sorim, 17 FSM R. 515, 520 (Chk. 2011).

To determine a criminal information's sufficiency, the information and its supporting affidavit(s) must be read together. FSM v. Sorim, 17 FSM R. 515, 520 (Chk. 2011).

When the information and supporting affidavits allege that the accused cashed various national

government checks that were made payable to fictitious people and that he and his codefendant shared the money thus obtained, those allegations are sufficient to put the accused on notice that the national government claims a legal, equitable, or possessory interest in the funds that the checks were used to obtain and the allegation that the codefendants made checks out to fictitious persons using legitimate travel authorization numbers for other persons and then cashed those checks, dividing the proceeds among themselves, is sufficient to put the accused on notice that the prosecution alleges that the checks were not authorized. FSM v. Sorim, 17 FSM R. 515, 520 (Chk. 2011).

When the information charges that the accused "invited reliance on these false checks by asking the same be cashed, effectively requesting the financial system and the FSM National Government to accept these false checks as true," and when this charge tracks the statutory language in subdivision 524(1)(c), wherein criminal liability is imposed when a person "invites reliance on any writing which he or she knows to be . . . lacking in authenticity," the accused should not be prejudiced merely because the information cited section 524 instead of subdivision 524(1)(c). FSM v. Sorim, 17 FSM R. 515, 521 (Chk. 2011).

When construing the meaning of an information, the description of the alleged conduct is far more critical than the information's prefatory language or its citation of a particular provision of a statute. It is the statement of facts in the pleading, rather than the statutory citation, that is controlling, and if an information properly charges an offense under the laws it is sufficient even though the government attorney may have supposed that the offenses charged were covered by a different statute. FSM v. Sorim, 17 FSM R. 515, 521 (Chk. 2011).

When the accused is fully informed of the charge against him and the information contains every element of the charge, the accused will have no basis for relief even if the information cites to the wrong subsection, or if it cites to a section and the specific subsection is omitted. FSM v. Sorim, 17 FSM R. 515, 521 (Chk. 2011).

Although an information must state for each count the citation of the statute, rule, regulation or other provision of law which the defendant is alleged to have violated, an error in the citation or description or its omission will not be ground for the information's dismissal if the error or omission did not mislead the defendant to the defendant's prejudice. FSM v. Sorim, 17 FSM R. 515, 521 (Chk. 2011).

An information should be drawn with greater care. The prosecution should in all cases specify the particular provision or subsection on which the charge is based. By doing so it will ensure that the defendant receives fair warning of the charge against which he or she must defend and will at the same time avoid unnecessary risks to itself on appeal. But when an information falls short of this desired standard, it is still sufficient if it fairly informs the accused of the charge against him. FSM v. Sorim, 17 FSM R. 515, 521 (Chk. 2011).

When the information alleges that the accused presented checks to merchants knowing that those checks were false documents, those factual allegations, supported by affidavit, establish probable cause that the accused violated 11 F.S.M.C. 529(1)(b). FSM v. Sorim, 17 FSM R. 515, 522 (Chk. 2011).

A conspiracy count is sufficient if it alleges an agreement, and identifies the object towards which the agreement is directed and an overt act. But it is not necessary that the information state the object of the agreement with the detail required of an information charging the substantive offense, and it is not necessary in a conspiracy charge to allege with precision all the elements essential to the offense which is the object of a conspiracy; allegations clearly identifying the offense the defendants conspired to commit are sufficient. FSM v. Sorim, 17 FSM R. 515, 523 (Chk. 2011).

When, although the information could have been drawn with greater care, the accused is not misled to his prejudice because the prosecution failed to cite the statute(s) that the codefendants allegedly conspired to violate, the conspiracy count will not be dismissed. FSM v. Sorim, 17 FSM R. 515, 523 (Chk. 2011).

An accused is not misled about the underlying crime that he is charged with conspiring to commit

when, between the conspiracy count, the facts incorporated therein by reference, and the supporting affidavits, it should be clear that he is charged with conspiring to take, through the use of national government checks with fictitious payees, money from the FSM national government to which neither he nor his codefendant had any rightful claim and when the conspiracy count, the facts incorporated therein by reference, and the supporting affidavits describe the substantive underlying offense with enough specificity to sufficiently apprise the accused of the charges against which he must be prepared to defend and it is sufficiently detailed to enable him to plead the case as a bar to future prosecutions for the same crime. FSM v. Sorim, 17 FSM R. 515, 523 (Chk. 2011).

When, although the affiant does not identify sources of information in his affidavit, the court finds that the description he includes regarding the results of his investigation are enough to enable a cautious person to believe it is more likely than not that a violation of the laws charged in the information occurred; when if the affiant obtained information from the statements of any witnesses, as hearsay it is permissible in making the probable cause determination; when it appears from the affidavit that the officer was able to observe damage to a vehicle that the defendant caused, the court will find that probable cause existed to support the information's charges and that defendant's motion to dismiss the information is without merit and will be denied. Chuuk v. Mitipok, 17 FSM R. 552, 554 (Chk. S. Ct. Tr. 2011).

Since an information's fundamental purpose is to inform the accused of the charges so that he may prepare his defense, the test for sufficiency is whether it is fair to the accused to require him to defend on the basis of the charges as stated in the information. FSM v. Meitou, 18 FSM R. 121, 127 (Chk. 2011).

Generally, an information is sufficient if it adequately apprises the accused of the charges against which the accused must be prepared to defend and if it is detailed enough to enable the accused to plead the case as a bar to future prosecutions for the same offenses. FSM v. Meitou, 18 FSM R. 121, 127 (Chk. 2011).

Since the possession of any handgun is banned, an information charging the illegal possession of a handgun is not deficient when the information does not allege the handgun's exact barrel length, color, caliber, or whether the handgun was a pistol or a revolver. The allegation that an accused possessed a handgun is an allegation that the firearm had a barrel length under twenty-six inches because that is the statutory definition of a handgun. FSM v. Meitou, 18 FSM R. 121, 127 (Chk. 2011).

Three of the four 11 F.S.M.C. 1003 statutory exemptions for firearms possession are defenses within 11 F.S.M.C. 107 for which the accused has the burden of going forward with sufficient evidence to raise these exemptions as issues although the ultimate burden of persuasion still remains with the government. The prosecution does not have to make the initial showing but ultimately bears the burden of disproving the applicability of the exception when it is properly presented. FSM v. Meitou, 18 FSM R. 121, 128 (Chk. 2011).

A information is not insufficient because it fails to plead that the handgun the accused allegedly possessed was currently operable. FSM v. Meitou, 18 FSM R. 121, 128 (Chk. 2011).

The inapplicability of the 11 F.S.M.C. 1003(2) exemption is an essential element of the government's case in a prosecution for unlawful possession of a firearm, and since it is an essential element 11 F.S.M.C. 1003(2)'s inapplicability must be pled. FSM v. Meitou, 18 FSM R. 121, 128-29 (Chk. 2011).

An information must charge all the essential elements of the offense, when it does not include all the essential elements constituting the offense that the prosecution has charged, it must be dismissed. FSM v. Meitou, 18 FSM R. 121, 129 (Chk. 2011).

An information charging firearms possession is sufficient if it or the supporting affidavit contains an allegation that negates any one of the three 11 F.S.M.C. 1003(2) requirements and the prosecution's proof at trial is sufficient if it negates beyond a reasonable doubt any one of the three requirements. FSM v.

Meitou, 18 FSM R. 121, 129 (Chk. 2011).

Liberality is the guide in testing an information's sufficiency in charging all the essential elements of the offense, although this applies to matters of form and not of substance. To determine whether an information is deficient, the information and its supporting affidavit must be read together. FSM v. Meitou, 18 FSM R. 121, 129 (Chk. 2011).

If an information charging handgun possession or its supporting affidavit contains allegations from which it may be inferred that the 1003(2) exemption is inapplicable, it is sufficient. FSM v. Meitou, 18 FSM R. 121, 129 (Chk. 2011).

A supporting affidavit's averment that the accused had been drinking and was openly displaying the handgun at the public market is viewed as just barely enough to give the accused notice of the essential element of the charges against him that the 11 F.S.M.C. 1003(2) exemption does not apply because in the appellate court's view, an intoxicated defendant displaying a firearm in public is inconsistent with the 1003(2) exemption because it is inconsistent with a claim that the accused was keeping the handgun as a curio, ornament, or a piece with historical value. FSM v. Meitou, 18 FSM R. 121, 129 (Chk. 2011).

The test for a particular information's sufficiency is whether it is fair to defendant to require him to defend on the basis of the charge stated therein. Chuuk v. Akapito, 19 FSM R. 13, 14 (Chk. S. Ct. Tr. 2013).

To determine whether an information is deficient, the information and its supporting affidavit must be read together, and allegations against the defendant in one count may be incorporated by reference in another count. Chuuk v. Akapito, 19 FSM R. 13, 14 (Chk. S. Ct. Tr. 2013).

If, when reading the information and supporting affidavit together, it is apparent that there are sufficient facts to give notice to the defendant that he is being charged with allegedly running over a certain victim, such notice is enough to allow him to prepare his defense. Chuuk v. Akapito, 19 FSM R. 13, 14-15 (Chk. S. Ct. Tr. 2013).

Probable cause is present when there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. A court must regard the evidence from the vantage point of law enforcement officers acting on the scene but must make its own independent determination as to whether, considering all the facts at hand, a prudent and cautious law enforcement officer, guided by reasonable training and experience would consider it more likely than not that a violation has occurred. Chuuk v. Akapito, 19 FSM R. 13, 15 (Chk. S. Ct. Tr. 2013).

Probable cause existed when the affidavit of probable cause includes such facts that the court can find that the detective had sufficient information to believe that it was more likely than not a violation of the law had occurred involving the defendant. Chuuk v. Akapito, 19 FSM R. 13, 15 (Chk. S. Ct. Tr. 2013).

A criminal defendant is not in danger of being subjected to multiple punishments in the same prosecution until the defendant has been found guilty. A pretrial motion raising a double jeopardy claim of multiple punishments is premature because the defendant may be acquitted on one or all of the charges. Thus, multiple charges in an information is not a defect in the information and is not a claim that is required to be made before trial or it will be deemed waived. A defendant's multiple punishment double jeopardy claim is a claim that cannot be raised before trial but may be raised after guilty findings for more than one offense. Benjamin v. Kosrae, 19 FSM R. 201, 208 (App. 2013).

Under FSM Criminal Rule 7(d), the court has the authority to strike a surplusage from the information. FSM v. Kimura, 19 FSM R. 617, 619 (Pon. 2014).

A criminal information's primary purpose is to inform the defendant of the charges against him so that he may prepare his defense, and to advise the court of the facts alleged so that the court may determine whether those facts, if proven, may support a conviction. An information deficient in these respects may be dismissed without prejudice. FSM v. Ehsa, 20 FSM R. 106, 108 (Pon. 2015).

The test for a particular information's sufficiency is whether it is fair to the defendant to require him to defend on the basis of the charge as stated therein. Liberality is the guide in testing an information's sufficiency in charging all the essential elements of the offense, although this applies to matters of form and not of substance. FSM v. Ehsa, 20 FSM R. 106, 108-09 (Pon. 2015).

An information will not be thrown out because of minor, technical objections which do not prejudice the accused because the Criminal Procedure Rules do not countenance the practice of fine combing or nit picking a criminal information for verbal and technical omissions. Substantial compliance is sufficient. FSM v. Ehsa, 20 FSM R. 106, 109 (Pon. 2015).

To determine whether an information is deficient, the information and its supporting affidavit must be read together. FSM v. Ehsa, 20 FSM R. 106, 109 (Pon. 2015).

When the supporting affidavit refers to "Governor Ehsa"; when paragraph 1 of the information states that "the defendant, John Ehsa," is an FSM citizen and a Pohnpei resident; when paragraph 4 refers to the "defendant, the Governor of the State of Pohnpei" and paragraph 5 quotes the court order, whose alleged violation gave rise to this criminal case, as enjoining, among others, "John Ehsa, in his capacity as Governor," that leaves no doubt that the defendant named as John Ehsa in paragraph 1 of the Information is the John Ehsa who is the Governor of Pohnpei. FSM v. Ehsa, 20 FSM R. 106, 109 (Pon. 2015).

A criminal case is not a civil action where a person might appear in his official capacity, or his individual capacity, or both. In a criminal case, a person can only be prosecuted as an individual regardless of what capacity he was acting under while committing the acts that gave rise to the prosecution. FSM v. Ehsa, 20 FSM R. 106, 109 (Pon. 2015).

When the charges are pled in the disjunctive – or – so that the prosecution only has to prove one of several methods of committing the crimes charged; when the counts are very clear about the defendant's conduct for which the prosecution seeks to hold him criminally liable; and when the counts clearly state the act(s) that the defendant is accused of committing that allegedly give rise to criminal liability, the information is sufficient to permit the defendant to prepare his defense and it is fair to require him to defend on the basis of the charges as pled. FSM v. Ehsa, 20 FSM R. 106, 110 (Pon. 2015).

When an information's language is more specific than the language of the statute under which the offense is charged, the prosecution must establish those specific facts in addition to a violation of the statute. Lee v. Kosrae, 20 FSM R. 160, 165-66 (App. 2015).

The test for a particular information's sufficiency is whether it is fair to the defendant to require him to defend on the basis of the charge as stated therein. Liberality is the guide in testing an information's sufficiency in charging all of the offense's essential elements, although this applies to matters of form and not of substance. FSM v. Itimai, 20 FSM R. 232, 234 (Pon. 2015).

The court will take an information's factual allegations as true for jurisdictional purposes and determine whether those factual allegations do allege a crime over which the court can exercise jurisdiction. The government's allegations remain to be proven at trial. FSM v. Itimai, 20 FSM R. 232, 234 (Pon. 2015).

When an information charges, in different counts, contamination of both the FSM territorial waters and its Exclusive Economic Zone, the FSM must prove not only that the contamination occurred but also where it occurred since it is unlikely that the contamination took place when the vessel was at a location where trash thrown overboard could contaminate both the territorial sea and the EEZ. FSM v. Kimura, 20 FSM R.

297, 302 (Pon. 2016).

If a statute makes it an offense to do a certain act "contrary to law," it is not enough simply to cite the statute and to allege that the act was done contrary to law. The pleading must show what other law was violated, either by a citation or by a sufficient statement of facts. This is because an information must be sufficiently certain and unambiguous so as to permit the defendant to prepare its defense, and to inform the court of which of this particular defendant's alleged acts or omissions result in criminal liability. FSM v. Kimura, 20 FSM R. 297, 303 (Pon. 2016).

An information is sufficient if it contains a plain, definite, and concise statement of the essential facts constituting the offense charged so that the defendant can prepare his defense and so that the defendant can avail himself of his conviction or acquittal as a bar to subsequent prosecutions. FSM v. Kimura, 20 FSM R. 297, 303 (Pon. 2016).

A count will not be dismissed if it contains a sufficient statement of the facts that allegedly give rise to criminal liability so as to inform the defendants so that they can prepare their defense and so that they can avail themselves of a conviction or acquittal as a bar to subsequent prosecutions. FSM v. Kimura, 20 FSM R. 297, 303 (Pon. 2016).

When the FSM's failure to incorporate the fisheries management agreement provisions by reference in statute, or regulation, or in permits and access agreements leaves the law so vague and ill-defined that what are the acts prohibited cannot be understood by people of ordinary intelligence, and so it cannot serve as a basis for criminal prosecution, the court must grant the defendants' motion to dismiss those counts for the Information's failure to charge an offense. FSM v. Kimura, 20 FSM R. 297, 305 (Pon. 2016).

Any defendant in a criminal case has the right to be informed of the nature of the accusation against him. This constitutional protection is implemented through Criminal Rule 7(c)(1), which requires that the information be a plain, concise and definite written statement of the essential facts constituting the offense charged. FSM v. Shiro, 21 FSM R. 195, 199 (Chk. 2017).

An information is required to: 1) contain a plain, concise and definite written statement of the essential elements of the offense charged; 2) fairly inform the defendant of the charge against which he must defend; and 3) enable the defendant to plead an acquittal or conviction in bar of future prosecutions of the same offense. FSM v. Shiro, 21 FSM R. 195, 199 (Chk. 2017).

The information's fundamental purpose is to inform the defendant of the charge so that he may prepare his defense, and the test for sufficiency is whether it is fair to the defendant to require him to defend on the basis of the charge as stated in the particular information. FSM v. Shiro, 21 FSM R. 195, 199 (Chk. 2017).

An information should be sufficiently definite, certain, and unambiguous as to permit the accused to prepare his defense. Common sense will be a better guide than arbitrary and artificial rules, and the sufficiency of the information will be determined on the basis of practical, rather than technical, considerations. FSM v. Shiro, 21 FSM R. 195, 199 (Chk. 2017).

An information is sufficient if it contains a plain, definite, and concise statement of the essential facts constituting the offense charged so that the defendant can prepare his defense and so that the defendant can avail himself of his conviction or acquittal as a bar to subsequent prosecutions. The true test of an information's sufficiency is not whether it could have been made more definite and certain, but whether it contains the elements of the offenses intended to be charged. FSM v. Shiro, 21 FSM R. 195, 199 (Chk. 2017).

At common law, an allegation of the date of the crime was required, and a good pleading will still state that the crime was committed on a particular day, month, and year. However, the modern view is that a

defect in the allegation of the date is a defect in form only. Indeed, great generality in the date allegation is acceptable. FSM v. Shiro, 21 FSM R. 195, 201 (Chk. 2017).

When time is not an essential element in trafficking in children cases; when the pertinent statute does not require proof of an exact date; and when each count of the information alleges the offenses occurred in the latter months of 2015, including September and October, the criminal information alleges with sufficient specificity the time period the offenses were allegedly committed so as to satisfy the defendants' right to due process. FSM v. Shiro, 21 FSM R. 195, 202 (Chk. 2017).

Although it is desirable for the information to allege the place where the alleged crime was committed, it is sufficient to state that the crime took place within the court's jurisdiction. FSM v. Shiro, 21 FSM R. 195, 202 (Chk. 2017).

Since location is not an essential element in trafficking in children cases and since the pertinent statute does not require proof of an exact location, when each count alleges the general areas on Patta Island of Chuuk where the offenses were allegedly committed, the criminal information alleges with sufficient specificity the locations that the offenses were allegedly committed so as to satisfy the defendants' right to due process. FSM v. Shiro, 21 FSM R. 195, 202 (Chk. 2017).

Since the human trafficking statute does not define recruiting, transporting, harboring, transferring, or receiving, these words' plain meaning will be used to determine whether the actions alleged in each count of the criminal information are included within the statute. FSM v. Shiro, 21 FSM R. 195, 203 (Chk. 2017).

When, without getting into a lesson in semantics, the statutory words' plain meanings lead to the conclusion that the human trafficking statute intended to include the actions allegedly taken by the defendants to secure access to the minor victim because the various methods by which they gained access to her were a form of recruitment and in each allegation the minor was received by the respective defendant. FSM v. Shiro, 21 FSM R. 195, 203 (Chk. 2017).

There are two essential elements a criminal information charging conspiracy must contain to satisfy due process standards – 1) an agreement with one or more persons that they, or one or more of them, will commit a crime and 2) an overt act in furtherance of the conspiracy by a party to the conspiracy. FSM v. Shiro, 21 FSM R. 195, 204 (Chk. 2017).

A conspiracy count is sufficient if it alleges an agreement, identifies the object towards which the agreement is directed, and an overt act. It is not necessary that the information state the object of the agreement with the detail required of an information charging the substantive offense or that it allege with precision all the elements essential to the offense which is the conspiracy's object; allegations clearly identifying the offense the defendants conspired to commit are sufficient. FSM v. Shiro, 21 FSM R. 195, 204 (Chk. 2017).

For conspiracy, the agreement does not have to be explicit. A mere tacit understanding will suffice, and there need not be any written statement or even a speaking of words which expressly communicates the agreement. FSM v. Shiro, 21 FSM R. 195, 204 (Chk. 2017).

Merely because each defendant acted individually after the implicit agreement does not mean a conspiracy was not committed because any party to the conspiracy who then commits an overt act in furtherance of the conspiracy satisfies the statute's second essential element. FSM v. Shiro, 21 FSM R. 195, 205 (Chk. 2017).

Although the criminal information could have been drafted with greater care, the defendants are not misled to their prejudice based on the information's language charging them with conspiracy to commit trafficking in children when, from Counts I through VIII and the supporting affidavit, it should be clear that they are charged with conspiring to commit the offense of trafficking in children and when the conspiracy

count (IX) describes the substantive underlying offense with enough specificity to sufficiently apprise the defendants of the charges which they must be prepared to defend and when it is detailed enough so that they may plead this case as a bar to future prosecutions for the same crime alleged. FSM v. Shiro, 21 FSM R. 195, 205 (Chk. 2017).

An information's fundamental purpose is to inform the defendant of the charges so that the defendant may prepare a defense, and to advise the court of the facts alleged so that the court may determine whether those facts, if proven, may support a conviction. An information deficient in these respects may be dismissed without prejudice. FSM v. Mumma, 21 FSM R. 387, 397 (Kos. 2017).

An information is sufficient if it is a plain, concise, and definite written statement of the essential facts constituting the offense charged, and if it sufficiently apprises the defendant of the charges against which the defendant must be prepared to defend and is sufficiently detailed to enable the defendant to plead the case as a bar to future prosecutions for the same offense. It is generally sufficient that an information set forth the offense in the words of the statute itself when those two basic requirements are met. FSM v. Mumma, 21 FSM R. 387, 397-98 (Kos. 2017).

Each count in an information should stand on its own although facts alleged therein may be incorporated by reference, and, the information must state for each count the citation of the statute, rule, regulation, or other provision of law which the defendant is alleged to have violated. FSM v. Mumma, 21 FSM R. 387, 398 (Kos. 2017).

The information must charge all the essential elements of the offense, but such facts need not be stated in detail. To determine whether an information is deficient, the information and its supporting affidavit must be read together. FSM v. Mumma, 21 FSM R. 387, 398 (Kos. 2017).

Pleading whether the firearms in question were .22 caliber handguns or .22 caliber rifles is essential because importing the former is banned by the statute, while importing the latter is not. FSM v. Mumma, 21 FSM R. 387, 398 (Kos. 2017).

Rule 7(a) requires a criminal information to be a plain, concise, and definite written statement of the essential facts constituting the crime charged. FSM v. Chunn, 21 FSM R. 501, 504 (Pon. 2018).

To determine whether an information is deficient, the information and its supporting affidavit(s) must be read together. FSM v. Chunn, 21 FSM R. 501, 504 (Pon. 2018).

A motion for a bill of particulars will be denied when the facts as alleged in four different, detailed affidavits include dates, locations, and amounts of money exchanged, and in addition to the charges as set forth in the information, give the defendant sufficient knowledge of the charges against him so that there will be no prejudicial surprise to him. FSM v. Chunn, 21 FSM R. 501, 504 (Pon. 2018).

Under both the FSM and Chuuk Constitutions, an accused has the right to be informed of the nature and cause of the accusation. This right has been incorporated into the Chuuk Rules of Criminal Procedure and requires that a criminal information be a plain, concise and definite written statement of the essential facts constituting the offense charged, and state, for each count, the citation of the statute, rule, regulation, or other provision of law which the defendant is alleged to have violated. Chuuk v. Silluk, 21 FSM R. 649, 653 (Chk. S. Ct. Tr. 2018).

The standard for statutes to comply with a defendant's "right to be informed" is that a criminal statute must be sufficiently explicit to prescribe the offense with reasonable certainty and not be so vague that persons of common intelligence must necessarily guess at its meaning. The constitutional clauses speak of rights to be informed of the nature of the charges and to receive due process. This is not language calculated to require absolute precision or even the best possible statement of the charge or violation. Chuuk v. Silluk, 21 FSM R. 649, 653 (Chk. S. Ct. Tr. 2018).

Rule 7 requires that the information consist of a plain, concise, and definite written statement of the essential facts constituting the offense charged, and it must cite for each count the statute, rule, regulation, or other provision of law which the defendant is alleged to have violated. Chuuk v. Kincho, 22 FSM R. 411, 413 (Chk. S. Ct. Tr. 2019).

The State may only prosecute offenses by information, and, by implication, it may not prosecute an offense outside the information. Chuuk v. Kincho, 22 FSM R. 411, 413 (Chk. S. Ct. Tr. 2019).

If the information does not sufficiently inform the accused of the charges against him, he may file for a bill of particulars, although a bill of particulars in not necessarily a "right," and it is preconditioned on the State having listed actionable charges within the information against the accused. Chuuk v. Kincho, 22 FSM R. 411, 413 (Chk. S. Ct. Tr. 2019).

Common sense dictates that a charge for "liability for the crimes of another" must state which "crimes of the other" the State intends to charge the defendant with. Stated differently, "liability for the crimes of another" is a charge that is always dependent on an independent charge towards another person – it thus may not stand as an independent charge without reference to another's criminal misconduct, coupled with the law allegedly violated. Chuuk v. Kincho, 22 FSM R. 411, 413 (Chk. S. Ct. Tr. 2019).

Rule 7 prohibits the State from prosecuting someone for offense not listed in the information. As a dependent charge, "liability for the crimes of another" cannot be prosecuted alone unless an independent charge against another is explicitly referenced in the information. "Liability for the crimes of another" is thus not an actionable charge all by itself. Chuuk v. Kincho, 22 FSM R. 411, 414 (Chk. S. Ct. Tr. 2019).

As a matter of law, the State may not prosecute a defendant for charges not included in the information. Chuuk v. Kincho, 22 FSM R. 411, 414 (Chk. S. Ct. Tr. 2019).

Since Chuuk State Law No. 6-66 provides liability for the crime of another if the defendant intentionally aids, abets, advises, solicits, counsels, or conspires to commit an offense, or fails to follow a legal duty to prevent the offense's commission, or causes an innocent to engage in criminal conduct, when the affidavit of probable cause provides no facts to show that the accused did any of these things and, instead, it states that another's assault with a dangerous weapon crime occurred well before March 19, 2019, the accused's turning a boat around on March 19, 2019 could never qualify as aiding or abetting an act of alleged criminal activity completed well before that date and therefore fails to meet the standard of probable cause that a crime had been committed. Since the Chuuk Constitution requires a showing of probable cause for the State to file a case, and where there is none, the Chuuk Constitution requires the court to dismiss the case. Chuuk v. Kincho, 22 FSM R. 411, 414 (Chk. S. Ct. Tr. 2019).

The terms "criminal complaint" and "criminal information" are not interchangeable. "Criminal complaint" refers to a written statement of the essential facts constituting the offense charged that was made upon oath before a judicial officer or a clerk of court. A complaint's principal function is as a basis for an application for an arrest warrant, but no complaint is needed, if a more formal determination of probable cause is made first because if an information has been filed before the arrest, a warrant may be issued on this ground alone. A "criminal information" is a plain, concise and definite written statement of the essential facts constituting the offense charged, that must be signed by the government's attorney. FSM v. Teteeth, 22 FSM R. 438, 441 n.1 (Yap 2020).

The information is the charging document, and it need not be limited to the terms of the complaint. Thus, a criminal complaint could be signed by the arresting officer, with the accused later prosecuted by an information signed by a government attorney. FSM v. Teteeth, 22 FSM R. 438, 441 n.1 (Yap 2020).

The court has consistently held that when determining whether an information is deficient, the information and its supporting affidavit(s) must be read together. FSM v. Teteeth, 22 FSM R. 438, 442

(Yap 2020).

The test for a particular information's sufficiency is whether it is fair to the defendant to require him to defend on the basis of the charge as stated therein. Liberality is the guide in testing an information's sufficiency in charging all of the crime's essential elements, although this applies to matters of form and not of substance. FSM v. Teteeth, 22 FSM R. 438, 442 (Yap 2020).

An accused's contention that the information is defective because various factual allegations are missing in the information itself is a matter of form, not substance when the information's supporting affidavit includes sufficient factual allegations to fairly inform the accused of the essential elements of the charges against him so that he may fashion a defense and to also inform the court of the facts alleged so that it can determine whether those facts, if proven, would support a conviction. FSM v. Teteeth, 22 FSM R. 438, 442 (Yap 2020).

Since the court's rules require only that the information be signed by the attorney for the government, when the signer is unquestionably an attorney, is unquestionably employed by the government, and is acting on the government's behalf, he has apparent authority to sign a criminal information. If the signer's actions exceed what he was contracted to do or what any written or oral amendment to that contract authorized him to do, that is a matter for the contracting parties to resolve between themselves. FSM v. Teteeth, 22 FSM R. 438, 444 (Yap 2020).

– Information – Amendment

At the trial judge's discretion, the information may be amended to conform to the evidence if it appears fair to do so. Buekea v. FSM, 1 FSM R. 487, 494 (App. 1984).

The government will be permitted to file an amended information to dismiss those counts for which the statute of limitations has expired. FSM v. Edwin, 8 FSM R. 543, 545 (Pon. 1998).

A motion to dismiss an information because the named defendant is not a formally constituted entity is moot when the government's motion to amend the information to change the defendant's name to its proper name is granted. FSM v. Moses, 9 FSM R. 139, 142 (Pon. 1999).

The court may permit an information to be amended at any time before making its finding of guilty or not guilty if no additional or different offense is charged and if the defendant's substantial rights are not prejudiced. FSM v. Sam, 14 FSM R. 328, 332 (Chk. 2006).

If the government adds a completely new or different offense of which the defendant had no notice, Rule 7(e) would be violated. But since the original information contained the factual elements necessary to charge the defendants as aiding or abetting another, the defendants had notice of the offense and their substantial rights are not prejudiced. FSM v. Sam, 14 FSM R. 328, 332 (Chk. 2006).

Amending an information to include a crime that is not a lesser included offense of the original charge does not necessarily violate Rule 7(e). FSM v. Sam, 14 FSM R. 328, 332 (Chk. 2006).

The court may permit an information to be amended as any time before finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced. FSM v. Zhang Xiaohui, 14 FSM R. 602, 610 (Pon. 2007).

If the government were to file an amended criminal information which contained the signature of the Secretary of the Department of Transportation, Communication and Infrastructure, *i.e.*, signed by that official, and if the inclusion of this signature reflected the only difference between such an information and the previously-filed amended criminal information, then there would be no additional or different offense that is being charged, nor would any substantial rights of the defendant be prejudiced. FSM v. Zhang Xiaohui, 14 FSM R. 602, 610-11 (Pon. 2007).

The court may permit an information to be amended at any time before finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced. FSM v. Sam, 15 FSM R. 457, 460 (Chk. 2007).

The filing of an amended information does not require a second affidavit if the affidavit filed with the original information established probable cause as to the amended charge. FSM v. Sam, 15 FSM R. 457, 460-61 (Chk. 2007).

No additional or different offense was charged in an amended information and the defendants' substantial rights were not prejudiced when the defendants had, by reading the original information and the affidavit together, notice from the start of the factual allegations in the case. FSM v. Sam, 15 FSM R. 457, 461 (Chk. 2007).

To the extent that a count is amended to charge aiding and abetting the use of a firearm to commit assault and homicide may subject the defendants, if convicted, to heavier sentences, such an amendment is not barred because no additional or different offense has been charged and the defendants have been on notice from the start (because of the affidavit accompanying the original complaint) that the prosecution alleged that they were criminally liable for another's use of a firearm to commit assault and homicide. FSM v. Sam, 15 FSM R. 457, 461 (Chk. 2007).

Since the court may permit an information to be amended at any time before finding if no additional or different offense is charged and if the defendant's substantial rights are not prejudiced, when, before the trial court's finding, the information was amended to add violation of section 548 of the 1980 criminal code to violation of section 529 of the 2001 criminal code; when the two sections are identical in all but in two inconsequential ways (in 2001 violation of the statute is changed from being an "offense" to being a "crime" and the feminine pronoun "she" is added to indicate that a man or woman can violate the statute); and when the elements of violating the two statutes and their respective penalty provisions are identical, no additional or different offense was charged by adding Section 548 to the information. Engichy v. FSM, 15 FSM R. 546, 555 (App. 2008).

When, because the two statutes are substantively identical, the appellants were not prejudiced in any way; when the appellants conceded there was nothing different that they would have done to prepare a defense for Section 548 as opposed to Section 529 and when the trial court explicitly gave the opportunity for the appellants to counter any perceived prejudice, amendment of the information to include both sections was proper. Engichy v. FSM, 15 FSM R. 546, 555 (App. 2008).

Since the court may permit an information to be amended at any time before finding if no additional or different offense is charged and if the defendant's substantial rights are not prejudiced, the court will permit amendments that only clarify the application of the relevant statutes and that make no further factual allegations and do not charge any different or additional offense. FSM v. Suzuki, 17 FSM R. 70, 76 (Chk. 2010).

While Rule 7(e) bars amending an information to charge an additional offense, the prosecution may file a superseding information with additional charges. The Rule 7(e) bar does not apply to a superseding information. FSM v. Meitou, 18 FSM R. 121, 126 (Chk. 2011).

Amendments to the information are permitted when the original Information contained the factual elements necessary to charge the defendant thereby providing notice to the defendant of the offense and his substantial rights are not prejudiced by this amendment, but not if the government adds a completely new or different offense of which the defendant had no notice. FSM v. Talley, 22 FSM R. 56, 59 (Kos. 2018).

An amendment to the information is permitted when it seeks only to clarify the application of relevant

statutes, and no further factual allegations and no different or additional charges are made against the accused. FSM v. Talley, 22 FSM R. 56, 59 (Kos. 2018).

An amendment to the information will be allowed, and the defendant's substantial rights are not prejudiced, when no new, additional, or different offense is charged since the amendment seeks only to change the date from "May of 2014" to "Sometime between May of 2014 and July of 2014," and since the crime's essential elements were provided in the information and that remains unchanged. FSM v. Talley, 22 FSM R. 56, 59-60 (Kos. 2018).

Rule 7(e) does not affect a superseding information. While Rule 7(e) bars amending an information to charge an additional offense, the prosecution may file a superseding information with additional charges. An information is considered superseding when the subsequent information charges a different offense or alleges facts different from the original charges. FSM v. Teteeth, 22 FSM R. 438, 444 (Yap 2020).

– Information – Superseding

The pretrial dismissal of an information, or of counts in an information, does not, if the facts permit, bar the prosecution from filing a superseding information if the accused has not yet been put in jeopardy. FSM v. Esefan, 17 FSM R. 389, 398 n.6 (Chk. 2011).

While Rule 7(e) bars amending an information to charge an additional offense, the prosecution may file a superseding information with additional charges. The Rule 7(e) bar does not apply to a superseding information. FSM v. Meitou, 18 FSM R. 121, 126 (Chk. 2011).

An information is considered superseding when the subsequent information charges a different offense or alleges facts different from the original charges. FSM v. Meitou, 18 FSM R. 121, 126 (Chk. 2011).

Generally, the prosecution will file a superseding information when new facts or evidence have come to light and it seeks to prosecute new or additional charges stemming from the same course of conduct or when the prosecution seeks to correct defects in the charges already filed. FSM v. Meitou, 18 FSM R. 121, 126 (Chk. 2011).

It is proper to file a superseding information in response to a defense motion to dismiss the original instrument for insufficiency. FSM v. Meitou, 18 FSM R. 121, 126 n.2 (Chk. 2011).

A superseding information may not be filed once jeopardy has attached or once the defendant has pled guilty, but if neither of these events has occurred, the government may, if the circumstances warrant, file a superseding information. FSM v. Meitou, 18 FSM R. 121, 126 (Chk. 2011).

A superseding information is proper unless it and the dismissal of the original information were done for the purpose of harassment. FSM v. Meitou, 18 FSM R. 121, 126 (Chk. 2011).

The dismissal of a prosecution without prejudice is proper when the information has been superseded since it is in the public interest that the prosecution accurately charges the offenses that may have been committed. FSM v. Meitou, 18 FSM R. 121, 126-27 (Chk. 2011).

If, when a superseding information has been filed, more time to prepare a defense is needed, the proper remedy to cure that prejudice would be a continuance, not a dismissal. FSM v. Meitou, 18 FSM R. 121, 127 (Chk. 2011).

When a superseding information was filed along with the motion to dismiss, and the superseding information bears the current case's docket number and is not accompanied by its own affidavit(s) of probable cause, the court, based on these circumstances, must consider it to be a proposed superseding information. FSM v. Teteeth, 22 FSM R. 438, 443 n.3 (Yap 2020).

Rule 7(e) does not affect a superseding information. While Rule 7(e) bars amending an information to charge an additional offense, the prosecution may file a superseding information with additional charges. An information is considered superseding when the subsequent information charges a different offense or alleges facts different from the original charges. FSM v. Teteeth, 22 FSM R. 438, 444 (Yap 2020).

Generally, the prosecution will file a superseding information when new facts or evidence have come to light and it seeks to prosecute new or additional charges stemming from the same course of conduct or when the prosecution seeks to correct defects in the charges already filed. FSM v. Teteeth, 22 FSM R. 438, 444 (Yap 2020).

The reasons for which a court may, under Rule 48(a), exercise its discretion and grant the government leave to dismiss an information are: 1] a plea agreement; 2] the defendant's death; 3] the defendant's incompetency to stand trial; 4] when the government's security interests might be placed at risk by disclosures at trial; 5] when a defendant has cooperated with a prosecutorial investigation; and 6] when the information has been superseded. FSM v. Teteeth, 22 FSM R. 438, 444 (Yap 2020).

A dismissal properly taken under Rule 48(a) is without prejudice, and within the period of statute of limitations, a second information may be brought on the same charge. The result will be otherwise, and the dismissal will be with prejudice, if the government sought dismissal for an improper purpose, such as harassment of the defendant. Besides harassment, the court may also deny a motion to dismiss without prejudice if the motion is clearly contrary to manifest public interest. FSM v. Teteeth, 22 FSM R. 438, 445 (Yap 2020).

Prosecutorial harassment can occur when the prosecutor charges, dismisses, and recharges a defendant and moves to dismiss an information over the defendant's objection. But a request for a dismissal of the original information without prejudice once a superseding information has been filed is usually not in bad faith because it is in the public interest that the prosecution accurately charges the offenses that may have been committed. FSM v. Teteeth, 22 FSM R. 438, 445 (Yap 2020).

There are serious doubts that a defendant's not guilty plea would, by itself, ever be an adequate ground to deny a dismissal without prejudice after a superseding information has been filed. But a guilty plea would be a good reason because a guilty plea's waiver of trial means that jeopardy has attached. FSM v. Teteeth, 22 FSM R. 438, 445 n.5 (Yap 2020).

– Interrogation and Confession

Courts may look to the Journals of the Micronesian Constitutional Convention for assistance in determining the meaning of constitutional language that does not provide an unmistakable answer. The Journals provide no conclusion as to whether promises of leniency by the police should be regarded as having compelled a defendant to give statements and other evidence but shows that the article IV, section 7 protection against self-incrimination was based upon the fifth amendment to the United States Constitution. Therefore courts within the Federated States of Micronesia may look to United States decisions to assist in determining the meaning of article IV, section 7. FSM v. Jonathan, 2 FSM R. 189, 193-94 (Kos. 1986).

A confession which is the product of an essentially free and unconstrained choice by its maker may be used as evidence to establish the guilt of the defendant in court. FSM v. Jonathan, 2 FSM R. 189, 194 (Kos. 1986).

Although questioning of witnesses and suspects is a necessary tool for the effective enforcement of criminal law, courts have recognized that there is an unbroken line from physical brutality to more subtle police use of deception, intimidation and manipulation, and that vigilance is required. FSM v. Jonathan, 2 FSM R. 189, 195 (Kos. 1986).

In the area of police questioning and confessions, the protection against self-incrimination is the principal protection, designed to restrict or prevent use of devices to subvert the will of an accused. FSM v. Jonathan, 2 FSM R. 189, 195 (Kos. 1986).

Overall circumstances and not merely the existence or nonexistence of a promise determines whether a confession will be accepted as voluntary or rendered inadmissible as involuntary. FSM v. Jonathan, 2 FSM R. 189, 196 (Kos. 1986).

Voluntariness of a confession may not be resolved by reference to any single infallible touchstone, such as whether a promise was made, but instead must be determined by reference to the totality of surrounding circumstances. FSM v. Jonathan, 2 FSM R. 189, 197 (Kos. 1986).

Where a police officer promised to reduce charges if the defendant cooperated but there was no other showing of police intimidation or manipulation and the defendant had recognized that his guilt was apparent, the confession was not induced by the promises but instead was a voluntary response to the futility of carrying the deceit further. FSM v. Jonathan, 2 FSM R. 189, 198 (Kos. 1986).

Police may question persons who, while they are in police custody, fall under suspicion for another crime, without regard to the fact that other persons in a similar category would be released without questioning. FSM v. Jonathan, 2 FSM R. 189, 199 (Kos. 1986).

Protection offered by the Constitution of the Federated States of Micronesia against compulsory self-incrimination is traceable to the fifth amendment of the United States Constitution. FSM v. Edward, 3 FSM R. 224, 230 (Pon. 1987).

Voluntary admissions prompted by the accumulation of evidence against the defendant are a legitimate goal of police investigation. FSM v. Edward, 3 FSM R. 224, 232 (Pon. 1987).

Where admissions have been obtained in the course of questioning conducted in violation of 12 F.S.M.C. 218, statutory policy calls for a presumption that subsequent admissions were obtained as a result of the violation. FSM v. Edward, 3 FSM R. 224, 233 (Pon. 1987).

When a defendant has expressed a wish to meet with counsel before further questioning, questioning must cease at once. Any attempt by police officers to ignore or override the defendant's wish, or to dissuade him from exercising his right, violates 12 F.S.M.C. 218. FSM v. Edward, 3 FSM R. 224, 237 (Pon. 1987).

A statement of a defendant may be used as evidence against him only if the statement was made voluntarily. FSM v. Edward, 3 FSM R. 224, 238 (Pon. 1987).

In determining whether a defendant's statement to police is "voluntary," consistent with the due process requirements of the Constitution, courts should consider the totality of the surrounding circumstances. Courts review the actual circumstances surrounding confession and attempt to assess the psychological impact on the accused of those circumstances. FSM v. Edward, 3 FSM R. 224, 238 (Pon. 1987).

The court will not issue a writ of certiorari to review the trial court's suppression of defendant's confession in a case in which no assignments of error are furnished to the court, although such decision effectively terminates the case because the government cannot continue its prosecution without the confession, and although no appeal is available to the government. In re Edward, 3 FSM R. 285, 286-87 (App. 1987).

Where no motion to suppress a confession has been made before trial and no cause has been offered as to the failure to raise the objection, the trial court was justified in finding that the defendant had waived any objection to the admission of the confession. In re Juvenile, 4 FSM R. 161, 163 (App. 1989).

Where the trial record shows no waiver of a minor's rights against self-incrimination, where a remarkable discrepancy exists between police procedure for taking a statement and the written evidence offered at trial, where the only evidence supporting the conviction other than the confession is an accomplice's testimony, where the minor is 16 years of age and had been on detention some 2 weeks prior to his confession, and where the parents of the minor were absent at the time the confession was made, the trial court erred in admitting the defendant's confession. In re Juvenile, 4 FSM R. 161, 164 (App. 1989).

A defendant's statement will be suppressed when the defendant has not been advised of all the rights set forth in 12 F.S.M.C. 218 (1)-(5), even though he was advised of the right to remain silent and the right to counsel and he waived those rights. FSM v. Sangechik, 4 FSM R. 210, 211-12 (Chk. 1990).

For a defendant to waive his right to silence or to counsel he must do so knowingly and intelligently. There exists a presumption against such waivers. Moses v. FSM, 5 FSM R. 156, 159 (App. 1991).

Although implied waivers of a defendant's rights might be valid there is a presumption against a finding of a waiver of rights. Moses v. FSM, 5 FSM R. 156, 159-60 (App. 1991).

A form which advises a suspect of his right to lawyer, and of his right to remain silent but only asks if the suspect wants a lawyer now, is confusing and lacks a specific waiver as to the right to remain silent. Moses v. FSM, 5 FSM R. 156, 161 (App. 1991).

Although there is a danger of prejudice in cases where a co-defendant's inculpatory statement is admitted into evidence, because the court is hesitant to limit the broad discretion afforded the trial judge by Criminal Rule 14, and because many problems can be eliminated by redaction of the statement, the court will not adopt a *per se* rule of severance at this time. Hartman v. FSM, 5 FSM R. 224, 230 (App. 1991).

For a confession of a defendant to be admissible as evidence the defendant must not merely waive his right to counsel but must also specifically waive the independent right to remain silent. Hartman v. FSM, 5 FSM R. 224, 234-35 (App. 1991).

By responding voluntarily to questions asked without coercion, after he has been advised of his rights, a defendant waives his right to remain silent. FSM v. Hartman (I), 5 FSM R. 350, 352 (Pon. 1992).

If severance is denied, the defendants' out of court statements ought to be redacted to eliminate in each references to other codefendants. Failure to do so may result in reversal of convictions in the interests of justice. After redaction, no prejudice will occur if the statements then give no reference to any codefendant. Redaction can normally be accomplished by the parties. Thus the court will not view the statement until after redaction. Hartman v. FSM, 6 FSM R. 293, 301-02 & n.12 (App. 1993).

By statute, statements taken as a result of a violation of the defendant's statutory right to be brought before a judicial officer without unnecessary delay are inadmissible, even if voluntary. Chuuk v. Arnish, 6 FSM R. 611, 613 (Chk. S. Ct. Tr. 1994).

Even if the police advise a person of all his rights in strict compliance with the statute, the issue remains whether the incriminating statement was voluntarily made. Voluntariness of a statement made while in custody is determined not by consideration of a single fact alone but instead by reference to the totality of surrounding circumstances. One of the standards to be applied in assessing a claim of involuntariness is the length of detention of the arrested person. FSM v. George, 6 FSM R. 626, 629 (Kos. 1994).

Statements made by a person being questioned by police without being advised of all his rights violates 12 F.S.M.C. 218. A statement so obtained is rendered inadmissible by 12 F.S.M.C. 220. FSM v. George, 6 FSM R. 626, 629 (Kos. 1994).

When a person's ability to think or reason has been diminished due to lack of rest by being held in custody for over 12 hours, his submission to questioning is not an act of voluntariness or consent even though he was advised of some of his rights just before questioning. Any statements made then were the products of physical exhaustion and a sense of oppression, and as a result of violation of the accused's rights under 12 F.S.M.C. 218. Under 12 F.S.M.C. 220, the statement, or evidence derived therefrom, is thus inadmissible against the accused. FSM v. George, 6 FSM R. 626, 629 (Kos. 1994).

When a defendant who testified in a civil contempt proceeding was not in custody, the civil contempt proceedings were not conducted to gather evidence for use in a subsequent criminal action and because a court is not required to warn a defendant of his right to counsel before giving testimony in a civil contempt proceeding, the defendant's testimony and voluntarily submitted pleadings in a civil contempt proceeding are admissible in a later criminal contempt proceeding. FSM v. Cheida, 7 FSM R. 633, 640 & n.2 (Chk. 1996).

A defendant's constitutional right against self-incrimination is an important right, and, although an implied waiver of the right might be valid, there is a presumption against such waivers. FSM v. Fal, 8 FSM R. 151, 154 (Yap 1997).

No FSM case determines that a corporation is a person for purposes of the privilege against self-incrimination found in article IV, section 7 of the FSM Constitution. FSM v. Zhong Yuan Fishery Co., 9 FSM R. 351, 352 (Kos. 2000).

Should the privilege against compulsory self-incrimination attach, it would be for the defendants to assert, not the FSM. FSM v. Zhong Yuan Fishery Co., 9 FSM R. 351, 353 (Kos. 2000).

Where a person's freedom was substantially restricted by a police officer when he was placed into a police car and where that person was under the police officer's suspicion that he was involved in the crimes committed earlier that evening, he was considered arrested for the purpose of the right to be advised of his constitutional rights to remain silent and to have legal counsel. And when the police officers failed to advise him of his constitutional rights at the time he was placed in the police car and considered arrested, all his statements made to the police after his arrest and placement into the police car and before he was advised of his constitutional rights, are inadmissible against him. Kosrae v. Erwin, 11 FSM R. 192, 193-94 (Kos. S. Ct. Tr. 2002).

Statements made by an arrested person being questioned by police without having been advised of his constitutional rights violates the law and the Kosrae Constitution, and any such statement made by that person is inadmissible against him. Kosrae v. Erwin, 11 FSM R. 192, 194 (Kos. S. Ct. Tr. 2002).

A defendant's statement may be used as evidence against him only if the statement was made voluntarily. In deciding whether a statement was made voluntarily, the court will consider the totality of the circumstances. Kosrae v. Sigrah, 11 FSM R. 249, 255 (Kos. S. Ct. Tr. 2002).

The protection against self-incrimination requires the giving of the so-called "Miranda" warnings to the accused, prior to questioning of the accused. The "Miranda" warnings include statements made by the police officers to an accused regarding the accused's right to remain silent and right to legal counsel, free of charge. Kosrae v. Sigrah, 11 FSM R. 249, 255 (Kos. S. Ct. Tr. 2002).

Routine questioning by government agents as part of procedure does not require Miranda warnings. The purpose of this type of procedural questioning is not to compel the person being questioned to incriminate himself. The government agents cannot be held to foresee that criminal liability of the subject might be exposed during the questioning. Kosrae v. Sigrah, 11 FSM R. 249, 255 (Kos. S. Ct. Tr. 2002).

Routine traffic stops which occur on the open road in view of passersby, and which do not result in

custodial interrogation, do not require Miranda warnings. Kosrae v. Sigrah, 11 FSM R. 249, 255 (Kos. S. Ct. Tr. 2002).

The requirements that a person's driver's license be in the immediate possession of the operator, and that the operator display his license to a police officer upon demand do not violate the Kosrae Constitution. Kosrae v. Sigrah, 11 FSM R. 249, 257 (Kos. S. Ct. Tr. 2002).

Any statements or confessions made after arrest but before accused was provided his rights is subject to suppression of the statements or confession, but when there was no statement and no confession made by the defendant between the time of arrest and the time of his booking a short time later, there are no statements or confessions to suppress. Kosrae v. Tulensru, 14 FSM R. 115, 121 (Kos. S. Ct. Tr. 2006).

When the evidence was uncontroverted that the defendant signed a Chuukese language advice of rights form showing that he had been informed of each of his rights under 12 F.S.M.C. 218, that he understood those rights, and that he waived his rights to silence, to have an attorney or someone else present on his behalf, and to have someone called for him, the statement he gave at the time the advice of rights and waiver form was executed was knowingly and intelligently and therefore voluntarily given within 24 hours of his arrest. FSM v. Menisio, 14 FSM R. 316, 319 (Chk. 2006).

For a defendant to waive his right to silence or to counsel he must do so knowingly and intelligently. There exists a presumption against such waivers. FSM v. Menisio, 14 FSM R. 316, 319 (Chk. 2006).

For a defendant to voluntarily waive his right to silence or to counsel he must do so knowingly and intelligently. There exists a presumption against such waivers. The government has overcome that presumption when it has produced signed advice of rights forms showing waivers and the defendants do not controvert that evidence. FSM v. Sam, 14 FSM R. 328, 335 (Chk. 2006).

Our constitution provides a criminal defendant with the right to be confronted by his accusers, which means that a defendant may cross-examine the witness against him. Consequently, the court is forbidden to consider as evidence against a defendant any part of a non-testifying codefendant's statement which inculpates another defendant since a statement cannot be cross-examined. FSM v. Sam, 14 FSM R. 328, 335 (Chk. 2006).

A "weapons lineup" conducted without any advice of rights or waiver beforehand, will be suppressed to the extent that the "weapons lineup" constituted statements by the defendants. FSM v. Sam, 14 FSM R. 328, 335 (Chk. 2006).

If codefendants are tried together, a defendant's out-of-court statement ought to be redacted to eliminate references to other codefendants. Failure to do so may result in reversal of convictions in the interests of justice. After redaction, no prejudice will occur if the statements then give no reference to any codefendant. Redaction can normally be accomplished by the parties. Thus the court will not view the statement until after redaction. FSM v. Sam, 14 FSM R. 328, 335 (Chk. 2006).

Evidence obtained as a result of the defendant being detained for more than 24 hours without being charged or released or obtained when the defendant was not properly informed of his rights must be excluded. FSM v. Louis, 15 FSM R. 206, 210 (Pon. 2007).

When none of the evidence the defendant seeks to suppress was obtained as a result of his being detained for more than 24 hours without being charged or released since his interview by a state police officer took place approximately 7 hours after he was arrested and therefore before the expiration of the 24 hour period and since his interview with a national police officer took place two days after he was charged in the Pohnpei Supreme Court and while he was in state police custody pursuant to a Pohnpei Supreme Court order, the motion to suppress those statements will be denied. FSM v. Louis, 15 FSM R. 206, 210 (Pon. 2007).

A defendant's contention that the state and national police failed to properly inform him of his rights is without merit where he was properly informed in Pohnpeian of his rights, including the right to remain silent and the right to counsel, three times when a state officer read him his rights in Pohnpeian as the officer arrested him in the morning, when the state officer read him his rights in Pohnpeian before his interview that afternoon, and when a national officer read him his rights in English and explained each right in Pohnpeian before his later interview, and thus his motion to suppress will be denied. FSM v. Louis, 15 FSM R. 206, 210 (Pon. 2007).

When a defendant fails to address the particular circumstances of his warrantless arrest or the bearing on the probable cause showing, if any, of the witness testimony contained in the police report referred to in the affidavit supporting the criminal information, the court can discern no legal basis for dismissing the case and even assuming the defendant's arrest was illegal, he is not entitled to dismissal of the information. The remedy for an illegal arrest is suppression of any statements made by the defendant. Chuuk v. Sipenuk, 15 FSM R. 262, 265 & n.2 (Chk. S. Ct. Tr. 2007).

When a defendant did not make any statements to the police, there are no statements to suppress. Chuuk v. Sipenuk, 15 FSM R. 262, 265 (Chk. S. Ct. Tr. 2007).

Failure to inform an accused of his rights does not in and of itself entitle an accused to an acquittal, but no evidence obtained as a result of such violation shall be admissible against the accused. FSM v. Louis, 15 FSM R. 348, 352 (Pon. 2007).

When the police officers only viewed the accused as a potential witness in the matter of another person, not as a suspect; when the officers dropped him back off at the funeral where they originally met him instead of taking him to the police station and the officers never substantially restricted or controlled the accused's freedom of movement; when the accused agreed to take the officers to fetch the handgun at Palikir, and willingly went with them in the vehicle; and when there is simply no evidence that the officers threatened, demanded, or compelled the accused in any manner, the accused was not under arrest during the car ride to and from Palikir. Accordingly, the officers were not required to inform the accused of his rights under 12 F.S.M.C. 218. FSM v. Louis, 15 FSM R. 348, 353 (Pon. 2007).

When the court, based upon the witnesses' testimony, including their respective demeanor in the courtroom during the hearing, concludes that the accused was properly advised of his rights, including the right to remain silent, before he purportedly confessed to possessing a firearm and ammunition, the motion to suppress his confession will be denied. FSM v. Tosy, 15 FSM R. 463, 466 (Chk. 2008).

The government has the burden of proving that an accused's statement is voluntary and thus admissible. Thus, although it was the defendant's motion to suppress, the government, because it has the burden, presented its side first at the suppression hearing. FSM v. Sam, 15 FSM R. 491, 492-93 (Chk. 2008).

Where the court finds that an accused's statement was voluntarily made after he had been informed of, and understood his rights, and chose to waive those rights, that will not end the analysis if the accused has established a relationship between unlawful police activity and the evidence sought to be suppressed, because the burden is on the prosecution to show that the evidence is still admissible. FSM v. Sam, 15 FSM R. 491, 493 (Chk. 2008).

It is unlawful for the government to fail either to release or charge an arrested person with a criminal offense within a reasonable time, which must under no circumstances exceed 24 hours. Thus, evidence, such as an accused's statement, obtained as a result of the defendant being detained for more than 24 hours without being charged or released must be excluded. FSM v. Sam, 15 FSM R. 491, 493 (Chk. 2008).

When the defendant's advice of rights form waiving his rights was dated the day after his arrest and when the government presented no evidence as to the time of day on that the defendant made his

statement on the day following his arrest or as to whether the statement was made within 24 hours of his arrest, the statement will be suppressed because once the defendant has established the government's unlawful act, it is the government's burden to show that the challenged evidence was not the result of that unlawful act. FSM v. Sam, 15 FSM R. 491, 493 (Chk. 2008).

A defendant's suppressed statement may not be used against him at trial unless he chooses to testify on his own behalf, in which case, the statement may be used to impeach his credibility. FSM v. Sam, 15 FSM R. 491, 493 (Chk. 2008).

Evidence and statements lawfully obtained from a defendant before he had been illegally detained over 24 hours will be admissible, but the defendant is entitled to the suppression of any evidence or statements obtained from him after his first 24 hours of detention. FSM v. Sato, 16 FSM R. 26, 30 (Chk. 2008).

The remedy for a defendant's unlawful detention over 24 hours is not the dismissal of the information against him or the suppression of all evidence and statements obtained from him. His only remedy in a criminal prosecution (as opposed to a civil suit) is suppression of any evidence obtained as a result of the illegal detention. FSM v. Sato, 16 FSM R. 26, 30 (Chk. 2008).

By statute, 12 F.S.M.C. 218, statements taken (even if made voluntarily) and evidence obtained as a result of a violation of the defendant's statutory right to be brought before a judicial officer without unnecessary delay are inadmissible, but when none of the evidence the defendant seeks to suppress was obtained as a result of his being detained for more than 24 hours, the motion to suppress will be denied. FSM v. Sato, 16 FSM R. 26, 30 (Chk. 2008).

The government has the burden of proving that an accused's statement is voluntary and thus admissible. Thus, although it may be the defendant's motion to suppress, the government, because it has the burden, presents its side first at a suppression hearing. FSM v. Aiken, 16 FSM R. 178, 184 (Chk. 2008).

When the government did not present any evidence that the accused's statement(s) were voluntary, but instead, averred that it did not take any statement from him, if there were any statements by the accused in the prosecution's possession, they could be suppressed. FSM v. Aiken, 16 FSM R. 178, 184 (Chk. 2008).

A motion to suppress an accused's statement made while in police custody will be granted when the accused was unlawfully detained since he was held over 24 hours without being charged or brought before a judge and when the prosecution failed to prove that the custodial statement was given within 24 hours of his arrest. FSM v. Sippa, 16 FSM R. 247, 249 (Chk. 2009).

Although routine questioning by government agents does not require a rights warning to be given beforehand since the purpose of this type of procedural questioning is not to compel the person being questioned to incriminate himself, but when the questioning was not routine since the state police officer, who questioned the accused for 30 minutes outside of where he lived, did so because a complainant had named the accused as the person who had earlier possessed and discharged a firearm in her presence and when the accused was thus already a suspect and the officer's questioning was designed to elicit incriminating statements and to produce incriminating evidence while the accused's freedom of movement was substantially restricted or controlled by the officer exercising official authority, the officer should have informed the accused of his rights before the questioning went very far. FSM v. Sippa, 16 FSM R. 247, 249 (Chk. 2009).

When, after the accused had been questioned for some time without being informed of his rights, the accused went into his residence, retrieved a handgun and five shells, and came out and turned the gun and ammunition over to the officer, the firearm was not seized as the result of an illegal search because the

police officer did not conduct a search of the residence or even enter it, but since the accused's surrender of the handgun and ammunition was the result of the officer's questioning and the incriminating statements made when the accused was interrogated without having been informed of his rights, the handgun and ammunition are thus inadmissible as they are the fruit of the poisonous tree. FSM v. Sippa, 16 FSM R. 247, 249 (Chk. 2009).

The government has the burden of proving that an accused's statement is voluntary and thus admissible. Thus, although it was the defendant's motion to suppress, the government, because it has the burden, usually presents its side first at a suppression hearing. FSM v. Aliven, 16 FSM R. 520, 528 (Chk. 2009).

When an accused's statement is voluntarily made after he has been informed of, and understood his rights, and chosen to waive those rights, his statement is admissible unless the accused has established a relationship between unlawful police activity and the statement sought to be suppressed. The burden then remains on the prosecution to show that the evidence is still admissible. FSM v. Aliven, 16 FSM R. 520, 528 (Chk. 2009).

The remedy for a defendant's unlawful detention over 24 hours is not the suppression of evidence lawfully obtained before the 24 hours passed. FSM v. Aliven, 16 FSM R. 520, 528 (Chk. 2009).

Without any other evidence, a signed advice of rights and waiver with the same date and time as the accused's signed statement cannot meet the prosecution's burden to show the advice of rights was given, and a waiver received, before the accused began to answer questions or make a statement. The statement will therefore be suppressed. FSM v. Aliven, 16 FSM R. 520, 529 (Chk. 2009).

A motion to suppress an accused's statement will be granted when the government failed to meet its burden to show that the accused was advised of his rights, that he understood those rights, and that he waived them before he voluntarily made his statement. FSM v. Aliven, 16 FSM R. 520, 529 (Chk. 2009).

Even if voluntarily given, a statement that is dated the day after the accused's arrest, but with no time given, is insufficient to show that the statement was not the product of the government's unlawful act of holding the defendant longer than 24 hours after his arrest. FSM v. Aliven, 16 FSM R. 520, 529 (Chk. 2009).

While the better practice is to finish all the paperwork concerning the advice of rights and waiver before beginning questioning, it is not a requirement in order for an accused to have made a valid waiver of his rights. The greater certainty engendered by completing the advice of rights and waiver paperwork first does, however, make things easier on counsel and the courts. FSM v. Aliven, 16 FSM R. 520, 529 (Chk. 2009).

If codefendants are tried together, a defendant's admissible out-of-court statement ought to be redacted to eliminate references to other codefendants. FSM v. Aliven, 16 FSM R. 520, 530 (Chk. 2009).

When an accused's statement has been suppressed, it may not be used against him at trial unless he chooses to testify on his own behalf, in which case, the statement may be used to impeach his credibility. FSM v. Aliven, 16 FSM R. 520, 530 (Chk. 2009).

Since the government has the burden of proof to prove by a preponderance of the evidence that the defendants' statements were admissible; it presented its side first on the issue. Chuuk v. Suzuki, 16 FSM R. 625, 629 (Chk. S. Ct. Tr. 2009).

For the defendants' statements to be admissible, the government is required to prove three things: 1) that the defendants, once they were placed under arrest and before they made their statements, knowingly and intelligently waived their constitutional rights against self-incrimination, including their rights to counsel

and to remain silent; 2) that the statements were voluntarily made by the defendants; and 3) that the confessions were made within 24 hours of the defendants' arrests. Chuuk v. Suzuki, 16 FSM R. 625, 629 (Chk. S. Ct. Tr. 2009).

The government has overcome the presumption against waiver when it has produced signed advice of rights forms showing timely waivers and the defendants do not controvert that evidence. Witness testimony is also admissible on the issue of whether a waiver was knowingly and voluntarily given. Chuuk v. Suzuki, 16 FSM R. 625, 629 (Chk. S. Ct. Tr. 2009).

When the court, based upon the witnesses' testimony, including their respective demeanor in the courtroom during the hearing, concludes that the accused was properly advised of his rights, including the right to remain silent, before he confessed, the court will deny a motion to suppress a confession that is based on the ground that a waiver was not knowingly and intelligently given. Chuuk v. Suzuki, 16 FSM R. 625, 629 (Chk. S. Ct. Tr. 2009).

When the advice of rights form was written in English and contained accurate descriptions of each of the defendant's rights; when officers testified that the rights were explained in English and Chuukese; and when, although to avoid any confusion on the issue the form itself should be written in English and Chuukese, the defendants knew English, there is no issue with the defendants' understanding of the contents of the advice of rights form. Chuuk v. Suzuki, 16 FSM R. 625, 629-30 (Chk. S. Ct. Tr. 2009).

When an accused asked for counsel before he gave his statement, the government failed to overcome the presumption against the accused's waiver of his right to counsel and to remain silent. Chuuk v. Suzuki, 16 FSM R. 625, 630 (Chk. S. Ct. Tr. 2009).

Even if a defendant has been advised of and waived his rights, a subsequent statement may be used as evidence against him only if the statement was made voluntarily. To make the determination about whether a statement was voluntary, the court must examine the totality of the circumstances surrounding the confession and assess the psychological impact on the defendants of those circumstances. Chuuk v. Suzuki, 16 FSM R. 625, 630 (Chk. S. Ct. Tr. 2009).

When a defendant has expressed a wish to meet with counsel before further questioning, questioning must cease at once. Any attempt by police officers to ignore or override the defendant's wish, or to dissuade him from exercising his constitutional rights, is grounds for suppression of his subsequent statement. Chuuk v. Suzuki, 16 FSM R. 625, 630 (Chk. S. Ct. Tr. 2009).

The only circumstance in which the government may use a defendant's suppressed statement is if the defendant chooses to testify on his own behalf; in which case, the statement can be used to impeach his credibility. Chuuk v. Suzuki, 16 FSM R. 625, 630 (Chk. S. Ct. Tr. 2009).

An officer's hitting an arrestee during interrogation or during his detention immediately before interrogation is compelling evidence that any subsequent statement was not voluntary, but was the result of intimidation and coercion. Chuuk v. Suzuki, 16 FSM R. 625, 630 (Chk. S. Ct. Tr. 2009).

In the absence of clear, unbroken testimony regarding the period when the statements were prepared and signed by the defendants, the court is unable to determine if their statements were voluntarily made, or whether they may have been coerced during the time periods not covered by the testimony. Chuuk v. Suzuki, 16 FSM R. 625, 630 (Chk. S. Ct. Tr. 2009).

By statute, statements taken as a result of a violation of the defendant's statutory right to be brought before a judicial officer without unnecessary delay, that is, twenty-four hours from arrest, are inadmissible, even if voluntary and the defendant has waived his rights against self-incrimination. Chuuk v. Suzuki, 16 FSM R. 625, 631 (Chk. S. Ct. Tr. 2009).

Evidence and statements lawfully obtained from a defendant before he had been illegally detained over 24 hours will be admissible, but the defendant is entitled to the suppression of any evidence or statements obtained from him after his first 24 hours of detention. Chuuk v. Suzuki, 16 FSM R. 625, 631 (Chk. S. Ct. Tr. 2009).

When the court has determined that a defendant's statement was taken after his invocation of his right to counsel and that neither his nor another's statements were voluntarily given, the timeliness of their statements does not save them from suppression. Chuuk v. Suzuki, 16 FSM R. 625, 631 (Chk. S. Ct. Tr. 2009).

The court is forbidden to consider as evidence against a defendant any part of a non-testifying codefendant's statement which inculpates another defendant since a statement cannot be cross-examined. Chuuk v. Suzuki, 16 FSM R. 625, 631 (Chk. S. Ct. Tr. 2009).

If the government seeks to admit a defendant's out-of-court statement, it ought to be redacted to eliminate references to his co-defendants. Failure to do so may result in reversal of convictions in the interests of justice. The parties should make all attempts to stipulate to redacted statements without the court's assistance. The court, especially when taking into account its fact-finding function, need not and should not view the statements until after the redactions have been made. Chuuk v. Suzuki, 16 FSM R. 625, 631 (Chk. S. Ct. Tr. 2009).

Once an accused has established a relationship between unlawful police activity and the evidence sought to be suppressed, the burden is on the prosecution to show that the evidence is still admissible. FSM v. Suzuki, 17 FSM R. 70, 74 (Chk. 2010).

When an accused's advice of rights form was signed at 10:03 a.m., on the day after his arrest at about 10:00 a.m., the prosecution has failed to prove that the accused's statement was given within 24 hours of his arrest even though there was some testimony that the accused signed the form not only after he was informed of his rights but also after he subsequently gave a statement since this is neither the usual nor the better method of conducting a police interrogation. FSM v. Suzuki, 17 FSM R. 70, 74 (Chk. 2010).

Statements and evidence obtained from an accused during the first 24 hours after his arrest are not inadmissible merely because the accused ended up being detained for over 24 hours. FSM v. Suzuki, 17 FSM R. 70, 74 (Chk. 2010).

When the only evidence and testimony properly before the court and from which the court may draw inferences and find facts supports the conclusion that an accused's statement was voluntarily made not long after his arrest and well within the 24-hour timeframe, the preponderance of the evidence thus weighs in the prosecution's favor and the accused's motion to suppress his statement will be denied. FSM v. Suzuki, 17 FSM R. 70, 74-75 (Chk. 2010).

The use of a non-testifying defendant's statement as evidence against a codefendant would violate the codefendant's constitutional "right of confrontation" since the declarant would not be a trial witness subject to the codefendant's cross-examination. This difficulty can be eliminated if the parties redact any codefendant statements before trial. FSM v. Suzuki, 17 FSM R. 70, 75 & n.1 (Chk. 2010).

Arrestees are not prejudiced if they are notified of the offense(s) with which they are to be charged soon after they are taken into custody and before giving a statement. FSM v. Suzuki, 17 FSM R. 114, 118 (Chk. 2010).

When it is determined that the searches were conducted with the defendant's voluntary consent, the defendant's claims of a violation of his right not to incriminate himself pursuant to FSM Const. art. IV, § 7 also fail because a confession's voluntariness is determined by reference to the totality of surrounding circumstances. FSM v. Phillip, 17 FSM R. 413, 425 (Pon. 2011).

When, after arriving at the police station, a person was advised of his constitutional rights in a "Your Rights in the Constitution" form that he signed; when the officer went over his rights one by one; when the officer specifically asked the person whether he needed a lawyer at that time and he said no; when, by signing the form, he acknowledged that he had been advised of his rights and understood them; when, following his signing of the advice of rights form, the police officers began their interrogation; and when there was no use of threats by the police officers and he was not under duress at the time, the evidence shows that his statements were made knowingly and voluntarily and that his statements were not extracted through any form of compulsion. FSM v. Edward, 18 FSM R. 444, 449-50 (Pon. 2012).

When the government had not complied with 12 F.S.M.C. 218 by releasing or charging the defendant within 24 hours of his arrest, the statements made and evidence retrieved thereafter until he was released will be suppressed because evidence obtained as a result of a violation of 12 F.S.M.C. 218 is not admissible against an accused. FSM v. Edward, 18 FSM R. 444, 451 (Pon. 2012).

Although evidence and statements lawfully obtained from an accused before he has been detained over 24 hours will be admissible, the accused is entitled to the suppression of any evidence of statements obtained from him after the first 24 hours of his detention. FSM v. Edward, 18 FSM R. 444, 451 (Pon. 2012).

A defendant must be advised of a full "panoply" of due process rights in addition to the right to remain silent and the right to counsel. These may be summarized as the right not to be denied access to counsel, family members, or other interested persons; the right to send a message, or other communications; the right to stop all questioning until such persons are present; the right to remain silent; and the right to be brought before a judge or released within a reasonable time. FSM v. Ezra, 19 FSM R. 497, 509 & n.4 (Pon. 2014).

The statutory protections are reviewed under a two-part analysis: first, under a statutory review of whether the defendant knowingly and intelligently waived his rights before giving a statement to the police. Second, they are reviewed under a constitutional backdrop of whether the defendant voluntarily waived those rights. This second look is often cursory, or entirely unnecessary, in the ordinary case where no investigatory irregularities are implicated. This two-part analysis is ultimately the inquiry into whether a defendant, knowingly, intelligently, and voluntarily waived his or her rights. FSM v. Ezra, 19 FSM R. 497, 509 (Pon. 2014).

A motion to suppress an accused's statement will be granted when the government has failed to meet its burden to show that the accused was advised of his rights, that he understood those rights, and that he waived them before he voluntarily made his statement. FSM v. Ezra, 19 FSM R. 497, 509 (Pon. 2014).

The government has the burden of proving that an accused's statement is voluntary and thus admissible and must show this by a preponderance of the evidence. FSM v. Ezra, 19 FSM R. 497, 510 (Pon. 2014).

Waiver of a fundamental right may not be presumed in ambiguous circumstances. Thus, a signed advice of rights form without any other evidence cannot meet the prosecution's burden to show the advice of rights was given and a waiver received. FSM v. Ezra, 19 FSM R. 497, 510 (Pon. 2014).

While the better practice is to finish all the paperwork concerning the advice of rights and waiver before beginning questioning, it is not a requirement in order for an accused to have made a valid waiver of his rights. FSM v. Ezra, 19 FSM R. 497, 510 (Pon. 2014).

An accused's waiver may be inferred by his responding voluntarily to questions asked of him without coercion after he has been advised of his rights. FSM v. Ezra, 19 FSM R. 497, 510 (Pon. 2014).

Voluntariness of a confession may not be resolved by reference to any single infallible touchstone, but instead must be determined by reference to the totality of the surrounding circumstances. FSM v. Ezra, 19 FSM R. 497, 511 (Pon. 2014).

There are two sets of factors to consider in determining whether a suspect's will was overborne. The first set of factors are the particular vulnerabilities and characteristics of the defendant himself, such as the accused's age, education, intelligence and general sophistication. The second set of factors focuses on the coercive conduct and the manner of the interrogation such as the length, detention facility, presence of weapons, number of interrogators, access to food and water, threats, deception, promises, and the denial of access to family friends or attorneys as well failure to inform suspect of rights. Of course, the actual use of physical force clearly violates the voluntariness standard. Ultimately, this is an ad hoc test and no one aspect is determinative. FSM v. Ezra, 19 FSM R. 497, 511-12 (Pon. 2014).

The determination of whether there has been an intelligent waiver of right to counsel must depend, in each case, upon the particular facts and circumstances surrounding that case, including the accused's background, experience, and conduct. FSM v. Ezra, 19 FSM R. 497, 511 n.7 (Pon. 2014).

When the entire interview was conducted in Pohnpeian; when the enumerated form shows that the defendant and his guardian were advised of his rights and that at the end of each statement he was asked whether he understood the right, and that after each statement he indicated, in writing, "yes" in each blank provided; when at the conclusion of the reading of the advice of rights the officer asked the defendant if he understood his rights and he responded that he did; when the officer asked the guardian if she understood, and she nodded her head; when the defendant answered "no" to "Do you want to meet your attorney now?"; when the defendant and the guardian both then signed the form; and when the officer subsequently took the defendant's statement as recorded in the record of interview which both the defendant and his guardian also signed, it was sufficiently reliable evidence to indicate that the defendant knowingly and intelligently waived his rights. FSM v. Ezra, 19 FSM R. 497, 512-13 (Pon. 2014).

When the defendant voluntarily went to the police station for questioning and when the officer's explanation adequately informed the defendant as to the reason for the questioning, and the requirement under 12 F.S.M.C. 214 was met, at that time, regardless of whether or not an arrest was subsequently effected in a custodial environment. FSM v. Ezra, 19 FSM R. 497, 517 (Pon. 2014).

Even though there was no probable cause to charge a defendant with theft prior to his own incriminating statements, when the police had probable cause to suspect him of trespass based on the video surveillance and interviews of the other co-defendants, that alone was sufficient to ask him to come in for questioning or to arrest him without further questioning since it is not uncommon for an ongoing investigation to result in the emergence of additional crimes, or the reduction of crimes, as new facts and evidence come into light, including statements taken from the defendants themselves. FSM v. Ezra, 19 FSM R. 497, 517 (Pon. 2014).

Although there is a potential danger of prejudice in cases where a co-defendant's inculpatory statement is admitted into evidence, many problems can be eliminated by a redaction. Thus, the court has not adopted a per se rule of severance. FSM v. Ezra, 19 FSM R. 497, 518 (Pon. 2014).

The use of a defendant's inculpatory statements in evidence against a co-defendant, would violate the right of confrontation since the declarant is not a witness at the trial subject to cross examination. FSM v. Ezra, 19 FSM R. 497, 518 (Pon. 2014).

The question "Do you know why we are here?" did not constitute an interrogation of the suspect's involvement in the crime, but was rather an inquiry directed towards him about whether he knew why the police were at his residence (which is the question's literal and plain meaning) since he was not confined or arrested when asked the question and since the question could have solicited various responses, including a "No" or a silent reply. FSM v. Isaac, 21 FSM R. 370, 375 (Pon. 2017).

That an investigation has focused on a suspect does not trigger the need for warnings in a non-custodial setting, and that situation is not comparable to that of a suspect who is physically restrained and painfully aware that he literally cannot escape a persistent custodial interrogator. FSM v. Isaac, 21 FSM R. 370, 376 (Pon. 2017).

The questioning of witnesses and suspects is a necessary tool for the effective enforcement of criminal laws. Without such investigation, those who were innocent might be falsely accused, those who were guilty might wholly escape prosecution, and many crimes would go unsolved. FSM v. Mumma, 21 FSM R. 387, 402 (Kos. 2017).

That an investigation has focused on a suspect does not trigger the need for warnings in a non-custodial setting, and that situation is not comparable to that of a suspect who is physically restrained and painfully aware that he literally cannot escape a persistent custodial interrogator. FSM v. Mumma, 21 FSM R. 387, 402 (Kos. 2017).

The statutory and constitutional rights to be advised of one's rights are owing to "one arrested," and to "any person arrested," and "arrest" is the placing any person under any form of detention by legal authority. FSM v. Mumma, 21 FSM R. 387, 402 (Kos. 2017).

Government agents' routine questioning does not require a rights warning to be given beforehand since the purpose of this type of procedural questioning is not to compel the person being questioned to incriminate himself. FSM v. Mumma, 21 FSM R. 387, 403 (Kos. 2017).

When the defendant signed a form that, before the signature and date lines, stated in bold: "that the information provided in this statement is true and correct, and that this Statement is freely given and not made under threat, duress, or intimidation"; and when the defendant's freedom of movement was not substantially controlled by the officers exercising official authority when they questioned him; and when he was free to leave after the questioning and did leave, the defendant's statements to the police will not be suppressed. FSM v. Mumma, 21 FSM R. 387, 403 (Kos. 2017).

The court has consistently rejected the redaction-is-premature argument, and has repeatedly required the redaction before trial of any co-defendant's statement that the prosecution intends to use at trial. FSM v. Jappan, 22 FSM R. 81, 83 (Chk. 2018).

Redaction is not required for a co-defendant's statement when it is used to help establish probable cause since hearsay may be used to establish probable cause. FSM v. Jappan, 22 FSM R. 81, 83 n.1 (Chk. 2018).

If the defendants are tried together, a defendant's out-of-court statement ought to be redacted to eliminate references to other co-defendants. Failure to do so may result in reversal of convictions in the interests of justice. After redaction, no prejudice will occur if the statements then give no reference to any co-defendant. Redaction can normally be accomplished by the parties. Thus, the court will not view the statement until after redaction. FSM v. Jappan, 22 FSM R. 81, 84 (Chk. 2018).

When co-defendants are tried together, one defendant's admissible out-of-court statement must be redacted to eliminate references to any co-defendant. FSM v. Jappan, 22 FSM R. 81, 84 (Chk. 2018).

Since it will not be known until trial whether either co-defendant will testify, the prosecution should be prepared for the eventuality that neither will. The prosecution presents its case first. Whether any co-defendant will testify is rarely certain until the defense has called its last witness. It is therefore proper that the parties agree on the redaction before trial. FSM v. Jappan, 22 FSM R. 81, 84 (Chk. 2018).

If the prosecution is ready with a redacted version of any co-defendant statement that it intends to introduce as evidence at trial, the trial will not be delayed to wait for the redactions or by disputes over what

should be redacted. The prosecution may then use redacted version in its case-in-chief, and if a co-defendant does later testify, the prosecution, may then use that co-defendant's unredacted statement in its cross-examination even if it has already introduced the redacted version. FSM v. Jappan, 22 FSM R. 81, 84 (Chk. 2018).

– Joinder and Severance

It is appropriate to proceed separately in cases involving multiple juvenile defendants. FSM v. Albert, 1 FSM R. 14, 17 (Pon. 1981).

Although there is a danger of prejudice in cases where a co-defendant's inculpatory statement is admitted into evidence, because the court is hesitant to limit the broad discretion afforded the trial judge by Criminal Rule 14, and because many problems can be eliminated by redaction of the statement, the court will not adopt a *per se* rule of severance at this time. Hartman v. FSM, 5 FSM R. 224, 230 (App. 1991).

If severance is denied, the defendants' out of court statements ought to be redacted to eliminate in each references to other codefendants. Failure to do so may result in reversal of convictions in the interests of justice. After redaction, no prejudice will occur if the statements then give no reference to any codefendant. Redaction can normally be accomplished by the parties. Thus the court will not view the statement until after redaction. Hartman v. FSM, 6 FSM R. 293, 301-02 & n.12 (App. 1993).

Severance of joint criminal defendants is a matter of sound judicial discretion. A trial judge is afforded broad discretion under Rule 14 to grant relief from prejudicial joinder – to sever defendants or counts from trial. When co-defendants were prejudiced by their joinder in a case because an attorney disqualified from prosecuting them assisted in the trial preparation, the court will order the severance of the charges against them. FSM v. Kansou, 14 FSM R. 171, 176 (Chk. 2006).

Rule 14 comes into play only if the original joinder was proper. It then permits a severance—or an order to the government to elect—if this is needed to avoid prejudice. FSM v. Kansou, 14 FSM R. 171, 176 n.3 (Chk. 2006).

Two or more offenses may be charged in the same information in a separate count for each offense if the offenses charged are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan. FSM v. Zhang Xiaohui, 14 FSM R. 602, 614 (Pon. 2007).

Two or more defendants may be charged in the information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count. FSM v. Zhang Xiaohui, 14 FSM R. 602, 614 n.4 (Pon. 2007).

If it appears that a defendant or the government is prejudiced by a joinder of offenses or defendants in a single information, or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever relief justice requires. FSM v. Zhang Xiaohui, 14 FSM R. 602, 614 (Pon. 2007).

When there is only one defendant in the matter, the prejudice that could necessitate a severance of trial, does not exist. FSM v. Zhang Xiaohui, 14 FSM R. 602, 615 (Pon. 2007).

Absent a strong showing of prejudice, co-conspirators are customarily tried together. This is not only for reasons of judicial and prosecutorial economy and, in the FSM, public defender economy, but also to give the factfinder a fuller picture of the scheme, as well as to decrease the chance of inconsistent verdicts and allow witnesses to avoid the burden of having to testify at successive trials. FSM v. Kansou, 15 FSM R. 180, 186-87 (Chk. 2007).

Since, absent a strong showing of prejudice, co-conspirators are customarily tried together, when the movant has not made a strong showing and has not identified any defense he would raise but cannot because his case is joined with another, his motion to sever will be denied. FSM v. Kansou, 15 FSM R. 373, 380 (Chk. 2007).

There is no rule requiring severance whenever co-defendants have conflicting defenses. FSM v. Kansou, 15 FSM R. 373, 380 (Chk. 2007).

Properly-joined defendants should be severed under Criminal Rule 14 only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants. FSM v. Kansou, 15 FSM R. 373, 380 (Chk. 2007).

All past delays attributable to any co-defendant are also attributable any other co-defendant. Severance would not change this. All delay attributable to one co-defendant because it was attributable to another co-defendant before severance would still be attributable to the first co-defendant. A severed co-defendant would have a separate speedy trial "clock" only for the time after severance was ordered. So when trial on the merits due in the foreseeable future, severance and the start of a separate speedy trial "clock" for one co-defendant would not help him preserve his speedy trial right or prevail on an unnecessary delay defense. FSM v. Kansou, 15 FSM R. 373, 380 (Chk. 2007).

If a co-defendant were prepared to go to trial soon while his co-defendant was not ready for trial in the foreseeable future, then severance could be appropriate to preserve his speedy trial right and avoid unnecessary delay, but when that is not the case, the movant has not shown a serious risk of, or articulated, any specific instances of prejudice, and his motion to sever will be denied. FSM v. Kansou, 15 FSM R. 373, 380 (Chk. 2007).

With a joint trial, while not immediately imminent, the next step in the case and expected in the foreseeable future, severance would only increase delay for the movant since both he and his co-defendant could not be tried simultaneously, and most likely his trial would not start until some time after his co-defendant's had finished. FSM v. Kansou, 15 FSM R. 373, 380 n.5 (Chk. 2007).

The trial court used a co-defendant's pre-trial, out-of-court affidavit only against the declarant since the judge's discourses with the prosecutor stated that it was only being offered or used against the declarant and the trial court's made specific findings with regard to the affidavit that only concerned the declarant co-defendant and since the court's special findings delineated other pieces of evidence, independent of that affidavit, that supported the other defendants' participation in the conspiracy. Engichy v. FSM, 15 FSM R. 546, 556-57 (App. 2008).

The best practice for a trial court finding itself in the situation where a non-testifying defendant's out-of-court statement will be introduced into evidence in a joint or multi-defendant trial, is to make an early, clear and uniform record identifying those defendants against whom the out-of-court statement will and will not be used. A trial court is not generally prohibited from admitting the statement. Engichy v. FSM, 15 FSM R. 546, 557 (App. 2008).

Pretrial rulings on the admissibility of evidence may have had an impact on the decision made by the FSM to later move for severance and the prejudice to the FSM by the joint trial of the two co-defendants are sufficient cause for the court to grant a relief from the Rule 12(f) waiver for failure to make the severance request earlier. FSM v. Edward, 18 FSM R. 547, 549 (Pon. 2013).

While the two defendants' joint trial would promote efficiency and might remove the possibility of inconsistent verdicts, the possible prejudice to the FSM is substantial and outweighs these factors. Severance of the defendants' trials will have the effect of setting back the trial dates, but the delay should not be lengthy and when the trials should not be longer than several days each and it is always possible

that a plea would mean no trial at all, any delay or waiting by the objecting defendant is not anticipated to be unduly burdensome. FSM v. Edward, 18 FSM R. 547, 549-50 (Pon. 2013).

Severance of joint criminal defendants is a matter of sound judicial discretion. A trial judge is afforded broad discretion under FSM Criminal Rule 14 to grant relief from prejudicial joinder – to sever defendants from trial. FSM v. Edward, 18 FSM R. 547, 550 (Pon. 2013).

If it appears that a defendant or the government is prejudiced by a joinder of offenses or defendants in a single information, or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever relief justice requires. FSM v. Edward, 18 FSM R. 547, 550 (Pon. 2013).

Severance will be granted when the prejudice to the FSM by the joint trial of the two co-defendants is sufficient cause to grant a severance for the trials of the two defendants; when it outweighs the benefits of a single trial; and when no significant delay in the separate trials for both defendants is expected. FSM v. Edward, 18 FSM R. 547, 550 (Pon. 2013).

The court has the authority to order two or more informations to be tried together. However, if it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of the defendants or provide whatever other relief justice requires. FSM v. Ezra, 19 FSM R. 497, 518 (Pon. 2014).

Although there is a potential danger of prejudice in cases where a co-defendant's inculpatory statement is admitted into evidence, many problems can be eliminated by a redaction. Thus, the court has not adopted a per se rule of severance. FSM v. Ezra, 19 FSM R. 497, 518 (Pon. 2014).

– Jurisdiction

The National Criminal Code places in the FSM Supreme Court exclusive jurisdiction over allegations of violations of the Code. No exception to that jurisdiction is provided for juveniles, so charges of crimes leveled against juveniles are governed by the National Criminal Code. FSM v. Albert, 1 FSM R. 14, 15 (Pon. 1981).

Since the national government does not have major crimes jurisdiction over Title 11 Trust Territory Code assaults calling for imprisonment of no more than six months, the repealer clause of the National Criminal Code would not appear to repeal those sections. FSM v. Boaz (II), 1 FSM R. 28, 30 (Pon. 1987).

The language employed by Congress in 11 F.S.M.C. 901 leaves no doubt that Congress was carefully limiting this provision for conduct of cases in the name of the national government to cases involving violation of laws enacted by the Congress and violations of statutes within the jurisdiction of the national government. FSM v. Boaz (II), 1 FSM R. 28, 32 (Pon. 1981).

When the FSM Supreme Court has jurisdiction over a violation of the National Criminal Code, it cannot then take jurisdiction over a non-major crime, which arose out of the same transaction and formed part of the same plan, under a theory of ancillary jurisdiction. FSM v. Hartman, 1 FSM R. 43, 44-46 (Truk 1981).

The repealer clause of the National Criminal Code repealed those provisions of Title 11 of the Trust Territory Code above the monetary minimum of $1,000 set for major crimes. Where the value is below $1,000, section 2 does not apply because it is not within the national court jurisdiction. FSM v. Hartman, 1 FSM R. 43, 46 (Truk 1981).

Title 11 of the Trust Territory Code, before the effective date of the National Criminal Code, is not a national law because its criminal jurisdiction was not expressly delegated to the national government, nor is

the power it confers of indisputably national character; therefore, it is not within the FSM Supreme Court's jurisdiction. Truk v. Otokichy, 1 FSM R. 127, 130 (Truk 1982).

The delegation of judicial functions to the Federated States of Micronesia, pursuant to Secretarial Order 3039, section 2 does not by itself give the FSM Supreme Court jurisdiction over Title 11 Trust Territory Code crimes occurring before the National Criminal Code's effective date. Truk v. Otokichy, 1 FSM R. 127, 131 (Truk 1982).

Offenses before the National Criminal Code's effective date are outside the FSM Supreme Court's jurisdiction. Truk v. Otokichy, 1 FSM R. 133, 134 (Truk 1982).

The FSM Supreme Court has jurisdiction to try Title 11 Trust Territory Code cases if they arise under a national law. Title 11 of the Trust Territory Code is not a national law. It was not adopted by Congress as a national law and it did not become a national law by virtue of the transition article. Truk v. Hartman, 1 FSM R. 174, 178 (Truk 1982).

Exclusive national government jurisdiction over major crimes is not mandated by the Constitution; such jurisdiction would be exclusive in any event only if criminal jurisdiction was a power of indisputably national character. Truk v. Hartman, 1 FSM R. 174, 181 (Truk 1982).

The National Government has exclusive jurisdiction over crimes arising under national law. 11 F.S.M.C. 901. Truk v. Hartman, 1 FSM R. 174, 181 (Truk 1982).

Sections of Title 11 of the Trust Territory Code covering matters within the jurisdiction of Congress owe their continuing vitality to section 102 of the National Criminal Code. Thus, the criminal prosecutions thereunder are a national matter and fall within the FSM Supreme Court's constitutional jurisdiction. 11 F.S.M.C. 102. In re Otokichy, 1 FSM R. 183, 185 (App. 1982).

Upon inception of constitutional self-government by the people of the Federated States of Micronesia, criminal law provisions in Title 11 of the Trust Territory Code became the law of governments within the Federated States of Micronesia by virtue of the Constitution's transition provisions. In re Otokichy, 1 FSM R. 183, 187 (App. 1982).

The savings clause, 11 F.S.M.C. 102(2), unlike the other sections of the National Criminal Code, was intended to apply to offenses committed before the Code's effective date. It specifically authorizes prosecutions of Title 11 Trust Territory Code offenses occurring prior to the enactment of the National Criminal Code. Therefore, these prosecutions fall within the FSM Supreme Court's constitutional jurisdiction. In re Otokichy, 1 FSM R. 183, 189-90 (App. 1982).

Section 102(2), the savings clause of the National Criminal Code, authorizes prosecutions of Title 11 Trust Territory Code offenses occurring prior to the enactment of the National Criminal Code. Therefore, these prosecutions fall within the FSM Supreme Court's constitutional jurisdiction. 11 F.S.M.C. 102(2). In re Otokichy, 1 FSM R. 183, 190 (App. 1982).

Presumably, Congress inserted no specific jurisdictional provision in section 102 of the National Criminal Code because Congress recognized that the FSM Supreme Court would have jurisdiction over all cases arising under national law by virtue of article XI, section 6(b) of the Constitution. 11 F.S.M.C. 102. In re Otokichy, 1 FSM R. 183, 193 (App. 1982).

Article IV, section 6 of the FSM Constitution, as implemented by Rule 7(c) of the Rules of Criminal Procedure, requires that the government's reliance upon aggregation to bring an alleged crime within the jurisdictional boundaries of the court be plainly disclosed to the defendant in the information. Fred v. FSM, 3 FSM R. 141, 144 (App. 1987).

State courts are not prohibited by article XI, section 6(b) of the FSM Constitution from hearing and

determining cases where the defendants are from FSM states other than the prosecuting state. Jurisdiction over criminal matters between the national and state governments is determined by the severity of the crime; not diversity of citizenship. Pohnpei v. Hawk, 3 FSM R. 543, 554 (Pon. S. Ct. App. 1988).

The general rule of criminal procedure is that jurisdiction over a particular crime places in the trial division the necessary authority to find a defendant guilty of any offense necessarily included in the offense charged. Kosrae v. Tosie, 4 FSM R. 61, 63 (Kos. 1989).

In the course of the formation of the FSM, the allocation of responsibilities between states and nation was such that the impact of the national courts in criminal matters was to be in the area of major crimes and as the ultimate arbiter of human rights issues. Hawk v. Pohnpei, 4 FSM R. 85, 93 (App. 1989).

The diversity jurisdiction provisions of article XI, section 6(b) of the FSM Constitution do not apply to criminal proceedings. Hawk v. Pohnpei, 4 FSM R. 85, 94 (App. 1989).

Where the crimes charged are no longer those expressly delegated to Congress to define, or are not indisputedly of a national character the FSM Supreme Court has no subject matter jurisdiction. FSM v. Jano, 6 FSM R. 9, 11 (Pon. 1993).

Where a court has dismissed a criminal case for lack of jurisdiction over the crimes for which the defendant was charged, the dismissal does not act as a discharge so as to preclude extradition on the charge. "Discharge" requires both personal and subject matter jurisdiction. In re Extradition of Jano, 6 FSM R. 93, 107-08 (App. 1993).

A national crime is one that is committed in some place where the national government has jurisdiction, or that involves an instrumentality of the national government, or involves an activity that the national government has the power to regulate. This power to define national crimes was inherent in the national government and existed before the 1991 constitutional amendment made the power express. FSM v. Fal, 8 FSM R. 151, 154 (Yap 1997).

A first and fundamental principle of criminal jurisprudence is that in order for a state to impose criminal penalties on an individual, it must be shown that he or she committed some unlawful act or engaged in some prohibited course of conduct, together with a wrongful intent or mens rea. Nelson v. Kosrae, 8 FSM R. 397, 405 (App. 1998).

When an appeal has been filed in the case, the trial court, in the absence of any authority indicating otherwise, no longer retains jurisdiction over the matter. Chuuk v. William, 17 FSM R. 495, 496 (Chk. S. Ct. Tr. 2011).

The FSM Supreme Court has jurisdiction to convict and sentence a person who commits, or attempts to commit a crime, in whole or in part within the Federated States of Micronesia. FSM v. Tipingeni, 19 FSM R. 439, 444-45 (Chk. 2014).

Even though the crimes being aided and abetted took place on Guam, the FSM Supreme Court, under 11 F.S.M.C. 103(2)(a), has jurisdiction to convict and punish a defendant on the aiding and abetting charges when the aiding and abetting took place in Chuuk. FSM v. Tipingeni, 19 FSM R. 439, 445 (Chk. 2014).

– Juvenile

The National Criminal Code places in the FSM Supreme Court exclusive jurisdiction over allegations of violations of the Code. No exception to that jurisdiction is provided for juveniles, so charges of crimes leveled against juveniles are governed by the National Criminal Code. FSM v. Albert, 1 FSM R. 14, 15 (Pon. 1981).

To dismiss litigation against juvenile defendants for lack of jurisdiction would be contrary to the National

Criminal Code despite the fact that Code makes no reference to charges against juveniles or to the Juvenile Code. FSM v. Albert, 1 FSM R. 14, 15 (Pon. 1981).

The Juvenile Code section mandating that courts adopt flexible procedures in juvenile cases remains in effect; neither the National Criminal Code nor any other provision of law enacted by the Congress is at odds with it. 12 F.S.M.C. 1101. FSM v. Albert, 1 FSM R. 14, 17 (Pon. 1981).

It is appropriate to proceed separately in cases involving multiple juvenile defendants. FSM v. Albert, 1 FSM R. 14, 17 (Pon. 1981).

In the absence of any explanation in the legislative history or from the government to justify a different interpretation, the only apparent reason for the deletion of the words "alleged to be found delinquent" from the Model Penal Code definition of official detention is that Congress wished to exclude detained juveniles from the national prohibitions against escape. 11 F.S.M.C. 505(1). In re Cantero, 3 FSM R. 481, 484 (Pon. 1988).

Juveniles alleged or found to be delinquent children are not under "official detention" within the meaning of 11 F.S.M.C. 505(1). In re Cantero, 3 FSM R. 481, 484 (Pon. 1988).

The Kosrae Pre-Trial Diversion Program is available only to first time juvenile offenders charged with certain non-violent crimes. When one of the charges against the subject juvenile, assault and battery, is a violent crime as it involved physical force and injury to the victim, the program is not applicable. Kosrae v. Ned, 13 FSM R. 351, 352 (Kos. S. Ct. Tr. 2005).

A Kosrae Pre-Trial Diversion Agreement must contain payment of restitution and/or performance of community service, and in a case where restitution is not warranted, the component of community service must be included. Kosrae v. Ned, 13 FSM R. 351, 352 (Kos. S. Ct. Tr. 2005).

The imposition of community service on a juvenile offender would not violate the provisions or spirit of the United Nations Convention on the Rights of the Child since community service, could be considered as guidance, supervision, counseling, education and vocational training, which are all preferred alternatives to institutional care (detention), which is also explicitly permitted under the Convention. Kosrae v. Ned, 13 FSM R. 351, 354 (Kos. S. Ct. Tr. 2005).

The waiver of a pre-trial diversion agreement's limited applicability, is permitted, despite that one offense charged is a violent offense, assault and battery, when the benefits to the juvenile to be gained through her participation in the Pre-Trial Diversion Program, and dismissal of the petition upon its completion, merits the pre-trial diversion agreement's application. Kosrae v. Ned, 13 FSM R. 351, 354-55 (Kos. S. Ct. Tr. 2005).

Kosrae State Code, Section 6.4802 permits an offender over the age of sixteen to be treated as an adult, in all respects, if the court determines that his physical and mental maturity justify it. In the proceedings to determine whether an offender should be treated as an adult, the court may order the juvenile to be examined by a physician or a psychologist, to aid the court in determining the propriety of treating the juvenile as an adult accused. Kosrae v. Ned, 14 FSM R. 86, 88 (Kos. S. Ct. Tr. 2006).

The Kosrae Rules of Evidence apply to civil, criminal and contempt proceedings, but are not applicable to miscellaneous proceedings, such as preliminary examinations for criminal cases and bail proceedings. The rules do not reference their applicability or inapplicability to juvenile proceedings or to preliminary proceedings to determine whether to treat a minor defendant as an adult. Kosrae v. Ned, 14 FSM R. 86, 89 (Kos. S. Ct. Tr. 2006).

Neither state law nor the Kosrae Juvenile Rules require a witness to be qualified as an expert witness under the Evidence Rules in order to accept her testimony and report in a preliminary proceeding to

determine whether to treat the defendant as an adult. The court may accept the witness's qualifications based upon her training as a physician and her position as Clinical Director of the FSM National Health Substance Abuse and Mental Health Program. Kosrae v. Ned, 14 FSM R. 86, 90 (Kos. S. Ct. Tr. 2006).

The Kosrae Penal Code, Section 13.104(4)(a) excludes certain minors from criminal liability, but it also does not prohibit criminal proceedings against minors. Kosrae v. Ned, 14 FSM R. 86, 90 (Kos. S. Ct. Tr. 2006).

Criminal proceedings against minors must be brought under Chapter 48, unless the minor is 16 or 17 and the court determines that his mental and physical maturity justify treating the minor as an adult. A minor who is 16 or 17 may be held responsible for his criminal conduct either as a juvenile under Title 6, Chapter 48 or an adult under Title 13. Kosrae v. Ned, 14 FSM R. 86, 90 (Kos. S. Ct. Tr. 2006).

Although the initial filing of the case as a criminal matter, and not as a juvenile proceeding, was in error, when as soon as the court was informed that the defendant was minor, the Juvenile Rules were immediately applied to the proceedings and all proceedings were then closed to the public, and the court ensured that a parent of the defendant was present at all proceedings, there was no prejudice to the defendant and the defendant's motion to dismiss on that ground will be denied. Kosrae v. Ned, 14 FSM R. 86, 90 (Kos. S. Ct. Tr. 2006).

When a normal sixteen-year old young man's physical and mental maturity warrant treating him as an adult in a criminal proceeding, the state's motion to treat juvenile accused as an adult will be granted. Kosrae v. Ned, 14 FSM R. 86, 91 (Kos. S. Ct. Tr. 2006).

– Kidnapping

The victims were confined in a "place of isolation" within the meaning of 11 F.S.M.C. 921(1), defining the offense of kidnapping, where they were moved from place to place but all locations were in the same vicinity, their captors were in complete control, and they could expect no assistance from anybody. Teruo v. FSM, 2 FSM R. 167, 170-71 (App. 1986).

Confinement for four to six hours is a "substantial period" of confinement within the meaning of 11 F.S.M.C. 921(1), defining the offense of kidnapping, particularly where the victims were subjected to indignities and brutalities amounting to torture during that time. Teruo v. FSM, 2 FSM R. 167, 171 (App. 1986).

The criminal charge of kidnapping is defined as forcibly or fraudulently and deceitfully, and without authority, imprisoning, seizing, detaining, or inveigling away any person (other than his minor child), with intent to cause the person to be secreted against his will, or sent out of the State against his will, or sold or held as a slave or for ransom. Kosrae v. Jackson, 12 FSM R. 93, 98 (Kos. S. Ct. Tr. 2003).

The offense of kidnapping requires proof beyond a reasonable doubt of forcibly or fraudulently and deceitfully, and without authority, imprisoning, seizing, detaining, or inveigling away any person (other than his minor child), with intent to cause the person to be secreted against his will, or sent out of the state against his will, or sold or held as a slave or for ransom. Kosrae v. Kilafwakun, 12 FSM R. 590, 595 (Kos. S. Ct. Tr. 2004).

When there was undisputed evidence that the defendant had grabbed and held on to a six year old girl's arm and then forced her to walk across the street with him into the wooded area where he intended to secrete her against her will and the defendant is not the victim's parent, the state did prove beyond a reasonable doubt all elements of the offense of kidnapping. Kosrae v. Kilafwakun, 12 FSM R. 590, 595 (Kos. S. Ct. Tr. 2004).

– Major Crimes

A simple assault, one without a weapon or the intent to inflict serious bodily injury, is punishable only by six months' imprisonment. It is neither a major crime under the National Criminal Code, because it does not call for three years' imprisonment, nor a felony. FSM v. Boaz (I), 1 FSM R. 22, 24 n.* (Pon. 1981).

Because Congress defined a major crime under the National Criminal Code as one calling for imprisonment of three years or more and because assaults under Title 11 of the Trust Territory Code are punishable by only six months' imprisonment, it is clear that the assault provisions of the Trust Territory Code are left intact. FSM v. Boaz (II), 1 FSM R. 28, 30 (Pon. 1981).

Exclusive national government jurisdiction over major crimes is not mandated by the Constitution; such jurisdiction would be exclusive in any event only if criminal jurisdiction was a power of indisputably national character. Truk v. Hartman, 1 FSM R. 174, 181 (Truk 1982).

The National Criminal Code is an exercise of Congress's power to define and provide penalties for major crimes. In re Otokichy, 1 FSM R. 183, 187 (App. 1982).

The Weapons Control Act violations punishable by imprisonment of three or more years are national crimes. Joker v. FSM, 2 FSM R. 38, 41 (App. 1985).

In light of the Constitution's Transition Clause, action by the FSM Congress is not necessary in order to establish that violations of the Weapons Control Act are prohibited within the Federated States of Micronesia. The only question is whether those are state or national law prohibitions or both. If the definition of major crimes in the National Criminal Code bears upon the Weapons Control Act at all, it is only for that purpose of allocating between state and national law. Joker v. FSM, 2 FSM R. 38, 43 (App. 1985).

The Weapons Control Act seems well attuned to the recognition of shared national-state interest in maintaining an orderly society and the goal of cooperation in law enforcement as reflected in the Major Crimes Clause, article IX, section 2(p) of the Constitution as well as the Joint Law Enforcement Act, 12 F.S.M.C. 1201. Joker v. FSM, 2 FSM R. 38, 44 (App. 1985).

The Major Crimes Clause, with its admonition to Congress to have due regard for local custom and tradition, unmistakably reflects awareness of the framers that Congress would be empowered under this clause to regulate crimes that would require consideration of local custom and tradition. Tammow v. FSM, 2 FSM R. 53, 57 (App. 1985).

Departure from the form of the United States Constitution reveals an intention by the framers of the FSM Constitution to depart from the substance as well, so far as major crimes are concerned. Tammow v. FSM, 2 FSM R. 53, 58 (App. 1985).

Major crimes obviously were not viewed by the framers as simply a local or state problem. The Major Crimes Clause undoubtedly reflects their judgment that the very integrity of this new nation could be threatened if major crimes could be committed with impunity in any part of the nation, with the national government forced helplessly to stand aside. Tammow v. FSM, 2 FSM R. 53, 58 (App. 1985).

The framers of the Constitution stipulated that the line for determining whether a crime is major be drawn on the basis of severity or gravity of the crime rather than by reference to principles of federalism developed under the Constitution of the United States. Tammow v. FSM, 2 FSM R. 53, 58 (App. 1985).

The scope of state police powers under the FSM Constitution must be determined by reference to the powers of the national government under the Major Crimes Clause. It follows that legitimate exercise of the national government power to define major crimes cannot be viewed as an unconstitutional encroachment upon the states' police powers. Tammow v. FSM, 2 FSM R. 53, 59 (App. 1985).

The members of the Micronesian Constitutional Convention obviously did not believe the Major Crimes Clause was improperly at odds with their general view that governmental power should be less centralized under the FSM Constitution than it had been in Trust Territory days. Tammow v. FSM, 2 FSM R. 53, 59 (App. 1985).

The precise line to be drawn in defining major crimes is to be determined by Congress. The policy determined in the Constitutional Convention was that the major-minor crimes distinction be based on the severity of the crime; and that local custom be taken into account. Tammow v. FSM, 2 FSM R. 53, 60 (App. 1985).

The general rule of criminal procedure is that jurisdiction over a particular crime places in the trial division the necessary authority to find a defendant guilty of any offense necessarily included in the offense charged. Kosrae v. Tosie, 4 FSM R. 61, 63 (Kos. 1989).

Under the constitutional and statutory framework of the Federated States of Micronesia, the FSM Supreme Court trial division, when exercising jurisdiction over cases reasonably initiated as major crimes charges, may also exercise jurisdiction over lesser included offenses prohibited by state law. Kosrae v. Tosie, 4 FSM R. 61, 65 (Kos. 1989).

Rather than rely heavily on United States precedent for guidance in establishing principles of federalism in matters of criminal regulation, the FSM Supreme Court is under an affirmative obligation to develop approaches suited to permit implementation of the national major crime responsibilities identified by Congress. Kosrae v. Tosie, 4 FSM R. 61, 65 (Kos. 1989).

In the course of the formation of the FSM, the allocation of responsibilities between states and nation was such that the impact of the national courts in criminal matters was to be in the area of major crimes and as the ultimate arbiter of human rights issues. Hawk v. Pohnpei, 4 FSM R. 85, 93 (App. 1989).

The intent of the Constitutional Convention is that major crimes, as defined by Congress and committed prior to voter ratification, fall within the jurisdiction of the national government and may be prosecuted pursuant to the national law after the effective date of the amendment. In re Ress, 5 FSM R. 273, 276 (Chk. 1992).

The national court should not abstain from deciding a criminal case where the crime took place before the effective date of the 1991 amendment removing federal jurisdiction over major crimes because of the firmly expressed intention by the Constitutional Convention delegates as to the manner of transition from national jurisdiction to state jurisdiction. In re Ress, 5 FSM R. 273, 276 (Chk. 1992).

Where the crimes charged are no longer those expressly delegated to Congress to define, or are not indisputedly of a national character the FSM Supreme Court has no subject matter jurisdiction. FSM v. Jano, 6 FSM R. 9, 11 (Pon. 1993).

Ever since the ratification of the constitutional amendment removed from Congress the power to define "major crimes" and substituted for it the power to define "national crimes" the national government has had no general criminal jurisdiction. That jurisdiction now lies with the states. In re Extradition of Jano, 6 FSM R. 93, 102 (App. 1993).

Congress has the express power to define national crimes, and until the Constitution was amended in 1991, Congress also had the express power to define major crimes. FSM v. Fal, 8 FSM R. 151, 153 (Yap 1997).

Since the FSM Constitution was amended in 1991, the national courts no longer have jurisdiction over major crimes. FSM v. Anson, 11 FSM R. 69, 73 (Pon. 2002).

When the constitutional amendment to article IX, § 2(p) was ratified, it eliminated Congress's power to define major crimes and repealed by implication Title 11's major crimes provisions. FSM v. Anson, 11 FSM R. 69, 74 (Pon. 2002).

Major crimes jurisdiction was based upon defining a major crime by the severity of the penalty. Jano v. FSM, 12 FSM R. 569, 573 (App. 2004).

The 1991 constitutional amendment that changed the word "major" to the word "national" narrowed Congress's power by allowing it to define national crimes instead of major crimes and prescribe penalties, having due regard for local custom and tradition. Jano v. FSM, 12 FSM R. 569, 573 (App. 2004).

– Malicious Mischief

An essential element of the crime of malicious mischief is that the property injured or destroyed be the property of another. A good faith belief that one owns the property injured or destroyed typically constitutes a defense to the crime. Nelson v. Kosrae, 8 FSM R. 397, 402, 407 (App. 1998).

As a matter of law, then, if one has a good faith belief that he or she owns the property subject to the crime, he or she cannot be guilty of trespass, malicious mischief or petty larceny. Whether a defendant has a good faith belief in ownership is ordinarily a determination for the trier of fact. Nelson v. Kosrae, 8 FSM R. 397, 402-03 (App. 1998).

The burden was on the government to establish beyond a reasonable doubt that defendants' interference with the crops at issue was unlawful; if there was any doubt about defendants' claim of right, defendants should have been acquitted on the malicious mischief charge. Nelson v. Kosrae, 8 FSM R. 397, 406-07 (App. 1998).

If defendants, in good faith, believe they can assert ownership rights over plantings made on their own land, they cannot be guilty of malicious mischief with respect to those plantings. Nelson v. Kosrae, 8 FSM R. 397, 407 (App. 1998).

The penalties applicable to criminal mischief pertain to deterring the commission of the crime not for the primary purpose of raising revenue as with the tax code which has comprehensive civil and criminal penalties designed specifically for that purpose. FSM v. Edwin, 8 FSM R. 543, 549 (Pon. 1998).

The criminal offense of malicious mischief requires proof beyond a reasonable doubt of wilfully destroying, damaging or injuring property belonging to another. Kosrae v. Anton, 12 FSM R. 606, 609 (Kos. S. Ct. Tr. 2004).

When testimony regarding the prior, good, and undamaged condition of the window screen and door latch is undisputed and testimony regarding the torn and damaged condition of the window screen and door latch after finding the defendant in the home is also undisputed, that is circumstantial evidence of the defendant's actions to damage the window screen and door latch and the court may infer from the evidence regarding the condition of the window screen and door latch before and after the defendant's entry into the home, that the defendant committed the damage to the window screen and door latch. Accordingly, the state proved beyond a reasonable doubt that the defendant did wilfully damage or injure property belonging to another and is guilty of the offense of malicious mischief. Kosrae v. Anton, 12 FSM R. 606, 610 (Kos. S. Ct. Tr. 2004).

The offense of malicious mischief as willfully destroying, damaging, or injuring property belonging to another. Kosrae v. Langu, 13 FSM R. 269, 272 (Kos. S. Ct. Tr. 2005).

– Misconduct in Office

In order to find an accused guilty of misconduct in public office, the court must find that the prosecution proved beyond a reasonable doubt that the accused 1) was a public official, and 2) he did an illegal act under the color of office, or he willingly neglected to perform the duties of his office as provided by law. Chuuk v. Robert, 16 FSM R. 73, 76, 78-79 (Chk. S. Ct. Tr. 2008).

A legislator who seeks to use representation fund monies for a medical referral, which is an impermissible purpose under the Representation Fund Act; who seeks to use Speaker and staff travel fund monies for a medical referral, which is neither permissible nor authorized; who altered the account and amount of his travel authorization request and submitted it for approval when it was not an authorized or permissible travel authorization; and who received the travel funds without the intention of using them for the approved travel, is guilty of misconduct in office. Chuuk v. Robert, 16 FSM R. 73, 79-80 (Chk. S. Ct. Tr. 2008).

– Misdemeanors

The government has no affirmative obligation to provide the defendant with information concerning misdemeanor offenses committed by its potential witnesses. FSM v. Cheida, 7 FSM R. 633, 641 (Chk. 1996).

The court may accept the statement of the charge or charges in a citation or a copy thereof in place of an information in any misdemeanor tried. Chuuk v. Dereas, 8 FSM R. 599, 601 (Chk. S. Ct. Tr. 1998).

A felony is an offense punishable by more than one year in prison and a misdemeanor is an offense punishable by more than 30 days imprisonment and up to one year. FSM v. Wainit, 12 FSM R. 105, 109 n.2 (Chk. 2003).

Under previous law, a felony is an offense which may be punished by imprisonment for more than one year; a petty misdemeanor is an offense which may be punished by imprisonment for not more than 30 days; and every other offense is a misdemeanor. FSM v. Ching Feng 767, 12 FSM R. 498, 501 (Pon. 2004).

When, for the offenses charged, a defendant convicted of the crime cannot be subjected to any imprisonment, the offenses are classified as petty misdemeanors. FSM v. Ching Feng 767, 12 FSM R. 498, 501 (Pon. 2004).

Misdemeanors are offenses punishable by imprisonment for more than 30 days up to one year. Felonies are offenses punishable by more than one year in prison. FSM v. Wainit, 13 FSM R. 532, 536 n.1 (Chk. 2005).

Kosrae State Code §13.106(2)(b) imposes a requirement that prosecutions for misdemeanors begin with one year of when the alleged crime was committed. This statute recognizes that a misdemeanor prosecution commenced after one year generally infringes on a defendant's right to a speedy trial. Kosrae v. Langu, 15 FSM R. 601, 604 (Kos. S. Ct. Tr. 2008).

The Kosrae State Court standard for measuring delay when filing an information and proceeding to trial is that the court presumes that there has been no unnecessary delay if the information is filed within six months of the alleged criminal act, but if the information is filed more than six months after the alleged act, then the prosecution must show that the delay in filing was reasonable or necessary. Kosrae v. Langu, 15 FSM R. 601, 604 (Kos. S. Ct. Tr. 2008).

Ten months' delay is in excess of what the Kosrae State Court would normally accept as reasonable or necessary for beginning the prosecution of misdemeanors allegedly committed in the presence of officers. Kosrae v. Langu, 15 FSM R. 601, 604 (Kos. S. Ct. Tr. 2008).

Under Pohnpei state law, a felony is defined as a crime or offense that may be punishable by imprisonment for a period of more than one year, and every other crime is a misdemeanor. Alexander v. Pohnpei, 18 FSM R. 392, 398 (Pon. 2012).

Under Pohnpei state law, disorderly conduct is a misdemeanor since it carries a maximum of six months' imprisonment. Alexander v. Pohnpei, 18 FSM R. 392, 398 (Pon. 2012).

11 F.S.M.C. 1007 is a misdemeanor because anyone convicted of it cannot be imprisoned for more than one year and because a felony is any crime which is punishable by imprisonment for more than one year. FSM v. Buchun, 22 FSM R. 529, 536 n.7 (Yap 2020).

A misdemeanor is any crime which is not a felony. FSM v. Buchun, 22 FSM R. 529, 536 n.7 (Yap 2020).

Often a misdemeanor will be a lesser included offense of a felony. But that is not the case when the greater offense can be committed without committing the misdemeanor. FSM v. Buchun, 22 FSM R. 529, 537 (Yap 2020).

– Motions

A motion to reopen a hearing will be denied where the movant does not demonstrate that he has learned of or located any new information after the hearing was closed. FSM v. Tipen, 1 FSM R. 79, 94 (Pon. 1982).

A written motion and notice of the hearing thereof shall be served, with a memorandum of points and authorities, not later than 14 days before the time specified for the hearing unless a different period is fixed by order of the court, and the moving party's failure to file a memorandum of points and authorities shall be deemed a waiver by the moving party of the motion. FSM v. Moses, 9 FSM R. 139, 143 (Pon. 1999).

Any defense, objection, or request which is capable of determination without the trial of the general issue may be made before trial by motion. Motions may be written or oral at the judge's discretion. FSM v. Moses, 9 FSM R. 139, 143 (Pon. 1999).

Generally, a motion to disqualify a prosecutor must be made at the earliest possible time, and failure to do so may constitute a waiver of the objection. FSM v. Wainit, 12 FSM R. 360, 363 (Chk. 2004).

Motions raising defenses and objections based on defects in the information (other than it fails to state an offense or the court lacks jurisdiction) must be raised prior to trial. FSM v. Wainit, 12 FSM R. 360, 363 (Chk. 2004).

By rule, timely receipt by the court would be ten days from date of service of the papers being responded to, if served personally, and sixteen days if served by mail. FSM v. Wainit, 12 FSM R. 405, 408 (Chk. 2004).

A moving party's failure to file a memorandum of points and authorities in support of a motion is deemed the moving party's waiver of the motion. FSM v. Moses, 12 FSM R. 509, 511 n.1 (Chk. 2004).

Movants cannot raise the claims of third parties; they may only raise their own claims. FSM v. Kansou, 12 FSM R. 637, 642 (Chk. 2004).

A written motion must be served with a memorandum of points and authorities. The moving party's failure to file the memorandum of points and authorities is deemed the moving party's waiver of the motion. When a party has waived his motion, there was no motion pending before the court. FSM v. Fritz, 13 FSM R. 88, 90 (Chk. 2004).

Service is incomplete when a defendant's response to a government motion is served only on the government and not on the other defendants because all filings are to be served on all other parties, including other co-defendants. FSM v. Kansou, 13 FSM R. 167, 168 n.1 (Chk. 2005).

Failure to respond in writing to a written motion is deemed a consent to the granting of the motion, and oral argument will not be heard from that party. FSM v. Kansou, 13 FSM R. 167, 169 n.2 (Chk. 2005).

A "brief" is in effect a motion when it asks the court for relief. FSM v. Kansou, 13 FSM R. 392, 394 (Chk. 2005).

A motion to disqualify the Attorney General's Office is a preliminary motion, which ought to be brought fairly early in the proceedings. Its filing should not wait until the deadline for filing all other pretrial motions. FSM v. Wainit, 13 FSM R. 433, 438 (Chk. 2005).

When the court has assumed, for the purpose of deciding the motion, that the defendant's allegations are true, the defendant's request for an evidentiary hearing to establish those allegations to support his motion will be denied. FSM v. Wainit, 13 FSM R. 433, 439 n.1 (Chk. 2005).

Considering that appointments of Acting Secretaries are a matter of public record and that defense counsel's office has two investigators and other staff on the Public Defenders' payroll on Pohnpei, the accuracy of the government's representation ought to be readily verifiable by the defense. To put the Public Defenders' Office to the expense of flying defense counsel to Chuuk from Yap and of flying witnesses from Pohnpei to Chuuk, to put the court to the expense of flying the judge to Chuuk from Yap, and to put the government to the expense of flying a prosecutor to Chuuk to hold an evidentiary hearing merely to establish when someone was Acting Secretary would be a waste of scarce resources and the defendant's request for an evidentiary hearing to establish those dates will therefore be denied. FSM v. Wainit, 13 FSM R. 433, 441 n.3 (Chk. 2005).

The FSM's motion in limine asking for an order barring all defendants from raising the certain defenses at trial will be granted when it was filed as a result of a defendant's response to its discovery request; when it was considered together with that defendant's motion asserting those same defenses; and when all defendants were served the motion but only one filed a response. FSM v. Kansou, 14 FSM R. 128, 131 (Chk. 2006).

On a motion to reconsider, the court will not consider the later affidavits of the three who were present at the hearing when they present no information located after the hearing was closed and there was no valid reason given why the government was unable to present the evidence at the hearing; but a fourth person's affidavit will be considered because he was unavailable before and during the hearing. FSM v. Kansou, 14 FSM R. 273, 277 (Chk. 2006).

An accused must raise the selective-prosecution claim at the pretrial motion stage. Defects in the institution of a prosecution, which is what a selective (or vindictive) prosecution would be, must be raised by motion before trial. FSM v. Fritz, 14 FSM R. 548, 552 (Chk. 2007).

When the defendants' motions to dismiss based on selective or vindictive prosecution have been denied for failure to establish a prima facie case, the government's motion in limine that the defendants be precluded from introducing at trial any testimony on or evidence of, or asserting, the defense of selective or discriminatory prosecution and of vindictive prosecution must be granted. FSM v. Fritz, 14 FSM R. 548, 555 (Chk. 2007).

A party opposing a motion has ten days after service of the motion to file and serve responsive papers and six days are added to this period when service is done by mail. The court may at its discretion enlarge the time for filing for cause shown, if a request for an enlargement of time is made prior to the expiration of

the time period in which the responsive pleading itself is to be filed and if a request for enlargement of time is made after the expiration of the original time period in which the responsive pleading is itself due, then the enlargement of time may only be granted upon a showing of excusable neglect. Where no reason is given for late filing and an enlargement of time is never sought, responsive papers may be stricken from the record as untimely. FSM v. Zhang Xiaohui, 14 FSM R. 602, 608-09, 612 (Pon. 2007).

The moving and non-moving parties must conform to the same standard with respect to the content of a memorandum of points and authorities and must set forth the law upon which the party relies and his theory as to the application of that law to the facts of the case. No bright-line test is appropriate for determining what is a sufficient memorandum of points and authorities and a court necessarily assesses a memorandum's sufficiency on the facts and law of a given motion. Chuuk v. Sipenuk, 15 FSM R. 262, 264 n.1 (Chk. S. Ct. Tr. 2007).

The fugitive disentitlement doctrine is not limited only to appellate review of a criminal conviction or of a related civil forfeiture. It may also apply in trial court proceedings, such as pretrial motions made by fugitives in the trial courts. FSM v. Jacob, 15 FSM R. 439, 442 (Chk. 2007).

A fugitive, in bringing motions, is trying to obtain favorable rulings from the court without risking any burden that may flow from an adverse ruling. If the rulings are unfavorable to him, he will remain a fugitive. Then, if the government wishes to pursue prosecuting him, it must go to the effort and expense of extraditing him assuming he has not fled to a jurisdiction with which the FSM does not have an extradition agreement. That bestows a benefit on the fugitive and violates the principle of mutuality and reaching the merits of a fugitive's pretrial motions may encourage others in the same position to take flight from justice. Thus his motions will be denied without prejudice. FSM v. Jacob, 15 FSM R. 439, 443 (Chk. 2007).

A fugitive's pending motions will all be denied without prejudice. Once he has submitted to the court's jurisdiction by returning, he may reurge any motion not previously denied on the merits. The fugitive will be afforded due process and his right to a fair trial once he has returned. FSM v. Jacob, 15 FSM R. 439, 443 (Chk. 2007).

The government has the burden of proving that an accused's statement is voluntary and thus admissible. Thus, although it was the defendant's motion to suppress, the government, because it has the burden, presented its side first at the suppression hearing. FSM v. Sam, 15 FSM R. 491, 492-93 (Chk. 2008).

Criminal Procedure Rule 12(a) abolished motions to quash an information, but any relief possible under the common law motions and pleas abolished by Rule 12(a) may be sought by motion under Criminal Rule 12(b). Thus, if a motion to quash information is filed, it will be considered a Rule 12(b) motion to dismiss the information. FSM v. Sato, 16 FSM R. 26, 28 (Chk. 2008).

Written motions must be supported by a memorandum of points and authorities and the moving party's failure to file the memorandum of points and authorities is deemed a waiver by the moving party of the motion. FSM v. Aiken, 16 FSM R. 178, 181 (Chk. 2008).

The government has the burden of proving that an accused's statement is voluntary and thus admissible. Thus, although it may be the defendant's motion to suppress, the government, because it has the burden, presents its side first at a suppression hearing. FSM v. Aiken, 16 FSM R. 178, 184 (Chk. 2008).

A motion to suppress the evidence against an accused on the ground that the evidence was obtained as the result of "an arrest that was not in compliance with the law" is not sufficiently particular since it does not indicate the reason(s) why the accused asserts that the arrest was illegal. A suppression movant must articulate in his motion with sufficient particularity the specific reason on which he bases his claim that the seizure was illegal, and a written motion to suppress evidence must specify with particularity the grounds

upon which the motion is based. FSM v. Aiken, 16 FSM R. 178, 184 (Chk. 2008).

The FSM rules have long required that written motions to suppress evidence be filed and decided before trial. FSM v. Aiken, 16 FSM R. 178, 184 (Chk. 2008).

A motion to suppress is, in effect, a pleading to the extent that it frames the issues to be determined in a pretrial hearing on the motion. The fundamental role of a pleading is to give an opposing party notice of the pleader's position concerning the facts and law so that the opposing party can begin to prepare his defense. A pleading thus both defines and limits the areas of consideration at a trial or other evidentiary hearing. Furthermore, the pleading assists the court in the conduct of the hearing. For example, by enabling the court to determine the relevance of the offered evidence. FSM v. Aiken, 16 FSM R. 178, 184 (Chk. 2008).

At least as much specificity should be required in a pretrial objection to the admissibility of evidence, i.e., a motion to suppress, as is required in an oral objection made during the course of a trial. In fact, even more specificity could reasonably be required because the pretrial objection can be researched and written under relatively calm circumstances, as distinguished from an extemporaneous objection made in the heat of trial. Broadly worded and vague objections are inappropriate in either context. FSM v. Aiken, 16 FSM R. 178, 185 (Chk. 2008).

Since a general objection such as "illegal arrest" or "illegal search" made before trial will ordinarily present no basis for reversing a trial court's ruling, a "shot-gun" motion that contains only conclusory language such as "illegal arrest" and that fails to specify with any particularity why his arrest was illegal could be denied without hearing on that ground alone. FSM v. Aiken, 16 FSM R. 178, 185 (Chk. 2008).

An oral motion to dismiss the case because the prosecution, by not putting on any witnesses or evidence, failed to establish a prima facie case against the accused at the hearing will be denied when the hearing was not a preliminary examination or an initial appearance, or some other proceeding at which the government is required to make a prima facie showing of the case against the defendant but was a pretrial hearing on the defendant's Rule 12(b)(2) and (3) motions – motions alleging defects in the information and to suppress evidence. FSM v. Aiken, 16 FSM R. 178, 185 (Chk. 2008).

Since, under Kosrae Criminal Rule 12, any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion, this rule encompasses a motion raising a statute of limitations defense. Kosrae v. George, 16 FSM R. 228a, 228d (Kos. S. Ct. Tr. 2008).

A motion to suppress is both belated and premature when it is belated because it was filed after the deadline for filing pre-trial motions and when it is premature because there is no indication from the court record or from the motion that the government intends to produce at trial the evidence that the defendant seeks to suppress. Without any indication that the government intends to produce that evidence at trial, the court is unable to discern what, if any, evidence may be subject to suppression. Chuuk v. Karen, 16 FSM R. 250, 252 (Chk. S. Ct. Tr. 2009).

The authority for filing a motion to suppress is provided for by Criminal Rule 12(b)(3), which requires that a motion to suppress must be raised prior to trial. Chuuk v. Karen, 16 FSM R. 250, 252 (Chk. S. Ct. Tr. 2009).

When there is no indication that the government intends to produce at trial the evidence sought to be suppressed, and until the government specifies that it intends to produce that evidence at trial, a motion to suppress that evidence is premature. The procedures set forth in Rules 12 and 16 need, as appropriate, to be followed before the court can reasonably address such issues. Chuuk v. Karen, 16 FSM R. 250, 252 (Chk. S. Ct. Tr. 2009).

A "shot-gun" motion that contains only conclusory language and that fails to specify the grounds with

any particularity can be denied without hearing on that ground alone. FSM v. Aliven, 16 FSM R. 520, 526 (Chk. 2009).

Since the government has the burden of proof to prove by a preponderance of the evidence that the defendants' statements were admissible; it presented its side first on the issue. Chuuk v. Suzuki, 16 FSM R. 625, 629 (Chk. S. Ct. Tr. 2009).

A motion made before trial must be determined before trial unless the court, for good cause, orders that it be deferred for determination at the trial of the general issue or until after finding, but no such determination can be deferred if a party's right to appeal is adversely affected. When factual issues are involved in determining a motion, the court must state its essential findings on the record; otherwise, the court is required to exercise sound judicial discretion in considering a request for dismissal that requires that the court have factual information supporting the request. Chuuk v. Inek, 17 FSM R. 137, 145 (Chk. S. Ct. Tr. 2010).

FSM Criminal Rule 12(a) abolishes motions to quash an information. However, since under FSM law any relief possible under the common law motions and pleas abolished by Rule 12(a) may be sought by pretrial motion under FSM Criminal Rule 12(b), the court will consider a defendant's motion to quash the information as a Rule 12(b) motion to dismiss the information. FSM v. Phillip, 17 FSM R. 413, 425 (Pon. 2011).

When the government has filed no response to a defendant's motion, it will not be permitted to present argument on the motion. FSM v. Phillip, 17 FSM R. 413, 425-26 (Pon. 2011).

A motion requesting a chamber conference is defective when it specifies neither a legal ground nor the relief or order sought, as required under Chuuk Criminal Rule 47. The court does not entertain motions for the purposes of "discussing concerns." Chuuk v. William, 17 FSM R. 495, 496 (Chk. S. Ct. Tr. 2011).

The time to raise issues regarding probable cause is immediately after arrest, preferably at the initial appearance, arraignment, or, upon motion, at a probable cause hearing. It is not approximately one month before trial is scheduled to begin. Chuuk v. Hauk, 17 FSM R. 508, 514 (Chk. S. Ct. Tr. 2011).

Pretrial motions are governed by Criminal Procedure Rule 12. Under that rule, any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion, and certain motions must be raised before trial or they are deemed waived. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

A pretrial motion is generally capable of determination before trial if it involves questions of law rather than fact. A defense is thus capable of determination if trial of the facts surrounding the commission of the alleged offense would be of no assistance in determining the validity of the defense. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

As a general matter, the question of whether or not a particular defense may be raised by means of a Rule 12(b) motion turns on whether or not that defense may be decided solely on issues of law. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

Under Rule 12(e), the court must decide a pretrial motion before trial unless the court, for good cause, orders that it be deferred for determination at the trial of the general issue. Good cause for deferral exists only if facts at trial will be relevant to the court's decision. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

The trial court must rule on any issue entirely segregable from the evidence to be presented at trial, but may in its discretion defer a ruling on any motion that requires trial of any nontrivial part of the general issue – that is, presentation of any significant quantity of evidence relevant to the question of guilt or innocence –

on the ground that it requires trial of the general issue for purposes of Rule 12(b). FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

Most defenses, such as self-defense, insanity, and entrapment require factual determinations that make pretrial disposition inappropriate. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

A motion to dismiss is not the proper way to raise a factual defense because if the pretrial claim is substantially founded upon and intertwined with evidence concerning the alleged offense, the motion must be deferred because it falls within the province of the factfinder at trial. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

An accused's self-defense claim is a factual defense substantially founded upon and intertwined with evidence about the alleged offenses that requires trial of the general issue of the accused's guilt or innocence and that cannot be decided solely on issues of law. FSM v. Semwen, 18 FSM R. 222, 226 (Chk. 2012).

Even though it was filed eleven days after the motion it opposed, when an opposition was filed on the deadline that the court otherwise directed in its scheduling order, it was timely filed and it will not be stricken. FSM v. Kool, 18 FSM R. 291, 294 (Chk. 2012).

A motion styled a motion in limine that requests the court's permission under Rule 15 to depose a witness outside of the jurisdiction is misnamed because a motion in limine is a pretrial request that certain inadmissible evidence not be referred to or offered at trial. Chuuk v. Emilio, 19 FSM R. 33, 35 n.1 (Chk. S. Ct. Tr. 2013).

The Department of Justice's involvement in the government's relief efforts following Typhoon Maysak, which may have been the strongest typhoon to hit this area in the last 100 years, constitute excusable neglect for its delay in filing an opposition six days late. FSM v. Itimai, 20 FSM R. 131, 133 (Pon. 2015).

When the government has shown excusable neglect for its tardiness because its Department of Justice needed to assist in emergency relief in Typhoon Maysek's aftermath, the court will excuse the late filing of its response to the defendants' motion. FSM v. Kimura, 20 FSM R. 297, 300 n.1 (Pon. 2016).

The court treats a motion, that asks the court to allow the filing of and consideration of certain motions despite being filed well-outside the court-ordered deadline for the filing of pretrial motions, as a motion for an enlargement of time because a thing is what it is regardless of what someone chooses to label his filing. FSM v. Mumma, 21 FSM R. 387, 392 n.1 (Kos. 2017).

When the issues raised by the motion to dismiss may be considered by the court at any time during the pendency of the proceedings in the matter, the motion should be noticed and considered. FSM v. Mumma, 21 FSM R. 387, 393 (Kos. 2017).

A court can exclude evidence by granting a motion in limine. FSM v. Chunn, 21 FSM R. 587, 588 n.1 (Pon. 2018).

A defendant's motion for special findings made after the court had already entered its general findings is untimely and will be denied. FSM v. Shiro, 21 FSM R. 627, 630 (Chk. 2018).

Under the court's inherent common law authority to administer the order of proof before it, the court may entertain a party's motion to reopen its case in the interest of justice, such as when the state had inadvertently forgotten to introduce a piece of evidence, the other party had notice through discovery that such evidence will be introduced, and the other party was not unduly prejudiced by the evidence's introduction. Chuuk v. Nowell, 22 FSM R. 130a, 130e (Chk. S. Ct. Tr. 2018).

The factors that are relevant for deciding whether to grant the state's motion to reopen its case in chief are: 1) the seriousness of the crime alleged; 2) whether motion to re-open case resulted from lack of preparation for trial; 3) timeliness of motion to reopen case in chief; 4) good cause; 5) whether motion to reopen case in chief resulted from a decision of the court after the case in chief, which was contrary to the state's understanding of the applicable law; 6) whether the other party would be unfairly prejudiced by reopening such case; and 7) whether re-opening the case will unduly delay the disposition of the case. Chuuk v. Nowell, 22 FSM R. 130a, 130d-0e (Chk. S. Ct. Tr. 2018).

A motion to reopen a case should be denied when unfair prejudice towards the defendant results, such as when the state wants to introduce a document or evidence not disclosed in discovery, of which defendant lacked any notice, and against which defendant could not adequately defend due to the lack of time to prepare a defense. But when the defendant had notice of the confession statement; and when a preliminary hearing determined that the confession statement was admissible at trial, and so that the defendant was put on notice that the confession would be introduced at trial, no unfair prejudice would result from allowing the state to introduce the defendant's confession statement upon re-opening its case. Chuuk v. Nowell, 22 FSM R. 130a, 130e-0f (Chk. S. Ct. Tr. 2018).

– Motions – Unopposed

Failure by the non-moving party to respond to the motion constitutes a consent to the granting of the motion, but even if a motion is unopposed, a court still needs good grounds before the motion may be granted. FSM v. Wainit, 12 FSM R. 201, 203 (Chk. 2003).

Failure to oppose a motion is generally deemed a consent to the motion and a party who has failed to oppose will not be permitted to orally argue the motion. But even when there is no opposition, a court still needs good grounds before it can grant the motion. FSM v. Wainit, 12 FSM R. 360, 362 (Chk. 2004).

Failure to oppose a motion is generally deemed a consent to the motion, but even when there is no opposition, a court still needs good grounds before it can grant the motion. But when the motion seeks the same relief, makes much the same arguments, and rests on much the same grounds as a motion that has been opposed, the court will consider the two motions together and the responsive filings as being applicable to both. FSM v. Wainit, 12 FSM R. 376, 379 (Chk. 2004).

Failure to oppose a motion is generally deemed a consent to the motion, but even if there is no opposition, the court still needs good grounds before it can grant the motion. FSM v. Sipos, 12 FSM R. 385, 386 (Chk. 2004).

When no opposition has been filed, it is generally deemed a consent to the motion, but even without an opposition, a court still needs good grounds before it can grant the motion. FSM v. Wainit, 12 FSM R. 405, 408 (Chk. 2004).

Although failure to oppose a motion is generally deemed a consent to a motion, even if there is no opposition, the court still needs good grounds before it can grant the motion. FSM v. Moses, 12 FSM R. 509, 511 (Chk. 2004).

Although a motion to dismiss stands unopposed, and while failure to oppose a motion is generally deemed a consent to the motion, the court still needs good grounds before it can grant the motion. FSM v. Zhang Xiaohui, 14 FSM R. 602, 609, 613 (Pon. 2007).

Failure to timely oppose a motion is deemed a consent to that motion, but a court still needs proper grounds before it can grant an unopposed motion. Chuuk v. Inos, 15 FSM R. 259, 261 (Chk. S. Ct. Tr. 2007).

Failure to timely oppose a motion is deemed a consent to that motion, but a court still needs proper

grounds before it can grant an unopposed motion. Chuuk v. Menisio, 15 FSM R. 276, 281 (Chk. S. Ct. Tr. 2007).

When the government has filed no response to a defendant's motions, it will not be permitted to present argument on the motions. FSM v. Kansou, 15 FSM R. 373, 378 (Chk. 2007).

Failure to oppose a motion is generally deemed a consent to the motion. But even if there is no opposition, the court still needs good grounds before it can grant the motion. FSM v. Kansou, 15 FSM R. 373, 378 (Chk. 2007).

Even though failure to timely oppose a motion is deemed consent to the motion, a court still needs good, proper grounds before it may grant the motion. Chuuk v. William, 15 FSM R. 381, 390 (Chk. S. Ct. Tr. 2007).

Failure to oppose a motion is generally deemed a consent to the motion, but even when there is no opposition, the court still needs good grounds before it can grant the motion. FSM v. Marehalau, 16 FSM R. 505, 507 (Pon. 2009).

Failure to oppose a motion is generally deemed a consent to the motion, but even if there is no opposition, the court still needs good grounds before it can grant the motion. FSM v. Suzuki, 17 FSM R. 114, 115 (Chk. 2010).

No substantial issue of law or fact is raised when the defendant argues that the government failed to file a written response to his second motion to dismiss and therefore it should have been granted since the court has the discretion to allow argument without the filing of a brief and since the court will not grant an unopposed motion unless there are otherwise good grounds to grant it. Chuuk v. Inek, 17 FSM R. 137, 145 (Chk. S. Ct. Tr. 2010).

A moving party's failure to file the memorandum of points and authorities is deemed the moving party's waiver of the motion. Chuuk v. Billimon, 17 FSM R. 313, 317 (Chk. S. Ct. Tr. 2010).

A non-moving party's failure to respond to a motion constitutes a consent to the granting of the motion. However, even if a motion is unopposed, the court still needs good grounds before the motion may be granted. FSM v. Phillip, 17 FSM R. 413, 426 (Pon. 2011).

A moving party's failure to file a memorandum of points and authorities will be deemed the moving party's waiver of the motion. Chuuk v. William, 17 FSM R. 495, 496 (Chk. S. Ct. Tr. 2011).

Failure to oppose a motion is generally deemed a consent to the motion, but even when there is no opposition, a court still needs good grounds before it can grant the motion. FSM v. Phillip, 17 FSM R. 595, 597 (Pon. 2011).

Regardless of whether a motion is unopposed and thus deemed consented to, the court must still evaluate the motion's merits and can only grant it if there are good grounds for it. FSM v. Semwen, 18 FSM R. 222, 224 (Chk. 2012).

Failure to timely oppose a motion, even a motion to enlarge time, is generally deemed a consent to the motion. FSM v. Itimai, 20 FSM R. 131, 133 (Pon. 2015).

Although the government did not file a response to the defendant's motion, it was allowed to orally respond to the motion during the hearing because the defendant did not oppose the government's participation. FSM v. Bisalen, 20 FSM R. 471, 472 (Pon. 2016).

While failure to oppose a motion is generally deemed a consent to the motion, even then the court still

needs good grounds before it can grant an unopposed motion. FSM v. Fritz, 20 FSM R. 596, 598 (Chk. 2016).

When a party has failed to respond in writing to a written motion, oral argument will generally not be heard from that party, but the court may decide to permit a limited oral response on the assurance that the party's arguments would not stray outside the scope of the movant's arguments. FSM v. Fritz, 20 FSM R. 596, 598 (Chk. 2016).

When no response is filed to a motion, the non-response is deemed consent to the granting of the motion. A basis in law and fact must nevertheless exist to grant the motion. FSM v. Wolphagen, 21 FSM R. 247, 249 (Pon. 2017).

Failure to oppose a motion is generally deemed a consent to the motion, but even when there is no opposition, the court still needs good grounds before it can grant the motion. FSM v. Wolphagen, 21 FSM R. 272, 274 (Pon. 2017).

When no response is filed to a motion, the non-response is deemed consent to granting the motion, but a basis in law and fact must nevertheless exist to grant the motion. FSM v. Mumma, 21 FSM R. 387, 401 (Kos. 2017).

While failure to oppose a motion is, by rule, deemed a consent to the motion, even then the court still needs good grounds before it can grant an unopposed motion. FSM v. Jappan, 22 FSM R. 49, 52 (Chk. 2018).

Even when a motion is unopposed, the motion must still present good grounds in law and fact before the court can grant it. FSM v. Teteeth, 22 FSM R. 438, 441 (Yap 2020).

– Motions for Acquittal

In stating that the prosecution's burden was to present a "prima facie" case, the trial court did not apply an incorrect standard in deciding an FSM Criminal Rule 29 motion for judgment of acquittal. Andohn v. FSM, 1 FSM R. 433, 437-38 (App. 1984).

An ordinary reading of FSM Criminal Rule 29 would require that the prosecution's case warrant a finding of guilt beyond a reasonable doubt, or else a motion for judgment of acquittal should be granted. Andohn v. FSM, 1 FSM R. 433, 441 (App. 1984).

In deciding a motion for a judgment of acquittal, the question is not whether the government has proved its case beyond a reasonable doubt. The proper question is whether from the evidence presented, a reasonable fact finder *could* find guilt beyond a reasonable doubt. Andohn v. FSM, 1 FSM R. 433, 441-42 (App. 1984).

In deciding a FSM Criminal Rule 29 motion for judgment of acquittal, it is not required that the evidence presented *compel*, but only that it be *capable of* persuading the trial fact finder to reach a verdict of guilt by the requisite standard. Andohn v. FSM, 1 FSM R. 433, 442 (App. 1984).

The offense of negligent driving requires proof of driving a vehicle in such a manner as to constitute a substantial deviation from the standard of care a reasonable person would exercise in the situation and when the state did not present any witnesses who saw the defendant driving his vehicle and there was no evidence presented to show the manner in which defendant was driving his vehicle and whether it was a substantial deviation from the appropriate standard of care and an officer testified that the defendant reported that he had a problem with his vehicle, it is reasonable to infer that this problem may caused the vehicle to leave the road and come to rest in the culvert. The state thus failed to present a prima facie case and the defendant's motion for acquittal on that count was granted and that count dismissed. Kosrae

v. Alokoa, 13 FSM R. 82, 83 (Kos. S. Ct. Tr. 2004).

The offense of unauthorized operation of a motor vehicle requires proof of operating a motor vehicle on a road without possessing a valid license or learner's permit and when the state did not present any witnesses who saw the defendant operating his vehicle and did not present any evidence that the defendant did not possess a driver's license or learner's permit, there was no evidence presented to prove that the defendant operated his vehicle without a valid license or permit in his possession. The state thus failed to present a prima facie case and the defendant's motion for acquittal on that count was granted and that count dismissed. Kosrae v. Alokoa, 13 FSM R. 82, 83 (Kos. S. Ct. Tr. 2004).

The standard of review that a court uses in considering a renewed motion for acquittal under Criminal Rule 29(c) is whether the evidence could "sustain" a conviction, i.e., such evidence that reasonable persons could find guilt beyond reasonable doubt. It is not a requirement that the evidence compel, but only that it is capable of or sufficient to persuade the factfinder to reach a verdict of guilt by the requisite standard. FSM v. Fritz, 13 FSM R. 85, 86 (Chk. 2004).

As a matter of due process, to sustain a conviction, the government must prove each element of an offense charged beyond a reasonable doubt. To sustain a charge against a Rule 29 motion for acquittal, however, it is not a requirement that the evidence compel a guilty verdict "beyond a reasonable doubt," only that it is adequate and sufficient to support a "prima facie" case. Chuuk v. William, 15 FSM R. 483, 487 (Chk. S. Ct. Tr. 2008).

In ruling on a Rule 29 motion, the proper inquiry is not whether the government has proved its case beyond a reasonable doubt, but whether there has been evidence presented that could persuade a reasonable person, viewing the evidence and reasonable inferences therefrom in the light most favorable to the prosecution, of guilt beyond a reasonable doubt. Chuuk v. William, 15 FSM R. 483, 487 (Chk. S. Ct. Tr. 2008).

For the purposes of motions for acquittal, the government has presented sufficient evidence of the requisite intent to satisfy that element of the murder charges when the defendants' use of dangerous weapons to repeatedly beat the victim alone creates a strong inference of the requisite intent and when there is evidence sufficient to support the specific intent requirement for murder based on the prolonged duration of the beating and other attendant circumstances arising after the victim's initial assault. Chuuk v. William, 15 FSM R. 483, 490 (Chk. S. Ct. Tr. 2008).

When an adjudication on the merits has not yet occurred and the case is still in the pretrial stage, a defendant's motion for acquittal on insanity grounds is premature and will be denied without prejudice since the FSM Code requires that, if a defendant is acquitted on the grounds of physical or mental disorder, the verdict and judgment must so state and since the court cannot issue a verdict and judgment until after a trial on the merits, during which the prosecution must prove beyond a reasonable doubt all elements including intent. FSM v. Andrew, 17 FSM R. 213, 216 (Pon. 2010).

The standard used in considering a Rule 29(a) motion for acquittal is not whether the evidence is insufficient for the court to find that each of the elements of the crimes the accused is charged with committing was proven beyond a reasonable doubt and the question is not whether the government has proved its case beyond a reasonable doubt. Instead, the proper question is whether the evidence could "sustain" a conviction, *i.e.*, such evidence that reasonable persons could find guilt beyond reasonable doubt. It is not a requirement that the evidence compel, but only that it is capable of or sufficient to persuade the factfinder to reach a verdict of guilt by the requisite standard. FSM v. Sonis, 18 FSM R. 620, 621 (Chk. 2013).

When there is evidence that could sustain a conviction because there is evidence that reasonable persons could find guilt beyond reasonable doubt on each of the counts, a motion to acquit will be denied for each count. FSM v. Sonis, 18 FSM R. 620, 622 (Chk. 2013).

Although the failure to oppose a motion is generally deemed a consent to that motion, the court, even with no opposition, still needs good grounds before it can grant a motion for acquittal. FSM v. Benedicto, 21 FSM R. 377, 379 (Chk. 2017).

When a defendant rests without putting on a defense, the sole basis for moving for acquittal, or raising the point on appeal, is that the government has failed to establish a prima facie case. In this context, the "prima facie" is used to denote evidence which, if believed, would be sufficient to establish a defendant's guilt beyond a reasonable doubt. FSM v. Benedicto, 21 FSM R. 377, 379 (Chk. 2017).

The court's standard of review in considering a renewed motion for acquittal under Criminal Rule 29(c) is whether the evidence could "sustain" a conviction, *i.e.*, such evidence that reasonable persons could find guilt beyond reasonable doubt. It is not a requirement that the evidence compel, but only that it is capable of or sufficient to persuade the factfinder to reach a verdict of guilt by the requisite standard. FSM v. Benedicto, 21 FSM R. 377, 379 (Chk. 2017).

The court will deny a renewed motion for acquittal when, not only are most of the witness-victim's testimonial inconsistencies minor, they are immaterial, and when the prosecution established a prima facie case because there was sufficient evidence that reasonable persons could find the defendant guilty beyond reasonable doubt – there was sufficient evidence to persuade a factfinder to reach a guilty verdict. FSM v. Benedicto, 21 FSM R. 377, 380 (Chk. 2017).

The court's standard of review when considering a renewed motion for judgment of acquittal under Rule 29(c) is whether the evidence is such that reasonable persons could find guilt beyond a reasonable doubt. It is not a requirement that the evidence compel, but only that it is capable of or sufficient to persuade the fact finder to reach a verdict of guilt by the requisite standard. FSM v. Shiro, 21 FSM R. 627, 631 (Chk. 2018).

The requisite standard for evaluating a Rule 29(c) motion is the same as the due process standard used in evaluating whether the evidence is sufficient to sustain the verdict: whether viewing all the evidence in the light most favorable to the government, any rational fact finder could find the defendant guilty beyond a reasonable doubt. FSM v. Shiro, 21 FSM R. 627, 631 (Chk. 2018).

Essentially, a Rule 29 motion for judgment of acquittal is a challenge to the sufficiency of the evidence. FSM v. Shiro, 21 FSM R. 627, 631 (Chk. 2018).

A Rule 29 motion is an important safeguard for the defendant. It tests the sufficiency of the evidence against the defendant, and avoids the risk that the trier of fact may capriciously find the defendant guilty even though there is no legally sufficient evidence of guilt. FSM v. Shiro, 21 FSM R. 627, 631 (Chk. 2018).

The relevant question in assessing a Rule 29(c) motion is whether, after viewing the evidence in the light most favorable to the government, any rational trier of fact could have found the crime's essential elements beyond a reasonable doubt. FSM v. Shiro, 21 FSM R. 627, 631 (Chk. 2018).

When the court finds that there is such evidence that reasonable persons could find guilt beyond a reasonable doubt, the court will deny the defendants' motion for judgment of acquittal after finding of guilt. FSM v. Shiro, 21 FSM R. 627, 633 (Chk. 2018).

– National Crimes

The prosecution of criminals is not a power having an indisputably national character. Truk v. Hartman, 1 FSM R. 174, 178 (Truk 1982).

Congress did not exceed its constitutional authority when it defined a national crime as one committed "against a national public servant in the course of, in connection with, or as a result of that person's

employment or service;" nor was this definition so vague that it does not give reasonable notice of what conduct is prohibited, or encourages arbitrary and discriminatory enforcement. FSM v. Anson, 11 FSM R. 69, 73 (Pon. 2002).

The Constitution, as amended, expressly delegates to Congress the power to define national crimes and prescribe penalties. Congress enacted the Revised Criminal Code Act, as amended, pursuant to this constitutional power. FSM v. Anson, 11 FSM R. 69, 74 (Pon. 2002).

Congress defined crimes against persons as inherently national when they are committed against national public servants, if the crime is sufficiently connected with national public servants' performance of their duties. FSM v. Anson, 11 FSM R. 69, 74 (Pon. 2002).

An assault against a national public servant at the national government capitol complex in Palikir, in the middle of a workday, in the National Public Auditor's Office demonstrates precisely the national government's interests that Congress sought to protect by defining a crime against a national public servant in the course of the public servant's employment as a national crime. FSM v. Anson, 11 FSM R. 69, 74 (Pon. 2002).

Congress acted constitutionally and within its power to define national crimes when it defined a crime against a national public servant in the course of employment as a national crime. FSM v. Anson, 11 FSM R. 69, 74 (Pon. 2002).

When a very strong nexus exists in this case between the defendant's alleged criminal conduct and the victim's employment as a national public servant because it was a crime of violence perpetrated on government property, against a government employee who was conducting official government business, it should be the national government that determines the penalty for that conduct and punishes that conduct. FSM v. Anson, 11 FSM R. 69, 76 (Pon. 2002).

The 1991 constitutional amendment that changed the word "major" to the word "national" narrowed Congress's power by allowing it to define national crimes instead of major crimes and prescribe penalties, having due regard for local custom and tradition. Jano v. FSM, 12 FSM R. 569, 573 (App. 2004).

The 1991 constitutional amendment that removed national government jurisdiction over major crimes did not remove national government jurisdiction over firearms and ammunition possession under the Weapons Control Act since there was an independent jurisdictional basis for it under the Constitution's foreign and interstate commerce and national defense clauses and Congress has always had the power to define national crimes. Jano v. FSM, 12 FSM R. 569, 574 (App. 2004).

In an examination to determine whether it is a national crime, the focus is: Does the regulation of the possession of firearms and ammunition involve a national activity or function, or is it one of an indisputably national character? Jano v. FSM, 12 FSM R. 569, 575 (App. 2004).

Congress's power to define national crimes is generally restricted to three areas: 1) actions occurring in places where the national government has jurisdiction; 2) actions involving an instrumentality of the national government; and 3) actions involving an activity or function that the national government has the power to regulate. Jano v. FSM, 12 FSM R. 569, 575 (App. 2004).

The national government can regulate firearms and ammunition possession since there is an international commerce aspect to the regulation of possession of firearms and ammunition that is related to its manufacture outside of the FSM and to its movement through the nation's customs and immigration borders and on the additional jurisdictional basis rooted in the national defense clause. Jano v. FSM, 12 FSM R. 569, 576 (App. 2004).

There is a national government interest in regulating the possession of firearms and ammunition in

order to provide for the national security, which furthers the nation's interest in its defense, and this, in combination with the international commerce aspects, provides a jurisdictional basis for the national government's regulation of the possession of firearms and ammunition. Jano v. FSM, 12 FSM R. 569, 576 (App. 2004).

The regulation of possession of firearms and ammunition involves a national activity or function because of the international commerce aspects of its manufacture and movement, together with the national government interest in protecting the national security under the national defense clause. In combination, these provide the national government with a jurisdictional basis to regulate the possession of firearms and ammunition. Jano v. FSM, 12 FSM R. 569, 576 (App. 2004).

Even if Congress took no position on its jurisdiction based on Article IX, Section 2(a), the court is well within its power to determine jurisdiction based on this constitutional provision when it is not a situation where the action of the government is being challenged for attempting to implement a non-self-executing provision of the Constitution, but is one where the court determined what authority Congress had to enact statutes regulating the possession of firearms and ammunition. In doing so, the court did not usurp the powers of Congress. Jano v. FSM, 12 FSM R. 633, 635 (App. 2004).

That the evidence presented in a prosecution for interfering in a national election, might also have sustained a state court conviction on state law charges (if one had been brought) arising from the simultaneous state election, is irrelevant and thus not a substantial or close question. FSM v. Wainit, 14 FSM R. 164, 169 (Chk. 2006).

In an examination to determine whether it is a national crime, the focus is: Does the regulation involve a national activity or function, or is it one of an indisputably national character? FSM v. Masis, 15 FSM R. 172, 176 (Chk. 2007).

Congress has always had the power to define national crimes. The power to define national crimes is inherent in the national government and existed before the 1991 amendment made the power express. FSM v. Louis, 15 FSM R. 206, 212 (Pon. 2007).

A contention that the FSM Supreme Court lacks subject matter jurisdiction over a case's firearms charges because there was no nexus between those charges and the national government's powers to regulate interstate and foreign commerce and to provide for the national defense or because national defense and foreign or interstate commerce was not involved or not implicated in the case is without merit. FSM v. Sam, 15 FSM R. 457, 459-60 (Chk. 2007).

When a "national offense" is defined as including any offense "which is otherwise an offense against the Federated States of Micronesia" and the underlying offenses involve improper obligation and expenditure of FSM funds and tampering with FSM official documents and information, it is difficult to see how these offenses could not be considered offenses against the FSM and an argument that they are not will be rejected. Engichy v. FSM, 15 FSM R. 546, 558 (App. 2008).

11 F.S.M.C. 1023(7), which prohibits firearms use in connection with or in aid of the commission of "any crime against the laws of the Federated States of Micronesia," does not restrict liability for firearms use to only those crimes defined in the FSM Code because the term "any crime against the laws of the Federated States of Micronesia," when read in context must refer to any or all criminal laws in the Federated States of Micronesia, national, state, or local, since, if it were otherwise, it would not be possible for the statute to have its obviously intended purpose and effect – to discourage the use of, and to punish the use of, firearms during the commission of other crimes. FSM v. Suzuki, 17 FSM R. 70, 76 (Chk. 2010).

The use of a firearm to commit a Chuuk state law crime, such as robbery, is a national offense even though the robbery itself is not a national offense. FSM v. Suzuki, 17 FSM R. 70, 76 (Chk. 2010).

Exclusive national jurisdiction over a trespass and theft at the Chinese Embassy is proper under 11 F.S.M.C. 104(7)(a)(ii) as an otherwise undefined national crime, but jurisdiction is not proper under 11 F.S.M.C. 104(7)(a)(i) where an exclusive list of national crimes is defined. FSM v. Ezra, 19 FSM R. 486, 494 (Pon. 2014).

Jurisdiction under 11 F.S.M.C. 104(7)(a)(i) cannot be supported for the misdemeanor crime of trespass or theft at the Chinese Embassy because the trespass and theft were not committed in the FSM's exclusive economic zone, or its the airspace, or oceans; because it was not a retaliation, or breach of fiduciary responsibility by a public servant; or because it was not against property belonging to the FSM national government, or against people participating in an election. FSM v. Ezra, 19 FSM R. 486, 495 (Pon. 2014).

Exclusive jurisdiction for undefined national crimes can be found under in 11 F.S.M.C. 104(7)(a)(ii) which states that national jurisdiction is proper for any crime that is "otherwise a crime against the Federated States of Micronesia." FSM v. Ezra, 19 FSM R. 486, 495 (Pon. 2014).

The test for what constitutes a crime under 11 F.S.M.C. 104(7)(a)(ii) is: Does the regulation involve a national activity or function, or is it one of an indisputably national character? Alternatively stated, a national crime is one that is committed in some place where the national government has jurisdiction, or that involves a national government instrumentality, or involves an activity that the national government has the power to regulate. FSM v. Ezra, 19 FSM R. 486, 495 (Pon. 2014).

Under 11 F.S.M.C. 104(7)(a)(ii), the FSM Supreme Court's trial division has exclusive jurisdiction over a trespass and theft at the Chinese Embassy because the power to create, enforce, and interpret treaties is exclusively an activity or function that the national government has power to regulate; because a power expressly delegated to the national government, or a power of such an indisputably national character as to be beyond the power of a state to control, is a national power; because the President has the duty to enforce and conduct foreign affairs under national law; because Congress has the duty to ratify treaties; because the national Supreme Court the duty to interpret and adjudicate international treaties; because the nature of the expressly delegated powers in the Constitution's article IX, § 2, calls for a uniform nationally coordinated approach; and because if a power is of an indisputable national character such that it is beyond state's power to control, that power is to be considered a national power. FSM v. Ezra, 19 FSM R. 486, 495-96 (Pon. 2014).

Under 11 F.S.M.C. 104(7)(a)(ii), the FSM Supreme Court's trial division has exclusive jurisdiction over a trespass and theft at the Chinese Embassy because ambassadors, and all foreign officials, are explicitly intended to be protected by the national government and breaching of an embassy's sanctity affects the personal residence of the ambassador, and directly affects the ambassador's staff, many of whom are legally protected foreign officials; because, although the embassy's physical premises are not explicitly listed in the Constitution as protected property they are necessarily, and implicitly, included within relationship with the ambassador and other foreign diplomats; because the duty of protecting the physical diplomatic mission is an express requirement of the agreement between the FSM and China and the Vienna Convention, statutorily incorporated by reference, requires the protection of the embassy itself; and because this is of an indisputably international character, a fortiori of a national character, and therefore beyond the reach of the state power to control. FSM v. Ezra, 19 FSM R. 486, 496 (Pon. 2014).

Under 11 F.S.M.C. 104(7)(b)(i), the FSM Supreme Court has jurisdiction over any crime committed in the FSM Exclusive Economic Zone. FSM v. Kimura, 19 FSM R. 630, 633 (Pon. 2015).

The FSM Supreme Court has exclusive jurisdiction over the prosecution of national crimes. FSM v. Itimai, 20 FSM R. 131, 134 (Pon. 2015).

A national crime is statutorily defined as any crime which is inherently national in character and defined anywhere in Title 11, or otherwise a crime against the FSM. FSM v. Itimai, 20 FSM R. 131, 134 (Pon. 2015).

A crime is "inherently national in character" when the crime is committed by a national public official or public servant while that person is engaged in his or her official duties or in violation of a fiduciary duty or when the crime involves property belonging to the national government. FSM v. Itimai, 20 FSM R. 131, 134 (Pon. 2015).

When all of the acts and omissions a defendant is accused of committing, he did as a national government official or public servant while he was engaged in his official duty; when those acts may also be a violation of his fiduciary duty; and when national government property – $926 in Maritime Operations Revolving Fund money – was involved, the information alleges national crimes. FSM v. Itimai, 20 FSM R. 131, 134 (Pon. 2015).

Since the FSM Supreme Court has jurisdiction over crimes committed by a national public official or public servant while that person is engaged in his or her official duties or in violation of a fiduciary duty, it will not dismiss a case where all of the acts and omissions the defendant is accused of committing, he did as a national government official or public servant while he was engaged in his official duty. FSM v. Itimai, 20 FSM R. 232, 235 (Pon. 2015).

A national crime is one that is committed in some place where the national government has jurisdiction, or that involves a national government instrumentality, or involves an activity that the national government has the power to regulate. FSM v. Shiro, 21 FSM R. 331, 333 (Chk. 2017).

Under article IX, section 2(p) of the Constitution, the FSM national government has exclusive jurisdiction over all national crimes, as defined in 11 F.S.M.C. 104(7), and the FSM Supreme Court has exclusive jurisdiction over allegations of violations of the National Criminal Code. FSM v. Tihpen, 21 FSM R. 463, 465-66 (Pon. 2018).

A national crime is one which is 1) inherently national in character and defined anywhere in Title 11; or 2) otherwise a crime against the FSM. FSM v. Tihpen, 21 FSM R. 463, 466 (Pon. 2018).

A crime is inherently national in character when it involves either real or personal property belonging to the national government. FSM v. Tihpen, 21 FSM R. 463, 466 (Pon. 2018).

The FSM Supreme Court properly has jurisdiction over a crime committed in a building entirely leased (except for one office space retained by the landlord) by the FSM Department of Health and Social Affairs to provide necessary office space to the World Health Organization. FSM v. Tihpen, 21 FSM R. 463, 466 (Pon. 2018).

Theft and unauthorized possession or removal of property from office space leased by the FSM national government and provided to, and occupied by, the World Health Organization is a national crime because it was committed in a place where the national government has jurisdiction, or that involves an instrumentality of the national government, or involves an activity that the national government has the power to regulate. FSM v. Tihpen, 21 FSM R. 463, 467 (Pon. 2018).

– New Trial

On a defendant's motion, the court may grant a new trial to that defendant if required in the interests of justice. When the motion is not brought on the ground of newly-discovered evidence, the other grounds on which a motion for a new trial may be granted are if the court reaches the conclusion that the verdict is contrary to the weight of the evidence and that a miscarriage of justice may have resulted, or for any error of sufficient magnitude to require reversal on appeal. FSM v. Fritz, 13 FSM R. 85, 87 (Chk. 2004).

If a timely motion for a new trial on any ground other than newly discovered evidence has been made, an appeal from a judgment of conviction may be taken within 10 days after the entry of an order denying

the motion. FSM v. Fritz, 13 FSM R. 85, 87-88 (Chk. 2004).

When the prosecution has volunteered to provide prior witness statements before trial, a mistrial will be declared if the prosecution's failure to provide the Chuukese language witness statements before trial prejudiced the defendant. The failure to produce prior witness statements is analyzed under a strict harmless error standard. Since courts cannot speculate whether the statement of the witness could have been utilized effectively at trial, the harmless error doctrine must be strictly applied in these cases. FSM v. Walter, 13 FSM R. 264, 268 (Chk. 2005).

The proper standard in negligent nondisclosure cases should call for a new trial whenever the nondisclosed evidence might reasonably have affected the factfinder's judgment on some material point, without necessarily requiring a supplementary finding that it would also have changed its verdict. FSM v. Walter, 13 FSM R. 264, 268 (Chk. 2005).

The purpose of production of witness statements is to give defendants impeachment materials at a time when they can effectively use them. When the prosecution has failed to timely provide the statements, that objective can be fulfilled by the grant of a mistrial because when the denial of an opportunity to impeach a prosecution witness's highly damaging testimony is caused by the breach of the prosecutor's duty to produce the witness's prior statement, a new trial is necessitated. FSM v. Walter, 13 FSM R. 264, 268 (Chk. 2005).

A defendant whose trial ended in a mistrial is entitled to a new trial, but not a new judge. Halbert v. Manmaw, 20 FSM R. 245, 251 (App. 2015).

– Obstructing Justice

The offense of obstructing justice requires proof beyond a reasonable doubt of resisting or interfering with a police officer in the lawful pursuit of his duties. The intent of the statute is that the police should be able to perform their official duties, including the arrest of an accused, without any obstacles, obstructions or hindrances placed in their way. Arresting a person is within scope of employment and within the lawful pursuit of a police officer's duties. Kosrae v. Nena, 12 FSM R. 525, 528 (Kos. S. Ct. Tr. 2004).

The term "interfere" means to check or hamper the action of the officer, or to do something which hinders or prevents or tends to prevent the performance of his legal duty. Defendants' actions in contacting, holding and pulling up a person while an officer was attempting to arrest him, did hamper or hinder the officer in the performance of his legal duty. Kosrae v. Nena, 12 FSM R. 525, 529 (Kos. S. Ct. Tr. 2004).

The offense of obstructing justice does not require force. However, the use of force, as distinguished from the use of words, is obviously sufficient. Kosrae v. Nena, 12 FSM R. 525, 529 (Kos. S. Ct. Tr. 2004).

Mere threats are not sufficient to constitute obstruction of justice. However, threats, accompanied by a show of force, are sufficient to constitute the offense. Kosrae v. Nena, 12 FSM R. 525, 529 (Kos. S. Ct. Tr. 2004).

Arguments with or criticism of a police officer, without any other action, is generally not sufficient to constitute the offense. For example, demanding that the officers properly identify themselves and show an arrest warrant, is not adequate for the offense of obstructing justice. Kosrae v. Nena, 12 FSM R. 525, 529 (Kos. S. Ct. Tr. 2004).

Under common law, a person may resist a lawful arrest if the arresting officer uses unreasonable force. After careful consideration of public policy and the constitutional protection of individual rights, including protection against arrests involving excessive force, the Kosrae State Court recognizes and accepts the application of the defense. A police officer has a right to use force reasonably necessary to

effectuate an arrest. The reasonableness of a police officer's conduct while making an arrest must be assessed on the basis of information that the police officer had when he acted. Kosrae v. Nena, 12 FSM R. 525, 530 (Kos. S. Ct. Tr. 2004).

When an arrestee was intoxicated and the arresting officer restrained and held the arrestee with a technique that he had been trained in to subdue intoxicated persons; when he did not use any weapons to subdue the arrestee; when the arrestee was not injured and did not receive any medical treatment for any injuries received; when the arrestee was not in danger of death or great bodily harm from the action in restraining him, the officer's conduct in making the arrest was reasonable based upon the information available to him when he acted and therefore he used the reasonable force necessary in trying to subdue, hold, and arrest the arrestee. Therefore the defendants' defense of resisting the arrest of another where the arresting officer uses unreasonable force, must fail. Kosrae v. Nena, 12 FSM R. 525, 530 (Kos. S. Ct. Tr. 2004).

Under Pohnpei law, every person who unlawfully resists or interferes with any law enforcement officer in the lawful pursuit of his duties, or who unlawfully tampers with witnesses or attempts to prevent their attendance at trials, is guilty of obstructing justice. Berman v. Pohnpei, 16 FSM R. 567, 574 (Pon. 2009).

Since the police may arrest without a warrant persons who are in the process of committing an offense in their presence, when the trial court found as fact that a person had, in the presence of the police, been argumentative; had prevented them from gaining access to her husband, who they had reasonable suspicion to stop and to whom they wanted to talk about a car abandonment; and that when a sergeant arrested her it was for obstructing justice and for pushing him in the chest and when these facts remain the facts on appeal, the facts, viewed from the law enforcement officers' vantage point, would constitute probable cause for an arrest on an obstructing justice charge. Berman v. Pohnpei, 17 FSM R. 360, 371 (App. 2011).

A person is guilty of obstructing administration of law and other government functions when the government has proven beyond a reasonable doubt that the defendant willfully interfered with, delayed, and obstructed certain public officials in the discharge or attempted discharge of their duties to process and prepare FSM passports by not providing the information necessary to gain access to the machine readable passport system after he left his government employment, thereby interfering with, and delaying or obstructing the processing and production of FSM passports. FSM v. Wolphagen, 21 FSM R. 315, 317 (Pon. 2017).

– Pardon

The English version of the Pohnpei Constitution gives the Governor the power to commute a sentence and to grant a pardon (though the Pohnpeian version restricts that power to felony cases); and both versions are silent on the power to grant parole. Pohnpei v. Hawk, 3 FSM R. 17, 23 (Pon. S. Ct. Tr. 1986).

In one line of cases, the United States Supreme Court held that the presidential power to pardon includes the power to commute a sentence even if not specifically provided for by statute, as long as the conditions do not offend the Constitution; in another line of case, however, the court holds that Congress may vest the power to commute by statute. This latter line, requiring legislative enactment, should be adopted by the Pohnpei state court system. Pohnpei v. Hawk, 3 FSM R. 17, 24 (Pon. S. Ct. Tr. 1986).

The only power given to the executive to modify a sentence is the power to grant pardons and reprieves. FSM v. Finey, 3 FSM R. 82, 84 (Truk 1986).

While a person's assertion that, given his rehabilitation over time, and his good work in the community and on behalf of his municipality in the years since his conviction, it is a "manifest injustice" that his felony conviction prohibits him from serving in Congress, may be grounds for a pardon, it is not a valid ground for setting aside a conviction and permitting withdrawal of a guilty plea under Rule 32(d). Trust Territory v. Edgar, 11 FSM R. 303, 306 (Chk. S. Ct. Tr. 2002).

A Presidential pardon restores a person's basic civil rights. FSM v. Innocenti, 20 FSM R. 293, 295 (Pon. 2016).

The court lacks the authority to order expungement of the record of a valid and unchallenged conviction even though the defendant has been pardoned since a pardon does not create the factual fiction that the crime was never committed. FSM v. Innocenti, 20 FSM R. 293, 296 (Pon. 2016).

A Presidential pardon restores a convicted felon's basic civil rights. FSM v. Fritz, 20 FSM R. 596, 600 (Chk. 2016).

The court does not have the constitutional power to make persons granted a pardon of a felony conviction eligible for election to Congress because the Constitution reserves that power to Congress, and the court cannot exercise a power that only Congress has. FSM v. Fritz, 20 FSM R. 596, 600 (Chk. 2016).

The Constitution permits Congress, and only Congress, to change, by statute, the constitutional provision disqualifying a person convicted of a felony from membership in Congress, and Congress so far has not seen fit to alter this qualification. FSM v. Fritz, 20 FSM R. 596, 600 (Chk. 2016).

Congress itself always has the final say over the election and qualification of its members, and, unless Congress acts to change the qualifications, a person convicted of a felony and later pardoned is still ineligible for Congress membership. FSM v. Fritz, 20 FSM R. 596, 600-01 (Chk. 2016).

If a Presidential pardon automatically entitled the pardoned person to an expungement of his criminal record, then the executive branch would have the power to interfere with the record-keeping of another co-equal branch of government (the judicial branch) while also preventing still another co-equal branch of government (Congress) from access to the judicial branch's records that would assist it in its constitutional duty to be the sole judge of the qualification of its members. FSM v. Fritz, 20 FSM R. 596, 601 (Chk. 2016).

– Parole

The National Criminal Code preserves the President's parole powers for offenses committed before the Code's effective date; the repeal of parole powers applies only to offenses committed thereafter. Tosie v. Tosie, 1 FSM R. 149, 151, 158 (Kos. 1982).

The English version of the Pohnpei Constitution gives the Governor the power to commute a sentence and to grant a pardon (though the Pohnpeian version restricts that power to felony cases); and both versions are silent on the power to grant parole. Pohnpei v. Hawk, 3 FSM R. 17, 23 (Pon. S. Ct. Tr. 1986).

The parole statute, 11 F.S.M.C. 1401, does not mandate, but merely authorizes, review of sentences for the purpose of determining parole eligibility. Yalmad v. FSM, 5 FSM R. 32, 33 (App. 1991).

When considering parole a justice shall request and consider the views of the prosecution, the prisoner and his counsel, the victim or head of the victim's family, and, when requested by the prosecution of the prisoner, such community leaders as clergy and municipal and village leaders when determining a prisoner's eligibility for parole. The justice shall also base his determination upon the prisoner's behavior in prison and any factors indicative of the prisoner's chance for successful adaptation to community life after release. Yalmad v. FSM, 5 FSM R. 32, 33-34 (App. 1991).

An appeal from the decision of the trial judge may be only on the grounds of abuse of discretion resulting from the justice exceeding constraints imposed by the parole statute, 11 F.S.M.C. 1401. Yalmad v. FSM, 5 FSM R. 32, 34 (App. 1991).

Sentencing is to be individualized, and the overall objective must be to make the sentence fit the

offender as well as the offense. The sentencing court's focus must be the defendant, the defendant's background and potential, and the nature of the offense. The term of imprisonment fixed in the sentence must be the time which the sentencing judge believes the convicted person justly should be required to serve. There is no justification for the sentence to include an additional factor in recognition of the possibility of parole. Kimoul v. FSM, 5 FSM R. 53, 60-61 (App. 1991).

If a motion were considered to be a parole application based on the defendant having served ⅓ of his sentence then it would have to be denied, with leave to renew within 30 days, for failure to follow the proper procedures and supply the proper information. FSM v. Akapito, 11 FSM R. 194, 196 (Chk. 2002).

The Kosrae Parole Board must consider any written statements and recommendations of the presiding justice. If one is not in the file, the Board, upon receipt of a parole petition, will serve a written notice on the presiding justice, who may, in his sole discretion, submit or decline to submit a written statement or recommendation. If no written statement and/or recommendation is received by the Parole Board from the presiding justice within the specified 10 day period, the Parole Board shall so state in its submission to the Governor. Phillip v. Kosrae State Parole Bd., 11 FSM R. 331, 332-33 (Kos. S. Ct. Tr. 2003).

The Kosrae Parole Board will not consider any verbal statements made by the presiding justice. Phillip v. Kosrae State Parole Bd., 11 FSM R. 331, 333 (Kos. S. Ct. Tr. 2003).

Since the parole statute requires the court to request and consider the views of the prosecution, the prisoner and his counsel, the victim or head of the victim's family, and, when requested by the prosecution or the prisoner, such community leaders as clergy and municipal and village leaders, the court must request that the prosecution express its views. FSM v. Engichy, 14 FSM R. 573, 574 (Chk. 2007).

The parole statute requires that the justice reviewing a parole application "base his or her determination upon the prisoner's behavior in prison and any factors indicative of the prisoner's chances for a successful adaptation to community life after release." The statute (and the parole review procedural rule that implements it) limits the reviewing justice to considering just those, and no other, factors. FSM v. Engichy, 14 FSM R. 573, 574 (Chk. 2007).

Since the parole statute requires that the court request and consider the views of the prosecution, the prisoner and his counsel, the victim or head of the victim's family, and, when requested by the prosecution or the prisoner, such community leaders as clergy and municipal and village leaders, when the prisoner's request expresses the prisoner's views and the views of some community leaders and the Chuuk Chief of Correction the court will ask that the prosecution and the Chuuk Director of Public Safety express their views on the prisoner's parole request. FSM v. Aki, 15 FSM R. 282, 283 (Chk. 2007).

The statute requires that the justice reviewing a parole application base his or her determination upon the prisoner's behavior in prison and any factors indicative of the prisoner's chances for a successful adaptation to community life after release. The statute (and the parole review procedural rule that implements it), limits the reviewing justice to considering just those two, and no other, factors. FSM v. Aki, 15 FSM R. 282, 284 (Chk. 2007).

That while the prisoner was on pretrial release in another criminal case, he committed the offense for which he is now serving a jail sentence from which he seeks parole, is not relevant to the prisoner's parole application since it occurred before he was convicted and sentenced to prison. FSM v. Aki, 15 FSM R. 282, 284 (Chk. 2007).

A prisoner's violation of his work release conditions must be considered to be "behavior in prison" within the meaning of the parole statute because it occurred while he was serving his jail sentence, and, since it occurred while the prisoner was on work release, it also has some bearing on whether he can successfully adapt to community life after release. It therefore must have some effect on the court's decision on the prisoner's parole application. FSM v. Aki, 15 FSM R. 282, 284 (Chk. 2007).

If the court denies a prisoner's parole request, the prisoner cannot apply for parole again until one year has passed after the entry of the denial order. FSM v. Aki, 15 FSM R. 282, 284 (Chk. 2007).

Instead of denying a parole request, the court may grant it and delay its effective date. FSM v. Aki, 15 FSM R. 282, 284 (Chk. 2007).

The Parole Rules require the applicant to file an original and three copies and also require the parole application to be accompanied by proof of service on not only the prosecutor or prosecuting authority, but also on the person or persons in charge of any facility where the prisoner has been incarcerated for 30 days or more during the sentence he is requesting to be reviewed, the victim of the crime or at least one member of the victim's immediate family if the victim is deceased, and the prisoner's village or municipal leaders. When a parole request does not comply with these requirements, the court may deny the request for failure to comply with the parole request procedure and may, at its discretion, notify the prisoner of the inadequacies and grant him one or more 30-day extensions within which to file a renewed request that properly complies with the parole rules. FSM v. Karen, 16 FSM R. 22, 23 (Chk. 2008).

The parole rules bar repetitive requests. A prisoner whose request for parole has been denied (either before or after review) is not permitted to file another request until one year after the entry of the order denying the request for review or denying modification of sentence following review. FSM v. Karen, 16 FSM R. 22, 23-24 (Chk. 2008).

Congress has granted the court the power to suspend jail sentences, to suspend the imposition of a sentence, and to parole prisoners after they have served part of their sentence, but it has not given the court the power to expunge convictions. FSM v. Erwin, 16 FSM R. 42, 45 (Chk. 2008).

When the statute requires that a defendant convicted of murder be sentenced to a minimum of term of not less than 40 year(s), and eligible for parole after 20, the term imprisonment, as used within the statute, means a punishment of not less than 40 years in prison. Otherwise, the term parole is left meaningless, since it can only refer to release from prison, as opposed to house arrest, or the lifting of a suspended sentence. Chuuk v. Jose, 21 FSM R. 566, 571 (Chk. S. Ct. Tr. 2018).

Parole is the conditional release of prisoners before they complete their sentence. Paroled prisoners are supervised by a parole officer. If paroled prisoners violate their release conditions, they may be returned to prison. Chuuk v. Jose, 21 FSM R. 566, 571 (Chk. S. Ct. Tr. 2018).

The commonly understood meaning of parole is the conditional release from prison. Chuuk v. Jose, 21 FSM R. 566, 571 (Chk. S. Ct. Tr. 2018).

– Pleas

A duty imposed on the trial court by Rule 11(e)(5) of the FSM Rules of Criminal Procedure to protect the defendant by assuring that there is a factual basis for the plea, may be breached only if the trial court should "enter a judgment" without finding a factual basis. In re Main, 4 FSM R. 255, 259 (App. 1990).

Default judgments are unknown in criminal law. Guilty pleas by a defendant require compliance with formalities designed to insure that the accused receives due process. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 474 n.3 (App. 1996).

A criminal defendant, having pled not guilty at arraignment, is not required to abandon that plea upon conviction. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 9 (App. 1997).

A Rule 32(d) motion can be granted if the defendant failed to understand the direct consequences of his plea with regard to sentencing, but failure to comprehend the collateral consequences of a plea is not grounds for the granting of a Rule 32(d) motion. The fact that the defendant, upon pleading guilty to a

felony, would be precluded from becoming a candidate for public office is a collateral consequence of the plea. Felons lose privileges available to those who do not commit crimes. Loss of these privileges of good citizenship is simply not grounds for vacating a conviction. Trust Territory v. Edgar, 11 FSM R. 303, 307 (Chk. S. Ct. Tr. 2002).

The term "nolo contendere" is a Latin phrase meaning "I will not contest it." It is a plea which has a similar legal effect as pleading guilty. The plea of nolo contendere has been described as a confession, implied confession, admission of guilt of all facts pleaded, conviction, and a guilty plea. A plea of nolo contendere is considered the functional and substantive equivalent of a guilty plea. Kosrae v. Tulensru, 14 FSM R. 115, 123 (Kos. S. Ct. Tr. 2006).

The principal difference between a plea of guilty and a plea of nolo contendere is that the plea of nolo contendere may not be used against the defendant in a civil action based upon the same acts. A plea of nolo contendere admits for the purpose of the criminal case all the elements of the offense charged against the defendant, and gives the court complete power to sentence the defendant for that offense. Kosrae v. Tulensru, 14 FSM R. 115, 123 (Kos. S. Ct. Tr. 2006).

A plea of "nolo contendere" literally means "I do not contest it." Tulensru v. Kosrae, 15 FSM R. 122, 128 (App. 2007).

A bargained-for dismissal as part of a plea agreement is not tantamount to an acquittal and the dismissal of charges pursuant to a plea agreement is clearly not a finding of the same order as an acquittal and should not have the same implications. Therefore, an accused's bargained-for dismissal of an illegal possession of ammunition charge against him does not warrant the dismissal of the aiding and abetting illegal possession of ammunition charges against other defendants. FSM v. Sam, 15 FSM R. 457, 462 (Chk. 2007).

In order to convict defendants of the aiding and abetting illegal possession of ammunition, the prosecution must first prove that another illegally possessed ammunition. But the dismissal of the illegal possession of ammunition charge against that other as the result of his bargained-for plea agreement in the other's case does not preclude the prosecution from proving, in this case, that the other illegally possessed ammunition, and then proving that the defendants aided and abetted him. FSM v. Sam, 15 FSM R. 457, 462 (Chk. 2007).

Rule 11 does not apply to hearings on the revocation of probation or supervised release. Rule 11 on its face applies only to the procedures a court must follow before accepting a plea of guilty or nolo contendere. The rule is addressed to the taking of a plea, not the imposition of sentence or the revocation of probation. FSM v. William, 16 FSM R. 4, 7-8 (Chk. 2008).

When Rule 11 applies, the failure to comply with the Rule 11 procedures would entitle the defendant to have his plea set aside and to have another hearing at which he may plead anew. FSM v. William, 16 FSM R. 4, 8 n.2 (Chk. 2008).

A guilty plea is itself a conviction, ending the controversy, but admissions of probation violations [unlike guilty pleas] do not end the controversy. The judge must still decide the more difficult issue whether the violations warrant revocation of probation. Thus, admissions of probation violations, unlike guilty pleas, do not automatically trigger sentencing. FSM v. William, 16 FSM R. 4, 9 (Chk. 2008).

Unlike in a criminal prosecution where it is constitutionally required, in a probation revocation the government does not have to prove beyond a reasonable doubt that the probation terms have been violated. The court may revoke probation if it is reasonably satisfied that the probation terms were violated. FSM v. William, 16 FSM R. 4, 9 (Chk. 2008).

The constitutional protection not to be twice placed in jeopardy does not apply to a revocation hearing

because revocation and a criminal prosecution can both be based on the same transaction without implicating double jeopardy concerns. FSM v. William, 16 FSM R. 4, 9 (Chk. 2008).

Since probation revocation is not a stage in a criminal prosecution, the defendant's privilege against self-incrimination is limited to where his answers might incriminate him in a future criminal proceeding. FSM v. William, 16 FSM R. 4, 9 (Chk. 2008).

A court is not required by the rules or by due process to warn a defendant that he would not be able to withdraw his admissions if the court did not follow the parties' recommendation about the length of probation to be revoked. Nor is a court required to allow him to withdraw his admission when the length of the probation revocation is not to his liking and a formal waiver of the defendant's rights or a Rule 11 style colloquy is also not required. FSM v. William, 16 FSM R. 4, 9 (Chk. 2008).

The revocation or modification of probation is not governed by Rule 11, but by Criminal Procedure Rule 32.1, which provides for a preliminary hearing and a final revocation hearing. A preliminary hearing is only held whenever a probationer is held in custody on the ground that the person has violated a condition of probation or supervised release. When the probationer is not in custody, the hearing is a final revocation hearing. FSM v. William, 16 FSM R. 4, 9 (Chk. 2008).

Unless waived by the person whose probation the government seeks to revoke, that person must be given 1) written notice of the alleged probation violation; 2) disclosure of the evidence supporting the charge; 3) an opportunity to appear and to present evidence; 4) the opportunity to question adverse witnesses; and 5) notice of the right to be represented by counsel. FSM v. William, 16 FSM R. 4, 10 (Chk. 2008).

A guilty plea is as an admission of all the elements of a formal criminal charge. FSM v. Muty, 19 FSM R. 453, 459 (Chk. 2014).

A guilty plea constitutes an admission to all of the facts averred in the information. FSM v. Muty, 19 FSM R. 453, 459 (Chk. 2014).

A plea of no contest or nolo contendere, a plea in which an accused does not expressly admit guilt but consents to be punished as if guilty, is insufficient to satisfy the actually litigated requirement and thus cannot be used to apply collateral estoppel or issue preclusion in a later civil proceeding. FSM v. Muty, 19 FSM R. 453, 459 n.3 (Chk. 2014).

Although a guilty plea eliminates the need for a contested trial, the FSM Supreme Court cannot enter a judgment of conviction on the plea unless it determines that a factual basis exists for it. FSM v. Muty, 19 FSM R. 453, 459 (Chk. 2014).

While the rules do permit the court to take an accused's plea during the accused's initial appearance, it is not this court's usual practice to do so. The one time that the FSM Supreme Court might be persuaded to take a plea during the accused's initial appearance, would be when the accused, while represented by counsel, has already negotiated a plea bargain with the prosecution and the parties are ready to proceed with the Rule 11 plea colloquy. FSM v. Teteeth, 22 FSM R. 438, 446 & n.7 (Yap 2020).

The court will generally not take the accused's plea until after all pretrial motions have been decided, and the accused and the prosecution have been forewarned that if a not guilty plea is entered at the accused's scheduled plea hearing, then trial will start immediately thereafter, so both sides should be prepared for that eventuality. FSM v. Teteeth, 22 FSM R. 438, 446 (Yap 2020).

– Pleas – Plea Agreement

The trial judge did not actively participate in plea negotiations when he did nothing other than judicially review and comment upon a proposed plea agreement prepared solely by counsel and parties and then

voluntarily submitted by counsel to the court. FSM v. Skilling, 1 FSM R. 464, 478-79 (Kos. 1984).

A trial judge cannot be said to have negotiated with the parties concerning a proposed plea when he did not in any way suggest that the defendant plead guilty, made no efforts to encourage either party to enter into a plea agreement or to pursue further negotiations, offered no promise to accept any agreement ultimately arrived at, nor was present at any plea agreement negotiations. FSM v. Skilling, 1 FSM R. 464, 479 (Kos. 1984).

The plea bargaining process contemplates that plea agreements will be submitted to the trial judge for acceptance or rejection. When counsel place documents before a court either voluntarily or as part of standard court procedures under circumstances where the court is normally expected to comment judicially on the documents, the court's response may not customarily be used as a basis for judicial disqualification. FSM v. Skilling, 1 FSM R. 464, 480-81 (Kos. 1984).

Submission of a proposed plea agreement to the court is intended to elicit from the court some indication of an acceptable sanction, assuming that the defendant will admit guilt. The court's statement as to an acceptable penalty does not denote its belief of defendant's guilt. FSM v. Skilling, 1 FSM R. 464, 482 (Kos. 1984).

The existence of plea negotiations says little to the court about defendant's actual guilt. FSM v. Skilling, 1 FSM R. 464, 483 (Kos. 1984).

A defendant's violation of his plea agreement after the agreement was filed with, and accepted by, the court, but before sentencing by the court, may serve as the basis for court punishment of the defendant. Based upon that violation, the court may accept the defendant's plea of guilty to the crime, although the plea agreement provides for the court to defer acceptance of the plea. FSM v. Dores, 1 FSM R. 580, 584 (Pon. 1984).

FSM Criminal Rule 11(e)(1)(C) calls for implementation of a plea agreement's terms by the court if the court accepts the agreement. When the court accepts, the defendant, the prosecution and the court are all bound to carry out the terms of the plea agreement. The defendant is entitled to the benefit of the bargain reflected in the plea agreement and the government is likewise entitled to enforce the defendant's promises. FSM v. Dores, 1 FSM R. 580, 587 (Pon. 1984).

Considerations of fairness and mutuality, as well as sound policy, require that a defendant who enters into a plea agreement be subject to punishment when he violates the terms of his agreement. FSM v. Dores, 1 FSM R. 580, 588 (Pon. 1984).

There are sound reasons why prosecutors should retain discretion over whether to submit a plea agreement to a court based upon information obtained by the prosecution subsequent to execution of a written plea agreement but before presentation of that agreement to the court. FSM v. Ocean Pearl, 3 FSM R. 87, 91 (Pon. 1987).

A plea agreement calling for dismissal or reduction of charges pending in criminal litigation is contingent upon court approval. Until such approval, neither party is bound by the agreement and neither party can enforce it against the other. FSM v. Ocean Pearl, 3 FSM R. 87, 92 (Pon. 1987).

A plea agreement is not fixed until the court has acted upon it in all particulars and has fixed all conditions and explained them to the defendant. Dores v. FSM, 3 FSM R. 155, 158 (App. 1987).

A judge's involvement in plea discussions in violation of Rule 11(e)(1) is plain error. One of the principles behind the rigid enforcement of Rule 11(e)(1), is to protect the integrity of the judicial process so that the judge's impartiality and objectivity shall not be open to any questions or suspicions when it becomes his duty to impose sentence. Kinere v. Kosrae, 14 FSM R. 375, 387 (App. 2006).

The government attorney and the defendant's attorney may engage in discussions with a view toward reaching a plea agreement. The court shall not participate in any such discussions. Kinere v. Kosrae, 14 FSM R. 375, 387 (App. 2006).

A conference, which counsel sought and at which they discussed their impasse in plea negotiations and presented the case and their positions to the trial judge is an improper and inappropriate procedure. Counsel should not ask the court to give any opinion on a possible plea agreement until a final agreement is properly presented to the court in its entirety. Kinere v. Kosrae, 14 FSM R. 375, 387-88 & n.9 (App. 2006).

A judge's indication of sentence necessarily constitutes participation in such [plea agreement] discussions. Rule 11(e)(1)'s command with regard to plea negotiations is simple and admits of no exceptions: the court shall not participate in any such discussions. Rule 11(e)(1) is an absolute prohibition on all forms of judicial participation in or interference with the plea negotiation process. The court's role is to evaluate a plea agreement once it has been reached by the parties and discussed in open court. Prior to that time, a court should not offer comments touching upon proposed or possible plea agreements. Kinere v. Kosrae, 14 FSM R. 375, 388 (App. 2006).

Rule 11 means what it says: the court shall not participate in any plea negotiations. Rule 11(e)(1) is a bright-line rule prohibiting all forms of judicial participation before the parties have reached a plea agreement and disclosed the agreement in open court. Kinere v. Kosrae, 14 FSM R. 375, 388 (App. 2006).

The primary reason for Rule 11 is that a judge's participation in plea negotiation is inherently coercive. Rule 11 is designed to totally eliminate judicial pressure from the plea bargaining process. Judicial participation in plea negotiation discussions also threatens the trial judge's impartiality. Rule 11(e)(1)'s bar of judicial participation in the plea discussions also serves to preserve the judge's impartiality after the negotiations are completed. This is because judicial participation in a plea discussion makes it difficult for a judge to later objectively assess the voluntariness of the plea; risks the loss (if the plea negotiations fail) of the judge's impartiality during trial; and diminishes the judge's objectivity in post-trial matters such as sentencing and motions for acquittal. Rule 11(e)(1) also protects the integrity of the judicial process – so that the judge's impartiality and objectivity shall not be open to any questions or suspicions when it becomes his duty to impose sentence. The judge's role must be that of a neutral arbiter of the criminal prosecution: his involvement in the adversary process of plea negotiation is beyond and detracts from that judicial duty. Kinere v. Kosrae, 14 FSM R. 375, 388 (App. 2006).

A defendant who has pled guilty after the judge has participated in plea discussions should be allowed to replead, without having to show actual prejudice has resulted from the participation. Regardless of whether he has shown actual prejudice, a defendant who has pleaded guilty after the judge has participated in plea discussions is entitled to replead. Judicial participation in plea discussions is not harmless error. This is because the court cannot measure the harm to the defendant because it cannot know what agreement, if any would have been reached absent judicial participation. Kinere v. Kosrae, 14 FSM R. 375, 388-89 (App. 2006).

When a case is remanded to permit the defendant to replead because the trial judge had participated in plea discussion in violation of Rule 11(e)(1), the case will be reassigned to another judge as a prophylactic measure. Kinere v. Kosrae, 14 FSM R. 375, 389 (App. 2006).

A bargained-for dismissal as part of a plea agreement is not tantamount to an acquittal and the dismissal of charges pursuant to a plea agreement is clearly not a finding of the same order as an acquittal and should not have the same implications. Therefore, an accused's bargained-for dismissal of an illegal possession of ammunition charge against him does not warrant the dismissal of the aiding and abetting illegal possession of ammunition charges against other defendants. FSM v. Sam, 15 FSM R. 457, 462

(Chk. 2007).

In order to convict defendants of the aiding and abetting illegal possession of ammunition, the prosecution must first prove that another illegally possessed ammunition. But the dismissal of the illegal possession of ammunition charge against that other as the result of his bargained-for plea agreement in the other's case does not preclude the prosecution from proving, in this case, that the other illegally possessed ammunition, and then proving that the defendants aided and abetted him. FSM v. Sam, 15 FSM R. 457, 462 (Chk. 2007).

The court is not bound by the terms of a plea agreement, and, at the plea hearing, it must inform the defendant of the charges, his rights, and the maximum possible sentence, and it must ask if the guilty plea had been entered into without coercion, threats of force or other promises. FSM v. Bui Van Cua, 20 FSM R. 588, 590 (Pon. 2016).

Under Rule 11(e), when a plea agreement contains sentencing recommendations, the court may impose a different sentence than that proposed by the government and the parties. FSM v. Bui Van Cua, 20 FSM R. 588, 590 (Pon. 2016).

The first step in determining whether a plea agreement has been breached and whether a remedy is proper is to determine if promises were made and, if so, what they were. While the government must be held to the promises it made, it will not be bound to those it did not make. FSM v. Iriarte, 22 FSM R. 271, 275 (Pon. 2019).

The FSM promised that it would support the defendant's expungement petition if the FSM determined that all the sentencing conditions have been satisfied, and it kept that promise when, having determined that the defendant had satisfied the plea agreement's conditions, the FSM not only did not oppose the defendant's expungement petition, but it also affirmatively stated that it supported the petition. The FSM did not breach the plea agreement, and it also did not violate its plea agreement promise when it truthfully responded to the court's request for briefing about the current state of FSM law on expungement. FSM v. Iriarte, 22 FSM R. 271, 275 (Pon. 2019).

The court may reject a plea agreement due to the failure to establish the factual basis for the counts to which the defendant is pleading guilty. FSM v. Pelep, 22 FSM R. 400, 403 (Pon. 2019).

– Pleas – Withdrawal

The defendant may withdraw from a plea agreement at any time prior to the court's action on every element on the agreement. Dores v. FSM, 3 FSM R. 155, 158 (App. 1987).

Ordinarily Rule 32(d) only permits a motion to withdraw a guilty plea prior to imposition of sentence. When the defendant has been sentenced and served his sentence fully, a motion under this rule should under most circumstances be denied. Trust Territory v. Edgar, 11 FSM R. 303, 306 (Chk. S. Ct. Tr. 2002).

After sentencing, the court, in its discretion, may set aside a judgment of conviction and thereafter permit a defendant to withdraw his guilty plea only upon a showing manifest injustice. The burden of proof of establishing "manifest injustice" sufficient to warrant setting aside a conviction lies with the defendant. In order to sustain his burden, the defendant must show that the conviction was obtained through fraud, imposition upon him, or misapprehension of his legal rights, and/or that he is not guilty of the crimes as charged. Trust Territory v. Edgar, 11 FSM R. 303, 306 (Chk. S. Ct. Tr. 2002).

While a person's assertion that, given his rehabilitation over time, and his good work in the community and on behalf of his municipality in the years since his conviction, it is a "manifest injustice" that his felony conviction prohibits him from serving in Congress, may be grounds for a pardon, it is not a valid ground for setting aside a conviction and permitting withdrawal of a guilty plea under Rule 32(d). Trust Territory v.

Edgar, 11 FSM R. 303, 306 (Chk. S. Ct. Tr. 2002).

Grounds for setting aside a conviction and permitting withdrawal of a guilty plea under Rule 32(d) include, *inter alia,* the trial court's failure to comply with Rule 11; the trial court's failure to adduce a factual basis for the plea; and lack of assistance of counsel coupled with a failure to understand the direct consequences of a guilty plea as regards the sentence to be imposed. Trust Territory v. Edgar, 11 FSM R. 303, 306-07 (Chk. S. Ct. Tr. 2002).

A motion to withdraw a guilty or nolo contendere plea may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea. Kosrae v. Kinere, 13 FSM R. 230, 234 (Kos. S. Ct. Tr. 2005).

Rule 32(d) establishes a two step process for the setting aside of the judgment after sentence and withdrawal of the defendant's plea. First, the court must find manifest injustice in the defendant's plea of guilty. Second, if the court finds manifest injustice, it may, in its discretion, set aside the judgment of conviction and permit the defendant to withdraw his plea. The burden of establishing "manifest injustice" sufficient to warrant setting aside a conviction lies with the defendant. In order to sustain his burden, the defendant must show that his conviction was obtained through fraud, imposition upon him, misunderstanding of his legal rights, and/or that the defendant is not guilty of the crimes as charged. Grounds granting a motion brought pursuant to Rule 32(d) include lack of assistance of counsel, coupled with a failure to understand the direct consequences of a guilty plea with regard to the sentence to be imposed. Kosrae v. Kinere, 13 FSM R. 230, 234 (Kos. S. Ct. Tr. 2005).

For a defendant's former counsel to testify regarding communications made during the course of the case at hearing on a motion to withdraw the defendant's plea, the defendant must be advised that if counsel is permitted to testify, the attorney-client privilege must be waived. Kosrae v. Kinere, 13 FSM R. 230, 236 (Kos. S. Ct. Tr. 2005).

When the defendant voluntarily terminated the Public Defender Office's services and chose to retain private counsel; when counsel talked to his potential client and reviewed the file before accepting the representation; when counsel met with the defendant on more than five occasions and on each occasion, in accordance with his established legal practice, advised the defendant that he can change counsel at any time, if he so desired; when counsel interviewed the defendant on the charges brought against him and each of the facts alleged in the Information and the defendant admitted that each of the charges and facts were true and that each of the sexual assault acts occurred as alleged; when counsel considered the possibility of double jeopardy with respect to the sexual assault charges, but concluded that the defendant's protection against double jeopardy had not been violated and that it was therefore not a defense; when, based upon this evaluation and analysis, and upon the defendant's admissions, counsel participated in settlement negotiations with the state and exchanged several plea offers before the final plea agreement was reached; when counsel presented and explained the proposed plea agreement to the defendant; when the defendant testified that he was not forced to sign the plea agreement and that he met with counsel, who explained the terms of the plea agreement to him, including the pleas of guilty and the recommended sentencing; and when this plea agreement was signed and accepted by the court in lieu of going to trial only after the court had explained it in the defendant's native language and was assured that the defendant understood the plea agreement and the direct consequences of his guilty pleas, the defendant was aware of the charges, his pleas of guilty to specific counts, dismissal of specific counts and the length of the recommended sentencing and therefore cannot show that his conviction was obtained through imposition upon him or that he misunderstood his legal rights or the direct consequences of his guilty pleas with regard to the sentence to be imposed for each count. Kosrae v. Kinere, 13 FSM R. 230, 236-37 (Kos. S. Ct. Tr. 2005).

The Public Defender, based upon the information he had received during his prior representation of the defendant in the matter, should have refused to sign the plea agreement, indicating his approval if he

believed that the agreement violated the defendant's constitutional protection against double jeopardy. It is disingenuous for defendant to now argue that private counsel provided ineffective assistance of counsel for failing to raise the defense of double jeopardy, when defendant's former counsel, also a public defender, agreed to and signed the plea agreement in the matter. Kosrae v. Kinere, 13 FSM R. 230, 237 (Kos. S. Ct. Tr. 2005).

Kosrae Criminal Procedure Rule 32(d) provides that a motion to withdraw a plea of guilty or nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea. The burden of establishing manifest injustice lies with the defendant. To meet this burden, the defendant must show that his conviction was obtained through fraud, imposition upon him, or misapprehension of his legal rights, and/or that he is not guilty of the crimes charged. Kinere v. Kosrae, 14 FSM R. 375, 381 (App. 2006).

Ineffective assistance of counsel during plea negotiations may invalidate a guilty plea if counsel's deficient performance undermined the voluntary and intelligent nature of the defendant's decision to plead guilty. Kinere v. Kosrae, 14 FSM R. 375, 382 (App. 2006).

To meet the second prong of the ineffective assistance of counsel analysis in the context of plea negotiations, an appellant must demonstrate a reasonable probability that, but for attorney error, he would have proceeded to trial. Kinere v. Kosrae, 14 FSM R. 375, 382 (App. 2006).

– Preliminary Hearing

The statute providing for preliminary hearings for criminal defendants, by its terms, does not apply to a defendant who was never arrested and who appeared before the court competent to try him. FSM v. Wainit, 10 FSM R. 618, 622 (Chk. 2002).

Because a prosecutor's assessment of probable cause is not sufficient alone to justify restraint of liberty pending trial, a preliminary hearing would be required if the defendant were to be detained pending trial or if significant restraints were to be placed on his liberty. FSM v. Wainit, 10 FSM R. 618, 622 (Chk. 2002).

The government is required to make a probable cause showing at a hearing before pretrial restraints on the defendant's liberty can be granted. This is because a fair and reliable determination of probable cause is a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest. Affidavits can be used, if properly introduced, as evidence at that hearing to make the probable cause showing. FSM v. Wainit, 10 FSM R. 618, 622 (Chk. 2002).

Because a probable cause determination is not a constitutional prerequisite to the charging decision, it is constitutionally required only for those suspects who suffer restraints on liberty other than the condition that they appear for trial. FSM v. Wainit, 10 FSM R. 618, 622 (Chk. 2002).

A preliminary hearing for the government to make a probable cause showing or for the defendant to challenge probable cause is not required either by the statute or by the Constitution when the defendant has not been arrested and has had no restraints placed on his liberty other than the condition that he appear for trial. FSM v. Wainit, 10 FSM R. 618, 622-23 (Chk. 2002).

A preliminary hearing is not a defendant's discovery tool. The preliminary hearing's purpose is to establish probable cause for detaining or requiring bail for an accused, not to create a discovery opportunity for the defendant (although some discovery may usually be a by-product of the hearing). The Criminal Procedure Rules provide other discovery methods for a defendant's use. FSM v. Wainit, 10 FSM R. 618, 623 (Chk. 2002).

A preliminary hearing is not a mini-trial. FSM v. Wainit, 10 FSM R. 618, 623 (Chk. 2002).

When the government filed an information with an accompanying affidavit, and the court, having concluded that probable cause existed that certain crimes occurred and that the accused committed those crimes, authorized the issuance of a summons commanding the accused to appear before the court for his initial appearance, the accused is not entitled to a preliminary examination. Because a prosecutor's assessment of probable cause is not sufficient alone to cause a restraint of liberty pending trial, a preliminary hearing is required if an accused is to be detained pending trial or if significant restraints are to be placed on his liberty, and, by its terms, the statute providing for preliminary hearings for criminal defendants does not apply to a defendant who was summoned to appear before the court competent to try him. FSM v. Tosy, 15 FSM R. 463, 465 (Chk. 2008).

Usually when a defendant challenges whether the supporting affidavit shows probable cause for a charged offense, the prosecution will call witnesses and possibly introduce exhibits in order to firmly establish probable cause for the offense charged since the prosecution has the burden to establish probable cause. FSM v. Esefan, 17 FSM R. 389, 395 (Chk. 2011).

In situations where an arrest is not made pursuant to an arrest warrant, the arrested individual is nonetheless entitled to a judicial determination as to whether there is probable cause to detain the accused and normally the accused has the right to a probable cause hearing within twenty four hours or be released without condition. FSM v. Kimura, 19 FSM R. 617, 620 n.4 (Pon. 2014).

The right to a prompt probable cause hearing is constitutional requirement for any significant pretrial restraint of liberty but is only necessary if detention, bail, or condition for release is placed on the defendant. FSM v. Kimura, 19 FSM R. 617, 620 n.5 (Pon. 2014).

– Prisons and Prisoners

Actions of a police officer in stripping a prisoner to punish and humiliate him, then beating him and damaging his pickup truck, constituted violation of the prisoner's constitutional rights to be free from cruel and unusual punishment and his due process rights. Tolenoa v. Alokoa, 2 FSM R. 247, 250 (Kos. 1986).

Except in grave emergencies, the Director of Public Safety or any other executive branch official responsible for the administration of the jail has no inherent or implied power to exercise his own discretion, or to carry out instructions from other nonjudicial officials, in determining whether to release from jail persons ordered to be confined there. Soares v. FSM, 4 FSM R. 78, 79-80 (App. 1989).

There is necessarily some limited power for a jailer to release prisoners in the case of a grave emergency to protect lives or property, but the emergency power is narrow, to be exercised only when there is no opportunity to contact the proper authorities. Soares v. FSM, 4 FSM R. 78, 81 (App. 1989).

Although the internal management of a jail or prison is, subject to compliance with constitutional requirements, a function of the executive branch, the legislature controls the overall sentencing scheme through statute. Soares v. FSM, 4 FSM R. 78, 82 (App. 1989).

In the absence of legislative action saying otherwise, it is the sentencing order, not the jailer or any member of the executive branch, which determines whether the prisoner is to be confined, and for how long. Soares v. FSM, 4 FSM R. 78, 82 (App. 1989).

A national senator has no power to release national prisoners confined for violation of laws enacted by the national Congress. Soares v. FSM, 4 FSM R. 78, 83 (App. 1989).

The Joint Law Enforcement Agreement between the State of Truk and the national government in no way affects the ability of a national court to require a jailer who has accepted custody of a prisoner to act in

conformity with the sentencing order governing the confinement of the prisoner. Soares v. FSM, 4 FSM R. 78, 84 (App. 1989).

The serious illness of a prisoner's child does not constitute an emergency necessitating the defendant's release from prison, where the child will receive the treatment she requires whether the prisoner is released or not. FSM v. Engichy, 4 FSM R. 177, 180 (Truk 1989).

Constitutional provisions applicable to a prisoner may vary depending on his status. A pre-trial detainee has a stronger right to liberty, which right is protected by the Due Process Clause, FSM Const. art. IV, § 3. A convicted prisoner's claims upon liberty have been diminished through due process so that person must rely primarily on article IV, section 8 which protects him from cruel and unusual punishment. Plais v. Panuelo, 5 FSM R. 179, 190 (Pon. 1991).

In a case where a convicted prisoner, who is also a pre-trial detainee, asserts civil rights claims arising out of ill-treatment after arrest, denial of access to family is a due process claim, and physical abuse involves due process as well as cruel and unusual punishment claims. Plais v. Panuelo, 5 FSM R. 179, 190 (Pon. 1991).

Deliberate indifference to an inmate's medical needs can amount to cruel and unusual punishment. Plais v. Panuelo, 5 FSM R. 179, 199-200 (Pon. 1991).

Where a prisoner is physically abused by an official with final policy-making authority, these acts are governmental and a statement of state policy concerning the prisoner. Plais v. Panuelo, 5 FSM R. 179, 207 (Pon. 1991).

Refusing to permit the public defender or the prisoner's mother to see him are violations of civil rights guaranteed under 12 F.S.M.C. 218(1) and (2) and constitute official actions for which a state must be held responsible under 11 F.S.M.C. 701(3). Plais v. Panuelo, 5 FSM R. 179, 207 (Pon. 1991).

Confining a prisoner in dangerously unsanitary conditions, which represent a broader government-wide policy of deliberate indifference to the dignity and well-being of prisoners, is a failure to provide civilized treatment or punishment, in violation of prisoners' protection against cruel and unusual punishment, and renders the state liable under 11 F.S.M.C. 701(3). Plais v. Panuelo, 5 FSM R. 179, 208 (Pon. 1991).

The national government is liable for violations of 6 F.S.M.C. 702(2) when it has abdicated its responsibility toward national prisoners. Plais v. Panuelo, 5 FSM R. 179, 210-11 (Pon. 1991).

A prisoner's rights to procedural due process have been violated when he received neither notice of the charges against him nor an opportunity to respond to those charges before or during confinement. Plais v. Panuelo, 5 FSM R. 179, 212 (Pon. 1991).

A prisoner, incarcerated as the result of his conviction for a national crime, is in the national government's custody although incarcerated in a state jail. The state is merely acting as the national government's agent in keeping the prisoner in custody. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 412 (App. 2000).

When it appears that the Chief of Police has attended to a prisoner's medical needs with respect to food preparation and the medical recommendation for low salt and low fat foods, there has been no refusal by the state to provide to the prisoner's medical needs. Talley v. Timothy, 10 FSM R. 528, 530 (Kos. S. Ct. Tr. 2002).

The Chuuk Attorney General must make a bi-weekly report to the Chuuk State Supreme Court listing each defendant and witness who has been held in custody pending information, arraignment or trial for a period in excess of ten days. In re Paul, 11 FSM R. 273, 279 (Chk. S. Ct. Tr. 2002).

The right to marry is a fundamental constitutional right. Prisoners retain that right, but the right is subject to substantial restrictions as a result of imprisonment. Prisons may regulate the time and place of the wedding ceremony. Sigrah v. Noda, 14 FSM R. 295, 298 (Kos. S. Ct. Tr. 2006).

A prisoner's rights to privacy and association, particularly intimate association, are necessarily impacted and limited during the period of imprisonment. Persons convicted of crimes and serving a sentence of imprisonment necessarily have their rights of privacy and intimate association lost or restricted as a consequence of their imprisonment. Sigrah v. Noda, 14 FSM R. 295, 298 (Kos. S. Ct. Tr. 2006).

A prisoner's right to marry has not been violated when the wedding ceremony will take place at the Kosrae state jail because the prison has authority to regulate a prisoner's wedding ceremony, including the regulation of the ceremony's time and place. Sigrah v. Noda, 14 FSM R. 295, 298 (Kos. S. Ct. Tr. 2006).

A prisoner's rights to privacy and association, including intimate association, do not include the right to be married at his family home. The prisoner's right to privacy and association are necessarily limited during his period of imprisonment. Sigrah v. Noda, 14 FSM R. 295, 298 (Kos. S. Ct. Tr. 2006).

Since a prisoner's rights to marry, privacy and association are not violated by the jailer's restriction of the location of prisoner's wedding ceremony to the Kosrae state jail, there is no unlawful restraint of the prisoner's liberty, and thus, a petition for the writ of habeas corpus to be married at home will be denied. Sigrah v. Noda, 14 FSM R. 295, 299 (Kos. S. Ct. Tr. 2006).

Considering the state's geographic and social configuration, the customary importance of marriages in the state and its effects upon the family and community relationships in Kosrae, the customary location of wedding ceremonies in Kosrae and the absence of any held at the state jail, a request for a prisoner to be married outside of the jail may be granted, in part, upon fulfillment of conditions. Sigrah v. Noda, 14 FSM R. 295, 299 (Kos. S. Ct. Tr. 2006).

Confining a person in dangerously unsanitary conditions, which represents a broader government-wide policy of deliberate indifference to the person's dignity and well-being, is a failure to provide civilized treatment, in violation of detainees' due process protections, and renders the state liable under 11 F.S.M.C. 701(3). Walter v. Chuuk, 14 FSM R. 336, 340 (Chk. 2006).

The state has a duty to protect the persons it has confined from themselves and each other and violating a person's civil right to be free from excessive force while detained in a jail, is a violation of 11 F.S.M.C. 701(3). The state can violate that duty by failing to intervene and stop the prisoners' attacks on the arrestees. Walter v. Chuuk, 14 FSM R. 336, 340 (Chk. 2006).

When the decedent's civil right to be free from excessive force while a prisoner in Weno municipal jail was violated, this violation and the defendants' failure to monitor the plaintiff prisoner was the proximate cause of his wrongful death. The defendants' failure to monitor may also show a deliberate indifference to the prisoner's medical needs, which is also a violation of the FSM Civil Rights statute. Lippwe v. Weno Municipality, 14 FSM R. 347, 352 (Chk. 2006).

A prisoner has a civil right to be free of excessive force while in custody. Lippwe v. Weno Municipality, 14 FSM R. 347, 352 (Chk. 2006).

The municipality, chief, and jailer owed a prisoner a duty of care, had a duty to regularly observe his condition, breached that duty by failing to provide the required checks on his condition. These defendants are therefore liable under for the prisoner's death by neglect. The municipality, through its subsequent conduct, effectively ratified its agents' conduct. Lippwe v. Weno Municipality, 14 FSM R. 347, 353 (Chk. 2006).

The Joint Law Enforcement Agreement provides that the state is responsible for the incarceration of

prisoners convicted or charged with a national crime. FSM v. Sias, 16 FSM R. 661, 663 (Chk. 2009).

National prisoners held in Chuuk jail will not be released outright from the state jail or ordered moved to some other facility that holds national prisoners when the FSM-Chuuk joint law enforcement agreement remains in effect. FSM v. Sias, 16 FSM R. 661, 663 (Chk. 2009).

To the extent that the prisoners are asserting that Chuuk has a right to be paid money by the national government because of their incarceration in Chuuk state jail, the prisoners are asserting, not their own rights, but the State of Chuuk's rights, which they cannot do because they lack standing to raise a non-party's rights. FSM v. Sias, 16 FSM R. 661, 664 (Chk. 2009).

When a prisoner was kept incarcerated in state jail after he has finished his maximum jail sentence and when state officials, after the matter was brought to their attention, showed deliberate indifference to his continued incarceration, the prisoner was subjected to cruel and unusual punishment in violation of the FSM Constitution. Kon v. Chuuk, 19 FSM R. 463, 465-66 (Chk. 2014).

A prisoner's unlawful 161-day detention after the end of his sentence meant that he was deprived of his constitutional right not to be deprived of his liberty without due process of law. Kon v. Chuuk, 19 FSM R. 463, 466 (Chk. 2014).

Generally, the alleged mistreatment of pre-trial arrestees is subject to a due process analysis while that of convicted prisoners is analyzed under the cruel and unusual punishment standard. Kon v. Chuuk, 19 FSM R. 463, 466 (Chk. 2014).

A convicted prisoner whose sentence had already ended but who was still kept imprisoned for 161 more days can assert a procedural due process claim – he was denied his liberty without due process when, without a hearing or an opportunity to be heard, his prison term was effectively extended and his release date bypassed. Kon v. Chuuk, 19 FSM R. 463, 466 (Chk. 2014).

The FSM civil rights statute, 11 F.S.M.C. 701(3), creates a private cause of action for damages against any person, including a state government, who deprives another of his civil rights guaranteed by the FSM Constitution. Chuuk therefore liable to a prisoner for depriving him of his civil right to be free from cruel and unusual punishment and to due process of law when it kept him in jail for 161 days after his sentence ended. Kon v. Chuuk, 19 FSM R. 463, 466 (Chk. 2014).

When there was an initial lawful arrest followed by lawful confinement in the Chuuk state jail pursuant to Chuuk State Supreme Court orders, but once the prisoner's release date passed his lawful detention became unlawful detention without an arrest and it thus became false imprisonment without a false arrest. Kon v. Chuuk, 19 FSM R. 463, 467 (Chk. 2014).

Although there is a lack of a female holding cell in the Chuuk jail and no separate female showering and restroom facilities, a female prisoner is not subjected to a cruel and unusual punishment by virtue of her incarceration at the Chuuk jail with shared use of restroom facilities with male inmates – when she has a female police officer guarding her, her own separate sleeping quarters, and uses the shower at a different time from the male inmate population. Chuuk v. Fred, 22 FSM R. 429, 433 (Chk. S. Ct. Tr. 2019).

– Process

The right to a speedy public and impartial trial attaches either when an information or complaint has been filed with the court and service of that information or complaint has been effected upon the one named as the accused; or when an accused has been arrested by means of an arrest warrant or other process issued by a judicial officer. "Other process" includes summons, writ, warrant, mandate or other process issuing from or by the authority of the court to have the defendant named therein appear before it at the appointed time. It does not refer to a warrantless arrest. Pohnpei v. Weilbacher, 5 FSM R. 431, 451-53 (Pon. S. Ct. Tr. 1992).

A bench warrant is a process issued by the court itself, or from the bench, for the attachment or arrest of a person. One accused of crime, not in custody or under bail, may be brought before the court, after information filed, by means of a bench warrant or a capias, for his arrest; and the state has the right to have as many capias issued as are necessary to accomplish its duty to try one accused. Chuuk v. Defang, 9 FSM R. 43, 44 (Chk. S. Ct. Tr. 1999).

A witness is unavailable if he is absent from the hearing and the proponent of his statement has been unable to procure his attendance by process or other reasonable means. A foreign resident's attendance at trial cannot be secured by process since the FSM Supreme Court's subpoena power does not extend into other countries. Merely being resident in a foreign country does not necessarily mean the witness is unavailable, but when the travel expenses are burdensome or when the witness unwilling to return for trial testimony, a possibility that may be more likely when he is an adverse, or even hostile, witness, a foreign resident may be considered unavailable and a deposition warranted. FSM v. Wainit, 13 FSM R. 301, 305-06 (Chk. 2005).

The filing of an information or complaint is one point in time where the statute stops, or tolls, the limitations period from running. The other event that may commence a prosecution and thus toll the statute of limitations is when an arrest warrant, summons or other process is issued, provided that reasonable attempts are made at service. The limitations period is also tolled during any time when the accused is continuously absent from the complaining jurisdiction or has no reasonably determinable place of abode or work within the jurisdiction. FSM v. Narruhn, 15 FSM R. 530, 533 (Chk. 2008).

A bench warrant is a process issued by the court itself, or from the bench, for the attachment or arrest of a person such as a non-appearing defendant. Helgenberger v. U Mun. Court, 18 FSM R. 274, 281 n.3 (Pon. 2012).

A witness is unavailable if he is absent from the hearing and the proponent of his statement has been unable to procure his attendance by process or other reasonable means. A foreign resident's attendance at trial cannot be secured by process since the FSM Supreme Court's subpoena power does not extend into other countries. Chuuk v. Emilio, 19 FSM R. 33, 36 (Chk. S. Ct. Tr. 2013).

A prosecution for a misdemeanor must be commenced within two years after it is committed. A prosecution is commenced either when an information or complaint is filed or when an arrest warrant, summons or other process is issued, provided that reasonable attempts are made at service. FSM v. Ezra, 19 FSM R. 497, 506 (Pon. 2014).

The right to a speedy trial does not attach until the information, or other process is issued. FSM v. Ezra, 19 FSM R. 497, 506 (Pon. 2014).

"Process" is a summons or writ issued in order to bring a defendant into court. "Service" usually refers to the formal delivery of some other legal notice, such as a pleading or a motion or other documents. FSM v. Itimai, 20 FSM R. 232, 233 n.1 (Pon. 2015).

In a criminal case, "process" is the arrest warrant or the penal summons that issues to compel a person to answer for a crime. FSM v. Itimai, 20 FSM R. 232, 233 n.1 (Pon. 2015).

In a criminal case, "process" is the arrest warrant or penal summons that issues to compel a person to answer for a crime. FSM v. Siega, 21 FSM R. 291, 297 (Chk. 2017).

Physical presence in the country usually supplies the only necessary prerequisite for personal jurisdiction in a national criminal prosecution. FSM v. Siega, 21 FSM R. 291, 297 (Chk. 2017).

When criminal defendants do not claim that they were not served process or that the process was not properly served on them or that they are not, or were not, physically present in the FSM, the court has

personal jurisdiction over them. FSM v. Siega, 21 FSM R. 291, 297 (Chk. 2017).

– Prosecutors

A prosecutor's decision whether to prosecute must be overruled only in the most extraordinary circumstances, e.g., vindictiveness, impermissible discrimination, or an attempt to prevent the exercise of constitutional rights. Nix v. Ehmes, 1 FSM R. 114, 125-26 (Pon. 1982).

A prosecutor has wide discretion in determining whether to prosecute. Nix v. Ehmes, 1 FSM R. 114, 126 (Pon. 1982).

The decision to initiate, continue, or terminate a particular criminal prosecution is, with limited exceptions, within the prosecutor's discretion. FSM v. Mudong, 1 FSM R. 135, 140 (Pon. 1982).

The prosecutor does not have authority to dismiss an existing prosecution on the basis of customary law, but the court does have power to respond to a prosecutorial suggestion for dismissal because of customary considerations. FSM v. Mudong, 1 FSM R. 135, 141 (Pon. 1982).

The high public office of state prosecutor may be the most powerful office in our system of justice. The prosecutor invokes and implements the sovereign powers of the state in the justice system and is given a wide degree of discretion in so doing. Rauzi v. FSM, 2 FSM R. 8, 13 (Pon. 1985).

Some government workers have been held partially or completely immune from tort liability on grounds that they are public officers. This immunity, intended to serve the purpose of encouraging fearless and independent public service, has been bestowed upon prosecutors as well as other public officials. Rauzi v. FSM, 2 FSM R. 8, 16 (Pon. 1985).

There are sound reasons why prosecutors should retain discretion over whether to submit a plea agreement to a court based upon information obtained by the prosecution subsequent to execution of a written plea agreement but before presentation of that agreement to the court. FSM v. Ocean Pearl, 3 FSM R. 87, 91 (Pon. 1987).

Although the prosecution has broad discretion in determining whether to initiate litigation, once that litigation is initiated in the FSM Supreme Court, the court also has responsibility for assuring that actions thereafter taken are in the public interest. Thus, criminal litigation can be dismissed only by obtaining leave of court. FSM v. Ocean Pearl, 3 FSM R. 87, 91 (Pon. 1987).

Prosecutors enjoy absolute immunity from prosecution for their actions which are connected to their role in judicial proceedings, which include participation in hearings related to obtaining search warrants. Prosecutors do not, however, enjoy absolute immunity from prosecution for their role as an administrative or investigative officers, which includes participation in and giving advice regarding the execution of a search warrant. Jano v. King, 5 FSM R. 388, 396 (Pon. 1992).

Prosecutors are absolutely immune from prosecution for their actions which are connected to their role in judicial proceedings, but do not enjoy absolute immunity from prosecution for their role as an administrative or investigative officer. Therefore prosecutors are absolutely immune for involvement in judicial proceedings to obtain a search warrant, but not for participation in and giving police advice regarding the execution of a search warrant. Liwi v. Finn, 5 FSM R. 398, 401 (Pon. 1992).

Prosecuting attorneys have wide discretion in determining whether to prosecute, and a prosecutor's decision whether to prosecute must be overruled only in the most extraordinary circumstances, such as vindictiveness, impermissible discrimination, or an attempt to prevent the exercise of constitutional rights. FSM v. Wainit, 11 FSM R. 1, 8 (Chk. 2002).

Absent evidence to the contrary, a decision to prosecute a particular person is presumed to be motivated solely by proper considerations. In order to dispel the presumption that a prosecutor has not violated equal protection, a criminal defendant must present clear evidence to the contrary. FSM v. Wainit, 11 FSM R. 1, 8 (Chk. 2002).

To overcome the presumption that a decision to prosecute a particular person is motivated solely by proper considerations, a criminal defendant has a heavy burden to establish *prima facie* the elements of an impermissible selective prosecution so as to shift the burden to the government to demonstrate that the prosecution was not premised on an invidious objective. FSM v. Wainit, 11 FSM R. 1, 8 (Chk. 2002).

Under the Model Rules of Professional Conduct, which regulates conduct of legal counsel admitted to practice law in the State of Kosrae, Rule 1.7 prohibits a counsel from representing a client if representation of that client may be materially limited by the counsel's responsibilities to a third person or the counsel's own interests. A counsel may not represent the state in prosecuting a criminal action, if the counsel's prosecution will be materially limited by his personal relationship to the defendant. Kosrae v. Nena, 12 FSM R. 20, 23 (Kos. S. Ct. Tr. 2003).

A prosecutor's duty is to zealously and diligently prosecute criminal charges which are supported by probable cause, in the public interest, and, in his position as a public servant, to serve the public interest, consistent with the Model Rules of Professional Conduct. If the prosecutor cannot fulfill his prosecutorial duties in a particular case due to a conflict, including a personal relationship to the defendant, then the prosecutor is obligated to withdraw from the case. Kosrae v. Nena, 12 FSM R. 20, 23 (Kos. S. Ct. Tr. 2003).

The Office of the Attorney General should complete appropriate assignment of criminal matters to avoid conflicts of interest. Kosrae v. Nena, 12 FSM R. 20, 23 (Kos. S. Ct. Tr. 2003).

A criminal case will not be dismissed if the whole FSM Department of Justice must be disqualified from prosecuting since a special prosecutor can be appointed. FSM v. Wainit, 12 FSM R. 172, 176 (Chk. 2003).

The question of disqualification of counsel, including prosecutors, is largely within the trial court's discretion. FSM v. Wainit, 12 FSM R. 172, 177 (Chk. 2003).

A prosecutor must communicate to his witnesses so that they appear at hearings when they are needed even if they are attorneys in the same office. FSM v. Wainit, 12 FSM R. 172, 177 (Chk. 2003).

Statements to the press generally will not disqualify a prosecutor, especially since there is no jury pool to taint through pretrial publicity as there are no jury trials in the FSM. FSM v. Wainit, 12 FSM R. 172, 177 (Chk. 2003).

Failure to return a .22 rifle to a criminal defendant does not show bias when the defendant's release conditions do not allow him to possess firearms, since if the government had returned the rifle to him, he would have been put in the position of violating his own bail bond release. That is not a position the government should be permitted to put any defendant into. FSM v. Wainit, 12 FSM R. 172, 177 (Chk. 2003).

Prosecutors' seeking a change of venue do not necessarily indicate bias so that they could continue to prosecute when the case is ready for immediate trial and, under the then alleged prevailing conditions, any FSM prosecutor might have felt unsafe unless venue were changed. FSM v. Wainit, 12 FSM R. 172, 177 (Chk. 2003).

Having sought the same release conditions for a defendant in two separate prosecutions does not constitute a hopeless intertwining of the two cases. Release conditions in two otherwise unrelated cases are easily separable. FSM v. Wainit, 12 FSM R. 172, 178 & n.3 (Chk. 2003).

A government lawyer, like any lawyer, cannot represent a client if the representation of that client may be materially limited by the lawyer's own interests. The lawyer's own interests may include emotional interests. An emotional interest, in order to be disqualifying, must create a bias or hostility in the government lawyer sufficiently strong to interfere seriously with the lawyer's exercise of public responsibility. FSM v. Wainit, 12 FSM R. 172, 178 (Chk. 2003).

A government lawyer's public responsibility involves the exercise of discretion. A prosecutor may be disqualified when the prosecutor suffers from a conflict of interest which might prejudice him against the accused and thereby affect, or appear to affect, his ability to impartially perform the discretionary function of his office. FSM v. Wainit, 12 FSM R. 172, 178 (Chk. 2003).

Prosecutors' discretion is limited. They can neither withdraw from representing the plaintiff government, nor dismiss the case, without first seeking and obtaining leave of court. They can, of course, seek such leave. Their other remaining discretion lies in a possible plea bargain should the defendant seek one and in their sentencing recommendation should he be convicted. They also retain discretion in choice of trial tactics to employ. FSM v. Wainit, 12 FSM R. 172, 178 (Chk. 2003).

The court declines to establish a bright line rule that any prosecutor who has some involvement with another case involving the defendant must always be disqualified. To conclude that prosecutors who are allegedly later victims of offenses committed by someone they are prosecuting must always be disqualified from continuing to prosecute would set an unhealthy precedent. It would provide an unwanted incentive for a criminal defendant who sought to disqualify a certain prosecutor to obtain his disqualification through extralegal means. FSM v. Wainit, 12 FSM R. 172, 178-79 (Chk. 2003).

When prosecutors have a special emotional stake or interest in a case, their disqualification from any future involvement with the prosecution is warranted. The current prosecutor will therefore make certain that there is no contact with the former prosecutors about the case and that they have no access to the case file. The current prosecutor may be ordered to file and serve a notice detailing all steps taken to implement this precaution. FSM v. Wainit, 12 FSM R. 172, 179 (Chk. 2003).

A prosecutor that has no interest in the case's outcome other than that justice be done has the exact interest that an impartial prosecutor must have because government's interest in a criminal case is not that it should win the case, but that justice be done. FSM v. Wainit, 12 FSM R. 172, 180 (Chk. 2003).

Because the court is required to make decisions consistent with the FSM's social and geographical configuration and because the FSM is a large country in terms of geographical distances, but has a small land base, a small population, and limited resources with a small government legal office and few other lawyers available, the court thus should not order the government to go outside its Department of Justice for a prosecutor unless it is absolutely necessary. FSM v. Wainit, 12 FSM R. 172, 180 (Chk. 2003).

There is no basis to disqualify the current prosecutor and the entire FSM Department of Justice when no member of the department is either an alleged victim or a witness in the case; when the current prosecutor was not a member of the department when the events occurred that ultimately lead to the disqualification of the other assistant attorneys general; when neither of the disqualified attorneys have any supervisory power over the current prosecutor and he is not subordinate to them; and when, if he has not already done so, he can and will be ordered to have no contact with them concerning the case and to keep all case files segregated from all other department files so that no other department employee can obtain access to them. FSM v. Wainit, 12 FSM R. 172, 180 (Chk. 2003).

It is the prosecutor's discretion to initiate, continue, or terminate a particular criminal prosecution. However, once prosecution has been initiated, the court also has responsibility to assure that all actions taken thereafter are in the public interest. Public interest requires the court to examine the grounds for a dismissal request. Kosrae v. Tosie, 12 FSM R. 296, 298 (Kos. S. Ct. Tr. 2004).

Generally, a motion to disqualify a prosecutor must be made at the earliest possible time, and failure to do so may constitute a waiver of the objection. FSM v. Wainit, 12 FSM R. 360, 363 (Chk. 2004).

A government lawyer, like any other lawyer, cannot represent the government if the representation of that client may be materially limited by the lawyer's own interests. A lawyer's own interests may include emotional interests. An emotional interest, in order to be disqualifying, must create a bias or hostility in the government lawyer sufficiently strong to interfere seriously with the lawyer's exercise of public responsibility. FSM v. Wainit, 12 FSM R. 360, 363 (Chk. 2004).

Since a government lawyer's public responsibility involves the exercise of discretion, a prosecutor may be disqualified when the prosecutor suffers from a conflict of interest which might prejudice him against the accused and thereby affect, or appear to affect, his ability to impartially perform the discretionary function of his office. FSM v. Wainit, 12 FSM R. 360, 363 (Chk. 2004).

Since a prosecutor has wide discretion in deciding whether to initiate a particular criminal prosecution, a prosecutor's emotional interest sufficiently strong to impair the impartial exercise of this discretion will disqualify the prosecutor from any participation in the matter, including filing the information. FSM v. Wainit, 12 FSM R. 360, 364 (Chk. 2004).

When prosecutors filed a case just two months after the frightening events allegedly caused by the defendant, and when it seems reasonable for them to have had emotional interests that would disqualify them from impartially exercising their discretion whether to prosecute the same defendant in any new cases, their failure to disqualify themselves raises an appearance of impropriety. Accordingly, a motion to disqualify those prosecutors will be granted. FSM v. Wainit, 12 FSM R. 360, 364 (Chk. 2004).

When there is no way to determine if prosecutors who were not disqualified would have exercised their discretion to file these charges, the information must be dismissed to allow that to happen. This is because no matter how firmly and conscientiously a prosecutor may steel himself against the intrusion of a competing and disqualifying interest, he never can be certain that he has succeeded in isolating himself from the inroads on his subconscious. The defendant does not have to show actual prejudice, because on the basis of public policy, it will be presumed to exist as a matter of law. The purpose of this is to avoid the appearance of impropriety. This is designed not only to prevent the dishonest practitioner from improper conduct but also to preclude the honest practitioner from being put in a position where he will be forced to choose between conflicting duties. FSM v. Wainit, 12 FSM R. 360, 364 (Chk. 2004).

Since a lawyer's conflicts are usually imputed to all in the lawyer's office or firm, one member's disqualification generally requires the entire firm's disqualification, but unlike private law firms, the disqualification of all government attorneys in an office is not required when one is disqualified. This different treatment for private and government law offices is considered to stem, in part, from government agency attorneys not being bound by a common profit motive as are lawyers in private practice, and in part because a prosecutor's duty is to seek justice, not merely to convict. FSM v. Wainit, 12 FSM R. 376, 380 & n.2 (Chk. 2004).

The general rule is that the recusal or disqualification of an assistant attorney general does not require the recusal of the attorney general or his other assistants. Individual rather than vicarious disqualification is the general rule but individual disqualification must be complete and any participation or anything less than complete abstention by a disqualified member of a prosecutor's office in a supervisory capacity would warrant disqualification of the entire office. FSM v. Wainit, 12 FSM R. 376, 381 (Chk. 2004).

As a general rule, an entire office of prosecutors will not be disqualified when one member is disqualified unless that one member has supervisory or administrative control over all the others. This general principle has been followed even when the entire prosecutor's office might be said to be a victim of the defendants' crimes. FSM v. Wainit, 12 FSM R. 376, 382 (Chk. 2004).

In light of the social and geographical configuration of Micronesia, FSM Const. art. XI, § 11, and the principle that a prosecutor's disqualification is largely within the court's discretion, the better course is to follow the general principle and disqualify only those in the office over whom the disqualified attorneys had, or have, supervisory authority, not the entire office. FSM v. Wainit, 12 FSM R. 376, 383 (Chk. 2004).

Police are considered part of the prosecution. FSM v. Walter, 13 FSM R. 264, 268 n.2 (Chk. 2005).

When the prosecutor's filing of a contempt charge against only the defense counsel followed precipitously on the heels of the defense counsel's clients' non-filing of a required report; when the non-complying clients were not charged with contempt; when the prosecutor sought an enlargement of time to respond to already filed motions, for which the rules required a response within ten days, in order to prepare and file a criminal contempt charge although there was no need to prepare the charge in such an immediate fashion since contempt has a three-month statute of limitations; when it would have been salutary for the prosecutor to have taken some time for calm refection and consideration and some research before deciding whether to exercise prosecutor's discretion to file contempt charges and against whom; when the haste with which the contempt charge was brought against defense counsel does not show the impartial exercise of a prosecutor's discretion of whether to initiate a prosecution, that is required of the prosecutor's office; when, once the prosecutor became aware of the need to prove defense counsel's bad faith, he did not move to amend the contempt charge to allege bad faith but months later moved to dismiss the information against defense counsel on other grounds, the court thus concludes that the contempt prosecution was not brought in good faith although the court does not conclude that the contempt prosecution was initiated to intentionally interfere with the defendants' chosen counsel, but rather that it appeared that it may have had that effect. FSM v. Kansou, 13 FSM R. 344, 349-50 (Chk. 2005).

A prosecutor is held to a higher standard than defense counsel. A prosecutor is much more constrained as an advocate and has the responsibility of a minister of justice and not simply that of an advocate. FSM v. Kansou, 13 FSM R. 344, 349-50 (Chk. 2005).

A prosecutor must have no interest in the case's outcome other than that justice be done because the government's interest in a criminal case is not that it should win the case, but that justice be done. FSM v. Kansou, 13 FSM R. 344, 350 (Chk. 2005).

When the prosecution of defense counsel for contempt was not in good faith and had the effect of appearing unfair and interfering with the defendants' choice of counsel and when that prosecution was not demonstrated to be harmless, the prosecutor will be disqualified from prosecuting those defendants. FSM v. Kansou, 13 FSM R. 344, 350 (Chk. 2005).

The record is wholly inadequate to disqualify the entire FSM Department of Justice or any other member of that department when the record shows that one prosecutor must be disqualified from prosecuting some of the defendants. FSM v. Kansou, 13 FSM R. 344, 350 (Chk. 2005).

Neither the prosecutor's search of another private law office on Pohnpei nor defense counsel's possible fee-forfeiture warrant the prosecutor's disqualification. Nor does defense counsel's civil suit against the prosecutor have any bearing on whether the prosecutor should be disqualified. FSM v. Kansou, 13 FSM R. 344, 350 (Chk. 2005).

Under FSM caselaw, prosecutors enjoy absolute immunity from prosecution for their actions which are connected to their role in judicial proceedings, including participation in hearings related to obtaining search warrants. Prosecutors do not, however, enjoy absolute immunity for their role as administrative or investigative officers. Prosecutors are absolutely immune for involvement in judicial proceedings to obtain a search warrant, but not for participation in and giving police advice regarding the execution of a search warrant. Sipos v. Crabtree, 13 FSM R. 355, 366 (Pon. 2005).

A request for, appearance at, and the presentation of evidence related to obtaining a search warrant is considered part of a prosecutor's judicial function, for which the prosecutor enjoys absolute immunity. This is true even though no criminal information has been filed yet since search warrants are usually, but not always, sought before criminal charges are filed. The defendants therefore enjoy absolute immunity for all alleged wrongful acts related to obtaining search warrants or other pretrial orders of a similar nature. Sipos v. Crabtree, 13 FSM R. 355, 367 (Pon. 2005).

A prosecutor's actions in seeking (and obtaining) release conditions during an initial appearance in a criminal case, was a judicial function for which prosecutors enjoy absolute prosecutorial immunity. Sipos v. Crabtree, 13 FSM R. 355, 367 (Pon. 2005).

A motion to disqualify the Attorney General's Office is a preliminary motion, which ought to be brought fairly early in the proceedings. Its filing should not wait until the deadline for filing all other pretrial motions. FSM v. Wainit, 13 FSM R. 433, 438 (Chk. 2005).

The question of disqualification of counsel, including prosecutors, is largely within the trial court's discretion. FSM v. Wainit, 13 FSM R. 433, 440 (Chk. 2005).

The court is required to make decisions consistent with the FSM's social and geographical configuration. While the FSM is a country of large geographical distances, it has a small land base, a small population, and limited resources. Likewise, it has a small government legal office and few other lawyers available. The court, consistent with the FSM's social and geographical configuration, thus should not order the government to go outside its Department of Justice for a prosecutor unless it is absolutely necessary. The disqualification of all lawyers in a government office when one of them is disqualified is a question within the trial court's discretion. FSM v. Wainit, 13 FSM R. 433, 440 (Chk. 2005).

The court will not establish a principle that the Department of Justice cannot prosecute a defendant accused of committing an offense against Department of Justice personnel. FSM v. Wainit, 13 FSM R. 433, 440 (Chk. 2005).

Individual rather than vicarious disqualification is the general rule but individual disqualification must be complete and any participation or anything less than complete abstention by a disqualified member of a prosecutor's office in a supervisory capacity would warrant the entire office's disqualification. FSM v. Wainit, 13 FSM R. 433, 442 (Chk. 2005).

The entire FSM Department of Justice will not be disqualified (and by implication the information dismissed) because one of its members will be a witness in the case. FSM v. Wainit, 13 FSM R. 433, 443 (Chk. 2005).

A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by FSM MRPC Rule 1.7 or Rule 1.9. Rules 1.7 and 1.9 deal with conflicts of interest. That members of the prosecutor's office are witnesses does not disqualify the entire office. FSM v. Wainit, 13 FSM R. 433, 443 (Chk. 2005).

Although a lawyer's conflicts are usually imputed to all in the lawyer's office or firm so that one member's disqualification requires the entire firm's disqualification, the disqualification of all government attorneys in an office, unlike private law firms, is not required when one is disqualified. This different treatment for private and government law offices stems, in part, from government attorneys not being bound by a common profit motive as are lawyers in private practice, and in part because a prosecutor's duty is to seek justice, not merely to convict. FSM v. Wainit, 13 FSM R. 433, 443 & n.6 (Chk. 2005).

The mere presence of prosecutors during a search is not *per se* improper. A prosecutor may assist in a search to provide legal advice. The reason a prosecutor might not want to participate in investigative matters such as executing a search warrant is that prosecutors only enjoy a limited immunity from civil

liability when participating in investigative acts, unlike the absolute immunity from civil liability that prosecutors enjoy for their actions connected with their role in judicial proceedings. FSM v. Wainit, 14 FSM R. 51, 57 (Chk. 2006).

When the FSM Secretary of Justice approached a defendant to discuss, and did discuss, a possible plea agreement without the presence or prior consent of his attorney, but the incident was short and ended with the defendant saying he wanted to discuss it with his lawyer and when no prejudice was alleged or shown, the Secretary of Justice's actions did not form any part of the basis of the FSM Department of Justice's disqualification and the three defendants' severance, but the court had no choice but to refer the matter to the disciplinary process. FSM v. Kansou, 14 FSM R. 171, 174 (Chk. 2006).

The court cannot give any credence to a contention that a prosecutor's complete disqualification was not required because of the ground for the disqualification. A disqualification is a disqualification. FSM v. Kansou, 14 FSM R. 171, 174 (Chk. 2006).

A prosecutor is held to a higher standard than defense counsel. A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. A prosecutor must have no interest in the case's outcome other than that justice be done since the government's interest in a criminal case is not that it should win the case, but that justice be done. FSM v. Kansou, 14 FSM R. 171, 174-75 (Chk. 2006).

The general rule is that the recusal or disqualification of an assistant attorney general does not require the recusal of the attorney general or his other assistants. Individual rather than vicarious disqualification is the general rule for prosecutors but individual disqualification must be complete. FSM v. Kansou, 14 FSM R. 171, 175 (Chk. 2006).

The result of a prosecutor's disqualification from prosecuting three co-defendants is that the government had a choice – it could either move to sever those three defendants and assign a different assistant attorney general to prosecute them and insulate the disqualified prosecutor from that prosecution, or it could have assigned a different assistant attorney general to prosecute all of the co-defendants. A detailed screening order is inappropriate when the government, at least theoretically, had a choice to make – a new prosecutor for the case, or seek severance into two cases. This is a choice that, at least initially, the prosecution, not the court, must make. FSM v. Kansou, 14 FSM R. 171, 175 (Chk. 2006).

Although the court was reluctant to disqualify the FSM Department of Justice from prosecuting three co-defendants and ordering their severance from the trial scheduled to start the same day, when no lesser sanction presented itself and the defendant has met his burden and established that a disqualified (former) prosecutor has assisted the current prosecutors in preparing the case against him and the government did not establish, or try to establish, that the disqualified former prosecutor was effectively screened from the prosecutors in the case, the entire FSM Department of Justice is therefore disqualified. FSM v. Kansou, 14 FSM R. 171, 176 (Chk. 2006).

Prosecutors, because of their conduct, can be disqualified when it is in the public's interest that the judicial process should both appear fair and be fair in fact. FSM v. Kansou, 14 FSM R. 273, 277 (Chk. 2006).

In helping locate and discuss relevant evidence in the discovery, a former prosecutor was a part of the prosecution team in the same way that the police are considered part of the prosecution team. FSM v. Kansou, 14 FSM R. 273, 277 (Chk. 2006).

Once an assistant attorney general has been disqualified, that attorney's disqualification must be complete and any participation or anything less than complete abstention by a disqualified member of a prosecutor's office in a supervisory capacity would warrant disqualification of the entire office. FSM v. Kansou, 14 FSM R. 273, 278 (Chk. 2006).

The court must make its decisions consistent with the FSM's social and geographical configuration. While the FSM is a nation of large geographical distances, it has a small land base, a small population, and limited resources. It also has a small government legal office and few other lawyers available. The court, consistent with the FSM's social and geographical configuration, thus should not order the government to go outside its Department of Justice for a prosecutor unless it is absolutely necessary. FSM v. Kansou, 14 FSM R. 273, 278 (Chk. 2006).

To insure that the judicial process both appears fair and is fair in fact, the court, aware of the hardship and insurmountable difficulties that the continued disqualification of the entire FSM Department of Justice may cause and also aware that the judicial process's fairness may be impugned by the appearance that a former disqualified prosecutor may have had some involvement in the government's preparation of its case against those defendants he was barred from prosecuting, will order that the entire FSM Department of Justice remain disqualified from prosecuting those defendants except for any FSM Department of Justice attorneys hired after the date of the former prosecutor's last involvement. The new assistant attorney(s) general assigned to prosecute the case shall not have discussed the case's merits with the previous prosecutors and shall not consult any of the previous prosecutors in preparing their prosecution. These new prosecutors shall be screened from all previous prosecutors in the case. FSM v. Kansou, 14 FSM R. 273, 278-79 (Chk. 2006).

A prosecutor has wide discretion in determining who and whether to prosecute, and a prosecutor's decision whether to prosecute must be overruled only in the most extraordinary circumstances, e.g., vindictiveness, impermissible discrimination, or an attempt to prevent the exercise of constitutional rights. FSM v. Fritz, 14 FSM R. 548, 552 (Chk. 2007).

When a former prosecutor was not disqualified from prosecuting the movant, any communication between the former prosecutor, who for the purpose of the motion must be considered as a part of the prosecution team since he was acting as a consultant attorney, and the Department of Justice concerning the movant cannot be per se misconduct. FSM v. Kansou, 15 FSM R. 373, 376-77 (Chk. 2007).

A former prosecutor who is helping locate and discuss relevant evidence in the discovery, is considered a part of the prosecution team. FSM v. Kansou, 15 FSM R. 373, 377 n.1 (Chk. 2007).

Disqualification for an emotional interest because it causes a conflicting interference with the lawyer's exercise of public responsibility is limited to prosecutors since prosecutors are held to a higher standard. Marsolo v. Esa, 17 FSM R. 480, 484 n.1 (Chk. 2011).

Prosecutors are constitutionally required to provide criminal defendants with any and all exculpatory evidence they have regardless of whether the defendant has made a discovery request. This is a continuing obligation which does not cease at any deadline. FSM v. Kool, 18 FSM R. 291, 293-94 (Chk. 2012).

A prosecutor has an ethical obligation to make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal. FSM v. Kool, 18 FSM R. 291, 294 (Chk. 2012).

Regardless of whether an accused has requested discovery, a prosecutor must disclose to the defense evidence that is favorable to the accused, either because it is exculpatory or because it is impeaching. FSM v. Kool, 18 FSM R. 291, 294 (Chk. 2012).

Police are considered part of the prosecution team so that any evidence or information in the hands of the police is considered evidence or information in the prosecution's hands. FSM v. Kool, 18 FSM R. 291, 295 (Chk. 2012).

A prosecutor is held to a higher standard than defense counsel. A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. Wolphagen v. FSM, 22 FSM R. 96, 101 (App. 2018).

One prosecutorial duty is the constitutional obligation to provide criminal defendants with any and all exculpatory evidence they have regardless of whether the defendant has made a discovery request, and this is a continuing obligation that does not end at any deadline. Wolphagen v. FSM, 22 FSM R. 96, 101 (App. 2018).

Regardless of whether an accused has requested discovery, a prosecutor must disclose to the defense evidence that is favorable to the accused, either because it is exculpatory, or because it is impeaching. Wolphagen v. FSM, 22 FSM R. 96, 101 (App. 2018).

A prosecutor is obligated to make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal. Wolphagen v. FSM, 22 FSM R. 96, 101 (App. 2018).

The prosecutor's obligation to produce exculpatory or impeaching evidence involves three types of situations. Wolphagen v. FSM, 22 FSM R. 96, 102 (App. 2018).

A prosecutor has an obligation to produce exculpatory or impeaching evidence when the undisclosed evidence demonstrates that the prosecution's case includes perjured testimony and that the prosecution knew, or should have known, of the perjury. Wolphagen v. FSM, 22 FSM R. 96, 102 (App. 2018).

Since the knowing use of perjured testimony is fundamentally unfair, such a conviction must be set aside if there is any reasonable likelihood that the false testimony could have affected the fact-finder's judgment. Wolphagen v. FSM, 22 FSM R. 96, 102 (App. 2018).

The prosecution, as an entity, has a constitutional obligation not to deceive the fact-finder or to allow the fact-finder to be deceived by the prosecution's witnesses; thus, the prosecution cannot let false testimony by any of its witnesses stand uncorrected. Wolphagen v. FSM, 22 FSM R. 96, 102 (App. 2018).

When there was a pretrial request for specific evidence, if the subject matter of such a request is material, or indeed if a substantial basis for claiming materiality exists, it is reasonable for the prosecution to respond either by furnishing the information or by submitting the problem to the trial judge. When the prosecutor receives a specific and relevant request, the failure to make any response is seldom, if ever, excusable. Wolphagen v. FSM, 22 FSM R. 96, 102 (App. 2018).

When there was a pretrial request for specific evidence or when there was no defense request at all or there was merely a generalized request for exculpatory material, the constitutional obligation is not measured by the prosecutor's moral culpability or willfulness. If evidence highly probative of innocence is in the prosecutor's file, the prosecutor is presumed to recognize its significance even if the prosecutor has actually overlooked it. Wolphagen v. FSM, 22 FSM R. 96, 102 (App. 2018).

If the evidence sought actually has no probative significance at all, no purpose would be served by requiring a new trial simply because an inept prosecutor incorrectly believed the prosecution was suppressing a fact that would be vital to the defense. Wolphagen v. FSM, 22 FSM R. 96, 102-103 (App. 2018).

If the prosecution's suppression of evidence results in constitutional error, it is because of the evidence's character, not the prosecutor's. Wolphagen v. FSM, 22 FSM R. 96, 103 (App. 2018).

A defendant may request that the prosecution produce for his inspection, and any needed copying, a document material to the preparation of his case. Wolphagen v. FSM, 22 FSM R. 96, 104 (App. 2018).

If the prosecution should find that it has exculpatory evidence, it must provide it, even though the defendant has already been convicted, because there is no deadline for the production of exculpatory evidence and the duty applies irrespective of the prosecution's prior good faith or bad faith. Wolphagen v. FSM, 22 FSM R. 96, 104 (App. 2018).

Since the court's rules require only that the information be signed by the attorney for the government, when the signer is unquestionably an attorney, is unquestionably employed by the government, and is acting on the government's behalf, he has apparent authority to sign a criminal information. If the signer's actions exceed what he was contracted to do or what any written or oral amendment to that contract authorized him to do, that is a matter for the contracting parties to resolve between themselves. FSM v. Teteeth, 22 FSM R. 438, 444 (Yap 2020).

– Public Trial

The FSM constitutional right that the defendant in a criminal case has a right to a speedy public trial is traceable to the U.S. Bill of Rights. FSM v. Wainit, 12 FSM R. 405, 410 (Chk. 2004).

A sentence is imposed when it is pronounced in open court. This is a constitutional as well as procedural requirement. The rules require the defendant's presence at sentencing. This is also required by the FSM constitutional provision, requiring a public trial and giving a defendant the right to confront witness against him. FSM v. Fritz, 13 FSM R. 88, 91 n.1 (Chk. 2004).

The FSM Constitution guarantees every criminal defendant the right to a public trial, as does the Kosrae Constitution. A criminal defendant's right to be present at trial extends to all stages of trial, including the return of the finding or verdict, even in a bench trial. Nena v. Kosrae, 14 FSM R. 73, 78 (App. 2006).

The defendant shall be present at every stage of the trial including the finding of the court, and the judge's finding must be returned in open court. Nena v. Kosrae, 14 FSM R. 73, 78 (App. 2006).

Under the constitutional guarantee of a public trial, an accused and the public both have a constitutional right that the court's finding be announced publicly in open court with the accused present. This is true whether the finding is guilty or not guilty. Violation of this constitutional protection is not subject to a harmless error analysis and the defendant need not show any prejudice. Nena v. Kosrae, 14 FSM R. 73, 78 (App. 2006).

The announcement of the decision to convict or acquit is neither of little significance nor trivial; it is the focal point of the entire trial. To exclude the public, the defendant, the prosecution, and defense counsel from such a proceeding–indeed not to have a proceeding at all–affects the integrity and legitimacy of the entire judicial process. Nena v. Kosrae, 14 FSM R. 73, 78 (App. 2006).

The remedy for the constitutional violation of not pronouncing a defendant guilty or acquitted in open court is not a new trial on the merits – instead the finding (and conviction) is vacated and the case is returned to the trial court for it to make a public pronouncement of its decision. Since a pronouncement in open court is constitutionally required, no other remedy is adequate. Nena v. Kosrae, 14 FSM R. 73, 78 (App. 2006).

The trial court must, in all criminal trials, orally pronounce in open court its finding of guilty or not guilty on each count tried. The trial court may issue written findings at the conclusion of the oral proceeding in open court if it so chooses or if a party has requested special findings and they are lengthy. Nena v.

Kosrae, 14 FSM R. 73, 79 (App. 2006).

The FSM and Kosrae Constitutions guarantee every criminal defendant the right to a public trial. A criminal defendant's right to be present at trial extends to all stages of trial, including the return of the finding or verdict of guilty or not guilty. Neth v. Kosrae, 14 FSM R. 228, 232 (App. 2006).

Violation of the constitutional public trial right is not subject to a harmless error analysis and the defendant need not show any prejudice. Neth v. Kosrae, 14 FSM R. 228, 232 (App. 2006).

When, after the trial court had taken the case under advisement, it made its finding of guilt in writing and the written finding was then served on counsel and there was never an oral in-court pronouncement of guilt beforehand, and when, following the sentencing hearing, there was no public imposition of sentence in open court, only a later written sentencing order served on counsel, an appellate court must vacate the finding because it was improperly entered since there was no public finding of guilt. Neth v. Kosrae, 14 FSM R. 228, 232 (App. 2006).

Even if the finding of guilt had been made in open court with the defendant present, the case would still have to be remanded to the trial court when there was no public imposition of sentence with the defendant present. When a sentence is imposed, the defendant's presence is required because the defendant must be present at every stage of the trial including the finding of the court and at the imposition of sentence. Neth v. Kosrae, 14 FSM R. 228, 232 (App. 2006).

The defendant's right (found in Rule 43) to be present at the imposition of sentence is constitutionally based on the confrontation and due process clauses. Neth v. Kosrae, 14 FSM R. 228, 233 & n.3 (App. 2006).

Although Kosrae Criminal Rule 43(b) permits a criminal defendant, once trial has started with the defendant present, to voluntarily absent himself or herself from the trial or from the oral pronouncement of findings, it does not permit a criminal defendant to be absent from the court's imposition of sentence or to waive his or her right to be present at the imposition of sentence. Neth v. Kosrae, 14 FSM R. 228, 233 (App. 2006).

A reason illustrating the importance of the public imposition of sentence is that the written sentence must conform to the one delivered orally. If it does not, the oral sentence, not the written sentence, controls. Neth v. Kosrae, 14 FSM R. 228, 233 (App. 2006).

The sentence orally pronounced from the bench is the sentence, because the only sentence that is legally cognizable is the actual oral pronouncement in the defendant's presence. Neth v. Kosrae, 14 FSM R. 228, 234 (App. 2006).

The general public also has a right and interest in a public sentencing that enables the public to learn the sentence and court's reasons for it. Neth v. Kosrae, 14 FSM R. 228, 234 (App. 2006).

Criminal Procedure Rules 43(b) only applies when a criminal defendant has appeared for trial and trial has started and then the defendant voluntarily absents himself or herself although the defendant has been informed of the obligation to remain during trial. In such cases, the defendant is considered to have waived the right to be present and the trial may progress to a conclusion in his or her absence. FSM v. Jacob, 15 FSM R. 439, 442 (Chk. 2007).

Rule 43(c)(3) provides that defendant is not required to be present at a conference or argument upon a question of law. But an evidentiary hearing is one that involves more than just a question of law. It involves findings of fact. An evidentiary hearing is thus one where the defendant must appear in court. FSM v. Jacob, 15 FSM R. 439, 442 (Chk. 2007).

A criminal contempt conviction would have to be vacated when neither the trial court's contempt finding nor its sentencing were done in open court because a criminal defendant's constitutional right to a public trial requires that the finding of guilt or innocence be made in open court and that, if there is a guilty finding, then the sentence must also be imposed in open court. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 n.10 (App. 2011).

Since the criminal contempt statute provides that no punishment of a fine of more than $100 or imprisonment can be imposed unless the accused is given a right to notice of the charges, to a speedy public trial, to confront the witnesses against him, to compel the attendance of witnesses in his behalf, and to have the assistance of counsel, this statute was violated when a $200 fine was imposed without a public trial and the party having the opportunity to be represented by a public defender. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 n.10 (App. 2011).

Although it might be advisable for the trial court to conduct a hearing on motions to stay and for in forma pauperis status, especially if the motions look like they may be denied, it is not part of the constitutional public trial right. Ned v. Kosrae, 20 FSM R. 147, 156 (App. 2015).

A prosecution request that the courtroom be closed and that the public be excluded during the child-victim's testimony and that a screen be placed in the courtroom so that when she testifies, she is shielded from the defendants' gaze, implicates two important constitutional rights – the defendant's right to confront any witnesses against the defendant and the public trial right. FSM v. Jappan, 22 FSM R. 49, 52 (Chk. 2018).

When the prosecution has made an adequate showing of necessity, the governmental interest in protecting child witnesses from the trauma of testifying in a child abuse case is sufficiently important to justify the use of a special procedure that permits a child witness in such cases to testify at trial against a defendant in the absence of face-to-face confrontation with the defendant. FSM v. Jappan, 22 FSM R. 49, 53 (Chk. 2018).

The public trial guarantee is a constitutional right that both the accused and the general public have. FSM v. Jappan, 22 FSM R. 49, 54 (Chk. 2018).

Violation of the constitutional public trial right is not subject to a harmless error analysis and the defendant need not show any prejudice in order to have his conviction or sentencing or other proceeding vacated. FSM v. Jappan, 22 FSM R. 49, 54 (Chk. 2018).

Closure of a criminal trial may be constitutional under limited circumstances. The public trial interest will be balanced against other interests that might justify closing the trial or part of the trial, but in striking a fair balance, the trial judge's discretion is strictly limited. FSM v. Jappan, 22 FSM R. 49, 54 (Chk. 2018).

The trial judge's best course of action is to hold an evidentiary hearing on the issue of closure whenever it arises, although in some circumstances, the judge will be able to take judicial notice of the essential facts. FSM v. Jappan, 22 FSM R. 49, 54 (Chk. 2018).

The party seeking to close a criminal proceeding 1) must advance an overriding interest that is likely to be prejudiced, 2) the closure must be no broader than necessary to protect that interest, 3) the trial court must consider reasonable alternatives to closing the proceeding, and 4) it must make findings adequate to support the closure. FSM v. Jappan, 22 FSM R. 49, 54 (Chk. 2018).

Closure orders are to be no broader than necessary to protect the countervailing interest advanced. That is because it is incumbent upon trial judges to consider reasonable alternatives before closing the courtroom during trial testimony. FSM v. Jappan, 22 FSM R. 49, 54 (Chk. 2018).

Implicit in the command that a courtroom closure must be no broader than necessary is the

requirement to consider measures less broad than complete closure. The court must consider alternatives to a complete closure of the courtroom even if no party suggests any, since courtrooms are presumed to be open and trials are presumed to be public and less drastic alternatives than courtroom closure must be considered even though those alternatives may be cumbersome. FSM v. Jappan, 22 FSM R. 49, 54 (Chk. 2018).

Although a trial for the sexual assault of a minor involves the government's compelling interest in the minor victim's welfare, it does not follow from this that the court may automatically close trials to the public whenever a minor victim testifies in any sexual assault trial. FSM v. Jappan, 22 FSM R. 49, 54 (Chk. 2018).

A trial court can determine on a case-by-case basis whether closure is necessary to protect a minor victim's welfare. Among the factors to be weighed are the minor victim's age, psychological maturity and understanding, the nature of the crime, the desires of the victim, and the interests of parents and relatives. FSM v. Jappan, 22 FSM R. 49, 54 (Chk. 2018).

Case-by-case attention is required when the issue is determining whether there is a legitimate need to encroach upon the defendant's right to a public trial. Limited exclusion of spectators is also permissible when there is a demonstrated need to protect a witness from threatened harassment or physical harm. FSM v. Jappan, 22 FSM R. 49, 54-55 (Chk. 2018).

Since the best course of action is for the trial judge to hold an evidentiary hearing on the issue of closure whenever it arises, the court cannot grant a trial closure when one has not yet been held, and judicial notice does not seem possible. FSM v. Jappan, 22 FSM R. 49, 55 (Chk. 2018).

– Right to Compel Witnesses

Upon a satisfactory showing that the defendant is financially unable to pay the fees of the witness and that the witness's presence is necessary to an adequate defense, the government will bear the costs of insuring that the witness is present at trial. Specifically, this includes travel costs. FSM v. Wainit, 11 FSM R. 511, 512 (Pon. 2003).

In a criminal case, a witness's fees and costs need not be tendered at the time of service of the subpoena, a useful precautionary measure. FSM v. Wainit, 11 FSM R. 511, 513 (Pon. 2003).

If a criminal defendant elects to proceed under FSM Criminal Rule 17(b), he should then ascertain from the FSM what that manner of payment is, and how that procedure will work in the event that he is found unable to pay the costs attendant upon securing the presence of his witnesses at trial. FSM v. Wainit, 11 FSM R. 511, 513 (Pon. 2003).

The defendant in a criminal case has a right to compel attendance of witnesses on his behalf, and defendants can exercise this right through the use of subpoenas, which the clerk of the court will issue under the FSM Supreme Court's seal and which will command each person to whom it is directed to attend and give testimony at the time and place specified therein, and the subpoena may also command the person to whom it is directed to produce the books, papers, documents, or other objects designated. Wolphagen v. FSM, 22 FSM R. 96, 103 (App. 2018).

A primary limitation on a subpoena asking a witness to produce something is that it must be for "evidence," that is, information that will be admissible at trial. Such a subpoena may be challenged when the circumstances indicate that the defense's use is directed at a purpose other than a "good faith" effort to obtain evidence, but where the subpoena seeks a specific document that clearly is relevant, courts invariably conclude that the subpoena is proper. Wolphagen v. FSM, 22 FSM R. 96, 103 (App. 2018).

The court clerk is even authorized to issue a subpoena, signed and with the seal of the FSM Supreme Court, but otherwise in blank to a party requesting it, who shall fill in the blanks before it is served, so that

once the defendant learned the identity of the person(s) with the evidence he sought, he could fill in a blank subpoena and have it served. Wolphagen v. FSM, 22 FSM R. 96, 104 (App. 2018).

A defendant may, at any time during the course of the proceedings, bring to the trial court's attention that he believes that the prosecution had not complied with his discovery request and seek appropriate relief, which could be a court order to permit the discovery, or inspection of the documents, or the grant of a continuance, or such other order as the court deems just under the circumstances. Wolphagen v. FSM, 22 FSM R. 96, 104 (App. 2018).

– Right to Confront Witnesses

A codefendant's inculpatory statement which has been admitted into evidence may not be used against any defendant other than the declarant without violating the right of confrontation guarantee of the FSM Constitution. Hartman v. FSM, 5 FSM R. 224, 229 (App. 1991).

Use of a defendant's out of court statement as evidence against a codefendant would violate the codefendant's "right of confrontation" since the declarant is not a witness at the trial subject to cross examination. Hartman v. FSM, 6 FSM R. 293, 301 (App. 1993).

Criminal conviction of a defendant who has failed to appear for trial violates the accused's constitutional right to confront witnesses against him, and other rights, such as due process and effective assistance of counsel, may also be implicated. But a defendant who appears at the beginning of trial and voluntarily absents himself before the trial's end waives any further right to be present. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 477 & n.7 (App. 1996).

An accused's right to confront the witnesses against him provides him with two types of protection: the right physically to face those who testify against him, and the right to conduct cross-examination. FSM v. Wainit, 10 FSM R. 618, 621 (Chk. 2002).

Because the FSM Declaration of Rights was modeled after the U.S. Bill of Rights, the court may look to U.S. sources for guidance in interpreting similar Declaration of Rights provisions, such as the right to confrontation. FSM v. Wainit, 10 FSM R. 618, 621 n.1 (Chk. 2002).

The right to confrontation is basically a trial right. It includes both the opportunity to cross-examine and the occasion for the factfinder to weigh the demeanor of the witness, and it applies when the ability to confront witnesses is most important–when the trier-of-fact determines the ultimate issue of fact. FSM v. Wainit, 10 FSM R. 618, 621 (Chk. 2002).

The right to confrontation does not apply before a criminal defendant is accused, and it is doubtful that the right applies even at a pretrial hearing. FSM v. Wainit, 10 FSM R. 618, 621 (Chk. 2002).

The use of affidavits to support the filing of a criminal information does not violate a criminal defendant's right to confrontation. The defendant will have the opportunity to confront the affiants if they are called as witnesses at trial by either the government or the defendant. FSM v. Wainit, 10 FSM R. 618, 621 (Chk. 2002).

An accused has a constitutional right to be confronted with the witnesses against him. Both the Constitution and the criminal rules contemplate trial by live testimony, not by deposition. This is in part because of the desirability of having the factfinder observe the witnesses' demeanor. Exceptional circumstances are thus required for depositions in criminal cases. FSM v. Wainit, 13 FSM R. 301, 304 (Chk. 2005).

Our constitution provides a criminal defendant with the right to be confronted by his accusers, which means that a defendant may cross-examine the witness against him. Consequently, the court is forbidden

to consider as evidence against a defendant any part of a non-testifying codefendant's statement which inculpates another defendant since a statement cannot be cross-examined. FSM v. Sam, 14 FSM R. 328, 335 (Chk. 2006).

If codefendants are tried together, a defendant's out-of-court statement ought to be redacted to eliminate references to other codefendants. Failure to do so may result in reversal of convictions in the interests of justice. After redaction, no prejudice will occur if the statements then give no reference to any codefendant. Redaction can normally be accomplished by the parties. Thus the court will not view the statement until after redaction. FSM v. Sam, 14 FSM R. 398, 400 (Chk. 2006).

An accused's right to confront the witnesses against him provides him with two types of protection: the right physically to face those who testify against him, and the right to conduct cross-examination. The right to confrontation is basically a trial right. It includes both the opportunity to cross-examine and the occasion for the factfinder to weigh the witness's demeanor. It applies when the ability to confront witnesses is most important – when the trier-of-fact determines the ultimate issue of fact. FSM v. Sam, 14 FSM R. 398, 401 (Chk. 2006).

The court is forbidden to consider as evidence against a defendant any part of a non-testifying codefendant's statement which inculpates another defendant since a statement cannot be cross-examined. Chuuk v. Suzuki, 16 FSM R. 625, 631 (Chk. S. Ct. Tr. 2009).

Since the accused has a constitutional right to confront and cross examine his accusers at trial, if the complainant has been untruthful or misleading, it remains to be ferreted out through the adversarial process. Chuuk v. Hauk, 17 FSM R. 508, 514 (Chk. S. Ct. Tr. 2011).

When codefendants are tried together, one defendant's admissible out-of-court statement ought to be redacted to eliminate references to the codefendant. This is because the use of a defendant's statement as evidence against a codefendant would violate the codefendant's right to be confronted with the witnesses against him if the declarant is not a witness at the trial subject to cross examination. FSM v. Sorim, 17 FSM R. 515, 524 (Chk. 2011).

Redaction is not required for a defendant's statement when it is used to help establish probable cause since hearsay may be used to establish probable cause. FSM v. Sorim, 17 FSM R. 515, 524 n.2 (Chk. 2011).

Although it may not be known whether a codefendant will testify at trial, the prosecution ought to be prepared in advance for the eventuality that she will not and be ready with a redacted version of any statement by her that it intends to introduce as evidence at trial. If she does testify, the prosecution may then introduce the unredacted statement even if it has already introduced a redacted version. FSM v. Sorim, 17 FSM R. 515, 525 (Chk. 2011).

A statement by a party's co-conspirator made during the course and in furtherance of a conspiracy is not hearsay and is admissible. FSM v. Sorim, 17 FSM R. 515, 525 n.3 (Chk. 2011).

As a general principle, an accused in a criminal trial must be able to confront the witnesses against him, but the court will not issue a blanket ruling with unknown effects about statements that the prosecution may or may not seek to introduce at trial. The accused may raise his objections to any statement once it is known that the prosecution intends to introduce it. FSM v. Sorim, 17 FSM R. 515, 525 (Chk. 2011).

Because the FSM Declaration of Rights was modeled after the U.S. Bill of Rights, the court may look to U.S. sources for guidance in interpreting similar Declaration of Rights provisions, such as the right to confrontation, found in the FSM Constitution's Declaration of Rights at Article IV, section 6, and in the U.S. Constitution in its Sixth Amendment. FSM v. Tipingeni, 19 FSM R. 439, 449 (Chk. 2014).

The prosecution may use Rule 15 to depose its witnesses because the FSM's Confrontation Clause does not always require a physical confrontation before the fact-finder, but the justification for using a deposition at a criminal trial as evidence against a defendant is much stronger if defendant has been present or if he or she has waived the right to be present. FSM v. Tipingeni, 19 FSM R. 439, 449 (Chk. 2014).

The FSM's confrontation clause does not always require a physical confrontation before the fact-finder. For example, there are certain well-established exceptions to the rule barring hearsay that, because of their indicia of reliability or trustworthiness, allow the introduction of evidence from witnesses a defendant will be unable to confront. FSM v. Tipingeni, 19 FSM R. 439, 449 (Chk. 2014).

When the government conducts a Rule 15 deposition in a foreign land with a view toward introducing it at trial, the Confrontation Clause requires, at a minimum, that the government undertake diligent efforts to secure the defendant's presence. FSM v. Tipingeni, 19 FSM R. 439, 450 (Chk. 2014).

A defendant's failure, absent good cause shown, to appear at the deposition of a government witness after notice and the government's tender of expenses constitutes a waiver of that right and of any objection to the taking and use of the deposition based upon that right. FSM v. Tipingeni, 19 FSM R. 439, 450 (Chk. 2014).

The scope and manner of examination and cross-examination during the Rule 15 depositions is the same as would be allowed in the trial itself. This includes the prosecution making available to the defendant or his counsel for examination and use during the deposition any statement of the witness being deposed which is in the government's possession and to which the defendant would be entitled at the trial. The deposition procedure will also include frequent pauses in the testimony so as to allow for translation for the defendant's benefit. The prosecution will be responsible for engaging and compensating a court-approved translator so that the defendant can follow the testimony and confer with his defense counsel. FSM v. Tipingeni, 19 FSM R. 439, 450 (Chk. 2014).

The use of a defendant's inculpatory statements in evidence against a co-defendant, would violate the right of confrontation since the declarant is not a witness at the trial subject to cross examination. FSM v. Ezra, 19 FSM R. 497, 518 (Pon. 2014).

An accused's right to confront the witnesses against him provides him with two types of protection: the right physically to face those who testify against him, and the right to conduct cross-examination. FSM v. Ezra, 19 FSM R. 497, 518 (Pon. 2014).

The FSM Rules of Criminal Procedure are silent about the admissibility of Skype testimony at trial and Congress has not legislated on this issue. Therefore it is left to the court's sound discretion to determine whether to allow Skype testimony at trial as FSM Criminal Rule 26 does not act to preclude the admissibility of Skype testimony because testimony offered via Skype would be taken orally in open court as the Rule requires. FSM v. Halbert, 20 FSM R. 42, 45 & n.1 (Pon. 2015).

Since live televised testimony is certainly not the equivalent of in-person testimony, the decision to excuse a witness's presence in the courtroom should be weighed carefully. FSM v. Halbert, 20 FSM R. 42, 45-46 (Pon. 2015).

Allowing testimony over Skype in exceptional circumstances is essential to vindicate the policy expressed in FSM Criminal Rule 2, which requires that the Rules be construed to provide "fairness in administration and the elimination of unjustifiable expense and delay" in criminal proceedings. FSM v. Halbert, 20 FSM R. 42, 46 (Pon. 2015).

When, in light of the witness's refusal to travel to the FSM, the court is faced with three flawed options: 1) The witness's testimony could be excluded entirely; 2) trial could be continued to allow the parties to

travel to the United States to depose the witness; and 3) the witness could testify over Skype, the court may exercise its discretion to allow the witness to testify over Skype when his testimony is necessary to further the important public policy in favor of justly resolving criminal cases. FSM v. Halbert, 20 FSM R. 42, 46 (Pon. 2015).

The confrontation clause requires the defendant to cross examine the adverse witness face-to-face, thereby permitting the finder of fact to evaluate the witness' credibility. However, the right to confrontation is not an absolute right. FSM v. Halbert, 20 FSM R. 42, 46 (Pon. 2015).

The FSM Declaration of Rights was modeled after the U.S. Bill of Rights, and so the court may look to U.S. sources for guidance in interpreting similar Declaration of Rights provisions, such as the right to confrontation, found in the FSM Constitution's Declaration of Rights in Article IV, section 6, and in the U.S. Constitution in its Sixth Amendment. FSM v. Halbert, 20 FSM R. 42, 46 n.3 (Pon. 2015).

Testimony may be admissible so long as it contains the essential indicia of reliability, including 1) the giving of testimony under oath; 2) the opportunity for cross examination; 3) the ability of the fact-finder to observe demeanor evidence; and 4) the reduced risk that a witness will wrongfully implicate an innocent defendant when testifying in his presence. FSM v. Halbert, 20 FSM R. 42, 46 (Pon. 2015).

Confrontation rights may be satisfied absent a physical, face-to-face confrontation at trial only when there is an individualized determination that denial of physical face-to-face confrontation is necessary to further an important public policy, and only when the testimony's reliability is otherwise assured. Since the reliability of Skype testimony is safeguarded by the traditional indicia of reliability, the deciding question is whether, under the circumstances of this case, allowing a witness to testify via Skype is necessary to further an important public policy. FSM v. Halbert, 20 FSM R. 42, 47 (Pon. 2015).

In all cases that allowed televised testimony it was not practicable for a material witness to appear at trial so as to facilitate physical face-to-face confrontation. Similar circumstances are extant when a material witness for the government is unable to secure permission from his employer to travel to the FSM and the court is powerless to compel his presence via a subpoena. In such circumstances, and where the reliability off testimony is otherwise ensured, allowing a witness to testify via Skype does not violate the defendant's right under the FSM Constitution to confront witnesses against him. FSM v. Halbert, 20 FSM R. 42, 47-48 (Pon. 2015).

A two-way video platform, such as Skype, preserves the face-to-face confrontation that is at the center of the right to confrontation, and thus, a more profitable comparison can be made to the Rule 15 deposition, which may be employed whenever due to the exceptional circumstances of the case it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved for use at trial." FSM v. Halbert, 20 FSM R. 42, 48 (Pon. 2015).

Since the FSM Constitution requires that court decisions be consistent with the social and geographical configuration of Micronesia; since the geographical configuration of Micronesia is such that its population is scattered amongst numerous islands, and transportation between the distant islands of the FSM can be expensive, time consuming and unreliable, and since travel to and from the United States can be especially expensive and time consuming due to the vast distances involved and one commercial airline carrier's monopoly over transportation in the FSM, the FSM's unique geographical configuration generates a public policy impetus in favor of remote testimony by Skype that is lacking in the United States. FSM v. Halbert, 20 FSM R. 42, 48-49 (Pon. 2015).

A prosecution request that the courtroom be closed and that the public be excluded during the child-victim's testimony and that a screen be placed in the courtroom so that when she testifies, she is shielded from the defendants' gaze, implicates two important constitutional rights – the defendant's right to confront any witnesses against the defendant and the public trial right. FSM v. Jappan, 22 FSM R. 49, 52 (Chk. 2018).

The accused's rights that are protected by the confrontation clause are the right to cross-examine witnesses, the right to exclude out-of-court statements, and the right to face-to-face confrontation, including a right to meet face to face all those who appear and give evidence at trial. Meeting face to face is required because it is always more difficult to tell a lie about a person to his face than behind his back, even though there are times it may unfortunately upset the truthful victim-witness. FSM v. Jappan, 22 FSM R. 49, 53 (Chk. 2018).

The confrontation clause requires that the defendant cross-examine an adverse witness face-to-face, thereby permitting the finder of fact to evaluate the witness' credibility, but the right to confrontation is not an absolute right. FSM v. Jappan, 22 FSM R. 49, 53 (Chk. 2018).

Since the right to meet face-to-face all those who appear and give evidence at trial is not absolute, an actual face-to-face encounter at trial is not constitutionally required in every instance. FSM v. Jappan, 22 FSM R. 49, 53 (Chk. 2018).

The government's interest in the physical and psychological well-being of child abuse victims may be sufficiently important to outweigh, at least in some cases, a defendant's right to face his or her accusers in court. FSM v. Jappan, 22 FSM R. 49, 53 (Chk. 2018).

When the prosecution has made an adequate showing of necessity, the governmental interest in protecting child witnesses from the trauma of testifying in a child abuse case is sufficiently important to justify the use of a special procedure that permits a child witness in such cases to testify at trial against a defendant in the absence of face-to-face confrontation with the defendant. FSM v. Jappan, 22 FSM R. 49, 53 (Chk. 2018).

Confrontation rights may be satisfied absent a physical, face-to-face confrontation at trial only when there is an individualized determination that the denial of a physical face-to-face confrontation is necessary to further an important public policy, and only when the testimony's reliability is otherwise assured. The requisite finding of necessity must be a case-specific one where the trial court hears evidence and determines the necessity of the special procedure to protect the chid's welfare. When no such determination of necessity has been made since no evidentiary hearing on the subject has been held, the court cannot grant the relief sought. FSM v. Jappan, 22 FSM R. 49, 53 (Chk. 2018).

Article II of the Kosrae Constitution provides for the constitutional rights of the people of Kosrae and also guarantees the right to be confronted by accusers. Kosrae v. Tilfas, 22 FSM R. 72, 75 (Kos. S. Ct. Tr. 2018).

In all Kosrae State Court criminal trials, the testimony of witnesses must be taken orally in open court, unless otherwise provided by an Act of the Kosrae State Legislature or by a Kosrae State Court rule. Kosrae v. Tilfas, 22 FSM R. 72, 75 (Kos. S. Ct. Tr. 2018).

The criminal procedure rules are silent about whether video testimony is admissible in a criminal trial, and there is no legislation on this. Kosrae v. Tilfas, 22 FSM R. 72, 75 (Kos. S. Ct. Tr. 2018).

Rule 26 does not seem to preclude the admissibility of video testimony because remote video testimony will be taken orally in open court as required by the rules. Kosrae v. Tilfas, 22 FSM R. 72, 75 (Kos. S. Ct. Tr. 2018).

Whether remote video testimony is admissible in a criminal trial is left to the court's sound discretion since Rule 26 does not seem to preclude the admissibility of video testimony because the remote video testimony will be taken orally in open court as required by the rules. Kosrae v. Tilfas, 22 FSM R. 72, 75 (Kos. S. Ct. Tr. 2018).

Live video testimony is not the equivalent of in-person testimony, and the decision to excuse a witness's presence in the courtroom should be weighed carefully. Kosrae v. Tilfas, 22 FSM R. 72, 75 (Kos. S. Ct. Tr. 2018).

Although remote testimony via video chat is not equivalent to in-person testimony, when the testimonies of the alleged victims seem to be crucial to the determination of the issues, the court will exercise its discretion to ensure a fair and just criminal trial by allowing the alleged victims to testify via video chat at trial. Kosrae v. Tilfas, 22 FSM R. 72, 75-76 (Kos. S. Ct. Tr. 2018).

The confrontation clause requires the defendant to cross examine the adverse witness face-to-face, thereby permitting the finder of fact to evaluate the witness's credibility, but this is not an absolute right. Kosrae v. Tilfas, 22 FSM R. 72, 76 (Kos. S. Ct. Tr. 2018).

Confrontation rights may, in limited circumstances, be satisfied without a physical, face-to-face confrontation at trial when the reliability of the testimony is otherwise assured and when there is an individualized determination that the denial of a face-to-face confrontation is necessary to further an important public policy. Kosrae v. Tilfas, 22 FSM R. 72, 76 (Kos. S. Ct. Tr. 2018).

Testimony may be admissible so long as it contains the essential indicia of reliability, including 1) the giving of testimony under oath; 2) the opportunity for cross examination; 3) the ability of the fact-finder to observe demeanor evidence; and 4) the reduced risk that a witness will wrongfully implicate an innocent defendant when testifying in his presence. Kosrae v. Tilfas, 22 FSM R. 72, 76 (Kos. S. Ct. Tr. 2018).

When the traditional indicia of reliability safeguards remote video testimony, a court must decide whether, under the case's circumstances, allowing witnesses to testify via video chat is necessary to further an important public policy. Kosrae v. Tilfas, 22 FSM R. 72, 76 (Kos. S. Ct. Tr. 2018).

A defendant's constitutional right to confront his accuser is not absolute. It can be met even without a face-to-face confrontation when it is necessary to further an important public policy and it is assured that the testimony is reliable. Thus, when the alleged victims testify by appearing visibly on a screen to the court and to the defendant and her counsel, these witnesses will, through video chat, deliver their testimonies orally, under oath, and in open court where the defendant will have an opportunity to cross-examine them and the court will be able to observe their demeanor. Kosrae v. Tilfas, 22 FSM R. 72, 76 (Kos. S. Ct. Tr. 2018).

Considering our people's migration realities, there are important public policies to uphold as the FSM's and Kosrae's geographical configuration make the ability to use video conferencing an advantage for the process by significantly reducing costs for plane tickets to and from Kosrae, by helping to reduce delay, and by allowing testimony of witnesses who otherwise would not be able to appear at all. Kosrae v. Tilfas, 22 FSM R. 72, 76 (Kos. S. Ct. Tr. 2018).

The use of a non-testifying defendant's statement as evidence against a co-defendant violates the co-defendant's right to be confronted with the witnesses against him since the declarant is not a trial witness subject to the co-defendant's cross-examination. This difficulty can be eliminated if the parties redact any co-defendant statements before trial. FSM v. Jappan, 22 FSM R. 81, 83 (Chk. 2018).

– Right to Counsel

The Constitution secures to the criminal defendant, as a minimum, the right to receive reasonable notice of the charges against the defendant, the right to examine any witnesses against the defendant, and the right to offer testimony and be represented by counsel. In re Iriarte (II), 1 FSM R. 225, 260 (Pon. 1983).

Where the defendants had been advised of their right to counsel but there was no indication that they desired or requested counsel, there is no basis for finding that their right to counsel had been violated.

FSM v. Jonathan, 2 FSM R. 189, 199 (Kos. 1986).

When a defendant has expressed a wish to meet with counsel before further questioning, questioning must cease at once. Any attempt by police officers to ignore or override the defendant's wish, or to dissuade him from exercising his right, violates 12 F.S.M.C. 218. FSM v. Edward, 3 FSM R. 224, 237 (Pon. 1987).

For a defendant to waive his right to silence or to counsel he must do so knowingly and intelligently. There exists a presumption against such waivers. Moses v. FSM, 5 FSM R. 156, 159 (App. 1991).

Although implied waivers of a defendant's rights might be valid there is a presumption against a finding of a waiver of rights. Moses v. FSM, 5 FSM R. 156, 159-60 (App. 1991).

A court cannot allow defense counsel to withdraw so that the defendant can seek new counsel to resume trial when the trial is well into the defendant's case-in-chief and when that new counsel was not present during trial and has not heard either the prosecution's witnesses' testimony or that of the defense witnesses who have already testified. FSM v. Jano, 9 FSM R. 470a, 470b (Pon. 2000).

Defense counsel cannot, in the middle of a criminal trial, precipitously accept other employment, without making the acceptance of employment conditional, commit himself to begin work "immediately," and then move for withdrawal because defense counsel is under an ethical obligation to continue as counsel until the criminal trial ends, even if that means postponement of his departure for new employment. FSM v. Jano, 9 FSM R. 470a, 470b (Pon. 2000).

When ordered to by a tribunal, defense counsel is ethically obligated to continue the representation even if good cause to withdraw is present. Should the criminal trial end in a conviction, new counsel may be obtained for sentencing. FSM v. Jano, 9 FSM R. 470a, 470b (Pon. 2000).

Denying withdrawal of counsel in the middle of a criminal trial is within the court's discretion, and as long as counsel is providing effective assistance, a criminal defendant has the choice of either continuing with that counsel or representing himself pro se. FSM v. Jano, 9 FSM R. 470a, 470b (Pon. 2000).

A defendant in a criminal case has a right to have counsel for his defense. This constitutional right to counsel affords a criminal defendant the right to choose his own counsel, provided that the choice of counsel does not interfere with just resolution of the case. Kosrae v. Sigrah, 11 FSM R. 26, 29 (Kos. S. Ct. Tr. 2002).

When no authority has been given for the court to appoint private counsel already retained by a defendant or to require that the Public Defenders' Office compensate that private counsel at his prevailing hourly rate and when appointed counsel usually serve pro bono, the request will be denied. FSM v. Kansou, 12 FSM R. 637, 641 (Chk. 2004).

When the movants have not been convicted of any charges, no assets have been ordered forfeited, no payments to movant's counsel have been identified as coming from forfeitable assets, and the government has not committed itself to seeking disgorgement of counsel's fees, and the record shows that the movants have sources of income and assets that the government has not alleged are forfeitable and from which attorney's fees might be paid, it is too speculative for the court to consider whether the possible forfeiture of attorney's fees will affect an accused's right to retain counsel of his choice and to effective assistance of that counsel. FSM v. Kansou, 12 FSM R. 637, 641 (Chk. 2004).

Concerns about the affect of possible forfeiture of defense counsel's attorney's fees do not apply to a defendant who is represented by a salaried employee of the Public Defenders' Office and who is only charged with one offense and forfeiture of assets is not a penalty that the court can impose for the conviction of that offense. FSM v. Kansou, 12 FSM R. 637, 641-42 (Chk. 2004).

The court is obligated to set pretrial release conditions for defendants when they make their initial appearance. At an initial appearance, the court is required to, among other things, inform a defendant of his rights, including his right to retain counsel, or to request the assignment of counsel if the defendant is unable to obtain counsel, and will, if requested, direct the appointment of counsel. FSM v. Kansou, 12 FSM R. 637, 642 (Chk. 2004).

The Office of the Public Defender was created by 2 F.S.M.C. 204(5). For at least the criminal side of the docket, this represents Congress's affirmative implementation of the Constitution's Professional Services Clause. The primary, perhaps even the sole, responsibility, for the Professional Services Clause's affirmative implementation lies with Congress. FSM v. Kansou, 13 FSM R. 392, 394 & n.1 (Chk. 2005).

The framers' intent in including the Professional Services Clause was to establish a national policy of providing the services when requested by individual citizens unable to provide for themselves, although these services would not necessarily be free. Thus the framers intended that these professional services were to be provided only to natural persons, not to artificial persons. Therefore neither the Office of the Public Defender's refusal to represent business entity defendants nor Public Defender Directive No. 19 barring such representation is unconstitutional. FSM v. Kansou, 13 FSM R. 392, 395 (Chk. 2005).

For appointment of counsel under Rule 44(a), the rule requires that a defendant be unable to obtain counsel. Before the court can make a determination that a business entity defendant is unable to obtain counsel, the court would need detailed evidence concerning each entity defendant's financial situation, its ability to pay counsel, whether it has sought to obtain counsel, which counsel it had tried to retain, and what was the result of each of those attempts. Without that information, the court has no ground on which to conclude that the entity defendants, or any one of them, are unable to obtain counsel, or that they have even tried to. When none of that information is before the court, the court, without deciding whether Rule 44(a) applies to defendants who are not natural persons, will decline to appoint counsel for the entity defendants under Rule 44(a). FSM v. Kansou, 13 FSM R. 392, 395 (Chk. 2005).

For a defendant to waive his right to silence or to counsel he must do so knowingly and intelligently. There exists a presumption against such waivers. FSM v. Kansou, 14 FSM R. 150, 151 (Chk. 2006).

The burden of proof is on the prosecution to show that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel. The standard of proof the prosecution must meet is the preponderance of the evidence. FSM v. Kansou, 14 FSM R. 150, 151-52 (Chk. 2006).

The government has met the standard of proof and proved by a preponderance of the evidence that the defendant has waived his rights knowingly and intelligently when the defendant's signed waiver showed that he was informed of his right to silence and his right to counsel and waived those rights and when, considering that signed waiver and the testimony presented, the court has considered the defendant's evidence and argument and cannot find that the manner in which the statement was elicited coerced the defendant into making it. FSM v. Kansou, 14 FSM R. 150, 152 (Chk. 2006).

The government's drafting of the defendant's affidavit, which the defendant signed and had notarized at the FSM Supreme Court, Palikir, Pohnpei, while not in the presence of any prosecution team member, does not make that affidavit the product of an unknowing or involuntary waiver of the defendant's rights. FSM v. Kansou, 14 FSM R. 150, 152 (Chk. 2006).

A defendant's right to counsel extends through any appeal of the trial court decision. It is counsel's responsibility, in consultation with his client, to determine where his obligations and duties lie and to determine whether an appeal is a desirable course of action, and proceed accordingly. Chuuk v. William, 16 FSM R. 149, 151 (Chk. S. Ct. Tr. 2008).

If counsel seeks to terminate representation after trial but before the appeal, steps must be taken to ensure the client's rights are protected to the extent reasonably practicable and, even then, notwithstanding good cause for withdrawal, the court may order counsel to continue representation. Chuuk v. William, 16 FSM R. 149, 151 (Chk. S. Ct. Tr. 2008).

Counsel may not simply refuse to pursue an appeal, without taking any further action to protect the client's rights. If counsel concludes that an appeal would not be meritorious, but the client still wishes to pursue the appeal, any withdrawal is conditioned upon the court's approval. Such approval may be conditioned on counsel's filing of an "Anders brief" referring to anything in the record that may arguably support appeal, whereupon the court should only grant withdrawal if it finds the appeal to be frivolous. Counsel may withdraw without the court's permission only if counsel was appointed solely to act as trial counsel. Chuuk v. William, 16 FSM R. 149, 152 (Chk. S. Ct. Tr. 2008).

When the public defender is the attorney of record in this case, unless and until the court recognizes his withdrawal, neither counsel nor his office is relieved of the duty of ensuring adequate representation for the client's appeal. The trial court may leave to the appellate court any ruling on whether the Public Defender's office may withdraw its representation of an appellant and what additional steps, if any, may be required before such withdrawal is approved. Chuuk v. William, 16 FSM R. 149, 152 (Chk. S. Ct. Tr. 2008).

Although an arrestee, who was not informed of her rights to access to counsel when she was handcuffed, was told her full rights at the police station, this does not excuse the police's failure to advise her of rights regarding to access to counsel on the scene when she was first placed in handcuffs. Since the arrestee was not harmed by the failure to advise her, when she was first placed in handcuffs, of rights regarding to access to counsel, the state is liable to her for nominal damages in the amount of one dollar. Berman v. Pohnpei, 16 FSM R. 567, 576 (Pon. 2009).

Upon request, the police must allow the arrested person to call an attorney. Berman v. Pohnpei, 16 FSM R. 567, 576 (Pon. 2009).

An arrestee was not denied access to legal counsel when she was allowed several attempts to call an attorney, but the attorneys that she attempted to contact via telephone were not available at that time. Berman v. Pohnpei, 16 FSM R. 567, 576 (Pon. 2009).

For a defendant to waive his right to silence or to counsel, he must do so knowingly and intelligently. The burden is on the government to show not only that the waiver was knowingly and intelligently given, but that it was given before any statement was made. There exists a presumption against such waivers. Chuuk v. Suzuki, 16 FSM R. 625, 629 (Chk. S. Ct. Tr. 2009).

When an accused asked for counsel before he gave his statement, the government failed to overcome the presumption against the accused's waiver of his right to counsel and to remain silent. Chuuk v. Suzuki, 16 FSM R. 625, 630 (Chk. S. Ct. Tr. 2009).

When a defendant has expressed a wish to meet with counsel before further questioning, questioning must cease at once. Any attempt by police officers to ignore or override the defendant's wish, or to dissuade him from exercising his constitutional rights, is grounds for suppression of his subsequent statement. Chuuk v. Suzuki, 16 FSM R. 625, 630 (Chk. S. Ct. Tr. 2009).

Since the criminal contempt statute provides that no punishment of a fine of more than $100 or imprisonment can be imposed unless the accused is given a right to notice of the charges, to a speedy public trial, to confront the witnesses against him, to compel the attendance of witnesses in his behalf, and to have the assistance of counsel, this statute was violated when a $200 fine was imposed without a public trial and the party having the opportunity to be represented by a public defender. Berman v. Pohnpei

Legislature, 17 FSM R. 339, 354 n.10 (App. 2011).

An arrestee's right to be informed of her right to counsel when arrested is a due process right. Berman v. Pohnpei, 17 FSM R. 360, 371 (App. 2011).

The usual remedy for the denial of the right to counsel is to vacate the conviction and remand for a new trial. Helgenberger v. U Mun. Court, 18 FSM R. 274, 280 n.2 (Pon. 2012).

Since, in a criminal case, a court is not constitutionally required to allow defense counsel to withdraw or to be replaced at a strategic moment in the proceedings, the right to counsel of an official who wanted to switch trial counsel before the end of his impeachment trial has not been violated even if that official had a constitutional right to counsel during his impeachment trial. Helgenberger v. U Mun. Court, 18 FSM R. 274, 281 (Pon. 2012).

The FSM Constitution protects the due process rights of all people accused of a crime. These rights include the right to be informed, the right against self-incrimination, and the right to have an attorney present at the time of questioning. These rights, along with others, were codified under 12 F.S.M.C. 214 and 218. The remedy for unlawful violations of these due process rights shall not in and of itself entitle an accused to an acquittal, but no evidence obtained as a result of such violation shall be admissible against the accused. FSM v. Ezra, 19 FSM R. 497, 508 (Pon. 2014).

For a defendant to waive his right to silence or to counsel he must do so knowingly and intelligently. FSM v. Ezra, 19 FSM R. 497, 509 (Pon. 2014).

When the defendants have been advised of their right to counsel but there was no indication that they desired or requested counsel, there is no basis for finding that their right to counsel has been violated. FSM v. Ezra, 19 FSM R. 497, 509 (Pon. 2014).

– Right to Counsel – Ineffective Assistance

Where defendant's counsel had five days to prepare for the defense of the accused, and was granted a two day continuance, in the absence of any showing in the record or representation by counsel of resulting prejudice or ineffectiveness of counsel, the trial court's refusal to grant a longer continuance was not an abuse of discretion and did not violate article IV, section 6 of the FSM Constitution. Hartman v. FSM, 5 FSM R. 224, 233-34 (App. 1991).

The right of effective assistance of counsel applies equally to retained as well as appointed counsel. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 478 (App. 1996).

Criminal defendants charged with a serious crime have a constitutional right to effective assistance of counsel even if the defendant is a corporation with retained counsel. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 478 (App. 1996).

Defense counsel's performance must be both deficient and prejudicial to the defendant to be ineffective assistance. Under the first prong of the test, the proper standard for attorney performance is that of reasonably effective assistance, and under the second prong, an error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment, but in certain contexts prejudice is presumed. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 478 (App. 1996).

Because prejudice is presumed when counsel is burdened by an actual conflict of interest an attorney representing criminal codefendants with conflicting interests denies a defendant his constitutional right to effective assistance of counsel. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 479 (App. 1996).

In order to prevail on an ineffective assistance of counsel claim in cases of joint representation, a criminal defendant who raised no objection at trial to the joint representation must demonstrate that an actual conflict of interest adversely affected his lawyer's performance. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 479 (App. 1996).

A criminal defendant who cannot show joint representation of conflicting interests can still prevail on an ineffective assistance claim if he can show deficient attorney performance resulting in actual prejudice. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 479 (App. 1996).

To resolve an ineffective assistance of counsel claim a court must consider the entire record. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 479 (App. 1996).

While an evidentiary hearing on remand may be necessary in many, or even most, ineffective assistance of counsel cases, it may not be needed when counsel's performance was deficient, and an actual conflict of interest existed which adversely affected that performance. In some such cases the conviction may be reversed, and the government may proceed with a new trial. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 481, 484 (App. 1996).

The right to counsel means competent counsel, but a trial counselor is not, merely because he is a trial counselor and not a lawyer, incompetent counsel. Representation by a trial counselor is not per se ineffective assistance of counsel failing to meet the constitutional requirement. Nelson v. Kosrae, 8 FSM R. 397, 400 (App. 1998).

Trial counselors and attorneys are expected to handle different types of cases, both civil and criminal. A counsel need not necessarily have special training or prior experience to handle legal problems of a type with which the counsel is unfamiliar. Consequently, even if a trial counselor did not have prior experience with the specific types of offenses charged against the defendant, that lack of experience does not automatically result in lack of competency. Kosrae v. Kinere, 13 FSM R. 230, 236 (Kos. S. Ct. Tr. 2005).

The Public Defender, based upon the information he had received during his prior representation of the defendant in the matter, should have refused to sign the plea agreement, indicating his approval if he believed that the agreement violated the defendant's constitutional protection against double jeopardy. It is disingenuous for defendant to now argue that private counsel provided ineffective assistance of counsel for failing to raise the defense of double jeopardy, when defendant's former counsel, also a public defender, agreed to and signed the plea agreement in the matter. Kosrae v. Kinere, 13 FSM R. 230, 237 (Kos. S. Ct. Tr. 2005).

All criminal defendants, including corporations, have the right to effective assistance of counsel. FSM v. Kansou, 13 FSM R. 392, 394 (Chk. 2005).

Ineffective assistance of counsel during plea negotiations may invalidate a guilty plea if counsel's deficient performance undermined the voluntary and intelligent nature of the defendant's decision to plead guilty. Kinere v. Kosrae, 14 FSM R. 375, 382 (App. 2006).

To prevail on an ineffective assistance of counsel claim, an appellant must show that 1) counsel's performance was so deficient that it fell below an objective standard of reasonableness, and 2) the deficient performance prejudiced the defense. Under the first prong of the analysis, courts must indulge in a strong presumption of attorney competence. The second prong of the analysis requires an appellant to demonstrate a reasonable probability that, but for counsel's deficient performance, the result of the proceedings would have been different (i.e., better). If the appellant cannot satisfy the first prong of this test, the court's inquiry will proceed no further. Kinere v. Kosrae, 14 FSM R. 375, 382 (App. 2006).

To meet the second prong of the ineffective assistance of counsel analysis in the context of plea negotiations, an appellant must demonstrate a reasonable probability that, but for attorney error, he would

have proceeded to trial. Kinere v. Kosrae, 14 FSM R. 375, 382 (App. 2006).

To resolve an argument that the defendant's counsel was constitutionally ineffective for failing to raise a double jeopardy defense before the defendant entered his guilty pleas, the court must necessarily consider the merits of the defendant's double jeopardy claim, since counsel may not be declared constitutionally ineffective for failing to raise a defense that would not have benefited the client. Kinere v. Kosrae, 14 FSM R. 375, 382 (App. 2006).

It is axiomatic that the failure to raise nonmeritorious issues does not constitute ineffective assistance of counsel. A position that as long as a defendant has a defense that has historically been recognized as meritorious, he automatically prevails on his ineffectiveness claim without having to prove that the defense would have been meritorious in his case is clearly flawed reasoning. Kinere v. Kosrae, 14 FSM R. 375, 382 & n.2 (App. 2006).

Having concluded that counsel was not constitutionally ineffective for failing to raise the defense of double jeopardy, the court must conclude that it is irrelevant whether counsel would have raised the defense if he had pondered the case longer. Kinere v. Kosrae, 14 FSM R. 375, 386 (App. 2006).

– Right to Counsel – Joint Representation

Because prejudice is presumed when counsel is burdened by an actual conflict of interest an attorney representing criminal codefendants with conflicting interests denies a defendant his constitutional right to effective assistance of counsel. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 479 (App. 1996).

In order to prevail on an ineffective assistance of counsel claim in cases of joint representation, a criminal defendant who raised no objection at trial to the joint representation must demonstrate that an actual conflict of interest adversely affected his lawyer's performance. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 479 (App. 1996).

A criminal defendant who cannot show joint representation of conflicting interests can still prevail on an ineffective assistance claim if he can show deficient attorney performance resulting in actual prejudice. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 479 (App. 1996).

It is an uncommon case where joint representation of criminal defendants is proper because the potential for conflict of interest in representing multiple defendants is so grave that ordinarily a lawyer should decline to represent more than one codefendant. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 479-80 (App. 1996).

Conflicting interests in the joint representation of criminal defendants might be discovered and avoided if an early hearing is conducted pursuant to FSM Criminal Rule 44(c). Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 480 n.9 (App. 1996).

In a case of actual conflict between jointly represented criminal codefendants a presumption of prejudice exists so that actual prejudice does not have to be shown and so that a harmless error inquiry is inappropriate. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 480 (App. 1996).

There must first be a finding of a valid waiver to any conflict of interest from the jointly represented codefendants before the question of whether counsel's trial tactics were reasoned becomes proper. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 481, 483 (App. 1996).

A court must indulge in every reasonable presumption against the waiver of the conflict of an attorney jointly representing codefendants. Such a waiver is not to be lightly inferred–it must be shown to have been knowingly, voluntarily and intelligently made. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 481, 483 (App. 1996).

Reversal of a conviction is warranted where there has been no inquiry into waiver of any conflict of counsel jointly representing codefendants, no hint of a waiver appears on the record, and an actual conflict existed. A new trial is then proper. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 481, 483 (App. 1996).

The right to waive an attorney's conflict of interest is not absolute. There are times when a court should not allow an otherwise valid waiver by a jointly represented codefendant. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 481, 484 (App. 1996).

In criminal cases the potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests is proper if the risk of adverse effect is minimal and FSM MRPC R. 1.6(b)'s requirements are met. Nena v. Kosrae, 14 FSM R. 73, 79 (App. 2006).

It is an uncommon case where joint representation of criminal defendants is proper since the potential for conflict of interest in representing multiple criminal defendants is so grave that ordinarily a lawyer should decline to represent more than one codefendant. Nena v. Kosrae, 14 FSM R. 73, 79 (App. 2006).

Because prejudice is presumed when counsel is burdened by an actual conflict of interest an attorney representing criminal codefendants with conflicting interests denies a defendant his constitutional right to effective assistance of counsel. Nena v. Kosrae, 14 FSM R. 73, 79 (App. 2006).

Rule 44 requires that the trial court inquire into possible conflicts when criminal defendants are charged or tried together and are represented by the same counsel or firm, and unless it appears that there is good cause to believe no conflict of interest is likely to arise, the court must take such measures as may be appropriate to protect each defendant's right to counsel. Nena v. Kosrae, 14 FSM R. 73, 79-80 (App. 2006).

A danger of representing criminal codefendants is that in any case with codefendants, one (or more) codefendant may insist upon his right to testify even if counsel advises against it since a criminal accused has a right to the assistance of an advocate, a right to testify and a right of confidential communication with counsel. When one codefendant testifies and another codefendant is represented by the same counsel, the other codefendant is deprived of effective assistance of counsel because he is unable to cross-examine the testifying defendant. Nena v. Kosrae, 14 FSM R. 73, 80 (App. 2006).

Even if codefendants' testimony would be entirely consistent, defendants jointly tried may present a conflict because of the advantages and disadvantages of taking the stand may vary substantially as between them. A decision to have them testify or not testify might work to the disadvantage of one or the other, while a decision to have only one testify will undoubtedly highlight the lack of testimony from the other. Although these tensions between the codefendants' interests may be lessened somewhat by separate trials, multiple representation may present various conflicts even in that setting. Nena v. Kosrae, 14 FSM R. 73, 80 (App. 2006).

When a conflict between two codefendants may not have been obvious initially, but once one of the defendants testified, it was apparent and it turned out to be prejudicial, although it was entirely likely that if the defendants had been tried separately or if neither defendant had testified there would have been no conflict, the remedy for a defendant who had ineffective assistance of counsel is to reverse the conviction and remand for a new trial. Reversal of a conviction is warranted when there has been no inquiry into waiver of any conflict of counsel jointly representing codefendants, no hint of a waiver appears on the record, and an actual conflict existed. A new trial is then proper. Nena v. Kosrae, 14 FSM R. 73, 81 & n.4 (App. 2006).

When the court raised the issue of a potential conflict of interest in having one attorney representing both defendants. After a brief discussion, the defendants expressly waived the right to separate counsel in court. The court agrees that at this time that no conflict of interest is apparent, however, recognizes that a Rule 44 hearing might be necessary at a later date. FSM v. Kimura, 19 FSM R. 617, 619 (Pon. 2014).

Although joint representation of a defendant in a criminal case is possible, the risk of error is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests is proper if the risk of adverse effect is minimal and the requirements are met. FSM v. Kimura, 19 FSM R. 617, 619 n.2 (Pon. 2014).

– Right to Silence

The issue of the court's jurisdiction to try a case is a preliminary matter that the accused, by testifying upon, does not subject himself to cross-examination as to other issues in the case. FSM v. Fal, 8 FSM R. 151, 154 (Yap 1997).

When a motorist, detained at routine traffic stop for a temporary and brief period, was not arrested and was not in custody at the time he was questioned regarding his driver's license, the police questioning at the roadblock was routine questioning, conducted by government agents as part of their roadblock procedure and did not require Miranda warnings. Therefore, based upon the totality of the circumstances, that motorist was not compelled into giving incriminating evidence against himself, his right against self-incrimination was not violated by the roadblock, and the evidence thus obtained will not be suppressed. Kosrae v. Sigrah, 11 FSM R. 249, 255 (Kos. S. Ct. Tr. 2002).

The privilege against self-incrimination is designed to prevent the use of devices to subvert the will of an accused. This protection has its roots in the United States Constitution's fifth amendment. Historically, the linchpin of this principle has been to prohibit the compelling of evidence of a testimonial or communicative nature. The protection does not extend to non-testimonial evidence such as fingerprints, handwriting exemplars, voice exemplars, or blood samples for purposes of determining a person's blood alcohol level, or the admission into evidence of a person's refusal to take a blood alcohol test. Sigrah v. Kosrae, 12 FSM R. 320, 331 (App. 2004).

The larger question is not whether a statute technically requires an act versus a statement, but whether the driver's failure to produce his license was compelled by the state in violation of the right against self-incrimination. Sigrah v. Kosrae, 12 FSM R. 320, 332 (App. 2004).

While a statute may be said to "compel" compliance with its requirement that a driver display his driver's license upon request by a police officer, it is manifestly the case that in such a sense every law specifying a positive duty and a penalty for failure to comply with that duty may be said to "compel" the required conduct. But this generalized characteristic of all effectively enforceable laws is a different question from whether the state coerced the driver's failure to display his license when the police officer requested him to do so. Sigrah v. Kosrae, 12 FSM R. 320, 332 (App. 2004).

A driver may not lay his own conduct in failing to have his license in his possession and failing to produce it upon an officer's request, at the statute's feet by claiming that it requires him to incriminate himself. The police officer who requested the driver to produce his license cannot be said to have prevented him from displaying his license, or to have engaged in any other type of coercive conduct. The short of it is that the state did not compel the driver's failure to produce his driver's license. Sigrah v. Kosrae, 12 FSM R. 320, 332 (App. 2004).

The constitutional privilege against self-incrimination is not meant to be a refuge for those who, by their own conduct and without any coercive action on the part of the state, fail to comply with the reasonable requirements of a valid statute. Sigrah v. Kosrae, 12 FSM R. 320, 332-33 (App. 2004).

Failure to produce a driver's license upon a police officer's request in contravention of a statute does not constitute compelled evidence within the meaning of either Article II, § 1(f) of the Kosrae Constitution, or Article IV, § 7 of the FSM Constitution, so as to render the statute unconstitutional under either of those constitutional provisions. Sigrah v. Kosrae, 12 FSM R. 320, 333 (App. 2004).

The protection offered by the FSM Constitution against compulsory self-incrimination is traceable to the U.S. Constitution's fifth amendment, and when a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, United States authority may be consulted to understand its meaning. FSM v. Kansou, 12 FSM R. 637, 643 (Chk. 2004).

The central standard for application of the privilege against self-incrimination has been whether the claimant is confronted by substantial and real, and not merely trifling or imaginary, hazards of incrimination. Prospective acts will ordinarily involve only speculative and insubstantial risks of incrimination. FSM v. Kansou, 12 FSM R. 637, 643 (Chk. 2004).

When a pretrial release order's reporting requirement is prospective only and the movants are not required to report any past transactions, but only ones that had not yet taken place, the reports cannot incriminate any defendant for any of the offenses charged in the pending criminal information. When sending money abroad is not a criminal or regulatory offense, merely reporting it cannot, by itself, incriminate anyone. When the condition to report money sent abroad is prospective only and a defendant may arrange his, her, or its affairs so that there is nothing to report that would be evidence of some act for which criminal charges might be brought, it presents the ordinary case for prospective acts – the movants are not confronted by any substantial and real hazard of self-incrimination and therefore may not rely on the right against self-incrimination for relief from a pretrial release order to report money sent abroad. FSM v. Kansou, 12 FSM R. 637, 643 (Chk. 2004).

Under the right against self-incrimination, neither a partnership nor the individual partners are shielded from compelled production of partnership records on self-incrimination grounds. FSM v. Kansou, 12 FSM R. 637, 643 (Chk. 2004).

A release condition that the defendants report money sent abroad is not contrary to the purpose of pretrial release conditions to ensure the defendant's appearance at trial and assure the community's safety when among the possible penalties, if convicted of the offenses charged, is the forfeiture of certain assets allegedly wrongfully acquired; when the provisions help assure that the res that might be subject to forfeiture is not transferred from its current owners or does not depart the jurisdiction – it helps assure the presence of the res; and when it is a less drastic measure than that sought by the government, which was to freeze the movants' assets and not permit any remittances abroad without prior court approval. FSM v. Kansou, 12 FSM R. 637, 643 (Chk. 2004).

An attorney is not liable for criminal contempt for advising his client in good faith to assert his or her privilege against self-incrimination. For an attorney in the Federated States of Micronesia to be liable for criminal contempt for advising a client to assert his or her right to self-incrimination, the attorney must have given that advice in bad faith. FSM v. Kansou, 13 FSM R. 344, 349 (Chk. 2005).

A person is "in custody" when a person's freedom is substantially restricted by a police officer. For example, where a person's freedom is substantially restricted by a police officer by being placed into a police car, based upon a police officer's suspicion that the person was involved in the crimes committed earlier that evening, that person is considered arrested for the purpose of the right to be advised of his constitutional rights to remain silent and to have legal counsel. Kosrae v. Phillip, 13 FSM R. 449, 452 (Kos. S. Ct. Tr. 2005).

A person who is stopped for a routine traffic offense is not in custody, for the purpose of requiring Miranda warnings, and persons who are stopped at a roadblock, where a person's freedom of movement is not substantially restricted or controlled, are not considered to be in custody and not considered to be

arrested. Kosrae v. Phillip, 13 FSM R. 449, 452 (Kos. S. Ct. Tr. 2005).

When a defendant was followed by the Kosrae State Police, stopped at a traffic stop, questioned briefly and asked to perform field sobriety tests; when the traffic stop was conducted on a public road, where passersby could witness the interaction of the police officers and the defendant and was conducted by only two police officers, which created a non-threatening situation; when the officers did not tell the defendant that he would be going to jail; and when there was no needless delay in the administration of the field sobriety tests, the defendant, when he was asked to perform the field sobriety tests, was not considered arrested and was not in custody for the purposes of Miranda rights, and the state was not required to provide the defendant his Miranda rights prior to administration of the tests. Kosrae v. Phillip, 13 FSM R. 449, 453 (Kos. S. Ct. Tr. 2005).

For a defendant to waive his right to silence or to counsel he must do so knowingly and intelligently. There exists a presumption against such waivers. FSM v. Kansou, 14 FSM R. 150, 151 (Chk. 2006).

The burden of proof is on the prosecution to show that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel. The standard of proof the prosecution must meet is the preponderance of the evidence. FSM v. Kansou, 14 FSM R. 150, 151-52 (Chk. 2006).

The government has met the standard of proof and proved by a preponderance of the evidence that the defendant has waived his rights knowingly and intelligently when the defendant's signed waiver showed that he was informed of his right to silence and his right to counsel and waived those rights and when, considering that signed waiver and the testimony presented, the court has considered the defendant's evidence and argument and cannot find that the manner in which the statement was elicited coerced the defendant into making it. FSM v. Kansou, 14 FSM R. 150, 152 (Chk. 2006).

The government's drafting of the defendant's affidavit, which the defendant signed and had notarized at the FSM Supreme Court, Palikir, Pohnpei, while not in the presence of any prosecution team member, does not make that affidavit the product of an unknowing or involuntary waiver of the defendant's rights. FSM v. Kansou, 14 FSM R. 150, 152 (Chk. 2006).

Since probation revocation is not a stage in a criminal prosecution, the defendant's privilege against self-incrimination is limited to where his answers might incriminate him in a future criminal proceeding. FSM v. William, 16 FSM R. 4, 9 (Chk. 2008).

A person may refuse to testify against himself in two situations. First, a person may invoke the privilege in a criminal trial in which that person is a defendant. Second, a person may invoke the privilege in any other proceeding, civil, criminal, formal or informal, where the answers might incriminate him in future criminal proceedings. FSM v. William, 16 FSM R. 4, 9 n.4 (Chk. 2008).

For a defendant to waive his right to silence or to counsel, he must do so knowingly and intelligently. The burden is on the government to show not only that the waiver was knowingly and intelligently given, but that it was given before any statement was made. There exists a presumption against such waivers. Chuuk v. Suzuki, 16 FSM R. 625, 629 (Chk. S. Ct. Tr. 2009).

When the court, based upon the witnesses' testimony, including their respective demeanor in the courtroom during the hearing, concludes that the accused was properly advised of his rights, including the right to remain silent, before he confessed, the court will deny a motion to suppress a confession that is based on the ground that a waiver was not knowingly and intelligently given. Chuuk v. Suzuki, 16 FSM R. 625, 629 (Chk. S. Ct. Tr. 2009).

When the officers' investigatory stop of the defendant and their questioning him about suspicious circumstances did not constitute an arrest, the officers were not required to advise the defendant of his right

to remain silent when they first approached him on the dock. FSM v. Phillip, 17 FSM R. 413, 420 (Pon. 2011).

When the officers had reasonable suspicion, based on specific and articulable facts, to perform an investigatory stop of the defendant after he disembarked from the *Voyager* on December 27, 2009, and when the defendant was not compelled to make an explicit or implicit disclosure of incriminating testimonial information since he volunteered to help the officers locate his backpack, he was not at that time, entitled to a privilege against self-incrimination under FSM Const. art. IV, § 7. FSM v. Phillip, 17 FSM R. 595, 599 (Pon. 2011).

The FSM Constitution protects the due process rights of all people accused of a crime. These rights include the right to be informed, the right against self-incrimination, and the right to have an attorney present at the time of questioning. These rights, along with others, were codified under 12 F.S.M.C. 214 and 218. The remedy for unlawful violations of these due process rights shall not in and of itself entitle an accused to an acquittal, but no evidence obtained as a result of such violation shall be admissible against the accused. FSM v. Ezra, 19 FSM R. 497, 508 (Pon. 2014).

The statutory protections are reviewed under a two-part analysis: first, under a statutory review of whether the defendant knowingly and intelligently waived his rights before giving a statement to the police. Second, they are reviewed under a constitutional backdrop of whether the defendant voluntarily waived those rights. This second look is often cursory, or entirely unnecessary, in the ordinary case where no investigatory irregularities are implicated. This two-part analysis is ultimately the inquiry into whether a defendant, knowingly, intelligently, and voluntarily waived his or her rights. FSM v. Ezra, 19 FSM R. 497, 509 (Pon. 2014).

For a defendant to waive his right to silence or to counsel he must do so knowingly and intelligently. FSM v. Ezra, 19 FSM R. 497, 509 (Pon. 2014).

A defendant's constitutional right against self-incrimination is an important right and, although an implied waiver of the right might be valid, there is a presumption against such waivers. For waiver to be effective, there must be a clear and unmistakable warning of the rights being waived. FSM v. Ezra, 19 FSM R. 497, 509 (Pon. 2014).

The right against self-incrimination is a privilege that may be waived by defendants and is a purely personal privilege that may not be claimed by a corporation that is named as a defendant in a criminal case. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 626 & n.9 (Pon. 2014).

– Robbery

When one person, encouraged by the defendant to commit an assault, carries out the assault and then proceeds to commit robbery by the taking of turtle meat from the possession of the assaulted person, the defendant is not guilt of robbery where: 1) he did not suggest taking of the turtle meat or anything of value; 2) there is no showing that the could have foreseen the assault would be followed by the taking of something of value; and 3) the defendant left the premises before the turtle meat was taken. FSM v. Carl, 1 FSM R. 1, 2 (Pon. 1981).

Robbery requires a linkage between the threat or use of violence and the taking of something of value. FSM v. Carl, 1 FSM R. 1, 2 (Pon. 1981).

In robbery, as defined in 11 F.S.M.C. 920, the element of use or threatened use of immediate force or violence must be shown to have preceded or been concomitant or contemporaneous with the taking. Andohn v. FSM, 1 FSM R. 433, 446-47 (App. 1984).

A conviction for robbery is a finding which can only be reversed if the court's finding is clearly

erroneous. Loney v. FSM, 3 FSM R. 151, 155 (App. 1987).

One who suggests to his drinking companions that they obtain additional liquor by taking a bottle from construction laborers in the area, and who then leads his companions in an effort to attack one of the workers, solicits more possibilities than just the taking of a bottle, and is guilty of aiding and abetting the robbery of a watch and money from another construction worker carried out by his companions while the original instigator is still pursuing the first laborer. FSM v. Hadley, 3 FSM R. 281, 284 (Pon. 1987).

It is reasonably foreseeable that a robbery of watch and money from a Korean construction worker may be a probable consequence of a common plan to take a bottle from "some Koreans," and the person who suggests the plan and initiates efforts to attack one of the construction workers may be held guilty of aiding and abetting the robbery of watch and money carried out by his companions against another Korean worker, immediately after the defendant initiated the first attack. FSM v. Hadley, 3 FSM R. 281, 284 (Pon. 1987).

– Sentence

Custom is more properly considered during sentencing than at other stages of a criminal prosecution. FSM v. Mudong, 1 FSM R. 135, 147-48 (Pon. 1982).

A criminal sentence may be affirmed on appeal when a review of the record reveals that the sentence is appropriate. Malakai v. FSM, 1 FSM R. 338, 338 (App. 1983).

The government's failure to prove the assertion in its information that a dangerous weapon was used to cause the victim to submit to the sexual assault need not result in dismissal of the case. It merely prevents an application of greater punishment available under 11 F.S.M.C. 914(3)(b). Buekea v. FSM, 1 FSM R. 487, 493-94 (App. 1984).

The statutory construction rule of lenity reflects the reluctance of courts to increase or multiply punishments absent a clear and definite legislative direction. Laion v. FSM, 1 FSM R. 503, 528 (App. 1984).

When two statutory provisions aimed at similar types of wrongdoing and upholding citizen and public interests of the same nature would apply to a solitary illegal act, which caused only one injury, the statutes will be construed not to authorize cumulative convictions in absence of a clear indication of legislative intent. However, the government is not denied the right to charge separate offenses to guard against the risk that a conviction may not be obtained on one of the offenses. Laion v. FSM, 1 FSM R. 503, 529 (App. 1984).

The only power given to the executive to modify a sentence is the power to grant pardons and reprieves. FSM v. Finey, 3 FSM R. 82, 84 (Truk 1986).

No authority exists for the court to grant home visits. FSM v. Finey, 3 FSM R. 82, 84 (Truk 1986).

The doctrine of separation of powers does not prevent courts from modifying sentences even though the effect of modification may be the same as commuting the sentence. Kosrae v. Mongkeya, 3 FSM R. 262, 263-64 (Kos. S. Ct. Tr. 1987).

Commutation powers affect the enforcement of the judgment whereas the modification powers affect the judgment itself. Kosrae v. Mongkeya, 3 FSM R. 262, 265 (Kos. S. Ct. Tr. 1987).

The Kosrae Constitution did not intend for the executive's power to commute a sentence to prevent the Kosrae State Court from modifying its own sentencing orders or to prevent the appellate division of the Federated States of Micronesia from reviewing a sentencing order of the state court. Kosrae v. Mongkeya, 3 FSM R. 262, 266 (Kos. S. Ct. Tr. 1987).

Although the internal management of a jail or prison is, subject to compliance with constitutional requirements, a function of the executive branch, the legislature controls the overall sentencing scheme through statute. Soares v. FSM, 4 FSM R. 78, 82 (App. 1989).

In the absence of legislative action saying otherwise, it is the sentencing order, not the jailer or any member of the executive branch, which determines whether the prisoner is to be confined, and for how long. Soares v. FSM, 4 FSM R. 78, 82 (App. 1989).

A national senator has no power to release national prisoners confined for violation of laws enacted by the national Congress. Soares v. FSM, 4 FSM R. 78, 83 (App. 1989).

The Joint Law Enforcement Agreement between the State of Truk and the national government in no way affects the ability of a national court to require a jailer who has accepted custody of a prisoner to act in conformity with the sentencing order governing the confinement of the prisoner. Soares v. FSM, 4 FSM R. 78, 84 (App. 1989).

Both cumulative and concurrent sentencing are logically not mentioned in 11 F.S.M.C. 1002, because they are not alternatives to the punishments specified by the separate criminal statutes, but rather the standards from which the "authorized sentences" of 11 F.S.M.C. 1002 deviate. Plais v. FSM, 4 FSM R. 153, 155 (App. 1989).

The authority to impose consecutive punishments for different crimes can be understood to be within the powers which the legislature has implicitly granted to the court in its overall scheme of criminal law; since each crime in the criminal code carries with it a separate and distinct punishment, it is logical to infer that when a person commits multiple crimes arising from more than one act, Congress intended that person to be punished separately for each offense. Plais v. FSM, 4 FSM R. 153, 155 (App. 1989).

If a defendant himself is incapable of paying restitution and he has made a request for assistance to his family, the family's bad faith in not paying cannot be imputed to the defendant and result in increased imprisonment. Gilmete v. FSM, 4 FSM R. 165, 166 (App. 1989).

The sentencing judge has authority to make a broad inquiry into the background of a defendant; specifically, the court may consider even cases in which the defendant was accused but not convicted. Kallop v. FSM, 4 FSM R. 170, 177 (App. 1989).

A sentencing judge may properly consider factors which would show trafficking of a controlled substance in a previous case, even though in the earlier case the defendant had pled guilty to possession and the trafficking charge had been dismissed. Kallop v. FSM, 4 FSM R. 170, 177 (App. 1989).

In the absence of authority derived from the Constitution, statutes or court rules, judges of the FSM Supreme Court are bound by their own sentencing orders arrived at through the normal exercise of criminal jurisdiction. FSM v. Likitimus, 4 FSM R. 180, 181 (Pon. 1990).

The trial division of the FSM Supreme Court has no power to amend its sentences at will. FSM v. Likitimus, 4 FSM R. 180, 181 (Pon. 1990).

The National Criminal Code does not contemplate routine application of the maximum or any other specific punishment but instead requires individualized sentencing, that is, court consideration of a broad range of alternatives, with the court's focus at all times on the defendant, the defendant's background and potential, and the nature of the offense, with the "overall objective" of the exercise of discretion being to "make the punishment fit the offender as well as the offense." Tammed v. FSM, 4 FSM R. 266, 272-73 (App. 1990).

In reviewing a sentencing decision of a trial court, an appellate court should follow the standards

generally applied in criminal appeals, upholding findings of fact supported by credible evidence but overruling those legal rulings with which the appellate court disagrees. Tammed v. FSM, 4 FSM R. 266, 274 (App. 1990).

When, before sentencing, a beating has been administered to a defendant by family and friends of the victim to punish the defendant for the crime for which he is to be sentenced, the sentencing court's refusal to consider the beatings is an inappropriate attempt to achieve a larger social purpose and an unacceptable diversion of the sentencing process when the refusal is not motivated by defendant's guilt or status but instead is an attempt to influence the future conduct of people who were not before the court and who had not committed crimes similar to those committed by defendants. Tammed v. FSM, 4 FSM R. 266, 276-77 (App. 1990).

Sentencing courts are not free to bar from consideration beatings that were grounded upon, or were products of custom and tradition when considering sentencing, and failure to consider the customary implications of those beatings violates not only the implicit statutory requirement of individualized sentencing, but also mandate of 11 F.S.M.C. 1003, enacted pursuant to article V, section 2 of the Constitution, as well as the judicial guidance clause. Tammed v. FSM, 4 FSM R. 266, 278 (App. 1990).

When a trial court is asked to give special mitigative effect to customary punishment during its sentencing proceedings, the court must first consider whether these customary activities have become so imbued with official state action so that the actions of the assailants are seen as actions of the state itself; if so the punishments must be tested by the same standards that would be applied if state officials carried out these punishments directly. Tammed v. FSM, 4 FSM R. 266, 283 (App. 1990).

The judicial guidance clause prohibits a sentencing court from giving special effect to customary beatings administered to the defendant, unless the court finds that such recognition would be consistent with the protections guaranteed to individuals by the Declaration of Rights. Tammed v. FSM, 4 FSM R. 266, 284 (App. 1990).

Sentencing is to be individualized, and the overall objective must be to make the sentence fit the offender as well as the offense. The sentencing court's focus must be the defendant, the defendant's background and potential, and the nature of the offense. The term of imprisonment fixed in the sentence must be the time which the sentencing judge believes the convicted person justly should be required to serve. There is no justification for the sentence to include an additional factor in recognition of the possibility of parole. Kimoul v. FSM, 5 FSM R. 53, 60-61 (App. 1991).

Because the defendants were convicted of the crime of aggravated sexual assault, which by nature is a violent crime, especially in this case where it was random, if released there is a likelihood they would pose a danger to others in the community. But because the defendants have committed one wrongdoing in the three years since their conviction other factors are needed to require denial of stay of sentence. FSM v. Hartman (II), 5 FSM R. 368, 369-70 (Pon. 1992).

Where defendants have willfully violated the court's previous order to remain confined to the Municipality of U, thus indicating a risk of flight, and where there is no substantial question of law or fact, defendants' motion for a stay of sentence pending appeal will not be granted. FSM v. Hartman (II), 5 FSM R. 368, 370-71 (Pon. 1992).

In considering the mitigation in sentencing to be given without regard to custom because of the beatings received by the defendants, the severity of the beating is the primary consideration. FSM v. Tammed, 5 FSM R. 426, 428 (Yap 1990).

The court cannot give further mitigative effect in sentencing to reflect the customary nature of the beatings if the court cannot find from the evidence presented that the beatings were customary. FSM v. Tammed, 5 FSM R. 426, 429 (Yap 1990).

The purpose of a sentencing hearing is to determine an appropriate sentence for criminal violations of which a defendant has already been convicted, not to reopen already decided issues of liability. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 219 (Pon. 1995).

Congress, by prescribing a mandatory minimum penalty, has determined that the penalty is proportionate to the nature of the crimes involved. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 219 (Pon. 1995).

Where a statute imposes a mandatory minimum fine and does not permit probation, a court cannot impose probation without violating the statute. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 219-20 (Pon. 1995).

Mitigating evidence cannot be used to depart below the mandatory minimum penalty required by the statute. A court may only consider that evidence in deciding whether the minimum sentence should be enhanced. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 220 (Pon. 1995).

A single, consolidated sentence for multiple offenses is proper, and when some convictions are vacated on appeal the consolidated sentence will be affirmed if it neither exceeds the maximum sentence of all the remaining convictions combined nor exceeds the maximum possible sentence for the most serious conviction remaining. Yinmed v. Yap, 8 FSM R. 95, 103 (Yap S. Ct. App. 1997).

Although a single, consolidated sentence for multiple offenses is proper, the better practice is for the trial court to impose sentence on each count individually, and to indicate on the record whether the sentences are to run concurrently or consecutively. A sentence which tracks the individual counts in this manner facilitates appellate review, and obviates the need for the appellate court to review the propriety of the entire sentence in the event any count underlying a general sentence is vacated. Yinmed v. Yap, 8 FSM R. 95, 103 (Yap S. Ct. App. 1997).

Where there is a plain legislative intent to impose separate punishments a court may reject a proposal that the sentences for those counts run concurrently. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 181 (Pon. 1997).

In fashioning an appropriate sentence for fishing violations, a court considers the nature, circumstances, extent, and gravity of the prohibited acts committed, the defendant's degree of culpability and history of prior offenses, whether other civil penalties or criminal fines have already been imposed for the specific conduct before the court, and such other matters as justice might require, keeping in mind the statutory purpose behind the provisions violated. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 181-82 (Pon. 1997).

When a person convicted of a crime appeals only his jail sentence and seeks a stay of that sentence pending appeal, the trial court will grant a stay only if it is reasonably assured that the appellant will not flee or pose a danger to any other person or to the community, and that the appeal is not for purpose of delay, and raises a substantial question of law or fact likely to result in a sentence that does not include a term of imprisonment. The burden of establishing these criteria rests with the defendant. FSM v. Nimwes, 8 FSM R. 299, 300 (Chk. 1998).

The request of a defendant, who is appealing only his jail sentence, for a stay pending appeal will be denied because his allegation that his four-month jail sentence for misappropriating to his own use $17,125 of government money is cruel and unusual punishment and an abuse of the judge's discretion when he has diabetes does not raise a substantial question likely to result in a sentence without a jail term and raises the inference that the appeal was brought for the purpose of delay. FSM v. Nimwes, 8 FSM R. 299, 300 (Chk. 1998).

If, for the same act, both a lesser included and a greater offense are proven, the court should then

enter a conviction on only the greater offense. A defendant cannot be sentenced on both the higher and the lesser included offense arising out of the same criminal transaction. Palik v. Kosrae, 8 FSM R. 509, 516 (App. 1998).

A sentence of imprisonment will be stayed if an appeal is taken to the Chuuk State Supreme Court appellate division and the defendant is released pending disposition of appeal if application for release is made in the first instance in the court appealed from. Iwenong v. Chuuk, 8 FSM R. 550, 551-52 (Chk. S. Ct. App. 1998).

Sentencing is to be individualized, and the overall objective is to make the punishment fit the offender as well as the offense. Cheida v. FSM, 9 FSM R. 183, 187 (App. 1999).

The sentencing court's focus at all times must be on the defendant, the defendant's background and potential, and the nature of the offense. Cheida v. FSM, 9 FSM R. 183, 187 (App. 1999).

If the trial court based the sentence upon the defendant's background and potential, and the nature of the offense, such individualized sentencing decision would be entitled to the deference accorded to findings of fact. Cheida v. FSM, 9 FSM R. 183, 187 (App. 1999).

The original sentence is to be one which the sentencing court has considered carefully and has concluded fits the offender as well as the offense. Any change in that sentence will not be lightly won. Cheida v. FSM, 9 FSM R. 183, 187 (App. 1999).

As a criminal contempt remedy is designed for individual deterrence, to punish for intentional disobedience of the court's orders, a defendant's status as a first time offender is not a mitigating factor in his sentencing. Cheida v. FSM, 9 FSM R. 183, 188 (App. 1999).

When an appellant has failed to provide a transcript of the relevant evidence and failed to identify the portions of the record that support his argument, he has failed to demonstrate that the trial court has erred as a matter of law in imposing sentence, and the presumption is that the evidence was sufficient to sustain the trial court's judgment. Cheida v. FSM, 9 FSM R. 183, 189 (App. 1999).

A trial judge may impose a sentence less than the maximum permitted by law. Cheida v. FSM, 9 FSM R. 183, 189-90 (App. 1999).

A sentence is individualized when the maximum is not imposed, the defendant's work schedule is taken into account, and an incentive is provided for compliance with other court orders. Cheida v. FSM, 9 FSM R. 183, 190 (App. 1999).

Imposing a fine is inadequate when the money diverted to the court would otherwise be used to repay the victim. Cheida v. FSM, 9 FSM R. 183, 190 (App. 1999).

A jail sentence with work release enables a defendant to continue his employment, meet his financial obligations to his family and fulfill a trial court judgment to repay the victims. Cheida v. FSM, 9 FSM R. 183, 190 (App. 1999).

Among the criteria the defendant must show to be released pending appeal when the appeal is only of his sentence of imprisonment is that the appeal is not for the purpose of delay and that it raises a substantial question of law or fact likely to result in a sentence that does not include a term of imprisonment. FSM v. Akapito, 10 FSM R. 255, 256 (Chk. 2001).

A defendant appealing his sentence has utterly failed to meet the criteria for release pending appeal when neither his moving papers nor argument raised a substantial question of law or fact likely to result in a sentence not including a term of imprisonment. FSM v. Akapito, 10 FSM R. 255, 256 (Chk. 2001).

That the defendant would then be free, in mind and body, to assist his counsel in the preparation of his appeal is not a substantial question of law or fact justifying release pending an appeal. FSM v. Akapito, 10 FSM R. 255, 257 (Chk. 2001).

When an appeal of a criminal sentence does not raise any substantial question likely to obtain the result the appellant seeks, the court may draw the inference that it was brought for the purpose of delay. FSM v. Akapito, 10 FSM R. 255, 257 (Chk. 2001).

By statute, the Chuuk State Supreme Court, at any time before imposition of sentence, may suspend imposition of sentence on conditions, and if the conditions are fully satisfied, it must vacate the conviction, but this statute is only applicable before the imposition of sentence and not in a case where the sentence was not only imposed, but was fully served. Trust Territory v. Edgar, 11 FSM R. 303, 307 (Chk. S. Ct. Tr. 2002).

Reconciliation is not a basis for dismissal of a criminal information. The law of our nation in this regard is clear. Custom, including customary apology and reconciliation, is to be considered during the sentencing of a criminal prosecution. Kosrae v. Nena, 12 FSM R. 20, 22 (Kos. S. Ct. Tr. 2003).

Appellate Rule 9(c) sets the criteria for release pending appeal in a criminal case, and the burden of establishing the requisite criteria rests with the defendant. FSM v. Moses, 12 FSM R. 509, 511 (Chk. 2004).

To grant a release pending appeal, the court first must conclude that one or more release conditions will reasonably assure that the appellant will not flee or pose a danger to another person or the community, and then the movant must establish that the appeal is not for purpose of delay and that it raises a substantial question of law or fact likely to result in either 1) a reversal; 2) an order for a new trial; 3) a sentence that does not include a term of imprisonment; or 4) a reduced sentence to a term of imprisonment less than the total of the time already served. FSM v. Moses, 12 FSM R. 509, 511 (Chk. 2004).

The release of a prisoner is not automatic once a notice of appeal and a motion for release have been filed. The prisoner must establish the requisite criteria exist under Appellate Rule 9(c). FSM v. Moses, 12 FSM R. 509, 511 (Chk. 2004).

When a criminal defendant wants to be released pending appeal but his appeal does not raise any substantial question likely to obtain the result sought by the appeal, the court may draw the inference that the appeal was brought for the purpose of delay. FSM v. Moses, 12 FSM R. 509, 511 (Chk. 2004).

A stay of sentence pending appeal is not automatic upon the filing of a notice of appeal and a motion to stay, but rests on the court's discretion. FSM v. Moses, 12 FSM R. 509, 511 (Chk. 2004).

The court may, in its discretion, stay pending appeal upon such terms as the court deems proper, an order for restitution, but the court may require the defendant pending appeal to deposit the whole or any part of the fine, restitution or costs in the registry of the trial court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make any appropriate order to restrain the defendant from dissipating his assets. The court may invite the movant and the government to submit their views on the advisability, if restitution is stayed, of an order that while the appeal is pending the restitution be paid into the court's registry to remain there in an interest-bearing account until the appeal is decided. FSM v. Moses, 12 FSM R. 509, 512 (Chk. 2004).

Generally, a criminal sentence starts when it is pronounced from the bench unless the sentence contains a provision that the sentence starts at some later time. A jail sentence starts to run the date the defendant is received at the jail or other place of detention. FSM v. Fritz, 13 FSM R. 88, 90-91 (Chk. 2004).

A sentence is imposed when it is pronounced in open court. This is a constitutional as well as procedural requirement. The rules require the defendant's presence at sentencing. This is also required by the FSM constitutional provision, requiring a public trial and giving a defendant the right to confront witness against him. FSM v. Fritz, 13 FSM R. 88, 91 n.1 (Chk. 2004).

A written sentence must conform to the one delivered orally. If it does not, the oral sentence controls. FSM v. Fritz, 13 FSM R. 88, 91 n.1 (Chk. 2004).

Work release is a grant of leniency and privilege granted to an imprisoned defendant at the court's discretion. It is not an entitlement to a defendant. The court will not grant work release when, based upon the papers filed, arguments of counsel, the record, and in the interests of justice, the court concludes that modification of the defendant's sentence to allow work release is not warranted and the interests of justice will be best served by completion of the individualized sentence imposed upon him, including his imprisonment in jail without work release for his entire sentence, as specified in the sentencing order. Kosrae v. Sigrah, 13 FSM R. 190, 192 (Kos. S. Ct. Tr. 2005).

Custom, including customary apology and reconciliation, is to be considered during the sentencing of a criminal prosecution, but when there was no customary reconciliation reached among the defendant and the victims, there is no consideration of this factor for sentencing. Kosrae v. Kilafwakun, 13 FSM R. 368, 369 (Kos. S. Ct. Tr. 2005).

When there was no evidence submitted to support defendant's contention that he, as an adult male in the family, is authorized under custom to commit an assault and battery upon two selected females in his family in order to stop an argument among three females in his family; when there was no evidence submitted to support defendant's argument that his actions were appropriate and taken in accordance with custom; and when although the defendant's sister initiated the argument with victims, the defendant committed the assaults and batteries upon the non-aggressors in the argument only further inciting the argument and raising tensions among the family instead of encouraging resolution of the argument and initiating reconciliation and peace, the defendant's argument that his actions were taken properly in accordance with custom, based upon his traditional authority as an adult male in the family must therefore be rejected in consideration of sentencing. Kosrae v. Kilafwakun, 13 FSM R. 368, 369 (Kos. S. Ct. Tr. 2005).

In Kosrae, in imposing a sentence, state law specifically permits the court to consider a convicted person's criminal record by hearing evidence of the convicted's good or bad character, including a criminal record. A criminal record includes the record or file of the criminal proceedings against an accused, and necessarily includes documentation of disposition of the case, including conviction and sentencing based upon a plea of guilty or nolo contendere, judgment of acquittal, or dismissal. Consequently, a plea of nolo contendere in a prior case and the judgment and sentencing, may be heard and considered in sentencing a defendant. Kosrae v. Tulensru, 14 FSM R. 115, 124 (Kos. S. Ct. Tr. 2006).

A defendant's criminal record is considered evidence of the defendant's character and is therefore admissible in a sentencing hearing. Kosrae v. Tulensru, 14 FSM R. 115, 124 (Kos. S. Ct. Tr. 2006).

A court may consider all criminal matters in which the defendant was accused, even if not convicted. A sentencing judge's authority is to make broad inquiry into the defendant's background. Specifically the court may consider even cases of which the defendant was accused but not convicted. Kosrae v. Tulensru, 14 FSM R. 115, 124 (Kos. S. Ct. Tr. 2006).

If a defendant is well enough to attend the sentencing hearing at the courthouse, the defendant must appear at the courthouse, but if he is not well enough to attend the sentencing hearing at the courthouse, then the sentencing hearing will be held at the hospital in a conference room or other suitable location at which the sentencing hearing can be conducted. Kosrae v. Tulensru, 14 FSM R. 115, 126 (Kos. S. Ct. Tr. 2006).

When the justice sentencing the defendant has resigned from the court and it is the justice's final day of service as a justice, a motion for recusal from sentencing on that ground is meritless. It is within the judge's authority and is his duty to conduct the sentencing hearing especially since the sentencing hearing was delayed at the defendant's request to address the issue of admission of defendant's prior criminal record. Kosrae v. Tulensru, 14 FSM R. 115, 126 (Kos. S. Ct. Tr. 2006).

That the judge has other criminal cases pending which he has not completed, and has granted continuances in other cases are meritless grounds to recuse the judge from sentencing the defendant on his final day as a judge when those matters are unrelated to this case and trial had been completed and the only action left is the imposition of sentence. Kosrae v. Tulensru, 14 FSM R. 115, 126-27 (Kos. S. Ct. Tr. 2006).

A defendant's potential health problems and needs are not relevant to a motion for stay of execution of sentence. They are appropriately raised in a Rule 35(b) motion for reduction of sentence. FSM v. Wainit, 14 FSM R. 164, 168 (Chk. 2006).

Even if the finding of guilt had been made in open court with the defendant present, the case would still have to be remanded to the trial court when there was no public imposition of sentence with the defendant present. When a sentence is imposed, the defendant's presence is required because the defendant must be present at every stage of the trial including the finding of the court and at the imposition of sentence. Neth v. Kosrae, 14 FSM R. 228, 232 (App. 2006).

The defendant's right (found in Rule 43) to be present at the imposition of sentence is constitutionally based on the confrontation and due process clauses. Neth v. Kosrae, 14 FSM R. 228, 233 & n.3 (App. 2006).

When sentencing a criminal defendant, the sentencing court must eyeball the defendant at the instant it exercises its most important judicial responsibility. Neth v. Kosrae, 14 FSM R. 228, 233 (App. 2006).

Although Kosrae Criminal Rule 43(b) permits a criminal defendant, once trial has started with the defendant present, to voluntarily absent himself or herself from the trial or from the oral pronouncement of findings, it does not permit a criminal defendant to be absent from the court's imposition of sentence or to waive his or her right to be present at the imposition of sentence. Neth v. Kosrae, 14 FSM R. 228, 233 (App. 2006).

A reason illustrating the importance of the public imposition of sentence is that the written sentence must conform to the one delivered orally. If it does not, the oral sentence, not the written sentence, controls. Neth v. Kosrae, 14 FSM R. 228, 233 (App. 2006).

The sentence orally pronounced from the bench is the sentence, because the only sentence that is legally cognizable is the actual oral pronouncement in the defendant's presence. Neth v. Kosrae, 14 FSM R. 228, 234 (App. 2006).

The general public also has a right and interest in a public sentencing that enables the public to learn the sentence and court's reasons for it. Neth v. Kosrae, 14 FSM R. 228, 234 (App. 2006).

There can be no cumulative punishment for a single offense absent clear legislative intent. Kinere v. Kosrae, 14 FSM R. 375, 383 (App. 2006).

A harsh sentence does not constitute manifest injustice, particularly when the sentence conforms to statutory guidelines. Kinere v. Kosrae, 14 FSM R. 375, 386 n.8 (App. 2006).

That the charge on which the defendant was convicted is a serious one which involved dishonesty by

persons holding high-ranking positions in government and that the public should be conveyed that message are factors to be taken into account when sentence is imposed. FSM v. Engichy, 14 FSM R. 573, 574 (Chk. 2007).

The maximum sentence for violating 11 F.S.M.C. 701 was raised in the 2001 criminal code from three years to ten years. Wainit v. FSM, 15 FSM R. 43, 46 n.2 (App. 2007).

The trial court's imposition of a one year sentence of imprisonment for a violation of 11 F.S.M.C. 701 was not an abuse of discretion when there is nothing in the record which suggests that the sentence was anything but reasonable in light of the evidence presented to the court at the time of sentencing, and when, at the time of the defendant's conduct giving rise to his conviction, a violation of 11 F.S.M.C. 701 could result in a period of incarceration of up to 3 years. Wainit v. FSM, 15 FSM R. 43, 49 (App. 2007).

The trial court did not abuse its discretion when its consideration of the pre-sentence report's inclusion of information concerning another criminal matter against the defendant obviously had no negative effect on the sentence imposed, nor did the trial court's consideration of it prior to the imposition of the defendant's sentence reveal an abuse of discretion by the trial court. Wainit v. FSM, 15 FSM R. 43, 49 (App. 2007).

At the time of sentencing, a trial court is entitled to consider a defendant's prior conviction, and the plea upon which it was based, even when the prior conviction was based upon a nolo contendere plea because it is not only the plea that is considered, but the conviction based upon the plea as well. Tulensru v. Kosrae, 15 FSM R. 122, 128 (App. 2007).

An original sentence is to be one which the sentencing court has considered carefully and has concluded fits the offender as well as the offense. The sentencing should be individualized, and the overall objective is to make the punishment fit the offender as well as the offense. The sentencing court's focus at all times must be on the defendant, the defendant's background and potential, and the nature of the offense. Chuuk v. Inos, 15 FSM R. 259, 261 (Chk. S. Ct. Tr. 2007).

A sentence of six years incarceration is not unduly severe on a manslaughter conviction. It may even be considered lenient. Chuuk v. Inos, 15 FSM R. 259, 261 (Chk. S. Ct. Tr. 2007).

Congress has granted the court the power to suspend jail sentences, to suspend the imposition of a sentence, and to parole prisoners after they have served part of their sentence, but it has not given the court the power to expunge convictions. FSM v. Erwin, 16 FSM R. 42, 45 (Chk. 2008).

Notice that the convicted person has a right to appeal must be given orally when a criminal contempt sentence is imposed. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 n.10 (App. 2011).

A guilty finding is not a "judgment of conviction" because in order to be a judgment of conviction, the "judgment of conviction" must set forth the plea, the findings, and the adjudication and sentence. Since a "judgment of conviction" must contain the sentence, it can only be entered after the sentence is pronounced. Benjamin v. Kosrae, 19 FSM R. 201, 204-05 n.1 (App. 2013).

A criminal sentence may be affirmed when a review of the record reveals that the sentence is appropriate, and, if the trial court based the sentence upon the defendant's background and potential, and the nature of the offense, such an individualized sentencing decision would be entitled to the deference accorded to findings of fact. Benjamin v. Kosrae, 19 FSM R. 201, 205 (App. 2013).

The standard of review of a trial court's decision to impose consecutive sentences is de novo review when the issues raised are the questions of law – whether an offense is a lesser included offense of another offense; whether a sentence violates the FSM and Kosrae Constitutions' protections against double jeopardy; and whether the rule of lenity should apply in construing a statute. Otherwise, the review of a judge's decision to impose concurrent or consecutive sentences is generally limited to review for abuse of

discretion. Benjamin v. Kosrae, 19 FSM R. 201, 205 (App. 2013).

While a trial judge's failure to inform a criminal defendant of his right to appeal may be harmless error when the defendant has in fact timely appealed, the trial judge's failure at a sentencing hearing to address a criminal defendant personally and ask him if wishes to make a statement in the defendant's own behalf and to present any information in mitigation of punishment is not harmless error. Benjamin v. Kosrae, 19 FSM R. 201, 206 (App. 2013).

A criminal defendant's right at a sentencing hearing to be personally addressed by the judge and to then make an unsworn statement on his own behalf in an effort to lessen the impending sentence is called the right of allocution. Benjamin v. Kosrae, 19 FSM R. 201, 206 (App. 2013).

The appellate court may notice plain error when the error affects a criminal defendant's substantial rights, such as his right of allocution. Benjamin v. Kosrae, 19 FSM R. 201, 206-07 & n.2 (App. 2013).

A trial judge's failure to personally address a criminal defendant and offer him an opportunity to allocute is not harmless error and the criminal defendant does not waive that right by failing to object to his lack of opportunity at the sentencing hearing. The right of allocution is a fundamental or substantial right. Benjamin v. Kosrae, 19 FSM R. 201, 207 (App. 2013).

The trial judge, as noted in Kosrae Criminal Procedure Rule 32(a)(1), has the burden to personally address a criminal defendant at the sentencing hearing and to offer him the right to allocute and make an unsworn statement to the court. Benjamin v. Kosrae, 19 FSM R. 201, 207 (App. 2013).

The law is clear that a defendant must be present in person at the time sentence is originally imposed and that he must be afforded the right of allocution. Benjamin v. Kosrae, 19 FSM R. 201, 207 (App. 2013).

When a criminal defendant was not afforded the right of allocution, his sentences will be vacated and the matter remanded for a new sentencing hearing. Benjamin v. Kosrae, 19 FSM R. 201, 207 (App. 2013).

Considering the seriousness of the sexual abuse charge, it is advisable that a presentence investigation and report be done as required by Kosrae Criminal Procedure Rule 32(c). Benjamin v. Kosrae, 19 FSM R. 201, 207 (App. 2013).

There is no authority that a crime is no longer a crime and the case must be dismissed once the accused has repaid all of the alleged financial losses, but, if the accused were found guilty, the repayment would likely have some effect on the degree of punishment. FSM v. Itimai, 20 FSM R. 131, 135 (Pon. 2015).

Since the attempt to commit sexual assault merged into the completed sexual assault; since assault is a lesser included offense of assault and battery; and since assault and battery and disturbing the peace are both lesser included offenses of sexual assault, the convictions for all these lesser offenses must be vacated, and since the maximum sentence for sexual assault as a category two felony is five years, the accused's seven-year sentence, and therefore his convictions, for all offenses must be vacated and the case remanded for re-sentencing on, and thus for a conviction to be entered for, only the greater offense of sexual assault. Ned v. Kosrae, 20 FSM R. 147, 155 (App. 2015).

A trial judge is required to publicly read out his sentence in open court, and if the trial judge fails to do so, he abuses his discretion because this is part of the constitutional right to a public trial. Ned v. Kosrae, 20 FSM R. 147, 155 (App. 2015).

Courts differ on whether a consolidated sentence is proper. Some courts hold them improper, and even where they are proper, courts take two approaches. Some courts hold that a single sentence may be imposed for all offenses so long as it does not exceed the aggregate of sentences that might have been separately imposed on all the counts consecutively while other courts hold that a consolidated or general

sentence, that is, one that does not specify the punishment imposed under separate counts of the information, will not be upheld if it exceeds the maximum term of punishment permissible under any single count. Ned v. Kosrae, 20 FSM R. 147, 155 (App. 2015).

A seven-year sentence is improper and must be vacated when it exceeds the maximum sentence for the one conviction that the appellate court has affirmed. Ned v. Kosrae, 20 FSM R. 147, 155 (App. 2015).

The better practice is for the trial court to impose sentence on each count individually and to indicate on the record whether the sentences are to run concurrently or consecutively. Such a sentence facilitates appellate review, and obviates the need for the appellate court to review the entire sentence's propriety in the event any count underlying a general sentence is vacated. Thus, if any part of a conviction is reversed on appeal, the sentence imposed under the valid count would not have to be disturbed. Ned v. Kosrae, 20 FSM R. 147, 155 (App. 2015).

The use of consolidated sentences should be avoided. Ned v. Kosrae, 20 FSM R. 147, 157 (App. 2015).

Although a consolidated sentence may be proper, it is inadvisable. The better practice is for the trial court to impose sentence on each count individually, indicating whether the sentences are to run concurrently or consecutively because such a sentence facilitates appellate review and obviates the need for a remand for re-sentencing. Lee v. Kosrae, 20 FSM R. 160, 168 (App. 2015).

The Compact of Free Association has a provision by which sentences imposed by FSM courts on U.S. citizens may be served in U.S. penal institutions, but if they go through the diplomatic channels and comply with transfer procedures and eligibility, but the Compact does not have a section that deals with an FSM citizen under a sentence rendered by a FSM court who seeks to serve the remaining term of his sentence in a U.S. jurisdiction. FSM v. Bisalen, 20 FSM R. 471, 473 (Pon. 2016).

Under Rule 11(e), when a plea agreement contains sentencing recommendations, the court may impose a different sentence than that proposed by the government and the parties. FSM v. Bui Van Cua, 20 FSM R. 588, 590 (Pon. 2016).

A criminal defendant will be given credit for such time as he has been in the government's custody. FSM v. Bui Van Cua, 20 FSM R. 588, 591 (Pon. 2016).

A court's jurisdiction ends once the defendant has satisfied the sentence that had been imposed. Chuuk v. Rimuo, 21 FSM R. 19, 21 (Chk. S. Ct. Tr. 2016).

A defendant is subject to possible imprisonment for not more than five years for the defendant's tampering with public records conviction when the court finds beyond a reasonable doubt that the defendant's purpose was to defraud or injure the government in its processing and production of FSM passports and to injure those FSM citizens who applied for and needed to obtain passports at the time the machine readable passport system was inoperable. FSM v. Wolphagen, 21 FSM R. 315, 317 (Pon. 2017).

Chuuk State Law No. 13-16-12 amended the sentencing provisions for some of the most violent felonies listed within Chuuk State Law No. 6-66 in order to help courts impose stiffer sentences on the convicted violators so as to help deter future criminal tendencies and involvement. Chuuk v. Jose, 21 FSM R. 566, 569 (Chk. S. Ct. Tr. 2018).

The commonly understood meaning of the term "imprisonment," and its definition in both legal and regular dictionaries, is confining someone in prison or jail, and these definitions consistently allude to detention or captivity within a structure, as opposed to "suspended sentences," but the scope of imprisonment possibly includes house arrest, since it is a type of lawful restraint upon movement. Chuuk v. Jose, 21 FSM R. 566, 569 (Chk. S. Ct. Tr. 2018).

Chuuk courts have consistently relied on the discretionary authority vested upon them under Section 1110, to suspend the execution of sentences that the court imposed. Chuuk v. Jose, 21 FSM R. 566, 570 (Chk. S. Ct. Tr. 2018).

A Chuuk court may direct that the execution of the whole or any part of a sentence of imprisonment it imposes be suspended on such terms as to good behavior and on such conditions as the court may think proper. Chuuk v. Jose, 21 FSM R. 566, 570 (Chk. S. Ct. Tr. 2018).

When the statute never defines imprisonment, the plain meaning of the term governs, which could leave the possibility of defining imprisonment to include house arrest, but the statute's context narrows the definition of imprisonment to refer only to confinement in jail. Chuuk v. Jose, 21 FSM R. 566, 570 (Chk. S. Ct. Tr. 2018).

When the statute requires that a defendant convicted of murder be sentenced to a minimum of term of not less than 40 year(s), and eligible for parole after 20, the term imprisonment, as used within the statute, means a punishment of not less than 40 years in prison. Otherwise, the term parole is left meaningless, since it can only refer to release from prison, as opposed to house arrest, or the lifting of a suspended sentence. Chuuk v. Jose, 21 FSM R. 566, 571 (Chk. S. Ct. Tr. 2018).

When a statute states that "a person convicted under this Section shall be punished by imprisonment for not more than five years," has consistently been interpreted to refer to the imposition of sentences, leaving the court the opportunity to suspend the execution of its imposed jail terms for sexual abuse, but when the punishment provision was amended to "not less than five years" instead of "not more than five years" imprisonment and the punishment section's wording otherwise remains the same, therefore, although imprisonment means jail term, the mandated punishment refers to the imposition of such jail term as opposed to its execution. Therefore, courts may still suspend such sentences. Chuuk v. Jose, 21 FSM R. 566, 571 (Chk. S. Ct. Tr. 2018).

When the amended statute added some additional subsections requiring that the defendant serve a minimum five-year sentence, the "shall serve" within this provision refers to the execution of a sentence. But when the notable term missing within the paragraph is "jail" sentence, the court must impose a five-year imprisonment term, which it may then suspend in whole or in part, although the defendant is required to serve a five-year sentence. Since the provision lacks the term "jail" before "sentence," it only requires the court to impose at least a five-year jail sentence – which the court may then suspend by virtue of its discretionary power. Chuuk v. Jose, 21 FSM R. 566, 571-72 (Chk. S. Ct. Tr. 2018).

Only those sections that contain a provision which mandates that defendant shall serve a mandatory x year jail sentence supersede § 1110 and thereby actually remove the court's equitable power to suspend such jail sentence. Chuuk v. Jose, 21 FSM R. 566, 572 (Chk. S. Ct. Tr. 2018).

The Chuuk Legislature's finding of an apparent increase in the commission of violent crimes in the State and the need to promote public peace and safety caused the Legislature to find it necessary to increase certain minimum sentences to help the court impose stiffer sentences on the convicted violators in certain violent felony criminal cases to help deter future criminal tendencies and involvement. Chuuk v. Silluk, 21 FSM R. 649, 654 (Chk. S. Ct. Tr. 2018).

The "definite, unambiguous, and certain" analysis is usually applied to statutory language which prohibits conduct as opposed to sentencing language. Courts are more deferential as to determining what constitutes a definite statement when sentencing guidelines are concerned. Chuuk v. Silluk, 21 FSM R. 649, 654-55 (Chk. S. Ct. Tr. 2018).

The court is subject to certain limits in sentencing when the state law sets a precise minimum of no less than five years imprisonment while the maximum sentence, as set by the FSM and Chuuk Constitutions, is life in prison because the Constitutions ban capital punishment. Chuuk v. Silluk, 21 FSM

R. 649, 655 (Chk. S. Ct. Tr. 2018).

A statute that sets only a minimum sentence does not allow the court unbridled discretion to implement cruel and unusual punishments because the court is constrained by the FSM and Chuuk Constitutions; because the court has a traditional role of adjudication based on equity that involves the considering mitigating and aggravating factors before imposing sentence; and because all statutes are presumptively constitutional. Thus, this statute is not so unconstitutionally vague or ambiguous as to violate a defendant's due process rights to be free from cruel and unusual punishment. Chuuk v. Silluk, 21 FSM R. 649, 655-56 (Chk. S. Ct. Tr. 2018).

Chuuk courts are restricted in hearing only "live" cases, meaning the case must be one appropriate for judicial determination. A matter is appropriate for judicial determination when there is a justiciable controversy, as distinguished from a difference or dispute of a hypothetical or abstract character, or one that is academic or moot. Thus, when a defendant has not yet stood trial and thus may not be convicted, the question of whether a potential sentence constitutes a cruel and unusual punishment is merely hypothetical and academic and not yet appropriate for judicial determination. Chuuk v. Silluk, 21 FSM R. 649, 656 (Chk. S. Ct. Tr. 2018).

When determining a statute's vagueness or ambiguity, the court must look to a statute that prescribes an offense that either forbids or requires the doing of an act. Thus, a sentencing requirement that states, "imprisonment for not less than five years, or a fine of not less than $5,000.00, or both" is not subject to a due process analysis for violating the defendant's right to know the nature and cause of the accusation against him because the statute's sentencing provision is not the part of the statute that forbids or requires the doing of an act. In order to attack a statute's vagueness, the court is restricted to looking at the statute that prescribes an offense or that forbids or requires the doing of an act. Chuuk v. Silluk, 21 FSM R. 649, 656 (Chk. S. Ct. Tr. 2018).

There is no requirement that a statutory sentencing provision's language contain absolute precision or perfection. Informing a defendant that the sentence constitutes a minimum of five years imprisonment is sufficient notice because the sentencing statute provides a clear and explicit notice of a monetary and sentencing minimum for the defendant and leaves the court the equitable power to set a cap upon the sentencing as justice demands and as restricted by the Chuuk and FSM Constitutions. Thus, the statute provides notice to the defendant that he may be sentenced to between five years and life. Chuuk v. Silluk, 21 FSM R. 649, 657 (Chk. S. Ct. Tr. 2018).

Although a statute gives the court the authority to suspend the execution and imposition of a sentence respectively, the court's power to suspend a sentence is not absolute when a mandatory jail term is required. Chuuk v. Phillip, 22 FSM R. 425, 428 (Chk. S. Ct. Tr. 2019).

Criminal statutes, that contain a provision which mandates that the defendant must serve a mandatory x year jail sentence, supersede the court's equitable power to suspend the mandatory jail sentence and its power to suspend the imposition of sentence. Chuuk v. Phillip, 22 FSM R. 425, 428 (Chk. S. Ct. Tr. 2019).

When the statute requires that the court impose a sentence of three years of imprisonment and that the defendant must serve a minimum of 3 years in jail, the statute controls, and the court cannot suspend the imposition or execution of the first three years of the jail sentence for a sexual assault conviction or to reduce the sentence to house arrest or to permit unsupervised release between 8 a.m. – 5 p.m. Chuuk v. Phillip, 22 FSM R. 425, 428 (Chk. S. Ct. Tr. 2019).

Although the statute gives the court the authority to suspend the execution and imposition of a sentence respectively, the court's power to suspend a sentence is not absolute when a mandatory jail term is required. Chuuk v. Fred, 22 FSM R. 429, 432 (Chk. S. Ct. Tr. 2019).

Criminal statutes that contain a provision which mandates that the defendant must serve a mandatory x

year jail sentence supersede the court's equitable power to suspend the mandatory jail sentence and its power to suspend the imposition of sentence. Chuuk v. Fred, 22 FSM R. 429, 432 (Chk. S. Ct. Tr. 2019).

– Sentence – Probation

While the court is interested in the rehabilitation of a defendant, its greater interest is in protecting society at large from illegal conduct. When a court releases a convicted person on probation, it does so at its own discretion. Probation is a leniency granted by the court. It is not a right and revocation of probation should not be thought of as additional punishment. FSM v. Phillip, 5 FSM R. 298, 301-02 (Kos. 1992).

Probation is inappropriate sentence when the defendant has departed from the FSM, not permitting the FSM to monitor or control its future behavior, and where the seriousness of its violations warranted a more serious sanction. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 181 (Pon. 1997).

The Kosrae State Court may modify an order of probation during the term of probation when the court finds a termination of probation serves the ends of justice and the best interests of the public and the defendant. Kosrae v. Nena, 12 FSM R. 20, 23 (Kos. S. Ct. Tr. 2003).

An order placing a defendant on probation may be stayed if an appeal is taken. If not stayed, the court shall specify when the term of probation will commence. If the order is stayed, the court must fix the terms of the stay. FSM v. Moses, 12 FSM R. 509, 512 (Chk. 2004).

In most instances in which a court orders probation, a defendant is placed on probation without any intervening imprisonment or delay. A court often orders "delayed probation," but this is when the probationary period is to start after the defendant has completed a sentence of imprisonment for some other crime. However, these statements in regard to Criminal Rule 32 do not apply when the sentence is probation and an appeal is sought. FSM v. Fritz, 13 FSM R. 88, 91 (Chk. 2004).

Under Rule 38(a)(4), when a sentence is probation and an appeal is taken, an automatic stay pending appeal remains in effect until a starting date is set for probation to begin. If a motion to stay is filed, the court would not set a starting date until the defendant's motion for a stay was either granted (in which case the terms of that stay order would take effect) or denied (in which case a starting date would be set for probation to begin). Conceivably, the court could set a starting date that came before the court was able to rule on the motion to stay. In such a circumstance, the probation would start and then a stay would be either granted or denied. FSM v. Fritz, 13 FSM R. 88, 91-92 (Chk. 2004).

A sentence of probation is automatically stayed upon appeal until a starting date for probation is explicitly set by the court. As a general rule, the court must explicitly state when the probation period starts and, until it does, a sentence of probation will not start. FSM v. Fritz, 13 FSM R. 88, 92 (Chk. 2004).

Once a probationary period has elapsed the defendant has automatically satisfied the sentence imposed. FSM v. Edward, 20 FSM R. 335, 338 (Pon. 2016).

Since probation law is intended in part to rehabilitate the offender without imprisonment, it contemplates that during the probation period he will be within the jurisdiction of the court that retains control over him and will be available to probation officers for the performance of their duties. FSM v. Bisalen, 20 FSM R. 471, 474 (Pon. 2016).

There is no authority to allow an FSM defendant with a remaining term on his probation to relocate to a foreign jurisdiction when that defendant has not produced any evidence that any steps have been taken in notifying or seeking permission from a court within that foreign jurisdiction for the purposes of monitoring his whereabouts and to oversee his compliance with his terms of release. The burden will is on the defendant to furnish proof of a court there that is willing to oversee the remaining term of his probation. FSM v. Bisalen, 20 FSM R. 471, 474 (Pon. 2016).

– Sentence – Probation – Revocation

Courts have uniformly held that sound policy requires that they be able to revoke probation for a defendant's offense committed before the sentence commences. FSM v. Dores, 1 FSM R. 580, 586 (Pon. 1984).

Revocation of probation of an alcohol dependent person because he consumed alcohol or because of alcohol related offenses for which he was convicted does not constitute cruel and unusual punishment in violation of the Constitution. FSM v. Phillip, 5 FSM R. 298, 300 (Kos. 1992).

Even if the defendant had been arrested merely for drinking alcohol the court would be compelled to return him to prison because the no-drinking condition had been imposed before the court became aware of the defendant's alcohol dependent condition and because compliance with that condition is fundamental to a proper probation. FSM v. Phillip, 5 FSM R. 298, 300-01 (Kos. 1992).

While the court is interested in the rehabilitation of a defendant, its greater interest is in protecting society at large from illegal conduct. When a court releases a convicted person on probation, it does so at its own discretion. Probation is a leniency granted by the court. It is not a right and revocation of probation should not be thought of as additional punishment. FSM v. Phillip, 5 FSM R. 298, 301-02 (Kos. 1992).

The issue of whether a defendant actually broke the law or that his arrest was unconstitutional is beyond the scope of a probation revocation hearing. The issues of whether a conviction is valid and constitutional should be taken to the appropriate court of appeals. FSM v. Phillip, 5 FSM R. 298, 302 (Kos. 1992).

A parole revocation hearing is significantly different than a trial. Although a court may not act capriciously in revoking probation, there is no need to establish beyond a reasonable doubt that the terms of the probation have been violated. A court may revoke probation if it is reasonably satisfied that the terms of the probation were violated. FSM v. Phillip, 5 FSM R. 298, 302-03 (Kos. 1992).

The court cannot revoke a sentence of probation for acts that took place before the sentence started. Probation cannot be revoked upon the basis of a probation violation occurring before defendant was placed on probation. FSM v. Fritz, 13 FSM R. 88, 92 (Chk. 2004).

Kosrae statute provides that upon revocation of probation the court may impose a sentence which it may have initially imposed if the court had not suspended imposition of sentence. Kosrae v. Palik, 13 FSM R. 187, 189 (Kos. S. Ct. Tr. 2005).

When the defendant was sentenced to five years imprisonment, suspended with conditions of probation, and payment of a fine; when during the sentencing hearing, there was extensive discussion regarding payment of the fine by local produce instead of cash, to accommodate the defendant's difficulty in paying cash; when the defendant was verbally informed at the sentencing hearing that his violation of the probation conditions may result in revocation of probation and remand to jail for the remainder of his term of imprisonment and the sentencing order also clearly gave notice of remand to jail in case of violation of probation conditions; when the defendant agreed verbally and by signature to the plea agreement's recommended sentence of five years term; when the defendant presented no grounds in support of his request to modify the sentencing order; and when the court finds by clear and convincing evidence that the defendant violated his probation by committing assault and battery and did not pay the fine imposed, the defendant's suspended sentence is revoked and he is remanded to jail to serve his remaining term. Kosrae v. Palik, 13 FSM R. 187, 189-90 (Kos. S. Ct. Tr. 2005).

A motion to revoke a suspended sentence must be filed by the State, as it is the prosecuting entity. A motion to revoke a suspended sentence may be filed with or without an affidavit from the Court Marshal. The State Attorney General's Office may be informed of a probationer's alleged violation of probation

conditions through several avenues: direct complaint, witness, police report, Court Marshal's affidavit etc. Kosrae is authorized by state law and court rules to file the motion to revoke suspended sentence based upon information provided to them. Kosrae v. Tilfas, 14 FSM R. 27, 31 (Kos. S. Ct. Tr. 2006).

Probation and revocation of probation proceedings are governed by Kosrae State Code, Section 6.4909. Neither this statutory provision nor Criminal Rule 32.1 require the court marshal, probation officer or any other specific person to institute a revocation proceeding. Kosrae v. Tilfas, 14 FSM R. 27, 31 (Kos. S. Ct. Tr. 2006).

Kosrae GCO 1998-03 establishes the probation officer's power to confine people for violations of suspended sentences, pre-trial and post-conviction release orders; it provides for the confinement and hearing procedure in cases where the person has been taken into custody by the probation officer, or where an arrest warrant has been executed by the Kosrae State Police; and it establishes the hearing procedure to ensure that a hearing on a revocation petition for a person held in custody is held as soon as possible. Kosrae v. Tilfas, 14 FSM R. 27, 31 (Kos. S. Ct. Tr. 2006).

When, based upon clear and convincing evidence of the defendant's assault and battery, the court finds that the defendant has violated his probation condition of "no violation of any national, state or municipal laws or ordinances," the defendant's probation will be revoked. Kosrae v. Tilfas, 14 FSM R. 27, 32 (Kos. S. Ct. Tr. 2006).

When a July 7, 2006 report of the defendant's non-compliance with his probation release conditions sought to revoke the defendant's probation, the defendant has not shown that a September 28, 2006 hearing date was not a hearing set within a reasonable time since he was without counsel and new, off-island counsel had to be assigned and since he had been released and was not being held pending his revocation hearing. And when any further delay after September 28, 2006, is attributable to the defendant and his requests for continuances, the ground that the defendant's hearing was not held within a reasonable time will be rejected as a ground to deny the motion to revoke his probation. FSM v. Kintin, 15 FSM R. 83, 85 (Chk. 2007).

Since the defendant had already started serving his sentence which included probation and weekends in jail when the alleged incident occurred, since the defendant violated his terms of probation while serving his weekend jail sentence, and since the defendant's term of probation had thus started before his violation, it would be unreasonable to hold that the court had no power to revoke the defendant's probation for an incident (if proven), which, if it had occurred two days earlier or one day later, the court clearly would have had the power to revoke probation. FSM v. Kintin, 15 FSM R. 83, 86 (Chk. 2007).

Although a court may not act capriciously in revoking probation, the government does not have to establish beyond a reasonable doubt that the probation terms have been violated. A court may revoke probation if it is reasonably satisfied that the terms of the probation were violated. FSM v. Kintin, 15 FSM R. 83, 86 (Chk. 2007).

Rule 11 does not apply to hearings on the revocation of probation or supervised release. Rule 11 on its face applies only to the procedures a court must follow before accepting a plea of guilty or nolo contendere. The rule is addressed to the taking of a plea, not the imposition of sentence or the revocation of probation. FSM v. William, 16 FSM R. 4, 7-8 (Chk. 2008).

A probation revocation is not a stage of a criminal prosecution, but does result in the loss of liberty. Accordingly a probationer is entitled to a preliminary and a final revocation hearing. FSM v. William, 16 FSM R. 4, 8 (Chk. 2008).

The due process concerns in a Rule 11 plea hearing do not apply with equal force to the context of a revocation of probation or supervised release. FSM v. William, 16 FSM R. 4, 8 (Chk. 2008).

Constitutionally and procedurally, the revocation of probation, of supervised release, and of parole are

treated alike. FSM v. William, 16 FSM R. 4, 8 n.3 (Chk. 2008).

At a revocation hearing, not only is a Rule 11 voluntariness colloquy not required before a court may accept a defendant's admission of supervised release violations, but such a formal colloquy would be ill suited to the context of supervised release proceedings. In contrast to the adversarial setting that characterizes the offering of a guilty plea, a revocation of supervised release proceeding features the involvement of a parole officer, who is responsible for representing the defendant's best interests to the greatest extent possible consistent with the community's welfare. To superimpose formalistic procedures such as a Rule 11 colloquy onto this context, however much it may be sound practice for judges to elicit some indication of voluntariness for the record, is neither required by due process nor necessarily conducive to a more effective accomplishment of the goals of probation. FSM v. William, 16 FSM R. 4, 8 (Chk. 2008).

Admissions to probation violations are not made in the course of a criminal trial and do not give rise to a different statutory offense or to an increase in punishment on the underlying conviction. Thus, by not contesting the revocation motion and having his probation revoked, a defendant would not be punished for any new crime, nor would his punishment be increased, he would only be punished for the crimes he had already pled guilty and he would be serving the sentence he received for those crimes. FSM v. William, 16 FSM R. 4, 8-9 (Chk. 2008).

A probation revocation hearing is not analogous to a criminal trial or prosecution and the admission of a probation violation is not the functional equivalent of a guilty plea. FSM v. William, 16 FSM R. 4, 9 (Chk. 2008).

The rights which a probationer enjoys during a revocation proceeding are simply not co-extensive with those enjoyed by a defendant during a prosecution for a substantive offense. For revocation hearings there is no constitutional (or statutory) requirement of a voluntariness colloquy similar to that required under Rule 11 and a defendant in a probation revocation hearing who admits to probation violations does not have to be informed of the maximum possible sentence because he was already informed of that when he pled guilty to the original offense or before he was sentenced. FSM v. William, 16 FSM R. 4, 9 (Chk. 2008).

A guilty plea is itself a conviction, ending the controversy, but admissions of probation violations [unlike guilty pleas] do not end the controversy. The judge must still decide the more difficult issue whether the violations warrant revocation of probation. Thus, admissions of probation violations, unlike guilty pleas, do not automatically trigger sentencing. FSM v. William, 16 FSM R. 4, 9 (Chk. 2008).

Unlike in a criminal prosecution where it is constitutionally required, in a probation revocation the government does not have to prove beyond a reasonable doubt that the probation terms have been violated. The court may revoke probation if it is reasonably satisfied that the probation terms were violated. FSM v. William, 16 FSM R. 4, 9 (Chk. 2008).

The constitutional protection not to be twice placed in jeopardy does not apply to a revocation hearing because revocation and a criminal prosecution can both be based on the same transaction without implicating double jeopardy concerns. FSM v. William, 16 FSM R. 4, 9 (Chk. 2008).

Since probation revocation is not a stage in a criminal prosecution, the defendant's privilege against self-incrimination is limited to where his answers might incriminate him in a future criminal proceeding. FSM v. William, 16 FSM R. 4, 9 (Chk. 2008).

When the most likely reason for the arrest and later court appearance of a prisoner on work release was not to charge him with a new crime but to revoke or modify his work release conditions, the rule concerning revocation of probation, rather than the statute concerning charging a crime, is the applicable law. Inek v. Chuuk, 19 FSM R. 195, 199 (Chk. 2013).

When Chuuk seeks to revoke a prisoner's work release for violating a release condition, the revocation hearing, unless waived by the probationer, must be held within a reasonable time, and whenever a probationer is held in custody on the ground that he has violated a condition of his probation, he must be afforded a prompt hearing before a judicial officer to determine whether there is probable cause to hold the probationer for a revocation hearing. Inek v. Chuuk, 19 FSM R. 195, 199 (Chk. 2013).

Since a convicted inmate is a probationer only when he is on work release and is otherwise properly in custody, the court must conclude that a preliminary probable cause hearing within 48 hours of the inmate's arrest for violating work release conditions would be prompt within the meaning of Chuuk Criminal Rule 32.1 and that a revocation hearing within 48 hours of the arrest for violation of probation would be within a reasonable time. Chuuk therefore cannot be held civilly liable for the arrestee detention from September 8, 2010 to September 10, 2010, of a prisoner arrested for a work release violation. Inek v. Chuuk, 19 FSM R. 195, 199 (Chk. 2013).

Since Chuuk Criminal Procedure Rule 32.1 provides that the person whose release Chuuk is trying to revoke be given written notice of the alleged probation violation and informed of the evidence against him and given an opportunity to appear and to present evidence and to question adverse witnesses and be represented by counsel, when, other than counsel at the hearing, the plaintiff was not given any of these Rule 32.1 procedural rights his remedy for that failure would be a denial of Chuuk's attempt to revoke his work release. Inek v. Chuuk, 19 FSM R. 195, 199-200 (Chk. 2013).

Once a prisoner arrested for a work release violation has been detained in the arrestee holding area past 72 hours without being charged with work release violations under Chuuk Criminal Procedure Rule 32.1, his continued detention there becomes unlawful. Inek v. Chuuk, 19 FSM R. 195, 200 (Chk. 2013).

Extended jurisdiction over a defendant is proper if the revocation process has been set in motion during the probationary period. Courts have uniformly held that jurisdiction continues after the probation term so long as formal revocation proceedings were commenced within the probation term. FSM v. Edward, 20 FSM R. 335, 338 (Pon. 2016).

Jurisdiction over a defendant can be extended for a violation committed during the probationary period, but only through the issuance of a summons, arrest warrant, or comparable court order notifying defendant of the allegations or issued before the expiration of the probationary term. FSM v. Edward, 20 FSM R. 335, 339 (Pon. 2016).

Due process requires that the sentencing court, not the probationary officer, ultimately determine whether revocation proceedings will be initiated. The sentencing court may initiate such proceedings sua sponte based on information acquired from any source, including the probation officer who is primarily responsible for acquiring and presenting such information to the sentencing court. Since Criminal Rule 32.1 does not specify who may file a report of violation, any person may supply the court with that evidence. FSM v. Edward, 20 FSM R. 335, 339 (Pon. 2016).

Due process requires that for a warrant to issue, the report must demonstrate "probable cause" and this determination must be made by a judicial officer before jurisdiction is extended. Thus, the sentencing court takes primary responsibility for initiating probation revocation proceedings. To delegate that authority would be tantamount to abdicating the judiciary's sentencing responsibility to the executive. Ultimately, the court retains the discretion to reject or accept the probation officer's recommendations. FSM v. Edward, 20 FSM R. 335, 339 (Pon. 2016).

A petition for revocation, an affidavit of violation, or a notice of non-compliance, however styled, is merely a report or a motion, but does not by itself initiate revocation proceedings. FSM v. Edward, 20 FSM R. 335, 339 (Pon. 2016).

Only the court can initiate revocation proceedings and its usual practice is to issue an order notifying the defendant of the allegations and setting a hearing. This action may be made by issuing an arrest

warrant, a summons, an order, or even a margin order, but in any case the procedure requires a judicial determination of probable cause to be made before the revocation proceedings are initiated. FSM v. Edward, 20 FSM R. 335, 339 (Pon. 2016).

If the court had formally initiated the revocation procedure before the expiration of the probationary term, jurisdiction would have been extended over the defendant and a revocation hearing held, but since the court did not do so before the defendant's probation ended on March 31, 2015, the court's jurisdiction over the defendant ended then. FSM v. Edward, 20 FSM R. 335, 339 (Pon. 2016).

Regardless of the lesser standards that apply in revocation proceedings, due process is required. FSM v. Edward, 20 FSM R. 335, 340 (Pon. 2016).

A defendant is entitled to a judicial determination of probable cause and to notice of those proceedings before the court can hold a delayed revocation hearing. This rule is jurisdictional. Ordinarily, when the warrant, summons, or order is executed, filed, and served, the defendant is provided with notice of this process, and the affidavit of violation is attached or adequately summarized therein, thereby fulfilling FSM Criminal Rule 32.1's procedural requirements. The court must set this process in motion before the probationary sentence's expiration. FSM v. Edward, 20 FSM R. 335, 340 (Pon. 2016).

Once a probationary period has elapsed, the defendant has automatically satisfied the sentence imposed, but extended jurisdiction over a defendant is proper if the revocation process has been set in motion during the probationary period. FSM v. Akapito, 20 FSM R. 579, 581 (Chk. 2016).

Jurisdiction over a probationer can be extended for a violation committed during the probationary period only through the issuance of a summons, arrest warrant, or comparable court order notifying defendant of the allegations or issued before the probationary term's expiration. FSM v. Akapito, 20 FSM R. 579, 581 (Chk. 2016).

The court may revoke probation if it is reasonably satisfied that the probation terms were violated. FSM v. Akapito, 20 FSM R. 579, 581 (Chk. 2016).

If the court determines that one or more probation violations occurred but that revocation is not necessary, it will sometimes be appropriate for the court to increase the conditions under which the defendant is allowed to remain on probation. Among the possibilities is extension of the probation period, which is constitutionally permissible. FSM v. Akapito, 20 FSM R. 579, 581 (Chk. 2016).

Depending on how the analysis is approached, a defendant's probation was either extended seven years or his probation was revoked and then, rather than return him to jail, his probation was reinstated for seven years. Either way, the result is that the defendant will have another seven years within which to finish paying his restitution. FSM v. Akapito, 20 FSM R. 579, 581-82 (Chk. 2016).

A court's jurisdiction over probationary matters lasts only as long as the probationary term. Chuuk v. Rimuo, 21 FSM R. 19, 21 (Chk. S. Ct. Tr. 2016).

When no action has been taken against a defendant during the term of probation, no action can be initiated after the probationary period's expiration. The "triggering event" that would properly initiate proceedings and grant a court jurisdiction after the probationary period's conclusion is generally considered to be more formal revocation proceedings such as issuing, before the probation's expiration, a summons or an arrest warrant alleging a probation violation. Chuuk v. Rimuo, 21 FSM R. 19, 21 (Chk. S. Ct. Tr. 2016).

When the defendant violated probation by not reporting to his probation officer for the last four months of his probation and by not paying the court-ordered $70 restitution to the victim, but the probation officer did not inform the Attorney General's Office of the probation violations until after the defendant's probationary term had already expired, and when the defendant was not summoned, which was the proper triggering procedure to grant this court jurisdiction, until over eleven months later, such delay in initiating the proper

triggering event results in the court losing jurisdiction over the matter. It therefore cannot grant a revocation motion. Chuuk v. Rimuo, 21 FSM R. 19, 21 (Chk. S. Ct. Tr. 2016).

Due to the state's lack of timeliness to issue a warrant or summons during the probationary term, this court lacks jurisdiction over a probation revocation matter. Chuuk v. Rimuo, 21 FSM R. 19, 21 (Chk. S. Ct. Tr. 2016).

– Sentence – Reduction of Sentence

Rule 35 of the Pohnpei Supreme Court Rules of Criminal Procedure is void because the statutes and Constitution of Pohnpei do not give the power to reduce sentences to the courts. Rather, the statutes and Constitution of Pohnpei explicitly reserve that power for the executive branch, in the person of the Governor. Pohnpei v. Hawk, 3 FSM R. 17, 24 (Pon. S. Ct. Tr. 1986).

There is no provision in the National Criminal Code of the Federated States of Micronesia permitting the court to modify a sentence after judgment. The rules only permit the court to reduce a sentence within 120 days after the sentence has been imposed. FSM v. Finey, 3 FSM R. 82, 84 (Truk 1986).

Even when mitigative effect cannot be given due to the beatings suffered by the defendants the court may consider a reduction of sentence pursuant to FSM Crim. R. 35. FSM v. Tammed, 5 FSM R. 426, 430 (Yap 1990).

In a criminal case, the appellate court may commute, reduce, or suspend the execution of sentence, but when the appellate court has held that the trial court did not abuse its discretion in considering and imposing its sentence on the defendant for the offense committed, it will find no way to commute, reduce, or suspend the sentence. Cheida v. FSM, 9 FSM R. 183, 190 (App. 1999).

FSM Criminal Rule 35 permits the sentencing judge to reduce a sentence within 120 days after sentence is imposed. FSM v. Faen, 9 FSM R. 416, 417 (Yap 2000).

Although the court may reduce a sentence simply because it has changed its mind, it usually will not do so where nothing is shown to justify a reduced sentence that was not already considered by the court when the initial sentence was fixed. FSM v. Faen, 9 FSM R. 416, 417 (Yap 2000).

Occasions will arise when a conscientious judge, after reflection or upon receipt of new probation reports or other information, will feel that he has been too harsh or has failed to give weight to mitigating factors which properly should have been taken into account. FSM v. Faen, 9 FSM R. 416, 417 (Yap 2000).

While it is a sobering fact that any incarceration will interrupt family life, that fact alone, however, does not constitute a basis upon which to reduce defendant's sentence when the court was aware of the defendant's family situation at the time of sentencing, and the motion for reconsideration presents nothing that could not have been presented then. FSM v. Faen, 9 FSM R. 416, 417 (Yap 2000).

The court may reduce a sentence from one of incarceration to one of probation within 120 days after the sentence is imposed, or within 120 days after the court's receipt of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or after entry of any order or judgment denying review of, or having the effect of upholding, a judgment of conviction. FSM v. Akapito, 11 FSM R. 194, 195 (Chk. 2002).

The FSM Supreme Court has jurisdiction to hear a Rule 35 motion for reduction of sentence after a convicted criminal defendant has dismissed his own appeal. FSM v. Akapito, 11 FSM R. 194, 196 (Chk. 2002).

When the relevant portion of FSM Criminal Procedure Rule 35(b) is identical to the United States Federal Rule of Criminal Procedure 35(b) that was in effect until November 1, 1987, and is derived from that source, the standard applied by U.S. federal courts exercising their discretion in Rule 35(b) requests is

thus persuasive. FSM v. Akapito, 11 FSM R. 298, 300 (Chk. 2002).

A reduction of sentence may be granted if the court decides that the sentence unduly severe. The court may reduce the sentence simply because it has changed its mind, but usually will not do so where nothing is shown to justify a reduced sentence that was not already considered by the court when the original sentence was fixed. FSM v. Akapito, 11 FSM R. 298, 300 (Chk. 2002).

A court may reconsider a sentence in light of further information presented to it in the interim between the imposition of sentence and the motion to reduce the sentence. FSM v. Akapito, 11 FSM R. 298, 300 (Chk. 2002).

On an application for reduction of sentence, the applicant's commendable prison deportment is only some evidence on the issue to be resolved, neither to be disregarded nor overestimated. Also, hardship on the applicant's family may justify a sentence reduction. FSM v. Akapito, 11 FSM R. 298, 300 (Chk. 2002).

A motion for reduction of sentence will be denied when the original sentence was not unduly severe, when no reason appeared for the court to change its mind, and when nothing is presented now that was not already considered at the time the sentence was imposed. FSM v. Akapito, 11 FSM R. 298, 300 (Chk. 2002).

Criminal Rule 35(b) provides for judicial discretion to reduce a sentence upon a timely motion. However, any change in the original sentence will not be lightly won by a convicted party because a court should not change a sentence when nothing is shown to justify a reduced sentence that was not already considered by the court when the original sentence was fixed. Chuuk v. Inos, 15 FSM R. 259, 261 (Chk. S. Ct. Tr. 2007).

A motion for reduction of sentence will be denied when the original sentence was not unduly severe, when no reason appeared for the court to change its mind, and when nothing is presented that was not already considered at the time the sentence was imposed. Chuuk v. Inos, 15 FSM R. 259, 261 (Chk. S. Ct. Tr. 2007).

A motion to reduce a sentence will be denied when the defendant was sentenced to incarceration for six years, four years less than the maximum sentence, and was, on its face, not unduly severe for the crime of manslaughter and when the mitigating factors were all considered in his original sentence. Chuuk v. Inos, 15 FSM R. 259, 261 (Chk. S. Ct. Tr. 2007).

A motion for reduction of sentence will be denied for lack of jurisdiction when a notice of appeal has been filed and the motion was not timely filed within 120 days of the entry of conviction. Chuuk v. William, 16 FSM R. 149, 152 (Chk. S. Ct. Tr. 2008).

Since a properly filed notice of appeal transfers jurisdiction from the trial court to the appellate court, the trial court is then divested of jurisdiction, except to take action in aid of the appeal, until the case is remanded to it. Thus, the trial court has no jurisdiction to rule on a motion for reduction of sentence after an appeal has been filed. Chuuk v. William, 16 FSM R. 149, 152 (Chk. S. Ct. Tr. 2008).

The standard applied by U.S. federal courts exercising their discretion in Rule 35(b) requests is persuasive. Chuuk v. William, 16 FSM R. 149, 152 n.1 (Chk. S. Ct. Tr. 2008).

Since the rules permit the court to reduce a sentence within 120 days after the sentence has been imposed, the court is without jurisdiction to rule on a motion to reduce sentence when it is filed more than 120 days from the date that the orders of conviction were entered. Chuuk v. William, 16 FSM R. 149, 153 (Chk. S. Ct. Tr. 2008).

The court may, within 120 days after the sentence is imposed, reduce a sentence if it has changed its mind on the terms of the sentence, but this is rarely done in the absence of justification for reducing the sentence that was not already considered by the court during the initial sentencing. FSM v. Marehalau, 16 FSM R. 505, 507 (Pon. 2009).

A motion for reduction of sentence is essentially a plea for leniency, and is addressed to the sound discretion of the trial court. FSM v. Marehalau, 16 FSM R. 505, 507 (Pon. 2009).

In the absence of FSM precedent, the FSM Supreme Court may consider the reasoning from the courts of other common law jurisdictions. FSM v. Marehalau, 16 FSM R. 505, 507 (Pon. 2009).

A sentence will not be reduced from imprisonment in jail to house arrest when the prisoner's doctor does not specifically assert that house arrest is necessary to alleviate any of the prisoner's medical problems and when the common jail conditions of heat in his prison cell, unhealthy food, and noise along with his state of health do not justify modifying the sentence because no showing was made that accommodation for these concerns is unavailable to him and because the court expects that the jail will make reasonable efforts to follow recommendations from the prisoner and/or his treating physician(s) regarding measures that may be taken at the jail to accommodate and alleviate the prisoner's medical conditions while he serves his sentence of imprisonment. FSM v. Marehalau, 16 FSM R. 505, 507-08 (Pon. 2009).

Chuuk Criminal Rule 35(b) provides for judicial discretion to reduce a sentence upon a timely motion, but any change in the original sentence will not be lightly won, and a motion for reduction of sentence will be denied when the original sentence was not unduly severe, when no reason appeared for the court to change its mind, and when nothing is presented now that was not already considered at the time the sentence was imposed. The burden rests on the moving party. Chuuk v. Ramey, 22 FSM R. 130f, 130h (Chk. S. Ct. Tr. 2018).

The court may reduce a sentence within 120 days after the sentence is imposed, or within 120 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within 120 days after entry of any order or judgment of the State Court appellate division denying review of, or having the effect of upholding, a judgment of conviction. Changing a sentence from one of incarceration to a grant of probation constitutes a permissible reduction of sentence under Rule 35(b). Chuuk v. Ramey, 22 FSM R. 130f, 130h (Chk. S. Ct. Tr. 2018).

Since the rules permit the court to reduce a sentence within 120 days after the imposition of sentence, the court lacks subject matter jurisdiction to rule on a motion to reduce a sentence when it is filed 123 days from the date that the orders of conviction were entered, and Criminal Procedure Rule 57 cannot serve as the basis for considering a motion for reduction of sentence filed after the 120-day deadline set in Rule 35(b). Chuuk v. Ramey, 22 FSM R. 130f, 130h-0i (Chk. S. Ct. Tr. 2018).

A motion for reduction of sentence will be denied when, even if the defendant had filed his motion within 120 days, the evidence presented still did not meet his burden to show that modification of his sentence is warranted because he did not prove that he suffers from a medical hardship which cannot be accommodated by the department of public safety and he did not prove that modifying his sentence to house arrest would not further victimize his victim's family. Chuuk v. Ramey, 22 FSM R. 130f, 130i-0j (Chk. S. Ct. Tr. 2018).

Under Rule 35(b), the court may reduce a sentence within 120 days after the sentence is imposed, and changing a sentence from a sentence of incarceration to a grant of probation constitutes a permissible reduction of sentence, but any Rule 35 change in the original sentence will not be lightly won. Chuuk v. Phillip, 22 FSM R. 425, 427 (Chk. S. Ct. Tr. 2019).

The court cannot reduce a sentence where nothing is shown that was not already considered by the court when the original sentence was fixed, and the court must deny a motion for modification where the

original sentence was not unduly severe, no reason appeared for the court to change its mind, and nothing was presented which was not already considered when the sentence was imposed. Chuuk v. Phillip, 22 FSM R. 425, 427 (Chk. S. Ct. Tr. 2019).

When the statute requires that the court impose a sentence of three years of imprisonment and that the defendant must serve a minimum of 3 years in jail, the statute controls, and the court cannot suspend the imposition or execution of the first three years of the jail sentence for a sexual assault conviction or to reduce the sentence to house arrest or to permit unsupervised release between 8 a.m. – 5 p.m. Chuuk v. Phillip, 22 FSM R. 425, 428 (Chk. S. Ct. Tr. 2019).

A reduction of sentence will be denied when the court carefully reviewed the defendant's aggravating and mitigating factors at the time of sentencing and sentenced him to the mandatory minimum, which cannot not be deemed as unduly severe for a serious felony offense; when the defendant did not present any additional factors besides those the court had already considered; and when the motion also lacked any reason to change the court's mind. Chuuk v. Phillip, 22 FSM R. 425, 428-29 (Chk. S. Ct. Tr. 2019).

Under Rule 35(b), the court may reduce a sentence within 120 days after the sentence is imposed, and changing a sentence from one of incarceration to a grant of probation constitutes a permissible reduction of sentence, but any Rule 35 change in the original sentence will not be lightly won. Chuuk v. Fred, 22 FSM R. 429, 432 (Chk. S. Ct. Tr. 2019).

When nothing is shown to justify a reduced sentence that the court had not already considered when it fixed the original sentence, the court cannot change the sentence and it must deny a motion for modification where the original sentence was not unduly severe, no reason appeared for the court to change its mind, and nothing was presented within the motion which was not already considered when the sentence was imposed. Chuuk v. Fred, 22 FSM R. 429, 432 (Chk. S. Ct. Tr. 2019).

When the statute requires the court to impose a sentence of three years of imprisonment and that the defendant must serve a minimum of 3 years in jail, the statute controls, and the court cannot suspend the imposition or execution of the first three years of the jail sentence for the sexual assault conviction or reduce the sentence to house arrest. Chuuk v. Fred, 22 FSM R. 429, 433 (Chk. S. Ct. Tr. 2019).

A reduction of sentence will be denied when the court carefully reviewed the defendant's aggravating and mitigating factors at the time of sentencing and sentenced her to the mandatory minimum, which cannot not be deemed as unduly severe for a serious felony offense; when the defendant did not present any additional factors besides those the court had already considered; and when the motion also lacked any reason to change the court's mind. Chuuk v. Fred, 22 FSM R. 429, 433-34 (Chk. S. Ct. Tr. 2019).

– Service

It is not unreasonable and oppressive to serve witness subpoenas one week before trial. FSM v. Kuranaga, 9 FSM R. 584, 585 (Chk. 2000).

A subpoena duces tecum is not unreasonable and oppressive when it requires documents that were earlier produced in response to discovery and materials and documents not discoverable under Criminal Rule 16 because it is not a valid objection that documents required by the subpoenas are not discoverable under Rule 16, but any materials already furnished in discovery need not be produced pursuant to the subpoenas. FSM v. Kuranaga, 9 FSM R. 584, 585 (Chk. 2000).

A subpoena will not be quashed for failure to tender a witness's travel costs "allowed by law" when the subpoena was served because, in the absence of a statute or rule setting a figure for the "fee for one day's attendance and the mileage allowed by law," the law does not allow an amount. FSM v. Kuranaga, 9 FSM R. 584, 586 (Chk. 2000).

– Sexual Offenses

The constitutional requirement that proof of guilt be established beyond a reasonable doubt provides protection to persons accused of sexual offenses as well as those accused of other crimes. Complaints by women of sexual assault in Micronesia require no more corroboration than those of other witnesses in other serious cases. Buekea v. FSM, 1 FSM R. 487, 492 (App. 1984).

When there is sufficient evidence of other force in the record to support a conviction for forced sexual penetration, there is no inconsistency in finding the use of force even without ruling that a knife compelled the victim to submit. Buekea v. FSM, 1 FSM R. 487, 494 (App. 1984).

Forcing the victim into the nahs, holding and disrobing her, and subjecting her to sexual penetration against her will in the presence of others constituted a single contemporaneous series of events, all of which were intended to be, and were, mutually supporting the general plan to subject the victim to group rape. FSM v. Hartman (I), 5 FSM R. 350, 352 (Pon. 1992).

When the state has failed to prove beyond a reasonable doubt that the sexual penetration was made against the complainant's will, the state has not carried its burden of proof and the sexual assault charge must be dismissed. Kosrae v. Jonah, 10 FSM R. 270, 272 (Kos. S. Ct. Tr. 2001).

Sexual assault is intentionally subjecting another person to sexual penetration, or forcing another person to make a sexual penetration on himself or another or on an animal, against the other person's will, or under conditions in which the offender knows or should know that the other person is mentally or physically incapable of resisting or understanding the nature of his conduct. Sexual penetration is sexual intercourse, cunnilingus, fellatio, anal or oral intercourse, or the causing of penetration of the genital, anal, or oral opening of another to any extent and with any object whether or not there is an emission. Kosrae v. Jackson, 12 FSM R. 93, 99 (Kos. S. Ct. Tr. 2003).

When the state did prove beyond a reasonable doubt that the defendant did commit a sexual assault by intentionally subjecting the victim to sexual penetration, by oral intercourse, under conditions in which the defendant knew or should have known that she was mentally or physically incapable of resisting or understanding the nature of his conduct, the defendant is guilty of the offense of sexual assault. Kosrae v. Jackson, 12 FSM R. 93, 100 (Kos. S. Ct. Tr. 2003).

The offense of sexual assault requires proof beyond a reasonable doubt of intentionally subjecting another person to sexual penetration, against the other person's will. Sexual penetration includes the causing of penetration of the genital, anal, or oral opening of another to any extent and with any object whether or not there is an emission. Kosrae v. Sigrah, 12 FSM R. 562, 566 (Kos. S. Ct. Tr. 2004).

When the evidence is undisputed that the defendant used his fingers to penetrate the victim's vagina, he did cause the penetration of the victim's genital opening with an object: his fingers, and the state has proven beyond a reasonable doubt all of the elements of the criminal offense of sexual assault. Kosrae v. Sigrah, 12 FSM R. 562, 566 (Kos. S. Ct. Tr. 2004).

Under Kosrae statute, sexual assault is intentionally subjecting another person to sexual penetration, or forcing another person to make a sexual penetration on himself or another or on an animal, against the other person's will, or under conditions in which the offender knows or should know that the other person is mentally or physically incapable of resisting or understanding the nature of his conduct. Kosrae v. Kilafwakun, 12 FSM R. 590, 594, 595-96 (Kos. S. Ct. Tr. 2004).

Under Kosrae statute, sexual penetration is sexual intercourse, cunnilingus, fellatio, anal or oral intercourse, or the causing of the penetration of the genital, anal, or oral opening of another to any extent and with any object whether or not there is an emission. Kosrae v. Kilafwakun, 12 FSM R. 590, 594, 596 (Kos. S. Ct. Tr. 2004).

Under Kosrae statute, sexual abuse is intentionally having sexual contact with another person who is less than thirteen years old or causing the person to have sexual contact with the offender. Sexual contact means any touching of the sexual or other intimate parts of another done with the intent of gratifying the sexual desire of either party. Kosrae v. Kilafwakun, 12 FSM R. 590, 594, 596 (Kos. S. Ct. Tr. 2004).

When the sexual abuse and sexual assault statutes each require proof of a fact which the other offense does not – the offense of sexual assault requires proof of the fact of intercourse, penetration, cunnilingus or fellatio; the offense of sexual abuse requires proof of the victim's age, but does not require proof of the fact of intercourse or penetration since sexual contact through touching is adequate – the court may enter findings and a decision on both offenses without violating double jeopardy protections. Kosrae v. Kilafwakun, 12 FSM R. 590, 594 (Kos. S. Ct. Tr. 2004).

When the evidence is undisputed that the defendant used his mouth and tongue to fondle and lick the six year old victim's vagina and vaginal area (actions defined as cunnilingus); when it is undisputed that she tried to resist the defendant's actions but he was too strong for her and that she was mentally and physically incapable of resisting or understanding the nature of the defendant's conduct; and when the 44 year old male defendant knew or should have known that she was mentally or physically incapable of resisting or understanding the nature of his conduct, the defendant committed cunnilingus thereby subjecting the victim to sexual penetration, and accordingly, the state proved beyond a reasonable doubt all of the elements of the offense of sexual assault. Kosrae v. Kilafwakun, 12 FSM R. 590, 596 (Kos. S. Ct. Tr. 2004).

When the evidence is undisputed that the defendant used his mouth and tongue to fondle and lick the victim's vagina and vaginal area, that the victim was a six year old child at the time, and that the defendant did masturbate during the time he was touching the victim, the defendant intentionally had sexual contact with a victim less than thirteen years old and he touched the victim's intimate parts with the intent of gratifying his own sexual desire. The state thus proved beyond a reasonable doubt all of the elements of the offense of sexual abuse. Kosrae v. Kilafwakun, 12 FSM R. 590, 596 (Kos. S. Ct. Tr. 2004).

Sexual assault is intentionally subjecting another person to sexual penetration, or forcing another person to make a sexual penetration on himself or another or on an animal, against that person's will, or under conditions in which the offender knows or should know that the other person is mentally or physically incapable of resisting or understanding the nature of his conduct. Sexual penetration is sexual intercourse, cunnilingus, fellatio, anal or oral intercourse, or the causing of penetration of the genital, anal, or oral opening of another to any extent and with any object whether or not there is an emission. Kosrae v. Kinere, 13 FSM R. 230, 240 (Kos. S. Ct. Tr. 2005).

Each instance of sexual penetration may be charged and prosecuted as a separate violation of Kosrae State Code, Section 13.311. Each factually distinguishable act of sexual penetration is subject to prosecution as a separate count, conviction and sentencing when the defendant committed three factually distinguishable acts of sexual penetration upon the same victim and the record reflects that each of the three acts that the defendant's conduct was separate in time and showed the defendant's new intent in his course of conduct. Kosrae v. Kinere, 13 FSM R. 230, 240 (Kos. S. Ct. Tr. 2005).

An argument that multiple acts of sexual penetration committed during a single continuous criminal episode can be subject only to conviction and sentencing on a single count is not supported by public policy. No principle exempts an accused from prosecution for all the offenses that were committed, just because the accused has the opportunity and willingness to multiply those offenses. Such a principle would encourage the more vicious and repeated criminal acts. The State Legislature could not have intended to grant immunity to a criminal who committed one sexual assault upon a minor victim, from prosecution and punishment for further criminal acts committed during the same encounter. When the defendant's conviction and sentencing upon three counts of sexual assault upon the same victim during the same criminal episode were based upon factually distinct acts and offenses, they are not multiple punishments for the same offense. Kosrae v. Kinere, 13 FSM R. 230, 241-42 (Kos. S. Ct. Tr. 2005).

In Kosrae law, sexual assault is intentionally subjecting another person to sexual penetration, or forcing another person to make a sexual penetration on himself or another or on an animal, against the other person's will, or under conditions in which the offender knows or should know that the other person is mentally or physically incapable of resisting or understanding the nature of his conduct. Sexual penetration is sexual intercourse, cunnilingus, fellatio, anal or oral intercourse, or the causing of penetration of the genital, anal, or oral opening of another to any extent and with any object whether or not there is an emission. Kinere v. Kosrae, 14 FSM R. 375, 383 n.4 (App. 2006).

When the defendant committed three distinct acts upon the victim and the act of fellatio occurred at a different time and in a different location than did the acts of anal intercourse and the two acts of anal intercourse were separated by an act of battery (a bite) the defendant penetrated the victim's body at least three times and he thus, did not receive multiple punishments for a single offense. On the contrary, he received multiple punishments for multiple offenses. The State was not required to prove that a significant amount of time elapsed between the three acts of penetration. Kinere v. Kosrae, 14 FSM R. 375, 384 (App. 2006).

Although physical evidence or the lack thereof may be compelling in some cases, it is not a requirement of proof when the victim herself testified credibly to the alleged act and when her testimony was neither impeached nor rebutted. The lack of physical evidence may even be expected in a case charging sexual abuse because, unlike sexual assault, proof of sexual abuse does not require proof of sexual penetration, but only of sexual contact. Sexual contact is defined as any touching of the sexual or other intimate parts of a person not married to the defendant, done with the intent of gratifying the sexual desire of either party. It would be highly unlikely for a doctor examining a person days after her genitalia or intimate parts had been touched to be able to determine whether she had in fact been touched. Thus, the lack of physical evidence in a sexual abuse case is rather to be anticipated, and does not provide the defendant with a defense. Chuuk v. Inek, 17 FSM R. 137, 145 (Chk. S. Ct. Tr. 2010).

Under the pleading theory, disturbing the peace is not a lesser included offense of sexual abuse when, as pled, to prove sexual abuse, Kosrae had to prove the genital licking and the fingering and that the victim was under 13 and to prove disturbing the peace, Kosrae had to prove the genital licking and that the victim was unreasonably disturbed or annoyed. Thus, the victim's age and the fingering were facts that Kosrae had to prove to obtain a sexual abuse conviction that it did not have to prove to obtain the disturbing the peace conviction. That the victim was unreasonably disturbed or annoyed was a fact that Kosrae had to prove to obtain the disturbing the peace conviction that it did not have to prove for the sexual abuse conviction. Kosrae did not have to prove that the victim was unreasonably disturbed or annoyed to prove sexual abuse. Thus, the greater offense of sexual abuse could have been committed without committing the lesser offense of disturbing the peace. Benjamin v. Kosrae, 19 FSM R. 201, 209-10 (App. 2013).

"Sexual penetration" is a statutory element of sexual assault. Ned v. Kosrae, 20 FSM R. 147, 152 (App. 2015).

To prove sexual assault, the victim's lack of consent is necessarily pled and proven, which would necessarily also require pleading and proving something that would constitute annoyance and disturbance to the victim. Ned v. Kosrae, 20 FSM R. 147, 154 (App. 2015).

Since sexual assault requires intentionally subjecting another person to sexual penetration against the other person's will and assault and battery requires striking, beating, wounding, or otherwise doing bodily harm to another, and since subjecting another person to sexual penetration against the other person's will is one of a number of ways to otherwise do bodily harm to another, assault and battery is a lesser included offense of sexual assault. Ned v. Kosrae, 20 FSM R. 147, 154 (App. 2015).

Since disturbing the peace is willfully committing any act which unreasonably annoys or disturbs another so that she is deprived of peace and quiet, or which provokes a breach of the peace, and since every sexual assault – every intentional subjecting a person to sexual penetration against that person's will

– is also the willful commission of an act which unreasonably annoys or disturbs another so that she is deprived of peace and quiet, disturbing the peace is a lesser included offense of sexual assault. Ned v. Kosrae, 20 FSM R. 147, 154-55 (App. 2015).

Since the attempt to commit sexual assault merged into the completed sexual assault; since assault is a lesser included offense of assault and battery; and since assault and battery and disturbing the peace are both lesser included offenses of sexual assault, the convictions for all these lesser offenses must be vacated, and since the maximum sentence for sexual assault as a category two felony is five years, the accused's seven-year sentence, and therefore his convictions, for all offenses must be vacated and the case remanded for re-sentencing on, and thus for a conviction to be entered for, only the greater offense of sexual assault. Ned v. Kosrae, 20 FSM R. 147, 155 (App. 2015).

When a statute states that "a person convicted under this Section shall be punished by imprisonment for not more than five years," has consistently been interpreted to refer to the imposition of sentences, leaving the court the opportunity to suspend the execution of its imposed jail terms for sexual abuse, but when the punishment provision was amended to "not less than five years" instead of "not more than five years" imprisonment and the punishment section's wording otherwise remains the same, therefore, although imprisonment means jail term, the mandated punishment refers to the imposition of such jail term as opposed to its execution. Therefore, courts may still suspend such sentences. Chuuk v. Jose, 21 FSM R. 566, 571 (Chk. S. Ct. Tr. 2018).

Although a trial for the sexual assault of a minor involves the government's compelling interest in the minor victim's welfare, it does not follow from this that the court may automatically close trials to the public whenever a minor victim testifies in any sexual assault trial. FSM v. Jappan, 22 FSM R. 49, 54 (Chk. 2018).

– Solicitation

One who suggests to his drinking companions that they obtain additional liquor by taking a bottle from construction laborers in the area, and who then leads his companions in an effort to attack one of the workers, solicits more possibilities than just the taking of a bottle, and is guilty of aiding and abetting the robbery of a watch and money from another construction worker carried out by his companions while the original instigator is still pursuing the first laborer. FSM v. Hadley, 3 FSM R. 281, 284 (Pon. 1987).

A solicitation charge will merge into a conspiracy charge when the person solicited agrees to the solicitation by acting on the request. FSM v. Esefan, 17 FSM R. 389, 398 n.5 (Chk. 2011).

Like aiding and abetting, soliciting and conspiring are all bases for criminal liability for the acts of another found in 11 F.S.M.C. 301(1)(d). FSM v. Esefan, 17 FSM R. 389, 398 n.5 (Chk. 2011).

– Speedy Trial

The Pohnpeian customary practice of quickly resolving conflict resulting from the commission of an act is closely related to, if not the counterpart of the Western concept of a speedy trial. Pohnpei v. Weilbacher, 5 FSM R. 431, 450 (Pon. S. Ct. Tr. 1992).

The statute of limitations begins to run from the commission of an offense, or when the crime is complete. Once prosecution has been commenced the statute of limitations period is no longer available to the prosecution who must then face the task of bringing the defendants to a prompt trial. Pohnpei v. Weilbacher, 5 FSM R. 431, 454-55 (Pon. S. Ct. Tr. 1992).

The Pohnpeian concept of justice and Pohnpei Criminal Rule 48 both allow the court to dismiss a criminal case for delay even when the defendant's constitutional right to a speedy trial has not been violated. Pohnpei v. Weilbacher, 5 FSM R. 431, 456 (Pon. S. Ct. Tr. 1992).

When a defendant has already agreed to a trial date that meets the constitutional requirement for a

speedy trial, and no reason is offered why that date is no longer constitutionally sound, a later motion for a speedy trial may be denied. FSM v. Wu Ya Si, 6 FSM R. 573, 574 (Pon. 1994).

The time that elapses between the alleged offenses and the filing of charges is not to be considered when determining whether a defendant has been denied a speedy trial. FSM v. Wainit, 11 FSM R. 186, 191 (Chk. 2002).

Rule 48(b) is the mechanism by which a defendant may assert his constitutional right to a speedy trial, although it also embraces the court's inherent power to dismiss for want of prosecution. The court's power to dismiss under Rule 48(b) is not limited to those situations in which the defendant's constitutional speedy trial right has been violated. The Rule is a restatement of the court's inherent power to dismiss a case for want of prosecution. It imposes a stricter standard of tolerable delay than does the Constitution. FSM v. Wainit, 12 FSM R. 405, 409 (Chk. 2004).

It is appropriate to look to U.S. constitutional law and its courts' interpretations, especially those interpretations existing at the time of the Micronesian Constitutional Convention, as a guide to the intended meaning and scope of the FSM Constitution's words (such as the speedy trial right) since the provisions in the FSM Constitution's Declaration of Rights are traceable to the U.S. Constitution's Bill of Rights. FSM v. Wainit, 12 FSM R. 405, 409 (Chk. 2004).

The FSM constitutional right that the defendant in a criminal case has a right to a speedy public trial is traceable to the U.S. Bill of Rights. FSM v. Wainit, 12 FSM R. 405, 410 (Chk. 2004).

A four-factor balancing test for determining speedy trial violations: – length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant – is an appropriate tool to analyze the meaning of the FSM Constitution's speedy trial right. It is also an appropriate tool to use in analyzing a Rule 48(b) dismissal. FSM v. Wainit, 12 FSM R. 405, 410 (Chk. 2004).

In determining whether to exercise its discretionary power to dismiss under Rule 48(b), the court may consider the same factors relevant to a constitutional decision regarding denial of a speedy trial. FSM v. Wainit, 12 FSM R. 405, 410 (Chk. 2004).

A lengthy delay is a triggering mechanism to determine if further analysis is required to determine if a defendant's right to a speedy trial has been violated. FSM v. Wainit, 12 FSM R. 405, 410 (Chk. 2004).

A four-factor balancing test – 1) length of delay, 2) the reason for the delay, 3) the defendant's assertion of his right, and 4) prejudice to the defendant – is used to analyze the meaning of the FSM Constitution's speedy trial right and to determine speedy trial violations; and it is also an appropriate tool to analyze whether a Rule 48(b) dismissal for unnecessary delay in prosecution is warranted. FSM v. Kansou, 14 FSM R. 497, 499 (Chk. 2006).

To determine whether to exercise its discretionary power to dismiss under Rule 48(b), a court may consider the same factors relevant to a constitutional decision regarding denial of a speedy trial. FSM v. Kansou, 14 FSM R. 497, 499 (Chk. 2006).

A lengthy delay is a triggering mechanism to determine if further analysis is required to determine if a defendant's right to a speedy trial has been violated. FSM v. Kansou, 14 FSM R. 497, 499 (Chk. 2006).

Four factors – 1) length of delay, 2) the reason for the delay, 3) the defendant's assertion of his right, and 4) prejudice to the defendant – are balanced when analyzing the FSM Constitution's speedy trial right and to determine speedy trial violations; and they are also used to analyze whether a Rule 48(b) dismissal for unnecessary delay in prosecution is warranted. The court will also use the same four-factor balancing test to determine whether dismissal is appropriate under 12 F.S.M.C. 802 since that statutory right is embodied in Rule 48(b). FSM v. Kansou, 15 FSM R. 180, 183 (Chk. 2007).

A lengthy delay is a triggering mechanism to determine if further analysis is required to determine if a defendant's right to a speedy trial has been violated. If the delay has not been so lengthy as to be presumptively prejudicial, no further analysis is needed. FSM v. Kansou, 15 FSM R. 180, 183 (Chk. 2007).

The provisions in the FSM Constitution's Declaration of Rights are traceable to the United States Constitution's Bill of Rights, and when a FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision, United States authority may be consulted to understand its meaning. The FSM speedy trial right is patterned after the United States Constitution. FSM v. Kansou, 15 FSM R. 180, 185 n.1 (Chk. 2007).

A defendant may waive his right to a speedy trial. He effects a waiver, in respect of a particular delay, when he requests it, consents to it, enters a plea of guilty, makes certain dilatory pleas or motions, or when the delay is otherwise attributable to the defendant. FSM v. Kansou, 15 FSM R. 180, 185 (Chk. 2007).

A defendant remains free to move for a severance at any time during which his speedy trial clock has not begun to run because a codefendant has not been apprehended. FSM v. Kansou, 15 FSM R. 180, 188 (Chk. 2007).

The four-factor balancing test applicable for cases implicating a defendant's right to a speedy trial or a Chuuk Criminal Rule 48(b) dismissal for unnecessary delay in prosecution is: 1) length of delay, 2) the reason for the delay, 3) the defendant's assertion of his right, and 4) prejudice to the defendant. The first factor, whether there has been a lengthy delay, is a triggering mechanism for further analysis to determine if a defendant's right to a speedy trial has been violated. A delay of one year is presumptively prejudicial and triggers application of the three remaining factors. Chuuk v. William, 15 FSM R. 381, 386 (Chk. S. Ct. Tr. 2007).

The provisions in the FSM Constitution's Declaration of Rights are traceable to the United States Constitution's Bill of Rights, and when a FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision, United States authority may be consulted to understand its meaning. The FSM speedy trial right is patterned after the United States Constitution. Chuuk v. William, 15 FSM R. 381, 387 n.1 (Chk. S. Ct. Tr. 2007).

Under Kosrae Criminal Procedure Rule 48(b), the Kosrae State Court may dismiss a case if there is unnecessary delay in filing an information or if there is unnecessary delay in going to trial. Under this rule, either delay may violate a defendant's right to a speedy trial and to due process. Kosrae v. Langu, 15 FSM R. 601, 603 (Kos. S. Ct. Tr. 2008).

The factors for determining speedy trial violations are: length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant. Kosrae v. Langu, 15 FSM R. 601, 603 (Kos. S. Ct. Tr. 2008).

The right to a speedy trial primarily protects a criminal defendant from hardship due to restraints of liberty before trial. There may also be some anxiety and the recognized risk that the memories of witnesses and the defendant will suffer. The prosecution and public are harmed by delays, too. Witnesses' loss of memory makes them vulnerable on cross-examination. And, imposing criminal sanctions in a prompt, clear manner is more likely to deter future criminal conduct. These factors are important to the fair and prompt administration of justice in all circumstances, even when the prosecution and defense agree to a continuance. Kosrae v. Langu, 15 FSM R. 601, 604 (Kos. S. Ct. Tr. 2008).

An accused has the constitutional right to a speedy trial. FSM v. Kool, 18 FSM R. 291, 295 (Chk. 2012).

Rule 48(b) embraces the court's inherent power to dismiss for want of prosecution. It is not limited to those situations in which the defendant's constitutional speedy trial right has been violated because it

imposes a stricter standard of tolerable delay than does the Constitution. FSM v. Kool, 18 FSM R. 291, 295 (Chk. 2012).

The four-factor balancing test for determining speedy trial violations is: 1) length of delay; 2) the reason for the delay; 3) the defendant's assertion of his right; and 4) prejudice to the defendant, and it is also an appropriate tool to use in analyzing a Rule 48(b) dismissal. Chuuk v. Chopwa, 19 FSM R. 28, 31 (Chk. S. Ct. Tr. 2013).

The Chuuk State Supreme Court has the authority to dismiss a case sua sponte. This is a necessary corollary of the judge's authority to process criminal cases. Cases that have remained dormant due to inaction and that meet the standard for dismissal, may be dismissed. Chuuk v. Chopwa, 19 FSM R. 28, 31 (Chk. S. Ct. Tr. 2013).

Dismissal without prejudice is a relatively lenient penalty for the state's utter failure to prosecute an action, for a dismissal without prejudice does not, in theory, irrevocably deprive the state of its day in court. Chuuk v. Chopwa, 19 FSM R. 28, 32 (Chk. S. Ct. Tr. 2013).

When the four speedy trial factors, on balance, show that the defendant has suffered a violation of his right to a speedy trial because the record does not support any legitimate reasons for the delay, because an excessive length of time that has passed coupled with the absolute lack of diligence on the prosecution's part are sufficient to assume prejudice; when the delays were a direct result of the state failing to diligently prosecute the case, the case will be dismissed. Chuuk v. Chopwa, 19 FSM R. 28, 33 (Chk. S. Ct. Tr. 2013).

The four-factor balancing test for determining speedy trial violations: 1) length of delay; 2) the reason for the delay; 3) the defendant's assertion of his right, and 4) prejudice to the defendant, is also an appropriate tool to use in analyzing a Rule 48(b) dismissal. Chuuk v. Noboru, 19 FSM R. 38, 41 (Chk. S. Ct. Tr. 2013).

A four-factor balancing test for determining speedy trial violations: 1) length of delay; 2) the reason for the delay; 3) the defendant's assertion of his right, and 4) prejudice to the defendant, is also an appropriate tool to use in analyzing a Rule 48(b) dismissal. Chuuk v. Haruo, 19 FSM R. 43, 46 (Chk. S. Ct. Tr. 2013).

The Chuuk State Supreme Court has the authority to dismiss a case sua sponte. This is a necessary corollary of the judge's authority to process criminal cases. Cases that have remained dormant due to inaction and that meet the standard for dismissal, may be dismissed. Chuuk v. Haruo, 19 FSM R. 43, 47 (Chk. S. Ct. Tr. 2013).

When the record demonstrates that neither the court nor the defendant were the cause for the delay, the state's premise that the case has been waiting scheduling is flawed. If the court were to adopt such an approach, as long as the court schedules trials and other hearings, the state or the court would be free to subsequently delay a trial as long as it wished for any reason, but common sense dictates that the reason or reasons for all trial delays must have the requisite good cause existing for the delay in ultimately bringing a defendant to trial. Chuuk v. Haruo, 19 FSM R. 43, 47 (Chk. S. Ct. Tr. 2013).

The case will be dismissed without prejudice for lack of prosecution when, taking a look at the state's processing of the case before the dismissal, the four speedy trial factors, on balance, show that the defendant suffered a violation of his right to a speedy trial because the record does not support any legitimate reasons for the delay, because the record does show that the delays were a direct result of the state failing to diligently prosecute the case, and because the excessive length of time that has passed coupled with the absolute lack of diligence on the state's part are sufficient to assume prejudice. Chuuk v. Haruo, 19 FSM R. 43, 48 (Chk. S. Ct. Tr. 2013).

The FSM Constitution guarantees a criminal defendant the right to a speedy public trial. FSM v. Ezra,

19 FSM R. 497, 505 (Pon. 2014).

An appropriate tool to analyze the meaning of the FSM Constitution's speedy trial right is a four-factor balancing test for determining speedy trial violations: length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant. FSM v. Ezra, 19 FSM R. 497, 505-06 (Pon. 2014).

Rule 48(b) is the mechanism by which a defendant may assert his constitutional right to a speedy trial, although it also embraces the court's inherent power to dismiss for want of prosecution. The court's power to dismiss under Rule 48(b) is not limited to those situations in which the defendant's constitutional speedy trial right has been violated since the Rule is a restatement of the court's inherent power to dismiss a case for want of prosecution and it imposes a stricter standard of tolerable delay than does the Constitution. FSM v. Ezra, 19 FSM R. 497, 506 (Pon. 2014).

The court will use the same four-factor balancing test to determine whether dismissal is appropriate under 12 F.S.M.C. 802 since that statutory right is embodied in Rule 48(b). Accordingly, a case may be dismissed by the court if there is unnecessary delay in bringing the accused to trial. FSM v. Ezra, 19 FSM R. 497, 506 (Pon. 2014).

The four-factor balancing test applicable for cases implicating a defendant's right to a speedy trial or a Chuuk Criminal Rule 48(b) dismissal for unnecessary delay in prosecution include: 1) length of delay, 2) the reason for the delay, 3) the defendant's assertion of his right, and 4) prejudice to the defendant. The first factor, whether there has been a lengthy delay, is a triggering mechanism for further analysis to determine if a defendant's right to a speedy trial has been violated. Chuuk v. Kapwich, 19 FSM R. 548, 550 (Chk. S. Ct. Tr. 2014).

If there is unnecessary delay in filing an information against a defendant who has been held to answer, or if there is unnecessary delay in bringing a defendant to trial, the court may dismiss the information or complaint. Rule 48(b) is the mechanism by which a defendant may assert his constitutional right to a speedy trial, although it also embraces the court's inherent power to dismiss for want of prosecution. FSM v. Talley, 22 FSM R. 56, 60 (Kos. 2018).

The court's power to dismiss under Rule 48(b) is not limited to those situations in which the defendant's constitutional speedy trial right has been violated. The Rule is a restatement of the court's inherent power to dismiss a case for want of prosecution and imposes a stricter standard of tolerable delay than does the Constitution. FSM v. Talley, 22 FSM R. 56, 60 (Kos. 2018).

The four-factor balancing test for determining speedy trial violations – 1) length of delay; 2) reason for the delay; 3) defendant's assertion of his right, and 4) prejudice to the defendant – is used to analyze the Constitution's right to speedy trial and to determine speedy trial violations under a Rule 48(b) dismissal for unnecessary delay. FSM v. Talley, 22 FSM R. 56, 60-61 (Kos. 2018).

The four-factor balancing test is used to determine whether a court may exercise its discretionary power to dismiss under Rule 48(b) and whether a dismissal is appropriate under 12 F.S.M.C. 802 since that statutory right is embodied in Rule 48(b). FSM v. Talley, 22 FSM R. 56, 61 (Kos. 2018).

A defendant may waive his right to a speedy trial. He effects a waiver when he requests it, consents to it, enters a plea of guilty, or when the delay is otherwise attributable to him. FSM v. Talley, 22 FSM R. 56, 61 (Kos. 2018).

As a general rule, the state is expected to produce all evidence available to it at the time of trial. This rule exists for the purposes of judicial economy, an efficient disposition of cases, and to not delay the defendant's rights to a speedy trial. Some instances merit exception to this general rule. Chuuk v. Nowell, 22 FSM R. 130a, 130d (Chk. S. Ct. Tr. 2018).

– Speedy Trial – Assertion of Right

Although non-assertion of the right does not constitute waiver of the speedy trial right, a court can consider whether the right was asserted, and how vigorously, in determining the reasonableness of any delay. FSM v. Kansou, 15 FSM R. 180, 185 (Chk. 2007).

For speedy trial or unnecessary delay purposes, a defendant's demand for a prompt trial will always weigh heavily in his favor, while a failure to assert the right will make it difficult for him to prove that he was denied it. Chuuk v. William, 15 FSM R. 381, 388-89 (Chk. S. Ct. Tr. 2007).

For speedy trial or unnecessary delay purposes, the defendant's demand for a prompt trial will always weigh heavily in his favor, while a failure to assert the right will make it difficult for him to prove that he was denied it. But since non-assertion of the right does not constitute waiver of the speedy trial right, a court can consider whether the right was asserted, and how vigorously, in determining the reasonableness of any delay. Chuuk v. Chopwa, 19 FSM R. 28, 32 (Chk. S. Ct. Tr. 2013).

A defendant's failure to demand a speedy trial will weigh in favor of the prosecution. Chuuk v. Chopwa, 19 FSM R. 28, 32 (Chk. S. Ct. Tr. 2013).

For speedy trial or unnecessary delay purposes, the defendant's demand for a prompt trial will always weigh heavily in his favor while a failure to assert the right will make it difficult for him to prove that he was denied it, but non-assertion of the right does not constitute waiver of the speedy trial right. A court can consider whether the right was asserted, and how vigorously, in determining the reasonableness of any delay. Chuuk v. Noboru, 19 FSM R. 38, 42 (Chk. S. Ct. Tr. 2013).

When a defendant failed to object to any delay either on the basis that it was unnecessary or that it violated the defendant's right to a speedy trial, this factor will weigh in the prosecution's favor. Chuuk v. Noboru, 19 FSM R. 38, 42 (Chk. S. Ct. Tr. 2013).

For speedy trial or unnecessary delay purposes, the defendant's demand for a prompt trial will always weigh heavily in his favor, and a failure to assert the right will make it difficult for him to prove that he was denied it, and while non-assertion of the right does not constitute waiver of the speedy trial right, a court can consider whether the right was asserted, and how vigorously, in determining the reasonableness of any delay. Chuuk v. Haruo, 19 FSM R. 43, 47 (Chk. S. Ct. Tr. 2013).

A defendant's failure to object to any delay either on the basis that it was unnecessary or that it violated the defendant's right to a speedy trial, will weigh in the prosecution's favor. Chuuk v. Haruo, 19 FSM R. 43, 47-48 (Chk. S. Ct. Tr. 2013).

A defendant may waive his right to a speedy trial. He effects a waiver when he requests it, consents to it, enters a plea of guilty or when the delay is otherwise attributable to the defendant. FSM v. Ezra, 19 FSM R. 497, 507 (Pon. 2014).

Although non-assertion of the right does not constitute waiver of the speedy trial right, a court can consider whether the right was asserted, and how vigorously, in determining the reasonableness of any delay. When the defendants have raised the right and cannot be considered to be sleeping on the right, but some delay is being caused collectively by the defendants' pretrial actions, and motions, this delay is an implicit acquiescence and necessary part of any criminal action. FSM v. Ezra, 19 FSM R. 497, 507 (Pon. 2014).

Although non-assertion of the speedy trial right does not constitute waiver of the right, a court can consider whether the right was asserted, and how vigorously, in determining the reasonableness of any delay. FSM v. Talley, 22 FSM R. 56, 61-62 (Kos. 2018).

A defendant may waive his right to a speedy trial when he requests a continuance; when he does not oppose the government's request for continuance; when he makes certain representations that result in continuance of trial; and when he files pre-trial motions beyond the set deadline. FSM v. Talley, 22 FSM R. 56, 62 (Kos. 2018).

– Speedy Trial – Length of Delay

When only ten months have passed since the defendant was charged with twelve counts and about 8½ months since his initial appearance – not enough time has elapsed for speedy trial concerns to be implicated in a complex case, especially when trial seems imminent. FSM v. Wainit, 11 FSM R. 186, 191 (Chk. 2002).

A longer delay is tolerable for a complex conspiracy, than for an ordinary crime. FSM v. Kansou, 15 FSM R. 180, 184 (Chk. 2007).

Ten months' delay is in excess of what the Kosrae State Court would normally accept as reasonable or necessary for beginning the prosecution of misdemeanors allegedly committed in the presence of officers. Kosrae v. Langu, 15 FSM R. 601, 604 (Kos. S. Ct. Tr. 2008).

The less than four months between the information's filing and the accused's motion to dismiss is simply insufficient to trigger any presumption of a violation of the accused's speedy trial right. FSM v. Kool, 18 FSM R. 291, 295 (Chk. 2012).

Whether there has been a lengthy delay, is a triggering mechanism for further analysis to determine if a defendant's right to a speedy trial has been violated. Since a delay of one year is presumptively prejudicial and triggers application of the three remaining factors, those factors will be considered when the case has been pending since November 2007. Chuuk v. Chopwa, 19 FSM R. 28, 31 (Chk. S. Ct. Tr. 2013).

When fifty-five months elapsed between the filing of the action and the order for dismissal and in that time, the prosecution failed to file anything to move the case forward and when the case languished in the courts for several years with the inactivity prompting the court to place it on the dismissal list, the appearance docket reveals scant effort to prosecute the case. The primary responsibility for prosecuting a case lies with the plaintiff. When a case has not been prosecuted in a diligent manner, prejudice is generally presumed because a case left to languish in the system, with little to no activity, will eventually erode the defendant's ability to prepare a defense. Chuuk v. Chopwa, 19 FSM R. 28, 32-33 (Chk. S. Ct. Tr. 2013).

Brief periods of inactivity in an otherwise active prosecution are acceptable. Chuuk v. Chopwa, 19 FSM R. 28, 33 (Chk. S. Ct. Tr. 2013).

Brief periods of inactivity in an otherwise active prosecution are acceptable. Chuuk v. Noboru, 19 FSM R. 38, 43 (Chk. S. Ct. Tr. 2013).

Only rarely would the prosecution's failure to file anything for several years be appropriate. Chuuk v. Chopwa, 19 FSM R. 28, 33 (Chk. S. Ct. Tr. 2013).

Whether there has been a lengthy delay, is a triggering mechanism for further analysis to determine if a defendant's right to a speedy trial has been violated. Since a delay of one year is presumptively prejudicial and triggers application of the three remaining factors when the case has been pending since September 2, 2003, the remaining factors are triggered. Chuuk v. Noboru, 19 FSM R. 38, 41 (Chk. S. Ct. Tr. 2013).

Whether there has been a lengthy delay is a triggering mechanism for further analysis to determine if a

defendant's right to a speedy trial has been violated. Since a delay of one year is presumptively prejudicial and triggers application of the three remaining factors when the case has been pending since May 19, 2008, the remaining factors are triggered. Chuuk v. Haruo, 19 FSM R. 43, 46 (Chk. S. Ct. Tr. 2013).

When it can reasonably be inferred from the lack of activity on the record that the state had been deliberately proceeding in dilatory fashion, a dismissal is more than a mere attempt to enforce a scheduling order or to "clean up the docket." Chuuk v. Haruo, 19 FSM R. 43, 47 (Chk. S. Ct. Tr. 2013).

The time that elapses between the alleged offenses and the filing of charges is not to be considered when determining whether a defendant has been denied a speedy trial. FSM v. Ezra, 19 FSM R. 497, 506 (Pon. 2014).

The statute of limitations is not the same as the right to a speedy trial, but it is a referent as to whether the case should be dismissed under the more exacting standard of unnecessary delay found in 12 F.S.M.C. 802. FSM v. Ezra, 19 FSM R. 497, 506 (Pon. 2014).

A single speedy trial "clock" governs in cases with multiple defendants. The "clock" starts to run with the most recently added defendant and any delay attributable to any one defendant is charged against the single clock, thus making the delay applicable to all defendants. FSM v. Ezra, 19 FSM R. 497, 507 (Pon. 2014).

When the criminal information was re-filed against the defendant a little over six months after the alleged incident and when the defendant has been charged with felonious crimes, not misdemeanors, it cannot be viewed as a lengthy delay that would trigger further analysis and consideration of the remaining three speedy trial factors. Chuuk v. Kapwich, 19 FSM R. 548, 550 (Chk. S. Ct. Tr. 2014).

A lengthy delay (the first factor) is a triggering mechanism to determine if further analysis is required. A two-year delay is presumptively prejudicial, therefore triggering the three remaining balancing factors. FSM v. Talley, 22 FSM R. 56, 61 (Kos. 2018).

– Speedy Trial – Prejudice to Accused

Prejudice to an accused from delay may consist of: 1) oppressive pretrial incarceration; 2) the accused's pretrial anxiety; and 3) impairment of the defense. Of these, the most serious is the last because the possibility an accused's inability to adequately prepare his defense skews the fairness of the entire system. Pretrial anxiety is the least significant factor and, because a certain amount of pretrial anxiety naturally exists, the accused must demonstrate that he suffered extraordinary or unusual pretrial anxiety. FSM v. Kansou, 15 FSM R. 180, 188 (Chk. 2007).

A defendant's general statement that witnesses' memories may be impaired from the delay, does not show prejudice. FSM v. Kansou, 15 FSM R. 180, 188 (Chk. 2007).

When delay is justified by a legitimate reason, such as complexity, a speedy trial claim will fail absent a demonstration of actual prejudice. FSM v. Kansou, 15 FSM R. 180, 188 (Chk. 2007).

Prejudice is not shown when the defendant does not state that his, or any particular one of his, witnesses now has an impaired memory or is no longer available, or what that witness would testify to if his or her memory were not impaired. FSM v. Kansou, 15 FSM R. 180, 188 (Chk. 2007).

The failure of a prosecution witness's memory does not support a speedy trial violation claim. FSM v. Kansou, 15 FSM R. 180, 188-89 (Chk. 2007).

When it was less than three years after the accused was charged that he was arrested in the U.S. on an FSM extradition warrant and during that whole time he was residing, working, and paying taxes in the

United States or its territory and he neither resided nor worked in the accusing jurisdiction (the FSM) and had no reasonably determinable place of abode or work within the jurisdiction of the FSM after 1999 at anytime after he was charged in November, 2003 and when the claimed prejudice resulting from his alleged 1999 involvement in the charged conspiracy and his 2006 arrest was the deaths of two mayors of municipalities in Faichuk, who are alleged to be possible witnesses, but how they would have assisted the accused's defense, who was responsible only for the Northern Namoneas, is left unsaid, his motion to dismiss for unnecessary delay based on the FSM's alleged negligence in arresting him will be denied. FSM v. Kansou, 15 FSM R. 373, 378-79 (Chk. 2007).

Prejudice to an accused may consist of: 1) oppressive pretrial incarceration; 2) the accused's pretrial anxiety; and 3) impairment of the defense. Of these, the most serious is the last because the possibility that an accused may not be able to adequately prepare his defense skews the fairness of the entire system. Pretrial anxiety is the least significant factor, and, because a certain amount of pretrial anxiety naturally exists, the accused must demonstrate that he suffered extraordinary or unusual pretrial anxiety. Chuuk v. William, 15 FSM R. 381, 389 (Chk. S. Ct. Tr. 2007).

Since the mere erosion of memory through the passage of time is not sufficient for a showing of prejudice, any claim of failing memory must be supported by a specific showing of which memories were affected and how any memory problem affects the defense. When the only witness a defendant addresses in his motion is himself and, assuming he testifies at his trial, he has not asserted that his memory is impaired other than by the passage of time, or what he would be able to testify if his memory were not impaired, his vague assertions of memory impairment alone do not constitute a showing of prejudice from the delay and this factor, therefore, favors the government. Chuuk v. William, 15 FSM R. 381, 389 (Chk. S. Ct. Tr. 2007).

When, although the delay of over three years was presumptively prejudicial, such presumptive prejudice alone is not determinative of the speedy trial analysis, but must be considered in the context of the other factors and when delay is justified by legitimate reasons, a speedy trial claim will fail absent a demonstration of actual prejudice. Thus, when the delays were not the result of any deliberate or negligent act of the government since it was due to necessary changes in counsel and judges, defendants' pre-trial motions, scheduling difficulties, and other reasons unrelated to the diligence of the government's prosecution, and since the accused only now raises his right to a speedy trial, and he has not shown any prejudice from the delay, he did not suffer a constitutional speedy trial violation. Chuuk v. William, 15 FSM R. 381, 390 (Chk. S. Ct. Tr. 2007).

When it was the prosecution's witnesses who were either unavailable or whose memory failed, the defendants were not prejudiced and may even have benefitted from the delay. When the defendants do not state that any particular defense witness now had an impaired memory or was no longer available, or what that witness would have testified to if his or her memory were not impaired, this does not show prejudice. The failure of a prosecution witness's memory does not support a dismissal for unnecessary delay claim. FSM v. Kansou, 15 FSM R. 481, 482 (Chk. 2008).

Prejudice to an accused may consist of: 1) oppressive pretrial incarceration; 2) the accused's pretrial anxiety; and 3) impairment of the defense. Of these, the most serious is the last because the possibility that an accused may not be able to adequately prepare his defense skews the fairness of the entire system. Pretrial anxiety is the least significant factor, and, because a certain amount of pretrial anxiety naturally exists, the accused must demonstrate that he suffered extraordinary or unusual pretrial anxiety. Chuuk v. Chopwa, 19 FSM R. 28, 32 (Chk. S. Ct. Tr. 2013).

When the pre-trial release conditions imposed on the defendant restrict his ability to travel outside of the State of Chuuk and when this restriction of movement will be analogous to an incarceration within the state since FSM citizens are afforded a constitutional right to travel, it will weigh in favor of the pretrial incarceration, though much less than actual oppressive incarceration. Chuuk v. Chopwa, 19 FSM R. 28, 32 (Chk. S. Ct. Tr. 2013).

Prejudice to an accused may consist of: 1) oppressive pretrial incarceration; 2) the accused's pretrial anxiety; and 3) impairment of the defense. Of these, the most serious is the last because the possibility that an accused may not be able to adequately prepare his defense skews the fairness of the entire system, and pretrial anxiety is the least significant factor, and, because a certain amount of pretrial anxiety naturally exists, the accused must demonstrate that he suffered extraordinary or unusual pretrial anxiety. Chuuk v. Noboru, 19 FSM R. 38, 42 (Chk. S. Ct. Tr. 2013).

When the pre-trial release conditions imposed on the defendant restrict his ability to travel outside of Chuuk and when this restriction of movement will be analogous to an incarceration within the State since FSM citizens are afforded a constitutional right to travel, it will weigh in favor of a pretrial incarceration, though much less than actual oppressive incarceration. Chuuk v. Noboru, 19 FSM R. 38, 42 (Chk. S. Ct. Tr. 2013).

A case left to languish in the system, with little to no activity will eventually erode the defendant's ability to prepare a defense. Chuuk v. Noboru, 19 FSM R. 38, 42 (Chk. S. Ct. Tr. 2013).

The court is not merely interested in "cleaning house" and dismissal is appropriate when the defendant would suffer a demonstrable prejudice or threat of prejudice from the excessive delay in the prosecution's bringing this case to trial because the case has been pending for over nine years and contains a stipulated dismissal from 2003, signed by both parties, which demonstrates the prosecution's desire to abandon the case rather than continue to prosecute, and because the prosecution has taken no action in the case since the stipulated motion's filing. Chuuk v. Noboru, 19 FSM R. 38, 42-43 (Chk. S. Ct. Tr. 2013).

Prejudice to an accused may consist of: 1) oppressive pretrial incarceration; 2) the accused's pretrial anxiety; and 3) impairment of the defense. Of these, the most serious is the last because the possibility that an accused may not be able to adequately prepare his defense skews the fairness of the entire system, and pretrial anxiety is the least significant factor, and, because a certain amount of pretrial anxiety naturally exists, the accused must demonstrate that he suffered extraordinary or unusual pretrial anxiety. Chuuk v. Haruo, 19 FSM R. 43, 48 (Chk. S. Ct. Tr. 2013).

When the pre-trial release conditions imposed on the defendant restrict his ability to travel outside of Chuuk and when the defendant was also required to submit his passport, this restriction of the defendant's ability to freely move will count as an incarceration of sorts and will weigh in favor of the pretrial incarceration, though much less than actual oppressive incarceration. Chuuk v. Haruo, 19 FSM R. 43, 48 (Chk. S. Ct. Tr. 2013).

When pretrial anxiety of insurmountable or extraordinary measures has not been demonstrated, it will weigh in the prosecution's favor. Chuuk v. Haruo, 19 FSM R. 43, 48 (Chk. S. Ct. Tr. 2013).

Prejudice to an accused may consist of: 1) oppressive pretrial incarceration; 2) the accused's pretrial anxiety; and 3) impairment of the defense. Of these, the most serious is the last because the possibility an accused's inability to adequately prepare his defense skews the fairness of the entire system. Pretrial anxiety is the least significant factor and because a certain amount of pretrial anxiety naturally exists, the accused must demonstrate that he suffered extraordinary or unusual pretrial anxiety as a result of the delay. FSM v. Ezra, 19 FSM R. 497, 507 (Pon. 2014).

When the pretrial release restrictions placed on the defendants are not onerous and do not rise to the level of oppressive and when the anxiety caused by delay in confronting trespass charges is not extraordinary, the prejudice as a result of the delay is minimal and will not impact the fairness of the trial procedure, the quality of the evidence, or jeopardize any other due processes right of the defendants. FSM v. Ezra, 19 FSM R. 497, 508 (Pon. 2014).

Prejudice to an accused may consist of: 1) oppressive pretrial incarceration; 2) the accused's pretrial

anxiety; and 3) impairment of the defense. Of these, the most serious is the last because the possibility that an accused may not be able to adequately prepare his defense skews the fairness of the system, and the least significant is "pretrial anxiety" because it is natural for an accused to experience some anxiety. Therefore, the defendant must demonstrate "extraordinary or unusual" pretrial anxiety. FSM v. Talley, 22 FSM R. 56, 62 (Kos. 2018).

A defendant is not prejudiced by the delay when, although his pre-trial conditions restricted travel outside of the FSM, there was no oppressive pre-trial incarceration; when he was recently permitted to travel to Japan for official business purposes; when, although some pretrial anxiety is natural or even expected, he did not establish extraordinary or unusual pretrial anxiety; and when there is no impairment to his defense since he is fully aware of the charges against him and there is no new, different, or additional charge against him. FSM v. Talley, 22 FSM R. 56, 62 (Kos. 2018).

– Speedy Trial – Reason for Delay

Under the Pohnpei Constitution an accused's right to a speedy trial is not violated if the delay was necessary to afford the accused the opportunity (if he chooses to exercise the customary practice) of pacifying hostilities arising from the criminal conduct between the defendant and his victims; or if the delay was necessary for the prosecutor to prepare for trial, given the complexity and other circumstances of the case; or if the delay was the result of certain excusable neglect by any agency involved in the criminal process. It is a violation of an accused's right to a speedy trial if the delay was employed by the prosecution to subject the accused to undue oppression. Pohnpei v. Weilbacher, 5 FSM R. 431, 450-51 (Pon. S. Ct. Tr. 1992).

A delay in bringing to trial caused by a "subsisting agreement" between the government and the Public Defender's Office that was not clear as to how service of the criminal process was to be effected on defendants was excusable neglect and thus not a violation of the right to a speedy trial. Pohnpei v. Weilbacher, 5 FSM R. 431, 455 (Pon. S. Ct. Tr. 1992).

No trial can be held while an appellate division-ordered stay is in effect, nor until after a defendant's motions to disqualify the prosecutors and to dismiss the case are decided. FSM v. Wainit, 12 FSM R. 405, 411 (Chk. 2004).

Delay caused or requested by a defendant suspends his speedy trial right, or is considered his waiver of that right, until that delay is over, even when that delay is justified. FSM v. Wainit, 12 FSM R. 405, 411 (Chk. 2004).

An accused is not denied a speedy trial when the delay is clearly attributable to the accused himself or to his counsel. Such delay includes the defendant's excused absences and the time to rule on his pretrial motions. FSM v. Wainit, 12 FSM R. 405, 411-12 (Chk. 2004).

For speedy trial or unnecessary delay purposes, a defendant cannot take advantage of delays caused by his own conduct whether or not those delays were justified. FSM v. Wainit, 12 FSM R. 405, 412 (Chk. 2004).

Since no trial can be held until after a defendant's motions to disqualify the prosecutors or to dismiss the case are decided, such motions are delays caused or requested by a defendant. Delay caused or requested by a defendant suspends his speedy trial right, or is considered his waiver of that right until that delay is over, even when that delay is justified. FSM v. Kansou, 14 FSM R. 497, 500 (Chk. 2006).

An accused is not denied a speedy trial when the delay is clearly attributable to the accused himself or to his counsel. Such delay includes the time to rule on a defendant's pretrial motions. FSM v. Kansou, 14 FSM R. 497, 500 (Chk. 2006).

A defendant's consent to a trial date that may be, or is, beyond the time when a trial would have to be held under the defendant's speedy trial right, constitutes the defendant's waiver of his right to a speedy trial. An express waiver of an accused's speedy trial right is not required if defense counsel agrees to a trial date beyond the speedy trial limit. FSM v. Kansou, 14 FSM R. 497, 500 (Chk. 2006).

For speedy trial or unnecessary delay purposes, a defendant cannot take advantage of delays caused by his own conduct or consent, whether or not those delays were justified. The delay caused by a defendant's requests, although justified since the court granted relief based on his motions, thus cannot be used by the defendant to seek a dismissal on the ground that his speedy trial right was violated or that there has been unnecessary delay in bringing him to trial. FSM v. Kansou, 14 FSM R. 497, 500 (Chk. 2006).

The court can disregard the delay during the 2005 discovery when the defendant's first assertion of his speedy trial right was not until he filed a motion to dismiss on that ground on November 6, 2006, since he had already waived any claim based on that right by consenting to the March 13, 2006 trial date. A defendant's consent to a trial date that may, or is, beyond the time when a trial would have to be held under the defendant's speedy trial right, constitutes the defendant's waiver of his right to a speedy trial. Since an express waiver of an accused's speedy trial right is not required if defense counsel agrees to a trial date beyond the speedy trial limit, the defendant thus waived any speedy trial claim for the delay before the March 13, 2006 trial date when his attorney consented to that trial date. FSM v. Kansou, 15 FSM R. 180, 185-86 (Chk. 2007).

Delay caused or requested by a defendant suspends his speedy trial right, or is considered his waiver of that right, until that delay is over, even when that delay is justified. The movant's speedy trial right was thus suspended or waived by his successful (and justified) motion to disqualify the FSM Department of Justice. FSM v. Kansou, 15 FSM R. 180, 186 (Chk. 2007).

When a defendant raises an issue before trial which makes the original trial date impractical, the reasonable period of delay caused thereby is attributable to the defendant. FSM v. Kansou, 15 FSM R. 180, 186 (Chk. 2007).

A defendant is free to take whatever actions he feels are necessary to protect his rights prior to trial. He may not, however, use the delaying consequences of those actions as a basis for claiming that his trial was improperly delayed. FSM v. Kansou, 15 FSM R. 180, 186 (Chk. 2007).

Delay caused by a defendant's successful motion to disqualify the FSM Department of Justice is attributable to him, if not wholly, at least in large part, and delay caused by his successful motion to disqualify the judge is also attributable to him. FSM v. Kansou, 15 FSM R. 180, 186 (Chk. 2007).

Although judicial economy considerations cannot be elevated to where they impair a defendant's constitutional rights, they are relevant. FSM v. Kansou, 15 FSM R. 180, 187 n.3 (Chk. 2007).

When co-defendants are charged together and will be tried together, any delay attributed to one co-defendant is attributed to all of them. FSM v. Kansou, 15 FSM R. 180, 187 (Chk. 2007).

Delay due to a co-defendant's unavailability is not attributed to the government, and this includes the time a co-defendant was a fugitive. FSM v. Kansou, 15 FSM R. 180, 187 (Chk. 2007).

A single speedy trial "clock" governs in cases with multiple defendants. The "clock" starts to run with the most recently added defendant and any delay attributable to any one defendant is charged against the single clock, thus making the delay applicable to all defendants. No other rule is practical. If every co-defendant had a different "clock," the advantages of a joint trial would be destroyed and multiple trials, with all their disadvantages, would have to be held in sequence. FSM v. Kansou, 15 FSM R. 180, 187-88 & n.5 (Chk. 2007).

When the movant's case has never been severed from his co-defendant's and the movant never sought a severance, the speedy trial "clock" therefore did not start to run until December 11, 2006, when the co-defendant made his initial appearance. FSM v. Kansou, 15 FSM R. 180, 188 (Chk. 2007).

Co-defendants share the same speedy trial "clock" and any delay attributable to one joined co-defendant is attributable to all joined co-defendants. Thus the delay that the court has already attributed to the other joined co-defendants, is also attributed to a co-defendant. FSM v. Kansou, 15 FSM R. 373, 379 (Chk. 2007).

It is the prosecution's burden to take the necessary steps to bring a criminal matter to trial, but, a defendant cannot take advantage of delays caused by his own conduct or consent, whether or not those delays were justified. Any delay resulting from a defendant's difficulty in obtaining counsel and adequately preparing a defense should not be attributed to the prosecution, and a defendant may waive his right to a speedy trial. He effects a waiver, in respect of a particular delay, when he requests it, consents to it, enters a plea of guilty, makes certain dilatory pleas or motions, or when the delay is otherwise attributable to the defendant. Chuuk v. William, 15 FSM R. 381, 387 (Chk. S. Ct. Tr. 2007).

Delay caused by pre-trial motions, including a successful motion to disqualify a judge or government prosecutor, is attributable to the defense and is a waiver of the speedy trial right until that delay is over even if the delay is justified. Chuuk v. William, 15 FSM R. 381, 387 (Chk. S. Ct. Tr. 2007).

Delays on one defendant's part are not attributable to the government and the government is not required to request severance when one defendant causes delay in the prosecution of a co-defendant. Rather, a single speedy trial "clock" governs in cases with multiple defendants. The "clock" starts to run with the most recently added defendant and any delay attributable to any one defendant is charged against the single clock, thus making the delay applicable to all defendants. No other rule is practical. If every co-defendant had a different "clock," the advantages of a joint trial would be destroyed and multiple trials, with all their disadvantages, would have to be held in sequence. A defendant is free to seek severance himself when a co-defendant causes delay in the ticking of the speedy trial "clock." Chuuk v. William, 15 FSM R. 381, 387 n.2 (Chk. S. Ct. Tr. 2007).

Assuming the government is to blame for the delay, the weight to be given to the government's reason for delay depends upon what that reason is. If delay is due to a government effort to impede the defense, then, of course it will weigh heavily against the government. If the reason is neutral, such as crowded courts, it will still go against the government, but less heavily. Chuuk v. William, 15 FSM R. 381, 387 (Chk. S. Ct. Tr. 2007).

A valid reason justifies appropriate delay. If the court should find that the prosecution was conducted with such disregard of the appellant's interests that it can be said that the delay resulted from the prosecutor's deliberate, or at least negligent, actions and the prosecutor fails to show that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay, then the accused's speedy trial rights have been denied and the convictions must be vacated and the indictments dismissed, but if the court finds that all the delay attributable to the prosecutor was necessary for fair and just prosecution of the charge, then the conviction will stand. Chuuk v. William, 15 FSM R. 381, 388 (Chk. S. Ct. Tr. 2007).

When much of the delay, such as that resulting from the defendants' difficulties in obtaining and retaining counsel, timely appearing for scheduled court dates, and their pre-trial motions, is attributable to the defendants and any objection to the delay was waived; when other delays attributable to the death of the presiding judge, judge recusal for conflict of interest, and judge reassignment do not weigh heavily against the government as the delays were due either to neutral factors or the court's extraordinary circumstances (although these "neutral" delays are attributable to the government); but when none of the delay was the result of the government's deliberate or negligent action and the government was prepared to present its case in October of 2004 before defense counsel's departure for medical treatment lead to a

continuance, the third factor favors a finding that there was no constitutional speedy trial violation. Chuuk v. William, 15 FSM R. 381, 388 (Chk. S. Ct. Tr. 2007).

A valid reason should serve to justify appropriate delay. Chuuk v. Chopwa, 19 FSM R. 28, 31 (Chk. S. Ct. Tr. 2013).

When the prosecution states that the court is to blame for the delay and that the case has been waiting scheduling and when, assuming that this assertion is correct and that the sole reason for the delay was a result of the crowded courts, such will still go against the government, but less heavily. Chuuk v. Chopwa, 19 FSM R. 28, 31 (Chk. S. Ct. Tr. 2013).

When the record demonstrates that neither the court nor the defendant were the cause for the delay and when the prosecution has provided no supporting evidence for the proposition that the court was to blame for the delay, the prosection simply failed to move the case forward. This is not a demonstration of good cause as required. Otherwise, as long as the court schedules trials and other hearings, the prosecution and/or the court would be free to subsequently delay a trial as long as they wished for any reason. Common sense dictates that the reason or reasons for all trial delays must have the requisite good cause existing for the delay in ultimately bringing a defendant to trial. Chuuk v. Chopwa, 19 FSM R. 28, 31 (Chk. S. Ct. Tr. 2013).

The dismissal of a 2007 case is more than a mere attempt to enforce a scheduling order or to "clean up the docket" when it can reasonably be inferred from the lack of activity on the record that the prosecution had been deliberately proceeding in dilatory fashion. Chuuk v. Chopwa, 19 FSM R. 28, 31-32 (Chk. S. Ct. Tr. 2013).

The better procedure is for the prosecution to insist on its need to have its day in court by filing a motion for reassignment, requesting a status conference, or scheduling of the case before a dismissal. Something more than nothing would be a necessary action to avoid dismissal. Chuuk v. Chopwa, 19 FSM R. 28, 33 (Chk. S. Ct. Tr. 2013).

A valid reason should serve to justify appropriate delay. Chuuk v. Noboru, 19 FSM R. 38, 41 (Chk. S. Ct. Tr. 2013).

Assuming that the sole reason for the delay was a result of the crowded courts, such will still go against the government, but less heavily. But when the record demonstrates that the prosecution requested a dismissal, the premise of the prosecution's argument–that the case has been waiting scheduling–is flawed. Chuuk v. Noboru, 19 FSM R. 38, 41 (Chk. S. Ct. Tr. 2013).

Common sense dictates that the reason or reasons for all trial delays must have the requisite good cause existing for the delay in ultimately bringing a defendant to trial. Chuuk v. Noboru, 19 FSM R. 38, 41 (Chk. S. Ct. Tr. 2013).

When the prosecution simply failed to move the case forward, a dismissal is more than a mere attempt to enforce a scheduling order or to "clean up the docket" when it can reasonably be inferred from the lack of activity on the record that the prosecution had been deliberately proceeding in dilatory fashion. Chuuk v. Noboru, 19 FSM R. 38, 41 (Chk. S. Ct. Tr. 2013).

A valid reason should serve to justify appropriate delay. Chuuk v. Haruo, 19 FSM R. 43, 47 (Chk. S. Ct. Tr. 2013).

The state's response is void of any demonstration of good cause as to why it has failed to prosecute the case when, rather than demonstrating a valid reason, it asks the court for permission to set trial; when the state does state that the court is to blame for the delay and that the case has been waiting scheduling and that due to the severity of the crime, it should not be dismissed; and when, assuming that the sole reason for the forty-nine month delay was a result of the crowded courts, such will still go against the

government, but less heavily. Chuuk v. Haruo, 19 FSM R. 43, 47 (Chk. S. Ct. Tr. 2013).

When the state offers no reason for its failure to comply with the defendant's constitutional right to a speedy trial; when it was only after the court issued a notice that the state requested leave to begin trial; when the state's failure to make the request on its own, further demonstrates a lack of diligence in prosecuting this case; and when, on three separate occasions, the prosecutor neglected to attend the trials, dismissal without prejudice is a relatively lenient penalty for the state's utter failure to prosecute the case since a dismissal without prejudice does not, in theory, irrevocably deprive the state of its day in court. Chuuk v. Haruo, 19 FSM R. 43, 47 (Chk. S. Ct. Tr. 2013).

When the defendant requested discovery on June 23, 2008, and the request was never answered and when forty-nine months elapsed between the filing of the action and the order for dismissal, the case languished in the courts for several years with the inactivity prompting the court to place it on the dismissal list because the appearance docket revealed scant effort by the state's counsel to prosecute this case. Since the primary responsibility for prosecuting a case lies with the state, when a case has not been prosecuted in a diligent manner, prejudice is generally presumed because a case left to languish in the system, with little to no activity will eventually erode the defendant's ability to prepare a defense, particularly if the defendant's request for discovery, which does not require any action by the court, is never answered. Chuuk v. Haruo, 19 FSM R. 43, 48 (Chk. S. Ct. Tr. 2013).

An accused is not denied a speedy trial when the delay is clearly attributable to the accused himself or to his counsel. Such delay includes the defendant's excused absences and the time to rule on his pretrial motions. FSM v. Ezra, 19 FSM R. 497, 506 (Pon. 2014).

Delay caused or requested by the defendant suspends his right to a speedy trial, or is considered his waiver of that right, until after that delay is over, even if the delay is justified. Such delay includes the time to rule on a defendant's pretrial motions. FSM v. Ezra, 19 FSM R. 497, 507 (Pon. 2014).

When delay is justified by a legitimate reason, such as complexity, a speedy trial claim will fail absent a demonstration of actual prejudice. FSM v. Ezra, 19 FSM R. 497, 507 (Pon. 2014).

When a defendant's attorney had to file multiple enlargements due to the fact that he could not contact his client, this delay is attributable to the defendant's own actions and is applicable to all co-defendants in a joint trial. FSM v. Ezra, 19 FSM R. 497, 507 (Pon. 2014).

When the delay is reasonably attributed to the complexity and unusual character of a case of first impression, to the appointment of counsel, to the defendants' own actions, and to a non-intentional change in the lead investigator, no unnecessary delay has shown on the prosecution's part, nor any intent to prejudice the defendants thereby. FSM v. Ezra, 19 FSM R. 497, 507 (Pon. 2014).

When, due to the complexity of jurisdictional questions of first impression, combined with coordinating the activity of all four defendants, and to the lead investigator's death, no intentional delay can be attributed to the prosecution, the defendants' right to a speedy trial has not been violated under the Constitution, nor has it been violated under the more exacting standard of "unnecessary delay" under 12 F.S.M.C. 802. FSM v. Ezra, 19 FSM R. 497, 508 (Pon. 2014).

An accused is not denied a speedy trial when the delay is clearly attributable to the accused himself or his counsel. Such delay includes the defendant's excused absences and the time to rule on his pretrial motions. FSM v. Talley, 22 FSM R. 56, 61 (Kos. 2018).

Delay caused or requested by a defendant suspends his speedy trial right, or is considered his waiver of that right, until that delay is over. A defendant cannot, for the purposes of speedy trial or unnecessary delay, take advantage of delays that he has caused, even if those delays were justified. FSM v. Talley, 22 FSM R. 56, 61 (Kos. 2018).

When most of the delay is attributable to the defendant's motions that were filed beyond the set deadline for pre-trial motions and when certain actions by the defendant throughout the case's procedural course also resulted in continuance of trial, the defendant, even if those delays were justified, cannot take advantage of the delay that stemmed from his own actions for the purposes of a speedy trial or unnecessary delay objection. FSM v. Talley, 22 FSM R. 56, 61 (Kos. 2018).

– Speedy Trial – When Right Attaches

The right to a speedy public and impartial trial attaches either when an information or complaint has been filed with the court and service of that information or complaint has been effected upon the one named as the accused; or when an accused has been arrested by means of an arrest warrant or other process issued by a judicial officer. "Other process" includes summons, writ, warrant, mandate or other process issuing from or by the authority of the court to have the defendant named therein appear before it at the appointed time. It does not refer to a warrantless arrest. Pohnpei v. Weilbacher, 5 FSM R. 431, 451-53 (Pon. S. Ct. Tr. 1992).

An accused's speedy trial right attaches once he or she is accused – that is, when the criminal information charging the accused with a crime has been filed. The time that elapses between the alleged crimes and the filing of charges is not to be considered when determining whether a defendant has been denied a speedy trial. FSM v. Kool, 18 FSM R. 291, 295 (Chk. 2012).

The right to a speedy trial does not attach until the information, or other process is issued. FSM v. Ezra, 19 FSM R. 497, 506 (Pon. 2014).

– Standard of Proof

All elements of a crime need not themselves be criminal in order for the combination of those elements to be criminal. FSM v. Boaz (II), 1 FSM R. 28, 33 (Pon. 1981).

The Constitution's Due Process Clause requires proof beyond a reasonable doubt as a condition for criminal conviction in the Federated States of Micronesia. Alaphonso v. FSM, 1 FSM R. 209, 217-23 (App. 1982).

As a matter of constitutional due process, a trial court presented with an alibi defense should consider evidence concerning the alibi along with all other evidence and shall not find the defendant guilty if after considering all of that evidence, the judge feels there is a reasonable doubt as to the defendant's guilt. Alaphonso v. FSM, 1 FSM R. 209, 223-25 (App. 1982).

Unsubstantiated speculations raised after trial are not sufficient to raise reasonable doubt as to a person's guilt in the light of eyewitness testimony. Alaphonso v. FSM, 1 FSM R. 209, 225-27 (App. 1982).

The government's burden in criminal prosecutions is to show guilt beyond a reasonable doubt. Andohn v. FSM, 1 FSM R. 433, 441 (App. 1984).

The constitutional requirement that proof of guilt be established beyond a reasonable doubt provides protection to persons accused of sexual offenses as well as those accused of other crimes. Complaints by women of sexual assault in Micronesia require no more corroboration than those of other witnesses in other serious cases. Buekea v. FSM, 1 FSM R. 487, 492 (App. 1984).

A gun with a defective trigger is a firearm under 11 F.S.M.C. 1204(4). The statute's purpose may not be evaded by such simple expedients as dismantling the weapon, maintaining weapons and ammunition in separate places, removing one easily replaceable part, or other similar ploys. Under the statute, current operability is not an essential element of the crime of possession of a firearm. Ludwig v. FSM, 2 FSM R.

27, 34 (App. 1985).

The government in any criminal case is required, as a matter of due process, to prove all elements of the offense beyond a reasonable doubt. Ludwig v. FSM, 2 FSM R. 27, 35 (App. 1985).

Statutes which provide a defense in the form of exceptions to a general proscription do not reduce or remove the government's traditional burden of proving beyond a reasonable doubt every fact necessary to constitute the offense. Ludwig v. FSM, 2 FSM R. 27, 35 (App. 1985).

The government ultimately bears the burden of disproving the applicability of a statutory exception when it is properly presented as a defense. Ludwig v. FSM, 2 FSM R. 27, 35 (App. 1985).

Each item of evidence is merely a building block. The standard of proof beyond a reasonable doubt is not applied to any specific item of evidence to determine admissibility but to all of the evidence collectively to determine whether all elements of the crime have been established beyond a reasonable doubt. Joker v. FSM, 2 FSM R. 38, 47 (App. 1985).

Mental condition defense established by 11 F.S.M.C. 302(1), and other affirmative defenses, do not lift from government the burden of establishing all essential elements of the crime beyond a reasonable doubt. Runmar v. FSM, 3 FSM R. 308, 312 (App. 1988).

In order for trier of fact to be free to choose between the lesser offense, manslaughter, or a greater degree of homicide, there must be a factual element, the resolution of which will determine whether the greater or lesser offense is applicable. Runmar v. FSM, 3 FSM R. 308, 318 (App. 1988).

The burden of proof beyond a reasonable doubt is on the government as to all essential elements of a crime charged. FSM v. Oliver, 3 FSM R. 469, 479 (Pon. 1988).

Where two government witnesses testified that they knew the defendant and the witnesses were policemen who participated in the search of the defendant's property in the defendant's presence, the trial court was justified in reaching the finding, beyond a reasonable doubt, that the defendant was the one who committed the crime even though there was no in-court identification or description of the defendant. Kallop v. FSM, 4 FSM R. 170, 176 (App. 1989).

In a murder case, the defendant's voluntary admissions, including an express statement to his mother that he had committed the crime and asking others if the victim had been killed at a time before the body had been found, corroborated by finding the body slain in a manner consistent with the defendant's statement, constitute evidence sufficient to permit a reasonable trier of fact to find beyond a reasonable doubt that the defendant in fact killed the victim. Kimoul v. FSM, 5 FSM R. 53, 58 (App. 1991).

Failure to raise objections which must be made prior to trial constitutes a waiver of objections, FSM Crim. R. 12(f). Moses v. FSM, 5 FSM R. 156, 159 (App. 1991).

A variance – a discrepancy or disagreement between allegations of the charging instrument and the proof adduced at trial – will be tolerated as long as it is not material to the basic elements of the crime charged. Otto v. Kosrae, 5 FSM R. 218, 221-22 (App. 1991).

Variance between charge of striking police car windshield with fists and evidence adduced at trial of damaging headlights with a beer can is not so misleading and prejudicial that defendant was denied a fair trial or suffered from a lack of notice as to the evidence to be offered at trial on a charge of damaging the property of another. Otto v. Kosrae, 5 FSM R. 218, 222 (App. 1991).

Where evidence offered at trial showed the defendant was hitting vehicle and that there was damage to vehicle and that defendant was at and participated in illegal roadblock the trial court, acting reasonably,

could be convinced beyond a reasonable doubt of the defendant's guilt. Otto v. Kosrae, 5 FSM R. 218, 223 (App. 1991).

Proof beyond a reasonable doubt is not established in a case in which only one witness testifies as to the presence of an element of the crime (live birth) and he expresses assumptions and has difficulty in being exact or sure, and states that the infant was either born alive or its heart was beating. Welson v. FSM, 5 FSM R. 281, 285-87 (App. 1992).

In a case in which the existence of an element of the crime (live birth) was not established because of the uncertainty of the evidence on this point, and in which a review of all the evidence yields the possibility that the infant was dead at the time the defendant disposed of the body, a reasonable doubt would exist in the mind of the trier of fact as to the element of live birth. Welson v. FSM, 5 FSM R. 281, 287 (App. 1992).

The Chapman rule, which holds that a constitutional error can be found harmless only when it is harmless beyond a reasonable doubt, is suitable for the FSM. Jonah v. FSM, 5 FSM R. 308, 314 (App. 1992).

When there are verdicts that are inconsistent to such an extent that an essential element cannot be proven beyond a reasonable doubt a resulting conviction is reversible error. Thus when someone is convicted of a charge for which an essential element is being aided and abetted by another and that other is acquitted of being an aider and abettor the conviction is reversible error for failure of proof beyond a reasonable doubt of the essential element of being aided and abetted. Hartman v. FSM, 6 FSM R. 293, 300-01 (App. 1993).

The government has the burden of proof in criminal cases, and must prove each element of the crimes charged beyond a reasonable doubt. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 171 (Pon. 1997).

Proof of guilt may be by either direct evidence, circumstantial evidence or both. Direct evidence is evidence, which if believed, proves the existence of facts in issue without inference or presumption. Circumstantial evidence is evidence of facts and circumstances from which the existence or nonexistence of facts in issue may be inferred. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 171 (Pon. 1997).

The burden was on the government to establish beyond a reasonable doubt that defendants' interference with the crops at issue was unlawful; if there was any doubt about defendants' claim of right, defendants should have been acquitted on the malicious mischief charge. Nelson v. Kosrae, 8 FSM R. 397, 406-07 (App. 1998).

Where a person claims to have acted in the lawful exercise of his rights, the burden is on the government to show that his interference with the property was unlawful; if the evidence leaves any room for reasonable doubt as to the accused's claim of right, the accused should be acquitted. Nelson v. Kosrae, 8 FSM R. 397, 407 (App. 1998).

Proof beyond a reasonable doubt is the constitutionally-mandated standard to sustain a criminal defendant's conviction. FSM v. Wainit, 10 FSM R. 618, 621 (Chk. 2002).

In order for a warrant or a criminal summons to issue, the affidavits, or affidavits and exhibits, attached to a criminal information should make a prima facie showing of probable cause, not proof beyond a reasonable doubt. FSM v. Wainit, 10 FSM R. 618, 621 (Chk. 2002).

A defendant's intention must be inferred from what he says and what he does. An inference is not permitted if it cannot reasonably be drawn from the facts in evidence. Kosrae v. Anton, 12 FSM R. 606, 609 (Kos. S. Ct. Tr. 2004).

Eyewitness testimony is not necessary to prove each fact or element of a criminal offense. Facts may be shown by circumstantial evidence. Kosrae v. Anton, 12 FSM R. 606, 609 (Kos. S. Ct. Tr. 2004).

Proof of guilt may be by either direct evidence, circumstantial evidence or both. Direct evidence is evidence, which if believed, proves the existence of facts in issue without inference or presumption. Circumstantial evidence is evidence of facts and circumstances from which the existence or nonexistence of facts in issue may be inferred. Kosrae v. Anton, 12 FSM R. 606, 609-10 (Kos. S. Ct. Tr. 2004).

When considering whether an allegation of variance warrants relief, the court must examine whether the variance was material or prejudicial, that is, whether it affected the substantial rights of the accused. Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded. The issue is whether the accused is given sufficient notice of the charges against him so as to be able to present his defense and not be taken by surprise by the evidence offered at the trial and also to be protected against another prosecution for the same offense. FSM v. Fritz, 13 FSM R. 85, 87 (Chk. 2004).

When the plain meaning of the defendant's letters clearly refers to both the state and national candidates in the March 2, 1999 election, that is sufficient evidence that there was a national election on March 2, 1999. Wainit v. FSM, 15 FSM R. 43, 48-49 (App. 2007).

There was clearly sufficient evidence to support the trial court's findings that the defendant sent his February 19 and 27, 1999 letters in his capacity as a public officer, specifically as the mayor of Udot Municipality, when the letters were signed: "T.C. Wainit, Mayor, Udot Fonuweisom." Wainit v. FSM, 15 FSM R. 43, 49 (App. 2007).

When there is nothing present in the defendant's letters to suggest that either letter was sent by accident, by an unauthorized person, or was in any way unintentional on the defendant's part, the trial court was correct in its finding that the defendant acted willfully. Wainit v. FSM, 15 FSM R. 43, 49 (App. 2007).

There was sufficient evidence apart from the field sobriety tests to sustain the conviction for driving under the influence because there were testimonies that the defendant appeared drunk and had the smell of alcohol on him, together with the fact that the defendant exhibited these characteristics when he emerged from his vehicle carrying an open can of Budweiser after going through a stop sign and colliding with another vehicle. Tulensru v. Kosrae, 15 FSM R. 122, 127 (App. 2007).

A trier of fact is entitled to rely on properly admitted evidence and reasonable inferences drawn from that evidence. A reasonable inference is that the accused, who smelled of alcohol and had appeared to be intoxicated, would not have emerged from a vehicle immediately after an accident carrying an empty Budweiser can with him when he had this can in hand when he was on the road, which is a public place. Thus there was sufficient evidence to convict the defendant for possessing an open can of alcohol in a public place. Tulensru v. Kosrae, 15 FSM R. 122, 127 (App. 2007).

When a reasonable fact finder could find beyond a reasonable doubt that the defendants employed unreasonable force against the victim when he was no longer a threat to them, evidenced by their use of dangerous weapons against the victim when he no longer had a machete and their simultaneous beating of him when he was no longer offering resistance, the government has presented sufficient evidence that the victim's killing was unlawful. Chuuk v. William, 15 FSM R. 483, 488 (Chk. S. Ct. Tr. 2008).

If a reasonable fact finder could find beyond a reasonable doubt that during the extended period between the victim's initial assault and the defendants' finally relenting from their beating of him, during which the defendants had ample time to observe that the victim was suppliant, injured and helpless, then either the defendants had, in fact, regained their senses or reasonable persons in the defendants' situation would have cooled off and regained their senses. Chuuk v. William, 15 FSM R. 483, 490 (Chk. S. Ct. Tr. 2008).

Conflicting testimony may be admitted, and it is the responsibility of the finder of fact to weigh all the answers and resolve the conflict, and it is well established that the weighing of contradictory evidence is strictly within the trial court's discretion. Engichy v. FSM, 15 FSM R. 546, 559 (App. 2008).

To sustain a conviction, each element of a charge must be proven beyond a reasonable doubt. Chuuk v. Robert, 16 FSM R. 73, 78 (Chk. S. Ct. Tr. 2008).

A variance is a discrepancy or disagreement between the allegations of the charging instrument and the proof adduced at trial. Kasmiro v. FSM, 16 FSM R. 243, 245 (App. 2009).

When considering whether a variance warrants relief, the court must examine whether the variance was material or prejudicial, that is, whether it affected the substantial rights of the accused. Any error, defect, irregularity or variance which does not affect substantial rights is disregarded. The issue is whether the accused is given sufficient notice of the charges against him so as to be able to present his defense and not be taken by surprise by the evidence offered at the trial and also to be protected against another prosecution for the same offense. Kasmiro v. FSM, 16 FSM R. 243, 245 (App. 2009).

When the prosecution failed to incorporate the accused's alleged possession of a rifle into its prosecution even after witness testimony, choosing instead to remain within the parameters of its original allegations all the way through closing argument, namely that the accused's presence in the boat alone supported conviction, it is reasonable to conclude that the accused was never given proper notice of his alleged conduct, and, even if the accused was given notice of the conduct underlying the violation after the witness testimony, such notice coming midway through the FSM's case-in-chief is not sufficient notice for the accused to prepare his defense against the factual allegations ultimately used to convict him. Kasmiro v. FSM, 16 FSM R. 243, 246 (App. 2009).

Allegations in the information alleging a criminal violation must be proven in order to obtain a conviction. It is not sufficient that the evidence show a violation of the statute specified in the information if the actual violation is different from the one alleged. Kasmiro v. FSM, 16 FSM R. 243, 247 (App. 2009).

Under the permissive inference type of criminal statutory presumptions, the prosecution is not relieved of the burden of persuasion since the presumption is effective only so long as there is no substantial evidence contradicting the conclusion flowing from the presumption, and the factfinder is left free to accept or reject the inference. FSM v. Aliven, 16 FSM R. 520, 533 (Chk. 2009).

A presumption in a criminal statute creates a permissive inference. Because this permissive presumption leaves the trier of fact free to credit or reject the inference and does not shift the burden of proof, it affects the application of the "beyond a reasonable doubt" standard only if, under the facts of the case, there is no rational way the trier could make the connection permitted by the inference. This is the manner in which the FSM Supreme Court should and will handle a criminal presumption that is "prima facie evidence." FSM v. Aliven, 16 FSM R. 520, 533-34 (Chk. 2009).

A motion for a pretrial acquittal on conspiracy counts based on the government's failure to prove an agreement will be denied as premature because the existence of such an agreement is subject to proof at trial. Chuuk v. Suzuki, 16 FSM R. 625, 632 (Chk. S. Ct. Tr. 2009).

The government has the burden of proving that an accused's statement is voluntary and thus admissible and must show this by a preponderance of the evidence. FSM v. Ezra, 19 FSM R. 497, 510 (Pon. 2014).

There is a substantial difference between the quantum of proof necessary to constitute sufficient evidence to establish probable cause and that necessary to support a conviction. FSM v. Kimura, 19 FSM R. 630, 636, 638 (Pon. 2015).

When an information's language is more specific than the language of the statute under which the offense is charged, the prosecution must establish those specific facts in addition to a violation of the statute. Lee v. Kosrae, 20 FSM R. 160, 165-66 (App. 2015).

The report of a trained and experienced fisheries observer on the scene and his later deposition testimony is more than sufficient to show probable cause – that it was more likely than not that a violation occurred – when, although the observer never actually saw a crew member throw the trash overboard, the court can infer from the circumstantial evidence that it is more likely than not that that is what occurred. Whether the government will be able to prove that beyond a reasonable doubt, a higher standard, is a matter left for trial. FSM v. Kimura, 20 FSM R. 297, 302 (Pon. 2016).

The element that escalates contempt to criminal status is the level of willfulness associated with the conduct. Criminal intent is a specific intent to consciously disregard an order of the court. Criminal intent is defined by 11 F.S.M.C. 104(4) as acting with the conscious purpose to engage in the conduct specified. In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

Civil intent can be demonstrated by general intent, or by knowledge defined in 11 F.S.M.C. 104(5) as being aware of the nature of the conduct or omission which brings the conduct or omission within the provision of the code. This standard is expressly distinguished from mere negligence, a negligent act is one born of inattention or carelessness – the opposite of an intended act. An act, not willfully intending the result, creating a substantial risk of the unlawful result, is not an act done purposefully or intentionally. In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

The FSM and Chuuk Constitutions both provide criminal defendants the protections of due process, which require the state to prove their case beyond a reasonable doubt. Chuuk v. Roman, 21 FSM R. 138, 142 (Chk. S. Ct. Tr. 2017).

The government bears the burden to prove each element of the crime charged beyond a reasonable doubt, and in proving guilt, the government may use either direct evidence, circumstantial evidence, or both. Chuuk v. Roman, 21 FSM R. 138, 142 (Chk. S. Ct. Tr. 2017).

When the doctrine of transferred intent applies, the burden of proof still remains on the government, but the state need not prove the defendant intended to harm the actual victim, but merely the intended victim. Chuuk v. Roman, 21 FSM R. 138, 142 (Chk. S. Ct. Tr. 2017).

The state needs only to prove intent as to one of the intended victims and does not have to prove intent specifically directed at each of the actual victims. Chuuk v. Roman, 21 FSM R. 138, 143 (Chk. S. Ct. Tr. 2017).

Before a defendant can be convicted, it must first be shown that he had the intention to cause great bodily harm to someone. Merely because he shot the wrong person makes his crime no less heinous. It is only necessary that the state of mind exist, not that it be directed at a particular person. Chuuk v. Roman, 21 FSM R. 138, 143, 144 (Chk. S. Ct. Tr. 2017).

Evidence that the defendant suffered from a physical or mental disease, disorder, or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is an element of the crime. FSM v. Pillias, 22 FSM R. 334, 337 n.2 (Chk. 2019).

"Clear and convincing evidence" is the standard of proof required to prove the existence of a defendant's physical or mental disease, disorder, or defect. FSM v. Pillias, 22 FSM R. 334, 338 n.5 (Chk. 2019).

When the court has found that clear and convincing evidence proved the existence of the accused's mental disease, disorder, or defect when he committed the crime, the court is required by statute to enter a

judgment of acquittal due to mental disease, disorder, or defect. But the court's responsibility does not end there. FSM v. Pillias, 22 FSM R. 334, 338-39 (Chk. 2019).

– Statutes of Limitation

The statute of limitations begins to run from the commission of an offense, or when the crime is complete. Once prosecution has been commenced the statute of limitations period is no longer available to the prosecution who must then face the task of bringing the defendants to a prompt trial. Pohnpei v. Weilbacher, 5 FSM R. 431, 454-55 (Pon. S. Ct. Tr. 1992).

The day upon which a crime is committed is to be excluded in the computation of the statute of limitations. In re Extradition of Jano, 6 FSM R. 93, 106 (App. 1993).

Where the prosecution of an underlying offense is not time-barred, prosecution of conspiracy to commit that offense is not time-barred even if part of the conspiracy extends back in time to a point that would be time-barred. In re Extradition of Jano, 6 FSM R. 93, 107 (App. 1993).

A prosecution for criminal contempt will not be dismissed on statute of limitations grounds when the information is based in part on acts within the three month statute of limitations for contempt. FSM v. Cheida, 7 FSM R. 633, 638 (Chk. 1996).

The government will be permitted to file an amended information to dismiss those counts for which the statute of limitations has expired. FSM v. Edwin, 8 FSM R. 543, 545 (Pon. 1998).

The statute of limitations is no part of any definition of probable cause. Probable cause is present when there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. That the violation of law occurred within the statute of limitations is not an element that must be shown for probable cause to exist. FSM v. Wainit, 12 FSM R. 105, 108 (Chk. 2003).

The statute of limitations is an affirmative defense which the defendant must raise either by motion under Criminal Procedure Rule 12(b) or later at trial by a plea of not guilty. FSM v. Wainit, 12 FSM R. 105, 108 (Chk. 2003).

Under 11 F.S.M.C. 105(3)(b) even if the three-year time limitation to prosecute a felony or the two-year time limit to prosecute a misdemeanor has expired, a prosecution may nevertheless be commenced for any offense based on misconduct in office by a public officer or employee at any time when the defendant is in public office or employment or within two years thereafter, but in no case will this provision extend the period of limitations otherwise applicable by more than three years. FSM v. Wainit, 12 FSM R. 105, 109 (Chk. 2003).

Although statutes of limitation on criminal prosecutions must be accorded a rational meaning in harmony with the obvious intent and purpose of the law, such statutes must be liberally construed in favor of the accused, and exceptions from the benefits of such statutes must be construed narrowly or strictly against the government. The rule of strict construction will not justify an unreasonable interpretation – one contrary to the law's intent. The rule of strict construction simply means that ordinary words are to be given their ordinary meaning. FSM v. Wainit, 12 FSM R. 105, 109-10 (Chk. 2003).

The right not to be put into jeopardy once when barred by the statute of limitations is not a constitutional right, but rather one created by statute. FSM v. Wainit, 12 FSM R. 201, 204 (Chk. 2003).

Prosecution for a petty misdemeanor must be commenced within six months after it is committed. FSM v. Ching Feng 767, 12 FSM R. 498, 501 (Pon. 2004).

Dismissal of a case is warranted when the statute of limitation applicable to both of the counts in the criminal information had elapsed before the case was filed. FSM v. Ching Feng 767, 12 FSM R. 498, 504-05 (Pon. 2004).

The statute of limitations is an affirmative defense which an accused must raise either by motion under Criminal Procedure Rule 12(b) or later at trial by a plea of not guilty. FSM v. Wainit, 13 FSM R. 532, 536 (Chk. 2005).

Under the earlier criminal code, prosecutions for felonies punishable by ten years or less in jail had to start within three years after the offense was committed, and misdemeanor prosecutions within two years after the offense was committed, except as otherwise provided in 11 F.S.M.C. 105. FSM v. Wainit, 13 FSM R. 532, 537 (Chk. 2005).

Under the earlier criminal code, even if the time limitation to prosecute had expired, a prosecution may nevertheless be commenced for any offense based on misconduct in office by a public officer or employee at any time when the accused was in public office or employment or within two years thereafter, but in no case can the period of limitations otherwise applicable be extended by more than three years. FSM v. Wainit, 13 FSM R. 532, 537 (Chk. 2005).

Although statutes of limitation on criminal prosecutions must be accorded a rational meaning in harmony with the law's obvious intent and purpose, such statutes must be liberally construed in favor of the accused, and exceptions from the benefits of such statutes must be construed narrowly or strictly against the government. The rule of strict construction will not justify an unreasonable interpretation – one contrary to the law's intent. The rule of strict construction simply means that ordinary words are to be given their ordinary meaning. FSM v. Wainit, 13 FSM R. 532, 537 (Chk. 2005).

By deliberately using a different term, "public officer," in 11 F.S.M.C. 105(3)(b) from the ones defined in 11 F.S.M.C. 104(11) and in 11 F.S.M.C. 1301(2), the drafters can only have intended that the meaning be different, and, by not defining it, that the term's meaning should be its common, ordinary English language meaning. FSM v. Wainit, 13 FSM R. 532, 538 (Chk. 2005).

A statute's policy is to be found in the legislative intent. And it is the cardinal rule in the construction of statutes that such intent is, itself, to be found solely in the statute's words, if they are free from ambiguity and express a sensible meaning. FSM v. Wainit, 13 FSM R. 532, 539 (Chk. 2005).

Section 105(3)(b)'s object was to apply the statute of limitations exception to all public officers, not just to those defined as "public servants" in section 104(11) or as "public officials" in section 1301(2). This was 11 F.S.M.C. 105(3)(b)'s plain and unambiguous meaning. If the drafters had intended to restrict the section 105(3)(b) exception to just those persons that had been defined as "public servants," or as "public officials" they could easily have inserted either term into section 105(3)(b) as they so easily inserted "public servants" in so many other criminal code sections or as they so easily used "public officials" in chapter 13. Instead, the drafters deliberately chose the term "public officer" for section 105(3)(b). FSM v. Wainit, 13 FSM R. 532, 539 (Chk. 2005).

Section 105(3)(b) "public officer" exception to the statute of limitations applied to persons based upon their status as public officers – persons holding posts and exercising governmental functions. It did not matter whether that status was defined and bestowed upon a person by the national government or by another level of government. It only mattered that the person held that status. That the term "public officer" cannot possibly refer to state and municipal public officials since the national government lacks the constitutional power to define those offices and to determine or install those officials is a frivolous and misplaced contention because national laws are often applied to persons based on their status, even when that status is defined solely by another government. FSM v. Wainit, 13 FSM R. 532, 539 (Chk. 2005).

When the public officer tolling exception was part of a provision of general application to the whole

criminal code, not to just one portion and the information alleges that the accused used his office to commit the charged offenses, that section did not require that the accused additionally actually use the office to conceal the wrongful act(s), the statute's application was triggered by the accused's alleged use of his office to commit allegedly national offenses. FSM v. Wainit, 13 FSM R. 532, 541 (Chk. 2005).

The section 105(3)(b) exception to the criminal statute of limitations applied to any public officer in any level of government in the FSM who, based on the public officer's misconduct in office, was charged with the commission of a national criminal offense. FSM v. Wainit, 13 FSM R. 532, 541 (Chk. 2005).

The time limitation does not run during any time when a prosecution against the accused for the same conduct is pending in the jurisdiction. FSM v. Wainit, 13 FSM R. 532, 541 (Chk. 2005).

As a general principle, the subsection 105(4)(b) tolling the statute of limitations while a prosecution is pending operated independently of the public officer tolling exception in subsection 105(3) because it was applicable to all limitations on criminal prosecutions. Thus, the time tolled by the operation of subsection (4)(b) cannot be included in the subsection (3)(b) three-year limit to the public officer extension of the statute of limitations. FSM v. Wainit, 13 FSM R. 532, 541-42 (Chk. 2005).

FSM law provides that a prosecution commences when an information is filed, and the filing of an information is sufficient for statute of limitations purposes. FSM v. Kansou, 14 FSM R. 128, 131 (Chk. 2006).

Conspiracy is regarded as a continuing offense, hence, the statutory period of limitation therefor begins to run from the time of the last provable overt act in furtherance of the conspiracy. FSM v. Kansou, 14 FSM R. 132, 134 (Chk. 2006).

Conspiracy is punishable by imprisonment for not more than one-half the maximum sentence which is provided for the most serious offense which was the object of the conspiracy if the maximum is less than life imprisonment. When the most serious offense charged as an object of the conspiracy carries a maximum of twenty years' imprisonment, the conspiracy charge thus has a maximum sentence of ten years and therefore a limitations period of three years. FSM v. Kansou, 14 FSM R. 132, 134-35 (Chk. 2006).

For any offense based on misconduct in office by a public officer or employee at any time when the defendant is in public office or employment or within two years thereafter, the period of limitation otherwise applicable can be extended by up to three years. FSM v. Kansou, 14 FSM R. 132, 135 (Chk. 2006).

Since the maximum penalty for bribery is five years' imprisonment, the general limitation period for bribery is thus three years. FSM v. Kansou, 14 FSM R. 132, 135 (Chk. 2006).

When the statute of limitations is three years for a felony charge and two years for a misdemeanor charge and under the law applicable for offenses in 1999, the statute of limitations was extended, even if the time limitation to prosecute had expired, for any offense based on misconduct in office by a public officer or employee at any time when the defendant is in public office or employment or within two years thereafter, but in no case will this provision extend the limitations period otherwise applicable by more than three years. FSM v. Wainit, 14 FSM R. 164, 170 (Chk. 2006).

When, under the 1982 national criminal code, the statute of limitations for an offense which is punishable by imprisonment for more than ten years was six years after it is committed and for any other felony was three years, and when the penalty for a person convicted under section 601, if the value of the property or service was $5,000 or more, was s "imprisonment for not more than ten years," the applicable limitations period was three years except as otherwise provided in Title 11, section 105. FSM v. Nifon, 14 FSM R. 309, 312 (Chk. 2006).

The limitations period for any offense based on misconduct in office by a public officer or employee at

any time when the defendant is in public office or employment or within two years thereafter can be extended by no more than three years. FSM v. Nifon, 14 FSM R. 309, 312 (Chk. 2006).

Although statutes of limitation on criminal prosecutions must be accorded a rational meaning in harmony with the obvious intent and purpose of the law, such statutes must be liberally construed in favor of the accused, and exceptions from the benefits of such statutes must be construed narrowly or strictly against the government. But the rule of strict construction does not justify an unreasonable interpretation – one contrary to the law's intent. The strict construction rule simply means that ordinary words are to be given their ordinary meaning. FSM v. Nifon, 14 FSM R. 309, 313 (Chk. 2006).

The common and approved English language usage of the term "public officer" is a person holding a post to which he has been legally elected or appointed and exercising governmental functions. Strictly construing the term "public officer" by using only its plain, ordinary, and unambiguous meaning (or in the code's terms "its common and approved usage"), a mayor falls within the public officer tolling provision to the criminal statute of limitations, since the plain, unambiguous, and ordinary meaning of "public officer" (an ordinary term for which no construction is required) is that the term includes any person holding a post to which he has been legally elected or appointed and exercising governmental functions. FSM v. Nifon, 14 FSM R. 309, 313 (Chk. 2006).

Under the 2001 criminal code, the applicable limitations periods for murder or treason is any time; for a crime which is punishable by imprisonment for ten years or more is six years or within two years after it is discovered or with reasonable diligence could have been discovered, whichever is longer; and for any other felony is three years or within one year after it is discovered or with reasonable diligence could have been discovered, whichever is longer. FSM v. Nifon, 14 FSM R. 309, 314 (Chk. 2006).

When the maximum possible penalty for an alleged offense is ten years and the limitations period for offenses "punishable by imprisonment for ten years or more" is six years, the applicable limitations period is six years. The phrase, "ten years or more" does not mean that the maximum possible sentence must be more than ten years. The disjunctive "or" clearly means that, for subsection 105(2) to apply, a maximum possible sentence of only ten years is enough. FSM v. Nifon, 14 FSM R. 309, 314 (Chk. 2006).

Any request in 2005 for an order to show cause why a defendant should not be held in criminal contempt for failure to appear at the start of the February 5, 2001 trial as required by the witness subpoena served on him, comes much too late since anyone charged with criminal contempt must be charged within three months of the contempt. Amayo v. MJ Co., 14 FSM R. 355, 361 (Pon. 2006).

Nothing in Title 11 suggests that the Congress intended the tolling provision set forth at Section 105(3) to apply only to "public officers" acting at the national level. Indeed, when the context of the sections of the statutes relating to crimes against "public servants" and offenses committed by "public officials," clearly shows a congressional intent to limit those sections to federal officers and employees, the trial court correctly rejected efforts to limit the tolling provision for offenses committed by public officers at the national level, as Congress clearly has the power to define crimes and criminals in all states, including the states' political subdivisions. Wainit v. FSM, 15 FSM R. 43, 48 (App. 2007).

There is no authority to limit the power of Congress to define those persons affected by application of a statute of limitation, including any applicable tolling provisions. The Constitution vests in Congress the plenary power to enact laws of general application throughout the entire nation. The statute of limitations, including tolling provision for public officers, is one such law. Wainit v. FSM, 15 FSM R. 43, 48 (App. 2007).

The FSM tolling statute for criminal prosecutions does not require that the accused be fleeing justice. It only requires that the accused either be continuously absent from the jurisdiction or that has no reasonably determinable place of abode or work within the jurisdiction. Maintaining a home in Chuuk for his family there, but residing and working abroad and having no reasonably determinable place of abode or

work within the FSM, cannot remove the accused from the operation of the statute. FSM v. Kansou, 15 FSM R. 373, 379 & n.4 (Chk. 2007).

Prosecution for felonies other than murder, treason, or those punishable by imprisonment for ten years or more, must be commenced within three years after it is committed, or within one year after it is discovered or with reasonable diligence could have been discovered, whichever is longer. FSM v. Narruhn, 15 FSM R. 530, 532 (Chk. 2008).

When the maximum possible penalty for an alleged offense is ten years and the limitations period for offenses "punishable by imprisonment for ten years or more" is six years, the applicable limitations period is six years because the phrase, "ten years or more" does not mean that the maximum possible sentence must be more than ten years since the disjunctive "or" clearly means that, for subsection 105(2) to apply, a maximum possible sentence of only ten years is enough. FSM v. Narruhn, 15 FSM R. 530, 533 (Chk. 2008).

The time periods running from "discovery" of the offense and the date the offense was committed are subject to the qualifier, "whichever is longer." The court will not read into the statute a qualifier of "whichever is shorter" because this would be directly contrary to the statute's plain meaning. The longer of the two possible calculations of the statutory limitations period applies. FSM v. Narruhn, 15 FSM R. 530, 533 (Chk. 2008).

A prosecution has been properly "commenced" when the information was filed within the applicable time period. FSM v. Narruhn, 15 FSM R. 530, 533 (Chk. 2008).

The filing of an information or complaint is one point in time where the statute stops, or tolls, the limitations period from running. The other event that may commence a prosecution and thus toll the statute of limitations is when an arrest warrant, summons or other process is issued, provided that reasonable attempts are made at service. The limitations period is also tolled during any time when the accused is continuously absent from the complaining jurisdiction or has no reasonably determinable place of abode or work within the jurisdiction. FSM v. Narruhn, 15 FSM R. 530, 533 (Chk. 2008).

When two independent actions were both overt acts committed by a member, or members, of the conspiracy within the three years preceding the information's filing, the government filed its information within the applicable statute of limitations. Engichy v. FSM, 15 FSM R. 546, 554 (App. 2008).

Kosrae State Code §13.106(2)(b) imposes a requirement that prosecutions for misdemeanors begin with one year of when the alleged crime was committed. This statute recognizes that a misdemeanor prosecution commenced after one year generally infringes on a defendant's right to a speedy trial. Kosrae v. Langu, 15 FSM R. 601, 604 (Kos. S. Ct. Tr. 2008).

When a prosecution was commenced within the time limits set by Kosrae State Code §13.106(2)(b), there is no statutorily-required dismissal. Kosrae v. Langu, 15 FSM R. 601, 604 (Kos. S. Ct. Tr. 2008).

Since, under Kosrae Criminal Rule 12, any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion, this rule encompasses a motion raising a statute of limitations defense. Kosrae v. George, 16 FSM R. 228a, 228d (Kos. S. Ct. Tr. 2008).

The statute of limitations is an affirmative defense which the defendant must raise either by motion under Criminal Procedure Rule 12(b) or later at trial by a plea of not guilty. Kosrae v. George, 16 FSM R. 228a, 228d (Kos. S. Ct. Tr. 2008).

The statute of limitations begins to run from the commission of an offense, or when the offense is complete. Kosrae v. George, 16 FSM R. 228a, 228e (Kos. S. Ct. Tr. 2008).

A prosecution is commenced when an information is filed in court. Kosrae v. George, 16 FSM R. 228a, 228e (Kos. S. Ct. Tr. 2008).

The dismissal of a case is warranted when the statute of limitations applicable to the count in the criminal information elapses before the case is filed. Kosrae v. George, 16 FSM R. 228a, 228e (Kos. S. Ct. Tr. 2008).

Under the Kosrae State Code, a prosecution for a felony must be commenced within three years after the alleged crime was committed but an extension of the statute of limitations is allowed when an element of the offense is fraud. Kosrae v. George, 16 FSM R. 228a, 228e (Kos. S. Ct. Tr. 2008).

When the defendant was charged with two counts of forgery, both containing the element of fraud, the statute of limitations is, since fraud is an element of the crime, extended to allow prosecution to commence the action within one year of the discovery of the offense by the aggrieved party, but not in any case is the period of limitation otherwise applicable extended by more than three years. Kosrae v. George, 16 FSM R. 228a, 228e (Kos. S. Ct. Tr. 2008).

Although when an element of the crime is fraud, the statute of limitations allows a prosecution to commence within one year of an aggrieved party's discovery of an offense, the limitation period cannot be extended by more than an additional three years. Kosrae v. George, 16 FSM R. 228a, 228e (Kos. S. Ct. Tr. 2008).

When the statute of limitations to both counts in a criminal information had elapsed before the case was filed, the dismissal of the case is warranted. Kosrae v. George, 16 FSM R. 228a, 228e (Kos. S. Ct. Tr. 2008).

The underlying reason for having a statute of limitations, which is a statutory time beyond which the action may not be brought, is that the enactment of such laws concerns the belief that there is a point beyond which a prospective defendant should no longer need to worry about the possible commencement in the future of an action against him or her and that the law disfavors stale evidence. Kosrae v. George, 16 FSM R. 228a, 228f (Kos. S. Ct. Tr. 2008).

Although statutes of limitation on criminal prosecutions must be accorded a rational meaning in harmony with the obvious intent and purpose of the law, such statutes must be liberally construed in favor of the accused, and exceptions from the benefits of such statutes must be construed narrowly or strictly against the government. Kosrae v. George, 16 FSM R. 228a, 228f (Kos. S. Ct. Tr. 2008).

A prosecution for a misdemeanor must be commenced within two years after it is committed. A prosecution is commenced either when an information or complaint is filed or when an arrest warrant, summons or other process is issued, provided that reasonable attempts are made at service. FSM v. Ezra, 19 FSM R. 497, 506 (Pon. 2014).

The statute of limitations is not the same as the right to a speedy trial, but it is a referent as to whether the case should be dismissed under the more exacting standard of unnecessary delay found in 12 F.S.M.C. 802. FSM v. Ezra, 19 FSM R. 497, 506 (Pon. 2014).

Generally, the filing of an information within the statute of limitations time frame weighs in favor of non-dismissal, unless evidence of bad faith reasons for the delay are shown. FSM v. Ezra, 19 FSM R. 497, 506 (Pon. 2014).

When the prosecution of an underlying offense is not time-barred, prosecution of conspiracy to commit that offense is not time-barred even if part of the conspiracy extends back in time to a point that would be time-barred. FSM v. Mumma, 21 FSM R. 387, 395, 397 (Kos. 2017).

The statute of limitations runs from the time the offense is committed until the prosecution is commenced, unless some intervening act occurs to interrupt it, and it is considered as being an act of grace, or as the sovereign's surrender of its right to prosecute. It creates a bar to prosecution and is not merely a statute of repose as in civil cases. FSM v. Mumma, 21 FSM R. 387, 395 (Kos. 2017).

The statute of limitations begins to run from the time of the commission of an offense, or when the crime is complete, not from the date the crime is discovered. FSM v. Mumma, 21 FSM R. 387, 395 (Kos. 2017).

Although statutes of limitation on criminal prosecutions must be accorded a rational meaning in harmony with the law's obvious intent and purpose, such statutes must be liberally construed in favor of the accused, and exceptions from the benefits of such statutes must be narrowly or strictly construed. FSM v. Mumma, 21 FSM R. 387, 396 (Kos. 2017).

The statute of limitations is an affirmative defense which the defendant must raise either by motion under Criminal Procedure Rule 12(b) or later at trial by a plea of not guilty. FSM v. Mumma, 21 FSM R. 387, 396 (Kos. 2017).

When a violation of the charged Weapons Control Act provisions hold a sentence of up to ten years, the six-year statute of limitations applies. FSM v. Mumma, 21 FSM R. 387, 396 (Kos. 2017).

– Strict Liability Crime

The absence of an intent element in 11 F.S.M.C. 1223(6) (which prohibits any person from boarding or attempting to board a commercial airliner while carrying a firearm either on his person or in his luggage) evinces a legislative intent to dispense with the mens rea element and make the proscribed conduct a strict liability crime. The court can properly infer from Congress's silence in subsection (6) and lack of silence in subsections (1) and (2) that Congress intended that subsection (6) constitute a strict liability offense, whereas subsections (1) and (2) do not. Sander v. FSM, 9 FSM R. 442, 447 (App. 2000).

Although 11 F.S.M.C. 1223(6) does not dispense with the mental element that the defendant must know or be aware that he had the shotgun in his possession, the statute does dispense with the specific intent to board the aircraft knowing that it was illegal to do so with a shotgun. Sander v. FSM, 9 FSM R. 442, 447 (App. 2000).

A heavy maximum penalty of a $2000 fine and five years imprisonment is not dispositive in determining whether a crime is a strict liability offense. Sander v. FSM, 9 FSM R. 442, 448 (App. 2000).

Because violation of 11 F.S.M.C. 1223(6) is not a case of an attempt to commit a crime but a case where "attempt to board" is an element of the offense, 11 F.S.M.C. 201 (the attempt statute) does not apply to the crime of attempting to board a commercial aircraft with a firearm. Sander v. FSM, 9 FSM R. 442, 448 (App. 2000).

Because conduct alone without regard to the doer's intent is often sufficient to convict someone of a crime, because there is wide latitude to declare an offense and to exclude elements of knowledge and diligence from its definition, and because the defendant knew, by his own admission, that he was not permitted to take a weapon on board the plane, the strict criminal liability imposed by 11 F.S.M.C. 1223(6) for boarding or attempting to board a commercial aircraft while carrying a firearm or dangerous device does not violate due process. Sander v. FSM, 9 FSM R. 442, 449-50 (App. 2000).

The absence of an intent element – either the defendant has a valid sea cucumber permit or he does not – creates a strict liability or liability without fault offense. The defendant's intent is irrelevant. Lee v. Kosrae, 20 FSM R. 160, 166 (App. 2015).

There is no such thing as liability without fault conspiracy. In order to be guilty of conspiring to commit an underlying strict liability offense, the defendant must have the specific intent to violate the underlying law. Lee v. Kosrae, 20 FSM R. 160, 167 (App. 2015).

The only elements needed for a successful 11 F.S.M.C. 1023(5) prosecution is that the firearm is something other than a .22 rile or a .410 shotgun and the defendant knows that he possesses a firearm. FSM v. Pillias, 22 FSM R. 334, 335 n.1 (Chk. 2019).

Unlawful firearms possession is almost a strict liability crime – the defendant need only know that he possesses a firearm, and in the case of prosecutions under 11 F.S.M.C. 1005, and that he does not possess a firearms identification card. FSM v. Pillias, 22 FSM R. 334, 338 (Chk. 2019).

– Tampering with Public Records

When a "national offense" is defined as including any offense "which is otherwise an offense against the Federated States of Micronesia" and the underlying offenses involve improper obligation and expenditure of FSM funds and tampering with FSM official documents and information, it is difficult to see how these offenses could not be considered offenses against the FSM and an argument that they are not will be rejected. Engichy v. FSM, 15 FSM R. 546, 558 (App. 2008).

A person is guilty of tampering with public records or information in violation of 11 F.S.M.C. 529(1) when the government has proven beyond a reasonable doubt that the defendant did make, present, or use a record, document, or thing knowing it to be false, and with the purpose that it be taken as a genuine part of information or records, including the information necessary to access the machine readable passport system that allows for the processing and issuance of FSM passports. FSM v. Wolphagen, 21 FSM R. 315, 317 (Pon. 2017).

A defendant is subject to possible imprisonment for not more than five years for the defendant's tampering with public records conviction when the court finds beyond a reasonable doubt that the defendant's purpose was to defraud or injure the government in its processing and production of FSM passports and to injure those FSM citizens who applied for and needed to obtain passports at the time the machine readable passport system was inoperable. FSM v. Wolphagen, 21 FSM R. 315, 317 (Pon. 2017).

– Theft

When existing facts having a material bearing upon the desirability of a proposed investment are intentionally misrepresented, the investor has been defrauded, even if the person who has induced the investors by false statements fervently hopes that related promises of future actions, developments or profitability will be fulfilled. Wolfe v. FSM, 2 FSM R. 115, 120 (App. 1985).

Where an obvious and unreasonable risk of loss was forced on investors, without their knowledge or consent, by defendant's intentional misstatement of facts, and the defendant thereby obtained money of the investors knowing that he was exposing the investors to risk beyond their knowledge, this is theft in violation of 11 F.S.M.C. 934. Wolfe v. FSM, 2 FSM R. 115, 120 (App. 1985).

When a person makes statements calculated to create a false impression as to value in order to induce those who heard him to give him their money, and the statements did have that result, the person has purposely obtained property through deception within the meaning of 11 F.S.M.C. 932(6). Wolfe v. FSM, 2 FSM R. 115, 121 (App. 1985).

When the government fails to notify defendant of its intention to rely upon 11 F.S.M.C. 931(3), allowing aggregation of amounts involved in the thefts, as its source of jurisdiction, such aggregation will not be allowed. Fred v. FSM, 3 FSM R. 141, 144 (App. 1987).

The crime of grand larceny requires proof beyond a reasonable doubt of the stealing, taking or carrying away of the personal property of another, in the value of $50 or more, without the owner's knowledge or consent, and with the intent to convert it to one's own use. Kosrae v. Tolenoa, 4 FSM R. 201, 202 (Kos. S. Ct. Tr. 1990).

To prove larceny, the prosecution generally need not prove that the victim had an unassailable right to possession in the items stolen, only that the defendant had no greater right to possession of the stolen items. Kosrae v. Tolenoa, 4 FSM R. 201, 203 (Kos. S. Ct. Tr. 1990).

As with trespass and malicious mischief, a necessary element of the offense of petty larceny is that the subject personalty be "property of another." Thus a good faith belief in a right to the property negates an element of the offense of petty larceny as well. Nelson v. Kosrae, 8 FSM R. 397, 402 (App. 1998).

Where one, in good faith, takes the property of another and converts it to his own use, believing it to be legally his own, or that he has a legal right to its possession, he is not guilty of larceny, although his claim is based on a misconception of the law or of his right under it, for although ignorance of law and honest intentions cannot shield a man from civil liability for a trespass committed by him, they do protect him from criminal liability by divesting the act of the felonious intent without which it cannot be a crime. Nelson v. Kosrae, 8 FSM R. 397, 402 (App. 1998).

As a matter of law, then, if one has a good faith belief that he or she owns the property subject to the crime, he or she cannot be guilty of trespass, malicious mischief or petty larceny. Whether a defendant has a good faith belief in ownership is ordinarily a determination for the trier of fact. Nelson v. Kosrae, 8 FSM R. 397, 402-03 (App. 1998).

The doctrine of separation of powers is not violated every time a person, who happens to be a senator, allegedly misuses property that is traceable to an appropriation made under national law. If a senator takes a car, boat, desk, computer, or pen that rightfully is in the possession of another person or entity, he should bear the same responsibility and consequences as any other person: he could be charged criminally, or sued in a civil action by the rightful owner for conversion of that property. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 632 (Pon. 2002).

In order to find an accused guilty of grand larceny, the court must find that the accused 1) stole, took and carried away the personal property of another; 2) valued at more than $200 but less than $5,000; 3) without the owner's knowledge or consent: and 4) with the intent to permanently convert it to his own use. Chuuk v. Robert, 16 FSM R. 73, 76, 80 (Chk. S. Ct. Tr. 2008).

When the accused sought and obtained a check in the amount of $3,100 from the Speaker's and staff travel fund for a medical referral when he was neither authorized nor legally entitled to use the funds, the funds, without authorization for a permissible purpose, remained the property of the state. When the owner of the funds, the allottee Speaker, did not have knowledge or consent to the taking and his authorization and approval was required in order for the accused to legally obtain funds from that account; when the accused intended to permanently convert the funds and never demonstrated his entitlement to using the $3,100; when the accused did not use the funds for an approved, allotted purpose or return them so that they could be used for an allotted purpose, the allottee of the funds was permanently deprived of their use; and when the accused intended to permanently convert the funds because he sought reimbursement to use the funds for a medical referral, which was not a lawful purpose, the accused is guilty of grand larceny. Chuuk v. Robert, 16 FSM R. 73, 80-81 (Chk. S. Ct. Tr. 2008).

A voucher submitted for a travel authorization in October 2007 could not have been authorized in the spring of 2006 without obligating funds in advance of their appropriation in violation of the Financial Management Act. Chuuk v. Robert, 16 FSM R. 73, 81 n.8 (Chk. S. Ct. Tr. 2008).

Even though the state was able to recover of some of the funds that were not returned and not used

for permissible, authorized travel, such recovery did not excuse their taking since the funds were public monies held in the General Fund to be used only for their designated statutory purposes according to the requirements and procedures provided for by law. A travel authorization cannot lawfully be used as a means for a government employee to obtain an interest free personal loan, or for any other purpose not prescribed by statute in accordance with the Chuuk Constitution article VIII, § 2. The state's ability to recover any or all travel funds advanced to a particular traveler has little to no bearing on whether the traveler unlawfully obtained the funds or used them for an unlawful purpose. Chuuk v. Robert, 16 FSM R. 73, 81 (Chk. S. Ct. Tr. 2008).

When the information and supporting affidavits allege that the accused cashed various national government checks that were made payable to fictitious people and that he and his codefendant shared the money thus obtained, those allegations are sufficient to put the accused on notice that the national government claims a legal, equitable, or possessory interest in the funds that the checks were used to obtain and the allegation that the codefendants made checks out to fictitious persons using legitimate travel authorization numbers for other persons and then cashed those checks, dividing the proceeds among themselves, is sufficient to put the accused on notice that the prosecution alleges that the checks were not authorized. FSM v. Sorim, 17 FSM R. 515, 520 (Chk. 2011).

Although conversion has sometimes been called the civil equivalent of theft that is not an accurate description. It is not the same as theft. The crime of theft requires the intent to permanently deprive another of the property. Conversion only requires the defendant's wrongful or unauthorized act of dominion over the plaintiff's property be inconsistent with the owner's right. It does not require the intent to permanently deprive the owner of its property. Ihara v. Vitt, 19 FSM R. 595, 602 (App. 2014).

– Traffic Offenses

When neither the Legislature nor the court has provided any rules of procedure for traffic cases, the proper rules to follow are the court's rules of criminal procedure. Chuuk v. Dereas, 8 FSM R. 599, 601 (Chk. S. Ct. Tr. 1998).

Relevant provisions of Title 12 of the Trust Territory Code regarding traffic citations' definition and procedure continue in effect as Chuuk state law on criminal procedure, as long as these provisions have not been amended or repealed and are consistent with the Chuuk Constitution. Chuuk v. Dereas, 8 FSM R. 599, 601 (Chk. S. Ct. Tr. 1998).

A person who is stopped for a routine traffic offense is not in custody for purposes of Miranda warnings. Kosrae v. Sigrah, 11 FSM R. 249, 255 (Kos. S. Ct. Tr. 2002).

The offense of negligent driving requires proof of driving a vehicle in such a manner as to constitute a substantial deviation from the standard of care a reasonable person would exercise in the situation and when the state did not present any witnesses who saw the defendant driving his vehicle and there was no evidence presented to show the manner in which defendant was driving his vehicle and whether it was a substantial deviation from the appropriate standard of care and an officer testified that the defendant reported that he had a problem with his vehicle, it is reasonable to infer that this problem may caused the vehicle to leave the road and come to rest in the culvert. The state thus failed to present a prima facie case and the defendant's motion for acquittal on that count was granted and that count dismissed. Kosrae v. Alokoa, 13 FSM R. 82, 83 (Kos. S. Ct. Tr. 2004).

The offense of unauthorized operation of a motor vehicle requires proof of operating a motor vehicle on a road without possessing a valid license or learner's permit and when the state did not present any witnesses who saw the defendant operating his vehicle and did not present any evidence that the defendant did not possess a driver's license or learner's permit, there was no evidence presented to prove that the defendant operated his vehicle without a valid license or permit in his possession. The state thus failed to present a prima facie case and the defendant's motion for acquittal on that count was granted and that

count dismissed. Kosrae v. Alokoa, 13 FSM R. 82, 83 (Kos. S. Ct. Tr. 2004).

Driving under the influence is driving a vehicle while under the influence of alcoholic drink or a controlled substance or any other intoxicating substance. Kosrae v. Phillip, 13 FSM R. 285, 288 (Kos. S. Ct. Tr. 2005).

The term "under the influence" as establishing a standard of conduct subject to criminal liability, has existed and has been enforced since at least 1970, first as a Trust Territory statute, and then later as a Kosrae state statute. Kosrae v. Phillip, 13 FSM R. 285, 288 (Kos. S. Ct. Tr. 2005).

When the language of the statute being challenged has been consistently enforced by the prior Trust Territory government and by the Kosrae state government for a cumulative period of at least thirty-five years without challenge and field sobriety tests have also been the predominant, if not sole, standard by which the Kosrae State Police determine whether a person was "under the influence" of alcoholic drink, the court must accord great weight to the constitutionality of Kosrae State Code, Section 13.710 and the use of field sobriety tests. Kosrae v. Phillip, 13 FSM R. 285, 288 (Kos. S. Ct. Tr. 2005).

The criminal offense of driving under the influence, as defined in Kosrae State Code, Section 13.710, is not unconstitutionally vague. The term "under the influence" does give people of ordinary intelligence a reasonable opportunity to know and understand what conduct is prohibited and how to avoid violation. Kosrae v. Phillip, 13 FSM R. 285, 291 (Kos. S. Ct. Tr. 2005).

Field sobriety tests are not subjective and arbitrary although all testing, even the chemical testing of breath, blood or urine that the defendant strongly advocates, is subject to human error. Kosrae v. Phillip, 13 FSM R. 285, 292 (Kos. S. Ct. Tr. 2005).

The offense of driving under the influence requires proof of two elements: driving a vehicle, and being under the influence of alcoholic drink, controlled substance or other intoxicating substance. Kosrae v. Phillip, 14 FSM R. 42, 46 (Kos. S. Ct. Tr. 2006).

The United States National Highway Traffic Safety Administration findings, reports, standards, methods and statements do not constitute the law of the FSM or Kosrae, and are not binding upon the Kosrae State Court. Kosrae v. Phillip, 14 FSM R. 42, 46, 47 (Kos. S. Ct. Tr. 2006).

When evidence was presented regarding the field sobriety tests administered to the defendant, coupled with the evidence regarding the smell of alcohol upon defendant's breath, defendant's red eyes, the presence of open and closed beer cans in the passenger compartment of defendant's vehicle, defendant's actions in driving the vehicle at a high speed more than twice the statutory speed limit, defendant's vehicle weaving in the road and crossing the center line, and defendant's refusal to stop the vehicle after being signaled by the police officer, the state has presented evidence beyond a reasonable doubt that the defendant was impaired and driving under the influence of alcoholic drinks even without consideration of the evidence of the defendant's performance of the one-legged stand field sobriety test. Kosrae v. Phillip, 14 FSM R. 42, 47 (Kos. S. Ct. Tr. 2006).

The offense of driving under the influence requires driving under the influence of an alcoholic drink, controlled substance or any other intoxicating substance: it does not require the presence of any specific blood alcohol percentage. A specific blood alcohol percentage is not an element of the offense of driving under the influence. Kosrae v. Phillip, 14 FSM R. 42, 47 (Kos. S. Ct. Tr. 2006).

The offense of unauthorized consuming, possessing or giving of alcoholic drink is not inclusive of, or a lesser included offense of driving under the influence because the two offenses are committed with completely different actions and do not share even one common element. The offense of unauthorized consuming, possessing or giving of alcoholic drink does not require any involvement of a vehicle, whereas the offense of driving under the influence does not require possession of a alcoholic drink or non-possession of a valid drinking permit. Also, both offenses are classified as category one

misdemeanors: neither offense is a classified as lesser than the other. Kosrae v. Phillip, 14 FSM R. 42, 48 (Kos. S. Ct. Tr. 2006).

The offense of driving under the influence requires proof of two elements: driving a vehicle, and being under the influence of alcoholic drink, controlled substance, or other intoxicating substance. Kosrae v. Tulensru, 14 FSM R. 115, 120 (Kos. S. Ct. Tr. 2006).

When the defendant failed two of the three field sobriety tests administered to him, coupled with the evidence regarding the smell of alcoholic drinks upon his breath, his intoxicated appearance, his intoxicated conduct, his failure to stop at a stop sign, his carrying of a beer can to another car after the accident, the state has presented evidence beyond a reasonable doubt that the defendant was impaired and driving under the influence of alcoholic drinks. Kosrae v. Tulensru, 14 FSM R. 115, 121 (Kos. S. Ct. Tr. 2006).

When there was undisputed evidence presented of the defendant's performance of other physical activity, the court can infer that the defendant's ailments did permit the defendant to complete a variety of activities requiring movement of his arms, legs and body, and did not affect his performance of the field sobriety tests. Kosrae v. Tulensru, 14 FSM R. 115, 122 (Kos. S. Ct. Tr. 2006).

Cases upholding the constitutionality of statutes criminalizing driving "under the influence" reflect the fact that alcohol, its consumption, and effects have long been a part of human experience. DUI statutes enacted with the arrival of the motor vehicle take that experience into account. Phillip v. Kosrae, 15 FSM R. 116, 120 (App. 2007).

The Kosrae DUI statute does not violate the vagueness doctrine because it employs the phrase "under the influence." It provides both law enforcement officers and judges with the necessary enforcement standards. "Driving under the influence" is commonly understood to mean driving in a state of intoxication that lessens a person's normal ability for clarity and control. A police officer will know that he may take enforcement action where he observes an individual exhibiting this commonly understood behavior. That a police officer must exercise his judgment in evaluating this behavior does not render the statute vague. Phillip v. Kosrae, 15 FSM R. 116, 120 (App. 2007).

"Driving under the influence" provides a judge with a sufficient enforcement standard. Based upon the evidence that a judge hears and is entitled to consider, he may determine whether a defendant was "under the influence" such that he was driving in a state of intoxication that lessened his normal ability for clarity and control. The statute thus passes constitutional muster. Phillip v. Kosrae, 15 FSM R. 116, 120-21 (App. 2007).

In Micronesia, our communities are small, roadways are limited, and on occasion may be in less than optimal condition. Active village life takes place near those roadways. In this setting, drunken driving can have consequences for people in addition to those who may at any given moment be traveling on, or be in the vicinity of, the roads. A DUI statute that prohibits "driving under the influence" is a useful and reasonably effective means of helping to insure the safety of those who travel on, are present near, or live near public roadways in our island communities. Phillip v. Kosrae, 15 FSM R. 116, 121 (App. 2007).

When the accused either was or was not driving "under the influence," and it was the arresting officer's job to exercise his judgment to determine whether there was probable cause to believe the accused's ability for clarity and control had been lessened by his consumption of alcohol, or in other words, whether the accused was driving "under the influence," and when Kosrae's statute did not require the accused to offer an explanation for his conduct and any such exculpatory explanation would have been immaterial to his objective state of sobriety or lack thereof, the Kosrae DUI statute is not void for vagueness and does not violate the Due Process Clause of either the Kosrae Constitution or the FSM Constitution. Phillip v. Kosrae, 15 FSM R. 116, 121 (App. 2007).

Even assuming that the photos not admitted would have shown that the defendant was not at fault in

the accident, that would have had no bearing on his state of intoxication because even if the other driver were 100% at fault, there is no question that the defendant was driving a vehicle, and he would still have been subject to conviction under the driving under the influence. Tulensru v. Kosrae, 15 FSM R. 122, 127 (App. 2007).

– Trespass

Where there is consent to enter another's property for certain purposes, but a person enters the property with the intent to commit an assault therein a conviction for trespass can be maintained because no consent can be implied to enter for an unlawful purpose. Lawful entry followed by a later unlawful act, however, is not trespass. Alik v. Kosrae, 6 FSM R. 469, 472 (App. 1994).

Since under Yap statutory law trespass is a lesser included offense of burglary, a trespass conviction will be vacated when there is a burglary conviction for the same act. Yinmed v. Yap, 8 FSM R. 95, 101-02 (Yap S. Ct. App. 1997).

A necessary element of the crime of trespass is that the property trespassed upon be property of another. Nelson v. Kosrae, 8 FSM R. 397, 401-02 (App. 1998).

The real property on which a defendant is alleged to have trespassed must be the property of another. A good faith claim of right to the property provides a complete defense to the crime of trespass because it negates the criminal intent necessary for conviction. Nelson v. Kosrae, 8 FSM R. 397, 402 (App. 1998).

As a matter of law, then, if one has a good faith belief that he or she owns the property subject to the crime, he or she cannot be guilty of trespass, malicious mischief or petty larceny. Whether a defendant has a good faith belief in ownership is ordinarily a determination for the trier of fact. Nelson v. Kosrae, 8 FSM R. 397, 402-03 (App. 1998).

The court's role in a civil trespass case is to determine which party has the greater possessory right to disputed property. In a criminal trespass case, in contrast, the court must determine whether the prosecution has established each element of the crime of trespass beyond a reasonable doubt. Nelson v. Kosrae, 8 FSM R. 397, 403 (App. 1998).

Criminal trespass is defined as entering, or causing an object to enter, the dwelling place, premises, or property of another without his express or implied consent, or entering with his consent and, following withdrawal of the consent, refusing to leave the dwelling place, premises, or property. Kosrae v. Jackson, 12 FSM R. 93, 98-99 (Kos. S. Ct. Tr. 2003).

When the householders did not give the defendant permission to enter their home, and when, even assuming that the defendant did have some implied consent to enter the home due to being a family friend, that implied consent did not extend to the time and purpose under consideration – to enter the home between the hours of midnight and 4 am, for the purpose of waking up, and assaulting the handicapped daughter. Kosrae v. Jackson, 12 FSM R. 93, 99 (Kos. S. Ct. Tr. 2003).

The offense of trespass requires proof beyond a reasonable doubt of entering the dwelling place, premises, or property of another without her express or implied consent. Kosrae v. Sigrah, 12 FSM R. 562, 567 (Kos. S. Ct. Tr. 2004).

When the evidence is undisputed that the defendant did not have consent to enter the victim's cookhouse at 2 a.m., (although there appeared to be implied consent for neighbors to cross the victim's property around her house and cookhouse, this consent does not extend to the cookhouse's interior), and that the defendant entered the victim's dwelling place and property without her express or implied consent, the state proved beyond a reasonable doubt all the elements of the criminal offense of trespass. Kosrae v. Sigrah, 12 FSM R. 562, 567 (Kos. S. Ct. Tr. 2004).

The criminal offense of trespass requires proof beyond a reasonable doubt of entering the dwelling place or property of another without consent and when it is undisputed that the defendant entered another's dwelling place without consent at approximately 5:50 a.m., the state has proven beyond a reasonable doubt all of the elements of the criminal offense of trespass. Kosrae v. Anton, 12 FSM R. 606, 610 (Kos. S. Ct. Tr. 2004).

– Venue

All trials of criminal offenses should be held in the state in which the offense was committed. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 474 n.2 (App. 1996).

The venue provision in a criminal case in the FSM is not a constitutional right but rather is provided for under statute and under court rule, which provide for the trial of offenses in the state where committed. The provisions thus do not apply to occurrences not within any state in the FSM, such as in the EEZ. FSM v. Ting Hong Oceanic Enterprises, 7 FSM R. 578, 580 (Pon. 1996).

The primary purpose of the criminal venue requirement is to prevent government oppression of a defendant by requiring him to defend against a criminal prosecution in a place far from his home, counsel and any witnesses or evidence which may be of help to him in his defense. FSM v. Ting Hong Oceanic Enterprises, 7 FSM R. 578, 580 (Pon. 1996).

Trial of a corporation for a crime committed in the FSM EEZ is appropriate on Pohnpei when the corporation's FSM offices are on Pohnpei and most of its witnesses and its counsel are available on Pohnpei. FSM v. Ting Hong Oceanic Enterprises, 7 FSM R. 578, 580-81 (Pon. 1996).

An order granting or refusing a transfer of venue is not a final judgment and is not appealable. FSM v. Wainit, 11 FSM R. 411, 412 (Pon. 2003).

Since an order granting a change of venue is not appealable, no stay is warranted while the defendant seeks its review in the appellate division. FSM v. Wainit, 11 FSM R. 411, 412 (Pon. 2003).

By statute, either a defendant or the government may petition the court for a change of venue for good cause. FSM v. Wainit, 11 FSM R. 411, 413 (Pon. 2003).

Apart from the rights conferred by 11 F.S.M.C. 106, there is no constitutional or statutory right to trial in the same state as the offense. FSM v. Wainit, 11 FSM R. 411, 413 (Pon. 2003).

A criminal defendant may raise the issue of venue on any appeal from a final judgment should he be convicted. If he is acquitted, then he has suffered no prejudice. FSM v. Wainit, 11 FSM R. 411, 413 (Pon. 2003).

A defendant's contention that he will suffer irreparable injury if he is forced to defend his case in a different venue is not persuasive. Any individual who employs private counsel to defend himself in a criminal case will incur the costs of defense, even if he is ultimately acquitted. FSM v. Wainit, 11 FSM R. 411, 413 (Pon. 2003).

Prosecutors' seeking a change of venue do not necessarily indicate bias so that they could continue to prosecute when the case is ready for immediate trial and, under the then alleged prevailing conditions, any FSM prosecutor might have felt unsafe unless venue were changed. FSM v. Wainit, 12 FSM R. 172, 177 (Chk. 2003).

CUSTOM AND TRADITION

A customary privilege to enter one's cousin's house cannot be exercised by pounding on the walls of the house at two a.m. until a hole for entry is created and shouting threats at the occupants. FSM v. Boaz (I), 1 FSM R. 22, 26 (Pon. 1981).

The fact that one may have a general customary privilege to enter property does not necessarily mean that the privilege may be exercised at all times and in every conceivable manner. FSM v. Ruben, 1 FSM R. 34, 39 (Truk 1981).

Familial relationships are at the core of Micronesian society and are the source of numerous rights and obligations which influence practically every aspect of the lives of individual Micronesians. FSM v. Ruben, 1 FSM R. 34, 40 (Truk 1981).

Familial relationships are an important segment, perhaps the most important component, of the custom and tradition referred to generally in the Constitution, FSM Const. art. V, art. XI, § 11, and more specifically in the National Criminal Code, 11 F.S.M.C. 108, 1003. FSM v. Ruben, 1 FSM R. 34, 40 (Truk 1981).

While the court may find that a criminal defendant's conduct did not violate the criminal law and the defendant owes no debt to society in general, this does not suggest that the defendant has necessarily fulfilled all customary obligations he may owe to a relative who was the victim of his actions. FSM v. Ruben, 1 FSM R. 34, 41 (Truk 1981).

The court is willing to assume that the homeowner whose wife's brother is seeking to enter the house by force late at night in a threatening manner should as a matter of customary law go lightly and use less force than he might to expel some other intruder. FSM v. Ruben, 1 FSM R. 34, 41 (Truk 1981).

State officials generally should have greater knowledge of use, local custom and expectations concerning land and personal property. They should be better equipped than the national government to control and regulate these matter. The Constitution's framers specifically considered this issue and felt that powers of this sort should be state powers. In re Nahnsen, 1 FSM R. 97, 107, 109 (Pon. 1982).

Under appropriate circumstances, customary law may assume importance equal to or greater than particular written provisions in the National Criminal Code. 11 F.S.M.C. 108. FSM v. Mudong, 1 FSM R. 135, 139-40 (Pon. 1982).

Customary law is placed in neither an overriding nor inferior position by the FSM Constitution and statutes. FSM v. Mudong, 1 FSM R. 135, 139 (Pon. 1982).

Customary settlements do not require court dismissal of court proceedings if no exceptional circumstances are shown. FSM v. Mudong, 1 FSM R. 135, 140 (Pon. 1982).

The FSM Supreme Court is required by the National Criminal Code to recognize generally accepted customs and to determine the applicability and effect of customary law in a criminal case; it is not authorized to develop new customary law. 11 F.S.M.C. 108. FSM v. Mudong, 1 FSM R. 135, 140, 146-47 (Pon. 1982).

The prosecutor does not have authority to dismiss an existing prosecution on the basis of customary law, but the court does have power to respond to a prosecutorial suggestion for dismissal because of customary considerations. FSM v. Mudong, 1 FSM R. 135, 141 (Pon. 1982).

The burden of proof is on a defendant to establish effect of customary law; the effect of customary apology ceremony on court proceedings is not self-evident. 11 F.S.M.C. 108(3). FSM v. Mudong, 1 FSM R. 135, 141-43.

Customary law and the constitutional legal system perform different roles; they may mutually support

each other. Neither system controls the other. FSM v. Mudong, 1 FSM R. 135, 145 (Kos. 1982).

Custom is more properly considered during sentencing than at other stages of a criminal prosecution. FSM v. Mudong, 1 FSM R. 135, 147-48 (Pon. 1982).

The constitutional government seeks not to override custom but to work in cooperation with the traditional system in an atmosphere of mutual respect. In re Iriarte (II), 1 FSM R. 255, 271 (Pon. 1982).

When no custom is established by a preponderance of the evidence that the vile phrases used are sufficient provocation for a serious attack on the speaker, that alleged custom will not be considered in determining the criminal culpability of the person who attacks the one who has used vile phrases. FSM v. Raitoun, 1 FSM R. 589, 591-92 (Truk 1984).

The Major Crimes Clause, with its admonition to Congress to have due regard for local custom and tradition, unmistakably reflects awareness of the framers that Congress would be empowered under this clause to regulate crimes that would require consideration of local custom and tradition. Tammow v. FSM, 2 FSM R. 53, 57 (App. 1985).

Even where the parties have not asserted that any principle of custom or tradition applies, the court has an obligation of its own to consider custom and tradition. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 140 (Pon. 1985).

Where the business activities which gave rise to the lawsuit are not of a local or traditional nature, and the work setting and the work itself are of a markedly non-local, international character, the court need not conduct an intense search for applicable customary laws and traditional rules when none have been brought to its attention by the parties. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 140 (Pon. 1985).

Customary and traditional practices within a state should be considered in determining whether the people of that state would expect their state government to be immune from court action. Panuelo v. Pohnpei (I), 2 FSM R. 150, 159 (Pon. 1986).

Defendants are not within the coverage of FSM Constitution article V, section 1, preserving "the role or function of a traditional leader as recognized by custom and tradition," simply by virtue of their status as municipal police officers. Teruo v. FSM, 2 FSM R. 167, 172 (App. 1986).

Whether interference with the efforts of a non-FSM citizen engaged in business within the Federated States of Micronesia is an abuse of process is not an issue which may be resolved by reference to traditional or customary principles. Mailo v. Twum-Barimah, 2 FSM R. 265, 268 (Pon. 1986).

An agreement between the FSM National Government and operators of a United States fishing vessel in an attempt to terminate court proceedings, is not the kind of matter that historically came within principles of custom and tradition. FSM v. Ocean Pearl, 3 FSM R. 87, 91 (Pon. 1987).

In a case of first impression concerning national employment contracts, when no party points to applicable customary principles of law or traditional values, the FSM Supreme Court looks to the common law in other jurisdictions to assist in developing legal principles suitable for Micronesia. Falcam v. FSM Postal Serv., 3 FSM R. 112, 120 (Pon. 1987).

In a case in which the defendant proposes a standard of requiring clear and convincing evidence in civil conspiracy cases rather than a preponderance based upon conditions, customs and traditions in Micronesia, it is incumbent upon him to establish such conditions by evidence, because the court will not take judicial notice of such conditions, customs or traditions. Opet v. Mobil Oil Micronesia, Inc., 3 FSM R. 159, 164 (App. 1987).

Sentencing courts are not free to bar from consideration beatings that were grounded upon, or were products of custom and tradition when considering sentencing, and failure to consider the customary implications of those beatings violates not only the implicit statutory requirement of individualized sentencing, but also mandate of 11 F.S.M.C. 1003, enacted pursuant to article V, section 2 of the Constitution, as well as the judicial guidance clause. Tammed v. FSM, 4 FSM R. 266, 278 (App. 1990).

The duty of a national court justice to give full and careful consideration to a request to consider a particular customary practice or value in arriving at a decision requires careful investigation of the nature and customary effect of the specific practice at issue, a serious effort to reconcile the custom and tradition with other constitutional requirements, and an individualized decision as to whether the specific custom or tradition should be given effect in the particular contexts of the case before the court. Tammed v. FSM, 4 FSM R. 266, 279 (App. 1990).

When a trial court is asked to give special mitigative effect to customary punishment during its sentencing proceedings, the court must first consider whether these customary activities have become so imbued with official state action so that the actions of the assailants are seen as actions of the state itself; if so the punishments must be tested by the same standards that would be applied if state officials carried out these punishments directly. Tammed v. FSM, 4 FSM R. 266, 283 (App. 1990).

The judicial guidance clause prohibits a sentencing court from giving special effect to customary beatings administered to the defendant, unless the court finds that such recognition would be consistent with the protections guaranteed to individuals by the Declaration of Rights. Tammed v. FSM, 4 FSM R. 266, 284 (App. 1990).

Congress has no power to specify voting requirements for the Constitutional Convention and therefore any attempt to exercise this power so as to uphold tradition is also outside the powers of Congress under article V, section 2 of the Constitution, which is not an independent source of congressional power but which merely confirms the power of Congress, in exercising national legislative powers, to make special provisions for Micronesian tradition. Constitutional Convention 1990 v. President, 4 FSM R. 320, 328 (App. 1990).

6 F.S.M.C. 1614 exempts adoptions effected in accordance with local custom from the domestic relations law of the Federated States of Micronesia. Customary adoptions are an alternative to court-ordered adoptions which are established by the Code. In re Marquez, 5 FSM R. 381, 383 (Pon. 1992).

Parties who wish to adopt a child have a choice of method of adoption. They may adopt according to local custom, or they may adopt according to the laws of the Federated States of Micronesia. What a petitioner may not do is seek the court's involvement in a customary adoption. In re Marquez, 5 FSM R. 381, 383 (Pon. 1992).

Determining the relevancy of custom in carrying out the mandate of article XI, section 11 of the FSM Constitution must proceed on a case-by-case basis. Wito Clan v. United Church of Christ, 6 FSM R. 129, 132 (App. 1993).

Where entitlement to customary relief has been proven and the means to execute such a remedy are within the trial court's authority and discretion, the trial court should as a matter of equity and constitutional duty grant the relief. Wito Clan v. United Church of Christ, 6 FSM R. 129, 133 (App. 1993).

FSM courts must consider customary law where relevant to a decision, but it is not error for a court to consider custom and find that it is not relevant to its decision because a Certificate of Title had been issued for the land. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 50 (App. 1995).

Issues related to the EEZ cannot be determined by relying on custom and tradition, as the commercial value of the EEZ to the Federated States of Micronesia was first realized when the nation acceded to the Law of the Sea Convention. While the rights of individual Micronesians, families and clans to living marine resources under particular circumstances might be amenable to determination by custom and tradition, the states' legal entitlement to share in fishing fees derived from commercial fishing ventures, extending to 200 miles from island baselines, is not. Chuuk v. Secretary of Finance, 8 FSM R. 353, 378 (Pon. 1998).

Any claim to resources in the EEZ based upon custom and tradition must rest with clans, families and individuals rather than with the states. Chuuk v. Secretary of Finance, 8 FSM R. 353, 379 (Pon. 1998).

The constitutional government works not to override custom, but works in cooperation with the traditional system in an atmosphere of mutual respect. Senda v. Semes, 8 FSM R. 484, 497 (Pon. 1998).

In a civil case where defendants seeks to advance Pohnpeian customary practice as a defense to a claim of equitable contribution, the burden is on the defendants to establish by a preponderance of the evidence the relevant custom and tradition. Senda v. Semes, 8 FSM R. 484, 497 (Pon. 1998).

Micronesian custom, and the constitutional legal system established by the people of the FSM, flow from differing (not necessarily inconsistent) premises and purposes. These two systems, then, can be seen as supplementary and complementary, not contradictory. Each has a valuable role to perform, independent of the other. Senda v. Semes, 8 FSM R. 484, 499 (Pon. 1998).

One of our courts' express functions is to apply and interpret the duly enacted and promulgated laws and regulations which lie at the heart of a dispute. Our court system exists to speak to the very issues to which Pohnpeian custom and tradition are silent. In this way, the two systems complement each other. Senda v. Semes, 8 FSM R. 484, 499 (Pon. 1998).

Allowing a contribution claim between parties who are relatives, and who are equally liable under a duly promulgated regulation for a corporation's debts, is consistent with the customary principle that relatives should assist one another. Senda v. Semes, 8 FSM R. 484, 499 (Pon. 1998).

A contention that custom and tradition as a procedural device may prevent an equitable claim for contribution based on violation of a regulation governing the formation of corporations is an insufficient defense as a matter of law. Senda v. Semes, 8 FSM R. 484, 499 (Pon. 1998).

In a civil case when a defendant seeks to advance Pohnpeian customary practice as a defense, the burden is on the defendant to establish by a preponderance of the evidence the relevant custom and tradition. Phoenix of Micronesia, Inc. v. Mauricio, 9 FSM R. 155, 158-59 (App. 1999).

The FSM Constitution requires court decisions be consistent with Micronesian customs and traditions, and provides that the FSM Congress may enact statutes to protect the traditions of the people of the FSM. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 66 (Pon. 2001).

The filing of the appeal over land was not a breach of the defendant's condition and was not a breach of a customary settlement when the appeal was filed before the customary settlement and condition were made; and when the appeal was not decided in the defendant's favor, the defendant's condition regarding his promised grant of a portion of land was satisfied and the customary settlement and the defendant's promise were therefore enforceable. Robert v. Semuda, 11 FSM R. 165, 168 (Kos. S. Ct. Tr. 2002).

Customary and traditional use rights to an island are a form of property right. Rosokow v. Bob, 11 FSM R. 210, 217 (Chk. S. Ct. App. 2002).

Since the FSM people's traditions may be protected by statute and if challenged as violative of the fundamental rights in Article IV, protection of Micronesian tradition shall be considered a compelling social

purpose warranting such governmental action, Kosrae may pass a law which protects the Kosraean people's traditions. Kosrae v. Waguk, 11 FSM R. 388, 390 (Kos. S. Ct. Tr. 2003).

Reconciliation is not a basis for dismissal of a criminal information. The law of our nation in this regard is clear. Custom, including customary apology and reconciliation, is to be considered during the sentencing of a criminal prosecution. Kosrae v. Nena, 12 FSM R. 20, 22 (Kos. S. Ct. Tr. 2003).

While the doctrine of unjust enrichment has not been explicitly discussed or adopted, Pohnpei state law and Micronesian custom and tradition dictate that a party who has benefitted unjustly from another should, under certain circumstances, be made to repay that benefit. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM R. 337, 346 (Pon. 2004).

Custom, including customary apology and reconciliation, is to be considered during the sentencing of a criminal prosecution, but when there was no customary reconciliation reached among the defendant and the victims, there is no consideration of this factor for sentencing. Kosrae v. Kilafwakun, 13 FSM R. 368, 369 (Kos. S. Ct. Tr. 2005).

An obligation to give aid to someone in need does not mean that it may be done in an illegal manner. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 22 & n.7 (App. 2006).

When the defendant argued that the court should recognize custom regarding the relationship between him and the victim, but did not present any evidence of the relationship between victim and him, and did not present any evidence of custom, specifically evidence that due to the relationship between victim and the defendant, it would be customary for the defendant to show up drunk at a relative's home and commit a battery upon the relative, the court may not utilize tradition in reaching a decision because it has not received satisfactory evidence of the tradition. When a defendant has not provided any evidence of custom or tradition, it cannot be considered. Kosrae v. Tilfas, 14 FSM R. 27, 30-31 (Kos. S. Ct. Tr. 2006).

Customary business practice is distinguished from customary law, that is, from the "custom and tradition" enshrined in the Constitution. Amayo v. MJ Co., 14 FSM R. 487, 489 (Pon. 2006).

Parties who proffer custom as a basis for a claim must prove the relevant custom by a preponderance of the evidence. Narruhn v. Aisek, 16 FSM R. 236, 240 (App. 2009).

There is a general deference to local officials' knowledge of local customs. Narruhn v. Aisek, 16 FSM R. 236, 242 (App. 2009).

While the ultimate burden of persuasion remains with the government, a defendant, asserting an affirmative defense, has some burden of proof or of going forward with sufficient evidence to raise the defense as an issue at trial. When custom is raised, it is usually more properly considered during sentencing than at other stages of a criminal prosecution. FSM v. Aliven, 16 FSM R. 520, 534 (Chk. 2009).

A defendant's motion to dismiss on the ground of custom will be denied, but he will be free to present evidence at trial concerning his defense(s), if applicable. FSM v. Aliven, 16 FSM R. 520, 534 (Chk. 2009).

Custom does not divest Congress of its power to regulate shipping and commerce or render the limitation of liability statute, 19 F.S.M.C. 1101-1108, unconstitutional. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 538 (Yap 2013).

Before the establishment of the FSM constitutional government, customary law was inferior in legal status to written law promulgated by the administering authority, or any official or legislative body, which often disregarded, or considered void, any custom or customary law in conflict with written law, but under FSM law, customary law is not placed in an exalted or overriding posture under the FSM Constitution and

statues, but neither is it relegated to its previous inferior status. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 641 (Pon. 2016).

The FSM Supreme Court is indisputably charged with the duty of considering customary law when relevant to a decision since the constitutional government works not to override custom, but to work in cooperation with the traditional system in an atmosphere of mutual respect. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

While Trust Territory High Court opinions are not binding precedent on the FSM Supreme Court, they serve as useful advisory precedent, especially considering they contain important information regarding the customs and traditions of the people of Micronesia. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 n.2 (Pon. 2016).

Custom is a law established by long usage and is by common consent and uniform practice so that it becomes the law of the place, or of the subject matter, to which it relates. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

It is only when a local custom is firmly established and generally known and been peacefully and fairly uniformly acquiesced in by those whose rights would naturally be affected that it will be judicially noticed by the court. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

When there is a dispute about the existence or effect of a local custom, and the court is not satisfied about either its existence or its applicability, such custom becomes a mixed question of law and fact, and the party relying upon it must prove it to the court's satisfaction. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642-43 (Pon. 2016).

Rare is the case where the court benefits from clear, uncontradicted evidence of custom on point in a given matter presented by knowledgeable authorities. The great difficulty in applying custom is that unlike other sources of law, it is uncodified. Custom is revealed through human practice and oral description, and owing to the diversity of cultures and languages in the FSM, the court must rely almost entirely on witness testimony to elucidate particular customs and traditions. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 643 (Pon. 2016).

Under the FSM Constitution's Judicial Guidance Clause, the FSM Supreme Court's decisions must be consistent with, *inter alia*, Micronesian customs and traditions. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 643 (Pon. 2016).

– Chuuk

In Trukese society, the husband, as the head of the household, is responsible for taking care of the family legal matters such as signing of documents, and overseeing all family financial matters. O'Sonis v. Truk, 3 FSM R. 516, 518 (Truk S. Ct. Tr. 1988).

Either the husband or the wife may prosecute or defend a civil action in which one or both are parties, provided that he or she has informed his or her spouse of the representation. O'Sonis v. Truk, 3 FSM R. 516, 518 (Truk S. Ct. Tr. 1988).

Even when the parties have not raised an issue of custom or tradition, the court has an obligation of its own to consider custom and tradition. O'Sonis v. Truk, 3 FSM R. 516, 518 (Truk S. Ct. Tr. 1988).

Since the judicial system and customary settlement in Truk are fundamentally different and serve different goals, the primary concern of customary settlement being community harmony rather than compensation for loss, the use of one should not prevent the use of the other. Suka v. Truk, 4 FSM R. 123, 128 (Truk S. Ct. Tr. 1989).

Offers or acceptances of customary settlement should neither be used in court to prove liability on the part of the wrongdoer, nor be deemed the same as a legal release on the part of the plaintiff. Suka v. Truk, 4 FSM R. 123, 129 (Truk S. Ct. Tr. 1989).

To the extent that customary settlements are given any binding effect at all, they should be only binding as to those persons that are part of custom; state agencies and non-Trukese persons are not part of that system. Suka v. Truk, 4 FSM R. 123, 129 (Truk S. Ct. Tr. 1989).

The absolute defenses of Assumption of the Risk and Contributory Negligence are contrary to the traditional Chuukese concepts of responsibility and shall not be available in Chuuk State. Epiti v. Chuuk, 5 FSM R. 162, 167 (Chk. S. Ct. Tr. 1991).

The traditional remedy for the original landowners in an "ammot" transaction when the grantee no longer used the land for the purpose for which it was given was repossession of the land and nothing more. Wito Clan v. United Church of Christ, 6 FSM R. 129, 134 (App. 1993).

Patrilineal descendants – or *afokur* – have no rights to lineage land in Chuuk. They only enjoy permissive rights of usage from the members of the lineage. Mere usage of lineage land by *afokur* does not constitute title of any sort even if the usage lasts a lifetime. Transfer of lineage land to any descendants of male members requires the clear agreement of the Clan. Chipuelong v. Chuuk, 6 FSM R. 188, 196 (Chk. S. Ct. Tr. 1993).

It is an established principle of Chuukese land tenure, that lineage land is owned by the matrilineal descendants and not by the patrilineal descendants or "afokur." Chipuelong v. Chuuk, 6 FSM R. 188, 197 (Chk. S. Ct. Tr. 1993).

The people of Chuuk have always considered themselves to have rights and ownership of the tidelands, and thereby hold the property rights in them, throughout all of the several foreign administrations. These traditional and customary claims came down from time immemorial. Nimeisa v. Department of Public Works, 6 FSM R. 205, 208 (Chk. S. Ct. Tr. 1993).

The sanction imposed on one who controls and manages the land of a group who does not fairly and according to custom concern himself with the rights of the other members or another member of the group is the censure of the community. In re Estate of Hartman, 6 FSM R. 326, 328 (Chk. 1994).

When the children of a landowner with full title to land inherit the land they form a land-owning group ("corporation"). The senior male, the *mwäänii chi*, is required to manage the property in the interest of the "corporation." The corporation owns the land even if one part or another is allotted to a member for his use. In re Estate of Hartman, 6 FSM R. 326, 329 (Chk. 1994).

Individuals have full title to the improvements (as distinguished from the soil) made upon land owned by a land-owning group or "corporation." In re Estate of Hartman, 6 FSM R. 326, 330 (Chk. 1994).

The property owned in full title by one who dies is inherited by the children of the deceased. Personal property suited for use by women is inherited by daughters and sisters. In re Estate of Hartman, 6 FSM R. 326, 330 (Chk. 1994).

A court should not order a traditional apology, compensation, and settlement when none has been offered voluntarily because traditional settlements are customarily non-adversarial and arrived at without outside coercion and court decisions must be consistent with custom. Alafonso v. Sarep, 7 FSM R. 288, 290-91 (Chk. S. Ct. Tr. 1995).

The Chuuk Constitution provides that existing Chuukese custom and tradition shall be respected. Chuuk v. Sound, 8 FSM R. 577, 578 (Chk. S. Ct. Tr. 1998).

A court's finding of guilt and sentencing would not render illegal, or prevent, customary forgiveness of the defendant by the victim's family or clan. Whatever the court does, customary settlement may remain desirable to resolve lingering hostility and disputes between the families. Chuuk v. Sound, 8 FSM R. 577, 579 (Chk. S. Ct. Tr. 1998).

A customary forgiveness ceremony resolving disputes among families or clans may not prevent the court system from determining the individual guilt of the defendant and considering whether societal notions of justice and the need to uphold law and order require fining, imprisonment or other restriction of the defendant's freedom. Chuuk v. Sound, 8 FSM R. 577, 579 (Chk. S. Ct. Tr. 1998).

Because the trend of the application of customary settlements in the criminal justice system, is its use as excuse, justification or mitigation during the imposition of sentence after conviction for a crime and not as an element of guilt or the dismissal of an information and complaint charging a criminal offense, a motion for dismissal of a major criminal charge on the grounds that a customary settlement has been reached will be denied. Chuuk v. Sound, 8 FSM R. 577, 579-80 (Chk. S. Ct. Tr. 1998).

Because the Chuuk Constitution requires the courts to make decisions consistent with Chuukese customs and traditions, Chuukese custom and tradition may prevail over the provisions of a holographic will in deciding who may enter upon land for the purpose of making reasonable use thereof. In re Ori, 8 FSM R. 593, 595 (Chk. S. Ct. App. 1998).

When tidelands were never properly divided during the father's lifetime, the logical conclusion is that those tidelands remain lineage or family property according to Chuukese tradition and custom and cannot be transferred without the consent of all male adults of the lineage, subject only to the traditional rights of afokur as consented to. Lukas v. Stanley, 10 FSM R. 365, 366 (Chk. S. Ct. Tr. 2001).

Under Chuukese custom and tradition the oldest sister may have the authority in family and lineage matters to sign for younger family members, but the youngest sister does not have the authority, under custom and tradition, to sign for the older ones. Stephen v. Chuuk, 11 FSM R. 36, 44 (Chk. S. Ct. Tr. 2002).

An *afokur*'s rights to lineage land are permissive use rights only. Marcus v. Truk Trading Corp., 11 FSM R. 152, 159 (Chk. 2002).

The consent of all adult members of the lineage is needed to sell lineage land. Marcus v. Truk Trading Corp., 11 FSM R. 152, 159 (Chk. 2002).

It would seem that for a long-term land lease (especially one that could last two or three or more generations) the level of lineage members' consent needed should be equivalent to that needed for a sale. Marcus v. Truk Trading Corp., 11 FSM R. 152, 160 (Chk. 2002).

An entity, such as a corporation, which must act through agents or representatives, can, by its conduct, ratify an unauthorized agreement. A lineage or a clan is a similar entity in that it is recognized by courts in Chuuk as a personable entity – a entity capable of suing and being sued and of entering into contracts. This parallels and recognizes the clan's or lineage's position under custom and tradition in which the clan or lineage is an entity capable of owning, acquiring, and alienating land. Marcus v. Truk Trading Corp., 11 FSM R. 152, 160 (Chk. 2002).

A clan or lineage in some respects functions as a corporation – it is, or can be, composed of many members, but is considered a single legal entity, capable of owning land, suing and being sued, and performing other acts, and which must necessarily act through its representatives. In this respect a corporation and a clan or lineage are analogous. Marcus v. Truk Trading Corp., 11 FSM R. 152, 161 (Chk. 2002).

Generally, any ratification of an unauthorized agreement must be in its entirety because an entity cannot accept the benefits of an unauthorized act, but reject its burdens. Marcus v. Truk Trading Corp., 11 FSM R. 152, 161 (Chk. 2002).

When a lineage as a whole has accepted all of the benefits of a lease – all of the payments that the lessee was required to make – up to the present and even beyond, it cannot now reject the burden of the lessee exercising its options to renew. Marcus v. Truk Trading Corp., 11 FSM R. 152, 161 (Chk. 2002).

Distribution of benefits within a lineage is an internal lineage matter. Courts generally will not involve themselves in a lineage's internal affairs. Marcus v. Truk Trading Corp., 11 FSM R. 152, 161 (Chk. 2002).

Community censure is the sanction imposed on one who controls and manages the land of a group who does not fairly and according to custom concern himself with the rights of other members or another member of the group. That is not a sanction that a court can order or relief that a court could grant. Marcus v. Truk Trading Corp., 11 FSM R. 152, 161 (Chk. 2002).

The court is unaware of any tradition or custom within Chuukese society for a child, or even an adult, to carry the last name of his or her step-father or step-mother, and finds and concludes that no such tradition or custom exists. In re Suda, 11 FSM R. 564, 566 (Chk. S. Ct. Tr. 2003).

Acheche is traditionally a gift of land at the time of the birth of the first son so there could not have been any acheche of the land later because the transfer would have had to have taken place when the son was born. In re Lot No. 014-A-21, 11 FSM R. 582, 593 (Chk. S. Ct. Tr. 2003).

When the project control document did not say otherwise, the community halls contemplated by the Uman Social Project project control document are the customary and traditional community hall (an *wuut* or *uut*) found in Uman (and throughout the Southern Namoneas and Chuuk Lagoon) because this is the meaning of the term community hall (*wuut* or *uut*) as understood by the defendants, who are all from the Southern Namoneas and because is this is not only the only logical conclusion to draw under the circumstances, this result is mandated by the Judicial Guidance Clause, which requires all judicial decisions to be consistent with custom and tradition. FSM v. Este, 12 FSM R. 476, 481 (Chk. 2004).

It is generally recognized that in order to sell lineage land in Chuuk, lineage heads need the lineage members' consent. Nakamura v. Moen Municipality, 15 FSM R. 213, 218 (Chk. S. Ct. App. 2007).

A lineage is an entity similar to a corporation in that it is recognized by courts in Chuuk as a personable entity – a entity capable of suing and being sued and of entering into contracts. This parallels the lineage's position under Chuukese custom and tradition in which a lineage is an entity capable of owning, acquiring, and alienating land. Nakamura v. Moen Municipality, 15 FSM R. 213, 219 (Chk. S. Ct. App. 2007).

It is possible for an agreement not authorized by all lineage members to be ratified by the later conduct of those who did not authorize it. Nakamura v. Moen Municipality, 15 FSM R. 213, 219 (Chk. S. Ct. App. 2007).

Lineage members' consent or acquiesce to the sale of lineage land can be shown by affirmative assent, or an acquiescence, or by ratification of the act. Nakamura v. Moen Municipality, 15 FSM R. 213, 219 (Chk. S. Ct. App. 2007).

Under Mortlockese custom, a person would be considered related to his relative's stepson, but the added generation that results from his relative being another's step-grandmother – as opposed to his step-mother – cuts off the relationship under Mortlockese custom so that in actual fact a person is not considered related to the other. In such circumstances, a judge would not need to disqualify himself since he lacks a relationship to the other. Berman v. Rosario, 15 FSM R. 337, 339 n.1 (Pon. 2007).

A traditional gift of *nechop* is a Chuukese custom through which someone gives property to another in gratitude for care giving. Narruhn v. Aisek, 16 FSM R. 236, 240 (App. 2009).

When the testimony on *nechop* is sufficient to establish that it existed as a custom and that, when employed, it operated to disrupt the status quo of matrilineal descent, the trial court did not ignore the established custom of Chuukese matrilineal descent in accepting that a *nechop* took place since it was proven by a preponderance of the evidence that the *nechop* took place. Narruhn v. Aisek, 16 FSM R. 236, 242 (App. 2009).

Proof of the existence of a custom is a factual issue. The burden is therefore on the proponents to prove by a preponderance of the evidence that achemwir is a custom practiced in Chuuk, and they have the further burden of proving that the requirements of the custom were met. Peter v. Jessy, 17 FSM R. 163, 171 (Chk. S. Ct. App. 2010).

To prove an achemwir adoption, the consent of the adoptive lineage's members must be proven. Peter v. Jessy, 17 FSM R. 163, 171 (Chk. S. Ct. App. 2010).

Consent of lineage members, if not given contemporaneously, may, at least in some contexts, be shown by evidence of ratification through the lineage members' later conduct. Peter v. Jessy, 17 FSM R. 163, 171 (Chk. S. Ct. App. 2010).

When Epen Inong brought Yosko Epen to live among members of his lineage, but his lineage members did not treat her as a lineage member since she did not participate in lineage member meetings and decision-making and since she was referred to as Epen Inong's daughter and not as a "sister" as would be proper if she had been a lineage member through an achemwir adoption, there is no admitted evidence showing that the lineage members, by their subsequent conduct, consented to or ratified an achemwir adoption of Yosko Epen. Peter v. Jessy, 17 FSM R. 163, 171-72 (Chk. S. Ct. App. 2010).

When the proponents did not present any evidence or argument to support their contention that achemwir doesn't require lineage member consent or to otherwise impeach the testimony of their own expert to that effect and when they had ample opportunity, at the trial level, to raise any issues regarding achemwir's requirements and their own expert witness presented evidence that the trial court found credible, and which clearly articulated its requirements including the lineage member consent requirement, they failed to meet their burden of proof to show otherwise at trial. The appellate court will not, therefore, entertain a new theory regarding achemwir's requirements. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

Lineage rights descend through the female lineage members and that patrilineal descendants, as afokur, have only permissive use rights in lineage land. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

Once all the lineage members died, the intervener, as an afokur to the lineage ceased having even permissive rights to lineage lands because once the lineage was extinct, all lineage rights ceased. The lands were then validly acquired by another person and her descendants, not as lineage members, but as heirs. Peter v. Jessy, 17 FSM R. 163, 175-76 (Chk. S. Ct. App. 2010).

Under Chuukese custom, children are expected to and do in fact contribute to support of their parents. If they are not married and are employed they give larger amounts than when they have a family of their own, but the support in some amount will continue, in a normal relationship, as long as the parents live. Whether there is an obligation under the custom to support parents or other members of the family, largely depending on their need, does not affect the next of kin's entitlement to damages for pecuniary loss. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 211 (Chk. 2010).

If a decedent had been married, this would not eliminate parental support under custom, nor would it relieve the wrongdoer under the wrongful death statute. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 212 (Chk. 2010).

Since there is no indication that parental support has ceased to be the custom in Chuuk and since parents are undoubtedly "other next of kin" under the Chuuk wrongful death statute, parents of adult children, consistent with custom, are included within the single class of persons entitled to recover in a wrongful death action even when there are other members (surviving spouse and children) of the class present. But even when a plaintiff is within the class of persons who may benefit from a wrongful death action, that plaintiff still must prove pecuniary damages in order for a money judgment to be awarded, and, of course, the plaintiff must also prove the other elements of a wrongful death cause of action. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 212 (Chk. 2010).

Traditionally, when someone no longer had the right to reside on another's land, he would be allowed to dismantle the house he had built and take the materials to rebuild somewhere else because he owned the building materials. This is usually not feasible with modern houses. Killion v. Nero, 18 FSM R. 381, 385 n.3 (Chk. S. Ct. Tr. 2012).

Chuukese custom generally follows the rule that a person who makes improvements on property has full title to these improvements even though he does not hold title to the property on which they are made. Killion v. Nero, 18 FSM R. 381, 385 n.4 (Chk. S. Ct. Tr. 2012).

– Kosrae

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

Pursuant to the Kosrae State Code, the court cannot consider tradition unless satisfactory evidence of it is introduced. Kosrae Code 6.303. Seymour v. Kosrae, 3 FSM R. 537, 540 (Kos. S. Ct. Tr. 1988).

Because farming of short term crops, such as sugar cane, on someone else's land is not uncommon in Kosrae, the fruits of such farming are considered the personal property of the person planting them. Kosrae v. Tolenoa, 4 FSM R. 201, 204 (Kos. S. Ct. Tr. 1990).

A statutory cap on the amount and scope of recovery in a wrongful death action, lawfully enacted by the Kosrae legislature, does not interfere with traditional Kosraean or Micronesian compensation of a victim's family by the tortfeasor. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 361 (Kos. 1992).

Until proven contrary to Kosraean custom the Kosrae State Court will entertain actions for negligence as tort liability for negligence is consistent with Micronesian culture. Nena v. Kosrae, 5 FSM R. 417, 420 (Kos. S. Ct. Tr. 1990).

On Kosrae, *usru* is a gift of land by a parent to one's children, and *kewosr* is an outright gift of land from a man to a favored lover. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 36 (Kos. S. Ct. Tr. 1997).

Under Kosraen custom one does not openly declare that a *kewosr* has taken place, but simply acts, with a witness present, in a certain fashion. A *kewosr* is a secret way of giving land that only the man and woman involved know about. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 36 (Kos. S. Ct. Tr. 1997).

Although transfer of land by *kewosr* fell out of favor after the arrival of Christianity on Kosrae, *kewosr* did continue afterward. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 37 (Kos. S. Ct. Tr. 1997).

Under the Kosrae Code, a court cannot consider tradition unless satisfactory evidence of tradition is introduced. Nelson v. Kosrae, 8 FSM R. 397, 406 (App. 1998).

The Kosrae Constitution provides that the state government protect the state's traditions as the public interest may require. Anton v. Heirs of Shrew, 10 FSM R. 162, 165 (Kos. S. Ct. Tr. 2001).

The court is required to receive satisfactory evidence that custom or tradition applies to a case, before utilizing it. Kosrae v. Sigrah, 11 FSM R. 26, 30 (Kos. S. Ct. Tr. 2002).

Kosrae customary practice is to hold wedding ceremonies at a church or at the home of the bride or groom. Sigrah v. Noda, 14 FSM R. 295, 299 (Kos. S. Ct. Tr. 2006).

The burden of proving custom and tradition relies on the party asserting its effect. When both parties were specifically given the opportunity to offer such evidence, but neither party took that opportunity, the court correctly concluded that no Kosraean customary transfer or acquisition of land could be considered because no party offered evidence. Heirs of Taulung v. Heirs of Wakuk, 15 FSM R. 294, 298-99 (Kos. S. Ct. Tr. 2007).

Kosrae State Code § 6.303 prohibits the trial court's application of custom and tradition unless there is satisfactory evidence of the tradition or custom. Akinaga v. Heirs of Mike, 15 FSM R. 391, 398 (App. 2007).

When the appellees' general right to enter the land to tend to existing burial sites is established by the undisputed facts but the same cannot be said of the ten-foot buffer zone that was ordered to be maintained around the exiting burial sites since the trial court did not elaborate as to the exact operation of this "perimeter"; when the undisputed facts which establish the right of way do not support such a precisely defined area being designated; when the case relied upon by the trial court is factually distinguishable and does not alone justify the trial court's mandate of such a large buffer zone; and when the invocation of custom remains as the only basis for the trial court's order but the trial court was not provided supporting evidence of a custom or tradition involving such a specifically demarcated perimeter around burial sites, this single issue will be remanded to the trial court with instructions to strike the portion of its order that provides a 10-foot perimeter around the existing burial sites. The trial court may then receive supporting evidence of custom or tradition about the size of perimeters around graves and thereafter may enter an amended order based upon its findings. Akinaga v. Heirs of Mike, 15 FSM R. 391, 399 (App. 2007).

In resolving a land claim, it is irrelevant whether *kewosr* is a legally-recognized tradition with the force of law today when the *kewosr* land transfer at issue occurred about 1912. The relevant question would thus be whether *kewosr* was a tradition when the *kewosr* occurred. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 375 (Kos. S. Ct. Tr. 2009).

Since the Land Court's jurisdiction includes all matters concerning the title to land and any interests therein, that would necessarily include whether *kewosr* was a tradition affecting land tenure when the alleged transfer took place and whether a *kewosr* did in fact occur. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 375 (Kos. S. Ct. Tr. 2009).

– Pohnpei

The court must try to apply the Court Rules of Civil Procedure in a way that is consistent with local customary practice. Hadley v. Board of Trustees, 3 FSM R. 14, 16 (Pon. S. Ct. Tr. 1985).

Judicial decisions, including interpretations of rules of civil procedure, should be consistent with the Constitution and with the Pohnpeian concept of justice. Hadley v. Board of Trustees, 3 FSM R. 14, 16

(Pon. S. Ct. Tr. 1985).

The Pohnpeian custom of "Ke pwurohng omw mwur," according to which one reaps the fruit of one's misdeed, requires the lessor to bear the consequences of his failure to repossess the rented vehicle from the lessee. Phillip v. Aldis, 3 FSM R. 33, 38 (Pon. S. Ct. Tr. 1987).

Customary law takes precedence over the common law, according to Pon. Const. art. 5, § 1; 1 TTC 103; 1 F.S.M.C. 203. Phillip v. Aldis, 3 FSM R. 33, 38 (Pon. S. Ct. Tr. 1987).

The Pohnpei Supreme Court may look to Pohnpeian customs and concepts of justice when there are no statutes governing the subject matter, but it may also draw from common law concepts when they are appropriate. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 64 (Pon. S. Ct. Tr. 1986).

The common Pohnpeian custom of assisting a person in need should not be dispensed with in order to allow the defense of contributory negligence or assumption of risk to be raised. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 67 (Pon. S. Ct. Tr. 1986).

According to the Pohnpeian view of civil wrongs, if one damages another's property, he must repair or replace it; if one injures another person, he must apologize and provide assistance to the injured person and his family; if one kills another person, he must provide the assistance that the victim would have provided and may have to offer another person to take the place of victim in his family. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 70-71 (Pon. S. Ct. Tr. 1986).

The Pohnpei Supreme Court declines to adopt the "collateral source" rule, according to which alternative sources of income available to a victim are not allowed to be deducted from the amount the negligent party owes, because it does not want to discourage customary forms of family restitution. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 74 (Pon. S. Ct. Tr. 1986).

Under Pohnpeian state law after confirmation of a customary separation or divorce under 39 TTC 5, the court may order custody and child support under 39 TTC 103. Pernet v. Aflague, 4 FSM R. 222, 225 (Pon. 1990).

Although under historical Pohnpeian customary law only the husband had rights over the children of the marriage, now both parents have rights and responsibilities in connection with a marriage and the court should take this into consideration in determining child custody rights and support payment obligations in cases of customary divorce. Pernet v. Aflague, 4 FSM R. 222, 225 (Pon. 1990).

The doctrine of comparative negligence is more consistent with life in Pohnpei in that the doctrine recognizes that injuries and damages are often caused through a combination of errors and misjudgments by more than one person. Nothing in Pohnpei custom absolves a party who caused injury to another from the customary obligations of apology and reconciliation because the injured party's negligence contributed to the injury. Alfons v. Edwin, 5 FSM R. 238, 242 (Pon. 1991).

The Pohnpei court system has to be extra cautious applying the foreignly developed concepts of criminal justice into its own, so that in adopting or applying such concepts it does so without doing injustice to Pohnpeian culture and traditional values. Pohnpei v. Weilbacher, 5 FSM R. 431, 449 (Pon. S. Ct. Tr. 1992).

The Pohnpeian customary practice of quickly resolving conflict resulting from the commission of an act is closely related to, if not the counterpart of the Western concept of a speedy trial. Pohnpei v. Weilbacher, 5 FSM R. 431, 450 (Pon. S. Ct. Tr. 1992).

Should Pohnpeian custom and tradition not be determinative, the FSM Supreme Court will look to its earlier holding and decisions of United States courts for guidance as to relevant common law tort principles,

and will evaluate the persuasiveness of the reasoning in these decisions against the background of pertinent aspects of Micronesian society and culture in Pohnpei. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 248, 253 (Pon. 1998).

Although under Pohnpeian custom it is inappropriate for a parent, or an individual who stands in the place of a parent, to see his daughter come home late at night with a boyfriend, it is not a corollary that that person is justified under custom in inflicting a battery on the boyfriend, or damaging car he is driving. Elymore v. Walter, 9 FSM R. 450, 456 (Pon. 2000).

When there was no evidence to suggest that a parent's customary privilege to discipline ran beyond the daughter to encompass her boyfriend as well, when there was no evidence to suggest that when the boyfriend dropped the daughter off he was threatening or in any other way posing a danger of physical harm to her such that the parent was entitled to inflict a battery upon the boyfriend in order to defend the daughter as he may have been obligated to do under custom, and when there was no evidence that under custom a parent could attack the car driven by the daughter's boyfriend with the baseball bat as a way of demonstrating his displeasure with the boyfriend for his role in keeping her out late, and in dropping her off under circumstances where he would see them together, Pohnpeian custom does not constitute a defense to either the battery or property damage claims. Elymore v. Walter, 9 FSM R. 450, 456 (Pon. 2000).

The people of Pohnpei's traditional and customary rights to freely navigate the reef, engage in subsistence fishing in that area, and control the use of and materials in that marine environment is recognized in 67 TTC 2(1)(e), in the FSM Constitution, and the Pohnpei Constitution. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 66 (Pon. 2001).

The construction of a multistory building using imported technology is not imbued with Pohnpeian custom and tradition so as to lend itself to an analysis in those terms. Amayo v. MJ Co., 10 FSM R. 371, 384 (Pon. 2001).

Customary law takes precedence over the common law. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 272 n.3 (Pon. 2015).

Customary marriage is based on a flexible standard and is not established by a single test or a defined set of parameters because the solemnization of a customary marriage can take many forms. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 273 (Pon. 2015).

In a civil case, the party advancing Pohnpeian customary practice or law must establish, by a preponderance of the evidence, the relevant custom and tradition. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 640 (Pon. 2016).

The court recognizes the customary and traditional rights of municipalities, clans, families, and individuals to control the use of, or material in, marine areas below the ordinary high watermark and otherwise engage in the harvesting of fish and other marine resources from reef areas, but any traditional and customary right to control the use of, or material in, marine areas below the ordinary high watermark is subject to, and limited by, the inherent rights of the Pohnpei Public Lands Trust as the owner of such marine areas. Accordingly, the Mwoalen Wahu does not have standing on the basis that there exists a customary law that gives the traditional leaders the right to control the use of marine areas in their respective municipalities. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 641-42 & n.1 (Pon. 2016).

The Pohnpei Constitution provides protection for custom and tradition, and mandates that the Pohnpei government shall respect and protect the customs and traditions of Pohnpei. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

To the extent a claimed customary right is still in effect, the Mwoalen Wahu members have a legal right

under the Pohnpei Constitution to institute legal proceedings in order to protect their constitutionally protected interests. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

In order to be protected by the Pohnpei Constitution, the customary law must still exist. Custom is a practice that by its common adoption and long, unvarying habit has come to have the force of law. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

The traditional and customary right of the Nahnmwarki of each established municipality of Pohnpei to receive offerings from their respective subjects is firmly established in history and still widely known and peacefully accepted by the citizens of Pohnpei, thereby making it a judicially noticeable fact. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 643 (Pon. 2016).

Even assuming *arguendo* that wide recognition and practice of the custom has disappeared so as to preclude judicial notice of its existence, testimony given by the Iso Nahnken of Nett provides a sufficient basis to conclude that the custom is still practiced today when he testified that the custom is still practiced and the defendants failed to sufficiently rebut that testimony and a conclusory argument to the contrary was not evidence. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 643 (Pon. 2016).

The custom that Mwoalen Wahu members receive from their constituents various marine life that inhabit Pohnpei waters, allegedly threatened by the proposed harvesting scheme, remains an active customary law. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 643 (Pon. 2016).

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– Yap

Since under Yapese custom a daughter in her adult years may be expected to provide certain services for her mother, the loss of such customary services should be considered in calculating the mother's pecuniary injury resulting from her daughter's death. Leeruw v. FSM, 4 FSM R. 350, 365 (Yap 1990).

Given that a 19-year old daughter is considered a child under Yapese custom, that the decedent was a 19-year old daughter who up to the time of her death continued to live with her parents in Yap and to perform those household chores expected under custom of young female persons within families in Yap, and that the parents were accompanying their daughter en route to obtain medical services when she died, the daughter was a child within the meaning of 6 F.S.M.C. 503. Leeruw v. FSM, 4 FSM R. 350, 366 (Yap 1990).

Under Yap traditional rights and ownership of natural resources and marine areas inside the Yap fringing reef – the rights to use and exploit, to the exclusion of all others, the marine resources of particular areas of the submerged lands inside the fringing reef around Yap – stem from a concept called a *tabinaw*. A *tabinaw* entails rights, duties and obligations for its members, and includes families and households. But a *tabinaw* is more than a concept. A *tabinaw* includes an estate in identifiable land and specific areas within the Yap fringing reef within which a *tabinaw* member can exploit the marine resources. A *tabinaw* member can only exploit marine resources in the marine area that appertains to his *tabinaw*. Each village includes a number of *tabinaw*. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 415 (Yap 2006).

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The court can take judicial notice that the social configuration of the outer islands in the State of Yap differs significantly from the Yap main island (even the vernacular language is significantly different) since it is a fact not subject to reasonable dispute in that it is generally known within the trial court's territorial jurisdiction and since the court's decisions are required to be consistent with the social and geographic configuration of Micronesia. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 267 (Yap 2012).

Tabinaw are a salient social feature of the main island of Yap, but may not be in Yap's outer islands or on Eauripik. Thus, the failure to mention *tabinaw* membership in the plaintiffs' proposed class definition may not make the class designation indefinite. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 267 (Yap 2012).

CUSTOMS

All aircraft entering FSM ports of entry are subject to immigration inspection, customs inspections, agricultural inspections and quarantines, and other administrative inspections authorized by law. In Chuuk, the Chuuk International Airport is the only port of entry for aircraft. FSM v. Joseph, 9 FSM R. 66, 70 (Chk. 1999).

Customs officers have the right to examine all goods subject to customs control, and it is unlawful to import into the FSM any goods whose use, possession or import is prohibited or contrary to restrictions imposed by the FSM or the state into which the goods are imported. FSM v. Joseph, 9 FSM R. 66, 70 (Chk. 1999).

The Customs Act of 1996 gives the FSM the authority to investigate and perform post-audits of declared CIF values after the release of the goods. Ruben v. FSM, 15 FSM R. 508, 514 (Pon. 2008).

An importer has the responsibility of fully and accurately declaring the value of all dutiable goods. The amount of penalties for understating the value of the imported goods depends on who discovers the understatement and the timing of the discovery in relation to the release of the goods. If the FSM discovers the understatement before the release of the goods, a 100% penalty applies. A 100% penalty also applies if the importer or owner discovers and reports the understatement within 10 days of the release of the goods. A 200% penalty applies in all other cases of understatement. Ruben v. FSM, 15 FSM R. 508, 514 (Pon. 2008).

While the statute is not explicit, instances where a 200% penalty will apply include when the importer or owner discovers and reports the understatement more than 10 days after the release of the goods and when the FSM discovers the understatement anytime after the release of the goods. Ruben v. FSM, 15 FSM R. 508, 514 (Pon. 2008).

The FSM is within its statutory authority to conduct a post-audit investigation after the goods have been released. Ruben v. FSM, 15 FSM R. 508, 514 (Pon. 2008).

Appraisement is just one of the valuation methods set forth in Section 223; there are several other preferred methods for arriving at an equivalent CIF price when the CIF price cannot be reasonably determined. For instance, an equivalent CIF price can be established through the value of identical goods at the CIF location. Only when all other preferable methods fail to render an equivalent CIF price does the statute permit the use of appraisement to arrive at the CIF price. Ruben v. FSM, 15 FSM R. 508, 516 (Pon. 2008).

Civil penalties and interest for understating the amount of duty due on imported goods cannot be avoided through lack of knowledge, however innocent the importer's lack of knowledge may be. Laxmi Enterprises v. FSM Dep't of Fin. & Admin., 21 FSM R. 601, 603 (Chk. 2018).

Unlike most goods, the customs duty for cigarettes is based on the number of cigarettes imported, not on the imported cigarettes' monetary value. Laxmi Enterprises v. FSM Dep't of Fin. & Admin., 21 FSM R. 601, 603 n.1 (Chk. 2018).

If an importer, correctly reporting the types, quantities, and values of the dutiable goods, were to prove that it was affirmatively misled by customs officials to understate the amount of duty due, it may have an equitable estoppel claim against the government. Laxmi Enterprises v. FSM Dep't of Fin. & Admin., 21 FSM R. 601, 603 (Chk. 2018).

A Customs officer has the right to examine all goods subject to Customs control, and among the goods subject to Customs control are all goods for export, from the time such goods are brought to any port, airport, or other place for export until their exportation to any country outside of the FSM. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 461 (Pon. 2020).

A facility that is not itself a port or airport, but is in close proximity to both the port and airport, can be considered an "other place for export" to the extent that it is a container yard – it stores packed containers ready for shipment abroad. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 461 (Pon. 2020).

A CY-CY container is a container in which all goods packed in it are for the one consignee and the container is consigned from one container yard to another container yard and will not normally be unpacked at the wharf. CY-CY containers are typically subjected to customs inspection, not on the wharf, but at a container yard. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 461 (Pon. 2020).

That an examination was not done by a customs officer, but by the national police, a different FSM law enforcement agency, but one that is tasked with the general enforcement of all FSM national law, instead of the narrow specialized area that customs officers are restricted to, should not invalidate the examination when it was one that was permissible for Customs officers to do. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 461 (Pon. 2020).

Ports, airports, and other places for export such as a container yard are functional equivalents of a border. Border searches and searches at the functional equivalent of a border are an exception to the warrant requirement of section 5 of the FSM Declaration of Rights. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 461 (Pon. 2020).

The border search exception to the constitutional search warrant requirement applies equally to persons and goods leaving the country as it does to persons and goods entering the country. A border search, or a search at the functional equivalent of a border, of outgoing passengers or goods requires neither a warrant nor probable cause. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 461 (Pon. 2020).

DEBTORS' AND CREDITORS' RIGHTS

With respect to liens, first in time is not always first in right. Bank of Guam v. Island Hardware, Inc. (II), 3 FSM R. 105, 108 (Pon. 1987).

A prior statutory lien will not necessarily be given priority over all liens which arise subsequently. Rather, the effect to be given to a statutory lien must be determined through interpretation of the statute which provides for the lien. Bank of Guam v. Island Hardware, Inc. (II), 3 FSM R. 105, 108 (Pon. 1987).

In an insolvency proceeding, a broad range of issues must be decided for which there is little or no guidance by way of statute or precedent, and the court is acting as an equitable court and must apply equitable principles to the circumstances of each case to reach a fair result. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 296 (Pon. 1988).

In absence of statute pertaining to rights of employees of insolvent companies to receive preference against other creditors of employer, an appropriate source of guidance is the common law as it existed in absence of statute. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 300 (Pon. 1988).

Claims for wages asserted by low level employees and laborers are entitled to preference over all other claims, except wage and salary tax lien rights of the national government, which are given priority over all other claims and liens by 54 F.S.M.C. 135(2). In re Mid-Pacific Constr. Co., 3 FSM R. 292, 301 (Pon. 1988).

Attachment and seizure create statutory and possessory lien rights which will be unaffected by subsequent writs of execution, but will be subject to national government's wage and salary tax lien claims under 54 F.S.M.C. 135(2), to wage claims of low level employees and laborers, and to pre-existing national government lien rights under 54 F.S.M.C. 153. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 303 (Pon. 1988).

Without more, continuing guaranties given to a creditor do not establish any lien rights for the creditor against property of the debtor whose obligations are covered by the guaranty. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 304 (Pon. 1988).

An execution creditor holds a more powerful position than a mere judgment creditor. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 306 (Pon. 1988).

Where it becomes apparent that claims of creditors will outstrip the value of debtor's assets, the approach is to give all creditors an opportunity to submit claims, and distribute any available proceeds on an equitable basis. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 306 (Pon. 1988).

An employee's preference for wage claims is determined by reference to the equities among the parties rather than exclusively by specific dates upon which particular liens were established. In re Island Hardware, 3 FSM R. 332, 341 (Pon. 1988).

Unless a statute or common law principle expressly says otherwise, disclosure is a prerequisite for making a lien effective against other creditors. In re Island Hardware, 3 FSM R. 332, 342 (Pon. 1988).

Where purchasers at a judicial sale are not served by summons and complaint pursuant to FSM Civil Rule 3 but receive notice of a motion seeking confirmation of the sale and made by a creditor of the party whose property was sold, and where the purchasers do not object to the motion, confirmation of the sale is effective and binding on the purchasers and is not violative of their rights of due process. Sets v. Island Hardware, 3 FSM R. 365, 368 (Pon. 1988).

The fact that stock issued by a corporation and formerly owned by a judgment debtor has been sold to

a third party at a judicial sale of the debtor's assets does not make the corporation a party to the litigation concerning distribution of the assets of the insolvent debtor for purposes of determining whether the shares were validly issued and outstanding shares of the corporation. Sets v. Island Hardware, 3 FSM R. 365, 368 (Pon. 1988).

A lawsuit to enforce a mortgage is an attempt to enforce a type of lien against a delinquent debtor. Such a case bears a relationship to the power to regulate "bankruptcy and insolvency," which the Constitution, in article IX, section 2(g), places in the national Congress. Bank of Guam v. Semes, 3 FSM R. 370, 381 (Pon. 1988).

Under circumstances where there is no bankruptcy legislation or comprehensive system for establishing and recognizing liens in the FSM, the court acts essentially as a court of equity when deciding insolvency cases. In re Pacific Islands Distrib. Co., 3 FSM R. 575, 581 (Pon. 1988).

Creditors with judgments more than 10 days old are entitled to writs of execution upon request. In re Pacific Islands Distrib. Co., 3 FSM R. 575, 582 (Pon. 1988).

In an insolvency proceeding, holders of writs of execution should be paid on the basis of a first-in-time, first-in-right rule according to the dates of the individual parties' writs, subject to the rights of the creditors entitled to superior treatment by virtue of statutory lien priority or extraordinary equitable relief. In re Pacific Islands Distrib. Co., 3 FSM R. 575, 582 (Pon. 1988).

In an insolvency proceeding, claimants without liens and not entitled to special equitable treatment, who comply with a court order or with the instructions of a court appointed receiver, trustee or other custodian to substantiate their claims against the debtor's estate after the proceedings have been consolidated, shall receive payment on a pro rata basis with other creditors in the same class. In re Pacific Islands Distrib. Co., 3 FSM R. 575, 583 (Pon. 1988).

In an insolvency proceeding, judgment creditors with judgments issued on or before the consolidation of the case but without writs of execution as of that time are prioritized on a pro rata basis, after satisfaction of claims of lienholders, those with special equitable claims and holders of writs of execution. In re Pacific Distrib. Co., 3 FSM R. 575, 583 (Pon. 1988).

The final class of creditors entitled to distribution in an insolvency proceeding shall consist of all the debtor's remaining creditors who either reduced their claims to judgment after the consolidation date or who substantiate their claims according to the receiver's instructions. In re Pacific Islands Distrib. Co., 3 FSM R. 575, 585 (Pon. 1988).

Where the rights of a corporation have been assigned to its creditors in previous litigation, the creditors' rights as against the shareholders or subscribers of stock in the corporation are derived from the rights of the corporation itself, and the creditors will be able to enforce the shareholders' liability only to the extent that the corporation could have enforced it before the assignment. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM R. 157, 159 (Pon. 1989).

In an action to enforce an unpaid stock subscription, the statute of limitations begins to run against the creditors when it runs against the corporation. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM R. 157, 159 (Pon. 1989).

Stock subscriptions which are silent as to the date and terms of payment do not become due until a call has been issued by the corporation or, if the corporation becomes insolvent without ever issuing such a call, then the cause of action to collect unpaid subscriptions accrues when the creditors, by authority of the court, first demand payment. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM R. 157, 161 (Pon. 1989).

It is necessary for each creditor to establish that attorney's fees to be charged to a debtor pursuant to

an agreement in a promissory note are reasonable in relation to the amount of the debt as well as to the services rendered. Bank of Hawaii v. Jack, 4 FSM R. 216, 220 (Pon. 1990).

The statutory right of a judgment creditor to obtain immediate issuance of a writ of execution implies as well a legislative intent that holders of writs be paid on the basis of a first-in-right rule according to the dates of the individual parties' writs. In re Island Hardware, Inc., 5 FSM R. 170, 173 (App. 1991).

The trial court did not abuse its discretion when it ruled that judgment creditor who had accepted assignment of debtor's accounts receivable should not otherwise participate in distribution of assets of insolvent debtor. In re Island Hardware, Inc., 5 FSM R. 170, 174 (App. 1991).

Where a debtor/account receivable to an insolvent corporation is liable to the corporation's creditors the debtor has no standing to vindicate the rights of any of the creditors against other creditors. Creditors of Mid-Pac Constr. Co. v. Senda, 6 FSM R. 140, 142 (Pon. 1993).

Where a debtor/account receivable to an insolvent corporation is liable to the corporation's creditors the debtor cannot challenge the arrangement for attorney's fees made between the creditors, counsel, and the court for collection of the insolvent corporation's accounts receivable. Creditors of Mid-Pac Constr. Co. v. Senda, 6 FSM R. 140, 142 (Pon. 1993).

In collection cases creditors must establish that the attorney's fees to be charged are reasonable in relation to the amount of the debt as well as to the services rendered. Generally, plaintiff's attorney's fees in a debt collection case, barring bad faith on the defendant's part, will be limited to a reasonable amount not to exceed fifteen percent of the outstanding principal and interest. J.C. Tenorio Enterprises, Inc. v. Sado, 6 FSM R. 430, 432 (Pon. 1994).

Among execution creditors the claims of those whose writs are dated earliest have priority to an insolvent's assets over those whose writs are dated later. Individual writ-holders are to be paid on the basis of first-in-time, first-in-right rule according to the dates of their writs. Western Sales Trading Co. v. Ponape Federation of Coop. Ass'ns, 6 FSM R. 592, 593 (Pon. 1994).

An intervenor must make a three part showing to qualify for intervention as a matter of right: an interest, impairment of that interest, and inadequacy of representation by existing parties. A tax lien holder and a judgment creditor with an unsatisfied writ of execution may intervene as a matter of right where an assignee is compromising a debtor's accounts receivable. California Pac. Assocs. v. Alexander, 7 FSM R. 198, 200 (Pon. 1995).

Where a creditor accepts a premium payment for insurance that he has agreed to procure, where he makes a diligent effort to fulfill his agreement to do so, promptly notifies the debtor of his inability to procure insurance, he would not be held liable to the debtor, as he would have fulfilled his contract to attempt to procure insurance which is not a contract of insurance. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 250 (Chk. 1995).

Both contract and tort theories can be pursued by a debtor who alleges that a creditor has failed to procure credit insurance. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 251 (Chk. 1995).

A creditor who undertakes to secure credit insurance for a debtor is liable to the debtor for negligent performance of that duty or of duty to notify debtor if insurance not obtained. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 251 (Chk. 1995).

Failure of a creditor to notify the debtor of its failure to obtain insurance is negligence. As a consequence the creditor is liable to the debtor for the entire amount of the debtors' loss, otherwise the debtor is only entitled to return of full amount of insurance premiums paid. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 251 (Chk. 1995).

Judgment creditors will be paid in their priority order except for those who release their claims in writing. Payment of a released judgment may be returned to the judgment debtor. Mid-Pacific Constr. Co. v. Senda, 7 FSM R. 371, 373-75 (Pon. 1996).

Appointment of a receiver is not appropriate when what little evidence that has been presented on the financial strength of the defendant company is long out of date, there is no reliable measure of the value of defendant's current assets and liabilities, no finding of insolvency, and plaintiffs have not demonstrated that the available legal remedy – the reduction of their claims to judgment, followed by a demand for payment, will be insufficient to provide the relief to which they may later prove themselves entitled. Lavides v. Weilbacher, 7 FSM R. 400, 402-03 (Pon. 1996).

Generally, a person who seeks to satisfy the court that his failure to obey an order or decree was due entirely to his inability to render obedience, without fault on his part, must prove such inability. The FSM Supreme Court places the burden on the movant to show that the debtor has the ability to comply. Once this burden has been met and the debtor has been held in contempt, it is then the debtor's burden to show that he no longer has the ability to comply through no fault of his own despite his exercise of due diligence. Hadley v. Bank of Hawaii, 7 FSM R. 449, 452-53 (App. 1996).

A cooperative may be dissolved administratively by the FSM Registrar of Corporations and trustees appointed to wind up the cooperative's affairs. In re Kolonia Consumers Coop. Ass'n, 9 FSM R. 297, 300 (Pon. 2000).

All violations of the FSM Regulations under which the FSM Registrar of Corporations may appoint trustees in dissolution for winding up an association's affairs are enjoinable. In re Kolonia Consumers Coop. Ass'n, 9 FSM R. 297, 300 (Pon. 2000).

When a judgment-debtor has unilaterally increased his indebtedness to non-judgment creditors while not increasing his payments to his judgment-creditor, it is the judgment-debtor who should bear the burden of this improvidence, and not the judgment-creditor. The court will therefore order the allotment amounts for the new voluntary debts to be allotted to the judgment-creditor's debt instead. Bank of Guam v. Tuuth, 9 FSM R. 467, 469-70 (Yap 2000).

As between a judgment creditor and a creditor who has not instituted legal action, the judgment creditor should enjoy a priority. Bank of Guam v. Tuuth, 9 FSM R. 467, 470 (Yap 2000).

The national government is not subject to writ of garnishment or other judicial process to apply funds or other assets it owes to a state to satisfy the state's obligation to a third person. FSM v. Louis, 9 FSM R. 474, 479 (App. 2000).

The only purpose of statutes authorizing orders in aid of judgment is to force the payment of a judgment and to provide means to collect a money judgment, which is the same as proceedings for attachment, garnishment or execution. Kama v. Chuuk, 9 FSM R. 496, 498 (Chk. S. Ct. Tr. 1999).

Historically, orders in aid of judgment and orders in aid of execution serve the same purpose and the terms are used interchangeably. Their purpose is to provide a means of discovery to inquire into the assets and ability of a judgment debtor to pay a judgment. Kama v. Chuuk, 9 FSM R. 496, 498 (Chk. S. Ct. Tr. 1999).

When Chuuk has ultimate access to money on a monthly basis that greatly exceeds the amount of the civil rights judgment, Chuuk must pay the judgment. Davis v. Kutta, 9 FSM R. 565, 568 (Chk. 2000).

A court shall determine the fastest manner in which the debtor can reasonably pay a judgment. Davis v. Kutta, 9 FSM R. 565, 568 (Chk. 2000).

When a judgment was entered over four years ago, and the bulk of it remains outstanding and the debtor has the means to pay, the judgment should be paid forthwith. Davis v. Kutta, 9 FSM R. 565, 568 (Chk. 2000).

When loan collateral is in the lender's possession and the borrower has made a reasonable request that the lender liquidate the collateral to preserve its value, the lender should do so; but there is no duty in law requiring the lender to take possession of the collateral and foreclose on property at the borrowers' request when that property is not in the lender's possession, unless there is a provision in the mortgage requiring it. FSM Dev. Bank v. Gouland, 9 FSM R. 605, 607 (Chk. 2000).

A debtor who knew of an order, since he stipulated to it, and who had some ability to pay, as evidenced by the payments that he did make, cannot be found in contempt for failing to meet the payments under the stipulated order when there was insufficient evidence presented to establish any income sufficient to confer on the debtor the ability to pay under the order because having some ability to pay is different from having the ability to make the payments specified in the order. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 102 (Kos. 2001).

An attorney's fee must be reasonable, and the court must make such a finding. Except in unusual circumstances, an attorney's fee in debt collection cases will be limited to a reasonable amount not to exceed 15% of the amount due on the loan at the time of default. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103 (Kos. 2001).

The rationale for limiting attorney's fees in collection cases, whether the attorney's fees result from a loan agreement or a stipulated judgment, to a reasonable percentage of the amount collected is so that a debtor is not ultimately faced with an obligation far in excess of that originally anticipated, and to provide certainty to debtors and creditors alike. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103 (Kos. 2001).

Payments totaling the principal amount of a judgment have been paid do not fully satisfy the judgment when the judgment expressly provides for 9% interest and for attorney's fees incurred in enforcing the judgment. Even if it did not so state, the judgment creditor would be entitled to statutory interest of 9% under 6 F.S.M.C. 1401. Until such time as all interest and a reasonable attorney's fee is paid, the judgment remains unsatisfied. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103 (Kos. 2001).

While the fact that as part of an assignment another agreed to assume all of a debtor's liabilities under a stipulated judgment may provide the debtor with recourse against the other, it does not affect the debtor's obligation to the creditor under the judgment and payment order. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103 (Kos. 2001).

When a debtor has engaged in the unreasonable conduct that he has no further liability on the judgment, it is equitable to award an attorney's fee of 30% of the remaining amount due on the loan for work done to collect on the judgment, rather than the 15% allowed in Bank of Hawaii v. Jack. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103 (Kos. 2001).

When a debtor's unreasonable conduct occurred in opposing the collection of the remainder of a judgment after the bulk of it had been paid and the creditor is entitled to reasonable attorney's fees, it is equitable to award the creditor reasonable attorney's fees not to exceed 15% for work done in collecting the bulk of the judgment, and reasonable attorney's fees not to exceed 30% of the judgment's remainder, rather than attorney's fees not exceeding 15% of the total judgment. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103-04 (Kos. 2001).

Criminal contempt is not a specified remedy in 6 F.S.M.C. 1412, but is an available remedy under the general FSM contempt statute, 4 F.S.M.C. 119, under which the court may punish any intentional

disobedience to a lawful court order. Davis v. Kutta, 10 FSM R. 125, 127 (Chk. 2001).

Generally, pre-judgment interest is only included as an element of damages as a matter of right when a debtor knows precisely what he is to pay and when he is to pay it. This occurs when a party has been deprived of funds to which he was entitled by virtue of the contract, and the defaulting party knew the exact amount and terms of the debt. In those types of cases, the goal of compensation requires that the complaining party be compensated for the loss of use of those funds. This compensation is made in the form of interest. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 196 (Kos. S. Ct. Tr. 2001).

Payments should be applied first to interest, then principal. Davis v. Kutta, 10 FSM R. 224, 226 (Chk. 2001).

An agreement between two defendants who are jointly liable on the note, whereby one of them would assume full responsibility on the note (and thereby "releasing" the other from responsibility on the note), is not binding on the plaintiff, especially when the note's language clearly states that in the case of joint obligors, one of the obligors can only be released from liability via a signed writing, signed by an official of the plaintiff bank. Bank of the FSM v. Hebel, 10 FSM R. 279, 285 (Pon. 2001).

An agreement between two defendants, jointly responsible on a loan, as to who will be responsible to pay back the loan is not binding on the creditor unless the creditor clearly assents to the agreement. Bank of the FSM v. Hebel, 10 FSM R. 279, 285 (Pon. 2001).

When the parties' written agreement requires that a writing signed by a bank officer would be necessary to release one of the obligors from responsibility on the note, the presence of a bank employee at the defendants' divorce proceeding (regardless of whether that employee were an officer or agent), and his failure to object to the defendants' settlement agreement, without more, would not release one of the defendants from liability to the bank on the note. Bank of the FSM v. Hebel, 10 FSM R. 279, 285 (Pon. 2001).

When a divorced couple is jointly responsible on a promissory note, no agreement they could make between them could possibly prevent the creditor from pursuing its claims against either or both of them, and since the issue of whether one of the defendants could have relieved himself or herself from responsibility to the creditor could not have been litigated in the divorce proceeding, the creditor cannot be precluded from litigating that issue. Bank of the FSM v. Hebel, 10 FSM R. 279, 286 (Pon. 2001).

A divorcing couple is free to enter into whatever agreement they choose as to who between the two of them will be responsible to repay a bank loan. However, such an agreement can have no effect on bank's right to seek repayment of the loan from either or both of them. Bank of the FSM v. Hebel, 10 FSM R. 279, 286 (Pon. 2001).

A promissory note is a term of art. There is a division of authority as to whether a document containing no express promise to pay constitutes a promissory note, but a writing that does not include such promise-to-pay language, but which is signed by the party to be charged is enforceable on its face as an acknowledgment of a debt. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 475, 477 (Pon. 2001).

The general rule is that payments are applied to interest first, and then to principal. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 475, 477 (Pon. 2001).

Unpaid interest and principal, consolidated into a new principal sum for purposes of a new loan is not a violation of a statute that prohibits interest compounding, since interest compounding results where interest is automatically compounded, and not where interest has become due, has not been paid, and becomes the subject of a new loan agreement. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 475, 478 (Pon. 2001).

Even assuming that the seller historically did not charge interest on its account with the buyer, nothing precludes the parties to a commercial transaction from coming to a new agreement regarding installment payments on the outstanding indebtedness that also included an interest component calculated over the prior 26 months period, so long as the interest rate charged did not contravene FSM public policy as set out in 34 F.S.M.C. 204. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 502, 504 (Pon. 2002).

When an agreement provides for 18% interest per annum on the principal remaining after the debtor's last payment, no usury issue arises, and when the interest charged cannot be said to be arbitrary and capricious on any other basis, the interest portion of the agreement is binding. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 502, 504 (Pon. 2002).

Previous insolvency cases involved juridical persons, either corporations or cooperatives, which after they were declared insolvent and the creditors paid to the extent they could be, were dissolved. Once a corporation's or a cooperative's assets are all paid out and the corporation or cooperative is dissolved, unpaid creditors are generally without further recourse to collect any unpaid sums. In re Engichy, 11 FSM R. 520, 525 (Chk. 2003).

While the court may determine (and has in the absence of statute) the priority of its judgments as to a debtor, the court is reluctant to assume that it may order the discharge of a judgment against a debtor when, by statute, the judgment is to remain valid and enforceable for twenty years. In re Engichy, 11 FSM R. 520, 525 (Chk. 2003).

The Constitution assigns Congress the authority to enact bankruptcy laws and thus to determine when a judgment against an insolvent person should be discharged without either full payment or the parties' agreement. In re Engichy, 11 FSM R. 520, 525-26 (Chk. 2003).

Even if the court can declare natural persons insolvent in the manner it can and has declared corporations and cooperatives insolvent, the court does not have the authority to "discharge" a natural person judgment-debtor's debts short of full satisfaction of the judgment. In re Engichy, 11 FSM R. 520, 526 (Chk. 2003).

There is no impediment to appointing a receiver in the absence of an insolvency declaration, especially when it is the judgment-debtors who ask that one be appointed. In re Engichy, 11 FSM R. 520, 526 (Chk. 2003).

In order to purge any possible contempt buy the judgment-debtors, the court may order the receiver to pay out of funds on deposit with the court the arrearages accrued on orders in aid of judgment before the judgments were consolidated. In re Engichy, 11 FSM R. 520, 526 (Chk. 2003).

Among judgment creditors, those with a writ of execution have priority over those who do not. In re Engichy, 11 FSM R. 520, 527 (Chk. 2003).

One reason writ-holders are granted a higher priority is that the judgment creditor who has taken the effort and exhibited the diligence to move to the status of execution creditor deserves to be treated differently on that basis. In re Engichy, 11 FSM R. 520, 527 (Chk. 2003).

A judgment-creditor who has obtained an order in aid of judgment should be accorded the same status as a judgment creditor who has obtained a writ of execution because both methods of enforcing a money judgment are provided for by statute and both methods show that the judgment creditor has taken the effort and exhibited diligence greater than that of a mere judgment-creditor. In re Engichy, 11 FSM R. 520, 528 (Chk. 2003).

A judgment-creditor's statutory right to obtain immediate issuance of a writ of execution implies as well a legislative intent that holders of writs be paid on the basis of a first-in-time, first-in-right rule according to

the dates of each party's writ. In re Engichy, 11 FSM R. 520, 528 (Chk. 2003).

Judgment-creditors with execution creditor status are to be paid on the basis of a first-in-time, first-in-right rule according to the dates of the individual parties' writs. The pro rata payment basis is the rule for unsecured judgment-creditors who do not hold execution creditor status or a statutory lien priority. Because holders of orders in aid of judgment are accorded the status of execution creditors, those judgment-creditors will be paid in order according to the date of either their first writ of execution or their first order in aid of judgment. In re Engichy, 11 FSM R. 520, 528-29 (Chk. 2003).

If a creditor's judgment is secured by a mortgage, it would have priority over the other unsecured judgment-creditors for the proceeds from the sale of the mortgaged property. In re Engichy, 11 FSM R. 520, 530 (Chk. 2003).

Assuming that the transfer of title to property by the judgment-debtors to a judgment-creditor was not a sham transaction with the judgment-debtors retaining ownership of it and the judgment-creditor merely selling it for them, but was a bona fide transfer of title, it was within the judgment-creditor's rights to take property instead of cash as payment on its judgment. In re Engichy, 11 FSM R. 520, 533 (Chk. 2003).

When a judgment-creditor decides to take title to property as full payment for the outstanding judgment in lieu of a cash payment for the remainder of the judgment, the judgment is satisfied at that point, not at some later time when the judgment-creditor has managed to sell the property for cash. A judgment-creditor accepting title to property in lieu of cash as full satisfaction of its judgment takes the risk that its later sale of the property could amount to less (or the chance it could be more) than amount due on the judgment or that the sale might fall through. In re Engichy, 11 FSM R. 520, 533 (Chk. 2003).

In the usual case, the payment of a money judgment against the state must abide a legislative appropriation. "The usual case" means the ordinary civil case for money damages. Estate of Mori v. Chuuk, 12 FSM R. 3, 9 (Chk. 2003).

The court will not determine the state to be insolvent and appoint a receiver to manage its debts to insure the payment of its judgments because it is a much more drastic approach than garnishment and it is also a course upon which the court will not embark without the benefit of a substantially fuller record than that now before it. Estate of Mori v. Chuuk, 12 FSM R. 3, 11 (Chk. 2003).

That a promissory note's co-signer did not receive the loan proceeds, but the other signers did and they spent it, is not a defense to an action on the note or a ground for dismissal of the case against the co-signer. LPP Mortgage Ltd. v. Maras, 12 FSM R. 27, 28 (Chk. 2003).

Except for unusual circumstances, 15% is the upward limit for an attorney's fee to be deemed reasonable when it is awarded pursuant to a stipulation for the payment of attorney's fees in a debt collection case. LPP Mortgage Ltd. v. Maras, 12 FSM R. 112, 113 (Chk. 2003).

That a corporation is insolvent does not mean that it lacks the capacity to sue or be sued. Goyo Corp. v. Christian, 12 FSM R. 140, 147 (Pon. 2003).

Even though the FSM does not have a bankruptcy code, the FSM Supreme Court has previously recognized the appointment of receivers or special masters to engage in collection efforts on behalf of insolvent corporate entities. A trustee's purpose in a bankruptcy proceeding is similar to the appointment of a receiver or collection agent to act on behalf of an insolvent corporation, and the fact of a corporation's insolvency does not affect the ability of a trustee, receiver, or collection agent to proceed on a corporation's behalf to recover assets in the corporation's name, and for the benefit of the corporation's creditors or shareholders. Goyo Corp. v. Christian, 12 FSM R. 140, 147 (Pon. 2003).

When the plaintiff had a legal right to initiate a lawsuit against a corporate defendant for its unpaid

debts at the time that the promissory note was executed in 1994, but instead of initiating a lawsuit, it agreed to certain terms of payment, and required individuals to personally guarantee that payment would be made, each of the parties gained something in the execution of the promissory note and security agreement. There was thus consideration exchanged by the parties when they entered into these agreements. Goyo Corp. v. Christian, 12 FSM R. 140, 149 (Pon. 2003).

In a broad sense a guarantor or surety is one who promises to answer for the debt or default of another. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 10 (Pon. 2004).

When the defendants contend that they cannot be liable on the guaranty because the guaranty secures the promissory note on which they are named as the promisors, but can only prevail on this argument if they are the primary obligors on the loan, but they are not, and never were even though certain writings failed to properly reflect that, and when those writings have been reformed, this contention is without merit. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 10 (Pon. 2004).

Like other contracts, contracts of guaranty must be supported by consideration, and a guaranty will not be enforced unless the promise is supported by consideration. However, if the promise of the guarantor is shown to have been given as part of a transaction or arrangement which created the guaranteed debt or obligation, the promise is supported by the same consideration which supports the principal transaction. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

When a guaranty was given as a part of the same transaction by which the debt to the bank was created, no independent consideration was necessary. The guaranty was supported by the same consideration that supported the transaction between the debtor and the bank. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

A debtor is not an indispensable party under Rule 19 in an action to enforce a guaranty of payment. A lender holding a guaranty of payment can sue a guarantor directly, without naming the borrower. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

When, under the terms of a guaranty, the guarantors waived any right to require the bank to proceed against the borrower, to proceed against or exhaust any security held from the borrower, or to pursue any other remedy in its power whatsoever, the guarantors' contention that the bank could not proceed against them without also proceeding against the borrower is without merit. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

Guaranties and suretyships bear many similarities. A guaranty creates a secondary obligation under which the guarantor promises to be responsible for the debt of another. The guarantor is only secondarily liable, and then only on proof of the default by the principal debtor. A suretyship differs from a guarantee in that a surety's obligation to the creditor is primary and unconditional whereas a guarantor's obligation is secondary and conditioned on the principal's default. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

The main distinction between a contract of surety and one of guaranty has been expressed by stating that a surety is primarily and jointly liable with the principal debtor, while a guarantor's liability is collateral and secondary and is fixed only by the inability of the principal debtor to discharge the primary obligation. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

A court does not need to determine whether an instrument is a guaranty or a surety when the result would be the same. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 12 (Pon. 2004).

Failure to sue the borrower as well as, or instead of, the guarantors cannot be considered a "mistake" subject to relief from judgment under Rule 60(b)(1) because, as a general legal principle, a lender holding a guaranty of payment can sue a guarantor directly, without naming the borrower and because the terms of

the guaranty, under which the guarantors were found liable, permitted the bank, in the case of a loan default, to sue the guarantors without suing the borrower. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 632 (Pon. 2008).

As a general rule, in the absence of an agreement or stipulation to the contrary, a debt is payable at the place where the creditor resides, or at his place of business, if he has one, or wherever else he may be found; and ordinarily it is the duty of the debtor to seek the creditor for the purpose of making payment, provided the creditor is within the state of his residence when the payment is due. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 145 (App. 2013).

Where the obligor on a promissory note is to make his payments does not relate to a matter of vital importance or go to the contract's essence since the note provides a number of options for place of payment, and since the obligor was not deprived of the benefits he expected to receive under the contract – his use of the bank's money (the loan) for a specified period of time. He knew he had an obligation to pay the bank and he knew (or should have known) where to pay and if he did not know it was his duty to find out where. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 145 (App. 2013).

Since a partial payment constitutes an acknowledgment of the debt, it is implicitly treated as a new promise to pay, and a new promise to pay has the effect of starting any limitations period all over again. Eot Municipality v. Elimo, 19 FSM R. 290, 295 (Chk. 2014).

While a stipulated judgment does represent a private agreement and not a judicial determination, it is a judicial act, binding on the parties. Thus, contract defenses are not available to a judgment debtor in a proceeding to enforce a money judgment. FSM Dev. Bank v. Carl, 20 FSM R. 70, 73 (Pon. 2015).

Under Rule 69, post-judgment discovery is available only to judgment creditors. FSM Dev. Bank v. Carl, 20 FSM R. 70, 73 (Pon. 2015).

The right to post-judgment discovery is limited to judgment creditors, who are usually, but not always, plaintiffs who succeeded in obtaining a money judgment. Rule 69 is meant to benefit a judgment creditor, not a judgment debtor. FSM Dev. Bank v. Carl, 20 FSM R. 70, 73-74 (Pon. 2015).

Rule 69 applies only to money judgments. Thus, it is generally not applicable to judgments that direct specific acts, which are covered by Rule 70. FSM Dev. Bank v. Carl, 20 FSM R. 70, 74 n.2 (Pon. 2015).

A judgment debtor has no discovery rights under Rule 69, which makes sense because once a money judgment has been rendered, the only relevant factual inquiry is the debtor's ability to pay the judgment and the fastest manner in which the debtor can reasonably pay it. FSM Dev. Bank v. Carl, 20 FSM R. 70, 74 (Pon. 2015).

The execution statute, 6 F.S.M.C. 1407, requires issuance of a writ of execution upon request, subject to the Rule 62(a) limitation that no execution shall issue upon a judgment until the expiration of 10 days after the entry of that judgment. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 276, 277 (Pon. 2015).

When the issuance of a writ of execution was not only based on statutory law, but the court had also afforded the judgment debtor and her counsel ample time to confer and respond to the motion for a writ of execution, the issuance of the writ was appropriate. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 276, 278 (Pon. 2015).

When the primary performer, the borrower, stopped making loan repayments to the bank and defaulted, the guarantors were then bound to perform on the loan repayments once the borrower had ceased to. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 289 (Pon. 2016).

A creditor who undertakes to secure credit insurance for a debtor is liable to the debtor for negligent

performance of that duty or of duty to notify debtor if insurance not obtained. FSM Dev. Bank v. Carl, 20 FSM R. 592, 593 (Pon. 2016).

When the debtor has not produced evidence to show that credit insurance was obtained when the loan was entered into, the court will not rule that the debt has been discharged although, if credit insurance had been obtained, the debtor would have had a valid claim of discharge of the debt. FSM Dev. Bank v. Carl, 20 FSM R. 592, 594 (Pon. 2016).

If a loan is in default and the promissory note contains an acceleration clause, the lender may choose to accelerate payment of the entire amount due and payable under the note. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 172 (Pon. 2017).

A bank seeking attorney's fees as part of its loan collection lawsuit is not engaging in the unauthorized practice of law because the bank is not practicing law – its duly admitted attorney is, and there is no fee-splitting involved as an attorney fee award is solely the property of the client, not the attorney. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 173 (Pon. 2017).

When a promissory note contains a clause under which the bank, in the event of a default, is entitled to reasonable attorney's fees, expenses and costs of collection, the borrowers thus agreed to the imposition of reasonable attorney's fees and costs of collection if they defaulted on their payment obligation to the bank. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 173 (Pon. 2017).

In general, in debt collection cases, reasonable attorney's fees are limited to not more than 15% of the principal amount due. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 174 (Pon. 2017).

A borrower cannot make a bank liable for payment for further construction work (in effect, requiring the bank to make a further loan to the borrower) without the bank's consent. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 181 (Pon. 2017).

When a borrower's credit life insurance policy was for a four-year term and expired about eighteen years before the borrower's death, the claim for insurance coverage to cover the borrower's debt is invalid. FSM Dev. Bank v. Carl, 21 FSM R. 640, 642-43 (Pon. 2018).

FSM Development Bank loans that are determined to be no longer collectable are subject to write-off, but when the mortgaged parcel securing the loan is still generating income, in the form of monthly rent, the loan is still deemed to be capable of being paid off. FSM Dev. Bank v. Carl, 21 FSM R. 640, 643-44 (Pon. 2018).

A borrower's death does not automatically make an FSM Development Bank loan subject to a write-off. Rather, the death is only one criteria to be considered. FSM Dev. Bank v. Carl, 21 FSM R. 640, 644 (Pon. 2018).

An administrator of a decedent's estate is liable to manage the estate, including the decedent's debts and liabilities – financial or pecuniary obligations. A decedent's debt passes down to her estate's administrator to manage and settle. FSM Dev. Bank v. Carl, 21 FSM R. 640, 644 & n.9 (Pon. 2018).

– Orders in Aid of Judgment

FSM law allows imprisonment of a debtor for "not more than six months" if he is "adjudged in contempt as a civil matter" for failure "without good cause to comply with any order in aid of judgment." 6 F.S.M.C. 1412. The inability of a judgment debtor to comply with an order in aid of judgment without fault on his part after his exercise of due diligence constitutes "good cause" within the meaning of the statute. Hadley v. Bank of Hawaii, 7 FSM R. 449, 452 (App. 1996).

In order to hold a debtor in contempt for failure to comply with an order in aid of judgment it is not enough that the debtor's noncompliance was found to be willful. There must also be a recital, or a finding somewhere in the record, that the debtor was able to comply. Hadley v. Bank of Hawaii, 7 FSM R. 449, 453 (App. 1996).

A non-party is deprived of due process of law when a case is started against it without notice or it having been made a party, when an order in aid of judgment has been issued against the non-party without a judgment and a hearing held following notice, and when a writ of execution has been issued against a non-party and without notice or hearing to determine the amount to be executed upon. Bank of Guam v. O'Sonis, 8 FSM R. 301, 304 (Chk. 1998).

The statute authorizing issuance of an order in aid of judgment, 6 F.S.M.C. 1409, presents two issues: the debtor's ability to pay, and the most expeditious way that payment can be accomplished. Louis v. Kutta, 8 FSM R. 312, 316 (Chk. 1998).

A court has an interest in insuring that its orders are heeded, and this interest exists apart from any interest the parties may have in the litigation. A court may take whatever reasonable steps are appropriate to insure compliance with its orders. It need not rely on the parties themselves to prescribe the way in which its orders will be carried out, or its judgments executed. Louis v. Kutta, 8 FSM R. 312, 318 (Chk. 1998).

By statute, a court has wide latitude in crafting an order in aid of judgment and may even modify the order on its own motion. Louis v. Kutta, 8 FSM R. 312, 319 (Chk. 1998).

Under 11 F.S.M.C. 701, a private cause of action is provided to any person whose constitutional rights are violated. In order for the remedy provided by 11 F.S.M.C. 701(3) to be effective, it must be enforceable. Where the defendant in a civil rights action is a state, this means that the remedy should not be dependent upon subsequent state legislative action, such as appropriation of funds, which would thwart the Congressional mandate that 11 F.S.M.C. 701 is meant to implement. Accordingly, the FSM Supreme Court is not precluded from issuing an order in aid of judgment against a state in the absence of a state legislative appropriation. Davis v. Kutta, 8 FSM R. 338, 341 (Chk. 1998).

Under 6 F.S.M.C. 1409, an individual judgment debtor is allowed to "retain such property and such portion of his income as may be necessary to provide the reasonable living requirements of the debtor and his dependents," but if the debtor has some limited ability to pay, the court can order some payment. Davis v. Kutta, 8 FSM R. 338, 342 (Chk. 1998).

Under 6 F.S.M.C. 1410(2), an order in aid of judgment may provide for the sale of particular assets, such as unencumbered property that is not necessary for the debtor to meet his family and customary obligations, and payment of the net proceeds to the creditor. Davis v. Kutta, 8 FSM R. 338, 343 (Chk. 1998).

Under 6 F.S.M.C. 1409, the court makes two inquiries: the judgment debtor's ability to pay, and the fastest manner to accomplish payment. Davis v. Kutta, 8 FSM R. 338, 343 (Chk. 1998).

Because the court must consider the debtor's ability to pay, an order which takes this factor properly into consideration will not result, in and of itself, in the financial undoing of a debtor. Davis v. Kutta, 8 FSM R. 338, 344 (Chk. 1998).

A motion for an order in aid of judgment against the State of Chuuk to assign sufficient assets to pay a money judgment will be denied because the state may make payments subject only to legislative appropriation. Judah v. Chuuk, 9 FSM R. 41, 42 (Chk. S. Ct. Tr. 1999).

The only purpose of statutes authorizing orders in aid of judgment is to force the payment of a judgment and to provide means to collect a money judgment, which is the same as proceedings for

attachment, garnishment or execution. Kama v. Chuuk, 9 FSM R. 496, 498 (Chk. S. Ct. Tr. 1999).

The Trust Territory Code provisions for orders in aid of judgment are not available as against Chuuk because, when it barred the courts' power of attachment, execution and garnishment of public property, the clear legislative intent was to supersede or repeal all provisions of the Trust Territory Code, Title 8 insofar as they allowed seizure of Chuuk state property. Kama v. Chuuk, 9 FSM R. 496, 498 (Chk. S. Ct. Tr. 1999).

Historically, orders in aid of judgment and orders in aid of execution serve the same purpose and the terms are used interchangeably. Their purpose is to provide a means of discovery to inquire into the assets and ability of a judgment debtor to pay a judgment. Kama v. Chuuk, 9 FSM R. 496, 498 (Chk. S. Ct. Tr. 1999).

Proceedings in aid of a judgment are supplementary proceedings to enforce a judgment, the same as attachment, execution and garnishment, and as against Chuuk State public property, are prohibited by § 4 of the Chuuk Judiciary Act. Kama v. Chuuk, 9 FSM R. 496, 498 (Chk. S. Ct. Tr. 1999).

The court may modify any order in aid of judgment as justice may require, at any time, upon the application of either party and notice to the other, or on the court's own motion. Davis v. Kutta, 10 FSM R. 224, 225 (Chk. 2001).

A court may grant a debtor's motion to modify an order in aid of judgment when the debtor's proposed commitment to pay is reasonable. Davis v. Kutta, 10 FSM R. 224, 225 (Chk. 2001).

A judgment debtor's request to the court for a hearing, pursuant to 6 F.S.M.C. 1409 to determine its ability to pay the debt and the fastest means to pay and satisfy the judgment constitutes a motion for an order in aid of judgment. Walter v. Chuuk, 10 FSM R. 312, 316 (Chk. 2001).

Either party may apply for an order in aid of judgment. Once it has, the court must, after notice to the opposite party, hold a hearing on the question of the debtor's ability to pay and determine the fastest manner in which the debtor can reasonably pay a judgment based on the finding. Walter v. Chuuk, 10 FSM R. 312, 316-17 (Chk. 2001).

Although under FSM law once an application for an order in aid of judgment has been filed no writ of execution may issue except under an order in aid of judgment or by special order of the court, it is uncertain what effect, if any, this (or the Chuuk state law prohibiting attachment, execution, or garnishment of Chuuk public property) would have on courts in jurisdictions outside the Federated States of Micronesia. Walter v. Chuuk, 10 FSM R. 312, 317 (Chk. 2001).

The procedure for a judgment creditor to obtain an order in aid of judgment and the authority for a court to issue one is contained in section 55 of Title 8 of the Trust Territory Code, which, under the Chuuk Constitution's Transition Clause, is still applicable law in Chuuk. Section 55, by its terms, does not bar its application to a government judgment debtor. Kama v. Chuuk, 10 FSM R. 593, 600 (Chk. S. Ct. App. 2002).

Section 4 of the Chuuk Judiciary Act of 1990 denies courts the power of attachment, execution and garnishment of public property. Thus, a court may issue an order in aid of judgment addressed to the state, but is barred from issuing any order in aid of judgment that acts as an attachment, execution and garnishment of public property. Kama v. Chuuk, 10 FSM R. 593, 600 (Chk. S. Ct. App. 2002).

Any order in aid of judgment may, be modified by the trial court at any time upon application of either party and notice to the other, or on the court's own motion. Kama v. Chuuk, 10 FSM R. 593, 600 (Chk. S. Ct. App. 2002).

It is generally within the Chuuk State Supreme Court's power to issue an order in aid of judgment. This power derives from the court's power to issue all writs for equitable and legal relief. Narruhn v. Chuuk, 11 FSM R. 48, 53 (Chk. S. Ct. Tr. 2002).

In deciding whether to issue an order in aid of judgment, the court is presented with two issues: 1) the debtor's ability to pay, and 2) the fastest manner in which the debtor can reasonably pay the judgment based upon the finding of ability to pay. Narruhn v. Chuuk, 11 FSM R. 48, 53 (Chk. S. Ct. Tr. 2002).

As a matter of law, the court cannot issue an order directing the state to pay money absent an appropriation therefor. The inquiry, then, is how, when funds are available to pay judgments, the court can assist a judgment creditor in getting his judgment paid in the fastest manner. Narruhn v. Chuuk, 11 FSM R. 48, 53 (Chk. S. Ct. Tr. 2002).

In addressing the question of how best to assure payment of a judgment in "the fastest manner," the court is mindful of the fact that it has wide latitude in crafting an order in aid of judgment. While the court cannot direct the Legislature to appropriate money to pay a judgment, it does have the authority to compel the Director of Treasury, and the Governor, through mandamus, to meet their non-discretionary duty to pay judgments in a fair and non-discriminatory manner. Narruhn v. Chuuk, 11 FSM R. 48, 54 (Chk. S. Ct. Tr. 2002).

A judgment creditor needing continuing medical care resulting from a state employee's negligent or wilful conduct, may apply to the court for specific relief, and assuming funds have been appropriated for payment of the state's judgment debts which remain undisbursed and available, any such judgment creditor shall receive payment on his or her judgment regardless of the judgment's date of entry. Narruhn v. Chuuk, 11 FSM R. 48, 54 (Chk. S. Ct. Tr. 2002).

The statutory remedy for violations of an order in aid of judgment is that if any debtor fails without good cause to comply with any order in aid of judgment, he may be adjudged in contempt as a civil matter. The inability of a judgment debtor to comply with an order in aid of judgment without fault on his part after his exercise of due diligence constitutes "good cause." Rodriguez v. Bank of the FSM, 11 FSM R. 367, 374 (App. 2003).

When the judgment-debtor's Social Security retirement benefits are received by him and have not been subjected to any sort of direct levy, allotment or garnishment or any execution, attachment, or assignment of these benefits and when these benefits may be commingled with any other income the debtor may have available to him, and from these funds he meets his living expenses and his other obligations, the trial court's order in aid of judgment does not require that the payment come from any particular source of income. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 379 (App. 2003).

There is no violation of the 53 F.S.M.C. 604 susceptibility of benefits rule, when there has been no execution, attachment, garnishment, or assignment of the judgment-debtor's Social Security retirement benefits and when the trial court's order in aid of judgment specifically found that the judgment-debtor would have sufficient funds for his and his dependents' basic support. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 380 (App. 2003).

While the trial court does not violate the Constitution's involuntary servitude provision when it orders a judgment-debtor to seek immediate employment, when the judgment-debtor has presented evidence that he is unable to work, the trial court must make specific findings with regard to his fitness for work before it orders him to seek immediate employment. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 386 (App. 2003).

A major purpose for granting consolidation of judgments is to establish the payment priority for the consolidated judgments and to implement an orderly payment plan involving one, instead of multiple, orders in aid of judgments. In re Engichy, 11 FSM R. 520, 527 (Chk. 2003).

A judgment-creditor's right to the issuance of a writ of execution is provided for by statute, as is the right to obtain an order in aid of judgment. In re Engichy, 11 FSM R. 520, 527 (Chk. 2003).

An FSM judgment-debtor can, if he so chooses, prevent the issuance of a writ of execution because any party, either the judgment-creditor or the judgment-debtor may apply for an order in aid of judgment and once a party has applied for an order in aid of judgment, the judgment-creditor is statutorily barred from obtaining a writ of execution except as part of an order in aid of judgment or by special order of the court for cause shown. In re Engichy, 11 FSM R. 520, 528 (Chk. 2003).

A judgment-creditor who has obtained an order in aid of judgment should be accorded the same status as a judgment creditor who has obtained a writ of execution because both methods of enforcing a money judgment are provided for by statute and both methods show that the judgment creditor has taken the effort and exhibited diligence greater than that of a mere judgment-creditor. In re Engichy, 11 FSM R. 520, 528 (Chk. 2003).

Judgment-creditors with execution creditor status are to be paid on the basis of a first-in-time, first-in-right rule according to the dates of the individual parties' writs. The pro rata payment basis is the rule for unsecured judgment-creditors who do not hold execution creditor status or a statutory lien priority. Because holders of orders in aid of judgment are accorded the status of execution creditors, those judgment-creditors will be paid in order according to the date of either their first writ of execution or their first order in aid of judgment. In re Engichy, 11 FSM R. 520, 528-29 (Chk. 2003).

While the Chuuk Financial Control Commission is precluded from paying any court ordered judgments unless specifically appropriated by law, it must, in a timely manner, develop in consultation with the Governor and Attorney General subsequent legislation for appropriation or other purposes for consideration by the Chuuk Legislature to address court judgments. That the Commission has disclaimed this responsibility imparted is in material part a basis for the court's ruling that ordering Chuuk to pay the judgment through taking the first step in that direction by proposing a payment plan is not a workable means of obtaining a satisfaction of the judgment, and the parlous state of Chuuk's finances is more reason, not less, why it should have been forthcoming with a plan for payment. Estate of Mori v. Chuuk, 11 FSM R. 535, 540 (Chk. 2003).

On motion for an order in aid of judgment, the court must determine both the question of the judgment debtor's ability to pay and the fastest manner in which payment can reasonably be made. Estate of Mori v. Chuuk, 11 FSM R. 535, 542 (Chk. 2003).

Courts have the power to issue all writs for equitable and legal relief, except the power of attachment, execution and garnishment of public property. This statutory prohibition has been held to prohibit the issuance of an order in aid of judgment against Chuuk. Ben v. Chuuk, 11 FSM R. 649, 651 (Chk. S. Ct. Tr. 2003).

A stipulated judgment, even after court approval, cannot confer jurisdiction on a court to issue an order in aid of judgment against Chuuk in direct contravention of a statute. Regardless of the stipulated judgment's language, the court simply cannot violate the statute and issue an order in aid of judgment against Chuuk. Ben v. Chuuk, 11 FSM R. 649, 651 (Chk. S. Ct. Tr. 2003).

When no appropriation has been made, general or otherwise, for the payment of judgments, even if the court were to issue an order in aid of judgment, and even if the state government were to identify funds from some other source for payment of the judgment, the Chuuk Financial Control Commission would be precluded from approving the payment pursuant to the order in aid of judgment since it is precluded from paying any court ordered judgements unless specifically appropriated by law. Ben v. Chuuk, 11 FSM R. 649, 652 (Chk. S. Ct. Tr. 2003).

Under a Chuuk State Supreme Court decision, if money was appropriated to pay court judgments, the oldest judgment must be paid in full before any payment could be made on the next oldest judgment. Ben v. Chuuk, 11 FSM R. 649, 652 (Chk. S. Ct. Tr. 2003).

An order in aid of judgment only requires future payment according to its terms, which invariably will not be immediate payment in full, and which may later be modified. In re Engichy, 12 FSM R. 58, 66 (Chk. 2003).

An order in aid of judgment, unlike a writ of execution, may only be obtained after application and notice to the other party and a hearing instead of the prompt issuance possible for a writ of execution. In re Engichy, 12 FSM R. 58, 66 (Chk. 2003).

A judgment-creditor (or its attorney) must evaluate which method (writ of execution or order in aid of judgment) is most likely to best satisfy its judgment unless the judgment-debtor has already foreclosed that choice by applying for an order in aid of judgment. In re Engichy, 12 FSM R. 58, 66-67 (Chk. 2003).

An order in aid of judgment generally deals not only with funds and assets currently in a judgment-debtor's possession but also with funds that are expected to come into the judgment-debtor's possession in the future. In re Engichy, 12 FSM R. 58, 72 (Chk. 2003).

When the court has found the defendants in civil contempt, it may order them imprisoned until such time as they comply with the orders issued to date and/or pay an amount necessary to compensate the court and plaintiff for the wasted time and expense involved in having held and set over pretrial conferences that the defendants never timely rescheduled nor attended; but if, in the court's opinion, imprisonment is a less suitable punishment than a ruling that by its nature will move this litigation to its conclusion, and when the defendant's only asserted defense to having defaulted on the underlying promissory note was his unemployment and inability to pay and he is now employed, the court may order the defendants to settle the case and file a stipulated judgment or the court will strike defendants' answer and enter a default judgment against the defendants, grant a motion for order in aid of judgment, the plaintiff files one, hold a hearing thereon, make findings as to the defendants' ability to pay, and if warranted, order the defendants' wages garnished for such amount as the court deems appropriate in light of those findings. FSM Dev. Bank v. Ladore, 12 FSM R. 169, 171-72 (Pon. 2003).

When a person has entered the plaintiff's parcel on at least two occasions and harvested crops in violation of the court's decision that the plaintiff is the fee simple owner of the parcel, an injunction will issue against that person and the defendants which prohibits further trespass and taking of crops from the parcel, and the defendants will be given a reasonable time to remove a local hut that they have constructed on parcel. Edwin v. Heirs of Mongkeya, 12 FSM R. 220, 222 (Kos. S. Ct. Tr. 2003).

Failure to comply with an order in aid of judgment and an injunction can be grounds for a contempt proceeding. Edwin v. Heirs of Mongkeya, 12 FSM R. 220, 222 (Kos. S. Ct. Tr. 2003).

The trial court will not extend the right to a writ of garnishment against the state beyond that affirmed by the appellate division in Chuuk v. Davis and will therefore deny a judgment-creditor's request to seize local revenues by the only means logical, a writ of garnishment directed to the FSM national government, when his damages are strictly economic in nature. The suggested alternative, a more drastic step of an order seizing and auctioning the state legislative officers' new vehicles will also be denied. Barrett v. Chuuk, 14 FSM R. 509, 511 (Chk. 2006).

The trial court can issue an order in aid of judgment requiring the state executive branch to submit, within thirty days of entry of this order, an appropriation request to the Legislature for funds to satisfy the judgment. Barrett v. Chuuk, 14 FSM R. 509, 511 (Chk. 2006).

Civil Rule 6(d) provides that all motions shall contain certification by the movant that a reasonable

effort has been made to obtain the opposing party's agreement or acquiescence and that no such agreement has been forthcoming, but a motion for an order in aid of judgment, which is what the court must consider a motion for a writ of garnishment to be, is governed by statute, and that statute does not require that a movant first seek the opposing party's agreement or acquiescence before moving for an order in aid of judgment. The procedural rules are not meant to alter that statutory scheme. Tipingeni v. Chuuk, 14 FSM R. 539, 542 (Chk. 2007).

A judgment-creditor's motion that asks for a court order to assist it in obtaining, or to facilitate, the payment of a money judgment, is a motion for an order in aid of judgment regardless of what the movant has called it because a thing is what it is regardless of what someone chooses to call it. Chuuk v. Andrew, 15 FSM R. 39, 42 & n.1 (Chk. S. Ct. App. 2007).

The procedure for a judgment creditor to obtain an order in aid of judgment and the authority for a court to issue one, is contained in section 55 of Title 8 of the Trust Territory Code, which requires the court, after notice to the opposite party, to hold a hearing on the question of the debtor's ability to pay and to determine the fastest manner in which the debtor can reasonably pay a judgment based on the finding. Chuuk v. Andrew, 15 FSM R. 39, 42 (Chk. S. Ct. App. 2007).

When no hearing was held before the court issued its December 14, 2001 order in aid of judgment and no finding was made on the debtor's ability to pay in December 2001, the December 14, 2001 order was issued in violation of the State's right to due process and the order constitutes an abuse of the trial court's discretion. Chuuk v. Andrew, 15 FSM R. 39, 42 (Chk. S. Ct. App. 2007).

When the State has not made the appropriation act a part of the record, the appellate court is unable to determine whether the $20,000 ordered payment to a judgment-creditor violated the terms of that statute or whether it was only contrary to the Executive branch's hoped-for distribution of the appropriated funds. Chuuk v. Andrew, 15 FSM R. 39, 42-43 (Chk. S. Ct. App. 2007).

The trial court must not issue any orders in aid of judgment against the State without affording the State notice and an opportunity to be heard and a finding that the State has the physical and legal ability to pay. Chuuk v. Andrew, 15 FSM R. 39, 43 (Chk. S. Ct. App. 2007).

Section 4 of the Chuuk Judiciary Act of 1990 denies courts the power of attachment, execution and garnishment of public property. Thus, a court may issue an order in aid of judgment addressed to a governmental body, but is barred from issuing any order in aid of judgment that acts as an attachment, execution and garnishment of public property. Albert v. O'Sonis, 15 FSM R. 226, 232 (Chk. S. Ct. App. 2007).

The procedure for a judgment creditor to obtain an order in aid of judgment and the authority for a court to issue one is contained in section 55 of Title 8 of the Trust Territory Code, which is still applicable law in Chuuk. Albert v. O'Sonis, 15 FSM R. 226, 233 (Chk. S. Ct. App. 2007).

The statute requires that an order in aid of judgment hearing can only be held after an application for an order in aid of judgment and notice of that application has been given to the opposing party. Since an application for an order in aid of judgment must be made an adequate time for notice before the motion hearing, it must be made in writing. The Civil Rules provide that adequate time for service of the notice is not later than 5 days before the time specified for the hearing. Therefore, in order to obtain an order in aid of judgment, a party must serve a written motion on the opposing party at least five days before the specified hearing date. Albert v. O'Sonis, 15 FSM R. 226, 233 (Chk. S. Ct. App. 2007).

The trial court cannot issue an order in aid of judgment without first making a finding about the debtor's ability to pay. In the case of a governmental debtor, this finding must include the debtor's legal ability to pay (*e.g.*, whether money has been appropriated that can legally be applied to that debt). Albert v. O'Sonis, 15 FSM R. 226, 233 (Chk. S. Ct. App. 2007).

Any order in aid of judgment may be modified by the court as justice may require, at any time, upon application of either party and notice to the other, or on the court's own motion. But a court cannot decide its own motion without first giving either party notice or an opportunity to be heard because that would violate a litigant's due process rights guaranteed by both the Chuuk and FSM Constitutions since notice and an opportunity to be heard is the essence of due process. Albert v. O'Sonis, 15 FSM R. 226, 234 (Chk. S. Ct. App. 2007).

A trial judge's calculated and repeated disregard of governing rules of orders in aid of judgment would also support the issuance of a writ of prohibition that the trial judge issue no further orders in aid of judgment without complying with the statute and without first ruling on the pending motion to stay. Albert v. O'Sonis, 15 FSM R. 226, 234 (Chk. S. Ct. App. 2007).

After obtaining a judgment, the judgment holder is entitled by statute to seek an order in aid of judgment to force payment and determine the best means to effectuate such payment. The purpose of an order in aid of judgment is to provide a means of discovery to inquire into the assets and ability of a judgment debtor to pay a judgment. Chuuk Public Utilities Corp. v. Billimon, 15 FSM R. 290, 293 (Chk. S. Ct. Tr. 2007).

Once a party has applied for an order in aid of judgment, the court must, after notice to the opposite party, hold a hearing on the question of the debtor's ability to pay and determine the fastest manner in which the debtor can reasonably pay a judgment based on the finding. Chuuk Public Utilities Corp. v. Billimon, 15 FSM R. 290, 293 (Chk. S. Ct. Tr. 2007).

A plaintiff's motion for a temporary restraining order filed after judgment had already been entered against the defendant and after the plaintiff had already requested an order in aid of judgment will be denied since the plaintiff has an available remedy in its motion for an order in aid of judgment and since it seeks to restrain funds in the hands of a third party without a specific determination as to the defendant's right to any part of those funds. Chuuk Public Utilities Corp. v. Billimon, 15 FSM R. 290, 293 (Chk. S. Ct. Tr. 2007).

An order in aid of judgment is not appropriate when the prevailing party seeks an order evicting an alleged successor-in-interest and non-party because an order in aid of judgment is only appropriate when seeking satisfaction of a money judgment and the matter does not involve a money judgment. Salik v. U Corp., 15 FSM R. 534, 537 (Pon. 2008).

The process to enforce a judgment for the payment of money may be a writ of execution or an order in aid of judgment. Salik v. U Corp., 15 FSM R. 534, 537 (Pon. 2008).

Once either party has moved for an order in aid of judgment, the court, after notice to the opposite party, must hold a hearing on the question of the debtor's ability to pay and determine the fastest manner in which the debtor can reasonably pay a judgment based on its finding. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 637 (Pon. 2008).

Payment by cash on hand is always the fastest way in which the debtor can reasonably pay a judgment. The next fastest way to pay is through the sale of highly liquid assets that can readily be reduced to cash. Unlike stock in closely-held corporations for which there is no readily identifiable market for their shares or easily ascertained value, stock, which is traded daily on major stock exchanges and the prices reported, is almost as liquid as cash. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 638-39 (Pon. 2008).

The court can, as an act of grace to prevent undue hardship, permit withholding from payment to the judgment-creditor any sums that might be due in taxes because of the order in aid of judgment since the court may make provision for tax payments to non-parties in its court judgments when a judgment causes a party to incur tax liability. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 137-38 (Pon. 2008).

The presence of the debtors' property in a Guam brokerage account does not affect the validity of an order in aid of judgment. While generally a court does not have jurisdiction over property in another jurisdiction because it cannot enforce its orders there, the court does have jurisdiction over the judgment-debtor's person. Thus, if the court were to order a debtor to sell property in another country and to pay or deposit the proceeds with some person or the court, and, if the judgment-debtor did not obey that order, the court could then impose sanctions on the debtor, such as, civil contempt of court to coerce the judgment-debtor's compliance or criminal contempt of court to punish the judgment-debtor's disobedience. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 138 (Pon. 2008).

Process to enforce a judgment for the payment of money may be a writ of execution or an order in aid of judgment. Barrett v. Chuuk, 16 FSM R. 229, 234 (App. 2009).

By statute, contempt proceedings to enforce judgments and orders in aid of judgment are meant to be civil matters. Further, by statute, orders in aid of judgment require hearings in which the court determines the judgment debtor's ability to pay. Since a judgment debtor is present at such hearings, no order in aid of judgment can logically issue without the court's determination of the debtor's ability to pay and the debtor's knowledge of the order in aid. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 226 (Kos. 2010).

In the context of failure to comply with an order in aid of judgment, there are four points in time when there may be a question of ability to pay: 1) when the order in aid was issued; 2) when the debtor misses a payment; 3) when the motion is submitted; and 4) when the hearing is held. Because the court assesses ability to pay when the order in aid is issued, the first point is irrelevant and because civil contempt is not used to punish past misconduct, ability to pay at the second point is similarly irrelevant, unless the moving party wishes to request criminal contempt proceedings, in which case the court may refer the matter to the appropriate government prosecutor. The remaining times are when the motion is submitted, and when the hearing is held. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 226 (Kos. 2010).

Traditionally, the movant has the burden to show that the debtor has the ability to comply with the court order; once this burden has been met, it is then the debtor's burden to show that he no longer has the ability to comply through no fault of his own despite due diligence. Thus, it is the moving party's burden not only to submit a proper motion for a show cause hearing, but also, at the hearing, to prove by a preponderance that the judgment debtor has the ability to pay. If the movant cannot provide evidentiary support, or certify his information and belief that such support is likely after a reasonable opportunity for further investigation or discovery, the court must deny the motion, but if the court does set a hearing and order parties to appear, and if at the hearing the moving party presents such evidence, only then will the burden shift to the debtor to show that he does not in fact have the ability to pay. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 226-27 (Kos. 2010).

If a debtor cannot overcome the moving party's evidence that the debtor in fact had the ability to pay when the motion was submitted, the court will find him in contempt only if he still has the same ability to pay at the time of the hearing; and in either case the moving party may request a separate adjudication as to criminal contempt. If the debtor did not have the ability to pay when the motion was submitted, the court will not entertain any request for a separate adjudication as to criminal contempt and will find him in contempt only if he has regained the same ability to pay at the time of the hearing. If the debtor's ability to pay at the time of the hearing is diminished, the court will not find him in contempt, but may issue a modified order in aid. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 227 (Kos. 2010).

Under the FSM national law regarding enforcement of judgments, the exemption for necessities for trade or occupation is defined as tools, implements, utensils, two work animals, and equipment necessary to enable the person to carry on his usual occupation. By a plain reading of the statute's language, a rental house, and by extension, the land on which it stands, is not such a necessity. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 323 (Kos. 2011).

Under FSM law, land or an interest in land owned solely by a judgment debtor in his own right may be

ordered sold or transferred under an order in aid of judgment, provided the court deems that justice so requires and finds that the debtor will have sufficient land remaining after the sale to support himself and his dependents. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 323-24 (Kos. 2011).

When the judgment-creditor, by its offer to subdivide a parcel so as to ensure that the debtor's daughter and son-in-law can continue to live in the house on the parcel's back portion, has gone out of its way to accommodate not only the letter but the spirit of the law, the court concludes that a fee simple interest in land may be attached and executed under national law and that the creditor's proposal would leave the debtor with sufficient land to support her and her dependents. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 324 (Kos. 2011).

When a creditor is seeking a judicial power of sale that would subdivide a parcel, Kos. S.C. § 11.404(1)'s subdivision language is inapplicable because it applies to private powers of sale. FSM Dev. Ban k v. Jonah, 17 FSM R. 318, 324 (Kos. 2011).

When seeking to enforce a judgment against the State of Chuuk, the full set of factors a trial court should consider are: 1) the nature of the judgment, such as whether the judgment is in tort or contract, whether the judgment is full or partial, and whether or not the judgment includes a civil rights component; 2) whether or not the debtor has acted in good or bad faith in its attempts to satisfy the judgment; 3) the length of time the judgment has gone unsatisfied; 4) the ability of the debtor to pay; and 5) the balance of interests. Such factors are best weighed by the trial court. Stephen v. Chuuk, 17 FSM R. 453, 461 (App. 2011).

Statutorily, a motion for an order in aid of judgment requires a hearing at which the trial court assesses the debtor's ability to pay the judgment. Stephen v. Chuuk, 17 FSM R. 453, 461 n.4 (App. 2011).

When a trial court has the power to fashion an alternative remedy, but a party neither files a request for such alternative nor urges it at a hearing for the remedy the party actually requested and when the trial court has not foreclosed the possibility of the alternative remedy, the trial court has not abused its discretion by not fashioning its own relief. Stephen v. Chuuk, 17 FSM R. 453, 462 (App. 2011).

Upon remand, and as part of the factors for considering orders in aid of judgment, the trial court should spell out the nature of the judgment, so as to provide clarity and avoid obfuscation of issues. Stephen v. Chuuk, 17 FSM R. 453, 462 (App. 2011).

When Chuuk's deficiencies in addressing its judgment debt stem not so much from bad faith as it does from general fiscal ineptitude and from the lack of a sense of urgency or of a judgment's importance, the court will not doubt that Chuuk has made good faith efforts to address its debt problems and to reduce its overall debt. Stephen v. Chuuk, 18 FSM R. 22, 25-26 (Chk. 2011).

The court will not make six and a half years after a civil rights judgment the magic date after which the judgment-holder can begin to seek the judgment's collection through extraordinary measures. Stephen v. Chuuk, 18 FSM R. 22, 26 (Chk. 2011).

When Chuuk has a limited ability to make some payment on the judgment but does not have the ability to pay the judgment in full at one time; when, if the court were to garnish the funds held in Chuuk's current account with the FSM for the full amount, it is unlikely that the garnished funds would satisfy the judgment but it is certain that such a garnishment would seriously hinder Chuuk's ability to function since the Chuuk Legislature, having estimated the amount that would be available from this source, has appropriated such sums for various vital uses, the court characterized the judgment's size as unwieldy as there is a strong public interest in Chuuk having sufficient fiscal resources to maintain a minimum level of basic and essential public services such that the public's health, safety, and welfare are not jeopardized and it would be an onerous burden on Chuuk's governmental operations to evict Chuuk from part of its warehouse. Stephen v. Chuuk, 18 FSM R. 22, 26 (Chk. 2011).

Since the trial court can, on application, endeavor to find a workable way in which to eventually pay the

judgment as quickly as reasonably possible and issue writs for less than the full judgment amount, the court will issue a writ of garnishment for compensation for the taking of the plaintiff's retained property during two years, and if no further payments are made on the judgment within the next six months, the plaintiff may then apply for another writ of garnishment. Stephen v. Chuuk, 18 FSM R. 22, 26 (Chk. 2011).

The parties are free to stipulate how any payment on a judgment should be applied – what part of the judgment it should be applied to – but that in the absence of such an agreement, the court would usually presume any payment to be a general payment on the judgment as a whole. Stephen v. Chuuk, 18 FSM R. 22, 27 (Chk. 2011).

Funds received from U.S. military retirement and U.S. Social Security benefits are not the type of property that qualify as exemptions under 6 F.S.M.C. 1414 because the U.S. statutes have no force and effect outside of U.S. territory. Bank of Hawaii v. Dison, 18 FSM R. 161, 164 (Pon. 2012).

A writ of execution levied on an account in the Bank of Guam, Pohnpei branch, was directed toward funds held in a local bank, authorized to conduct banking transactions under FSM law, and did not assign, garnish, attach, execute, or levy on U.S. Social Security or military retirement benefits, but executed on funds on deposit in the FSM. Bank of Hawaii v. Dison, 18 FSM R. 161, 164 (Pon. 2012).

Since the statutory exemptions on judicial enforcement of judgments pertaining to U.S. Social Security and U.S. military retirement benefits are provided for by U.S. statutes and the judicial enforcement of FSM judgments is governed by FSM statutes, a judgment-debtor whose income is U.S. Social Security and U.S. military retirement benefits and who has the ability to pay will be ordered to make monthly payments toward the satisfaction of the judgment. Bank of Hawaii v. Dison, 18 FSM R. 161, 164 (Pon. 2012).

Interests in land are not subject to a writ of execution, but any interest in land owned solely by a judgment debtor, in his own right, may be ordered sold or transferred under an order in aid of judgment if the court making the order deems that justice so requires and finds as a fact that after the sale or transfer, the debtor will have sufficient land remaining to support himself and those persons directly dependent on him according to recognized local custom and FSM law. Saimon v. Wainit, 18 FSM R. 211, 214 (Chk. 2012).

Since homes and lands are not personal property, a writ of execution cannot be used to force their sale or rental to satisfy a judgment. A judgment-creditor must proceed through an order in aid of judgment to reach such assets. An evidentiary hearing under 6 F.S.M.C. 1410(1) is a necessary step of that process. Saimon v. Wainit, 18 FSM R. 211, 214 (Chk. 2012).

If a judgment creditor seeks to attach and sell any land personally owned by a judgment debtor in his own right, the judgment creditor must seek an order in aid of judgment and at the 6 F.S.M.C. 1410(1) order in aid of judgment hearing must produce sufficient evidence that the court can deem that justice so requires and can find as a fact that after the sale, the judgment debtor will have sufficient land remaining to support himself and any those persons directly dependent on him. Saimon v. Wainit, 18 FSM R. 211, 215 (Chk. 2012).

The trial court did not err in denying the defendants' motion to raise the minimum bid price when the motion was filed after the sale was held and the defendants were appealing the sale price but not the sale itself and the sale was conducted 56 days after the amended order in aid of judgment setting a minimum sale price was entered. Helgenberger v. FSM Dev. Bank, 18 FSM R. 498, 500-01 (App. 2013).

Since the trial court retains jurisdiction to enforce a judgment even though it has been appealed, a judgment holder may, in the absence of a stay, seek to enforce its judgment, and a hearing to enforce or modify existing orders in aid of the existing judgment will proceed as scheduled because Congress has, by statute, has authorized judgment holders to use these methods to enforce valid money judgments. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

The procedure for issuing an order in aid of judgment is governed by statute. The court, after notice to the opposite party, must hold a hearing on the question of the debtor's ability to pay and determine the fastest manner in which the debtor can reasonably pay a judgment based on the finding. Alexander v. Pohnpei, 19 FSM R. 133, 135 (Pon. 2013).

The trial court cannot issue an order in aid of judgment without first making a finding about the debtor's ability to pay, which, in the case of a governmental debtor, must include the debtor's legal ability to pay, that is, whether money has been appropriated that can legally be applied to that debt. Alexander v. Pohnpei, 19 FSM R. 133, 135 (Pon. 2013).

In the usual case, the payment of a money judgment against a state must abide a legislative appropriation since due respect must be given to the constitutional separation of powers. Alexander v. Pohnpei, 19 FSM R. 133, 135-36 (Pon. 2013).

The usual first step for an order in aid of judgment against a state when there are no appropriated funds available for that purpose is to order the state executive to submit an appropriation bill, and since legislative appropriation can be a time-consuming process, the state must be given a reasonable time and opportunity to complete the process and be given further opportunity to meet its obligation in some other manner before a plaintiff can resort to a writ of garnishment. Alexander v. Pohnpei, 19 FSM R. 133, 136 (Pon. 2013).

Since the payment of judgments is not a representation expense in the course of the Pohnpei Governor's official public relations, the court cannot issue an order in aid of judgment to use those funds to pay a judgment. Alexander v. Pohnpei, 19 FSM R. 133, 136 (Pon. 2013).

A request to order the Pohnpei Governor to reprogram funds or to use his representation funds to pay a judgment will be denied. The judgment holder must await the outcome of the legislative process. Alexander v. Pohnpei, 19 FSM R. 133, 136 (Pon. 2013).

The FSM social security non-assignment of benefits statute, 53 F.S.M.C. 604, does not bar legal process such as orders in aid of judgment from reaching FSM social security benefits. Dison v. Bank of Hawaii, 19 FSM R. 157, 161 (App. 2013).

Congress enacted an exemption statute, 6 F.S.M.C. 1415, and courts cannot broaden statutes beyond their original meaning. Nor do courts have the power to amend a statute. Dison v. Bank of Hawaii, 19 FSM R. 157, 161 (App. 2013).

There is no true conflict between the U.S. statues exempting U.S. military retirement benefits and U.S. social security benefits and the FSM exempt property statute because the U.S. statutes provide exemptions from judgments rendered and enforced in the U.S., and the FSM statute provides what property is exempt from judgments rendered and enforced in the FSM. Dison v. Bank of Hawaii, 19 FSM R. 157, 162 (App. 2013).

A trial court did not abuse its discretion in applying only FSM, and not U.S., statutory law in determining whether property is exempt from legal process in the FSM. Dison v. Bank of Hawaii, 19 FSM R. 157, 162 (App. 2013).

A $300 payment on a 1998 judgment could not have reduced the principal by $300, and considering the age of the judgment and how little has been paid, it likely did not reduce the principal at all. Therefore the part of the trial court order in aid of judgment reducing the judgment principal by $300 is reversed. George v. Sigrah, 19 FSM R. 210, 219-20 (App. 2013).

The purpose of an order-in-aid-of-judgment hearing is for the trial court to examine the question of the

judgment debtor's ability to pay and determine the fastest way in which the judgment debtor can reasonably satisfy the judgment. A writ of execution (or garnishment or attachment) can issue as part of an order in aid of judgment. George v. Sigrah, 19 FSM R. 210, 220 (App. 2013).

When the $50 monthly payments barely cover the monthly interest plus some of the accrued interest, if some of the rental payments to the judgment debtor can be garnished while complying with Kosrae Code § 6.2409(1) that allows debtors to retain property and income to provide reasonable living requirements, the trial court must do so unless there is an even faster way to satisfy the judgment. This is for the trial court to determine at a hearing where the parties present the necessary evidence for a determination. George v. Sigrah, 19 FSM R. 210, 220 (App. 2013).

A judgment creditor has discovery tools available to him under Kosrae Civil Procedure Rule 69(a) under which a judgment creditor may obtain discovery from any person, including the judgment debtor. George v. Sigrah, 19 FSM R. 210, 220 n.6 (App. 2013).

Often at an order-in-aid-of-judgment hearing, the judgment debtor, having been subpoenaed as a witness by the judgment creditor, will be called to testify, about his or her finances, assets, income, and ability to pay. Based on this evidence and other evidence the judgment creditor has introduced through other witness testimony or documentary exhibits, as well as any evidence similarly introduced by the judgment debtor, the trial judge makes his findings about the fastest way in which the judgment debtor can reasonably satisfy the judgment and fashions his order in aid of judgment accordingly. Argument of counsel is not evidence on which the court can base its factual findings. George v. Sigrah, 19 FSM R. 210, 220-21 (App. 2013).

When the order-in-aid-of-judgment hearing is on the judgment creditor's motion, his counsel should have the opportunity to present his evidence and his witnesses first and the judgment debtor's counsel should present his side next with the judgment editor's counsel having any last words. Any future order-in-aid-of-judgment hearing should follow this procedure. George v. Sigrah, 19 FSM R. 210, 221 (App. 2013).

When the previous sale of the RS Plaza Building still left a substantial outstanding balance, 6 F.S.M.C. 1409 allows for a successive request for an order in aid of judgment because the judgment has not been satisfied in full. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 104 (Chk. 2015).

A writ of garnishment directing rent payments to the judgment creditor from the debtor corporation's commercial tenant, constitutes a proper exercise of the court's authority under the order-in-aid-judgment statute. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 104 (Chk. 2015).

When a meritorious defense has not been portrayed, the defendants' requests to set aside or vacate the default judgment, order(s) in aid of judgment, and writ of garnishment will be denied. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 104 (Chk. 2015).

A writ of ne exeat would require the defendant to surrender her passport and prevent her from leaving the FSM until she complies with all court orders and pays tax arrearages in full. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 128, 130 (Pon. 2015).

The writ ne exeat republica is an obscure writ that is ancient, and infrequently used, and is an extraordinary writ which should issue only in exceptional cases. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 128, 130 (Pon. 2015).

In the absence of a stay obtained in accordance with Rule 62(d), the pendency of an appeal does not prevent the judgment-creditor from acting to enforce the judgment. FSM Dev. Bank v. Setik, 20 FSM R. 315, 318 (Pon. 2016).

Notwithstanding a notice of appeal's general effect, the trial court retains jurisdiction to determine matters collateral or incidental to the judgment and may act in aid of the appeal. Because the mere filing of a notice of appeal does not affect the judgment's validity, the trial court retains jurisdiction to enforce the judgment. FSM Dev. Bank v. Setik, 20 FSM R. 315, 318 (Pon. 2016).

Post-judgment discovery from any person is expressly available. The judgment creditor or a successor in interest when that interest appears of record, may, in aid of the judgment or execution, obtain discovery from any person, including the judgment debtor. The judgment creditor is allowed discovery to find out about assets on which execution can issue or about assets that have been fraudulently transferred or are otherwise beyond the reach of execution. FSM Dev. Bank v. Carl, 20 FSM R. 329, 333 (Pon. 2016).

The Chuuk State Supreme Court cannot issue an order directing the payment of money by Chuuk State absent an appropriation therefor. Kama v. Chuuk, 20 FSM R. 522, 530 (Chk. S. Ct. App. 2016).

If a judgment creditor wants Chuuk to furnish money to pay his judgment now, he must seek an appropriation from the Chuuk Legislature that includes it or that can be used to pay it. Kama v. Chuuk, 20 FSM R. 522, 530-31 (Chk. S. Ct. App. 2016).

Since the principle that funds appropriated for other purposes cannot be redirected to pay judgments is inherent in the separation-of-powers scheme in the Chuuk Constitution, the Chuuk State Supreme Court cannot levy any writs on Chuuk state funds because those writs would be levied on money that the Chuuk Legislature has already appropriated for another purpose. Kama v. Chuuk, 20 FSM R. 522, 531 (Chk. S. Ct. App. 2016).

Chuuk State Law No. 190-08, § 4 does not bar the issuance of an order in aid of judgment addressed to the state, but does bar the issuance of any order in aid of judgment that acts as an attachment, execution, or garnishment of public property. The general rule is that statutes (and case law) barring the issuance of such writs against public property are a constitutionally valid expression of the separation of powers doctrine recognizing the legislative branch's power to appropriate funds and the judicial branch's lack of power to appropriate funds. Kama v. Chuuk, 20 FSM R. 522, 531 (Chk. S. Ct. App. 2016).

For a money judgment against the state to be paid there must be an appropriation by the Legislature and the courts have no power to compel an appropriation. Kama v. Chuuk, 20 FSM R. 522, 532 (Chk. S. Ct. App. 2016).

Under Rule 69, the judgment creditor, in aid of the judgment or execution, may obtain discovery from any person, including the judgment debtor. Rule 69 was intended to establish an effective and efficient means of securing the execution of judgments. As part of the process, it provides for securing information relating to the judgment-debtor's assets. FSM Dev. Bank v. Carl, 20 FSM R. 592, 594-95 (Pon. 2016).

As required by 6 F.S.M.C. 1409, the court will schedule a hearing on the motions for an order to show cause for the failure to comply with an order in aid of judgment and for an order in aid of judgment. FSM Dev. Bank v. Carl, 20 FSM R. 592, 595 (Pon. 2016).

When the land whose title transfer is sought was owned only by one defendant, that defendant is the only defendant with standing to oppose the title transfer. FSM Dev. Bank v. Ehsa, 20 FSM R. 608, 611 n.1 (Pon. 2016).

Since an order in aid of judgment may provide for the sale of the judgment debtor's particular assets and the payment of that sale's net proceeds to the judgment creditor, a judgment creditor does not have to first acquire title to a particular asset before it is sold for the creditor's benefit. FSM Dev. Bank v. Ehsa, 20 FSM R. 608, 612 (Pon. 2016).

Since a statute provides for the sale of a judgment debtor's particular non-exempt assets with the net

proceeds to be paid to the judgment creditor and since such an order may be made only after a hearing on a motion for an order in aid of judgment, when such a hearing was held and the judgment debtor appeared at that hearing and agreed to the land's sale, the court may issue an order in aid of judgment that contained an order of sale for that parcel. FSM Dev. Bank v. Ehsa, 20 FSM R. 608, 613 (Pon. 2016).

When no stay pending appeal had been granted, the trial court had the jurisdiction to not only deny the defendants' Rule 60(b) motion for relief from judgment, but it also had the jurisdiction to enforce the money judgment by mortgage foreclosure. Setik v. FSM Dev. Bank, 21 FSM R. 505, 518 (App. 2018).

The trial court's issuance of an order transferring title six days after the bank filed its motion and notice of payment was not reversible error when an earlier order in aid of judgment required that a court order transferring title to the parcel had to be issued no later than ten days after notice is given of delivery of a cashier's check in the full amount and when the appellants do not contend that there were any procedural defects in the sale on which they could base a challenge to its outcome. Setik v. FSM Dev. Bank, 21 FSM R. 505, 520 (App. 2018).

In hearings for an order in aid of judgment, the judgment debtor, having been subpoenaed as a witness by the judgment creditor, will testify about his or her finances, assets, income, and his ability to pay, and based on this evidence and other evidence the judgment creditor has introduced through other witness testimony or documentary exhibits, as well as any evidence similarly introduced by the judgment debtor, the trial judge will make findings about the fastest way in which the judgment debtor can reasonably satisfy the judgment and will fashion an order in aid of judgment accordingly. Bank of the FSM v. Ohwa Christian High Sch., 21 FSM R. 645, 648 (Pon. 2018).

When a plaintiff seeks an order in aid of judgment, the court must inquire into the defendant's ability to pay, and when the information the plaintiff seeks pertains to the defendant's income, finances, and could reasonably uncover assets not previously disclosed, the court will deny the defendant's motion to quash the plaintiff's subpoena and subpoena duces tecum. Bank of the FSM v. Ohwa Christian High Sch., 21 FSM R. 645, 648 (Pon. 2018).

When a subpoena duces tecum seeks documents that are reasonable and unoppressive and can address the defendant's ability to reasonably satisfy the judgment, the defendant has not provided good cause for the court to issue a protective order. Bank of the FSM v. Ohwa Christian High Sch., 21 FSM R. 645, 648 (Pon. 2018).

The court is reluctant to order the sale of land in a collection case until other methods of satisfying the money judgment have been tried and are unsuccessful because of the central importance of land in Micronesian culture, and this seems to be the general practice, even by creditors, although no law specifically mandates it. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 481 (Pon. 2020).

The court is subject to the statutory command that the court, in aid of a money judgment, must determine the fastest manner in which the debtor can reasonably pay a judgment. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 481 n.7 (Pon. 2020).

Since the court must make a reasonable effort to take every step reasonable and necessary to avoid unnecessarily reducing the availability of article XIII, section 1 health care services, the court will note that the FSM Development Bank is legally entitled to an order of sale for the mortgaged medical equipment and to an order enforcing the borrowers' assignments of income and exclusive possession of the medical clinic premises, but the court will not issue such orders contemporaneously with the judgment. The court will hesitate to issue such orders until all reasonable means of satisfying the judgment by other methods have been explored and exhausted, and will thus give special consideration to health care services and assure that their availability is not unreasonably or unnecessarily diminished by any action it takes. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 481-82 (Pon. 2020).

The court is required by law to hold a hearing on an application for an order in aid of judgment if either party requests one. FSM Dev. Bank v. Talley, 22 FSM R. 587, 595 (Kos. 2020).

Collection proceedings against a judgment debtor will not be stayed because the debtor has filed a notice of appeal and has also filed an independent action for relief from the judgment. The usual method to stay the collection of a money judgment is for the defendant to give a supersedeas bond, and when the judgment debtor did not obtain, and did not offer to obtain, a supersedeas bond, and has not stated any basis upon which the court could exercise its discretion to stay the money judgment against him in absence of a bond, he is not entitled to a stay under FSM Civil Rule 62(d). FSM Dev. Bank v. Talley, 22 FSM R. 608, 610 (Kos. 2020).

In the absence of a stay, the court has the ability, and the inclination, to protect a judgment-debtor during an appeal by requiring that all sums the judgment-debtor is ordered to pay, be paid into the court's registry where the money would be held awaiting the outcome of the judgment debtor's appeal, with the money delivered to whichever party the appellate court deems proper. FSM Dev. Bank v. Talley, 22 FSM R. 608, 610-11 (Kos. 2020).

A motion for an order in aid of judgment may be heard by video-conferencing. FSM Dev. Bank v. Talley, 22 FSM R. 608, 611 (Kos. 2020).

The statute authorizing issuance of an order in aid of judgment, 6 F.S.M.C. 1409, presents two issues: the debtor's ability to pay, and the most expeditious way that payment can be accomplished. Because the court must consider the debtor's ability to pay, an order which takes this factor properly into consideration will not result, in and of itself, in the debtor's financial undoing. FSM Dev. Bank v. Talley, 22 FSM R. 608, 612 (Kos. 2020).

The court is unable to determine a judgment debtor's ability to pay and the fastest way for the debtor to pay when, although the judgment creditor establishes that the debtor had substantial income, there is no evidence of the debtor's legitimate financial obligations, such as the amount needed to support dependents. The court cannot determine if that amount it should order the debtor to pay is greater than or less than the biweekly sum the creditor asked for. When the court cannot establish with any certainty an appropriate amount, the court has no choice but to deny the motion for an order in aid of judgment, without prejudice to any future order in aid of judgment. FSM Dev. Bank v. Talley, 22 FSM R. 608, 612 (Kos. 2020).

– Secured Transactions

Because courts generally were concerned that third parties, especially other potential creditors, might rely to their detriment on assets which are in the possession of the borrower but, unknown to the other parties, are subject to a secret lien, there exists in the law a strong general policy against non-possessory and secret liens. Bank of Guam v. Island Hardware, Inc., 2 FSM R. 281, 279 (Pon. 1986).

The common law of the United States today concerning secured transactions is the Uniform Commercial Code (UCC), a comprehensive statute covering commercial transactions. Absence in the Federated States of Micronesia of any filing requirement to notify others of a security interest, and of a designated place for filing, which provisions are at the heart of the UCC statutory scheme, virtually precludes any judicial attempt to draw heavily on UCC principles in fashioning an approach to secured transactions. Bank of Guam v. Island Hardware, Inc., 2 FSM R. 281, 287 (Pon. 1986).

In considering the law concerning secured transactions, the FSM Supreme Court must look for guidance of the pre-UCC common law and may only declare the existence of such security interests as have been found by other courts to exist in the absence of statutes. Bank of Guam v. Island Hardware, Inc., 2 FSM R. 281, 288 (Pon. 1986).

When a party agrees to create a security interest to secure his debt but then refuses to do what is

necessary to vest the other party with statutory or common law lien rights in the property, courts can find that the other party has an equitable lien in property even if statutory or common law lien requirements have not been made. Bank of Guam v. Island Hardware, Inc., 2 FSM R. 281, 290 (Pon. 1986).

Non-possessory equitable liens will not be found to exist against another who had neither actual notice nor reason to know of the existence of the security claim. Bank of Guam v. Island Hardware, Inc., 2 FSM R. 281, 290 (Pon. 1986).

In absence of an authorized statute, a claim of a chattel mortgage will not be upheld as an equitable lien against third parties who had neither actual notice nor reason to know of the existence of the security claim unless there has been some method of notice so that other interested persons could have a reasonable opportunity to become aware of the security interest. In re Island Hardware, 3 FSM R. 332, 340 (Pon. 1988).

A "general security agreement," without more does not establish a lien under common law or pursuant to any statute in the Federated States of Micronesia. In re Island Hardware, 3 FSM R. 332, 342 (Pon. 1988).

Unless a statute or common law principle expressly says otherwise, disclosure is a prerequisite for making a lien effective against other creditors. In re Island Hardware, 3 FSM R. 332, 342 (Pon. 1988).

Secured transactions within the Federated States of Micronesia remain subject to the policies applied elsewhere prior to the adoption of the Uniform Commercial Code. In re Island Hardware, 3 FSM R. 332, 342 (Pon. 1988).

In the absence of a statute authorizing the recording of security interests, security agreements should be authenticated by a controller, accountant, bookkeeper, or other employee with firsthand, personal knowledge of the secured party's books and records. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 659, 663 (Pon. 1996).

A secured interest will not be given priority status when there is no recording statute, thus making it a secret lien, and where there is no transfer of dominion to the lender, and the lender appears to claim a floating interest. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 659, 664 (Pon. 1996).

It has long been recognized in the FSM, that secret liens are not enforceable against third parties. Banks in the past have attempted to assert a priority right for unpaid loan balances where the loan was used to purchase chattel property. The court has denied them and refused to uphold the asserted liens against third parties. This is controlling law in the FSM. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 365 (Chk. 2003).

If a judgment-creditor were to attempt to execute against a piece of land for which there was a certificate of title and that certificate showed an outstanding mortgage on the land, or if there was no certificate of title for the land but a mortgage had been duly and properly recorded at the Land Commission so that anyone searching the records there should necessarily find it, then that would be a security interest that was not a secret lien and therefore valid against third parties. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 365 (Chk. 2003).

Because there are no statutory schemes in the FSM to record liens and mortgages on chattel property and provide notice thereof because no Micronesian legislature has established any, except that for vessels, chattel mortgages are therefore secret liens which cannot be enforced against third parties who had neither notice nor reason to know of the security interest claim. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 365 (Chk. 2003).

When the FSM Supreme Court's concern in inquiring into a Guam bankruptcy case was not to

determine whether the principles of comity should be applied, but rather whether any order the court might issue would subject a party to liability for contempt in the other court because the party was required by two courts to obey contradictory orders and when that concern has been assuaged, the court will take no position on whether, and under what circumstances, it might recognize U.S. bankruptcy law or proceedings and whether or when comity would apply in such a case. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 366 (Chk. 2003).

Generally, a secured interest will not be given priority status when there is no recording statute, thus making it a secret lien. In re Engichy, 11 FSM R. 520, 530 (Chk. 2003).

A promissory note and a security agreement are enforceable contractual agreements between the parties. Goyo Corp. v. Christian, 12 FSM R. 140, 146 (Pon. 2003).

Whenever a bank lends money, it always assumes a risk that the borrower will not repay it. The bank tries to manage or lessen its risk by requiring certain information about the borrower and the money's intended use and by evaluating that information before any money is lent. Even if satisfied that the borrower is creditworthy, a bank may also lessen its risk by attaching certain conditions to the loan and by acquiring a security interest in the borrower's collateral. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 286 (Chk. 2009).

If a security interest has been perfected under Title 33, chapter 10 of the FSM Code, the secured party will, by virtue of a judgment, be entitled to foreclose as a post-judgment remedy. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 288 (Chk. 2009).

If a security interest has been perfected, the secured party will, by virtue of a judgment, be entitled to foreclose. This is a post-judgment remedy and the secured party may also have other post-judgment remedies available to it. FSM Dev. Bank v. Chuuk Fresh Tuna, Inc., 16 FSM R. 335, 339 (Chk. 2009).

A pre-judgment possession hearing should be an expedited proceeding because the statute provides that a secured party is entitled to an expedited hearing upon application for a pre-judgment order granting the secured party possession of the collateral. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 569, 571 (Kos. 2013).

A motion to dismiss that was a matter of first impression, had to be carefully considered and denied before the court could proceed with a pre-judgment possession hearing. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 569, 571 (Kos. 2013).

The court will deny an attorney's motion to withdraw for financial reasons when substitute counsel certainly cannot be found in time for the pre-judgment possession hearing or the depositions and the pre-judgment possession cannot and will not be delayed because it is statutorily an expedited proceeding. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 569, 571-72 (Kos. 2013).

Since a secured party under a prior transaction may file a notice of the property interest created by the prior transaction within sixty days of the Secured Transactions Act's effective date in the same manner as provided for a notice of a security interest and since the Act became effective on October 2, 2006, a November 29, 2006 filing of a notice of security interest in a prior transaction created a perfected security interest. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 594-95 (Kos. 2013).

The Secured Transactions Act is an existing, applicable FSM statute that covers the pre-judgment seizure of property by a secured party. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 595 (Kos. 2013).

When the secured party's application contains a statement under oath verifying the existence of the attached security agreement and identifies two events of the debtor's default; when it has perfected its

security interest by properly filing it with the FSM Secured Transactions Filing Office; and when the debtor has defaulted on the loan payments, the secured party has, under 33 F.S.M.C. 1052, a right to take lawful possession of the collateral. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 596 (Kos. 2013).

A mortgagee under the provisions of a chattel mortgage covering all the personal property of the insolvent may, on default, be entitled to take possession of the property and sell it to satisfy his claim. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 596 (Kos. 2013).

When an FSM secured transactions statute mirrors and appears to have been drawn from a U.S. statute, U.S. caselaw construing the U.S. statute may be consulted for guidance in construing the FSM statute. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 596 & n.6 (Kos. 2013).

Since the Secured Transactions Act does not apply to the transfer of an interest in real property except as provided with respect to fixtures, crops, timber to be cut, or minerals to be extracted, a lender cannot have perfected a security interest in a factory building unless it had obtained a mortgage on the factory building (and presumably the land underneath it or an easement) and recorded that mortgage. The lender is therefore not entitled to pre-judgment possession of the factory building since it does not have a perfected security interest in it under the Act. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 597 (Kos. 2013).

Fixtures are goods that are fixed to real property, or are intended to become fixed to real property in a manner that causes a property right to arise in the goods under the prevailing law. Goods are all things that are movable when a security interest attaches and the term includes fixtures. Readily removable factory machines, office machines, and domestic appliances are not fixtures. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 598 (Kos. 2013).

When a security agreement covers fixtures, the secured party may, if it chooses, proceed under the Secured Transactions Act and obtain a 33 F.S.M.C. 1053(3) order for pre-judgment possession of the fixtures. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 598 (Kos. 2013).

A general description of the collateral is sufficient. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 598 (Kos. 2013).

When, except for the factory building, the vehicles, and the inventory, the rest of the listed items on the filing would fit the general description as water bottling machines and equipment needed to produce bottled water and thus be collateral subject to the bank's security interest even if the attachment to the agreement was an illegitimate expansion of the bank's security interests, the bank is therefore entitled, after the debtor has defaulted, to immediate possession of those chattels in which it has a perfected security interest. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 598 (Kos. 2013).

An assignment executed between a bank and a borrower that provides that, in the event of a default, the bank is the sole and exclusive party entitled to possession of the subject property/premises and to operate the subject business and to receive all income therefrom is a right to possession and operation that, although a security interest, is not a security interest that can be, or was, perfected under Title 33, chapter 10, because it involves real property – the factory building – and the incorporeal right to operate the business from that building. On its face, this is an executory contract for which there was an offer, acceptance, definite terms, and consideration. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 598 (Kos. 2013).

While 33 F.S.M.C. 1053 gives a secured party the right to pre-judgment possession of collateral – chattels – in which the secured party has perfected a security interest, it does not authorize the court to issue a pre-judgment order enforcing specific performance of a contract designed to give a lender further security in the event of a default or to issue an order granting the lender pre-judgment possession of

property in which it does not have a perfected security interest and in which it could not perfect a security interest. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 598 (Kos. 2013).

The right to a debtor's income is an intangible property right in which a lender could have perfected a security interest. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 599 (Kos. 2013).

The Secured Transactions Act generally recognizes an obligor's liability for any deficiency. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 599 (Kos. 2013).

Besides pre-judgment possession of the collateral, under the Secured Transactions Act, the creditor also has the remedies of writ of attachment and release and modification and may seek a foreclosure action against a debtor's secured or unsecured property whether or not it has taken possession of the collateral. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 599 (Kos. 2013).

In order for a secured party's seizure of collateral to be a waiver of the secured party's right to a deficiency judgment, that waiver ordinarily would have to be expressly provided for in the mortgage documents or in a statute. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 599 (Kos. 2013).

A secured party's possession of the debtor's collateral will not constitute a waiver by the secured party of its right to proceed and obtain a judgment for any deficiency. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 599 (Kos. 2013).

When, although the factory building is real property to which the secured party does not have a right to pre-judgment possession, the secured party must be afforded access to the building so that it may take possession of the chattels to which it does have a right of pre-judgment possession. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 599 (Kos. 2013).

A claim by the Marshall Islands Social Security Administration against a debtor in the FSM is not a secured debt – a claim in which the creditor has a security interest in collateral. It is an unsecured claim. In re Mix, 18 FSM R. 600, 603 (Pon. 2013).

When the defaulting borrowers had executed a chattel mortgage to help secure a loan, and when the bank registered and thereby perfected its security interests in the chattels, the bank is entitled to a judgment on its claim to foreclose its chattel mortgage.

When the borrowers' assignment of income and of exclusive possession was used to secure their indebtedness to the bank and the assignments allowed the borrowers to retain their income and possession of the business premises so long as the loan it secured did not go into default, the bank is entitled to a judgment on its claim to enforce the assignments once the borrowers have defaulted. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 478 (Pon. 2020).

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When the FSM Development Bank has a statutory right to reduce its claim to judgment and to foreclose its perfected security interest in the borrowers' medical equipment and also has the contractual right to do the same, the Constitution's Professional Services Clause does not make that contract illegal. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 481 (Pon. 2020).

Since the court must make a reasonable effort to take every step reasonable and necessary to avoid unnecessarily reducing the availability of article XIII, section 1 health care services, the court will note that

the FSM Development Bank is legally entitled to an order of sale for the mortgaged medical equipment and to an order enforcing the borrowers' assignments of income and exclusive possession of the medical clinic premises, but the court will not issue such orders contemporaneously with the judgment. The court will hesitate to issue such orders until all reasonable means of satisfying the judgment by other methods have been explored and exhausted, and will thus give special consideration to health care services and assure that their availability is not unreasonably or unnecessarily diminished by any action it takes. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 481-82 (Pon. 2020).

– Setoff

The general rule is that where a creditor has failed to both procure credit insurance paid for by the debtor and to notify the debtor of his failure to procure the insurance requested, prior to loss, the debtor may plead such failure as a defense or setoff. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 250 (Chk. 1995).

Equity does not dictate that a setoff for the amount of a defendant's stock subscription be allowed against a contribution claim when the person claiming the setoff received by far the greatest benefit from the failed corporation while it was operating. Senda v. Semes, 8 FSM R. 484, 507 (Pon. 1998).

A statute that requires the creditor to give written notice to the debtor of the creditor's intention to foreclose prior to foreclosing on the property, is inapplicable to setoffs because foreclosures and setoffs are very different things. Bank of the FSM v. Asugar, 10 FSM R. 340, 342 (Chk. 2001).

A setoff is a debtor's right to reduce the amount of a debt by any sum the creditor owes the debtor, or the counterbalancing sum owed by the creditor. Bank of the FSM v. Asugar, 10 FSM R. 340, 342 (Chk. 2001).

Banks generally have a common law right to a setoff against depositors. Bank of the FSM v. Asugar, 10 FSM R. 340, 342 (Chk. 2001).

When a bank has a contractual right to setoff because the promissory note contains a provision granting the bank a right to setoff and in that provision, the borrowers authorize the bank's use of setoff, and the borrowers are on notice that if payments are not made that the bank may exercise a setoff against the borrower's bank deposits. And when the note provides that the bank may forgo or delay enforcing any of its rights or remedies without losing them, the bank was within its rights to setoff sums in the borrowers' bank accounts against the monthly payments as each became due and remained unpaid instead of declaring the loan in default and accelerating payment of the entire amount. Bank of the FSM v. Asugar, 10 FSM R. 340, 342 (Chk. 2001).

A setoff is a debtor's right to reduce the amount of a debt by any sum the creditor owes the debtor, or the counterbalancing sum owed by the creditor. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 469 (Pon. 2004).

A promissory note will not bear any interest past the date it is setoff against an opposing claim. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 470 (Pon. 2004).

Setoff implies that both the plaintiff and defendant have independent causes of action maintainable against the other, while mitigation (of damages) does not involve facts which constitute a cause of action in favor of the defendant, but facts that show that the plaintiff is not entitled to as large an amount as the plaintiff's showing would otherwise justify. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 420 (Yap 2006).

The doctrine of set-off, as recognized in the FSM, applies between parties when the party being sued has no defense to an action but has a cause of action against the party suing him that arises out of the same right and the party being sued asks the court to determine the parties' mutual liability. Ruo Municipality v. Shigeto's Store, 17 FSM R. 195, 197 (Chk. S. Ct. Tr. 2010).

The setoff doctrine only applies when liabilities are mutual. Ruo Municipality v. Shigeto's Store, 17 FSM R. 195, 197 (Chk. S. Ct. Tr. 2010).

Since Ruo municipality and Piisemwar municipality are distinct parties, each responsible for its own obligations and liabilities, Ruo municipality is under no obligation to answer to Shigeto's Store's claim against Piisemwar municipality. Therefore, the respective liabilities of these parties cannot be set-off against each other. Ruo Municipality v. Shigeto's Store, 17 FSM R. 195, 197 (Chk. S. Ct. Tr. 2010).

Two municipalities cannot be jointly and severally liable for each others' debts because each municipality has a separate account in the State treasury, because each municipality is authorized to obligate funds from its municipal account, and because the municipality, not the state, obligates those funds and once the funds are obligated, the municipality, not the state, owes the obligation. Therefore, the amount Piisemwar municipality owes to Shigeto's cannot be set-off against the amount Shigeto's owes Ruo municipality. Ruo Municipality v. Shigeto's Store, 17 FSM R. 195, 197 (Chk. S. Ct. Tr. 2010).

When Shigeto's contracted with Piisemwar municipality for the purchase of motors and the state was not a party to that contract and when Shigeto's Store has not raised any other basis for liability other than set-off between the contracts it had with Ruo and Piisemwar municipalities, judgment will enter for Shigeto's Store and against only Piisemwar municipality. Ruo Municipality v. Shigeto's Store, 17 FSM R. 195, 197-98 (Chk. S. Ct. Tr. 2010).

When there was evidence of the terminated employee receiving approval of an advance leave request of 60 hours, but there was no evidence of how much of this advance leave was actually used, how much had already been paid back, and how much was still outstanding, the court will deny the government's request to offset the employee's pay to cover for the advance leave still owed since there is a lack of evidence on this matter. Poll v. Victor, 18 FSM R. 235, 245 (Pon. 2012).

A setoff is a debtor's right to reduce the amount of a debt by any sum the creditor owes the debtor, or the counterbalancing sum owed by the creditor. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 181 n.12 (Pon. 2017).

Yap has specifically extended its sovereign immunity waiver to include set-offs. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 318, 325 n.6 (Yap 2017).

DOMESTIC RELATIONS

Where there is diversity of citizenship between the parties, litigation involving domestic relations issues, including custody and child support, falls within the jurisdiction of the FSM Supreme Court. Mongkeya v. Brackett, 2 FSM R. 291, 292 (Kos. 1986).

All persons, whether male or female, residing in the state of Pohnpei, who have attained the age of 18 years are regarded as of legal age and their period of minority to have ceased. Welson v. FSM Social Sec. Admin., 21 FSM R. 348, 351 n.1 (Pon. 2017).

When there is diversity of citizenship between the parties, litigation involving domestic relations issues, including custody and child support, falls within the FSM Supreme Court's jurisdiction, even though state law will furnish the rules of decision. O'Sonis v. O'Sonis, 22 FSM R. 268, 269 (Chk. 2019).

The states generally have power over land law and other local issues including personal property law, inheritance law, and domestic law including marriage, divorce, and adoption. However, where the national government concurrently has the power to acquire title to land within the FSM under powers expressly delegated to it, and state law purports to restrict it, the state law must fail as applied to the national government. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 331-32 (Pon. 2019).

– Adoption

6 F.S.M.C. 1614 exempts adoptions effected in accordance with local custom from the domestic relations law of the FSM. Customary adoptions are an alternative to court-ordered adoptions which are established by the Code. In re Marquez, 5 FSM R. 381, 383 (Pon. 1992).

Parties who wish to adopt a child have a choice of method of adoption. They may adopt according to local custom, or they may adopt according to the laws of the Federated States of Micronesia. What a petitioner may not do is seek the court's involvement in a customary adoption. In re Marquez, 5 FSM R. 381, 383 (Pon. 1992).

6 F.S.M.C. 1615 grants the court jurisdiction to confirm customary adoptions. For the court to hear a petition to confirm a customary adoption there must first be a challenge to the validity of that adoption. Furthermore, the challenge must either cause "serious embarrassment" to one of the parties, or affect their property rights. Mere speculation or gossip will not suffice. In re Marquez, 5 FSM R. 381, 383-84 (Pon. 1992).

Before the court may confirm a customary adoption, there must first have occurred a customary adoption. Thus, a threshold question is whether a customary adoption has taken place. In re Marquez, 5 FSM R. 381, 384 (Pon. 1992).

Evidence that a customary adoption has taken place may be offered via affidavits from the natural parents of the child, consenting and attesting to the customary adoption. In re Marquez, 5 FSM R. 381, 384 (Pon. 1992).

A petition to confirm a customary adoption which fails to indicate that the customary adoption has occurred is premature and unreviewable. In re Marquez, 5 FSM R. 381, 385 (Pon. 1992).

The court has no statutory authority to enter a decree of adoption, pursuant to statute, for an adult. In re Jae Joong Hwang, 6 FSM R. 331, 331 (Chk. S. Ct. Tr. 1994).

An adoption of an adult may qualify for recognition by the court if done under Chuukese custom. In re Jae Joong Hwang, 6 FSM R. 331, 332 (Chk. S. Ct. Tr. 1994).

To prove an achemwir adoption, the consent of the adoptive lineage's members must be proven. Peter v. Jessy, 17 FSM R. 163, 171 (Chk. S. Ct. App. 2010).

When Epen Inong brought Yosko Epen to live among members of his lineage, but his lineage members did not treat her as a lineage member since she did not participate in lineage member meetings and decision-making and since she was referred to as Epen Inong's daughter and not as a "sister" as would be proper if she had been a lineage member through an achemwir adoption, there is no admitted evidence showing that the lineage members, by their subsequent conduct, consented to or ratified an achemwir adoption of Yosko Epen. Peter v. Jessy, 17 FSM R. 163, 171-72 (Chk. S. Ct. App. 2010).

When the proponents did not present any evidence or argument to support their contention that achemwir doesn't require lineage member consent or to otherwise impeach the testimony of their own expert to that effect and when they had ample opportunity, at the trial level, to raise any issues regarding achemwir's requirements and their own expert witness presented evidence that the trial court found credible, and which clearly articulated its requirements including the lineage member consent requirement, they failed to meet their burden of proof to show otherwise at trial. The appellate court will not, therefore, entertain a new theory regarding achemwir's requirements. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

A valid claim for Social Security benefits as an adopted child requires proof of adoption and of dependency of the adopted child on the wage earner. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 368 (Pon. 2016).

Changed circumstances may require the adopted child to move away and to no longer be dependent on the adopted parent. In these situations, the child no longer depends on the wage earner for support, and the child would fall outside of Social Security's statutory scheme. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 368 (Pon. 2016).

Social Security has the regulatory authority to request additional proof of dependency and the claimant is required to submit such proof. Actual dependency upon the adoptive parent is a prerequisite for an adopted minor to receive surviving child Social Security benefits after the adoptive parent's death. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 370-71 (Pon. 2016).

A valid claim for adopted child benefits requires proof of adoption and of the adopted child's dependency on the wage earner. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 479 (Pon. 2016).

Social Security's statutory scheme is not unconstitutional, and the exercise of its investigatory functions, which would include the request for evidence of dependency in adoption matters, is lawful as long as it is authorized by law. Thus, Social Security regulations are not *ultra vires*. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 479 (Pon. 2016).

A child who is dependent upon a person entitled to old age benefits or who was dependent upon an individual who died fully insured or currently insured, is entitled, upon filing an application, to a child's insurance benefit, but actual dependency upon the adoptive parent is a prerequisite for an adopted minor to receive surviving social security benefits after the adoptive parent's death. Eliam v. FSM Social Sec. Admin., 21 FSM R. 412, 417 (App. 2018).

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

An adopted child applying for benefits under the FSM Social Security system must complete an application and show dependency on the insured. Robert v. FSM Social Sec. Admin., 21 FSM R. 490, 493 (Kos. 2018).

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Social Security has the regulatory authority to request additional proof of dependency and the claimant is required to submit such proof since actual dependency upon the adoptive parent is a prerequisite for an adopted minor to receive surviving child Social Security benefits after the adoptive parent's death. Robert v. FSM Social Sec. Admin., 21 FSM R. 490, 493-94 (Kos. 2018).

When the immunization records that listed the children's natural mothers did not support the benefits claim because it did not show the children's dependency on the adoptive parents; when no additional evidence was submitted after the hearing for the court to consider; and when the census records show the adopted children in the same household as the wage-earner adoptive parent and his daughters, the natural mothers, the court will remand the matter to the Board to determine whether the children were dependent on the wage-earner's disability payments; whether the children's mothers were employed at the time; and

whether dependency would be presumed if the child lived with the adoptive parents. Robert v. FSM Social Sec. Admin., 21 FSM R. 490, 494-95 (Kos. 2018).

– Child Support and Custody

Where there is diversity of citizenship between the parties, litigation involving domestic relations issues, including custody and child support, falls within the jurisdiction of the FSM Supreme Court. Mongkeya v. Brackett, 2 FSM R. 291, 292 (Kos. 1986).

In litigation brought by a mother seeking child support payments from the father, the court will not grant the defendant-father's motion to change the venue to the FSM state in which he now resides from the FSM state in which: 1) the mother initiated the litigation; 2) the couple was married and resided together; 3) their children were born and have always lived; and 4) the mother still resides. Pernet v. Aflague, 4 FSM R. 222, 224 (Pon. 1990).

Statutory provisions in the Trust Territory Code concerning domestic relations are part of state law because domestic relations fall within the powers of the states and not the national government. Pernet v. Aflague, 4 FSM R. 222, 224 (Pon. 1990).

Since the determination of support payments payable by a divorced husband is a matter governed by state law, the FSM Supreme Court in addressing such an issue is obligated to attempt to apply the pertinent state statutes in the same fashion as would the highest state court in the pertinent jurisdiction. Pernet v. Aflague, 4 FSM R. 222, 224 (Pon. 1990).

Under Pohnpeian state law after confirmation of a customary separation or divorce under 39 TTC 5, the court may order custody and child support under 39 TTC 103. Pernet v. Aflague, 4 FSM R. 222, 225 (Pon. 1990).

Although under historical Pohnpeian customary law only the husband had rights over the children of the marriage, now both parents have rights and responsibilities in connection with a marriage and the court should take this into consideration in determining child custody rights and support payment obligations in cases of customary divorce. Pernet v. Aflague, 4 FSM R. 222, 225 (Pon. 1990).

Under the law of Pohnpei a court may award child custody, and, if necessary order child support. The standard to be applied is the "best interests of the child." Youngstrom v. Youngstrom, 5 FSM R. 335, 337 (Pon. 1992).

Under the law of Pohnpei support of the children is the responsibility of both parents. A court may order the parent without custody to make support payments. In granting or denying a divorce, the court may make such orders for custody of minor children, for their support as it deems justice and the best interests of all concerned may require. Youngstrom v. Youngstrom, 6 FSM R. 304, 306 (Pon. 1993).

If a court deems justice and the best interest of all concerned so require, it may award past child support. When considering child support, it is the best interests of the children with which a court is most concerned. Youngstrom v. Youngstrom, 6 FSM R. 304, 306 (Pon. 1993).

Factual determinations of a trial court, such as the appropriate size and period for an award of child support, will be overturned on appeal only if the findings of the trial court are clearly erroneous. Youngstrom v. Youngstrom, 7 FSM R. 34, 36 (App. 1995).

Citation to other cases is of limited assistance in framing an award for child support because a child support award is an inherently fact specific determination that must be made on a case by case basis. Youngstrom v. Youngstrom, 7 FSM R. 34, 37 (App. 1995).

The reciprocal child support enforcement provisions of chapter 17 of Title 6 of the FSM Code remain in effect as part of state law. Burke v. Torwal, 7 FSM R. 531, 534 (Pon. 1996).

A proceeding for enforcement in the FSM of a CNMI child support order is properly filed in state court by the state attorney general, not in national court by the FSM Attorney General. Burke v. Torwal, 7 FSM R. 531, 535-36 (Pon. 1996).

Although national law provides for the reciprocal enforcement of child support orders, case law supports the conclusion that FSM Supreme Court should abstain from exercising its jurisdiction at least until the state court has had the opportunity to rule on the issues. Villazon v. Mafnas, 11 FSM R. 309, 310 (Pon. 2003).

Based on the traditional state jurisdiction over matters of domestic relations and on the applicable statutory provisions' language and history, a proceeding for enforcement of a foreign support order is properly commenced in the state court in which the defendant resides, rather than in the FSM Supreme Court and for the same reasons, these cases are properly prosecuted by the Pohnpei Attorney General's office, rather than by the FSM Attorney General's office. Villazon v. Mafnas, 11 FSM R. 309, 310-11 (Pon. 2003).

Pohnpei state law anticipates the prosecution of child support enforcement actions in foreign jurisdictions, and provides plaintiffs with a procedure and remedy that is identical to that which they would enjoy under the national code. Villazon v. Mafnas, 11 FSM R. 309, 311 (Pon. 2003).

A biological father whose paternity has been established owes his natural child a duty of support. Tolenoa v. Timothy, 11 FSM R. 485, 487 (Kos. S. Ct. Tr. 2003).

The interests of justice require an award of child support based upon the custom, tradition, prevailing economic status of Kosrae, the child's needs, the plaintiff's household status, and the defendant's earning capacity in Guam. Tolenoa v. Timothy, 11 FSM R. 485, 487 (Kos. S. Ct. Tr. 2003).

In domestic relations matters, the national court should abstain from exercising jurisdiction until the state court has had the opportunity to rule on the issues presented when it is a proceeding for enforcement of a foreign support order. These cases are properly commenced in the state court in which the defendant resides, rather than in the FSM Supreme Court and are properly prosecuted by a state attorney general, rather than by the FSM Attorney General. Anson v. Rutmag, 11 FSM R. 570, 571-72 (Pon. 2003).

Plaintiffs seeking to prosecute a foreign child support enforcement action must file their action in state court, where they will be provided with a procedure and remedy that is identical to that which they would enjoy under the national code. When such a case has been filed in the FSM Supreme Court, it will be ordered transferred to a state court with the proviso that if that court has not ruled on the issues presented within 45 days, the FSM Supreme Court may reinstitute active proceedings. The national court's role is to docket and transfer the case to a state court for determination of the paternity and child support issues. Anson v. Rutmag, 11 FSM R. 570, 572 (Pon. 2003).

When a state has not enacted laws in an area within its jurisdiction such as child support, national law is applicable to the state court proceeding, because the Trust Territory Code reciprocal support enforcement provisions, now codified at 6 F.S.M.C. 1711, are imputed to be state law under the FSM Constitution's Transition Clause. Under that clause, Trust Territory statutes that were applicable to the states became part of the states' laws regardless of whether they were published thereby. They stand as the laws of the states until amended, superseded or repealed. Anson v. Rutmag, 11 FSM R. 570, 572 (Pon. 2003).

Reciprocal support enforcement procedure requires that a state attorney general's office be diligent in its prosecution of it, and that, after a hearing, the state court will issue an order that decides the paternity question and determines the amount of child support and medical insurance coverage, if any, to which the

petitioner is entitled. Anson v. Rutmag, 11 FSM R. 570, 572-73 (Pon. 2003).

Since any decree as to custody or support of the parties' minor children is subject to revision by the court at any time upon motion of either party, the court has on-going jurisdiction to reconsider the question of child support previously decided. Ramp v. Ramp, 11 FSM R. 630, 639 (Pon. 2003).

In the context of a confirmation of a customary divorce, the court has awarded reimbursement for child support expenses where the father made no support payments, even when part of the reimbursement is sought for a period when no pendente lite order requiring support payments was in effect. Ramp v. Ramp, 11 FSM R. 630, 641 (Pon. 2003).

When it is a court-ordered divorce decree's child support provisions, not a confirmation of a customary divorce, that a party seeks to modify, the court, bearing in mind the suitability to the FSM of any specific common law principle, may, in determining Pohnpei law, look to the Restatements (compilations of U.S. common law according to subject matter) and decisions from jurisdictions outside the FSM that also follow the common law tradition. Ramp v. Ramp, 11 FSM R. 630, 641 (Pon. 2003).

Court-ordered child support payments may be modified at any time circumstances render such a change appropriate, but the modification operates prospectively only. Child support cannot be modified retroactively. This is consistent with the equitable principle, suitable for Micronesia or elsewhere, that one having a claim should pursue it when he or she first has notice of it. Ramp v. Ramp, 11 FSM R. 630, 641 (Pon. 2003).

While a child support decree may be subject to revision by the court at any time, a party seeking modification of child support must show a substantial change in circumstances not anticipated by the original decree in order to justify the modification. For determination is the question of the children's needs, and not the standard of living desired by the custodial parent. Ramp v. Ramp, 11 FSM R. 630, 641 (Pon. 2003).

While a divorced party's ability to help defray the alleged increased child support costs is certainly a valid consideration generally, it does not go to the question of the children's alleged changed circumstances (i.e., increased needs), which is the primary issue for determination in a support modification proceeding. When the custodial parent was aware in 1993 of these needs, her remedy was to move for modification under 6 F.S.M.C. 1622 at the time when she first had notice. It was not to wait nearly ten years until she had learned that his income had increased and her child support was about to terminate when during this period, he was making all of the court-ordered payments, a factor which the court may legitimately give some attention to in judging the equities as between the parties and their children's welfare. Ramp v. Ramp, 11 FSM R. 630, 642 (Pon. 2003).

Under Pohnpei law, both the mother and the father are responsible for their children's support. The parties' obligation to support their children is in accordance with their respective abilities. It is sound public policy to require both parents to make some contribution toward the support of their children regardless of income disparity. Ramp v. Ramp, 11 FSM R. 630, 642 (Pon. 2003).

Even if one divorced party's income is greater than the other's, that fact alone does not support a proposed modification to shift all of the pre-motion child-rearing costs retroactively to the higher-income party. Ramp v. Ramp, 11 FSM R. 630, 642 (Pon. 2003).

The obligation to support the parties' children is, after all, one that the mother must share with the father, taking into account her ability to contribute. Ramp v. Ramp, 11 FSM R. 630, 643 (Pon. 2003).

When under the separation agreement, the father is only obligated to support the parties' adult children while they are pursuing post secondary education and since a child has re-enrolled in college and the father has now resumed paying her expenses and another has left school, these two do not entitle the

mother to any measure of relief. Ramp v. Ramp, 11 FSM R. 630, 643 (Pon. 2003).

A requested child support order will be denied as redundant when it is already in the parties' court-approved separation agreement and past history shows that the father has complied with it. Ramp v. Ramp, 11 FSM R. 630, 643-44 (Pon. 2003).

– Divorce

National courts can exercise jurisdiction over divorce cases where there is diversity of citizenship although domestic relations are primarily the subject of state law. Youngstrom v. Youngstrom, 5 FSM R. 335, 336 (Pon. 1992).

Since a divorce case involves the status or condition of a person and his relation to other persons the law to be applied is the law of the domicile. Youngstrom v. Youngstrom, 5 FSM R. 335, 337 (Pon. 1992).

When a divorced couple is jointly responsible on a promissory note, no agreement they could make between them could possibly prevent the creditor from pursuing its claims against either or both of them, and since the issue of whether one of the defendants could have relieved himself or herself from responsibility to the creditor could not have been litigated in the divorce proceeding, the creditor cannot be precluded from litigating that issue. Bank of the FSM v. Hebel, 10 FSM R. 279, 286 (Pon. 2001).

A divorcing couple is free to enter into whatever agreement they choose as to who between the two of them will be responsible to repay a bank loan. However, such an agreement can have no effect on bank's right to seek repayment of the loan from either or both of them. Bank of the FSM v. Hebel, 10 FSM R. 279, 286 (Pon. 2001).

Title 6, section 1622, FSM Code provides that any decree as to custody or support of the parties' minor children is subject to revision by the court at any time, but does not provide for continuing jurisdiction over property issues. Ramp v. Ramp, 11 FSM R. 630, 633 n.1 (Pon. 2003).

Because a divorce case involves the parties' status or condition and their relationship to others, the law to be applied is that of the domicile. Thus in a divorce between a Pohnpeian, who now resides in Hawaii, and an American citizen who resides in Pohnpei and the parties lived in Pohnpei during their marriage, the court will apply Pohnpei substantive law. Ramp v. Ramp, 11 FSM R. 630, 641 (Pon. 2003).

Spousal and child support and child visitation and custody rights are, under Chuuk State Supreme Court Civil Procedure Rule 13(a), compulsory counterclaims that must be pled in the earlier state court divorce action, if they have not been already pled there. O'Sonis v. O'Sonis, 22 FSM R. 268, 270 (Chk. 2019).

Any claim which is filed as an independent, separate action by one spouse during the pendency of a prior claim filed by the other spouse and which may be denominated a compulsory counterclaim under Rule 13(a), may not be independently prosecuted during the pendency of the prior action but must be dismissed with the leave to file it as a counterclaim in the prior action or stayed until final judgment has been entered in that action. O'Sonis v. O'Sonis, 22 FSM R. 268, 270 (Chk. 2019).

In a divorce action, even final support and custody and visitation orders might later be modified if materially changed circumstances warrant it. O'Sonis v. O'Sonis, 22 FSM R. 268, 270 (Chk. 2019).

– Marriage

A marriage procured and induced by fraud is void ab initio and the party whose consent was so procured is entitled to a judgment annulling the marriage. Burrow v. Burrow, 6 FSM R. 203, 204-05 (Pon. 1993).

The right to marry is a fundamental constitutional right. Prisoners retain that right, but the right is subject to substantial restrictions as a result of imprisonment. Prisons may regulate the time and place of the wedding ceremony. Sigrah v. Noda, 14 FSM R. 295, 298 (Kos. S. Ct. Tr. 2006).

A prisoner's right to marry has not been violated when the wedding ceremony will take place at the Kosrae state jail because the prison has authority to regulate a prisoner's wedding ceremony, including the regulation of the ceremony's time and place. Sigrah v. Noda, 14 FSM R. 295, 298 (Kos. S. Ct. Tr. 2006).

A prisoner's rights to privacy and association, including intimate association, do not include the right to be married at his family home. The prisoner's right to privacy and association are necessarily limited during his period of imprisonment. Sigrah v. Noda, 14 FSM R. 295, 298 (Kos. S. Ct. Tr. 2006).

Since a prisoner's rights to marry, privacy and association are not violated by the jailer's restriction of the location of prisoner's wedding ceremony to the Kosrae state jail, there is no unlawful restraint of the prisoner's liberty, and thus, a petition for the writ of habeas corpus to be married at home will be denied. Sigrah v. Noda, 14 FSM R. 295, 299 (Kos. S. Ct. Tr. 2006).

The Kosrae State Court recognizes the universal importance of marriage in our societies; the social and geographical configuration of Kosrae; and the importance of family relationships in our communities and of the building of new family relationships through marriages. Sigrah v. Noda, 14 FSM R. 295, 299 (Kos. S. Ct. Tr. 2006).

Kosrae customary practice is to hold wedding ceremonies at a church or at the home of the bride or groom. Sigrah v. Noda, 14 FSM R. 295, 299 (Kos. S. Ct. Tr. 2006).

Considering the state's geographic and social configuration, the customary importance of marriages in the state and its effects upon the family and community relationships in Kosrae, the customary location of wedding ceremonies in Kosrae and the absence of any held at the state jail, a request for a prisoner to be married outside of the jail may be granted, in part, upon fulfillment of conditions. Sigrah v. Noda, 14 FSM R. 295, 299 (Kos. S. Ct. Tr. 2006).

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

The Pohnpei Supreme Court recognizes three types of marriages: 1) statutory civil marriage under 39 TTC 51; 2) statutory "religious marriage" commonly known in Pohnpei as "inou sarawi" meaning (a sacrosanct) and 3) statutory customary marriage known in Pohnpei as "pwopwoud en tiahk en sahpw." Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 271-72 (Pon. 2015).

Customary marriage is based on a flexible standard and is not established by a single test or a defined set of parameters because the solemnization of a customary marriage can take many forms. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 273 (Pon. 2015).

Under Pohnpei law, marriage contracts between parties, both of whom are FSM citizens, that are solemnized in accordance with recognized customs, are valid. Hadley v. FSM Social Sec. Admin., 21 FSM R. 420, 427 (App. 2018).

To find that there was a Pohnpeian customary marriage, the court need not find that the coconut oil and head lei ritual was performed, only that there is substantial evidence in the record to make a finding that the families of both parties to the marriage contract consented to the marriage, expressly or impliedly.

Hadley v. FSM Social Sec. Admin., 21 FSM R. 420, 427 (App. 2018).

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

It is generally recognized that interference with existing contractual relations applies to any type of contract, except a contract to marry – marriage contracts are specifically excluded from the tort of intentional interference with contract. Panuelo v. FSM, 22 FSM R. 498, 505 (Pon. 2020).

A plaintiff cannot sue for tortious interference with a contract when that contract is a marriage contract. Panuelo v. FSM, 22 FSM R. 498, 505, 511 (Pon. 2020).

– Probate

State court, rather than national courts, should normally resolve probate and inheritance issues especially where interests in land are at issue. In re Nahnsen, 1 FSM R. 97, 97 (Pon. 1982).

Probate matters are statutory and involve proceedings in rem, that is, jurisdiction based on court control of specific property. In re Nahnsen, 1 FSM R. 97, 103 (Pon. 1982).

The FSM Supreme Court is empowered to exercise authority in probate matters where there is an independent basis for jurisdiction under the Constitution. In re Nahnsen, 1 FSM R. 97, 104 (Pon. 1982).

The power to regulate probate of wills or inheritance of property is not "beyond the power of a state to control" within the meaning of article VIII, section 1 of the Constitution and is consequently a state power. In re Nahnsen, 1 FSM R. 97, 107 (Pon. 1982).

Nothing about the power to regulate probate of wills or inheritance of property suggests that these are beyond the power of a state to control. In re Nahnsen, 1 FSM R. 97, 107 (Pon. 1982).

The Ponape District Court, although not granted jurisdiction over land matters, may be given the opportunity to hear certified questions from the FSM Supreme Court on issues in a probate case involving land in order to further the intent of the framers that local decision-makers play a part in decisions of a local nature. In re Nahnsen, 1 FSM R. 97, 110-12 (Pon. 1982).

When jurisdiction exists by virtue of diversity of the parties, the FSM Supreme Court may resolve the dispute despite the fact that matters squarely within the legislative power of states (e.g., probate, inheritance and land issues) may be involved. Ponape Chamber of Commerce v. Nett Mun. Gov't, 1 FSM R. 389, 392-93 (Pon. 1984).

An assignor must be able to inherit the assigned expectancy from the source in order for his assignment of expectancy to be effective. Etscheit v. Adams, 6 FSM R. 365, 382 (Pon. 1994).

Where a person is constitutionally prohibited from inheriting land that person's valid assignment of expectancy to a person who may acquire land will operate only to assign the non-land holdings in the expectancy. Etscheit v. Adams, 6 FSM R. 365, 382-83 (Pon. 1994).

Where Trust Territory law in 1956 did not allow non-citizens to acquire land except as heirs or devisees a deed from a landowner to her non-citizen children is invalid because the grantor was still living, and

therefore her children were neither heirs or devisees. Etscheit v. Adams, 6 FSM R. 365, 385-86 (Pon. 1994).

Heirs are those persons who acquire ownership upon someone's death. Thus the later issuance of a Certificate of Title to "heirs" confirms their earlier ownership of the property. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 49 n.8 (App. 1995).

A probate appeal may be remanded when a number of essential issues and facts have yet to be established and the ends of justice require that additional matters must be considered, including whether the appellants are proper parties to the proceedings and who are the beneficiaries or the exact persons entitled to share in the assets of the estate and what the proposed division of the assets is. In re Malon, 8 FSM R. 591, 592 (Chk. S. Ct. App. 1998).

The terms of the will and the clear intent of the testator control who shall be in actual physical control of the land for the purpose and its preservation and for the purpose of granting its reasonable use by those persons having a lawful right to the use of the land. In re Ori, 8 FSM R. 593, 594 (Chk. S. Ct. App. 1998).

Because the Chuuk Constitution requires the courts to make decisions consistent with Chuukese customs and traditions, Chuukese custom and tradition may prevail over the provisions of a holographic will in deciding who may enter upon land for the purpose of making reasonable use thereof. In re Ori, 8 FSM R. 593, 595 (Chk. S. Ct. App. 1998).

A will written out by request by someone else does not constitute a holographic will within the meaning of 13 TTC 6, or one in the handwriting of the testator, but one prepared by another at the testator's direction within the meaning of 13 TTC 5. Elaija v. Edmond, 9 FSM R. 175, 181 (Kos. S. Ct. Tr. 1999).

There were no clearly ascertainable statutory requirements for the execution of a valid will in Kosrae in 1962. Elaija v. Edmond, 9 FSM R. 175, 181-82 n.3 (Kos. S. Ct. Tr. 1999).

A person may only transfer such title to land as that person lawfully possesses. So when someone did not own a parcel, he did not have the authority to transfer title and distribute it to his children through his will. Anton v. Heirs of Shrew, 10 FSM R. 162, 165 (Kos. S. Ct. Tr. 2001).

It is in an estate's best interests that a trustee who resides in Kosrae be appointed to manage the lease of a land parcel located in Kosrae, so that negotiations, collection and distribution of the lease payments can easily take place in Kosrae, where most of the heirs live; and so that the trustee be able to quickly respond to any issues or problems which may arise during the lease, including seeking court assistance. In re Estate of Melander, 12 FSM R. 82, 83 (Kos. S. Ct. Tr. 2003).

Even if a will is valid and judicially recognized as such, this does not automatically make every bequest in that will valid. For a bequest to be valid, the testator must, at the time of his death, actually own the property being bequeathed. A person can only transfer such title to land as he validly owns. Anton v. Cornelius, 12 FSM R. 280, 287 (App. 2003).

When the Kosrae State Court did not abuse its discretion in concluding that the Land Commission's findings that the testator had not actually acquired ownership of the land were not clearly erroneous, any further consideration of the will was pointless once it has been determined that the testator did not own the land mentioned in the will. Anton v. Cornelius, 12 FSM R. 280, 288 (App. 2003).

In general, a probate court is not a court of equity, but it is recognized that a probate court may apply principles of equity in determining issues brought before it. In re Estate of Setik, 12 FSM R. 423, 428 (Chk. S. Ct. Tr. 2004).

When the court has determined the portion of a decedent's estate that one heir is to inherit, the court may permit all the heirs to agree to divide the estate to satisfy that heir's judgment. In re Estate of Setik, 12

FSM R. 423, 431 (Chk. S. Ct. Tr. 2004).

The filing requirements in probate proceedings, specifically require that all heirs be listed in the verified petition. The term "heirs" include the decedent's surviving adopted children. In re Skilling, 12 FSM R. 447, 449 (Kos. S. Ct. Tr. 2004).

The omission of an adopted daughter's name from a verified probate petition, signed under oath by the petitioner, resulted in the failure to provide the adopted daughter her constitutional due process rights to be notified of the probate proceeding, have an opportunity to be heard and may have also affected her rights as an heir of the decedent. In re Skilling, 12 FSM R. 447, 449 (Kos. S. Ct. Tr. 2004).

Counsel is expected to know legal and procedural requirements for court filings and proceedings and is required to provide competent representation to a client, which includes the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. It is counsel's duty to complete all preparation necessary to represent a petitioner in a probate proceeding, including investigating and obtaining all necessary facts to prepare the verified petition. In re Skilling, 12 FSM R. 447, 449 (Kos. S. Ct. Tr. 2004).

A person may only transfer such title to land as that person lawfully possesses. If the grantor had no authority to bequeath the property, plainly the devisees acquired no title to the property. Benjamin v. Youngstrom, 13 FSM R. 72, 75 (Kos. S. Ct. Tr. 2004).

When the plaintiffs' predecessor in interest no longer held title to the parcel in April 2002, when he wrote his will, he could not transfer any interest in the parcel, by will or otherwise, to the plaintiffs or to anyone else and therefore the plaintiffs do not have likelihood of success on the merits. This factor weighs strongly in the defendants' favor. Benjamin v. Youngstrom, 13 FSM R. 72, 75-76 (Kos. S. Ct. Tr. 2004).

Pursuant to state law, when the Land Court found that Lonno was the "previous land owner" of the subject parcels and that Lonno died without leaving a will, all heirs of Lonno were therefore interested parties to the parcels. Heirs of Lonno v. Heirs of Lonno, 13 FSM R. 421, 423 (Kos. S. Ct. Tr. 2005).

When a person by virtue of a quitclaim deed that he executed and delivered, no longer owned a parcel on the date that he executed his will, he had no rights, interest or title to the parcel and could not bequeath the parcel in his will. Benjamin v. Youngstrom, 13 FSM R. 542, 549-50 (Kos. S. Ct. Tr. 2005).

Upon the undisputed owner's death, title to land transfers pursuant to a valid will to the devisees specified in the will, or if there is no valid will, to the owner's heirs, according to intestate succession. George v. Abraham, 14 FSM R. 102, 106 (Kos. S. Ct. Tr. 2006).

In Kosrae, an oral will is valid only if made by a person in imminent peril of death, whether from illness or otherwise, and if 1) the testator dies as a result of the peril and 2) the testator declares it to be his will before two disinterested witnesses and the court receives the will for probate within six months following the testator's death unless for good cause the court permits it to be submitted later. An oral will may dispose of personal property only and to an aggregate value not exceeding one thousand dollars. George v. Abraham, 14 FSM R. 102, 107-08 (Kos. S. Ct. Tr. 2006).

In Kosrae, an oral will neither revokes nor changes an existing written will. George v. Abraham, 14 FSM R. 102, 108 (Kos. S. Ct. Tr. 2006).

In Kosrae, real property, including land, may not be disposed of by oral will. George v. Abraham, 14 FSM R. 102, 108 (Kos. S. Ct. Tr. 2006).

All wills executed after the Kosrae State Code's October 1, 1985 effective date must comply with Title 16, Chapter 2. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 287, 289 (Kos. S. Ct. Tr. 2006).

Oral wills may only dispose of personal property only and must meet other requirements. Oral wills may not dispose of real property or land, and any oral will which disposes of land or interests in land is invalid to that land. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 287, 289 (Kos. S. Ct. Tr. 2006).

Only if a life insurance policy had no designated or named beneficiary, would the policy benefits be payable to his estate to be distributed through probate to his heirs or devisees. John v. Chuuk Public Utility Corp., 15 FSM R. 169, 171 (Chk. 2007).

As the purpose of probate is not to determine issues of ownership, probate petitioners should resolve issues regarding land ownership, if any, before they proceed with probate. Otherwise, the probate proceeding may be subject to collateral attack from those who may claim an interest in the property and who were not given notice or made a party to this proceeding. In re Land Noota, Neppi, 15 FSM R. 518, 519 (Chk. S. Ct. Tr. 2008).

When it was established that a decedent's real property at issue was lineage land, it continues to be property of the lineage, and is not part of the decedent's estate. In re Estate of Manas, 15 FSM R. 609, 611 (Chk. S. Ct. Tr. 2008).

Title to land is not generally subject to probate but transfers pursuant to a valid will to the devisees specified in the will, or if there is no valid will, to the owner's heirs according to intestate succession. In re Estate of Manas, 15 FSM R. 609, 611 (Chk. S. Ct. Tr. 2008).

Social security benefits are not subject to probate, as the Social Security Board, not the court, has initial jurisdiction over applications for social security benefits, whether by a surviving spouse or surviving children. The procedure for such applications is set forth in the Social Security Act. In re Estate of Manas, 15 FSM R. 609, 611 (Chk. S. Ct. Tr. 2008).

When the sole owner of land dies his fee simple interest would be inherited by his multiple heirs who would hold that fee simple estate as a tenancy in common. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 372 n.1 (Kos. S. Ct. Tr. 2009).

One does not have heirs until one has passed away. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 324 n.2, 325 (Kos. 2011).

Under the Pohnpei Intestate Succession Act of 1977, ⅓ of an intestate decedent's estate is to be distributed to the surviving spouse and the rest (⅔) is to be divided equally among the decedent's children. Pohnpei probate courts will deviate from this statutorily-required division of an intestate decedent's assets only when a family agreement has been presented to and approved by the probate court. Mori v. Hasiguchi, 19 FSM R. 16, 19 n.1 (Chk. 2013).

An improper sale by a fiduciary (estate administrator) that has already taken place can be vacated, but not if the buyer was a bona-fide purchaser because, when property of an estate has been transferred to a bona-fide purchaser for value, the latter is protected even if the fiduciary was acting improperly. The beneficiaries' remedy is not to void the transaction but to seek damages for the personal representative's breach of his fiduciary duty. Mori v. Hasiguchi, 19 FSM R. 16, 22 (Chk. 2013).

A bona fide purchaser for value and without notice, should be as protected buying shares from the distributee as he would have been buying them from the fiduciary administrator, especially when it was the same person. Mori v. Hasiguchi, 19 FSM R. 16, 23 (Chk. 2013).

Someone who has wrongfully sold property to a bona fide purchaser for value without notice can be compelled to buy a replacement if this is reasonably possible. Sometimes damages are the only appropriate remedy. Either way, the rightful heir's remedy is against estate administrator. If it were any

other way, then anyone who ever bought property after it had been inherited and distributed by a Pohnpei probate court final order could never be certain that his or her title would not be taken away by a future final probate court order that the distributee seller was not the proper distributee. Mori v. Hasiguchi, 19 FSM R. 16, 23 (Chk. 2013).

The FSM Supreme Court is empowered to exercise authority in probate matters when there is an independent basis for jurisdiction under the Constitution, and the court has found such an independent basis when there was a diversity of citizenship among the heirs. In re Estate of Edmond, 19 FSM R. 59, 61 (Kos. 2013).

The Constitution does not mandates such a sweeping expansion of the FSM Supreme Court's jurisdiction over probate cases as would result if creditors were considered parties for jurisdictional purposes. The better view is that only the heirs, potential heirs, or devisees in a probate case be considered parties for jurisdictional purposes and that, in the usual case, the decedent's creditors would file their claims in a state court probate proceeding. This view comports with the proper respect due to the state courts as courts of general jurisdiction that should normally resolve probate and inheritance issues. In re Estate of Edmond, 19 FSM R. 59, 62 (Kos. 2013).

For jurisdictional purposes, the parties in a probate case are those who have a claim that they are heirs. Creditors are not to be considered parties for jurisdictional purposes. This reasoning is suitable for the FSM. In re Estate of Edmond, 19 FSM R. 59, 62 (Kos. 2013).

A creditor may open a probate case in state court without destroying the state court's jurisdiction because a creditor is not an heir. In re Estate of Edmond, 19 FSM R. 59, 62 (Kos. 2013).

The probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes the national courts from disposing of property that is in a state probate court's custody. But it does not bar the national courts from adjudicating matters outside of those confines and otherwise within national court jurisdiction. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 430 (App. 2014).

Interference with the property of the estate, and the probate exception should be read narrowly so as not to bar national court jurisdiction over preliminary matters, or ancillary matters, such as in personam actions and equitable intervention for fraud, maladministration, or non-administration of the estate. In those matters, the national court may appoint an administrator or an administrator pendente lite on behalf of third party interests before, or while, the action is pending in state court. These actions are outside of the scope of the probate exception, but they should not be confused with direct challenges to the validity of the will itself, in interpreting the language of the will, or equitable charges of fraud, undue influence, or tortious interference with the testator's intent which are core matters within the probate exception. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 430 (App. 2014).

An open probate proceeding at the state level is not a bar to national court subject matter jurisdiction as long as the national court does not interfere with the estate's res. Under the longstanding "creditor exception," the national courts have subject matter jurisdiction to appoint an administrator or an administrator pendente lite and to initiate proceedings on behalf of interested third parties. This appointment has no impact on the res of the decedent's estate, does not interfere with administrative decisions regarding the decedent's estate, nor does it affect the distribution of those assets within the state's control. It is a preliminary matter outside of the scope of the probate exception. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 430-31 (App. 2014).

When jurisdiction exists by virtue of diversity of the parties, the FSM Supreme Court may resolve the dispute despite the fact that matters squarely within the legislative powers of states (e.g., probate, inheritance and land issues) may be involved. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 431 (App. 2014).

A long line of precedents supports diversity jurisdiction as a proper independent basis for national jurisdiction of probate matters. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 431 (App. 2014).

Since the FSM Supreme Court trial division has original and exclusive jurisdiction in cases in which the national government is a party except when an interest in land is at issue and since the Federated States of Micronesia Development Bank is an instrumentality of the national government and part of the national government for the purposes of the Constitution's Article XI, § 6(a), the FSM Supreme Court's trial division therefore has original and exclusive jurisdiction in any case in which the bank is a party so long as no interest in land is at issue. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 432 (App. 2014).

Ultimately, the bulk of probate matters are to remain with the states, but an express constitutional exception is carved out when the national government is a party to the suit. Furthermore, the Constitution's framers created a constitutional limitation on the national government's jurisdiction under the land clause exception of article XI, § 6(a). FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 433 (App. 2014).

Preference toward state courts adjudicating the bulk of probate matters should be read narrowly, to permit creditors and other third parties to protect financial interests by initiating probate proceedings and resolving many auxiliary matters. The national courts are not barred from exercising subject matter jurisdiction over probate matters, and when an independent basis for jurisdiction is established, the national courts may proceed with the probate matter in its entirety. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 436 (App. 2014).

Another court's assumption of jurisdiction should be made with restraint, cognizant of the limitation that if a court has already assumed jurisdiction over the matter, a second court will not interfere and assume in rem jurisdiction over the same res. In those cases, abstention may be the appropriate course of action. A probate matter filed only in national court, however, causes no such conflict. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 436 (App. 2014).

Under Civil Rule 17's third party beneficiary clause, judgment creditors are real parties in interest when pursuing many preliminary and auxiliary matters relating to the probate of estates. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 436 (App. 2014).

The purpose of ancillary probate proceedings in places other than where the main probate case is, is to probate the decedent's properties in those locations. Setik v. FSM Dev. Bank, 21 FSM R. 505, 519 (App. 2018).

An ancillary probate proceeding for registered land (land with a certificate of title) on Pohnpei is through an heirship proceeding in the Pohnpei Court of Land Tenure. Setik v. FSM Dev. Bank, 21 FSM R. 505, 519 (App. 2018).

In rem jurisdiction includes registration of land titles, mortgages, and probate proceedings involving land. To exercise in rem jurisdiction, the property over which the court is to exercise jurisdiction must be physically present within the court's territorial jurisdiction and under its control. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

The only reason for ancillary probate proceedings in Pohnpei, Guam, and Hawaii would be to probate the decedent's properties in those places. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

The only place to "probate" registered land in Pohnpei would be through an heirship proceeding in the Pohnpei Court of Land Tenure. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

A decedent's estate ceased to own Pohnpei land once the Pohnpei Court of Land Tenure ruled on the heirship petition for that land and the time to appeal that decision expired. Because the decedent's estate

does not have, and, since Pohnpei Court of Land Tenure ruling, has not had, any interest in the property, it has no standing to seek the relief regarding that land. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

Land on Pohnpei cannot be tied up in a Chuuk probate proceeding. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

A Chuuk probate court cannot have jurisdiction over real property on Pohnpei even though the property's registered owner was a Chuukese decedent for whom probate cases were filed in a Chuuk state court. Setik v. Mendiola, 21 FSM R. 624, 626 (App. 2018).

Even if there had not been an heirship proceeding for the Pohnpei property in the Pohnpei Court of Land Tenure, the Chuuk State Supreme Court would still lack jurisdiction to probate the property since the land and real estate are outside of Chuuk. Setik v. Mendiola, 21 FSM R. 624, 626 (App. 2018).

The Pohnpei State Mortgage Law provides that a deceased mortgagor's heirs and devisees take subject to a mortgage. FSM Dev. Bank v. Carl, 21 FSM R. 640, 643 (Pon. 2018).

An administrator is a person appointed by the court to manage the assets and liabilities of an intestate decedent. FSM Dev. Bank v. Carl, 21 FSM R. 640, 644 (Pon. 2018).

An estate of a deceased is the property that one leaves after death – a dead person's collective assets and liabilities. FSM Dev. Bank v. Carl, 21 FSM R. 640, 644 (Pon. 2018).

An administrator of a decedent's estate is liable to manage the estate, including the decedent's debts and liabilities – financial or pecuniary obligations. A decedent's debt passes down to her estate's administrator to manage and settle. FSM Dev. Bank v. Carl, 21 FSM R. 640, 644 & n.9 (Pon. 2018).

A temporary co-administrator's powers include only those powers specifically expressed in the order of appointment and as may be expressed in the appointing court's subsequent orders. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 9 (Pon. 2018).

When no particular powers were expressed in an administrator's temporary appointment, although he was expected to help resolve the "overlappings" between two estates, and when the subsequent order granted extensive powers to the co-administrators without making any distinction between the two full co-administrators and the temporary one, the court must, solely for the purpose of the pending motions, take as true the temporary administrator's assertion that he remains the estate's co-administrator and assume that since his administrator's powers were not otherwise limited, he has the power to sue on the estate's behalf to preserve the estate's assets. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 9 (Pon. 2018).

When the Pohnpei state probate case was the first filed lawsuit and that case can afford a complete resolution of the issues between the parties; when the later-filed FSM Supreme Court case could, at best, afford only a partial resolution and certainly lacks jurisdiction to enforce a state court interlocutory order; and when the Pohnpei Supreme Court is perfectly competent to enforce its own orders and judgments and to take any further needed steps in the probate case pending before it, it is appropriate that that forum resolve the issues. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 13 (Pon. 2018).

State courts should normally handle probate and inheritance matters. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 13 (Pon. 2018).

A joint tenancy gives each joint tenant the right of survivorship – to automatically become sole owner of the property on the other joint tenant's death. It differs from a tenancy in common because each joint tenant has a right of survivorship to the other's share. Nicky v. Chuuk Public Utility Corp., 22 FSM R. 239, 242 n.1 (Chk. 2019).

When the owner of registered land passes away, the Land Commission has the statutory duty to determine the devisee or devisees or heir or heirs and their interests or respective interests to which each is entitled. Nicky v. Chuuk Public Utility Corp., 22 FSM R. 239, 242 n.3 (Chk. 2019).

The general principle is that an administratrix stands in decedent's shoes and has no greater or other rights or powers than the decedent would have if living. Panuelo v. Sigrah, 22 FSM R. 341, 356 (Pon. 2019).

If the decedent would, if living, have standing to bring the suit, then the administratrix of his estate would have standing to do so. Panuelo v. Sigrah, 22 FSM R. 341, 356 (Pon. 2019).

Any action by or against the executor, administrator, or other representative of a deceased person for a cause of action in favor of, or against, the deceased shall be brought only within two years after the executor, administrator, or other representative is appointed or first takes possession of the assets of the deceased. Panuelo v. Sigrah, 22 FSM R. 341, 358 (Pon. 2019).

An administratrix of a decedent's estate is the successor in interest to the decedent, and is his privy. Panuelo v. Sigrah, 22 FSM R. 341, 359 (Pon. 2019).

DOMICILE AND RESIDENCE

Because a person may have more than one place of residence and a person's legal residence is his place of domicile or permanent abode, as distinguished from temporary residence, an FSM citizen temporarily working abroad is the legal resident of some state in the Federated States of Micronesia, and thus may be served process in any manner permitted by the FSM rules, such as by certified mail. Alik v. Moses, 8 FSM R. 148, 150 (Pon. 1997).

The Supreme Court may exercise personal jurisdiction in civil cases only over persons residing or found in the Federated States of Micronesia or who have been duly summoned and voluntarily appear, except as provided in the long arm statute. The terms "resides in," "is a resident of," and "residence is in" are roughly synonymous. Alik v. Moses, 8 FSM R. 148, 149-50 (Pon. 1997).

Ordinarily a person's usual place of abode is the place where the party is actually living, except for temporary absences, at the time service is made, but it is possible for a person to have two or more dwelling houses or usual places of abode for the purpose of Rule 4(d)(1) service. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 121 (Chk. 2002).

Because a divorce case involves the parties' status or condition and their relationship to others, the law to be applied is that of the domicile. Thus in a divorce between a Pohnpeian, who now resides in Hawaii, and an American citizen who resides in Pohnpei and the parties lived in Pohnpei during their marriage, the court will apply Pohnpei substantive law. Ramp v. Ramp, 11 FSM R. 630, 641 (Pon. 2003).

When comparing the terms from different parts of the code, the court must presume that by using different terms, in this case "legal residents" and "residents," the drafters could have only intended that the meaning would also be different. Berman v. Lambert, 17 FSM R. 442, 447 (App. 2011).

The word "resident" has many legal meanings that are largely determined by the statutory context in which it is used. The simplest definition of resident is a person who has residence in a location. Berman v. Lambert, 17 FSM R. 442, 448 (App. 2011).

Legal residence is defined as the place of domicile or permanent abode, as distinguished from temporary residence, it is the location defined by law as the residence of the person. Berman v. Lambert, 17 FSM R. 442, 448 (App. 2011).

The statute's plain meaning of term "legal residents of Pohnpei" is individuals who are domiciled in Pohnpei. This interpretation allows a Pohnpeian citizen living abroad, who maintained his or her domicile in Pohnpei, to receive the same hiring preference as a Pohnpeian citizen living in Pohnpei and it would give all FSM citizens and non-citizens who have moved to Pohnpei and made Pohnpei their domicile, equal opportunity for job selection and promotion. This interpretation is also internally consistent with the statute's other parts which give a second preference for employment to FSM citizens who are not legal residents of Pohnpei when applying for a position or promotion and who would receive a preference over non-citizens who are temporarily living in Pohnpei and over other non-residents. Berman v. Lambert, 17 FSM R. 442, 448 (App. 2011).

When, by its own terms, the 51 F.S.M.C. 112(7) definition of a "nonresident worker" applies only to FSM Code Title 51, chapter 1, and not even to the rest of the FSM Code, it certainly does not apply to the Chuuk Health Care Act, which contains its own definition for the term "resident." Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 617, 619-20 (Chk. 2011).

Under the Chuuk Health Care Act, a "resident" is any Chuuk citizen for whom Chuuk is his principal residence, or any noncitizen who has established an ongoing physical presence in Chuuk and whose presence is sanctioned by law and is not merely transitory in nature. The non-citizen workers' ongoing physical presence in Chuuk is clearly sanctioned by law when the non-citizen employees apply annually for labor certification and for entry permits in order to maintain their employment in Chuuk. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 617, 620 (Chk. 2011).

The law sometimes equates "legal residence" with domicil, while using "actual residence" to refer to one's present physical location. Even though the term "legal residence" is sometimes used as the equivalent of domicil, a person may have more than one legal residence. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 617, 620 (Chk. 2011).

Even though a contractor's non-citizen employees cannot be domiciled in Chuuk, they might have a legal residence here, but, even if they are not considered to have a legal residence here, they do have an actual residence in Chuuk that is legally sanctioned, and they are thus, by statute, enrolled in and eligible for Chuuk Health Care Plan benefits and their employer is therefore liable, as a matter of law, to the Plan for the employees' and the employer's contributions of the health insurance premiums for its non-citizen as well as citizen employees on Chuuk. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 617, 620 (Chk. 2011).

Since a suit against an official in his or her official capacity is a suit against that official's office and since a national government office with nationwide scope and authority must be "found" or be "present" in some form in each state in the nation regardless of whether it has an actual year-round physical presence there, for the purpose of the venue statute, none of the defendant national government officials "reside" on Pohnpei. Marsolo v. Esa, 18 FSM R. 59, 66 (Chk. 2011).

Legal residence is usually defined as the place of domicile or permanent abode, and while the term "legal residence" is often the equivalent of domicile and "actual residence" is used to refer to one's current physical location, a person may have more than one legal residence, but a person can have only one domicile. In re Mix, 18 FSM R. 600, 602 n.1 (Pon. 2013).

ELECTIONS

After the executive branch has declared a candidate to have won an election, that winner has the right to hold office, subject only to the legislative branch's power to judge the qualifications of its members. Daniel v. Moses, 3 FSM R. 1, 4 (Pon. S. Ct. Tr. 1985).

Where there is in the Constitution a textually demonstrable commitment of the issue to a coordinate

branch of government, such as Congress being the sole judge of the elections of its members, it is a nonjusticiable political question not to be decided by the court because of the separation of powers provided for in the Constitution. Aten v. National Election Comm'r (III), 6 FSM R. 143, 145 (App. 1993).

While the court has statutory authority to hear appeals regarding the conduct of elections, its power to grant relief is limited to ordering a recount or a revote. Only Congress can decide who is to be seated and once it has seated a member unconditionally the matter is nonjusticiable. Aten v. National Election Comm'r (III), 6 FSM R. 143, 145 & n.1 (App. 1993).

The framers did not intend that the constitutional provision barring persons convicted of a felony from serving in the legislature, even if pardoned, to have retroactive effect so as to bar a person who was both convicted and pardoned before the enactment of the Chuuk State Constitution from appearing on the official ballot for state legislator. Robert v. Mori, 6 FSM R. 178, 179-80 (Chk. S. Ct. Tr. 1993).

While the Constitution makes ineligible for election to Congress persons convicted of felonies in FSM courts, the Constitution gives to Congress the power to modify that ineligibility by statute. Robert v. Mori, 6 FSM R. 394, 398 (App. 1994).

Congress has the Constitutional power to prescribe, by statute, additional qualifications for eligibility for election to Congress beyond those found in the Constitution. Such additional qualifications must be consistent with the rest of the Constitution. Knowledge of English may not be a qualification. Robert v. Mori, 6 FSM R. 394, 399 (App. 1994).

Congress, not the FSM Supreme Court, has the constitutional power to make persons granted a pardon of a felony conviction eligible for election to Congress. The court cannot exercise a power reserved to Congress. Robert v. Mori, 6 FSM R. 394, 401 (App. 1994).

Where the election law provides for remedies that have not yet been used a candidate cannot show irreparable harm necessary for the issuance of a temporary restraining order. Wiliander v. Siales, 7 FSM R. 77, 80 (Chk. 1995).

While there may be cases in which the court would enter a matter before the election process has been completed the court will not do so where none of the acts complained of are contrary to law. Wiliander v. Siales, 7 FSM R. 77, 80 (Chk. 1995).

Voting is a privilege and not a right. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 47 (Chk. S. Ct. Tr. 1999).

When it appears that there is no provision in the Chuuk Constitution or statutes which guarantees the right to or even permits voting by absentee ballot, the appellants have not shown a likelihood of success on appeal and their request for a stay of a trial court judgment not to deliver Losap municipal absentee ballots to voters outside of Chuuk will be denied. Chipen v. Election Comm'r of Losap, 9 FSM R. 80, 81 (Chk. S. Ct. App. 1999).

There are rare occasions when an equitable remedy may be proper in an election case. Braiel v. National Election Dir., 9 FSM R. 133, 137 (App. 1999).

The innocent voter who has done everything right should not lose the right to vote and be counted because the election officials have disregarded the mandates and directions of the election law. Braiel v. National Election Dir., 9 FSM R. 133, 138 (App. 1999).

The secret ballot provision of Chuuk Constitution article XII, section 2 relates only to general elections and has no application to proceedings in the House of Representatives. Christlib v. House of Representatives, 9 FSM R. 503, 507 (Chk. S. Ct. Tr. 2000).

When a congressional candidate seeks the issuance of a temporary restraining order prior to balloting he will be denied since he cannot show irreparable injury because the Election Code provides an aggrieved candidate with sufficient alternate and adequate remedies. When the election law provides for remedies that have not yet been used a candidate cannot show the irreparable harm necessary for the issuance of a temporary restraining order. Asugar v. Edward, 13 FSM R. 209, 212 (Chk. 2005).

No temporary restraining order will issue ordering the National Election Director to accept the late filing of a candidate's nomination papers even though the candidate was misadvised as to the filing deadline. Doone v. National Election Comm'r, 14 FSM R. 489, 493 (Chk. 2006).

The court's only authority in election matters is to hear appeals from Chuuk State Election Commission decisions regarding the conduct of elections. Only a house of the Legislature can decide who is to be seated as a member. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 590 (Chk. S. Ct. App. 2007).

The Tolensom Constitution does not grant the Tolensom Legislature the power to create a method to "appoint" persons to the offices of mayor and assistant mayor. Those offices can be filled in only one way – by vote of the Tolensom electorate, that is, by the people of Tolensom. The only exception to that is when the mayoral office becomes vacant with less than a year left in the mayor's term, the assistant mayor assumes the office for the rest of the term. It was the Tolensom Constitution's framers' clearly expressed will that the mayor and assistant mayor be elected by the voters and not appointed by someone else. Esa v. Elimo, 15 FSM R. 198, 204 (Chk. 2007).

When the Tolensom Legislature elected in 2004 would have been the sole judge of the election of its members elected in that year and that Legislature already judged the four-year members elected, the Legislature elected in 2006 cannot be the judge of the members elected in 2004. The Legislature elected in 2006 can only be the judge of the election of the members elected in 2006. It cannot be otherwise. A later legislature cannot re-examine a four-year member's election at its whim after the mid-term election because that would make a nullity and a mockery of the provision that four at-large seats would have four year terms, not two year terms. The framers' intent is obvious. They wanted the four year seat holders to be held over throughout the term of the Legislature elected at the mid-term election, to provide a certain continuity. Esa v. Elimo, 15 FSM R. 198, 204 (Chk. 2007).

There may be cases in which the court would enter an election matter before the election process has been completed. But when, assuming the plaintiff fails to get elected, any irregularities in the election results can be addressed by filing a complaint with the State Election Commission to seek a recount or to aside the election, the plaintiff has not demonstrated that he is in danger of immediate, irreparable harm. Bisaram v. Suta, 15 FSM R. 250, 254 (Chk. S. Ct. Tr. 2007).

The only explicit right to suffrage found in the FSM Constitution is the right to "vote in national elections." So an alleged denial of a right to suffrage in a Chuuk state election would be the denial of a right under the Chuuk Constitution's suffrage provisions, and not a denial of FSM constitutional right to suffrage. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 397 (Chk. 2009).

A claim of denial of the right to suffrage in a state election because no revote was ordered is not a claim arising under the national constitution or law. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 397 (Chk. 2009).

If a runoff election must be held, then it must be held and it is the State Election Commission's problem to come up with the necessary funds or to figure out how to conduct the election without funds. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

The State Election Commission cannot refuse to hold an election because it has insufficient funds. If

it refuses to hold an election on that ground, it is clear that, if sought, a writ of mandamus would issue to command that the election be announced and held. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

If the State Election Commission has a duty to announce and conduct a runoff election, that duty can only be ministerial and non-discretionary. The State Election Commission does not have the discretion to choose whether to conduct an election or not. Its duty to conduct elections is mandated by the Constitution. Thus, whether the petitioner is entitled to a writ commanding the respondent Election Commission to announce (and conduct) a runoff election to fill the Governor's office depends solely on the meaning of the relevant provisions of the Chuuk Constitution. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 21 (Chk. S. Ct. Tr. 2011).

It is a clear non-discretionary duty for the State Election Commission to conduct a runoff election if, during the general election, no ticket of candidates for Governor and Lieutenant Governor receives a majority of the votes cast. However, in a special gubernatorial election to fill a vacancy, the candidates do not run on tickets. They run alone for the office of governor. The Section 7 provision for runoff elections applies to tickets of candidates, not to single candidates. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 21-22 (Chk. S. Ct. Tr. 2011).

The Section 11 constitutional provision for special elections does not mention runoff elections if there is no candidate with a majority. Nor does it state that the gubernatorial special election shall be conducted in the same manner as the gubernatorial election in Section 7, and it also does not state that it should be conducted in a manner to be prescribed by statute. If it did then, Section 142 of the Election Code, which provides that "[a]ll special elections shall be conducted in the same manner and form as a general election, except as otherwise provided in this Act," would carry great weight and might lead the court to conclude that there was a clear, non-discretionary duty to conduct a runoff. However, there are no such provisions. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 22 (Chk. S. Ct. Tr. 2011).

When the Constitution's framers did not include provisions for runoff elections after special elections, and even if that was through oversight, the court will not insert into the Constitution a runoff provision that is not there. Accordingly, the petition for a writ of mandamus directed to the State Election Commission commanding it to hold a runoff election will be denied. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 22 (Chk. S. Ct. Tr. 2011).

The Chuuk State Supreme Court appellate division heartily approves of the method that if there were any discrepancies in tally totals at any of the twenty-five ballot checking points that the tabulating committee would recount the ballots they had counted since the last checking point and not count any further ballots until all tally counts agreed instead of using the methods that introduce a substantial chance of inaccurate results, and, although the Chuuk State Supreme Court appellate division does not require that all future elections use this tabulation method, this method will produce the most accurate result. Hallers v. Yer, 18 FSM R. 644, 648 (Chk. S. Ct. App. 2013).

A motion to temporarily restrain an election will be denied as moot when that election was held as scheduled. Simina v. Chuuk State Election Comm'n, 19 FSM R. 572, 573 (Chk. S. Ct. App. 2014).

An appeal of an order denying a run-off election is moot when the real party in interest has taken the oath of office and has served the term as Governor until April 2013 since a run-off election following the August 24, 2011 special election is not now possible. Narruhn v. Chuuk State Election Comm'n, 20 FSM R. 36, 38 (Chk. S. Ct. App. 2015).

The appellate court will not consider a municipal election ordinance's validity when that ordinance's two alleged defects may be remedied or addressed before the next municipal election. Selifis v. Robert, 22 FSM R. 569, 572 (Chk. S. Ct. App. 2020).

– Conduct

The "two-of-three mechanism," in which three tabulators tally the votes for a particular candidate as they are read aloud, and either all three tabulators, or at least two of the three tabulators, must agree on the results for the results to be taken as correct, is not illegal, unreasonable, improper or prohibited. This mechanism will produce an accurate count for most ballot boxes. Olter v. National Election Comm'r, 3 FSM R. 123, 135-37 (App. 1987).

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

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

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

The National Election Commissioner has the power to establish voting precincts and designate polling places upon the recommendation of the members of the board of elections of the particular election district. Aten v. National Election Comm'r (II), 6 FSM R. 74, 76-77 (App. 1993).

When a state election is held on the same date as the national election and the closing time for the state poll is later than the 5:00 p.m. closing time for the national election, then the later state closing time prevails for the national election as well. The poll remains open to allow all who are waiting in line at closing time to vote. Aten v. National Election Comm'r (II), 6 FSM R. 74, 79 (App. 1993).

Courts of equity are without jurisdiction to enforce purely political rights. Matters concerning the conduct of elections are usually left to the political branches and the courts generally have no jurisdiction until after the elections are held. Election Comm'r v. Petewon, 6 FSM R. 491, 500 (Chk. S. Ct. App. 1994).

Generally speaking, elections are conducted and carried out and administered by the executive and legislative branches. Courts do not have a primary position in that traditional scheme. The election law states the time at which the court has the right of entertaining an appeal from the final action of the National Election Director. Wiliander v. Siales, 7 FSM R. 77, 79 (Chk. 1995).

By statute, petitions to the National Election Director challenging the acceptablitiy of a vote or votes must be filed prior to certification of the results of the election or within one week of the election, whichever occurs first. Wiliander v. Mallarme, 7 FSM R. 152, 156 (App. 1995).

By statute, absentee ballots are to be examined when received, on or before Election Day, to determine if the voter is qualified to vote absentee, and the ballot envelope deposited unopened in container, and publicly delivered to counting and tabulating committee on Election Day. Wiliander v. Mallarme, 7 FSM R. 152, 156-57 (App. 1995).

Where, because election officials had not processed the absentee ballots until nine and ten days after the election thus making it impossible to file a petition concerning the acceptability of those ballots within the statutory time frame of prior to certification of the results of the election or within one week of the election, whichever occurs first, the petition will still be considered timely if it is filed before certification. Wiliander v. Mallarme, 7 FSM R. 152, 157 (App. 1995).

A timely received absentee ballot may be rejected if the accompanying statement is insufficient, the signatures do not correspond, the procedure for marking and returning the absentee ballot has not been

complied with, the voter is not a qualified elector, or the ballot envelope has been tampered with. Wiliander v. Mallarme, 7 FSM R. 152, 156 n.6, 159 (App. 1995).

The formalities involved in the absentee election process are intended to safeguard the electoral process from voter fraud. Therefore a regulation rejecting absentee ballots if the signature on the request form is different from the signature on the statement accompanying an absentee ballot is a reasonable exercise of the National Election Director's power to implement rules and regulations for absentee ballots. Wiliander v. Mallarme, 7 FSM R. 152, 160-61 (App. 1995).

Since the right to vote is personal – one person's vote cannot be cast by another – one person's request to vote absentee cannot be made by another. Wiliander v. Mallarme, 7 FSM R. 152, 160 (App. 1995).

Congress intended that the National Election Code be applied uniformly throughout the nation. Wiliander v. Mallarme, 7 FSM R. 152, 161 (App. 1995).

A radio announcement of the results of an Uman municipal election by the Uman Election Commissioner is not a ruling by the Chuuk Election Commission which would authorize an appeal to the Chuuk State Supreme Court appellate division. David v. Uman Election Comm'r, 8 FSM R. 300d, 300f (Chk. S. Ct. App. 1998).

The Chuuk Constitution provides that there shall be an independent Election Commission vested with powers, duties, and responsibilities, as prescribed by statute, for the administration of elections in the State of Chuuk. David v. Uman Election Comm'r, 8 FSM R. 300d, 300h (Chk. S. Ct. App. 1998).

The Chuuk Election Law of 1996 applies to all elections in Chuuk including municipal elections unless otherwise specifically provided. David v. Uman Election Comm'r, 8 FSM R. 300d, 300i (Chk. S. Ct. App. 1998).

All the provisions of the Chuuk State Election Law of 1996 apply to all elections in the State of Chuuk, including municipal and national elections whenever applicable unless otherwise specifically provided. Chipen v. Chuuk State Election Comm'n, 8 FSM R. 300n, 300o (Chk. S. Ct. App. 1998).

All ballots forwarded to absentee voters and not physically received by the Commission at its main office prior to the closing of the polls on election day shall be rejected. Chipen v. Chuuk State Election Comm'n, 8 FSM R. 300n, 300p (Chk. S. Ct. App. 1998).

The Chuuk Constitution provides that there shall be an independent election commission vested with powers, duties, and responsibilities, as prescribed by statute, for the administration of elections in Chuuk. Mathew v. Silander, 8 FSM R. 560, 564 (Chk. S. Ct. Tr. 1998).

No resident entitled to vote may be denied the privilege to vote or be interfered with in voting. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 47 (Chk. S. Ct. Tr. 1999).

Absentee voting is a privilege granted electors, and not an absolute right. The purpose of statutes permitting absentee voting is to enable a qualified voter to vote at a general election in the precinct of his domicil when he is temporarily absent therefrom. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 47 (Chk. S. Ct. Tr. 1999).

Unless voting is expressly allowed elsewhere, all ballots must be cast in the state of residence. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 48 (Chk. S. Ct. Tr. 1999).

Voters' due process and equal protection rights are not violated by regulation or restriction of voting by absentee ballots. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 48 (Chk. S. Ct. Tr. 1999).

A municipal ordinance restricting absentee voting in municipal elections to persons in the state of Chuuk is not unconstitutional. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 48 (Chk. S. Ct. Tr. 1999).

The National Election Commissioner's failure to send out any absentee ballots until eleven days before the election instead of the at least 30 days prior to an election provided for by 9 F.S.M.C. 704(1) is not in substantial compliance with the procedures required by the statute and was a direct violation of a mandatory statute enacted by Congress. Braiel v. National Election Dir., 9 FSM R. 133, 136 (App. 1999).

When requests for absentee ballots were received between January 30th and February 11th and no ballots were sent out until February 19th, those ballots were not sent out as soon as is practicable after the request was received as required by statute. Braiel v. National Election Dir., 9 FSM R. 133, 136 (App. 1999).

Errors in not timely providing absentee ballots can be largely remedied by extending the time in which ballots from such voters can be counted as timely received. Braiel v. National Election Dir., 9 FSM R. 133, 136 (App. 1999).

Absentee ballots must be sent out at least thirty days before the election to all duly qualified voters who have requested them by then. Braiel v. National Election Dir., 9 FSM R. 133, 136, 137 (App. 1999).

No absentee ballots received after the established close of polling places on Election Day should be counted and tabulated. Braiel v. National Election Dir., 9 FSM R. 133, 137 (App. 1999).

Separate mail or delivery by absentee voters is not required by the statute's language. Braiel v. National Election Dir., 9 FSM R. 133, 138 (App. 1999).

Mere irregularities in a ballot's form will not invalidate an election if the voters' intent is obvious. Therefore ballots where the alignment of the candidate's name, picture, and box for an X vary slightly from the specimen ballot are not confusing and will not be invalidated. Braiel v. National Election Dir., 9 FSM R. 133, 139 (App. 1999).

Candidates are to notify the national election commissioner twenty-four hours before their intended use of a government broadcast facility. FSM v. Moses, 9 FSM R. 139, 144 (Pon. 1999).

When there is no statutory requirement that a candidate submit his taped speech before it is aired and when there is no mention of criminal liability on the of the government broadcast facility should it do so, there is no probable cause to believe a crime has been committed, and the information and criminal summons should be dismissed without prejudice. FSM v. Moses, 9 FSM R. 139, 145 (Pon. 1999).

A court will not extrapolate a statute's allowable meaning to encompass submission of the taped speech directly to the radio station without first submitting it to the national election commissioner when the statute's only stated requirement is twenty-four hours' notice. FSM v. Moses, 9 FSM R. 139, 145 (Pon. 1999).

A political candidate's freedom of expression is guaranteed, as it is to all citizens, under section 1 of the FSM Constitution's Declaration of Rights. FSM v. Moses, 9 FSM R. 139, 146 (Pon. 1999).

To conclude that 9 F.S.M.C. 107(1) criminalizes either a candidate's conduct in submitting his campaign tape directly to a broadcast facility without previously submitting it to the national election commissioner, or to conclude that the owner and operator of the radio station faces a criminal penalty because it aired the tape would be to attribute an uncertain meaning to the statute, which might well cause candidates to steer far wider of the unlawful zone than they otherwise would, or should, in the important work of presenting their views to a public which needs to exercise its franchise in an intelligent manner.

The court declines to credit such an uncertain meaning to the statute. FSM v. Moses, 9 FSM R. 139, 146 (Pon. 1999).

The national election director and his deputies in the four states, the national election commissioners, may have a duty to take all reasonable steps to insure that candidates have equal access to government broadcast facilities. FSM v. Moses, 9 FSM R. 139, 146 (Pon. 1999).

All provisions of the Chuuk Election Law of 1996 apply to all elections in the State of Chuuk, including municipal and national elections whenever applicable unless otherwise specifically provided. Phillip v. Phillip, 9 FSM R. 226, 228 (Chk. S. Ct. Tr. 1999).

While conditions may be imposed on candidates, the candidate must be afforded a reasonable opportunity to satisfy the conditions, and the extraction of fees which are arbitrary, or have no relation to the expense of the election will be denied. Nameta v. Cheipot, 9 FSM R. 510, 512 (Chk. S. Ct. Tr. 2000).

The purpose of election filing fees is to defray the costs of the procedures leading to the election. There must be a reasonable relation to the amount of the fee and the costs incurred. Unreasonable fees not only deny the candidate his right to be a candidate, but also deny the right of every person to select him for office. When the fee requirements go beyond the bounds of reasonable regulation, it operates as a substantial impairment of the right of the electorate to freely choose the candidate of their choice. Nameta v. Cheipot, 9 FSM R. 510, 512 (Chk. S. Ct. Tr. 2000).

The Chuuk Constitution provides that no person, otherwise qualified to vote, may be denied the privilege to vote. The unreasonableness of candidate qualifying fees is an effective denial of the privilege to vote. Nameta v. Cheipot, 9 FSM R. 510, 512 (Chk. S. Ct. Tr. 2000).

When an ordinance has a savings clause and its provision for election filing fees is found unconstitutional, the filing fee provision of the previous ordinance it superseded will be reinstated. Nameta v. Cheipot, 9 FSM R. 510, 512 (Chk. S. Ct. Tr. 2000).

When a constitution establishes specific eligibility requirements for a particular constitutional office, the legislature is without power to require different qualifications and when there is no direct authority in the constitution for the legislature to establish qualifications for office in excess of those imposed by the constitution, such extra qualifications are unconstitutional. Olap v. Chuuk State Election Comm'n, 9 FSM R. 531, 533 (Chk. S. Ct. Tr. 2000).

The Chuuk Constitution does not, either expressly or by implication, give the Legislature any authority whatsoever, to add qualifications for persons seeking a legislative office beyond those in the Constitution. Olap v. Chuuk State Election Comm'n, 9 FSM R. 531, 533 (Chk. S. Ct. Tr. 2000).

It is beyond the power of the Legislature to enact a law to prohibit government employees from becoming candidates for legislative service. Olap v. Chuuk State Election Comm'n, 9 FSM R. 531, 534 (Chk. S. Ct. Tr. 2000).

The issue of whether a person is entitled to have his name placed on the ballot is an election case, over which neither division of the Chuuk State Supreme Court has original jurisdiction, and which is placed solely in the hands of the Chuuk State Election Commission with the Chuuk State Supreme Court appellate division having jurisdiction only as provided in the Election Law of 1996. Hethon v. Os, 9 FSM R. 534, 535 (Chk. S. Ct. Tr. 2000).

Even if the purported enactment of the education qualifications for mayor and assistant mayor were unquestionably enacted, the municipal council is without authority to add qualifications to those set out in the municipal constitution unless the constitution so authorizes the council. Chipen v. Election Comm'r of Losap, 10 FSM R. 15, 17-18 (Chk. 2001).

Unlawfully added education qualifications for mayor and assistant mayor improperly deprive candidates and those similarly situated of the equal protection of the law as guaranteed by the FSM Constitution. Chipen v. Election Comm'r of Losap, 10 FSM R. 15, 18 (Chk. 2001).

A municipality and its election commissioner will be restrained from enforcing added qualifications for municipal office when a short time remains to file as a candidate and the harm is irreparable to those potential candidates who are denied nominating petitions because they do not meet the unlawful added qualifications, when there is no harm to the municipality or the election commissioner if they are required to allow the candidacies, and when the public interest is served if eligible citizens are able to present themselves for election. Chipen v. Election Comm'r of Losap, 10 FSM R. 15, 18 (Chk. 2001).

While the Chuuk Constitution may not make voting abroad a constitutionally-protected right, it does not prohibit voting out-of-state. Such voting is a privilege that the Legislature may create and regulate by statute and it has done so. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 153 (Chk. S. Ct. App. 2001).

The executive policy requiring resignation before running for a seat in the Chuuk Legislature adds a qualification prohibited by the Chuuk Constitution and is void, and therefore, the plaintiffs' forced resignation pursuant to the Governor's Executive Order or policy is unconstitutional and beyond his power. Lokopwe v. Walter, 10 FSM R. 303, 306 (Chk. S. Ct. Tr. 2001).

A governor has only a delegated power and a limited sphere of action, and the Chuuk Constitution does not give the Governor the power to add qualifications, that a person must not be a state employee, to be a candidate for a seat in the Chuuk Legislature. Lokopwe v. Walter, 10 FSM R. 303, 307 (Chk. S. Ct. Tr. 2001).

An FSM citizen, who is over 18 years of age, a resident of Chuuk, and not insane, confined to a mental institution or imprisoned, may vote at any Chuuk election provided he is registered to vote. In re Nomun Weito Interim Election, 11 FSM R. 461, 465 (Chk. S. Ct. App. 2003).

Specific procedures and time frames govern voter registration. No one can be registered except by affidavit of registration made before the registration clerk in the municipality where such person resides at least 30 days prior to any election, when the registration rolls close for that election, and the Commission, accepts no further affidavits except for those who turn 18 years of age within the 30 day period. In re Nomun Weito Interim Election, 11 FSM R. 461, 465 (Chk. S. Ct. App. 2003).

The Chuuk State Election Commission has the statutory power to promulgate in writing the necessary rules and regulations including administrative procedures for elections. In re Nomun Weito Interim Election, 11 FSM R. 461, 466 n.8 (Chk. S. Ct. App. 2003).

Any elector who has previously been registered but whose name does not appear on the master list of his or her election precinct may be re-registered provided, he or she signs an affidavit attesting to such previous registration and swears to before the Election Commission or a designated representative. A registered voter from the same precinct must witness the elector's sworn statement. In re Nomun Weito Interim Election, 11 FSM R. 461, 466 (Chk. S. Ct. App. 2003).

The Election Commission must prepare and compile a registration list of all voters for use in a general election, or any other election. The Election Commission's responsibility is to see that the general register lists accurately reflects the registered voters for the State of Chuuk. In re Nomun Weito Interim Election, 11 FSM R. 461, 467 (Chk. S. Ct. App. 2003).

When it was already too late for the 39 persons on the additional list to be registered if they had not previously registered, then their votes were illegal; and when the specific procedures for re-registration were

not followed for any of the 39 persons on the additional list that were being re-registered, their votes were illegal. Therefore, the process used to add the 39 persons on the additional list to the general register list on election day so as to allow them to vote was an election irregularity; all 39 persons on the additional list should not have been allowed to vote; and their votes were illegal. In re Nomun Weito Interim Election, 11 FSM R. 461, 467 (Chk. S. Ct. App. 2003).

Because the statutory provision prohibits making, using or furnishing copies of official ballots by any person, the Election Director should not have authorized the copying of additional ballots and copied ballots should not have been used in the election. In re Nomun Weito Interim Election, 11 FSM R. 461, 467 (Chk. S. Ct. App. 2003).

Opening a ballot box on the day before the election is not in accordance with the election law. In re Nomun Weito Interim Election, 11 FSM R. 461, 468 (Chk. S. Ct. App. 2003).

When voters used a copied ballot but were not aware of it and did not intend to do so and when those voters were properly registered to vote, showed up at the polling place, and properly exercised their constitutional and statutory right to vote, any problem with the ballots that they used was not their fault, but the fault of election officials in carrying out the election. Thus their votes should not be voided. In re Nomun Weito Interim Election, 11 FSM R. 461, 468-69 (Chk. S. Ct. App. 2003).

If true, even a failed attempt to intimidate voters, especially at a polling place, would subject that person to criminal liability. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 474 (Chk. S. Ct. App. 2003).

The Election Director does not have the authority to open a ballot box and to change the certification on his own. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 475 (Chk. S. Ct. App. 2003).

When the election law was not complied with in making a certification of votes, that certification is void. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 476-77 (Chk. S. Ct. App. 2003).

There will be an independent Election Commission, vested with powers, duties and responsibilities, as prescribed by statute, for the administration of elections in Chuuk. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 576 (Chk. S. Ct. Tr. 2003).

The Chuuk State Election Commission has the power to conduct all elections in the State of Chuuk, including national and municipal elections, if so provided by law or municipal constitutions. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 577 (Chk. S. Ct. Tr. 2003).

Allegations of a total failure to provide an accounting of the number of ballots printed for the election; refusal to record or account for the total number of ballots cast in the election; failure to maintain an acknowledgment list to provide proof of which registered voters actually cast ballots; refusal by the Election Commissioner (the brother of an elected candidate) to permit opponents' representatives to accompany the Guam VAAPP ballot box to Fefan; the ballot box's seizure and opening while it was in his possession; evidence, including the fact that the key for the ballot box's lock did not fit the lock, raising an inference that the Election Commissioner had tampered with the ballot box while it was in his possession; deciding, a mere 10 days before the election, to do away with VAAPP sites in Hawaii and Pohnpei, thereby effectively depriving Fefan citizens residing in those places of their right to cast votes in the election; and the fact that the entire Fefan Election Commission had been hand selected by a candidate from his active supporters, thereby calling into question whether the Election Commission was truly independent, if proven to be true, are sufficient to call into question whether the election was in fact free and democratic, as required by the Chuuk Constitution. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 578 (Chk. S. Ct. Tr. 2003).

Neither the Legislature, nor the Governor, may add qualifications for public office beyond those qualifications provided in the Chuuk Constitution. It matters not whether the employee in question is an

"exempt" employee, or one covered by the Public Service Act. All government employees, with the express exception of the Governor's principal officers and advisors (who serve at the Governor's pleasure), are protected in their political activities from the Governor's interference with their employment. Tomy v. Walter, 12 FSM R. 266, 271 (Chk. S. Ct. Tr. 2003).

When nothing in the record indicates under what tenure a person held the municipal election commissioner's office, the court cannot conclude as a matter of law that he held that position when he conducted an election on August 1, 2003 and that his purported removal from office was unlawful. Summary judgment that the August 1st election was valid will therefore denied. Buruta v. Walter, 12 FSM R. 289, 295 (Chk. 2004).

The election results certification, the signing of it, and notifying the public and the candidates should all be done at the same time, promptly on the same day. That an intervening day was celebrated as a holiday by many is no excuse. The date of certification is an important starting date in the election contest process. The statutory scheme contemplates that these steps are taken promptly. Wiliander v. National Election Dir., 13 FSM R. 199, 203-04 (App. 2005).

The current election statute only gives the Chuuk State Election Commission the power to conduct municipal elections, if so provided by law or municipal constitutions and also requires that all election complaints be filed with the Chuuk Election Commissioner and that all appeals from the Election Commissioner's decision go directly to the Chuuk State Supreme Court appellate division. Esa v. Elimo, 14 FSM R. 262, 265 & n.1 (Chk. 2006).

Election irregularities may include the polling place's location was not announced thirty days in advance, voting started without a candidate poll watcher's presence, and poll watchers, who, for some reason, were permitted to sit close to the poll workers in the voting area. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 596 (Chk. S. Ct. App. 2007).

It is a poll watcher's duty to know where the polling place is and to be present before it is scheduled to open. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 596 (Chk. S. Ct. App. 2007).

Persons who are present at the polling place before closing (or in line at the door) and who are qualified to vote and have not been able to do so, must be given sufficient time to vote. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 596 (Chk. S. Ct. App. 2007).

The current Chuuk election statute only gives the Chuuk State Election Commission the power to conduct municipal elections if so provided by law or municipal constitutions. Nikichiw v. Petewon, 15 FSM R. 33, 38 (Chk. S. Ct. App. 2007).

Elections, particularly, are in the hands of the political branches. Bisaram v. Suta, 15 FSM R. 250, 254 (Chk. S. Ct. Tr. 2007).

Elections belong to the political branch of the government. The court can exercise authority over election disputes only to the extent that there is a constitutional or statutory provision expressly or impliedly giving it that authority. Kinemary v. Siver, 16 FSM R. 201, 205 (Chk. S. Ct. App. 2008).

Under Chuuk election regulations, stopping the voting at a polling place is authorized if in a precinct board's best judgment an incident creates an imminently extreme and unpreventable danger to human beings, and the election commission's executive director confirms the closing. Aniol v. Chuuk State Election Comm'n, 16 FSM R. 387, 388-89 (Chk. S. Ct. App. 2009).

The determination of whether a ballot can be counted or not is to be performed by examining the integrity of each individual ballot cast to determine if it is lost, destroyed, or defective, or whether it is capable of tabulation. Aniol v. Chuuk State Election Comm'n, 16 FSM R. 387, 389 (Chk. S. Ct. App.

2009).

When the court finds that although there was damage to the ballot box, there was no evidence that any of the individual ballots had been rendered unreliable or were otherwise incapable of tabulation, the court will order the ballot box to be delivered to the election commission for a tabulation of cast votes according to the applicable Election Code provisions and election regulations. Aniol v. Chuuk State Election Comm'n, 16 FSM R. 387, 389 (Chk. S. Ct. App. 2009).

The Commissioners are tasked with a duty that includes the basic administrative planning of an election. Poor planning does not constitute an emergency, and the Commissioners must plan accordingly to ensure that they are carrying out their duties as assigned. To facilitate the process, state law provides that the Commissioners appoint people to conduct the election. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 584, 588 (Chk. S. Ct. Tr. 2013).

When the Commissioners' travel authorization was for travel originating in Chuuk on March 1, 2013, and therefore, any prior expenditure of funds, not directly attributable to the travel, cannot be then ascribed to a preliminary injunction's issuance; when the status quo for state government travel is to purchase full fare tickets which are therefore refundable with a minimal fee imposed and when hotel accommodations and car rentals are generally fully refundable given twenty-four hour notice and other costs associated with the election can generally be transferred to the parties that will travel in place of the Commissioners; when the Commissioners' impartiality is necessary to protect the elections' integrity while protecting the plaintiff candidates' and other individuals' fundamental rights; and when the Commissioners stated that they will attempt to be "honest" but that alone is insufficient because impartiality is required, the balance of the equities tips overwhelmingly in the plaintiffs' favor to enjoin the Commissioners' travel to supervise polling places. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 584, 588-89 (Chk. S. Ct. Tr. 2013).

Allowing the Election Commissioners to travel to conduct the elections will not serve the public interest since the commissioners' need to be physically present at the polling sites to conduct the election is a mischaracterization of the law because subordinate officers and employees are designated duties for the efficient performance of functions and duties and because the law requires impartiality, whether explicitly or implicitly, and the Commissioners' physical presence at the polling sites defeats impartiality and clouds the Election Commission with the appearance of impropriety. Consequently, an injunction will serve the public interest in a manner, which preserves the integrity of elections by ensuring that the Election Commissioners remain impartial while being available for any necessary quorums and require adequate planning for the elections. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 584, 589 (Chk. S. Ct. Tr. 2013).

State election commissioners are enjoined from traveling from Chuuk for the purposes of conducting the election at the voting sites and from appearing in person at the voting locations. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 584, 589-90 (Chk. S. Ct. Tr. 2013).

All ballots forwarded to absentee voters and not physically received by the Chuuk State Election Commission at its main office before the closing of the polls on election day must be rejected. Setile v. Chuuk State Election Comm'n, 18 FSM R.641, 643 (Chk. S. Ct. App. 2013).

Since the FSM Post Office, Chuuk branch was not the Chuuk State Election Commission's main office on March 5, 2013 and the Chuuk State Election Law's language is mandatory and not discretionary and therefore must be strictly adhered to, counting the thirteen absentee mail-in ballots that were in the post office on March 5, 2013, but that were not physically received at the Chuuk State Election Commission main office until after the closing of the polling places was improper and must be deducted from the totals. Setile v. Chuuk State Election Comm'n, 18 FSM R.641, 643 (Chk. S. Ct. App. 2013).

All Chuuk Election Commissioners must remain neutral to avoid any/all appearances of impropriety, and to be available for any quorum following an election. Additionally, all persons holding a position in the Chuuk State Election Commission must strictly adhere to the mandates of the election laws. Narruhn v.

Chuuk State Election Comm'n, 18 FSM R. 649, 652 (Chk. S. Ct. Tr. 2013).

All Chuuk Election Commissioners are permanently enjoined from traveling from Chuuk for the purposes of conducting the election at the voting sites and from appearing in person at the voting locations for the purposes of conducting the election at the voting sites. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 649, 652 (Chk. S. Ct. Tr. 2013).

Whether an individual is entitled to be placed on the ballot is left solely in the hands of the Chuuk State Election Commission and is beyond the Chuuk State Supreme Court's jurisdiction. Simina v. Chuuk State Election Comm'n, 19 FSM R. 587, 589 (Chk. S. Ct. App. 2014).

No law (including the Nema Constitution) prevents the Chuuk State Election Commission from determining whether an individual should be placed on the Nema Municipality General Election ballot. Simina v. Chuuk State Election Comm'n, 19 FSM R. 587, 589 (Chk. S. Ct. App. 2014).

– Contests

An election must be completed and the results announced before the election can be contested. Daniel v. Moses, 3 FSM R. 1, 4 (Pon. S. Ct. Tr. 1985).

To interpret 9 F.S.M.C. 904, the FSM Supreme Court should apply a two-prong test. The first prong is whether there is a "substantial question or fraud or error" and the second prong is whether there is "substantial possibility that the outcome would be affected by a recount." Olter v. National Election Comm'r, 3 FSM R. 123, 136-37 (App. 1987).

If the possibility of double voting is alleged the burden is on the appellant to show that it occurred. Aten v. National Election Comm'r (II), 6 FSM R. 74, 78 (App. 1993).

When the National Election Commissioner's decision concerning election irregularities is appealed to the FSM Supreme Court, the appellate division must decide whether the National Election Commissioner's decision is proper, and if not, whether the irregularities complained of could have resulted in the election of a candidate who would not have won had the irregularities not occurred. Aten v. National Election Comm'r (II), 6 FSM R. 74, 81 (App. 1993).

Where election irregularities cannot be corrected by a recount, the election, in whole or in part, can be set aside and done over only if it is more likely than not that the irregularities complained of could have, not necessarily would have, resulted in the election of a candidate who would not have won had the irregularities not occurred. Aten v. National Election Comm'r (II), 6 FSM R. 74, 82 (App. 1993).

While the court has statutory authority to hear appeals regarding the conduct of elections, its power to grant relief is limited to ordering a recount or a revote. Only Congress can decide who is to be seated and once it has seated a member unconditionally the matter is nonjusticiable. Aten v. National Election Comm'r (III), 6 FSM R. 143, 145 & n.1 (App. 1993).

The time frames established by statute for election petitions to the National Election Director are short. A candidate must be vigilant in asserting his rights to petition. Wiliander v. Mallarme, 7 FSM R. 152, 157 (App. 1995).

Where no action, or words, or silence of the National Election Director prior to the appellant's initial petition misled the appellant into untimely filing his petition after certification it does not give rise to an estoppel. The Director's later failure to raise the issue of untimeliness until his denial of the petition was appealed to the Supreme Court does not give rise to an estoppel. Wiliander v. Mallarme, 7 FSM R. 152, 157-58 (App. 1995).

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

Congress intended that the election appeal process be timely and expeditious. This is especially important in a year in which the newly elected Congress selects the President and Vice President of the nation from among its members. Wiliander v. Mallarme, 7 FSM R. 152, 161 (App. 1995).

The Chuuk State Election Law, Chk. Pub. L. No. 3-95-26, §§ 126, 130, requires that all election complaints be filed with the Chuuk Election Commissioner and that all appeals from the Election Commissioner's decision go directly to the Chuuk State Supreme Court appellate division. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 245, 247 (Chk. S. Ct. Tr. 1998).

When the state election law requiring election appeals to go directly to the state court appellate division has a provision applying the law to municipal elections if the municipal constitution or law so provides and there is no such municipal provision, then jurisdiction over the election appeal does not lie in the state court appellate division in the first instance. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 245, 247 (Chk. S. Ct. Tr. 1998).

When the state judiciary act gives the state court trial division authority to review all actions of an agency of the government, the trial division has jurisdiction over an appeal of the state election commissioner's denial of a petition to set aside a municipal election. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 245, 247 (Chk. S. Ct. Tr. 1998).

The Chuuk State Supreme Court trial division had jurisdiction to hear an election appeal from an election conducted, pursuant to the governor's emergency declaration, under a state law providing for such jurisdiction. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 275, 280 n.1 (Chk. S. Ct. Tr. 1998).

A decision of the Chuuk Election Commission may be appealed to the Chuuk State Supreme Court appellate division. David v. Uman Election Comm'r, 8 FSM R. 300d, 300f, 300h (Chk. S. Ct. App. 1998).

The right to contest an election is not a common law right. Elections belong to the political branch of the government, and are beyond the control of the judicial power. David v. Uman Election Comm'r, 8 FSM R. 300d, 300g (Chk. S. Ct. App. 1998).

The jurisdiction of courts exercising general equity powers does not include election contests, unless it is so provided expressly or impliedly by the constitution or by statute. David v. Uman Election Comm'r, 8 FSM R. 300d, 300g (Chk. S. Ct. App. 1998).

It is a general rule that courts of equity have no inherent power to try contested elections, notwithstanding fraud on the part of the election officers. David v. Uman Election Comm'r, 8 FSM R. 300d, 300g (Chk. S. Ct. App. 1998).

Constitutions and statutes of most jurisdictions provide, as a part of the machinery of elections, a procedure by which election results may be contested. Such contests are regulated wholly by the constitutional or statutory provisions. A strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are powerless to entertain such proceedings. David v. Uman Election Comm'r, 8 FSM R. 300d, 300g (Chk. S. Ct. App. 1998).

Election contests are purely statutory, and the courts have no inherent power to determine election

contests, the determination of such contests being a judicial function only when and to the extent that the determination is authorized by statute. David v. Uman Election Comm'r, 8 FSM R. 300d, 300h (Chk. S. Ct. App. 1998).

If the Chuuk State Supreme Court appellate division has original jurisdiction to decide an election contest, there must be a specific constitutional or statutory provision giving the appellate division that authority. David v. Uman Election Comm'r, 8 FSM R. 300d, 300h (Chk. S. Ct. App. 1998).

The Chuuk State Supreme Court appellate division has no original jurisdiction to entertain an appeal directly from a municipal election commissioner. David v. Uman Election Comm'r, 8 FSM R. 300d, 300i (Chk. S. Ct. App. 1998).

When a contestant offers no evidence of voting irregularities before a municipal election board and the Chuuk State Election Commission and the Chuuk State Supreme Court appellate division, the appellate division has no basis to disturb the findings of fact reached by the Election Commission. Findings of fact relative to the residence, age and location of electors will generally be left undisturbed. Chipen v. Chuuk State Election Comm'n, 8 FSM R. 300n, 300p (Chk. S. Ct. App. 1998).

The right to contest an election is not a common-law right. Elections belong to the political branch of the government, and are beyond the control of the judicial power. An election contest is purely a constitutional or statutory proceeding. Mathew v. Silander, 8 FSM R. 560, 562 (Chk. S. Ct. Tr. 1998).

The jurisdiction of courts exercising general equity powers does not include election contests, unless it is so provided expressly or impliedly by the constitution or by statute. Mathew v. Silander, 8 FSM R. 560, 562 (Chk. S. Ct. Tr. 1998).

It is a general rule that courts of equity have no inherent power to try contested elections, notwithstanding fraud on the part of the election officers. Mathew v. Silander, 8 FSM R. 560, 562 (Chk. S. Ct. Tr. 1998).

The constitutions and statutes of most jurisdictions provide, as a part of the machinery of elections, a procedure by which election results may be contested. Such contests are regulated wholly by the constitutional or statutory provisions. They are not actions at law or suits in equity, and were unknown to the common law. The proceedings are special and summary in their nature. A strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are powerless to entertain such proceedings. Mathew v. Silander, 8 FSM R. 560, 563 (Chk. S. Ct. Tr. 1998).

The determination of an election contest is a judicial function only so far as authorized by the statute. The court exercising the jurisdiction does not proceed according to the course of the common law, but must resort to the statute alone to ascertain its powers and mode of procedure. Mathew v. Silander, 8 FSM R. 560, 563 (Chk. S. Ct. Tr. 1998).

The Chuuk State Supreme Court trial division could have had jurisdiction over election commission appeals had the legislature seen fit to grant it such authority, but the Election Law of 1996, provides that Chuuk Election Commission decisions may be appealed to the appellate division. Therefore an election contest appeal in the trial division will be dismissed for lack of jurisdiction. Mathew v. Silander, 8 FSM R. 560, 564 (Chk. S. Ct. Tr. 1998).

No stay in an election appeal will be granted when nothing in the record of the case indicates that appellant will suffer irreparable harm and, also, that he will likely prevail on the merits of the appeal and when granting a stay would have a substantial effect on the municipal employees and other public officials who have held office for almost a year and would not be in the public interest of having an efficient and effective municipal government. Pius v. Chuuk State Election Comm'n, 8 FSM R. 570, 571 (Chk. S. Ct.

App. 1998).

An election contest is purely a constitutional or statutory proceeding. At common law there was no right to contest in a court any public election, the theory being that elections belong to the political branch of the government, beyond the control of judicial power. Phillip v. Phillip, 9 FSM R. 226, 228 (Chk. S. Ct. Tr. 1999).

When a voter contests any election he must file a written complaint with the Chuuk Election Commission. If the contestant is dissatisfied with the Commission's decision, appeal to the Chuuk State Supreme Court appellate division can be had, and if the contestant is dissatisfied with the Chuuk State Supreme Court appellate division's decision, appeal to the FSM Supreme Court can be had. The Chuuk State Supreme Court trial division is without jurisdiction to hear an election contest. Phillip v. Phillip, 9 FSM R. 226, 228 (Chk. S. Ct. Tr. 1999).

When the statute requires that a statement of contest must be filed within five days "after declaration of the result of the election by the body canvassing the returns" and also provides that upon "tabulation of each of the precinct votes, the Commission shall tabulate or cause to be tabulated the cumulative results, including the total of election results for each nominee, and make these results known to the public," the declaration is when the results are made known to the public. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 153 (Chk. S. Ct. App. 2001).

An aggrieved candidate does not have to wait until the final certification of the results to file his complaint. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 153 (Chk. S. Ct. App. 2001).

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

There is no provision in the election law allowing a voter to cast a ballot after the polling places have closed and everyone in line at the time has been allowed to vote. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 155 (Chk. S. Ct. App. 2001).

When sufficient evidence was not produced to establish a prima facie case for the reliability of state ballots found misplaced in national election ballot boxes, and those ballots were not kept securely, the election contestant has failed to establish an attribute of reliability that might have lead the court to allow those ballots to have been counted. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 156 (Chk. S. Ct. App. 2001).

When the faxed official result form from a polling place abroad is illegible and the results are later sent on an unofficial form, the proper relief for those results' unreliability is not their elimination, but that the ballot box be placed in the court clerk's custody, to be opened and the original official result form used in place of the faxed results to determine the proper result. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 156 (Chk. S. Ct. App. 2001).

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

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

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

If, on appeal the Chuuk State Supreme Court confirms the election, judgment shall be rendered against the contestants, for costs, in favor of the defendant. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 222 (Chk. S. Ct. App. 2001).

When, if an election contestant were declared a winning candidate, only one of two other candidates would no longer be a winning candidate, both may properly be considered defendants under the election statute when it is uncertain which of those two the contestant would have displaced if he had succeeded in being elected. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 222 (Chk. S. Ct. App. 2001).

When a municipal election ordinance has no provision for contesting or challenging the election results after an election has been held, or for resolving election disputes and when the state election law applies to all elections in the state including municipal elections whenever applicable unless otherwise specifically provided, the state election law must apply to this phase of the election, and the proper forum to contest the municipal election is the Chuuk Election Commission. Alafanso v. Suda, 10 FSM R. 553, 557 (Chk. S. Ct. Tr. 2002).

When the sole issue before the appellate court was whether the Director's rejection of an election petition as untimely was in compliance with the applicable statute and when the only relief the court could have granted would have been to vacate the Director's denial, remand the matter to the Director, and order the Director to consider the petition on the merits and when the Director himself has resolved this one issue in petitioner's favor and considered and ruled on the petition's merits, there is no further relief that the court could grant that the Director has not already granted. The appeal is moot. Fritz v. National Election Dir., 11 FSM R. 442, 444 (App. 2003).

A Chuuk Election Commission decision may be appealed to the Chuuk State Supreme Court appellate division where a trial *de novo* may hear witness testimony and oral arguments from the parties. In re Nomun Weito Interim Election, 11 FSM R. 461, 464 & n.2 (Chk. S. Ct. App. 2003).

When even if the number of illegal votes were all subtracted from the real party in interest's legal votes, the real party in interest still has more votes than his opponent, the court cannot set aside the election results because the election results would not change. In re Nomun Weito Interim Election, 11 FSM R. 461, 469-70 (Chk. S. Ct. App. 2003).

When an election contestant has not proven that an unauthorized pollwatcher's actions made the situation at the Pohnpei VAAPP such that the results from that ballot box are so unreliable that they must be discarded, those results will stand. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 474 (Chk. S. Ct. App. 2003).

A letter to the Commission, that asks that the vote be changed from 154 to 164 is not in the form of a verified complaint as required by statute. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 475 (Chk. S. Ct. App. 2003).

The unauthorized opening of a ballot box creates severe impediments to resolving an election contest in a manner reflecting the voters' intent. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 475 (Chk. S. Ct. App. 2003).

An aggrieved candidate has a due process right, created by statute, to be heard on his verified complaint's contentions. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 475 (Chk. S. Ct. App. 2003).

An aggrieved candidate should file a verified complaint, which should be heard and considered by the Election Commission before it alters or certifies the figures certified by the Overall Chairman and the Director. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 476 (Chk. S. Ct. App. 2003).

When an election contest comes before the Chuuk State Supreme Court appellate division with the best evidence of the results, the ballots, irreversibly tainted and unusable, the court is forced to consider less authoritative evidence. Since the election law mandates that a trial be held for election contests appealed to the appellate division, this requires the court to make a *de novo* determination of the facts as well as stating its interpretation of the law. The court therefore hears witness testimony in addition to considering documentary evidence and legal argument. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 476 (Chk. S. Ct. App. 2003).

The Chuuk election law requires a trial in the appellate division and not a normal appeal where generally only issues of law are decided and the facts as determined below are left undisturbed. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 477 (Chk. S. Ct. App. 2003).

The Legislature has granted the appellate division "all powers necessary to make the determination" of the contested election. The Legislature's intent when it said "all powers" was that the court could consider all relevant and admissible evidence properly offered. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 477 (Chk. S. Ct. App. 2003).

In keeping with the Chuuk Constitution Judicial Guidance Clause's requirement that court decisions must be in conformity with "the social and geographical configuration of the State of Chuuk," parol evidence may be used to impeach a written election return that was based upon an oral communication by radio because Chuuk's geographical configuration is such that the transmission of election returns from the outer islands is oral (by radio). In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 477 (Chk. S. Ct. App. 2003).

When the election commission never properly certified anyone as the winning candidate, an appellate trial's result cannot confirm a candidate's election, but rather determines which of two contestants should have been declared elected. Therefore no judgment for costs will be awarded in anyone's favor. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 477-78 (Chk. S. Ct. App. 2003).

Even when the real parties in interest have already taken office, both the plaintiffs and the real parties in interest have a legally cognizable interest in the outcome, because if the election is declared unconstitutionally void, the plaintiffs may have another chance at victory and if the election is declared valid, then the real parties in interest may savor their victory and because it is not an abstract dispute, but a very real problem which threatens the very foundation of democracy, the right of the people to vote in free and fair and democratic elections. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 580 (Chk. S. Ct. Tr. 2003).

Since, if the court determines that the Chuuk State Election Commission is constitutionally required to conduct all elections in Chuuk, including all municipal elections, the Chuuk State Election Commission will be required to bear substantial additional burdens and obligations, the Chuuk State Election Commission is thus a necessary party to the litigation as provided in Chuuk Civil Rule 19(a). Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 581 (Chk. S. Ct. Tr. 2003).

A new claim that constitutionally only the state election commission can conduct municipal elections in Chuuk will not be considered unless the municipal defendants are represented separately from the state when past practice in Chuuk has been that municipal officials have run municipal elections, when this new claim is only hypothetical as the state election commission, a non-party, has not asserted that it intends to and will conduct or that it has the sole authority to conduct municipal elections in the future, and when the defendant Governor and the municipal defendants are represented by the same counsel, a state

employee, but may likely have differing views on the point. Even then, the court would desire a separate appearance by the state election commission before considering the issue. Buruta v. Walter, 12 FSM R. 289, 295 (Chk. 2004).

A prematurely filed election appeal must be dismissed. By statute, an aggrieved candidate in an election contest can appeal to the FSM Supreme Court only after the Election Director has denied his petition or after his petition has been effectively denied because the time has run out for the Director to issue a decision on the petition. Wiliander v. National Election Dir., 13 FSM R. 199, 202 (App. 2005).

The primary forum in which election contests must run their course is the election administrative machinery created by Congress. Constitutions and statutes provide, as a part of the machinery of elections, a procedure by which election results may be contested. Such contests are regulated wholly by the constitutional or statutory provisions. A strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are powerless to entertain such proceedings. Wiliander v. National Election Dir., 13 FSM R. 199, 203 (App. 2005).

An election contest appellant has not strictly observed the steps necessary to give the court jurisdiction when he has not filed his appeal within the time frame permitted by statute. Wiliander v. National Election Dir., 13 FSM R. 199, 203 (App. 2005).

The election results certification, the signing of it, and notifying the public and the candidates should all be done at the same time, promptly on the same day. That an intervening day was celebrated as a holiday by many is no excuse. The date of certification is an important starting date in the election contest process. The statutory scheme contemplates that these steps are taken promptly. Wiliander v. National Election Dir., 13 FSM R. 199, 203-04 (App. 2005).

When there are multiple dates upon which an election result was certified, the date of making the certification public and notifying the candidates would comport best with due process as the certification starting point for election contests. Wiliander v. National Election Dir., 13 FSM R. 199, 204 (App. 2005).

The court lacks jurisdiction to hear an election appeal filed too soon because the statute does not grant the court jurisdiction over election cases until the administrative steps and time frames in 9 F.S.M.C. 902 have been adhered to. Such an appeal is therefore dismissed as premature (unripe). Wiliander v. National Election Dir., 13 FSM R. 199, 204 (App. 2005).

The five-day time limit to appeal an election to the FSM Supreme Court does not start when the Director certifies the election, but rather when the aggrieved candidate receives the Director's decision on the candidate's petition or until the time has run out for the Director to issue a decision on the candidate's petition. Wiliander v. National Election Dir., 13 FSM R. 199, 204 (App. 2005).

An election contest appellant's failure to specify which statutory standard of review he thinks applies to his appeal should not, by itself, be fatal to his appeal. Wiliander v. National Election Dir., 13 FSM R. 199, 204 (App. 2005).

The conduct of elections is generally left to the political branches of government – the legislative and the executive – and not to the judicial branch. The primary forum in which election contests must take place is the election administrative machinery Congress created by statute. Asugar v. Edward, 13 FSM R. 209, 213 (Chk. 2005).

Constitutions and statutes provide, as a part of the election machinery, a procedure by which election results may be contested. Such contests are regulated wholly by constitutional or statutory provisions. The necessary steps must be strictly observed to give the court jurisdiction, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are usually powerless to

entertain such proceedings. Asugar v. Edward, 13 FSM R. 209, 213 (Chk. 2005).

The election law states the time at which the court has the right to entertain an appeal is from the National Election Director's final action. No statutory or constitutional provision grants the court the power to interfere with the election machinery and issue injunctive relief at a point in the electoral process prior to the election officials' completion of their responsibilities. Asugar v. Edward, 13 FSM R. 209, 213 (Chk. 2005).

The applicable time frame within which an election contest appeal can be made starts with a petition to the National Election Director filed within one week of certification of the results of the election. The winning candidate then has one week to respond to the petition. The Director then has ten days to decide whether to approve the petition. If the petition is denied, then the aggrieved candidate would have five days to appeal to the FSM Supreme Court appellate division. It is at that point that the court would have jurisdiction to consider this election contest. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

By statute, an aggrieved candidate in an election contest can appeal to the FSM Supreme Court only after the election agency has denied his petition. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

The primary forum in which election contests must take place is the election administrative machinery Congress created by statute. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

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

An election contest appeal must await the National Election Director's certification of the election results and the Director's denial of a timely post-certification petition by the candidate. If the Director's decision on the petition does not adequately address his concerns, only then would the aggrieved candidate have five days from the receipt of the Director's decision to appeal to the FSM Supreme Court appellate division if the Director's decision on the petition does not adequately address his concerns. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

If the National Election Director does not issue his decision on a candidate's post-certification petition within the statutory time frame, the candidate may appeal without waiting further for the decision. Asugar v. Edward, 13 FSM R. 215, 219 n.3 (App. 2005).

Congress, when it drafted the election statute, limited the court's involvement in election contests to until after the issues were narrowed to the certified result and whether a candidate's petition contesting the certified result should have been granted by the Director and, if so, what relief was then appropriate. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

An election contest appeal must be dismissed for lack of jurisdiction when it is filed too soon, at a time before the election statute confers jurisdiction on the court. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

If an aggrieved candidate's appeal seeks a revote, he may, once the election is certified, petition the National Election Director for a revote, and if he feels that the Director's decision does not adequately address his concerns, then appeal that decision to the FSM Supreme Court appellate division within the statutory time limit. An earlier appeal is too soon. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

The court would be without jurisdiction to hear an election contest appeal on the acceptability of a vote or votes when the aggrieved candidate withdrew his only timely petition on the subject. Asugar v. Edward,

13 FSM R. 215, 220 (App. 2005).

If election contest issues come before the FSM Supreme Court appellate division by an appeal properly filed during the statutory time limit after the election contest machinery has run its course, the court will then consider at that time the merits of what is raised and before it. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

When the plaintiffs seek a declaration that they are the legal winners of an election but have not named as defendants the candidates that opposed them and that presumably question their right to office and since these other candidates are not only real parties in interest but also indispensable parties to such a declaration, the case may be dismissed for failure to join indispensable parties. Puchonong v. Chuuk, 14 FSM R. 67, 69 (Chk. 2006).

It is doubtful whether a court judgment in an election contest case can be collaterally attacked since election contests are purely statutory, and the courts have no inherent power to determine election contests. The determination of election contests is a judicial function only when and to the extent that the determination is authorized by statute. Thus, the jurisdiction of courts exercising general equity powers does not include election contests. An election contest must follow the path set out for it in the statute and no other. Puchonong v. Chuuk, 14 FSM R. 67, 69 (Chk. 2006).

Whether the Chuuk State Supreme Court trial division lacked jurisdiction to consider the municipal election contest claims that the defendants brought there is irrelevant to a motion to dismiss a case in the FSM Supreme Court that relies on that state court decision because if that court lacked jurisdiction, it is now too late for the defendants to contest the municipal election in any other forum and the municipal election commission's decision will stand as a basis upon which the plaintiffs' complaint can state a claim for which relief may be granted and if that court had jurisdiction, then that court's final (and unappealed) judgment will stand as the basis on which the plaintiffs' complaint can state a claim for which relief can be granted. Esa v. Elimo, 14 FSM R. 216, 219 (Chk. 2006).

Assuming an allegation that the litigants were denied due process by the Chuuk State Supreme Court trial division to be true, does not assist their argument because they had a clear avenue to appeal that judgment and did not. When no attempt was made to appeal a decision that the candidates considered in error and a violation of their due process rights, the defendants were not vigilant in asserting their rights in seeking appellate review. An aggrieved candidate must be vigilant in asserting his rights to contest an election result. Esa v. Elimo, 14 FSM R. 216, 219-20 (Chk. 2006).

The current election statute only gives the Chuuk State Election Commission the power to conduct municipal elections, if so provided by law or municipal constitutions and also requires that all election complaints be filed with the Chuuk Election Commissioner and that all appeals from the Election Commissioner's decision go directly to the Chuuk State Supreme Court appellate division. Esa v. Elimo, 14 FSM R. 262, 265 & n.1 (Chk. 2006).

Generally speaking, elections are conducted, carried out, and administered by the executive and legislative branches. Courts do not have a primary position in that traditional scheme. The election law states the time at which the court has the right of entertaining an appeal from the National Election Director's final action, although there may be cases in which the court would enter a matter before the election process has been completed. Doone v. National Election Comm'r, 14 FSM R. 489, 493 (Chk. 2006).

Since the Civil Procedure Rules generally apply to civil proceedings in the trial division, not the appellate division, it is not necessary to serve a summons when an election contest is appealed to the appellate division and the respondent was properly served the notice of appeal. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 575, 577 (Chk. S. Ct. App. 2007).

An election contestant, when, if he obtained as relief the nullification of all the votes in a VAAPP box, his vote total would then be higher than another's with the result that he would be declared a winning candidate, has stated a claim for which the court can grant relief so his election appeal cannot be dismissed on that ground. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 575, 577 (Chk. S. Ct. App. 2007).

The court's only authority in election matters is to hear appeals from Chuuk State Election Commission decisions regarding the conduct of elections. Only a house of the Legislature can decide who is to be seated as a member. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 590 (Chk. S. Ct. App. 2007).

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

Election Code, sections 126 and 127, involving what must be included in an election complaint and the requirement that it be verified, apply to complaints filed before the Election Commission, not to the papers required to be filed in the Chuuk State Supreme Court appellate division for it to obtain jurisdiction over the case. When the Election Commission did not render its decision rejecting Samuel's petition on the ground that his complaint was not properly verified or did not satisfy certain formalities. Any technical defects in the original complaint are not before the court. Furthermore, the proceedings are not to be dismissed by the Commission or any court for the want of form if the contest grounds are alleged with enough certainty as will advise the defendant of the particular ground or cause for which the election is contested. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 590 (Chk. S. Ct. App. 2007).

When an election contestant's appeal to the court included what he called a Refutation of Decision of Election Commission in which he contends that the Commission's decision was contrary to law, the contestant has alleged abuse of discretion because one way in which an adjudicatory body may abuse its discretion is when its decision is based on an erroneous conclusion of law. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 590 (Chk. S. Ct. App. 2007).

In an election contest trial in the appellate division, the respondent may, after presentation of the petitioner's case, move for dismissal on the ground that the petitioner has not carried his burden of proof for the relief sought. The court will consider the motion to be analogous to a Civil Procedure Rule 41(b) motion in the trial division and hear argument. Such a motion for dismissal may be made on the ground that upon the facts and the law the petitioner has shown no right to relief, and the appellate court, as the trier of facts, may then determine the facts and render judgment against the petitioner or may decline to render any judgment until the close of all the evidence. When the court renders judgment on the merits against the petitioner by granting a motion to dismiss after the close of the petitioner's case-in-chief, it must make findings of fact and conclusions of law in a manner analogous to Civil Procedure Rule 52(a). Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 594-95 (Chk. S. Ct. App. 2007).

Since, in an election contest appeal, the appellate division is statutorily required to conduct a trial instead of the usual appellate proceeding, the court will follow, where necessary, procedures analogous to those in the Civil Procedure Rules. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 594-95 n.1 (Chk. S. Ct. App. 2007).

For the twenty-plus voters who cast their votes after 5:00 p.m. to have affected the election's outcome, there would have to have been at least twenty-six voters (because the winning margin was twenty-six votes); they would have to have all been illegal votes; and all of them would have had to have voted for real party in interest and none for the petitioner, which since this is a multiple-member district, it was possible that one

or more of these voters voted for both. This makes it unlikely that these twenty-plus voters (possibly not even totaling 26), even if they all cast illegal votes, affected the election's outcome. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 596 (Chk. S. Ct. App. 2007).

An election cannot be set aside on account of illegal votes, unless by deducting those illegal votes, the result is a tie or a different candidate would be declared the winner. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 596 (Chk. S. Ct. App. 2007).

An election contestant will prevail only when it is more likely than not that the irregularities complained of could have, not necessarily would have, resulted in a tie or the election of a candidate who would not have won had the irregularities not occurred. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 596 (Chk. S. Ct. App. 2007).

When it was not more likely than not that the allegedly illegal votes cast after the Honolulu polling place had closed, if deducted, could have resulted in a tie or in the petitioner's election and when nothing before the court indicated that any of the other irregularities complained of had any affect on the election's outcome, the election contestant therefore failed to carry his burden of proof to show that upon the facts and the law he had a right to relief, and, on motion, the court may dismiss the case. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 596 (Chk. S. Ct. App. 2007).

When a candidate seeks as relief either that the results from certain ballot boxes be nullified, leaving him with a plurality thus making him the "winning candidate" or a revote, it is thus an election contest in which a candidate alleges that fraud or errors affected the election's outcome and challenges the certification of another as the "winning candidate." Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 4 (App. 2007).

The applicable time frame within which an election contest appeal can be made starts with a petition for a recount or a revote filed with the Election Director within one week of certification of the results of the election; the "winning candidate" is then given seven days to respond; and the Director then has fourteen days to decide whether to approve petition. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 4 (App. 2007).

A prematurely-filed election contest appeal must be dismissed because, by statute, an aggrieved candidate in an election contest can only appeal to the FSM Supreme Court after his petition has been denied. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 4 (App. 2007).

The primary forum in which election contests must run their course is the election administrative machinery created by Congress. Constitutions and statutes provide, as a part of the machinery of elections, a procedure by which election results may be contested. Such contests are regulated wholly by the constitutional or statutory provisions, and a strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are powerless to entertain such proceedings. The statute conferring jurisdiction on the court does not allow appeals to the court until the proceedings before the Director (certification of election, candidate's petition, and Director's decision on the petition) have run their course. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 5 (App. 2007).

If a losing candidate wanted to appeal the National Election Director's April 3, 2007 decision rejecting his petition, he would have had to file a notice of appeal from that decision after it was issued on April 3, 2007. When he did not, and when if he had, then that appeal would have been docketed and filed separately as a different case, the court lacks jurisdiction to consider the appeal from the Director's alleged non-decision, filed before the Director's April 3, 2007 decision, and must dismiss the appeal. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 5 (App. 2007).

The only relief that the Election Code authorizes the FSM Supreme Court to grant is a recount or a

revote. It does not authorize the court to restrain the Election Director from acts such as swearing in another candidate or to order a ballot box declared invalid (thus disenfranchising all of the many qualified voters who properly cast their ballots in that box) and thereby declaring another candidate the winner. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

The Election Code does not authorize *ex parte* court hearings. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

An election contestant cannot show irreparable harm, a necessary prerequisite to the issuance of a temporary restraining order and a major factor to be weighed before granting a preliminary injunction, when he has the election appeal process available to him within which he could properly seek redress, and although it is true that if Congress seats a candidate unconditionally the election contest becomes non-justiciable, not once has the court failed to decide an election contest appeal before the statutorily-mandated May 11 date for the newly-elected Congress to start. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

A candidate's supporters are not properly part of an election contest. Only the election contestant(s), the National Election Director, and the "winning candidate" are proper parties to an election contest appeal. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

Jurisdiction over election contests rests purely on statutory and constitutional provisions. Courts have no inherent power to determine election contests. The determination of such contests being a judicial function only when and to the extent that the determination is authorized by statute. Nikichiw v. Petewon, 15 FSM R. 33, 38 (Chk. S. Ct. App. 2007).

Since the jurisdiction of courts exercising general equity powers does not include election contests and since courts of equity are without jurisdiction to enforce purely political rights in election cases, a writ of prohibition is proper to prevent a trial court from exercising equity jurisdiction in an election case. Nikichiw v. Petewon, 15 FSM R. 33, 38 (Chk. S. Ct. App. 2007).

Since relief from judgment, either in an independent action or under a Rule 60(b) motion seeks the exercise of a court's equitable powers, and since courts of equity have no jurisdiction in election contests, any trial division justices are without jurisdiction to hear a case seeking relief from judgment in an election contest case or to issue any substantive orders in that case other than to dismiss it for want of jurisdiction. Nikichiw v. Petewon, 15 FSM R. 33, 38-39 (Chk. S. Ct. App. 2007).

The court will consider the constitutionality of a municipal ordinance when the one issue that has always been before the court from the case's inception was the right of those municipal officials elected to municipal offices (mayor, assistant mayor, and Tolensom legislators) in 2004 not to be deprived or divested of those offices until their terms are up; when the terms of the legislators elected for two years have already expired but the terms of the four at-large four-year legislators, the mayor, and the assistant mayor have not; and when the new municipal ordinance relates directly to this issue because it purports to create a Tolensom Special Election Tribunal Commission, which can appoint a mayor or assistant mayor when there is an "executive crisis" created because the offices have been "vacant" for more than six months because the right to those offices is disputed between the candidates who ran for those offices. Esa v. Elimo, 15 FSM R. 198, 203 (Chk. 2007).

In any action where a party seeks relief that would result in that party being declared the winner of an election rather than some other person, that other person is an indispensable party whose absence would make any judgment void and subject to collateral attack. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 224 (Chk. S. Ct. App. 2007).

The Chuuk Election Law of 1996 applies to Murilo municipal elections. Sections 123-130 of that law provide for the means to contest an election in Chuuk, which is to be before, and decided by, the Chuuk

Election Commission. And it is well settled that election contest appeals from the Chuuk Election Commission go directly to the Chuuk State Supreme Court appellate division. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 225 (Chk. S. Ct. App. 2007).

From the Election Commission's denial in an election contest, the only proper avenue in which an aggrieved candidate can seek further review is by appeal to the appellate division. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 225 (Chk. S. Ct. App. 2007).

Once an aggrieved candidate's request to the Chuuk Election Commission is denied, his only recourse is to appeal to the appellate division because the trial division lacks jurisdiction over the election contest. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 225 (Chk. S. Ct. App. 2007).

All the provisions of the Chuuk State Election Law of 1996 apply to all elections in the State of Chuuk, including municipal elections whenever applicable unless otherwise specifically provided. The Chuuk State Election Law requires that all election complaints be filed with the Chuuk Election Commissioner and that all appeals from the Election Commissioner's decision go directly to the Chuuk State Supreme Court appellate division. Bisaram v. Suta, 15 FSM R. 250, 254 (Chk. S. Ct. Tr. 2007).

In an election dispute, the person whose right to the office is contested is the real party in interest. When a plaintiff is contesting the right of a candidate to participate in an election but fails to name the candidate as a party in the complaint, the court will deny injunctive relief because the real parties in interest are not parties to the action, since without naming the candidates as parties to this action, and giving them the benefit of due process of law, the court is unwilling and unable to adjudicate their rights in the proceeding. Bisaram v. Suta, 15 FSM R. 250, 255 (Chk. S. Ct. Tr. 2007).

Chuuk courts do not have jurisdiction over disputes regarding an election until after the election and the matter has first been appealed from a decision of the Chuuk State Election Commission, and the Chuuk State Supreme Court trial division does not have any jurisdiction over election disputes even after an appeal from the Chuuk State Election Commission. That the case involves a municipal election in a municipality without a provision for contesting or challenging an election does not change the analysis. Bisaram v. Suta, 15 FSM R. 250, 256 (Chk. S. Ct. Tr. 2007).

In conducting a trial *de novo* in an election contest appeal, the court is not bound to show any deference to the findings of the Chuuk State Election Commission and will consider all admissible documentary and testimonial evidence in support of the petition. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 369, 371 n.1 (Chk. S. Ct. App. 2007).

When a petitioner has presented sufficient evidence to support a *prima facie* case for relief, a respondent's motion for dismissal at the close of the petitioner's case-in-chief will be denied. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 369, 372 (Chk. S. Ct. App. 2007).

After the parties rest, the court makes findings of fact based on the total record in the case. The petitioner (election contestant) has the burden of proof to prove his case by a preponderance of the evidence. The petitioner satisfies his burden of proof if his evidence is more convincing to the court than that of the respondents. Therefore, the petitioner must establish facts in support of his claim by evidence at least sufficient to overbalance any weight of evidence produced by the other parties. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 369, 372 (Chk. S. Ct. App. 2007).

When a motion to dismiss for lack of the court's subject matter jurisdiction is filed in lieu of an answer to an election contest complaint, the court is required to address the preliminary issues raised regarding the appellate division's subject matter jurisdiction before proceeding to the merits of the issue. Kinemary v. Siver, 16 FSM R. 201, 205 (Chk. S. Ct. App. 2008).

The determination of an election contest is a judicial function only so far as authorized by the statute. Even if the court is granted jurisdiction, it does not then proceed according to the course of the common

law, but must rely solely on its statutorily granted authority to ascertain its powers and mode of procedure. Kinemary v. Siver, 16 FSM R. 201, 205 (Chk. S. Ct. App. 2008).

The Chuuk State Election Law of 1996, chapter 8 sets forth the procedures for contesting the results of an election. A "contestant" is someone contesting an election. A "defendant" in an election contest is one whose election or qualifications are contested. A contestant must verify a statement of contest and file it within five days after the declaration of the result of the election by the body canvassing the returns thereof, and the election commission must rule on the complaint within three days after the end of time for filing statements of contest. The Election Law imposes no deadline for appealing a ruling of the election commission to the Chuuk State Supreme Court appellate division. Kinemary v. Siver, 16 FSM R. 201, 205-06 (Chk. S. Ct. App. 2008).

Unless municipal law or constitution provides otherwise, all appeals from the Election Commissioner's decision on an election contest go directly to the Chuuk State Supreme Court appellate division. Kinemary v. Siver, 16 FSM R. 201, 206 (Chk. S. Ct. App. 2008).

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

The election contest provisions do not allow for the filing of an election contest complaint before an election. Although a petitioner may file a petition after an election is declared but before it is certified, there is no authority for allowing an election contest to be filed outside the framework of section 127 of the Election Law, which specifically states that a contest must be filed within five days after the declaration of the election – the petition must be filed after declaration of the election, but no later than five days from the date of the declaration. The Chuuk State Supreme Court appellate division has no jurisdiction when over an election contest when it was not filed with the Election Commission within the deadline imposed. Kinemary v. Siver, 16 FSM R. 201, 206 (Chk. S. Ct. App. 2008).

Although it may be preferable to have the issue of a candidate's qualification addressed before the election, there is nothing to prevent a petitioner from re-filing his qualification challenge after the declaration of the results, according to the provisions for an election contest. Kinemary v. Siver, 16 FSM R. 201, 206 (Chk. S. Ct. App. 2008).

Although there may be some cases where issues regarding the conduct of elections may be raised prior to an election, it seems axiomatic that an election contest only arises once the results of the election are known. Kinemary v. Siver, 16 FSM R. 201, 206 (Chk. S. Ct. App. 2008).

By filing a complaint under section 55, any person may raise with the state election commission a controversy over a violation of any of the Election Law provisions. If a candidate is found guilty of violating any election law provision, the candidate may be disqualified from office and an Independent Prosecutor or Attorney General, or both, will take whatever necessary legal action to make the disqualification from office legally effective. While there are specific timing provisions that control the filing of an election contest, there is no provision that sets a deadline for filing section 55 controversies. A disqualification resulting from a successful section 55 action may, therefore, occur either before or after a candidate takes office. Kinemary v. Siver, 16 FSM R. 201, 207 (Chk. S. Ct. App. 2008).

While the Election Law explicitly grants jurisdiction to the appellate court over appeals of election contests, it is silent on the question of appellate jurisdiction over appeals from decisions made under section 55 and no other provision in the Election Law, other than those granting jurisdiction over election contests in the appellate division, expressly provides for jurisdiction in the Supreme Court appellate division.

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

The state appellate panel must decide on a contested election before the date upon which the declared winning candidates are to take office in the Senate or House of Representatives since the decision of the specific house concerned will prevail and is final. Kinemary v. Siver, 16 FSM R. 201, 208 (Chk. S. Ct. App. 2008).

Except for members-elect of the Senate or House of Representatives, the court is not prevented from ruling on cases involving elected officials even after they have taken office. A candidate will continue to have a legally cognizable interest in whether one or more candidates is disqualified because, if one or more candidates is disqualified, then one of the others may stand to be the winning candidate. If the candidates' qualifications are affirmed by the court, the ruling still serves a valuable function by settling a concrete dispute over the qualifications of an elected official. Kinemary v. Siver, 16 FSM R. 201, 208 (Chk. S. Ct. App. 2008).

The procedures for filing a challenge of a candidate's or elected official's qualifications may be presented at any time. A properly filed petition is not rendered moot by the results of an election or the swearing in of a mayoral candidate. Kinemary v. Siver, 16 FSM R. 201, 208 (Chk. S. Ct. App. 2008).

A case is an election contest when the relief sought may affect or change who the winning candidate is in an election district and the plaintiff-candidate is thus an election contestant. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 358 (Chk. 2009).

An election contestant cannot show irreparable harm, a necessary prerequisite to the issuance of a temporary restraining order and a major factor to be weighed before granting a preliminary injunction, when he has the election appeal process available to him through which he could properly seek redress. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 358 (Chk. 2009).

When the relief sought is obtainable from the National Election Director before certification since a recount or a revote is a remedy within the National Election Director's power to order during the election contest appeal process, the plaintiff cannot show irreparable harm and his motion for a temporary restraining order may be denied on that ground alone. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 358-59 (Chk. 2009).

An election contest appeal must await the National Election Director's certification of the election results and the Director's subsequent denial of the candidate's timely post-certification petition. If the Director's decision on an aggrieved candidate's petition does not adequately address the candidate's concerns, the aggrieved candidate would then have five days from the receipt of the Director's decision to appeal to the FSM Supreme Court appellate division. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 359 (Chk. 2009).

When Congress drafted the election statute, it limited court involvement in election contests until after the issues have been narrowed to the certified result and to whether the Director should have granted a candidate's petition contesting the certified result and, if so, what relief was then appropriate. The statute also designates the FSM Supreme Court appellate division as the forum for election contest appeals. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 359 (Chk. 2009).

Any candidate who would be adversely affected by the relief an aggrieved candidate seeks would be an indispensable party to the action and must be joined before a court could grant any relief or a dismissal will ensue. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 359 (Chk. 2009).

Election Code sections 131 and 132 specifically provide that the Chuuk State Supreme Court appellate division is to hold a trial de novo on an appeal from the election commission, which necessarily means that the appellate division will make its own determinations of fact. The court is therefore not limited to review of the election commission's findings for an abuse of discretion, but is authorized by law to make findings of fact. Aniol v. Chuuk State Election Comm'n, 16 FSM R. 387, 389 (Chk. S. Ct. App. 2009).

When the election statute appears to contemplate that the election commission will be open for filing election complaints during the five days following the election results' certification regardless of whether one of those day falls on a weekend or holiday; when the election commission had no written policies or regulations or other notice issued to the public that would reasonably inform a complainant that the election commission would be open at reasonable, specified times for filing election contests each of the five days following the results' certification; when the election contestant was not reasonably informed that he could file his verified complaint on Saturday, March 14, rather than filing it on the following Monday, as he had done; when the contestant had sought to file his verified complaint on Saturday, but the election commission office was not open for filing; and when, even if there had been written policies or regulations or other reasonable public notice, the commission was not, in fact, open for filing when petitioner sought to file his complaint within the five-day deadline, the court will conclude that the verified election complaint's Monday filing was timely under the circumstances and remand the matter back to the election commission for an expedited ruling. Aten v. Chuuk State Election Comm'n, 16 FSM R. 390, 391-92 (Chk. S. Ct. App. 2009).

A case is an election contest when the relief sought may affect, change, or prevent the change of who the winning candidates are. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 392, 394 (Chk. 2009).

An election contestant cannot show irreparable harm, a necessary prerequisite to the issuance of a temporary restraining order and a major factor to be weighed before granting a preliminary injunction, when he has the election appeal process available to him through which he could properly seek redress. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 392, 394 (Chk. 2009).

Jurisdiction over election contests rests purely on statutory and constitutional provisions, and courts have no inherent power to determine election contests. The determination of such contests are a judicial function only when and to the extent that the determination is authorized by statute. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 392, 394 (Chk. 2009).

When a candidate seeks relief that would result either in him being confirmed the winning candidate or preventing another candidate from such a confirmation or relief could affect an election's outcome, it is an election contest. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 397 (Chk. 2009).

The FSM Supreme Court trial division lacks jurisdiction over an election contest in a Chuuk state election since jurisdiction over election contests rests purely on statutory and constitutional provisions, and courts otherwise have no inherent power to determine election contests, and since the determination of such contests is a judicial function only when and to the extent that the determination is authorized by statute. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 397 (Chk. 2009).

The court lacks subject-matter jurisdiction over a case when, if applied, the general principle that courts should first consider any non-constitutional grounds that might resolve the issue because unnecessary constitutional adjudication ought to be avoided, would unmask the case as an election contest and the matter would accordingly be dismissed. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 398 (Chk. 2009).

An election contest is a proceeding to challenge the results of an election. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 410 (Chk. S. Ct. App. 2009).

The pleading requirements for filing an election contest are liberal. An election contestant must file a verified, written complaint with the election commission setting forth the contestant's name and that he is a voter in the state, municipality or precinct where the contested election was held; the defendant's name; the office; and the particular grounds of contest, and the complaint must not be rejected, nor the proceeding dismissed by the commission or any court, for want of form, if the grounds of the contest are alleged with such certainty as will advise the defendant of the particular ground or cause for which the election is contested. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 410 (Chk. S. Ct. App. 2009).

When the petitioners' complaint to the election commission shows numerous, specific allegations of misconduct resulting in election irregularities and when, based on these allegations, the petitioners challenge the election results and request relief that could change the election's outcome, the allegations are set forth with sufficient certainty to advise the defendants of the grounds for the contest, and since the petitioners' complaint challenges the election results with sufficient certainty, it should be treated as an election contest and not an action against the commissioners in their individual capacities. If there is a basis for criminal or civil liability against election commission officials in their individual capacities, the allegations may be pursued in a separate action within the discretion of the Attorney General or an independent prosecutor. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 410 (Chk. S. Ct. App. 2009).

A complainant before the election commission may name as a defendant a person whose election or qualifications are contested or persons receiving an equal or larger number of votes, other than the contestant, and the election commission or an individual member may also be a defendant. If the election commission believes that the commission is an indispensable party to the action, it can easily order that it be named a party to the action. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 410-11 (Chk. S. Ct. App. 2009).

The decision as to the court's jurisdiction over an action is one to be made by the court, and the election commission is not empowered to assume or confer whether a court has jurisdiction. The election commission is limited to determining its own jurisdiction. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 411 (Chk. S. Ct. App. 2009).

An election contestant must file a verified complaint with the election commission within five days after the declaration of the election result by the body canvassing the returns. The deadline for filing a complaint with the election commission is jurisdictional. If the complainant fails to meet the deadline, then the election commission has no jurisdiction. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 411 (Chk. S. Ct. App. 2009).

A timely-filed election complaint confers jurisdiction in the election commission. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 411 (Chk. S. Ct. App. 2009).

A court will refrain from addressing whether it has jurisdiction over an election contest when the matter is merely hypothetical and not a justiciable controversy, but if the issue comes properly before the court and if it appears that the court lacks jurisdiction over the complaint's subject matter, the court would dismiss the action. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 411 (Chk. S. Ct. App. 2009).

An appeal is an election contest when a candidate seeks relief that would result either in him being confirmed the "winning candidate" or preventing another candidate from such a confirmation or the relief could affect an election's outcome. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 419 (App. 2009).

Constitutions and statutes provide, as a part of the election machinery, the procedure by which election

results may be contested, and such contests are regulated wholly by these constitutional or statutory provisions. A strict observance of the steps necessary to give us jurisdiction over an election contest is required, and if these steps are not followed, the court is powerless to entertain such proceedings. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 419 (App. 2009).

An aggrieved candidate may, within five days after receipt of the National Election Director's decision granting or denying a petition for a recount or a revote, appeal that decision to the FSM Supreme Court appellate division. A post-certification petition, and a decision thereon, is a prerequisite to an appeal to the court. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 419 (App. 2009).

If the possibility of double voting is alleged, the burden is on the election appellant to show that it is likely to have occurred; he cannot rely solely on an assertion that double voting is possible. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 420 n.4 (App. 2009).

A petition presented to the National Election Director must contain a) a statement of the nature, location and extent of the election fraud or error that forms the basis of the petition; b) a statement of the form of relief the petitioner seeks; c) a list of election records and witnesses that will establish the existence of election error or fraud, specifying how each record or official listed is relevant to the petition's allegations; and d) affidavits, documents and any other evidence in support of the petition. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 420 (App. 2009).

When an election contestant's shifting allegations of irregularities (the allegations shifted from misreporting or tampering with the reported results to double-voting) and his later exhibits could have been an appropriate basis for a post-certification petition to the National Election Director, but instead of filing the required post-certification petition, the contestant filed a court appeal, the court cannot conduct a meaningful appellate review in such a manner and therefore cannot consider them because these issues and exhibits would, if allowed, come before the court without the benefit of the National Election Director's reasoned review and decision. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 420-21 (App. 2009).

If an election contestant's appeal is considered as only a claim challenging the acceptability of votes, the five-day time frame to appeal the National Election Commissioner's denial of that claim would start then even though a recount was pending because an FSM Supreme Court appellate division decision may have the effect of disallowing challenged votes but shall not halt or delay balloting or counting and tabulating. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 421 (App. 2009).

A candidate's only appeal from the certification of an election or the declaration of the winning candidate is to file a petition with the National Election Director within seven days of the certification, and, if the candidate is still aggrieved after the National Election Director's decision on the post-certification petition, then he or she may appeal to the FSM Supreme Court appellate division. The Election Code does not authorize an appeal of a certification of election directly to the FSM Supreme Court. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 421-22 (App. 2009).

An election appeal filed too soon will be dismissed as premature (unripe) because the statute does not grant the court jurisdiction over election cases until the administrative steps and time frames have been adhered to. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 422 (App. 2009).

Although there are rare occasions when an equitable remedy may be proper in an election case, overlooking or extending a deadline to file an appeal is not one of them. Statutory deadlines to file appeals are jurisdictional, and if the deadline has not been strictly complied with the adjudicator is without jurisdiction over the matter once the deadline has passed. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 422 (App. 2009).

The timing provisions for the election commission to rule on an election contest provide that once the state election commission begins a special session, it has two days to reach a determination of the contest. The court reads the two-day deadline as directory, not mandatory. Because the deadline is directory, an

election contest is not effectively denied if the election commission fails to reach a determination within two days, so long as the commission is taking reasonable steps to determine the contest as quickly as possible. Doone v. Chuuk State Election Comm'n, 16 FSM R. 459, 462 (Chk. S. Ct. App. 2009).

A court cannot conclude that there was an effective denial of an election petition until there is a determination as to what, if any, substantive action to determine the contest was taken by the election commission. Doone v. Chuuk State Election Comm'n, 16 FSM R. 459, 463 (Chk. S. Ct. App. 2009).

If an election complaint was not timely filed with the election commission, then neither the election commission nor the court have jurisdiction over the election contest. Because statutory filing deadlines are generally mandatory, whether the complaint was timely filed is a jurisdictional question and therefore potentially dispositive of a contest. That determination is initially the election commission's to make, as it involves factual questions going to its own jurisdiction. Doone v. Chuuk State Election Comm'n, 16 FSM R. 459, 463 (Chk. S. Ct. App. 2009).

Until the election commission determines the election contest, or there is otherwise an appeal from a final order or a determinate effective denial, administrative remedies have not been exhausted and such an election contest will, therefore, be remanded to the election commission for further proceedings. Doone v. Chuuk State Election Comm'n, 16 FSM R. 459, 463 (Chk. S. Ct. App. 2009).

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

In ruling on a motion to dismiss for failure to prosecute an election contest, the court also takes into consideration the vigilance required of an election contestant to prosecute his claim to a speedy resolution. Due to the time sensitivity of election contests, continuances should rarely if ever be granted since the public interest and the litigants' private rights demand that proceedings be resolved as soon as consistent with justice and orderly process. Bisaram v. Oneisom Election Comm'n, 16 FSM R. 475, 478 (Chk. S. Ct. App. 2009).

The burden is on the election contestant to be vigilant and to prosecute his claim diligently to a speedy resolution. When a contestant has not done this; when the contestant's explanation for not complying with the court's order for a pre-trial record was not consistent with a good faith effort to prosecute his appeal; when the contestant otherwise took no action to expedite his appeal's resolution; and when an election contestant, without reasonable justification, failed to comply with a court order requiring a filing by a set deadline or his claim would be deemed abandoned; and when he has not taken steps to diligently pursue the speedy resolution of the election contest, the court is justified in concluding that the prosecution of the claim has been abandoned and will grant a motion to dismiss for failure to prosecute. Bisaram v. Oneisom Election Comm'n, 16 FSM R. 475, 478 (Chk. S. Ct. App. 2009).

An election contest petitioners' failure to name all real parties in interest in their pleadings can subject the court's rulings to being later challenged by the real parties in interest as a violation of their due process rights to defend their interest in the action. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 516 n.1, 517 (Chk. S. Ct. App. 2009).

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

Comm'n, 16 FSM R. 513, 517 (Chk. S. Ct. App. 2009).

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

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

In an election contest trial in the appellate division, a respondent may, after presentation of the petitioner's case, move for dismissal on the ground that the petitioner has not carried his burden of proof for the relief sought. The court will consider this as a motion analogous to a Civil Procedure Rule 41(b) motion in the trial division. The motion may therefore be made on the ground that upon the facts and the law the petitioner has shown no right to relief, and the appellate court, as the trier of facts, may then make findings of fact and conclusions of law and render judgment against the petitioner. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 518 (Chk. S. Ct. App. 2009).

Whether an election complaint is timely filed is a matter of great importance in election contests, as an untimely complaint will prevent an adjudicator from ruling on the contest for lack of jurisdiction since an adjudicator's jurisdiction over election contests is limited to the constitutional or statutory provision expressly or impliedly giving it that authority. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 518 (Chk. S. Ct. App. 2009).

Under the Chuuk Election Law, initially, an election contestant must file a verified complaint with the election commission within five days after the declaration of the election result by the body canvassing the returns. This deadline for filing a complaint with the election commission is mandatory, and, if the complainant fails to strictly comply with the deadline for filing a verified complaint, the complaint will be dismissed for lack of jurisdiction. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 518 (Chk. S. Ct. App. 2009).

An election contestant must file a verified complaint. An oral complaint does not satisfy the requirements of a verified complaint, which is a written complaint sworn to under oath. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 519 (Chk. S. Ct. App. 2009).

The public announcement of the results, not the date of certification, is the date for determining an election contest filing deadline under the Chuuk Election Law. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 519 (Chk. S. Ct. App. 2009).

In an election contest, the court makes findings of fact based on the total record in the case. The petitioner has the burden of proof to prove his case by a preponderance of the evidence. The petitioner satisfies his burden of proof if his evidence is more convincing to the court than that of the respondents. Thus, the petitioners must establish facts in support of their claim by evidence at least sufficient to overbalance any weight of evidence produced by the other parties. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 519 (Chk. S. Ct. App. 2009).

When there was no evidence to contradict the election commission's finding of the dates that the election results were announced, the petitioners cannot prove by a preponderance of the evidence that the declaration of the election was after April 11, 2009, which, if it had been, would have made their petition timely and the panel would have remanded the contest to the election commission for a third time. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 519 (Chk. S. Ct. App. 2009).

Neither the election commission nor the court can take jurisdiction over an election contest when it is not timely filed. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 519 (Chk. S. Ct. App. 2009).

Before the appellate division proceeds to the merits of any action filed as an election contest, the court should determine if it has subject matter jurisdiction because the appellate division has jurisdiction over election contests only to the extent that a constitutional or statutory provision expressly or impliedly gives it that authority. Rayphand v. Chuuk State Election Comm'n, 16 FSM R. 540, 542 (Chk. S. Ct. App. 2009).

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

Chuuk Election Code, section 138 clearly contemplates that the FSM Supreme Court appellate division may exercise jurisdiction over a Chuuk state election contest even after the candidates that have been declared the winners have been sworn in. Chuuk State Election Comm'n v. Chuuk State Supreme Court App. Div., 16 FSM R. 614, 615 (App. 2009).

A court cannot, for lack of jurisdiction, weigh the likelihood of plaintiff's success on the merits when, pursuant to state law, the merits of his appeal are not before the court because they were duly presented in their proper forum of the appellate division. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 491 (Chk. S. Ct. Tr. 2011).

In the case of a contested election of a member-elect of the Chuuk Senate or House of Representatives, the decision of the specific house concerned prevails. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 492, 494 (Chk. S. Ct. App. 2011).

When, at the close of the petitioner's case-in-chief, the respondents move to dismiss the petitioner's case because he had not shown a right to relief, the Chuuk State Supreme Court appellate division will consider the motion to be analogous to a trial division Civil Procedure Rule 41(b) motion to dismiss although the civil procedure rules apply to the trial division and not the appellate division. Such a motion to dismiss may be made on the ground that on the facts and the law the petitioner has shown no right to relief, and the Chuuk State Supreme Court appellate division, as the trier of fact, may then determine the facts and render judgment against the petitioner or may decline to render any judgment until the close of all the evidence. Hallers v. Yer, 18 FSM R. 644, 647 (Chk. S. Ct. App. 2013).

When determining whether a petitioner has shown a right to relief in an election contest appeal, the Chuuk State Supreme Court appellate division is not required to view the facts in the light most favorable to the petitioner but may draw permissible inferences, and if it determines that the petitioner has not made out a prima facie case, the real party in interest is entitled to have the case dismissed. Even if a petitioner makes out a prima facie case, the Chuuk State Supreme Court appellate division, as the trier of fact, may, in assessing the evidence on a Rule 41(b) or analogous motion, weigh the evidence, resolve any conflicts in it, and decide for itself where the preponderance of the evidence lies, and when weighing the evidence, the court may view the evidence with an unbiased eye without any attendant favorable inferences, and may sift and balance the evidence and give the evidence such weight as it deems fit, and when it renders judgment on the merits against the petitioner by granting a motion to dismiss after the close of the petitioner's case-in-chief, it must make findings of fact and conclusions of law in a manner analogous to Civil Procedure Rule 52(a). Hallers v. Yer, 18 FSM R. 644, 647 (Chk. S. Ct. App. 2013).

When there was an eighty-five vote difference between the petitioner and the real party in interest; when, weighing the evidence with an unbiased eye, the Chuuk State Supreme Court appellate division

determined that the petitioner did not show that the possible tabulation inaccuracies, even in the unlikely event that they were all in the real part in interest's favor, were enough that there was a substantial chance that the election's outcome was affected; and when, even if the Chuuk State Supreme Court appellate division were to view the facts in the light most favorable to the petitioner and gave the petitioner the benefit of all reasonable inferences, it still would not have been more likely than not that if a more accurate vote count were obtained through a recount the vote totals would have changed enough so that there was a substantial chance that the election's outcome would be affected; the petitioner failed to carry his burden of proof to show that upon the facts and the law he had a right to relief and the Chuuk State Supreme Court appellate division therefore may, on motion made after the presentation of the petitioner's case-in-chief, dismiss the case. Hallers v. Yer, 18 FSM R. 644, 648 (Chk. S. Ct. App. 2013).

Without the Chuuk State Election Commission case record, including but not limited to the complaint and the Commission's decision, the court cannot determine whether certain requirements before retaining jurisdiction were met: 1) whether the Chuuk State Election Commission case was filed within the prescribed time and 2) whether the Chuuk State Election Commission case was filed as a verified complaint. Iron v. Chuuk State Election Comm'n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

Whether an election complaint is timely filed is a matter of great importance in election, as an untimely complaint will prevent an adjudicator from ruling on the contest for lack of jurisdiction. An adjudicator's jurisdiction over election contest is limited to the constitutional or statutory provision expressly or impliedly giving it that authority. A strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of a proceeding. Iron v. Chuuk State Election Comm'n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

When the appellant cannot verify to the court that the election contest requirements were met, the court lacks the jurisdiction. Iron v. Chuuk State Election Comm'n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

– Court Jurisdiction

A writ of prohibition is proper to prevent a trial court from exercising equity jurisdiction in an election case. Election Comm'r v. Petewon, 6 FSM R. 491, 500 (Chk. S. Ct. App. 1994).

Courts of equity are without jurisdiction to enforce purely political rights. Matters concerning the conduct of elections are usually left to the political branches and the courts generally have no jurisdiction until after the elections are held. Election Comm'r v. Petewon, 6 FSM R. 491, 500 (Chk. S. Ct. App. 1994).

Generally speaking, elections are conducted and carried out and administered by the executive and legislative branches. Courts do not have a primary position in that traditional scheme. The election law states the time at which the court has the right of entertaining an appeal from the final action of the National Election Director. Wiliander v. Siales, 7 FSM R. 77, 79 (Chk. 1995).

When the state election law requiring election appeals to go directly to the state court appellate division has a provision applying the law to municipal elections if the municipal constitution or law so provides and there is no such municipal provision, then jurisdiction over the election appeal does not lie in the state court appellate division in the first instance. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 245, 247 (Chk. S. Ct. Tr. 1998).

When the state judiciary act gives the state court trial division authority to review all actions of an agency of the government, the trial division has jurisdiction over an appeal of the state election commissioner's denial of a petition to set aside a municipal election. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 245, 247 (Chk. S. Ct. Tr. 1998).

The Chuuk State Supreme Court trial division had jurisdiction to hear an election appeal from an

election conducted, pursuant to the governor's emergency declaration, under a state law providing for such jurisdiction. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 275, 280 n.1 (Chk. S. Ct. Tr. 1998).

A decision of the Chuuk Election Commission may be appealed to the Chuuk State Supreme Court appellate division. David v. Uman Election Comm'r, 8 FSM R. 300d, 300f, 300h (Chk. S. Ct. App. 1998).

The jurisdiction of courts exercising general equity powers does not include election contests, unless it is so provided expressly or impliedly by the constitution or by statute. David v. Uman Election Comm'r, 8 FSM R. 300d, 300g (Chk. S. Ct. App. 1998).

It is a general rule that courts of equity have no inherent power to try contested elections, notwithstanding fraud on the part of the election officers. David v. Uman Election Comm'r, 8 FSM R. 300d, 300g (Chk. S. Ct. App. 1998).

Constitutions and statutes of most jurisdictions provide, as a part of the machinery of elections, a procedure by which election results may be contested. Such contests are regulated wholly by the constitutional or statutory provisions. A strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are powerless to entertain such proceedings. David v. Uman Election Comm'r, 8 FSM R. 300d, 300g (Chk. S. Ct. App. 1998).

Election contests are purely statutory, and the courts have no inherent power to determine election contests, the determination of such contests being a judicial function only when and to the extent that the determination is authorized by statute. David v. Uman Election Comm'r, 8 FSM R. 300d, 300h (Chk. S. Ct. App. 1998).

If the Chuuk State Supreme Court appellate division has original jurisdiction to decide an election contest, there must be a specific constitutional or statutory provision giving the appellate division that authority. David v. Uman Election Comm'r, 8 FSM R. 300d, 300h (Chk. S. Ct. App. 1998).

The Chuuk State Supreme Court appellate division has no original jurisdiction to entertain an appeal directly from a municipal election commissioner. David v. Uman Election Comm'r, 8 FSM R. 300d, 300i (Chk. S. Ct. App. 1998).

The jurisdiction of courts exercising general equity powers does not include election contests, unless it is so provided expressly or impliedly by the constitution or by statute. Mathew v. Silander, 8 FSM R. 560, 562 (Chk. S. Ct. Tr. 1998).

It is a general rule that courts of equity have no inherent power to try contested elections, notwithstanding fraud on the part of the election officers. Mathew v. Silander, 8 FSM R. 560, 562 (Chk. S. Ct. Tr. 1998).

The constitutions and statutes of most jurisdictions provide, as a part of the machinery of elections, a procedure by which election results may be contested. Such contests are regulated wholly by the constitutional or statutory provisions. They are not actions at law or suits in equity, and were unknown to the common law. The proceedings are special and summary in their nature. A strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are powerless to entertain such proceedings. Mathew v. Silander, 8 FSM R. 560, 563 (Chk. S. Ct. Tr. 1998).

The determination of an election contest is a judicial function only so far as authorized by the statute. The court exercising the jurisdiction does not proceed according to the course of the common law, but must resort to the statute alone to ascertain its powers and mode of procedure. Mathew v. Silander, 8 FSM R. 560, 563 (Chk. S. Ct. Tr. 1998).

The Chuuk State Supreme Court trial division could have had jurisdiction over election commission appeals had the legislature seen fit to grant it such authority, but the Election Law of 1996, provides that Chuuk Election Commission decisions may be appealed to the appellate division. Therefore an election contest appeal in the trial division will be dismissed for lack of jurisdiction. Mathew v. Silander, 8 FSM R. 560, 564 (Chk. S. Ct. Tr. 1998).

When a voter contests any election he must file a written complaint with the Chuuk Election Commission. If the contestant is dissatisfied with the Commission's decision, appeal to the Chuuk State Supreme Court appellate division can be had, and if the contestant is dissatisfied with the Chuuk State Supreme Court appellate division's decision, appeal to the FSM Supreme Court can be had. The Chuuk State Supreme Court trial division is without jurisdiction to hear an election contest. Phillip v. Phillip, 9 FSM R. 226, 228 (Chk. S. Ct. Tr. 1999).

The issue of whether a person is entitled to have his name placed on the ballot is an election case, over which neither division of the Chuuk State Supreme Court has original jurisdiction, and which is placed solely in the hands of the Chuuk State Election Commission with the Chuuk State Supreme Court appellate division having jurisdiction only as provided in the Election Law of 1996. Hethon v. Os, 9 FSM R. 534, 535 (Chk. S. Ct. Tr. 2000).

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

The primary forum in which election contests must run their course is the election administrative machinery created by Congress. Constitutions and statutes provide, as a part of the machinery of elections, a procedure by which election results may be contested. Such contests are regulated wholly by the constitutional or statutory provisions. A strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are powerless to entertain such proceedings. Wiliander v. National Election Dir., 13 FSM R. 199, 203 (App. 2005).

An election contest appellant has not strictly observed the steps necessary to give the court jurisdiction when he has not filed his appeal within the time frame permitted by statute. Wiliander v. National Election Dir., 13 FSM R. 199, 203 (App. 2005).

The court lacks jurisdiction to hear an election appeal filed too soon because the statute does not grant the court jurisdiction over election cases until the administrative steps and time frames in 9 F.S.M.C. 902 have been adhered to. Such an appeal is therefore dismissed as premature (unripe). Wiliander v. National Election Dir., 13 FSM R. 199, 204 (App. 2005).

The five-day time limit to appeal an election to the FSM Supreme Court does not start when the Director certifies the election, but rather when the aggrieved candidate receives the Director's decision on the candidate's petition or until the time has run out for the Director to issue a decision on the candidate's petition. Wiliander v. National Election Dir., 13 FSM R. 199, 204 (App. 2005).

Constitutions and statutes provide, as a part of the election machinery, a procedure by which election results may be contested. Such contests are regulated wholly by constitutional or statutory provisions. The necessary steps must be strictly observed to give the court jurisdiction, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are usually powerless to entertain such proceedings. Asugar v. Edward, 13 FSM R. 209, 213 (Chk. 2005).

The election law states the time at which the court has the right to entertain an appeal is from the National Election Director's final action. No statutory or constitutional provision grants the court the power to interfere with the election machinery and issue injunctive relief at a point in the electoral process prior to the election officials' completion of their responsibilities. Asugar v. Edward, 13 FSM R. 209, 213 (Chk. 2005).

The applicable time frame within which an election contest appeal can be made starts with a petition to the National Election Director filed within one week of certification of the results of the election. The winning candidate then has one week to respond to the petition. The Director then has ten days to decide whether to approve the petition. If the petition is denied, then the aggrieved candidate would have five days to appeal to the FSM Supreme Court appellate division. It is at that point that the court would have jurisdiction to consider this election contest. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

By statute, an aggrieved candidate in an election contest can appeal to the FSM Supreme Court only after the election agency has denied his petition. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

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

An election contest appeal must await the National Election Director's certification of the election results and the Director's denial of a timely post-certification petition by the candidate. If the Director's decision on the petition does not adequately address his concerns, only then would the aggrieved candidate have five days from the receipt of the Director's decision to appeal to the FSM Supreme Court appellate division if the Director's decision on the petition does not adequately address his concerns. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

If the National Election Director does not issue his decision on a candidate's post-certification petition within the statutory time frame, the candidate may appeal without waiting further for the decision. Asugar v. Edward, 13 FSM R. 215, 219 n.3 (App. 2005).

Congress, when it drafted the election statute, limited the court's involvement in election contests to until after the issues were narrowed to the certified result and whether a candidate's petition contesting the certified result should have been granted by the Director and, if so, what relief was then appropriate. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

An election contest appeal must be dismissed for lack of jurisdiction when it is filed too soon, at a time before the election statute confers jurisdiction on the court. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

It is doubtful whether a court judgment in an election contest case can be collaterally attacked since election contests are purely statutory, and the courts have no inherent power to determine election contests. The determination of election contests is a judicial function only when and to the extent that the determination is authorized by statute. Thus, the jurisdiction of courts exercising general equity powers does not include election contests. An election contest must follow the path set out for it in the statute and no other. Puchonong v. Chuuk, 14 FSM R. 67, 69 (Chk. 2006).

Whether the Chuuk State Supreme Court trial division lacked jurisdiction to consider the municipal election contest claims that the defendants brought there is irrelevant to a motion to dismiss a case in the FSM Supreme Court that relies on that state court decision because if that court lacked jurisdiction, it is now too late for the defendants to contest the municipal election in any other forum and the municipal election commission's decision will stand as a basis upon which the plaintiffs' complaint can state a claim for which

relief may be granted and if that court had jurisdiction, then that court's final (and unappealed) judgment will stand as the basis on which the plaintiffs' complaint can state a claim for which relief can be granted. Esa v. Elimo, 14 FSM R. 216, 219 (Chk. 2006).

The relevant Chuuk constitutional provisions do not bar the Legislature from providing by statute for an appeal directly from the Chuuk State Election Commission to the Chuuk State Supreme Court appellate division. The Constitution does provide for appeals from administrative agencies to the Chuuk State Supreme Court trial division, but the Constitution does not make the trial division's jurisdiction exclusive, and the trial division's jurisdiction is further qualified with the proviso "as may be provided by law." Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 589 (Chk. S. Ct. App. 2007).

The Legislature, under its power to prescribe by statute for the regulation of the certification of elections and under its power to provide by law for review of administrative agency decisions, has the power to place the jurisdiction to review Election Commission decisions in the Chuuk State Supreme Court appellate division rather than in the trial division with an appeal to the appellate division and a further possible appeal to the FSM Supreme Court appellate division. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 589 (Chk. S. Ct. App. 2007).

The court's only authority in election matters is to hear appeals from Chuuk State Election Commission decisions regarding the conduct of elections. Only a house of the Legislature can decide who is to be seated as a member. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 590 (Chk. S. Ct. App. 2007).

In an election contest trial in the appellate division, the respondent may, after presentation of the petitioner's case, move for dismissal on the ground that the petitioner has not carried his burden of proof for the relief sought. The court will consider the motion to be analogous to a Civil Procedure Rule 41(b) motion in the trial division and hear argument. Such a motion for dismissal may be made on the ground that upon the facts and the law the petitioner has shown no right to relief, and the appellate court, as the trier of facts, may then determine the facts and render judgment against the petitioner or may decline to render any judgment until the close of all the evidence. When the court renders judgment on the merits against the petitioner by granting a motion to dismiss after the close of the petitioner's case-in-chief, it must make findings of fact and conclusions of law in a manner analogous to Civil Procedure Rule 52(a). Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 594-95 (Chk. S. Ct. App. 2007).

Since, in an election contest appeal, the appellate division is statutorily required to conduct a trial instead of the usual appellate proceeding, the court will follow, where necessary, procedures analogous to those in the Civil Procedure Rules. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 594-95 n.1 (Chk. S. Ct. App. 2007).

A prematurely-filed election contest appeal must be dismissed because, by statute, an aggrieved candidate in an election contest can only appeal to the FSM Supreme Court after his petition has been denied. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 4 (App. 2007).

The primary forum in which election contests must run their course is the election administrative machinery created by Congress. Constitutions and statutes provide, as a part of the machinery of elections, a procedure by which election results may be contested. Such contests are regulated wholly by the constitutional or statutory provisions, and a strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are powerless to entertain such proceedings. The statute conferring jurisdiction on the court does not allow appeals to the court until the proceedings before the Director (certification of election, candidate's petition, and Director's decision on the petition) have run their course. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 5 (App. 2007).

If a losing candidate wanted to appeal the National Election Director's April 3, 2007 decision rejecting

his petition, he would have had to file a notice of appeal from that decision after it was issued on April 3, 2007. When he did not, and when if he had, then that appeal would have been docketed and filed separately as a different case, the court lacks jurisdiction to consider the appeal from the Director's alleged non-decision, filed before the Director's April 3, 2007 decision, and must dismiss the appeal. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 5 (App. 2007).

The only relief that the Election Code authorizes the FSM Supreme Court to grant is a recount or a revote. It does not authorize the court to restrain the Election Director from acts such as swearing in another candidate or to order a ballot box declared invalid (thus disenfranchising all of the many qualified voters who properly cast their ballots in that box) and thereby declaring another candidate the winner. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

The Election Code does not authorize *ex parte* court hearings. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

An election contestant cannot show irreparable harm, a necessary prerequisite to the issuance of a temporary restraining order and a major factor to be weighed before granting a preliminary injunction, when he has the election appeal process available to him within which he could properly seek redress, and although it is true that if Congress seats a candidate unconditionally the election contest becomes non-justiciable, not once has the court failed to decide an election contest appeal before the statutorily-mandated May 11 date for the newly-elected Congress to start. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

A candidate's supporters are not properly part of an election contest. Only the election contestant(s), the National Election Director, and the "winning candidate" are proper parties to an election contest appeal. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

Jurisdiction over election contests rests purely on statutory and constitutional provisions. Courts have no inherent power to determine election contests. The determination of such contests being a judicial function only when and to the extent that the determination is authorized by statute. Nikichiw v. Petewon, 15 FSM R. 33, 38 (Chk. S. Ct. App. 2007).

Since the jurisdiction of courts exercising general equity powers does not include election contests and since courts of equity are without jurisdiction to enforce purely political rights in election cases, a writ of prohibition is proper to prevent a trial court from exercising equity jurisdiction in an election case. Nikichiw v. Petewon, 15 FSM R. 33, 38 (Chk. S. Ct. App. 2007).

Since relief from judgment, either in an independent action or under a Rule 60(b) motion seeks the exercise of a court's equitable powers, and since courts of equity have no jurisdiction in election contests, any trial division justices are without jurisdiction to hear a case seeking relief from judgment in an election contest case or to issue any substantive orders in that case other than to dismiss it for want of jurisdiction. Nikichiw v. Petewon, 15 FSM R. 33, 38-39 (Chk. S. Ct. App. 2007).

From the Election Commission's denial in an election contest, the only proper avenue in which an aggrieved candidate can seek further review is by appeal to the appellate division. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 225 (Chk. S. Ct. App. 2007).

Once an aggrieved candidate's request to the Chuuk Election Commission is denied, his only recourse is to appeal to the appellate division because the trial division lacks jurisdiction over the election contest. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 225 (Chk. S. Ct. App. 2007).

All the provisions of the Chuuk State Election Law of 1996 apply to all elections in the State of Chuuk, including municipal elections whenever applicable unless otherwise specifically provided. The Chuuk State Election Law requires that all election complaints be filed with the Chuuk Election Commissioner and

that all appeals from the Election Commissioner's decision go directly to the Chuuk State Supreme Court appellate division. Bisaram v. Suta, 15 FSM R. 250, 254 (Chk. S. Ct. Tr. 2007).

Chuuk courts do not have jurisdiction over disputes regarding an election until after the election and the matter has first been appealed from a decision of the Chuuk State Election Commission, and the Chuuk State Supreme Court trial division does not have any jurisdiction over election disputes even after an appeal from the Chuuk State Election Commission. That the case involves a municipal election in a municipality without a provision for contesting or challenging an election does not change the analysis. Bisaram v. Suta, 15 FSM R. 250, 256 (Chk. S. Ct. Tr. 2007).

In conducting a trial *de novo* in an election contest appeal, the court is not bound to show any deference to the findings of the Chuuk State Election Commission and will consider all admissible documentary and testimonial evidence in support of the petition. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 369, 371 n.1 (Chk. S. Ct. App. 2007).

When a motion to dismiss for lack of the court's subject matter jurisdiction is filed in lieu of an answer to an election contest complaint, the court is required to address the preliminary issues raised regarding the appellate division's subject matter jurisdiction before proceeding to the merits of the issue. Kinemary v. Siver, 16 FSM R. 201, 205 (Chk. S. Ct. App. 2008).

The determination of an election contest is a judicial function only so far as authorized by the statute. Even if the court is granted jurisdiction, it does not then proceed according to the course of the common law, but must rely solely on its statutorily granted authority to ascertain its powers and mode of procedure. Kinemary v. Siver, 16 FSM R. 201, 205 (Chk. S. Ct. App. 2008).

Unless municipal law or constitution provides otherwise, all appeals from the Election Commissioner's decision on an election contest go directly to the Chuuk State Supreme Court appellate division. Kinemary v. Siver, 16 FSM R. 201, 206 (Chk. S. Ct. App. 2008).

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

The election contest provisions do not allow for the filing of an election contest complaint before an election. Although a petitioner may file a petition after an election is declared but before it is certified, there is no authority for allowing an election contest to be filed outside the framework of section 127 of the Election Law, which specifically states that a contest must be filed within five days after the declaration of the election – the petition must be filed after declaration of the election, but no later than five days from the date of the declaration. The Chuuk State Supreme Court appellate division has no jurisdiction when over an election contest when it was not filed with the Election Commission within the deadline imposed. Kinemary v. Siver, 16 FSM R. 201, 206 (Chk. S. Ct. App. 2008).

While the Election Law explicitly grants jurisdiction to the appellate court over appeals of election contests, it is silent on the question of appellate jurisdiction over appeals from decisions made under section 55 and no other provision in the Election Law, other than those granting jurisdiction over election contests in the appellate division, expressly provides for jurisdiction in the Supreme Court appellate division. Although there is no specific reference to the jurisdiction of the trial division in the Election Law itself, it must be inferred that the trial division, and not the appellate division, has jurisdiction over criminal prosecutions sought pursuant to section 55 as well as the power to hear contempt proceedings that are certified from the Election Commission pursuant to section 8. Since the provisions in the Chuuk Constitution and Judiciary Act for trial court review over agency actions otherwise provide authority for the

trial court's jurisdiction over appeals from an election commission, the appellate court does not have jurisdiction over an appeal from the Election Commission's denial of a petitioner's pre-election complaint regarding the qualifications of candidates for Polle municipal mayoral office. Kinemary v. Siver, 16 FSM R. 201, 207 (Chk. S. Ct. App. 2008).

When the relief sought is obtainable from the National Election Director before certification since a recount or a revote is a remedy within the National Election Director's power to order during the election contest appeal process, the plaintiff cannot show irreparable harm and his motion for a temporary restraining order may be denied on that ground alone. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 358-59 (Chk. 2009).

If Congress seats a candidate unconditionally an election contest becomes a non-justiciable political question. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 359 (Chk. 2009).

Jurisdiction over election contests rests purely on statutory and constitutional provisions, and courts have no inherent power to determine election contests. The determination of such contests are a judicial function only when and to the extent that the determination is authorized by statute. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 392, 394 (Chk. 2009).

The FSM Supreme Court trial division lacks jurisdiction over an election contest in a Chuuk state election since jurisdiction over election contests rests purely on statutory and constitutional provisions, and courts otherwise have no inherent power to determine election contests, and since the determination of such contests is a judicial function only when and to the extent that the determination is authorized by statute. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 397 (Chk. 2009).

When the constitutional issues the plaintiffs raise are either a part of an election contest over which the court has no jurisdiction or are hypothetical, abstract, or academic, the court lacks jurisdiction over the case. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 398 (Chk. 2009).

The court lacks subject-matter jurisdiction over a case when, if applied, the general principle that courts should first consider any non-constitutional grounds that might resolve the issue because unnecessary constitutional adjudication ought to be avoided, would unmask the case as an election contest and the matter would accordingly be dismissed. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 398 (Chk. 2009).

The decision as to the court's jurisdiction over an action is one to be made by the court, and the election commission is not empowered to assume or confer whether a court has jurisdiction. The election commission is limited to determining its own jurisdiction. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 411 (Chk. S. Ct. App. 2009).

Constitutions and statutes provide, as a part of the election machinery, the procedure by which election results may be contested, and such contests are regulated wholly by these constitutional or statutory provisions. A strict observance of the steps necessary to give us jurisdiction over an election contest is required, and if these steps are not followed, the court is powerless to entertain such proceedings. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 419 (App. 2009).

An aggrieved candidate may, within five days after receipt of the National Election Director's decision granting or denying a petition for a recount or a revote, appeal that decision to the FSM Supreme Court appellate division. A post-certification petition, and a decision thereon, is a prerequisite to an appeal to the court. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 419 (App. 2009).

An election appeal filed too soon will be dismissed as premature (unripe) because the statute does not grant the court jurisdiction over election cases until the administrative steps and time frames have been adhered to. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 422 (App. 2009).

Although there are rare occasions when an equitable remedy may be proper in an election case, overlooking or extending a deadline to file an appeal is not one of them. Statutory deadlines to file appeals are jurisdictional, and if the deadline has not been strictly complied with the adjudicator is without jurisdiction over the matter once the deadline has passed. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 422 (App. 2009).

The timing provisions for the election commission to rule on an election contest provide that once the state election commission begins a special session, it has two days to reach a determination of the contest. The court reads the two-day deadline as directory, not mandatory. Because the deadline is directory, an election contest is not effectively denied if the election commission fails to reach a determination within two days, so long as the commission is taking reasonable steps to determine the contest as quickly as possible. Doone v. Chuuk State Election Comm'n, 16 FSM R. 459, 462 (Chk. S. Ct. App. 2009).

If an election complaint was not timely filed with the election commission, then neither the election commission nor the court have jurisdiction over the election contest. Because statutory filing deadlines are generally mandatory, whether the complaint was timely filed is a jurisdictional question and therefore potentially dispositive of a contest. That determination is initially the election commission's to make, as it involves factual questions going to its own jurisdiction. Doone v. Chuuk State Election Comm'n, 16 FSM R. 459, 463 (Chk. S. Ct. App. 2009).

Until the election commission determines the election contest, or there is otherwise an appeal from a final order or a determinate effective denial, administrative remedies have not been exhausted and such an election contest will, therefore, be remanded to the election commission for further proceedings. Doone v. Chuuk State Election Comm'n, 16 FSM R. 459, 463 (Chk. S. Ct. App. 2009).

Under the Chuuk Election Law, initially, an election contestant must file a verified complaint with the election commission within five days after the declaration of the election result by the body canvassing the returns. This deadline for filing a complaint with the election commission is mandatory, and, if the complainant fails to strictly comply with the deadline for filing a verified complaint, the complaint will be dismissed for lack of jurisdiction. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 518 (Chk. S. Ct. App. 2009).

Neither the election commission nor the court can take jurisdiction over an election contest when it is not timely filed. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 519 (Chk. S. Ct. App. 2009).

Before the appellate division proceeds to the merits of any action filed as an election contest, the court should determine if it has subject matter jurisdiction because the appellate division has jurisdiction over election contests only to the extent that a constitutional or statutory provision expressly or impliedly gives it that authority. Rayphand v. Chuuk State Election Comm'n, 16 FSM R. 540, 542 (Chk. S. Ct. App. 2009).

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

When the appellants dispute the Election Commission's authority to nullify the results of a municipal mayoral election and reschedule the election, the appellants are not contesting the results of any election,

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

Chuuk Election Code, section 138 clearly contemplates that the FSM Supreme Court appellate division may exercise jurisdiction over a Chuuk state election contest even after the candidates that have been declared the winners have been sworn in. Chuuk State Election Comm'n v. Chuuk State Supreme Court App. Div., 16 FSM R. 614, 615 (App. 2009).

The Chuuk State Supreme Court appellate division does not have jurisdiction over a challenge to a municipal election commission's order for a revote because it is not an election contest since the appellant does not contest an election's result or a candidate's qualifications and since it is not an appeal from a municipal court decision or otherwise an appeal from a trial court decision. Siis Mun. Election Comm'n v. Chuuk State Election Comm'n, 17 FSM R. 146, 147 (Chk. S. Ct. App. 2010).

When the election law provides for remedies that have not yet been used, a candidate cannot show irreparable harm necessary for the issuance of a temporary restraining order. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 490 (Chk. S. Ct. Tr. 2011).

Since section 131 of Chuuk State Law No. 3-95-26 provides for trials in the Chuuk State Supreme Court Appellate Division when review of Election Commission decisions regarding contested elections is sought and since the plaintiff has availed himself of that remedy, he cannot show irreparable harm. But a court must weigh three factors other than irreparable harm when considering injunctive relief – the relative harm to the plaintiff and to the defendant, the public interest, and the likelihood of success by the plaintiff in the underlying case – and when none of those factors weigh so strongly in the plaintiff's favor to overcome the lack of irreparable harm injunctive relief will not be granted. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 490 (Chk. S. Ct. Tr. 2011).

A plaintiff's request that the court issue a declaratory judgment against defendant Election Commission stating that the scheduled revote election violates plaintiff's due process rights will be dismissed for lack of jurisdiction when that Election Commission decision is already being reviewed by the Appellate Division. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 490 (Chk. S. Ct. Tr. 2011).

It is the nature of the political process that elections typically yield a single winner and one or more losers. Absent a showing of foul play or procedural irregularity, a defeated election contestant has no claim before any court of law. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 491 (Chk. S. Ct. Tr. 2011).

A court cannot, for lack of jurisdiction, weigh the likelihood of plaintiff's success on the merits when, pursuant to state law, the merits of his appeal are not before the court because they were duly presented in their proper forum of the appellate division. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 491 (Chk. S. Ct. Tr. 2011).

Whether an individual is entitled to be placed on the ballot is left solely in the hands of the Chuuk State Election Commission and is beyond the Chuuk State Supreme Court's jurisdiction. Simina v. Chuuk State Election Comm'n, 19 FSM R. 587, 589 (Chk. S. Ct. App. 2014).

The Chuuk State Supreme Court appellate division has jurisdiction of election matters as provided for in Sections 130 through 139, of the Election Law of 1996. Simina v. Chuuk State Election Comm'n, 19

FSM R. 587, 589 (Chk. S. Ct. App. 2014).

When the appellant cannot verify to the court that the election contest requirements were met, the court lacks the jurisdiction. Iron v. Chuuk State Election Comm'n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

– Recount

A decision whether to grant or deny a recount is not an everyday decision, but a large question affecting the public interest profoundly and involving fundamental policy considerations. Olter v. National Election Comm'r, 3 FSM R. 123, 133 (App. 1987).

To interpret 9 F.S.M.C. 904, the FSM Supreme Court should apply a two-prong test. The first prong is whether there is a "substantial question or fraud or error" and the second prong is whether there is "substantial possibility that the outcome would be affected by a recount." Olter v. National Election Comm'r, 3 FSM R. 123, 136-37 (App. 1987).

The statutory scheme of the National Election Code strongly suggests that Congress intended the word "substantial" in 9 F.S.M.C. 904 to be applied liberally, so that in the event of doubt, a recount would be available. Olter v. National Election Comm'r, 3 FSM R. 123, 138 (App. 1987).

The statutory scheme of the National Election Code reflects far greater concern that appropriate recounts be provided than that inappropriate recounts be prevented. If a recount is denied when it should have been granted, a grave risk is presented to constitutional government. Olter v. National Election Comm'r, 3 FSM R. 123, 138-39 (App. 1987).

When an appellant seeks to have an election set aside and done over due to irregularities not correctable by a recount the appeal is timely filed if it is filed within one week of the certification of the results of the election. This is the same filing time frame as for a recount. Aten v. National Election Comm'r (I), 6 FSM R. 38, 39 (App. 1993).

While the court has statutory authority to hear appeals regarding the conduct of elections, its power to grant relief is limited to ordering a recount or a revote. Only Congress can decide who is to be seated and once it has seated a member unconditionally the matter is nonjusticiable. Aten v. National Election Comm'r (III), 6 FSM R. 143, 145 & n.1 (App. 1993).

The standard to determine whether a recount must be ordered is 1) whether a substantial question of fraud or error exists, and 2) whether there is a substantial possibility that the outcome of the election would be affected. Braiel v. National Election Dir., 9 FSM R. 133, 136 (App. 1999).

A partial recount is a less drastic remedy than requiring part of the election to be done over. Braiel v. National Election Dir., 9 FSM R. 133, 137 (App. 1999).

Under Chuuk election law, once the votes are tabulated and certified, the Election Commission does not have the power to grant a recount request unless ordered to do so by "a court of competent jurisdiction." It can only deny a recount request and a contestant's only recourse then is an appeal to a court of competent jurisdiction. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 154 (Chk. S. Ct. App. 2001).

When the election statute provides that a recount is to be taken if a recount is necessary for the proper determination of the election contest, the proper standard to use to determine whether "a recount is necessary for the proper determination of the contest" is that a recount will be ordered when the contestant has shown that it is more likely than not that there were substantial irregularities that could have affected the election's outcome. It is the election contestant's burden to make this showing. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 156 (Chk. S. Ct. App. 2001).

When one member of the tabulating committee, called the speaker, read out the votes on the ballot, another member verified what he read, and three other members recorded the votes on their tally sheets and stopped at various checking places to check their totals and when the methods used to resolve tally sheet discrepancies – if two tally sheets agreed and one did not, the result of the two that agreed was used; and if all three differed, the middle result was used – introduced a substantial chance of inaccurate results, these methods' inaccurate results could have affected the outcome because of the closeness of the official results (a one vote difference). Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 156-57 (Chk. S. Ct. App. 2001).

The court heartily approved of a recount method designed to achieve an accurate result by which, if there were any discrepancies in tally totals at any of the checking points, the tabulating committee would instead recount the ballots they had counted since the last checking point and not count any further ballots until all tally counts agreed. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 157 (Chk. S. Ct. App. 2001).

When the ballot box was obviously not in the condition it was when locked and it was not even in the condition that the Director asserted that it was in when he opened (and closed) it to retrieve the tally sheet, the possibility that the box could have been tampered with and that the ballots were not in their original condition was unmistakable. Since the court could have no confidence in the integrity of the ballots because they were so tainted that they were inadmissable as evidence of the votes cast, it would be pointless to order a recount. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 476 (Chk. S. Ct. App. 2003).

If the Director had not opened the ballot box on his own, but instead waited as required by statute, for a court order to recount, the ballots' integrity would, in all likelihood, be unquestioned and a recount could have been ordered which should have satisfied the parties and the public as to the true vote totals. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 476 (Chk. S. Ct. App. 2003).

The court, in an election contest, would be extremely hesitant to grant the relief of nullification of all of the votes cast in a ballot box and a declaration that the election contestant was then the winner because that would disenfranchise the many qualified voters who properly cast their ballots in that ballot box in good faith. If there had been proven illegal votes in sufficient number that the ballot box result was cast in doubt, the court would have been inclined to consider ordering the election done over as a less drastic and more equitable and democratic remedy. The statute explicitly gives the court the power to order a recount during trial, but does not specifically grant the power to order a revote or to nullify a ballot box. The powers to effect remedies for irregularities that likely could have affected an election's outcome appear to be implied or inherent in the Election Commission's powers and thus in the court's powers in review of the Commission's election contest decisions. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 596-97 (Chk. S. Ct. App. 2007).

A recount will not be ordered when the statements of contest on file do not appear to make it necessary; when the petitioner, who had originally not made that request before the Election Commission, initially made such a request of the court prematurely, but later abandoned his request when the court specifically inquired if he was still seeking a recount; and when, even if the court could be assured of the security and chain of custody of the ballot box in question, it was not shown that it was likely a recount could alter the outcome. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 597 (Chk. S. Ct. App. 2007).

If an election contestant's appeal is considered as only a claim challenging the acceptability of votes, the five-day time frame to appeal the National Election Commissioner's denial of that claim would start then even though a recount was pending because an FSM Supreme Court appellate division decision may have the effect of disallowing challenged votes but shall not halt or delay balloting or counting and tabulating. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 421 (App. 2009).

A decision to provide a recount is not appealable. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 421 (App. 2009).

Provisions for challenging the acceptability of votes apply to individual or particular votes and not to an entire polling place. The only proper remedies when the reliability of an entire polling place result is in question, are either a recount or a revote, depending on the particular circumstances. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 421 (App. 2009).

The court will decline to order the exclusion of all votes at a polling place, thus disenfranchising many qualified and innocent voters and possibly altering the will of the electorate and the election results. Only a recount or a revote would be proper in such cases. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 421 (App. 2009).

When the only irregularity clearly alleged in an election petition was that the transmission of the results had been tampered with, a recount of the actual ballots, if the ballot boxes' security and integrity has been maintained and assured, is the logical remedy. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 421 n.5 (App. 2009).

When the tabulators, after twenty-five ballots had been tabulated, would compare their tabulations and if the tallies did not agree the tabulators would, if two tallies agreed, adopt the majority figure, and if all three were different, they would adopt the middle figure, these methods used to resolve discrepancies introduce a substantial chance of inaccurate results and these inaccurate results, depending on the closeness of the official outcome, could affect the outcome, which would entitle the petitioner to a recount. Hallers v. Yer, 18 FSM R. 644, 647-48 (Chk. S. Ct. App. 2013).

– Revote

When an appellant seeks to have an election set aside and done over due to irregularities not correctable by a recount the appeal is timely filed if it is filed within one week of the certification of the results of the election. This is the same filing time frame as for a recount. Aten v. National Election Comm'r (I), 6 FSM R. 38, 39 (App. 1993).

That the results of the election would have been changed but for the alleged irregularities is not the correct formulation of the ground for a revote. Aten v. National Election Comm'r (II), 6 FSM R. 74, 79 (App. 1993).

Where election irregularities cannot be corrected by a recount, the election, in whole or in part, can be set aside and done over only if it is more likely than not that the irregularities complained of could have, not necessarily would have, resulted in the election of a candidate who would not have won had the irregularities not occurred. Aten v. National Election Comm'r (II), 6 FSM R. 74, 82 (App. 1993).

While the court has statutory authority to hear appeals regarding the conduct of elections, its power to grant relief is limited to ordering a recount or a revote. Only Congress can decide who is to be seated and once it has seated a member unconditionally the matter is nonjusticiable. Aten v. National Election Comm'r (III), 6 FSM R. 143, 145 & n.1 (App. 1993).

The proper standard for determining whether a revote should be ordered is whether the result could have been different had the irregularities not occurred. The plaintiffs' obligation is twofold, to establish that irregularities occurred and to show that the result could have been different had no irregularities occurred. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 275, 277-78 (Chk. S. Ct. Tr. 1998).

No revote can be ordered when there is no proof of the alleged election irregularities and thus no showing that the conduct of the election affected the result, and when the outcome is the result of the plaintiffs' refusal to participate in the election. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 275,

278-79 (Chk. S. Ct. Tr. 1998).

The time frame for an aggrieved candidate to seek a revote is the same as that to seek a recount. It must be filed within one week of certification of the election results. The winning candidate has one week to respond to the petition. The National Election Director then has 10 days to decide whether to approve the petition. If he decides not to approve the petition, he must record the reasons for the decision. Wiliander v. National Election Dir., 13 FSM R. 199, 203 (App. 2005).

When election irregularities cannot be corrected by recount, a candidate may petition for an election to be set aside and done over, either in a district as a whole or in the part where the irregularities took place. The procedures for the filing a revote petition, action thereon, and appeal of its denial are the same as those for a recount petition. Wiliander v. National Election Dir., 13 FSM R. 199, 203 n.3 (App. 2005).

Assuming that, as a result of the revote, that the candidate seeking to enjoin the revote is not declared the winning candidate (an assumption that the court cannot make), he still has all the avenues provided by the statutory provisions governing election contests, and once the administrative remedies before the National Election Director have run their course, a candidate still aggrieved may, at that time, seek relief from the FSM Supreme Court appellate division. Since this is an adequate alternative remedy, the candidate cannot show irreparable harm. Asugar v. Edward, 13 FSM R. 209, 212-13 (Chk. 2005).

The court, in an election contest, would be extremely hesitant to grant the relief of nullification of all of the votes cast in a ballot box and a declaration that the election contestant was then the winner because that would disenfranchise the many qualified voters who properly cast their ballots in that ballot box in good faith. If there had been proven illegal votes in sufficient number that the ballot box result was cast in doubt, the court would have been inclined to consider ordering the election done over as a less drastic and more equitable and democratic remedy. The statute explicitly gives the court the power to order a recount during trial, but does not specifically grant the power to order a revote or to nullify a ballot box. The powers to effect remedies for irregularities that likely could have affected an election's outcome appear to be implied or inherent in the Election Commission's powers and thus in the court's powers in review of the Commission's election contest decisions. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 596-97 (Chk. S. Ct. App. 2007).

Provisions for challenging the acceptability of votes apply to individual or particular votes and not to an entire polling place. The only proper remedies when the reliability of an entire polling place result is in question, are either a recount or a revote, depending on the particular circumstances. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 421 (App. 2009).

The court will decline to order the exclusion of all votes at a polling place, thus disenfranchising many qualified and innocent voters and possibly altering the will of the electorate and the election results. Only a recount or a revote would be proper in such cases. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 421 (App. 2009).

The Chuuk State Supreme Court appellate division does not have jurisdiction over a challenge to a municipal election commission's order for a revote because it is not an election contest since the appellant does not contest an election's result or a candidate's qualifications and since it is not an appeal from a municipal court decision or otherwise an appeal from a trial court decision. Siis Mun. Election Comm'n v. Chuuk State Election Comm'n, 17 FSM R. 146, 147 (Chk. S. Ct. App. 2010).

When the Election Commission has ordered a revote and that order has been appealed, the relative harm to each party, or even that either party faces an impending harm at all, is difficult to fathom. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 490 (Chk. S. Ct. Tr. 2011).

A plaintiff's request that the court issue a declaratory judgment against defendant Election Commission stating that the scheduled revote election violates plaintiff's due process rights will be dismissed for lack of

jurisdiction when that Election Commission decision is already being reviewed by the Appellate Division. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 490 (Chk. S. Ct. Tr. 2011).

When the trial court is without jurisdiction to either decide or second guess the reasoning underpinning future appellate division decisions and, whatever the results of the revote, neither party is likely to suffer a harm of such import that cannot potentially be redressed through the procedures set forth under our laws. The plaintiff does not stand to lose anything of a magnitude so great as to justify issuance of an order enjoining the election from taking place at all because if the defendant prevails in the appeal, there may be utility in the revote and if the plaintiff prevails in the appeal, the revote becomes a nullity. Under either scenario, the results of the revote may be administratively and, if necessary, judicially appealed. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 491 (Chk. S. Ct. Tr. 2011).

When a plaintiff argues that the District No. 11 constituents should not incur the expenses of a revote where there is a likelihood that the appellate court will set aside the results, the public interest is best served if due process is allowed to run its course. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 491 (Chk. S. Ct. Tr. 2011).

When, at least procedurally, the law governing appeals of administrative decisions on contested elections has been properly complied with, a plaintiff's petition requesting an injunction against the revote ordered by the Election Commission is wholly without merit and can only serve to frustrate the legal process underway in appellate division. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 491 (Chk. S. Ct. Tr. 2011).

Under Chuuk State Law No. 3-95-26, no irregularity or improper conduct in the proceedings of any election board will void an election result, unless such irregularity or misconduct resulted in a defendant being declared either elected or tied for election, and an election will not be set aside on account of illegal votes unless it appears that such number of illegal votes has been given to the person whose right to the office is contested. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 492, 493-94 (Chk. S. Ct. App. 2011).

Since, in order for the Chuuk State Election Commission to have properly declared a revote, in addition to determining that illegal votes were cast, it was required to determine that the illegal votes resulted in the winning candidate being declared elected, a call for a revote was in error when there is nothing to indicate the likelihood that the 18 illegally cast votes would have resulted in a different candidate being declared elected, or a tie, or would have rendered a different outcome in the district 11 poll results. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 492, 494 (Chk. S. Ct. App. 2011).

A "winning" candidate cannot show that a revote constitutes irreparable harm because, after the revote is held, that candidate may still be declared and certified as the winning candidate – the revote might not alter the ultimate outcome. In re Decision of Nat'l Election Dir., 22 FSM R. 221, 223 (App. 2019).

A revote is an authorized remedy for fraud or error that cannot be corrected by a recount, and a shortage of ballots at a polling place is, by its nature, an error that cannot be corrected by a recount. In re Decision of Nat'l Election Dir., 22 FSM R. 234, 236 (App. 2019).

A revote is the preferred remedy for an error that cannot be corrected by a recount since it does not disenfranchise the many qualified and innocent voters at the polling place(s) where the revote is held. In re Decision of Nat'l Election Dir., 22 FSM R. 234, 236 (App. 2019).

A party seeking a preliminary injunction must clearly show that an immediate and irreparable injury would otherwise occur and that there is no adequate alternative remedy. In re Decision of Nat'l Election Dir., 22 FSM R. 234, 236 (App. 2019).

EMPLOYER – EMPLOYEE

Where the employee seeking damages for injuries sustained while working does not, either in his complaint or elsewhere, point to any particular act or omission by the employer, who had been stripped of any supervision and control over the activities of the employee before the injury, that employer cannot be held responsible for any wrongful direction or lack of direction at the scene which might have led to the alleged injury. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 144 (Pon. 1985).

An employer who assigns employees to work under the supervision of another is not legally responsible to the assigned employees for injuries caused by failure of the other employer to provide labor-saving or safety equipment where the hazards known to the employer were equally obvious to the assigned employees. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 144 (Pon. 1985).

In absence of statute pertaining to rights of employees of insolvent companies to receive preference against other creditors of employer, an appropriate source of guidance is the common law as it existed in absence of statute. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 300 (Pon. 1988).

Claims for wages asserted by low level employees and laborers are entitled to preference over all other claims, except wage and salary tax lien rights of the national government, which are given priority over all other claims and liens by 54 F.S.M.C. 135(2). In re Mid-Pacific Constr. Co., 3 FSM R. 292, 301 (Pon. 1988).

An employee's preference for wage claims is determined by reference to the equities among the parties rather than exclusively by specific dates upon which particular liens were established. In re Island Hardware, 3 FSM R. 332, 341 (Pon. 1988).

Where an employee is commanded to take an action which creates a known risk of injury, his obedience to the command will not bar subsequent recovery for injuries suffered, even where the risk of injury is apparent, but this will not excuse clearly reckless conduct by the employee where he had full knowledge of reasonable means to limit or prevent the injury. Epiti v. Chuuk, 5 FSM R. 162, 169 (Chk. S. Ct. Tr. 1991).

A plaintiff employee is not barred from recovery for his failure to exercise due care because defendant employer's conduct amounted to a reckless disregard for the safety of its employees. Alfons v. Edwin, 5 FSM R. 238, 241 (Pon. 1991).

Where prior course of dealing and surrounding circumstances make it apparent that the parties' intention was that pay for unused vacation time would be an implied term the former employee is entitled to the pay for unused vacation time minus the applicable taxes. Ponape Transfer & Storage, Inc. v. Wade, 5 FSM R. 354, 356 (Pon. 1992).

An employer owes a duty of care toward its employee to see that the employee is properly educated about the operation of clearly dangerous machinery. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 63, 65 (Chk. 1997).

Where the employer is aware that unsafe procedures are being used and safe procedures are possible, but the employer does not demand them, the employer breaches its duty of care toward its employees. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 63, 65 (Chk. 1997).

When a general manager's actions in hiring, supervising and paying the employees of a sawmill were within the scope of authority granted to him by the principals, the sawmill's joint owners, the principals are bound by their agent's actions in hiring or authorizing the hiring of a sawmill employee. Sigrah v. Timothy, 9 FSM R. 48, 52 (Kos. S. Ct. Tr. 1999).

The determination of an employee-employer relationship for tort liability purposes will not be based

upon an employer's decision on whether to report the persons as "employees" for the purposes of reporting Social Security contributions and FSM Income Tax deductions. Sigrah v. Timothy, 9 FSM R. 48, 52 (Kos. S. Ct. Tr. 1999).

For the purposes of determining the employee status of an individual person for FSM Social Security contributions or for the FSM Income Tax law, the statutes look to the usual common law rules applicable in determining the employer-employee relationship. An employer includes any association or group employing any person. Employment means any service by an employee for the employer employing him, irrespective of where such employment is performed. Sigrah v. Timothy, 9 FSM R. 48, 52 (Kos. S. Ct. Tr. 1999).

Under common law generally, "employment" includes any service performed for remuneration under any oral agreement of hire. To "employ" is to make use of the services of another, and to "be employed" means to perform a function under orders to do so. An "employee" is normally defined as a person in the service of another, through an agreement, which may be express, implied or verbal, and which gives the employer the right to control and direct the person in the way the work is to be performed. An employee performs services for an employer and is paid by the employer for those services. Sigrah v. Timothy, 9 FSM R. 48, 52-53 (Kos. S. Ct. Tr. 1999).

If a person performed services at the defendants' sawmill and was paid compensation for his services by the defendants through their sawmill operations manager, who gave employees directions for the performance of labor, he was the defendants' employee under the common law rules for determining the employer-employee relationship for individuals. Sigrah v. Timothy, 9 FSM R. 48, 53 (Kos. S. Ct. Tr. 1999).

Under the common law, there are only two reasons for distinguishing between agents of a principal who are "servants" or "employees" of the principal and agents who are independent contractors. The most common is to determine the principal's possible liability for torts of the agent within the scope of employment. The second purpose is to determine the obligations, rights and immunities between the principal and the agent. Sigrah v. Timothy, 9 FSM R. 48, 53 (Kos. S. Ct. Tr. 1999).

An employer owes a duty of care toward its employee to see that the employee is properly educated about the operation of clearly dangerous machinery. An employer who recognizes the potential danger of a work situation, but who fails to take steps to reduce the danger or warn his employees of the danger is negligent. Sigrah v. Timothy, 9 FSM R. 48, 53 (Kos. S. Ct. Tr. 1999).

A general contractor in control of a structure or premises owes to the employees of any other contractor rightfully thereon a duty to exercise ordinary care to keep the structure or premises in a safe condition for their use. Amayo v. MJ Co., 10 FSM R. 244, 250 (Pon. 2001).

An employer has a duty to exercise ordinary or reasonable care commensurate with the nature of the business to protect the employee from the hazards incident to it, and the employer is bound to exercise this degree of diligence in providing his employee with a safe working place. Amayo v. MJ Co., 10 FSM R. 244, 250 (Pon. 2001).

An owner/general contractor who actively supervises daily construction operations has a duty to keep the premises safe for all workers on the job and is ultimately liable for injuries occurring on the worksite when those injuries result from failure to perform that duty. Amayo v. MJ Co., 10 FSM R. 244, 250 (Pon. 2001).

When one company assigned its employee to work for another company, and the assigning company was effectively stripped of control over the way the work was done, and when the assigning company had no knowledge of facts unknown to the employee that would have affected the risk faced by him, and did nothing else to cause the employee's injury, there is no negligence liability on the part of the assigning company. Amayo v. MJ Co., 10 FSM R. 244, 251 (Pon. 2001).

When an employee is directed or permitted by his employer to perform services for another employer he may become the employee of such other in performing the services and since the question of liability is always raised because of some specific act done, the important question is whether or not, as to the act in question the employee was acting in the business of and under the direction of one or the other employer. Amayo v. MJ Co., 10 FSM R. 244, 251 (Pon. 2001).

A cause of action to collect salary or wages accrues when an employee has a right to collect the money allegedly owed to him. Thus the statute of limitations began to run from the time that each plaintiff's pay for any specific pay period was due. Segal v. National Fisheries Corp., 11 FSM R. 340, 342 (Kos. 2003).

Even assuming that the Pohnpei Wage and Hour Law applies to a governmental organization employer and assuming that a claim under the statute was pled although the statute was not mentioned in the complaint, the claim is without merit when the court has determined that the positions of full-time and part-time teachers are different and the college may maintain different pay scales for them. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 82 (Pon. 2007).

A full-time teacher's added duties, the need to forgo other employment, and the long-term commitment (three years as opposed to one semester) to teaching at the College, makes a full-time teaching position a substantially different job from a part-time teaching position. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 593 (App. 2008).

Regardless of the applicability of a U.S. case, the appeal of the denial of the plaintiff's equal pay claim turns on whether full-time teaching positions and part-time teaching positions are similar positions and on whether there is a rational relationship between a full-time teacher's pay and a part-time teacher's pay. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 593-94 (App. 2008).

When full-time teachers and part-time teachers are not similarly situated, a plaintiff does not have a factual basis for relief under the Pohnpei Wage and Hour Law when the claim is that she was paid less than male full-time teachers because she did not perform the same work as a full-time teacher. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 595 (App. 2008).

The College is an instrumentality of the national government in the same way that the FSM Development Bank is even though its employees are not considered government employees. The College was created by Congress and is subject to suit only in the manner provided for and to the extent that suits may be brought against the National Government. So, since the national government is not subject to suit under the Pohnpei Wage and Hour Law, neither is the College. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 596 (App. 2008).

An employee or agent is liable to a third person for injuries resulting from the breach of any duty which the employee or agent owes directly to such third person, and is not liable to a third person for injuries resulting from a breach of duty which the employee or agent owes only or solely to his employer. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 438-39 (Pon. 2009).

An employment applicant was not discriminated against when the employer chose an applicant more qualified than she. Berman v. Pohnpei Legislature, 16 FSM R. 492, 497 (Pon. 2009).

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

Whereas the Pohnpei Division of Personnel, Labor and Manpower Development may issue orders and

decisions, the Treasury Director has the final decision, and to give meaning to that finality, the Director's powers include issuing any orders necessary to arrive at and give effect to the decision. Smith v. Nimea, 17 FSM R. 125, 130 (Pon. 2010).

While the Pohnpei PL&MD Division must establish procedures to ensure compliance with the Pohnpei Residents Employment Act of 1991 and the rules and regulations promulgated thereunder, the statute does not mention a "Chief of the Division," and where the Division of PL&MD is mentioned specifically, it is specifically envisioned that the Division must establish procedures to ensure compliance. By providing the Division with the responsibility for making the rules, the Act nevertheless does not empower only the Division to ensure compliance. Rather, it establishes that responsibility as part of the overall effort to ensure compliance and the statute vests the power of the final decision for effecting compliance with the Director, not the Division or its Chief. Smith v. Nimea, 17 FSM R. 125, 130 (Pon. 2010).

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

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

An employer has a duty to exercise ordinary or reasonable care commensurate with the nature of the business to protect the employee from the hazards incident to it, and the employer is bound to exercise this degree of diligence in providing his employee with a safe working place. Duty of care is one of the four elements of a negligence cause of action. Roosevelt v. Truk Island Developers, 17 FSM R. 264, 265-66 (Chk. 2010).

When the employer instructed the employees to use safe procedures such as pulling rebars out (or inserting them) from the oceanside and not the roadside and when the employer provided its employees with a safe working place and did not knowingly permit unsafe procedures to be used, it did not breach its duty of care to its employees. Accordingly, since the plaintiff has failed to prove this essential element of a wrongful death claim, she cannot prevail. Roosevelt v. Truk Island Developers, 17 FSM R. 264, 266 (Chk. 2010).

The Constitution's investment in the national government of the power to regulate immigration, emigration, naturalization, and citizenship does not deprive the states of the ability to regulate employment within their own jurisdictions whenever such employment involves non-residents. To the degree that a state law regulating employment of non-resident workers does not directly conflict with national law, such state law is not preempted; and when there is possible conflict, the state law should be construed so as to avoid such conflict. Smith v. Nimea, 17 FSM R. 333, 337-38 (Pon. 2011).

Pohnpei Code Title 19 and its definitions, apply only to private employers and their employees, not to Pohnpei public employees. Berman v. Lambert, 17 FSM R. 442, 447 (App. 2011).

A subcontractor's status, when compared to that of an employee, is ordinarily that of an independent contractor. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 (Pon. 2011).

No national statute directly addresses overtime pay for private sector employment although 51 F.S.M.C. 139(2) does require an employer of a nonresident worker to present a copy of the worker's contract, which must contain certain information including a wage scale for regular and overtime work,

before approval of the nonresident worker's entry to the FSM. Villarena v. Abello-Alfonso, 18 FSM R. 100, 102 & n.1 (Pon. 2011).

Wage and hour laws are a complex field in which there is substantial public concern. Villarena v. Abello-Alfonso, 18 FSM R. 100, 102 (Pon. 2011).

Private employment is governed by the principles of contract law. Ihara v. Vitt, 18 FSM R. 516, 524 (Pon. 2013).

When, under the employment contract, compensation is to be figured on the "net total amount for the specific job" not on the net total amount for only a part of the contract job, the employee's commission compensation must be figured on a contract job by contract job basis, not on a task-by-task basis within the contract job. Smith v. Nimea, 19 FSM R. 163, 172 (App. 2013).

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

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

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

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

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

Private employment is governed by the principles of contract law. Ramirez v. College of Micronesia, 20 FSM R. 254, 265 (Pon. 2015).

Pohnpei and the FSM have no workers' compensation law. Hairens v. Federated Shipping Co., 20 FSM R. 404, 406 (Pon. 2016).

The underlying purpose of Workers' Compensation Statutes is removal of the burden regarding work-place injury from an employee and instead, place it on the industry he served, irrespective of the cause for said injury. For employees within the statute's reach, Workers' Compensation is the exclusive remedy for accidental injuries sustained in the work place. While providing workers with benefits on a no-fault basis, the flip side of this arrangement is the provision for immunity from common law negligence

suits for employers covered by the statute. Hairens v. Federated Shipping Co., 20 FSM R. 404, 407 (Pon. 2016).

The central tenet of Workers' Compensation is that of true no-fault insurance. In essence, employees were provided wage replacement and medical benefits resulting from industrial accidents for their respective injuries, in exchange for relinquishing the right to pursue a civil remedy. This exclusive remedy doctrine has been gradually eroded. Hairens v. Federated Shipping Co., 20 FSM R. 404, 407 (Pon. 2016).

When an insurance carrier's endorsement contained within an employer's policy limited the applicability of the CNMI Workers' Compensation Program to "the benefits provided under the Workers' Compensation Law of the CNMI," (which would entail that statute's "determination of pay," that statute's exclusive remedy provision setting forth tort immunity does not apply, and an employee would not be forestalled from also bringing a civil action sounding in negligence. Hairens v. Federated Shipping Co., 20 FSM R. 404, 409 (Pon. 2016).

Employment contracts generally do not make the employee's family members or dependants intended third-party beneficiaries. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 175 (Pon. 2017).

Even if public policy did not allow at-will employment in private industry as the default position, private parties could still contract for that provision. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 176 (Pon. 2017).

When, even though the employment contract was printed with a Pohnpei state government letterhead, the Pohnpei Visitors Bureau's actual function and operation shows that it is independent of the Pohnpei state government; when the PVB's funding is provided for under the Compact of Free Association, but is deposited with the Pohnpei Department of Treasury and Administration for custodial purposes and disbursement; and when the PVB's actual decision-making lies with its Board, the PVB is an entity that operates independent of the state government, and its Board is responsible for its General Manager's hiring, thus making the state's non-renewal of the plaintiff's contract unlawful. Santos v. Pohnpei, 21 FSM R. 495, 499 (Pon. 2018).

An employer has a duty to exercise ordinary or reasonable care commensurate with the nature of the business to protect the employee from hazards incident to it. The employer is bound to exercise this degree of diligence in providing its employee with a safe working place. Duty of care is one of the four elements of a negligence cause of action. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 28 (Pon. 2018).

An employer has a duty to provide its employee with proper training, equipment, and a safe work environment. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 28 (Pon. 2018).

In a place like Pohnpei, where industrial and economic development continues to take shape and the people are not quite sophisticated about the uses or proper handling of certain machinery or equipment, a procurer, user, owner, or seller of equipment or machinery must take extra precautionary measures in educating the people about the proper handling, operation, or storage of any such machinery or equipment and also inform the people about the potential harm if such machinery or equipment is not properly handled, operated, or stored. Failure to observe such extra precautionary measures may render the equipment's procurer, user, owner, operator, or the seller liable for any injury that might result from such failure. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 28 (Pon. 2018).

Education or information about dangerous machinery or equipment can be made in writing, or by oral explanation, through demonstration, or uses of signs easily understood and noticeable. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 28 (Pon. 2018).

When an employer is aware that unsafe procedures are being used and safe procedures are possible but the employer does not demand them, the employer breaches its duty of care toward its employees. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 28 (Pon. 2018).

An employer breaches its duty of care when it fails to provide its employee with proper footwear appropriate for the hazardous work site despite being aware of the importance of proper footwear on the work site and despite it being company policy to require proper work equipment. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 28 (Pon. 2018).

When the employer provided the employee with a short safety briefing prior to his beginning work, but failed to provide him with the proper safety equipment necessary to safely perform his work duties, namely proper protective work shoes which are standard to the industry, it is clear that but for the employer's breach in not providing for or otherwise requiring the proper working boots before allowing him to begin work, he would not have been injured. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 29 (Pon. 2018).

When the employer paid the employee's salary during the time he was attempting to recover from his workplace injury, even after his discharge from the hospital, until the termination of his employment, and when the employer also paid his medical bills, damages for lost wages during that time and for his medical bills is inappropriate. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 30 n.1 (Pon. 2018).

Since Pohnpei is a mixed subsistence and cash economy, people rely on a person's employability to bring in the cash necessary to help support himself and his family in addition to the farm and fish products which he could produce through farming on his lands and fishing. Thus, a workplace injury, may greatly impair both the person's employability and his ability to provide from farming and fishing. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 30 (Pon. 2018).

When an employer is liable to an employee for a workplace injury permanently disabling the employee, the court must in all fairness determine a reasonable time frame to aid in calculating the amount of lost wages damages to award the plaintiff. Wages up to age sixty is a reasonable time frame. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 30 (Pon. 2018).

Generally, an employer is required to withhold the wages and salaries tax from its employees' pay, and the penalties and interest imposed for the failure to withhold the wages and salaries tax from an employee's pay are imposed upon the employer, not the taxpayer. Basu v. Amor, 22 FSM R. 557, 567 (Pon. 2020).

– Employee Handbook

Termination for just cause as described in a written employment contract precludes the former employee from seeking redress for the termination as the breach of an implied contract embodied in the personnel manual. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 353 (App. 1994).

When failure to adopt a manual of administration was not a violation of statute because the statute does not set a time limit for the board to adopt one and when the employer is specifically exempted by statute from the Public Service System Act, summary judgment will be granted against a terminated employee on his claim that failure to adopt a manual made the employer liable for his termination. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 665 (Kos. S. Ct. Tr. 2002).

Provisions in a personnel handbook may be enforceable as an employment contract if they meet the requirements for the formation of a unilateral contract. The offer must be definite in form and must be communicated to the offeree. Whether a proposal is meant to be an offer for a unilateral contract is determined by the outward manifestations of the parties, not by their subjective intentions. An employer's general statements of policy are no more than that and do not meet the contractual requirements for an offer. Reg v. Falan, 14 FSM R. 426, 431 (Yap 2006).

It does not matter whether a personnel handbook was received at the time the employee was hired or at some later time because the distribution of the manual may act as an offer of a unilateral contract even if there was no unilateral contract offered at the time of hiring. This is because the consideration for the

contract was supplied when the employee continued to work, after receipt of the manual, when he had no obligation to do so. Reg v. Falan, 14 FSM R. 426, 431 n.2 (Yap 2006).

When a personnel policies manual is detailed and the court finds that it was intended to set the terms of employment; when a review of the employee handbook makes it clear that the employer intended its employees to be bound by the manual's terms and that it intended to bind itself to these terms, the personnel policies manual was meant to be an offer for a unilateral employment contract and an employee has accepted the offer through his continued employment. Reg v. Falan, 14 FSM R. 426, 431-32 (Yap 2006).

A terminated employee's contract was not violated when he was not given a hearing before termination since the personnel manual did not require any hearing. Reg v. Falan, 14 FSM R. 426, 435 (Yap 2006).

When an employee is presented with an employee handbook, instructed to read and understand it, told to sign-off on it, and when the employee does so, the employee handbook will constitute a unilateral contract between the parties. Ihara v. Vitt, 18 FSM R. 516, 525 (Pon. 2013).

Personnel handbook provisions can be enforceable as an employment contract if they meet the requirements for the formation of a unilateral contract, which are: the offer must be definite in form and must be communicated to the offeree. An employer's general statements of policy are no more than that and do not meet the contractual requirements for an offer. George v. Palsis, 19 FSM R. 558, 564 (Kos. 2014).

When a personnel policies manual is detailed and the court finds that it was intended to set the terms of employment; when a review of the employee handbook makes it clear that the employer intended its employees to be bound by the manual's terms and that it intended to bind itself to these terms, the personnel policies manual was meant to be an offer for a unilateral employment contract and an employee has accepted the offer through his continued employment. George v. Palsis, 19 FSM R. 558, 564 (Kos. 2014).

When the Personnel Manual, read as a whole, authorizes the payment of the full amount (if it is 600 hours or less) of accrued annual leave to a former employee only when that employee has resigned with two weeks' written notice, the result must be that an employee's right to accrued annual leave pay is contingent upon certain events and if those events do not occur, the right never becomes a vested property interest. When it is undisputed that those events (written resignation with two weeks' notice) never occurred, the former employee, as a matter of law, did not have a vested property interest in his accrued annual leave. George v. Palsis, 19 FSM R. 558, 566 (Kos. 2014).

When an employee is presented with an employee handbook, instructed to read the handbook, told to sign off on the handbook, and when the employee does so, the employee handbook will constitute a unilateral contract between the parties. Ramirez v. College of Micronesia, 20 FSM R. 254, 266 (Pon. 2015).

Since an employee handbook can provide contract terms between the employer and employee, when the employment contract explicitly states that the employee's position, construed employment, compensation, leaves of absences, additional employment, benefits, performance evaluations, and termination are governed by the employee manual and when that manual includes terminations provisions explicitly providing the employer with the right to initiate layoffs, the employer had the contractual right to lay off employees before the expiration of the contract term, although this right to lay off employees is limited to the procedures as set forth in the manual. Ramirez v. College of Micronesia, 20 FSM R. 254, 266 (Pon. 2015).

– Wrongful Discharge

Where an employer terminates an employee without proper notice the termination will be given effect at the end of the proper notice period and the employee is entitled to any compensation he would have received during that period. Alik v. Kosrae Hotel Corp., 5 FSM R. 294, 296 (Kos. 1992).

Where there is sufficient evidence in the record for the trial judge to have found that an employee was terminated for the just cause of insubordination as permitted without notice in the parties' written employment contract, the trial court ruling that the plaintiff failed to prove he was terminated without just cause is sufficiently comprehensive and pertinent to the issue to form a basis for the decision. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 352-53 (App. 1994).

Termination for just cause as described in a written employment contract precludes the former employee from seeking redress for the termination as the breach of an implied contract embodied in the personnel manual. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 353 (App. 1994).

A plaintiff's firing by a private employer does not state a cause of action for unconstitutional deprivation of due process because no governmental entity or official is a defendant; the defendant is not alleged to be performing an essential governmental function; and a government action is not at issue. Semwen v. Seaward Holdings, Micronesia, 7 FSM R. 111, 113 (Chk. 1995).

An employee fired because he had filed suit against the defendant seeking compensation for injuries received while working on the job for the employer appears to state a cause of action in either tort or implied contract for wrongful discharge or termination. Semwen v. Seaward Holdings, Micronesia, 7 FSM R. 111, 114 (Chk. 1995).

When an employee has been laid off for the summer, it is not a termination for disciplinary reasons or a reduction-in-force. A layoff is a termination of employment at the will of the employer, which may be temporary or permanent. Langu v. Kosrae, 8 FSM R. 427, 434 (Kos. S. Ct. Tr. 1998).

Summary judgment will be granted against a terminated employee on his claim for breach of his verbal employment contract when he has failed to show that he had an assurance of continued employment through actions of a supervisor with authority to establish employment terms; when even assuming that former general manager did give the employee verbal assurances of continued employment, those verbal assurances ended with the general manager's termination; and when cause was not required for an employee's termination because the statute permitted employees to be terminated for other reasons, as the employer deemed appropriate. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 664 (Kos. S. Ct. Tr. 2002).

When failure to adopt a manual of administration was not a violation of statute because the statute does not set a time limit for the board to adopt one and when the employer is specifically exempted by statute from the Public Service System Act, summary judgment will be granted against a terminated employee on his claim that failure to adopt a manual made the employer liable for his termination. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 665 (Kos. S. Ct. Tr. 2002).

When the employer is empowered to create bylaws in which the rights and obligations of employees with regard to termination might be spelled out, but none have been introduced into evidence in this case, only the terms of the contract itself may control the question of whether the plaintiff's termination was in material breach of his employment agreement. Hauk v. Board of Dirs., 11 FSM R. 236, 241 (Chk. S. Ct. Tr. 2002).

An employee's diversion of funds can be construed to violate employment contract provision that bars unethical conduct, but when the contract provides the employer with the right to terminate the employee if he does not discharge his duties and responsibilities to his "employer's satisfaction," the employer could discharge the employee upon sixty days written notice if the employer was dissatisfied in any manner with his job performance, even without the apparent ethical lapse which occurred. Hauk v. Board of Dirs., 11

FSM R. 236, 241-42 (Chk. S. Ct. Tr. 2002).

When a contract provision for written notice of termination was inserted in the contract to assure that the employee had actual notice of the adverse action and when there is no dispute that the employee received actual notice of his termination, the employer's failure to provide written notice is not actionable breach of contract. Hauk v. Board of Dirs., 11 FSM R. 236, 242 (Chk. S. Ct. Tr. 2002).

When an employment contract has no provision for immediate termination under any circumstances, even where it is undisputed that the employer's property was misappropriated by an employee under contract, the court, construing the contract against the drafter, must conclude that the employer was required to provide the employee with sixty days written notice of his termination, which must run from the date of actual notice of impending termination. Hauk v. Board of Dirs., 11 FSM R. 236, 242 (Chk. S. Ct. Tr. 2002).

An employer may fire an employee who was convicted of a violent felony while already employed when its personnel manual states it will refuse employment to such persons since an employer who fires an employee is refusing employment to the former employee. Reg v. Falan, 14 FSM R. 426, 433 (Yap 2006).

When a personnel manual gives the director the responsibility of carrying out employee terminations, but another superior carried it out, this variation from the procedure is inconsequential because the requirement that the director perform the termination is a responsibility placed on the director rather than a procedural right vested in the employee. Reg v. Falan, 14 FSM R. 426, 434 (Yap 2006).

When nothing in the personnel policies manual requires that an employee be given notice of his right to object to his termination and that this notice should have informed him of his right to write to the supervisor, director and the policy council, this notice was not required. Reg v. Falan, 14 FSM R. 426, 434 (Yap 2006).

When the preamble to a personnel manual section states that the disciplinary actions are not mandatory, but the involuntary termination portion of that section is stated in mandatory terms, and when read together, the manual requires that the involuntary dismissal procedure be followed, and where the procedure is set out in such detail and phrased with mandatory language, the earlier general statement that disciplinary procedures are guidelines must give way. Reg v. Falan, 14 FSM R. 426, 435 (Yap 2006).

When the personnel manual provides for an employee's involuntary dismissal two weeks after the director has recommended it, and when the employee was not afforded the two weeks of pay that he should have received had the procedure been followed, in this regard, the contract has been breached and the plaintiff is due his expectation damages under the contract, the amount he would have been paid for those two weeks. Reg v. Falan, 14 FSM R. 426, 435 (Yap 2006).

A terminated employee's contract was not violated when he was not given a hearing before termination since the personnel manual did not require any hearing. Reg v. Falan, 14 FSM R. 426, 435 (Yap 2006).

When a plaintiff is due what he should have been paid during the two-week notice period that was required by his contract, but was not paid, the court will award that as damages and the employee's share of taxes should be deducted from this amount and paid to the appropriate taxing agencies as required by law and the employer's share of applicable taxes should not be deducted from this amount, but should be paid to the appropriate taxing agencies as required by law. Reg v. Falan, 14 FSM R. 426, 435 (Yap 2006).

Reinstatement to his former position and back pay to the date of his termination to the date he is reinstated are remedies are generally available to an employee who has shown wrongful discharge. But the amount awarded in back pay should be reduced to the extent the plaintiff has mitigated his damages by securing other employment. Reg v. Falan, 14 FSM R. 426, 436-37 (Yap 2006).

When a plaintiff suing for wrongful discharge has introduced no evidence of his efforts to mitigate his

damages by attempting to secure a job during his periods of unemployment, the plaintiff is precluded from recovery of damages for these periods. Reg v. Falan, 14 FSM R. 426, 437 (Yap 2006).

When an employer has unlawfully discharged an employee in violation of his civil rights and the former employee obtains alternative employment, in calculating damages, the income from the alternative employment will be deducted from the back pay owed to the employee, since otherwise the plaintiff could recover a windfall, which would violate the principles of compensatory damages. Robert v. Simina, 14 FSM R. 438, 443 (Chk. 2006).

Reinstatement to his former position and back pay to the date of his termination to the date he is reinstated are remedies generally available to an employee who has shown wrongful discharge with the amount awarded in back pay reduced to the extent the plaintiff has mitigated his damages by securing other employment. But the court cannot reinstate a terminated employee in his former position when he is past the mandatory retirement age. It can only award him back pay for time before his retirement date, and any income through alternative employment that was received for employment after he would have had to retire from his Public Service System employment will not be used to reduce the back pay award. Kimeuo v. Simina, 15 FSM R. 664, 666 (Chk. 2008).

The applicable employment taxes should be deducted from a back pay award and paid to social security and the national government as required by law. Kimeuo v. Simina, 15 FSM R. 664, 667 (Chk. 2008).

When no evidence was introduced at trial of how much, if any, unused annual leave the plaintiff had accrued before he was wrongfully terminated, the court cannot make an award for unused accrued annual leave. Kimeuo v. Simina, 15 FSM R. 664, 667 (Chk. 2008).

In order to be eligible to be paid sick leave, an employee must be ill. The employee will not be paid sick leave when he was not sick. When a plaintiff was not sick when he was wrongfully terminated, he is not entitled to any sick leave. Kimeuo v. Simina, 15 FSM R. 664, 667 (Chk. 2008).

Redress for a wrongfully-terminated state employee would include reinstatement and back pay, except when the former employee could not be reinstated due the Public Service System Act's mandatory retirement policy. But the former employee could be awarded back pay if he had mitigated his damages. Simina v. Kimeuo, 16 FSM R. 616, 624 (App. 2009).

The remedies generally available to a state public service system employee who has shown that he was wrongfully discharged are reinstatement to his former position and back pay to the date of his termination. Sandy v. Mori, 17 FSM R. 92, 94 (Chk. 2010).

Back pay compensatory damages are the measure of compensatory damages for wrongful discharge. Compensation for an injury is not doubled just because the plaintiff has two different causes of action on which to base that recovery because only the injury itself is compensated. Sandy v. Mori, 17 FSM R. 92, 95-96 (Chk. 2010).

From awards of back pay damages the employer must deduct the applicable wage and salary taxes and social security taxes, which must then be remitted to the appropriate tax authorities. Sandy v. Mori, 17 FSM R. 92, 96 (Chk. 2010).

When an employee did not report to work for a total of twelve days before the termination action was taken, such action on the employee's part constituted voluntary job abandonment. Peniknos v. Nakasone, 18 FSM R. 470, 480 (Pon. 2012).

When an employee had been requested to come into the work place to meet with management and did not and when the employee subsequently did not report to the work place for twelve days at which point

she was administratively terminated, the existing evidence is sufficient for the employer to make out a prima facie case of entitlement for summary judgment. To survive summary judgment, the employee must establish that genuine issues of material fact exist as to whether she voluntarily abandoned her job and when she failed to offer any evidence setting forth specific facts to overcome the employer's voluntary job abandonment evidence, she has not shown that there exists any genuine issues of material fact for trial and the employer will be granted summary judgment that she abandoned her job. Peniknos v. Nakasone, 18 FSM R. 470, 481 (Pon. 2012).

When a job applicant certified that she provided all the information requested in her employment history, and when the employer later discovered that one of the applicant's past employers was intentionally omitted, such omission constitutes a "material" omission to her work experience and would be sufficient grounds for termination. Peniknos v. Nakasone, 18 FSM R. 470, 482 (Pon. 2012).

The employment-at-will doctrine avows that, when an employee does not have a written employment contract and the term of employment is of indefinite duration, the employer can terminate the employee for good cause, bad cause, or no cause at all. Peniknos v. Nakasone, 18 FSM R. 470, 482 (Pon. 2012).

There is no inherent right to continued private sector employment. Peniknos v. Nakasone, 18 FSM R. 470, 483 (Pon. 2012).

When the plaintiff was a new hire and had not completed her probationary period and when the employer included in its employee handbook a clear and unambiguous disclaimer that the handbook is not to be construed as a contract, the disclaimer is effective and the employee handbook does not create an implied employment contract and the plaintiff was an at-will employee who could have been terminated at any time within the introductory period with or without cause. Peniknos v. Nakasone, 18 FSM R. 470, 483-84 (Pon. 2012).

"Just cause" or "good cause" for termination means a fair and honest cause or reason regulated by good faith on the employer's part. Ihara v. Vitt, 18 FSM R. 516, 526 (Pon. 2013).

There are situations which would provide just cause for immediate termination even if not specifically set forth in an employment handbook. These situations could include severe or multiple instances of disobedience, insubordination, dishonesty, criminal conduct, theft, and actions detrimental to the business. All circumstances constituting just cause for immediate termination cannot be anticipated and listed in an employee handbook. Ihara v. Vitt, 18 FSM R. 516, 526 (Pon. 2013).

Even when insubordination is not included in the employee handbook as a cause for termination, severe and/or multiple acts of insubordination can provide just cause for immediate termination. A private sector business cannot be required to retain an employee who acts in a way that actively harms the employer's business interest. Ihara v. Vitt, 18 FSM R. 516, 526 (Pon. 2013).

The fact that an employment contract authorizes the employer to terminate it for certain specified causes does not ordinarily prevent the employer from discharging the employee for a legal cause not specified. Ihara v. Vitt, 18 FSM R. 516, 527 (Pon. 2013).

It is implied in every employment contract that the employee will conduct himself with such decency and propriety as not to injure the employer in his business. Ihara v. Vitt, 18 FSM R. 516, 527 (Pon. 2013).

The plaintiff's discharge was justified when her inappropriate behavior in not coming to work to book an airline ticket for a client seaman who had suffered a stroke was so prejudicial from a business standpoint and from a personal health and safety standpoint because of the urgent medical emergency situation and because the employer was directly involved in booking airline tickets for clients. Ihara v. Vitt, 18 FSM R. 516, 527 (Pon. 2013).

As an exception to progressive discipline, an employee's immediate discharge was justified when she

refused to come to work to issue airline ticket for client seaman, although she was aware that the client had suffered a stroke and needed to urgently depart Pohnpei to seek additional medical attention off-island since her conduct ran contrary to her employer's integrity, safety, and quality improvement objectives in providing needed, expected, and necessary services to its clients, especially when it involved a medical emergency. Ihara v. Vitt, 18 FSM R. 516, 527 (Pon. 2013).

Three factors are used to determine whether immediate termination is justified even though the employer has a progressive discipline policy in its employee handbook: 1) culpability, 2) knowledge of expected conduct, and 3) control over the offending conduct. Ihara v. Vitt, 18 FSM R. 516, 527 (Pon. 2013).

An employee's immediate termination was justified when not only did the employer have holiday pay but it also offered its employees overtime because of its need to work outside of normal hours; when the employee by refusing to come to work twice on March 21, 2008, engaged in conduct that was materially adverse to the employer's financial interest in not being able to promptly provide needed airline booking services and related assistance to its client who needed the flight arrangements to be made at the soonest possible time; when she was the only employee who could book airline tickets, and after being explained the situation's emergency nature and urgency, she must have known that by her not showing up to work as ordered, a serious interruption of the employer's operations would occur which would have possibly endangered the its client's health; when her absence placed unexpected pressure on other employees in what was already an emergency situation; and when she had control over her actions that day and her decision not to come into work was not abrupt and she had adequate time to consider the consequences of her actions. Ihara v. Vitt, 18 FSM R. 516, 528-29 (Pon. 2013).

An employee's repeated acts of insubordination provide just cause for her immediate termination and do not require the progressive discipline in the employee's handbook and therefore the employer is not liable to her for any wrongful termination. Ihara v. Vitt, 18 FSM R. 516, 529 (Pon. 2013).

An employee's immediate termination based on multiple acts of disobedience and insubordination was not a wrongful termination and was based on just cause and did not have to proceed through the employee handbook's progressive discipline. Having not prevailed on the wrongful termination claim, the plaintiff's other claims for pain and suffering, punitive damages, and attorneys' fees are also denied. Ihara v. Vitt, 18 FSM R. 516, 531 (Pon. 2013).

Even when the plaintiffs failed to make reasonable efforts to secure alternative employment, the burden of proof falls on the former employer to show that the former employees could have found alternative employment in their chosen field. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 276 (Pon. 2014).

When the former employer has demonstrated that suitable alternative employment was available and that the former employees failed to make reasonable efforts to secure alternative employment, the court must conclude that plaintiffs could not recover for breach of contract due to their failure to mitigate damages. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 276 (Pon. 2014).

The failure to mitigate damages is an affirmative defense for which the defendant bears the burden of proof. The common law rule establishing failure to mitigate damages as an affirmative defense is sound because to hold otherwise would be to impose a burdensome requirement upon every plaintiff in a wrongful termination case and because a holding that failure to mitigate damages is an affirmative defense puts the burden of proof on defendants, who presumably would refrain from litigating this issue unless the question of failure to mitigate damages is actually in dispute. Manuel v. FSM, 19 FSM R. 382, 391 (Pon. 2014).

When the court has not held that the implied covenant of good faith and fair dealing could never be applied to an employment contract, the court, at the summary judgment stage of the proceeding, will not dismiss this cause of action as it might apply to the plaintiff's claim for wrongful termination in violation of his

employment contract. George v. Palsis, 19 FSM R. 558, 568 (Kos. 2014).

The constitutional guarantee of due process only protects persons from the governments, and those acting under them, established or recognized by the Constitution. Thus, a person's termination by a non-governmental employer does not state a cause of action for unconstitutional deprivation of due process because no governmental entity or official is a defendant; the defendant is not alleged to be performing an essential governmental function; and a government action is not at issue. George v. Palsis, 19 FSM R. 558, 569 (Kos. 2014).

An employer is not a governmental entity when it was not created by the FSM national government nor by any government established or recognized (national, state, or local) by the FSM Constitution; when it is merely funded, in part, by the FSM national and four state governments; when it is incorporated in the United States Commonwealth of the Northern Marianas and its parent corporation was created by the act of the United States Congress so that even if it were a governmental entity, it would be an entity of a government to which the FSM Constitution's due process clause does not apply. It will therefore be entitled to summary judgment on a former employee's wrongful termination in violation of constitutional due process cause of action. George v. Palsis, 19 FSM R. 558, 569 (Kos. 2014).

A former employee's allegation that his termination violated public policy under the FSM Constitution and the right to be free of religious discrimination does not state a cause of action. To the extent that any defendant could be held civilly liable for the violation of public policy, it would be under 11 F.S.M.C. 701(3), and the public policy as expressed in the civil rights statute. George v. Palsis, 19 FSM R. 558, 569 (Kos. 2014).

A former employee's allegation that his termination violated human rights policy under the FSM Constitution and his right to work and enjoy just and favorable working conditions under Article 23 of the United Nations Universal Declaration of Human Rights does not state a recognized cause of action. These claims are actionable under FSM domestic law. George v. Palsis, 19 FSM R. 558, 569-70 (Kos. 2014).

The three factors used to analyze whether there is just cause for immediate termination are: 1) culpability, 2) knowledge of expected conduct, and 3) control over the offending conduct. Ihara v. Vitt, 19 FSM R. 595, 601 (App. 2014).

The proper emphasis under the culpability requirement for employee termination should not be upon the number of violations; rather, it should address the problem of whether the discharge was necessary to avoid actual or potential harm to the employer's rightful interest. Ihara v. Vitt, 19 FSM R. 595, 601 (App. 2014).

The trial court's conclusion upholding an employee's termination is sound when the factual findings on which the conclusion is based are not clearly erroneous and the facts meet the three-factor test to permit immediate termination despite an employee handbook provision requiring progressive discipline. Ihara v. Vitt, 19 FSM R. 595, 602 (App. 2014).

When an employee failed to discharge his duties in a prompt and efficient manner, and he was insubordinate; when the failure to discharge one's duties in a prompt and efficient manner constitutes just cause for termination from the employer; and when insubordination is also just cause, the employer did not materially breach the employee's employment contract (the employee manual) by terminating him since just cause for termination existed. George v. Palsis, 20 FSM R. 111, 116 (Kos. 2015).

When the plaintiff had the burden to prove by a preponderance of the evidence that his employer's termination of his employment was not for just cause and he failed to do so, he has not shown upon the facts and the law a right to relief and the defendants' motion to dismiss will therefore be granted. George v. Palsis, 20 FSM R. 111, 116 (Kos. 2015).

A plaintiff has not proven a material breach of his employment contract merely because he lost his job. George v. Palsis, 20 FSM R. 174, 177 (Kos. 2015).

When the plaintiff produced no evidence from which the court could reasonably calculate a damages amount and when the plaintiff's termination was not a material breach of his employment contract, even if the plaintiff were permitted to proffer evidence now about the measure or the amount of his damages it would not help his case since he failed to prove a material breach and that failure is enough to bar any recovery. George v. Palsis, 20 FSM R. 174, 177-78 (Kos. 2015).

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

Since an employee handbook can provide contract terms between the employer and employee, when the employment contract explicitly states that the employee's position, construed employment, compensation, leaves of absences, additional employment, benefits, performance evaluations, and termination are governed by the employee manual and when that manual includes terminations provisions explicitly providing the employer with the right to initiate layoffs, the employer had the contractual right to lay off employees before the expiration of the contract term, although this right to lay off employees is limited to the procedures as set forth in the manual. Ramirez v. College of Micronesia, 20 FSM R. 254, 266 (Pon. 2015).

A permanent employee is an employee who has successfully completed a probationary period. Ramirez v. College of Micronesia, 20 FSM R. 254, 266 n.5 (Pon. 2015).

The employer is entitled to a judgment as a matter of law when, even viewing the uncontested facts in the light most favorable to the discharged employee, there are no genuine issues of material fact and the discharged employee cannot prevail on his breach of contract claim because he was properly laid off in accord with the contract terms incorporated from the personnel manual; because the employer had the right to layoff employees; because the employer created a specific layoff procedure in its personnel manual, and because the employee was laid off according to that procedure. Ramirez v. College of Micronesia, 20 FSM R. 254, 267 (Pon. 2015).

ENVIRONMENTAL PROTECTION

Earthmoving regulations themselves represent a governmental determination as to the public interest, and the clear violation of such regulations may therefore be enjoined without a separate court assessment of the public interest and balancing of hardships between the parties. Damarlane v. Pohnpei Transp. Auth., 4 FSM R. 347, 349 (Pon. 1990).

Where the national government, in previous appearances and filings, stated that no valid earthmoving permit was in effect the burden is on the national government at a motion for summary judgment to establish that there was a valid delegation of permit granting authority by the national government to the state officials. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 1, 7 (Pon. 1991).

Although neither the Environmental Protection Act nor the earthmoving regulations contain any

absolute requirement that a public hearing be held before an earthmoving permit may be issued, the issuance by national government officials of a permit authorizing earthmoving by a state agency without holding a hearing and based simply upon the application filed by the state agency and the minutes prepared by the state officials, is arbitrary and capricious where the dredging activities have been long continued in the absence of a national earthmoving permit and where the parties directly affected by those activities have for several months been vigorously opposing continuation of the earthmoving activities at the dredging site. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 1, 8 (Pon. 1991).

Various environmental acts that do not provide for a private citizen's cause of action for monetary damages cannot be used to create a duty for the breach of which damages may be awarded. Damarlane v. United States, 6 FSM R. 357, 360-61 (Pon. 1994).

The FSM Environmental Protection Act does not provide for a citizen's claim for damages. Damarlane v. FSM, 8 FSM R. 119, 121 (Pon. 1997).

Claims for damages for violation of the FSM Environmental Protection Act and for damage based on an alleged property interest in the reef and lagoon adjoining plaintiffs' land will be dismissed for failure to state a claim for which relief may be granted. Damarlane v. FSM, 8 FSM R. 119, 121 (Pon. 1997).

A savings clause that merely states that private parties who could previously seek civil remedies for what are now violations of the Chuuk State Environmental Protection Act still retain that right even if the Chuuk Environmental Protection Agency decides to act, does not create any new rights for those persons. Nor does it entitle them to collect any of the penalties created which may be asserted only by the Chuuk Environmental Protection Agency and only to its credit. Moses v. M.V. Sea Chase, 10 FSM R. 45, 51 (Chk. 2001).

When Pohnpei's refusal to hold a trochus harvest allegedly stemmed from environmental concerns, but all of the reports addressing this issue recommended that a trochus harvest be held and the concern was not that there would be too little trochus, but that there would be too much, nothing stood in the way of reasonable limitations on the harvest that could have harmonized both Pohnpei's legitimate environmental concerns and the national law requirement that it not limit the production of any commodity. Failure to do so violated 32 F.S.M.C. 302(2). AHPW, Inc. v. FSM, 12 FSM R. 544, 552 (Pon. 2004).

A cause of action exists in admiralty and maritime law for recovery of damages for oil contamination of wildlife and other natural resources in the marine environment. The type of injury includes both physical loss or injury, such as due to the grounding on the reef, as well as loss of use, either because of a government ban or because there has been a diminution of the resources because of oil contamination. Maritime nations generally recognize that parties injured by an oil spill should recover their damages, as the polluter must pay. Such a cause of action is available under the general admiralty and maritime law of the Federated States of Micronesia. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 416 (Yap 2006).

Nuisance law is frequently used to address liability in environmental contamination cases. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 416 (Yap 2006).

No offset for sums spent on cleanup can be given since the defendants had a duty to mitigate their damages and a legal duty imposed by Yap law to respond to the oil spill and clean up as much as possible. The oil spill cleanup protected them from greater liability. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 420 (Yap 2006).

When the issue of continued monitoring of the marine environment remains unresolved, the court may hold in abeyance its ruling with respect to the monitoring issue and will retain jurisdiction over this issue in the expectation that the parties (and the State) can resolve any differences themselves. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 422 (Yap 2006).

Title 1 of the Compact governs the relationship between and amongst the parties to the Compact and its environmental protection section does not create a private cause of action since it provides that actions brought pursuant to that section may be initiated only by the FSM government. Damarlane v. Damarlane, 18 FSM R. 177, 179 (Pon. 2012).

No private cause of action exists under the FSM Environmental Act – Section 704 by its own terms limits enforcement of the Act to the Board and Section 502 is aspirational. Damarlane v. Damarlane, 18 FSM R. 177, 179-80 (Pon. 2012).

When the plaintiffs have not stated a claim based on national law on which the FSM Supreme Court may grant relief and when all that remains is state law, including state environmental regulations, they have not persuaded the court to retain the case, and the court will therefore abstain. Damarlane v. Damarlane, 18 FSM R. 177, 181 (Pon. 2012).

Defendants may be liable for nuisance regardless of whether they violated any environmental regulations and regardless of and without reference to any environmental regulations or laws. Violation of any such regulations might be used as evidence that a nuisance exists. A plaintiffs' nuisance cause of action is not and cannot be based on statutes or regulations when the complaint would state a common law cause of action for nuisance even if there were no environmental laws. Damarlane v. Damarlane, 19 FSM R. 97, 108 (App. 2013).

National or state environmental laws and regulations are relevant to a nuisance claim only to the extent that failure to comply with those laws and regulations that apply to the defendants, may be evidence that the defendants' conduct is unreasonable, negligent, or reckless. However, reference to those laws is not necessary for the plaintiffs to prevail on a nuisance cause of action. Damarlane v. Damarlane, 19 FSM R. 97, 109 (App. 2013).

Nuisance law is frequently used to address liability in environmental contamination cases. Damarlane v. Damarlane, 19 FSM R. 97, 109 (App. 2013).

The FSM Environmental Protection Act, 25 F.S.M.C. 501 *et seq.*, and its enforcement provisions, 25 F.S.M.C. 703-707, do not, as a matter of law, provide for a private cause of action or a citizen's claim for money damages but may support a claim for injunctive relief. Berman v. Pohnpei, 19 FSM R. 111, 116 (App. 2013).

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

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

Money damages are not available in a private environmental protection lawsuit even if injunctive relief is available. Berman v. Pohnpei, 19 FSM R. 111, 117 (App. 2013).

The potential for a significant impact on the public interest exists when Pohnpei's entire population will be directly and adversely affected by an unsustainable sea cucumber harvest, potentially affecting Pohnpei's public health, welfare, and economy in a negative manner since allowing a potentially

environmentally devastating sea cucumber harvest is certainly not in the public interest. There is strong public interest in protecting Pohnpei's precious environment and natural resources. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 552 (Pon. 2016).

The plaintiffs' reasonable fears of environmental pollution is sufficient injury-in-fact to support standing. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 645 (Pon. 2016).

Under the Pohnpei Marine Sanctuary and Wildlife Refuge Act of 1999, any person may commence a civil suit on his own behalf to enjoin any person who is alleged to be in violation of § 5-107 of that Act, and "person" includes any individual, corporation, partnership, association or other entity, and any governmental entity including, but not limited to, the FSM or any of the FSM states or any political subdivision thereof, and any foreign government, subdivision of such government, or any entity thereof. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 647 (Pon. 2016).

Since, unlike 26 Pon. C. § 5-115 which expressly grants to the Attorney General the right to bring a suit to enjoin a person who is in "imminent violation," the citizen suit provision of 26 Pon. C. § 5-117 only allows a person to commence a civil suit to enjoin a person who is "alleged to be in violation" of § 5-107," the plain statutory language can only be read to allow the Attorney General the power to seek equitable relief for an imminent violation but not private persons who do not allege facts that are sufficient to grant traditional constitutional standing when it has not asserted injury to itself. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 647 (Pon. 2016).

That none of the edible species are included in the sea cucumber harvest's plan does not mean that the population of such species will not be negatively affected by a harvest which is more likely than not to have an impact on the ecosystem they inhabit. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 21 FSM R. 150, 158 (Pon. 2017).

EQUITY

Where it becomes apparent that claims of creditors will outstrip the value of debtor's assets, the approach is to give all creditors an opportunity to submit claims, and distribute any available proceeds on an equitable basis. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 306 (Pon. 1988).

Under circumstances where there is no bankruptcy legislation or comprehensive system for establishing and recognizing liens in the FSM, the court acts essentially as a court of equity when deciding insolvency cases. In re Pacific Islands Distrib. Co., 3 FSM R. 575, 581 (Pon. 1988).

Decisions regarding res judicata and the transitional activities of the Trust Territory High Court typically should be made on the basis of larger policy considerations rather than the equities lying with or against a particular party. United Church of Christ v. Hamo, 4 FSM R. 95, 120 (App. 1989).

Where no contract existed for lack of definite terms, the court may use its inherent equity power to fashion a remedy under the doctrine of restitution. Jim v. Alik, 4 FSM R. 198, 200 (Kos. S. Ct. Tr. 1989).

Where attorney's fees claimed pursuant to a contractual provision are excessive or otherwise unreasonable, it is within the equitable and discretionary power of the court to reduce or even deny the award, despite the contractual provision. Bank of Hawaii v. Jack, 4 FSM R. 216, 220 (Pon. 1990).

Encroachment of a road on adjacent parcels is a trespass when the state has not used the property without interruption for the statutory period, nor for a period of time that would make the assertion of plaintiff's rights unfair. Palik v. Kosrae, 5 FSM R. 147, 156 (Kos. S. Ct. Tr. 1991).

Where entitlement to customary relief has been proven and the means to execute such a remedy are within the trial court's authority and discretion, the trial court should as a matter of equity and constitutional

duty grant the relief. Wito Clan v. United Church of Christ, 6 FSM R. 129, 133 (App. 1993).

Trial courts have jurisdiction to set aside judgments either by a Rule 60 relief from judgment motion or by an independent action in equity. Election Comm'r v. Petewon, 6 FSM R. 491, 499 (Chk. S. Ct. App. 1994).

There are five essential elements to an independent action in equity to set aside a judgment. They are 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the defendant; and 5) the absence of any adequate remedy at law. If any one of these elements is missing the court cannot take equitable jurisdiction of the case. Election Comm'r v. Petewon, 6 FSM R. 491, 499 (Chk. S. Ct. App. 1994).

Where there are one or more legal remedies still available to a litigant the trial court has no jurisdiction to grant relief from a judgment through an independent action in equity. Election Comm'r v. Petewon, 6 FSM R. 491, 499 (Chk. S. Ct. App. 1994).

Courts of equity are without jurisdiction to enforce purely political rights. Matters concerning the conduct of elections are usually left to the political branches and the courts generally have no jurisdiction until after the elections are held. Election Comm'r v. Petewon, 6 FSM R. 491, 500 (Chk. S. Ct. App. 1994).

A writ of prohibition is proper to prevent a trial court from exercising equity jurisdiction in an election case. Election Comm'r v. Petewon, 6 FSM R. 491, 500 (Chk. S. Ct. App. 1994).

Courts may consult foreign sources about equitable principles when there is no applicable Micronesian authority on point. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 489 n.3 (App. 1996).

The clean hands doctrine has been expressed in the language that he who has done inequity shall not have equity. A maxim which is closely related to, and which has been described as a corollary of, the clean hands maxim is where the wrong of the one party equals that of the other, the defendant is in the stronger position. On the other hand, one whose wrong is less than that of the other may be granted relief in some circumstances. Senda v. Semes, 8 FSM R. 484, 500 (Pon. 1998).

Equity does not dictate that a setoff for the amount of a defendant's stock subscription be allowed against a contribution claim when the person claiming the setoff received by far the greatest benefit from the failed corporation while it was operating. Senda v. Semes, 8 FSM R. 484, 507 (Pon. 1998).

An award of attorney's fees, depending as it does upon a finding of reasonableness, is an exercise in equity. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103 (Kos. 2001).

Rescission is equitable in nature, just as waiver is. Adams v. Island Homes Constr., Inc., 10 FSM R. 510, 513 (Pon. 2002).

One who would seek the benefit of equitable relief must himself demonstrate that he has done equity, or that he has clean hands. Obversely stated, he who has done inequity shall not have equity. Adams v. Island Homes Constr., Inc., 10 FSM R. 510, 513 (Pon. 2002).

When a defendant has unprofessionally refused to comply with the plaintiffs' discovery requests without any justification for doing so, in the limited context of discovery proceedings, its hands are unclean and it is in no position to make a case under rescission or other equitable principle. Adams v. Island Homes Constr., Inc., 10 FSM R. 510, 513 (Pon. 2002).

Quantum meruit is an equitable doctrine, based on the concept that no one who benefits by the labor and materials of another should be unjustly enriched thereby; under those circumstances, the law implies a

promise to pay a reasonable amount for the labor and materials furnished, even absent a specific contract therefor. The doctrine of unjust enrichment has been recognized in the FSM. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 232 (Pon. 2002).

A court exercising equity jurisdiction has plenary power to fashion an order in such a manner as to recognize and maintain the equities of the parties involved. The relief granted in equity is dictated by the equitable requirements of the situation at hand and must be adapted to the facts and circumstances of each particular case. More simply stated, the underlying concept is the prevention of injustice, when a legal remedy may not be available to a party because of a technicality. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM R. 337, 346 (Pon. 2004).

Reformation is an equitable doctrine that allows a court to conform a contract (even an insurance contract) to the true agreement between the parties rather than the agreement as written. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 470 (Pon. 2004).

The exercise of equity is justified for the court to order the return of a unique pocketknife to the plaintiff when that unique item is not available for purchase on Kosrae. Palik v. PKC Auto Repair Shop, 13 FSM R. 93, 96 (Kos. S. Ct. Tr. 2004).

If all the parties have unclean hands, the court may afford relief to the party who bears a lesser degree of fault. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 518 (App. 2005).

"Equity" describes a specific set of legal principles used in countries that follow English common law. At one point in history, courts of law and courts of equity (also called courts of chancery) were separate systems with jurisdiction over different types of cases, having different procedures and offering different remedies. Over time, particularly in the United States, courts merged into a unified jurisdiction where an action at law and a suit in equity became less distinct. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 662 (Kos. S. Ct. Tr. 2008).

An equitable remedy: 1) cannot take cognizance of any case wherein the common law can give complete remedy; 2) cannot interpose in any case against the legislature's express letter and intention since if the legislature means to enact an injustice, however palpable, the court of equity is not the body with whom a correcting power is lodged; and 3) shall not interpose in any case which does not come within a general description and admit of redress by a general and practicable rule. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 662 (Kos. S. Ct. Tr. 2008).

An equitable remedy does not apply unless: 1) there is no adequate remedy at law; 2) it does not conflict with any statute; and 3) it rests on existing legal obligations (it does not create a new obligation or duty where none existed before) and follows legal precedent. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 662 (Kos. S. Ct. Tr. 2008).

Equitable relief is not generally necessary for a court to resolve disputes relating to title because establishment of title is available by law. This is true for the Kosrae Land Court. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 662 (Kos. S. Ct. Tr. 2008).

Common law, or case law, and statutes provide the basis for Land Court orders, in other words, a complete and adequate remedy. The Legislature established the Land Court's authority to hear and decide title determinations. Statutes require that Land Court decisions not be contrary to law and must be based on substantial evidence. Case law guides the Land Court on what constitutes substantial evidence to support a decision; this is legal precedent. The Land Court must establish title based on substantial evidence by considering the testimony and record before it. There is no need to resort to equitable jurisdiction to make a title determination. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 662-63 (Kos. S. Ct. Tr. 2008).

A complex record that takes time to assess, is not normally grounds to rely on equity. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 663 (Kos. S. Ct. Tr. 2008).

A court must make its findings and show it is relying on substantial evidence even if using equitable jurisdiction, because an order must be based on sufficient evidence. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 663 (Kos. S. Ct. Tr. 2008).

Although there are rare occasions when an equitable remedy may be proper in an election case, overlooking or extending a deadline to file an appeal is not one of them. Statutory deadlines to file appeals are jurisdictional, and if the deadline has not been strictly complied with the adjudicator is without jurisdiction over the matter once the deadline has passed. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 422 (App. 2009).

The equitable doctrine of unjust enrichment, a theory applicable to implied contracts, operates in the absence of an enforceable contract and this principle requires that the party receiving something of value either pay for it or return it, and is based on the notion that one party should not be allowed to enrich himself at another's expense. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 119 (App. 2011).

When the equities involved include that the plaintiff falsely informed Chuuk that the marine insurance policy was not in effect when, in fact, it was in effect because the net premium had been paid to the insurer, promissory estoppel may instead be a better measure of the damages than implied contract or unjust enrichment. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 120 (App. 2011).

Since the defenses of laches, estoppel, and waiver generally require certain factual determinations about a party's acts or omissions, when those facts have not been established, there is an insufficient factual basis on which to grant a movant summary judgment on these defenses. Iwo v. Chuuk, 18 FSM R. 252, 255 (Chk. 2012).

When the defendant built family residences on part of the land and has occupied them at least since sometime in the early 1990s, requiring such longtime occupants to change residence and rebuild elsewhere and take compensation for the houses is burdensome. Equity would not favor giving the plaintiff the choice of paying the defendant for his houses instead of the defendant paying for the land. Killion v. Nero, 18 FSM R. 381, 386 (Chk. S. Ct. Tr. 2012).

Courts of equity are not bound to give any stereotyped form of relief. They readily and easily adapt themselves to the parties' situation and to the facts of the particular case, and may make such decrees as effectuate justice. Killion v. Nero, 18 FSM R. 381, 386 (Chk. S. Ct. Tr. 2012).

When the parties had agreed to a land exchange and the defendant has built houses on the land he received but the plaintiff did not receive any land because the defendant did not have the land to exchange, instead of returning the land to the plaintiff and having the plaintiff pay the defendant the value of the houses the defendant built the most equitable remedy (and the easiest for the court to fashion) is monetary compensation to the plaintiff for the value of the land that he did not receive in an exchange agreement that provided that he was to receive in exchange land of an equal amount to the land transferred to the defendants. To effectuate justice, the defendants should pay the plaintiff the value of the land the defendants received. Killion v. Nero, 18 FSM R. 381, 386 (Chk. S. Ct. Tr. 2012).

A court may not grant a plaintiff's request for injunctive or other equitable relief when there has been no showing of irreparable harm or that there is no adequate remedy at law. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 648 (Chk. S. Ct. Tr. 2015).

If both parties have unclean hands, the court may afford relief to the party who bears a lesser degree of fault. Eot Municipality v. Elimo, 20 FSM R. 482, 490 (Chk. 2016).

Unclean hands is an equitable defense that can be used against actions in equity, but not in actions at law. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 477 (Pon. 2020).

– Estoppel

Under the doctrine of equitable estoppel, a person may sometimes be precluded by his act or conduct, or silence when he has a duty to speak, from asserting a right which he otherwise would have had. However, this equitable doctrine may apply only when justice demands intervention on behalf of a person misled by the conduct of the party estopped. Etpison v. Perman, 1 FSM R. 405, 417 (Pon. 1984).

The doctrine of equitable estoppel does not apply when a party claiming to have been misled was aware of the facts which he insists the other party should have told him or when the first party could reasonably have been expected to learn those facts. Etpison v. Perman, 1 FSM R. 405, 417 (Pon. 1984).

Laches and estoppel are equitable doctrines which may be invoked only by parties who themselves have acted properly concerning the subject matter of the litigation. Ponape Transfer & Storage v. Federated Shipping Co., 3 FSM R. 174, 178 (Pon. 1987).

The estoppel doctrine, which is applied when justice demands intervention on behalf of a person misled by the conduct of the person estopped, is not available as a defense to a board member of a corporation where the board member knowingly misled regulatory officials and creditors of the corporation. Mid-Pac Constr. Co. v. Senda, 4 FSM R. 376, 385 (Pon. 1990).

Equitable estoppel should be applied to governments in the Federated States of Micronesia where this is necessary to prevent manifest injustice and where the interests of the public will not be significantly prejudiced. KCCA v. Tuuth, 5 FSM R. 118, 120 (Pon. 1991).

A party may sometimes be precluded by his act or conduct from asserting a right which he otherwise would have had. When a party has failed to assert its rights over a long period of time, and another party has relied on this non-assertion, the first party may be estopped from asserting those rights now. NIH Corp. v. FSM, 5 FSM R. 411, 414 (Pon. 1992).

Where the government's prior audit methods had the effect of permitting gross revenue tax computation on the cash basis and where the government's attempts to advise businesses that they are required to use the accrual method have for many years been woefully inadequate, the government will be barred by equitable estoppel from assessing penalties and interest on any underpayment of taxes that was the result of being led to believe that the cash basis was an acceptable method of tax computation. NIH Corp. v. FSM, 5 FSM R. 411, 415 (Pon. 1992).

Where no action, or words, or silence of the National Election Director prior to the appellant's initial petition misled the appellant into untimely filing his petition after certification it does not give rise to an estoppel. The Director's later failure to raise the issue of untimeliness until his denial of the petition was appealed to the Supreme Court does not give rise to an estoppel. Wiliander v. Mallarme, 7 FSM R. 152, 157-58 (App. 1995).

The affirmative defense of estoppel requires a long non-assertion of one's rights by the plaintiff and the defendant's reliance on that non-assertion to its detriment. There can be no estoppel where there is no loss, injury, damage, detriment, or prejudice to the party claiming it. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 63, 65-66 (Chk. 1997).

Defendants are not likely to prevail on counterclaims of promissory estoppel when it does not appear that they relied on the plaintiff's promise to their detriment. Carlos Etscheit Soap Co. v. Epina, 8 FSM R. 155, 163 (Pon. 1997).

Estoppel is an equitable doctrine which may be invoked only by parties who themselves have acted properly concerning the subject matter of the litigation. Carlos Etscheit Soap Co. v. Epina, 8 FSM R. 155, 163 (Pon. 1997).

One of the necessary elements of equitable estoppel is that the party to be estopped must have had knowledge, actual or constructive, of the real facts. Carlos Etscheit Soap Co. v. Epina, 8 FSM R. 155, 164 (Pon. 1997).

No estoppel can arise from an act or a representation if it was not intended to have the effect claimed and if, from its nature or from the time when, or the circumstances under which, it was done or made, it would be unreasonable to attribute such effect to it. Carlos Etscheit Soap Co. v. Epina, 8 FSM R. 155, 164 (Pon. 1997).

The defenses of estoppel, unclean hands and laches are all equitable defenses which do not apply in actions sounding in personal injury. Conrad v. Kolonia Town, 8 FSM R. 183, 193 (Pon. 1997).

When estoppel serves as the basis for a plaintiff to file a breach of contract claim and that contract claim has been time barred, the plaintiff's estoppel claim is also barred. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 559 (Pon. 2000).

Where no contract exists, the court may use its inherent equity power to fashion a remedy under equitable doctrines. The doctrine of promissory estoppel allows enforcement of promises that induce reliance. The doctrine of promissory estoppel, also referred to as detrimental reliance, is summarized as: A promise which the promisor should reasonably expect to induce action on the part of the promisee, and which does induce such action, is binding if justice requires enforcement of the promise. The remedy for breach may be limited as justice requires. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 195 (Kos. S. Ct. Tr. 2001).

Under the doctrine of promissory estoppel, a person's reliance upon a promise may create rights and duties. The finding of detrimental reliance does not depend upon finding any agreement or consideration. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 195 (Kos. S. Ct. Tr. 2001).

When the plaintiff relied upon the defendant's promise to let him use the land to build his house, and the defendant should have reasonably expected the plaintiff to take action on this promise, such as obtaining financing through a loan, leasing equipment, and purchasing materials and labor to build his house, and when the plaintiff did in fact rely upon the promise and took action to secure financing through a loan, the doctrine of promissory estoppel is applicable and the promise is enforceable. Justice requires the enforcement of the promise and the plaintiff is entitled to recover the amount expended in reliance of his promise, based upon the doctrine of promissory estoppel. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 195 (Kos. S. Ct. Tr. 2001).

Evidence that, sometime before defendant's marriage, the plaintiff did have some limited intimate contact on one occasion with the woman who later became the defendant's wife, does not serve as a defense to the plaintiff's claim of unjust enrichment and to recover restitution for the defendant's stopping construction of the plaintiff's house. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 196 (Kos. S. Ct. Tr. 2001).

The trial court has wide discretion in determining the amount of damages in contract and quasi-contract cases involving equitable doctrines, such as promissory estoppel and restitution. The plaintiff may be compensated for the injuries by awarding compensation for the expenditures made in reliance on the promise. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 196 (Kos. S. Ct. Tr. 2001).

Pre-judgment interest is not appropriate and a claim for it will be denied when there was no agreement involving a promise to pay money, when the plaintiff was not deprived of funds that he was entitled to because there was no contract made between the parties to pay money, and when the plaintiff was

awarded damages based upon the equitable doctrine of promissory estoppel for the plaintiff's expenditures made in reliance on a promise. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 197 (Kos. S. Ct. Tr. 2001).

A defendant would be estopped from raising an illegality of contract as a defense to a negligence claim when as the other party to the allegedly illegal contract he had the benefit of it. Amayo v. MJ Co., 10 FSM R. 244, 250 (Pon. 2001).

Estoppel in pais is defined as the doctrine by which a person may be precluded by his act or conduct, or silence when it is his duty to speak. Enengeitaw Clan v. Shirai, 10 FSM R. 309, 311 (Chk. S. Ct. Tr. 2001).

The doctrine of equitable estoppel operates to preclude a party from asserting a right he otherwise might have had, based upon his previous conduct. But a plaintiff is not equitably estopped from challenging the Office of Economic Affairs's authority to conduct a trochus harvest because any past acquiescence to the Office's authority does not alter the Office's powers and duties vested in it by Pohnpei state law when, as a matter of law, the Office's activities with regard to the trochus harvest were illegal. Nagata v. Pohnpei, 11 FSM R. 265, 271 (Pon. 2002).

Estoppel is an equitable remedy that may be invoked only by parties who themselves have acted properly concerning the subject of the litigation. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 307 (Pon. 2004).

A plaintiff's effort to induce a driver to claim that he was not intoxicated at the time of the accident, makes it unlikely that the plaintiff will be successful in any attempt to rely upon equitable doctrines in the litigation, especially when it cannot be said that no genuine issue of material fact exists, and that on the basis of estoppel the plaintiff is entitled to judgment as a matter of law. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 307 (Pon. 2004).

Detrimental reliance is subsumed within estoppel. A party seeking to invoke the equitable estoppel doctrine must prove that 1) a defendant made representations or statements; 2) the plaintiff reasonably relied upon the representations; and 3) the plaintiff will be harmed if estoppel is not allowed. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 191 (Pon. 2006).

To claim promissory estoppel a party must prove that 1) a promise was made; 2) the promisor should reasonably have expected the promise to induce actions of a definite and substantial character; 3) the promise did in fact induce such action; and 4) the circumstances require the enforcement of the promise to avoid injustice. Elements 3 and 4 are sometimes referred to collectively as "detrimental reliance." Misrepresentation, too, contains the elements of reasonable reliance and damages. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 191-92 (Pon. 2006).

Equitable estoppel is (and should be) applied to governments in the FSM when this is necessary to prevent manifest injustice and when the interests of the public will not be significantly prejudiced. But a party asserting equitable estoppel against the government must prove more than is required when it is asserted against a private entity. The government may not be estopped on the same terms as any other litigant. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 192 (Pon. 2006).

Another element must be established when a party asserts estoppel against the government – affirmative misconduct on the government's part. "Affirmative misconduct" has never been clearly defined by any court. This much, however, is clear. The misconduct complained of must be "affirmative," which indicates more than mere negligence is required. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 192 (Pon. 2006).

"Detrimental reliance" requires, at the very least, that a party has changed its position for the worse as a consequence of the government's purported misconduct. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 192 (Pon. 2006).

When the defendant affirmatively signed a Letter of Commitment that it would issue the plaintiff a permit to purchase the first 60 metric tons of shell from the Pohnpei reefs during each annual trochus harvest and made other promises or representations that there would be a trochus harvest and the plaintiff reasonably relied upon these representations that there would be a trochus harvest and, until it finally stopped business in 1998, kept employees on so that it would be ready to go back into the trochus button business, the defendant is liable. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 192 (Pon. 2006).

The doctrine of detrimental reliance is summarized as a promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee, and which does induce such action or forbearance is binding if justice requires enforcement of the promise. The remedy for breach may be limited as justice requires. In other words, when a person justifiably and reasonably relies on a promise, then the promise will be enforced if it is the only way to avoid injustice. Siba v. Noah, 15 FSM R. 189, 195-96 (Kos. S. Ct. Tr. 2007).

When the plaintiff performed his part of the agreement by providing goods and cash to the a defendant believing the boundary of his land would be extended and he timely filed a subdivision request with the Land Commission and completed building a house on the land, in expectation of receiving title; when the defendant accepted the goods and cash and another defendant received title to the land from that defendant and others, including the portion the plaintiff was to receive; and when the other defendant accepted title to both parcels, but knew that the plaintiff was entitled to a portion of the land and had requested the subdivision, applying the doctrine of unjust enrichment, the other defendant has been unjustly enriched at the plaintiff's expense. To end the other defendant's unjust enrichment, the remedy is to issue title to the plaintiff for the portion of the land he was to receive in 1987 and leave title to the remaining land with the other defendant. An application of the doctrine of detrimental reliance affords the same remedy. Siba v. Noah, 15 FSM R. 189, 196 (Kos. S. Ct. Tr. 2007).

Under the doctrine of equitable estoppel, or estoppel in pais, a person may sometimes be precluded by his act or conduct or silence when he has a duty to speak, from asserting a right which he otherwise would have had. However, this equitable doctrine applies only when justice demands intervention on behalf of a person misled by the conduct of the party estopped. The equitable estoppel doctrine should be applied to Federated States of Micronesia governments when this is necessary to prevent manifest injustice and when the interests of the public will not be significantly prejudiced. FSM v. Katzutoku Maru, 15 FSM R. 400, 403-04 (Pon. 2007).

No estoppel can arise from an act or a representation if it was not intended to have the effect claimed and if, from its nature or from the time when, or the circumstances under which, it was done or made, it would be unreasonable to attribute such effect to it or when the party claiming to have been misled was aware of the facts which he now insists the other party should have told him, or could reasonably have been expected to learn the facts. FSM v. Katzutoku Maru, 15 FSM R. 400, 404 (Pon. 2007).

Detrimental reliance is subsumed within estoppel. A party seeking to invoke the equitable estoppel doctrine must prove that 1) a defendant made representations or statements; 2) the plaintiff reasonably relied upon the representations; and 3) the plaintiff will be harmed if estoppel is not allowed. John v. Chuuk Public Utility Corp., 16 FSM R. 226, 228 (Chk. 2008).

To claim promissory estoppel a party must prove that 1) a promise was made; 2) the promisor should reasonably have expected the promise to induce actions of a definite and substantial character; 3) the promise did in fact induce such action; and 4) the circumstances require the enforcement of the promise to avoid injustice. Elements 3 and 4 are sometimes referred to collectively as "detrimental reliance." Detrimental reliance requires, at the very least, that a party has changed its position for the worse as a consequence of the defendant's purported misconduct. John v. Chuuk Public Utility Corp., 16 FSM R. 226, 228 (Chk. 2008).

When there is no evidence before the court that, if it were not for the employer's maintaining life insurance for the employees, the employee would have either quit his job and taken a job with a different employer that provided life insurance benefits or that he would have purchased his own life insurance policy from another source, the employee's widow cannot recover on a promissory estoppel or detrimental reliance theory since she cannot show that the employee relied on the employer's alleged promise to provide life insurance and her mere assertion, first made in her closing argument, that had they known they might have found another policy is insufficient to prove reliance. John v. Chuuk Public Utility Corp., 16 FSM R. 226, 228 (Chk. 2008).

Collateral estoppel prevents the land claimants from disputing, in this appeal, the existence of a *kewosr* transfer because collateral estoppel bars a party from relitigating an issue determined against that party in an earlier action, even if the second action differs significantly from the first one, and the court's 1997 decision between the same parties precludes the claimants from arguing that no *kewosr* transfer occurred or that the land could not have been transferred by *kewosr*. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 375 (Kos. S. Ct. Tr. 2009).

A trial court has wide discretion in determining the amount of damages in contract and quasi-contract cases involving equitable doctrines, such as promissory estoppel and restitution and the plaintiff may be compensated for the injuries by awarding compensation for the expenditures made in reliance on the promise. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 120 (App. 2011).

A party seeking to invoke the equitable estoppel doctrine must prove that 1) a defendant made representations or statements; 2) the plaintiff reasonably relied upon the representations; and 3) the plaintiff will be harmed if estoppel is not allowed, and to claim promissory estoppel a party must prove that 1) a promise was made; 2) the promisor should reasonably have expected the promise to induce actions of a definite and substantial character; 3) the promise did in fact induce such action; and 4) the circumstances require the enforcement of the promise to avoid injustice. But a party asserting equitable estoppel against a government must prove more than is required when it is asserted against a private entity because the government may not be estopped on the same terms as any other litigant since another element must be established when a party asserts estoppel against the government – affirmative misconduct on the government's part. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 120 (App. 2011).

When Actouka relied on Chuuk's promises that the premium payments would be forthcoming and advanced the premium to keep the policy in force and it was reasonable for Actouka to rely on Chuuk's promise (especially in 1996) because Chuuk had always paid late in previous years (1988-95) and Chuuk should have expected that Actouka would keep the policy in force based on past performance and course of dealing; when enforcement of the promise would avoid the injustice that Actouka had to advance payment to keep the policy in force for the other governments operating FSM-owned ships and when Chuuk's affirmative misconduct was its misleading communications to Actouka that the premium money was available and that Actouka would be paid soon, equitable estoppel and detrimental reliance may apply. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 120 (App. 2011).

The running of a statute of limitations can be tolled – suspended – by certain events. A defendant's wrongful conduct can, as a form of estoppel, toll or suspend the running of a statute of limitations – for instance, a defendant would be estopped from raising a statute of limitations defense when, by his wrongful conduct, he induced the plaintiff not to sue until the statute of limitations had run out. Iwo v. Chuuk, 18 FSM R. 252, 254 (Chk. 2012).

When it has not been shown, that the three-and-a-half-year time period, by itself, was an inexcusable delay and when it has not been shown, instead of merely speculating, that the delay has resulted in prejudice to the defendants, the defendants cannot be granted summary judgment on their laches defense and for the same reasons, they must also be denied summary judgment on their estoppel and waiver defense. Tarauo v. Arsenal, 18 FSM R. 270, 273 (Chk. 2012).

An estoppel and waiver affirmative defense requires a long non-assertion of one's rights by the plaintiff and the defendant's reliance on that non-assertion to its detriment, but there can be no estoppel when there is no prejudice to the party claiming it. Tarauo v. Arsenal, 18 FSM R. 270, 273-74 (Chk. 2012).

Under the doctrine of equitable estoppel, a person may sometimes be precluded by his act or conduct, or silence when he has a duty to speak, from asserting a right which he otherwise would have had, and this equitable doctrine will apply only when justice demands intervention on behalf of a person misled by the conduct of the party estopped. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

A party seeking to invoke the equitable estoppel doctrine must prove that 1) another party made representations or statements; 2) the party reasonably relied upon the representations; and 3) the party will be harmed if estoppel is not allowed. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

One essential element of equitable estoppel so far as the party to be estopped is concerned, is that he should have intended, or at least expected, that his conduct on which it is sought to predicate the estoppel should be acted upon by the other party or by other persons. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

The burden of proof is on the party alleging and relying on estoppel. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

Equitable estoppel is based on fraudulent conduct or fraudulent result. One must knowingly take a position with intention that it be acted upon, and reliance thereon by another to his prejudice. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

The application of the doctrine of equitable estoppel generally requires an express representation made by the party estopped and relied upon by another party who changes his position to his detriment. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

Estoppel is to be applied against wrongdoers, not the victim of a wrong. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

Since estoppel is an equitable remedy that may be invoked only by parties who themselves have acted properly concerning the subject of the litigation, a defendant cannot prevail on this defense when it behaved improperly by cashing checks made out to the plaintiff without the plaintiff's express authorization and when it did not reasonably rely on any statement by the plaintiff. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

Equitable estoppel has been defined simply as the familiar principle that where one of two innocent persons must suffer by the acts of a third, he who has enabled such third person to occasion the loss, must sustain it. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

When the defendants must show detrimental reliance on the plaintiffs' waiver of exclusive possession of a town lot in order to establish the affirmative defense of equitable estoppel, the defendants' argument that burying a family member on the property in 2002 constituted detrimental reliance must fail because burying the family member on the property did not change the defendants' position to their detriment, and they fail to demonstrate that they buried him in reliance on the waiver from the plaintiffs. Harden v. Inek, 19 FSM R. 278, 281 (Pon. 2014).

Injury, detriment, or prejudice to the party claiming the estoppel is one of the essential elements of an equitable estoppel. Harden v. Inek, 19 FSM R. 278, 281 (Pon. 2014).

To claim promissory estoppel a party must prove that: 1) a promise was made; 2) the promisor should reasonably have expected the promise to induce actions of a definite and substantial character; 3)

the promise did in fact induce such action; and 4) the circumstances require the enforcement of the promise to avoid injustice. Elements 3) and 4) are sometimes referred to collectively as "detrimental reliance." Misrepresentation, too, contains the elements of reasonable reliance and damages. Johnny v. Occidental Life Ins., 19 FSM R. 350, 358 (Pon. 2014).

The promises made by the insurer's agents bind the insurer and must be enforced in order to avoid manifest injustice because if the plaintiff had enrolled her daughter under a separate cancer policy, she would have been covered under her own policy, but instead, the agent's misrepresentation caused her to keep her daughter under her cancer policy, making the daughter ineligible at the time she was diagnosed with cancer because she did not qualify as a covered family member under that policy's provisions. Johnny v. Occidental Life Ins., 19 FSM R. 350, 359 (Pon. 2014).

A plaintiff's claim under a promissory estoppel and detrimental reliance cause of action is supported when the plaintiff has timely paid the insurance premiums since 1996; when her reasonable expectation was that she and her dependents would receive life and cancer insurance coverage; when she expected that, as an insured, that the insurer's agents would provide her with accurate and reliable information about the policies, which would include when a dependent is no longer covered and what steps to take when coverage has ceased; when the insurer did not fulfill these expectations, to the detriment of her and her dependents; and when, if the insurer had properly advised her, she would have had the opportunity to take out a separate cancer policy for her daughter and her daughter would have been eligible for cancer policy benefits once she was diagnosed with cancer in 2009. Johnny v. Occidental Life Ins., 19 FSM R. 350, 359-60 (Pon. 2014).

A claim that since the property is part of the late patriarch's estate and the state probate proceeding is still pending, the real property still belongs to this decedent, is belied by the fact that the decedent died on August 23, 1997, yet this did not prevent the defendants from pledging the property as collateral for a December 22, 1997 loan, or prevent, after the corporation's formation on October 20, 2004, the administratrix of this decedent's estate and the corporation's chairperson/president from notifying the bank on November 2, 2004, of the corporation's ownership of the subject real estate and businesses. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 103-04 (Chk. 2015).

A corporation, by having accepted the benefit of the contract, may be estopped to deny an officer's authority to act on its behalf. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 104 (Chk. 2015).

To claim promissory estoppel a party must prove that 1) a promise was made; 2) the promisor should reasonably have expected the promise to induce actions of a definite and substantial character; 3) the promise did in fact induce such action; and 4) the circumstances require the enforcement of the promise to avoid injustice. Elements 3 and 4 are usually referred to collectively as "detrimental reliance," and detrimental reliance requires, at the very least, that a party has changed its position for the worse as a consequence of the defendant's purported misconduct. A finding of detrimental reliance does not depend upon finding any agreement or consideration. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 429 (App. 2016).

When the supposed "promise" might better be characterized as a careless misrepresentation, the plaintiff has failed to prove one of promissory estoppel's four elements. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 429 (App. 2016).

Estoppel is an equitable doctrine which may be invoked only by parties who themselves have acted properly concerning the subject matter of the litigation. Eot Municipality v. Elimo, 20 FSM R. 482, 490 (Chk. 2016).

Estoppel is to be applied against wrongdoers, not the victim of a wrong. Eot Municipality v. Elimo, 20 FSM R. 482, 490 (Chk. 2016).

Estoppel constitutes a doctrine which may be only be invoked by parties who themselves have acted properly concerning the subject matter of the litigation, and is a doctrine by which a person may be precluded by his act or conduct or silence, when it is his duty to speak. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 510 (App. 2016).

When, during a span of four plus years, the judgment debtors never even hinted that subject-matter jurisdiction was an unsettling issue and acquiesced to the trial court's rulings and implied a recognition of the judgment, the venerable legal concept of equitable estoppel applies since the judgment creditor relied on that conduct or more appropriately, lack thereof. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 511 (App. 2016).

Intentional misrepresentation, negligent misrepresentation, and promissory estoppel all contain elements of detrimental reliance. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 178 n.11 (Pon. 2017).

To claim promissory estoppel a party must prove that 1) a promise was made; 2) the promisor should reasonably have expected the promise to induce actions of a definite and substantial character; 3) the promise did in fact induce such action; and 4) the circumstances require the enforcement of the promise to avoid injustice. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 179 (Pon. 2017).

Since no estoppel can arise from an act or a representation if it was not intended to have the effect claimed and if, from its nature or from the time when, or the circumstances under which, it was done or made, it would be unreasonable to attribute such effect to it, and since the employee cannot show that his employer's alleged promise to him in 2008 was made with the intention that he take out a substantial home construction loan some three years later, (or some other action of a similar nature), his promissory estoppel claim must fail. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 179 (Pon. 2017).

If an importer, correctly reporting the types, quantities, and values of the dutiable goods, were to prove that it was affirmatively misled by customs officials to understate the amount of duty due, it may have an equitable estoppel claim against the government. Laxmi Enterprises v. FSM Dep't of Fin. & Admin., 21 FSM R. 601, 603 (Chk. 2018).

Appellate review of the equitable defenses of estoppel and waiver is similar to appellate review of a laches equitable defense since they are mixed questions of law and fact. An appellate court reviews an equitable estoppel defense for clear error for any factual findings and uses an abuse of discretion standard to review its application. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

The doctrines of laches and estoppel are closely allied. Laches is a form of equitable estoppel based on an unreasonable delay by a party in asserting a right. Alik v. Heirs of Alik, 21 FSM R. 606, 622 (App. 2018).

While laches focuses on the reasonableness of the plaintiff's delay in suit, equitable estoppel focuses on what the defendant reasonably has been led to believe from the plaintiff's conduct. While laches requires the passage of an unreasonable period of time in filing suit, estoppel does not. While estoppel requires reliance, laches generally does not. Alik v. Heirs of Alik, 21 FSM R. 606, 622 (App. 2018).

When there was no evidence, particularly undisputed evidence, that the plaintiffs' conduct led the defendants to reasonably believe or to rely on that conduct, summary judgment on an estoppel defense was inappropriate because a determination of estoppel generally involves questions of fact. Alik v. Heirs of Alik, 21 FSM R. 606, 622-23 (App. 2018).

Generally, the equitable defense of laches is only available to a defendant when the plaintiff has sought some form of equitable relief and is not available as a defense against actions at law. Because an action on a judgment is an action at law, the equitable defense of laches is not available as a matter of law. The same is true for an estoppel defense. FSM Dev. Bank v. Carl, 22 FSM R. 365, 374 (Pon. 2019).

A helicopter owner will be estopped from asserting that the U.S. lacked jurisdiction or authority over the helicopter that it had registered with the U.S., and from asserting that it did not have to comply with the U.S.'s applicable regulations or U.S. aviation law. It should not now be able to assert that the U.S. has no jurisdiction over its helicopter when it registered that helicopter with the U.S. and maintained its U.S. registration thereafter and derived whatever benefits that the U.S. registration afforded. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 459 (Pon. 2020).

While it is true that parties cannot confer or divest a court of jurisdiction by stipulation or by assumption, a helicopter buyer who had to register that helicopter somewhere (some country) and chose to register it in the U.S., will be estopped from denying the U.S.'s regulatory authority over its helicopter. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 459 (Pon. 2020).

Equitable estoppel (and unclean hands) is based on the other party's alleged misrepresentation or misconduct, this ground for relief can only be sought through Rule 60(b)(3), and that rule, as noted above, has a one-year absolute time limit, and that time limit expired four and a half months before the defendant filed his motion. FSM Dev. Bank v. Talley, 22 FSM R. 587, 594-95 (Kos. 2020).

– Laches

Laches and estoppel are equitable doctrines which may be invoked only by parties who themselves have acted properly concerning the subject matter of the litigation. Ponape Transfer & Storage v. Federated Shipping Co., 3 FSM R. 174, 178 (Pon. 1987).

Although final judgment in a case has been entered by the Trust Territory High Court, because any effort by a party to have the High Court consider its own jurisdiction would have been futile, it is procedurally fair to later afford the party an opportunity to question that jurisdiction. United Church of Christ v. Hamo, 4 FSM R. 95, 118-19 (App. 1989).

Laches is a tool courts use to limit a party's rights when they have not been timely asserted, such that it is unfair for the court to now redress them. The period of time may be less than the statutory limitations period and each case must be judged on a case by case basis for fundamental fairness. Palik v. Kosrae, 5 FSM R. 147, 155 (Kos. S. Ct. Tr. 1991).

Where there is a long delay in moving for certification of an issue and it appears the motion's sole purpose is to cause further delay, the doctrine of laches may bar the granting of the motion. Youngstrom v. Youngstrom, 5 FSM R. 335, 337-38 (Pon. 1992).

The elements of the equitable defense of laches include, at a minimum, inexcusable delay or lack of diligence by the plaintiff in bringing suit, and injury to the defendant from the plaintiff's inaction. For the delay to have been inexcusable, the plaintiff has to have known or had notice of the defendant's conduct giving rise to the cause of action and had an opportunity to bring suit. Mid-Pacific Constr. Co. v. Semes (II), 6 FSM R. 180, 185-86 (Pon. 1993).

The equitable defense of laches is not available to a defendant who has not shown inexcusable delay by the plaintiff in bringing suit and injury to the defendant as a result. Mid-Pacific Constr. Co. v. Semes (II), 6 FSM R. 180, 186 (Pon. 1993).

The basic elements of the doctrine of laches are 1) inexcusable delay or lack of diligence by the plaintiff in bringing suit, and 2) injury or prejudice to the defendant from plaintiff's delay. Delay is inexcusable when the plaintiff knew or had notice of defendant's conduct giving rise to plaintiff's cause of action, and had prior opportunity to bring suit. Nahnken of Nett v. United States (III), 6 FSM R. 508, 522 (Pon. 1994).

Where the plaintiff did know or should have known of defendants' claims for at least a decade, defendants should not have to be hauled into court to relitigate issues decided over ten years before because it is prejudicial to the defendants who had a reasonable right to assume that the TT High Court appellate decision had closed the matter in 1982. Nahnken of Nett v. United States (III), 6 FSM R. 508, 523 (Pon. 1994).

Although the doctrine of laches cannot be asserted against government land, where suit is prosecuted in the name of a government by a private individual laches may apply as a bar. Nahnken of Nett v. United States (III), 6 FSM R. 508, 523 (Pon. 1994).

The doctrine of adverse possession is unrelated to the defense of laches. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 176 n.8 (Pon. 1995).

The two elements to a laches defense are inexcusable delay or lack of diligence by a plaintiff in bringing suit, and injury or prejudice to the defendant from the plaintiff's delay. Inexcusable delay exists when plaintiff knew or had notice of the defendant's conduct which gave rise to plaintiff's cause of action, had an opportunity to bring suit, but failed to do so. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 177 (Pon. 1995).

The determination whether a plaintiff's delay in bringing suit is sufficient to justify the application of laches is made on a case by case basis. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 178 (Pon. 1995).

Where plaintiff inexcusably waited fifteen years after accrual of cause of action and prejudiced the state by allowing it to make substantial costly improvements the doctrine of laches will bar plaintiff's claims. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 178 (Pon. 1995).

The doctrine of laches may not be used as a defense against the government in an action brought by the government, but may be used as a defense by the government against a suit brought by a private party. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 179 (Pon. 1995).

A party whose conduct regarding the subject of the litigation is unconscionable, or its actions constitute deceit, fraud, or misrepresentation has unclean hands and thus may not invoke the equitable defense of laches. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 180 (Pon. 1995).

The equitable defense of laches and the statute of limitations are neither synonymous nor mutually exclusive. Unlike statutes of limitation, which forever bar an action after a fixed period of time, laches depends upon considerations of fairness, justice, and equity, and is invoked when the applicable statute of limitations has not yet expired. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 181 (Pon. 1995).

Laches and the statute of limitations are two different defenses. The statue of limitations defense has only one element – the passage of a specific statutory amount of time while the equitable defense of laches has two elements – the passage of a nonspecific amount of time during which the plaintiff engages in inexcusable delay or lack of diligence in bringing suit, and resulting prejudice to the defendant. Laches is always applied separate from and irrespective of the statute of limitations. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 489 (App. 1996).

Laches is a mixed question of law and fact. Whether the elements of laches have been established in any particular case is one of fact depending on the circumstances, and calls for the exercise of a sound discretion by the trial court. But whether, in view of the established facts, relief is to be denied–that is, whether it would be inequitable or unjust to the defendant to enforce the complainant's right–is a question of law. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 489 (App. 1996).

An abuse of discretion standard is used to review whether the elements of laches have been established, but the question of law – whether it would be inequitable or unjust to the defendant to enforce the complainant's right is reviewed *de novo*. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 489 (App. 1996).

In order for a plaintiff to be charged with inexcusable delay or lack of diligence the plaintiff must have had knowledge of the facts that gave rise to his claim. Ordinarily, actual knowledge on the part of the complainant is necessary in order to charge him with laches. However, knowledge may in some circumstances be imputed to him by reason of opportunity to acquire knowledge, or where it appears he could have informed himself of the facts by the exercise of reasonable diligence, or where the circumstances were such as to put a man of ordinary prudence on inquiry. Ordinary prudence depends on the particular circumstances of the case. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 490 (App. 1996).

A plaintiff inexcusably delays in bringing suit when he was aware of or should have been aware of, the state's control and use of the land that had not been given over to his control and for which he had received no payment for at least fifteen years during which he could have brought suit against the state or its predecessor in interest. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 490 (App. 1996).

Delay alone does not constitute laches. Even lengthy delay does not eliminate the prejudice prong of the laches test, but the longer the delay the less need there is to show, or search for, specific prejudice, and the greater the shift to the plaintiff of the task of demonstrating lack of prejudice. The test of laches is prejudice to the other party. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 490 (App. 1996).

There are two types of prejudice that may stem from delay in filing suit. The adverse party may be unable to mount a defense because of loss of records, destruction of evidence, missing witnesses, and the like, or the prejudice may be economic. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 490 (App. 1996).

The doctrine of laches is applied only where it would be inequitable to allow a person making a belated claim to prevail. Each case is governed chiefly by its own circumstances. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 491 (App. 1996).

Generally, a party who has failed to act properly – a party who has "unclean hands" – cannot invoke an equitable doctrine such as laches. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 491 (App. 1996).

Where public lands are involved laches cannot be used as a defense against the government, but the government may use laches as a defense against another who seeks to claim public lands. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 491 (App. 1996).

Laches is a plaintiff's inexcusable delay or lack of diligence in bringing suit, and resulting prejudice to the defendant. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 63, 65 (Chk. 1997).

The defenses of estoppel, unclean hands and laches are all equitable defenses which do not apply in actions sounding in personal injury. Conrad v. Kolonia Town, 8 FSM R. 183, 193 (Pon. 1997).

An officer's authority to contract for a corporation may be actual or apparent, and may result from the officer's conduct and the acquiescence thereto by the directors. The corporation may be estopped to deny the officer's authority by having accepted the benefit of the contract. Generally, an officer's authority to act for his corporation with reference to contracts is a question of fact to be determined by the trier of fact. Asher v. Kosrae, 8 FSM R. 443, 452 (Kos. S. Ct. Tr. 1998).

Generally, the laches defense is meant to prevent injustice as to a person against whom one seeks to assert rights where the one asserting the rights has slept on those rights. Thus, laches at a minimum comprehends an inexcusable delay in bringing suit, and prejudice to the defendant as a result. Senda v. Semes, 8 FSM R. 484, 501 (Pon. 1998).

The doctrine of laches or stale demand is whereby the owner after the lapse of time is deprived of his interests because he has not exercised proper diligence in protecting his rights in court. Hartman v. Chuuk, 9 FSM R. 28, 33 (Chk. S. Ct. App. 1999).

Laches involves two factors, 1) inexcusable delay or lack of diligence by the plaintiff in bringing suit, and 2) injury or prejudice to the defendant from plaintiff's delay. A predicate to reliance on the doctrine of laches is that he who would invoke it must have clean hands, and must have acted properly concerning the subject matter of the litigation. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 78 (Kos. 1999).

A defendant who has had the benefit of the goods which he received without paying for them is precluded from relying on the doctrine of laches as a defense to a suit for payment. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 78 (Kos. 1999).

Both res judicata and laches are affirmative defenses and must be asserted in responsive pleading. If affirmative defenses are not raised in the answer or other responsive pleading, the defenses are waived. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 94 (Kos. S. Ct. Tr. 1999).

The doctrine of laches applies to the actual filing of a claim rather than to any inaction that might arise following the initiation of a legal proceeding. In re Lot No. 014-A-21, 9 FSM R. 484, 491 (Chk. S. Ct. Tr. 1999).

Since laches is an equitable defense, it is only available to a defendant when a plaintiff seeks some form of equitable relief. It is not a valid defense to an action brought solely at law. FSM Dev. Bank v. Gouland, 9 FSM R. 605, 607 (Chk. 2000).

The doctrine of laches is applied only where it would be inequitable to allow a person making a belated claim to prevail. Each case is governed chiefly by its own circumstances. The equitable defense of laches has two elements: the passage of a nonspecific amount of time during which the plaintiff engages in inexcusable delay or lack of diligence in bringing suit, and resulting prejudice to the defendant. Laches is always applied separate from and irrespective of the statute of limitations. Skilling v. Kosrae, 9 FSM R. 608, 613 (Kos. S. Ct. Tr. 2000).

In determining whether to apply laches, the resulting prejudice to the defendant is explored first. There are two types of prejudice that may stem from delay in filing suit. The adverse party may be unable to mount a defense because of loss of records, destruction of evidence, missing witnesses, and the like, or the prejudice may be economic. Skilling v. Kosrae, 9 FSM R. 608, 613 (Kos. S. Ct. Tr. 2000).

A predicate to reliance on the doctrine of laches is that he who would invoke it must have clean hands, and must have acted properly concerning the subject matter of the litigation. Generally, a party who has failed to act properly a party who has "unclean hands" cannot invoke an equitable doctrine such as laches. Skilling v. Kosrae, 9 FSM R. 608, 613 (Kos. S. Ct. Tr. 2000).

When two Directors of Education failed to act properly by not acting upon the plaintiff's grievance and not making a written finding on plaintiff's grievance, as required by regulation, the State cannot invoke the equitable doctrine of laches in its defense. Skilling v. Kosrae, 9 FSM R. 608, 613 (Kos. S. Ct. Tr. 2000).

When a plaintiff has acted expeditiously to notify a defendant of his trespass as soon as the defendant began construction on the land, there has been no unreasonable delay prejudicing the defendant which could give rise to a laches defense. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 188 (Pon. 2001).

Laches and the statute of limitations are two different defenses. The statute of limitations defense has only one element, which is the passage of a specific statutorily set amount of time. The equitable defense of laches has two elements. One element is the passage of a nonspecific amount of time during which the plaintiff engages in inexcusable delay or lack of diligence in bringing suit, and the other element is the resulting prejudice to the defendant. Kosrae v. Skilling, 11 FSM R. 311, 318 (App. 2003).

Unlike statutes of limitation, which bar an action after a fixed period of time, laches depends upon

considerations of fairness, justice, and equity, and is invoked when the applicable statute of limitations has not yet passed. Kosrae v. Skilling, 11 FSM R. 311, 318 (App. 2003).

There is a two part standard of review for a laches defense since laches is a mixed question of law and fact. Whether the elements of laches have been established is a factual determination which depends upon the case's circumstances, and calls for an appellate court to apply an abuse of discretion standard of review. But whether, in view of the established facts, it would be equitable or unjust to the defendant to enforce the complainant's right is a question of law that is reviewed *de novo*. Kosrae v. Skilling, 11 FSM R. 311, 318 (App. 2003).

There was no abuse of discretion by the trial court in finding that the state had not satisfied the laches requirement of showing prejudice due to the passage of time before the plaintiff brought his action when any resulting prejudice due to a witness's death was not significant as other pertinent records and witnesses still existed and because there was no resulting prejudice to the state in light of its joint stipulation of facts and documents. Kosrae v. Skilling, 11 FSM R. 311, 318 (App. 2003).

The equitable doctrine of laches cannot be invoked when a party has failed to act properly or is said to have "unclean hands." Kosrae v. Skilling, 11 FSM R. 311, 318 (App. 2003).

When a state employee did not engage in inexcusable delay or a lack of diligence in bringing suit, as the delay was caused by his engaging the administrative grievance process and waiting for the state's required response, and when the state, by its own inaction on the employee's claims, was not in compliance with the applicable regulation and statute, failed to act properly with regard to his grievance, the state, being the cause of the delay, cannot invoke the equitable doctrine of laches. Kosrae v. Skilling, 11 FSM R. 311, 318 (App. 2003).

Laches and failure to mitigate damages are not grounds on which to grant summary judgment when a sufficient factual basis to support either ground has not yet been developed. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 127 (Chk. 2005).

Laches has two elements – the passage of a nonspecific amount of time during which the plaintiff engages in inexcusable delay or lack of diligence in bringing suit, and resulting prejudice to the defendant. Laches is always applied separate from and irrespective of the statute of limitations. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 18 (App. 2006).

When a party has not shown why the delay was inexcusable or how it was prejudiced by the delay, its assertions of laches and estoppel are without merit. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 18 (App. 2006).

The basic elements of the doctrine of laches are 1) inexcusable delay or lack of diligence by the plaintiff in bringing suit, and 2) injury or prejudice to the defendant from plaintiff's delay. Delay is inexcusable when the plaintiff knew or had notice of the defendant's conduct giving rise to the plaintiff's cause of action, and had prior opportunity to bring suit. The doctrine of laches or stale demand applies to deprive an owner of his interests after the lapse of time because he has not exercised proper diligence in protecting his rights in court. It is an affirmative defense that is raised at the time an answer is filed by a defendant or else is usually considered waived. Heirs of Taulung v. Heirs of Wakuk, 15 FSM R. 294, 299 (Kos. S. Ct. Tr. 2007).

The question of prejudice to the other party is usually treated as a question of law and reviewed de novo on appeal. The longer the delay, the less need there is to show specific prejudice and the greater the shift to the other party to demonstrate the lack of prejudice. When a party developed the property and treated it as their own for over 50 years, the passing of witnesses and the loss of their testimony is prejudicial to them. The prejudice is economic as well, from the loss of their efforts in maintaining and developing the property during this time. With a delay of 50 years, the burden shifts to the other party to demonstrate lack of prejudice. The criteria of prejudice is met. Heirs of Taulung v. Heirs of Wakuk, 15

FSM R. 294, 299-300 (Kos. S. Ct. Tr. 2007).

The length of the delay is a factor in laches, too. The twenty-year statute of limitations establishes one clear limit to the time allowed for bringing a claim, but laches is a separate analysis. Both address the concern that after the passage of a length of time, a person loses the opportunity to assert their rights. When over 50 years have passed, if this is not enough time to allow someone to assert a claim of ownership to land, it is difficult to set forth what length of time is sufficient. The Land Court did not abuse its discretion when it treated the claim of ownership as stale after 50 years. Heirs of Taulung v. Heirs of Wakuk, 15 FSM R. 294, 300 (Kos. S. Ct. Tr. 2007).

Laches is another equitable doctrine that is applied to bar relitigation of cases. Laches requires the passage of a nonspecific amount of time during which the plaintiff engages in inexcusable delay or lack of diligence in bringing suit, and the resulting prejudice to the defendant. Laches depends upon considerations of fairness, justice, and equity, and is invoked when the applicable statute of limitations has not yet passed. But when the statute of limitations passed on a claim, the question of laches will not be addressed. Andon v. Shrew, 15 FSM R. 315, 322 (Kos. S. Ct. Tr. 2007).

A borrower's laches defense will fail when the borrower has had the use of a blast freezer securing the loan the whole time since 1998 without making any payment on the loan because the equitable doctrine of laches cannot be invoked when a party has failed to act properly or is said to have "unclean hands" regarding the litigation's subject matter. FSM Dev. Bank v. Chuuk Fresh Tuna, Inc., 16 FSM R. 335, 338 (Chk. 2009).

Laches is the passage of a nonspecific amount of time during which the plaintiff engages in inexcusable delay or lack of diligence in bringing suit, which results in prejudice to the defendant. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 538 (Chk. 2011).

When the defendant became an employer in Chuuk sometime during 2009 and when this suit, after some initial contact and some failed negotiations between the parties during 2010, was filed in December 2010, the court can conclude that, as a matter of law, this was not an inexcusable delay. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 538 (Chk. 2011).

Since laches is an equitable defense, it is available to a defendant only when a plaintiff seeks some form of equitable relief and is not a valid defense to an action brought solely at law, such as this suit for unpaid statutory health insurance premiums which is an action at law. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 538 (Chk. 2011).

The elements of a laches defense are the plaintiff's inexcusable delay or lack of diligence in bringing suit and resulting prejudice to the defendant. Tarauo v. Arsenal, 18 FSM R. 270, 273 (Chk. 2012).

Whether the elements of laches have been established in any particular case is one of fact depending on the circumstances, and calls for the trial court's exercise of a sound discretion. Tarauo v. Arsenal, 18 FSM R. 270, 273 (Chk. 2012).

When it has not been shown, that the three-and-a-half-year time period, by itself, was an inexcusable delay and when it has not been shown, instead of merely speculating, that the delay has resulted in prejudice to the defendants, the defendants cannot be granted summary judgment on their laches defense and for the same reasons, they must also be denied summary judgment on their estoppel and waiver defense. Tarauo v. Arsenal, 18 FSM R. 270, 273 (Chk. 2012).

Generally, the equitable defense of laches is only available to a defendant when the plaintiff has sought some form of equitable relief and is not available as a defense against actions at law. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 362 (App. 2012).

Laches has two elements – the passage of a nonspecific amount of time during which the plaintiff engages in inexcusable delay or lack of diligence in bringing suit, and resulting prejudice to the defendant. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 362 (App. 2012).

Since conversion is an action at law, laches is not a defense that can be used against a conversion claim. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 362 (App. 2012).

Even if it were a permissible defense, laches cannot be applied when there was no inexcusable delay. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 362 (App. 2012).

In the Kosrae State Court, both res judicata and laches are affirmative defenses that must be asserted in responsive pleadings, and, if affirmative defenses are not raised in the answer or other responsive pleading, the defenses are waived. Waguk v. Waguk, 21 FSM R. 60, 67 (App. 2016).

The equitable doctrine of laches is usually invoked only when the applicable statutory limitations period has not yet run, and not only depends upon considerations of fairness, justice, and equity, but also cannot be invoked when the party raising it has failed to act properly or is said to have "unclean hands." Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 580-81 (App. 2018).

Laches is rarely subject to summary judgment, and can rarely be resolved without some preliminary evidentiary inquiry. Generally, when a defendant asserts the laches defense, a full hearing of testimony on both sides of the issue is required. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 581 (App. 2018).

An appellate court uses a two-part standard to review a laches defense since it is a mixed question of law and fact. Whether the elements of laches have been established in any particular case is a factual determination which depends upon the circumstances, and calls for us to apply an abuse of discretion standard of review. But whether, in view of the established facts, it would be equitable or unjust to the defendant to enforce the complainant's right is a question of law that is reviewed de novo. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

The equitable doctrine of laches is usually invoked only when the applicable statutory limitations period has not yet run, and not only depends upon considerations of fairness, justice, and equity, but it also cannot be invoked when the party raising it has failed to act properly or is said to have "unclean hands." Alik v. Heirs of Alik, 21 FSM R. 606, 622 (App. 2018).

Laches is rarely subject to summary judgment, and can rarely be resolved without some preliminary evidentiary inquiry. Generally, when a defendant asserts a laches defense, a full hearing of testimony on both sides of the issue is required. Alik v. Heirs of Alik, 21 FSM R. 606, 622 (App. 2018).

Summary judgment (or dismissal) on a laches ground is particularly inappropriate when the plaintiffs' allegations, on their face, do not show that the plaintiffs neglected to or delayed in asserting their claims once they learned that another claimed to be the sole landowner and when there was no evidentiary inquiry in the trial court, although the case required one to prove the laches defense. Alik v. Heirs of Alik, 21 FSM R. 606, 622 (App. 2018).

The doctrines of laches and estoppel are closely allied. Laches is a form of equitable estoppel based on an unreasonable delay by a party in asserting a right. Alik v. Heirs of Alik, 21 FSM R. 606, 622 (App. 2018).

While laches focuses on the reasonableness of the plaintiff's delay in suit, equitable estoppel focuses on what the defendant reasonably has been led to believe from the plaintiff's conduct. While laches requires the passage of an unreasonable period of time in filing suit, estoppel does not. While estoppel requires reliance, laches generally does not. Alik v. Heirs of Alik, 21 FSM R. 606, 622 (App. 2018).

For an independent action for relief, no statute of limitations would apply because there is no time limit on when an independent action may be brought, but the doctrine of laches is applicable and undue delay can bar relief. Panuelo v. Sigrah, 22 FSM R. 341, 358 (Pon. 2019).

Laches is an important consideration in bankruptcy proceedings because the chief purpose of the bankruptcy laws is to secure a prompt and effectual administration of and settlement of the estate of all bankrupts within a limited period. Panuelo v. Sigrah, 22 FSM R. 341, 358 (Pon. 2019).

Generally, the equitable defense of laches is only available to a defendant when the plaintiff has sought some form of equitable relief and is not available as a defense against actions at law. Because an action on a judgment is an action at law, the equitable defense of laches is not available as a matter of law. The same is true for an estoppel defense. FSM Dev. Bank v. Carl, 22 FSM R. 365, 374 (Pon. 2019).

– Waiver

When an individual claiming an interest in land has no prior knowledge of an impending transaction of other parties concerning that land, his failure to forewarn those parties of his claim cannot be interpreted as a knowing waiver of his rights. Etpison v. Perman, 1 FSM R. 405, 418 (Pon. 1984).

Express or implied waiver, to be effective, must be the knowing, intentional and voluntary relinquishment of a known legal right. Enlet v. Bruton, 10 FSM R. 36, 41 (Chk. 2001).

Waiver is the relinquishment of a known right, either by action or words, which rests upon the equitable principle that one will not be permitted to act contrary to his former position when to do so results in detriment to another. Adams v. Island Homes Constr., Inc., 10 FSM R. 510, 513 (Pon. 2002).

Rescission is equitable in nature, just as waiver is. Adams v. Island Homes Constr., Inc., 10 FSM R. 510, 513 (Pon. 2002).

For a party with "unclean hands," the equitable defense of waiver (as opposed to a contractual waiver) is insufficient as a matter of law. Eot Municipality v. Elimo, 20 FSM R. 482, 490 (Chk. 2016).

Appellate review of the equitable defenses of estoppel and waiver is similar to appellate review of a laches equitable defense since they are mixed questions of law and fact. An appellate court reviews an equitable estoppel defense for clear error for any factual findings and uses an abuse of discretion standard to review its application. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

The issue of waiver is a mixed question of law and fact for which an appellate court uses a de novo review for the law and the clearly erroneous standard for the facts. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

Waiver is the intentional relinquishment of a known right. Ordinarily, the question of waiver is one of fact. Alik v. Heirs of Alik, 21 FSM R. 606, 623 (App. 2018).

A waiver must be voluntary, which implies knowledge of the right, claim, or thing waived and that the plaintiffs knew they were waiving that right. Alik v. Heirs of Alik, 21 FSM R. 606, 623 (App. 2018).

Waiver of a right or privilege is not presumed. Waivers of rights are inherently suspect, and will not be inferred from doubtful and ambiguous factors. Alik v. Heirs of Alik, 21 FSM R. 606, 623 (App. 2018).

When the documentary evidence in the pleadings does not show that there is no genuine issue about whether all of the plaintiffs voluntarily and intentionally relinquished their known right to registered title to the parcel, summary judgment that waiver barred the plaintiffs' claim was inappropriate. Alik v. Heirs of Alik, 21 FSM R. 606, 623 (App. 2018).

ESCHEAT

Unclaimed balances of judgments paid into court may escheat to the government. Mid-Pacific Constr. Co. v. Senda, 7 FSM R. 371, 375 (Pon. 1996).

At least two Micronesian legislatures have considered some form of escheat suited for application in the FSM. Congress has enacted a limited escheat statute concerning the proceeds from property found in an unclaimed shipwreck. The Pohnpei Legislature has enacted a more general escheat statute concerning the real and personal property of an intestate who die without heirs. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 672 (App. 1996).

Escheat of property, as is property law in general, is primarily a state power. Therefore, based on the inherent power of the court in the absence of an applicable statute, any funds paid into court left unclaimed after the twenty-year statute of limitations has run will escheat to the state. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 673 (App. 1996).

EVIDENCE

An actor's intention must be inferred from what he says and what he does. FSM v. Boaz (I), 1 FSM R. 22, 24-25 (Pon. 1981).

The FSM Supreme Court is vested, by statute, with authority to suppress or exclude, evidence obtained by unlawful search and seizure. 12 F.S.M.C. 312. FSM v. Tipen, 1 FSM R. 79, 92 (Pon. 1982).

When a purported state employment contract erroneously and consistently recites that it is between the employee and the Trust Territory of the Pacific Islands and contains other statements demonstrating that the contract words were not taken seriously and did not comport with reality, the document is unpersuasive evidence of the relationships among the employee, the state, and the national government. Manahane v. FSM, 1 FSM R. 161, 165-67 (Pon. 1982).

As a matter of constitutional due process, a trial court presented with an alibi defense should consider evidence concerning the alibi along with all other evidence and shall not find the defendant guilty if after considering all of that evidence, the judge feels there is a reasonable doubt as to the defendant's guilt. Alaphonso v. FSM, 1 FSM R. 209, 223-25 (App. 1982).

Unsubstantiated speculations raised after trial are not sufficient to raise reasonable doubt as to a person's guilt in the light of eyewitness testimony. Alaphonso v. FSM, 1 FSM R. 209, 225-27 (App. 1982).

The existence of plea negotiations says little to the court about defendant's actual guilt. FSM v. Skilling, 1 FSM R. 464, 483 (Kos. 1984).

When there is sufficient evidence of other force in the record to support a conviction for forces sexual penetration, there is no inconsistency in finding the use of force even without ruling that a knife compelled the victim to submit. Buekea v. FSM, 1 FSM R. 487, 494 (App. 1984).

It is not unreasonable for a trial court to conclude that a police officer, claiming to effect an arrest, who hits a person four times with a mangrove coconut husker and kills him was trying to kill him. Loch v. FSM, 1 FSM R. 566, 576 (App. 1984).

Death and the cause of death can be shown by circumstantial evidence. Loch v. FSM, 1 FSM R. 566, 577 (App. 1984).

It is generally recognized by courts that nonmedical persons may be capable of recognizing when

someone is intoxicated. Ludwig v. FSM, 2 FSM R. 27, 33 n.3 (App. 1985).

An affidavit unsupported by factual detail is not sufficient to cast doubt on the proposition that a project manager of a joint venture, who is in charge of all activities of a corporate member of the joint venture within a state, is a managing or general agent of that corporation. Luda v. Maeda Road Constr. Co., 2 FSM R. 107, 110 (Pon. 1985).

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

In adopting the rules of evidence used by the United States federal courts, the Kosrae State Court also adopted the reasons for those rules and the case law which interprets them, insofar as those are appropriate for Kosrae. Nena v. Kosrae, 3 FSM R. 502, 506 (Kos. S. Ct. Tr. 1988).

A request for admission as to the genuineness of a letter, excludable as evidence under Kosrae Evidence Rule 408 because it relates to settlement negotiations, is reasonably calculated to lead to evidence which could be admissible, and an objecting party may not obtain a protective order pursuant to Kosrae Civil Rule 26 to avoid responding to the request. Nena v. Kosrae, 3 FSM R. 502, 507 (Kos. S. Ct. Tr. 1988).

An inference is not permitted if it cannot reasonably be drawn from the facts in evidence. Este v. FSM, 4 FSM R. 132, 138 (App. 1989).

In a contempt trial, the trial court may consider information in addition to evidence adduced in the contempt hearing itself when the other information came to the knowledge of the trial court in previous judicial hearings related to the matter which gave rise to the contempt charge, and when the judge identified the "outside" information and gave the defendant an opportunity to object but the defendant failed to do so. Semes v. FSM, 5 FSM R. 49, 52 (App. 1991).

The trier of fact determines what should be accepted as the truth and what should be rejected as untrue or false, and in doing so is free to select from conflicting evidence, and inferences that which it considers most reasonable. Epiti v. Chuuk, 5 FSM R. 162, 166 (Chk. S. Ct. Tr. 1991).

Evidence that a customary adoption has taken place may be offered via affidavits from the natural parents of the child, consenting and attesting to the customary adoption. In re Marquez, 5 FSM R. 381, 384 (Pon. 1992).

Generally, a breach of duty is proven by the testimony of witnesses who describe what a reasonable person, acting in compliance with the duty of care, would have done or not done in the same situation. In rare circumstances when the facts are indisputable and when they raise such a strong inference that all reasonable people agree on the duty of care, the court can decide, as a matter of law, the person has breached his duty of care. Nena v. Kosrae, 5 FSM R. 417, 421 (Kos. S. Ct. Tr. 1990).

It is error for a trial court to rely on exhibits never identified, described or marked at trial. Waguk v. Kosrae Island Credit Union, 6 FSM R. 14, 18 (App. 1993).

Where exhibits are identified and marked at trial but never introduced, and where there is extensive testimony and cross examination of witnesses concerning the contents of these exhibits except for interest and late charges, an award for interest and late charges must be deleted because it is not supported by testimony. Waguk v. Kosrae Island Credit Union, 6 FSM R. 14, 18 (App. 1993).

Unless a malfunction is alleged or proven, the printout of a functioning Global Positioning System unit will be presumed correct as to a ship's position regardless of assertions to the contrary. FSM v. Kotobuki Maru No. 23 (II), 6 FSM R. 159, 164-65 (Pon. 1993).

If a judge does not specifically rely on the objected to evidence, the appellate court must presume that he did not rely on that evidence and therefore that any error in admitting the evidence did not result in substantial hardship or prejudice to a party. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 349 (App. 1994).

Where there is no indication that the trial court relied on certain evidence, the presumption is there was no such reliance, and any error in its admission is not prejudicial. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 351 (App. 1994).

The presumption that a written contract that is complete on its face embodies the final and entire agreement between the parties may be rebutted by evidence presented at trial. Etscheit v. Adams, 6 FSM R. 365, 384 (Pon. 1994).

Representations of counsel in a probable cause hearing are not a substitute for competent, reliable evidence in the form of testimony or appropriately detailed affidavits. FSM v. Yue Yuan Yu No. 708, 7 FSM R. 300, 305 (Kos. 1995).

A court cannot infer that someone attended a hearing because they might have attended another hearing that might have taken place an hour beforehand at the same place. Palik v. Henry, 7 FSM R. 571, 575 (Kos. S. Ct. Tr. 1996).

The issue of the court's jurisdiction to try a case is a preliminary matter that the accused, by testifying upon, does not subject himself to cross-examination as to other issues in the case. FSM v. Fal, 8 FSM R. 151, 154 (Yap 1997).

Proof of guilt may be by either direct evidence, circumstantial evidence or both. Direct evidence is evidence, which if believed, proves the existence of facts in issue without inference or presumption. Circumstantial evidence is evidence of facts and circumstances from which the existence or nonexistence of facts in issue may be inferred. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 171 (Pon. 1997).

An appellate court will not reweigh the evidence presented at trial. Credibility determinations are uniquely the province of the factfinder, not the appellate court. Johnny v. FSM, 8 FSM R. 203, 207 (App. 1997).

It is not a manifest error of fact requiring a new trial that certain evidence that parties felt was compelling was not recited in the court's decision or given the weight they thought proper, when the parties were afforded a full hearing and the court considered all evidence on the record in reaching its decision. Conrad v. Kolonia Town, 8 FSM R. 215, 217 (Pon. 1997).

A court may suppress evidence obtained by an unlawful search and seizure. FSM v. Santa, 8 FSM R. 266, 268 (Chk. 1998).

Any reliance on the contents of a further investigation that have never been a part of the record is improper. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 172 (App. 1999).

It is improper for counsel to argue facts only within the counsel's knowledge and not in the record. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 172 (App. 1999).

Any reliance on a "proposed disposition" to prove the respondent attorney's misconduct is improper when the respondent attorney's statements show that any admissions of misconduct were only for the purpose of the reviewing justice's approval of the proposed disposition and if it was not accepted, the respondent attorney would have to call defense witnesses. Such equivocation is not an admission of professional misconduct. It is thus inadmissible under FSM Evidence Rules 410 and 408, which bar the

admission of pleas, plea discussions, and related statements and compromises and offers to settle, respectively. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 172 (App. 1999).

When no party raised a best evidence objection about two checks during the trial, when the trial court did not preclude or limit the introduction of evidence about either check, when both checks were involved in much of the testimony offered by the plaintiff and both also formed the subject of direct examination testimony by defense witnesses, when the trial judge himself questioned defense witnesses at length concerning the two checks, and when defense witnesses acknowledged both checks' existence, their amounts and that they were made out to the plaintiff, the trial court cannot be said to have applied the "best evidence" rule, which is exclusionary in character, and requires the production of originals unless specified exceptions are met. Tulensru v. Wakuk, 10 FSM R. 128, 133 (App. 2001).

The weight to be accorded admissible evidence is for the trier of fact to determine. Tulensru v. Wakuk, 10 FSM R. 128, 134 (App. 2001).

Rule 59 provides a means for relief in cases in which a party has been unfairly made the victim of surprise, but relief will be denied if the party failed to seek a continuance. Surprise, along with excusable neglect, is also addressed by Rule 60(b)(1). Thus, if a party is surprised at trial he is amply protected by Rules 59(a) and 60(b). Amayo v. MJ Co., 10 FSM R. 371, 383 (Pon. 2001).

A party may not derive benefit post trial from tendering evidence that which he was under a discovery obligation to produce pre-trial, and did not. Amayo v. MJ Co., 10 FSM R. 371, 385 (Pon. 2001).

When a sketch proffered to the appellate court, even if it had been admitted at trial, would not have been enough to demonstrate that a trial court's factual finding was clearly erroneous, the factual finding must stand. Phillip v. Moses, 10 FSM R. 540, 544 (Chk. S. Ct. App. 2002).

When the plaintiff's complaint claimed he performed "over 714 hours of overtime work," the defendant was given notice of the plaintiff's overtime claims. The defendant thus cannot exclude evidence that the plaintiff worked 1184.5 overtime hours, and the plaintiff does not need to amend his complaint, because 1184.5 hours is more than 714 hours. Palsis v. Kosrae, 10 FSM R. 551, 552 (Kos. S. Ct. Tr. 2002).

When the alleged defect in the kerosene resulted from the contamination of the product, and not its design, logic dictates that the plaintiff must show a high degree of similarity between the accident in this case and the accidents in the other cases before the other accidents will be admitted on the question of the dangerous condition of the allegedly contaminated product. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 583 (Pon. 2002).

Speculation, guess and surmise may not be substituted for competent evidence, and where there are several possible causes of one accident, one or more of which a defendant is not responsible for, a plaintiff cannot recover without proving that the injury was sustained wholly or in part by a cause for which the defendant was responsible. William v. Mobil Oil Micronesia, Inc., 10 FSM R. 584, 587 (Pon. 2002).

The court is required to receive satisfactory evidence that custom or tradition applies to a case, before utilizing it. Kosrae v. Sigrah, 11 FSM R. 26, 30 (Kos. S. Ct. Tr. 2002).

A trial court's errors in admitting or excluding evidence are not grounds for reversal when the appellants have not explained what the evidence would have shown had it been admitted and how this evidence would or could have changed the court's decision because error in admitting or excluding evidence is not ground for vacating judgment unless refusal to do so is inconsistent with substantial justice. Rosokow v. Bob, 11 FSM R. 210, 216 (Chk. S. Ct. App. 2002).

Authentic school and hospital documents, which reflect the correct birth date of a petitioner may be used to establish the petitioner's correct birth date. In re Phillip, 11 FSM R. 301, 302 (Kos. S. Ct. Tr. 2002).

An appellate ruling that only determined that certain testimony was admissible did not instruct the trial court as to what weight to give his testimony or what inferences it must draw from it on remand. Rosokow v. Bob, 11 FSM R. 454, 458 (Chk. S. Ct. App. 2003).

When in discovery responses the amount of the plaintiffs' damages was stated as slightly more than the amount actually proven at trial, the invoices offered and received into evidence at trial establish by a preponderance of the evidence the amount of plaintiffs' damages. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 241-42 (Pon. 2003).

The court's pretrial order did not prevent the bank from adequately defending on the question of damages when all witnesses specified in the bank's pretrial statement whose testimony summaries indicated that they had testimony to offer relevant to the question of damages were permitted to testify. Further, when the bank did not object before trial to the court's limitation of its damages witnesses, it waived any objection in this regard. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 242 (Pon. 2003).

In order to prove lost rental damages, a business should be prepared to show that all other similar available vehicles were rented and that the had to turn away customers who would otherwise had rented the damaged pickup, and the number of days it would have been rented. A long-term, ongoing business might show this by comparing the average of the total rental days of all pickups combined for each month before the pickup was damaged with the average total rental days for each month after the accident. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 472 (Pon. 2004).

Under the traditional "new business rule," which applies to any business without a history of profits, it has been recognized that evidence of expected profits from a new business is too speculative, uncertain, and remote to be considered and does not meet the legal standard of reasonable certainty. But lost profits can be recovered by a new business when it is possible to show, by competent evidence and with reasonable certainty, that profits would have been made in the particular situation, and the amount of those profits. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 472 (Pon. 2004).

When the boundary claimed by appellants was supported by testimony of a neutral observer and the appellees' was based only on their testimony, the Land Court decision, which accepted the appellees' boundary claim was not based upon substantial evidence. Heirs of Noda v. Heirs of Joseph, 13 FSM R. 21, 23 (Kos. S. Ct. Tr. 2004).

When there was no evidence presented to the Land Court regarding the parties' acceptance of the river as the boundary between their parcels, but the Land Court relied upon an alleged settlement between the parties which was never presented or accepted as evidence at the hearing, the Land Court decision which determined the river as the boundary was not based upon substantial evidence. Heirs of Noda v. Heirs of Joseph, 13 FSM R. 21, 23 (Kos. S. Ct. Tr. 2004).

When the parties' settlement to divide the islands in the swampy area such that each party is owner of two islands was accepted into evidence at the Land Court hearing, but was not reflected in the Land Court decision, that decision regarding the swampy area, was not based upon substantial evidence. Heirs of Noda v. Heirs of Joseph, 13 FSM R. 21, 23-24 (Kos. S. Ct. Tr. 2004).

Representations of counsel at a hearing are not a substitute for competent, reliable evidence in the form of testimony or detailed affidavits. Counsel's statements constitute only argument of counsel and are not evidence. Kosrae v. Nena, 13 FSM R. 63, 67 (Kos. S. Ct. Tr. 2004).

A certified map is conclusive only as to the location and boundaries of the land within it. It is not conclusive as to the boundaries and locations of other parcels of land, although it may be some evidence. Church of the Latter Day Saints v. Esiron, 13 FSM R. 99a, 99f (Chk. 2004).

Evidence first introduced in response to questioning by the trial judge during defendant's closing

argument was not properly in evidence before the trial court as it was made during the closing arguments and such statements were not made under oath, not subject to cross-examination, and not subject to any rebuttal testimony by any witness. Argument does not constitute evidence. Livaie v. Weilbacher, 13 FSM R. 139, 144 (App. 2005).

When the trial court's assessment of restitution damages was specifically calculated using a figure based on a statement made during closing argument, it was not supported by evidence properly before the trial court. As such, the amount of restitution assessed by the trial court is clearly erroneous and must be vacated and the case remanded to the trial court to determine the amount of restitution based on the evidence properly before it or to hold a further evidentiary hearing on the issue. Livaie v. Weilbacher, 13 FSM R. 139, 144-45 (App. 2005).

When the plaintiff tendered receipts for the equipment rental, but the receipts were not original documents, nor copies of the originals: the receipts had been reconstructed recently for the purpose of the hearing, the receipts were not accepted into evidence. Livaie v. Weilbacher, 13 FSM R. 206, 208 (Kos. S. Ct. Tr. 2005).

When at trial of the matter, the defendant had argued that only 25% of the excavated fill materials had met specifications and had actually been hauled to the road project site, but, at the hearing held on April 14, 2005, did not present any evidence in support of this argument, the plaintiff is entitled to restitution for the market value of all the materials excavated from the quarry. Livaie v. Weilbacher, 13 FSM R. 206, 208 (Kos. S. Ct. Tr. 2005).

When the Plaintiff seeks as a component of restitution, ground rent for his quarry and argues that ground rent is "normally compensated in similar contracts," but did not present any evidence during the June 2003 trial nor at the April 14, 2005 hearing in support of his claim for ground rent and did not offer any "similar contracts" to establish that ground rent is "normally compensated" for the use of land for a quarry, the plaintiff's request for restitution for ground rent must be denied. Livaie v. Weilbacher, 13 FSM R. 206, 208 (Kos. S. Ct. Tr. 2005).

When the defendants had the burden of proof to establish their claim for damages in an amount different than that presented by the plaintiffs, but failed to present any witnesses or other evidence to contradict or modify the calculations presented by the plaintiffs, the court cannot jump to an inference when the underlying testimony does not support the inference. Livaie v. Weilbacher, 13 FSM R. 249, 251 (Kos. S. Ct. Tr. 2005).

When an unrepresented party made statements as a preamble to the questions he posed to another claimant, the Land Court, recognizing that the claimants were lay persons and not trained in legal hearing procedures, should have provided instructions that cross-examination is limited to asking questions of the witness. Edmond v. Alik, 13 FSM R. 413, 416 (Kos. S. Ct. Tr. 2005).

Since it is error for a court to rely upon evidence never presented at a hearing or trial, the Land Court's reference in its decision to statements not in evidence properly before it was contrary to law. Edmond v. Alik, 13 FSM R. 413, 416 (Kos. S. Ct. Tr. 2005).

The weight to be accorded admissible evidence is for the trier of fact to determine. Kosrae v. Tilfas, 14 FSM R. 27, 30 (Kos. S. Ct. Tr. 2006).

When the defendant argued that the court should recognize custom regarding the relationship between him and the victim, but did not present any evidence of the relationship between victim and him, and did not present any evidence of custom, specifically evidence that due to the relationship between victim and the defendant, it would be customary for the defendant to show up drunk at a relative's home and commit a battery upon the relative, the court may not utilize tradition in reaching a decision because it has not received satisfactory evidence of the tradition. When a defendant has not provided any evidence

of custom or tradition, it cannot be considered. Kosrae v. Tilfas, 14 FSM R. 27, 30-31 (Kos. S. Ct. Tr. 2006).

When there was undisputed evidence presented of the defendant's performance of other physical activity, the court can infer that the defendant's ailments did permit the defendant to complete a variety of activities requiring movement of his arms, legs and body, and did not affect his performance of the field sobriety tests. Kosrae v. Tulensru, 14 FSM R. 115, 122 (Kos. S. Ct. Tr. 2006).

When it is undisputed that a public road is a public place and that the defendant was carrying and possessing an open beer can on the public road, the court can draw the inference from the facts in evidence that the open beer can possessed by the defendant on the public road was an open beer can containing beer, which is an alcoholic drink. Kosrae v. Tulensru, 14 FSM R. 115, 122 (Kos. S. Ct. Tr. 2006).

The Kosrae Rules of Evidence do not require corroboration of undisputed testimony. Kosrae v. Tulensru, 14 FSM R. 115, 125 (Kos. S. Ct. Tr. 2006).

Even assuming that the photos not admitted would have shown that the defendant was not at fault in the accident, that would have had no bearing on his state of intoxication because even if the other driver were 100% at fault, there is no question that the defendant was driving a vehicle, and he would still have been subject to conviction under the driving under the influence statute if he were driving that vehicle while under the influence. Tulensru v. Kosrae, 15 FSM R. 122, 127 (App. 2007).

It was not error to exclude photos from evidence when the probative value of the photos of an accident scene taken some months after the accident, and without the vehicles present, is negligible. Tulensru v. Kosrae, 15 FSM R. 122, 127 (App. 2007).

Japanese survey maps, alone, contain no assurance of who should be shown as owners as they were primarily concerned with boundaries. The survey maps are some evidence of ownership, but that there must be substantial evidence to support the decision of ownership. Testimony from many witnesses to determine that the appellees controlled and used the land from over ten to fifteen years prior to the survey map through the time of filing claims, in excess of fifty years, is substantial evidence. Heirs of Taulung v. Heirs of Wakuk, 15 FSM R. 294, 298 (Kos. S. Ct. Tr. 2007).

The burden of proving custom and tradition relies on the party asserting its effect. When both parties were specifically given the opportunity to offer such evidence, but neither party took that opportunity, the court correctly concluded that no Kosraean customary transfer or acquisition of land could be considered because no party offered evidence. Heirs of Taulung v. Heirs of Wakuk, 15 FSM R. 294, 298-99 (Kos. S. Ct. Tr. 2007).

When the Land Court findings consist of testimony of a number of witnesses of a family's undisputed use, control and development of the parcel without interference for over 50 years and that family continues to do so today, the Land Court finding was based on substantial evidence to support the family's ownership, even though another's name was on the Japanese survey map and when considering the evidence in a light favorable to the appellees, the appellants, the Land Court's decision was not clearly erroneous. Heirs of Taulung v. Heirs of Wakuk, 15 FSM R. 294, 299 (Kos. S. Ct. Tr. 2007).

The application of the Kosrae Rules of Evidence is expressly excluded from proceedings with respect to release on bail. Nedlic v. Kosrae, 15 FSM R. 435, 438 (App. 2007).

A defendant's suppressed statement may not be used against him at trial unless he chooses to testify on his own behalf, in which case, the statement may be used to impeach his credibility. FSM v. Sam, 15 FSM R. 491, 493 (Chk. 2008).

The trial court used a co-defendant's pre-trial, out-of-court affidavit only against the declarant since the judge's discourses with the prosecutor stated that it was only being offered or used against the declarant and the trial court's made specific findings with regard to the affidavit that only concerned the declarant co-defendant and since the court's special findings delineated other pieces of evidence, independent of that affidavit, that supported the other defendants' participation in the conspiracy. Engichy v. FSM, 15 FSM R. 546, 556-57 (App. 2008).

The best practice for a trial court finding itself in the situation where a non-testifying defendant's out-of-court statement will be introduced into evidence in a joint or multi-defendant trial, is to make an early, clear and uniform record identifying those defendants against whom the out-of-court statement will and will not be used. A trial court is not generally prohibited from admitting the statement. Engichy v. FSM, 15 FSM R. 546, 557 (App. 2008).

When the record was uniform in signifying that the trial court did not consider one co-defendant's affidavit against the other defendants and when the trial court, in its special findings made at the trial's conclusion identified the other pieces of admitted evidence that it relied upon and that exist independent of the one co-defendant's affidavit; when a review of this specifically relied upon evidence, in addition to the complete record on appeal, presents a sufficient evidentiary basis to support the other defendants' participation in the conspiracy wholly independent of and detached from the one co-defendant's affidavit, the appellate court will conclude that the trial court was successful in excluding the one co-defendant's affidavit as evidence against the other defendants. Engichy v. FSM, 15 FSM R. 546, 557 (App. 2008).

When the trial court asked the government to redact the other defendants' names from one co-defendant's affidavit but no redacted version offered into evidence, and when a physical redaction under these circumstances would have been superfluous, merely replicating the mental exercise of compartmentalizing already successfully undertaken by the trial court, if the trial court proceeded with the trial despite the government's failure to provide a redacted copy of the statement, that choice was within the trial court's discretion and did not unfairly result in substantial hardship or prejudice to any party and thus was not reversible error. Engichy v. FSM, 15 FSM R. 546, 557-58 (App. 2008).

If challenged, previous ledger pages constituting the rest of an open account may be needed to support a plaintiff's case for any items whose accuracy the defendant has not stipulated to because when a writing or recorded statement or part thereof is introduced by a party, an adverse party may require him at that time to introduce any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it. Albert v. George, 15 FSM R. 574, 581 (App. 2008).

Various writings, admitted into evidence, which were signed on the behalf of Chuuk, the party to be charged, can establish by a preponderance of the evidence that the plaintiff and Chuuk entered into an agreement whereby the plaintiff would obtain insurance on Chuuk's vessels for the two periods in question, and that Chuuk would pay for the premiums for the insurance obtained. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 651 (Pon. 2008).

Counsel's argument about a memo's effect is not a substitute for evidence. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 653 (Pon. 2008).

The remedy for a defendant's unlawful detention over 24 hours is not the dismissal of the information against him or the suppression of all evidence and statements obtained from him. His only remedy in a criminal prosecution (as opposed to a civil suit) is suppression of any evidence obtained as a result of the illegal detention. FSM v. Sato, 16 FSM R. 26, 30 (Chk. 2008).

When an FSM Evidence Rule is modeled after a United States rule, the court should look to United States court decisions interpreting that rule. Fritz v. FSM, 16 FSM R. 192, 197 (App. 2008).

Evidence that speaks for itself is evidence that is significant or self-evident. Fritz v. FSM, 16 FSM R. 192, 198 (App. 2008).

An agreement granting fishing rights is not alone conclusive evidence of land ownership. Narruhn v. Aisek, 16 FSM R. 236, 241-42 (App. 2009).

Speculation may not be substituted for competent evidence. Jano v. Fujita, 16 FSM R. 323, 328 (Pon. 2009).

Although the presence of a person's name on the 1932 Japanese Survey Map as the owner of a parcel of land is not conclusive or dispositive of that person's ownership but may be overcome or rebutted by other evidence, when there was substantial evidence in the record before the Land Court that Mackwelung used, controlled, and occupied Yekula continuously after 1932, including evidence and testimony presented at the original 1979 Land Commission proceeding, the Land Court reasonably assessed this evidence as supporting the Mackwelungs' position that a *kewosr* to Sra Nuarar had taken place, and since the testimony that a previously unmentioned person had owned the land and had later transferred it to Kun Mongkeya was reasonably assessed as not credible, the evidence did not overcome the 1932 Japanese survey map. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 377 (Kos. S. Ct. Tr. 2009).

It was not error for the Land Court not to award one side all of the disputed land based on an option agreement that was never exercised and that only refers to a parcel situated somewhere in the disputed land and not all of it and so it does not support a claim to all of the land, even assuming it is some evidence of ownership of some part. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 378-79 (Kos. S. Ct. Tr. 2009).

The FSM Rules of Evidence would appear to be inapplicable to proceedings with respect to release of an arrested vessel on bond. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 543, 546 (Yap 2009).

It is constitutional error for a trial court to rely on exhibits never identified, described, or marked at trial, but the trial court does not commit reversible error when there was extensive testimony and cross-examination of witnesses concerning the exhibits' contents. In such an instance, it is the witness testimony that is the evidence before the court. George v. George, 17 FSM R. 8, 10 (App. 2010).

Although the court must first look to FSM sources of law for purposes of establishing legal requirements in criminal cases, when an FSM court has not previously construed an FSM evidence rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources on the United States Federal Rules of Evidence for guidance. Cholymay v. FSM, 17 FSM R. 11, 19 (App. 2010).

A litigant's constitutional right to due process is violated when a trial court relies on evidence, not a part of the record, without prior notice to the parties or without an opportunity for the parties to comment on it, and it is constitutional error for the court to rely on exhibits never identified, described or marked at trial. George v. Albert, 17 FSM R. 25, 32 (App. 2010).

Trial court judgments that were, in part, based on documents that were never authenticated by affidavit or by testimony and their accuracy was never vouched for by affidavit, or testimony, or other evidence will be vacated. George v. Albert, 17 FSM R. 25, 32 (App. 2010).

When the receipts relied upon by the trial court were never identified, marked, described, or admitted at trial or evidentiary hearing; when those receipts were provided to the court post-trial and were never authenticated, introduced, or admitted into evidence; and when neither side had the opportunity to examine witnesses, or to produce witnesses to testify, on the accuracy, meaning, or completeness of the receipts or about the receipts that the trial court disallowed because someone else had signed them, the documents supplied to the court after trial were not evidence that was properly before that court and thus were not evidence in the record and the trial court's use of these documents violated due process. There is therefore no substantial evidence in the record to support the judgment amount. The judgment amount

finding is thus clearly erroneous, and the judgment will be vacated since that figure is not supported by substantial evidence in the record, and, in fact, is not supported by any evidence in the record. George v. Albert, 17 FSM R. 25, 32-33 (App. 2010).

Although physical evidence or the lack thereof may be compelling in some cases, it is not a requirement of proof when the victim herself testified credibly to the alleged act and when her testimony was neither impeached nor rebutted. The lack of physical evidence may even be expected in a case charging sexual abuse because, unlike sexual assault, proof of sexual abuse does not require proof of sexual penetration, but only of sexual contact. Sexual contact is defined as any touching of the sexual or other intimate parts of a person not married to the defendant, done with the intent of gratifying the sexual desire of either party. It would be highly unlikely for a doctor examining a person days after her genitalia or intimate parts had been touched to be able to determine whether she had in fact been touched. Thus, the lack of physical evidence in a sexual abuse case is rather to be anticipated, and does not provide the defendant with a defense. Chuuk v. Inek, 17 FSM R. 137, 145 (Chk. S. Ct. Tr. 2010).

The weight to be accorded admissible evidence is for the court as trier of fact to determine. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

In reviewing a dismissal for insufficiency of evidence, once the appellate court determines the trial court's findings are not clearly erroneous, the appellate court asks whether those factual findings are sufficient or insufficient to meet the plaintiff's burden of proof. The trial court's answer to that question forms a legal conclusion, and as such is a ruling on a point of law that is reviewed de novo. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

Uncontradicted and unimpeached evidence will be taken as true to the extent that it cannot arbitrarily be disregarded. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

Reversible error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected and no error in the admission or the exclusion of evidence is ground for granting a new trial or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. Palsis v. Kosrae, 17 FSM R. 236, 244 (App. 2010).

A conclusory argument is not evidence. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 324 (Kos. 2011).

When the FSM proved by a preponderance of the evidence that the fishing boat's HF radio was not on and it also proved that the vessel had a VHF radio, but there was no evidence whether the VHF radio was on or off or whether it was tuned to channel 16, the FSM's claim that the vessel was not monitoring a required radio frequency fails for lack of proof because the statute, the Foreign Fishing Agreement, and the foreign fishing permit all require that the vessel monitor only one of those two frequencies and the evidence shows that the vessel had the ability to monitor the VHF channel 16 and there is no evidence that it was not being monitored. FSM v. Kana Maru No. 1, 17 FSM R. 399, 405 (Chk. 2011).

The circumstantial evidence proves proximate cause even though exactly how the reef was damaged – whether anchors and/or chains were dragged on the reef; or whether a detached or slack cable or chain used to connect the barge to the tugboat struck the reef; or whether one or both of the vessels struck the reef; or whether some combination of these was responsible – is undetermined since the damages occurred while the two vessels were on the site (or while just the barge was there) and since no other vessels were present at the time and the damage was of the type that must have been caused by one or more of the methods described. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 174-75 (Yap 2012).

The court will not attach any deference to a state agency's findings of fact when the defendant was never a party to any proceeding in that agency and was not even aware of the proceeding and no state

agency ever initiated any action against the defendant or imposed any fines or penalties on it and when this court case is not a judicial review of an adversarial agency action so the agency report is not entitled to the judicial deference given such agency action. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 175 (Yap 2012).

Evidence is exculpatory if it clears or tends to clear from alleged fault or guilt. FSM v. Kool, 18 FSM R. 291, 293 n.1 (Chk. 2012).

When the appellants do not contend that the checks are not authentic but contend that the signature endorsements are all forgeries, and when the trial court found as fact that, except for one or two or a few that she had signed herself, Lilly Iriarte had authorized Santos to sign her name on the premium checks, the appellate court cannot conclude that the finding was clearly erroneous since substantial evidence in the record supports that finding. Since a forgery is a signature of a person that is made without the person's consent and without the person otherwise authorizing it, Lilly Iriarte's signatures are not forgeries even if made by Santos and having the original checks could not have altered the finding that Lilly Iriarte were authorized. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 352 (App. 2012).

Counsel's assertion in one post-trial filing that the plaintiff's land occupied by the defendant was worth $26,000 and consisted of 2,000 square meters with an annual rental value of $20 per square meter was not competent evidence because counsel's assertions in argument do not constitute evidence before the court. Killion v. Nero, 18 FSM R. 381, 387 (Chk. S. Ct. Tr. 2012).

When no evidence was presented at trial that the Director of Public Safety was personally involved in the plaintiff's arrest and jailing or that he directed its manner or timing, the court cannot presume that because his wife was the complainant that he ordered or directed that the plaintiff be arrested and jailed because, in the absence of evidence, an inference just as likely is that a zealous subordinate, believing it would curry favor with his superior, decided that a quick arrest and some jail time were in order. The court therefore will not hold the Director, in his personal capacity, liable to the plaintiff. Alexander v. Pohnpei, 18 FSM R. 392, 400 (Pon. 2012).

It is within the court's sound discretion whether to admit additional evidence after trial. Exercise of such discretion must take into account the evidence's probative value against the danger of injuring the opposite party through surprise. The opposing party cannot properly examine or counter evidence offered after trial, and so the burden is on the party offering the evidence to demonstrate good cause why the evidence should be admitted. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 269 (Pon. 2014).

While it is appropriate for a Chief Justice to engage with all the relevant stake-holders in the process of promulgating a general court order, the decision making process is quite different for a justice called upon to render an evidentiary ruling in a criminal case. Even when a party raises a question of first impression, a judge presiding over a criminal case has a responsibility to apply the law to the case's facts, and it would be an abuse of judicial discretion to delay an evidentiary ruling in order to solicit advice from non-parties suggesting what the law should be. This judicial power is curtailed by the process of appellate review. FSM v. Halbert, 20 FSM R. 49, 53 (Pon. 2015).

An affidavit, not introduced at trial and which the defendants never had the opportunity to address or to cross-examine a witness concerning its contents, will be stricken as evidence since the opposing party cannot properly examine or counter evidence offered after trial and since the burden is on the party offering the evidence to demonstrate good cause why the evidence should be admitted. George v. Palsis, 20 FSM R. 111, 114 (Kos. 2015).

Just because an affidavit was filed while the court was considering cross motions for summary judgment does not mean that it is automatically admitted into evidence at the later trial. To be evidence that the court can consider, the affidavit should be offered at trial in the usual manner. Then it might be admitted in the usual manner, or it might be objected to and the objection sustained, or the affiant himself

might instead be called to testify. George v. Palsis, 20 FSM R. 111, 114 (Kos. 2015).

A court cannot award damages based on matter "introduced" during argument after the presentation of evidence has ended. George v. Palsis, 20 FSM R. 111, 117 (Kos. 2015).

In the FSM, a "declaration under the penalty of perjury" is not the equivalent of an affidavit as it would be in the United States where a statute makes it so. George v. Palsis, 20 FSM R. 174, 177 (Kos. 2015).

Since, by its terms, a statute enacted by the U.S. Congress that permits declarations in place of affidavits affects only U.S. rules and regulations and since the FSM Congress has not enacted an equivalent statute and no procedural rule has been promulgated to bring about the same result, an unsworn declaration, even when the declarant avers or asserts that it is made "under the penalty of perjury," is not the equivalent of an affidavit required by the FSM rules. George v. Palsis, 20 FSM R. 174, 177 (Kos. 2015).

A party's insistence that the case solely involved a boundary dispute within a parcel is belied by his claim to the parcel *in toto*. Ittu v. Ittu, 20 FSM R. 178, 185 (App. 2015).

Counsel's representation does not constitute competent evidence. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 573 (Pon. 2016).

When there is a dispute about the existence or effect of a local custom, and the court is not satisfied about either its existence or its applicability, such custom becomes a mixed question of law and fact, and the party relying upon it must prove it to the court's satisfaction. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642-43 (Pon. 2016).

An argument contained within a brief does not constitute evidence. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 122 (App. 2017).

Direct evidence is evidence, which if believed, proves the existence of facts in issue without inference or presumption. Circumstantial evidence is evidence of facts and circumstances from which the existence or nonexistence of facts in issue may be inferred. Chuuk v. Roman, 21 FSM R. 138, 142 (Chk. S. Ct. Tr. 2017).

A judge is required to engage in a conscious balancing of the proffered evidence's probative value against the harms likely to result from its introduction into evidence. FSM v. Wolphagen, 21 FSM R. 247, 249 (Pon. 2017).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion. Eliam v. FSM Social Sec. Admin., 21 FSM R. 412, 416 (App. 2018).

Evidence must be in the nature of facts – not conclusions or counsel's unsupported allegations. An argument contained in a brief does not constitute evidence. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 533 (App. 2018).

Because a preliminary injunction can be granted on basis of procedures that are less formal and evidence that is less complete than in a trial on the merits, the evidence rules are relaxed when considering requests for a temporary restraining order or preliminary injunction. In re Gross Revenue Tax, 22 FSM R. 124, 129 (Pon. 2018).

Because a preliminary injunction hearing is less formal than a full trial, less complete evidence is required for an injunction than at trial. Therefore, a petitioner's affidavits submitted on the record may be sufficient evidence when considering a temporary restraining order or a preliminary injunction. In re Gross Revenue Tax, 22 FSM R. 124, 129 (Pon. 2018).

As a general rule, the state is expected to produce all evidence available to it at the time of trial. This rule exists for the purposes of judicial economy, an efficient disposition of cases, and to not delay the defendant's rights to a speedy trial. Some instances merit exception to this general rule. Chuuk v. Nowell, 22 FSM R. 130a, 130d (Chk. S. Ct. Tr. 2018).

Under the court's inherent common law authority to administer the order of proof before it, the court may entertain a party's motion to reopen its case in the interest of justice, such as when the state had inadvertently forgotten to introduce a piece of evidence, the other party had notice through discovery that such evidence will be introduced, and the other party was not unduly prejudiced by the evidence's introduction. Chuuk v. Nowell, 22 FSM R. 130a, 130e (Chk. S. Ct. Tr. 2018).

The factors that are relevant for deciding whether to grant the state's motion to reopen its case in chief are: 1) the seriousness of the crime alleged; 2) whether motion to re-open case resulted from lack of preparation for trial; 3) timeliness of motion to reopen case in chief; 4) good cause; 5) whether motion to reopen case in chief resulted from a decision of the court after the case in chief, which was contrary to the state's understanding of the applicable law; 6) whether the other party would be unfairly prejudiced by reopening such case; and 7) whether re-opening the case will unduly delay the disposition of the case. Chuuk v. Nowell, 22 FSM R. 130a, 130d-0e (Chk. S. Ct. Tr. 2018).

When a movant has provided an affidavit verifying an attached payment history and no contrary evidence is provided, the court normally would accept this evidence as an accurate account of what was owed if the affidavit and the ledger sheet were regular on their face, but the court will not if it is apparent that the numbers do not add up. FSM Dev. Bank v. Carl, 22 FSM R. 365, 376 (Pon. 2019).

Evidence-gathering orders, under 12 F.S.M.C. 1709(1)(b), involve the gathering of evidence by methods other than by a search warrant, under 12 F.S.M.C. 1709(1)(a), commanding the search for, and seizure of, particular things. An evidence-gathering order may involve taking testimony, the collecting or recording of data, or producing things, documents, or copies. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 463 (Pon. 2020).

Proof may be made by testimony as to reputation or by testimony in the form of an opinion, and the contents of writings, recordings, or photographs may be proved by the testimony of the party against whom offered, without accounting for the nonproduction of the original. Pelep v. Lapaii, 22 FSM R. 482, 487 (Pon. 2020).

– Admissibility

Evidence will not be stricken when most previously introduced evidence is unquestionably related to counts still before the court; when the description of the defendants' duties before and after July 12, 1981 did not vary significantly; when the auditor's activities uncovered illegal transactions both before and after July 12, 1981; when various Mobil employees' conversations before July 12, 1981 related to the existence of a pattern of conduct and planning and carrying out illegal transactions and are relevant about whether a conspiracy existed after July 12, 1981. FSM v. Jonas (II), 1 FSM R. 306, 310-12 (Pon. 1983).

Evidence of the earlier alterations is not rendered inadmissible on grounds that it relates to other crimes, wrongs, or acts when the fact a defendant was able to use his position with Mobil to embezzle funds in a particular way before July 12, 1981, lends itself to an inference that the same defendant, holding the same position after July 11, 1981, had the opportunity to carry out the same kind of transaction thereafter and because information concerning pre-July 12, 1981 transactions and activities may also: 1) suggest that defendants who engaged in illegal activities earlier still intended to do so at a later time; 2) indicate preparation for later actions; 3) establish a plan extending beyond July 12, 1981; 4) suggest knowledge of similar later actions; 5) imply identity of people involved in subsequent similar ICR alterations later; and 6) reduce likelihood that ICR alterations after July 12, 1981 occurred by mistake or accident. These

legitimate purposes overcome the general prohibition against evidence of prior misconduct merely to show the defendant's character. FSM v. Jonas (II), 1 FSM R. 306, 313 (Pon. 1983).

If the offered item possesses characteristics which are fairly unique and readily identifiable, and if the substance of which the item is composed is relatively impervious to change, the trial court has broad discretion to admit merely on the basis of testimony that the item is the one in question and is in substantially unchanged condition. Joker v. FSM, 2 FSM R. 38, 46 (App. 1985).

The FSM Rules of Evidence for identification, authentication and admissibility of evidence do not require that exhibits related to an essential element of the crime may be admitted into evidence only if identified beyond a reasonable doubt. Joker v. FSM, 2 FSM R. 38, 47 (App. 1985).

Kosrae Evidence Rule 408, which renders evidence of settlement negotiations inadmissible in the trial, is based upon the court's commitment to encourage out of court settlements and includes offers made in the early stages of a dispute. Nena v. Kosrae, 3 FSM R. 502, 505-06 (Kos. S. Ct. Tr. 1988).

Pursuant to Kosrae Evidence Rule 408, all statements, including factual assertions, made during the settlement process are protected and inadmissible in court to prove liability or invalidity of a claim. Nena v. Kosrae, 3 FSM R. 502, 506 (Kos. S. Ct. Tr. 1988).

Although Kosrae Evidence Rule 408 does not require the exclusion of factual evidence "otherwise discoverable" simply because it was presented during compromise negotiations, a statement made in a letter seeking to settle a dispute, which statement is clearly connected to and part of the settlement offer, is not otherwise discoverable. Nena v. Kosrae, 3 FSM R. 502, 507 (Kos. S. Ct. Tr. 1988).

A party seeking to offer evidence after trial must show good cause why it should be admitted. The court, in exercising its discretion, must weigh the evidence's probative value against the danger of injuring the opposite party through surprise because the opposing party cannot properly examine or counter the evidence, and without good cause shown the court should deny its admission as untimely. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 121 (Pon. 1993).

It is not an abuse of the trial court's discretion for a trial court to admit testimony that is inconsistent with that witness's answer to an interrogatory. Admissions made in interrogatories are not binding and the answering party may introduce other evidence on the subject of the admissions at trial. Contradictions between a party's answers to interrogatories and court testimony go to the weight and credibility of the testimony, not to its admissibility. Conflicting testimony may be admitted, and it is the responsibility of the finder of fact to weigh all the answers and resolve the conflict. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 350 (App. 1994).

Inconsistencies between a party's responses to discovery and trial testimony properly go to the weight and credibility of the testimony and not to its admissibility. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 352 (App. 1994).

Hearsay is not admissible in a hearing or trial. Hearsay is an out-of-court statement offered as evidence to prove the truth of the matter asserted. A statement is an oral or written assertion. An affidavit is hearsay which is inadmissible unless allowed by an exception to the hearsay rule. In re Disqualification of Justice, 7 FSM R. 278, 279 (Chk. S. Ct. Tr. 1995).

A certified copy of a judgment from a foreign court is admissible evidence as a properly authenticated public record of that jurisdiction. Joeten Motor Co. v. Jae Joong Hwang, 7 FSM R. 326, 327 (Chk. S. Ct. Tr. 1995).

Statements made for purposes of medical diagnosis or treatment are not excluded from admissibility by the hearsay rule. Primo v. Refalopei, 7 FSM R. 423, 436 n.28 (Pon. 1996).

Business records are normally authenticated by a custodian of records. A duplicate of an original writing is not admissible if there is a genuine issue as to the authenticity of the original. Richmond Wholesale Meat Co. v. Kolonia Consumer Coop. Ass'n (III), 7 FSM R. 453, 455 (Pon. 1996).

In order for a deposition to be admissible a deponent must physically appear before someone who can identify and administer the oath even if the deposition is taken telephonically. FSM v. Skico, Ltd. (III), 7 FSM R. 558, 559 (Chk. 1996).

Expert opinion testimony is admissible if the witness is qualified by knowledge, skill, experience, training, education, or otherwise; and that the expert's opinion will assist the trier of fact to understand the fact at issue. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 622 (App. 1996).

Hearsay within hearsay is inadmissible. Hearsay otherwise admissible may be excluded where it consists primarily of reiteration of a statement made by some other unidentified person. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 659, 663 (Pon. 1996).

Maps attached to a filing without any sort of foundation or any type of authentication cannot be considered as evidence. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 38 (Kos. S. Ct. Tr. 1997).

A statement, which if it had been made by the defendant would have been admissible as an admission of a party-opponent, is inadmissible hearsay when made by the defendant's then spouse as part of a traditional apology, and cannot be considered on a summary judgment motion. Glocke v. Pohnpei, 8 FSM R. 60, 62 (Pon. 1997).

Counsel's statements concerning an answer constitute argument of counsel, not evidence. Only the answer itself is admissible evidence. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 172 (App. 1999).

The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. Elaija v. Edmond, 9 FSM R. 175, 182 (Kos. S. Ct. Tr. 1999).

On a design defect products liability claim, evidence of other accidents is admissible to show a dangerous condition so long as the proponent makes a foundational showing that the prior accidents occurred under substantially the same circumstances. Further, evidence proffered to illustrate the existence of a dangerous condition necessitates a high degree of similarity because it weighs directly on the ultimate issue to be decided by the finder of fact. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 583 (Pon. 2002).

When the instant case is similar to the other accidents to the extent that the alleged defect is the same, i.e., contaminated kerosene, but the manner in which the other accidents occurred is quite different, the other accidents are not sufficiently similar to be admissible on the question of dangerousness. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 583 (Pon. 2002).

Generally, evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith, but such evidence is admissible as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. FSM v. Wainit, 11 FSM R. 1, 5 (Chk. 2002).

Production of an original document, although preferable, is not absolutely required. Other evidence of its contents could be admissible if all originals have been lost or destroyed (unless the proponent destroyed them in bad faith), or if no original can be obtained by any available judicial process or procedure, or if the

original is under the control of the party against whom it is offered and he does not produce the original, or if it is not closely related to a controlling issue. FSM v. Wainit, 11 FSM R. 1, 6 (Chk. 2002).

The testimony of one Constitutional Convention delegate as to the meaning of a constitutional provision would reflect his personal opinions and beliefs on the interpretation of the subject constitutional provision, and not the opinions of the entire twenty-two member Convention, and will therefore not be admitted. Kosrae v. Sigrah, 11 FSM R. 26, 30 (Kos. S. Ct. Tr. 2002).

There is no "dead man's statute" barring the admission of a deceased person's statements as evidence in Kosrae state law or in the rules of evidence. Taulung v. Jack, 11 FSM R. 345, 348 (Kos. S. Ct. Tr. 2003).

Ultimately, the determination as to whether or not to admit evidence is left to the trial court's discretion. The weight to be accorded admissible evidence is for the trier of fact to determine. Kosrae v. Phillip, 13 FSM R. 449, 455 (Kos. S. Ct. Tr. 2005).

The test for the admissibility of field sobriety test results is that the court must consider evidence of the police officers' knowledge of the tests, his training and his ability to interpret his observations. Any testimony concerning the defendant's performance would be subjected to cross-examination and defense counsel could question any inadequacy regarding the administration of the tests. The test results' admissibility must be determined at trial, following such testimony. The test results' admissibility for each accused will necessarily depend upon the facts of his or her case, and must therefore depend upon the evidence presented for each individual accused in each case. The results may be admissible in one case, but not admissible in another. Kosrae v. Phillip, 13 FSM R. 449, 455 (Kos. S. Ct. Tr. 2005).

A duplicate is admissible to the same extent as an original unless a genuine question is raised as to the original's authenticity or in the circumstances it would be unfair to admit the duplicate in lieu of the original. Since an original is not required, other evidence of a writing's contents is admissible if at a time when an original was under the control of the party against whom offered, the party was put on notice that the contents would be a subject of proof at the hearing, and the party does not produce the original at the hearing. When the party had the originals and did not produce them, it has no ground to complain. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 19 (App. 2006).

Even if the evidence is of events that took place in periods for which prosecution may be time-barred, it is not necessarily inadmissible. Nor is hearsay necessarily inadmissible. FSM v. Kansou, 14 FSM R. 139, 140-41 (Chk. 2006).

Statements by a party-opponent offered against that party are not hearsay and are admissible. FSM v. Kansou, 14 FSM R. 139, 141 (Chk. 2006).

A statement by a party's co-conspirator made during the course and in furtherance of the conspiracy is not hearsay and is admissible. FSM v. Kansou, 14 FSM R. 139, 141 (Chk. 2006).

An account of evidence adduced in a hearing in another case to which the movant was not a party and a hearing at which he was not present or had an opportunity to be heard, even presuming (which the court cannot do) that the evidence presented then is accurately characterized now, is not admissible and cannot be used against the movant's summary judgment motion. Dereas v. Eas, 14 FSM R. 446, 456 (Chk. S. Ct. Tr. 2006).

Former testimony is not admissible unless the party against whom the testimony is now offered (or a predecessor in interest) had an opportunity and similar motive to develop that testimony by direct, cross, or redirect examination. Dereas v. Eas, 14 FSM R. 446, 456 (Chk. S. Ct. Tr. 2006).

Failure to inform an accused of his rights does not in and of itself entitle an accused to an acquittal, but

no evidence obtained as a result of such violation shall be admissible against the accused. FSM v. Louis, 15 FSM R. 348, 352 (Pon. 2007).

Evidence and statements lawfully obtained from a defendant before he had been illegally detained over 24 hours will be admissible, but the defendant is entitled to the suppression of any evidence or statements obtained from him after his first 24 hours of detention. FSM v. Sato, 16 FSM R. 26, 30 (Chk. 2008).

By statute, 12 F.S.M.C. 218, statements taken (even if made voluntarily) and evidence obtained as a result of a violation of the defendant's statutory right to be brought before a judicial officer without unnecessary delay are inadmissible, but when none of the evidence the defendant seeks to suppress was obtained as a result of his being detained for more than 24 hours, the motion to suppress will be denied. FSM v. Sato, 16 FSM R. 26, 30 (Chk. 2008).

Business records are normally authenticated by a custodian of records. The custodian or other qualified witness who must authenticate business records need not be the person who prepared or maintained the records, or even an employee of the record-keeping entity, as long as the witness understands the system used to prepare the records. Objections concerning the identity or competency of preparer of a record might go to the evidentiary weight or credibility of a record but not to the record's admissibility. Cholymay v. FSM, 17 FSM R. 11, 20 (App. 2010).

To prove the content of a writing the original is required, but a duplicate of an original writing is admissible when the original cannot be found and if there is no genuine issue as to the original's authenticity. Cholymay v. FSM, 17 FSM R. 11, 22-23 (App. 2010).

Arguments concerning the accuracy of the record go to their weight and not their admissibility. The question then is whether the photocopy was a duplicate of what the government claimed it to be. Cholymay v. FSM, 17 FSM R. 11, 23 (App. 2010).

When the trial court excluded an affidavit from admission because the prima facie authenticity for notarized documents extended by Evidence Rule 902(8) was rebutted by the clerk's testimony that he should not have notarized it because the affiant had not appeared before him and it was not signed in his presence, whereupon the court concluded that the affidavit could not be authenticated under Rule 902(8) and when the proponents did not seek to authenticate the affidavit by other means such as by calling another witness to authenticate the signature on the affidavit despite its defective notary seal, the trial court, without any additional testimony to authenticate the signature, had no way of determining whether the signature on the affidavit was in fact genuine. The court's determination not to admit the affidavit was thus within its discretion. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

Grounds for admission of a document that were not raised in the trial court, may be considered waived. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

When the proponents failed to raise any other basis for admission of an affidavit other than as a self-authenticating document, the appellate court is left to review whether the trial court's exclusion was proper on the basis that the document was not authenticated. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

When the trial court denies admission of documentary evidence on the basis that it was not properly authenticated, the appellate court's review is limited to determining whether the trial court abused its discretion in deciding whether the movant made a prima facie showing as to the document's authenticity. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

Generally, the requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

When the affidavit was not acknowledged in the manner provided for by law since the affiant was not present at the time that the affidavit was acknowledged, the trial court's determination that the presumption of self-authentication had been rebutted and that the affidavit was not otherwise authenticated was proper. There was therefore no abuse of discretion in the trial court's denial of the affidavit's admission into evidence for the reason that it was not authenticated. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

When an affidavit's substance was only read into the record for the purpose of ruling on its admissibility, the better practice may have been to allow the presentation of a foundation for admission, including establishing the document's authenticity, before proceeding with testimony regarding its contents. That practice would avoid confusion as to whether the substance of inadmissible documentary evidence has become a part of the evidentiary record. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

Extrinsic evidence of authenticity, as a condition precedent to admissibility, is not required with respect to documents accompanied by a certificate of acknowledgment, executed by a notary public in the manner provided by law. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 29 (App. 2016).

Although to prove the content of a writing the original writing is required, FSM Evidence Rule 1003 makes a duplicate admissible to the same extent as an original unless 1) a genuine question is raised as to the authenticity of the original or 2) in the circumstances it would be unfair to admit the duplicate in lieu of the original. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 352 (App. 2012).

When the defendant has not indicated what specific pieces of evidence he seeks to exclude and the prosecution does not appear to have informed the defendant what specific evidence it will seek to introduce at trial, the court is not in a position to rule on the evidence's admissibility and will deny the defendant's current motion in limine and will rule on the admissibility of any particular evidence that the defendant objects to if and when that issue comes properly before the court. FSM v. Tipingeni, 19 FSM R. 439, 447 (Chk. 2014).

When the plaintiff's claim for damages to his car from a break-in were not tried by the parties' consent during the trial on the plaintiff's claim for failure to repair his car; when the break-in damages claim was not raised by the pleadings and admitting evidence about it would prejudice the defendant who had not had adequate notice that the issue would be tried; when excluding the evidence about the break-in would not prejudice the plaintiff; and when the break-in was not part of a common nucleus of operative fact with the defendant's alleged behavior in failing to properly repair the plaintiff's vehicle but represented an entirely new claim that the plaintiff could file against the defendant for failure to properly safeguard his property, all evidence that pertained to the alleged break-in would be excluded and not considered. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 471-72 (Pon. 2014).

A motion to reopen a case should be denied when unfair prejudice towards the defendant results, such as when the state wants to introduce a document or evidence not disclosed in discovery, of which defendant lacked any notice, and against which defendant could not adequately defend due to the lack of time to prepare a defense. But when the defendant had notice of the confession statement; and when a preliminary hearing determined that the confession statement was admissible at trial, and so that the defendant was put on notice that the confession would be introduced at trial, no unfair prejudice would result from allowing the state to introduce the defendant's confession statement upon re-opening its case. Chuuk v. Nowell, 22 FSM R. 130a, 130e-0f (Chk. S. Ct. Tr. 2018).

A statement made by an alleged co-conspirator during the course of and in furtherance of the conspiracy is not hearsay and is admissible. FSM v. Jappan, 22 FSM R. 81, 84 n.2 (Chk. 2018).

A party's copies of the original copies in an insttution are admissible to the same extent as the

institution's originals. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 183 (Pon. 2019).

– Authentication

Rule 901(a) of our Rules of Evidence provides that the requirement of authentication "is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Testimony of two witnesses supporting such a claim is fully adequate to justify the action of the trial court in accepting that matter as evidence. Joker v. FSM, 2 FSM R. 38, 46 (App. 1985).

The FSM Rules of Evidence for identification, authentication and admissibility of evidence do not require that exhibits related to an essential element of the crime may be admitted into evidence only if identified beyond a reasonable doubt. Joker v. FSM, 2 FSM R. 38, 47 (App. 1985).

A certified copy of a judgment from a foreign court is admissible evidence as a properly authenticated public record of that jurisdiction. Joeten Motor Co. v. Jae Joong Hwang, 7 FSM R. 326, 327 (Chk. S. Ct. Tr. 1995).

Business records are normally authenticated by a custodian of records. A duplicate of an original writing is not admissible if there is a genuine issue as to the authenticity of the original. Richmond Wholesale Meat Co. v. Kolonia Consumer Coop. Ass'n (III), 7 FSM R. 453, 455 (Pon. 1996).

Maps attached to a filing without any sort of foundation or any type of authentication cannot be considered as evidence. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 38 (Kos. S. Ct. Tr. 1997).

An open account is not self-proving. An account must be supported by an evidentiary foundation to demonstrate the accuracy of the account. FSM Telecomm. Corp. v. Worswick, 9 FSM R. 6, 15 (Yap 1999).

The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. Elaija v. Edmond, 9 FSM R. 175, 182 (Kos. S. Ct. Tr. 1999).

An ancient document or data compilation is authenticated if evidence that the document or data compilation, in any form, is in such condition as to create no suspicion concerning its authenticity, was in a place where it, if authentic, would likely be, and has been in existence 20 years or more at the time it is offered. Elaija v. Edmond, 9 FSM R. 175, 182 (Kos. S. Ct. Tr. 1999).

For a plaintiff to succeed, she must come forward with a preponderance of creditable evidence to establish the authenticity of the document upon which her claim is based. Lukas v. Stanley, 10 FSM R. 365, 366 (Chk. S. Ct. Tr. 2001).

A plaintiff has not met the necessary burden of proof when the affidavit offered by plaintiff to prove her claim is highly suspect in that the plaintiff's father, whom she claims gave the property to her, did not appear in person before the Clerk of Court when he signed the document and the plaintiff presented conflicting evidence in court at which place or where the document was signed. Lukas v. Stanley, 10 FSM R. 365, 366 (Chk. S. Ct. Tr. 2001).

The Kosrae Rules of Evidence, Article IX, require authentication and identification of documentary evidence, sufficient to support a finding that the document is what its proponent claims. When the author of a written statement was not present to identify and authenticate the document and no other person was presented to identify and authenticate the subject statement the prosecution has failed to satisfy the requirements of authentication and identification of documents and the written statement will be suppressed. Kosrae v. Kilafwakun, 13 FSM R. 333, 335 (Kos. S. Ct. Tr. 2005).

Business records are normally authenticated by a custodian of records. The custodian or other qualified witness who must authenticate business records need not be the person who prepared or maintained the records, or even an employee of the record-keeping entity, as long as the witness understands the system used to prepare the records. Objections concerning the identity or competency of preparer of a record might go to the evidentiary weight or credibility of a record but not to the record's admissibility. Cholymay v. FSM, 17 FSM R. 11, 20 (App. 2010).

Authentication is satisfied by evidence sufficient to support a finding that the matter in question is what it its proponent claims. The appellate court's review is limited to determining whether the trial court abused its discretion in deciding that the government made a prima facie showing as to the documents' authenticity. Cholymay v. FSM, 17 FSM R. 11, 21 (App. 2010).

When the defendants did not claim that the exhibits were something other than what the government claimed them to be, but instead stated that the exhibits were illegible, incomplete, or had notes written on them raising substantial doubts as to their authenticity, that is a question of what weight or credibility the exhibits should be given, not whether they should be admitted. Cholymay v. FSM, 17 FSM R. 11, 22 (App. 2010).

When the government's witnesses testified as to what the exhibits were and, if a witness did not know what an exhibit was, it was not admitted, the weight or credibility that an exhibit was given was for the trial court to decide. When the trial court took into account the defendants' stated concerns regarding the documents but there was no requirement that the exhibits be excluded after the witnesses had testified that they were what the government claimed them to be, the trial court, having heard adequate testimony, did not abuse its discretion by admitting the exhibits. Cholymay v. FSM, 17 FSM R. 11, 22 (App. 2010).

Arguments concerning the accuracy of the record go to their weight and not their admissibility. The question then is whether the photocopy was a duplicate of what the government claimed it to be. Cholymay v. FSM, 17 FSM R. 11, 23 (App. 2010).

When the defendants' argument is not a true objection to the records' admissibility but is instead a question concerning the weight or credibility that the exhibits should be given because the defendants dispute the exhibits' accuracy; when the government stated that the originals were unobtainable due to judicial process because the documents were collected by the court in the related criminal matters and were not available for the trial of this case; and when FSM Evidence Rule 1004 does not require originals when they cannot be obtained, the trial court did not err or abuse its discretion in admitting the government's exhibits over the defendants' best evidence objections. Cholymay v. FSM, 17 FSM R. 11, 23 (App. 2010).

Prima facie authenticity is extended so long as the proffered document is accompanied by a certificate of acknowledgment under the seal of a notary public or other authorized officer. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

When the trial court excluded an affidavit from admission because the prima facie authenticity for notarized documents extended by Evidence Rule 902(8) was rebutted by the clerk's testimony that he should not have notarized it because the affiant had not appeared before him and it was not signed in his presence, whereupon the court concluded that the affidavit could not be authenticated under Rule 902(8) and when the proponents did not seek to authenticate the affidavit by other means such as by calling another witness to authenticate the signature on the affidavit despite its defective notary seal, the trial court, without any additional testimony to authenticate the signature, had no way of determining whether the signature on the affidavit was in fact genuine. The court's determination not to admit the affidavit was thus within its discretion. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

When the proponents failed to raise any other basis for admission of an affidavit other than as a self-authenticating document, the appellate court is left to review whether the trial court's exclusion was

proper on the basis that the document was not authenticated. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

When the trial court denies admission of documentary evidence on the basis that it was not properly authenticated, the appellate court's review is limited to determining whether the trial court abused its discretion in deciding whether the movant made a prima facie showing as to the document's authenticity. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

Generally, the requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

A notarized affidavit may be authenticated without the affiant's testimony, as it is presumed to be authentic so long as it is acknowledged in the manner provided for by law. A clerk of court's manner of acknowledging an affidavit is for the affiant to swear to it under oath in the clerk's presence. Peter v. Jessy, 17 FSM R. 163, 173-74 (Chk. S. Ct. App. 2010).

When the affidavit was not acknowledged in the manner provided for by law since the affiant was not present at the time that the affidavit was acknowledged, the trial court's determination that the presumption of self-authentication had been rebutted and that the affidavit was not otherwise authenticated was proper. There was therefore no abuse of discretion in the trial court's denial of the affidavit's admission into evidence for the reason that it was not authenticated. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

When an affidavit's substance was only read into the record for the purpose of ruling on its admissibility, the better practice may have been to allow the presentation of a foundation for admission, including establishing the document's authenticity, before proceeding with testimony regarding its contents. That practice would avoid confusion as to whether the substance of inadmissible documentary evidence has become a part of the evidentiary record. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

Extrinsic evidence of authenticity, as a condition precedent to admissibility, is not required with respect to documents accompanied by a certificate of acknowledgment, executed by a notary public in the manner provided by law. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 29 (App. 2016).

An ancient document is authenticated if evidence that the document, in any form, is in such condition, as to create no suspicion concerning its authenticity, was in a place where if authentic, would likely be, and has been in existence 20 years or more at the time it is offered. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 121 (App. 2017).

– Burden of Proof

In a case of civil conspiracy, the burden of proof is a preponderance of the evidence, not a clear and convincing standard, in order to establish the conspiracy. Opet v. Mobil Oil Micronesia, Inc., 3 FSM R. 159, 164 (App. 1987).

A party claiming ownership in land for which there is a determination of ownership showing another as owner, with the appeal period expired, has, at a minimum, the burden of showing facts to establish that the determination of ownership is incorrect. Benjamin v. Kosrae, 3 FSM R. 508, 510 (Kos. S. Ct. Tr. 1988).

The concept of Burden of Proof has two aspects. First the plaintiff in a civil case must produce sufficient evidence to establish a prima facie case in order to avoid a nonsuit. Second, the sufficiency of evidence necessary to prove a disputed fact in a civil case is proof by a preponderance of the evidence – the facts asserted by the plaintiff are more probably true than false. Meitou v. Uwera, 5 FSM R. 139, 141-42 (Chk. S. Ct. Tr. 1991).

The plaintiff, whose duty it is to introduce evidence to prove her case by a preponderance of the evidence, carries the burden of proof. This "burden of going forward with the evidence," or "burden of producing evidence," lies with the party who seeks to prove an affirmative fact. Nimeisa v. Department of Public Works, 6 FSM R. 205, 212 (Chk. S. Ct. Tr. 1993).

The defendant has the burden of proving affirmative defenses. A defense raised for the first time in a defendant's written closing argument does not meet the burden of proof. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 619 (App. 1996).

The burden of producing evidence in a civil trial generally lies with the plaintiff, who must establish a prima facie case to avoid a nonsuit or other adverse ruling. Berman v. Santos, 7 FSM R. 624, 627 (App. 1996).

The defendants have the burden of proof with respect to each affirmative defense, and must prove that defense by a preponderance of the evidence. Senda v. Semes, 8 FSM R. 484, 496 (Pon. 1998).

In a civil case where defendants seeks to advance Pohnpeian customary practice as a defense to a claim of equitable contribution, the burden is on the defendants to establish by a preponderance of the evidence the relevant custom and tradition. Senda v. Semes, 8 FSM R. 484, 497 (Pon. 1998).

Preponderance of the evidence is not evidence to a moral certainty or clear and convincing evidence. As a standard of proof, preponderance of the evidence has been held to mean that the facts asserted by the plaintiff are more probably true than false. The party having the burden of establishing his claim by a preponderance of the evidence must establish the facts by evidence at least sufficient to destroy the equilibrium and overbalance any weight of evidence produced by the other party. FSM Telecomm. Corp. v. Worswick, 9 FSM R. 6, 12 (Yap 1999).

If the plaintiff's evidence is more convincing than that which defendant offers in opposition, then plaintiff has met its burden of showing that the facts for which it contends are more probably true than false. If, on the other hand, plaintiff's evidence is less convincing than that offered in opposition, then defendant's version of events is the more likely, and the plaintiff fails to meet its burden of proof. FSM Telecomm. Corp. v. Worswick, 9 FSM R. 6, 12 (Yap 1999).

When the plaintiff has demonstrated that it billed the defendant for long distance services according to its usual and customary practice, and that its billing practices accurately reflect its customers' usage of the communications services which it offers to the public and when the defendant's 1998 testimony about her long distance usage habits during September 1990 through July 1, 1992 does not persuade the court that she received inaccurate telephone bills from plaintiff at relevant times under the terms of the parties' valid and enforceable contract, the plaintiff has met its burden of proof. FSM Telecomm. Corp. v. Worswick, 9 FSM R. 6, 15 (Yap 1999).

A plaintiff, who has testified that in 1991 the defendant gave him $500 and that this payment was a portion of a $3,000 check issued by the FSM Finance Office as payment to the plaintiff, but who does not present any other evidence of the $3,000 check or the $500 payment and does not show that documentary proof relating to the $500 payment or the $3,000 check was unavailable through discovery or by subpoena, has failed to sustain his burden of proof. When the plaintiff has testified that in 1996 the FSM Finance Office issued another check in his name, but presents no documentary proof of this check, the plaintiff has again failed to sustain his burden of proof. Tulensru v. Utwe, 9 FSM R. 95, 97 (Kos. S. Ct. Tr. 1999).

A plaintiff must prove the allegations of the complaint by a preponderance of admissible evidence in order to prevail. Chipen v. Reynold, 9 FSM R. 148, 149 (Chk. S. Ct. Tr. 1999).

In a civil case when a defendant seeks to advance Pohnpeian customary practice as a defense, the

burden is on the defendant to establish by a preponderance of the evidence the relevant custom and tradition. Phoenix of Micronesia, Inc. v. Mauricio, 9 FSM R. 155, 158-59 (App. 1999).

The disciplinary counsel's burden is to prove attorney misconduct by clear and convincing evidence. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 171 (App. 1999).

The standard of proof for establishing allegations of attorney misconduct is clear and convincing evidence. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 173 (App. 1999).

Clear and convincing evidence is a higher burden of proof than mere preponderance of the evidence, but not quite as high as beyond a reasonable doubt. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 173 (App. 1999).

The clear and convincing evidence standard is the most demanding standard applied in civil cases. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 173 (App. 1999).

To be clear and convincing evidence must be of extraordinary persuasiveness. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 173 (App. 1999).

Clear and convincing evidence means evidence establishing that the truth of the facts asserted is highly probable. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 173 (App. 1999).

The clear and convincing evidentiary standard is that weight of proof which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts of the case. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 173 (App. 1999).

A proposition proved by a preponderance of the evidence is one that has been found to be more probably true than not. Clear and convincing evidence, on the other hand, reflects a more exacting standard of proof. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 173 (App. 1999).

Although stated in terms of reasonable doubt, clear and convincing evidence is considered to be more than a preponderance while not quite approaching the degree of proof necessary to convict a person of a criminal offense. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 173 (App. 1999).

The spectrum of increasing degrees of proof, from preponderance of the evidence, to clear and convincing evidence, to beyond a reasonable doubt is widely recognized, and it has been suggested that the standard of proof required would be clearer if the degrees of proof were defined, respectively, as probably true, highly probably true and almost certainly true. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 173-74 (App. 1999).

Evidence may be uncontroverted, and yet not be clear and convincing. Conversely, evidence may be clear and convincing despite the fact it has been contradicted. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 174 (App. 1999).

The clear and convincing standard is that which enables the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts of the case. In re Robert, 9 FSM R. 278a, 278g (Pon. 1999).

The proper standard of proof for inherent power sanctions is clear and convincing evidence standard rather than the lower standard of preponderance of the evidence standard. This heightened standard of proof is particularly appropriate because most inherent power sanctions are fundamentally punitive and because an inherent power sanction requires a finding of bad faith, and a bad faith finding requires

heightened certainty. In re Sanction of Woodruff, 10 FSM R. 79, 88 (App. 2001).

For those inherent power sanctions that are fundamentally penal – and default judgments, as well as contempt orders, awards of attorneys' fees and the imposition of fines – the trial court must find clear and convincing evidence of the predicate misconduct. In re Sanction of Woodruff, 10 FSM R. 79, 88 (App. 2001).

The clear and convincing evidence standard of an inherent powers sanction is also consistent with the standard of proof needed to discipline an attorney. It would be inequitable if a court could avoid the heightened standard of a disciplinary proceeding by instead resorting to its inherent powers to sanction an attorney. In re Sanction of Woodruff, 10 FSM R. 79, 88 (App. 2001).

At trial, the plaintiff has the burden of proving each element of his breach of contract claim by a preponderance of the evidence. If he fails to do so, it is appropriate for the trial court to enter judgment against him. Tulensru v. Wakuk, 10 FSM R. 128, 132 (App. 2001).

When a trial court has found that all parties fulfilled their obligations under the contract, and the plaintiff did not offer competent evidence of breach sufficient to establish that the trial court's findings were improper, there was no clear error in the trial court's factual findings on the liability issue. Tulensru v. Wakuk, 10 FSM R. 128, 133 (App. 2001).

When defendants did not submit any proof at trial in support of their affirmative defense, they did not carry their burden of proof. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 196 (Kos. S. Ct. Tr. 2001).

When there was no evidence presented at trial that two defendants had made any promise to the plaintiff and they were not a parties to any agreement or promise with the plaintiff, the plaintiff has not carried his burden of proof with respect to claims made against them and justice requires that the complaint against them be dismissed. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 197 (Kos. S. Ct. Tr. 2001).

A plaintiff who establishes the existence of risk factors which may have caused the injury, must show that these risk factors did in fact cause the injury. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 348, 353 (Pon. 2001).

It is enough that the plaintiff introduce evidence from which reasonable men may conclude that it is more probable that the event was caused by the defendant than that it was not. Stated another way, it does not require that the proof eliminate every possible cause other than the one on which plaintiff relies, but only such other causes, if any, which fairly arise from the evidence. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 348, 353 (Pon. 2001).

When no product defect is found, causes of action based on strict product liability and on breach of warranty fail and *res ipsa loquitur* is not applicable. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 348, 353 (Pon. 2001).

The clear and convincing evidence standard involves a higher burden of proof than a mere preponderance of the evidence, but not quite as high as beyond a reasonable doubt. "Clear evidence to the contrary" would be a similar standard. FSM v. Wainit, 11 FSM R. 1, 8 n.1 (Chk. 2002).

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

When, at a trial de novo, the plaintiff's testimony was credible and supported by other credible testimonial and physical evidence and the defendant's claim was inconsistent and not supported by convincing evidence, the plaintiff's evidence is more convincing and he has met his burden of proving ownership. In re Lot No. 014-A-21, 11 FSM R. 582, 591-94 (Chk. S. Ct. Tr. 2003).

The plaintiffs' reply to a defendant's written closing argument will not be stricken because the plaintiffs have the burden of proof, and therefore may have the last word. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 242 (Pon. 2003).

When a case proceeds to trial, the burden of going forward with evidence as to affirmative defenses is normally on the defendant. However, when the plaintiff seeks summary judgment on the question of liability, the plaintiff must initiate the inquiry even as to affirmative defenses. The party moving for summary judgment has the burden of clearly establishing the lack of any triable issues of fact. The burden extends to affirmative defenses as well as to the plaintiff's own positive allegations. Sigrah v. Microlife Plus, 13 FSM R. 375, 379 (Kos. 2005).

It is the claimant's burden to present his or her evidence to the Land Court and it is the claimant's burden to request admission of evidence which had been previously presented to the Land Commission in prior proceedings. Wesley v. Carl, 13 FSM R. 429, 431 (Kos. S. Ct. Tr. 2005).

In a civil case the burden of proof lies generally with the plaintiff, who must make a showing of a prima facie case to avoid an adverse ruling such as a nonsuit. At the same time, a defendant has the burden of proof with respect to each affirmative defense, which he must prove by a preponderance of the evidence. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 519 (App. 2005).

In a prima facie case, a party has produced enough evidence to allow the fact-finder to infer the fact at issue and rule in the party's favor. Hauk v. Lokopwe, 14 FSM R. 61, 64 n.1 (Chk. 2006).

The government has met the standard of proof and proved by a preponderance of the evidence that the defendant has waived his rights knowingly and intelligently when the defendant's signed waiver showed that he was informed of his right to silence and his right to counsel and waived those rights and when, considering that signed waiver and the testimony presented, the court has considered the defendant's evidence and argument and cannot find that the manner in which the statement was elicited coerced the defendant into making it. FSM v. Kansou, 14 FSM R. 150, 152 (Chk. 2006).

The plaintiff has the burden of proving each element of a claim by a preponderance of evidence. Siba v. Noah, 15 FSM R. 189, 195 (Kos. S. Ct. Tr. 2007).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion. It consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Nakamura v. Moen Municipality, 15 FSM R. 213, 217 n.1 (Chk. S. Ct. App. 2007).

In a civil case, a plaintiff must prove the allegations of their complaint by a preponderance of evidence in order to prevail. Preponderance of the evidence is not evidence to a moral certainty or clear and convincing evidence. As a standard of proof, preponderance of the evidence means that the facts asserted by the plaintiff are more probably true than false. But, if the plaintiff's evidence is less convincing than that offered in opposition, then defendant's version of events is the more likely, and the plaintiff fails to meet its burden of proof. George v. George, 15 FSM R. 270, 274 (Kos. S. Ct. Tr. 2007).

An open account is not self-proving; it must be supported by enough evidence to show the account's accuracy. George v. George, 15 FSM R. 270, 274 (Kos. S. Ct. Tr. 2007).

When the evidence offered to support the amount claimed in the complaint is minimal and receipts, which the plaintiff's own witnesses testified were available, were not offered into evidence; when one page

of the ledger was identified and marked, but never offered into evidence; when the evidence to support the plaintiff's claims consists of his former employees' testimony on the amount owed and the defendant's acknowledgment that she owes some amount but not the amount claimed; when the defendant could have used the receipts to show they did not support the amount in the ledger but did not and did not question the plaintiff's witnesses as to the specific amounts shown in the receipts, the court was given no evidence to weigh in support of an alternative explanation and can only look at the testimony offered and determine whether the facts asserted by the plaintiff are more probably true than false. Thus, based on the defendant's acknowledgment that some amount is owed, but not the $14,431.58 claimed by the plaintiff, and based on the testimony of the plaintiff's witnesses about the ledger and the balance, the evidence weighs slightly to the plaintiff and that it is more probably true than false that the defendant owes the amount of $6,220.52. George v. George, 15 FSM R. 270, 274-75 (Kos. S. Ct. Tr. 2007).

When evidence is available but not offered, the question is raised whether the withheld evidence supported the claim. George v. George, 15 FSM R. 270, 274 (Kos. S. Ct. Tr. 2007).

The parties have the responsibility to put forward the evidence to support their client's case. This is not the court's responsibility. George v. George, 15 FSM R. 270, 275 (Kos. S. Ct. Tr. 2007).

The burden of proof in a civil case is on the plaintiff. Plaintiffs must prove each element of their causes of action. Andon v. Shrew, 15 FSM R. 315, 320 (Kos. S. Ct. Tr. 2007).

When the plaintiff offered no evidence that he was entitled to notice in the Land Commission proceedings so there was no proof of a negligent or wrongful act or omission, he did not prove a violation of his due process rights, and when Land Commission records would have contained evidence about his entitlement to notice and whether he was served with notice, but, the plaintiff did not present those records and did not offer proof that he owned any portion of the disputed land and the only evidence of land ownership showed ownership by another, the plaintiff's claims against the government based on negligence and a violation of due process fail. Andon v. Shrew, 15 FSM R. 315, 320 (Kos. S. Ct. Tr. 2007).

In a civil case, a plaintiff must prove the allegations by a preponderance of evidence in order to prevail. Preponderance of the evidence is not evidence to a moral certainty or clear and convincing evidence. As a standard of proof, preponderance of the evidence means that the facts asserted by the plaintiff are more probably true than false. But, if the plaintiff's evidence is less convincing than that offered in opposition, then the defendant's version of events is the more likely, and the plaintiff fails to meet its burden of proof. George v. Albert, 15 FSM R. 323, 327 (Kos. S. Ct. Tr. 2007).

When the receipts did not support the amount stated in the ledger and claimed by the plaintiff even though the plaintiff's witness testified that the receipts would support the full amount; when the plaintiff was specifically ordered to produce at trial the original of all receipts, ledgers, and any other documents pertaining to the defendant's account but failed to submit receipts supporting the amount in the ledger produced and failed to submit the full ledger for the defendant's account; and when the defendant acknowledged owing some amount and did not dispute the receipts signed by him, the court will award the plaintiff the amounts shown in the receipts and ledger with credit for the defendant's payments. George v. Albert, 15 FSM R. 323, 327 (Kos. S. Ct. Tr. 2007).

When a petitioner has presented sufficient evidence to support a *prima facie* case for relief, a respondent's motion for dismissal at the close of the petitioner's case-in-chief will be denied. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 369, 372 (Chk. S. Ct. App. 2007).

After the parties rest, the court makes findings of fact based on the total record in the case. The petitioner (election contestant) has the burden of proof to prove his case by a preponderance of the evidence. The petitioner satisfies his burden of proof if his evidence is more convincing to the court than that of the respondents. Therefore, the petitioner must establish facts in support of his claim by evidence at least sufficient to overbalance any weight of evidence produced by the other parties. Miochy v. Chuuk

State Election Comm'n, 15 FSM R. 369, 372 (Chk. S. Ct. App. 2007).

When, given the weight of the evidence indicating that the petitioner was born on October 26, 1972, which was generated both before, when he did not have a vested interest in the election, and after his application for a delayed birth certificate, the court could not find that his evidence that he was born on October 26, 1971, was more convincing than that of the respondents, and therefore, he has not proven his case by a preponderance of the evidence. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 369, 372 (Chk. S. Ct. App. 2007).

When the defendants did not stipulate to their ledger sheets' accuracy, that would have left one genuine issue of material fact before the court for trial because an open account is not self-proving. An open account must be supported by an evidentiary foundation to demonstrate the account's accuracy. Albert v. George, 15 FSM R. 574, 581 (App. 2008).

The burden at trial is on the party asserting the existence of a customary right to prove it by a preponderance of the evidence. Setik v. Ruben, 16 FSM R. 158, 163 (Chk. S. Ct. App. 2008).

Parties who proffer custom as a basis for a claim must prove the relevant custom by a preponderance of the evidence. Narruhn v. Aisek, 16 FSM R. 236, 240 (App. 2009).

When the testimony on *nechop* is sufficient to establish that it existed as a custom and that, when employed, it operated to disrupt the status quo of matrilineal descent, the trial court did not ignore the established custom of Chuukese matrilineal descent in accepting that a *nechop* took place since it was proven by a preponderance of the evidence that the *nechop* took place. Narruhn v. Aisek, 16 FSM R. 236, 242 (App. 2009).

In a civil case, the plaintiff has the burden of proving each element of his cause of action by a preponderance of the evidence, and if he fails to do so, judgment will be entered against him. Jano v. Fujita, 16 FSM R. 323, 327 (Pon. 2009).

When the plaintiff's testimony on the element of damages is speculative, conclusory, and lacking in foundation, the plaintiff did not meet his burden of proof on the issue of damages and a judgment in the defendant's favor is therefore appropriate. Jano v. Fujita, 16 FSM R. 323, 328 (Pon. 2009).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion. It consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 374 (Kos. S. Ct. Tr. 2009).

When there is no way of determining what portion of an amount deposited into a bank account was also converted by another defendant and since the plaintiff has the burden of proof, that other defendant will receive the benefit of the doubt created by this question and will not be held liable for the deposited sums. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 447 (Pon. 2009).

In a civil case, the plaintiff has the burden of proving each element of his cause of action by a preponderance of the evidence, and if he fails to do so, judgment will be entered against him. The preponderance of the evidence standard also applies to a civil action for conspiracy. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 456 (Pon. 2009).

In an election contest, the court makes findings of fact based on the total record in the case. The petitioner has the burden of proof to prove his case by a preponderance of the evidence. The petitioner satisfies his burden of proof if his evidence is more convincing to the court than that of the respondents. Thus, the petitioners must establish facts in support of their claim by evidence at least sufficient to overbalance any weight of evidence produced by the other parties. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 519 (Chk. S. Ct. App. 2009).

When there was no evidence to contradict the election commission's finding of the dates that the election results were announced, the petitioners cannot prove by a preponderance of the evidence that the declaration of the election was after April 11, 2009, which, if it had been, would have made their petition timely and the panel would have remanded the contest to the election commission for a third time. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 519 (Chk. S. Ct. App. 2009).

A plaintiff has not met her burden of showing that the state is liable to her for "summary punishment" when she did not disclose what specific conduct she believed constituted summary punishment and her complaint was silent on that point as well. Berman v. Pohnpei, 16 FSM R. 567, 575 (Pon. 2009).

When the first question is whether there is a valid contract, the plaintiff has the burden of proving each element of that claim by a preponderance of evidence. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 645 (Kos. S. Ct. Tr. 2009).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion. It consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. George v. Albert, 17 FSM R. 25, 33 n.3 (App. 2010).

In a prima facie case, a party has produced enough evidence to allow the fact-finder to infer the fact at issue and rule in the party's favor. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 45 n.2 (Chk. 2010).

When the discharged employee has not presented any evidence about whether and where he sought employment during a certain time period, he has introduced no evidence of his efforts to mitigate his damages by attempting to secure a job during his periods of unemployment, and he is thus precluded from recovery of damages for those periods since it is the plaintiff's burden to prove every element of his case, including all of his damages. Sandy v. Mori, 17 FSM R. 92, 95 (Chk. 2010).

Since hearsay testimony is inherently unreliable, the court cannot be required to or presumed to rely on hearsay testimony over contrary direct evidence to determine where the preponderance of evidence lies. FSM v. Suzuki, 17 FSM R. 114, 116 (Chk. 2010).

The findings of fact made at the end of trial may differ somewhat from those the court made after the close of the plaintiffs' case-in-chief for the purpose of the defense Rule 41(b) motion since then it still awaited the presentations of the defendant and third-party defendant; since nothing contained in the court's Rule 41(b) memorandum was intended to foreclose the defendant and the third-party defendant of their opportunity to be heard; and since what may then have been reasonable and logical inferences from the evidence might later be shown to be something entirely different. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 119, 121 & n.1 (Chk. 2010).

In a civil case, the plaintiff has the burden of proving each element of the plaintiff's cause of action by a preponderance of the evidence, and if the plaintiff fails to prove any one element, judgment will be entered against the plaintiff. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 119, 123 (Chk. 2010).

In ruling on a 41(b) motion to dismiss, the trial court, in determining whether the plaintiff has shown a right to relief, is not required to view the facts in the light most favorable to the plaintiff but draws permissible inferences. If the court determines that the plaintiff has not made out a prima facie case, the defendant is entitled to have the case dismissed. Even if a plaintiff makes out a prima facie case, the court as the trier of fact, may, in assessing the evidence on a Rule 41(b) motion, weigh the evidence, resolve any conflicts in it, and decide for itself where the preponderance of the evidence lies. In weighing the evidence, the trial court is required to view the evidence with an unbiased eye, without any attendant favorable inferences, but it is also required to sift and to balance the evidence, and to give the evidence such weight as it deems fit. Peter v. Jessy, 17 FSM R. 163, 171 (Chk. S. Ct. App. 2010).

Proof of the existence of a custom is a factual issue. The burden is therefore on the proponents to prove by a preponderance of the evidence that achemwir is a custom practiced in Chuuk, and they have the further burden of proving that the requirements of the custom were met. Peter v. Jessy, 17 FSM R. 163, 171 (Chk. S. Ct. App. 2010).

Even if an affidavit were admitted, the proponents have the burden to come forward with a preponderance of credible evidence to establish the document's veracity because notarization does not conclusively establish the truth of the statements made in the document, but only the identity and signature of the person who signed the document. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

The plaintiffs' burden of proof to show the truth of the statements in a notarized affidavit is not met when the purported affiant did not appear in person to have the document notarized and there is no other evidence regarding the circumstances of its signing. Without even testimony to authenticate her signature, let alone the circumstances surrounding her signature, the trial court, as finder of fact, had no way to determine whether the purported affiant fully understood and freely signed the document, or whether she signed it under coercion, mistake, or as a result of fraud, or misunderstanding, let alone whether it was indeed her who signed her name to it. Thus, the affidavit, even if it had been admitted into evidence, would rightly be accorded little weight since significant questions were raised regarding its authenticity, reliability, and veracity. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

The mental disease, disorder or defect defense established by 11 F.S.M.C. 302 is an affirmative defense. Under 11 F.S.M.C. 302(3), the party asserting this defense has the burden of proving the existence of the physical or mental disease, disorder, or defect by clear and convincing evidence. FSM v. Andrew, 17 FSM R. 213, 216 (Pon. 2010).

Traditionally, the movant has the burden to show that the debtor has the ability to comply with the court order; once this burden has been met, it is then the debtor's burden to show that he no longer has the ability to comply through no fault of his own despite due diligence. Thus, it is the moving party's burden not only to submit a proper motion for a show cause hearing, but also, at the hearing, to prove by a preponderance that the judgment debtor has the ability to pay. If the movant cannot provide evidentiary support, or certify his information and belief that such support is likely after a reasonable opportunity for further investigation or discovery, the court must deny the motion, but if the court does set a hearing and order parties to appear, and if at the hearing the moving party presents such evidence, only then will the burden shift to the debtor to show that he does not in fact have the ability to pay. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 226-27 (Kos. 2010).

In a trespass dispute over land, the only issue properly before the court, and the only issue the court may rule upon without violating the due process rights of non-parties, is whether it is more likely than not, and not whether it is certain beyond all doubt, or whether it is certain beyond a reasonable doubt, or whether it is clear and convincing that, as between the parties, the plaintiff has the superior right to possess the land. The plaintiff only has to prove its case by a preponderance of the evidence, that is, to show that it is more likely than not that its rights are superior. Church of the Latter Day Saints v. Esiron, 17 FSM R. 229, 233 & n.4 (Chk. 2010).

The standard of review on a question of the sufficiency of the evidence is whether the trial court's findings are clearly erroneous. A finding is clearly erroneous and reversible error if: 1) the findings are not supported by substantial evidence in the record; 2) the finding was the result of an erroneous conception of the applicable law; or 3) after reviewing the entire body of the evidence in the light most favorable to the appellee, the reviewing court is left with a definite and firm conviction that a mistake has been made. Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion, and it consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Palsis v. Kosrae, 17 FSM R. 236, 243 (App. 2010).

An element of criminal contempt is the subjective intent to defy the court's authority, and the requisite intent is specific intent. There is thus more to prove to show criminal contempt. There is also a higher burden of proof, beyond a reasonable doubt than the civil contempt burden of clear and convincing evidence of the predicate misconduct. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 (App. 2011).

When no evidence was presented at trial to support the defendants' counterclaims, those counterclaims fail and are dismissed because the defendants have not met their burden of proof. A counterclaimant has the same burden of proof as a plaintiff – to prove the counterclaim by a preponderance of the evidence. FSM v. Kana Maru No. 1, 17 FSM R. 399, 406 (Chk. 2011).

The substantial-evidence rule is the principle that a reviewing court should uphold an administrative body's ruling if it is supported by evidence on which the administrative body could reasonably base its decision. Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion, and it consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 655 (App. 2011).

The record may contain evidence which preponderates one way and yet include substantial evidence to support an order reaching an opposite result. Substantial evidence need not be much evidence, and though "substantial" means more than a mere scintilla, or some evidence, it is less than is required to sustain a verdict being attacked as against the great weight and preponderance of the evidence. The substantial-evidence rule is a very deferential standard of review. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 656 (App. 2011).

"Some evidence" may be a higher standard than the scintilla of evidence standard, but "some evidence" still does not equate with "substantial evidence." "Substantial evidence" is a higher standard than "some evidence" but it is not as high as the "preponderance of the evidence" standard. It can be less. Substantial evidence is more than a mere scintilla or some evidence, but less than is required to sustain a verdict being attacked as against the great weight and preponderance of the evidence. The trial court does not assume the role of fact finder, the issue is purely one of law. In fact, the evidence may be substantial and yet greatly preponderate the other way. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 656 (App. 2011).

The "burden of proof" is a party's duty to prove a disputed assertion or charge. The burden of proof includes both the burden of persuasion and the burden of production. Congress v. Pacific Food & Servs., Inc., 18 FSM R. 76, 77 (App. 2011).

When a trial court ruling did not involve disputed facts, the only burden was that of persuasion. Congress v. Pacific Food & Servs., Inc., 18 FSM R. 76, 77 (App. 2011).

The burden of proof is on the party alleging and relying on estoppel. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

Only when there is a duty of care, breach of this duty, damage caused by the breach, and determination of the value of the damage can there be a liability for negligence. The plaintiffs have the burden of proving each these elements in order to prevail on a negligence claim, and if the plaintiffs fail to prove any one element, judgment will be entered against them. William v. Kosrae State Hosp., 18 FSM R. 575, 580 (Kos. 2013).

When damages are calculated based on figures in statements made during closing argument, those damage amounts are not supported by evidence properly before the trial court, and, as such, any judgment based on them would be vacated and the court cannot take the "judicial notice" of the plaintiffs' requested figures. William v. Kosrae State Hosp., 18 FSM R. 575, 582-83 (Kos. 2013).

Determination of damages is an essential element of the plaintiffs' causes of action. Trial is the time

for plaintiffs to present evidence about the amount of their damages since, in civil cases, the plaintiff has the burden of proving at trial each element of the plaintiff's cause of action by a preponderance of the evidence, and if the plaintiff fails to do so, judgment will be entered against the plaintiff. William v. Kosrae State Hosp., 18 FSM R. 575, 583 (Kos. 2013).

When the plaintiff testified that he was uncertain whether he lost any pay because of his absences from work due to the September 8, 2010 and the November 4, 2010 arrests and no other evidence was introduced about his state employee pay or its amount, the court must find as fact that he did not lose any pay as the result of the September 8, and November 4, 2010 arrests and detentions since he had the burden of proof to establish that he lost pay and the amount of that lost pay and he did not meet that burden. Inek v. Chuuk, 19 FSM R. 195, 199 (Chk. 2013).

It is within the court's sound discretion whether to admit additional evidence after trial. Exercise of such discretion must take into account the evidence's probative value against the danger of injuring the opposite party through surprise. The opposing party cannot properly examine or counter evidence offered after trial, and so the burden is on the party offering the evidence to demonstrate good cause why the evidence should be admitted. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 269 (Pon. 2014).

In a civil case, the plaintiff has the burden of proving each element of the plaintiff's cause of action by a preponderance of the evidence, and if the plaintiff fails to prove any one element, judgment will be entered against the plaintiff. George v. Palsis, 19 FSM R. 558, 566 (Kos. 2014).

A plaintiff has the burden to persuade the court, with competent evidence, as to the amount of his damages. Parties have the responsibility to put forward the evidence to support their case. This is not the court's responsibility. George v. Palsis, 20 FSM R. 111, 117 (Kos. 2015).

A plaintiff must introduce his evidence during his case-in-chief so the defendants will have an opportunity to address it, or to stipulate to it, or to challenge it and to cross-examine witnesses about it, and where, if the defendants feel the need, they can introduce evidence to counter it when it their turn comes. George v. Palsis, 20 FSM R. 111, 117 (Kos. 2015).

Since the defendants pled the plaintiff's failure to mitigate damages as an affirmative defense, if the plaintiff had put on evidence of his damages, the burden would have shifted to the defendants to prove that the plaintiff failed to mitigate his damages or to prove to what extent he did mitigate his damages. But since the plaintiff put on no evidence about the amount of his damages, the burden of proof about damages never shifted to the defendants. George v. Palsis, 20 FSM R. 111, 116 (Kos. 2015).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion and it consists of more than a scintilla of evidence but may be less than a preponderance. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 193 (App. 2015).

The movant bears the burden of establishing the elements of civil contempt by clear and convincing evidence, which is a higher standard than the preponderance of the evidence standard, common in civil cases, although not as high as beyond a reasonable doubt. In re Contempt of Jack, 20 FSM R. 452, 464 (Pon. 2016).

The standard of review for a criminal contempt conviction under 4 F.S.M.C. 119(1)(b), like the standard for any criminal conviction, is whether the appellate court can conclude that the trier of fact reasonably could have been convinced beyond a reasonable doubt. In re Contempt of Jack, 20 FSM R. 452, 464 n.11 (Pon. 2016).

A contemnor's intent must be ascertained from all the acts, words, and circumstances surrounding the occurrence. Ultimately, most *bona fide* representations tend to excuse, but cannot justify the act. Notably, an attorney's good faith belief that they were not obligated to appear at that time may be accepted

or rejected. In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

The clear and convincing standard will be applied to the evidence in a civil contempt case. In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

The burden of proof is upon the plaintiffs to show the fact and extent of the injury and the amount or value of damages. Determination of damages is an essential element of the plaintiffs' cause of action, which, at trial, the plaintiffs must prove as to amount by a preponderance of evidence. Linter v. FSM, 20 FSM R. 553, 562 (Pon. 2016).

When the evidence shows that the plaintiffs did in fact perform work during the relevant time period and that the standard operating procedure for many years was to submit employee-created time sheets similar to those that the plaintiffs submitted and when the government concedes that, if there was a valid contract, the plaintiffs would have been paid based on the submission of the same time sheets, there is sufficient evidence to carry the plaintiffs' burden on damages. Linter v. FSM, 20 FSM R. 553, 562 (Pon. 2016).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion. It consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Substantial evidence is also evidence of such quality and weight that reasonable and fair-minded men in the exercise of impartial judgment might reach different conclusions. Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 628 (Yap 2016).

In a civil case, the party advancing Pohnpeian customary practice or law must establish, by a preponderance of the evidence, the relevant custom and tradition. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 640 (Pon. 2016).

In a civil case, the plaintiff has the burden of proving each element of his cause of action by a preponderance of the evidence, and if he fails to do so, judgment will be entered against him. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 17 (Pon. 2016).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion, and it consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 98 (App. 2016).

Parties have the responsibility to put forward the evidence to support their case. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 122 (App. 2017).

Preponderance of the evidence is not evidence to a "moral certainty" or "clear and convincing evidence." As a standard of proof, "preponderance of the evidence" means that the facts asserted by the plaintiff are more probably true than false. Pelep v. Mai Xiong Inc., 21 FSM R. 182, 187 (Pon. 2017).

If the plaintiff's evidence is more convincing than that which defendant offers in opposition, then the plaintiff has met its burden of showing that the facts for which it contends are more probably true than false. If, on the other hand, the plaintiff's evidence is less convincing than that offered in opposition, then the defendant's version of events is the more likely, and the plaintiff fails to meet its burden of proof. Pelep v. Mai Xiong Inc., 21 FSM R. 182, 187 (Pon. 2017).

In a civil case, a plaintiff must prove the allegations by a preponderance of evidence in order to prevail. Preponderance of the evidence is not evidence to a moral certainty or clear and convincing evidence. As a standard of proof, preponderance of the evidence means that the facts asserted by the plaintiff are more probably true than false. But, if the plaintiff's evidence is less convincing than that offered in opposition, then the defendant's version of events is the more likely, and the plaintiff fails to meet its burden of proof. Pelep v. Mai Xiong Inc., 21 FSM R. 182, 188 n.7 (Pon. 2017).

The court will not speculate as to under what authority was the plaintiff's vehicle being kept at an auto shop, because the burden is on the plaintiff to establish why the vehicle was being kept by the shop. Pelep v. Mai Xiong Inc., 21 FSM R. 182, 189 (Pon. 2017).

A contractor may attack a contracting officer's decision to terminate on the grounds that such decision was an abuse of discretion or arbitrary and capricious, but the contractor has the burden of proving arbitrary and capricious conduct. Pacific Int'l, Inc. v. FSM, 21 FSM R. 283, 289 (Pon. 2017).

Even if substantial evidence were proffered to demonstrate the existence of fraud, that proffer was inadequate. Ordinarily, a proponent's burden to establish fraud is clear and convincing evidence, which is the highest burden of proof in civil cases. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 310, 315 (App. 2017).

Since "substantial evidence" is "more than a scintilla, but less than a preponderance, substantial evidence would be insufficient to prove fraud, even if the usual, lower burden of proof – preponderance of the evidence – was applied. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 310, 315 (App. 2017).

In reviewing the evidence in the record below, the court must recognize that it is primarily Social Security's task to assess the witnesses' credibility, the admissibility of evidence, and to resolve factual disputes since substantial evidence is a deferential standard, which is more than a scintilla or some evidence, but less than a preponderance of evidence. The court does not assume the fact-finder's role, since the issue is purely one of law. Hadley v. FSM Social Sec. Admin., 21 FSM R. 420, 428 (App. 2018).

Any purportedly erroneous trial court finding about specific boundary lines' accuracy of the lot are safely ameliorated as harmless error, when the plaintiff's proffer of evidence was inadequate to show that it would have developed this lot during the divested five-month period of its respective lease. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 532 (App. 2018).

The parties have the responsibility to put forward the evidence to support their case. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 532 (App. 2018).

Evidence must be in the nature of facts – not conclusions or counsel's unsupported allegations. An argument contained in a brief does not constitute evidence. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 533 (App. 2018).

In a civil case, the plaintiff has the burden of proving each element of his cause of action by a preponderance of the evidence, and if he fails to do so, judgment will be entered against him. Palasko v. Pohnpei, 21 FSM R. 562, 565 (Pon. 2018).

Preponderance of the evidence is not evidence to a "moral certainty" or "clear and convincing evidence." As a standard of proof, preponderance of the evidence means that the facts asserted by the plaintiff are more probably true than false. Donre v. FSM Nat'l Gov't Employees' Health Ins. Plan, 21 FSM R. 592, 595 (Pon. 2018).

In a civil case, the plaintiff has the burden of proving each element of his cause of action by a preponderance of the evidence, and if he fails to do so, judgment will be entered against him. Donre v. FSM Nat'l Gov't Employees' Health Ins. Plan, 21 FSM R. 592, 597 (Pon. 2018).

Substantial evidence is more than a scintilla. It means such relevant evidence as a reasonable mind might accept to support a conclusion. It is evidence affording a substantial basis of fact from which the fact in issue can be reasonably inferred. FSM v. Shiro, 21 FSM R. 627, 631 (Chk. 2018).

In a civil case, the plaintiff has the burden of proving each element of his cause of action by a preponderance of the evidence, and if he fails to do so, judgment will be entered against him. FSM v.

Mikel, 22 FSM R. 33, 36 (Chk. 2018).

Preponderance of the evidence is not evidence to a "moral certainty" or "clear and convincing evidence." As a standard of proof, "preponderance of the evidence" means that the facts asserted by the plaintiff are more probably true than false. FSM v. Mikel, 22 FSM R. 33, 36 (Chk. 2018).

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

Substantial evidence need not be much evidence, and though "substantial" means more than a mere scintilla, or some evidence, it is less than is required to sustain a verdict being attacked as against the great weight and preponderance of the evidence. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 137, 144 n.4 (Pon. 2019).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion, and it consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. George v. Palsis, 22 FSM R. 165, 171 (App. 2019).

A plaintiff has the burden to persuade the court with competent evidence about the amount of damages. Reasonably calculated damages must be shown as part of a *prima facie* case. George v. Palsis, 22 FSM R. 165, 174 (App. 2019).

When a plaintiff fails to offer evidence of calculated damages at trial, the trial court may use its discretion to strike a document listing damages that was submitted after trial, and, in striking that submitted documentation, the trial court does not abuse its discretion because the opposing party cannot properly examine or counter evidence offered after trial. George v. Palsis, 22 FSM R. 165, 174 (App. 2019).

The burden to demonstrate good cause why evidence offered after trial should be admitted is on the party offering the evidence. George v. Palsis, 22 FSM R. 165, 174 (App. 2019).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion, and it consists of more than a mere scintilla of evidence, but may be somewhat less than a preponderance. Jackson v. Siba, 22 FSM R. 224, 230 (App. 2019).

"Clear and convincing evidence" is the standard of proof required to prove the existence of a defendant's physical or mental disease, disorder, or defect. FSM v. Pillias, 22 FSM R. 334, 338 n.5 (Chk. 2019).

While the court recognizes the difficulties a Social Security claimant may have in substantiating her claim, the burden of proof remains with the applicant as a matter of law and does not shift to the Social Security Administration. Robert v. FSM Social Sec. Admin., 22 FSM R. 388, 396 (Kos. 2019).

To prevail on a claim of trespass, nuisance, or a civil action for a due process violation, the plaintiff must prove each element of the claims by the preponderance of the evidence. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 421 (Chk. S. Ct. Tr. 2019).

In a civil case, the plaintiff has the burden of proving each element of the plaintiff's cause of action by a preponderance of the evidence, and if the plaintiff fails to prove any one element, judgment will be entered against the plaintiff. Pelep v. Lapaii, 22 FSM R. 482, 486 (Pon. 2020).

Even in a criminal case, eyewitness testimony may not be necessary if there is abundant evidence in the record to support the court's conclusion. In civil matters, a less rigorous standard of proof applies. Pelep v. Lapaii, 22 FSM R. 482, 487 (Pon. 2020).

– Expert Opinion

Opinion testimony by experts has no such conclusive force that there is an error of law in not following it. The trier of fact may decide what weight, if any, is to be given such testimony, and even if the testimony is uncontroverted, may exercise independent judgment. Setik v. Sana, 6 FSM R. 549, 553-54 (Chk. S. Ct. App. 1994).

Expert opinion testimony is admissible if the witness is qualified by knowledge, skill, experience, training, education, or otherwise; and that the expert's opinion will assist the trier of fact to understand the fact at issue. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 622 (App. 1996).

A trial court's qualification of a witness as an expert and the admission of his opinion testimony will not be reversed unless clearly erroneous. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 622 (App. 1996).

To be qualified as an expert witness, the witness must have skill and knowledge superior to the trier of fact, but expert opinion testimony is not restricted to the person best qualified to give an opinion. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 622 (App. 1996).

Under the work product doctrine, even if a plaintiff demonstrates substantial need for factual information contained in the report of a consulting expert whose services a defendant sought in anticipation of litigation, he would have to show exceptional circumstances under FSM Civil Rule 26(b)(4)(B) before being entitled to discover the consulting expert's opinions. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 476 (Pon. 1998).

Rule 26 does not authorize any discovery concerning experts who the other party does not intend to call as a trial witness absent a showing of exceptional circumstances. It would be "unfair" to allow a party to extract his adversaries' consulting expert's knowledge or opinion without having to bear any of the financial cost of retaining that expert and to take unwarranted advantage of the opponent's trial preparation or investigations. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 482-83 (Pon. 1998).

Absent the requisite showing of exceptional circumstances, FSM Civil Rule 26 does not permit a party to obtain any information specific to an adversary's nontestifying experts through interrogatories. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 483 (Pon. 1998).

If a person is to be used by the defendants as a testifying expert, the plaintiff would be entitled to all the discovery authorized by FSM Civil Rule 26(b)(4)(A), and all documents the expert considered in forming his opinions would be discoverable as well. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 483 (Pon. 1998).

If specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill experience, training, or education, may testify thereto in the form of an opinion. Senda v. Semes, 8 FSM R. 484, 497-98 (Pon. 1998).

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise. The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. FSM Telecomm. Corp. v. Worswick, 9 FSM R. 6, 15 (Yap 1999).

When an expert's testimony, although not objected to, lacks the foundation contemplated by Evidence Rule 703, it is, at best, entitled to slight weight. FSM Telecomm. Corp. v. Worswick, 9 FSM R. 6, 16 (Yap 1999).

The appellate court begins its review of trial court rulings by presuming that the trial court's factual

findings are correct. The trial court's grant or refusal to adopt an expert's opinion is a question of fact and factual questions are reviewed by this court under the clearly erroneous standard. Sellem v. Maras, 9 FSM R. 36, 38 (Chk. S. Ct. App. 1999).

To state an opinion is not to set forth specific facts. In the context of a summary judgment motion, an expert must back up his opinion with specific facts. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 580 (Pon. 2002).

No expert opinion arises simultaneously with the events that ultimately gives rise to that opinion, but comes to harvest in the course of a lawsuit and in the usual case is a gloss on the occurrence or events on which the lawsuit is based. In that sense an opinion is not a "fact" within the meaning of Civil Rule 56(e), but since Evidence Rules 702-704 expressly allow for expert witnesses' opinion testimony, the question is whether any given opinion is backed up with specific facts. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 580 (Pon. 2002).

The precise combustive characteristics of kerosene, gasoline, and mixtures of the two lie beyond the ordinary ken of the court. In these circumstances, an expert's opinion is indispensable to the finder of fact in determining whether questions of fact may be reasonably resolved only in favor of the moving party. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 581 (Pon. 2002).

An expert may opine on a particular case's facts as they are made known to him at or before the hearing at which the expert testifies and the expert may offer an opinion that embraces an ultimate issue to be decided by the trier of fact. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 581 (Pon. 2002).

When the expert opinion offered by the nonmovant does not go to the causation issue presented by the facts, and on which the movant's expert offered his opinion, it does not create a fact issue under Rule 56. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 582 (Pon. 2002).

The litigation process is designed not only to discover information, but also to reduce it to the essentials necessary to advance a party's case. When a lawsuit deals with scientific, technical, or other specialized knowledge, an expert's opinion is a useful tool in this paring process. Its value derives in no insubstantial part from the fact that it reflects a synthesis of relevant facts. When such an opinion goes to a necessary element of the case, and stands unopposed by a countervailing, factually supported expert opinion that fairly meets the moving party's opinion, it may be dispositive in the context of a summary judgment motion. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 582 (Pon. 2002).

When the plaintiff's expert's testimony does not set forth specific facts showing that there is a genuine issue of fact as to the kerosene contamination issue and since the defect's existence goes to a necessary element of the plaintiff's case, the plaintiff has failed to make a showing sufficient to establish the existence of an element essential to his case, and on which he will bear the burden of proof at trial and summary judgment in the defendants' favor is therefore appropriate. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 583 (Pon. 2002).

Facts that go to the question of a contamination source are rendered immaterial in light of the defendants' expert's competent, uncontroverted expert testimony that nothing about the combustion event that caused the injury led him to believe that the kerosene was contaminated. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 583-84 (Pon. 2002).

When the defendants' expert has testified, and the plaintiff conceded, that gasoline and kerosene are completely miscible, when the plain inference from expert's miscibility testimony is that the fuel which first burned normally was identical in its chemical makeup to the fuel which the plaintiff later claimed exploded, and when the defendant offers nothing in her response to address the anomaly created by the expert's specific testimony on the miscibility point as it relates to her memory of what occurred, in the absence of such evidence, and given the expert's competency to opine on a verifiable physical phenomenon like

miscibility, no issue of fact exists on this specific point. George v. Mobil Oil Micronesia, Inc., 10 FSM R. 590, 592 (Pon. 2002).

An economist, who holds a master's degree in economics, is qualified as an expert by knowledge, skill, experience, training, or education under FSM Evidence Rule 702, since his expert testimony, if admissible, will assist the trier of fact to understand the evidence or to determine the economic damages in issue. AHPW, Inc. v. FSM, 12 FSM R. 544, 556-57 (Pon. 2004).

The court may appoint an expert witness to assist both the state and the defendant in evaluating a criminal defendant's mental condition. Kosrae v. Charley, 13 FSM R. 214, 215 (Kos. S. Ct. Tr. 2005).

A Certified Public Accountant's testimony based on his compilation of financial records and some computations that a layman could have done and drawing conclusions from them is something an accountant does based on his technical knowledge, skill, experience, and education and he would therefore qualify as an expert witness. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 19-20 (App. 2006).

Expert testimony based on ideal conditions and not reality would not make the testimony irrelevant; it would only bear on the weight it would be given. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 20 (App. 2006).

Generally, although absent a statute or contract expert witness fees and research expenses are not taxable costs, successful litigants may be awarded their out-of-pocket expenses for an expert witness when the expert witness was an indispensable part of the trial and was crucial to the ultimate resolution of the issues and the costs were appropriate and not excessive. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 75 (Yap 2007).

The Rules of Evidence expressly permit an expert witness to testify that he had made assessments of the damage to submerged reefs in numerous other cases, and, as such, the trial court was free to assess whatever weight it saw fit with regard to the expert's testimony when determining the damages that should be assessed. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 60-61 (App. 2008).

Expert opinions have no such conclusive force that there is an error of law in refusing to follow them. It is for the trier of fact to decide whether any, and if any what, weight is to be given to such testimony. Even if the testimony is uncontroverted the trier of fact may exercise independent judgment. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 61 (App. 2008).

An issue of whether the trial court erred by failing to recognize someone as an expert witness is reviewed for an abuse of discretion. Fritz v. FSM, 16 FSM R. 192, 197 (App. 2008).

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of opinion or otherwise. It is not the witness, but the trial judge who has the responsibility and discretion to determine whether a witness is qualified as an expert. Fritz v. FSM, 16 FSM R. 192, 197 (App. 2008).

Once faced with the proffer of an expert witness, the question of whether the witness may be qualified as an expert is a preliminary fact to be decided by the trial court. Fritz v. FSM, 16 FSM R. 192, 197 (App. 2008).

When the defendant never presented a witness as an expert witness at trial, the appellate court cannot find that the trial court abused its discretion in declining or otherwise refusing to qualify that witness as an expert witness. Fritz v. FSM, 16 FSM R. 192, 197 (App. 2008).

Although Evidence Rule 706 provides that the court may, on its own motion, enter an order to show cause why an expert witness should not be appointed, a trial court in not acting *sua sponte* to have a

defense witness qualified as an expert witness did not abuse its discretion. Fritz v. FSM, 16 FSM R. 192, 197-98 (App. 2008).

A motion to exclude an expert witness's deposition testimony is premature when it is made before his deposition has been completed, and any motion to exclude his trial testimony on the ground of relevance before the deposition is complete is also premature. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 652 (Pon. 2009).

A trial court's grant or refusal to adopt an expert's opinion is a question of fact and will not be reversed unless clearly erroneous. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

A party needs to finish deposing the opposing party's witness far enough ahead of trial so that it would have a fair opportunity to meet that witness's expected expert opinion testimony. FSM v. GMP Hawaii, Inc., 17 FSM R. 192, 194 (Pon. 2010).

Ordinarily, a determination that the care, skill, and diligence exercised by a professional engaged in furnishing skilled services for compensation was less than that normally possessed and exercised by members of that profession in good standing and that the damage sustained resulted from the variance requires expert testimony to establish the prevailing standard and the consequences of departure from it in the case under consideration. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580-81 (Pon. 2011).

Because the fact-finder is not permitted to speculate as to the standard against which to measure the acts of the professional in determining whether he exercised a reasonable degree of care, expert testimony is required. Only in a few very clear and palpable cases can a court dispense with the expert testimony requirement to establish the parameters of professional conduct and find damages to have been caused by a professional's failure to exercise reasonable care, skill, and diligence. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 581 (Pon. 2011).

Even assuming *arguendo* that wide recognition and practice of the custom has disappeared so as to preclude judicial notice of its existence, testimony given by the Iso Nahnken of Nett provides a sufficient basis to conclude that the custom is still practiced today when he testified that the custom is still practiced and the defendants failed to sufficiently rebut that testimony and a conclusory argument to the contrary was not evidence. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 643 (Pon. 2016).

– Hearsay

The excited utterance exception to the hearsay rule, FSM Evid. R. 803, does not permit admission of a statement made under stress of excitement caused by a startling event or condition, if the statement does not relate to the event or condition. Jonah v. FSM, 5 FSM R. 308, 313 (App. 1992).

Hearsay is not admissible in a hearing or trial. Hearsay is an out-of-court statement offered as evidence to prove the truth of the matter asserted. A statement is an oral or written assertion. An affidavit is hearsay which is inadmissible unless allowed by an exception to the hearsay rule. In re Disqualification of Justice, 7 FSM R. 278, 279 (Chk. S. Ct. Tr. 1995).

A court may rely on hearsay evidence for the purpose of finding probable cause at a post-seizure hearing. FSM v. Yue Yuan Yu No. 708, 7 FSM R. 300, 303 (Kos. 1995).

Although procedural and evidentiary rules are relaxed at a probable cause hearing a prosecutor may not rely solely on hearsay evidence when other, more competent testimony is available. FSM v. Yue Yuan Yu No. 708, 7 FSM R. 300, 304 (Kos. 1995).

A court may discount inherently unreliable evidence. The more levels of hearsay or the more hearsay statements contained within an affidavit, which is hearsay itself, the more unreliable the evidence is. FSM

v. Yue Yuan Yu No. 708, 7 FSM R. 300, 304 (Kos. 1995).

Statements made for purposes of medical diagnosis or treatment are not excluded from admissibility by the hearsay rule. Primo v. Refalopei, 7 FSM R. 423, 436 n.28 (Pon. 1996).

In order for a deposition to be admissible a deponent must physically appear before someone who can identify and administer the oath even if the deposition is taken telephonically. FSM v. Skico, Ltd. (III), 7 FSM R. 558, 559 (Chk. 1996).

Out of court admissions by a party-opponent are not hearsay statements. FSM v. Skico, Ltd. (IV), 7 FSM R. 628, 630 (Chk. 1996).

Hearsay within hearsay is inadmissible. Hearsay otherwise admissible may be excluded where it consists primarily of reiteration of a statement made by some other unidentified person. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 659, 663 (Pon. 1996).

A statement, which if it had been made by the defendant would have been admissible as an admission of a party-opponent, is inadmissible hearsay when made by the defendant's then spouse as part of a traditional apology, and cannot be considered on a summary judgment motion. Glocke v. Pohnpei, 8 FSM R. 60, 62 (Pon. 1997).

Official government documents submitted to Congress are evidence that falls within an exception to the hearsay rule. Chuuk v. Secretary of Finance, 8 FSM R. 353, 364 n.8 (Pon. 1998).

Counsel's conversations with persons involved in drafting the Constitution are hearsay, especially when there is no competent evidence in the record, or in the Constitutional Convention Journal, to support counsel's assertion. Chuuk v. Secretary of Finance, 8 FSM R. 353, 386 n.27 (Pon. 1998).

Statements in a document in existence twenty years or more the authenticity of which is established are excepted from the hearsay rule. Elaija v. Edmond, 9 FSM R. 175, 182 (Kos. S. Ct. Tr. 1999).

The finding of probable cause may be based upon hearsay evidence in whole or in part. FSM v. Wainit, 10 FSM R. 618, 621 (Chk. 2002).

The evidence rules define a letter from a criminal defendant as non-hearsay – an admission by a party-opponent, and if the defendant were not to testify on his own behalf, as is his right, it could also be admissible under the hearsay exception for statements against interest when the declarant is unavailable to testify. If produced and properly authenticated, the letter itself would be admissible evidence. FSM v. Wainit, 11 FSM R. 1, 6 (Chk. 2002).

Merely because a person who holds a public office creates a document does not necessarily make that document a public record admissible under the hearsay exception for public documents. FSM v. Wainit, 11 FSM R. 1, 6 (Chk. 2002).

As a general rule, hearsay evidence is inadmissible unless it falls within an exception to the hearsay rule. The reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located, is such an exception and is admissible as evidence. Rosokow v. Bob, 11 FSM R. 210, 215 (Chk. S. Ct. App. 2002).

The subject himself cannot provide the factual basis for the date of his birth, as his knowledge of this information is based upon hearsay only. A person does not have personal knowledge of his date of birth. In re Phillip, 11 FSM R. 243, 245 (Kos. S. Ct. Tr. 2002).

The Kosrae Rules of Evidence do not apply in the Land Commission or Land Court. In the case of hearsay testimony, the Land Commission or presiding justice shall determine the testimony's relevancy and the credibility of the witness. The purpose of allowing hearsay testimony and other evidence at land proceedings, without application of the Kosrae Rules of Evidence, is to allow all relevant evidence on the claims presented before the Land Commission and Land Court, without limitations imposed by the Rules of Evidence. The determination of relevancy of evidence and credibility of witnesses is made by the adjudicators, the Land Commission or a justice of the Kosrae Land Court. Taulung v. Jack, 11 FSM R. 345, 348 (Kos. S. Ct. Tr. 2003).

A log of payments in which entries were made at or about the same time as the transactions took place, and that they were records he kept in the normal course of business can be admitted into evidence. In re Lot No. 014-A-21, 11 FSM R. 582, 592 (Chk. S. Ct. Tr. 2003).

Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Hearsay is generally not admissible, and therefore cannot be relied upon to create a material issue of fact when opposing a summary judgment motion. Goyo Corp. v. Christian, 12 FSM R. 140, 147 (Pon. 2003).

It is the Land Court's duty to assess the witnesses' credibility, the admissibility of evidence, and to resolve factual disputes and it retains discretion to accord weight to evidence presented at hearing, including appropriate weight to hearsay evidence made by a person, now deceased, and therefore not subject to cross-examination. Wesley v. Carl, 13 FSM R. 429, 432 (Kos. S. Ct. Tr. 2005).

Any requests deemed admitted may be used only against the party deemed admitting it. This is because admissions obtained under Rule 36 may be offered in evidence, but are subject to all pertinent objections to admissibility that may be interposed. It is only when the admission is offered against the party that made it that it comes within the exception to the definition of hearsay as an admission of a party opponent. Mailo v. Chuuk, 13 FSM R. 462, 471 (Chk. 2005).

When there was testimony concerning the world price for pepper and its relation to Pohnpei's price; when the trial court only determined that Pohnpei set its price without any regard to the world price, not that it bore a certain relationship to the world price; and when someone in the pepper export business would be expected to have first-hand knowledge concerning world prices, the trial court finding that Pohnpei set its buying price without regard to the world price or to the sustainability of the pepper processing facility as a profit-making venture is not error. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 20 (App. 2006).

Even if the evidence is of events that took place in periods for which prosecution may be time-barred, it is not necessarily inadmissible. Nor is hearsay necessarily inadmissible. FSM v. Kansou, 14 FSM R. 139, 140-41 (Chk. 2006).

Statements by a party-opponent offered against that party are not hearsay and are admissible. FSM v. Kansou, 14 FSM R. 139, 141 (Chk. 2006).

A statement by a party's co-conspirator made during the course and in furtherance of the conspiracy is not hearsay and is admissible. FSM v. Kansou, 14 FSM R. 139, 141 (Chk. 2006).

An FSM police report, if relevant, may be considered in a proceeding to release a vessel when it is not a criminal case, since police reports, as matters observed pursuant to duty imposed by law as to which matters there was a duty to report, are admissible as an exception to the rule that hearsay is generally inadmissible and since a motion for a vessel's release is in the nature of a bond or bail hearing, and the rules of evidence generally do not apply to proceedings with respect to release on bail or otherwise. FSM v. Kana Maru No. 1, 14 FSM R. 300, 302 (Chk. 2006).

An account of evidence adduced in a hearing in another case to which the movant was not a party and

a hearing at which he was not present or had an opportunity to be heard, even presuming (which the court cannot do) that the evidence presented then is accurately characterized now, is not admissible and cannot be used against the movant's summary judgment motion. Dereas v. Eas, 14 FSM R. 446, 456 (Chk. S. Ct. Tr. 2006).

Former testimony is not admissible unless the party against whom the testimony is now offered (or a predecessor in interest) had an opportunity and similar motive to develop that testimony by direct, cross, or redirect examination. Dereas v. Eas, 14 FSM R. 446, 456 (Chk. S. Ct. Tr. 2006).

Although the strict guidelines against the admission of hearsay evidence do not apply in a probable cause determination, a prosecutor may not rely solely on hearsay testimony when other, more competent testimony is available. The court may therefore discount unreliable hearsay or other evidence that is inherently untrustworthy or suspicious, unless additional measures are taken to ensure reliability or to explain those exigent circumstances that make it impossible to produce more reliable or competent evidence. A prosecutor's own representations are not a substitute for competent, reliable evidence in the form of first-hand testimony or appropriately detailed affidavits from investigating officers who obtained first-hand accounts. Chuuk v. Chosa, 16 FSM R. 95, 98 (Chk. S. Ct. Tr. 2008).

When the affiant's belief that probable cause existed was based solely on affiant's review of a police report, which presumably was prepared by an officer who investigated the crime scene; when the affiant does not state whether the affiant spoke with the reporting officer, or even identify the reporting officer; when there is no explanation of how the information contained in the police report was obtained; when there is no evidence that the affiant or the unknown reporting officer interviewed witnesses or investigated the incident and there is no way to determine the extent to which the report itself was based on hearsay or any assurance that it was based on the investigating officer's reasonable belief rather than on pure speculation, then the "affidavit of probable cause" is deficient because the affidavit suffers from multiple layers of hearsay, and multiple levels of hearsay become less reliable as the number of levels of hearsay increase and because the affidavit fails to adequately identify the information's source or sources and may be based on unattributed hearsay statements of one or more declarants. As the number of included hearsay statements increases, the guarantees of reliability that justify admission become attenuated. Hearsay that is otherwise admissible may be excluded where it primarily reiterates statements of other, unidentified persons. Chuuk v. Chosa, 16 FSM R. 95, 98-99 (Chk. S. Ct. Tr. 2008).

Hearsay is inadmissible unless it falls within an exception to the hearsay rule. Cholymay v. FSM, 17 FSM R. 11, 20 (App. 2010).

FSM Evidence Rule 803(6) authorizes the admission, over a hearsay objection, of a record made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the record, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. Cholymay v. FSM, 17 FSM R. 11, 20 (App. 2010).

Business records are normally authenticated by a custodian of records. The custodian or other qualified witness who must authenticate business records need not be the person who prepared or maintained the records, or even an employee of the record-keeping entity, as long as the witness understands the system used to prepare the records. Objections concerning the identity or competency of preparer of a record might go to the evidentiary weight or credibility of a record but not to the record's admissibility. Cholymay v. FSM, 17 FSM R. 11, 20 (App. 2010).

Because of the general trustworthiness of regularly kept records and the need for such evidence in many cases, the business records exception has been construed generously in favor of admissibility. Cholymay v. FSM, 17 FSM R. 11, 20 (App. 2010).

No evidence rule requires that the custodian have personal knowledge of the business record. The custodian is merely a person with knowledge of what the proponent claims the record to be. Rule 803 also does not require that the custodian be the author of the record or even an employee of the business from which the record originated. The witness need only be a qualified witness to satisfy the requirements of Rule 803(6). Whether the witness was qualified to satisfy those requirements is a decision within the trial court's discretion. Cholymay v. FSM, 17 FSM R. 11, 21 (App. 2010).

When an extensive evidentiary foundation had been laid before the business records exhibits were admitted over the defendants' hearsay objections, the trial court, having heard adequate foundational testimony, did not abuse its discretion by admitting the exhibits. Cholymay v. FSM, 17 FSM R. 11, 21 (App. 2010).

When compiling of debts owed to businesses was a regular transaction of any company regardless of whether or not it had been prepared at or near the time of pending litigation and when the accountant/bookkeeper was specifically hired to address accounts receivables information for the businesses, her compilation of debts owed by an authority was in the regular course of her duties and a typical business practice, and therefore the trial court did not abuse its discretion by admitting the debt compilation. Cholymay v. FSM, 17 FSM R. 11, 21 (App. 2010).

When the government's witnesses testified as to what the exhibits were and, if a witness did not know what an exhibit was, it was not admitted, the weight or credibility that an exhibit was given was for the trial court to decide. When the trial court took into account the defendants' stated concerns regarding the documents but there was no requirement that the exhibits be excluded after the witnesses had testified that they were what the government claimed them to be, the trial court, having heard adequate testimony, did not abuse its discretion by admitting the exhibits. Cholymay v. FSM, 17 FSM R. 11, 22 (App. 2010).

Since hearsay testimony is inherently unreliable, the court cannot be required to or presumed to rely on hearsay testimony over contrary direct evidence to determine where the preponderance of evidence lies. FSM v. Suzuki, 17 FSM R. 114, 116 (Chk. 2010).

Although a criminal defendant may seek introduction of a police report as an offering against the government of a factual finding resulting from an investigation made pursuant to authority granted by law and the declarant's availability would have been immaterial for the purposes of ruling on the report's admission, when the defendant did not seek to admit the report and the report was not part of the record, the court will not consider it as a basis to challenge the sufficiency of its findings. Chuuk v. Inek, 17 FSM R. 137, 144 (Chk. S. Ct. Tr. 2010).

To admit statements regarding personal or family history under Evidence Rule 804(b)(4), the proponent would have to show that the declarant was unavailable. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

When a letter is hearsay and the proponent does not argue its admissibility under any exception to the hearsay rule and when the letter's contents were irrelevant and inadmissible since the letter was proffered as evidence that, in terminating the proponent, the Director was acting in conformity with other wrongs he allegedly committed, the Kosrae State Court correctly granted the State's motion in limine to exclude the letter since evidence of other crimes, wrongs, or acts is not admissible to prove a person's character in order to show that he acted in conformity therewith. Palsis v. Kosrae, 17 FSM R. 236, 244 (App. 2010).

"Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Chuuk v. Hauk, 17 FSM R. 508, 512 (Chk. S. Ct. Tr. 2011).

If it appears from the complaint, or from affidavit or affidavit filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a

warrant for the defendant's arrest will issue to any officer authorized by law to execute it. The probable cause finding may be based upon hearsay evidence in whole or in part. Chuuk v. Hauk, 17 FSM R. 508, 512 (Chk. S. Ct. Tr. 2011).

As the levels of hearsay included in the affidavit increase, the guarantees of reliability that justify admission become attenuated. Hearsay that is otherwise admissible may be excluded where it primarily reiterates statements of other, unidentified persons. Chuuk v. Hauk, 17 FSM R. 508, 512 (Chk. S. Ct. Tr. 2011).

A statement by a party's co-conspirator made during the course and in furtherance of a conspiracy is not hearsay and is admissible. FSM v. Sorim, 17 FSM R. 515, 525 n.3 (Chk. 2011).

Hearsay as is an unsworn, out-of-court statement offered to prove the truth of the matter asserted. Chuuk v. Mitipok, 17 FSM R. 552, 553 (Chk. S. Ct. Tr. 2011).

Evidence Rule 803(22) is an exception to the general rule that makes hearsay inadmissible. This exception allows evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment even when the declarant is available as a witness. FSM v. Muty, 19 FSM R. 453, 458 (Chk. 2014).

Evidence Rule 803(22) merely makes a person's conviction admissible evidence. To make that evidence conclusive in a summary judgment motion, a plaintiff must rely on a legal principle known as collateral estoppel or issue preclusion. FSM v. Muty, 19 FSM R. 453, 458 (Chk. 2014).

An ancient document is authenticated if evidence that the document, in any form, is in such condition, as to create no suspicion concerning its authenticity, was in a place where if authentic, would likely be, and has been in existence 20 years or more at the time it is offered. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 121 (App. 2017).

A statement made by an alleged co-conspirator during the course of and in furtherance of the conspiracy is not hearsay and is admissible. FSM v. Jappan, 22 FSM R. 81, 84 n.2 (Chk. 2018).

A court may attach the most limited amount of credibility to hearsay testimony that fails to fall under any exception, but to which no objection was made. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 422 (Chk. S. Ct. Tr. 2019).

It is well-established that hearsay may be used to establish probable cause. The finding of probable cause may be based upon hearsay evidence in whole or in part. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 456 (Pon. 2020).

– Judicial Notice

A trial court is entitled to take judicial notice of an agreement authorizing state police officers to act on behalf of the FSM. Doone v. FSM, 2 FSM R. 103, 106 (App. 1985).

In a case in which the defendant proposes a standard of requiring clear and convincing evidence in civil conspiracy cases rather than a preponderance based upon conditions, customs and traditions in Micronesia, it is incumbent upon him to establish such conditions by evidence, because the court will not take judicial notice of such conditions, customs or traditions. Opet v. Mobil Oil Micronesia, Inc., 3 FSM R. 159, 164 (App. 1987).

The trial court may take judicial notice at any stage of the proceedings and may do so when he gives his findings. Este v. FSM, 4 FSM R. 132, 135 (App. 1989).

When the trial court states that it is taking judicial notice of a fact the parties can raise the issue of the propriety thereof. Este v. FSM, 4 FSM R. 132, 135 (App. 1989).

It is mandatory for a court to take judicial notice of the amount of judgments in favor of creditors when a request has been made and the court has been given all necessary information. Senda v. Mid-Pac Constr. Co., 5 FSM R. 277, 280 (App. 1992).

Judicial notice may be taken on appeal. Welson v. FSM, 5 FSM R. 281, 284 (App. 1992).

When requested to by a party, and once it has been supplied with all the necessary information, a court must take judicial notice of an adjudicative fact, only if it is either generally known within the territorial jurisdiction of the trial court or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Counsel's oral argument to that effect is not enough. Stinnett v. Weno, 6 FSM R. 312, 313 (Chk. 1994).

A court may take judicial notice at any stage of the proceedings including during a petition for rehearing on the appellate level. Nena v. Kosrae (III), 6 FSM R. 564, 566 (App. 1994).

A court may take judicial notice of its own reported decisions. Berman v. FSM Supreme Court (I), 7 FSM R. 8, 11 n.2 (App. 1995).

A court may consider as evidence against pleader, in the action in which they are filed, a party's earlier admissions in its responsive pleadings even though it was later withdrawn or superseded by amended pleadings. A court may take judicial notice of them as part of the record. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 249 (Chk. 1995).

When portions of court files in other cases are introduced into evidence a court may take judicial notice of all the papers and pleadings on file in those other cases. Kaminaga v. Chuuk, 7 FSM R. 272, 273 (Chk. S. Ct. Tr. 1995).

When most documents provided in support of a party's submission are official records of the opponent state government, the Kosrae State Court may take judicial notice of the records. Langu v. Kosrae, 8 FSM R. 455, 459 (Kos. S. Ct. Tr. 1998).

In a land case, the Kosrae State Court may take judicial notice of the documents in the file of a Trust Territory land case to clarify if the judgment in that case concerned the land in this case. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 93 (Kos. S. Ct. Tr. 1999).

In determining damages, the court may take judicial notice regarding the replacement costs for college transcripts and a college diploma, when they are easily ascertainable and available on the University of Guam Internet site and from the University of Guam Office of Admissions and Records. Talley v. Lelu Town Council, 10 FSM R. 226, 239 (Kos. S. Ct. Tr. 2001).

When deciding the ownership of tideland, the trial court did not err in not taking judicial notice of and following the judgment in a different case that dealt only with the boundaries and ownership of adjacent filled land. Phillip v. Moses, 10 FSM R. 540, 544 (Chk. S. Ct. App. 2002).

An appellate court may receive proof or take notice of facts outside the record for determining whether a question presented to it is moot. Wainit v. Weno, 10 FSM R. 601, 610 (Chk. S. Ct. App. 2002).

Judicial notice may be taken of a statutory provision. Hauk v. Board of Dirs., 11 FSM R. 236, 240 (Chk. S. Ct. Tr. 2002).

The court may take judicial notice that a person's status as a chief implies his residence within the area

of which they are chief. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 199 (Yap 2003).

If it were an adjudicative fact, the court could take judicial notice of another suit's existence but not of that complaint's contents when the necessary information has not been supplied. FSM v. Kansou, 12 FSM R. 637, 641 n.3 (Chk. 2004).

In assessing damages, the court may take judicial notice of the prevailing cost in Kosrae of items similar to the ones lost. Palik v. PKC Auto Repair Shop, 13 FSM R. 93, 96 (Kos. S. Ct. Tr. 2004).

When portions of court files in other cases are introduced into evidence, a court may take judicial notice of all the papers and pleadings on file in those other cases. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 125 n.2 (Chk. 2005).

The court may take judicial notice of a fact not subject to reasonable dispute in that it is either 1) generally known within the trial court's territorial jurisdiction or 2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. The court must take judicial notice if requested by a party and supplied with the necessary information, but when the existence of the documents is disputed by the plaintiffs and the defendants have not provided the court with the information necessary to take judicial notice of it, such as either copies of the filed document or copy of the docket book showing that such a document was filed, the court will decline to take judicial notice. Ruben v. Petewon, 13 FSM R. 383, 387 n.1 (Chk. 2005).

The court may take judicial notice that the airport departure fee from Chuuk is $15 per person and that this is included in the contractual repatriation travel costs. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 555 (Chk. 2005).

When, at argument, the state presented the defendant's certificate of live birth, which indicated his age as less than 21 years of age on the date of the offense, the court can take judicial notice of the defendant's certificate of live birth, which is an official public Kosrae state government record. Kosrae v. Jonithan, 14 FSM R. 94, 96 (Kos. S. Ct. Tr. 2006).

Since an appellate court may receive proof or take notice of facts outside the record for determining whether a question presented to it is moot, the court therefore may take notice of the opinion in a related appeal case. Nikichiw v. Marsolo, 15 FSM R. 177, 178 (Chk. S. Ct. App. 2007).

Foreign law is a fact which must be pled and proven. But state law does not need to be expressly pled, because the court may take judicial notice of any state law. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 595 (App. 2008).

Since the court must take judicial notice if requested by a party and supplied with the necessary information, a party, at some point, may have had to provide the trial court and the opposing party with a copy of the statute and its provisions or make them aware of it if they were not. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 595 (App. 2008).

The court can take judicial notice of a fact not subject to reasonable dispute in that it is either 1) generally known within the trial court's territorial jurisdiction or 2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, and the court must take judicial notice if requested by a party and supplied with the necessary information. John v. Chuuk Public Utility Corp., 16 FSM R. 66, 69 (Chk. 2008).

When the court has not been supplied with the information necessary for the court to take judicial notice that life insurance was a state employee benefit when CPUC was created and what the insurance coverage's terms were or to conclude that CPUC has not adopted its own merit system with changed

benefits, there are genuine issues of material fact that preclude either party being entitled to summary judgment: 1) whether state employees in 1997 were afforded life insurance benefits and on what terms (contributory, non-contributory; on the job only, 24-hour; etc.); 2) whether CPUC has since established its own merit system and then altered the benefits; and 3) whether, if notice of the lapse of insurance coverage was required, it was given for the July 2004 lapse. John v. Chuuk Public Utility Corp., 16 FSM R. 66, 69 (Chk. 2008).

A court may take judicial notice of its own reported decisions and of papers and pleadings on file in other cases before it when portions of those cases have been introduced into evidence. Arthur v. Pohnpei, 16 FSM R. 581, 588 n.3 (Pon. 2009).

On a Rule 12(b)(6) motion to dismiss, only the well-pled or well-pleaded facts are to be accepted as true, and, no matter how artfully the allegations may be crafted, the court does not assume the truth of legal conclusions merely because they are cast in the form of factual allegations since conclusory allegations or legal allegations masquerading as factual conclusions will not suffice to prevent a motion to dismiss. Furthermore, the court need not accept as true allegations that contradict facts which may be judicially noticed; for example, the court may consider matters of public record including pleadings, orders and other papers filed with the court. And the court does not have to credit invective, bald assertions, unsupportable conclusions, periphrastic circumlocutions, and the like. Arthur v. Pohnpei, 16 FSM R. 581, 593 (Pon. 2009).

Although the court may take judicial notice of documents filed in earlier related cases without converting the Rule 12(b)(6) motion to a summary judgment motion, the court, when it has given notice in open court that it would consider the motions as summary judgment motions, will follow that course. Arthur v. Pohnpei, 16 FSM R. 581, 593 (Pon. 2009).

A court must, if requested by a party and supplied with the necessary information, take judicial notice of a fact not subject to reasonable dispute in that it is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, but when the necessary information has not been supplied, the court cannot take judicial notice. Counsel's oral representation or argument is inadequate if the necessary information has not been supplied to the court. FSM v. Suzuki, 17 FSM R. 70, 74 (Chk. 2010).

Defense counsel's representations of what the testimony was in and what facts a state court proceeding found involving a defendant's statements, was inadequate for the FSM Supreme Court to take judicial notice of those adjudicative facts when the court has not been supplied with the necessary information for it to take judicial notice. FSM v. Suzuki, 17 FSM R. 114, 116 (Chk. 2010).

By statute, no evidence or testimony can be considered at the appeal hearing except those matters which constituted the official record, transcripts, and exhibits received at the Land Court hearing. Thus, when a transcript of 2004 Land Court hearing testimony and 1991 testimony before the Land Registration team were part of the title registration process, they should have been part of the official Land Court record and thus reviewable by the State Court. And when a Trust Territory High Court case that was mentioned in the Land Court decision both that court and the State Court could properly take judicial notice of its files if the files had been given to the Land Court and to the other parties. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 659 (App. 2011).

When portions of court files in other cases are introduced into evidence, a court may take judicial notice of all papers and pleadings in those cases. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 154 n.1 (Pon. 2012).

The court can take judicial notice that the social configuration of the outer islands in the State of Yap differs significantly from the Yap main island (even the vernacular language is significantly different) since it is a fact not subject to reasonable dispute in that it is generally known within the trial court's territorial

jurisdiction and since the court's decisions are required to be consistent with the social and geographic configuration of Micronesia. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 267 (Yap 2012).

When the parties neglected to put any admissible evidence of land values before the court, the Asian Development Bank valuation system, although officially adopted only for governmental transactions, is evidence of Chuuk land values of which a court may take judicial notice because it is information capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Killion v. Nero, 18 FSM R. 381, 386-87 (Chk. S. Ct. Tr. 2012).

While it may be uncontested that the value of the reef on the main island of Yap is $600 per square meter, the court cannot presume, without evidence, that $600 a square meter is an accurate value for any particular Yap outer island reef, especially where on the outer island there may be more reef and fewer people who have the right to rely on or depend on the reef's resources. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 541 (Yap 2013).

The court may take judicial notice of its files in related cases. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 284 n.1 (Chk. 2016).

The court may take judicial notice of its own files in related cases. Onanu Municipality v. Elimo, 20 FSM R. 535, 541 (Chk. 2016).

It is only when a local custom is firmly established and generally known and been peacefully and fairly uniformly acquiesced in by those whose rights would naturally be affected that it will be judicially noticed by the court. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

The traditional and customary right of the Nahnmwarki of each established municipality of Pohnpei to receive offerings from their respective subjects is firmly established in history and still widely known and peacefully accepted by the citizens of Pohnpei, thereby making it a judicially noticeable fact. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 643 (Pon. 2016).

A judicially noticed fact must be one not subject to reasonable dispute, in that it is either 1) generally known within the trial court's territorial jurisdiction or 2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 30 (App. 2016).

The fact that it was widely known that Philippine immigration stamps were frequently forged, was capable of accurate and ready determination, by resorting to official Republic of the Philippines websites, the veracity of which cannot be reasonably questioned. As such, that recitation qualified as a fact, to which judicial notice could properly be ascribed. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 30 (App. 2016).

State law does not need to be expressly pled because the court may take judicial notice of any state law. Chuuk Health Care Plan v. FSM Dev. Bank, 21 FSM R. 300, 304 (Chk. 2017).

A party opposed to a court taking judicial notice must make a timely objection. Setik v. FSM Dev. Bank, 21 FSM R. 505, 514 (App. 2018).

A court may take judicial notice of its own files in related cases. Setik v. Perman, 22 FSM R. 105, 117 (App. 2018).

A court may take judicial notice of its own reported decisions and of papers and pleadings on file in other cases before it when parts of those cases have been introduced into evidence, and the court may take judicial notice of its own files in related cases. Panuelo v. Sigrah, 22 FSM R. 341, 352 (Pon. 2019).

A court must take judicial notice if requested by a party and supplied with the necessary information and the necessary information is not subject to reasonable dispute. Panuelo v. Sigrah, 22 FSM R. 341, 352 (Pon. 2019).

– Objections

FSM Evidence Rule 103 contemplates timely objection and statement of reasons in support of evidentiary objections. Failure to offer reasons in timely fashion, especially when coupled with pointed avoidance by counsel of inquiry into the matters at issue, places a party in a poor position for mounting an effective challenge to an evidentiary ruling. Joker v. FSM, 2 FSM R. 38, 47 (App. 1985).

Failure to raise objections which must be made prior to trial constitutes a waiver of objections, FSM Crim. R. 12(f). Moses v. FSM, 5 FSM R. 156, 159 (App. 1991).

A defendant that has failed to raise and preserve the issue has waived his right to object to the admission of evidence, but when a plain error that affects the constitutional rights of the defendant has occurred the court may notice the error. Moses v. FSM, 5 FSM R. 156, 161 (App. 1991).

Generally, failure to object or to seek a continuance results in a waiver of the objection. Amayo v. MJ Co., 10 FSM R. 371, 383 (Pon. 2001).

An objection to the admission of evidence not made at trial is not preserved for appeal because in the absence of an objection in the trial court an issue cannot properly come before the appellate division for review and the appellate division will refuse to consider the issue. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 19 (App. 2006).

When none of the objections to admission of evidence are of the type that should be addressed in a pretrial motion to suppress, which is generally reserved for evidence allegedly obtained illegally, the motion to suppress should be denied and the issue of whether any of the evidence is admissible is a question that should, and will, come up in an orderly fashion during trial and be ruled upon if offered and objected to. FSM v. Kansou, 14 FSM R. 139, 141 (Chk. 2006).

Business records are normally authenticated by a custodian of records. The custodian or other qualified witness who must authenticate business records need not be the person who prepared or maintained the records, or even an employee of the record-keeping entity, as long as the witness understands the system used to prepare the records. Objections concerning the identity or competency of preparer of a record might go to the evidentiary weight or credibility of a record but not to the record's admissibility. Cholymay v. FSM, 17 FSM R. 11, 20 (App. 2010).

If an objection to the admission of evidence is not raised at the trial level, it is not preserved for appeal and the appellate court will not consider the issue. In rulings excluding evidence, however, the issue is preserved for appeal so long as the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked. The offering of the evidence must otherwise be on the record and it must reveal the grounds for admission. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

If an objection to the admission of evidence is not raised at the trial level, it is not preserved for appeal, and the appellate court will not consider the issue. But, in rulings excluding evidence, the issue is preserved so long as the substance of the evidence was made known to the court by an offer of proof or was apparent from the context within which questions were asked and the offering of the evidence must otherwise be on the record, and it must reveal the grounds for admission. Palsis v. Kosrae, 17 FSM R. 236, 244 (App. 2010).

When the trial court granted a motion in limine excluding a letter, the proponent did not need to take

any further steps to preserve the issue for appeal since, as an interlocutory order excluding evidence, the denial order merged with the final judgment because the letter's substance had been made known to the trial court before its ruling. Palsis v. Kosrae, 17 FSM R. 236, 244 (App. 2010).

– Presumptions

By statute, only the cargo actually used illegally, or the fish actually caught illegally, are subject to forfeiture, although the burden of proof (presumptions) rest on different parties depending on whether fish or cargo is involved. It is a rebuttable presumption that all fish found a board a vessel seized for Title 24 violations were illegally taken, but there is no such presumption that the cargo found aboard was "cargo used" in the alleged violation. FSM v. Skico, Ltd. (I), 7 FSM R. 550, 552 (Chk. 1996).

Since hearsay testimony is inherently unreliable, the court cannot be required to or presumed to rely on hearsay testimony over contrary direct evidence to determine where the preponderance of evidence lies. FSM v. Suzuki, 17 FSM R. 114, 116 (Chk. 2010).

A notarized affidavit may be authenticated without the affiant's testimony, as it is presumed to be authentic so long as it is acknowledged in the manner provided for by law. A clerk of court's manner of acknowledging an affidavit is for the affiant to swear to it under oath in the clerk's presence. Peter v. Jessy, 17 FSM R. 163, 173-74 (Chk. S. Ct. App. 2010).

When the affidavit was not acknowledged in the manner provided for by law since the affiant was not present at the time that the affidavit was acknowledged, the trial court's determination that the presumption of self-authentication had been rebutted and that the affidavit was not otherwise authenticated was proper. There was therefore no abuse of discretion in the trial court's denial of the affidavit's admission into evidence for the reason that it was not authenticated. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

Every person is competent to testify. When challenged on the basis of impairment or diminished capacity, the general rule of competency is presumed, and the witness is almost invariably pronounced competent unless shown otherwise. FSM Dev. Bank v. Carl, 20 FSM R. 329, 334 (Pon. 2016).

The party challenging the authenticity or validity of a certificate of title, bears the burden of proving it is not authentic or valid because a certificate of title is *prima facie* evidence of ownership and courts must attach a presumption of correctness to it. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 120-21 (App. 2017).

There are a number of presumptions in collision law that are directed to the issue of fault. When a vessel under its own power collides with an anchored vessel or a navigational structure, the burden of proving absence of fault or inevitable accident rests with the moving vessel. The presumption also applies when an unmoored, drifting vessel hits an anchored vessel or structure. The presumption does not apply, however, in the case of an allision with a submerged hidden object. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 20 (Yap 2018).

Since the presumption of fault does not apply to allisions with sunken or hidden objects, the party who is invoking the presumption has the burden of proving either that the object was visible or that the vessel otherwise possessed knowledge of the object's location. While this presumption generally does not apply to allisions with sunken or hidden objects, knowledge of an otherwise nonvisible object warrants imposition of presumed negligence against those operating the vessel who possessed this knowledge because, if the submerged object's presence is known, then the accident was neither fortuitous nor unavoidable. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 20 (Yap 2018).

The *res ipsa loquitur* doctrine creates a rebuttable presumption of negligence on the part of a party who is in exclusive control of an instrumentality with regard to a mishap that ordinarily does not occur in the

absence of negligence. It is primarily applicable in allision cases. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 20 (Yap 2018).

When the vessel, while moving under its own power, struck a stationary object – the outer edge of a reef – and ran hard aground on it, causing damage; when the vessel's captain knew that the reef's outer edge was located off the vessel's port side, although he was unsure of its exact location; when the vessel deliberately ran parallel to the reef while the captain looked for its outer edge with his own eyes; when the reef was submerged, but it was not hidden; and when the reef was visible when not staring directly into the sunlight's glare, the allision presumption applies and none of the exceptions to that principle applies. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 20 (Yap 2018).

When the vessel was running at 5 knots in an easterly direction toward the early morning sun; when the atoll and its reef were off the vessel's port side; when if the vessel had wanted to avoid the reef, a turn to starboard, where there was plenty of sea room, no shipping, and no reef, would have sufficed; when even the use of the vessel's sonar depth finders or the posting of lookouts should have prevented the allision, the court must discount the presence of inaccurate navigational charts on the vessel because, even if the vessel had been using the inaccurate charts to navigate when it grounded on the reef, that grounding would still have to be considered the result of maritime negligence because of the captain's other failures. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 20-21 (Yap 2018).

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

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

Regardless of arguments about the application of presumptions, case law requires a determination of the adoptive children's "actual dependency" on the deceased adoptive parent. This does not regard a presumption. It is a factual inquiry and primarily focused on documentary evidence. Robert v. FSM Social Sec. Admin., 22 FSM R. 388, 394 (Kos. 2019).

– Privileges

Information concerning the source of funds for payment of attorney's fees of a particular party normally is not privileged information. Mailo v. Twum-Barimah, 3 FSM R. 179, 181 (Pon. 1987).

The appropriate test to determine the scope of work product protection to be afforded a document which serves the dual purpose of assisting with future litigation the outcome of which may be affected by a business decision, is that documents should be deemed prepared in anticipation of litigation if in light of the nature of the document and the factual situation in the particular case, the document can fairly be said to have been prepared or obtained because of the prospect of litigation. Where a document is created because of the prospect of litigation, analyzing the likely outcome of that litigation, it does not lose protection under this formulation merely because it is created to assist with a business decision. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 479 (Pon. 1998).

Work product protection extends to subsequent litigation as long as the materials sought were prepared by or for a party to the subsequent litigation. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 481 (Pon. 1998).

It is appropriate to allow the deposition of a party's attorney either when 1) the deposition is the only practical means of obtaining the information, 2) the information sought will not invade the attorney-client privilege or the work product doctrine, and 3) the information sought is relevant and the need for it

outweighs the disadvantages inherent in deposing a party's attorney; or when it is shown that no other means exist to obtain the information, and that the information sought is crucial to the preparation of the case. Pohnpei v. KSVI No. 3, 9 FSM R. 273, 278 (Pon. 1999).

A privilege is a peculiar right, advantage, exemption, power, franchise, or immunity held by a person or class, not generally possessed by others. AHPW, Inc. v. FSM, 10 FSM R. 420, 423 n.1 (Pon. 2001).

A witness's privilege is governed by common law principles as they may be interpreted by FSM courts in the light of reason and experience, including local custom and tradition. AHPW, Inc. v. FSM, 10 FSM R. 420, 423 (Pon. 2001).

When the court looks to common law sources in considering the nature of the legislative privilege enjoyed by members of the Pohnpei Legislature, it is mindful of Article XI, section 11 of the FSM Constitution, which requires that FSM Supreme Court decisions be consistent with the Constitution, Micronesian customs and traditions, and the social and geographical configuration of Micronesia. AHPW, Inc. v. FSM, 10 FSM R. 420, 423 (Pon. 2001).

Legislative privilege has a long history, and was well established at common law even before the founding of the United States. AHPW, Inc. v. FSM, 10 FSM R. 420, 423 (Pon. 2001).

Legislative immunity for state legislators exists under United States federal law independent of state constitutional speech or debate provisions. Legislative freedom has no less vitality in the FSM than in the United States. Our national Constitution and all four state constitutions contain speech or debate clauses. AHPW, Inc. v. FSM, 10 FSM R. 420, 424 (Pon. 2001).

A member of the Pohnpei Legislature is responsible only to the Legislature for statements in the Legislature or a committee thereof. AHPW, Inc. v. FSM, 10 FSM R. 420, 424 (Pon. 2001).

A lawmaker engages in many activities which are not covered by the legislative privilege, such as a wide range of legitimate errands performed for constituents, making of appointments with government agencies, assistance in securing government contracts, preparing news letters to constituents, news releases, and outside speeches. Such activities, though entirely legitimate, are political in nature rather than legislative, and such political matters do not have speech or debate clause protection. But when a legislator is acting within the legitimate legislative sphere, the speech or debate clause is an absolute bar to interference. AHPW, Inc. v. FSM, 10 FSM R. 420, 424-25 (Pon. 2001).

Legislative privilege should be read broadly to include anything generally done in a session of the legislature by one of its members in relation to the business before it. The ambit of the privilege extends beyond speech and debate per se to cover voting, circulation of information to other legislators, participation in the work of legislative committees, and a host of kindred activities. AHPW, Inc. v. FSM, 10 FSM R. 420, 425 (Pon. 2001).

The legislative privilege doctrine has both substantive and evidentiary aspects. In substance, the doctrine renders legislators immune from civil and criminal liability based on either speech or debate in the course of proceedings in the legislature. From an evidentiary standpoint, a legislator may claim the privilege in declining to answer any questions outside the legislature itself where those questions concern how a legislator voted, acted, or decided on matters within the sphere of legitimate legislative activity. AHPW, Inc. v. FSM, 10 FSM R. 420, 425 (Pon. 2001).

A Pohnpei legislator may decline to answer any questions that fall within the legitimate legislative activity of the Pohnpei legislature. AHPW, Inc. v. FSM, 10 FSM R. 420, 425 (Pon. 2001).

Questions that are casually or incidentally related to legislative affairs but not a part of the legislative process itself, do not fall within the legislative privilege. Such questions, when otherwise appropriate under

Rule 26(b)(1), should be answered. AHPW, Inc. v. FSM, 10 FSM R. 420, 426 (Pon. 2001).

There is no banker-client (i.e., customer) privilege, and no analytical reason to raise an understandably confidential commercial situation of principal-agent or customer-banker to a privilege. A privacy or confidentiality interest must be balanced against a litigant's interest in obtaining relevant and probative information even if the privacy interest implicated is that of non-parties. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 227 (Pon. 2002).

There is no privilege provided by law to protect the victim daughter from testifying against the defendant father. Kosrae State Code § 6.302 provides a privilege to persons from testifying against their spouse, but when the family victim is not the defendant's spouse, no privilege exists. Kosrae v. Nena, 12 FSM R. 20, 23 (Kos. S. Ct. Tr. 2003).

For a defendant's former counsel to testify regarding communications made during the course of the case at hearing on a motion to withdraw the defendant's plea, the defendant must be advised that if counsel is permitted to testify, the attorney-client privilege must be waived. Kosrae v. Kinere, 13 FSM R. 230, 236 (Kos. S. Ct. Tr. 2005).

Privilege is governed by the principles of the common law as they may be interpreted by the courts of the Federated States of Micronesia in the light of reason and experience, including local custom and tradition. FSM Dev. Bank v. Adams, 14 FSM R. 234, 247 (App. 2006).

The general rule appears to be that there exists no common law privilege with respect to bank customer information, but a court should indulge in a careful balancing of the right of civil litigants to discover relevant facts, on the one hand, with the right of bank customers to maintain reasonable privacy regarding their financial affairs, on the other. FSM Dev. Bank v. Adams, 14 FSM R. 234, 247 (App. 2006).

When an attorney's fee award has been requested, matters concerning attorney's fees are generally not privileged and a blanket refusal to disclose to opposing counsel any supporting documentation showing the date, the work done, and the amount of time spent on each service for which a compensation claim was made, goes far beyond any possible assertion of attorney-client or work-product privilege. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 62 (Yap 2007).

Since the rule with respect to privileges applies at all stages of all actions, cases, and proceedings, it therefore applies during discovery. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 511 (Pon. 2009).

Except as otherwise required by the FSM Constitution or provided by Act of Congress or in rules prescribed by the Chief Justice, the privilege of a witness, person, government, state, or political subdivision thereof is governed by the principles of the common law as they may be interpreted by FSM courts in the light of reason and experience. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 511 (Pon. 2009).

The government, by instituting an action, does not waive any privilege it may have and thereby submit to unlimited discovery. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 511 (Pon. 2009).

Although it may be true in the general case that when the FSM is claiming executive privilege it has an initial duty to provide a sworn declaration demonstrating that the discovery at issue is privileged, but when discovery is sought from a president, no such declaration will be required since presidential communications are "presumptively privileged." This is because a court is not required to proceed against the president as against an ordinary individual. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 511 (Pon. 2009).

Although a former president may not retain the capacity to either assert or waive an executive privilege, an incumbent president can claim the privilege on his predecessor's behalf. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 511 (Pon. 2009).

The presidential executive privilege is rooted in the separation of powers doctrine and in the principle that confidentiality in communications between the president and his advisors should enhance the quality of discussion and government decisions. However, this presumptive privilege is not absolute and must be considered in the light of the rule of law. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512 (Pon. 2009).

While the public and the courts have a right to every person's evidence, except for that protected by constitutional, statutory, or other privilege, these privileges are not expansively construed. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512 (Pon. 2009).

A party seeking discovery, who is confronted with an executive privilege claim, may overcome that claim if the discovery would 1) lead to admissible evidence; 2) is essential to the party's case; 3) is not available through any alternative source or less burdensome means; and 4) will not significantly interfere with the official's ability to perform his governmental duties. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512 (Pon. 2009).

When the plaintiff contends that the depositions of the president, vice president, and former president would yield admissible evidence about the discussions during high-level national-state government meetings on replacing the plaintiff as the Project Management Unit since the presidents and vice president were the only persons present at all of those meetings and should thus have unique, relevant testimony, the plaintiff has not met its burden to show that information about those meetings cannot be obtained through alternative sources or less burdensome means since a number of other persons were present at each of those meetings. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512 (Pon. 2009).

When the plaintiff has corroborating testimony from two witnesses, it has not shown why the former president's testimony on the same subject is essential to its case or that what it seeks to obtain from him it has not already obtained from the alternative sources. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512 (Pon. 2009).

When the president has unique, personal knowledge of an essential relevant issue because only the president, and no alternative source, is available to corroborate testimony, the court will limit discovery from the president to this one narrow topic. Since discovery will be limited to this one narrow point, the president's oral deposition will be more burdensome than needed. The court will therefore craft a protective order so that another means of discovery will be used – the plaintiff may seek discovery from the president through either a Rule 31 deposition upon written questions or through Rule 33 written interrogatories, whichever the plaintiff finds best-suited to its purposes. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512-13 (Pon. 2009).

It is appropriate to depose another party's attorney only when 1) the deposition is the only practical means of obtaining the information, 2) the information sought will not invade the attorney-client privilege or the work product doctrine, and 3) the information sought is relevant and the need for it outweighs the disadvantages inherent in deposing a party's attorney; or when it has been shown that no other means exist to obtain the information, and that the information sought is crucial to the case's preparation. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41d (Pon. 2015).

Since any communication made to or from an attorney can always be sought from the person or entity on the other end of the communication, there should always be another practical means of obtaining the substance of that communication if it does not violate attorney-client privilege or the work product doctrine. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41d (Pon. 2015).

To the extent that the discovery a party seeks constitutes internal workings of the Attorney General's Office – attorney work product – it is privileged and not discoverable. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41d (Pon. 2015).

Any confidential patient-doctor's information can be redacted from documents provided in discovery.

The fact that a medical clinic received certain sums as payments for medical services should be discoverable, but what those medical services were and for which patients, need not be provided. That the clinic received an aggregate total payment of some amount for a particular type of service may be provided without violating doctor-patient privilege. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 442 (Pon. 2016).

The mere allegation that the work product doctrine applies, is insufficient to claim the privilege. The party who asserts the work product privilege must demonstrate that the doctrine applies. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 443 (Pon. 2016).

Because the work product doctrine is intended only to guard against divulging the attorney's strategies and legal impressions, it does not protect facts concerning the creation of work product or facts contained within work product. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 443 (Pon. 2016).

Evidence privileges will be governed by the principles of the common law, as they may be interpreted by the FSM courts. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 666 (Pon. 2016).

When prior FSM cases have not addressed a precise point, the court, in such instances, may look to authority from other jurisdictions in the common law tradition, such as the U.S. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 666 (Pon. 2016).

The attorney-client privilege protects communications between an attorney and client that were made for the purpose of providing legal services. The privilege's effect is to safeguard these communications from being disclosed in litigation, since it acts a shield, to prevent adversaries from obtaining such exchanged information. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 666 (Pon. 2016).

The attorney-client privilege is deeply rooted in public policy and essential to the administration of justice. The privilege is traditionally deemed worthy of maximum legal protection. It remains one of the most carefully guarded privileges and is not readily to be whittled down. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 666 (Pon. 2016).

The attorney-client privilege applies only if: 1) the asserted holder of the privilege is or sought to become a client; 2) the person to whom the communication was made is a member of the bar of a court or his or her subordinate and in connection with this communication, is acting as a lawyer; 3) the communication relates to a fact of which the attorney was informed by the client, without the presence of strangers, for the purpose of securing primarily either an opinion on law, or legal services, or assistance in some legal proceeding, and not for the purpose of committing a crime or tort; and 4) the client has claimed and not waived the privilege. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 667 (Pon. 2016).

A justification for the attorney-client privilege is that it promotes disclosure of all relevant information by the client; enabling the attorney to effectively represent the client and dispense thorough legal advice. Without the privilege, there would most likely be a chilling effect, in that many clients would be reluctant to disclose all relevant information to the attorney, if adverse parties could utilize same against them in subsequent litigation. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 667 (Pon. 2016).

A justification for the attorney-client privilege is that an attorney must be able to openly communicate legal advice and strategy to the client, in order to adequately represent him or her and counsel would be hesitant to engage in such discourse, if adverse litigants could discover such communication in subsequent litigation. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 667 (Pon. 2016).

Because sound legal advice or advocacy serves public ends, the attorney-client privilege is necessary to promote full and unrestricted communication; consonant with the attorney-client relationship. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 667 (Pon. 2016).

Whether the attorney-client privilege attaches depends on the nature of the communication. In

examining the nature of the communication, courts look to whether the attorney was retained to act in a capacity other than as an attorney, in which case, the communications may not be privileged. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 667 (Pon. 2016).

An uncertain attorney-client privilege – or one which purports to be certain, but results in widely varying applications by courts – is little better than no privilege. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 668 (Pon. 2016).

In determining the dominant purpose of the communication and thus whether the attorney-client privilege is implicated, the relevant question boils down to: was the exchange of information relevant to the rendition of legal services. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 668 (Pon. 2016).

The attorney-client privilege does not require the communication to contain purely legal analysis or advice to be privileged. Instead, if a communication between lawyer and client would facilitate the rendition of legal services or advice, the communication is privileged. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 668 (Pon. 2016).

When the communication documents exchanged by an attorney were intended to be confidential, the attorney-client privilege prevents their disclosure. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 668 (Pon. 2016).

Since parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, a request for communication documents to and from an attorney are shielded by the attorney-client privilege and a motion to compel their production will be denied, but a motion to compel the production of communication documents to and from an engineer co-project manager will be granted. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 668 (Pon. 2016).

– Relevant

"Relevant evidence" is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. FSM v. Jonas (II), 1 FSM R. 306, 312 (Pon. 1983).

Introduction of other burn cases to show that defective fuel in those cases tended to show the fuel was defective in the present case is relevant if the other cases are similar. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 348, 352 (Pon. 2001).

Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the action's determination more probable or less probable than it would be without the evidence, and all relevant evidence is admissible, except for the specific exceptions set out in the FSM Rules of Evidence. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 473 (Pon. 2001).

When prosecuting criminal acts alleged to have occurred during the national election, the government may introduce evidence of acts in relation to the Chuuk state election held on the same day so long as those acts are relevant and are evidence of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident in relation to the national election offenses charged in the information. FSM v. Wainit, 11 FSM R. 1, 6 (Chk. 2002).

When the government, in prosecuting criminal acts alleged to have occurred during the national election, may introduce evidence of acts in relation to the Chuuk state election held on the same day so long as those acts are relevant and are evidence of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident in relation to the national election offenses, the defendant may have the State Election Director as a witness give evidence so long as it is restricted to relevant evidence of which he has first-hand knowledge and which is within the scope of evidence the

prosecution has introduced concerning the state election during the government's case-in-chief. FSM v. Wainit, 11 FSM R. 1, 7 (Chk. 2002).

The Kosrae Rules of Evidence do not apply in the Land Commission or Land Court. In the case of hearsay testimony, the Land Commission or presiding justice shall determine the testimony's relevancy and the credibility of the witness. The purpose of allowing hearsay testimony and other evidence at land proceedings, without application of the Kosrae Rules of Evidence, is to allow all relevant evidence on the claims presented before the Land Commission and Land Court, without limitations imposed by the Rules of Evidence. The determination of relevancy of evidence and credibility of witnesses is made by the adjudicators, the Land Commission or a justice of the Kosrae Land Court. Taulung v. Jack, 11 FSM R. 345, 348 (Kos. S. Ct. Tr. 2003).

All relevant documents are not necessarily those required to prove a party's case by the preponderance of the evidence. AHPW, Inc. v. FSM, 12 FSM R. 164, 168 (Pon. 2003).

The Kosrae State Court Rules of Evidence do not apply to Land Court proceedings. Evidence which is relevant and material to the claim or the issues may be presented at the Land Court hearing and the presiding justice will determine the relevancy and credibility of all evidence offered at the hearing, and will determine whether the evidence is admissible in the hearing. This allows the presiding Land Court justice to hear all offered evidence and determine whether the evidence is relevant and credible. The evidentiary standard for Land Court proceedings is very broad and allows the admission and consideration of hearsay and other evidence that would normally be excluded under the Kosrae Rules of Evidence, in Kosrae State Court proceedings. This broad evidentiary standard is applied to allow all relevant evidence of claims and statements to be presented without the limitations imposed by the Kosrae Rules of Evidence. Heirs of Palik v. Heirs of Henry, 12 FSM R. 625, 627 (Kos. S. Ct. Tr. 2004).

When an agreement stating that the defendant had received full payment for the 27 motors and still owed the plaintiff 14 motors is relevant and is admissible as an admission of a party-opponent, the trial court did not err by relying on it when making a finding of fact since the exhibit was properly admitted, and the trial court was entitled to give it such weight as it saw fit. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 518 (App. 2005).

When a February 19, 1999 letter clearly refers to state legislative seats, but also asks for support for the Government of Udot's candidates, the question of who are the Government of Udot's candidates allowed the court to consider all evidence relevant to the issue, and when further evidence established that the incumbent candidate for the Chuuk Fourth Congressional District was one of those candidates, it was upon this basis that defendant was convicted of interfering in the national election. Thus this evidentiary issue is not substantial. FSM v. Wainit, 14 FSM R. 164, 169 (Chk. 2006).

A blanket claim that all evidence should have been excluded will not be considered a close or substantial question on appeal. Nor is a claim that prejudicial evidence was admitted a substantial issue because relevant evidence is inherently prejudicial; but it is only unfair prejudice, substantially outweighing probative value, which permits exclusion of relevant matter. FSM v. Petewon, 14 FSM R. 320, 326 (Chk. 2006).

A motion to exclude an expert witness's deposition testimony is premature when it is made before his deposition has been completed, and any motion to exclude his trial testimony on the ground of relevance before the deposition is complete is also premature. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 652 (Pon. 2009).

The Land Court should not exclude any relevant evidence and the Kosrae Rules of Evidence do not apply in the Land Court, but the State Court cannot consider evidence that was not "received" in the Land Court. "Received" in the statute is read to include evidence offered or introduced but improperly excluded. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 659 (App. 2011).

Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the action's determination more probable or less probable than it would be without the evidence. All relevant evidence is admissible, except for the specific exceptions set out in the FSM Rules of Evidence. Mori v. Hasiguchi, 19 FSM R. 222, 225 (Chk. 2013).

When the plaintiff contends that the defendants attempted to interfere with his purchase of Transco stock by trying to get the seller to rescind the sale to him and to purchase it themselves, a past pattern of stock purchases might make it more probable than it would be without the evidence that the defendants tried to get the seller to sell them the shares and, furthermore, written correspondence received by Transco about this matter must also be relevant. Mori v. Hasiguchi, 19 FSM R. 222, 225 (Chk. 2013).

Evidence must be in the nature of facts – not conclusions or unsupported allegations of counsel. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 122 (App. 2017).

Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the action's determination more probable or less probable than it would be without the evidence. All relevant evidence is admissible, except for the specific exceptions set out in the FSM Rules of Evidence. FSM v. Wolphagen, 21 FSM R. 247, 249 (Pon. 2017).

A state court accusation of harassment and disorderly conduct against the defendant has no bearing on the current FSM court charges of obstruction, retaliation, and tampering since the state court case's contents would not make the pending charges more or less probable because of the different facts and circumstances surrounding each case and, since the state court charges were later dropped, those accusations are no longer relevant because it will be construed as though those allegations were never filed. FSM v. Wolphagen, 21 FSM R. 247, 249 (Pon. 2017).

Irrelevant evidence that will be extremely prejudicial towards the defendant, should be excluded from the record. FSM v. Wolphagen, 21 FSM R. 247, 249 (Pon. 2017).

Generally, evidence of other crimes, wrongs, or acts is not admissible to prove a person's character in order to show that he acted in conformity therewith, but such evidence is admissible as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. FSM v. Wolphagen, 21 FSM R. 247, 250 (Pon. 2017).

Evidence that the defendant suffered from a physical or mental disease, disorder, or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is an element of the crime. FSM v. Pillias, 22 FSM R. 334, 337 n.2 (Chk. 2019).

– Stipulations

Since a trial's purpose is to resolve disputed factual issues and to determine the ultimate facts, no trial would have been needed if all the necessary facts had been stipulated. Berman v. Pohnpei Legislature, 17 FSM R. 339, 347 n.1 (App. 2011).

In construing a stipulation, a court should not extend its terms beyond that which fair construction justifies. Berman v. Pohnpei Legislature, 17 FSM R. 339, 348 (App. 2011).

When, by its terms, a stipulation refers only to the attorneys' number of years of legal experience and not to the nature or quality of that experience, it cannot be relied on to prove that a party had the same qualifications as another and thus was entitled to the higher pay that other received. Berman v. Pohnpei Legislature, 17 FSM R. 339, 348 (App. 2011).

Notwithstanding the effect of stipulation as binding judicial admissions dispensing with the necessity of

legal proof, when the court makes findings of fact contrary to such stipulations and when ample evidence supports the court's findings, the parties who failed to object or to assert the stipulation in rebuttal to such evidence, have waived their right to rely on the stipulated facts. Berman v. Pohnpei Legislature, 17 FSM R. 339, 348 (App. 2011).

Although parties may stipulate to factual matters, they may not stipulate to interpretations of law. Berman v. Lambert, 17 FSM R. 442, 446, 450-51 (App. 2011).

– When Evidence Rules Apply

The Kosrae Rules of Evidence do not apply in the Land Commission or Land Court. In the case of hearsay testimony, the Land Commission or presiding justice shall determine the testimony's relevancy and the credibility of the witness. The purpose of allowing hearsay testimony and other evidence at land proceedings, without application of the Kosrae Rules of Evidence, is to allow all relevant evidence on the claims presented before the Land Commission and Land Court, without limitations imposed by the Rules of Evidence. The determination of relevancy of evidence and credibility of witnesses is made by the adjudicators, the Land Commission or a justice of the Kosrae Land Court. Taulung v. Jack, 11 FSM R. 345, 348 (Kos. S. Ct. Tr. 2003).

The Kosrae State Court Rules of Evidence do not apply to Land Court proceedings. Evidence which is relevant and material to the claim or the issues may be presented at the Land Court hearing and the presiding justice will determine the relevancy and credibility of all evidence offered at the hearing, and will determine whether the evidence is admissible in the hearing. This allows the presiding Land Court justice to hear all offered evidence and determine whether the evidence is relevant and credible. The evidentiary standard for Land Court proceedings is very broad and allows the admission and consideration of hearsay and other evidence that would normally be excluded under the Kosrae Rules of Evidence, in Kosrae State Court proceedings. This broad evidentiary standard is applied to allow all relevant evidence of claims and statements to be presented without the limitations imposed by the Kosrae Rules of Evidence. Heirs of Palik v. Heirs of Henry, 12 FSM R. 625, 627 (Kos. S. Ct. Tr. 2004).

Depositions, warrants or other papers may be admitted into evidence in an extradition case if properly authenticated and the FSM Rules of Evidence by their terms do not apply to extradition proceedings. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 373 (Yap 2005).

The Kosrae Rules of Evidence apply to civil, criminal and contempt proceedings, but are not applicable to miscellaneous proceedings, such as preliminary examinations for criminal cases and bail proceedings. The rules do not reference their applicability or inapplicability to juvenile proceedings or to preliminary proceedings to determine whether to treat a minor defendant as an adult. Kosrae v. Ned, 14 FSM R. 86, 89 (Kos. S. Ct. Tr. 2006).

An FSM police report, if relevant, may be considered in a proceeding to release a vessel when it is not a criminal case, since police reports, as matters observed pursuant to duty imposed by law as to which matters there was a duty to report, are admissible as an exception to the rule that hearsay is generally inadmissible and since a motion for a vessel's release is in the nature of a bond or bail hearing, and the rules of evidence generally do not apply to proceedings with respect to release on bail or otherwise. FSM v. Kana Maru No. 1, 14 FSM R. 300, 302 (Chk. 2006).

Although the strict guidelines against the admission of hearsay evidence do not apply in a probable cause determination, a prosecutor may not rely solely on hearsay testimony when other, more competent testimony is available. The court may therefore discount unreliable hearsay or other evidence that is inherently untrustworthy or suspicious, unless additional measures are taken to ensure reliability or to explain those exigent circumstances that make it impossible to produce more reliable or competent evidence. A prosecutor's own representations are not a substitute for competent, reliable evidence in the form of first-hand testimony or appropriately detailed affidavits from investigating officers who obtained

first-hand accounts. Chuuk v. Chosa, 16 FSM R. 95, 98 (Chk. S. Ct. Tr. 2008).

The Land Court should not exclude any relevant evidence and the Kosrae Rules of Evidence do not apply in the Land Court, but the State Court cannot consider evidence that was not "received" in the Land Court. "Received" in the statute is read to include evidence offered or introduced but improperly excluded. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 659 (App. 2011).

– Witnesses

At the core of the task of the trier of fact is the power and obligation to determine credibility of witnesses. The court may rely upon that testimony which he finds credible and disregard testimony which does not appear credible. To do this, the trial court must be a sensitive observer of tones, hesitations, inflections, mannerisms and general demeanor of actual witnesses. Engichy v. FSM, 1 FSM R. 532, 556 (App. 1984).

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

A witness's credibility may not be attacked by evidence of a prior criminal conviction if the crime did not involve dishonesty or false statement, or was not for a felony whose punishment ended within the past ten years, or if the prejudicial effect outweighs the probative value. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 122 (Pon. 1993).

A lawyer generally cannot appear as an advocate when he also appears as a witness, although there is an exception when the testimony relates to an uncontested issue. FSM Dev. Bank v. Ifraim, 10 FSM R. 342, 344 (Chk. 2001).

A witness summons can be issued for any witness, including the victim, for his or her appearance and testimony at trial. This process is utilized frequently in trials of criminal cases where witnesses are reluctant to appear and testify. Kosrae v. Nena, 12 FSM R. 20, 23 (Kos. S. Ct. Tr. 2003).

A person's failure to obey a witness summons is considered contempt of court, and may subject the offending witness to arrest and imprisonment. Kosrae v. Nena, 12 FSM R. 20, 23 (Kos. S. Ct. Tr. 2003).

Every person is competent to be witness except as otherwise provided by the Evidence Rules. A witness must have personal knowledge of the matter testified to and must, prior to testifying, declare, by oath or affirmation that she will testify truthfully. Kosrae v. Jackson, 12 FSM R. 93, 97 (Kos. S. Ct. Tr. 2003).

The Rules do not specify any mental qualifications for testifying as a witness. The issue is better suited to the fact finder in its determination of the witness's weight and credibility. Kosrae v. Jackson, 12 FSM R. 93, 97 (Kos. S. Ct. Tr. 2003).

The question of a witness's competency goes to the issue of credibility, which is for the trier of fact. Even a finding of criminal insanity and incompetence does not make a person incompetent to testify. As long as the person had a sufficient memory, could understand the oath, and could communicate what the person saw, the person was competent to serve as a witness. Kosrae v. Jackson, 12 FSM R. 93, 97 (Kos. S. Ct. Tr. 2003).

A witness's competency to testify requires a minimum ability to observe, record, recollect and recount

an event, as well as an understanding to tell the truth. The fact finder hears the testimony and judges the witness's credibility. Therefore, mental capacity generally functions as an effect on the weight of the testimony to be given, instead of precluding admissibility of the testimony. Generally, any showing of memory about the event is sufficient to make the witness competent to testify. If the witness is capable of communicating in any manner, the witness is competent. Kosrae v. Jackson, 12 FSM R. 93, 97 (Kos. S. Ct. Tr. 2003).

A witness will not be disqualified to testify as witness in a trial due to her mental handicap when she took an oath to testify truthfully; had the memory of what actions had taken place; and, based upon her testimony, showed her ability to observe, record, recollect and recount that event. Kosrae v. Jackson, 12 FSM R. 93, 97 (Kos. S. Ct. Tr. 2003).

Kosrae Rule of Evidence 609 permits impeachment through evidence of conviction of a felony, where the date of the conviction is less than ten years and it also requires the court to determine that the probative value of admitted the prior conviction outweighs its prejudicial effect to the defendant. Kosrae v. Jackson, 12 FSM R. 93, 98 (Kos. S. Ct. Tr. 2003).

Every person is competent to be a witness except as otherwise provided in the Rules. Rule 602 requires lay witnesses to have personal knowledge of the matters that they are testifying to. Rule 603 requires every witness to declare that he will testify truthfully. The Rules do not exclude potential witnesses based upon their status as prisoners. Kosrae v. Sigrah, 12 FSM R. 562, 566 (Kos. S. Ct. Tr. 2004).

When a prisoner's testimony complied with the requirements of Rules 601, 602 and 603 and the defendant had the opportunity to cross examine him and attack his credibility by evidence of prior criminal convictions, there is no legal authority for the automatic exclusion of a prisoner's testimony. Ultimately, it is the task of trier of fact to determine the witnesses' credibility and to determine what should be accepted as the truth and what should be rejected as untrue or false. Kosrae v. Sigrah, 12 FSM R. 562, 566 (Kos. S. Ct. Tr. 2004).

A party is entitled to question any witness as to the basis of his knowledge. This is relevant evidence. Thus when the history of the land claim is relevant, an attorney should not be prevented from asking a witness about his family's claim to the land and why his testimony on that subject differed from that of his father. Any witness may be impeached. Church of the Latter Day Saints v. Esiron, 13 FSM R. 99a, 99e, 99f (Chk. 2004).

Criminal Rule 26.2 creates no right to production of statements of witnesses until the witness has testified on direct examination, but if the prosecution insists upon literal compliance with Rule 26.2(a) the practical result is that a recess must be taken at the conclusion of the direct examination of every witness, and the court would very likely abuse its discretion if it refused to grant a recess. The usual practice in the FSM under Rule 26.2 has been that the prosecution voluntarily provides defense counsel access to witness statements in advance of their testimony and the court finds this a salutary and commendable practice. FSM v. Walter, 13 FSM R. 264, 267-68 (Chk. 2005).

A defendant may obtain a witness's statement in the government's hands either through Rule 16 discovery or through Rule 26.2(a) procedures. It is not obtainable by deposition. FSM v. Wainit, 13 FSM R. 301, 304-05 (Chk. 2005).

A non-party under subpoena may move to quash the subpoena directed to him. FSM v. Wainit, 13 FSM R. 301, 305 (Chk. 2005).

It is for the trial judge to assess a witness' credibility, because he has the opportunity to observe the witness and the manner in which he testifies. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 514 (App. 2005).

There is no rule that would require a party wishing to prove a money transfer to do so by documentary evidence only. Every time a witness takes the stand the trier of fact must determine whether that witness is believable. A trier of fact can perform this function regardless of whether financial transactions are the subject of the testimony. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 514 (App. 2005).

The fact that the appellant challenges the credibility of a witness's testimony does not mean that the trier of fact could not accept it as true, since it is for the trier of fact to assess a witness' credibility. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 519 (App. 2005).

Civil Rule 32(a)(3) permits any party to use a witness's deposition for any purpose if the court finds that the witness is off of the island at which the trial or hearing is being held, unless it appears that the witness's absence was procured by the party offering the deposition. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 19 (App. 2006).

The use of a witness's deposition at trial because the witness was off-island was proper when the witness's current job meant he no longer traveled to the Pacific and that he did not expect to be in Pohnpei in the next six months and that, since he was in Texas, an FSM Supreme Court subpoena could not compel him to appear. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 19 (App. 2006).

A subpoena directed to someone in a foreign country is considered valid and enforceable only if the person it is directed to is an FSM national or resident. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 19 n.4 (App. 2006).

The trial court did not commit error when it denied the defendant's request during trial to permit the State Auditor to be called as a witness when the State Auditor was not on the state's witness list; he had not been subpoenaed; and the plaintiff had no prior notice that this witness would be called. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 21 (App. 2006).

Neither state law nor the Kosrae Juvenile Rules require a witness to be qualified as an expert witness under the Evidence Rules in order to accept her testimony and report in a preliminary proceeding to determine whether to treat the defendant as an adult. The court may accept the witness's qualifications based upon her training as a physician and her position as Clinical Director of the FSM National Health Substance Abuse and Mental Health Program. Kosrae v. Ned, 14 FSM R. 86, 90 (Kos. S. Ct. Tr. 2006).

A witness must obey the subpoena that summoned him or her or get that subpoena quashed. Amayo v. MJ Co., 14 FSM R. 355, 361 n.1 (Pon. 2006).

A motion to suppress all witness statements on the ground they were given without the warnings required by law will be denied since the court is not aware of any warnings required to be given a witness before the witness makes a statement and neither the accused's written motion nor oral argument cited any authority that legal warnings are required to be given before a witness's statement may be taken. This does not mean that the FSM Rules of Evidence, especially those concerning hearsay, would not apply at trial. FSM v. Aiken, 16 FSM R. 178, 184 (Chk. 2008).

Matters regarding a person's qualification to be a witness must be determined by the trial court, and the proponent must establish the qualification. Fritz v. FSM, 16 FSM R. 192, 197 (App. 2008).

Once faced with the proffer of an expert witness, the question of whether the witness may be qualified as an expert is a preliminary fact to be decided by the trial court. Fritz v. FSM, 16 FSM R. 192, 197 (App. 2008).

At the core of the trier-of-fact's task is the power and obligation to determine the witnesses' credibility. The trial court may rely upon that testimony which it finds credible and disregard testimony which does not

appear credible. Fritz v. FSM, 16 FSM R. 192, 199 (App. 2008).

Although an argument that it is not logical that one outsider of the clan would know about the history of a *nechop* land transfer when no testifying clan member had knowledge of the *nechop* and that for this reason the testimony is not credible, may affect credibility, the court cannot say that the trial court abused its discretion in accepting and relying upon the testimony when the witness could have attained this knowledge from his wife's uncle. Narruhn v. Aisek, 16 FSM R. 236, 241 (App. 2009).

Although the appellants may consider the timing of a witness's rebuttal testimony to be problematic, when the witness's testimony is not contradictory to his testimony before rebuttal and when the trial court's findings are supported by other testimony, the finding will not be set aside based on an alleged inconsistency between the witness's direct and later rebuttal testimony. Narruhn v. Aisek, 16 FSM R. 236, 241 (App. 2009).

A court cannot assess the credibility of parties, whose deposition testimony was admitted but who declined to appear at trial, because in order to make this assessment the court must carefully observe the witness's tone, hesitations, inflections, mannerisms, and general demeanor. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 439 (Pon. 2009).

The trial court is in the best position to judge the demeanor and credibility of the witnesses. Cholymay v. FSM, 17 FSM R. 11, 17 (App. 2010).

FSM Evidence Rule 611(b) allows the court to permit a procedure where the plaintiff would call the witnesses but each party would be able to treat each witness as if the witness were its own, that is, each defendant could ask each witness any relevant question regardless of whether that question was within the scope of the plaintiff's direct examination. In effect, each party put on its case-in-chief simultaneously with the others. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 117 & n.2 (App. 2011).

The trier of fact, whose duty it is to assess a witness's credibility, could accept as true some witnesses' testimony and thereby reject another witness's contrary deposition testimony. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 352 (App. 2012).

That the trial court found other testimony more credible than one witness's is not a ground for reversal because the trial court was in the best position to judge the witnesses' demeanor and credibility since the trial judge had the opportunity to observe the witnesses and the manner in which they testified. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 352 (App. 2012).

Although the trial judge did not have the opportunity the manner in which a witness testified when she testified by deposition, the appellate court cannot presume that even if she had testified in person that the trial judge would have found her more credible than the other witnesses and then decided the case in her favor since there was substantial evidence in the record to support the trial court's findings. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 352 (App. 2012).

A witness is unavailable if he is absent from the hearing and the proponent of his statement has been unable to procure his attendance by process or other reasonable means. A foreign resident's attendance at trial cannot be secured by process since the FSM Supreme Court's subpoena power does not extend into other countries. Chuuk v. Emilio, 19 FSM R. 33, 36 (Chk. S. Ct. Tr. 2013).

When the plaintiffs had ample opportunity to impeach a witness's testimony at trial; when all the arguments and evidence presented by the plaintiffs in their post-trial motion were available at trial and should have been presented at trial; when, if the plaintiffs were sincere in their desire to see the witness prosecuted, then they would have brought the matter to the attention of the appropriate authorities rather than asking the court to refer the matter for a perjury prosecution by a separate branch of government; and when the motion's filing suggests that the true motive was to impeach the witness's credibility, the plaintiffs'

motion for an order referring the witness to the FSM Department of Justice for violation of the perjury statute will be denied, and the court will not consider the motion's contents in reaching a decision. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 269 (Pon. 2014).

Judging the credibility of witness testimony is the exclusive responsibility of the justice presiding over the matter. Harden v. Inek, 19 FSM R. 278, 280 n.1 (Pon. 2014).

When, in general, the witnesses' emotional attachment to the lot is irrelevant to the plaintiff's actual damages from the Board's violation of its civil right to due process, and when, without knowing what the witnesses' testimony will be, it is unknown whether testimony about the lot's necessary background history will unavoidably include some mention of emotional attachment, the court cannot make a blanket ruling barring all mention of a witness's emotional attachment to the lot. During trial, the defendant may object to any irrelevant questions and move to strike any irrelevant matter in a witness's answer to a relevant question. That should be sufficient protection. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 377-78 (Pon. 2014).

Although the Civil Procedure Rules provide that FSM nationals and residents are subject to the court's subpoenas even in foreign countries, there is no similar provision in the Criminal Procedure Rules. The only relevant Criminal Procedure Rule states that a subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the FSM. FSM v. Tipingeni, 19 FSM R. 439, 448 n.3 (Chk. 2014).

The FSM's confrontation clause does not always require a physical confrontation before the fact-finder. For example, there are certain well-established exceptions to the rule barring hearsay that, because of their indicia of reliability or trustworthiness, allow the introduction of evidence from witnesses a defendant will be unable to confront. FSM v. Tipingeni, 19 FSM R. 439, 449 (Chk. 2014).

Since, generally, a lawyer must not act as advocate at a trial in which the lawyer is likely to be a necessary witness, it follows that a party should not be able to potentially disqualify another litigant's advocate by making the other litigant's lawyer into a witness by noticing that advocate's deposition. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41d (Pon. 2015).

Testimony may be admissible so long as it contains the essential indicia of reliability, including 1) the giving of testimony under oath; 2) the opportunity for cross examination; 3) the ability of the fact-finder to observe demeanor evidence; and 4) the reduced risk that a witness will wrongfully implicate an innocent defendant when testifying in his presence. FSM v. Halbert, 20 FSM R. 42, 46 (Pon. 2015).

FSM Supreme Court justices, even temporary justices, should be guided by permissible considerations rather than by one party's unsupported supposition that other justices would have ruled differently on a question of first impression. FSM v. Halbert, 20 FSM R. 49, 52 (Pon. 2015).

Since for the issue of the admissibility of Skype testimony to be properly before the court, there must be a threshold showing that Skype testimony is feasible and since in the absence of such a showing the government would be asking for a mere advisory opinion, it was proper for the court to require the government to demonstrate Skype testimony's feasibility before ruling on the parties' legal arguments. FSM v. Halbert, 20 FSM R. 49, 52 (Pon. 2015).

A witness's prior inconsistent statement bears on his credibility. Ittu v. Ittu, 20 FSM R. 178, 186 (App. 2015).

An appellate court cannot say that the trial court's finding was clearly erroneous when it was the result of weighing conflicting evidence. When the trial judge believed one witness's testimony and not the other's and gave an extensive analysis of the testimony before him that led to the conclusion, there is no reason for the appellate court to disturb the trial court's conclusion since it was supported by credible evidence and the

trial judge had the opportunity to observe the witnesses and the manner of testimony and the appellate court did not have that opportunity. Ittu v. Ittu, 20 FSM R. 178, 186 (App. 2015).

Every person is competent to testify. When challenged on the basis of impairment or diminished capacity, the general rule of competency is presumed, and the witness is almost invariably pronounced competent unless shown otherwise. FSM Dev. Bank v. Carl, 20 FSM R. 329, 334 (Pon. 2016).

The burden of proof as to witness competency rests with the objecting party. In determining competence a judge has great latitude in the procedure he may follow. Typically, the court will simply permit the witness to begin direct examination testimony, and then consider the witness's competency in light of the content of that testimony and the manner in which it was given. Alternatively, the court may conduct a preliminary examination, or even hold a separate competency hearing, wherein the prospective witness is subjected to questioning, and other witnesses may testify and external evidence may be submitted to help the court assess the claim because the assistance of experts is sometimes necessary to aid in the determination. FSM Dev. Bank v. Carl, 20 FSM R. 329, 334 (Pon. 2016).

Witness competence is a preliminary question to be decided by the judge. FSM Dev. Bank v. Carl, 20 FSM R. 329, 334 (Pon. 2016).

A diagnosis of diabetes is insufficient to overcome the general rule that every person is competent to testify. FSM Dev. Bank v. Carl, 20 FSM R. 329, 334 (Pon. 2016).

Under FSM Evidence Rule 601, every person is competent to testify, and, if challenged on the basis of impairment, the general rule is that competency is presumed. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 438 (Pon. 2016).

By trying to take a party's deposition, the parties can reach an informed opinion about that party's competence to testify. Whether she is physically or mentally incapable of testifying is a factual, not a legal, question which can be resolved by taking her deposition. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 573 (Pon. 2016).

An FSM court may order the issuance of a subpoena requiring the appearance as a witness before it, or before a person or body designated by it, of an FSM national who is in a foreign country if it is necessary in the interest of justice and if it is not possible to obtain that evidence otherwise. FSM Dev. Bank v. Salomon, 21 FSM R. 327, 329 (Pon. 2017).

The FSM Supreme Court may issue a subpoena directed to an FSM citizen, who is present in a foreign country, to appear to testify at a deposition, as well as to appear and testify at a trial or hearing. FSM Dev. Bank v. Salomon, 21 FSM R. 327, 329 (Pon. 2017).

In all Kosrae State Court criminal trials, the testimony of witnesses must be taken orally in open court, unless otherwise provided by an Act of the Kosrae State Legislature or by a Kosrae State Court rule. Kosrae v. Tilfas, 22 FSM R. 72, 75 (Kos. S. Ct. Tr. 2018).

The criminal procedure rules are silent about whether video testimony is admissible in a criminal trial, and there is no legislation on this. Kosrae v. Tilfas, 22 FSM R. 72, 75 (Kos. S. Ct. Tr. 2018).

Rule 26 does not seem to preclude the admissibility of video testimony because remote video testimony will be taken orally in open court as required by the rules. Kosrae v. Tilfas, 22 FSM R. 72, 75 (Kos. S. Ct. Tr. 2018).

Whether remote video testimony is admissible in a criminal trial is left to the court's sound discretion since Rule 26 does not seem to preclude the admissibility of video testimony because the remote video testimony will be taken orally in open court as required by the rules. Kosrae v. Tilfas, 22 FSM R. 72, 75

(Kos. S. Ct. Tr. 2018).

Live video testimony is not the equivalent of in-person testimony, and the decision to excuse a witness's presence in the courtroom should be weighed carefully. Kosrae v. Tilfas, 22 FSM R. 72, 75 (Kos. S. Ct. Tr. 2018).

Although remote testimony via video chat is not equivalent to in-person testimony, when the testimonies of the alleged victims seem to be crucial to the determination of the issues, the court will exercise its discretion to ensure a fair and just criminal trial by allowing the alleged victims to testify via video chat at trial. Kosrae v. Tilfas, 22 FSM R. 72, 75-76 (Kos. S. Ct. Tr. 2018).

The confrontation clause requires the defendant to cross examine the adverse witness face-to-face, thereby permitting the finder of fact to evaluate the witness's credibility, but this is not an absolute right. Kosrae v. Tilfas, 22 FSM R. 72, 76 (Kos. S. Ct. Tr. 2018).

Confrontation rights may, in limited circumstances, be satisfied without a physical, face-to-face confrontation at trial when the reliability of the testimony is otherwise assured and when there is an individualized determination that the denial of a face-to-face confrontation is necessary to further an important public policy. Kosrae v. Tilfas, 22 FSM R. 72, 76 (Kos. S. Ct. Tr. 2018).

Testimony may be admissible so long as it contains the essential indicia of reliability, including 1) the giving of testimony under oath; 2) the opportunity for cross examination; 3) the ability of the fact-finder to observe demeanor evidence; and 4) the reduced risk that a witness will wrongfully implicate an innocent defendant when testifying in his presence. Kosrae v. Tilfas, 22 FSM R. 72, 76 (Kos. S. Ct. Tr. 2018).

When the traditional indicia of reliability safeguards remote video testimony, a court must decide whether, under the case's circumstances, allowing witnesses to testify via video chat is necessary to further an important public policy. Kosrae v. Tilfas, 22 FSM R. 72, 76 (Kos. S. Ct. Tr. 2018).

A defendant's constitutional right to confront his accuser is not absolute. It can be met even without a face-to-face confrontation when it is necessary to further an important public policy and it is assured that the testimony is reliable. Thus, when the alleged victims testify by appearing visibly on a screen to the court and to the defendant and her counsel, these witnesses will, through video chat, deliver their testimonies orally, under oath, and in open court where the defendant will have an opportunity to cross-examine them and the court will be able to observe their demeanor. Kosrae v. Tilfas, 22 FSM R. 72, 76 (Kos. S. Ct. Tr. 2018).

Considering our people's migration realities, there are important public policies to uphold as the FSM's and Kosrae's geographical configuration make the ability to use video conferencing an advantage for the process by significantly reducing costs for plane tickets to and from Kosrae, by helping to reduce delay, and by allowing testimony of witnesses who otherwise would not be able to appear at all. Kosrae v. Tilfas, 22 FSM R. 72, 76 (Kos. S. Ct. Tr. 2018).

EXTRADITION

Extradition is neither a criminal nor a civil proceeding. In re Extradition of Jano, 6 FSM R. 12, 13 (App. 1993).

The FSM Attorney General's Office is not disqualified in an international extradition case where the accused is the plaintiff in a civil suit against one of its members because the Attorney General's office has no discretion in the matter. It did not initiate nor can it influence the course of the prosecution abroad, and the discretion of whether to extradite a citizen does not repose in the Attorney General's Office. In re Extradition of Jano, 6 FSM R. 12, 13-14 (App. 1993).

Certifications of extraditability are not final decisions of the trial court since the final decision-making authority rests with the Secretary of External Affairs. Therefore they are not appealable. In re Extradition of Jano, 6 FSM R. 23, 25 App. 1993).

Judicial review of a certification of extraditability, although not appealable, is available to an accused in custody by seeking a writ of habeas corpus. In re Extradition of Jano, 6 FSM R. 23, 25 (App. 1993).

Where the FSM statute governing extradition proceeding is silent on the appealability of extradition proceedings and where the statute has been borrowed from another jurisdiction where extradition proceedings are not appealable it is presumed that the meaning and application of the statute is as it was interpreted by the courts of the source. In re Extradition of Jano, 6 FSM R. 23, 25 (App. 1993).

Extradition is founded upon treaties between sovereign nations involving mutual agreements and commitments. There is no counterpart in Micronesia custom and tradition that is applicable. In re Extradition of Jano, 6 FSM R. 23, 25 (App. 1993).

Certification of extraditability is an adversarial proceeding. An advocate in an adversarial proceeding is expected to be zealous. In re Extradition of Jano, 6 FSM R. 26, 27 (App. 1993).

Extradition is not a criminal action although it involves a criminal accusation. The specific provisions of the international extradition statute apply rather than the general provisions of Title 12, chapter 2. In re Extradition of Jano, 6 FSM R. 62, 63 (App. 1993).

Once a justice certifies an accused as extraditable, the justice must then commit the person to the proper jail until surrendered. The extradition statute does not give the court the authority to release a person on bail pending any judicial review of the certification. In re Extradition of Jano, 6 FSM R. 62, 63 (App. 1993).

In an international extradition case, bail can be granted only if "special circumstances" are shown. Neither risk of flight nor the availability of a suitable custodian are primary considerations. Rather the primary consideration is the ability of the government to surrender the accused to the requesting government. In re Extradition of Jano, 6 FSM R. 62, 64 (App. 1993).

Judicial review of an extradition hearing is by petition for a writ of habeas corpus. In re Extradition of Jano, 6 FSM R. 93, 97 (App. 1993).

No Micronesian custom or tradition is applicable to extradition. In re Extradition of Jano, 6 FSM R. 93, 97 (App. 1993).

A person for whom extradition is sought must be brought before a justice that evidence of his criminality may be heard and considered so that he may be certified as extraditable. Such a person is entitled to notice of the hearing and an opportunity to be heard and to effective assistance of counsel. In re Extradition of Jano, 6 FSM R. 93, 99 (App. 1993).

A person whose extradition is sought can always contest identification. In re Extradition of Jano, 6 FSM R. 93, 100 (App. 1993).

A person whose extradition is sought may, at the extradition hearing, introduce evidence that explains the government's evidence of probable cause, but not evidence that contradicts it. In re Extradition of Jano, 6 FSM R. 93, 101 (App. 1993).

By the terms of the Compact and its subsidiary extradition agreement the term "Signatory Government" includes not only the national, but also the state governments of the two nations. Therefore state as well as national law may be used to determine if the offense for which extradition is sought satisfies the dual criminality test of whether it is criminal under the laws of both signatory governments. In re Extradition of

Jano, 6 FSM R. 93, 102-03 (App. 1993).

Extradition treaties are to be construed liberally to effect their purpose of surrender of fugitives to be tried for their alleged offenses. In re Extradition of Jano, 6 FSM R. 93, 103 (App. 1993).

The scope of a habeas corpus review of an extradition proceeding is 1) whether the judge had jurisdiction, 2) whether the court had jurisdiction over the extraditee, 3) whether there is an extradition agreement in force, 4) whether the crimes charged fall within the terms of the agreement, and 5) whether there was sufficient evidence to support a finding of extraditability. In re Extradition of Jano, 6 FSM R. 93, 104 (App. 1993).

An extradition hearing justice is required to make written findings for two reasons: 1) to meet the "rule of specialty" by which prosecution is limited to those offenses upon which extradition is granted, and 2) to reflect that the offenses for which extradition is granted is criminal in both the requesting and requested countries. In re Extradition of Jano, 6 FSM R. 93, 105 (App. 1993).

To satisfy the dual criminality test in extradition matters either national or state law may be used. An exact matching of the offense or elements is not required, but the acts charged must be criminal in both jurisdictions. In re Extradition of Jano, 6 FSM R. 93, 105 (App. 1993).

Where a court has dismissed a criminal case for lack of jurisdiction over the crimes for which the defendant was charged, the dismissal does not act as a discharge so as to preclude extradition on the charge. "Discharge" requires both personal and subject matter jurisdiction. In re Extradition of Jano, 6 FSM R. 93, 107-08 (App. 1993).

Where the extradition agreement specifically requires that the requesting government's statute of limitations be used to determine extraditability, a general provision cannot be read to apply the statute of limitations of the requested government. In re Extradition of Jano, 6 FSM R. 93, 108 (App. 1993).

Extradition is neither a criminal nor a civil proceeding. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 372 (Yap 2005).

Extradition treaties are to be liberally construed to effect their purpose of surrender of the persons sought to be tried for their alleged crimes. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 372 (Yap 2005).

An extradition hearing's purpose is not to hold a trial on the merits to determine guilt or innocence, but to determine whether probable cause exists to believe that the person whose surrender is sought has committed the crime for which extradition is requested. The probable cause standard applicable in extradition proceedings is described as sufficient evidence to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the accused's guilt. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 373 (Yap 2005).

A person whose extradition is sought may, at the extradition hearing, introduce evidence that explains the government's evidence of probable cause, but not evidence that contradicts it. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 373 (Yap 2005).

Depositions, warrants or other papers may be admitted into evidence in an extradition case if properly authenticated and the FSM Rules of Evidence by their terms do not apply to extradition proceedings. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 373 (Yap 2005).

Facts and circumstances detailed in the documents admitted into evidence can constitute probable cause to believe that persons sought to be extradited committed the crime alleged therein. When the documents come with indicia of reliability, including the certifications of authenticity, the court may properly

consider this evidence in making the probable cause determination for extradition. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 373 (Yap 2005).

For extradition, dual, or double, criminality is a requirement, which means that the offense for which extradition is sought must be criminal in both the requesting and requested countries. A precise matching of the crime or its elements is not required, but the acts charged must be criminal in both jurisdictions. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 373 (Yap 2005).

When the offense alleged in the U.S. indictment is false use of a passport, and when, in the FSM, a person commits the crime of tampering with public records under 11 F.S.M.C. 529 if he makes, presents, or uses any record, document, or thing knowing it to be false, and with the purpose that it be taken as a genuine part of information or records that are received or kept by a public servant or required to be kept by anyone for the government's information, and under 11 F.S.M.C. 524, a person commits the crime of falsification if, with purpose to mislead a public servant in performing his or her official function, he or she submits or invites reliance on any writing which he or she knows to be forged, altered, or otherwise lacking in authenticity, these two FSM statutes proscribe the conduct charged, and the requirement of dual criminality is satisfied. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 373-74 (Yap 2005).

The "rule of specialty" means that the court must find that the prosecution is limited to the offense upon which extradition is granted. Specifically, the "principle of specialty" limits prosecution in the requesting country to those extraditable offenses established by the facts on which extradition has been granted by the asylum country. Under this principle, the inquiry does not end merely because the accused is found extraditable on one charge. A determination must be made as to whether each specific charge forms the basis for extradition, as the defendant may be prosecuted only on extraditable charges. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 374 (Yap 2005).

If, on a hearing to determine extraditability the judge deems the evidence sufficient to sustain the charge under the treaty provisions, the judge shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of Foreign Affairs that a warrant may issue upon the requisition of the proper authorities of the foreign government, for the person's surrender according to the treaty's stipulations; and the judge shall issue his warrant for the commitment of the person to be extradited to the proper jail, there to remain until surrender is made. But when no witnesses testified at the hearing, there is no testimony to be transcribed and submitted to the Secretary of Foreign Affairs and counsel for the FSM summarized the papers it filed and when the necessary papers were admitted into evidence and are part of the record, the court will make the certification of sufficient evidence to sustain the charges, but will make no certification of testimony, and when the persons charged are already under house arrest and under FSM Immigration personnel's custody and supervision, no warrant will issue. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 374 (Yap 2005).

In extradition cases, the receiving court, under the rules of speciality and double criminality, lacks personal jurisdiction over the defendant for crimes other than the crimes for which the defendant was extradited. FSM v. Siega, 21 FSM R. 291, 297 n.4 (Chk. 2017).

FEDERALISM

The Pohnpei State Constitution was established under the authority granted by article VII, section 2 of the Constitution of the Federated States of Micronesia which mandates that a state shall have a democratic constitution and also Pohnpei State Law No. 2L-131-82, section 9, which mandated the Pohnpei State Constitutional Convention "to draft a constitution for the State of Ponape . . . [that] shall make adequate provisions for the exercise of legislative, judicial and executive functions, and shall guarantee to all citizens of the State, a democratic form of government." People of Kapingamarangi v. Pohnpei Legislature, 3 FSM R. 5, 8-9 (Pon. S. Ct. Tr. 1985).

Although national law requires the FSM Supreme Court to protect persons against violations of civil

rights, strong considerations of federalism and local self-government suggest that local institutions should be given an opportunity to address local issues, even civil rights issues, especially when this can be done without placing the rights of the parties in serious jeopardy and when the local decision may obviate the need for a constitutional ruling by the national court. Hadley v. Kolonia Town, 3 FSM R. 101, 103 (Pon. 1987).

As a general proposition, the court will not lightly assume that Congress intends to assert national powers which may overlap with, or encroach upon, powers allocated to the states under the general scheme of federalism embodied in the Constitution. FSM v. Oliver, 3 FSM R. 469, 480 (Pon. 1988).

Nothing in the language of the statute, 23 F.S.M.C. 105, or in the legislative history, indicates that Congress made an affirmative determination to enact national legislation applicable within twelve miles of prescribed baselines. Therefore, 23 F.S.M.C. 105 gives the national government regulatory power only outside the twelve mile zone. FSM v. Oliver, 3 FSM R. 469, 480 (Pon. 1988).

Statutory provisions in the Trust Territory Code concerning domestic relations are part of state law because domestic relations fall within the powers of the states and not the national government. Pernet v. Aflague, 4 FSM R. 222, 224 (Pon. 1990).

Since the determination of support payments payable by a divorced husband is a matter governed by state law, the FSM Supreme Court in addressing such an issue is obligated to attempt to apply the pertinent state statutes in the same fashion as would the highest state court in the pertinent jurisdiction. Pernet v. Aflague, 4 FSM R. 222, 224 (Pon. 1990).

The FSM Supreme Court will not interfere in a pending state court proceeding where no authority has been cited to allow it to do so, where the case has not been removed from state court, where it has not been shown that the national government is a party to the state court proceeding thereby putting the case within the FSM Supreme Court's exclusive jurisdiction, and where it has not been shown that the movants are parties to the state court proceeding and thus have standing to seek national court intervention. Pohnpei v. Kailis, 6 FSM R. 460, 463 (Pon. 1994).

Congress has the sole power to legislate the regulation of natural resources in the marine space of the Federated States of Micronesia beyond 12 miles from island baselines, and the states have the constitutional power to legislate the regulation of natural resources within that twelve miles of sea. Congress may also legislate concerning navigation and shipping within the twelve-mile limit except within lagoons, lakes, and rivers. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 459 (App. 1996).

The Constitution provides three instances of mandatory unconditional revenue sharing with the states, which the framers evidently thought enough. Chuuk v. Secretary of Finance, 9 FSM R. 424, 435 (App. 2000).

When the judgment creditor has an execution remedy apart from a writ of execution directed to the state police, the court is reluctant to unnecessarily consider the constitutional issue raised when doing so could be viewed in any light as hampering voluntary cooperation between state and national law enforcement as a matter of comity, an important concern given the geographical configuration of our country and the limited law enforcement resources of both the state and national governments. Parkinson v. Island Dev. Co., 11 FSM R. 451, 453 (Yap 2003).

The Constitution's broadly stated express grants of power to the national government contain within them innumerable incidental or implied powers, as well as certain inherent powers. Jano v. FSM, 12 FSM R. 569, 576 (App. 2004).

A litigant may assert a claim in state or local court based upon a right provided under both a state and FSM Constitutions, and if a state constitution grants fewer rights than the FSM Constitution, a litigant may

rely upon and assert his rights under the FSM Constitution. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 307 (App. 2007).

Although a state court's determination of a litigant's rights under that state's constitution may be final and not subject to review by the FSM Supreme Court, a state court's determination of a litigant's rights guaranteed under the FSM Constitution is subject to de novo review by the FSM Supreme Court since a state constitution cannot deprive the FSM Supreme Court of its jurisdiction granted under the FSM Constitution because the FSM Constitution is the supreme law of the land. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 307 (App. 2007).

Any conflict between the Pohnpei Constitution provision that no appeal of any matter relating to the Pohnpei Constitution, Pohnpei law, customs or traditions may be made to any court except the Pohnpei Supreme Court and the FSM Supreme Court's jurisdiction to hear cases under the FSM Constitution is resolved under the FSM Constitution's supremacy clause, which provides that any act of a government that conflicts with the FSM Constitution is invalid, to the extent of the conflict. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 307 (App. 2007).

When the FSM Supreme Court decides matters of tort and contract law, it will apply, in the same way the highest state court would, the state's substantive law, which includes its common law as well as its statutory law. Peniknos v. Nakasone, 18 FSM R. 470, 479 & n.5 (Pon. 2012).

When the FSM Supreme Court is deciding matters of tort and contract law, it will apply in the same way the highest state court would the state's substantive state law, which includes the state's common law as well as its statutory law. Ihara v. Vitt, 18 FSM R. 516, 524 & n.3 (Pon. 2013).

The territorial sea is the waters within 12 nautical miles seaward of FSM island baselines, and the exclusive economic zone is the water seaward of the territorial sea outward to 200 nautical miles from the island baselines. FSM v. Kimura, 20 FSM R. 297, 302 (Pon. 2016).

A decision of the highest state court about a state law matter is controlling and the FSM Supreme Court will apply it. A state court trial division decision may be deemed not to be controlling if it appears that the highest state court would decide the question differently. If there is no controlling state case law, then the court should decide the case according to how it thinks the highest state court would, and if the state's highest court later decides the issue differently, then that case will prospectively serve as controlling precedent for the national court on that state law issue. Panuelo v. FSM, 22 FSM R. 498, 506-07 n.3 (Pon. 2020).

– Abstention

As the Ponape District Court bears the closest resemblance to the state court system contemplated by the Constitution, it is appropriate to provide the District Court an opportunity to render an opinion on local issues. In re Nahnsen, 1 FSM R. 97, 97 (Pon. 1982).

State courts, rather than national courts, should normally resolve probate and inheritance issues especially where interests in land are at issue. In re Nahnsen, 1 FSM R. 97, 97 (Pon. 1982).

It would be contrary to the desire of the framers of the Constitution that local officials retain control over local matters if the FSM Supreme Court were to relinquish jurisdiction over issues involving local and state powers to the Trust Territory High Court, which is the least local tribunal now existing in the Trust Territory. In re Nahnsen, 1 FSM R. 97, 110 (Pon. 1982).

The Ponape District Court, although not granted jurisdiction over land matters, may be given the opportunity to hear certified questions from the FSM Supreme Court on issues in a probate case involving land in order to further the intent of the framers that local decision-makers play a part in decisions of a local nature. In re Nahnsen, 1 FSM R. 97, 110-12 (Pon. 1982).

Even though the requirements for pendent jurisdiction are met in a case, a national court has discretion to decline to exercise jurisdiction over state claims. This determination should turn on considerations of judicial economy, convenience and fairness to litigants and should be instructed by a desire of the federal or national court to avoid needless decisions of state law. Ponape Chamber of Commerce v. Nett Mun. Gov't, 1 FSM R. 389, 397 (Pon. 1984).

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

A reasoned request by a state that the FSM Supreme Court abstain from deciding a particular issue should be granted unless the opposing party establishes that the benefits of abstention in terms of federalism and judicial harmony, and respect for state sovereignty, would be substantially outweighed by delay, harm or injustice. Panuelo v. Pohnpei (I), 2 FSM R. 150, 156 (Pon. 1986).

Where neither land, inheritance nor any other crucial interest of the state is involved; where the state has developed no extensive administrative apparatus or practical knowledge relating to the state issue with which a state court would be more familiar; where the state issue is not, strictly speaking, constitutional; and where the state has tendered the issue to the FSM Supreme Court and no party has requested abstention, the FSM Supreme Court should decide the issue rather than abstaining in favor of the state court. Panuelo v. Pohnpei (I), 2 FSM R. 150, 157-59 (Pon. 1986).

Abstention in favor of state court jurisdiction is inappropriate in a case which concerns leasehold of a dock facility, raises issues of national commercial import, and was filed almost two years ago during which time several opinions were rendered. Federated Shipping Co. v. Ponape Transfer & Storage (III), 3 FSM R. 256, 260-61 (Pon. 1987).

As a general rule the FSM Supreme Court trial division is obliged to exercise its jurisdiction and may not abstain simply because unsettled issues of state law are presented. Edwards v. Pohnpei, 3 FSM R. 350, 360 (Pon. 1988).

Because the interest of developing a dynamic and well reasoned body of Micronesian jurisprudence, is best served when all courts have the benefit of one another's opinions to consider and question; when the litigants are private parties the FSM Supreme Court normally should attempt to resolve all issues presented, even when matters of state law are involved. Federated Shipping Co. v. Ponape Transfer & Storage Co., 4 FSM R. 3, 13 (Pon. 1989).

A cautious, reasoned use of the doctrine of abstention is not a violation of the FSM Supreme Court's duty to exercise diversity jurisdiction, or of the litigants' constitutional rights, under article XI, section 6(b) of the FSM Constitution. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM R. 37, 39 (Pon. 1989).

The FSM Supreme Court may and should abstain in a case where land use rights are at issue, where the state is attempting to develop a coherent policy concerning the disposition of public lands, where there is a similar litigation already pending in state court, where the state requests abstention as defendant in an action which may expose it to monetary damages, where Congress has not asserted any national interests which may be affected by the outcome of the litigation, and where abstention will not result in delay or injustice to the parties. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM R. 37, 39 (Pon. 1989).

While the FSM Constitution provides initial access to the FSM Supreme Court for any party in article XI, section 6(b) litigation, the court may, having familiarized itself with the issues, invoke the doctrine of

abstention and permit the case to proceed in a state court, since the power to grant abstention is inherent in the jurisdiction of the FSM Supreme Court, and nothing in the FSM Constitution precludes the court from abstaining in cases which fall within its jurisdiction under article XI, section 6(b). Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM R. 37, 42-43 (Pon. 1989).

Abstention by national courts is desirable in a case affecting state efforts to establish a coherent policy concerning how private persons may obtain rights to use land currently held by the state government. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM R. 37, 44 (Pon. 1989).

In a case brought before the FSM Supreme Court where similar litigation involving the same parties and issues is already pending before a state court, and a decision by the state court in the litigation would resolve all controversies among the parties, the risk of costly, duplicative litigation is one factor to be considered by the national court in determining whether to abstain. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM R. 37, 44 (Pon. 1989).

Although foreign and interstate commerce and shipping involve profound national interests, where Congress has not seen fit to assert those interests and there is no national regulation or law to enforce, the fact that a case affects interstate and foreign commerce and shipping is not sufficient to deny abstention if other strong grounds for abstention exist. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM R. 37, 47 (Pon. 1989).

There are no statutory or constitutional obligations which require the FSM Supreme Court to abstain or certify questions merely because unsettled matters of state law are at issue. Pryor v. Moses, 4 FSM R. 138, 141 (Pon. 1989).

The choice of whether to abstain from a decision or certify questions is one that lies wholly within the discretion of the FSM Supreme Court, and the judge must not undertake that decision lightly. Pryor v. Moses, 4 FSM R. 138, 141 (Pon. 1989).

The list of areas in which the FSM Supreme Court will consider it appropriate to liberally defer to state courts must be open and flexible, responding to the particular state of legal and social development in Micronesia, and when issues important to Micronesians become the focus of concerted state efforts to establish a coherent body of law, the FSM Supreme Court will take those developments into account in evaluating requests for certification or abstention. Pryor v. Moses, 4 FSM R. 138, 142 (Pon. 1989).

Where two private parties are involved, special considerations of state sovereignty are not as weighty in considering requests for abstention or certification, and the FSM Supreme Court normally should attempt to resolve all issues presented, even when matters of state law are involved. Pryor v. Moses, 4 FSM R. 138, 143 (Pon. 1989).

Requiring the FSM Supreme Court to abstain from deciding virtually all state law matters of first impression would not be in the interests of the efficient administration of justice, and would not be consistent with the jurisdictional provisions of the FSM Constitution. Pryor v. Moses, 4 FSM R. 138, 143 (Pon. 1989).

In a case where there is no state party and no issues of land or other matters crucial to state interests for which the state is actively developing policy and law, the healthy and efficient administration of justice demands that the FSM Supreme Court fulfill its duty to exercise jurisdiction and refuse to abstain or certify issues. Pryor v. Moses, 4 FSM R. 138, 145 (Pon. 1989).

The FSM Supreme Court will abstain from a claim for recovery of taxes where the defendant state requests abstention, the claim is for monetary relief, and the state has endeavored to develop a body of law in the areas of excise taxes and sovereign immunity. Gimnang v. Yap, 4 FSM R. 212, 214 (Yap 1990).

On a claim for declaratory relief from an unconstitutional excise tax, the FSM Supreme Court trial

division will not abstain, where the issue could later be certified to the FSM Supreme Court appellate division and result in delay, where the trial court has already retained the case longer than contemplated, where the issue is narrowly posed and not capable of varying resolutions, and where it appears that a greater service may be provided by deciding the issue. Gimnang v. Yap, 4 FSM R. 212, 214 (Yap 1990).

It is not appropriate to abstain from deciding a claim for injunctive relief where it is undisputed that the court has jurisdiction and where the interests of time can be of pressing importance. Gimnang v. Yap, 4 FSM R. 212, 214 (Yap 1990).

The national courts, in carrying out their judicial responsibilities, do have inherent power to certify issues, or to abstain partially or completely from exercising jurisdiction in a particular issue or to exercise jurisdiction over part or all of a case. Gimnang v. Yap, 5 FSM R. 13, 19 (App. 1991).

A national court ordinarily should refrain from deciding a case in which state action is challenged as violating the federal constitution, if unsettled questions of state law may be dispositive and obviate the need for the constitutional determination. Gimnang v. Yap, 5 FSM R. 13, 21 (App. 1991).

A national court may not abstain from exercising its constitutional jurisdiction when it is directly faced with a constitutional issue and surely may never abstain completely from exercising jurisdiction in a case where there remains to be resolved a substantial issue under the national constitution. Gimnang v. Yap, 5 FSM R. 13, 25 (App. 1991).

In a case arising under national law there is an especially strong presumption against full abstention, and there is a serious question whether the trial division of a national court may ever certify a question of national law to a state court for decision unless it can reasonably be expected that the particular claim can be resolved entirely through the application of state law. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 67A, 67C (Pon. 1991).

When there are identifiable, particularly strong state interests, such as questions concerning the ownership of land or where there are monetary claims against the state or its agencies, the national courts should exercise restraint, and look with sympathy upon a state request for abstention. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 67A, 67D (Pon. 1991).

Although it may be appropriate to defer to state courts the resolution of land related state law issues, abstention and certification of issues should not be allowed to thwart the more fundamental goal and obligation of the judicial system to render just decisions in a speedy fashion at a minimum of costs to litigants and society alike. Therefore a reasonable balance must be sought between responsiveness to state interests and the obligation of the national courts to carry out their own jurisdictional responsibilities. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 67A, 67D (Pon. 1991).

Full abstention is not appropriate where claims are not essentially state law claims, and are made against another nation, thus falling within the national court's primary jurisdiction. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 67A, 67E (Pon. 1991).

Abstention may be appropriate for causes of action that raise issues of state law only, but may not be where substantive issues of national law are raised. A national court may not abstain from deciding a national constitutional claim. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 67A, 67E (Pon. 1991).

Where a claim is against the national government and an interest in land is not placed at issue the claim is within the exclusive jurisdiction of the FSM Supreme Court and it cannot abstain on the claim. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 67A, 67E (Pon. 1991).

The national court should not abstain from deciding a criminal case where the crime took place before the effective date of the 1991 amendment removing federal jurisdiction over major crimes because of the

firmly expressed intention by the Constitutional Convention delegates as to the manner of transition from national jurisdiction to state jurisdiction. In re Ress, 5 FSM R. 273, 276 (Chk. 1992).

It is appropriate for the state court to rule upon the non-constitutional grounds and upon the alleged violation of the Pohnpei Constitution. The plaintiff may raise at a later time the allegation that the ordinance violates the FSM Constitution if that is still necessary after disposition by the state court. Berman v. Pohnpei, 5 FSM R. 303, 306-07 (Pon. 1992).

A bond of debt is simply a loan instrument. Therefore when determining its legal effect does not require a determination concerning interests in land there is insufficient basis for abstention. Kihara v. Nanpei, 5 FSM R. 342, 345 (Pon. 1992).

Because the FSM Supreme Court is the only court of jurisdiction in cases arising under article XI, section 6(a) of the FSM Constitution, the court has no discretion to abstain in such cases. Faw v. FSM, 6 FSM R. 33, 36 (Yap 1993).

A strong presumption exists under FSM law for deferring land matters to local land authorities. Kapas v. Church of Latter Day Saints, 6 FSM R. 56, 60 (App. 1993).

Determination of property boundaries is the responsibility of the state land commissions, and the national court should not intercede where the local agency has not completed its work. Kapas v. Church of Latter Day Saints, 6 FSM R. 56, 60 (App. 1993).

The FSM Supreme Court has a constitutional duty to hear disputes wherein the parties are diverse, even if land issues are involved, although the court may abstain from exercising such jurisdiction on a case-by-case basis where other factors weighing in favor of abstention are present. Etscheit v. Mix, 6 FSM R. 248, 250 (Pon. 1993).

Where a complaint arises from actions concerning the internal operations of municipal government, and the claims sound in tort, abstention in favor of state court adjudication is appropriate. Mendiola v. Berman (I), 6 FSM R. 427, 429 (Pon. 1994).

That a defendant files a counterclaim alleging violation of constitutional rights does not in itself make abstention of the case as a whole inappropriate. Mendiola v. Berman (II), 6 FSM R. 449, 450 (Pon. 1994).

Deference to state court jurisdiction is warranted in cases involving municipal government issues, given the greater familiarity with such issues at the state level and the greater importance to state interests. Mendiola v. Berman (II), 6 FSM R. 449, 450-51 (Pon. 1994).

Even though the national court has jurisdiction abstention may be warranted in civil forfeiture fishing case for fishing in state waters where defendants are also part of a companion criminal case in state court. Pohnpei v. M/V Zhong Yuan Yu #606, 6 FSM R. 464, 465-66 (Pon. 1994).

When a national court abstains it simply says that it is not going to decide the issue and allows the parties to file in state or local court; it does not submit or transfer anything to another court. Gimnang v. Trial Division, 6 FSM R. 482, 485 (App. 1994).

The choice of whether to abstain from a decision or to certify questions is one that lies wholly within the discretion of the trial court. Gimnang v. Trial Division, 6 FSM R. 482, 485 (App. 1994).

Abstention is left to the sound discretion of the court, but the Supreme Court may not abstain for cases involving issues of interpreting the Constitution. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM R. 594, 603 (Pon. 1994).

Because speedy and final resolution of questions regarding the constitutional roles of the state and

national governments will avoid unnecessary conflict and possible jurisdictional tension between the state and national courts, it is proper to stay an order of abstention pending appeal in such cases. Pohnpei v. MV Hai Hsiang #36 (II), 6 FSM R. 604, 605 (Pon. 1994).

The decision whether the FSM Supreme Court will exercise its inherent power to abstain from a case is left to the sound discretion of the trial division which must exercise it carefully and sparingly. Conrad v. Kolonia Town, 7 FSM R. 97, 99 (Pon. 1995).

Counseling against the unfettered use of abstention is the FSM Supreme Court's solemn obligation to consider the interests and protect the rights of those who wish to invoke its constitutional jurisdiction. Conrad v. Kolonia Town, 7 FSM R. 97, 99 (Pon. 1995).

When issues of national law are involved there is a particularly strong presumption against full abstention from the case. Conrad v. Kolonia Town, 7 FSM R. 97, 100 (Pon. 1995).

There is a presumption favoring abstention in claims involving state law and money damages against the state that touch upon the particularly strong state interest of fiscal autonomy and federalism. Even in those cases the FSM Supreme Court will not abstain when abstention will result in substantial delay or additional cost. Conrad v. Kolonia Town, 7 FSM R. 97, 100 (Pon. 1995).

Where a case involves several substantive FSM constitutional claims the FSM Supreme Court will not and most likely cannot exercise its discretion to abstain. Conrad v. Kolonia Town, 7 FSM R. 97, 101 (Pon. 1995).

Extension of the presumption of abstention in certain cases to municipalities is inappropriate. Conrad v. Kolonia Town, 7 FSM R. 97, 101 (Pon. 1995).

Abstention by the FSM Supreme Court is only proper if it has concurrent jurisdiction, such as diversity jurisdiction, and the case involves state powers or interests. Ladore v. U Corp., 7 FSM R. 296, 298 (Pon. 1995).

Abstention may be proper in a case involving a private easement where there are no issues distinctly separate from those involving state powers because state courts have the primary role in setting policy and deciding legal issues concerning ownership and interests in land. Ladore v. U Corp., 7 FSM R. 296, 298 (Pon. 1995).

The choice to abstain from a decision, like the decision to certify a question, lies wholly within the sound discretion of the trial court. Thus the standard of review of the decision not to abstain is whether the trial court abused its discretion. Nanpei v. Kihara, 7 FSM R. 319, 322 (App. 1995).

Certain circumstances may give rise to an inclination in favor of abstention, such as a state request for abstention where there are identifiable, particularly strong state interests such as monetary claims against the state or questions concerning ownership of land, but national courts still have the obligation to carry out their own jurisdictional responsibilities. Nanpei v. Kihara, 7 FSM R. 319, 322 (App. 1995).

The FSM Supreme Court has original and exclusive jurisdiction over admiralty and maritime cases. This grant of exclusive jurisdiction is not made dependent upon constitutional grants of powers to other branches of the national government. When the Supreme Court's jurisdiction is exclusive it cannot abstain from deciding a case in favor of another court in the FSM because no other court in the country has jurisdiction. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 459 (App. 1996).

The FSM Supreme Court may not abstain in cases involving interpretation of the FSM Constitution. Island Dev. Co. v. Yap, 9 FSM R. 18, 20 (Yap 1999).

Neither the state's mere presence in a lawsuit by virtue of a monetary claim against it, nor its presence plus the presence of even an important issue of state law serves as a sufficient basis for abstention. Always hovering in the background of any abstention analysis is a litigant's constitutional right under the FSM Constitution to avail himself of the national court's diversity jurisdiction under article XI, section 6(b). Island Dev. Co. v. Yap, 9 FSM R. 18, 21 (Yap 1999).

The likelihood of abstention, always discretionary, is increased when the state is a party; when the subject matter of the requested abstention is one involving local concerns that lie solidly within a state's sphere of interest, such as land or inheritance issues; when the state has developed an administrative approach to deal with the specified issues; and when the issue presented is a "clean" legal issue, as opposed to a factual one. Island Dev. Co. v. Yap, 9 FSM R. 18, 21-22 (Yap 1999).

Yap's interest in establishing a body of contract jurisprudence is, without more, insufficient to cause the FSM Supreme Court to exercise its discretion and abstain in a case in which it has diversity jurisdiction under article XI, section 6(b) of the FSM Constitution. Island Dev. Co. v. Yap, 9 FSM R. 18, 22 (Yap 1999).

The standard of review for a decision not to abstain is that of abuse of discretion. Weno v. Stinnett, 9 FSM R. 200, 210 (App. 1999).

An abstention request that comes after trial, and after the case had been pending for approximately five years, is untimely. Weno v. Stinnett, 9 FSM R. 200, 210 (App. 1999).

Abstention requires the initiation of a new lawsuit in a state court. Weno v. Stinnett, 9 FSM R. 200, 210-11 (App. 1999).

A defense is that which is offered and alleged by the party proceeded against in an action or suit, as a reason in law or fact why plaintiff should not recover or establish what he seeks. A motion for abstention has little common ground with the concept of a defense because abstention by no means precludes a plaintiff from obtaining the requested relief but rather goes to the question of the appropriate forum in which to pursue that relief. Island Dev. Co. v. Yap, 9 FSM R. 279, 283 (Yap 1999).

Abstention is not a defense to a lawsuit in the sense used in Rule 12(b). In abstention practice, the movant is asking the court to exercise its discretion to abstain from hearing the action for the express purpose that another court may hear the lawsuit. Island Dev. Co. v. Yap, 9 FSM R. 279, 283 (Yap 1999).

There is no reason that answers could not be filed in due course during the pendency of an abstention motion, and there is also no reason that discovery could not have been ongoing during an abstention motion's pendency, since discovery was just as inevitable as the answer. Island Dev. Co. v. Yap, 9 FSM R. 279, 284 (Yap 1999).

An abstention motion before the FSM Supreme Court should proceed as a post-answer motion, and not a motion in lieu of answer under Rule 12(b) of the FSM Civil Procedure Rules. Island Dev. Co. v. Yap, 9 FSM R. 279, 284 (Yap 1999).

As a general rule, the FSM Supreme Court trial division is obliged to exercise its jurisdiction and may not abstain simply because unsettled issues of state law are presented. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 635 (Pon. 2002).

The FSM Supreme Court has deferred adjudication of certain land disputes in favor of state land commissions, but has also emphasized its responsibility under article XI, section 6(b) of the FSM Constitution to hear diversity disputes, even if land issues are involved. There is no judicial, constitutional, or legislative rule that in all cases where land is concerned, the FSM Supreme Court must abstain or otherwise refrain from exercising jurisdiction. The presence of certain factors on a case-by-case basis may influence the decision to abstain in land cases. Ambros & Co. v. Board of Trustees, 10 FSM R. 639, 644

(Pon. 2001).

The factors in favor of abstention are outweighed by the factors in favor of the FSM Supreme Court retaining jurisdiction over a case when there is no parallel litigation in state court which will address all of the parties' respective claims; when there is no duplicative litigation from two lawsuits as to the same subject matter; when, if the court does abstain, various claims of the parties will not be addressed, such as the numerous tort claims and the motions for preliminary injunction; and especially when the motion for remand does not seek to transfer the case to a state court, but instead to the party who allegedly committed bad faith and substantive violations in the performance of its duties. Ambros & Co. v. Board of Trustees, 10 FSM R. 639, 644 (Pon. 2001).

Although national law provides for the reciprocal enforcement of child support orders, case law supports the conclusion that FSM Supreme Court should abstain from exercising its jurisdiction at least until the state court has had the opportunity to rule on the issues. Villazon v. Mafnas, 11 FSM R. 309, 310 (Pon. 2003).

A motion to abstain will be denied when the plaintiffs have a constitutional right to pursue their claims in the FSM Supreme Court as the claims arise under the Constitution and national laws and they have chosen to do so, and when the nature of the state law rulings a court might have to make in the case is not apparent at this stage of the case. Naoro v. Walter, 11 FSM R. 619, 621 (Chk. 2003).

When issues of national law are involved there is a particularly strong presumption against full abstention from the case. Naoro v. Walter, 11 FSM R. 619, 621 (Chk. 2003).

While certain circumstances, such as a state request for abstention where there are identifiable, particularly strong state interests such as monetary claims against the state or questions concerning ownership of land, may give rise to an inclination in favor of abstention, national courts still have the obligation to carry out their own jurisdictional responsibilities, but the FSM Supreme Court may not abstain in cases involving interpretation of the FSM Constitution. Naoro v. Walter, 11 FSM R. 619, 621 (Chk. 2003).

A motion to abstain may be denied when the case does not involve land and when, although it involves monetary claims against the state, it appears that interpretation of the Constitution may also be necessary. Naoro v. Walter, 11 FSM R. 619, 621 (Chk. 2003).

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

While the FSM Supreme Court may abstain from a part of a case, it may not abstain from interpretation of the FSM Constitution. Mailo v. Chuuk, 12 FSM R. 597, 601 (Chk. 2004).

A national court has discretion to decline to exercise jurisdiction over state claims, but this determination should turn on considerations of judicial economy, convenience and fairness to litigants and should be instructed by the national court's desire to avoid needless decisions of state law. Judicial economy, convenience and fairness to litigants, especially in light of the expedited determination sought by the parties, would seem to dictate that the entire case proceed in the same forum. Mailo v. Chuuk, 12 FSM

R. 597, 601 (Chk. 2004).

The rationale for abstention is that the state court is the better court to decide an issue which involves state powers and particularly strong, identifiable state interests. Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 148 (App. 2005).

Motions to abstain cannot be brought before the defendants have pled by filing an answer. The only motions to dismiss that a defendant may file before answering the complaint are those based on 1) lack of subject matter jurisdiction, 2) lack of personal jurisdiction, 3) improper venue, 4) insufficiency of process, 5) insufficiency of service of process, 6) failure to state a claim upon which relief can be granted, or 7) failure to join a party under Rule 19. McVey v. Etscheit, 13 FSM R. 473, 476-77 (Pon. 2005).

An abstention request that comes after trial, and after the case had been pending for approximately five years, is untimely. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 507 (App. 2005).

Although the national courts, in carrying out their judicial responsibilities, do have inherent power to certify issues, or to abstain partially or completely from exercising jurisdiction over a particular issue, or to exercise jurisdiction over part or all of a case; and although the trial court may raise the question of abstention or certification on its own motion; it is not mandatory that the court do so. And even if such a motion had been made, the choice of whether to abstain from a decision or to certify questions is one that lies wholly within the trial court's discretion. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 507 (App. 2005).

When no motion to abstain or to certify a question to the state court was made, the trial court could not abuse its discretion by not abstaining from deciding or by not certifying the ownership question to the state court. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 507 (App. 2005).

The choice to abstain from a decision lies wholly within the trial court's sound discretion. Certain circumstances may give rise to an inclination in favor of abstention, such as a state request for abstention when there are identifiable, particularly strong state interests such as monetary claims against the state or questions concerning ownership of land, but national courts still have the obligation to carry out their own jurisdictional responsibilities. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 158 (Pon. 2006).

A national court may not abstain from exercising its constitutional jurisdiction when it is directly faced with a constitutional issue and surely may never abstain completely from exercising jurisdiction in a case where there remains to be resolved a substantial issue under the national constitution. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 159 (Pon. 2006).

When the case does not involve a question of land ownership, although land use rights are involved because the fairness and constitutionality of the process by which those rights were granted, is the central issue; when trying to separate the national constitutional issues from the state law issues would be difficult and impractical and would also cause considerable delay; and when abstaining from those parts of the case which do not involve interpretation of the FSM Constitution due process clause (and the FSM civil rights statute) and separating it from the rest of the case would be difficult and impractical and cause unreasonable delay, the factors that favor the court's retention of the case outweigh those that favor abstention. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 159 (Pon. 2006).

Since an allegation of police brutality implicates both the national and state constitutions and a plaintiff asserting a right arising under national law has a right to be heard in the FSM Supreme Court even if state courts may also assert jurisdiction, the fact that the Pohnpei Supreme Court may be equally equipped to decide the case will not divest the plaintiff of his day in the FSM Supreme Court. Annes v. Primo, 14 FSM R. 196, 201 (Pon. 2006).

That unsettled state law issues are involved in a case about the Lt. Governor's proclamation

concerning a municipal election is insufficient grounds to dismiss the case, especially when a significant body of state law has already developed around the Governor's powers over municipal governments. Esa v. Elimo, 14 FSM R. 216, 220 (Chk. 2006).

Generally, a motion for the FSM Supreme Court to abstain from all or part of a case should proceed as a post-answer motion, and not a motion in lieu of answer under FSM Civil Procedure Rule 12(b) since abstention is not one of the enumerated grounds for a Rule 12(b) motion. But when, in one of those rare instances, where the material facts are not in dispute and an answer would not help to identify or to narrow the factual issues since only legal matters are contested, it may be appropriate to permit an abstention motion without an answer. Narruhn v. Chuuk, 16 FSM R. 558, 561 (Chk. 2009).

Even cases which arise under the national Constitution sometimes call for deference to state courts. For example, courts generally strive to avoid unnecessarily or prematurely addressing issues of national constitutional law. A national court ordinarily should refrain from deciding a case in which state action is challenged as violating the national Constitution, if unsettled questions of state law may be dispositive and obviate the need for the constitutional determination. Under such circumstances, the national court may appropriately give the state court the opportunity to provide a definitive ruling as to state law. Narruhn v. Chuuk, 16 FSM R. 558, 562 (Chk. 2009).

When there are identifiable, particularly strong state interests, such as when there are monetary claims against the state or its agencies, the national courts should exercise restraint and look with sympathy upon a state request for abstention. Narruhn v. Chuuk, 16 FSM R. 558, 562 (Chk. 2009).

The likelihood of abstention, always discretionary, is increased when the state is a party; when the subject matter of the requested abstention is one involving local concerns that lie solidly within a state's sphere of interest; when the state has developed an administrative approach to deal with the specified issues; and when the issue presented is a "clean" legal issue, as opposed to a factual one. Narruhn v. Chuuk, 16 FSM R. 558, 562 (Chk. 2009).

When what constitutes property and interests in property is purely a matter of state law; when the strong state interests in fiscal autonomy militate in favor of abstention in lawsuits against the state for monetary damages; and when the state is attempting (finally) to develop an administrative approach and policies to address monetary claims against it and its debts (both matters solidly within the state's sphere of interest), all of these considerations favor abstention. Narruhn v. Chuuk, 16 FSM R. 558, 562 (Chk. 2009).

In a case arising under national law, the analysis must begin with an especially strong presumption against full abstention. Narruhn v. Chuuk, 16 FSM R. 558, 563 (Chk. 2009).

Although, in a case arising under national law, the analysis must begin with an especially strong presumption against full abstention, when the national law question cannot even be reached unless a purely state law question is first resolved in the plaintiff's favor and is thus wholly dependent upon favorable resolution of that issue first and since the national court ordinarily should refrain from deciding a case in which state action is challenged as violating the national Constitution, if unsettled questions of state law may be dispositive and obviate the need for the constitutional determination, the state court should be given an opportunity to resolve that issue first. Narruhn v. Chuuk, 16 FSM R. 558, 563 (Chk. 2009).

That claims in an FSM case might involve injunctive relief to enforce a state court order in aid of judgment is not an adequate basis to deny abstention or to even retain partial jurisdiction. Narruhn v. Chuuk, 16 FSM R. 558, 563 (Chk. 2009).

National court abstention or certification of issues may also be justified on occasion by a desire to avoid unsettling a delicate balance in national-state relationships. Narruhn v. Chuuk, 16 FSM R. 558, 564 (Chk. 2009).

The appellants' likelihood of success on their claim that the court should have abstained or certified their "novel issues" to the state court is virtually zero when they never moved for certification or abstention and when, even if they had, the court is not required to certify or abstain from every "unsettled" state law issue. FSM Dev. Bank v. Helgenberger, 17 FSM R. 266, 270 (Pon. 2010).

The choice to abstain from hearing a case, like the decision to certify a question, lies wholly within the trial court's sound discretion, and this is reviewed on an abuse of discretion standard. Narruhn v. Chuuk, 17 FSM R. 289, 293 (App. 2010).

A trial court's abuse of discretion occurs when its decision is clearly unreasonable, arbitrary, or fanciful; when it is based on an erroneous conclusion of law; or when the record contains no evidence upon which the court could rationally have based its decision. Such abuses must be unusual and exceptional; an appeals court will not substitute its judgment for that of the trial judge. Narruhn v. Chuuk, 17 FSM R. 289, 293 (App. 2010).

An appellant must show that there was an abuse of discretion for an appellate panel to reverse a trial court's order of abstention. Narruhn v. Chuuk, 17 FSM R. 289, 294 (App. 2010).

When a trial court's abstention order is well-reasoned and reaches no arbitrary or fanciful conclusions because the trial court provided a careful analysis of the questions before it and citation to the legal precedents on which it relied and no erroneous conclusions of law are apparent and the record contains sufficient evidence on which it could have rationally based its decision, there is no basis under the abuse of discretion standard by which to reverse the trial court. The trial court's decision to abstain was not an abuse of discretion. Narruhn v. Chuuk, 17 FSM R. 289, 296 (App. 2010).

When there are no clear due process rights to be preserved before the national trial court, the appellate court will not remand the matter to the trial court for modification that the trial court retain some jurisdiction over the case or to resume jurisdiction if the state court fails to act within a year. Narruhn v. Chuuk, 17 FSM R. 289, 297 (App. 2010).

Generally, although the national courts have primary responsibility in litigation under article XI, section 6(b), cases which arise under national law are distinguishable from diversity cases, and the courts should be more reluctant to abstain in cases arising under national law. It therefore follows that the national courts' jurisdiction in cases solely within article XI, section 6(b) by virtue of diversity of citizenship is far less compelling. Villarena v. Abello-Alfonso, 18 FSM R. 100, 102 (Pon. 2011).

When the national courts are asked to rule on areas of the law which fall within state powers and in which there are identifiable, particularly strong, state interests and particularly when a state is attempting to establish a coherent administrative policy in a complex field in which there is substantial public concern, abstention becomes increasingly appropriate. Villarena v. Abello-Alfonso, 18 FSM R. 100, 102 (Pon. 2011).

The point of abstention is not to identify a particular agency to resolve questions of state law, but to relinquish jurisdiction to avoid needless conflict with a state's administration of its own affairs. Villarena v. Abello-Alfonso, 18 FSM R. 100, 102 (Pon. 2011).

Because the plaintiffs' causes of action are rooted in questions of state law, and because the field of wage and hour laws is a complex one in which there is substantial public concern and in which the State of Pohnpei has the right to establish a coherent administrative policy, it is altogether appropriate for the FSM Supreme Court to relinquish jurisdiction through abstention. Villarena v. Abello-Alfonso, 18 FSM R. 100, 103 (Pon. 2011).

When the plaintiffs have not stated a claim based on national law on which the FSM Supreme Court may grant relief and when all that remains is state law, including state environmental regulations, they have not persuaded the court to retain the case, and the court will therefore abstain. Damarlane v. Damarlane,

18 FSM R. 177, 181 (Pon. 2012).

In order to accord respect to a Kosrae State Court criminal proceeding, the FSM Supreme Court will abstain from granting a petitioner's application for a writ habeas corpus when the petitioner is currently the subject of an ongoing criminal proceeding in the Kosrae State Court that has not reached final adjudication; when those proceedings afford the petitioner an opportunity to raise his constitutional claims; when the State has an important interest in protecting the public through criminal prosecutions; and when pre-conviction habeas corpus relief is being sought; when the state court remedies have not been fully exhausted; and when no extraordinary circumstances have been presented. In re Anzures, 18 FSM R. 316, 324-25 (Kos. 2012).

An appellate court reviews an abstention order on an abuse of discretion standard. A trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence on which the court could rationally have based its decision. Damarlane v. Damarlane, 19 FSM R. 97, 106 (App. 2013).

While a plaintiff's lawyer may misconceive the proper legal theory of the claim but the complaint shows that the plaintiff is entitled to some relief which the court can grant, regardless of whether it asks for the proper relief, the complaint is sufficient and will not be dismissed. This same principle applies to abstention – even if the plaintiff's lawyer has misconceived the legal theory as one under the environmental regulations rather than a common law tort, that misconception should not be the basis for a dismissal on abstention grounds. The court must consider the actual nature of the case pled. Damarlane v. Damarlane, 19 FSM R. 97, 107 (App. 2013).

The major rationale for abstention is that the state court is the better court to decide an issue which involves state powers and particularly strong, identifiable state interests. Certain circumstances give rise to an inclination in favor of abstention, such as a state request for abstention where there are identifiable, particularly strong state interests such as monetary claims against the state or questions concerning ownership of land, but national courts still have the obligation to carry out their own jurisdictional responsibilities. Damarlane v. Damarlane, 19 FSM R. 97, 107 (App. 2013).

When unsettled areas of state law are the key to the case's resolution, abstention may also be appropriate if it would avoid unsettling a delicate balance in national-state relationships and would avoid threatening the state's fiscal autonomy. Damarlane v. Damarlane, 19 FSM R. 97, 107 (App. 2013).

None of the circumstances favoring abstention applies in a case where there is no state request for abstention; the state is not even a party; and none of its agencies or regulations is involved and the plaintiffs' factual allegations set forth an action between private parties based on two common law torts, nuisance and trespass, plus a breach of contract claim, none of which involves unsettled areas of state law. Damarlane v. Damarlane, 19 FSM R. 97, 107 (App. 2013).

Parties to a dispute within the scope of article XI, section 6(b) diversity jurisdiction have a constitutional right to invoke the FSM Supreme Court's jurisdiction and it is the solemn obligation of the court and all others within the Federated States of Micronesia to uphold the constitutional right to invoke national court jurisdiction under article XI, section 6(b). Damarlane v. Damarlane, 19 FSM R. 97, 108 (App. 2013).

While, when issues of national law are involved there is a particularly strong presumption against abstention, there is still a presumption against abstention when the court's jurisdiction is based solely on diversity of citizenship. As a general rule, the FSM Supreme Court trial division is obliged to exercise its jurisdiction and may not abstain simply because unsettled state law issues are presented. Damarlane v. Damarlane, 19 FSM R. 97, 108 (App. 2013).

The FSM Supreme Court's solemn obligation to consider the interests and protect the rights of those who wish to invoke its constitutional jurisdiction counsels against the unfettered use of abstention. The

benefit the Constitution secures to diverse parties is the right to litigate in national court. Damarlane v. Damarlane, 19 FSM R. 97, 108 (App. 2013).

A diverse party's constitutional right to litigate in the FSM Supreme Court should not lightly be disregarded, and the FSM Supreme Court's discretionary power to abstain must be exercised carefully and sparingly. Damarlane v. Damarlane, 19 FSM R. 97, 108 (App. 2013).

When evaluating a motion to abstain, the FSM Supreme Court must recall its responsibility to exercise its jurisdiction under article XI, section 6 of the Constitution, and a judge must not undertake the decision to abstain lightly, since the national courts do have responsibility to exercise their own jurisdiction under article XI, section 6 of the Constitution. The FSM court cannot foist off on the state courts difficult state law questions presented in cases within the FSM Supreme Court's jurisdiction. Damarlane v. Damarlane, 19 FSM R. 97, 108-09 (App. 2013).

Diversity cases where the causes of action are state law are not subject to abstention and dismissal at a judge's whim. That would make the constitutional right for diverse parties to litigate in the FSM Supreme Court an empty one. Damarlane v. Damarlane, 19 FSM R. 97, 109 (App. 2013).

The presumption is always that the FSM Supreme Court will exercise its constitutionally-defined jurisdiction. For the trial court to abstain, this presumption must be overcome. Damarlane v. Damarlane, 19 FSM R. 97, 109 (App. 2013).

Another court's assumption of jurisdiction should be made with restraint, cognizant of the limitation that if a court has already assumed jurisdiction over the matter, a second court will not interfere and assume in rem jurisdiction over the same res. In those cases, abstention may be the appropriate course of action. A probate matter filed only in national court, however, causes no such conflict. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 436 (App. 2014).

The FSM Supreme Court may and should abstain in a case where land use rights are at issue, where the state is attempting to develop a coherent policy concerning the disposition of public lands, where there is a similar litigation already pending in state court, where the state requests abstention as defendant in an action which may expose it to monetary damages, where Congress has not asserted any national interests that may be affected by the litigation's outcome, and where abstention will not result in delay or injustice to the parties. Carius v. Johnson, 20 FSM R. 143, 146 (Pon. 2015).

When there is similar litigation involving the same parties and issues already pending in a state court, and a state court decision in that litigation would resolve all disputes between the parties, the risk of costly, duplicative litigation is an important factor for the FSM Supreme Court to consider in determining whether to abstain. Carius v. Johnson, 20 FSM R. 143, 146 (Pon. 2015).

When the case involves a leasehold of public land and is between a plaintiff with a recorded lease and an occupier of the lot; when the lessee's children have been added as third-party beneficiaries so this court would have diversity jurisdiction; when the usual third-party beneficiary claim is by a third-party beneficiary to a contract against a defendant who is one of the contracting parties; when the defendant is not a party to any contract of which the lessee's children would be third-party beneficiaries; when there already is a pending case in the Pohnpei Supreme Court over possession of the leasehold lot; and when the parties may have a remedy in the Pohnpei Supreme Court appellate division through mandamus or procedendo for the trial division's neglect or dilatory behavior, the FSM Supreme Court will abstain from the case. Carius v. Johnson, 20 FSM R. 143, 146 (Pon. 2015).

The exclusive nature of the national court jurisdiction is such that the FSM Supreme Court does not have the power to abstain from admiralty and maritime cases. Gilmete v. Peckalibe, 20 FSM R. 444, 448 (Pon. 2016).

The FSM Supreme Court should consider and weigh in each pendent jurisdiction case, and at every

stage of the litigation, the values of judicial economy, convenience, fairness, and comity in order to decide whether to exercise jurisdiction over a case brought in that court involving pendent law state-law claims. When the balance of these factors indicates that a case properly belongs in state court, as when the national-law claims have dropped out of the lawsuit at its early stages and only state-law claims remain, the national court should decline to exercise jurisdiction by dismissing the case without prejudice. The doctrine of pendent jurisdiction thus is a doctrine of flexibility. When the national law claims must all be dismissed, it may be an abuse of discretion to take pendent jurisdiction of a claim that depends on novel questions of state law. Panuelo v. FSM, 22 FSM R. 498, 513-14 (Pon. 2020).

– Certification to State Court

Where litigation in which a state of the Federated States of Micronesia is a defendant involves an issue concerning the meaning of a provision of the state Constitution, and the parties in that litigation request that the issue of the meaning of the provision be certified to the supreme court of the state, it is an appropriate exercise of the inherent powers of the FSM Supreme Court to devise a procedure for tendering the issue to the state supreme court, so long as the state court approves. Panuelo v. Pohnpei (III), 2 FSM R. 244, 246 (Pon. 1986).

The factors to be considered in the decision about whether the FSM Supreme Court should certify an issue to the state supreme court include: possible harm to the party seeking relief; the likelihood of significant delay; and the objections raised by the opposing party. Hadley v. Kolonia Town, 3 FSM R. 101, 103 (Pon. 1987).

Certification of appropriate issues to the Pohnpei Supreme Court appellate division by the FSM Supreme Court is consistent with the interaction between state and national courts, as contemplated by the FSM Const. art. XI, §§ 7, 8, 10, and as interpreted in earlier case law. Hadley v. Kolonia Town, 3 FSM R. 101, 103-04 (Pon. 1987).

The FSM Supreme Court has earlier explained that in the interests of judicial harmony and out of respect for state sovereignty, it is an appropriate exercise of the FSM Supreme Court's inherent powers to devise a procedure for tendering state constitutional issues to the state courts, so long as the state court approves. Hadley v. Kolonia Town, 3 FSM R. 101, 104 (Pon. 1987).

The FSM Supreme Court trial division is required to decide all national law issues presented to it. Certification to state court is only proper for state or local law issues. Edwards v. Pohnpei, 3 FSM R. 350, 354 (Pon. 1988).

The FSM Constitution, article XI, section 8, as well as general principles of federalism and considerations of judicial harmony, give the FSM Supreme Court power to certify state law issues to state courts. Edwards v. Pohnpei, 3 FSM R. 350, 361 (Pon. 1988).

Considerations of federalism and state sovereignty create a presumption in litigation when a state is defendant in an action for money damages that a request by the state defendant for certification to state court of unresolved and significant issues of state law will be granted. Edwards v. Pohnpei, 3 FSM R. 350, 362 (Pon. 1988).

While the FSM Supreme Court may certify legal issues in a case before it to the highest state court, questions which require application of law to facts may not be certified. Edwards v. Pohnpei, 3 FSM R. 350, 363 (Pon. 1988).

Certification of issues to other courts typically causes delay and increases the cost of litigation and therefore should be employed only for unsettled legal issues. Edwards v. Pohnpei, 3 FSM R. 350, 363 (Pon. 1988).

FSM Supreme Court's trial division does not lose jurisdiction over a case merely because land issues are involved, but if such issues are presented, certification procedures may be employed to avoid encroachment upon state decision-making prerogatives. Bank of Guam v. Semes, 3 FSM R. 370, 381 (Pon. 1988).

There are no statutory or constitutional obligations which require the FSM Supreme Court to abstain or certify questions merely because unsettled matters of state law are at issue. Pryor v. Moses, 4 FSM R. 138, 141 (Pon. 1989).

The choice of whether to abstain from a decision or certify questions is one that lies wholly within the discretion of the FSM Supreme Court, and the judge must not undertake that decision lightly. Pryor v. Moses, 4 FSM R. 138, 141 (Pon. 1989).

The list of areas in which the FSM Supreme Court will consider it appropriate to liberally defer to state courts must be open and flexible, responding to the particular state of legal and social development in Micronesia, and when issues important to Micronesians become the focus of concerted state efforts to establish a coherent body of law, the FSM Supreme Court will take those developments into account in evaluating requests for certification or abstention. Pryor v. Moses, 4 FSM R. 138, 142 (Pon. 1989).

Where two private parties are involved, special considerations of state sovereignty are not as weighty in considering requests for abstention or certification, and the FSM Supreme Court normally should attempt to resolve all issues presented, even when matters of state law are involved. Pryor v. Moses, 4 FSM R. 138, 143 (Pon. 1989).

Because it is appropriate to seek to develop legal standards through careful consideration of every individual case and all its attendant facts, to certify questions of law in a factual vacuum as a regular and frequent practice ill serves the primary purpose of the courts to address the justice of each separate case. Pryor v. Moses, 4 FSM R. 138, 144-45 (Pon. 1989).

In a case where there is no state party and no issues of land or other matters crucial to state interests for which the state is actively developing policy and law, the healthy and efficient administration of justice demands that the FSM Supreme Court fulfill its duty to exercise jurisdiction and refuse to abstain or certify issues. Pryor v. Moses, 4 FSM R. 138, 145 (Pon. 1989).

In a case where there is no state party and no issues of land or other matters crucial to state interests for which the state is actively developing policy and law, the healthy and efficient administration of justice demands that the FSM Supreme Court fulfill its duty to exercise jurisdiction and refuse to abstain or certify issues. Pryor v. Moses, 4 FSM R. 138, 145 (Pon. 1989).

The national courts, in carrying out their judicial responsibilities, do have inherent power to certify issues, or to abstain partially or completely from exercising jurisdiction in a particular issue or to exercise jurisdiction over part or all of a case. Gimnang v. Yap, 5 FSM R. 13, 19 (App. 1991).

In a case arising under national law there is an especially strong presumption against full abstention, and there is a serious question whether the trial division of a national court may ever certify a question of national law to a state court for decision unless it can reasonably be expected that the particular claim can be resolved entirely through the application of state law. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 67A, 67C (Pon. 1991).

Although it may be appropriate to defer to state courts the resolution of land related state law issues, abstention and certification of issues should not be allowed to thwart the more fundamental goal and obligation of the judicial system to render just decisions in a speedy fashion at a minimum of costs to litigants and society alike. Therefore a reasonable balance must be sought between responsiveness to state interests and the obligation of the national courts to carry out their own jurisdictional responsibilities.

Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 67A, 67D (Pon. 1991).

Where a case requires decisions as to the rights of owners of land in Pohnpei, it is appropriate that these issues be certified for presentation to the Pohnpei Supreme Court if it can be done without undue expense to the litigants, or extended delay. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 67A, 67F (Pon. 1991).

If national court jurisdiction exists the national court should promptly grant the petition to remove. Thereafter the national court can entertain a motion to abstain or to certify specific issues to the state court. Proceedings in the national court do not have to stop while a certified issue is presented to a state court. Etscheit v. Adams, 5 FSM R. 243, 246 (Pon. 1991).

Where there is a long delay in moving for certification of an issue and it appears the motion's sole purpose is to cause further delay, the doctrine of laches may bar the granting of the motion. Youngstrom v. Youngstrom, 5 FSM R. 335, 337-38 (Pon. 1992).

The circumstance that decisions of the Appellate Division of the Chuuk State Supreme Court may be appealed to the Appellate Division of the FSM Supreme Court and the method chosen by the sovereign State of Chuuk to select members of their appellate panels will not foreclose the FSM Supreme Court trial division from certifying a question to the Chuuk State Supreme Court Appellate Division where there are other elements in favor of certification. Stinnett v. Weno, 6 FSM R. 478, 479-80 (Chk. 1994).

Certification of questions to a state court is appropriate where the decision of the state court on state law may be dispositive, eliminating the need to address the FSM Constitutional issues and where important questions as to the source of authority of one of its political subdivisions to impose a tax and the nature of the exercise of municipal taxing authority are involved. Stinnett v. Weno, 6 FSM R. 478, 480 (Chk. 1994).

Considerations of federalism and local self-government lead to the utility of certification. Stinnett v. Weno, 6 FSM R. 478, 480 (Chk. 1994).

Certification to a state court does not prevent the FSM Supreme Court from addressing the FSM constitutional issues if that becomes necessary. Stinnett v. Weno, 6 FSM R. 478, 480 (Chk. 1994).

Where the validity of a municipal tax ordinance is questioned under the state constitution and right of the taxpayer to a refund it is appropriate for the FSM Supreme Court to certify the question to the appellate division of the state court. Chuuk Chamber of Commerce v. Weno, 6 FSM R. 480, 481 (Chk. 1994).

Unlike abstention, when a national court certifies a state law issue it poses specific questions to the appellate division of the state court. Gimnang v. Trial Division, 6 FSM R. 482, 485 (App. 1994).

The choice of whether to abstain from a decision or to certify questions is one that lies wholly within the discretion of the trial court. Gimnang v. Trial Division, 6 FSM R. 482, 485 (App. 1994).

Certification is normally granted by the court that will be applying the guidance sought to its decision, not yet made, not by the court that is requested to hear the certified question. Etscheit v. Adams, 6 FSM R. 608, 610 (App. 1994).

National courts are not required to certify to state courts state law issues of first impression. Whether to certify a question to state court is left to the sound discretion of the trial court on a case by case basis. Youngstrom v. Youngstrom, 7 FSM R. 34, 36 (App. 1995).

A most important issue in determining whether to certify an issue to state court is whether it will result in undue delay and whether that delay will prejudice a party. Youngstrom v. Youngstrom, 7 FSM R. 34, 36 (App. 1995).

Extension of the presumption of abstention in certain cases to municipalities is inappropriate. Conrad v. Kolonia Town, 7 FSM R. 97, 101 (Pon. 1995).

Only "clean" questions of law are appropriate for certification, not questions of fact or mixed questions of law and fact. Nanpei v. Kihara, 7 FSM R. 319, 322 (App. 1995).

The decision to certify a question to a state court lies wholly within the sound discretion of the trial court. Thus the standard of review of the decision not to certify a question is whether the trial court abused its discretion. Nanpei v. Kihara, 7 FSM R. 319, 322 (App. 1995).

The FSM Supreme Court is not obligated to certify every unsettled issue of state law, and it does have a constitutional obligation to exercise its own jurisdiction, but there may be a preference for referring a matter to state court when the state court's decision on an unsettled matter of state law would be dispositive and obviate the need for an adjudication of the national constitution. Nanpei v. Kihara, 7 FSM R. 319, 322 (App. 1995).

Certification as practiced in the FSM is a judicially devised procedure that is entirely discretionary with the court. Weno v. Stinnett, 9 FSM R. 200, 209 (App. 1999).

Just as the trial court could exercise its discretion to certify the questions on its own motion, it could properly exercise that discretion to grant plaintiffs' unopposed motion to withdraw the certification after nearly a year had elapsed without any indication from the Chuuk state court appellate division that it would hear the question. Weno v. Stinnett, 9 FSM R. 200, 209 (App. 1999).

Events transpiring in other litigation before the Chuuk State Supreme Court trial division did not have the capacity, by their mere occurrence, to create reversible error in a different case before a different court. The FSM trial court was not obliged to be aware of and draw inferences from those events, which did not constitute controlling precedent, in order to discern the Chuuk State Supreme Court appellate division's mind with respect to the certification question. When Chuuk State Supreme Court appellate division did not speak to the certification issue, the FSM Supreme Court trial division properly exercised its discretion to withdraw the certification. Weno v. Stinnett, 9 FSM R. 200, 209-10 (App. 1999).

A motion to certify issues to a state court may be denied when there is an absence of legal authority in the movant's memorandum and when the issues are imprecisely and inaccurately defined. Island Cable TV v. Gilmete, 9 FSM R. 264, 266-67 (Pon. 1999).

A court is hesitant to initiate the somewhat cumbersome certification procedure until it is satisfied that putative issues raised exist, and that they have been precisely defined. Island Cable TV v. Gilmete, 9 FSM R. 264, 266-67 (Pon. 1999).

A strong presumption exists under FSM law for deferring land matters to local land authorities, along with federalism principles and concerns for judicial harmony. The FSM Supreme Court can certify such questions of state law to the state courts. But when, if the equitable or mechanic's lien claims had been presented in the original complaint, the court could then have certified the questions to the state court to determine whether such liens exist under state law and when the original complaint's factual allegations support such claims, there was no reason why that claim could not have been made then with discovery on-going while the state court considered the question. But when, considering the circumstances, it has become too late to bring this claim, a motion to amend the complaint to add a declaratory judgment claim that the plaintiffs have such a lien will be denied. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 233 (Pon. 2002).

Although the national courts, in carrying out their judicial responsibilities, do have inherent power to certify issues, or to abstain partially or completely from exercising jurisdiction over a particular issue, or to

exercise jurisdiction over part or all of a case; and although the trial court may raise the question of abstention or certification on its own motion; it is not mandatory that the court do so. And even if such a motion had been made, the choice of whether to abstain from a decision or to certify questions is one that lies wholly within the trial court's discretion. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 507 (App. 2005).

When no motion to abstain or to certify a question to the state court was made, the trial court could not abuse its discretion by not abstaining from deciding or by not certifying the ownership question to the state court. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 507 (App. 2005).

National court abstention or certification of issues may also be justified on occasion by a desire to avoid unsettling a delicate balance in national-state relationships. Narruhn v. Chuuk, 16 FSM R. 558, 564 (Chk. 2009).

The appellants' likelihood of success on their claim that the court should have abstained or certified their "novel issues" to the state court is virtually zero when they never moved for certification or abstention and when, even if they had, the court is not required to certify or abstain from every "unsettled" state law issue. FSM Dev. Bank v. Helgenberger, 17 FSM R. 266, 270 (Pon. 2010).

The choice to abstain from hearing a case, like the decision to certify a question, lies wholly within the trial court's sound discretion, and this is reviewed on an abuse of discretion standard. Narruhn v. Chuuk, 17 FSM R. 289, 293 (App. 2010).

The choice to abstain from hearing a case, like the decision to certify a question, lies wholly within the trial court's sound discretion, and this is reviewed on an abuse of discretion standard. Narruhn v. Chuuk, 17 FSM R. 289, 293 (App. 2010).

When no motion to certify was ever made, the trial court could not abuse its discretion by not certifying a question to the state court. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

– National/State Power

There appears nothing of an indisputably national character in the power to control all lesser crimes. FSM v. Boaz (II), 1 FSM R. 28, 32 (Pon. 1981).

The Trust Territory High Court's former exclusive jurisdiction over lawsuits against the Trust Territory government has been delegated to the constitutional governments covered by Secretarial Order 3039. Within the Federated States of Micronesia, the allocation of this former exclusive High Court jurisdiction between the Supreme Court of the Federated States of Micronesia and the various state courts will be determined on the basis of jurisdictional provisions within the Constitution and laws of the Federated States of Micronesia and its respective states. Lonno v. Trust Territory (I), 1 FSM R. 53, 68 (Kos. 1982).

The Federated States of Micronesia Supreme Court is specifically given jurisdiction over disputes between citizens of a state and foreign citizens. FSM Const. art. XI, § 6(b). This jurisdiction is based upon the citizenship of the parties, not the subject matter of their dispute. In re Nahnsen, 1 FSM R. 97, 101 (Pon. 1982).

The Constitution places diversity jurisdiction in the Supreme Court, despite the fact that the issues involve matters within state or local, rather than national, legislative powers. In re Nahnsen, 1 FSM R. 97, 102 (Pon. 1982).

The power to regulate probate of wills or inheritance of property is not "beyond the power of a state to control" within the meaning of article VIII, section 1 of the Constitution and is consequently a state power. Nothing about the power to regulate probate or inheritance suggests that these are beyond the power of a state to control. In re Nahnsen, 1 FSM R. 97, 107 (Pon. 1982).

State officials generally should have greater knowledge of use, local custom and expectations concerning land and personal property. They should be better equipped than the national government to control and regulate these matters. The Constitution's framers specifically considered this issue and felt that powers of this sort should be state powers. In re Nahnsen, 1 FSM R. 97, 107, 109 (Pon. 1982).

The allocation of judicial authority is made on the basis of jurisdiction, generally without regard to whether state or national powers are at issue. In re Nahnsen, 1 FSM R. 97, 108 (Pon. 1982).

The prosecution of criminals is not a power having indisputably national character. Truk v. Hartman, 1 FSM R. 174, 178 (Truk 1982).

Exclusive national government jurisdiction over major crimes is not mandated by the Constitution; such jurisdiction would be exclusive in any event only if criminal jurisdiction was a power of indisputably national character. Truk v. Hartman, 1 FSM R. 174, 181 (Truk 1982).

When jurisdiction exists by virtue of diversity of the parties, the FSM Supreme Court may resolve the dispute despite the fact that matters squarely within the legislative powers of states (e.g., probate, inheritance an land issue) may be involved. Ponape Chamber of Commerce v. Nett Mun. Gov't, 1 FSM R. 389, 396 (Pon. 1984).

While the FSM Constitution is the supreme law of the land and the FSM Supreme Court may under no circumstances acquiesce in unconstitutional governmental action, states should be given a full opportunity to exercise their legitimate powers in a manner consistent with the commands of the Constitution without unnecessary intervention by national courts. Etpison v. Perman, 1 FSM R. 405, 428 (Pon. 1984).

There is nothing absurd about a weapons control scheme that recognizes that both the national and the state governments have an interest in controlling the possession, use and sale of weapons. While Congress and the states may eventually wish to allocate their respective roles with more precision, the current Weapons Control Act appears to provide a workable system during these early years of transition and constitutional self-government. Joker v. FSM, 2 FSM R. 38, 44 (App. 1985).

The Weapons Control Act seems well attuned to the recognition of shared national-state interest in maintaining an orderly society and the goal of cooperation in law enforcement as reflected in the Major Crimes Clause, article IX, section 2(p) of the Constitution as well as the Joint Law Enforcement Act, 12 F.S.M.C. 1201. Joker v. FSM, 2 FSM R. 38, 44 (App. 1985).

Major crimes obviously were not viewed by the framers as simply a local or state problem. The Major Crimes Clause undoubtedly reflects their judgment that the very integrity of this new nation could be threatened if major crimes could be committed with impunity in any part of the nation, with the national government forced helplessly to stand aside. Tammow v. FSM, 2 FSM R. 53, 58 (App. 1985).

The framers of the Constitution stipulated that the line for determining whether a crime is major be drawn on the basis of severity or gravity of the crime rather than by reference to principles of federalism developed under the Constitution of the United States. Tammow v. FSM, 2 FSM R. 53, 58 (App. 1985).

The scope of state police powers under the FSM Constitution must be determined by reference to the powers of the national government under the Major Crimes Clause. It follows that legitimate exercise of the national government power to define major crimes cannot be viewed as an unconstitutional encroachment upon the police powers of the states. Tammow v. FSM, 2 FSM R. 53, 59 (App. 1985).

The members of the Micronesian Constitutional Convention obviously did not believe the Major Crimes Clause was improperly at odds with their general view that governmental power should be less centralized under the FSM Constitution than it had been in Trust Territory days. Tammow v. FSM, 2 FSM R. 53, 59

(App. 1985).

The power to impose taxes, duties, and tariffs based on imports is a national, not a state, power and where Congress has exercised the power and shares the revenues with the states, a state may not also impose an additional import tax. Wainit v. Truk (II), 2 FSM R. 86, 88 (Truk 1985).

The nature of the expressly delegated powers in article IX, section 2, of the Constitution – including the powers to impose taxes, to provide for the national defense, ratify treaties, regulate immigration and citizenship, regulate currency, foreign commerce and navigation, and to provide for a postal system – strongly suggests that they are intended to be the exclusive province of the national government, since they call for a uniform nationally coordinated approach. Innocenti v. Wainit, 2 FSM R. 173, 181-82 (App. 1986).

The Pohnpei State Constitution was established under the authority granted by article VII, section 2 of the Constitution of the Federated States of Micronesia which mandates that a state shall have a democratic constitution and also Pohnpei State Law No. 2L-131-82, section 9, which mandated the Pohnpei State Constitutional Convention "to draft a constitution for the State of Ponape . . . [that] shall make adequate provisions for the exercise of legislative, judicial and executive functions, and shall guarantee to all citizens of the State, a democratic form of government." People of Kapingamarangi v. Pohnpei Legislature, 3 FSM R. 5, 8-9 (Pon. S. Ct. Tr. 1985).

Congress, under section 5 of article XV, had the power to provide for transition from government under the Trusteeship to government under the Constitution of the Federated States of Micronesia. Pohnpei v. Mack, 3 FSM R. 45, 49 (Pon. S. Ct. Tr. 1987).

Trust Territory statutes applicable to the states became part of the state's laws, regardless of whether they were published in the FSM Code. Such holdover Trust Territory laws become laws of the states until superseded. Pohnpei v. Mack, 3 FSM R. 45, 55 (Pon. S. Ct. Tr. 1987).

All Trust Territory statutes that were applicable to the State of Pohnpei prior to Pub. L. No. 2-48 and immediately before November 8, 1984, the effective date of the Pohnpei State Constitution, and which have not been amended, superseded, or repealed, are laws of the State of Pohnpei. Section 3 of S.L. 3L-33-84 made those Trust Territory statutes into laws of the State of Pohnpei, and that includes Title 15 of the Trust Territory Code. Pohnpei v. Mack, 3 FSM R. 45, 55 (Pon. S. Ct. Tr. 1987).

Determination as to whether a statute is a state or national law must be made on a statute-by-statute or a section-by-section basis. Edwards v. Pohnpei, 3 FSM R. 350, 355 (Pon. 1988).

The fact that Congress included a particular law in the FSM Code does not indicate conclusively whether the law is to be applied by this court as part of national law, for some parts of the Code were intended to apply only to the Trust Territory High Court in its transitional role until state courts were established. Edwards v. Pohnpei, 3 FSM R. 350, 356 (Pon. 1988).

If a power is not enumerated in the Constitution, the likelihood is that the framers intended it to be a state power, for the only unexpressed powers which may be exercised by the national government are powers of "such an indisputably national character as to be beyond the power of a state to control." FSM Const. art. VIII, § 1. Edwards v. Pohnpei, 3 FSM R. 350, 357 (Pon. 1988).

Primary lawmaking powers for the field of torts lie with the states, not with the national government, but the national government may have an implied power to regulate tort law as part of the exercise of other general powers. Edwards v. Pohnpei, 3 FSM R. 350, 359 (Pon. 1988).

Wrongful death statutes, including the $100,000 ceiling on wrongful death claims, are part of the law of the states and are not national law. Edwards v. Pohnpei, 3 FSM R. 350, 359 (Pon. 1988).

A FSM Supreme Court decision applying state law in a case before it is final and res judicata; but if in a subsequent case a state court decides the same issue differently, the state decision in that subsequent case is controlling precedent and the national courts should apply the state court rule in future cases. Edwards v. Pohnpei, 3 FSM R. 350, 360 n.22 (Pon. 1988).

Lack of mention of state and local courts in FSM Constitution article XI, section 6(b) reveals that national courts are to play the primary role in handling the kinds of cases identified in that section, but nothing in article XI, section 6(b) may be read as absolutely preventing state courts from exercising jurisdiction over those kinds of cases. Bank of Guam v. Semes, 3 FSM R. 370, 379 (Pon. 1988).

Parties to a dispute in which there is diversity have a constitutional right to invoke the jurisdiction of a national court, but if all parties agree, and if state law permits, a state court may hear and decide the kinds of cases described in article XI, section 6(b) of the Constitution. Bank of Guam v. Semes, 3 FSM R. 370, 379 (Pon. 1988).

Article XI, section 6(c) of the Constitution places authority to prescribe jurisdiction only in the national Congress, and not in state legislatures. Bank of Guam v. Semes, 3 FSM R. 370, 379 (Pon. 1988).

Failure to mention national courts in section 25 of the Pohnpei State Real Property Mortgage Act should not be read as an attempt to deprive litigants of access to the FSM Supreme Court's trial division. Bank of Guam v. Semes, 3 FSM R. 370, 380 (Pon. 1988).

A lawsuit to enforce a mortgage is an attempt to enforce a type of lien against a delinquent debtor. Such a case bears a relationship to the power to regulate "bankruptcy and insolvency," which the Constitution in article IX, section 2(g), places in the national Congress. Bank of Guam v. Semes, 3 FSM R. 370, 381 (Pon. 1988).

The national Constitution does not prohibit state courts from hearing cases described in article XI, section 6(b) if all parties accept state court jurisdiction, but parties to a dispute within scope of article XI, section 6(b) have a constitutional rights to invoke jurisdiction of FSM Supreme Court trial division. U Corp. v. Salik, 3 FSM R. 389, 392 (Pon. 1988).

The intent of framers of the Constitution was that national courts would handle most types of cases described in article XI, section 6(b) of the Constitution and national courts therefore should not lightly find a waiver of right to invoke its jurisdiction. U Corp. v. Salik, 3 FSM R. 389, 394 (Pon. 1988).

Under the Constitution of the Federated States of Micronesia, the national government, not the state governments, assumes any "right, obligation, liability, or contract of the government of the Trust Territory." Salik v. U Corp. (I), 3 FSM R. 404, 407 (Pon. 1988).

Powers not expressly delegated to the national government nor prohibited to the states are state powers. FSM Const. art. VIII, § 2. FSM v. Oliver, 3 FSM R. 469, 473 (Pon. 1988).

The fact that control over marine areas within the twelve-mile zone is not mentioned in the Constitution is a strong indication that the framers intended the states to control ownership and use of marine resources within that area. FSM v. Oliver, 3 FSM R. 469, 473 (Pon. 1988).

Regulatory power beyond twelve miles from island baselines lies with the national government. FSM v. Oliver, 3 FSM R. 469, 479 (Pon. 1988).

Decision making concerning allocation of functions as state and national roles falls most squarely within the role of Congress, for Congress is the most political branch of the national government and is best suited to resolve policy issues. In re Cantero, 3 FSM R. 481, 484 (Pon. 1988).

Article XI, section 8 of the Constitution, providing for state court certification of issues of national law,

gives the FSM Supreme Court appellate division another tool to oversee the development of national law jurisprudence, but also provides the option of remand so that the state court may address issues of national law. Bernard's Retail Store & Wholesale v. Johnny, 4 FSM R. 33, 35 (App. 1989).

No jurisdiction is conferred on state courts by article XI, section 6(b) of the FSM Constitution, but neither does the diversity jurisdiction of section 6(b) preclude state courts from acting under state law, unless or until a party to the litigation invokes national court jurisdiction. Hawk v. Pohnpei, 4 FSM R. 85, 89 (App. 1989).

In the course of the formation of the FSM, the allocation of responsibilities between states and nation was such that the impact of the national courts in criminal matters was to be in the area of major crimes and as the ultimate arbiter of human rights issues. Hawk v. Pohnpei, 4 FSM R. 85, 93 (App. 1989).

Questions regarding the validity of the provisions of promissory notes for personal loans, executed with a national bank operating in each state of the FSM and having in part foreign ownership, are closely connected to the powers of the national legislature to regulate banking, foreign and interstate commerce, and bankruptcy, and to establish usury limits, and they have a distinctly national character. The FSM Supreme Court therefore will formulate and apply rules of national law in assessing such issues. Bank of Hawaii v. Jack, 4 FSM R. 216, 218 (Pon. 1990).

A state law provision attempting to place "original and exclusive jurisdiction" in the Yap State Court cannot divest a national court of responsibilities placed upon it by the national constitution, which is the "supreme law of the Federated States of Micronesia." Gimnang v. Yap, 5 FSM R. 13, 23 (App. 1991).

Under traditional constitutional analysis, taxpayers' efforts to recover tax moneys unlawfully extracted from them by a state may be relegated to state procedures and decision-makers so long as there is a reasonable procedure under state law whereby the taxpayer may obtain meaningful relief. Gimnang v. Yap, 5 FSM R. 13, 23-24 (App. 1991).

The power of the national government under article IX, section 2(e) of the Constitution, "to impose taxes on income," is an exclusive national power that may not be exercised by the states. Youngstrom v. Kosrae, 5 FSM R. 73, 74 (Kos. 1991).

The Kosrae transaction tax of KC 9.301 is a selective tax rather than an income tax and is not an encroachment upon the national government's exclusive power to tax income. Youngstrom v. Kosrae, 5 FSM R. 73, 76 (Kos. 1991).

Under national law, the governor of a state is the allottee for all Compact of Free Association funds unless he delegates in writing his right to be allottee, so where a state statute allots such funds to the legislative branch without written delegation from the governor, the statute violates national law. Gouland v. Joseph, 5 FSM R. 263, 265 (Chk. 1992).

The national court should not abstain from deciding a criminal case where the crime took place before the effective date of the 1991 amendment removing federal jurisdiction over major crimes because of the firmly expressed intention by the Constitutional Convention delegates as to the manner of transition from national jurisdiction to state jurisdiction. In re Ress, 5 FSM R. 273, 276 (Chk. 1992).

The scheme of national, constitutionally-authorized foreign investment legislation is so pervasive there is no room for the state to supplement it. Non-FSM citizen attorneys and their private practice of law are expressly subjected to the national legislative scheme. Insofar as attorneys who are engaged in the private practice of law and whose business activities are within the scope of the national FIA, the state FIA is invalid. Berman v. Pohnpei, 5 FSM R. 303, 306 (Pon. 1992).

Although the FSM Supreme Court has the constitutional power to use its discretion to review a case

from a state trial court, generally, proper respect for the state court requires that state appeal rights be exhausted before the FSM Supreme Court would grant appellate review especially when important state interests are involved. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 322, 324 (App. 1992).

The FSM Constitution distinguishes national powers from state powers, FSM Const. art. VIII. FSM v. Kotobuki Maru No. 23 (I), 6 FSM R. 65, 69 (Pon. 1993).

If a power is of an indisputable national character such that it is beyond the state's power to control, then that power is to be considered a national power, even though it is not an express power granted by the Constitution. FSM v. Kotobuki Maru No. 23 (I), 6 FSM R. 65, 70-71 (Pon. 1993).

A state power can be concurrently national to the extent that the state cannot adequately exercise that power in the manner in which it is intended either by statute or by or constitutional framework for circumstances not foreseen by the framers of our Constitution. FSM v. Kotobuki Maru No. 23 (I), 6 FSM R. 65, 72 (Pon. 1993).

To the extent that the state is unable to police its waters and enforce its fishing regulations of its own, the national government has an obligation to provide assistance. However, to the extent that the national government must provide assistance, the power to regulate state waters is beyond the state's control and is in fact a concurrent national power. FSM v. Kotobuki Maru No. 23 (I), 6 FSM R. 65, 73 (Pon. 1993).

A condition on an MMA fishing permit which prohibits fishing within 12 miles of the FSM unless authorized by the state which has jurisdiction is an exercise of the national government's unexpressed concurrent national power. FSM v. Kotobuki Maru No. 23 (I), 6 FSM R. 65, 73 (Pon. 1993).

Nothing in the FSM constitutional framework suggests that a state can unilaterally avoid the effect of a valid international agreement, constitutionally arrived at, between the Federated States of Micronesia and another nation. In re Extradition of Jano, 6 FSM R. 93, 103-04 (App. 1993).

The national government has the exclusive power to tax income and imports. The power to levy other taxes, unless specifically barred by the Constitution, is an exclusive state power. Sigrah v. Kosrae, 6 FSM R. 168, 169-70 (App. 1993).

A transaction tax oriented toward individual transactions and not total income, and only triggered by the transactions it covers, even though paid by the vendor, is analogous to a selective sales tax and is not an unconstitutional encroachment on the national government's exclusive power to tax income. Sigrah v. Kosrae, 6 FSM R. 168, 170 (App. 1993).

Comity, the respect of one sovereign for another, and respect for state sovereignty are important principles. Pohnpei v. Ponape Constr. Co., 6 FSM R. 221, 222-23 (App. 1993).

A Chuuk state tax on a lessor or landowner who rents or leases land, building or housing unit, for residential, or office space, or other use is not an unconstitutional encroachment on the national government's exclusive power to tax income. Truk Continental Hotel, Inc. v. Chuuk, 6 FSM R. 310, 311 (Chk. 1994).

The Constitution prohibits state and local governments from imposing taxes which restrict interstate commerce. Stinnett v. Weno, 6 FSM R. 312, 313 (Chk. 1994).

The absence of an express grant of authority to the national government to regulate marine resources within twelve miles of island baselines indicates the framers' intention that states have control over these resources. However, the state authority to regulate marine resources located within twelve miles of island baselines is primary but not exclusive. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM R. 594, 598 (Pon. 1994).

The nonexclusive constitutional grant to the states of regulatory power over marine resources located within twelve miles of island baselines cannot be read as creating exclusive state court jurisdiction over marine resources within the twelve mile limit. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM R. 594, 598-99 & n.7 (Pon. 1994).

The framers of the FSM Constitution favored state control over marine resources within twelve miles of island baselines. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM R. 594, 601 (Pon. 1994).

Even when a national court places itself in the shoes of the state court and interprets state law, the state court is always the final arbiter of the meaning of a state law. State court interpretations of state law which contradict prior rulings of the national courts are controlling. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM R. 594, 601 (Pon. 1994).

A fishing permit issued by the national government prohibiting fishing in state waters unless authorized by the state which has jurisdiction does not constitute regulation of state waters by the national government because it merely tries to prevent a vessel that fishes illegally in state waters from continuing to fish in national waters. FSM v. Hai Hsiang No. 63, 7 FSM R. 114, 116 (Chk. 1995).

Only the national government may constitutionally tax income. The states' taxing power does not include the power to tax income. Truk Continental Hotel, Inc. v. Chuuk, 7 FSM R. 117, 119 (App. 1995).

If a state wishes to obtain funding from a consumption tax, it can avoid a constitutional confrontation by making the taxable incident the sale or rental transaction, and by expressing the requirement that the tax be paid by the consumer. Therefore a state tax on the gross rental receipts of a landlord is an unconstitutional tax on income. Truk Continental Hotel, Inc. v. Chuuk, 7 FSM R. 117, 120 (App. 1995).

Among the powers reserved to the states is the control of administration and policy-making of all branches of state government. Berman v. Santos, 7 FSM R. 624, 626 (App. 1996).

The Constitution reserves to the states all powers not prohibited to them or expressly delegated to the national government or of such indisputably national character as to be beyond the power of a state to control. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 672 (App. 1996).

State autonomy should be as wide-ranging as possible, but it is subject to the limits of the FSM Constitution. A state may not exceed the scope of its power by reliance on a state constitutional provision where to do so prevents enforcement of national civil rights legislation. Louis v. Kutta, 8 FSM R. 208, 212-13 (Chk. 1997).

The supremacy clause of the FSM Constitution does not admit a result where a state constitutional provision prevents the enforcement of a national statute which gives a private cause of action for rights guaranteed by the FSM Constitution, especially when it is the solemn obligation of state governments to uphold the principles of the FSM Constitution and to advance the principles of unity upon which the Constitution is founded. Louis v. Kutta, 8 FSM R. 208, 213 (Chk. 1997).

Article I, section 1 of the Constitution defines the FSM's national boundaries, and section 2 defines the states' boundaries in the event marine resources revenues should accrue to the state wherein the resources are found, but the Constitution's framers did not intend to confer ownership of marine resources, or revenues derived from such resources, when they defined the state boundaries. Offshore marine resources, and the division between national and state power with respect to these resources, are addressed in other articles of the Constitution. Chuuk v. Secretary of Finance, 8 FSM R. 353, 367-68 (Pon. 1998).

Article IX, section 2(m) of the FSM Constitution expressly grants to the FSM Congress the power to regulate the ownership, exploration, and exploitation of natural resources beyond 12 miles from island

baselines. Chuuk v. Secretary of Finance, 8 FSM R. 353, 368 (Pon. 1998).

The line between national and state power in a particular area of government is not always clear, and must be carefully and thoughtfully drawn. Chuuk v. Secretary of Finance, 8 FSM R. 353, 369 (Pon. 1998).

Although article IX, section 2(m) of the Constitution does not expressly state how revenues derived from regulatory activities in the EEZ should be distributed, the FSM Congress constitutionally is empowered to collect and distribute fishing fees as implied or incidental to the express grant of power in article IX, section 2(m), and that discretion over the ultimate division or appropriation of the fishing fees rests with the FSM national government. Chuuk v. Secretary of Finance, 8 FSM R. 353, 369-70 (Pon. 1998).

All express powers delegated to the national government contain within them innumerable incidental or implied powers. Chuuk v. Secretary of Finance, 8 FSM R. 353, 370 (Pon. 1998).

Each of the express powers delegated to the national government in Article IX of the FSM Constitution include the full authority for the national government to enact legislation and engage in activities necessary to exercise that express power. Chuuk v. Secretary of Finance, 8 FSM R. 353, 371 (Pon. 1998).

The express grant of power to the national government to regulate the ownership, exploration, and exploitation of natural resources, implicitly includes the power of the national government to collect revenues that are generated as a result. Thus, the national government has the authority to enact legislation related to offshore marine resources, including legislation related to collection and distribution of revenues derived therefrom. Chuuk v. Secretary of Finance, 8 FSM R. 353, 371 (Pon. 1998).

To empower the national government to regulate ownership and exploitation of fishery resources within the EEZ, without the power to collect and distribute revenues derived from these regulatory functions, would violate the intention of the Constitution's framers and unduly limit the national government in the exercise of its exclusive power over natural resources in the area beyond 12 miles from the island baselines. Chuuk v. Secretary of Finance, 8 FSM R. 353, 371 (Pon. 1998).

Since the national government has the express authority to regulate the ownership, exploration, and exploitation of fishery resources in the EEZ, the power to promulgate legislation which generates revenue from the regulation of these resources and provides for collection and distribution of such revenue, is incidental to or implied in the express grant. Chuuk v. Secretary of Finance, 8 FSM R. 353, 371 (Pon. 1998).

The Constitution's framers intended to vest complete control of the EEZ in the national government, and the expressed intent of legislation passed by the Interim Congress which terminated the practice of distributing fishing fees from the EEZ to the districts, or states, was to bring certain provisions of the Fishery Zone legislation into conformity with the provisions of the FSM Constitution and the powers granted to the national government under the Constitution. Chuuk v. Secretary of Finance, 8 FSM R. 353, 371-74 (Pon. 1998).

That the states currently are dissatisfied with the national government's power over the fishing fees does not change the constitutional division of powers that each of the states agreed to when it ratified the FSM Constitution and entered the Federated States of Micronesia. The states clearly delegated all power over offshore fishing resources beyond 12 miles from their baselines to the national government in the Constitution. Thus, the FSM has the power to collect and distribute the fishing fees under article IX, section 2(m). Chuuk v. Secretary of Finance, 8 FSM R. 353, 374 (Pon. 1998).

The national government's authority to collect and distribute the fishing fees derived from the FSM EEZ is indisputably of a national character and beyond the ability of a single state to control because of the numerous national powers which the national government is required to exercise in order to effectively regulate and control the FSM EEZ and because the individual states are incapable of regulating and controlling the EEZ. Chuuk v. Secretary of Finance, 8 FSM R. 353, 374-75 (Pon. 1998).

Management and control of the FSM's fishing resources in its EEZ requires the national government to exercise its exclusive treaty powers under article IX, section 2(b) of the FSM Constitution. The FSM national government has specific international rights, and has undertaken specific international obligations, with respect to its EEZ under certain treaties. Chuuk v. Secretary of Finance, 8 FSM R. 353, 375 (Pon. 1998).

Negotiating fishery agreements with foreign governments and foreign companies necessarily involves foreign affairs, another exclusive national power. Chuuk v. Secretary of Finance, 8 FSM R. 353, 375 (Pon. 1998).

The process of determining the appropriate level of the fishing fees, the best method to collect the fishing fees, and ultimately how to distribute the fishing fees, is indisputably of a national character. Thus the national government, not the states, has the power to collect and distribute the fishing fees. Chuuk v. Secretary of Finance, 8 FSM R. 353, 375 (Pon. 1998).

That Congress has legislated sharing revenues from fines and forfeitures with the states and that each of the states has a delegate on the Board of the MMA is not an admission or indication that the states are the owners of the underlying resources. Chuuk v. Secretary of Finance, 8 FSM R. 353, 376 (Pon. 1998).

The Law of the Sea Convention first recognized that the Federated States of Micronesia as a nation has the exclusive right to exploit resources in its 200-mile EEZ. The FSM Constitution was drafted to vest authority over the EEZ in the national government with this in mind. Chuuk v. Secretary of Finance, 8 FSM R. 353, 378 & n.19 (Pon. 1998).

Issues related to the EEZ cannot be determined by relying on custom and tradition, as the commercial value of the EEZ to the Federated States of Micronesia was first realized when the nation acceded to the Law of the Sea Convention. While the rights of individual Micronesians, families and clans to living marine resources under particular circumstances might be amenable to determination by custom and tradition, the states' legal entitlement to share in fishing fees derived from commercial fishing ventures, extending to 200 miles from island baselines, is not. Chuuk v. Secretary of Finance, 8 FSM R. 353, 378 (Pon. 1998).

Any claim to resources in the EEZ based upon custom and tradition must rest with clans, families and individuals rather than with the states. Chuuk v. Secretary of Finance, 8 FSM R. 353, 379 (Pon. 1998).

The FSM national government has the exclusive right to harvest living marine resources in its EEZ, just as it has the exclusive right to harvest offshore mineral resources. As the holder of this exclusive right, the national government is allowed to dispose of this resource and receive revenue in return. Under the Convention on the Law of the Sea, each nation is entitled to exploit its marine resources to the extent it is able to achieve a maximum sustainable yield. When the FSM does not fully exploit its own resources, it is entitled to compensation at the appropriate market rate from foreign fishing vessels which it allows to fish in its waters. Chuuk v. Secretary of Finance, 8 FSM R. 353, 386 (Pon. 1998).

Because a Congressional statute set up Telecom to serve the public interest and foster economic development, because Telecom may seek appropriations from Congress and, to the extent approved by the President, grants from sources outside of the FSM, because Telecom's board of directors must submit an annual report reflecting its activities, including financial statements, to the government, and because Telecom has no independent shareholders and is fully owned by the national government, Telecom is deemed, for taxation purposes, to be a part of the national government, and its efforts to carry out its mission should not be hindered by any state's efforts to tax its business activities. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 380, 385 (Pon. 2000).

By making the taxing powers allocated between the national and state governments of Micronesia exclusive and distinct and allocating the exclusive power to tax income and imports, the Constitution's

framers sought to avoid vertical multiple taxation and ensure a consistent fiscal policy for Micronesia. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 380, 387-89 (Pon. 2000).

Internal waters are those waters on the landward side, or inside, of the baselines of the territorial sea. The exclusive economic zone starts twelve nautical miles seaward of the baseline and extending outward for another 188 nautical miles. A desire to maximize the area that might be included within the baselines, subject to the FSM's international treaty obligations, cannot be interpreted as a recognition of state ownership of the ocean resources 12 to 200 nautical outside of those baselines when drawn. Chuuk v. Secretary of Finance, 9 FSM R. 424, 430-31 (App. 2000).

The framers' intent that the equidistance method be used to establish fair and equitable marine boundaries between the states in the event marine resource revenue should accrue to the state wherein the resources are found does not indicate state resource ownership because the Constitution explicitly provides for an event when such revenues would accrue to the state – when ocean floor mineral resources are exploited. Chuuk v. Secretary of Finance, 9 FSM R. 424, 431 (App. 2000).

When the Constitution defined state boundaries, the Constitution's framers did not intend to confer on the states the ownership of the exclusive economic zone's resources or all the revenues derived from them. Chuuk v. Secretary of Finance, 9 FSM R. 424, 431 (App. 2000).

When a government has the power to collect money, it has the power to disburse that money at its discretion unless the Constitution or applicable laws should provide otherwise. Chuuk v. Secretary of Finance, 9 FSM R. 424, 431 (App. 2000).

The Constitution's broadly stated express grants of power to the national government contain within them innumerable incidental or implied powers, as well as certain inherent powers. Chuuk v. Secretary of Finance, 9 FSM R. 424, 431 n.2 (App. 2000).

Because regulating the ownership, exploration, and exploitation of the exclusive economic zone's natural resources is a power expressly and exclusively delegated to the national government and because the incidental power to collect assessments levied pursuant to that delegated power is indisputably a national power, the power to disburse those funds is also a national power, except where the Constitution provides otherwise (such as in Article IX, section 6). Thus even were the states the underlying owners of the exclusive economic zone's resources, such a conclusion would not entitle the states to the exclusive economic zone's revenues except where the Constitution so provides. Chuuk v. Secretary of Finance, 9 FSM R. 424, 431-32 (App. 2000).

Under the fishery statute enacted by the FSM Interim Congress, the only portion of the fishing fees subject to mutual determination with the states was that attributable to the foreign catch within twelve nautical miles of the baselines, an area whose natural resources the Constitution places under state control. The rest of the fishing fees – those for the area now known as the exclusive economic zone – went directly to the national government. Chuuk v. Secretary of Finance, 9 FSM R. 424, 433 (App. 2000).

The four states are not entitled to the net proceeds of revenues from exploitation of the living resources in the FSM exclusive economic zone on the basis of ownership. Chuuk v. Secretary of Finance, 9 FSM R. 424, 434 (App. 2000).

Fishing fees are not assessed under the national government's constitutional authority to impose taxes on income. They are levied instead under the national government's constitutional authority to regulate the ownership, exploration, and exploitation of natural resources within the marine space of the Federated States of Micronesia beyond 12 miles from island baselines. Chuuk v. Secretary of Finance, 9 FSM R. 424, 434 (App. 2000).

Unearmarked foreign financial assistance is divided into equal shares for each state and the national

government, which means that the national government and every state each receive a 20% share. Chuuk v. Secretary of Finance, 9 FSM R. 424, 435 (App. 2000).

Not less than half of the national taxes must be paid to the state where collected, but fishing fees are not national taxes because they are imposed, not under the national government's power to impose taxes, but under its power to regulate exploitation of natural resources within the FSM exclusive economic zone. Chuuk v. Secretary of Finance, 9 FSM R. 424, 435 (App. 2000).

Revenue sharing is also mandated for net revenue derived from FSM EEZ ocean floor mineral resources exploited, which is to be divided equally between the national government and the appropriate state government. Chuuk v. Secretary of Finance, 9 FSM R. 424, 435 (App. 2000).

The Constitution grants the national government the exclusive right to regulate the exploitation of the natural resources within the EEZ, which necessarily includes the generation of revenue from the EEZ and the use of that revenue. The Constitution requires that of the EEZ-generated revenues, half of the net revenues derived from ocean floor mineral resources be given to the state governments. There is no Constitutional requirement that any revenue from the EEZ's living resources be shared with the state governments although the framers could have easily included one. Chuuk v. Secretary of Finance, 9 FSM R. 424, 435-36 (App. 2000).

Article IX, section 2(g) of the Constitution expressly delegates to Congress the power to regulate foreign and interstate commerce. A delegation of power to the national government under section 2 of Article IX is exclusive. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 581-82 (App. 2000).

Import taxes are an exclusive national power, and as such it is a power that is prohibited to the states. MGM Import-Export Co. v. Chuuk, 10 FSM R. 42, 44 (Chk. 2001).

The states have the residual authority to regulate ownership, exploration and exploitation of natural resources within 12 miles from island baselines. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 63 (Pon. 2001).

The power of the states to regulate ownership, exploration and exploitation of natural resources in the marine area within 12 miles from the island baselines is not absolute as it is limited by the national powers to regulate navigation and shipping, and to regulate foreign and interstate commerce. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 63 & n.8 (Pon. 2001).

Control over areas within 12 miles from island baselines was reserved to the states, subject to the national government's control over foreign and interstate commerce, and navigation and shipping. Thus, under the transition clause, the "government" ownership referenced in 67 TTC 2 should be interpreted as "state" ownership within 12 miles from island baselines. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 65 n.13 (Pon. 2001).

In our federal system of government, state courts are not inferior tribunals to the FSM Supreme Court trial division. The national and state court systems are separate systems created by and serving different sovereigns. Neither system is superior to the other. Rather the systems are parallel. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 120 (Pon. 2001).

A Trust Territory statute (except to the extent it is amended, repealed, or is inconsistent with the Constitution), which related to matters that now fall within the national government's legislative powers became national law upon the Constitution's ratification, and the other Trust Territory laws presumably became law of each of the states at the same time; and if neither state nor national powers alone are sufficient to carry out the statute's original purpose, or if state and national powers are invoked, then the statute is enforceable as both state and national law. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 414-15 (Pon. 2001).

Because the national government has the exclusive power to regulate foreign and interstate commerce, the Consumer Protection Act is the law of the FSM insofar as any advertising, sale, offer or distribution involves commerce between the states of the FSM or with any foreign entity. The Consumer Protection Act also is the law of the states of the FSM, insofar as it involves commerce which is intrastate and has not been repealed by the state legislatures. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 415 (Pon. 2001).

A national statute whose term "public officer" refers to state and municipal public officials as well as national officials does not raise a constitutional issue involving the allocation of powers between the two sovereigns – state and national – and the three levels of government – national, state, and local because it applies to persons based upon their status as public officers – persons holding posts and exercising governmental functions. It does not matter whether that status is defined and bestowed upon a person by the national government or by another level of government in the FSM. It only matters that the person holds that status. FSM v. Wainit, 12 FSM R. 105, 111 (Chk. 2003).

A Pohnpei state law exempting it from anticompetitive practices liability does not apply to a case brought under the national anticompetitive practices statute since the lawsuit is based on a cause of action created by the national, not the state, statute covering an activity – foreign and interstate commerce – over which the national government may legislate. It would, of course, apply to an action brought under the state anticompetitive practices statute. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 16 (App. 2006).

A state cannot nullify a valid exercise of national power by enacting a state statute. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 16 (App. 2006).

A municipality is not a separate sovereign. A municipality is a creature of a state's sovereignty. Unlike states, municipalities are not sovereigns, but exercise that portion of a state's sovereignty that the state authorizes it to. FSM v. Nifon, 14 FSM R. 309, 315 (Chk. 2006).

The national government has the power to ban the possession and use of Philippine slingshots in those places under its jurisdiction and in those circumstances that make the offense "inherently national in character" such as when the offense is committed in the FSM Exclusive Economic Zone or in FSM airspace, or on FSM-flagged vessels, or is committed against an FSM public servant in connection with that servant's service. FSM v. Masis, 15 FSM R. 172, 175-76 (Chk. 2007).

The regulation of possession of firearms and ammunition involved a national activity or function because of the international commerce aspects of their manufacture and movement together with the national government interest in protecting the national security under the national defense clause, and that these, in combination, provided the national government's jurisdictional basis to regulate the possession of firearms and ammunition. FSM v. Masis, 15 FSM R. 172, 176 (Chk. 2007).

In an examination to determine whether it is a national crime, the focus is: Does the regulation involve a national activity or function, or is it one of an indisputably national character? FSM v. Masis, 15 FSM R. 172, 176 (Chk. 2007).

The possession or use of a Philippine slingshot does not implicate the national government's functions and activities in the sphere of national defense or security and the connection, if there is one, is too tenuous to give the national government authority to regulate Philippine slingshots. FSM v. Masis, 15 FSM R. 172, 176 (Chk. 2007).

The national government certainly has the power to criminalize possession or use of explosive, incendiary or poison gas bomb, grenade, mine or similar devices on the same basis that it has the power to regulate the possession and use of firearms and ammunition because these items definitely implicate both national defense and security and foreign commerce interests on which the Jano court concluded that the

national government had the authority to regulate firearms and ammunition. But Philippine slingshots do not. FSM v. Masis, 15 FSM R. 172, 176 (Chk. 2007).

Weapons control has long been recognized as a subject on which both the national and state governments may legislate. It is thus within the power of the State of Chuuk to regulate the possession and use of Philippine slingshots. If it has not done so, that does not mean that it cannot. FSM v. Masis, 15 FSM R. 172, 177 (Chk. 2007).

It has long been recognized that both the national and state governments may enact legislation regulating the possession of firearms. There is nothing particularly absurd about a weapons control scheme that recognizes that both the national and the state governments have an interest in controlling the possession, use 1and sale of weapons. FSM v. Louis, 15 FSM R. 206, 211 (Pon. 2007).

Congress has an independent jurisdictional basis for the Weapons Control Act under FSM Constitution Article IX, Section 2(g) on foreign and interstate commerce and Article IX, Section 2(a) on national defense. FSM v. Louis, 15 FSM R. 206, 212 (Pon. 2007).

Congress has always had the power to define national crimes. The power to define national crimes is inherent in the national government and existed before the 1991 amendment made the power express. FSM v. Louis, 15 FSM R. 206, 212 (Pon. 2007).

The 1991 constitutional amendment did not proscribe Congress's authority to enact legislation pursuant to its independent authority under the national defense and foreign and interstate commerce clauses. Thus, the 1991 amendment did nothing to curtail Congress's authority to regulate the possession of firearms. FSM v. Louis, 15 FSM R. 206, 212 (Pon. 2007).

Congress does not lack the authority to regulate possession of firearms because it was the framers' clear intent that commerce within a particular state should be regulated locally since there is an international commerce aspect to the regulation of possession of firearms and ammunition that is related to its manufacture outside of the FSM and to its movement through the nation's customs and immigration borders. FSM v. Louis, 15 FSM R. 206, 212 (Pon. 2007).

In concluding that Congress has the authority to regulate the possession of firearms as part of its power to provide for the national defense, the court does not focus on the defendant's intended use of the firearm at issue, but instead focuses on the potential uses of firearms in general. FSM v. Louis, 15 FSM R. 206, 212 (Pon. 2007).

Congress's authority to regulate firearms is not dependent on the defendant's subjective intent because the national government interest in regulating the possession of firearms and ammunition in order to provide for the national security in combination with the international commerce aspects provides a jurisdictional basis for the national government's regulation of the possession of firearms and ammunition. Congress's jurisdiction over the possession of firearms is not tied to the intent of a particular defendant. FSM v. Louis, 15 FSM R. 206, 212 (Pon. 2007).

The national government's power to regulate firearms is derived from both its ability to protect the national security under its power to provide for the national defense and its power to regulate international commerce aspects because of the international commerce aspect of firearms manufacture and movement. In combination, these provide the national government with a jurisdictional basis to regulate the possession of firearms and ammunition. FSM v. Tosy, 15 FSM R. 238, 239 (Chk. 2007).

The national government's jurisdiction over firearms is not limited to only certain circumstances or certain quantities. What the national government can regulate in aggregate, it is able to regulate piece by piece; otherwise it would not be able to regulate it at all, and that, is clearly not the case. FSM v. Tosy, 15 FSM R. 238, 239 (Chk. 2007).

Since engaging in business is defined as carrying out any activity relating to the conduct of a business and expressly includes leasing property of any kind for commercial purposes, when a foreign investment permittee engaged in the business of providing operational and maintenance support to helicopters servicing fishing vessels in the FSM, its leasing helicopters is one aspect of its business that relates to its fishing activity and is therefore that leasing activity is subject to the FSM's exclusive jurisdiction and regulation for foreign investment purposes. Thus Pohnpei may not require it to apply for a foreign investment permit. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 335 (Pon. 2007).

Since, by statute, an economic sector included in any of the Categories for National Regulation must not appear in any of the Categories for State Regulation, the statutory provision contemplates that state and national regulation will be mutually exclusive, and works hand in glove with the stated purpose of the Foreign Investment Act, which is to encourage foreign investment. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 335-36 (Pon. 2007).

A state constitution cannot control or restrict the actions of the national government, whose powers and limitations are derived solely from the national constitution, which is the supreme law of the land. Thus, a state constitution's protections cannot be invoked against the national government. FSM v. Aiken, 16 FSM R. 178, 182 (Chk. 2008).

The dual sovereignty doctrine provides an important limitation on the application of double jeopardy to related state and national prosecutions. Under the dual sovereignty doctrine, a state prosecution does not bar a subsequent national prosecution of the same person for the same acts, and a national prosecution does not bar a subsequent state prosecution. The reason is that the national government and its individual states are independent sovereigns, and prosecutions under the laws of those separate sovereigns do not subject a defendant to be twice put in jeopardy. If the constitutional protection against double jeopardy did apply to prosecutions under the laws of independent sovereigns, then prosecution by one sovereign for a relatively minor offense might bar prosecution by another sovereign for a much graver offense, effectively depriving the latter of the right to enforce its laws, and defendants would always race to stand trial in the court where the charges were less severe in order to bar the second action. Chuuk v. Kasmiro, 16 FSM R. 404, 406 (Chk. S. Ct. Tr. 2009).

The Chuuk State Supreme Court is perfectly competent to adjudicate a civil rights claim against the state made under 11 F.S.M.C. 701(3) (violation of national constitutional rights) and also claims made under Chuuk's own constitutional provision barring deprivation of property. Narruhn v. Chuuk, 16 FSM R. 558, 564 (Chk. 2009).

No national statute regulates a state's duties and functions, except to the extent that a national statute may limit the state's lawmaking ability in specific areas through the supremacy clause. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 659 (App. 2009).

The Constitution grants the national government, not the state governments, the power to regulate foreign and interstate commerce and taxation is regulation just as prohibition is. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 160 (Chk. 2010).

A service tax on plane passengers does not have only an incidental effect on foreign commerce; its only effect is on foreign commerce. A tax on shipping cargo or freight affects only foreign commerce or interstate commerce since the airline does not fly to anywhere in Chuuk except Weno. Since state and local governments are prohibited from imposing taxes which restrict interstate commerce, to the extent that the tax is imposed on freight or cargo shipped from Chuuk to other FSM states, would appear to be specifically barred by the Constitution and to the extent it is imposed on cargo or freight shipped elsewhere, it would be regulation of foreign commerce – in effect, an export tax. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 160 (Chk. 2010).

While the interplay between national and state power does mean that, in land cases, the court must

apply state law, or certify unsettled questions to the state courts, when the national court has maintained jurisdiction, national rules of procedure prevail. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 325 (Kos. 2011).

The Constitution's investment in the national government of the power to regulate immigration, emigration, naturalization, and citizenship does not deprive the states of the ability to regulate employment within their own jurisdictions whenever such employment involves non-residents. To the degree that a state law regulating employment of non-resident workers does not directly conflict with national law, such state law is not preempted; and when there is possible conflict, the state law should be construed so as to avoid such conflict. Smith v. Nimea, 17 FSM R. 333, 337-38 (Pon. 2011).

When the FSM Supreme Court decides a matter of state law its goal is to apply the law the same way the highest state court would. If there is a decision of the highest state court it is controlling. If there is no controlling state law, then the court would decide the case according to how it thinks the highest state court would. Should the state's highest court later decide the issue differently, then that case will prospectively serve as controlling precedent for the national court on that state law issue. Berman v. Lambert, 17 FSM R. 442, 446 (App. 2011).

The unconditional 50% transfer of national taxes to the state treasuries is part of the constitutional framework that, through mandatory revenue sharing, allows the states a high degree of fiscal autonomy while at the same time avoiding undesirable vertical multiple taxation. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 530 n.3 (Chk. 2011).

Under the FSM Constitution's Supremacy Clause, a national statute must control over a conflicting state statute. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 617, 619 (Chk. 2011).

Under the FSM Constitution, the power to establish systems of social security and public welfare may be exercised concurrently by Congress and the states. The State of Chuuk therefore has the constitutional authority to establish a system of health insurance since it is a system created to promote and advance the public welfare of Chuuk. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 496 (Chk. 2013).

Payment of Chuuk state employees' contributions and of the employer's contribution out of the Chuuk state funds held in the FSM Treasury is not be a tax or a levy on the national government or an illegal expenditure of FSM funds since the payment would be from Chuuk state funds and, because the obligation to withhold the Plan insurance premium contributions arises by operation of law, the Plan insurance premium contributions would be properly obligated and should be paid. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 496-97 (Chk. 2013).

The Constitution does not mandate such a sweeping expansion of the FSM Supreme Court's jurisdiction over probate cases as would result if creditors were considered parties for jurisdictional purposes. The better view is that only the heirs, potential heirs, or devisees in a probate case be considered parties for jurisdictional purposes and that, in the usual case, the decedent's creditors would file their claims in a state court probate proceeding. This view comports with the proper respect due to the state courts as courts of general jurisdiction that should normally resolve probate and inheritance issues. In re Estate of Edmond, 19 FSM R. 59, 62 (Kos. 2013).

Only the national government can impose taxes on imports and no state may impose taxes that restrict interstate commerce. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 153 (Chk. 2013).

While a state may be designated as the administrator and allottee of Compact sector funds that are used to pay state employees, those funds are appropriated by the FSM Congress and remain subject to the provisions of the FSM Financial Management Act and the Compact of Free Association financial controls. The FSM Secretary of Finance has full and complete oversight over, and at all times full and complete

access to all financial records for, all Compact funds of the state and national governments of the FSM. FSM v. Muty, 19 FSM R. 453, 460 (Chk. 2014).

Taxing income and taxing imports are both powers reserved exclusively to the national government, and therefore forbidden to municipal governments. Isamu Nakasone Store v. David, 20 FSM R. 53, 57 (Pon. 2015).

A state law vesting exclusive jurisdiction in a state court cannot divest the FSM Supreme Court of jurisdiction over a matter it would otherwise have jurisdiction, as mandated by the FSM Constitution. FSM Dev. Bank v. Ehsa, 20 FSM R. 608, 613 (Pon. 2016).

The regulation of banking and of commercial paper are powers expressly delegated to the national government. "Commercial paper" is any instrument, other than cash, for the payment of money and is generally viewed as synonymous with negotiable paper or bills. Promissory notes are commercial paper. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 170 n.4 (Pon. 2017).

A national power is one which is expressly delegated to the national government, or a power of such an indisputably national character as to be beyond the power of the state to control. FSM v. Tihpen, 21 FSM R. 463, 466 (Pon. 2018).

The Constitution expressly grants the FSM national government the power to tax income, and the further provides that not less than 50% of the tax revenues be paid into the treasury of the state where collected. Chuuk v. FSM, 22 FSM R. 85, 90 (Chk. 2018).

The Constitution's framers intended that at least half of all income taxes and import taxes received by the national government would be paid to the states. Chuuk v. FSM, 22 FSM R. 85, 90-91 (Chk. 2018).

The Constitution's framers contemplated and created a system wherein (at least) half of the income tax money received by the national government would go into one or another state treasury. Chuuk v. FSM, 22 FSM R. 85, 91 (Chk. 2018).

The state share of a major corporation's income tax should be paid into state treasury of the state of incorporation and this share is determined after the Micronesia Registrar Advisor has first taken its percentage of the corporate income taxes paid by the major corporations it induced to incorporate in the FSM – the state's 50% share should be calculated from the net amount "collected" by the national government, that is, 50% of the amount of tax levied after the Registration Advisor's percentage is deducted. Chuuk v. FSM, 22 FSM R. 85, 92 (Chk. 2018).

National government revenues derived from constitutional provisions other than its authority to tax income and imports, are not (with one exception) constitutionally subjected to revenue-sharing. Chuuk v. FSM, 22 FSM R. 85, 93 (Chk. 2018).

A power expressly delegated to the national government, or a power of such an indisputably national character as to be beyond the power of a state to control, is a national power, and a power not expressly delegated to the national government or prohibited to the states is a state power. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 329, 331 (Pon. 2019).

The power to regulate banking is expressly delegated to Congress. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 329, 330 (Pon. 2019).

The Constitution establishes a federal system of government in which the national government reigns supreme in its very limited and narrowly defined sphere of responsibility and the state governments are supreme in their much broader sphere. The powers of the national are "express powers" and those of the states, "residual." Included within the "indisputedly national" category are numerous powers, many of

which are of minor significance, but which nevertheless collectively contribute to the national government's ability to function. This includes its power to buy land. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 329 (Pon. 2019).

Determination of whether a power falls within the indisputedly national category lies initially with the national legislature and national chief executive, and if their conclusions are challenged, the final decision rests with the Supreme Court. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 329 (Pon. 2019).

The enactment of FSM Code, Title 30 falls squarely within the Congress's express powers as delegated by the FSM Constitution. That 30 F.S.M.C. 137 deals with the FSM Development Bank's ability to acquire title to land places this activity squarely in the category of indisputedly national government powers. To function, the Bank must be able to deal with mortgages, as well as deeds and land titles, as land is the primary collateral possessed by most Micronesians. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 330 (Pon. 2019).

Powers that are indisputedly national include the national government's power to buy land, and, as an instrumentality of the national government, the FSM Development Bank has the authority to act in that capacity according to laws enacted by the Congress under its express and implied powers under the Constitution. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 330 (Pon. 2019).

Since the FSM Congress specified in 30 F.S.M.C. 137 that the FSM Development Bank must have and retain the legal capacity to acquire, own title to, dispose of, and otherwise deal in land and waters in the FSM, restrictions imposed by Pohnpei must fail as applied to the Bank's ability to acquire title to Pohnpei land. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 330 (Pon. 2019).

If the FSM Development Bank's right to acquire, own title to, dispose of, and otherwise deal in FSM land and waters could be impaired in different ways by each of the four states, based on the states' Constitutions or statutes, it would eviscerate the national government's power to regulate the Bank under the express powers granted to it under the FSM Constitution. If each state could deny the Bank the right to acquire land, its essential functions would be impaired, and it would be unable to achieve the stated purpose of operating as an independent financial institution within the framework of the national government's general economic plans, policies, and priorities. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 330-31 (Pon. 2019).

The states generally have power over land law and other local issues including personal property law, inheritance law, and domestic law including marriage, divorce, and adoption. However, where the national government concurrently has the power to acquire title to land within the FSM under powers expressly delegated to it, and state law purports to restrict it, the state law must fail as applied to the national government. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 331-32 (Pon. 2019).

Pohnpei may not, by Constitution or statute, restrict the national government in the exercise of its expressly delegated powers under the FSM Constitution. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 332 (Pon. 2019).

FOREIGN INVESTMENT LAWS

The national government has neither the constitutional authority nor the law enforcement capacity to oversee, on a worldwide basis, every noncitizen acquisition of an interest in a business operating within the FSM. Michelsen v. FSM, 3 FSM R. 416, 423 (Pon. 1988).

The "applicant" referred to in the Foreign Investment Act is one interested in doing business, not just investing money, in the Federated States of Micronesia, and the considerations to be employed in determining whether to grant an application relate to business operations within the FSM, not to investment of funds. Michelsen v. FSM, 3 FSM R. 416, 425 (Pon. 1988).

The Foreign Investment Act regulates the operation of noncitizen business within the Federated States of Micronesia, not individual investors. 32 F.S.M.C. §§ 203(2) and 204 have no application to acquisitions of interests in a business operating in the Federated States of Micronesia with a national foreign investment permit. Michelsen v. FSM, 3 FSM R. 416, 426 (Pon. 1988).

Since Congress used the Trust Territory Investment Act as the overall model in drafting the FSM Foreign Investment Act and adopted language similar to that employed in the Trust Territory statute for describing the activities to be covered in the FSM law, analysis of the new Act must begin with a presumption that Congress intended that the FSM Foreign Investment Act would regulate essentially the same activities as those covered by the Trust Territory Investment Act. Carlos v. FSM, 4 FSM R. 17, 26 (App. 1989).

Based on the language and legislative history of the FSM Foreign Investment Act, 32 F.S.M.C. 201-232, and on that law's similarity to its Trust Territory predecessor, there is no indication that Congress intended the Foreign Investment Act to apply to the provision of legal services. Carlos v. FSM, 4 FSM R. 17, 28-29 (App. 1989).

Since Congress did not give any consideration to, or make any mention of, the services enumerated in article XIII, section 1 of the FSM Constitution in enacting the Foreign Investment Act, 32 F.S.M.C. 201-232, the avoidance of potential conflict with the Constitution calls for the conclusion that Congress did not intend the Foreign Investment Act to apply to noncitizen attorneys or to any other persons who provide services of the kind described in article XIII, section 1 of the Constitution. Carlos v. FSM, 4 FSM R. 17, 30 (App. 1989).

A foreign investment permit applicant aggrieved by a final permit decision may appeal the decision to the FSM Supreme Court. 32 F.S.M.C. 215. Michelsen v. FSM, 5 FSM R. 249, 252-53 (App. 1991).

By statute the practice of law is specifically included in businesses engaged in by noncitizens requiring a foreign investment permit. 32 F.S.M.C. 203. Michelsen v. FSM, 5 FSM R. 249, 254 (App. 1991).

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

When considering a foreign investment permit application, the Secretary of Resources and Development must consider "the extent to which the activity will contribute to the constitutional policy of making education, health care, and legal services available to the people of the Federated States of Micronesia." 32 F.S.M.C. 210(8). Michelsen v. FSM, 5 FSM R. 249, 254 (App. 1991).

The scheme of national, constitutionally-authorized foreign investment legislation is so pervasive there is no room for the state to supplement it. Non-FSM citizen attorneys and their private practice of law are expressly subjected to the national legislative scheme. Insofar as attorneys who are engaged in the private practice of law and whose business activities are within the scope of the national FIA, the state FIA is invalid. Berman v. Pohnpei, 5 FSM R. 303, 306 (Pon. 1992).

An isolated, interest-free, unsecured loan is not engaging in business within the meaning of the Pohnpei State Foreign Investment law. Kihara v. Nanpei, 5 FSM R. 342, 345 (Pon. 1992).

By statute, the national government guarantees that there will be no compulsory acquisition or expropriation of any foreign investment property for which a Foreign Investment Certificate has been issued and that the national government will not take action, or permit any state or other entity within the FSM to take action that although not formally designated or acknowledged as compulsory acquisition or expropriation, indirectly has the same injurious effect ("creeping expropriation") and that if such action nevertheless takes place, the national government is responsible for the prompt and adequate

compensation of any injured noncitizen. This statute creates a cause of action by the aggrieved alien against the FSM for compensation for a state's conduct in violation of § 216(1) and (4). AHPW, Inc. v. FSM, 12 FSM R. 114, 120 (Pon. 2003).

While injunctive relief would be available to prospectively enforce 32 F.S.M.C. 219, noticeably absent from this section is any language which creates a cause of action for damages on the aggrieved party's part. AHPW, Inc. v. FSM, 12 FSM R. 114, 122 (Pon. 2003).

An isolated interest-free, unsecured loan transaction plainly is not engaging in business within the meaning of the applicable Pohnpei law and regulations. Similarly, execution of an isolated promissory note and security agreement, to establish payment on an open account, is not engaging in business within the meaning of the Pohnpei foreign investment laws. Goyo Corp. v. Christian, 12 FSM R. 140, 146 (Pon. 2003).

A foreign owned entity's isolated attempt to secure payment of a debt should not require that the foreign entity obtain a foreign investment permit. Goyo Corp. v. Christian, 12 FSM R. 140, 147 (Pon. 2003).

The national government guarantees that there will be no compulsory acquisition or expropriation of the property of any foreign investment as to which a Foreign Investment Certificate has been issued. AHPW, Inc. v. FSM, 12 FSM R. 164, 166 (Pon. 2003).

When a party has not alleged that the state has dispossessed it of any property, and that property is now in the possession of the state or its designee, the party has not stated a cause of action for expropriation under the FSM foreign investment statutes. AHPW, Inc. v. FSM, 12 FSM R. 164, 167 (Pon. 2003).

While § 219 of the Foreign Investment Laws admits of a cause of action for prospective, injunctive relief against the FSM, it does not permit an action for damages. Chapter 3 provides a remedy for damages, but notwithstanding the fact that the remedy is against Pohnpei, and not the FSM, it is nevertheless a remedy. If the plaintiff prevails, the conduct alleged will not go unsanctioned. AHPW, Inc. v. FSM, 12 FSM R. 164, 167 (Pon. 2003).

There is no meaningful distinction between the terms "compulsory acquisition" and "expropriation." AHPW, Inc. v. FSM, 12 FSM R. 164, 167 (Pon. 2003).

The unilateral cancellation of a foreign investment permit in derogation of the procedures provided for under Kos. S.C. § 15.308(10) is arbitrary and grossly incorrect, and as such constitutes a violation of the national civil rights statute. Wortel v. Bickett, 12 FSM R. 223, 226 (Kos. 2003).

The Kosrae State Code provides that a state foreign investment permit may be temporarily suspended only if the permit holder a) begins operation in a different economic sector from the one(s) for which the permit was issued, or b) alters, changes, modifies or transfers the amount of the ownership interest which the non-citizen retains. Wortel v. Bickett, 12 FSM R. 223, 226 (Kos. 2003).

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

A noncitizen cannot engage in business in the FSM unless that noncitizen holds a valid foreign investment permit. A "noncitizen" is any business entity in which any ownership interest is held by a person who is not a citizen of the FSM. Geoffrey Hughes (Export) Pty, Ltd. v. America Ducksan Co., 12 FSM R.

413, 414-15 (Chk. 2004).

By statute, the national government guarantees that there will be no compulsory acquisition or expropriation of the property of any foreign investment as to which a foreign investment certificate has been issued. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 23 (App. 2006).

By statute, the national government will not take action, or permit action, or permit action to be taken by any state or other entity within the FSM, that although not formally designated or acknowledged as compulsory acquisition or expropriation, indirectly has the same injurious effect ("creeping expropriation"), and that if such action takes place, the national government will be responsible for the prompt and adequate compensation of any injured noncitizen. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 23 (App. 2006).

By statute, the national government will not take action, or permit any state to take action, that would result in a foreign investor being given treatment that is less favorable than the treatment given to citizens, or business entities wholly owned by citizens, engaging in business in the FSM. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 23 (App. 2006).

A state would have to actually acquire the property in some fashion for there to be an expropriation, and 32 F.S.M.C. 219 only authorizes injunctive relief and does not create a cause of action for damages. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 24 (App. 2006).

The Foreign Investment Act of 1997 establishes a system of Categories of economic sectors for the purposes of implementing the FSM policy to welcome foreign investment in all sectors of the FSM economy. Three of these categories are made up of economic sectors that are of special national significance and therefore fall within the national government's jurisdiction in respect of foreign investment regulation. The first is the National Red List. No foreign investment is permitted in the activities specified on this list, which includes the minting of money and arms manufacture. The second is the National Amber List. Banking (other than as defined in Title 29 of the FSM Code) and insurance are included on this list. Certain criteria specified in the FSM Foreign Investment Regulations must be met before investment is permitted in these areas. A third category of activities that fall within the jurisdiction of the national government appear on the National Green List. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 333-34 (Pon. 2007).

Foreign investment Category C (National Green List) comprises the set of economic sectors that are subject to national government regulation but as to which no special criteria need to be met before a foreign investment permit is to be issued. It includes banking, as defined in title 29 of the FSM Code; telecommunications; fishing in the FSM's Exclusive Economic Zone; international and interstate air transport; international shipping; and such other economic sectors as the Secretary may, after consultation with States, designate in the FSM Foreign Investment Regulations as being on the National Green List. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 334 (Pon. 2007).

In contrast to the three areas subject to national regulation, economic sectors that are not of special national significance are delegated to the jurisdiction of the state governments in respect of foreign investment regulation, which are to be established separately by each state, except that an economic sector included in any of the categories for national regulation cannot appear in any of the categories for state regulation. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 334 (Pon. 2007).

Fishing and international air transport are areas of foreign investment regulation that are subject to exclusive regulation by the national government. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 334 (Pon. 2007).

The Marine Resources Act of 2002 amended the prior fisheries law for the purpose of ensuring the sustainable development, conservation and use of the marine resources in the exclusive economic zone by promoting development of, and investment in, fishing and related activities. Included in the definition of "fishing" under the Act is the actual or attempted searching for fish; the placing of any fish aggregating

device or associated electronic equipment such as radio beacons; and the use of an aircraft in relation to any activity described in this subsection. "Fishing gear" is equipment or other thing that can be used in the act of fishing, including any aircraft or helicopter. Helicopters, which are used to search for fish and to place radio devices near schools of fish to assist fishing boats in locating fish, fall within the express definition of fishing equipment. Therefore, since fishing in the FSM's EEZ is subject to the exclusive national government jurisdiction and regulation, and since a company's helicopters, based on fishing vessels and piloted by the company's employees, are used to search for fish within the FSM's EEZ, those helicopters are engaged in fishing for purposes of the statutory definition and thus the helicopters, which the company charters to the purse seine operators, and their pilots are subject to the national government's exclusive regulation. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 334-35 (Pon. 2007).

Since helicopter pilots engaged in fishing are thus subject to the national government's exclusive jurisdiction for foreign investment purposes, it follows that the company which is the pilots' principal, is bound by that conduct. Thus, that company's fishing activities in the FSM's EEZ are also subject to the FSM's exclusive regulation. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 335 (Pon. 2007).

Since engaging in business is defined as carrying out any activity relating to the conduct of a business and expressly includes leasing property of any kind for commercial purposes, when a foreign investment permittee engaged in the business of providing operational and maintenance support to helicopters servicing fishing vessels in the FSM, its leasing helicopters is one aspect of its business that relates to its fishing activity and is therefore that leasing activity is subject to the FSM's exclusive jurisdiction and regulation for foreign investment purposes. Thus Pohnpei may not require it to apply for a foreign investment permit. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 335 (Pon. 2007).

Since, by statute, an economic sector included in any of the Categories for National Regulation must not appear in any of the Categories for State Regulation, the statutory provision contemplates that state and national regulation will be mutually exclusive, and works hand in glove with the stated purpose of the Foreign Investment Act, which is to encourage foreign investment. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 335-36 (Pon. 2007).

When a company has obtained a national foreign investment permit in an area in which the FSM's jurisdiction is exclusive and the company has complied with national laws and regulations in this regard, Pohnpei may not require it to obtain a state foreign investment permit in addition to the FSM permit that it already has. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 336 (Pon. 2007).

When the court has granted summary judgment on the basis that the plaintiff's helicopters are engaged in fishing, the court need not address the plaintiff's further contention that it is also subject to exclusive national regulation by virtue of the fact that its helicopters are engaged in interstate and international air transport and international shipping. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 336 (Pon. 2007).

Public hearings are a standard part of the foreign investment permit application process. Smith v. Nimea, 18 FSM R. 36, 45 (Pon. 2011).

A foreign investment permit holder is required to, by the terms of his foreign investment permit, to abide by all laws and regulations applicable to the business(es) that his foreign investment permit allows him to engage in. Lee v. Kosrae, 20 FSM R. 160, 165 (App. 2015).

A Kosrae Island Resource Management Authority sea cucumber permit is the only sea cucumber permit needed so as not to violate either Kosrae State Code § 13.523(5) or § 13.523(6). A foreign citizen also needs a foreign investment permit to engage in a sea cucumber (or any other) business, and the lack of a foreign investment permit or the violation of one or more of its conditions would be charged under the foreign investment statutes, not under § 13.523(5) or § 13.523(6). Lee v. Kosrae, 20 FSM R. 229, 231

(App. 2015).

Under the foreign investment laws requiring noncitizens "engaging in business" to hold a valid foreign investment permit, "engaging in business" includes providing professional services as an attorney for a fee. Pacific Int'l, Inc. v. FSM, 20 FSM R. 346, 349 (Pon. 2016).

Someone providing professional services for a fee, such as an attorney, is not considered to be "engaging in business" unless he or she, while present in the FSM, performs his or her respective professional services for more than 14 days in any calendar year. Pacific Int'l, Inc. v. FSM, 20 FSM R. 346, 349 (Pon. 2016).

A noncitizen attorney, licensed to practice in the FSM since 1985 and a member of the Bar in good standing but currently resident and practicing on Guam, is excepted from the foreign investment permit requirement when he works in tandem with an FSM citizen licensed to practice in the FSM and when his involvement in the case has been from a remote location and, as a result, he has not been present in the FSM rendering professional services for more than 14 days in any calendar year. Pacific Int'l, Inc. v. FSM, 20 FSM R. 346, 349 (Pon. 2016).

Under 55 F.S.M.C. 419(1) and (2), no foreign investment permit is required of a noncitizen attorney when his representation directly involves "contract management activities" that relate to a public contract awarded for a civil works project to implement part of the Infrastructure Development Plan and that is supported by funds through the Amended Compact of Free Association Section 211. Pacific Int'l, Inc. v. FSM, 20 FSM R. 346, 349-50 (Pon. 2016).

An attorney cannot be said to come within the ambit of the 32 F.S.M.C. 204, which otherwise would require a foreign investment permit, when his legal representation, to date, has been conducted *in absentia*, and thus cannot be said to have rendered his professional services "while present in the FSM for more than 14 days in any calendar year" and when the present action involves an Infrastructure Development Plan project and the construction by his client was undertaken pursuant to a contract underwritten with Compact monies. Pacific Int'l, Inc. v. FSM, 20 FSM R. 346, 350 (Pon. 2016).

A corporation's legal inability to engage in business on Pohnpei is not a legal impediment to its ability to own personal property on Pohnpei, although its inability to legally conduct business on Pohnpei could be a persuasive indication that any equipment used to conduct a Pohnpei business was, in fact, not owned by it, but owned by another. Pohnpei Arts & Crafts, Inc. v. Narruhn, 21 FSM R. 366, 368 (Pon. 2017).

The FSM is not required to permit a person's entry into or continued presence in the FSM just because a state government has granted that person a foreign investment permit. Only the national government (Congress) may regulate immigration even though the state governments retain some authority to regulate the business or employment of non-FSM citizens within their state, but, when deciding whether to permit or deny someone's entry or continued presence in the FSM, the FSM must take into consideration that that person has a state-issued foreign investment permit. Macayon v. FSM, 22 FSM R. 544, 552 (Chk. 2020).

GAMBLING

Poker machines are not included within the term "slot machines" under Truk State law and a search warrant authorizing the seizure of slot machines does not permit the seizure of poker machines. In re Slot Machines, 3 FSM R. 498, 500 (Truk S. Ct. Tr. 1988).

Courts should not broaden statutes beyond the meaning of the law as written, even if it means that gambling devices just as harmful socially as slot machines, such as poker machines, will be excluded from statutory prohibition of slot machines. In re Slot Machines, 3 FSM R. 498, 500-01 (Truk S. Ct. Tr. 1988).

Poker machines involve the use of some skill, and are not based simply upon mere chance, therefore

are not "slot machines," and are not subject to current Truk State legislative prohibition, specifically Truk District Law No. 25-3. In re Slot Machines, 3 FSM R. 498, 502 (Truk S. Ct. Tr. 1988).

While under the Chuuk Constitution the "powers and functions of a municipality with respect to its local affairs and government are superior to statutory law," the key phrase in this constitutional provision is "local affairs." Gambling is of statewide concern and an area properly within the state legislative function and does not fall under the cloak of "local affairs." Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 546 (Chk. S. Ct. Tr. 2000).

When an act lists 23 different and distinct prohibited gaming devices, including "slot machines," but makes no mention of "poker machines" whatsoever, by its failing to list "poker machines" in an extended list of prohibited items, the legislature excluded such machines from the application of the law, and the court will not include the machines into the proscription of the statute something which the Legislature intended to exclude. Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 547 (Chk. S. Ct. Tr. 2000).

Although there is an element of chance involved in the operation of both slot and poker machines, the fundamental difference between a slot machine and a poker machine is that a poker machine, as opposed to a slot machine, allows the user to exercise his skill to affect the odds and thereby the manner and result of its operation. Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 547 (Chk. S. Ct. Tr. 2000).

HABEAS CORPUS

Article XI, section 6(b) of the Federated States of Micronesia Constitution requires that the FSM Supreme Court consider a petition for writ of habeas corpus alleging imprisonment of a petitioner in violation of his rights of due process. In re Iriarte (I), 1 FSM R. 239, 243-44 (Pon. 1983).

The FSM Supreme Court's constitutional jurisdiction to consider writs of habeas corpus is undiminished by the fact that the courts whose actions are under consideration, the Trust Territory High Court and a Community Court, were not contemplated by the Constitution of the Federated States of Micronesia. In re Iriarte (I), 1 FSM R. 239, 244, 246 (Pon. 1983).

In a habeas corpus proceeding, the court must apply due process standards to the actions of the courts which have issued orders of commitment. In re Iriarte (I), 1 FSM R. 239, 249 (Pon. 1983).

Judicial review of a certification of extraditability, although not appealable, is available to an accused in custody by seeking a writ of habeas corpus. In re Extradition of Jano, 6 FSM R. 23, 25 (App. 1993).

4 F.S.M.C. 117 gives both the trial division and the appellate division the powers to issue all writs not inconsistent with law or with the rules of civil procedure. FSM Appellate Rule 22(a) requires petitions for writs of habeas corpus be first brought in the trial division. When the circumstances have been shown to warrant, the appellate division clearly has the authority to suspend the rule. In re Extradition of Jano, 6 FSM R. 31, 32 (App. 1993).

Judicial review of an extradition hearing is by petition for a writ of habeas corpus. In re Extradition of Jano, 6 FSM R. 93, 97 (App. 1993).

The scope of a habeas corpus review of an extradition proceeding is 1) whether the judge had jurisdiction, 2) whether the court had jurisdiction over the extraditee, 3) whether there is an extradition agreement in force, 4) whether the crimes charged fall within the terms of the agreement, and 5) whether there was sufficient evidence to support a finding of extraditability. In re Extradition of Jano, 6 FSM R. 93, 104 (App. 1993).

Because a habeas corpus petition is a civil action (although the proceeding is unique), the clerk will assign the petition a civil action number and enter it on the civil side of the docket. Sangechik v. Cheipot, 10 FSM R. 105, 106 (Chk. 2001).

When the pleadings clearly name a person as the *de facto* keeper of the detention facility where the petitioner is currently incarcerated and the petitioner seeks a writ of habeas corpus directed to that person in that capacity, that person is properly named as the respondent to the petition. Sangechik v. Cheipot, 10 FSM R. 105, 106 (Chk. 2001).

Habeas corpus proceedings are commenced with an order, directed to the person having custody of the person detained, to show cause why the writ should not be issued. Sangechik v. Cheipot, 10 FSM R. 105, 106 (Chk. 2001).

In order to ensure a citizen's right to life and liberty, Chuuk Constitution Article III, § 7 provides that the writ of habeas corpus shall exist in Chuuk and that it may not be suspended, except by the Governor and only when the public safety requires it in case of war, rebellion, insurrection or invasion. Consideration of the writ must take precedence over all other business of the court, and, if the court determines there is a proper basis, the writ shall issue without delay. In re Paul, 11 FSM R. 273, 277 (Chk. S. Ct. Tr. 2002).

Only under certain limited and severely proscribed circumstances may the Governor suspend the writ of habeas corpus, thereby affecting the rights of detainees to petition the court for their release from unlawful detention. In re Paul, 11 FSM R. 273, 277 (Chk. S. Ct. Tr. 2002).

The Governor may declare a state of emergency and issue appropriate decrees if required to preserve public peace, health or safety at a time of extreme emergency caused by civil disturbance, natural disaster, or immediate threat of war or insurrection. A declaration of emergency may impair civil rights to the extent actually required for the preservation of peace, health or safety. In re Paul, 11 FSM R. 273, 277 (Chk. S. Ct. Tr. 2002).

Article XI, § 12(b) of the Chuuk Constitution clearly provides that citizens' civil rights may be impaired by a declaration of emergency, but that impairment rights may only occur to the extent actually required for the preservation of peace, health or safety, so that when the Governor's declaration of emergency made no reference to the suspension of civil rights, or of the need to do so to preserve peace, health or safety, it was solely addressed to the creation and implementation of emergency response and recovery efforts to Tropical Storm Chata'an. In re Paul, 11 FSM R. 273, 279 (Chk. S. Ct. Tr. 2002).

The writ of habeas corpus, like the civil rights of citizens, may under certain circumstances be suspended by the Governor, but suspension of the writ of habeas corpus may only occur when "the public safety requires it in case of war, rebellion, insurrection or invasion. In re Paul, 11 FSM R. 273, 279 (Chk. S. Ct. Tr. 2002).

In circumstances short of war, rebellion, insurrection or invasion where suspension of the Chuuk citizens' civil rights is warranted require the Governor's clear and unambiguous statement in the declaration of emergency itself, and even if such a clear and unambiguous statement were made, a citizen's continued right to petition for a writ of habeas corpus, except in cases of war, rebellion, insurrection or invasion, would provide a remedy to any improper suspension of civil rights by the declaration of emergency. In re Paul, 11 FSM R. 273, 279 (Chk. S. Ct. Tr. 2002).

A writ of habeas corpus will issue when the Governor's declaration of emergency did not suspend civil rights to due process of law, and when the petitioner's detention without charge and without initial appearance was unlawful and in violation of his right of due process. In re Paul, 11 FSM R. 273, 280 (Chk. S. Ct. Tr. 2002).

Kosrae State Code, Title 6, Chapter 34, states the prompt timeframe in which habeas corpus petitions must be considered. Sigrah v. Noda, 14 FSM R. 295, 297-98 (Kos. S. Ct. Tr. 2006).

The Kosrae State Court has jurisdiction to hear a petition for a writ of habeas corpus while the

prisoner's appeal is pending. Sigrah v. Noda, 14 FSM R. 295, 298 (Kos. S. Ct. Tr. 2006).

The requirements for issuance of a writ of habeas corpus under Kosrae State Code § 6.3401, have not been satisfied when there has been no evidence presented to the court that the prisoner is being unlawfully imprisoned at the Kosrae state jail. Sigrah v. Noda, 14 FSM R. 295, 298 (Kos. S. Ct. Tr. 2006).

A writ of habeas corpus may be issued upon a finding that there is an unlawful restraint of the prisoner's liberty. Sigrah v. Noda, 14 FSM R. 295, 298 (Kos. S. Ct. Tr. 2006).

Under 4 F.S.M.C. 117, the FSM Supreme Court has the power to issue all writs and other process as may be necessary for the due administration of justice and, under 6 F.S.M.C. 1503, the court may grant a writ of habeas corpus to inquire into the cause of imprisonment or restraint of a person, who has applied or who has had an application made on his behalf, and who is unlawfully imprisoned or restrained of his liberty under any pretense whatsoever. In re Mefy, 16 FSM R. 401, 403 (Chk. 2009).

An applicant for a writ of habeas corpus should name as the respondent the person who has custody over him. In re Mefy, 16 FSM R. 401, 403 (Chk. 2009).

Since habeas corpus proceedings are commenced with an order, directed to the person having custody of the person detained, to show cause why the writ should not be issued, an application is deficient when it does not name a respondent. In re Mefy, 16 FSM R. 401, 403 (Chk. 2009).

When the issues raised in an application for a writ of habeas corpus are moot because the applicants have already been granted the relief sought – release from jail – any consideration or relief would thus be ineffectual. No justiciable case or dispute is presented when events subsequent to a case's filing make the issues presented moot. Since the FSM Supreme Court lacks jurisdiction to consider moot cases or issues, it must dismiss a moot application because, when the court lacks jurisdiction over a case, it should not remain lifelessly on the docket however harmless that may seem. In re Mefy, 16 FSM R. 401, 403 (Chk. 2009).

To the extent that the issues that the applicants for a writ of habeas corpus seek to raise in a moot application are significant and relevant to other issues to be raised and considered in a criminal case, they should be raised for consideration in that case in the proper manner or in a civil suit for damages. In re Mefy, 16 FSM R. 401, 403-04 (Chk. 2009).

A writ of habeas corpus may be used in situations involving an individual incarcerated without probable cause. In re Anzures, 18 FSM R. 316, 320 (Kos. 2012).

The FSM Supreme Court has the power to issue all writs and must consider a petition for a writ of habeas corpus alleging imprisonment of the petitioner in violation of his rights under the FSM Constitution. In re Anzures, 18 FSM R. 316, 321 (Kos. 2012).

In the absence of any statutory restrictions, the FSM Supreme Court will, under the proper circumstances, consider applications for a writ of habeas corpus on the grounds that a person is in custody in violation of the FSM Constitution. The overriding purpose of such a writ is to protect an individual's right to be free from wrongful intrusions and restraints upon their liberty. In re Anzures, 18 FSM R. 316, 322 (Kos. 2012).

In considering a pretrial petition for a writ of habeas corpus, the FSM Supreme Court will consider that the evidence for probable cause need not be sufficient to support a conviction and that the trial court is the most appropriate place to determine whether probable cause exists. In re Anzures, 18 FSM R. 316, 324 (Kos. 2012).

In order to accord respect to a Kosrae State Court criminal proceeding, the FSM Supreme Court will abstain from granting a petitioner's application for a writ habeas corpus when the petitioner is currently the

subject of an ongoing criminal proceeding in the Kosrae State Court that has not reached final adjudication; when those proceedings afford the petitioner an opportunity to raise his constitutional claims; when the State has an important interest in protecting the public through criminal prosecutions; and when pre-conviction habeas corpus relief is being sought; when the state court remedies have not been fully exhausted; and when no extraordinary circumstances have been presented. In re Anzures, 18 FSM R. 316, 324-25 (Kos. 2012).

6 F.S.M.C. 906 gives the court authority to stay the execution of a sentence pending appellate review, but nothing in 6 F.S.M.C. 906 specifically authorizes the court to grant a stay pending the review of a writ of habeas corpus petition, and there is no authority in Titles 4 and 6 of the 2014 FSM Code or the FSM Rules to stay execution of sentence pending a habeas corpus proceeding. FSM v. Wolphagen, 22 FSM R. 237, 238 (Pon. 2019).

Regardless of whether the issued writ of habeas corpus is a final order, the court may entertain FSM Civil Rule 59 and 60 motions while the matter is subject to an appeal and, if it determines such motion(s) shall prevail, it must so indicate in the record for the appellate court's consideration. Timsina v. FSM, 22 FSM R. 383, 386 (Pon. 2019).

The respondents' motion for reconsideration will be denied when there is no compelling new legal authority on which to vacate the court's grant of petitioners' motion for a writ of habeas corpus, and when there has been no executive or legislative action to address the issue of refugees that may arrive in the FSM, because the court retains the authority, on a case-by-case basis, to address alleged FSM Constitutional violations with respect to the government's treatment of refugees. Timsina v. FSM, 22 FSM R. 383, 388 (Pon. 2019).

IMMIGRATION

An alien must willfully fail to depart the Federated States of Micronesia upon expiration of entry authorization to be guilty of a violation of 50 F.S.M.C. 112. Knowledge of the requirement to depart coupled with failure to depart is not enough. There must be an element of voluntariness or purposefulness in the noncitizen's conduct, which will generally require showing a reasonable opportunity to depart, voluntarily rejected, without some justification for the rejection beyond mere personal preferences. FSM v. Jorg, 1 FSM R. 378, 384 (Pon. 1983).

The FSM Supreme Court and the Federated States of Micronesia must not be lured into the role of mediator between visitors and their nations of citizenship. Only in the rarest of circumstances, if ever, would the court second-guess and scrutinize the conditions which other nations place upon offers of funds to their own citizens to assist those persons to comply with FSM immigration laws. FSM v. Jorg, 1 FSM R. 378, 385-86 (Pon. 1983).

A rule that treats aliens unequally to citizens involves immigration and foreign affairs. Berman v. FSM Supreme Court (I), 5 FSM R. 364, 366 (Pon. 1992).

Congress and the President respectively have the power to regulate immigration and conduct foreign affairs while the Chief Justice may make rules governing the admission of attorneys. Therefore a rule of admission that treats aliens unequally promulgated by the Chief Justice implicates powers expressly delegated to other branches. Berman v. FSM Supreme Court (I), 5 FSM R. 364, 366 (Pon. 1992).

All aircraft entering FSM ports of entry are subject to immigration inspection, customs inspections, agricultural inspections and quarantines, and other administrative inspections authorized by law. In Chuuk, the Chuuk International Airport is the only port of entry for aircraft. FSM v. Joseph, 9 FSM R. 66, 70 (Chk. 1999).

The government may be directed to allow a plaintiff to enter the FSM as required for the limited

purpose of prosecuting her lawsuit through trial. O'Sullivan v. Panuelo, 9 FSM R. 229, 232 (Pon. 1999).

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

The Constitution's investment in the national government of the power to regulate immigration, emigration, naturalization, and citizenship does not deprive the states of the ability to regulate employment within their own jurisdictions whenever such employment involves non-residents. To the degree that a state law regulating employment of non-resident workers does not directly conflict with national law, such state law is not preempted; and when there is possible conflict, the state law should be construed so as to avoid such conflict. Smith v. Nimea, 17 FSM R. 333, 337-38 (Pon. 2011).

No national statute directly addresses overtime pay for private sector employment although 51 F.S.M.C. 139(2) does require an employer of a nonresident worker to present a copy of the worker's contract, which must contain certain information including a wage scale for regular and overtime work, before approval of the nonresident worker's entry to the FSM. Villarena v. Abello-Alfonso, 18 FSM R. 100, 102 & n.1 (Pon. 2011).

U.S. citizens, like all other non-citizens, must hold a valid passport at the time of entry into the FSM. A valid passport means a passport that is valid for a period of not less than 120 beyond the date of entry. Harden v. Continental Air Lines, Inc., 18 FSM R. 141, 145 (Pon. 2012).

Absent any express regulatory or statutorily established exceptions, the FSM Immigration Regulations and Title 50, F.S.M.C., as amended, control the FSM entry requirements for all non-citizens, including U.S. citizens, regardless of whether they are habitual residents and/or spouses of FSM citizens. Harden v. Continental Air Lines, Inc., 18 FSM R. 141, 145 (Pon. 2012).

No express statutory language declares that habitual residents, as provided under 50 F.S.M.C. 104(2), have an exemption from complying with Part 2.2 of the FSM Immigration Regulations since Part 2.2 does not contradict 50 F.S.M.C. 104(2). The statutory and regulatory provisions' plain meaning is that for a habitual resident there is no exception to Part 2.2's application. Harden v. Continental Air Lines, Inc., 18 FSM R. 141, 146 (Pon. 2012).

The grant of an entry permit to any non-citizen spouse is specifically authorized on a showing of being an FSM citizen's lawful spouse. A non-citizen spouse can invoke this specific statutory grant when applying to the government for an entry permit, but an FSM citizen's U.S. citizen lawful spouse is not exempted from the passport validity requirements under Part 2.2 of the Regulations. Harden v. Continental Air Lines, Inc., 18 FSM R. 141, 146 (Pon. 2012).

The statutory and regulatory provisions dealing with entry permits, habitual residents, and spouses of FSM citizens, are independent of Part 2.2 of the FSM Immigration Regulations and do not provide an exception to the regulations' passport validity requirements. Harden v. Continental Air Lines, Inc., 18 FSM R. 141, 147 (Pon. 2012).

Unless statutory or regulatory amendments mandate otherwise, "non-citizens" include U.S. citizens and do not except habitual residents or U.S. citizen spouses of FSM citizens. Since there are no exceptions to the 120-day passport validity requirement under the regulations and Title 50 of the F.S.M.C., as amended, no non-citizen, including U.S. citizens who are habitual residents or spouses of FSM citizens are exempt from the operational reach of Part 2.2 of the FSM Immigration Regulations. Harden v. Continental Air Lines, Inc., 18 FSM R. 141, 147 (Pon. 2012).

Sea vessels and aircraft arriving in the FSM must compensate the FSM Treasury for the actual costs of overtime that immigration officials accrue clearing sea vessels and aircraft into the FSM. These costs must be 1) associated with the arrival of sea vessels and aircraft into the FSM; 2) actual; 3) originate in the official duties of immigration officers carrying out Title 50's requirements; and 4) accrue outside immigration officers' normal working hours. "Actual hours worked" will always correlate with hours that have already been worked or performed and the FSM Treasurer will not be compensated for subjective or imputed work. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77 (Pon. 2013).

Reading 52 F.S.M.C. 164(3) and 50 F.S.M.C. 115, jointly in order to ensure that the FSM Treasurer is compensated for all actual overtime expenses, the cost of overtime compensation allotted to employees under § 164(3) must equal the compensation the treasury receives under the second part of § 115, and as the treasury is compensated only for actual hours worked, it is clear that the treasury may remunerate employees only for actual hours worked. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77 (Pon. 2013).

Passage by Vietnamese through the FSM territorial waters was not innocent and therefore unlawful when it was for the purpose of illegal sea cucumber harvesting, and thus it provides a sufficient factual basis for a guilty plea to entry without a permit. FSM v. Bui Van Cua, 20 FSM R. 588, 590-91 (Pon. 2016).

Congress has the sole authority to regulate immigration, and it exercised this power by enacting Title 50, chapter 1 of the FSM Code. Macayon v. FSM, 22 FSM R. 544, 551 (Chk. 2020).

The Immigration Act authorizes the President to issue immigration regulations that are consistent with the immigration statute. Macayon v. FSM, 22 FSM R. 544, 551 (Chk. 2020).

The court only becomes involved with an immigration matter when it has to determine if a challenged executive action or omission is consistent with immigration law, procedure, and the Constitution. Macayon v. FSM, 22 FSM R. 544, 551 (Chk. 2020).

A person aggrieved by a decision of the Division of Immigration and Labor is entitled, first to an informal hearing before the officer in charge of the local immigration office, and then, if still aggrieved by that officer's decision, to appeal to a hearing before a committee consisting of the Chief of Immigration, or, in the event of a conflict of interest on the Chief's part, his designee, the Secretary of the Department of Justice or his designee, and a representative of the Department of Foreign Affairs. Macayon v. FSM, 22 FSM R. 544, 551 (Chk. 2020).

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

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

Under Rule 56, unless a court, viewing the facts and inferences in the light most favorable to the nonmoving party, finds that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law, the court must deny a motion for summary judgment. Macayon v. FSM, 22 FSM R. 544, 551-52 (Chk. 2020).

The FSM is not required to permit a person's entry into or continued presence in the FSM just because

a state government has granted that person a foreign investment permit. Only the national government (Congress) may regulate immigration even though the state governments retain some authority to regulate the business or employment of non-FSM citizens within their state, but, when deciding whether to permit or deny someone's entry or continued presence in the FSM, the FSM must take into consideration that that person has a state-issued foreign investment permit. Macayon v. FSM, 22 FSM R. 544, 552 (Chk. 2020).

An immigration appeal committee's decision cannot merely list the mitigating factors that were put before it, but must give some explanation of how those factors affected, or did not affect, its decision or how its reason outweighed or overcame all of the mitigating factors. Macayon v. FSM, 22 FSM R. 544, 552-53 (Chk. 2020).

The statute that authorizes the President to delegate his authority to issue entry permits and to permit entry into the FSM of persons, vessels, and aircraft under the provisions of this chapter and regulations promulgated thereto also authorizes the President to delegate his authority to deny issuance of an entry permit and his authority to deny entry of persons, vessels, and aircraft into the FSM because if an official has the delegated authority to issue an entry permit, then that official must also have the authority not to issue the entry permit – that is, to deny an entry permit application or renewal. Macayon v. FSM, 22 FSM R. 544, 553 (Chk. 2020).

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

A person who is not an FSM national may be denied an entry permit based on a finding by the President that the entry of the applicant or his presence in the FSM would not be in the FSM government's best interest, and the statute does not authorize the President to delegate his statutory authority to make that finding. What constitutes the national government's best interest is a policy decision best made by a high-level official such as the President, not a lower level official. Macayon v. FSM, 22 FSM R. 544, 553-54 (Chk. 2020).

Congress can authorize the President to delegate the finding of the national government's best interest to some other (presumably high-ranking) official, but any such authorization and delegation must be more explicit than the current statutory authorization and regulatory delegation. Macayon v. FSM, 22 FSM R. 544, 554 n.8 (Chk. 2020).

When the President did not make a finding that a person's continued presence in Chuuk was not in the national government's best interest, the FSM Immigration Officer in Charge in Chuuk did not have the delegated authority to make such a finding, and therefore his denial of an entry permit renewal, and the appeal committee's affirmance of that denial, on that ground was unlawful because, under 50 F.S.M.C. 107(1)(k), a Presidential finding is necessary for the FSM to deny an entry permit on the ground it is in the national government's best interest. Macayon v. FSM, 22 FSM R. 544, 554 (Chk. 2020).

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

INSURANCE

A municipal license fee ordinance which separately defines banking and insurance businesses and specifically imposes a different rate upon those businesses than would be imposed upon other kinds of businesses on its face appears to be an effort to regulate banking and insurance and is unconstitutional and void. Actouka v. Kolonia Town, 5 FSM R. 121, 122 (Pon. 1991).

An insurance company that has no contractual obligation to persons other than its insured until a court determines the liability of its insured, cannot be joined as a party to a lawsuit to determine that liability. Wilson v. Pohnpei Family Headstart Program, Inc., 7 FSM R. 411, 413 (Pon. 1996).

In the absence of a contractual or statutory provision authorizing a direct action against or the joinder of a liability insurer, an injured person, for lack of privity between himself and the insurer, has no right of action at law against the insurer and cannot join the insured and the liability insurer as parties defendant. Moses v. M.V. Sea Chase, 10 FSM R. 45, 52 (Chk. 2001).

An insurance company that has no contractual obligation to persons other than its insured until a court determines its insured's liability, cannot be joined as a party to a lawsuit to determine that liability. Moses v. M.V. Sea Chase, 10 FSM R. 45, 52 (Chk. 2001).

When no national or state statute or contractual provision authorizes a third party's suit against or joinder of an insurer, an injured party's causes of action against and joinder of an insurer will be dismissed. Moses v. M.V. Sea Chase, 10 FSM R. 45, 52-53 (Chk. 2001).

When there was no legal requirement for the lessor to offer insurance to the lessee in a car rental agreement, the lessor's failure to offer insurance to the lessee in a rental agreement does not serve as a defense to the damages assessed against the lessee for an accident. Jackson v. George, 10 FSM R. 523, 527 (Kos. S. Ct. Tr. 2002).

The FSM Supreme Court does not look kindly upon contractual provisions that can only be understood by individuals who possess an advanced degree in insurance law. Clear, understandable, precise language is a condition to a finding that an insured must bear the cost of litigating in a remote forum. Phillip v. Marianas Ins. Co., 11 FSM R. 559, 562 n.3 (Pon. 2003).

To the extent that a purported forum selection clause could be interpreted to require suit in a foreign country, it must be struck down as void as against public policy unless it is a freely negotiated, arms-length agreement between parties with relatively equal bargaining power. An insurance contract that seeks to oust the FSM Supreme Court's jurisdiction will not be upheld when the insured is an FSM citizen and resident, the insurance policy is obtained in the FSM from an FSM-based agent, the premiums are paid in the FSM to cover vehicles operating in the FSM, and the incident giving rise to a claim occurred in the FSM. The clause is against public policy because it impedes the administration of justice relating to insurance claims, and would undermine the public's confidence in business dealings if upheld. To require such lawsuits to be filed in a foreign country would not only be onerous, but would essentially render insurance companies immune from suit. Phillip v. Marianas Ins. Co., 11 FSM R. 559, 562-63 (Pon. 2003).

Contracts impose on the parties thereto a duty to do everything necessary to carry them out, and there is an implied undertaking in every contract on each party's part that he will not intentionally and purposely do anything to prevent the other party from carrying out his part of the agreement, or do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract, and the FSM Supreme Court will entertain such claims in the context of insurance contracts, where the insurer possesses greater sophistication, can be expected to assist local insureds in understanding the relevant legal terminology, and has a specialized role in processing claims. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 307 (Pon. 2004).

A measure of damages for the tort of negligent misrepresentation (also called deceit) employs the benefit of the bargain rule when damages can be proved with reasonable certainty. Under this principle, the insurer would be entitled to its premium, which would be set off against what it owed its insured. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 469 (Pon. 2004).

Rescission of an insurance contract would, if granted, absolve an insured from liability for the premium and could even entitle him to return of the premium paid. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 470

(Pon. 2004).

Reformation of an insurance contract may be sought under a theory of mutual mistake or mistake or fraud of the insurance agent. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 470 (Pon. 2004).

Reformation is an equitable doctrine that allows a court to conform a contract (even an insurance contract) to the true agreement between the parties rather than the agreement as written. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 470 (Pon. 2004).

Courts have permitted attorney's fee awards under the vexatious conduct exception when the plaintiff has proven the defendant's breach of the implied covenant or implied duty of good faith and fair dealing (also called the bad faith tort). If a plaintiff were to prevail on a bad faith tort claim against an insurer, the insurer would be liable to him for reasonable attorney's fees that are proximately caused by the bad faith conduct. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 471 (Pon. 2004).

The Foreign Investment Act of 1997 establishes a system of Categories of economic sectors for the purposes of implementing the FSM policy to welcome foreign investment in all sectors of the FSM economy. Three of these categories are made up of economic sectors that are of special national significance and therefore fall within the national government's jurisdiction in respect of foreign investment regulation. The first is the National Red List. No foreign investment is permitted in the activities specified on this list, which includes the minting of money and arms manufacture. The second is the National Amber List. Banking (other than as defined in Title 29 of the FSM Code) and insurance are included on this list. Certain criteria specified in the FSM Foreign Investment Regulations must be met before investment is permitted in these areas. A third category of activities that fall within the jurisdiction of the national government appear on the National Green List. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 333-34 (Pon. 2007).

When there is no evidence before the court that, if it were not for the employer's maintaining life insurance for the employees, the employee would have either quit his job and taken a job with a different employer that provided life insurance benefits or that he would have purchased his own life insurance policy from another source, the employee's widow cannot recover on a promissory estoppel or detrimental reliance theory since she cannot show that the employee relied on the employer's alleged promise to provide life insurance and her mere assertion, first made in her closing argument, that had they known they might have found another policy is insufficient to prove reliance. John v. Chuuk Public Utility Corp., 16 FSM R. 226, 228 (Chk. 2008).

In the absence of special circumstances, such as the existence of an incontestable clause in the policy, fraud is fully available to the insurer as a defense in an action at law on the policy. Sigrah v. Micro Life Plus, 16 FSM R. 253, 258 (Kos. 2009).

An insurer may void an insurance contract on the grounds that the insured willfully misrepresented a material fact since the misrepresentation prevents a meeting of the minds, or mutual assent, as to the risk to be insured. A material representation or omission of fact in an insurance application, relied on by the insurer in issuing the policy, renders the coverage voidable at the insurance company's option. This protects the insurer's right to know the full extent of the risk it undertakes when an insurance policy is issued. The mutual good faith which is required in a life insurance contract will not permit a recovery where the insured intentionally withholds or conceals material changes in the condition of his health. Sigrah v. Micro Life Plus, 16 FSM R. 253, 259 (Kos. 2009).

An insurer seeking rescission of an insurance contract based on a misrepresentation in an insurance application must tender the premiums back to the insured. Sigrah v. Micro Life Plus, 16 FSM R. 253, 260 (Kos. 2009).

An insurer seeking to rescind a life insurance policy upon a ground which rendered it voidable from the

beginning must return or tender the premium paid thereunder because rescission of an insurance contract would, if granted, absolve an insured from liability for the premium and entitle him to return of the premium paid since the general rule is that a contract must be rescinded in whole and cannot be rescinded in part. Sigrah v. Micro Life Plus, 16 FSM R. 253, 260 (Kos. 2009).

Reinstatement of an insurance policy cannot take place until after the insurer learned of the insured's misrepresentation and then waived it. Sigrah v. Micro Life Plus, 16 FSM R. 253, 260 n.3 (Kos. 2009).

The court will not hesitate to deny rescission and order enforcement of the contract when the party seeking rescission has not made a timely tender of the premiums (or benefit) it received under the contract. Sigrah v. Micro Life Plus, 16 FSM R. 253, 261 (Kos. 2009).

Under the FSM Constitution, the power to establish systems of social security and public welfare may be exercised concurrently by Congress and the states. The State of Chuuk therefore has the constitutional authority to establish a system of health insurance since it is a system created to promote and advance the public welfare of Chuuk. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 496 (Chk. 2013).

The FSM does not need each state employee to individually notify it that the employee is enrolled in the Chuuk Health Care Plan since the Act provides for universal coverage for Chuuk residents. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 496 (Chk. 2013).

When the insurance carrier approved the patient's off-island referral within two days and was ready to put her on the earliest possible flight but the patient did not leave until 20 days later and when this long delay was the proximate cause of the patient's death, the insurance carrier's actions were not the proximate cause of her death because the insurance carrier did not cause the delay. William v. Kosrae State Hosp., 18 FSM R. 575, 581 (Kos. 2013).

A 1991 memorandum of understanding between the insurer and the Kosrae State Hospital that required that the hospital provide all necessary health care services within Kosrae to all covered persons and that these services would include the cost of a medical or other attendant to accompany a covered person to a health care facility is an agreement that allocates the cost of attendants between the parties to the memorandum and it does not, by itself, allocate costs or create duties between the state and the insureds ("covered persons") and their families. William v. Kosrae State Hosp., 18 FSM R. 575, 582 (Kos. 2013).

When the statute is silent about what result should follow if the Health Care Board does not submit draft legislation for the selection of its members by citizen enrolles and when that statute only directs the submission of draft legislation but does not require (nor could it) its enactment, the Board's failure to comply does not render the Board's composition illegal or its acts ultra vires. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 188 (Chk. 2013).

A plaintiff's claim under a promissory estoppel and detrimental reliance cause of action is supported when the plaintiff has timely paid the insurance premiums since 1996; when her reasonable expectation was that she and her dependents would receive life and cancer insurance coverage; when she expected that, as an insured, that the insurer's agents would provide her with accurate and reliable information about the policies, which would include when a dependent is no longer covered and what steps to take when coverage has ceased; when the insurer did not fulfill these expectations, to the detriment of her and her dependents; and when, if the insurer had properly advised her, she would have had the opportunity to take out a separate cancer policy for her daughter and her daughter would have been eligible for cancer policy benefits once she was diagnosed with cancer in 2009. Johnny v. Occidental Life Ins., 19 FSM R. 350, 359-60 (Pon. 2014).

The doctrine of unjust enrichment does not apply when there is a legally binding agreement in the form

of life and cancer insurance policies that the parties agreed to and executed. Johnny v. Occidental Life Ins., 19 FSM R. 350, 360 (Pon. 2014).

The statutory requirement that an insurance policy must be signed by two major officers of the insurance company is fulfilled when the cover page of the policy shows the signatures of the company's Secretary and President. Johnny v. Occidental Life Ins., 19 FSM R. 350, 361 (Pon. 2014).

Contracts impose on the parties a duty to do everything necessary to carry them out, and there is an implied undertaking in every contract on each party's part that he will not intentionally and purposely do anything to prevent the other party from carrying out his part of the agreement, or do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract. The FSM Supreme Court will entertain such claims in the context of insurance contracts, when the insurer possesses greater sophistication, provides the policy, can be expected to assist insureds in understanding the relevant terminology in the policy, and has a specialized role in processing claims. Johnny v. Occidental Life Ins., 19 FSM R. 350, 361-62 (Pon. 2014).

Under the circumstances of an insurance case, there may be a duty to disclose information, based on a relationship of confidence or trust between the parties, or based on one party's superior knowledge or means of knowledge. Johnny v. Occidental Life Ins., 19 FSM R. 350, 362 (Pon. 2014).

As used in the insurance context, bad faith does not refer to misconduct of a malicious or immoral nature. Rather, the bad faith concept emphasizes unfaithfulness to an agreed common purpose or to the justifiable expectations of the other party to the contract. In short, a showing of bad faith requires that insurers not act unreasonably or arbitrarily when dealing with their insureds. Johnny v. Occidental Life Ins., 19 FSM R. 350, 362 (Pon. 2014).

Insuring vessels that later navigate through FSM waters is not, by itself, sufficient to give the court personal jurisdiction over the insurer. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 210 (Yap 2015).

Since the FSM long-arm statute only requires for personal jurisdiction that the defendant be a party to a contracting to insure a risk located in the FSM, it may cover an agency providing underwriting and claims services for the actual insurers at Lloyd's of London. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 210-11 n.2 (Yap 2015).

Since the FSM long-arm statute specifically provides for personal jurisdiction over non-residents contracting to insure any person, property, or risk located within the FSM at the time of contracting, it does not allow the court to exercise personal jurisdiction over an insurer that insured a vessel that was not located in the FSM, but was in Singapore at the time of contracting for marine insurance. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 211 (Yap 2015).

Without a direct action statute, an injured third-party cannot sue an insurer directly because an insurer has no contractual obligation to persons other than its insured, at least until a court determines the liability of its insured and the insurer cannot be joined as a party to a lawsuit to determine that liability. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 211 (Yap 2015).

Even without a direct action statute, an insurer with world-wide coverage could expect to be called upon to help defend its insured in FSM courts. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 211 (Yap 2015).

Generally, an insurer has the duty to defend, the duty to indemnify, the duty to settle, and the duty (or implied covenant) of good faith and fair dealing. These duties are all owed to its insured with whom the insurer has a contractual relationship, not to injured third-party claimants. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 213 (Yap 2015).

An injured claimant may not sue an insurer for breach of the duty of good faith and fair dealing. The duty is a product of the fiduciary relationship created by the contract between the insurer and its insured. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 213 (Yap 2015).

An insured's cause of action for the insurer's breach of the covenant of good faith and fair dealing is assignable to the injured third-party claimant, and the assignee may sue on it. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 213 (Yap 2015).

When an insurance carrier's endorsement contained within an employer's policy limited the applicability of the CNMI Workers' Compensation Program to "the benefits provided under the Workers' Compensation Law of the CNMI," (which would entail that statute's "determination of pay," that statute's exclusive remedy provision setting forth tort immunity does not apply, and an employee would not be forestalled from also bringing a civil action sounding in negligence. Hairens v. Federated Shipping Co., 20 FSM R. 404, 409 (Pon. 2016).

When the insurance agents' failure to differentiate between the insured's life and cancer policies was careless, but not arbitrary and unreasonable, and did not deprive the insured of her bargained-for benefit, the trial court's conclusion that the insurers breached the implied covenant of good faith and fair dealing or that they engaged in bad faith conduct was reversible error. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 428-29 (App. 2016).

A plaintiff's averment that the defendant engaged in practices designed to discourage employee enrollment in health insurance is merely a conclusory allegation insufficient to state a claim because there are no facts alleged in support of the conclusion. Chuuk Health Care Plan v. FSM Dev. Bank, 21 FSM R. 300, 309 (Chk. 2017).

Breach of an implied covenant of good faith and fair dealing is a common law cause of action. It is a tort claim that arises out of a contractual relationship between the parties, and it rests on the premise that whenever a party's cooperation is necessary for the performance of a contractual promise, there is a condition implied that the cooperation will be given. Donre v. FSM Nat'l Gov't Employees' Health Ins. Plan, 21 FSM R. 592, 598 (Pon. 2018).

A supplemental term life insurance rider does not constitute an individual insurance plan. It is in name and in function an attachment to an existing insurance plan. Barnabas v. Individual Assurance Co., 22 FSM R. 252, 256 (Pon. 2019).

A "policy endorsement" is an insurance-specific document that may add, remove or modify existing coverage. It is not a stand-alone document. Barnabas v. Individual Assurance Co., 22 FSM R. 252, 256 (Pon. 2019).

A "conversion privilege" allows term life insurance to convert to a permanent or individual policy. Term life insurance cannot be or become an individual policy without a conversion option. Barnabas v. Individual Assurance Co., 22 FSM R. 252, 256 (Pon. 2019).

– Agents and Brokers

An insurance broker is an independent middleman between the insured and the insurance company who does not represent any particular insurance company. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 651 (Pon. 2008).

An agreement to perform the service of obtaining insurance is different from the contract of insurance itself. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 651 (Pon. 2008).

When an insurance agent's contract with the insurer contains language regarding the agent's duty to make certain that the premium checks were sent to the insurer, the agent is liable to the insurer for breach of contract when the agent failed to fulfill the contractual obligation to send the premium checks to the insurer's office in Kansas City. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 437-38 (Pon. 2009).

Since insurance agents are required to exercise the utmost good faith, loyalty, and honesty toward the insurer during the times that they acted as the insurer's agents, by cashing the premium checks, and thereby failing to send the checks on to the insurer, they breached this duty. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 441 (Pon. 2009).

An insurer has no duty to its agents to undertake an investigation for the agents' benefit in order to stop the agents from converting the insurer's property. When the insurer's property was converted by the agents' intentional actions, the agents cannot argue that the insurer should have known that they were converting – stealing – the insurer's property, and that since the insurer should have stopped them but did not stop them from doing what they had no right to do, the agents should not have to pay back what they took. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 443 (Pon. 2009).

The insurer ratified, or approved, the check cashing activities of its agents to the extent that they distributed the money obtained from the checks to policy holders for legitimate insurance purposes, and that the insurer gave credit to its agents for these distributions shows this conclusively. But the insurer never ratified the agents' conversion of the funds that were not accounted for, or were not used for insurance purposes since the insurer's efforts to figure out what had happened, to stop it from happening, to arrive at an accounting for the missing money, and to restore order to its Pohnpei operation, manifest its disapproval of the practice of cashing premium checks initiated and continued by its agents. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 444 (Pon. 2009).

While there may be no general duty to explain the type of insurance involved, insurance agents may be found to have additional duties when specifically questioned by the insured as to the appropriate level of insurance. Johnny v. Occidental Life Ins., 19 FSM R. 350, 358 (Pon. 2014).

A principal is bound by, and liable for, the acts which his agent does with or within the actual or apparent authority from the principal, and within the scope of the agent's employment, and an insurance company's general agent is one who has authority to transact all the business of an insurance company of a particular kind, or in a particular place, and whose powers are coextensive with the business entrusted in the agent's care. Agents have been regarded as general agents when they fully represent the insurance company in a particular district and are authorized to solicit insurance, receive money and premiums, issue and renew polices, appoint subagents, and adjust loses. Johnny v. Occidental Life Ins., 19 FSM R. 350, 362-63 (Pon. 2014).

Not every mistake by an insurer or its agent rises to the level of bad faith – is automatically unreasonable or arbitrary. An insurance agent's misrepresentation, particularly an unintentional misrepresentation, may breach the agent's duty of care toward the insured rather than constitute bad faith and unreasonable and arbitrary conduct towards an insured. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 428 (App. 2016).

– Application for and Acceptance

An insurance contract, like all contracts, requires an offer and acceptance to be effective, and, like any contract, an insurance contract is formed when an unrevoked offer by one person is accepted by another, thus satisfying the two prerequisites of mutual assent. Sigrah v. Micro Life Plus, 16 FSM R. 253, 257 (Kos. 2009).

An application for insurance standing alone does not constitute a contract upon which judgment can be

recovered. It is merely an offer or request for insurance which may either be accepted or rejected by the insurer. An insurer is at liberty to choose its own risks and is not bound to accept an insurance application for insurance. Sigrah v. Micro Life Plus, 16 FSM R. 253, 258 (Kos. 2009).

An insurance contract may be established when one of the parties to the contract proposes to be insured and the other party agrees to insure, and the subject, the amount, and the rate of insurance are ascertained or understood and the premium is paid if demanded. Sigrah v. Micro Life Plus, 16 FSM R. 253, 258 (Kos. 2009).

An insurer may rely on an applicant's representations as truthful, and, in the absence of information that gives an insurer notice that an insurance applicant has misrepresented facts, an insurer has no duty to investigate an applicant's representations. Sigrah v. Micro Life Plus, 16 FSM R. 253, 258 (Kos. 2009).

An insurance applicant has a duty to be truthful and accurate in making representations when applying for insurance. In insurance law, a representation is a statement made prior to the issuance of a policy which tends to cause the insurer to assume the risk. Sigrah v. Micro Life Plus, 16 FSM R. 253, 259 (Kos. 2009).

A misrepresentation in a negotiation for a life insurance policy is a statement as a fact of something that the insured knows or should know is untrue. Sigrah v. Micro Life Plus, 16 FSM R. 253, 259 (Kos. 2009).

It is a long-established common law rule that an insurance applicant has a duty to inform the insurer of answers that would need to be changed between the date of the application and the insurance policy's effective date. The rule is that the insured must inform the company of any change in his physical condition of which he becomes cognizant after making the application for the policy and prior to the delivery thereof. This duty to disclose any change in health exists regardless of whether there is a policy provision requiring such disclosure. Sigrah v. Micro Life Plus, 16 FSM R. 253, 259 (Kos. 2009).

An insurer may void an insurance contract on the grounds that the insured willfully misrepresented a material fact since the misrepresentation prevents a meeting of the minds, or mutual assent, as to the risk to be insured. A material representation or omission of fact in an insurance application, relied on by the insurer in issuing the policy, renders the coverage voidable at the insurance company's option. This protects the insurer's right to know the full extent of the risk it undertakes when an insurance policy is issued. The mutual good faith which is required in a life insurance contract will not permit a recovery where the insured intentionally withholds or conceals material changes in the condition of his health. Sigrah v. Micro Life Plus, 16 FSM R. 253, 259 (Kos. 2009).

An insurer seeking rescission of an insurance contract based on a misrepresentation in an insurance application must tender the premiums back to the insured. Sigrah v. Micro Life Plus, 16 FSM R. 253, 260 (Kos. 2009).

If an insurer seeks to avoid liability for the policy death benefit because of the insured's misrepresentation in the application process, it must tender the premiums to the beneficiaries. If it does not, it cannot prevail on the defense that the insured's misrepresentation made the policy voidable. This is because, after an insured's death, if a tender of the premium in avoidance of the life insurance policy for misrepresentation is not made to the beneficiaries in a timely manner or within a reasonable time, the defense of fraud or misrepresentation is deemed waived, and if the beneficiaries refuse the tender, it should then be paid into court before the insurer seeks a decision on the merits of its defense of fraud or misrepresentation. Sigrah v. Micro Life Plus, 16 FSM R. 253, 260 (Kos. 2009).

An insurance contract was formed when there was an invitation made by the insurer to provide life and cancer insurance coverage to the plaintiff and the plaintiff offered to enroll under the policy and the insurer accepted the offer by issuing life and cancer insurance policies and accepting premiums that the plaintiff

paid through bi-weekly allotments. The parties' reasonable expectations were that the plaintiff would make timely payments on the policy, and that the insurer would provide coverage subject to the policy's terms. Johnny v. Occidental Life Ins., 19 FSM R. 350, 357 (Pon. 2014).

When the insurer's denial of insurance benefits was lawful, the insured does not have a breach of contract claim. Donre v. FSM Nat'l Gov't Employees' Health Ins. Plan, 21 FSM R. 592, 598 (Pon. 2018).

– Claims and Benefits

The court cannot say that an insurance claims process which consumed between 3 and 4 months from the filing of the claim to the issuance of a denial is so lengthy, so egregious, as to constitute bad faith as a matter of law. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 308 (Pon. 2004).

An insurance policy beneficiary has standing to sue for unpaid insurance policy benefits. John v. Chuuk Public Utility Corp., 15 FSM R. 169, 171 (Chk. 2007).

Only if a life insurance policy had no designated or named beneficiary, would the policy benefits be payable to his estate to be distributed through probate to his heirs or devisees. John v. Chuuk Public Utility Corp., 15 FSM R. 169, 171 (Chk. 2007).

When the plaintiff alleges that she is the third-party beneficiary of an insurance contract, the six-year statute of limitations for breach of contract generally applies. John v. Chuuk Public Utility Corp., 15 FSM R. 169, 171 (Chk. 2007).

Only if a life insurance policy has no designated or named beneficiary, would the policy benefits be payable to a decedent's estate to be distributed through probate to his heirs or devisees. In re Estate of Manas, 15 FSM R. 609, 611 (Chk. S. Ct. Tr. 2008).

When the decedent's life insurance policy named his mother, who predeceased the decedent, as beneficiary, the rights in the policy became part of her estate when she died and descended to the devisees according to her will, if she had one, or her heirs according to the law of intestate succession, if she had no will. In re Estate of Manas, 15 FSM R. 609, 611 (Chk. S. Ct. Tr. 2008).

Generally rights of a beneficiary pass to the beneficiary's estate in the event of the beneficiary's death during the lifetime of the insured, but if a policy reserves to the insured the right to change the beneficiary, the beneficiary's rights may cease in the event of the beneficiary's death during the insured's lifetime. In re Estate of Manas, 16 FSM R. 82, 83 (Chk. S. Ct. Tr. 2008).

An insurance policy's benefits are payable only to those who are beneficiaries. Sigrah v. Micro Life Plus, 16 FSM R. 253, 256 n.1 (Kos. 2009).

If an insurer seeks to avoid liability for the policy death benefit because of the insured's misrepresentation in the application process, it must tender the premiums to the beneficiaries. If it does not, it cannot prevail on the defense that the insured's misrepresentation made the policy voidable. This is because, after an insured's death, if a tender of the premium in avoidance of the life insurance policy for misrepresentation is not made to the beneficiaries in a timely manner or within a reasonable time, the defense of fraud or misrepresentation is deemed waived, and if the beneficiaries refuse the tender, it should then be paid into court before the insurer seeks a decision on the merits of its defense of fraud or misrepresentation. Sigrah v. Micro Life Plus, 16 FSM R. 253, 260 (Kos. 2009).

Cash advances are deducted from the policy's cash value and if the insured dies before repaying it that amount (plus interest) is deducted from the death benefit. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 360 n.10 (App. 2012).

When the insurance benefit is a amount of $10,000 lump sum payment; when the agreement does not specify if expenses incurred for an attendant accompanying a patient for off-island treatment is covered under the policy; and when there was no evidence presented at trial as to the nature and amount of expenses incurred, the expenses claim will be denied. Johnny v. Occidental Life Ins., 19 FSM R. 350, 360-61 (Pon. 2014).

When certain expenses had been covered by a different insurance plan, the court will not grant relief that would provide the plaintiff with a double recovery. Johnny v. Occidental Life Ins., 19 FSM R. 350, 361 (Pon. 2014).

When the damages amount was a liquidated sum and the insurance contract involved a promise to pay money if certain events occurred, the plaintiff will be awarded the 9% statutory rate of interest from a reasonable time of 60 days after the diagnosis of her daughter's cancer was submitted to the insurer in a claim form for accident and health policies. Johnny v. Occidental Life Ins., 19 FSM R. 350, 363 (Pon. 2014).

An insurance contract in the FSM that made reference to "the benefits provided under the Workers' Compensation of the CNMI," only intended to merely utilize 4 N. Mar. I. Code § 9310 to ascribe a dollar amount to the benefits to which an injured employee would be entitled, as opposed to adopting the entire CMNI Workers' Compensation Program. Hairens v. Federated Shipping Co., 20 FSM R. 404, 408 (Pon. 2016).

When the insurer's denial of insurance benefits was lawful, the insured does not have a breach of contract claim. Donre v. FSM Nat'l Gov't Employees' Health Ins. Plan, 21 FSM R. 592, 598 (Pon. 2018).

When the insured's remaining claims are all based on the insurer's denial of insurance coverage and when that denial was lawful, the insured's remaining claims will be dismissed. Donre v. FSM Nat'l Gov't Employees' Health Ins. Plan, 21 FSM R. 592, 598 (Pon. 2018).

– Coverage

When the insurance contract language excludes bailment leases, a plaintiff vehicle rental business is not entitled to judgment as a matter of law on a claim that the defendants breached the insurance contract when they did not pay for a damaged rental vehicle. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 305 (Pon. 2004).

In an insurance contract that provides that when the word "insured" is utilized in an "unqualified" manner within the contract, the word will be understood to include all individuals who operate an insured vehicle with the permission of the named insured, but where an exclusion provision does not utilize the word "insured" in an unqualified manner and instead specifies that the provision applies to the "Named Insured," the effect of that qualification is to narrow the definition of "insured" to only those individuals who are actually named on the policy. The term "Named Insured" does not include permissive users. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 306 (Pon. 2004).

When there is a contradiction between the first and second sentences of an insurance policy exclusion, it must be construed against the insurance company that drafted the language and was in a superior bargaining position when the contract was entered into. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 306 n.3 (Pon. 2004).

As the vessels' owner, and as a named insured under the policies along with the four states, the FSM received a benefit as a result of the fleet insurance coverage, but in order to establish a claim for quantum meruit, the insurance broker must demonstrate that the FSM was unjustly enriched by the benefit of the broker paying the premium for Chuuk. But the agreement between Chuuk and the FSM was that FSM would permit Chuuk to use vessels that the FSM owned and Chuuk, in return, would pay for insurance

coverage for those vessels; so by advancing the insurance premium, the broker met Chuuk's obligation to the FSM in this regard. The primary benefit conferred by the insurance premium payments went to Chuuk, and not to the FSM, since Chuuk was also an insured along with the FSM under the policies and it was Chuuk's, not the FSM's, obligation to provide coverage for the vessels. To suggest that when Chuuk failed to meet its obligation to the FSM to insure the vessels, the FSM became liable for the premiums on the vessels is to lose sight of the fact that the vessels were being operated by Chuuk and for Chuuk's benefit on the condition that Chuuk provide the insurance. The broker's remedy for the premium nonpayment is against Chuuk, who breached its agreement with the FSM by failing to pay for the premiums. The broker's remedy does not extend to the FSM. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 655 (Pon. 2008).

Every Chuuk resident is enrolled in the Chuuk Health Care Act and is eligible to receive benefits under it, except for unemployed noncitizens residing in the State who are not dependents of enrollees. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 617, 620 (Chk. 2011).

Under the Chuuk Health Care Act, a "resident" is any Chuuk citizen for whom Chuuk is his principal residence, or any noncitizen who has established an ongoing physical presence in Chuuk and whose presence is sanctioned by law and is not merely transitory in nature. The non-citizen workers' ongoing physical presence in Chuuk is clearly sanctioned by law when the non-citizen employees apply annually for labor certification and for entry permits in order to maintain their employment in Chuuk. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 617, 620 (Chk. 2011).

Even though a contractor's non-citizen employees cannot be domiciled in Chuuk, they might have a legal residence here, but, even if they are not considered to have a legal residence here, they do have an actual residence in Chuuk that is legally sanctioned, and they are thus, by statute, enrolled in and eligible for Chuuk Health Care Plan benefits and their employer is therefore liable, as a matter of law, to the Plan for the employees' and the employer's contributions of the health insurance premiums for its non-citizen as well as citizen employees on Chuuk. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 617, 620 (Chk. 2011).

Under a fleet insurance policy, the premiums must be paid for all the ships in the fleet before any has coverage. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 118 (App. 2011).

Every Chuuk state employee is automatically an enrollee in the Chuuk Health Care Plan by operation of law since under the Chuuk Health Care Plan Act every Chuuk resident (except unemployed noncitizens who are not dependents of enrollees) is enrolled in and is eligible to receive benefits and "resident' means any citizen of Chuuk for whom Chuuk is his principal residence or any noncitizen who has established an ongoing physical presence in Chuuk and whose presence is sanctioned by law and is not merely transitory in nature. Chuuk is an employer as defined by the Act. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 496 (Chk. 2013).

Non-citizen employees who reside in Chuuk are covered by the Chuuk Health Care Plan and required to make health insurance premium contributions. Chuuk Health Care Plan v. Chuuk Public Utility Corp., 18 FSM R. 409, 411 n.1 (Chk. 2012).

The insurer did not breach an insurance policy's terms when it denied coverage because the dependent was not a covered family member since, although she was under 25, she had not been enrolled as a full time student in a post-secondary institution of higher learning for five calendar months or more. Johnny v. Occidental Life Ins., 19 FSM R. 350, 358 (Pon. 2014).

The promises made by the insurer's agents bind the insurer and must be enforced in order to avoid manifest injustice because if the plaintiff had enrolled her daughter under a separate cancer policy, she would have been covered under her own policy, but instead, the agent's misrepresentation caused her to keep her daughter under her cancer policy, making the daughter ineligible at the time she was diagnosed

with cancer because she did not qualify as a covered family member under that policy's provisions. Johnny v. Occidental Life Ins., 19 FSM R. 350, 359 (Pon. 2014).

When an agent has been employed by the insurer for approximately 25 years and, although he may not have had the power to unilaterally amend policies, he informed the plaintiff that cancer coverage was up to 25 years of age; and when, because he was the manager of the insurer's office in Pohnpei and aside from a subordinate he was the only insurer's representative whom the plaintiff was in contact with, the plaintiff had ample reason to rely and accept his statements as the truth. Johnny v. Occidental Life Ins., 19 FSM R. 350, 363 (Pon. 2014).

When the medical insurance coverage excludes treatment of injuries that are attributable to the member's own intemperate use of drugs or alcohol and when the insured was extremely intoxicated and admittedly under the heavy influence of sakau, the court will consider whether the plaintiff, despite his intoxication, would have fallen from the ridge since if the fall would have occurred even if the insured was not drunk, then the insured's injuries should have been covered because the denial of insurance benefits was attributed to his intoxication. Donre v. FSM Nat'l Gov't Employees' Health Ins. Plan, 21 FSM R. 592, 596-97 & n.3 (Pon. 2018).

When, because of the insured's misconduct, the insurer was not obligated to cooperate by extending medical coverage to the insured, the insured's cause of action for breach of implied covenant of good faith and fair dealing is void. Donre v. FSM Nat'l Gov't Employees' Health Ins. Plan, 21 FSM R. 592, 598 (Pon. 2018).

A "policy endorsement" is an insurance-specific document that may add, remove or modify existing coverage. It is not a stand-alone document. Barnabas v. Individual Assurance Co., 22 FSM R. 252, 256 (Pon. 2019).

A "universal life insurance policy" is a permanent, individual policy that accumulates cash value. Term insurance covers only a period of time and therefore does not accrue cash value. Accordingly, premium refunds do not normally apply to term insurance. Barnabas v. Individual Assurance Co., 22 FSM R. 252, 256 (Pon. 2019).

– Credit Life Insurance

Where a creditor accepts a premium payment for insurance that he has agreed to procure, where he makes a diligent effort to fulfill his agreement to do so, promptly notifies the debtor of his inability to procure insurance, he would not be held liable to the debtor, as he would have fulfilled his contract to attempt to procure insurance which is not a contract of insurance. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 250 (Chk. 1995).

The general rule is that where a creditor has failed to both procure credit insurance paid for by the debtor and to notify the debtor of his failure to procure the insurance requested, prior to loss, the debtor may plead such failure as a defense or setoff. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 250 (Chk. 1995).

Both contract and tort theories can be pursued by a debtor who alleges that a creditor has failed to procure credit insurance. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 251 (Chk. 1995).

A creditor who undertakes to secure credit insurance for a debtor is liable to the debtor for negligent performance of that duty or of duty to notify debtor if insurance not obtained. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 251 (Chk. 1995).

Failure of a creditor to notify the debtor of its failure to obtain insurance is negligence. As a consequence the creditor is liable to the debtor for the entire amount of the debtors' loss, otherwise the debtor is only entitled to return of full amount of insurance premiums paid. FSM Dev. Bank v. Bruton, 7

FSM R. 246, 251 (Chk. 1995).

A creditor who undertakes to secure credit insurance for a debtor is liable to the debtor for negligent performance of that duty or of duty to notify debtor if insurance not obtained. FSM Dev. Bank v. Carl, 20 FSM R. 592, 593 (Pon. 2016).

When the debtor has not produced evidence to show that credit insurance was obtained when the loan was entered into, the court will not rule that the debt has been discharged although, if credit insurance had been obtained, the debtor would have had a valid claim of discharge of the debt. FSM Dev. Bank v. Carl, 20 FSM R. 592, 594 (Pon. 2016).

When a borrower's credit life insurance policy was for a four-year term and expired about eighteen years before the borrower's death, the claim for insurance coverage to cover the borrower's debt is invalid. FSM Dev. Bank v. Carl, 21 FSM R. 640, 642-43 (Pon. 2018).

– Lapse and Cancellation

When a group insurance policy is non-participatory in that the employee contributes nothing to the payment of the premiums, no contractual relationship arises between the employee and the insurer. Therefore the insurer was under no contractual obligation to provide the decedent employee with notice that the group policy lapsed. John v. Chuuk Public Utility Corp., 16 FSM R. 66, 68 (Chk. 2008).

The effect of an employer's cancellation of the master policy in regard to an employee's coverage depends primarily on the time at which the employer does so. If it occurs before liability under the policy has attached, the insurer is released from any liability that might subsequently accrue so that when the insurer's coverage of CPUC employees lapsed before its employee died, and therefore before liability under the policy attached, the insurer, as a matter of law, was not liable. John v. Chuuk Public Utility Corp., 16 FSM R. 66, 68 (Chk. 2008).

When the court has not been supplied with the information necessary for the court to take judicial notice that life insurance was a state employee benefit when CPUC was created and what the insurance coverage's terms were or to conclude that CPUC has not adopted its own merit system with changed benefits, there are genuine issues of material fact that preclude either party being entitled to summary judgment: 1) whether state employees in 1997 were afforded life insurance benefits and on what terms (contributory, non-contributory; on the job only, 24-hour; etc.); 2) whether CPUC has since established its own merit system and then altered the benefits; and 3) whether, if notice of the lapse of insurance coverage was required, it was given for the July 2004 lapse. John v. Chuuk Public Utility Corp., 16 FSM R. 66, 69 (Chk. 2008).

When the group insurance plan is non-contributory – when the employee does not contribute anything towards payment of the insurance premiums – the employee is not entitled to notice that the employer has ceased paying the premiums. John v. Chuuk Public Utility Corp., 16 FSM R. 226, 227 (Chk. 2008).

37 F.S.M.C. 404, by its terms, does not apply to the cancellation of a life insurance policy when there are no issues of non-payment of a premium. Barnabas v. Individual Assurance Co., 22 FSM R. 252, 255 (Pon. 2019).

When 37 F.S.M.C. 404 does not apply to a life insurance policy's cancellation, the court will evaluate the matter according to the terms of the agreements among the parties. Barnabas v. Individual Assurance Co., 22 FSM R. 252, 256 (Pon. 2019).

When the continuation of a supplemental term life insurance policy was contingent upon sufficient enrollment in the group policy, and when, according to the plan's terms, if the plan enrollment fell below "35% of those eligible" to participate, the insurer could terminate the policy, the insurer was entitled to

terminate the policy as set forth in the supplemental term life insurance policy. Barnabas v. Individual Assurance Co., 22 FSM R. 252, 257 (Pon. 2019).

When the supplemental term life insurance rider provided that 61 days' notice was required to terminate the supplemental life insurance plan, the insurer's notice to the employer, given 66 calendar days before termination, was sufficient notice as required by the policy. It was incumbent upon the employer, not the insurer, to provide notice to policyholders. Barnabas v. Individual Assurance Co., 22 FSM R. 252, 257 (Pon. 2019).

When the insureds received refunds through their employer, as what should occur only for group insurance policies, not individual insurance policies, and when the insurer instructed the employer to stop all employee payroll deductions for supplemental group life insurance, the insurer did not convert the insureds' money and was not unjustly enriched. Barnabas v. Individual Assurance Co., 22 FSM R. 252, 257 (Pon. 2019).

– Premiums

Insureds frequently pay premiums by executing a promissory note – a "premium note," and, depending on the circumstances of its execution, may pay the premium in full through the execution of a premium note. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 309 (Pon. 2004).

Before an insurance company can obtain summary judgment on an action for enforcement of a premium note, the defenses available to the enforcement of a premium note must be addressed. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 309 (Pon. 2004).

A measure of damages for the tort of negligent misrepresentation (also called deceit) employs the benefit of the bargain rule when damages can be proved with reasonable certainty. Under this principle, the insurer would be entitled to its premium, which would be set off against what it owed its insured. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 469 (Pon. 2004).

Rescission of an insurance contract would, if granted, absolve an insured from liability for the premium and could even entitle him to return of the premium paid. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 470 (Pon. 2004).

Various writings, admitted into evidence, which were signed on the behalf of Chuuk, the party to be charged, can establish by a preponderance of the evidence that the plaintiff and Chuuk entered into an agreement whereby the plaintiff would obtain insurance on Chuuk's vessels for the two periods in question, and that Chuuk would pay for the premiums for the insurance obtained. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 651 (Pon. 2008).

A marine insurance broker who advances fleet insurance premiums may obtain reimbursement from the insured on whose behalf it advanced those premiums under an implied-in-law contractual right to reimbursement of the premiums it advanced on another's behalf when the implied-in-law contractual right is integrally related both to the contract whereby the broker was to procure insurance and to the insurance contracts that resulted from that agreement. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 652 (Pon. 2008).

When, although Chuuk did not pay the premiums, they were paid by the broker on Chuuk's behalf and the policies were in full force and effect for the vessels operated by Chuuk, Chuuk is responsible for these premiums because the broker established by a preponderance of the evidence at trial that the broker and Chuuk had entered into an agreement whereby the broker would procure insurance for the Chuuk-operated vessels and that Chuuk would pay for that insurance. This express contract serves as the basis for an implied-in-law contract that Chuuk is liable for reimbursement to the broker. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 653 (Pon. 2008).

The elements of a cause of action for quantum meruit are that 1) valuable goods or services are provided 2) to someone against whom recovery is sought 3) when the goods or services are enjoyed or used by the one against whom recovery is sought 4) under such circumstances that notified the person that the one performing the services or providing the goods expected payment. The fact that Chuuk did not know that its insurance broker had paid the premiums relates to the quantum meruit claim's fourth element, which is whether the benefit conferred by the in-force policies was enjoyed by Chuuk under circumstances such that Chuuk knew that the insurance broker expected payment. Since it is beyond question that Chuuk knew that the broker expected payment because Chuuk acknowledged in writing that the premiums were owed, the notice requirement to Chuuk is met by Chuuk's express acknowledgment that it owed the premiums pursuant to its enforceable contract with the broker. Accordingly, Chuuk's contention that it is not liable because it did not know that the broker had advanced the premiums on its behalf is without merit. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 654 (Pon. 2008).

An insurance broker did not violate the Chuuk Financial Management Act by advancing the premium on Chuuk's behalf when it was not a state officer, employee, or allottee within the meaning of the statute and it thus did not create an obligation within the statute's meaning because no evidence suggests that the broker was anything other than one of Chuuk's many vendors with whom Chuuk entered into a binding contract. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 654 (Pon. 2008).

When the evidence did not suggest that it was ever the understanding of those concerned that if one of the state operators failed to pay for insurance covering its vessels, the FSM would become liable for the insurance premiums because it owned the vessels, no contract to which the FSM was a party imposed such liability on the FSM. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 655 (Pon. 2008).

As the vessels' owner, and as a named insured under the policies along with the four states, the FSM received a benefit as a result of the fleet insurance coverage, but in order to establish a claim for quantum meruit, the insurance broker must demonstrate that the FSM was unjustly enriched by the benefit of the broker paying the premium for Chuuk. But the agreement between Chuuk and the FSM was that FSM would permit Chuuk to use vessels that the FSM owned and Chuuk, in return, would pay for insurance coverage for those vessels; so by advancing the insurance premium, the broker met Chuuk's obligation to the FSM in this regard. The primary benefit conferred by the insurance premium payments went to Chuuk, and not to the FSM, since Chuuk was also an insured along with the FSM under the policies and it was Chuuk's, not the FSM's, obligation to provide coverage for the vessels. To suggest that when Chuuk failed to meet its obligation to the FSM to insure the vessels, the FSM became liable for the premiums on the vessels is to lose sight of the fact that the vessels were being operated by Chuuk and for Chuuk's benefit on the condition that Chuuk provide the insurance. The broker's remedy for the premium nonpayment is against Chuuk, who breached its agreement with the FSM by failing to pay for the premiums. The broker's remedy does not extend to the FSM. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 655 (Pon. 2008).

Life insurance premiums paid after the insured's death are unearned premiums and may be recovered from the date of the insured's death, provided that the date can be satisfactorily established. Sigrah v. Micro Life Plus, 16 FSM R. 253, 257 (Kos. 2009).

If an insurer seeks to avoid liability for the policy death benefit because of the insured's misrepresentation in the application process, it must tender the premiums to the beneficiaries. If it does not, it cannot prevail on the defense that the insured's misrepresentation made the policy voidable. This is because, after an insured's death, if a tender of the premium in avoidance of the life insurance policy for misrepresentation is not made to the beneficiaries in a timely manner or within a reasonable time, the defense of fraud or misrepresentation is deemed waived, and if the beneficiaries refuse the tender, it should then be paid into court before the insurer seeks a decision on the merits of its defense of fraud or misrepresentation. Sigrah v. Micro Life Plus, 16 FSM R. 253, 260 (Kos. 2009).

The court will not hesitate to deny rescission and order enforcement of the contract when the party seeking rescission has not made a timely tender of the premiums (or benefit) it received under the contract. Sigrah v. Micro Life Plus, 16 FSM R. 253, 261 (Kos. 2009).

Under a fleet insurance policy, the premiums must be paid for all the ships in the fleet before any has coverage. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 118 (App. 2011).

Under the Chuuk Health Care Act of 1994, it is the employer who is liable to the Health Care Plan for all health insurance premiums including the employee's contribution. Liability is not imposed on the employee. The Act also imposes sanctions on the employer for non-payment of the premiums. Chuuk Health Care Plan v. Chuuk Public Utility Corp., 18 FSM R. 409, 411 (Chk. 2012).

In order to collect overdue premiums or any amount imposed or authorized under the Chuuk Health Care Act of 1994, the Act authorizes civil actions against any person liable to pay any amount under the Act, that is, against the employer because under the Act that is who is liable. Chuuk Health Care Plan v. Chuuk Public Utility Corp., 18 FSM R. 409, 411 (Chk. 2012).

Non-citizen employees who reside in Chuuk are covered by the Chuuk Health Care Plan and required to make health insurance premium contributions. Chuuk Health Care Plan v. Chuuk Public Utility Corp., 18 FSM R. 409, 411 n.1 (Chk. 2012).

Payment of Chuuk state employees' contributions and of the employer's contribution out of the Chuuk state funds held in the FSM Treasury is not be a tax or a levy on the national government or an illegal expenditure of FSM funds since the payment would be from Chuuk state funds and, because the obligation to withhold the Plan insurance premium contributions arises by operation of law, the Plan insurance premium contributions would be properly obligated and should be paid. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 496-97 (Chk. 2013).

A plaintiff has a reasonable probability of success on the merits that insurance premiums will be ruled an income tax when the contributions are computed as a percentage of income earned as wages or salaries. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 506 (Chk. 2013).

A statute that provides only that the Plan's Board "may prescribe" or "may establish" differing premium amounts based on the number of the enrollee's dependants, or on their risk factors, does not appear to require that differing premium amounts be set. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 506 (Chk. 2013).

The balance-of-harms factor favors the defendant when the harm that it would suffer is that it would receive 16⅔% less revenue than it had expected or budgeted for on the basis of the 3% contribution it has been collecting instead of the 2½% that the plaintiff asks the court to enforce and when the harm to the plaintiff is the extra ½% contribution he is paying which could be credited to future health insurance premium contributions if found unlawful. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 506 (Chk. 2013).

When the statute provides only that the Chuuk Health Care Plan's Board "may prescribe" or "may establish" differing premium amounts based on the number of the enrollee's dependants or on their "risk" factors, the statute does not require it, but leaves it to the Board's discretion, the Board may choose to assess premiums in a different manner. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 189 (Chk. 2013).

When the health care assessments or premiums are not imposed by the Chuuk Legislature but are imposed by a public corporation, the Chuuk Health Care Plan through its Board and when the assessments or premiums are not deposited in the Chuuk General Fund but into a special trust fund, these attributes of the premium assessments are characteristic of a classic fee and the opposite of a classic tax. Even

though the funds raised will be spent, at least indirectly, for the benefit of the entire Chuuk community since the funds will be spent for the benefit of people needing or using health care services, which is nearly everyone in Chuuk at one time or another, the premium assessments lie nearer the fee end of the spectrum than the tax end. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 190 (Chk. 2013).

When the health insurance premiums and assessments are not raised for general revenue purposes and cannot be used for any Chuuk state government activity and can only be used for the purposes of the Health Care Plan Act and when the premiums or assessments help defray the cost of providing medical care, the benefits they provide are not of the sort often financed by a general tax. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 190 (Chk. 2013).

When discretionary language "may" is used, which indicates that the insurance board has the power to consider these factors when assessing the insurance premiums and may exercise the power of applying these factors in the future, the discretion to do so is left with the board, and not with the court. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 26 (App. 2015).

While it may be true that an agent and a principal may be sued in the same case for the same cause of action even when the principal's liability is predicated solely on the agency, when the principal's liability is not based on the agency but is based on a statute, the Chuuk Health Care Act of 1994, that imposes the liability only on the principal – the employer – and absolves the employee from any liability, the employee agent is not a proper party to the litigation. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 284 (Chk. 2016).

When the legal issue of whether the foreign citizen CPUC Chief Executive Officer could be a defendant in a lawsuit by the Chuuk Health Care Plan to collect unpaid health insurance premiums, thereby creating diversity jurisdiction, was previously litigated and a final decision rendered concluding that it could not be done; when the time to appeal that decision has expired; and when the same parties are present, res judicata bars the action in the FSM Supreme Court and the case will be dismissed without prejudice to any action in the Chuuk State Supreme Court. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 285 (Chk. 2016).

The Chuuk Health Care Plan enabling statute clearly imposes liability for the payments of premiums on all employers employing eligible residents of Chuuk. Chuuk Health Care Plan v. FSM Dev. Bank, 21 FSM R. 300, 305 (Chk. 2017).

Chuuk State Law No. 2-94-06 contemplates a comprehensive health insurance system whereby premium payments were required on behalf of eligible enrollees employed by the national government. The statute's language contemplates a system of "universal" coverage automatically extending to all eligible enrollees, which includes all employed Chuuk residents regardless of their employer. Chuuk Health Care Plan v. FSM Dev. Bank, 21 FSM R. 300, 306 (Chk. 2017).

When, although the regulations for the Chuuk Health Care Plan implement the actual premium amounts due, the statute itself provides for liability to make the premium payments, the Plan has shown facts that, if proven, entitle it to the relief sought for the defendant's non-payment of premiums. Chuuk Health Care Plan v. FSM Dev. Bank, 21 FSM R. 300, 308 (Chk. 2017).

A "universal life insurance policy" is a permanent, individual policy that accumulates cash value. Term insurance covers only a period of time and therefore does not accrue cash value. Accordingly, premium refunds do not normally apply to term insurance. Barnabas v. Individual Assurance Co., 22 FSM R. 252, 256 (Pon. 2019).

When the insureds received refunds through their employer, as what should occur only for group insurance policies, not individual insurance policies, and when the insurer instructed the employer to stop all employee payroll deductions for supplemental group life insurance, the insurer did not convert the insureds'

money and was not unjustly enriched. Barnabas v. Individual Assurance Co., 22 FSM R. 252, 257 (Pon. 2019).

INTEREST AND USURY

Although FSM Public Law No. 2-33, regarding usury, did not appear in the 1982 codification of FSM statutes, it remained effective as did every other law which took effect after October 1, 1981 and it is currently in effect as codified in the 1987 supplement to the FSM Code at 34 F.S.M.C. 201-207. Bernard's Retail Store & Wholesale v. Johnny, 4 FSM R. 33, 36 (App. 1989).

Questions regarding the validity of the provisions of promissory notes for personal loans, executed with a national bank operating in each state of the FSM and having in part foreign ownership, are closely connected to the powers of the national legislature to regulate banking, foreign and interstate commerce, and bankruptcy, and to establish usury limits, and they have a distinctly national character. The FSM Supreme Court therefore will formulate and apply rules of national law in assessing such issues. Bank of Hawaii v. Jack, 4 FSM R. 216, 218 (Pon. 1990).

One whose property is converted is entitled to interest at the legal rate from the time of conversion. Bank of Guam v. Nukuto, 6 FSM R. 615, 616 (Chk. 1994).

Interest on unpaid social security taxes is assessed at 12% from date due until paid even if part of a court judgment and even though court judgments normally bear a 9% interest rate. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (II), 7 FSM R. 365, 370 (Yap 1996).

Plaintiff's waiver of a portion of its monetary claim cannot summarily disprove an affirmative defense of usury. Richmond Wholesale Meat Co. v. Kolonia Consumer Coop. Ass'n (III), 7 FSM R. 453, 455 (Pon. 1996).

In commercial credit transactions, no person may directly or indirectly receive or charge interest which exceeds an annual percentage rate of twenty-four percent. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 475, 477 (Pon. 2001).

Even assuming that the seller historically did not charge interest on its account with the buyer, nothing precludes the parties to a commercial transaction from coming to a new agreement regarding installment payments on the outstanding indebtedness that also included an interest component calculated over the prior 26 months period, so long as the interest rate charged did not contravene FSM public policy as set out in 34 F.S.M.C. 204. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 502, 504 (Pon. 2002).

When an agreement provides for 18% interest per annum on the principal remaining after the debtor's last payment, no usury issue arises, and when the interest charged cannot be said to be arbitrary and capricious on any other basis, the interest portion of the agreement is binding. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 502, 504 (Pon. 2002).

No person in a commercial credit transaction may directly or indirectly receive or charge interest which exceeds an annual percentage rate of twenty-four percent. Bank of the FSM v. Mori, 11 FSM R. 13, 14 (Chk. 2002).

Because the repeal of a statutory prohibition against usury releases any penalties imposed and permits enforcement of the debtor's obligation in accordance with the parties' agreement, it follows that as to a usury defense, the parties' agreement is governed by the law existing when the agreement is enforced. Bank of the FSM v. Mori, 11 FSM R. 13, 15 (Chk. 2002).

A plaintiff is only entitled to a judgment which represents the amount of money he lent to the defendants and the $100,000 in interest he seeks cannot be awarded when it is the product of an unlawful

and usurious interest rate. Walter v. Damai, 12 FSM R. 648, 649 (Pon. 2004).

A creditor who engages in a usurious credit transaction has no right to collect or receive any interest and this prohibition extends to prejudgment interest. Walter v. Damai, 12 FSM R. 648, 650 (Pon. 2004).

Interest on unpaid social security taxes continues to accrue at 12% until paid, even though a judgment normally bears interest at 9%. FSM Social Sec. Admin. v. Lelu Town, 13 FSM R. 60, 62 (Kos. 2004).

The general rule is that, in the absence of express authorization, interest is to be computed on a simple basis rather than compounded. Lee v. Lee, 13 FSM R. 68, 71 (Chk. 2004).

When there is no authorization for compound interest in the settlement agreement and when it is apparent that the parties, in settling their prior lawsuit, intended to apply the legal or judgment rate of interest to any unpaid settlement balances, the plaintiff's damages must therefore be calculated on a simple interest basis. Lee v. Lee, 13 FSM R. 68, 71 (Chk. 2004).

A lease agreement's penalty provision, which charged either one or two per cent per day (365% or 730% per annum respectively), is void since either interest rate is usurious. The penalty for charging a usurious interest rate is that the person charging such a rate has no right to receive or collect any interest. Uehara v. Chuuk, 14 FSM R. 221, 225-26 (Chk. 2006).

The legal interest rate is nine per cent per annum simple interest – not compounded. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 421 n.2 (Yap 2006).

If appellants post a supersedeas bond, they are automatically entitled to stay once the court has approved the bond. Statutory post-judgment interest, however, will continue to accrue until the judgment is paid. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 501, 505 (Yap 2006).

The court has the discretion to award pre-judgment interest, but it is not a matter of right unless the debtor knows precisely what he is to pay and when payment is due. The purpose of awarding interest is to compensate the complaining party for losing use of the funds. George v. George, 15 FSM R. 270, 275 (Kos. S. Ct. Tr. 2007).

When the parties have a written agreement stating that interest would be added to the unpaid balance, an award of pre-judgment interest has been upheld. George v. George, 15 FSM R. 270, 275 (Kos. S. Ct. Tr. 2007).

A court has the discretion to award pre-judgment interest, but it is not a matter of right unless the debtor knows precisely what he is to pay and when payment is due. The purpose of awarding interest is to compensate the complaining party for losing use of the funds. George v. Albert, 15 FSM R. 323, 328 (Kos. S. Ct. Tr. 2007).

When the parties have a written agreement stating that interest would be added to the unpaid balance, an award of pre-judgment interest will be upheld. George v. Albert, 15 FSM R. 323, 328 (Kos. S. Ct. Tr. 2007).

When the defendant agreed to make regular payments but there was no written agreement to pay interest on the defendant's open account; when the ledger page showing payments contains a 25-cent charge at the time of each payment but this does not correspond to an interest calculation; and when there is no evidence to show interest was discussed or agreed to by the defendant, the plaintiff is not entitled to pre-judgment interest. George v. Albert, 15 FSM R. 323, 328 (Kos. S. Ct. Tr. 2007).

Pre-judgment interest cannot be awarded until the court has determined when payment would reasonably have been due. Saimon v. Wainit, 16 FSM R. 143, 148 (Chk. 2008).

Since 18% per annum is not a usurious rate of interest under FSM law, the defaulting defendants will be liable for this item of damages when the defaulting defendants agreed, by their agent's signature on the invoices, to pay this rate on overdue accounts. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 225 (Chk. 2008).

If the additional 33% charge for collection were considered a penalty instead of attorney's fees, it would then have to be added to the any other penalties and interest to determine the true interest rate, and adding 33% to the 18% contract rate would yield an interest rate over 50%, which is usurious interest. When a creditor seeks a usurious interest rate, the penalty is that the creditor will not be permitted to recover any interest whatsoever. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 225 (Chk. 2008).

The legal rate of interest is 9%, and is simple interest, not compounded. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 543, 546 (Yap 2009).

When there is no evidence in the record that the defendant knew of, or had agreed to, a contractual requirement that he pay interest and the ledger sheets admitted into evidence do not show any interest charges and when none of the situations where the courts have previously allowed prejudgment interest is present, prejudgment interest will be denied. George v. Albert, 17 FSM R. 25, 33 (App. 2010).

When the parties have had an agreement stating that interest would be added to an unpaid balance, the FSM court has awarded prejudgment interest, and, prejudgment interest at the 9% statutory judgment rate has also been awarded when the defendant knew precisely the amount to which he was obligating himself and the effective date of that commitment to pay, and when the defendant was liable for conversion. George v. Albert, 17 FSM R. 25, 33 (App. 2010).

The statutory interest rate is 9% per year, which the court may impose prejudgment when the defendant knew precisely the amount to which he was potentially obligating himself, and the effect date of that commitment. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 35 n.6 (Pon. 2011).

The general rule is that in applying partial payments to an interest-bearing debt which is due, in the absence of an agreement or statute to the contrary, the payment will be first applied to the interest due. Salomon v. Mendiola, 20 FSM R. 138, 140 (Pon. 2015).

At the start of a typical loan repayment, the installment payments are usually not much larger than the amount of interest accrued and due. The bulk of the installment payment is then applied to interest and the remaining amount goes to reducing the principal so that at the next installment payment, if made on time, a little less is needed to pay the accrued interest and a little more can go to the reduction of principal. This does not constitute usury unless the interest rate itself is higher than permitted by statute. Salomon v. Mendiola, 20 FSM R. 138, 140-41 (Pon. 2015).

If the loan payments are late, more interest will accumulate and more of the payment will go to cover the interest and less will go to reducing the principal. Enough late payments or a missed payment and the next payment may end being applied all to accrued interest with nothing left over to apply to the principal. Salomon v. Mendiola, 20 FSM R. 138, 141 (Pon. 2015).

When a court finds a lack of an enforceable contract, and no evidence was submitted to support the plaintiff's request for interest, the plaintiff may not recover on a claim for 1.5% interest per month based on the parties' unenforceable agreement. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 19 (Pon. 2016).

Usury is the exacting, taking, or receiving of an interest charge in an amount or at a rate in excess of that allowed by law for the use of money or extension of credit. Setik v. Mendiola, 21 FSM R. 537, 556-57

(App. 2018).

In a commercial credit transaction, no person may directly or indirectly receive or charge interest which exceeds an annual percentage rate of 24 percent. Setik v. Mendiola, 21 FSM R. 537, 557 (App. 2018).

In applying partial payments to an interest-bearing debt which is due, in the absence of an agreement or statute to the contrary, the payment will be first applied to the interest due. Thus, at the start of a loan repayment, the bulk of a monthly payment is applied to the accrued interest and the remaining amount goes to reducing the principal so that at the next monthly payment, if made on time, a little less is needed to pay the accrued interest and a little more will go to reducing the principal. This is not usury unless the interest rate (including fees) is itself higher than the statutory cap. Setik v. Mendiola, 21 FSM R. 537, 557 (App. 2018).

A 9% interest rate is not usurious. The court thus has no power to disregard it, or to otherwise vary it, lower it, or raise it because the parties agreed to the 9% rate – the bank offered to lend the loan applicants money at 9%, and those applicants, who borrowed money, agreed to borrow it at 9%. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 474 n.1 (Pon. 2020).

Congress created the FSM Development Bank, and gave it the power to lend money either with or without security, and if with security upon such terms as may from time to time seem expedient. The bank's ability to set terms is, of course, limited by the usury statutes. Those statutes prohibit (make usurious) credit transactions that directly or indirectly exceed an annual interest rate of 24%. FSM Dev. Bank v. Talley, 22 FSM R. 587, 594 (Kos. 2020).

FSM law prohibits (make usurious) commercial credit transactions that directly or indirectly exceed an annual interest rate of 24%, and consumer credit transactions made after October 31, 1998, that directly or indirectly exceed 24% annual interest. Yoruw v. FSM Dep't of Educ., 22 FSM R. 596, 599 (Yap 2020).

A "late fee" of 15% per month on unpaid invoices is an annual interest rate of 180%, and these "late fees" charge interest, either directly or indirectly, at a rate that is usury and that is thus prohibited. Yoruw v. FSM Dep't of Educ., 22 FSM R. 596, 599 (Yap 2020).

The penalty for charging, or trying to charge, a usurious rate, is that the person or entity charging, or trying to charge, such a rate, has no right to collect or receive any interest. It does not matter whether the other party agreed to pay the usurious rate or not or whether the interest sought is prejudgment or post-judgment. This penalty cannot be avoided by reducing the interest to a legal rate or by calling it a fee because that would defeat the statute's purpose. Yoruw v. FSM Dep't of Educ., 22 FSM R. 596, 599 (Yap 2020).

The statutory penalty is that the creditor, who charges or tries to charge a usurious interest rate, has no right to any interest whatsoever. Yoruw v. FSM Dep't of Educ., 22 FSM R. 596, 599 (Yap 2020).

When a debtor has paid a creditor's invoice that included usurious interest, the debtor is entitled to restitution of all the usurious interest "late fees" paid. Yoruw v. FSM Dep't of Educ., 22 FSM R. 596, 599 (Yap 2020).

The FSM usury statutes prohibit (make usurious) commercial credit transactions that directly or indirectly exceed an annual interest rate of 24%, and consumer credit transactions made after October 31, 1998, that exceed an annual interest rate of 24%. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 606-07 (Pon. 2020).

INTERNATIONAL LAW

The Trust Territory is not a foreign state such as to give the FSM Supreme Court diversity jurisdiction

over a suit against the Trust Territory. Neimes v. Maeda Constr. Co., 1 FSM R. 47, 51 (Truk 1982).

The concept of admiralty is related uniquely to the law of nations. It consists of rules in large part intended to govern the conduct of various nations in their shipping and commercial activities. Lonno v. Trust Territory (I), 1 FSM R. 53, 71 (Kos. 1982).

Retention of the power to play a major role in executive functions, to suspend legislation enacted by the Congress, and to entertain appeals from the court of last resort, the very essence of government suggests that the Trust Territory government remains, not a foreign state, but an integral part of the national government here. Lonno v. Trust Territory (I), 1 FSM R. 53, 73-74 (Kos. 1982).

Under the present state of affairs, the Trust Territory government cannot be considered a foreign state, citizen or subject thereof within the meaning of article XI, section 6(b) of the Constitution. Lonno v. Trust Territory (I), 1 FSM R. 53, 74 (Kos. 1982).

Under international law punitive damages are but rarely and then only reluctantly allowed against foreign national governments. Damarlane v. United States, 6 FSM R. 357, 361 (Pon. 1994).

Comity is a recognition which one nation extends within its own territory to the legislative, executive, or judicial acts of another. It is not a rule of law, but one of practice, convenience, and expediency. Under principles of comity, courts will enforce foreign judgments, but not when the foreign court lacked jurisdiction, or where enforcement of the foreign judgment would violate a public policy, or where granting comity would result in prejudice to the forum's citizens. J.C. Tenorio Enterprises, Inc. v. Sado, 6 FSM R. 430, 431-32 (Pon. 1994).

Any attempt to breathe new life into tort claims time barred by the relevant and analogous statutes should be approached with caution because they are the type of personal claims for money damages that become increasingly difficult of proof and difficult to defend with the passage of time. Ordinarily such claims are resolved by political and diplomatic efforts. Alep v. United States, 7 FSM R. 494, 498 (App. 1996).

International law does not impose vicarious liability on the chief of state or elected or appointed officials to whom governmental authority has been delegated to make military decisions having collateral consequences to noncombatants in theaters of operations. Alep v. United States, 7 FSM R. 494, 498 (App. 1996).

The Law of the Sea Convention first recognized that the Federated States of Micronesia as a nation has the exclusive right to exploit resources in its 200-mile EEZ. The FSM Constitution was drafted to vest authority over the EEZ in the national government with this in mind. Chuuk v. Secretary of Finance, 8 FSM R. 353, 378 & n.19 (Pon. 1998).

The FSM national government has the exclusive right to harvest living marine resources in its EEZ, just as it has the exclusive right to harvest offshore mineral resources. As the holder of this exclusive right, the national government is allowed to dispose of this resource and receive revenue in return. Under the Convention on the Law of the Sea, each nation is entitled to exploit its marine resources to the extent it is able to achieve a maximum sustainable yield. When the FSM does not fully exploit its own resources, it is entitled to compensation at the appropriate market rate from foreign fishing vessels which it allows to fish in its waters. Chuuk v. Secretary of Finance, 8 FSM R. 353, 386 (Pon. 1998).

The determination of whether Tonga and its agents are immune from suit is a decision that is better made by the FSM government's executive branch because the FSM Constitution expressly delegates the power to conduct foreign affairs to the President and because whether a party claiming immunity from suit has the status of a foreign sovereign is a matter for the executive branch's determination and is outside the competence of the courts. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 373 (Kos. 2000).

International organizations, their property, and their assets wherever located, and by whomsoever held, are accorded the same immunity from suit and every form of judicial process by the Federated States of Micronesia government that it accords to foreign governments, but the nature of the immunity the FSM affords foreign governments is still an open question. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 373 n.5 (Kos. 2000).

Internal waters are those waters on the landward side, or inside, of the baselines of the territorial sea. The exclusive economic zone starts twelve nautical miles seaward of the baseline and extending outward for another 188 nautical miles. A desire to maximize the area that might be included within the baselines, subject to the FSM's international treaty obligations, cannot be interpreted as a recognition of state ownership of the ocean resources 12 to 200 nautical outside of those baselines when drawn. Chuuk v. Secretary of Finance, 9 FSM R. 424, 430-31 (App. 2000).

Under the United Nations Convention on the Law of the Sea, an international treaty to which the FSM has acceded and which is now in effect, coastal nations do not have sovereign ownership of the resources in their exclusive economic zones. Coastal nations only have sovereign rights for the purpose of exploring and exploiting, conserving and managing natural resources, whether living or non-living. These rights are subject to numerous duties, including the duty to allow other nations access to the living resources of its exclusive economic zone if the coastal nation does not have the domestic capacity to harvest the entire allowable catch in its exclusive economic zone. Chuuk v. Secretary of Finance, 9 FSM R. 424, 432 (App. 2000).

Under the Law of the Sea Convention, a coastal nation does not "own" the fish in its exclusive economic zone. But a coastal nation does "own," if "own" is the right word, the sovereign right to exploit those fish and control who is given the access to its exclusive economic zone and the opportunity to reduce those fish to proprietary ownership. Chuuk v. Secretary of Finance, 9 FSM R. 424, 432 (App. 2000).

A suit over an incident involving a foreign vessel, will not be dismissed when the vessel was engaged in commercial activity, and not in sovereign acts. Kosrae v. Kingdom of Tonga, 9 FSM R. 522, 523 (Kos. 2000).

Conduct attributable to a state that is intended to, and does, effectively deprive an alien of substantially all of the benefit of his interest in property, constitutes a taking of the property, even though the state does not deprive him of his entire legal interest in the property. If a government harasses a foreign entrepreneur in such a way as to make the enterprise unprofitable, one of two outcomes may follow: the entrepreneur may abandon the property or the entrepreneur may sell it to the government at a price which reflects only the diminished potential of the firm. The first is usually classified as a "creeping expropriation" and the second becomes a case of coercion. However, conduct attributable to a state may deprive an alien's property of value without constituting a taking. AHPW, Inc. v. FSM, 12 FSM R. 114, 120-21 (Pon. 2003).

What is now the Federated States of Micronesia was a part of the Trust Territory of the Pacific Islands during the United Nations Trusteeship, and the government of the Trust Territory was not an agency of the United States. When the present Federated States of Micronesia was part of the Trust Territory of the Pacific Islands, the Federated States of Micronesia was a foreign country relative to the United States, and not a U.S. territory. In re Neron, 16 FSM R. 472, 473-74 (Pon. 2009).

The Federated States of Micronesia is not, and historically was not, a U.S. territory. In re Neron, 16 FSM R. 472, 474 (Pon. 2009).

Although the court will not judge the actions of the U.S. government, when the case's disposition does not require the court to judge those actions, the court can and will judge the actions of the parties to the case if there are satisfactory criteria to do so. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 485 (Pon. 2009).

The international nature of admiralty and maritime law would necessitate that FSM statutory maritime law be applied uniformly throughout the FSM and not vary from island to island because the concept of admiralty law is related uniquely to the law of nations and it consists of rules in large part intended to govern the conduct of various nations in their shipping and commercial activities. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 538 (Yap 2013).

Pacta sunt servanda ("agreements must be kept"), is the rule of law that applies to all agreements made within the framework of the international legal system, and is the basis of the law of treaties, and once in force treaties are binding on the parties to them and must be performed in good faith. FSM v. Ezra, 19 FSM R. 486, 492 & n.5 (Pon. 2014).

Although the FSM has not acceded to, ratified, or otherwise adopted Vienna Convention on the Law of Treaties of May 1969, pacta sunt servanda is international customary law that binds the FSM independently. FSM v. Ezra, 19 FSM R. 486, 492 n.5 (Pon. 2014).

Customary international law can be derived from a variety of sources, but most often from a general and consistent practice of states, and the "practice of the states" includes: 1) all manner of actual behaviors as well as public statements and instructions from diplomatic and official governmental bodies; 2) international agreements codifying or contributing to the emergence of international law; 3) and can also be derived from general principles common to all legal systems. There is no precise formula to indicate how widespread a practice must be before it is accepted as a general practice. FSM v. Ezra, 19 FSM R. 486, 492 & n.8 (Pon. 2014).

All nations have a duty and obligation over its territory and general authority over its nationals. This duty requires: 1) prescription, 2) adjudication, and 3) enforcement of international law. Prescription is the nation's responsibility to make sure that its laws, whether created by legislation, executive order, rule or regulation, or court order enable it to carry out its international obligations. Adjudication is the requirement that persons or things are subject to the process of its courts or administrative tribunals, whether civil or criminal proceedings. Finally, enforcement of the law requires the nation to induce or compel compliance and punish noncompliance with its laws through the courts, police, or by other action. FSM v. Ezra, 19 FSM R. 486, 493 (Pon. 2014).

Since the FSM became a member state of the United Nations, it has reciprocal obligations to the international community to redress wrongs in good faith under the provisions of the U.N. Charter. FSM v. Ezra, 19 FSM R. 486, 496 n.15 (Pon. 2014).

The territorial sea is the waters within 12 nautical miles seaward of FSM island baselines, and the exclusive economic zone is the water seaward of the territorial sea outward to 200 nautical miles from the island baselines. FSM v. Kimura, 20 FSM R. 297, 302 (Pon. 2016).

Passage by Vietnamese through the FSM territorial waters was not innocent and therefore unlawful when it was for the purpose of illegal sea cucumber harvesting, and thus it provides a sufficient factual basis for a guilty plea to entry without a permit. FSM v. Bui Van Cua, 20 FSM R. 588, 590-91 (Pon. 2016).

– Diplomatic Relations

It would seem, as a matter of comity among sovereign nations, the Korean Embassy would expect that after the receipt of its diplomatic note, the FSM Department of Foreign Affairs would promptly and voluntarily, long before the trial court ordered it, file its determination that the Korean defendants had diplomatic immunity from suit. McIlrath v. Amaraich, 11 FSM R. 502, 507 (App. 2003).

The FSM President is authorized to enter into diplomatic relations with foreign governments and to consent to the establishment of diplomatic missions in the FSM. FSM v. Ezra, 19 FSM R. 486, 491 (Pon. 2014).

Members of diplomatic missions, and their families and private servants, and diplomatic couriers assigned to the mission must be afforded the privileges, immunities, protections, and exemptions specified in the April 18, 1961 Vienna Convention on Diplomatic Relations, and the diplomatic mission's premises is inviolable. FSM v. Ezra, 19 FSM R. 486, 491 (Pon. 2014).

An embassy's inviolability and protection is law, made by treaty, and the magnitude of the infraction is irrelevant since inviolability is a foundation of international law that precludes even the slightest violation because there is no more fundamental prerequisite for the maintenance of good relations between the countries in today's interdependent world than the inviolability of diplomatic envoys and embassies. The inviolability rule applies to the embassy building, or parts of buildings and land ancillary thereto, irrespective of ownership and to a diplomatic agent's private residence. FSM v. Ezra, 19 FSM R. 486, 491 & n.4 (Pon. 2014).

Under the Vienna Convention, the receiving country is under a special duty to protect diplomatic persons, places, and things against any intrusion or damage, and to prevent any disturbance of peace of the mission or impairment of its dignity. FSM v. Ezra, 19 FSM R. 486, 491 (Pon. 2014).

Since the Constitution explicitly grants the FSM Supreme Court trial division concurrent and original jurisdiction over any cases arising under treaties and since a breach of the inviolability of the embassy premises is a direct violation of an international treaty and international law, the FSM Supreme Court trial division has original jurisdiction over a prosecution for a misdemeanor trespass and theft committed in a foreign embassy. FSM v. Ezra, 19 FSM R. 486, 491-92 (Pon. 2014).

Internationally protected persons are entitled to special protection. Those persons are entitled to a higher degree of protection than afforded to ordinary citizens. FSM v. Ezra, 19 FSM R. 486, 493 n.9 (Pon. 2014).

Under international law, the state is expected to provide an effective civil remedy, and/or criminal sanction when damage or injury to a diplomatic mission occurs. If it does not do so, the claim might proceed before an international tribunal. FSM v. Ezra, 19 FSM R. 486, 493 (Pon. 2014).

In order to fulfill its treaty obligations to protect diplomats, as governed through the application of international law, the FSM must apply its national criminal code of law to private citizens acting within its territorial control. FSM v. Ezra, 19 FSM R. 486, 493 (Pon. 2014).

Exclusive national jurisdiction over a trespass and theft at the Chinese Embassy is proper under 11 F.S.M.C. 104(7)(a)(ii) as an otherwise undefined national crime, but jurisdiction is not proper under 11 F.S.M.C. 104(7)(a)(i) where an exclusive list of national crimes is defined. FSM v. Ezra, 19 FSM R. 486, 494 (Pon. 2014).

The Chinese Embassy does not enjoy full extraterritoriality under the Vienna Convention on Diplomatic Relations, but is afforded special privileges therein because the status of diplomatic premises arises from the rules of law relating to immunity from the prescriptive and enforcement jurisdiction of the receiving state; the premises are not a part of the territory of the sending state. That embassy premises are inviolable does not mean that they are extraterritorial. FSM v. Ezra, 19 FSM R. 486, 495 n.13 (Pon. 2014).

Under 11 F.S.M.C. 104(7)(a)(ii), the FSM Supreme Court's trial division has exclusive jurisdiction over a trespass and theft at the Chinese Embassy because ambassadors, and all foreign officials, are explicitly intended to be protected by the national government and breaching of an embassy's sanctity affects the personal residence of the ambassador, and directly affects the ambassador's staff, many of whom are legally protected foreign officials; because, although the embassy's physical premises are not explicitly listed in the Constitution as protected property they are necessarily, and implicitly, included within relationship with the ambassador and other foreign diplomats; because the duty of protecting the physical diplomatic mission is an express requirement of the agreement between the FSM and China and the

Vienna Convention, statutorily incorporated by reference, requires the protection of the embassy itself; and because this is of an indisputably international character, a fortiori of a national character, and therefore beyond the reach of the state power to control. FSM v. Ezra, 19 FSM R. 486, 496 (Pon. 2014).

The FSM has enacted legislation that gives positive effect to the Vienna Convention on Diplomatic Relations of April 18, 1961. Estate of Gallen v. Governor, 21 FSM R. 457, 461 (Pon. 2018).

Diplomatic missions, members of the mission, and their families and private servants, and diplomatic couriers assigned to the mission shall be afforded the privileges, immunities, protections, and exemptions specified in the Vienna Convention on Diplomatic Relations of April 18, 1961. Estate of Gallen v. Governor, 21 FSM R. 457, 461 (Pon. 2018).

The FSM statute explicitly incorporates the Vienna Convention's diplomatic immunity provisions into FSM law. Thus, the Vienna Convention's diplomatic immunity provisions apply in the FSM, regardless of whether the Vienna Convention is self-executing. Estate of Gallen v. Governor, 21 FSM R. 457, 461 (Pon. 2018).

Since no reciprocal determination has been made concerning the Chinese Embassy, the Vienna Convention's diplomatic immunity provisions apply unaltered to the Chinese Embassy in the FSM. Estate of Gallen v. Governor, 21 FSM R. 457, 461 (Pon. 2018).

Any action or proceeding brought against an individual who is entitled to diplomatic immunity with respect to such action or proceeding under any FSM law extending diplomatic privileges and immunities, must be dismissed. Such immunity may be established upon motion or suggestion by or on behalf of the individual, or as otherwise permitted by law or applicable rules of procedure. Estate of Gallen v. Governor, 21 FSM R. 457, 461 (Pon. 2018).

The Vienna Convention on Diplomatic Relations embodies customary international law, including the "practice of states," and under international law and FSM statute, the Chinese Embassy premises is inviolable, and its premises shall be immune from search, requisition, attachment, or execution. Estate of Gallen v. Governor, 21 FSM R. 457, 461 (Pon. 2018).

Embassy premises, since they are held on behalf of the sending state for the purposes of the mission, are thus immune from suit. Estate of Gallen v. Governor, 21 FSM R. 457, 461 (Pon. 2018).

The Chinese Embassy is immune from litigation. This immunity is established by treaty (the Vienna Convention), by customary international law, and by FSM statutory law. Estate of Gallen v. Governor, 21 FSM R. 457, 461 (Pon. 2018).

An embassy's immunity from litigation is not dependent on the FSM's issuance of a diplomatic note or effective only once the FSM has issued a diplomatic note, and not before; it is effective upon the establishment of the diplomatic mission. Estate of Gallen v. Governor, 21 FSM R. 457, 462 (Pon. 2018).

When an embassy has, as permitted by statute, established its immunity by motion, it must be dismissed as a party. No pleading defect, real or imagined, can alter that and produce a different result. Estate of Gallen v. Governor, 21 FSM R. 457, 462 (Pon. 2018).

When, because an embassy is immune from suit, it will be dismissed. Since the court cannot exercise jurisdiction over it, and, as a prevailing party, it is also entitled to its costs. Estate of Gallen v. Governor, 21 FSM R. 457, 462 (Pon. 2018).

An embassy is immune from attachment or execution, and cannot be ejected from its premises. Estate of Gallen v. Governor, 21 FSM R. 457, 462 (Pon. 2018).

Under the Vienna Convention, embassy land remains inviolable, and the host country or its agents

cannot enter the embassy grounds without the consent of the head of the mission or the sending state. Estate of Gallen v. Governor, 21 FSM R. 457, 462 n.2 (Pon. 2018).

When the plaintiffs' basic claim is that the state defendants deprived them of their property (the land on which an embassy sits) without just compensation, they would have a viable remedy of monetary damages assessed against the Pohnpei state defendants if they prove that claim, but no remedy against the embassy since it is immune. Estate of Gallen v. Governor, 21 FSM R. 457, 462 (Pon. 2018).

JUDGMENTS

The courts must apply three guidelines in determining whether a decision should be given retroactive effect. First, the decision, to be applied non-retroactively, must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied or by deciding an issue of first impression whose resolution was not clearly foreshadowed. Second, the court must weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation. Finally, the court must weigh the inequity imposed by retroactive application. Innocenti v. Wainit, 2 FSM R. 173, 185-86 (App. 1986).

Earlier legislation similar to the legislation at issue cannot serve as "past precedent" within the meaning of the first guideline for determining whether a decision should be given retroactive effect where that legislation has not been subjected to court review for constitutionality. Innocenti v. Wainit, 2 FSM R. 173, 185 (App. 1986).

The court may, in the interest of justice, make the application of its decision prospective where the court is overruling a previous decision or declaring a statute unconstitutional and the present ruling does not prejudice those who might have relied on such ruling or on such statute. Paulus v. Pohnpei, 3 FSM R. 208, 222 (Pon. S. Ct. Tr. 1987).

The action of a trial court in refusing to vacate a judgment will not be disturbed on appeal unless it clearly appears that the trial court has abused its discretion. Truk v. Robi, 3 FSM R. 556, 564 (Truk S. Ct. App. 1988).

Under Civil Rule 54(c) the court has full authority except in default judgments, to award the party granted judgment any relief to which it is entitled whether that party prayed for it or not. Billimon v. Chuuk, 5 FSM R. 130, 137 (Chk. S. Ct. Tr. 1991).

Where a judge's pretrial order states that the only issue for trial is the ownership of land within certain boundaries as described on a certain map later litigants cannot claim that the determination of title does not include land that they admit is within those boundaries. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 49-50 (App. 1995).

Unclaimed balances of judgments paid into court may escheat to the government. Mid-Pacific Constr. Co. v. Senda, 7 FSM R. 371, 375 (Pon. 1996).

An order granting summary judgment does not constitute a judgment. Before an adjudication can become an effective judgment, the judgment must be set forth in writing on a separate document, and the judgment so set forth must be entered in the civil docket. Bank of the FSM v. Kengin, 7 FSM R. 381, 382 (Yap 1996).

Because dicta does not create a precedent and is not binding, no rehearing can be granted on dicta in an opinion. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 481, 484 (App. 1996).

In the Chuuk State Supreme Court a trial judge has the discretion to order on his own motion a hearing for the plaintiff to prove to the court by the applicable legal standard the amount of damages or other relief

sought to be awarded by an offer of judgment. Rosokow v. Chuuk, 7 FSM R. 507, 509-10 (Chk. S. Ct. App. 1996).

All judgments, by statute, accrue nine percent simple interest a year from date of entry of judgment until satisfied. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 670 (App. 1996).

When a second action and judgment is necessary to enforce and satisfy an earlier judgment, the statutory interest on judgments will be computed from the date of entry of the original judgment. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 670 (App. 1996).

A judgment that is reversed and remanded stands as if no trial has yet been held. A party whose convictions have been reversed stands in the position of an accused who has not yet been tried. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 5 (App. 1997).

An obligation of the state to pay a litigant a sum in exchange for dismissal of claims sought that arises from the judgment of dismissal of that case is not contrary to the legislative intent expressed in any provision of the Financial Management Act. Otherwise, no settlement of litigation requiring payment by the state could ever be made. Ham v. Chuuk, 8 FSM R. 300i, 300k (Chk. S. Ct. App. 1998).

It is the purpose of the Financial Management Act to ensure that public funds are only used or promised in a manner provided by law and a judgment of the Chuuk State Supreme Court trial division is a manner provided by law. Ham v. Chuuk, 8 FSM R. 300i, 300k (Chk. S. Ct. App. 1998).

The FSM does not have a statute which prescribes when a plaintiff may obtain prejudgment interest, but prejudgment interest has been awarded in the FSM. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM R. 388, 392 (Kos. 1998).

As a general rule, a judgment for a defendant based on lack of jurisdiction does not bar the plaintiff from bringing another action on the same cause in another court having jurisdiction. National Fisheries Corp. v. New Quick Co., 9 FSM R. 147, 148 (Pon. 1999).

A judgment entered upon a dismissal for lack of jurisdiction should recite that fact, so as to make clear that the dismissal is without prejudice to a different suit in a court that does have jurisdiction. Similar reasoning applies to the granting of a motion to dismiss for improper forum. National Fisheries Corp. v. New Quick Co., 9 FSM R. 147, 148 (Pon. 1999).

Before the Chuuk State Supreme Court can enter a judgment against the state's public funds pursuant to an offer and acceptance of judgment under Civil Procedure Rule 68, a hearing for the purpose of having the benefit of evidence or hearing testimony as to the value of the plaintiff's claim, or the validity thereof, is an absolute necessity. Kama v. Chuuk, 9 FSM R. 496, 499 (Chk. S. Ct. Tr. 1999).

Attorney fee awards that are part of money judgments are entitled to bear interest at the judgment rate until satisfied. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM R. 569, 570 (Chk. 2000).

Unsatisfied judgments accrue nine percent simple interest from date of entry because the statute does not authorize compounding. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM R. 569, 570 (Chk. 2000).

The generally recognized rule is that interest should not bear interest, but compound interest may be awarded if authorized by statute. When the statute reads "nine percent a year" it is not an express authorization to compound interest annually, but is instead, without more, merely a statement of the rate of simple interest. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM R. 569, 570 (Chk. 2000).

Judgments in the Federated States of Micronesia are valid and enforceable for twenty years, and therefore generally do not need to be "revived." Walter v. Chuuk, 10 FSM R. 312, 315 (Chk. 2001).

A revived or renewed judgment is not a novation of contract. Walter v. Chuuk, 10 FSM R. 312, 315 (Chk. 2001).

Under early common law and prior to the creation of the writ of scire facias, it was necessary to sue on the judgment in a new action, affording the defendant an opportunity of proving that he had discharged it, if he had really done so. The purpose of a writ of scire facias or of a revival of the judgment is to give a dormant judgment a new vitality so that it may be executed upon, although it is not a new action or judgment. Walter v. Chuuk, 10 FSM R. 312, 315-16 (Chk. 2001).

An action upon a judgment must be commenced within 20 years after the cause of action accrued. Walter v. Chuuk, 10 FSM R. 312, 316 (Chk. 2001).

Enforcement of a judgment may also be effected, if the court deems justice requires and so orders, by a civil action on the judgment or in any other manner known to American common law or common in courts in the United States. Walter v. Chuuk, 10 FSM R. 312, 316 (Chk. 2001).

There is no provision in FSM law that makes a judgment dormant or that extinguishes a judgment-creditor's right to execution before the twenty-year statute of limitations has run. A dormant judgment is one upon which the statute of limitations has not yet run but which, because of lapse of time during which no enforcement action has been taken, may not be enforced unless certain steps are taken by the judgment holder to revive the judgment. Walter v. Chuuk, 10 FSM R. 312, 316 (Chk. 2001).

An eight-year-old judgment not being dormant in the FSM (although some other jurisdiction may consider it dormant), it cannot be revived by an FSM court. The general rule is that a judgment, to be revived, must be dormant; if a judgment is not dormant, revivor is not necessary. An FSM judgment creditor may proceed by bringing a new action on the judgment. Walter v. Chuuk, 10 FSM R. 312, 316 (Chk. 2001).

Neither Rule 68, nor any principle of contract law, requires an acceptance to be on a different piece of paper from the offer of judgment in order for it to be valid. Kama v. Chuuk, 10 FSM R. 593, 599 (Chk. S. Ct. App. 2002).

When the original trial judge had the discretion to hold, or not to hold, a Rule 68(b) hearing and when it appears that, based on the memorandum submitted with the offer and acceptance and the attorney general's authority to settle claims against the state, the trial judge exercised his discretion not to hold a Rule 68(b) hearing and instead issued the judgment, the holding that a Rule 68(b) hearing was an absolute necessity was an erroneous conclusion of law. Kama v. Chuuk, 10 FSM R. 593, 599 (Chk. S. Ct. App. 2002).

In the FSM, a court judgment remains in effect for twenty years, which gives a judgment holder plenty of time to collect her judgment so that for although the judgment gives the plaintiff $5,000 worth of auto repairs and she may not have a vehicle now, that is not to say that she will never have one at any time in the future and be able to collect on her judgment. Farata v. Punzalan, 11 FSM R. 175, 178 (Chk. 2002).

When the trial court concluded that its ruling would not change what had been established long ago and continued until today and what had been habitually practiced on an island but did not make a finding of what had been established long ago and what had been the habitual and normal practice on the island, the case will be remanded to the trial court for it to determine if the appellants had customary and traditional use rights to the island and what the extent of those rights is. Rosokow v. Bob, 11 FSM R. 210, 216-17 (Chk. S. Ct. App. 2002).

In the FSM, judgments, by statute, remain valid and enforceable for twenty years from date of entry. In re Engichy, 11 FSM R. 520, 525 (Chk. 2003).

While the court may determine (and has in the absence of statute) the priority of its judgments as to a debtor, the court is reluctant to assume that it may order the discharge of a judgment against a debtor when, by statute, the judgment is to remain valid and enforceable for twenty years. In re Engichy, 11 FSM R. 520, 525 (Chk. 2003).

Any post-judgment charges for attorney's fees and costs – any attorney's fees and costs beyond those awarded in the judgments themselves – must first be determined as reasonable and awarded by the court before the judgment-creditors are entitled to these amounts. In re Engichy, 11 FSM R. 520, 534 (Chk. 2003).

A court has the inherent power to tailor its decision and remedies to prevent any adverse impact on the affairs of the public because it may, if it determines that the best interests of the parties and of the public require it, render a judgment in plaintiffs' favor on constitutional and statutory claims, and make the application of the judgment prospective only. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 580 (Chk. S. Ct. Tr. 2003).

In any case brought under 11 F.S.M.C. 701 *et seq.*, a plaintiff must prove each element of his case by the preponderance of the evidence. In the case of a stipulated judgment under a settlement agreement, an equally basic jurisprudential principle dictates that a stipulated judgment will be entered only if it is well grounded both in law and in fact. Estate of Mori v. Chuuk, 12 FSM R. 24, 26 (Chk. 2003).

A quiet title court judgment is only good against the parties to the case and those in privity with them, while a certificate of title to registered land is presumptively valid against the world. Dereas v. Eas, 12 FSM R. 629, 633 (Chk. S. Ct. Tr. 2004).

Every judgment must be set forth on a separate document. Nikichiw v. O'Sonis, 13 FSM R. 132, 136 n.2 (Chk. S. Ct. App. 2005).

The principle of stare decisis is one of the guiding lights of our jurisprudence, and without a principled and compelling reason for overruling a long line of FSM cases, the court is disinclined to do so. Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 149 (App. 2005).

The courts are not given the responsibility of interpreting the law, but deprived of the authority to apply it. The judiciary's power to pass judgment goes hand in hand with its power to enforce those judgments as justice requires. Chuuk v. Davis, 13 FSM R. 178, 185 (App. 2005).

A court which lacks personal jurisdiction over a defendant cannot enter a valid judgment against that defendant. Lee v. Lee, 13 FSM R. 252, 256 (Chk. 2005).

Civil Rule 71 only permits enforcement of orders and judgments against non-parties "when obedience to an order may be lawfully enforced against a person who is not a party." The key word here is "lawfully." Ordinarily a judgment may be enforced only against a party. However, an injunction may be enforced upon parties to the action, their officers, agents, servants, employees and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise. Ruben v. Petewon, 13 FSM R. 383, 389 (Chk. 2005).

In the case of an injunction, non-parties who are persons who are the defendant's "officers, agents, servants, employees and attorneys," or "persons in active concert or participation" with the defendant and successors to a party, are the only non-parties against whom judgments and orders may be lawfully enforced, that is, enforced without violating the non-party's constitutional right to due process and Rule 71. Ruben v. Petewon, 13 FSM R. 383, 389 (Chk. 2005).

Previously awarded attorney's fees as sanctions for repeated non-compliance with the court's orders

compelling discovery will, if unpaid, be added to the judgment. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 556 (Chk. 2005).

If a detrimental reliance cause of action was pled and tried, or tried by the parties' express or implied consent, the plaintiff is entitled to have the trial court rule on this cause of action when the plaintiff's judgment is reversed for the statutory claim. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 26 (App. 2006).

A defendant may, without waiving defendant's right to offer evidence in the event the motion is not granted, move to dismiss the plaintiff's case after the plaintiff has completed his case-in-chief on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court must make findings as provided in Rule 52(a). Hauk v. Lokopwe, 14 FSM R. 61, 64 (Chk. 2006).

If the awarded sanctions are unpaid at judgment and payable to the prevailing party they should be included as taxable costs. If the sanctions are unpaid at judgment and payable to the non-prevailing party, they ought to be deducted from the money judgment due the prevailing party. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 475 (Pon. 2006).

When unpaid Rule 37 sanctions are not specifically named and included as costs in either the judgment or the later order that fixed and entered the costs and fees that were to be added to the judgment, they should be included in the original judgment by implication, if not specifically, since the court was unaware that the sanctions fixed seven months earlier had not been paid. It would be better practice for the plaintiffs to ask that the amount of unpaid sanctions be specifically included in the court's judgment. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 475-76 (Pon. 2006).

Chuuk State Supreme Court Civil Procedure Rule 62(a) automatically stays court enforcement of all money judgments for ten days. Billimon v. Marar, 15 FSM R. 87, 89 (Chk. 2007).

Rule 52(a) requires a trial judge, after trial, to make special findings of fact and separate conclusions of law. Mathias v. Engichy, 15 FSM R. 90, 95 (Chk. S. Ct. App. 2007).

The requirement that the trial court "find the facts specially" serves three major purposes: 1) to aid appellate court review by affording it a clear understanding of the ground or basis of the trial court's decision; 2) to make definite precisely what the case has decided in order to apply the doctrines of estoppel and res judicata in future cases and promote confidence in the trial judge's decision-making; and 3) to evoke care on the trial judge's part in ascertaining the facts. Mathias v. Engichy, 15 FSM R. 90, 95 (Chk. S. Ct. App. 2007).

The trial court satisfies its responsibility to make specific findings of fact when the findings are sufficiently detailed to inform the appellate court of the basis of the decision and to permit intelligent appellate review, but the trial court need not mention evidence it considers of little or no value. As long as the trial court clearly relates the findings of fact upon which the decision rests and articulates in a readily intelligible manner the conclusions it draws by applying the controlling law to the facts as found, no more is needed. The trial court has the obligation to ensure that the basis for its decision is set out with enough clarity to enable the reviewing court to perform its function. Mathias v. Engichy, 15 FSM R. 90, 96 (Chk. S. Ct. App. 2007).

Since a trial court can only hold that, as between the parties to the case, who has the better claim to ownership, but that is all the trial court can decide regarding ownership, its ruling cannot apply to any claims to ownership by non-parties. Since the state never claimed title to Unupuku, a judgment against the state for title, even if it were valid against the state, would be utterly meaningless. It is certainly no good against anyone else. Ruben v. Hartman, 15 FSM R. 100, 111 (Chk. S. Ct. App. 2007).

A judgment can only be enforced against a party to the case. For a judgment to be enforceable, the court rendering the judgment must have jurisdiction over the subject matter of the action and personal jurisdiction over the parties to the action and against whom the judgment is to be enforced. Ruben v. Hartman, 15 FSM R. 100, 111 (Chk. S. Ct. App. 2007).

Once a judgment has been entered does not mean it is enforceable against anyone and everyone who is not a party. Ruben v. Hartman, 15 FSM R. 100, 111 (Chk. S. Ct. App. 2007).

An order or judgment that may be lawfully enforced against someone who is not a party is an injunction may be enforced upon parties to the action, their officers, agents, servants, employees and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise and against a non-party opponent for costs incurred by his misbehavior. Ruben v. Hartman, 15 FSM R. 100, 112 (Chk. S. Ct. App. 2007).

A trial court can determine no more than who among the parties before it has a better claim to title or in the case of trespass, possession. A court cannot determine who has title good against the world. Land registration (determination of title presumptively good against the world) is the province of the Land Commission and its procedures, not of a court. Ruben v. Hartman, 15 FSM R. 100, 112 (Chk. S. Ct. App. 2007).

In order for a judgment granting ownership to land to which someone else has a certificate of title to be valid, the judgment would first have to have set aside the other's certificate of title and as a general rule a certificate of title can be set aside only on the grounds of fraudulent registration. When the pleadings never addressed, or even mentioned the existence of, the certificate of title, this was a fatal flaw. Ruben v. Hartman, 15 FSM R. 100, 113 (Chk. S. Ct. App. 2007).

When a fees and costs order was hand carried, along with some other papers, by a traveler to Yap and those other papers were received, as expected, by the court staff in Yap on the next day, March 23, 2007 and an inquiry the next day satisfied the court that the papers had been received and dealt with, but the fees and costs award did not come to the clerk's attention, or into her possession, until June 5, and was then entered on June 6, 2007, the court can direct that the order awarding fees and costs be entered *nunc pro tunc* as of March 23, 2007, the day the court expected the order to be, and thought it had been, entered because a court may issue an order *nunc pro tunc* to supply a record of an action previously done but omitted from the record through inadvertence or mistake, to have effect as of the former date. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 133, 134 (Yap 2007).

Trust Territory judicial decisions are not stare decisis, that is, they are not binding precedent on FSM courts. Nakamura v. Moen Municipality, 15 FSM R. 213, 218 (Chk. S. Ct. App. 2007).

Civil Procedure Rule 52(a) requires a trial judge, after trial, to make special findings of fact and separate conclusions of law before a judgment is entered. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 225 (Chk. S. Ct. App. 2007).

When the Trust Territory judgment that the appellant relies upon explicitly states that the judgment will not affect any rights of way there may be over the lands in question and when it is undisputed that the appellees were granted their right of way prior to the Trust Territory judgment, the Trust Territory judgment did nothing to alter the preexisting right of way. Akinaga v. Heirs of Mike, 15 FSM R. 391, 397-98 (App. 2007).

"Law of the case" refers to the principle that once issues are decided in a case, they will not be redetermined later in the same case. This is a policy relied on by courts out of concern for judicial economy and to avoid the confusion that would result if a court reversed its own decisions during the course of a case. In the absence of statute the phrase, "law of the case," as applied to the effect of previous orders on the later action of the court rendering them in the same case, merely expresses the practice of

courts generally to refuse to reopen what has been decided, not a limit to their power. Heirs of Wakap v. Heirs of Obet, 15 FSM R. 450, 453 (Kos. S. Ct. Tr. 2007).

When an issue is decided at trial and later reversed on appeal due to legal error, the findings of fact still bind the trial court on remand as law of the case. Heirs of Wakap v. Heirs of Obet, 15 FSM R. 450, 453-54 (Kos. S. Ct. Tr. 2007).

When the original decision had been reviewed by the Kosrae State Court on appeal and remanded for the purpose of considering new evidence and when the only new evidence was rejected, the findings of fact made in the original decision should bind the Land Court on remand. When, in its second decision, it reconsidered the evidence previously offered and made different, conflicting findings than in the original decision, applying the principle of law of the case, the findings in favor of the appellants' ownership of the subject parcel in the original decision are upheld. Heirs of Wakap v. Heirs of Obet, 15 FSM R. 450, 454 (Kos. S. Ct. Tr. 2007).

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When the Land Court's first decision, assessed the evidence and made findings of fact supporting the appellants' ownership of the parcel and its second decision, issued two years later, rejected new evidence and assessed the identical evidence to make findings of fact supporting the appellees' ownership of the parcel, the matter presents the kind of confusion that results when a court reopens what it has already decided. Evidence often conflicts and may reasonably support inconsistent findings. But the Land Court cannot redetermine factual issues decided earlier in the case without new evidence to support a different decision. When the Kosrae State Court was presented with the question of whether the original decision was based on substantial evidence at the time of the first appeal and remanded the case back to Land Court for the purpose of looking at new evidence but did not remand based on a lack of substantial evidence to support the original decision, the doctrine of law of the case applies to uphold the original findings of fact as based on substantial evidence and the original determination of title in favor of the appellants. Heirs of Wakap v. Heirs of Obet, 15 FSM R. 450, 454 (Kos. S. Ct. Tr. 2007).

When the original judgment with respect to trebling the pepper business lost profits damages was ultimately correct in its entirety as the same amount was awarded by the later judgment on remand, that leads to the conclusion that the trebled damages were fully ascertained as of the date of the original judgment. AHPW, Inc. v. Pohnpei, 15 FSM R. 520, 524 (Pon. 2008).

An order in aid of judgment is not appropriate when the prevailing party seeks an order evicting an alleged successor-in-interest and non-party because an order in aid of judgment is only appropriate when seeking satisfaction of a money judgment and the matter does not involve a money judgment. Salik v. U Corp., 15 FSM R. 534, 537 (Pon. 2008).

A judgment affecting an interest in land becomes enforceable, by registering the judgment with the appropriate land authority. Salik v. U Corp., 15 FSM R. 534, 537 (Pon. 2008).

An option for enforcing a judgment as provided by statute is the filing of a new civil action based on the

judgment. This option is most appropriate avenue and is likely to lead to an efficient and just resolution when the earlier judgment dismissed claims raised by the plaintiff in connection with a land use agreement he had entered into with the defendant and the defendant, some two decades later, seeks to use this judgment to prevent the others, who are not parties to the action and seemingly not involved in the underlying dispute until recently, from using land that may or may not be subject to the judgment and a dispute clearly exists as to whether the other should be deprived of using the land in dispute even if that land is subject to the judgment because new evidence is needed to resolve this dispute between the defendant and the other. Salik v. U Corp., 15 FSM R. 534, 538 (Pon. 2008).

When the prevailing party's proposed form of judgment includes matters that are tantamount to new findings of fact not found anywhere in the former justice's oral findings and conclusions, the court will decline to enter the submitted proposed form of judgment. Salik v. U Corp., 15 FSM R. 534, 538 (Pon. 2008).

The court is required to find the facts specially and state its conclusions of law thereon but is not required to be reduce findings and conclusions to writing. A justice is under no obligation to reduce his findings and conclusions to writing so long as he stated the findings and conclusions orally in open court. Salik v. U Corp., 15 FSM R. 534, 538 (Pon. 2008).

A successor judge may not make findings of fact and conclusions of law and enter judgment solely upon the record developed by his predecessor except upon agreement of the parties, and a second judge is prohibited from making factual determinations as to a first judge's intent when he interprets an order issued by the first judge. Salik v. U Corp., 15 FSM R. 534, 539 (Pon. 2008).

Although the plaintiffs' summary judgment motion was granted, no judgment will be entered at this time when one cause of action remains outstanding and unadjudicated. Ruben v. Petewon, 15 FSM R. 605, 609 (Chk. 2008).

Under Rule 58, upon a decision by the court the clerk must enter judgment as directed by the rule or the court, and every judgment must be set forth on a separate document. A judgment is effective only when so set forth and when entered as provided in Rule 79(a). FSM Dev. Bank v. Kaminanga, 16 FSM R. 45, 46 (Chk. 2008).

The court can, as an act of grace to prevent undue hardship, permit withholding from payment to the judgment-creditor any sums that might be due in taxes because of the order in aid of judgment since the court may make provision for tax payments to non-parties in its court judgments when a judgment causes a party to incur tax liability. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 137-38 (Pon. 2008).

In the absence of a stay obtained in accordance with Rule 62(d), the pendency of an appeal does not prevent the judgment creditor from acting to enforce the judgment. But a person who cannot furnish a supersedeas bond does not lose the right to appeal, although he does assume the risk of getting his money back again if the judgment is reversed. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 142 (Pon. 2008).

When one of two defendants against whom a judgment is to be entered is a d/b/a of the other, the other is essentially the only defendant against whom the judgment will be entered. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 223 n.1 (Chk. 2008).

Generally, parties must bear their own attorney's fees unless otherwise authorized by law or by contract between the parties. Thus, when the sales contract provides that the buyer will pay the seller's attorney's fees and costs if an attorney is hired to collect the debt, the court will determine and award the seller its reasonable attorney's fees, which, except in unusual circumstances involving bad faith and vexatious litigation, will not exceed 15% of the outstanding principal and interest. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 225 (Chk. 2008).

If, after the plaintiff has completed the presentation of plaintiff's evidence, the defendant, without

waiving the defendant's right to offer evidence in the event the motion is not granted, moves for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief, and if the court then renders judgment on the merits against the plaintiff, the court must make findings as provided in Rule 52(a). Ehsa v. Kinkatsukyo, 16 FSM R. 450, 453 (Pon. 2009).

Trial court judgments that were, in part, based on documents that were never authenticated by affidavit or by testimony and their accuracy was never vouched for by affidavit, or testimony, or other evidence will be vacated. George v. Albert, 17 FSM R. 25, 32 (App. 2010).

When the receipts relied upon by the trial court were never identified, marked, described, or admitted at trial or evidentiary hearing; when those receipts were provided to the court post-trial and were never authenticated, introduced, or admitted into evidence; and when neither side had the opportunity to examine witnesses, or to produce witnesses to testify, on the accuracy, meaning, or completeness of the receipts or about the receipts that the trial court disallowed because someone else had signed them, the documents supplied to the court after trial were not evidence that was properly before that court and thus were not evidence in the record and the trial court's use of these documents violated due process. There is therefore no substantial evidence in the record to support the judgment amount. The judgment amount finding is thus clearly erroneous, and the judgment will be vacated since that figure is not supported by substantial evidence in the record, and, in fact, is not supported by any evidence in the record. George v. Albert, 17 FSM R. 25, 32-33 (App. 2010).

The usual rule is that the parties are responsible for their own attorney's fees. Generally, a prevailing party will be awarded attorney's fees only if they are authorized by contract or by statute, or when the opposing party has acted vexatiously, or in bad faith, or presses frivolous claims, or employs oppressive litigation practices. George v. Albert, 17 FSM R. 25, 34 (App. 2010).

The prevailing plaintiff will not be awarded attorney's fees when the defendant did not act vexatiously or in bad faith, or press frivolous claims, or employ oppressive litigation practices and when no statute or contractual provision authorized attorney's fees in the case. George v. Albert, 17 FSM R. 25, 34 (App. 2010).

Whether a defendant is liable to the plaintiff for an attorney's fee award is properly part of the matters that must be heard at trial and decided before judgment. The amount of the attorney's fees to be awarded will, however, be determined in response to a post-judgment motion. George v. Albert, 17 FSM R. 25, 34 (App. 2010).

The court renders judgment and grants relief based on what has been proven, not on what was pled. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 49 (Chk. 2010).

A court cannot order as relief a de facto practice that is actually contrary to law, even if it has been the usual practice. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 176, 179 (Pon. 2010).

Trust Territory High Court decisions are not stare decisis in the Federated States of Micronesia, but their rationale may be adopted when persuasive. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 212 (Chk. 2010).

A default judgment is not a judgment obtained on the merits. In fact, it makes no claim as to the merits of the case at all. Instead, defaults and default judgments are procedural mechanisms which enable courts to avoid delay by an unresponsive party and to deter parties from using delay as a litigation strategy. Narruhn v. Chuuk, 17 FSM R. 289, 298 (App. 2010).

The Barrett decision does not stand for the proposition that a judgment is a property right which affords judgment-creditors due process rights under the national Constitution. The FSM Supreme Court has not to date, made such a determination. Narruhn v. Chuuk, 17 FSM R. 289, 299 (App. 2010).

Dicta are expressions in the court's opinion which go beyond the facts before the court and therefore are individual views of the author of the opinion and are not binding in subsequent cases. Narruhn v. Chuuk, 17 FSM R. 289, 300 n.4 (App. 2010).

A person with a judgment may initiate contempt proceedings when enforcement of a favorable judgment is required to prevent irreparable injury to the winning party's interests and is otherwise in the interests of justice. Damarlane v. Pohnpei Transp. Auth., 17 FSM R. 307, 309 (Pon. 2010).

A default judgment is not a judgment obtained on the merits. In fact, it makes no claim as to the merits of the case at all. Stephen v. Chuuk, 17 FSM R. 496, 499 (App. 2011).

A statement by a court that, to the extent that it is not dicta, is a finding of fact, a conclusion of law, and a reprimand, cannot be used as a basis for any future action when it is vacated on appeal. In re Sanction of George, 17 FSM R. 613, 617 (App. 2011).

Damages are contractual in nature when they arose either from the various lease agreements between the plaintiff and the state or from the settlement agreement between them even though the settlement agreement included a claim for a state court partial (and thus probably not final and enforceable) judgment for some of the unpaid periods of the leases because this court used the parties' memorandum of understanding for its determination of damages. Thus the damages judgment in this case was not based on a state court "judgment" but on the parties' contractual stipulation about the amount the state owed the plaintiff as of March 9, 2006. Stephen v. Chuuk, 18 FSM R. 22, 25 & n.1 (Chk. 2011).

Once the parties have finished presenting all their evidence, the trial court's duty is to weigh the evidence and make its findings of fact and conclusions of law and to render judgment on whether the plaintiff has shown a right to relief. Thus, a Rule 41(b) motion to dismiss during closing arguments is pointless. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 117 (App. 2011).

The property right created by a judgment against a government entity is not a right to payment at a particular time but merely the recognition of a continuing debt of that government entity. Kama v. Chuuk, 18 FSM R. 326, 332 (Chk. S. Ct. Tr. 2012).

Since the court, adhering to the authority vested in the judicial branch, should only interpret the laws regarding property in Chuuk and should not take over the legislative branch's role, when there has been no legislative intent shown of a specific desire to ascribe a property right to judgments, therefore, absent a specific Chuuk State legislation creating a specific property right, such a right cannot be ascribed to judgments. Kama v. Chuuk, 18 FSM R. 326, 332 (Chk. S. Ct. Tr. 2012).

Although no state shall deprive any person of life, liberty, or property without due process of law is the mandate of the constitution, a party cannot be said to be deprived of his property in a judgment because at the time he is unable to collect it. Kama v. Chuuk, 18 FSM R. 326, 333 (Chk. S. Ct. Tr. 2012).

Plaintiffs are not deprived of their judgments, so long as they continue to be existing liabilities against the entity. Therefore a failure to timely fulfill a judgment does not constitute a taking in violation of the due process clause as there continues to be an existing liability against the state. Kama v. Chuuk, 18 FSM R. 326, 333 (Chk. S. Ct. Tr. 2012).

When the issued judgment s valid, it represents an existing liability against the State of Chuuk. Kama v. Chuuk, 18 FSM R. 326, 333 (Chk. S. Ct. Tr. 2012).

When no property right can be ascribed to the judgment at issue; the due process standard is not applicable. Kama v. Chuuk, 18 FSM R. 326, 333 (Chk. S. Ct. Tr. 2012).

A judgment can be confirmed when it is undisputed that the judgment exists even though a mere recognition of an existing legal obligation would be redundant. Kama v. Chuuk, 18 FSM R. 326, 335 (Chk. S. Ct. Tr. 2012).

When no evidence was presented that supports the liability of the Director of Public Safety in his official capacity, judgment for an illegal arrest by the Pohnpei state police will be entered solely against the Pohnpei state government. Alexander v. Pohnpei, 18 FSM R. 392, 400 (Pon. 2012).

Whatever arrangements regarding who would be responsible for the payment of the plane tickets that might have been made between an employee's mother and sister and an employee who charged plane tickets for her mother and her sister to her employer does not affect the employee's liability to her employer for all of the tickets because the employee cannot shift liability to another party without her employer's agreement although the employee will be credited for any payments she and her sister made since the employer is not entitled to double recovery. Ihara v. Vitt, 18 FSM R. 516, 531 (Pon. 2013).

No ruling can be made or judgment entered against persons over whom the court does not have personal jurisdiction. William v. Kosrae State Hosp., 18 FSM R. 575, 579 n.1 (Kos. 2013).

When facts are designated established and then those facts are used to render summary judgment, the judgment then rendered is a decision on the merits. Mori v. Hasiguchi, 19 FSM R. 16, 24 (Chk. 2013).

While the better view may be that the dollar value in the judgment reflect the amount the Japanese yen is valued at on the day the court enters judgment because that is the only way the plaintiff would receive the Japanese yen amount equal to the yen she spent on necessary medical bills and other services, the court will not decide this issue when the plaintiff's damages total between $28,454.13 and $30,310.37 depending on the conversion date, and the FSM has waived its sovereign immunity only to the extent of the first $20,000 in damages so only a $20,000 judgment can be entered. Lee v. FSM, 19 FSM R. 80, 85-86 (Pon. 2013).

As a general rule, when one of several defendants who is alleged to be jointly liable defaults, judgment should not be entered against that defendant until the matter has been adjudicated with regard to all defendants, or all defendants have defaulted. This principle guards against inconsistent judgments when the relationship between the parties requires joint and several liability. Damarlane v. Damarlane, 19 FSM R. 97, 110 (App. 2013).

"Law of the case" refers to the principle that once issues are decided in a case, they will not be redetermined later in the same case. This is a policy relied on by courts out of concern for judicial economy and to avoid the confusion that would result if a court reversed its own decisions during the course of a case. In the absence of statute the phrase, "law of the case," as applied to the effect of previous orders on the later action of the court rendering them in the same case, merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit to their power. Berman v. FSM Nat'l Police, 19 FSM R. 118, 126 (App. 2013).

When a trial court has already ruled against the plaintiffs on all the issues and arguments they raised in their summary judgment motion, it could refuse to reopen what it had already been decided unless there was new evidence presented or a there had been a change in the controlling law. This is true even though any decision, however designated, which adjudicates fewer than all the claims does not terminate the action as to any of the claims or parties, and is subject to revision at any time before the entry of judgment adjudicating all the claims. Berman v. FSM Nat'l Police, 19 FSM R. 118, 126-27 (App. 2013).

Generally, the filing of a notice of a appeal divests the trial court of jurisdiction over the appealed case. Notwithstanding the general effect of the filing of a notice of appeal, the trial court retains jurisdiction to determine matters collateral or incidental to the judgment, and may act in aid of the appeal. For example, because the mere filing of a notice of appeal does not affect the validity of a judgment, the trial court retains

jurisdiction to enforce the judgment. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

When the issue of the trial court's jurisdiction is being appealed on various constitutional grounds but there has been no determination that the trial court lacks jurisdiction, the trial court retains jurisdiction to enforce the judgment and is not acting without authority or jurisdiction. The extraordinary writ of prohibition will not serve as a substitute for that appeal. Ehsa v. Johnny, 19 FSM R. 175, 177-78 (App. 2013).

When, although the judge signed the judgment on September 13, 2007, the clerk did not enter it until September 17, 2007, September 17, 2007 is the judgment date. George v. Sigrah, 19 FSM R. 210, 215 n.2 (App. 2013).

When the plaintiffs failed to raise the issue of nuisance, or damages arising from nuisance, at trial, that count of the complaint is waived. Harden v. Inek, 19 FSM R. 244, 252 (Pon. 2014).

It is not necessary for the court to make findings on undisputed or stipulated facts. Nor are findings required on issues that are not material. Harden v. Inek, 19 FSM R. 278, 281 (Pon. 2014).

Uncontested findings need only be included in the court's findings of fact if they form a basis for its conclusion of law. Harden v. Inek, 19 FSM R. 278, 281 (Pon. 2014).

Under the Kosrae statute, a judgment from a Trust Territory court with jurisdiction over Kosrae land matters should be accorded res judicata status. Even if it did not, the general legal doctrine of res judicata, which the statute does not abolish, would accord res judicata status to Trust Territory High Court judgments when the elements are met. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

A Trust Territory High Court judgment is entitled to res judicata effect unless (or until) that judgment is successfully collaterally attacked. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 303 (App. 2014).

An argument that citizens' rights must be upheld over a Trust Territory High Court judgment because the Trust Territory High Court was not a constitutional court must be rejected when there were no constitutional courts in 1960 when the judgment was issued and the Trust Territory courts were the only functioning court system then. The impropriety of the Trust Territory High Court deciding cases when both the Trust Territory High Court and constitutional FSM courts were simultaneously in existence and functioning thus offers no support. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 303-04 (App. 2014).

Rule 69 applies only to money judgments. Thus, it is generally not applicable to judgments that direct specific acts, which are covered by Rule 70. FSM Dev. Bank v. Carl, 20 FSM R. 70, 74 n.2 (Pon. 2015).

A judgment for a defendant based on lack of jurisdiction does not bar the plaintiff from bringing another action on the same cause in another court having jurisdiction. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 285 n.4 (Chk. 2016).

A trial judge is not required to limit his analysis to the causes of action pled in the complaint because, under the rules, except as to a party against whom a judgment is entered by default, every final judgment must grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 430 (App. 2016).

To grant a judgment against the state government for funds that the national government admits that it still holds and is willing to pay would permit double recovery. Eot Municipality v. Elimo, 20 FSM R. 482, 489 n.2 (Chk. 2016).

Stare decisis is the doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same points of law arise again in litigation. Ehsa v. FSM Dev. Bank, 20 FSM R.

498, 514-15 (App. 2016).

There is no Chuuk statute making judgments against the state (or a municipality) a vested property interest, and there are no statutes requiring that judgments be paid within a certain time, or providing the means to effect payment if the governmental entity does not have the funds available. Kama v. Chuuk, 20 FSM R. 522, 529 (Chk. S. Ct. App. 2016).

The state's failure to appropriate funds to pay a judgment debt does not constitute a taking in violation of the due process clause because the property right created by a judgment against a government entity is merely the recognition of a continuing debt of that government entity. Kama v. Chuuk, 20 FSM R. 522, 529 (Chk. S. Ct. App. 2016).

A money judgment against the state is not property such that its non-payment constitutes a taking, but a money judgment against the state is a recognition of the state government's continuing debt or obligation. Kama v. Chuuk, 20 FSM R. 522, 529-30 (Chk. S. Ct. App. 2016).

If a judgment creditor wants Chuuk to furnish money to pay his judgment now, he must seek an appropriation from the Chuuk Legislature that includes it or that can be used to pay it. Kama v. Chuuk, 20 FSM R. 522, 530-31 (Chk. S. Ct. App. 2016).

Since the principle that funds appropriated for other purposes cannot be redirected to pay judgments is inherent in the separation-of-powers scheme in the Chuuk Constitution, the Chuuk State Supreme Court cannot levy any writs on Chuuk state funds because those writs would be levied on money that the Chuuk Legislature has already appropriated for another purpose. Kama v. Chuuk, 20 FSM R. 522, 531 (Chk. S. Ct. App. 2016).

The statutory presumption that judgments over twenty years old have been satisfied is a rebuttable presumption. Kama v. Chuuk, 20 FSM R. 522, 534 (Chk. S. Ct. App. 2016).

A money judgment against the state is not a property interest but an existing, continuing liability against the state, and a failure to timely satisfy that judgment does not constitute a taking in violation of due process or equal protection. Kama v. Chuuk, 20 FSM R. 522, 534 (Chk. S. Ct. App. 2016).

To grant a judgment against the state government for funds that the national government admits that it still holds and is willing to pay would permit double recovery. Onanu Municipality v. Elimo, 20 FSM R. 535, 540 n.4 (Chk. 2016).

If, and when, a party is awarded its expenses under Rule 37, and if that party is not paid those expenses reasonably promptly, that expense award will, at final judgment, be deducted from any money judgment awarded to the opposing party or added to any money judgment awarded to the party. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 575 (Pon. 2016).

While Trust Territory High Court opinions are not binding precedent on the FSM Supreme Court, they serve as useful advisory precedent, especially considering they contain important information regarding the customs and traditions of the people of Micronesia. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 n.2 (Pon. 2016).

When the plaintiff obtains a judgment in his favor, his claim "merges" in that judgment; he may seek no further relief on that claim in a separate action. Waguk v. Waguk, 21 FSM R. 60, 69 (App. 2016).

When a judgment is rendered for a defendant, the plaintiff's claim is extinguished; the judgment acts as a "bar." Waguk v. Waguk, 21 FSM R. 60, 69 (App. 2016).

A proposition that it is mandatory that separate sections specifically entitled "Findings of Fact" and

"Conclusions of Law" appear within an order, is misguided. Kosrae Civil Procedure Rule 52 plainly states that if an opinion or memorandum of decision is filed, it is sufficient if the findings of fact and conclusion of law appear therein. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 119 (App. 2017).

A presiding judge is under no obligation to reduce his findings and conclusions to writing, so long as he has stated the findings and conclusions orally in open court. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 119 (App. 2017).

Once the parties have finished presenting all their evidence, the trial court's duty is to weigh the evidence and make its findings of fact and conclusions of law and to render judgment on whether the plaintiff has shown a right to relief. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 119 (App. 2017).

When an order in question disposes of all the claims against one of several parties, it clearly has the requisite finality to be appealable under Civil Procedure Rule 54(b) if the trial court has made a proper certification under that rule. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 224 (App. 2017).

A decree *nisi* is a court's decree that will become absolute unless the adversely affected party shows the court, within a specified time, why it should be set aside. Fuji Enterprises v. Jacob, 21 FSM R. 355, 360 n.4 (App. 2017).

A notice of appeal divests trial court of jurisdiction, except to take action in aid of the appeal. Examples of orders in aid of an appeal include, but are not limited to, applications for release from jail pending appeal, applications for stays pending appeal, taxation of costs on a judgment after notice of appeal filed, considering and denying a Rule 60(b) relief from judgment motions (but not granting one unless the case is remanded), and, since the mere filing of a notice of appeal does not affect a judgment's validity, the trial court also retains jurisdiction to enforce the judgment, unless a stay has been granted. Setik v. FSM Dev. Bank, 21 FSM R. 505, 518 (App. 2018).

While trial division decisions are precedents, they are not binding precedents since they are only trial court decisions. They are thus not "controlling law." Setik v. Mendiola, 21 FSM R. 537, 561 (App. 2018).

The court's denial of a person's motion to dismiss him "in his individual capacity" put that person on notice that any judgment in the plaintiff's favor would, unless the court ordered otherwise, be against him personally. Smith v. Nimea, 22 FSM R. 131, 134 (Pon. 2019).

When prior judge's findings all indicate that the individual defendant was the plaintiff's actual employer and liable to him on the judgment, the court will conclude that the prior judge considered his judgment to be against either just the individual defendant or against both him and the co-defendant corporation, jointly and severally, since the judgment was based on the holding that the individual defendant was the employer and thus liable under the employment contract. That being the "law of the case," the court will direct that a clarified judgment be entered naming the individual defendant as the judgment debtor and include the corporation as a joint and several judgment debtor since it was the plaintiff's nominal employer. Smith v. Nimea, 22 FSM R. 131, 135 (Pon. 2019).

Even though the plaintiff did not plead an ejectment cause of action, the court could, if he proves he has a greater current possessory right to the land, grant the plaintiff actual possession of land through an ejectment remedy because, except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 163 (Chk. 2019).

The court can, in a proper case, after notice and after severing a previously consolidated case, then dismiss that severed case, but when there was no order of severance, the cases remained consolidated

and any dismissals were the partial adjudication of one (consolidated) case. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 180 (Pon. 2019).

A judgment of any court is presumed to be paid and satisfied at the expiration of twenty years after it is rendered. FSM Dev. Bank v. Carl, 22 FSM R. 365, 374 (Pon. 2019).

Since except as to a party against whom a judgment is entered by default, every final judgment must grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings, when the sum of expenses that the party is entitled to is larger than the amount sought, the court will grant judgment for the larger figure. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 479 (Pon. 2020).

Since an attorney is the real party in interest for any sanction imposed on her personally, the court cannot include the sanction, for which the attorney's clients are not liable, in the judgment against the clients and will enter the sanction solely against the liable attorney. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 479 (Pon. 2020).

A litigant's judgments against Chuuk are not vested property rights, and Chuuk's failure to pay those judgments is not a due process or civil rights violation. Suzuki v. Chuuk, 22 FSM R. 491, 494 (Chk. 2020).

When the only basis the plaintiff asserts for subject-matter jurisdiction is that his state court judgments are property and the state's failure to pay is a taking of his property without due process, the plaintiff's suit does not involve subject matter over which the FSM Supreme Court has jurisdiction because the plaintiff's state court judgments are not property, and the state's failure to pay his judgments against it does not violate his due process or civil rights. Suzuki v. Chuuk, 22 FSM R. 491, 494 (Chk. 2020).

"Law of the case" refers to the principle that once issues are decided in a case, they will not be redetermined later in the same case. This is a policy relied on by courts out of concern for judicial economy and to avoid the confusion that would result if a court reversed its own decisions during the course of a case. In the absence of a statute, the phrase, "law of the case," as applied to the effect of previous orders on the later action of the court rendering them in the same case, merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit to their power. FSM v. Kuo Rong 113, 22 FSM R. 515, 521 (App. 2020).

Under the law of the case doctrine, unless corrected by an appellate tribunal, a legal decision made at one stage of a civil or criminal case constitutes the law of the case throughout the pendency of the litigation. Strictly speaking, the doctrine is not implicated for interlocutory orders because they remain open to trial court reconsideration, and do not constitute the law of the case. FSM v. Kuo Rong 113, 22 FSM R. 515, 521-22 (App. 2020).

A court judgment is not a vested property right or interest because a party has no absolute right to a trial court judgment; otherwise, an appeal would be futile. FSM v. Kuo Rong 113, 22 FSM R. 515, 525 (App. 2020).

– Action on a Judgment

An action on a judgment may be maintained up to twenty years after the date of entry of the judgment. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 672 (App. 1996).

An action on a judgment filed more than twenty years after the judgment was announced, but less than twenty years after the written judgment was served on the parties is timely filed and not barred by the statute of limitations. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 174 (Kos. S. Ct. Tr. 2002).

FSM statutory law recognizes the existence of an action on a judgment because it provides a time limit

– 20 years – within which one must be brought. FSM Dev. Bank v. Carl, 22 FSM R. 365, 371 (Pon. 2019).

An action may be maintained up to twenty years after the date of entry of the judgment. FSM Dev. Bank v. Carl, 22 FSM R. 365, 371 (Pon. 2019).

When a valid and final personal judgment is rendered in the plaintiff's favor, the plaintiff cannot thereafter maintain an action on the original claim or any part thereof, although the plaintiff may be able to maintain an action upon the judgment. FSM Dev. Bank v. Carl, 22 FSM R. 365, 371-72 (Pon. 2019).

An action on a judgment is a new and independent action, and not merely a means of enforcing a judgment, as is a writ of execution. FSM Dev. Bank v. Carl, 22 FSM R. 365, 372 (Pon. 2019).

To be available as a cause of action, the judgment must be a definite and personal judgment for the payment of money, final in its character and not merely interlocutory, remaining unsatisfied, and capable of immediate enforcement. FSM Dev. Bank v. Carl, 22 FSM R. 365, 372 (Pon. 2019).

An action based on a judgment is an action based on contract. The judgment becomes a debt which the judgment debtor is obligated to pay and the law implies a contract on his part to pay it. FSM Dev. Bank v. Carl, 22 FSM R. 365, 372 (Pon. 2019).

A suit on a judgment is separate and independent from the underlying cause of action that led to the judgment, and is deemed distinct from the original suit in which the prior judgment was rendered. It must be commenced and prosecuted in the same way as any other civil action brought to recover judgment on a debt. FSM Dev. Bank v. Carl, 22 FSM R. 365, 372 (Pon. 2019).

In an action on a judgment, the original cause of action is merged in the judgment, and, unless void, the judgment is conclusive. FSM Dev. Bank v. Carl, 22 FSM R. 365, 372 (Pon. 2019).

An action on a judgment is not an action on the original claim, which has merged into the original judgment. It is a new and independent action. FSM Dev. Bank v. Carl, 22 FSM R. 365, 372 (Pon. 2019).

An action on a judgment must be prosecuted by the owner of it, and it must be brought against the defendant of record in the judgment or the defendant's successor in interest, and not an entity or person not named in the judgment. FSM Dev. Bank v. Carl, 22 FSM R. 365, 372 (Pon. 2019).

An action on a judgment is especially apt for resolution by means of a motion for summary judgment. Usually, the plaintiff establishes his prima facie case by producing certified copies of the judgment on which the action is based and the identity of the defendant as obligee. FSM Dev. Bank v. Carl, 22 FSM R. 365, 373 (Pon. 2019).

When, in an action on a judgment, the plaintiff has produced a copy of the judgment on which the action is based, but it is not certified, that deficiency may be disregarded where the original judgment on which the action is based was entered in the same court and venue in which the action on the judgment is filed, and thus the copy's accuracy can easily be verified. FSM Dev. Bank v. Carl, 22 FSM R. 365, 373 (Pon. 2019).

When one co-defendant's "affirmative defense" may more accurately be a cross-claim against its co-defendant, to which the co-defendant has not responded (or even been specifically asked to respond), it may be disregarded for the purpose of the plaintiff's summary judgment motion against the two co-defendants. FSM Dev. Bank v. Carl, 22 FSM R. 365, 373 (Pon. 2019).

The defenses against an action on a judgment are limited. In an action on a judgment, the original cause of action is merged in the judgment, and, unless void, the judgment is conclusive, and no defense is available which was, or might have been, urged in defense of the original action. FSM Dev. Bank v. Carl,

22 FSM R. 365, 373 (Pon. 2019).

In an action on the judgment, the defendant cannot avail himself of defenses he might have interposed, or did interpose, in the first action. It is immaterial whether the defendant interposed the defense or failed to do so or even defaulted in the original action. Nor does the fact that the judgment was erroneous preclude the plaintiff from maintaining an action upon it. FSM Dev. Bank v. Carl, 22 FSM R. 365, 374 (Pon. 2019).

In an action on the judgment, the defendant may interpose matters which have arisen since the rendition of the judgment and constitute defenses to its enforcement such as payment, release, accord and satisfaction, or the statute of limitations. FSM Dev. Bank v. Carl, 22 FSM R. 365, 374 (Pon. 2019).

Generally, the equitable defense of laches is only available to a defendant when the plaintiff has sought some form of equitable relief and is not available as a defense against actions at law. Because an action on a judgment is an action at law, the equitable defense of laches is not available as a matter of law. The same is true for an estoppel defense. FSM Dev. Bank v. Carl, 22 FSM R. 365, 374 (Pon. 2019).

The defenses of fraud, misrepresentation, and illegality are unavailable as defenses to an action on a judgment unless they are part of the recognized defenses – payment, release, accord and satisfaction, or the statute of limitations (the court also recognizes that a discharge in bankruptcy of a judgment debt would likely constitute a good defense as a release) – but fraud would be an available defense if there was fraud on the court in obtaining the judgment. FSM Dev. Bank v. Carl, 22 FSM R. 365, 374 (Pon. 2019).

An action on a judgment's main purpose is to obtain a new judgment, which will facilitate the ultimate goal of securing satisfaction of the original cause of action. FSM Dev. Bank v. Carl, 22 FSM R. 365, 374 (Pon. 2019).

A party has a right to maintain an action on a judgment when some advantage will be secured thereby. Often the advantage to be secured is to domesticate a judgment from another jurisdiction so that the other jurisdiction's judgment can be enforced domestically against the defendant or the defendant's property. FSM Dev. Bank v. Carl, 22 FSM R. 365, 374-75 (Pon. 2019).

A judgment for the plaintiff awarding him a sum of money creates a debt in that amount in his favor. The plaintiff may maintain proceedings by way of execution for enforcement of the judgment, the plaintiff may also be able to maintain an action upon the judgment. Ordinarily no useful purpose is served by bringing an action in the same state upon the judgment instead of executing upon it, but if the statute of limitations period has almost run, the plaintiff can bring an action upon the judgment and obtain a new judgment upon which the limitations period will run again. FSM Dev. Bank v. Carl, 22 FSM R. 365, 375 (Pon. 2019).

While ordinarily no advantage is gained by bringing an action in the same court upon a judgment, if the statute of limitation period has almost run upon the judgment, the judgment creditor can start the limitation period anew by bringing an action upon the judgment and obtaining a new judgment. FSM Dev. Bank v. Carl, 22 FSM R. 365, 375 (Pon. 2019).

The twenty-year statute of limitations would be an effective affirmative defense against an action on a February 11, 1999 judgment filed after February 11, 2019, but when the action on a judgment was filed January 8, 2019, it was begun within the statutory period, and is thus timely and may proceed to judgment. This is because once an action on a judgment has begun within the statutory period, the creditor's right to recover remains alive, even though the limitation period may subsequently expire. FSM Dev. Bank v. Carl, 22 FSM R. 365, 375 (Pon. 2019).

The institution of an action on a judgment within the statutory period tolls the statute although it is not followed by rendition of judgment, or even service of an answer, within such time. FSM Dev. Bank v. Carl,

22 FSM R. 365, 375 (Pon. 2019).

The institution of an action on a judgment within the twenty-year statutory period set by 6 F.S.M.C. 802(1)(a) tolls that limitation statute even though the court has not yet rendered a judgment and even despite that a defendant did not file and serve her answer within the statutory time period. Because the timely filing of the action tolled the statutory time period, the statute, 6 F.S.M.C. 801, that creates a presumption of satisfaction after the twenty years has passed, does not come into play. FSM Dev. Bank v. Carl, 22 FSM R. 365, 375 (Pon. 2019).

The defenses of payment, release, and accord and satisfaction are defenses that are available against an action on a judgment. FSM Dev. Bank v. Carl, 22 FSM R. 365, 375-76 (Pon. 2019).

Although release and accord and satisfaction are both defenses that are available against an action on a judgment, when they were mentioned as affirmative defenses in a defendant's answer, but were neither raised nor mentioned in her opposition to the plaintiff's summary judgment motion, these defenses are deemed waived or abandoned. FSM Dev. Bank v. Carl, 22 FSM R. 365, 376 (Pon. 2019).

In an action on a judgment there is a rebuttable presumption that a judgment remains in full force and unsatisfied. The plaintiff does not bear the burden of proving that the judgment has not been satisfied. FSM Dev. Bank v. Carl, 22 FSM R. 365, 376 (Pon. 2019).

– Action on a Judgment – Foreign

Comity is a recognition which one nation extends within its own territory to the legislative, executive, or judicial acts of another. It is not a rule of law, but one of practice, convenience, and expediency. Under principles of comity, courts will enforce foreign judgments, but not when the foreign court lacked jurisdiction, or where enforcement of the foreign judgment would violate a public policy, or where granting comity would result in prejudice to the forum's citizens. J.C. Tenorio Enterprises, Inc. v. Sado, 6 FSM R. 430, 431-32 (Pon. 1994).

An FSM court may reduce the amount of attorney's fees provided for under a foreign judgment, where that judgment is unenforceable as against public policy to the extent that the attorney fees in excess of 15% of debt are repugnant to fundamental notions of what is decent and just in the FSM. J.C. Tenorio Enterprises, Inc. v. Sado, 6 FSM R. 430, 432 (Pon. 1994).

Averment of a foreign judgment states a claim upon which relief could be granted. Allegations that the foreign judgment was obtained without notice are outside the complaint and cannot be considered in evaluating a Rule 12(b)(6) motion to dismiss. Latte Motors, Inc. v. Hainrick, 7 FSM R. 190, 192 (Pon. 1995).

A certified copy of a judgment from a foreign court is admissible evidence as a properly authenticated public record of that jurisdiction. Joeten Motor Co. v. Jae Joong Hwang, 7 FSM R. 326, 327 (Chk. S. Ct. Tr. 1995).

The FSM Supreme Court will not enforce the part of a Northern Marianas' judgment imposing a CNMI statutory treble damages penalty for writing bad checks when the FSM has no similar public policy. Recovery will be limited to the outstanding principal amount of the bad checks and the plaintiff's undisputed additional costs – bank charges and court costs. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM R. 388, 391 (Kos. 1998).

When the FSM Supreme Court's concern in inquiring into a Guam bankruptcy case was not to determine whether the principles of comity should be applied, but rather whether any order the court might issue would subject a party to liability for contempt in the other court because the party was required by two courts to obey contradictory orders and when that concern has been assuaged, the court will take no

position on whether, and under what circumstances, it might recognize U.S. bankruptcy law or proceedings and whether or when comity would apply in such a case. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 366 (Chk. 2003).

Under principles of comity, the FSM Supreme Court will enforce foreign judgments, but not when the foreign court lacked jurisdiction, or where enforcement of the foreign judgment would violate a public policy, or where granting comity would result in prejudice to the forum's citizens. Northern Marianas Housing Corp. v. Finik, 12 FSM R. 441, 444 (Chk. 2004).

The FSM Supreme Court will not enforce a foreign judgment entered by a court that lacked personal jurisdiction over the defendant when it entered its judgment against her. Northern Marianas Housing Corp. v. Finik, 12 FSM R. 441, 446-47 (Chk. 2004).

Since the only prejudgment interest recognized so far in breach of contract cases is where the contract itself specifically provides for such a remedy, the part of a foreign judgment containing such prejudgment interest may thus be unenforceable in the FSM as against public policy. Northern Marianas Housing Corp. v. Finik, 12 FSM R. 441, 447 (Chk. 2004).

Under principles of comity, courts will enforce foreign judgments, but not when the foreign court lacked jurisdiction, or where enforcement of the foreign judgment would violate a public policy, or where granting comity would result in prejudice to the forum's citizens. Dison v. Bank of Hawaii, 19 FSM R. 157, 162 (App. 2013).

A party has a right to maintain an action on a judgment when some advantage will be secured thereby. Often the advantage to be secured is to domesticate a judgment from another jurisdiction so that the other jurisdiction's judgment can be enforced domestically against the defendant or the defendant's property. FSM Dev. Bank v. Carl, 22 FSM R. 365, 374-75 (Pon. 2019).

– Alter or Amend Judgment

Because until a final judgment has been entered a trial court has plenary power over its interlocutory orders, it may, without regard to the restrictive time limits in Rule 59, alter, amend, or modify such orders any time prior to the entry of judgment. Youngstrom v. Phillip, 8 FSM R. 198, 201 (Kos. S. Ct. Tr. 1997).

A court may alter or amend a judgment under Rule 59 on any of four grounds: 1) to correct a manifest error of law or fact upon which the judgment is based; 2) the court is presented with newly discovered or previously unavailable evidence; 3) to prevent a manifest injustice; or 4) there is an intervening change in the controlling law. Chuuk v. Secretary of Finance, 9 FSM R. 99, 100 (Pon. 1999).

A timely motion to alter or amend judgment is one served not later than 10 days after entry of the judgment. O'Sonis v. Bank of Guam, 9 FSM R. 356, 359 (App. 2000).

A post-judgment motion for supplemental attorney's fees is not a motion to alter or amend judgment under FSM Civil Procedure Rule 59(e), and does not extend the time for the filing of the notice of appeal under Appellate Procedure Rule 4(a)(4). O'Sonis v. Bank of Guam, 9 FSM R. 356, 359 (App. 2000).

A motion that a judgment be amended to include a statement of the statutory interest and that its title be corrected to read "judgment" instead of "proposed order," is not one to amend, but rather more properly one to correct a judgment. As such Rule 60 applies, not Rule 59. Walter v. Chuuk, 10 FSM R. 312, 315 (Chk. 2001).

The ten day time limit for a motion to alter or amend a judgment does not apply to an order which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties because that order does not terminate the action as to any of the claims or parties, and is subject to revision at any time

before the entry of judgment. The appropriate means by which to raise concerns about such an order is not by a Rule 59 motion to alter or amend judgment, but by a Rule 54 motion for reconsideration. A motion for reconsideration can be brought any time before entry of judgment, and is not subject to the 10 day limit. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 470 (Pon. 2001).

A Rule 59 motion must be brought within ten days of entry of judgment and can either be for a new trial or to alter or amend the judgment. Farata v. Punzalan, 11 FSM R. 175, 177 (Chk. 2002).

A motion to alter or amend the judgment will be denied when it does not state what the judgment should be altered to or amended to read, but only states the movant's dissatisfaction with its current form and asks that the judgment be opened. Farata v. Punzalan, 11 FSM R. 175, 178 (Chk. 2002).

Although the trial court, absent a remand, lacks jurisdiction to vacate or alter its judgment pending appeal, the trial court retains the power throughout the pendency of the appeal to simply preserve the status quo by granting a stay of the judgment. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

The defendants have not presented adequate grounds to support their motion to alter judgment or for a new trial when there has been no manifest error of law or fact made by the court in its memorandum and judgment and when there has been no newly discovered evidence presented by the defendants in support of their motion. Livaie v. Weilbacher, 13 FSM R. 249, 251 (Kos. S. Ct. Tr. 2005).

When the court's findings have not been disputed and have not been amended, a motion to reconsider and modify an order will be denied. Akinaga v. Heirs of Mike, 14 FSM R. 91, 93 (Kos. S. Ct. Tr. 2006).

A party may seek the addition of supplemental findings to a judgment within ten days of the judgment being entered. Such action should only be taken by the judge who presided over the proceedings and who entered the judgment and while the facts underlying the proceedings are fresh within the presiding judge's mind. A motion for amended judgment or supplemental findings under Rule 52(b), nearly two decades after entry of judgment and with a new presiding judge, is untimely and inappropriate. Salik v. U Corp., 15 FSM R. 534, 539 (Pon. 2008).

A letter that does not certify that it has been served upon the plaintiff as required and that does not certify that the defendant sought the plaintiff's acquiescence, as required, is procedurally deficient because the court will treat the letter as a motion for amended judgment and/or supplemental findings. Salik v. U Corp., 15 FSM R. 534, 540 (Pon. 2008).

A motion to reconsider that was filed 22 days after the judgment had been entered, cannot be a Rule 54(b) motion to reconsider since those motions must be made before entry of judgment, or a Rule 59(e) motion to alter or amend judgment since a Rule 59(e) motion must "be served not later than 10 days after entry of the judgment." It can only be a Rule 60(b) motion for relief from judgment. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 588 (App. 2008).

A timely-filed motion to reconsider an order of dismissal is considered a Rule 59(e) motion to alter or amend a judgment. Alanso v. Pridgen, 15 FSM R. 597, 600 (App. 2008).

The timely filing of a motion to alter or amend judgment destroys a previously filed notice of appeal and even a subsequent notice of appeal if that notice is filed while the motion to alter or amend is still pending. Alanso v. Pridgen, 15 FSM R. 597, 600 (App. 2008).

An order of dismissal is not a final decision if a timely motion under Rule 59 has been made and not disposed of, since the case lacks finality. For that reason, the subsequent filing of a notice of appeal is a nullity and does not deprive the trial court of power to rule on the motion. Alanso v. Pridgen, 15 FSM R. 597, 600 (App. 2008).

A motion to reconsider made more than ten days after entry of judgment can only be considered a Rule 60(b) motion for relief from judgment. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 120 n.1 (App. 2008).

A motion to reconsider or vacate a judgment filed within ten days of the judgment is a Rule 59 motion to alter or amend judgment and a motion filed after ten days is a Rule 60(b) motion for relief from judgment. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 138 n.3 (Pon. 2008).

A Rule 52(b) motion is one that asks the court to amend the findings of fact that the court has already made as required by Rule 52(a). The Rule 52(b) term "motion for judgment," when referring to a motion made after the start of trial, refers to a Rule 41(b) motion, not to a motion made after closing arguments. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 17 FSM R. 247, 250 (Yap 2010).

A Rule 52(b) motion is timely – that is, is made at a time permitted by the rule – when it is made after the court has indicated the action it would take but has not yet entered judgment, but when the court has neither issued its written findings of fact nor indicated what those findings will be, such a motion is premature since the court's findings, when issued, may be favorable and no motion would be needed. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 17 FSM R. 247, 250 (Yap 2010).

A motion for judgment as a matter of law that is made too late to be cognizable under Rule 41(b) and that is made too early to be cognizable under Rule 52(b), will, on the opposing party's motion, be stricken, but may be renewed, if need be, after the court has entered its findings. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 17 FSM R. 247, 251 (Yap 2010).

The grounds on which a court may grant a new trial or alter or amend the judgment is either when the court has made a manifest error of law or fact, or for newly discovered evidence. Senate v. Elimo, 18 FSM R. 199, 201 (Chk. S. Ct. Tr. 2012).

A litigant may, under Rule 59(e), move for reconsideration of an order granting summary judgment or move to alter or amend the judgment derived from that order and the court has a responsibility to hear that motion. Senate v. Elimo, 18 FSM R. 199, 201 (Chk. S. Ct. Tr. 2012).

Summary judgment will ordinarily not be altered or vacated on the basis of supplemental exhibits or affidavits filed after summary judgment is granted, particularly when the party seeking to alter or amend the judgment has made absolutely no showing that the additional evidence offered could not have been timely submitted in the exercise of reasonable diligence. Motions for reconsideration cannot in any case be employed as a vehicle to introduce new evidence that could have been adduced during pendency of the summary judgment motion. Senate v. Elimo, 18 FSM R. 199, 201 (Chk. S. Ct. Tr. 2012).

A motion to alter or amend judgment will be denied when no valid reason was given why the movant could not have produced, as part of his summary judgment motion or his opposition to his opponent's summary judgment motion, the evidence now relied on to seek reconsideration because it was all available to him before the cross motions for summary judgment were filed and before those motions were heard. Senate v. Elimo, 18 FSM R. 199, 202 (Chk. S. Ct. Tr. 2012).

A litigant may not sit idly by during the course of litigation and then seek to present additional defenses in the event of an adverse outcome. Senate v. Elimo, 18 FSM R. 199, 202 (Chk. S. Ct. Tr. 2012).

Summary judgment will not be altered on the basis of a movant's supplemental exhibits and affidavits since that additional evidence could have been timely submitted if he had exercised due diligence. Senate v. Elimo, 18 FSM R. 199, 202 (Chk. S. Ct. Tr. 2012).

The court must decline to amend its findings when the proposed finding would require speculation about future events. Harden v. Inek, 19 FSM R. 278, 282 (Pon. 2014).

The trial court may, in an effort to assist the appellate division in its review of the matter, amend its findings even though the amendments requested by the defendants did not form the basis for the court's conclusions of law. Harden v. Inek, 19 FSM R. 278, 282 (Pon. 2014).

One of the grounds for amending a judgment under FSM Civil Rule 59(e) is to prevent a manifest injustice. This ground is a catch-all basis for relief, and is usually coupled with another ground. Harden v. Inek, 19 FSM R. 278, 282 (Pon. 2014).

To alter or amend a judgment to prevent a manifest injustice, it is not enough for the defendants to show that the court's reasoned decision would result in hardship; rather, a successful Rule 59(e) motion will present a flaw in the fact finding or decision making process, and demonstrate that failure to correct the flaw would lead to manifest injustice. Harden v. Inek, 19 FSM R. 278, 282 (Pon. 2014).

A motion to alter, or amend, under FSM Civil Rule 59(e), or reconsideration of a mistake through inadvertence under FSM Civil Rule 60(b) are post-judgment motions that are appropriately filed in the trial division, not the appellate division, and, under the final judgment rule, these post-judgment motions prohibit filing an appeal until they have been either granted or denied. Mori v. Hasiguchi, 19 FSM R. 416, 418 (App. 2014).

A timely filed motion to reconsider a final order is considered an FSM Civil Rule 59(e) motion to alter or amend a judgment. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 422 (Pon. 2014).

The court may alter or amend a final order under Rule 59(e) on any of the following four grounds: 1) to correct a manifest error of law or fact upon which the judgment is based; 2) the court is presented with newly discovered or previously unavailable evidence; 3) to prevent a manifest injustice; or 4) there is an intervening change in controlling law. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 422 (Pon. 2014).

A Rule 59(e) motion may not be used to relitigate old matters, and arguments that could have been raised before may not be raised for the first time in a motion for reconsideration. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 423 (Pon. 2014).

Since the plaintiffs' argument that the delay in the imposition of sanctions is evidence of the reasonableness of their complaint is an extension of their argument of a meritorious complaint, it will be considered on a motion for reconsideration, but when the plaintiffs' argument that the delay in imposing sanctions prejudiced them is clearly a new argument that could and should have been raised in their original opposition, this latter timeliness argument is a new issue that the court must decline to consider. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 424 (Pon. 2014).

The defendants do not present adequate grounds to support a motion to alter judgment or a motion for a new trial when there has been no manifest error of law or fact made by the court in its memorandum and judgment and when there has been no newly discovered evidence presented by the defendants in support of their motion. Moylan's Ins. Underwriters (FSM), Inc. v. Gallen, 20 FSM R. 3, 6 (Pon. 2015).

The court may alter or amend a judgment under Rule 59(e) on any of four grounds: 1) to correct a manifest error of law or fact upon which the judgment is based; 2) the court is presented with newly discovered or previously unavailable evidence; 3) to prevent a manifest injustice; or 4) there is an intervening change in controlling law. FSM Dev. Bank v. Setik, 20 FSM R. 315, 317 (Pon. 2016).

A Rule 59(e) motion may not be used to relitigate old matters. FSM Dev. Bank v. Setik, 20 FSM R. 315, 317-18 (Pon. 2016).

A trial court has jurisdiction to consider and deny a Rule 59(e) motion after an appeal has been filed. FSM Dev. Bank v. Setik, 20 FSM R. 315, 318 (Pon. 2016).

When the movants have failed to satisfy any of the four grounds for altering or amending a judgment, a reconsideration of the court's order transferring title is unwarranted and the motion for reconsideration of that order will be denied. FSM Dev. Bank v. Setik, 20 FSM R. 315, 319 (Pon. 2016).

Regardless of whether the issued writ of habeas corpus is a final order, the court may entertain FSM Civil Rule 59 and 60 motions while the matter is subject to an appeal and, if it determines such motion(s) shall prevail, it must so indicate in the record for the appellate court's consideration. Timsina v. FSM, 22 FSM R. 383, 386 (Pon. 2019).

– Collateral Attack

In a case in which the High Court of the Trust Territory of the Pacific Islands did not transfer the case to the FSM Supreme Court or to the Truk State Court because it failed to act in conformity with the purpose of Secretarial Order No. 3039 which was to provide maximum permissible self government to the newly self-governing entities, and because the High Court's determination that the case was in active trial and therefore need not be transferred was incorrect, the High Court is not deprived of jurisdiction where the presently objecting party failed to make any objection before the High Court and where the judgment by the High Court is being collaterally attacked. United Church of Christ v. Hamo, 3 FSM R. 445, 451-52 (Truk 1988).

In some cases failure to join an indispensable party may subject a judgment to collateral attack, but failure to join a necessary party will not. A necessary party is one who has an identifiable interest in the action and should normally be made a party to the lawsuit, but whose interests are separable from the rest of the parties or whose presence cannot be obtained; whereas an indispensable party is one to whom any judgment, if effective, would necessarily affect his interest, or would, if his interest is eliminated, constitute unreasonable, inequitable, or impractical relief. Nahnken of Nett v. United States (III), 6 FSM R. 508, 517 (Pon. 1994).

A judgment entered against a party without notice or an opportunity to be heard is void and is subject to direct or collateral attack at any time. Hartman v. Bank of Guam, 10 FSM R. 89, 97 (App. 2001).

A judgment entered against a party without notice or an opportunity to be heard is void and subject to direct or collateral attack. Pastor v. Ngusun, 11 FSM R. 281, 285 (Chk. S. Ct. Tr. 2002).

If the court enters a default judgment different in kind from or exceeds in amount the relief that was prayed for in the demand for judgment, such a default judgment would be void and subject to collateral attack. Serious due process questions would be raised. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 277 (Chk. 2005).

It is doubtful whether a court judgment in an election contest case can be collaterally attacked since election contests are purely statutory, and the courts have no inherent power to determine election contests. The determination of election contests is a judicial function only when and to the extent that the determination is authorized by statute. Thus, the jurisdiction of courts exercising general equity powers does not include election contests. An election contest must follow the path set out for it in the statute and no other. Puchonong v. Chuuk, 14 FSM R. 67, 69 (Chk. 2006).

A judgment (or final order) entered against a person without notice or an opportunity to be heard is void and is subject to direct or collateral attack at any time, and a court that lacks personal jurisdiction over a person cannot enter a valid judgment against that person. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

The failure to join an indispensable party may subject a judgment to collateral attack. A judgment (or final order) entered against a person without notice or an opportunity to be heard is void and is subject to

direct or collateral attack at any time, and a court that lacks personal jurisdiction over a person cannot enter a valid judgment against that person. Ruben v. Hartman, 15 FSM R. 100, 110 (Chk. S. Ct. App. 2007).

When the plaintiff was an interested party and never received notice or an opportunity to be heard, he could have pursued his claim by filing an appeal of the issuance of title because without notice, his time to file an appeal is extended beyond the statutory sixty-day time limit. The Kosrae State Court favors this approach when Land Commission or Land Court actions are at issue because an appeal ensures that the records needed to make a fair determination are before the court and because this approach promotes finality in decisions on land ownership by encouraging full participation of all interested parties at Land Court proceedings instead of allowing later, collateral attacks on their decisions. Siba v. Noah, 15 FSM R. 189, 195 (Kos. S. Ct. Tr. 2007).

As the purpose of probate is not to determine issues of ownership, probate petitioners should resolve issues regarding land ownership, if any, before they proceed with probate. Otherwise, the probate proceeding may be subject to collateral attack from those who may claim an interest in the property and who were not given notice or made a party to this proceeding. In re Land Noota, Neppi, 15 FSM R. 518, 519 (Chk. S. Ct. Tr. 2008).

A judgment or final order entered against a person without notice or an opportunity to be heard is void and is subject to direct or collateral attack at any time. Farek v. Ruben, 16 FSM R. 154, 157 (Chk. S. Ct. App. 2008).

A 1930s ¥400 purchase price for over 600,000 square meters of land on Kosrae does not make the whole transaction very questionable and thus the Trust Territory High Court judgment confirming it suspect when ¥400 would have equaled $200 in the 1930s and $200 was a sizeable sum then. The "sale" amount cannot be used to undermine the Trust Territory High Court judgment. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

As recognized by general law and as provided for in Compact of Free Association § 176, Trust Territory judgments that are final, although accorded res judicata status, can be subject to collateral attack or to relief from judgment. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 304 (App. 2014).

When a judgment has been entered against a party without notice or an opportunity to be heard, it is void and is subject to direct or collateral attack at any time. A judgment cannot be collaterally attacked merely because it is wrong. It can only be attacked on the grounds of lack of jurisdiction or due process violations that make the judgment void. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 304 (App. 2014).

Parties can, as a defense to the application of res judicata, collaterally attack a Trust Territory High Court judgment and should be permitted the opportunity to try to do so. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 305 (App. 2014).

Trust Territory High Court judgments should be afforded res judicata status but, like any judgment, those judgments may be subject to collateral attack on due process grounds. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 305 (App. 2014).

Kosrae Civil Procedure Rule 60(b) does not limit the power of the court to entertain an independent action. A party collaterally attacking a judgment has the burden to establish its prerequisites. The five essential elements that an independent action in equity to set aside a judgment must satisfy are: 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the defendant; and 5) the absence of any adequate remedy at law. If any one of the elements is missing the court cannot take equitable jurisdiction of the case. Andrew v. Heirs of Seymour,

19 FSM R. 331, 341 (App. 2014).

A judgment entered against a party without notice or an opportunity to be heard is void and subject to direct or collateral attack. Andrew v. Heirs of Seymour, 19 FSM R. 331, 341 (App. 2014).

An argument that the appellants are bound by a Trust Territory High Court judgment but cannot attack that judgment because they were not parties to that case is nonsense and must be rejected. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 367 (App. 2014).

It is well established, that when a judgment has been entered against a party without notice or an opportunity to be heard, it is void and subject to direct or collateral attack at any time. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 121 (App. 2017).

A collateral attack is not an opportunity to appeal or relitigate the matter. Merely leveling a claim of fraud, without connecting up such an allegation in terms of propounding sufficient evidence, does not satisfy the requisite burden of proof for a collateral attack of a Trust Territory judgment and fails to satisfy the five-prong test required to pierce a judgment via a collateral attack. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 122 (App. 2017).

– Finality of

The basic tenets of due process of law are notice and an opportunity to be heard. As applied to judgments, this means that a judgment may not be rendered in violation of these constitutional limitations and guaranties. An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated to apprise interested parties of the pendency of the action, which is itself a corollary to another requisite of due process, the right to be heard. Hartman v. Bank of Guam, 10 FSM R. 89, 96-97 (App. 2001).

One of the basic tenets of our system of jurisprudence is that of finality of judgments. The principle of finality is essential to ensure consistency and certainty in the law. This salutary principle is founded upon the generally recognized public policy that there must be some end to litigation. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

There is a sharp conflict about whether a judgment from which an appeal is pending has the finality requisite for the application of the res judicata doctrine. Waguk v. Waguk, 21 FSM R. 60, 71 (App. 2016).

– Final Judgment

A final judgment that precisely defines a disputed boundary cannot be entered until the Land Commission completes the survey partitioning the land. Once the boundary is determined, the defendant may then meaningfully assess his situation for purposes of considering any appeal. Therefore a motion to stay the survey's completion pending appeal will be denied. Youngstrom v. Phillip, 9 FSM R. 103, 106 (Kos. S. Ct. Tr. 1999).

When the court approves a stipulation that does not adjudicate all the claims or the rights and liabilities of all the parties, the stipulation does not constitute a final judgment. Bank of the FSM v. Hebel, 10 FSM R. 279, 287 (Pon. 2001).

Final judgments, as a rule, generally bind only the parties to the case and all those in privity with them. If a judgment is final, then the doctrine of res judicata applies, and that doctrine bars any further litigation of the same issues between the same parties or anyone claiming under those parties. Phillip v. Moses, 10 FSM R. 540, 546 (Chk. S. Ct. App. 2002).

An order that does not adjudicate all claims and the rights and liabilities of all parties is not a judgment

or an order from which a judgment could be derived. Nor is such an order a partial final judgment when it does not have an express determination that there is no just reason for delay and an express direction for entry of judgment, both of which are required for the entry of a partial final judgment. Stephen v. Chuuk, 11 FSM R. 36, 40 (Chk. S. Ct. Tr. 2002).

An order that did not adjudicate any of the claims against the defendants or adjudicate any of the defendants' defenses and did not dispose of or dismiss either the case or the complaint, but only disposed of and dismissed the plaintiffs' and both sets of intervenors' claims against each other was therefore not a judgment because all it did was to combine both sets of intervenors and the plaintiffs together as joint plaintiffs against the two defendants. Stephen v. Chuuk, 11 FSM R. 36, 40-41 (Chk. S. Ct. Tr. 2002).

The Chuuk State Supreme Court may correct any errors in judgments or orders resulting from oversight or omission prior to final judgment, which under Rule 54 does not occur until the rights and duties of all parties have been finally determined. Konman v. Adobad, 11 FSM R. 34, 35 (Chk. S. Ct. Tr. 2002).

Under Rule 58, every judgment must be set forth in a separate document, and becomes effective only when docketed by the clerk under Rule 79(a). While an order may be final in some circumstances without Rule 58 compliance, the better course, and the one that the court endeavors to follow, is for the trial court to avoid any ambiguity on the finality point by following Rule 58. Richmond Wholesale Meat Co. v. George, 11 FSM R. 86, 87 (Kos. 2002).

When summary judgment is granted for a portion of the plaintiff's claim and when the court finds pursuant to Rule 54(b) that as to this portion of the claim there is no just reason for delay, the court will expressly direct entry of final judgment for that amount. Richmond Wholesale Meat Co. v. George, 11 FSM R. 86, 88 (Kos. 2002).

A cause of action that alleges that the plaintiffs' customary and traditional rights to use an island might be better described as intentional interference with a customary and traditional property right than trespass. That the plaintiffs referred to it as a trespass should not, in itself, be an obstacle to them prevailing on this point if the evidence warrants, because except for judgments rendered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings. Rosokow v. Bob, 11 FSM R. 210, 217 (Chk. S. Ct. App. 2002).

Judgment can be entered on less than all claims in a case if the court makes an express determination that there is no just cause for delay and expressly directs entry of judgment. Both elements must be present to give a partial adjudication final judgment status. When either element is absent, even if only because of oversight or a failure to appreciate that the case is one that is within Rule 54(b), the partial adjudication does not carry final judgment status. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 628 (App. 2003).

A partial adjudication in a consolidated case generally falls within Rule 54(b). Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 628 (App. 2003).

When the provisions of the trial court's consolidation order and later order assigning one docket number indicated that the cases were consolidated for all purposes including trial, and when the trial court dismissed the claims between certain parties but did not make the required findings under Rule 54(b), that dismissal was not a final judgment and thus the plaintiff in one of the consolidated actions remained a party to the consolidated action for purposes of later appeal. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 629 (App. 2003).

A final judgment will issue when the court expressly determines that there is no just cause for delay and hereby directs that judgment be entered. Dereas v. Eas, 12 FSM R. 629, 633 (Chk. S. Ct. Tr. 2004).

The general rule is that, in the absence of express authorization, interest is to be computed on a simple

basis rather than compounded. Lee v. Lee, 13 FSM R. 68, 71 (Chk. 2004).

When a judgment on less than all claims in the pleadings is entered upon an express determination that there is no just reason for delay and upon an express direction for entry of judgment, that judgment is a final adjudication with regard to the claims disposed of by the judgment. A second judgment will issue later at the appropriate time that addresses the remaining claim. FSM Social Sec. Admin. v. Jonas, 13 FSM R. 171, 173 (Kos. 2005).

Civil Rule 54(c)'s clear command is that a default judgment cannot be different in kind from or exceed in amount that prayed for in the demand for judgment. This is in contrast to a case decided on the merits where every final judgment will grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 277-78 (Chk. 2005).

If a complaint shows that the plaintiff is entitled to any relief which the court can grant, regardless of whether the complaint asks for the proper relief, the complaint is sufficient, and since, (except as to a party against whom a judgment is entered by default), every final judgment must grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings, the trial court should consider whether to find liability and award damages on a cause of action not specifically named in the complaint but for which evidence was presented at trial. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 26 (App. 2006).

The court in every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

When, although the issue of continued monitoring of the marine environment remains unresolved and the attorney fees and costs award remains to be determined, there is no just cause for delay, and the clerk shall accordingly enter an appropriate judgment forthwith. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 422 (Yap 2006).

A grant of partial summary judgment is not a final judgment when the court did not expressly determine that there was no just reason for delay and did not then expressly direct the entry of a judgment, both of which are required for the entry of a partial final judgment. Dereas v. Eas, 15 FSM R. 135, 138 (Chk. S. Ct. Tr. 2007).

Final judgments, as a rule, generally bind only the parties to the case and all those in privity with them. If a judgment is final, then the doctrine of res judicata applies, and that doctrine bars any further litigation of the same issues between the same parties or anyone claiming under those parties. Nakamura v. Chuuk, 15 FSM R. 146, 149 (Chk. S. Ct. App. 2007).

Since a previously-awarded $770 discovery sanction will be incorporated into the final judgment as a matter of course, summary judgment for this amount is redundant, and will accordingly be denied. Berman v. Rosario, 15 FSM R. 429, 431 (Pon. 2007).

Any final judgment, when it is not entered by default, must grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings. Saimon v. Wainit, 16 FSM R. 143, 148 (Chk. 2008).

A denial of a request for reconsideration does not mean that a partial adjudication order is not subject to revision at any time. Even though the trial court may be very unlikely to revise it, the order remains legally capable of being revised (under the appropriate circumstances) any time before the trial court enters a final judgment. Smith v. Nimea, 16 FSM R. 346, 348 (App. 2009).

A court can enter judgment on less than all of the claims in a case only if the court makes both an express determination that there is no just cause for delay and an express direction for entry of judgment. Both elements must be present to give a partial adjudication final judgment status. When either element is absent, even if only because of oversight or a failure to appreciate that the case is one that is within Rule 54(b), the partial adjudication does not carry final judgment status. Smith v. Nimea, 16 FSM R. 346, 348-49 (App. 2009).

When a trial court dismisses less than all of the claims but does not expressly make the required findings under Rule 54(b), that dismissal is not a final decision. When the trial court did not expressly determine that there was no just cause for delay and did not expressly direct the entry of judgment, the appeal is not from a final decision since the trial court must do both for a partial adjudication to be deemed a final decision capable of being appealed. Smith v. Nimea, 16 FSM R. 346, 349 (App. 2009).

Final judgments may be enforced by contempt proceedings provided that enforcement at such time is required to prevent irreparable injury or multiple damage to the interests of the winning party and is otherwise in the interests of justice. Damarlane v. Pohnpei Transp. Auth., 17 FSM R. 307, 310 (Pon. 2010).

A trial court can enter a final judgment on less than all claims in a case only if the trial court makes an express determination that there is no just cause for delay and if it then also expressly directs entry of judgment. Both elements must be present to give a partial adjudication final judgment status. When either element is absent, even if only because of oversight or a failure to appreciate that the case is one that is within Rule 54(b), the partial adjudication does not carry final judgment status. Iriarte v. Individual Assurance Co., 17 FSM R. 356, 358 (App. 2011).

When, even though the trial court may have expressly directed entry of a judgment, it never made an express determination that there was no just cause for delay, the judgment is not an appealable final judgment since in the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties will not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and all the parties' rights and liabilities. Thus, although a filing designated as a "Judgment" was entered, it was, under Rule 54(b), not a final decision and therefore not appealable. Iriarte v. Individual Assurance Co., 17 FSM R. 356, 358-59 (App. 2011).

A contention that a trial court could not make as a ground for relief a claim that was not in the plaintiff's complaint is incorrect because, except as to a party against whom a judgment is entered by default, every final judgment must grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings. Berman v. Pohnpei, 17 FSM R. 360, 373 n.5 (App. 2011).

While the res judicata doctrine formally addresses situations involving prior and subsequent lawsuits, its reasoning and purpose may apply in a lawsuit that has already been adjudged since under the doctrine of merger, all interlocutory orders merge into the final judgment. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 373 (App. 2012).

When a final judgment is entered, temporary orders cease to be valid, subsisting orders. In general, a trial court's temporary orders issued during the pendency of a proceeding are superseded by the trial court's final order. Temporary orders are always subject to revision or repeal by the final judgment, even if not explicitly mentioned in that judgment. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 373-74 (App. 2012).

Interlocutory orders do not survive, but merge in, the final judgment. They are not accorded res judicata effect or final judgment status since interlocutory orders made in the course of an action or

proceeding are not binding on the trial court when fashioning the controversy's final adjudication. This should be clear from the operation of FSM Civil Procedure Rule 54(b). Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 374 (App. 2012).

A motion to enforce a trial court's previous interlocutory order must be denied when it was not included in the final judgment or explicitly made a separate final judgment under Civil Rule 54(b). Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 374 (App. 2012).

An appellate opinion that merely dismissed the appeal for the lack of jurisdiction could not, and did not, convert any interlocutory order into an enforceable final order. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 374 (App. 2012).

When a May 1991 interlocutory order and a March 1991 preliminary injunction were neither included in the 1995 final judgment nor made into a separate final judgment, they were overruled, superseded, or made irrelevant by the 1995 amended judgment dissolving the injunction even though the May 17, 1991 order was not explicitly mentioned in the judgment. They ceased to be valid orders. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 375 (App. 2012).

Final judgments, as a rule, generally bind only the parties to the case and all those in privity with them. If a judgment is final, then the doctrine of res judicata applies, and that doctrine bars any further litigation of the same issues between the same parties or anyone claiming under those parties. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

A Kosrae State Court order cannot be a partial final judgment when the court failed to include the express determination required by Kosrae Civil Procedure Rule 54(b) "that there is no just reason for delay" and the "express direction for the entry of judgment" which would allow the entry of a partial final judgment. Andrew v. Heirs of Seymour, 19 FSM R. 331, 337-38 (App. 2014).

When the plaintiffs made two claims in their complaint – trespass and due process violation – and sought damages for both, but the trial court did not calculate any damages, neither claim has been fully adjudicated and therefore neither claim could be granted partial final judgment status under Rule 54(b). Andrew v. Heirs of Seymour, 19 FSM R. 331, 338 (App. 2014).

Since a permanent injunction is imposed only as part of a final judgment and since there is no final judgment in the absence of either a final judgment including the ruling on damages or an order containing express language that there is no just cause for delay and directing the clerk to enter a final judgment, the permanent injunction must be vacated, which would leave the earlier preliminary injunction in place. Andrew v. Heirs of Seymour, 19 FSM R. 331, 338 (App. 2014).

A dismissal with prejudice constitutes a judgment on the merits. Saito v. Siro, 19 FSM R. 650, 654 (Chk. S. Ct. Tr. 2015).

When the movants have failed to cite any reasons for the elongated delay in filing their motion for relief from judgment, much less extraordinary circumstances that would warrant having their Rule 60(b)(4) motion supersede the doctrine of *res judicata*, prejudice would invariably inure to the judgment creditor, in light of its justified reliance on the relevant December 28, 2007 default judgment's finality. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 509-10 (App. 2016).

When an appeal is pending, the underlying decision is generally not considered final for the purposes of claim preclusion. Waguk v. Waguk, 21 FSM R. 60, 71 (App. 2016).

When, in a partial summary judgment, the court did not make an express determination that there is no just reason for delay and direct the entry of a judgment, that order is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of the parties and cannot be a

final judgment. Hartmann v. Department of Justice, 21 FSM R. 468, 474 (Chk. 2018).

Final judgments, as a rule, generally bind only the parties to the case and all those in privity with them, and, when a judgment is final, res judicata then applies. That doctrine bars any further litigation of the same issues between the same parties or anyone claiming under those parties. Estate of Gallen v. Governor, 21 FSM R. 477, 487 (Pon. 2018).

Although a default judgment is not an adjudication on a claim's merits, it is a final judgment with res judicata and claim preclusion effect. Setik v. Mendiola, 21 FSM R. 537, 554-55 (App. 2018).

A partial adjudication (one on less than all of the claims and parties) is not a final (and appealable) order unless the court, after expressly determining that there is no just reason for delay, expressly directs the entry of a final judgment. When either element is absent, even if only because of oversight or a failure to appreciate that the case is one that is within Rule 54(b), the partial adjudication does not carry final judgment status. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 180-81 (Pon. 2019).

When both Rule 54(b) elements are absent from a partial adjudication because the court did not make any determination that there was no just reason for delay and did not direct the clerk to enter a final judgment on those claims, the order is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties, should circumstances ever arise that would warrant its revision. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 181 (Pon. 2019).

When a party's production of its entire file, including correspondence, should satisfy the opposing six of the parties' ten requests for production, the opposing parties' motion to compel, to the extent Salomons' counsel said it was needed, has thus already been granted and production ordered. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 185 (Pon. 2019).

– Interest on

One whose property is converted is entitled to interest at the legal rate from the time of conversion. Bank of Guam v. Nukuto, 6 FSM R. 615, 616 (Chk. 1994).

Interest on unpaid social security taxes is assessed at 12% from date due until paid even if part of a court judgment and even though court judgments normally bear a 9% interest rate. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (II), 7 FSM R. 365, 370 (Yap 1996).

All judgments, by statute, accrue nine percent simple interest a year from date of entry of judgment until satisfied. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 670 (App. 1996).

When a second action and judgment is necessary to enforce and satisfy an earlier judgment, the statutory interest on judgments will be computed from the date of entry of the original judgment. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 670 (App. 1996).

As a general rule interest ceases to accrue on a judgment when the money is paid into a court of competent jurisdiction pursuant to the court's order, unless a statute provides otherwise. If a part of the principal is paid, then the statutory interest stops on that part. Partial payments on a judgment are first to be applied to the accrued interest and then to reduction of the principal. The subsequent statutory interest is computed only on the remaining principal. Payments into court accrue interest for the benefit of the ultimate recipient as earned in the court's depository institution. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 670-71 (App. 1996).

Interest on a judgment is payable under 6 F.S.M.C. 1401 at nine percent a year. 11 F.S.M.C. 701(3), which provides for an award of attorney's fees in a civil rights action, should be construed to permit interest on an unpaid fee award. Davis v. Kutta, 8 FSM R. 338, 341 n.2 (Chk. 1998).

The FSM does not have a statute which prescribes when a plaintiff may obtain prejudgment interest, but prejudgment interest has been awarded in the FSM. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM R. 388, 392 (Kos. 1998).

Generally, interest is usually included as an element of damages as a matter of right when a debtor knows precisely what he is to pay and when he is to pay it. The complaining party has been deprived of funds to which he was entitled by virtue of the contract, the defaulting party knew the exact amount and terms of the debt, and the goal of compensation requires that the complainant be compensated for the loss of use of those funds. This compensation is made in the form of interest. In the absence of statute, an award of prejudgment interest is in the discretion of the court. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM R. 388, 392-93 (Kos. 1998).

Pre-judgment interest at the statutory, judgment rate of 9% is appropriate when the defendant wrote the insufficient funds checks to plaintiff because the defendant knew precisely the amount to which he was obligating himself, and the effective date of that commitment. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM R. 388, 393 (Kos. 1998).

When the amount awarded for prejudgment interest is more than the amount designated as usurious, it is excessive and must be reduced. Malem v. Kosrae, 9 FSM R. 233, 237 (Kos. S. Ct. Tr. 1999).

Attorney fee awards that are part of money judgments are entitled to bear interest at the judgment rate until satisfied. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM R. 569, 570 (Chk. 2000).

Unsatisfied judgments accrue nine percent simple interest from date of entry because the statute does not authorize compounding. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM R. 569, 570 (Chk. 2000).

The generally recognized rule is that interest should not bear interest, but compound interest may be awarded if authorized by statute. When the statute reads "nine percent a year" it is not an express authorization to compound interest annually, but is instead, without more, merely a statement of the rate of simple interest. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM R. 569, 570 (Chk. 2000).

Generally, pre-judgment interest is only included as an element of damages as a matter of right when a debtor knows precisely what he is to pay and when he is to pay it. This occurs when a party has been deprived of funds to which he was entitled by virtue of the contract, and the defaulting party knew the exact amount and terms of the debt. In those types of cases, the goal of compensation requires that the complaining party be compensated for the loss of use of those funds. This compensation is made in the form of interest. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 196 (Kos. S. Ct. Tr. 2001).

In the absence of a statute, an award of prejudgment interest is in the court's discretion. If pre-judgment interest is awarded, the statutory, post-judgment interest rate of 9% per annum is appropriate. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 196 (Kos. S. Ct. Tr. 2001).

Pre-judgment interest is not appropriate and a claim for it will be denied when there was no agreement involving a promise to pay money, when the plaintiff was not deprived of funds that he was entitled to because there was no contract made between the parties to pay money, and when the plaintiff was awarded damages based upon the equitable doctrine of promissory estoppel for the plaintiff's expenditures made in reliance on a promise. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 197 (Kos. S. Ct. Tr. 2001).

Payments on judgments are credited first to accrued interest, and then to principal. Interest accrues as simple interest. Narruhn v. Chuuk, 11 FSM R. 48, 52 (Chk. S. Ct. Tr. 2002).

If money on deposit with the court is eventually paid out in partial satisfaction of a judgment, the statutory interest, at least on the sum paid into court, stops accruing on the date the money was paid into court and the only interest the judgment creditor would be entitled to on that money would be the amount it

earned while on deposit with the court. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 517 (Chk. 2003).

As a general rule, interest on a judgment ceases to accrue when money is paid into a court of competent jurisdiction pursuant to the court's order. If a part of the principal is paid, then the statutory interest stops on that part. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 517 (Chk. 2003).

If money currently deposited with the court ultimately goes toward satisfaction of a judgment, then the statutory interest on whatever part of it that was attributable to the principal when paid into court will have ceased accruing on the date it was paid into court. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 517 (Chk. 2003).

Partial payments on a judgment are first to be applied to the accrued interest and then to reduction of the principal. The subsequent statutory interest is computed only on the remaining principal. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 517 n.1 (Chk. 2003).

As a general rule, interest on a judgment ceases to accrue when money is paid into a court of competent jurisdiction pursuant to the court's order. If a part of the principal is paid, then the statutory interest stops on that part. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 517 (Chk. 2003).

The deposited money's ultimate recipient is entitled to the interest the money earned while deposited with the court. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 517 (Chk. 2003).

In calculating the amounts due on judgments, the 9% statutory interest ceases to accrue at the point the judgment-debtor pays the money credited to the principal into court and after that time the only interest a judgment-creditor is entitled to is that paid by the court's depository institution on the deposited money. In re Engichy, 11 FSM R. 520, 534 (Chk. 2003).

The only interest remitted to a judgment-creditor other than that earned before the money was deposited with the court will be whatever amount the court's depository institution has paid on the deposited money. In re Engichy, 12 FSM R. 58, 71 (Chk. 2003).

A plaintiff is only entitled to a judgment which represents the amount of money he lent to the defendants and the $100,000 in interest he seeks cannot be awarded when it is the product of an unlawful and usurious interest rate. Walter v. Damai, 12 FSM R. 648, 649 (Pon. 2004).

Interest on unpaid social security taxes continues to accrue at 12% until paid, even though a judgment normally bears interest at 9%. FSM Social Sec. Admin. v. Lelu Town, 13 FSM R. 60, 62 (Kos. 2004).

Nine percent a year is the legal or statutory interest rate on judgments. Such interest is only simple interest and is not compounded. Lee v. Lee, 13 FSM R. 68, 71 (Chk. 2004).

A judgment will accrue 9% interest thereon from the date the clerk enters judgment. Uehara v. Chuuk, 14 FSM R. 221, 227-28 (Chk. 2006).

In those few cases in which the court has awarded prejudgment interest when it was not provided for by contract or statute, the court has always awarded the legal interest rate – 9% simple interest. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 420-21 (Yap 2006).

All money judgments bear nine percent interest. As part of the judgment, taxable costs bear that same interest imposed by statute and attorney's fee sanctions are a form of "costs" which will bear interest after judgment has been entered. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 475 (Pon. 2006).

Since, if costs are allowed without express mention in the judgment, the date of the judgment starts the accrual of interest on the costs due, therefore earlier awarded Rule 37 attorney fee sanctions would bear

interest from the date the judgment was entered because failing to allow attorneys' fees awards to bear interest would give parties against whom such awards have been entered an artificial and undesirable incentive to appeal or otherwise delay payment. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 476 (Pon. 2006).

If the money is paid into court, interest ceases to accrue on a judgment, and if only a part of the principal is paid, then the statutory interest stops on that part. Partial payments on a judgment are first to be applied to the accrued interest and then to reduction of the principal. The subsequent statutory interest is computed only on the remaining principal. Payments into court accrue interest for the benefit of the ultimate recipient as earned in the court's depository institution. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 501, 504 (Yap 2006).

A court has the discretion to award pre-judgment interest, but it is not a matter of right unless the debtor knows precisely what he is to pay and when payment is due. The purpose of awarding interest is to compensate the complaining party for losing use of the funds. George v. Albert, 15 FSM R. 323, 328 (Kos. S. Ct. Tr. 2007).

If a money judgment in a civil case is affirmed, whatever interest is allowed by law will be payable from the date the judgment was entered in the court appealed from, but if a judgment is modified or reversed with a direction that a judgment for money be entered in the court appealed from, the mandate must contain instructions with respect to allowance of interest. AHPW, Inc. v. Pohnpei, 15 FSM R. 520, 523 (Pon. 2008).

A prevailing party should not be deprived of statutory interest accrued on a judgment simply because further court proceedings become necessary to collect that judgment. AHPW, Inc. v. Pohnpei, 15 FSM R. 520, 523 (Pon. 2008).

The FSM Supreme Court is reticent to issue an inequitable decision denying post-judgment interest that would punish the prevailing party and possibly encourage losing parties to instigate post-judgment litigation for the purpose of lessening its eventual financial liability, a particularly relevant concern in a case involving a substantial award with the potential to accrue substantial interest. AHPW, Inc. v. Pohnpei, 15 FSM R. 520, 525 (Pon. 2008).

A judgment should not earn interest if it 1) is not supported by applicable law, 2) needs further factual/evidentiary findings for its support, and/or 3) is ultimately reversed as to the underlying finding of liability. AHPW, Inc. v. Pohnpei, 15 FSM R. 520, 527 (Pon. 2008).

The equitable purpose of post-judgment interest is to compensate the successful plaintiff for being deprived of the compensation for the loss from the time between the ascertainment of the damage and the payment by the defendant. A judgment lacking a sufficient legal or evidentiary basis or requiring further factual development should not accrue interest. A legally sufficient judgment that is basically sound but on remand is modified to include additional clarification or explanation without consideration of new evidence or the making of additional findings should accrue interest. AHPW, Inc. v. Pohnpei, 15 FSM R. 520, 528 (Pon. 2008).

Equitable principles favor calculating the interest in a manner that more fully compensates the prevailing party so that once a final judgment has been entered as to liability and damages, vacation of the damage award on appeal and issuance of an order requiring further proceedings to explain the basis for the recoverable damages will not prevent accrual of post-judgment interest on the amount common to the earlier and later judgments from the date the original judgment was entered. AHPW, Inc. v. Pohnpei, 15 FSM R. 520, 528 (Pon. 2008).

When the appellate division affirmed the underlying liability as well as the base award for the pepper business lost profits and, although the appellate division vacated the trebled portion of the award, it was not

vacated for legal or evidentiary insufficiency and it did not request entry of any additional findings, but rather requested further explanation as to why the trial court applied the statute to the damages at issue and explicitly allowed for reinstatement of the trebled damages; and when, on remand, the trial court explained that the statute compelled a mandatory trebling of damages and reinstated the same award for a second time without the consideration of any additional evidence or the making of any additional factual findings with respect to the award of pepper business lost profits damages, the first and second judgments in this matter are identical, and both are supported by the exact same evidentiary and legal basis, and since the trebled award for the pepper business lost profits damages was fully ascertainable on the date the first judgment was entered, interest on the award will accrue from that date. AHPW, Inc. v. Pohnpei, 15 FSM R. 520, 528 (Pon. 2008).

Pre-judgment interest cannot be awarded until the court has determined when payment would reasonably have been due. Saimon v. Wainit, 16 FSM R. 143, 148 (Chk. 2008).

The legal rate of interest is 9%, and is simple interest, not compounded. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 543, 546 (Yap 2009).

When there is no evidence in the record that the defendant knew of, or had agreed to, a contractual requirement that he pay interest and the ledger sheets admitted into evidence do not show any interest charges and when none of the situations where the courts have previously allowed prejudgment interest is present, prejudgment interest will be denied. George v. Albert, 17 FSM R. 25, 33 (App. 2010).

The statutory interest rate is 9% per year, which the court may impose prejudgment when the defendant knew precisely the amount to which he was potentially obligating himself, and the effect date of that commitment. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 35 n.6 (Pon. 2011).

Injured parties in maritime tort cases are typically awarded prejudgment interest. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 175 (Yap 2012).

While the FSM statute, 6 F.S.M.C. 1401, by its terms, applies solely to judgments from the date of entry, the court has judicially adopted 9% simple interest per annum as the legal interest rate to be applied when prejudgment interest is awarded and the interest rate has not been otherwise designated by statute or contract. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 176 (Yap 2012).

When a stipulated judgment waived the statutory interest if the judgment was satisfied within 90 days and the judgment was not satisfied within that time, then the post-judgment interest must accrue from the date of entry of judgment. Kama v. Chuuk, 18 FSM R. 326, 335 (Chk. S. Ct. Tr. 2012).

When a limitation of liability fund has been constituted, any judgment covered by that fund would not include any further prejudgment interest because as a general rule, once the funds are paid into court, the only interest that the prevailing party is entitled to is the interest earned by the money in the court's depository institution. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 94 (Yap 2013).

Money judgments bear interest as provided by law. Under the applicable Kosrae statute, the Kosrae State Court has no discretion. All judgments for the payment of money bear nine percent interest from the date the judgment is entered. George v. Sigrah, 19 FSM R. 210, 216 (App. 2013).

All Kosrae State Court money judgments automatically bear 9% interest regardless of whether the court specifically ordered it, or remembered to put it in the judgment, or whether it is stated in the judgment. George v. Sigrah, 19 FSM R. 210, 217 (App. 2013).

A judgment holder might voluntarily agree to waive his or her statutory right to 9% interest on a money judgment either as an inducement for the defendant to stipulate to a judgment or to pay it off quickly (pay in full by ___ and I'll waive the interest) or for some other reason, but the Kosrae State Court does not have the authority to suspend or vacate liability for the 9% post-judgment interest as that would be an act inconsistent with the law. George v. Sigrah, 19 FSM R. 210, 217 (App. 2013).

The nine percent on Kosrae State Court judgments is simple interest from date of entry since the statute does not authorize compounding. George v. Sigrah, 19 FSM R. 210, 217 n.4 (App. 2013).

Partial payments on a judgment are to be first applied to the accrued interest and then to reduction of the principal with the subsequent statutory interest being computed only on the remaining principal. George v. Sigrah, 19 FSM R. 210, 219 (App. 2013).

In the absence of a statute an award of prejudgment interest is in the court's discretion. Prejudgment interest is recoverable in cases where the plaintiff is entitled to recover a liquidated sum of money. Johnny v. Occidental Life Ins., 19 FSM R. 350, 363 (Pon. 2014).

When the damages amount was a liquidated sum and the insurance contract involved a promise to pay money if certain events occurred, the plaintiff will be awarded the 9% statutory rate of interest from a reasonable time of 60 days after the diagnosis of her daughter's cancer was submitted to the insurer in a claim form for accident and health policies. Johnny v. Occidental Life Ins., 19 FSM R. 350, 363 (Pon. 2014).

Statutes, 6 F.S.M.C. 1401; 8 TTC 1, that read: "Every judgment for the payment of money shall bear interest at the rate of nine percent a year from the date it is entered" are statutes of general application to money judgments and not statutes that specifically address judgments against sovereign defendants. Eot Municipality v. Elimo, 20 FSM R. 7, 11 (Chk. 2015).

In the absence of an express statutory waiver of immunity against post-judgment interest, the Chuuk government is not liable for such interest even though there is a statute of general application imposing 9% post-judgment interest on money judgments, but Chuuk is liable for the 5% interest it agreed to on a loan. Eot Municipality v. Elimo, 20 FSM R. 7, 11-12 (Chk. 2015).

Since injured parties in admiralty and maritime tort cases are typically awarded prejudgment interest, when the plaintiff pled a claim for prejudgment interest, the 9% statutory interest will start on the damages award on the day the vessel ran aground. The 9% statutory interest will start on the costs award on the day the amended judgment is entered. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 80 (Pon. 2015).

When, under prior precedent and the law of the case doctrine, the state government is immune from an interest award as a part of a judgment against the state unless the state has expressly consented to the imposition of interest and when the state government has not expressly consented, by statute or by contract, to the imposition of interest for claims or for a conversion claim, no interest will be permitted. Eot Municipality v. Elimo, 20 FSM R. 482, 489 (Chk. 2016).

Sovereign immunity does bar the imposition of interest as part of or on a judgment against the State of Chuuk. Eot Municipality v. Elimo, 20 FSM R. 482, 490 (Chk. 2016).

A declaratory judgment is not a money judgment and does not need to mention interest. Kama v. Chuuk, 20 FSM R. 522, 533 (Chk. S. Ct. App. 2016).

When part of the plaintiff's damages claim rests on their legal conclusion that interest can be imposed and included in a money judgment against the state, but this legal conclusion is incorrect, a default judgment against the State of Chuuk will be entered, but no interest will accrue on the judgment amount. Onanu Municipality v. Elimo, 20 FSM R. 535, 543 (Chk. 2016).

When no payments have been made on the judgment, it has, since it was entered, accrued interest at the rate of 9% per year, simple interest. Smith v. Nimea, 22 FSM R. 131, 136 (Pon. 2019).

If a money judgment is affirmed, the interest allowed by law will be payable from the date the judgment was entered in the court appealed from. Smith v. Nimea, 22 FSM R. 131, 136 (Pon. 2019).

When the judgment on which it accrues is joint and several, the defendants' liability for the post-judgment interest is also joint and several. Smith v. Nimea, 22 FSM R. 131, 136 (Pon. 2019).

Post-judgment interest compensates a successful litigant for being deprived of compensation for the litigant's loss for the time between the court's ascertainment of the damages amount owed and the defendant's payment. Smith v. Nimea, 22 FSM R. 131, 136 (Pon. 2019).

When a legally sufficient judgment is basically sound but is, on remand, modified to include additional clarification or explanation, without considering new evidence or making additional findings, it will accrue interest from the date of the original judgment. Smith v. Nimea, 22 FSM R. 131, 136 (Pon. 2019).

When a final judgment has been entered as to liability and damages, the vacation of the damage award on appeal and issuance of an order requiring further proceedings to explain the basis for the recoverable damages will not prevent accrual of post-judgment interest on the amount common to the earlier and later judgments from the date the original judgment was entered. Smith v. Nimea, 22 FSM R. 131, 136 (Pon. 2019).

When the appellate division did not vacate, but affirmed, the damages award, and when it did not alter the judgment amount, but merely required that the judgment be clarified so as to name the liable defendant(s), both defendants will be liable, jointly and severally, for the accrued interest since the judgment date. Smith v. Nimea, 22 FSM R. 131, 136 (Pon. 2019).

A litigant does not lose his judgment's accrued interest merely because further proceedings are needed to enforce the judgment. Smith v. Nimea, 22 FSM R. 131, 136 (Pon. 2019).

The interest on judgments is simple interest; it is not to be compounded. FSM Dev. Bank v. Carl, 22 FSM R. 365, 376 (Pon. 2019).

– Payment and Satisfaction

Judgment creditors will be paid in their priority order except for those who release their claims in writing. Payment of a released judgment may be returned to the judgment debtor. Mid-Pacific Constr. Co. v. Senda, 7 FSM R. 371, 373-75 (Pon. 1996).

As a general rule interest ceases to accrue on a judgment when the money is paid into a court of competent jurisdiction pursuant to the court's order, unless a statute provides otherwise. If a part of the principal is paid, then the statutory interest stops on that part. Partial payments on a judgment are first to be applied to the accrued interest and then to reduction of the principal. The subsequent statutory interest is computed only on the remaining principal. Payments into court accrue interest for the benefit of the ultimate recipient as earned in the court's depository institution. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 670-71 (App. 1996).

A court should retain in its trust account any unclaimed judgments paid into court until the twenty years has run. Otherwise, a judgment creditor may appear and be unable to recover funds rightfully his without yet more litigation and collection efforts, and, if the funds have escheated to a government, a legislative act and appropriation. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 672 (App. 1996).

Generally, a judgment debtor who has paid damages for his wrongful act has no right to receive any

part of the payment left unclaimed by the parties because the judgment debtor is not the rightful owner of unclaimed portions of the judgment. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 672 (App. 1996).

Payments totaling the principal amount of a judgment have been paid do not fully satisfy the judgment when the judgment expressly provides for 9% interest and for attorney's fees incurred in enforcing the judgment. Even if it did not so state, the judgment creditor would be entitled to statutory interest of 9% under 6 F.S.M.C. 1401. Until such time as all interest and a reasonable attorney's fee is paid, the judgment remains unsatisfied. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103 (Kos. 2001).

Payments should be applied first to interest, then principal. Davis v. Kutta, 10 FSM R. 224, 226 (Chk. 2001).

Any person or entity authorized by law to pay the state's debts, in the absence of legislation to the contrary, must use money appropriated by the Legislature to pay judgments against the state in the order in which the judgments were entered, paying the oldest judgment in full before any payments are made on the next oldest judgment. Narruhn v. Chuuk, 11 FSM R. 48, 54 (Chk. S. Ct. Tr. 2002).

Assuming that the transfer of title to property by the judgment-debtors to a judgment-creditor was not a sham transaction with the judgment-debtors retaining ownership of it and the judgment-creditor merely selling it for them, but was a bona fide transfer of title, it was within the judgment-creditor's rights to take property instead of cash as payment on its judgment. In re Engichy, 11 FSM R. 520, 533 (Chk. 2003).

When a judgment-creditor decides to take title to property as full payment for the outstanding judgment in lieu of a cash payment for the remainder of the judgment, the judgment is satisfied at that point, not at some later time when the judgment-creditor has managed to sell the property for cash. A judgment-creditor accepting title to property in lieu of cash as full satisfaction of its judgment takes the risk that its later sale of the property could amount to less (or the chance it could be more) than amount due on the judgment or that the sale might fall through. In re Engichy, 11 FSM R. 520, 533 (Chk. 2003).

While the Chuuk Financial Control Commission is precluded from paying any court ordered judgments unless specifically appropriated by law, it must, in a timely manner, develop in consultation with the Governor and Attorney General subsequent legislation for appropriation or other purposes for consideration by the Chuuk Legislature to address court judgments. That the Commission has disclaimed this responsibility imparted is in material part a basis for the court's ruling that ordering Chuuk to pay the judgment through taking the first step in that direction by proposing a payment plan is not a workable means of obtaining a satisfaction of the judgment, and the parlous state of Chuuk's finances is more reason, not less, why it should have been forthcoming with a plan for payment. Estate of Mori v. Chuuk, 11 FSM R. 535, 540 (Chk. 2003).

A civil rights judgment must not depend on legislative action for satisfaction. Estate of Mori v. Chuuk, 11 FSM R. 535, 541 (Chk. 2003).

In the usual case payment of a money judgment against the state must abide a legislative appropriation, but a judgment for the violation of rights guaranteed by the FSM Constitution is a species apart. If there is no meaningful remedy for such a violation, which means a judgment subject to satisfaction in a reasonably expeditious manner, then that right afforded constitutional protection is an illusion, and, if that right is reduced to an illusion, then our Constitution itself is reduced to a solemn mockery. Estate of Mori v. Chuuk, 11 FSM R. 535, 541 (Chk. 2003).

When a judgment was entered in a plaintiff's favor and against a defendant prior to the defendant's death, dismissal of the matter is not appropriate as the claim has not been extinguished. The unsatisfied portion of the judgment still exists. Bank of the FSM v. Rodriguez, 11 FSM R. 542, 544 (Pon. 2003).

Even if the Chuuk Financial Control Commission were at some future time to assume its responsibility to develop legislation for appropriation to address court judgments when it has thus far declined to do so, payment of the judgment would still have to await legislative appropriation, a state of affairs that the principle of supremacy of the FSM Constitution does not countenance where a judgment based on a civil rights violation is concerned. Davis v. Kutta, 11 FSM R. 545, 549 (Chk. 2003).

The remedy for violation of a constitutional right, to be meaningful, must be one that can be realized upon in a reasonably expeditious manner. When more than six and a half years have elapsed since the judgment was entered, 6 F.S.M.C. 707, which prohibits the garnishment of funds owed by the FSM to a state, is unconstitutional as it applies to the case's judgment for a violation of civil rights guaranteed by the FSM Constitution. In practical terms, that statute takes from the plaintiff the only means of securing a reasonably expeditious satisfaction of the judgment. Davis v. Kutta, 11 FSM R. 545, 549 (Chk. 2003).

Process to enforce a judgment for the payment of money will be a writ of execution, unless the court directs otherwise. The procedure on execution will be in accordance with the practice and procedure of the state in which the court is held, existing at the time the remedy is sought, except that any FSM statute governs to the extent that it is applicable. Barrett v. Chuuk, 12 FSM R. 558, 560 (Chk. 2004).

Failure to pay a judgment in accordance with a court order may in the appropriate case constitute conduct that is sanctionable by an order of contempt under 4 F.S.M.C. 119. For such an order to issue, it must be shown that the putative contemnor had knowledge of the order and the ability to obey, and that he did not do so. Barrett v. Chuuk, 12 FSM R. 558, 561 (Chk. 2004).

Repeated, intentional instances of failure of a state to pay a judgment does not constitute a separate, constitutional claim for deprivation of property without due process where the original underlying claim is not constitutional in character, but is based on common law contract and when there is no constitutional claim that supports the judgment itself, nor a national statute applicable that implicates a "clear and substantial" national interest. Barrett v. Chuuk, 12 FSM R. 558, 561-62 (Chk. 2004).

In the usual case, payment of a money judgment against a state must abide a legislative appropriation. A state will have the ability to pay a judgment as contemplated by 6 F.S.M.C. 1409 when its legislature appropriates money for that purpose. Barrett v. Chuuk, 12 FSM R. 558, 562 (Chk. 2004).

The parties are free to stipulate how any payment on a judgment should be applied – what part of the judgment it should be applied to – but that in the absence of such an agreement, the court would usually presume any payment to be a general payment on the judgment as a whole. Stephen v. Chuuk, 18 FSM R. 22, 27 (Chk. 2011).

While a statute of limitations bars a claim after the passage of a specified time, the common-law rebuttable presumption of payment is, on the other hand, used as evidence, based on the lapse of time, to create a rebuttable inference that the debt has been paid or otherwise satisfied. The presumption is based on the assumption that a person, before the passage of twenty years, would have recovered what belonged to that person unless prevented by some impediment. The persuasiveness of the presumption may be strengthened or diminished by evidence supporting or contradicting the significance of the lapse of time. Kama v. Chuuk, 18 FSM R. 326, 335 (Chk. S. Ct. Tr. 2012).

The presumption of payment of a judgment cannot be raised until after the lapse of 20 years from when the debt is either due or demandable. Kama v. Chuuk, 18 FSM R. 326, 335 (Chk. S. Ct. Tr. 2012).

The presumption of payment of a judgment is prima facie only and may be rebutted. An acknowledgment of the debt within twenty years preceding the action, if made by the debtor, rebuts such presumption. Such acknowledgment need not recognize the debt as a valid and subsisting obligation, and need not expressly nor impliedly contain a promise to pay. It is sufficient if it shows that the debt in question has never been paid. An admission of non-payment coupled with a refusal to pay is sufficient to rebut the

presumption of payment. Finally, part payment by a debtor within twenty years before action is begun rebuts such presumption. Kama v. Chuuk, 18 FSM R. 326, 335-36 (Chk. S. Ct. Tr. 2012).

The 6 F.S.M.C. 801 provision that: "[a] judgment of any court shall be presumed to be paid and satisfied at the expiration of twenty years after it is rendered" reflects the common-law rebuttable presumption of payment after a lapse of twenty years. It can therefore be implied that the 20-year statute of limitations for enforcing a judgment is a rule that creates a rebuttable presumption of payment. Kama v. Chuuk, 18 FSM R. 326, 336 (Chk. S. Ct. Tr. 2012).

The doctrine of prescription or presumption of payment of a judgment does not apply when 20 years has not yet elapsed. Kama v. Chuuk, 18 FSM R. 326, 336 (Chk. S. Ct. Tr. 2012).

Partial payments on a judgment are to be first applied to the accrued interest and then to reduction of the principal with the subsequent statutory interest being computed only on the remaining principal. George v. Sigrah, 19 FSM R. 210, 219 (App. 2013).

A $300 payment on a 1998 judgment could not have reduced the principal by $300, and considering the age of the judgment and how little has been paid, it likely did not reduce the principal at all. Therefore the part of the trial court order in aid of judgment reducing the judgment principal by $300 is reversed. George v. Sigrah, 19 FSM R. 210, 219-20 (App. 2013).

When the current matter is in the post-judgment phase and a separate civil action raises claims that the debt has been discharged, the court will defer those issues to be determined in that other civil action and deny the defendant's motion for court order declaring satisfaction of account. FSM Dev. Bank v. Carl, 20 FSM R. 592, 594 (Pon. 2016).

– Relief from Judgment

Rule 60(b)(6) of the FSM Rules of Civil Procedure permits the court to relieve a party from judgment for any reason justifying the relief. Bank of the FSM v. Bartolome, 4 FSM R. 182, 184 (Pon. 1990).

Trial courts have jurisdiction to set aside judgments either by a Rule 60 relief from judgment motion or by an independent action in equity. Election Comm'r v. Petewon, 6 FSM R. 491, 499 (Chk. S. Ct. App. 1994).

The purpose of Civil Rule 60(b) is to provide the trial court with a tool for navigating between the conflicting principles that litigation must be brought to an end and that justice should be done. Mid-Pacific Constr. Co. v. Senda, 7 FSM R. 129, 133 (Pon. 1995).

A Rule 60 motion for relief from judgment cannot be granted when the order from which relief is sought is not a final judgment. In re Estate of Hartman, 7 FSM R. 409, 410 (Chk. 1996).

After a judgment has been appealed, a trial court, without appellate court permission, has the power to both consider, and deny Rule 60(b) relief from judgment motions. A trial court, however, cannot grant a Rule 60(b) motion while an appeal is pending. If the trial court is inclined to grant the motion, it should issue a brief memorandum so indicating. Armed with this, movant may then request the appellate court to remand the action so that the trial court can vacate judgment and proceed with the action accordingly. Walter v. Meippen, 7 FSM R. 515, 517-18 (Chk. 1996).

Because relief from judgment may be granted upon such terms as are just, a court may order as relief that the trial be resumed at some point other than the beginning. Walter v. Meippen, 7 FSM R. 515, 518 (Chk. 1996).

Relief from judgment is addressed to the discretion of the court, which must balance the policy in favor

of hearing a litigant's claims on the merits against the policy in favor of finality. Walter v. Meippen, 7 FSM R. 515, 518 (Chk. 1996).

A stay of judgment may be granted while a motion for relief from judgment is pending. Walter v. Meippen, 7 FSM R. 515, 519 (Chk. 1996).

When a judgment is on appeal, a trial court, without appellate court permission, has the power to both consider and deny Rule 60(b) relief from judgment motions, but cannot grant such a motion while an appeal is pending. If inclined to grant the motion, the trial court issues a brief memorandum so indicating. Armed with this, the movant can then request the appellate court to remand the action so that judgment could be vacated. If the Rule 60(b) motion is denied, the movant may appeal from the order of denial. A trial court's jurisdiction to consider and deny a Rule 59(e) motion (motion to alter or amend judgment) after an appeal has been filed is similar to its power with respect to a Rule 60(b) motion. Stinnett v. Weno, 8 FSM R. 142, 145 & n.1 (Chk. 1997).

In the Kosrae State Court, motions for relief from judgment or to alter or amend a judgment are non-hearing motions. Langu v. Kosrae, 8 FSM R. 455, 457 (Kos. S. Ct. Tr. 1998).

A Rule 60(b) motion is for relief from the judgment of a trial court, not the reconsideration of an appellate order. A motion to reconsider before the Pohnpei Supreme Court appellate division is not analogous to a relief from judgment motion. It is instead analogous to the types of motions to reconsider specifically mentioned in FSM Appellate Rule 4(a)(4). Damarlane v. Pohnpei, 9 FSM R. 114, 118-19 (App. 1999).

A motion to vacate an order of dismissal under Rule 60(b) that is not brought under any of the six enumerated bases set out in Rule 60(b), and reurges the same points made in the response to the original motion to dismiss is plainly not a Rule 60(b) motion, but is considered as a motion for reconsideration. Kosrae v. Worswick, 9 FSM R. 536, 538 (Kos. 2000).

A motion that a judgment be amended to include a statement of the statutory interest and that its title be corrected to read "judgment" instead of "proposed order," is not one to amend, but rather more properly one to correct a judgment. As such Rule 60 applies, not Rule 59. Walter v. Chuuk, 10 FSM R. 312, 315 (Chk. 2001).

With the exception of void judgments under Rule 60(b)(4), the grant or denial of Rule 60 relief rests with the trial court's sound discretion. The discretion is not an arbitrary one to be capriciously exercised, but a sound legal discretion guided by accepted legal principles. Amayo v. MJ Co., 10 FSM R. 371, 377 (Pon. 2001).

Rule 59 provides a means for relief in cases in which a party has been unfairly made the victim of surprise, but relief will be denied if the party failed to seek a continuance. Surprise, along with excusable neglect, is also addressed by Rule 60(b)(1). Thus, if a party is surprised at trial he is amply protected by Rules 59(a) and 60(b). Amayo v. MJ Co., 10 FSM R. 371, 383 (Pon. 2001).

A successor trial court judge has the same power to grant relief from judgment under Rule 60(b) that the original trial court judge had. A successor judge may vacate a judgment when the original judge would have had an adequate legal basis to do so. Kama v. Chuuk, 10 FSM R. 593, 597 (Chk. S. Ct. App. 2002).

Appellate review of a grant or denial of a motion for relief from judgment is limited to determining whether the trial court abused its discretion. Kama v. Chuuk, 10 FSM R. 593, 598 (Chk. S. Ct. App. 2002).

The right to seek relief from judgment under Rule 60(b) is restricted to a party or a party's legal representative. Rule 60(b) explicitly requires a motion from the affected party, not from the trial court acting *sua sponte*. Kama v. Chuuk, 10 FSM R. 593, 598 (Chk. S. Ct. App. 2002).

The Rule 60(b) requirement that a party seek relief is unlike a Rule 60(a) correction of a clerical error in a judgment, which may be corrected by the court of its own initiative or on any party's motion. Kama v. Chuuk, 10 FSM R. 593, 598 (Chk. S. Ct. App. 2002).

It was an erroneous conclusion of law for a trial court to hold it had the authority to move *sua sponte* to relieve a party from judgment. Kama v. Chuuk, 10 FSM R. 593, 598 (Chk. S. Ct. App. 2002).

When the trial court *sua sponte* set aside a judgment without notice and an opportunity to be heard, it set aside the judgment without due process of law. Kama v. Chuuk, 10 FSM R. 593, 598 (Chk. S. Ct. App. 2002).

Relief from judgment must be sought by motion with notice to opposing party and an opportunity for him to be heard. The motion must state the grounds for the relief, including the facts and the law on which the grounds are based, and why the movant believes that the motion is brought within a reasonable time, that is, the movant must show good reason for its failure to take appropriate action sooner. If the motion is brought pursuant to Rule 60(b)(6), the movant must also state the nature of the extraordinary circumstances that are the ground for relief. Kama v. Chuuk, 10 FSM R. 593, 600 (Chk. S. Ct. App. 2002).

The movant for relief from judgment must keep in mind that generally the standard for reopening a consent final judgment is a strict one. Kama v. Chuuk, 10 FSM R. 593, 600 (Chk. S. Ct. App. 2002).

When an offer of judgment and an acceptance of offer of judgment were made solely between the plaintiff and one defendant and neither party had the power to bind the other defendants to any judgment by such offer and acceptance, the judgment will be modified under Civil Rule 60(a) to clearly reflect that the judgment is only against the one defendant. Konman v. Adobad, 11 FSM R. 34, 35-36 (Chk. S. Ct. Tr. 2002).

When there is no judgment in the case but only an interlocutory order confirming a settlement agreement between fewer than all the parties to the action, a motion for relief from judgment will properly be characterized, not as one for relief from judgment under Rule 60(b), but as one to reconsider an interlocutory order. A party cannot seek relief from a judgment that does not exist. Stephen v. Chuuk, 11 FSM R. 36, 43 (Chk. S. Ct. Tr. 2002).

The standard test for whether a judgment is final for Rule 60(b) purposes is usually stated to be whether the judgment is sufficiently final to be appealed. Richmond Wholesale Meat Co. v. George, 11 FSM R. 86, 87 (Kos. 2002).

In the absence of the Rule 60(b) finality requirement, the court will deem a putative Rule 60(b) motion as one for reconsideration of the court's order. Richmond Wholesale Meat Co. v. George, 11 FSM R. 86, 88 (Kos. 2002).

Defendants' failure to move for relief from judgment until after a writ of execution has been issued and their property seized was not an unreasonable delay when the plaintiff was so prompt in obtaining a default judgment, a writ of execution, and then levying on the writ. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 122 (Chk. 2002).

Bad checks that, in part, gave rise to the lawsuit are not culpable conduct after the lawsuit's inception that would bar relief from judgment, and neither are the defendants' other instances of alleged culpable conduct (such as moving or closing other businesses) that do not appear to be related to the lawsuit. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 123 (Chk. 2002).

Relief from judgment may be granted only on motion and upon such terms as are just. The requirement of a bond is a just term upon which to grant relief from judgment, especially in a close case

that tips in the defendants' favor because of the court's policy favoring resolutions on the merits over defaults. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 123 (Chk. 2002).

Rule 60(b) may not allow a party in whose favor a judgment is entered to seek relief from that judgment because stipulated judgments, while they are judicial acts, also have many attributes of voluntarily-undertaken contracts, and when the parties have made a freely calculated, deliberate choice to submit to an agreed upon judgment rather than seek a more favorable litigated outcome (or risk a less favorable litigated outcome), the burden under Rule 60(b) is probably more formidable than had they litigated and lost. Farata v. Punzalan, 11 FSM R. 175, 178 (Chk. 2002).

Although the trial court, absent a remand, lacks jurisdiction to vacate or alter its judgment pending appeal, the trial court retains the power throughout the pendency of the appeal to simply preserve the status quo by granting a stay of the judgment. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

When a motion to relieve a party from a final order on the basis of surprise is filed after the order has been appealed, the court may deny the motion and leave the order appealed from intact, or, if the court is inclined to grant the motion it may only state on the record what it would do in the event that the case were remanded to it since the filing of the notice of appeal transferred jurisdiction to the appellate division. Estate of Mori v. Chuuk, 12 FSM R. 3, 9 (Chk. 2003).

A trial court may stay the execution of any proceedings to enforce a judgment pending the disposition of a motion for relief from a judgment or order made pursuant to Rule 60. Estate of Mori v. Chuuk, 12 FSM R. 3, 12 (Chk. 2003).

Chuuk state trial courts have jurisdiction to set aside judgments either by a Rule 60 relief from judgment motion or by an independent action in equity. The FSM Supreme Court trial division therefore also has the power in a proper case to entertain an independent action for relief from a state court judgment. Enlet v. Bruton, 12 FSM R. 187, 189-90 (Chk. 2003).

The grant or denial of relief under Civil Procedure Rule 60 rests with the sound discretion of the trial court. Panuelo v. Amayo, 12 FSM R. 365, 372 (App. 2004).

An appellate court reviews a trial court denial of a Rule 60(b) motion under an abuse of discretion standard. Panuelo v. Amayo, 12 FSM R. 365, 372 (App. 2004).

Relief from judgment is addressed to the discretion of the court, which must balance the policy in favor of hearing a litigant's claims on the merits against the policy in favor of finality. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 279 (Chk. 2005).

When a case has been dismissed for the plaintiff's failure to prosecute, the plaintiff's possible remedies are either to appeal the dismissal or a Rule 60(b) motion for relief from judgment (the more viable, quicker, and usual remedy) if he wishes to have the dismissal set aside. (Filing a new case when there has been a dismissal on the merits is not a possible remedy.) Success by either method would reinstate the case at the point it was dismissed. If neither of these routes is taken successfully, the plaintiff, depending on his ability to prove that he would have succeeded at trial, may have a cause of action against his counsel. Kishida v. Aizawa, 13 FSM R. 281, 284 (Chk. 2005).

A trial court's request for clarification of the attorneys' fee request documentation was not a grant of relief from judgment or analogous to relief from judgment, and a trial court's permitting the submission of the attorney fee request one day late was within its discretion. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 22 (App. 2006).

It is an error of law for the trial justice to even consider setting aside a judgment sua sponte or on his own motion since only an affected party may seek relief from judgment. Rule 60(b) explicitly requires a

motion from the affected party, not from the trial court acting *sua sponte*. Ruben v. Hartman, 15 FSM R. 100, 108-09 (Chk. S. Ct. App. 2007).

Since a party cannot seek relief from a judgment that does not exist, a motion for relief from a partial summary judgment is therefore properly characterized, not as one for relief from judgment under Rule 60(b), but as one to reconsider an interlocutory order. Dereas v. Eas, 15 FSM R. 135, 138 (Chk. S. Ct. Tr. 2007).

A motion to reconsider that was filed 22 days after the judgment had been entered, cannot be a Rule 54(b) motion to reconsider since those motions must be made before entry of judgment, or a Rule 59(e) motion to alter or amend judgment since a Rule 59(e) motion must "be served not later than 10 days after entry of the judgment." It can only be a Rule 60(b) motion for relief from judgment. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 588 (App. 2008).

Even after a judgment has been properly appealed, a trial court, without appellate court permission, has the jurisdiction to both consider, and to deny a Rule 60(b) relief from judgment motion, but cannot grant a Rule 60(b) motion while an appeal is pending. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 (App. 2008).

When the trial judge has a Rule 60(b) motion before him, which is within his jurisdiction to consider and deny even though the case is on appeal, and also a motion to recuse, and when, upon receipt of a recusal motion, a justice must rule on it before proceeding any further in the matter, the trial judge is required to rule on the recusal motion before proceeding on to the Rule 60(b) motion. The trial judge therefore had the jurisdiction to, and a duty to, rule on the recusal motion. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 (App. 2008).

If a judgment has been appealed and a Rule 60(b) motion for relief from that judgment is afterwards denied, a separate notice of appeal from that denial must be filed for an appellate court to have jurisdiction to review the Rule 60(b) denial. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 (App. 2008).

If the defendants succeed in vacating the judgment, then the next step would be to order a new trial because if the judgment were left in place and only its enforcement barred, the result would the anomalous situation of a valid money judgment which could not be enforced even though the judgment-debtors are solvent and within the jurisdiction. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 630 (Pon. 2008).

Relief from a judgment may be sought either by a Rule 60(b) motion or by an independent action – through filing a separate case. It cannot be sought by both. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 636 (Pon. 2008).

When the defendants have not filed their Rule 60(b) motion seeking relief in a separate action in equity collaterally attacking the judgment, but have instead filed it as a post-judgment motion in the original case, the motion may only be treated as a Rule 60(b) motion for relief from judgment, and not as an independent action, despite the defendants styling their motion as one "in the nature of an independent action." FSM Dev. Bank v. Arthur, 15 FSM R. 625, 636 (Pon. 2008).

A motion to reconsider made more than ten days after entry of judgment can only be considered a Rule 60(b) motion for relief from judgment. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 120 n.1 (App. 2008).

A motion to reconsider or vacate a judgment filed within ten days of the judgment is a Rule 59 motion to alter or amend judgment and a motion filed after ten days is a Rule 60(b) motion for relief from judgment. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 138 n.3 (Pon. 2008).

Rule 60(b) permits only motions for relief from judgment under that rule or independent actions.

There is no such motion as one in the nature of an independent equitable action for relief filed in the original case. If a party wishes to seek relief through an independent action, it must file a separate independent action. If a party files a motion in the case in which the judgment was issued, it is a Rule 60(b) motion for relief from judgment. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 139 (Pon. 2008).

A motion to vacate a judgment filed in the original case cannot be anything other than a Rule 60(b) motion for relief from judgment. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 139 (Pon. 2008).

Generally, relief from a judgment may be sought either by a Rule 60(b) motion for relief from judgment filed in the original case or by a separate, independent action (a new case), but it cannot be sought by both. Arthur v. Pohnpei, 16 FSM R. 581, 596 (Pon. 2009).

A litigant may not sit idly by during the course of litigation and then seek to present additional defenses in the event of an adverse outcome. Arthur v. Pohnpei, 16 FSM R. 581, 599 (Pon. 2009).

When the dismissal for failure to exhaust administrative remedies was without prejudice to any later court action after administrative relief had been sought, granting relief from the dismissal would not be in the interest of justice, and any future litigation would be conducted on a new and accurate pleadings. Aake v. Mori, 16 FSM R. 607, 609 (Chk. 2009).

Relief from a judgment under Rule 60 is addressed to the court's discretion, which is not an arbitrary one to be capriciously exercised but a sound legal discretion guided by accepted legal principles. An appellate court therefore reviews a trial court's denial of a Rule 60(b) motion under an abuse of discretion standard. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 657 (App. 2009).

It is not important whether the trial judge considered the attack upon the judgment under 60(b) or as an independent equitable action, if based on all the evidence the trial judge in the exercise of his judicial and equitable discretion, denied relief. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 658 (App. 2009).

In an independent action, it is fundamental that equity will not grant relief if the complaining party has, or by exercising proper diligence would have had an adequate remedy at law, or by proceedings in the original action to open, vacate, modify or otherwise obtain relief against, the judgment. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 658-59 (App. 2009).

When, in essence this is an appeal of an earlier final appellate court determination of the appellants' liability based on a defense they could have raised but waived in the trial court, it is yet another attempt to have a second bite of the appellate apple. When the appellants assert that the trial court erred in failing to vacate the judgment and raise claims either already argued and decided in their first appeal or not raised at the trial level, this is not an opportunity or an appropriate occasion for them to have a second bite of the appellate apple or to address issues that were not raised at the trial level. The trial court thus did not abuse its discretion by not vacating the judgment. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 661 (App. 2009).

A plaintiff seeking to maintain an action for unjust enrichment as the result of having paid money on a judgment must first have that judgment vacated or reversed before that plaintiff can pursue an unjust enrichment or restitution claim. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 7 (Pon. 2011).

To maintain an action for unjust enrichment or for money had and received or for restitution, the recipient of the money had and received must be shown to be unjustly enriched. Unless and until a judgment on which the plaintiffs have paid the money is vacated or reversed that is something the plaintiffs are manifestly unable to do. They thus fail to state a claim for unjust enrichment or restitution when the judgment has not been set aside and remains valid and enforceable. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 7 (Pon. 2011).

Although the plaintiffs' argument for restitution which asserts that an earlier judgment should not be enforced does not explicitly say so, the court must consider the case to be an independent action for relief from judgment joined with, and thus presuming success on the independent action for relief, an action for unjust enrichment and restitution with the necessary element of the prior judgment having been set aside to be accomplished in the same action. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 8 (Pon. 2011).

There are only three methods by which judgment-debtors may have a judgment against them set aside. One is to appeal the judgment and convince the appellate court to reverse it. The second is a motion for relief from judgment as provided for in Civil Procedure Rule 60(b). The third is an independent action in equity (as acknowledged in Rule 60(b)) to set aside a judgment. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 11 & n.5 (Pon. 2011).

When there is no final judgment in a case but only an interlocutory order, a motion for relief from the interlocutory order will properly be characterized, not as one for relief from judgment under Rule 60(b), but as one to reconsider an interlocutory order under Rule 54(b). People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 312 (Yap 2012).

The Compact of Free Association requires that, subject to the constitutional power of FSM courts to grant relief from judgments in appropriate cases, res judicata status be given to Trust Territory judgments. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

As recognized by general law and as provided for in Compact of Free Association § 176, Trust Territory judgments that are final, although accorded res judicata status, can be subject to collateral attack or to relief from judgment. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 304 (App. 2014).

Under the Compact of Free Association, final judgments in civil cases rendered by any Trust Territory court continue in full force and effect, subject to the constitutional power of the courts of the Federated States of Micronesia to grant relief from judgments in appropriate cases. Andrew v. Heirs of Seymour, 19 FSM R. 331, 341 (App. 2014).

A trial division justice does not have jurisdiction to issue an order granting relief from the summary judgment when the matter has been timely appealed and the jurisdiction lay in the appellate division when he issued the relief order. Kuss v. Joseph, 19 FSM R. 380, 381 (Chk. S. Ct. App. 2014).

After a judgment has been appealed, a trial court, without appellate court permission, has the power to both consider, and deny Rule 60(b) relief from judgment motions, but the trial court cannot grant a Rule 60(b) motion while an appeal is pending. If the trial court is inclined to grant the motion for relief from judgment, it should issue a brief memorandum so indicating, and, armed with this, the movant may then request the appellate court to remand the action so that the trial court can vacate judgment and proceed with the action accordingly. Kuss v. Joseph, 19 FSM R. 380, 381 (Chk. S. Ct. App. 2014).

An appellate court may consider a trial justice's order setting aside the summary judgment to be his "brief memorandum" indicating that he is inclined to grant the motion to set aside the summary judgment as void and remand the case to the trial division so that the trial justice can, if he is so inclined, re-enter his order vacating the summary judgment. Kuss v. Joseph, 19 FSM R. 380, 381-82 (Chk. S. Ct. App. 2014).

A motion to alter, or amend, under FSM Civil Rule 59(e), or reconsideration of a mistake through inadvertence under FSM Civil Rule 60(b) are post-judgment motions that are appropriately filed in the trial division, not the appellate division, and, under the final judgment rule, these post-judgment motions prohibit filing an appeal until they have been either granted or denied. Mori v. Hasiguchi, 19 FSM R. 416, 418 (App. 2014).

Although Rule 60(b) does not limit the court's power to entertain an independent action to relieve a party from a judgment, the procedure for obtaining any relief from a judgment is either by a Rule 60(b)

motion or by an independent action; not by both. FSM Dev. Bank v. Carl, 20 FSM R. 70, 72 (Pon. 2015).

The court, in its discretion and on such condition for the adverse party's security as is proper, may, pending the disposition of a Rule 60 motion for relief from judgment, stay the execution of or any proceedings to enforce a judgment. The criteria to be utilized when determining the propriety of a such a stay are: 1) whether the applicant has made a strong showing that the applicant is likely to prevail on the merits of the appeal; 2) whether the applicant has shown that without the stay, the applicant will be irreparably harmed; 3) whether issuance of the stay would substantially harm other parties interested in the proceedings and 4) whether the public interest would be served by granting the stay. FSM Dev. Bank v. Setik, 20 FSM R. 85, 89 (Pon. 2015).

A Rule 59 motion for a new trial must be served not later than ten days after entry of the judgment, but a motion that purports to be a Rule 59(b) motion for a new trial will not be denied merely because it is untimely since a Rule 59 motion served after the ten days has expired will be, and can only be, considered a Rule 60(b) motion for relief from judgment. George v. Palsis, 20 FSM R. 174, 176 (Kos. 2015).

When almost a month has elapsed from the July 17th entry of an order and the August 14th filing of a motion to set it aside, coupled with the redress sought therein, the court will characterize it as a motion under FSM Civil Rule 60(b) seeking relief from an order. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 227 (Chk. 2015).

A movant, as a precondition to rule 60(b) relief, must give the court reason to believe that vacating the judgment will not be a futile gesture or an empty exercise; in other words, there must exist a meritorious defense. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 228 (Chk. 2015).

When a final order has been properly appealed, a trial court has the jurisdiction, without appellate court permission, to both consider and to deny a Rule 60(b) relief from judgment motion, but it cannot grant a Rule 60(b) motion while an appeal is pending, but if the trial court is inclined to grant the motion, it may only state on the record that it would do so if the case were remanded. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 289 (Pon. 2016).

Rule 60(b)'s purpose is to provide the trial court with a tool for navigating between the conflicting principles that litigation must be brought to an end and that justice should be done. To meet this intended purpose, Rule 60(b), which combines aspects of both law and equity, reposes a high degree of discretion in the trial court. In re Contempt of Jack, 20 FSM R. 452, 460 (Pon. 2016).

The decision to grant or deny a motion for relief from a final judgment is committed to the trial court's sound discretion. Accordingly, the lower court's decision about relief from judgment should be reviewed only upon a showing that the trial judge's ruling manifested an abuse of discretion. Such abuses must be unusual and exceptional; an appellate court will not merely substitute its judgment for that of the trial court. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 506 (App. 2016).

It is just as important that there should be a place to end litigation, as there should be a place to begin. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 506 (App. 2016).

The provisions of Rule 60(b) must be carefully interpreted to preserve the delicate balance between the sanctity of final judgments and the incessant command of the court's conscience, that justice be done in light of all the facts. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

A party seeking relief from a final judgment must do so pursuant to Rule 60(b). Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 508 (App. 2016).

The decision to grant or deny a motion for relief from a final judgment is committed to the trial court's sound discretion. Accordingly, the lower court's decision should be scrutinized, with an eye toward

determining whether the trial judge's ruling manifested an abuse of discretion. Such abuses must be unusual and exceptional; an appellate court will not merely substitute its judgment for that of the trial court. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 98 (App. 2016).

An appellate court's review of a trial court's grant or denial of a Rule 60(b)(1) motion focuses on whether there was an abuse of discretion. An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision, and such an abuse must be unusual and exceptional. Gallen v. Moylan's Ins. Underwriters (FSM) Inc., 21 FSM R. 380, 383-84 (App. 2017).

A party's failure to proffer adequate evidence to identify where the judgment amount was inaccurate, fails to persuade that the party was entitled to relief from that judgment. Gallen v. Moylan's Ins. Underwriters (FSM) Inc., 21 FSM R. 380, 385 (App. 2017).

Rule 60(b)'s purpose is to provide the trial court with a tool for navigating between the conflicting principles that litigation must be brought to an end and that justice be done. Gallen v. Moylan's Ins. Underwriters (FSM) Inc., 21 FSM R. 380, 385 (App. 2017).

When there is no final judgment but only an interlocutory order, a motion for relief from the interlocutory order will properly be characterized, not as one for relief from judgment under Rule 60(b), but as one to reconsider an interlocutory order under Rule 54(b). Hartmann v. Department of Justice, 21 FSM R. 468, 474 (Chk. 2018).

When there is no final judgment in the matter but only an interlocutory order, a party's motion for relief from the interlocutory order is properly characterized, not as one for relief from judgment under Rule 60(b), but as one to reconsider, under Rule 54(b), the interlocutory order granting partial summary judgment. Hartmann v. Department of Justice, 21 FSM R. 468, 474 (Chk. 2018).

Since Rule 60(b) relief from judgment is addressed to the court's sound discretion, an appellate court reviews the trial court's denial of relief from judgment using the abuse of discretion standard. Setik v. FSM Dev. Bank, 21 FSM R. 505, 514 (App. 2018).

A litigant, as a precondition to Rule 60(b) relief, must give the trial court reason to believe that vacating the judgment will not be a futile gesture or an empty exercise, that is, that the litigant has a meritorious defense. Setik v. FSM Dev. Bank, 21 FSM R. 505, 514 (App. 2018).

Relief from a judgment may be sought either by a Rule 60(b) motion or by an independent action – through filing a separate case. It cannot be sought by both. Setik v. Mendiola, 21 FSM R. 537, 552 (App. 2018).

It is proper to require a party to advance in the first Rule 60(b) motion all matters that were reasonably available at that time. Setik v. Mendiola, 21 FSM R. 537, 552 (App. 2018).

Successive Rule 60(b) motions for relief from judgment are impermissible unless the later motion is brought on a different ground. Setik v. Mendiola, 21 FSM R. 537, 552 (App. 2018).

The older a judgment grows, the greater finality it should be accorded and the greater the burden on the party seeking to set it aside. Setik v. Mendiola, 21 FSM R. 537, 554 (App. 2018).

The denial of a Rule 60(b) motion for relief from judgment may have res judicata effect on a subsequent independent action to set aside a judgment, if the subsequent action is brought on the same ground as the earlier motion. Setik v. Mendiola, 21 FSM R. 537, 555 (App. 2018).

A motion to reconsider a final order made over ten days after entry of that order is a Rule 60(b) motion for relief from judgment. Alik v. Heirs of Alik, 21 FSM R. 606, 617 (App. 2018).

The debtor, as an interested party, has sufficient stake in the matter for standing to try to reopen his own bankruptcy case. Panuelo v. Sigrah, 22 FSM R. 341, 356 (Pon. 2019).

Although under Bankruptcy Rule 5010, a case may be reopened on motion of the debtor or other interested party pursuant to 31 F.S.M.C. 311(2), a lawsuit is not a motion and 31 F.S.M.C. 311(2) applies only to a corporate debtor that is unable to implement a part of its reorganization plan or comply with a provision of the court's confirmation order. Bankruptcy Rule 5010 does not apply to an individual debtor or to a liquidation case. Panuelo v. Sigrah, 22 FSM R. 341, 356-57 (Pon. 2019).

Bankruptcy Rule 9024 permits reopening a bankruptcy case by providing that FSM Civil Procedure Rule 60 applies in cases under Title 31. Panuelo v. Sigrah, 22 FSM R. 341, 357 (Pon. 2019).

The administratrix of an estate of a former debtor would have standing to seek relief under Bankruptcy Rule 9024 for alleged overpayments to creditors and to the bankruptcy receiver because she seeks reconsideration of, or relief from, the bankruptcy case orders allowing those claims by the creditors and the receiver. Panuelo v. Sigrah, 22 FSM R. 341, 357 (Pon. 2019).

A new lawsuit obviously cannot be a motion to reopen a case under Bankruptcy Rule 9024 (or for relief from judgment under Civil Procedure Rule 60), since such a motion would necessarily be filed in the original bankruptcy case, but Civil Procedure Rule 60 (and thus Bankruptcy Rule 9024) authorizes one other procedure for relief – an independent action for relief. Rule 60(b) does not limit a court's power to entertain an independent action to relieve a party from a judgment. Panuelo v. Sigrah, 22 FSM R. 341, 357 (Pon. 2019).

Regardless of whether the issued writ of habeas corpus is a final order, the court may entertain FSM Civil Rule 59 and 60 motions while the matter is subject to an appeal and, if it determines such motion(s) shall prevail, it must so indicate in the record for the appellate court's consideration. Timsina v. FSM, 22 FSM R. 383, 386 (Pon. 2019).

Civil Procedure Rule 60 governs all motions to set aside a judgment or for relief from judgment including default judgments. FSM Dev. Bank v. Talley, 22 FSM R. 587, 592 (Kos. 2020).

– Relief from Judgment – Default Judgments

Under circumstances where the defendant has failed to set forth a meritorious defense and has exhibited culpable conduct, defendant will not succeed on a motion to set aside a judgment of default. Truk Transp. Co. v. Trans Pacific Import Ltd., 3 FSM R. 512, 514 (Truk 1988).

A motion to set aside a default judgment is addressed to the discretion of the court. In the exercise of discretion the court is guided by the principle that cases should normally be decided after trials on the merits. Truk Transp. Co. v. Trans Pacific Import Ltd., 3 FSM R. 512, 515 (Truk 1988).

The criteria to be met in order to justify the setting aside of a default judgment are whether the default was willful, caused by culpable conduct of the defendant, whether there is meritorious defense, and whether setting aside the default would prejudice the plaintiff. Truk Transp. Co. v. Trans Pacific Import Ltd., 3 FSM R. 512, 515 (Truk 1988).

Under Civil Procedure Rule 55(c), relief from an entry of default may be granted for good cause shown. A default entry may thus be set aside for reasons that would not be enough to open a default judgment. A Rule 55(c) motion is addressed to the trial court's discretion. Good cause is a mutable standard, varying from situation to situation, and it is likewise a liberal one, but not so elastic as to be devoid

of substance. FSM Dev. Bank v. Gouland, 9 FSM R. 375, 377 (Chk. 2000).

The standard for setting aside an entry of default under Rule 55(c) is the liberal and less rigorous "good cause" standard rather than the more restrictive standard of excusable neglect for setting aside a default judgment under Rule 60(b). FSM Dev. Bank v. Gouland, 9 FSM R. 375, 377-78 (Chk. 2000).

The "good cause" threshold for Rule 55(c) relief is lower, ergo more easily overcome, than that which obtains under Rule 60(b) and the trial court should not read "good cause" too grudgingly. This more flexible approach reflects a policy decision that a default judgment should enjoy a greater degree of finality and, therefore, should be more difficult to disturb than a mere default. FSM Dev. Bank v. Gouland, 9 FSM R. 375, 378 (Chk. 2000).

A default judgment will be set aside when one defendant was served the complaint and summons not by a policeman or some other specially appointed person in compliance with Civil Procedure Rule 4(c) but by plaintiff's counsel and the other defendant was not served at all. Simina v. Rayphand, 9 FSM R. 500, 501 (Chk. S. Ct. Tr. 1999).

An entry of default may be set aside for good cause shown. Rule 55 distinguishes between relief from default, which is an interlocutory matter, and relief from a judgment by default, which involves final judicial action. Thus, a more liberal standard is applied to reviewing entry of default, as opposed to default judgments. Adams v. Island Homes Constr., Inc., 10 FSM R. 159, 162 (Pon. 2001).

A common statement of the criteria to set aside a default judgment is whether the default was willful, that is, caused by culpable conduct of the defendant, whether there is a meritorious defense, and whether setting aside the default judgment would prejudice the plaintiff. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 180 (Pon. 2001).

Any of the reasons sufficient to justify the vacation of a default judgment normally will justify relief from a default entry and in various situations a default entry may be set aside for reasons that would not be enough to open a default judgment. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 180 (Pon. 2001).

Courts generally disfavor default judgments and readily set them aside rather than deprive a party of the opportunity to contest a claim on the merits. O'Sullivan v. Panuelo, 10 FSM R. 257, 260 (Pon. 2001).

Even when service on the defendants was proper, they may still obtain relief from a default judgment if they qualify under Rule 60. Courts generally disfavor default judgments and will, in proper Rule 60(b) cases, readily set them aside rather than deprive a party of the opportunity to contest, and the court to resolve, a claim on its merits, instead of on procedural grounds. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 122 (Chk. 2002).

The criteria to be met in order to justify setting aside a default judgment are whether the default was willful, caused by the defendant's culpable conduct, whether the defendant has a meritorious defense, and whether setting aside the default would prejudice the plaintiff. Relief from judgment is addressed to the discretion of the court, which must balance the policy in favor of hearing a litigant's claims on the merits against the policy in favor of finality. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 122 (Chk. 2002).

In order to obtain relief from a default judgment, the defendant must have a meritorious defense. A defense that would constitute a complete defense to the action if proven at trial would be a meritorious defense justifying relief from judgment when some evidence to support the defense has been produced, although more evidence may be needed to prevail at trial. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 123 (Chk. 2002).

Relief from judgment may be granted only on motion and upon such terms as are just. The

requirement of a bond is a just term upon which to grant relief from judgment, especially in a close case that tips in the defendants' favor because of the court's policy favoring resolutions on the merits over defaults. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 123 (Chk. 2002).

When a default judgment that affects persons, who claim ownership of the land and who were never made parties to the suit, but against whom the judgment is sought to be enforced those persons are clearly entitled to relief from the default judgment under Chuuk Civil Rule 60(b)(6), and no time limits are imposed on the granting of such relief because the court may, in its discretion, treat a complaint as a Rule 60(b)(6) motion for relief from judgment. Pastor v. Ngusun, 11 FSM R. 281, 285 (Chk. S. Ct. Tr. 2002).

After a default judgment has been entered, a motion to dismiss cannot be granted unless the motion to set aside the default is successful. Konman v. Esa, 11 FSM R. 291, 294 n.2 (Chk. S. Ct. Tr. 2002).

When a party moves for relief from judgment under Civil Procedure Rule 60(b)(4) on the ground that the judgment was void, there is no requirement, as is usual when a default judgment is attacked under Rule 60(b), that the movant show that he has a meritorious defense. Lee v. Lee, 13 FSM R. 252, 256 (Chk. 2005).

Courts generally disfavor default judgments and will set them aside rather than deprive a party of the opportunity to contest a claim on the merits so as to permit the claim to be resolved on its merits instead of on procedural grounds. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 279 (Chk. 2005).

The standard for analyzing whether relief from a default judgment is warranted is whether the default was willful, that is, caused by the defendant's culpable conduct, whether there is a meritorious defense, and whether setting aside the default judgment would prejudice the plaintiff, so when a plaintiff does not want the opportunity to contest a claim or assert a meritorious defense to a claim but wants to add a claim, the inapplicability of this standard to the case highlights the novelty of what the plaintiff is trying to do. No cases support the claim that Rule 60(b) relief is available for a prevailing plaintiff to be granted relief from a default judgment in its favor when the defendant had not appeared in the case prior to the default judgment. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 279 (Chk. 2005).

A plaintiff should seek to amend its complaint to ask for prejudgment interest before asking for a default judgment if it wants an unpled interest claim included in the judgment. When it does not do so, the court cannot grant it leave to amend its complaint after the default judgment has been entered because that would make meaningless Rule 54(c)'s clear command limiting default judgments to the kind and the amount prayed for in the demand for judgment. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 279 (Chk. 2005).

Rule 55(c) governs the setting aside of a default, but when a default judgment was already entered, FSM Civil Rule 60 applies. Bank of Hawaii v. Susaia, 19 FSM R. 66, 69 n.1 (Pon. 2013).

The criteria to be met in order to justify setting aside a default judgment are whether the default was willful, caused by the defendant's culpable conduct, whether the defendant has a meritorious defense, and whether setting aside the default would prejudice the plaintiff. Relief from judgment is addressed to the court's discretion, which must balance the policy in favor of hearing a litigant's claims on the merits against the policy in favor of finality. Bank of Hawaii v. Susaia, 19 FSM R. 66, 69 (Pon. 2013).

Relief from judgment will be granted when the culpability and meritorious defense requirements are met because the defendant has a meritorious statute of limitation defense as to part of the default judgment and because if the defendant had had legal representation during the case's early stages, the statute of limitation defense would have been raised, which would affect a part of the amount granted in the plaintiff's default judgment and when not setting aside the default judgment would prejudice the defendant, instead of the plaintiff, because as it stands, the defendant would be liable for an amount greater than what he is supposed to pay by law. Bank of Hawaii v. Susaia, 19 FSM R. 66, 69-70 (Pon. 2013).

The standard for setting aside an entry of default under Rule 55(c) is the liberal and less rigorous "good cause" standard rather than the more restrictive standard of excusable neglect for setting aside a default judgment under Rule 60(b). The "good cause" threshold for Rule 55(c) relief is lower, ergo more easily overcome, than that which obtains under Rule 60(b) and the trial court should not read "good cause" too grudgingly. This more flexible approach reflects a policy decision that a default judgment should enjoy a greater degree of finality and, therefore, should be more difficult to disturb than a mere default. Pohnpei Transfer & Storage, Inc. v. Shoniber, 19 FSM R. 614, 616 (Pon. 2014).

The court may refuse to set aside a default judgment when the default is due to willfulness or bad faith or when the defendant offers no excuse at all for the default. FSM Dev. Bank v. Setik, 20 FSM R. 85, 89 (Pon. 2015).

In order to obtain relief from a default judgment, the defendant must have a meritorious defense that would constitute a complete defense to the action if proven at trial. FSM Dev. Bank v. Setik, 20 FSM R. 85, 89 (Pon. 2015).

A default judgment will not be set aside when the defendants' averments were made more than one year after the judgment was entered and as such, fail to come within the time frame prescribed in Rule 60(b) and when the default was a direct result of the defendants' willful conduct and there has been no meritorious defense or extraordinary circumstance(s) depicted to justify the coveted relief. FSM Dev. Bank v. Setik, 20 FSM R. 85, 89 (Pon. 2015).

The court may refuse to set aside a default judgment when the default is due to the defendant's willfulness or bad faith. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 104 (Chk. 2015).

When a meritorious defense has not been portrayed, the defendants' requests to set aside or vacate the default judgment, order(s) in aid of judgment, and writ of garnishment will be denied. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 104 (Chk. 2015).

Rule 55(c) governs only the setting aside of an entry of default. It is Rule 60(b) that governs the setting aside of a default judgment (and all other judgments). If a court determines that, under Rule 60(b)'s requirements, a default judgment should be set aside, then the entry of default will also be set aside. That is because, if the Rule 60(b)'s higher requirements for relief from judgment have been met, then Rule 55(c)'s lower requirement of good cause is also met. Setik v. FSM Dev. Bank, 21 FSM R. 505, 514 (App. 2018).

When relief is sought only from the entry of default the standard is "good cause," and when relief is also sought from the entry of a default judgment the "reasons" set forth in Rule 60(b) may supply the good cause. Setik v. FSM Dev. Bank, 21 FSM R. 505, 514 (App. 2018).

If a default judgment has been entered when the court lacked personal jurisdiction over the defendant, then that default judgment is void and relief can be sought under Rule 60(b)(4), for which there is no time limit to seek relief. Setik v. FSM Dev. Bank, 21 FSM R. 505, 516 (App. 2018).

Civil Procedure Rule 60 governs all motions to set aside a judgment or for relief from judgment including default judgments. FSM Dev. Bank v. Talley, 22 FSM R. 587, 592 (Kos. 2020).

The criteria to be satisfied in order to justify setting aside a default judgment are: 1) whether the default was willful, caused by the defendant's culpable conduct; 2) whether the defendant has a meritorious defense; and 3) whether setting aside the default would prejudice the plaintiff. FSM Dev. Bank v. Talley, 22 FSM R. 587, 593 (Kos. 2020).

To obtain relief from a default judgment, the defendant must have a meritorious defense – a defense that would constitute a complete defense to the action if proven at trial. But when the defendant has failed

to set forth a meritorious defense and has exhibited culpable conduct, the defendant will not succeed on a motion to set aside a default judgment. FSM Dev. Bank v. Talley, 22 FSM R. 587, 593 (Kos. 2020).

Section 128, Title 30 grants the FSM Development Bank tax exemption and prohibits it from paying dividends because the bank exists and operates "solely for the benefit of the public." It does not create a private cause of action against the FSM Development Bank, and thus a borrower cannot raise it as an affirmative defense. FSM Dev. Bank v. Talley, 22 FSM R. 587, 594 (Kos. 2020).

To invoke the equitable estoppel doctrine, the proponent must allege that 1) another party made representations or statements; 2) the party reasonably relied upon the representations; and 3) the party will be harmed if estoppel is not allowed. But when the movant does not allege any specific facts that would satisfy these elements, he does not allege a meritorious defense. FSM Dev. Bank v. Talley, 22 FSM R. 587, 594 (Kos. 2020).

The 38 U.S.C. § 5301 ban on assigning U.S. military retirement benefits does not constitute a meritorious defense because 38 U.S.C. § 5301 is a United States statute that is applicable wherever the United States is sovereign, but which has no effect in the separate and distinct sovereignty of the Federated States of Micronesia. Since there is no similar FSM statute in effect, the defendant's assignment is not an illegal contract. FSM Dev. Bank v. Talley, 22 FSM R. 587, 595 (Kos. 2020).

When the court must deny a defendant's motion for relief from, or to set aside, the default judgment, the court must also deny his motion to enlarge time to file an answer. FSM Dev. Bank v. Talley, 22 FSM R. 587, 595 (Kos. 2020).

The "good cause" threshold for Rule 55(c) relief is a lower, and more easily overcome, than that which obtains under Rule 60(b) and this approach reflects a policy decision that a default judgment must enjoy a greater degree of finality and, therefore, should be more difficult to disturb than a mere entry of default. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 604 (Pon. 2020).

Rule 55(c) governs the setting aside of a default, but when a default judgment has already been entered, FSM Civil Rule 60(b) applies and must be used to set aside the default judgment. But, if a court determines that, under Rule 60(b)'s requirements, a default judgment should be set aside, then the entry of default will also be set aside, as a matter of course, because, if the Rule 60(b)'s higher requirements for relief from judgment are met, then Rule 55(c)'s lower requirement of good cause is also met. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 604 (Pon. 2020).

A prompt motion for relief from judgment once a default judgment is entered and served on the movant is a sign of good faith. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 604 (Pon. 2020).

In addition to meeting the Rule 60(b)(1) excusable neglect standard, there are three other criteria that must be satisfied in order to justify setting aside a default judgment: 1) whether the default was willful, caused by the defendant's culpable conduct; 2) whether the defendant has a meritorious defense; and 3) whether setting aside the default judgment would prejudice the plaintiff. Most importantly, the defendant must have a meritorious defense in order to obtain relief from a default judgment. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 604 (Pon. 2020).

A meritorious defense is required for relief from a default judgment. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 604 (Pon. 2020).

An affirmative defense cannot be pled with only a conclusory statement, but must, in each instance, be tied to specific factual allegations so as to give the plaintiff notice of the defense. A defendant cannot claim to have meritorious defenses by just listing the possible affirmative defenses to the plaintiff's causes of action without supporting factual allegations. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 605 (Pon. 2020).

When a borrower made a $410 payment after the date the bank ended the accounting of her loan, she has a meritorious payment defense, at least as far as the $410 payment is concerned. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 605 (Pon. 2020).

When a defendant has a meritorious payment defense to part of the default judgment against her, the court will grant partial relief from the default judgment because any other approach would be unfairly detrimental or prejudicial to the debtor. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 607 (Pon. 2020).

– Relief from Judgment – Grounds

While Civil Rule 60(a) may be used to correct clerical errors in a judgment such as those of transcription, copying, or calculation it cannot be used to obtain relief for acts deliberately done. Therefore where the court deliberately intended to enter in a judgment the amount prayed for in a party's motion and that amount is based on a special master's report not before the court, the party cannot obtain relief under Rule 60(a) for errors in the special master's report. Senda v. Mid-Pacific Constr. Co., 6 FSM R. 440, 444-45 (App. 1994).

Relief from judgment cannot be granted when judgment was granted on two separate grounds and relief is only sought from one of the grounds. However, if meritorious, the record may be corrected to show that one ground ought to be stricken. Setik v. FSM, 6 FSM R. 446, 448 (Chk. 1994).

Failure of counsel to exercise due diligence in searching for "newly discovered" evidence is sufficient and independent grounds for denial of a motion for relief from judgment under FSM Civil Rule 60(b)(2). Nena v. Kosrae (III), 6 FSM R. 564, 567 (App. 1994).

Civil Rule 60(b) does not afford relief to a party where the errors complained of were calculated by that party, submitted to the court by that party, and judicially noticed upon that party's request, because it is apparent that that party seeks relief from the insufficient preparation, the carelessness, and the neglect of its own counsel. Mid-Pacific Constr. Co. v. Senda, 7 FSM R. 129, 135 (Pon. 1995).

A party may be estopped from seeking Rule 60(b)(1) relief from acts voluntarily undertaken by that party. Mid-Pacific Constr. Co. v. Senda, 7 FSM R. 129, 135 (Pon. 1995).

Relief from judgment will be denied when the relief sought is for someone not a party. Damarlane v. United States, 7 FSM R. 350, 352-53 (Pon. 1995).

Relief from judgment may be granted to a party who failed to appear at trial when he was unaware that trial had been scheduled. Walter v. Meippen, 7 FSM R. 515, 519 (Chk. 1996).

Courts considering a Rule 60(b) motion also require that the moving party show a good claim or defense before relief from judgment may be granted. Walter v. Meippen, 7 FSM R. 515, 519 (Chk. 1996).

When there was no showing that the movant tried to obtain the evidence before judgment and where the evidence would not change the result, it cannot be considered newly discovered evidence that could not have been discovered previously by the exercise of due diligence entitling the movant to relief from judgment. Stinnett v. Weno, 8 FSM R. 142, 146 (Chk. 1997).

Failure to calendar the date for response and having only one attorney, busy handling a large volume of work, and a number of trial counselors in the office during the month the response was due is not "excusable neglect" entitling a party to relief from judgment. Even if the trial counselors were not prepared to handle the response to the submission, they were certainly capable of and experienced in drafting a motion for enlargement of time. Langu v. Kosrae, 8 FSM R. 455, 459 (Kos. S. Ct. Tr. 1998).

A motion for relief from judgment must allege facts sufficient to establish a meritorious defense. Such defendants must make a showing of a meritorious defense that if established at trial, would constitute a complete defense to the action. Irons v. Ruben, 9 FSM R. 218, 219 (Chk. S. Ct. Tr. 1999).

The Chuuk State Supreme Court may set aside any judgment for fraud upon the court, or if the judgment is void as in a case where the judgment is against public policy, or if it is no longer equitable that the judgment should have prospective application, or for any other reason justifying relief from the operation of the judgment. Kama v. Chuuk, 9 FSM R. 496, 499-500 (Chk. S. Ct. Tr. 1999).

Relief from judgment under Rule 60 is addressed to the court's discretion. The discretion is not an arbitrary one to be capriciously exercised, but a sound legal discretion guided by accepted legal principles. Generally, the court's discretion does not reach neglect of counsel, which, without more, is not a basis for Rule 60(b) relief, except when the neglect itself is excusable. Elymore v. Walter, 10 FSM R. 267, 268-69 (Pon. 2001).

Because clients are responsible for their counsel's conduct, the proper focus is upon whether the neglect of the clients and their counsel was excusable. Clients must be held accountable for their attorney's acts or omissions. Elymore v. Walter, 10 FSM R. 267, 269 (Pon. 2001).

The conduct of both client and counsel is relevant to a determination of excusable neglect under Rule 60(b)(1). Elymore v. Walter, 10 FSM R. 267, 269 (Pon. 2001).

When even if former counsel's neglect were excusable, plaintiffs' failure to secure new counsel in a more timely manner is conduct sufficient in itself to preclude relief under Rule 60(b)(1), the motion for relief from judgment must be denied based on the plaintiffs' own conduct. Elymore v. Walter, 10 FSM R. 267, 269-70 (Pon. 2001).

Serving the defendant himself and failure to serve defendant's counsel with documents was not improper conduct entitling the defendant to Rule 60(b)(3) relief from judgment when that defendant had no counsel of record and was appearing pro se. Amayo v. MJ Co., 10 FSM R. 371, 380 (Pon. 2001).

Service of a motion upon an opposing party is expressly required under Civil Procedure Rule 6(d). Such is not the case with a trial subpoena. Therefore, in the absence of any pre-trial order requiring it, failure to serve trial subpoenas on an opposing party does not constitute improper conduct justifying relief from judgment under Rule 60(b)(3). Amayo v. MJ Co., 10 FSM R. 371, 381 (Pon. 2001).

Attorney negligence, even gross negligence, if demonstrated, is not a separate basis for Rule 60(b)(6) relief from judgment. Under established FSM law, attorney neglect as a basis for Rule 60(b) relief falls within subsection Rule 60(b)(1), "mistake, inadvertence, surprise, or excusable neglect." Amayo v. MJ Co., 10 FSM R. 371, 381 (Pon. 2001).

Generally, attorney negligence is not a basis for Rule 60(b)(1) relief from judgment. Parties who freely choose their attorneys should not be allowed to avoid the ramification of the acts or omissions of their chosen counsel. A party in a civil case whose attorney's conduct has fallen below a reasonable standard has other remedies. To grant Rule 60(b)(1) relief in such circumstances would penalize the nonmoving party for the negligent conduct of the moving party's counsel. Amayo v. MJ Co., 10 FSM R. 371, 381 (Pon. 2001).

The exception to the rule that attorney neglect does not state a basis for relief under Rule 60(b)(1) is where the neglect itself is excusable. Clients must be held accountable for their attorneys' acts or omissions. Amayo v. MJ Co., 10 FSM R. 371, 381-82 (Pon. 2001).

Allegations of an attorney's gross negligence do not entitle his client to relief from judgment under the excusable neglect provision of Rule 60(b)(1). Amayo v. MJ Co., 10 FSM R. 371, 382 (Pon. 2001).

An analysis of excusable neglect under Rule 60(b)(1) by its terms brings into play the conduct of the client, as well counsel because the proper focus is upon whether the neglect of the clients and their counsel was excusable. Amayo v. MJ Co., 10 FSM R. 371, 382 (Pon. 2001).

A pro se party's lack of full involvement in the pretrial process for whatever reasons when he had the opportunity to participate – and indeed was required to do so but did not when it came to responding to plaintiffs' discovery – does not constitute excusable neglect under Civil Procedure Rule 60(b) when he has not demonstrated that his own neglect of the litigation, either in his role of client or attorney, was excusable. Amayo v. MJ Co., 10 FSM R. 371, 382 (Pon. 2001).

Because procedural law cannot cast a sympathetic eye on the unprepared or it will soon fragment into a kaleidoscope of shifting rules, relief under Rule 60 is not appropriate when a party has demonstrated a pattern of delay and neglect. Amayo v. MJ Co., 10 FSM R. 371, 382 n.5 (Pon. 2001).

For the limited purpose of Rule 60(b)(1) relief from judgment the court will not allow a party, having elected at relevant times to be his own counsel of record, to ascribe his own on-the-record conduct of the litigation after the fact to off-the-record counsel. Amayo v. MJ Co., 10 FSM R. 371, 383 (Pon. 2001).

Subsection (6) is the grand reservoir of equitable power to do justice in a particular case, subject to the requirement that the provision is applicable only when the basis for relief is different from those enumerated in subsections (1) through (5) of Rule 60(b), and to the requirement that extraordinary circumstances exist for justifying relief. Extraordinary circumstances usually means that the movant himself was not at fault for his predicament. Conversely, the usual implication of fault on the movant's part is that there are no extraordinary circumstances. Amayo v. MJ Co., 10 FSM R. 371, 383 (Pon. 2001).

Relief from judgment under Rule 60(b)(6) will be denied when there was sufficient action, and failure to act, on the movant's part to preclude the argument that there was no fault on his part and when there is also no distinct claim for relief that falls outside those specifically enumerated in subsections (b)(1) through (b)(5) of Rule 60. Amayo v. MJ Co., 10 FSM R. 371, 383 (Pon. 2001).

The determination of what sorts of neglect that can be considered excusable in order to justify relief from judgment is an equitable one. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 122 (Chk. 2002).

Relief under Rule 60(b)(6) is reserved for extraordinary circumstances. Farata v. Punzalan, 11 FSM R. 175, 178 (Chk. 2002).

Relief from judgment will be denied when the movant has not shown the extraordinary circumstances required by Rule 60(b)(6) for her to be granted relief from a judgment, which was in her favor and which she had agreed to, and has not shown unforeseeable changed circumstances. Farata v. Punzalan, 11 FSM R. 175, 178 (Chk. 2002).

A judgment may be vacated for nonjoinder of a necessary or indispensable party or where it affects persons who were never made parties to the suit. Pastor v. Ngusun, 11 FSM R. 281, 285 (Chk. S. Ct. Tr. 2002).

Rule 60(b) draws a distinction between relief from judgment for "fraud," which is subject to a one-year limitation, and for "fraud upon the court," which is not subject to such a limitation. These are two distinct types of fraud, since any other conclusion would render nugatory the one-year limitations period that is placed on "ordinary" fraud under Rule 60(b)(3). Ramp v. Ramp, 11 FSM R. 630, 635 (Pon. 2003).

The adversary process is designed to ferret out perjured testimony and the like, and if a party does not litigate vigorously and effectively to accomplish this, then he must live with the result. Thus, the advantage of focusing the inquiry on what the party seeking relief should have accomplished at the earlier trial serves all the purposes of the "intrinsic" versus "extrinsic" fraud distinction. It protects the sanctity of final

judgments from those who did not adequately litigate the issues the first time around. The preservation of the sanctity of judgments and the certainty that this is meant to provide in the lives of litigants, irrespective of whether they win or lose, is the rationale for the heightened showing necessary for relief from judgment after one year has elapsed from the time of the entry of judgment. Ramp v. Ramp, 11 FSM R. 630, 636 (Pon. 2003).

A finding of fraud on the court is justified only by the most egregious misconduct directed to the court itself, such as bribery of a judge or jury or fabrication of evidence by counsel, and must be supported by clear, unequivocal and convincing evidence. Ramp v. Ramp, 11 FSM R. 630, 636 (Pon. 2003).

Nondisclosure is not a basis for seeking relief from an order or judgment based on allegations of fraud on the court. Ramp v. Ramp, 11 FSM R. 630, 638 (Pon. 2003).

When a party has received a copy of an instrument evidencing the property transfer that she now claims was concealed from her, notwithstanding this omission, and regardless of the fact that the opponent answered the interrogatory "no," when the only correct answer was "yes," it remains that the discovery responses that were served on her attorney of record and are a part of the court file contain a copy of the document conveying the half interest. Thus, she cannot now say this transaction was not disclosed to her. At most, the inconsistency between the request for production and the interrogatory created an issue for resolution by further discovery. In light of the property transfer document, even the patently incorrect interrogatory answer does not entitle her to any relief under the fraud on the court provision. Ramp v. Ramp, 11 FSM R. 630, 638-39 (Pon. 2003).

Miscategorization of the property cannot be a basis for a fraud on the court claim when the statement of the parties' assets and liabilities was, and is a part of the record, when the alleged miscategorization was evidently not an issue at the time the parties executed the separation agreement since the listing is attached to that agreement, and when it was not an issue when the parties stipulated to the entry of the divorce decree that incorporated the separation agreement with the attached asset listing. Ramp v. Ramp, 11 FSM R. 630, 639 (Pon. 2003).

Rule 60(b)(1) provides that a court may relieve an affected party from judgment on the basis of mistake, inadvertence, surprise, or excusable neglect. Panuelo v. Amayo, 12 FSM R. 365, 372 (App. 2004).

A trial court commits an abuse of discretion when it commits legal error by denying a motion for relief from judgment when a defendant was surprised by the date and time of trial since he was never served with a notice of trial because the trial court erred when, through its clerks' office, it failed to serve notice of the trial date and time on the *pro se* litigant. This error seriously affected the judicial proceedings' fairness, integrity, and public reputation, regardless of opposing counsel's service of a trial subpoena on the litigant. Panuelo v. Amayo, 12 FSM R. 365, 372 (App. 2004).

When the fundamental tenets of due process are violated by the trial court's failure to provide notice of the trial to a *pro se* litigant, the trial court's later denial of his motion for relief from judgment under Rule 60 is an abuse of discretion. Panuelo v. Amayo, 12 FSM R. 365, 374 (App. 2004).

Unlike other grounds under Rule 60(b), the court does not have any discretion when relief from judgment is sought on the ground that the judgment was void because either a judgment is void or it is valid. A judgment is not void merely because it is erroneous. It is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law. Lee v. Lee, 13 FSM R. 252, 256 (Chk. 2005).

When the only ground offered to justify relief from judgment is that the movant was not properly served the amended complaint and when the court has concluded that he was properly served the amended complaint by mail since he had already appeared in the case to plead or otherwise defend, the motion for

relief from judgment must be denied. Lee v. Lee, 13 FSM R. 252, 258 (Chk. 2005).

When an amended complaint asserted additional factual claims, the defendant had to be served a summons with the amended complaint and the service had to be effected as would the service of any complaint and summons, and since he was served by ordinary mail, he was not properly served the amended complaint. The judgment based on the amended complaint is thus void as to him and a motion for relief from judgment will therefore granted as to him. Lee v. Lee, 13 FSM R. 252, 258 (Chk. 2005).

On motion and upon such terms as are just, the court may relieve a party from a final judgment when the judgment is void. The court can order the plaintiff to serve the amended complaint and a summons issued by the court clerk on defendant being relieved from judgment by any means permissible under FSM Civil Procedure Rule 4 or 4 F.S.M.C. 204(2) or 4 F.S.M.C. 204(3) within a certain time. Lee v. Lee, 13 FSM R. 252, 259 (Chk. 2005).

Relief from judgment cannot be for a mistake the bank made in preparing the loan agreement and promissory note when the court corrected that "mistake" by reforming the loan agreement and the promissory note to accurately reflect the agreement of the parties to it because the judgment from which relief is sought is not based on, or the result of, this "mistake," but is instead the result of the court's correction of the "mistake." FSM Dev. Bank v. Arthur, 15 FSM R. 625, 632 (Pon. 2008).

Legal rulings affirmed on appeal and therefore not error are not "mistakes" subject to relief from judgment under Rule 60(b)(1). FSM Dev. Bank v. Arthur, 15 FSM R. 625, 632 (Pon. 2008).

Failure to sue the borrower as well as, or instead of, the guarantors cannot be considered a "mistake" subject to relief from judgment under Rule 60(b)(1) because, as a general legal principle, a lender holding a guaranty of payment can sue a guarantor directly, without naming the borrower and because the terms of the guaranty, under which the guarantors were found liable, permitted the bank, in the case of a loan default, to sue the guarantors without suing the borrower. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 632 (Pon. 2008).

When the defendants do not assert that the judgment is void and do not allege that the court lacked subject matter jurisdiction over the case or personal jurisdiction over the defendants or that the court acted inconsistent with due process, the defendants are not entitled to relief from judgment under Rule 60(b)(4). FSM Dev. Bank v. Arthur, 15 FSM R. 625, 633 (Pon. 2008).

Rule 60(b)(5) which permits relief from a judgment on the ground that "it is no longer equitable that the judgment have prospective application," properly applies only to judgments with prospective effect, and so does not cover the case of a judgment for money damages. While a money judgment may be "prospective" to the extent that the defendant has failed to pay it in a timely manner, it is nevertheless a final order and is not "prospective" for purposes of Rule 60(b)(5). FSM Dev. Bank v. Arthur, 15 FSM R. 625, 634 (Pon. 2008).

Subsection 60(b)(6), which permits relief for "any other reason justifying relief," and the other subsections of Rule 60(b) are mutually exclusive. Thus, if the reasons offered for relief from judgment could have been considered under any of the subsections 60(b)(1) through (5), they cannot be considered under Rule 60(b)(6). FSM Dev. Bank v. Arthur, 15 FSM R. 625, 634 (Pon. 2008).

Relief under Rule 60(b)(6) is reserved for extraordinary circumstances. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 634 (Pon. 2008).

When the defendants do not allege that the FSM Development Bank, or IDF, or FDA committed any wrongdoing causing the borrower's non-performance on the loan repayments, they cannot rely on the principle that a promisor is discharged from liability when the promisor's non-performance is caused by the other contracting party since the other contracting party, the bank (and its principal, IDF) did not cause the

non-performance and they cannot rely on the principle that a person is not permitted to profit by his own wrong at another's expense since neither the bank nor IDF are alleged to have committed a wrong, and it is IDF that will profit if the loan is repaid. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 635 (Pon. 2008).

When the terms of the guaranty under which the guarantors have been held liable waived any right to the borrower's defenses, the guarantors would need to overcome this express waiver in order to be entitled to relief from the judgment against them based on the ground that another's wrongdoing is a defense against the borrower being required to repay its loan. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 635 n.7 (Pon. 2008).

A litigant, as a precondition to Rule 60(b) relief, must give the trial court reason to believe that vacating the judgment will not be a futile gesture or an empty exercise, that is, that the litigant has a meritorious defense. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 635 (Pon. 2008).

When, taking the guarantors' factual allegations as true – that the bank misrepresented to plaintiffs that the documents were in accord with the loan, caused plaintiffs to rely upon said representations and knew plaintiffs would so rely – it is difficult to see how the guarantors were harmed thereby because, if the bank had prepared all the documents correctly, the documents would have shown that a corporation was the borrower and that the guarantors were guarantors with the result that the guarantors would be liable on their guaranty, and since this result is no different than that in the judgment rendered in the former litigation, any alleged reliance on the bank's representation could not have been to the guarantors' detriment since they were in no worse position than if the loan documents were accurately prepared. Arthur v. Pohnpei, 16 FSM R. 581, 597-98 (Pon. 2009).

Since the court cannot ignore the facts that the guarantors agreed were true and stipulated to in the former litigation – that a corporation was the borrower, that the promissory note was incorrectly completed, and that they signed a guaranty – and instead pretend, for the sake of this independent action, that those facts are not true, and that the guarantors were the borrowers, the guarantors' current allegation that they were the borrowers cannot be taken as true because it is a conclusion of law masquerading as a factual conclusion that the court cannot accept or, alternatively, it is a conclusory factual allegation that is contradicted by facts which the court may judicially notice – the court filings, record, and reported decision in the former action and the appellate affirmance of that decision. Either way, the court cannot accept this allegation as true because it is not. Arthur v. Pohnpei, 16 FSM R. 581, 598 (Pon. 2009).

When the guarantors steadfastly maintained, from the start and throughout the former litigation and subsequent appeal, their position that a corporation was the borrower and that they were only the guarantors, the guarantors cannot now pretend that, because the former judgment and appeal were unfavorable to them, they were instead the borrowers on the loan, something they had consistently denied throughout. If the guarantors were permitted to now assert that they were the borrowers, they would be relitigating the entire case from the beginning, and that they cannot do in an independent action, and, since the corporation was the borrower, the guarantors' allegations that can be taken as true fail to state a claim for fraud. Because the guarantors' allegation cannot make out a fraud claim, summary judgment could be granted in the bank's favor on this ground alone since, without the existence of the requisite fraud, res judicata prevails. Arthur v. Pohnpei, 16 FSM R. 581, 598 (Pon. 2009).

When the issue of the bank's faulty preparation of some of the loan documents that showed the guarantors as borrowers and the effects of those scrivener's errors on the guarantors' liability was fully litigated in the former civil action and, on appeal, the guarantors' contentions were again fully considered and the trial court's decision was affirmed; when the defense of mistake in the document preparation was fully litigated in the trial court and also considered by the appellate court; and when the guarantors did not raise a fraud defense at that time but they could have if they had chosen to since all the facts known to them now were also known to them then, there is no genuine issue of material fact about whether the guarantors were misled by the bank's errors on the loan documents to believe that they were the actual borrowers and not guarantors since they all believed that the corporation was the borrower, not they, and

that they had signed a guaranty, and, in the former action, had stipulated to these facts as true and that these facts were undisputed. Arthur v. Pohnpei, 16 FSM R. 581, 598-99 (Pon. 2009).

Relief under Rule 60(b)(6) is reserved for "extraordinary circumstances," which usually means that the movant himself was not at fault for his predicament. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 659 (App. 2009).

An issue that should have been known to the appellants when the original suit was filed should have been raised as a defense in the original suit or an excuse offered for not raising it then. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 659 (App. 2009).

When there is no reason, other than the appellants' own carelessness or inadvertence, not to have raised a defense at the trial level or to have impleaded the State of Pohnpei for indemnification, but they did neither, the appellants fail to demonstrate that they were not at fault or negligent. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 659 (App. 2009).

When the appellants' first claim is that the contract reformation was a mistake on the court's part and that issue was already disposed of in their first appeal; when they have been before the trial court as well as the appeals court, and have had an opportunity to fully litigate their claims; when their claim that because the contract was reformed, they were unable to present their defense is unsupported and unpersuasive; when they were not denied any due process rights or remedies in law or equity as they were afforded an opportunity to fully litigate their claims and to present in the original action any meritorious defense against all claims; when they stipulated to the facts; and when many of their arguments are factual claims made in a prior appeal, in which that court already concluded were speculative arguments, the appellants have not demonstrated that their circumstances are in any way unusual and exceptional. Nor have they established that their own fault or negligence was not a factor in the resulting judgment. Therefore the trial court did not abuse its discretion in denying the appellants' request for relief from the judgment. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 659-60 (App. 2009).

When the appellants have had ample opportunity to present evidence on every ground or defense that they asserted, or could have asserted, but failed to do so; when the trial court comprehensively and correctly analyzed and denied their Rule 60(b) motion for relief from the trial court's judgment; and when they now urge on this appeal that the trial court's decision be vacated because it failed to treat their Rule 60(b) motion as an independent action under Rule 60(b)(6), this contention is spurious. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 660 (App. 2009).

Evidence does not qualify as newly discovered evidence that would be a ground for relief under Civil Rule 60(b)(2) when that evidence should have been in the plaintiff's possession all along (since he was a signatory to the agreement) or was evidence he would have, with due diligence, located before he filed suit, especially since this is his second suit for the breach of the same easement agreement and he should have had it for the earlier suit. Welle v. Chuuk Public Utility Corp., 18 FSM R. 203, 206 (Chk. 2012).

When all the defenses the defendant now seeks to raise were previously raised on his behalf and then considered and rejected by the court, he has not shown any grounds to revisit these issues or for relief from judgment under Civil Procedure Rule 60(b), which governs the defendant's motion to dismiss prior court judgments, which also was not timely. Saimon v. Wainit, 18 FSM R. 211, 214 (Chk. 2012).

Civil Procedure Rule 60(b)(4) provides for the relief from judgment when the judgment is void. Unlike other grounds for relief from judgment under Rule 60(b), the court does not have any discretion when the relief is sought because the judgment is void since a judgment is either void or it is valid and if it is void the court must vacate it. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 613 (Pon. 2013).

Although the court has no discretion and must grant the relief when relief is sought from a void judgment, a judgment is void only if the court that rendered it lacked jurisdiction of the subject matter, or of

the parties, or if it acted in a manner inconsistent with due process. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 613 (Pon. 2013).

Since a corporation's directors have a duty to act in the corporation's best interest and when, regardless of whether the judgment existed, the corporation had debts that greatly exceeded its assets and it was unable to pay those debts as they became due, bankruptcy was probably in the corporation's best interest, and the court cannot give any weight to the argument that this meant that the directors had accepted the judgment when they directed the corporation to seek bankruptcy protection. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 613 (Pon. 2013).

The court cannot give any weight to the argument that the passage of time is enough to bar vacating a void judgment. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 614 (Pon. 2013).

A judgment entered against a party without notice or an opportunity to be heard is void and subject to direct or collateral attack. Andrew v. Heirs of Seymour, 19 FSM R. 331, 341 (App. 2014).

There are civil procedure mechanisms to address situations where the Kosrae State Court would be in the position of being asked to enforce contradictory judgments. Under Kosrae Civil Procedure Rule 60(b)(5), on motion and on such terms as are just, the Kosrae State Court may relieve a party or a party's legal representative from a final judgment, order, or proceeding when a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application. Thus, a party could be relieved from an inconsistent permanent injunction as a final order that it is no longer equitable that it should have prospective application. Andrew v. Heirs of Seymour, 19 FSM R. 331, 341 & n.7 (App. 2014).

A court may relieve an affected party from judgment on the basis of mistake, inadvertence, surprise, or excusable neglect. The grant or denial of relief under Rule 60 rests with the trial court's sound discretion. The court must balance the policy in favor of hearing a litigant's claims on the merits against the policy in favor of finality. Moylan's Ins. Underwriters (FSM), Inc. v. Gallen, 20 FSM R. 3, 6 (Pon. 2015).

Relief from judgment will be denied when the basis for relief is that there was mistake, inadvertence, and excusable neglect in the stipulated judgment because besides the fraudulent insurance policies that are the subject of the complaint, there were legitimate policies sold and the defendant mistakenly believed that the properly earned commission and proper rate of commission had already been taken into account when the parties stipulated to judgment, but, during a deposition, in discussing the stipulation, the defendant admitted that the judgment amount was correct and that she had the opportunity to review the stipulation for one to two days before signing it and when no further evidence was produced to support the claim that the judgment amount was inaccurate. Moylan's Ins. Underwriters (FSM), Inc. v. Gallen, 20 FSM R. 3, 6 (Pon. 2015).

Relief from judgment will not be granted when the defendants' arguments brought pursuant to subsections 60(b)(1), (2), and (3) are well outside the one-year time constraint and are thus untimely and when the defendants' remaining affirmations fail to demonstrate any other reason justifying relief. FSM Dev. Bank v. Setik, 20 FSM R. 85, 88 (Pon. 2015).

The movants do not qualify for a suspension of the proceedings when they do not deny the debt and therefore fail to denote that they are likely to prevail on the merits of the accompanying Rule 60(b) motion; when there has been an inadequate showing that irreparable harm will befall the movants without the stay; when they have made no attempt to meet their obligation under the mortgage even though the executed mortgage pledged the subject parcels as security; when the coveted issuance of a stay would further delay the plaintiff's ability to recoup money due and owing, as reflected in the judgment(s) that have languished for an inordinate length of time, coupled with the fact that the deterioration of the mortgaged buildings is inevitable with the passage of time, thereby adversely impacting the value of the mortgaged property; and when the stay could set a troubling public policy precedent by allowing other debtors to stave off satisfaction

of final judgments when an underlying justification for suspension of proceedings has not been adequately depicted. FSM Dev. Bank v. Setik, 20 FSM R. 85, 89 (Pon. 2015).

A motion sounding in an attorney's purported negligence does not constitute a basis for Rule 60(b) relief from judgment, as clients are held accountable for their attorney's acts or omissions. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 103 (Chk. 2015).

In its discretion and on such condition for the adverse party's security as is proper, the court may, pending the disposition of a Rule 60 motion for relief from judgment, stay the execution of any proceeding to enforce a judgment. The criteria to be utilized when determining the propriety of a stay are: 1) whether the applicant has made a strong showing that the applicant is likely to prevail on the merits; 2) whether the applicant has shown that without a stay, the applicant will be irreparably harmed; 3) whether the stay's issuance would substantially harm other parties interested in the proceedings and 4) whether the public interest would be served by granting the stay. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 104 (Chk. 2015).

A motion to stay will be denied when the defendants' arguments have failed to denote a likelihood of prevailing on the merits of their Rule 60(b) motions; when there has been an inadequate showing that irreparable harm will befall them without a stay, as they do not dispute the debt but have made no attempt to meet their obligation with respect to the outstanding judgment; when the stay's issuance would further delay the plaintiff's ability to recoup monies due and owing, as reflected in the judgment that has been languishing for an inordinate length of time; and when a stay could conceivably set a troubling public policy precedent, in terms of allowing other debtors to stave off satisfaction of final judgments although an underlying justification for a suspension has not been adequately shown. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 104-05 (Chk. 2015).

A motion for a new trial or for relief from judgment will be denied when none of the purported "newly discovered evidence" that it relies upon qualifies as newly discovered evidence which by due diligence could not have been discovered earlier. George v. Palsis, 20 FSM R. 174, 176-77 (Kos. 2015).

Evidence, that by its very nature, was in the plaintiff's possession the whole time cannot be considered "newly discovered" evidence especially when the motion for a new trial or relief from judgment does not address the plaintiff's complete failure to produce the evidence at trial. George v. Palsis, 20 FSM R. 174, 177 (Kos. 2015).

A judgment is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 289 (Pon. 2016).

Whether a default judgment granted relief not prayed for in the complaint's demand for judgment; whether the guaranties that were signed were not attached to the promissory notes; whether the judgment was joint and several; and whether one of the guaranties was not signed by the person it should have been signed by but was fraudulently signed by another person, are not determinants of subject-matter jurisdiction. While they may be raised as defenses, none of these grounds is jurisdictional. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 290 (Pon. 2016).

When none of the movants' asserted grounds would alter the case's nature or the type of relief sought because the court had jurisdiction over the case's nature – enforcement and collection of defaulted FSM Development Bank loans – and had, under 4 F.S.M.C. 117, the power to grant the relief sought (including mortgage foreclosure) and when none of the movants' grounds would change that or would have limited the court's ability to rule on parties' conduct or the status of debt and grant relief or judgment in any party's (including any defendant's) favor, the court had full jurisdiction over the case's subject matter even if the defenses had been raised before judgment. A motion for relief from judgment on the ground the court lacked subject-matter jurisdiction will be denied on this ground alone. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 290 (Pon. 2016).

Rule 60(b)(6) is a grand reservoir of equitable power to do justice in a particular case, subject to the requirement that the provision is applicable only when there is a basis for relief different from those enumerated in subsections (1) through (5) of Rule 60(b), and when extraordinary circumstances exist for justifying relief. In re Contempt of Jack, 20 FSM R. 452, 459 (Pon. 2016).

The "extraordinary circumstances" required for Rule 60(b)(6) relief usually means that the movant himself or herself was not at fault for his or her predicament, and conversely, the usual implication of fault on the movant's part is that there are no "extraordinary circumstances." Relief under Rule 60 is simply not appropriate where a party has demonstrated a pattern of delay and neglect. In re Contempt of Jack, 20 FSM R. 452, 459 (Pon. 2016).

Rule 60(b) is not meant to relieve a party from its own carelessness and neglect, or from its counsel's carelessness and neglect. Rule 60(b) relief is precluded when the complained of injuries result solely from the carelessness or neglect of the moving party, or of the moving party's counsel, except when the neglect itself is excusable under FSM Civil Rule 60(b)(1). In re Contempt of Jack, 20 FSM R. 452, 459 (Pon. 2016).

With the exception of void judgments under Rule 60(b)(4), the grant or denial of relief under Rule 60 rests with the trial court's sound discretion, but that discretion is not an arbitrary one to be capriciously exercised, but a sound legal discretion guided by accepted legal principles, and the factors that should inform the court's consideration are: 1) that final judgments should not lightly be disturbed; 2) that the Rule 60(b) motion is not to be used as a substitute for appeal; 3) that the rule should be liberally construed in order to achieve substantial justice; 4) whether the motion was made within a reasonable time; 5) whether (if the judgment was a default or a dismissal in which the merits were not considered) the interest in deciding cases on the merits outweighs, in the particular case, the interest in the finality of judgments, and there is merit in the movant's claim or defense; 6) whether if the judgment was rendered after a trial on the merits the movant had a fair opportunity to present his claim or defense; 7) whether there are intervening equities that would make it inequitable to grant relief; and 8) any other factors relevant to the justice of the judgment under attack. In re Contempt of Jack, 20 FSM R. 452, 460 & n.3 (Pon. 2016).

Rule 60(b) is not intended as a substitute for a direct appeal from an erroneous judgment. The fact that a judgment is erroneous does not constitute a ground for relief under the Rule. Nor is Rule 60(b) designed to circumvent the policy evidenced by the rule limiting the time for appeal. In re Contempt of Jack, 20 FSM R. 452, 460 (Pon. 2016).

Although the term "void" describes a result, rather than the conditions that render a judgment unenforceable, a void judgment is one so affected by a fundamental infirmity that the infirmity may be raised after the judgment becomes final. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

A judgment is void and therefore subject to relief under Rule 60(b)(4), only if the court that rendered judgment lacked jurisdiction or in circumstances in which the court's action amounted to a plain usurpation of power constituting a violation of due process. The total want of jurisdiction must be distinguished from an error in the exercise of jurisdiction and only rare instances of a clear usurpation of power will render a judgment void. In other words, a court has the power to determine its own jurisdiction and an error in that determination will not render the judgment void. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 508 (App. 2016).

Generally, attorney negligence is not a basis for Rule 60(b)(1) relief. Since, parties may freely choose their attorneys and should not be allowed to avoid the ramification of their chosen counsel's acts or omissions, to grant relief under Rule 60(b)(1) for attorney negligence would penalize the nonmoving party for the negligent conduct of the moving party's counsel. Johnson v. Rosario, 21 FSM R. 7, 11 (Pon. 2016).

Keeping a suit alive merely because the plaintiff should not be penalized for the omissions of his own

attorney would be visiting the sins of the plaintiff's lawyer upon the defendant. Johnson v. Rosario, 21 FSM R. 7, 12 (Pon. 2016).

Relief under Rule 60(b)(6) is reserved for "extraordinary circumstances." Subsection (6) is a grand reservoir of equitable power to do justice in a particular case, subject to the requirement that it is applicable only when there is a basis for relief different from those enumerated in subsections (1) through (5) of Rule 60(b), and to the requirement that "extraordinary circumstances" exist for justifying relief. Johnson v. Rosario, 21 FSM R. 7, 12 (Pon. 2016).

"Extraordinary circumstances" justifying relief under Rule 60(b)(6) means that the movant himself was not at fault for his predicament, and conversely, the usual implication of fault on the movant's part is that there are no "extraordinary circumstances." Johnson v. Rosario, 21 FSM R. 7, 12 (Pon. 2016).

The dilatory approach exhibited by not filing a substitution motion, even though the named plaintiff passed away almost three and a half years earlier, coupled with a representation that "a probate needs to be filed" in the future, is clearly not the type of "extraordinary circumstances" contemplated by Civil Rule 60(b)(6) for relief from judgment. Johnson v. Rosario, 21 FSM R. 7, 13 (Pon. 2016).

A self-proclaimed obliviousness, in failing to make a motion to substitute once the plaintiff's death was suggested on the record, is not a "mistake" justifying relief under Civil Rule 60(b)(1). Neither was it "extraordinary circumstances" justifying relief under Civil Rule 60(b)(6), since the failure to file the relevant motion for substitution was attributable solely to the movant. The defendants should not be expected to endure the prejudicial repercussions attendant to the plaintiff's disproportionate tardiness. Johnson v. Rosario, 21 FSM R. 7, 13-14 (Pon. 2016).

It is well established, that when a judgment has been entered against a party without notice or an opportunity to be heard, it is void and subject to direct or collateral attack at any time. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 121 (App. 2017).

Under Civil Rule 60(b)(1), the trial court may relieve a party from a final judgment based on mistake, inadvertence, surprise, or neglect. Gallen v. Moylan's Ins. Underwriters (FSM) Inc., 21 FSM R. 380, 385 (App. 2017).

Stipulated judgments, while they are judicial acts, also have many attributes of voluntarily-undertaken contracts, and when the parties have made a freely calculated, deliberate choice to submit to an agreed upon judgment rather than seek a more favorable litigated outcome (or risk a less favorable litigated outcome), the burden under Rule 60(b) is probably more formidable than had they litigated and lost. Gallen v. Moylan's Ins. Underwriters (FSM) Inc., 21 FSM R. 380, 386 (App. 2017).

When the movant's evidence that the judgment amount was a mistake was inadequate, the trial court's denial of her Rule 60(b)(1) motion was not an abuse of discretion, since one of the basic tenets of our system of jurisprudence is that of finality of judgments. Gallen v. Moylan's Ins. Underwriters (FSM) Inc., 21 FSM R. 380, 386 (App. 2017).

Even when the unjust enrichment remedy is otherwise available to a judgment-debtor claiming an inaccurate judgment amount, she would still need to first prevail on her Rule 60(b)(1) motion (based on mistake), before the unjust enrichment doctrine could become a viable remedy. Gallen v. Moylan's Ins. Underwriters (FSM) Inc., 21 FSM R. 380, 386 (App. 2017).

The denial of a Rule 60(b) motion does not bring up the underlying judgment for review. The appellate court's review is limited to whether the trial court abused its discretion in denying the Rule 60(b) motion because Rule 60(b) is not a substitute for a direct appeal from an erroneous judgment. That a judgment is erroneous does not constitute a ground for relief under the Rule. Setik v. FSM Dev. Bank, 21 FSM R. 505, 514 (App. 2018).

That rental payments may have been diverted is not a ground for relief from judgments that were entered years before that diversion. At most, the judgment-debtors would have an argument about the amount outstanding on the judgments. Setik v. FSM Dev. Bank, 21 FSM R. 505, 516 (App. 2018).

A motion may seek timely Rule 60(b)(1) relief when it seeks relief from a recent order in aid of judgment, and not from the judgment itself. Setik v. FSM Dev. Bank, 21 FSM R. 505, 516 (App. 2018).

A claim that the FSM Development Bank should not be trying to make a profit is neither a ground for relief from judgment nor a meritorious defense. Setik v. FSM Dev. Bank, 21 FSM R. 505, 519 (App. 2018).

When the appellants' reasons were not sufficient to justify vacating the default judgments under the Rules generally available to them, Rule 60(b)(4) and 60(b)(6), and when they failed to show a meritorious defense, the trial court did not abuse its discretion when it denied their motion for relief from judgment. Setik v. FSM Dev. Bank, 21 FSM R. 505, 519 (App. 2018).

An order that Pohnpei seek an earthmoving permit to remove a dredging berm was a final decision because it ended the litigation and did not contemplate further court action other than the enforcement of that order. Berman v. Pohnpei, 22 FSM R. 300, 302 (Pon. 2019).

Under Civil Procedure Rule 60(b)(5), a party may obtain relief from a judgment or a final order when 1) the judgment has been satisfied, released, or discharged, or 2) a prior judgment upon which it is based has been reversed or otherwise vacated, or 3) it is no longer equitable that the judgment should have prospective application. Berman v. Pohnpei, 22 FSM R. 300, 303 (Pon. 2019).

The Rule 60(b)(5) provision that permits relief from a final order or judgment on the ground that it is no longer equitable that the judgment have prospective application, properly applies only to final decisions with prospective effect. Berman v. Pohnpei, 22 FSM R. 300, 303 (Pon. 2019).

Rule 60(b)(5) may not be used to challenge the legal conclusions on which a prior judgment or order rests, but the Rule provides a means by which a party can ask a court to modify or vacate a judgment or order if a significant change either in factual conditions or in law renders continued enforcement detrimental to the public interest. The party seeking relief bears the burden of establishing that changed circumstances warrant relief, but once that party carries this burden, a court abuses its discretion when it refuses to modify an order in light of such changes. Berman v. Pohnpei, 22 FSM R. 300, 303 (Pon. 2019).

The movants have established that significantly changed circumstances warrant relief under Rule 60(b)(5) when the significant changes in the factual conditions of the dredging berm make it no longer equitable that the 1991 administrative agency decision and the dredging permit conditions have prospective application and when the changed circumstances have rendered the enforcement of the final order that the defendants seek a permit to remove the dredging berm detrimental to the public interest. Berman v. Pohnpei, 22 FSM R. 300, 304 (Pon. 2019).

Relief under Rule 60(b)(6) is reserved only for extraordinary circumstances. It is the grand reservoir of equitable power to do justice in a particular case, subject to the requirement that the provision is applicable only when the basis for relief is different from those enumerated in Rule 60(b) subsections (1) through (5), and to the requirement that extraordinary circumstances exist for justifying relief. FSM Dev. Bank v. Talley, 22 FSM R. 587, 592 (Kos. 2020).

Extraordinary circumstances usually means that the movant himself was not at fault for his predicament, but if there was fault on the movant's part, the usual implication is that there are no extraordinary circumstances. Even then, a motion for relief from judgment under Rule 60(b)(6) must still be filed within a reasonable time. FSM Dev. Bank v. Talley, 22 FSM R. 587, 592 (Kos. 2020).

An allegation of neglect, which, if it were shown to be excusable, would be a ground for relief under Rule 60(b)(1), but when the one-year time limit for Rule 60(b)(1) relief expired long before the defendant filed his motion for relief, the defendant cannot use Rule 60(b)(6) to circumvent the Rule 60(b)(1) time limit. FSM Dev. Bank v. Talley, 22 FSM R. 587, 592 (Kos. 2020).

A client is responsible for his attorney's actions, inactions, or omissions. Rule 60(b) is not meant to relieve a party from its own carelessness and neglect, or from his counsel's carelessness and neglect. FSM Dev. Bank v. Talley, 22 FSM R. 587, 593 (Kos. 2020).

Rule 60(b) relief is precluded when the injuries complained of result solely from the movant's carelessness or neglect, or from his counsel's carelessness or neglect, except when the neglect itself is excusable under FSM Civil Rule 60(b)(1). FSM Dev. Bank v. Talley, 22 FSM R. 587, 593 (Kos. 2020).

Equitable estoppel (and unclean hands) is based on the other party's alleged misrepresentation or misconduct, this ground for relief can only be sought through Rule 60(b)(3), and that rule, as noted above, has a one-year absolute time limit, and that time limit expired four and a half months before the defendant filed his motion. FSM Dev. Bank v. Talley, 22 FSM R. 587, 594-95 (Kos. 2020).

Primarily salient to an analysis of an excusable neglect assertion are: 1) an explanation of the movant's diligent and good faith efforts and 2) the lack of prejudice to the opposing party, but good-faith efforts and lack of prejudice are not enough to justify a finding of excusable neglect. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 604 (Pon. 2020).

In a close case, it is probably best for the court to err on the side of caution and call the neglect excusable. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 604 (Pon. 2020).

– Relief from Judgment – Independent Actions

Where there are one or more legal remedies still available to a litigant the trial court has no jurisdiction to grant relief from a judgment through an independent action in equity. Election Comm'r v. Petewon, 6 FSM R. 491, 499 (Chk. S. Ct. App. 1994).

Trial courts have jurisdiction to set aside judgments either by a Rule 60 relief from judgment motion or by an independent action in equity. Election Comm'r v. Petewon, 6 FSM R. 491, 499 (Chk. S. Ct. App. 1994).

There are five essential elements to an independent action in equity to set aside a judgment. They are 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the defendant; and 5) the absence of any adequate remedy at law. If any one of these elements is missing the court cannot take equitable jurisdiction of the case. Election Comm'r v. Petewon, 6 FSM R. 491, 499 (Chk. S. Ct. App. 1994).

In appropriate circumstances, a court will invoke its equitable jurisdiction and will permit an independent action to set aside a prior judgment. Union Indus. Co. v. Santos, 7 FSM R. 242, 245 (Pon. 1995).

Where an identical action was dismissed with prejudice, the parties were represented by competent counsel, and defendant relied upon the dismissal of the prior action as a final and unequivocal resolution of both parties' claims, it would be inequitable to allow the plaintiff to relitigate the issue. Union Indus. Co. v. Santos, 7 FSM R. 242, 245 (Pon. 1995).

Chuuk state trial courts have jurisdiction to set aside judgments either by a Rule 60 relief from judgment motion or by an independent action in equity. The FSM Supreme Court trial division therefore

also has the power in a proper case to entertain an independent action for relief from a state court judgment. Enlet v. Bruton, 12 FSM R. 187, 189-90 (Chk. 2003).

There are five essential elements to an independent action in equity to set aside a judgment: 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the defendant's part; and 5) the absence of any adequate remedy at law. Enlet v. Bruton, 12 FSM R. 187, 190 (Chk. 2003).

Relief from a judgment may be sought either by a Rule 60(b) motion or by an independent action – through filing a separate case. It cannot be sought by both. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 636 (Pon. 2008).

It is not the function of an independent action to relitigate issues finally determined in another action between the parties. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 636 n.8 (Pon. 2008).

When the defendants have not filed their Rule 60(b) motion seeking relief in a separate action in equity collaterally attacking the judgment, but have instead filed it as a post-judgment motion in the original case, the motion may only be treated as a Rule 60(b) motion for relief from judgment, and not as an independent action, despite the defendants styling their motion as one "in the nature of an independent action." FSM Dev. Bank v. Arthur, 15 FSM R. 625, 636 (Pon. 2008).

Resort to an independent action may be had only rarely, and then only under unusual and exceptional circumstances. The defendants must satisfy all five of an independent action's elements, which are: 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the defendant's part; and 5) the absence of any adequate remedy at law. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 636 (Pon. 2008).

Rule 60(b) permits only motions for relief from judgment under that rule or independent actions. There is no such motion as one in the nature of an independent equitable action for relief filed in the original case. If a party wishes to seek relief through an independent action, it must file a separate independent action. If a party files a motion in the case in which the judgment was issued, it is a Rule 60(b) motion for relief from judgment. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 139 (Pon. 2008).

When an independent action's only purpose is to obtain relief from the judgment in another case; when certain named defendants were not parties in that other case, are not judgment-creditors in that other case, and have neither the power nor the authority to enforce that judgment since none of them has a judgment against the judgment-debtors and none of them is a successor-in-interest to that judgment's judgment-creditor; and when that judgment has not been assigned to any of them and thus, none of them can enforce the judgment, the independent action's complaint, as a matter of law, fails to state a claim against those certain named defendants upon which relief may be granted. Arthur v. Pohnpei, 16 FSM R. 581, 594-95 (Pon. 2009).

Whether certain named defendants can be ordered to order a judgment-creditor to cease collection efforts is pointless and meaningless since the court can, if the right to such relief were shown, vacate the challenged judgment and directly order the judgment-creditor, the only entity with the authority to collect the judgment, to cease collection efforts. If a judgment in an independent action vacates a judgment-creditor's judgment it would grant all of the relief sought, the other named defendants are thus neither necessary nor indispensable parties without whom complete relief cannot be granted. Arthur v. Pohnpei, 16 FSM R. 581, 595 (Pon. 2009).

Generally, claimants seeking equitable relief through an independent action must meet three requirements. They must 1) show that they have no other available or adequate remedy; 2) demonstrate that their own fault, neglect, or carelessness did not create the situation for which they seek equitable relief; and 3) establish a recognized ground–such as fraud, accident, or mistake–for equitable relief. Arthur v. Pohnpei, 16 FSM R. 581, 596 (Pon. 2009).

Generally, relief from a judgment may be sought either by a Rule 60(b) motion for relief from judgment filed in the original case or by a separate, independent action (a new case), but it cannot be sought by both. Arthur v. Pohnpei, 16 FSM R. 581, 596 (Pon. 2009).

There is some authority that if a Rule 60(b) motion for relief from judgment is denied solely as untimely, that denial does not act as res judicata precluding an independent action since the denial was not on the merits. Otherwise the two Rule 60(b) remedies (motion or independent action) are alternative, not cumulative, remedies, and res judicata applies to successive Rule 60(b) motions and independent Rule 60(b) actions. Arthur v. Pohnpei, 16 FSM R. 581, 596 (Pon. 2009).

When the denial of a Rule 60(b) motion for relief from judgment was not only on the ground that the motion was untimely, but also analyzed the merits of the grounds for relief and denied it on the merits of those grounds as well, summary judgment could be granted solely on the ground that the later independent action is precluded by the court's earlier denial on the merits of the motion. Arthur v. Pohnpei, 16 FSM R. 581, 596-97 (Pon. 2009).

The plaintiffs in an independent action have the burden to allege such fraud as to support an independent action for relief from judgment. Without the existence of the requisite fraud, an independent action in equity may not be brought. Instead, res judicata prevails. Arthur v. Pohnpei, 16 FSM R. 581, 597 (Pon. 2009).

An independent action cannot be used to withdraw a party's stipulation to the facts (or to have the court ignore their prior stipulation to the facts) and to then relitigate those issues since an independent action is not a vehicle for the relitigation of issues. Arthur v. Pohnpei, 16 FSM R. 581, 599 (Pon. 2009).

An independent action cannot be made a vehicle for relitigation of issues. A party is precluded by res judicata from relitigation in the independent equitable action issues that were open to litigation in the former action where he had a fair opportunity to make his claim or defense in that action. Arthur v. Pohnpei, 16 FSM R. 581, 599-600 (Pon. 2009).

When it is clear that an "independent action" is only an attempt to relitigate issues already litigated and decided by a trial court and affirmed by the appellate court and when the "fraud" allegation is merely an attempt to cast the same facts and claims in a different light in order to try to sneak under the bar of res judicata, there are no material facts genuinely in dispute and, as a matter of law, the independent action is barred by res judicata. Arthur v. Pohnpei, 16 FSM R. 581, 600 (Pon. 2009).

Rule 60(b) permits an independent action for relief from a judgment based upon fraud upon the court. Fraud upon the court is defined as the most egregious misconduct directed to the court itself, such as bribery of a judge or fabrication of evidence by counsel, which must be supported by clear, unequivocal and convincing evidence. Arthur v. Pohnpei, 16 FSM R. 581, 600 n.14 (Pon. 2009).

It is not important whether the trial judge considered the attack upon the judgment under 60(b) or as an independent equitable action, if based on all the evidence the trial judge in the exercise of his judicial and equitable discretion, denied relief. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 658 (App. 2009).

An independent action in equity to set aside a judgment must satisfy five essential elements: 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident, or mistake which prevented the

defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the defendant; and 5) the absence of any adequate remedy at law. If any one of these elements is missing the court cannot take equitable jurisdiction of the case. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 659 (App. 2009).

There are only three methods by which judgment-debtors may have a judgment against them set aside. One is to appeal the judgment and convince the appellate court to reverse it. The second is a motion for relief from judgment as provided for in Civil Procedure Rule 60(b). The third is an independent action in equity (as acknowledged in Rule 60(b)) to set aside a judgment. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 11 & n.5 (Pon. 2011).

In an appropriate case, the Kosrae State Court has the power to grant a party relief from a Trust Territory High Court judgment through an independent action in equity. This has even been acknowledged by treaty with the United States. Andrew v. Heirs of Seymour, 19 FSM R. 331, 341 (App. 2014).

Kosrae Civil Procedure Rule 60(b) does not limit the power of the court to entertain an independent action. A party collaterally attacking a judgment has the burden to establish its prerequisites. The five essential elements that an independent action in equity to set aside a judgment must satisfy are: 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the defendant; and 5) the absence of any adequate remedy at law. If any one of the elements is missing the court cannot take equitable jurisdiction of the case. Andrew v. Heirs of Seymour, 19 FSM R. 331, 341 (App. 2014).

Although Rule 60(b) does not limit the court's power to entertain an independent action to relieve a party from a judgment, the procedure for obtaining any relief from a judgment is either by a Rule 60(b) motion or by an independent action; not by both. FSM Dev. Bank v. Carl, 20 FSM R. 70, 72 (Pon. 2015).

The mere filing of an independent action for relief is not in itself a ground for relief of any kind. Just as a Rule 60(b) motion does not affect the finality of a judgment or suspend its operation, an independent action's filing does not affect the judgment's finality or suspend its operation. An independent action is just that – independent of the case in which the judgment was entered unless and until a final judgment in the independent action grants relief from the judgment. The independent action proceeds on its own. FSM Dev. Bank v. Carl, 20 FSM R. 70, 72 (Pon. 2015).

The filing of an independent action is not a ground for a stay of judgment. It cannot be the basis for a stay since its filing does not affect or suspend the judgment's operation. FSM Dev. Bank v. Carl, 20 FSM R. 70, 72 (Pon. 2015).

When the plaintiffs have already opted to seek the same relief via a Rule 60(b) motion, the present complaint is therefore an independent cause of action, and since a party seeking relief from a judgment is constrained to choosing, either a Rule 60(b) motion or an independent cause of action, the plaintiffs are thereby precluded from bringing the ostensibly redundant cause of action at hand. Setik v. Mendiola, 20 FSM R. 236, 241 (Pon. 2015).

An independent action seeking equitable relief, must satisfy five (5) essential elements: 1) a judgment which ought not, in equity and good conscience, be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident, or mistake, which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the defendant's part and 5) the absence of any adequate remedy at law. Since the components are prescribed in the conjunctive, if any one of these factors are absent, the court cannot take equitable jurisdiction of the case. Setik v. Mendiola, 20 FSM R. 236, 241 (Pon. 2015).

An independent action cannot be made a vehicle for relitigation of issues. A party is precluded by res judicata from relitigation in the independent equitable action that were open to litigation in the former action, where he had a far opportunity to make his claim or defense in that action. Setik v. Mendiola, 20 FSM R. 236, 241-42 (Pon. 2015).

Allegations in an independent action, which could have been previously broached consequently run counter to the doctrine of res judicata. Setik v. Mendiola, 20 FSM R. 236, 243 (Pon. 2015).

Having already utilized a Rule 60(b) motion for relief from judgment, the plaintiffs are not entitled to pursue a later independent cause of action to obtain relief because a party is limited to employing only one of these strategies. Setik v. Mendiola, 20 FSM R. 236, 244 (Pon. 2015).

The mere filing of an independent action for relief, is not in itself a ground for relief of any kind. Such a filing does not affect the judgment's finality or suspend its operation. Nor is the filing of an independent action a ground for stay. FSM Dev. Bank v. Setik, 20 FSM R. 315, 319 (Pon. 2016).

Parties are precluded from seeking relief from a judgment via an independent cause of action, after having previously chosen to utilize a Civil Rule 60(b) motion toward that end. Setik v. Mendiola, 20 FSM R. 320, 323 (Pon. 2016).

An independent action which seeks to belatedly stave off the transfer of land ownership, concerning the same property at issue in the previous actions, constitutes a redundant attempt that is prohibited under earlier case law, and as such, that proscription presents another hurdle, which this action cannot overcome. Setik v. Perman, 21 FSM R. 31, 40 (Pon. 2016).

An independent action in equity to set aside a judgment must satisfy five essential elements: 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the defendant; and 5) the absence of any adequate remedy at law. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 121 (App. 2017).

A collateral attack is not an opportunity to appeal or relitigate the matter. Merely leveling a claim of fraud, without connecting up such an allegation in terms of propounding sufficient evidence, does not satisfy the requisite burden of proof for a collateral attack of a Trust Territory judgment and fails to satisfy the five-prong test required to pierce a judgment via a collateral attack. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 122 (App. 2017).

An independent action in equity to set aside a judgment must satisfy five elements: 1) a judgment which ought not, in equity and good conscience, be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident or mistake, which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the defendant's part; and 5) the absence of an adequate remedy at law. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 310, 312-13 (App. 2017).

When an independent action for relief from judgment fails, then res judicata applies. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 310, 314 (App. 2017).

An appellate court reviews, under an abuse of discretion standard, a trial court's grant or denial of relief in an independent action to set aside a judgment. Setik v. Mendiola, 21 FSM R. 537, 552 (App. 2018).

An independent action is a rare and unusual case. Resort to an independent action may be had only rarely, and then only under unusual and exceptional circumstances. Setik v. Mendiola, 21 FSM R. 537, 552 (App. 2018).

An independent action in equity to set aside a judgment must satisfy five essential elements: 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the defendant; and 5) the absence of any adequate remedy at law. Setik v. Mendiola, 21 FSM R. 537, 552 (App. 2018).

Relief from a judgment may be sought either by a Rule 60(b) motion or by an independent action – through filing a separate case. It cannot be sought by both. Setik v. Mendiola, 21 FSM R. 537, 552 (App. 2018).

An independent action to set aside a judgment made after a Rule 60(b) motion is denied, should be permitted only if it is made on a ground different from the ground in the denied Rule 60(b) motion. Setik v. Mendiola, 21 FSM R. 537, 553 (App. 2018).

If a Rule 60(b) motion for relief from judgment is denied solely as untimely, that denial does not act as res judicata precluding an independent action since the denial was not on the merits. A Rule 60(b)(1) motion's denial solely on the ground that the absolute time limit of one year precluded consideration of the merits of the grounds presented does not preclude a prompt independent action for relief in the same court. Setik v. Mendiola, 21 FSM R. 537, 553 (App. 2018).

For an independent action in equity to set aside a judgment there are no time limits; the general statutes of limitation do not apply. Rule 60(b) permits an independent action and prescribes no time limitations for such action. In the absence of a controlling statute, the only time limitation is the equitable doctrine of laches. Setik v. Mendiola, 21 FSM R. 537, 554 (App. 2018).

There is no time limit on when an independent action may be brought, but the doctrine of laches is applicable and undue delay may bar relief. Setik v. Mendiola, 21 FSM R. 537, 554 (App. 2018).

An underlying judgment's res judicata effect is not a proper defense to, or an appropriate ground on which to grant a dismissal of, an independent action because an independent action seeks to set aside a judgment in another case that is presumed to be final and res judicata unless the independent action succeeds. Setik v. Mendiola, 21 FSM R. 537, 555 (App. 2018).

The denial of a Rule 60(b) motion for relief from judgment may have res judicata effect on a subsequent independent action to set aside a judgment, if the subsequent action is brought on the same ground as the earlier motion. Setik v. Mendiola, 21 FSM R. 537, 555 (App. 2018).

When a decedent's estate does not own the property and has no interest in it (since it has been "probated"), a cause of action for interference with its ownership rights fails to state a claim on which the court could grant relief and does not constitute a good defense to set aside the judgments. Setik v. Mendiola, 21 FSM R. 537, 555 (App. 2018).

Rule 9(b) requires that, in allegations of fraud, the circumstances constituting the fraud must be pled with particularity. When fraud is alleged, particularity is a pleading requirement that applies with equal force to independent actions brought under Rule 60(b). Setik v. Mendiola, 21 FSM R. 537, 556 (App. 2018).

Gross negligence and tortious interference with business relations and lost business opportunities and profits claims based on a decedent's estate owning the property and being under a probate court's supervision so that the bank's foreclosure wrongfully interferes with their business, fail to state claims on which the court could grant relief and do not constitute a good defense to set aside the bank's judgments when the decedent's estate does not own the property. Setik v. Mendiola, 21 FSM R. 537, 557-58 (App.

2018).

The absence of any one essential element of an independent action precludes relief. In particular, the failure to show the essential element of a good defense, precludes relief. Setik v. Mendiola, 21 FSM R. 537, 558 (App. 2018).

The element requiring the absence of fault or negligence on the part of the party seeking to set aside a judgment is more stringent in an independent action in equity than in a Rule 60(b) motion for relief. Setik v. Mendiola, 21 FSM R. 537, 558 (App. 2018).

When, if the plaintiffs' "causes of action" were not good defenses but rather separate claims, they would have been compulsory counterclaims that would have had to have been raised as counterclaims in the answer. They cannot sit idly by while the bank's promissory note claim goes to a default judgment and then later raise the compulsory counterclaims as defenses warranting relief in an independent action. Setik v. Mendiola, 21 FSM R. 537, 558 (App. 2018).

Neither the presence of other defendants, who were in privity with the defendant and who were nominal parties, nor the plaintiffs' request for an injunction to prevent the enforcement of the earlier judgment, change the nature of the action from one seeking independent relief from that earlier judgment. Setik v. Mendiola, 21 FSM R. 624, 626 (App. 2018).

A new lawsuit obviously cannot be a motion to reopen a case under Bankruptcy Rule 9024 (or for relief from judgment under Civil Procedure Rule 60), since such a motion would necessarily be filed in the original bankruptcy case, but Civil Procedure Rule 60 (and thus Bankruptcy Rule 9024) authorizes one other procedure for relief – an independent action for relief. Rule 60(b) does not limit a court's power to entertain an independent action to relieve a party from a judgment. Panuelo v. Sigrah, 22 FSM R. 341, 357 (Pon. 2019).

When the debtor's administratrix named only the bankruptcy receiver as the sole defendant, she would have standing in the action, to recover alleged overpayments to the receiver, but to recover alleged overpayments to the creditors, she would have to proceed against those creditors. Panuelo v. Sigrah, 22 FSM R. 341, 357 (Pon. 2019).

For an independent action for relief, no statute of limitations would apply because there is no time limit on when an independent action may be brought, but the doctrine of laches is applicable and undue delay can bar relief. Panuelo v. Sigrah, 22 FSM R. 341, 358 (Pon. 2019).

Res judicata would bar any suit by an administratrix of a decedent's estate, over a closed bankruptcy proceeding unless the suit is an independent action for relief because an independent action seeks to set aside a judgment in another case that is presumed to be final and res judicata unless the independent action succeeds. Panuelo v. Sigrah, 22 FSM R. 341, 359 (Pon. 2019).

A suit that seeks to vacate or alter the bankruptcy court's orders in the bankruptcy case, but is not a motion to reopen that case under either Bankruptcy Rule 5010 or 9024, could be an independent action for relief as allowed by Bankruptcy Rule 9024 adopting Civil Procedure Rule 60(b) by reference. Panuelo v. Sigrah, 22 FSM R. 341, 359 (Pon. 2019).

Under FSM case law, an independent action to set aside a judgment or final order must satisfy five essential elements: 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident, or mistake which prevented the defendant in the judgment (who would be the plaintiff in an independent action) from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the defendant; and 5) the absence of any adequate remedy at law. If any element is missing, the court cannot take equitable jurisdiction of the case. Panuelo v. Sigrah, 22 FSM R. 341, 359 (Pon. 2019).

If Rule 60(b) is to be interpreted as a coherent whole, independent actions must be reserved for those cases of injustices which, in certain instances, are deemed sufficiently gross to demand departure from rigid adherence to the doctrine of res judicata. Due to the universal interest in the finality of judgments, resort to an independent action is only permitted under unusual and exceptional circumstances. Panuelo v. Sigrah, 22 FSM R. 341, 359 (Pon. 2019).

A court will not grant relief if the complaining party has or by exercising proper diligence would have had, an adequate remedy at law, or by proceedings in the original action to open, vacate, or otherwise obtain relief against, the judgment. Panuelo v. Sigrah, 22 FSM R. 341, 359-60 (Pon. 2019).

When the proponent's own fault, negligence, or carelessness, however innocent, contributed to the entry of the original judgment, an independent action for relief is improper unless the evidence to establish injustice is practically conclusive. Panuelo v. Sigrah, 22 FSM R. 341, 360 (Pon. 2019).

If a fraud allegation, that failed to adequately plead a regular fraud cause of action, was meant to be an allegation of fraud on the court, which is a further ground to set aside a judgment that Bankruptcy Rule 9024 (by adopting Civil Procedure Rule 60) permits to be brought in an independent action, that allegation will also be wanting because the doctrine of fraud upon the court is narrow and limited in scope and not every allegation of fraud rises to the level of fraud upon the court. Panuelo v. Sigrah, 22 FSM R. 341, 361 (Pon. 2019).

A finding of fraud on the court is justified only by the most egregious misconduct directed to the court itself, such as bribery of a judge or fabrication of evidence by counsel, and must be supported by clear, unequivocal and convincing evidence. Panuelo v. Sigrah, 22 FSM R. 341, 361 (Pon. 2019).

A grant of relief for fraud on the court ordinarily requires that: 1) the fraud is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury; 2) the fraud involves the most egregious conduct, such as bribery of a judge or the fabrication of evidence in which an attorney is implicated; and 3) the party perpetrating the fraud acted with an intent to deceive or defraud the court. Further, the fraud must have actually deceived the court. These requirements are strictly applied because a finding of fraud on the court is exempt from time limits and because it permits the severe consequence of allowing a party to overturn the finality of a judgment. Panuelo v. Sigrah, 22 FSM R. 341, 361 (Pon. 2019).

– Relief from Judgment – Time Limits

A motion for relief of a partial summary judgment under Civil Rule 59(e) is subject to a strict time limit of 10 days which cannot be enlarged by the court. Such a motion filed 10 months later is untimely. This very strict deadline cannot be avoided by an unsupported assertion that a copy of the judgment was not served. Kihara Real Estate, Inc. v. Estate of Nanpei (II), 6 FSM R. 354, 355-56 (Pon. 1994).

When a motion for relief from judgment is made pursuant to Civil Rule 60(b)(1), (2), or (3) the court must consider whether it was made within a reasonable time even when it is made within the one year time limit. Senda v. Mid-Pacific Constr. Co., 6 FSM R. 440, 445-46 (App. 1994).

Even where a request for Rule 60(b) relief is filed within the stated one-year time limit, a court still must examine whether the filing was made within a "reasonable time." In determining this issue, the court reviews all of the facts and circumstances surrounding the case and may require the party seeking Rule 60 relief to offer a sufficient explanation for not having taken appropriate action in a more timely manner. Mid-Pacific Constr. Co. v. Senda, 7 FSM R. 129, 136 (Pon. 1995).

When a motion for relief from judgment is made pursuant to Civil Rule 60(b)(1), a court must first consider whether it was made within a reasonable time even when it is made within the one year time limit. To determine if the time was reasonable it considers whether the nonmoving party was prejudiced and

whether the moving party had some good reason for his failure to take appropriate action sooner. Walter v. Meippen, 7 FSM R. 515, 518 (Chk. 1996).

The time for making a motion for relief from judgment continues to run even while the case is on appeal. Walter v. Meippen, 7 FSM R. 515, 518 (Chk. 1996).

A motion for relief from judgment cannot be brought under Rule 60(b) subsections (1), (2), or (3) when it is more than one year after the judgment. Kama v. Chuuk, 10 FSM R. 593, 600 (Chk. S. Ct. App. 2002).

A motion for relief from judgment under Rule 60(b) allows the court to consider a motion for relief from a final judgment for several listed reasons, but such a motion must be made within a reasonable time not more than one year after judgment was entered or taken. When the decision was entered nearly three years ago, the one year deadline in which to file a Rule 60(b) motion has long since expired and the motion is thus untimely and must also be rejected on that basis. Edwin v. Heirs of Mongkeya, 12 FSM R. 220, 222 (Kos. S. Ct. Tr. 2003).

There is no time limit on relief from a void judgment. The reason for this is obvious. If a judgment is void when issued, it is always void. When relief is sought from a void judgment, a court has no discretion but must grant relief from judgment. Ruben v. Petewon, 13 FSM R. 383, 389 (Chk. 2005).

There is no time limit to seek relief from a void judgment because if a judgment is void when issued, it is always void, and when relief is sought from a void judgment, a court has no discretion but must grant relief from judgment. Ruben v. Hartman, 15 FSM R. 100, 112 (Chk. S. Ct. App. 2007).

A Rule 60(b) motion must be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. The one-year time limit is not suspended by the pendency of an appeal because a Rule 60(b) motion can be made even though an appeal has been taken and is pending. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 632-32 (Pon. 2008).

The court is powerless to enlarge the one-year time limit to obtain relief from judgment under Rule 60(b) (1), (2), or (3) even if relief had been possible, and the concept of reasonable time cannot be used to extend the one-year limit. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 632 (Pon. 2008).

Courts that have held that a court's legal error can be considered a "mistake" subject to relief from judgment under Rule 60(b)(1), have ruled that "reasonable time" to seek relief in those cases cannot exceed the time in which an appeal might have been timely filed. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 632 n.4 (Pon. 2008).

There is no time limit to seek relief from a void judgment under Rule 60(b)(4). FSM Dev. Bank v. Arthur, 15 FSM R. 625, 633 (Pon. 2008).

Motions for relief from judgment for Rule 60(b) reasons (5) and (6) must be made within a reasonable time. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 633 (Pon. 2008).

A factor to be considered in determining whether Rule 60(b) relief has been sought within a reasonable time is whether good reason has been presented for failure to act sooner. Courts have been unyielding in requiring that a party show good reason for the failure to take appropriate action sooner. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 633 (Pon. 2008).

When the defendants have not shown good reason for waiting until March 2008 to seek relief from a 2004 judgment that was affirmed in 2006, the defendants have not moved for relief from judgment "within a reasonable time" as required and their motion to vacate the judgment can be denied on this ground alone. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 633 (Pon. 2008).

Rule 60(b)(6) cannot be used to circumvent the one-year time limit for motions for relief from judgment under Rule 60(b) reasons (1), (2), and (3). FSM Dev. Bank v. Arthur, 15 FSM R. 625, 634 (Pon. 2008).

By moving to vacate a judgment, the movants automatically raise the issue of whether they had filed their motion within a reasonable time because a motion to vacate judgment made more than ten days after judgment is entered is a Rule 60(b) motion for relief from judgment and Rule 60(b) requires that all motions for relief from judgment be made in a reasonable time. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 138-39 (Pon. 2008).

The court has no need to address the question posed by the movants in a motion to vacate judgment when the movants had to first surmount the hurdle of whether the motion to vacate judgment was filed within a reasonable time, and they could not. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 139 (Pon. 2008).

Rule 60(b) requires that the movant explain why the seven-month lapse between the dismissal of his case and the motion for relief constitutes a reasonable time within which to make the motion for relief from judgment. Aake v. Mori, 16 FSM R. 607, 608 (Chk. 2009).

By moving to vacate a judgment, a movant automatically raises the issue of whether the motion is filed within a reasonable time because Rule 60(b) requires that all motions for relief from judgment be made in a reasonable time. A movant must explain why the lapse between the judgment in, or the dismissal of, the case and his motion for relief from judgment constitutes a reasonable time within which to move for relief from judgment. Welle v. Chuuk Public Utility Corp., 18 FSM R. 203, 205 (Chk. 2012).

A factor the court must consider when determining whether Rule 60(b) relief has been sought within a reasonable time is whether good reason has been presented for failure to act sooner. Welle v. Chuuk Public Utility Corp., 18 FSM R. 203, 205 (Chk. 2012).

Courts have been unyielding in requiring that a party show good reason for the failure to take appropriate action sooner. When a movant has not shown good reason for waiting to seek relief, the movant has not moved for relief from judgment "within a reasonable time" as required and the motion to vacate the judgment can be denied on this ground alone. Welle v. Chuuk Public Utility Corp., 18 FSM R. 203, 205 (Chk. 2012).

A court need not address a movant's claims in a motion to vacate judgment when the movant had to first surmount the hurdle of whether the motion for relief from judgment was filed within a reasonable time, and the movant could not. Welle v. Chuuk Public Utility Corp., 18 FSM R. 203, 205 (Chk. 2012).

When a movant has not shown why the six-month lapse between the summary judgment and his motion for relief from judgment is a reasonable time and has not given any reason for the delay, he has not shown that his motion was filed within a reasonable time and his motion for relief must therefore be denied. Welle v. Chuuk Public Utility Corp., 18 FSM R. 203, 205-06 (Chk. 2012).

When a motion for relief from judgment is made pursuant to Rule 60(b)(1), a court must first consider whether it was made within a reasonable time even when it is made within the one year time limit. To determine if the time was reasonable, it considers whether the nonmoving party was prejudiced and whether the moving party had some good reason for his failure to take appropriate action sooner. Bank of Hawaii v. Susaia, 19 FSM R. 66, 69 (Pon. 2013).

When a motion for relief from judgment is made pursuant to Civil Rule 60(b)(1), (2), or (3), a court must first consider whether it was made within a reasonable time even when it is made within the one year time limit. To determine if the time was reasonable, the court considers whether the nonmoving party was prejudiced and whether the moving party had some good reason for his failure to take appropriate action sooner. Moylan's Ins. Underwriters (FSM), Inc. v. Gallen, 20 FSM R. 3, 5 (Pon. 2015).

Four months may be a reasonable time for a defendant to seek relief from judgment when the defendant was pro se and the plaintiff was not prejudiced by the delay. Moylan's Ins. Underwriters (FSM), Inc. v. Gallen, 20 FSM R. 3, 6 (Pon. 2015).

A motion for relief from judgment must be made within a reasonable time and for most reasons, that time cannot exceed one year. Even if the reason given were one for which reasonable time greater than one year was allowed, a motion sixteen years after judgment, is not made within a reasonable time. FSM Dev. Bank v. Carl, 20 FSM R. 70, 72 (Pon. 2015).

Rule 60(b)(6) motions are reserved for extraordinary circumstances. Since Rule 60(b)(6), which delineates "any other reason justifying relief" and the other Rule 60(b) subsections are mutually exclusive, Rule 60(b)(6) cannot be utilized to circumvent the one-year time limit for motions seeking relief from judgment under Rule 60(b)(1), (2), and (3). FSM Dev. Bank v. Setik, 20 FSM R. 85, 88 (Pon. 2015).

Relief from judgment will not be granted when the defendants' arguments brought pursuant to subsections 60(b)(1), (2), and (3) are well outside the one-year time constraint and are thus untimely and when the defendants' remaining affirmations fail to demonstrate any other reason justifying relief. FSM Dev. Bank v. Setik, 20 FSM R. 85, 88 (Pon. 2015).

An April 4, 2014 motion for relief from a September 23, 2009 default judgment is well outside the time constraint for arguments based on Rule 60(b) subsections (1), (2), and (3), and as such, is untimely. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 102 (Chk. 2015).

A factor to be considered in determining whether Rule 60(b) relief has been sought within a reasonable time, is whether a good reason has been presented for failure to act sooner. Courts have been unyielding in requiring that a party show good reason for the failure to take appropriate action sooner. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 102 (Chk. 2015).

Since Rule 60(b)(6) relief is reserved for extraordinary circumstances and the language delineated therein: "any other reason justifying relief," cannot be utilized to circumvent the one-year time limit for motions brought pursuant to Rule 60(b) subsections (1), (2), and (3). FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 102 (Chk. 2015).

The defendants have not proffered any rationalization for the inordinate delay in seeking relief from judgment when they have not opposed or otherwise responded to the entry of the default judgment, the order(s) in aid of judgment, or the writ of garnishment that they now move to set aside and when, although they allege that they were not privy to the respective hearing dates, the record denotes that their previous counsel was in receipt of the motions and had notice of the relevant proceedings. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 103 (Chk. 2015).

As grounds for post-judgment relief, motions raised under either Rule 60(b)(3) (for a fraud claim) or Rule 60(b)(1) (for mistake, inadvertence, surprise, or excusable neglect) must be made within a reasonable time, not more than one year after the judgment, and will be denied as untimely when the one-year time limit has long since passed. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 290 n.4 (Pon. 2016).

Relief from judgment for an adverse party's fraud, such as fraud in the inducement, or misrepresentation is a motion that can only be made under Rule 60(b)(3) and that has a one-year deadline. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 291 (Pon. 2016).

The only type of fraud not subject to the one-year limitation for relief from judgment is fraud on the court. This is because Rule 60(b) does not limit the time in which the court may set aside a judgment for fraud on the court. Fraud on the court is a lawyer's or party's misconduct so serious that it undermines or is intended to undermine the integrity of the judicial proceeding. A finding of fraud on the court is justified only by the most egregious misconduct directed to the court itself, such as bribery of a judge or counsel's

fabrication of evidence, and must be supported by clear, unequivocal, and convincing evidence. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 291 (Pon. 2016).

A Rule 60(b) motion must be made within a reasonable time. A factor to consider in determining whether Rule 60(b) relief has been sought within a reasonable time is whether good reason has been presented for failure to act sooner. In re Contempt of Jack, 20 FSM R. 452, 460 (Pon. 2016).

If a court's legal error were considered a "mistake" under Rule 60(b)(1), or if relief is sought under Rule 60(b)(6) for error involved a fundamental misconception of law, the "reasonable time" for a motion of this kind may not exceed the time in which appeal might have been taken a reasonable time for a motion to relief cannot exceed the 42-day time limit provided by FSM Appellate Rule 4(a)(1). Rule 60(b)(6)'s broad power is not for the purpose of relieving a party from free, calculated, and deliberate choices he or she has made. It is ordinarily not permissible to use a Rule 60(b) motion to remedy a failure to take an appeal. In re Contempt of Jack, 20 FSM R. 452, 460-61 (Pon. 2016).

The reason for there being no time limit on relief from a void judgment is obvious. If a judgment is void when issued, it is always void. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

Under Rule 60(b)(1), (2), or (3), a movant must file the motion within one year from the entry of final judgment. Otherwise, no specific time period is set forth, except that under Rule 60(b)(4), (5), or (6), the motion must be made within a "reasonable time." What constitutes a reasonable time, depends on the facts of each case. The relevant considerations include, whether the parties have been prejudiced by the delay and good reason presented for failing to take action sooner. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 508 (App. 2016).

Even when the motion for relief from judgment was not filed within the prescribed reasonable time, the court's analysis will not conclude, because if the judgment was void, relief may nevertheless be granted under Rule 60(b)(4). Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 509 (App. 2016).

Unlike its counterparts, Rule 60(b)(4), which provides relief from void judgments, is not subject to any time limitation. If a judgment is void, it is a nullity from the outset and any Rule 60(b)(4) motion for relief is therefore filed within a reasonable time. However, the concept of void judgments is narrowly construed. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 509 (App. 2016).

When the movants have failed to cite any reasons for the elongated delay in filing their motion for relief from judgment, much less extraordinary circumstances that would warrant having their Rule 60(b)(4) motion supersede the doctrine of *res judicata*, prejudice would invariably inure to the judgment creditor, in light of its justified reliance on the relevant December 28, 2007 default judgment's finality. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 509-10 (App. 2016).

Since Rule 60(b) specifically provides that Rule 60(b) motions must be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment was entered, a Rule 60(b) motion on those grounds that was not made within one year of any of the judgments, but was made years later, is too late. Setik v. FSM Dev. Bank, 21 FSM R. 505, 515 (App. 2018).

Relief cannot be sought under subsection 60(b)(6) if the time has passed to seek relief under 60(b)(1), since Rule 60(b)(6) is reserved for extraordinary circumstances not covered in any of the other Rule 60(b) subsections and cannot be used to circumvent the one-year time limit for motions brought under subsections (1), (2), and (3). Setik v. FSM Dev. Bank, 21 FSM R. 505, 515 (App. 2018).

Mere clerical errors in judgments, such as those of calculation, may be corrected under Rule 60(a) at any time. Setik v. FSM Dev. Bank, 21 FSM R. 505, 516 (App. 2018).

If a default judgment has been entered when the court lacked personal jurisdiction over the defendant, then that default judgment is void and relief can be sought under Rule 60(b)(4), for which there is no time

limit to seek relief. Setik v. FSM Dev. Bank, 21 FSM R. 505, 516 (App. 2018).

If a Rule 60(b) motion for relief from judgment is denied solely as untimely, that denial does not act as res judicata precluding an independent action since the denial was not on the merits. A Rule 60(b)(1) motion's denial solely on the ground that the absolute time limit of one year precluded consideration of the merits of the grounds presented does not preclude a prompt independent action for relief in the same court. Setik v. Mendiola, 21 FSM R. 537, 553 (App. 2018).

For an independent action in equity to set aside a judgment there are no time limits; the general statutes of limitation do not apply. Rule 60(b) permits an independent action and prescribes no time limitations for such action. In the absence of a controlling statute, the only time limitation is the equitable doctrine of laches. Setik v. Mendiola, 21 FSM R. 537, 554 (App. 2018).

There is no time limit on when an independent action may be brought, but the doctrine of laches is applicable and undue delay may bar relief. Setik v. Mendiola, 21 FSM R. 537, 554 (App. 2018).

For an independent action for relief, no statute of limitations would apply because there is no time limit on when an independent action may be brought, but the doctrine of laches is applicable and undue delay can bar relief. Panuelo v. Sigrah, 22 FSM R. 341, 358 (Pon. 2019).

A grant of relief for fraud on the court ordinarily requires that: 1) the fraud is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury; 2) the fraud involves the most egregious conduct, such as bribery of a judge or the fabrication of evidence in which an attorney is implicated; and 3) the party perpetrating the fraud acted with an intent to deceive or defraud the court. Further, the fraud must have actually deceived the court. These requirements are strictly applied because a finding of fraud on the court is exempt from time limits and because it permits the severe consequence of allowing a party to overturn the finality of a judgment. Panuelo v. Sigrah, 22 FSM R. 341, 361 (Pon. 2019).

The time for making a motion for relief from judgment continues to run even while the case is on appeal. Timsina v. FSM, 22 FSM R. 383, 386 (Pon. 2019).

Under Rule 60(b)(1), (2), or (3), a movant must file the motion for relief from judgment within a reasonable time not to exceed one year from the entry of judgment. Thus, when the movant filed his motion for relief well over a year after the final judgment was entered against him, he is precluded from any relief from judgment on the grounds of mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party. FSM Dev. Bank v. Talley, 22 FSM R. 587, 592 (Kos. 2020).

Extraordinary circumstances usually means that the movant himself was not at fault for his predicament, but if there was fault on the movant's part, the usual implication is that there are no extraordinary circumstances. Even then, a motion for relief from judgment under Rule 60(b)(6) must still be filed within a reasonable time. FSM Dev. Bank v. Talley, 22 FSM R. 587, 592 (Kos. 2020).

An allegation of neglect, which, if it were shown to be excusable, would be a ground for relief under Rule 60(b)(1), but when the one-year time limit for Rule 60(b)(1) relief expired long before the defendant filed his motion for relief, the defendant cannot use Rule 60(b)(6) to circumvent the Rule 60(b)(1) time limit. FSM Dev. Bank v. Talley, 22 FSM R. 587, 592 (Kos. 2020).

When counsel appeared for the defendant four and a half months after the court entered the default judgment and no good reason was shown why a motion for relief from judgment could not have been filed promptly thereafter instead of after eleven more months, the defendant has not shown that a motion for relief from judgment filed fifteen and a half months after judgment was entered (and eleven months after his counsel entered her appearance), was filed within a reasonable time, and, since a Rule 60(b)(6) motion

for relief from judgment must be made within a "reasonable time," even if the defendant had shown extraordinary circumstances, Rule 60(b)(6) relief would still be time-barred because the motion was filed too late. FSM Dev. Bank v. Talley, 22 FSM R. 587, 593 (Kos. 2020).

– Stipulated

Judgment entered pursuant to compromise and settlement is treated as a judgment on the merits barring any other action for the same cause. Truk v. Robi, 3 FSM R. 556, 564 (Truk S. Ct. App. 1988).

Default judgments and stipulated or agreed judgments against the State of Chuuk are to be subjected to close scrutiny by the court. Kama v. Chuuk, 9 FSM R. 496, 499 (Chk. S. Ct. Tr. 1999).

The movant for relief from judgment must keep in mind that generally the standard for reopening a consent final judgment is a strict one. Kama v. Chuuk, 10 FSM R. 593, 600 (Chk. S. Ct. App. 2002).

Rule 60(b) may not allow a party in whose favor a judgment is entered to seek relief from that judgment because stipulated judgments, while they are judicial acts, also have many attributes of voluntarily-undertaken contracts, and when the parties have made a freely calculated, deliberate choice to submit to an agreed upon judgment rather than seek a more favorable litigated outcome (or risk a less favorable litigated outcome), the burden under Rule 60(b) is probably more formidable than had they litigated and lost. Farata v. Punzalan, 11 FSM R. 175, 178 (Chk. 2002).

In any case brought under 11 F.S.M.C. 701 *et seq.*, a plaintiff must prove each element of his case by the preponderance of the evidence. In the case of a stipulated judgment under a settlement agreement, an equally basic jurisprudential principle dictates that a stipulated judgment will be entered only if it is well grounded both in law and in fact. Estate of Mori v. Chuuk, 12 FSM R. 24, 26 (Chk. 2003).

Although parties are free to stipulate to factual matters, they may not stipulate to conclusions of law to be reached by the court. FSM Social Sec. Admin. v. Jonas, 13 FSM R. 171, 173 (Kos. 2005).

A stipulated judgment is not a judicial determination or holding. Stipulated judgments, while they are judicial acts, also have the attributes of voluntarily-undertaken contracts. A stipulated judgment (also called a consent decree) although enforceable like any other judicial decree, is not a judicial determination of any litigated right. It may be defined as a contract of the parties acknowledged in open court and ordered to be recorded by a court of competent jurisdiction. Mailo v. Chuuk, 13 FSM R. 462, 467-68 (Chk. 2005).

A stipulated judgment is not a judicial determination, but is a contract between the parties entering into the stipulation. A consent decree or stipulated judgment does not constitute a resolution of parties' rights but is a mere recordation of their private agreement. Once a consent decree has been entered it is generally considered to be binding on the parties and it cannot be amended or varied without each party's consent. Mailo v. Chuuk, 13 FSM R. 462, 468 (Chk. 2005).

When it is necessary to construe a stipulated judgment or consent decree, courts resort to ordinary principles of contract interpretation. Mailo v. Chuuk, 13 FSM R. 462, 468 (Chk. 2005).

Even if the judgment was based on the parties' agreement, when there is no suggestion of fraud, lack of jurisdiction, or other serious injustice; only that the appellants themselves failed to timely pursue their case in the past and they claim that this should not be held against them but they recognize that they had two previous opportunities to pursue their case and that their own inaction led to the prior appeal's dismissal, under these circumstances, the policy supporting finality of judgments should apply and the earlier stipulated judgment should be treated as a final judgment precluding relitigation of ownership. Heirs of Tulenkun v. Heirs of Seymour, 15 FSM R. 342, 347 (Kos. S. Ct. Tr. 2007).

When the parties stipulate to a judgment, the judgment is not a decision by the court. FSM Dev. Bank

v. Kaminanga, 16 FSM R. 45, 46 (Chk. 2008).

Rule 58 does not, by its terms, apply to stipulated or consent judgments because such judgments are not decisions by the court. FSM Dev. Bank v. Kaminanga, 16 FSM R. 45, 46 (Chk. 2008).

A stipulated judgment is not a judicial determination, but is a contract between the parties making the stipulation. FSM Dev. Bank v. Kaminanga, 16 FSM R. 45, 47 (Chk. 2008).

A stipulated judgment (also called a consent decree) although enforceable like any other judicial decree, is not a judicial determination of any litigated right but may be defined as a contract of the parties acknowledged in open court and ordered to be recorded by a court of competent jurisdiction. It does not constitute a resolution of parties' rights but is a mere recordation of their private agreement and once a consent decree has been entered it is generally considered to be binding on the parties and it cannot be amended or varied without each party's consent. FSM Dev. Bank v. Kaminanga, 16 FSM R. 45, 47 (Chk. 2008).

Strict compliance with Rule 58 is unnecessary in the case of a stipulated judgment, but the better practice may be for the clerk to enter a judgment that reflects the parties' stipulation as approved by the court. FSM Dev. Bank v. Kaminanga, 16 FSM R. 45, 47 (Chk. 2008).

A stipulated judgment may be defined as a contract of the parties acknowledged in open court and ordered to be recorded by a court of competent jurisdiction. Welle v. Chuuk Public Utility Corp., 17 FSM R. 609, 611 (Chk. 2011).

A stipulated judgment is a contract between the parties entering into the stipulation that has been approved by the court. Welle v. Chuuk Public Utility Corp., 17 FSM R. 609, 611 (Chk. 2011).

The parties' stipulated judgment in a state court action for breach of an easement agreement constituted a new contract – a new easement agreement – between the parties because it was a contract or agreement that was inconsistent with the original contract or agreement, especially when the amount stipulated to, $50,000, greatly exceeded the value of the undelivered 40 cubic yards of sand and 40 cubic yards of aggregates that constituted the breach. Welle v. Chuuk Public Utility Corp., 17 FSM R. 609, 611-12 (Chk. 2011).

While a stipulated judgment may not give rise to the doctrine of res judicata, a later court contemplating a civil action based on the same underlying facts may adopt the findings of fact in the stipulated judgment and any conclusions of law in the order granting the stipulated judgment, and in so doing finally adjudicate the matter. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 156 (Pon. 2012).

While a stipulated judgment does represent a private agreement and not a judicial determination, it is a judicial act, binding on the parties. Thus, contract defenses are not available to a judgment debtor in a proceeding to enforce a money judgment. FSM Dev. Bank v. Carl, 20 FSM R. 70, 73 (Pon. 2015).

Preclusive effect is given to many decisions that have not actually been litigated on the merits – for example if it is the subject of a stipulation between the parties, or a judgment entered by confession, or consent, or default, where none of the issues is actually litigated. Waguk v. Waguk, 21 FSM R. 60, 72 (App. 2016).

Stipulated judgments, while they are judicial acts, also have many attributes of voluntarily-undertaken contracts, and when the parties have made a freely calculated, deliberate choice to submit to an agreed upon judgment rather than seek a more favorable litigated outcome (or risk a less favorable litigated outcome), the burden under Rule 60(b) is probably more formidable than had they litigated and lost. Gallen v. Moylan's Ins. Underwriters (FSM) Inc., 21 FSM R. 380, 386 (App. 2017).

Although parties may stipulate to factual matters, they may not stipulate to interpretations of law.

Thus, even though parties may stipulate to a judgment, they cannot stipulate to a court's subject-matter jurisdiction to enter that judgment. Suzuki v. Chuuk, 22 FSM R. 491, 493 (Chk. 2020).

When the parties' stipulation to enter a judgment would result in a void judgment, the court must reject the stipulation for judgment and dismiss the case for the lack of subject-matter jurisdiction because whenever it appears that the court lacks jurisdiction of the subject matter, the court must dismiss the action. Suzuki v. Chuuk, 22 FSM R. 491, 494 (Chk. 2020).

– Void

Any judicial act, that has been done pursuant to a statute that does not confer the power to do that act, is void on its face. A judgment that is void on its face may be set aside by the court on its own motion. In re Jae Joong Hwang, 6 FSM R. 331, 331-32 (Chk. S. Ct. Tr. 1994).

A judgment may not be rendered in favor of or against a person who was not made party to the action. A party to an action is a person whose name is designated on the record as a plaintiff or defendant. A person may not be made a party to a proceeding simply by including his name in the judgment. Hartman v. Bank of Guam, 10 FSM R. 89, 97 (App. 2001).

When someone is accorded none of these due process guarantees with respect to a "judgment" against it, the judgment and ensuing order in aid of judgment and writ of execution are void as a matter of law, and these procedural infirmities inherent in the judgment are subject to attack at any time, and thus are outside the adjudicative framework established by the rules of procedure. Hartman v. Bank of Guam, 10 FSM R. 89, 97 (App. 2001).

Since any judgment *in personam* against an unknown defendant would be void, the court will dismiss John Doe defendants. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 412-13 n.1 (Pon. 2001).

A judgment entered against a party without notice or an opportunity to be heard is void and is subject to direct or collateral attack at any time. Hartman v. Bank of Guam, 10 FSM R. 89, 97 (App. 2001).

With the exception of void judgments under Rule 60(b)(4), the grant or denial of Rule 60 relief rests with the trial court's sound discretion. The discretion is not an arbitrary one to be capriciously exercised, but a sound legal discretion guided by accepted legal principles. Amayo v. MJ Co., 10 FSM R. 371, 377 (Pon. 2001).

A judgment entered against a party without notice or an opportunity to be heard is void and subject to direct or collateral attack. Pastor v. Ngusun, 11 FSM R. 281, 285 (Chk. S. Ct. Tr. 2002).

When a party moves for relief from judgment under Civil Procedure Rule 60(b)(4) on the ground that the judgment was void, there is no requirement, as is usual when a default judgment is attacked under Rule 60(b), that the movant show that he has a meritorious defense. Lee v. Lee, 13 FSM R. 252, 256 (Chk. 2005).

Unlike other grounds under Rule 60(b), the court does not have any discretion when relief from judgment is sought on the ground that the judgment was void because either a judgment is void or it is valid. A judgment is not void merely because it is erroneous. It is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law. Lee v. Lee, 13 FSM R. 252, 256 (Chk. 2005).

When an amended complaint asserted additional factual claims, the defendant had to be served a summons with the amended complaint and the service had to be effected as would the service of any complaint and summons, and since he was served by ordinary mail, he was not properly served the

amended complaint. The judgment based on the amended complaint is thus void as to him and a motion for relief from judgment will therefore granted as to him. Lee v. Lee, 13 FSM R. 252, 258 (Chk. 2005).

There is no time limit on relief from a void judgment. The reason for this is obvious. If a judgment is void when issued, it is always void. When relief is sought from a void judgment, a court has no discretion but must grant relief from judgment. Ruben v. Petewon, 13 FSM R. 383, 389 (Chk. 2005).

If it appears that the court lacks subject matter jurisdiction, the case must be dismissed since any judgment rendered by a court without subject matter jurisdiction would be void. Harper v. William, 14 FSM R. 279, 281 (Chk. 2006).

A judgment (or final order) entered against a person without notice or an opportunity to be heard is void and is subject to direct or collateral attack at any time, and a court that lacks personal jurisdiction over a person cannot enter a valid judgment against that person. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

A judgment is void when the court lacked subject matter jurisdiction or when indispensable parties were not joined or when a certificate of title had previously been issued for the land and that certificate or the validity of the process that resulted in that certificate was never challenged. Ruben v. Hartman, 15 FSM R. 100, 109-10 (Chk. S. Ct. App. 2007).

When neither the Wito Clan nor the Rubens were ever duly summoned in Civil Action No. 64-98 before the August 20, 1998 judgment was issued so that court never had personal jurisdiction over them, the judgment, as to any interest either of them might have, is void. Ruben v. Hartman, 15 FSM R. 100, 110 (Chk. S. Ct. App. 2007).

There is no time limit to seek relief from a void judgment because if a judgment is void when issued, it is always void, and when relief is sought from a void judgment, a court has no discretion but must grant relief from judgment. Ruben v. Hartman, 15 FSM R. 100, 112 (Chk. S. Ct. App. 2007).

In any action where a party seeks relief that would result in that party being declared the winner of an election rather than some other person, that other person is an indispensable party whose absence would make any judgment void and subject to collateral attack. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 224 (Chk. S. Ct. App. 2007).

A judgment is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 633 (Pon. 2008).

A trial court's failure to notify the appellants of trial was plain error and the judgment that was entered is therefore void. Farek v. Ruben, 16 FSM R. 154, 157 (Chk. S. Ct. App. 2008).

Since any judgment *in personam* against an unknown defendant would be void, the retention of "John Doe" defendants is pointless. Berman v. Pohnpei, 17 FSM R. 360, 366 n.1 (App. 2011).

Civil Procedure Rule 60(b)(4) provides for the relief from judgment when the judgment is void. Unlike other grounds for relief from judgment under Rule 60(b), the court does not have any discretion when the relief is sought because the judgment is void since a judgment is either void or it is valid and if it is void the court must vacate it. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 613 (Pon. 2013).

If a judgment is void when issued, it is always void. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 613 (Pon. 2013).

Although the court has no discretion and must grant the relief when relief is sought from a void judgment, a judgment is void only if the court that rendered it lacked jurisdiction of the subject matter, or of

the parties, or if it acted in a manner inconsistent with due process. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 613 (Pon. 2013).

The court cannot give any weight to the argument that the passage of time is enough to bar vacating a void judgment. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 614 (Pon. 2013).

A judgment is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 304 (App. 2014).

When a judgment has been entered against a party without notice or an opportunity to be heard, it is void and is subject to direct or collateral attack at any time. A judgment cannot be collaterally attacked merely because it is wrong. It can only be attacked on the grounds of lack of jurisdiction or due process violations that make the judgment void. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 304 (App. 2014).

A judgment is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 289 (Pon. 2016).

Whether a judgment is joint and several or not has no affect on whether the court has subject-matter jurisdiction. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 292 (Pon. 2016).

A judgment in a default case that awards relief that either is more than or different in kind from that requested originally is null and void. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 292 (Pon. 2016).

A judgment rendered without the requisite subject-matter jurisdiction is void *ab initio*. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

A void judgment is a legal nullity. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507, 509 (App. 2016).

Although the term "void" describes a result, rather than the conditions that render a judgment unenforceable, a void judgment is one so affected by a fundamental infirmity that the infirmity may be raised after the judgment becomes final. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

The reason for there being no time limit on relief from a void judgment is obvious. If a judgment is void when issued, it is always void. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

In the interests of finality, the concept of void judgments is narrowly construed. A judgment is not void merely because it may be erroneous or because the precedent upon which it was based is later altered or even overruled. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507-08 (App. 2016).

A judgment is void and therefore subject to relief under Rule 60(b)(4), only if the court that rendered judgment lacked jurisdiction or in circumstances in which the court's action amounted to a plain usurpation of power constituting a violation of due process. The total want of jurisdiction must be distinguished from an error in the exercise of jurisdiction and only rare instances of a clear usurpation of power will render a judgment void. In other words, a court has the power to determine its own jurisdiction and an error in that determination will not render the judgment void. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 508 (App. 2016).

Even when the motion for relief from judgment was not filed within the prescribed reasonable time, the court's analysis will not conclude, because if the judgment was void, relief may nevertheless be granted under Rule 60(b)(4). Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 509 (App. 2016).

Unlike its counterparts, Rule 60(b)(4), which provides relief from void judgments, is not subject to any time limitation. If a judgment is void, it is a nullity from the outset and any Rule 60(b)(4) motion for relief is therefore filed within a reasonable time. However, the concept of void judgments is narrowly construed. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 509 (App. 2016).

Since the requirement of subject matter jurisdiction is never capable of being waived, judgments rendered without such allocation of authority are void *ab initio* and can be attacked at any time. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 509 (App. 2016).

When the movants have failed to cite any reasons for the elongated delay in filing their motion for relief from judgment, much less extraordinary circumstances that would warrant having their Rule 60(b)(4) motion supersede the doctrine of *res judicata*, prejudice would invariably inure to the judgment creditor, in light of its justified reliance on the relevant December 28, 2007 default judgment's finality. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 509-10 (App. 2016).

A manifest abuse of authority, a judgment obtained unfairly or working a serious injustice, fraud or collusion by a court, fraud, and lack of jurisdiction have been considered grounds to ignore a judgment's validity. Validity fundamentally includes the court's competence to adjudicate the matter with regard to subject-matter jurisdiction, territorial jurisdiction, and notice. Waguk v. Waguk, 21 FSM R. 60, 71 (App. 2016).

It is well established, that when a judgment has been entered against a party without notice or an opportunity to be heard, it is void and subject to direct or collateral attack at any time. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 121 (App. 2017).

A court that lacks personal jurisdiction over a defendant cannot enter a valid judgment against that defendant. Setik v. FSM Dev. Bank, 21 FSM R. 505, 516 (App. 2018).

If a default judgment has been entered when the court lacked personal jurisdiction over the defendant, then that default judgment is void and relief can be sought under Rule 60(b)(4), for which there is no time limit to seek relief. Setik v. FSM Dev. Bank, 21 FSM R. 505, 516 (App. 2018).

Default judgments against a real party of interest will be voided for lack of due process when that party lacked a notice and hearing before being disposed of its claim to a property – even when the real party of interest lacked a certificate of title. Einat v. Chuuk Land Comm'n, 22 FSM R. 130j, 130L (Chk. S. Ct. Tr. 2018).

A judgment rendered by a court without subject-matter jurisdiction is void from the start. A void judgment is a legal nullity. Suzuki v. Chuuk, 22 FSM R. 491, 494 (Chk. 2020).

A court should never enter a judgment it knows would be void. Suzuki v. Chuuk, 22 FSM R. 491, 494 (Chk. 2020).

When the parties' stipulation to enter a judgment would result in a void judgment, the court must reject the stipulation for judgment and dismiss the case for the lack of subject-matter jurisdiction because whenever it appears that the court lacks jurisdiction of the subject matter, the court must dismiss the action. Suzuki v. Chuuk, 22 FSM R. 491, 494 (Chk. 2020).

JURISDICTION

The burden is always on the one who seeks the exercise of the power of the court in her behalf to establish that the court does have jurisdiction. Neimes v. Maeda Constr. Co., 1 FSM R. 47, 47 (Truk 1982).

The Secretary of the Interior has the power to terminate the Trust Territory High Court's exclusive jurisdiction over suits against the Trust Territory because that jurisdiction was originally conferred upon the

High Court by authority emanating from the Department of Interior. Lonno v. Trust Territory (I), 1 FSM R. 53, 65-67 (Kos. 1982).

The Trust Territory High Court's former exclusive jurisdiction over lawsuits against the Trust Territory government has been delegated to the constitutional governments covered by Secretarial Order 3039. Within the Federated States of Micronesia, the allocation of this former exclusive High Court jurisdiction between the Supreme Court of the Federated States of Micronesia an the various state courts will be determined on the basis of jurisdictional provisions within the Constitution and laws of the Federated States of Micronesia and its respective states. Lonno v. Trust Territory (I), 1 FSM R. 53, 68 (Kos. 1982).

The FSM Supreme Court is empowered to exercise authority in probate matters where there is an independent basis for jurisdiction under the Constitution. In re Nahnsen, 1 FSM R. 97, 104 (Pon. 1982).

There is no statutory limitation on the FSM Supreme Court's jurisdiction; the Judiciary Act of 1979 plainly contemplates that that court will exercise all the jurisdiction available to it under the Constitution. 4 F.S.M.C. 201-208. In re Nahnsen, 1 FSM R. 97, 106 (Pon. 1982).

The allocation of judicial authority is made on the basis of jurisdiction, generally without regard to whether state or national powers are at issue. In re Nahnsen, 1 FSM R. 97, 108 (Pon. 1982).

The Constitution contemplates that decisions affecting the people of the Federated States of Micronesia will be decided by courts appointed by the constitutional governments of the Federated States of Micronesia. This in turn requires an expansive reading of the FSM Supreme Court's jurisdictional mandate while we await establishment of functioning state courts. In re Nahnsen, 1 FSM R. 97, 111 (Pon. 1982).

The FSM Supreme Court may look to decisions under the United States Constitution for guidance in determining the scope of jurisdiction since the jurisdictional language of the FSM Constitution is similar to that of the United States. Etpison v. Perman, 1 FSM R. 405, 414 (Pon. 1984).

The standard method of obtaining a determination from the FSM Supreme Court as to its jurisdiction over specific parties or issues is to file a civil or criminal action with the FSM Supreme Court trial division. Koike v. Ponape Rock Products Co., 1 FSM R. 496, 500 (Pon. 1984).

The jurisdictional language in the FSM Constitution is patterned upon the United States Constitution. In re Sproat, 2 FSM R. 1, 4 n.2 (Pon. 1985).

A case must be one appropriate for judicial determination, that is, a justiciable controversy, as distinguished from a difference or dispute of a hypothetical or abstract character, or one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. In re Sproat, 2 FSM R. 1, 5 (Pon. 1985).

Because the FSM Constitution states that the judicial power "is vested" in the Supreme Court, and the trial division "has" jurisdiction over certain cases – unlike the jurisdictional provisions of the United States Constitution, which are not self-executing – determinations as to the jurisdiction of the FSM courts are based on constitutional interpretation rather than statutory construction, and therefore it cannot be assumed that United States court holdings will yield the correct result under FSM jurisdictional provisions. FSM Dev. Bank v. Estate of Nanpei, 2 FSM R. 217, 219 n.1 (Pon. 1986).

As a general rule the FSM Supreme Court trial division is obliged to exercise its jurisdiction and may not abstain simply because unsettled issues of state law are presented. Edwards v. Pohnpei, 3 FSM R. 350, 360 (Pon. 1988).

State courts do not normally look to the national Constitution as a source of jurisdictional authority, but instead typically rely upon state constitutions and state law for their authorization to act, so in considering

whether a state court may exercise jurisdiction in a case the proper question is not whether the national Constitution authorizes, but whether it bars state court jurisdiction. Bank of Guam v. Semes, 3 FSM R. 370, 377 (Pon. 1988).

Article XI, section 6(c) of the Constitution places authority to prescribe jurisdiction only in the national Congress, and not in state legislatures. Bank of Guam v. Semes, 3 FSM R. 370, 379 (Pon. 1988).

Failure to mention national courts in section 25 of the Pohnpei State Real Property Mortgage Act should not be read as an attempt to deprive litigants of access to the FSM Supreme Court's trial division. Bank of Guam v. Semes, 3 FSM R. 370, 380 (Pon. 1988).

FSM Supreme Court's trial division does not lose jurisdiction over a case merely because land issues are involved, but if such issues are presented, certification procedures may be employed to avoid encroachment upon state decision making prerogatives. Bank of Guam v. Semes, 3 FSM R. 370, 381 (Pon. 1988).

The Constitution's jurisdictional provisions are self-executing. U Corp. v. Salik, 3 FSM R. 389, 394 (Pon. 1988).

The determination of jurisdiction itself normally qualifies for protection under the common law principle of res judicata, requiring a second court to presume that the court which issued the judgment did properly exercise its own jurisdiction, but plain usurpation of power by a court which wrongfully extends its jurisdiction beyond the scope of its authority, is outside of the doctrine and does not qualify for res judicata protection. United Church of Christ v. Hamo, 4 FSM R. 95, 107-08 (App. 1989).

In light of the Trust Territory High Court's insistence on maintaining control over cases within the Federated States of Micronesia in disregard of Secretarial Order 3039 and to the exclusion of the new constitutional courts, its characterizations of Joint Rule No. 1 as "simply a memorandum" and of the words "active trial" in Secretarial Order 3039 as merely "administrative guidance," its acceptance of appeals after it was precluded from doing so by Secretarial Order 3039, its decision of appeals after Secretarial Order 3039 was terminated and its continued remand of cases to the High Court trial division for further action even after November 3, 1986, there can be no doubt that for purposes of res judicata analysis, the High Court was a court lacking capacity to make an adequately informed determination of a question concerning its own jurisdiction United Church of Christ v. Hamo, 4 FSM R. 95, 118 (App. 1989).

Although final judgment in a case has been entered by the Trust Territory High Court, because any effort by a party to have the High Court consider its own jurisdiction would have been futile, it is procedurally fair to later afford the party an opportunity to question that jurisdiction. United Church of Christ v. Hamo, 4 FSM R. 95, 118-19 (App. 1989).

Where the Trust Territory High Court's exercise of jurisdiction was a manifest abuse of authority, allowing the judgment of the High Court to stand would undermine the decision-making guidelines and policies reflected in the judicial guidance clauses of the national and state constitutions and would thwart the efforts of the framers of the Constitution to reallocate court jurisdiction within the Federated States of Micronesia by giving local decision-makers control over disputes concerning ownership of land. United Church of Christ v. Hamo, 4 FSM R. 95, 119 (App. 1989).

The decision as to jurisdiction is one to be made by the court, and counsel may not by agreement, confer upon a court jurisdiction that it does not have by law. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 369 (App. 1990).

The maritime jurisdiction conferred on the FSM Supreme Court by the Constitution is not to be decided with reference to the details of United States cases and statutes concerning admiralty jurisdiction but instead with reference to the general maritime law of seafaring nations of the world, and to the law of nations. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 374 (App. 1990).

The FSM Supreme Court has jurisdiction over all cases which are maritime in nature including all maritime contracts, torts and injuries. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 374 (App. 1990).

The question of the enforceability of ship mortgages is a matter that falls within the maritime jurisdiction of the FSM Supreme Court under article XI, section 6(a) of the Constitution. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 376 (App. 1990).

A state law provision attempting to place "original and exclusive jurisdiction" in the Yap State Court cannot divest a national court of responsibilities placed upon it by the national constitution, which is the "supreme law of the Federated States of Micronesia." Gimnang v. Yap, 5 FSM R. 13, 23 (App. 1991).

Under traditional constitutional analysis, taxpayers' efforts to recover tax moneys unlawfully extracted from them by a state may be relegated to state procedures and decision-makers so long as there is a reasonable procedure under state law whereby the taxpayer may obtain meaningful relief. Gimnang v. Yap, 5 FSM R. 13, 23-24 (App. 1991).

Under the Compact of Free Association and the Federal Programs and Services Agreement, civilian employees of the United States government have immunity from civil and criminal process for wrongful acts and omissions done within the scope and in performance of official duty, unless expressly waived by the U.S. government. Samuel v. Pryor, 5 FSM R. 91, 95 (Pon. 1991).

The Compact of Free Association provides to the United States immunity from the jurisdiction of the FSM Supreme Court for claims arising from the activities of United States agencies or from the acts or omissions of the employees of such agencies. Samuel v. United States, 5 FSM R. 108, 111 (Pon. 1991).

Issuance of a search warrant is indisputedly within the FSM Supreme Court's jurisdiction. Jano v. King, 5 FSM R. 388, 392 (Pon. 1992).

A maritime contract cannot be converted into a non-maritime one by stipulation of the parties so as to divest the court of its admiralty jurisdiction. Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31, 6 FSM R. 1, 4 (Pon. 1993).

The term "concurrent" in article XI, section 6(c) of the FSM Constitution has the same meaning as in section 6(b); i.e., that jurisdiction is concurrent as between the FSM Supreme Court and any other national courts that may be established by statute. It would be illogical and contrary to norms of constitutional interpretation to assume a different meaning for "concurrent" in section 6(c) than in section 6(b), since it is quite clear that the two sections are to be read together. Faw v. FSM, 6 FSM R. 33, 35 (Yap 1993).

Under the FSM Constitution the FSM Supreme Court may hear cases on appeal from the highest state court in which a decision may be had if that state's constitution permits it. The Chuuk State Constitution permits such appeals, which, in civil cases, Chuuk statute provides be made by certiorari. Gustaf v. Mori, 6 FSM R. 284, 285 (App. 1993).

The FSM Supreme Court will not interfere in a pending state court proceeding where no authority has been cited to allow it to do so, where the case has not been removed from state court, where it has not been shown that the national government is a party to the state court proceeding thereby putting the case within the FSM Supreme Court's exclusive jurisdiction, and where it has not been shown that the movants are parties to the state court proceeding and thus have standing to seek national court intervention. Pohnpei v. Kailis, 6 FSM R. 460, 463 (Pon. 1994).

A court may *sua sponte* raise the issue of jurisdiction at any time because it is the duty of the courts and counsel to insure that jurisdiction exists. Barker v. Paul, 6 FSM R. 473, 475 (Chk. S. Ct. App. 1994).

Actions concerning the determination of land titles rest primarily with the Land Commission, which is statutorily charged with the registration and determination of land ownership. When the Land Commission has designated a registration area the courts cannot entertain any action with regard to interests in land within that registration area without a showing of special cause, although any determination of the Commission may be appealed to the Trial Division of the Chuuk State Supreme Court. Otherwise, it becomes final and conclusive. Barker v. Paul, 6 FSM R. 473, 475-76 (Chk. S. Ct. App. 1994).

Absent a finding of "special cause" on the record the trial court had no jurisdiction to entertain an action asserting an interest in land located within a designated registration area. Barker v. Paul, 6 FSM R. 473, 476 (Chk. S. Ct. App. 1994).

When the Land Commission has issued a Determination of Ownership which has become final upon the lapse of the time to appeal, the trial court has no authority or power to alter the final determination of ownership and boundaries. Barker v. Paul, 6 FSM R. 473, 476 (Chk. S. Ct. App. 1994).

The Chuuk State Supreme Court is a unified court system with two constitutionally mandated divisions – the trial division and the appellate division. All justices are members of both divisions, but a justice does not serve in the appellate division until he has been designated by the Chief Justice to be the presiding justice on a specific case. The trial division is the state's court of general jurisdiction. Election Comm'r v. Petewon, 6 FSM R. 491, 497 (Chk. S. Ct. App. 1994).

All justices in the trial division have concurrent jurisdiction, but once a case has been assigned to a particular justice, that justice has exclusive jurisdiction over the parties and issues of the case until the case is terminated in the trial division. Election Comm'r v. Petewon, 6 FSM R. 491, 498 (Chk. S. Ct. App. 1994).

A properly filed notice of appeal transfers jurisdiction from the trial court to the appellate court. Election Comm'r v. Petewon, 6 FSM R. 491, 498 (Chk. S. Ct. App. 1994).

The nonexclusive constitutional grant to the states of regulatory power over marine resources located within twelve miles of island baselines cannot be read as creating exclusive state court jurisdiction over marine resources within the twelve mile limit. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM R. 594, 598-99 & n.7 (Pon. 1994).

The state and national courts have concurrent jurisdiction over cases involving state regulation of marine resources located within twelve miles of island baselines. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM R. 594, 602 (Pon. 1994).

Parties cannot confer or divest a court of jurisdiction by stipulation or by assumption. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 45 (App. 1995).

It is the duty of the court to insure jurisdiction exists. The fact that the defendant has not challenged the allegation of jurisdiction does not confer jurisdiction on the court if none exists. Joeten Motor Co. v. Jae Joong Hwang, 7 FSM R. 326, 327 (Chk. S. Ct. Tr. 1995).

The FSM Supreme Court has jurisdiction over a suit against the national government by the states alleging that under the Constitution the states are entitled to 50% of all revenues from the EEZ because the FSM Supreme Court has the ultimate responsibility for interpretation of the Constitution. Chuuk v. Secretary of Finance, 7 FSM R. 563, 567 (Pon. 1996).

A trial court has jurisdiction to issue an order assessing costs, even though it was issued after the notice of appeal was filed. Damarlane v. United States, 8 FSM R. 14, 17 (App. 1997).

A policy of judicial economy dictates against allowing further piecemeal appeals when the appeal in question arises from the same civil action and involves the same or similar questions of law. Damarlane v. United States, 8 FSM R. 14, 17 (App. 1997).

The FSM Supreme Court's jurisdiction is derived from the FSM Constitution which grants the appellate division the jurisdiction to review cases heard in state or local courts if they require interpretation of the FSM Constitution, and a state constitution cannot deprive the FSM Supreme Court of this jurisdiction. Damarlane v. Pohnpei Legislature, 8 FSM R. 23, 26-27 (App. 1997).

The FSM Supreme Court appellate division has jurisdiction over an appeal where a motion to recuse filed by the appellant in the state court appellate division raised an issue of due process under the FSM Constitution. Damarlane v. Pohnpei Legislature, 8 FSM R. 23, 27 (App. 1997).

When the state election law requiring election appeals to go directly to the state court appellate division has a provision applying the law to municipal elections if the municipal constitution or law so provides and there is no such municipal provision, then jurisdiction over the election appeal does not lie in the state court appellate division in the first instance. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 245, 247 (Chk. S. Ct. Tr. 1998).

A case challenging the Governor's authority to take certain actions where the Governor has cited the state constitution as his authority and where the issues are serious and substantial is clearly a case arising under the state constitution over which the state court trial division has original and exclusive jurisdiction. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 245, 247 (Chk. S. Ct. Tr. 1998).

When the state judiciary act gives the state court trial division authority to review all actions of an agency of the government, the trial division has jurisdiction over an appeal of the state election commissioner's denial of a petition to set aside a municipal election. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 245, 247 (Chk. S. Ct. Tr. 1998).

The Chuuk State Supreme Court trial division had jurisdiction to hear an election appeal from an election conducted, pursuant to the governor's emergency declaration, under a state law providing for such jurisdiction. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 275, 280 n.1 (Chk. S. Ct. Tr. 1998).

Once land has been declared part of a registration area, courts shall not entertain any action with regard to interests in land within that registration area without a showing of special cause why action by a court is desirable before it is likely the land commission can make a determination on the matter. Pau v. Kansou, 8 FSM R. 524, 526-27 (Chk. 1998).

When title to land in a designated registration area becomes an issue in a case involving damage claims for trespass, and there is no pending case before the land commission concerning this land or a previous final determination of ownership, a court may remand the question of ownership to the land commission to be determined within a limited time. Once ownership is determined, the court may proceed because more than an interest in land is at stake, and the land commission can only adjudicate interests in land. Pau v. Kansou, 8 FSM R. 524, 527 (Chk. 1998).

Venue does not refer to jurisdiction at all. Jurisdiction of the court means the inherent power to decide a case, whereas venue designates the particular county or city in which a court with jurisdiction may hear and determine the case. On the other hand, forum means a place of jurisdiction. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 125 (Pon. 1999).

A foreign government is an entity over whom the FSM Supreme Court may exercise jurisdiction if it engages in certain acts. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 371 n.1 (Kos. 2000).

The Constitution does not authorize the FSM Supreme Court to declare the law anytime a justice feels moved to do so or authorize the court to respond to every request for a legal ruling directed to it by citizens. Instead, Article XI, section 6 of the Constitution grants jurisdiction, and the power to exercise judicial powers, only in five specific kinds of "disputes" and five types of "cases." FSM v. Louis, 9 FSM R. 474, 482 (App. 2000).

Because a court is without jurisdiction to entertain an action asserting an interest in land located within a designated registration area and because all such actions must first be filed with the Chuuk State Land Commission, a quiet title action filed in the Chuuk State Supreme Court will be transferred to the Land Commission for consideration of ownership. Simina v. Rayphand, 9 FSM R. 508, 509 (Chk. S. Ct. Tr. 2000).

When the court's jurisdiction is placed at issue, it is the plaintiff's burden to show that the Supreme Court does have jurisdiction, and that a colorable claim exists. Udot Municipality v. FSM, 9 FSM R. 560, 562 (Chk. 2000).

The FSM Development Bank is an instrumentality of the national government and part of the national government for purposes of Article XI, Section 6(a) of the Constitution. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 4 (Chk. 2001).

The Constitution does appear not to bar the FSM Supreme Court from exercising jurisdiction over FSM Development Bank mortgage foreclosures. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 5 (Chk. 2001).

Under the Chuuk Constitution, article VII, § 3(c), the Chuuk State Supreme Court has only appellate or review jurisdiction over the Land Commission, and thus a motion for review de novo of matters not raised before the Land Commission must be denied. Enengeitaw Clan v. Shirai, 10 FSM R. 309, 311 (Chk. S. Ct. Tr. 2001).

When plaintiffs ask the Chuuk State Supreme Court trial division to interpret a statute in light of various Chuuk Constitution provisions because in their view the statute unconstitutionally delegates the power to conduct elections to the municipalities themselves, it is a constitutional question of significant magnitude, given the past history of the conduct of elections in general in Chuuk. Given the clear jurisdictional mandate in the Chuuk Constitution for the court to determine issues regarding the state constitution and laws, the court has jurisdiction over the case, and a motion to dismiss for lack of subject matter jurisdiction must therefore be denied. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 579-80 (Chk. S. Ct. Tr. 2003).

The statutory prohibition on issuing writs against public property is jurisdictional. Since the statute deprives a court of jurisdiction to issue any such writ, the parties may not by agreement confer jurisdiction upon a court when a statute affirmatively deprives the court of jurisdiction. Ben v. Chuuk, 11 FSM R. 649, 651 (Chk. S. Ct. Tr. 2003).

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

While ordinarily the court does not have jurisdiction over claims arising in land registration areas subject to the Land Commission's jurisdiction, an exception is that whenever the Land Commission, in its discretion, makes either of the determinations set forth in 67 TTC 108(1) or (2), it may refer the claim to the Chuuk State Supreme Court trial division for adjudication without itself making any determination. The statute thus expressly confers jurisdiction on the court upon a matter's referral from the Land Commission whenever cause appears pursuant to 67 TTC 108(1) or (2). The "special cause" is established by the statute, and the trial division clearly has jurisdiction if the circumstances meet the statute's requirements. Chuuk v. Ernist Family, 12 FSM R. 154, 159 (Chk. S. Ct. Tr. 2003).

A default judgment must be vacated when the Chuuk State Supreme Court never had jurisdiction over the action to determine ownership of real property in the first place because, despite being framed as a

declaratory relief action, the case sought a determination of ownership of land lying within a land registration area and only the Land Commission has jurisdiction to determine ownership of land within a land registration area. Hartman v. Chuuk, 12 FSM R. 388, 398-99 (Chk. S. Ct. Tr. 2004).

When the land in question clearly lies in a Land Commission registration area; when the action seeks a declaration that a party is the owner of the land and it does not allege, nor prove, that the Land Commission referred the matter to the court for resolution, and when she does not assert any "special cause" why the court should assert jurisdiction over the land claim, the court is statutorily deprived of jurisdiction over any action with regard to interests in land. Hartman v. Chuuk, 12 FSM R. 388, 399 (Chk. S. Ct. Tr. 2004).

The courts have a duty to examine issues regarding their jurisdiction. Jurisdiction of the court may be raised at any time, even after judgment. Hartman v. Chuuk, 12 FSM R. 388, 399 (Chk. S. Ct. Tr. 2004).

Acts in excess of a court's jurisdiction are void. Hartman v. Chuuk, 12 FSM R. 388, 399 (Chk. S. Ct. Tr. 2004).

Questions regarding interests in land must be raised before the Land Commission. The Chuuk State Supreme Court has no jurisdiction to hear or decide such claims. The court can only refer the matter to the Land Commission, so that the Land Commission can resolve the dispute. Hartman v. Chuuk, 12 FSM R. 388, 401-02 (Chk. S. Ct. Tr. 2004).

Any case over which the trial division has jurisdiction may be heard by any of the justices as assigned by the Chief Justice. Once a case has been assigned to a particular justice, that justice has jurisdictional priority over the parties and issues of the case to the exclusion of all other trial division justices. This exclusive jurisdiction continues until the case is terminated in the trial division. While the case is pending, the priority extends to any other case involving the same parties and issues, even if filed later before a court that could also take jurisdiction. Nikichiw v. O'Sonis, 13 FSM R. 132, 138 (Chk. S. Ct. App. 2005).

When the parties are identical in two civil actions and the plaintiffs sought the same relief in both civil actions – that the contents of certain ballot boxes not be counted and tabulated because of election irregularities and when the only difference in the later civil action was that the plaintiffs were contesting only two of the five boxes they contested in the first civil action and that the irregularities alleged in the later case were discovered during and in the course of the litigation of the first civil action (that is, during the counting and tabulating ordered by the judge in the first civil action), such irregularities would be expected to be brought immediately before the judge on the case in which they were discovered. When they were not, but were instead filed as a separate case, once the trial judge on the first case became available, the case should have been left to him to act upon. Therefore the second trial judge's presiding over the second civil action was in excess of his jurisdiction since the first trial division justice had jurisdictional priority over the parties and the issues in that case to the exclusion of all other trial division justices. Nikichiw v. O'Sonis, 13 FSM R. 132, 138 (Chk. S. Ct. App. 2005).

A claim that civil matters should be dealt with in the defendant's country and that since both he and the plaintiff were Koreans, the court should dismiss this case is an assertion of forum non conveniens. Forum non conveniens is not a claim that the court lacks jurisdiction over the case, but is a doctrine that the court may, as a matter of its discretion, decline jurisdiction and dismiss a case when the parties' and the witnesses' convenience and the ends of justice would be better served if the action were brought and tried in another forum in which the action could be heard. Lee v. Lee, 13 FSM R. 252, 257 n.5 (Chk. 2005).

A trial justice may not, *sua sponte*, assert jurisdiction over a case which has been fully dismissed, particularly when that case was dismissed by another justice. When a case has been dismissed, there is no case or dispute remaining before the court. Ruben v. Petewon, 14 FSM R. 177, 183 (Chk. S. Ct. App. 2006).

Because the Kosrae State Court only has the authority to hear appeals from Land Court and it cannot

act until the Land Court has adjudicated the matter and an appeal has been filed, a case concerning a claim of title to land filed in the Kosrae State Court will be dismissed without prejudice to allow the plaintiffs to file their claim in the Land Court, whose jurisdiction includes all matters concerning the title of land and any interests therein. Alanso v. Pridgen, 14 FSM R. 479, 480 (Kos. S. Ct. Tr. 2006).

Courts have no jurisdiction to hear cases with regard to interests in land in land registration areas unless there has been a showing of special cause, and a finding by the court, that action by a court is desirable or the Land Commission has asked the court to assume jurisdiction without the Land Commission having made a determination. Mathias v. Engichy, 15 FSM R. 90, 95 (Chk. S. Ct. App. 2007).

When an order awarded attorneys' fees on the private attorney general theory and those fees are added to the judgment to be borne by the defendants, the issue of whether the fee award under the private attorney general theory will also stand as the fee award to plaintiffs' counsel in a final distribution is an issue that is not now before the court and will not be before the court until a proposal for a final distribution is before the court. Until then, anything the court might say would be in the nature of an advisory opinion, and the court does not have the authority to issue advisory opinions. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 133, 134-35 (Yap 2007).

The FSM Supreme Court trial division lacks jurisdiction over an election contest in a Chuuk state election since jurisdiction over election contests rests purely on statutory and constitutional provisions, and courts otherwise have no inherent power to determine election contests, and since the determination of such contests is a judicial function only when and to the extent that the determination is authorized by statute. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 397 (Chk. 2009).

The FSM Supreme Court's jurisdiction is constitutionally limited to actual cases and disputes thereby precluding it from making pronouncements on hypothetical, abstract, or academic issues or when the matter is moot. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 398 (Chk. 2009).

When the constitutional issues the plaintiffs raise are either a part of an election contest over which the court has no jurisdiction or are hypothetical, abstract, or academic, the court lacks jurisdiction over the case. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 398 (Chk. 2009).

The decision as to the court's jurisdiction over an action is one to be made by the court, and the election commission is not empowered to assume or confer whether a court has jurisdiction. The election commission is limited to determining its own jurisdiction. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 411 (Chk. S. Ct. App. 2009).

Although the court will not judge the actions of the U.S. government, when the case's disposition does not require the court to judge those actions, the court can and will judge the actions of the parties to the case if there are satisfactory criteria to do so. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 485 (Pon. 2009).

Chuuk Election Code, section 138 clearly contemplates that the FSM Supreme Court appellate division may exercise jurisdiction over a Chuuk state election contest even after the candidates that have been declared the winners have been sworn in. Chuuk State Election Comm'n v. Chuuk State Supreme Court App. Div., 16 FSM R. 614, 615 (App. 2009).

The section 6(a) phrase "except where an interest in land is at issue," does not preclude the FSM Supreme Court from exercising jurisdiction in a case where the national government entity is a party and land is involved. It does preclude the court from exercising exclusive jurisdiction – the jurisdiction becomes concurrent and a competent state court could instead entertain the matter. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 93 (Yap 2011).

A Yap state statute cannot divest the FSM Supreme Court of jurisdiction conferred on it by the FSM Constitution, which is the supreme law of the land. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 94 (Yap 2011).

The FSM Supreme Court can exercise jurisdiction in a case where an interest in land is at issue if there is another basis for jurisdiction. Iwo v. Chuuk, 18 FSM R. 182, 184 (Chk. 2012).

Although pleading requirements are interpreted liberally, it is the plaintiff's responsibility to see that his complaint states the grounds of jurisdiction. Iwo v. Chuuk, 18 FSM R. 182, 184 (Chk. 2012).

If the case involves officials of foreign governments, or disputes between states, or admiralty or maritime matters, no further analysis is needed. The FSM Supreme Court trial division has exclusive jurisdiction. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 614 (Pon. 2013).

If the FSM Supreme Court does not have exclusive jurisdiction, the analysis will not end there. It proceeds to the next set of questions about the FSM Supreme Court's concurrent jurisdiction. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 615 (Pon. 2013).

The FSM Supreme Court either has exclusive jurisdiction over a case or it has concurrent jurisdiction. It cannot have both simultaneously because a court's jurisdiction over a case cannot be both exclusive and non-exclusive (concurrent) at the same time. It is either exclusive or it is not. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 618 (Pon. 2013).

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

The Constitution does not mandate such a sweeping expansion of the FSM Supreme Court's jurisdiction over probate cases as would result if creditors were considered parties for jurisdictional purposes. The better view is that only the heirs, potential heirs, or devisees in a probate case be considered parties for jurisdictional purposes and that, in the usual case, the decedent's creditors would file their claims in a state court probate proceeding. This view comports with the proper respect due to the state courts as courts of general jurisdiction that should normally resolve probate and inheritance issues. In re Estate of Edmond, 19 FSM R. 59, 62 (Kos. 2013).

For jurisdictional purposes, the parties in a probate case are those who have a claim that they are heirs. Creditors are not to be considered parties for jurisdictional purposes. This reasoning is suitable for the FSM. In re Estate of Edmond, 19 FSM R. 59, 62 (Kos. 2013).

A creditor may open a probate case in state court without destroying the state court's jurisdiction because a creditor is not an heir. In re Estate of Edmond, 19 FSM R. 59, 62 (Kos. 2013).

State laws vesting state courts with exclusive jurisdiction cannot divest the FSM Supreme Court of its constitutional responsibilities. FSM Dev. Bank v. Setik, 19 FSM R. 233, 235 (Pon. 2013).

When no defendant has started a case under bankruptcy law, the defendants cannot have the case dismissed because bankruptcy law would provide the legal framework for the case. FSM Dev. Bank v. Setik, 19 FSM R. 233, 236 (Pon. 2013).

The probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes the national courts from disposing of property that is in a state probate court's custody. But it does not bar the national courts from adjudicating matters outside of those confines and otherwise within national court jurisdiction. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 430 (App. 2014).

Interference with the property of the estate, and the probate exception should be read narrowly so as not to bar national court jurisdiction over preliminary matters, or ancillary matters, such as in personam actions and equitable intervention for fraud, maladministration, or non-administration of the estate. In those matters, the national court may appoint an administrator or an administrator pendente lite on behalf of third party interests before, or while, the action is pending in state court. These actions are outside of the scope of the probate exception, but they should not be confused with direct challenges to the validity of the will itself, in interpreting the language of the will, or equitable charges of fraud, undue influence, or tortious interference with the testator's intent which are core matters within the probate exception. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 430 (App. 2014).

Ultimately, the bulk of probate matters are to remain with the states, but an express constitutional exception is carved out when the national government is a party to the suit. Furthermore, the Constitution's framers created a constitutional limitation on the national government's jurisdiction under the land clause exception of article XI, § 6(a). FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 433 (App. 2014).

Courts have no jurisdiction to hear cases about interests in land in land registration areas unless there has been a showing of special cause, and a court finding, that action by a court is desirable or that the Land Commission has asked the court to assume jurisdiction without the Land Commission having made a determination. Aritos v. Muller, 19 FSM R. 533, 538 (Chk. S. Ct. App. 2014).

Under 11 F.S.M.C. 104(7)(b)(i), the FSM Supreme Court has jurisdiction over any crime committed in the FSM Exclusive Economic Zone. FSM v. Kimura, 19 FSM R. 630, 633 (Pon. 2015).

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if filed later before a court that could also take jurisdiction. Carius v. Johnson, 20 FSM R. 143, 146 (Pon. 2015).

For purposes of jurisdiction, since the College of Micronesia was created by national statute, and given the nature of its structure and functions, it is an instrumentality or agency of the FSM national government. Ramirez v. College of Micronesia, 20 FSM R. 254, 263 (Pon. 2015).

A state statute that vests exclusive jurisdiction over certain cases in a state court (such as the Pohnpei statute requiring all judicial actions for a mortgage foreclosure to be brought in the Pohnpei Supreme Court trial division), cannot deprive the FSM Supreme Court of jurisdiction or have any effect on its jurisdiction. Sam v. FSM Dev. Bank, 20 FSM R. 409, 416 (App. 2016).

Jurisdictional grants of power to the national courts in Article XI, § 6 appear to be self-executing, calling for no action by Congress. Since most U.S. Constitution jurisdictional provisions are not self-executing, determinations of U.S. courts' jurisdiction are typically based on statutory construction rather than constitutional interpretation, as in the FSM. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 517 n.5 (App. 2016).

A state law vesting exclusive jurisdiction in a state court cannot divest the FSM Supreme Court of jurisdiction over a matter it would otherwise have jurisdiction, as mandated by the FSM Constitution. FSM Dev. Bank v. Ehsa, 20 FSM R. 608, 613 (Pon. 2016).

Although standing is not expressly stated within the FSM Constitution, it is implied as an antecedent to the "case or dispute" requirement found in Article XI, § 6 and should be interpreted so as to implement the objectives of that requirement. Two factors are central to the determination of whether a party has standing: 1) the party must allege a sufficient stake in a controversy's outcome and it must have suffered some threatened or actual injury resulting from the allegedly illegal action or erroneous court ruling, and 2) the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 57 (App. 2016).

When the asserted ownership of a parcel constitutes a sufficient stake in the outcome; and when a challenge to the Kosrae State Court's ruling is capable of being redressed by a favorable decision in the FSM Supreme Court appellate division, an appellant, who did not appeal the Land Court decision to the Kosrae State Court, possesses standing to bring the present appeal. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 57 (App. 2016).

A manifest abuse of authority, a judgment obtained unfairly or working a serious injustice, fraud or collusion by a court, fraud, and lack of jurisdiction have been considered grounds to ignore a judgment's validity. Validity fundamentally includes the court's competence to adjudicate the matter with regard to subject-matter jurisdiction, territorial jurisdiction, and notice. Waguk v. Waguk, 21 FSM R. 60, 71 (App. 2016).

A court of competent jurisdiction is a court that has the power and authority to do a particular act; one recognized by law as possessing the right to adjudicate a controversy. Waguk v. Waguk, 21 FSM R. 60, 71 n.14 (App. 2016).

A court has no more right to decline the exercise of jurisdiction which is given, than it does to usurp that which is not given. Waguk v. Waguk, 21 FSM R. 60, 74 (App. 2016).

The Pohnpei Supreme Court is not the only forum with jurisdiction to foreclose a mortgage on Pohnpei real estate because it is undisputed that the FSM Supreme Court may exercise such jurisdiction when the FSM Development Bank is the mortgagee since a state statute cannot divest the FSM Supreme Court of its jurisdiction. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 172 (Pon. 2017).

A person may be convicted and sentenced under the laws of the FSM if he or she commits, or attempts to commit a crime, in whole or in part within the FSM. FSM v. Siega, 21 FSM R. 291, 298 (Chk. 2017).

The statute of limitations does not affect a court's jurisdiction because generally a statute of limitation is not jurisdictional unless it is a limitations period for claims against the government. Alik v. Heirs of Alik, 21 FSM R. 606, 621 (App. 2018).

A Chuuk probate court cannot have jurisdiction over real property on Pohnpei even though the property's registered owner was a Chuukese decedent for whom probate cases were filed in a Chuuk state court. Setik v. Mendiola, 21 FSM R. 624, 626 (App. 2018).

Even if there had not been an heirship proceeding for the Pohnpei property in the Pohnpei Court of Land Tenure, the Chuuk State Supreme Court would still lack jurisdiction to probate the property since the land and real estate are outside of Chuuk. Setik v. Mendiola, 21 FSM R. 624, 626 (App. 2018).

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if filed later before a court that could also take jurisdiction. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 12 (Pon. 2018).

When the Pohnpei state probate case was the first filed lawsuit and that case can afford a complete resolution of the issues between the parties; when the later-filed FSM Supreme Court case could, at best, afford only a partial resolution and certainly lacks jurisdiction to enforce a state court interlocutory order; and when the Pohnpei Supreme Court is perfectly competent to enforce its own orders and judgments and to take any further needed steps in the probate case pending before it, it is appropriate that that forum resolve the issues. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 13 (Pon. 2018).

When diversity jurisdiction does not exist, the FSM Supreme Court's subject-matter jurisdiction must be based on some other ground. Apostol v. Maniquiz, 22 FSM R. 146, 149 (Chk. 2019).

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if filed later before a court that could also take jurisdiction. O'Sonis v. O'Sonis, 22 FSM R. 268, 270 (Chk. 2019).

While it is true that parties cannot confer or divest a court of jurisdiction by stipulation or by assumption, a helicopter buyer who had to register that helicopter somewhere (some country) and chose to register it in the U.S., will be estopped from denying the U.S.'s regulatory authority over its helicopter. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 459 (Pon. 2020).

– Arising Under

The repealer clause of the National Criminal Code repealed those provisions of Title 11 of the Trust Territory Code above the monetary minimum of $1,000 set for major crimes. Where the value is below $1,000, section 2 does not apply because it is not within the national court jurisdiction. FSM v. Hartman, 1 FSM R. 43, 46 (Truk 1981).

The Seaman's Protection Act, originally enacted for the entire Trust Territory by the Congress of Micronesia, relates to matters that now fall within the legislative powers of the national government under article IX, section 2 of the Constitution, and has therefore become a national law of the Federated States of Micronesia under article XV. That being so, a claim asserting rights under the Act falls within the FSM Supreme Court's jurisdiction under article XI, section 6(b) of the Constitution as a case arising under national law. 19 F.S.M.C. 401-437. Lonno v. Trust Territory (I), 1 FSM R. 53, 72 (Kos. 1982).

Title 11 of the Trust Territory Code, before the effective date of the National Criminal Code, is not a national law because its criminal jurisdiction was not expressly delegated to the national government, nor is the power it confers of indisputably national character; therefore, it is not within the FSM Supreme Court's jurisdiction. Truk v. Otokichy, 1 FSM R. 127, 130 (Truk 1982).

The FSM Supreme Court has jurisdiction to try Title 11 Trust Territory Code cases if they arise under a national law. Title 11 of the Trust Territory Code is not a national law. It was not adopted by Congress as a national law and it did not become national law by virtue of the transition article. Truk v. Hartman, 1 FSM R. 174, 178 (Truk 1982).

Exclusive national government jurisdiction over major crimes is not mandated by the Constitution; such jurisdiction would be exclusive in any event only if criminal jurisdiction was a power of indisputably national character. Truk v. Hartman, 1 FSM R. 174, 181 (Truk 1982).

The National Government has exclusive jurisdiction over crimes arising under national law. 11 F.S.M.C. 901. Truk v. Hartman, 1 FSM R. 174, 181 (Truk 1982).

Sections of Title 11 of the Trust Territory Code covering matters within the jurisdiction of Congress owe their continuing vitality to section 102 of the National Criminal Code. Thus, the criminal prosecutions thereunder are a national matter and fall within the FSM Supreme Court's constitutional jurisdiction. 11 F.S.M.C. 102. In re Otokichy, 1 FSM R. 183, 185 (App. 1982).

Section 102(2), the savings clause of the National Criminal Code, authorizes prosecutions of Title 11 Trust Territory Code offenses occurring prior to the enactment of the National Criminal Code. Therefore, these prosecutions fall within the FSM Supreme Court's constitutional jurisdiction. 11 F.S.M.C. 102(2). In re Otokichy, 1 FSM R. 183, 190 (App. 1982).

Presumably, Congress inserted no specific jurisdictional provision in section 102 of the National Criminal Code because Congress recognized that the FSM Supreme Court would have jurisdiction over all cases arising under national law by virtue of article XI, section 6(b) of the Constitution. 11 F.S.M.C. 102. In re Otokichy, 1 FSM R. 183, 193 (App. 1982).

The Trust Territory Weapons Control Act is not inconsistent with any provision of the Constitution. It therefore continued in effect. When the National Criminal Code was enacted, and major crimes were defined, the Trust Territory Weapons Control Act became national law and trials for violations thereof were within the FSM Supreme Court's jurisdiction. 11 F.S.M.C. 1201-1231. FSM v. Nota, 1 FSM R. 299, 302-03 (Truk 1983).

When petitioners raise serious and substantial constitutional claims supported by authorities and reasoning of legal substance, the case falls within the FSM Supreme Court's jurisdiction under article XI, section 6(b) of the Constitution. Ponape Chamber of Commerce v. Nett Mun. Gov't, 1 FSM R. 389, 391 (Pon. 1984).

Article XI, section 6(a) of the Constitution places jurisdiction in the Federated States of Micronesia Supreme Court over cases in which the national government is a party. Panuelo v. Pohnpei (I), 2 FSM R. 150, 153 (Pon. 1986).

National civil rights claims under 11 F.S.M.C. 701 furnish a jurisdictional basis for the case to be heard by the FSM Supreme Court. Panuelo v. Pohnpei (I), 2 FSM R. 150, 153 (Pon. 1986).

Activities and organizations created and controlled by the national government should remain subject to FSM Constitution article XI, section 6(a), but organizations merely authorized or licensed by the national government which operate for private purposes, with little governmental involvement or control, should not be treated as a part of the national government. FSM Dev. Bank v. Estate of Nanpei, 2 FSM R. 217, 219-20 (Pon. 1986).

Exact scope of admiralty jurisdiction is not defined in the FSM Constitution or legislative history, but United States Constitution has a similar provision, so it is reasonable to expect that words in both Constitutions have similar meaning and effect. Weilbacher v. Kosrae, 3 FSM R. 320, 323 (Kos. S. Ct. Tr. 1988).

The FSM Supreme Court trial division is required to decide all national law issues presented to it. Certification to state court is only proper for state or local law issues. Edwards v. Pohnpei, 3 FSM R. 350, 354 (Pon. 1988).

In the absence of any special limitation, issues that arise under any state or national law within the particular state may fall within the jurisdiction of the state and local courts of that state through state constitutional and statutory provisions which place the "judicial power of the state" within those courts. Gimnang v. Yap, 5 FSM R. 13, 17 (App. 1991).

Article XI, section 6(b) and 8 of the FSM Constitution places primary responsibility in the national courts for the kind of cases arising under the constitution or requiring interpretation of the Constitution, national law or treaties; and in disputes between a state and a citizen of another state, between state, citizen, of different states, and between a state or a citizen, a foreign state, citizen, or subject but they do not prohibit state court jurisdiction over issues of national law or cases which arise under national law. Gimnang v. Yap, 5 FSM R. 13, 18 (App. 1991).

Issues that arise under any state or national law within the particular state may fall within the jurisdiction of the state and local courts of that state through state constitutional and statutory provisions which place the "judicial power of the state" within those courts, subject to the possibility that state or local courts may sometimes be barred from exercising jurisdiction in some such cases by the action of Congress, of this court, or of the state legislature. Gimnang v. Yap, 5 FSM R. 13, 18 (App. 1991).

Article XI, section 8 of the FSM constitution does not bar state courts from exercising jurisdiction over cases which arise under national law within the meaning of Article XI, section 6(b). Gimnang v. Yap, 5

FSM R. 13, 18 (App. 1991).

Full abstention is not appropriate where claims are not essentially state law claims, and are made against another nation, thus falling within the national court's primary jurisdiction. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 67A, 67E (Pon. 1991).

Abstention may be appropriate for causes of action that raise issues of state law only, but may not be where substantive issues of national law are raised. A national court may not abstain from deciding a national constitutional claim. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 67A, 67E (Pon. 1991).

The intent of the Constitutional Convention is that major crimes, as defined by Congress and committed prior to voter ratification, fall within the jurisdiction of the national government and may be prosecuted pursuant to the national law after the effective date of the amendment. In re Ress, 5 FSM R. 273, 276 (Chk. 1992).

The national court should not abstain from deciding a criminal case where the crime took place before the effective date of the 1991 amendment removing federal jurisdiction over major crimes because of the firmly expressed intention by the Constitutional Convention delegates as to the manner of transition from national jurisdiction to state jurisdiction. In re Ress, 5 FSM R. 273, 276 (Chk. 1992).

Where the crimes charged are no longer those expressly delegated to Congress to define, or are not indisputedly of a national character the FSM Supreme Court has no subject matter jurisdiction. FSM v. Jano, 6 FSM R. 9, 11 (Pon. 1993).

The FSM Supreme Court has jurisdiction over a suit against the national government by the states alleging that under the Constitution the states are entitled to 50% of all revenues from the EEZ because the FSM has waived its sovereign immunity in cases to recover illegally collected taxes and for claims arising out of improper administration of FSM statutory law. Chuuk v. Secretary of Finance, 7 FSM R. 563, 568 (Pon. 1996).

A plaintiff's complaint, stating two causes of action for breach of fiduciary duty (both existing under common law), does not arise under the national laws of the FSM so as to confer original jurisdiction on the FSM Supreme Court or show on its face an issue of national law thereby creating removal jurisdiction. David v. San Nicolas, 8 FSM R. 597, 598 (Pon. 1998).

That a corporation chartered under the laws of the FSM is involved in a lawsuit does not necessarily mean that the interpretation of national laws will be required or that the state court is not otherwise equipped to hear the case. David v. San Nicolas, 8 FSM R. 597, 598 (Pon. 1998).

To determine whether a controversy arises under national law, the issue of national law must be an essential element of one or more of the plaintiff's causes of action, it must be disclosed upon the face of the complaint, unaided by the answer, the petition for removal or any pleadings subsequently filed in the case, it may not be inferred from a defense asserted or one expected to be made, and the issue of national law raised must be a substantial one. David v. San Nicolas, 8 FSM R. 597, 598 (Pon. 1998).

When a case has been removed from state court on the ground that it arose under national law but the plaintiff's complaint only relies upon common law principles of breach of fiduciary duty and as such does not arise under national law because no issue of national law appears on the face of the complaint and no substantial issue of national law is raised, the case will be remanded to the state court where it was initially filed. David v. San Nicolas, 8 FSM R. 597, 598 (Pon. 1998).

When an amended complaint's deliberate indifference or negligence allegations do not rise to the level of a constitutional due process claim, it does not state a claim upon which the FSM Supreme Court can grant relief and the trial court's dismissal of the amended complaint will therefore be affirmed. Primo v.

Pohnpei Transp. Auth., 9 FSM R. 407, 412 (App. 2000).

Determination of whether a case arises under the Constitution, national law, or a treaty is based on the plaintiff's statement of his cause of action, not on whatever defenses that are or that might be raised. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 4 (Chk. 2001).

National law defenses do not constitute a basis for arising under national law jurisdiction pursuant to section 6(b). FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 4 (Chk. 2001).

Determination of whether a case arises under the Constitution, national law, or a treaty is based on the plaintiff's statement of his cause of action, not on whatever defenses that are or that might be raised. Enlet v. Bruton, 10 FSM R. 36, 40 (Chk. 2001).

A case that asserts five causes of action under 32 F.S.M.C. 301 *et seq.*, is one that "arises under national law" within the meaning of Article XI, section 6(b). Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 203 (Pon. 2001).

A foreign corporation served pursuant to 4 F.S.M.C. 204 may be sued within the FSM for violations of 32 F.S.M.C. 302 or 303, regardless of where the service occurs, so long as that foreign corporation has done specific acts within the FSM to bring it within the jurisdiction of the FSM Supreme Court. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204-05 (Pon. 2001).

A party to a dispute within the scope of article XI, section 6(b) has a constitutional right to invoke the jurisdiction of the FSM Supreme Court. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 100 (Pon. 2002).

Although national law provides for the reciprocal enforcement of child support orders, case law supports the conclusion that FSM Supreme Court should abstain from exercising its jurisdiction at least until the state court has had the opportunity to rule on the issues. Villazon v. Mafnas, 11 FSM R. 309, 310 (Pon. 2003).

When the plaintiff has alleged that his termination from the Head Start Program violated his rights secured under the FSM Constitution, the FSM Supreme Court has concurrent original jurisdiction over the matter. Reg v. Falan, 11 FSM R. 393, 399 (Yap 2003).

A motion to dismiss for lack of jurisdiction will be denied when the plaintiffs' complaint alleges claims that arise under national law and the national constitution because the FSM Supreme Court exercises jurisdiction over such cases, and, although state courts may also exercise jurisdiction over such cases, the plaintiffs have a constitutional right to bring such cases in the FSM Supreme Court if they so desire. Naoro v. Walter, 11 FSM R. 619, 621 (Chk. 2003).

A cross-claim cannot form a basis for the FSM Supreme Court's jurisdiction because determination of whether a case arises under the Constitution, national law, or a treaty is based on the plaintiff's statement of his cause of action, not on whatever defenses that are or that might be raised. Mailo v. Chuuk, 12 FSM R. 597, 600 (Chk. 2004).

The national courts, including the trial division of the Supreme Court, have concurrent original jurisdiction in cases arising under national law. National courts are the trial division of the FSM Supreme Court and any other national courts that might be established by statute, and not state courts. Shrew v. Sigrah, 13 FSM R. 30, 32 (Kos. 2004).

When a state law makes a specific reference to a national statute, any interpretation of that state law must simultaneously present a question of national law. The FSM Supreme Court would have subject matter jurisdiction over such a case. Shrew v. Sigrah, 13 FSM R. 30, 32 (Kos. 2004).

Section 6(b) of Article XI of the FSM Constitution provides that the national courts, including the Supreme Court trial division, have concurrent original jurisdiction in cases arising under the Constitution, national law or treaties, and in disputes between a state and a citizen of another state, between citizens of different states, and between a state or citizen thereof, and a foreign state, citizen, or subject. The national courts referred to in this section are the FSM Supreme Court trial division and any other national courts which may be established in the future. Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 147 (App. 2005).

Determination of whether the FSM Supreme Court has subject matter jurisdiction over a case is based on the plaintiff's statement of his cause of action, not on whatever defenses that are or that might be raised. McVey v. Etscheit, 13 FSM R. 473, 476 (Pon. 2005).

Determination of whether a case arises under the Constitution, national law, or a treaty is based on the plaintiff's statement of his cause of action, not on whatever defenses that are or that might be raised. Etscheit v. McVey, 13 FSM R. 477, 479 (Pon. 2005).

To determine whether a case arises under national law, the issue of national law must be an essential element of one or more of the plaintiff's causes of action, it must be disclosed upon the face of the complaint, unaided by the answer, the petition for removal or any pleadings subsequently filed in the case, it may not be inferred from a defense asserted or one expected to be made, and the issue of national law raised must be a substantial one. Etscheit v. McVey, 13 FSM R. 477, 479 (Pon. 2005).

When the plaintiffs' fifth cause of action is expressly entitled "Violation of the FSM Anti-competitive Practices Law" and the text specifically states that it alleges violations of the "Federated States of Micronesia Anti-competitive Practices Act" and cites 32 F.S.M.C. §§ 302-306 twice and when no Pohnpei state law or the Trust Territory predecessor statute is cited, this is thus clearly a cause of action arising under national law. The FSM Supreme Court has jurisdiction over cases arising under national law. Since the issue raised is a substantial one, the case was therefore not improvidently removed from the Pohnpei Supreme Court. Etscheit v. McVey, 13 FSM R. 477, 479-80 (Pon. 2005).

A case that came before the court based on the court's exclusive jurisdiction over cases when the national government is a party and where the plaintiff's asserted claims primarily arose under national law, is not a diversity case where state law provides the rules of decision. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 16 (App. 2006).

When the case was first filed in the FSM Supreme Court as an action for civil rights and due process and certain fact-finding functions were referred to the Pohnpei Board of Trustees because it was best able, at least initially, to make those determinations, the remand or reference to the Board did not divest the court of jurisdiction because in making that remand or reference, the court was not transferring this case to the Board of Trustees and the Board does not have the authority to grant much of the relief sought in the case – damages for civil rights and due process violations and for trespass and injunctive relief. Jurisdiction over the case remained with the court the whole time. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 156-57 (Pon. 2006).

When the remand or reference to the Board of Trustees was analogous to this court's power to appoint a special master to make factual findings, which the court may or may not adopt as its own findings and was also similar to those cases that were initiated in the FSM Supreme Court in Chuuk and then "remanded" to the Chuuk Land Commission for certain factual determinations and those cases then either "appealed" back to, or referred back to, the FSM Supreme Court trial division when those determinations were either completed or some other issue came up that required court determination, and when the Board, in effect, acted as a special master – a court-designated fact finder. When the FSM Supreme Court had subject-matter jurisdiction over the complaint's allegations when it was filed, the court still retained that jurisdiction and the remand or reference is thus not a ground upon which to grant dismissal.

Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 157 (Pon. 2006).

Since an allegation of police brutality implicates both the national and state constitutions and a plaintiff asserting a right arising under national law has a right to be heard in the FSM Supreme Court even if state courts may also assert jurisdiction, the fact that the Pohnpei Supreme Court may be equally equipped to decide the case will not divest the plaintiff of his day in the FSM Supreme Court. Annes v. Primo, 14 FSM R. 196, 201 (Pon. 2006).

When, accepting the plaintiffs' allegations as true, which the court must on a Rule 12(b)(6) motion to dismiss, the plaintiffs state a claim that their civil rights were violated by an illegal act under the color of law, their case will not be dismissed. A determination of whether a case arises under the national constitution or national law is based on the plaintiff's statement of his case in his complaint, and, although a state court may exercise jurisdiction over such cases, a plaintiff has the constitutional right to bring such claims in the national court. Esa v. Elimo, 14 FSM R. 216, 219 (Chk. 2006).

A claim of denial of the right to suffrage in a state election because no revote was ordered is not a claim arising under the national constitution or law. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 397 (Chk. 2009).

When the parties are of diverse citizenship and when some of the plaintiff's claims arise under a treaty to which the FSM is a party, the FSM Supreme Court would, on either ground, have subject-matter jurisdiction over the case if an actual case or dispute exists. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 157 (Chk. 2010).

When a plaintiff clearly bases his cause of action on 11 F.S.M.C. 701, the national civil rights statute, it is obvious that he is invoking the FSM Supreme Court's jurisdiction over the case as one arising under FSM national law. Welle v. Chuuk Public Utility Corp., 17 FSM R. 609, 611 (Chk. 2011).

National law is not at issue in a case when the plaintiffs, in the complaint or in their initial motion for injunction, do not cite a particular national law at issue and their only mention of any sort of national law is in their October 19, 2011 "Notice of Terminology" and their October 31, 2011 "Supplement to Pending Motion for Injunction," where they cite only twenty-year-old "findings" of the FSM Secretary of Health and Human Services, and the FSM Earthmoving Regulations, neither of which apply to the defendants named in the complaint. Damarlane v. U Mun. Gov't, 18 FSM R. 96,98-99 (Pon. 2011).

When the plaintiff alleges that the state took his property without just compensation, but he only cites to the Chuuk Constitution provision barring Chuuk from taking property without just compensation and does not allege that Chuuk's alleged acts violated any FSM Constitutional provision, his complaint does not appear to allege claims arising under national law and thus does not show FSM Supreme Court jurisdiction. Iwo v. Chuuk, 18 FSM R. 182, 184 (Chk. 2012).

A writ of habeas corpus may be used in situations involving an individual incarcerated without probable cause. In re Anzures, 18 FSM R. 316, 320 (Kos. 2012).

The FSM Supreme Court has the power to issue all writs and must consider a petition for a writ of habeas corpus alleging imprisonment of the petitioner in violation of his rights under the FSM Constitution. In re Anzures, 18 FSM R. 316, 321 (Kos. 2012).

In the absence of any statutory restrictions, the FSM Supreme Court will, under the proper circumstances, consider applications for a writ of habeas corpus on the grounds that a person is in custody in violation of the FSM Constitution. The overriding purpose of such a writ is to protect an individual's right to be free from wrongful intrusions and restraints upon their liberty. In re Anzures, 18 FSM R. 316, 322 (Kos. 2012).

It is within the FSM Supreme Court's province to determine whether a Chuuk statute, as applied, runs afoul of the FSM Constitution. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 505 (Chk. 2013).

If the case arises under the FSM Constitution, national law, or treaties, then the FSM Supreme Court trial division has concurrent jurisdiction over the subject-matter. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 615 (Pon. 2013).

For some cases arising under national law, Congress has placed exclusive jurisdiction in the FSM Supreme Court trial division. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 615 n.1 (Pon. 2013).

The determination of whether a case is one "arising under" the FSM Constitution, national law, or treaties is derived from the plaintiff's cause of action, not inferred from any possible defenses. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 615 (Pon. 2013).

Since the Constitution explicitly grants the FSM Supreme Court trial division concurrent and original jurisdiction over any cases arising under treaties and since a breach of the inviolability of the embassy premises is a direct violation of an international treaty and international law, the FSM Supreme Court trial division has original jurisdiction over a prosecution for a misdemeanor trespass and theft committed in a foreign embassy. FSM v. Ezra, 19 FSM R. 486, 491-92 (Pon. 2014).

As a defense raised in the answer to the original complaint, a defendant's due process claims would not make it a case over which the FSM Supreme Court would have jurisdiction because it would not be considered a case arising under the FSM Constitution or national law. Saimon v. Nena, 19 FSM R. 608, 611 (Kos. 2014).

The determination of whether a case is one "arising under" the FSM Constitution, national law, or treaties is derived from the plaintiff's cause of action, not inferred from any possible defenses that are or that might be raised. Saimon v. Nena, 19 FSM R. 608, 611 (Kos. 2014).

Since a cross-claim cannot form a basis for the FSM Supreme Court's jurisdiction because determination of whether a case arises under the Constitution, national law, or a treaty is based on the plaintiff's statement of his cause of action, not on whatever defenses that are or that might be raised, a third-party claim should not create subject-matter jurisdiction in the FSM Supreme Court either. Saimon v. Nena, 19 FSM R. 608, 611 (Kos. 2014).

When the case is not a case arising under the FSM Constitution or national laws, the only grounds asserted for jurisdiction, the FSM Supreme Court does not have subject-matter jurisdiction over it, and when the FSM Supreme Court does not have any subject-matter jurisdiction over a case, the case will be dismissed without prejudice to any later adjudication in a state court. Isamu Nakasone Store v. David, 20 FSM R. 53, 58 (Pon. 2015).

The FSM Constitution's Article VII, section 2 provides no basis for a party to seek relief in the FSM Supreme Court and no basis on which the party is likely to prevail when the party does not argue that the Chuuk has an undemocratic constitution but instead contends that the Chuuk executive branch is expending Chuuk state funds (albeit originally appropriated by Congress) without an appropriation of those funds by the Chuuk Legislature and that this is a violation of Chuuk's democratic constitution. Mailo v. Lawrence, 20 FSM R. 201, 204 (Chk. 2015).

Article XI, Section 6(b) grants the national courts concurrent original jurisdiction in cases arising under national law and these forums include the FSM Supreme Court trial division and any other national courts which might be established by statute, but not state courts. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 516 (App. 2016).

"Arising under" jurisdiction was limited to those matters, in which four factors exist: 1) a national law

issue is an essential element of the cause of action; 2) the issue of national law is disclosed upon the complaint's face; 3) the issue of law is not inferred from a defense which is asserted and 4) the issue of law is a substantial one. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 517 (App. 2016).

The framers' intent was that "arising under" jurisdiction extend to cases involving the enforcement of a right protected or created by the national constitution, national law, or treaty and cases involving the construction or interpretation of the national constitution, national law, or treaty. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 517 (App. 2016).

In light of the self-executing grants of jurisdiction embodied within the FSM Constitution, the United States decisions, which address the underlying congressional intent, provide little guidance, in terms of analysis of the Article XI, Section 6(b) "arising under" language, against the backdrop of a constitutional provision. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 517 (App. 2016).

Arising under jurisdiction enables the FSM Supreme Court to explicate the meaning of our Constitution's jurisdictional grants and thereby ensure an appropriate level of uniformity in the applicability thereof. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 518 (App. 2016).

Concurrent jurisdiction properly exists given the diverse citizenship of the parties or when consonant with the "arising under" constitutional provision. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 518 (App. 2016).

When the complaint alleges violation of the plaintiff's civil rights under the FSM Constitution, the FSM Supreme Court has before it, at a bare minimum, a case that arises under the FSM Constitution and the court thus has jurisdiction under Section 6(b), with the state law matters that may be considered under the court's pendent jurisdiction. Rodriguez v. Ninth Pohnpei Legislature, 21 FSM R. 276, 278 (Pon. 2017).

The FSM Supreme Court has held it may exercise jurisdiction over appeals from state administrative agencies when those appeals have included due process violation and civil rights claims arising under the FSM Constitution. Phillip v. Pohnpei, 21 FSM R. 439, 442 (Pon. 2018).

When the defendant is not a governmental entity, is not alleged to have acted under color of law, and is not a private person (not acting under color of law) who injured, oppressed, threatened, or intimidated the plaintiff exercising or enjoying or having exercised or enjoyed any civil right, the plaintiff's claim is not a civil rights claim. Apostol v. Maniquiz, 22 FSM R. 146, 149 (Chk. 2019).

The determination of whether a case is one "arising under" the FSM Constitution, national law, or a treaty is derived from the plaintiff's cause of action and not inferred from any possible defense that is or that might be pled. Apostol v. Maniquiz, 22 FSM R. 146, 149 (Chk. 2019).

Whether an allegedly defamatory pleading in a case filed in a national court is privileged or actionable should be decided as a matter of national law and is thus a matter arising under national law. Helgenberger v. Helgenberger, 22 FSM R. 244, 249 (Pon. 2019).

A case that alleges that a state law is, or contains, a bill of attainder in violation of the FSM Constitution is a claim that arises under the Constitution and over which the FSM Supreme Court may exercise jurisdiction. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 263 (Chk. 2019).

As the constitutional prohibition of bills of attainder bars all such legislative acts, if a state law is a bill of attainder, the FSM Supreme Court has the jurisdiction to strike it (or the part of it that is a bill of attainder) down as unconstitutional and to enjoin its enforcement. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 263 (Chk. 2019).

The FSM Supreme Court has jurisdiction over a case as one arising under the Constitution, national law, or treaties, when the plaintiff asserts that the defendants violated three different FSM Constitution provisions and also violated an FSM Code provision. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 328 (Pon.

2019).

Congress's power to regulate bankruptcy and insolvency is an exclusive national power, and bankruptcy cases are, by law, assigned to the FSM Supreme Court trial division. Panuelo v. Sigrah, 22 FSM R. 341, 351 (Pon. 2019).

Any claim that a bankruptcy receiver was overcompensated is solely a matter of national (bankruptcy) law, and a claim that a bankruptcy receiver paid the creditors of a debtor, who had sought bankruptcy protection, more than was their due is also a matter arising only under national bankruptcy law. Panuelo v. Sigrah, 22 FSM R. 341, 351 (Pon. 2019).

– Diversity

The Trust Territory is not a foreign state such as to give the FSM Supreme Court diversity jurisdiction over a suit against the Trust Territory. Neimes v. Maeda Constr. Co., 1 FSM R. 47, 51 (Truk 1982).

Under the present state of affairs, the Trust Territory government cannot be considered a foreign state, citizen or subject thereof within the meaning of article XI, section 6(b) of the Constitution. Lonno v. Trust Territory (I), 1 FSM R. 53, 74 (Kos. 1982).

The Federated States of Micronesia Supreme Court is specifically given jurisdiction over disputes between citizens of a state and foreign citizens. FSM Const. art. XI, § 6(b). The jurisdiction is based upon the citizenship of the parties, not on the subject matter of the dispute. In re Nahnsen, 1 FSM R. 97, 101 (Pon. 1982).

The Constitution places diversity jurisdiction in the Supreme Court, despite the fact that the issues involve matters within state or local, rather than national, legislative powers. In re Nahnsen, 1 FSM R. 97, 102 (Pon. 1982).

A primary purpose of diversity jurisdiction is to minimize any belief of the parties that a more local tribunal might favor local parties in disputes with "outsiders." In re Nahnsen, 1 FSM R. 97, 102 (Pon. 1982).

A requirement for complete diversity among all parties has no constitutional support as a prerequisite to FSM Supreme Court jurisdiction. In re Nahnsen, 1 FSM R. 97, 105-06 (Pon. 1982).

When jurisdiction exists by virtue of diversity of the parties, the FSM Supreme Court may resolve the dispute despite the fact that matters squarely within the legislative powers of states (*e.g.,* probate, inheritance and land issues) may be involved. Ponape Chamber of Commerce v. Nett Mun. Gov't, 1 FSM R. 389, 392-93 (Pon. 1984).

Diversity of citizenship is determined as of commencement of the action. Where diversity existed between the parties at the date and time the suit commenced, diversity will not be defeated by later developments. Etpison v. Perman, 1 FSM R. 405, 414 (Pon. 1984).

Where there is diversity of citizenship between the parties, litigation involving domestic relations issues, including custody and child support, falls within the jurisdiction of the FSM Supreme Court. Mongkeya v. Brackett, 2 FSM R. 291, 292 (Kos. 1986).

For purposes of diversity jurisdiction under article XI, section 6(b) of the Constitution, a corporation is considered a foreign citizen when any of its shareholders are not citizens of the Federated States of Micronesia. Federated Shipping Co. v. Ponape Transfer & Storage (III), 3 FSM R. 256, 260 (Pon. 1987).

Although the FSM Supreme Court has often decided matters of tort law without stating explicitly that state rather than national law controls, there has been acknowledgment that state law controls in the

resolution of contract and tort issues. When the Supreme Court, in the exercise of its jurisdiction, decides a matter of state law, its goal should be to apply the law the same way the highest state court would. Edwards v. Pohnpei, 3 FSM R. 350, 360 n.22 (Pon. 1988).

Lack of mention of state and local courts in FSM Constitution article XI, section 6(b) reveals that national courts are to play the primary role in handling the kinds of cases, identified in that section, but nothing in article XI, section 6(b) may be read as absolutely preventing state courts from exercising jurisdiction over those kinds of cases. Bank of Guam v. Semes, 3 FSM R. 370, 379 (Pon. 1988).

Parties to a dispute in which there is diversity have a constitutional right to invoke the jurisdiction of a national court, but if all parties agree, and if state law permits, a state court may hear and decide the kinds of cases described in article XI, section 6(b) of the Constitution. Bank of Guam v. Semes, 3 FSM R. 370, 379 (Pon. 1988).

Only national courts are given jurisdiction by article XI, section 6(b) of the Constitution and the concurrent jurisdiction referred to there is between the trial division of the FSM Supreme Court, and any other national courts which may be established in the future. Bank of Guam v. Semes, 3 FSM R. 370, 377 (Pon. 1988).

The Trust Territory of the Pacific Islands, which still exists and has governmental powers in the Republic of Palau, is now "foreign" to the Federated States of Micronesia and a corporation organized under the laws of the Trust Territory may itself be regarded as foreign for purposes of diversity of citizenship jurisdiction. U Corp. v. Salik, 3 FSM R. 389, 392 (Pon. 1988).

The Constitution requires only that one plaintiff has citizenship different from one defendant for there to be diversity jurisdiction. U Corp. v. Salik, 3 FSM R. 389, 392 (Pon. 1988).

The national Constitution does not prohibit state courts from hearing cases described in article XI, section 6(b) if all parties accept state court jurisdiction, but parties to a dispute within scope of article XI, section 6(b) have a constitutional rights to invoke jurisdiction of FSM Supreme Court trial division. U Corp. v. Salik, 3 FSM R. 389, 392 (Pon. 1988).

Intent of framers of the Constitution was that national courts would handle most types of cases described in article XI, section 6(b) of the Constitution and national courts therefore should not lightly find a waiver of right to invoke its jurisdiction. U Corp. v. Salik, 3 FSM R. 389, 394 (Pon. 1988).

A party named as a defendant in state court litigation which falls within the scope of article XI, section 6(b) of the Constitution may invoke national court jurisdiction through a petition for removal and is not required to file a complaint. U Corp. v. Salik, 3 FSM R. 389, 394 (Pon. 1988).

The Truk State Court will not assert jurisdiction in a diversity case because the "The national courts, including the trial division of the Supreme Court, have concurrent original jurisdiction . . . in disputes between a state and a citizen of another state, between citizens of different states, and between a state or a citizen thereof, and a foreign state, or subject." FSM Const. art. XI, § 6(b). Flossman v. Truk, 3 FSM R. 438, 440 (Truk S. Ct. Tr. 1988).

State courts are not prohibited by article XI, section 6(b) of the FSM Constitution from hearing and determining cases where the defendants are from FSM states other than the prosecuting state. Jurisdiction over criminal matters between the national and state governments is determined by the severity of the crime; not diversity of citizenship. Pohnpei v. Hawk, 3 FSM R. 543, 554 (Pon. S. Ct. App. 1988).

"Concurrent jurisdiction" as used in article XI, section 6(b) of the FSM Constitution means concurrent jurisdiction between national courts, including the trial divisions of the FSM Supreme Court and of the four state courts. Pohnpei v. Hawk, 3 FSM R. 543, 554-55 (Pon. S. Ct. App. 1988).

When all of the parties are citizens of foreign states there is no diversity of citizenship subject matter jurisdiction under article XI, section 6(b). International Trading Co. v. Hitec Corp., 4 FSM R. 1, 2 (Truk 1989).

A joint venture, without the powers to sue or be sued in the name of the association and without limited liability of the individual members of the association, is not a citizen of Truk State for diversity purposes even though its principal place of business is in Truk State. International Trading Corp. v. Hitec Corp., 4 FSM R. 1, 2 (Truk 1989).

A cautious, reasoned use of the doctrine of abstention is not a violation of the FSM Supreme Court's duty to exercise diversity jurisdiction, or of the litigants' constitutional rights, under article XI, section 6(b) of the FSM Constitution. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM R. 37, 39 (Pon. 1989).

While the FSM Constitution provides initial access to the FSM Supreme Court for any party in article XI, section 6(b) litigation, the court may, having familiarized itself with the issues, invoke the doctrine of abstention and permit the case to proceed in a state court, since the power to grant abstention is inherent in the jurisdiction of the FSM Supreme Court, and nothing in the FSM Constitution precludes the court from abstaining in cases which fall within its jurisdiction under article XI, section 6(b). Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM R. 37, 42-43 (Pon. 1989).

No jurisdiction is conferred on state courts by article XI, section 6(b) of the FSM Constitution, but neither does the diversity jurisdiction of section 6(b) preclude state courts from acting under state law, unless or until a party to the litigation invokes national court jurisdiction. Hawk v. Pohnpei, 4 FSM R. 85, 89 (App. 1989).

It is consistent with the broad plan of the framers of the FSM Constitution that the Constitution would not require that diversity jurisdiction be available in criminal proceedings. Hawk v. Pohnpei, 4 FSM R. 85, 94 (App. 1989).

Although the purpose of diversity jurisdiction is to provide parties who are not citizens of the state where a matter arises with a national forum for which the federation of states is responsible, the need to safeguard the legitimate rights of a noncitizen in a state forum must be balanced against the understandable concern of the society of that state to control standards of behavior in accordance with its own set of values. Hawk v. Pohnpei, 4 FSM R. 85, 94 (App. 1989).

The diversity jurisdiction provisions of article XI, section 6(b) of the FSM Constitution do not apply to criminal proceedings. Hawk v. Pohnpei, 4 FSM R. 85, 94 (App. 1989).

Jurisdiction based upon diversity of citizenship between the parties is concurrent in the Supreme Court and the national courts, and therefore a party to state court litigation where diversity exists has a constitutional right to invoke the jurisdiction of the national court. In re Estate of Hartman, 4 FSM R. 386, 387 (Chk. 1989).

Issues concerning land usually fall into state court jurisdiction, but if there are diverse parties having bona fide interests in the case or dispute, the Constitution places jurisdiction in the national courts even if interests in land are at issue. Etscheit v. Adams, 5 FSM R. 243, 246 (Pon. 1991).

When an estate is a party it is the citizenship of the estate representative that is to be considered for diversity purposes. Etscheit v. Adams, 5 FSM R. 243, 246 (Pon. 1991).

Where, for six and a half years after the national court had come into existence the noncitizen petitioners made no attempt to invoke the national court's jurisdiction, the noncitizen petitioners affirmatively indicated their willingness to have the case resolved in court proceedings, first in the Trust Territory High

Court and later in Pohnpei state court, and thus have waived their right to diversity jurisdiction in the national courts. Etscheit v. Adams, 5 FSM R. 243, 247-48 (Pon. 1991).

The fact that a "tactical stipulation," made in 1988 to eliminate all noncitizens as parities to the litigation and thus place the litigation within the sole jurisdiction of the state court, may have been violated in 1991, does not retroactively change the effect of the stipulation for purposes of jurisdiction. Etscheit v. Adams, 5 FSM R. 243, 248 (Pon. 1991).

National courts can exercise jurisdiction over divorce cases where there is diversity of citizenship although domestic relations are primarily the subject of state law. Youngstrom v. Youngstrom, 5 FSM R. 335, 336 (Pon. 1992).

In a diversity of citizenship case the FSM Supreme Court will normally apply state law. Youngstrom v. Youngstrom, 5 FSM R. 335, 337 (Pon. 1992).

For purposes of diversity jurisdiction a corporation is considered a foreign citizen when any of its shareholders are not FSM citizens. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 44 (App. 1995).

For purposes of diversity jurisdiction a joint venture is considered a foreign citizen when the parties to it are not FSM citizens. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 44 (App. 1995).

For purposes of diversity jurisdiction it is the citizenship of the estate administrator that is to be considered for determining citizenship of a decedent's estate. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 44 (App. 1995).

Where the constitutional language itself, following FSM precedents on constitutional interpretation, only requires minimal diversity for the national courts to have jurisdiction, and the constitutional journals do not reveal any intent to depart from the plain meaning of the constitutional language, there are no sound reasons why twelve years of FSM jurisprudence requiring only minimal diversity should be overturned. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 48 (App. 1995).

The FSM Supreme Court has diversity jurisdiction only in disputes between a state and a citizen of another state, between citizens of different states, and between a state or a citizen thereof, and a foreign state, citizen, or subject. Diversity jurisdiction thus does not exist when all the parties are foreign citizens, even though they may be citizens of different foreign nations. In such cases, the court's subject matter jurisdiction must be based on some other ground. Trance v. Penta Ocean Constr. Co., 7 FSM R. 147, 148 (Chk. 1995).

For the purposes of diversity jurisdiction the citizenship of a corporation is considered foreign if any of its shareholders are not FSM citizens or if it was organized under the laws of a foreign government. The citizenship of a corporation formed in the FSM and wholly owned by FSM citizens is in the state of its principal place of business. Ladore v. U Corp., 7 FSM R. 296, 298 (Pon. 1995).

In a diversity case, a litigant may avail himself of the FSM Supreme Court's jurisdiction even though state law may determine the outcome of the litigation. Island Dev. Co. v. Yap, 9 FSM R. 18, 22 (Yap 1999).

There is no statutory or decisional authority in the FSM which would permit a joint venture to be considered a citizen of the state where its principal place of business is located. Island Dev. Co. v. Yap, 9 FSM R. 220, 223 (Yap 1999).

A corporation that has any foreign ownership at all is a noncitizen of the FSM for diversity purposes. Island Dev. Co. v. Yap, 9 FSM R. 220, 223 (Yap 1999).

Any business entity in which any ownership interest is held by a person who is not a citizen of the FSM is a non-citizen. Island Dev. Co. v. Yap, 9 FSM R. 220, 223 & n.1 (Yap 1999).

A general partnership is a foreign citizen for diversity purposes when any ownership interest is held by a foreign citizen. Island Dev. Co. v. Yap, 9 FSM R. 220, 223-24 (Yap 1999).

In order to invoke the FSM Supreme Court's diversity jurisdiction under article XI, section 6(b) of the FSM Constitution, only one plaintiff need have citizenship different from one defendant. Island Dev. Co. v. Yap, 9 FSM R. 288, 290 (Yap 1999).

Since the FSM Supreme Court can decide a land issue under its diversity jurisdiction, the mere addition of the national government as another party to a diversity case should not divest the FSM Supreme Court of jurisdiction. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 5 (Chk. 2001).

In determining the question of jurisdiction based on the parties' citizenship, the FSM Supreme Court must look only to the parties of record. Enlet v. Bruton, 10 FSM R. 36, 40 (Chk. 2001).

When diverse citizenship was not present on the record in a case when it was removed, it cannot be created by the FSM Supreme Court's order when the court lacks the jurisdiction to issue any but procedural orders. Enlet v. Bruton, 10 FSM R. 36, 40 (Chk. 2001).

When the FSM Supreme Court does not have subject-matter jurisdiction in a case, it does not have the authority or jurisdiction to issue an order joining a diverse party, and any such order it did issue would be void for want of jurisdiction. Enlet v. Bruton, 10 FSM R. 36, 40 (Chk. 2001).

A state court joinder of a diverse party does not deprive the state court of jurisdiction, it merely makes its jurisdiction concurrent with the FSM Supreme Court. Enlet v. Bruton, 10 FSM R. 36, 41 (Chk. 2001).

The FSM Supreme Court does not have diversity jurisdiction under Article XI, section 6(b) over disputes between two foreign citizens, even if they are citizens of different countries. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 203 (Pon. 2001).

The FSM Constitution grants the FSM Supreme Court jurisdiction over disputes between a citizen of an FSM state and a citizen of a foreign state. Pernet v. Woodruff, 10 FSM R. 239, 242 (App. 2001).

No jurisdiction is conferred on state courts by article XI, section 6(b) but neither does section 6(b) diversity jurisdiction preclude state courts from acting under state law, unless or until a party to the litigation invokes national court jurisdiction. Pernet v. Woodruff, 10 FSM R. 239, 242 (App. 2001).

Both a state court and a national court may have jurisdiction over a case where, absent diversity considerations, the case is otherwise properly before the state court. Pernet v. Woodruff, 10 FSM R. 239, 242 (App. 2001).

In a diversity case, a plaintiff, as the party initiating suit, can file her action in either state or national court, and if she files in state court, the defendant has two alternatives, either to litigate on the merits in state court or to remove the matter to national court. Pernet v. Woodruff, 10 FSM R. 239, 242-43 (App. 2001).

The benefit the Constitution secures to diverse parties is the right to litigate in national court. Pernet v. Woodruff, 10 FSM R. 239, 243 (App. 2001).

The fact of the parties' diversity, without more, does not preclude a suit in state court because to invoke national court jurisdiction so as to divest a state court of jurisdiction means to remove the action to national court. Pernet v. Woodruff, 10 FSM R. 239, 243 (App. 2001).

A motion to dismiss a state court case because of diversity neither divests the state court of jurisdiction nor invokes the FSM Supreme Court's diversity jurisdiction. Pernet v. Woodruff, 10 FSM R. 239, 243 (App. 2001).

To invoke national court jurisdiction in a diversity case, a removal petition must be filed within 60 days of a party's receipt of papers from which his right to remove the case may first be ascertained. Pernet v. Woodruff, 10 FSM R. 239, 243 (App. 2001).

Failure to file a removal petition within the time requirements of FSM General Court Order 1992-2 constitutes a waiver of the right to invoke national court jurisdiction in cases involving parties of diverse citizenship. Pernet v. Woodruff, 10 FSM R. 239, 243 (App. 2001).

In diversity cases, state courts otherwise having jurisdiction pursuant to state law are not divested of jurisdiction unless or until a removal petition is timely filed, prompt written notice of such filing is served upon all parties, and a copy of the petition is filed with the state court clerk. Pernet v. Woodruff, 10 FSM R. 239, 243 (App. 2001).

Section 6(b) does not grant the FSM Supreme Court exclusive jurisdiction over diversity cases. Section 6(b) does not bar a state court from exercising jurisdiction over a case in which the parties are of diverse citizenship, if the state court otherwise has jurisdiction. First Hawaiian Bank v. Berdon, 10 FSM R. 538, 539 (Chk. S. Ct. Tr. 2002).

If diverse parties wished to have a case in the Chuuk State Supreme Court heard in the FSM Supreme Court, they should have removed the case to the FSM Supreme Court using the procedure outlined in FSM General Court Order 1992-2. When they have not, a motion to dismiss filed in the Chuuk State Supreme Court will not invoke that court's jurisdiction. First Hawaiian Bank v. Berdon, 10 FSM R. 538, 539 (Chk. S. Ct. Tr. 2002).

There is no requirement of complete diversity of parties for the FSM Supreme Court to have jurisdiction over a matter. The FSM Constitution requires only that one plaintiff has citizenship different from one defendant for there to be diversity jurisdiction. Ambros & Co. v. Board of Trustees, 11 FSM R. 17, 23 (Pon. 2002).

For purposes of diversity jurisdiction under article XI, section 6(b) of the Constitution, a corporation is considered a foreign citizen when any of its shareholders are not citizens of the FSM. Ambros & Co. v. Board of Trustees, 11 FSM R. 17, 24 (Pon. 2002).

When jurisdiction exists by virtue of the parties' diversity, the FSM Supreme Court may resolve the dispute despite the fact that matters squarely within the states' legislative powers (e.g., probate, inheritance and land issues) may be involved. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 100 (Pon. 2002).

In property cases, if there are diverse parties having bona fide interests in the case or dispute, the FSM Constitution places jurisdiction in the FSM Supreme Court, and this is so even if interests in land are at issue in the litigation. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 100 (Pon. 2002).

A party to a dispute within the scope of article XI, section 6(b) has a constitutional right to invoke the jurisdiction of the FSM Supreme Court. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 100 (Pon. 2002).

The FSM Supreme Court has concurrent jurisdiction along with the state courts to hear cases where diversity of citizenship of the parties exists. Gilmete v. Adams, 11 FSM R. 105, 108 (Pon. 2002).

It is well settled that the FSM Supreme Court may hear cases based on diversity even when land is at issue. Gilmete v. Adams, 11 FSM R. 105, 108 (Pon. 2002).

The FSM Supreme Court cannot imply or create diversity of citizenship in a case. If it does not have subject matter jurisdiction in a case, it does not have the authority or jurisdiction to issue an order joining another party. Gilmete v. Adams, 11 FSM R. 105, 110 (Pon. 2002).

Diversity jurisdiction does not exist when all the parties are foreign citizens, even though they may be citizens of different foreign nations. In such cases, the FSM Supreme Court's subject matter jurisdiction must be based on some other ground. Kelly v. Lee, 11 FSM R. 116, 117 (Chk. 2002).

A motion to dismiss for lack of diversity jurisdiction will be denied when the plaintiff's complaint does not plead diversity jurisdiction (found in section 6(b) of article XI of the Constitution), but clearly pleads that the court's jurisdiction under section 6(a), and when a fair reading of the plaintiff's claim is that it is based on the defendant's alleged breach of a maritime contract – the plaintiff's employment contract as a ship's captain. This, coupled with the complaint's allegation that the court has jurisdiction based on section 6(a), which provides for FSM Supreme Court exclusive jurisdiction over certain cases including admiralty and maritime cases, indicates that the plaintiff did not base his jurisdictional plea on the parties' citizenship, but upon the case's alleged maritime nature. Kelly v. Lee, 11 FSM R. 116, 117 (Chk. 2002).

A corporation partly owned by non-FSM citizens, is a foreign citizen for diversity jurisdiction purposes because a corporation is deemed a foreign citizen when any of its shareholders are not FSM citizens. Marcus v. Truk Trading Corp., 11 FSM R. 152, 155 (Chk. 2002).

If diversity of citizenship among the parties were not present and there were no other basis of jurisdiction, the FSM Supreme Court would be without subject matter jurisdiction, and any judgment it might render would be void and without any res judicata effect because all proceedings that had taken place would have been for naught, and the plaintiffs would have to start all over again in state court if they still wished to pursue the matter. Marcus v. Truk Trading Corp., 11 FSM R. 152, 155 n.1 (Chk. 2002).

It is well established that the FSM Supreme Court has jurisdiction as a result of the parties' diversity of citizenship. Villazon v. Mafnas, 11 FSM R. 309, 310 (Pon. 2003).

It is well established that diversity is determined as of the commencement of the action. Once diversity jurisdiction attaches, or vests, it is not defeated by later developments, such as a party's later change of domicile or the dismissal of a party due to partial settlement. Island Homes Constr. Corp. v. Pohnpei Transp. Auth., 12 FSM R. 128, 129 (Pon. 2003).

When a consolidated case is before the FSM Supreme Court trial division under its diversity jurisdiction – because of the parties' diverse citizenship – state law will usually provide the rules of decision. This is especially true in real property cases. Enlet v. Bruton, 12 FSM R. 187, 189 (Chk. 2003).

In a diversity case, the FSM Supreme Court trial division has no greater and no lesser power than the state court would have if it were hearing the case. It may exercise whatever powers the state court could have if the case been before that court. Enlet v. Bruton, 12 FSM R. 187, 189 (Chk. 2003).

It has been a principle of long standing that, for purposes of diversity jurisdiction under the Constitution's article XI, section 6(b), a corporation or a joint venture is considered a foreign citizen when any of its shareholders are not FSM citizens. Its place of incorporation is irrelevant. Geoffrey Hughes (Export) Pty, Ltd. v. America Ducksan Co., 12 FSM R. 413, 414 (Chk. 2004).

When all parties to an action are foreign citizens, even if they are citizens of different foreign countries, the FSM Supreme Court does not have diversity jurisdiction. Geoffrey Hughes (Export) Pty, Ltd. v. America Ducksan Co., 12 FSM R. 413, 415 (Chk. 2004).

Section 6(b) of Article XI of the FSM Constitution provides that the national courts, including the Supreme Court trial division, have concurrent original jurisdiction in cases arising under the Constitution, national law or treaties, and in disputes between a state and a citizen of another state, between citizens of different states, and between a state or citizen thereof, and a foreign state, citizen, or subject. The national courts referred to in this section are the FSM Supreme Court trial division and any other national courts

which may be established in the future. Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 147 (App. 2005).

Section 6(a) contains a single jurisdictional exception limited in scope to a case involving the national government as a party. In contrast, Section 6(b) contains no exception of any kind. This admits of no conclusion other than the obvious one: the Framers intended that the limited exception stated in Section 6(a) apply to cases involving an interest in land in which the national government is a party, and with equal force intended that no such exception apply to any of the kinds of cases specified in Section 6(b). Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 148 (App. 2005).

The adoption of Committee Proposal No. 01-5 by the Third Constitutional Convention does not act as a check upon the exercise of the FSM Supreme Court's diversity jurisdiction in land cases because the proposed amendment was not ratified by the people. Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 150 (App. 2005).

Parties to a dispute within the scope of article XI, section 6(b) have a constitutional right to invoke the jurisdiction of the FSM Supreme Court and it is the solemn obligation of the court and all others within the Federated States of Micronesia to uphold that constitutional right to invoke national court jurisdiction under Article XI, Section 6(b). To accept the contention that the FSM Supreme Court trial division has no jurisdiction in diversity cases involving land would defeat the exercise of that right. The court upholds the right of litigants who fall within the scope of Article XI, Section 6(b) to invoke the FSM Supreme Court's jurisdiction in cases involving land issues. Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 150 (App. 2005).

If in the complaint, a plaintiff asserts a contractual cause of action over which the FSM Supreme Court may exercise diversity jurisdiction, whether the defendants might ultimately prevail on one or more of their defenses does not deprive the FSM Supreme Court of subject matter jurisdiction. McVey v. Etscheit, 13 FSM R. 473, 476 (Pon. 2005).

Minimal diversity of citizenship, not complete diversity, is the rule in the Federated States of Micronesia. Lee v. Han, 13 FSM R. 571, 576 (Chk. 2005).

Diversity jurisdiction gives concurrent original jurisdiction to the state and national courts. FSM GCO 1992-2 provides for removal of diversity cases from the state to national courts and is directed solely to the issue of the transfer of cases between the state and national courts. It provides a procedure for removal, not authority for dismissal from state court. Muller v. Enlet, 16 FSM R. 92, 94 (Chk. S. Ct. Tr. 2008).

A motion to dismiss filed in the Chuuk State Supreme Court asserting non-consent to the court's jurisdiction will not, by its invocation of the FSM court's jurisdiction, deprive the Chuuk State Supreme court of its jurisdiction. Rather, in diversity cases, state courts otherwise having jurisdiction pursuant to state law are not divested of jurisdiction unless or until a removal petition is timely filed, prompt written notice of such filing is served upon all parties, and a copy of the petition is filed with the state court clerk. Thus, when an action is originally filed in state court, the state court retains its jurisdiction, despite the diversity of parties, so long as the same action is not filed in or removed to the FSM court. An allegation of diversity jurisdiction is not a proper basis for a defendant's motion to dismiss. Muller v. Enlet, 16 FSM R. 92, 94 (Chk. S. Ct. Tr. 2008).

When the parties are of diverse citizenship and when some of the plaintiff's claims arise under a treaty to which the FSM is a party, the FSM Supreme Court would, on either ground, have subject-matter jurisdiction over the case if an actual case or dispute exists. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 157 (Chk. 2010).

Since national court jurisdiction is proper when the parties are diverse, a Kosrae statute that requires a foreclosure action to be filed in Kosrae State Court cannot divest the FSM Supreme Court of its

constitutionally mandated jurisdiction under the FSM Constitution. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 325 (Kos. 2011).

Minimal diversity, not complete diversity, is the rule in the Federated States of Micronesia. Damarlane v. U Mun. Gov't, 18 FSM R. 96, 98 (Pon. 2011).

When a fair reading of the complaint does not show a cause of action against the one diverse defendant, that person is thus merely a nominal party present only so that the plaintiff can plead the court's diversity jurisdiction. When the plaintiff has, for the sole purpose of attempting to create diversity of citizenship, named a person as a defendant against whom he asserts no cause of action or claim for relief, the court will dismiss the nominal diverse defendant from the case as improperly joined and then dismiss the complaint for lack of subject-matter jurisdiction because there was no actual diversity of citizenship when the case was filed. Hauk v. Mijares, 18 FSM R. 185, 187 (Chk. 2012).

The court does not believe that it can exercise jurisdiction over every credit dispute between a customer and a local business merely because that business has a foreign accountant (or manager) who a plaintiff can name as a nominal, but diverse, defendant. Hauk v. Mijares, 18 FSM R. 185, 187 (Chk. 2012).

A Chuukese plaintiff in a suit against a Chuukese business or other Chuukese entity cannot create jurisdiction in the FSM Supreme Court merely by adding the defendant's non-citizen employees as co-defendants when the plaintiff's claims are only against the employer. Chuuk Health Care Plan v. Chuuk Public Utility Corp., 18 FSM R. 409, 411 (Chk. 2012).

Even though a court must exercise its discretion liberally to grant leave to amend a complaint, the court should deny a motion to amend when it would be futile to amend the complaint to add diverse parties from whom no relief can be obtained since they are not statutorily liable to plaintiff. Chuuk Health Care Plan v. Chuuk Public Utility Corp., 18 FSM R. 409, 411 (Chk. 2012).

If the case involves parties of diverse (different) citizenship, then the FSM Supreme Court trial division has concurrent jurisdiction, unless all the parties are foreign citizens. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 615 (Pon. 2013).

Only minimal, not complete, diversity of citizenship is required for subject-matter jurisdiction in the FSM Supreme Court. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 615 (Pon. 2013).

If a party is a corporation, the corporation's citizenship is the citizenship of its shareholders and, for purposes of diversity jurisdiction, a corporation is considered a foreign citizen when any of its shareholders are not FSM citizens. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 615 (Pon. 2013).

Even if the FSM Development Bank were not an FSM national government agency, the FSM Supreme Court would still have subject-matter jurisdiction over the case as one between a plaintiff corporation with Chuuk and Kosrae citizenship and Pohnpei citizen defendants. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 618 (Pon. 2013).

Complete diversity of citizenship is not a requirement for the FSM Supreme Court to have subject-matter jurisdiction in a diversity case; only minimal diversity is required. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 656 (Pon. 2013).

The FSM Supreme Court is empowered to exercise authority in probate matters when there is an independent basis for jurisdiction under the Constitution, and the court has found such an independent basis when there was a diversity of citizenship among the heirs. In re Estate of Edmond, 19 FSM R. 59, 61 (Kos. 2013).

Parties to a dispute within the scope of article XI, section 6(b) diversity jurisdiction have a constitutional

right to invoke the FSM Supreme Court's jurisdiction and it is the solemn obligation of the court and all others within the Federated States of Micronesia to uphold the constitutional right to invoke national court jurisdiction under article XI, section 6(b). Damarlane v. Damarlane, 19 FSM R. 97, 108 (App. 2013).

The FSM Supreme Court's solemn obligation to consider the interests and protect the rights of those who wish to invoke its constitutional jurisdiction counsels against the unfettered use of abstention. The benefit the Constitution secures to diverse parties is the right to litigate in national court. Damarlane v. Damarlane, 19 FSM R. 97, 108 (App. 2013).

A diverse party's constitutional right to litigate in the FSM Supreme Court should not lightly be disregarded, and the FSM Supreme Court's discretionary power to abstain must be exercised carefully and sparingly. Damarlane v. Damarlane, 19 FSM R. 97, 108 (App. 2013).

Diversity cases where the causes of action are state law are not subject to abstention and dismissal at a judge's whim. That would make the constitutional right for diverse parties to litigate in the FSM Supreme Court an empty one. Damarlane v. Damarlane, 19 FSM R. 97, 109 (App. 2013).

When jurisdiction exists by virtue of diversity of the parties, the FSM Supreme Court may resolve the dispute despite the fact that matters squarely within the legislative powers of states (e.g., probate, inheritance and land issues) may be involved. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 431 (App. 2014).

A long line of precedents supports diversity jurisdiction as a proper independent basis for national jurisdiction of probate matters. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 431 (App. 2014).

The Constitution only requires minimal diversity. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 431 n.2 (App. 2014).

When the legal issue of whether the foreign citizen CPUC Chief Executive Officer could be a defendant in a lawsuit by the Chuuk Health Care Plan to collect unpaid health insurance premiums, thereby creating diversity jurisdiction, was previously litigated and a final decision rendered concluding that it could not be done; when the time to appeal that decision has expired; and when the same parties are present, res judicata bars the action in the FSM Supreme Court and the case will be dismissed without prejudice to any action in the Chuuk State Supreme Court. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 285 (Chk. 2016).

A corporation's citizenship, for diversity purposes, is the citizenship of its shareholders and only minimal diversity need exist. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 516 (App. 2016).

Concurrent jurisdiction properly exists given the diverse citizenship of the parties or when consonant with the "arising under" constitutional provision. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 518 (App. 2016).

A corporation's citizenship, for diversity purposes, is the citizenship of its shareholders and only minimal diversity need exist. Setik v. Perman, 21 FSM R. 31, 36 (Pon. 2016).

Only minimal diversity of citizenship is needed to invoke the FSM Supreme Court's diversity jurisdiction. Apostol v. Maniquiz, 22 FSM R. 146, 148 (Chk. 2019).

A corporation's citizenship, for diversity purposes, is the citizenship of its shareholders. Apostol v. Maniquiz, 22 FSM R. 146, 148 (Chk. 2019).

If a non-profit corporation has no shareholders, its citizenship for diversity purposes should be the citizenship of its members, or, if it has no members, of its incorporators. Apostol v. Maniquiz, 22 FSM R. 146, 148 (Chk. 2019).

If a party is an unincorporated association, then its citizenship is the citizenship of the association's individual members. Apostol v. Maniquiz, 22 FSM R. 146, 148 (Chk. 2019).

Diversity jurisdiction does not exist when all parties are foreign citizens, even if they are citizens of different countries. Apostol v. Maniquiz, 22 FSM R. 146, 148 (Chk. 2019).

When diversity jurisdiction does not exist, the FSM Supreme Court's subject-matter jurisdiction must be based on some other ground. Apostol v. Maniquiz, 22 FSM R. 146, 149 (Chk. 2019).

When there is diversity of citizenship between the parties, litigation involving domestic relations issues, including custody and child support, falls within the FSM Supreme Court's jurisdiction, even though state law will furnish the rules of decision. O'Sonis v. O'Sonis, 22 FSM R. 268, 269 (Chk. 2019).

The FSM Supreme Court has diversity jurisdiction over a case where an FSM citizen sues a foreign citizen regardless of how long the foreign citizen has resided in the FSM or whether she is married to an FSM citizen. Panuelo v. Sigrah, 22 FSM R. 341, 351 (Pon. 2019).

– Exclusive FSM Supreme Court

The National Criminal Code places in the FSM Supreme Court exclusive jurisdiction over allegations of violations of the Code. No exception to that jurisdiction is provided for juveniles, so charges of crimes leveled against juveniles are governed by the National Criminal Code. FSM v. Albert, 1 FSM R. 14, 15 (Pon. 1981).

A seaman's contract claim against the owner of the vessel upon which he served would be regarded as falling within the FSM Supreme Court's exclusive admiralty and maritime jurisdiction. FSM Const. art. XI, § 6(a). Lonno v. Trust Territory (I), 1 FSM R. 53, 68-71 (Kos. 1982).

The FSM Development Bank is an instrumentality of the national government and part of the national government for the purposes of FSM Constitution article XI, section 6(a), giving the trial division of the Supreme Court exclusive jurisdiction over cases in which the national government is a party. FSM Dev. Bank v. Estate of Nanpei, 2 FSM R. 217, 221 (Pon. 1986).

In an action on a delinquent promissory note brought by an instrumentality of the national government which seeks to foreclose the mortgage securing the payment of the note, prior to the filing of an answer no interest in land is at issue, and therefore, the motion to dismiss on the ground that the court lacked jurisdiction is denied. FSM Dev. Bank v. Mori, 2 FSM R. 242, 244 (Truk 1987).

A dispute arising out of injury sustained by a passenger on a vessel transporting passengers from Kosrae to Pohnpei, at a time when the vessel is 30 miles from Kosrae, falls within the exclusive admiralty jurisdiction of the FSM Supreme Court. Weilbacher v. Kosrae, 3 FSM R. 320, 323 (Kos. S. Ct. Tr. 1988).

The FSM Supreme Court's grant of original and exclusive jurisdiction in admiralty and maritime cases implies the adoption of admiralty or maritime cases as of the drafting and adoption of the FSM Constitution. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 57, 59 (Truk 1989).

The enforcement of ships' mortgages does not come within the admiralty jurisdiction of the FSM Supreme Court. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 57, 60 (Truk 1989).

The maritime jurisdiction conferred on the FSM Supreme Court by the Constitution is not to be decided with reference to the details of United States cases and statutes concerning admiralty jurisdiction but instead with reference to the general maritime law of seafaring nations of the world, and to the law of nations. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 374 (App. 1990).

The FSM Supreme Court has jurisdiction over all cases which are maritime in nature including all maritime contracts, torts and injuries. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 374 (App. 1990).

The question of the enforceability of ship mortgages is a matter that falls within the maritime jurisdiction of the FSM Supreme Court under article XI, section 6(a) of the Constitution. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 376 (App. 1990).

Where a claim is against the national government and an interest in land is not placed at issue the claim is within the exclusive jurisdiction of the FSM Supreme Court and it cannot abstain on the claim. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 67A, 67E (Pon. 1991).

The framers of the Constitution made clear that the term "exclusive" in article XI, section 6(a) of the FSM Constitution means that for the types of cases listed in that section, the trial division of the FSM Supreme Court is the only court of jurisdiction. Faw v. FSM, 6 FSM R. 33, 35 (Yap 1993).

A state law cannot divest the FSM Supreme Court of exclusive jurisdiction in cases arising under article XI, section 6(a) of the FSM Constitution. Faw v. FSM, 6 FSM R. 33, 36-37 (Yap 1993).

The FSM Supreme Court has exclusive jurisdiction in actions by the national government to enforce the terms of fishing agreements and permits to which it is a party. FSM v. Hai Hsiang No. 63, 7 FSM R. 114, 116 (Chk. 1995).

The FSM Supreme Court has original and exclusive jurisdiction over admiralty and maritime cases. This grant of exclusive jurisdiction is not made dependent upon constitutional grants of powers to other branches of the national government. When the Supreme Court's jurisdiction is exclusive it cannot abstain from deciding a case in favor of another court in the FSM because no other court in the country has jurisdiction. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 459 (App. 1996).

Only the FSM Supreme Court has original and exclusive jurisdiction over admiralty and maritime and certain other cases under the Constitution. The other national courts authorized by the Constitution, but which Congress has never created, are only authorized to entertain cases of concurrent jurisdiction, and thus could never exercise jurisdiction over admiralty and maritime cases. Maritime jurisdiction can reside only in one national court – the Supreme Court. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 460 n.2 (App. 1996).

Actions to enforce *in personam* civil penalties for violations of state fishing laws are within the exclusive admiralty and maritime jurisdiction of the FSM Supreme Court. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 464-65 (App. 1996).

The FSM Supreme Court has original and exclusive jurisdiction over a suit on an FSM Development Bank promissory note because the national government is a party. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 4 (Chk. 2001).

Jurisdiction over admiralty and maritime cases resides exclusively with the FSM Supreme Court trial division. The language of the FSM Constitution is clear and unambiguous in this regard. Robert v. Sonis, 11 FSM R. 31, 33 (Chk. S. Ct. Tr. 2002).

The exclusive nature of the national court jurisdiction is such that the FSM Supreme Court appellate division has held that it does not have the power to abstain from admiralty and maritime cases. Robert v. Sonis, 11 FSM R. 31, 33 (Chk. S. Ct. Tr. 2002).

Plaintiffs cannot rely on a default judgment entered in excess of the trial court's jurisdiction in another case as conferring jurisdiction on the court in their cases. Robert v. Sonis, 11 FSM R. 31, 33 (Chk. S. Ct.

Tr. 2002).

The only time the FSM Supreme Court does not have original and exclusive jurisdiction over the types of cases enumerated in Section 6(a) is in those specific cases where the national government is a party and an interest in land is at issue. Gilmete v. Adams, 11 FSM R. 105, 108 (Pon. 2002).

A motion to dismiss for lack of diversity jurisdiction will be denied when the plaintiff's complaint does not plead diversity jurisdiction (found in section 6(b) of article XI of the Constitution), but clearly pleads that the court's jurisdiction under section 6(a), and when a fair reading of the plaintiff's claim is that it is based on the defendant's alleged breach of a maritime contract – the plaintiff's employment contract as a ship's captain. This, coupled with the complaint's allegation that the court has jurisdiction based on section 6(a), which provides for FSM Supreme Court exclusive jurisdiction over certain cases including admiralty and maritime cases, indicates that the plaintiff did not base his jurisdictional plea on the parties' citizenship, but upon the case's alleged maritime nature. Kelly v. Lee, 11 FSM R. 116, 117 (Chk. 2002).

In contrast to Section 6(b), Section 6(a) of Article XI provides that the Supreme Court trial division has original and exclusive jurisdiction in cases affecting officials of foreign governments, disputes between states, admiralty or maritime cases, and in cases in which the national government is a party except where an interest in land is at issue. Section 6(a) names four different types of cases: 1) those affecting officials of foreign governments; 2) those involving disputes between states; 3) those that are admiralty or maritime in character; and 4) those where the national government is a party. Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 148 (App. 2005).

Section 6(a) carves out a specific exception for cases involving land – the trial division has original and exclusive jurisdiction in cases in which the national government is a party except where an interest in land is at issue. Or to cast this as a negative, the trial division does not have original and exclusive jurisdiction in a case in which the national government is a party and an interest in land is at issue. Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 148 (App. 2005).

A case involving the hazardous duty pay claims of fifty-eight port operators and seamen employed by the defendants on Federated States of Micronesia Class III vessels comes before the FSM Supreme Court on the court's exclusive jurisdiction in admiralty and maritime cases. Zion v. Nakayama, 13 FSM R. 310, 312 (Chk. 2005).

When the FSM Government is a party defendant, the court has subject matter jurisdiction under Article XI, § 6(a) of the Constitution, which provides that the FSM Supreme Court trial division has original and exclusive jurisdiction in cases in which the national government is a party. Emmanual v. Kansou, 13 FSM R. 527, 529 (Chk. 2005).

A case that came before the court based on the court's exclusive jurisdiction over cases when the national government is a party and where the plaintiff's asserted claims primarily arose under national law, is not a diversity case where state law provides the rules of decision. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 16 (App. 2006).

The FSM Supreme Court has exclusive and original subject matter jurisdiction over a case in admiralty. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 414 (Yap 2006).

The FSM Supreme Court trial division has original and exclusive jurisdiction in admiralty or maritime cases but the exact scope of admiralty and maritime jurisdiction is not defined in the Constitution or elsewhere. Ehsa v. Pohnpei Port Auth., 14 FSM R. 505, 507-08 (Pon. 2006).

The article XI, section 6(a) maritime jurisdiction extends to all cases which are maritime in nature. Since a maritime cause of action is one arising on the sea, ocean, great lakes, or navigable rivers, or from some act or contract concerning the commerce and navigation thereof, and when, although the plaintiffs attempt to characterize the issue as one of state law, they are essentially complaining about loss of

business as a result of the penalties imposed by the port authority on the vessels resulting from the port authority's maritime-related activities, it is a maritime case and will not be remanded to state court. Ehsa v. Pohnpei Port Auth., 14 FSM R. 505, 508 (Pon. 2006).

The College is an instrumentality of the national government in the same way that the FSM Development Bank is even though its employees are not considered government employees. The College was created by Congress and is subject to suit only in the manner provided for and to the extent that suits may be brought against the National Government. So, since the national government is not subject to suit under the Pohnpei Wage and Hour Law, neither is the College. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 596 (App. 2008).

In a collection case based on a defaulted loan, no interest in land was ever at issue when the fee simple ownership of the parcel was never at issue and when the bank's registered mortgage lien was not at issue, so the jurisdictional language in section 6(a) is not applicable. FSM Dev. Bank v. Kansou, 17 FSM R. 605, 608 (Chk. 2011).

The FSM Supreme Court clearly has jurisdiction over the FSM Development Bank's two causes of action – 1) to collect an unpaid promissory note and 2) to foreclose the chattel mortgage and apply the proceeds to the unpaid loan – because, under section 6(a), the court has exclusive jurisdiction in a case where a party is an instrumentality of the national government and the FSM Development Bank is an instrumentality of the national government. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 93 (Yap 2011).

The section 6(a) phrase "except where an interest in land is at issue," does not preclude the FSM Supreme Court from exercising jurisdiction in a case where the national government entity is a party and land is involved. It does preclude the court from exercising exclusive jurisdiction – the jurisdiction becomes concurrent and a competent state court could instead entertain the matter. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 93 (Yap 2011).

The FSM Development Bank is an instrumentality of the national government and part of the national government for the purposes of FSM Const. art. XI, § 6(a), which gives the FSM Supreme Court trial division exclusive jurisdiction over cases in which the national government is a party. Helgenberger v. FSM Dev. Bank, 18 FSM R. 498, 500 (App. 2013).

When the property was lawfully transferred and this transfer is not a part of what is being appealed because the appellants are appealing the minimum sale price and when the mortgagee does not have title to the land but only a lien, the court will reject the appellants' claim of lack of subject-matter jurisdiction based on the exception for where an interest in land is at issue. Helgenberger v. FSM Dev. Bank, 18 FSM R. 498, 500 (App. 2013).

The FSM Supreme Court's subject-matter jurisdiction cannot be determined by reference to the Constitution's detailed command to the Public Auditor about the breadth and depth of the tasks that the Public Auditor must undertake. The exclusive jurisdiction that the FSM Supreme Court exercises when the national government is a party cannot be avoided, and was never meant to be avoided, by the mere device of naming a branch, or a department, or an agency, or a statutory authority of the national government as a party instead of naming the national government itself as a party. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 614 (Pon. 2013).

If the FSM national government is a party to the case and an interest in land is not at issue, the FSM Supreme Court trial division has exclusive jurisdiction. If an interest in land is at issue, the FSM Supreme Court may still have jurisdiction but it will not be exclusive. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 615 (Pon. 2013).

For some cases arising under national law, Congress has placed exclusive jurisdiction in the FSM Supreme Court trial division. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 615 n.1 (Pon. 2013).

While the restructured FSM Development Bank differs from its earlier incarnation, it does not differ enough for it to be considered no longer an FSM national government instrumentality for Section 6(a) purposes because it is still imbued with a public purpose; it is still governed by a special act at title 30 of the FSM Code, rather than by the general banking statutes at title 29; there is still no private ownership of the Bank; 98.7%, of its shares are owned by the national government, making the FSM national government the shareholder that chooses the board of directors, with the exception of the Bank's president who is an ex officio member of the board and who is chosen by the other board members; the Bank is thus still under the control of the FSM national government that created it and still submits annual reports to the national government although now this is in the national government's capacity as a shareholder; and because in every fiscal year but one, Congress has appropriated funds for the restructured Bank's use. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 617 (Pon. 2013).

The restructured FSM Development Bank is fiscally independent of the national government as are a number of other national government instrumentalities and agencies – FSM Social Security Administration; National Fisheries Corporation; FSM Telecommunications Corporation; MiCare Health Insurance; and FSM Petroleum Corporation. This fiscal autonomy removes these FSM national government instrumentalities from the national government's every day political influence and control, but these instrumentalities were created by the national government and are still under its control, first as a shareholder or the shareholder, and second since Congress can, at any time, amend the statutes that created the restructured Bank, or any of these other instrumentalities, to exert or enforce some new national policy preference. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 617 (Pon. 2013).

That the national government is not legally responsible for the FSM Development Bank's debts, does not prevent the bank from being a national government instrumentality since other national government instrumentalities have similar status. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 617 (Pon. 2013).

As befits a national government agency or instrumentality, the FSM Development Bank is exempt from any taxes (except import taxes) or assessments on its property or operations, and similar statutory provisions exist for other national government instrumentalities and agencies. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 617 (Pon. 2013).

The restructured FSM Development Bank remains, regardless of the name given it and the other details of form, subject to the article XI, § 6(a) constitutional provision and, as with similar national government instrumentalities, it should be treated as part of the national government for jurisdiction purposes because it is an organization created by the national government for a public purpose and over which the national government can exercise control when it chooses. It is not an organization that the national government merely licensed or authorized to operate for private purposes. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 618 (Pon. 2013).

Since the FSM Supreme Court trial division has original and exclusive jurisdiction in cases in which the national government is a party except when an interest in land is at issue and since the Federated States of Micronesia Development Bank is an instrumentality of the national government and part of the national government for the purposes of the Constitution's Article XI, § 6(a), the FSM Supreme Court's trial division therefore has original and exclusive jurisdiction in any case in which the bank is a party so long as no interest in land is at issue. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 432 (App. 2014).

The FSM Development Bank is an instrumentality of the national government, and should be treated as if the national government itself is the actor. It, therefore, has an independent basis for jurisdiction under the Constitution article XI, § 6(a) and the national forum is available to it. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 433 (App. 2014).

The FSM Development Bank may fully adjudicate many matters in the national court until land is at issue. At that time, unless, a separate and additional source of jurisdiction can be found, the case must be

dismissed and returned to the state court, or alternately, held in abeyance until the land issue is certified. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 433 (App. 2014).

As an instrumentality of the government, the FSM Development Bank is, under Civil Rule 17's third party beneficiary clause, a real party in interest for the purposes collecting judgments from a party, limited by the land clause exception in article XI, § 6(a), and whenever "land is at issue" the national forum is no longer available so that if and when title to the land is disputed by the parties, the proceedings on that issue must be dismissed, or alternatively, the issue may be certified to the state court. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 435-36 (App. 2014).

If an independent basis creates exclusive jurisdiction in the national courts, the action must be removed from the state court, and adjudicated in the national forum. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 436 (App. 2014).

When the defendant has failed to substantiate a legally recognizable possessory interest in the land on which he has settled and for which the FSM has a certificate of title and absent any such indicia that an interest in land is present, the FSM Supreme Court has subject matter jurisdiction. FSM v. Falan, 20 FSM R. 59, 61-62 (Pon. 2015).

Subject matter jurisdiction is proper for the FSM Supreme Court when the defendant has not adequately shown a possessory interest, much less an ownership interest, to reflect a case or dispute where an interest in land is at issue as the matter involves the defendant's entry upon land to which the FSM holds a certificate of title and the pending trespass cause of action therefore concerns one for an alleged violation of possession, not for challenge to title. FSM v. Falan, 20 FSM R. 59, 62 (Pon. 2015).

A mortgage foreclosure generally does not constitute an interest in land being at issue because in a mortgage foreclosure the interests in land are not in dispute – the parties all agree who owns the land and who holds the mortgage. The mortgagee just seeks to foreclose the mortgage which a mortgagor has pledged as security for a debt and which the mortgagor earlier agreed, when he signed the mortgage, could be sold if the debt remained unpaid. Thus, the Exception Clause does not preclude jurisdiction. Sam v. FSM Dev. Bank, 20 FSM R. 409, 416 (App. 2016).

A seaman's contract claim against the owner of the vessel on which he served falls within the FSM Supreme Court's exclusive admiralty and maritime jurisdiction. Gilmete v. Peckalibe, 20 FSM R. 444, 448 & n.3 (Pon. 2016).

Cases involving claims for wages by seamen are maritime cases. Gilmete v. Peckalibe, 20 FSM R. 444, 448 (Pon. 2016).

The exclusive nature of the national court jurisdiction is such that the FSM Supreme Court does not have the power to abstain from admiralty and maritime cases. Gilmete v. Peckalibe, 20 FSM R. 444, 448 (Pon. 2016).

Since the FSM Supreme Court has jurisdiction over all cases which are maritime in nature including all maritime contracts, torts, and injuries, it has jurisdiction over a seaman's claims for breach of contract and negligence. Gilmete v. Peckalibe, 20 FSM R. 444, 449 (Pon. 2016).

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

Because of the unique classification of seamen and their rights as employees, along with the limitations when it comes to the termination of their employment, and because this class of FSM national government

employees is distinct, and in line with FSM Constitution Article XI, § 6(a), the FSM Supreme Court should exercise its exclusive jurisdiction over the matter rather than confer authority to an administrative body. Gilmete v. Peckalibe, 20 FSM R. 444, 451 (Pon. 2016).

Since the FSM Development Bank was formed by the national government to undertake a public purpose and is subject to its creator's control, the reconfigured FSM Development Bank constitutes a national government instrumentality within Article XI, § 6(a), and is accorded the status equivalent to that of the national government. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 515 (App. 2016).

The FSM Supreme Court's exclusive jurisdiction over cases in which the national government is a party is not paralleled in the United States, and such differences presumably reflect a conscious effort by the framers to select a road other than that paved by the United States Constitution. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 517 (App. 2016).

The FSM Development Bank is a national government instrumentality under Section 6(a) of Article XI. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 518 (App. 2016).

When the FSM was not a successor-in-interest to the lands in question because, as a matter of law, the Trust Territory government never transferred to the FSM national government any of the Trust Territory's interest in that land; when the only basis, asserted or apparent, for the FSM Supreme Court's jurisdiction is that the FSM national government is a party; and when the FSM was never properly a party because it had no interest in the land, the plaintiff has not stated a claim over which the FSM Supreme Court can exercise jurisdiction or for which it can grant relief and the FSM's motion to dismiss will therefore be granted and the FSM is dismissed and since the court never had jurisdiction over the case, it is dismissed without prejudice to any proceeding in a court of competent jurisdiction. Chuuk v. Weno Municipality, 20 FSM R. 582, 585 (Chk. 2016).

That the FSM Development Bank seeks to sell land of undisputed ownership does not divest the court of jurisdiction when it otherwise has jurisdiction. FSM Dev. Bank v. Ehsa, 20 FSM R. 608, 612 (Pon. 2016).

The FSM Supreme Court trial division has original and exclusive jurisdiction over admiralty and maritime cases. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 131 (Pon. 2017).

In an FSM Supreme Court criminal case, a "forum shopping" claim must be rejected because only the FSM Supreme Court has jurisdiction over a national crime – its jurisdiction over the prosecution of national crimes is exclusive. There is no alternative forum in which to prosecute a national crime. FSM v. Siega, 21 FSM R. 291, 299 (Chk. 2017).

A defendant's alleged breach of a maritime contract falls within the FSM Supreme Court's original and exclusive jurisdiction over admiralty and maritime cases. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 200 (Pon. 2019).

The FSM Development Bank is an instrumentality of the national government and is part of the national government for the purposes of FSM Constitution article XI, § 6(a), which gives the FSM Supreme Court trial division exclusive jurisdiction over cases in which the national government is a party. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 328, 328-29 (Pon. 2019).

It is well settled law that the FSM Supreme Court has jurisdiction over a case, regardless of the nature of the case's causes of action, when the FSM Development Bank is a party. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 328 (Pon. 2019).

The FSM Supreme Court must deny a motion to dismiss for lack of subject-matter jurisdiction when the FSM Development Bank is a party because the court has jurisdiction when the FSM Development Bank is a party. FSM Dev. Bank v. Carl, 22 FSM R. 365, 371 (Pon. 2019).

The Constitution generally confers original and exclusive jurisdiction over cases to which the national government is a party on the FSM Supreme Court trial division. The FSM Supreme Court also has pendent jurisdiction over state law claims whenever the Constitution or national law confers subject matter jurisdiction on the court and those state law claims arise from the same nucleus of operative fact as the claims under national jurisdiction and are such that they would be expected to be tried in the same judicial proceeding. Panuelo v. FSM, 22 FSM R. 498, 513 (Pon. 2020).

– In Rem

Probate matters are statutory and involve proceedings in rem, that is, jurisdiction based on court control of specific property. In re Nahnsen, 1 FSM R. 97, 103 (Pon. 1982).

In order to exercise *in rem* jurisdiction the thing over which jurisdiction is to be exercised (or its substitute, *e.g*., a bond) must be physically present in the jurisdiction and under the control of the court. In re Kuang Hsing No. 127, 7 FSM R. 81, 82 (Chk. 1995).

Where *in rem* jurisdiction over a vessel has not been established and its owner has not been made a party to the action an *in rem* action that includes a claim against the vessel's owner may be dismissed without prejudice. In re Kuang Hsing No. 127, 7 FSM R. 81, 82 (Chk. 1995).

The FSM Constitution, by its plain language, grants exclusive and original jurisdiction to the FSM Supreme Court trial division for admiralty and maritime cases. It makes no exceptions. Therefore all *in rem* actions against marine vessels, even those by a state seeking forfeiture for violation of its fishing laws, must proceed in the trial division of the FSM Supreme Court. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 463 (App. 1996).

Generally, to complete a court's jurisdiction in an in rem action, the res must be seized and be under the court's control. In other words, jurisdiction of the res is obtained by a seizure under process of the court, whereby it is held to abide such order as the court may make concerning it. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 370 (Kos. 2000).

When a vessel has not been seized and is not in the FSM, the court has not obtained jurisdiction over it and the complaint as to the vessel must be dismissed. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 370 (Kos. 2000).

When the complaint states that it is an admiralty and maritime action and that the plaintiffs are invoking the court's *in rem* and *in personam* jurisdiction, plaintiffs' failure to style their action against a vessel as *in rem* in the caption is merely a formal error and not a fatal defect, and the caption can always be amended to correct technical defects. Moses v. M.V. Sea Chase, 10 FSM R. 45, 51 (Chk. 2001).

The only way a vessel can be a defendant in a civil action is if the proceeding against it is *in rem*. The FSM Supreme Court may exercise *in rem* jurisdiction over a vessel for damage done by that vessel. Moses v. M.V. Sea Chase, 10 FSM R. 45, 51 (Chk. 2001).

In order for a court to exercise *in rem* jurisdiction, the thing (such as a vessel) over which jurisdiction is to be exercised (or its substitute, *e.g*., a posted bond) must be physically present in the jurisdiction and seized by court process and under the court's control, whereby it is held to abide such order as the court may make concerning it. Moses v. M.V. Sea Chase, 10 FSM R. 45, 51 (Chk. 2001).

When a vessel was never seized and brought under the court's jurisdiction and is no longer present in the jurisdiction, a court cannot exercise *in rem* jurisdiction over it and all such claims against the vessel will be dismissed without prejudice. Moses v. M.V. Sea Chase, 10 FSM R. 45, 52 (Chk. 2001).

In order for a court to exercise *in rem* jurisdiction, the thing over which jurisdiction is to be exercised must be physically present in the jurisdiction. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 110 (Chk. 2001).

The charterer under a demise is responsible for the proper performance of all agreements made with third parties in connection with the ship's operation. The charterer, as owner *pro hac vice* is also potentially liable for collision, personal injuries to the master, crew, and third parties, pollution damages, and for loss or damage to the chartered vessel. The vessel owner normally has no personal liability, but the vessel may be liable *in rem*. The charterer, however, has an obligation to indemnify the vessel owner if the damage was incurred through the charterer's negligence or fault. Yap v. M/V Cecilia I, 13 FSM R. 403, 409 (Yap 2005).

When the proceeding against the defendant vessel is an *in rem* proceeding – the vessel's forfeiture is sought – a motion to release the vessel without any bond will be denied because in order to exercise *in rem* jurisdiction, the thing over which jurisdiction is to be exercised (or its substitute, *e.g.*, a bond) must be physically present in the jurisdiction and under the court's control. FSM v. Kana Maru No. 1, 14 FSM R. 300, 302 (Chk. 2006).

When the government's complaint seeks, among other things, a vessel's forfeiture under 24 F.S.M.C. 801(1), the case is, in part, an *in rem* proceeding, albeit one created by the marine resources statute. FSM v. Kana Maru No. 1, 14 FSM R. 365, 367 (Chk. 2006).

In generally accepted admiralty practice, a letter of undertaking becomes the substitute *res* for a vessel in lieu of the vessel's seizure, providing the court with *in rem* subject matter jurisdiction. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 414 (Yap 2006).

The only way a vessel can be a defendant in a civil action is if the proceeding against it is *in rem*. A court cannot exercise *in personam* jurisdiction over a vessel, but can entertain an *in personam* suit against a vessel's owner if the court has obtained personal jurisdiction over the owner. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

For a court to exercise *in rem* jurisdiction, the thing (*res*) over which jurisdiction is to be exercised (or its substitute) must be physically present in the jurisdiction and under the court's control where it will be held to abide further order. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

When a vessel was never seized and brought under the court's control and is not in, or is no longer in, the FSM, the court cannot exercise *in rem* jurisdiction over it and all claims against the vessel will be dismissed without prejudice unless a letter of undertaking or a bond has been made a substitute *res* for the vessel in lieu of the vessel's seizure, thus permitting the court to exercise *in rem* jurisdiction. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

When two vessels were never arrested or seized in the FSM and no substitute *res*, a bond or letter of undertaking, has been provided to the court so that the court can exercise *in rem* jurisdiction through the substitute, the court lacks jurisdiction over the vessels regardless of the service on the vessels' agent, and no default can be entered against either vessel. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

Vessels are not subject to service of process under Rule 4(d)(3) (service on corporations), but must be proceeded against *in rem* because they are things, not corporations. This is unlike the vessels' owner, which is a corporation. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

When the court has not acquired *in rem* jurisdiction over the two vessels and since service on an agent cannot create jurisdiction over a vessel, the complaint against the two vessels will be dismissed without prejudice. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 85 (Yap 2010).

The only way a vessel can be a defendant in a civil action is if the proceeding against it is in rem, and in order for a court to exercise in rem jurisdiction, the vessel over which jurisdiction is to be exercised (or its substitute, *e.g.*, a posted bond) must be physically present in the jurisdiction and seized by court process and under the court's control, whereby it is held to abide such order as the court may make concerning it. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288 (Yap 2012).

If a vessel was never seized and brought under the court's control and is not in, or is no longer in, the FSM, the court has not acquired in rem jurisdiction over it and all claims against it will be dismissed without prejudice unless a letter of undertaking or a bond has been made a substitute *res* for the vessel in lieu of its seizure. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288 (Yap 2012).

When a tug is not present in the FSM and was not arrested when it was present and when no bond or letter of undertaking has been posted to provide a substitute res over which the court could exercise jurisdiction, the complaint against it must be dismissed without prejudice. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288 (Yap 2012).

The FSM Supreme Court cannot exercise jurisdiction over any vessel unless that *in rem* defendant has been validly arrested in the FSM and brought under the court's actual control or under its constructive control through the provision of a substitute security. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 (Yap 2012).

Unlike *in personam* defendants, who may under certain circumstances be validly served process in foreign countries, valid service of process on an *in rem* defendant can only be made within the court's territorial jurisdiction. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 (Yap 2012).

A court cannot order an *in personam* defendant to bring a vessel into the jurisdiction so that a plaintiff may then have it arrested and brought within the court's jurisdiction and made a separate defendant *in rem* because a court's authority to exercise *in rem* jurisdiction does not carry with it a concomitant derivative power to enter *in personam* orders. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 (Yap 2012).

An *in rem* defendant ought not to be able to have the complaint against it dismissed for lack of service merely by keeping the *res* out of the court's jurisdiction for 120 days. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 466 (Yap 2012).

The time for the plaintiffs to serve process on an *in rem* defendant vessel may be enlarged so as to allow the plaintiffs to perfect service *in rem* on the vessel if, at any time before the *in personam* action goes to trial, the vessel may be found and arrested within the court's jurisdiction. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 466 (Yap 2012).

The court can exercise jurisdiction only over vessels that are present in the FSM and that have been brought into the court's jurisdiction by arrest or over vessels for which an adequate substitute has been provided. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 94 (Yap 2013).

Another court's assumption of jurisdiction should be made with restraint, cognizant of the limitation that if a court has already assumed jurisdiction over the matter, a second court will not interfere and assume in rem jurisdiction over the same res. In those cases, abstention may be the appropriate course of action. A probate matter filed only in national court, however, causes no such conflict. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 436 (App. 2014).

Criminal cases are in personam proceedings, and brought against a person rather than property. Only civil actions may be brought in rem, or "against a thing." FSM v. Kimura, 19 FSM R. 617, 619 n.1 (Pon. 2014).

The only way a vessel can be a defendant in a civil action is if the proceeding against it is *in rem*. In order for a court to exercise *in rem* jurisdiction, the vessel over which jurisdiction is to be exercised (or its substitute, *e.g*., a posted bond) must be physically present in the jurisdiction and seized by court process and under the court's control, whereby it is held to abide such order as the court may make concerning it. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 132 (Pon. 2017).

For a court to exercise *in rem* jurisdiction, the thing (*res*) over which jurisdiction is to be exercised (or its substitute) must be physically present in the jurisdiction and under the court's control where it will be held to abide further order. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 132 (Pon. 2017).

For *in rem* actions, venue is jurisdictional. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 132 n.1 (Pon. 2017).

When a court exercises jurisdiction over land, it can only exercise that jurisdiction in the nature of an in rem proceeding. In rem proceedings encompass any action in which essential purpose of suit is to determine title to or affect interests in specific property located within the territory over which court has jurisdiction. Setik v. FSM Dev. Bank, 21 FSM R. 505, 518 (App. 2018).

In rem jurisdiction includes registration of land titles, mortgages, and probate proceedings involving land. Setik v. FSM Dev. Bank, 21 FSM R. 505, 518 (App. 2018).

To be able to exercise in rem jurisdiction, the property over which the court is to exercise jurisdiction must be physically present within the court's territorial jurisdiction and under its control. Setik v. FSM Dev. Bank, 21 FSM R. 505, 518 (App. 2018).

A court's jurisdiction over land is in the nature of an in rem proceeding. "In rem" proceedings encompass any action in which essential purpose of suit is to determine title to or affect interests in specific property located within the territory over which court has jurisdiction. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

In rem jurisdiction includes registration of land titles, mortgages, and probate proceedings involving land. To exercise in rem jurisdiction, the property over which the court is to exercise jurisdiction must be physically present within the court's territorial jurisdiction and under its control. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

Land on Pohnpei is not physically present in the Chuuk State Supreme Court's territorial jurisdiction. Thus, neither it, nor any court in Chuuk, can exercise jurisdiction over any Pohnpei land. Only a court in Pohnpei can do that. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

The FSM Supreme Court has jurisdiction in rem over all vessels irrespective of their flag and all maritime claims wherever arising with respect to claims for goods, materials or services supplied to a vessel. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 200 (Pon. 2019).

– Pendent

When the FSM Supreme Court has jurisdiction over a violation of the National Criminal Code, it cannot then take jurisdiction over a non-major crime, which arose out of the same transaction and formed part of the same plan, under the theory of ancillary jurisdiction. FSM v. Hartman, 1 FSM R. 43, 44-46 (Truk 1981).

Under article XI, section 6(b) of the FSM Constitution, it is proper to employ the rule of pendent jurisdiction over cases involving interpretations of the Constitution or national law, so that the court may resolve state or local issues involved in the same case. Ponape Chamber of Commerce v. Nett Mun. Gov't, 1 FSM R. 389, 396 (Pon. 1984).

When a substantial constitutional issue is involved in a case, the national court may exercise pendent jurisdiction over state or local claims which derives from the same nucleus of operative fact and are such that the plaintiff would ordinarily be expected to try them all in one judicial proceeding. Ponape Chamber of Commerce v. Nett Mun. Gov't, 1 FSM R. 389, 396 (Pon. 1984).

Even though the requirements for pendent jurisdiction are met in a case, a national court has discretion to decline to exercise jurisdiction over state claims. This determination should turn on considerations of judicial economy, convenience and fairness to litigants and should be instructed by a desire of the federal or national court to avoid needless decisions of state law. Ponape Chamber of Commerce v. Nett Mun. Gov't, 1 FSM R. 389, 397 (Pon. 1984).

A national court may exercise pendent jurisdiction over state law claims included in a plaintiff's cause of action if they arise out of a common nucleus of operative fact and are such that they ordinarily would be expected to be tried in one judicial proceeding, but its exercise of pendent jurisdiction will be limited so as to avoid needless decisions of state laws. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 116 (Pon. 1993).

The FSM Supreme Court can proceed on a mortgage foreclosure under its pendent jurisdiction because it arises from the same nucleus of operative fact as the promissory note (over which the FSM Supreme Court has exclusive jurisdiction) and is such that it would be expected to be tried in the same judicial proceeding. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 5 (Chk. 2001).

The FSM Supreme Court may exercise pendent jurisdiction over a state law wrongful death claim when it arises from the same nucleus of operative fact and is such that it would be expected to be tried in the same judicial proceeding as a plaintiff's national civil rights claims. Estate of Mori v. Chuuk, 10 FSM R. 6, 13 (Chk. 2001).

A national court may exercise pendent jurisdiction over state law claims included in a plaintiff's complaint if they arise out of a common nucleus of operative fact and are such that they ordinarily would be expected to be tried in one judicial proceeding. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 205 (Pon. 2001).

The FSM Supreme Court has jurisdiction over state law claims of tortious interference with contractual relationships, defamation, and interference with prospective business opportunities when they are based on the same nucleus of operative facts as the claims under the national statute prohibiting anti-competitive practices. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 205 (Pon. 2001).

The FSM Supreme Court exercised pendent jurisdiction over a wrongful death claim, a state law cause of action when the plaintiffs' claim for civil rights violation under 11 F.S.M.C. 701(3) arose from the same nucleus of operative fact so as to create the reasonable expectation that the claims would be tried in the same proceeding. Estate of Mori v. Chuuk, 11 FSM R. 535, 537 (Chk. 2003).

The FSM Supreme Court may exercise pendent jurisdiction over a state law wrongful death action when it arises from the same nucleus of operative fact and is such that it would be expected to be tried in the same judicial proceeding as the plaintiff's national civil rights claims. Herman v. Municipality of Patta, 12 FSM R. 130, 136 (Chk. 2003).

When an FSM constitutional issue is involved in a case, the FSM Supreme Court may exercise pendent jurisdiction over state law claims which derive from the same nucleus of operative fact and are such that the plaintiff would ordinarily be expected to try them all in one judicial proceeding. Mailo v. Chuuk, 12 FSM R. 597, 600 (Chk. 2004).

When a citizen of Pohnpei, sues Pohnpei and one of its agencies over a state law tort claim of false imprisonment and the remaining four counts of the amended complaint allege violations of the national civil

rights law, and are based on the same facts that form the basis for the state law claim, or the same nucleus of operative fact, the FSM Supreme Court may exercise pendent jurisdiction over the state law claim. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 492 (Pon. 2005).

The FSM Supreme Court may exercise pendent jurisdiction over a state law cause of action when it arises from the same nucleus of operative fact and is such that it would be expected to be tried in the same judicial proceeding as the plaintiff's national civil rights claims. Thus, when the issue of a proclamation's validity arises from the same nucleus of operative fact as the plaintiffs' national civil rights claim, the court may exercise jurisdiction. Esa v. Elimo, 14 FSM R. 216, 220 (Chk. 2006).

The FSM Supreme Court may exercise pendent jurisdiction over a state law wrongful death action (or other state law cause of action) when it arises from the same nucleus of operative fact and is such that it would be expected to be tried in the same judicial proceeding as the plaintiff's national civil rights claim. Therefore if the plaintiffs' civil rights cause of action states a claim upon which the court may grant relief, the FSM Supreme Court will have subject matter jurisdiction over the other state law causes of action as well. Harper v. William, 14 FSM R. 279, 282 (Chk. 2006).

Wrongful death is a state law cause of action created by a Trust Territory statute that is state law pursuant to the FSM and Chuuk Constitutions' transition clauses. The FSM Supreme Court exercises pendent jurisdiction over a wrongful death action when it arises from the same nucleus of operative fact and is such that it would be expected to be tried in the same judicial proceeding as the national civil rights claims. Lippwe v. Weno Municipality, 14 FSM R. 347, 352 (Chk. 2006).

When the court dismisses causes of action for the failure to state claims on which the FSM Supreme Court can grant relief and the remaining causes of action are all based in tort, which are properly the domain of state law, the court will grant the motion to dismiss with regard to the rest of the complaint because without at least one viable national law cause of action from which to hang, there is no pendent jurisdiction for the state law issues. Ladore v. Panuel, 17 FSM R. 271, 276 (Pon. 2010).

Arising from the same nucleus of operative fact is a requirement for the court's pendent jurisdiction. Stephen v. Chuuk, 18 FSM R. 22, 25 n.3 (Chk. 2011).

Ancillary jurisdiction is a court's jurisdiction to adjudicate claims and proceedings that arise out of a claim that is properly before the court. In re Suka, 18 FSM R. 554, 557 (Chk. S. Ct. Tr. 2013).

A court can employ ancillary jurisdiction as 1) to allow a single court to dispose of factually interdependent claims; and 2) to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees. When courts refer to the "inherent power" of a court to consider a claim, they refer to the latter of these two uses of ancillary jurisdiction. In re Suka, 18 FSM R. 554, 557 (Chk. S. Ct. Tr. 2013).

The FSM Supreme Court may exercise pendent jurisdiction over the state law causes of action that arise from the same nucleus of operative fact and are such that they would be expected to be tried in the same judicial proceeding as the plaintiff's national civil rights claims. Wainit v. Chuuk Public Utility Corp., 20 FSM R. 135, 137 (Chk. 2015).

When tort claims arising from the power re-connection do not arise from a nucleus of operative fact common to the plaintiff's due process claims arising from the power disconnection, pendent jurisdiction is unavailable and those tort claims will be dismissed without prejudice to any future state court litigation. Wainit v. Chuuk Public Utility Corp., 20 FSM R. 135, 137 (Chk. 2015).

The Constitution generally confers original and exclusive jurisdiction over cases to which the national government is a party on the FSM Supreme Court trial division. The FSM Supreme Court also has pendent jurisdiction over state law claims whenever the Constitution or national law confers subject matter

jurisdiction on the court and those state law claims arise from the same nucleus of operative fact as the claims under national jurisdiction and are such that they would be expected to be tried in the same judicial proceeding. Panuelo v. FSM, 22 FSM R. 498, 513 (Pon. 2020).

When, before the defendants have even answered, the FSM Supreme Court dismisses, for the failure to state claims on which the court can grant relief, all of the claims that confer subject matter jurisdiction on the FSM Supreme Court, and all the causes of action that remain are the pendent state law claims, the court should dismiss the rest of the complaint without prejudice and allow the state law claims to proceed in state court. Panuelo v. FSM, 22 FSM R. 498, 513 (Pon. 2020).

The FSM Supreme Court should consider and weigh in each pendent jurisdiction case, and at every stage of the litigation, the values of judicial economy, convenience, fairness, and comity in order to decide whether to exercise jurisdiction over a case brought in that court involving pendent law state-law claims. When the balance of these factors indicates that a case properly belongs in state court, as when the national-law claims have dropped out of the lawsuit at its early stages and only state-law claims remain, the national court should decline to exercise jurisdiction by dismissing the case without prejudice. The doctrine of pendent jurisdiction thus is a doctrine of flexibility. When the national law claims must all be dismissed, it may be an abuse of discretion to take pendent jurisdiction of a claim that depends on novel questions of state law. Panuelo v. FSM, 22 FSM R. 498, 513-14 (Pon. 2020).

– Personal

Under the Compact of Free Association and the Federal Programs and Services Agreement, civilian employees of the United States government have immunity from civil and criminal process for wrongful acts and omissions done within the scope and in performance of official duty, unless expressly waived by the U.S. government. Samuel v. Pryor, 5 FSM R. 91, 95 (Pon. 1991).

A United States federal employee does not waive immunity from civil liability under the Compact of Free Association and the Federal Programs and Services Agreement when the civilian employee initiated litigation in the FSM Supreme Court in a separate lawsuit with different claims against different parties and where the affirmative misconduct is within the scope and in the performance of the official duty. Samuel v. Pryor, 5 FSM R. 91, 97 (Pon. 1991).

The purpose of the rules addressing process and service of process in civil cases is to assure that a defendant receives sufficient notice of all causes of action that are filed against him and thus has a fair and adequate opportunity to defend. Where a plaintiff fails to properly serve a defendant, the court does not have jurisdiction over that defendant, and the case may not proceed, but will be dismissed without prejudice. Berman v. Santos, 6 FSM R. 532, 534 (Pon. 1994).

The Chuuk State Supreme Court has personal jurisdiction in civil cases only over persons residing or found in the state and who have been duly summoned. Joeten Motor Co. v. Jae Joong Hwang, 7 FSM R. 326, 327 (Chk. S. Ct. Tr. 1995).

For purposes of the motion to dismiss, the plaintiff has the burden of showing a prima facie case of personal jurisdiction, and the allegations in the complaint are taken as true except where controverted by affidavit, in which case any conflicts are construed in the non-moving party's favor. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 127 (Pon. 1999).

A court must be assured that it has acquired personal jurisdiction over a defendant before it enters a default against him, and a court does not have personal jurisdiction over a defendant unless or until he has been properly served. Medabalmi v. Island Imports Co., 10 FSM R. 32, 34 (Chk. 2001).

A venue provision that permits a civil action against a defendant who does not live in the FSM to be brought in a court within whose jurisdiction the defendant can be served or his property can be attached does not limit the FSM Supreme Court's subject matter jurisdiction, and does not render the long-arm

statute superfluous. Such provisions do not preclude actions which are made procedurally possible by the long-arm statute, which gives litigants the means to effect service on entities not found within the FSM. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204 (Pon. 2001).

To exercise jurisdiction, the court must also have personal jurisdiction over the parties. The Chuuk State Supreme Court has personal jurisdiction over all who reside or are found in the State of Chuuk and any who voluntarily appear before the court. First Hawaiian Bank v. Engichy, 10 FSM R. 536, 538 (Chk. S. Ct. Tr. 2002).

Lack of jurisdiction over the person is a defense that can be waived, whereas lack of subject matter cannot and requires dismissal. First Hawaiian Bank v. Engichy, 10 FSM R. 536, 538 (Chk. S. Ct. Tr. 2002).

When a complaint and summons (the service of process) is not properly served on a defendant, the court does not have personal jurisdiction over that defendant. Lee v. Lee, 13 FSM R. 252, 256 (Chk. 2005).

A court which lacks personal jurisdiction over a defendant cannot enter a valid judgment against that defendant. Lee v. Lee, 13 FSM R. 252, 256 (Chk. 2005).

Personal jurisdiction as a defense is waived only if the party raising it fails to raise it in a motion permitted by Rule 12(b), in his answer, or in an amendment to the answer permitted under Rule 15(a). Personal jurisdiction may not be raised in an amendment that requires leave of court. Yap v. M/V Cecilia I, 13 FSM R. 403, 407 (Yap 2005).

For purposes of a motion to dismiss for lack of personal jurisdiction over a defendant, the allegations of the complaint are accepted as true, except where those allegations have been controverted by affidavit, in which event conflicts are construed in the non-moving party's favor. Allegations based on information and belief are insufficient to support in personam jurisdiction, except where the truth of those allegations are admitted in the responsive pleading. Yap v. M/V Cecilia I, 13 FSM R. 403, 407 (Yap 2005).

In analyzing a motion to dismiss for lack of personal jurisdiction, the court must undertake a particularized inquiry into the allegations that support personal jurisdiction. The complaint's allegations are accepted as true for a motion to dismiss, except where those allegations have been controverted by affidavit, in which event conflicts are construed in the non-moving party's favor. Yap v. M/V Cecilia I, 13 FSM R. 403, 411 (Yap 2005).

In civil cases, a court has personal jurisdiction only over persons who have been duly summoned, that is, made a party by valid service of process. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

A court is not competent to rule on the validity of a certificate of title to land when the court does not have (by its own statement) subject matter jurisdiction over the case and does not have personal jurisdiction over indispensable parties (the titleholders) or give them notice or an opportunity to be heard. Its orders were void and an order invalidating a person's certificate of title may even be void on its face when it held that that person was an indispensable party who was not present in the case and then proceeded to invalidate his certificate of title without him having been made a party to the case. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

The failure to join an indispensable party may subject a judgment to collateral attack. A judgment (or final order) entered against a person without notice or an opportunity to be heard is void and is subject to direct or collateral attack at any time, and a court that lacks personal jurisdiction over a person cannot enter a valid judgment against that person. Ruben v. Hartman, 15 FSM R. 100, 110 (Chk. S. Ct. App. 2007).

In civil cases, a court has personal jurisdiction only over persons who have been duly summoned, that is, made a party by valid service of process. Ruben v. Hartman, 15 FSM R. 100, 110 (Chk. S. Ct. App. 2007).

When neither the Wito Clan nor the Rubens were ever duly summoned in Civil Action No. 64-98 before the August 20, 1998 judgment was issued so that court never had personal jurisdiction over them, the judgment, as to any interest either of them might have, is void. Ruben v. Hartman, 15 FSM R. 100, 110 (Chk. S. Ct. App. 2007).

Personal jurisdiction is the court's power to bring a person into its adjudicative process. A court always has personal jurisdiction over a plaintiff because, by filing a case, the plaintiff has consented to the court's jurisdiction over her person. John v. Chuuk Public Utility Corp., 15 FSM R. 169, 171 (Chk. 2007).

When a defendant has been improperly served, the court lacks jurisdiction over the defendant and the case will be dismissed without prejudice, but, since a dismissal under Rule 12(b)(5) is without prejudice, a court will often quash service instead of dismissing the case so that only service need be repeated. FSM v. Fu Yuan Yu 096, 16 FSM R. 1, 3 (Pon. 2008).

Rule 4(j) provides that if service of the summons and complaint is not made on a defendant within 120 days after the filing of the complaint, the action will be dismissed as to that defendant without prejudice upon motion or on the court's own initiative, but dismissal for lack of service is also possible under Rule 41(b). A case against a defendant may be dismissed under Rule 41(b) for lack of personal jurisdiction over that defendant, that is, because that defendant was never properly served the summons and complaint and the court thus never acquired personal jurisdiction over that defendant. Dismissal under Rule 41(b) for lack of jurisdiction is without prejudice. Nakamura v. Mori, 16 FSM R. 262, 269 (Chk. 2009).

The only way a vessel can be a defendant in a civil action is if the proceeding against it is *in rem*. A court cannot exercise *in personam* jurisdiction over a vessel, but can entertain an *in personam* suit against a vessel's owner if the court has obtained personal jurisdiction over the owner. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

When the court file does not contain a return of service for a summons and for either the original complaint or the first amended complaint on two named defendants, the court has nothing before it from which it can conclude that the court has personal jurisdiction over either of them. The court will therefore give the plaintiff time to show that the court has personal jurisdiction over those two defendants; otherwise, they may be subject, under Civil Procedure Rule 4(j), to dismissal for lack of service of process on them. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 329 (Pon. 2011).

No ruling can be made against persons over whom the court does not have personal jurisdiction. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 332 (Pon. 2011).

Insufficient service of process only affects personal jurisdiction – jurisdiction over the person of the defendants or respondents who should have been served properly. It does not affect subject-matter jurisdiction. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

In analyzing a motion to dismiss for lack of personal jurisdiction, the court must undertake a particularized inquiry into the allegations that support personal jurisdiction. The complaint's allegations are accepted as true for a motion to dismiss, except when those allegations have been controverted by affidavit, in which event conflicts are construed in the non-moving party's favor. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 297, 302 (Yap 2012).

When some defendants were never served with the complaint and summons, the court never had personal jurisdiction over them and the plaintiffs' case against them was considered abandoned and dismissed. William v. Kosrae State Hosp., 18 FSM R. 575, 579 n.1 (Kos. 2013).

No ruling can be made or judgment entered against persons over whom the court does not have personal jurisdiction. William v. Kosrae State Hosp., 18 FSM R. 575, 579 n.1 (Kos. 2013).

A court obtains personal jurisdiction over a defendant when service of process – service of the complaint and summons – is properly made on that defendant. A court must have personal jurisdiction over a party before its orders can bind that party. Nena v. Saimon, 19 FSM R. 317, 324 (App. 2014).

For personal service of a complaint and summons to be effective when a defendant refuses to accept the papers, the complaint and summons must be left with the defendant or where they might reasonably be found and the process server must make an attempt to describe generally the meaning of the papers in a language the defendant can understand. Nena v. Saimon, 19 FSM R. 317, 324-25 (App. 2014).

When a person refused to accept the complaint and summons and the papers were not left with him, he was not properly served with the complaint and summons and the court therefore did not acquire personal jurisdiction over him. Nena v. Saimon, 19 FSM R. 317, 325 (App. 2014).

A court that lacked personal jurisdiction over a person because the complaint and summons were not properly served on him later acquired personal jurisdiction over that person when he filed an answer in which he did not challenge personal jurisdiction over him although he did challenge the court's personal jurisdiction over "his immediate family" since none of them had been named or served. Nena v. Saimon, 19 FSM R. 317, 325 & n.1 (App. 2014).

Unlike personal jurisdiction, which a court can obtain upon the parties' consent or failure to object, the lack of subject-matter jurisdiction is never capable of being waived. In essence, the court either possesses it or it does not; it cannot assert it. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 509 (App. 2016).

A defendant, who has properly asserted lack of personal jurisdiction over it, may move for the issue's determination as a preliminary matter. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 233 (App. 2017).

No substantial basis for difference of opinion exists about a defendant's right to move before trial for dismissal based on lack of personal jurisdiction. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 233 (App. 2017).

The issue is well settled that affidavits and other evidence may be submitted in support of or opposition to a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 233 (App. 2017).

The standard that a motion to dismiss should be denied unless it appears to a certainty that no relief could be granted is routinely applied to motions to dismiss under Civil Rule 12(b)(6) for failure to state a claim upon which relief can be granted, but this rule of interpretation has no bearing on a motion to dismiss under Civil Rule 12(b)(2), where the burden is on the plaintiff to prove a prima facie showing of personal jurisdiction. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 233-34 (App. 2017).

One of the most fundamental questions of law is whether a court has jurisdiction to preside over a given case or has personal jurisdiction over a particular party. The need for minimum contacts is a matter of personal jurisdiction, and whether a court has personal jurisdiction over a particular defendant is reviewed *de novo* when appealed. Thus, a question of personal jurisdiction is a "question of law." People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 234 (App. 2017).

There must be personal jurisdiction over a party before a court may enter an order against it, whether in a civil or criminal case. FSM v. Siega, 21 FSM R. 291, 297 (Chk. 2017).

Personal jurisdiction refers to the court's authority to adjudicate the claim as to the person. That a court has "jurisdiction of a party" means either that a party has appeared generally and submitted to the

jurisdiction, has otherwise waived service of process, or that process has properly issued and been served on such party. FSM v. Siega, 21 FSM R. 291, 297 (Chk. 2017).

Physical presence in the country usually supplies the only necessary prerequisite for personal jurisdiction in a national criminal prosecution. FSM v. Siega, 21 FSM R. 291, 297 (Chk. 2017).

In extradition cases, the receiving court, under the rules of speciality and double criminality, lacks personal jurisdiction over the defendant for crimes other than the crimes for which the defendant was extradited. FSM v. Siega, 21 FSM R. 291, 297 n.4 (Chk. 2017).

When criminal defendants do not claim that they were not served process or that the process was not properly served on them or that they are not, or were not, physically present in the FSM, the court has personal jurisdiction over them. FSM v. Siega, 21 FSM R. 291, 297 (Chk. 2017).

For the trial court to have had personal jurisdiction over all the defendants, each defendant had to have been served the complaint and summons. Setik v. FSM Dev. Bank, 21 FSM R. 505, 516 (App. 2018).

A court that lacks personal jurisdiction over a defendant cannot enter a valid judgment against that defendant. Setik v. FSM Dev. Bank, 21 FSM R. 505, 516 (App. 2018).

Rule 12(b)(2) dismissal for lack of jurisdiction over the person raises a question as to whether the controversy or the defendant has sufficient contacts, ties, or relationships with the forum to give the court the right to exercise judicial power over the defendant. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 195 (Pon. 2019).

– Personal – Long-Arm

The Supreme Court may exercise personal jurisdiction in civil cases only over persons residing or found in the Federated States of Micronesia or who have been duly summoned and voluntarily appear, except as provided in the long arm statute. The terms "resides in," "is a resident of," and "residence is in" are roughly synonymous. Alik v. Moses, 8 FSM R. 148, 149-50 (Pon. 1997).

The FSM long-arm statute applies to persons without regard to their citizenship or residence. It may thus be applied to an FSM citizen. Alik v. Moses, 8 FSM R. 148, 150 (Pon. 1997).

To obtain personal jurisdiction over a non-resident defendant in a diversity action, a plaintiff must show that jurisdiction is consistent with the "long arm" statute, 4 F.S.M.C. §§ 203-04, and that the exercise of jurisdiction does not deny the defendant due process of law as guaranteed by article IV, section 3 of the FSM Constitution. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 128 (Pon. 1999).

Because Article IV, section 3 is based on the Due Process Clause of the United States Constitution, FSM courts can look to interpretations of the United States Due Process Clause to determine the extent to which the FSM long-arm statute may be used consistently with due process to exert jurisdiction over a non-forum defendant. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 128-29 (Pon. 1999).

Under the doctrine of minimum contacts a defendant must have certain minimum contacts with a forum such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. The FSM Supreme Court applies a minimum contacts analysis to determine the extent to which the FSM long-arm statute may be used consistently with due process to exert jurisdiction over a non-forum defendant. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 129 (Pon. 1999).

Except as provided for in 4 F.S.M.C. 204, the Supreme Court may exercise personal jurisdiction in civil cases only over persons residing or found in the Federated States of Micronesia or who have been duly summoned and voluntarily appear. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 129 (Pon.

1999).

The FSM Supreme Court can exercise personal jurisdiction in civil cases over an individual or agent of a corporation as to any cause of action arising from the commission of a tortious act within the Federated States of Micronesia. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 129 (Pon. 1999).

The mere allegation that an out-of-state defendant has tortiously interfered with contractual rights or has committed other business torts that have allegedly injured a forum resident does not necessarily establish that the defendant possesses the constitutionally required minimum contacts. In order to resolve the jurisdictional question, a court must undertake a particularized inquiry as to the extent to which the defendant thus purposefully availed itself of the benefits of the forum's laws. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 129 (Pon. 1999).

Generalized legal conclusions in an affidavit have no bearing on the particularized inquiry, which a court must undertake in order to determine whether defendants have minimum contacts with the forum in order to make a prima facie case that the court has personal jurisdiction over the defendants. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 130 (Pon. 1999).

Two – possibly four – letters and unspecified phone calls sent into the FSM are insufficient in themselves to establish the minimum contacts necessary to establish personal jurisdiction. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 130 (Pon. 1999).

Personal jurisdiction is not established when the alleged tortious conduct resulted only in economic consequences in the FSM because mere economic injury suffered in the forum is not sufficient to establish the requisite minimum contacts so as to sustain long-arm jurisdiction. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 130 (Pon. 1999).

When the tortious conduct is not shown to have occurred in FSM, and the alleged harm flowing from the conduct cannot be said to have been "targeted" to the FSM, it does not persuade the court that the defendants have caused an "effect" in this forum sufficient to justify jurisdiction over them under the FSM long-arm statute. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 131 (Pon. 1999).

When the defendants are not parties to the contract they tortiously interfered with and have no meaningful presence in the FSM, although the economic harm was allegedly targeted to an FSM plaintiff, it is insufficient to establish personal jurisdiction over the defendants. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 132 (Pon. 1999).

Except as provided in 4 F.S.M.C. 204, the FSM Supreme Court may exercise personal jurisdiction in civil cases only over persons residing or found in the Federated States of Micronesia or who have been duly summoned and voluntarily appear. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 370 (Kos. 2000).

A "long-arm statute" is a legislative act that provides for personal jurisdiction over persons and corporations which are non-residents of a state or country, and which go in to a state or country voluntarily, directly or by agent, for limited purposes, and in which the claim is related to those purposes. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204 n.2 (Pon. 2001).

A venue provision that permits a civil action against a defendant who does not live in the FSM to be brought in a court within whose jurisdiction the defendant can be served or his property can be attached does not limit the FSM Supreme Court's subject matter jurisdiction, and does not render the long-arm statute superfluous. Such provisions do not preclude actions which are made procedurally possible by the long-arm statute, which gives litigants the means to effect service on entities not found within the FSM. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204 (Pon. 2001).

The long-arm statute provides how service may be effected, outside of the FSM Supreme Court's

territorial jurisdiction, against those who have done certain acts which subject them to the personal jurisdiction of the FSM Supreme Court, and such service has the same force and effect as though it had been personally made within the FSM. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204 (Pon. 2001).

A foreign corporation served pursuant to 4 F.S.M.C. 204 may be sued within the FSM for violations of 32 F.S.M.C. 302 or 303, regardless of where the service occurs, so long as that foreign corporation has done specific acts within the FSM to bring it within the jurisdiction of the FSM Supreme Court. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204-05 (Pon. 2001).

Transacting business in the FSM, engaging in tortious activity within the FSM, and causing injury within the FSM related to sales of products within the FSM, are arguably sufficient to bring a foreign defendant under the personal jurisdiction of the FSM Supreme Court. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 205 n.4 (Pon. 2001).

A long-arm statute does not by itself grant a court personal jurisdiction over those who fall within the statute's reach. What a long-arm statute does is to permit a court to acquire personal jurisdiction over those persons subject to the statute once they have been properly served with notice that comports with due process. Northern Marianas Housing Corp. v. Finik, 12 FSM R. 441, 444 (Chk. 2004).

The FSM Supreme Court has personal jurisdiction over persons residing or found in the FSM or who voluntarily appear. Exceptions to this general rule are found in the FSM long-arm statute, 4 F.S.M.C. 204, which specifies the conditions under which a defendant found outside the FSM may be hailed into court here. Yap v. M/V Cecilia I, 13 FSM R. 403, 410 (Yap 2005).

The FSM Supreme Court has personal jurisdiction, under 4 F.S.M.C. 204(1)(c), over a cause of action that arises from the operation of a vessel or craft within the FSM territorial waters. Yap v. M/V Cecilia I, 13 FSM R. 403, 410 (Yap 2005).

The reach of the FSM's long-arm statute is circumscribed by the constitutional requirement that the putative defendant must have "minimum contacts" with the forum so that requiring him to litigate there does not offend "traditional notions of fair play and substantial justice." Yap v. M/V Cecilia I, 13 FSM R. 403, 410-11 (Yap 2005).

When a vessel is the subject to a bareboat charter, the hallmark of which is that the charterer takes complete control of the vessel, mans it with his own crew, and is treated by law as its legal owner, the vessel's owner cannot be said to have undertaken the operation of a vessel or craft within the FSM territorial waters within the meaning of 4 F.S.M.C. 204(c), and personal jurisdiction over the vessel's owner will not lie on that basis. Yap v. M/V Cecilia I, 13 FSM R. 403, 411 (Yap 2005).

In analyzing the degree and extent of a defendant's business contacts with a forum jurisdiction, it is the nature and quality of acts and not their number that determines whether transactions of business have occurred. It does not mean that any single act suffices to allow personal jurisdiction. Yap v. M/V Cecilia I, 13 FSM R. 403, 411 (Yap 2005).

Being the recipient of a letter sent from a jurisdiction, without more, does not aid the personal jurisdiction analysis. Yap v. M/V Cecilia I, 13 FSM R. 403, 412 n.3 (Yap 2005).

The act of sending the single letter, which recites that the vessel remains under a bareboat charter and that the owner was put in a very bad position as a result of receiving only two charter payments over the course of two years and eight months, does not suggest a sufficient basis upon which to conclude that the owner was doing business in the FSM and subject to personal jurisdiction here, and neither does being the recipient of 60 e-mails or copies of e-mails sent to others. Yap v. M/V Cecilia I, 13 FSM R. 403, 412 (Yap 2005).

When no evidence exists that the charter agreement between the owner and the charterer created an obligation on the owner's part to engage in any business activity in the FSM, although the vessel operated in Yap waters beginning in April of 2001; allegedly discharged petroleum effluent into Yap waters; and ultimately grounded in the Yap harbor, the existence of the bareboat charter leads to the conclusion that personal jurisdiction over vessel owner does not lie under the doing business provision of the FSM long-arm statute notwithstanding the presence of the vessel here. Yap v. M/V Cecilia I, 13 FSM R. 403, 412 (Yap 2005).

When a vessel owner never purposefully availed himself of the privilege of conducting activities in the FSM because of the bareboat charter of his vessel, for the court to exercise in personam jurisdiction over the vessel owner would violate well established notions of fair play and substantial justice. The vessel owner's motion to dismiss will be granted and he will be dismissed as a defendant. Yap v. M/V Cecilia I, 13 FSM R. 403, 412 (Yap 2005).

The court has personal jurisdiction over a vessel's owner, charter, and manager, as each did business in the State of Yap with regard to the vessel's operation. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 414 (Yap 2006).

Exploitation of any economic resources in the FSM, is one of the grounds for personal jurisdiction in the FSM's long-arm statute. FSM v. Fu Yuan Yu 096, 16 FSM R. 1, 3 (Pon. 2008).

A corporation submits itself to the personal jurisdiction of the FSM Supreme Court if by an agent it engages in the exploitation of economic resources within the FSM exclusive economic zone. FSM v. Fu Yuan Yu 096, 16 FSM R. 1, 3 (Pon. 2008).

While there is no statutory definition of exploitation of an economic resource, these words' plain meaning leads to the conclusion that it includes fishing because the FSM's fisheries are undoubtedly a natural resource, marine in character, that are subject to economic exploitation as a result of the market demand for fish. It follows that fishing in the FSM EEZ constitutes the exploitation of a natural resource that subjects a party to the personal jurisdiction of the FSM Supreme Court. FSM v. Fu Yuan Yu 096, 16 FSM R. 1, 3 (Pon. 2008).

The Trust Territory's long-arm statute for the Trust Territory courts' jurisdiction is 6 F.S.M.C. 131, which statute is thus obsolete. The FSM's long-arm statute is codified at 4 F.S.M.C. 204. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 297, 302 n.2 (Yap 2012).

A motion to dismiss Yuh Yow Fishery will be denied when the allegations in the amended complaint are sufficient to show personal jurisdiction over Yuh Yow Fishery if the plaintiffs succeed in proving the alter ego allegations that Yuh Yow Fishery is the alter ego of the corporations that own the vessels since Yuh Yow Fishery would have operated vessels that are alleged to have caused damage while in FSM waters. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 297, 302 (Yap 2012).

The FSM Supreme Court can exercise personal jurisdiction over persons not found in the FSM under the FSM "long-arm" statute so long as the exercise of jurisdiction does not deny the defendant due process of law as guaranteed by article IV, section 3 of the Constitution. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 54 (Yap 2013).

The FSM Supreme Court applies a minimum contacts analysis to determine the extent to which the FSM long-arm statute may be used consistently with due process to exert jurisdiction over a non-forum defendant. Under the minimum contacts doctrine a defendant must have certain minimum contacts with a forum such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 54 (Yap 2013).

The FSM Supreme Court has personal jurisdiction, under 4 F.S.M.C. 204(1)(c), over a cause of action that arises from the operation of a vessel or craft within the FSM territorial waters. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 54 (Yap 2013).

When a case or dispute is related to or "arises out of" a defendant's contacts with the forum, a relationship among the defendant, the forum, and the litigation is the essential foundation of in personam jurisdiction. A case or dispute arising out of contacts with the forum may be referred to as specific jurisdiction. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 55 (Yap 2013).

"Specific" jurisdiction requires a showing of three distinct elements: 1) the nonresident defendant must purposefully direct his activities or consummate some transaction with the forum or residents thereof: or perform some act by which he purposefully avails himself of the conducting activities in the forum, thereby invoking the benefits and protections of its laws; 2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and 3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 55 (Yap 2013).

When two of the defendants purposefully directed their activities to refloat a vessel stranded in FSM territorial waters and they purposefully availed themselves of the privilege of attempting salvage operations in FSM territorial waters for which the stranded vessel's owners hired them and when another defendant directed its vessel to FSM territorial waters to assist the stranded vessel and the plaintiffs' claims arise from that attempted assistance, the plaintiffs' claims against those defendants arise solely out of their activities in FSM territorial waters and the FSM Supreme Court's exercise of personal jurisdiction over those defendants is reasonable because, if for no other reason, it would be unreasonable for any other forum to exercise jurisdiction over the plaintiffs' claims. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 55 (Yap 2013).

When the defendants contend that the one time they were in FSM territorial waters they did not commit any tortious acts so that they do not have the minimum contacts necessary for the FSM Supreme Court to exercise jurisdiction over them, their argument is actually not a claim that they did not have minimum contacts needed for personal jurisdiction but rather that they did not commit the minimum acts necessary to have committed a tort within FSM territorial waters. This is a defense on the merits – that the plaintiffs cannot prove the tort's elements. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 55 (Yap 2013).

A defense that no damages can be proved and that no duty was breached is a defense on the merits. It is not a defense that the defendants lack the minimum contacts with the FSM so that the litigation against them would offend due process and traditional notions of fair play and substantial justice. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 55-56 (Yap 2013).

Under the FSM long-arm statute, while the defendants have sufficient minimum contacts with the FSM for the FSM Supreme Court to exercise personal jurisdiction over them since the plaintiffs' claims against the defendants arise from their actions within FSM territorial waters which allegedly caused damages to the interests of FSM citizens, this does not mean that the defendants might not prevail on a summary judgment motion or that the plaintiffs will be able to prove these defendants liable at trial, but in this instance it is proper for the court to exercise personal jurisdiction over them. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 56 (Yap 2013).

A "long-arm statute" is a legislative act that provides for personal jurisdiction over persons and corporations who are not residents of the state or country, and who go into a state or country voluntarily, directly or by an agent, for limited purposes, and for claims which are related to those purposes. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 209 n.1 (Yap 2015).

The FSM Supreme Court may exercise personal jurisdiction over non-residents for any cause of action

that arises from the transaction of any business within the FSM, the commission of a tortious act within the FSM; and contracting to insure any person, property, or risk located within the FSM at the time of contracting. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 210 (Yap 2015).

Insuring vessels that later navigate through FSM waters is not, by itself, sufficient to give the court personal jurisdiction over the insurer. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 210 (Yap 2015).

Since the FSM long-arm statute only requires for personal jurisdiction that the defendant be a party to a contracting to insure a risk located in the FSM, it may cover an agency providing underwriting and claims services for the actual insurers at Lloyd's of London. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 210-11 n.2 (Yap 2015).

Since the FSM long-arm statute specifically provides for personal jurisdiction over non-residents contracting to insure any person, property, or risk located within the FSM at the time of contracting, it does not allow the court to exercise personal jurisdiction over an insurer that insured a vessel that was not located in the FSM, but was in Singapore at the time of contracting for marine insurance. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 211 (Yap 2015).

The court may not have personal jurisdiction over an insurer when the insurer did not sell insurance in the FSM and did not provide insurance-like services to its insureds when they were present in the FSM. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 211 (Yap 2015).

Without a direct action statute, an injured third-party cannot sue an insurer directly because an insurer has no contractual obligation to persons other than its insured, at least until a court determines the liability of its insured and the insurer cannot be joined as a party to a lawsuit to determine that liability. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 211 (Yap 2015).

Even without a direct action statute, an insurer with world-wide coverage could expect to be called upon to help defend its insured in FSM courts. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 211 (Yap 2015).

The reach of the FSM's long-arm statute is circumscribed by the constitutional requirement that the putative defendant must have "minimum contacts" with the forum so that requiring him to litigate here does not offend traditional notions of fair play and substantial justice. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 212 (Yap 2015).

In analyzing the degree and extent of a defendant's business contacts with the forum jurisdiction, it is the nature and quality of acts and not their number that determines whether business transactions have occurred. It does not mean that any single act suffices to allow personal jurisdiction. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 212 (Yap 2015).

Two e-mails and a letter that the defendant sent to recipients in the FSM and a letter of undertaking in a civil action, are insufficient to establish the minimum contacts necessary to establish personal jurisdiction over the defendant. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 212 (Yap 2015).

When the FSM plaintiffs are not parties to the insurance contract that the defendant allegedly tortiously breached with its I-Kiribati or Taiwanese insured; when it was to that insured that the economic harm was targeted although that harm had a secondary effect in the FSM; when the insurer has no meaningful presence in the FSM; and when the tortious acts that the defendant is alleged to have committed, were directed toward and targeted its insured, not the plaintiffs, personal jurisdiction is not established over the

defendant because, since the plaintiffs' claims against the defendant are claims assigned to the plaintiffs by the insured, the case, at its heart, is a dispute between the insured and the insurer over insurance coverage. While an insurer who issues a policy under which it has a duty to defend its insured anywhere in the world, must expect, if the need arises, to defend its insured against a third-party's claim in the FSM, it cannot reasonably expect to be sued by its insured anywhere in the world in a dispute over insurance coverage. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 212 (Yap 2015).

For the FSM Supreme Court to properly exercise jurisdiction under the FSM long-arm statute, a defendant must have certain minimum contacts with an FSM forum such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 234 (App. 2017).

Whether a defendant's conduct amounts to the requisite minimum contacts necessary for the court to exercise personal jurisdiction over it, requires the court to undertake a particularized inquiry about the extent to which the defendant purposefully availed itself of the benefits of FSM laws. This "particularized inquiry" is a necessarily fact-intensive investigation into the alleged facts that constitute the conduct by which the defendant established minimum contacts. Since it would be impossible for the appellate court to determine the trial court's jurisdiction over a defendant without reference to the trial court record, personal jurisdiction cannot be seen as a "pure" question of law, and because the issue is not a pure question of law, it cannot be properly certified for interlocutory appeal. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 234-35 (App. 2017).

– Removal

A party named as a defendant in state court litigation which falls within the scope of article XI, section 6(b) of the Constitution may invoke national court jurisdiction through a petition for removal and is not required to file a complaint. U Corp. v. Salik, 3 FSM R. 389, 394 (Pon. 1988).

Prolonged delay in seeking removal, as well as affirmative steps, such as filing a complaint in the state court, or filing a motion aimed at obtaining a substantive state court ruling, should normally be regarded as signaling acquiescence of a party to state court jurisdiction. U Corp. v. Salik, 3 FSM R. 389, 394 (Pon. 1988).

Jurisdiction based upon diversity of citizenship between the parties is concurrent in the Supreme Court and the national courts, and therefore a party to state court litigation where diversity exists has a constitutional right to invoke the jurisdiction of the national court. In re Estate of Hartman, 4 FSM R. 386, 387 (Chk. 1989).

If national court jurisdiction exists the national court should promptly grant the petition to remove. Thereafter the national court can entertain a motion to abstain or to certify specific issues to the state court. Proceedings in the national court do not have to stop while a certified issue is presented to a state court. Etscheit v. Adams, 5 FSM R. 243, 246 (Pon. 1991).

Where, for six and a half years after the national court had come into existence the noncitizen petitioners made no attempt to invoke the national court's jurisdiction, the noncitizen petitioners affirmatively indicated their willingness to have the case resolved in court proceedings, first in the Trust Territory High Court and later in Pohnpei state court, and thus have waived their right to diversity jurisdiction in the national courts. Etscheit v. Adams, 5 FSM R. 243, 247-48 (Pon. 1991).

The fact that a "tactical stipulation," made in 1988 to eliminate all noncitizens as parities to the litigation and thus place the litigation within the sole jurisdiction of the state court, may have been violated in 1991, does not retroactively change the effect of the stipulation for purposes of jurisdiction. Etscheit v. Adams, 5 FSM R. 243, 248 (Pon. 1991).

A motion for removal will be denied where, in an action in eminent domain under Truk state law the only defense available are those relating to the taking, and the counterclaims asserted as a basis for national court jurisdiction do not fall within a defense to the taking. Chuuk v. Land Known as Mononong, 5 FSM R. 272, 273 (Chk. 1992).

Removal to the Supreme Court pursuant to article XI section 6(b) of the Constitution cannot be ordered if there is no diversity of citizenship among the parties to the case pending in the state court. Etscheit v. Adams, 5 FSM R. 339, 341 (App. 1992).

Where a party petitions for removal after denial of its motion to dismiss brought in state court and the motion to dismiss was filed in lieu of answering the compliant and was not argued by the parties, such action will be considered a defense to suit on procedural grounds rather than a consent to state court adjudication of the merits such that waiver of the right to remove may not be implied. Mendiola v. Berman (I), 6 FSM R. 427, 428 (Pon. 1994).

If the FSM national court takes jurisdiction in a removal case all prior state court orders would remain in effect and record of all prior proceedings in the state court may be required to be brought before the court. Pohnpei v. M/V Zhong Yuan Yu #606, 6 FSM R. 464, 466 (Pon. 1994).

An attorney disciplinary proceeding in state court for violations of state disciplinary rules may not be removed to the FSM Supreme Court. Berman v. Santos, 7 FSM R. 231, 241 (Pon. 1995).

FSM Supreme Court General Court Order 1992-2 sets forth the governing procedures for the removal of state court actions to the FSM Supreme Court. Removal is effected upon compliance with these procedures. The state court takes no further action following removal unless and until a case is remanded. Wilson v. Pohnpei Family Headstart Program, Inc., 7 FSM R. 411, 412 (Pon. 1996).

A petition for removal must be accompanied by a short and plain statement of the facts which entitle the party to removal together with a copy of all process, pleadings and orders served upon the parties in the action. Wilson v. Pohnpei Family Headstart Program, Inc., 7 FSM R. 411, 412 n.2 (Pon. 1996).

When a case has been removed from state court after improperly pleading as a party a diverse citizen, it will be remanded as improvidently removed. Wilson v. Pohnpei Family Headstart Program, Inc., 7 FSM R. 411, 413-14 (Pon. 1996).

Another court's purported lack of subject matter jurisdiction over a case is not a basis for removing that case to the FSM Supreme Court. Rather, the basis for removing a state court case to the FSM Supreme Court is the FSM Supreme Court's jurisdiction to hear the case in question. Damarlane v. Harden, 8 FSM R. 225, 226 (Pon. 1998).

Any action brought in a state court of which the trial division of the FSM Supreme Court has jurisdiction may be removed by any party to the trial division of the FSM Supreme Court. This includes cases involving parties of diverse citizenship. Damarlane v. Harden, 8 FSM R. 225, 226 (Pon. 1998).

In order to remove a case from a state court to the FSM Supreme Court, the moving party must file a verified petition with the FSM Supreme Court within sixty days from the date that the party receives, through service or otherwise, a copy of an initial or amended pleading, motion, order or other paper from which it may first be ascertained that the case is removable. The petition for removal must contain a short and plain statement of the facts which entitle the party to removal along with a copy of all process, pleadings and orders served upon or by the moving party in such action. Damarlane v. Harden, 8 FSM R. 225, 227 (Pon. 1998).

A case may be removed from a municipal court to the FSM Supreme Court when diversity of

citizenship exists. Damarlane v. Harden, 8 FSM R. 225, 227 (Pon. 1998).

Removal to the FSM Supreme Court is effected when, promptly after filing a verified removal petition together with copies of all state court process, pleadings and orders, the party seeking removal has given written notice thereof to all parties and has filed a copy of the petition with the clerk of the state court. Porwek v. American Int'l Co. Micronesia, 8 FSM R. 436, 438 (Chk. 1998).

When removing a case to the FSM Supreme Court, a careful attorney ought to promptly notify the FSM Supreme Court when a copy of the removal petition has been filed with the state court clerk so as to avoid any confusion or delay. Porwek v. American Int'l Co. Micronesia, 8 FSM R. 436, 438 (Chk. 1998).

An opposition to a removal petition, regardless of how it is styled, is actually a motion to remand the case to state court on the ground that it was improvidently removed. Porwek v. American Int'l Co. Micronesia, 8 FSM R. 436, 438 (Chk. 1998).

The FSM Supreme Court may require a petition for removal of an action to be accompanied by a bond, but the bond requirement is discretionary with the court. Porwek v. American Int'l Co. Micronesia, 8 FSM R. 463, 465 (Chk. 1998).

Actions taken by a state court prior to removal remain in effect when the case is removed until dissolved or modified by the FSM Supreme Court trial division. Porwek v. American Int'l Co. Micronesia, 8 FSM R. 463, 465-66 (Chk. 1998).

When an FSM court rule, such as General Court Order 1992-2 governing removal, has not be construed by the FSM Supreme Court and is similar or nearly identical to a U.S. counterpart, the court may look to U.S. practice for guidance. Porwek v. American Int'l Co. Micronesia, 8 FSM R. 463, 466 n.1 (Chk. 1998).

A removal petition must be filed within sixty days after the receipt by any party, through service or otherwise, of a copy of an initial or amended pleading, motion, order or other paper from which it may first be ascertained that the case is removable. Proper service is not required for the sixty-day period to start running – only receipt, which may be through service or otherwise. Porwek v. American Int'l Co. Micronesia, 8 FSM R. 463, 466 (Chk. 1998).

There is no obstacle to the removal of a defaulted case so long as it is done within the time limit set by the General Court Order 1992-2. Porwek v. American Int'l Co. Micronesia, 8 FSM R. 463, 466 (Chk. 1998).

Although removal after a default judgment is proper if done within time, it cannot be taken to supersede the default judgment which must be regarded as valid until set aside. Porwek v. American Int'l Co. Micronesia, 8 FSM R. 463, 466-67 (Chk. 1998).

A plaintiff's complaint, stating two causes of action for breach of fiduciary duty (both existing under common law), does not arise under the national laws of the FSM so as to confer original jurisdiction on the FSM Supreme Court or show on its face an issue of national law thereby creating removal jurisdiction. David v. San Nicolas, 8 FSM R. 597, 598 (Pon. 1998).

To determine whether a controversy arises under national law, the issue of national law must be an essential element of one or more of the plaintiff's causes of action, it must be disclosed upon the face of the complaint, unaided by the answer, the petition for removal or any pleadings subsequently filed in the case, it may not be inferred from a defense asserted or one expected to be made, and the issue of national law raised must be a substantial one. David v. San Nicolas, 8 FSM R. 597, 598 (Pon. 1998).

When a case has been removed from state court on the ground that it arose under national law but the

plaintiff's complaint only relies upon common law principles of breach of fiduciary duty and as such does not arise under national law because no issue of national law appears on the face of the complaint and no substantial issue of national law is raised, the case will be remanded to the state court where it was initially filed. David v. San Nicolas, 8 FSM R. 597, 598 (Pon. 1998).

After the filing of a removal petition, removal is effected by giving all parties written notice and by filing a copy of the petition with the state court clerk. Enlet v. Bruton, 10 FSM R. 36, 39 (Chk. 2001).

A case that is improvidently removed from a state court must be remanded to that state court. A case is improvidently removed when it has been removed to the FSM Supreme Court and either the FSM Supreme Court did not have subject-matter jurisdiction over the case at the time of its removal, or the party removing the case has waived its right to proceed in the FSM Supreme Court. Enlet v. Bruton, 10 FSM R. 36, 39 (Chk. 2001).

FSM GCO 1992-2, § II(B), similar to 28 U.S.C. § 1446(b), states that the removal petition must be filed within sixty days after the receipt by any party, through service or otherwise, of a copy of an initial or amended pleading, motion, order or other paper from which it may first be ascertained that the case is removable. Enlet v. Bruton, 10 FSM R. 36, 40 (Chk. 2001).

When diverse citizenship was not present on the record in a case when it was removed, it cannot be created by the FSM Supreme Court's order when the court lacks the jurisdiction to issue any but procedural orders. Enlet v. Bruton, 10 FSM R. 36, 40 (Chk. 2001).

When the FSM Supreme Court does not have subject-matter jurisdiction in a case, it does not have the authority or jurisdiction to issue an order joining a diverse party, and any such order it did issue would be void for want of jurisdiction. Enlet v. Bruton, 10 FSM R. 36, 40 (Chk. 2001).

For the parties' diversity of citizenship or other grounds to be the basis for removal, it must be present at the time the case is removed. Enlet v. Bruton, 10 FSM R. 36, 40 (Chk. 2001).

A state court filing that does not show diverse parties or other basis for FSM Supreme Court jurisdiction is not a paper from which it may be ascertained that the case is removable. Enlet v. Bruton, 10 FSM R. 36, 40-41 (Chk. 2001).

Delay in effecting a case's removal by not filing a copy of the removal petition with the state court clerk until some days after the sixty days had run might prove fatal to the removal. Enlet v. Bruton, 10 FSM R. 36, 41 (Chk. 2001).

Acts taken before a case first becomes removable cannot be the basis for an implied waiver of the right to remove because there is as yet no right to remove to waive. Enlet v. Bruton, 10 FSM R. 36, 41 (Chk. 2001).

National courts, in removal cases, do not lightly find a waiver of right to invoke its jurisdiction. Enlet v. Bruton, 10 FSM R. 36, 41 (Chk. 2001).

A state court pleading, order, or motion, or amended pleading that is filed much later than the complaint can be a paper "from which it may first be ascertained that the case is removable." Enlet v. Bruton, 10 FSM R. 36, 41 (Chk. 2001).

On remand for improvident removal the state court receives the case in the posture (with pending motions) and state it was in the FSM Supreme Court when that court remanded it. Enlet v. Bruton, 10 FSM R. 36, 41 (Chk. 2001).

A party may file a request in the FSM Supreme Court for its just costs incurred by the improvident

removal of a case. Enlet v. Bruton, 10 FSM R. 36, 41 (Chk. 2001).

In a diversity case, a plaintiff, as the party initiating suit, can file her action in either state or national court, and if she files in state court, the defendant has two alternatives, either to litigate on the merits in state court or to remove the matter to national court. Pernet v. Woodruff, 10 FSM R. 239, 242-43 (App. 2001).

The fact of the parties' diversity, without more, does not preclude a suit in state court because to invoke national court jurisdiction so as to divest a state court of jurisdiction means to remove the action to national court. Pernet v. Woodruff, 10 FSM R. 239, 243 (App. 2001).

The procedure for removal of state court cases to the FSM Supreme Court is controlled by General Court Order 1992-2, adopted pursuant to Article XI, section 9(d) of the Constitution. Pernet v. Woodruff, 10 FSM R. 239, 243 (App. 2001).

To invoke national court jurisdiction in a diversity case in state court, a removal petition must be filed within 60 days of a party's receipt of papers from which his right to remove the case may first be ascertained. Pernet v. Woodruff, 10 FSM R. 239, 243 (App. 2001).

Failure to file a removal petition within the time requirements of FSM General Court Order 1992-2 constitutes a waiver of the right to invoke national court jurisdiction in cases involving parties of diverse citizenship. Pernet v. Woodruff, 10 FSM R. 239, 243 (App. 2001).

In diversity cases, state courts otherwise having jurisdiction pursuant to state law are not divested of jurisdiction unless or until a removal petition is timely filed, prompt written notice of such filing is served upon all parties, and a copy of the petition is filed with the state court clerk. Pernet v. Woodruff, 10 FSM R. 239, 243 (App. 2001).

The FSM Supreme Court Admission Rules apply to all cases properly before the national courts, regardless of where the case originated. There is no exception to these rules, express or implied, for legal representatives whose cases are removed to the national court from a state court. Nett Dist. Gov't v. Micronesian Longline Fishing Corp., 10 FSM R. 520, 521-22 (Pon. 2002).

If diverse parties wished to have a case in the Chuuk State Supreme Court heard in the FSM Supreme Court, they should have removed the case to the FSM Supreme Court using the procedure outlined in FSM General Court Order 1992-2. When they have not, a motion to dismiss filed in the Chuuk State Supreme Court will not invoke that court's jurisdiction. First Hawaiian Bank v. Berdon, 10 FSM R. 538, 539 (Chk. S. Ct. Tr. 2002).

A plaintiff's opposition to a petition to remove, regardless of how it was styled, is actually a motion to remand the case to the state court on the ground that it was improvidently removed. Gilmete v. Adams, 11 FSM R. 105, 107 & n.1 (Pon. 2002).

Removal of state court actions to the FSM Supreme Court is effected upon compliance with the procedures in FSM Supreme Court GCO 1992-2. The state court takes no further action following removal unless and until a case is remanded. Gilmete v. Adams, 11 FSM R. 105, 109 (Pon. 2002).

In order to remove a case from a state court to the FSM Supreme Court, the moving party must file a verified petition with the FSM Supreme Court within sixty days from the date that the party receives, through service or otherwise, a copy of an initial or amended pleading, motion, order or other paper from which it may first be ascertained that the case is removable. The petition for removal must contain a short and plain statement of the facts which entitle the party to remove along with a copy of all process, pleadings and orders upon or by the moving party in such action. Gilmete v. Adams, 11 FSM R. 105, 109 (Pon. 2002).

When diverse citizenship does not appear to be present on the record in a removed case and when,

although defendants have argued that a diverse company is a necessary party, they have not joined it, the case will be remanded to the state court. Defendants may file another petition for removal when diversity of citizenship exists between the parties of record. Gilmete v. Adams, 11 FSM R. 105, 110 (Pon. 2002).

When a case has been properly removed from a municipal court where no complaint was filed, the FSM Supreme Court will require the plaintiff to file a complaint and allow the case to proceed therefrom. Damarlane v. Sato Repair Shop, 11 FSM R. 343, 344 (Pon. 2003).

When a party desires to remove a case from a state court to the FSM Supreme Court trial division, the requirements of General Court Order 1992-2 must be met. A petitioner cannot remove certain causes of action – that is, certain discrete legal issues and claims pertaining to petitioner – that are imbedded in a state court case. Bifurcation of a case is not anticipated nor authorized by GCO 1992-2, which pertains to the transfer of civil actions in their entirety. In re Estate of Helgenberger, 11 FSM R. 599, 600 (Pon. 2003).

Removal is effected when a copy of the verified petition of removal was filed with the state court clerk and the parties were served with written notice thereof. Mailo v. Chuuk, 12 FSM R. 597, 599 (Chk. 2004).

A verified petition for removal must contain a short and plain statement of the facts that entitle the party to removal along with a copy of all process, pleadings and orders served upon or by the moving party in such action. Mailo v. Chuuk, 12 FSM R. 597, 599 (Chk. 2004).

A case is improvidently removed when it has been removed to the FSM Supreme Court and either the FSM Supreme Court did not have subject-matter jurisdiction over the case at the time of its removal, or the party removing the case has waived its right to proceed in the FSM Supreme Court. A case that is improvidently removed from a state court must be remanded to that state court. Mailo v. Chuuk, 12 FSM R. 597, 600 (Chk. 2004).

In deciding whether a case has been improvidently removed from a state court to the FSM Supreme Court, the court must base its decision on whether subject matter jurisdiction existed at the time of removal and not on matter first raised in the case in papers filed in the FSM Supreme Court after removal. Subject matter jurisdiction must be present at the time of removal. Mailo v. Chuuk, 12 FSM R. 597, 600 (Chk. 2004).

When a plaintiff's complaint filed in state court states a cause of action as a violation of his right under the equal protection clause of the FSM Constitution, it asserts a claim that arises under the FSM Constitution, and the FSM Supreme Court had subject-matter jurisdiction when the case was removed. Mailo v. Chuuk, 12 FSM R. 597, 600 (Chk. 2004).

Under FSM General Court Order 1992-2, Section II(D), the filing of a petition for removal to the FSM Supreme Court itself effects removal so long as the specified requirements are met. Shrew v. Sigrah, 13 FSM R. 30, 32 (Kos. 2004).

An opposition to a verified petition to remove is a motion to remand because an opposition to a removal petition, regardless of how it is styled, is actually a motion to remand the case to state court on the ground that it was improvidently removed. Etscheit v. McVey, 13 FSM R. 477, 479 (Pon. 2005).

A case is improvidently removed when it has been removed to the FSM Supreme Court and either the FSM Supreme Court did not have subject-matter jurisdiction over the case at the time of its removal, or the party removing the case had waived its right to proceed in the FSM Supreme Court. Etscheit v. McVey, 13 FSM R. 477, 479 (Pon. 2005).

When the plaintiffs having clearly pled a cause of action arising under national law, they cannot, once the case has been removed to national court, change their minds and say that it was a mistake, that the complaint did not mean what it said, and that instead they really meant to plead a state law cause of action.

The court must take the plaintiffs' pleadings at face value. Etscheit v. McVey, 13 FSM R. 477, 480 (Pon. 2005).

A case stands removed to the FSM Supreme Court trial division when the party seeking removal files in the FSM trial division a verified petition for removal along with all the papers served on or by the removing party. The removing party must file the petition within 60 days of being served with any paper from which it is first ascertainable that the case is removable. San Nicholas v. Neth, 16 FSM R. 70, 71 (Pon. 2008).

A motion to dismiss under Rule 12(b) proceeds on the assumption that the allegations of the complaint are true. Similarly, the complaint's allegations are deemed true for purposes of a motion to remand a removed case to the state court on the basis that the FSM Supreme Court lacks subject matter jurisdiction. San Nicholas v. Neth, 16 FSM R. 70, 72 (Pon. 2008).

When the complaint's allegations do not point to any specific actions that a defendant took on the national government's behalf for which the national government should be held to account; when neither a descriptive allegation that a defendant was a Congress representative nor any other allegation alleges that he was acting as an agent of the FSM national government when he entered into the contract alleged; when the complaint alleges that the contract's purpose was to further the defendant's personal interest by facilitating his reelection to Congress; when the relief requested seeks nothing from the national government, but rather is a request for a joint and several judgment against the defendants individually, looking to the complaint's allegations and considering those as true, the complaint alleges that the defendant was acting for himself personally at relevant times that he allegedly entered into the contract and not as an agent of the national government. Since the only apparent basis for subject matter jurisdiction in this court is that the defendant was an agent of the national government at relevant times, the FSM Supreme Court lacks subject matter jurisdiction and the plaintiff's motion to remand will be granted. San Nicholas v. Neth, 16 FSM R. 70, 72 (Pon. 2008).

If at any time before final judgment it appears that a case was removed from state court improvidently and without jurisdiction, the FSM Supreme Court trial division must remand the case, and the clerk of court will mail a certified copy of the remand order to the state court. San Nicholas v. Neth, 16 FSM R. 70, 73 (Pon. 2008).

Diversity jurisdiction gives concurrent original jurisdiction to the state and national courts. FSM GCO 1992-2 provides for removal of diversity cases from the state to national courts and is directed solely to the issue of the transfer of cases between the state and national courts. It provides a procedure for removal, not authority for dismissal from state court. Muller v. Enlet, 16 FSM R. 92, 94 (Chk. S. Ct. Tr. 2008).

If an independent basis creates exclusive jurisdiction in the national courts, the action must be removed from the state court, and adjudicated in the national forum. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 436 (App. 2014).

Under FSM GCO 1992-2, § II(D), a party has effected removal of a case to the FSM Supreme Court when written notice thereof has been given to all parties and a copy of the petition has been filed with the clerk of the state court. The removal is thus accomplished automatically without any FSM Supreme Court action. Saimon v. Nena, 19 FSM R. 608, 610 (Kos. 2014).

Regardless of how it is styled, an opposition to a verified petition to remove can only be a motion to remand the case to the state court it came from on the ground that it was improvidently removed. Saimon v. Nena, 19 FSM R. 608, 610 (Kos. 2014).

A party may remove a case from state court to the FSM Supreme Court if the case is one over which the FSM Supreme Court would have subject-matter jurisdiction if the case had originally been filed in the FSM Supreme Court; if the removal was effected within 60 days after the receipt by any party, through service or otherwise, of a copy of an initial or amended pleading, motion, order or other paper from which it

may first be ascertained that the case is removable; and if the party removing the case has not previously waived the its right to remove. Saimon v. Nena, 19 FSM R. 608, 611 (Kos. 2014).

A case arises under the FSM Constitution or national law when the FSM Constitutional issue or the national law issue is an essential element of one or more of the plaintiff's causes of action, and it must be disclosed upon the face of the complaint, unaided by the answer, the petition for removal, or any pleadings subsequently filed in the case, and it may not be inferred from a defense asserted or one expected to be made, and the national law issue must be a substantial one. Saimon v. Nena, 19 FSM R. 608, 611 (Kos. 2014).

As a defense raised in the answer to the original complaint, a defendant's due process claims would not make it a case over which the FSM Supreme Court would have jurisdiction because it would not be considered a case arising under the FSM Constitution or national law. Saimon v. Nena, 19 FSM R. 608, 611 (Kos. 2014).

When the Pohnpei Supreme Court granted the FSM Development Bank's motion to intervene, the bank was clearly a party to the action and therefore, entitled to remove the action to the FSM Supreme Court contingent upon the jurisdictional criteria being satisfied. Setik v. Perman, 21 FSM R. 31, 35 (Pon. 2016).

Subject-matter jurisdiction in the FSM Supreme Court is proper in a case involving an FSM Development Bank mortgage foreclosure, on any one of the following as an independent basis: 1) the bank's classification as an instrumentality of the national government; 2) the parties' diversity of citizenship; and 3) the implied challenge to the superiority of FSM Supreme Court; hence a case arising under the FSM Constitution or national law. As such, removal of such a state court case to the FSM Supreme Court is deemed appropriate. Setik v. Perman, 21 FSM R. 31, 37 (Pon. 2016).

Under FSM General Court Order 1992-2, § II(D), the filing of a petition for removal to the FSM Supreme Court itself effects removal so long as all the specified requirements are met. Thus, a party accomplishes the removal automatically without any FSM Supreme Court action. Setik v. Perman, 22 FSM R. 105, 115 (App. 2018).

An opposition to a removal petition must be considered a motion to remand because any opposition to a removal petition, regardless of how it is styled, is actually a motion to remand the case to the state court on the ground that it was improvidently removed. Setik v. Perman, 22 FSM R. 105, 115 (App. 2018).

A case is improvidently removed when it has been removed to the FSM Supreme Court and either the FSM Supreme Court did not have subject-matter jurisdiction over the case at the time it was removed, or the party removing the case has waived its right to proceed in the FSM Supreme Court. Setik v. Perman, 22 FSM R. 105, 115 (App. 2018).

A party's actions in the state court, such as conducting active litigation or waiting more than sixty days, may constitute a waiver of the right to remove that case to the FSM Supreme Court. Setik v. Perman, 22 FSM R. 105, 116 (App. 2018).

When a party's only action in the state court was to file a motion seeking more time to answer or otherwise defend, that filing does not constitute the party's waiver, through active state court litigation, of the right to effect the case's removal. Setik v. Perman, 22 FSM R. 105, 116 (App. 2018).

Although the court must first look to FSM sources of law, when it has not previously construed the effect of an FSM General Court Order 1992-2 provision that is identical or similar to a U.S. counterpart, the court may consult U.S. sources for guidance in interpreting that provision. Setik v. Perman, 22 FSM R. 105, 116 n.10 (App. 2018).

The word "may" in FSM General Court Order 1992-2, § I, grants the discretion to remove to any party in a state court action, not to the FSM Supreme Court. Setik v. Perman, 22 FSM R. 105, 116 (App. 2018).

In a removed case, the case arrives in the FSM Supreme Court in the same posture it was when it left the state court – the court treats everything that occurred in the state court before removal as if it had occurred in the FSM Supreme Court. Setik v. Perman, 22 FSM R. 105, 116 (App. 2018).

In a removed case, the FSM Supreme Court properly treats the complaint that the plaintiffs filed in the state court as if it had been filed in the FSM Supreme Court. Setik v. Perman, 22 FSM R. 105, 117 (App. 2018).

Once the state court granted an intervention as a party-defendant, that party had the same capacity as any party to quickly remove the case to the FSM Supreme Court, if the FSM court had jurisdiction, and to move to dismiss the case for the failure to state a claim, if it thought that was a viable defense. Setik v. Perman, 22 FSM R. 105, 119 (App. 2018).

An oral assertion that the state court retained jurisdiction and that the FSM Supreme Court had not acquired it was a motion to remand the matter to state court, because any opposition to a case's removal is, regardless of how it is styled, actually a motion to remand the case on the ground it was improvidently removed. Panuelo v. Sigrah, 22 FSM R. 341, 350 (Pon. 2019).

A case is "improvidently removed" when either the FSM Supreme Court did not have subject-matter jurisdiction over it when it was removed, or the party that removed the case had already waived its right to proceed in the FSM Supreme Court. An improvidently-removed case will be remanded to the court it was removed from. Panuelo v. Sigrah, 22 FSM R. 341, 350 (Pon. 2019).

The Chief Justice by rule may govern the transfer of cases between state and national courts, and FSM General Court Order 1992-2 is the rule the Chief Justice promulgated to govern the transfer of cases between state and national courts when cases are removed from a state court. It is thus the applicable rule and must be followed. Panuelo v. Sigrah, 22 FSM R. 341, 351 (Pon. 2019).

– Subject-Matter

Where the Trust Territory High Court improperly retained a case for four years after the FSM Supreme Court was certified, and continued to hold the case more than a year after the Truk State Court was established, issuing a judgment based upon filed papers, without there ever having been a trial, let alone an active trial, in the case, by the time judgment was issued the subject matter of the litigation was so plainly beyond the High Court's jurisdiction that its entertaining the action was a manifest abuse of authority. United Church of Christ v. Hamo, 4 FSM R. 95, 119 (App. 1989).

Where a court has dismissed a criminal case for lack of jurisdiction over the crimes for which the defendant was charged, the dismissal does not act as a discharge so as to preclude extradition on the charge. "Discharge" requires both personal and subject matter jurisdiction. In re Extradition of Jano, 6 FSM R. 93, 107-08 (App. 1993).

The Chuuk State Supreme Court has subject matter jurisdiction to hear suits alleging that the legislature has exercised its power to be the sole judge of the qualifications of its members in an unconstitutional manner in violation of the constitutional prohibitions against ex post facto laws. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 265 (Chk. S. Ct. Tr. 1993).

Although, ordinarily, an issue must be raised at the trial level for it to be preserved for appeal, whether a court has subject matter jurisdiction is an issue that may be raised at any time. Hartman v. FSM, 6 FSM R. 293, 296 (App. 1993).

When it appears that the court lacks subject matter jurisdiction the case will be dismissed. Trance v. Penta Ocean Constr. Co., 7 FSM R. 147, 148 (Chk. 1995).

The Chuuk State Supreme Court is a court of general jurisdiction with concurrent original subject matter jurisdiction with other courts to try all civil cases except those matters that are within the exclusive jurisdiction of the national courts. Joeten Motor Co. v. Jae Joong Hwang, 7 FSM R. 326, 327 (Chk. S. Ct. Tr. 1995).

A court with both subject matter jurisdiction of the case and personal jurisdiction over the defendant has complete jurisdiction of the matter. Joeten Motor Co. v. Jae Joong Hwang, 7 FSM R. 326, 327 (Chk. S. Ct. Tr. 1995).

Whether a court has subject matter jurisdiction is an issue that may be raised at any time. Abraham v. Kosrae, 9 FSM R. 57, 59 (Kos. S. Ct. Tr. 1999).

Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. Thus subject matter jurisdiction may never be waived, and may be raised at any time, even after judgment. Island Dev. Co. v. Yap, 9 FSM R. 220, 222 (Yap 1999).

A venue provision that permits a civil action against a defendant who does not live in the FSM to be brought in a court within whose jurisdiction the defendant can be served or his property can be attached does not limit the FSM Supreme Court's subject matter jurisdiction, and does not render the long-arm statute superfluous. Such provisions do not preclude actions which are made procedurally possible by the long-arm statute, which gives litigants the means to effect service on entities not found within the FSM. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204 (Pon. 2001).

The Pohnpei Supreme Court is a court of general jurisdiction, which has subject matter jurisdiction over a landlord/tenant dispute. Pernet v. Woodruff, 10 FSM R. 239, 242 (App. 2001).

A court may raise the issue of jurisdiction at any time because it is the court's duty to insure that jurisdiction exists. Jack v. Paulino, 10 FSM R. 335, 336 (Kos. S. Ct. Tr. 2001).

When an action was filed as an appeal under Kosrae State Code § 11.614, which provides that a Land Commission determination of ownership is subject to appeal, but there was no determination of ownership issued, the Kosrae State Court does not have subject matter jurisdiction to hear it as an appeal. When it appears that the court lacks subject matter jurisdiction, the case will be dismissed. Jack v. Paulino, 10 FSM R. 335, 336 (Kos. S. Ct. Tr. 2001).

Subject matter jurisdiction can be raised at any time by any party or by the court, and if it appears that subject matter jurisdiction does not exist then the case must be dismissed. First Hawaiian Bank v. Engichy, 10 FSM R. 536, 537 (Chk. S. Ct. Tr. 2002).

The Chuuk State Supreme Court is a court of general jurisdiction and has concurrent original jurisdiction to try all civil cases. As such, it may exercise, subject to the principle of forum non conveniens, jurisdiction over contract cases generally, regardless of where the contract was formed, unless exclusive jurisdiction for that particular contract resides in some other court. First Hawaiian Bank v. Engichy, 10 FSM R. 536, 537 (Chk. S. Ct. Tr. 2002).

Lack of jurisdiction over the person is a defense that can be waived, whereas lack of subject matter cannot and requires dismissal. First Hawaiian Bank v. Engichy, 10 FSM R. 536, 538 (Chk. S. Ct. Tr. 2002).

When a court has both subject matter and personal jurisdiction over a case, a motion to dismiss on jurisdictional grounds will be denied. First Hawaiian Bank v. Engichy, 10 FSM R. 536, 538 (Chk. S. Ct. Tr. 2002).

The question of subject matter jurisdiction can be raised at any point in the proceeding. Alafanso v. Suda, 10 FSM R. 553, 554 (Chk. S. Ct. Tr. 2002).

The presence or lack of subject matter jurisdiction can be raised at any time by any party or by the court. Once raised, it must be considered. This is because a decision by a court without subject matter jurisdiction is void, and such occurrences should be avoided. Bualuay v. Rano, 11 FSM R. 139, 145 (App. 2002).

Subject matter jurisdiction cannot be waived, and must be considered no matter how late in the proceeding it is raised. Bualuay v. Rano, 11 FSM R. 139, 145 (App. 2002).

The Chuuk State Supreme Court trial division has original and exclusive jurisdiction over disputes between municipalities and cases arising under the Chuuk Constitution, and, except for those matters which fall under the FSM Supreme Court's exclusive jurisdiction, it has concurrent original jurisdiction to try all civil, criminal, probate, juvenile, traffic and land cases, disputes over the waters in Chuuk, cases involving state laws, and cases in which the state government is a party. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 579 (Chk. S. Ct. Tr. 2003).

Whether a court has subject matter jurisdiction is an issue which may be raised at any time, even after judgment. Ben v. Chuuk, 11 FSM R. 649, 651 (Chk. S. Ct. Tr. 2003).

A statute of limitations is one of the expressly stated affirmative defenses to an action under Civil Rule 8(c). As such, it may be waived. On the other hand, a defect in subject matter jurisdiction may never be waived, and may be raised at any time, even after judgment. Andrew v. FSM Social Sec. Admin., 12 FSM R. 78, 80 (Kos. 2003).

Subject matter jurisdiction may never be waived and may be raised at any time. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 422 (Kos. S. Ct. Tr. 2004).

When, viewing the allegations in the light most favorable to the plaintiffs, the complaint does not state a civil rights cause of action and when no other basis for subject matter jurisdiction, such as diversity of citizenship, is alleged, the complaint does not state a claim upon which the FSM Supreme Court can grant relief, and the defendant's motion to dismiss will be granted. Harper v. William, 14 FSM R. 279, 282 (Chk. 2006).

When a Rule 12(b)(1) motion to dismiss raised a preliminary issue, the court's subject matter jurisdiction, the court had to address that before any trial on the merits could proceed or any decision on the merits could be made. The motion even had to be ruled upon before the defendants could be required to answer the complaint and thus put the case at issue on the merits. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 224 (Chk. S. Ct. App. 2007).

A motion to dismiss for lack of standing is a claim that the court lacks subject matter jurisdiction and is properly filed in lieu of an answer under Rule 12(b)(1), or as a motion to dismiss under Rule 12(h)(3), which can be raised at any time, even after judgment. It is the plaintiff's burden to show that the court has jurisdiction, and that a colorable claim exists. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 217 (Chk. S. Ct. Tr. 2008).

It is within the court's discretion to allow or disallow affidavits and other matters outside the pleadings to be brought in when considering a motion to dismiss challenging the court's subject matter jurisdiction. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 217 (Chk. S. Ct. Tr. 2008).

The court lacks subject-matter jurisdiction over a case when, if applied, the general principle that courts should first consider any non-constitutional grounds that might resolve the issue because

unnecessary constitutional adjudication ought to be avoided, would unmask the case as an election contest and the matter would accordingly be dismissed. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 398 (Chk. 2009).

A court will refrain from addressing whether it has jurisdiction over an election contest when the matter is merely hypothetical and not a justiciable controversy, but if the issue comes properly before the court and if it appears that the court lacks jurisdiction over the complaint's subject matter, the court would dismiss the action. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 411 (Chk. S. Ct. App. 2009).

A court's subject-matter jurisdiction may be raised at any time by a party or by the court. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 419 (App. 2009).

If all the answers to the subject-matter analytical construct questions are no, then subject-matter jurisdiction must be in some (most likely the state) court other than the FSM Supreme Court. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 615 (Pon. 2013).

The FSM Constitution vests the FSM Supreme Court with jurisdiction over a matter when the FSM Development Bank, an instrumentality of the FSM government, is a party. A Pohnpei state law cannot divest the court of that subject matter jurisdiction. FSM Dev. Bank v. Setik, 19 FSM R. 233, 235 (Pon. 2013).

Subject-matter jurisdiction can be raised at any time. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 366 (App. 2014).

An open probate proceeding at the state level is not a bar to national court subject matter jurisdiction as long as the national court does not interfere with the estate's res. Under the longstanding "creditor exception," the national courts have subject matter jurisdiction to appoint an administrator or an administrator pendente lite and to initiate proceedings on behalf of interested third parties. This appointment has no impact on the res of the decedent's estate, does not interfere with administrative decisions regarding the decedent's estate, nor does it affect the distribution of those assets within the state's control. It is a preliminary matter outside of the scope of the probate exception. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 430-31 (App. 2014).

Preference toward state courts adjudicating the bulk of probate matters should be read narrowly, to permit creditors and other third parties to protect financial interests by initiating probate proceedings and resolving many auxiliary matters. The national courts are not barred from exercising subject matter jurisdiction over probate matters, and when an independent basis for jurisdiction is established, the national courts may proceed with the probate matter in its entirety. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 436 (App. 2014).

Lack of subject-matter jurisdiction is a defense that can be raised at any time by any party or by the court. Isamu Nakasone Store v. David, 20 FSM R. 53, 57 (Pon. 2015).

A suit for any damage allegedly caused by a neighbor's pigs would have to be made against the pigs' owner or custodian, and, unless there was diversity of citizenship between the plaintiff and the pigs' owner (an unlikely occurrence), the FSM Supreme Court would not have any jurisdiction over such a claim. Palasko v. Pohnpei, 20 FSM R. 90, 95 (Pon. 2015).

Whether a default judgment granted relief not prayed for in the complaint's demand for judgment; whether the guaranties that were signed were not attached to the promissory notes; whether the judgment was joint and several; and whether one of the guaranties was not signed by the person it should have been signed by but was fraudulently signed by another person, are not determinants of subject-matter jurisdiction. While they may be raised as defenses, none of these grounds is jurisdictional. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 290 (Pon. 2016).

Subject-matter jurisdiction is jurisdiction over the nature of the case and the type of relief sought; the extent to which a court can rule on the conduct of persons or the status of things. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 290 (Pon. 2016).

Whether a judgment is joint and several or not has no affect on whether the court has subject-matter jurisdiction. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 292 (Pon. 2016).

Whenever it appears by suggestion of the parties or otherwise, including being raised as an affirmative defense in the answer, that the court lacks jurisdiction of the subject matter the court must dismiss the action. Eperiam v. FSM, 20 FSM R. 351, 354 & n.1 (Pon. 2016).

Subject-matter jurisdiction entails a court's power to entertain and adjudicate a given type of case. The fundamental requirement for subject matter jurisdiction is a power derived from the FSM Constitution that specifies the class of cases the FSM Supreme Court is granted authority to hear. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 506-07 (App. 2016).

A judgment rendered without the requisite subject-matter jurisdiction is void *ab initio*. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

Like *res judicata*, the concept of jurisdiction over the subject matter is based upon public policy: one dictates the finality of judgments and the other requires litigation to be addressed in the proper forum. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

While courts do not have the power to extend their subject matter jurisdiction, as a practical matter, they must have the power to interpret and determine whether they have subject matter jurisdiction. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 509 (App. 2016).

Unlike personal jurisdiction, which a court can obtain upon the parties' consent or failure to object, the lack of subject-matter jurisdiction is never capable of being waived. In essence, the court either possesses it or it does not; it cannot assert it. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 509 (App. 2016).

Since the requirement of subject matter jurisdiction is never capable of being waived, judgments rendered without such allocation of authority are void *ab initio* and can be attacked at any time. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 509 (App. 2016).

A party may not waive subject matter jurisdiction. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 516 (App. 2016).

Existence of jurisdiction can only be exclusive or non-exclusive/concurrent. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 516 (App. 2016).

Exclusive and concurrent jurisdiction cannot be simultaneously present. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 518 (App. 2016).

In any matter before the court, the issue of standing should be addressed first as it is a threshold issue going to the court's subject matter jurisdiction. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 639 (Pon. 2016).

Subject-matter jurisdiction in the FSM Supreme Court is proper in a case involving an FSM Development Bank mortgage foreclosure, on any one of the following as an independent basis: 1) the bank's classification as an instrumentality of the national government; 2) the parties' diversity of citizenship; and 3) the implied challenge to the superiority of FSM Supreme Court; hence a case arising under the FSM Constitution or national law. As such, removal of such a state court case to the FSM Supreme Court is

deemed appropriate. Setik v. Perman, 21 FSM R. 31, 37 (Pon. 2016).

A standing issue is addressed first, as it is a threshold issue going to a court's subject matter jurisdiction. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 56 (App. 2016).

A dismissal for lack of subject-matter jurisdiction does not preclude a second action on the same claim. Waguk v. Waguk, 21 FSM R. 60, 73 (App. 2016).

While limited, the Kosrae Land Court's subject-matter jurisdiction is broad enough to encompass factual determinations of fraud and misrepresentation to the extent that they affect the validity of titles or conveyances of land. Indeed, that is the Land Court's very purpose. Waguk v. Waguk, 21 FSM R. 60, 73 (App. 2016).

When the Kosrae Land Court itself is implicated in the allegations of fraud, that court is not competent to adjudicate the subject matter. Waguk v. Waguk, 21 FSM R. 60, 74 (App. 2016).

Subject-matter jurisdiction is addressed first because, if the court lacks it, any ruling it makes on other issues would be an advisory opinion (obiter dicta), and the court is not empowered to make advisory opinions. Pohnpei Arts & Crafts, Inc. v. Narruhn, 21 FSM R. 366, 368 (Pon. 2017).

Since the court must dismiss the action whenever it appears by the parties' suggestion or otherwise that the court lacks jurisdiction of the subject matter, the court will dismiss a civil rights action by a municipality against the state without prejudice to any future action in the state court. Kitti Mun. Gov't v. Pohnpei Utilities Corp., 21 FSM R. 408, 409 (Pon. 2017).

A statue of limitation generally is not jurisdictional unless it is a limitations period for claims against the government. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 579 (App. 2018).

Raising a statute of limitation as a bar to a remedy does not deprive a court of jurisdiction to hear the cause in the first instance; the court could not adjudicate the question of proper application of the statute if it did not have subject matter jurisdiction. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 579 (App. 2018).

Raising a statute of limitation as a bar to a remedy does not deprive a court of jurisdiction to hear the cause in the first instance; the court could not adjudicate the question of proper application of the statute if it did not have subject matter jurisdiction. Alik v. Heirs of Alik, 21 FSM R. 606, 621 (App. 2018).

Courts that have subject matter jurisdiction over a case but not venue, have the inherent power to transfer the case to a court with both. Alik v. Heirs of Alik, 21 FSM R. 606, 623 (App. 2018).

The FSM Supreme Court has jurisdiction over a case, regardless of the nature of the case's causes of action, when the FSM Development Bank is a party. Setik v. Perman, 22 FSM R. 105, 115 (App. 2018).

A state court has no jurisdiction over real estate in the jurisdiction of a different sovereign state. Setik v. Perman, 22 FSM R. 105, 119 (App. 2018).

When the court lacks subject-matter jurisdiction over a case, the court may still adjudicate the counterclaim if the court has an adequate independent basis for subject-matter jurisdiction over the counterclaim. Helgenberger v. Helgenberger, 22 FSM R. 244, 248 (Pon. 2019).

Since subject-matter jurisdiction is a threshold matter, the court will address this point before considering the motion's merits. Panuelo v. Sigrah, 22 FSM R. 341, 350 (Pon. 2019).

A statute that acts as a bar to an action does not deprive the court of subject-matter jurisdiction to hear the case in the first instance because the court cannot rule on the statute's proper application – the

statute's effect on the case – if it does not have subject-matter jurisdiction to consider the case. FSM Dev. Bank v. Carl, 22 FSM R. 365, 371 (Pon. 2019).

A statutory bar does not mean that the court would lack subject-matter jurisdiction over the case, but instead it would be an affirmative defense that would bar the plaintiff's claim and require that a judgment be entered for the defendant. FSM Dev. Bank v. Carl, 22 FSM R. 365, 371 (Pon. 2019).

Although parties may stipulate to factual matters, they may not stipulate to interpretations of law. Thus, even though parties may stipulate to a judgment, they cannot stipulate to a court's subject-matter jurisdiction to enter that judgment. Suzuki v. Chuuk, 22 FSM R. 491, 493 (Chk. 2020).

Parties cannot confer subject matter jurisdiction upon the FSM Supreme Court by stipulation, and therefore their agreement to do so is irrelevant. Suzuki v. Chuuk, 22 FSM R. 491, 493 (Chk. 2020).

Because parties may not agree between themselves and stipulate to subject matter jurisdiction, the court has an obligation to independently determine whether it has subject matter jurisdiction. Suzuki v. Chuuk, 22 FSM R. 491, 493-94 (Chk. 2020).

A court, whether trial or appellate, is obliged to notice want of jurisdiction, on its own motion. Suzuki v. Chuuk, 22 FSM R. 491, 494 (Chk. 2020).

When the only basis the plaintiff asserts for subject-matter jurisdiction is that his state court judgments are property and the state's failure to pay is a taking of his property without due process, the plaintiff's suit does not involve subject matter over which the FSM Supreme Court has jurisdiction because the plaintiff's state court judgments are not property, and the state's failure to pay his judgments against it does not violate his due process or civil rights. Suzuki v. Chuuk, 22 FSM R. 491, 494 (Chk. 2020).

When the parties' stipulation to enter a judgment would result in a void judgment, the court must reject the stipulation for judgment and dismiss the case for the lack of subject-matter jurisdiction because whenever it appears that the court lacks jurisdiction of the subject matter, the court must dismiss the action. Suzuki v. Chuuk, 22 FSM R. 491, 494 (Chk. 2020).

– Territorial

In order for a court to have jurisdiction over an action involving real property, particularly an action involving title, the real property must be within that court's territorial jurisdiction. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 110 (Chk. 2001).

Unlike *in personam* defendants, who may under certain circumstances be validly served process in foreign countries, valid service of process on an *in rem* defendant can only be made within the court's territorial jurisdiction. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 (Yap 2012).

A manifest abuse of authority, a judgment obtained unfairly or working a serious injustice, fraud or collusion by a court, fraud, and lack of jurisdiction have been considered grounds to ignore a judgment's validity. Validity fundamentally includes the court's competence to adjudicate the matter with regard to subject-matter jurisdiction, territorial jurisdiction, and notice. Waguk v. Waguk, 21 FSM R. 60, 71 (App. 2016).

When a court exercises jurisdiction over land, it can only exercise that jurisdiction in the nature of an in rem proceeding. In rem proceedings encompass any action in which essential purpose of suit is to determine title to or affect interests in specific property located within the territory over which court has jurisdiction. Setik v. FSM Dev. Bank, 21 FSM R. 505, 518 (App. 2018).

To be able to exercise in rem jurisdiction, the property over which the court is to exercise jurisdiction

must be physically present within the court's territorial jurisdiction and under its control. Setik v. FSM Dev. Bank, 21 FSM R. 505, 518 (App. 2018).

No court located in Chuuk can exercise jurisdiction over land in Pohnpei. Only a court in Pohnpei can do that. Setik v. FSM Dev. Bank, 21 FSM R. 505, 519 (App. 2018).

A court's jurisdiction over land is in the nature of an in rem proceeding. "In rem" proceedings encompass any action in which essential purpose of suit is to determine title to or affect interests in specific property located within the territory over which court has jurisdiction. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

In rem jurisdiction includes registration of land titles, mortgages, and probate proceedings involving land. To exercise in rem jurisdiction, the property over which the court is to exercise jurisdiction must be physically present within the court's territorial jurisdiction and under its control. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

Land on Pohnpei is not physically present in the Chuuk State Supreme Court's territorial jurisdiction. Thus, neither it, nor any court in Chuuk, can exercise jurisdiction over any Pohnpei land. Only a court in Pohnpei can do that. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

Land on Pohnpei cannot be tied up in a Chuuk probate proceeding. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

It is a well established principle of law that a court's jurisdiction does not extend beyond the boundaries of the state of its creation. This is because the authority of every tribunal is necessarily restricted by the territorial limits of the state in which it is established, and any attempt to exercise authority beyond those limits would be deemed in every other forum an illegitimate assumption of power. Setik v. Mendiola, 21 FSM R. 624, 626 (App. 2018).

A state court has no jurisdiction over real estate in the jurisdiction of a different sovereign state. Setik v. Perman, 22 FSM R. 105, 119 (App. 2018).

MANDAMUS AND PROHIBITION

The party seeking a writ of mandamus has the burden of showing that its right to issuance of the writ is clear and indisputable. Senda v. Trial Division, 6 FSM R. 336, 338 (App. 1994).

A denial of a motion to recuse may be reviewed by means of a petition for a writ of prohibition or mandamus. The standard of review is whether the trial judge abused his discretion in denying the motion to recuse. The petitioner must show that the trial judge clearly and indisputably abused his discretion when he denied the motion to disqualify. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 4 (App. 1997).

Although mandamus cases usually involve judges and arise out of pending cases, a case may arise out of an administrative procedure and the public official may be a clerk instead of a judge or justice. Nonetheless the same principles apply, and mandamus may be the appropriate remedy where there is undue delay. In re Certification of Belgrove, 8 FSM R. 74, 78 (App. 1997).

The standards governing the issuance of a writ of mandamus are well-recognized. The exact formulations may, however, differ somewhat. Federated Shipping Co. v. Trial Division, 9 FSM R. 270, 272 (App. 1999).

The power to grant the writ is discretionary. Federated Shipping Co. v. Trial Division, 9 FSM R. 270, 273 (App. 1999).

The party seeking the writ of mandamus has the burden of showing that its right to the writ's issuance is clear and undisputable. Talley v. Timothy, 10 FSM R. 528, 530 (Kos. S. Ct. Tr. 2002).

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

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

Rule 38 damages may be awarded when a mandamus petition is frivolous. FSM Dev. Bank v. Yinug, 12 FSM R. 450, 452 (App. 2004).

A writ of procedendo is a high prerogative writ of extraordinary nature that is an order from a superior court to an inferior court to proceed to judgment without trying to tell the inferior court what its judgment should be. It was the earliest remedy for refusal or neglect of justice by the courts, and, in many jurisdictions, the writ has become obsolete, and a writ of mandamus may be sought instead. Mori v. Hasiguchi, 16 FSM R. 382, 385 n.1 (Chk. 2009).

FSM Appellate Rule 21 is a nearly verbatim adoption of U.S. Federal Appellate Rule 21, and so special consideration should be given to United States decisions regarding application of Appellate Rule 21. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 257 (Pon. 2014).

The rules do not stay trial division proceedings while a writ of mandamus or prohibition is sought. The trial division is therefore free to act unless a stay has been specifically ordered. A writ applicant may seek a stay, first from the trial division, and if unsuccessful there, from the appellate division. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 577, 578 (App. 2016).

When no stay was ever issued (and none apparently ever sought), the trial division justice may, while a petition for a writ of prohibition to disqualify that justice is pending in the appellate division, continue to make such orders, and do all acts, not inconsistent with law or with the rules of procedure and evidence as may be necessary for the due administration of justice. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 577, 578 (App. 2016).

The Kosrae State Court has the power to issue all writs and other process, and may entertain a petition for a writ of mandamus. Tilfas v. Kosrae, 21 FSM R. 81, 93 (App. 2016).

It is not proper to make the lower court a defendant when seeking judicial review of its actions in a higher court. Judicial review of a lower court's acts or omissions is usually accomplished by an appeal to a higher court or, on rare occasion, by a petition for a prerogative writ, such as prohibition or mandamus. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 579 (App. 2018).

A lower court should not be made a defendant when seeking judicial review of its actions in a higher court. Judicial review of a lower court's acts or omissions is properly accomplished by an appeal to a higher court or, on rare occasion, by a petition for a prerogative writ, such as prohibition or mandamus. Alik v. Heirs of Alik, 21 FSM R. 606, 620 (App. 2018).

– Authority and Jurisdiction

The FSM Supreme Court has inherent constitutional power to issue all writs; this includes the traditional common law writ of mandamus. 4 F.S.M.C. 117. Nix v. Ehmes, 1 FSM R. 114, 118 (Pon. 1982).

That the FSM Supreme Court has the general power to issue writs of mandamus is beyond controversy. 4 F.S.M.C. 117. However, exercise of such power must be tempered by sober judgment, for it is equally settled that the writ of mandamus is an extraordinary remedy, the object of which is not to cure a mere legal error or to serve as a substitute for appeal, but to require an official to carry out a clear non-discretionary duty. Damarlane v. Santos, 6 FSM R. 45, 46 (Pon. 1993).

Chuuk State Supreme Court has the power to issue all writs for equitable and legal relief including writs of mandamus and prohibition. Election Comm'r v. Petewon, 6 FSM R. 491, 496 (Chk. S. Ct. App. 1994).

The Supreme Court has the power to issue writs of prohibition or of mandamus but may only do so if the petitioner has met its burden to show that its right to the writ is clear and indisputable. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 4 (App. 1997).

Writs of mandamus are issued in aid of the court's appellate jurisdiction. The court's authority is not confined to issuance of writs in aid of a jurisdiction already acquired by appeal but extends to those cases which are within its appellate jurisdiction although no appeal has been perfected. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 120 (Pon. 2001).

For the purposes of writs of mandamus an inferior court is one that is either placed under the supervisory or appellate control of the other court or is one whose jurisdiction is limited and confined. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 120 (Pon. 2001).

The historic use of writs of prohibition and mandamus directed by an appellate court to an inferior court has been to exert the revisory appellate power over the inferior court. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 120 (Pon. 2001).

The FSM Supreme Court trial division is not a superior tribunal to the Pohnpei Supreme Court, although in certain circumstances the FSM Supreme Court appellate division is such a superior tribunal. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 120 (Pon. 2001).

If it were proper to issue a writ of mandamus directed to the Pohnpei Supreme Court appellate division, it could only be done upon application to the FSM Supreme Court appellate division, not to the trial division. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 120 (Pon. 2001).

The FSM Supreme Court trial division is without jurisdiction to issue a writ of mandamus directed to the Pohnpei Supreme Court. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 120 (Pon. 2001).

The Kosrae State Court has the power to issue writs of mandamus but may only do so if the petitioner has met its burden to show that its rights to the writ is clear and undisputable. The writ of mandamus is an extraordinary remedy, the object of which is to require an official to carry out a clear, non-discretionary duty. Jackson v. Kosrae, 10 FSM R. 198, 199 (Kos. S. Ct. Tr. 2001).

The Kosrae State Court has jurisdiction to issue writs and other process. Sigrah v. Speaker, 11 FSM R. 258, 260 (Kos. S. Ct. Tr. 2002).

The statutory basis for Appellate Procedure Rule 21(a), which provides for application for a writ of prohibition, is 4 F.S.M.C. 117, which provides that the Supreme Court and each division thereof will have power to issue all writs. Urusemal v. Capelle, 12 FSM R. 577, 585 (App. 2004).

While none of the FSM Rules of Civil Procedure appear to govern the disposition of a mandamus petition filed before the trial division, the power of the FSM Supreme Court trial division to entertain a petition for such a writ is beyond dispute. In reaching a disposition of a pending petition, the court will proceed

analogously with Appellate Rule 23(b), which governs mandamus petitions before the appellate division, and provides that if the court is of the opinion that the writ clearly should not be granted, the court will deny the petition even before an answer has been filed. Shrew v. Sigrah, 13 FSM R. 30, 34 (Kos. 2004).

The Chuuk State Supreme Court appellate division has the power to issue writs of prohibition in the appropriate case. Nikichiw v. O'Sonis, 13 FSM R. 132, 138 (Chk. S. Ct. App. 2005).

The Cuuk State Supreme Court derives its authority to issue writs of prohibition from Chk. S.L. No. 190-08, § 4, and Chk. App. R. 21(a). Ruben v. Petewon, 14 FSM R. 177, 182 (Chk. S. Ct. App. 2006).

The FSM Supreme Court has inherent constitutional power to issue all writs, including writs of mandamus and writs of prohibition. The extraordinary writ of mandamus is used to compel public officials to perform a duty ministerial in nature and not subject to the official's own discretion while the extraordinary writ of prohibition is used to prevent a trial court from exceeding its jurisdiction and exercising unauthorized judicial or quasi-judicial power. The writs of mandamus and prohibition are similar in that the former commands the trial court to do something, while the latter commands the trial court not to do something. Etscheit v. Amaraich, 14 FSM R. 597, 600 (App. 2007).

A court that has the power to issue writs of prohibition may only do so if the petitioner has met its burden to show that its right to the writ is clear and indisputable. Albert v. O'Sonis, 15 FSM R. 226, 232 (Chk. S. Ct. App. 2007).

Courts frequently, in addition to prohibiting a specified action, impose affirmative directions or commands found essential to adequate relief. When the lower tribunal is completely without jurisdiction to act, the court has the authority to not only prevent the lower tribunal's excesses but to also correct the results thereof. Albert v. O'Sonis, 15 FSM R. 226, 232 (Chk. S. Ct. App. 2007).

The Chuuk State Supreme Court has the authority to issue a writ of mandamus in a proper case. The Chuuk Judiciary Act gives all state courts the power to issue all writs for equitable and legal relief. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

Unlike a notice of appeal, there are no jurisdictional time frames for filing a petition for a writ of prohibition or for other extraordinary writs. The Appellate Rule 4 time limits for filing notices of appeal do not apply to petitions for extraordinary writs under Appellate Rule 21. In re Sanction of George, 19 FSM R. 131, 132 (App. 2013).

The only procedure available to seek restraint of or injunctive relief against an FSM Supreme Court trial division justice is to be found in Rule 21 of the FSM Rules of Appellate Procedure. It is established in this jurisdiction that a writ of prohibition must be directed to a court or tribunal inferior in rank to the one issuing the writ. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 257 (Pon. 2014).

The structure of the FSM Court system dictates that as a practical matter a writ against a trial division court may only be issued by the appellate division. Therefore, a writ of mandamus or prohibition, even if characterized as an "injunction" or "setting aside an order" may not be issued by one trial division justice against another FSM Supreme Court trial division justice. Appellate Rule 21 writs of prohibition are the sole procedure available for seeking restraint of a trial court judge's actions in a pending case. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 257-58 (Pon. 2014).

The FSM Supreme Court trial division has the authority to issue writs of mandamus and prohibition as they may be necessary for the due administration of justice because the Supreme Court and each division thereof has power to issue all writs and other process not inconsistent with law or with the rules of procedure and evidence established by the Chief Justice, as may be necessary for the due administration of justice. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 288 (App. 2014).

Since a writ of mandamus issues from a higher tribunal to an inferior tribunal, the trial division may issue a writ of mandamus to compel a public official to perform a duty ministerial in nature and not subject to the official's own discretion. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 288 (App. 2014).

An appellate court considers whether a lower court also has original jurisdiction to issue mandamus with the appellate court. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 288 (App. 2014).

The FSM Supreme Court trial division is a tribunal superior to an FSM administrative agency. It has original jurisdiction over writs of mandamus directed to administrative agencies, and may in an appropriate case issue a writ of mandamus directed to the Secretary of Finance and Administration. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 288 (App. 2014).

The FSM Supreme Court appellate and trial divisions have concurrent original jurisdiction to issue writs of mandamus directed to administrative agencies. Though courts of last resort are given original jurisdiction to issue writs of mandamus it does not follow that such courts whose principal function is to exercise appellate or supervisory jurisdiction, will assume original jurisdiction in all cases in which their aid may be sought and which otherwise may be a proper case for the use of the remedy. When concurrent original jurisdiction exists, the petitioner ought to show why it is essential or proper that the writ issue from the appellate court rather than from the lower court, and in the absence of such a showing the appellate court may refuse to issue the writ. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 288-89 (App. 2014).

Although the FSM Supreme Court appellate division and the trial division have concurrent original jurisdiction over the issuance of a writ of mandamus directed to FSM administrative agencies, absent special circumstances, the writ should be sought first in the trial division and any petition for the writ filed in the appellate division should be dismissed without prejudice to any future filing in the trial division. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 289 (App. 2014).

Normally a petition for a writ of mandamus filed in the appellate division when the trial division has concurrent original jurisdiction should be dismissed without prejudice to a future petition filed in the trial division, but when it is obvious that the writ clearly should not be granted, the appellate division can deny it. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 290 (App. 2014).

Since a writ of prohibition can only issue from a superior court against an inferior court, when, although the plaintiffs' complaint requested injunctive relief rather than specifically requesting a writ of prohibition, it is clear that they in actuality were requesting a writ of prohibition, any possibility of relief is plainly foreclosed. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 371-72 (Pon. 2014).

The Pohnpei Supreme Court trial division does not have appellate jurisdiction over Pohnpei municipal or local courts, and therefore the Pohnpei Supreme Court appellate division lacks jurisdiction over a petition for a writ of mandamus directed to a municipal court. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 401, 402 (App. 2014).

A writ of prohibition directed to the Nett District Court trial division must first be sought in the Nett District Court appellate division since that is the tribunal with immediate supervisory power over the Nett District Court trial division. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 401, 403 (App. 2014).

The FSM Supreme Court appellate division may exercise jurisdiction over an appeal from the Nett District Court to the extent that it is an appeal from the Nett District Court appellate division and it may consider a petition for a writ of prohibition if a writ of prohibition has already been sought and denied in the Nett District Court appellate division or to the extent that it is a petition for a writ of prohibition directed to the Nett District Court appellate division. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 401, 403 (App. 2014).

When the Chief Justice of the Nett District Court was acting as a Nett District Court trial division judge, a writ of prohibition directed against him must first be sought from the Nett District Court appellate division.

Loyola ex rel. Edmund v. Hairens, 19 FSM R. 401, 403 (App. 2014).

Under 4 F.S.M.C. 117, the FSM Supreme Court has a constitutional power to issue all writs, including writs of prohibition. Halbert v. Manmaw, 20 FSM R. 245, 248 (App. 2015).

A prerogative writ such as procedendo, mandamus, or prohibition can only be directed to a court or tribunal lower in rank to the one issuing the writ. Chuuk v. Chuuk State Supreme Court App. Div., 21 FSM R. 583, 586 (App. 2018).

Since the FSM Supreme Court appellate division is a court that is superior or higher in rank to the Chuuk State Supreme Court appellate division because, as authorized by the FSM Constitution, FSM Const. art. XI, § 7, and the Chuuk Constitution, Chk. Const. art. VII, § 4. The FSM Supreme Court appellate division may thus, but only in the appropriate and rare and exceptional case, issue the high prerogative writ of procedendo or mandamus directed to the Chuuk State Supreme Court appellate division. Chuuk v. Chuuk State Supreme Court App. Div., 21 FSM R. 583, 586 (App. 2018).

The Chuuk State Supreme Court has the authority to issue a writ of mandamus because the Chuuk State Judiciary Act gives all state courts the power to issue writs for equitable and legal relief. Hartman v. Mailo, 21 FSM R. 657, 659 (Chk. S. Ct. Tr. 2018).

– Nature and Scope

The writ of mandamus is used to compel public officials to perform a duty ministerial in nature and not subject to the official's own discretion. Nix v. Ehmes, 1 FSM R. 114, 118 (Pon. 1982).

The writ of mandamus is an extraordinary remedy, the object is not to cure a mere legal error or to serve as a substitution for appeal, but to require an official to carry out a clear non-discretionary duty. In re Raitoun, 1 FSM R. 561, 562 (App. 1984).

Only under special circumstances that render the matter rare and exceptional should the Federated States of Micronesia Supreme Court appellate division issue a writ of mandamus to alter a trial judge's conduct before the trial court has completed proceedings and reached a final decision. In re Raitoun, 1 FSM R. 561, 562-63 (App. 1984).

The finality requirement and its underlying rationale mandate appellate court restraint and preclude issuance of writs of mandamus and prohibition on an interlocutory basis except in those rare and exceptional circumstances when the precise requirements for issuance of the writ are met and the appellate court in its discretion determines that immediate relief is called for. In re Main, 4 FSM R. 255, 258 (App. 1990).

The writ of mandamus is an extraordinary remedy issued to require a public official to carry out a clear non-discretionary duty. Office of the Public Defender v. FSM Supreme Court, 4 FSM R. 307, 309 (App. 1990).

The writ of mandamus is an extraordinary remedy, the object of which is not to cure a mere legal error or to serve as a substitute for appeal, but to require an official to carry out a clear non-discretionary duty. Senda v. Trial Division, 6 FSM R. 336, 338 (App. 1994).

A writ of mandamus may only force a ministerial act or prevent a clear abuse of power and cannot be used to test or overrule a judge's exercise of discretion. Senda v. Trial Division, 6 FSM R. 336, 338 (App. 1994).

Mere legal error by a judge, even gross legal error in a particular case, as distinguished from a calculated and repeated disregard of governing rules, does not suffice to support issuance of the writ of

mandamus. Senda v. Trial Division, 6 FSM R. 336, 338 (App. 1994).

The single issue presented by a writ of prohibition is whether or not an inferior court or tribunal is without jurisdiction or is about to act in excess of its jurisdiction. Election Comm'r v. Petewon, 6 FSM R. 491, 496 (Chk. S. Ct. App. 1994).

The general requirements for the issuance of a writ of prohibition are that a court or officer is about to exercise judicial or quasi-judicial power, that the exercise of such power is unauthorized and will result in damage or injury for which there is no plain, speedy or adequate legal remedy. Generally, the writ will not be issued unless the petitioner has objected in the inferior court to that court's exercise of jurisdiction in order to allow the lower court the opportunity to rule properly on the question of its own jurisdiction. Election Comm'r v. Petewon, 6 FSM R. 491, 497 (Chk. S. Ct. App. 1994).

The extraordinary writ of prohibition is proper to prevent an inferior tribunal acting without or in excess of jurisdiction which may result in wrong, damage, and injustice and there is no plain, speedy and adequate remedy otherwise available. Election Comm'r v. Petewon, 6 FSM R. 491, 497 (Chk. S. Ct. App. 1994).

The principal and fundamental purpose of the writ of prohibition is to prevent an encroachment, excess, usurpation or assumption of jurisdiction on the part of an inferior court or tribunal. The issuance of the writ is discretionary and used with great caution for the furtherance of justice and to secure order and regularity in judicial proceedings. Election Comm'r v. Petewon, 6 FSM R. 491, 497 (Chk. S. Ct. App. 1994).

It is proper to issue a writ of prohibition to restrain a co-equal court or justice from proceeding in a matter that was already pending before another court or justice. Election Comm'r v. Petewon, 6 FSM R. 491, 498 (Chk. S. Ct. App. 1994).

The purpose of a writ of mandamus is to compel a judicial or other public officer who has failed or refused to perform a non-discretionary act which results from his official station or from operation of law. In re Failure of Justice to Resign, 7 FSM R. 105, 108-09 (Chk. S. Ct. App. 1995).

The determination of whether the power to grant a writ of mandamus should be exercised entails a court's full recognition of the extraordinary nature of the relief requested. Though the power is curative, it is strong medicine and its use must therefore be restricted to the most serious and critical ills. Federated Shipping Co. v. Trial Division, 9 FSM R. 270, 272-73 (App. 1999).

Appellate review, in all but narrowly defined, exceptional circumstances, should be postponed until final judgment has been rendered by the trial court. Hence the party requesting a writ of prohibition or mandamus has the burden of showing a clear and indisputable right thereto, and must show exceptional circumstances necessitating review before final judgment below. Federated Shipping Co. v. Trial Division, 9 FSM R. 270, 273 (App. 1999).

A writ of mandamus is used to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so. This is similar to a writ of prohibition, which, instead of commanding an inferior tribunal to do something, commands it not to do something. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 119-20 (Pon. 2001).

A writ of mandamus is an extraordinary remedy the purpose of which is to cause a public official to carry out his or her clear, nondiscretionary duty. FSM Dev. Bank v. Director of Commerce & Indus., 10 FSM R. 317, 319 (Kos. 2001).

Given the nature of the remedy of mandamus, and the caution exercised in affording it, it is important that the right sought to be enforced be clear and certain. There must be an immediate right to have the act in question performed, and such right must be specific, well defined, and complete, so as not to admit of any reasonable controversy. FSM Dev. Bank v. Director of Commerce & Indus., 10 FSM R. 317, 319 (Kos.

2001).

Five elements must be present before the court can exercise its discretion to issue a writ of mandamus: 1) the respondent must be a judicial or other public officer; 2) the act to be compelled must be non-discretionary or ministerial; 3) the respondent must have a clear legal duty to perform the act; 4) the respondent must have failed or refused to perform the act; and 5) there must be no other adequate legal remedy available. Each of these five requirements must be satisfied. Talley v. Timothy, 10 FSM R. 528, 530 (Kos. S. Ct. Tr. 2002).

Five elements must be present before the court can exercise its discretion to issue a writ of mandamus: 1) the respondent must be a judicial or other public officer; 2) the act to be compelled must be non-discretionary or ministerial; 3) the respondent must have a clear legal duty to perform the act; 4) the respondent must have failed or refused to perform the act; and 5) there must be no other adequate legal remedy available. Benjamin v. Attorney General Office Kosrae, 10 FSM R. 566, 568 (Kos. S. Ct. Tr. 2002).

The writ of mandamus is an extraordinary remedy, the object is not to cure a mere legal error or to serve as a substitute for appeal, but to require an official to carry out a clear nondiscretionary duty. The writ's purpose is to compel a judicial or other public officer who has failed or refused to perform a non-discretionary act which results from his official station or from the operation of law. Talley v. Timothy, 10 FSM R. 528, 530 (Kos. S. Ct. Tr. 2002).

A non-discretionary or ministerial act may be established by the Constitution, by state law or by regulation. Benjamin v. Attorney General Office Kosrae, 10 FSM R. 566, 568 (Kos. S. Ct. Tr. 2002).

The writ of mandamus is an extraordinary remedy, the object of which is not to cure a legal error or to serve as a substitute for appeal, but to require an official to carry out a clear non-discretionary duty. A writ of mandamus may only force a ministerial act or prevent a clear abuse of power and cannot be used to test or overrule a judge's exercise of discretion. FSM Dev. Bank v. Yinug, 11 FSM R. 405, 409 n.3 (App. 2003).

A writ of mandamus is an extraordinary remedy, the object of which is not to cure a legal error or to serve as a substitute for appeal, but to require an official to carry out a clear non-discretionary duty. The writ may only force a ministerial act or prevent a clear abuse of power; it cannot be used to test or overrule a judge's exercise of discretion. It issues only where there is no other adequate remedy available. FSM Dev. Bank v. Yinug, 11 FSM R. 437, 441 (App. 2003).

Issuance now of a writ of mandamus cannot serve as a substitute for the pending appeal. FSM Dev. Bank v. Yinug, 11 FSM R. 437, 441 (App. 2003).

A mandamus action is an extraordinary remedy that is to be reserved for rare and exceptional circumstances. The requirements for mandamus relief are that 1) the respondent must be a public official; 2) the action sought to be compelled must be nondiscretionary or ministerial; 3) the respondent must be under a clear duty to perform the act; 4) the respondent must have failed or refused to do the act; and 5) no other remedy must exist. Shrew v. Sigrah, 13 FSM R. 30, 33 (Kos. 2004).

In order to state a claim for mandamus relief, a petitioner must allege that the respondent official owes him or her a duty so plainly described as to be free from doubt. Shrew v. Sigrah, 13 FSM R. 30, 33 (Kos. 2004).

Presumption and belief, irrespective of who makes the assumption or holds the belief, are insufficient to support allegations entitling a petitioner to mandamus relief. Shrew v. Sigrah, 13 FSM R. 30, 34 (Kos. 2004).

The general requirements for the issuance of a writ of prohibition are that: a court or officer is about to exercise judicial or quasi-judicial power, and the exercise of power is unauthorized and will result in damage or injury for which there is no plain, speedy or adequate legal remedy. Ordinarily, the writ will not issue

unless the petitioner has objected in the lower court to that court's exercise of jurisdiction. Ruben v. Petewon, 14 FSM R. 177, 182 (Chk. S. Ct. App. 2006).

The court is mindful of its duty to issue the extraordinary writ of prohibition with great caution and is also mindful that it is especially important to exercise the writ in those cases where it is necessary to confine a lower court to its proper function. Ruben v. Petewon, 14 FSM R. 177, 187 (Chk. S. Ct. App. 2006).

The FSM Supreme Court has inherent constitutional power to issue all writs, including writs of mandamus and writs of prohibition. The extraordinary writ of mandamus is used to compel public officials to perform a duty ministerial in nature and not subject to the official's own discretion while the extraordinary writ of prohibition is used to prevent a trial court from exceeding its jurisdiction and exercising unauthorized judicial or quasi-judicial power. The writs of mandamus and prohibition are similar in that the former commands the trial court to do something, while the latter commands the trial court not to do something. Etscheit v. Amaraich, 14 FSM R. 597, 600 (App. 2007).

A writ of mandamus or prohibition is an extraordinary remedy, the object of which is not to cure a mere legal error or to serve as a substitute for appeal, but to require an official to carry out a clear, nondiscretionary duty. Such a writ may only force a ministerial act or prevent a clear abuse of power and cannot be used to test or overrule a judge's exercise of discretion. Mere legal error by a judge, even gross legal error in a particular case, as distinguished from a calculated and repeated disregard of governing rules, does not suffice to support the issuance of a writ of mandamus or prohibition. The issuance of writs is discretionary and must be used with great caution. Etscheit v. Amaraich, 14 FSM R. 597, 600 (App. 2007).

Only under special circumstances that render the matter rare and exceptional should the FSM Supreme Court appellate division issue a writ of mandamus or prohibition to alter a trial judge's conduct before the trial court has completed the proceedings and reached a final decision. The finality requirement and its underlying rationale mandate appellate court restraint, and preclude issuance of writs of mandamus and prohibition on an interlocutory basis, except in those rare and exceptional circumstances when the precise requirements for issuance of the writ are met and the appellate court, in its discretion, determines that immediate relief is necessitated. Etscheit v. Amaraich, 14 FSM R. 597, 600 (App. 2007).

The FSM Supreme Court's exercise of its power to issue writs of mandamus and prohibition must be tempered by sober judgment, since such writs are extraordinary remedies. The determination whether to grant a writ of mandamus or prohibition involves the court's full recognition of the extraordinary nature of the relief requested. Though the power is curative, it is strong medicine and its use must be restricted to the most serious and critical ills. Etscheit v. Amaraich, 14 FSM R. 597, 600 (App. 2007).

The five elements that must be present in order for the FSM Supreme Court to exercise its discretion to issue a writ of mandamus or prohibition are: 1) the respondent must be a judicial or other public officer; 2) the act to be compelled must be non-discretionary or ministerial; 3) the respondent must have a clear legal duty to perform the act; 4) the respondent must have failed or refused to perform the act; and 5) there must be no other adequate legal remedy available. Each of these five elements must be satisfied. Etscheit v. Amaraich, 14 FSM R. 597, 600 (App. 2007).

The party seeking a writ of mandamus has the burden of showing that its right to issuance of the writ is clear and indisputable. Since a prerequisite to the issuance of a writ of mandamus or prohibition is the existence of a clear duty that is being violated by the trial court, no writ will issue when the petitioner has not established that the trial court had any duty, much less a clear duty. Etscheit v. Amaraich, 14 FSM R. 597, 600 (App. 2007).

The general requirements for the issuance of an extraordinary writ of prohibition are that a court or an officer is about to exercise judicial or quasi-judicial power, that the exercise of such power is unauthorized or the inferior tribunal is about to act without or in excess of jurisdiction which may or will result in damage or

injury for which there is no plain, speedy or adequate legal remedy. Nikichiw v. Petewon, 15 FSM R. 33, 37 (Chk. S. Ct. App. 2007).

The single issue presented by a petition for a writ of prohibition is whether or not an inferior court or tribunal is without jurisdiction or is about to act in excess of its jurisdiction. The general requirements for the issuance of an extraordinary writ of prohibition are that a court or an officer is about to exercise judicial or quasi-judicial power and that the exercise of such power is unauthorized or the inferior tribunal is about to act without or in excess of jurisdiction which may or will result in damage or injury for which there is no plain, speedy or adequate legal remedy. Albert v. O'Sonis, 15 FSM R. 226, 231 (Chk. S. Ct. App. 2007).

A writ of prohibition is an extraordinary remedy, the object of which is not to cure a mere legal error or to serve as a substitute for appeal. Such a writ may only prevent a clear abuse of power and cannot be used to test or overrule a judge's exercise of discretion. Mere legal error by a judge, even gross legal error in a particular case, as distinguished from a calculated and repeated disregard of governing rules, does not suffice to support the issuance of a writ of prohibition. The issuance of writs is discretionary and must be used with great caution. Albert v. O'Sonis, 15 FSM R. 226, 231 (Chk. S. Ct. App. 2007).

A writ of mandamus is used to confine an inferior tribunal to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so, which is similar to a writ of prohibition that, instead of commanding an inferior tribunal to do something, commands it not to do something. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20-21 (Chk. S. Ct. Tr. 2011).

The historic use of writs of prohibition and mandamus directed by an appellate court to an inferior tribunal has been to exert the revisory appellate power over the inferior tribunal. For the purpose of a writ of mandamus an inferior tribunal is one that is either placed under the supervisory or appellate control of the other court or is one whose jurisdiction is limited and confined. The Chuuk State Election Commission is an agency or tribunal inferior to the Chuuk State Supreme Court. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 21 (Chk. S. Ct. Tr. 2011).

The five elements that must be present before the court can exercise its discretion to issue a writ of mandamus are: 1) the respondent must be a judicial or other public officer or body, 2) the act to be compelled must be non-discretionary or ministerial, 3) the respondent must have a clear legal duty to perform the act, 4) the respondent must have failed or refused to perform the act, and 5) there must be no other adequate legal remedy available. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 21 (Chk. S. Ct. Tr. 2011).

A writ of prohibition is an extraordinary remedy, the object of which is not to cure a mere legal error or to serve as a substitute for appeal. Such a writ may only prevent a clear abuse of power and cannot be used to test or overrule a judge's exercise of discretion. Mere legal error by a judge, even gross legal error in a particular case, as distinguished from a calculated and repeated disregard of governing rules, does not suffice to support the issuance of a writ of prohibition. Ehsa v. Johnny, 19 FSM R. 175, 177 (App. 2013).

For the FSM Supreme Court to exercise its discretion to issue a writ of mandamus or prohibition: 1) the respondent must be a judicial or other public officer; 2) the act to be compelled must be non-discretionary or ministerial; 3) the respondent must have a clear legal duty to perform the act; 4) the respondent must have failed or refused to perform the act; and 5) there must be no other adequate legal remedy available, and each of these five elements must be satisfied. A writ of mandamus or prohibition is an extraordinary remedy, the object of which is not to cure a mere legal error or to serve as a substitute for appeal, but to require an official to carry out a clear, non-discretionary duty or prevent a clear abuse of power. Tilfas v. Aliksa, 19 FSM R. 181, 184 (App. 2013).

The issuance of writs of mandamus or prohibition must be done with great caution and cannot be used to test or overrule a judge's exercise of discretion, and a mere legal error by a judge, even gross legal error in a particular case, as distinguished from a calculated and repeated disregard of governing rules, will not

suffice to support the issuance of a writ of prohibition. Tilfas v. Aliksa, 19 FSM R. 181, 184 (App. 2013).

The single issue presented by a writ of prohibition is whether an inferior court or tribunal is without jurisdiction or is about to act in excess of its jurisdiction. The extraordinary writ of prohibition is proper to prevent an inferior tribunal acting without or in excess of jurisdiction which may result in a wrong, damage, and injustice when there is no plain, speedy, and adequate legal remedy otherwise available. Tilfas v. Aliksa, 19 FSM R. 181, 184 (App. 2013).

A writ of prohibition cannot be used as a substitute for a pending appeal of attorney sanctions that is currently being briefed, especially when the sanctions have been stayed while that appeal proceeds. That is an adequate legal remedy for the attorney sanctions. Tilfas v. Aliksa, 19 FSM R. 181, 184 (App. 2013).

Five elements must be present in order for the FSM Supreme Court to exercise its discretion to issue a writ of mandamus or prohibition: 1) the respondent must be a judicial or other public officer; 2) the act to be compelled must be non-discretionary or ministerial; 3) the respondent must have a clear legal duty to perform the act; 4) the respondent must have failed or refused to perform the act; and 5) there must be no other adequate legal remedy available. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 194 (App. 2013).

A writ of prohibition is an extraordinary remedy, the object of which is not to cure a mere legal error or to serve as a substitute for appeal, but to require an official to carry out a clear, non-discretionary duty. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 194 (App. 2013).

A writ cannot be used to test or overrule a judge's exercise of discretion, and mere legal error by a judge, even gross legal error in a particular case, as distinguished from a calculated and repeated disregard of governing rules, does not suffice to support the issuance of a writ of prohibition. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 194 (App. 2013).

The single issue presented by a petition for a writ of prohibition is whether an inferior court or tribunal is without jurisdiction or is about to act in excess of its jurisdiction. The extraordinary writ of prohibition is proper to prevent an inferior tribunal acting without or in excess of jurisdiction which may result in a wrong, damage, and injustice when there is no plain, speedy, and adequate remedy otherwise available. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 194 (App. 2013).

The only procedure available to seek restraint of or injunctive relief against an FSM Supreme Court trial division justice is to be found in Rule 21 of the FSM Rules of Appellate Procedure. It is established in this jurisdiction that a writ of prohibition must be directed to a court or tribunal inferior in rank to the one issuing the writ. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 257 (Pon. 2014).

When a case has languished in the Pohnpei Supreme Court trial division since 1991, any party, instead of filing suit in the FSM Supreme Court, could have sought from the Pohnpei Supreme Court appellate division a writ of mandamus or a writ of procedendo as a remedy for the lower Pohnpei state court's refusal or neglect of justice. Such a writ would order the trial court to make a decision in the case without telling the lower court what its decision should be. Carius v. Johnson, 20 FSM R. 143, 145-46 (Pon. 2015).

A writ of prohibition is an extraordinary remedy and may only prevent a clear abuse of discretion; it may not be used to overrule a trial judge's sound exercise of discretion. Halbert v. Manmaw, 20 FSM R. 245, 248-49 (App. 2015).

The determination of whether to grant a writ of mandamus or prohibition involves the court's full recognition of the extraordinary nature of the relief requested, and no writ will issue if the petitioner has not first established that the trial judge had a duty and violated it. Though the power is curative, it is strong medicine and its use must be restricted to the most serious and critical ills. Halbert v. Manmaw, 20 FSM R. 245, 249 (App. 2015).

A writ of procedendo is a high prerogative writ of extraordinary nature that is an order from a superior or higher court to a lower court to proceed to judgment without trying to tell the lower court what its judgment should be. It was the earliest remedy for refusal or neglect of justice by the courts, and, in many jurisdictions, the writ has become obsolete, and a writ of mandamus may be issued instead. Chuuk v. Chuuk State Supreme Court App. Div., 21 FSM R. 583, 586 (App. 2018).

A writ of mandamus is an extraordinary remedy issued to require a public official to carry out a clear, non-discretionary duty. The object of a writ of mandamus is not to cure a mere legal error or to serve as a substitute for appeal, but to require an official to carry out a clear non-discretionary duty. Hartman v. Mailo, 21 FSM R. 657, 659-60 (Chk. S. Ct. Tr. 2018).

A writ of mandamus may only force a ministerial act or prevent a clear abuse of power and cannot be used to test or overrule a judge's exercise of discretion. As the land commission occupies a semi-judicial role, a writ of mandamus may be directed to a Land Commissioner's decisions as well. Hartman v. Mailo, 21 FSM R. 657, 660 (Chk. S. Ct. Tr. 2018).

– Procedure

The proper method to obtain a writ of prohibition to disqualify a member of an appellate panel is to move for disqualification before that member, and, if the recusal motion is denied, to file a petition for a writ of prohibition as a separate matter to be considered by an appellate panel constituted pursuant to Appellate Rule 21(a). Berman v. FSM Supreme Court (I), 7 FSM R. 8, 10 (App. 1995).

The Office of the Attorney General is not a public officer – it is a public office. In order to meet the mandamus requirement of a public officer, the Attorney General should have been named as a respondent. Benjamin v. Attorney General Office Kosrae, 10 FSM R. 566, 568 (Kos. S. Ct. Tr. 2002).

When an amended petition for writ of mandamus is filed, the petitioner will be limited to briefing the issues raised in its original petition for writ of mandamus, not the issues raised in its amended petition, and the amended petition will be designated as a case with a different docket number. FSM Dev. Bank v. Yinug, 11 FSM R. 405, 409 (App. 2003).

An amended petition for a writ of mandamus is considered a separate petition for writ of mandamus involving the same parties. FSM Dev. Bank v. Yinug, 11 FSM R. 437, 440 (App. 2003).

When an application has been made for a writ of mandamus or prohibition directed to an FSM Supreme Court judge the remaining article XI, section 3 FSM Supreme Court justice(s), acting as the appellate division, are eligible to consider the petition. If the remaining fulltime justice(s) are of the opinion that the writ clearly should not be granted, they shall deny the petition. Otherwise, they shall order that an answer be filed. McIlrath v. Amaraich, 11 FSM R. 502, 504 (App. 2003).

The rules do not stay trial division proceedings when a writ of mandamus is sought. FSM v. Wainit, 12 FSM R. 201, 203 (Chk. 2003).

It has been a principle of long standing that a stay will not be granted in a criminal matter while the defendant is seeking a writ of mandamus unless there is a substantial likelihood he will prevail. The court cannot see any reason why the standard should be lower when the defendant has also filed an interlocutory notice of appeal as well as a petition for a writ of mandamus. FSM v. Wainit, 12 FSM R. 201, 204 (Chk. 2003).

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

When the court refused to allow the original petition for a writ of mandamus to be amended and

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

The FSM Supreme Court Director of Court Administration is a court officer who may properly be the subject of a writ of prohibition when no other adequate remedy presents itself since a specially assigned justice's handling of cases specially assigned to him is not possible in the absence of certain administrative steps on the Director's part. Accordingly, the Court Director can properly be named a respondent. Urusemal v. Capelle, 12 FSM R. 577, 585 (App. 2004).

While none of the FSM Rules of Civil Procedure appear to govern the disposition of a mandamus petition filed before the trial division, the power of the FSM Supreme Court trial division to entertain a petition for such a writ is beyond dispute. In reaching a disposition of a pending petition, the court will proceed analogously with Appellate Rule 23(b), which governs mandamus petitions before the appellate division, and provides that if the court is of the opinion that the writ clearly should not be granted, the court will deny the petition even before an answer has been filed. Shrew v. Sigrah, 13 FSM R. 30, 34 (Kos. 2004).

A respondent justice, as is his right under Appellate Procedure Rule 21(b), may file a letter that he does not wish to participate further in the prohibition proceeding against him. Nikichiw v. O'Sonis, 13 FSM R. 132, 134-35 (Chk. S. Ct. App. 2005).

A writ of prohibition directed to a Chuuk State Supreme Court trial division justice is not a matter that the justice is barred from hearing when it was not heard by such justice in the Chuuk State Supreme Court trial division, and in an FSM Supreme Court case, the justice was careful not to decide anything on the merits. Not having expressed an opinion on the merits or done more than issue a preliminary injunction, a justice is not precluded from sitting on a panel considering a petition for writ of prohibition. Ruben v. Petewon, 14 FSM R. 141, 145 (Chk. S. Ct. App. 2006).

A motion to stay proceedings pending consideration of a petition for a writ of mandamus concerning a lawyer's representation is denied when there: 1) is no substantial possibility that an appellate panel would grant the writ, 2) is no showing of irreparable harm if the stay is denied, and 3) are no equities presented that favor a stay. McVey v. Etscheit, 14 FSM R. 268, 271 (Pon. 2006).

When a petition addressed to an appellate justice asking that he disqualify himself has been denied by that justice, the party may file a petition for a writ of prohibition to prevent that justice from continuing to sit on the appeal. When the other two panel justices are of the opinion that the writ of prohibition clearly should not be granted, they will deny the petition. Goya v. Ramp, 14 FSM R. 303, 304 (App. 2006).

A petition for a preemptory writ, such as prohibition or mandamus, is an expedited procedure that does not usually require the certification of a trial court record, or extended briefing, or even a transcript, or oral argument. Amayo v. MJ Co., 14 FSM R. 355, 363 (Pon. 2006).

It is unclear whether a complaint and summons must be served with a petition for a writ of mandamus, but, service of the petition was defective because a summons should have been issued and served. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 19 (Chk. S. Ct. Tr. 2011).

The Legislature is not an indispensable party when a petition seeks a writ commanding the State Election Commission to perform an act, not the Legislature to perform an act. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

When parties seek relief from a final order and interlocutory relief in the nature of relief usually sought by a petition for a writ of prohibition, the two are deemed to be two separate appellate cases with the appeal from the final order proceeding on the usual course of an appeal on the merits and with the petition for a writ of prohibition proceeding separately under a different docket number on the Rule 21 expedited

procedure pertinent to that form of relief. In re Sanction of George, 19 FSM R. 131, 133 (App. 2013).

Under Appellate Rule 21, if the appellate division is of the opinion that a writ of prohibition clearly should not be granted, it must deny the petition. Otherwise, it must order that an answer be filed. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 194 (App. 2013).

The party seeking a writ of mandamus has the burden of showing that its right to issuance of the writ is clear and indisputable. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 289 (App. 2014).

The FSM Supreme Court appellate division may, in the interest of judicial economy, determine if a petition for a writ of mandamus that should have been filed in the trial division clearly should not be granted. If it is of the opinion that the writ clearly should not be granted, it will deny the petition, but if there is any doubt, it will dismiss the petition without prejudice so that the petitioner could file in the trial division. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 289 (App. 2014).

A writ of prohibition directed to the Nett District Court trial division must first be sought in the Nett District Court appellate division since that is the tribunal with immediate supervisory power over the Nett District Court trial division. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 401, 403 (App. 2014).

When the Chief Justice of the Nett District Court was acting as a Nett District Court trial division judge, a writ of prohibition directed against him must first be sought from the Nett District Court appellate division. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 401, 403 (App. 2014).

A writ of mandamus petition will be dismissed without prejudice when the named respondent is the Chuuk State Supreme Court trial division because it is not a public officer – it is a public office. To meet the mandamus requirement of a public officer, the trial judge should be the named respondent. Irons v. Chuuk State Supreme Court Tr. Div., 19 FSM R. 654, 655 (Chk. S. Ct. App. 2015).

A petition for a writ of mandamus will be dismissed when the named respondent is the Chuuk State Election Commission because it is not a public officer – it is a public office. In order to meet the mandamus requirement of a public officer, the Director and Commissioners should have been named as respondents. Narruhn v. Chuuk State Election Comm'n, 20 FSM R. 36, 38 (Chk. S. Ct. App. 2015).

A petition for a writ of prohibition to disqualify a trial court judge is procedurally deficient when it includes a lone exhibit which reflects the trial judge's order; when there is no affidavit stating the reasons for the belief that grounds for disqualification exist; when it lacks a memorandum of points and authorities; and when it includes a motion to stay that does not properly belong before the appellate division since it should have been filed in the trial court. Halbert v. Manmaw, 20 FSM R. 245, 249 (App. 2015).

A petitioner for a writ of prohibition must allege facts that show an appearance of partiality. Without a supporting affidavit, the purported facts underpinning the allegation are absent, and only the petitioner's subjective assertions remain, and when the petitioner's unsupported allegations that the judge is not impartial are purely speculative, they are insufficient to support his disqualification. Halbert v. Manmaw, 20 FSM R. 245, 250 (App. 2015).

When there are too many procedural deficiencies to overlook because the application for a writ of prohibition's certificate of service shows service only on the respondent judge at her office; because the real parties in interest were not served and were not named as real parties in interest in the application or in the case caption; because the petition does not contain a copy of the respondent judge's order denying her recusal, if there was a written order, or a transcript of the denial on the record if the denial was made orally; and because, although the relevant judicial disqualification statute requires that an application to disqualify a justice be accompanied by an affidavit stating the reasons for the belief that grounds for disqualification exist, no affidavit accompanied the petition although an "affidavit attached hereto" is mentioned in the application, the petition for a writ of prohibition will be denied without prejudice to any future application in

which all of the procedural deficiencies have been cured. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 563, 564 (App. 2016).

When the previous application for a writ of prohibition was denied without prejudice because of various deficiencies in the application and a second application for a writ of prohibition is filed, the court clerks will assign it the next available appellate docket number since it is a new application. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 577, 578 (App. 2016).

When membership in the Mwoalen Wahu Ileile En Pohnpei is limited to the traditional paramount chiefs of Pohnpei and the paramount chiefs are only those persons who hold the title of either Nanmwarki or Nahnken and when the justice's father, as Wasahi Sokehs, is not a paramount chief and is therefore not now a member of the plaintiff Mwoalen Wahu Ileile En Pohnpei, and, unless one day he attains the title of Nanmwarki Sokehs, will never be a member of that council, a writ of prohibition, directed to the trial justice, clearly should not be granted. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 577, 579 (App. 2016).

The appellate rules require that a petition for a writ of prohibition be accompanied by proof of service on the respondent judge or justice and on all parties to the action in the trial court. Miju Mulsan Co. v. Carl-Worswick, 20 FSM R. 660, 662 (App. 2016).

Since Appellate Rule 21(a) requires that a petition for a writ of prohibition contain copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition, that would, at a minimum, be the trial judge's written order denying her recusal and the reasons for that denial or, if the denial was oral, a transcript of that denial. Miju Mulsan Co. v. Carl-Worswick, 20 FSM R. 660, 662 (App. 2016).

The relevant judicial disqualification statute requires that an application to disqualify a justice, be accompanied by an affidavit stating the reasons for the belief that grounds for disqualification exist. Miju Mulsan Co. v. Carl-Worswick, 20 FSM R. 660, 662 (App. 2016).

When the procedural deficiencies in a petition for a writ of prohibition are too many to overlook, the petition will be denied without prejudice to any future petition in which these procedural deficiencies have all been cured. Miju Mulsan Co. v. Carl-Worswick, 20 FSM R. 660, 662 (App. 2016).

When a new FSM Supreme Court associate justice has taken the oath of office and is not disqualified, he, as the remaining article XI, section 3 FSM Supreme Court justice is eligible to consider a petition for a writ of prohibition and he alone could deny that petition. But when a specially assigned justice has already sat on the appeal case since his designation in March 2016, both the specially assigned justice and the remaining article XI, section 3 justice will constitute the appellate division for the case. Miju Mulsan Co. v. Carl-Worswick, 20 FSM R. 660, 662 (App. 2016).

When the trial court clearly considered the petition for a writ of mandamus, it did not deprive the petitioner of his procedural due process by denying the writ without first having a hearing. Tilfas v. Kosrae, 21 FSM R. 81, 93 (App. 2016).

The burden of proof lies with the party seeking the writ of mandamus; they must show that the right to issuance of the writ is clear and indisputable. Hartman v. Mailo, 21 FSM R. 657, 660 (Chk. S. Ct. Tr. 2018).

– When May Issue

Where there is no evidence of arbitrary or capricious conduct, the Pohnpei Supreme Court will decline to issue a writ of mandamus compelling the State Legislature to exercise discretionary legislative functions, even though the State Constitution expressly commands the performance of those functions. People of Kapingamarangi v. Pohnpei Legislature, 3 FSM R. 5, 11 (Pon. S. Ct. Tr. 1985).

When a justice is called upon to alter the conduct of a trial judge in a state court before that court has completed proceedings and reached a final decision in a case, the pertinent inquiry is whether or not special circumstances exist so as to render the matter rare and exceptional for issuance of a writ of mandamus. Damarlane v. Santos, 6 FSM R. 45, 46-47 (Pon. 1993).

A request for mandamus so as to avoid a long and costly appeal does not present rare and exceptional circumstances so as to warrant issuance of a writ of mandamus. Damarlane v. Santos, 6 FSM R. 45, 47 (Pon. 1993).

Where the most the petitioner alleges is that the trial justice committed gross legal error and where the matter is already on appeal a writ of mandamus will not issue because it was not shown that the trial justice breached a duty, ministerial in nature, or that he had engaged in a clear abuse of power. Senda v. Trial Division, 6 FSM R. 336, 338 (App. 1994).

In order to overturn the trial judge's denial of a motion to recuse an appellant must show an abuse of the trial judge's discretion. The same standard of review applies to a petition for a writ of prohibition ordering a judge to recuse himself. Nahnken of Nett v. Trial Division, 6 FSM R. 339, 340 (App. 1994).

Since a prerequisite to the issuance of a writ of mandamus is the existence of a clear duty that is being violated by the trial court, no writ will issue when the petitioner has not established that the trial court had any duty, much less a clear duty. Gimnang v. Trial Division, 6 FSM R. 482, 485 (App. 1994).

Where a properly filed notice of appeal has transferred jurisdiction to the appellate court and the trial court is about to conduct either a hearing on a preliminary injunction or a trial on the merits of the case which is the same as those on appeal, it is proper for an appellate court to issue a writ of prohibition to prevent further action by the lower court. Election Comm'r v. Petewon, 6 FSM R. 491, 498 (Chk. S. Ct. App. 1994).

A writ of prohibition is proper to prevent a trial court from exercising equity jurisdiction in an election case. Election Comm'r v. Petewon, 6 FSM R. 491, 500 (Chk. S. Ct. App. 1994).

Where an inferior court has acted in excess of its jurisdiction a writ of prohibition is proper to confine it to its proper role. Election Comm'r v. Petewon, 6 FSM R. 491, 500 (Chk. S. Ct. App. 1994).

When a court has concluded that the inferior court has acted or is about to act in excess of its jurisdiction the next requirement for the writ of prohibition to issue is that a harm or injury will result from the inferior court's action. Election Comm'r v. Petewon, 6 FSM R. 491, 500 (Chk. S. Ct. App. 1994).

Where the Election Commissioner is in the untenable position of being subject to the inconsistent orders of two trial division courts because either order he chooses to obey will cause him to be in violation of the other order and where one trial court's assumption of jurisdiction also interferes with the order and regularity of the judicial proceedings because the same issues affecting the same parties cannot be decided at the same time by a trial division court and the appellate division, it is proper for a writ of prohibition to issue. Election Comm'r v. Petewon, 6 FSM R. 491, 500 (Chk. S. Ct. App. 1994).

When the Election Commissioner is caught between the two competing and inconsistent orders of courts of the same rank, and has pursued the only legal remedy available to him by objecting to the second court's jurisdiction, it is proper for a writ of prohibition to issue to confine the second court to its proper role because the Commissioner has no other plain, speedy or adequate legal remedy. Election Comm'r v. Petewon, 6 FSM R. 491, 501 (Chk. S. Ct. App. 1994).

The writ of mandamus is an extraordinary remedy designed to prevent public officials from committing clear abuses of power. As such, mandamus relief cannot be used as a precaution against future events

that may never occur. Damarlane v. Pohnpei State Court, 6 FSM R. 561, 563-64 (Pon. 1994).

A writ of mandamus is an extraordinary remedy issued to require a public official to carry out a clear non-discretionary duty to which the petitioner has an indisputable right, and it may not be issued for the purpose of requiring a public official to carry out an act that is not within his authority. Katau Corp. v. Micronesian Maritime Auth., 6 FSM R. 621, 622 (Pon. 1994).

Because the Micronesian Maritime Authority has discretion in negotiating and entering into foreign fishing agreements and because statutorily a fishing permit cannot be issued without a signed agreement a court cannot issue a writ of mandamus to compel issuance of a fishing permit because it cannot order performance of a statutorily forbidden act. Katau Corp. v. Micronesian Maritime Auth., 6 FSM R. 621, 624 (Pon. 1994).

A writ of prohibition will only issue to prevent an inferior court or tribunal from acting without or in excess of its jurisdiction. It must be directed to a court or tribunal inferior in rank to the one issuing the writ. As a general rule, it cannot issue from one court to another of equal rank. Berman v. FSM Supreme Court (I), 7 FSM R. 8, 10 (App. 1995).

A writ of prohibition is an extraordinary writ and cannot be issued when there is a plain, speedy and adequate remedy otherwise available that has not been exhausted. Berman v. FSM Supreme Court (I), 7 FSM R. 8, 10 (App. 1995).

A writ of prohibition will not issue to disqualify an FSM Supreme Court justice where the party seeking disqualification has not filed a motion to disqualify or recuse to be considered by the justice whose disqualification is sought. Berman v. FSM Supreme Court (I), 7 FSM R. 8, 10 (App. 1995).

In order for a writ of prohibition to issue to require a judge to recuse himself it must be an abuse of discretion for the judge not to recuse himself. Where it is not apparent what interest of the judge could be substantially affected by the outcome of the proceeding or that the judge is biased or prejudiced the writ will not issue. Berman v. FSM Supreme Court (I), 7 FSM R. 8, 10 (App. 1995).

The central issues of law presented by an application for a writ mandamus are whether the act sought to be compelled is one that is ministerial or non-discretionary and whether the act is one which the respondent as a judicial or other public officer has a clear legal duty to perform. In re Failure of Justice to Resign, 7 FSM R. 105, 108 (Chk. S. Ct. App. 1995).

The five elements that must be present before the court can exercise its discretion to issue a writ of mandamus are: 1) the respondent must be a judicial or other public officer, 2) the act to be compelled must be non-discretionary or ministerial, 3) the respondent must have a clear legal duty to perform the act, 4) the respondent must have failed or refused to perform the act, and 5) there must be no other adequate legal remedy available. In re Failure of Justice to Resign, 7 FSM R. 105, 109 (Chk. S. Ct. App. 1995).

Pursuant to the Chuuk Judiciary Act judges in Chuuk have a clear ministerial, non-discretionary duty to resign from judicial office upon becoming a candidate for a non-judicial office. A writ of mandamus is the specific remedy to compel the performance of such a legally required ministerial act. In re Failure of Justice to Resign, 7 FSM R. 105, 110 (Chk. S. Ct. App. 1995).

Although the Chuuk Constitution does subject members of the judiciary to removal from office by impeachment, the court need not decide if this is the sole method a judge may be removed from office because the issuance of a writ of mandamus is not a removal action. All the court did by issuing the writ is to require the judge to follow the applicable law and remove himself from office by resignation when he became a political candidate. In re Failure of Justice to Resign, 7 FSM R. 105, 110 (Chk. S. Ct. App. 1995).

Because a judge has a ministerial, non-discretionary duty to state on the record his reasons for denying a motion to disqualify himself a writ of prohibition may issue to prevent him from proceeding further on a case until he has done so. Ting Hong Oceanic Enterprises v. Trial Division, 7 FSM R. 642, 643 (App. 1996).

Mandamus will lie to require the performance of a clear non-discretionary duty, or to prevent a clear abuse of power, but it does not lie to control judicial discretion, except when that discretion has been abused. In re Certification of Belgrove, 8 FSM R. 74, 78 (App. 1997).

As with other extraordinary writs, mandamus will not issue unless no other adequate remedy is available. In re Certification of Belgrove, 8 FSM R. 74, 78 (App. 1997).

When there is no right of appeal from the Chief Clerk's deferral of an applicant's certification as an attorney entitled to practice law before the FSM Supreme Court, and no other remedy exists, and when the deferral was without giving the applicant a hearing, and the deferral was continued during an unexplained, lengthy delay in the subsequent disciplinary proceeding, constituting an abuse of the discretion allowed by the admission rules, a writ of mandamus will lie to compel the certification of the applicant. In re Certification of Belgrove, 8 FSM R. 74, 78 (App. 1997).

When the Kosrae State Code Section 18.506 requires a branch head to make and transmit his final decision to the Director of Administration and the appellant within 14 days of receipt of the committee's recommendation and more than 14 days have elapsed since the branch head's receipt with no final decision by him, the branch head has failed to carry out his clear, non-discretionary duty to issue and transmit his final decision within the time period provided by law. The petitioner's right to the writ of mandamus is thus clear and undisputable and the writ will issue. Jackson v. Kosrae, 10 FSM R. 198, 199 (Kos. S. Ct. Tr. 2001).

When a petition for mandamus to order the respondent to sell land does not identify the property, the right which the writ seeks to enforce is not sufficiently specific, well defined, and complete to justify the extraordinary remedy of mandamus. FSM Dev. Bank v. Director of Commerce & Indus., 10 FSM R. 317, 319 (Kos. 2001).

Mandamus lies to compel a public official to perform a clear, nondiscretionary duty. When the petition is devoid of any allegation that the respondent is acting in an official capacity, when the Kosrae deed of trust statute does not confer on the respondent either the obligation or the express power to act as a trustee under a deed of trust, and when the petition is silent as to any other mechanism or source of authority by which the respondent in his official capacity has assumed the duties of the trustee under the deed of trust at issue so as to make the performance of those duties a "clear and nondiscretionary," mandamus is not available. FSM Dev. Bank v. Director of Commerce & Indus., 10 FSM R. 317, 319 (Kos. 2001).

When there is no constitutional provision which specifies the type of food to be provided to inmates and no statutory or regulatory provisions which specify the type of food to be provided to inmates, there is no clear ministerial duty of the Chief of Police which states the type of food to be provided to inmates. Talley v. Timothy, 10 FSM R. 528, 530 (Kos. S. Ct. Tr. 2002).

A court may issue a writ of mandamus when the petitioner has met its burden to show that its right to the writ is clear and undisputable. The writ of mandamus is an extraordinary remedy issued to require a public official to carry out a clear non-discretionary duty. Benjamin v. Attorney General Office Kosrae, 10 FSM R. 566, 568 (Kos. S. Ct. Tr. 2002).

Because no statute or regulation requires the Attorney General or Director of Administration to explain his decision to deny the request for hazardous pay differential, it is not a non-discretionary or ministerial act. Benjamin v. Attorney General Office Kosrae, 10 FSM R. 566, 569 (Kos. S. Ct. Tr. 2002).

Mandamus will be denied when there is another adequate legal remedy available to the petitioners – to

file a grievance on their hazardous pay differential claim and proceed through the administrative process. Benjamin v. Attorney General Office Kosrae, 10 FSM R. 566, 569 (Kos. S. Ct. Tr. 2002).

The finality requirement and its underlying rationale mandate appellate court restraint and preclude issuance of writs of mandamus on an interlocutory basis except in those rare and exceptional cases when the precise requirements for issuance of the writ are met and the appellate court in its discretion determines that immediate relief is called for. FSM Dev. Bank v. Yinug, 11 FSM R. 405, 409 n.3 (App. 2003).

Appellate review, in all but narrowly defined, exceptional circumstances, should be postponed until the trial court has rendered final judgment. Hence the party requesting a writ of mandamus has the burden of showing a clear and indisputable right thereto, and must show exceptional circumstances necessitating review before a final judgment is entered below. FSM Dev. Bank v. Yinug, 11 FSM R. 405, 409 n.3 (App. 2003).

The finality requirement and its underlying rationale mandate appellate court restraint and preclude issuance of writs of mandamus on an interlocutory basis except in those rare and exceptional cases when the precise requirements for issuance of the writ are met and the appellate court in its discretion determines that immediate relief is called for. FSM Dev. Bank v. Yinug, 11 FSM R. 437, 441 (App. 2003).

Only under special circumstances should the Appellate Division issue a writ of mandamus to alter the conduct of the trial judge before the trial court has completed proceedings and reached a final decision. The object of the requirement is to prevent piecemeal litigation which would result from the use of interlocutory appeals. FSM Dev. Bank v. Yinug, 11 FSM R. 437, 441 n.4 (App. 2003).

Appellate review, in all but narrowly defined, exceptional circumstances, should be postponed until final judgment has been rendered by the trial court. Hence the party petitioning for a writ of mandamus has the burden of showing a clear and indisputable right thereto, and must show exceptional circumstances necessitating review before a final judgment is entered below. FSM Dev. Bank v. Yinug, 11 FSM R. 437, 441 (App. 2003).

When, although a review of the record would appear to indicate that adequate notice and opportunity to be heard were provided, the issue of whether the petitioner had notice and an opportunity to be heard is one that is properly raised on appeal from a final judgment or order. That is its remedy at law and the petition will be denied when petitioner has not shown that this remedy is unavailable or inadequate, or that the extraordinary circumstances exist for the issuance of a peremptory writ and it has not provided compelling justification and the court does not find the exceptional circumstances that would justify the issuance of the extraordinary writ of mandamus necessitating review before a final judgment below. FSM Dev. Bank v. Yinug, 11 FSM R. 437, 441 (App. 2003).

A writ of prohibition may issue when a court or court officer is about to engage in judicial or quasi-judicial action that is unauthorized and when there is no other adequate remedy to address the injury that will result from the unauthorized conduct. Urusemal v. Capelle, 12 FSM R. 577, 585 (App. 2004).

Since the sole issue before an appellate panel considering a writ of prohibition directed against one judge is whether the petitioner has established that that judge must be prohibited from acting in a particular case, not whether some other judge may also be disqualified, a challenge to another judge's authority to act must be brought up in some other proceeding. Nikichiw v. O'Sonis, 13 FSM R. 132, 136-37 (Chk. S. Ct. App. 2005).

The sole issue before the state appellate court on a petition for writ of mandamus is whether the petitioner has established that the trial judge must be prohibited from acting in a certain case, not whether some other judge may also be disqualified. The national government's removal of that case to the FSM Supreme Court does not affect the court's jurisdiction because the court has no way of knowing whether the required procedural steps to effect removal to that court were completed, or, even if they were, whether it might be remanded; because the state appellate proceeding is not an appeal from the civil action since

the issue is whether the trial judge properly sit on the case and because since the purported removal action started, the trial judge has issued another preliminary injunction that does not name the national government as a party being restrained. Therefore the later "removal" did not deprive the appellate court of jurisdiction over the original action for a writ of prohibition. Nikichiw v. O'Sonis, 13 FSM R. 132, 137 (Chk. S. Ct. App. 2005).

The general requirements for the issuance of an extraordinary writ of prohibition are that a court or officer is about to exercise judicial or quasi-judicial power, that the exercise of such power is unauthorized or the inferior tribunal is about to act without or in excess of jurisdiction which may or will result in damage or injury for which there is no plain, speedy or adequate legal remedy. The writ will usually not issue unless the petitioner has objected in the lower court to that court's exercise of jurisdiction. Nikichiw v. O'Sonis, 13 FSM R. 132, 138 (Chk. S. Ct. App. 2005).

One instance where it is appropriate to issue a writ of prohibition is when a trial court justice is about to exercise unauthorized power without or in excess of his jurisdiction by exercising jurisdiction over a case where another judge already has jurisdictional priority over the parties and the issues. Nikichiw v. O'Sonis, 13 FSM R. 132, 138 (Chk. S. Ct. App. 2005).

When a trial judge's presiding over a case is in excess of his jurisdiction since another trial division justice had jurisdictional priority over the parties and the issues in that case to the exclusion of all other trial division justices, when the petitioner objected to that judge's exercise of jurisdiction from the start, and when the petitioner will be injured if the writ does not issue since he will be subject to conflicting and contradictory orders from two different trial division justices, there is no plain, speedy, or adequate remedy otherwise available and the writ of prohibition will accordingly issue. Nikichiw v. O'Sonis, 13 FSM R. 132, 138-39 (Chk. S. Ct. App. 2005).

A due process violation may be remedied through means other than a writ of prohibition, such as a direct appeal. A writ of prohibition is not a writ of right and cannot lie when there is a plain, speedy, and adequate remedy otherwise available which has not been exhausted. The court's job is simply to determine whether the respondent has acted without, or in excess of, his jurisdiction. Ruben v. Petewon, 14 FSM R. 177, 183 n.2 (Chk. S. Ct. App. 2006).

In order for the extraordinary writ of prohibition to issue when a justice has denied a motion to recuse or disqualify, it must be an abuse of discretion for a justice not to recuse him- or herself. Ruben v. Petewon, 14 FSM R. 177, 184 (Chk. S. Ct. App. 2006).

If the extraordinary writ of prohibition may issue where a justice has abused his discretion in ruling on a disqualification motion, it must likewise issue where a justice has patently disregarded a mandate which stripped him of any discretion to act in the first instance. Ruben v. Petewon, 14 FSM R. 177, 184 (Chk. S. Ct. App. 2006).

A Chuuk State Supreme Court justice exceeds his jurisdiction when he refuses to refer a recusal motion to another trial division justice. Ruben v. Petewon, 14 FSM R. 177, 185 (Chk. S. Ct. App. 2006).

The extraordinary writ of prohibition will lie where a trial justice exercises jurisdiction over a case wherein another justice has jurisdictional priority over the parties and issues. Ruben v. Petewon, 14 FSM R. 177, 186 (Chk. S. Ct. App. 2006).

A writ of prohibition is proper when a trial justice interferes with the appellate division's jurisdiction. Ruben v. Petewon, 14 FSM R. 177, 186 (Chk. S. Ct. App. 2006).

A justice's acts after a single appellate justice issued a stay that were not acts taken in aid of the appeal, but were acts designed to frustrate or nullify the appeal process and the respondent justice's interference with the jurisdiction of, and blatant disregard for a stay entered by, a justice having greater

jurisdictional authority supports the conclusion that he must be prohibited from taking any further action in the case. Ruben v. Petewon, 14 FSM R. 177, 186-87 (Chk. S. Ct. App. 2006).

When a justice excluded counsel from a chambers conference in a Pohnpei Supreme Court case where counsel was trying to appear to represent a different client, her exclusion from that conference is inadequate to, and cannot, show personal bias by that justice toward counsel since, typically, only the judge and court personnel, the parties, and their counsel are permitted to attend a chambers conference and that counsel was not admitted to practice before the Pohnpei Supreme Court and her motion to appear pro hac vice in that case had not been granted. A petition for writ of prohibition will therefore be denied. Goya v. Ramp, 14 FSM R. 303, 304-05 (App. 2006).

When a party has filed a writ of prohibition directed to disqualify one appellate justice, the remaining members of the appellate panel may deny that petition if it clearly should not be granted. Goya v. Ramp, 14 FSM R. 305, 308 n.2 (App. 2006).

Since a trial court's decision to disqualify an attorney from participation in a given case is a decision falling within a trial court's inherent discretionary powers, and since a petition for a writ of mandamus fails when it seeks appellate review that is explicitly beyond the curative parameters of mandamus or prohibition, the petition will be denied. The trial court had no legal duty to admit an attorney in the case, since the challenged disqualification was wholly within the trial court's discretion. Etscheit v. Amaraich, 14 FSM R. 597, 601 (App. 2007).

An attempt to use a petition for writ of prohibition or mandamus to obtain a preemptory disqualification of an attorney not presently involved in the case is misplaced because, given the nature of the remedy of mandamus and prohibition and the caution exercised in affording it, the right sought to be enforced must be clear and certain. There must be an immediate right to have the act in question performed, and such right must be specific, well defined, and complete, so as not to admit of any reasonable controversy. As such, mandamus or prohibition relief cannot be used as a precaution against future events that may never occur. Etscheit v. Amaraich, 14 FSM R. 597, 601 n.1 (App. 2007).

The general requirements for the issuance of an extraordinary writ of prohibition are that a court or an officer is about to exercise judicial or quasi-judicial power, that the exercise of such power is unauthorized or the inferior tribunal is about to act without or in excess of jurisdiction which may or will result in damage or injury for which there is no plain, speedy or adequate legal remedy. Nikichiw v. Petewon, 15 FSM R. 33, 37 (Chk. S. Ct. App. 2007).

A writ of prohibition will usually not be issued such a unless the petitioner has objected in the lower court to that court's exercise of jurisdiction. Nikichiw v. Petewon, 15 FSM R. 33, 37 (Chk. S. Ct. App. 2007).

A court that has the power to issue writs of prohibition may only do so if the petitioner has met its burden to show that its right to the writ is clear and indisputable. Nikichiw v. Petewon, 15 FSM R. 33, 37 (Chk. S. Ct. App. 2007).

Since the jurisdiction of courts exercising general equity powers does not include election contests and since courts of equity are without jurisdiction to enforce purely political rights in election cases, a writ of prohibition is proper to prevent a trial court from exercising equity jurisdiction in an election case. Nikichiw v. Petewon, 15 FSM R. 33, 38 (Chk. S. Ct. App. 2007).

The extraordinary writ of prohibition is to be issued with great caution, but it is especially important to exercise the writ in those cases where it is necessary to confine a lower court to its proper function. Nikichiw v. Petewon, 15 FSM R. 33, 39 (Chk. S. Ct. App. 2007).

When certain issues raised are merely allegations of gross legal error which may be properly

addressed by an appeal (and are already the subject of an appeal) and since a writ of prohibition can only be issued to confine a lower tribunal to its proper jurisdiction and is not a substitute for an appeal, those issues are not the proper subject for a petition for a writ of prohibition. A writ of prohibition will not lie to correct those alleged legal errors no matter how gross the error or how meritorious the petitioners' legal arguments. Albert v. O'Sonis, 15 FSM R. 226, 232 (Chk. S. Ct. App. 2007).

Since an order in aid of judgment to seize municipally-owned vehicles acted as an execution on public property, it is clearly and indisputably an attempt to exercise power in excess of the court's jurisdiction, that is, it is a power specifically denied to courts by the Chuuk Judiciary Act. Since the trial court justice had no discretion in the matter – he had no power to order the vehicles' seizure and since the petitioners have no plain, speedy or adequate legal remedy for this judicial act in excess of the court's jurisdiction and writ of prohibition will issue. Albert v. O'Sonis, 15 FSM R. 226, 232 (Chk. S. Ct. App. 2007).

When issuance of a writ of prohibition without a further affirmative command to return the unlawfully seized property to the registered owner would not constitute adequate relief, and would leave the petitioner without any plain, speedy or adequate legal remedy and since the trial court was completely without jurisdiction to issue an order in aid of judgment executing on public property, to correct the results of that excess, the appellate court must order the return of the seized property. Albert v. O'Sonis, 15 FSM R. 226, 233 (Chk. S. Ct. App. 2007).

When a trial justice makes no rulings on the motion to stay before him, he fails to exercise whatever discretion he may have had to rule on it because a court abuses its discretion by an unexplained failure to exercise its discretion within a reasonable time and since the trial judge neglected his duties by ignoring the motion to stay and further abused his discretion by failing to rule on it before issuing an order in aid of judgment, the appellate court issuing a writ of prohibition barring the order in aid of judgment will stay any enforcement of the judgment until the appeal of the judgment has been decided. Albert v. O'Sonis, 15 FSM R. 226, 233 (Chk. S. Ct. App. 2007).

A trial judge's calculated and repeated disregard of governing rules of orders in aid of judgment would also support the issuance of a writ of prohibition that the trial judge issue no further orders in aid of judgment without complying with the statute and without first ruling on the pending motion to stay. Albert v. O'Sonis, 15 FSM R. 226, 234 (Chk. S. Ct. App. 2007).

Whether sufficient funds are already appropriated to conduct a runoff election is not a ground to deny the petition. The lack of funds to perform a required duty is a problem to be solved by the political branches of government, not the court. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

The State Election Commission cannot refuse to hold an election because it has insufficient funds. If it refuses to hold an election on that ground, it is clear that, if sought, a writ of mandamus would issue to command that the election be announced and held. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

If the State Election Commission has a duty to announce and conduct a runoff election, that duty can only be ministerial and non-discretionary. The State Election Commission does not have the discretion to choose whether to conduct an election or not. Its duty to conduct elections is mandated by the Constitution. Thus, whether the petitioner is entitled to a writ commanding the respondent Election Commission to announce (and conduct) a runoff election to fill the Governor's office depends solely on the meaning of the relevant provisions of the Chuuk Constitution. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 21 (Chk. S. Ct. Tr. 2011).

It is a clear non-discretionary duty for the State Election Commission to conduct a runoff election if, during the general election, no ticket of candidates for Governor and Lieutenant Governor receives a majority of the votes cast. However, in a special gubernatorial election to fill a vacancy, the candidates do

not run on tickets. They run alone for the office of governor. The Section 7 provision for runoff elections applies to tickets of candidates, not to single candidates. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 21-22 (Chk. S. Ct. Tr. 2011).

The Section 11 constitutional provision for special elections does not mention runoff elections if there is no candidate with a majority. Nor does it state that the gubernatorial special election shall be conducted in the same manner as the gubernatorial election in Section 7, and it also does not state that it should be conducted in a manner to be prescribed by statute. If it did then, Section 142 of the Election Code, which provides that "[a]ll special elections shall be conducted in the same manner and form as a general election, except as otherwise provided in this Act," would carry great weight and might lead the court to conclude that there was a clear, non-discretionary duty to conduct a runoff. However, there are no such provisions. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 22 (Chk. S. Ct. Tr. 2011).

When the Constitution's framers did not include provisions for runoff elections after special elections, and even if that was through oversight, the court will not insert into the Constitution a runoff provision that is not there. Accordingly, the petition for a writ of mandamus directed to the State Election Commission commanding it to hold a runoff election will be denied. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 22 (Chk. S. Ct. Tr. 2011).

A writ of prohibition may issue when a court is about to engage in judicial action that is unauthorized and when there is no other adequate remedy to address the injury that will result from the unauthorized conduct. Whether to grant a writ of prohibition involves the court's full recognition of the extraordinary nature of the relief requested. Ehsa v. Johnny, 19 FSM R. 175, 177 (App. 2013).

When the issue of the trial court's jurisdiction is being appealed on various constitutional grounds but there has been no determination that the trial court lacks jurisdiction, the trial court retains jurisdiction to enforce the judgment and is not acting without authority or jurisdiction. The extraordinary writ of prohibition will not serve as a substitute for that appeal. Ehsa v. Johnny, 19 FSM R. 175, 177-78 (App. 2013).

When there is no basis for the court to depart from the procedures established for a stay to be put in place pending an appeal since the petitioner has other adequate remedies to obtain what he seeks and since the petitioner, who is also seeking an extraordinary writ of prohibition, has not met his burden to show that his right to the writ is clear and indisputable, the petition for a writ of prohibition will be denied. Ehsa v. Johnny, 19 FSM R. 175, 178 (App. 2013).

A petition for a writ of prohibition will be denied when any legal error or even gross legal error in striking the response brief is correctable by a pending or a future appeal. Tilfas v. Aliksa, 19 FSM R. 181, 184 (App. 2013).

When the respondent Kosrae State Court Chief Justice has not acted without jurisdiction or in excess of his jurisdiction, a writ of prohibition clearly should not be granted. Tilfas v. Aliksa, 19 FSM R. 181, 184 (App. 2013).

The Kosrae State Court Chief Justice is not acting in excess of his jurisdiction by appointing himself to sit as a temporary judge on a Land Court case when all the Land Court judges are disqualified when the Land Court is an inferior court within a unified state court system and since there is no constitutional impediment to a Kosrae statute authorizing a Kosrae State Court justice to sit as a temporary justice in another (inferior) court within the unified Kosrae state court system. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 194-95 (App. 2013).

When there appears to be no legal grounds, let alone a clear duty that the Kosrae Chief Justice not appoint himself a Land Court temporary judge to preside over a Land Court case, a writ of prohibition clearly should not be granted. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 195 (App. 2013).

A petition for a writ of mandamus clearly should not be granted when a factual record will need to be

developed and questions of fact are best determined in the trial division; when the voluntary payment rule may bar the recovery of taxes; when the FSM may also be able to prove statute of limitations defenses for some or all of the tax payments; when the petitioner has appealed the Secretary's denial of the relief sought and that appeal should afford it a plain, speedy, and adequate remedy and a forum in which it may prove its right to relief and the extent of that relief; and because a writ of prohibition is an extraordinary writ and cannot be issued when there is a plain, speedy, and adequate remedy otherwise available that has not been exhausted. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 289 (App. 2014).

Five elements must be present before the court can exercise its discretion to issue a writ of mandamus: 1) the respondent must be a judicial or other public officer, 2) the act to be compelled must be non-discretionary or ministerial, 3) the respondent must have a clear legal duty to perform the act, 4) the respondent must have failed or refused to perform the act, and 5) there must be no other adequate legal remedy available. Irons v. Chuuk State Supreme Court Tr. Div., 19 FSM R. 654, 655 (Chk. S. Ct. App. 2015).

Five elements must be present before the court can exercise its discretion to issue a writ of mandamus: 1) the respondent must be a judicial or other public officer, 2) the act to be compelled must be non-discretionary or ministerial, 3) the respondent must have a clear legal duty to perform the act, 4) the respondent must have failed or refused to perform the act, and 5) there must be no other adequate legal remedy available. Narruhn v. Chuuk State Election Comm'n, 20 FSM R. 36, 38 (Chk. S. Ct. App. 2015).

In order for the Supreme Court to issue an extraordinary writ of prohibition overruling a trial judge's denial of a motion to disqualify, the trial judge's ruling must be an abuse of discretion. Halbert v. Manmaw, 20 FSM R. 245, 248, 250 (App. 2015).

The court may issue a writ of prohibition only when the party seeking a writ has met his burden to show that his right is clear and indisputable. Halbert v. Manmaw, 20 FSM R. 245, 249, 250 (App. 2015).

A petitioner seeking a writ of prohibition to disqualify a trial judge must show an abuse of discretion, as the appellate court will not merely substitute its judgment for that of the trial judge. Halbert v. Manmaw, 20 FSM R. 245, 250 (App. 2015).

A petition for a writ of prohibition to disqualify a trial judge will be denied when it neither meets the burden of showing the that the judge harbors bias or prejudice nor shows that any disqualifying knowledge was derived from an extrajudicial source since the mere fact that the judge made an adverse evidentiary ruling and declared a mistrial does not mean the judge's impartiality might reasonably be questioned. Halbert v. Manmaw, 20 FSM R. 245, 251 (App. 2015).

When there are too many procedural deficiencies to overlook because the application for a writ of prohibition's certificate of service shows service only on the respondent judge at her office; because the real parties in interest were not served and were not named as real parties in interest in the application or in the case caption; because the petition does not contain a copy of the respondent judge's order denying her recusal, if there was a written order, or a transcript of the denial on the record if the denial was made orally; and because, although the relevant judicial disqualification statute requires that an application to disqualify a justice be accompanied by an affidavit stating the reasons for the belief that grounds for disqualification exist, no affidavit accompanied the petition although an "affidavit attached hereto" is mentioned in the application, the petition for a writ of prohibition will be denied without prejudice to any future application in which all of the procedural deficiencies have been cured. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 563, 564 (App. 2016).

When membership in the Mwoalen Wahu Ileile En Pohnpei is limited to the traditional paramount chiefs of Pohnpei and the paramount chiefs are only those persons who hold the title of either Nanmwarki or Nahnken and when the justice's father, as Wasahi Sokehs, is not a paramount chief and is therefore not now a member of the plaintiff Mwoalen Wahu Ileile En Pohnpei, and, unless one day he attains the title of

Nanmwarki Sokehs, will never be a member of that council, a writ of prohibition, directed to the trial justice, clearly should not be granted. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 577, 579 (App. 2016).

A petition for a writ of prohibition will be denied when the petitioner's new points do not buttress its position, but instead further support the court's earlier denial of its previous petition. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 585, 588 (App. 2016).

A party seeking the extraordinary and exceptional remedy of a writ of prohibition must show that the party's right to the writ is clear and indisputable and that all of the following five elements are satisfied: 1) the respondent must be a judicial or other public officer; 2) the act to be compelled must be non-discretionary or ministerial; 3) the respondent must have a clear legal duty to perform the act; 4) the respondent must have failed or refused to have performed that act; and 5) there must be no other adequate legal remedy available. Peterson v. Anson, 20 FSM R. 657, 658-59 (App. 2016).

A writ of prohibition clearly should not be granted based on a judge's adverse ruling that did not even remain adverse when the justice changed her mind and on factors that arose as part of the give and take during a contentious oral hearing on a controversial topic. Peterson v. Anson, 20 FSM R. 657, 659 (App. 2016).

When the procedural deficiencies in a petition for a writ of prohibition are too many to overlook, the petition will be denied without prejudice to any future petition in which these procedural deficiencies have all been cured. Miju Mulsan Co. v. Carl-Worswick, 20 FSM R. 660, 662 (App. 2016).

When the case's time delays have been excessive; when, under the Chuuk Rules of Appellate Procedure, the Chuuk State Supreme Court appellate division is prepared to consider cases on the merits promptly after briefs are filed; and when the FSM Supreme Court appellate division, although it has been dilatory, can see no reason why Chuuk State Supreme Court appellate division appeal should not be set for argument, it will, considering the possibility there might be a reason and out of deference to the Chuuk State Supreme Court appellate division, defer action for sixty days, and, if, within that sixty days, the Chuuk State Supreme Court appellate division has held oral argument on all pending matters or if that court has fixed oral argument on a date certain in the near future, it will not issue the writ of procedendo or mandamus. Chuuk v. Chuuk State Supreme Court App. Div., 21 FSM R. 583, 586 (App. 2018).

When a court has jurisdiction to grant writs of mandamus in a matter, there are five elements that must be met: 1) the respondent must be a judicial or other public officer, 2) the act to be compelled must be non-discretionary or ministerial, 3) the respondent must have a clear legal duty to perform the act, 4) the respondent must have failed or refused to perform the act, and 5) there must be no other adequate legal remedy available. Hartman v. Mailo, 21 FSM R. 657, 660, 661 (Chk. S. Ct. Tr. 2018).

The Senior Land Commissioner is a public officer who oversees the Land Commission and who has the non-discretionary legal duty to issue a certificate of title to persons holding an interest in the land pursuant to the determination after the 120-day time limit for appeal has expired without an appeal. The Land Commission's continuous failure to issue a certificate of title for over 37 years following an un-appealed determination of ownership constitutes a breach of its duty and leaves the petitioner without any legal remedy other than to petition for a writ of mandamus, and to prevent this manifest injustice, equity requires that the court compel the Land Commission to fulfill its legal duty to issue a certificate of title to petitioner. Hartman v. Mailo, 21 FSM R. 657, 661 (Chk. S. Ct. Tr. 2018).

MARINE RESOURCES

Traditional claims of exclusive ownership of marine resources have been recognized only in areas immediately adjacent to an island or submerged reef. Claims involving custom and tradition were recognized by the Constitution's drafters, but were restricted to areas within lagoons and near reef areas. Chuuk v. Secretary of Finance, 8 FSM R. 353, 377 (Pon. 1998).

A person holding a current and valid foreign investment permit is qualified to register a vessel in the FSM, and qualified persons may register in the FSM any vessel they wholly own. An FSM-registered vessel must fly the FSM national flag. FSM v. Kimura, 20 FSM R. 297, 304-05 (Pon. 2016).

– Exclusive Economic Zone

Congress intended that the prohibitions of 23 F.S.M.C. 105 extend throughout all the waters of the FSM. FSM v. Oliver, 3 FSM R. 469, 478 (Pon. 1988).

23 F.S.M.C. 105(3) is national law, at least as it applies beyond the twelve mile limit. FSM v. Oliver, 3 FSM R. 469, 479 (Pon. 1988).

Nothing in the language of the statute, 23 F.S.M.C. 105, or in the legislative history, indicates that Congress made an affirmative determination to enact national legislation applicable within twelve miles of prescribed baselines. Therefore, 23 F.S.M.C. 105 gives the national government regulatory power only outside the twelve mile zone. FSM v. Oliver, 3 FSM R. 469, 480 (Pon. 1988).

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

The Law of the Sea Convention first recognized that the Federated States of Micronesia as a nation has the exclusive right to exploit resources in its 200-mile EEZ. The FSM Constitution was drafted to vest authority over the EEZ in the national government with this in mind. Chuuk v. Secretary of Finance, 8 FSM R. 353, 378 & n.19 (Pon. 1998).

Issues related to the EEZ cannot be determined by relying on custom and tradition, as the commercial value of the EEZ to the Federated States of Micronesia was first realized when the nation acceded to the Law of the Sea Convention. While the rights of individual Micronesians, families and clans to living marine resources under particular circumstances might be amenable to determination by custom and tradition, the states' legal entitlement to share in fishing fees derived from commercial fishing ventures, extending to 200 miles from island baselines, is not. Chuuk v. Secretary of Finance, 8 FSM R. 353, 378 (Pon. 1998).

leads to the conclusion that it includes fishing because the FSM's fisheries are undoubtedly a natural resource, marine in character, that are subject to economic exploitation as a result of the market demand for fish. It follows that fishing in the FSM EEZ constitutes the exploitation of a natural resource that subjects a party to the personal jurisdiction of the FSM Supreme Court. FSM v. Fu Yuan Yu 096, 16 FSM R. 1, 3 (Pon. 2008).

"Fishery waters" includes the FSM Exclusive Economic Zone, territorial waters, and internal waters. FSM v. Kana Maru No. 1, 17 FSM R. 399, 404 n.2 (Chk. 2011).

Where he has reasonable cause to believe that an offense against the provisions of Title 24 or any regulations made thereunder has been committed, any authorized officer may, with or without a warrant or other process, stop, board and search inside the fishery waters, or outside after hot pursuit, any fishing vessel which he believes has been used in the commission of that offense and he may, within the fishery waters, arrest any person if he has reasonable cause to believe that such person has committed a Title 24 offense and seize any fishing vessel involved, its fishing gear, furniture, appurtenances, stores, cargo, and fish, and seize any fish which he reasonably believes to have been taken in violation of Title 24. FSM v. Kimura, 19 FSM R. 630, 633-34 (Pon. 2015).

The territorial sea is the waters within 12 nautical miles seaward of FSM island baselines, and the exclusive economic zone is the water seaward of the territorial sea outward to 200 nautical miles from the island baselines. FSM v. Kimura, 20 FSM R. 297, 302 (Pon. 2016).

When an information charges, in different counts, contamination of both the FSM territorial waters and its Exclusive Economic Zone, the FSM must prove not only that the contamination occurred but also where it occurred since it is unlikely that the contamination took place when the vessel was at a location where trash thrown overboard could contaminate both the territorial sea and the EEZ. FSM v. Kimura, 20 FSM R. 297, 302 (Pon. 2016).

Only those fisheries management agreements that require the FSM to enforce, on a reciprocal basis, the fisheries laws of foreign countries against persons who have violated the fisheries law of that foreign country, must, under 24 F.S.M.C. 120(2), implemented by National Oceanic Resource Management Authority regulation. FSM v. Kimura, 20 FSM R. 297, 304 (Pon. 2016).

A fisheries management agreement is any agreement, arrangement, or treaty in force to which the FSM is a party, not including any access agreement, which has as its primary purpose cooperation in or coordination of fisheries management measures in all or part of the region. Such an agreement, by its nature, would not be self-executing. FSM v. Kimura, 20 FSM R. 297, 304 (Pon. 2016).

FSM citizens and FSM-flagged fishing vessels are required, on the high seas or in an area designated by a fisheries management agreement, to comply with any applicable law or agreement. FSM v. Kimura, 20 FSM R. 297, 304 (Pon. 2016).

– EEZ – Regulation of

While the FSM and Pohnpei foreign fishing statutes pose no specific requirements as grounds for the search of a fishing vessel, the power to seize is carefully conditioned upon illegal use of the vessel. Ishizawa v. Pohnpei, 2 FSM R. 67, 75 (Pon. 1985).

Any attempt to grant statutory authority to permit seizure of a fishing vessel upon a lesser standard than probable cause would raise serious questions of compatibility with article IV, sections 3 and 4 of the Constitution. Such an interpretation should be avoided unless clearly mandated by statute. Ishizawa v. Pohnpei, 2 FSM R. 67, 77 (Pon. 1985).

Seizure under the FSM and Pohnpei foreign fishing statutes must be based upon probable cause, that is, grounds to believe it is more likely than not that a violation of the act has occurred and that the vessel was used in that violation. Ishizawa v. Pohnpei, 2 FSM R. 67, 77 (Pon. 1985).

Negotiations between the FSM National Government and a U.S. owned fishing vessel reflect the new role of the national government and the methods by which the people of the Federated States of Micronesia govern their relations with other members of the community of nations. In this context, it is entirely appropriate to draw on principles of common law for guidance. FSM v. Ocean Pearl, 3 FSM R. 87, 91 (Pon. 1987).

As defined in 24 F.S.M.C. 102(22) "fishing" includes refueling or supplying fishing vessels. FSM v. Skico, Ltd., 8 FSM R. 40, 41 (Chk. 1997).

A company that stores its fuel cargo in a tanker, stations a cargo supervisor aboard the tanker, and sends messages that tell the tanker where to go to sell the company's fuel to fishing vessels needing refueling is an operator of the tanker within the meaning of Title 24. FSM v. Skico, Ltd., 8 FSM R. 40, 42-43 (Chk. 1997).

Section 404 of Title 24 sets forth certain minimum terms that all foreign fishing agreements must contain. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 84 (Pon. 1997).

Section 404 of Title 24 sets forth certain minimum terms that all foreign fishing agreements must contain. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 172 (Pon. 1997).

MMA cannot contract to insulate a foreign fishing agreement signatory from criminal liability because to do so would violate 24 F.S.M.C. 404. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 181 (Pon. 1997).

Article I, section 1 of the Constitution defines the FSM's national boundaries, and section 2 defines the states' boundaries in the event marine resources revenues should accrue to the state wherein the resources are found, but the Constitution's framers did not intend to confer ownership of marine resources, or revenues derived from such resources, when they defined the state boundaries. Offshore marine resources, and the division between national and state power with respect to these resources, are addressed in other articles of the Constitution. Chuuk v. Secretary of Finance, 8 FSM R. 353, 367-68 (Pon. 1998).

Article IX, section 2(m) of the FSM Constitution expressly grants to the FSM Congress the power to regulate the ownership, exploration, and exploitation of natural resources beyond 12 miles from island baselines. Chuuk v. Secretary of Finance, 8 FSM R. 353, 368 (Pon. 1998).

The express grant of power to the national government to regulate the ownership, exploration, and exploitation of natural resources, implicitly includes the power of the national government to collect revenues that are generated as a result. Thus, the national government has the authority to enact legislation related to offshore marine resources, including legislation related to collection and distribution of revenues derived therefrom. Chuuk v. Secretary of Finance, 8 FSM R. 353, 371 (Pon. 1998).

To empower the national government to regulate ownership and exploitation of fishery resources within the EEZ, without the power to collect and distribute revenues derived from these regulatory functions, would violate the intention of the Constitution's framers and unduly limit the national government in the exercise of its exclusive power over natural resources in the area beyond 12 miles from the island baselines. Chuuk v. Secretary of Finance, 8 FSM R. 353, 371 (Pon. 1998).

Since the national government has the express authority to regulate the ownership, exploration, and exploitation of fishery resources in the EEZ, the power to promulgate legislation which generates revenue from the regulation of these resources and provides for collection and distribution of such revenue, is incidental to or implied in the express grant. Chuuk v. Secretary of Finance, 8 FSM R. 353, 371 (Pon. 1998).

The Constitution's framers intended to vest complete control of the EEZ in the national government, and the expressed intent of legislation passed by the Interim Congress which terminated the practice of distributing fishing fees from the EEZ to the districts, or states, was to bring certain provisions of the Fishery Zone legislation into conformity with the provisions of the FSM Constitution and the powers granted to the national government under the Constitution. Chuuk v. Secretary of Finance, 8 FSM R. 353, 371-74 (Pon. 1998).

That the states currently are dissatisfied with the national government's power over the fishing fees does not change the constitutional division of powers that each of the states agreed to when it ratified the FSM Constitution and entered the Federated States of Micronesia. The states clearly delegated all power over offshore fishing resources beyond 12 miles from their baselines to the national government in the Constitution. Thus, the FSM has the power to collect and distribute the fishing fees under article IX, section 2(m). Chuuk v. Secretary of Finance, 8 FSM R. 353, 374 (Pon. 1998).

The national government's authority to collect and distribute the fishing fees derived from the FSM EEZ is indisputably of a national character and beyond the ability of a single state to control because of the numerous national powers which the national government is required to exercise in order to effectively regulate and control the FSM EEZ and because the individual states are incapable of regulating and controlling the EEZ. Chuuk v. Secretary of Finance, 8 FSM R. 353, 374-75 (Pon. 1998).

Management and control of the FSM's fishing resources in its EEZ requires the national government to exercise its exclusive treaty powers under article IX, section 2(b) of the FSM Constitution. The FSM national government has specific international rights, and has undertaken specific international obligations, with respect to its EEZ under certain treaties. Chuuk v. Secretary of Finance, 8 FSM R. 353, 375 (Pon. 1998).

Negotiating fishery agreements with foreign governments and foreign companies necessarily involves foreign affairs, another exclusive national power. Chuuk v. Secretary of Finance, 8 FSM R. 353, 375 (Pon. 1998).

The process of determining the appropriate level of the fishing fees, the best method to collect the fishing fees, and ultimately how to distribute the fishing fees, is indisputably of a national character. Thus the national government, not the states, has the power to collect and distribute the fishing fees. Chuuk v. Secretary of Finance, 8 FSM R. 353, 375 (Pon. 1998).

That Congress has legislated sharing revenues from fines and forfeitures with the states and that each of the states has a delegate on the Board of the MMA is not an admission or indication that the states are the owners of the underlying resources. Chuuk v. Secretary of Finance, 8 FSM R. 353, 376 (Pon. 1998).

Certain issues are not of a local or traditional nature, and not amenable to determination based upon custom and tradition, such as issues related to business ventures in the FSM by non-citizens, foreign shipping agreements, and international extradition. Fishing fees derived from commercial fishing contracts, and collected primarily from foreign companies pursuant to agreements negotiated by the MMA are transactions and behaviors that are also distinctly non-customary and non-local. Chuuk v. Secretary of Finance, 8 FSM R. 353, 377 (Pon. 1998).

The MMA can establish fees and other forms of compensation in foreign fishing agreements, which can include compensation in the field of refinancing, equipment and technology relating to the fishing industry, but no particular measure is set for the fishing fee in the FSM Code. Chuuk v. Secretary of Finance, 8 FSM R. 353, 380 (Pon. 1998).

The following factors are relevant to determining whether fishing fees are taxes: 1) the source of the levy – whether the entity imposing the tax is legislative or administrative; 2) the effect of the levy on the general public – whether the assessment is imposed upon a broad or narrow class; 3) the means by which the levy is made – whether it is voluntary, and produces a benefit to the payor which is commensurate with the payment; and 4) the relationship between the levy and government costs – whether the revenue generated bears a relationship to the costs of the government in administering the particular program. Chuuk v. Secretary of Finance, 8 FSM R. 353, 382-83 (Pon. 1998).

The level of fishing fees is set at a measure of the value of the asset to the payor, a percentage of the value of the estimated weighted catch. The measure of the value of the service to the payor can be an appropriate measure for a fee. That the value received by the government exceeds the cost of administration is not dispositive when a valuable resource is being removed from the government's control by fishing fees payors. The government is entitled to compensation for its asset like any private property owner. Chuuk v. Secretary of Finance, 8 FSM R. 353, 385-86 (Pon. 1998).

The FSM national government has the exclusive right to harvest living marine resources in its EEZ, just as it has the exclusive right to harvest offshore mineral resources. As the holder of this exclusive right, the national government is allowed to dispose of this resource and receive revenue in return. Under the Convention on the Law of the Sea, each nation is entitled to exploit its marine resources to the extent it is able to achieve a maximum sustainable yield. When the FSM does not fully exploit its own resources, it is entitled to compensation at the appropriate market rate from foreign fishing vessels which it allows to fish in its waters. Chuuk v. Secretary of Finance, 8 FSM R. 353, 386 (Pon. 1998).

Revenues from natural resources are not taxes. The constitutional definition of tax was not meant to include amounts received by the national government from disposal of natural resources over which it has control. Chuuk v. Secretary of Finance, 8 FSM R. 353, 386-87 (Pon. 1998).

A four-part analysis is applied to determine whether fishing fees are taxes: 1) the source of the levy, 2) the effect of the levy on the general public, 3) the means by which the levy is made, and 4) the relationship between the levy and government costs. Chuuk v. Secretary of Finance, 9 FSM R. 99, 102 (Pon. 1999).

Whether fishing fees are uniform is immaterial to a finding that fishing fees do not constitute a tax. Chuuk v. Secretary of Finance, 9 FSM R. 99, 102 (Pon. 1999).

How Congress appropriates fishing fees is irrelevant to whether they are a tax. Chuuk v. Secretary of Finance, 9 FSM R. 99, 102 (Pon. 1999).

The FSM national government has the exclusive right to regulate and harvest living marine resources in the EEZ and is therefore entitled to a reasonable compensation from those whom it allows to share that right. A determination of ownership of the living marine resources does not affect the national government's right. Chuuk v. Secretary of Finance, 9 FSM R. 99, 102 (Pon. 1999).

Although fishing fees, as currently assessed, may be related to a percentage of the expected landed catch's value – projected income – there is no legal or constitutional requirement that they be calculated that way. They could be assessed on a flat amount per day or per voyage basis, or some other method not related to income. Chuuk v. Secretary of Finance, 9 FSM R. 424, 434 (App. 2000).

Fishing fees are not assessed under the national government's constitutional authority to impose taxes on income. They are levied instead under the national government's constitutional authority to regulate the ownership, exploration, and exploitation of natural resources within the marine space of the Federated States of Micronesia beyond 12 miles from island baselines. Chuuk v. Secretary of Finance, 9 FSM R. 424, 434 (App. 2000).

Although income-related, neither the fishing fees levied under Article IX, section 2(m) nor the social security taxes levied under Article IX, section 3(d) are income taxes within the meaning of Article IX, section 2(e) or national taxes within the meaning of section 5. Chuuk v. Secretary of Finance, 9 FSM R. 424, 435 (App. 2000).

Fishing fees are not income taxes because the national government's power to impose them does not derive from its power to tax income. Chuuk v. Secretary of Finance, 9 FSM R. 424, 435 (App. 2000).

Not less than half of the national taxes must be paid to the state where collected, but fishing fees are not national taxes because they are imposed, not under the national government's power to impose taxes, but under its power to regulate exploitation of natural resources within the FSM exclusive economic zone. Chuuk v. Secretary of Finance, 9 FSM R. 424, 435 (App. 2000).

The Constitution grants the national government the exclusive right to regulate the exploitation of the natural resources within the EEZ, which necessarily includes the generation of revenue from the EEZ and the use of that revenue. The Constitution requires that of the EEZ-generated revenues, half of the net revenues derived from ocean floor mineral resources be given to the state governments. There is no Constitutional requirement that any revenue from the EEZ's living resources be shared with the state governments although the framers could have easily included one. Chuuk v. Secretary of Finance, 9 FSM R. 424, 435-36 (App. 2000).

The national government is free to distribute or disburse its fishing fee revenues through its normal legislative process. Chuuk v. Secretary of Finance, 9 FSM R. 424, 436 (App. 2000).

Fishing fees are not an income tax because they are not a tax. The national government has the exclusive sovereign right to control access to and exploitation of the natural resources in the FSM's exclusive economic zone and when it imposes fishing fees, the national government is selling access to the exclusive economic zone's living resources to its fishing licensees and it is selling the licensees the opportunity to reduce some of those resources to the licensees' proprietary ownership. Chuuk v. Secretary of Finance, 9 FSM R. 424, 436 (App. 2000).

While the prosecution has broad discretion in determining whether to initiate litigation, once that litigation is instituted in court, the court also has responsibility for assuring that actions thereafter taken are in the public interest; therefore criminal litigation can be dismissed only by obtaining leave of the court. In a fishing case where criminal and civil cases are filed together, and the dismissal of the criminal proceeding(s) is obviously "integral" to the settlement agreement for which court approval is sought, the same policy considerations apply to the settlement of the civil proceeding(s) as apply to the criminal dismissal. FSM v. Fu Yuan Yu 398, 12 FSM R. 487, 491 (Pon. 2004).

A purpose of Title 24 is to protect marine resources, which are vital to the people of the FSM, from abusive fishing practices. FSM v. Fu Yuan Yu 398, 12 FSM R. 487, 492 (Pon. 2004).

Title 24 establishes agencies to conclude fishing agreements and establish regulations for the exploitation of FSM marine resources. In fishing cases, when the prosecution seeks a dismissal, the court should be presented with evidence that appropriate agencies have been involved in the resolution of the case(s). FSM v. Fu Yuan Yu 398, 12 FSM R. 487, 492 (Pon. 2004).

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Protecting marine resources from abusive fishing practices is an important goal. FSM v. Ching Feng 767, 12 FSM R. 498, 505 (Pon. 2004).

When the applicable statute permits the court take into account the possible fishing violation fines, but states that the bond should not exceed the value of the property to be released and when it also provides that notwithstanding that provision, the amount determined by the court for a bond must not be less than the fair market value of the property to be released or the aggregate minimum fine for each offense charged, whichever is greater, Congress has left the court no choice but to set the vessel's bond at the aggregate minimum fine when this exceeds the vessel's value. FSM v. Kana Maru No. 1, 14 FSM R. 300, 302 (Chk. 2006).

The statutory use of the phrase "offense charged," for fishing violations, while usually indicative of a criminal prosecution and not a civil suit (in civil cases, violations are alleged, not offenses charged), appears to be intended to cover both civil and criminal violations. FSM v. Kana Maru No. 1, 14 FSM R. 300, 302

(Chk. 2006).

When the government's complaint seeks, among other things, a vessel's forfeiture under 24 F.S.M.C. 801(1), the case is, in part, an *in rem* proceeding, albeit one created by the marine resources statute. FSM v. Kana Maru No. 1, 14 FSM R. 365, 367 (Chk. 2006).

The court will not direct that the government provide countersecurity under the admiralty rules for a defendant's counterclaims in an fishing boat seizure case. FSM v. Kana Maru No. 1, 14 FSM R. 365, 367 (Chk. 2006).

The Marine Resources Act of 2002 amended the prior fisheries law for the purpose of ensuring the sustainable development, conservation and use of the marine resources in the exclusive economic zone by promoting development of, and investment in, fishing and related activities. Included in the definition of "fishing" under the Act is the actual or attempted searching for fish; the placing of any fish aggregating device or associated electronic equipment such as radio beacons; and the use of an aircraft in relation to any activity described in this subsection. "Fishing gear" is equipment or other thing that can be used in the act of fishing, including any aircraft or helicopter. Helicopters, which are used to search for fish and to place radio devices near schools of fish to assist fishing boats in locating fish, fall within the express definition of fishing equipment. Therefore, since fishing in the FSM's EEZ is subject to the exclusive national government jurisdiction and regulation, and since a company's helicopters, based on fishing vessels and piloted by the company's employees, are used to search for fish within the FSM's EEZ, those helicopters are engaged in fishing for purposes of the statutory definition and thus the helicopters, which the company charters to the purse seine operators, and their pilots are subject to the national government's exclusive regulation. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 334-35 (Pon. 2007).

Since engaging in business is defined as carrying out any activity relating to the conduct of a business and expressly includes leasing property of any kind for commercial purposes, when a foreign investment permittee engaged in the business of providing operational and maintenance support to helicopters servicing fishing vessels in the FSM, its leasing helicopters is one aspect of its business that relates to its fishing activity and is therefore that leasing activity is subject to the FSM's exclusive jurisdiction and regulation for foreign investment purposes. Thus Pohnpei may not require it to apply for a foreign investment permit. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 335 (Pon. 2007).

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

The National Oceanic Resources Management Authority has the authority to adopt regulations for the issuance of citations and assessment of administrative penalties consistent with chapter 7 of Title 24 and for any violation of the statute or its regulations which would fall within section 920's penalty provisions, the Authority may, by regulation provide for an administrative penalty. FSM v. Koshin 31, 16 FSM R. 15, 19 (Pon. 2008).

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

With respect to the interplay between NORMA's Administrative Penalties Regulations and the FSM Code's Title 24, administrative penalties are those resulting from a citation issued by a Marine Surveillance

Officer while civil penalties are those the FSM Supreme Court imposes in a civil lawsuit after a finding of liability for a Title 24 violation. The court has neither the authority nor the discretion to impose an administrative penalty for the violation in a civil lawsuit. FSM v. Koshin 31, 16 FSM R. 15, 19-20 (Pon. 2008).

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

When Congress enacted Title 24 and engaged in an executive function by formally inserting itself into the execution and implementation of a portion of that act by vesting in itself the power to control how the law regarding fishing access agreements is executed when more than nine vessels are involved, this was impermissible under the separation of powers doctrine since negotiated access agreements are not approved and licenses are not issued until Congress acts (and the parties to the negotiations presumably know this and adjust their behavior accordingly) and since negotiation and approval of commercial transactions is ordinarily an Executive power. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 189 (Pon. 2010).

When, if the section of Title 24 requiring congressional approval of access agreements for more than nine vessels is struck down, that section is easily severed from the rest of Title 24, which would function perfectly well without it; that is, it would function just as it already does for access agreements for nine or fewer vessels, then that section is not so vital to the whole Title 24 regulatory scheme that it cannot be severed from the rest of Title 24. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 189 (Pon. 2010).

If Congress feels that the current Title 24 statutory requirements for access agreements are too loose or are not in the nation's best interests and should be tightened, it can enact further and stricter requirements or it can provide for that review by creating a mechanism for further review in the executive branch, since Congress, through its investigatory powers, can always keep itself informed on the Executive's execution of the laws, and enact remedial legislation when it feels that the Executive needs further guidance in executing national policy that Congress has enacted. But Congress may not execute the laws itself. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 189 (Pon. 2010).

An "access agreement" is a treaty, agreement or arrangement entered into by the Authority pursuant to Title 24 in relation to access to the exclusive economic zone for fishing by foreign fishing vessels. But a fishing access agreement is usually not a treaty because treaties are compacts or agreements between sovereign nations and most fishing access agreements are commercial agreements between the FSM national government and a commercial enterprise. They are business deals – not treaties. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 189 (Pon. 2010).

Since the Constitution specifically delegates to Congress the power to ratify treaties but does not grant Congress the power to approve or reject fishing access agreements, ruling unconstitutional the statute that requires congressional approval for fishing access agreements for more than nine vessels would not impair Congress's ability to ratify treaties and to advise and consent to presidential appointments. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 190 (Pon. 2010).

Since approval of commercial fishing agreements is not a power that the Constitution confers on Congress, but a power that Congress has conferred upon itself by statute, the court's conclusion that that statute is unconstitutional does not have any effect on access agreements that are actually negotiated and concluded as treaties between sovereign nations because, just like any other treaty, the President would

continue to submit those to Congress for ratification. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 190 (Pon. 2010).

The court's conclusion that requiring Congress to approve or reject fishing access agreements is unconstitutional has no effect on Congress's constitutional treaty-ratification and advice and consent powers. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 190 (Pon. 2010).

Since a government act in conflict with the Constitution is invalid to the extent of conflict, Congress's rejection of a successor access agreement was invalid because 24 F.S.M.C. 405 is in conflict with the Constitution. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 190 (Pon. 2010).

A party to a foreign fishing agreement is bound by statute and by the foreign fishing agreement to ensure that an authorized vessel complies with the FFA and all applicable FSM laws, rules, and regulations. FSM v. Kana Maru No. 1, 17 FSM R. 399, 404 (Chk. 2011).

A statute that purports to allow Congress to step around the bill-making process and approve fishing access agreements by resolution, is surely unconstitutional because under the Constitution, Congress may make law only by statute, and may enact statutes only by bill. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 546 (App. 2011).

Congress's decision to approve or disapprove fishing access agreements is legislation that must be enacted by the bill-making process. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 547 (App. 2011).

Because an access agreement does not give exclusive rights either to negotiate permits on behalf of all foreign vessels or to exploit the FSM's EEZ, it is more properly a permit or license. Administration of a permit or license scheme is, by its nature, administrative, and thus an executive branch function. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 549 (App. 2011).

If Congress is truly concerned by the amount of debt carried by proposed agents, it may be more specific by creating new minimum requirements for eligibility. But once Congress delegates power to the executive, it cannot have it both ways – it cannot then take back that power or modify the extent of that delegation without amending the statute through the bill-making process. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 550 (App. 2011).

Under 24 F.S.M.C. 121, all of the Marine Resources Act's components are severable. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 551 (App. 2011).

Since operators, owners, and agents are defined separately in the statute, the 24 F.S.M.C. 109 and 122 restrictions that apply to owners do not apply to agents for foreign fishing vessels. Congress v. Pacific Food & Servs., Inc., 18 FSM R. 76, 77 (App. 2011).

Newly-ratified fisheries management agreement can be made part of FSM domestic law by statute, or by National Oceanic Resource Management Authority regulation under 24 F.S.M.C. 204(1)(d). FSM v. Kimura, 20 FSM R. 297, 305 (Pon. 2016).

– EEZ – Regulation of – Acts Violating

The fact that a fishing vessel approaches a reef is by itself some basis for some suspicion that it may intend to engage in fishing. Ishizawa v. Pohnpei, 2 FSM R. 67, 78 (Pon. 1985).

The government has probable cause to detain a fishing vessel for illegal fishing when the evidence and

information indicate that the vessel was conducting fishing operations within the FSM Exclusive Economic Zone, there was freshly caught fish aboard, and the permit provided to the officers contained a name different from the actual name of the vessel. FSM v. Zhong Yuan Yu No. 621, 6 FSM R. 584, 590-91 (Pon. 1994).

A person may be held criminally liable for violating any provision of Title 24 or of any regulation or permit issued pursuant to Title 24, or any provision of, or regulation under, an applicable domestic-based or foreign fishing agreement entered into pursuant to Title 24, or any condition of any permit issued in accordance with Title 24 and any regulations made under Title 24, respectively. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 211 (Pon. 1995).

A defendant may be held criminally liable for failure to maintain a daily English language catch log as required under the terms of its foreign fishing agreement and the Harmonized Minimum Terms and Conditions. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 211-12 (Pon. 1995).

A party to a foreign fishing agreement voluntarily assumes primary liability and responsibility for its own failure to comply with the law, and for similar failures on the part of its fishing vessels and vessel operators within the FSM. Such a party also assumes a legal duty to ensure that the operators of its licensed vessels comply with all applicable provisions of FSM law. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 212 (Pon. 1995).

A defendant may be held criminally liable for failure to have a radio capable of monitoring VHF channel 16, the international safety and calling frequency, as required under the terms of its foreign fishing agreement. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 213-14 (Pon. 1995).

A defendant may be held criminally liable for exceeding the crew size authorized under the terms of its foreign fishing permit which is a term that the permit holder cannot unilaterally alter by use of the notification of changes provision in the permit. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 214 (Pon. 1995).

A defendant cannot be held criminally liable for failure to properly stow all fishing gear aboard a vessel in such a manner that it would not be readily available for use in fishing when the vessel was in an area in which it was authorized to fish. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 215 (Pon. 1995).

A defendant may be held criminally liable for knowingly shipping, transporting, or having custody, control, or possession of any fish taken or retained in violation of Title 24 or any regulation, permit, or foreign fishing agreement or any applicable law even when the vessel is operating under a valid permit. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 216 (Pon. 1995).

A party's failure to "ensure" its vessel's compliance with FSM law constitutes a breach of its foreign fishing agreement. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 86 (Pon. 1997).

When the fishing statute sets forth a list of prohibited acts in the disjunctive, commission of any one of the listed acts is unlawful, and the government may pursue separate civil penalties for each. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 90 (Pon. 1997).

It is unlawful for any person to violate any provision of Title 24, or of any regulation or permit issued under it, or to violate any provision of, or regulation under, an applicable domestic-based or foreign fishing agreement entered into pursuant to 24 F.S.M.C. 401, 404-406. A person is any individual, corporation, partnership, association, or other entity, the FSM or any of the state governments, or any political subdivision thereof, and any foreign government, subdivision of such government, or entity thereof. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 173-74 & n.2 (Pon. 1997).

While 24 F.S.M.C. 116(1) places a duty to maintain the daily catch log upon the vessel master, the statute does not make the vessel master's liability for failure to maintain that log exclusive. Therefore

when a party to a foreign fishing agreement that says that party ensures that its authorized vessels will properly maintain such a log that party may be held liable. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 174 (Pon. 1997).

An authorized vessel's master's knowledge is attributable to its foreign fishing agreement party because knowledge held by an agent or employee of a corporation may be attributed to its principal. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 180 (Pon. 1997).

A fishing association is not liable under a general theory of agency when the complaint does not make a general agency allegation, and instead asserts liability based on an agreement's language, and nothing in the agreement renders the other defendants the agents of the fishing association such that the association is liable under the respondeat superior doctrine for the damages flowing from a vessel's alleged negligent operation. Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM R. 112, 115 (Kos. 2001).

Fishing agreement provisions that refer to vessels' compliance with FSM law address statutory law violations, not conduct governed by tort law principles. Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM R. 112, 115 (Kos. 2001).

When a fishing agreement requires that the signatory organizations must only take "necessary steps to ensure" that their members comply with the laws, regulations, and their permits and the government has made no allegation and introduced no evidence that the signatory has failed to take any of these "necessary steps," the government cannot seek to impose some sort of strict liability on the signatory for the actions of its members' employees because the fishing agreement's terms, without more, do not create liability for the signatory organizations for each and every violation of FSM fishery law or the foreign fishing agreement that their members commit. The government is therefore not entitled to summary judgment because, as a matter of law, the foreign fishing agreement's contractual terms do not impose vicarious liability on the signatory. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 173-74 (Chk. 2001).

Because NORMA does not have a legal duty to issue a fishing permit by an applicant's preferred effective date, a defense of unjustified withholding of the license because it was not issued on the applicant's preferred date is without merit. FSM v. Katzutoku Maru, 15 FSM R. 400, 404 (Pon. 2007).

A defendant commits a separate violation of section 907(1) for each day he engages in commercial fishing without a valid fishing permit. FSM v. Katzutoku Maru, 15 FSM R. 400, 404-05 (Pon. 2007).

A vessel owner is included within the definition of operator of a vessel and an operator is prohibited from fishing in the FSM's exclusive economic zone without a permit and is also mandated to keep fishing gear stowed except in an area where the vessel is permitted to fish. FSM v. Fu Yuan Yu 096, 16 FSM R. 1, 3 (Pon. 2008).

When a Rule 12(b)(6) movant points to no factual deficiencies in the complaint, whose allegations are deemed true for purposes of the motion to dismiss, and when, taking as true, the complaint's material allegation that the captain switched on the automatic locating device or transponder as the vessel was boarded, the transponder was not on at the time of boarding, which constitutes a violation of 24 F.S.M.C. 611(4), and the complaint thus states a claim for a 24 F.S.M.C. 611(4) violation. FSM v. Koshin 31, 16 FSM R. 15, 19 (Pon. 2008).

A fishing boat operator must, by statute, ensure that appropriate position-fixing and identification equipment is installed and maintained in working order on each vessel, and thus, a fishing boat's transponder is required to be on at all times while it is within the FSM EEZ, even while in transit. FSM v. Kana Maru No. 1, 17 FSM R. 399, 404 (Chk. 2011).

The act or omission of any crew member of a fishing vessel or in association with a fishing vessel, is deemed to be that of that fishing vessel's operator, and an "operator" is any person who is in charge of or directs or controls a fishing vessel, or for whose direct economic or financial benefit a vessel is being used, including the master, owner, and charterer. FSM v. Kana Maru No. 1, 17 FSM R. 399, 404 (Chk. 2011).

The statute imposes liability for a fishing civil penalty on "any person" and "person" is defined as any natural person or business enterprise or similar entity. It does not include a vessel *in rem*. The civil penalty is thus imposed jointly and severally against the fishing vessel operators only and not against the fishing vessel. But the vessel, or rather the bond posted for the vessel's release, may be considered the property or assets of an owner or operator from which a judgment against the owner or operator may be satisfied. FSM v. Kana Maru No. 1, 17 FSM R. 399, 405 (Chk. 2011).

By statute, a fishing vessel's operator must ensure the continuous monitoring of the international distress and call frequency 2182 kHz (HF) or the international safety and call frequency 156.8 MHz (channel 16, VHF-FM) to facilitate communication with the fisheries management, surveillance and enforcement authorities, and both the Foreign Fishing Agreement and the foreign fishing permit also require that the vessel continuously monitor either of two radio frequencies. FSM v. Kana Maru No. 1, 17 FSM R. 399, 405 (Chk. 2011).

When the FSM proved by a preponderance of the evidence that the fishing boat's HF radio was not on and it also proved that the vessel had a VHF radio, but there was no evidence whether the VHF radio was on or off or whether it was tuned to channel 16, the FSM's claim that the vessel was not monitoring a required radio frequency fails for lack of proof because the statute, the Foreign Fishing Agreement, and the foreign fishing permit all require that the vessel monitor only one of those two frequencies and the evidence shows that the vessel had the ability to monitor the VHF channel 16 and there is no evidence that it was not being monitored. FSM v. Kana Maru No. 1, 17 FSM R. 399, 405 (Chk. 2011).

By statute, and as required by both the foreign fishing agreement and the fishing permit, a fishing boat operator must prominently display any permit issued for the vessel in the vessel's wheelhouse. FSM v. Kana Maru No. 1, 17 FSM R. 399, 405 (Chk. 2011).

Because "display" means a fixed display such as being posted on a bulkhead, not being produced and displayed on demand, the FSM has proven a violation of the requirement to prominently display a fishing permit in the vessel's wheelhouse when the displayed permit had expired and was thus invalid, and the captain, only when asked for a current permit, promptly displayed one. FSM v. Kana Maru No. 1, 17 FSM R. 399, 405-06 (Chk. 2011).

Title 24 imposes criminal liability on any person who commits an act prohibited by that title. A person is defined as any natural person or business enterprise or similar entity. It does not include a vessel in rem. By statute, a person specifically includes a corporation, partnership, cooperative, association, or government entity. Although not an actual, living person, the law treats a company as a person for the purposes of liability. FSM v. Kimura, 19 FSM R. 617, 619 n.1 (Pon. 2014).

All licensed fishing vessels are required to send their position to NORMA when they enter or exit the FSM EEZ, and when in the FSM EEZ, the vessels are required to activate their transponder, broadcasting a unique signal to the FSM's Vessel Monitoring System which regularly records its location. FSM v. Kimura, 19 FSM R. 630, 634 (Pon. 2015).

24 F.S.M.C. 611(5) imposes strict liability for failure to comply with certain requirements of subsection (1), which reflects the legislative purpose to require that fishing vessels undertake all the various actions necessary to transmit required information continuously, accurately and effectively. To this end, a vessel's operator is required to install a transponder, maintain it in good working order, and ensure the effective transmission of required information. FSM v. Kuo Rong 113, 20 FSM R. 27, 32 (Yap 2015).

Read in proper context, 24 F.S.M.C. 611(1)(b) and (c) are aimed at similar types of wrongdoing and

uphold a public interest of the same nature. Thus, a vessel's failure to maintain its transponder in good working order, and its consequent failure to ensure transmission of required information from the transponder, is a solitary act that caused only one injury and therefore 24 F.S.M.C. 611(5) should not be construed to authorize cumulative penalties. FSM v. Kuo Rong 113, 20 FSM R. 27, 32 (Yap 2015).

Since Subsection (1) allows NORMA to require that operators perform an integrated act which, when completed in its entirety, ensures transmission of required information from a vessel's transponder and this is reflected in the use of the word "and" between 24 F.S.M.C. 611(1)(b) and (c); since the failure to perform any one part of the integrated act required under subsection 611(1) is sufficient to frustrate entirely the purpose of the subsection; and since a failure to perform multiple component parts of the act required under the subsection is no more frustrating to the statute's purpose than failure to perform only one part, the court will, in the absence of clear legislative intent to impose cumulative penalties, construe 24 F.S.M.C. 611(5) to impose only a single penalty for the failure to comply with the integrated requirements imposed on them under 24 F.S.M.C. 611(1). FSM v. Kuo Rong 113, 20 FSM R. 27, 33 (Yap 2015).

To prove a violation of section 611(1), the government has to show that a defendant: 1) entered into an access agreement or secured a fishing permit; 2) that the access agreement or permit required the defendant to conform to the requirements that NORMA is authorized to impose under section 611(1), and 3) that the defendant failed to comply with these requirements. It follows that a defendant's failure to comply with section 611(1), will, ipso facto, constitute a violation of a permit or access agreement as proscribed by section 906(1)(a),(c). FSM v. Kuo Rong 113, 20 FSM R. 27, 34 (Yap 2015).

An act in violation of 24 F.S.M.C. 611(1) is the failure to maintain the transponder in good working order and the failure to ensure the transponder was transmitting required information or data continuously, accurately and effectively to the designated receiver. FSM v. Kuo Rong 113, 22 FSM R. 515, 525 (App. 2020).

– EEZ – Regulation of – Fishing Permits

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

A vessel defined as a foreign fishing vessel for permitting purposes must enter into a foreign fishing agreement prior to receiving any fishing permits. Katau Corp. v. Micronesian Maritime Auth., 6 FSM R. 621, 623 (Pon. 1994).

Because the Micronesian Maritime Authority has discretion in negotiating and entering into foreign fishing agreements and because statutorily a fishing permit cannot be issued without a signed agreement a court cannot issue a writ of mandamus to compel issuance of a fishing permit because it cannot order performance of a statutorily forbidden act. Katau Corp. v. Micronesian Maritime Auth., 6 FSM R. 621, 624 (Pon. 1994).

A party entitled to apply for a fishing permit must file an application on prescribed forms; otherwise the Micronesian Maritime Authority cannot issue a fishing permit. An applicant may be given an opportunity to cure any defects in a filed permit application. Katau Corp. v. Micronesian Maritime Auth., 6 FSM R. 621, 625 (Pon. 1994).

A fishing permit issued by the national government prohibiting fishing in state waters unless authorized by the state which has jurisdiction does not constitute regulation of state waters by the national government because it merely tries to prevent a vessel that fishes illegally in state waters from continuing to fish in national waters. FSM v. Hai Hsiang No. 63, 7 FSM R. 114, 116 (Chk. 1995).

Section 404 of Title 24 sets forth certain minimum terms that all foreign fishing agreements must contain. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 172 (Pon. 1997).

Revocation of a fishing permit is not the government's sole remedy for violation of the permit's terms. Civil and criminal penalties are also available. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 181 (Pon. 1997).

The fishing permit requirement attaches to vessels, not helicopters. "Vessel" is defined as any water-going craft, and does not include helicopters. Thus the fact that a helicopter company does not have a fishing permit is not dispositive with regard to whether its helicopters engage in "fishing" as that term is defined by 24 F.S.M.C. 102(32). Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 335 (Pon. 2007).

No person shall use any fishing vessel for, and the crew and operator of any fishing vessel shall not engage in, commercial or non-commercial fishing or related activities in the exclusive economic zone unless it is in accordance with a valid and applicable permit. FSM v. Katzutoku Maru, 15 FSM R. 400, 403 (Pon. 2007).

When the defendants' local agent – prior to defendants' fishing activities on August 18th, 19th, and 20th – had actual knowledge that NORMA would not be issuing the fishing permit, the knowledge of the defendants' agent is imputed to the defendants under the law of agency. FSM v. Katzutoku Maru, 15 FSM R. 400, 404 (Pon. 2007).

The Marine Resources Act of 2002 gives NORMA broad discretion in the processing and approval of fishing permits. NORMA does not have a legal duty to process, let alone approve, an application for a fishing permit within one day after the submission of the application. Under 24 F.S.M.C. 108, the Executive Director is to review each application submitted and may, at his discretion, solicit views from appropriate persons in the states and hold public hearings when and where necessary. NORMA also has the discretion to grant or deny a permit under various circumstances, including denying applications when the Executive Director determines that the issuance of a permit would not be in the FSM's best interests. FSM v. Katzutoku Maru, 15 FSM R. 400, 404 (Pon. 2007).

Because NORMA does not have a legal duty to issue a fishing permit by an applicant's preferred effective date, a defense of unjustified withholding of the license because it was not issued on the applicant's preferred date is without merit. FSM v. Katzutoku Maru, 15 FSM R. 400, 404 (Pon. 2007).

Before NORMA issues a fishing permit, it performs a review of various items, including, among other things, the country of registration of the vessel, insurance status, and court cases against the vessel. FSM v. Katzutoku Maru, 15 FSM R. 503, 505 (Pon. 2008).

When, although NORMA informed defendant's local agent that it would not issue a permit on August 17th, there is no evidence defendant's local agent communicated that information to defendant before defendant commenced fishing on August 18th, the defendant's degree of culpability does not warrant imposition of a civil penalty in the amount of $500,000, but the defendant should not have been fishing under the false and uninformed presumption that NORMA would issue the permit on August 17th so the defendant should be required to pay more than the minimum civil penalty. And when the defendant has no history of prior offenses and when the defendant did commit three separate violations by fishing without a permit for three consecutive days, but it appears that the defendant may simply have commenced fishing under the false and uninformed belief that NORMA, as in the past, would issue the permit on the requested preferred effective date, August 17th, and that defendant stopped fishing on August 20th when he found out the permit had not issued, the court determines that $400,000 is the appropriate civil penalty to apply. FSM v. Katzutoku Maru, 15 FSM R. 503, 507 (Pon. 2008).

– EEZ – Regulation of – Penalties

A fishing vessel involved in criminal violations of FSM fishing laws is subject to forfeiture to the government in a civil proceeding against the vessel itself. FSM v. Zhong Yuan Yu No. 621, 6 FSM R. 584,

587 (Pon. 1994).

By statute, only the cargo actually used illegally, or the fish actually caught illegally, are subject to forfeiture, although the burden of proof (presumptions) rest on different parties depending on whether fish or cargo is involved. It is a rebuttable presumption that all fish found a board a vessel seized for Title 24 violations were illegally taken, but there is no such presumption that the cargo found aboard was "cargo used" in the alleged violation. FSM v. Skico, Ltd. (I), 7 FSM R. 550, 552 (Chk. 1996).

Where a fuel tanker illegally fueled a fishing vessel and then loaded on more fuel cargo, only the amount of fuel cargo on the tanker before it reloaded is "cargo used" in violation of Title 24 subject to forfeiture. FSM v. Skico, Ltd. (I), 7 FSM R. 550, 552 (Chk. 1996).

A contract between a foreign fishing agreement party and the owner of vessels permitted under that agreement that the vessels' owner will be responsible for criminal and civil charges for fishing violations merely provides the foreign fishing agreement party with a contractual right of indemnity against the vessels' owner and does not bar the government's imposition of penalties for fishing agreement violations on the foreign fishing agreement party. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 89 (Pon. 1997).

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

Revocation of a fishing permit is not the government's sole remedy for violation of the permit's terms. Civil and criminal penalties are also available. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 181 (Pon. 1997).

In fashioning an appropriate sentence for fishing violations, a court considers the nature, circumstances, extent, and gravity of the prohibited acts committed, the defendant's degree of culpability and history of prior offenses, whether other civil penalties or criminal fines have already been imposed for the specific conduct before the court, and such other matters as justice might require, keeping in mind the statutory purpose behind the provisions violated. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 181-82 (Pon. 1997).

When assessing civil penalties for violations of the Marine Resources Act of 2002, the court is required to take into account several factors, including among other things, the degree of culpability, any history of prior offenses, whether there are multiple violations which together constitute a serious disregard of conservation and management measure and such other matters as justice may require. FSM v. Katzutoku Maru, 15 FSM R. 400, 405 (Pon. 2007).

The Marine Resources Act of 2002, requires the court to take into account several factors when assessing civil penalties for illegal fishing. These factors include the degree of culpability, any history of prior offenses, whether there are multiple violations which together constitute a serious disregard of conservation and management measures and such other matters as justice may require. 24 F.S.M.C. 901(2) sets a minimum civil penalty of $100,000 per violation and a maximum civil penalty of $1,000,000 per violation. FSM v. Katzutoku Maru, 15 FSM R. 503, 506, 507 (Pon. 2008).

When, although NORMA informed defendant's local agent that it would not issue a permit on August 17th, there is no evidence defendant's local agent communicated that information to defendant before defendant commenced fishing on August 18th, the defendant's degree of culpability does not warrant imposition of a civil penalty in the amount of $500,000, but the defendant should not have been fishing under the false and uninformed presumption that NORMA would issue the permit on August 17th so the defendant should be required to pay more than the minimum civil penalty. And when the defendant has no

history of prior offenses and when the defendant did commit three separate violations by fishing without a permit for three consecutive days, but it appears that the defendant may simply have commenced fishing under the false and uninformed belief that NORMA, as in the past, would issue the permit on the requested preferred effective date, August 17th, and that defendant stopped fishing on August 20th when he found out the permit had not issued, the court determines that $400,000 is the appropriate civil penalty to apply. FSM v. Katzutoku Maru, 15 FSM R. 503, 507 (Pon. 2008).

The FSM is entitled to the proceeds of the sale of fish caught during defendant's illegal fishing activities. FSM v. Katzutoku Maru, 15 FSM R. 503, 507 (Pon. 2008).

Any person who commits a fishery violation for which no civil penalty is otherwise specified, is subject to a civil penalty of not less that $40,000 and not more than $100,000. FSM v. Koshin 31, 16 FSM R. 15, 19 (Pon. 2008).

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

When a licensed vessel's captain had forgotten to turn the transponder back on after he had fixed and restarted the generator and the vessel was not fishing at the time, the captain's failure to turn the transponder back on immediately after fixing the generator was neither intentional nor reckless, but, at most, it was negligent. Taking into account the nature, circumstances, extent and gravity of this prohibited act, the violator's degree of culpability and any history of prior offenses, the court will determine that the minimum civil penalty permissible ($100,000) is appropriate. FSM v. Koshin 31, 16 FSM R. 350, 354 (Pon. 2009).

Since the penalty for violating 24 F.S.M.C. 611 may be imposed on "any person," it, by statute, may be imposed only on a natural person or business enterprise or similar entity and not on a vessel. FSM v. Koshin 31, 16 FSM R. 350, 354 (Pon. 2009).

In determining the amount of a Title 24 civil penalty, the court must consider the nature, circumstances, extent and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, whether there are multiple violations which together constitute a serious disregard of conservation and management measures, and such other matters as justice requires. FSM v. Kana Maru No. 1, 17 FSM R. 399, 404 (Chk. 2011).

Congress, by setting a high minimum fine, considers a fishing boat's failure to have the ALC transponder on at all times while in the FSM EEZ to be a grave violation, but when the fishing boat's failure to have the transponder on does not appear to be intentional; when it did not have any history of prior offenses; when, even taken together with the other alleged violations, the multiple violations together do not constitute a serious disregard of conservation and management measures; when the fishing boat had a valid fishing license; and when it was not fishing at the time and had not been fishing within the FSM EEZ on that voyage, the court determines that the $100,000 minimum penalty under 24 F.S.M.C. 611(5) is appropriate. FSM v. Kana Maru No. 1, 17 FSM R. 399, 405 (Chk. 2011).

When no specific civil penalty is provided for a Title 24 violation it is subject to a civil penalty of not less than $40,000 and not more than $100,000. FSM v. Kana Maru No. 1, 17 FSM R. 399, 406 (Chk. 2011).

Whether cumulative statutory penalties are permissible is properly determined by seeking out the legislative intent as expressed in the statute's language. FSM v. Kuo Rong 113, 20 FSM R. 27, 31 (Yap 2015).

Clear legislative intent for cumulative penalties can be indicated by provisions providing for separate penalties for each day of a violation, as found section 901(2) of the Marine Resources Act, or where a separate penalty is expressly imposed for each violation. FSM v. Kuo Rong 113, 20 FSM R. 27, 31 (Yap 2015).

Congress would have reasonably intended to restrict to the scope of 24 F.S.M.C. 611(5) and its civil penalty of $100,000 to $500,000, to only those acts of interference that would result in a failure to ensure transmission of required information from a transponder, and that an act of interference that falls short of that standard would be penalized under the catch-all provision in 24 F.S.M.C. 920, and would be punishable by a lesser fine of between $40,000 and $100,000. FSM v. Kuo Rong 113, 20 FSM R. 27, 32 (Yap 2015).

When the FSM's initial reliance on section 906(2) was in error but that mistake was merely a technical error in pleading since the catch-all cause of action under 24 F.S.M.C. 920 applied, and when granting leave to amend would not prejudice the defendants because the revised cause of action does not place any new facts in dispute, would not result in the need for additional discovery and would not otherwise delay the case's disposition, leave to amend the prayer for relief in four counts to seek a fine in the maximum amount of $100,000 under 24 F.S.M.C. 920 instead of $500,000 under 24 F.S.M.C. 906(2) will be granted. FSM v. Kuo Rong 113, 20 FSM R. 27, 33 (Yap 2015).

In the absence of clear legislative intent to impose cumulative penalties against a single violative act, the court will construe 24 F.S.M.C. 611(5), 906(1) and 920 to impose only one penalty for failure to comply with the integrated requirements imposed as a condition of a permit or access agreement pursuant to 24 F.S.M.C. 611(1). But since 24 F.S.M.C. 901(2) evinces clear legislative intent for the imposition of cumulative penalties by making each day of a continuing violation a separate offense for violations of subtitle I and since the entire Marine Resources Act of 2002 constitutes FSM Code Title 24, Subtitle I, it is proper to impose a separate penalty for each of the four days between April 27, 2013 and April 30, 2013, inclusive, during which the vessel violated a provision of that Act. FSM v. Kuo Rong 113, 20 FSM R. 27, 34-35 (Yap 2015).

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

Although penalties can only be assessed against persons – natural persons or business enterprises or similar entities – and the definition of person does not include a vessel *in rem*, the vessel or a bond posted for the vessel's release, may be considered the property or assets of an owner or operator from which a judgment against the owner or operator may be satisfied so that the vessel, as security for the bond, is therefore properly a party to the action. FSM v. Kuo Rong 113, 20 FSM R. 27, 35 (Yap 2015).

Violations of 24 F.S.M.C. 611(1) that are also violations of 24 F.S.M.C. 906(1) should be penalized as one violation under 24 F.S.M.C. 611(5) and that civil penalties should be assessed pursuant to section 24 F.S.M.C. 901(1) on a daily basis under 24 F.S.M.C. 901(2). The only exception to imposition of penalties under 24 F.S.M.C. 611(5) is an act that does not rise to the level of failure to install, maintain, or ensure transmission of information from a transponder, which is to intentionally feed information or data into a transponder which is not officially required or is meaningless, as set forth in 24 F.S.M.C. 611(4). Such an act is penalized under 24 F.S.M.C. 920. FSM v. Kuo Rong 113, 22 FSM R. 515, 524 & n.9 (App. 2020).

24 F.S.M.C. 611(1) is a strict liability statute. The pertinent inquiry is whether there was compliance with the statute, and if not, during what time period. Whether continuing "acts" occurred to cause the

failure to comply is irrelevant. When the defendants were in violation of 24 F.S.M.C. 611(1) on four consecutive days, the imposition of multiple penalties under 24 F.S.M.C. 901(2) is justified. FSM v. Kuo Rong 113, 22 FSM R. 515, 526 (App. 2020).

The only relevant question when evaluating a strict liability statute is whether there was compliance. A finding of discreet or overt acts in violation of the Marine Resources Act need not be established in order to find continuing violations under 24 F.M.S.C. 901(2). Thus, when the lack of compliance continued for four days, the court will impose penalties for each day of noncompliance. FSM v. Kuo Rong 113, 22 FSM R. 515, 526-27 (App. 2020).

When the later enacted public law is silent about whether sections 611(4) and 611(5) were retroactively repealed, the law in effect at the time of the violations will control the imposition of the penalty. FSM v. Kuo Rong 113, 22 FSM R. 515, 528 (App. 2020).

– Reef Damage

Various approaches exist for monetary valuation of damages to reefs: commodity value, which is posited on a sale of the components of the damaged area; tourism value, which is based on what visitors spend to visit the site; and replacement value involves, which is the cost of replacing the damaged corals by reseeding. People of Satawal ex rel. Ramoloilug v. Mina Maru No. 3, 10 FSM R. 337, 339 (Yap 2001).

When the class plaintiffs successfully pursued two separate causes of action arising from the same incident, negligence and nuisance, and were awarded compensatory damages, including damages for the physical damage to the reef and marine area as well as their loss of use of this resource, their purported discomfort and annoyance does not generate an additional, separate award of damages since the compensatory damages that were awarded, which flowed from the negligence claim, addressed the loss related to the use of property including any discomfort or annoyance that may have been experienced. Any additional award of damages for their nuisance claim would have resulted in a double recovery. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 63 (App. 2008).

While it may be uncontested that the value of a reef on the main island of Yap is $600 per square meter, the court cannot presume, without evidence, that $600 a square meter is an accurate value for any particular Yap outer island reef, especially where on the outer island there may be more reef and fewer people who have the right to rely on or depend on the reef's resources. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 22 (Yap 2018).

An appropriate measure of damages for a damaged coral reef may be the cost of restoration without grossly disproportionate expense. Or if the cost of restoration would not be an appropriate measure because it would entail a grossly disproportionate expense, damages could be measured by the economic value of the marine resources lost or diminished by the reef damage. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 22 (Yap 2018).

– State Waters

While the FSM and Pohnpei foreign fishing statutes pose no specific requirements as grounds for the search of a fishing vessel, the power to seize is carefully conditioned upon illegal use of the vessel. Ishizawa v. Pohnpei, 2 FSM R. 67, 75 (Pon. 1985).

Any attempt to grant statutory authority to permit seizure of a fishing vessel upon a lesser standard than probable cause would raise serious questions of compatibility with article IV, sections 3 and 4 of the Constitution. Such an interpretation should be avoided unless clearly mandated by statute. Ishizawa v. Pohnpei, 2 FSM R. 67, 77 (Pon. 1985).

Seizure under the FSM and Pohnpei foreign fishing statutes must be based upon probable cause, that

is, grounds to believe it is more likely than not that a violation of the act has occurred and that the vessel was used in that violation. Ishizawa v. Pohnpei, 2 FSM R. 67, 77 (Pon. 1985).

To the extent that the state is unable to police its waters and enforce its fishing regulations of its own, the national government has an obligation to provide assistance. However, to the extent that the national government must provide assistance, the power to regulate state waters is beyond the state's control and is in fact a concurrent national power. FSM v. Kotobuki Maru No. 23 (I), 6 FSM R. 65, 73 (Pon. 1993).

A condition on an MMA fishing permit which prohibits fishing within 12 miles of the FSM unless authorized by the state which has jurisdiction is an exercise of the national government's unexpressed concurrent national power. FSM v. Kotobuki Maru No. 23 (I), 6 FSM R. 65, 73 (Pon. 1993).

The issue of whether all vessels in a purse seiner group can be held liable for the illegal fishing of one of the vessels inside the twelve mile territorial sea is not reached when there is insufficient evidence to prove by a preponderance of the evidence that one vessel was searching for fish inside the twelve mile limit. FSM v. Kotobuki Maru No. 23 (II), 6 FSM R. 159, 165 (Pon. 1993).

The regulation of foreign commercial fishing in state waters – within a limit of twelve miles, is a matter of state law. Pohnpei v. M/V Zhong Yuan Yu #606, 6 FSM R. 464, 465 (Pon. 1994).

A fishing permit issued by the national government prohibiting fishing in state waters unless authorized by the state which has jurisdiction does not constitute regulation of state waters by the national government because it merely tries to prevent a vessel that fishes illegally in state waters from continuing to fish in national waters. FSM v. Hai Hsiang No. 63, 7 FSM R. 114, 116 (Chk. 1995).

Even if an FSM Foreign Fishing Agreement has a regulatory effect in banning fishing in state waters, Kosrae acceded to that regulation when the Kosrae Attorney General requested that "the FSM Department of Justice institute a prosecution of the vessel and her owners and operators for fishing within state waters in violation of national law and the terms of the vessel's permit." When Kosrae requested the FSM's assistance in enforcing the national statute criminalizing the Foreign Fishing Agreement's strictures on fishing in state waters, and failing to keep fishing gear stowed in those same waters, Kosrae ratified any FSM regulation of its waters in those two respects and on the occasion in question. FSM v. Zhong Yuan Fishery Co., 9 FSM R. 421, 423 (Kos. 2000).

A criminal prosecution for fishing in state waters will not be dismissed when even if the Foreign Fishing Agreement were to be construed as regulating commercial fishing in Kosrae's waters, the cooperative law enforcement public policy weighs in favor of Kosrae's ability to expressly ratify any such regulation by a specific request to institute a prosecution where the ratification facilitated the enforcement of a national law criminalizing conduct proscribed in the Foreign Fishing Agreement. FSM v. Zhong Yuan Fishery Co., 9 FSM R. 421, 423 (Kos. 2000).

Internal waters are those waters on the landward side, or inside, of the baselines of the territorial sea. The exclusive economic zone starts twelve nautical miles seaward of the baseline and extending outward for another 188 nautical miles. A desire to maximize the area that might be included within the baselines, subject to the FSM's international treaty obligations, cannot be interpreted as a recognition of state ownership of the ocean resources 12 to 200 nautical outside of those baselines when drawn. Chuuk v. Secretary of Finance, 9 FSM R. 424, 430-31 (App. 2000).

As a result of the Pohnpei Executive Reorganization Act, the Department of Land and Natural Resources, not the Office of Economic Affairs, has the power to authorize the harvest and marketing of trochus in Pohnpei. Therefore, any actions taken by the Office of Economic Affairs with regard to publication of solicitations to bid, designating successful bidders, or entering into contracts on the state's behalf for the sale of trochus, were *ultra vires*, or without any legal authority. Nagata v. Pohnpei, 11 FSM R. 265, 270-71 (Pon. 2002).

When the FSM had no involvement in or authority over Pohnpei's decisions not to declare a trochus harvest, summary judgment in the FSM's favor is appropriate with respect to the alleged constitutional violations concerning the plaintiff's trochus business. AHPW, Inc. v. FSM, 12 FSM R. 114, 118-19 (Pon. 2003).

Under Yap traditional rights and ownership of natural resources and marine areas inside the Yap fringing reef – the rights to use and exploit, to the exclusion of all others, the marine resources of particular areas of the submerged lands inside the fringing reef around Yap – stem from a concept called a *tabinaw*. A *tabinaw* entails rights, duties and obligations for its members, and includes families and households. But a *tabinaw* is more than a concept. A *tabinaw* includes an estate in identifiable land and specific areas within the Yap fringing reef within which a *tabinaw* member can exploit the marine resources. A *tabinaw* member can only exploit marine resources in the marine area that appertains to his *tabinaw*. Each village includes a number of *tabinaw*. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 157 (Yap 2007).

Since a *tabinaw* member can only exploit marine resources in the marine area that appertains to his *tabinaw*, the court can and will redefine the class to include only those residents whose *tabinaw* membership gives them exclusive exploitation or use rights in the affected reef area, regardless of whether the state is the ultimate owner of the reef. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 157 (Yap 2007).

Under Yap traditional rights and ownership of natural resources and marine areas inside the Yap fringing reef – the rights to use and exploit, to the exclusion of all others, the marine resources of particular areas of the submerged lands inside the Yap fringing reef – stem from a concept called a *tabinaw*. A *tabinaw* entails rights, duties and obligations for its members, and includes families and households. But a *tabinaw* is more than a concept. A *tabinaw* includes an estate in identifiable land and specific areas within the Yap fringing reef within which a *tabinaw* member can exploit the marine resources. A *tabinaw* member can only exploit marine resources in the marine area that appertains to his *tabinaw*. Each village includes a number of *tabinaw*. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 38 (Yap 2008).

In a lawsuit for damage to the reef in a Yap municipality, a plaintiff class of all municipal residents is not sufficiently definite when the rights to exploit the reef are vested in only certain *tabinaw* and the *tabinaw*'s members. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 38-39 (Yap 2008).

A trial court case that when affirmed on appeal held that the decision – that the State of Pohnpei and not its municipalities owned the marine areas in Pohnpei – concerned only Pohnpei and not the other three FSM states, is clearly not controlling precedent for the resolving issues unique to the State of Yap, including the interpretation of its Constitution and Code when, unlike Pohnpei, Yap not only repealed the relevant Trust Territory Code provision, but Yap's Constitution expressly recognizes the traditional rights and ownership over the natural resources and the marine space within the state of Yap. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 58 (App. 2008).

The State of Yap's ownership of public lands as provided for at 9 Y.S.C. 901, is not mutually exclusive with the traditional rights of ownership over these lands and related marine resources by the people of Yap through the *tabinaw*, as recognized in the Yap Constitution. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 58 (App. 2008).

The mere fact that there is someone outside the class who believes that they also have an interest in the damaged marine space would not preclude an award of damages to the class plaintiffs, provided the class could demonstrate that they had such an interest. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 60 (App. 2008).

When the class plaintiffs successfully pursued two separate causes of action arising from the same incident, negligence and nuisance, and were awarded compensatory damages, including damages for the physical damage to the reef and marine area as well as their loss of use of this resource, their purported discomfort and annoyance does not generate an additional, separate award of damages since the compensatory damages that were awarded, which flowed from the negligence claim, addressed the loss related to the use of property including any discomfort or annoyance that may have been experienced. Any additional award of damages for their nuisance claim would have resulted in a double recovery. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 63 (App. 2008).

"Fishery waters" includes the FSM Exclusive Economic Zone, territorial waters, and internal waters. FSM v. Kana Maru No. 1, 17 FSM R. 399, 404 n.2 (Chk. 2011).

No one may commercially harvest, commercially process, or commercially export sea cucumbers without having a valid permit issued by Kosrae Island Resource Management Authority. Lee v. Kosrae, 20 FSM R. 160, 165 (App. 2015).

Anyone, regardless of citizenship, is required to obtain the same sea cucumber permit because the permit requirement is part of a regulatory scheme to properly manage an important marine resource and avoid its depletion. Lee v. Kosrae, 20 FSM R. 160, 165 (App. 2015).

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

A foreign investment permit holder must also hold a Kosrae Island Resource Management Authority permit in order to commercially harvest, process, or export sea cucumbers. Lee v. Kosrae, 20 FSM R. 160, 165 (App. 2015).

A Kosrae Island Resource Management Authority sea cucumber permit is the only sea cucumber permit needed so as not to violate either Kosrae State Code § 13.523(5) or § 13.523(6). A foreign citizen also needs a foreign investment permit to engage in a sea cucumber (or any other) business, and the lack of a foreign investment permit or the violation of one or more of its conditions would be charged under the foreign investment statutes, not under § 13.523(5) or § 13.523(6). Lee v. Kosrae, 20 FSM R. 229, 231 (App. 2015).

The territorial sea is the waters within 12 nautical miles seaward of FSM island baselines, and the exclusive economic zone is the water seaward of the territorial sea outward to 200 nautical miles from the island baselines. FSM v. Kimura, 20 FSM R. 297, 302 (Pon. 2016).

Irreparable harm may be threatened when, once the sea cucumber population is significantly impacted, it will take several years for the population to recover, if at all, and when the very nature of the surrounding ecosystem will suffer negative consequences as a result. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 551 (Pon. 2016).

The Administrator of the Pohnpei Office of Fisheries and Aquaculture is granted the power to establish seasons for the harvesting of sea cucumbers from their natural marine habitat, and he or she shall do so with the aim of balancing the exploitation of sea cucumbers as an economic resource and the preservation

of sea cucumbers as a renewable resource. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 551 (Pon. 2016).

When a temporary restraining order enjoins the conduct, endorsement, or coordination of any further commercial sea cucumber harvesting in Pohnpei waters and the sale or purchase of sea cucumbers harvested in Pohnpei waters, it may also provide that any sea cucumber already harvested before the order's date may be sold and purchased pursuant to the laws and regulations and that any sea cucumber coming into the buyer's possession which was harvested before the order's date may be handled accordingly so as to prevent the unnecessary waste of those sea cucumbers. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 553 (Pon. 2016).

Passage by Vietnamese through the FSM territorial waters was not innocent and therefore unlawful when it was for the purpose of illegal sea cucumber harvesting, and thus it provides a sufficient factual basis for a guilty plea to entry without a permit. FSM v. Bui Van Cua, 20 FSM R. 588, 590-91 (Pon. 2016).

The court recognizes the customary and traditional rights of municipalities, clans, families, and individuals to control the use of, or material in, marine areas below the ordinary high watermark and otherwise engage in the harvesting of fish and other marine resources from reef areas, but any traditional and customary right to control the use of, or material in, marine areas below the ordinary high watermark is subject to, and limited by, the inherent rights of the Pohnpei Public Lands Trust as the owner of such marine areas. Accordingly, the Mwoalen Wahu does not have standing on the basis that there exists a customary law that gives the traditional leaders the right to control the use of marine areas in their respective municipalities. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 641-42 & n.1 (Pon. 2016).

NAMES

In *in personam* actions, there is no authority to proceed against unknown persons in the absence of a statute or rule, and the FSM has no rule or statute permitting the use of fictitious names to designate defendants. Accordingly, John Doe defendants will be dismissed. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 412 n.1 (Pon. 2001).

A court decree is required to document a change of name, even for spelling changes. In re Phillip, 11 FSM R. 301, 302 (Kos. S. Ct. Tr. 2002).

The court is unaware of any tradition or custom within Chuukese society for a child, or even an adult, to carry the last name of his or her step-father or step-mother, and finds and concludes that no such tradition or custom exists. In re Suda, 11 FSM R. 564, 566 (Chk. S. Ct. Tr. 2003).

At common law, a person is free to adopt and use any name he or she chooses, so long as there is no fraudulent purpose, and the name does not infringe on the rights of others. In re Suda, 11 FSM R. 564, 566 (Chk. S. Ct. Tr. 2003).

The right to assume any name, absent fraud or infringement of the rights of others, operates at common law independently of any court order. In the absence of a statute to the contrary, any person may ordinarily change his name at will, without any legal proceedings, merely by adopting another name. In re Suda, 11 FSM R. 564, 566 (Chk. S. Ct. Tr. 2003).

The lack of statutory procedures for name changes in Chuuk has led to a great variety of allegations in petitions for change of name, such as incorrect allegations regarding Chuukese tradition and custom. It is clearly more preferable that the Legislature act to provide statutory requirements for name change petitions. In the absence of such statutory regulation, it is prudent for the court to establish minimum requirements for name change petitions in Chuuk. In re Suda, 11 FSM R. 564, 566 (Chk. S. Ct. Tr. 2003).

A petition for change of name must include: 1) the petitioner's current name and place of residence; 2)

the petitioner's birth date and age, and place of birth; 3) the petitioner's citizenship, unless the petitioner is an FSM citizen; 4) the petitioner's marital status; 5) the names and ages of petitioner's children, if any; 6) a statement as to the absence or status of petitioner's criminal record; 7) a statement regarding the absence or existence of petitioner's status as a debtor, including the names and addresses of petitioner's creditors, if any; 8) the petitioner's proposed name, and a brief statement of the reasons, if any, for the requested name change; and 9) in the case of a petition for change of name of a minor child, parental consent to the change of name. The petition must contain a prayer for change of name, be signed by the petitioner or the petitioner's attorney or trial counselor, and the petition must be verified. In addition to these minimum requirements, the petitioner must give the general public notice of the petition sufficient to permit those who might object to appear and make written objection. In re Suda, 11 FSM R. 564, 567 (Chk. S. Ct. Tr. 2003).

Given the difficulties of notice in Chuuk, for any petition for name change filed with the Chuuk State Supreme Court, the Clerk of the Court will prepare a radio announcement to be read on V6AK radio, containing the petitioner's name, the date the petition was filed, and requiring any objections to the name change to be filed with the court within four (4) weeks of the petition's filing date. In re Suda, 11 FSM R. 564, 567 (Chk. S. Ct. Tr. 2003).

No hearing on a name change petition will normally be required, unless objections to the petition are properly filed with the court within the time period required. If objections are filed, the court will schedule a hearing at the earliest possible opportunity, and the Clerk of the Court shall give notice of the hearing by the best means available to apprize the objectors of the hearing's date and time. In the absence of objection, and upon confirmation that the name change petition contains all necessary information, the court will grant the petition without hearing, and will give notice to the petitioner that the petition has been granted. In re Suda, 11 FSM R. 564, 567 (Chk. S. Ct. Tr. 2003).

The court would prefer that the Chuuk Legislature adopt statutory procedures for name change petitions, as well as petitions for adoption and other matters involving family status. Name change petitions must contain the court-required minimum provisions only so long as the Legislature chooses not to enact a statutory scheme for such matters. In re Suda, 11 FSM R. 564, 567 (Chk. S. Ct. Tr. 2003).

NOTARIES

While the majority of notaries are employed by the state government, several are employed by other offices and by private entities. The duties of a notary public are the same, regardless of where they are employed. A notarization performed by a court employee carries the same weight as a notarization performed by a privately employed individual. In re Phillip, 11 FSM R. 243, 245 (Kos. S. Ct. Tr. 2002).

A notary only confirms that the person appeared before him or her, was identified by the notary, and signed the affidavit (or other document) in the presence of the notary. Identity is confirmed by personal knowledge or by appropriate documentation. The identity and signature of the person signing the affidavit are verified by the notary public, and so noted on the document. In re Phillip, 11 FSM R. 243, 245 (Kos. S. Ct. Tr. 2002).

A notary cannot and does not verify or confirm the statements in the affidavit because the notary does not have personal knowledge of those statements. In re Phillip, 11 FSM R. 243, 245 (Kos. S. Ct. Tr. 2002).

Notarization of a document does not establish truth to the statements made in the document: notarization only verifies the identity and signature of the person who signed the document. Consequently, notarization of a document by a court employee does not represent any court endorsement or certification of the statements made in the document. In re Phillip, 11 FSM R. 243, 245 (Kos. S. Ct. Tr. 2002).

A notarized affidavit may be authenticated without the affiant's testimony, as it is presumed to be authentic so long as it is acknowledged in the manner provided for by law. A clerk of court's manner of acknowledging an affidavit is for the affiant to swear to it under oath in the clerk's presence. Peter v. Jessy,

17 FSM R. 163, 173-74 (Chk. S. Ct. App. 2010).

Before a notary can apply the notary seal to an affidavit, the notary must confirm that the affiant has personally appeared to sign the affidavit before the notary, the affiant must be identified at that time by the notary, and the affiant must sign the affidavit in the notary's presence. The notary confirms the affiant's identity by personal knowledge or by reviewing appropriate documentation. When applying the notary seal, the notary notes on the affidavit that the affiant's identity and signature have been verified. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

The act of notarizing a document is in itself a verification of the identity and signature of the person who signed the document. If an affiant is not present, however, the notary cannot make the necessary verifications and should under no circumstances notarize the document, and is subject to liability for misconduct of a notary public. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

Generally, a notarized signature is presumed to be authentic. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581 (Pon. 2014).

Until a party has become aware of operative facts to discover that the signature may have been forged, that party is entitled to rely on the authenticity of the notarized signature. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581 (Pon. 2014).

A party is ordinarily entitled to rely on the notarized signature on an agreement when it sues on that agreement, but if the party knows before filing suit that the defendant claims not to have signed the agreement or to know anything about the agreement, the plaintiff cannot base his suit on the presumption arising from the notarized signature. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581 (Pon. 2014).

When the attorney signing the complaint was unaware of operative facts to discover that the notarized signature of one of the defendants was not hers, the attorney made, under the case's circumstances, a reasonable inquiry before the complaint was signed and filed, and, a reasonable inquiry having been made, the defendants' motion for Rule 11 sanctions for filing the complaint will be denied. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581-82 (Pon. 2014).

The false notarization of a guaranty does not affect the guaranty's substantive provisions as it relates to the signer when the signer admits that he did sign the guaranty. This is because the purpose of notarization is to verify the identity and signature of the person who signed the document. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 292 & n.8 (Pon. 2016).

Under both the Pohnpei and FSM statutes, a notary public has the privilege and is authorized to receive proof and acknowledgments of writings and all copies of certification under his or her hand and the notarized seal shall be received as evidence of such transaction. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 29 (App. 2016).

Extrinsic evidence of authenticity, as a condition precedent to admissibility, is not required with respect to documents accompanied by a certificate of acknowledgment, executed by a notary public in the manner provided by law. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 29 (App. 2016).

By virtue of having affixed the notary seal, a notary acknowledges the identity and signature of the individual who signed the document. This is because the notary receives proof of identity and signature before giving his or her imprimatur, as evidenced by the seal. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 29 (App. 2016).

Recognition of a notarized signature as indicia of reliability, is consistent with the governing statute(s), the rules of evidence, and case law; thereby meeting the reasonable inquiry requirement set forth in Rule 11. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 29 (App. 2016).

Kosrae Land Court Rules (and good practice) require that all documents concerning transfer of title must be notarized and submitted to the Registrar for recordation. Signatures that are executed at different times or in different locations must be notarized separately. The signature page of each document may consist of as many duplicate pages as necessary for proper notarization. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 581 (App. 2018).

When the purported transferor's signature and that of his witnesses were not notarized on a duplicate page, but the notarization was instead on a page separate from their signatures, and since the Registrar must not accept any document which is not properly notarized, it is doubtful that the Land Court should have accepted for filing a deed of gift in this form, even if it had been accompanied by the surrender of the old certificate of title, which it was not. Since the deed of gift was in a doubtful form and since the transferor's certificate of title was not surrendered with it, the Land Court should not have issued the transferee a certificate of title for that parcel. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 581 (App. 2018).

The Kosrae Land Court Rules (and good practice) require that all documents concerning transfer of title be notarized and submitted to the Registrar for recordation. Each document must reflect the printed name and signature of each person signing the document, and the date of the signing. Signatures which are executed at different times or in different locations must be notarized separately, and the signature page of each document may consist of as many duplicate pages as necessary for proper notarization. The Registrar shall not accept any document which is not properly notarized. Alik v. Heirs of Alik, 21 FSM R. 606, 618 (App. 2018).

An affidavit supporting probable cause is not deficient when the signature line says "notary public" below it, but the signature is that of an FSM Supreme Court court clerk and her signature is sealed by the court's seal. Nor is the inadvertent omission of the date on the line is provided for entry of the date above the clerk's signature, which the court clerk apparently neglected to fill it in before she signed, fatal to the warrant application or the warrant itself. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 456 (Pon. 2020).

PROPERTY

The fact that one may have general privilege to enter property does not necessarily mean that the privilege may be exercised at all times and in every conceivable manner. FSM v. Ruben, 1 FSM R. 34, 39 (Truk 1981).

State courts, rather than national courts, should normally resolve probate and inheritance issues especially where interests in land are at issue. In re Nahnsen, 1 FSM R. 97, 97 (Pon. 1982).

The power to regulate probate of wills or inheritance of property is not "beyond the power of a state to control" within the meaning of article VIII, section 1 of the Constitution and is consequently a state power. In re Nahnsen, 1 FSM R. 97, 107 (Pon. 1982).

Nothing about the power to regulate probate of wills or inheritance of property suggests that these are beyond the power of a state to control. In re Nahnsen, 1 FSM R. 97, 107 (Pon. 1982).

State officials generally should have greater knowledge of use, local custom and expectations concerning land and personal property. They should be better equipped than the national government to control and regulate these matters. The framers of the Constitution specifically considered this issue and felt that powers of this sort should be state powers. In re Nahnsen, 1 FSM R. 97, 107, 109 (Pon. 1982).

The Ponape District Court, although not granted jurisdiction over land matters, may be given the opportunity to hear certified questions from the FSM Supreme Court on issues in a probate case involving

land in order to further the intent of the framers that local decision-makers play a part in decision of local nature. In re Nahnsen, 1 FSM R. 97, 110-12 (Pon. 1982).

When jurisdiction exists by virtue of diversity of the parties, the FSM Supreme Court may resolve the dispute despite the fact that matters squarely within the legislative powers of states (e.g., probate, inheritance and land issues) may be involved. Ponape Chamber of Commerce v. Nett Mun. Gov't, 1 FSM R. 389, 392-93 (Pon. 1984).

When an individual claiming an interest in land has no prior knowledge of an impending transaction of other parties concerning that land, his failure to forewarn those parties of his claim cannot be interpreted as a knowing waiver of his rights. Etpison v. Perman, 1 FSM R. 405, 418 (Pon. 1984).

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

There is a substantial state interest in assuring that land disputes are decided fairly because of the fundamental role that land plays in Micronesia. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 92, 98 (Kos. S. Ct. Tr. 1987).

A claim that decision-makers in a land adjudication were biased raises serious statutory and constitutional issues and is entitled to careful consideration. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 92, 99 (Kos. S. Ct. Tr. 1987).

FSM Supreme Court's trial division does not lose jurisdiction over a case merely because land issues are involved, but if such issues are presented, certification procedures may be employed to avoid encroachment upon state decision-making prerogatives. Bank of Guam v. Semes, 3 FSM R. 370, 381 (Pon. 1988).

In an action brought to enforce an agreement among three parties to "meet and divide up" land which is the subject of an ownership dispute, the court will enforce the agreement and, where there is no evidence to establish that any party is entitled to a larger share than the others, the court will presume that they intended to divide the land equally. Tauleng v. Palik, 3 FSM R. 434, 436 (Kos. S. Ct. Tr. 1988).

A party claiming ownership in land for which there is a determination of ownership showing another as owner, with the appeal period expired, has, at a minimum, the burden of showing facts to establish that the determination of ownership is incorrect. Benjamin v. Kosrae, 3 FSM R. 508, 510 (Kos. S. Ct. Tr. 1988).

Plaintiff's possessory interest in land is sufficient to maintain standing to bring action for damages wrought when a road was built across the land. Benjamin v. Kosrae, 3 FSM R. 508, 511 (Kos. S. Ct. Tr. 1988).

The FSM Supreme Court may and should abstain in a case where land use rights are at issue, where the state is attempting to develop a coherent policy concerning the disposition of public lands, where there is a similar litigation already pending in state court, where the state requests abstention as defendant in an action which may expose it to monetary damages, where Congress has not asserted any national interests which may be affected by the outcome of the litigation, and where abstention will not result in delay or injustice to the parties. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM R. 37, 39 (Pon. 1989).

The FSM Constitution terminated all existing indefinite term land use agreements five years after the effective date of the Constitution. After that date, without a new lease agreement the occupier becomes a trespasser on the land. Billimon v. Chuuk, 5 FSM R. 130, 132 (Chk. S. Ct. Tr. 1991).

Because of the special importance land has in Micronesian society the state has a substantial interest in assuring that land disputes are settled fairly. Nena v. Kosrae, 5 FSM R. 417, 424 (Kos. S. Ct. Tr. 1990).

When a landowner voluntarily enters into a statement of intent to grant the state an easement the state has not violated the landowner's constitutional rights by "taking" his property without just compensation, and is not liable for trespass. Nena v. Kosrae, 5 FSM R. 417, 425 (Kos. S. Ct. Tr. 1990).

A strong presumption exists under FSM law for deferring land matters to local land authorities. Kapas v. Church of Latter Day Saints, 6 FSM R. 56, 60 (App. 1993).

Because land ownership determinations in the FSM are conducted using different procedures and resources than in the United States, it is not appropriate to adopt the same legal prerequisites to title employed by U.S. jurisdictions. Wito Clan v. United Church of Christ, 6 FSM R. 129, 133 (App. 1993).

The issue of indefinite parcel boundaries can be resolved by the state Land Commission subsequent to a declaration of title by the court. Wito Clan v. United Church of Christ, 6 FSM R. 129, 133 (App. 1993).

The traditional remedy for the original landowners in an "ammot" transaction when the grantee no longer used the land for the purpose for which it was given was repossession of the land and nothing more. Wito Clan v. United Church of Christ, 6 FSM R. 129, 134 (App. 1993).

Patrilineal descendants – or *afokur* – have no rights to lineage land in Chuuk. They only enjoy permissive rights of usage from the members of the lineage. Mere usage of lineage land by *afokur* does not constitute title of any sort even if the usage lasts a lifetime. Transfer of lineage land to any descendants of male members requires the clear agreement of the Clan. Chipuelong v. Chuuk, 6 FSM R. 188, 196 (Chk. S. Ct. Tr. 1993).

It is an established principle of Chuukese land tenure, that lineage land is owned by the matrilineal descendants and not by the patrilineal descendants or "afokur." Chipuelong v. Chuuk, 6 FSM R. 188, 197 (Chk. S. Ct. Tr. 1993).

When land is granted for "for so long as it is used for missionary purposes," the original grantors retain a reversionary interest. Dobich v. Kapriel, 6 FSM R. 199, 201 (Chk. S. Ct. Tr. 1993).

Land granted for "for so long as it is used for missionary purposes," is not a constitutionally prohibited indefinite land use agreement because the length of the term of the land use will continue, with all certainty, as long as a court determines that the land is still being used for missionary purposes. The term is definite, because its termination can be determined with certainty. Dobich v. Kapriel, 6 FSM R. 199, 202 (Chk. S. Ct. Tr. 1993).

The Constitutional prohibition against indefinite land use agreements does not apply to an agreement where none of the parties are a non-citizen, a corporation not wholly owned by citizens, or a government. Dobich v. Kapriel, 6 FSM R. 199, 202 (Chk. S. Ct. Tr. 1993).

The sanction imposed on one who controls and manages the land of a group who does not fairly and according to custom concern himself with the rights of the other members or another member of the group is the censure of the community. In re Estate of Hartman, 6 FSM R. 326, 328 (Chk. 1994).

When the children of a landowner with full title to land inherit the land they form a land-owning group ("corporation"). The senior male, the *mwäänii chi*, is required to manage the property in the interest of the "corporation." The corporation owns the land even if one part or another is allotted to a member for his use. In re Estate of Hartman, 6 FSM R. 326, 329 (Chk. 1994).

Where a party has merely alleged inadequate notice at the time of the title determination by the Land

Commission but has offered no evidence the a court must conclude the certificate of title is valid, especially when the party only entered the property nine years after the determination process and offers no evidence of interest in property dating back to the time of the determination process. Ponape Enterprises Co. v. Soumwei, 6 FSM R. 341, 344 (Pon. 1994).

Where the T.T. High Court found that a particular parcel of land was not public land in a suit brought by the Nanmwarki and Nahnken of Nett on behalf of all their constituents and subjects the doctrine of res judicata bars a party from presenting that issue as a counterclaim or defense. Ponape Enterprises Co. v. Soumwei, 6 FSM R. 341, 344 (Pon. 1994).

An action for damages for negligent surveying is not an action for the recovery of an interest in land, for which the twenty year statute of limitation would apply, therefore it may be barred by the lesser statue of limitations. Damarlane v. United States, 6 FSM R. 357, 361 (Pon. 1994).

German land reforms instituting the rule of primogeniture and prohibiting sale of land without approval of the Governor and the Nanmwarki and requiring a certain number of days of free labor to the Nanmwarki applied only to the public lands that were taken from the Nanmwarkis and given to the ethnic Pohnpeians actually farming them and not to lands already individually owned. Etscheit v. Adams, 6 FSM R. 365, 374-75 (Pon. 1994).

Japanese land law on Pohnpei disregarded the rule of primogeniture instituted by the Germans and often allowed the division of land and ownership by women. Etscheit v. Adams, 6 FSM R. 365, 376-77 (Pon. 1994).

Under the Trust Territory government the rule of primogeniture was only applied to land held under the standard German form deeds which stated the rule, and even then the courts frequently made exceptions to the restrictions. Etscheit v. Adams, 6 FSM R. 365, 377-80 (Pon. 1994).

Because the customary Pohnpeian title system was primarily matrilineal and the court's decisions should be consistent with local custom, the primogeniture provisions of the standard form German deeds should be given narrow application and not applied more broadly than it was by the German, Japanese, or Trust Territory governments. Etscheit v. Adams, 6 FSM R. 365, 381 (Pon. 1994).

Where the rule of primogeniture was not in effect when the land was individually acquired in 1903, was never fully in effect at any time, was largely ignored by the Japanese when the land was passed by will contrary to primogeniture, and has been repudiated by the state government, and where the person who would have inherited if primogeniture had applied never made that claim, and where primogeniture appears contrary to custom, the court must conclude that primogeniture never applied to the land in question. Etscheit v. Adams, 6 FSM R. 365, 381-82 (Pon. 1994).

An assignor must be able to inherit the assigned expectancy from the source in order for his assignment of expectancy to be effective. Etscheit v. Adams, 6 FSM R. 365, 382 (Pon. 1994).

A U.S. statute requiring aliens to dispose of landholdings within ten years of acquisition never applied in the Trust Territory because the Trust Territory never had the status of a U.S. territory and the U.S. Congress never specifically extended its application to the Trust Territory. Nahnken of Nett v. United States (III), 6 FSM R. 508, 524-25 (Pon. 1994).

A party who has not disturbed the natural contours of the land is not liable for loss of lateral support for removing fill pushed over the common boundary by the other party when the other party created the need for lateral support by altering the natural contours of the land at their common boundary. Setik v. Sana, 6 FSM R. 549, 553 & n.3 (Chk. S. Ct. App. 1994).

Heirs are those persons who acquire ownership upon someone's death. Thus the later issuance of a Certificate of Title to "heirs" confirms their earlier ownership of the property. Luzama v. Ponape

Enterprises Co., 7 FSM R. 40, 49 n.8 (App. 1995).

Where a judge's pretrial order states that the only issue for trial is the ownership of land within certain boundaries as described on a certain map later litigants cannot claim that the determination of title does not include land that they admit is within those boundaries. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 49-50 (App. 1995).

On Kosrae, *usru* is a gift of land by a parent to one's children, and *kewosr* is an outright gift of land from a man to a favored lover. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 36 (Kos. S. Ct. Tr. 1997).

Under Kosraen custom one does not openly declare that a *kewosr* has taken place, but simply acts, with a witness present, in a certain fashion. A *kewosr* is a secret way of giving land that only the man and woman involved know about. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 36 (Kos. S. Ct. Tr. 1997).

In Kosrae, land ownership determinations are conducted using different procedures and resources than those in the United States. It is not appropriate to adopt the same legal reasoning employed in U.S. jurisdictions. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 37 n.6 (Kos. S. Ct. Tr. 1997).

Although transfer of land by *kewosr* fell out of favor after the arrival of Christianity on Kosrae, *kewosr* did continue afterward. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 37 (Kos. S. Ct. Tr. 1997).

Profit à prendre, the right to enter land for cultivation and to take the products of such cultivation, is an interest separate from ownership. It may be created by either grant or prescription. Iriarte v. Etscheit, 8 FSM R. 231, 240 (App. 1998).

The FSM Supreme Court does not need to rule on whether to recognize to recognize the legal doctrine of *profit à prendre* when the claimant cannot satisfy the elements of that doctrine. Iriarte v. Etscheit, 8 FSM R. 231, 240 (App. 1998).

The ownership of realty carries with it, as an incident thereto, the prima facie presumption of the ownership of both the natural products of the land and the annually sown crops. Nelson v. Kosrae, 8 FSM R. 397, 404 (App. 1998).

The criminal law is not to be used to settle conflicting claims to property. Property disputes in Micronesia strain the social fabric of the communities in which they occur. The filing of a criminal action injects an element of criminality into a matter which is, at its core, civil, and increases that strain. Nelson v. Kosrae, 8 FSM R. 397, 406 (App. 1998).

Trust Territory Code Title 67 remains in effect in Chuuk through the Chuuk Constitution Transition Clause. Pau v. Kansou, 8 FSM R. 524, 526 (Chk. 1998).

When a traditional and customary settlement provides a life estate in property, the land reverts to the grantor or his heirs upon the life estate's owner's demise. Muritok v. William, 8 FSM R. 574, 576 (Chk. S. Ct. Tr. 1998).

A person may only transfer such title to land as that person lawfully possesses. Muritok v. William, 8 FSM R. 574, 576 (Chk. S. Ct. Tr. 1998).

If the seller had no authority to sell property, plainly, the buyer acquired no title to the property. Mere possession is not probative of title, because one in possession acquires no better title than his seller. Muritok v. William, 8 FSM R. 574, 576 (Chk. S. Ct. Tr. 1998).

A party who purchased the land from the life estate owner only purchased a life estate and upon the seller's death has no further title or interest in the land. Muritok v. William, 8 FSM R. 574, 576 (Chk. S. Ct. Tr. 1998).

Actions for the recovery of land or any interest therein must be commenced within twenty years after the cause of action accrues. Hartman v. Chuuk, 9 FSM R. 28, 31 (Chk. S. Ct. App. 1999).

A dedication is generally defined as the appropriation of land by the owner for the use of the public. Hartman v. Chuuk, 9 FSM R. 28, 32 (Chk. S. Ct. App. 1999).

An owner may be deemed to have dedicated his property based on his actions, which included throwing the property open to the public and his acquiescence in the property's maintenance by the municipality. Hartman v. Chuuk, 9 FSM R. 28, 32 (Chk. S. Ct. App. 1999).

In land cases, notice requirements must be followed. Failure to serve actual notice is a violation of due process of law and contrary to law. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 94 (Kos. S. Ct. Tr. 1999).

The purpose of a quiet title action is to determine, as between the parties to the proceeding, who has the better title. Elaija v. Edmond, 9 FSM R. 175, 179 (Kos. S. Ct. Tr. 1999).

Implicit in the concept of ownership of property is the right to exclude others; that is, a true owner of land exercises full dominion and control over it and possesses the right to expel intruders. Elaija v. Edmond, 9 FSM R. 175, 179 (Kos. S. Ct. Tr. 1999).

The fact that a claimant's name is shown on the 1932 Japanese survey map of Kosrae is not dispositive as to the land's ownership. Ownership will be determined on the basis of all the evidence. Elaija v. Edmond, 9 FSM R. 175, 180 (Kos. S. Ct. Tr. 1999).

Determination of land ownership rests primarily with the Land Commission. After a designation of any registration area has been filed, a court will entertain only those land title cases where there is a showing of special cause why action by a court is desirable. Simina v. Rayphand, 9 FSM R. 508, 509 (Chk. S. Ct. Tr. 2000).

The German Land Code of 1912 applies only to land on Pohnpei, not to submerged areas. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 64 (Pon. 2001).

In order for a court to have jurisdiction over an action involving real property, particularly an action involving title, the real property must be within that court's territorial jurisdiction. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 110 (Chk. 2001).

A person may only transfer such title to land as that person lawfully possesses. So when someone did not own a parcel, he did not have the authority to transfer title and distribute it to his children through his will. Anton v. Heirs of Shrew, 10 FSM R. 162, 165 (Kos. S. Ct. Tr. 2001).

When a trespass action is not an action to set boundaries or to determine the ownership of any particular property and when the defendant never directly asserts an ownership interest in the land on which he allegedly trespasses, but rather asserts the rights of third parties, who (and any claims they may have) are not currently before the court, it is not an "action with regard to interests in land" within the meaning of 67 TTC 105 requiring a showing of special cause why action by a court is desirable before it is likely the Land Commission can make a determination on the matter. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 180 (Pon. 2001).

A case that appears to rest on the assertion that the Land Commission gave title to the land in question

to a clan will be dismissed when the Determination of Ownership names a person as the sole owner of the land. Enengeitaw Clan v. Shirai, 10 FSM R. 309, 311 (Chk. S. Ct. Tr. 2001).

Trust Territory Code Title 67 remains in effect in Chuuk through the Chuuk Constitution Transition Clause. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM R. 367, 369 (Chk. 2001).

It is a well-recognized rule of law in Chuuk that lineage land cannot be transferred, distributed or sold by an individual member of the lineage without the consent or acquiescence of all adult members of that lineage, and it is assumed that this rule of law applies to "transfers" by lease as well. Marcus v. Truk Trading Corp., 10 FSM R. 387, 389 (Chk. 2001).

There is no statute of frauds – a law requiring that certain agreements or contracts to be in writing before they are enforceable in court – in Chuuk. Customarily, any agreement, even that selling land, might be oral. Marcus v. Truk Trading Corp., 10 FSM R. 387, 389 (Chk. 2001).

In Kosrae, due to the customs regarding land inheritance and the delays in adjudicating title to land, many parcels are possessed and used by persons who do not have title to land. Land use agreements may be made in writing, but when the agreements involve family members, the agreements are usually verbal. James v. Lelu Town, 10 FSM R. 648, 649 (Kos. S. Ct. Tr. 2002).

The consent of all adult members of the lineage is needed to sell lineage land. Marcus v. Truk Trading Corp., 11 FSM R. 152, 159 (Chk. 2002).

Community censure is the sanction imposed on one who controls and manages the land of a group who does not fairly and according to custom concern himself with the rights of other members or another member of the group. That is not a sanction that a court can order or relief that a court could grant. Marcus v. Truk Trading Corp., 11 FSM R. 152, 161 (Chk. 2002).

Customary and traditional use rights to an island are a form of property right. Rosokow v. Bob, 11 FSM R. 210, 217 (Chk. S. Ct. App. 2002).

"Color of title" is susceptible to ready definition: Any instrument having a grantor and a grantee, and containing a description of the lands intended to be conveyed, and apt words for their conveyance, gives a color of title to the lands described. When the College had color of title to the property because it held a quitclaim deed to the property, that recognition served as a means of assessing and comparing the quality of the respective possessory interests claimed by it and another. Rosario v. College of Micronesia-FSM, 11 FSM R. 355, 359 (App. 2003).

A trial court can hold that, as between the parties to the case, who had the better claim to ownership, but that is all the trial court could have decided regarding ownership. Its ruling could not apply to any claims to ownership by non-parties or to other claims not raised in the pleadings or at trial. Rosokow v. Bob, 11 FSM R. 454, 457 (Chk. S. Ct. App. 2003).

When the parties' position at trial, and on this appeal (until now), was that it was a dispute over ownership, the trial court's decision was limited to who among the parties had a better claim to ownership and did not include a claim that no one owned Fayu. Thus the claim that Fayu was owned by no one was not before the trial court. The appellate court's affirmance of the trial court thus does not preclude a non-party from later successfully maintaining a claim that no one owns Fayu. Rosokow v. Bob, 11 FSM R. 454, 457 (Chk. S. Ct. App. 2003).

The transfer of a void title to another does not make the title any more valid when the other also had notice that the title was being challenged on appeal. In re Lot No. 014-A-21, 11 FSM R. 582, 591 (Chk. S. Ct. Tr. 2003).

Acheche is traditionally a gift of land at the time of the birth of the first son so there could not have been any acheche of the land later because the transfer would have had to have taken place when the son was born. In re Lot No. 014-A-21, 11 FSM R. 582, 593 (Chk. S. Ct. Tr. 2003).

A party can have no legal interest in a lot when she never alleged that she purchased the lot from the true landowning group. In re Lot No. 014-A-21, 11 FSM R. 582, 595 (Chk. S. Ct. Tr. 2003).

The law presumes that an owner of land knows his own property and truly represents it. Tulenkun v. Abraham, 12 FSM R. 13, 17 (Kos. S. Ct. Tr. 2003).

When the Chuuk Legislature has made no effort to repeal, supersede or amend the Trust Territory Code regarding land tenure in Chuuk, pursuant to Article XV, § 9 of the Chuuk Constitution, the Trust Territory Code provisions still apply to land disputes. Chuuk v. Ernist Family, 12 FSM R. 154, 158 n.3 (Chk. S. Ct. Tr. 2003).

When determinations of ownership for adjoining land show that title to those lands is held not only by the named parties but by their brothers and sisters as well, these persons should be named in a boundary dispute and trespass case's pleadings and at least once in the caption, because as co-owners, they may be indispensable parties. In re FSM Telecomm. Corp. Cellular Tower, 12 FSM R. 243, 248 (Chk. 2003).

A party who seeks to quiet title to a piece of land must join all known persons who are claiming title in order to settle the property's ownership without additional litigation. Anton v. Heirs of Shrew, 12 FSM R. 274, 279 (App. 2003).

All co-tenants are indispensable parties to the litigation when someone else claims complete ownership of the land. Otherwise, the co-tenants would either be deprived of their property interest without due process of law or they would be forced to share their property with a hostile co-owner who believes he should be the sole owner. Anton v. Heirs of Shrew, 12 FSM R. 274, 279 (App. 2003).

An appeal will be dismissed for the lack of indispensable parties because an appellant's failure to join all the co-owners as parties is fatal to his appeal. Anton v. Heirs of Shrew, 12 FSM R. 274, 279 (App. 2003).

All co-tenants would not be indispensable parties if a litigant were claiming only one co-tenant's share and not the other shares. Then only that co-tenant need be joined. Anton v. Heirs of Shrew, 12 FSM R. 274, 279 (App. 2003).

When there is no clear evidence in the record that anyone else had significant involvement with the parcel, and given the trial court's judgment as to the witness's credibility, there is no significant evidence to overcome even "some evidence" of Timothy's ownership as presented by the 1932 Japanese Map. George v. Nena, 12 FSM R. 310, 318 (App. 2004).

Whether or not someone had a valid claim of land ownership arising out of his alleged purchase in 1959, he lost any claim he may have had to it by failing to raise the claim or perfect his interest prior to the issuance of a Certificate of Title for it in 1981. Hartman v. Chuuk, 12 FSM R. 388, 400 (Chk. S. Ct. Tr. 2004).

A claim to land clearly could not be renewed when the statute of limitations on an action to recover land or an interest therein is twenty years and more than twenty years have passed since the Certificate of Title in another's favor was issued and since the court decision affirming ownership. Any subsequent attempt to litigate the land's ownership is barred by the statute of limitations. Hartman v. Chuuk, 12 FSM R. 388, 400 (Chk. S. Ct. Tr. 2004).

The law of Chuuk provides that lineage land is owned by the matrilineal members of the lineage.

Lineage land may only be transferred with the consent of the lineage, and since the land is owned by the matrilineal members of the lineage, their consent is necessary. Hartman v. Chuuk, 12 FSM R. 388, 401 (Chk. S. Ct. Tr. 2004).

Interests in land include fee simple ownership, easements, rights of way and leases. Sigrah v. Kosrae, 12 FSM R. 531, 535 (Kos. S. Ct. Tr. 2004).

A person may only transfer such title to land as that person lawfully possesses. If the grantor had no authority to bequeath the property, plainly the devisees acquired no title to the property. Benjamin v. Youngstrom, 13 FSM R. 72, 75 (Kos. S. Ct. Tr. 2004).

Implicit in the concept of ownership of property is the right to exclude others; that is a true owner of land exercises full dominion and control over it and possesses the right to expel intruders. Benjamin v. Youngstrom, 13 FSM R. 72, 76 (Kos. S. Ct. Tr. 2004).

Fee simple title to land which is held by a group of heirs is held as tenants-in-common. Sigrah v. Heirs of Nena, 13 FSM R. 192, 196 (Kos. S. Ct. Tr. 2005).

Co-owners of land are generally considered indispensable parties to any litigation involving the land. A party who seeks to quiet title to a piece of land must join all known persons who are claiming title in order to settle the property's ownership. Sigrah v. Heirs of Nena, 13 FSM R. 192, 196 (Kos. S. Ct. Tr. 2005).

Pursuant to state law, when the Land Court found that Lonno was the "previous land owner" of the subject parcels and that Lonno died without leaving a will, all heirs of Lonno were therefore interested parties to the parcels. Heirs of Lonno v. Heirs of Lonno, 13 FSM R. 421, 423 (Kos. S. Ct. Tr. 2005).

Land use agreements involving family members are usually verbal. Norita v. Tilfas, 13 FSM R. 424, 426 (Kos. S. Ct. Tr. 2005).

Customary land use rights, such as for burials and gravesites, are a form of property right. Norita v. Tilfas, 13 FSM R. 424, 426 (Kos. S. Ct. Tr. 2005).

It is difficult to see how the after-acquired title doctrine could be any other way. The general rule is that a person may only transfer such title to land as that person lawfully possesses. However, if a person should transfer more than he lawfully possesses and then later comes to lawfully possess what he purported to transfer, it is only fair and just that he and the law honor his prior transfer. If a person should transfer an interest that he mistakenly believes he holds and then it is discovered that he does not hold it, the law should encourage him to cure this defective transfer and acquire the interest so that the innocent transferee continues to receive the benefit of his bargain and quietly enjoy what he has leased or bought. If the doctrine of after-acquired title (also called estoppel by deed and estoppel by lease for sales and leases respectively) were not the rule, an innocent transferee would be deprived of the benefit of his bargain, while permitting the after-acquiring transferor to unfairly benefit by disregarding the sale or lease although he has now acquired the right he earlier claimed that he had. Mailo v. Chuuk, 13 FSM R. 462, 469 (Chk. 2005).

A person may only transfer such title to land as that person lawfully possesses. If the seller had no authority to sell property, plainly the buyer acquired no title to the property. Mere possession is not probative of title, because one in possession acquired no better title than his seller. George v. Abraham, 14 FSM R. 102, 108 (Kos. S. Ct. Tr. 2006).

All causes of action arising out of the same event (and all defenses to a cause of action) must be raised in one case or else they are barred. A plaintiff cannot file one suit claiming title based on a will and then be allowed to file a second lawsuit for title to the same land claiming fraud and breach of contract. He must raise all causes of action for title to the land in the same case. Heirs of Mackwelung v. Heirs of

Taulung, 14 FSM R. 494, 496 (Kos. S. Ct. Tr. 2006).

Japanese survey maps, alone, contain no assurance of who should be shown as owners as they were primarily concerned with boundaries but when the Trust Territory Court cases relied on them, along with the other evidence, in reaching their decisions, the Japanese survey maps, along with the sketches and boundary descriptions, may be used to give effect to those decisions. Heirs of Livaie v. Palik, 14 FSM R. 512, 516 (Kos. S. Ct. Tr. 2006).

Courts have no jurisdiction to hear cases with regard to interests in land in land registration areas unless there has been a showing of special cause, and a finding by the court, that action by a court is desirable or the Land Commission has asked the court to assume jurisdiction without the Land Commission having made a determination. Mathias v. Engichy, 15 FSM R. 90, 95 (Chk. S. Ct. App. 2007).

It is generally recognized that in order to sell lineage land in Chuuk, lineage heads need the lineage members' consent. Nakamura v. Moen Municipality, 15 FSM R. 213, 218 (Chk. S. Ct. App. 2007).

Lineage members' consent or acquiesce to the sale of lineage land can be shown by affirmative assent, or an acquiescence, or by ratification of the act. Nakamura v. Moen Municipality, 15 FSM R. 213, 219 (Chk. S. Ct. App. 2007).

Japanese survey maps, alone, contain no assurance of who should be shown as owners as they were primarily concerned with boundaries. The survey maps are some evidence of ownership, but that there must be substantial evidence to support the decision of ownership. Testimony from many witnesses to determine that the appellees controlled and used the land from over ten to fifteen years prior to the survey map through the time of filing claims, in excess of fifty years, is substantial evidence. Heirs of Taulung v. Heirs of Wakuk, 15 FSM R. 294, 298 (Kos. S. Ct. Tr. 2007).

When the Land Court findings consist of testimony of a number of witnesses of a family's undisputed use, control and development of the parcel without interference for over 50 years and that family continues to do so today, the Land Court finding was based on substantial evidence to support the family's ownership, even though another's name was on the Japanese survey map and when considering the evidence in a light favorable to the appellees, the appellants, the Land Court's decision was not clearly erroneous. Heirs of Taulung v. Heirs of Wakuk, 15 FSM R. 294, 299 (Kos. S. Ct. Tr. 2007).

The bona fide, or "innocent," purchaser rule arises from the statutory recording requirements for interests in real estate. For all real estate in each district, the clerk of court is required to make and keep in a permanent record a copy of all documents submitted to him for recording. No transfer of or encumbrance upon title to real estate or any interest therein, other than a lease for a term not exceeding one year, is valid against any subsequent purchaser or mortgagee of the same real estate or interest, or any part thereof, in good faith for a valuable consideration without notice of such transfer or encumbrance, or against any person claiming under them, if the transfer to the subsequent purchaser or mortgagee is first duly recorded. Mori v. Haruo, 15 FSM R. 468, 472 (Chk. S. Ct. App. 2008).

The "registration" of interests in land, pursuant to 67 TTC 119 "has the same force and effect as to such land as a recording" under 57 TTC 301. In order for a subsequent, bona fide, or "innocent," purchaser to have valid title against a prior holder of an interest in the same real estate the subsequent purchaser must "register" or "record" the interest before the prior holder. Mori v. Haruo, 15 FSM R. 468, 472 (Chk. S. Ct. App. 2008).

A buyer is not a bona fide purchaser for value without notice when she executes a purchase agreement with an individual seller when an earlier determination of ownership was notice to the world, and thus to her, of the lineage's interest in the property. Mori v. Haruo, 15 FSM R. 468, 473 (Chk. S. Ct. App. 2008).

Lineage heads need the adult lineage members' consent for transfers of lineage land. Mori v. Haruo, 15 FSM R. 468, 474 (Chk. S. Ct. App. 2008).

The rule of law that has gained precedence in Chuuk based on customary practice, and which the court is bound to apply, does not provide for any legally recognizable means to assure that the sale of lineage land will be valid other than by proving that all living, adult members of the lineage have consented to the sale. Mori v. Haruo, 15 FSM R. 468, 474-75 (Chk. S. Ct. App. 2008).

When adult lineage members did not consent to the sale of their interest, as lineage members, in lineage land and the buyer had notice of the lineage's ownership through the February 10, 1976 determination of ownership and therefore was not a bona fide purchaser without notice, the lineage head's transfer of the property was not valid since the lineage members did not ratify the unauthorized transfer of lineage land. Mori v. Haruo, 15 FSM R. 468, 475 (Chk. S. Ct. App. 2008).

A judgment affecting an interest in land becomes enforceable, by registering the judgment with the appropriate land authority. Salik v. U Corp., 15 FSM R. 534, 537 (Pon. 2008).

When it was established that a decedent's real property at issue was lineage land, it continues to be property of the lineage, and is not part of the decedent's estate. In re Estate of Manas, 15 FSM R. 609, 611 (Chk. S. Ct. Tr. 2008).

Title to land is not generally subject to probate but transfers pursuant to a valid will to the devisees specified in the will, or if there is no valid will, to the owner's heirs according to intestate succession. In re Estate of Manas, 15 FSM R. 609, 611 (Chk. S. Ct. Tr. 2008).

The burden at trial is on the party asserting the existence of a customary right to prove it by a preponderance of the evidence. Setik v. Ruben, 16 FSM R. 158, 163 (Chk. S. Ct. App. 2008).

When the appellate court does not find anything in the trial court record to suggest that the trial court should have found, by a preponderance of the evidence, that appellants were granted any an alleged enduring, customary right, the trial court's finding was not clearly erroneous. Setik v. Ruben, 16 FSM R. 158, 163 (Chk. S. Ct. App. 2008).

The bona fide, or "innocent," purchaser rule arises from the statutory recording requirements for interests in real estate. For all real estate in each district, the clerk of court is required to make and keep in a permanent record a copy of all documents submitted to him for recording. No transfer of or encumbrance upon title to real estate or any interest therein, other than a lease for a term not exceeding one year, is valid against any subsequent purchaser or mortgagee of the same real estate or interest, or any part thereof, in good faith for a valuable consideration without notice of such transfer or encumbrance, or against any person claiming under them, if the transfer to the subsequent purchaser or mortgagee is first duly recorded. The "registration" of interests in land has the same force and effect as to such land as a recording. Therefore, a subsequent, bona fide, or "innocent," purchaser has valid title against a prior holder of an interest in the same real estate if one "registers" or "records" the interest before the prior holder. Setik v. Ruben, 16 FSM R. 158, 164-65 (Chk. S. Ct. App. 2008).

An agreement granting fishing rights is not alone conclusive evidence of land ownership. Narruhn v. Aisek, 16 FSM R. 236, 241-42 (App. 2009).

A tenancy in common is a form of co-ownership where two or more persons have equal and undivided shares in the whole with each having an equal right to the whole, but no right of survivorship. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 372 n.1 (Kos. S. Ct. Tr. 2009).

When the sole owner of land dies his fee simple interest would be inherited by his multiple heirs who would hold that fee simple estate as a tenancy in common. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 372 n.1 (Kos. S. Ct. Tr. 2009).

In resolving a land claim, it is irrelevant whether *kewosr* is a legally-recognized tradition with the force of law today when the *kewosr* land transfer at issue occurred about 1912. The relevant question would thus be whether *kewosr* was a tradition when the *kewosr* occurred. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 375 (Kos. S. Ct. Tr. 2009).

Although the presence of a person's name on the 1932 Japanese Survey Map as the owner of a parcel of land is not conclusive or dispositive of that person's ownership but may be overcome or rebutted by other evidence, when there was substantial evidence in the record before the Land Court that Mackwelung used, controlled, and occupied Yekula continuously after 1932, including evidence and testimony presented at the original 1979 Land Commission proceeding, the Land Court reasonably assessed this evidence as supporting the Mackwelungs' position that a *kewosr* to Sra Nuarar had taken place, and since the testimony that a previously unmentioned person had owned the land and had later transferred it to Kun Mongkeya was reasonably assessed as not credible, the evidence did not overcome the 1932 Japanese survey map. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 377 (Kos. S. Ct. Tr. 2009).

When the boundaries described in two May 9, 1957 land use agreements, one in which Kun Mongkeya granted about ¾ hectare for use by the Kusaie Intermediate School, and in the other in which Allen Mackwelung (and Daniel Aliksa) granted four hectares for the same purpose, and which were both signed not only by the grantors but also by a Tafunsak village chief, the Chief Magistrate of Kusaie, and five members of the Land Advisory Committee of Seven, including the District Administrator and the clerk of courts, abut each other; when the Land Commission-ordered "subdivision" reflects the boundary descriptions in both agreements; and when the boundary location was corroborated by witnesses who had been present in 1957 when the boundary was marked on the ground as personally directed by Allen Mackwelung, this all constitutes substantial evidence in support of the Land Court finding that the 1957 land use agreements reflect the true ownership of the land. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 377-78 (Kos. S. Ct. Tr. 2009).

It was not error for the Land Court not to award one side all of the disputed land based on an option agreement that was never exercised and that only refers to a parcel situated somewhere in the disputed land and not all of it and so it does not support a claim to all of the land, even assuming it is some evidence of ownership of some part. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 378-79 (Kos. S. Ct. Tr. 2009).

There is no property right that is recognized by the law of the FSM as "damages." Damages is a legal term of art that refers generally to a remedy which may be granted by the court to a party in a civil action. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 456 (Pon. 2009).

A land title determination that someone is "the sole owner" means just that – she is the sole owner and that the land is individually owned by her and any further language in the determination identifying the individual's lineage and lineage head is a means of identifying further who the individual is, particularly if she did not have a surname. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 554 (Chk. S. Ct. App. 2009).

Generally, what constitutes property and interests in property is purely a matter of state law. Narruhn v. Chuuk, 16 FSM R. 558, 562 (Chk. 2009).

Lineage rights descend through the female lineage members and that patrilineal descendants, as afokur, have only permissive use rights in lineage land. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

Once all the lineage members died, the intervener, as an afokur to the lineage ceased having even permissive rights to lineage lands because once the lineage was extinct, all lineage rights ceased. The lands were then validly acquired by another person and her descendants, not as lineage members, but as

heirs. Peter v. Jessy, 17 FSM R. 163, 175-76 (Chk. S. Ct. App. 2010).

A court does not need the presence of all owners of all property abutting the land's purported boundaries, and any other landowners in the vicinity whose property or property lines would have to appear on a certified survey map to decide the limited issue raised by a plaintiff's cause of action for trespass, that is, to decide whether the defendant is trespassing or occupying land to which the plaintiff church has a better right to possess or occupy. The court does not need to (and without the other necessary parties cannot) determine where all of the other boundaries lie because the only issue properly before the court, and the only issue the court may rule upon without violating the due process rights of non-parties, is whether it is more likely than not that the land the plaintiff leased was owned by the lessor and because the determination of boundaries of any other parts of the land which the plaintiff does not claim a leasehold or of the boundaries of any other parcels of land in the area is not before the court. Church of the Latter Day Saints v. Esiron, 17 FSM R. 229, 233-34 (Chk. 2010).

In a trespass dispute over land, the only issue properly before the court, and the only issue the court may rule upon without violating the due process rights of non-parties, is whether it is more likely than not, and not whether it is certain beyond all doubt, or whether it is certain beyond a reasonable doubt, or whether it is clear and convincing that, as between the parties, the plaintiff has the superior right to possess the land. The plaintiff only has to prove its case by a preponderance of the evidence, that is, to show that it is more likely than not that its rights are superior. Church of the Latter Day Saints v. Esiron, 17 FSM R. 229, 233 & n.4 (Chk. 2010).

The Barrett decision does not stand for the proposition that a judgment is a property right which affords judgment-creditors due process rights under the national Constitution. The FSM Supreme Court has not to date, made such a determination. Narruhn v. Chuuk, 17 FSM R. 289, 299 (App. 2010).

A person may acquire a vested interest in his living parent's land in many ways, such as by a gift, by becoming a trustee, by becoming a beneficiary, or by being named in a registered or otherwise evidenced will or other testamentary device. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 325 (Kos. 2011).

In Chuuk, lineage land cannot be transferred, distributed, or sold by an individual member of the lineage without the consent of all adult members of that lineage. Setik v. Ruben, 17 FSM R. 465, 474 (App. 2011).

The bona fide purchaser rule is a rule of property law, and as such is a question of state law. Setik v. Ruben, 17 FSM R. 465, 475 (App. 2011).

Good faith is an objective standard. Setik v. Ruben, 17 FSM R. 465, 475 (App. 2011).

The bona fide purchaser rule does not apply when the land was lineage land which the seller had no authority to convey since the courts have historically been wary of applying the rule where the purported seller has no authority to sell, and when the Land Commission's determination of ownership was invalid for lack of notice to the occupants since a certificate of title must be based on a valid determination of ownership. Setik v. Ruben, 17 FSM R. 465, 476 (App. 2011).

When an earlier trial court decision and the appellate opinion affirming it clearly stated in no uncertain terms that that case only concerned a tideland and did not concern the adjacent filled land; when the appellate opinion court noted that the owner of dry land is not necessarily the owner of the adjacent tideland; and when that entire proceeding was premised on the supposition that certain persons owned the filled land that they were living on, no plausible reading of the earlier decision can support a claim that it ruled that another was the owner of the filled land because only the most twisted logic could pervert that decision, in which the filled land's ownership was presumed undisputed, into a decision that awarded title of that land to that other. Phillip v. Moses, 18 FSM R. 247, 251 (Chk. S. Ct. App. 2012).

The Constitution does not create property interests, property interests are created and their dimensions are defined by existing rules or understandings that stem from an independent source, such as state law, that secure certain benefits and that support claims of entitlement to those benefits. Kama v. Chuuk, 18 FSM R. 326, 331 (Chk. S. Ct. Tr. 2012).

The hallmark of property is an individual entitlement grounded in state law, which cannot be removed except for cause. Once that characteristic is found, the types of interests protected as "property" are varied and, as often as not, intangible, relating to the whole domain of social and economic fact. Kama v. Chuuk, 18 FSM R. 326, 332 (Chk. S. Ct. Tr. 2012).

Property is more than mere ownership. It includes the right to acquire, use, enjoy, and dispose of acquisitions subject only to the law of the land. Kama v. Chuuk, 18 FSM R. 326, 332 (Chk. S. Ct. Tr. 2012).

The property right created by a judgment against a government entity is not a right to payment at a particular time but merely the recognition of a continuing debt of that government entity. Kama v. Chuuk, 18 FSM R. 326, 332 (Chk. S. Ct. Tr. 2012).

Since the court, adhering to the authority vested in the judicial branch, should only interpret the laws regarding property in Chuuk and should not take over the legislative branch's role, when there has been no legislative intent shown of a specific desire to ascribe a property right to judgments, therefore, absent a specific Chuuk State legislation creating a specific property right, such a right cannot be ascribed to judgments. Kama v. Chuuk, 18 FSM R. 326, 332 (Chk. S. Ct. Tr. 2012).

Although no state shall deprive any person of life, liberty, or property without due process of law is the mandate of the constitution, a party cannot be said to be deprived of his property in a judgment because at the time he is unable to collect it. Kama v. Chuuk, 18 FSM R. 326, 333 (Chk. S. Ct. Tr. 2012).

Plaintiffs are not deprived of their judgments, so long as they continue to be existing liabilities against the entity. Therefore a failure to timely fulfill a judgment does not constitute a taking in violation of the due process clause as there continues to be an existing liability against the state. Kama v. Chuuk, 18 FSM R. 326, 333 (Chk. S. Ct. Tr. 2012).

When the issued judgment s valid, it represents an existing liability against the State of Chuuk. Kama v. Chuuk, 18 FSM R. 326, 333 (Chk. S. Ct. Tr. 2012).

When no property right can be ascribed to the judgment at issue; the due process standard is not applicable. Kama v. Chuuk, 18 FSM R. 326, 333 (Chk. S. Ct. Tr. 2012).

Traditionally, when someone no longer had the right to reside on another's land, he would be allowed to dismantle the house he had built and take the materials to rebuild somewhere else because he owned the building materials. This is usually not feasible with modern houses. Killion v. Nero, 18 FSM R. 381, 385 n.3 (Chk. S. Ct. Tr. 2012).

Chuukese custom generally follows the rule that a person who makes improvements on property has full title to these improvements even though he does not hold title to the property on which they are made. Killion v. Nero, 18 FSM R. 381, 385 n.4 (Chk. S. Ct. Tr. 2012).

When the parties had agreed to a land exchange and the defendant has built houses on the land he received but the plaintiff did not receive any land because the defendant did not have the land to exchange, instead of returning the land to the plaintiff and having the plaintiff pay the defendant the value of the houses the defendant built the most equitable remedy (and the easiest for the court to fashion) is monetary compensation to the plaintiff for the value of the land that he did not receive in an exchange agreement that provided that he was to receive in exchange land of an equal amount to the land transferred to the

defendants. To effectuate justice, the defendants should pay the plaintiff the value of the land the defendants received. Killion v. Nero, 18 FSM R. 381, 386 (Chk. S. Ct. Tr. 2012).

When the parties neglected to put any admissible evidence of land values before the court, the Asian Development Bank valuation system, although officially adopted only for governmental transactions, is evidence of Chuuk land values of which a court may take judicial notice because it is information capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Killion v. Nero, 18 FSM R. 381, 386-87 (Chk. S. Ct. Tr. 2012).

The court will not award the plaintiff the land's rental value as well as its sale price when there was no evidence before the court that the plaintiff would have or would have been able to rent that land to someone else if the defendant was not occupying it because to recover both the sale price and the rental value would be a double recovery. Double recovery is not permissible. Killion v. Nero, 18 FSM R. 381, 387 (Chk. S. Ct. Tr. 2012).

Land does not "earn" interest. It may increase or appreciate in value, in which case, the current fair market value includes the increase or appreciation. Killion v. Nero, 18 FSM R. 381, 387 (Chk. S. Ct. Tr. 2012).

Real property is land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land. Real property can be either corporeal (soil and buildings) or incorporeal (easements). A factory building is thus real property. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 597 (Kos. 2013).

When, although the factory building is real property to which the secured party does not have a right to pre-judgment possession, the secured party must be afforded access to the building so that it may take possession of the chattels to which it does have a right of pre-judgment possession. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 599 (Kos. 2013).

When, if the buyer had diligently inquired into or investigated the matter, all he would have found would have been a Pohnpei Supreme Court final distribution probate order transferring title to all the shares to the seller and stating that this was the final disposition of the case at bar, it was sufficient to create a prima facie case that the buyer was without notice of any prior adverse claims to seller's ownership of the shares and since the buyer paid good and valuable consideration for the shares he was a bona fide purchaser for value. Mori v. Hasiguchi, 19 FSM R. 16, 22 (Chk. 2013).

In rem jurisdiction includes registration of land titles, mortgages, and probate proceedings involving land. Setik v. FSM Dev. Bank, 21 FSM R. 505, 518 (App. 2018).

No court located in Chuuk can exercise jurisdiction over land in Pohnpei. Only a court in Pohnpei can do that. Setik v. FSM Dev. Bank, 21 FSM R. 505, 519 (App. 2018).

A court's jurisdiction over land is in the nature of an in rem proceeding. "In rem" proceedings encompass any action in which essential purpose of suit is to determine title to or affect interests in specific property located within the territory over which court has jurisdiction. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

In rem jurisdiction includes registration of land titles, mortgages, and probate proceedings involving land. To exercise in rem jurisdiction, the property over which the court is to exercise jurisdiction must be physically present within the court's territorial jurisdiction and under its control. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

Land on Pohnpei is not physically present in the Chuuk State Supreme Court's territorial jurisdiction. Thus, neither it, nor any court in Chuuk, can exercise jurisdiction over any Pohnpei land. Only a court in

Pohnpei can do that. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

Land on Pohnpei cannot be tied up in a Chuuk probate proceeding. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

Real property, or realty, is land and anything growing on, attached to, or erected on it, except anything that can be moved without injury to the land. Setik v. Mendiola, 21 FSM R. 537, 555 (App. 2018).

Realty – real property cannot be "converted." Any such conversion claim is misconceived. Setik v. Mendiola, 21 FSM R. 537, 555 (App. 2018).

A litigant's "conversion" claim over real estate can be conceived as a quiet title claim. Setik v. Mendiola, 21 FSM R. 537, 555 (App. 2018).

A home may be owned by someone other than the owner of the land on which it sits. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 155 n.1 (Chk. 2019).

A joint tenancy gives each joint tenant the right of survivorship – to automatically become sole owner of the property on the other joint tenant's death. It differs from a tenancy in common because each joint tenant has a right of survivorship to the other's share. Nicky v. Chuuk Public Utility Corp., 22 FSM R. 239, 242 n.1 (Chk. 2019).

When a co-ownership is not a joint tenency (with right of survivorship), it is a tenancy in common. Nicky v. Chuuk Public Utility Corp., 22 FSM R. 239, 242 n.1 (Chk. 2019).

A tenancy in common is a form of co-ownership where two or more persons have equal and undivided shares in the whole with each having an equal right to the whole, but no right of survivorship. Nicky v. Chuuk Public Utility Corp., 22 FSM R. 239, 242 n.2 (Chk. 2019).

A co-owner's trespass case will be dismissed for failure to join the land's other co-owner as an indispensable party plaintiff because any judgment rendered in the other co-owner's absence would prejudice the defendant(s). This is because the other co-owner could later sue for the same trespass, thus subjecting the defendant(s) to multiple judgments for the same acts; because even a judgment in the defendant's favor would not prevent another co-owner from suing for the same acts; because no protective provisions could be included in a judgment that would lessen the defendant's prejudice; and because the plaintiff has an adequate remedy since the dismissal is without prejudice, and he may then refile the case with all the other co-owners included as plaintiffs. Nicky v. Chuuk Public Utility Corp., 22 FSM R. 239, 242 (Chk. 2019).

In a claim for damages to land, such as trespass, all the affected land's co-owners are indispensable parties to the action and must be joined if they are not already parties; otherwise the defendant faces the substantial risk that it may be subject to multiple or inconsistent judgments if any of the other co-owners later sue. Nicky v. Chuuk Public Utility Corp., 22 FSM R. 239, 242 n.4 (Chk. 2019).

When the plaintiff's averments in his proposed first amended complaint do not cure the complaint's indispensable party problem, the best course is to dismiss this case without prejudice to any future litigation by all of the land's co-owners (whoever they then are), claiming that the defendants are trespassing on the land. Nicky v. Chuuk Public Utility Corp., 22 FSM R. 239, 243 (Chk. 2019).

The enactment of FSM Code, Title 30 falls squarely within the Congress's express powers as delegated by the FSM Constitution. That 30 F.S.M.C. 137 deals with the FSM Development Bank's ability to acquire title to land places this activity squarely in the category of indisputedly national government powers. To function, the Bank must be able to deal with mortgages, as well as deeds and land titles, as land is the primary collateral possessed by most Micronesians. FSM Dev. Bank v. Lighor, 22 FSM R. 321,

330 (Pon. 2019).

The states generally have power over land law and other local issues including personal property law, inheritance law, and domestic law including marriage, divorce, and adoption. However, where the national government concurrently has the power to acquire title to land within the FSM under powers expressly delegated to it, and state law purports to restrict it, the state law must fail as applied to the national government. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 331-32 (Pon. 2019).

Neither Secretarial Order No. 2969 nor Secretarial Order No. 3039 relates to privately held land, nor do they dictate how the FSM as a nation should structure its government to deal with issues related to private lands and their title, transfer, and ownership. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 332 (Pon. 2019).

A litigant's judgments against Chuuk are not vested property rights, and Chuuk's failure to pay those judgments is not a due process or civil rights violation. Suzuki v. Chuuk, 22 FSM R. 491, 494 (Chk. 2020).

When the only basis the plaintiff asserts for subject-matter jurisdiction is that his state court judgments are property and the state's failure to pay is a taking of his property without due process, the plaintiff's suit does not involve subject matter over which the FSM Supreme Court has jurisdiction because the plaintiff's state court judgments are not property, and the state's failure to pay his judgments against it does not violate his due process or civil rights. Suzuki v. Chuuk, 22 FSM R. 491, 494 (Chk. 2020).

While the Chuuk Constitution provides the Chuuk State Supreme Court with concurrent jurisdiction over land disputes, Article VII, § 3(d) of the Chuuk Constitution allows the specific court to be prescribed by statute. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 576 (Chk. S. Ct. App. 2020).

– Adverse Possession

Adverse possession must continue unabated for 20 years in order for the doctrine of adverse possession to be applicable in a land case. Similarly, the common law doctrine of prescriptive right is inapplicable if the 20-year statutory period is not completed. Etpison v. Perman, 1 FSM R. 405, 416 (Pon. 1984).

There was not the kind of consistent assertion of ownership, as distinguished from right of use, that would allow the doctrine of adverse possession to apply in this case. Heirs of Likiaksa v. Heirs of Lonno, 3 FSM R. 465, 468 (Kos. S. Ct. Tr. 1988).

For the state to acquire an easement by prescription, the state's use must by open, notorious, hostile, and continuous for the statutory period under a claim of right. Palik v. Kosrae, 5 FSM R. 147, 154 (Kos. S. Ct. Tr. 1991).

In order for an action over an interest in land to be barred by the statute of limitations, the cause of action must arise more than twenty years before the action is brought. If the claim could have been made over twenty years before it was actually made, then the action can no longer be maintained, no matter how meritorious. Chipuelong v. Chuuk, 6 FSM R. 188, 194 (Chk. S. Ct. Tr. 1993).

When 38 years have elapsed since the determination of ownership of a tract of land in the Wito Clan, when there have been public notices posted concerning the determination and concerning its later lease to the Trust Territory; two separate High Court decisions and three determinations of ownership concerning the land, and when construction activity on he land began 36 years ago; this constitutes both constructive and actual notice of the Wito Clan's claim to the land to another clan whose numerous members lived on the same small island. Chipuelong v. Chuuk, 6 FSM R. 188, 195 (Chk. S. Ct. Tr. 1993).

Adverse possession is a doctrine under which one can acquire ownership of land if he, without the

owner's permission, uses the land openly, notoriously, exclusively, continuously and under a claim of right, and the owner does not challenge such action until after the statute of limitations has run. Etscheit v. Adams, 6 FSM R. 365, 389 (Pon. 1994).

Because the Trust Territory statute of limitations did not go into effect until May 28, 1951 the 20-year period of unchallenged possession necessary to make out a claim for title to land under adverse possession cannot be met if possession was challenged before May 28, 1971. Etscheit v. Adams, 6 FSM R. 365, 389 (Pon. 1994).

It is a general principle that members of a family may not acquire adverse possession against each other in the absence of a clear, positive, and continued disclaimer and disavowal of title, and an assertion of adverse right brought home to the true owner a sufficient length of time to bar him under the statute of limitations from asserting his rights. Etscheit v. Adams, 6 FSM R. 365, 390 (Pon. 1994).

For adverse possession to be shown, the statute of limitations under which a challenge to possession can be made must have expired. Etscheit v. Adams, 6 FSM R. 365, 390 (Pon. 1994).

Adverse possession is a method, which is not favored, of acquiring title to property, which has been defined as the open and notorious possession and occupation of real property under an evident claim or color of right. This possession must be exclusive and in opposition to the true owner of the land. Usually adverse possession is controlled by statute, including the length of time needed to qualify, which is often the same as the statute of limitation. Cheni v. Ngusun, 6 FSM R. 544, 547 (Chk. S. Ct. App. 1994).

One may not claim adverse possession against the government. Cheni v. Ngusun, 6 FSM R. 544, 548 (Chk. S. Ct. App. 1994).

Where government title to the tidelands reverted to the traditional owners in 1989, and because the right to bring an action for trespass or ejection must be available to the owner before the time period for adverse possession has run, whether the doctrine of adverse possession exists in Chuukese land law need not be decided because the twenty-year statute of limitations did not start to run until 1989. Cheni v. Ngusun, 6 FSM R. 544, 548 (Chk. S. Ct. App. 1994).

The doctrine of adverse possession is unrelated to the defense of laches. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 176 n.8 (Pon. 1995).

Adverse possession refers to the acquisition of the full benefit of a piece of property, whereas *profit à prendre* refers to the acquisition of a right of entry and the right to remove and take from the land the designated products or profits. Etscheit v. Nahnken of Nett, 7 FSM R. 390, 393 n.3 (Pon. 1996).

In addition to actual possession for the twenty-year statutory period, adverse possession requires the possessor's occupancy to have been open and notorious, exclusive, continuous and under a claim of right. Thus, a party claiming property rights based on adverse possession must demonstrate that he came onto the land with the intent of taking complete and exclusive control of the property. Etscheit v. Nahnken of Nett, 7 FSM R. 390, 395 (Pon. 1996).

Parties that claim they entered the land with permission to do exactly what they were doing, and did not take any affirmative steps to assert outright ownership, cannot be said to have been in "adverse" possession of the land in dispute. Etscheit v. Nahnken of Nett, 7 FSM R. 390, 396 (Pon. 1996).

Adverse possession is a doctrine under which one can acquire ownership of land if he, without the owner's permission, uses the land openly, notoriously, exclusively, continuously and under claim of right, and the owner does not challenge such action until after the statute of limitations has run. Iriarte v. Etscheit, 8 FSM R. 231, 239 (App. 1998).

The applicable statute of limitations period for adverse possession is twenty years. Iriarte v. Etscheit, 8 FSM R. 231, 239 (App. 1998).

The adverse possession element of "under claim of right" means that the claimant intends to hold the land as his own to the exclusion of all others. It has the same meaning as "hostile." Iriarte v. Etscheit, 8 FSM R. 231, 239 (App. 1998).

When the requisite element of hostility is absent from a party's assertion of adverse possession it is irrelevant whether the party had occupied the land for twenty years before the certificate of title was issued because their occupation was not hostile. Iriarte v. Etscheit, 8 FSM R. 231, 239 (App. 1998).

The FSM Supreme Court does not acknowledge that ownership in land can be gained by adverse possession because when a party cannot satisfy elements to make out claim of adverse possession it is unnecessary to decide whether to recognize that doctrine. Even in those jurisdictions in which adverse possession is recognized, it is not favored as a method of acquiring title. Iriarte v. Etscheit, 8 FSM R. 231, 239 (App. 1998).

An argument that a certificate of title is invalid because of an adverse possession claim must fail when the twenty years necessary for adverse possession has not passed. Iriarte v. Etscheit, 8 FSM R. 231, 239 (App. 1998).

When parties' claim to possession of land changes from permission of someone without authority to give permission to hostility an adverse possession claim will fail if the period of hostility has not yet run twenty years. Iriarte v. Etscheit, 8 FSM R. 231, 240 (App. 1998).

Profit à prendre, the right to enter land for cultivation and to take the products of such cultivation, is an interest separate from ownership. It may be created by either grant or prescription. Iriarte v. Etscheit, 8 FSM R. 231, 240 (App. 1998).

Acquisition by prescription of the right to *profit à prendre* requires the same claim of right or hostility as required to gain ownership by adverse possession. Iriarte v. Etscheit, 8 FSM R. 231, 240 (App. 1998).

When a party's possession of land was not hostile so as to give rise to an adverse possession or to a *profit à prendre* claim, failure to give the party notice is not a violation of the party's due process rights. Iriarte v. Etscheit, 8 FSM R. 231, 240 (App. 1998).

A party's claim to land after a municipality has continued its open, notorious, exclusive and hostile occupation of the land for a period of 27 years before he files suit is barred by the twenty-year statute of limitations, and the municipality is the true and lawful owner of title to the land in dispute on the theory of adverse possession. Hartman v. Chuuk, 9 FSM R. 28, 31 (Chk. S. Ct. App. 1999).

Adverse possession is an acknowledged doctrine under the common law which is fully applicable in Chuuk state court. Hartman v. Chuuk, 9 FSM R. 28, 31 (Chk. S. Ct. App. 1999).

The presumptive rights in land arising from long possession and use, together with delay on the part of the lawful owner in asserting his title, have often been found to be sufficient grounds for taking title from a legal owner and granting it to the user. Hartman v. Chuuk, 9 FSM R. 28, 32 (Chk. S. Ct. App. 1999).

The doctrine of adverse possession provides that long-continued peaceful possession under claim of right is a strong indication of ownership. Hartman v. Chuuk, 9 FSM R. 28, 32 (Chk. S. Ct. App. 1999).

If a person of full age and sound mind stands by, or he and his predecessors in interest together have stood by, for twenty years or more and let someone else openly and actively use land under claim of ownership for that period or more, the person who so stood by will ordinarily be held to have lost whatever

rights he may previously have had in the land and the courts will not, and should not, assist him in regaining such rights. Hartman v. Chuuk, 9 FSM R. 28, 32 (Chk. S. Ct. App. 1999).

To avoid trouble, a person who believes he owns certain land and raises no objection to someone else using it, should at least obtain some clear and definite acknowledgment of his ownership by the user's word or acts at intervals of less than twenty years. If he cannot obtain such an acknowledgment, he should bring the matter to the court for determination before the use has continued for more than twenty years either from the time it began or from the time of the last such acknowledgment. Hartman v. Chuuk, 9 FSM R. 28, 32 (Chk. S. Ct. App. 1999).

When in 1968 the Trust Territory entered the land in question and, pursuant to 6 TTC 302, acquired title by adverse possession 20 years later in 1988, Chuuk is the successor to the title. Sefich v. Chuuk, 9 FSM R. 517, 519 (Chk. S. Ct. Tr. 2000).

When the defendants have failed to show the elements of adverse possession have been met and have thus failed to show that they own or have a right to possess the property they presently occupy, the defendants' claim of long use and occupation of the land does not create a genuine issue as to a material fact since the defendants failed to establish that they acquired ownership or a right to possession. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 103 (Pon. 2002).

An adverse possession claim will never prevail over a validly-issued certificate of title. In re Engichy, 12 FSM R. 58, 69 (Chk. 2003).

Since someone claiming land by adverse possession must prove that his possession was open, notorious, hostile, continuous, and exclusive for the required statutory (twenty-year) time limit, failure to prove any one of these elements causes the whole claim to fail. A court's conclusion concerning another's continuous use of the land can only mean that the claimant, at a minimum, failed to show that his claimed possession was "exclusive" for any twenty-year period. His failure to prove that element is enough so that the lower court did not need to further discuss adverse possession because his adverse possession claim had failed at that point. Anton v. Cornelius, 12 FSM R. 280, 288 (App. 2003).

Adverse possession is not a claim that can be made against registered land, or land that has been one step (determination of boundaries) away from being registered land since 1981, and the filing of a trespass suit tolls (suspends) any running of the time period needed to assert an adverse possession claim. Church of the Latter Day Saints v. Esiron, 13 FSM R. 99a, 99e (Chk. 2004).

The doctrine of adverse possession does not apply when the use of the land was made with the owner's permission. Heirs of Nena v. Sigrah, 14 FSM R. 283, 286 (Kos. S. Ct. Tr. 2006).

The doctrine of adverse possession requires continuous use of the land for at least twenty years. An adverse possession claim must fail when the twenty years necessary for adverse possession has not passed. Heirs of Nena v. Sigrah, 14 FSM R. 283, 286 (Kos. S. Ct. Tr. 2006).

In order to successfully assert a claim that property rights have been acquired through adverse possession, a party must establish that he entered the land at issue and remained in possession of the land for the entire statutory period of 20 years. In addition to actual possession for the statutory period, adverse possession requires the possessor's occupancy to have been open and notorious, exclusive, continuous and under a claim of right. Thus, a party claiming property rights based on adverse possession must demonstrate that he came onto the land with the intent of taking complete and exclusive control of the property. Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 145 (Kos. S. Ct. Tr. 2007).

Persons claiming land by adverse possession must show they had actual, exclusive, continuous, open and notorious possession under a claim of right for the statutory period of limitations, twenty years, before successfully asserting ownership of the land under this doctrine. Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 145 (Kos. S. Ct. Tr. 2007).

Once a claim is filed in court, the time set under a statute of limitations stops running. This means that a claim for adverse possession does not include the time after an action has been filed in a court. Therefore, the 20-year period for the claimants to occupy land openly, notoriously, exclusively, continuously, and under a claim of right must run prior to the time claims were filed. Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 145 (Kos. S. Ct. Tr. 2007).

The appellants did not cite any facts in the record to show that they exclusively and continuously possessed the land for any twenty year period prior to the time the claims were filed when the testimony showed that the appellees gave permission for others to use the land, that the appellees sometimes occupied the land, and that the appellees placed markers claiming ownership at the time of the survey. This evidence shows that the appellants did not have exclusive and continuous possession of the land. Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 145 (Kos. S. Ct. Tr. 2007).

All elements of adverse possession must be demonstrated before title is issued based on this doctrine and when the appellants did not prove all of the elements, their claim of ownership based on adverse possession could not be upheld. Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 145 (Kos. S. Ct. Tr. 2007).

Adverse possession is a disfavored method or doctrine of acquiring title to land. To prove a adverse possession claim, a claimant must demonstrate that the occupation was without the owner's permission, the land was used openly, notoriously, exclusively, continuously and under claim of right, and that the owner did not challenge such action until after the statute of limitations had run. A claimant must prove all elements of adverse possession before title is issued based on the doctrine. Setik v. Ruben, 16 FSM R. 158, 165 (Chk. S. Ct. App. 2008).

The adverse possession element of "under claim of right" means that the claimant intends to hold the land as his own to the exclusion of all others. It has the same meaning as "hostile." Adverse possession does not apply when the use of the land is with the owner's permission. The consistent assertion of ownership necessary for a claim of adverse possession must, therefore, be distinguished from a mere right of use. Setik v. Ruben, 16 FSM R. 158, 166 (Chk. S. Ct. App. 2008).

When the requisite element of hostility is absent from a party's assertion of adverse possession, it is irrelevant whether the party had occupied the land for twenty years before the certificate of title was issued because the occupation was not hostile. Setik v. Ruben, 16 FSM R. 158, 166 (Chk. S. Ct. App. 2008).

A trial court finding that the appellants occupied the land during the prior ownership under a right of use will not be overruled unless it is clearly erroneous, and when there is nothing in the record to indicate that the appellants ever challenged the ownership of the land, the court will not overturn the trial court's ruling against the claim for adverse possession without anything to indicate error in the trial court's finding that the appellants' use was permissive. Setik v. Ruben, 16 FSM R. 158, 166 (Chk. S. Ct. App. 2008).

An adverse possession claim will never prevail over a validly issued certificate of title. Setik v. Ruben, 16 FSM R. 158, 166 (Chk. S. Ct. App. 2008).

Adverse possession is a doctrine under which one can acquire ownership of land if he, without the owner's permission, uses the land openly, notoriously, exclusively, continuously, and under claim of right, and the owner does not challenge such action until after the statute of limitations has run. Setik v. Ruben, 17 FSM R. 465, 476 (App. 2011).

For an adverse possession claim, the occupation must be without permission, open, notorious, and exclusive. Thus when the occupation of the land was permissive and non-hostile, the occupants have not adversely possessed the land. Setik v. Ruben, 17 FSM R. 465, 476-77 (App. 2011).

Adverse possession is a doctrine under which one can acquire ownership of land if he, without the owner's permission, uses the land openly, notoriously, exclusively, continuously and under claim of right, and the owner does not challenge such action until after the statute of limitations has run. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 657 (App. 2011).

Land Court proceedings are the time and place adverse possession can and should be raised since Land Court jurisdiction includes all matters concerning the title of land and any interests therein. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 657 (App. 2011).

Land has a "true owner" or a rightful owner or a legal owner before any Land Court proceedings have been conducted even though it may be uncertain until the proceedings have concluded just who that owner is. A land occupant asserting adverse possession would have to prove that all the elements of adverse possession were satisfied against whoever would be the true owner or against all persons who could possibly be the true owner. Some authorities state that the possessor does not hold adversely unless he intends to hold against the whole world, including the rightful owner, but the really significant fact is that he hold against, that is, not in subordination to the rights of the legal owner. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

Once an owner has a certificate of title to land, that ownership can never be lost through adverse possession. Under a Torrens land title registration system, such as the one in Kosrae, an adverse possession claim will never prevail over a validly-issued certificate of title. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

Claims founded on adverse possession or prescription, are not permitted to come into existence once the title has been registered. Once a title is registered, it is impossible thereafter to acquire title to the registered land by holding adversely to the registered owner. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

One of the attractions of a land registration system (as opposed to a land recordation system) and one of the great benefits of land title registration (as opposed to title recordation) is that once a landowner has gone through the laborious process of validly registering title to land, that landowner and that landowner's successors can never lose that land to an adverse possession claim. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

The proper time and place to make adverse possession claims, if a land occupant has one, is in a Land Court (or other) proceeding before the land title has been registered. Afterward is too late. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

Adverse possession is a disfavored method or doctrine for acquiring title to land and a claimant must prove all the elements of adverse possession before title can be issued based on that doctrine. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

Adverse possession is a doctrine under which one can acquire ownership of land if that individual, absent the owner's permission, uses the land openly, notoriously, exclusively, continuously and under claim of right, coupled with a requirement that the owner does not challenge such action until after the statute of limitation has run. The applicable statute of limitation period for adverse possession is twenty years. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 58 (App. 2016).

In order to successfully assert a claim that property rights have become vested through adverse possession, a claimant must establish that he entered the land in issue and remained in possession of it for the entire twenty-year statutory period, and such possession, pursuant to a claim of right, must be continuous (i.e. uninterrupted, as far as being challenged by the owner). Tilfas v. Heirs of Lonno, 21 FSM R. 51, 58 (App. 2016).

When, in 1990, the Land Commission conducted preliminary and formal hearings, with contested ownership claims in order to determine ownership rights; when others expanded their boundaries, encroaching, and overlapping on the land in 2005; and when there were Land Court status conferences conducted to determine ownership rights during 2011, the requisite twenty-year "continuous" unchallenged time period needed for adverse possession was suspended by these interludes. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 58-59 (App. 2016).

In order to uphold a claim of ownership based on adverse possession, all elements of adverse possession must be demonstrated. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 59 (App. 2016).

– Deeds

Where two clauses within an agreement are inconsistent, the court should attempt to interpret the agreement so that each provision has meaning, but the paramount rule is that the deed must be construed so as to give effect to the intention of the parties as collected from the whole instrument. Melander v. Kosrae, 3 FSM R. 324, 327 (Kos. S. Ct. Tr. 1988).

A court interpreting a deed should attempt to determine the meaning of the words used rather than what the signatory later says he intended. Melander v. Kosrae, 3 FSM R. 324, 328 (Kos. S. Ct. Tr. 1988).

Where fraud or mistake are involved, the court can reform or cancel a deed, but relief will be denied in either situation if the misunderstanding of the aggrieved party was caused by his unexplained failure to read the necessary documents. Melander v. Kosrae, 3 FSM R. 324, 329 (Kos. S. Ct. Tr. 1988).

Where Trust Territory law in 1956 did not allow non-citizens to acquire land except as heirs or devisees, a deed from a landowner to her non-citizen children is invalid because the grantor was still living, and therefore her children were neither heirs or devisees. Etscheit v. Adams, 6 FSM R. 365, 385-86 (Pon. 1994).

Where there is an issue of fact regarding the authenticity of a deed, summary judgment will not be granted to the parties claiming under the deed, and both sides will be allowed to present evidence on the issue. Etscheit v. Adams, 6 FSM R. 365, 389 (Pon. 1994).

When a deed may be legally insufficient to transfer a property because of an inaccurate recitation of its size it may still be relied on as an expression of the intent of the parties at the time. Nakamura v. Moen Municipality, 7 FSM R. 375, 379 (Chk. S. Ct. Tr. 1996).

On Pohnpei, German land deeds were issued only for land taken from the Nahnmwarkis and distributed to ethnic Pohnpeians. The lack of a German land deed for land acquired in another way and thus not subject to German deeds is not an infirmity of title. Nahnken of Nett v. United States, 7 FSM R. 581, 588 (App. 1996).

A court interpreting a deed should attempt to determine the meaning of the words used. Isaac v. Palik, 13 FSM R. 396, 399 (Kos. S. Ct. Tr. 2005).

A court interpreting a deed should attempt to determine the meaning of the words used rather than what the signatory or a relative later says he intended. Benjamin v. Youngstrom, 13 FSM R. 542, 547 (Kos. S. Ct. Tr. 2005).

When a quitclaim deed conveys all of the seller's rights, title and interest in a parcel to a buyer, his children and all his future heirs; when there is no reference made to the plaintiffs or to reservation of any rights for the plaintiffs; and when the quitclaim deed clearly indicates the parties' intent: the sale of all rights, title and interest in the parcel for $3000; the quitclaim deed was not made especially for the benefit of third persons. As the plaintiffs were not the intended beneficiaries on the contract, and do not satisfy the requirements of third party beneficiaries, they cannot recover on the breach of contract claim. Benjamin v.

Youngstrom, 13 FSM R. 542, 547 (Kos. S. Ct. Tr. 2005).

When there is no reference to a "portion" or "part" or "subdivision" of a parcel in a deed and no language in it that would suggest the grantor's intent to transfer only a portion of the parcel to the grantees although it recites 682 square meters as the area, the clear inference drawn is that the Kosrae Land Court analyzed the deeds and determined that the grantor's intent was to transfer the entire parcel and not just a portion thereof, the Kosrae Land Court, in issuing the certificates of title utilized the full area of the parcel, as reflected in the prior grantor's certificate of title and as reflected in the cadastral plat map. The title to the entire 958 square meter parcel was effectively and validly transferred by the quitclaim deed. Benjamin v. Youngstrom, 13 FSM R. 542, 548 (Kos. S. Ct. Tr. 2005).

Deeds, in describing or identifying the land affected in the transaction, may simply reference an appropriate parcel number on the official map. Benjamin v. Youngstrom, 13 FSM R. 542, 549 (Kos. S. Ct. Tr. 2005).

A deed is effective when it is delivered. Benjamin v. Youngstrom, 13 FSM R. 542, 549 (Kos. S. Ct. Tr. 2005).

When a certificate of title was never issued to Tulpe Alokoa for parcel 006-K-07 and she was never determined by a Land Commission proceeding to be the title holder of that parcel and therefore could not transfer title to land that she did not own, her deed of gift was invalid, and should have been rejected for filing by the Land Commission. George v. Abraham, 14 FSM R. 102, 108 (Kos. S. Ct. Tr. 2006).

A deed of gift that only described the gifted land as a "portion of 006-K-07" with no description of boundaries, no reference to a map or drawing of the portion, and no designation of the area of the portion on the deed of gift, is defective due to its failure to adequately describe or identify the affected land because a deed, to be valid, must describe or otherwise identify the land affected. George v. Abraham, 14 FSM R. 102, 108-09 (Kos. S. Ct. Tr. 2006).

A land purchase agreement's intent and effect was to transfer title to the lot to the State upon execution of the agreement; otherwise there would have been no need to include a clause requiring that the land be deeded back to the seller if she was not paid in full by a date certain. Uehara v. Chuuk, 14 FSM R. 221, 226 (Chk. 2006).

Forfeitures are abhorrent to the law, and are construed strictly. Because the law abhors a forfeiture, the language effecting defeasance in a deed must clearly spell that fact out. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

Since under Chuukese customary law, any contract may be oral, that the deed was an inadequate writing to convey land is irrelevant. Nakamura v. Moen Municipality, 15 FSM R. 213, 217 (Chk. S. Ct. App. 2007).

When credible evidence in the record more clearly supported the conclusion that Naau, Fonomu, and Ipis were three separate and distinct parcels of land, a 1910 German administration deed indicating the ownership of Naau was not germane since it did not involve the disputed island, Fonomu. Narruhn v. Aisek, 16 FSM R. 236, 241 (App. 2009).

When the deed conveying the land to the national government, only required it to "commence" development within five years, an argument that development of the land was not "completed" within that finite period of time, is without merit. FSM v. Falan, 20 FSM R. 59, 61 (Pon. 2015).

A deed of trust is a deed conveying title to real property to a trustee as security until the grantor repays a loan. Edmond v. FSM Dev. Bank, 22 FSM R. 77, 79 n.1 (App. 2018).

When, despite the use of the words "will" and "inherited," a document titled "Deed of Will" can only be an inter vivos deed transferring, on the date it was executed, whatever interest the grantor had on that date in the land to his son, because, if it were meant to be a will, it would undoubtedly have included bequests to some or all of the grantor's other children and mention other holdings, but it does not. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 163 (Chk. 2019).

– Easements

Read in the light of its legislative history, article XIII, section 5 of the Constitution of the Federated States of Micronesia was intended to cover leases, not easements, and therefore an easement that is indefinite in term does not violate this constitutional section. Melander v. Kosrae, 3 FSM R. 324, 330 (Kos. S. Ct. Tr. 1988).

For the state to acquire an easement by prescription, the state's use must by open, notorious, hostile, and continuous for the statutory period under a claim of right. Palik v. Kosrae, 5 FSM R. 147, 154 (Kos. S. Ct. Tr. 1991).

Utility poles do not constitute trespass on land when the owner consented to their placement, accepted compensation for crop damage, and signed an agreement which effectively granted an easement for placement of utility poles. Palik v. Kosrae, 5 FSM R. 147, 155-56 (Kos. S. Ct. Tr. 1991).

Encroachment of a road on adjacent parcels is a trespass when the state has not used the property without interruption for the statutory period, nor for a period of time that would make the assertion of plaintiff's rights unfair. Palik v. Kosrae, 5 FSM R. 147, 156 (Kos. S. Ct. Tr. 1991).

Easements are not indefinite land use agreements prohibited by the Constitution because "indefinite land use agreement" is a term of art referring to Trust Territory leases for an indefinite term. Nena v. Kosrae, 5 FSM R. 417, 423 (Kos. S. Ct. Tr. 1990).

An easement for a road is not an indefinite land use agreement prohibited by the Constitution because it is perpetual. It is not indefinite in that it is effective into perpetuity. Nena v. Kosrae (I), 6 FSM R. 251, 254 (App. 1993).

An easement may be created for a permanent duration, or, as it is sometimes stated, in fee, which will ordinarily continue in operation and be enforceable forever. The grant of a permanent easement is for as definite a term as the grant of a fee simple estate. Both are permanent and not for a definite term. Nena v. Kosrae (II), 6 FSM R. 437, 439 (App. 1994).

A grant of a permanent or perpetual easement is definite in the same sense that a grant of a fee simple estate is definite – it is a permanent transfer of an interest in land. Nena v. Kosrae (III), 6 FSM R. 564, 568 (App. 1994).

Although no Trust Territory statute expressly authorizes easements, they are recognized by clear implication in the Trust Territory Code. Island Cable TV v. Gilmete, 9 FSM R. 264, 266 (Pon. 1999).

Under Kosrae State Code § 11.615(3), land held under a certificate of title may be subject to a right of way whether or not the right of way is stated in the certificate of title. Sigrah v. Kosrae, 12 FSM R. 513, 518 (Kos. S. Ct. Tr. 2004).

A pre-existing right of way, such as an access road, passes with and remains necessarily attached to a parcel until it is cut off in a lawful manner Sigrah v. Kosrae, 12 FSM R. 513, 518-19 (Kos. S. Ct. Tr. 2004).

A holder or user of an existing right of way does not have the right to widen or modify the right of way without the landowner's consent. Sigrah v. Kosrae, 12 FSM R. 513, 519 (Kos. S. Ct. Tr. 2004).

An easement by prescription is a doctrine under which one can acquire ownership of land if he, without the owner's permission, uses the land openly, notoriously, exclusively and continuously for the statutory period under a claim of right. The statutory period for easement by prescription, which is an action for the recovery for an interest in land, is twenty years. Sigrah v. Kosrae, 12 FSM R. 513, 519 (Kos. S. Ct. Tr. 2004).

A preexisting easement or other right appurtenant to the land remains appurtenant, even if it is not described in the certificate of title. Norita v. Tilfas, 13 FSM R. 424, 426 (Kos. S. Ct. Tr. 2005).

When, pursuant to state law, parties were granted and therefore maintain a permanent land use right to access a parcel and use a portion thereof for maintenance of their existing gravesites, this permanent land use right passes with the parcel until it is extinguished in a lawful manner independent of the certificate of title. Norita v. Tilfas, 13 FSM R. 424, 427 (Kos. S. Ct. Tr. 2005).

When the subject parcel was utilized for gravesites pursuant to a verbal land use right, prior to the certificate of title's issuance, and the land was utilized by the defendants for many years without interference by the plaintiff, the land use right granted to the defendants for their burial sites was necessarily a permanent right. When the permission granted to the defendants to utilize the parcels included construction of permanent burial sites and necessarily included permission for continuing access and care of the burial sites, by virtue of the permanent nature of burial sites, the defendants' rights pertaining to access and care for the burial sites are rights appurtenant to the parcel and pass with the parcel. Akinaga v. Heirs of Mike, 14 FSM R. 91, 93 (Kos. S. Ct. Tr. 2006).

A permissive land use right, often referred to as an easement or right of way, constitutes a valid property interest in Kosrae. Land use rights in Kosrae are frequently granted verbally, particularly when the land use agreements are between family members. Akinaga v. Heirs of Mike, 15 FSM R. 391, 397 (App. 2007).

Kosrae State Code § 11.615(4), which governs the issuance of certificates of title, establishes that a preexisting easement or other right of way over the land remains appurtenant even if it is not described in the certificate; and passes with the land until cut off or extinguished in a lawful manner independent of the certificate. Akinaga v. Heirs of Mike, 15 FSM R. 391, 397 (App. 2007).

When the Trust Territory judgment that the appellant relies upon explicitly states that the judgment will not affect any rights of way there may be over the lands in question and when it is undisputed that the appellees were granted their right of way prior to the Trust Territory judgment, the Trust Territory judgment did nothing to alter the preexisting right of way. Akinaga v. Heirs of Mike, 15 FSM R. 391, 397-98 (App. 2007).

In general, an easement granted without a specified term is considered to be of permanent duration and may continue in operation forever and is not extinguished by the grantor's death. Akinaga v. Heirs of Mike, 15 FSM R. 391, 398 (App. 2007).

A grant of a right of way does not constitute a trespass because trespass laws are intended to protect those who have a right to possess and use land, and the doctrine of trespass does not act to prohibit the grantees' usage of land provided that they stay within the easement or right of way granted to them. Akinaga v. Heirs of Mike, 15 FSM R. 391, 398 (App. 2007).

When the appellees' general right to enter the land to tend to existing burial sites is established by the undisputed facts but the same cannot be said of the ten-foot buffer zone that was ordered to be maintained around the exiting burial sites since the trial court did not elaborate as to the exact operation of this "perimeter"; when the undisputed facts which establish the right of way do not support such a precisely defined area being designated; when the case relied upon by the trial court is factually distinguishable and

does not alone justify the trial court's mandate of such a large buffer zone; and when the invocation of custom remains as the only basis for the trial court's order but the trial court was not provided supporting evidence of a custom or tradition involving such a specifically demarcated perimeter around burial sites, this single issue will be remanded to the trial court with instructions to strike the portion of its order that provides a 10-foot perimeter around the existing burial sites. The trial court may then receive supporting evidence of custom or tradition about the size of perimeters around graves and thereafter may enter an amended order based upon its findings. Akinaga v. Heirs of Mike, 15 FSM R. 391, 399 (App. 2007).

A proposed settlement is unimportant and only confuses the issues since even if the settlement made no issue of ingress or egress, the November 1997 court order ruled in favor of the appellant's right of way through the subject parcel onto his land behind it, ordering the appellee and his family members to refrain from any acts that may interfere with ingress or egress of appellant and his family members on the subject parcel. Ittu v. Ittu, 19 FSM R. 258, 263 (Kos. S. Ct. Tr. 2014).

"Rights of way" over land are such things as roads, footpaths, and utility easements. A "right of way" is the right to pass through property owned by another or the strip of land subject to a nonowner's right to pass through. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

The Kosrae Land Court is entitled to determine an easement or right of way, because the land registration process is, with certain exceptions, supposed to determine all interests in the land, not just ownership interests. Ittu v. Ittu, 20 FSM R. 178, 187 (App. 2015).

By statute, a certificate of title must show all interests in the land except for rights of way, taxes due, and lease or use rights of less than one year and the certificate is conclusive upon all persons who have had notice of the proceedings and all those claiming under them. A "right of way" over land is a thing such as a road, or footpath, or utility easement. A "right of way" is the right to pass through property owned by another or the strip of land subject to a nonowner's right to pass through. Iwo v. Chuuk, 20 FSM R. 652, 655 (Chk. 2016).

Any rights of way there may be over the land in question need not be stated in the certificate of title. Iwo v. Chuuk, 20 FSM R. 652, 655 (Chk. 2016).

A certificate of title's failure to mention the roadway or government right of way cannot extinguish the government's ownership of the roadway right of way. That right remained vested in the state government. When the government owned a right of way across the land that predated the current owners' ownership of the land, that right of way existed on the land when the land was homesteaded and thus still existed after a later buyer bought part of that homestead lot. Iwo v. Chuuk, 20 FSM R. 652, 655 (Chk. 2016).

The certificate of title statute does not exempt mineral rights if they are not mentioned. Iwo v. Chuuk, 20 FSM R. 652, 655 n.1 (Chk. 2016).

The government owners and users of a right of way across land are not liable for the landowners' neighbors' alleged encroachment on the land. Any remedy for that alleged encroachment, the landowners must seek from their neighbors. Iwo v. Chuuk, 20 FSM R. 652, 656 (Chk. 2016).

An easement that provides ingress and egress to a parcel, necessarily touches and concerns that parcel, with that parcel being the dominant estate or tenement and the parcel over which the easement runs, being the subservient estate or tenement. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 172-73 (Pon. 2017).

By Chuuk state law, a public utility may enter on any private land to dig out and replace or redistribute at the landowner's instruction earth or soil for the maintenance of any pipe or line, but the landowner's instruction is required only if the soil is to be redistributed. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 422 (Chk. S. Ct. Tr. 2019).

No trespass was committed when the public utility already had an easement over the pipes that it replaced on the plaintiff's land, and the law did not require instruction from the land owner since the soil that the utility dug up to replace the pipes was never redistributed – it was placed over the pipes again. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 423 (Chk. S. Ct. Tr. 2019).

No trespass was committed when the public utility placed primary utility poles to connect the general public in that area to electricity because the landowner's right to possessory interest remains subject to the public utility's right to use the soil above and below the land for public utility purposes. Thus, no interference with the land owner's possessory interest occurred. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 423 (Chk. S. Ct. Tr. 2019).

A public utility did not create a nuisance when it installed primary electric poles and replaced pipes because neither qualify as unreasonable conduct nor an abnormally dangerous activity. Public utilities often engage in the installation and replacement of utilities to provide the entire community with a higher standard of living. Neither create any realistic danger to the landowner or surrounding landowners and they provide benefits to the community. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 423-24 (Chk. S. Ct. Tr. 2019).

Chuuk state law requires a public utility to consult with the land owner and announce entry before it works on public utilities – but provides no relief for failure to consult. Due process requires consultation with the landowner before installing a new structure on the land (or extending another easement through that land), but the replacement of existing pipes falls outside that due process requirement since that easement already existed. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 424 (Chk. S. Ct. Tr. 2019).

The respect for real property, as implicitly recognized under the Chuuk Constitution, requires that if the real property owner is known, a public utility must consult with the landowner before creating a new easement over a land – in part to alleviate the landowner's concerns and to create a practical easement which limits the easement's effect on the owner. But consultation with the real landowner may sometimes be impossible; so when the real property owner is absent or unknown, a public utility company may broadcast two radio announcements about its intent to place a new structure on a particular parcel of land and invite any parties who might have an ownership claim to attend a consultation meeting. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 424 (Chk. S. Ct. Tr. 2019).

– Eminent Domain

A motion for removal will be denied where, in an action in eminent domain under Truk State law the only defense available are those relating to the taking, and the counterclaims asserted as a basis for national court jurisdiction do not fall within a defense to the taking. Chuuk v. Land Known as Mononong, 5 FSM R. 272, 273 (Chk. 1992).

The acquisition of interests in private land by the state for a public purpose without the consent of the interested parties is permitted under the Kosrae Constitution, Article XI, § 5, which requires specific procedures to be followed, which are set forth in Kosrae State Code § 11.103. The state must first negotiate with each interested party, provide a written statement of the public purpose for which the interest is sought and negotiate in good faith. If the negotiations are not successful, the state may begin a court action to acquire the interest in land. Sigrah v. Kosrae, 12 FSM R. 513, 519 (Kos. S. Ct. Tr. 2004).

Since the state's statutory authority to acquire interests in land through court action has never been utilized to forcibly purchase an interest in private land for a public purpose, the court cannot conclude that the state is likely to prevail on the merits of its claim due to a complete absence of court decisions applying or interpreting this authority. Sigrah v. Kosrae, 12 FSM R. 513, 519 (Kos. S. Ct. Tr. 2004).

Under the Chuuk Eminent Domain statute, the applicable Rules of Civil Procedures for the Chuuk State Supreme Court govern the procedure for the condemnation of private lands under the power of eminent domain, except as otherwise provided in the statute. In re Lot No. 029-A-16, 18 FSM R. 422, 424 (Chk. S. Ct. Tr. 2012).

When the only relief pleaded by the respondent in his answer that could possibly be considered a counterclaim was his prayer for attorney's fees and costs and when the eminent domain statute precludes this type of relief, even if this part of the respondent's prayer for relief is considered a counterclaim, it is a counterclaim that the statute clearly forbids and therefore should not hinder a dismissal under Rule 41(a)(2). In re Lot No. 029-A-16, 18 FSM R. 422, 424 (Chk. S. Ct. Tr. 2012).

In an eminent domain case, just compensation must be fully tendered before a taking may occur and the Chuuk government must deposit in court, for the benefit of the landowners entitled thereto, the amount of just compensation stated in the declaration. In re Lot No. 029-A-47, 18 FSM R. 456, 458 (Chk. S. Ct. Tr. 2012).

The statutory provision adopting the Asian Development Bank Valuation System in the Governor's Executive Order 04-2007 and recognizing it as the prevailing land valuation system for all government land transactions only applied to land values without regard to any permanent structures that the landowner may also own on the condemned property. In re Lot No. 029-A-47, 18 FSM R. 456, 459 (Chk. S. Ct. Tr. 2012).

The Chuuk eminent domain statute and its provision allowing the court to increase (or decrease) a land's valuation by 10% applies only to the taking of the land and the land valuation and it does not apply to permanent structures erected on the land that the state is taking. The 10% increase possible for any other reasonable factor could include such improvements to the land itself such as the installation of a drainage system, or leveling the land in preparation for building, or adding retaining walls or lateral support. In re Lot No. 029-A-47, 18 FSM R. 456, 459 (Chk. S. Ct. Tr. 2012).

Even if the Trust Territory statute requiring payment for the improvements on land taken by eminent domain, 67 TTC 453 and 454, has been repealed by implication (it was not expressly repealed), the constitutional provision requiring just compensation for property taken would require compensation for a permanent structure on the land at its fair market value. In re Lot No. 029-A-47, 18 FSM R. 456, 459 (Chk. S. Ct. Tr. 2012).

Since, under the Transition Clause, a statute in force in the State of Chuuk on the effective date of the Chuuk Constitution continues in effect to the extent it is consistent with the Chuuk Constitution or until it is amended or repealed, both 67 TTC 453 and 454 remain as Chuuk state law until amended or repealed since both are consistent with the Chuuk Constitution which requires "just compensation," and since they have not been repealed by implication because they occupy gaps in the recently enacted Chuuk eminent domain statute. In re Lot No. 029-A-47, 18 FSM R. 456, 459 (Chk. S. Ct. Tr. 2012).

An award of reasonable relocation or business interruption expenses may be the better view since such damages could be calculated with greater certainty than "lost profits," which would be too speculative. In re Lot No. 029-A-47, 18 FSM R. 456, 460 (Chk. S. Ct. Tr. 2012).

When the parties, by their settlement agreement, have liquidated all damages and compensation claims between them including the respondent's lost profits claim, the issue of whether the respondent in an eminent domain action can obtain damages for lost profits is moot. In re Lot No. 029-A-47, 18 FSM R. 456, 460 (Chk. S. Ct. Tr. 2012).

A respondent in an eminent domain action cannot recover attorney's fees under a private attorney general theory since the court's ruling monetarily benefits only him. In re Lot No. 029-A-47, 18 FSM R. 456, 460 (Chk. S. Ct. Tr. 2012).

Attorney's fees and expenses are not recoverable under 11 F.S.M.C. 701(3) in an eminent domain case filed by the petitioner state since it is not a civil rights case and the respondent is receiving the process due him under the Chuuk statute and Constitution and thus his civil rights have not been violated In re Lot No. 029-A-47, 18 FSM R. 456, 460 (Chk. S. Ct. Tr. 2012).

Since the Chuuk eminent domain statute specifically prohibits an award for the expenses of litigation for either side in an eminent domain case, no attorney's fees or other costs of litigation can be awarded in an eminent domain case. In re Lot No. 029-A-47, 18 FSM R. 456, 460 (Chk. S. Ct. Tr. 2012).

– Gifts

On Kosrae, *usru* is a gift of land by a parent to one's children, and *kewosr* is an outright gift of land from a man to a favored lover. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 36 (Kos. S. Ct. Tr. 1997).

There must be a clear, unmistakable, and unequivocal intention on the part of a donor to make a gift of his property in order to constitute a valid, effective gift inter vivos. Elaija v. Edmond, 9 FSM R. 175, 180 (Kos. S. Ct. Tr. 1999).

Gifts inter vivos must be fully and completely executed – that is, there must be a donative intent to transfer title to the property, a delivery by the donor, and an acceptance by the donee. The intention to make a gift must be executed by a complete and unconditional delivery. Elaija v. Edmond, 9 FSM R. 175, 180 (Kos. S. Ct. Tr. 1999).

Gifts inter vivos, during the life of the owner, must be fully and completely executed. In other words, there must be donative intent to transfer title to the property, a delivery by the donor, and an acceptance by the donee. The intention to make a gift must be executed by a complete and unconditional delivery. George v. Abraham, 14 FSM R. 102, 106 (Kos. S. Ct. Tr. 2006).

When the certificate holder and owner, did not complete or submit any document of transfer for the subject portion of the parcel to the defendant and he did not survey or arrange for the survey of the subject portion of the parcel claimed by the defendant, there was no compliance with the statutory provisions governing a transfer of interest in land or transfer of interest in a portion of parcel by the certificate holder, and therefore, pursuant to state law, there was no gift of land made from the certificate holder to the defendant. George v. Abraham, 14 FSM R. 102, 107 (Kos. S. Ct. Tr. 2006).

– Improvements

Where the court cannot compel the state to honor an illegal and/or unconstitutional lease it can order the state to restore the illegally held land, with any and all public improvements removed, to its rightful owner who may also be entitled to damages. Billimon v. Chuuk, 5 FSM R. 130, 137 (Chk. S. Ct. Tr. 1991).

Individuals have full title to the improvements (as distinguished from the soil) made upon land owned by a land-owning group or "corporation." In re Estate of Hartman, 6 FSM R. 326, 330 (Chk. 1994).

Under Pohnpei law, damage to reefs or soil under the high water mark resulting from dredging activities, the object of which is for public purposes, does not justify compensation to abutting land owners. If the Pohnpei Public Land Board of Trustees had granted certain rights in writing to an individual or group of individuals, and acting on that grant the grantees erected or constructed certain improvements, including fish maii (fish trap) in shallow waters, and if destroyed or value reduced as a result of state dredging activities, the owners thereof may be entitled to just compensation in accordance with the Pohnpei Constitution. Damarlane v. United States, 7 FSM R. 56, 69 (Pon. S. Ct. App. 1995).

A person may make improvements to land he possesses even if he does not own the land. The issue of making improvements is a matter between the owner of the land and possessor of the land. James v.

Lelu Town, 10 FSM R. 648, 649 (Kos. S. Ct. Tr. 2002).

Individuals may have full title to the improvements (as distinguished from the soil) they make upon land not owned by them. Bank of the FSM v. Aisek, 13 FSM R. 162, 166 (Chk. 2005).

The Pohnpei Development Leasehold Act says that every development lease must contain a covenant stating that the lessor shall have the rights of future benefit to the improvements placed on the land by or on behalf of the lessee and that, upon the lease's termination, existing improvements thereon shall become the property of the lessor thereof or his successor in interest without further cost or condition to be met by the lessor, the property's title holder or any successor in interest to said property. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 225 n.1 (Pon. 2005).

Plaintiff landowners should not be permitted to unjustly enrich themselves through obtaining a house and other improvements built at the defendant's expense. Heirs of Nena v. Sigrah, 14 FSM R. 283, 286 (Kos. S. Ct. Tr. 2006).

Individuals may have full title to the improvements (as distinguished from the soil) they make upon land not owned by them and thus may be entitled to compensation if it is determined that they do not own the land on which the improvements were made and cannot remove those improvements to another site. Phillip v. Moses, 18 FSM R. 247, 251 (Chk. S. Ct. App. 2012).

– Land Commission or Land Court

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

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

Kosrae State Land Commission properly relied on the decision of the Trust Territory High Court in Civil Action No. 47 (1953) as establishing that a person's name on the Japanese Survey of Kosrae was not conclusive evidence of ownership in 1932 of the land indicated. Heirs of Likiaksa v. Heirs of Lonno, 3 FSM R. 465, 468 (Kos. S. Ct. Tr. 1988).

Kosrae State Land Commission was not required as a matter of law to accept as true the Japanese Survey's designation of Fred Likiaksa as owner, in 1932, of certain lands called Limes, in Lelu, parcel No. 050-K-00. Heirs of Likiaksa v. Heirs of Lonno, 3 FSM R. 465, 468 (Kos. S. Ct. Tr. 1988).

Kosrae State Land Commission properly relied on the decision of the Trust Territory High Court in Civil Action No. 47 (1953) as establishing that no rights given to plaintiff's family could have extended beyond the death of Nena Kuang in 1970. Heirs of Likiaksa v. Heirs of Lonno, 3 FSM R. 465, 468 (Kos. S. Ct. Tr. 1988).

Determination of property boundaries is the responsibility of the state land commissions, and the national court should not intercede where the local agency has not completed its work. Kapas v. Church of Latter Day Saints, 6 FSM R. 56, 60 (App. 1993).

Land Commission procedures result in a determination of ownership wherein title to registered land is settled and declared by the government. The certificate of title issued by the government shows the state of the title and in whom it is vested. Chipuelong v. Chuuk, 6 FSM R. 188, 196 (Chk. S. Ct. Tr. 1993).

Where a certificate of title issued by the Land Commission goes beyond the findings of its own determination of ownership as affirmed by the court's findings, the certificate of title is invalid to the extent that it goes beyond the determination. Chipuelong v. Chuuk, 6 FSM R. 188, 197 (Chk. S. Ct. Tr. 1993).

Actions concerning the determination of land titles rest primarily with the Land Commission, which is statutorily charged with the registration and determination of land ownership. When the Land Commission has designated a registration area the courts cannot entertain any action with regard to interests in land within that registration area without a showing of special cause, although any determination of the Commission may be appealed to the Trial Division of the Chuuk State Supreme Court. Otherwise, it becomes final and conclusive. Barker v. Paul, 6 FSM R. 473, 475-76 (Chk. S. Ct. App. 1994).

Absent a finding of "special cause" on the record the trial court had no jurisdiction to entertain an action asserting an interest in land located within a designated registration area. Barker v. Paul, 6 FSM R. 473, 476 (Chk. S. Ct. App. 1994).

When the Land Commission has issued a Determination of Ownership which has become final upon the lapse of the time to appeal, the trial court has no authority or power to alter the final determination of ownership and boundaries. Barker v. Paul, 6 FSM R. 473, 476 (Chk. S. Ct. App. 1994).

Once a section of land is considered for registration the Land Commission undertakes a five-step program: 1) survey and establish tentative boundaries, 2) notice and conduct preliminary inquiry, 3) notice and conduct formal hearing, 4) notice and issue determination of ownership, and 5) issue certificate of title. These duties are both administrative and adjudicative. Palik v. Henry, 7 FSM R. 571, 574 (Kos. S. Ct. Tr. 1996).

Before a preliminary inquiry is conducted, the Land Commission must notify any person who claims a portion of the area in dispute so that they might attend the inquiry and be heard. Palik v. Henry, 7 FSM R. 571, 575 (Kos. S. Ct. Tr. 1996).

It is critical that the Land Commission post notice on the land, at the municipal office, and at the principal village meeting place and serve notice on all interested parties at least thirty days in advance of a formal hearing and give similar notice of its determination of ownership. Notice is required because it gives a chance to be heard. Palik v. Henry, 7 FSM R. 571, 576 (Kos. S. Ct. Tr. 1996).

Judgments of the Land Commission are void when it has failed to serve notice as required by law. Palik v. Henry, 7 FSM R. 571, 576-77 (Kos. S. Ct. Tr. 1996).

The Land Commission is required by statute to give actual, not constructive notice for hearings to all interested parties and to post notice on the land, at the municipal office and principal meeting place at least thirty days in advance of the hearing. Palik v. Henry, 7 FSM R. 571, 577 (Kos. S. Ct. Tr. 1996).

Without a claim to the land in question there is no right to notice of a land commission proceeding or finding. Nahnken of Nett v. United States, 7 FSM R. 581, 589 (App. 1996).

An appeal from the land commission will be on the record unless the court finds good cause for a trial of the matter. At a trial de novo the parties may offer any competent evidence, including the record of proceedings before the land commission, but the question of whether the commission considered the evidence submitted to it is not normally a part of judicial scrutiny. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 35 (Kos. S. Ct. Tr. 1997).

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

Chuuk land commissioners have considerable adjudicatory powers under 67 TTC 109. Wito Clan v. United Church of Christ, 8 FSM R. 116, 118 (Chk. 1997).

State law specifically prohibits persons with an interest from being members of a land registration team, but no such statute specifically requires the disqualification of land commissioners with an interest from reviewing the registration team's determination. This brings constitutional due process concerns into play. Wito Clan v. United Church of Christ, 8 FSM R. 116, 118 (Chk. 1997).

Adjudicatory decisions affecting property rights are subject to the procedural due process requirements of article IV, section 3 of the Constitution. Due process demands impartiality on the part of adjudicators, including quasi-judicial officials, such as land commissioners. Wito Clan v. United Church of Christ, 8 FSM R. 116, 118 (Chk. 1997).

Grounds that require a person's recusal from the land registration team also require his disqualification as a land commissioner reviewing the land registration team's adjudication. Wito Clan v. United Church of Christ, 8 FSM R. 116, 118 (Chk. 1997).

When the statute requires the signature of at least two land commissioners in order to constitute an action of the commission and only two commissioners signed the section 109 review, and at least one of those should have disqualified himself, the review is void. Wito Clan v. United Church of Christ, 8 FSM R. 116, 118 (Chk. 1997).

Review of a land registration team's decision should, in the first instance, be done by the Land Commission, not a court. A land commission review that is void will therefore be remanded for a new review. Wito Clan v. United Church of Christ, 8 FSM R. 116, 118 (Chk. 1997).

Once land has been declared part of a registration area, courts shall not entertain any action with regard to interests in land within that registration area without a showing of special cause why action by a court is desirable before it is likely the land commission can make a determination on the matter. Pau v. Kansou, 8 FSM R. 524, 526-27 (Chk. 1998).

When title to land in a designated registration area becomes an issue in a case involving damage claims for trespass, and there is no pending case before the land commission concerning this land or a previous final determination of ownership, a court may remand the question of ownership to the land commission to be determined within a limited time. Once ownership is determined, the court may proceed because more than an interest in land is at stake, and the land commission can only adjudicate interests in land. Pau v. Kansou, 8 FSM R. 524, 527 (Chk. 1998).

The standard required for the review of a Land Commission decision by the Chuuk State Supreme Court trial division is whether the decision of the Land Commission is supported by substantial evidence. Nakamura v. Moen Municipality, 8 FSM R. 552, 554 (Chk. S. Ct. App. 1998).

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

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

When a person, who has applied for registration of land included within the boundaries of an area on which hearings are held and who, based upon his application, was, as required by 67 TTC 110, entitled to be served notice of the hearings, was not served notice of the hearings and was also not served a copy of the Determination of Ownership, there was no substantial compliance with the notice requirements specified by law. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 93 (Kos. S. Ct. Tr. 1999).

The Land Commission is required by statute to give actual, and not constructive notice for hearings to all interested parties, and is required to post notice on the land, at the municipal office and principal meeting place at least thirty days in advance of the hearing. Failure to provide notice to an interested party is violation of due process. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 93 (Kos. S. Ct. Tr. 1999).

The policy reasons supporting actual notice of hearings to land claimants, as required by law, are very important. There is a substantial interest in assuring that land disputes are decided fairly because of the fundamental role that land plays in Kosrae and throughout Micronesia. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 94-95 (Kos. S. Ct. Tr. 1999).

In reviewing the Land Commission's decision, the Kosrae State Court should merely consider whether the Land Commission exceeded its constitutional or statutory authority, has conducted a fair proceeding, has properly resolved any legal issues and has reasonably assessed the evidence presented. Isaac v. Benjamin, 9 FSM R. 258, 259 (Kos. S. Ct. Tr. 1999).

It is critical that before a preliminary inquiry is conducted, the Land Commission must serve notice at least thirty days in advance of a formal hearing on any person who claims a portion of the area in dispute so that they might attend the inquiry and be heard. Notice is required because it gives a chance to be heard. Isaac v. Benjamin, 9 FSM R. 258, 259 (Kos. S. Ct. Tr. 1999).

The Land Commission is required by statute to give actual, not constructive notice for hearings to all interested parties at least thirty days in advance of the hearing. Judgments of the Land Commission are void when it has failed to serve notice as required by law. Isaac v. Benjamin, 9 FSM R. 258, 259 (Kos. S. Ct. Tr. 1999).

When the record reflects that the Kosrae State Land Commission failed to serve notice, as required by law, on the appellants for the preliminary and formal hearings on adjoining parcels to which the appellants are interested parties its failure to serve notice as required by law makes its judgments void. The Kosrae State Court will vacate and remand to the Land Commission to, as necessary, give proper notice and conduct preliminary inquiries and formal hearings and take evidence from appellants and other interested parties regarding the boundaries and issue any new Determinations of Ownership. Isaac v. Benjamin, 9 FSM R. 258, 259-60 (Kos. S. Ct. Tr. 1999).

Because a Kosrae Land Commission determination of ownership is subject to appeal to the Kosrae State Court within one hundred twenty days from the date of receipt of notice of the determination, when that time has passed and someone claims that he was never given notice of the original Kosrae Land Commission title determination proceedings as required under KC 11.609, his remedy lies with the Kosrae State Court. If he wishes to pursue that remedy on a lack of notice basis, he must file a complaint seeking to set aside the title determinations. His remedy is not to pursue his claims either within the confines of an earlier case concerning other land, or with the Land Commission. Palik v. Henry, 9 FSM R. 309, 312 (Kos. S. Ct. Tr. 2000).

Under the Chuuk Constitution's transition clause, Trust Territory Code Title 67, which authorizes and empowers land commissions to determine the ownership of any land in its district, applies in Chuuk. In re Lot No. 014-A-21, 9 FSM R. 484, 490 (Chk. S. Ct. Tr. 1999).

A land commission may appoint one or more land registration teams and may designate the area or areas for which each team shall be responsible. Each land registration team is responsible for

adjudicating claims to land within that area. In re Lot No. 014-A-21, 9 FSM R. 484, 490 (Chk. S. Ct. Tr. 1999).

Land registration teams may administer oaths to witnesses, take testimony under oath and subpoena witnesses. Once a decision is reached on any claim where a dispute has arisen, the land registration team shall include in the team's record the substance of all pertinent testimony it took. Land registration teams are to be guided by the civil procedure and evidence rules, and their determinations are subject to review by the land commission. In re Lot No. 014-A-21, 9 FSM R. 484, 490 (Chk. S. Ct. Tr. 1999).

Land registration teams may decline to adjudicate a disputed claim and instead refer it to the land commission along with any record, including the substance of all pertinent testimony, taken by the team. The land commission may then adjudicate the claim or refer it to court. In re Lot No. 014-A-21, 9 FSM R. 484, 490 n.2 (Chk. S. Ct. Tr. 1999).

The land commission, upon receipt of a land registration team adjudication and the record upon which it is based, may accept the land registration team's determination or reject it, and if it rejects the team's determination, the land commission may either remand the matter to the land registration team or itself hold further hearings and make its own determination of ownership. In re Lot No. 014-A-21, 9 FSM R. 484, 490, 492 (Chk. S. Ct. Tr. 1999).

If the land commission rejects a land registration team determination and instead holds further hearings, it may administer oaths to witnesses, take testimony under oath and subpoena witnesses, and it is to be guided by the civil procedure and evidence rules. In re Lot No. 014-A-21, 9 FSM R. 484, 490 (Chk. S. Ct. Tr. 1999).

Any aggrieved party may appeal a land commission determination of ownership at any time within 120 days from the date of determination. If it is not appealed within 120 days, then the land commission shall issue a certificate of title which is conclusive evidence of ownership of the land as to all persons who received notice of the land commission's action. In re Lot No. 014-A-21, 9 FSM R. 484, 491 (Chk. S. Ct. Tr. 1999).

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

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

Just as the courts in the judiciary confirm their role in society by adjudicating claims in civil matters, so to must the land commission. When a court fails to provide an adequate record of its proceedings, the role of the judiciary fails. Because claims over land are of no lesser importance than claims in civil matters, the requirement of a full and complete record applies to the land commission. In re Lot No. 014-A-21, 9 FSM R. 484, 493 (Chk. S. Ct. Tr. 1999).

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

Although the land commission may appoint a land registration team to conduct hearings and adjudicate the parties' competing claims, the land registration team's determination, including the record

upon which it is based, is not the final determination of ownership. Rather, it is the subsequent action of the land commission that establishes a determination of ownership and which is, in turn, subject to judicial review. In re Lot No. 014-A-21, 9 FSM R. 484, 493 (Chk. S. Ct. Tr. 1999).

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

When the land commission conducts its own hearings and reaches a determination of ownership, it must be based upon the record from the land registration team along with the record from the land commission's hearings. In re Lot No. 014-A-21, 9 FSM R. 484, 493 (Chk. S. Ct. Tr. 1999).

When the land commission has made a determination that results in a reversal of a land registration team's earlier determination, the record must also include an adequate basis supporting the land commission rationale for rejecting the land registration team's earlier findings. The absence of such information in the record gives the appearance that the land commission has acted arbitrarily in reaching its determination and has employed inadequate fact finding procedures. In re Lot No. 014-A-21, 9 FSM R. 484, 494 (Chk. S. Ct. Tr. 1999).

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

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

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

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

Determination of land ownership rests primarily with the Land Commission. After a designation of any registration area has been filed, a court will entertain only those land title cases where there is a showing of special cause why action by a court is desirable. Simina v. Rayphand, 9 FSM R. 508, 509 (Chk. S. Ct. Tr. 2000).

Because a court is without jurisdiction to entertain an action asserting an interest in land located within a designated registration area and because all such actions must first be filed with the Chuuk State Land Commission, a quiet title action filed in the Chuuk State Supreme Court will be transferred to the Land Commission for consideration of ownership. Simina v. Rayphand, 9 FSM R. 508, 509 (Chk. S. Ct. Tr. 2000).

One method to claim an interest in a parcel is to file a written claim with the Land Commission before the hearing. A verbal claim is invalid. Jonas v. Paulino, 9 FSM R. 513, 516 (Kos. S. Ct. Tr. 2000).

It is the claimant's duty to submit a written claim to the Land Commission. The Land Commission

does not have any statutory obligation to write down a claimant's verbal claim. Jonas v. Paulino, 9 FSM R. 519, 521 (Kos. S. Ct. Tr. 2000).

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

The Land Commission is required by statute to give actual, and not constructive notice for hearings to all interested parties. Failure to provide notice to an interested party is violation of due process. Nena v. Heirs of Melander, 9 FSM R. 523, 525 (Kos. S. Ct. Tr. 2000).

The registration team is required to serve actual notice of the hearing upon all parties shown by the preliminary inquiry to have an interest in the parcel either by personal service or registered air mail. It is also required to serve actual notice of a determination of ownership upon all persons shown to have an interest in the parcel. Nena v. Heirs of Melander, 9 FSM R. 523, 525 (Kos. S. Ct. Tr. 2000).

When the land commission voids one person's certificate of title and issues a new certificate of title covering the same land to another person without notice to the first person and affording the first person an opportunity to be heard, it is a denial of due process and the certificates of title will be vacated and the case remanded to the land commission to conduct the statutorily-required hearings. Enlet v. Chee Young Family Store, 9 FSM R. 563, 564-65 (Chk. S. Ct. Tr. 2000).

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

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

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

When the Land Commission reasonably assessed the evidence with respect to who owned the land, its findings are not clearly erroneous, and when those findings are that Ittu never took back ownership of the land, the Land Commission did not reach the issue of applying Kosrae tradition and thus properly resolved that legal issue and did not exceed its constitutional authority. That Land Commission decision will be affirmed. Anton v. Heirs of Shrew, 10 FSM R. 162, 165 (Kos. S. Ct. Tr. 2001).

When a person who has asserted a claim to land was not given notice of the registration proceedings as required by law, the Determination of Ownership for that land is not conclusive as upon him. Kun v. Kilafwakun, 10 FSM R. 214, 216 (Kos. S. Ct. Tr. 2001).

When a person had asserted a claim to a parcel and was identified as a claimant early in the Land Commission proceedings and also testified in support of his boundary dispute at several hearings, but was not served notice of the formal hearing and was also not served a copy of the Determination of Ownership for the parcel, the Determination of Ownership for the parcel is not conclusive upon him. Kun v. Kilafwakun, 10 FSM R. 214, 216 (Kos. S. Ct. Tr. 2001).

In land cases, statutory notice requirements must be followed. Personal service of the notice of hearing and the Determination of Ownership upon all parties shown by the preliminary inquiry to have an interest in the parcel is required. Failure to serve actual notice on a claimant is a denial of due process and violation of law, which will cause a Determination of Ownership to be set aside as void, and the case remanded to the Land Commission to hold the formal hearings and to issue the determination of ownership for that parcel. Kun v. Kilafwakun, 10 FSM R. 214, 216 (Kos. S. Ct. Tr. 2001).

Under the Chuuk Constitution, article VII, § 3(c), the Chuuk State Supreme Court has only appellate or review jurisdiction over the Land Commission, and thus a motion for review de novo of matters not raised before the Land Commission must be denied. Enengeitaw Clan v. Shirai, 10 FSM R. 309, 311 (Chk. S. Ct. Tr. 2001).

The Kosrae State Court, in reviewing the Land Commission's procedure and decision, should consider whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Nena v. Heirs of Melander, 10 FSM R. 362, 364 (Kos. S. Ct. Tr. 2001).

The Land Commission does not conduct a fair proceeding when it issues a determination of ownership without compliance with statutory notice requirements. Nena v. Heirs of Melander, 10 FSM R. 362, 364 (Kos. S. Ct. Tr. 2001).

The Land Commission is required by statute to give actual, and not constructive notice for hearings to all interested parties. Failure to provide notice to an interested party is violation of due process. Nena v. Heirs of Melander, 10 FSM R. 362, 364 (Kos. S. Ct. Tr. 2001).

The registration team is required to service actual notice of the hearing, either by personal service or registered air mail, upon all parties shown by the preliminary inquiry to have an interest in the parcel, and is also required to serve actual notice of a determination of ownership upon all persons shown to have an interest in the parcel. Nena v. Heirs of Melander, 10 FSM R. 362, 364 (Kos. S. Ct. Tr. 2001).

When the land registration team was informed at the preliminary inquiry that someone was an interested party due to his boundary dispute, but the land registration team failed to serve him actual notice of the formal hearing and the determination of ownership issued for the parcel, there was no substantial compliance with the notice requirements specified by law, and due to the violations of the statutory notice requirement, the determinations of ownership for both adjoining parcels must be set aside as void and remanded to the Land Commission. Nena v. Heirs of Melander, 10 FSM R. 362, 364 (Kos. S. Ct. Tr. 2001).

Once land has been declared part of a registration area a court cannot entertain any action with regard to interests in land within that registration area without a showing of special cause why court action is desirable before it is likely a determination can be made on the matter by the land commission. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM R. 367, 369 (Chk. 2001).

Boundary determination in designated registration areas is a statutory function of the Land Commission. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM R. 367, 370 (Chk. 2001).

When the plaintiffs have not shown any special cause why action by a court is desirable before the land commission can determine the boundary between the plaintiffs' and the defendants' land and when there is a case pending before the Land Commission concerning the land, the issue of the land's boundaries will be remanded to the Land Commission. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM R. 367, 370 (Chk. 2001).

Under the doctrine of primary jurisdiction it is for the Land Commission, not the court, to decide land

boundaries, and the Land Commission must be given the chance to conclude its administrative process. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM R. 367, 370 (Chk. 2001).

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

When a party was not given an opportunity to comment or rebut the evidence presented by the adverse claimants at the formal Land Commission hearing, and was not given an opportunity to cross examine adverse witnesses or an opportunity to present his own testimony to rebut adverse claims, this procedural failure is a violation of the due process protection provided by the Kosrae Constitution; and the issued determination of ownership will be set aside, and held null and void and the matter remanded to the Land Commission. Ittu v. Heirs of Mongkeya, 10 FSM R. 446, 448 (Kos. S. Ct. Tr. 2001).

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

Due process demands impartiality on the part of adjudicators, such as land commissioners. Langu v. Heirs of Jonas, 10 FSM R. 547, 549 (Kos. S. Ct. Tr. 2002).

It is a land commissioner's duty to disqualify himself when necessary, as soon as the commissioner is aware of the grounds for his disqualification. Langu v. Heirs of Jonas, 10 FSM R. 547, 549-50 (Kos. S. Ct. Tr. 2002).

When there has been a violation of law or a denial of due process, a determination of ownership must be vacated and the matter remanded for further proceedings. Land Commission judgments are void when the Land Commission has failed to follow the requirements of the law. Langu v. Heirs of Jonas, 10 FSM R. 547, 550 (Kos. S. Ct. Tr. 2002).

When the Land Commission has not served an interested party statutory notice, the law is clear. Determinations of ownership and certificates of title have been held void and vacated when proper notice was not given pursuant to statute. Actual notice by personal service to an interested party is required. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 174 (Kos. S. Ct. Tr. 2002).

When an interested party was never served proper statutory notice of the formal hearings or Determinations of Ownership issued for the land in question, the 120-day appeal period never began to run and has never expired. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 174 (Kos. S. Ct. Tr. 2002).

The twenty year statute of limitation does not apply to claims against the Land Commission for violation of due process, violation of statute and for failure to apply an earlier judgment as they are not claims for the recovery of land. These claims are subject to a limitations period of six years and are barred by the statute of limitations and will be dismissed when the Land Commission actions all occurred more than six years ago. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 175 (Kos. S. Ct. Tr. 2002).

The law is clear when the Land Commission knew of a civil action judgment and that a person was a claimant and interested party for the parcels, which were the subject of the judgment and later the subject of Land Commission proceedings, but that person was not served personal notice of the formal hearings or the Determinations of Ownership for the parcels. Pursuant to established precedent, Determinations of Ownership and Certificates of Title will be held void and vacated when proper notice was not given pursuant

to statute. Actual notice to an interested party is required by personal service. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 246, 248 (Kos. S. Ct. Tr. 2002).

The law does not require notice to potential adverse claimants in completing the preliminary inquiry. The preliminary inquiry's purpose was to record all claims for a parcel, so that the claimants would be on record and would then be notified of the formal hearing. Heirs of Henry v. Palik, 11 FSM R. 419, 422 (Kos. S. Ct. Tr. 2003).

The Land Commission may withdraw a disputed claim from a registration team. If that withdrawal takes place, then the Land Commissioners must hold the hearing, hear the evidence and make an adjudication. Heirs of Henry v. Palik, 11 FSM R. 419, 422 (Kos. S. Ct. Tr. 2003).

When testimony presented at the first formal hearing was not heard by the full panel of adjudicators due to a Land Commissioner's late disqualification and the addition of temporary adjudicators, only one person of the adjudication panel heard that testimony. This resulted in a due process violation because the testimony was not heard by the full adjudication panel when the acting replacement commissioners did not hear the testimony, yet they participated in the findings of fact, opinion and decision. The Land Commission exceeded it constitutional and statutory authority by the adjudication panel's failure to hear all the evidence presented at the hearings. Heirs of Henry v. Palik, 11 FSM R. 419, 422 (Kos. S. Ct. Tr. 2003).

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

The Land Commission is required by statute to give actual, and not constructive notice for hearings to all interested parties. Failure to provide notice as required by law to an interested party is violation of due process. Albert v. Jim, 11 FSM R. 487, 490 (Kos. S. Ct. Tr. 2003).

The registration team is required to serve actual notice of the hearing upon all parties shown to have an interest in the parcel either by personal service or registered air mail. Albert v. Jim, 11 FSM R. 487, 490 (Kos. S. Ct. Tr. 2003).

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

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

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

Since the Land Commission only has authority to issue a certificate of title after the time for appeal from a Land Commission determination of ownership has expired without any notice of appeal having been filed, when a notice of appeal was timely filed with the Chuuk State Supreme Court and the appellee had notice of the appeal, she is precluded from using the certificate of title against the appellant, and its issuance has no conclusive effect because once a notice of appeal had been filed, the Land Commission acted ultra vires, or outside of its authority, when it issued the certificate of title. The certificate is thus void. In re Lot No. 014-A-21, 11 FSM R. 582, 590 (Chk. S. Ct. Tr. 2003).

Where the provisions of former Kosrae State Code, Title 11, Chapter 6, were applicable to the Land Commission proceedings now on appeal, the court will apply the provisions of former Kosrae State Code, Title 11, Chapter (repealed) to its review of the Land Commission's procedure and decision in the matter. Tulenkun v. Abraham, 12 FSM R. 13, 15-16 (Kos. S. Ct. Tr. 2003).

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

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

When the Land Commission did not exceed its constitutional or statutory authority, and did conduct a fair proceeding for determination of title, there was no violation of state law and no violation of constitutional and statutory due process based upon the Land Commission's failure to notify the appellant in writing of the planting of monuments. Tulenkun v. Abraham, 12 FSM R. 13, 16 (Kos. S. Ct. Tr. 2003).

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

If the land registration team deems that consideration of a disputed claim will seriously interfere with accomplishment of the purpose of land registration, it may refer the claim to the Land Commission without the team's making any decision thereon and if a Land Commission deems that a team is spending an undesirable amount of time on a particular disputed claim, it may withdraw that claim from the team's consideration. In either of these situations, the Land Commission may then proceed itself to hear the parties and witnesses and make a determination on the claim or it may refer the claim to Chuuk State Supreme Court trial division for adjudication without any determination by the Commission. Chuuk v. Ernist Family, 12 FSM R. 154, 158 (Chk. S. Ct. Tr. 2003).

While ordinarily the court does not have jurisdiction over claims arising in land registration areas subject to the Land Commission's jurisdiction, an exception is that whenever the Land Commission, in its discretion, makes either of the determinations set forth in 67 TTC 108(1) or (2), it may refer the claim to the Chuuk State Supreme Court trial division for adjudication without itself making any determination. The statute thus expressly confers jurisdiction on the court upon a matter's referral from the Land Commission whenever cause appears pursuant to 67 TTC 108(1) or (2). The "special cause" is established by the statute, and the trial division clearly has jurisdiction if the circumstances meet the statute's requirements.

Chuuk v. Ernist Family, 12 FSM R. 154, 159 (Chk. S. Ct. Tr. 2003).

In order for the Land Commission to exercise its discretion pursuant to statute and send a dispute to the trial division, either the land registration team must conclude that the dispute is interfering with the purpose of the law, and send the dispute to the Land Commission, or the Land Commission must determine that the land registration team is spending too much time on a particular dispute, and take control over the dispute from the land registration team. Chuuk v. Ernist Family, 12 FSM R. 154, 159 (Chk. S. Ct. Tr. 2003).

The Land Commission's decision to refer a dispute to the court was not arbitrary and capricious when the land registration team failed to resolve the dispute over the twenty-eight years since the first claim to the land was presented and when the Land Commission's request for transfer recited the problems in resolving the dispute and the lack of sufficient Land Commissioners (due to disqualification) to render a decision. Chuuk v. Ernist Family, 12 FSM R. 154, 160 (Chk. S. Ct. Tr. 2003).

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

The Land Commission has primary jurisdiction to determine and register land titles. Once an area has been designated as a land registration area, courts cannot entertain any action regarding land titles in that area unless special cause has been shown. Enlet v. Bruton, 12 FSM R. 187, 191 (Chk. 2003).

The statute authorizes only the Land Commission to declare a land registration area. No authority has been identified that would permit a court to designate a land registration area, or to order the Land Commission to designate one. The statute leaves that to the Land Commission's discretion based upon its determination of desirability and practicability, which is uniquely within its expertise and authority to make. Enlet v. Bruton, 12 FSM R. 187, 191 (Chk. 2003).

While the Land Commission has the statutory authority to determine and register land titles, whether the Land Commission has the legal authority and the technical ability to determine, survey, and register tidelands is an unanswered question. Enlet v. Bruton, 12 FSM R. 187, 191 (Chk. 2003).

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

An assertion that a Land Commission decision was tainted and a party denied due process because various members of the Land Commission and Land Registration Team were close relatives of the appellee or the appellee's wife is a serious allegation that, if true, would usually be enough to vacate the decision and remand the case to the Land Court for new proceedings with a new determination to be made by impartial adjudicators. Anton v. Cornelius, 12 FSM R. 280, 284 (App. 2003).

Since the Kosrae State Court has not been shy in vacating and remanding Land Commission decisions for due process violations, including involvement of commissioners who should have disqualified themselves, Kosrae's social configuration should not prevent an appellant from timely raising the issue of disqualification of persons in the Land Commission proceedings. Anton v. Cornelius, 12 FSM R. 280, 285 (App. 2003).

The Kosrae State Court must hear an appeal from the Land Commission on the record unless it finds good cause exists for a trial of the matter. The Land Commission's failure to follow the Kosrae Rules of

Evidence does not constitute good cause for a trial *de novo* because those rules do not apply in the Land Commission. Anton v. Cornelius, 12 FSM R. 280, 286 (App. 2003).

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

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

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

It violates due process for the Land Commission to hold a hearing and adjudicate ownership of a parcel of land without giving notice to a party with a demonstrated interest in that land. George v. Nena, 12 FSM R. 310, 316 (App. 2004).

When title to land in a designated registration area becomes an issue in a case involving damage claims for trespass, a court may remand the question of ownership to the land commission to be determined within a limited time. Once the land commission has determined ownership, the court may proceed because more than an interest in land is at stake, and the land commission can only adjudicate interests in land. Kiniol v. Kansou, 12 FSM R. 335, 336 (Chk. 2004).

When the plaintiffs have not shown any special cause why court action is desirable before the land commission can determine the boundary between the plaintiffs' and the defendants' land, the issue of the land's boundaries will be remanded to the land commission. Kiniol v. Kansou, 12 FSM R. 335, 336 (Chk. 2004).

When the issue of the location of the boundary between the plaintiffs' land and the defendant's land is remanded to the Chuuk Land Commission, the owner of the tower on the land with the defendant's permission is not a party to the remanded Land Commission proceedings as that proceeding only concerns title, not trespass to or possession of, land. But it remains a party to the trespass action in court. Kiniol v. Kansou, 12 FSM R. 335, 337 (Chk. 2004).

A default judgment must be vacated when the Chuuk State Supreme Court never had jurisdiction over the action to determine ownership of real property in the first place because, despite being framed as a declaratory relief action, the case sought a determination of ownership of land lying within a land registration area and only the Land Commission has jurisdiction to determine ownership of land within a land registration area. Hartman v. Chuuk, 12 FSM R. 388, 398-99 (Chk. S. Ct. Tr. 2004).

When someone offers no evidence of irregularity in the Land Commission proceedings and no evidence that her father (through whom she claims the land) was deprived in some way of participating in the proceedings, and when, to the contrary, documents establish that the Land Commission followed all statutory requirements regarding notice of the proceedings involving the land, any action taken thereafter must be conclusively presumed valid. Hartman v. Chuuk, 12 FSM R. 388, 400 (Chk. S. Ct. Tr. 2004).

Questions regarding interests in land must be raised before the Land Commission. The Chuuk State

Supreme Court has no jurisdiction to hear or decide such claims. The court can only refer the matter to the Land Commission, so that the Land Commission can resolve the dispute. Hartman v. Chuuk, 12 FSM R. 388, 401-02 (Chk. S. Ct. Tr. 2004).

A Land Commission determination of ownership is subject to appeal to the Kosrae State Court within 120 days from the date of receipt of notice of the determination. If the determination was not received, then the appeal time limit of 120 days never began to run. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 80 (Kos. S. Ct. Tr. 2004).

When a partial transcript's inclusion in the record for a parcel infers the Land Commission's reliance upon that transcript in making its Determination of Ownership for that parcel and when the partial transcript contains evidence that was not properly before the Land Commission because the appellants were not provided statutory notice of that hearing, and were not provided an opportunity to participate in the hearing and cross-examine a witness on his testimony regarding the parcel, the Land Commission did not conduct a fair proceeding because it did not comply with statutory notice requirements and because it considered evidence not properly before the Commission. Heirs of Wakap v. Heirs of Obet, 13 FSM R. 418, 420 (Kos. S. Ct. Tr. 2005).

When title to land in a designated registration area or its boundaries becomes an issue in a trespass case, a court may remand the ownership question to the Land Commission for it to determine within a limited time. If no special cause has been shown why court action is desirable before the Land Commission can make its boundary determination, the boundary issue should be remanded to the Land Commission. Once the Land Commission has determined ownership or boundaries, the court may proceed when more than an interest in land is at stake, and the Land Commission can only adjudicate interests in land. Kiniol v. Kansou, 13 FSM R. 456, 458 (Chk. 2005).

Determination of property boundaries is generally the responsibility of the state land commission because under the primary jurisdiction doctrine it is for the Land Commission, not the court, to decide land boundaries, and the Land Commission must be given the chance to conclude its administrative process. Kiniol v. Kansou, 13 FSM R. 456, 459 (Chk. 2005).

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

The Kosrae State Land Commission was never a court nor an instrumentality of the Kosrae state judiciary. Isaac v. Saimon, 14 FSM R. 33, 36 (Kos. S. Ct. Tr. 2006).

A six years' statute of limitations applies to all claims to which neither the specific twenty-year, or two-year statutes, apply. Claims against the Land Commission for violation of due process, as they are not claims for the recovery of land (twenty-year statute of limitation), are subject to a six-year limitations period and are barred and will be dismissed when the Land Commission actions are all over six years old since a complaint against the Land Commission cannot assert a claim for the recovery of an interest in land against the defendant Land Commission because it does not own any interest in the land at issue. Dereas v. Eas, 14 FSM R. 446, 456 n.5 (Chk. S. Ct. Tr. 2006).

The Land Court took over the Land Commission's responsibilities and is required by statute to give effect to determinations issued by the Land Commission. It does not have the discretion to ignore a Land Commission determination because it is handwritten or because it has not yet been served on the parties. The Land Court's duty is to take over, or "succeed" to the Land Commission's responsibilities, not re-hear matters previously decided by it. Heirs of Tara v. Heirs of Kurr, 14 FSM R. 521, 525 (Kos. S. Ct. Tr. 2007).

In reviewing a Land Commission decision, the Kosrae State Court considers whether the Land Commission exceeded its constitutional or statutory authority, has conducted a fair proceeding, has properly resolved any legal issues, and has reasonably assessed the evidence presented. Heirs of Tara v. Heirs of

Kurr, 14 FSM R. 521, 525 (Kos. S. Ct. Tr. 2007).

When creating the Land Court, the Kosrae Legislature provided for the transition of cases from the Land Commission to the Land Court and the Land Court succeeded to all Land Commission responsibilities, registers, properties and assets and Land Commission land determinations and registrations are equivalent to Land Court title determinations and registrations. Heirs of George v. Heirs of Dizon, 14 FSM R. 556, 558 (Kos. S. Ct. Tr. 2007).

Since The Land Court took over the Land Commission's responsibilities and is required by statute to give effect to Land Commission determinations, it does not have the discretion to ignore a Land Commission determination even when the Commissioners signed an adjudication to indicate their decision rather than issue a separate document. The Land Court does not have the discretion to ignore a Land Commission determination because it has not yet been served on the parties. The Land Court's duty is to take over, or "succeed" the Land Commission's responsibilities, not re-hear matters previously decided by them. Heirs of George v. Heirs of Dizon, 14 FSM R. 556, 559 (Kos. S. Ct. Tr. 2007).

That the Land Commission determination was not timely served on the parties since it was signed in 1990 and not served until the Land Court took action to complete the matter in January 2006, is not a ground to set aside the determination or to ignore the record made by the Land Commission because Kosrae Code § 11.616 requires that the Land Court treat the Land Commission's determinations as equivalent to its own determinations and there is no language setting a time restriction on this requirement. Despite the extended delay in service, the Land Court correctly gave force and effect to the Land Commission's determination. Heirs of George v. Heirs of Dizon, 14 FSM R. 556, 559 (Kos. S. Ct. Tr. 2007).

Courts have no jurisdiction to hear cases with regard to interests in land in land registration areas unless there has been a showing of special cause, and a finding by the court, that action by a court is desirable or the Land Commission has asked the court to assume jurisdiction without the Land Commission having made a determination. Mathias v. Engichy, 15 FSM R. 90, 95 (Chk. S. Ct. App. 2007).

A trial court can determine no more than who among the parties before it has a better claim to title or in the case of trespass, possession. A court cannot determine who has title good against the world. Land registration (determination of title presumptively good against the world) is the province of the Land Commission and its procedures, not of a court. Ruben v. Hartman, 15 FSM R. 100, 112 (Chk. S. Ct. App. 2007).

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

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

The Land Commission is vested with the authority to register land. The Commission's statutory powers and duties include designating land to be registered, surveying the land and establishing

boundaries, and determining title and adjudicating disputed claims through investigation, notice, and public hearings. Mori v. Haruo, 15 FSM R. 468, 471 (Chk. S. Ct. App. 2008).

Adjoining landowners, even if not claimants, would, because of their common boundaries, be interested parties, along with anyone else who holds some interest in the land, such as a mortgagee, an easement holder, or a holder of a covenant running with the land. But even if the adjoining landowners were not interested parties, Land Court notice to them is not contrary to law. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

Because of the conclusive nature of a certificate of title, the Land Court should give the adjoining landowners notice of the formal hearing so that the resulting boundaries will be conclusive against them. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

Notice of land registration hearings must be given to the public in general. The hearings are public, and anyone may attend. Land Court proceedings are not ones which only the known claimants may attend. One purpose of public notice at various stages of the registration process is to reach as many persons as possible so that, at the end, the certificate of title will be conclusive against as many persons as possible, which is to the certificate holder's considerable benefit. The statute requiring that actual notice be given to claimants, is a minimum requirement, not the maximum permissible. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 572 (App. 2008).

The Kosrae Land Assessor must prepare one or more preliminary sketches clearly marking the land and the boundaries claimed by each claimant, and a qualified surveyor must make a survey based on the preliminary sketch, do the survey, and prepare a preliminary map, which the Land Assessor is required to post the preliminary map so that it will be visible to the presiding judge and any witness on the witness stand. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 572 (App. 2008).

Once a new claim arose, the other claimants were entitled to notice of it and to have a preliminary map showing the claims in dispute posted during a formal hearing. Due process requires that the new claim be surveyed, a new preliminary map prepared showing the overlapping claims, and a new, or second, formal hearing held with the new preliminary map posted. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 572 (App. 2008).

The process due to land claimants under the Kosrae Land Court Rules requires that a preliminary map showing all claims be posted at a formal hearing so that the presiding judge and the witnesses can view it and the claimants have an opportunity to be heard on any disputes. When the Land Court based its decision on a map prepared long after the formal hearing and on which the appellants had no opportunity to comment and no map showing the overlapping claims was available at the hearing, a second formal hearing should have been held once the new (second) preliminary map was prepared showing both sides' claims. The matter will therefore be remanded to the Land Court for that court to hold another formal hearing at which a map showing all the claimed boundaries must be posted and at which the parties will have the opportunity to be heard on the matter of the overlapping claims and the two preliminary maps and for which the Land Court will give actual notice to all claimants and to all interested parties. Interested parties shall be interpreted to include the adjoining landowners. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 573 (App. 2008).

Claims against the Land Commission for negligence, violation of due process and failing to apply statutes are actions against the government which fall within the limitations period of six years. Allen v. Allen, 15 FSM R. 613, 619 (Kos. S. Ct. Tr. 2008).

The Kosrae Land Court is statutorily created as an inferior court within the State Court. It was created for specific purposes – title investigation, title determination, and the registration of interests in lands within Kosrae and to provide one system of filing all recorded interests in land. Thus, it is a court granted specific, limited jurisdiction. It is not a court of general jurisdiction. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM

R. 657, 662 (Kos. S. Ct. Tr. 2008).

Equitable relief is not generally necessary for a court to resolve disputes relating to title because establishment of title is available by law. This is true for the Kosrae Land Court. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 662 (Kos. S. Ct. Tr. 2008).

Common law, or case law, and statutes provide the basis for Land Court orders, in other words, a complete and adequate remedy. The Legislature established the Land Court's authority to hear and decide title determinations. Statutes require that Land Court decisions not be contrary to law and must be based on substantial evidence. Case law guides the Land Court on what constitutes substantial evidence to support a decision; this is legal precedent. The Land Court must establish title based on substantial evidence by considering the testimony and record before it. There is no need to resort to equitable jurisdiction to make a title determination. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 662-63 (Kos. S. Ct. Tr. 2008).

The Land Commission's statutory powers and duties include designating land to be registered, surveying the land and establishing boundaries, and determining title and adjudicating disputed claims through investigation, notice, and public hearings. Setik v. Ruben, 16 FSM R. 158, 163 (Chk. S. Ct. App. 2008).

The Land Court's "subdivision" of land was not reversible error nor was it arbitrary when the original 1982 Land Commission determination of ownership explicitly divided the unsurveyed part of the land in its determination and since this division recognized the different history (with different evidence) for the two parts. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 375-76 (Kos. S. Ct. Tr. 2009).

There was no reversible error when the parties certainly had adequate notice of a "subdivision" before the October 18, 2005 Land Court hearing since they knew of it before the 2003 appeal and the 2005 remand and hearing; when one side's assertion that they were not "given the chance to stake out their claims" before the land was subdivided would be a cause of concern if they had claimed less than the entire land, but they claimed the whole unsurveyed land, as did the other side; and since, if the Land Commission erred, it was harmless error because neither side can show that they were prejudiced by this "subdivision" and both sides had the opportunity to assert and to prove their respective claims to both parcels and because the "subdivision" did not prevent or hinder either side from claiming, and trying to prove, that they had title to both parcels. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 376 (Kos. S. Ct. Tr. 2009).

A court instruction to the Land Commission to take further action consistent with its decision, including a preliminary survey, and such preliminary and formal hearings as might be necessary to make a determination of ownership, would not be necessary on remand if all that Land Commission was required to do was issue a determination of ownership in a calmant's favor with a certificate of title to follow. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 376 (Kos. S. Ct. Tr. 2009).

Since a determination of ownership for the unsurveyed portion of Yekula was not before the court when it rendered its 1997 decision on the other parcels involved in the dispute between the claimants, the State Court's 1997 instructions to Land Commission about Yekula can only be considered further guidance (beyond and in addition to that given in 1988) to the Land Commission on how it ought to proceed in resolving the remainder of the dispute. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 376-77 (Kos. S. Ct. Tr. 2009).

Even if the Land Commission thinks it is only correcting its own error, due process still requires that it give notice and an opportunity to be heard to any party which the "correction" might appear to adversely affect. Although the Land Commission may think it is only correcting its own error, it is always possible that its "correction" could be an error. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 554 (Chk. S. Ct. App. 2009).

When an owner of any interest in registered land dies, the Land Commission's duty is to cancel the original and duplicate certificates and issue new ones in the name(s) of the decedent's devisees or heirs. A certificate of title cannot be issued in the name of a person already deceased. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 555 (Chk. S. Ct. App. 2009).

When the owner of registered land is deceased, it is the Land Commission's statutory responsibility to make a determination of the devisee or devisees or heir or heirs and the interests or respective interests to which each are entitled, and, to make this determination, the Land Commission must conduct a hearing at which evidence shall be heard for the purpose of determining the heir or heirs or devisee or devisees entitled to the decedent's land. Proper notice must be given for the hearing, and within 30 days after the hearing's conclusion, the Land Commission should issue its finding as to the heir or heirs or devisee or devisees and the respective interest or interests to which each are entitled. Once the Land Commission has issued its determination, it cannot issue any certificates of title unless and until after one hundred twenty days – the time to appeal – has passed, and only then, if the 120 days have passed without an appeal or if an appeal has been taken and decided, can the Land Commission issue certificates of title. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 555 (Chk. S. Ct. App. 2009).

A suit against the Land Commission (or successor institution) cannot end with a land title transferred to a successful plaintiff. Only a successful suit against the current titleholder, a necessary and indispensable party to any suit over title, could result in the transfer of the land title to the successful plaintiff although a successful suit against a Land Commission might result in a money damages award. Allen v. Allen, 17 FSM R. 35, 40 (App. 2010).

Determination of a land's exact boundaries, certification of a survey map for the area, and the issuance of a certificate of title for the land, are all acts that a court is legally unable to do when the court would need before it all the current owners of the part of the land not claimed by the plaintiff, all owners of all property abutting the land's purported boundaries, and any other landowners in the vicinity whose property or property lines would have to appear on a certified survey map for the land and when none of these necessary parties, with the exception of the defendant are before the court and because the court cannot make rulings that would affect or determine their rights without their presence or participation. Church of the Latter Day Saints v. Esiron, 17 FSM R. 229, 233 (Chk. 2010).

A court will not order the Land Commission to issue a certificate of title when that would require a determination of the current lessor(s), that is, who the lessor's heirs are since a Land Commission heirship proceeding is needed to determine current owners before an certificate of title can issue. Church of the Latter Day Saints v. Esiron, 17 FSM R. 229, 235 (Chk. 2010).

The court will not order the Land Commission to certify a survey map when that would require the determination of boundary lines to properties whose owners and claimants are not before the court. Church of the Latter Day Saints v. Esiron, 17 FSM R. 229, 235 (Chk. 2010).

Before a land registration team commences hearing with respect to any claim, the Land Commission must provide notice at least thirty (30) days in advance. Specific notice must be served upon all parties shown by the preliminary inquiry to be interested. Setik v. Ruben, 17 FSM R. 465, 473 (App. 2011).

In failing to make a reasonable inquiry as to the Setiks' occupation of the land, in failing to provide notice to the Setiks of the determination of ownership hearing, and in issuing the determination of ownership to another without an application by her, the Land Commission deprived the Setiks of due process. The determination of ownership was thus not valid, and the matter must be remanded to the Land Commission for a new determination. Setik v. Ruben, 17 FSM R. 465, 474 (App. 2011).

Due process demands impartiality on the part of the adjudicators, including Kosrae Land Court judges. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 503 (App. 2011).

By statute, the standard under which the Kosrae State Court must review Land Court decisions is by applying the "substantial evidence rule." And, if the State Court finds the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, it must remand the case to the Land Court with instructions and guidance for re-hearing the matter in its entirety or such portions of the case as may be appropriate. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 655 (App. 2011).

When reviewing a Land Court decision, the State Court, applying the substantial-evidence rule, does not determine where, in its view, the preponderance of the evidence lies. Under the substantial-evidence rule, the court's sole obligation is to review the entire record and determine whether the evidence as a whole is such that reasonable minds could have reached the same conclusion. The State Court thus must determine if the record contained evidence supporting the Land Court decision that was more than a mere scintilla or even more than some evidence. If there was, the State Court must affirm the Land Court decision even if the evidence would not, in the State Court's view, amount to a preponderance of the evidence but would be somewhat less and even if the State Court would have decided it differently. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 655-56 (App. 2011).

The Kosrae State Court cannot assume the role of fact-finder. The statute mandates that the standard of review that the State Court must apply to a Land Court decision is whether there was substantial evidence in the record to support it, not whether the Land Court "reasonably assessed" the evidence. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 656 (App. 2011).

The Kosrae Legislature has mandated that the State Court must use the substantial-evidence rule when it reviews all Land Court decisions. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 657 (App. 2011).

Land Court proceedings are the time and place adverse possession can and should be raised since Land Court jurisdiction includes all matters concerning the title of land and any interests therein. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 657 (App. 2011).

The proper time and place to make adverse possession claims, if a land occupant has one, is in a Land Court (or other) proceeding before the land title has been registered. Afterward is too late. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

The Land Court should not exclude any relevant evidence and the Kosrae Rules of Evidence do not apply in the Land Court, but the State Court cannot consider evidence that was not "received" in the Land Court. "Received" in the statute is read to include evidence offered or introduced but improperly excluded. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 659 (App. 2011).

The statute does not give the State Court the power to reverse the Land Court and order it to enter a decree the opposite of the Land Court's original decision, but it does allow the State Court to vacate the Land Court decision and to give the Land Court such instructions and guidance that may result in a reversal after the Land Court re-hearing. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 660 (App. 2011).

A Land Court case is in fact a title dispute rather than a boundary dispute when the case was remanded to the lower court specifically directed a party's boundary claim be heard and in order to have the claim on display for the hearing, the lower court gave the party the opportunity to stake out his claim on subject land parcel and the party staked out his boundary claim as encompassing the entire parcel rather than just a portion of it. Ittu v. Ittu, 19 FSM R. 258, 262 (Kos. S. Ct. Tr. 2014).

When a party claimed a boundary to subject land, but now claims the entire parcel, that caused the court to find and conclude that the party was uncertain as to what he was claiming and because of the inconsistencies the land court questioned his credibility. Ittu v. Ittu, 19 FSM R. 258, 262 (Kos. S. Ct. Tr.

2014).

Due regard must be given to the trial judge's opportunity to weigh the witnesses' credibility. In considering whether the decision is based upon substantial evidence, the reviewing court recognizes that it is primarily the Land Court's task to assess the witnesses' credibility, the admissibility of evidence, and to resolve factual disputes. Ittu v. Ittu, 19 FSM R. 258, 262 (Kos. S. Ct. Tr. 2014).

Land Court findings of fact will not be set aside unless clearly erroneous. To reverse its findings of fact, the appellate court must find that 1) its findings are not supported by substantial evidence; 2) there was an erroneous conception by the Land Court of the applicable law; and 3) the appellate court has a definite and firm conviction that a mistake has been made. Ittu v. Ittu, 19 FSM R. 258, 262 (Kos. S. Ct. Tr. 2014).

A proposed settlement is unimportant and only confuses the issues since even if the settlement made no issue of ingress or egress, the November 1997 court order ruled in favor of the appellant's right of way through the subject parcel onto his land behind it, ordering the appellee and his family members to refrain from any acts that may interfere with ingress or egress of appellant and his family members on the subject parcel. Ittu v. Ittu, 19 FSM R. 258, 263 (Kos. S. Ct. Tr. 2014).

A land case was a boundary dispute until the appellant claimed the entire parcel. Ittu v. Ittu, 19 FSM R. 258, 263, 264 (Kos. S. Ct. Tr. 2014).

It is primarily the Land Court's task to assess the admissibility of evidence and when it was reasonably assessed, the reviewing court will accept its finding. Ittu v. Ittu, 19 FSM R. 258, 263 (Kos. S. Ct. Tr. 2014).

The Land Court's finding is based on substantial evidence in the record and not clearly erroneous when the appellant spends most of his argument repeating the same point that this matter is a boundary dispute within a parcel and not a title dispute but he not only claimed the entire parcel before the lower court, but he also surreptitiously asks for the Certificate of Title for the parcel in the same brief in which he calls for it boundary dispute. The appellant's repeated arguments are disingenuous. Ittu v. Ittu, 19 FSM R. 258, 264 (Kos. S. Ct. Tr. 2014).

Under the res judicata effect as enshrined by Kosrae statute, a Land Court justice must not adjudicate a matter previously decided by a court between the same parties or those under whom the parties claim which dispute involves the same parcel. The Kosrae Land Court must accept prior judgments as res judicata and determine those issues without evidence. Andrew v. Heirs of Seymour, 19 FSM R. 331, 339 (App. 2014).

When a previous court case has res judicata effect and status, it is conclusive only between the parties to the case and those claiming under them and no one else. But there could be persons who were not parties to the court case and who do not claim under those parties but who have their own claim to the land. The Land Court must still go through all of its usual procedures to determine if there are other claimants and, if there are, adjudicate their claims, before it can issue a determination of ownership and, if there is no appeal or if its decision is affirmed on appeal, a certificate of title. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 367 (App. 2014).

A view that only successful land claimants have to be notified of the Land Commission's determination of ownership is gross legal error. All claimants to a parcel of land must be notified of the determination of ownership for that parcel, and if boundary determinations are involved, the adjoining landowners must also be notified. Aritos v. Muller, 19 FSM R. 533, 536 & n.1 (Chk. S. Ct. App. 2014).

When the Trust Territory Code Title 67, chapter three, which includes 67 TTC 115, was repealed and replaced by a similar Chuuk state law in 2004, and since the Land Commission acts complained of took place in 1998, and the trial division case was filed in 2000, the Trust Territory Code, Title 67, chapter 3 is the applicable law, but the 2004 Chuuk state statute enacted will apply to the further proceedings on

remand. Aritos v. Muller, 19 FSM R. 533, 537 n.2 (Chk. S. Ct. App. 2014).

There is no time limit to seek relief from a void Land Commission decision. To rule otherwise would leave an interested party without any recourse even though that party was unconstitutionally deprived of notice and an opportunity to be heard at the Land Commission formal hearing or was denied the opportunity to file a timely appeal of an adverse determination of ownership of which they never had timely notice. This is similar to the principle that there is no time limit to seek relief from a void judgment because if a judgment is void when issued, it is always void, and a court has no discretion but must grant relief from a void judgment whenever relief is sought. Aritos v. Muller, 19 FSM R. 533, 537 (Chk. S. Ct. App. 2014).

Courts have no jurisdiction to hear cases about interests in land in land registration areas unless there has been a showing of special cause, and a court finding, that action by a court is desirable or that the Land Commission has asked the court to assume jurisdiction without the Land Commission having made a determination. Aritos v. Muller, 19 FSM R. 533, 538 (Chk. S. Ct. App. 2014).

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

When the case was not an appeal from a Land Commission determination of ownership because it was filed too late for that and when it was not, at least initially, a trial court action with regard to interests in land within that registration area before it is likely a determination can be made on the matter by the Land Commission because the Land Commission had already made a decision, the trial court action was, instead, an action to collaterally attack (an allegedly) void Land Commission final decision. Once the trial court had determined that the Land Commission decision was void for the lack of due process, then the statute applied to the case before it and if the trial court wanted to proceed on the merits it had to first find special cause existed. Aritos v. Muller, 19 FSM R. 533, 538 (Chk. S. Ct. App. 2014).

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

An answer or a Rule 12(b) motion is not untimely and will not be disregarded or stricken when no default has yet been requested and entered. Killion v. Chuuk, 19 FSM R. 539, 540 (Chk. 2014).

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

The Chuuk Constitution provides that the trial division of the State Supreme Court has "concurrent original jurisdiction with other courts to try all civil, criminal, probate, juvenile, traffic, and land cases." The word "concurrent" modifies the term "original jurisdiction" and when jurisdiction is concurrent, the appropriate court may be prescribed by statute. The appropriate court for land cases in declared land registration areas was prescribed by statute as an administrative agency, the Chuuk Land Commission. Aritos v. Muller, 19 FSM R. 574, 575 (Chk. S. Ct. App. 2014).

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

The Chuuk Land Commission is not a court as that word is used in the Chuuk Constitution. It is an administrative agency that functions as a quasi-judicial tribunal. Aritos v. Muller, 19 FSM R. 612, 613 (Chk. S. Ct. App. 2014).

The Chuuk Legislature, by statute, has determined that a land case in a declared land registration area must first go through the Land Commission procedure before it can become a land case in the Chuuk State Supreme Court trial division. Aritos v. Muller, 19 FSM R. 612, 613 (Chk. S. Ct. App. 2014).

The constitutional grant of original court jurisdiction does not prevent the Legislature from prescribing by statute that certain land cases must first go to an administrative agency, the Chuuk Land Commission, before the trial court can exercise its original jurisdiction over them. Aritos v. Muller, 19 FSM R. 612, 613 (Chk. S. Ct. App. 2014).

The Kosrae Land Court is entitled to determine an easement or right of way, because the land registration process is, with certain exceptions, supposed to determine all interests in the land, not just ownership interests. Ittu v. Ittu, 20 FSM R. 178, 187 (App. 2015).

While limited, the Kosrae Land Court's subject-matter jurisdiction is broad enough to encompass factual determinations of fraud and misrepresentation to the extent that they affect the validity of titles or conveyances of land. Indeed, that is the Land Court's very purpose. Waguk v. Waguk, 21 FSM R. 60, 73 (App. 2016).

When the Kosrae Land Court itself is implicated in the allegations of fraud, that court is not competent to adjudicate the subject matter. Waguk v. Waguk, 21 FSM R. 60, 74 (App. 2016).

The Kosrae Land Court's written decision must be served on all claimants who appeared at the hearing, pursuant to the State Court rules prescribing service requirements. Esau v. Penrose, 21 FSM R. 75, 80 (App. 2016).

Any subsequent transfer from a registered owner, does not require notice, much less a hearing, to determine ownership anew or a written decision. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 102 (App. 2016).

The Kosrae Land Court's statutory jurisdiction includes all matters concerning the title of land and any interest therein. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 578 (App. 2018).

An action alleging fraud or negligence or due process violation and in which the plaintiffs seek to regain the registered title to a land parcel their predecessor once held and in which the defendants seek to retain the registered title in their predecessor's name so that, in the future, they will become the parcel's registered owners, is a dispute over the parcel's title and is thus a matter concerning the title of land and the interests therein, over which the Kosrae Land Court has original jurisdiction. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 578-79 (App. 2018).

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

When the Land Court does not own, or claim to own, any interest in a land parcel, it is not a proper party to any dispute over title to that parcel. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 579 (App. 2018).

The Land Court is not a proper party – a real party in interest – to any dispute over title because no judgment against the Land Court could ever give the plaintiffs the relief they seek – ownership of a parcel, which can only be done by an action against the current registered owner or his heirs, if he is deceased. Alik v. Heirs of Alik, 21 FSM R. 606, 620 (App. 2018).

Although the Kosrae Legislature did not vest exclusive jurisdiction in the Kosrae Land Court, it did create the Land Court as the court with original jurisdiction over land matters, and reserved appellate jurisdiction in the Kosrae State Court. Alik v. Heirs of Alik, 21 FSM R. 606, 623 (App. 2018).

When the proper place for a suit to have started was the Kosrae Land Court, but it was filed on the Kosrae State Court, the Kosrae State Court should have dismissed the Kosrae Land Court and the Kosrae state government as parties and, since it is the superior court in a unified court system, transferred the case from its docket to the Land Court's docket. Alik v. Heirs of Alik, 21 FSM R. 606, 623 (App. 2018).

The land registration team is designated to settle claims and adjudicate competing claims for parcels of land within a registration area, and if the Land Commission, upon review the record, is satisfied, it will issue a determination of ownership. If the Land Commission remains unsatisfied with the record, it can either remand with instructions to the registration team or hold further adjudications itself. It must provide notice of the determination of ownership to the interested parties, who then have 120 days to appeal, and if the time for appeal expires without any notice of appeal having been filed, the Commission must issue a certificate of title setting forth the names of all persons holding an interest in the land pursuant to the determination, and such certificate of title shall be conclusive proof upon all persons who have had actual or constructive notice of the proceedings. Hartman v. Mailo, 21 FSM R. 657, 660 (Chk. S. Ct. Tr. 2018).

Land Registration Team findings are superseded by a legal presumption of ownership over a parcel when the Land Commission has issued a valid and un-appealed determination of ownership. Hartman v. Mailo, 21 FSM R. 657, 660 (Chk. S. Ct. Tr. 2018).

The Senior Land Commissioner is a public officer who oversees the Land Commission and who has the non-discretionary legal duty to issue a certificate of title to persons holding an interest in the land pursuant to the determination after the 120-day time limit for appeal has expired without an appeal. The Land Commission's continuous failure to issue a certificate of title for over 37 years following an un-appealed determination of ownership constitutes a breach of its duty and leaves the petitioner without any legal remedy other than to petition for a writ of mandamus, and to prevent this manifest injustice, equity requires that the court compel the Land Commission to fulfill its legal duty to issue a certificate of title to petitioner. Hartman v. Mailo, 21 FSM R. 657, 661 (Chk. S. Ct. Tr. 2018).

Because Fefan and all areas under its political jurisdiction were designated as Land Registration Area 14, and because a tideland in Fefan falls under the political jurisdiction of Fefan, it thus lies within Registration Area 14, and the Land Commission therefore has primary jurisdiction to determine its ownership, as opposed to the court – unless, special cause is shown. Irons v. Rudolph, 22 FSM R. 408, 410 (Chk. S. Ct. Tr. 2019).

While an action for trespass remains proper for the court to hear because it is a court of general jurisdiction under the Chuuk State Judiciary Act of 1990, the Land Commission must resolve the question of title before the court can determine the trespass issue since the tideland was in a land registration area and no special cause was shown for court jurisdiction. Irons v. Rudolph, 22 FSM R. 408, 410 (Chk. S. Ct. Tr. 2019).

Upon the filing of a registration area with the court, courts cannot entertain any action with regard to interests in land within that registration area without a showing of special cause why action by a court is desirable before it is likely that the land commission can determine the matter. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 576 (Chk. S. Ct. App. 2020).

Land registration teams are to adjudicate claims to as much land within a registration area as practical within a year of the designation. If the registration team deems that a disputed claim's consideration will seriously interfere with accomplishing this or the land commission deems that one of its teams is spending an undesirable amount of time on a claim, the land commission may withdraw the claim from that team's consideration, and may then proceed to hear the claim itself or to refer the claim to the Chuuk State Supreme Court trial division for adjudication. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 576 (Chk. S. Ct. App. 2020).

Upon receipt of a land registration team's adjudication, the Land Commission may issue a determination of ownership if satisfied, but, if not satisfied with the adjudication, the Land Commission may either hold hearings on the matter or remand the issue back to the registration team, but the Land Commission has no authority to refer the matter to the Chuuk State Supreme Court. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 576 (Chk. S. Ct. App. 2020).

When a land commission consists of more than a senior commissioner, the concurrence of at least two members is necessary to constitute action by the commission. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 576-77 (Chk. S. Ct. App. 2020).

When the Senior Land Commissioner's letter of referral states that the land registration team would take an undesirable amount of time over the matter as the dispute had numerous issues of law which the land registration team was incapable of resolving, and when it states that the Land Commission decided against adjudicating since the parties and commissioners exhibited ill-will towards each other and therefore, the commissioners felt conflicted and prejudiced, that written explanation satisfies the statutory requirements for removal of an adjudication from a registration team in order to refer it to the Chuuk State Supreme Court trial division. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 578 (Chk. S. Ct. App. 2020).

When the entire commission body suffered from a conflict of interest in the matter as a result of ill feeling towards one of the parties, and the Senior Land Commissioner appeared to have the only valid signature for a decision, the statutory two-commissioner requirement does not apply to a decision as in that matter, because the Senior Land Commissioner's one signature referral to the court does not violate 67 TTC 116, since the two-signature requirement is for a valid Land Commission action or decision on substantive matters concerning property rights, not for a decision on procedural matters such as referral of a dispute to the Chuuk State Supreme Court. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 579 (Chk. S. Ct. App. 2020).

– Leases

Although the court is powerless to compel Chuuk State to honor its lease agreement it has full power to restore unlawfully held property to its rightful owner as a remedy for forcible entry and unlawful detainer. Billimon v. Chuuk, 5 FSM R. 130, 136-37 (Chk. S. Ct. Tr. 1991).

Where a party purchases land subject to prior liens and a lease is a prior lien noted on the title the purchase was made subject to the lease. Chipuelong v. Chuuk, 6 FSM R. 188, 198 (Chk. S. Ct. Tr. 1993).

A person, who acquires leased land from the lessees and the houses the lessees built on it, has no rights superior to the rights given the lessees in the lease. Wolphagen v. Ramp, 8 FSM R. 241, 244 (Pon. 1998).

When a lease provides that lessees may build "such buildings as they see fit" on the land and that such buildings will become the lessor's property when the lease ended, the lessor has a vested future interest in the buildings if they are built. The interest is executory, resulting from a springing use, the event of which is when and if the lessees built structures. The lessor has a vested future interest in the buildings, once built,

which ripens into possession at the lease's termination. Wolphagen v. Ramp, 8 FSM R. 241, 244 (Pon. 1998).

A lessor's vested future interest in houses may be protected from an alteration which would change the structures' character. A wrongful eviction counterclaim based on the lessor's refusal to allow the houses to be turned into a bar will therefore be dismissed. Wolphagen v. Ramp, 8 FSM R. 241, 244 (Pon. 1998).

When a lease provides that the lessees have the right to build such structures as they see fit with the buildings to become the lessor's property upon the lease termination and the lessees built two houses, they built such structures as they saw fit, and in doing so defined the nature of those structures. Once built, those structures became the lessor's property, although not until the lease's termination. At that time, the lessor was entitled to find himself the owner of dwellings, not a bar. He was within his rights to prevent the houses from being renovated for use in that manner. Wolphagen v. Ramp, 9 FSM R. 191, 195 (App. 1999).

It is a well-recognized rule of law in Chuuk that lineage land cannot be transferred, distributed or sold by an individual member of the lineage without the consent or acquiescence of all adult members of that lineage, and it is assumed that this rule of law applies to "transfers" by lease as well. Marcus v. Truk Trading Corp., 10 FSM R. 387, 389 (Chk. 2001).

It would seem that for a long-term land lease (especially one that could last two or three or more generations) the level of lineage members' consent needed should be equivalent to that needed for a sale. Marcus v. Truk Trading Corp., 11 FSM R. 152, 160 (Chk. 2002).

When a lineage as a whole has accepted all of the benefits of a lease – all of the payments that the lessee was required to make – up to the present and even beyond, it cannot now reject the burden of the lessee exercising its options to renew. Marcus v. Truk Trading Corp., 11 FSM R. 152, 161 (Chk. 2002).

Under the after-acquired title doctrine as it applies to leases, if a lessor purports to make a lease at a time when the lessor does not have title to the realty that is subject to that lease but then subsequently acquires legal title to the realty, such after-acquired title will inure to the lessee's benefit by means of estoppel and will be subject to the lessee's rights under the lease. Mailo v. Chuuk, 13 FSM R. 462, 468 (Chk. 2005).

The after-acquired title doctrine may be applied in favor of one holding the lease under an assignment from the original lessee, because an assignee of a landlord or tenant by estoppel stands in as good a position as his assignor and may sue on the lease's covenants. Mailo v. Chuuk, 13 FSM R. 462, 469 (Chk. 2005).

A lease agreement entered into by the parties was a valid contract because the promise to pay rent in exchange for exclusive use of the property constituted an offer, acceptance, and consideration and the agreement's terms were definite and enforceable. Harden v. Inek, 19 FSM R. 244, 249 (Pon. 2014).

A lease is a contract by which a rightful possessor of real property conveys the right to use and occupy the property in exchange for consideration, usually rent. A leasehold is a tenant's possessory estate in land or premises or an estate in realty held under a lease. FSM v. Tihpen, 21 FSM R. 463, 466 n.2 (Pon. 2018).

A leasehold is the right to use property on which a lease is held for the purposes of the lease. FSM v. Tihpen, 21 FSM R. 463, 466 n.2 (Pon. 2018).

Any lease or use rights for a term not exceeding one year does not need to be stated in the certificate of title to be effective. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 163 (Chk. 2019).

A long-term lease (a lease for greater than one year), is an interest in land subject to Land Commission adjudication and must be stated in the certificate of title for it to be effective against third parties. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 163 (Chk. 2019).

A long-term lessee is entitled to notice as an interested party – as a claimant to an interest in that land – when that land is first registered. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 164 (Chk. 2019).

Persons, including a purported long-term lessee, known to a claimant, if not to the Land Commission, to claim interests in the land, are entitled, as interested parties, to actual notice of any Land Commission proceedings determining the land's ownership and other interests therein. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 164 (Chk. 2019).

When the lease did not require the lessee, at the lease's termination, to remove the structures and foundations, the lessor's requested damages will be reduced because the lessee should not have to pay for the removal of slabs and foundations that remain on the property. Hartman v. Henry, 22 FSM R. 292, 298 (Pon. 2019).

– Mortgages

In an action on a delinquent promissory note brought by an instrumentality of the national government which seeks to foreclose the mortgage securing the payment of the note, prior to the filing of an answer no interest in land is at issue, and therefore, the motion to dismiss on the ground that the court lacked jurisdiction is denied. FSM Dev. Bank v. Mori, 2 FSM R. 242, 244 (Truk 1987).

Failure to mention national courts in section 25 of the Pohnpei State Real Property Mortgage Act should not be read as an attempt to deprive litigants of access to the FSM Supreme Court's trial division. Bank of Guam v. Semes, 3 FSM R. 370, 380 (Pon. 1988).

A lawsuit to enforce a mortgage is an attempt to enforce a type of lien against a delinquent debtor. Such a case bears a relationship to the power to regulate "bankruptcy and insolvency," which the Constitution, in article IX, section 2(g), places in the national Congress. Bank of Guam v. Semes, 3 FSM R. 370, 381 (Pon. 1988).

When loan collateral is in the lender's possession and the borrower has made a reasonable request that the lender liquidate the collateral to preserve its value, the lender should do so; but there is no duty in law requiring the lender to take possession of the collateral and foreclose on property at the borrowers' request when that property is not in the lender's possession, unless there is a provision in the mortgage requiring it. FSM Dev. Bank v. Gouland, 9 FSM R. 605, 607 (Chk. 2000).

A mortgage foreclosure generally does not involve a dispute over who owns the land, but rather the mortgagor's undisputed ownership being transferred, often involuntarily, to a buyer or to the mortgagee to satisfy the mortgagor's debt. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 4 (Chk. 2001).

The Constitution does appear not to bar the FSM Supreme Court from exercising jurisdiction over FSM Development Bank mortgage foreclosures. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 5 (Chk. 2001).

Only two courts have jurisdiction over the territory of Chuuk – the Chuuk State Supreme Court and the FSM Supreme Court. A mortgage foreclosure on land in Chuuk therefore could not be in any court other than those two. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 110 (Chk. 2001).

Mandamus lies to compel a public official to perform a clear, nondiscretionary duty. When the petition is devoid of any allegation that the respondent is acting in an official capacity, when the Kosrae deed of trust

statute does not confer on the respondent either the obligation or the express power to act as a trustee under a deed of trust, and when the petition is silent as to any other mechanism or source of authority by which the respondent in his official capacity has assumed the duties of the trustee under the deed of trust at issue so as to make the performance of those duties a "clear and nondiscretionary," mandamus is not available. FSM Dev. Bank v. Director of Commerce & Indus., 10 FSM R. 317, 319 (Kos. 2001).

A statute that requires the creditor to give written notice to the debtor of the creditor's intention to foreclose prior to foreclosing on the property, is inapplicable to setoffs because foreclosures and setoffs are very different things. Bank of the FSM v. Asugar, 10 FSM R. 340, 342 (Chk. 2001).

A foreclosure is a legal proceeding to terminate a mortgagor's interest in property, instituted by the lender (the mortgagee) either to gain title or to force a sale in order to satisfy the unpaid debt secured by the property. Bank of the FSM v. Asugar, 10 FSM R. 340, 342 (Chk. 2001).

Generally, money deposited in a bank account is a debt that the bank owes to the depositor – the bank is obligated to repay the money to the depositor, either on demand or at a fixed time. Money deposited in a bank account is thus not property mortgaged to the bank. Bank of the FSM v. Asugar, 10 FSM R. 340, 342 (Chk. 2001).

If a judgment-creditor were to attempt to execute against a piece of land for which there was a certificate of title and that certificate showed an outstanding mortgage on the land, or if there was no certificate of title for the land but a mortgage had been duly and properly recorded at the Land Commission so that anyone searching the records there should necessarily find it, then that would be a security interest that was not a secret lien and therefore valid against third parties. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 365 (Chk. 2003).

Certificates of title are required to show all interests in the land except for rights of way, taxes due, and lease or use rights of less than one year. A mortgage can and must show on the certificate to be effective against third parties. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 365 n.2 (Chk. 2003).

A buyer would usually expect to buy land without a mortgage or, if the land carries a mortgage, that a part of his purchase price will be used to pay off the mortgage so that he receives title free and clear of any mortgage. (Alternatively, a buyer might reduce his offer by the mortgage's outstanding balance and then pay off the mortgage himself.). In re Engichy, 11 FSM R. 520, 530 (Chk. 2003).

If a creditor's judgment is secured by a mortgage, it would have priority over the other unsecured judgment-creditors for the proceeds from the sale of the mortgaged property. In re Engichy, 11 FSM R. 520, 530 (Chk. 2003).

If a judgment-creditor were to attempt to execute against a piece of land for which there was a certificate of title and that certificate showed an outstanding mortgage on the land, or if there was no certificate of title for the land but a mortgage had been duly and properly recorded at the Land Commission so that anyone searching the records there should necessarily find it, then that would be a security interest that was not a secret lien and therefore valid against third parties. In re Engichy, 11 FSM R. 520, 530 (Chk. 2003).

Certificates of title are required to show all interests in the land except for rights of way, taxes due, and lease or use rights of less than one year. Therefore a mortgage can and must be shown on the certificate of title to be perfected and thus effective against third parties. If the property has not been issued a certificate of title, then the mortgage must be properly recorded in the chain of title so that someone searching the Land Commission files would expect to find it. In re Engichy, 11 FSM R. 520, 530 (Chk. 2003).

A perfected security interest in land (the mortgage either shown on the certificate of title, or if no

certificate, properly recorded) would have priority over any unsecured judgment-creditors, even those with writs of execution, should the mortgaged property be sold to satisfy the landowners' debts. In re Engichy, 11 FSM R. 520, 530 (Chk. 2003).

The proper way to record a mortgage under the Torrens land registration system in use in Chuuk is for the mortgage and the landowner's [duplicate] certificate of title to be submitted to the Land Commission at the same time. The mortgage document is then recorded; the mortgage is endorsed on the certificate of title permanently on file at the Land Commission; and then a (new) duplicate certificate of title, showing the endorsement of the newly-recorded mortgage, is given (or returned) to the landowner. If this is done, then the security interest is perfected and the mortgage is valid and enforceable against all the world and has priority over all other claims to the proceeds from the sale of the mortgaged property. If all these steps are not done, then the security interest is not perfected and the mortgage does not carry priority over and is not effective against parties without notice of it – it is a disfavored secret lien. In re Engichy, 11 FSM R. 520, 531 (Chk. 2003).

Failure to perfect a security interest does not affect the mortgage's validity and enforceability between the parties to it. In re Engichy, 11 FSM R. 520, 531 (Chk. 2003).

A social security tax lien has priority over a mortgage because section 607 grants social security tax liens priority over all other liens regardless of whether the other liens arose earlier. In re Engichy, 12 FSM R. 58, 65 (Chk. 2003).

Under the general rule a mortgage first in time has superior right in the absence of the applicability of a statutory provision to the contrary. Section 607 is a statutory provision to the contrary because it grants social security tax liens priority over all other liens regardless of whether the other liens arose earlier. In re Engichy, 12 FSM R. 58, 65 (Chk. 2003).

A mortgagee's due process rights are not violated by a statute making another lien superior to its mortgage when the statute was enacted prior to the mortgage's execution. In re Engichy, 12 FSM R. 58, 65 (Chk. 2003).

By state statute, a mortgage creates a lien on the land, but does not pass title to the mortgagee. In re Engichy, 12 FSM R. 58, 68 (Chk. 2003).

Any land may be mortgaged by its owners, and such a mortgage may be recorded. But a mortgage on unregistered land can only be recorded, not registered because no certificate of title had been issued for it. In re Engichy, 12 FSM R. 58, 68 (Chk. 2003).

The Chuuk Real Estate Mortgage Law confirms and adopts by reference rather than modifying or repealing the Title 67 provisions applicable to the endorsement of mortgages on certificates of title. In re Engichy, 12 FSM R. 58, 70 (Chk. 2003).

A mortgage endorsed on a certificate of title cannot be given retroactive effect. To do so would destroy the purpose of the land registration system – that the original certificate of title at the Land Commission is conclusive and if there are no endorsements anyone searching the state of the title need look nowhere else for mortgages and for the other encumbrances that, with certain exceptions, are required to be listed there. In re Engichy, 12 FSM R. 58, 71 (Chk. 2003).

A mortgagee will have a secured interest in any future funds that from the sale of the mortgaged land when, although the mortgage was not endorsed on the certificate of title before the case was consolidated with other judgment-creditors', all of the necessary documents for the Land Commission to endorse the mortgage had been submitted to the Land Commission by then. In re Engichy, 12 FSM R. 58, 71 (Chk. 2003).

While a mortgagee bank may have policies and rules it must follow that require it to inquire into the

purported collateral or security and require ownership documents and certified maps of the property's location when land is used as collateral or security for its loans, it has not been shown that violation of these policies and rules creates a duty to a stranger to the mortgage. They may create a duty to the bank's shareholder, and failure to follow them may result in the bank holding worthless security, but the bank has not been shown to have a general duty to all landowners not to accept a mortgage to land one of them might later claim. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 127-28 (Chk. 2005).

The result of "negligence" in failing to properly record a mortgage on unregistered land is that the mortgage is ineffective against third parties – someone other than the mortgagor who had no notice of the mortgage (and the result is the same for registered land when a mortgage is not properly endorsed on the certificate of title). Rudolph v. Louis Family, Inc., 13 FSM R. 118, 128 & n.4 (Chk. 2005).

A mortgagor can only mortgage an interest in land that he owns at the time the mortgage is granted. If the mortgagors held no interest in the land they mortgaged, the bank would never be able to foreclose the mortgage (essentially it holds no security) since it can only foreclose the interests that the mortgagors held and mortgaged. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 128 (Chk. 2005).

There is some authority that a mortgagor can mortgage land that he does not own but will own in the future and that the mortgage then becomes effective when he acquires the land. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 128 n.5 (Chk. 2005).

A mortgagee that fails to ascertain the mortgagor's true interest in the mortgaged property does so at its own risk. Its punishment, if it can be called that, is that it has no security for the debt it is owed. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 128 (Chk. 2005).

When a plaintiff's determination of ownership is for a lot with one number and the bank holds mortgages on lots with other numbers, the bank does not have a mortgage for the plaintiff's lot and there is no proximate cause between the bank acquiring the mortgage and any later alleged damage to the plaintiff's lot. Whether the mortgage was properly recorded is immaterial. If the plaintiff was damaged, the mortgage did not cause it. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 128 (Chk. 2005).

Since a bank owed no duty of care to a plaintiff when it took a mortgage to secure a loan to another, and that mortgage, even if it is unenforceable, was not the proximate cause of the plaintiff's alleged damages, the bank is entitled to summary judgment as a matter of law on the plaintiff's negligence and void mortgage causes of action. Additional reasons for this are that the bank has not attempted to foreclose its mortgage and that the mortgage does not cover the lot for which the plaintiff has a determination of ownership. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 128 (Chk. 2005).

Holding a mortgage to property in which the mortgagor had no interest cannot be taking dominion over property. A mortgagee may take dominion over a mortgaged property only when it has foreclosed on the property and either taken title to it itself or had it sold to another. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 129 (Chk. 2005).

By taking a mortgage, a mortgagee does not claim title to (or dominion over) the property. A mortgage creates a lien on the land, but does not pass title to the mortgagee. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 129 n.6 (Chk. 2005).

A mortgagee, is not an insurer or guarantor of the mortgagor's actions. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 129 (Chk. 2005).

Since national court jurisdiction is proper when the parties are diverse, a Kosrae statute that requires a foreclosure action to be filed in Kosrae State Court cannot divest the FSM Supreme Court of its constitutionally mandated jurisdiction under the FSM Constitution. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 325 (Kos. 2011).

Public policy cannot abide by the perverse result that would never leave a title quiet if the court were to recognize an indefinite expectancy right for a person to inherit his living parent's land and require a complainant to name all the landowner's children. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 325 (Kos. 2011).

When a landowner's children do not have a vested interest in the land, the foreclosure statute does not require a judgment creditor to name them as defendants. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 325 (Kos. 2011).

In a collection case based on a defaulted loan, no interest in land was ever at issue when the fee simple ownership of the parcel was never at issue and when the bank's registered mortgage lien was not at issue, so the jurisdictional language in section 6(a) is not applicable. FSM Dev. Bank v. Kansou, 17 FSM R. 605, 608 (Chk. 2011).

When the complaint alleges that a person is bound by the mortgage because another defendant, who signed the mortgage, held that person's power of attorney to act on his behalf in regard to the land, the plaintiff is estopped from and cannot deny that that person is a party to the mortgage and, since he is a party to the mortgage, he has standing to enforce its provisions. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 94 (Yap 2011).

The court will enforce a forum selection clause when the bank drafted the real estate mortgage and the bank chose to include the forum selection clause as one of the terms it insisted upon in the preprinted mortgage form it used to execute the mortgage; when a mortgagor not only does not expressly waive the bank's forum selection but he affirmatively insists upon the forum selection clause's enforcement; and when no other valid reason is apparent or has been asserted by the bank that would allow the clause's waiver. The bank may thus assert its real estate mortgage foreclosure remedy in the Yap State Court, the forum it chose, and the mortgagor may raise his defenses to the mortgage's validity there and the FSM Supreme Court will adjudicate the bank's action on the promissory note and on the chattel mortgage. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 94 (Yap 2011).

A mortgagee does not have title to the land, only a lien. Helgenberger v. FSM Dev. Bank, 18 FSM R. 498, 500 (App. 2013).

A mortgagee under the provisions of a chattel mortgage covering all the personal property of the insolvent may, on default, be entitled to take possession of the property and sell it to satisfy his claim. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 596 (Kos. 2013).

Since the Secured Transactions Act does not apply to the transfer of an interest in real property except as provided with respect to fixtures, crops, timber to be cut, or minerals to be extracted, a lender cannot have perfected a security interest in a factory building unless it had obtained a mortgage on the factory building (and presumably the land underneath it or an easement) and recorded that mortgage. The lender is therefore not entitled to pre-judgment possession of the factory building since it does not have a perfected security interest in it under the Act. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 597 (Kos. 2013).

The Pohnpei Mortgage Law requires that the complaint name all persons having or claiming an interest in the property subordinate to the mortgage interest. FSM Dev. Bank v. Setik, 19 FSM R. 233, 235 (Pon. 2013).

When there are no transfers or encumbrances registered against the mortgaged parcels except for the bank's mortgages and a separate conveyance of a property interest in the land to the bank; when all the parties with an interest in the parcels are parties to the litigation; and when it is undisputed that the named defendants were duly served with a summons and complaint, an argument that the bank failed to comply with the statutory notice requirements must fail. FSM Dev. Bank v. Setik, 19 FSM R. 233, 235 (Pon. 2013).

A mortgage foreclosure generally does not involve a dispute over who owns the land, but rather the mortgagor's undisputed ownership being transferred, often involuntarily, to a buyer or to the mortgagee to satisfy the mortgagor's debt. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 432 (App. 2014).

When the subject mortgage required that the mortgagor not only refrain from removing or demolishing the buildings on the premises but also maintain the structures in good repair, as well as assign to the mortgagee all rents and profits derived from same, this language reflects that the buildings, and not just the land they were on, were expressly contemplated, in ascribing the respective value to the mortgage, as security for the underlying loan. FSM Dev. Bank v. Setik, 20 FSM R. 85, 88 (Pon. 2015).

When the previously court-appointed land sales agent has died and the mortgagee has proposed a successor agent and when the defendants have failed to cite any legal authority in support of their opposition to this proposed successor, the court will confirm the successor since he is familiar with the case's operative facts and is an employee of the mortgagee whose services would thus require no additional compensation. FSM Dev. Bank v. Setik, 20 FSM R. 85, 90 (Pon. 2015).

A mortgage foreclosure generally does not constitute an interest in land being at issue because in a mortgage foreclosure the interests in land are not in dispute – the parties all agree who owns the land and who holds the mortgage. The mortgagee just seeks to foreclose the mortgage which a mortgagor has pledged as security for a debt and which the mortgagor earlier agreed, when he signed the mortgage, could be sold if the debt remained unpaid. Thus, the Exception Clause does not preclude jurisdiction. Sam v. FSM Dev. Bank, 20 FSM R. 409, 416 (App. 2016).

When security, such as a guaranty, is given as part of the same transaction that created the debt to the bank, no further or independent consideration is needed. The loan itself is sufficient consideration. This principle holds true when a mortgage is the security given for a loan to a third party. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

The consideration for a mortgage may consist of a loan to a third person. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

It is not essential to a mortgage's validity that the mortgagor should have received the consideration. It is sufficient that the mortgagee parted with consideration. The consideration need not go directly from the mortgagee to the mortgagor. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

When a parcel was pledged as collateral for a loan in an executed security instrument and when the borrowers defaulted on the loan and the lender bank instituted enforcement proceedings and was allowed to enforce the mortgage's terms, the borrowers surrendered their ownership interest in this parcel and the ultimate transfer of ownership, as approved by the FSM Supreme Court, cannot be categorized as "wrongful or unauthorized," or a "frozen asset," when the borrowers had earlier obtained a Pohnpei Court of Land Tenure determination of heirship for the parcel that named them as the legal heirs to the property. Setik v. Perman, 21 FSM R. 31, 37-38 (Pon. 2016).

The Pohnpei Supreme Court is not the only forum with jurisdiction to foreclose a mortgage on Pohnpei real estate because it is undisputed that the FSM Supreme Court may exercise such jurisdiction when the FSM Development Bank is the mortgagee since a state statute cannot divest the FSM Supreme Court of its jurisdiction. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 172 (Pon. 2017).

That the bank has also named persons in the mortgage foreclosure whose inclusion may be superfluous, does not affect the validity of the foreclosure against the registered owner as long as that person is named and all the proper steps for foreclosure are taken against that person. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 173 (Pon. 2017).

When no stay pending appeal had been granted, the trial court had the jurisdiction to not only deny the defendants' Rule 60(b) motion for relief from judgment, but it also had the jurisdiction to enforce the money judgment by mortgage foreclosure. Setik v. FSM Dev. Bank, 21 FSM R. 505, 518 (App. 2018).

The trial court's issuance of an order transferring title six days after the bank filed its motion and notice of payment was not reversible error when an earlier order in aid of judgment required that a court order transferring title to the parcel had to be issued no later than ten days after notice is given of delivery of a cashier's check in the full amount and when the appellants do not contend that there were any procedural defects in the sale on which they could base a challenge to its outcome. Setik v. FSM Dev. Bank, 21 FSM R. 505, 520 (App. 2018).

The Pohnpei State Mortgage Law provides that a deceased mortgagor's heirs and devisees take subject to a mortgage. FSM Dev. Bank v. Carl, 21 FSM R. 640, 643 (Pon. 2018).

FSM Development Bank loans that are determined to be no longer collectable are subject to write-off, but when the mortgaged parcel securing the loan is still generating income, in the form of monthly rent, the loan is still deemed to be capable of being paid off. FSM Dev. Bank v. Carl, 21 FSM R. 640, 643-44 (Pon. 2018).

The enactment of FSM Code, Title 30 falls squarely within the Congress's express powers as delegated by the FSM Constitution. That 30 F.S.M.C. 137 deals with the FSM Development Bank's ability to acquire title to land places this activity squarely in the category of indisputedly national government powers. To function, the Bank must be able to deal with mortgages, as well as deeds and land titles, as land is the primary collateral possessed by most Micronesians. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 330 (Pon. 2019).

Under Pohnpei law, when a bank is entitled to a foreclosure of the mortgaged land as a matter of law, and the full judgment amount is not paid into court within three months of the judgment date, the court may, order the foreclosed property sold for the mortgagee's (the bank's) benefit. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 478 (Pon. 2020).

When the defaulting borrowers had executed a chattel mortgage to help secure a loan, and when the bank registered and thereby perfected its security interests in the chattels, the bank is entitled to a judgment on its claim to foreclose its chattel mortgage. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 478 (Pon. 2020).

When the FSM Development Bank has a statutory right to reduce its claim to judgment and to foreclose its perfected security interest in the borrowers' medical equipment and also has the contractual right to do the same, the Constitution's Professional Services Clause does not make that contract illegal. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 481 (Pon. 2020).

– Personal

Because farming of short term crops, such as sugar cane, on someone else's land is not uncommon in Kosrae, the fruits of such farming are considered the personal property of the person planting them. Kosrae v. Tolenoa, 4 FSM R. 201, 204 (Kos. S. Ct. Tr. 1990).

The property owned in full title by one who dies is inherited by the children of the deceased. Personal property suited for use by women is inherited by daughters and sisters. In re Estate of Hartman, 6 FSM R. 326, 330 (Chk. 1994).

Personal property is property other than land or interests in land. House of Travel v. Neth, 7 FSM R. 228, 229 (Pon. 1995).

Personal property is property other than land or interests in land. George v. Abraham, 14 FSM R.

102, 108 (Kos. S. Ct. Tr. 2006).

When a judgment-creditor has requested a writ and no motion for an order in aid of judgment is pending, he is entitled to a writ of execution against the judgment-debtor's non-exempt personal property. Personal property is property other than land or interests in land. Saimon v. Wainit, 18 FSM R. 211, 214 (Chk. 2012).

A mortgagee under the provisions of a chattel mortgage covering all the personal property of the insolvent may, on default, be entitled to take possession of the property and sell it to satisfy his claim. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 596 (Kos. 2013).

Fixtures are goods that are fixed to real property, or are intended to become fixed to real property in a manner that causes a property right to arise in the goods under the prevailing law. Goods are all things that are movable when a security interest attaches and the term includes fixtures. Readily removable factory machines, office machines, and domestic appliances are not fixtures. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 598 (Kos. 2013).

A bona fide purchaser for value is someone who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller's title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims. Mori v. Hasiguchi, 19 FSM R. 16, 21-22 (Chk. 2013).

An improper sale by a fiduciary (estate administrator) that has already taken place can be vacated, but not if the buyer was a bona-fide purchaser because, when property of an estate has been transferred to a bona-fide purchaser for value, the latter is protected even if the fiduciary was acting improperly. The beneficiaries' remedy is not to void the transaction but to seek damages for the personal representative's breach of his fiduciary duty. Mori v. Hasiguchi, 19 FSM R. 16, 22 (Chk. 2013).

A bona fide purchaser for value and without notice, should be as protected buying shares from the distributee as he would have been buying them from the fiduciary administrator, especially when it was the same person. Mori v. Hasiguchi, 19 FSM R. 16, 23 (Chk. 2013).

Someone who has wrongfully sold property to a bona fide purchaser for value without notice can be compelled to buy a replacement if this is reasonably possible. Sometimes damages are the only appropriate remedy. Either way, the rightful heir's remedy is against estate administrator. If it were any other way, then anyone who ever bought property after it had been inherited and distributed by a Pohnpei probate court final order could never be certain that his or her title would not be taken away by a future final probate court order that the distributee seller was not the proper distributee. Mori v. Hasiguchi, 19 FSM R. 16, 23 (Chk. 2013).

The elements of a conversion action are the plaintiff's ownership and right to possession of the personalty, the defendant's wrongful or unauthorized act of dominion over the plaintiff's property inconsistent with or hostile to the owner's right, and resulting damages. "Personalty" is personal property as distinguished from real property. Setik v. Mendiola, 21 FSM R. 537, 555 (App. 2018).

When the defaulting borrowers had executed a chattel mortgage to help secure a loan, and when the bank registered and thereby perfected its security interests in the chattels, the bank is entitled to a judgment on its claim to foreclose its chattel mortgage. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 478 (Pon. 2020).

– Personal – Bailment

Bailment occurs when one person has lawfully acquired possession of another's personal property; the bailor retains ownership, but the bailee has lawful possession and exclusive control over the property for the

duration of the term of the lease. Vehicle rental agreements are bailment leases. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 305 (Pon. 2004).

A bailment is created by the delivery of personal property by one person to another, in trust for a specific purpose, pursuant to an express or implied contract to fulfill the trust. Palik v. PKC Auto Repair Shop, 13 FSM R. 93, 96 (Kos. S. Ct. Tr. 2004).

The delivery of property to another under an agreement to repair is a bailment. Palik v. PKC Auto Repair Shop, 13 FSM R. 93, 96 (Kos. S. Ct. Tr. 2004).

The bailee, having custody of the bailor's property, has the obligation to exercise due care to protect the property from loss, damage or destruction. Palik v. PKC Auto Repair Shop, 13 FSM R. 93, 96 (Kos. S. Ct. Tr. 2004).

A presumption arises that a bailee who has sole actual and exclusive possession of the goods has been negligent if he cannot explain the loss, disappearance or damage of the bailed property, its parts or contents. Palik v. PKC Auto Repair Shop, 13 FSM R. 93, 96 (Kos. S. Ct. Tr. 2004).

A bailee is liable for all repairs and replacement for the bailed property that are necessary due to his neglect or lack of care. Palik v. PKC Auto Repair Shop, 13 FSM R. 93, 96 (Kos. S. Ct. Tr. 2004).

In assessing damages, the court may take judicial notice of the prevailing cost in Kosrae of items similar to the ones lost. Palik v. PKC Auto Repair Shop, 13 FSM R. 93, 96 (Kos. S. Ct. Tr. 2004).

A bailment is created by the delivery of personal property by one person to another, in trust for a specific purpose, pursuant to an express or implied contract to fulfill the trust. The delivery of property to another under an agreement to repair is a bailment. Pelep v. Mai Xiong Inc., 21 FSM R. 182, 189 (Pon. 2017).

– Public Land

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

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

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

The Pohnpei Public Lands laws do not provide for the disposal or lease of public lands in Kolonia Town by the Pohnpei Public Lands Authority. Micronesian Legal Servs. Corp. v. Ludwig, 3 FSM R. 241, 247 (Pon. S. Ct. Tr. 1987).

Abstention by national courts is desirable in a case affecting state efforts to establish a coherent policy concerning how private persons may obtain rights to use land currently held by the state government.

Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM R. 37, 44 (Pon. 1989).

Plaintiff's due process rights were not violated where the government did not use condemnation procedures specified in 67 TTC 451, but followed land registration procedures to obtain title and treated the plaintiff fairly and in the same way it treated other landowners. Palik v. Kosrae, 5 FSM R. 147, 152-54 (Kos. S. Ct. Tr. 1991).

Where the alleged trespassers did not claim to have an interest in the land at the time of the determination of ownership they cannot now raise as a defense a claim that the land in question is public land when that issue was decided in the determination of ownership process and certificates of title issued. In re Parcel No. 046-A-01, 6 FSM R. 149, 156-57 (Pon. 1993).

A Certificate of Title issued by a state land commission precludes a claim by the state that the land is public land. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 51 (App. 1995).

Since under 67 TTC 1 public lands were lands situated within the Trust Territory as the government of the Trust Territory had acquired or would acquire for public purposes, in Chuuk public lands are those lands located in Chuuk that the state has acquired or will acquire for public purposes. Sana v. Chuuk, 7 FSM R. 252, 254 (Chk. S. Ct. Tr. 1995).

In Chuuk the leasing of private land by the government for public purposes is an exercise of the state's eminent domain power because the Chuuk Constitution requires that the state should negotiate a voluntary lease, sale or exchange, if possible, instead of an involuntary taking. Sana v. Chuuk, 7 FSM R. 252, 254 (Chk. S. Ct. Tr. 1995).

In Chuuk land leased by the government for a public purpose is public land for the duration of the term of the lease. Sana v. Chuuk, 7 FSM R. 252, 255 (Chk. S. Ct. Tr. 1995).

Early termination of a lease for which the State of Chuuk has fully paid is a disposal of public land which the governor cannot do without the advice and consent of the legislature. Sana v. Chuuk, 7 FSM R. 252, 255 (Chk. S. Ct. Tr. 1995).

Prior to the effective date of the Chuuk Constitution the ownership of the filled marineland was with the Japanese government and that title was transferred to the Trust Territory pursuant to 67 TTC §§ 1 and 2 and later to Truk State. Atin v. Eram, 7 FSM R. 269, 271 (Chk. S. Ct. Tr. 1995).

A forced sale of land under duress to the Japanese government does not make that land public land. Nahnken of Nett v. United States, 7 FSM R. 581, 588 (App. 1996).

Private individuals lack standing to assert claims on behalf of the public and cannot bring claims against the state on behalf of the public with respect to state land. Therefore a private landowner does not have standing to sue the state with respect to black rocks deposited below the ordinary high water mark because that is state land, but he does have standing to sue with respect to black rocks located above the high water mark and on his land. Jonah v. Kosrae, 9 FSM R. 335, 341 (Kos. S. Ct. Tr. 2000).

A claim that no one owned an island is in the nature of a claim that the island is public land. Generally, but not always, it is the state government that would assert that some land is public land. Rosokow v. Bob, 11 FSM R. 454, 457 & n.2 (Chk. S. Ct. App. 2003).

When a plaintiff obtained an assignment that was registered and subsequently dissolved by the Public Lands Board, the plaintiff was directly and adversely affected by the Board's decision, and thus has standing to sue the Board. There can be no question that the plaintiff is the real party in interest. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 90 (Pon. 2003).

The Board of Trustees of the Pohnpei Public Lands Trust is the sole entity empowered and authorized to execute a lease agreement in regard to Pohnpei public lands, and when the Board has executed a residential lease agreement, the holder of the residential lease for the property is the present tenant and enjoys privity of contract and privity of estate in relation to that parcel. Ambros & Co. v. Board of Trustees, 12 FSM R. 206, 212 (Pon. 2003).

Under Pohnpei law, an executory interest in the assignment of a public lands leasehold expires on the grantor's death. Ambros & Co. v. Board of Trustees, 12 FSM R. 206, 212 (Pon. 2003).

When an assignment of public land was never approved by the Board and by the form lease agreement's terms, the tenant could not sublease, transfer or assign any interest in the premises without the Board's prior written consent, the assignment could not become a possessory interest until the Board gave its written approval. Upon the assignor's death, the leasehold interest became part of the assignor's estate, and the assignment was extinguished. Ambros & Co. v. Board of Trustees, 12 FSM R. 206, 213 (Pon. 2003).

The doctrine of equitable estoppel operates to preclude a party from asserting a right he otherwise might have had, based upon his previous conduct. Equitable estoppel is applied to governments in the FSM when this is necessary to prevent manifest injustice and where the interests of the public will not be significantly prejudiced. Equitable estoppel thus applies to prevent (or estop) the Board of Trustees from claiming that a party had no existing right to a lot when it had given that party a lease (which was duly recorded at the State Land Registry) to that lot and had taken that party's lease payments for years. Carlos Etscheit Soap Co. v. McVey, 14 FSM R. 458, 462 (Pon. 2006).

When a party had some right to a lot, it was, at a minimum, entitled to notice that the Board of Trustees believed the party's lease was invalid and that the Board intended to revoke the lease and put that lot up for public bid. The party was also entitled to notice and an opportunity to be heard on the issue of the lease's validity before the Board revoked the lease. When the Board did not give the party any notice and revoked its lease and issued a lease to another, this lack of notice to the party would thus make the later issuance of a lease invalid. Carlos Etscheit Soap Co. v. McVey, 14 FSM R. 458, 462 (Pon. 2006).

Since in 2004 the plaintiff held an unexpired, recorded lease to Lot No. 014-A-08 for which the lease payments were current and up to date, it was entitled to notice and an opportunity to be heard before the Board of Trustees could disregard or void that lease and advertise Lot No. 014-A-08 for immediate lease or could lease Lot No. 014-A-08 to another. This is true even if the Board considered the lease "illegal" due to omissions in the approval process. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 109 (Pon. 2010).

When the plaintiff's lease had not been voided after notice and an opportunity to be heard before its leased lot was advertised for immediate commercial lease, the Board violated the plaintiff's civil rights because it denied the plaintiff the due process of law when it did not give the plaintiff prior notice and an opportunity to be heard on the validity of its lease. This is because notice and an opportunity to be heard are the essence of due process of law. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 110 (Pon. 2010).

A public land lease is void when it was issued without any prior notice to the then current lessee of record and without any opportunity for the current lessee to be heard and when it was issued without any prior notice to the then current lessee during the term of the lease held by the then current lessee and since it was set to start on a date during the term of the lease held by the then current lessee. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 110 (Pon. 2010).

When no one holds a valid lease for a lot, no one owes any lease payments for the lot. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 111 (Pon. 2010).

A public land lease that has a provision that a holdover by a lessee does not give rise to any right to a renewal of the lease by the holdover lessee, indicates that any right to renew would not be automatic. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 111 (Pon. 2010).

Since one of the Board's purposes is to administer, manage and regulate the use of public lands for the people of Pohnpei, this purpose is not served by leaving a lot without a lessee and not in productive use, especially when, the Pohnpei Legislature has directed that public lands in the cadastral plat including that lot be leased in an expeditious manner with the intent that all public land within that plat should be fully leased. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 111 (Pon. 2010).

When a plaintiff, based on its paid-up and unexpired prior lease, had a right superior to a later lessee to possess or occupy a public land lot No. 014-A-08, when the later lessees occupied that lot, they were trespassing. This is because the issue in a trespass action is who among the parties has the superior right to possession. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 112 (Pon. 2010).

It cannot be said that consequential damages were contemplated for the termination of a lease five months early when the leased land had remained undeveloped for a long while and when it is difficult to see what development could have taken place in those five months that would have earned the plaintiff a profit during those five months, that is, whether there would be any consequential damages because the plaintiff was deprived of the use of an undeveloped lot for the last five months of its lease. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 377 (Pon. 2014).

Where the evidentiary hearing or trial mandated by the appellate court is to determine the plaintiff's actual damages for the defendant's violation of the plaintiff's civil rights when it terminated the lot lease five months early, and where damages beyond the five-month period are contingent on whether the plaintiff should be granted a new or renewed lease to the lot, that is not the subject of the trial but is the subject of what will be a different proceeding. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 378 (Pon. 2014).

When, if specific performance were ordered, the court would order that the plaintiff be allowed to resume possession of a lot for five more months, but when, because that lot was undeveloped and did not generate any revenue, five months of resumed occupation by the plaintiff would not affect the plaintiff's income and thus specific performance of the last five months of the lease would seem pointless, a money award for actual damages should suffice. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 378 (Pon. 2014).

The Pohnpei Residential Shoreline Act of 2009 outlines procedures to be followed in applying for a residential leasehold from the Chief of the Division of Public Land of the Department of Land and Natural Resources. It mandates that, upon the receipt of an application pursuant to the Act, the Chief of the Division of Public Land shall orchestrate a survey of the filled land for which the application has been submitted, and upon satisfaction that the applicant and the land meet the Act's criteria, the Chief must issue a certificate of eligibility for a residential leasehold to the applicant. Damarlane v. Damarlane, 19 FSM R. 519, 529 (Pon. 2014).

Under Pohnpei state law, submerged public trust lands to a distance of not more than 150 feet extending seaward from a residential shoreline that have been filled for the purpose of constructing all or a portion of a residence thereon before December 31, 2008 are designated as available for residential lease. Damarlane v. Damarlane, 19 FSM R. 519, 529 (Pon. 2014).

When the court cannot establish that the plaintiffs' pending application under the Pohnpei Residential Shoreline Act of 2009 complies with the Act's requirements, the plaintiffs have not demonstrated an inchoate possessory interest over the landfill by virtue of their pending application for a leasehold interest, and since the plaintiffs do not have title or a leasehold interest in the landfill and cannot demonstrate an inchoate possessory interest under the Act, they cannot demonstrate a legally cognizable property right to exclusive possession of the landfill and therefore their trespass claim must fail. Damarlane v. Damarlane,

19 FSM R. 519, 530 (Pon. 2014).

Under a plain reading of Secretarial Order 2969, Trust Territory public lands were transferred to the respective Trust Territory districts, and thus Trust Territory public lands on Weno were earlier transferred to the Truk District government. Although, on July 12, 1979, when the FSM Constitution took effect, any Trust Territory government interest in property was transferred to the FSM for retention or distribution in accordance with the FSM Constitution, public land on Weno was not Trust Territory government property since all Trust Territory public land there had already been transferred to the Truk district government. It would thus have been Truk district government property. Chuuk v. Weno Municipality, 20 FSM R. 582, 584-85 (Chk. 2016).

In Pohnpei, all marine areas below the ordinary high watermark belong to the government, and such lands are a part of the Pohnpei Public Lands Trust with certain exceptions reestablishing customary rights to the people in areas below the high watermark. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 641 (Pon. 2016).

By law, public land cannot be subdivided for homesteading or development unless public roads were laid out or established insuring public access to each new lot or parcel. Iwo v. Chuuk, 20 FSM R. 652, 654 (Chk. 2016).

Under Secretarial Order 2969, Amendment No. 1, Trust Territory public lands in Chuuk were conveyed to the Chartered Truk District Government, and the Chuuk state government is the legal successor to the Truk district government. Iwo v. Chuuk, 20 FSM R. 652, 655 (Chk. 2016).

Even though the lessee's inertia could lead the Board to reasonably conclude that the leased lot would remain undeveloped, this dormancy did not relieve the Board from providing notice and an opportunity to be heard with regard to the improperly executed lease to a different lessee. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 534 (App. 2018).

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

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

Being the prior lessee of Pohnpei public land does not entitle that party to an automatic renewal of its lease upon request, especially when the lessee has not yet developed the lot. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 137, 145 (Pon. 2019).

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

A clear legislative directive, that all public lands in a certain cadastral plat should be fully leased in an expeditious manner, is a clear statement of the public interest about that particular public land. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 203, 210 (Pon. 2019).

The Pohnpei Public Lands Authority is a legal entity that receives, holds, and disposes of Pohnpei public lands, but does not relate to the national government's ability to hold title to private land through the FSM Development Bank. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 332 (Pon. 2019).

The FSM Constitution, art. XV, § 3, states that a property interest held by the Trust Territory government is transferred to the FSM for retention or distribution in accordance with the Constitution. Other FSM Constitution provisions govern land ownership and use, and FSM law allows for national government eminent domain and real property acquisition. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 333 (Pon. 2019).

– Registered Land

Heirs are those persons who acquire ownership upon someone's death. Thus the later issuance of a Certificate of Title to "heirs" confirms their earlier ownership of the property. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 49 n.8 (App. 1995).

Where parties had no claims to the land at the time the title was determined they were not entitled to notice. The lack of notice to them does not raise a genuine issue of material fact as to the validity of a Certificate of Title. Where a court proceeding determined title, the lack of a record of notice in the Land Commission files does not raise a genuine issue of material fact as to the validity of the Certificate of Title because the Land Commission did not conduct the hearing on title and so would not have any record of notice. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 49 (App. 1995).

FSM courts must consider customary law where relevant to a decision, but it is not error for a court to consider custom and find that it is not relevant to its decision because a Certificate of Title had been issued for the land. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 50 (App. 1995).

While, as a general rule, res judicata applies only to parties, and their privies, to an earlier proceeding, a Torrens system land registration Certificate of Title is, by statute, prima facie evidence of ownership stated therein as against the world, and conclusive upon all persons who had notice and those claiming under them. As a general rule a Certificate of Title can be set aside only on the grounds of fraudulent registration. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 50-51 (App. 1995).

A Certificate of Title issued by a state land commission precludes a claim by the state that the land is public land. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 51 (App. 1995).

A court need not decide whether a party who is being sued for trespass, and who does not claim ownership, may raise as an affirmative defense a challenge to the validity of a plaintiff's Certificate of Title issued under the Torrens land registration system when the issues raised by the defendant are insufficient to challenge the Certificate of Title. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 51-52 (App. 1995).

Certificates of Title to real property are conclusive upon all persons who have had notice of the proceedings that resulted in the issuance of the certificates, and all those claiming under them, and are prima facie evidence of ownership as therein stated against the world. Etscheit v. Nahnken of Nett, 7 FSM R. 390, 392 (Pon. 1996).

Because Certificates of Title are prima facie evidence of ownership as therein stated against the world, a court is required to attach a presumption of correctness to them when considering challenges to their validity or authenticity. Etscheit v. Nahnken of Nett, 7 FSM R. 390, 394 (Pon. 1996).

Once a Designation of Land Registration Area is made, courts should not entertain actions with regard to interests in such land unless special cause is shown for so doing. Iriarte v. Etscheit, 8 FSM R. 231, 238 (App. 1998).

The statutory provisions required for notice to those the land registration team might find from preliminary inquiry to have claims includes both actual service on known claimants and posting. Iriarte v. Etscheit, 8 FSM R. 231, 238 (App. 1998).

When a court makes the determination of ownership the Land Commission is not relieved from giving notice of that determination prior to issuing the certificate of title. Iriarte v. Etscheit, 8 FSM R. 231, 238 (App. 1998).

An argument that a certificate of title is invalid because of an adverse possession claim must fail when the twenty years necessary for adverse possession has not passed. Iriarte v. Etscheit, 8 FSM R. 231, 239 (App. 1998).

Because Certificates of Title are prima facie evidence of ownership as therein stated against the world, a court is required to attach a presumption of correctness to them when considering challenges to their validity or authenticity. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 93 (Kos. S. Ct. Tr. 1999).

As a general rule, a Torrens system land registration Certificate of Title is, by statute, prima facie evidence of ownership stated therein as against the world, and conclusive upon all persons who had notice and those claiming under them; but when a person has asserted a claim to the land and was not given notice of the registration proceedings as required by law, the Determination of Ownership and the Certificate of Title for that land is not conclusive as upon him. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 93 (Kos. S. Ct. Tr. 1999).

In land cases, notice requirements shall be followed. Failure to serve actual notice on a claimant is a denial of due process and violation of law. Due to the violations of the statutory notice requirement, Determinations of Ownership and Certificates of Title will be set aside as void. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 95 (Kos. S. Ct. Tr. 1999).

Any aggrieved party may appeal a land commission determination of ownership at any time within 120 days from the date of determination. If it is not appealed within 120 days, then the land commission shall issue a certificate of title which is conclusive evidence of ownership of the land as to all persons who received notice of the land commission's action. In re Lot No. 014-A-21, 9 FSM R. 484, 491 (Chk. S. Ct. Tr. 1999).

A Certificate of Title is prima facie evidence of ownership and is conclusive upon a person who appeared as a witness at the formal hearing and those claiming under her. Jonas v. Paulino, 9 FSM R. 513, 516 (Kos. S. Ct. Tr. 2000).

As a general rule, a Torrens system land registration Certificate of Title is, by statute, prima facie evidence of ownership stated therein as against the world, and conclusive upon all persons who had notice and those claiming under them. However, when a person has asserted a claim to the land and was not given notice of the registration proceedings as required by law, the Determination of Ownership and the Certificate of Title for that land is not conclusive as upon him. Nena v. Heirs of Nena, 9 FSM R. 528, 530 (Kos. S. Ct. Tr. 2000).

A Determination of Ownership is not conclusive upon a claimant who was identified early in the Land Commission proceedings and who also testified in support of his claim at the formal hearing but was not served a copy of the Determination of Ownership. Nena v. Heirs of Nena, 9 FSM R. 528, 530 (Kos. S. Ct. Tr. 2000).

In land cases, statutory notice requirements must be followed. Failure to serve actual notice on a claimant is a denial of due process and violation of law. Due to the violations of the statutory notice requirement, Determinations of Ownership and Certificates of Title will be set aside as void. Nena v. Heirs

of Nena, 9 FSM R. 528, 530 (Kos. S. Ct. Tr. 2000).

When a party, who had shown an interest in the parcel, was not served the Determination of Ownership as required by law, the parcel's Determination of Ownership and the Certificate of Title will, due to the violations of the statutory notice requirement, be vacated and set aside as void and remanded to the Land Commission to again issue and serve the Determination of Ownership for the parcel in accordance with statutory requirements. Nena v. Heirs of Nena, 9 FSM R. 528, 530 (Kos. S. Ct. Tr. 2000).

The issuance of a Determination of Ownership is not the final step in the land registration process. Issuance of a Certificate of Title is. Generally, certificates of title are to be issued shortly after the time to appeal a determination of ownership has expired or shortly after an appeal has been determined. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM R. 367, 370 (Chk. 2001).

A Certificate of Title must, with exception of rights of way, taxes, and leases of less than one year, set forth the names of all persons or groups of persons holding interest in the land, and should include a description of the land's boundaries. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM R. 367, 370 (Chk. 2001).

When a Determination of Ownership has been issued but no Certificate of Title has been issued, the Land Commission's ownership determination process has been started but has not been completed. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM R. 367, 370 (Chk. 2001).

A plaintiff with a certificate of title for a parcel clearly has greater possessory interest to the disputed property so that a defendant is liable for trespass on the plaintiff's parcel when he has entered, cleared and planted crops inside the established boundaries of the plaintiff's parcel without the plaintiff's consent. Shrew v. Killin, 10 FSM R. 672, 674 (Kos. S. Ct. Tr. 2002).

Certificates of title are by statute, prima facie evidence of ownership stated therein as against the world. Because of this, a court is required to attach a presumption of correctness to them when considering challenges to their validity or authenticity. Stephen v. Chuuk, 11 FSM R. 36, 41 (Chk. S. Ct. Tr. 2002).

Because certificates of title to real property are prima facie evidence of ownership as stated therein against the world, a court is required to attach a presumption of correctness to them when considering challenges to their validity or authenticity. A party challenging the certificates' validity thus bears the burden of proving that they are not valid or authentic. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 101 (Pon. 2002).

When to dispute the plaintiffs' ownership of the property, the defendants have the burden of showing that the plaintiffs' certificates of title are not valid or authentic, or that the relevant certificate of title does not cover the land the defendants occupy, whether the land the defendants occupy was part of the land in a 1903 auction is not a genuine issue of material fact because the defendants' unsupported contention does not dispute the validity of the certificates showing the plaintiffs to be the property's owners. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 101 (Pon. 2002).

That a later survey was performed and another certificate of title issued for the same land does not somehow dilute the certificate holders' ownership of the property, or make defendants' claim to it any more substantial. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 102 (Pon. 2002).

Whether a certificate of title issued in 1983 was voidable is not a genuine issue as to a material fact which would prevent the granting of summary judgment because the plaintiffs presently hold a certificate of title for the property defendants presently occupy. The party challenging the certificate's validity bears the burden of proving that it is not valid or authentic, and when the defendants have failed to show that the relevant certificate of title is invalid, their argument does not create a genuine issue of material fact. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 104 (Pon. 2002).

Courts are required to attach a presumption of correctness to a certificate of title. Marcus v. Truk Trading Corp., 11 FSM R. 152, 158 (Chk. 2002).

It would seem that due process would require that in any lawsuit to remove someone's name from a certificate of title that that person would be an indispensable party to the action. Marcus v. Truk Trading Corp., 11 FSM R. 152, 158 n.4 (Chk. 2002).

When the plaintiffs are entitled to continued use of a parcel on a permanent land use basis pursuant to a land use grant made in 1974 by the defendant's now decreased father, title to the parcel will be issued in the defendant's name as fee simple owner, but the Certificate of Title to that parcel must also reflect the plaintiffs' permanent land use right. Robert v. Semuda, 11 FSM R. 165, 168 (Kos. S. Ct. Tr. 2002).

The law is clear when the Land Commission knew of a civil action judgment and that a person was a claimant and interested party for the parcels, which were the subject of the judgment and later the subject of Land Commission proceedings, but that person was not served personal notice of the formal hearings or the Determinations of Ownership for the parcels. Pursuant to established precedent, Determinations of Ownership and Certificates of Title will be held void and vacated when proper notice was not given pursuant to statute. Actual notice to an interested party is required by personal service. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 246, 248 (Kos. S. Ct. Tr. 2002).

When the plaintiff was never served statutory notice of the formal hearings or Determinations of Ownership issued for the parcels, those Determinations of Ownership and Certificates of Title must be vacated and set aside as void and the matter remanded for further proceedings consistent with statute. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 246, 248 (Kos. S. Ct. Tr. 2002).

Certificates of title are required to show all interests in the land except for rights of way, taxes due, and lease or use rights of less than one year. A mortgage can and must show on the certificate to be effective against third parties. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 365 n.2 (Chk. 2003).

When a person, entitled to be served notice of the hearing, was not served actual notice of the hearing by personal service, there was no substantial compliance with the notice requirements specified by law and when there was no substantial compliance with the notice requirements specified by law, the Certificate of Title and the Determination of Ownership will be vacated and set aside as void, and the matter remanded to Kosrae Land Court for further proceedings. Albert v. Jim, 11 FSM R. 487, 490 (Kos. S. Ct. Tr. 2003).

Certificates of title are required to show all interests in the land except for rights of way, taxes due, and lease or use rights of less than one year. Therefore a mortgage can and must be shown on the certificate of title to be perfected and thus effective against third parties. If the property has not been issued a certificate of title, then the mortgage must be properly recorded in the chain of title so that someone searching the Land Commission files would expect to find it. In re Engichy, 11 FSM R. 520, 530 (Chk. 2003).

The proper way to record a mortgage under the Torrens land registration system in use in Chuuk is for the mortgage and the landowner's [duplicate] certificate of title to be submitted to the Land Commission at the same time. The mortgage document is then recorded; the mortgage is endorsed on the certificate of title permanently on file at the Land Commission; and then a (new) duplicate certificate of title, showing the endorsement of the newly-recorded mortgage, is given (or returned) to the landowner. If this is done, then the security interest is perfected and the mortgage is valid and enforceable against all the world and has priority over all other claims to the proceeds from the sale of the mortgaged property. If all these steps are not done, then the security interest is not perfected and the mortgage does not carry priority over and is not effective against parties without notice of it – it is a disfavored secret lien. In re Engichy, 11 FSM R. 520, 531 (Chk. 2003).

A party must comply strictly with the Torrens land registration system's procedures in order to claim its

benefits. In re Engichy, 11 FSM R. 520, 531 (Chk. 2003).

Since the Land Commission only has authority to issue a certificate of title after the time for appeal from a Land Commission determination of ownership has expired without any notice of appeal having been filed, when a notice of appeal was timely filed with the Chuuk State Supreme Court and the appellee had notice of the appeal, she is precluded from using the certificate of title against the appellant, and its issuance has no conclusive effect because once a notice of appeal had been filed, the Land Commission acted ultra vires, or outside of its authority, when it issued the certificate of title. The certificate is thus void. In re Lot No. 014-A-21, 11 FSM R. 582, 590 (Chk. S. Ct. Tr. 2003).

It is fairly clear that a purchaser who has actual knowledge of some adverse claim to the land will take subject to it, even though the certificate of title fails to memorialize it. In re Engichy, 12 FSM R. 58, 67 n.4 (Chk. 2003).

On registered land encumbrances such as a mortgage must be endorsed upon the certificate of title. In re Engichy, 12 FSM R. 58, 68 (Chk. 2003).

American common law authorities are applicable in the Federated States of Micronesia, if they are applicable at all, only to "recorded" land – to land that has not been issued a certificate of title. Land with a certificate of title is not part of a land recordation system but is part of a Torrens land registration system. In re Engichy, 12 FSM R. 58, 68 (Chk. 2003).

A Torrens land registration system is a legal concept completely foreign to American common law and the related recording statutes. Common law precedents and procedures do not apply to registered land. Land registration is wholly statutory. In re Engichy, 12 FSM R. 58, 68-69 (Chk. 2003).

The purpose and benefit of the lengthy procedure and notice requirements needed to register land is that a certificate of title, once issued, is conclusive upon all persons who have had notice of the proceedings and all those claiming under them and shall be prima facie evidence of ownership as therein stated against the world. This is unlike a "conventional" recording system, which makes no averments to the public about the state of title to any parcel of land. Instead it merely invites searchers to inspect the copies of the instruments which it contains and to draw their own conclusions as to title. In re Engichy, 12 FSM R. 58, 69 (Chk. 2003).

The ownership as stated in the certificate of title is conclusive upon all persons who have had notice of the proceedings and all those claiming under them and prima facie evidence against the world. In re Engichy, 12 FSM R. 58, 69 (Chk. 2003).

No lengthy title searches, which may fail to turn up important claims, need be done on registered land because all transfers and encumbrances of any interest in the land covered by a certificate of title must be noted thereon or therewith except for rights of way over the land, taxes on the land due within the two years prior to the certificate's issuance, and leases or use rights of less than one year. One only needs to consult the Land Commission's original certificate of title, which will show at a glance the ownership of, and the encumbrances on, the property, and the title searcher need then only read and evaluate the documents referred to by the current endorsements. No historical search of the title is ever necessary or relevant. In re Engichy, 12 FSM R. 58, 69 (Chk. 2003).

An adverse possession claim will never prevail over a validly-issued certificate of title. In re Engichy, 12 FSM R. 58, 69 (Chk. 2003).

The benefits of land registration all flow from the adherence to the Torrens land registration statutes and people's ability to rely on the certificate of title. In re Engichy, 12 FSM R. 58, 69 (Chk. 2003).

The Chuuk Real Estate Mortgage Law confirms and adopts by reference rather than modifying or repealing the Title 67 provisions applicable to the endorsement of mortgages on certificates of title. In re

Engichy, 12 FSM R. 58, 70 (Chk. 2003).

Although preferable, endorsements on certificates of title are not required to be typewritten. Hand printing would suffice. In re Engichy, 12 FSM R. 58, 70 (Chk. 2003).

In some Torrens land registration system jurisdictions, considering that the purpose of land registration acts is to allow confident reliance upon the land registration agency's original certificate of title, the absence of even an obvious encumbrance (or an encumbrance of which there is actual knowledge) from the certificate is fatal because the certificate itself is conclusive. In re Engichy, 12 FSM R. 58, 70-71 (Chk. 2003).

A mortgage endorsed on a certificate of title cannot be given retroactive effect. To do so would destroy the purpose of the land registration system – that the original certificate of title at the Land Commission is conclusive and if there are no endorsements anyone searching the state of the title need look nowhere else for mortgages and for the other encumbrances that, with certain exceptions, are required to be listed there. In re Engichy, 12 FSM R. 58, 71 (Chk. 2003).

A mortgagee will have a secured interest in any future funds that from the sale of the mortgaged land when, although the mortgage was not endorsed on the certificate of title before the case was consolidated with other judgment-creditors', all of the necessary documents for the Land Commission to endorse the mortgage had been submitted to the Land Commission by then. In re Engichy, 12 FSM R. 58, 71 (Chk. 2003).

The Land Commission has primary jurisdiction to determine and register land titles. Once an area has been designated as a land registration area, courts cannot entertain any action regarding land titles in that area unless special cause has been shown. Enlet v. Bruton, 12 FSM R. 187, 191 (Chk. 2003).

The statute authorizes only the Land Commission to declare a land registration area. No authority has been identified that would permit a court to designate a land registration area, or to order the Land Commission to designate one. The statute leaves that to the Land Commission's discretion based upon its determination of desirability and practicability, which is uniquely within its expertise and authority to make. Enlet v. Bruton, 12 FSM R. 187, 191 (Chk. 2003).

A court can determine no more than who among the parties before it has a better claim to title (or in the case of trespass – possession). A court usually cannot determine who has title good against the world. Land registration (determination of title presumptively good against the world) is the province of the Land Commission and its procedures. Enlet v. Bruton, 12 FSM R. 187, 191 (Chk. 2003).

No court could grant as relief a sweeping request to nullify all certificates of title to all persons who are not heirs of legatees pursuant to a will when such a request would reverse long-settled, final cases not now before the court, with parties not now before the court, and award others title to land for which certificates of title have already been issued because that would have the court void certificates of title in a manner that would violate every notion of due process of law. Anton v. Heirs of Shrew, 12 FSM R. 274, 277 (App. 2003).

Courts must attach a presumption of correctness to a certificate of title. Anton v. Heirs of Shrew, 12 FSM R. 274, 277 (App. 2003).

Co-owners of land are generally considered indispensable parties to any litigation involving that land. This should be especially true when full title to the land is at stake, and even more important when the land will be registered and a certificate of title issued for it because a certificate of title, once issued, is conclusive upon a person who had notice of the proceedings and a person claiming under him and is prima facie evidence of ownership. This is because a cotenant cannot be divested of his interest by a proceeding against all the co-owners of the common property unless he is made a party to the proceeding and served with legal process. Anton v. Heirs of Shrew, 12 FSM R. 274, 278-79 (App. 2003).

No court could grant as relief a far-reaching request to nullify all certificates of title to all persons who are not heirs of legatees pursuant to a will when such a request would reverse long-settled, final cases not now before the court, with parties not now before the court, and award others title to land for which certificates of title have already been issued because that would have the court void certificates of title in a manner that would violate every notion of due process of law. Anton v. Cornelius, 12 FSM R. 280, 288-89 (App. 2003).

Properly issued certificates of title are by statute *prima facie* evidence of the ownership stated therein as against the whole world, and a court is required to attach a presumption of correctness to them. Hartman v. Chuuk, 12 FSM R. 388, 400 (Chk. S. Ct. Tr. 2004).

Under Kosrae State Code § 11.615(3), land held under a certificate of title may be subject to a right of way whether or not the right of way is stated in the certificate of title. Sigrah v. Kosrae, 12 FSM R. 513, 518 (Kos. S. Ct. Tr. 2004).

Certificates of title are prima facie evidence of ownership as therein stated against the world. Therefore the court, pursuant to established precedent and in accordance with Kosrae's Torrens system land registration process, must attach a presumption of correctness to a certificate of title for a parcel, including its ownership and its boundaries. Sigrah v. Kosrae, 12 FSM R. 531, 533-34 (Kos. S. Ct. Tr. 2004).

A quiet title court judgment is only good against the parties to the case and those in privity with them, while a certificate of title to registered land is presumptively valid against the world. Dereas v. Eas, 12 FSM R. 629, 633 (Chk. S. Ct. Tr. 2004).

Certificates of title are prima facie evidence of ownership as therein stated against the world, and a court is required to attach a presumption of correctness to them when considering challenges to their validity. Since a certificate of title issued to the defendant carries a presumption of correctness, it must be presumed that the defendant is the true owner of the parcel. Benjamin v. Youngstrom, 13 FSM R. 72, 75 (Kos. S. Ct. Tr. 2004).

The Land Commission has no authority to reopen a 1981 determination of ownership that is final and res judicata, but it must determine the land's exact boundaries before it can issue a certificate of title. Church of the Latter Day Saints v. Esiron, 13 FSM R. 99a, 99e (Chk. 2004).

Adverse possession is not a claim that can be made against registered land, or land that has been one step (determination of boundaries) away from being registered land since 1981, and the filing of a trespass suit tolls (suspends) any running of the time period needed to assert an adverse possession claim. Church of the Latter Day Saints v. Esiron, 13 FSM R. 99a, 99e (Chk. 2004).

In light of the appellate court's insistence that the Land Commission should have the primary responsibility for determining, surveying, and certifying the land's exact final boundary, and the court's general unsuitability to perform those functions, the court will remand the case to the Land Commission to perform this work. Church of the Latter Day Saints v. Esiron, 13 FSM R. 99a, 99e (Chk. 2004).

Since a certificate of title must describe the land's exact boundaries, the Land Commission must, before it can issue a certificate of title, locate, survey, and certify all of the boundaries, which must be as they existed when its determination of ownership was made. The certificate must also show that it is subject to a 99-year lease, if that lease was, is, or becomes properly recorded. Church of the Latter Day Saints v. Esiron, 13 FSM R. 99a, 99f (Chk. 2004).

Under 67 TTC 106, upon the designation of a registration area, the district surveyor's duty was to cause an accurate survey to be made of the area's exterior bounds and thereafter to make such surveys of plots or claims and place such markers within the area as the commission may direct; and under former

Kosrae State Code Section 11.605 (repealed) upon designation of a registration area, a qualified person designated by the Land Commission made an accurate survey of the area's exterior bounds and claimed parcels within the area, placing markers at the Commission's direction. The Land Commission and surveyors were to recognize and mark claims made within a designation area. Sigrah v. Heirs of Nena, 13 FSM R. 192, 197-98 (Kos. S. Ct. Tr. 2005).

Nothing in former Title 11 of the Kosrae State Code required that the boundaries of Japanese Lots be maintained during the registration process, and it was the Land Commission's established practice of recognizing claims for plots and portions of Japanese Lots, and partitioning Japanese Lots into smaller parcels during the registration process. Sigrah v. Heirs of Nena, 13 FSM R. 192, 198 (Kos. S. Ct. Tr. 2005).

The partitioning of Japanese Lots into smaller parcels for the land registration process has been a continuing Land Commission practice, and is completed in accordance with statutory mandates for the recognition of claims of plots made within a designation area. No statutes or regulations prohibit the partitioning of Japanese Lots into smaller parcels for the land registration process. Sigrah v. Heirs of Nena, 13 FSM R. 192, 198 (Kos. S. Ct. Tr. 2005).

The Kosrae Land Commission was required by Trust Territory law and by Kosrae state law to recognize and survey claims of plots made within a registration area. Sigrah v. Heirs of Nena, 13 FSM R. 192, 198 (Kos. S. Ct. Tr. 2005).

Since a certificate of title is prima facie evidence of ownership and courts are required to attach a presumption of correctness to a certificate of title, a plaintiff with a certificate of title is presumed to be an owner of the subject parcels and thus the factor of the likelihood of success on the merits weighs in the plaintiffs' favor. Akinaga v. Heirs of Mike, 13 FSM R. 296, 299 (Kos. S. Ct. Tr. 2005).

A certificate of title is prima facie evidence of ownership, and courts are required to attach a presumption of correctness to a certificate of title. Norita v. Tilfas, 13 FSM R. 321, 323 (Kos. S. Ct. Tr. 2005).

Certificates of title are prima facie evidence of ownership. Norita v. Tilfas, 13 FSM R. 424, 426 (Kos. S. Ct. Tr. 2005).

A preexisting easement or other right appurtenant to the land remains appurtenant, even if it is not described in the certificate of title. Norita v. Tilfas, 13 FSM R. 424, 426 (Kos. S. Ct. Tr. 2005).

When, pursuant to state law, parties were granted and therefore maintain a permanent land use right to access a parcel and use a portion thereof for maintenance of their existing gravesites, this permanent land use right passes with the parcel until it is extinguished in a lawful manner independent of the certificate of title. Norita v. Tilfas, 13 FSM R. 424, 427 (Kos. S. Ct. Tr. 2005).

The law regarding the validity of certificates of title is well established in Kosrae and the FSM. Certificates of title are prima facie evidence of ownership as stated against the world. A court is required to attach a presumption of correctness to them when there are challenges to their validity. Benjamin v. Youngstrom, 13 FSM R. 542, 546 (Kos. S. Ct. Tr. 2005).

The Kosrae Constitution permits certain conveyances of land to be subject to conditions. Article II, Section 3 provides that any conveyance of land from a parent or parents to a child or children, may be subject to such conditions as the parent or parents deem appropriate, provided, that such conditions are in writing at the time of conveyance and duly reflected in the certificate of title. Benjamin v. Youngstrom, 13 FSM R. 542, 546 (Kos. S. Ct. Tr. 2005).

It is the Kosrae Land Court's statutory duty to issue certificates of title. Benjamin v. Youngstrom, 13

FSM R. 542, 548 (Kos. S. Ct. Tr. 2005).

A cause of action based upon a claim of defective certificate of title, must fail when the issuing entity, the Kosrae Land Court, is not a party to this action. Benjamin v. Youngstrom, 13 FSM R. 542, 548 (Kos. S. Ct. Tr. 2005).

The notice required by state law is intended to reach all parties, claimants and provide notice to the general public on the schedule of proceedings. The statutory notice required includes notice to the public: posting of the notice in at least three conspicuous places or at least two areas of public access and further notice to the public is required by posting at the municipal building of the municipality where the property is located and through announcements on the Kosrae radio station on several occasions. Notice to parties, claimants, and public is provided by at least two separate postings of the notice in different locations, and notice by radio broadcast. These substantial requirements for notice of land proceedings reflect the Kosrae Land Court's calculated goal to reach as many claimants, parties and members of the general public as possible. Kun v. Heirs of Abraham, 13 FSM R. 558, 561 (Kos. S. Ct. Tr. 2005).

A party challenging a certificate of title bears the burden of proving that the certificate of title is not valid or authentic, and when the party has failed to show that the relevant certificate of title is invalid, their argument does not create a genuine issue of material fact. Kinere v. Sigrah, 13 FSM R. 562, 567 (Kos. S. Ct. Tr. 2005).

Generally, Kosrae State Code, Title 11, former Chapter 6 (repealed) specified the former Kosrae State Land Commission's duties and responsibilities, and the procedures for determination and registration of interests in land. It did not specify any duties of private party claimants, or govern the conduct of private party claimants. When the defendants are individuals and private parties, Kosrae State Code, Title 11, including former Chapter 6, does not create a cause of action against the defendants. Kinere v. Sigrah, 13 FSM R. 562, 570 (Kos. S. Ct. Tr. 2005).

When the complete absence of any map or sketch from the entire Land Court record raises grave concerns as to the correct identification of the subject parcel, area and boundaries at the hearing; as to the parties' potential confusion; and regarding notice to the claimants of the area and boundaries of the subject parcel, and when the parties were not, as required, provided the map or sketch with the Land Court's memorandum of decision, this failure resulted in inadequate notice of the decision to the parties, and was contrary to law. The memorandum of decision must thus be vacated and the matter remanded to the Land Court for further proceedings. Heirs of Weilbacher v. Heirs of Luke, 14 FSM R. 99, 101 (Kos. S. Ct. Tr. 2006).

Certificates of Title must show all interests in the land except for with rights of way, taxes due and lease or use rights of less than one year. George v. Abraham, 14 FSM R. 102, 107 (Kos. S. Ct. Tr. 2006).

When the owner did not execute nor record any lease for a portion of the parcel in the defendant's favor, any lease granted to the defendant in excess of one year did not comply with law as it was not recorded on the certificate of title, and since legal recognition of a grant of a permanent land use right also requires written documentation to be executed by the grantor, there was no permanent land use right granted by the owner in the defendant's favor. George v. Abraham, 14 FSM R. 102, 107 (Kos. S. Ct. Tr. 2006).

Since the Land Commission is required to make a determination of lawful devisees or heirs and their respective interests following a hearing, when the Land Commission did not hold any hearing to determine the devisees or heirs and their interests following the owner's death, and when the Registrar's personal evaluation of the owner's oral will and determination of its validity was contrary to law, it is therefore vacated and the certificate of title issued based upon the invalid oral will is therefore also invalid. George v. Abraham, 14 FSM R. 102, 108 (Kos. S. Ct. Tr. 2006).

When a certificate of title was never issued to Tulpe Alokoa for parcel 006-K-07 and she was never

determined by a Land Commission proceeding to be the title holder of that parcel and therefore could not transfer title to land that she did not own, her deed of gift was invalid, and should have been rejected for filing by the Land Commission. George v. Abraham, 14 FSM R. 102, 108 (Kos. S. Ct. Tr. 2006).

Certificates of Title are prima facie evidence of ownership as therein stated against the world. Heirs of Nena v. Sigrah, 14 FSM R. 283, 285 (Kos. S. Ct. Tr. 2006).

A party has standing to challenge a certificate of title when, although he admits that some of the land was sold to others, he asserts that even after those sales, he still retained part of the land. Dereas v. Eas, 14 FSM R. 446, 453-54 (Chk. S. Ct. Tr. 2006).

Certificates of title are by statute, prima facie evidence of ownership stated therein as against the world, and because of this, a court must attach a presumption of correctness to them when considering challenges to their validity or authenticity. Dereas v. Eas, 14 FSM R. 446, 454 (Chk. S. Ct. Tr. 2006).

No court can grant as relief a request to set aside or nullify a certificate of title to a person who is not a party before the court and effectively award someone else ownership to some or all of the land for which the certificate of title was issued because that would have the court void a certificate of title in a manner that would violate every notion of due process of law. Dereas v. Eas, 14 FSM R. 446, 454 (Chk. S. Ct. Tr. 2006).

In any lawsuit to remove someone's name from a certificate of title, that is, to deprive a person of ownership of the registered land that the certificate represents, due process requires that that person is an indispensable party to the action. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

No court can set aside, void, nullify, invalidate, or alter a person's certificate of title to land without that person first having been made a party to the action before the court. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

As a general rule, a certificate of title can be set aside only on the grounds of fraudulent registration. While the Land Commission may be a necessary party to such an action, the titleholder is an indispensable party to any action to set aside, void, nullify, or alter the titleholder's certificate of title who must be joined, or any ensuing adjudication is void. Dereas v. Eas, 14 FSM R. 446, 455 n.3 (Chk. S. Ct. Tr. 2006).

A court is not competent to rule on the validity of a certificate of title to land when the court does not have (by its own statement) subject matter jurisdiction over the case and does not have personal jurisdiction over indispensable parties (the titleholders) or give them notice or an opportunity to be heard. Its orders were void and an order invalidating a person's certificate of title may even be void on its face when it held that that person was an indispensable party who was not present in the case and then proceeded to invalidate his certificate of title without him having been made a party to the case. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

When the one person's certificate of title was voided and a new certificate of title covering the same land issued to another person without notice to the first person and affording the first person an opportunity to be heard, it was a denial of due process and that action was void. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

A person's certificate of title on file at the Chuuk Land Commission constituted notice to the world of that person's ownership of all of the land it was for and that certificate and the Plat No. cited constituted notice of the boundaries of the ownership. Dereas v. Eas, 14 FSM R. 446, 457 (Chk. S. Ct. Tr. 2006).

When no court with jurisdiction to do so has ever invalidated or altered a person's certificate of title to a lot and the statute of limitations bars any further action to invalidate that certificate, the presumption of that certificate's correctness has not been overcome and the titleholder's motion to quiet title to that lot will be

granted. Dereas v. Eas, 14 FSM R. 446, 458 (Chk. S. Ct. Tr. 2006).

The registration process for Land Court is designed to ensure all interested parties and claimants receive notice. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 494, 496 (Kos. S. Ct. Tr. 2006).

When title to land is at issue, all known persons who are claiming title must be joined in order to settle ownership without additional litigation. The policy supporting this rule is that all persons needed for a full, fair, and just adjudication should be part of the case and have an opportunity to be heard. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 494, 496 (Kos. S. Ct. Tr. 2006).

Trust Territory Court decisions are valid and binding, consistent with the Kosrae constitutional provisions on transition of government. The doctrine of res judicata applies and Trust Territory Court decisions must be upheld. Therefore, the Land Court lacked jurisdiction to receive additional evidence and issue a new decision in a case where the Trust Territory Court, in three previous cases, had established the ownership and boundaries of the land in question. Heirs of Livaie v. Palik, 14 FSM R. 512, 516 (Kos. S. Ct. Tr. 2006).

A Land Court decision is contrary to law when it failed to give effect to the decisions in previous Trust Territory Court cases, and will therefore be remanded to the Kosrae Land Court with instructions and guidance to re-survey the parcels, if needed to issue a memorandum of decision consistent with the Trust Territory Court decisions. Heirs of Livaie v. Palik, 14 FSM R. 512, 516 (Kos. S. Ct. Tr. 2006).

In any lawsuit to, in effect, remove someone's name from a certificate of title, that is, to change the registered ownership of the land that the certificate represents and deprive the certificate titleholder of the titleholder's property interest, due process requires that that person is an indispensable party to the action. Any action that seeks to claim an interest in land for which a certificate of title or a determination of ownership has already been issued, must, at a minimum, name the registered titleholder as a party. Ruben v. Hartman, 15 FSM R. 100, 110 (Chk. S. Ct. App. 2007).

Certificates of title are required to show all interests in the land except for rights of way, taxes due, and lease or use rights of less than one year and are conclusive upon all persons who have had notice of the proceedings and all those claiming under them and are prima facie evidence of ownership as stated therein against the world. Ruben v. Hartman, 15 FSM R. 100, 112-13 (Chk. S. Ct. App. 2007).

In order for a judgment granting ownership to land to which someone else has a certificate of title to be valid, the judgment would first have to have set aside the other's certificate of title and as a general rule a certificate of title can be set aside only on the grounds of fraudulent registration. When the pleadings never addressed, or even mentioned the existence of, the certificate of title, this was a fatal flaw. Ruben v. Hartman, 15 FSM R. 100, 113 (Chk. S. Ct. App. 2007).

Title is prima facie proof of ownership and is conclusive upon all persons who have had notice of the proceedings and all those claiming under them and it is prima facie evidence of ownership as therein stated against the world. But when the plaintiff filed his request for a subdivision of the parcels with the Land Commission but never had notice of any proceedings or an opportunity to be heard on his claim, the title issued in 2002 was not conclusive as to his interest. Siba v. Noah, 15 FSM R. 189, 194 (Kos. S. Ct. Tr. 2007).

For the process of issuing title to be fair and rational, it must address all claimed interests in title. If a person claims an interest in land, that claim must be considered before title is issued to someone else. Siba v. Noah, 15 FSM R. 189, 194 (Kos. S. Ct. Tr. 2007).

When, before issuing title to someone else, the Land Court never gave the plaintiff notice or an opportunity to be heard on his claim of ownership based on a subdivision and since having notice and an opportunity to be heard are the core requirements of due process and fundamental fairness, the Land Commission and Land Court deprived the plaintiff of his right to due process when title was issued in 2002

without giving the plaintiff notice or an opportunity to be heard on his claim of ownership filed with the Land Commission in 1987, and therefore, the 2002 title is not valid as to the plaintiff. Siba v. Noah, 15 FSM R. 189, 194-95 (Kos. S. Ct. Tr. 2007).

A certificate of title is conclusive upon any person who had notice of the proceedings and all those claiming under that person and is prima facie evidence of ownership against all others. Thus, the land registration statute creates conclusive title, a title that cannot be challenged, as to anyone who had notice of the proceedings and as to anyone whose interest is derived from a person with notice. As to the world at large this statute creates a presumption of ownership. Andon v. Shrew, 15 FSM R. 315, 321 (Kos. S. Ct. Tr. 2007).

For a person who has asserted a claim to the land and was not given notice of the registration proceedings as required by law, the determination of ownership and the certificate of title for that land is not conclusive as upon him. When that person is claiming ownership of land, another person has title, and the appeals period has expired, then that person now claiming ownership must at least show enough facts to establish that the previous ownership decision is incorrect. Andon v. Shrew, 15 FSM R. 315, 321 (Kos. S. Ct. Tr. 2007).

When a plaintiff failed to submit evidence that he was entitled to notice in the previous Land Commission proceedings and testimony shows that he was not entitled to notice in the proceedings, and when the plaintiff's interests are derived from someone who received notice and participated and the record even suggests that the plaintiff himself was present at the hearing, the issued certificate of title is conclusive title and cannot be challenged by the plaintiff. Even if the plaintiff had submitted sufficient evidence showing he was entitled to notice and did not receive it, he must also show enough facts to establish the previous ownership decision was incorrect, and when he submitted no evidence on this issue, he has not carried his burden of proof on claims of ownership of land and he is not entitled to the requested relief. Andon v. Shrew, 15 FSM R. 315, 321 (Kos. S. Ct. Tr. 2007).

The need for finality in litigation is particularly important for claims to land. The statute covering designation of registration areas, recognizes this need and provides 1) that a justice must not adjudicate a matter previously decided by a court between the same parties or those under whom the parties claim which dispute involves the same parcel and 2) that the Land Court must accept prior judgments as res judicata and determine those issues without receiving evidence. Andon v. Shrew, 15 FSM R. 315, 321 (Kos. S. Ct. Tr. 2007).

When an earlier civil action heard and determined the subject land's ownership and the plaintiff was in privity to one of the parties, he cannot relitigate the subject land's ownership. The earlier case determined ownership in a final judgment and, based on res judicata, the plaintiff is barred from re-litigating that case again. The Land Commission was statutorily created to address disputes about ownership and to issue a Torrens Title that is conclusively correct as to the parties and presumptively correct as to everyone else. When the plaintiff's interests are derived from a party in the Land Commission proceedings, that title is conclusive as to his interests and he is barred, under the statutorily adopted doctrine of res judicata, from relitigating an ownership claim already determined. Andon v. Shrew, 15 FSM R. 315, 321-22 (Kos. S. Ct. Tr. 2007).

Kosrae State Code § 11.615(4), which governs the issuance of certificates of title, establishes that a preexisting easement or other right of way over the land remains appurtenant even if it is not described in the certificate; and passes with the land until cut off or extinguished in a lawful manner independent of the certificate. Akinaga v. Heirs of Mike, 15 FSM R. 391, 397 (App. 2007).

The current system of land registration in Chuuk dates from the Trust Territory period. Title 67 of the Trust Territory Code, governing land registration, has been retained by the Chuuk. Mori v. Haruo, 15 FSM R. 468, 471 (Chk. S. Ct. App. 2008).

Land registration is based on the Torrens system of land registration, whereby land ownership is conclusively determined and certified by the government and thereby is easy to determine. The certificate of title issued by the government shows the state of the title and the person in whom it is vested. Determination of title is the system's basic requirement. To that end, the Land Commission holds a proceeding to settle and declare the state of the title. Once the Commission completes its inquiry and conducts a public hearing, it must issue a determination of ownership, pursuant to which a certificate of title is issued. Determinations of ownership are appealable to the Chuuk State Supreme Court trial division. Mori v. Haruo, 15 FSM R. 468, 471 (Chk. S. Ct. App. 2008).

A party claiming ownership of land for which there is a determination of ownership showing another as owner, with the appeal period expired, has, at a minimum, the burden of showing facts to establish that the determination of ownership is incorrect. Mori v. Haruo, 15 FSM R. 468, 471 (Chk. S. Ct. App. 2008).

When a determination of ownership was issued to a party, but no certificate of title was issued, and there has been no allegation that the determination of ownership was incorrect, the court proceeds as if a certificate of title had been issued. Mori v. Haruo, 15 FSM R. 468, 472 (Chk. S. Ct. App. 2008).

The "registration" of interests in land, pursuant to 67 TTC 119 "has the same force and effect as to such land as a recording" under 57 TTC 301. In order for a subsequent, bona fide, or "innocent," purchaser to have valid title against a prior holder of an interest in the same real estate the subsequent purchaser must "register" or "record" the interest before the prior holder. Mori v. Haruo, 15 FSM R. 468, 472 (Chk. S. Ct. App. 2008).

Individual lineage members are not required to register their interest in their individual names in order to protect their interests as lineage members in the property. There is no legal requirement that the individual names of the lineage members appear in a registration or recording in order to give notice of their interest or otherwise protect their legal interest in lineage property. Such a requirement would be impracticable under the system of lineage land ownership. If such a requirement existed, each new member of the lineage would be required to seek an amendment of the ownership documents to the lineage land in order to obtain a legally protected right in the disposition of the land. Mori v. Haruo, 15 FSM R. 468, 472-73 (Chk. S. Ct. App. 2008).

The identification of a person as the lineage head in a determination of ownership was for the purpose of clarifying the identification of the lineage. It is not the Land Commission's function to vest, in any particular person, the authority to sell lineage land. Mori v. Haruo, 15 FSM R. 468, 473 (Chk. S. Ct. App. 2008).

The statute requires that a notice of a land registration hearing be given to all interested parties and claimants, and to the public. "Interested parties" is not defined. Claimants are presumably those persons who are known to have filed a claim to register the land. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

In a Torrens land registration system, it is in the land owner's interest for notice to be given as broadly as possible since the certificate of title the landowner gets at the end of the process is conclusive upon any person who had notice of the proceedings and all those claiming under that person, but only prima facie evidence of ownership against all others. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

Adjoining landowners, even if not claimants, would, because of their common boundaries, be interested parties, along with anyone else who holds some interest in the land, such as a mortgagee, an easement holder, or a holder of a covenant running with the land. But even if the adjoining landowners were not interested parties, Land Court notice to them is not contrary to law. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

Because of the conclusive nature of a certificate of title, the Land Court should give the adjoining landowners notice of the formal hearing so that the resulting boundaries will be conclusive against them. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

Notice of land registration hearings must be given to the public in general. The hearings are public, and anyone may attend. Land Court proceedings are not ones which only the known claimants may attend. One purpose of public notice at various stages of the registration process is to reach as many persons as possible so that, at the end, the certificate of title will be conclusive against as many persons as possible, which is to the certificate holder's considerable benefit. The statute requiring that actual notice be given to claimants, is a minimum requirement, not the maximum permissible. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 572 (App. 2008).

Common law, or case law, and statutes provide the basis for Land Court orders, in other words, a complete and adequate remedy. The Legislature established the Land Court's authority to hear and decide title determinations. Statutes require that Land Court decisions not be contrary to law and must be based on substantial evidence. Case law guides the Land Court on what constitutes substantial evidence to support a decision; this is legal precedent. The Land Court must establish title based on substantial evidence by considering the testimony and record before it. There is no need to resort to equitable jurisdiction to make a title determination. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 662-63 (Kos. S. Ct. Tr. 2008).

In order to ensure the legal protection of any right they had in the land, parties are required to register that interest. Setik v. Ruben, 16 FSM R. 158, 163 (Chk. S. Ct. App. 2008).

Land registration is based on the Torrens system of land registration, whereby land ownership is conclusively determined and certified by the government and thereby is easy to determine. The certificate of title issued by the government shows the state of the title and the person in whom it is vested. Determination of title is the basic requirement of the system. Setik v. Ruben, 16 FSM R. 158, 163 (Chk. S. Ct. App. 2008).

Certificates of title are prima facie evidence of ownership as stated therein against the world. A party claiming ownership in land for which there is a determination of ownership showing another as owner, with the appeal period expired, has, at a minimum, the burden of showing facts to establish that the determination of ownership is incorrect. Setik v. Ruben, 16 FSM R. 158, 164 (Chk. S. Ct. App. 2008).

In order for a judgment granting ownership to land to which someone else has a certificate of title to be valid, the judgment would first have to have set aside the other's certificate of title. As a general rule, a certificate of title can be set aside only on the grounds of fraudulent registration. Setik v. Ruben, 16 FSM R. 158, 164 (Chk. S. Ct. App. 2008).

Land claimants are not exempted from the registration and recording requirements due to their alleged rights being of a customary nature. The preservation of customary rights, as with other enduring rights in property, requires that it be registered. A certificate of title must show all interests in the land except for rights of way, taxes due, and lease or use rights of less than one year and are conclusive upon all persons who have had notice of the proceedings and all those claiming under them. A claim of customary interest in land will not be implicitly recognized in a land registration, but must be explicitly identified. In cases where a certificate of title has been issued, therefore, it is not clearly erroneous for a trial court to disregard the existence of a purported customary right arising prior to the certificate of title's issuance. Setik v. Ruben, 16 FSM R. 158, 164 (Chk. S. Ct. App. 2008).

Under Chuuk's statutory system of land registration, which is designed to ensure good title through the land registration proceedings, it is not for the appellate court to determine whether or not someone had a valid claim of land ownership arising prior to the issuance of a certificate of title, if the claim was never raised or perfected. Setik v. Ruben, 16 FSM R. 158, 164 (Chk. S. Ct. App. 2008).

When neither the 1989 determination of ownership nor the 2000 certificate of title identifies any customary rights in appellants; when in order to preserve the customary rights the appellants contend they were granted in 1973, they were required to register them; when the appellants do not contend that there was anything fraudulent in the registration of the land or that they were in any way deprived of their rights through the registration proceedings; when the appellants do not otherwise present any basis for setting aside the 1989 land registration proceedings; and when they appellants do not present any reason to justify why they failed to assert their alleged customary rights when the land was registered and recorded that might provide a basis to set aside the Land Commission's determination, the 1989 determination of ownership was therefore conclusive as between appellants and appellees. Setik v. Ruben, 16 FSM R. 158, 164 (Chk. S. Ct. App. 2008).

The purpose and benefit of the lengthy procedure and notice requirements needed to register land is that a certificate of title, once issued, is conclusive upon all persons who have had notice of the proceedings and all those claiming under them and is prima facie evidence of ownership as therein stated against the world. This is unlike a "conventional" recording system, which makes no averments to the public about the state of title to any parcel of land but merely invites searchers to inspect the copies of the instruments which it contains and to draw their own conclusions as to the state of title. Rather, Chuuk's statutory system of land registration is designed to ensure that buyers can rely on the determination of ownership as a representation of good title. Setik v. Ruben, 16 FSM R. 158, 165 (Chk. S. Ct. App. 2008).

When the appellants' claim is based on a customary grant in 1973 and the grantors' successors in interest registered the land when the Land Commission issued a determination of ownership to them in 1989 and when the Land Commission issued a certificate of title in 2000 to the appellees based on the 1989 determination of ownership and the appellees' 1999 purchase of the property from the grantors' successors in interest; and when the appellants did not object that they failed to receive notice of the Land Commission proceedings or that they were entitled to notice, the appellees, as purchasers, were entitled to rely on the 1989 determination of ownership as conclusive evidence of all interests in the property since the appellants were, in order to preserve any rights they had to the property with respect to appellees, required to assert those rights prior to appellees' registering or recording their interest. When there is no evidence to suggest the appellants ever attempted to register or record their alleged interest, it will not be recognized implicitly and the appellees were therefore bona fide purchasers without notice of appellants' claim when they sought and received a certificate of ownership in 2000. Setik v. Ruben, 16 FSM R. 158, 165 (Chk. S. Ct. App. 2008).

An adverse possession claim will never prevail over a validly issued certificate of title. Setik v. Ruben, 16 FSM R. 158, 166 (Chk. S. Ct. App. 2008).

The Kosrae Land Court is required to set forth on every certificate of title the names of all persons holding an interest in the land. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 535, 536 (Kos. S. Ct. Tr. 2009).

The Kosrae Land Court must make orders and decisions which determine any claim of heirship to a deceased person's title or interest in the lands, and once the Land Court heirship proceeding has determined the names of all persons who are heirs to a parcel, it may then issue a certificate of title for that parcel. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 535, 536 (Kos. S. Ct. Tr. 2009).

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

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

When an owner of any interest in registered land dies, the Land Commission's duty is to cancel the original and duplicate certificates and issue new ones in the name(s) of the decedent's devisees or heirs. A certificate of title cannot be issued in the name of a person already deceased. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 555 (Chk. S. Ct. App. 2009).

When the owner of registered land is deceased, it is the Land Commission's statutory responsibility to make a determination of the devisee or devisees or heir or heirs and the interests or respective interests to which each are entitled, and, to make this determination, the Land Commission must conduct a hearing at which evidence shall be heard for the purpose of determining the heir or heirs or devisee or devisees entitled to the decedent's land. Proper notice must be given for the hearing, and within 30 days after the hearing's conclusion, the Land Commission should issue its finding as to the heir or heirs or devisee or devisees and the respective interest or interests to which each are entitled. Once the Land Commission has issued its determination, it cannot issue any certificates of title unless and until after one hundred twenty days – the time to appeal – has passed, and only then, if the 120 days have passed without an appeal or if an appeal has been taken and decided, can the Land Commission issue certificates of title. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 555 (Chk. S. Ct. App. 2009).

A 1986 determination of ownership in the Land Commission's records constituted notice to the world that the named owner owned the land, and that if any potential purchaser of the land had sought to buy it from the plaintiff, the purchaser would be charged with notice that named owner, and not the plaintiff, owned the parcel. Allen v. Allen, 17 FSM R. 35, 41 (App. 2010).

In any lawsuit that, in effect, seeks to change the registered ownership of the land that a certificate of title represents and deprive the certificate titleholder of the titleholder's property interest, due process would require that that person be an indispensable party to the action. Any action that seeks to claim an interest in land for which a certificate of title or a determination of ownership has been issued, must, at a minimum, name the registered titleholder as a party. Setik v. Pacific Int'l, Inc., 17 FSM R. 304, 306 (Chk. 2010).

Certificates of title are by statute, prima facie evidence of ownership stated therein as against the world. Because of this, a court is required to attach a presumption of correctness to them when considering challenges to their validity or authenticity. Truk Trading Co. v. John, 17 FSM R. 382, 384 (Chk. S. Ct. Tr. 2010).

When the defendants do not dispute the veracity of the certificates of title provided, nor have they presented or offered any relevant or even meaningful evidence that would support a claim that the plaintiff uses or occupies or has otherwise encroached upon land it does not own, the court, accepting the certificates of title as prima facie evidence, will find that the land ownership is certain and a remand to the Land Commission for the purpose of establishing ownership is not warranted because ownership is not at issue. Truk Trading Co. v. John, 17 FSM R. 382, 384 (Chk. S. Ct. Tr. 2010).

A certificate of title must, with exception of rights of way, taxes, and leases of less than one year, set forth the names of all persons or groups of persons holding interest in the land and should include a description of the land's boundaries. Truk Trading Co. v. John, 17 FSM R. 382, 384 (Chk. S. Ct. Tr. 2010).

If the plaintiff requires a description of the boundaries of lots that he unquestionably owns, then it behooves him to obtain the relevant documentation from Land Commission directly, especially in light of its trespass accusations since it has demonstrated no special circumstances that would justify or otherwise necessitate the court ordering the Land Commission to re-survey the lots. Truk Trading Co. v. John, 17

FSM R. 382, 384 (Chk. S. Ct. Tr. 2010).

There is no statute of frauds – a law requiring that certain agreements or contracts to be in writing before they are enforceable in court – in Chuuk. Customarily, any agreement, even that selling land, might be oral, but in some situations, a customary oral transfer must be registered to be enforceable. The reason is not that the Torrens land registration system must supplant custom and tradition. Rather, the reason is one of evidence because certificates of title are prima facie evidence of ownership as stated therein against the world. Setik v. Ruben, 17 FSM R. 465, 472 (App. 2011).

A determination of ownership is presumed valid and cannot be set aside unless a challenger proves by a preponderance of the evidence that there has been fraud in the registration process. Setik v. Ruben, 17 FSM R. 465, 472 (App. 2011).

Chuuk has retained Title 67 of the Trust Territory Code, governing land registration, which is based on the Torrens system. Setik v. Ruben, 17 FSM R. 465, 473 (App. 2011).

The purpose and benefit of the lengthy procedure and notice requirements needed to register land is that a certificate of title, once issued, is conclusive upon all persons who have had notice of the proceedings and all those claiming under them and shall be prima facie evidence of ownership as therein stated against the world. Setik v. Ruben, 17 FSM R. 465, 475 (App. 2011).

Since a certificate of title must be based on a valid determination of ownership, the invalidity of a determination of ownership means that the subsequent certificate of title is likewise invalid and thus cannot be conclusive against the world. Setik v. Ruben, 17 FSM R. 465, 476 (App. 2011).

A certificate of title is conclusive upon all persons who have had notice of the proceedings and all those claiming under them and is prima facie evidence of ownership as stated therein against the world. FSM Dev. Bank v. Kansou, 17 FSM R. 605, 607-08 (Chk. 2011).

Title 67 of the Trust Territory Code remains Chuuk state law pursuant to the Chuuk Constitution's Transition Clause and because it has not been amended or repealed. FSM Dev. Bank v. Kansou, 17 FSM R. 605, 608 n.2 (Chk. 2011).

When the land is registered land, the interests in it that are registered are the only interests that exist. FSM Dev. Bank v. Kansou, 17 FSM R. 605, 608 (Chk. 2011).

Once an owner has a certificate of title to land, that ownership can never be lost through adverse possession. Under a Torrens land title registration system, such as the one in Kosrae, an adverse possession claim will never prevail over a validly-issued certificate of title. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

Claims founded on adverse possession or prescription, are not permitted to come into existence once the title has been registered. Once a title is registered, it is impossible thereafter to acquire title to the registered land by holding adversely to the registered owner. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

One of the attractions of a land registration system (as opposed to a land recordation system) and one of the great benefits of land title registration (as opposed to title recordation) is that once a landowner has gone through the laborious process of validly registering title to land, that landowner and that landowner's successors can never lose that land to an adverse possession claim. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

The proper time and place to make adverse possession claims, if a land occupant has one, is in a Land Court (or other) proceeding before the land title has been registered. Afterward is too late. Heirs of

Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

Certificates of title that state that the owners are the heirs of a person, who died three years before the certificates were issued and who has now been dead for twenty-eight years, have remained for too long in what should only be a very temporary designation because the Kosrae Land Court, like the Land Commission before it, has the power to make orders and decisions which determine any claim of heirship to a deceased person's title or interest in lands. Nena v. Saimon, 19 FSM R. 317, 327 (App. 2014).

Certificates of title naming the heirs of someone as the owners do not conform to the statutory requirement that a certificate of title must set forth the names of all persons holding an interest in the land. None of the co-owners' names are set forth on the certificates of title, although all of their names should be set forth on the certificates, when the only name on the certificate is that of a person who does not hold an interest in the land since he is deceased. For those persons who are the deceased's true and only heirs, their names, only their names, should be on the certificates of title. Nena v. Saimon, 19 FSM R. 317, 327 (App. 2014).

One of the purposes of a Torrens land registration system, such as Kosrae's, is that one document – the certificate of title – names every person who has an interest in the parcel covered by that certificate and describes the extent of that interest without the need to consult other sources to determine who the owners and the interest holders are and the interests they hold. That purpose is defeated if the ownership interests are listed as held by unnamed persons whose identity can only be determined by consulting birth and death records or the decedent's will, if there was one. Nena v. Saimon, 19 FSM R. 317, 327 (App. 2014).

The issuance of certificates of title to "the Heirs of" should be done only sparingly, if at all, and the Land Court should determine who the heirs are and name them and the interest they hold on any certificates of title it issues. A certificate that designates "the Heirs of" as the owners does not set forth the name of any person, let alone the names of all persons, holding an interest in the land and that phrase does not name an "entity." It just designates a group of unnamed persons whose identities and interests will presumably be identified at some later time. Nena v. Saimon, 19 FSM R. 317, 327 (App. 2014).

The presence of others on the land for over 60 years who had never been notified of the land registration proceedings would lessen the plaintiffs' likelihood of success on the merits of a trespass action because persons who have been openly residing on land for a long time are persons who must be given notice of any land registration proceedings for that land, otherwise the determination of ownership (and any subsequent certificate of title) is not valid – when a person has a claim to the land and was not given notice of the registration proceedings as required by law, the determination of ownership and the certificate of title for that land is not conclusive as upon him. Nena v. Saimon, 19 FSM R. 317, 328 (App. 2014).

The argument that someone who had occupied or used the land for a long time did not have to be given notice because they did not own the land must be rejected because the determination of who the land owners are is made at the end of the land registration process, not before it has started. Their long-term presence on the land entitled them to notice of the land registration proceeding for the land. Nena v. Saimon, 19 FSM R. 317, 328 (App. 2014).

The land registration process is, with certain exceptions, supposed to determine all interests in the land, not just ownership interests. Thus, even if someone does not own the land, they may hold some other interest, such as a use interest exceeding one year, that has to be determined and included in the certificate of title. Nena v. Saimon, 19 FSM R. 317, 328 (App. 2014).

A Trust Territory High Court case that renders a judgment about ownership of land between certain parties does not, by itself, entitle one of those parties (or a party claiming under that party) to a certificate of title for that land because there may be other persons who have claims, even better claims to ownership than the parties in the Trust Territory case. Andrew v. Heirs of Seymour, 19 FSM R. 331, 340 (App. 2014).

When a previous court case has res judicata effect and status, it is conclusive only between the parties

to the case and those claiming under them and no one else. But there could be persons who were not parties to the court case and who do not claim under those parties but who have their own claim to the land. The Land Court must still go through all of its usual procedures to determine if there are other claimants and, if there are, adjudicate their claims, before it can issue a determination of ownership and, if there is no appeal or if its decision is affirmed on appeal, a certificate of title. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 367 (App. 2014).

A view that only successful land claimants have to be notified of the Land Commission's determination of ownership is gross legal error. All claimants to a parcel of land must be notified of the determination of ownership for that parcel, and if boundary determinations are involved, the adjoining landowners must also be notified. Aritos v. Muller, 19 FSM R. 533, 536 & n.1 (Chk. S. Ct. App. 2014).

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

When the case was not an appeal from a Land Commission determination of ownership because it was filed too late for that and when it was not, at least initially, a trial court action with regard to interests in land within that registration area before it is likely a determination can be made on the matter by the Land Commission because the Land Commission had already made a decision, the trial court action was, instead, an action to collaterally attack (an allegedly) void Land Commission final decision. Once the trial court had determined that the Land Commission decision was void for the lack of due process, then the statute applied to the case before it and if the trial court wanted to proceed on the merits it had to first find special cause existed. Aritos v. Muller, 19 FSM R. 533, 538 (Chk. S. Ct. App. 2014).

Courts must attach a presumption of correctness to a Certificate of Title. FSM v. Falan, 20 FSM R. 59, 61 (Pon. 2015).

By statute, a certificate of title must show all interests in the land except for rights of way, taxes due, and lease or use rights of less than one year and the certificate is conclusive upon all persons who have had notice of the proceedings and all those claiming under them. A "right of way" over land is a thing such as a road, or footpath, or utility easement. A "right of way" is the right to pass through property owned by another or the strip of land subject to a nonowner's right to pass through. Iwo v. Chuuk, 20 FSM R. 652, 655 (Chk. 2016).

Any rights of way there may be over the land in question need not be stated in the certificate of title. Iwo v. Chuuk, 20 FSM R. 652, 655 (Chk. 2016).

A certificate of title's failure to mention the roadway or government right of way cannot extinguish the government's ownership of the roadway right of way. That right remained vested in the state government. When the government owned a right of way across the land that predated the current owners' ownership of the land, that right of way existed on the land when the land was homesteaded and thus still existed after a later buyer bought part of that homestead lot. Iwo v. Chuuk, 20 FSM R. 652, 655 (Chk. 2016).

The certificate of title statute does not exempt mineral rights if they are not mentioned. Iwo v. Chuuk, 20 FSM R. 652, 655 n.1 (Chk. 2016).

The government owners and users of a right of way across land are not liable for the landowners' neighbors' alleged encroachment on the land. Any remedy for that alleged encroachment, the landowners must seek from their neighbors. Iwo v. Chuuk, 20 FSM R. 652, 656 (Chk. 2016).

A valid certificate of title constitutes *prima facie* evidence of ownership. Courts must attach a presumption of correctness to a certificate of title. Setik v. Perman, 21 FSM R. 31, 39 (Pon. 2016).

A "registration area," is any area, which has been designated for treatment by the Kosrae Land Court, to determine boundaries and ownership interests. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 101 (App. 2016).

The party challenging the authenticity or validity of a certificate of title, bears the burden of proving it is not authentic or valid because a certificate of title is *prima facie* evidence of ownership and courts must attach a presumption of correctness to it. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 120-21 (App. 2017).

An ancillary probate proceeding for registered land (land with a certificate of title) on Pohnpei is through an heirship proceeding in the Pohnpei Court of Land Tenure. Setik v. FSM Dev. Bank, 21 FSM R. 505, 519 (App. 2018).

The only place to "probate" registered land in Pohnpei would be through an heirship proceeding in the Pohnpei Court of Land Tenure. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

A decedent's estate ceased to own Pohnpei land once the Pohnpei Court of Land Tenure ruled on the heirship petition for that land and the time to appeal that decision expired. Because the decedent's estate does not have, and, since Pohnpei Court of Land Tenure ruling, has not had, any interest in the property, it has no standing to seek the relief regarding that land. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

When the type of interest allegedly harmed is land ownership; when the right that the plaintiffs sue upon is their right to own a certain land parcel; when the remedy sought is to recover registered title to that land parcel that the plaintiffs contend that was lost through the defendants' predecessor's wrongful act; and when the primary interest that the alleged wrongdoer invaded was the plaintiffs' predecessor's registered ownership of that parcel, the action is one for the recovery of title to land. The theory of recovery might be fraud, or due process violation, or negligence, or some other theory such as reformation of contract, but that theory does not change the action's nature for statute of limitations purposes. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 580 (App. 2018).

For registered land, strict compliance with the Torrens land registration system's procedures is a must in order to claim the system's benefits of title good against the world. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 581 (App. 2018).

For registered land, strict compliance with the Torrens land registration system's procedures is a must in order to claim the system's benefits of a valid certificate of title with a title good against the world. Alik v. Heirs of Alik, 21 FSM R. 606, 618 (App. 2018).

The proper way for someone to acquire a valid certificate of title for a decedent's previously registered parcel is for the Kosrae Land Court to conduct an heirship proceeding to determine the landowner's heirs and to issue a new certificate of title in those persons' names. Then, if those persons wish to transfer the parcel's title (give or sell) to one of themselves, they will execute a deed, with all their signatures properly notarized, and then present that deed to the Land Court while also surrendering their new certificate of title to the Land Court. Alik v. Heirs of Alik, 21 FSM R. 606, 619 (App. 2018).

A certificate of title must set forth the names of all persons holding an interest in the land. Alik v. Heirs of Alik, 21 FSM R. 606, 619 n.4 (App. 2018).

When the record supports a prima facie case that a certificate of title was issued without the process due the plaintiffs as the supposed grantors and that therefore title was fraudulently registered in another's name, they may challenge that certificate of title's validity. Alik v. Heirs of Alik, 21 FSM R. 606, 619 (App. 2018).

When the alleged fraudulent registration of a parcel is based on the alleged misrepresentation in the "deed of gift" that the "grantor" had the ability to grant and convey full title to parcel to the grantee, the plaintiffs have stated a claim for which they could be granted relief. Alik v. Heirs of Alik, 21 FSM R. 606, 619-20 (App. 2018).

When the plaintiffs do not seek money damages, but only seek undisturbed registered title to a parcel, the entity alleged to be negligent, the Kosrae Land Court, should not be a party to the action. Alik v. Heirs of Alik, 21 FSM R. 606, 620 (App. 2018).

In past practice, the Kosrae Land Commission, was often named a defendant when a plaintiff complained about one of its acts or omissions because plaintiffs often named administrative agencies as defendants when they sought judicial review of that administrative agency's act or omission. But the Kosrae Land Court, unlike the Kosrae Land Commission, is not an administrative agency. It is a court. It should not be a party to the action. Alik v. Heirs of Alik, 21 FSM R. 606, 620 (App. 2018).

The titleholder is an indispensable party to any action to set aside, void, nullify, or alter the titleholder's certificate of title because due process makes that person an indispensable party to the action. Courts generally hold court orders void when the real party of interest was not present and the matter concerned the removal of that (indispensable) party from a certificate of title. Einat v. Chuuk Land Comm'n, 22 FSM R. 130j, 130L (Chk. S. Ct. Tr. 2018).

Default judgments against a real party of interest will be voided for lack of due process when that party lacked a notice and hearing before being disposed of its claim to a property – even when the real party of interest lacked a certificate of title. Einat v. Chuuk Land Comm'n, 22 FSM R. 130j, 130L (Chk. S. Ct. Tr. 2018).

A stipulated motion, that proffers no proof of service on the real party of interest, but asks the court to void the real party in interest's years-old, un-appealed determination of ownership and thus seeks to dispossess her of her property rights without notice or hearing, asks the court to issue an order in violation of the real party in interest's due process rights. The court will deny any such motion because voiding a determination of ownership based on stipulation that fails to provide notice to the real party of interest violates the real party of interest's due process rights under the Chuuk Constitution. Einat v. Chuuk Land Comm'n, 22 FSM R. 130j, 130m (Chk. S. Ct. Tr. 2018).

Any lease or use rights for a term not exceeding one year does not need to be stated in the certificate of title to be effective. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 163 (Chk. 2019).

A long-term lease (a lease for greater than one year), is an interest in land subject to Land Commission adjudication and must be stated in the certificate of title for it to be effective against third parties. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 163 (Chk. 2019).

A long-term lessee is entitled to notice as an interested party – as a claimant to an interest in that land – when that land is first registered. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 164 (Chk. 2019).

Persons, including a purported long-term lessee, known to a claimant, if not to the Land Commission, to claim interests in the land, are entitled, as interested parties, to actual notice of any Land Commission proceedings determining the land's ownership and other interests therein. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 164 (Chk. 2019).

It is to a land claimant's advantage and great benefit to make sure that the Land Commission gives

actual notice to everyone that the land claimant knows has or makes some sort of claim to the land that the claimant claims is his own. That is because a certificate of title, once issued, is conclusive upon all persons who have had actual or constructive notice of the proceedings and all those claiming under them, but is otherwise only "prima facie evidence of such ownership. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 164 (Chk. 2019).

When a long-term lessee was an interested party entitled to notice of the Land Commission proceedings determining the ownership of and interests in the land and when it never received any actual or constructive notice of the proceedings that determined ownership, the new owner's certificate of title is not conclusive against the lessee. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 164 (Chk. 2019).

Even when not conclusive, a certificate of title is generally prima facie evidence of such ownership. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 164 (Chk. 2019).

A certificate of title is ineffective against someone who was entitled to notice of the determination of ownership proceedings but did not receive any. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 164 (Chk. 2019).

When the plaintiff's certificate of title (and underlying determination of ownership) is ineffective against the lessee, the plaintiff has not shown by the preponderance of the evidence that he has a current possessory interest in the land superior to that of the lessee on the land. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 164 (Chk. 2019).

Upon receipt of a land registration team's adjudication, the Land Commission may issue a determination of ownership if satisfied, but, if not satisfied with the adjudication, the Land Commission may either hold hearings on the matter or remand the issue back to the registration team, but the Land Commission has no authority to refer the matter to the Chuuk State Supreme Court. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 576 (Chk. S. Ct. App. 2020).

When the Senior Land Commissioner's letter of referral states that the land registration team would take an undesirable amount of time over the matter as the dispute had numerous issues of law which the land registration team was incapable of resolving, and when it states that the Land Commission decided against adjudicating since the parties and commissioners exhibited ill-will towards each other and therefore, the commissioners felt conflicted and prejudiced, that written explanation satisfies the statutory requirements for removal of an adjudication from a registration team in order to refer it to the Chuuk State Supreme Court trial division. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 578 (Chk. S. Ct. App. 2020).

When the entire commission body suffered from a conflict of interest in the matter as a result of ill feeling towards one of the parties, and the Senior Land Commissioner appeared to have the only valid signature for a decision, the statutory two-commissioner requirement does not apply to a decision as in that matter, because the Senior Land Commissioner's one signature referral to the court does not violate 67 TTC 116, since the two-signature requirement is for a valid Land Commission action or decision on substantive matters concerning property rights, not for a decision on procedural matters such as referral of a dispute to the Chuuk State Supreme Court. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 579 (Chk. S. Ct. App. 2020).

– Registered Land – Transfer

Someone who by her written request transferred the Certificate of Title to her daughter is no longer the fee owner of that parcel, and therefore has no rights to the parcel and no standing to bring an action concerning the parcel. Jack v. Paulino, 10 FSM R. 335, 336 (Kos. S. Ct. Tr. 2001).

No lengthy title searches, which may fail to turn up important claims, need be done on registered land because all transfers and encumbrances of any interest in the land covered by a certificate of title must be noted thereon or therewith except for rights of way over the land, taxes on the land due within the two years prior to the certificate's issuance, and leases or use rights of less than one year. One only needs to consult the Land Commission's original certificate of title, which will show at a glance the ownership of, and the encumbrances on, the property, and the title searcher need then only read and evaluate the documents referred to by the current endorsements. No historical search of the title is ever necessary or relevant. In re Engichy, 12 FSM R. 58, 69 (Chk. 2003).

It is the owner's duty in requesting any transfer or upon notice that an involuntary transfer has been effected to submit his owner's duplicate certificate for proper endorsement or cancellation, if it is physically practicable for him to do so and if the owner is unable to physically submit the certificate because it has been lost or destroyed, there is a method whereby he may obtain a new duplicate certificate for submission. In re Engichy, 12 FSM R. 58, 70 (Chk. 2003).

Someone who has transferred the certificate of title to another person is no longer the fee owner of the parcel and therefore has no rights to the parcel. Benjamin v. Youngstrom, 13 FSM R. 72, 75 (Kos. S. Ct. Tr. 2004).

Upon the undisputed owner's death, title to land transfers pursuant to a valid will to the devisees specified in the will, or if there is no valid will, to the owner's heirs, according to intestate succession. George v. Abraham, 14 FSM R. 102, 106 (Kos. S. Ct. Tr. 2006).

Before noting a transfer of interest in a parcel, the Land Commission was required to determine that the document of transfer was in proper form, including a correct description of the parcel and for a transfer of a portion of a parcel, the Land Commission may require that the certificate holder have the transferred portion be surveyed at his expense. George v. Abraham, 14 FSM R. 102, 106 (Kos. S. Ct. Tr. 2006).

When the certificate holder and owner, did not complete or submit any document of transfer for the subject portion of the parcel to the defendant and he did not survey or arrange for the survey of the subject portion of the parcel claimed by the defendant, there was no compliance with the statutory provisions governing a transfer of interest in land or transfer of interest in a portion of parcel by the certificate holder, and therefore, pursuant to state law, there was no gift of land made from the certificate holder to the defendant. George v. Abraham, 14 FSM R. 102, 107 (Kos. S. Ct. Tr. 2006).

When a certificate of title was never issued to Tulpe Alokoa for parcel 006-K-07 and she was never determined by a Land Commission proceeding to be the title holder of that parcel and therefore could not transfer title to land that she did not own, her deed of gift was invalid, and should have been rejected for filing by the Land Commission. George v. Abraham, 14 FSM R. 102, 108 (Kos. S. Ct. Tr. 2006).

The identification of a person as the lineage head in a determination of ownership was for the purpose of clarifying the identification of the lineage. It is not the Land Commission's function to vest, in any particular person, the authority to sell lineage land. Mori v. Haruo, 15 FSM R. 468, 473 (Chk. S. Ct. App. 2008).

A buyer is not a bona fide purchaser for value without notice when she executes a purchase agreement with an individual seller when an earlier determination of ownership was notice to the world, and thus to her, of the lineage's interest in the property. Mori v. Haruo, 15 FSM R. 468, 473 (Chk. S. Ct. App. 2008).

The bona fide, or "innocent," purchaser rule arises from the statutory recording requirements for interests in real estate. For all real estate in each district, the clerk of court is required to make and keep in a permanent record a copy of all documents submitted to him for recording. No transfer of or encumbrance upon title to real estate or any interest therein, other than a lease for a term not exceeding

one year, is valid against any subsequent purchaser or mortgagee of the same real estate or interest, or any part thereof, in good faith for a valuable consideration without notice of such transfer or encumbrance, or against any person claiming under them, if the transfer to the subsequent purchaser or mortgagee is first duly recorded. The "registration" of interests in land has the same force and effect as to such land as a recording. Therefore, a subsequent, bona fide, or "innocent," purchaser has valid title against a prior holder of an interest in the same real estate if one "registers" or "records" the interest before the prior holder. Setik v. Ruben, 16 FSM R. 158, 164-65 (Chk. S. Ct. App. 2008).

There is no statute of frauds – a law requiring that certain agreements or contracts to be in writing before they are enforceable in court – in Chuuk. Customarily, any agreement, even that selling land, might be oral, but in some situations, a customary oral transfer must be registered to be enforceable. The reason is not that the Torrens land registration system must supplant custom and tradition. Rather, the reason is one of evidence because certificates of title are prima facie evidence of ownership as stated therein against the world. Setik v. Ruben, 17 FSM R. 465, 472 (App. 2011).

Land Commission determinations of ownership are meant to dispose of all competing claims to land. When a customary oral transfer has been confirmed in a writing, that writing constitutes tangible prima facie evidence of the claim, which preserves the claim, and as such assists any tribunal, including the Land Commission, before which the claim is raised. Setik v. Ruben, 17 FSM R. 465, 472 (App. 2011).

The bona fide purchaser rule does not apply when the land was lineage land which the seller had no authority to convey since the courts have historically been wary of applying the rule where the purported seller has no authority to sell, and when the Land Commission's determination of ownership was invalid for lack of notice to the occupants since a certificate of title must be based on a valid determination of ownership. Setik v. Ruben, 17 FSM R. 465, 476 (App. 2011).

Since a seller cannot sell more than he owns, when a purchaser bought land with a roadway right of way across it, that right of way remained even though the right of way was not mentioned in the later issued certificate of title. Iwo v. Chuuk, 20 FSM R. 652, 656 (Chk. 2016).

There is no need for the Pohnpei Court of Land Tenure to go through the whole process of having to designate the land, serve notice of the hearing, conduct a hearing, determine ownership and service notice of an issuance of this new title when the land already had a certificate of title and the FSM Supreme Court had issued an order transferring that title. Setik v. Perman, 21 FSM R. 31, 39 (Pon. 2016).

When registered land is later transferred by deed, there is no need to again designate, serve notice, hold hearings, and determine ownership, in order to issue a certificate of title to the new owner. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 101 (App. 2016).

Any subsequent transfer from a registered owner, does not require notice, much less a hearing, to determine ownership anew or a written decision. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 102 (App. 2016).

Under Kosrae Court Rule 13, when registered land is transferred, the owner of the parcel must surrender the certificate of title to the Registrar to transfer title. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 581 (App. 2018).

A landowner's failure to surrender the his certificate of title may indicate that the landowner does not intend to transfer title to the land. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 581 (App. 2018).

Kosrae Land Court Rules (and good practice) require that all documents concerning transfer of title must be notarized and submitted to the Registrar for recordation. Signatures that are executed at different times or in different locations must be notarized separately. The signature page of each document may consist of as many duplicate pages as necessary for proper notarization. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 581 (App. 2018).

When the purported transferor's signature and that of his witnesses were not notarized on a duplicate page, but the notarization was instead on a page separate from their signatures, and since the Registrar must not accept any document which is not properly notarized, it is doubtful that the Land Court should have accepted for filing a deed of gift in this form, even if it had been accompanied by the surrender of the old certificate of title, which it was not. Since the deed of gift was in a doubtful form and since the transferor's certificate of title was not surrendered with it, the Land Court should not have issued the transferee a certificate of title for that parcel. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 581 (App. 2018).

The hearing and notice procedure in Kosrae State Code § 11.612 is inapplicable to the transfer of already registered land. It only governs the registration of unregistered land. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 582 (App. 2018).

When the owner of registered land sells or gifts registered land, all that is needed for a valid transfer is the delivery to the Land Court of a properly notarized deed (with each needed signature properly notarized) combined with the surrender of the grantor's old duplicate certificate of title. Proper and strict compliance with these requirements is the due process that is sufficient (and required) for the issuance of a new certificate of title to the grantee. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 582 (App. 2018).

On rare occasions, when the landowner's old certificate has been lost, mislaid, or destroyed and the landowner wishes to transfer title, the proper practice is for the Land Court, following its practices and procedures for replacing a lost, mislaid, or destroyed certificate, to issue and deliver to the grantor a new duplicate certificate of title so that the grantor may turn around and surrender that certificate to Land Court when the deed is presented for registration. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 582 (App. 2018).

Whenever a landowner of registered land wishes to transfer an interest in the registered land (such as subjecting it to a lien such as a mortgage) or to transfer title, it is the landowner's duty in requesting any transfer to submit his or her owner's duplicate certificate for proper endorsement or cancellation. When the landowner has not done so, the landowner's intent might reasonably be questioned and the Land Court ought not to act. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 582 (App. 2018).

The Kosrae Land Court Rules (and good practice) require that all documents concerning transfer of title be notarized and submitted to the Registrar for recordation. Each document must reflect the printed name and signature of each person signing the document, and the date of the signing. Signatures which are executed at different times or in different locations must be notarized separately, and the signature page of each document may consist of as many duplicate pages as necessary for proper notarization. The Registrar shall not accept any document which is not properly notarized. Alik v. Heirs of Alik, 21 FSM R. 606, 618 (App. 2018).

When registered land is transferred, the parcel's owner must surrender the certificate of title to the Registrar for title transfer. A landowner's (or the landowner's heirs') failure to surrender the old certificate of title could indicate that the landowner (or his heirs) do not intend to transfer land title. Alik v. Heirs of Alik, 21 FSM R. 606, 618 (App. 2018).

When the "deed of gift" was not signed by all of the registered landowner's heirs; when it was not signed by the registered owner, since he was deceased; when the "land deed," which did contain the (unnotarized) signatures of all the other heirs, did not show an unequivocal intent to do anything other than to permit the grantee to build a house on the parcel; since the "deed of gift" was in a doubtful form and the "land deed" was equivocal; and since the old certificate of title was not surrendered with the deed of gift when it was filed, the Land Court should not have issued a new certificate of title for parcel to the grantee. Alik v. Heirs of Alik, 21 FSM R. 606, 618 (App. 2018).

Kosrae State Code § 11.612 does not apply to the transfer of registered land. It governs only the registration of unregistered land. Alik v. Heirs of Alik, 21 FSM R. 606, 619 (App. 2018).

When the owner of registered land sells or gifts registered land, all that is needed for a valid transfer is the delivery to the Land Court of a properly notarized deed (with each needed signature properly notarized) combined with the surrender of the grantor's old duplicate certificate of title. Proper and strict compliance with those requirements is the due process that is sufficient (and required) for the valid issuance of a new certificate of title to the grantee. Alik v. Heirs of Alik, 21 FSM R. 606, 619 (App. 2018).

If the landowner's old certificate has been lost, mislaid, or destroyed, the proper practice to transfer title is for the Land Court, following its practices and procedures for replacing a lost, mislaid, or destroyed certificate, to issue and deliver to the would-be grantor a new duplicate certificate of title so that the would-be grantor may then turn around and surrender that certificate to the Land Court at the same time that the deed is presented for registration. Alik v. Heirs of Alik, 21 FSM R. 606, 619 (App. 2018).

Whenever a landowner of registered land wishes to transfer an interest in that land (such as subjecting it to a lien such as a mortgage) or to transfer title, it is the landowner's duty in requesting any transfer to submit or surrender his or her owner's duplicate certificate for proper endorsement or cancellation. When the landowner has not done so, the landowner's intent might reasonably be questioned and the Land Court ought not to act. Alik v. Heirs of Alik, 21 FSM R. 606, 619 (App. 2018).

The proper way for someone to acquire a valid certificate of title for a decedent's previously registered parcel is for the Kosrae Land Court to conduct an heirship proceeding to determine the landowner's heirs and to issue a new certificate of title in those persons' names. Then, if those persons wish to transfer the parcel's title (give or sell) to one of themselves, they will execute a deed, with all their signatures properly notarized, and then present that deed to the Land Court while also surrendering their new certificate of title to the Land Court. Alik v. Heirs of Alik, 21 FSM R. 606, 619 (App. 2018).

When the alleged fraudulent registration of a parcel is based on the alleged misrepresentation in the "deed of gift" that the "grantor" had the ability to grant and convey full title to parcel to the grantee, the plaintiffs have stated a claim for which they could be granted relief. Alik v. Heirs of Alik, 21 FSM R. 606, 619-20 (App. 2018).

When the owner of registered land passes away, the Land Commission has the statutory duty to determine the devisee or devisees or heir or heirs and their interests or respective interests to which each is entitled. Nicky v. Chuuk Public Utility Corp., 22 FSM R. 239, 242 n.3 (Chk. 2019).

– Tidelands

The people of Chuuk have always considered themselves to have rights and ownership of the tidelands, and thereby hold the property rights in them, throughout all of the several foreign administrations. These traditional and customary claims came down from time immemorial. Nimeisa v. Department of Public Works, 6 FSM R. 205, 208 (Chk. S. Ct. Tr. 1993).

The Chuuk State Constitution recognizes all traditional rights and ownership over all reefs, tidelands, and other submerged lands subject to legislative regulation of their reasonable use. Nimeisa v. Department of Public Works, 6 FSM R. 205, 209 (Chk. S. Ct. Tr. 1993).

It was the intent of the framers of the Chuuk State Constitution to return the rights and ownership of all reefs, tidelands (all areas below the ordinary high watermark), and other submerged lands to the individual people of Chuuk State. Nimeisa v. Department of Public Works, 6 FSM R. 205, 210 (Chk. S. Ct. Tr. 1993).

The constitutional grant of ownership of the tidelands back to the rightful individual owners, shall be given prospective application only. Nimeisa v. Department of Public Works, 6 FSM R. 205, 212 (Chk. S.

Ct. Tr. 1993).

The reversion of reefs, tidelands and other submerged lands to private owners granted by article IV, section 4 of the Chuuk Constitution does not apply to any tidelands that were previously filled or reclaimed. Nena v. Walter, 6 FSM R. 233, 236 (Chk. S. Ct. Tr. 1993).

Tideland is land below the ordinary high water mark. Filled or reclaimed land, by its nature, is not land below the ordinary high water mark, and it cannot be considered tideland or submerged land. Nena v. Walter, 6 FSM R. 233, 236 (Chk. S. Ct. Tr. 1993).

Where government title to the tidelands reverted to the traditional owners in 1989, and because the right to bring an action for trespass or ejection must be available to the owner before the time period for adverse possession has run, whether the doctrine of adverse possession exists in Chuukese land law need not be decided because the twenty-year statute of limitations did not start to run until 1989. Cheni v. Ngusun, 6 FSM R. 544, 548 (Chk. S. Ct. App. 1994).

The Chuuk State Constitution, effective on October 1, 1989, recognizes traditional rights over all reefs, tidelands, and other submerged lands. Tidelands, including man-made islands, that were filled prior to this effective date are no longer classed as tidelands and have become dry land. Sellem v. Maras, 7 FSM R. 1, 3-4 (Chk. S. Ct. Tr. 1995).

Tidelands traditionally are those lands from the dry land to the deep water at the edge of the reef, and must be shallow enough for Chuukese women to engage in traditional methods of fishing. Sellem v. Maras, 7 FSM R. 1, 4 (Chk. S. Ct. Tr. 1995).

A deep water passage through a reef too deep for Chuukese women to engage in their traditional fishing methods is not a tideland. While under Chuukese tradition and custom channels may have been owned, the constitution does not recognize traditional rights over channels. The state thus retains ownership of the channels, as was the situation prior to the adoption of the Chuuk Constitution. Sellem v. Maras, 7 FSM R. 1, 5 & n.9 (Chk. S. Ct. Tr. 1995).

Tidelands within the meaning of article IV, section 4 of the Chuuk Constitution are those marine lands from the shore to the face of the reef that are shallow enough for traditional fishing activity by women. The constitutional recognition of traditional rights in tidelands does not include deep water channels or tidelands that have become dry land prior to the effective date of the constitution, through filling or other activity that raised the level of the marine lands above the mean high tide mark. Sellem v. Maras, 7 FSM R. 1, 7 (Chk. S. Ct. Tr. 1995).

Under Pohnpei state law, owners of the land adjacent to the lagoon do not have sufficient property rights in the reef and the lagoon as to entitle them to monetary compensation or other relief for damage to the reef caused by unauthorized dredging activity in the lagoon near their land. Damarlane v. United States, 7 FSM R. 56, 59-60 (Pon. S. Ct. App. 1995).

Under Pohnpei state law persons simply possessing a permit in the lagoon do not have sufficient property rights in the reef and the lagoon as to entitle them to monetary compensation or other relief for damage to the reef caused by unauthorized dredging activity in the lagoon near their land unless there has been some affirmative action such as prior written approval from the appropriate authority and effecting some development in the area in question. Damarlane v. United States, 7 FSM R. 56, 60 (Pon. S. Ct. App. 1995).

Under Pohnpei state law, if a reef is damaged by persons carrying out dredging activities authorized by state officials for a public purpose, adjacent or nearby coastal landowners are not entitled to a payment of just compensation for the depreciation of the value of the reef and fishing grounds. Damarlane v. United States, 7 FSM R. 56, 60 (Pon. S. Ct. App. 1995).

Under Pohnpei state law, if a fish maii [trap] is damaged by persons carrying out dredging activities authorized by state officials for a public purpose, adjacent or nearby coastal landowners are entitled to a payment of just compensation for the damage to a fish maii which they had constructed in the lagoon, if the fish maii was constructed pursuant to the dictate of customary law as a joint enterprise of the villagers, supervised by the village chief, managed, maintained and owned in common by the villagers; or, if an individual constructed the fish maii, prior written permission from the District Administrator, now the Pohnpei Public Land Board of Trustees, was obtained. Damarlane v. United States, 7 FSM R. 56, 60 (Pon. S. Ct. App. 1995).

The rights of citizens of Pohnpei in areas below the high watermark are prescribed by 67 TTC 2. Damarlane v. United States, 7 FSM R. 56, 63-64 (Pon. S. Ct. App. 1995).

Under Pohnpei law, damage to reefs or soil under the high water mark resulting from dredging activities, the object of which is for public purposes, does not justify compensation to abutting land owners. If the Pohnpei Public Land Board of Trustees had granted certain rights in writing to an individual or group of individuals, and acting on that grant the grantees erected or constructed certain improvements, including fish maii (fish trap) in shallow waters, and if destroyed or value reduced as a result of state dredging activities, the owners thereof may be entitled to just compensation in accordance with the Pohnpei Constitution. Damarlane v. United States, 7 FSM R. 56, 69 (Pon. S. Ct. App. 1995).

Prior to the effective date of the Chuuk Constitution the ownership of the filled marineland was with the Japanese government and that title was transferred to the Trust Territory pursuant to 67 TTC §§ 1 and 2 and later to Truk State. Atin v. Eram, 7 FSM R. 269, 271 (Chk. S. Ct. Tr. 1995).

Any filling of marineland prior to the effective date of the Chuuk Constitution is dry land and has become part of the land adjacent to the fill activity. Atin v. Eram, 7 FSM R. 269, 271 (Chk. S. Ct. Tr. 1995).

An owner of dry land that erodes has no legal basis to claim ownership of tideland. Mailo v. Atonesia, 7 FSM R. 294, 295 (Chk. S. Ct. Tr. 1995).

Claims for damages for violation of the FSM Environmental Protection Act and for damage based on an alleged property interest in the reef and lagoon adjoining plaintiffs' land will be dismissed for failure to state a claim for which relief may be granted. Damarlane v. FSM, 8 FSM R. 119, 121 (Pon. 1997).

Traditional claims of exclusive ownership of marine resources have been recognized only in areas immediately adjacent to an island or submerged reef. Claims involving custom and tradition were recognized by the Constitution's drafters, but were restricted to areas within lagoons and near reef areas. Chuuk v. Secretary of Finance, 8 FSM R. 353, 377 (Pon. 1998).

The waters, land, and other natural resources within the marine space of Kosrae are public property, the use of which the state government shall regulate by law in the public interest, subject to the right of the owner of land abutting the marine space to fill in and construct on or over the marine space. Jonah v. Kosrae, 9 FSM R. 335, 340 (Kos. S. Ct. Tr. 2000).

All marine areas below the ordinary high water mark belong to the Kosrae state government. Jonah v. Kosrae, 9 FSM R. 335, 340 (Kos. S. Ct. Tr. 2000).

Private individuals lack standing to assert claims on behalf of the public and cannot bring claims against the state on behalf of the public with respect to state land. Therefore a private landowner does not have standing to sue the state with respect to black rocks deposited below the ordinary high water mark because that is state land, but he does have standing to sue with respect to black rocks located above the high water mark and on his land. Jonah v. Kosrae, 9 FSM R. 335, 341 (Kos. S. Ct. Tr. 2000).

A Kosrae state regulation that covers all persons wanting to fill in and construct on or over land below the ordinary high water mark does not provide any private right of action and cannot be the basis of a claim against the state for violation of law or regulation even if it did not have a specific plan for the seawall that was part of a road-widening project for which it had an overall plan. Jonah v. Kosrae, 9 FSM R. 335, 342-43 (Kos. S. Ct. Tr. 2000).

The customary and traditional rights of municipalities, clans, families and individuals to engage in subsistence fishing, and to harvest fish and other living marine resources from reef areas are recognized, but a municipality is not directly entitled to compensation when resources in a particular reef area of Pohnpei are damaged. Thus, absent any damage to municipal property besides the reef itself or the living marine resources, the municipality is entitled only to that amount which Pohnpei appropriates to the municipality to compensate it for damage to its traditional subsistence fishing rights. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 60-61 (Pon. 2001).

The state owns the submerged reef areas, but this ownership carries with it certain responsibilities with respect to the people in whose trust these areas are held. It must preserve and respect the traditionally recognized fishing rights of the people of Pohnpei. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 61 (Pon. 2001).

Submerged reef areas are government lands which passed from the Trust Territory to Pohnpei, and the rights of the municipalities to use these areas are subject to the state's ownership rights. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 61 (Pon. 2001).

Under the Trust Territory Code the state has the power to control all marine areas below the ordinary high water mark, subject to a few notable exceptions. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 62 (Pon. 2001).

The power of the states to regulate ownership, exploration and exploitation of natural resources in the marine area within 12 miles from the island baselines is not absolute as it is limited by the national powers to regulate navigation and shipping, and to regulate foreign and interstate commerce. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 63 & n.8 (Pon. 2001).

Pohnpei has legal ownership of the submerged reef area as long as none of the relevant exceptions to 67 TTC 2 are applicable. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 63 (Pon. 2001).

The assertion that municipalities own submerged reef areas is not sound because 67 TTC 2(1) expressly states that the law established by the Japanese administration was that all marine areas below the ordinary high watermark belong to the government and because a finding that the municipalities were the underlying owners of all submerged reef areas, would render the statute granting them the right to use marine resources there superfluous and inconsistent with the rest of the statute. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 64 (Pon. 2001).

The German Land Code of 1912 applies only to land on Pohnpei, not to submerged areas. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 64 (Pon. 2001).

The Japanese owned all areas below the high water mark during their administration, then ownership of this land passed to the Trust Territory, and subsequently to the State of Pohnpei. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 65 (Pon. 2001).

Control over areas within 12 miles from island baselines was reserved to the states, subject to the national government's control over foreign and interstate commerce, and navigation and shipping. Thus, under the transition clause, the "government" ownership referenced in 67 TTC 2 should be interpreted as "state" ownership within 12 miles from island baselines. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 65 n.13 (Pon. 2001).

Because the state has assumed the duty of regulating exploration, exploitation and conservation of natural resources within the 12 mile zone from island baselines, and it is presumably the state which bears the costs associated with enforcing state laws related to such natural resources within state waters, it is logical that the state should recover the damages flowing from injury to these resources. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 65 (Pon. 2001).

Title 67, Section 2 of the Trust Territory Code continues in effect under the transition clause of the FSM Constitution, is consistent with other provisions in the FSM and Pohnpei Constitutions, and clearly confirms that all marine areas below the ordinary high water mark belong to the government. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 66 (Pon. 2001).

Pohnpei does not have a proprietary ownership interest in the tideland, as it is public land which is intended to benefit the public. Thus, Pohnpei may not sell submerged reef areas, or destroy or waste these resources with impunity because such actions would violate the public trust, and any damages recovered by Pohnpei should be returned in kind to the people in accordance with Pohnpei's obligation to protect and preserve the natural resources for the people's use. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 66 (Pon. 2001).

The ownership of submerged land and marine resources has a public character, being held by all of the people for purposes in which all of the people are interested. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 66 (Pon. 2001).

The people of Pohnpei's traditional and customary rights to freely navigate the reef, engage in subsistence fishing in that area, and control the use of and materials in that marine environment is recognized in 67 TTC 2(1)(e), in the FSM Constitution, and the Pohnpei Constitution. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 66 (Pon. 2001).

A municipality is precluded from recovering damages for injury to the submerged lands and living marine resources damaged by a fishing vessel grounding, but will be provided an opportunity at trial to prove any damage to other municipal resources. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 67 (Pon. 2001).

When tidelands were never properly divided during the father's lifetime, the logical conclusion is that those tidelands remain lineage or family property according to Chuukese tradition and custom and cannot be transferred without the consent of all male adults of the lineage, subject only to the traditional rights of afokur as consented to. Lukas v. Stanley, 10 FSM R. 365, 366 (Chk. S. Ct. Tr. 2001).

When deciding the ownership of tideland, the trial court did not err in not taking judicial notice of and following the judgment in a different case that dealt only with the boundaries and ownership of adjacent filled land. Phillip v. Moses, 10 FSM R. 540, 544 (Chk. S. Ct. App. 2002).

An owner of dry land is not necessarily the owner of the adjacent tideland. Phillip v. Moses, 10 FSM R. 540, 544 (Chk. S. Ct. App. 2002).

Tideland ownership derives from the Chuuk Constitution's recognition (as of its effective date, October 1, 1989) of traditional rights in the tidelands. Phillip v. Moses, 10 FSM R. 540, 544 (Chk. S. Ct. App. 2002).

Since traditional rights in tideland were not recognized in the law until October 1, 1989, no prior assertion of ownership over filled land could affect the traditional tideland rights. Phillip v. Moses, 10 FSM R. 540, 545 (Chk. S. Ct. App. 2002).

Any assertion of ownership over the filled land in a different case could not affect the continuing traditional rights in the adjacent tidelands. Phillip v. Moses, 10 FSM R. 540, 545 (Chk. S. Ct. App. 2002).

Prior to the effective date of the Chuuk Constitution, all tidelands were owned by the government. When the Chuuk Constitution became effective, traditional tideland rights were restored over only those

areas that were still tidelands on that date (Oct. 1, 1989). Stephen v. Chuuk, 11 FSM R. 36, 41 (Chk. S. Ct. Tr. 2002).

The tideland that is subject to traditional claims of ownership does not include deep water. Stephen v. Chuuk, 11 FSM R. 36, 42 n.2 (Chk. S. Ct. Tr. 2002).

While the Land Commission has the statutory authority to determine and register land titles, whether the Land Commission has the legal authority and the technical ability to determine, survey, and register tidelands is an unanswered question. Enlet v. Bruton, 12 FSM R. 187, 191 (Chk. 2003).

During the German Administration, it was widely known on Ponape that all property from high-water mark out was considered to belong to the German Government with the exception of three private mangrove reserves. Subsequently, the Japanese claimed everything below the high water mark. In due course this passed to the Trust Territory, which shortly before the Trust Territory broke up, granted its rights to the several districts. In the area that became the Federated States of Micronesia, the districts became states. Pohnpei thus became the owner of the marine areas below the high water mark. Such ownership rests with the sovereign, and in this case the sovereign is the State of Pohnpei. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 508 (App. 2005).

The national government does not own or control tidelands, reefs, or natural resources within 12 nautical miles of the island baselines. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 509 (App. 2005).

Chuuk, in its Constitution, retroceded tideland rights to their traditional holders. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 509 (App. 2005).

When the people of Kitti, as opposed to the municipal government, were not parties to the case, the trial court decision did not affect were the traditional rights of the people of the various municipalities to fish in the submerged reef areas. These rights of the people to marine resources remain unaffected and are protected by Trust Territory statute. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 509 (App. 2005).

The Yap Constitution provides that the state recognizes traditional rights and ownership of natural resources and areas within the marine space of the State within 12 miles from island baselines and Yap statutory law provides that traditionally recognized fishing rights wherever located within the State Fishery Zone and internal waters must be preserved and respected and also preserves existing private rights of action for civil damages, for damage to coral reefs, seagrass areas, and mangroves. Thus 67 TTC 2 is no longer Yap state law. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 414 (Yap 2006).

Under Yap traditional rights and ownership of natural resources and marine areas inside the Yap fringing reef – the rights to use and exploit, to the exclusion of all others, the marine resources of particular areas of the submerged lands inside the fringing reef around Yap – stem from a concept called a *tabinaw*. A *tabinaw* entails rights, duties and obligations for its members, and includes families and households. But a *tabinaw* is more than a concept. A *tabinaw* includes an estate in identifiable land and specific areas within the Yap fringing reef within which a *tabinaw* member can exploit the marine resources. A *tabinaw* member can only exploit marine resources in the marine area that appertains to his *tabinaw*. Each village includes a number of *tabinaw*. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 415 (Yap 2006).

When a vessel's grounding and subsequent oil spill was an unreasonable interference with the interests in the affected marine resources, resulting in significant damage, and resulted in physical injury to the reef and mangroves, and other features of the lagoon environment, a significant harm, and when the plaintiffs have suffered an injury special in kind from other Yap residents because of their traditional ownership and use interests in the particularly affected natural resources, the defendants are thus liable to plaintiffs on the theory of both public and private nuisance since the court considers the interest of the

Yapese in exclusive use and exploitation of the submerged lands inside the fringing reef analogous to interests in dry land in other common law countries. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 417 (Yap 2006).

A trial court case that when affirmed on appeal held that the decision – that the State of Pohnpei and not its municipalities owned the marine areas in Pohnpei – concerned only Pohnpei and not the other three FSM states, is clearly not controlling precedent for the resolving issues unique to the State of Yap, including the interpretation of its Constitution and Code when, unlike Pohnpei, Yap not only repealed the relevant Trust Territory Code provision, but Yap's Constitution expressly recognizes the traditional rights and ownership over the natural resources and the marine space within the state of Yap. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 58 (App. 2008).

The State of Yap's ownership of public lands as provided for at 9 Y.S.C. 901, is not mutually exclusive with the traditional rights of ownership over these lands and related marine resources by the people of Yap through the *tabinaw*, as recognized in the Yap Constitution. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 58 (App. 2008).

FSM admiralty law recognizes a cause of action for nuisance. The Yapese interest in exclusive use and exploitation of their submerged lands on and within the fringing reef is analogous to interests in dry land. A nuisance is a substantial interference with the use and enjoyment of another's land (either dry or submerged in Yap) resulting from intentional and unreasonable conduct or caused unintentionally by negligent or reckless conduct. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 176 (Yap 2012).

The Pohnpei Residential Shoreline Act of 2009 outlines procedures to be followed in applying for a residential leasehold from the Chief of the Division of Public Land of the Department of Land and Natural Resources. It mandates that, upon the receipt of an application pursuant to the Act, the Chief of the Division of Public Land shall orchestrate a survey of the filled land for which the application has been submitted, and upon satisfaction that the applicant and the land meet the Act's criteria, the Chief must issue a certificate of eligibility for a residential leasehold to the applicant. Damarlane v. Damarlane, 19 FSM R. 519, 529 (Pon. 2014).

Under Pohnpei state law, submerged public trust lands to a distance of not more than 150 feet extending seaward from a residential shoreline that have been filled for the purpose of constructing all or a portion of a residence thereon before December 31, 2008 are designated as available for residential lease. Damarlane v. Damarlane, 19 FSM R. 519, 529 (Pon. 2014).

A plaintiff whose tideland is being dredged by another is threatened with irreparable harm because once a tideland has been dredged its very nature is altered and cannot easily be restored and because, analogously, harm to land is often considered irreparable since land is unique. Killion v. Chuuk, 19 FSM R. 539, 541 (Chk. 2014).

Harm to land is often considered irreparable because land is unique. The same should hold true of the reef and surrounding environment where harvesting is to occur as well as the precious population of sea cucumbers. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 551 (Pon. 2016).

In Pohnpei, all marine areas below the ordinary high watermark belong to the government, and such lands are a part of the Pohnpei Public Lands Trust with certain exceptions reestablishing customary rights to the people in areas below the high watermark. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 641 (Pon. 2016).

Because Fefan and all areas under its political jurisdiction were designated as Land Registration Area 14, and because a tideland in Fefan falls under the political jurisdiction of Fefan, it thus lies within Registration Area 14, and the Land Commission therefore has primary jurisdiction to determine its ownership, as opposed to the court – unless, special cause is shown. Irons v. Rudolph, 22 FSM R. 408,

410 (Chk. S. Ct. Tr. 2019).

PUBLIC CONTRACTS

When the state's letter says that the bid was incomplete and that the contract was awarded to another bidder, it is a fair inference that the bid was rejected. International Bridge Corp. v. Yap, 9 FSM R. 362, 364 (Yap 2000).

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

A suit for injunctive relief is the appropriate vehicle by which to challenge a contract award under public bidding statutes because as a general rule, a declaratory judgment and an injunction are the only adequate means of protecting the public interest, the integrity of the competitive bidding process, and the individual bidder's rights. International Bridge Corp. v. Yap, 9 FSM R. 390, 394 (Yap 2000).

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

Under 9 Y.S.C. 528, all Yap state government contracts must be in writing and be executed by the agency which is authorized to let contracts in its own name and must be made with the lowest responsible bidder. The lowest responsible bidder is the lowest bidder whose offer adequately responds in quality, fitness, and capacity to the particular requirements of the proposed work called for by the contract. The lowest responsible bidder may be the bidder who submits the lowest price, but not necessarily. International Bridge Corp. v. Yap, 9 FSM R. 390, 397 (Yap 2000).

All state contracts shall be in writing and made with the lowest responsible bidder. If the lowest bid is rejected, the contracting officer may, at his discretion, award the contract to the lowest remaining responsible bidder or advertise anew for bids. In each instance the officer, at his discretion, after determining the lowest responsible bidder, may negotiate with that bidder, and that bidder only, to reduce the scope of work and to award the contract at a price which reflects the reduction in the scope of work. International Bridge Corp. v. Yap, 9 FSM R. 390, 397 (Yap 2000).

While the better procedure under 9 Y.S.C. 528 would have been for Public Works to formally select the second lowest bidder as the lowest responsible bidder before beginning negotiations with it to reduce the scope of work, and consequent price, the essential point is that the state had legally sufficient reasons for rejecting the lowest bidder's bid when it did so. As a result, no substantial right of the lowest bidder was violated by the state's failure to strictly conform to the statutory procedure. The court therefore will not reverse, modify, or remand the case for further proceedings pursuant to 10 Y.S.C. 165 on the basis of the state's negotiations with the second lowest bidder. International Bridge Corp. v. Yap, 9 FSM R. 390, 398 (Yap 2000).

The state must provide contract bidders with substantial, material, and detailed information necessary for a bidder to make a knowing and fully informed bid. International Bridge Corp. v. Yap, 9 FSM R. 390, 399 (Yap 2000).

Materials provided by the state, however denominated, must provide sufficient specificity to permit real competition between the bidders on contracts, and fair comparison among the several bids. The state-provided specifications may be sufficient to provide real competition and a fair comparison although the bid form requires the bidder to provide additional specifications. International Bridge Corp. v. Yap, 9

FSM R. 390, 400 (Yap 2000).

When the state's bid documents provided specifications for metal buildings in extreme detail it could properly require a contract bidder to provide the brand name and additional specifications for the metal buildings as part of its bid, and could reject the bid on this basis when those items were not provided. International Bridge Corp. v. Yap, 9 FSM R. 390, 401-02 (Yap 2000).

The lowest responsible bidder is the lowest bidder whose offer adequately responds in quality, fitness, and capacity to the particular requirements of the proposed work called for by the contract. International Bridge Corp. v. Yap, 9 FSM R. 390, 403 (Yap 2000).

The lowest responsible bidder for a contract for public work is one who is responsible and the lowest in price on the advertised basis. The term "responsible" as thus used is not limited in its meaning to financial resources and ability. Authorizations of this kind invest public authorities with discretionary power to pass upon the bidder's experience and his facilities for carrying out the contract, his previous conduct under other contracts, and the quality of his previous work, and when that discretion is properly exercised, the courts will not interfere. A bidder's experience in his field of expertise is a valid factor which may be considered in evaluating competing bids in order to determine the lowest responsible bidder. International Bridge Corp. v. Yap, 9 FSM R. 390, 403 (Yap 2000).

In addition to the names of any joint or subcontractors and the work they will do, all bids for state contracts must include any other materially relevant information the contracting officer may require, and any bid which does not comply with the advertisement's requirements or the statutory provisions shall be rejected. International Bridge Corp. v. Yap, 9 FSM R. 390, 403 (Yap 2000).

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

The state may reject a contract bid when the bidder has not supplied the names and curriculum vitae of its key personnel which was materially relevant information required by the bidding documents. International Bridge Corp. v. Yap, 9 FSM R. 390, 404 (Yap 2000).

When the subcontractors' professional experience was not required under the terms of the bid documents themselves, nor was its submission a customary practice, a bidder's failure to submit them was not properly a basis for the rejection of its bid. International Bridge Corp. v. Yap, 9 FSM R. 390, 405 (Yap 2000).

When the statute provides that any bid which does not comply with the bid advertisement's requirements or the statutory provisions shall be rejected, and when the bidder's qualification statement makes it clear that failure to provide any of the information requested may result in the contracting officer's rejection of the bid, the lack of materially relevant information required by the bid documents was a sufficient basis upon which to reject the bid. International Bridge Corp. v. Yap, 9 FSM R. 390, 405 (Yap 2000).

Although the statute requires the state to determine before a bid is submitted whether a potential bidder's financial ability to perform the work and its experience in performing similar work, the state may also require that a bidder provide, as part of its bid package, additional information regarding the qualifications of those specific individuals within its organization who would be working on the project. International Bridge Corp. v. Yap, 9 FSM R. 390, 406 (Yap 2000).

A contract for public work or public property or supplies must be executed on the public body's behalf

by some officer or officers possessed of the power to contract on behalf of the governmental body which they represent. The fundamental rule is that a public officer, who has only such authority as is conferred upon him by law, may make for the government he represents only such contracts as he is authorized by law to make. Nagata v. Pohnpei, 11 FSM R. 265, 271 (Pon. 2002).

The terms and conditions of a contract with a successful bidder for public contracts where competitive bidding is required are to be gathered from the terms and specifications of the advertisement or solicitation for bids. Nagata v. Pohnpei, 11 FSM R. 265, 271 (Pon. 2002).

When the plaintiffs have shown that the state has acted *ultra vires* with regard to soliciting bids, designating successful bidders, and entering into contracts for trochus, and has acted arbitrarily in determining what constitutes evidence of available funds and in attaching other conditions to the contract awards which were not included in the solicitation to bid documents, they have demonstrated that they will be irreparably injured if the trochus harvest is permitted to proceed, as the bid solicitation and contract award processes were contrary to Pohnpei state law. The plaintiffs are thus entitled to a declaratory judgment that the defendants' trochus harvest activities are illegal and to a permanent injunction, prohibiting the defendants from proceeding with any trochus harvest until the state has implemented procedures to conduct a fair and transparent bidding process for trochus, through the department authorized by law to conduct it. Nagata v. Pohnpei, 11 FSM R. 265, 272 (Pon. 2002).

A fair and transparent bidding process requires that regulations for soliciting bids, designating successful bidders, and awarding contracts for trochus be properly noticed, published, and distributed by the authorized department and that the department's solicitations to bid set forth in clear terms each and every term and condition of the contract to be formed with a successful bidder for a trochus harvest, which terms may not be varied by the state after a bid is awarded. Nagata v. Pohnpei, 11 FSM R. 265, 272 (Pon. 2002).

The statutory provision entitled "State Acquisition of Land" applies to the state's acquisition of interests in private land, which includes purchases of land in fee simple, and also other interests such as leases, easements for access roads and rights of way. Sigrah v. Kosrae, 12 FSM R. 513, 521-22 (Kos. S. Ct. Tr. 2004).

When the timing and manner in which a parcel was selected for a state quarry site, and when the negotiations were conducted and a lease agreement executed without public notice, without bidding procedures and without testing the suitability of the rock therein for aggregate production, it raises issues of public trust, transparency of government operations and propriety of the these actions under state law. Sigrah v. Kosrae, 12 FSM R. 513, 522 (Kos. S. Ct. Tr. 2004).

The Kosrae Financial Management Regulations, Section 4.2(b) requires free, open and competitive bidding for purchases more than $25,000. Sigrah v. Kosrae, 12 FSM R. 531, 534 (Kos. S. Ct. Tr. 2004).

The Financial Management Regulations, Section 4.17 provides the requirements for an exemption from open bidding when the Governor, in the event of an emergency affecting public health, safety, or convenience so declares in writing, describing the nature of the emergency and danger, an exemption to open bidding will be made to the extent necessary to avoid the stated danger. Sigrah v. Kosrae, 12 FSM R. 531, 534 (Kos. S. Ct. Tr. 2004).

The State of Kosrae acquires an interest in private land at the direction of the Governor through negotiation or through a procedure for acquisition of an interest in private land through court proceedings. Sigrah v. Kosrae, 12 FSM R. 531, 535 (Kos. S. Ct. Tr. 2004).

If the state's lease interest in parcels of which the Governor as a co-owner was acquired at the Lt. Governor's direction, or at the direction of any person other than the Governor, then it appears that lease interest was acquired in violation of Kosrae State Code, Section 11.103(1), but if the lease interest in the

parcels was acquired at the Governor's direction, in compliance with Section 11.103, then it appears that the lease interest was acquired in violation of the Kosrae State Ethics Act. Sigrah v. Kosrae, 12 FSM R. 531, 535 (Kos. S. Ct. Tr. 2004).

An insurance broker did not violate the Chuuk Financial Management Act by advancing the premium on Chuuk's behalf when it was not a state officer, employee, or allottee within the meaning of the statute and it thus did not create an obligation within the statute's meaning because no evidence suggests that the broker was anything other than one of Chuuk's many vendors with whom Chuuk entered into a binding contract. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 654 (Pon. 2008).

All contracts for the purchase of personal property involving $50,000 or more made on behalf of any national government agency must be let by free and open competitive bidding. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 655 (Pon. 2008).

When the FSM assumed the responsibility for arranging for insurance coverage for the vessels owned by the FSM including those operated by the four states, and the broker, Chuuk, and the FSM knew that the vessels' operators would be responsible for paying for the insurance for their respective vessels, the public bidding statute, as a matter of law, does not create liability on the FSM's part to the broker for Chuuk's premiums. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 655 (Pon. 2008).

When none of the questions to be decided by the court directly touch upon treaty relations between the FSM and the United States, the FSM Supreme Court may determine whether the FSM wrongfully provided false information to U.S. officials, whether, if proven, those actions were actionable, and if so, what damages the defendant-counterclaimant suffered since the court can also decide the issue of whether either party breached the contract, and if so, who owes what sums to the other. The mere existence of a funding mechanism agreed to by two sovereign nations cannot strip the court of jurisdiction to issue a decision on the merits of this case. Nor does the Compact intend to so hobble the court. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 484 (Pon. 2009).

When a public law's statutory language seems to speak only in prospective terms and certainly does not expressly state or clearly, explicitly, positively, unequivocally, unmistakably, and unambiguously show legislative intent to make the statute retroactive or for it to be applied retrospectively to previously-awarded public contracts, the movant is entitled to summary judgment and a declaration that the public law does not apply to the parties' earlier contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 592 (Pon. 2011).

Chuuk cannot escape liability when the plaintiff did not accept the risk that Chuuk might not be able to find funds and was not promised payment only when and if funds were available; when the plaintiff was told on November 24, 1995, that Chuuk was still awaiting the Chuuk Department of Treasury's issuance of a check for full payment of the insurance premium which Chuuk hoped would be within a week, and was asked to "Please bear with us your usual patient [sic] and understanding"; when the plaintiff would have had every reason to believe that the funds had been appropriated and, apparently like in previous years, Chuuk was waiting for them to become available and the paperwork done to cut the check; when the same should be true for fiscal 1997, when Chuuk informed the plaintiff that it had submitted a requisition to Chuuk Finance for $84,000 and was making daily follow-up; and when the judgment was not on a breach of contract theory. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 119 (App. 2011).

There is no authority that a party to a government contract has a duty to inquire and determine for itself whether the funds to pay for the contract have been properly appropriated and are certified as available, although there is plenty of authority that the government cannot create an obligation to pay unless there has been an appropriation and certification. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 119 (App. 2011).

Governments are generally not liable on contracts unless there has been an appropriation and a certification of availability of funds, and Chuuk, by its own Financial Management Act, Truk S.L. No. 5-44,

has similar statutory requirements. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 119 (App. 2011).

The public interest factor favors the plaintiffs since the public interest should favor a fair and thorough, but not rushed, evaluation of the power generation bids which ends with the PUC Board of Directors approving a contract with the bidder with the best plan because it involves proposals for a long-term improvement of PUC's power generation capacity and the expenditure of a large sum. The public interest also favors adherence to the Pohnpei statutes that govern an independent public corporation such as PUC, rather than a blatant disregard of PUC's independent nature. Perman v. Ehsa, 18 FSM R. 432, 440 (Pon. 2012).

The public interest favors a bidding process that is fair and transparent. It also favors that foreign investors be seen to be treated fairly and thus encouraged to invest in Pohnpei to the State's benefit. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 568 (Pon. 2013).

A declaratory judgment and an injunction are the only adequate means of protecting the public interest, the integrity of the competitive bidding process, and the individual bidder's rights to challenge a contract award under the public bidding statutes. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 568 (Pon. 2013).

The successful bidder on a public contract is a necessary and indispensable party to litigation by an unsuccessful bidder that challenges the public bidding process. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 573, 575 (Pon. 2013).

The mandate of 55 F.S.M.C. 221(2) prohibits any employee of the FSM to authorize an expenditure or create or authorize an obligation in advance of the availability of funds. Pacific Int'l, Inc. v. FSM, 20 FSM R. 220, 223 (Pon. 2015).

When the applicable regulations require that any public contracts awarded under those regulations are subject to mandatory alternative dispute methods; when the movants have filed a complaint and thereby "invoked the litigation machinery"; when the parties availed themselves of an alternative dispute method by virtue of a mediation session but the settlement agreement thus reached was unenforceable because it did not receive the required Presidential approval; and when the government is not disposed to resume alternative dispute resolution, the plaintiff's motion to compel arbitration will be denied. Pacific Int'l, Inc. v. FSM, 20 FSM R. 220, 224-25 (Pon. 2015).

When an FSM court has not previously construed an FSM civil procedure rule that is similar to a U.S. rule, it may look to U.S. sources for guidance in interpreting the FSM rule, such as when it has not previously considered the application of FSM Civil Rule 56 to litigation involving the termination of a government construction contract. Pacific Int'l, Inc. v. FSM, 21 FSM R. 283, 289 (Pon. 2017).

A contractor asserting claims of bad faith must overcome the strong presumption, that in the absence of clear, contrary evidence, public officials act conscientiously in the discharge of their duties. Thus, unless bad faith is demonstrated, the government is prevented only from engaging in actions motivated by a specific intent to harm the plaintiff. For a contractor attempting to show that a government act was undertaken in bad faith requires well-nigh irrefragable proof to induce the court to abandon the presumption of good faith dealing. The necessary irrefragable proof is equated with evidence of some specific intent to injure the plaintiff, motivated solely by malice or actuated by animus toward same. Pacific Int'l, Inc. v. FSM, 21 FSM R. 283, 289 (Pon. 2017).

Unsubstantiated suspicions and allegations of bad faith actions are not enough to demonstrate bad faith. A contractor must identify specific instances of the government's ill will directed toward it – the contracting officer's state of mind is critical. No less than the contracting officer's knowing and intentional conduct can support a finding of bad faith. Thus, claims of bad faith have been rejected when the

contractor can only prove that the convenience termination was an outgrowth of the contracting officer's negligent conduct, or the government's mere error, even if would constitute sufficient ground for contractual breach. Pacific Int'l, Inc. v. FSM, 21 FSM R. 283, 289 (Pon. 2017).

A contractor may attack a contracting officer's decision to terminate on the grounds that such decision was an abuse of discretion or arbitrary and capricious, but the contractor has the burden of proving arbitrary and capricious conduct. Pacific Int'l, Inc. v. FSM, 21 FSM R. 283, 289 (Pon. 2017).

Summary judgment will be denied when a genuine issue of fact exists about whether the contractor had met all material terms of the contract or that the delay was excusable and when the contract provides that if, after termination of the contractor's right to proceed, it is determined that the contractor was not in default or that the delay was excusable, the parties' rights and obligations will be the same as if the termination had been issued for the government's convenience. Pacific Int'l, Inc. v. FSM, 21 FSM R. 283, 290 (Pon. 2017).

PUBLIC OFFICERS AND EMPLOYEES

When a purported state employment contract erroneously and consistently recites that it is between the employee and the Trust Territory of the Pacific Islands and contains other statements demonstrating that the contract words were not to be taken seriously and did not comport with reality, the document is unpersuasive evidence of the relationships among the employee, the state, and the national government. Manahane v. FSM, 1 FSM R. 161, 165-67 (Pon. 1982).

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

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

Government employment that is "property" within the meaning of the Due Process Clause cannot be taken without due process. To be property protected under the Constitution, there must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Suldan v. FSM (II), 1 FSM R. 339, 351-52 (Pon. 1983).

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

The government's right to discipline an employee for unexcused absence is not erased by the fact that annual leave and sick leave were awarded for the days of absence. Suldan v. FSM (II), 1 FSM R. 339, 357 (Pon. 1983).

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

If, pursuant to section 156 of the National Public Service system Act, the highest management official declines to accept a finding of the ad hoc committee, the official will be required by statutory as well as constitutional requirements to review those portions of the record bearing on the factual issues and to

submit a reasoned statement demonstrating why the ad hoc committee's factual conclusion should be rejected. Suldan v. FSM (II), 1 FSM R. 339, 360-61 (Pon. 1983).

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

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

The high public office of state prosecutor may be the most powerful office in our system of justice. The prosecutor invokes and implements the sovereign powers of the state in the justice system and is given a wide degree of discretion in so doing. Rauzi v. FSM, 2 FSM R. 8, 13 (Pon. 1985).

No common law rule has been applied universally in all contexts to determine the status of government officials. Rauzi v. FSM, 2 FSM R. 8, 15 (Pon. 1985).

Some government workers have been held partially or completely immune from tort liability on grounds that they are public officers. This immunity, intended to serve the purpose of encouraging fearless and independent public service, has been bestowed upon prosecutors as well as other public officials. Rauzi v. FSM, 2 FSM R. 8, 16 (Pon. 1985).

The emphasis in governmental tort liability cases has been on the special status of government, its functions and its officials rather than on the degree of control tests commonly employed in nongovernmental cases. Even those commentators who specifically note that the *respondeat superior* doctrine applies to the government analyze governmental liability issues in terms of public policy considerations rather than through a degree of control analysis which distinguishes between closely supervised and high-ranking officials. Rauzi v. FSM, 2 FSM R. 8, 16 (Pon. 1985).

There is a common law of taxation which addresses the status of public officials as employees. Rauzi v. FSM, 2 FSM R. 8, 17 (Pon. 1985).

A taxpayer who held the high public office of Chief of Finance, whose contract gave him a wide degree of discretion in carrying out governmental powers; and who was not an outside consultant who could merely suggest or advise but was an integral part of the governmental operation is a governmental official, therefore an employee for purposes of the FSM Income Tax Law. Heston v. FSM, 2 FSM R. 61, 65 (Pon. 1985).

All government officials are employees of the government within the meaning of the Federated States of Micronesia Income Tax Law. Heston v. FSM, 2 FSM R. 61, 65 (Pon. 1985).

Defendants were not acting as police officers or under the direction of police officers so as to make their conduct lawful where the record reveals generally that the defendants' actions were not those of police officers acting in good faith to enforce the law, but were taken on their own behalf to punish and intimidate their victims. Teruo v. FSM, 2 FSM R. 167, 171 (App. 1986).

The National Public Service System Act and the FSM Public Service System Regulations establish an expectation of continued employment for nonprobationary national government employees by limiting the permissible grounds and specifying procedures necessary for their dismissal; this is sufficient protection of the right to continued national government employment to establish a property interest for nonprobationary employees which may not be taken without fair proceedings, or "due process." Semes v. FSM, 4 FSM R. 66, 73 (App. 1989).

In the absence of statutory language to the contrary, the National Public Service System Act's mandate may be interpreted as assuming compliance with the constitutional requirements, because if it purported to preclude constitutionally required procedures, it must be set aside as unconstitutional. Semes v. FSM, 4 FSM R. 66, 74 (App. 1989).

Where there are no directly controlling statutes, cases or other authorities within the Federated States of Micronesia, it may be helpful to look to the law of other jurisdictions, especially the United States, in formulating general principles for use in resolving legal issues bearing upon the rights of public employees and officers, in part because the structures of public employment within the Federated States of Micronesia are based upon the comparable governmental models existing in the United States. Sohl v. FSM, 4 FSM R. 186, 191 (Pon. 1990).

A basic premise of public employment law is that the rights of a holder of public office are determined primarily by reference to constitutional, statutory and regulatory provisions, not by the principles of contract which govern private employment relationships. Sohl v. FSM, 4 FSM R. 186, 191 (Pon. 1990).

Subject to constitutional limitations, the public has the power, through its laws, to fix the rights, duties and emoluments of public service, and the public officer neither bargains for, nor has contractual entitlements to them. Sohl v. FSM, 4 FSM R. 186, 191 (Pon. 1990).

The power of the President to appoint executive branch officers is not absolute, but is subject to check by the advice and consent of Congress. Sohl v. FSM, 4 FSM R. 186, 197 (Pon. 1990).

If someone constitutionally ineligible for appointment, is appointed a judge then his status is that of a de facto judge. A de facto judge is one who exercises the duties of the judicial office under the color of an appointment thereto. Where there is an office to be filled, and one, acting under color of authority, fills the office and discharges its duties, his actions are those of an officer de facto, and binding on the public. Hartman v. FSM, 6 FSM R. 293, 298-99 (App. 1993).

The Title 51 provision barring nonresident workers from gainful employment for other than the employer who has contracted for him does not apply to national government employees because the national government is not an employer for the purposes of Title 51 of the FSM Code and does not contract with the Chief of the Division of Labor for employment of nonresident workers. FSM v. Moroni, 6 FSM R. 575, 578 (App. 1994).

Title 51 does not preclude nonresident national government employees from engaging in off-hours, secondary, private sector employment, but simply means that in order to engage in secondary employment nonresident national government employees must comply with its statutory provisions covering the private sector employment of nonresidents. FSM v. Moroni, 6 FSM R. 575, 579 (App. 1994).

A permanent employee has a one year probationary period after a promotion or transfer. A probationary employee has all of the rights of a permanent employee except the right to appeal from removal from the new position. Once the probationary period expires, an employee becomes a permanent employee in the new position. No adverse action (including a demotion) may be taken against a permanent employee except as prescribed by regulations which entitle the employee to notice of the action taken and a hearing regarding the merits of the action before an ad hoc committee if the employee appeals. Isaac v. Weilbacher, 8 FSM R. 326, 332 (Pon. 1998).

Title 52 F.S.M.C. 151-57 and PSS Regulation 18.4 establish an expectation of continuous employment for nonprobationary national government employees by limiting the permissible grounds, and specifying necessary procedures, for their dismissal. This is sufficient to establish a "property interest" for the nonprobationary employee which cannot be taken without fair proceedings, or "due process." Isaac v. Weilbacher, 8 FSM R. 326, 333 (Pon. 1998).

When there is no applicable FSM precedent on the point, it is helpful to look to U.S. law in order to formulate general principles for use in resolving legal issues bearing upon the rights of public employees and officers because the public employment structures within the FSM are based upon comparable government models existing in the United States. Isaac v. Weilbacher, 8 FSM R. 326, 333 (Pon. 1998).

A provisionally or temporarily appointed individual is not ordinarily entitled to a permanent civil service position merely by reason of his or her retention beyond the probation period prescribed for regular appointees. At least two conditions must be present before a temporary appointment may become permanent, so as to entitle an affected employee to the procedures in the PSS Act and Regulations, regarding adverse action against permanent employees: 1) the employee must have been among the first three on the eligible list at the time of the appointment, so as to be qualified and capable of receiving the appointment, and 2) there must have been a vacancy. Isaac v. Weilbacher, 8 FSM R. 326, 334 (Pon. 1998).

A court finding that an employee, who held an acting position for four years and was certified as qualified or eligible for the vacant position, had been permanently promoted, does not take away management discretion in hiring and establish for employees a legal right to promotion. Rather, it recognizes the reality of the employee's employment situation, and prevents the government from circumventing the procedural requirements of the PSS Act and Regulations. Isaac v. Weilbacher, 8 FSM R. 326, 334 (Pon. 1998).

The PSS Act's purpose is to provide employees with just opportunities for promotion, reasonable job security (including the right to appeal), and tenure in positions. 52 F.S.M.C. 113, 115. If the national government is allowed to "temporarily" promote employees for indefinite periods of time and subsequently return them to their previous positions, the government can effectively circumvent all of the Act's merit and tenure principles. Isaac v. Weilbacher, 8 FSM R. 326, 334-35 (Pon. 1998).

Under the PSS Act and Regulations, a permanent employee after a promotion or transfer is a probationary employee who becomes permanent and non-probationary at the end of a maximum one year probationary period. Thereafter, an action returning the employee to his previous pay level is a demotion, an adverse action. Isaac v. Weilbacher, 8 FSM R. 326, 335 (Pon. 1998).

The protections afforded a permanent employee include: 1) notification of the adverse action, containing a full and detailed statement of the reasons for the action; 2) notification of his right to appeal the adverse action; 3) the right to appeal the adverse action and have his appeal heard publicly by an ad hoc committee; and 4) the right to receive a written report from the ad hoc committee containing findings of fact and written recommendations concerning the adverse action. Isaac v. Weilbacher, 8 FSM R. 326, 335, 337 (Pon. 1998).

An employee receiving a temporary promotion must be informed in advance and must agree in writing that at the expiration of the temporary promotion, he will be returned to the former salary (grade and step) that he would be receiving had he remained in his former position. But such a written agreement has no effect if the promotion has become permanent. Isaac v. Weilbacher, 8 FSM R. 326, 335 (Pon. 1998).

A permanent employee cannot be demoted to his former position based on a regulation which, by its terms, only applies to a temporary promotion. A permanent employee's constitutional right to due process is violated by the national government when it has thus demoted him. Isaac v. Weilbacher, 8 FSM R. 326, 335 (Pon. 1998).

Every permanent and probationary employee is to receive an annual written rating of performance. Employees who receive "Satisfactory" or "Exceptional" ratings are eligible for step increases within their pay level. Employees who receive "Less than Satisfactory" ratings are not eligible. The absence of a performance evaluation gives rise to the presumption that the individual was performing at a "Less than Satisfactory" level. Pay and step increases are discretionary. Isaac v. Weilbacher, 8 FSM R. 326, 336-37

(Pon. 1998).

Because Congress has not explicitly made employment contracts which violate 11 F.S.M.C. 1305 unenforceable, the FSM Supreme Court may properly decide whether a contravention of public policy is grave enough to warrant unenforceabillty. FSM v. Falcam, 9 FSM R. 1, 4 (App. 1999).

When there is no national precedent on the issue of the enforcement of an employment contract term which was violative of public policy, and there is no custom or tradition governing the matter, the FSM Supreme Court may look to the common law of the United States. FSM v. Falcam, 9 FSM R. 1, 5 (App. 1999).

Although there was a public interest in denying enforcement because the hiring violated public policy, this is outweighed by the special public interest of the government's failure to provide any hearing or opportunity to be heard concerning its failure to pay the employee or take any steps to terminate the contract, thus constituting a violation of due process rights; the employee's justified expectations of being paid; and the substantial forfeiture would result if enforcement were to be denied. Therefore the trial court did not abuse its discretion in its weighing of the factors on the issue of enforceability. FSM v. Falcam, 9 FSM R. 1, 5 (App. 1999).

An illegally-hired public employee has a constitutionally protected interest in employment because the Secretary of Finance must give notice and an opportunity to be heard after taking the action to withhold his pay, and the government must terminate his employment after it determines his hiring had violated public policy, giving him notice and an opportunity to be heard. Failure to take such steps violated the employee's due process rights. FSM v. Falcam, 9 FSM R. 1, 5 (App. 1999).

Trust Territory Code Title 61 governed the Public Employment System during 1978, and provided that the grievance procedures would hear and adjudicate grievances for all employees where the employees would be free from coercion, discrimination or reprisals and that they might have a representative of their own choosing. Skilling v. Kosrae, 10 FSM R. 448, 451 (Kos. S. Ct. Tr. 2001).

In 1978, the Trust Territory Public Service Grievance System covered all Public Service employees and covered any matter of concern or dissatisfaction to an eligible employee, unless exempted. Skilling v. Kosrae, 10 FSM R. 448, 451 (Kos. S. Ct. Tr. 2001).

An employee had to complete the informal grievance procedure before presenting the grievance to the Trust Territory Personnel Board. The employee was required to present a grievance concerning a particular act or occurrence within fifteen calendar days of the date of the act or occurrence. The informal grievance procedure permitted presentation of the grievance orally. The Regulations also provided a formal grievance procedure, which the employee may have utilized and which had to be done in writing, if his grievance was not settled to his satisfaction under the informal grievance procedure. The formal grievance procedure was not mandatory upon employees. Skilling v. Kosrae, 10 FSM R. 448, 451-52 (Kos. S. Ct. Tr. 2001).

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

After a Trust Territory employee's cause of action accrued in 1980 when he completed the informal grievance procedure with his supervisor, he had two options: follow the formal grievance procedure for review by the Personnel Board; or file suit in court for judicial review of his grievance. Since his right to sue was complete then, a suit, filed in 2000, will be barred by the six-year statute of limitations and dismissed. Skilling v. Kosrae, 10 FSM R. 448, 452-53 (Kos. S. Ct. Tr. 2001).

The over-obligation of funds statute, 55 F.S.M.C. 220(3), was not intended to create a basis for private parties to sue government officials, but for the government to be able to punish employees and officials who are found to be misusing public funds. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 634 (Pon. 2002).

Under the FSM criminal code a "public servant" is any officer or employee of, or any person acting on behalf of, the FSM, including legislators and judges, and any person acting as an advisor, consultant, or otherwise, in performing a governmental function; but the term does not include witnesses. FSM v. Wainit, 12 FSM R. 105, 110 (Chk. 2003).

The common and approved usage in the English language of the term "public officer" is a person holding a post to which he has been legally elected or appointed and exercising governmental functions. "Public officer" is not a legal term of art but carries only its common, ordinary, and unambiguous English language meaning as found in the dictionary. FSM v. Wainit, 12 FSM R. 105, 110-11 (Chk. 2003).

Strictly construing the term "public officer" by using only its plain, ordinary, and unambiguous meaning (or in the code's terms "its common and approved usage"), a mayor falls within the public officer exception to the criminal statute of limitations. FSM v. Wainit, 12 FSM R. 105, 111 (Chk. 2003).

The plain, unambiguous, and ordinary meaning of "public officer," an ordinary term for which no construction is required, is that the term includes any person holding a post to which he has been legally elected or appointed and exercising governmental functions. FSM v. Wainit, 12 FSM R. 105, 111 (Chk. 2003).

The ad hoc committee is required to prepare a full written statement of its findings of fact and its recommendations for action within seven calendar days after the close of its hearing. Maradol v. Department of Foreign Affairs, 13 FSM R. 51, 54 (Pon. 2004).

The English language's common and approved usage of the term "public officer" is a person holding a post to which he has been legally elected or appointed and exercising governmental functions or one holding office under the government of a municipality, state, or nation. FSM v. Wainit, 13 FSM R. 532, 538 (Chk. 2005).

The plain, unambiguous, and ordinary meaning of "public officer," an ordinary term for which no construction is required, is that the term includes any person holding a post to which he has been legally elected or appointed and exercising governmental functions. FSM v. Wainit, 13 FSM R. 532, 539 (Chk. 2005).

Section 105(3)(b) "public officer" exception to the statute of limitations applied to persons based upon their status as public officers – persons holding posts and exercising governmental functions. It did not matter whether that status was defined and bestowed upon a person by the national government or by another level of government. It only mattered that the person held that status. That the term "public officer" cannot possibly refer to state and municipal public officials since the national government lacks the constitutional power to define those offices and to determine or install those officials is a frivolous and misplaced contention because national laws are often applied to persons based on their status, even when that status is defined solely by another government. FSM v. Wainit, 13 FSM R. 532, 539 (Chk. 2005).

When an FSM statute defines a public servant as an officer or employee of the FSM, that section did not include within its definition of public servant all public officers. It only included those that were officers of the FSM national government. FSM v. Wainit, 13 FSM R. 532, 540 (Chk. 2005).

Qualified immunity is not a defense to a criminal prosecution. "Qualified immunity" partially shields public officials performing discretionary functions from civil liability and damages. Public officials are not

immune or exempt from criminal liability and prosecution. FSM v. Wainit, 14 FSM R. 51, 55 (Chk. 2006).

A law enforcement officer is one whose duty is to preserve the peace. A mayor has the duty to faithfully implement the municipality's laws and ordinances, but he does not have the power of arrest, and even if he were a law enforcement officer, he would not be immune from prosecution because a law enforcement officer may be prosecuted for an offense committed while he was arresting someone. FSM v. Wainit, 14 FSM R. 51, 55 (Chk. 2006).

National police officers are public officials. FSM v. Wainit, 14 FSM R. 51, 60 (Chk. 2006).

A public officer is not denied due process of law by the abolition of his office before his term expires or by his removal or suspension according to law. Esa v. Elimo, 14 FSM R. 216, 218 (Chk. 2006).

While the defendant's position as Weno mayor would not satisfy the FSM officer or employee element in sections 55 F.S.M.C. 221(3) and 223, the defendant's service as the project manager on a project for which the national government supplied all the funding, for the purpose of that project, would because he was subject to the national government's control and supervision concerning the project he was manager of, and in that capacity, he performed a national government function – expending national government funds. Spending national government funds is an exercise of the national government's sovereign power. FSM v. Nifon, 14 FSM R. 309, 314-15 (Chk. 2006).

For the purpose of that project, a project manager of a national government project funded by national government funds, is an officer of the national government since he was exercising powers on the national government's behalf. FSM v. Nifon, 14 FSM R. 309, 315 (Chk. 2006).

As a project manager for the Compact funds, a defendant was a national government officer (for that purpose only) because he was exercising powers on the national government's behalf over national government money in a national government project. FSM v. Nifon, 14 FSM R. 309, 315 (Chk. 2006).

The term "officer or employee of any government of the FSM" in 55 F.S.M.C. 313(2) includes municipal mayors. FSM v. Nifon, 14 FSM R. 309, 315 (Chk. 2006).

The term "officer or employee of any State" in 55 F.S.M.C. 338 includes municipal officers and employees. FSM v. Nifon, 14 FSM R. 309, 316 (Chk. 2006).

Currently each of the states and the FSM national government have hiring preference laws. Berman v. Lambert, 17 FSM R. 442, 449 n.4 (App. 2011).

Sovereign immunity should not be confused with official immunity for public officers. Government officials who are performing their official duties are generally shielded from civil damages, and the court has previously recognized that some government workers have been held partially or completely immune from tort liability on grounds that they are public officers. This immunity, intended to serve the purpose of encouraging fearless and independent public service, has been bestowed upon prosecutors as well as other public officials. Marsolo v. Esa, 18 FSM R. 59, 64 (Chk. 2011).

A qualified official immunity applies to public officials. An official who simply enforces a presumptively valid statute will rarely thereby lose his or her immunity from suit. Absent extraordinary circumstances, liability will not attach for executing the statutory duties one was appointed to perform. Marsolo v. Esa, 18 FSM R. 59, 65 (Chk. 2011).

When no extraordinary circumstances are present in a suit over the enforcement of a statute, public officers, in their individual capacities, will be dismissed from the suit, but since injunctive relief can be had against them in their official capacities, they will not be dismissed in their official capacities. Marsolo v. Esa, 18 FSM R. 59, 65 (Chk. 2011).

Since a suit against an official in his or her official capacity is a suit against that official's office and since a national government office with nationwide scope and authority must be "found" or be "present" in some form in each state in the nation regardless of whether it has an actual year-round physical presence there, for the purpose of the venue statute, none of the defendant national government officials "reside" on Pohnpei. Marsolo v. Esa, 18 FSM R. 59, 66 (Chk. 2011).

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

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

While rights are often freely assignable, duties are not freely delegated. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 232 (Yap 2013).

If chiefs were considered state officers and thus a state authority and were permitted to espouse the Receiver of Wreck's claims, then they would have claims that they do not share with the other class members and since a person whose claims are not common to the class would have to be removed as class representatives of, and membership in, the certified class and some other person(s), who could adequately protect the class interests, would have to be named as class representative(s), the chiefs would then not be permitted to participate in, or receive, or share any of the damages awarded to the certified class. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 232 (Yap 2013).

Since a statutory receiver or public officer cannot, even with a court's approval, delegate his powers or duties, or surrender assets which the law compels him to administer and since the Receiver of Wreck is both a statutory receiver and a public officer (the Secretary of Transportation and Communications), the delegation of the Receiver's duties to private persons (the class plaintiffs) would be unlawful because the statute only permits delegation to "relevant state authority" and cannot be approved as a class action settlement agreement. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 232-33 (Yap 2013).

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

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

Under Title 52, since the FSM Supreme Court's review is for the sole purpose of preventing statutory, regulatory and constitutional violations, review of the factual findings is limited to determining whether substantial evidence in the record supports the administrative official's conclusion that a violation of the kind justifying termination has occurred. The statute evinces a clear congressional intent that the courts avoid serving as finders of fact. When there are non-frivolous disputes about the grounds for termination, the decision of the ad hoc committee should identify and address those grounds with specificity, and when they

have not, the court will remand the case to the ad hoc committee to prepare a full written statement of its findings of fact. Manuel v. FSM, 19 FSM R. 382, 386-87 (Pon. 2014).

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

The National Public Service System Act and the Public Service System Regulations establish continued employment for non-probationary national government employees by limiting the permissible grounds, and specifying the necessary procedures for their dismissal. This is sufficient protection of the right to continued employment to establish a property interest for non-probationary employees which may not be taken without due process, including notice and an opportunity to be heard. Manuel v. FSM, 19 FSM R. 382, 390 (Pon. 2014).

The Public Service System Act is designed to further the public interest in hiring the most qualified employees, and the public and the government are the losers and public policy is violated when the public service system procedures, which are designed to obtain the best qualified public employees, are not followed. FSM v. Halbert, 20 FSM R. 42, 47 (Pon. 2015).

As the managing official under 52 F.S.M.C. 135(1), the Secretary has the discretion to ask the Personnel Officer to certify a new eligible list if the current list has no one that is "available or acceptable," and a letter, in which the Secretary stated that, as a result of the interviews, no one was found to be suitable for the position, fulfills the requirement that the list be rejected in writing, but if the Personnel Officer finds the reasons for rejection inadequate, the same list will be returned and an appointment made from the list. Panuelo v. FSM, 20 FSM R. 62, 67 (Pon. 2015).

Because no one shall report to work nor receive a salary unless that person has been previously certified on an appropriate eligible list by the Personnel Officer or his authorized representative, and selected by a Department or agency head, an applicant is not entitled to declaratory relief that he should be hired when, although he was placed on the eligible list, the Secretary, as the result of interviews, found, in writing, no one was available or acceptable and the Personnel Officer did not find the Secretary's reasons inadequate and return the list. Panuelo v. FSM, 20 FSM R. 62, 67-68 (Pon. 2015).

Since the full rights of continued employment only vest upon appointment, when an applicant was not selected from the certified list, was never appointed to the position he applied for, and no agreement for employment was entered into between the parties, he was never a public employee, and therefore his due process rights never vested. Panuelo v. FSM, 20 FSM R. 62, 68 (Pon. 2015).

Because specific performance is a remedy in equity under contract law, an applicant's claim for specific performance is unenforceable when no valid agreement exists between the applicant and the government since, for the court to order the Secretary to hire the applicant based on an invalid contract, through specific performance, would be unlawful and a violation of public policy. Panuelo v. FSM, 20 FSM R. 62, 69 (Pon. 2015).

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

The National Public Service System Act created a system of personnel administration based on merit principles and accepted personnel methods governing the classification of positions and the employment, conduct, movement, and separation of public officers and employees. Eperiam v. FSM, 20 FSM R. 351, 354 (Pon. 2016).

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

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

A permanent employee is an employee who has been appointed to a position in the public service who has successfully completed a probation period. Eperiam v. FSM, 20 FSM R. 351, 355 n.2 (Pon. 2016).

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

Every new employee must successfully serve a probation period before becoming a regular employee, and the Public Service System Regulations require that the probationary period last at least six months and that it can be extended to up to one year. Alexander v. Hainrick, 20 FSM R. 377, 379 (App. 2016).

A Presidential administrative order about vehicle use cannot be applied to the Public Auditor because, under the Constitution, the Public Auditor is independent of administrative control. Alexander v. Hainrick, 20 FSM R. 377, 382 (App. 2016).

When a person's employment is established pursuant to shipping articles, which is a contract between the FSM national government and seamen, it is unlike employment positions protected under the Public Service System, since there is no continued expectation of employment because the shipping articles have a one-year duration, and may be renewed upon expiration. Gilmete v. Peckalibe, 20 FSM R. 444, 450 (Pon. 2016).

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

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

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

Government employment that is property within the meaning of the due process clause cannot be taken without due process. To be property protected under the FSM Constitution, there must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. These assurances may come from various sources, such as statute, formal contract, or actions of a supervisory person with authority to establish terms of employment. Linter v. FSM, 20 FSM R. 553, 558 (Pon. 2016).

Although a governmental entity's breach of contract, without more, does not constitute a civil rights or due process violation, a person who has been employed for twelve years under a series of one year contracts could prove that by that length of employment, there was an unwritten claim to continued employment. Linter v. FSM, 20 FSM R. 553, 558 (Pon. 2016).

When the executive branch was substantially responsible for conducting administrative tasks in relation to the plaintiffs' employment as well as assigning work to them; when the person with the power to renew and approve their contracts was the allottee, the FSM President, who designated a sub-allottee; when the past contracts were also signed by the FSM Attorney General and for each of the plaintiffs' past periods of employment were prepared by procuring a form from the Attorney General's office and working with the suballottee's employees to complete, after which the FSM Attorney General and the suballottee would sign them; when no one in Congress ever signed any of the plaintiffs' contracts; and when the completed time sheets were submitted, reviewed and approved and signed by the suballottee and forwarded to the Department of Finance for disbursement of wages, the preponderance of the evidence supports the conclusion that the plaintiffs were executive branch employees. There was substantial evidence to confirm that the plaintiffs were performing work to execute the laws passed by Congress by implementation of public projects. That is to say that the plaintiffs' work was executive in nature. Linter v. FSM, 20 FSM R. 553, 560 (Pon. 2016).

The "office" of First Lady is not a constitutional office. Nor is it an office created by statute. It is not an office for which a writ of quo warranto will lie to determine the right to hold the office. It is a title that is, or has been, customarily bestowed on or used to honor the President's wife, who is then expected to perform varied social and diplomatic functions on the President's or the nation's behalf. But the person acting as the First Lady would not necessarily be the President's wife. Panuelo v. FSM, 22 FSM R. 498, 512-13 (Pon. 2020).

Public officials are generally entitled to qualified official immunity so that government officials who are performing their official duties are generally shielded from civil damages. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 630-31 (Pon. 2020).

The objective test to determine whether public officials are shielded from liability for damages is that government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 631 (Pon. 2020).

More than bare allegations of malice are required to deny public officials' qualified immunity for acts conducted in the course of official duties. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 631 n.4 (Pon. 2020).

A government official is not personally liable when the official was not in a situation where the official could be expected to know that certain conduct would violate statutory or constitutional rights or when the tone or content of the official's letters to the plaintiff was not threatening and there was no evidence that the motive for these letters was personal vengeance. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 632 (Pon. 2020).

– Chuuk

Courts may not speculate as to the powers and duties of the office of the Attorney General, but must look to the wording of the relevant law, and further, may not speculate as to the probable intent of the legislature apart from the words. Truk v. Robi, 3 FSM R. 556, 562 (Truk S. Ct. App. 1988).

The Truk Attorney General represents the government in legal actions and is given the statutory

authority pursuant to TSL 5-32 to conduct and control the proceedings on behalf of the government and, in absence of explicit legislative or constitutional expression to the contrary, possesses complete dominion over litigation including power to settle the case in which he properly appears in the interest of the state. Truk v. Robi, 3 FSM R. 556, 561-63 (Truk S. Ct. App. 1988).

Under Rule 1.11 of the Truk State Code of Professional Responsibility, a lawyer may not represent a private client in connection with a matter in which the lawyer participated "personally and substantially" as a public officer or employee, unless the appropriate government agency consents after consultation. Nakayama v. Truk, 3 FSM R. 565, 570 (Truk S. Ct. Tr. 1987).

For purposes of Rule 1.11, an attorney who, as a government attorney, signs his name to a lease agreement, approving the lease "as to form," is personally and substantially involved. Nakayama v. Truk, 3 FSM R. 565, 571 (Truk S. Ct. Tr. 1987).

An attorney holding public office should avoid all conduct which might lead the layman to conclude that the attorney is utilizing his former public position to further his subsequent professional success in private practice. Nakayama v. Truk, 3 FSM R. 565, 572 (Truk S. Ct. Tr. 1987).

The Governor, as all public officials, occupies a fiduciary relationship to the state he serves, may not use his official power to further his own interest, and shall cooperate with any legislative investigating committee. In re Legislative Subpoena, 7 FSM R. 261, 266 (Chk. S. Ct. Tr. 1995).

It is unreasonable for a public official, required by law to cooperate with legislative investigating committees, to have an expectation of privacy in matters that are linked to his performance in office, and it is unreasonable for a public official, such as the Governor, who is a trustee of the state's finances and who owes a fiduciary duty to the state to expect that his personal finances will be kept private if there is some reason to believe he has violated his trust. In re Legislative Subpoena, 7 FSM R. 261, 267 (Chk. S. Ct. Tr. 1995).

All citizens generally have the duty to, and state officials are obligated by statute to, cooperate with legislative investigations. These obligations of citizenship and public office are linked with the assumption that the legislature will respect individuals' constitutional rights, including the right of privacy. In re Legislative Subpoena, 7 FSM R. 328, 333-34 (Chk. S. Ct. App. 1995).

All Chuuk public officers are statutorily required to cooperate with legislative investigations, but an officer being tried in the Senate on a case of impeachment after the House of Representatives has voted a bill of impeachment is no longer required to cooperate. In re Legislative Subpoena, 7 FSM R. 328, 336 (Chk. S. Ct. App. 1995).

A commitment in a personnel action form for permanent employment without the existence of an appropriation to fund such a position violates the Truk Financial Management Act. Hauk v. Terravecchia, 8 FSM R. 394, 396 (Chk. 1998).

Granting of permanent employment without advertisement, examination (if required) and the preparation of a eligible list by the Personnel Officer violates the Truk State Public Service System Act. Hauk v. Terravecchia, 8 FSM R. 394, 396 (Chk. 1998).

Principles of contract are inapplicable to employment cases when the proper issue is whether plaintiff has shown a legal entitlement to permanent employment under the Truk State Public Service System Act. Hauk v. Terravecchia, 8 FSM R. 394, 396 (Chk. 1998).

The regulations provide in part that overtime must be requested by the immediate supervisor and approved by his superior or the department head. Osi v. Chuuk, 8 FSM R. 565, 566 (Chk. S. Ct. Tr. 1998).

Government employees who worked overtime during inaugural ceremonies are not entitled to recovery when there is no convincing evidence that they were directed to work overtime by the proper authority such as would entitle them to overtime pay. Osi v. Chuuk, 8 FSM R. 565, 566 (Chk. S. Ct. Tr. 1998).

Overtime voluntarily performed is not compensable. Osi v. Chuuk, 8 FSM R. 565, 566 (Chk. S. Ct. Tr. 1998).

The Governor of Chuuk has no constitutional or statutory power or authority to appoint an acting Executive Director of the Board of Education or head of the Education Department other than as provided for in section 4, article X, Chuuk Constitution and that any other appointment to that position is void. Welle v. Walter, 8 FSM R. 572, 573-74 (Chk. S. Ct. Tr. 1998).

Only the lawful Director or Head of Education is entitled to all the rights, powers, privileges and emoluments thereof, including the benefits of office. Welle v. Walter, 8 FSM R. 572, 574 (Chk. S. Ct. Tr. 1998).

The Chuuk Attorney General has no duty to act on a successful plaintiff's behalf in collecting the plaintiff's judgment against the state. Judah v. Chuuk, 9 FSM R. 41, 41-42 (Chk. S. Ct. Tr. 1999).

A public employee who explained that he would be absent because he contested the demotion, was not absent without explanation as required by the Public Service regulations and statute for abandonment of his job. Marar v. Chuuk, 9 FSM R. 313, 315 (Chk. 2000).

It is beyond the power of the Legislature to enact a law to prohibit government employees from becoming candidates for legislative service. Olap v. Chuuk State Election Comm'n, 9 FSM R. 531, 534 (Chk. S. Ct. Tr. 2000).

The prevailing rule is that when the Constitution provides no direct authority to establish qualifications for office in excess of those imposed by the Constitution, such qualifications were unconstitutional by their very terms and under equal protection, due process, and freedom of speech and assembly. Lokopwe v. Walter, 10 FSM R. 303, 306 (Chk. S. Ct. Tr. 2001).

A governor has only a delegated power and a limited sphere of action, and the Chuuk Constitution does not give the Governor the power to add qualifications, that a person must not be a state employee, to be a candidate for a seat in the Chuuk Legislature. Lokopwe v. Walter, 10 FSM R. 303, 307 (Chk. S. Ct. Tr. 2001).

A person entering upon a public office is generally required to qualify by performing all the steps customarily or legally required to hold the office. This includes the taking of an oath of office and attendance upon the duties of the office. Songeni v. Fanapanges Municipality, 10 FSM R. 308, 309 (Chk. S. Ct. Tr. 2001).

When the plaintiffs have never qualified for the public office for which they seek compensation, their case will be dismissed. Songeni v. Fanapanges Municipality, 10 FSM R. 308, 309 (Chk. S. Ct. Tr. 2001).

When the state has not paid plaintiff employees as mandated by its state law and has alleged as affirmative defenses that a supervening cause prevented performance and that funds intended to pay lapsed, frustrating performance, these are defenses of payment, not liability, and the plaintiffs are entitled to judgment as a matter of law, the liability or obligation resting on the public law of the defendant state itself with the affirmative defenses being inadequate as a matter of law as to liability. Saret v. Chuuk, 10 FSM R. 320, 322-23 (Chk. 2001).

Since the Oneisomw municipal constitution provides for succession in the event of a mayor's death or disability, that document, not Article VI, § 1, nor Article XIII, § 1 of the Chuuk Constitution, governs

succession to the position of Mayor of Oneisomw upon the mayor's passing. In re Oneisomw Election, 11 FSM R. 89, 92 (Chk. S. Ct. Tr. 2002).

Neither Article VI, § 1, nor Article XIII, § 1 of the Chuuk Constitution provides authority to the Governor to appoint any person to any municipal office. Absent any state law authorizing the Governor to so act, he is without power to affect municipal political offices in any manner. In re Oneisomw Election, 11 FSM R. 89, 92 (Chk. S. Ct. Tr. 2002).

Under Article XIII, § 5 of the Chuuk Constitution, if rules of succession to the office of municipal mayor in the event of the mayor's death or disability are to be found anywhere, they are to be found in the municipality's constitution and laws. In re Oneisomw Election, 11 FSM R. 89, 92 (Chk. S. Ct. Tr. 2002).

The Governor cannot interfere with the political rights of a municipality's people by appointing a mayor when the municipal constitution has provided for the orderly succession of an elected official to that office. Such an appointment is void. In re Oneisomw Election, 11 FSM R. 89, 93 (Chk. S. Ct. Tr. 2002).

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

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

Neither the Legislature, nor the Governor, may add qualifications for public office beyond those qualifications provided in the Chuuk Constitution. It matters not whether the employee in question is an "exempt" employee, or one covered by the Public Service Act. All government employees, with the express exception of the Governor's principal officers and advisors (who serve at the Governor's pleasure), are protected in their political activities from the Governor's interference with their employment. Tomy v. Walter, 12 FSM R. 266, 271 (Chk. S. Ct. Tr. 2003).

A plaintiff, who failed to prove monetary damages, is still entitled to a permanent injunction, against the Governor, the Director of Personnel, the Director of Budget, and any designee acting on their behalf or in their stead, permanently enjoining them from interfering in any way or manner with plaintiff's lawful exercise of all of the duties, obligations and responsibilities of his office. Tomy v. Walter, 12 FSM R. 266, 273 (Chk. S. Ct. Tr. 2003).

Statutes clearly prohibit Chuuk state employees from engaging in any outside employment not compatible with the discharge of the employee's duties to the state. Hartman v. Chuuk, 12 FSM R. 388, 396 (Chk. S. Ct. Tr. 2004).

Under the Reorganization Act, gubernatorial nomination and senatorial advice and consent is required for principal officers or directors, deputy directors, principal advisors, and other officials in positions requiring such advice and consent as prescribed by statute. Chiefs (division heads) are not designated as officials subject to senatorial advice and consent, although the Legislature could easily have included all (or some) of them, if it so desired. Robert v. Simina, 14 FSM R. 257, 260 (Chk. 2006).

Considering the provisions making chiefs out of former department or office heads division heads against the entire reorganization act's background to arrive at an interpretation consistent with the act's other provisions and with its general design, the court can only conclude that the Legislature's intent when it reorganized the executive branch was that none of the positions designated as chiefs were principal officers

or were subject to senatorial advice and consent. Robert v. Simina, 14 FSM R. 257, 260 (Chk. 2006).

The Chuuk personnel regulations permit the hiring of person through non-competitive examinations when the positions require rare or special qualifications which did not permit competition. Robert v. Simina, 14 FSM R. 257, 261 (Chk. 2006).

When the affidavit of the former Chief of the Division of the Personnel was conclusory and potentially self-serving affidavit since his employment situation and termination is the same as the plaintiffs' and when it averred that the plaintiffs were hired in their public service system positions as chiefs without the usual competitive examination because they were the only persons qualified for their jobs and that their positions required rare or special qualifications which did not permit competition and when there is no evidence presented that a non-competitive examination of any of the plaintiffs was ever held, the affidavit is thus insufficient to show that there is no genuine issue of material fact that, after the reorganization statute had abolished their former positions that the plaintiffs were lawfully hired to fill the new public service positions. Robert v. Simina, 14 FSM R. 257, 261 (Chk. 2006).

The public and the state are the losers and public policy is violated when the public service system procedures, which are designed to obtain the best qualified public employees, are not followed. Robert v. Simina, 14 FSM R. 438, 445 (Chk. 2006).

The applicable employment taxes should be deducted from a back pay award and paid to social security and the national government as required by law. Kimeuo v. Simina, 15 FSM R. 664, 667 (Chk. 2008).

In order to be eligible to be paid sick leave, an employee must be ill. The employee will not be paid sick leave when he was not sick. When a plaintiff was not sick when he was wrongfully terminated, he is not entitled to any sick leave. Kimeuo v. Simina, 15 FSM R. 664, 667 (Chk. 2008).

The purpose of a personnel action form is to implement government policies and regulations as well as contractual arrangements. The personnel action form reflects and implements rights derived from other sources. It does not independently establish rights. Billimon v. Refit, 16 FSM R. 209, 212 (Chk. 2008).

Government employment contracts contain the terms of employment, regardless of what is contained in the corresponding personnel action form. In other words, the contract speaks for itself, and the personnel action form cannot be used to modify the terms of the contract. Billimon v. Refit, 16 FSM R. 209, 212 (Chk. 2008).

A personnel action form cannot modify the terms of a person's employment to make him a permanent employee if his position was an exempt or contract employee and he had not gone through the proper statutory procedures to become a permanent employee under the Truk State Public Service System Act. Billimon v. Refit, 16 FSM R. 209, 212 (Chk. 2008).

A state employee who has been hired to fill a "permanent" position, must first successfully serve a probationary period. Billimon v. Refit, 16 FSM R. 209, 212 (Chk. 2008).

Any "permanent" designation in a new hire's first personnel action form is suspect because it, if the person were hired for a position covered by the Truk Public Service System, should designate his status as probationary, with a later personnel action form changing his status from probationary to permanent. Billimon v. Refit, 16 FSM R. 209, 212 (Chk. 2008).

The Truk Public Service System Act requires that its covered employees be paid a differential for work performed at night, on holidays, or for overtime. Weriey v. Chuuk, 16 FSM R. 329, 331 (Chk. 2009).

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

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

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

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

The Chuuk Constitution only requires that legislation changing the transitional salaries take effect after the general election. Doone v. Simina, 16 FSM R. 487, 489 n.1 (Chk. S. Ct. Tr. 2009).

The Constitution set the transitional salaries of the Governor ($25,000) and Lieutenant Governor ($22,000). The transitional salaries were to remain in effect until after the first general election in March of 1990. Then, new salaries could be statutorily prescribed. Under the new Constitution, salaries of the presiding members of the Legislature, Governor and Lieutenant Governor could only be increased by voter referendum and only by an amount not to exceed $2,000 for each officer. Doone v. Simina, 16 FSM R. 487, 490 (Chk. S. Ct. Tr. 2009).

Constitutional, statutory, and regulatory provisions determine a public officer's right to a given salary. A public officer may only collect and retain such compensation as authorized by law. Doone v. Simina, 16 FSM R. 487, 490 (Chk. S. Ct. Tr. 2009).

Statutes setting salaries of public officials, like any other statutes, are presumed constitutional, and it is the court's duty to determine whether statutes conform to the Constitution, and if they do not, they will be treated as null and void. Doone v. Simina, 16 FSM R. 487, 490 (Chk. S. Ct. Tr. 2009).

The Chuuk Legislature was constitutionally authorized to initially set post-transitional salaries without a voter referendum. Doone v. Simina, 16 FSM R. 487, 491 (Chk. S. Ct. Tr. 2009).

The salaries of the governor and lieutenant governor were set by Chuuk Constitution article XV, section 10 during the transition period, and those salaries were only effective, according to that provision, until

prescribed by statute. Doone v. Simina, 16 FSM R. 487, 491 (Chk. S. Ct. Tr. 2009).

As with the salaries of legislative member salaries, the salaries of the governor and lieutenant governor were only subject to the referendum provision once they had been initially set from the transitional salaries and since Chk. S.L. No. 6-91 was the first law under the new government to set the salaries of the governor and lieutenant governor, Chk. S.L. No. 6-91 validly set the salaries of the governor and lieutenant governor. Doone v. Simina, 16 FSM R. 487, 491 (Chk. S. Ct. Tr. 2009).

The court can find no provision in the public service system regulations that precludes a former state public service system employee from pursuing a grievance that arose during the state employee's period of employment through the public service system administrative grievance procedure even though the aggrieved party is no longer a public service system employee. Indeed, if the grievance involved termination, the regulations specifically provide for it. Aake v. Mori, 16 FSM R. 607, 609 (Chk. 2009).

It would seem incongruous, if a public service system employee could avoid the administrative grievance procedure and have an immediate right to resort to court action merely by retiring, resigning, or otherwise leaving public service system employment (especially if a grievance were pending at the time the employee left the public service system). A former state employee may still pursue a grievance through the public service system administrative procedure if the grievance arose while the former employee was a member of the public service system. Aake v. Mori, 16 FSM R. 607, 609 (Chk. 2009).

A position is either filled by a person identified on an eligibility list or a promotional list and the requirements for filling a position depend on the list. No requirement exists in the Chuuk Public Service System Act that an individual slated for promotion need to submit to an examination or that the position to which he or she is promoted be advertised. Simina v. Kimeuo, 16 FSM R. 616, 621, 623 (App. 2009).

Once an employee of the Public Service System reaches the age of sixty years, he must retire from the Public Service within thirty days. Simina v. Kimeuo, 16 FSM R. 616, 622 (App. 2009).

The Chuuk Board of Education has eight members who are appointed by the Governor with the advice and consent of the Senate. The Education Department head, who is also appointed by the Governor with the advice and consent of the Senate, serves as the Board's executive director. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 60 (Chk. S. Ct. Tr. 2010).

A vacancy on the Board of Education occurs when a member dies; resigns; is removed from the Board; has been incapacitated or disabled; or becomes a Department of Education employee or staff, except the member who represents the public school system, and, if there is a vacancy, the Governor appoints a replacement member who serves for the duration of the departed member's term. The vacancy provision's plain meaning is that temporary appointments are only be made when a vacancy occurs for one of the enumerated reasons; otherwise, an incumbent's term must expire and a new appointee must first be confirmed by the Senate before the new incumbent can sit on the Board. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 61 (Chk. S. Ct. Tr. 2010).

The Director's responsibilities to the Board of Education include duties and functions as assigned by the Board, attendance at Board meetings, and providing logistical and administrative needs to the Board and other needs as declared by the Board, and the Board is the only authority that may remove the Director, which is by a majority vote of all Board members for misconduct, incompetency, neglect of duty, or other good cause. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 61 (Chk. S. Ct. Tr. 2010).

Since the expiration of a board member's term is not one of the enumerated occurrences giving rise to a vacancy, it follows that during any interim after the expiration of the incumbent's term and the confirmation of a new appointment, no vacancy is created. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 61 (Chk. S. Ct. Tr. 2010).

The Board of Education Act should be read so that its provisions are internally consistent and sensible and each provision should be considered against the entire Act's background so as to arrive at a reasonable interpretation consistent with other specific provisions and the Act's general design. Since the Board's statutorily-mandated purpose is to provide control and direction and to formulate policy for the Chuuk educational system, if the Act were construed so as to render the Board unable to perform its duties each time members' terms expired without replacements having been confirmed, the Board's ability to discharge its duties would be severely handicapped and its purpose to act towards the betterment of education in Chuuk would be undermined and since the Act contemplates an independent board with the power to perform its functions without interruption, construing the provisions for filling vacancies and appointments, and taking into account the Board's statutory purpose and the Act's overall intent, holdover incumbents continue to hold their seat until there are new incumbents. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 61 (Chk. S. Ct. Tr. 2010).

When no provision is made by law for an official's holdover, the official is regarded as a de facto official. A holdover official's de facto authority ends when the office is filled by appointment or election, as provided by law. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 62 (Chk. S. Ct. Tr. 2010).

A de facto officer is one who is in possession of an office, and discharging its duties, under color of authority. In the context of incumbent de facto officials, "under color of authority" means authority derived from an election or appointment, however irregular or informal, so that the incumbent is not a mere volunteer. The principle of de facto authority is based on the public's interest in having a safeguard against unnecessary interruption of public governance. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 62 (Chk. S. Ct. Tr. 2010).

The generally applied rule is that where a term of office is fixed by law simply for a period of time and no particular date is established for the beginning or ending of the term, each incumbent takes a term running from the date of his appointment equal in duration to the period of time fixed; and a new term does not begin at the end of the preceding term but only when the new incumbent is appointed, or holdover incumbent is reappointed. Thus, in the absence of a constitution or statue providing otherwise, an officer is entitled to hold his office until his successor is appointed or elected and has qualified. In this context, the term "holding over" when applied to an officer, implies that the office has a fixed term and the incumbent is holding the office into the succeeding term. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 62 (Chk. S. Ct. Tr. 2010).

The de facto doctrine is applied even in cases of executive branch officials so long as it is not otherwise expressly, or by clear implication, prohibited by law. The reasons for the application of the de facto doctrine to independent board members appears to be even stronger than other executive branch officials, since they are statutorily mandated to exercise their duties and powers independently. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 62 (Chk. S. Ct. Tr. 2010).

In instances where there is no FSM precedent, the court may consider cases from other jurisdictions in the common law tradition. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 62 n.2 (Chk. S. Ct. Tr. 2010).

What is clear from the Board of Education Act is that a term's expiration does not create a vacancy and, other than the confirmation of new members, there is otherwise no provision that would allow the Board to proceed uninterrupted after the expiration of board member terms and since the Act does not set a fixed date for the beginning and ending of Board member terms but only for staggered five year terms and because the underlying public policy for the application of the de facto doctrine is especially applicable when the Board of Education's purpose is to provide uninterrupted educational services to the Chuuk public, a holdover incumbent Board member exercises de facto authority until there is a new incumbent. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 63 (Chk. S. Ct. Tr. 2010).

Board members were due compensation and benefits while they continued discharging their duties as holdover members. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 63 (Chk. S. Ct. Tr. 2010).

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

Since, by statute, a governor must send a nomination to the Senate within 45 days of a vacancy in an office requiring the Senate's advice and consent and since a resignation is an act or an instance of surrendering or relinquishing of an office or a formal notification of relinquishing an office or position, when cabinet officers and special assistants have submitted "courtesy resignations," those offices are vacant and new nominations (or renominations) must be submitted. The court cannot discern any difference (in result) between a "courtesy resignation" and a resignation for other reasons since a resignation is a resignation. Senate v. Elimo, 18 FSM R. 137, 140 (Chk. S. Ct. Tr. 2012).

A state employee's speech that concerns genuine public issues is protected speech. Tither v. Marar, 18 FSM R. 303, 306 (Chk. 2012).

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

– Chuuk – Termination

While the principal officers and advisors serve during the current term of the appointing Governor unless sooner removed by the Governor, the dismissal of non-policy making employees from public employment solely on the ground of political affiliation is not permissible. Lokopwe v. Walter, 10 FSM R. 303, 306 (Chk. S. Ct. Tr. 2001).

The executive policy requiring resignation before running for a seat in the Chuuk Legislature adds a qualification prohibited by the Chuuk Constitution and is void, and therefore, the plaintiffs' forced resignation pursuant to the Governor's Executive Order or policy is unconstitutional and beyond his power. Lokopwe v. Walter, 10 FSM R. 303, 306 (Chk. S. Ct. Tr. 2001).

A public employer may not discharge either a tenured or a non-tenured employee for the reasonable exercise of constitutional rights such as freedom of speech. Lokopwe v. Walter, 10 FSM R. 303, 306 (Chk. S. Ct. Tr. 2001).

Termination resulting from the decision of any government employee (other than a "principal officer" or "advisor") to run for public office violates that employee's free speech and association rights as guaranteed by the Chuuk Constitution, as well as depriving the employee of a property interest (his right to continued employment) without due process of law. Tomy v. Walter, 12 FSM R. 266, 271-72 (Chk. S. Ct. Tr. 2003).

When plaintiffs sue the state for wrongful termination, the proper issue is whether the plaintiffs have shown a legal entitlement to permanent employment under the Truk State Public Service System Act. But when none of the proper procedures were followed to hire any of the plaintiffs before (or after) the Governor appointed them to fill the permanent chief positions; when no competitive process was involved when the plaintiffs became chiefs, none of the plaintiffs have shown a legal entitlement to permanent employment under the Truk State Public Service System Act. Robert v. Simina, 14 FSM R. 438, 442 (Chk. 2006).

The Truk Public Service System Regulation that allows persons whose public service system positions have been abolished by a reduction in force to be reassigned, without the loss of permanent status, to another vacant public service position for which they are qualified applies only to persons who held permanent public service system positions before their positions were abolished. It does not apply to political appointees whose exempt advice-and-consent positions are abolished by the Legislature. Robert v. Simina, 14 FSM R. 438, 443 (Chk. 2006).

Even when a reduction in force of the public service system is necessary, a competitive process is mandated to assure equitable competition, recognition of merit, and the public interest. Robert v. Simina, 14 FSM R. 438, 443 (Chk. 2006).

When, even though discharged state employees held their position without legal entitlement, they are entitled to compensation for any work done for which they were not paid. Robert v. Simina, 14 FSM R. 438, 443 (Chk. 2006).

An employee of a state or local government who is discharged in violation of the civil rights statutes has a duty to actively look for and accept any reasonable offer of employment, otherwise back pay damages cannot be awarded. Robert v. Simina, 14 FSM R. 438, 443 (Chk. 2006).

When an employer has unlawfully discharged an employee in violation of his civil rights and the former employee obtains alternative employment, in calculating damages, the income from the alternative employment will be deducted from the back pay owed to the employee, since otherwise the plaintiff could recover a windfall, which would violate the principles of compensatory damages. Robert v. Simina, 14 FSM R. 438, 443 (Chk. 2006).

In order to recover compensatory damages, the plaintiffs must prove actual injury from the civil rights deprivation. When, if proper procedure had been followed, the plaintiffs still would have been terminated from their positions, there is no actual injury to compensate with back pay or other benefits. Nominal damages may, however, be awarded for the deprivation of the important right to procedural due process. Robert v. Simina, 14 FSM R. 438, 444 (Chk. 2006).

There is no authority, precedent, or principle of law that would require the state to obtain judicial approval before terminating an employee. Robert v. Simina, 14 FSM R. 438, 445 (Chk. 2006).

When plaintiffs sue the state for wrongful termination, the proper issue is whether the plaintiffs have shown a legal entitlement to permanent employment under the Truk State Public Service System Act. Kimeuo v. Simina, 15 FSM R. 664, 666 (Chk. 2008).

Reinstatement to his former position and back pay to the date of his termination to the date he is reinstated are remedies generally available to an employee who has shown wrongful discharge with the amount awarded in back pay reduced to the extent the plaintiff has mitigated his damages by securing other employment. But the court cannot reinstate a terminated employee in his former position when he is past the mandatory retirement age. It can only award him back pay for time before his retirement date, and any income through alternative employment that was received for employment after he would have had to retire from his Public Service System employment will not be used to reduce the back pay award. Kimeuo v. Simina, 15 FSM R. 664, 666 (Chk. 2008).

When no evidence was introduced at trial of how much, if any, unused annual leave the plaintiff had accrued before he was wrongfully terminated, the court cannot make an award for unused accrued annual leave. Kimeuo v. Simina, 15 FSM R. 664, 667 (Chk. 2008).

When, in a wrongful termination case, no evidence of physical pain or a physical manifestation of suffering was introduced, no damages can be awarded for pain and suffering because the rule is well settled that to award damages for pain and suffering, such must be the result of physical injury or of a

physical manifestation of emotional distress. Kimeuo v. Simina, 15 FSM R. 664, 667 (Chk. 2008).

When a plaintiff sues the State of Chuuk (and its officers) for wrongful termination, the proper issue is whether the plaintiff has shown a legal entitlement to permanent employment under the Truk State Public Service System Act. But when the proper statutory procedures were not followed to hire the plaintiff as a "permanent" employee, the plaintiff has not shown a legal entitlement to permanent employment under the Truk State Public Service System Act. Billimon v. Refit, 16 FSM R. 209, 211 (Chk. 2008).

Since the State Public Service System applies to all state government employees unless the employee is exempt, when a state employee's position as a division chief was a lawful non-exempt position under the Executive Branch Organization Act, the proper issue for consideration regarding a wrongful termination matter is whether the plaintiff had a legal entitlement to permanent employment under the Public Service System Act. Simina v. Kimeuo, 16 FSM R. 616, 620-21 (App. 2009).

Removal of a Public Service System employee is a disciplinary action or termination and the employee must be given at least five work days advance written notice before removal. The action taken must be for good and justifiable cause and must be appropriate to the infraction, if there was one. The employee must also be informed of his appeal rights. Simina v. Kimeuo, 16 FSM R. 616, 622, 623-24 (App. 2009).

When the state employee was not given the required five business days' notice concerning removal/dismissal from permanent employment but was notified that effective immediately he was dismissed and replaced pursuant to an Executive Order and was not given notice of his appeal rights, this did not comply with the protections afforded a Public Service System classified employee and he was thus not afforded due process of law and was thus wrongfully terminated. Simina v. Kimeuo, 16 FSM R. 616, 622 (App. 2009).

A Public Service System classified employee has a legal entitlement to permanent employment under the Public Service System Act and should be afforded due process rights not available to an exempt political appointee. Termination of an exempt political appointee and non-exempt Public Service System employee are not handled the same way. Simina v. Kimeuo, 16 FSM R. 616, 623 (App. 2009).

Redress for a wrongfully-terminated state employee would include reinstatement and back pay, except when the former employee could not be reinstated due the Public Service System Act's mandatory retirement policy. But the former employee could be awarded back pay if he had mitigated his damages. Simina v. Kimeuo, 16 FSM R. 616, 624 (App. 2009).

Being forced to resign a Chuuk public service system job on December 2, 2002, because the employee was going to run for a seat in the Chuuk House of Representatives, was, as a matter of law, illegal because the statute and regulations requiring such resignations had already been held unconstitutional. Dungawin v. Simina, 17 FSM R. 51, 53 (Chk. 2010).

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

The applicable limitations period for a wrongful termination suit against the State of Chuuk is six years (subject to statutory tolling provisions). Dungawin v. Simina, 17 FSM R. 51, 54 (Chk. 2010).

Even if the Board of Education had the authority to terminate the Director, the Board was still required to adhere to appropriate procedures and requirements for the termination to be effective. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 63 (Chk. S. Ct. Tr. 2010).

The remedies generally available to a state public service system employee who has shown that he was wrongfully discharged are reinstatement to his former position and back pay to the date of his

termination. Sandy v. Mori, 17 FSM R. 92, 94 (Chk. 2010).

A wrongfully discharged government employee has a duty to mitigate his damages by actively looking for and accepting any reasonable offer of employment; otherwise back pay damages cannot be awarded. If the former government employee obtains other employment, the amount he is awarded in back pay must be reduced by the amount he mitigated his damages – by the amount he received from the other employment – since otherwise he could recover a windfall, which would violate the principles of compensatory damages. Sandy v. Mori, 17 FSM R. 92, 94 (Chk. 2010).

When the discharged employee has not presented any evidence about whether and where he sought employment during a certain time period, he has introduced no evidence of his efforts to mitigate his damages by attempting to secure a job during his periods of unemployment, and he is thus precluded from recovery of damages for those periods since it is the plaintiff's burden to prove every element of his case, including all of his damages. Sandy v. Mori, 17 FSM R. 92, 95 (Chk. 2010).

Back pay compensatory damages are the measure of compensatory damages for wrongful discharge. Compensation for an injury is not doubled just because the plaintiff has two different causes of action on which to base that recovery because only the injury itself is compensated. Sandy v. Mori, 17 FSM R. 92, 95-96 (Chk. 2010).

From awards of back pay damages the employer must deduct the applicable wage and salary taxes and social security taxes, which must then be remitted to the appropriate tax authorities. Sandy v. Mori, 17 FSM R. 92, 96 (Chk. 2010).

Reinstatement to his former position (or its equivalent) is the usual remedy for a state public service system employee who has shown that he was wrongfully discharged. This is true even though the former position has been filled by another employee since if the existence of a replacement constituted a complete defense against reinstatement, then reinstatement could be effectively blocked in every case simply by immediately hiring an innocent third-party after the unlawful discharge has occurred, thus rendering the reinstatement remedy's deterrent effect a nullity. Sandy v. Mori, 17 FSM R. 92, 96 (Chk. 2010).

Since the appropriateness of an equitable remedy of reinstatement is determined by current conditions rather than past conditions, the court may reinstate a wrongfully-discharged state employee provided that the former employee is ready, willing, and able to work and is ready for assignment. Sandy v. Mori, 17 FSM R. 92, 96 (Chk. 2010).

In a case alleging a retaliatory discharge, the plaintiff bears the burden to demonstrate that his conduct is both constitutionally protected and a substantial or motivating factor in his government employer's decision to discharge him. If the employee has met this burden, then the burden shifts to the employer to demonstrate that it would have taken the same action in the absence of the protected conduct. Tither v. Marar, 18 FSM R. 303, 306 (Chk. 2012).

A plaintiff has not met his burden to prove that his protected speech was a substantial or motivating factor in his termination when he was not terminated because he engaged in protected speech about a patient's treatment but his termination occurred many months later and after a much more substantial ground and the more likely motivating factor – his behavior during the USNS *Mercy* visit and because his work performance while a probationary employee was not up to the level of professionalism expected of a practical nurse as shown by the series of incidents of unprofessional conduct. Tither v. Marar, 18 FSM R. 303, 306 (Chk. 2012).

A plaintiff's termination or discharge was not unlawful when, even if he had been able to prove that his constitutionally-protected conduct had been a substantial or motivating factor in his termination and the burden had have shifted to the defendants, he still would not prevail because the defendants demonstrated that they would have taken the same action in the absence of the protected conduct because of his probationary status and his unsatisfactory and unprofessional conduct prevented him from being converted

from a probationary employee to a permanent employee and he would have been terminated anyway. Tither v. Marar, 18 FSM R. 303, 306 (Chk. 2012).

The Director of Education does not serve at the Board's, or the Governor's, pleasure. The Governor cannot remove the Director from office. Only the Board, by majority vote, can remove the Director, and then only for one or more of four reasons: misconduct, incompetency, neglect of duty, or other good cause. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 649 (Chk. S. Ct. Tr. 2015).

When at a minimum, the Education Director should have been given notice of the allegations and evidence on which the Board based its resolution to terminate her, and she should have been given an opportunity to respond or to explain her actions or omissions and to rebut any false allegations but was not, her likelihood of success on her due process claim seems almost certain because this is the essence of due process – notice and an opportunity to be heard. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 649 (Chk. S. Ct. Tr. 2015).

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

– Compensation

When an individual begins working for a federal government agency, he is justified in believing that he will be allowed to hold that position until terminated by a supervisor and in believing that he will be compensated for his work. Falcam v. FSM, 3 FSM R. 194, 198 (Pon. 1987).

An expectation of being paid for work already performed is a property interest qualifying for protection under the Due Process Clause of the FSM Constitution. Falcam v. FSM, 3 FSM R. 194, 200 (Pon. 1987).

Any withholding of private property, such as a government employee's paycheck, without a hearing can be justified only so long as it take the authorized payor to obtain a judicial determination as to the legality of the payment being withheld. Falcam v. FSM, 3 FSM R. 194, 200 (Pon. 1987).

The amount of compensation a public employee receives is not based on quasi-contract doctrines such as quantum meruit or unjust enrichment, but instead is set by law, even if the actual value of the services rendered by a public officer is greater than the compensation set by law. Sohl v. FSM, 4 FSM R. 186, 192 (Pon. 1990).

Public employees are only entitled to receive the benefits prescribed by law for positions to which they have been duly appointed, even if an officer or employee has performed duties or services above and beyond those of the appointed office. Sohl v. FSM, 4 FSM R. 186, 192 (Pon. 1990).

A public officer claiming certain compensation or other benefits must show a clear legal basis for his right to these emoluments; hopes and expectations, even reasonable ones, are not enough to create that legal entitlement, nor are any moral obligations which may be incurred, without clear warrant of law. Sohl v. FSM, 4 FSM R. 186, 193 (Pon. 1990).

The compensation of public officials in the FSM is not determined by a contract for specific services, express or implied, but by the judgment of the people, through their elected representatives and executive officials who properly exercise delegated power pursuant to statutory or other authorization; specifically, the FSM Constitution and statutes establish how a person may attain public office, and the National Public Service System Act and regulations thereunder set the compensation to be paid to holders of the respective

offices. Sohl v. FSM, 4 FSM R. 186, 194 (Pon. 1990).

Where a public official claims additional compensation, it is inappropriate to ask whether he received compensation equal to the value of his services to the public, but instead the court must inquire whether he received the amount that was due to him by law or whether he can demonstrate a clear legal entitlement to the office which would have provided the compensation he now seeks. Sohl v. FSM, 4 FSM R. 186, 194 (Pon. 1990).

A temporarily-promoted employee is compensated at the step in the new pay level which is next above his current pay, and the employee must be informed in advance and must agree in writing that at the end of the temporary promotion, he will be returned to the former salary (grade and step) that he would be receiving had he remained in his former position. No temporary promotion can exceed one year. Isaac v. Weilbacher, 8 FSM R. 326, 332 (Pon. 1998).

Every permanent and probationary employee is to receive an annual written rating of performance. Employees who receive "Satisfactory" or "Exceptional" ratings are eligible for step increases within their pay level. Employees who receive "Less than Satisfactory" ratings are not eligible. The absence of a performance evaluation gives rise to the presumption that the individual was performing at a "Less than Satisfactory" level. Pay and step increases are discretionary. Isaac v. Weilbacher, 8 FSM R. 326, 336-37 (Pon. 1998).

Because Congress has not explicitly made employment contracts which violate 11 F.S.M.C. 1305 unenforceable, the FSM Supreme Court may properly decide whether a contravention of public policy is grave enough to warrant unenforceabillty. FSM v. Falcam, 9 FSM R. 1, 4 (App. 1999).

When an employer has unlawfully discharged an employee in violation of his civil rights and the former employee obtains alternative employment, in calculating damages, the income from the alternative employment will be deducted from the back pay owed to the employee, since otherwise the plaintiff could recover a windfall, which would violate the principles of compensatory damages. Robert v. Simina, 14 FSM R. 438, 443 (Chk. 2006).

Under 52 F.S.M.C. 164(3),overtime is determined by a three-prong test: 1) the employee is directed to work; 2) the employee does work; and 3) the employee has first worked forty hours straight time in the same week and more than eight hours on any single day. "Directed to work," indicates that an employee cannot work overtime on his own initiative, but must be instructed to work or have received prior approval by a supervisor or government official. "Does work," indicates that overtime compensation only accrues when an employee worked outside regular working hours, in accordance with instructions or directions given by the supervising authority. And an employee cannot begin to accrue overtime hours until and unless the employee first worked a minimum of forty hours in a regularly scheduled workweek and more than eight hours on any single day worked. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 76 (Pon. 2013).

Sea vessels and aircraft arriving in the FSM must compensate the FSM Treasury for the actual costs of overtime that immigration officials accrue clearing sea vessels and aircraft into the FSM. These costs must be 1) associated with the arrival of sea vessels and aircraft into the FSM; 2) actual; 3) originate in the official duties of immigration officers carrying out Title 50's requirements; and 4) accrue outside immigration officers' normal working hours. "Actual hours worked" will always correlate with hours that have already been worked or performed and the FSM Treasurer will not be compensated for subjective or imputed work. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77 (Pon. 2013).

Reading 52 F.S.M.C. 164(3) and 50 F.S.M.C. 115, jointly in order to ensure that the FSM Treasurer is compensated for all actual overtime expenses, the cost of overtime compensation allotted to employees under § 164(3) must equal the compensation the treasury receives under the second part of § 115, and as the treasury is compensated only for actual hours worked, it is clear that the treasury may remunerate employees only for actual hours worked. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77 (Pon. 2013).

A calculation of actual hours worked may not include imputed hours because the meaning of the pertinent statutes regarding overtime is plain and unambiguous that overtime compensation will be allotted for actual hours worked only. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77 (Pon. 2013).

Because overtime is based on actual hours worked, the automatic two-hour credit provision under the regulations is inconsistent with the statute and is, therefore, null and void. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77 (Pon. 2013).

When Congress enacted unambiguous statutes it chose what the public policy is – that the FSM national government be paid in full for its expenses in clearing the ships and planes after hours and that those ships and planes pay for actual overtime work. Esiel v. FSM Dep't of Fin., 19 FSM R. 590, 594 (App. 2014).

When no one ever notified the plaintiffs that they must stop working in their respective positions or that they would not be paid for the work done from October 2014 to April 2015; when the government continued to assign them projects and retained the benefits conferred by their work, but did not compensate them for the work; when the plaintiffs never received notification from the government that their contracts had not or would not be renewed although the plaintiffs eventually became aware that the Project Control Documents that controlled their contracts were unsigned; when the government's consistent delay in renewing the contracts and disbursing wages was a common occurrence experienced by the plaintiffs during their previous years' contracts; and when the government continued to accept, approve, sign, and maintain the plaintiffs' submitted time sheets thereby implying assurances of forthcoming wages, the evidence, viewed in its entirety, presents a situation whereby the plaintiffs had a reasonable justified expectation to continued employment and, therefore, payment for those services rendered to the government's benefit between October 2014 and April 2015. Linter v. FSM, 20 FSM R. 553, 558 (Pon. 2016).

A government employee's pay is a form of property that a government cannot deprive the employee of without due process. Linter v. FSM, 20 FSM R. 553, 559 (Pon. 2016).

When the government has willingly deprived the plaintiffs of wages that they are entitled to without due process of law, it is civilly liable under 11 F.S.M.C. 701(3) for violating the plaintiffs' civil rights. Linter v. FSM, 20 FSM R. 553, 559 (Pon. 2016).

When the evidence shows that the plaintiffs did in fact perform work during the relevant time period and that the standard operating procedure for many years was to submit employee-created time sheets similar to those that the plaintiffs submitted and when the government concedes that, if there was a valid contract, the plaintiffs would have been paid based on the submission of the same time sheets, there is sufficient evidence to carry the plaintiffs' burden on damages. Linter v. FSM, 20 FSM R. 553, 562 (Pon. 2016).

– Impeachment

Although the Chuuk Constitution does subject members of the judiciary to removal from office by impeachment, the court need not decide if this is the sole method a judge may be removed from office because the issuance of a writ of mandamus is not a removal action. All the court did by issuing the writ is to require the judge to follow the applicable law and remove himself from office by resignation when he became a political candidate. In re Failure of Justice to Resign, 7 FSM R. 105, 110 (Chk. S. Ct. App. 1995).

The Chuuk House of Representatives possesses the sole authority and power to pass a Bill of Impeachment seeking to remove those state officials responsible for misfeasance or malfeasance. In re Legislative Subpoena, 7 FSM R. 261, 266 (Chk. S. Ct. Tr. 1995).

The Chuuk House of Representatives has no criminal prosecution function. It is limited to passing laws and under the proper circumstance bringing bills of impeachment, which are not criminal in nature. In re Legislative Subpoena, 7 FSM R. 261, 266 (Chk. S. Ct. Tr. 1995).

A committee of the legislative house constitutionally charged with the function of impeachment whose authorizing resolution empowered it to investigate the state's insolvency and the executive branch officers' misfeasance, malfeasance, or failure to carry out their duties and responsibilities, presented with evidence that the governor has illegal sources of income that may involve state funds is seeking relevant material related to its function when it seeks to subpoena the governor's bank records. In re Legislative Subpoena, 7 FSM R. 328, 333 (Chk. S. Ct. App. 1995).

All Chuuk public officers are statutorily required to cooperate with legislative investigations, but an officer being tried in the Senate on a case of impeachment after the House of Representatives has voted a bill of impeachment is no longer required to cooperate. In re Legislative Subpoena, 7 FSM R. 328, 336 (Chk. S. Ct. App. 1995).

A criminal information filed against a legislator who is the chairman of an impeachment committee while there is an article of impeachment currently being investigated will not be dismissed on the basis of a statute that provides criminal penalties for attempting to interfere with the impeachment process since the statute could not provide a blanket protection against prosecution for any member of an impeachment proceeding or it would lead to the absurd result that a member of an impeachment proceeding could commit any crime with impunity. Chuuk v. Robert, 15 FSM R. 419, 425 (Chk. S. Ct. Tr. 2007).

When an official has been impeached, a trial on criminal charges is not foreclosed by the principle of double jeopardy. Helgenberger v. U Mun. Court, 18 FSM R. 274, 279 (Pon. 2012).

Under ancient English practice, impeachment was a criminal proceeding to which "jeopardy of life or limb" attached; that is, anciently criminal punishment could be imposed in the impeachment proceeding but now a conviction on impeachment affects only the right to hold office and does not include criminal punishment or other public remedy. Helgenberger v. U Mun. Court, 18 FSM R. 274, 279 (Pon. 2012).

Under the practice in the FSM that has been inherited from the U.S., the extraordinary remedy by impeachment does not prevent an indictment and conviction thereunder, and does not extend beyond a removal from office and a disqualification to hold office. Helgenberger v. U Mun. Court, 18 FSM R. 274, 280 (Pon. 2012).

The remedy of impeachment has the single role of affecting only the right to hold office and is not intended to bar or delay another remedy for a public wrong. The other remedy is often a criminal prosecution. This is because the remedy of impeachment is not exclusive of any other public remedy for the same misbehavior, and if the cause for which the officer is punished is a public offense, he may also be indicted, tried, and punished. Helgenberger v. U Mun. Court, 18 FSM R. 274, 280 (Pon. 2012).

A single act of misconduct may offend the public interest in a number of areas and call for the appropriate remedy for each hurt. Thus it may require removal from office. It may also require criminal prosecution. Helgenberger v. U Mun. Court, 18 FSM R. 274, 280 (Pon. 2012).

Impeachment and removal from office is not criminal punishment under the FSM Constitution's double jeopardy clause. Helgenberger v. U Mun. Court, 18 FSM R. 274, 280 (Pon. 2012).

A government official's misconduct does not present a government with an irrevocable choice to either criminally prosecute the official or to impeach and try to remove that official from office. If the offending official has not resigned from office first, the government may do, and is usually expected to do, both. Helgenberger v. U Mun. Court, 18 FSM R. 274, 280 (Pon. 2012).

A former government official cannot claim he was subjected to double jeopardy because he was

convicted of public offenses and then impeached and removed from office for those same offenses. Nor could he have claimed double jeopardy if he had first been impeached and removed from office and then prosecuted for the same public offenses. Helgenberger v. U Mun. Court, 18 FSM R. 274, 280 (Pon. 2012).

Since, in a criminal case, a court is not constitutionally required to allow defense counsel to withdraw or to be replaced at a strategic moment in the proceedings, the right to counsel of an official who wanted to switch trial counsel before the end of his impeachment trial has not been violated even if that official had a constitutional right to counsel during his impeachment trial. Helgenberger v. U Mun. Court, 18 FSM R. 274, 281 (Pon. 2012).

While an impeachment conviction may not be appealable, a contempt conviction certainly is. Helgenberger v. U Mun. Court, 18 FSM R. 274, 282 n.6 (Pon. 2012).

Bills or resolutions of impeachment are not criminal in nature, and impeachment and removal from office is not criminal punishment. Rodriguez v. Ninth Pohnpei Legislature, 21 FSM R. 276, 279 (Pon. 2017).

While it may be true that, in two recent instances impeachment proceedings and criminal prosecutions were pursued consecutively rather than simultaneously, nothing requires that it be done that way. Simultaneous proceedings are not only probable, but sometimes expected or likely. Rodriguez v. Ninth Pohnpei Legislature, 21 FSM R. 276, 279 (Pon. 2017).

The Pohnpei Constitution clearly and demonstrably textually commits the investigation of, and the impeachment of Pohnpei state government officials, including the Pohnpei Chief Justice, to the Pohnpei Legislature. An impeachment proceeding's procedure, including its timing, is thus also a non-justiciable political question. Rodriguez v. Ninth Pohnpei Legislature, 21 FSM R. 276, 280 (Pon. 2017).

The Pohnpei Legislature's procedures for, including the timing of, its investigation and possible impeachment of the Pohnpei Chief Justice, are non-justiciable. Rodriguez v. Ninth Pohnpei Legislature, 21 FSM R. 276, 280 (Pon. 2017).

A preliminary injunction seeking to enjoin the possible impeachment of the Pohnpei Chief Justice, will be denied when there is no possibility of success on the merits because the case involves a non-justiciable political question, and the equities all favor the Pohnpei Legislature, and the public interest will be served by permitting the Legislature's investigation of a possible impeachment to proceed. Rodriguez v. Ninth Pohnpei Legislature, 21 FSM R. 276, 281 (Pon. 2017).

Impeachment is only a preliminary step to the removal of a person from a public office, and for Kitti municipal offices, impeachment by the Kitti Legislature results in suspension from office and is preliminary to an impeachment trial before a different municipal tribunal, at which the impeached official is either convicted or acquitted of the charges in the articles of impeachment. Luhk v. Anthon, 22 FSM R. 69, 71 (Pon. 2018).

– Kosrae

Written notice in a letter giving a limited-term employee three days' notice of the reasons for his two week suspension from work is sufficient compliance with the requirement of 61 TTC 10(15)(a), which provides that a suspended employee must receive notice of the reasons for suspension, and is also sufficient compliance with the notice requirements of due process under the Kosrae Constitution. Taulung v. Kosrae, 3 FSM R. 277, 279 (Kos. S. Ct. Tr. 1988).

To be property protected under the Constitution, the employment right must be supported by more than merely the employee's own personal hope. There must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Taulung v.

Kosrae, 3 FSM R. 277, 280 (Kos. S. Ct. Tr. 1988).

A public officer's right to a given salary is based primarily upon constitutional, statutory, and regulatory provisions. Edwin v. Kosrae, 4 FSM R. 292, 298 (Kos. S. Ct. Tr. 1990).

The Kosrae Code contemplates the problem of persons performing services in excess of their prescribed duties, and KC 5.427 provided a means for compensating such extra labor. Edwin v. Kosrae, 4 FSM R. 292, 299 (Kos. S. Ct. Tr. 1990).

When a Kosrae state employee makes a claim for additional compensation or benefits, on grounds that he has been temporarily assigned to a position by detail, "acting" assignment, or temporary promotion and is performing services in excess of prescribed duties, the burden is on the employee to show that a clear legal basis exists for the employee's right to those emoluments. Edwin v. Kosrae, 4 FSM R. 292, 299 (Kos. S. Ct. Tr. 1990).

There is no provision in the laws of Kosrae that provides that Kosrae State is entitled to reimbursement of salary paid over and above a state employee's pay level. Edwin v. Kosrae, 4 FSM R. 292, 300 (Kos. S. Ct. Tr. 1990).

Representations by officials with authority to set and change salaries can alter the general rule that salaries are set by law and not contract. Edwin v. Kosrae, 4 FSM R. 292, 300 (Kos. S. Ct. Tr. 1990).

In order for a Kosrae state employee's salary to be set by contract and not law, it must be shown that direct representations were made to the employee regarding the fixing of a salary not otherwise determined by law and made by an official with legal discretion to do so. Edwin v. Kosrae, 4 FSM R. 292, 300 (Kos. S. Ct. Tr. 1990).

In Kosrae, a permanent employee has the right to hold his position during good behavior, subject to suspension, demotion, reduction-in-force, or dismissal, except when an employment contract provides otherwise. Edwin v. Kosrae, 4 FSM R. 292, 302 (Kos. S. Ct. Tr. 1990).

The right of Kosrae State to demote an employee is limited to disciplinary reasons based on good cause. Edwin v. Kosrae, 4 FSM R. 292, 303 (Kos. S. Ct. Tr. 1990).

Kosrae State has the right and the power to adjust its employment scheme according to the availability of funds and work. Edwin v. Kosrae, 4 FSM R. 292, 303 (Kos. S. Ct. Tr. 1990).

When a public officer is requested to perform a duty mandated by law which he feels would violate the constitution, he has standing to apply to the court for a declaratory judgment declaring the statute unconstitutional. Siba v. Sigrah, 4 FSM R. 329, 334 (Kos. S. Ct. Tr. 1990).

The public service system applies to all state employees except for listed exemptions, which include positions of a temporary nature. Taulung v. Kosrae, 8 FSM R. 270, 273 (App. 1998).

A regular or permanent state employee is an employee who has been appointed to a position in the public service in accordance with the statute and who has successfully completed an initial probation period of not less than six months nor more than one year. Taulung v. Kosrae, 8 FSM R. 270, 273 (App. 1998).

A state employee appointed to successive, discrete six-month temporary positions with terminations at the end of some of them, is not a permanent state employee or a member of the public service system. Taulung v. Kosrae, 8 FSM R. 270, 273-74 (App. 1998).

A management official may not suspend any employee without pay for a period of three working days or more, unless the management official gives the employee a written notice setting forth the specific reasons upon which the suspension is based and files a copy of the statement with the director. Taulung v.

Kosrae, 8 FSM R. 270, 274 (App. 1998).

A limited-term employee does not have an assurance of continual employment in the sense of continuing indefinitely in time without interruption, but he is assured of employment until the end of his limited term, and of dismissal for only specified reasons, namely, when the good of the service will be served thereby. Taulung v. Kosrae, 8 FSM R. 270, 275 (App. 1998).

The procedural due process requirements of notice and an opportunity to be heard are met when Kosrae provides a limited-term employee being suspended for two weeks the notice mandated by 61 TTC 10(15)(a) and an opportunity to be heard by the official suspending him. Taulung v. Kosrae, 8 FSM R. 270, 275 (App. 1998).

A salient feature of Chapter 5 of Title 5 of the 1985 Code drew a distinction between the employees whose compensation was determined according to specific contract, which the sections anticipate and authorize, and those permanent state employees whose salary was determined according to the base salary schedule contained in § 5.502. Chapter 4 conferred a wide range of rights on permanent employees that contract employees did not enjoy, such as the right given by § 402 to continued employment "during good behavior." Cornelius v. Kosrae, 8 FSM R. 345, 350-51 (Kos. S. Ct. Tr. 1998).

There is a dichotomy between employees whose salaries are set by statute – "as prescribed by law" – and those whose salaries are subject to individual contract. Certain individuals or groups are subject to individual contracts, and excluded from the Public Service System. The Public Service System gives substantial rights to permanent employees that are denied contract employees. Cornelius v. Kosrae, 8 FSM R. 345, 351 (Kos. S. Ct. Tr. 1998).

Kosrae law has historically recognized a permanent work force of employees given specified rights whose compensation is statutorily determined; and a second group of employees who do not have the specified rights given permanent employees, who serve for a contract term, and whose compensation is determined by those contracts. It is this former group whose salaries were subject to reduction by S.L. No. 6-132. Cornelius v. Kosrae, 8 FSM R. 345, 352 (Kos. S. Ct. Tr. 1998).

The phrase "all State Government employees" as it appears in article VI, section 5, means those employees whose salaries are "prescribed by law." Only those employees whose salaries are set in the first place by statute are the employees to whom subsequent statutory reductions should apply. Cornelius v. Kosrae, 8 FSM R. 345, 352 (Kos. S. Ct. Tr. 1998).

The phrase "all State Government employees" means employees whose compensation is determined by statute, and does not include those employees who have individual contracts with Kosrae. Therefore a state law reducing state public service system employees' pay can constitutionally be applied to a Kosrae State Court justice's pay. Cornelius v. Kosrae, 8 FSM R. 345, 352 (Kos. S. Ct. Tr. 1998).

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

The statutory and regulatory authorities in effect during the time the employees' grievances took place will be applied to the decision. Langu v. Kosrae, 8 FSM R. 427, 432 (Kos. S. Ct. Tr. 1998).

Upon successfully completing probation, an employee becomes a permanent employee. Positions in the Executive Service are either permanent or temporary. Permanent positions are authorized to last longer than one year. Temporary positions are authorized to last up to twelve months. Permanent employment may be part-time, so long as the work time exceeds sixty hours per month. Temporary or

limited-term appointments may be either full-time or part-time. Langu v. Kosrae, 8 FSM R. 427, 432 (Kos. S. Ct. Tr. 1998).

When employees were classified as permanent employees on their Personnel Action Forms, their scheduled work time during the school year was full-time, and their bi-weekly salaries were full-time base salaries, the employees were full-time permanent employees of the Kosrae Executive Service System. Langu v. Kosrae, 8 FSM R. 427, 433 (Kos. S. Ct. Tr. 1998).

Permanent employees have the right to hold their position during good behavior, subject to suspension, demotion, reduction-in-force or dismissal, unless an employment contract provides otherwise. Langu v. Kosrae, 8 FSM R. 427, 433 (Kos. S. Ct. Tr. 1998).

Suspension and demotion of a permanent employee are actions that may be taken only for disciplinary reasons based on good cause. Langu v. Kosrae, 8 FSM R. 427, 433 (Kos. S. Ct. Tr. 1998).

When an employee has been laid off for the summer, it is not a termination for disciplinary reasons or a reduction-in-force. A layoff is a termination of employment at the will of the employer, which may be temporary or permanent. Langu v. Kosrae, 8 FSM R. 427, 434 (Kos. S. Ct. Tr. 1998).

A state employee's right to a given salary is based primarily upon constitutional, statutory and regulatory provisions. Langu v. Kosrae, 8 FSM R. 427, 434 (Kos. S. Ct. Tr. 1998).

A permanent Kosrae government employee's right to hold his position during good behavior is not subject to a "lay off" because neither the term "lay off," nor the concept of a "lay off" is present anywhere in Title 5. Langu v. Kosrae, 8 FSM R. 427, 434 (Kos. S. Ct. Tr. 1998).

Leave with pay (annual leave) must be requested by the employee in advance on a written form. Langu v. Kosrae, 8 FSM R. 427, 434 (Kos. S. Ct. Tr. 1998).

Leave without pay may be granted to an employee if the reason is sufficient and is in the best interests of the Executive. The maximum is thirty calendar days. Leave without pay is not a disciplinary tool to be imposed upon an employee who has not requested it; instead it is a benefit to be granted to the employee in appropriate circumstances. Langu v. Kosrae, 8 FSM R. 427, 434 (Kos. S. Ct. Tr. 1998).

There is no authority that permits the Kosrae government to impose annual leave or leave without pay upon its permanent employees. Langu v. Kosrae, 8 FSM R. 427, 434 (Kos. S. Ct. Tr. 1998).

When state employees have been required to apply for annual leave, if it was available, and did receive their salary during the annual leave, the employees have not suffered any monetary damages with respect to their annual leave. Langu v. Kosrae, 8 FSM R. 427, 434 (Kos. S. Ct. Tr. 1998).

The state's imposition upon its employees of leave without pay violated the Kosrae State Code, Title 5, and deprived them of their right to continued employment and salary. Langu v. Kosrae, 8 FSM R. 427, 434 (Kos. S. Ct. Tr. 1998).

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

Permanent state employees are subject to the laws and regulations implementing the Executive Service System, and a finding that some were exempted from all regulations and policies applicable to Kosrae government employees is clearly erroneous. Langu v. Kosrae, 8 FSM R. 427, 435 (Kos. S. Ct. Tr.

1998).

Although the statutory time periods are directory and not mandatory, a significant delay in proceedings can deprive the Executive Service Appeals Board procedure of its meaningfulness, in violation of the due process rights protected by the Constitution. Langu v. Kosrae, 8 FSM R. 427, 435 (Kos. S. Ct. Tr. 1998).

State employees are entitled to recover the base salary that they would have received during the periods of time that they were placed on leave without pay because the state's imposition of a "lay off" and leave without pay violated the employees' right to continued employment under the Kosrae Constitution and the Kosrae State Code. Langu v. Kosrae, 8 FSM R. 427, 436 (Kos. S. Ct. Tr. 1998).

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

Under Kosrae state law, a "grievance" is an employee action to present and resolve a difficulty or dispute arising in the performance of his duties and not from a disciplinary action. Abraham v. Kosrae, 9 FSM R. 57, 61 (Kos. S. Ct. Tr. 1999).

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

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

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

Under the Executive Services Regulations when they were in effect, a Kosrae state employee may present a grievance concerning a continuing practice or condition at any time. Kosrae v. Langu, 9 FSM R. 243, 246 & n.1 (App. 1999).

Under the Executive Service Regulations, when they were in effect, an appeal from a grievance was identical to that for an appeal from a disciplinary action, and was made to the Executive Service Appeals Board. Kosrae v. Langu, 9 FSM R. 243, 246 (App. 1999).

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

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

Although an inquiry whether state employees were not exempt, but were permanent employees under

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

Issues of law, such as whether cooks were permanent state employees in the legal sense such that they were entitled to all the protections afforded to them under the statute and regulations, are reviewed de novo on appeal. Kosrae v. Langu, 9 FSM R. 243, 248 (App. 1999).

Kosrae state employees must fall within one of three categories – exempt, i.e., exempt from the protections afforded to state employees by the Kosrae Executive Service as it was then structured; probationary; or permanent. Kosrae v. Langu, 9 FSM R. 243, 248 (App. 1999).

A permanent state employee has the right to hold his position during good behavior, subject to suspension, demotion, reduction-in-force, or dismissal, except when an employment contract provides otherwise. Kosrae v. Langu, 9 FSM R. 243, 249 (App. 1999).

A summer layoff of school cooks that required the cooks to take annual leave first, then leave without pay when school was not in session was not a reduction-in-force because a reduction-in-force means an employee's termination. Kosrae v. Langu, 9 FSM R. 243, 250 (App. 1999).

Once the Kosrae State Court has correctly determined that placing cooks on unpaid leave was a violation of law or regulation, the appropriate factfinder for the determination of cooks' back pay, which constitutes their damages, is the Executive Service Appeals Board or its successor, not the state court. Kosrae v. Langu, 9 FSM R. 243, 250 (App. 1999).

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

Under Kosrae State Code, Title 18, there is no limitation on the Kosrae State Court's jurisdiction to hear claims based upon a grievance, filed by a former Executive Branch employee. There is no limitation on a plaintiff's right, as a former employee, to file suit on his grievance and his right to file suit on his grievance arose in 1997, when he took early retirement and terminated his state employment. Skilling v. Kosrae, 9 FSM R. 608, 612-13 (Kos. S. Ct. Tr. 2000).

While the plaintiff was a state employee, he was subject to the administrative procedures specified for grievances, but when his administrative action was still pending when he retired in 1997, because his grievance had never been ruled on, he was no longer an employee required to comply with the administrative procedures. His right to bring suit on his claim did not become complete and his cause of action therefore did not accrue his early retirement resulted in termination from state government employment. Skilling v. Kosrae, 9 FSM R. 608, 613 (Kos. S. Ct. Tr. 2000).

When two Directors of Education failed to act properly by not acting upon the plaintiff's grievance and not making a written finding on plaintiff's grievance, as required by regulation, the State cannot invoke the equitable doctrine of laches in its defense. Skilling v. Kosrae, 9 FSM R. 608, 613 (Kos. S. Ct. Tr. 2000).

A public officer's right to a given salary is based primarily upon constitutional, statutory, and regulatory provisions. The amount of compensation a public employee receives is set by law. Palsis v. Mayor of Tafunsak, 10 FSM R. 141, 144 (Kos. S. Ct. Tr. 2001).

Because the Tafunsak Municipal Constitution requires that salaries for elected Council members be established by ordinance and because a public officer's right to compensation depends entirely upon him

being able to show clear authority of law entitling him to remuneration for performance of public duties, Tafunsak public officials' salaries must be appropriated by municipal ordinance. Palsis v. Mayor of Tafunsak, 10 FSM R. 141, 144 (Kos. S. Ct. Tr. 2001).

Compensation for a public officer's official services depends entirely upon the law. A public officer may only collect and retain such compensation as is specifically provided by law. Palsis v. Mayor of Tafunsak, 10 FSM R. 141, 144 (Kos. S. Ct. Tr. 2001).

When no Tafunsak municipal ordinance has been enacted to establish and pay salary for council members, other municipal officers and employees, there is no authority, as required by the municipal constitution, to pay salaries to Tafunsak municipal public officers and employees. A municipal council member is thus not entitled to receive unpaid salary, particularly when no evidence has been presented of a Tafunsak municipal ordinance enacted for appropriation of funds for payment of salaries for the 4th quarter of 1998 and when the municipal constitution requires that all payments from the municipal treasury be made according to appropriation by ordinance. Palsis v. Mayor of Tafunsak, 10 FSM R. 141, 144 (Kos. S. Ct. Tr. 2001).

Any payments for salaries of elected officials and staff made from the Tafunsak municipal treasury without the authority of a municipal ordinance establishing such salary and appropriating funds for the payment of such salary have been made in violation of the municipal constitution. Palsis v. Mayor of Tafunsak, 10 FSM R. 141, 144 (Kos. S. Ct. Tr. 2001).

While it appears that elected officials and staff of Tafunsak municipal government have been paid and continue to be paid salaries without authority of law, the Kosrae State Court cannot approve or order any salary to be paid to a Tafunsak Municipal Council member in violation of the municipal constitution. Palsis v. Mayor of Tafunsak, 10 FSM R. 141, 144 (Kos. S. Ct. Tr. 2001).

When the Kosrae State Code Section 18.506 requires a branch head to make and transmit his final decision to the Director of Administration and the appellant within 14 days of receipt of the committee's recommendation and more than 14 days have elapsed since the branch head's receipt with no final decision by him, the branch head has failed to carry out his clear, non-discretionary duty to issue and transmit his final decision within the time period provided by law. The petitioner's right to the writ of mandamus is thus clear and undisputable and the writ will issue. Jackson v. Kosrae, 10 FSM R. 198, 199 (Kos. S. Ct. Tr. 2001).

Because the Oversight Board has not adopted any policies, rules or regulations, the Director of Administration, who is responsible for administration of the Public Service System consistent with Title 18, and any policies, rules and regulations adopted by the Oversight Board, must implement all the Speaker's decisions pertaining to the Legislative Branch's public service employees, as long as the decision is not inconsistent with Kosrae State Code, Title 18. Seventh Kosrae State Legislature v. Abraham, 10 FSM R. 299, 302 (Kos. S. Ct. Tr. 2001).

When two legislative branch employees, effective October 1, 1998, had met the statutory requirements to qualify for performance increases, but the personnel action forms to implement the increases were never submitted to the Department of Administration for processing due to administrative oversight at the Legislature; when in June 2001, the Speaker ordered the Director of Administration to implement the performance increases effective October 1, 1998 and backdated personnel action forms were submitted on both employees' behalf; when the personnel action forms contemplate an effective date that may be different than the approval date; when backdating of personnel action forms was a common practice in all three branches of state government and are routinely processed and implemented by the Department of Administration; when the Department's refusal to process the backdated personnel actions deprives both employees of the performance increases they qualified for and are entitled to by law; and when backdating employees' personnel action forms is consistent with all three state government branches' accepted and continuing practice and is not inconsistent with Kosrae State Code, Title 18; the Director of Administration is

required to implement the performance increase, retroactive to October 1, 1998, and subsequent pay level adjustments ordered by the Speaker. Seventh Kosrae State Legislature v. Abraham, 10 FSM R. 299, 302-03 (Kos. S. Ct. Tr. 2001).

The Kosrae Executive Service System provides for the systemic classification of positions and for one pay level for each class of positions, and the state's action in assigning two different pay levels to the same class of positions was a violation of Kosrae State Code §§ 5.401(6), 5.410(1) and 5.506(1). Jonas v. Kosrae, 10 FSM R. 441, 444 (Kos. S. Ct. Tr. 2001).

When plaintiffs should have been classified at the time the state hired them in 1997 at the same pay level as the medical officers who the state hired as Staff Physicians I prior to the plaintiffs and when the plaintiffs' grievances were granted increasing their pay in 2000 only partially corrected the situation from May 1, 2000 forward, the plaintiffs are entitled to summary judgment for a retroactive adjustment to their entrance salary. Jonas v. Kosrae, 10 FSM R. 441, 444-45 (Kos. S. Ct. Tr. 2001).

Pre-judgment interest is rarely awarded as an element of damages. Because tort claims are generally "unliquidated" in that the defendant does not know the precise amount he will be obligated to pay, most courts will not award interest on unliquidated monetary claims, which amount cannot be computed without a trial. Jonas v. Kosrae, 10 FSM R. 441, 445 (Kos. S. Ct. Tr. 2001).

There is no Kosrae statute allowing or directing the court to award pre-judgment interest in public employment cases involving violation of law or regulations, and although pre-judgment interest has been allowed in certain contract and conversion cases, it has not been awarded in these type of cases and will be denied. Jonas v. Kosrae, 10 FSM R. 441, 445 (Kos. S. Ct. Tr. 2001).

The Kosrae State Court's standard of review in its judicial review of State Public Service System final decisions is that the court will decide all relevant questions of law and fact, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action, and the court is authorized to compel, or hold unlawful and set aside agency actions. Jonas v. Kosrae, 10 FSM R. 453, 458 (Kos. S. Ct. Tr. 2001).

Former Kosrae State Code, Title 5 (repealed) and Regulation 11 (repealed) are applicable to positions within the Executive Service System from 1990 through 1992. Jonas v. Kosrae, 10 FSM R. 453, 458 (Kos. S. Ct. Tr. 2001).

An employee was required to present a grievance related to a particular act or occurrence within 15 calendar days of the date of occurrence or the date when the employee should have become aware of it had he been exercising reasonable diligence. Jonas v. Kosrae, 10 FSM R. 453, 459-60 (Kos. S. Ct. Tr. 2001).

The time limits prescribed in the Executive Service Laws and Regulations are directory and not mandatory because the law and the regulations do not prescribe what happens if the prescribed time limits are not met. Jonas v. Kosrae, 10 FSM R. 453, 459 (Kos. S. Ct. Tr. 2001).

Because the regulation that an employee grievance be presented no later than 15 days after the subject action is directory and not mandatory, a plaintiff's late presentation of his grievance after the specified 15 day period does not bar his claim. Jonas v. Kosrae, 10 FSM R. 453, 459 (Kos. S. Ct. Tr. 2001).

An Executive Service position is a defined set of work responsibilities in the Executive. Jonas v. Kosrae, 10 FSM R. 453, 460 (Kos. S. Ct. Tr. 2001).

Each Executive Service position was required to be classified by the Director of the Department of Personnel and Employment Services and all executive branch employee positions fall within the Executive

System and Kosrae State Code, Title 5, chapters 4 and 5, unless exempted under section 5.101(18). When the Director failed to classify the Head Teacher position before, during, or after the plaintiff was moved into that position, he did not perform his duties as required, and therefore violated state law. Jonas v. Kosrae, 10 FSM R. 453, 460 (Kos. S. Ct. Tr. 2001).

If an employee performs duties in addition to those stated in the classification plan for his regular position and the compensation for the position which normally includes the additional duties is greater than his regular salary, he receives the greater salary during the period of performance. Jonas v. Kosrae, 10 FSM R. 453, 460 (Kos. S. Ct. Tr. 2001).

There are several types of salary adjustment for additional duties: detail, acting assignment and temporary promotion. Jonas v. Kosrae, 10 FSM R. 453, 460 (Kos. S. Ct. Tr. 2001).

A detail is an employee's temporary assignment to a different position for a specified period, with the intention that the employee will return to his regular position and duties at the end of the detail. A position is not filled by detail, as the employee continues to the incumbent of the position from which detailed. A teacher's temporary assignment to the different position of Head Teacher for a maximum period of one year, with the intention that he would return to his regular position of Classroom Teacher II at the end of the detail no later than one year later, is a detail. Jonas v. Kosrae, 10 FSM R. 453, 461 (Kos. S. Ct. Tr. 2001).

An employee who is temporarily assigned to a position by detail will be compensated at the step in the new pay level which is equivalent to a two step increase above his regular salary. A one step increase is unlawful and is therefore set aside. Jonas v. Kosrae, 10 FSM R. 453, 461 (Kos. S. Ct. Tr. 2001).

The term demotion means reduction to lower rank or grade, or to lower type of position, or to lower pay scale. For disciplinary reasons based upon good cause a management official may demote an employee. An employee's demotion is not effective for any purpose until a management official gives the employee written notice stating the reasons for the demotion and the employee's right of appeal. Demotion for a non-disciplinary reason is a statutory violation. Jonas v. Kosrae, 10 FSM R. 453, 461-62 (Kos. S. Ct. Tr. 2001).

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

The state's failure to give an employee the required written notice of his demotion and his right of appeal is a statutory violation, and makes the demotion ineffective for any purpose. Jonas v. Kosrae, 10 FSM R. 453, 462 (Kos. S. Ct. Tr. 2001).

After successfully serving a maximum probation period of one year, an employee may be converted to a permanent employee. Jonas v. Kosrae, 10 FSM R. 453, 462 (Kos. S. Ct. Tr. 2001).

A position which is established to meet continuing government need and which is authorized to last longer than one year, must be identified as a permanent position. Jonas v. Kosrae, 10 FSM R. 453, 462 (Kos. S. Ct. Tr. 2001).

When an employee successfully served the full one year probationary period as Head Teacher, his position as Head Teacher with its higher pay level, became a permanent position when the probationary period expired. Jonas v. Kosrae, 10 FSM R. 453, 462 (Kos. S. Ct. Tr. 2001).

When a state employee's demotion was unlawful and is set aside, his salary will be established as if the demotion never occurred. Jonas v. Kosrae, 10 FSM R. 453, 462 (Kos. S. Ct. Tr. 2001).

The Kosrae State Court's standard of review in its judicial review of State Public Service System final

decisions is that the court will decide all relevant questions of law and fact, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action, and the court is authorized to compel, or hold unlawful and set aside agency actions. Tolenoa v. Kosrae, 10 FSM R. 486, 489 (Kos. S. Ct. Tr. 2001).

Former Kosrae State Code, Title 5 (repealed) and Regulation 11 (repealed) are applicable to positions within the Executive Service System from 1990 through 1997. Tolenoa v. Kosrae, 10 FSM R. 486, 489 (Kos. S. Ct. Tr. 2001).

An Executive Service position is a defined set of work responsibilities in the Executive. Tolenoa v. Kosrae, 10 FSM R. 486, 490 (Kos. S. Ct. Tr. 2001).

Each Executive Service position was required to be classified by the Director of the Department of Personnel and Employment Services and all executive branch employee positions fall within the Executive System and Kosrae State Code, Title 5, chapters 4 and 5, unless exempted under section 5.101(18). When the Director failed to classify the Head Teacher position before, during, or after the plaintiff was moved into that position, he did not perform his duties as required, and therefore violated state law. Tolenoa v. Kosrae, 10 FSM R. 486, 490 (Kos. S. Ct. Tr. 2001).

If an employee performs duties in addition to those stated in the classification plan for his regular position and the compensation for the position which normally includes the additional duties is greater than his regular salary, he receives the greater salary during the period of performance. Tolenoa v. Kosrae, 10 FSM R. 486, 490 (Kos. S. Ct. Tr. 2001).

There are several types of salary adjustment for additional duties: detail, acting assignment and temporary promotion. Tolenoa v. Kosrae, 10 FSM R. 486, 491 (Kos. S. Ct. Tr. 2001).

A detail is an employee's temporary assignment to a different position for a specified period, with the intention that the employee will return to his regular position and duties at the end of the detail. A position is not filled by detail, as the employee continues to the incumbent of the position from which detailed. A teacher's temporary assignment to the different position of Head Teacher for a maximum period of one year, with the intention that he would return to his regular position of Classroom Teacher II at the end of the detail no later than one year later, is a detail. Tolenoa v. Kosrae, 10 FSM R. 486, 491 (Kos. S. Ct. Tr. 2001).

An employee who is temporarily assigned to a position by detail will be compensated at the step in the new pay level which is equivalent to a two step increase above his regular salary. A one step increase is unlawful and is therefore set aside. Tolenoa v. Kosrae, 10 FSM R. 486, 491 (Kos. S. Ct. Tr. 2001).

When the plaintiff did not assume all of the administrative duties of the Vice Principal position and did not assume the duties of a vacant position, he was not assigned a "temporary promotion" to the position of Vice Principal. Tolenoa v. Kosrae, 10 FSM R. 486, 491-92 (Kos. S. Ct. Tr. 2001).

When an employee was given added duties as a Head Teacher, the state will be required to classify the position of head teacher, including position description and pay level, and to pay compensation equivalent to a two-step increase. Tolenoa v. Kosrae, 10 FSM R. 486, 492 (Kos. S. Ct. Tr. 2001).

The law does not require that a supervisor (Director or Governor) implement a hazardous pay differential decision made by a subordinate employee, such as the Administrator of Division of Personnel. Benjamin v. Attorney General Office Kosrae, 10 FSM R. 566, 569 (Kos. S. Ct. Tr. 2002).

Mandamus will be denied when there is another adequate legal remedy available to the petitioners – to file a grievance on their hazardous pay differential claim and proceed through the administrative process. Benjamin v. Attorney General Office Kosrae, 10 FSM R. 566, 569 (Kos. S. Ct. Tr. 2002).

Any decision made by the Director's subordinate, the Administrator of Personnel, would only be deemed as advice to the Director, and not binding on the Director of Administration and Finance. Ultimately, it is the Director who is responsible for administering the Public Service System, consistent with Title 18 and applicable regulations. Benjamin v. Attorney General Office Kosrae, 10 FSM R. 566, 569-70 (Kos. S. Ct. Tr. 2002).

Since a state employee classification plan that identifies class specifications for each class, including appropriate pay levels, must be approved by the Oversight Board, of which the Chief Justice is a member, it would be improper for the Chief Justice to order a classification of a position that would ultimately be reviewed and approved by him as an Oversight Board member. The court will therefore delete from its order the requirement that the state must create Head Teacher position classification. Tolenoa v. Kosrae, 11 FSM R. 179, 185 (Kos. S. Ct. Tr. 2002).

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

A position in the Executive Service is a defined set of work responsibilities in the Executive, and if an employee performs duties in addition to those stated in the classification plan for his regular position and the compensation for the position which normally includes the additional duties is greater than her regular salary, she receives the greater salary during the period of performance. Jackson v. Kosrae, 11 FSM R. 197, 200 (Kos. S. Ct. Tr. 2002).

When the duties performed by the plaintiff in the Diabetic and Hypertension Program were regular duties of the Head Nurse position pursuant to the classification plan and were not in addition to those stated in the classification plan for the Head Nurse position, the plaintiff is not entitled to additional compensation or a higher salary during the time she performed those duties. Jackson v. Kosrae, 11 FSM R. 197, 200 (Kos. S. Ct. Tr. 2002).

The state was not required to change the plaintiff's position to the CDC Coordinator when her duties did not substantially change after she was assigned to perform some of the CDC Coordinator duties and when it was not a "temporary promotion" to the position of CDC Coordinator because she did not assume all or nearly all of the CDC Coordinator duties, which were shared and completed by four employees including her. Jackson v. Kosrae, 11 FSM R. 197, 200 (Kos. S. Ct. Tr. 2002).

A state employee's government service is governed by law, first by the Kosrae State Code, Title 5, the Executive Service Law, and later by Title 18, the State Public Service System Law. A public service employee does not have any contractual entitlements, and thus a state employee's contract claim against the state is without merit and will be dismissed. Jackson v. Kosrae, 11 FSM R. 197, 201 (Kos. S. Ct. Tr. 2002).

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

When a state employee did not engage in inexcusable delay or a lack of diligence in bringing suit, as the delay was caused by his engaging the administrative grievance process and waiting for the state's required response, and when the state, by its own inaction on the employee's claims, was not in compliance with the applicable regulation and statute, failed to act properly with regard to his grievance, the state, being the cause of the delay, cannot invoke the equitable doctrine of laches. Kosrae v. Skilling, 11 FSM R. 311, 318 (App. 2003).

When a state employee would not have been entitled to payment at his usual hourly rate for unused sick leave since he was never injured or ill and denied sick leave, he cannot claim that he has suffered a loss when he lost his accumulated hours of sick leave. Sam v. Chief of Police, 12 FSM R. 587, 589 (Kos. 2004).

A new law that results in a state employee's loss of his accumulated sick leave hours is not unconstitutional and a deprivation of property without due process because the right to take payment for sick leave to be taken in the future is a mere expectancy, and does not constitute a vested right entitling the employee to compensation. "Vested" means having the character or given the rights of absolute ownership. Sam v. Chief of Police, 12 FSM R. 587, 589 (Kos. 2004).

For the period of 1993-97, the law and regulations for the Executive Service System are applicable. For the period of 1997 to 2002, the law and regulations for the Kosrae State Public Service System are applicable. Former Kosrae State Code, Title 5, Chapter 4 (repealed) governed the Executive Service System during a portion of the relevant period, from 1993 to 1997. Sigrah v. Kosrae, 13 FSM R. 315, 319 (Kos. S. Ct. Tr. 2005).

Since the then applicable law limited compensation for additional duties only when the additional duties performed were duties for a position with a greater salary and the plaintiff's tasks were duties of another classified position that, in the position classification plan, was compensated at the same as his, the plaintiff is not entitled to additional compensation for the additional tasks that he performed from 1993 to 1998. Sigrah v. Kosrae, 13 FSM R. 315, 319 (Kos. S. Ct. Tr. 2005).

For additional compensation, the "additional duties" performed by the public employee must be the duties of a position that has a greater salary than the employee's regular salary. When the journeyman tradesman (refrigeration mechanic) plaintiff's "additional duties" are the duties of another journeyman tradesman position (i.e. electrician or plumber) which has the same salary as the plaintiff's regular salary, the plaintiff is not entitled to additional compensation for the additional duties since all journeyman tradesman positions, regardless of specialization, are classified at pay level 7. Sigrah v. Kosrae, 13 FSM R. 315, 319 (Kos. S. Ct. Tr. 2005).

The Kosrae State Public Service System establishes a state-wide public service system applicable to all branches of government and is governed by Kosrae State Code, Title 18. The PSS applies to all Kosrae state employees and positions except for those employees and positions which are specifically exempted. Specific exemptions include "contract employees." Allen v. Kosrae, 13 FSM R. 325, 329-30 (Kos. S. Ct. Tr. 2005).

There are no limitations on the "contract employees" exemption: all contract employees are exempt from application of the Public Service System under Kosrae State Code, Title 18. There are no limitations imposed through any other state law upon the hiring of state government employees pursuant to ungraded, PSS exempt contracts. The State is permitted to hire ungraded, PSS exempt employees by contract, in its discretion, subject only to funding and budgetary limitations. Allen v. Kosrae, 13 FSM R. 325, 331 (Kos. S. Ct. Tr. 2005).

There are no provisions in state law which prohibit the state government from hiring employees by contract for positions which are also classified under the Public Service System classification plan. Allen v. Kosrae, 13 FSM R. 325, 331 (Kos. S. Ct. Tr. 2005).

Kosrae State Code, § 18.104, which provides a preference to FSM citizens and Kosrae state residents in making appointments to positions within the PSS is not applicable to the contract position of Chief of Secondary Education. Allen v. Kosrae, 13 FSM R. 325, 331 (Kos. S. Ct. Tr. 2005).

Kosrae State Code, section 18.302, which provides that the position classification plan must classify all

positions subject to the provisions of the State Public Service System according to their duties and responsibilities, is not applicable to the contract position of Chief of Secondary Education since that position was not one classified within the PSS at the time of the contract hiring. Allen v. Kosrae, 13 FSM R. 325, 331 (Kos. S. Ct. Tr. 2005).

Regardless of the reason for a Public Service System position vacancy or the length of time for the position vacancy, there is no statutory or constitutional requirement for the State to fill any vacancies of Public Service System positions. Allen v. Kosrae, 13 FSM R. 325, 332 (Kos. S. Ct. Tr. 2005).

Once a property interest is found to exist, the next step is to determine if due process rights were violated. The court looks at whether the procedures used to apply the disciplinary action were fair based on the circumstances of the case; procedures must assure a rational decision making process. Municipal defendants are not required to follow the State of Kosrae's Public Service System laws and regulations and are not required to adopt their own written procedures, but they must be fair considering all the circumstances and use a rational decision making process. Palsis v. Tafunsak Mun. Gov't, 14 FSM R. 517, 520 (Kos. S. Ct. Tr. 2006).

Kosrae State Code Title 18 creates the comprehensive Public Service System. An integral part of this system is a classification plan for all state positions subject to the plan. The position classification plan classifies all positions subject to the State Public Service System provisions according to their duties and responsibilities. Positions that are classified under the plan are filled by examination. Allen v. Kosrae, 15 FSM R. 18, 21 (App. 2007).

The Kosrae Public Service System applies to all employees and positions in the state government with fourteen different categories, including contract employees, exempted from its provisions. There are no restrictions on the exemptions that would foreclose or prohibit the Kosrae Department of Education from hiring teachers or a Chief of Secondary Education on a PSS-exempt, contract basis. In the absence of any such limitations, the contract employee exemption applies. Allen v. Kosrae, 15 FSM R. 18, 21-22 (App. 2007).

When the Legislature has altered the statutory framework only to increase, and not decrease, Kosrae's hiring discretion for contract employees by removing the single qualification that it had placed on the contract employees exemption, the court cannot limit the hiring discretion thus conferred by the Kosrae Legislature in the absence of a statutory basis for doing so since it is the Kosrae Legislature's role to consider and determine the public policy that supports a statute, and to enact legislation that reflects that public policy. Allen v. Kosrae, 15 FSM R. 18, 22 (App. 2007).

When the Kosrae statute defines "public service" as all offices and positions in the state government not exempted by Section 18.107, the requirement that preference be given to FSM citizens with a view to insuring full participation by FSM citizens and state residents in its public service means that the preference will apply to the hiring of individuals for non-exempt, Public Service System positions. Thus, when the position for which another was hired was exempt from the PSS because it was filled on a contract basis, the preference had no application to the hiring. Allen v. Kosrae, 15 FSM R. 18, 23 (App. 2007).

The statute does not specifically require a good cause standard to be met when dismissing or demoting an employee. A management official may, for disciplinary reasons, dismiss or demote an employee when he determines that the good of the public service will be served thereby. Palsis v. Kosrae, 16 FSM R. 297, 305, 311 (Kos. S. Ct. Tr. 2009).

For the due process clause to apply, a life, property, or liberty interest must be implicated. In an employment case, to be property protected under the Constitution, the employment right must be supported by more than merely the employee's own personal hope. There must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Palsis v. Kosrae, 16 FSM R. 297, 307 (Kos. S. Ct. Tr. 2009).

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

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

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

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

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

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

State employees suing for unpaid compensation for work they performed, obviously have a sufficient stake in the case's outcome when they allege that they each have suffered an actual injury (insufficient pay) and that that injury can be traced to the Director's challenged action and their claim is one that a favorable court decision can redress by awarding damages. Kosrae v. Edwin, 18 FSM R. 507, 514 (App. 2013).

When the appellees did not officiously thrust their services as vice-principals on Kosrae but had applied for the vice-principal position; thought they had been hired for the position (and did not know their contracts were invalid); and then performed the duties required by that position and as they were instructed by their superiors, Kosrae was unjustly enriched and therefore should compensate the appellees. Kosrae v. Edwin, 18 FSM R. 507, 515 (App. 2013).

An illegally-hired government employee is entitled to be paid for the work he actually performed. Kosrae v. Edwin, 18 FSM R. 507, 516 (App. 2013).

A cause of action to collect salary or wages accrues when an employee has a right to collect the money allegedly owed to him. Tilfas v. Kosrae, 21 FSM R. 81, 89 (App. 2016).

A school teacher could not have successfully maintained a cause of action for improper salary classification as of the date of his initial hiring when he had not submitted documentation to the government proving his educational background, thereby giving him a right to collect the higher salary allegedly owed to

him. His cause of action began to accrue when, if ever, he submitted the relevant documents necessary to prove he should have been placed at the higher pay level. Tilfas v. Kosrae, 21 FSM R. 81, 89 (App. 2016).

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

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

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

When a state employee's claim for wrongful probation status accrued, at the very latest, on August 26, 1989, because that was when the event triggering the cause of action occurred and when he could have first successfully maintained a suit on his claim since he remained classified as a probationary employee despite working, as of then, one day longer than one year. Thus, when that employee first exercised his administrative remedies and filed a grievance on April 30, 1997, his action for wrongful probationary status is time-barred because his grievance and the initiation of this lawsuit clearly fall outside the six-year statute of limitations. Tilfas v. Kosrae, 21 FSM R. 81, 92 (App. 2016).

– Kosrae – Termination

When shortage of work or funds requires the dismissal of a Kosrae state employee the Executive should consider an employee's individual merit, qualifications through education, training, and experience and the employee's seniority. Edwin v. Kosrae, 4 FSM R. 292, 303 (Kos. S. Ct. Tr. 1990).

Title III of the Kosrae State Court manual of administration permits dismissal of a government employee if the employee is convicted of felony. In the case of non-felonies, section 11(5)(c) permits dismissal only if it is shown that the employee's "criminal conduct . . . is detrimental to the performance of the duties and responsibilities of his position." Palsis v. Kosrae State Court, 5 FSM R. 214, 217 (Kos. S. Ct. Tr. 1991).

An employee may not be dismissed for conviction of a misdemeanor unless the nature of the conduct leading to the conviction is itself detrimental to the performance of the employee's duties. Palsis v. Kosrae State Court, 5 FSM R. 214, 218 (Kos. S. Ct. Tr. 1991).

When a law enforcement officer during performance of his duties reveals an unacceptable lack of respect for legal authority such as obstructing another officer from performing similar duties, the nature of his conduct is itself detrimental to the performance of his duties and his dismissal is justified. Palsis v. Kosrae State Court, 5 FSM R. 214, 218 (Kos. S. Ct. Tr. 1991).

An employee may be terminated without notice and an opportunity to be heard if she has abandoned her job. If not, the state must provide written notice stating the reasons for the dismissal and an opportunity to present mitigating circumstances, defenses, or other positions in opposition to the proposed disciplinary action. Klavasru v. Kosrae, 7 FSM R. 86, 89-90 (Kos. 1995).

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

A public employee, who supplied an explanation for her absence from work and who made clear, both before and after the absence that she did not intend to take permanent leave of her position, cannot be terminated for abandonment of office or disciplined without the statutory safeguard of notice and an opportunity to be heard. Klavasru v. Kosrae, 7 FSM R. 86, 92 (Kos. 1995).

Government employment that is property with the meaning of the Due Process Clause cannot be taken without due process. Only if an employment arrangement has an entitlement based upon governmental assurances of continual employment or dismissal for only specified reasons does the FSM Constitution require procedural due process as a condition to its termination. Taulung v. Kosrae, 8 FSM R. 270, 274 (App. 1998).

A permanent employee may be dismissed for disciplinary reasons based upon good cause or the employee may be dismissed within a reduction-in-force. Langu v. Kosrae, 8 FSM R. 427, 433 (Kos. S. Ct. Tr. 1998).

Kosrae's right and power to adjust its employment scheme according to the availability of funds and work is not unlimited. When the shortage of funds require dismissal of an employee, certain procedures are to be followed to ensure that seniority and qualifications are given due consideration. The government must give employees written notice that he has been reached by a reduction-in-force and that his services shall be terminated. Langu v. Kosrae, 8 FSM R. 427, 433 (Kos. S. Ct. Tr. 1998).

Termination of employment means a complete severance of the relationship of employer and employee. Reductions-in-force mean dismissal or termination of employees. Langu v. Kosrae, 8 FSM R. 427, 433 (Kos. S. Ct. Tr. 1998).

When an employee has been laid off for the summer, it is not a termination for disciplinary reasons or a reduction-in-force. A layoff is a termination of employment at the will of the employer, which may be temporary or permanent. Langu v. Kosrae, 8 FSM R. 427, 434 (Kos. S. Ct. Tr. 1998).

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

When the statutory provisions intend and ensure that an entity is run as a corporation with its own management and employees, and not as a Kosrae state government agency and when, although the state government remains its sole shareholder, the state government does not assume its debts, does not own its assets, and has no control over its day to day operations, it is not a "state actor," and its termination of an employee is therefore not a "state action." Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 666-67 (Kos. S. Ct. Tr. 2002).

Employment is a property right protected by the Kosrae Constitution when there is an assurance of continued employment or when dismissal is allowed for specified reasons. An employee's personal hope of continued employment or the expiration of a contract with no provisions for renewal does not give rise to a property interest. Thus, when the Tafunsak Constitution states that the position of Treasurer is a four-year term and the plaintiff's employment was terminated before the term's end, this is sufficient to show an assurance of continued employment and gives rise to a property right protected by due process under the Kosrae Constitution. Palsis v. Tafunsak Mun. Gov't, 14 FSM R. 517, 520 (Kos. S. Ct. Tr. 2006).

Where the plaintiff claims that he was not given an administrative remedy and did not have an opportunity to meet or rebut the allegations against him and when the defendants began by giving the

plaintiff written notice listing specific issues and specifying their concerns about the plaintiff's failure to perform his duties and gave the plaintiff several months until late February 2004 to correct his behavior; when the plaintiff did not change his behavior to perform his job responsibilities and he spoke with the defendants about resigning from employment during this time period, thus demonstrating that he met with the defendants and had an opportunity to rebut the first letter's allegations; the Council gave him a copy of its March 2004 letter to the Mayor recommending termination of his employment; when the Mayor's letter to the plaintiff based on this recommendation again gave him an opportunity to bring forth any grievances, this procedure consistently gave the plaintiff notice of the defendants' specific reasons for concern and gave him several opportunities to meet and rebut allegations and bring forth grievances and was thus fair based on the circumstances and was based on a rational decision-making process. Palsis v. Tafunsak Mun. Gov't, 14 FSM R. 517, 520 (Kos. S. Ct. Tr. 2006).

The Tafunsak Constitution provisions about the Treasurer's employment do not conflict with the provision that the Council can terminate a municipal employee with a ⅔ vote. Palsis v. Tafunsak Mun. Gov't, 14 FSM R. 517, 520-21 (Kos. S. Ct. Tr. 2006).

The statute does not specifically require a good cause standard to be met when dismissing or demoting an employee. A management official may, for disciplinary reasons, dismiss or demote an employee when he determines that the good of the public service will be served thereby. Palsis v. Kosrae, 16 FSM R. 297, 305, 311 (Kos. S. Ct. Tr. 2009).

Although Kosrae statutes do not specifically state that a pre-dismissal hearing is required, constitutional due process in the FSM does require that a governmental, non-probationary employee be given some opportunity to respond to the charges against him before his dismissal may be implemented, which includes: oral or written notice of the charges against him, an explanation of the employer's evidence and an opportunity to present his side of the story. Palsis v. Kosrae, 16 FSM R. 297, 306 (Kos. S. Ct. Tr. 2009).

Although Kosrae statutes do not specifically state that a pre-dismissal hearing is required, once it is determined that the statute establishes a property right subject to protection under the due process clause, constitutional principles determine what process is due as a minimum. Palsis v. Kosrae, 16 FSM R. 297, 306 (Kos. S. Ct. Tr. 2009).

The constitution is consistent with the Kosrae State Code and the Public Service System statutes which will not be set aside as contrary to due process since, in the absence of statutory language to the contrary, the statutory mandate may be interpreted as assuming compliance with the constitutional requirements. Thus, when the Kosrae State Code states that written notice setting forth the specific reasons for the dismissal or demotion and the employee's rights of appeal must be transmitted to the employee but is silent as to whether a dismissal may be implemented before some kind of hearing is provided, this is not read as an attempt to authorize immediate dismissal for all purposes without giving the employee a right to respond but instead as an indication of solicitude, demonstrating the intention to assure that employees' rights be observed. Palsis v. Kosrae, 16 FSM R. 297, 306-07 (Kos. S. Ct. Tr. 2009).

When, at the time of her termination, the plaintiff was a permanent state employee and since a "regular employee" or "permanent employee" means an employee who has been appointed to a position in the public service and who has successfully completed a probation period, the plaintiff's claim to employment was supported by more than her mere personal hope of employment and the state had a legal obligation to employ the plaintiff. Thus, the plaintiff had a property right which was protected by the due process clause. Procedural due process requires notice and an opportunity to be heard, so as to protect the employee's rights and insure that discipline is not enforced in an arbitrary manner. Palsis v. Kosrae, 16 FSM R. 297, 307 (Kos. S. Ct. Tr. 2009).

A state employee with a property right is entitled to a pre-termination hearing that includes notice and an opportunity to be heard. The employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. Palsis v.

Kosrae, 16 FSM R. 297, 307 (Kos. S. Ct. Tr. 2009).

An essential principle of due process is that a deprivation of life, liberty, or property be preceded by notice and an opportunity for hearing appropriate to the nature of the case. This requires some type of hearing prior to the discharge of an employee who has a constitutionally-protected interest in his or her employment. The pre-termination hearing, though necessary, need not be elaborate. The formality and procedural requisites for the hearing can vary, depending upon the importance of the interest involved and the nature of the subsequent proceedings that are available. In general, something less than a full evidentiary hearing is sufficient prior to adverse administrative action. The pre-termination hearing does not definitively resolve the propriety of discharge, but is an initial check against mistaken decisions. The essential requirements are notice and an opportunity to respond. The state employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story and to require more than this prior to termination would intrude to an unwarranted extent on the government's interest in quickly removing an unsatisfactory employee. Palsis v. Kosrae, 16 FSM R. 297, 309 (Kos. S. Ct. Tr. 2009).

Since a state employee's pre-termination hearing need not be elaborate and since a notice of a hearing can be oral and is highly informal, given that the employee is given the opportunity for a post-deprivation hearing, where the employee was given notice on August 7, 2007 when she received a notice-of-dismissal letter and the dismissal did not become effective until August 30, 2007 and thus she was not deprived of benefits until then, an August 7, 2007 meeting constituted a pre-termination hearing as did a later August 15, 2007 meeting because, at both meetings, she was given an opportunity to respond to the charges against her and she had not yet been deprived of benefits and because the meetings served as an initial check of the charges since she was given an opportunity to explain her side of the story and the Director discussed the evidence for dismissal as stated in the termination letter and was open to questions regarding the reasons for dismissal. Also, when, at the August 15, 2007 meeting, her representative took the opportunity to be heard on her behalf, asked questions to the Director; tried to negotiate a settlement; and presented her side of the story, the requirements of notice and an opportunity to respond were met. Because she had notice and an opportunity to be heard prior to dismissal, her due process rights were not violated as a pre-termination hearing was held. Palsis v. Kosrae, 16 FSM R. 297, 311 (Kos. S. Ct. Tr. 2009).

The good of the public service is served by an employee's dismissal if the management official determines that the employee has had 1) three consecutive performance evaluation reports with less than satisfactory ratings in any category; or 2) a total of three suspensions, whether imposed as minor discipline or disciplinary action; or 3) a conviction of any crime that the management official determines makes the employee unfit for his job; or 4) more than eight working days in two years that the employee has been taken unauthorized leave; or 5) a determination has been made that the applicant was not truthful on his employment application; or 6) the employee ceases work without explanation for more than 6 consecutive working days; or 7) any other grounds causing the management official to justifiably believe that the good of the public service will be served by dismissal. Palsis v. Kosrae, 16 FSM R. 297, 311-12 (Kos. S. Ct. Tr. 2009).

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

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

FSM R. 297, 314-15 (Kos. S. Ct. Tr. 2009).

When a terminated state employee, since she was given an immediate opportunity to respond and another opportunity to respond one week later, had two opportunities to be heard after being informed of the reasons for her dismissal, and when after these two opportunities, she had two full post-termination evidentiary hearings that analyzed the Hospital's decision to terminate her employment, her procedural due process rights were not violated. Palsis v. Kosrae, 17 FSM R. 236, 242 (App. 2010).

Since a Kosrae public service system management official may, for disciplinary reasons, dismiss an employee when he determines that the good of the public service will be served thereby but since no dismissal of a permanent employee is effective for any purpose until the management official transmits to the employee, by the most practical means, a written notice setting forth the specific reasons for the dismissal and the employee's rights of appeal, the employee must be provided with notice that specifically identifies the reasons for dismissal and the employee's rights of appeal, which is the opportunity to be heard. When the trial court's findings of fact indicate that these specific mandates were satisfied, the appellate court is unable to find that the State Court's reasoning was clearly erroneous. Palsis v. Kosrae, 17 FSM R. 236, 242 (App. 2010).

– Pohnpei

A Pohnpei state government official is an employee for purposes of the Federated States of Micronesia Income Tax Law. Rauzi v. FSM, 2 FSM R. 8, 12 (Pon. 1985).

Working for the Pohnpei state government, whose policy of public service is based explicitly on the merit, is merely a privilege which can be withheld subject to the due process of law. Paulus v. Pohnpei, 3 FSM R. 208, 217 (Pon. S. Ct. Tr. 1987).

The right to governmental employment in Pohnpei is not a fundamental right, constitutionally protected, requiring invoking a strict scrutiny test. Paulus v. Pohnpei, 3 FSM R. 208, 217 (Pon. S. Ct. Tr. 1987).

The Pohnpei State Government has discretion in hiring or firing employees, but that discretion does not carry with it the right to its arbitrary exercise. Paulus v. Pohnpei, 3 FSM R. 208, 217 (Pon. S. Ct. Tr. 1987).

Section 14(1) of the State Public Service System Act of 1981 (2L-57-81), prohibiting any person who has been convicted of a felony and is currently under sentence from being considered for any public employment or from continuing to hold any previously attained public service position, operates to effect double punishment on persons classified as felons, by preventing such individuals' attempts at rehabilitation, and as such this statute does not support Pohnpei State Government's policy of rehabilitating persons who are convicted of crimes. Paulus v. Pohnpei, 3 FSM R. 208, 219 (Pon. S. Ct. Tr. 1987).

Section 14(1) of the State Public Service System Act of 1981 (2L-57-81) is impermissibly arbitrary and irrationally unfair in its blanket prohibition of employment of any person who has been convicted of a felony and is currently under sentence; such statutory prohibition fails to tailor its impact to those convicted felons who otherwise lack the habits of industry. Consequently, this section of the statute is violative of the Equal Rights Clause of the Pohnpei Constitution by failing to demonstrate that the exclusion of all felons is necessary to achieve the articulated state goal. Paulus v. Pohnpei, 3 FSM R. 208, 220 (Pon. S. Ct. Tr. 1987).

A statute providing that any person who has been convicted of a felony and who is currently under sentence shall be terminated from public employment, constitutes an unconstitutional deprivation of procedural due process by allowing for an affected individual's termination without a hearing, and thus must be struck down. Paulus v. Pohnpei, 3 FSM R. 208, 221-22 (Pon. S. Ct. Tr. 1987).

Each division of the Pohnpei Department of Treasury and Administration, except in instances where the

director maintains direct management of the division, has a division chief. Smith v. Nimea, 17 FSM R. 284, 287 (Pon. 2010).

When the Department Director held a hearing, he could conceivably have been acting as the *de facto* chief of PL&MD, or, if PL&MD did have a chief then, the Director may not have had implied authority, unless he was the division chief's designee. Smith v. Nimea, 17 FSM R. 284, 287 (Pon. 2010).

All powers statutorily granted to PL&MD are necessarily a subset of those powers granted to the Pohnpei Department of Treasury and Administration, particularly in light of the statute wherein a department director may assume a division chief's responsibilities and the statute which empowers a division chief to designate another person to act in his stead. Smith v. Nimea, 17 FSM R. 284, 287-88 (Pon. 2010).

Pohnpei Code Title 9, chapter 2, section 105 states that preference shall be given to qualified legal residents of Pohnpei in making appointments and promotions and providing opportunities for training in the public service, but the term "legal residents" is not defined in Title 9. Berman v. Lambert, 17 FSM R. 442, 446 (App. 2011).

Pohnpei Code Title 19 and its definitions, apply only to private employers and their employees, not to Pohnpei public employees. Berman v. Lambert, 17 FSM R. 442, 447 (App. 2011).

Pohnpei Code Title 9 provides for a promotion preference, as well as a hiring preference. It offers two tiers of hiring and promotion preferences. A higher hiring and promotion preference is given to legal residents of Pohnpei, and the lower hiring and promotion preference for all FSM citizens who are not legal residents of Pohnpei. Berman v. Lambert, 17 FSM R. 442, 447 (App. 2011).

If the legislature wanted the statute to provide a hiring and promotion preference to Pohnpeian or FSM citizens, then the legislature would have used "citizen" rather than "legal resident." By not defining the term "legal residents" the term's meaning must be the term's common, recognized definition. Berman v. Lambert, 17 FSM R. 442, 448 (App. 2011).

The statute's plain meaning of term "legal residents of Pohnpei" is individuals who are domiciled in Pohnpei. This interpretation allows a Pohnpeian citizen living abroad, who maintained his or her domicile in Pohnpei, to receive the same hiring preference as a Pohnpeian citizen living in Pohnpei and it would give all FSM citizens and non-citizens who have moved to Pohnpei and made Pohnpei their domicile, equal opportunity for job selection and promotion. This interpretation is also internally consistent with the statute's other parts which give a second preference for employment to FSM citizens who are not legal residents of Pohnpei when applying for a position or promotion and who would receive a preference over non-citizens who are temporarily living in Pohnpei and over other non-residents. Berman v. Lambert, 17 FSM R. 442, 448 (App. 2011).

Unless the regulations directly violate a national statute or are found to be unconstitutional, Pohnpei is free to regulate its own public service system. Berman v. Lambert, 17 FSM R. 442, 449 (App. 2011).

The right to work for the Pohnpei state government is not a constitutionally protected right, and, although there is a right to seek employment, there is no fundamental right for employment particularly to public employment. Berman v. Lambert, 17 FSM R. 442, 450 (App. 2011).

Section 2-114(1), by its terms, only applies to persons who have completed their sentence and are applying for a Pohnpei public service position. It does not apply to persons already holding public service positions. Phillip v. Pohnpei, 21 FSM R. 439, 442 (Pon. 2018).

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

A court's review of a Pohnpei Personnel Review Board decision is governed by statute. Phillip v. Pohnpei, 21 FSM R. 439, 443 (Pon. 2018).

When, even though the employment contract was printed with a Pohnpei state government letterhead, the Pohnpei Visitors Bureau's actual function and operation shows that it is independent of the Pohnpei state government; when the PVB's funding is provided for under the Compact of Free Association, but is deposited with the Pohnpei Department of Treasury and Administration for custodial purposes and disbursement; and when the PVB's actual decision-making lies with its Board, the PVB is an entity that operates independent of the state government, and its Board is responsible for its General Manager's hiring, thus making the state's non-renewal of the plaintiff's contract unlawful. Santos v. Pohnpei, 21 FSM R. 495, 499 (Pon. 2018).

Although the contract in question is a personal services contract which names the State of Pohnpei as the contracting party, because the Pohnpei Visitors Bureau operates and is controlled by its Board, and not by the state government, the agreement is between the plaintiff and the PVB, through its Board of Directors. Santos v. Pohnpei, 21 FSM R. 495, 499 (Pon. 2018).

Since the Pohnpei Visitors Bureau is a non-governmental organization with duly enacted articles of incorporation and bylaws, whose funding is provided for under the Compact of Free Association, the Pohnpei state government had a ministerial duty to certify the plaintiff's employment contract after the Board's approval, because the discretion of whether to hire the plaintiff was with the PVB Board. "Ministerial" means of or relating to an act that involves obedience to instructions or laws instead of discretion, judgment, or skill. Santos v. Pohnpei, 21 FSM R. 495, 500 & n.4 (Pon. 2018).

– Pohnpei – Termination

The removal or termination of a public service system employee is a disciplinary action, and the applicable Pohnpei state statute provides that a management official may, for disciplinary reasons, dismiss an employee for such causes that will promote the public service's efficiency. Phillip v. Pohnpei, 21 FSM R. 439, 443 (Pon. 2018).

When the court cannot say that the Personnel Review Board's decision was arbitrary, capricious, or an abuse of discretion since Pohnpei had a rational basis for its decision – that the plaintiff, because of his cheating conviction, was an inappropriate role model or mentor for the children he had been employed to instruct, the plaintiff's termination was thus in compliance with Section 2-139 since his disciplinary dismissal was for such cause that would promote the public service's efficiency. Phillip v. Pohnpei, 21 FSM R. 439, 443 (Pon. 2018).

Due process requires that a non-probationary government employee be given some opportunity to respond to the charges against him before his dismissal may be implemented; including oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. Phillip v. Pohnpei, 21 FSM R. 439, 444 (Pon. 2018).

– Termination

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

The National Public Service System Act fixes two conditions for termination of a national government employee. Responsible officials must be persuaded that: 1) there is "cause," that is, the employee has acted wrongfully, justifying disciplinary action; and 2) the proposed action will serve "the good of the public

service." 52 F.S.M.C. 151-157. Suldan v. FSM (II), 1 FSM R. 339, 353 (Pon. 1983).

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

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

The National Public Service System Act places broad authority in the highest management official, authorizing dismissal based upon disciplinary reasons when the official determines that the good of the public service will be served thereby. Semes v. FSM, 4 FSM R. 66, 73 (App. 1989).

The National Public Service System Act and the FSM Public Service System Regulations establish an expectation of continued employment for nonprobationary national government employees by limiting the permissible grounds and specifying necessary procedures for their dismissal; this is sufficient protection of the right to continued national government employment to establish a property interest for nonprobationary employees which may not be taken without fair proceedings, or "due process." Semes v. FSM, 4 FSM R. 66, 73 (App. 1989).

Constitutional due process requires that a nonprobationary employee of the national government be given some opportunity to respond to the charges against him before his dismissal may be implemented; including oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. Semes v. FSM, 4 FSM R. 66, 76 (App. 1989).

Implementation of the constitutional requirement that a government employee be given an opportunity to respond before dismissal is consistent with the statutory scheme of the National Public Service System Act, therefore the Act need not be set aside as contrary to due process. Semes v. FSM, 4 FSM R. 66, 77 (App. 1989).

A person whose temporary promotion became permanent has the right to be discharged only for cause, and is entitled to all of the other protections afforded a permanent employee. Isaac v. Weilbacher, 8 FSM R. 326, 337 (Pon. 1998).

A timely appeal by a public employee of his termination by submitting a letter brief to the Assistant Secretary for Personnel Administration entitles him to a hearing on his appeal within fifteen calendar days after the Personnel Officer receives the appeal, unless the appellant requests a delay. A postponement longer than that by the government not consented to by the appellant is not in compliance with the law. Maradol v. Department of Foreign Affairs, 13 FSM R. 51, 52-53 (Pon. 2004).

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

Under Title 52, when the FSM Supreme Court's review is for the sole purpose of preventing statutory, regulatory, and constitutional violations, review of the factual findings is limited to determining whether substantial evidence in the record supports the administrative official's conclusion that a violation justifying

termination has occurred. The court is thus required to uphold the President's findings of fact if there is substantial evidence in the record to support them. Poll v. Victor, 18 FSM R. 235, 239 (Pon. 2012).

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

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

The National Public Service System Act and the Public Service System Regulations establish continued employment for non-probationary national government employees by limiting the permissible grounds and specifying the necessary procedures for their dismissal. This is sufficient protection of the right to continued national government employment to establish a non-probationary employee's property interest which may not be taken without due process, including notice and an opportunity to be heard. Poll v. Victor, 18 FSM R. 235, 244 (Pon. 2012).

When an employee's termination, effectuated on October 28, 2009, could not have taken effect before he was given an opportunity to be heard, which he later received at the ad hoc committee hearing, his termination would be effective, at the earliest, on the December 21, 2009 date of the ad hoc committee's decision because the ad hoc committee hearing was his first opportunity to respond to the charges against him. Poll v. Victor, 18 FSM R. 235, 245 (Pon. 2012).

When there was evidence of the terminated employee receiving approval of an advance leave request of 60 hours, but there was no evidence of how much of this advance leave was actually used, how much had already been paid back, and how much was still outstanding, the court will deny the government's request to offset the employee's pay to cover for the advance leave still owed since there is a lack of evidence on this matter. Poll v. Victor, 18 FSM R. 235, 245 (Pon. 2012).

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

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

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

In reviewing a government employee's termination under Title 52, the FSM Supreme Court will review factual findings insofar as necessary to determine whether there is evidence to establish that there were

grounds for discipline. Manuel v. FSM, 19 FSM R. 382, 386 (Pon. 2014).

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

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

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

If an employee ceases work without explanation for not less than six consecutive working days, the management official shall file with the personnel officer a statement showing termination of employment because of abandonment of position. Manuel v. FSM, 19 FSM R. 382, 389 (Pon. 2014).

When an employee's supervisor is contacted with a request for leave due to illness, the supervisor is on notice that the requesting employee is absent for a reason other than a desire to abandon his employment; when any senior management official who read the departmental attendance log and saw LWOP beside the employee's name should have understood that the employee did not wish to resign, but rather that his absences were approved; when it is clear that the employee did not cease work without explanation for six consecutive days and at worst only four of the six absences were without explanation, the employee did not cease work without explanation for six consecutive days and the court must conclude that a finding that the employee abandoned his employment is not supported by substantial evidence. Manuel v. FSM, 19 FSM R. 382, 389-90 (Pon. 2014).

It is well established that a plaintiff seeking an award of back pay as damages for wrongful termination has a duty to mitigate damages by actively seeking alternative employment. Manuel v. FSM, 19 FSM R. 382, 391 (Pon. 2014).

The failure to mitigate damages is an affirmative defense for which the defendant bears the burden of proof. The common law rule establishing failure to mitigate damages as an affirmative defense is sound because to hold otherwise would be to impose a burdensome requirement upon every plaintiff in a wrongful termination case and because a holding that failure to mitigate damages is an affirmative defense puts the burden of proof on defendants, who presumably would refrain from litigating this issue unless the question of failure to mitigate damages is actually in dispute. Manuel v. FSM, 19 FSM R. 382, 391 (Pon. 2014).

Reinstatement to his former position and back pay from the date of termination to the date of reinstatement are remedies generally available to an employee who has shown wrongful discharge. However, the amount of back pay must be reduced to the extent that the plaintiff has mitigated his damages by securing other employment. Manuel v. FSM, 19 FSM R. 382, 391-92 (Pon. 2014).

A wrongfully discharged employee is entitled to the equitable remedy of reinstatement to his former position. Reinstatement is appropriate even if the position has been filled by another employee since, if a replacement's existence constituted a complete defense against reinstatement, then reinstatement could be effectively blocked in every case simply by immediately hiring an innocent third-party after the unlawful discharge has occurred, thus rendering the reinstatement remedy's deterrent effect a nullity. Manuel v. FSM, 19 FSM R. 382, 392 (Pon. 2014).

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

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

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

A pattern of untruthfulness that had preceded the probationary employee's lying about posting comments on a website, along with his disrespectful and insubordinate attitude to his supervisor, were more than sufficient to terminate a probationary employee, even if he had not posted any comments. Alexander v. Hainrick, 20 FSM R. 377, 383 (App. 2016).

If the preponderance of evidence shows that a government employee would have been terminated even in the absence of the protected free speech conduct, then the employee's termination should be upheld. Alexander v. Hainrick, 20 FSM R. 377, 383 (App. 2016).

To grant a wrongfully discharged probationary employee a substantial back pay award would be to convert him from the probationary employee he was to a regular or permanent employee, and he cannot be treated as a regular employee since he did not successfully complete his probationary period before he was terminated. Thus, the most a court could do would be to reinstate him as a probationary employee. Alexander v. Hainrick, 20 FSM R. 377, 383 (App. 2016).

A complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face, but a plaintiff's allegation that there was a "sheer possibility" that her termination was based on petty and insufficient grounds, is inadequate, as far as withstanding a Rule 12(b)(6) challenge. Solomon v. FSM, 20 FSM R. 396, 401 (Pon. 2016).

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

When the plaintiff's reasoning neglects to cite what constituted an alleged illegal termination since the only factual averments which depict allegedly untoward conduct on the defendants' part, albeit nebulous, only apply to one defendant, the requisite nexus to support a substantive due process violation is wanting. Solomon v. FSM, 20 FSM R. 396, 402 (Pon. 2016).

– Yap

Section 23 of Yap State Law 1-35, affecting resignation and abandonment of employment positions, does not provide for administrative remedies or administrative appeal of any kind. Dabchur v. Yap, 3 FSM R. 203, 205 (Yap S. Ct. App. 1987).

Abandonment of a public office is a voluntary form of resignation wherein the employee's intention to relinquish his position must be clear, either through declaration or overt acts. Dabchur v. Yap, 3 FSM R. 203, 207 (Yap S. Ct. App. 1987).

Where the statute in question classifies "constructive" abandonment as an employee ceasing work "without explanation" for not less than six consecutive working days, any explanation from the employee, written or verbal, would suffice to indicate the employer that the employee does not intend to relinquish his position absolutely. Dabchur v. Yap, 3 FSM R. 203, 207 (Yap S. Ct. App. 1987).

An employee who contests the factual allegation of voluntary abandonment is not entitled to any administrative remedies or administrative appeal, and has recourse only in the court. Dabchur v. Yap, 3 FSM R. 203, 208 (Yap S. Ct. App. 1987).

Once Yap's Director of Education took over control of YHS, appointed a DOE employee as the YHS Acting Director, and exercised the power to terminate a YHS employee on a Yap Assistant Attorney General's advice, YHS employees are then state employees since when an individual or entity exercises the power to fire an employee, they become an employer of that employee. Reg v. Falan, 14 FSM R. 426, 436 (Yap 2006).

– Yap – Termination

No dismissal or demotion of a permanent Yap state employee is effective for any purpose until the management official transmits to the employee, by the most practical means, a written notice setting forth the specific reasons for the dismissal or demotion and the employee's rights of appeal. The rights of appeal that the employee should be informed of include: 1) an appeal through the Chief of Division of Personnel, 2) a hearing before an ad hoc committee where the plaintiff has a right to be heard and evidence is taken and recorded, and 3) a full written report of findings and recommendations to the highest management official at the agency. Reg v. Falan, 14 FSM R. 426, 436 (Yap 2006).

When the termination letter sent to the plaintiff stated the reason for his termination, but did not set forth his appeal rights, the plaintiff's dismissal from state employment was not effective. Reg v. Falan, 14 FSM R. 426, 436 (Yap 2006).

Reinstatement to his former position and back pay to the date of his termination to the date he is reinstated are remedies are generally available to an employee who has shown wrongful discharge. But the amount awarded in back pay should be reduced to the extent the plaintiff has mitigated his damages by securing other employment. Reg v. Falan, 14 FSM R. 426, 436-37 (Yap 2006).

When a plaintiff suing for wrongful discharge has introduced no evidence of his efforts to mitigate his damages by attempting to secure a job during his periods of unemployment, the plaintiff is precluded from recovery of damages for these periods. Reg v. Falan, 14 FSM R. 426, 437 (Yap 2006).

PUBLIC UTILITIES

Only the PUC Board of Directors can terminate PUC's general manager. The Governor has no such power under any circumstance. If the PUC Board lacks a quorum, the Governor's power extends only to nominating new Board members who, if confirmed, would allow the Board to have a quorum and thus to

transact business. Perman v. Ehsa, 18 FSM R. 432, 438 (Pon. 2012).

The Pohnpei Governor has neither the power nor the authority to exercise any of the powers vested exclusively in the PUC Board. Perman v. Ehsa, 18 FSM R. 432, 438 (Pon. 2012).

Pohnpei Utility Corporation is not part of the executive branch of the Pohnpei state government or part of either of the other two branches. It is an independent agency not subject to or under any of the three branches of government. Perman v. Ehsa, 18 FSM R. 432, 440 (Pon. 2012).

By Chuuk state law, a public utility may enter on any private land to dig out and replace or redistribute at the landowner's instruction earth or soil for the maintenance of any pipe or line, but the landowner's instruction is required only if the soil is to be redistributed. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 422 (Chk. S. Ct. Tr. 2019).

No trespass was committed when the public utility already had an easement over the pipes that it replaced on the plaintiff's land, and the law did not require instruction from the land owner since the soil that the utility dug up to replace the pipes was never redistributed – it was placed over the pipes again. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 423 (Chk. S. Ct. Tr. 2019).

No trespass was committed when the public utility placed primary utility poles to connect the general public in that area to electricity because the landowner's right to possessory interest remains subject to the public utility's right to use the soil above and below the land for public utility purposes. Thus, no interference with the land owner's possessory interest occurred. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 423 (Chk. S. Ct. Tr. 2019).

A public utility did not create a nuisance when it installed primary electric poles and replaced pipes because neither qualify as unreasonable conduct nor an abnormally dangerous activity. Public utilities often engage in the installation and replacement of utilities to provide the entire community with a higher standard of living. Neither create any realistic danger to the landowner or surrounding landowners and they provide benefits to the community. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 423-24 (Chk. S. Ct. Tr. 2019).

Chuuk Public Utilities Corporation is a semi-public entity where the governor of Chuuk appoints its board of directors; it is thus a government actor whose actions are subject to the mandates found within the Chuuk Constitution – including the declaration of rights clause. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 424 (Chk. S. Ct. Tr. 2019).

Chuuk state law requires a public utility to consult with the land owner and announce entry before it works on public utilities – but provides no relief for failure to consult. Due process requires consultation with the landowner before installing a new structure on the land (or extending another easement through that land), but the replacement of existing pipes falls outside that due process requirement since that easement already existed. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 424 (Chk. S. Ct. Tr. 2019).

The respect for real property, as implicitly recognized under the Chuuk Constitution, requires that if the real property owner is known, a public utility must consult with the landowner before creating a new easement over a land – in part to alleviate the landowner's concerns and to create a practical easement which limits the easement's effect on the owner. But consultation with the real landowner may sometimes be impossible; so when the real property owner is absent or unknown, a public utility company may broadcast two radio announcements about its intent to place a new structure on a particular parcel of land and invite any parties who might have an ownership claim to attend a consultation meeting. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 424 (Chk. S. Ct. Tr. 2019).

REMEDIES

Although retroactive application of a decision holding a state tax unconstitutional would impose hardship on a state where funds collected under the tax have already been committed, such a result is not inequitable where the state legislature pushed on with the tax act despite the strong resistance of business people to the tax in the form of petition and establishment of an escrow account to hold contested payments, and a veto message by the governor of the state, and there is no indication that the legislature seriously considered the constitutionality of the legislation. Innocenti v. Wainit, 2 FSM R. 173, 186 (App. 1986).

A promissory note executed by a governor, not authorized by law, and for which no appropriation of funds was made, and which failed to meet the requirements of the state financial management act is unenforceable against the state. Truk v. Maeda Constr. Co. (I), 3 FSM R. 485, 487 (Truk 1988).

A promissory note executed by the governor which is unenforceable against the state is not ratified although the legislature appropriated funds for a state debt committee which included the amount of the note, since the committee is not required to pay the promisee of the note, and since the promisee is not the allottee of the appropriation. Truk v. Maeda Constr. Co. (I), 3 FSM R. 485, 487 (Truk 1988).

Although the court is powerless to compel Chuuk State to honor its lease agreement it has full power to restore unlawfully held property to its rightful owner as a remedy for forcible entry and unlawful detainer. Billimon v. Chuuk, 5 FSM R. 130, 136-37 (Chk. S. Ct. Tr. 1991).

Under Civil Rule 54(c) the court has full authority except in default judgments, to award the party granted judgment any relief to which it is entitled whether that party prayed for it or not. Billimon v. Chuuk, 5 FSM R. 130, 137 (Chk. S. Ct. Tr. 1991).

Where the court cannot compel the state to honor an illegal and/or unconstitutional lease it can order the state to restore the illegally held land, with any and all public improvements removed, to its rightful owner who may also be entitled to damages. Billimon v. Chuuk, 5 FSM R. 130, 137 (Chk. S. Ct. Tr. 1991).

The equitable remedy of specific performance is one where the court orders a breaching party to do that which he has agreed to do, thereby rendering the non-breaching party the exact benefit which he expected. The remedy is available when money damages are inadequate compensation for the plaintiff – when damages cannot be computed or when a substitute cannot be purchased. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 126 (Pon. 1993).

Where entitlement to customary relief has been proven and the means to execute such a remedy are within the trial court's authority and discretion, the trial court should as a matter of equity and constitutional duty grant the relief. Wito Clan v. United Church of Christ, 6 FSM R. 129, 133 (App. 1993).

Where a remedy exists, the FSM Supreme Court has general power under the Judiciary Act of 1979 to effect that remedy. Amayo v. MJ Co., 10 FSM R. 433, 435 (Pon. 2001).

It is an elemental canon of statutory construction that where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it. AHPW, Inc. v. FSM, 12 FSM R. 114, 122 (Pon. 2003).

There is no property right that is recognized by the law of the FSM as "damages." Damages is a legal term of art that refers generally to a remedy which may be granted by the court to a party in a civil action. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 456 (Pon. 2009).

Injunctive relief is a remedy available in proper cases. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 486 (Pon. 2009).

A court cannot order as relief a de facto practice that is actually contrary to law, even if it has been the usual practice. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 176, 179 (Pon. 2010).

An improper sale by a fiduciary (estate administrator) that has already taken place can be vacated, but not if the buyer was a bona-fide purchaser because, when property of an estate has been transferred to a bona-fide purchaser for value, the latter is protected even if the fiduciary was acting improperly. The beneficiaries' remedy is not to void the transaction but to seek damages for the personal representative's breach of his fiduciary duty. Mori v. Hasiguchi, 19 FSM R. 16, 22 (Chk. 2013).

Someone who has wrongfully sold property to a bona fide purchaser for value without notice can be compelled to buy a replacement if this is reasonably possible. Sometimes damages are the only appropriate remedy. Either way, the rightful heir's remedy is against estate administrator. If it were any other way, then anyone who ever bought property after it had been inherited and distributed by a Pohnpei probate court final order could never be certain that his or her title would not be taken away by a future final probate court order that the distributee seller was not the proper distributee. Mori v. Hasiguchi, 19 FSM R. 16, 23 (Chk. 2013).

A wrongfully discharged employee is entitled to the equitable remedy of reinstatement to his former position. Reinstatement is appropriate even if the position has been filled by another employee since, if a replacement's existence constituted a complete defense against reinstatement, then reinstatement could be effectively blocked in every case simply by immediately hiring an innocent third-party after the unlawful discharge has occurred, thus rendering the reinstatement remedy's deterrent effect a nullity. Manuel v. FSM, 19 FSM R. 382, 392 (Pon. 2014).

Since the plaintiff formed a series of valid and enforceable contracts with the defendant, the plaintiff cannot find relief in equity. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 478 (Pon. 2014).

Under a trespass cause of action, the trespasser is liable for his intentional failure to remove from the land a thing he has a duty to remove. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 78 (Pon. 2015).

When no valid contract exists between the parties because of a lack of definite terms, a party may recover for the benefit conferred upon another pursuant to other legal remedies under the law of contracts. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 (Pon. 2016).

When the plaintiffs' basic claim is that the state defendants deprived them of their property (the land on which an embassy sits) without just compensation, they would have a viable remedy of monetary damages assessed against the Pohnpei state defendants if they prove that claim, but no remedy against the embassy since it is immune. Estate of Gallen v. Governor, 21 FSM R. 457, 462 (Pon. 2018).

– Election of Remedies

Under the doctrine of election of remedies, a plaintiff cannot pursue two or more remedies which are inconsistent with each other, i.e. the assertion of one remedy directly contradicts or repudiates the other. The test is whether the assertion of one remedy involves the negation or repudiation of the other at a time when full knowledge of the facts would indicate a choice between the forms of redress. Mid-Pacific Constr. Co. v. Semes (II), 6 FSM R. 180, 183 (Pon. 1993).

Election of remedies as a bar to a plaintiff's action does not apply in a case where plaintiff had no knowledge or reason to know of fraud affecting his choice of action or where his original choice was based unknowingly on false information. Mid-Pacific Constr. Co. v. Semes (II), 6 FSM R. 180, 184 (Pon. 1993).

– Quantum Meruit

In an action by a party who performed work for the benefit of the state and who seeks quantum meruit

relief because no valid obligation of state funds existed, that relief by summary judgment cannot be granted when the party's own authorities show that the party must overcome the presumption of knowledge of the requirements of government contracting to demonstrate good faith, and no evidence on this issue was included in the motion for summary judgment, even though the work done and the charges made were reasonable, and even though there was no evidence of bad faith, collusion or fraud. Truk v. Maeda Constr. Co. (II), 3 FSM R. 487, 489 (Truk 1988).

A party completing projects is not entitled to quantum meruit recovery against the state when the contracts were done at the instance of the governor who had no authority to obligate the funds of the state, when the contracts did not purport to obligate the funds of the state, in which the governor promised to use his best efforts to find funds to pay for work performed, when the party accepted the risk that the governor might not be able to find funds, and when the governor promised payment when and if funds were available, even though the work performed was satisfactory, the charges were reasonable, and the work benefitted the state. Truk v. Maeda Constr. Co. (III), 3 FSM R. 489, 493-94 (Truk 1988).

The amount of compensation a public employee receives is not based on quasi-contract doctrines such as quantum meruit or unjust enrichment, but instead is set by law, even if the actual value of the services rendered by a public officer is greater than the compensation set by law. Sohl v. FSM, 4 FSM R. 186, 192 (Pon. 1990).

The doctrine of unjust enrichment generally applies where there is an unenforceable contract due to impossibility, illegality, mistake, fraud, or another reason and requires a party to either return what has been received under the contract or pay the other party for it. The unjust enrichment doctrine is based on the idea one person should not be permitted unjustly to enrich himself at the expense of another. Etscheit v. Adams, 6 FSM R. 365, 392 (Pon. 1994).

A claim for unjust enrichment will not lie where a party's efforts to reclaim the family's land were necessary in order for him to preserve any claim he personally had to that land and there is no evidence that he expended additional efforts or expense for the rest of the family beyond what he had to do to protect his own interests. Etscheit v. Adams, 6 FSM R. 365, 392 (Pon. 1994).

Quantum meruit is an equitable doctrine, based upon the concept that no one who benefits by the labor and materials of another should be unjustly enriched thereby. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 558 (Pon. 2000).

The essential elements of recovery under quantum meruit include: 1) valuable services rendered or materials furnished; 2) to a person sought to be charged; 3) which services or material were used and enjoyed by the person sought to be charged; and 4) under such circumstances as reasonably notified the person sought to be charged that the person performing the services expected payment. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 558 (Pon. 2000).

As a matter of law, the presence of an express written contract, which clearly sets forth the obligations of the parties, precludes a party from bringing a claim under quantum meruit. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 558 (Pon. 2000).

The settled rule that the statute of limitations begins to run upon the accrual of a cause of action applies in actions on implied and quasi contracts. When compensation for services is to be made on a certain date, the statute of limitations on an implied or quasi contract begins to run at that time. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 559 (Pon. 2000).

Quantum meruit is an equitable doctrine, based on the concept that no one who benefits by the labor and materials of another should be unjustly enriched thereby; under those circumstances, the law implies a promise to pay a reasonable amount for the labor and materials furnished, even absent a specific contract therefor. The doctrine of unjust enrichment has been recognized in the FSM. Adams v. Island Homes

Constr., Inc., 11 FSM R. 218, 232 (Pon. 2002).

A motion to amend a complaint to add an unjust enrichment claim will be denied when it is based upon a defendant's failure to abide by the alleged agreements' terms because these are express agreements, and unjust enrichment is a theory applicable to implied contracts. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 232 (Pon. 2002).

The doctrine of unjust enrichment only applies where there is no enforceable contract; the doctrine of restitution may not be applied where there is a contract; and the doctrines of implied contract and quantum meruit do not apply where there is an enforceable written contract. Esau v. Malem Mun. Gov't, 12 FSM R. 433, 436 (Kos. S. Ct. Tr. 2004).

If a defendant had had capabilities and resources equal to the transaction it undertook – then when it did not perform its contract, the plaintiff may well have had an adequate remedy in suing it on its contract to supply outboard motors, but when it was never a viable business entity, but a shell enterprise the purpose of which was to funnel the money to the other defendant, under all the case's facts and circumstances, the plaintiff should be permitted to "follow the money." Precluding the plaintiff from doing so would result in the other defendant's unjust enrichment at the plaintiff's expense. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 516 (App. 2005).

Quantum meruit, or unjust enrichment, is the equitable doctrine that in the absence of an enforceable contract, someone who receives something from another at the expense of the one conferring the benefit should either pay for it or return it. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 651 (Pon. 2008).

Unjust enrichment relates to the doctrine of implied contracts, which is to say that the court will, in the absence of a legally enforceable contract, imply a contract in law in the absence of a contract in fact in order to avoid unjust enrichment. Neither the concept of unjust enrichment or the closely associated idea of an implied contract apply where there is an enforceable written contract, since an express contract and implied contract for the same thing cannot govern a legal relationship at the same time. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 651-52 (Pon. 2008).

The elements of a cause of action for quantum meruit are that 1) valuable goods or services are provided 2) to someone against whom recovery is sought 3) when the goods or services are enjoyed or used by the one against whom recovery is sought 4) under such circumstances that notified the person that the one performing the services or providing the goods expected payment. The fact that Chuuk did not know that its insurance broker had paid the premiums relates to the quantum meruit claim's fourth element, which is whether the benefit conferred by the in-force policies was enjoyed by Chuuk under circumstances such that Chuuk knew that the insurance broker expected payment. Since it is beyond question that Chuuk knew that the broker expected payment because Chuuk acknowledged in writing that the premiums were owed, the notice requirement to Chuuk is met by Chuuk's express acknowledgment that it owed the premiums pursuant to its enforceable contract with the broker. Accordingly, Chuuk's contention that it is not liable because it did not know that the broker had advanced the premiums on its behalf is without merit. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 654 (Pon. 2008).

As the vessels' owner, and as a named insured under the policies along with the four states, the FSM received a benefit as a result of the fleet insurance coverage, but in order to establish a claim for quantum meruit, the insurance broker must demonstrate that the FSM was unjustly enriched by the benefit of the broker paying the premium for Chuuk. But the agreement between Chuuk and the FSM was that FSM would permit Chuuk to use vessels that the FSM owned and Chuuk, in return, would pay for insurance coverage for those vessels; so by advancing the insurance premium, the broker met Chuuk's obligation to the FSM in this regard. The primary benefit conferred by the insurance premium payments went to Chuuk, and not to the FSM, since Chuuk was also an insured along with the FSM under the policies and it was Chuuk's, not the FSM's, obligation to provide coverage for the vessels. To suggest that when Chuuk failed

to meet its obligation to the FSM to insure the vessels, the FSM became liable for the premiums on the vessels is to lose sight of the fact that the vessels were being operated by Chuuk and for Chuuk's benefit on the condition that Chuuk provide the insurance. The broker's remedy for the premium nonpayment is against Chuuk, who breached its agreement with the FSM by failing to pay for the premiums. The broker's remedy does not extend to the FSM. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 655 (Pon. 2008).

6 F.S.M.C. 702(3) waives the FSM's sovereign immunity only for claims, whether liquidated or unliquidated, upon an express or implied contract with the FSM. But, although the equitable doctrine of unjust enrichment operates in the absence of an enforceable contract when a party has received something of value and neither paid for it or returned it, unjust enrichment is a theory applicable to implied contracts. Thus, depending upon the facts of a case, 6 F.S.M.C. 702(3) does not bar an unjust enrichment claim since it does waive the FSM's sovereign immunity for implied (as well as express) contract claims. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 605 (Pon. 2009).

If there was a valid contact, a court cannot use an implied contract and an unjust enrichment analysis because the doctrines of unjust enrichment and implied contract do not apply when there is a valid, enforceable written contract. The unjust enrichment doctrine applies only when there is an unenforceable contract due to impossibility, illegality, mistake, fraud, or other reason and is based on the idea one person should not be permitted to unjustly enrich himself at another's expense. Kosrae v. Edwin, 18 FSM R. 507, 514 (App. 2013).

Unjust enrichment is an equitable doctrine that relates to the doctrine of implied contracts in that the court will, in the absence of a legally enforceable contract, imply a contract in law in the absence of a contract in fact in order to avoid unjust enrichment. Kosrae v. Edwin, 18 FSM R. 507, 514 (App. 2013).

When the trial court concluded that Kosrae was liable because there was an implied contract and because Kosrae was unjustly enriched, it must necessarily have also concluded that there was no valid enforceable contract since if there were an express contract, the implied contract and unjust enrichment doctrines would not apply. Kosrae v. Edwin, 18 FSM R. 507, 514 (App. 2013).

When the appellees did not officiously thrust their services as vice-principals on Kosrae but had applied for the vice-principal position; thought they had been hired for the position (and did not know their contracts were invalid); and then performed the duties required by that position and as they were instructed by their superiors, Kosrae was unjustly enriched and therefore should compensate the appellees. Kosrae v. Edwin, 18 FSM R. 507, 515 (App. 2013).

As a matter of law, the presence of an express written contract, which clearly sets forth the parties' obligations, precludes a party from bringing a claim under quantum meruit. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 12 (Pon. 2013).

When there are two express written contracts in which the parties' obligations are clearly set out: 1) the salvage contract between the vessel owner and the salvor and 2) the contract between insurer and the salvor that the insurer would pay the salvor the amounts due under the salvage contract on the presentation of an invoice and when there are additional, probably oral contracts for the $26,607.50 preparation work the salvor agreed to do that was outside the salvage contract's scope of work, the defendants are, with the exception of the $26,607.50 preparation work, entitled to summary judgment on the salvor's quantum meruit claims. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 12 (Pon. 2013).

As a matter of law, the presence of an express written contract, which clearly sets forth the parties' obligations, precludes a party from bringing a claim in equity under quantum meruit. Smith v. Nimea, 19 FSM R. 163, 172 (App. 2013).

When no contract exists for lack of definite terms, the court may use its equity power to fashion a

remedy under the restitution doctrine. The unjust enrichment doctrine also applies when there is an unenforceable contract. It is based upon the idea that one person should not be permitted unjustly to enrich himself at the expense of another. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 (Pon. 2016).

The unjust enrichment doctrine is based on the idea that one person should not be permitted unjustly to enrich himself at another's expense. The generally accepted elements of an unjust enrichment cause of action are: 1) the plaintiff conferred a benefit on the defendant, who has knowledge of the benefit, 2) the defendant accepted and retained the conferred benefit, and 3) under the circumstances it would be inequitable for the defendant to retain the benefit without paying for it. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 (Pon. 2016).

The "unjust enrichment" doctrine generally refers to the situation where someone takes part performance under contract that is void for impossibility, illegality, mistake, fraud, or some other reason. The, even though there is no enforceable contract, the doctrine requires the individual to either return what has been received under the contract or pay the other party for it. FSM v. Mikel, 22 FSM R. 33, 37 (Chk. 2018).

To maintain an action for unjust enrichment or for money had and received or for restitution, the recipient of the money had and received must be shown to be unjustly enriched. FSM v. Mikel, 22 FSM R. 33, 37 (Chk. 2018).

When there is no proof of a contract or part performance based on impossibility, illegality, mistake, fraud, or some other reason, an unjust enrichment or restitution claim is without merit. FSM v. Mikel, 22 FSM R. 33, 37 (Chk. 2018).

– Restitution

Where no contract existed for lack of definite terms, the court may use its inherent equity power to fashion a remedy under the doctrine of restitution. Jim v. Alik, 4 FSM R. 198, 200 (Kos. S. Ct. Tr. 1989).

Restitution is a remedy which returns the benefits already received by a party to the party who gave them where the court can find no contract. Jim v. Alik, 4 FSM R. 198, 201 (Kos. S. Ct. Tr. 1989).

The doctrine of unjust enrichment has been expanded to cover cases where there is an implied contract, but a benefit officiously thrust upon one is not considered an unjust enrichment and restitution is denied in such cases. Etscheit v. Adams, 6 FSM R. 365, 392 (Pon. 1994).

The purpose of the remedy of restitution is not to compensate the non-breaching party for reliance expenditures, but rather to prevent unjust enrichment of the breaching parties by forcing them to give up what they have received under the contract. Therefore defendants who breached an enforceable option agreement must return the $12,500 consideration, not because it is a loss attributable to the breach, but because the defendants would be unjustly enriched if they were allowed to keep the consideration after failing to live up to their end of the option agreement. Kihara Real Estate, Inc. v. Estate of Nanpei (III), 6 FSM R. 502, 507 (Pon. 1994).

As a general rule, where money is paid under a mistake of fact, and payment would not have been made had the facts been known to the payor, such money may be recovered even though the person to whom the money was paid under a mistake of fact was not guilty of deceit or unfairness, and acted in good faith, nor does the payor's negligence preclude recovery. The fact that money paid by mistake has been spent by the payee is generally insufficient to bar restitution to the payor. Bank of Hawaii v. Air Nauru, 7 FSM R. 651, 653 (Chk. 1996).

Restitution is a quasi-contract action based on a tort that is an alternative remedy to a tort action for

damages. Bank of Hawaii v. Air Nauru, 7 FSM R. 651, 653 (Chk. 1996).

Refund of taxes paid pursuant to an unconstitutional ordinance is an action for restitution, not damages. The principles governing recovery of payment which preclude recovery of voluntary payments are applicable to the recovery of tax payments. The "voluntary payment rule" has barred recovery in restitution. The general rule is that money paid voluntarily under a claim of right to the payment, and with knowledge of the facts by the person making the payment, cannot be recovered back on the ground that the claim was illegal. Chuuk Chamber of Commerce v. Weno, 8 FSM R. 122, 125 (Chk. 1997).

The reason the voluntary payment rule bars recovery in restitution of unlawful taxes is that litigation should precede payment. It thus does not apply to payments made after the commencement of litigation because the rule ceases with the reason on which it is founded. Chuuk Chamber of Commerce v. Weno, 8 FSM R. 122, 125-26 (Chk. 1997).

A person who has discharged more than his proportionate share of a duty owed by himself and another, as to which neither had a prior duty of performance, and who is entitled to contribution from the other is entitled to reimbursement, limited to the proportionate amount of his net outlay properly expended. Senda v. Semes, 8 FSM R. 484, 495 (Pon. 1998).

Contribution is an equitable doctrine based on principles of fundamental justice. When any burden ought, from the relationship of the parties to be equally borne and each party is in aequali jure, contribution is due if one has been compelled to pay more than his share. The right to contribution is not dependent on contract, joint action, or original relationship between the parties; it is based on principles of fundamental justice and equity. Senda v. Semes, 8 FSM R. 484, 495 (Pon. 1998).

The right to sue for contribution does not depend upon a prior determination that the defendants are liable. Whether they are liable is the matter to be decided in the suit. To recover a plaintiff must prove both that there was common burden of debt and that he has, as between himself and the defendant, paid more than his fair share of the common obligations. Senda v. Semes, 8 FSM R. 484, 496 (Pon. 1998).

In a civil case where defendants seeks to advance Pohnpeian customary practice as a defense to a claim of equitable contribution, the burden is on the defendants to establish by a preponderance of the evidence the relevant custom and tradition. Senda v. Semes, 8 FSM R. 484, 497 (Pon. 1998).

Allowing a contribution claim between parties who are relatives, and who are equally liable under a duly promulgated regulation for a corporation's debts, is consistent with the customary principle that relatives should assist one another. Senda v. Semes, 8 FSM R. 484, 499 (Pon. 1998).

A contention that custom and tradition as a procedural device may prevent an equitable claim for contribution based on violation of a regulation governing the formation of corporations is an insufficient defense as a matter of law. Senda v. Semes, 8 FSM R. 484, 499 (Pon. 1998).

The date of accrual for a contribution cause of action is the day the judgment was entered. Obviously a prerequisite to any successful contribution action based on a judgment is the judgment itself. The limitations period for a contribution action is six years. Senda v. Semes, 8 FSM R. 484, 500-01 (Pon. 1998).

In the case of indemnity the defendant is liable for the whole damage springing from contract, while in contribution the defendant is chargeable only with a ratable proportion founded not on contract but upon equitable factors measured by equality of burden. Senda v. Semes, 8 FSM R. 484, 505 (Pon. 1998).

A party jointly and severally liable for a corporation's debts is not liable for contribution for a subsidiary's debt paid by a guarantor when the corporation was not a coguarantor of the subsidiary's loan. Senda v. Semes, 8 FSM R. 484, 506 (Pon. 1998).

Equity does not dictate that a setoff for the amount of a defendant's stock subscription be allowed against a contribution claim when the person claiming the setoff received by far the greatest benefit from the failed corporation while it was operating. Senda v. Semes, 8 FSM R. 484, 507 (Pon. 1998).

When C.P.A. Reg. 2.7 imposes the same degree of liability on all incorporators, and the parties' plan from the beginning was to share profits equally, balancing the equities favors a three-way, equal split of the debt burden on a contribution claim. Senda v. Semes, 8 FSM R. 484, 507-08 (Pon. 1998).

A person who has discharged more than his proportionate share of a duty owed by himself and another and who is entitled to contribution from the other is entitled to reimbursement limited to the proportionate amount of his net outlay properly expended. When incurred interest expense is part of his net outlay properly expended, the other should contribute toward the interest expense. Senda v. Semes, 8 FSM R. 484, 508 (Pon. 1998).

Where no contract existed, a court may use its inherent equity power to fashion a remedy under the doctrine of restitution. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 195 (Kos. S. Ct. Tr. 2001).

The doctrine of unjust enrichment generally applies where there is an unenforceable contract. It requires a party to either return what has been received or pay the other party for it. The unjust enrichment doctrine is based on the idea one person should not be permitted unjustly to enrich himself at the expense of another. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 195 (Kos. S. Ct. Tr. 2001).

Restitution is a remedy which returns the benefits already received by a party to the party who gave them where the court can find no contract. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 195 (Kos. S. Ct. Tr. 2001).

Evidence that, sometime before defendant's marriage, the plaintiff did have some limited intimate contact on one occasion with the woman who later became the defendant's wife, does not serve as a defense to the plaintiff's claim of unjust enrichment and to recover restitution for the defendant's stopping construction of the plaintiff's house. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 196 (Kos. S. Ct. Tr. 2001).

The trial court has wide discretion in determining the amount of damages in contract and quasi-contract cases involving equitable doctrines, such as promissory estoppel and restitution. The plaintiff may be compensated for the injuries by awarding compensation for the expenditures made in reliance on the promise. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 196 (Kos. S. Ct. Tr. 2001).

Claimed expenditures for food and beverages will not be awarded when the purchase and consumption of these items was not dependent upon the defendant's promise, and labor costs will not be allowed as damages when there was no evidence presented at trial that the plaintiff paid any person a specific sum for labor. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 196 (Kos. S. Ct. Tr. 2001).

Pre-judgment interest is not appropriate and a claim for it will be denied when there was no agreement involving a promise to pay money, when the plaintiff was not deprived of funds that he was entitled to because there was no contract made between the parties to pay money, and when the plaintiff was awarded damages based upon the equitable doctrine of promissory estoppel for the plaintiff's expenditures made in reliance on a promise. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 197 (Kos. S. Ct. Tr. 2001).

Where no contract existed for lack of definite terms, the court may use its inherent equity power to fashion a remedy under the doctrine of restitution. Youngstrom v. Mongkeya, 11 FSM R. 550, 554 (Kos. S. Ct. Tr. 2003).

The court has wide discretion in the award of damages in restitution cases to achieve fairness. Once a claimant's entitlement to damages is established, the amount of damages is an issue for the finder of fact. Youngstrom v. Mongkeya, 11 FSM R. 550, 555 (Kos. S. Ct. Tr. 2003).

When the plaintiff has already paid the full amount of costs for which both the plaintiff and defendant are equally responsible, the defendant is liable to the plaintiff for half of those costs. Youngstrom v. Mongkeya, 11 FSM R. 550, 555 (Kos. S. Ct. Tr. 2003).

When the parties have failed to make an enforceable contract due to the lack of definite terms, the court may use its equity power to grant a remedy under the doctrine of restitution. Restitution is a remedy which returns the benefits already received to the party who gave those benefits. Livaie v. Weilbacher, 11 FSM R. 644, 648 (Kos. S. Ct. Tr. 2003).

Restitution is a doctrine by which the court returns the benefits received by one party. Livaie v. Weilbacher, 11 FSM R. 644, 648 (Kos. S. Ct. Tr. 2003).

When the plaintiff is entitled to restitution for the value of landfill hauled from his property, he will be paid at the market value per cubic yard. Livaie v. Weilbacher, 11 FSM R. 644, 648 (Kos. S. Ct. Tr. 2003).

The unjust enrichment doctrine is based on the idea that one person should not be permitted unjustly to enrich himself at another's expense. The generally accepted elements of an unjust enrichment cause of action are: 1) the plaintiff conferred a benefit on the defendant, who has knowledge of the benefit, 2) the defendant accepted and retained the conferred benefit, and 3) under the circumstances it would be inequitable for the defendant to retain the benefit without paying for it. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM R. 337, 345 (Pon. 2004).

Unjust enrichment is an equitable remedy, and generally requires that the party who accepted and retained a benefit pay that benefit back to the party who conferred it. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM R. 337, 346 (Pon. 2004).

While the doctrine of unjust enrichment has not been explicitly discussed or adopted, Pohnpei state law and Micronesian custom and tradition dictate that a party who has benefitted unjustly from another should, under certain circumstances, be made to repay that benefit. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM R. 337, 346 (Pon. 2004).

There is no impediment to a plaintiff recovering for unjust enrichment, when the plaintiff has proven that one or more defendant knowingly accepted a benefit from the plaintiff and was unjustly enriched at plaintiff's expense. The plaintiff was undoubtedly wronged when it paid $54,000 for 27 outboard motors, and only received 13 of the motors, and since the defendants received this money and converted it to other purposes, it would be unjust to permit them to retain that benefit. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM R. 337, 346 (Pon. 2004).

Even though there is evidence of a contract between the plaintiff and a defendant, the equitable remedy of unjust enrichment will be applied to permit the plaintiff to recover from another defendant, when it is apparent that the first defendant was created only to circumvent second's obligations under its distributorship agreement and the second defendant ultimately was the party that received the bulk of the money. It would be unjust indeed to permit it to retain a benefit it received, merely because it received the benefit through a shell company that was created merely so that the plaintiff's check could be cashed and the money paid over to it. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM R. 337, 346 (Pon. 2004).

When individuals were unjustly enriched by the plaintiff in the amount of $3,500, and the plaintiff elected to sue on an equitable claim of unjust enrichment, rather than for breach of contract, and when, by their own testimony, the individuals personally made money on the transaction, and the plaintiff received only one-half of the motors it purchased, it would be inappropriate to not hold the defendants responsible, as individuals and as the company's principals, for their dealings with the plaintiff which damaged the plaintiff. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM R. 337, 346-47 (Pon. 2004).

When a defendant admitted that it had been "paid in full" for the 27 outboard motors the plaintiff purchased, but it only delivered 13 of the motors, the defendant has been unjustly enriched in the amount the plaintiff paid for 14 of the 27 motors, minus the amount that was converted by others. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM R. 337, 347 (Pon. 2004).

The doctrine of unjust enrichment only applies where there is no enforceable contract; the doctrine of restitution may not be applied where there is a contract; and the doctrines of implied contract and quantum meruit do not apply where there is an enforceable written contract. Esau v. Malem Mun. Gov't, 12 FSM R. 433, 436 (Kos. S. Ct. Tr. 2004).

The doctrine of unjust enrichment generally applies where there is an unenforceable contract due to impossibility, illegality, mistake, fraud, or another reason and requires a party to either return what has been received under the contract or pay the other party for it. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 130 (Chk. 2005).

The unjust enrichment doctrine is based on the idea one person should not be permitted unjustly to enrich himself at another's expense and this doctrine has been expanded to cover cases where there is an implied contract. The generally accepted elements of an unjust enrichment cause of action are: 1) the plaintiff conferred a benefit on the defendant, who has knowledge of the benefit, 2) the defendant accepted and retained the conferred benefit, and 3) under the circumstances it would be inequitable for the defendant to retain the benefit without paying for it. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 130 (Chk. 2005).

The classic situation to which the unjust enrichment doctrine is applied is where there is an unenforceable contract due to impossibility, illegality, mistake, fraud, or another reason and the doctrine requires a party to either return what has been received under the contract or pay the other party for it. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 130 (Chk. 2005).

There was no classic unjust enrichment situation when there was no contract, unenforceable or otherwise, between the plaintiff and the bank and no implied contract between the two and when the plaintiff did not confer a benefit on the bank that the bank had knowledge of, accepted and retained, because not only was there no contract between the plaintiff and the bank, but also because the plaintiff had no contact with the bank at all and was not in privity with the bank. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 130 (Chk. 2005).

When a borrower did not pay the money to the bank under the mistaken belief that it owed the bank money because it actually did owe the bank money and when it did not mistakenly pay to the bank money that it owed to another, the money was not paid to the bank by mistake as that term is used in unjust enrichment cases – often referred to as an action for money had and received. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 130 (Chk. 2005).

There is a certain limited instance where a plaintiff may recover under an unjust enrichment theory from a third party with which he has had no contact, either directly or through its agents. The requisite "privity" does exist between a plaintiff and such a defendant when that defendant has received money from another fraudulently obtained by the latter only when the recipient was aware of the fraud. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 130-31 (Chk. 2005).

Money received in the regular course of business from one who fraudulently or feloniously obtained it from another may not be recovered by the true owner from the recipient, even though the latter received it in payment of an antecedent debt and parted with no new consideration for the same, if he had no knowledge of the fraud or of the felony. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 131 (Chk. 2005).

A defendant bank, having received money from a debtor to it in the regular course of business to pay an antecedent debt which the debtor unquestionably owed to it and having no reason to believe or

knowledge that the money might have been fraudulently obtained, is not liable to pay restitution to the plaintiff under the unjust enrichment doctrine. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 131 (Chk. 2005).

When no contract exists for lack of definite terms, the court may use its inherent equity power to fashion a remedy under the doctrine of restitution. Restitution is the proper remedy when no enforceable contract exists. It requires the benefitted party to return what was received or to pay the other party for it. Livaie v. Weilbacher, 13 FSM R. 139, 143 (App. 2005).

When the Plaintiff seeks as a component of restitution, ground rent for his quarry and argues that ground rent is "normally compensated in similar contracts," but did not present any evidence during the June 2003 trial nor at the April 14, 2005 hearing in support of his claim for ground rent and did not offer any "similar contracts" to establish that ground rent is "normally compensated" for the use of land for a quarry, the plaintiff's request for restitution for ground rent must be denied. Livaie v. Weilbacher, 13 FSM R. 206, 208 (Kos. S. Ct. Tr. 2005).

When no contract exists for lack of definite terms, the court may use its inherent equity power to fashion a remedy under the doctrine of restitution and where no contract exists for lack of an agreed sale price, restitution is applicable. The doctrine of unjust enrichment generally applies when there is an unenforceable contract. It is based on the idea that one person should not be permitted unjustly to enrich himself at the expense of another. DJ Store v. Joe, 14 FSM R. 83, 85 (Kos. S. Ct. Tr. 2006).

When the defendant took the cement mixer in April 2001 and has maintained continuous possession and use for nearly five years without any payment to the plaintiff, the defendant has unjustly enriched himself through continued possession and use of the cement mixer, especially in his construction business, which has generated income for defendant. The defendant is thus liable to the plaintiff for restitution of the cement mixer's value. DJ Store v. Joe, 14 FSM R. 83, 85-86 (Kos. S. Ct. Tr. 2006).

When no contract exists for lack of definite terms, the court may use its equity power to fashion a remedy under the doctrine of restitution. The doctrine of unjust enrichment also applies where there is an unenforceable contract. It is based upon the idea that one person should not be permitted unjustly to enrich himself at the expense of another. Heirs of Nena v. Sigrah, 14 FSM R. 283, 285 (Kos. S. Ct. Tr. 2006).

When the defendant's expenses are equivalent to the defendant's rental income, the defendant has not been unjustly enriched and is therefore not liable to the plaintiffs under the doctrines of restitution and unjust enrichment. Heirs of Nena v. Sigrah, 14 FSM R. 283, 286 (Kos. S. Ct. Tr. 2006).

When the parties have failed to make an enforceable contract due to the lack of definite terms, the court may use its equity power to grant a remedy under the doctrine of restitution. Restitution is a remedy which returns the benefits already received to the party who gave those benefits. Once a claimant's entitlement to damages is established, the amount of damages is an issue of fact for the finder of fact. The trial court has wide discretion in determining the amount of damages in quasi-contract and contract cases involving equitable doctrines, such as restitution. Hartman v. Krum, 14 FSM R. 526, 531 (Chk. 2007).

When a plaintiff makes a claim for damages, he has a duty to mitigate those damages, which means that a plaintiff who has taken reasonable steps to minimize the amount of his damages may recover the amount of those expenses. A court will not compensate an injured party for a loss that he could have avoided by making appropriate efforts, in the eyes of the court, to the circumstances. Under the general principle of mitigation of damages, a plaintiff is not encouraged to maximize his recovery by siting on his rights. Hartman v. Krum, 14 FSM R. 526, 531 (Chk. 2007).

When the defendant is responsible for returning a cement mixer to the plaintiffs in a similar condition as

when he took it, but it would be too difficult to have the cement mixer fixed, the court must look at an alternative and award the plaintiffs an amount for the replacement of their used cement mixer. Hartman v. Krum, 14 FSM R. 526, 531 (Chk. 2007).

When there is no enforceable contract, a court may use its inherent equity power to fashion a remedy under doctrines such as unjust enrichment or detrimental reliance. The doctrine of unjust enrichment is based on the idea that one person should not be unjustly enriched at the expense of another. It usually applies when a party has partly performed under a contract that is later void for mistake, fraud, illegality, impossibility, or some other reason, or where there is an implied contract. Generally, the person must either return what has been received under the contract or pay for it. Siba v. Noah, 15 FSM R. 189, 195 (Kos. S. Ct. Tr. 2007).

When the plaintiff performed his part of the agreement by providing goods and cash to the a defendant believing the boundary of his land would be extended and he timely filed a subdivision request with the Land Commission and completed building a house on the land, in expectation of receiving title; when the defendant accepted the goods and cash and another defendant received title to the land from that defendant and others, including the portion the plaintiff was to receive; and when the other defendant accepted title to both parcels, but knew that the plaintiff was entitled to a portion of the land and had requested the subdivision, applying the doctrine of unjust enrichment, the other defendant has been unjustly enriched at the plaintiff's expense. To end the other defendant's unjust enrichment, the remedy is to issue title to the plaintiff for the portion of the land he was to receive in 1987 and leave title to the remaining land with the other defendant. An application of the doctrine of detrimental reliance affords the same remedy. Siba v. Noah, 15 FSM R. 189, 196 (Kos. S. Ct. Tr. 2007).

When the court concludes that there was a contract between the plaintiff and the defendant, it will do not address the plaintiff's alternative claims under unjust enrichment and promissory estoppel. George v. George, 15 FSM R. 270, 273 (Kos. S. Ct. Tr. 2007).

When the court concludes that there was a contract between the plaintiff and the defendant, it will do not address the plaintiff's alternative claims under unjust enrichment and promissory estoppel. George v. Albert, 15 FSM R. 323, 326 (Kos. S. Ct. Tr. 2007).

An unjust enrichment or restitution claim cannot be maintained until money has been paid to or received by the person alleged to be unjustly enriched or has been paid in error to someone who should not retain it. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 6 (Pon. 2011).

A plaintiff seeking to maintain an action for unjust enrichment as the result of having paid money on a judgment must first have that judgment vacated or reversed before that plaintiff can pursue an unjust enrichment or restitution claim. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 7 (Pon. 2011).

If, when a judgment that a party has paid is reversed on appeal or otherwise set aside, that party then has a restitution or unjust enrichment cause of action, then it follows that when a judgment has been affirmed on appeal and not otherwise set aside, that party does not have cause of action for restitution or unjust enrichment for sums paid on the judgment. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 7 (Pon. 2011).

If a plaintiff has not had the judgment set aside or reversed, then the plaintiff's unjust enrichment claim fails to state a claim on which relief can be granted since the plaintiff cannot allege that it would be inequitable for the defendant to retain the benefit without paying for it because the plaintiff cannot truthfully allege that the judgment has been set aside. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 7 (Pon. 2011).

To maintain an action for unjust enrichment or for money had and received or for restitution, the recipient of the money had and received must be shown to be unjustly enriched. Unless and until a judgment on which the plaintiffs have paid the money is vacated or reversed that is something the plaintiffs are manifestly unable to do. They thus fail to state a claim for unjust enrichment or restitution when the

judgment has not been set aside and remains valid and enforceable. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 7 (Pon. 2011).

Plaintiffs who did not make any payments of their own cannot seek the restitution of any funds or allege unjust enrichment since they have not paid any funds. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 7-8 (Pon. 2011).

A constructive trust is a remedy for an unjust enrichment or restitution cause of action and when the plaintiffs fail to state a claim for unjust enrichment or restitution, there can be no basis to employ a constructive trust remedy. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 8 (Pon. 2011).

Although the plaintiffs' argument for restitution which asserts that an earlier judgment should not be enforced does not explicitly say so, the court must consider the case to be an independent action for relief from judgment joined with, and thus presuming success on the independent action for relief, an action for unjust enrichment and restitution with the necessary element of the prior judgment having been set aside to be accomplished in the same action. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 8 (Pon. 2011).

Some authorities indicate that after a judgment is reversed a timely demand for restitution of the judgment payment must first be made and that its refusal is a prerequisite for an unjust enrichment suit. This is sensible because the courts should not be burdened with an unjust enrichment lawsuit if the former judgment holder will return the payment after a demand for it. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 8 n.3 (Pon. 2011).

An unjust enrichment claim has not accrued (and may never accrue) when the prerequisite for the unjust enrichment claim – having an earlier judgment set aside – still has not occurred and may never occur. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 9 (Pon. 2011).

A trial court has wide discretion in determining the amount of damages in contract and quasi-contract cases involving equitable doctrines, such as promissory estoppel and restitution and the plaintiff may be compensated for the injuries by awarding compensation for the expenditures made in reliance on the promise. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 120 (App. 2011).

When the equities involved include that the plaintiff falsely informed Chuuk that the marine insurance policy was not in effect when, in fact, it was in effect because the net premium had been paid to the insurer, promissory estoppel may instead be a better measure of the damages than implied contract or unjust enrichment. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 120 (App. 2011).

Lawyers are accustomed to seeing the word "restitution" in connection with the "rescission" or cancellation of a contract because when a contract is rescinded, each party is entitled to be restored what he gave the other, or in other words, is entitled to restitution. Killion v. Nero, 18 FSM R. 381, 385 (Chk. S. Ct. Tr. 2012).

Rescission will normally be accompanied by restitution on both sides. It is the general rule that rescission will be granted only on the condition that the party asking it restore to the other party, substantially, the consideration received. Killion v. Nero, 18 FSM R. 381, 385 (Chk. S. Ct. Tr. 2012).

When rescinding a contract, ordering substitutionary restitution is possible – the defendant can often be made to return the money value of the property he obtained because, on rescission, a plaintiff is entitled to the return of her property or to its value if its reconveyance cannot be had. Killion v. Nero, 18 FSM R. 381, 385-86 (Chk. S. Ct. Tr. 2012).

When the defendant built family residences on part of the land and has occupied them at least since sometime in the early 1990s, requiring such longtime occupants to change residence and rebuild elsewhere and take compensation for the houses is burdensome. Equity would not favor giving the plaintiff

the choice of paying the defendant for his houses instead of the defendant paying for the land. Killion v. Nero, 18 FSM R. 381, 386 (Chk. S. Ct. Tr. 2012).

When the parties had agreed to a land exchange and the defendant has built houses on the land he received but the plaintiff did not receive any land because the defendant did not have the land to exchange, instead of returning the land to the plaintiff and having the plaintiff pay the defendant the value of the houses the defendant built the most equitable remedy (and the easiest for the court to fashion) is monetary compensation to the plaintiff for the value of the land that he did not receive in an exchange agreement that provided that he was to receive in exchange land of an equal amount to the land transferred to the defendants. To effectuate justice, the defendants should pay the plaintiff the value of the land the defendants received. Killion v. Nero, 18 FSM R. 381, 386 (Chk. S. Ct. Tr. 2012).

Unjust enrichment is a theory applicable to implied contracts. The unjust enrichment doctrine covers cases where there is an implied contract. But if a benefit is officiously thrust upon another, it is not considered an unjust enrichment and restitution is denied in such cases. Kosrae v. Edwin, 18 FSM R. 507, 515 (App. 2013).

The equitable doctrine of unjust enrichment operates in the absence of an enforceable contract. Johnny v. Occidental Life Ins., 19 FSM R. 350, 360 (Pon. 2014).

Unjust enrichment relates to the doctrine of implied contracts, which is to say that in order to avoid unjust enrichment the court will, in the absence of a legally enforceable contract, imply a contract in law in the absence of a contract in fact. Neither the concept of unjust enrichment or the closely associated idea of an implied contract apply when there is an enforceable written contract, since an express contract and implied contract for the same thing cannot govern a legal relationship at the same time. Johnny v. Occidental Life Ins., 19 FSM R. 350, 360 (Pon. 2014).

The doctrine of unjust enrichment does not apply when there is a legally binding agreement in the form of life and cancer insurance policies that the parties agreed to and executed. Johnny v. Occidental Life Ins., 19 FSM R. 350, 360 (Pon. 2014).

Money withheld from wages for social security and income taxes does not count as restitution to the FSM of funds fraudulently converted from Compact sector grant money. FSM v. Muty, 19 FSM R. 453, 461 (Chk. 2014).

When no contract exists for lack of definite terms, the court may use its equity power to fashion a remedy under the restitution doctrine. The unjust enrichment doctrine also applies when there is an unenforceable contract. It is based upon the idea that one person should not be permitted unjustly to enrich himself at the expense of another. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 (Pon. 2016).

The unjust enrichment doctrine is based on the idea that one person should not be permitted unjustly to enrich himself at another's expense. The generally accepted elements of an unjust enrichment cause of action are: 1) the plaintiff conferred a benefit on the defendant, who has knowledge of the benefit, 2) the defendant accepted and retained the conferred benefit, and 3) under the circumstances it would be inequitable for the defendant to retain the benefit without paying for it. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 (Pon. 2016).

When the court can find no contract, restitution is a remedy which returns the benefits already received by a party to the party who gave them. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 (Pon. 2016).

When the parties have failed to make an enforceable contract due to the lack of definite terms, the court may use its equity power to grant a remedy under the restitution doctrine. Restitution is a remedy

which returns the benefits already received to the party who gave those benefits. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 (Pon. 2016).

When a court finds a lack of an enforceable contract, and no evidence was submitted to support the plaintiff's request for interest, the plaintiff may not recover on a claim for 1.5% interest per month based on the parties' unenforceable agreement. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 19 (Pon. 2016).

When no contract exists for lack of definite terms, the court may use its equity power to fashion a remedy under the doctrine of restitution. The doctrine of unjust enrichment also applies where there is an unenforceable contract. It is based upon the idea that one person should not be permitted unjustly to enrich himself at the expense of another. Pelep v. Mai Xiong Inc., 21 FSM R. 182, 191 (Pon. 2017).

When the court can find no contract, restitution is a remedy which returns the benefits already received by a party to the party who gave them. Pelep v. Mai Xiong Inc., 21 FSM R. 182, 191 (Pon. 2017).

The unjust enrichment doctrine cannot be applied when there is an enforceable contract between the parties. Gallen v. Moylan's Ins. Underwriters (FSM) Inc., 21 FSM R. 380, 386 (App. 2017).

The "unjust enrichment" doctrine generally refers to the situation where someone takes part performance under contract that is void for impossibility, illegality, mistake, fraud, or some other reason. The, even though there is no enforceable contract, the doctrine requires the individual to either return what has been received under the contract or pay the other party for it. FSM v. Mikel, 22 FSM R. 33, 37 (Chk. 2018).

To maintain an action for unjust enrichment or for money had and received or for restitution, the recipient of the money had and received must be shown to be unjustly enriched. FSM v. Mikel, 22 FSM R. 33, 37 (Chk. 2018).

When there is no proof of a contract or part performance based on impossibility, illegality, mistake, fraud, or some other reason, an unjust enrichment or restitution claim is without merit. FSM v. Mikel, 22 FSM R. 33, 37 (Chk. 2018).

When the insureds received refunds through their employer, as what should occur only for group insurance policies, not individual insurance policies, and when the insurer instructed the employer to stop all employee payroll deductions for supplemental group life insurance, the insurer did not convert the insureds' money and was not unjustly enriched. Barnabas v. Individual Assurance Co., 22 FSM R. 252, 257 (Pon. 2019).

When a debtor has paid a creditor's invoice that included usurious interest, the debtor is entitled to restitution of all the usurious interest "late fees" paid. Yoruw v. FSM Dep't of Educ., 22 FSM R. 596, 599 (Yap 2020).

Money paid under a mistake of fact may be recovered as restitution to the payor. Yoruw v. FSM Dep't of Educ., 22 FSM R. 596, 599 (Yap 2020).

SEARCH AND SEIZURE

The article IV, section 5 right to be secure against searches is not absolute. The Constitution only protects against unreasonable searches. FSM v. Tipen, 1 FSM R. 79, 82 (Pon. 1982).

No right is held more sacred, or is more carefully guarded by the common law than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law. FSM v. Tipen, 1 FSM R. 79, 86 (Pon. 1982).

The constitutional protection of the individual against unreasonable searches and limitation of powers of the police apply wherever an individual may harbor a reasonable expectation of privacy. FSM v. Tipen, 1 FSM R. 79, 86 (Pon. 1982).

Constitutional protection against unreasonable searches extends to the contents of closed containers within one's possession and to those items one carries on one's person. FSM v. Tipen, 1 FSM R. 79, 86 (Pon. 1982).

A citizen is entitled to protection of the privacy which he seeks to maintain even in a public place. FSM v. Tipen, 1 FSM R. 79, 86 (Pon. 1982).

The burden is on the government to justify a search without a warrant. FSM v. Tipen, 1 FSM R. 79, 87 (Pon. 1982).

The legality of a search must be tested on the basis of the information known to the police officer immediately before the search began. FSM v. Tipen, 1 FSM R. 79, 88 (Pon. 1982).

When investigating officers have reason to believe that somebody on private premises may have information pertaining to their investigation, they may enter those private premises, without a warrant or prior judicial authorization, to make reasonably nonintrusive efforts to determine if anybody is willing to discuss the substance of their investigations. FSM v. Mark, 1 FSM R. 284, 288 (Pon. 1983).

It is generally agreed that for actions to constitute a search, there must be: 1) an examination of premises or a person; 2) in a manner encroaching upon one's reasonable expectation of privacy; 3) with an intention, or at least a hope, to discover contraband or evidence of guilt to be used in prosecution of a criminal action. FSM v. Mark, 1 FSM R. 284, 298 (Pon. 1983).

Mere observation does not constitute a search. The term "search" implies exploratory investigation or quest. FSM v. Mark, 1 FSM R. 284, 289 (Pon. 1983).

Police officers who in the performance of their duty enter upon private property without an intention to look for evidence but merely to ask preliminary questions of the occupants cannot be said to be conducting a search within the meaning of the Constitution. FSM v. Mark, 1 FSM R. 284, 289 (Pon. 1983).

Wide ranging and unwarranted movement of police officers on private land may constitute an unreasonable invasion of privacy, or establish that the investigation had evolved into a search. FSM v. Mark, 1 FSM R. 284, 290 (Pon. 1983).

The starting point and primary focus of legal analysis for a claim of unreasonable search and seizure should normally be the Constitution's Declaration of Rights, not the statutory "Bill of Rights." FSM v. George, 1 FSM R. 449, 455 (Kos. 1984).

The principal difference between FSM Constitution article IV, section 5 and 1 F.S.M.C. 103 is that the Constitution, in addition to prohibiting unreasonable searches and seizures also contains a prohibition against invasions of privacy. FSM v. George, 1 FSM R. 449, 455 n.1 (Kos. 1984).

While the existence of probable cause to believe that a crime has been committed and that a particular person has committed it is not in itself sufficient to justify a warrantless search, the establishment of probable cause is nevertheless critical to any unconsented search. FSM v. George, 1 FSM R. 449, 460-61 (Kos. 1984).

Without probable cause, no search warrant may be obtained and no unconsented search may be conducted. FSM v. George, 1 FSM R. 449, 461 (Kos. 1984).

Constitutional prohibitions against unreasonable searches, seizures or invasions of privacy must be applied with full vigor when a dwelling place is the object of the search. FSM v. George, 1 FSM R. 449, 461 (Kos. 1984).

Article IV, section 5 of the FSM Constitution, based upon the fourth amendment of the United States Constitution, permits reasonable, statutorily authorized inspections of a fishing vessel in FSM ports, under various theories upheld under the United States Constitution, when the vessel is reasonably suspected of having engaged in fishing activities. Ishizawa v. Pohnpei, 2 FSM R. 67, 74 (Pon. 1985).

It is extraordinarily difficult for law enforcement authorities to police the vast waters of the Federated States of Micronesia. Yet, effective law enforcement to prevent fishing violations is crucial to the economic interests of this new nation. Accordingly, the historical doctrines applied under the United States Constitution which expand the right to search based upon border search, administrative inspection and exigent circumstances theories, appear suitable for application to fishing vessels within the Federated States of Micronesia. Ishizawa v. Pohnpei, 2 FSM R. 67, 74 (Pon. 1985).

Searches and seizures both constitute a substantial intrusion upon the privacy of an individual whose person or property is affected, but a seizure often imposes more onerous burdens. Ishizawa v. Pohnpei, 2 FSM R. 67, 75 (Pon. 1985).

A temporary seizure is itself a significant taking of property, depriving the owner of possession, an important attribute of property. Ishizawa v. Pohnpei, 2 FSM R. 67, 75 (Pon. 1985).

While the power to seize a vessel is crucial to the interests of the Federated States of Micronesia and its states, there are also compelling factors demanding that seizures take place only where fully justified and that procedures be established and scrupulously followed to assure that the power to seize is not abused. Ishizawa v. Pohnpei, 2 FSM R. 67, 75 (Pon. 1985).

It is normally required that a hearing be held prior to seizure of a property. In extraordinary situations a seizure may take place prior to hearing, but the owner must be afforded a prompt post-seizure hearing at which the person seizing the property must at least make a showing of probable cause. Unreasonable delay in providing a post-seizure hearing may require that an otherwise valid seizure be set aside. Ishizawa v. Pohnpei, 2 FSM R. 67, 76 (Pon. 1985).

Where a seizure is for forfeiture rather than evidentiary purposes, the constitutional prohibitions against taking property without due process come into play. Ishizawa v. Pohnpei, 2 FSM R. 67, 76 (Pon. 1985).

The general requirement under article IV, section 5 of the Constitution is that before a search or seizure may occur there must exist "probable cause," that is, a reasonable ground for suspicion, sufficiently strong to warrant a cautious person to believe that a crime has been committed and that the item to be seized has been used in the crime. Ishizawa v. Pohnpei, 2 FSM R. 67, 76 (Pon. 1985).

Any attempt to grant statutory authority to permit seizure of a fishing vessel upon a lesser standard than probable cause would raise serious questions of compatibility with article IV, sections 3 and 4 of the Constitution. Such an interpretation should be avoided unless clearly mandated by statute. Ishizawa v. Pohnpei, 2 FSM R. 67, 77 (Pon. 1985).

Where defendants accompanied police officers, then defendants entered their homes and obtained the stolen goods and turned them over to the police, the question of whether there has been an unreasonable seizure in violation of article IV, section 5 of the Constitution turns on whether the defendants' actions were voluntary. FSM v. Jonathan, 2 FSM R. 189, 198-99 (Kos. 1986).

The prohibition in article II, section 1(d) of the Constitution of Kosrae against any unreasonable search

and seizure is to assure the individual of his fundamental right to the possession of and control over his own person and property. Kosrae v. Alanso, 3 FSM R. 39, 42 (Kos. S. Ct. Tr. 1985).

Because the Kosrae State Constitution does not provide an exact standard for determining whether a search is "reasonable," this court will first turn to the framers' intent. In the absence of an official journal of the First Constitutional Convention, this court will then look to FSM and U.S. judicial decisions interpreting the search and seizure provision in their respective constitutions. Kosrae v. Alanso, 3 FSM R. 39, 42 (Kos. S. Ct. Tr. 1985).

Few rights are more important than the freedom from unreasonable governmental intrusion into a citizen's privacy and courts must protect this right from well-intentioned, but unauthorized, governmental action. Kosrae v. Alanso, 3 FSM R. 39, 44 (Kos. S. Ct. Tr. 1985).

An individual's home, even one located on public land, qualifies for constitutional protection against warrantless searches. FSM v. Rodriquez, 3 FSM R. 385, 386 (Pon. 1988).

The protection in article IV, section 5 of the Constitution of the Federated States of Micronesia against unreasonable search and seizure is based upon the comparable provision in the fourth amendment of the United States Constitution. FSM v. Rodriquez, 3 FSM R. 385, 386 (Pon. 1988).

Although an individual acting without state authorization has constructed a sleeping hut and has planted crops on state-owned public land, state police officers may nevertheless enter the land without a search warrant to make reasonable inspections of it and may observe and seize illegally possessed plants in open view and plainly visible from outside the sleeping hut. FSM v. Rodriquez, 3 FSM R. 385, 386 (Pon. 1988).

When investigators, acting without a search warrant on advance information, conduct searches in privately owned areas beyond the immediate area of a dwelling house, and seize contraband, they do not thereby violate the prohibitions in article IV, section 5 of the Constitution of the Federated States of Micronesia against unreasonable search and seizure. FSM v. Rosario, 3 FSM R. 387, 388-89 (Pon. 1988).

The standard for engaging in a search of private property is less exacting than the standard required for seizing such property. FSM v. Zhong Yuan Yu No. 621, 6 FSM R. 584, 588 n.4 (Pon. 1994).

For purposes of article IV, section 5 protection, a search is any governmental intrusion into an area where a person has a reasonable expectation of privacy. Thus, the constitutional protections do not attach unless the search or seizure can be attributed to governmental conduct *and* the defendant had a reasonable expectation of privacy in the items searched. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 137, 142 (Pon. 1995).

Administrative searches designed to aid in the collection of taxes rightly owing to the government must be conducted according to the same requirements laid down for other searches and seizures. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 137, 142 (Pon. 1995).

An administrative agency may either request certain records be provided or formally subpoena the desired information, rather than obtain a court-ordered search warrant. In either situation, the subject of the inspection may decide whether to refuse or cooperate with the government's request. Only when a person refuses to permit the requested search does the Constitution prohibit the administrative agency from coercing that person to turn over records without first obtaining a valid search warrant. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 137, 143 (Pon. 1995).

Where a person refuses to cooperate with the inspection requests of the administrative agency, the government will be required to demonstrate to a neutral and detached magistrate that the requested material is reasonable to the enforcement of the administrative agency's statutory responsibilities and that

the inspection is being conducted pursuant to a general and neutral enforcement plan in order to obtain the required search warrant. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 137, 143 (Pon. 1995).

Where a vessel has been arrested pursuant to a warrant, a post-seizure hearing is required by the constitutional guarantee of due process. FSM v. M.T. HL Achiever (II), 7 FSM R. 256, 257 (Chk. 1995).

An owner of seized property cannot challenge the statute it was seized under as unconstitutional because the statute fails to provide for notice and a hearing, if procedural due process, notice and a right to a hearing, are provided. FSM v. M.T. HL Achiever (II), 7 FSM R. 256, 258 (Chk. 1995).

The Chuuk Constitution protects persons from an unreasonable invasion of privacy. The right to privacy depends upon whether a person has a reasonable expectation that the thing, paper or place should remain free from governmental intrusion. A person's right to privacy is strongest when the government is acting in its law enforcement capacity. In re Legislative Subpoena, 7 FSM R. 261, 266 (Chk. S. Ct. Tr. 1995).

It is unreasonable for a public official, required by law to cooperate with legislative investigating committees, to have an expectation of privacy in matters that are linked to his performance in office, and it is unreasonable for a public official, such as the Governor, who is a trustee of the state's finances and who owes a fiduciary duty to the state to expect that his personal finances will be kept private if there is some reason to believe he has violated his trust. In re Legislative Subpoena, 7 FSM R. 261, 267 (Chk. S. Ct. Tr. 1995).

Persons are secure in their persons, houses, and possessions against an unreasonable invasion of privacy. An invasion of privacy occurs when the government intrudes into any place where the individual harbors a reasonable expectation of privacy. A claim to privacy must be viewed in the specific context in which it arises. In re Legislative Subpoena, 7 FSM R. 328, 334 (Chk. S. Ct. App. 1995).

An person's expectation that his bank records will remain private is not reasonable because bank records are not the person's private papers, but are the bank's business records. This does not mean that such records are open to unrestrained production and inspection. For such records to be produced or inspected, the purpose of the intrusion must not be unreasonable. In re Legislative Subpoena, 7 FSM R. 328, 335 (Chk. S. Ct. App. 1995).

Apprehension of a person suspected of committing a crime by use of deadly force is a seizure, but the shooting of a bystander, who is not a suspect, by the police is not. Davis v. Kutta, 7 FSM R. 536, 547 (Chk. 1996).

A person can only complain of an unlawful search or seizure if it is his own rights which have been violated, such as when the person had ownership or a possessory right to the place searched, or was the owner of the items seized. A person also has standing to challenge a search and seizure of items as illegal when possession is an element of the crime charged, or when the person is legitimately on the premises searched and fruits of the search are to be used against him. FSM v. Skico, Ltd. (I), 7 FSM R. 550, 553 (Chk. 1996).

A vessel arrested pursuant to a warrant has, upon request, a right to a post-seizure hearing to contest the warrant and any deficiency in the arrest proceeding. FSM v. Skico, Ltd. (II), 7 FSM R. 555, 556 (Chk. 1996).

The Due Process Clause does not require an immediate post-seizure probable cause hearing in advance of a civil forfeiture trial. It only requires that the government begin the forfeiture action within a reasonable time of the seizure. FSM v. Skico, Ltd. (II), 7 FSM R. 555, 557 (Chk. 1996).

A civil forfeiture statute is not unconstitutional in failing to set out a requirement for a post-seizure

hearing and a notice of that right nor is the government constitutionally required to inform the defendant of such notice and a right to a hearing. FSM v. Skico, Ltd. (II), 7 FSM R. 555, 557 (Chk. 1996).

A court may suppress evidence obtained by an unlawful search and seizure. FSM v. Santa, 8 FSM R. 266, 268 (Chk. 1998).

When a warrantless search or seizure is conducted the burden is on the government to justify the search or seizure, but when the search or seizure is conducted pursuant to a judicially-issued warrant the burden rests with the defendant to prove the illegality of the search or seizure. FSM v. Joseph, 9 FSM R. 66, 69 (Chk. 1999).

When no search or arrest warrant had been issued or sought and the defendant moves to suppress the evidence seized, although it is the defendant's suppression motion, it is the government's burden to prove that the searches were reasonable and therefore lawful under section 5 of article IV of the FSM Constitution. FSM v. Joseph, 9 FSM R. 66, 69 (Chk. 1999).

The border search doctrine is suitable for application to fishing vessels in the FSM. The principle should be the same for aircraft. FSM v. Joseph, 9 FSM R. 66, 70 n.2 (Chk. 1999).

All aircraft entering FSM ports of entry are subject to immigration inspection, customs inspections, agricultural inspections and quarantines, and other administrative inspections authorized by law. In Chuuk, the Chuuk International Airport is the only port of entry for aircraft. FSM v. Joseph, 9 FSM R. 66, 70 (Chk. 1999).

An agriculture quarantine inspector's duty is to enforce the provisions of plant and animal quarantine controls, quarantines, and regulations, the purpose of which is to protect the agricultural and general well-being of the people of the FSM from injurious insects, pests, and diseases. Goods entering or transported within the FSM can be inspected. Those goods known to be, or suspected of being, infected or infested with disease or pests may be refused entry into or movement within the FSM, and anything attempted to be brought into or transported within the FSM in contravention of the agricultural inspection scheme shall be seized and may be destroyed. FSM v. Joseph, 9 FSM R. 66, 70 (Chk. 1999).

Customs officers have the right to examine all goods subject to customs control, and it is unlawful to import into the FSM any goods whose use, possession or import is prohibited or contrary to restrictions imposed by the FSM or the state into which the goods are imported. FSM v. Joseph, 9 FSM R. 66, 70 (Chk. 1999).

Border searches and searches at the functional equivalent of a border are an exception to the warrant requirement of section 5 of the FSM Declaration of Rights. FSM v. Joseph, 9 FSM R. 66, 70 (Chk. 1999).

Passing through security screening and boarding a foreign-registered airplane in Pohnpei that has arrived from a foreign country without it and its cargo having cleared customs in the FSM and whose passengers have not cleared immigration in the FSM, unless they deplaned, is passing out of and across a functional border of the FSM. The same passenger landing in Chuuk and entering the customs inspection area is crossing a functional equivalent of a border back into the FSM. FSM v. Joseph, 9 FSM R. 66, 70-71 (Chk. 1999).

Because entering the Chuuk International Airport customs inspection area after deplaning from a through flight is crossing the functional equivalent of a border a warrantless search there is reasonable under section 5 of the FSM Declaration of Rights. This analysis is consistent with the geographical configuration of Micronesia, with the statutory schemes of agricultural inspection, and customs inspection. FSM v. Joseph, 9 FSM R. 66, 71 (Chk. 1999).

An airport inspection of arriving passengers and their luggage does not violate an FSM citizen's right to travel within the FSM and the right to privacy. FSM v. Joseph, 9 FSM R. 66, 71 (Chk. 1999).

A search and seizure at the police station of an arrestee's possessions is not the unlawful fruit of the poisonous tree when the arrest was lawful. FSM v. Joseph, 9 FSM R. 66, 72 (Chk. 1999).

The protection in article IV, section 5 of the FSM Constitution against unreasonable search and seizure is based upon the comparable provision in the U.S. Constitution's fourth amendment. FSM v. Inek, 10 FSM R. 263, 265 (Chk. 2001).

When no search or arrest warrant had been issued or sought and the defendant moves to suppress the evidence seized, although it is the defendant's suppression motion, it is the government's burden to prove that the searches were reasonable and therefore lawful under section 5 of article IV of the FSM Constitution. FSM v. Inek, 10 FSM R. 263, 265 (Chk. 2001).

Once the police have a reasonable suspicion that a person may be armed and dangerous they may do a patdown search of or frisk that person for weapons in order to protect themselves and others from possible danger. FSM v. Inek, 10 FSM R. 263, 266 (Chk. 2001).

When the police received the information from a known independent source that a person was carrying a handgun, the police not only had a reasonable suspicion that he was armed and carrying a handgun, they also had probable cause to believe that he was, and it was constitutionally permissible for the police to conduct a patdown search of or to frisk him for weapons. Such a warrantless search is reasonable. FSM v. Inek, 10 FSM R. 263, 266 (Chk. 2001).

In order for a warrant or a criminal summons to issue, the affidavits, or affidavits and exhibits, attached to a criminal information should make a prima facie showing of probable cause, not proof beyond a reasonable doubt. FSM v. Wainit, 10 FSM R. 618, 621 (Chk. 2002).

The search and seizure provision of the FSM Constitution's Declaration of Rights is similar to and drawn from a provision in the U.S. Constitution's Bill of Rights, and when a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, U.S. authority may be consulted to understand its meaning. FSM v. Wainit, 11 FSM R. 424, 434 (Chk. 2003).

Few rights are more important than the freedom from unreasonable governmental intrusion into a citizen's privacy. The FSM Supreme Court, mindful of these principles, must protect these rights from well-intentioned, but unauthorized, government action. In re FSM Nat'l Police Case No. NP 10-04-03, 12 FSM R. 248, 250 (Pon. 2003).

Article IV, section 5 of the FSM Constitution states that "[t]he right of the people to be secure in their persons, houses, papers, and other possessions against unreasonable search, seizure or invasion of privacy may not be violated." For article IV, section 5 purposes, a search is any governmental intrusion into an area where a person has a reasonable expectation of privacy. In re FSM Nat'l Police Case No. NP 10-04-03, 12 FSM R. 248, 250 (Pon. 2003).

When an officer has made a warrantless arrest by relying upon a tip from an informant, the reviewing court will evaluate the tip based upon the totality of the circumstances, including the informant's truthfulness and reliability, and the basis of his or her knowledge. Deficiency in one prong may be compensated for by a strong showing of the other. Kosrae v. Tosie, 12 FSM R. 296, 299 (Kos. S. Ct. Tr. 2004).

The remedy for a victim of an illegal search is not the self-help of resistance. Resistance to such authority to search and seize by self-help is not recognized in courts of law. Whoever suffers the imposition of an unlawful police search has the assurance that any evidence so acquired is rendered inadmissible in a subsequent criminal trial by the exclusionary rule. And in any event damage remedies are available in the courts for violations of constitutional rights stemming from either an unlawful search or arrest. These remedies are present in the FSM. FSM v. Wainit, 13 FSM R. 433, 446 (Chk. 2005).

When a criminal offense has been committed, and a policeman has reasonable ground to believe that the person to be arrested has committed it, such policeman may arrest the person without a warrant, but there may be one exception to this rule, however, and that is when a routine felony arrest takes place inside the suspect's home and there are no exigent circumstances (an emergency or a dangerous situation) to overcome the warrant requirement. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 496 n.4 (Pon. 2005).

The prohibition in Article II, Section 1(d) of the Kosrae State Constitution against any unreasonable search and seizure is to assure the individual of his fundamental right to the possession of and control over his own person and property. Kosrae v. Noda, 14 FSM R. 37, 40 (Kos. S. Ct. Tr. 2006).

It is generally agreed that for actions to constitute a search, there must be: 1) an examination of premises or a person; 2) in a manner encroaching upon one's reasonable expectation of privacy; 3) with an intention, or at least a hope, to discover contraband or evidence of guilt to be used in prosecution of a criminal action. Kosrae v. Noda, 14 FSM R. 37, 40 (Kos. S. Ct. Tr. 2006).

The constitutional protection against unreasonable searches and limitation of powers of the police apply wherever an individual may harbor a reasonable expectation of privacy. The burden is on the government to justify a search without a warrant and the search's legality must be tested on the basis of the information known to the police officer immediately before the search began. Kosrae v. Noda, 14 FSM R. 37, 40 (Kos. S. Ct. Tr. 2006).

When all warrants, monitoring orders, and subpoenas duces tecum were served or executed on either the Bank of Guam or the Bank of the Federated States of Micronesia, a defendant's motion to suppress those warrants, monitoring orders, and subpoenas duces tecum and any evidence seized pursuant to those search warrants as the fruits of illegal searches will be denied since the defendant lacks standing to challenge the searches of those bank records because he lacks an expectation of privacy therein. FSM v. Kansou, 14 FSM R. 136, 138 (Chk. 2006).

The protection in article IV, section 5 of the FSM Constitution against unreasonable search and seizure is based upon and drawn from the comparable provision in the U.S. Constitution's fourth amendment. The addition of the phrase "invasion of privacy" to the FSM version was not intended to expand the search and seizure protections in the FSM any further. It was intended to more adequately express its meaning. FSM v. Kansou, 14 FSM R. 136, 138 (Chk. 2006).

Evidence obtained as the result of violations of Title 12 is not admissible against an accused. FSM v. Kansou, 14 FSM R. 136, 138 (Chk. 2006).

The Declaration of Rights protects persons from acts of the governments, and those acting under them, established or recognized by the Constitution. The constitutional provision barring the invasion of a person's privacy only protects persons from governmental intrusion into their affairs, not from intrusions by private persons. FSM Dev. Bank v. Adams, 14 FSM R. 234, 247 (App. 2006).

For actions to constitute a search, there must be: 1) an examination of premises or a person; 2) in a manner encroaching upon one's reasonable expectation of privacy; and 3) with an intention, or at least a hope, to discover contraband or evidence of guilt to be used in prosecution of a criminal action. FSM v. Louis, 15 FSM R. 348, 351 (Pon. 2007).

In order for a search to take place the police officers' intention to discover contraband or evidence is not enough. There also must be 1) an examination of premises or a person and 2) in a manner encroaching upon one's reasonable expectation of privacy. FSM v. Louis, 15 FSM R. 348, 352 (Pon. 2007).

When the evidence before the court plainly shows that the officers did not conduct an examination of any premises or person but approached the funeral at a neighbor's house, asked for Louis, and Louis came

out and then Louis directed the officers to his office in Palikir and upon arrival in Palikir, the police remained in the vehicle, while Louis went to his office and returned with the handgun. Under these facts, a search cannot be said to have taken place. It also cannot be said that the officers encroached upon Louis's reasonable expectation of privacy. FSM v. Louis, 15 FSM R. 348, 352 (Pon. 2007).

Various arguments concerning a lack of probable cause, including the discrepancy in the dates cited for his arrest – either January 5, 2005, as cited in the accompanying affidavit, or January 6, 2005, as cited in the police reporter introduced as evidence during the hearing are simply misplaced at this point. FSM v. Tosy, 15 FSM R. 463, 465-66 (Chk. 2008).

Where the court finds that an accused's statement was voluntarily made after he had been informed of, and understood his rights, and chose to waive those rights, that will not end the analysis if the accused has established a relationship between unlawful police activity and the evidence sought to be suppressed, because the burden is on the prosecution to show that the evidence is still admissible. FSM v. Sam, 15 FSM R. 491, 493 (Chk. 2008).

When the defendant's advice of rights form waiving his rights was dated the day after his arrest and when the government presented no evidence as to the time of day on that the defendant made his statement on the day following his arrest or as to whether the statement was made within 24 hours of his arrest, the statement will be suppressed because once the defendant has established the government's unlawful act, it is the government's burden to show that the challenged evidence was not the result of that unlawful act. FSM v. Sam, 15 FSM R. 491, 493 (Chk. 2008).

When no search or arrest warrant had been issued or sought and the defendant moves to suppress the evidence seized, although it is the defendant's suppression motion, it is the government's burden to prove that the seizures were reasonable and therefore lawful under section 5 of article IV of the FSM Constitution. FSM v. Sato, 16 FSM R. 26, 29 (Chk. 2008).

When a search or seizure is conducted without a warrant the burden is on the government to justify the search or seizure, but when the search or seizure is conducted pursuant to a judicially-issued warrant the burden rests with the defendant to prove the illegality of the search or seizure. FSM v. Aiken, 16 FSM R. 178, 184 (Chk. 2008).

A motion to suppress the evidence against an accused on the ground that the evidence was obtained as the result of "an arrest that was not in compliance with the law" is not sufficiently particular since it does not indicate the reason(s) why the accused asserts that the arrest was illegal. A suppression movant must articulate in his motion with sufficient particularity the specific reason on which he bases his claim that the seizure was illegal, and a written motion to suppress evidence must specify with particularity the grounds upon which the motion is based. FSM v. Aiken, 16 FSM R. 178, 184 (Chk. 2008).

Grounds for relief in broad and literal conclusory terms, such as a conclusory statement in an accused's suppression motion that his arrest was not in compliance with the law, are, without more, insufficient to raise a suppression question. FSM v. Aiken, 16 FSM R. 178, 184 (Chk. 2008).

A motion to suppress is, in effect, a pleading to the extent that it frames the issues to be determined in a pretrial hearing on the motion. The fundamental role of a pleading is to give an opposing party notice of the pleader's position concerning the facts and law so that the opposing party can begin to prepare his defense. A pleading thus both defines and limits the areas of consideration at a trial or other evidentiary hearing. Furthermore, the pleading assists the court in the conduct of the hearing. For example, by enabling the court to determine the relevance of the offered evidence. FSM v. Aiken, 16 FSM R. 178, 184 (Chk. 2008).

At least as much specificity should be required in a pretrial objection to the admissibility of evidence, i.e., a motion to suppress, as is required in an oral objection made during the course of a trial. In fact, even

more specificity could reasonably be required because the pretrial objection can be researched and written under relatively calm circumstances, as distinguished from an extemporaneous objection made in the heat of trial. Broadly worded and vague objections are inappropriate in either context. FSM v. Aiken, 16 FSM R. 178, 185 (Chk. 2008).

When, after the accused had been questioned for some time without being informed of his rights, the accused went into his residence, retrieved a handgun and five shells, and came out and turned the gun and ammunition over to the officer, the firearm was not seized as the result of an illegal search because the police officer did not conduct a search of the residence or even enter it, but since the accused's surrender of the handgun and ammunition was the result of the officer's questioning and the incriminating statements made when the accused was interrogated without having been informed of his rights, the handgun and ammunition are thus inadmissible as they are the fruit of the poisonous tree. FSM v. Sippa, 16 FSM R. 247, 249 (Chk. 2009).

An individual's constitutional protection against unreasonable searches and the limitation of police powers apply wherever an individual may harbor a reasonable expectation of privacy. For actions to constitute a search, there must be: 1) an examination of premises or a person; 2) in a manner encroaching upon one's reasonable expectation of privacy; 3) with an intention, or at least a hope, to discover contraband or evidence of guilt to be used in prosecution of a criminal action. FSM v. Sapusi, 16 FSM R. 315, 317 (Chk. 2009).

When the police officer did not enter the accused's home or any house in which he was staying; when there was no evidence that the accused had an expectation of privacy in anything present in another's house that was entered; when there was no evidence that the accused resided there, or that he stayed there intermittently, or that he had permission to leave any personal items there, or that he had permission or authority to enter and use the house, or even that the bag seized was his; when there is also no evidence about how the other came to have possession of the pistol and ammunition; when the accused does not claim a property interest in the pistol and ammunition or the bag; and when the accused also was not present in the house when the police officer entered it, the accused lacks standing to object to the entry of the house and the seizure of the pistol and ammunition after the other gave the bag it was in the the officer. FSM v. Sapusi, 16 FSM R. 315, 317 (Chk. 2009).

Exigent circumstances may make it necessary or constitutionally reasonable to proceed with a search without first obtaining a warrant. Exigent circumstances are present when a police officer has heard three gunshots fired in a residential area since people's lives could have been in danger if more shots were fired and when the officer did not know who was firing and had no reason to know whether more would be fired. Thus, exigent circumstances existed that required the officer to investigate the possible sources of the gunfire. FSM v. Sapusi, 16 FSM R. 315, 318 (Chk. 2009).

Since the FSM Constitution's Declaration of Rights protection against unreasonable search and seizure is similar to and drawn from a provision in the U.S. Constitution's Bill of Rights, U.S. authority may be consulted to understand its meaning. FSM v. Aliven, 16 FSM R. 520, 527 n.2 (Chk. 2009).

For the purposes of FSM Constitution article IV, § 5, a search is any governmental intrusion into an area where a person has a reasonable expectation of privacy. For actions to constitute a search, there must be: 1) an examination of a premises or a person; 2) in a manner encroaching upon one's reasonable expectation of privacy; 3) with an intention, or at least a hope, to discover contraband or evidence of guilt to be used in the prosecution of a criminal action. FSM v. Phillip, 17 FSM R. 413, 421 (Pon. 2011).

The FSM Constitution guarantees that the right of the people to be secure in their persons, houses, papers, and other possessions against unreasonable search, seizure, or invasion of privacy may not be violated. This protection prohibits the police from making a warrantless and nonconsenual entry into a suspect's home in order to make a routine felony arrest. Alexander v. Pohnpei, 18 FSM R. 392, 398 (Pon. 2012).

When an FSM Declaration of Rights provision is patterned after a U.S. Constitution provision (such as Section Five of the Declaration of Rights which is patterned after the U.S. Constitution's Fourth Amendment), U.S. authority may be consulted to understand its meaning. Alexander v. Pohnpei, 18 FSM R. 392, 398 n.4 (Pon. 2012).

Merely entering a person's property is often not enough to violate a person's right to be secure in her house. For instance, if the police do not enter the home but wait for the occupant to emerge from the house before effecting an arrest, the right is not violated. Alexander v. Pohnpei, 18 FSM R. 392, 398 (Pon. 2012).

A test for whether a particular area is constitutionally protected from unreasonable searches and seizures is whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by. Under this test, section five certainly protects a person's shower house area as the nature of its use is one in which there is a high expectation of privacy. Alexander v. Pohnpei, 18 FSM R. 392, 398 n.5 (Pon. 2012).

When the officers told the plaintiff, while she was still in her shower house, that they were there to arrest her and once the officers told her that that was what they were there for, she was not free to leave except in their custody. In other words, the police arrested her while she was in her shower house even though they were outside. Alexander v. Pohnpei, 18 FSM R. 392, 398 (Pon. 2012).

It is the location of the arrested person, and not the arresting agents, that determines whether an arrest occurs within a home. When the plaintiff was arrested while she was in an area protected by Section five of the Declaration of Rights (her shower house) and when the police did not have a warrant, her arrest was illegal because the police needed a warrant to arrest her where they did and they did not have one. Alexander v. Pohnpei, 18 FSM R. 392, 398-99 (Pon. 2012).

When the government had not complied with 12 F.S.M.C. 218 by releasing or charging the defendant within 24 hours of his arrest, the statements made and evidence retrieved thereafter until he was released will be suppressed because evidence obtained as a result of a violation of 12 F.S.M.C. 218 is not admissible against an accused. FSM v. Edward, 18 FSM R. 444, 451 (Pon. 2012).

Although evidence and statements lawfully obtained from an accused before he has been detained over 24 hours will be admissible, the accused is entitled to the suppression of any evidence of statements obtained from him after the first 24 hours of his detention. FSM v. Edward, 18 FSM R. 444, 451 (Pon. 2012).

Due process would seem to require a prompt post-seizure hearing before the administrative agency that has administratively levied execution of unpaid taxes. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 155 (Chk. 2013).

The Chuuk Legislature can grant a state administrative agency the power to levy in the manner of a levy of an execution for statutory liens held by the state so long as due process concerns are addressed by such mechanisms as a prompt post-levy (or post-execution) hearing being available. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 155 (Chk. 2013).

A Customs officer has the right to examine all goods subject to Customs control, and among the goods subject to Customs control are all goods for export, from the time such goods are brought to any port, airport, or other place for export until their exportation to any country outside of the FSM. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 461 (Pon. 2020).

A facility that is not itself a port or airport, but is in close proximity to both the port and airport, can be considered an "other place for export" to the extent that it is a container yard – it stores packed containers

ready for shipment abroad. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 461 (Pon. 2020).

That an examination was not done by a customs officer, but by the national police, a different FSM law enforcement agency, but one that is tasked with the general enforcement of all FSM national law, instead of the narrow specialized area that customs officers are restricted to, should not invalidate the examination when it was one that was permissible for Customs officers to do. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 461 (Pon. 2020).

Ports, airports, and other places for export such as a container yard are functional equivalents of a border. Border searches and searches at the functional equivalent of a border are an exception to the warrant requirement of section 5 of the FSM Declaration of Rights. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 461 (Pon. 2020).

– By Consent

The Ponape state consent statute does not authorize the search of a nonconsenting bar or restaurant customer. Pon. Code. ch. 3, §§ 3-13. FSM v. Tipen, 1 FSM R. 79, 81 (Pon. 1982).

Under Ponape state law, a bar or restaurant patron's denial of an authorized person's request to search the person of the patron merely subjects the patron to exclusion from the establishment. Pon. Code ch. 3, §§ 3-13. FSM v. Tipen, 1 FSM R. 79, 81 (Pon. 1982).

The government bears the burden of proving the existence of voluntary consent. Acquiescence in the desire of law enforcement personnel to search will not be presumed but must be affirmatively demonstrated. FSM v. George, 1 FSM R. 449, 456 (Kos. 1984).

A demand, even if courteously expressed, is different from a request, and a citizen's compliance with a police officer's demand, backed by apparent force of law, is perhaps subtly, but nonetheless significantly, different from voluntary consent to a request. FSM v. George, 1 FSM R. 449, 458 (Kos. 1984).

On matters relating to a warrantless search, it is for the court to decide whether voluntary consent, as opposed to passive submission to legal authority, occurred. The government must put before the court facts, not mere conclusions of police officers, which will permit the judge to decide whether consent was given. FSM v. George, 1 FSM R. 449, 458 (Kos. 1984).

The unconsented and warrantless entry into defendant's house, without any subsequent action on the officer's part to impress upon the defendant that they could be influenced by his wishes as to whether a search might be conducted, erases any possibility of finding any aspect of the search in the house or the resultant seizure of evidence, to be either consented to or untainted. FSM v. George, 1 FSM R. 449, 459 (Kos. 1984).

Officers entering a house by consent for purposes of a search must keep in mind the eventual likelihood that they will need to establish that consent was voluntary. FSM v. George, 1 FSM R. 449, 463 (Kos. 1984).

Only under rare circumstances would the FSM Supreme Court likely find that a homeowner who neither says nor does anything to indicate affirmative consent has consented to a warrantless search of his house. FSM v. George, 1 FSM R. 449, 463 (Pon. 1984).

To determine whether a search is reasonable, the Kosrae State Court will be guided by the principle that, with the exception of a few carefully defined types of cases, any search of private property without proper consent is unreasonable, unless previously authorized by a valid search warrant. Kosrae v. Alanso, 3 FSM R. 39, 43 (Kos. S. Ct. Tr. 1985).

The Kosrae State Court, consistent with U.S. and FSM precedent, recognizes consent as a valid

exception to the need for a search warrant. However, consent is understood to be an informed and voluntary relinquishment of a known right and the burden will be on the government to show that there was consent. Kosrae v. Alanso, 3 FSM R. 39, 43 (Kos. S. Ct. Tr. 1985).

To protect the right to be free from unreasonable search and seizure, this court requires clear proof, not merely that consent was given, but also that a right was knowingly and voluntarily waived. It is fundamental that a citizen be aware of the right he is giving up in order for consent to be found. Kosrae v. Alanso, 3 FSM R. 39, 44 (Kos. S. Ct. Tr. 1985).

Consent, given in the face of a police request to search without the consenting person having been informed of his right to refuse consent, and without any written evidence that consent was voluntarily and knowingly given, renders such consent inadequate to permit a warrantless search absent probable cause. Kosrae v. Alanso, 3 FSM R. 39, 44 (Kos. S. Ct. Tr. 1985).

In an administrative agency inspection, as in any other governmental search and seizure, a warrant is unnecessary where the government obtains the voluntary consent of the party to be searched. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 137, 143 (Pon. 1995).

If a police officer had permission to search a home, then no warrant was necessary; if he needed a warrant, then he did not have permission to enter the house. Consent to conduct a search must be proven by a preponderance of the evidence. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 497 (Pon. 2005).

When no search took place, it is unnecessary for the court to decide whether the defendant gave his consent. FSM v. Louis, 15 FSM R. 348, 352 (Pon. 2007).

The FSM Constitution's prohibition against "unreasonable searches and seizures" generally requires the police to obtain a search warrant by showing probable cause to believe that a search will uncover evidence of contraband or a crime. However, there are certain well delineated exceptions to having a valid warrant prior to commencing a search under FSM Const. art. IV, § 5. One such exception arises when a person authorized to give consent does so prior to the initiation of the search. FSM v. Phillip, 17 FSM R. 413, 421 (Pon. 2011).

FSM Constitution article IV, § 5 requires the police to prove that consent to perform a search was given voluntarily and was not the product of duress or coercion. FSM v. Phillip, 17 FSM R. 413, 423 (Pon. 2011).

FSM Constitution article IV, § 5 protects FSM citizens against unreasonable searches and seizures. There is a legitimate need, under certain circumstances, for FSM law enforcement officers to perform searches based on an individual's voluntary consent since such searches are often the only means available to obtain important and reliable evidence, and may result in considerably less inconvenience for the subject of the search than other means by which to obtain the sought-after evidence. FSM v. Phillip, 17 FSM R. 413, 423 (Pon. 2011).

A search pursuant to consent often occurs under informal conditions in which the due process considerations inherent in a custodial interrogation or criminal trials do not apply. FSM v. Phillip, 17 FSM R. 413, 423 (Pon. 2011).

FSM Constitution article IV, § 5 contains no requirement that law enforcement officers inform a consenting individual that he has the right to refuse to give consent. Instead, to ensure that consent not be coerced, by explicit or implicit means, by implied threat or covert force, the court will consider the "totality of the circumstances" to determine whether a criminal defendant's consent was voluntarily given. In doing so, any searches that are the product of law enforcement coercion can be filtered out without undermining the continuing validity of consent searches. FSM v. Phillip, 17 FSM R. 413, 423-24 (Pon. 2011).

When, of foremost importance, an officer asked the defendant whether they could look inside the backpack, he said, "Yes"; when there was insufficient evidence showing that the officers involved intimidated or harassed the defendant into making his response; when the officers did not brandish weapons, threaten him, or make any intimidating movements; when they were dressed in street clothes, not public safety uniforms, and were not carrying weapons; when the officers were also known to the defendant; and when, while the officers did not advise the defendant that he could refuse consent, that knowledge of the right to refuse consent is not mandatory for a valid consent search to occur, the court will find, based on its examination of the totality of the circumstances, that the defendant voluntarily consented to the search of the backpack. FSM v. Phillip, 17 FSM R. 413, 424 (Pon. 2011).

In situations where law enforcement have some evidence of illegal activity but lack probable cause to arrest or search, a search authorized by a valid consent may be the only means of obtaining important and reliable evidence. FSM v. Phillip, 17 FSM R. 413, 424 (Pon. 2011).

When, under the circumstances, it was objectively reasonable for the officers to believe that the scope of the suspect's consent permitted them to remove items from the his backpack and open closed containers because a reasonable person would have believed that to "look inside" a backpack may well necessitate the removal of certain items from the backpack; when the defendant gave his consent to also search the Tupperware container and there was no evidence to suggest that he attempted to limit the scope of the officers' search when they began removing items from the backpack; when the defendant was present when the search was conducted; and when the officers were searching for marijuana, and a reasonable person may be expected to know that marijuana is generally transported in some form of container, the officers' search of the Tupperware container within the defendant's backpack was reasonable because the defendant gave his consent to search the Tupperware container and failed to place any limitation on the scope of the search. FSM v. Phillip, 17 FSM R. 413, 425 (Pon. 2011).

When it is determined that the searches were conducted with the defendant's voluntary consent, the defendant's claims of a violation of his right not to incriminate himself pursuant to FSM Const. art. IV, § 7 also fail because a confession's voluntariness is determined by reference to the totality of surrounding circumstances. FSM v. Phillip, 17 FSM R. 413, 425 (Pon. 2011).

The possibility that Micronesians may be more apt to acquiesce when asked to give their consent by an authority figure may be one of the factors that a court may consider in evaluating the "totality of the circumstances" to determine whether consent was voluntarily given. Such an assessment must be performed on a case-by-case basis, and the court would be overly presumptive to assume that all Micronesians would respond to police questioning in the same manner. FSM v. Phillip, 17 FSM R. 595, 600 (Pon. 2011).

While the court may be sensitive to the possibility of a Micronesian suspect's simple submission to what is considered the authority or the power of the state to search, a tendency by individuals to accede to the demands of authority figures is not unique to Micronesia. FSM v. Phillip, 17 FSM R. 595, 600 (Pon. 2011).

A consent search simply does not rise to the level of a custodial interrogation or trial, both situations in which a defendant must be specifically informed of his rights. FSM v. Phillip, 17 FSM R. 595, 600 (Pon. 2011).

A warning is required when a custodial interrogation takes place and a suspect has been deprived of his freedom in a significant way. This differs from the situation where there was some evidence of illegal activity prior to the search, but it did not meet the probable cause standard necessary to arrest or search. In this type of situation, a search authorized by valid consent may be the only method by which evidence may be obtained. FSM v. Phillip, 17 FSM R. 595, 600 (Pon. 2011).

If the court were to impose an explicit proof of knowledge requirement in determining the reasonableness of consent searches, it would seriously limit police officers' ability to use consent searches

at all, as it would be very difficult for the prosecution to ever show that a suspect affirmatively knew of his right to refuse consent. Under such a standard, defendants could simply fail to admit that they knew of their right to refuse consent, creating an unrealistically high burden for prosecutors seeking to introduce evidence obtained as a result of a consent search. FSM v. Phillip, 17 FSM R. 595, 600 (Pon. 2011).

Explicit knowledge of the right to refuse consent is not mandatory for a valid consent search to occur. FSM v. Phillip, 17 FSM R. 595, 601 (Pon. 2011).

When, based on the totality of the circumstances, the court finds that the defendant voluntarily consented to the search of his backpack, his motion to suppress evidence will be denied. FSM v. Phillip, 17 FSM R. 595, 601 (Pon. 2011).

– Exclusionary Rule

The FSM Supreme Court is vested, by statute, with authority to suppress or exclude, evidence obtained by unlawful search and seizure. 12 F.S.M.C. 312. FSM v. Tipen, 1 FSM R. 79, 92 (Pon. 1982).

This court will apply the exclusionary rule on a case-by-case basis. The exclusionary rule has been devised as a necessary device to protect the right to be free from unreasonable search and seizure. Kosrae v. Alanso, 3 FSM R. 39, 44 (Kos. S. Ct. Tr. 1985).

Under the exclusionary rule, any evidence obtained through an illegal search and seizure, whether physical or verbal, is a fruit of the illegal search and seizure, is tainted by illegality, and must be excluded. Kosrae v. Alanso, 3 FSM R. 39, 44 (Kos. S. Ct. Tr. 1985).

Generally, whatever evidence is obtained pursuant to an unlawful arrest may be suppressed. One exception to the general rule is when the government obtains the evidence based on an independent source. If knowledge of such facts is gained from an independent source they may be proved like any others. FSM v. Inek, 10 FSM R. 263, 265 (Chk. 2001).

Exclusion of evidence obtained as a result of a violation of one's constitutional rights has no applicability to evidence obtained by the prosecution from sources factually unrelated to violations of a defendant's rights. FSM v. Inek, 10 FSM R. 263, 266 (Chk. 2001).

Society's interest in deterring unlawful police conduct and the public interest in having factfinders receive all probative evidence of a crime are properly balanced by putting the police in the same, not a worse, position than they would have been if no police error or misconduct had occurred. When the challenged evidence has an independent source, exclusion of such evidence would put the police in a worse position than they would have been in absent any error or violation. FSM v. Inek, 10 FSM R. 263, 266 (Chk. 2001).

When the police received information that the defendant was carrying a handgun from a known informant with whom they knew the defendant had lived for three years while he was in Nema, and when their conduct of the ensuing search was based on that and not on the prior unlawful arrest, that independent tip makes the search reasonable because the information given the police while the defendant was detained was a source independent from the unlawful arrest. FSM v. Inek, 10 FSM R. 263, 266 (Chk. 2001).

Whoever suffers the imposition of an unlawful police search has the assurance that any evidence so acquired is rendered inadmissible in a subsequent criminal trial by the exclusionary rule and that damage remedies are available for violations of constitutional rights stemming from either an unlawful search or arrest. Both these remedies are present in the FSM. FSM v. Wainit, 11 FSM R. 424, 435 (Chk. 2003).

The remedy for a victim of an illegal search is not the self-help of resistance. Resistance to such

authority to search and seize by self-help is not recognized in courts of law. Whoever suffers the imposition of an unlawful police search has the assurance that any evidence so acquired is rendered inadmissible in a subsequent criminal trial by the exclusionary rule. And in any event damage remedies are available in the courts for violations of constitutional rights stemming from either an unlawful search or arrest. These remedies are present in the FSM. FSM v. Wainit, 13 FSM R. 433, 446 (Chk. 2005).

The exclusionary rule is well established in the FSM. FSM v. Benjamin, 19 FSM R. 342, 348 (Pon. 2014).

The court will apply the exclusionary rule on a case-by-case basis. The exclusionary rule has been devised as a necessary device to protect right to be free from unreasonable search and seizure. FSM v. Benjamin, 19 FSM R. 342, 348 (Pon. 2014).

Under the exclusionary rule, any evidence obtained through an illegal search and seizure, whether physical or verbal, is a fruit of the illegal search and seizure and is tainted by illegality, and must be excluded. FSM v. Benjamin, 19 FSM R. 342, 348 (Pon. 2014).

When admissions have been obtained in the course of questioning that violated 12 F.S.M.C. 218, statutory policy calls for a presumption that subsequent admissions were obtained as a result of the violation. Statements made by a person being questioned by police without being advised of all his rights violates 12 F.S.M.C. 218. A statement so obtained is rendered inadmissible by 12 F.S.M.C. 220. FSM v. Benjamin, 19 FSM R. 342, 348-49 (Pon. 2014).

When some evidence was obtained by means sufficiently distinguishable to be purged of the primary taint, it will not be suppressed, and therefore the court will not quash the information. FSM v. Benjamin, 19 FSM R. 342, 350 (Pon. 2014).

The usual remedy for a person's failure to be informed of his rights is the suppression of any evidence against him that resulted from that failure. Palasko v. Pohnpei, 20 FSM R. 90, 97 (Pon. 2015).

– Incident to an Arrest

A constitutional search may be conducted without a warrant if the search is incidental to a lawful arrest. Ludwig v. FSM, 2 FSM R. 27, 32 (App. 1985).

A police officer making an arrest has a limited right to conduct a search incident to that arrest. This right to search is for the limited purposes of preventing the arrested person from reaching concealed weapons to injure the officer or others, and from destroying evidence. Although the right to search is of limited scope, it plainly authorizes a reasonable search of the person being arrested. Ludwig v. FSM, 2 FSM R. 27, 34 (App. 1985).

An officer making an arrest has a limited right to conduct a warrantless search incident to that arrest. This right to search is for the limited purposes of preventing the arrested person from reaching concealed weapons to injure the officer or others, and from destroying evidence. Yinmed v. Yap, 8 FSM R. 95, 100 (Yap S. Ct. App. 1997).

A search incident to valid arrest must be confined to the person and the area from within which he or she might have reached weapons or destructible evidence and be done on the spot or later at the place of detention. Yinmed v. Yap, 8 FSM R. 95, 100 (Yap S. Ct. App. 1997).

When the police, after arresting the accused and while he was being escorted away, returned to seize items that had been lying next to him when arrested did make the seizure, they did no more than they were entitled to do incident to the usual custodial arrest, and the accused was no more imposed upon than he would have been had the seizure taken place simultaneously with his arrest. The seizure was thus valid

under the search incident to lawful arrest exception to the warrant rule. Yinmed v. Yap, 8 FSM R. 95, 100-01 (Yap S. Ct. App. 1997).

A search that was not done at the place of the arrest and at the time of the arrest or immediately thereafter is not a valid search incident to a lawful arrest. FSM v. Aki, 9 FSM R. 345, 348 (Chk. 2000).

The most basic principle underlying a warrantless search incident to a lawful arrest is that the arrest itself must be justified, and when the arrest is invalid, the search is invalid. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 496-97 (Pon. 2005).

When the police had probable cause to arrest the defendant because he was intoxicated and in a public place, a bag seized from the defendant was therefore seized pursuant to a lawful arrest. The search of the bag was thus not unreasonable because a constitutional search may be conducted without a warrant if the search is incidental to a lawful arrest. FSM v. Menisio, 14 FSM R. 316, 319 (Chk. 2006).

A police officer making an arrest has a limited right to conduct a search incident to that arrest. This right to search is for the limited purposes of preventing the arrested person from reaching concealed weapons to injure the officer or others, and from destroying evidence. Although the right to search is of limited scope, it plainly authorizes a reasonable search of the person being arrested. FSM v. Menisio, 14 FSM R. 316, 319 (Chk. 2006).

Searches incidental to a lawful arrest, and inventory searches, are exceptions to the Constitution's warrant requirement, and, as such, do not violate the Constitution's prohibition of unreasonable searches. FSM v. Menisio, 14 FSM R. 316, 319 (Chk. 2006).

Generally, a constitutional search may be conducted without a warrant if the search is incidental to a lawful arrest. This right to search is for the limited purposes of preventing the arrested person from reaching concealed weapons to injure the officer or others, and from destroying evidence. With respect to dwellings, an officer may conduct a warrantless search with validly obtained consent and, if evidence is discovered, the officer may seize it pursuant to the plain view doctrine. Chuuk v. Sipenuk, 15 FSM R. 262, 265-66 n.3 (Chk. S. Ct. Tr. 2007).

It is not unreasonable for the police, as part of the routine incident to an arrest, to search any container or article in the arrestee's possession or in his vicinity. The justification for such searches does not rest on probable cause, and hence the absence of a warrant is immaterial to the reasonableness of the search. FSM v. Tosy, 15 FSM R. 463, 467 (Chk. 2008).

Where a taxi driver was arrested and taken into custody and the zippered waist bag that he had was searched incident to his arrest because the bag was in close proximity to him when he was arrested and the officers discovered the bag and searched it, the search of that bag was not only reasonable, but lawful and the accused's assertion that the police lacked probable cause to search the bag is simply immaterial to the reason that such a search was even conducted and the accused's motion to suppress the weapon and ammunition that were found in the bag will be denied. FSM v. Tosy, 15 FSM R. 463, 467 (Chk. 2008).

Persons are constitutionally protected from unreasonable searches and seizures. But when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search that automobile's passenger compartment. It follows from this conclusion that the police may also examine the contents of any containers found within the passenger compartment for if the passenger compartment is within reach of the arrestee, so also will the containers in it be within his reach. FSM v. Aliven, 16 FSM R. 520, 527 (Chk. 2009).

An officer making an arrest has a limited right to conduct a warrantless search incident to that arrest and this right to search is for the limited purposes of preventing the arrested person from reaching concealed weapons to injure the officer or others, and from destroying evidence. FSM v. Aliven, 16 FSM

R. 520, 528 (Chk. 2009).

A search incident to valid arrest is confined to the person and the area from within which he or she might have reached weapons or destructible evidence and may be done on the spot or even later at the place of detention. Such incidental searches include a vehicle's passenger compartment, even after the occupants have been ordered out and are standing nearby. FSM v. Aliven, 16 FSM R. 520, 528 (Chk. 2009).

When the police had a reasonable belief that there was a firearm in the vehicle, a search of the vehicle incident to an arrest might also be viewed as reasonable if it were done for the purpose of protecting the general public from a firearm that was believed to be in the vehicle and that might fall into the wrong hands. FSM v. Aliven, 16 FSM R. 520, 528 (Chk. 2009).

– Inventory Search

It is not unreasonable for police, as part of the routine procedure incident to incarcerating an arrested person, to search any container or article in his possession, in accordance with established inventory procedures. The justification for such searches does not rest on probable cause, and hence the absence of a warrant is immaterial to the reasonableness of the search. FSM v. Joseph, 9 FSM R. 66, 72 (Chk. 1999).

A standardized procedure for inventorying an arrestee's possessions at the stationhouse is an entirely reasonable administrative procedure that not only deters an arrestee's false claims of missing or damaged property but also inhibits theft or careless handling of the arrestee's property and protects people from any dangerous instrumentalities that may be found. FSM v. Joseph, 9 FSM R. 66, 72 (Chk. 1999).

An inventory search is reasonable when police follow standardized procedures and are not acting in bad faith or for the sole purpose of investigation. FSM v. Joseph, 9 FSM R. 66, 72 (Chk. 1999).

Standardized or established routine must govern inventory searches because an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence. The policy or practice governing inventory searches should be designed to produce an inventory. FSM v. Joseph, 9 FSM R. 66, 72 (Chk. 1999).

Because the police also looked for contraband while doing an inventory that does not mean that the search was done in bad faith or for the sole purpose of investigation. FSM v. Joseph, 9 FSM R. 66, 72 (Chk. 1999).

To be valid, an inventory search must be governed by a standardized or established routine and not be a general rummaging to discover incriminating evidence. The policy or practice governing inventory searches should be designed to produce an inventory. The purpose of a standardized inventory procedure is to deter an arrestee's false claims of missing or damaged property, to inhibit theft or careless handling of an arrestee's property, and to protect against any dangerous instrumentalities that may be found. FSM v. Aki, 9 FSM R. 345, 348-49 (Chk. 2000).

When the police did not follow their own standard procedure for an inventory search of a vehicle and no inventory of the sedan's contents was made, and no listing of the sedan's description and owner made, it can only be described as a warrantless search for evidence, and as such was an illegal search. FSM v. Aki, 9 FSM R. 345, 349 (Chk. 2000).

It is not unreasonable for police, as part of the routine procedure incident to incarcerating an arrested person, to search any container or article in his possession, in accordance with established inventory procedures. The justification for such searches does not rest on probable cause, and hence the absence of a warrant is immaterial to the reasonableness of the search. FSM v. Menisio, 14 FSM R. 316, 319 (Chk.

2006).

Searches incidental to a lawful arrest, and inventory searches, are exceptions to the Constitution's warrant requirement, and, as such, do not violate the Constitution's prohibition of unreasonable searches. FSM v. Menisio, 14 FSM R. 316, 319 (Chk. 2006).

– Investigatory Stop

Under Kosrae statute, following commission of an offense a police officer who has reasonable grounds to believe that a particular person has committed the offense may arrest the person. This establishes the standard for the arrest of a person, but it does not establish the standard for the police to conduct an investigatory stop of a vehicle. Kosrae v. Tosie, 12 FSM R. 296, 299 (Kos. S. Ct. Tr. 2004).

Reasonable suspicion is required for police officers to make an investigatory stop of a vehicle. "Reasonable suspicion" is a particularized and objective basis for suspecting that a person is engaged in a criminal activity. Kosrae v. Tosie, 12 FSM R. 296, 299 (Kos. S. Ct. Tr. 2004).

Generally, an anonymous tip is not sufficient justification for a stop by the police. Police need sufficient reasonable articulated suspicion. Kosrae v. Tosie, 12 FSM R. 296, 299 (Kos. S. Ct. Tr. 2004).

Once the police have reasonable suspicion that the defendant has committed a criminal offense, they may conduct an investigatory stop, which is a temporary stop to confirm or dispel the suspicion which initially induced the investigatory stop. Investigatory stops are based upon less than probable cause and are temporary in nature. The information gained at the investigatory stop is then used to confirm or dispel the initial suspicion, and then either arrest or release the defendant. Kosrae v. Tosie, 12 FSM R. 296, 300 (Kos. S. Ct. Tr. 2004).

A criminal prosecution for driving under the influence will not be dismissed when the police officers had sufficient reasonable suspicion to conduct an investigatory stop of the defendant because the reasonable suspicion was supplied by an informant, whose identity, credibility, reputation and reliability were known. When at the investigatory stop, the police observed signs of the defendant's alcohol impairment, these signs provided grounds for the police to administer the field sobriety tests to the defendant, and when the defendant failed two field sobriety tests, it gave the police reasonable grounds and probable cause for defendant's commission of driving under the influence and probable cause to arrest the defendant. Kosrae v. Tosie, 12 FSM R. 296, 300 (Kos. S. Ct. Tr. 2004).

Warrantless arrests are, under certain situations, lawful and authorized by statute. Arrest by police without a warrant is authorized when a criminal offense has been committed, and a policeman has reasonable ground to believe that the person to be arrested has committed it, or a policeman, even when it is not certain that a criminal offense has been committed, may detain for examination persons who may be found under such circumstances as justify a reasonable suspicion that they have committed or intend to commit a felony. FSM v. Aliven, 16 FSM R. 520, 527 (Chk. 2009).

When the police knew that a crime had been committed and had either reasonable grounds to believe that the vehicle's occupants had committed the offense or reasonable suspicion that one or more of the vehicle's occupants had committed a felony and when the police knew that someone in that vehicle had fired a handgun from that vehicle, a search of the vehicle's passenger compartment is reasonable under such circumstances. FSM v. Aliven, 16 FSM R. 520, 527 (Chk. 2009).

Once the police have reasonable suspicion that a suspect has committed a criminal offense, they may conduct an investigatory stop. An investigatory stop is a temporary stop of a car and its passengers that is used to confirm or dispel the suspicion that caused the investigatory stop. These stops are based on less than probable cause. Information gathered at the stop can be used to arrest or release the suspects. Berman v. Pohnpei, 16 FSM R. 567, 573-74 (Pon. 2009).

Reasonable suspicion, not probable cause, is all that is required for police officers to make an investigatory stop of a vehicle. "Reasonable suspicion" is a particularized and objective basis for suspecting that a person is engaged in a criminal activity. Investigatory stops are based upon less than probable cause and are temporary in nature, and the information gained at the investigatory stop is used to confirm or dispel the initial suspicion, and then either arrest or release the person stopped. Berman v. Pohnpei, 17 FSM R. 360, 369-70 (App. 2011).

A law enforcement officer may perform an investigatory stop, also known as a field interrogation, if he has reasonable suspicion, based on specific facts, that the suspect has committed or is about to commit a crime. The officers may perform an investigatory stop when swift action is necessary based upon the law enforcement officer's observations. FSM v. Phillip, 17 FSM R. 413, 419 (Pon. 2011).

The question of whether an investigatory stop is a reasonable exception to the prohibition in FSM Const. art. IV, § 5 against unreasonable seizures is whether the facts available to the officers at the moment of the seizure would lead a person of reasonable caution to believe that the action was appropriate. When such situations arise, a warrant is not necessary because there is an element of urgency or speed requiring action while the suspect is present and engaged in suspicious activity. FSM v. Phillip, 17 FSM R. 413, 419 (Pon. 2011).

When officers received a tip that someone was planning to transport marijuana to Pohnpei's outer islands in late December, 2009 and the informant provided the description of a vehicle and a vehicle check revealed that the defendant owned it; when, on arrival at the dock, investigating officers observed the defendant board the *Voyager* with a backpack and disembark a short time later without the backpack; when, at first the defendant denied having a backpack, but after being told that he had been seen carrying a backpack on board, he admitted to having a backpack and told officers that he had given the backpack to another person; and when a check of that person revealed that he had never encountered the defendant on the *Voyager*, these specific facts and the rational inferences drawn from them justified the officers' reasonable suspicion that the defendant had deposited a backpack possibly containing contraband on board the *Voyager*. Under these circumstances, with the *Voyager* scheduled to disembark, there was an element of urgency or speed requiring the officers' immediate action. The officers were entitled to perform an investigatory stop of the defendant to determine whether he had or was about to commit a crime because the officers had reasonable suspicion, based on specific facts, that the defendant had committed or was about to commit a crime. FSM v. Phillip, 17 FSM R. 413, 419-20 (Pon. 2011).

When the officers' investigatory stop of the defendant and their questioning him about suspicious circumstances did not constitute an arrest, the officers were not required to advise the defendant of his right to remain silent when they first approached him on the dock. FSM v. Phillip, 17 FSM R. 413, 420 (Pon. 2011).

A law enforcement officer may perform an investigatory stop, also known as a field interrogation, if he has reasonable suspicion that the suspect has committed or is about to commit a crime. The reasonable suspicion standard requires police officers to identify "specific and articulable facts" justifying the stop, rather than a mere hunch. Reasonable suspicion must exist before the investigatory stop occurs for the stop to be valid. FSM v. Phillip, 17 FSM R. 595, 598 (Pon. 2011).

An anonymous tip received regarding the defendant's possible actions to transport contraband to Pingelap, the defendant's appearance at the dock with a backpack, and the defendant's disembarkation from the vessel without the backpack, were sufficient specific and articulable facts that supported the officers' reasonable suspicion that a crime had occurred or was about to occur. FSM v. Phillip, 17 FSM R. 595, 598 (Pon. 2011).

A valid investigatory stop requires only reasonable suspicion, based on specific and articulable facts, that the suspect has committed or is about to commit a crime. FSM v. Phillip, 17 FSM R. 595, 598 (Pon.

2011).

When the specific facts available to the police officers, namely, the informant's tip; that this tip was corroborated when the defendant, who was known to the officers, arrived at the dock carrying a backpack and boarded the vessel; and that some of the officers witnessed the defendant disembark from the ship without his backpack, were more than sufficient to establish reasonable suspicion, the officers were entitled to perform an investigatory stop of the defendant to determine whether he had or was about to commit a crime. FSM v. Phillip, 17 FSM R. 595, 598-99 (Pon. 2011).

The police did not go beyond the scope of an investigatory stop and compel incriminating testimonial evidence because the defendant voluntarily consented to a police request that he assist them in locating a backpack when the officers that approached the defendant were dressed in street clothes, not in uniform; when the police officers were unarmed; when the questioning occurred in a public location; when there was no evidence of any coercion or forceful language being used; and when some of the police officers and the defendant had met each other before and were acquainted with each other. FSM v. Phillip, 17 FSM R. 595, 599 (Pon. 2011).

When the officers had reasonable suspicion, based on specific and articulable facts, to perform an investigatory stop of the defendant after he disembarked from the *Voyager* on December 27, 2009, and when the defendant was not compelled to make an explicit or implicit disclosure of incriminating testimonial information since he volunteered to help the officers locate his backpack, he was not at that time, entitled to a privilege against self-incrimination under FSM Const. art. IV, § 7. FSM v. Phillip, 17 FSM R. 595, 599 (Pon. 2011).

– Plain View

A warrant is not necessary to authorize seizure when marijuana is in plain view of a police officer who has a right to be in the position to have that view. FSM v. Mark, 1 FSM R. 284, 294 (Pon. 1983).

An officer who, while standing on a road, sees a marijuana plant in plain view on top of a nearby house has not thereby engaged in an unlawful search. Kosrae v. Paulino, 3 FSM R. 273, 276 (Kos. S. Ct. Tr. 1988).

Even on public premises a person may retain an expectation of privacy, but where a person residing on public land makes no effort to preserve the privacy of marijuana plants and seedings, entry of police on the premises and seizure of contraband that is plainly visible from outside the residence is not an unconstitutional search and seizure. FSM v. Rodriquez, 3 FSM R. 368, 370 (Pon. 1988).

The "open fields" exception requires the evidence to be in plain view from a public place. But when the police viewed the open can of beer in the defendant's hand solely as the result of an illegal roadblock at which the car was stopped and would not have viewed the can of beer if the car had not been stopped at the roadblock, the can of beer was not in plain view from a public place and the "open fields" exception is not applicable. Kosrae v. Sikain, 13 FSM R. 174, 177 (Kos. S. Ct. Tr. 2005).

Under the plain view exception to the warrant requirement, if a police officer has a right to be in a specific place, and has a plain view of items subject to seizure, then he may seize those objects and they may be introduced into evidence in a subsequent criminal proceeding, but when the officer could not have seen the gun from his position on the porch and only obtained the rifle only after he had entered the house and conducted a search lasting 5 to 6 minutes, the search violated the right to be free from unreasonable searches and seizures. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 498 (Pon. 2005).

A warrant is not necessary to authorize seizure when marijuana is in plain view of a police officer who has a right to be in the position to have that view. Kosrae v. Noda, 14 FSM R. 37, 40 (Kos. S. Ct. Tr. 2006).

The plain view doctrine has been recognized as an exception to the search warrant requirement, and the application of the plain view doctrine and the legality of the search must be analyzed upon the information known to the police immediately before the search began. Kosrae v. Noda, 14 FSM R. 37, 40 (Kos. S. Ct. Tr. 2006).

The analysis of warrantless seizure and application of the plain view doctrine proceeds with three requirements: First, the police officer must lawfully make the initial intrusion or lawfully be in a position to view a particular area. Second, the officer must discover the incriminating evidence inadvertently (not know in advance the location of certain evidence). Third, it must be immediately apparent to the police that the items they observe are either evidence of a crime or contraband. Kosrae v. Noda, 14 FSM R. 37, 40-41 (Kos. S. Ct. Tr. 2006).

When a police officer conducted a routine investigation of a vehicle involved in an accident and, since the vehicle had been abandoned and the driver had voluntarily left the scene of the accident with a bystander, was looking for the registration card to determine the vehicle's ownership (a proper action within the state's governmental authority and police power); when the officer discovered the marijuana roaches in the ashtray inadvertently while looking for the vehicle's registration card; and when the officer, upon viewing the marijuana cigarette roaches in the ashtray, immediately recognized those items as contraband, the requirements for the application of the plain view doctrine have been satisfied and the warrantless search conducted of the defendant's vehicle was within the state's governmental authority and police power and was not unreasonable and the marijuana evidence will not be suppressed. Kosrae v. Noda, 14 FSM R. 37, 41-42 (Kos. S. Ct. Tr. 2006).

Generally, a constitutional search may be conducted without a warrant if the search is incidental to a lawful arrest. This right to search is for the limited purposes of preventing the arrested person from reaching concealed weapons to injure the officer or others, and from destroying evidence. With respect to dwellings, an officer may conduct a warrantless search with validly obtained consent and, if evidence is discovered, the officer may seize it pursuant to the plain view doctrine. Chuuk v. Sipenuk, 15 FSM R. 262, 265-66 n.3 (Chk. S. Ct. Tr. 2007).

A warrant is not necessary to authorize seizure and the seizure is therefore reasonable when the contraband or the instrument of a crime is in plain view of a police officer who has a right to be in the position to have that view so that when the handgun, and the bag the officer saw the accused put the gun into, were in the officers' plain view because they were responding to an emergency call and were thus in a place where they had a right to be the motion to suppress the seizure of the handgun will be denied. FSM v. Sato, 16 FSM R. 26, 29-30 (Chk. 2008).

Despite the fact that the defendant and the backpack was in a public place, it is clear that the defendant had a reasonable expectation of privacy in the backpack's contents. FSM v. Phillip, 17 FSM R. 413, 421 (Pon. 2011).

There is no protected privacy interest in items exposed to public view. It is not a "search" if police observe what may be seen by any member of the general public. Thus, when a backpack was in a public location, in public view, the police were entitled to locate the backpack on the *Voyager* even without the defendant's consent. FSM v. Phillip, 17 FSM R. 413, 421 n.1 (Pon. 2011).

– Probable Cause

While the existence of probable cause to believe that a crime has been committed and that a particular person has committed it is not in itself sufficient to justify a warrantless search, the establishment of probable cause is nevertheless critical to any unconsented search. FSM v. George, 1 FSM R. 449, 460-61 (Kos. 1984).

Without probable cause, no search warrant may be obtained and no unconsented search may be

conducted. FSM v. George, 1 FSM R. 449, 461 (Kos. 1984).

The standard announced in the second sentence of FSM Constitution article IV, section 5 for issuance of a warrant must be employed in determining the reasonableness of a search or seizure. Imposition of a standard of probable cause for issuance of a warrant in article IV, section 5 implies that no search or seizure may be considered reasonable unless justified by probable cause. Ludwig v. FSM, 2 FSM R. 27, 32 (App. 1985).

It is normally required that a hearing be held prior to seizure of a property. In extraordinary situations a seizure may take place prior to hearing, but the owner must be afforded a prompt post-seizure hearing at which the person seizing the property must at least make a showing of probable cause. Unreasonable delay in providing a post-seizure hearing may require that an otherwise valid seizure be set aside. Ishizawa v. Pohnpei, 2 FSM R. 67, 76 (Pon. 1985).

The general requirement under article IV, section 5 of the Constitution is that before a search or seizure may occur there must exist "probable cause," that is, a reasonable ground for suspicion, sufficiently strong to warrant a cautious person to believe that a crime has been committed and that the item to be seized has been used in the crime. Ishizawa v. Pohnpei, 2 FSM R. 67, 76 (Pon. 1985).

Any attempt to grant statutory authority to permit seizure of a fishing vessel upon a lesser standard than probable cause would raise serious questions of compatibility with article IV, sections 3 and 4 of the Constitution. Such an interpretation should be avoided unless clearly mandated by statute. Ishizawa v. Pohnpei, 2 FSM R. 67, 77 (Pon. 1985).

In probable cause determinations the court must regard the evidence from the vantage point of law enforcement officers acting on the scene but must make its own independent determination as to whether, considering all the facts at hand, a prudent and cautious law enforcement officer, guided by reasonable training and experience, would consider it more likely than not that a violation has occurred. Ishizawa v. Pohnpei, 2 FSM R. 67, 77 (Pon. 1985).

Consent, given in the face of a police request to search without the consenting person having been informed of his right to refuse consent, and without any written evidence that consent was voluntarily and knowingly given, renders such consent inadequate to permit a warrantless search absent probable cause. Kosrae v. Alanso, 3 FSM R. 39, 44 (Kos. S. Ct. Tr. 1985).

Probable cause is not proof of guilt, but shows that a reasonable ground for suspicion, sufficiently strong to warrant a cautious man to believe that the accused is guilty of the offense, exists. Kosrae v. Paulino, 3 FSM R. 273, 276 (Kos. S. Ct. Tr. 1988).

Because the purpose of article IV, section 5 of the Constitution is to protect the privacy rights of individuals against unreasonable and unauthorized searches and seizures by government officials it has been interpreted to require that an individual suspected of a crime be released from detention unless the government can establish "probable cause" to hold that individual. FSM v. Zhong Yuan Yu No. 621, 6 FSM R. 584, 588 (Pon. 1994).

The standard for determining probable cause is whether there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. The probable cause determination must be made by the deliberate, impartial, judgment of a judicial officer. FSM v. Zhong Yuan Yu No. 621, 6 FSM R. 584, 588-89 (Pon. 1994).

Often the determination of probable cause is made by a competent judicial officer upon the issuance of an arrest warrant, but where an arrest is not made pursuant to a warrant the arrested is entitled to a judicial determination as to whether there is probable cause to detain the accused. FSM v. Zhong Yuan Yu No.

621, 6 FSM R. 584, 589 (Pon. 1994).

A probable cause hearing is an informal, non-adversarial proceeding in which the formal rules of evidence and the requirement of proof beyond a reasonable doubt do not apply. FSM v. Zhong Yuan Yu No. 621, 6 FSM R. 584, 589 (Pon. 1994).

An individual whose property has been seized pursuant to a civil forfeiture proceeding is entitled to a post-seizure hearing in order to determine whether there is probable cause to seize and detain that property. The probable cause standard in a civil forfeiture case is whether there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation has occurred and that the property was used in that violation. FSM v. Zhong Yuan Yu No. 621, 6 FSM R. 584, 589-90 (Pon. 1994).

The government has probable cause to detain a fishing vessel for illegal fishing when the evidence and information indicate that the vessel was conducting fishing operations within the FSM Exclusive Economic Zone, there was freshly caught fish aboard, and the permit provided to the officers contained a name different from the actual name of the vessel. FSM v. Zhong Yuan Yu No. 621, 6 FSM R. 584, 590-91 (Pon. 1994).

In a post-seizure probable cause hearing in a civil forfeiture case the standard for finding that the FSM has probable cause to seize a fishing vessel is defined by reference to 24 F.S.M.C. 513(2). FSM v. Yue Yuan Yu No. 708, 7 FSM R. 300, 302 n.1 (Kos. 1995).

A court may rely on hearsay evidence for the purpose of finding probable cause at a post-seizure hearing. FSM v. Yue Yuan Yu No. 708, 7 FSM R. 300, 303 (Kos. 1995).

Although procedural and evidentiary rules are relaxed at a probable cause hearing a prosecutor may not rely solely on hearsay evidence when other, more competent testimony is available. FSM v. Yue Yuan Yu No. 708, 7 FSM R. 300, 304 (Kos. 1995).

Representations of counsel in a probable cause hearing are not a substitute for competent, reliable evidence in the form of testimony or appropriately detailed affidavits. FSM v. Yue Yuan Yu No. 708, 7 FSM R. 300, 305 (Kos. 1995).

The Due Process Clause does not require an immediate post-seizure probable cause hearing in advance of a civil forfeiture trial. It only requires that the government begin the forfeiture action within a reasonable time of the seizure. FSM v. Skico, Ltd. (II), 7 FSM R. 555, 557 (Chk. 1996).

A search warrant may not issue except on probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized. FSM v. Santa, 8 FSM R. 266, 268 (Chk. 1998).

To determine probable cause, the question is whether a substantial probability exists in the mind of a cautious person which leads him or her to conclude that the items to be seized that are the evidence of a crime are in a particular place at the time the warrant is issued – probable cause upon which a valid search warrant must be based must exist at the time at which the warrant is issued, not at some earlier time. FSM v. Santa, 8 FSM R. 266, 269 (Chk. 1998).

Although crucial, the time lapse is not considered in isolation from other factors when determining probable cause. The passage of time is not necessarily a controlling factor in determining the existence of probable cause because a court should also evaluate the nature of the criminal activity and the kind of property for which authorization is sought. FSM v. Santa, 8 FSM R. 266, 269 (Chk. 1998).

First-hand information from a reliable informant that firearms were left in a particular building and other

firearms were packed and shipped to that address months earlier will establish probable cause of illegal possession of firearms because firearms are something that do not deteriorate or pass away just through the passage of time and are usually left in just one position where kept and rarely, if ever, used, and delivery and then continued possession after receipt as a continuing matter may be inferred. FSM v. Santa, 8 FSM R. 266, 269 (Chk. 1998).

It is not unreasonable for police, as part of the routine procedure incident to incarcerating an arrested person, to search any container or article in his possession, in accordance with established inventory procedures. The justification for such searches does not rest on probable cause, and hence the absence of a warrant is immaterial to the reasonableness of the search. FSM v. Joseph, 9 FSM R. 66, 72 (Chk. 1999).

The police had probable cause to stop a sedan and detain its driver when they found it headed northbound a short time after it almost collided with a police car while it was speeding southbound and passing another southbound vehicle because the sedan had tinted windows and the police had no reason to believe that the sedan had switched drivers in the short time since they had last seen it. FSM v. Aki, 9 FSM R. 345, 348 (Chk. 2000).

When the police received the information from a known independent source that a person was carrying a handgun, the police not only had a reasonable suspicion that he was armed and carrying a handgun, they also had probable cause to believe that he was, and it was constitutionally permissible for the police to conduct a patdown search of or to frisk him for weapons. Such a warrantless search is reasonable. FSM v. Inek, 10 FSM R. 263, 266 (Chk. 2001).

Probable cause is a higher standard than reasonable suspicion. FSM v. Inek, 10 FSM R. 263, 266 (Chk. 2001).

Probable cause exists when there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. FSM v. Wainit, 10 FSM R. 618, 621 (Chk. 2002).

The finding of probable cause may be based upon hearsay evidence in whole or in part. FSM v. Wainit, 10 FSM R. 618, 621 (Chk. 2002).

A probable cause determination must be made by the deliberate, impartial, judgment of a judicial officer. FSM v. Wainit, 10 FSM R. 618, 622 (Chk. 2002).

The statute of limitations is no part of any definition of probable cause. Probable cause is present when there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. That the violation of law occurred within the statute of limitations is not an element that must be shown for probable cause to exist. FSM v. Wainit, 12 FSM R. 105, 108 (Chk. 2003).

Before a search or seizure may occur, there must exist "probable cause," that is, a reasonable ground for suspicion, sufficiently strong to warrant a cautious person to believe that a crime has been committed and that the item to be seized has been used in the crime. In re FSM Nat'l Police Case No. NP 10-04-03, 12 FSM R. 248, 251 (Pon. 2003).

Probable cause has not been provided that a crime has been committed and an application for a search warrant will be denied when the criminal law cited requires a showing that an individual threaten harm to a public official "with purpose to influence" a public official in a decision making capacity and the e-mails' language is ambiguous, and does not necessarily threaten harm to any public official and do not reference any decision, opinion, recommendation, vote, or other exercise of discretion by any FSM Immigration personnel and even if the court were to read the e-mails as serious threats to do harm, there is

no connection between the threatened harm and any action by Immigration officials that could possibly be influenced. In re FSM Nat'l Police Case No. NP 10-04-03, 12 FSM R. 248, 251 (Pon. 2003).

A police officer may, as a general rule, consider any evidence in determining whether reasonable suspicion or probable cause exists. The information may be provided by an informer. Police should consider the underlying circumstances from which the informer drew his conclusion. Some of the underlying circumstances must show that the informant was reliable. However, evidence to establish reasonable suspicion or probable cause may be entirely based upon hearsay. The general rule is that virtually any evidence may be considered. Kosrae v. Tosie, 12 FSM R. 296, 299 (Kos. S. Ct. Tr. 2004).

Reasonable grounds or probable cause exist when factors and circumstance within the arresting officer's knowledge are sufficient to warrant a man of reasonable caution to believe an offense has been committed. For the offense of driving under the influence, these circumstances include odor of alcohol, results of the field sobriety tests, appearance and mannerism of intoxication, slurring of speech, and unsteady movement. Kosrae v. Tosie, 12 FSM R. 296, 300 (Kos. S. Ct. Tr. 2004).

An extradition hearing's purpose is not to hold a trial on the merits to determine guilt or innocence, but to determine whether probable cause exists to believe that the person whose surrender is sought has committed the crime for which extradition is requested. The probable cause standard applicable in extradition proceedings is described as sufficient evidence to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the accused's guilt. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 373 (Yap 2005).

An illegal search cannot justify a later arrest, and an arrest cannot be justified by a subsequent search. A search's legality must be tested on the basis of the information known to the police officer immediately before the search began. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 497 (Pon. 2005).

In accordance with the Chuuk Constitution provision against unreasonable searches, seizures, and invasions of privacy, no warrant may be issued but upon probable cause, supported by affidavit, specifically describing the place to be searched and the persons or things to be seized. An individual suspected of a crime must be released from detention unless the government can establish probable cause to hold that individual. Chuuk v. Chosa, 16 FSM R. 95, 97 (Chk. S. Ct. Tr. 2008).

The standard for determining probable cause is whether there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. As a general rule, any evidence may be considered in determining whether reasonable suspicion or probable cause exists, and the finding of probable cause may be based upon hearsay evidence in whole or in part. Chuuk v. Chosa, 16 FSM R. 95, 97-98 (Chk. S. Ct. Tr. 2008).

A probable cause determination must be made by a deliberate, impartial judicial officer. Often the determination of probable cause is made by a judicial officer upon the issuance of an arrest warrant, but when an arrest is not made pursuant to a warrant, an arrested person is entitled to a judicial determination as to whether there is probable cause to detain him. Chuuk v. Chosa, 16 FSM R. 95, 98 (Chk. S. Ct. Tr. 2008).

When informants are used to establish probable cause, the investigating officers should consider the underlying circumstances from which the informer drew his conclusion. Some of the underlying circumstances must show that the informant was reliable. When the court makes its determination as to whether probable cause was proven, it must regard the evidence from the vantage point of law enforcement officers acting on the scene, but must make its own independent determination as to whether, considering all the facts at hand, a prudent and cautious law enforcement officer, guided by reasonable training and experience, would consider it more likely than not that a violation has occurred. Chuuk v.

Chosa, 16 FSM R. 95, 98 (Chk. S. Ct. Tr. 2008).

Although the strict guidelines against the admission of hearsay evidence do not apply in a probable cause determination, a prosecutor may not rely solely on hearsay testimony when other, more competent testimony is available. The court may therefore discount unreliable hearsay or other evidence that is inherently untrustworthy or suspicious, unless additional measures are taken to ensure reliability or to explain those exigent circumstances that make it impossible to produce more reliable or competent evidence. A prosecutor's own representations are not a substitute for competent, reliable evidence in the form of first-hand testimony or appropriately detailed affidavits from investigating officers who obtained first-hand accounts. Chuuk v. Chosa, 16 FSM R. 95, 98 (Chk. S. Ct. Tr. 2008).

When the affiant's belief that probable cause existed was based solely on affiant's review of a police report, which presumably was prepared by an officer who investigated the crime scene; when the affiant does not state whether the affiant spoke with the reporting officer, or even identify the reporting officer; when there is no explanation of how the information contained in the police report was obtained; when there is no evidence that the affiant or the unknown reporting officer interviewed witnesses or investigated the incident and there is no way to determine the extent to which the report itself was based on hearsay or any assurance that it was based on the investigating officer's reasonable belief rather than on pure speculation, then the "affidavit of probable cause" is deficient because the affidavit suffers from multiple layers of hearsay, and multiple levels of hearsay become less reliable as the number of levels of hearsay increase and because the affidavit fails to adequately identify the information's source or sources and may be based on unattributed hearsay statements of one or more declarants. As the number of included hearsay statements increases, the guarantees of reliability that justify admission become attenuated. Hearsay that is otherwise admissible may be excluded where it primarily reiterates statements of other, unidentified persons. Chuuk v. Chosa, 16 FSM R. 95, 98-99 (Chk. S. Ct. Tr. 2008).

A counsel's affidavit used to establish probable cause places counsel in the position of being called as a witness in the case and detracts from the evidence's reliability because it merely adds another layer of hearsay. In that instance, counsel would be in apparent violation of Model Rule of Professional Conduct 3.7 (1983), which, subject to limited exceptions, prohibits counsel from being an advocate at a trial in which counsel is likely to be called as a witness. Chuuk v. Chosa, 16 FSM R. 95, 99 (Chk. S. Ct. Tr. 2008).

Although, there may be cases when an affidavit containing multiple layers of hearsay is deemed sufficiently reliable to prove probable cause, when the affidavit fails even a minimal level of reliability that might be justified by exigent circumstances, which, in any case, were not present, the affidavit filed with the information was not reliable enough to prove probable cause and the defendant's motion to suppress the affidavit of probable cause and for dismissal was therefore granted, and the case was dismissed. Chuuk v. Chosa, 16 FSM R. 95, 99 (Chk. S. Ct. Tr. 2008).

Once the police have reasonable suspicion that a suspect has committed a criminal offense, they may conduct an investigatory stop. An investigatory stop is a temporary stop of a car and its passengers that is used to confirm or dispel the suspicion that caused the investigatory stop. These stops are based on less than probable cause. Information gathered at the stop can be used to arrest or release the suspects. Berman v. Pohnpei, 16 FSM R. 567, 573-74 (Pon. 2009).

The police have a right to conduct a routine traffic stop, and when they, in order to investigate and confirm or refute their suspicions, stopped a car in which there was a passenger who they suspected had abandoned his Honda after driving it off the road while intoxicated, they did not conduct any unlawful search or seizure. Berman v. Pohnpei, 16 FSM R. 567, 574 (Pon. 2009).

Typically, before an arrest can be made, a warrant must be issued for that arrest. A warrant requires a showing of probable cause, and probable cause exists when there is evidence and information sufficiently persuasive such that a cautious person would believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. Berman v. Pohnpei, 16 FSM R. 567, 574 (Pon.

2009).

Pohnpei state law authorizes policemen to make an arrest without a warrant when 1) a breach of the peace or other criminal offense has been committed, and the offender is shall endeavoring to escape, he may be arrested by virtue of an oral order of any official authorized to issue a warrant, or without such order if no such official be present; 2) anyone is in the act of committing a criminal offense; 3) a criminal offense has been committed, and a policeman has reasonable ground to believe that the person to be arrested has committed it; and 4) even in cases where it is not certain that a criminal offense has been committed, arrest and detain for examination persons who may be found under such circumstances as justify a reasonable suspicion that they have committed or intend to commit a felony. Berman v. Pohnpei, 16 FSM R. 567, 574 (Pon. 2009).

A person arrested for obstructing justice because she refused to give the police officers access to her car and interfered with their peaceful attempts to talk with her husband, whom she locked inside the car, is arrested for an offense committed in the police officers' presence, and, that being the case, a warrant did not need to be issued prior to the arrest. Since the officers correctly determined that they had probable cause to arrest without a warrant because her conduct fell within the Pohnpei state law definition of obstruction of justice, they did not conduct an unlawful or false arrest of her. Berman v. Pohnpei, 16 FSM R. 567, 574 (Pon. 2009).

A traffic stop, no matter how brief, is a seizure. But this seizure is not a warrantless arrest such that probable cause is needed and the person stopped must immediately be advised of his or her rights. Berman v. Pohnpei, 17 FSM R. 360, 370 (App. 2011).

When the police had information from an off-duty police officer that gave them reason to suspect that a person had been involved in a car accident and that he was intoxicated, these facts equate to reasonable suspicion to stop him and investigate. Berman v. Pohnpei, 17 FSM R. 360, 370 (App. 2011).

Probable cause exists when there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. In probable cause determinations, a court must regard the evidence from the vantage point of law enforcement officers acting on the scene but must make its own independent determination as to whether, considering all the facts at hand, a prudent and cautious law enforcement officer, guided by reasonable training and experience, would consider it more likely than not that a violation has occurred. Berman v. Pohnpei, 17 FSM R. 360, 371 (App. 2011).

Since the police may arrest without a warrant persons who are in the process of committing an offense in their presence, when the trial court found as fact that a person had, in the presence of the police, been argumentative; had prevented them from gaining access to her husband, who they had reasonable suspicion to stop and to whom they wanted to talk about a car abandonment; and that when a sergeant arrested her it was for obstructing justice and for pushing him in the chest and when these facts remain the facts on appeal, the facts, viewed from the law enforcement officers' vantage point, would constitute probable cause for an arrest on an obstructing justice charge. Berman v. Pohnpei, 17 FSM R. 360, 371 (App. 2011).

That the police had probable cause for an arrest on an obstructing justice charge does not mean that the arrestee was guilty beyond a reasonable doubt of that charge or that there was sufficient evidence to convict her on that charge; it only means that the police had enough to arrest her. Berman v. Pohnpei, 17 FSM R. 360, 371 (App. 2011).

A finding of probable cause may be based upon hearsay since the general rule is that virtually any evidence may be considered. A police officer may consider any evidence in determining whether reasonable suspicion or probable cause exists. The information may be provided by an informer. Police should consider the underlying circumstances from which the informer drew his conclusion and some of the underlying circumstances must show that the informant was reliable. However, evidence to establish

reasonable suspicion or probable cause may be based entirely upon hearsay. Chuuk v. Alluki, 17 FSM R. 385, 388 (Chk. S. Ct. Tr. 2011).

Probable cause exists when there is evidence and information sufficiently persuasive such that a cautious person would believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. Chuuk v. Alluki, 17 FSM R. 385, 388 (Chk. S. Ct. Tr. 2011).

When the affidavit in support of the information is simply too vague, it does not contain any evidence or factual information that might lead a cautious person to believe it likely that defendant committed a crime prior to being arrested and searched. Chuuk v. Alluki, 17 FSM R. 385, 388 (Chk. S. Ct. Tr. 2011).

When the nature of the complaint that law enforcement received and responded to is unspecified either by hearsay or any other kind of evidence; when the accused is said to have been arrested and brought to DPS for processing as a result of police action triggered by the complaint but that arrest's details and circumstances are also unsubstantiated; and when the affidavit reads as a cursory afterthought to the arrest, incarceration, search, and ultimate seizure perpetrated by law enforcement on the accused, it could not, in and of itself, have supported a finding of probable cause prior to the arrest. Chuuk v. Alluki, 17 FSM R. 385, 388 (Chk. S. Ct. Tr. 2011).

When a factually-sufficient information is unsupported by an affidavit showing probable cause but at the motion hearing the State, although neither was the affiant, elicited testimony from an officer involved in the actual arrest and another involved in defendant's search and booking and the arresting officer provided sufficient detail to remedy the affidavit's defects; when the accused was given the opportunity, and in fact did, cross-examine both witnesses; when the court finds their testimony credible and is satisfied that ample probable cause existed for accused's arrest; and when there is nothing before the court to indicate that the accused would in any way be prejudiced if the sworn testimony elicited at the hearing were admitted for the purposes of demonstrating that law enforcement had probable cause to arrest and subsequently search the accused incident to his arrest, at the time he was arrested, the information's charging portion remains unaffected and the accused's motion to suppress will be denied. Chuuk v. Alluki, 17 FSM R. 385, 388 (Chk. S. Ct. Tr. 2011).

A probable cause finding may be based upon hearsay evidence in whole or in part. FSM v. Esefan, 17 FSM R. 389, 395 (Chk. 2011).

Because the FSM Supreme Court has previously looked to the principles underlying the U.S. Constitution's Fourth Amendment when analyzing the requirements necessary to establish consent sufficient to justify a warrantless search in the FSM, the court may engage in that analysis again. FSM v. Phillip, 17 FSM R. 413, 423 (Pon. 2011).

When the three officers' affidavits are sufficient to establish facts which, if proven, may support the defendant's conviction on the charges brought; when the connection between a customs officer and an informant, to the extent that it exists, is not necessary to show probable cause to arrest the defendant; and when the affidavits support the discovery of significant quantities of a leafy substance resembling marijuana in the defendant's backpack, as well as further tests of that substance which revealed that it was marijuana, these affidavits provide probable cause to believe that a crime was committed, and the defendant's motion to dismiss the information will be denied. FSM v. Phillip, 17 FSM R. 413, 426 (Pon. 2011).

If it appears from the complaint, or from affidavit or affidavit filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the defendant's arrest will issue to any officer authorized by law to execute it. The probable cause finding may be based upon hearsay evidence in whole or in part. Chuuk v. Hauk, 17 FSM R. 508, 512 (Chk. S. Ct. Tr. 2011).

A police officer may, as a general rule, consider any evidence in determining whether reasonable suspicion or probable cause exists. An informer may provide the information. Police should consider the

underlying circumstances from which the informer drew his conclusion. Some of the underlying circumstances must show that the informant was reliable. However, evidence to establish reasonable suspicion or probable cause may be entirely based upon hearsay since the general rule is that virtually any evidence may be considered. Chuuk v. Hauk, 17 FSM R. 508, 512 (Chk. S. Ct. Tr. 2011).

As the levels of hearsay included in the affidavit increase, the guarantees of reliability that justify admission become attenuated. Hearsay that is otherwise admissible may be excluded where it primarily reiterates statements of other, unidentified persons. Chuuk v. Hauk, 17 FSM R. 508, 512 (Chk. S. Ct. Tr. 2011).

When the court makes its determination as to whether probable cause was proven, it must regard the evidence from the vantage point of law enforcement officers acting on the scene but must make its own independent determination as to whether, considering all the facts at hand, a prudent and cautious law enforcement officer, guided by reasonable training and experience, would consider it more likely than not that a violation has occurred. Chuuk v. Hauk, 17 FSM R. 508, 512-13 (Chk. S. Ct. Tr. 2011).

When the affidavit identifies its author as a Chuuk State Public Safety Department police detective and indicates that the detective was assigned to investigate the offenses alleged in the information; when the affidavit does not identify informants but describes facts uncovered during the course of the investigation; and when the defendant admits that the affiant formed his conclusions based upon the alleged victim's representations, the affiant's failure to name sources of information does not render the affidavit defective, in part because the defendant admits that the affiant gathered information directly from the victim. The affidavit does not suffer from multiple layers of hearsay because the affiant identifies himself and attests to personally investigating the criminal violations alleged. Chuuk v. Hauk, 17 FSM R. 508, 513 (Chk. S. Ct. Tr. 2011).

It is difficult to imagine how the vast majority of criminal prosecutions might proceed without using hearsay: it is the exception rather than the norm that court testimony underpins probable cause determinations. Any statements made to the affiant by the alleged victim are by definition hearsay and hearsay may, in whole or in part, form the basis of probable cause determinations, as may virtually any kind of evidence. Chuuk v. Hauk, 17 FSM R. 508, 513 (Chk. S. Ct. Tr. 2011).

Generally speaking, a prudent and thorough investigation likely would involve questioning the defendant before a probable cause determination is made, but the court is not in the business of investigating criminal allegations; law enforcement officials are and whether and to what extent the officer determined that such questioning was unnecessary and whether the omission somehow weakens the State's case is a factual issue to be determined at trial. Nothing in FSM or Chuuk state law provides that every investigating officer in every criminal case must question all or any criminal suspects before making a probable cause determination. Chuuk v. Hauk, 17 FSM R. 508, 513-14 (Chk. S. Ct. Tr. 2011).

Although there are civil remedies for the wrongs alleged, the possible existence of civil remedies in no way negates the fact that the legislature has criminalized the behavior alleged. The court's task in a probable cause determination is to determine whether the criminal allegations have merit, not to contemplate the propriety of the legal venue. Chuuk v. Hauk, 17 FSM R. 508, 514 (Chk. S. Ct. Tr. 2011).

When the court finds nothing to indicate that information obtained from the alleged victim is unreliable; when it does not seem reasonable or realistic to expect an alleged victim to remain neutral and unbiased regarding his claims about being victimized; and when the defendant admits that there was a financial arrangement of some sort between himself and the complainant and that the agreement itself is part of the nexus of facts leading up to this prosecution, the defendant has failed to demonstrate that from the investigating officer's perspective, information obtained during the course of the investigation is insufficient to justify a probable cause finding. Chuuk v. Hauk, 17 FSM R. 508, 514 (Chk. S. Ct. Tr. 2011).

The time to raise issues regarding probable cause is immediately after arrest, preferably at the initial

appearance, arraignment, or, upon motion, at a probable cause hearing. It is not approximately one month before trial is scheduled to begin. Chuuk v. Hauk, 17 FSM R. 508, 514 (Chk. S. Ct. Tr. 2011).

When the information alleges that the accused presented checks to merchants knowing that those checks were false documents, those factual allegations, supported by affidavit, establish probable cause that the accused violated 11 F.S.M.C. 529(1)(b). FSM v. Sorim, 17 FSM R. 515, 522 (Chk. 2011).

Since the existence of an agreement forming a conspiracy may be proven entirely by circumstantial evidence, circumstantial evidence can be sufficient to establish probable cause that such an agreement existed. FSM v. Sorim, 17 FSM R. 515, 524 (Chk. 2011).

Redaction is not required for a defendant's statement when it is used to help establish probable cause since hearsay may be used to establish probable cause. FSM v. Sorim, 17 FSM R. 515, 524 n.2 (Chk. 2011).

An arrest warrant or summons may issue if it appears from the complaint, or from affidavit or affidavit filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it. The probable cause finding may be based upon hearsay evidence in whole or in part. Chuuk v. Mitipok, 17 FSM R. 552, 553 (Chk. S. Ct. Tr. 2011).

Since the general rule is that virtually any evidence may be considered, a police officer may consider any evidence in determining whether reasonable suspicion or probable cause exists and the evidence to establish reasonable suspicion or probable cause may be entirely based upon hearsay. The police officers' determination of reasonable grounds and probable cause is based upon their training and understanding of conduct which forms the basis of criminal offenses. Chuuk v. Mitipok, 17 FSM R. 552, 553-54 (Chk. S. Ct. Tr. 2011).

Probable cause exists when there is evidence and information sufficiently persuasive such that a cautious person would believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. Chuuk v. Mitipok, 17 FSM R. 552, 554 (Chk. S. Ct. Tr. 2011).

When, although the affiant does not identify sources of information in his affidavit, the court finds that the description he includes regarding the results of his investigation are enough to enable a cautious person to believe it is more likely than not that a violation of the laws charged in the information occurred; when if the affiant obtained information from the statements of any witnesses, as hearsay it is permissible in making the probable cause determination; when it appears from the affidavit that the officer was able to observe damage to a vehicle that the defendant caused, the court will find that probable cause existed to support the information's charges and that defendant's motion to dismiss the information is without merit and will be denied. Chuuk v. Mitipok, 17 FSM R. 552, 554 (Chk. S. Ct. Tr. 2011).

The government must make a probable cause showing at a hearing before pretrial restraints on a defendant's liberty can be granted. This is because a fair and reliable determination of probable cause is a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest. Affidavits can be used, if properly introduced, as evidence at that hearing to make the probable cause showing. In re Anzures, 18 FSM R. 316, 320 n.7 (Kos. 2012).

Probable cause is a constitutional requirement for a warrant. In re Anzures, 18 FSM R. 316, 320 (Kos. 2012).

An individual suspected of a crime must be released from detention unless the government can establish "probable cause" to hold that individual. The standard for determining "probable cause" is whether there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. In re Anzures, 18 FSM R. 316, 324 (Kos. 2012).

A finding of probable cause may be based upon hearsay evidence in whole or in part. In re Anzures, 18 FSM R. 316, 324 n.12 (Kos. 2012).

Probable cause is present when there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. A court must regard the evidence from the vantage point of law enforcement officers acting on the scene but must make its own independent determination as to whether, considering all the facts at hand, a prudent and cautious law enforcement officer, guided by reasonable training and experience would consider it more likely than not that a violation has occurred. Chuuk v. Akapito, 19 FSM R. 13, 15 (Chk. S. Ct. Tr. 2013).

Probable cause existed when the affidavit of probable cause includes such facts that the court can find that the detective had sufficient information to believe that it was more likely than not a violation of the law had occurred involving the defendant. Chuuk v. Akapito, 19 FSM R. 13, 15 (Chk. S. Ct. Tr. 2013).

Article IV, § V protects individuals against illegal search and seizures, which can only be done based on probable cause. The standard for determining probable cause is whether there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. The probable cause determination must be made by the deliberate, impartial judgment of a judicial officer. FSM v. Benjamin, 19 FSM R. 342, 346-47 (Pon. 2014).

The protection in article IV, § 5 of the FSM Constitution against unreasonable search and seizure is based on a comparable provision in the fourth amendment of the U.S. Constitution. FSM v. Benjamin, 19 FSM R. 342, 347 n.4 (Pon. 2014).

When the defendant was found in the area after hours and his answers to the officer's questions were inconsistent, that and the surrounding circumstances rise to the level of reasonable suspicion, but not the higher standard of probable cause, which is needed for a lawful arrest. "Reasonable suspicion" is formed by specific, articulable facts which, together with objective and reasonable inferences, form the basis for suspecting that the particular person detained is engaged in criminal activity. FSM v. Benjamin, 19 FSM R. 342, 347 & n.5 (Pon. 2014).

In adopting the Declaration of Rights as part of the FSM Constitution and therefore the supreme law of the land, the people of Micronesia subscribed to various principles which place upon the judiciary the obligation, among others, to assure that arrests are based upon probable cause. Probable cause has been defined as a reasonable ground for suspicion, sufficiently strong to warrant a cautious person to believe that a crime has been committed. FSM v. Ezra, 19 FSM R. 497, 514 (Pon. 2014).

In probable cause determinations, the court must regard evidence from vantage point of law enforcement officers acting on scene but must make its own independent determination as to whether, considering all facts at hand, a prudent and cautious law enforcement officer, guided by reasonable training and experience, would consider it more likely than not that a violation has occurred. Thus, an officer's prior training and experience is a valid source of consideration when making a probable cause determination. FSM v. Ezra, 19 FSM R. 497, 515 n.13 (Pon. 2014).

The finding of probable cause may be based upon hearsay evidence in whole or in part. As a general rule, a police officer may consider virtually any evidence in determining whether reasonable suspicion or probable cause exists. FSM v. Ezra, 19 FSM R. 497, 515 (Pon. 2014).

Probable cause existed when the police knew a crime had occurred because they received a call reporting a break-in at the Chinese Embassy; when there was reason to believe that a crime had occurred inside the Chinese Embassy compound; when based partly on the victim's statement and the Chinese

Embassy's video surveillance, the police brought in two suspects whose statements implicated another; and when even though some of the evidence used by the police in determining that the other was a suspect to that crime was hearsay, a cautious person, based on the evidence the police already had in their possession, would have had reason to bring him in for questioning or to make an arrest without further questioning. The police have the discretion to formally arrest someone or to gather more information as they deem necessary. FSM v. Ezra, 19 FSM R. 497, 516 (Pon. 2014).

Probable cause is a reasonable ground for suspicion, sufficiently strong to warrant a cautious person to believe that a crime has been committed. FSM v. Kimura, 19 FSM R. 630, 634 (Pon. 2015).

In probable cause determinations, a court must regard the evidence from the vantage point of law enforcement officers acting on the scene but must make its own independent determination as to whether, considering all the facts at hand, a prudent and cautious law enforcement officer, guided by reasonable training and experience, would consider it more likely than not that a violation has occurred. FSM v. Kimura, 19 FSM R. 630, 634 (Pon. 2015).

Under the collective knowledge doctrine is a specific application called the "Fellow-Officer Rule," which expresses the principle that an investigative stop or an arrest is valid even if the law-enforcement officer lacks personal knowledge to establish reasonable suspicion or probable cause as long as the officer is acting on the knowledge of another officer and the collective knowledge of the law-enforcement office. FSM v. Kimura, 19 FSM R. 630, 635 (Pon. 2015).

A probable cause hearing is an informal, non-adversarial proceeding in which the formal rules of evidence do not apply. Thus, the finding of probable cause may be based upon hearsay evidence in whole or in part. This is not however, an open invitation to completely ignore the FSM Rules of Evidence, and the court must discount evidence that is inherently untrustworthy or suspicious. FSM v. Kimura, 19 FSM R. 630, 635 (Pon. 2015).

In a criminal case, a prosecutor may not, at a probable cause hearing, rely solely on hearsay testimony when competent evidence is readily available from perceiving witnesses. A probable cause hearing is a matter of limited purpose, and procedural and evidentiary rules are relaxed. But hearsay evidence alone will not suffice when other, more competent testimony is available. Thus, although the strict guidelines against the admission of hearsay evidence do not apply in a probable cause hearing, the court may discount unreliable hearsay. FSM v. Kimura, 19 FSM R. 630, 635 (Pon. 2015).

Establishing probable cause on the basis of hearsay alone should only be resorted to when the testimony of a perceiving witness is unavailable or when it is demonstrably inconvenient to summon witnesses able to testify to facts from personal knowledge. FSM v. Kimura, 19 FSM R. 630, 636 (Pon. 2015).

Hearsay provided by other law enforcement officers is often reliable without requiring any additional showing. Ultimately, hearsay from the police, or other government agencies involved in law enforcement, should not be treated the same as hearsay from an unknown informant or an anonymous tip. In short, who the informant is affects how the court weighs credibility behind the allegations supporting probable cause. FSM v. Kimura, 19 FSM R. 630, 636 (Pon. 2015).

Even though admiralty and maritime cases arrests are often made without an arrest warrant, the defendant is nonetheless entitled to a judicial determination as to whether there is probable cause to detain the accused. In this hearing, the government bears the burden of proving it had probable cause to seize the vessel. FSM v. Kimura, 19 FSM R. 630, 636 (Pon. 2015).

There is a substantial difference between the quantum of proof necessary to constitute sufficient evidence to establish probable cause and that necessary to support a conviction. FSM v. Kimura, 19 FSM R. 630, 636, 638 (Pon. 2015).

When, although no one officer had all of the information, collectively the agency did; when one or more government officers had the actual knowledge of each fact necessary to support the belief; when government officers are entitled to rely on representations from fellow officers if those representations are corroborated upon investigation and do not show the indicia of error; when similarly, the government may rely on hearsay derived from other investigative agencies, specifically NORMA observers; and when, regardless of the number of hearsay layers, these intermediaries should all be presumed reliable, the information and evidence was sufficient to support probable cause by the government at the time of the arrest. FSM v. Kimura, 19 FSM R. 630, 638 (Pon. 2015).

Probable cause must be made from a reasonable person's perspective, using the fellow-officer rule, to include all of the information that collectively the government had in its possession at the time of the arrest, and not merely any one particular officer's actual knowledge. FSM v. Kimura, 19 FSM R. 630, 638 (Pon. 2015).

Hearsay can be used to support a probable cause finding, if it has the indicia of reliability. Assessments on the reliability of hearsay should include a consideration for the integrity, training, and the experience of police officers, or other law enforcement agents, from whom it comes. If, after a reasonable investigation under the circumstances, which includes the knowledge of the source, this hearsay is corroborated, it should be considered by the court and weighed accordingly. FSM v. Kimura, 19 FSM R. 630, 638 (Pon. 2015).

An arrest based upon probable cause does not violate the constitutional right to due process. Palasko v. Pohnpei, 20 FSM R. 90, 96 (Pon. 2015).

An individual suspected of a crime must be released from detention unless the government can establish "probable cause" to hold that individual. The standard for determining probable cause is whether there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. Palasko v. Pohnpei, 20 FSM R. 90, 96 (Pon. 2015).

The police had probable cause to arrest a person and that arrest was lawful when they knew that he had someone else's pigs and that he would not release them to their owner. Since his arrest was lawful, the resulting overnight detention was lawful and was not false imprisonment. Palasko v. Pohnpei, 20 FSM R. 90, 96 (Pon. 2015).

Probable cause exists when there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. FSM v. Kimura, 20 FSM R. 297, 302 (Pon. 2016).

In probable cause determinations, a court must regard the evidence from the vantage point of law enforcement officers acting on the scene but must make its own independent determination as to whether, considering all the facts at hand, a prudent and cautious law enforcement officer, guided by reasonable training and experience, would consider it more likely than not that a violation has occurred. FSM v. Kimura, 20 FSM R. 297, 302 (Pon. 2016).

The report of a trained and experienced fisheries observer on the scene and his later deposition testimony is more than sufficient to show probable cause – that it was more likely than not that a violation occurred – when, although the observer never actually saw a crew member throw the trash overboard, the court can infer from the circumstantial evidence that it is more likely than not that that is what occurred. Whether the government will be able to prove that beyond a reasonable doubt, a higher standard, is a matter left for trial. FSM v. Kimura, 20 FSM R. 297, 302 (Pon. 2016).

Police officers had probable cause to arrest a person, whose fingerprints were found at the crime

scene, when he turned over the alleged stolen goods because probable cause is present when there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. FSM v. Isaac, 21 FSM R. 370, 374 (Pon. 2017).

The police have a reasonable suspicion about someone's involvement in the crime when they have a particularized and objective basis, supported by specific and articulable facts, for suspecting that person of criminal activity. FSM v. Isaac, 21 FSM R. 370, 374 & n.5 (Pon. 2017).

Even if the police officers have probable cause to make an arrest, nothing precludes them from further investigating someone before arresting him because questioning of witnesses and suspects is a necessary tool for the effective enforcement of criminal laws, and without such investigation, those who were innocent might be falsely accused, those who were guilty might wholly escape prosecution, and many crimes would go unsolved. FSM v. Isaac, 21 FSM R. 370, 374 (Pon. 2017).

Once someone voluntarily led the investigating officers to and surrendered the alleged stolen items, probable cause existed to arrest him and no warrant was necessary. FSM v. Isaac, 21 FSM R. 370, 374 (Pon. 2017).

Redaction is not required for a co-defendant's statement when it is used to help establish probable cause since hearsay may be used to establish probable cause. FSM v. Jappan, 22 FSM R. 81, 83 n.1 (Chk. 2018).

Article III of the Chuuk Constitution prohibits the court from issuing a warrant unless there is probable cause, supported by affidavit, specifically describing the person to be seized. Chuuk v. Kincho, 22 FSM R. 411, 413 (Chk. S. Ct. Tr. 2019).

When the FSM has applied for a search warrant after granting a foreign request for mutual assistance, the warrant application must satisfy the court that there is probable cause to believe that a serious offense has been or may have been committed against the laws of the foreign state. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 455 (Pon. 2020).

It is well-established that hearsay may be used to establish probable cause. The finding of probable cause may be based upon hearsay evidence in whole or in part. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 456 (Pon. 2020).

For the purpose of establishing probable cause that a serious offense has been or may have been committed against the laws of a foreign state, a statement contained in the foreign request to the effect that a serious offense has been or may have been committed against the laws of a foreign state is prima facie evidence of that fact. The statute does not require that the foreign request's statement be under oath. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 456 (Pon. 2020).

An affidavit supporting probable cause is not deficient when the signature line says "notary public" below it, but the signature is that of an FSM Supreme Court court clerk and her signature is sealed by the court's seal. Nor is the inadvertent omission of the date on the line is provided for entry of the date above the clerk's signature, which the court clerk apparently neglected to fill it in before she signed, fatal to the warrant application or the warrant itself. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 456 (Pon. 2020).

While a U.S. court should, and probably will at some point, have the final say whether a helicopter's supposedly invalid U.S. registration conferred extraterritorial jurisdiction on the U.S., for the purpose of establishing probable cause that U.S. laws were violated, the helicopter's U.S. registration is sufficient. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 458 (Pon. 2020).

An FSM search warrant application established that there was probable cause to believe that a serious offense had been committed against the laws of a foreign state (the U.S.) when it showed that a U.S. registered helicopter was no longer in a flyable condition – no longer airworthy – because the helicopter had had either an "aircraft accident" as there was substantial damage to it, or because there had been a "serious incident" caused by "ground damage," to the helicopter's tail and U.S. law required that U.S. registered aircraft immediately report such events and the helicopter owner did not. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 460 (Pon. 2020).

If there is information received from a known independent source, that information may be used to establish probable cause even if the same information was also obtained through an illegal search. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 461 (Pon. 2020).

The border search exception to the constitutional search warrant requirement applies equally to persons and goods leaving the country as it does to persons and goods entering the country. A border search, or a search at the functional equivalent of a border, of outgoing passengers or goods requires neither a warrant nor probable cause. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 461 (Pon. 2020).

A warrant may not issue except on probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized. The search warrant application must particularly identify the specific property to be seized and name or describe the place to be searched. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 462 (Pon. 2020).

Article III of the Chuuk Constitution prohibits the court from issuing a warrant unless there is probable cause, supported by affidavit, specifically describing the person to be seized. Chuuk v. Hebwer, 22 FSM R. 542, 543 (Chk. S. Ct. Tr. 2020).

Chuuk Criminal Procedure Rule 4 only allows an arrest warrant or summons to issue when it appears from the complaint, or from affidavit or affidavit filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, and a warrant for the defendant's arrest will issue to any officer authorized by law to execute it. It further provides that a probable cause finding may be based upon hearsay evidence in whole or in part. Chuuk v. Hebwer, 22 FSM R. 542, 543 (Chk. S. Ct. Tr. 2020).

When the supporting affidavit fails to allege any involvement by the two co-defendants in a conspiracy with the lead defendant, no probable cause exists to pursue the matter against the co-defendants, and, since no other counts are alleged against them, the two co-defendants will be dismissed. Chuuk v. Hebwer, 22 FSM R. 542, 543 (Chk. S. Ct. Tr. 2020).

FSM law provides that a statement contained in the foreign request to the effect that a serious offense has been or may have been committed against the foreign state's laws is prima facie evidence of that fact. When the appellant has presented nothing that overcomes that prima facie evidence, the true real party in interest, will, of course, be able to contest whether a serious offense was committed against the laws of a foreign state – the U.S. – in the courts of that foreign state and argue there about whether the evidence seized by the FSM for shipment to Guam is evidence of the commission of that alleged serious offense. In re Wrecked/Damaged Helicopter, 22 FSM R. 580, 585 (Pon. 2020).

– Traffic Stop

Stopping motorists on a public road is reasonable, even if there is no particularized suspicion of crime, but police roadblocks must be designed to advance a specific purpose, such as eradication of drunken driving, and the court must determine whether the roadblock was reasonable, through consideration of several factors: the importance of the state's interest served by the roadblock; the effectiveness of the roadblock in advancing the public interest, and the degree to which the roadblock interferes with the motorist. Kosrae v. Sigrah, 11 FSM R. 249, 254 (Kos. S. Ct. Tr. 2002).

When a roadblock's purpose was to check motorists for valid driver's licenses and vehicle registrations, the roadblock was designed to advance a specific state and public interest of assuring that drivers are properly licensed to drive, and to assure that the vehicle being driven meets minimum safety standards by being registered, and it addressed problems which were associated with the persons stopped. When a roadblock was designed to advance a specific public interest and was effective in advancing that public interest because motorists were detained for a temporary and brief period of time, interfering with them only to a minimal degree, the roadblock was reasonable under the Kosrae Constitution and a warrant was not required to conduct it nor was a warrant required for the police to stop a person at the roadblock. Kosrae v. Sigrah, 11 FSM R. 249, 254 (Kos. S. Ct. Tr. 2002).

When a motorist, detained at routine traffic stop for a temporary and brief period, was not arrested and was not in custody at the time he was questioned regarding his driver's license, the police questioning at the roadblock was routine questioning, conducted by government agents as part of their roadblock procedure and did not require Miranda warnings. Therefore, based upon the totality of the circumstances, that motorist was not compelled into giving incriminating evidence against himself, his right against self-incrimination was not violated by the roadblock, and the evidence thus obtained will not be suppressed. Kosrae v. Sigrah, 11 FSM R. 249, 255 (Kos. S. Ct. Tr. 2002).

The requirements that a person's driver's license be in the immediate possession of the operator, and that the operator display his license to a police officer upon demand do not violate the Kosrae Constitution. Kosrae v. Sigrah, 11 FSM R. 249, 257 (Kos. S. Ct. Tr. 2002).

A roadblock stop where all oncoming traffic was stopped is not an arrest. Just as indubitably, such a stop is a "seizure" within the meaning of the proscription against unreasonable search and seizures. Sigrah v. Kosrae, 12 FSM R. 320, 328 (App. 2004).

The standard by which the actions of law enforcement personnel is to be measured in conducting a traffic stop is one of reasonableness. To ensure against the arbitrary invasion of an individual motorist's security and privacy interests, the stop may not involve the discretionary exercise of authority by the officers who are actually on the scene and making the stops. The stops may not be made on an ad hoc basis, but must be implemented by public safety administrative personnel as part of a legitimate, rational program intended to make the state's roads safer, and not as a means of circumventing either the probable cause or reasonable, articulable suspicion, standards that would otherwise apply to the stop of an individual motorist. The manner of stopping must be in a rational, predetermined way. Either all motorists must be stopped, or the stops must occur in a specified incremental manner, such as every second, every fifth, etc., motorist. To insure the arbitrary, discretionary conduct is not merely shifted from the officer in the field to the public safety administrator responsible for the planning and implementation of the stops, the public must be given advance notice by means of radio announcement that the stops will be held. With these safeguards in place, the state's interest in promoting roadway safety more than outweighs the intrusion upon the privacy of and momentary inconvenience to the stopped motorists. Sigrah v. Kosrae, 12 FSM R. 320, 329 (App. 2004).

A checkpoint stop constitutes a mechanism for enforcing applicable laws. The roadblock itself, together with its prior announcement, is a means of causing people to take action to comply with applicable laws. When the stop is conducted in such a way that the rights conferred upon citizens under both Article II, § 1(d) of the Kosrae Constitution and Article IV, § 5 of the FSM Constitution are afforded adequate protection, the roadblock stop is not an unreasonable seizure. Sigrah v. Kosrae, 12 FSM R. 320, 330 (App. 2004).

It is sufficiently plain that automobiles by their intrinsic nature implicate safety concerns. Thus it does not take a statistical analysis to make the point that they are powerful mechanical devices that must be operated in a responsible manner, and that the operation of an automobile that is not roadworthy creates a hazard for other motorists and pedestrians, and a statistical analysis, however useful it might prove, is not a critical predicate to a finding that Kosrae's program of roadway safety roadblocks is constitutional. Sigrah

v. Kosrae, 12 FSM R. 320, 330 (App. 2004).

A roadblock traffic stop may not involve the discretionary exercise of authority by the officers who are actually on the scene and making the stops. The stops may not be made on an ad hoc basis, but must be implemented by public safety administrative personnel as part of a legitimate rational program. To insure the arbitrary, discretionary conduct is not merely shifted from the officer in the field to the public safety administrator responsible for the planning and implementation of the stops, the public must be given advance notice by means of radio announcement that the stops will be held. Kosrae v. Robert, 13 FSM R. 109, 111 (Kos. S. Ct. Tr. 2005).

The purpose of a roadblock, with proper advance notice, is a means to cause people to take action to comply with applicable laws. Kosrae v. Robert, 13 FSM R. 109, 111 (Kos. S. Ct. Tr. 2005).

The state's radio announcements made from October 11 through 19, 2004, which stated that roadblocks would be implemented "throughout the year" without specifying the dates of the roadblocks, constituted a failure to announce the date or dates of the scheduled roadblocks necessarily and did not provide adequate advance notice to the public thus resulting in discretionary conduct by giving the public safety administrator and the police officers unfettered discretion to determine the dates of the roadblocks. This arbitrary and discretionary exercise of authority is not permissible. The advance notice and the roadblock held on October 22, 2004 did not provide the necessary constitutional protections and therefore all evidence obtained by the state against the defendant as a result of the roadblock is suppressed and not admissible at trial. Kosrae v. Robert, 13 FSM R. 109, 112 (Kos. S. Ct. Tr. 2005).

A roadblock stop may not involve the discretionary exercise of authority by the officers who are actually on the scene and making the stops. To insure the arbitrary, discretionary conduct is not merely shifted from the officer in the field to the public safety administrator responsible for the planning and implementation of the stops, the public must be given advance notice by means of radio announcement that the stops will be held. Kosrae v. Sikain, 13 FSM R. 174, 174 (Kos. S. Ct. Tr. 2005).

The purpose of a roadblock, with proper advance notice is a means to cause people to take action to comply with applicable laws. Kosrae v. Sikain, 13 FSM R. 174, 176 (Kos. S. Ct. Tr. 2005).

There are two purposes for requiring advance notice of a roadblock to the public: first, to eliminate arbitrary and discretionary conduct by the officers, and second, to cause people to take action to comply with applicable law. Accordingly, the general public, including passengers, and not just drivers, must be given advance notice. Kosrae v. Sikain, 13 FSM R. 174, 176-77 (Kos. S. Ct. Tr. 2005).

– Return of Seized Property

For a court to order property seized pursuant to a search warrant to be returned, the defendants' burden is to show both that there has been an illegal seizure by the state and that they have a claim of lawful possession to the property. Chuuk v. Mijares, 7 FSM R. 149, 150 (Chk. S. Ct. Tr. 1995).

A party who denies ownership of the seized items has no standing to ask for return of the property. Chuuk v. Mijares, 7 FSM R. 149, 150 (Chk. S. Ct. Tr. 1995).

For a party to have a valid claim of lawful possession of alcohol seized by the state that party must have paid the possession tax on the seized items. Chuuk v. Mijares, 7 FSM R. 149, 150 (Chk. S. Ct. Tr. 1995).

Where a defendant's motion is one for the return of seized property and he has failed to meet his burden to show a right to lawful possession, a court need not reach the issue of the illegal seizure and suppression of the evidence. Chuuk v. Mijares, 7 FSM R. 149, 151 (Chk. S. Ct. Tr. 1995).

Because a Rule 41(e) motion for return of seized property is predicated on the seizure's illegality and the showing of a right to possession, return of unregistered firearms is improper because possession of unregistered firearms is unlawful there is thus no right to possession. FSM v. Santa, 8 FSM R. 266, 268 (Chk. 1998).

A criminal defendant has the right to move for the return of his property pursuant to Rule 41(e). This offers prompt and adequate relief for his grievance. FSM v. Joseph, 8 FSM R. 469, 470 (Chk. 1998).

The government may retain property seized from a criminal defendant that is not contraband or subject to forfeiture when it intends to offer the items in evidence at trial, and has a plausible reason for so intending. FSM v. Joseph, 8 FSM R. 469, 470 (Chk. 1998).

The court shall receive evidence on any issue of fact necessary to decide a motion for return of property. FSM v. Aki, 9 FSM R. 345, 349 (Chk. 2000).

A Rule 41(e) motion to return seized property the government claims it never had will be treated as a civil proceeding and may be entertained post-judgment or prejudgment. FSM v. Aki, 9 FSM R. 345, 349-50 (Chk. 2000).

To prevail in his motion the defendant must show that the seizure of the property was illegal, and that he is entitled to lawful possession. The burden of persuasion as to the possession is by a preponderance of the evidence. FSM v. Aki, 9 FSM R. 345, 350 (Chk. 2000).

When the defendant has established by a preponderance of the evidence that the $900 existed, that it was in his briefcase, that it was taken from his briefcase sometime after the police obtained the briefcase and before it was returned, and that he is entitled to lawful possession of the $900.00, a motion to return will be granted and since that money is not in the possession of the government, the defendant shall have judgment against the state for $900.00. FSM v. Aki, 9 FSM R. 345, 350 (Chk. 2000).

– Warrants

Police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure. FSM v. Tipen, 1 FSM R. 79, 85 (Pon. 1982).

Without probable cause, no search warrant may be obtained and no unconsented search may be conducted. FSM v. George, 1 FSM R. 449, 461 (Kos. 1984).

Police officers desiring to conduct a search should normally obtain a search warrant. This requirement serves to motivate officers to assess their case and to obtain perspective from the very start. FSM v. George, 1 FSM R. 449, 461-62 (Kos. 1984).

The standard announced in the second sentence of FSM Constitution article IV, section 5 for issuance of a warrant must be employed in determining the reasonableness of a search or seizure. Imposition of a standard of probable cause for issuance of a warrant in article IV, section 5 implies that no search or seizure may be considered reasonable unless justified by probable cause. Ludwig v. FSM, 2 FSM R. 27, 32 (App. 1985).

The Constitution does not protect a person against a "reasonable" search and/or seizure and a search is reasonable where a search warrant has been obtained prior to the search. Kosrae v. Paulino, 3 FSM R. 273, 275 (Kos. S. Ct. Tr. 1988).

Issuance of a search warrant is indisputedly within the FSM Supreme Court's jurisdiction. Jano v. King, 5 FSM R. 388, 392 (Pon. 1992).

When a search or seizure is conducted without a warrant the burden is on the government to justify the search or seizure, but when the search or seizure is conducted pursuant to a judicially-issued warrant the burden rests with the defendant to prove the illegality of the search or seizure. FSM v. Santa, 8 FSM R. 266, 268 (Chk. 1998).

One reason for limiting the government's right to discovery is the many other means the government has for obtaining needed information, such as the search warrant. FSM v. Wainit, 11 FSM R. 1, 10 (Chk. 2002).

Frequently, a search warrant is used at the start of an investigation before charges are brought. But no statute, rule, legal principle, or constitutional provision bars its use at a later stage in the proceeding. FSM v. Wainit, 11 FSM R. 1, 10 (Chk. 2002).

Rule 16(b) only concerns the limited amount of information that the government may, in very limited circumstances, seek by discovery. It is not concerned with what the government may seek to obtain through the use of a search warrant – search warrants are not "discovery." FSM v. Wainit, 11 FSM R. 1, 10 (Chk. 2002).

Persons executing search warrants are required to promptly file a return with an inventory of the property seized. FSM v. Wainit, 11 FSM R. 1, 10 (Chk. 2002).

In light of the prompt filing requirement for search warrant inventories, it would be unreasonable to expect the government's inventory to list every document when there are numerous documents. FSM v. Wainit, 11 FSM R. 1, 10-11 (Chk. 2002).

Generally, the failure to promptly file a return with an inventory is a ministerial violation which does not void an otherwise valid search in the absence of a showing of prejudice. FSM v. Wainit, 11 FSM R. 1, 11 (Chk. 2002).

The ostensible purpose of the inventory requirement is to enable the court to determine, on the face of the warrant, return and inventory, whether the seizure was properly limited to the property identified in the warrant. FSM v. Wainit, 11 FSM R. 1, 11 (Chk. 2002).

An inventory which lists four file folders and how each folder is labeled, but which does not individually list each document in the 600 pages of documents in the folders, does not show the prejudice that would void an otherwise valid search. If the inventory were found to be inadequate, the most likely remedy would be an order for the government to file a more detailed inventory, not suppression. FSM v. Wainit, 11 FSM R. 1, 11 (Chk. 2002).

The inadvertent omission of a document from the search warrant inventory would, in itself, not be grounds to suppress that document. FSM v. Wainit, 11 FSM R. 1, 11 (Chk. 2002).

Rule 41 only requires that a return be made promptly and be accompanied by a written inventory, not that the seized property itself be brought before the court. FSM v. Wainit, 11 FSM R. 1, 12 (Chk. 2002).

A defendant is entitled to a protective order barring the admission of any of the seized items that were outside the search warrant's scope. But when there is no indication that the government intends to offer any of them in evidence, the court will not inspect each item seized and rule on its relevance and whether it was outside the warrant's scope. FSM v. Wainit, 11 FSM R. 1, 12 (Chk. 2002).

As long as probable cause still exists, it is generally accepted that a warrant need only be executed within a reasonable time after its issuance, notwithstanding the presence of "forthwith" language in the warrant. FSM v. Wainit, 11 FSM R. 424, 432 (Chk. 2003).

To "execute" a search warrant does not mean a fully completed search but to "execute" is in that instance synonymous with to serve a search warrant. FSM v. Wainit, 11 FSM R. 424, 433 (Chk. 2003).

Even if a search warrant was valid for execution only until 4 p.m., on September 5, 2002, the government having executed, that is served, the search warrant and begun its search before 4 p.m. on September 5th, could have continued its search after 4 p.m. on the 5th until done, even if it ran over onto the 6th. The court does not see much difference between that and securing the site with police present inside to resume physically searching the next morning. FSM v. Wainit, 11 FSM R. 424, 433 (Chk. 2003).

The historical reason for restricting searches to daytime hours was that invasion of private premises in the small hours of the night and abrupt intrusion upon sleeping residents in the dark was more likely to create terror that precipitated violence. That reason does not apply to a search started in daytime that continues after dark. FSM v. Wainit, 11 FSM R. 424, 433 (Chk. 2003).

Normally, a search warrant's validity is brought into question by a motion to suppress the evidence seized as a result of the questioned warrant. FSM v. Wainit, 11 FSM R. 424, 434 (Chk. 2003).

The reasoning behind the principle barring physical resistance to an invalid search warrant is that while society has an interest in securing for its members the right to be free from unreasonable searches and seizures, society also has an interest in the orderly settlement of disputes between citizens and their government and it has an especially strong interest in minimizing the use of violent self-help in the resolution of those disputes particularly when a proper accommodation of those interests requires that a person claiming to be aggrieved by a search conducted pursuant to an allegedly invalid warrant test that claim in a court of law and not forcibly resist the warrant's execution at the place of search. This reasoning resonates even more strongly in Micronesia, where society has customarily prized peaceful and orderly resolution of disputes much higher than in the United States. FSM v. Wainit, 11 FSM R. 424, 436 (Chk. 2003).

At the time the FSM Constitution was framed and adopted, the prevailing U.S. constitutional analysis of its constitutional search and seizure provision, which the FSM constitutional provision was modeled after, was that persons had no right to resist a search warrant even if that warrant was invalid. FSM v. Wainit, 11 FSM R. 424, 436 (Chk. 2003).

Two old (1937 and 1924) cases that do not reflect U.S. constitutional analysis and practice at the time the FSM Constitution was drafted and adopted in the last half of the 1970's cannot be a basis for an FSM constitutional analysis of provisions adopted from and similar to a provision in the U.S. Constitution's Bill of Rights when those cases differ significantly from the constitutional analysis current in the 1970's. FSM v. Wainit, 11 FSM R. 424, 436 (Chk. 2003).

Process "void on its face" usually means process that the court did not have jurisdiction to issue or that was in excess of its jurisdiction. Since the FSM Supreme Court has the jurisdiction to issue search warrants anywhere in the FSM, and the island of Udot is within the FSM's territorial jurisdiction, and on September 4, 2002, the court had jurisdiction to issue a search warrant that would be valid on September 6, 2002, a search warrant used on Udot on September 6, 2002 was not void on its face. FSM v. Wainit, 11 FSM R. 424, 436 (Chk. 2003).

A defective search warrant is not a defense to a prosecution for resisting the defective warrant. FSM v. Wainit, 11 FSM R. 424, 436 (Chk. 2003).

Under FSM constitutional jurisprudence, a person has no right, with some possible narrow exception, to resist a court-issued search warrant even if that search warrant turns out to be invalid. A person's remedies for being subjected to a search with an invalid search warrant are the suppression of any evidence seized, and, in the proper case, a civil suit for damages. The self-help of resistance is not a remedy and because of the Micronesian customary preference for the peaceful resolution of disputes, this

conclusion is consistent not only with the FSM Constitution, but also with the social configuration of Micronesia as is required by the Constitution's Judicial Guidance Clause. FSM v. Wainit, 11 FSM R. 424, 436-37 (Chk. 2003).

The issue of a search warrant's validity is not a central, or even major issue in a case of resisting a search. It is not an available defense. FSM v. Wainit, 11 FSM R. 424, 437 (Chk. 2003).

A subscriber to an internet service in the FSM may have a reasonable expectation of privacy in the content of e-mails that are stored on the server at the FSM Telecom's offices. Even though e-mails are computer generated, digital images, they are "papers and possessions" that a person reasonably expects will be kept private, and they should not be subject to unchecked governmental intrusion or seizure. Thus, before the court can issue a warrant, it must find that there is evidence sufficiently strong to warrant a cautious person to believe that a crime has been committed. In re FSM Nat'l Police Case No. NP 10-04-03, 12 FSM R. 248, 251 (Pon. 2003).

The reasoning behind the principle barring physical resistance to an invalid search warrant is that society has an interest in securing for its members the right to be free from unreasonable searches and seizures. Society also has an interest, however, in the orderly settlement of disputes between citizens and their government; it has an especially strong interest in minimizing the use of violent self-help in the resolution of those disputes. A proper accommodation of those interests requires that a person claiming to be aggrieved by a search conducted by a peace officer pursuant to an allegedly invalid warrant test that claim in a court of law and not forcibly resist the execution of the warrant at the place of search. This reasoning resonates even more strongly in Micronesia, where society has customarily prized peaceful and orderly resolution of disputes much higher than in the United States. FSM v. Wainit, 13 FSM R. 433, 446 (Chk. 2005).

At the time the FSM Constitution was framed and adopted, the prevailing U.S. constitutional analysis of its constitutional search and seizure provision, which the FSM constitutional provision was modeled after, was that persons had no right to resist a search warrant even if that warrant was invalid. FSM v. Wainit, 13 FSM R. 433, 446 (Chk. 2005).

In the FSM, a person has no right to resist the execution of a search warrant by police or government agents even if the search warrant is later shown to be invalid. Consequently, a defendant may not assert as a defense that he has no liability and may resist a search warrant if he believes it is, or if it is, an invalid warrant. The law does not permit this. The search warrant's validity is irrelevant to the case and the court will refuse to hear testimony concerning it. FSM v. Wainit, 13 FSM R. 433, 446 (Chk. 2005).

As a matter of law, a search warrant's invalidity is not a defense under 11 F.S.M.C. 107(1) because it is not a fact or set of facts which removes or mitigates penal liability. Even a belief that a search warrant is invalid does not remove or mitigate penal liability. If a person believes that he has a legal right to resist an invalid search warrant that is a mistake or ignorance of law, not a mistake (or ignorance) of fact, and that is not a defense under section 301A(3). FSM v. Wainit, 13 FSM R. 433, 446 (Chk. 2005).

A search warrant's invalidity, or a belief it is invalid, is not a defense to charges stemming from resistance to the search warrant's execution. FSM v. Wainit, 13 FSM R. 433, 447 (Chk. 2005).

Under FSM constitutional jurisprudence, a person has no right, with some possible narrow exception which the court has not decided whether it is a viable defense, to resist a court-issued search warrant even if that search warrant turns out to be invalid. FSM v. Wainit, 13 FSM R. 433, 448 (Chk. 2005).

If the building to be searched is closed, the person executing the search warrant shall first demand entrance in a loud voice and state that he desires to execute a search warrant, and if the doors, gates, or other bars to the entrance are not immediately opened, he may force an entrance, by breaking them if necessary. Thus, since the defendant's residence was completely vacant at the time with no one there to

grant them entry, the national police had every right to force an entry into the residence. FSM v. Wainit, 14 FSM R. 51, 56-57 (Chk. 2006).

Once a search has been completed, the policeman taking property under a search warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken, or shall leave the copy and receipt at the place from which the property was taken. But, although termed "caretakers" of the property, when the municipal police did not occupy the property and could they provide entry to the residence, they were thus not persons from whom or from whose premises the property was taken and upon whom a copy of the search warrant had to be served, and since the search was not finished on September 5, 2002, whether a copy of the search warrant was left with the municipal police on September 5, 2002 is irrelevant. FSM v. Wainit, 14 FSM R. 51, 57 (Chk. 2006).

The mere presence of prosecutors during a search is not *per se* improper. A prosecutor may assist in a search to provide legal advice. The reason a prosecutor might not want to participate in investigative matters such as executing a search warrant is that prosecutors only enjoy a limited immunity from civil liability when participating in investigative acts, unlike the absolute immunity from civil liability that prosecutors enjoy for their actions connected with their role in judicial proceedings. FSM v. Wainit, 14 FSM R. 51, 57 (Chk. 2006).

Although a person has a right to be present while his residence is searched as long as he does not interfere with the search, members of the public and others who entered the residence after the owner had no right to be present during the residence's search. FSM v. Wainit, 14 FSM R. 51, 59 (Chk. 2006).

Although the remedy of self-help or resistance to a search thought to be unlawful is barred, the court has not decided whether there are some unlawful searches, with or without warrant, the circumstances of which would be so provocative to a reasonable man that the seriousness of the offense of resistance ought to be mitigated as a result of such provocation, and when the defendant had the opportunity to put on such evidence at trial but no such showing (by a preponderance of the evidence), was made, the court did not need to decide whether such an exception could be permitted since the search warrant execution attempt was neither provocative nor was the force used unreasonable. FSM v. Wainit, 14 FSM R. 51, 59-60 (Chk. 2006).

A person whose residence is being searched would, of course, be within his rights to tell the search party that if it insisted upon continuing its search it could do so over his protest, but that, in his view, the search warrant was invalid or expired and he would pursue every available civil remedy and suppression motion available to him so that the search party might want to reconsider whether it wanted to continue. FSM v. Wainit, 14 FSM R. 51, 60 n.8 (Chk. 2006).

A search warrant should be issued in the state where the property sought to be seized was alleged to be located. FSM v. Kansou, 14 FSM R. 136, 138 (Chk. 2006).

A return of the items seized pursuant to a search warrant must be made even if nothing is found or seized. FSM v. Kansou, 14 FSM R. 136, 138 (Chk. 2006).

When the defendant's arrest was by warrant, the burden of showing its supposed illegality rested with the defendant. When the defendant failed to meet that burden and when the motion's other ground that witnesses were not given required legal warnings is legally unsound, the government's failure to produce evidence at the hearing was not fatal and the motion to suppress is accordingly denied. FSM v. Aiken, 16 FSM R. 178, 185 (Chk. 2008).

The FSM Supreme Court has the authority to issue a search warrant only upon probable cause supported by affidavit and the search warrant application must particularly identify the specific property or persons to be seized and naming or describing the person or place to be searched. In re Search Warrant

Application, 19 FSM R. 399, 400 (Pon. 2014).

The search warrant's particularity requirement prohibits general searches and exploratory rummaging while looking for evidence of a crime. The constitutional protection of the individual against unreasonable searches and the limitations of powers of the police apply wherever an individual may harbor a reasonable expectation of privacy. In re Search Warrant Application, 19 FSM R. 399, 400 (Pon. 2014).

When the search warrant application adequately establishes probable cause as required but is unreasonably broad in its request to search the suspect's dwelling, an adjacent house owned by his mother-in-law but believed to be used as an alternative residence, and his vehicle, the court will grant the warrant to search the suspect's dwelling and his vehicle but deny the request to search the mother-in-law's home. The breadth of the application is not supported by the facts therein because the mere belief that the suspect uses the other home as a residence is not sufficient, nor is it reason to believe that the evidence sought will be found there. The Department of Justice may file another application, or applications, supported by additional evidence, if that location is determined to be necessary to the investigation. In re Search Warrant Application, 19 FSM R. 399, 400 (Pon. 2014).

A warrant cannot stand if it is too broad or vague. The warrant must be particularly specific in designating the place to be searched or the things to be seized. In re Search of All Electronically Stored Information, 21 FSM R. 192, 193 (Pon. 2017).

To avoid turning a limited search for particular information into a general search of electronic databases, the courts have established special particularity requirements for searching electronic databases. In re Search of All Electronically Stored Information, 21 FSM R. 192, 193-94 (Pon. 2017).

Although on rare occasions, the police may have reason to believe that all of the digital information in a particular device contains evidence of a crime, judges must be vigilant in observing the FSM Constitution's particularity requirement. In re Search of All Electronically Stored Information, 21 FSM R. 192, 194 (Pon. 2017).

When, due to the lack of particularity required by the FSM Constitution, the court is not satisfied that the search warrant application and affidavit are sufficient to grant a warrant for electronically stored information, the application will be denied. The court must tread carefully because the law in this area is still developing and expanding dramatically as the digital age matures. In re Search of All Electronically Stored Information, 21 FSM R. 192, 194 (Pon. 2017).

A search warrant application may be resubmitted in order to conform to the customary practice and constitutional limitations for electronic searches. In re Search of All Electronically Stored Information, 21 FSM R. 192, 194 (Pon. 2017).

The collateral bar rule applies to the execution of search warrants. The reasoning behind the principle barring physical resistance to an invalid search warrant is that while society has an interest in securing for its members the right to be free from unreasonable searches and seizures, society also has an interest in the orderly settlement of disputes between citizens and their government, and it has an especially strong interest in minimizing the use of violent self-help to resolve those disputes particularly when a proper accommodation of those interests requires that a person, claiming to be aggrieved by a search conducted pursuant to an allegedly invalid warrant, test that claim in a court of law and not forcibly resist the warrant's execution at the place of search. Governor v. Chuuk House of Senate, 21 FSM R. 428, 435 (Chk. S. Ct. Tr. 2018).

Article III of the Chuuk Constitution prohibits the court from issuing a warrant unless there is probable cause, supported by affidavit, specifically describing the person to be seized. Chuuk v. Kincho, 22 FSM R. 411, 413 (Chk. S. Ct. Tr. 2019).

An affidavit supporting probable cause is not deficient when the signature line says "notary public" below it, but the signature is that of an FSM Supreme Court court clerk and her signature is sealed by the court's seal. Nor is the inadvertent omission of the date on the line is provided for entry of the date above the clerk's signature, which the court clerk apparently neglected to fill it in before she signed, fatal to the warrant application or the warrant itself. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 456 (Pon. 2020).

The border search exception to the constitutional search warrant requirement applies equally to persons and goods leaving the country as it does to persons and goods entering the country. A border search, or a search at the functional equivalent of a border, of outgoing passengers or goods requires neither a warrant nor probable cause. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 461 (Pon. 2020).

A warrant may not issue except on probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized. The search warrant application must particularly identify the specific property to be seized and name or describe the place to be searched. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 462 (Pon. 2020).

Courts should not invalidate the warrant by interpreting the affidavit in a hypertechnical, rather than a commonsense, manner. A technical error in description is not automatically fatal to a search warrant's validity. Absolute precision is not required in identifying the things to be seized. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 462 (Pon. 2020).

A search warrant application's misidentification of a helicopter's corporate owner is not fatal to the search warrant application or to the issued warrant because that a person owned the helicopter through one corporation and not through the another corporation, is a technical defect when it was that person being investigated and the helicopter was described with sufficient particularity that the officers conducting the search had no trouble identifying it as the thing sought when they found it. That the application misstated how that person controlled the helicopter is a mere technical defect which cannot invalidate the search warrant. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 463 (Pon. 2020).

When the Secretary of Justice has granted a foreign state's request to obtain evidence, the FSM may apply to the Supreme Court for a search warrant; or an evidence-gathering order. The statute is disjunctive. The FSM may apply for, and the court may issue, one or the other – either a search warrant or an evidence-gathering order. Or, the FSM could apply for, and be granted, both. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 463 (Pon. 2020).

A search warrant specifies the property to be searched for, and after the search warrant's execution, a receipt is left for the property taken and a return is made with the inventory of the property taken. A search warrant, by its nature, always anticipates the seizure, if found, of the property sought in the warrant. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 463 (Pon. 2020).

Evidence-gathering orders, under 12 F.S.M.C. 1709(1)(b), involve the gathering of evidence by methods other than by a search warrant, under 12 F.S.M.C. 1709(1)(a), commanding the search for, and seizure of, particular things. An evidence-gathering order may involve taking testimony, the collecting or recording of data, or producing things, documents, or copies. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 463 (Pon. 2020).

An FSM search warrant issued in response to a foreign mutual assistance request, is not a confiscation order, foreign or otherwise. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 464 (Pon. 2020).

No bond is required in order to seize property pursuant to a search warrant, but when property has been seized pursuant to a foreign state's request for mutual assistance, the Secretary of Justice, not the real party in interest, has the power to assure the foreign state's compliance with any terms or conditions

that are imposed in respect of the sending abroad of the thing. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 464 (Pon. 2020).

A party generally cannot assert the rights of a third party as its own when challenging a search warrant. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 464 (Pon. 2020).

SEPARATION OF POWERS

When Congress has passed a statute, executive branch and judiciary branch members may not decide among themselves to reassign the decision-making responsibilities set forth in the statute. Suldan v. FSM (I), 1 FSM R. 201, 205 (Pon. 1982).

While the Judiciary must resolve disputes legitimately placed before it, it may not usurp legislative functions by making declarations of policy or law beyond those necessary to resolve disputes nor undertake administrative functions of the kind normally consigned to the Executive Branch where this is not necessary to carry out the judicial function. In re Sproat, 2 FSM R. 1, 4 (Pon. 1985).

One reason the judicial power is limited to cases or disputes is to prevent the Judiciary from intruding into areas committed to other branches of government. In re Sproat, 2 FSM R. 1, 7 (Pon. 1985).

Although the internal management of a jail or prison is, subject to compliance with constitutional requirements, a function of the executive branch, the legislature controls the overall sentencing scheme through statute. Soares v. FSM, 4 FSM R. 78, 82 (App. 1989).

In the absence of legislative action saying otherwise, it is the sentencing order, not the jailer or any member of the executive branch, which determines whether the prisoner is to be confined, and for how long. Soares v. FSM, 4 FSM R. 78, 82 (App. 1989).

A national senator has no power to release national prisoners confined for violation of laws enacted by the national Congress. Soares v. FSM, 4 FSM R. 78, 83 (App. 1989).

The Joint Law Enforcement Agreement between the State of Truk and the national government in no way affects the ability of a national court to require a jailer who has accepted custody of a prisoner to act in conformity with the sentencing order governing the confinement of the prisoner. Soares v. FSM, 4 FSM R. 78, 84 (App. 1989).

To the extent that Secretarial Order 3039 can be read as permitting the Trust Territory High Court to continue, after the FSM Supreme Court had begun functioning, to control cases assigned by the FSM Constitution to the FSM Supreme Court, that exercise by Congress of the transitional power under the Constitution could run counter to other specific provisions of the Constitution, especially the judiciary article, and to fundamental principles of the separation of powers; any extension by the Trust Territory High Court of the powers assigned to it under Secretarial Order 3039 would violate those same constitutional provisions and principles. United Church of Christ v. Hamo, 4 FSM R. 95, 106 (App. 1989).

The power of the President to appoint executive branch officers is not absolute, but is subject to check by the advice and consent of Congress. Sohl v. FSM, 4 FSM R. 186, 197 (Pon. 1990).

The determination of whether stockholders and directors should be protected at the expense of the general public and the employees of the corporation is, at the bottom, a policy choice of the kind that legislatures are better equipped than courts to make. Mid-Pac Constr. Co. v. Senda, 4 FSM R. 376, 385 (Pon. 1990).

Where the record fails to reflect that the functions of the judiciary have been prevented or substantially impaired by the financial management and fiscal powers exercised by the Secretary of Finance, the

judiciary has not been deprived of its essential role and constitutional independence. Mackenzie v. Tuuth, 5 FSM R. 78, 84 (Pon. 1991).

The Constitution mandates that the Chief Justice by rule may govern the admission to practice of attorneys, but a rule which differentiates between FSM citizens and noncitizens inherently relates to the regulation of immigration and foreign relations which are powers expressly delegated to the other two branches of government. Berman v. Pohnpei, 5 FSM R. 303, 305 (Pon. 1992).

The Chief Justice has the constitutional authority to make rules for the appointment of special judges, and Congress has the constitutional authority to amend them. Congress has provided the Chief Justice with the statutory authority to appoint temporary justices. Where Congress has acted pursuant to its constitutional authority to provide statutory authority to the court, the court need not have exercised its concurrent rule-making authority. Jano v. King, 5 FSM R. 326, 331 (App. 1992).

Congress and the President respectively have the power to regulate immigration and conduct foreign affairs while the Chief Justice may make rules governing the admission of attorneys. Therefore a rule of admission that treats aliens unequally promulgated by the Chief Justice implicates powers expressly delegated to other branches. Berman v. FSM Supreme Court (I), 5 FSM R. 364, 366 (Pon. 1992).

Without a rational valid basis for the rule limiting the number of times an alien may take the bar exam it will be held unconstitutional even if it would be constitutional if the regulation were made by Congress or the President. Berman v. FSM Supreme Court (I), 5 FSM R. 364, 367 (Pon. 1992).

Conduct of foreign affairs and the implementation of international agreements are properly left to the non-judicial branches of government. The judicial branch has the power to interpret treaties. In re Extradition of Jano, 6 FSM R. 93, 103 (App. 1993).

Where there is in the Constitution a textually demonstrable commitment of the issue to a coordinate branch of government, such as Congress being the sole judge of the elections of its members, it is a nonjusticiable political question not to be decided by the court because of the separation of powers provided for in the Constitution. Aten v. National Election Comm'r (III), 6 FSM R. 143, 145 (App. 1993).

In order for a Congressional statute to give the court valid authority in those areas which the Constitution grants the Chief Justice rule-making powers the Chief Justice does not first have to promulgate a rule before Congress may legislate on the same subject. Hartman v. FSM, 6 FSM R. 293, 297 (App. 1993).

Congress, not the FSM Supreme Court, has the constitutional power to make persons granted a pardon of a felony conviction eligible for election to Congress. The court cannot exercise a power reserved to Congress. Robert v. Mori, 6 FSM R. 394, 401 (App. 1994).

Courts and administrative agencies alike may not encroach upon the lawmaking responsibility reserved to the legislature. Klavasru v. Kosrae, 7 FSM R. 86, 91 (Kos. 1995).

Congress has not unconstitutionally delegated its authority to define crimes by delegating to an executive agency the power to enter into fishing agreements because congressional approval is needed for these agreements to take effect. FSM v. Cheng Chia-W (I), 7 FSM R. 124, 127 (Pon. 1995).

When Congress has specifically given Social Security, not the courts, the discretion to levy a penalty and limited that discretion to $1,000 a quarter and Social Security has exercised its discretion by levying a penalty less than that allowed by the statute, the court is generally bound to enforce it. The courts cannot usurp the power Congress granted to another governmental body. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM R. 129, 133 (App. 1997).

The determination of whether Tonga and its agents are immune from suit is a decision that is better made by the FSM government's executive branch because the FSM Constitution expressly delegates the power to conduct foreign affairs to the President and because whether a party claiming immunity from suit has the status of a foreign sovereign is a matter for the executive branch's determination and is outside the competence of the courts. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 373 (Kos. 2000).

When a Senator tells a public agency what projects are approved and the agency then carries out his decisions, it is Congress, not the executive, that is executing and implementing the public law. Udot Municipality v. FSM, 9 FSM R. 418, 420 (Chk. 2000).

Specific powers are given to each branch of the government. When Congress is executing and implementing a national law, a power expressly delegated to the executive branch, it abridges the executive's power to execute and implement national laws. Udot Municipality v. FSM, 9 FSM R. 418, 420 (Chk. 2000).

While FSM Supreme Court may determine the constitutionality under the FSM Constitution of a specific legislative act, there is no authority where a court has either ordered a legislative body to perform a specified legislative function, or held such a body in contempt for not performing that function. Davis v. Kutta, 10 FSM R. 98, 99 (Chk. 2001).

One of the rationales for limiting a court's power to deciding the cases before it is to prevent the court from intruding into areas committed to the executive or legislative branches. Davis v. Kutta, 10 FSM R. 98, 99 (Chk. 2001).

A court has the power to issue an order to a state official to perform a purely ministerial act – the issuance of a check – in order to cause the state to conform its conduct to the requirements of both the FSM Constitution and the national statute at issue, 11 F.S.M.C. 701. Davis v. Kutta, 10 FSM R. 98, 99 (Chk. 2001).

Specific powers are given to each branch of the government and a public law that abridges the executive's power to execute and implement national laws may be enjoined. Udot Municipality v. FSM, 10 FSM R. 354, 357 (Chk. 2001).

Because Congress has the statutory authority to name allottees other than the President or his designee, the court will deny a request for an order prohibiting defendants from ever again being allottees of FSM money. Udot Municipality v. FSM, 10 FSM R. 354, 359 (Chk. 2001).

The constitutional principle of separation of powers is still violated when the public law only requires that those seeking funds for improvement projects must consult with the relevant congressman before the funds are obligated instead of requiring consultation and approval by the congressman. Udot Municipality v. FSM, 10 FSM R. 354, 359 (Chk. 2001).

Congress can give as much guidance as it wishes in the appropriation legislation about which projects will be funded, and much of this guidance will, no doubt, be the product of individual congressmen's consultation with their constituents. But this consultation takes place before the appropriation bill becomes law, not afterwards. After the appropriation bill has become law, it is the duty of those who execute the law and administer the funds to follow the guidance Congress has given them by consulting the language Congress put in the public law, and any applicable regulations, not by consulting individual congressmen. Udot Municipality v. FSM, 10 FSM R. 354, 359-60 (Chk. 2001).

Fund categories that were formulated as the result of an unconstitutional "consultation" process with congressmen may effectively be disregarded whenever a new process is implemented to determine in a constitutionally proper manner where, how, and what to spend the improvement project money on. Udot Municipality v. FSM, 10 FSM R. 354, 360 (Chk. 2001).

As a matter of law, some official government action is required before a violation of the doctrine of separation of powers can occur. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 630 (Pon. 2002).

The concept of separation of powers is inherent in the FSM Constitution's structure. Each branch of the FSM government has specific powers and duties enumerated in the Constitution's text. Thus, each branch should restrain itself to exercise only those powers which the people of the FSM have granted to it in the Constitution: any power exercised by a branch of the government that is beyond that which the Constitution granted to that branch violates the Constitution and is null and void. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 630 (Pon. 2002).

Any attempt by one branch to usurp the powers that the FSM Constitution explicitly grants to another branch violates the FSM Constitution and is invalid. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 631 (Pon. 2002).

The essence of the separation of powers concept is that each branch, acting within the sphere of its defined powers and subject to the distinct institutional responsibilities of the others, is essential to the liberty and security of the people. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 631 (Pon. 2002).

The separation of powers among the three branches is intended to be a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of another. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 631 (Pon. 2002).

Acts of individual senators can result in a public law being declared unconstitutional in its application. However, at a minimum, the acts of individual senators must be acts done in their official capacities as senators to establish any constitutional violation. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 631 (Pon. 2002).

The doctrine of separation of powers is not violated every time a person, who happens to be a senator, allegedly misuses property that is traceable to an appropriation made under national law. If a senator takes a car, boat, desk, computer, or pen that rightfully is in the possession of another person or entity, he should bear the same responsibility and consequences as any other person: he could be charged criminally, or sued in a civil action by the rightful owner for conversion of that property. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 632 (Pon. 2002).

The separation of powers doctrine provides that in the tripartite government structure – i.e., the legislative, executive, and judiciary branches – that prevails at the state and national levels in the FSM, each branch may exercise only the particular powers with which it has been constitutionally endowed. Through history and practice, this has meant that the legislature enacts the laws, the executive executes or enforces the laws, and the judiciary, by resolving disputes that come before it in specific cases, interprets the laws. Sigrah v. Speaker, 11 FSM R. 258, 260 (Kos. S. Ct. Tr. 2002).

The separation of powers doctrine fortifies the government's constitutional makeup by requiring that each government branch exercise its assigned powers independently of the other two branches. Sigrah v. Speaker, 11 FSM R. 258, 260 (Kos. S. Ct. Tr. 2002).

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

Our Constitution commits to the executive branch the conduct of foreign affairs, just as it vests the

judicial power in the Supreme Court and such other courts as may be established by statute. Although these powers are categorically assigned, they are not in their exercise subject to the same degree of precision. Foreign sovereign immunity is inescapably a part of foreign affairs, but it can be offered as a defense in a lawsuit. Inter-branch comity is the means by which these parallel, if not competing, concerns are recognized and integrated. McIlrath v. Amaraich, 11 FSM R. 502, 506 (App. 2003).

Interbranch comity may manifest itself in the judicial branch's deference to the executive branch on the issue of foreign sovereign immunity. Some mechanism must be available to implement this procedure. The appellate division is disinclined to view the trial court's language that "ordered" the Department of Foreign Affairs to file the amicus curiae brief as transforming comity into a coercion that divested the Department of its discretion. McIlrath v. Amaraich, 11 FSM R. 502, 506-07 (App. 2003).

When all that the order required was that the Department of Foreign Affairs file an amicus curiae brief, it did not require the Department to decide the issue one way or another, or for any opinion at all. But what it did do was elicit a minimal degree of interaction between the two branches involved so that the executive branch's position, or even lack of one, would become known to the judicial branch. McIlrath v. Amaraich, 11 FSM R. 502, 507 (App. 2003).

Inter-branch comity is a two-way street. Just as the trial court's order recognized that the question of the foreign sovereign immunity putatively enjoyed by the defendants in the underlying case was appropriately decided by the executive branch's Department of Foreign Affairs, so the executive branch should participate in this process by giving its opinion on the matter, even if this means stating that it has no opinion. McIlrath v. Amaraich, 11 FSM R. 502, 507 (App. 2003).

The doctrine of separation of powers among the three branches of the national government is built into the Constitution by its very structure and the explicit language in Articles IX, X, and XI. These articles provide each branch its own specific powers and this structure provides for the independence of each branch in a system of checks and balances wherein no one branch of government may encroach upon another's domain. FSM v. Udot Municipality, 12 FSM R. 29, 48 (App. 2003).

On its most fundamental plane, the separation of powers doctrine protects the whole constitutional structure by requiring that each branch retain its essential powers and independence. FSM v. Udot Municipality, 12 FSM R. 29, 48 (App. 2003).

The standard for determining whether there is an improper interference with or delegation of the independent power of a branch is whether the alteration prevents or substantially impairs performance by the branch of its essential role in the constitutional system. FSM v. Udot Municipality, 12 FSM R. 29, 48 (App. 2003).

Once a public law is enacted, the responsibility for the execution and implementation of the law rests with those who have a duty to execute and administer the law, and Senators can have no further role in its execution. FSM v. Udot Municipality, 12 FSM R. 29, 49 (App. 2003).

The execution and implementation of the laws is an executive rather than a legislative function. FSM v. Udot Municipality, 12 FSM R. 29, 50 (App. 2003).

A public law that specifically provides that a Congressional delegation must be consulted on the most appropriate usage of the funds before an obligation could occur runs afoul of the Constitution because it empowers the Congressional delegation to engage in an executive function by formally involving itself in executing and implementing the appropriation. Congress cannot pass laws and vest in itself or its members the power to control how that law is executed. FSM v. Udot Municipality, 12 FSM R. 29, 50 (App. 2003).

The constitutional demarcation of powers to the three branches of the national government was

established with deliberate design and purpose. The intended effect was to create a system of checks and balances between the national government's branches such that no one branch could encroach upon the power of another branch and thereby dominate the others. FSM v. Udot Municipality, 12 FSM R. 29, 51 (App. 2003).

The standard for determining whether there is an improper interference with the independent power of a branch of government is whether the action of one branch substantially impairs another branch's performance of its essential role in the constitutional system. FSM v. Udot Municipality, 12 FSM R. 29, 51 (App. 2003).

Congress's enactment preventing obligation of funds unless and until the allottees engaged in "consultation" with the relevant Congressional delegation, substantially impaired the allottees' performance in executing and implementing the law, which is the executive's essential and exclusive role under our Constitution. By legislating "consultation" before obligation requirement into the law, the Congress encroached upon an executive function and assumed more power than it is allowed in our constitutional system of checks and balances, thus violating the separation of powers doctrine. FSM v. Udot Municipality, 12 FSM R. 29, 51 (App. 2003).

A President's reason for vetoing the bills passed during the Fourteenth Congress's Second Special Session is a non-justiciable issue because when the Constitution has a textually demonstrable commitment of an issue to a coordinate branch of government, it is a nonjusticiable political question not to be decided by the court because of the separation of powers provided for in the Constitution. Christian v. Urusemal, 14 FSM R. 291, 294 (App. 2006).

The Constitution does not limit the grounds upon which the President can veto bills. The President can veto any bill for any reason he chooses. The Constitution requires the President to return to Congress, within ten days, a bill he has vetoed along with his objections. Congress then makes its own determination of whether those objections will stand by either overriding or sustaining the veto. Invalidation or nullification of a Presidential veto is textually committed by the Constitution to Congress because the power to override a Presidential veto is expressly delegated to Congress. Christian v. Urusemal, 14 FSM R. 291, 294 (App. 2006).

The President's reasons for vetoing a bill cannot be questioned in the judicial branch. The court has no jurisdiction to grant the relief of declaring the President's vetoes void regardless of what the President's objections were. Christian v. Urusemal, 14 FSM R. 291, 294 (App. 2006).

The Constitution permits the Chief Justice to promulgate civil procedure rules, which Congress may amend by statute. Since Congress has the authority to amend or create procedural rules by statute, when Congress has enacted a procedural rule, it is valid. The Chief Justice does not have the authority to amend Congressionally-enacted statutes. Therefore, if the statute applies and the statute and the rule conflict, the statute must prevail. Tipingeni v. Chuuk, 14 FSM R. 539, 542 n.1 (Chk. 2007).

Presentment to, that is transmittal to, the mayor is a prerequisite for a bill to become an ordinance, either by the mayor then signing it, or vetoing it and having his veto overridden, or by the mayor's failure to act within the prescribed time period. Thus, no bill can become law without first being transmitted to the mayor for his possible action. Esa v. Elimo, 15 FSM R. 198, 203 n.2 (Chk. 2007).

The Tolensom Constitution does not grant the Tolensom Legislature the power to create a method to "appoint" persons to the offices of mayor and assistant mayor. Those offices can be filled in only one way – by vote of the Tolensom electorate, that is, by the people of Tolensom. The only exception to that is when the mayoral office becomes vacant with less than a year left in the mayor's term, the assistant mayor assumes the office for the rest of the term. It was the Tolensom Constitution's framers' clearly expressed will that the mayor and assistant mayor be elected by the voters and not appointed by someone else. Esa v. Elimo, 15 FSM R. 198, 204 (Chk. 2007).

When the Tolensom Legislature elected in 2004 would have been the sole judge of the election of its members elected in that year and that Legislature already judged the four-year members elected, the Legislature elected in 2006 cannot be the judge of the members elected in 2004. The Legislature elected in 2006 can only be the judge of the election of the members elected in 2006. It cannot be otherwise. A later legislature cannot re-examine a four-year member's election at its whim after the mid-term election because that would make a nullity and a mockery of the provision that four at-large seats would have four year terms, not two year terms. The framers' intent is obvious. They wanted the four year seat holders to be held over throughout the term of the Legislature elected at the mid-term election, to provide a certain continuity. Esa v. Elimo, 15 FSM R. 198, 204 (Chk. 2007).

A court exercising only its inherent power would need a very extraordinary and compelling case to expunge or seal not only the judicial branch's conviction records but also the arrest records maintained by the executive branch since that would implicate separation of powers concerns. FSM v. Erwin, 16 FSM R. 42, 44 (Chk. 2008).

The legal principles of justiciability, separation of powers, the political question doctrine do not apply to a case that, at its core, is one in which each party alleges the other breached a contract, and in which the defendant also counterclaims for civil rights violation, abuse of process, civil conspiracy, intentional interference with contractual relations, libel, and slander. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 484 (Pon. 2009).

The concept of separation of powers is inherent in the FSM Constitution's structure. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512 (Pon. 2009).

The FSM Constitution's separation-of-powers structure is derived from that in the U.S. Constitution. The similarities of the FSM and the U.S. Constitutions mandate that the FSM Supreme Court will give particular consideration to U.S. constitutional analysis, especially at the time of the Micronesian Constitutional Convention and of the Constitution's adoption. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512 n.1 (Pon. 2009).

State policy-making and legislating are functions of the political branches of state government. Narruhn v. Chuuk, 16 FSM R. 558, 563 (Chk. 2009).

When the Constitution contains a textually demonstrable commitment of an issue to a coordinate branch of government, it is a nonjusticiable political question not to be decided by the court because of the Constitution's requirements for the separation of powers. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 186 (Pon. 2010).

The separation-of-powers concept is inherent in the FSM Constitution's structure and any power exercised by a government branch that is beyond that which the Constitution grants to that branch violates the Constitution and is null and void. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 189 (Pon. 2010).

The concept of separation of powers is inherent in the FSM Constitution's structure, and any power exercised by a government branch that is beyond that which the Constitution grants to that branch violates the Constitution and is null and void. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 548 (App. 2011).

Articles IX, X, and XI of the Constitution provide each branch of the national government with its own specific powers and this structure provides for each branch's independence in a system of checks and balances wherein no one branch may encroach upon another's domain. Dison v. Bank of Hawaii, 19 FSM R. 157, 161 n.2 (App. 2013).

If the trial court had taken the large step of making U.S. military retirement and U.S. social security benefits paid to FSM citizens in the FSM exempt from all legal process, that would be a judicial encroachment on Congress's power to enact laws and set public policy because those recipients would then (along with U.S. veterans) have greater judicial protection than Congress has legislated for persons (regardless of citizenship) who receive FSM social security benefits. Whether foreign retirement benefits should carry equal or greater protection from legal process than FSM social security benefits is a public policy decision to be made by the people's elected representatives in Congress, not by the unelected court. Dison v. Bank of Hawaii, 19 FSM R. 157, 161-62 (App. 2013).

When the legislature, by enacting a statute, declares the public policy, the judicial branch must defer to that pronouncement. Thus, when the legislature has declared, by law, the public policy, the judicial department must remain silent, and if a modification or change in such policy is desired the law-making department must be applied to, not the judiciary whose function is to declare the law but not to make it. Esiel v. FSM Dep't of Fin., 19 FSM R. 590, 594 (App. 2014).

– Chuuk

A Chuuk state statute authorizing Chuuk state senators to designate the particular projects to be financed from state funds for their own election districts was violative of the separation of powers between the executive and legislative branches of the state government, and of the right of municipalities to select their own development projects, all as provided in the Chuuk Constitution. Akapito v. Doone, 4 FSM R. 285, 286 (Chk. S. Ct. Tr. 1990).

The ultimate interpretation of any provisions of the Chuuk State Constitution is within the sole authority of the Chuuk State Supreme Court, as the ultimate interpreter of the Constitution, and that includes the authority to interpret the meaning of whether a matter has been committed by the Constitution to another branch of government, or whether the action of that branch exceeds its authority. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 264 (Chk. S. Ct. Tr. 1993).

The constitutional provision making the House the sole judge of the qualification of its members does not automatically preclude the Chuuk State Supreme Court from having jurisdiction to decide if a member-elect of the legislature has been excluded from membership on unconstitutional grounds; nor is the court's jurisdiction over alleged unconstitutional applications of the Legislature's powers necessarily precluded by the political question doctrine. The court ultimately has the power to determine if the Legislature has exercised its powers in an unconstitutional and invalid manner. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 264-65 (Chk. S. Ct. Tr. 1993).

Policy determinations by other branches of the government are always to be given wide latitude when under judicial review, and policy determinations within the constitution itself must therefore receive the widest possible latitude when under review. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 269 (Chk. S. Ct. Tr. 1993).

Courts will not attempt to interfere with or control the exercise of discretionary powers, in the absence of any controlling provisions in the law conferring the power. The fact that the exercise of a power may be abused is not a sufficient reason for denying its existence. Thus, it is a firmly established rule that the judiciary will not interfere with executive officers in the performance of duties which are discretionary in their nature or involve the exercise of judgment. Chipen v. Reynold, 9 FSM R. 148, 150 (Chk. S. Ct. Tr. 1999).

The principle of avoiding constitutional questions was conceived out of considerations of sound judicial administration and is in accord with the principle of separation of powers of government. Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 545 (Chk. S. Ct. Tr. 2000).

Neither the Director of Treasury nor the Governor may use or direct the use of monies appropriated to pay judgments against the state for any purpose other than to pay judgments. Narruhn v. Chuuk, 11 FSM

R. 48, 54 (Chk. S. Ct. Tr. 2002).

Money appropriated to pay judgments against the state may not be used to pay "settlements" or "claims" against the state which have not been reduced to judgment. Narruhn v. Chuuk, 11 FSM R. 48, 54 (Chk. S. Ct. Tr. 2002).

The separation of powers doctrine precludes the Chuuk State Supreme Court from exercising jurisdiction over the claims that the plaintiff should be speaker of a municipal legislature and will dismiss the action. Anopad v. Eko, 11 FSM R. 287, 290 (Chk. S. Ct. Tr. 2002).

Whether sufficient funds are already appropriated to conduct a runoff election is not a ground to deny the petition. The lack of funds to perform a required duty is a problem to be solved by the political branches of government, not the court. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

The political authority of Chuuk is divided into legislative, executive, and judicial powers. The powers delegated to the three branches are functionally identifiable, distinct, and definable. These three powers must be separate and acting independently with the intent being to prevent the concentration of power and provide for checks and balances. Kama v. Chuuk, 18 FSM R. 326, 332 (Chk. S. Ct. Tr. 2012).

The legislative branch is responsible for enacting the laws of the state and appropriating the money necessary to operate the government; the executive branch is responsible for implementing and administering the public policy enacted and funded by the legislative branch while the judicial branch is responsible for interpreting the constitution and laws and applying those interpretations to controversies brought before it. Kama v. Chuuk, 18 FSM R. 326, 332 (Chk. S. Ct. Tr. 2012).

Since the court, adhering to the authority vested in the judicial branch, should only interpret the laws regarding property in Chuuk and should not take over the legislative branch's role, when there has been no legislative intent shown of a specific desire to ascribe a property right to judgments, therefore, absent a specific Chuuk State legislation creating a specific property right, such a right cannot be ascribed to judgments. Kama v. Chuuk, 18 FSM R. 326, 332 (Chk. S. Ct. Tr. 2012).

The Legislature raises funds by enacting tax legislation and the executive collects those funds. Under the Chuuk Constitution's separation of powers scheme, the executive branch, the Governor, proposes the state's budget and how to spend the state's money, and the Legislature appropriates the funds that were or will be raised and directs the executive how to spend the appropriated funds. Kama v. Chuuk, 20 FSM R. 522, 530 (Chk. S. Ct. App. 2016).

Since the principle that funds appropriated for other purposes cannot be redirected to pay judgments is inherent in the separation-of-powers scheme in the Chuuk Constitution, the Chuuk State Supreme Court cannot levy any writs on Chuuk state funds because those writs would be levied on money that the Chuuk Legislature has already appropriated for another purpose. Kama v. Chuuk, 20 FSM R. 522, 531 (Chk. S. Ct. App. 2016).

Chuuk State Law No. 190-08, § 4 does not bar the issuance of an order in aid of judgment addressed to the state, but does bar the issuance of any order in aid of judgment that acts as an attachment, execution, or garnishment of public property. The general rule is that statutes (and case law) barring the issuance of such writs against public property are a constitutionally valid expression of the separation of powers doctrine recognizing the legislative branch's power to appropriate funds and the judicial branch's lack of power to appropriate funds. Kama v. Chuuk, 20 FSM R. 522, 531 (Chk. S. Ct. App. 2016).

The judicial branch can, consistent with the state's waiver of sovereign immunity, declare the amount of the state's liability, but while the Chuuk State Supreme Court is empowered to declare the rights as between a judgment creditor and the government, it cannot enforce payment of the judgment absent

legislative appropriation. Kama v. Chuuk, 20 FSM R. 522, 531 (Chk. S. Ct. App. 2016).

Even when a state consents to be sued, its waiver of sovereign immunity does not allow its courts to force it to make an appropriation to satisfy a judgment in the absence of consent to the appropriation. When a money judgment has been rendered, the state's liability has been ascertained, but then the court's power ends. Kama v. Chuuk, 20 FSM R. 522, 531-32 (Chk. S. Ct. App. 2016).

When Chuuk not only has not expressly waived its sovereign immunity to writs of attachment, execution, and garnishment, but has also gone further and affirmatively enacted legislation emphatically notifying the public and potential litigants that it has not waived its immunity to those writs, that statute is a valid expression of the separation of powers doctrine enshrined in the Chuuk Constitution. Kama v. Chuuk, 20 FSM R. 522, 532 (Chk. S. Ct. App. 2016).

– Chuuk – Executive Powers

The governor does not have free rein to use the Attorney General's Office to litigate private matters outside the scope of his duties as governor, but until such time as he ceases to be able to act as governor pursuant to a bill of impeachment or other constitutional process he may utilize that office's services to litigate such matters as concern his acts as governor. In re Legislative Subpoena, 7 FSM R. 259, 261 (Chk. S. Ct. Tr. 1995).

For the Chuuk Governor to veto a bill he must both disapprove it and return it to the house in the legislature in which it originated within ten days of it being presented to him. Otherwise it becomes law in like manner as if he had signed it. Chuuk State Supreme Court v. Umwech (I), 7 FSM R. 600, 601 (Chk. S. Ct. Tr. 1996).

The Chuuk Governor's constitutional power to declare an emergency is discretionary. Whether an abuse exists is determined by an "arbitrary and capricious" standard. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 275, 280 (Chk. S. Ct. Tr. 1998).

The validity of the action taken following the declaration of emergency is determined by whether it was taken in good faith and in the honest belief of its necessity. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 275, 280 (Chk. S. Ct. Tr. 1998).

Executive orders must meet constitutional standards the same as acts of legislative bodies. Lokopwe v. Walter, 10 FSM R. 303, 306 (Chk. S. Ct. Tr. 2001).

While the principal officers and advisors serve during the current term of the appointing Governor unless sooner removed by the Governor, the dismissal of non-policy making employees from public employment solely on the ground of political affiliation is not permissible. Lokopwe v. Walter, 10 FSM R. 303, 306 (Chk. S. Ct. Tr. 2001).

The executive policy requiring resignation before running for a seat in the Chuuk Legislature adds a qualification prohibited by the Chuuk Constitution and is void, and therefore, the plaintiffs' forced resignation pursuant to the Governor's Executive Order or policy is unconstitutional and beyond his power. Lokopwe v. Walter, 10 FSM R. 303, 306 (Chk. S. Ct. Tr. 2001).

The executive power is the power to execute, or carry the laws into effect, as distinguished from the power to make the laws and the power to judge them. All executive power is granted by the constitution, and the executive branch can exercise no power not derived from it. Lokopwe v. Walter, 10 FSM R. 303, 307 (Chk. S. Ct. Tr. 2001).

A governor has only a delegated power and a limited sphere of action, and the Chuuk Constitution does not give the Governor the power to add qualifications, that a person must not be a state employee, to

be a candidate for a seat in the Chuuk Legislature. Lokopwe v. Walter, 10 FSM R. 303, 307 (Chk. S. Ct. Tr. 2001).

Neither the Director of Treasury nor the Governor may use or direct the use of monies appropriated to pay judgments against the state for any purpose other than to pay judgments. Narruhn v. Chuuk, 11 FSM R. 48, 54 (Chk. S. Ct. Tr. 2002).

Money appropriated to pay judgments against the state may not be used to pay "settlements" or "claims" against the state which have not been reduced to judgment. Narruhn v. Chuuk, 11 FSM R. 48, 54 (Chk. S. Ct. Tr. 2002).

Neither the Legislature, nor the Governor, may add qualifications for public office beyond those qualifications provided in the Chuuk Constitution. It matters not whether the employee in question is an "exempt" employee, or one covered by the Public Service Act. All government employees, with the express exception of the Governor's principal officers and advisors (who serve at the Governor's pleasure), are protected in their political activities from the Governor's interference with their employment. Tomy v. Walter, 12 FSM R. 266, 271 (Chk. S. Ct. Tr. 2003).

Neither the constitutional nor the statutory provision directs the Governor to implement the provisions that each municipality adopt its own constitution. The direction is aimed at the others – the municipalities and the Legislature. Buruta v. Walter, 12 FSM R. 289, 294 (Chk. 2004).

No authority, constitutional or statutory, grants the Governor the power to appoint (or to remove) municipal officials. Executive orders must meet constitutional standards, the same as acts of legislative bodies. Buruta v. Walter, 12 FSM R. 289, 294 (Chk. 2004).

The Chuuk Governor's constitutional power to declare an emergency is discretionary. Whether an abuse of discretion exists is determined by the arbitrary and capricious standard. The validity of an action taken following the declaration of emergency is determined by whether it was taken in good faith and in the honest belief of its necessity. Buruta v. Walter, 12 FSM R. 289, 294 (Chk. 2004).

A Governor's proclamation that finds that it was the intentional failure of the incumbent mayor and council that caused the lack of a municipal constitution and funding for the 2003 municipal election, but which continues those officials in office indefinitely until a constitution is adopted and an election is held but with no incentive to do either of those things and with every incentive not to, can only be termed arbitrary and capricious. Since the proclamation is arbitrary and capricious and exercises powers for which the Governor has no apparent authority, it is void. Buruta v. Walter, 12 FSM R. 289, 294 (Chk. 2004).

A Governor's proclamation that continues municipal officials in office indefinitely, violates the people's rights to substantive due process, in that they have no say in their municipal government since all of its officials are now appointed by and now hold office due to the Governor; and to equal protection of the laws, in that the municipal citizens are treated differently based on their ancestry (they and their ancestors are from Romalum) from citizens of other Chuuk municipalities in not being allowed an elected municipal government. Buruta v. Walter, 12 FSM R. 289, 295 (Chk. 2004).

The Governor's constitutional power to declare an emergency may be exercised only at a time of extreme emergency caused by civil disturbance, natural disaster, or immediate threat of war or insurrection and to issue appropriate decrees. This power is discretionary and whether the Governor (or the Lieutenant Governor acting as Governor) abused his discretion is determined by an "arbitrary and capricious" standard. Esa v. Elimo, 14 FSM R. 262, 265 (Chk. 2006).

The court cannot conclude that the Lieutenant Governor's declaration of an emergency was invalid in itself. It is within the Governor's constitutional power to determine whether there is a civil disturbance creating an extreme emergency. The court cannot question that. It is his, not a court's, power to

determine. Esa v. Elimo, 14 FSM R. 262, 265 (Chk. 2006).

The second aspect of the issue is the propriety of the actions which the Lieutenant Governor's proclamation directed to be taken, or, stated another way, whether the Lieutenant Governor issued appropriate decrees. The validity of the action taken following the declaration of emergency is determined by whether it was taken in good faith and in the honest belief of its necessity. Esa v. Elimo, 14 FSM R. 262, 265 (Chk. 2006).

The Lieutenant Governor's proclamation was not an appropriate decree because it could not have been taken in good faith and with the honest belief of its necessity since, having determined that an emergency existed because of civil disturbances caused by disputes "between the Party of Kisauo Esa and the Party of Amando [sic] Marsolo," the proclamation then removed Esa from office and installed Marsolo. If civil disturbances between the two parties was causing an extreme emergency, this was an arbitrary and capricious method to address the emergency and cannot be an act taken in good faith that it would prevent further civil disturbance. Esa v. Elimo, 14 FSM R. 262, 265-66 (Chk. 2006).

An emergency proclamation that orders the Chuuk Division of Finance to identify and locate funds to fund an election and to obligate those funds for that purpose would have been an inappropriate decree if it involved the expenditure of unappropriated funds and was not approved by the Chuuk Legislature because the Chuuk Constitution provides that a gubernatorial emergency decree may not involve the expenditure of unappropriated public funds unless approved by the Legislature. Esa v. Elimo, 14 FSM R. 262, 266 (Chk. 2006).

Within 15 days after the gubernatorial declaration of emergency, the Legislature must convene at the call of the Speaker of the House of Representatives and the President of the Senate or at the Governor's call to consider the declaration's revocation, amendment, or extension. Unless it expires by its own terms or is revoked or extended, a declaration of emergency is effective for 15 days. Esa v. Elimo, 14 FSM R. 262, 266 (Chk. 2006).

When an emergency declaration was never extended and the Chuuk Legislature never met to consider the emergency declaration's revocation, amendment, or extension, although the Governor (and presumably the Lieutenant Governor if he was still Acting Governor) had the power to call the Legislature into session to consider the emergency declaration and to approve the expenditure of funds, the failure to call the Legislature into session raises further doubts that the declaration was made in the honest belief of its necessity. Esa v. Elimo, 14 FSM R. 262, 266 (Chk. 2006).

The Chuuk Constitution is clear and unambiguous that when referring to the Governor's office, a Governor's "term" is a fixed four-year period. Thus, the phrase "current term" clearly means that if a governor is re-elected for a second four-year term, new nominations (or re-nominations) must be submitted to the Senate but otherwise a cabinet official may remain in office for a full four years unless the Governor earlier removes him (or he is impeached or he resigns). But when a new governor fills out the remainder of his predecessor's unexpired term, the new governor may retain the existing cabinet officials and special assistants without submitting their names for reconfirmation. Senate v. Elimo, 18 FSM R. 137, 139-40 (Chk. S. Ct. Tr. 2012).

Since, by statute, a governor must send a nomination to the Senate within 45 days of a vacancy in an office requiring the Senate's advice and consent and since a resignation is an act or an instance of surrendering or relinquishing of an office or a formal notification of relinquishing an office or position, when cabinet officers and special assistants have submitted "courtesy resignations," those offices are vacant and new nominations (or renominations) must be submitted. The court cannot discern any difference (in result) between a "courtesy resignation" and a resignation for other reasons since a resignation is a resignation. Senate v. Elimo, 18 FSM R. 137, 140 (Chk. S. Ct. Tr. 2012).

– Chuuk – Judicial Powers

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

The ultimate interpretation of any provisions of the Chuuk State Constitution is within the sole authority of the Chuuk State Supreme Court, as the ultimate interpreter of the Constitution, and that includes the authority to interpret the meaning of whether a matter has been committed by the Constitution to another branch of government, or whether the action of that branch exceeds its authority. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 264 (Chk. S. Ct. Tr. 1993).

The constitutional provision making the House the sole judge of the qualification of its members does not automatically preclude the Chuuk State Supreme Court from having jurisdiction to decide if a member-elect of the legislature has been excluded from membership on unconstitutional grounds; nor is the court's jurisdiction over alleged unconstitutional applications of the Legislature's powers necessarily precluded by the political question doctrine. The court ultimately has the power to determine if the Legislature has exercised its powers in an unconstitutional and invalid manner. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 264-65 (Chk. S. Ct. Tr. 1993).

The Chuuk State Supreme Court has the subject matter jurisdiction to hear suits alleging that the legislature has exercised its power to be the sole judge of the qualifications of its members in an unconstitutional manner in violation of the constitutional prohibitions against ex post facto laws. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 265 (Chk. S. Ct. Tr. 1993).

A court should not order a traditional apology, compensation, and settlement when none has been offered voluntarily because traditional settlements are customarily non-adversarial and arrived at without outside coercion and court decisions must be consistent with custom. Alafonso v. Sarep, 7 FSM R. 288, 290-91 (Chk. S. Ct. Tr. 1995).

A party may seek declaratory relief from the Chuuk State Supreme Court even though it may have another available remedy, but there must be an actual controversy between the parties and the matter must be within the court's jurisdiction. The court has discretion to entertain such actions if appropriate. Truk Shipping Co. v. Chuuk, 7 FSM R. 337, 339, 342 (Chk. S. Ct. Tr. 1995).

It is the duty of the court in the proper case to determine whether an act of the government, including acts of the Legislature, is in conformance with the supreme law of the state. Any such act that violates the Chuuk Constitution violates the supreme law of Chuuk and must be treated as null and void. Sauder v. Chuuk State Legislature, 7 FSM R. 358, 361 (Chk. S. Ct. Tr. 1995).

At least three justices hear all appeals in the Chuuk State Supreme Court appellate division with the decision by a concurrence of a majority of the justices sitting on the appellate panel, but a single justice may make necessary orders concerning failure to take or prosecute the appeal in accordance with applicable law and procedure. Wainit v. Weno, 9 FSM R. 160, 162 (App. 1999).

In the Chuuk Constitution there is a distinction between a "decision," which must be by a majority of the appellate justices assigned to hear the case, and "orders," which a single appellate justice may make. A "decision" means the final determination of the appeal. Wainit v. Weno, 9 FSM R. 160, 162 (App. 1999).

An action of a Chuuk State Supreme Court single appellate justice may be reviewed by the court. This provides a means whereby a single justice "order" may become the appellate panel's dispositive "decision." Wainit v. Weno, 9 FSM R. 160, 162-63 (App. 1999).

The court lacks jurisdiction over the subject matter or the complaint does not state a claim or cause of

action upon which relief can be granted when it asks the court to hold the removal of the Speaker and Vice-Speaker null and void. Christlib v. House of Representatives, 9 FSM R. 503, 506-07 (Chk. S. Ct. Tr. 2000).

No branch of the Chuuk state government is supreme, but it is the duty of the court in each case to determine if the powers of any branch of the government have been exercised in conformity with the constitution, and if they have not, to treat their acts as null and void. Udot Municipality v. Chuuk, 9 FSM R. 586, 588 (Chk. S. Ct. Tr. 2000).

Because the constitutional provision states that only one Chuuk State Supreme Court justice may hear or decide an appeal, and because "may" is permissive, not mandatory language, the Constitution contemplates that there may be an occasion when no Chuuk State Supreme Court justice would hear an appeal. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 151 (Chk. S. Ct. App. 2001).

In determining the extent of the powers of the judiciary under a state constitution, the rule is that the state constitution confers on the judicial department all the authority necessary to exercise powers as a co-ordinate department of the government. Kupenes v. Ungeni, 12 FSM R. 252, 262 (Chk. S. Ct. Tr. 2003).

With regard to grants of legislative and judicial power by state constitutions, and especially regarding the principle barring implied limitations on such powers, the whole of such legislative and judicial power reposing in the sovereignty is granted to those bodies, except as it may be restricted in the same instrument. Thus the state courts have and should maintain vigorously all the inherent and implied powers necessary to function properly and effectively as a separate department in the scheme of government. Kupenes v. Ungeni, 12 FSM R. 252, 262-63 (Chk. S. Ct. Tr. 2003).

Since the constitution must be interpreted in such a way as to carry out is purposes and since the purpose of the unified judiciary must be to ensure that fair and impartial justice be provided to every citizen of Chuuk, in a case where all sitting justices are disqualified, unavailable, or have recused themselves, fair and impartial justice will be unavailable unless the Chief Justice has some method available to ensure a fair and impartial hearing. Kupenes v. Ungeni, 12 FSM R. 252, 263 (Chk. S. Ct. Tr. 2003).

Since the constitution must be liberally, not restrictively, construed, any attempt to place limitations on the Chief Justice's power, where no words of limitation appear, would require a restrictive interpretation of the constitution, and would violate the rules of interpretation as applied to judiciaries. Kupenes v. Ungeni, 12 FSM R. 252, 263 (Chk. S. Ct. Tr. 2003).

Interpreting the Chief Justice's rule-making authority and his authority to "appoint and prescribe duties of other officers and employees, as prohibiting the appointment of a special trial justice unless the appointee meets the Article VII, § 9 qualifications of associate justices, would invite invalidity and chaos. Instead, the principle of acquiescence controls. Kupenes v. Ungeni, 12 FSM R. 252, 263-64 (Chk. S. Ct. Tr. 2003).

A gubernatorial emergency declaration is free from judicial interference for fifteen days after it is made. Esa v. Elimo, 14 FSM R. 262, 266 n.3 (Chk. 2006).

The Legislature is a co-equal branch of government and the court does not have the authority or power to order it to take a discretionary act of appropriating funds. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

The judiciary cannot usurp the other branches' powers by appropriating and spending the state's money without any regard to the Chuuk Constitution's separation of powers. Kama v. Chuuk, 20 FSM R. 522, 530 (Chk. S. Ct. App. 2016).

The Chuuk State Supreme Court cannot issue an order directing the payment of money by Chuuk State absent an appropriation therefor. Kama v. Chuuk, 20 FSM R. 522, 530 (Chk. S. Ct. App. 2016).

The judicial branch does not have the power to appropriate money. The judicial branch cannot enact statutes or prescribe by statute. The Legislature is a co-equal branch of government and the court does not have the authority or power to order it to appropriate funds. Kama v. Chuuk, 20 FSM R. 522, 531 (Chk. S. Ct. App. 2016).

For a money judgment against the state to be paid there must be an appropriation by the Legislature and the courts have no power to compel an appropriation. Kama v. Chuuk, 20 FSM R. 522, 532 (Chk. S. Ct. App. 2016).

– Chuuk – Legislative Powers

The Chuuk State Legislature is limited to judging only those qualifications of its elected members that are explicitly listed within the Chuuk State Constitution. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 264 (Chk. S. Ct. Tr. 1993).

Each house of the Chuuk State Legislature may exercise its power as the sole judge of the qualifications of its members so long as it is done in a manner that is rationally and reasonably related to the plain ordinary meaning of the text in order to comply with the state and federal requirements of due process, and not in any arbitrary or capricious manner, or in any other manner that would otherwise violate the state or national constitutions. This power may be exercised only in regard to the qualifications that explicitly appear in the constitution itself. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 266 (Chk. S. Ct. Tr. 1993).

No house of the legislature is bound by the decisions or determinations of a previous house. One duly elected legislature's determination of a member-elect's constitutional qualifications or disqualification to sit is not binding as legal precedent on any subsequently and duly elected legislatures, and each newly elected legislature is free to determine the meaning of constitutional qualifications and apply it in a manner that is different from that of previous legislatures, so long as its application is in conformity with the state and national constitutions. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 272 (Chk. S. Ct. Tr. 1993).

The power to investigate and issue subpoenas is expressly granted the legislature by the constitution. In re Legislative Subpoena, 7 FSM R. 261, 265 (Chk. S. Ct. Tr. 1995).

In determining whether the Legislature has the power to subpoena personal financial records of a public official in a legislative investigation, a court must consider the right to privacy as it specifically applies to a public official. In re Legislative Subpoena, 7 FSM R. 261, 265 (Chk. S. Ct. Tr. 1995).

The power to investigate has historically been found to be an inherent power of the legislative process and a power that is very broad. It comprehends probes into departments of the government to expose corruption, inefficiency or waste, and may not be unduly hampered. In re Legislative Subpoena, 7 FSM R. 261, 265 (Chk. S. Ct. Tr. 1995).

The legislative power to investigate is not unlimited. There is no general authority to expose the private affairs of individuals without justification in terms of the functions of the legislature, and the right to privacy embodied in Article III, section 3 of the Chuuk Constitution is a restraint on the investigative power of the legislature. In re Legislative Subpoena, 7 FSM R. 261, 265 (Chk. S. Ct. Tr. 1995).

The legislature's investigative powers are greatest when it is inquiring into and publicizing corruption, maladministration or inefficiency in the agencies or branches of government. In re Legislative Subpoena, 7 FSM R. 261, 265 (Chk. S. Ct. Tr. 1995).

The Chuuk House of Representatives possesses the sole authority and power to pass a Bill of Impeachment seeking to remove those state officials responsible for misfeasance or malfeasance. In re Legislative Subpoena, 7 FSM R. 261, 266 (Chk. S. Ct. Tr. 1995).

The Chuuk House of Representatives has no criminal prosecution function. It is limited to passing laws and under the proper circumstance bringing bills of impeachment, which are not criminal in nature. In re Legislative Subpoena, 7 FSM R. 261, 266 (Chk. S. Ct. Tr. 1995).

The Chuuk State Legislature has the express constitutional power to conduct investigations and to issue subpoenas in aid of an investigation. Each house has all the authority and attributes inherent in legislative assemblies. In re Legislative Subpoena, 7 FSM R. 328, 331 (Chk. S. Ct. App. 1995).

Constitutional protections are a restraint on legislative investigations. In re Legislative Subpoena, 7 FSM R. 328, 331 (Chk. S. Ct. App. 1995).

Any committee formed by a house of the legislature is restricted to the missions delegated to it, i.e., to acquire certain data to be used in coping with a problem that falls within the house's legislative sphere. This jurisdictional concept requires that material sought by the committee be pertinent or relevant to this function in order to compel disclosure from an unwilling witness. In re Legislative Subpoena, 7 FSM R. 328, 332 (Chk. S. Ct. App. 1995).

A court must presume that an action of a legislative body was taken with a legitimate object if it is capable of being so construed, and has no right to assume that the contrary was intended. In re Legislative Subpoena, 7 FSM R. 328, 332-33 (Chk. S. Ct. App. 1995).

A committee of the legislative house constitutionally charged with the function of impeachment whose authorizing resolution empowered it to investigate the state's insolvency and the executive branch officers' misfeasance, malfeasance, or failure to carry out their duties and responsibilities, presented with evidence that the governor has illegal sources of income that may involve state funds is seeking relevant material related to its function when it seeks to subpoena the governor's bank records. In re Legislative Subpoena, 7 FSM R. 328, 333 (Chk. S. Ct. App. 1995).

All citizens generally have the duty to, and state officials are obligated by statute to, cooperate with legislative investigations. These obligations of citizenship and public office are linked with the assumption that the legislature will respect individuals' constitutional rights, including the right of privacy. In re Legislative Subpoena, 7 FSM R. 328, 333-34 (Chk. S. Ct. App. 1995).

Once the First Chuuk Legislature has set the salaries of it members by statute, no increase in their salaries is effective until after approval by the voters in a referendum. Sauder v. Chuuk State Legislature, 7 FSM R. 358, 361 (Chk. S. Ct. Tr. 1995).

Expense allowances for a member of the Chuuk Legislature may not exceed 20% of his salary. Sauder v. Chuuk State Legislature, 7 FSM R. 358, 362 (Chk. S. Ct. Tr. 1995).

Salary and expense allowances for members of the Chuuk Legislature cannot exceed ¾ of the equivalent the Governor is entitled to. Sauder v. Chuuk State Legislature, 7 FSM R. 358, 362-63 (Chk. S. Ct. Tr. 1995).

Any form of legislative remuneration, compensation or reimbursement for Chuuk legislators is limited to 1/5 of a legislator's salary. An unrestricted "representation allowance" is an unconstitutional form of compensation. Sauder v. Chuuk State Legislature, 7 FSM R. 358, 364 (Chk. S. Ct. Tr. 1995).

Even in the absence of a general reduction of the pay of all state employees which would allow the Chuuk Legislature to reduce the pay of judges, the legislature has authority to reduce the pay of other

judiciary employees. When there is no general reduction of salaries, a law reducing the Chuuk State Supreme Court justices' salaries is invalid. Chuuk State Supreme Court v. Umwech (II), 7 FSM R. 630, 632 (Chk. S. Ct. Tr. 1996).

Reading the constitutional provision barring impairment of contracts in harmony with the provision allowing general reduction of salaries, the exclusion of contract employees does not preclude the Chuuk Legislature from enacting a general reduction of salaries. Chuuk State Supreme Court v. Umwech (II), 7 FSM R. 630, 632 (Chk. S. Ct. Tr. 1996).

Because the provision permitting an automatic increase back to their former salaries by the Governor, Lieutenant Governor, and the members of the legislature, is severable, it thus may be ruled unconstitutional without affecting the validity of the rest of the statute. Chuuk State Supreme Court v. Umwech (II), 7 FSM R. 630, 632 (Chk. S. Ct. Tr. 1996).

A state legislative body has the power to choose its own speaker from its own members and to appoint its own officers. Christlib v. House of Representatives, 9 FSM R. 503, 505 (Chk. S. Ct. Tr. 2000).

A state legislative body, having the power to choose its own speaker from its own members, also has the inherent power to remove such officer at its will or pleasure. Christlib v. House of Representatives, 9 FSM R. 503, 506 (Chk. S. Ct. Tr. 2000).

The Chuuk Constitution requires that every 2 years when a new Legislature convenes, each house shall organize by the election of one of its members as presiding officer, but it does not require that he remain in office throughout his term. Christlib v. House of Representatives, 9 FSM R. 503, 507 (Chk. S. Ct. Tr. 2000).

When a constitution establishes specific eligibility requirements for a particular constitutional office, the legislature is without power to require different qualifications and when there is no direct authority in the constitution for the legislature to establish qualifications for office in excess of those imposed by the constitution, such extra qualifications are unconstitutional. Olap v. Chuuk State Election Comm'n, 9 FSM R. 531, 533 (Chk. S. Ct. Tr. 2000).

The Chuuk Constitution does not, either expressly or by implication, give the Legislature any authority whatsoever, to add qualifications for persons seeking a legislative office beyond those in the Constitution. Olap v. Chuuk State Election Comm'n, 9 FSM R. 531, 533 (Chk. S. Ct. Tr. 2000).

It is beyond the power of the Legislature to enact a law to prohibit government employees from becoming candidates for legislative service. Olap v. Chuuk State Election Comm'n, 9 FSM R. 531, 534 (Chk. S. Ct. Tr. 2000).

Even if the purported enactment of the education qualifications for mayor and assistant mayor were unquestionably enacted, the municipal council is without authority to add qualifications to those set out in the municipal constitution unless the constitution so authorizes the council. Chipen v. Election Comm'r of Losap, 10 FSM R. 15, 17-18 (Chk. 2001).

Temporary Chuuk State Supreme Court justices, appointed for the limited purpose of hearing the appeal, may be a justice of the FSM Supreme Court, a judge of a court of another FSM state, or a qualified attorney in the State of Chuuk. FSM citizenship is not a constitutional requirement to be a temporary Chuuk State Supreme Court appellate justice and the Legislature cannot add it by statute. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 152 (Chk. S. Ct. App. 2001).

When the Constitution sets forth the requirements for office and does not authorize the Legislature to add further requirements, it is barred from doing so. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 152 (Chk. S. Ct. App. 2001).

Legislative houses are the final judges of their memberships and under the Chuuk Constitution each house is the sole judge of the election and qualification of its members. This does not make an election case about a member-elect non-justiciable until such time as the house has taken its final action. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 153 (Chk. S. Ct. App. 2001).

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

An order to show cause to the entire Chuuk Legislature requiring it to demonstrate why it should not be held in contempt for failing to pay the judgment will not be issued because it is not for the court to intrude in this manner into areas committed to the province of the state legislature. Estate of Mori v. Chuuk, 11 FSM R. 535, 540 (Chk. 2003).

The Chuuk state government's legislative power is vested in the Legislature, and extends to all rightful subjects of legislation not inconsistent with the Chuuk or FSM Constitutions. Ceasar v. Uman Municipality, 12 FSM R. 354, 357 n.1 (Chk. S. Ct. Tr. 2004).

All public expenditures are required to be for a defined public purpose and the procedures for demonstrating entitlement to public expenditures are implemented through the Financial Management Act. Chuuk v. Robert, 16 FSM R. 73, 79 & n.5 (Chk. S. Ct. Tr. 2008).

Funds appropriated under the Speaker and Staff Travel Fund Act provide for the official travel of the Speaker and Legislature employees and enable members to attend various public functions, as specified in the act. The Speaker administers the fund and authorizes selected persons to receive monies, subject to the act's limitations and appropriations to carry out the purposes of the act are authorized from the General Fund. Chuuk v. Robert, 16 FSM R. 73, 79 (Chk. S. Ct. Tr. 2008).

The Legislature is a co-equal branch of government and the court does not have the authority or power to order it to take a discretionary act of appropriating funds. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

The legislative branch's filing of a lawsuit is not an attempt to execute a statute when the lawsuit attempts to obtain a judicial interpretation of the statute's effect or meaning. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 505 (Chk. 2013).

The judicial branch does not have the power to appropriate money. The judicial branch cannot enact statutes or prescribe by statute. The Legislature is a co-equal branch of government and the court does not have the authority or power to order it to appropriate funds. Kama v. Chuuk, 20 FSM R. 522, 531 (Chk. S. Ct. App. 2016).

– Executive Powers

Under our Constitution the Executive Branch is expressly delegated the power to faithfully execute and implement all national laws. Udot Municipality v. FSM, 9 FSM R. 418, 420 (Chk. 2000).

Specific powers are given to each branch of the government. When Congress is executing and implementing a national law, a power expressly delegated to the executive branch, it abridges the executive's power to execute and implement national laws. Udot Municipality v. FSM, 9 FSM R. 418, 420 (Chk. 2000).

The Constitution gives Congress the authority to appropriate public funds, but the Executive Branch is expressly delegated the power to faithfully execute and implement all national laws and a public law that appropriates public funds is a national law. Udot Municipality v. FSM, 10 FSM R. 354, 357 (Chk. 2001).

The national government's executive power is vested in the President of the Federated States of Micronesia and expressly includes the power to faithfully execute and implement the provisions of the Constitution and all national laws. FSM v. Udot Municipality, 12 FSM R. 29, 48 (App. 2003).

Congress has its constitutional role of carrying out its legislative power by enacting national laws. Once national laws are enacted, the Executive Branch then has its constitutional role of carrying out its executive power by seeing to the execution and implementation of these laws. FSM v. Udot Municipality, 12 FSM R. 29, 51 (App. 2003).

Allottees, either specifically designated in an appropriations law or in the Financial Management Act, have their role in administering the law. Allottees' role in the execution, implementation, and administration of the law is executive in nature and must be considered as such. FSM v. Udot Municipality, 12 FSM R. 29, 51 (App. 2003).

The power to faithfully execute and implement the Constitution's provisions and all national laws is expressly delegated to the President. Urusemal v. Capelle, 12 FSM R. 577, 583 (App. 2004).

Although it may be true in the general case that when the FSM is claiming executive privilege it has an initial duty to provide a sworn declaration demonstrating that the discovery at issue is privileged, but when discovery is sought from a president, no such declaration will be required since presidential communications are "presumptively privileged." This is because a court is not required to proceed against the president as against an ordinary individual. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 511 (Pon. 2009).

The FSM president is not only the head of a co-equal branch of government, but is also both the FSM's head of state and head of government. The vice president functions either as an acting president or as one in waiting, who is keeping himself informed and prepared should some unfortunate event occur that would require him to act as president. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 511 (Pon. 2009).

Although a former president may not retain the capacity to either assert or waive an executive privilege, an incumbent president can claim the privilege on his predecessor's behalf. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 511 (Pon. 2009).

The presidential executive privilege is rooted in the separation of powers doctrine and in the principle that confidentiality in communications between the president and his advisors should enhance the quality of discussion and government decisions. However, this presumptive privilege is not absolute and must be considered in the light of the rule of law. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512 (Pon. 2009).

A party seeking discovery, who is confronted with an executive privilege claim, may overcome that claim if the discovery would 1) lead to admissible evidence; 2) is essential to the party's case; 3) is not available through any alternative source or less burdensome means; and 4) will not significantly interfere with the official's ability to perform his governmental duties. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512 (Pon. 2009).

When the plaintiff contends that the depositions of the president, vice president, and former president would yield admissible evidence about the discussions during high-level national-state government meetings on replacing the plaintiff as the Project Management Unit since the presidents and vice president were the only persons present at all of those meetings and should thus have unique, relevant testimony, the plaintiff has not met its burden to show that information about those meetings cannot be obtained through alternative sources or less burdensome means since a number of other persons were present at each of those meetings. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512 (Pon. 2009).

Once a public law is enacted, the responsibility for the execution and implementation of the law rests with those who have a duty to execute and administer the law. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 188 (Pon. 2010).

Once a public law is enacted, the responsibility for the execution and implementation of the law rests with those who have a duty to execute and administer the law, and Senators can have no further role in its execution. The basic constitutional principle involved is that the execution and implementation of the laws is an executive rather than a legislative function. The Constitution affords the Congress great latitude in making policy decisions through the process of enacting legislation, but once Congress enacts legislation, its role ends: Congress can thereafter formally affect the execution of its enactment only by enacting appropriate new legislation. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 548 (App. 2011).

Because an access agreement does not give exclusive rights either to negotiate permits on behalf of all foreign vessels or to exploit the FSM's EEZ, it is more properly a permit or license. Administration of a permit or license scheme is, by its nature, administrative, and thus an executive branch function. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 549 (App. 2011).

The power to appoint and confirm members of the Social Security Board is vested in the national government's Executive and Legislative branches. To halt the Board's function when all vacancies are not filled would adversely affect the Social Security's function as a whole, and would be detrimental to the livelihood of social security benefit recipients. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 643 (Pon. 2015).

– Judicial Powers

The FSM Supreme Court has broad rule-making powers under the Constitution. FSM Const. art. XI, § 9. FSM v. Albert, 1 FSM R. 14, 17 (Pon. 1981).

The Constitution unmistakably places upon the judicial branch ultimate responsibility for interpretation of the Constitution. Suldan v. FSM (II), 1 FSM R. 339, 343 (Pon. 1983).

By using the United States Constitution as a blueprint, the framers created a presumption that they were adopting such a fundamental American Constitutional principle as judicial review, found to be inherent in the language and very idea of the United States Constitution. Suldan v. FSM (II), 1 FSM R. 339, 348 (Pon. 1983).

The power to issue declaratory judgments is within the judicial power vested in the FSM Supreme Court by article XI, section 1 of the Constitution and confirmed by the Judiciary Act of 1979. The FSM Supreme Court may exercise jurisdiction over an action seeking a declaratory judgment so long as there is a "case" within the meaning of article XI, section 6(b). Ponape Chamber of Commerce v. Nett Mun. Gov't, 1 FSM R. 389, 400 (Pon. 1984).

An attorney's professional activities are individually subject to regulation by the judiciary, not by the administrators of the Foreign Investment Act. Michelsen v. FSM, 3 FSM R. 416, 427 (Pon. 1988).

The Constitution places control over admission of attorneys to practice before the national courts, and regulation of the professional conduct of the attorneys, in the Chief Justice, as the chief administrator of the national judiciary. Carlos v. FSM, 4 FSM R. 17, 27 (App. 1989).

While the FSM Constitution provides initial access to the FSM Supreme Court for any party in article XI, section 6(b) litigation, the court may, having familiarized itself with the issues, invoke the doctrine of abstention and permit the case to proceed in a state court, since the power to grant abstention is inherent in the jurisdiction of the FSM Supreme Court, and nothing in the FSM Constitution precludes the court from

abstaining in cases which fall within its jurisdiction under article XI, section 6(b). Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM R. 37, 42-43 (Pon. 1989).

The FSM Constitution provides no authority for any courts to act within the Federated States of Micronesia, other than the FSM Supreme Court, inferior courts to be established by statute, and state or local courts. United Church of Christ v. Hamo, 4 FSM R. 95, 105 (App. 1989).

The provisions of the FSM Constitution spelling out jurisdiction and vesting the entire judicial power of the national government in the FSM Supreme Court are self-executing, and the judicial power of the FSM Supreme Court is not dependent upon congressional action. United Church of Christ v. Hamo, 4 FSM R. 95, 105-06 (App. 1989).

The Supreme Court of the FSM has the constitutional power and obligation to review legislative enactments of Congress and to set aside national statutes to the extent they violate the Constitution. Constitutional Convention 1990 v. President, 4 FSM R. 320, 324 (App. 1990).

Although judiciaries are vested with power to require or authorize initiation of criminal contempt proceedings, and may appoint private counsel to prosecute those proceedings, judiciaries typically attempt to appoint for that purpose government attorneys who are already responsible for public prosecutions. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 62, 66 (Pon. 1991).

The legislative enactment of the Financial Management Act does not conflict with the constitutional provision stating the Chief Justice is the chief administrator of the national judiciary. Mackenzie v. Tuuth, 5 FSM R. 78, 80 (Pon. 1991).

The constitutional provision making the Chief Justice the chief administrator of the national judiciary was not intended to establish a separate administration of funds allotted to the judiciary; it is not so specific as to overcome the presumption of the constitutionality of the Financial Management Act as it relates to the judiciary. Mackenzie v. Tuuth, 5 FSM R. 78, 82-83 (Pon. 1991).

It is the duty of the FSM Supreme Court to review any national law, including a treaty such as the Compact of Free Association, in response to a claim that the law or treaty violates constitutional rights, and if any provision of the Compact is contrary to the constitution, which is the supreme law of the land, then that provision must be set aside as without effect. Samuel v. Pryor, 5 FSM R. 91, 98 (Pon. 1991).

The Chief Justice has the constitutional authority to make rules for the appointment of special judges, and Congress has the constitutional authority to amend them. Congress has provided the Chief Justice with the statutory authority to appoint temporary justices. Where Congress has acted pursuant to its constitutional authority to provide statutory authority to the court, the court need not have exercised its concurrent rule-making authority. Jano v. King, 5 FSM R. 326, 331 (App. 1992).

The Chief Justice may appoint an acting chief justice if he is unable to perform his duties. "Unable to perform his duties" refers to a physical or mental disability of some duration, not to the legal inability to act on one particular case. Jano v. King, 5 FSM R. 326, 331 (App. 1992).

The FSM Supreme Court is immune from an award of damages, pursuant to 11 F.S.M.C. 701(3), arising from the performance by the Chief Justice of his constitutionally granted rule-making powers. Berman v. FSM Supreme Court (II), 5 FSM R. 371, 374 (Pon. 1992).

The Chief Justice, in making rules, is performing a legislative function and is immune from an action for damages. Berman v. FSM Supreme Court (II), 5 FSM R. 371, 374 (Pon. 1992).

The grant of immunity to the Chief Justice while performing his rule-making authority is to protect the independence of one exercising a constitutionally granted legislative power. Berman v. FSM Supreme Court (II), 5 FSM R. 371, 374 (Pon. 1992).

Where there is in the Constitution a textually demonstrable commitment of the issue to a coordinate branch of government, such as Congress being the sole judge of the elections of its members, it is a nonjusticiable political question not to be decided by the court because of the separation of powers provided for in the Constitution. Aten v. National Election Comm'r (III), 6 FSM R. 143, 145 (App. 1993).

A judge cannot adopt a procedure not provided for by the rules because the Constitution grants the Chief Justice, and Congress, the power to establish rules of procedure. FSM v. M.T. HL Achiever (II), 7 FSM R. 256, 258 (Chk. 1995).

No court, municipal, state, or otherwise, has the jurisdiction to question the internal workings of a legislative body. Anopad v. Eko, 11 FSM R. 287, 290 (Chk. S. Ct. Tr. 2002).

The Supreme Court has the power to review Congress's legislative enactments and the implementation of those enactments, and it has the responsibility to set aside any national statute to the extent that it violates the Constitution. FSM v. Udot Municipality, 12 FSM R. 29, 47 (App. 2003).

When a party before the court insists that a particular national law contains provisions contrary to the Constitution, the court is required by the Constitution to consider that assertion. If it determines that the statutory provision is indeed repugnant to the Constitution, it may not enforce the statutory provision nor permit its enforcement by others. FSM v. Udot Municipality, 12 FSM R. 29, 47 (App. 2003).

The national government's judicial power is vested in a Supreme Court and inferior courts established by statute. FSM v. Udot Municipality, 12 FSM R. 29, 48 (App. 2003).

The Constitution permits the Chief Justice to promulgate rules, including criminal procedure rules, which Congress may amend by statute. Congress has the authority to amend or create procedural rules by statute, and when Congress has enacted a procedural rule, it is valid. The Chief Justice does not have the authority to amend Congressionally-enacted statutes. Therefore, if the statute applies and the statute and the rule conflict, the statute must prevail. FSM v. Wainit, 12 FSM R. 376, 383 (Chk. 2004).

The Constitution contemplates that administrative duties are an integral part of the Chief Justice's role, and in this regard they are manifestly judicial. He may delegate those duties pursuant to express constitutional authority, and they do not become nonjudicial because they are performed by the Chief Justice's designee. The contrary is the case, especially in light of the fact that the office of court administrator is one of only a handful of public offices specifically referred to in the Constitution. The administration of the court is an essential activity without which the court cannot function. Urusemal v. Capelle, 12 FSM R. 577, 585 (App. 2004).

If there is a conflict between the Supplemental Admiralty and Maritime Rules and Title 24, then Title 24 must prevail because the Constitution permits the Chief Justice to promulgate procedural rules, which Congress may amend by statute and since Congress has the authority to amend or create procedural rules by statute (and when Congress has enacted a procedural rule, it is valid) and the Chief Justice does not have the authority to amend Congressionally-enacted statutes, if the statute applies and the statute and the rule conflict, the statute must prevail. FSM v. Kana Maru No. 1, 14 FSM R. 365, 367 n.1 (Chk. 2006).

The Constitution unmistakably places upon the judicial branch the ultimate responsibility for interpretation of the Constitution and for determining the constitutionality of statutes. It is the special province and duty of the courts, and the courts alone, to say what the law is and to determine whether a statute is constitutional. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 187 (Pon. 2010).

While all public officials are sworn to uphold the Constitution, the Constitution places upon the courts the ultimate responsibility for interpreting the Constitution. The court is forsworn by the Supremacy Clause from enforcing national laws or treaties contrary to the Constitution itself. Pacific Foods & Servs., Inc. v.

National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 187 (Pon. 2010).

The question of a statute's constitutionality is not a nonjusticiable political question textually reserved to Congress. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 187 (Pon. 2010).

A statute takes precedence over the procedural rules because while the chief justice has the power to promulgate procedural rules, the rules may be amended by statute, and since the chief justice does not have the power to amend a statute, when Congress has enacted a procedural rule, it is valid. People of Tomil ex rel. Mar v. M/V Mell Sentosa, 17 FSM R. 478, 479 (Yap 2011).

The court may hold the political branches to account for violations of the Constitution, but it cannot force them to choose one constitutional method over another. Damarlane v. Damarlane, 18 FSM R. 177, 180 (Pon. 2012).

It is the special province and duty of the courts, and of the courts alone, to say what the law is and to determine whether a statute is constitutional. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 505 (Chk. 2013).

It is within the FSM Supreme Court's province to determine whether a Chuuk statute, as applied, runs afoul of the FSM Constitution. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 505 (Chk. 2013).

Congress has the authority to amend or create procedural rules by statute (and when Congress enacts a procedural rule, it is valid) but the Chief Justice does not have the power to amend Congressionally-enacted statutes. Thus, if a statute applies and the statute and the admiralty rule conflict, the statute must prevail. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 539 (Yap 2013).

While Congress has the authority to amend rules by statute, the Chief Justice does not have the authority to amend statutes by creating rules. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 595 (Kos. 2013).

The separation-of-powers doctrine enshrined in the Constitution bars the FSM Supreme Court from legislating. The court has the ultimate responsibility in interpreting the law and in deciding what the law is and it has the ability to set aside any statute to the extent that the statute violates the Constitution. Dison v. Bank of Hawaii, 19 FSM R. 157, 161 (App. 2013).

The FSM Supreme Court lacks the power to make persons granted a pardon of a felony conviction eligible for election to Congress because the Constitution reserves that power to Congress, and the court cannot exercise a power that only Congress has. FSM v. Innocenti, 20 FSM R. 293, 296 (Pon. 2016).

The Supreme Court has the power to review legislative enactments of the Congress, and the implementation of those enactments, and it has the responsibility to set aside any national statute to the extent that it violates the Constitution. Linter v. FSM, 20 FSM R. 553, 560 (Pon. 2016).

The court should not and cannot make choices that the Constitution assigns to Congress. FSM v. Fritz, 20 FSM R. 596, 600 (Chk. 2016).

A statute takes precedence over the procedural rules because, while the Chief Justice can promulgate procedural rules, the rules may be amended by statute, and because the Chief Justice does not have the power to amend a statute, a Congressionally enacted procedural rule is valid. Setik v. Mendiola, 21 FSM R. 537, 550 (App. 2018).

A court cannot strike down or enjoin statutes merely because they might be unwise and some other

course of action is better. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 267 (Chk. 2019).

Courts have no responsibility for the justice or wisdom of legislation, and no duty except to enforce the law as it is written, unless it is clearly beyond the lawmaking body's constitutional power. FSM v. Kuo Rong 113, 22 FSM R. 515, 526 (App. 2020).

– Kosrae

The doctrine of separation of powers does not prevent courts from modifying sentences even though the effect of modification may be the same as commuting the sentence. Kosrae v. Mongkeya, 3 FSM R. 262, 263-64 (Kos. S. Ct. Tr. 1987).

The executive authority to grant clemency is a function of the separation of powers between the executive and the judiciary to check sometimes mechanical jurisprudence which might work harsh results in individual cases. Kosrae v. Mongkeya, 3 FSM R. 262, 264 (Kos. S. Ct. Tr. 1987).

It is an inconsistency and a conflict with the legislative role in the Kosrae government when a member of the Legislature is made an allottee of funds for a purpose other than the operation of the legislature. Siba v. Sigrah, 4 FSM R. 329, 339 (Kos. S. Ct. Tr. 1990).

The legislature has some discretion as to who it may make an allottee and complete discretion as to the purpose and policies behind the allotment, but the function of the allottee is definitely not legislative in character. Siba v. Sigrah, 4 FSM R. 329, 340 (Kos. S. Ct. Tr. 1990).

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

A delegation of power that passes constitutional muster confers specified powers on the executive to execute and enforce the law. This is the executive branch's acknowledged role, and the governor's inclusion on a board that promulgates Public Service System rules and regulations confers on him specific powers to facilitate what is already the Governor's province to do, i.e., to execute and enforce state laws. Thus the governor's inclusion as a member of the board does not, per se, give rise to a constitutional infirmity. Sigrah v. Speaker, 11 FSM R. 258, 261 (Kos. S. Ct. Tr. 2002).

The Legislature may not by legislative act create a board to implement the Kosrae Public Service System and at the same time retain a degree of control over the board by appointing the Speaker as one of its members. Delegation of legislative authority may not proceed by half measures. To do so is to violate the separation of powers doctrine. Sigrah v. Speaker, 11 FSM R. 258, 261-62 (Kos. S. Ct. Tr. 2002).

The inclusion of the Kosrae State Court Chief Justice and the Kosrae Legislature Speaker on the Kosrae Public Service System Oversight Board is an impermissible delegation of legislative authority, violating the separation of powers doctrine. The Governor's inclusion on the board does not per se contravene that same principle. Sigrah v. Speaker, 11 FSM R. 258, 262 (Kos. S. Ct. Tr. 2002).

– Kosrae – Executive Powers

If required to preserve the public peace, health, or safety, at a time of extreme emergency caused by civil disturbance, natural disaster, or immediate threat of war or insurrection, the Governor may declare a state of emergency and issue appropriate decrees. Although a declaration of emergency may not impair the power of the judiciary, it may impair a civil right to the extent actually required for the preservation of peace, health, or safety. Unless it expires by its own terms, is revoked or extended, a declaration of

emergency is effective for thirty days. Kosrae v. Nena, 13 FSM R. 63, 66 (Kos. S. Ct. Tr. 2004).

– Kosrae – Judicial Powers

A fundamental precept of judicial independence is that the judiciary must not be dependent upon other branches of government in order to carry out judicial responsibilities. Article VI, section 8 of the Kosrae Constitution expressly confirms that the judicial branch is to control its own administration. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 92, 96 (Kos. S. Ct. Tr. 1987).

The Kosrae Constitution contemplates that justices of the FSM Supreme Court may decide cases which arise within Kosrae and fall under the original jurisdiction of the Kosrae State Court. In addition, the Kosrae Constitution vests in the Kosrae Chief Justice the power to include the resources and justices of the FSM Supreme Court as resources of the Kosrae State Court, insofar as that is consistent with the duties of the FSM Supreme Court under the FSM Constitution. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 92, 97 (Kos. S. Ct. Tr. 1987).

– Kosrae – Legislative Powers

The power of the legislature is to decide what the law shall be, to determine public policy and to frame the laws to reflect that public policy. Siba v. Sigrah, 4 FSM R. 329, 336 (Kos. S. Ct. Tr. 1990).

It is an inconsistency and a conflict with the legislative role in the Kosrae government when a member of the Legislature is made an allottee of funds for a purpose other than the operation of the legislature. Siba v. Sigrah, 4 FSM R. 329, 339 (Kos. S. Ct. Tr. 1990).

The legislature has some discretion as to who it may make an allottee and complete discretion as to the purpose and policies behind the allotment, but the function of the allottee is definitely not legislative in character. Siba v. Sigrah, 4 FSM R. 329, 340 (Kos. S. Ct. Tr. 1990).

Kosrae state legislators are, in all cases except felony or breach of peace, privileged from arrest during their attendance at sessions or committee meetings of the Legislature, and in going to and returning from the same. Kosrae v. Sigrah, 11 FSM R. 249, 253 (Kos. S. Ct. Tr. 2002).

A practice which has been engaged in by a government for a significant period of time is entitled to great weight in establishing the constitutionality of that practice. Thus, when the licensing of vehicle operators and that the license be in the immediate possession of the driver has been required for at nearly forty years, this significant period of time and therefore the licensing and possession requirement is entitled to great weight in establishing the constitutionality of that practice. Kosrae v. Sigrah, 11 FSM R. 249, 256 (Kos. S. Ct. Tr. 2002).

Passage of a legislative resolution that submits a request to the Governor which the Governor may or may not carry out at his discretion creates no legally enforceable rights by which the Kosrae Legislature may compel the Governor's compliance, especially when the Governor is not a party to the action. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 499 (Kos. 2003).

A law enacted by the Kosrae Legislature is the highest form of setting forth the legislature's policy decisions and such laws can create legal rights that may be enforceable in the courts. But when the subject bill is not yet law, having been vetoed by the Governor, and the bill requires action by the Governor who is not a party to the action, there is no injury to the plaintiff created from noncompliance with the bill's provisions. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 499 (Kos. 2003).

Within thirty days after the declaration of emergency, the Legislature must convene at the call of the Speaker or the Governor to consider revocation, amendment or extension of the declaration. Kosrae v. Nena, 13 FSM R. 63, 66 (Kos. S. Ct. Tr. 2004).

A declaration of a state of emergency requires a time of "extreme emergency" caused by civil disturbance, natural disaster or immediate threat of war or insurrection. The word "emergency" is a sudden unexpected happening or an unforeseen occurrence or condition. Kosrae v. Nena, 13 FSM R. 63, 66 (Kos. S. Ct. Tr. 2004).

A civil disturbance or civil disorder is a public disturbance involving acts of violence by a group of three or more persons, which causes an immediate danger of or results in damage or injury to the property or person of any other individual. Suicides and suicide attempts, as they have occurred in Kosrae State during 2003 and 2004, do not rise to the level of a civil disturbance or civil disorder. Kosrae v. Nena, 13 FSM R. 63, 66 (Kos. S. Ct. Tr. 2004).

A nuisance is an activity which arises from unreasonable or unlawful use by a person of his own property, and that disturbs another in possession of his property, or an offensive, unpleasant, or obnoxious thing or practice, especially a continuing or repeated invasion or disturbance of another's right. While it is undisputed that suicides and suicide attempts are events which disturb others, particularly family members and friends, and possibly a large number of persons in the community on a small island such as Kosrae, these events cannot be classified as public nuisances. Kosrae v. Nena, 13 FSM R. 63, 66-67 (Kos. S. Ct. Tr. 2004).

The issuance of an Executive Decree, pursuant to Kosrae Constitution, Article V, section 13, is an extraordinary power which may be applied only in extreme emergency situations. The issuance of an Executive Decree may not be utilized as a tool to remedy a state of affairs which does not meet the definition of extreme emergency, and which may be addressed by legislation. Kosrae v. Nena, 13 FSM R. 63, 67 (Kos. S. Ct. Tr. 2004).

The Governor's issuance of Declaration of Temporary State of Emergency and the Executive Decree, which prohibited the issuance of drinking permits, possession and consumption of alcoholic drinks by persons under the age of 35 and revoked drinking permits which had been issued to persons under the age of 35, exceeded the authority granted to him by the Kosrae Constitution, Article V, Section 13 because there was no civil disturbance, riot, typhoon, natural disaster or immediate threat of war or insurrection which constituted an "extreme emergency" and the Decree was therefore unconstitutional and void. Any criminal charges which have been based upon violation of the Executive Decree must be dismissed. Kosrae v. Nena, 13 FSM R. 63, 67 (Kos. S. Ct. Tr. 2004).

– Legislative Powers

It is doubtful that Congress would have the power to require that all criminal prosecutions be in the name of the Federated States of Micronesia. FSM v. Boaz (II), 1 FSM R. 28, 31 (Pon. 1981).

The Seaman's Protection Act, originally enacted for the entire Trust Territory by the Congress of Micronesia, relates to matters that now fall within the legislative powers of the national government under article IX, section 2 of the Constitution, and has therefore become a national law of the Federated States of Micronesia under article XV. That being so, a claim asserting rights under the Act falls within the FSM Supreme Court's jurisdiction under article XI, section 6(b) of the Constitution as a case arising under national law. 19 F.S.M.C. 401-437. Lonno v. Trust Territory (I), 1 FSM R. 53, 72 (Kos. 1982).

The tax on gross revenues falls squarely within the constitutional authorization given to Congress by article IX, section 2(e) to tax income. Ponape Federation of Coop. Ass'ns v. FSM, 2 FSM R. 124, 126 (Pon. 1985).

That Congress may tax "gross income" is plainly and unmistakably provided for in the words of article IX, section 2(e) of the Constitution. Ponape Federation of Coop. Ass'ns v. FSM, 2 FSM R. 124, 127 (Pon. 1985).

Congress enacted Public Law No. 1-72 and confirmed the legislative power of state governments to supersede Trust Territory statutes within the scope of their exclusive powers. Pohnpei v. Mack, 3 FSM R. 45, 54 (Pon. S. Ct. Tr. 1987).

While Congress may have the power to prohibit the taking of and killing of turtles within the twelve mile area as a matter of national law, it should lie with Congress, and not the court, to determine whether the power should be exercised. FSM v. Oliver, 3 FSM R. 469, 480 (Pon. 1988).

Once Congress has set a policy direction, barring constitutional violation, it is the duty of this court to ascertain and follow that guidance. In re Cantero, 3 FSM R. 481, 484 (Pon. 1988).

Primary responsibility, perhaps even sole responsibility, for affirmative implementation of the Professional Services Clause, FSM Const. art. XIII, § 1, must lie with Congress. Carlos v. FSM, 4 FSM R. 17, 29 (App. 1989).

The fixing of voting requirements is a uniquely political task and falls within the purview of the political arms of the government, so long as no legal rights are violated by a particular method selected. Constitutional Convention 1990 v. President, 4 FSM R. 320, 324 (App. 1990).

The nature of a constitutional convention as authorized by the FSM Constitution, with direct control of the people over the identity of convention delegates, and ultimate acceptance of the products of the convention's efforts, and the fact that the framers views a constitutional convention as a standard and preferred amendment mechanism, preclude congressional control over the convention's decision-making. Constitutional Convention 1990 v. President, 4 FSM R. 320, 327 (App. 1990).

Congress has no power to specify voting requirements for the Constitutional Convention and therefore any attempt to exercise this power so as to uphold tradition is also outside the powers of Congress under article V, section 2 of the Constitution, which is not an independent source of congressional power but which merely confirms the power of Congress, in exercising national legislative powers, to make special provisions for Micronesian tradition. Constitutional Convention 1990 v. President, 4 FSM R. 320, 328 (App. 1990).

The legislative enactment of the Financial Management Act does not conflict with the constitutional provision stating the Chief Justice is the chief administrator of the national judiciary. Mackenzie v. Tuuth, 5 FSM R. 78, 80 (Pon. 1991).

The legislative passage of the Financial Management Act rests upon the provisions of the Constitution, pursuant to which the Department of Finance and the General Fund were established to oversee the national administration and management of public money. Mackenzie v. Tuuth, 5 FSM R. 78, 81 (Pon. 1991).

Historically the concept of a single, general fund administered by one person is found in laws enacted by the Congress of Micronesia. The enactment of the Financial Management Act reflects a continuity of purpose and statutory consistency. Mackenzie v. Tuuth, 5 FSM R. 78, 82 (Pon. 1991).

Where there is in the Constitution a textually demonstrable commitment of the issue to a coordinate branch of government, such as Congress being the sole judge of the elections of its members, it is a nonjusticiable political question not to be decided by the court because of the separation of powers provided for in the Constitution. Aten v. National Election Comm'r (III), 6 FSM R. 143, 145 (App. 1993).

While the Constitution makes ineligible for election to Congress persons convicted of felonies in FSM courts, the Constitution gives to Congress the power to modify that ineligibility by statute. Robert v. Mori, 6 FSM R. 394, 398 (App. 1994).

Congress has the Constitutional power to prescribe, by statute, additional qualifications for eligibility for election to Congress beyond those found in the Constitution. Such additional qualifications must be consistent with the rest of the Constitution. Knowledge of English may not be a qualification. Robert v. Mori, 6 FSM R. 394, 399 (App. 1994).

Congress, not the FSM Supreme Court, has the constitutional power to make persons granted a pardon of a felony conviction eligible for election to Congress. The court cannot exercise a power reserved to Congress. Robert v. Mori, 6 FSM R. 394, 401 (App. 1994).

In the absence of any authority or compelling policy arguments the court cannot conclude that a law, the enforcement of which entails a harsh result, is unconstitutional, and can only note that the creation of potentially harsh results is well within the province of the nation's constitutionally empowered legislators. Mid-Pacific Constr. Co. v. Semes, 7 FSM R. 102, 104 (Pon. 1995).

Congress has not unconstitutionally delegated its authority to define crimes by delegating to an executive agency the power to enter into fishing agreements because congressional approval is needed for these agreements to take effect. FSM v. Cheng Chia-W (I), 7 FSM R. 124, 127 (Pon. 1995).

Congress has the sole power to legislate the regulation of natural resources in the marine space of the Federated States of Micronesia beyond 12 miles from island baselines, and the states have the constitutional power to legislate the regulation of natural resources within that twelve miles of sea. Congress may also legislate concerning navigation and shipping within the twelve-mile limit except within lagoons, lakes, and rivers. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 459 (App. 1996).

The Constitution gives Congress the authority to appropriate public funds. Udot Municipality v. FSM, 9 FSM R. 418, 420 (Chk. 2000).

The national government is free to distribute or disburse its fishing fee revenues through its normal legislative process. Chuuk v. Secretary of Finance, 9 FSM R. 424, 436 (App. 2000).

The Constitution gives Congress the authority to appropriate public funds, but the Executive Branch is expressly delegated the power to faithfully execute and implement all national laws and a public law that appropriates public funds is a national law. Udot Municipality v. FSM, 10 FSM R. 354, 357 (Chk. 2001).

Congress can give as much guidance as it wishes in the appropriation legislation about which projects will be funded, and much of this guidance will, no doubt, be the product of individual congressmen's consultation with their constituents. But this consultation takes place before the appropriation bill becomes law, not afterwards. After the appropriation bill has become law, it is the duty of those who execute the law and administer the funds to follow the guidance Congress has given them by consulting the language Congress put in the public law, and any applicable regulations, not by consulting individual congressmen. Udot Municipality v. FSM, 10 FSM R. 354, 359-60 (Chk. 2001).

A lawmaker engages in many activities which are not covered by the legislative privilege, such as a wide range of legitimate errands performed for constituents, making of appointments with government agencies, assistance in securing government contracts, preparing news letters to constituents, news releases, and outside speeches. Such activities, though entirely legitimate, are political in nature rather than legislative, and such political matters do not have speech or debate clause protection. But when a legislator is acting within the legitimate legislative sphere, the speech or debate clause is an absolute bar to interference. AHPW, Inc. v. FSM, 10 FSM R. 420, 424-25 (Pon. 2001).

Legislative privilege should be read broadly to include anything generally done in a session of the legislature by one of its members in relation to the business before it. The ambit of the privilege extends beyond speech and debate per se to cover voting, circulation of information to other legislators, participation in the work of legislative committees, and a host of kindred activities. AHPW, Inc. v. FSM, 10 FSM R. 420,

425 (Pon. 2001).

The legislative privilege doctrine has both substantive and evidentiary aspects. In substance, the doctrine renders legislators immune from civil and criminal liability based on either speech or debate in the course of proceedings in the legislature. From an evidentiary standpoint, a legislator may claim the privilege in declining to answer any questions outside the legislature itself where those questions concern how a legislator voted, acted, or decided on matters within the sphere of legitimate legislative activity. AHPW, Inc. v. FSM, 10 FSM R. 420, 425 (Pon. 2001).

Once the Congress has enacted a law appropriating money for certain purposes, the Congress cannot retain, for itself or for individual senators, the power to determine how that appropriated money is spent, beyond what is spelled out in the law itself, and Congress also does not have the authority to dictate the voting requirements for a Constitutional Convention. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 631 (Pon. 2002).

The power to organize is inherent in each legislature or general assembly. This includes the power of selecting its own presiding officer. Observance of a legislative body's rules which regulate the passage of statutes is a matter entirely within legislative control and discretion, not subject to review by the courts. Anopad v. Eko, 11 FSM R. 287, 290 (Chk. S. Ct. Tr. 2002).

Only the legislature has authority over its organization. Its acts in this regard are not subject to review by the courts. Anopad v. Eko, 11 FSM R. 287, 290 (Chk. S. Ct. Tr. 2002).

The remedy for one who believes he was improperly removed as speaker of a municipal legislature is to attend the legislature's next regular session and seek to reorganize the legislature again, and reclaim his position as speaker. Anopad v. Eko, 11 FSM R. 287, 290 (Chk. S. Ct. Tr. 2002).

Just as a legislature has the power to elect its leaders from among the members, it has an equal power to remove its leaders, and to select new leadership, at any time it so chooses. Anopad v. Eko, 11 FSM R. 287, 290 (Chk. S. Ct. Tr. 2002).

It is Congress that determines the qualifications for candidates for membership in that legislative body. Trust Territory v. Edgar, 11 FSM R. 303, 308 (Chk. S. Ct. Tr. 2002).

The Constitution assigns Congress the authority to enact bankruptcy laws and thus to determine when a judgment against an insolvent person should be discharged without either full payment or the parties' agreement. In re Engichy, 11 FSM R. 520, 525-26 (Chk. 2003).

The national government's legislative power is vested in the Congress of the Federated States of Micronesia. FSM v. Udot Municipality, 12 FSM R. 29, 48 (App. 2003).

Once a public law is enacted, the responsibility for the execution and implementation of the law rests with those who have a duty to execute and administer the law, and Senators can have no further role in its execution. FSM v. Udot Municipality, 12 FSM R. 29, 49 (App. 2003).

A public law that specifically provides that a Congressional delegation must be consulted on the most appropriate usage of the funds before an obligation could occur runs afoul of the Constitution because it empowers the Congressional delegation to engage in an executive function by formally involving itself in executing and implementing the appropriation. Congress cannot pass laws and vest in itself or its members the power to control how that law is executed. FSM v. Udot Municipality, 12 FSM R. 29, 50 (App. 2003).

The Constitution affords the Congress great latitude in making policy decisions through the process of enacting legislation. However, once Congress enacts legislation, its role ends: Congress can thereafter

formally affect the execution of its enactment only by enacting appropriate new legislation. FSM v. Udot Municipality, 12 FSM R. 29, 50 (App. 2003).

While Congress may inform itself on how legislation is being implemented through the normal means of legislative oversight, public hearing, and investigation, it cannot directly insert a Congressional delegation into the process of executing and implementing the law. FSM v. Udot Municipality, 12 FSM R. 29, 50 (App. 2003).

Making obligation of appropriated funds contingent upon consultation with members of Congress presented some of the same dangers that arose with permitting Congressional member(s) to control the approval of specific projects and the break down of the funding amounts under the line-item involved without going through the constitutional legislative process. The formal legislative process set forth in the Constitution's text requires formulating and introducing an appropriations bill, passing that bill in two separate readings, and then transmitting that bill to the President for approval or veto. To permit congressmen to effectively legislate without following constitutionally mandated procedures eliminates any transparency in the governmental process, and reduces the accountability of the congressmen to those whom they represent. FSM v. Udot Municipality, 12 FSM R. 29, 50-51 (App. 2003).

Congress has its constitutional role of carrying out its legislative power by enacting national laws. Once national laws are enacted, the Executive Branch then has its constitutional role of carrying out its executive power by seeing to the execution and implementation of these laws. FSM v. Udot Municipality, 12 FSM R. 29, 51 (App. 2003).

Congress's enactment preventing obligation of funds unless and until the allottees engaged in "consultation" with the relevant Congressional delegation, substantially impaired the allottees' performance in executing and implementing the law, which is the executive's essential and exclusive role under our Constitution. By legislating "consultation" before obligation requirement into the law, the Congress encroached upon an executive function and assumed more power than it is allowed in our constitutional system of checks and balances, thus violating the separation of powers doctrine. FSM v. Udot Municipality, 12 FSM R. 29, 51 (App. 2003).

The Constitution permits the Chief Justice to promulgate rules, including criminal procedure rules, which Congress may amend by statute. Congress has the authority to amend or create procedural rules by statute, and when Congress has enacted a procedural rule, it is valid. The Chief Justice does not have the authority to amend Congressionally-enacted statutes. Therefore, if the statute applies and the statute and the rule conflict, the statute must prevail. FSM v. Wainit, 12 FSM R. 376, 383 (Chk. 2004).

If a specially assigned justice may be removed for any reason at Congress's discretion after serving 90 days of service in a case, then the justice is not independent. His rulings are subject to the legislative branch's supervision. The Constitution's framers intended to prevent this result by providing that a justice may only be removed for cause under the procedures set out in Article IX, Section 7. Urusemal v. Capelle, 12 FSM R. 577, 587 (App. 2004).

Congress may not remove at its discretion a justice temporarily assigned to a case any time after that justice has served 90 days because any such resolution and the statute upon which it is based, 4 F.S.M.C. 104(2) violate Article IX, Section 7 of the Constitution. Urusemal v. Capelle, 12 FSM R. 577, 587 (App. 2004).

If a congressman has a conflict of interest and did not take steps to avoid that conflict, that is an ethical lapse that Congress, not the court, has the authority to consider and, if proper, impose sanctions or discipline on the congressman. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 186 n.2 (Pon. 2010).

When Congress enacted Title 24 and engaged in an executive function by formally inserting itself into

the execution and implementation of a portion of that act by vesting in itself the power to control how the law regarding fishing access agreements is executed when more than nine vessels are involved, this was impermissible under the separation of powers doctrine since negotiated access agreements are not approved and licenses are not issued until Congress acts (and the parties to the negotiations presumably know this and adjust their behavior accordingly) and since negotiation and approval of commercial transactions is ordinarily an Executive power. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 189 (Pon. 2010).

When, if the section of Title 24 requiring congressional approval of access agreements for more than nine vessels is struck down, that section is easily severed from the rest of Title 24, which would function perfectly well without it; that is, it would function just as it already does for access agreements for nine or fewer vessels, then that section is not so vital to the whole Title 24 regulatory scheme that it cannot be severed from the rest of Title 24. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 189 (Pon. 2010).

If Congress feels that the current Title 24 statutory requirements for access agreements are too loose or are not in the nation's best interests and should be tightened, it can enact further and stricter requirements or it can provide for that review by creating a mechanism for further review in the executive branch, since Congress, through its investigatory powers, can always keep itself informed on the Executive's execution of the laws, and enact remedial legislation when it feels that the Executive needs further guidance in executing national policy that Congress has enacted. But Congress may not execute the laws itself. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 189 (Pon. 2010).

Since the Constitution specifically delegates to Congress the power to ratify treaties but does not grant Congress the power to approve or reject fishing access agreements, ruling unconstitutional the statute that requires congressional approval for fishing access agreements for more than nine vessels would not impair Congress's ability to ratify treaties and to advise and consent to presidential appointments. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 190 (Pon. 2010).

The court's conclusion that requiring Congress to approve or reject fishing access agreements is unconstitutional has no effect on Congress's constitutional treaty-ratification and advice and consent powers. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 190 (Pon. 2010).

A statute takes precedence over the procedural rules because while the chief justice has the power to promulgate procedural rules, the rules may be amended by statute, and since the chief justice does not have the power to amend a statute, when Congress has enacted a procedural rule, it is valid. People of Tomil ex rel. Mar v. M/V Mell Sentosa, 17 FSM R. 478, 479 (Yap 2011).

A statute that purports to allow Congress to step around the bill-making process and approve fishing access agreements by resolution, is surely unconstitutional because under the Constitution, Congress may make law only by statute, and may enact statutes only by bill. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 546 (App. 2011).

Congress's decision to approve or disapprove fishing access agreements is legislation that must be enacted by the bill-making process. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 547 (App. 2011).

Once a public law is enacted, the responsibility for the execution and implementation of the law rests with those who have a duty to execute and administer the law, and Senators can have no further role in its execution. The basic constitutional principle involved is that the execution and implementation of the laws is an executive rather than a legislative function. The Constitution affords the Congress great latitude in making policy decisions through the process of enacting legislation, but once Congress enacts legislation,

its role ends: Congress can thereafter formally affect the execution of its enactment only by enacting appropriate new legislation. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 548 (App. 2011).

If Congress is truly concerned by the amount of debt carried by proposed agents, it may be more specific by creating new minimum requirements for eligibility. But once Congress delegates power to the executive, it cannot have it both ways – it cannot then take back that power or modify the extent of that delegation without amending the statute through the bill-making process. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 550 (App. 2011).

Congress has the authority to amend or create procedural rules by statute (and when Congress enacts a procedural rule, it is valid) but the Chief Justice does not have the power to amend Congressionally-enacted statutes. Thus, if a statute applies and the statute and the admiralty rule conflict, the statute must prevail. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 539 (Yap 2013).

While Congress has the authority to amend rules by statute, the Chief Justice does not have the authority to amend statutes by creating rules. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 595 (Kos. 2013).

By its nature, a statute is a declaration of public policy. Congress determines and declares public policy by enacting statues. Esiel v. FSM Dep't of Fin., 19 FSM R. 590, 594 (App. 2014).

A majority of the Congress members constitutes a quorum for the transaction of business. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 642 (Pon. 2015).

The power to appoint and confirm members of the Social Security Board is vested in the national government's Executive and Legislative branches. To halt the Board's function when all vacancies are not filled would adversely affect the Social Security's function as a whole, and would be detrimental to the livelihood of social security benefit recipients. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 643 (Pon. 2015).

The FSM Supreme Court lacks the power to make persons granted a pardon of a felony conviction eligible for election to Congress because the Constitution reserves that power to Congress, and the court cannot exercise a power that only Congress has. FSM v. Innocenti, 20 FSM R. 293, 296 (Pon. 2016).

The formal involvement by Congress in the implementation and execution of the laws is unconstitutional. Linter v. FSM, 20 FSM R. 553, 561 (Pon. 2016).

The court does not have the constitutional power to make persons granted a pardon of a felony conviction eligible for election to Congress because the Constitution reserves that power to Congress, and the court cannot exercise a power that only Congress has. FSM v. Fritz, 20 FSM R. 596, 600 (Chk. 2016).

The Constitution permits Congress, and only Congress, to change, by statute, the constitutional provision disqualifying a person convicted of a felony from membership in Congress, and Congress so far has not seen fit to alter this qualification. FSM v. Fritz, 20 FSM R. 596, 600 (Chk. 2016).

The court should not and cannot make choices that the Constitution assigns to Congress. FSM v. Fritz, 20 FSM R. 596, 600 (Chk. 2016).

Congress itself always has the final say over the election and qualification of its members, and, unless Congress acts to change the qualifications, a person convicted of a felony and later pardoned is still ineligible for Congress membership. FSM v. Fritz, 20 FSM R. 596, 600-01 (Chk. 2016).

A legislature has furnished a nonpunitive legislative purpose for the statute's enactment when it has

relied on its responsibility to control the state's finances and expenditures and to align those expenditures with the state's available revenues. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 265 (Chk. 2019).

The Chuuk Legislature may amend any of its earlier statutes that created a governmental agency, in order to alter, or vary, or eliminate any of that agency's powers or duties. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 266 (Chk. 2019).

The power to amend statutes belongs exclusively to the legislature. Existing legislation is subject to amendment in any manner consistent with constitutional limitations. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 266 (Chk. 2019).

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

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

The power to legislate is the power to repeal. A legislature may not bind itself or a future legislature by enacting an irrepealable law. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 266 (Chk. 2019).

If a legislature has the power to abolish an agency, it certainly has the power to exercise a less drastic regulation of the agency's affairs by suspending it. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 267 (Chk. 2019).

A court cannot strike down or enjoin statutes merely because they might be unwise and some other course of action is better. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 267 (Chk. 2019).

Congress may discipline, suspend, or expel a member. Panuelo v. FSM, 22 FSM R. 498, 510-11 (Pon. 2020).

Whether Congress should discipline, or should have disciplined, a member is nonjusticiable – it is a political question that is beyond the court's power or authority. This is because when there is in the Constitution a textually demonstrable commitment of an issue to a coordinate branch of government, it is a nonjusticiable political question not to be decided by a court because of the separation of powers provided for in the Constitution, and the question of disciplining Congress members is textually and demonstrably committed to a coordinate branch of government – Congress itself. Panuelo v. FSM, 22 FSM R. 498, 511 (Pon. 2020).

Congress may discipline a member, and may suspend or expel a member. Since "may" is a term that usually denotes discretion, the Constitution thus gives Congress the discretion to decide when, or if, and under what circumstances, it will discipline a member. Panuelo v. FSM, 22 FSM R. 498, 511 (Pon. 2020).

The decision whether to discipline a member is a nonjusticiable political question left to Congress's discretion. Panuelo v. FSM, 22 FSM R. 498, 511 (Pon. 2020).

Lawmakers have wide latitude to declare an offense and to exclude elements of knowledge and diligence from its definition. FSM v. Kuo Rong 113, 22 FSM R. 515, 525 (App. 2020).

Congress may enact a strict liability statute that penalizes multiple violations without any finding of overt acts to justify continuing violations. FSM v. Kuo Rong 113, 22 FSM R. 515, 526 (App. 2020).

– Pohnpei

After the executive branch has declared a candidate to have won an election, that winner has the right to hold office, subject only to the legislative branch's power to judge the qualifications of its members. Daniel v. Moses, 3 FSM R. 1, 4 (Pon. S. Ct. Tr. 1985).

A characteristic feature, and one of the cardinal and fundamental principles of the Pohnpei State Constitutional system, is that the governmental powers are divided among the three departments of this government, the legislative, executive, and judicial, and that each of these is separate from the others. People of Kapingamarangi v. Pohnpei Legislature, 3 FSM R. 5, 9 (Pon. S. Ct. Tr. 1985).

Pohnpei Utility Corporation is not part of the executive branch of the Pohnpei state government or part of either of the other two branches. It is an independent agency not subject to or under any of the three branches of government. Perman v. Ehsa, 18 FSM R. 432, 440 (Pon. 2012).

– Pohnpei – Executive Powers

When the Pohnpei Legislature, exercising its power under Pohnpei Constitution Article 13, § 9(3), revoked Emergency Executive Order 01-12 in its entirety and retroactive to September 3, 2012, because the situation stated in the Emergency Executive Order did not rise to the level of an emergency as defined in the Pohnpei Constitution Article 13, § 9(1), Emergency Executive Order 01-12 and all later acts done pursuant to it became nullities. Perman v. Ehsa, 18 FSM R. 432, 436 (Pon. 2012).

Only the PUC Board of Directors can terminate PUC's general manager. The Governor has no such power under any circumstance. If the PUC Board lacks a quorum, the Governor's power extends only to nominating new Board members who, if confirmed, would allow the Board to have a quorum and thus to transact business. Perman v. Ehsa, 18 FSM R. 432, 438 (Pon. 2012).

The Pohnpei Governor has neither the power nor the authority to exercise any of the powers vested exclusively in the PUC Board. Perman v. Ehsa, 18 FSM R. 432, 438 (Pon. 2012).

– Pohnpei – Judicial Powers

Under the system of constitutional government of the State of Pohnpei, among the most important functions entrusted to the judiciary are the duty to interpret the State's Constitution and the closely connected duty to determine whether or not laws and acts of the state legislature are contrary to the State Constitution. People of Kapingamarangi v. Pohnpei Legislature, 3 FSM R. 5, 10 (Pon. S. Ct. Tr. 1985).

When called on to review and control the acts of an officer or a coordinate branch of the government, the court should proceed with extreme caution, and the right to exercise the power must be manifestly clear. People of Kapingamarangi v. Pohnpei Legislature, 3 FSM R. 5, 10 (Pon. S. Ct. Tr. 1985).

It is within the special province and duty of the courts, and the courts alone, to say what the law is and to determine whether a statute or ordinance is constitutional. People of Kapingamarangi v. Pohnpei Legislature, 3 FSM R. 5, 8-9 (Pon. S. Ct. Tr. 1985).

The Pohnpei Constitution provides that single appellate justice orders are subject to review by a full appellate panel of justices hearing the appeal. This constitutional provision is self-executing. Damarlane v. Pohnpei, 9 FSM R. 114, 118 (App. 1999).

A single justice order in the Pohnpei Supreme Court appellate division is not a final decision of the Pohnpei Supreme Court because it is subject to review by a full appellate panel of the Pohnpei Supreme Court. Damarlane v. Pohnpei, 9 FSM R. 114, 118 (App. 1999).

A motion to reconsider a single justice appellate order in the Pohnpei Supreme Court is an application for review by a full appellate panel. Damarlane v. Pohnpei, 9 FSM R. 114, 118 (App. 1999).

SETTLEMENT

Customary settlements do not require court dismissal of criminal proceedings if no exceptional circumstances are shown. FSM v. Mudong, 1 FSM R. 135, 140 (Pon. 1982).

In an action brought to enforce an agreement among three parties to "meet and divide up" land which is the subject of an ownership dispute, the court will enforce the agreement and, where there is no evidence to establish that any party is entitled to a larger share than the others, the court will presume that they intended to divide the land equally. Tauleng v. Palik, 3 FSM R. 434, 436 (Kos. S. Ct. Tr. 1988).

Conflicting affidavits show that the circumstances surrounding the execution of a document allegedly reflecting plaintiffs acceptance of a settlement and her release of defendant and others from liability for the death of her late husband are not sufficiently clear to permit summary judgment either as to the efficacy of that document or as to the application to the plaintiff's claims of the statute of limitations found at 6 F.S.M.C. 503(2). Sarapio v. Maeda Road Constr. Co., 3 FSM R. 463, 464 (Pon. 1988).

Kosrae Evidence Rule 408, which renders evidence of settlement negotiations inadmissible in the trial, is based upon the court's commitment to encourage out of court settlements and includes offers made in the early stages of a dispute. Nena v. Kosrae, 3 FSM R. 502, 505-06 (Kos. S. Ct. Tr. 1988).

Pursuant to Kosrae Evidence Rule 408, all statements, including factual assertions, made during the settlement process are protected and inadmissible in court to prove liability or invalidity of a claim. Nena v. Kosrae, 3 FSM R. 502, 506 (Kos. S. Ct. Tr. 1988).

The discretion vested in the office of the Attorney General to settle a civil action brought against Truk State is provided for by law, which does not require consent of the Governor before the Attorney General may settle a civil suit against Truk State. Truk v. Robi, 3 FSM R. 556, 561-63 (Truk S. Ct. App. 1988).

The discretion vested in the office of the Attorney General to settle a civil action brought against Truk State is provided for by law, which does not require consent of the Governor before the Attorney General may settle a civil suit against Truk State. Truk v. Robi, 3 FSM R. 556, 561-63 (Truk S. Ct. App. 1988).

A valid compromise and settlement is as final, conclusive and binding upon the parties and upon those who knowingly accept its benefit as if its terms were embodied in a judgment and, regardless of what the actual merits of the antecedent claim may have been, they will not afterward be inquired into and examined. Truk v. Robi, 3 FSM R. 556, 564 (Truk S. Ct. App. 1988).

Judgment entered pursuant to compromise and settlement is treated as a judgment on the merits barring any other action for the same cause. Truk v. Robi, 3 FSM R. 556, 564 (Truk S. Ct. App. 1988).

Since the judicial system and customary settlement in Truk are fundamentally different and serve different goals, the primary concern of customary settlement being community harmony rather than compensation for loss, the use of one should not prevent the use of the other. Suka v. Truk, 4 FSM R. 123, 128 (Truk S. Ct. Tr. 1989).

Offers or acceptances of customary settlement should neither be used in court to prove liability on the part of the wrongdoer, nor be deemed the same as a legal release on the part of the plaintiff. Suka v.

Truk, 4 FSM R. 123, 129 (Truk S. Ct. Tr. 1989).

To the extent that customary settlements are given any binding effect at all, they should be only binding as to those persons that are part of custom; state agencies and non-Trukese persons are not part of that system. Suka v. Truk, 4 FSM R. 123, 129 (Truk S. Ct. Tr. 1989).

The parties, not their attorneys, have ultimate responsibility to determine the purposes to be served by legal representation. Thus, clients always have the right, if acting in good faith, to agree to settle their own case, with or without the consultation or approval of counsel, even when their attorneys have failed to settle. Iriarte v. Micronesian Developers, Inc., 6 FSM R. 332, 334 & n.1 (Pon. 1994).

Counsel's own dissatisfaction with the settlement agreement reached by his clients without counsel's consultation or approval does not take precedence over the clients' rights to settle their claims themselves. Iriarte v. Micronesian Developers, Inc., 6 FSM R. 332, 334-35 (Pon. 1994).

It is settled doctrine that the power vested in the office of the Attorney General empowers settlement of litigation in which the Attorney General has supervision and control. Ham v. Chuuk, 8 FSM R. 300i, 300k (Chk. S. Ct. App. 1998).

The court will not enforce a written settlement agreement as a verbal contract against a defendant who has not signed it when because of conflicting affidavits the court finds that the settlement terms were not sufficiently definite to constitute an enforceable contract and when there are questions as to whether the settlement was freely and fairly negotiated by the parties thereto. Bank of Hawaii v. Helgenberger, 9 FSM R. 260, 262 (Pon. 1999).

Default judgments and stipulated or agreed judgments against the State of Chuuk are to be subjected to close scrutiny by the court. Kama v. Chuuk, 9 FSM R. 496, 499 (Chk. S. Ct. Tr. 1999).

Settlement negotiations are not adequate grounds for dismissal of a matter. Generally when parties do settle a matter, they jointly request the court for dismissal. Talley v. Talley, 10 FSM R. 570, 573 (Kos. S. Ct. Tr. 2002).

When the defendants did not sign the settlement agreement between the other parties, they are not bound by it or by the court's confirmation of it because the defendants were not parties to the settlement agreement. A settlement agreement will not bind those not a party to it. Stephen v. Chuuk, 11 FSM R. 36, 42 (Chk. S. Ct. Tr. 2002).

When an order confirming a settlement agreement did not adjudicate the rights and liabilities of all parties, but only of the tideland claimants against each other, it may be revised because in the absence of a properly entered partial final judgment, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not terminate the action as to any of the claims or parties, and is subject to revision at any time before the entry of judgment. Stephen v. Chuuk, 11 FSM R. 36, 43 (Chk. S. Ct. Tr. 2002).

The grant or denial of a motion to set aside a settlement agreement lies within the sound discretion of the court and will not be disturbed on appeal except for a clear abuse of discretion. Stephen v. Chuuk, 11 FSM R. 36, 43 (Chk. S. Ct. Tr. 2002).

As a contract, a valid settlement agreement requires offer and acceptance, consideration, and parties who have the capacity and authority to settle. Stephen v. Chuuk, 11 FSM R. 36, 43 (Chk. S. Ct. Tr. 2002).

In order for a settlement to be fully binding, a person signing a settlement agreement must have the capacity and the authority to do so. Stephen v. Chuuk, 11 FSM R. 36, 43 (Chk. S. Ct. Tr. 2002).

When affidavits show that the one person who purportedly signed the settlement on the affiants' behalf

did not have the authority to do so and there is no admissible evidence to the contrary, only the unsupported assertion of counsel that the signer said she had the authority to sign for her older sisters, and when there is no basis to conclude that they ratified the settlement or that they should now be estopped from claiming that they are not bound by it, the movants have shown good cause that the settlement agreement must be held invalid. Stephen v. Chuuk, 11 FSM R. 36, 43 (Chk. S. Ct. Tr. 2002).

Even if there was no authority to bind a party to a compromise, he may nevertheless be bound on the basis of ratification or estoppel if he retains benefits derived from the compromise. Stephen v. Chuuk, 11 FSM R. 36, 43-44 (Chk. S. Ct. Tr. 2002).

The usual effect of the invalidation of a settlement is to restore the parties to where they were before the defective settlement or compromise was made, or at least to prevent the defective settlement from being enforced. Stephen v. Chuuk, 11 FSM R. 36, 44 (Chk. S. Ct. Tr. 2002).

Trial judges are expected to suggest the desirability of possible settlement. That is a normal part of their job. Bualuay v. Rano, 11 FSM R. 139, 148 (App. 2002).

The filing of the appeal over land was not a breach of the defendant's condition and was not a breach of a customary settlement when the appeal was filed before the customary settlement and condition were made; and when the appeal was not decided in the defendant's favor, the defendant's condition regarding his promised grant of a portion of land was satisfied and the customary settlement and the defendant's promise were therefore enforceable. Robert v. Semuda, 11 FSM R. 165, 168 (Kos. S. Ct. Tr. 2002).

When the parties settled rather than go to trial on damages a contract was formed between the parties – the defendant offered specific performance to fill land and in exchange, the plaintiff accepted the offer and agreed to not go to trial on the issue of damages. There was thus an offer and acceptance, consideration, and mutual assent by both parties. James v. Lelu Town, 11 FSM R. 337, 339 (Kos. S. Ct. Tr. 2003).

When a settlement contract for landfill of Muraka was formed between the parties that was not dependent on the case's active status, the contract is still enforceable because the case's status (pending or dismissed) was not part of the agreement. Therefore, the defendant is still liable to the plaintiff because the case's dismissal did not affect the parties' contract or the court's order when the court's order was based upon the parties' agreement and not upon any trial on damages. James v. Lelu Town, 11 FSM R. 337, 339-40 (Kos. S. Ct. Tr. 2003).

While the prosecution has broad discretion in determining whether to initiate litigation, once that litigation is instituted in court, the court also has responsibility for assuring that actions thereafter taken are in the public interest; therefore criminal litigation can be dismissed only by obtaining leave of the court. In a fishing case where criminal and civil cases are filed together, and the dismissal of the criminal proceeding(s) is obviously "integral" to the settlement agreement for which court approval is sought, the same policy considerations apply to the settlement of the civil proceeding(s) as apply to the criminal dismissal. FSM v. Ching Feng 767, 12 FSM R. 498, 502, 504 (Pon. 2004).

When there is no authorization for compound interest in the settlement agreement and when it is apparent that the parties, in settling their prior lawsuit, intended to apply the legal or judgment rate of interest to any unpaid settlement balances, the plaintiff's damages must therefore be calculated on a simple interest basis. Lee v. Lee, 13 FSM R. 68, 71 (Chk. 2004).

A plaintiff's claim based upon defendant's breach of the settlement agreement reached in an earlier court case, is not based upon the merits of the claim presented in that case because that case's merits were resolved by settlement between the parties, and based upon that settlement, that case was dismissed. George v. Phillip, 13 FSM R. 520, 521 (Kos. S. Ct. Tr. 2005).

When a settlement agreement was reached by the parties in a case, it represents a new agreement between the parties. The failure to comply with the settlement agreement is a new claim, separate and independent of the original claim. Settlement agreements are contracts which are enforceable by a court. Therefore, the doctrine of res judicata does not apply to a settlement agreement and accordingly a motion for dismissal must be denied. George v. Phillip, 13 FSM R. 520, 521 (Kos. S. Ct. Tr. 2005).

When the parties, by their settlement agreement, have liquidated all damages and compensation claims between them including the respondent's lost profits claim, the issue of whether the respondent in an eminent domain action can obtain damages for lost profits is moot. In re Lot No. 029-A-47, 18 FSM R. 456, 460 (Chk. S. Ct. Tr. 2012).

While the court encourages settlement whenever possible and is always willing, if necessary, to allow time for settlement to occur, a request by only one party that is too amorphous to determine even whether a settlement attempt can or will be made must be denied when insufficient grounds have been shown to suspend the litigation in a vague hope that settlement may occur. The parties are still encouraged to pursue all settlement possibilities. Eot Municipality v. Elimo, 19 FSM R. 290, 293 (Chk. 2014).

In order for a settlement agreement to be binding, it must be definite and certain as to the terms and requirements, as well as identify the subject matter and spell out each party's essential commitments. Pacific Int'l, Inc. v. FSM, 20 FSM R. 220, 223 (Pon. 2015).

A court should endeavor to determine the meaning of a contractor's words, rather than rely on what a signatory later says was intended. Pacific Int'l, Inc. v. FSM, 20 FSM R. 220, 223-24 (Pon. 2015).

When the parties to a proposed contract have agreed that the contract is not to be effective or binding until certain conditions are performed or occur, no binding contract will arise until the conditions specified have occurred or been performed. Pacific Int'l, Inc. v. FSM, 20 FSM R. 220, 224 (Pon. 2015).

A settlement agreement that was subject to the President's approval and Congress's appropriation of funds, was not enforceable when the President rejected it. Pacific Int'l, Inc. v. FSM, 20 FSM R. 220, 224 (Pon. 2015).

Since settlement through a more informal alternative dispute resolution than arbitration would be most consistent with Micronesian custom and practice and likely to lead to a lasting solution, the court will order that the parties attempt that before resorting to the mandatory arbitration. Pacific Int'l, Inc. v. FSM, 21 FSM R. 662, 664 (Pon. 2018).

Rule 68 provides that the defendant may serve an offer to allow judgment to be taken against the defendant for the money with costs then accrued. If within 10 days after the offer's service, the plaintiff serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof. If the plaintiff rejects this offer, and the judgment finally obtained by plaintiff is not more favorable than the offer, the plaintiff must pay the costs incurred after the offer was made. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 434, 436 (Chk. S. Ct. Tr. 2019).

When the defendant made a Rule 68 offer of judgment for $1,000 and when, after trial, the plaintiff was awarded nothing, the plaintiff is liable for the defendant's costs after the offer date. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 434, 436 (Chk. S. Ct. Tr. 2019).

A Rule 68 settlement offer may only be filed if accepted by the other party. When the plaintiff rejects an offer, there is no need to file the rejected offer of judgment with the court before the court issues a judgment in the matter. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 434, 436 (Chk. S. Ct. Tr. 2019).

Rule 68 exists to encourage compromise when a case lacks merit. When a plaintiff fails to see the lack of merit within his case, Rule 68 sanctions such failure by awarding costs to the party that made the

settlement offer. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 434, 437 (Chk. S. Ct. Tr. 2019).

SIGNATURES

"Forgery" is a signature of a person that is made without the person's consent and without the person otherwise authorizing it. Signing another's signature with authorization is not forgery. Individual Assurance Co. v. Iriarte, 16 FSM Intrm. 423, 440 (Pon. 2009).

When the appellants do not contend that the checks are not authentic but contend that the signature endorsements are all forgeries, and when the trial court found as fact that, except for one or two or a few that she had signed herself, Lilly Iriarte had authorized Santos to sign her name on the premium checks, the appellate court cannot conclude that the finding was clearly erroneous since substantial evidence in the record supports that finding. Since a forgery is a signature of a person that is made without the person's consent and without the person otherwise authorizing it, Lilly Iriarte's signatures are not forgeries even if made by Santos and having the original checks could not have altered the finding that Lilly Iriarte were authorized. Iriarte v. Individual Assurance Co., 18 FSM Intrm. 340, 352 (App. 2012).

A signature affixed by a judge by rubber stamp is valid because a signature is a person's name or mark written by that person or at the person's direction, or any name, mark, or writing used with the intent of authenticating a document – also termed a legal signature. George v. Palsis, 20 FSM R. 157, 159 (Kos. 2015).

In the absence of any provision in the FSM Code, Rules of Civil Procedure, or General Court Order, mandating a handwritten signature on an order issued by a justice, an argument that a judge's signature is deficient because it appears to be "rubber-stamped," is devoid of merit. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 228 (Chk. 2015).

In the absence of any provision in the FSM Code, Civil Procedure Rules, or General Court Order, mandating a handwritten signature on an order issued by a justice, arguments that a judge's signature is deficient because it is "rubber-stamped," are devoid of merit. FSM Dev. Bank v. Ehsa, 21 FSM R. 148, 149 (Pon. 2017).

A signature is a person's name or mark written by that person or at the person's direction, or any name, mark, or writing used with the intent of authenticating a document – also termed legal signature. FSM Dev. Bank v. Ehsa, 21 FSM R. 148, 149 (Pon. 2017).

A judge's rubber-stamped signatures are marks used to authenticate the judge's written orders, and are thus valid, original signatures. Contentions that they are fake, or invalid, or not legal signatures, are without merit. FSM Dev. Bank v. Ehsa, 21 FSM R. 148, 150 (Pon. 2017).

SOCIAL SECURITY

The FSM social security program's purpose is to provide a means whereby employees may be ensured a measure of financial security in their old age and be given an opportunity for leisure without hardship and complete loss of income, and, further, to provide survivors' insurance for wage earners and their dependents. 53 F.S.M.C. 602. The program is funded by joint contributions from employers and employees. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 137, 141 (Pon. 1995).

The FSM Social Security Administration has the power to sue and be sued, and since its power to hold hearings is discretionary it may file suit without having held a hearing. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (I), 7 FSM R. 280, 282-83 (Yap 1995).

Social Security's lofty public purpose is to provide for retirees, their dependents, and their surviving spouses and dependants. In re Engichy, 12 FSM R. 58, 65 (Chk. 2003).

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

While section 204 of Title 53 provides that the Social Security Board shall receive and maintain files and records of all employers and all employees subject to this Title, no specific Social Security rule or regulation requires that the Board's final decision take the form of an "order," or that it be "entered" in some specifically defined way. Andrew v. FSM Social Sec. Admin., 12 FSM R. 101, 103 (Kos. 2003).

Section 203(2) of Title 53 provides that the Social Security Board may hold hearings or make decisions upon hearings delegated to others for the purpose of determining any question involving any right, benefit, or obligations of any person subject to Title 53. Thus Social Security has in part a quasi-judicial function. Andrew v. FSM Social Sec. Admin., 12 FSM R. 101, 103 (Kos. 2003).

Since "enter" means to place anything before a court, or upon or among the records, in a formal and regular manner, and usually in writing, and since common sense must play a part in the way that an agency's statutorily mandated procedures are interpreted, a letter from the Social Security Board stating that it is a final decision by the Board, and that the petitioner has the option of appealing to the FSM Supreme Court, is a final, entered order within the meaning of 53 F.S.M.C. 208. Andrew v. FSM Social Sec. Admin., 12 FSM R. 101, 103-04 (Kos. 2003).

Since the Social Security Board has the power to delegate duties and responsibilities to such employees as it deems feasible and desirable to carry out the provisions of Title 53, a letter that begins with "[o]n behalf of the FSMSSA Board of Trustees . . . ." and continues with "the Board has denied your client's appeal," and which is signed by the Administrator, is properly signed. Andrew v. FSM Social Sec. Admin., 12 FSM R. 101, 104 (Kos. 2003).

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

An appeal from a Social Security Board decision will be determined on the record below and not on a trial de novo because, under 53 F.S.M.C. 708, the Board must certify and file in court a copy of the record. The Board's findings as to the facts, if supported by competent, material, and substantial evidence, will be conclusive. If either party applies for leave to adduce additional material evidence, and shows to the court's satisfaction that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives and that such evidence is competent, material, and substantial, the court may order the Board to take the additional evidence to be adduced upon the hearing in such manner and upon such conditions as the court considers proper. Clarence v. FSM Social Sec. Admin., 12 FSM R. 635, 636 (Kos. 2004).

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

Although preserving the integrity of the FSM social security system is a matter of concern to all FSM citizens, when Social Security has offered no argument why the court should depart from the general rule that municipal entities are immune from garnishment, a motion for issuance of a writ of garnishment

directed toward the assets of a municipality will be denied. FSM Social Sec. Admin. v. Lelu Town, 13 FSM R. 60, 62 (Kos. 2004).

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

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

The existence of employees without social security numbers cannot relieve an employer of liability for social security contributions for those employees. Ensuring that all employees have, or acquire, properly issued social security numbers, is the employer's responsibility. An employer cannot avoid liability for social security contributions by not reporting an employee's social security number or by employing someone without a social security number. FSM Social Sec. Admin. v. Fefan Municipality, 14 FSM R. 544, 547 (Chk. 2007).

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

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

A claims denial made before the due date to submit supporting documents is arbitrary and capricious and will be vacated by the court and remanded for further proceedings. Alokoa v. FSM Social Sec. Admin., 16 FSM R. 271, 277 (Kos. 2009).

The timeframe in which to appeal a decision of the FSMSSA Board is governed by 53 F.S.M.C. 708, which provides that any person aggrieved by a final order of the Board may obtain a review of the order in the FSM Supreme Court trial division by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. Palikkun v. FSM Social Sec. Admin., 19 FSM R. 314, 316 (Kos. 2014).

When the Social Security Board's decision was entered on August 27, 2013, and was received by the plaintiff on September 17, 2013, the 60-day deadline would fall on October 26, 2013, which would have given the plaintiff 39 days to file her claim after service of the Board's decision. She thus had adequate time to file her claim, and when she failed to file her claim in time pursuant to 53 F.S.M.C. 708, the court is unwilling to extend the timeframe to file a claim when the statute's language is clear, and the complaint will dismissed based on its filing being untimely under 53 F.S.M.C. 708. Palikkun v. FSM Social Sec. Admin.,

19 FSM R. 314, 317 (Kos. 2014).

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

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

The FSM social security program's purpose is to provide a means whereby employees may be ensured a measure of financial security in their old age and be given an opportunity for leisure without hardship and complete loss of income, and, further, to provide survivors' insurance for wage earners and their dependents. It is funded by joint contributions from employers and employees. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 643 (Pon. 2015).

Social Security's public purpose is to provide for retirees, their dependents, and their surviving spouses and dependents. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 643 (Pon. 2015).

The power to appoint and confirm members of the Social Security Board is vested in the national government's Executive and Legislative branches. To halt the Board's function when all vacancies are not filled would adversely affect the Social Security's function as a whole, and would be detrimental to the livelihood of social security benefit recipients. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 643 (Pon. 2015).

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

Under 53 F.S.M.C. 708, an appeal to the FSM Supreme Court trial division from a Social Security Board final order is on the record except when a person aggrieved by the order makes a showing that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives. In that event, the party may apply to the court for leave to adduce additional material evidence. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 199 (Pon. 2015).

When no showing is made of a reasonable failure to elicit evidence before the Social Security Board, the question that remains is whether the Board's final order rests on findings of fact that are supported by competent, material, and substantial evidence. If the court so concludes, then the findings of fact are conclusive. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 199 (Pon. 2015).

The trial court's disposition of a Social Security appeal on the record is final, subject to review by the appellate division. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 199 (Pon. 2015).

When the court reviews appeals from Social Security decisions, the Social Security Board's findings as to the facts are conclusive if supported by competent, material, and substantial evidence. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 200 (Pon. 2015).

Under 53 F.S.M.C. 708, an appeal to the FSM Supreme Court trial division from a Social Security Board final order is on the record except when the person aggrieved by the order makes a showing that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives. In that event, the party may apply to the court for leave to adduce additional material evidence. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 271 (Pon. 2015).

When no showing is made of a reasonable failure to elicit evidence before the Social Security Board, the question that remains is whether the Board's final order rests on findings of fact that are supported by

competent, material, and substantial evidence, and if the court so concludes, then the findings are conclusive. The trial court's disposition of the appeal on the record is final, subject to review by the appellate division. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 271 (Pon. 2015).

On an appeal from an FSM administrative agency, the court, under the Administrative Procedures Act, must hold unlawful and set aside agency actions and decisions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or contrary to constitutional right, power, privilege, or immunity; or without substantial compliance with the procedures required by law. These APA provisions apply to all agency action unless Congress by law provides otherwise and they apply to the Social Security Administration appeals because no part of the Social Security Act provides otherwise. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 271 (Pon. 2015).

When the court reviews appeals from Social Security decisions, the Social Security Board's findings as to the facts are conclusive if supported by competent, material, and substantial evidence. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 272 (Pon. 2015).

Social Security regulations allow wage earners to adopt after their 55th birthday under extremely limited circumstances. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 365 n.1 (Pon. 2016).

Any person aggrieved by a final order of the Social Security Board may obtain a review of the order in the FSM Supreme Court trial division by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition must be served on the Board, by service on its secretary or other designated agent, and thereupon the Board must certify and file in court a copy of the record upon which the order was entered. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 366 (Pon. 2016).

The Social Security Board's findings as to the facts, if supported by competent, material, and substantial evidence, is conclusive. If either party applies to the court for leave to adduce additional material evidence and shows to the court's satisfaction that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives, and that such evidence is competent, material, and substantial, the court may order the Board to take additional evidence to be adduced in the hearing in such manner and upon such conditions as the court considers proper. The Board may modify its findings and order after receipt of further evidence together with any modified or new findings or order. The court's judgment on the record shall be final, subject to review by the Supreme Court appellate division on any aggrieved party's petition, including the Board's, within 60 days from judgment. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 366, 372 (Pon. 2016).

On an appeal from an FSM administrative agency, the court, under the Administrative Procedures Act, must hold unlawful and set aside agency actions and decisions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or contrary to constitutional right, power, privilege, or immunity; or without substantial compliance with the procedures required by law. These Administrative Procedures Act provisions apply to all agency action unless Congress by law provides otherwise and it applies to Social Security Administration appeals because no part of the Social Security Act provides otherwise. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 366 (Pon. 2016).

In a matter of first impression, the court may look to case law of other jurisdictions, particularly the United States, for comparison and guidance. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 367 (Pon. 2016).

Regulations may be promulgated to assure efficiency, accuracy, and proficiency in carrying out the objectives of Title 53. These regulations also provide restrictions to prevent abuse and to regulate violations in order to protect the Social Security system. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 368 (Pon. 2016).

FSM Social Security's statutory scheme is not unconstitutional. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 369 (Pon. 2016).

Parties who appeal decisions of the Social Security Board may enter additional evidence for the court's consideration. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 370 (Pon. 2016).

The Social Security Administrator is responsible for the general administration of the Social Security System, and has a wide range of discretion as part of his or her administrative powers. Decisions made pursuant to the Administrator's discretionary power are also subject to the Social Security Board's review. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 371-72 (Pon. 2016).

Any person aggrieved by a final order of the Social Security Board may obtain a review of the order in the FSM Supreme Court trial division by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 478 (Pon. 2016).

On an appeal from an FSM administrative agency, the court, under the Administrative Procedures Act, must hold unlawful and set aside agency actions and decisions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or contrary to constitutional right, power, privilege, or immunity; or without substantial compliance with the procedures required by law. This applies to all agency action unless Congress by law provides otherwise and it applies to the Social Security Administration appeals since no part of the Social Security Act provides otherwise. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 478 (Pon. 2016).

Social Security's statutory scheme is not unconstitutional, and the exercise of its investigatory functions, which would include the request for evidence of dependency in adoption matters, is lawful as long as it is authorized by law. Thus, Social Security regulations are not *ultra vires*. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 479 (Pon. 2016).

Parties who appeal Social Security Board decisions are allowed to enter additional evidence for the court's consideration. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 480 (Pon. 2016).

The Social Security Administrator is given a wide range of discretion as part of his or her administrative powers. Decisions made under the Administrator's discretionary power are also subject to the review by the Board, as well as the FSM Supreme Court. In addition to this discretionary authority, the regulations detail different criteria that the Administrator may follow in forming a decision. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 481 (Pon. 2016).

An appeal from a Social Security Board decision will be determined based on the administrative hearing record, other documents as submitted by the parties, and the oral arguments as presented before the court and not on a trial de novo. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 482 (Pon. 2016).

Uunder 53 F.S.M.C. 708, the court's review of Social Security decisions is limited to issues determined on the record at the administrative level. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 482 (Pon. 2016).

Since, by statute, the findings of the Social Security Board as to the facts, if supported by competent, material, and substantial evidence, are conclusive, the statute thus requires that the court use the "substantial evidence" or "reasonableness" standard of review. Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 628 (Yap 2016).

The Administrative Procedures Act provisions apply to all agency action unless Congress by law provides otherwise, and it applies to the Social Security Administration appeals because no part of the Social Security Act provides otherwise. Seiola v. FSM Social Sec. Admin., 21 FSM R. 205, 209 (Pon.

2017).

Summary judgment will be denied when there is a genuine issue of material fact to be determined through trial on the issue of light work available to the disability applicant, and because of the conflicting findings in the reports, abstracts, and testimonies on the applicant's disability. Seiola v. FSM Social Sec. Admin., 21 FSM R. 205, 213 (Pon. 2017).

Anyone aggrieved by a Social Security Board final order may obtain a review of the order in the FSM Supreme Court trial division by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. Celestine v. FSM Social Sec. Admin., 21 FSM R. 263, 266 (Pon. 2017).

Under the Administrative Procedures Act, the court must, on an appeal from an FSM administrative agency, hold unlawful and set aside agency actions and decisions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or contrary to constitutional right, power, privilege, or immunity; or without substantial compliance with the procedures required by law. These provisions apply to all agency action unless Congress by law provides otherwise, and it applies to Social Security Administration appeals because the Social Security Act does not provide otherwise. Celestine v. FSM Social Sec. Admin., 21 FSM R. 263, 266 (Pon. 2017).

Since the Administrative Procedures Act applies to all agency action unless Congress by law provides otherwise, it applies to the Social Security Administration because no part of the Social Security Act provides otherwise. Eliam v. FSM Social Sec. Admin., 21 FSM R. 412, 415 (App. 2018).

Statutory authority for judicial review of a Social Security Board decision provides that the Board's findings as to the facts, if supported by competent, material and substantial evidence, are conclusive. Eliam v. FSM Social Sec. Admin., 21 FSM R. 412, 415-16 (App. 2018).

Generally there are three possible standards of review for administrative decisions: 1) arbitrary and capricious or abuse of discretion; 2) reasonableness or substantial evidence; and 3) de novo or agreement review. Judicial review of social security law cases, because the statute expressly uses the words "reasonableness" and "substantial," uses the intermediate standard. Eliam v. FSM Social Sec. Admin., 21 FSM R. 412, 416 (App. 2018).

Since 53 F.S.M.C. 703 expressly grants Social Security rule-making power, judicial review is limited to determining whether the promulgated regulations exceed the statutory authority, which is an issue of law reviewed de novo on appeal. Eliam v. FSM Social Sec. Admin., 21 FSM R. 412, 416 (App. 2018).

53 F.S.M.C. 703 delegates to the Social Security Administration authority to promulgate regulations and provides that the Board may, pursuant to the Administrative Procedures Act, adopt, amend, or rescind regulations for the administration of the Social Security law. Eliam v. FSM Social Sec. Admin., 21 FSM R. 412, 416 (App. 2018).

The FSM Social Security Act is patterned after United States statutes, and it is well settled rule of statutory construction that a statute adopted from another jurisdiction is presumed to have been adopted as construed by that jurisdiction's courts. Eliam v. FSM Social Sec. Admin., 21 FSM R. 412, 417 (App. 2018).

An appeal under 53 F.S.M.C. 708 to the FSM Supreme Court trial division from a Social Security Board final order is on the record except if the aggrieved person shows that there were reasonable grounds for failure to adduce the evidence in the Board hearing. When no showing is made of a reasonable failure to elicit evidence, the question that remains is whether the Board's final order rests on findings of fact that are supported by competent, material, and substantial evidence. If so, then the findings of fact are conclusive, and the trial court's disposition of the appeal on the record is final, subject to review by the Supreme Court appellate division. Robert v. FSM Social Sec. Admin., 21 FSM R. 490, 492 (Kos. 2018).

On an appeal from an FSM administrative agency, the court, under the Administrative Procedures Act, must hold unlawful and set aside agency actions and decisions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or contrary to constitutional right, power, privilege, or immunity; or without substantial compliance with the procedures required by law. This applies to all agency action unless Congress by law provides otherwise, and it applies to the Social Security Administration appeals because the Social Security Act does not provide otherwise. Robert v. FSM Social Sec. Admin., 21 FSM R. 490, 492-93 (Kos. 2018).

Businesses are required by law to maintain both gross revenue and wage and salary information records. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 182 (Pon. 2019).

Although the Social Security Administrator is required to receive and maintain files and records of all employers and all employees, such records shall not be disclosed to any person except as may be required to administer the FSM Social Security laws. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 183 (Pon. 2019).

– Claims and Benefits

Social Security benefits are not subject to execution, attachment, or garnishment and are not assignable except as provided in the FSM Social Security Act. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 377 (App. 2003).

When the judgment-debtor's Social Security retirement benefits are received by him and have not been subjected to any sort of direct levy, allotment or garnishment or any execution, attachment, or assignment of these benefits and when these benefits may be commingled with any other income the debtor may have available to him, and from these funds he meets his living expenses and his other obligations, the trial court's order in aid of judgment does not require that the payment come from any particular source of income. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 379 (App. 2003).

When 53 F.S.M.C. 604 does not contain the broader language of, "or other legal processes," it cannot be interpreted in a manner identical to the U.S. statute that does. The FSM provision is more restrictive than the U.S. provision, as it protects Social Security benefits only from execution, attachment, garnishment, and assignment and not from other legal processes. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 379 (App. 2003).

There is no violation of the 53 F.S.M.C. 604 susceptibility of benefits rule, when there has been no execution, attachment, garnishment, or assignment of the judgment-debtor's Social Security retirement benefits and when the trial court's order in aid of judgment specifically found that the judgment-debtor would have sufficient funds for his and his dependents' basic support. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 380 (App. 2003).

Social security benefits are not subject to probate, as the Social Security Board, not the court, has initial jurisdiction over applications for social security benefits, whether by a surviving spouse or surviving children. The procedure for such applications is set forth in the Social Security Act. In re Estate of Manas, 15 FSM R. 609, 611 (Chk. S. Ct. Tr. 2008).

Actual dependency upon the adoptive parent is a prerequisite for the adopted minor to receive surviving child Social Security benefits after the adoptive parent's death. Alokoa v. FSM Social Sec. Admin., 16 FSM R. 271, 276 n.2 (Kos. 2009).

Social Security does not have to wait 2½ years for claimants to supply supporting documentation for a benefits claim before it may rule on an application. Nor is Social Security to be at the mercy of claimants who promise supporting documents at some indefinite future date but fail to provide them with reasonable promptness. Alokoa v. FSM Social Sec. Admin., 16 FSM R. 271, 277 (Kos. 2009).

If it is determined that the father and mother lived in the same household as the grandfather and grandmother and that the father's income was greater than the grandfather's and the father contributed to the support of the household, Social Security would be completely justified in finding that there was no dependency by the grandsons upon the grandfather. Alokoa v. FSM Social Sec. Admin., 16 FSM R. 271, 277 (Kos. 2009).

The FSM social security non-assignment of benefits statute, 53 F.S.M.C. 604, does not bar legal process such as orders in aid of judgment from reaching FSM social security benefits. Dison v. Bank of Hawaii, 19 FSM R. 157, 161 (App. 2013).

If the trial court had taken the large step of making U.S. military retirement and U.S. social security benefits paid to FSM citizens in the FSM exempt from all legal process, that would be a judicial encroachment on Congress's power to enact laws and set public policy because those recipients would then (along with U.S. veterans) have greater judicial protection than Congress has legislated for persons (regardless of citizenship) who receive FSM social security benefits. Whether foreign retirement benefits should carry equal or greater protection from legal process than FSM social security benefits is a public policy decision to be made by the people's elected representatives in Congress, not by the unelected court. Dison v. Bank of Hawaii, 19 FSM R. 157, 161-62 (App. 2013).

Surviving spouse benefit payments are paid for each month starting with the month of death of the fully insured spouse and ending with the month preceding the month in which the surviving spouse dies or remarries. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 199 (Pon. 2015).

When a woman, living together with a man for three years, has a title that is taken from the man's Pohnpeian title and that is derived from being his wife, the Social Security Board's decision to cease spousal survival benefit payments to her because she has remarried will be upheld when the evidence submitted on record, taken in its entirety, is competent, material, and substantial and supports the Board's findings in denying benefits to her based on her remarriage. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 200-01 (Pon. 2015).

When the Social Security Board's final order denying the plaintiff benefits because of remarriage rests on findings of fact that are supported by competent, material, and substantial evidence and does not violate 17 F.S.M.C. 111(3)(b), its decision will be affirmed. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 274 (Pon. 2015).

A Social Security benefit is any retirement (old age), disability, dependent's, survivor's, or other insurance benefit prescribed in the Act. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 367 n.2 (Pon. 2016).

Social Security benefits are not vested in a property sense, in that they are subject to defeasance by act of Congress so long as that action is not arbitrary. Changing economic conditions may require that the program be modified. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 367 (Pon. 2016).

The current Social Security scheme does not automatically disburse benefits to a dependent of a wage earner who has been contributing to Social Security once a claim is made. A claimant becomes "entitled" to benefits once he or she has applied and has provided convincing evidence of entitlement. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 367 (Pon. 2016).

Because a claimant must go through the process of applying for benefits and meet certain requirements to be deemed eligible, Social Security benefits are not a property right. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 367 (Pon. 2016).

The FSM Social Security program's purpose is to provide a means whereby employees may be ensured a measure of financial security in their old age and be given an opportunity for leisure without

hardship and complete loss of income, and, further, to provide survivors' insurance for wage earners and their dependents. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 368 (Pon. 2016).

A valid claim for Social Security benefits as an adopted child requires proof of adoption and of dependency of the adopted child on the wage earner. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 368 (Pon. 2016).

Changed circumstances may require the adopted child to move away and to no longer be dependent on the adopted parent. In these situations, the child no longer depends on the wage earner for support, and the child would fall outside of Social Security's statutory scheme. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 368 (Pon. 2016).

Since, if benefits are distributed by virtue of only an adoption decree, not only will this affect the financial stability and well-being of the Social Security program, Social Security would be vulnerable to abuse, exploitation, and misconduct. Therefore, the Social Security regulations that limit when benefits can be paid to adoptees are not *ultra vires*. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 368 (Pon. 2016).

A claimant who alleges that he has a child in his care who is living with him must provide the Social Security Administration with a signed statement to that effect when applying for benefits. If the child is under 16 or mentally incompetent, Social Security will need no more information, unless it doubts the truth of the statement. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 370 (Pon. 2016).

Social Security has the regulatory authority to request additional proof of dependency and the claimant is required to submit such proof. Actual dependency upon the adoptive parent is a prerequisite for an adopted minor to receive surviving child Social Security benefits after the adoptive parent's death. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 370-71 (Pon. 2016).

Social Security benefits are not a property right and do not disburse automatically once a claim is filed. A potential beneficiary must fulfill the requirements as set forth in Title 53 of the FSM Code and Social Security regulations before being deemed eligible to receive benefits. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 479 (Pon. 2016).

FSM Social Security benefits are not a property right that automatically vests upon the wage earner's death and upon the filing of a claim. The proper procedure under Title 53 and the FSM Social Security Regulations must be adhered to before a claimant may be deemed eligible for benefits. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 479 (Pon. 2016).

A valid claim for adopted child benefits requires proof of adoption and of the adopted child's dependency on the wage earner. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 479 (Pon. 2016).

Social Security has the regulatory authority to request additional proof of dependency and the claimant is required to submit such proof. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 480 (Pon. 2016).

For Social Security benefit purposes, a disability is the inability to engage in any substantial gainful employment by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. Substantial gainful employment is not only an inability to engage in the applicant's previous occupation or work, but also means that based on the applicant's education, experience, and limitations, there are no other occupations that the applicant could perform. Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 628 (Yap 2016).

Persons are entitled to Social Security disability benefits if they are currently and fully insured, are disabled and have been so for at least three full calendar months, and have filed a complete application

with the Social Security Administrator for disability insurance. Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 628 (Yap 2016).

A Social Security claimant becomes entitled to benefits once he or she has applied and has provided convincing evidence of entitlement. A Social Security benefit applicant is responsible for providing the evidence needed to prove his or her entitlement to Social Security benefits. Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 628 (Yap 2016).

When a Social Security decision was supported by competent, material, and substantial evidence that the applicant was not disabled because he was capable of engaging in his former occupation or a similar occupation, that finding is conclusive as to the fact that, when Social Security and later the Social Security Board made their determinations, the applicant was not sufficiently impaired to qualify as disabled for Social Security disability benefits. Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 628 (Yap 2016).

Anyone aggrieved by a Social Security Board final order may obtain a review of that order in the FSM Supreme Court trial division by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. The court may order the Board to take additional evidence in such manner and upon such conditions as the court considers proper, and the Board may thereafter modify its findings and order. The court's judgment on the record is final, subject to review by the FSM Supreme Court appellate division upon petition of any aggrieved party, including the Board, filed within 60 days from judgment. Seiola v. FSM Social Sec. Admin., 21 FSM R. 205, 209 (Pon. 2017).

Under 53 F.S.M.C. 603(6) and FSM Social Security Regulation § 100.2 as amended in 2012, disability is defined as the inability to engage in any substantial gainful employment by reason of any physical or mental impairment that can be expected to last for a continuous period of not less than 12 months. Seiola v. FSM Social Sec. Admin., 21 FSM R. 205, 209 (Pon. 2017).

A five-step sequential evaluation process is used to determine an applicant's eligibility for disability benefits. Seiola v. FSM Social Sec. Admin., 21 FSM R. 205, 210 (Pon. 2017).

Social Security may deny a disability benefits application when the applicant is able to perform light and sedentary work. Seiola v. FSM Social Sec. Admin., 21 FSM R. 205, 211-12 (Pon. 2017).

Once a disability applicant meets the burden of proof under the first four requirements of the five-step sequential evaluation process, the burden shifts to Social Security to show that the applicant can perform other jobs – Social Security must show that employment positions are available in the FSM that suit the applicant's experience and education before the denial of benefits can be upheld. Seiola v. FSM Social Sec. Admin., 21 FSM R. 205, 212 (Pon. 2017).

FSM Social Security benefits are not a property right, and all the proper steps and requirements must be fulfilled before an individual is eligible for benefits. Celestine v. FSM Social Sec. Admin., 21 FSM R. 263, 266 (Pon. 2017).

The process by which spousal benefits cease is governed under § 100.16 of the Social Security regulations. Celestine v. FSM Social Sec. Admin., 21 FSM R. 263, 267 (Pon. 2017).

If Social Security receives convincing evidence from any credible source that a surviving spouse who is receiving social security benefits has re-married, the surviving spouse benefits will cease unless the surviving spouse proves that he or she has not remarried. Celestine v. FSM Social Sec. Admin., 21 FSM R. 263, 268 (Pon. 2017).

When, based on the administrative hearing and the evidence on the record, the Social Security Board's decision to cease spousal benefits was supported by competent, material, and substantial evidence, it was therefore conclusive, and even though the plaintiff produced additional evidence to support her claim that

she had not remarried, Social Security's discontinuance of spousal benefits will be affirmed. Celestine v. FSM Social Sec. Admin., 21 FSM R. 263, 268 (Pon. 2017).

When a plaintiff, since she lacks standing to sue, cannot identify any specific interests that her son would assert if her interest was transferred to him, the matter will be dismissed without prejudice to allow the son to assert any claims he may have against the FSM Social Security Administration. Welson v. FSM Social Sec. Admin., 21 FSM R. 348, 351 (Pon. 2017).

The statutory delegation of rule-making authority to Social Security implicitly recognizes its relative competence and expertise to ensure an efficient and equitable means to evaluate whether a claimant qualifies for benefits. Eliam v. FSM Social Sec. Admin., 21 FSM R. 412, 416 (App. 2018).

Social security regulations are entitled to great deference because Congress has given Social Security full power and authority to promulgate regulations necessary or appropriate to carry out the agency's function and therefore Social Security regulations are not *ultra vires*. Eliam v. FSM Social Sec. Admin., 21 FSM R. 412, 417 (App. 2018).

A child who is dependent upon a person entitled to old age benefits or who was dependent upon an individual who died fully insured or currently insured, is entitled, upon filing an application, to a child's insurance benefit, but actual dependency upon the adoptive parent is a prerequisite for an adopted minor to receive surviving social security benefits after the adoptive parent's death. Eliam v. FSM Social Sec. Admin., 21 FSM R. 412, 417 (App. 2018).

Social Security's list of "preferred evidence" is not too restrictive because "preferred" does not connote exclusive and because it allows an applicant, at the Administrator's discretion, to adduce supplementary evidence – any other documents or evidence that will prove the child's dependency on the insured. Eliam v. FSM Social Sec. Admin., 21 FSM R. 412, 419 (App. 2018).

The list of preferred evidence set forth in the Social Security regulations streamlines the decision-making process by providing a means to efficiently and equitably evaluate dependency and makes it easier for applicants to know what evidence they need to produce for a successful application. As such, pursuant to the statutory authority to implement the social security program, the promulgated regulations are consistent with the legislature's intent. Eliam v. FSM Social Sec. Admin., 21 FSM R. 412, 419 (App. 2018).

When an applicant was notified that evidence of dependency was lacking and did not apply to adduce additional evidence, the Board's findings as to the facts, if supported by competent, material and substantial evidence, are conclusive since there was no further evidence of dependency proffered. Thus, the trial court's grant of summary judgment in Social Security's favor was proper, since the applicant failed to adduce sufficient evidence of dependency, as required by statute. Eliam v. FSM Social Sec. Admin., 21 FSM R. 412, 419 (App. 2018).

The standard of review for social security cases is highly deferential. The appellate court must presume the trial court's finding that the Board's action was valid and affirm the decision if a reasonable basis, or substantial evidence, exists for it. The appellate court's role is to determine whether the trial court was correct in upholding the Board's decision. In doing so, it reviews the Board's decision to make sure that it applied the correct legal standards and reviews the entire administrative record to ascertain whether its findings are supported by substantial evidence. Hadley v. FSM Social Sec. Admin., 21 FSM R. 420, 424 (App. 2018).

A court will consider additional evidence at the aggrieved party's motion only when supported by reasonable grounds for failure to adduce the evidence in the hearing before the Social Security Board, and when the claimant made no such showing of a reasonable failure to elicit evidence, the remaining question is whether the Board's final order rests on findings of fact that are supported by competent, material, and

substantial evidence, and if the court so concludes, then the Board's findings of fact are conclusive. Hadley v. FSM Social Sec. Admin., 21 FSM R. 420, 424-25 (App. 2018).

When the applicant testified at the administrative level that the marriage was accepted by members of her community; that she and her partner had been living together for three years; that she has a sacred Pohnpeian title exclusively given to the wife of the second in chief, which is her partner's title; that her title is derived from being her partner's customary wife; and that she serves as her partner's wife at traditional feasts, Social Security's determination that she had remarried was valid since there was a reasonable basis, or substantial evidence, for its decision. Hadley v. FSM Social Sec. Admin., 21 FSM R. 420, 427-28 (App. 2018).

In reviewing the evidence in the record below, the court must recognize that it is primarily Social Security's task to assess the witnesses' credibility, the admissibility of evidence, and to resolve factual disputes since substantial evidence is a deferential standard, which is more than a scintilla or some evidence, but less than a preponderance of evidence. The court does not assume the fact-finder's role, since the issue is purely one of law. Hadley v. FSM Social Sec. Admin., 21 FSM R. 420, 428 (App. 2018).

When the court finds substantial evidence in the record supporting Social Security Board's findings, it must affirm the Board's decision that the applicant remarried and is thus not entitled to further social security survivor benefits as a result thereof. Hadley v. FSM Social Sec. Admin., 21 FSM R. 420, 428 (App. 2018).

An adopted child applying for benefits under the FSM Social Security system must complete an application and show dependency on the insured. Robert v. FSM Social Sec. Admin., 21 FSM R. 490, 493 (Kos. 2018).

A valid claim for Social Security benefits as an adopted child requires proof of adoption and of the adopted child's dependency on the wage earner. Robert v. FSM Social Sec. Admin., 21 FSM R. 490, 493 (Kos. 2018).

Social Security has the regulatory authority to request additional proof of dependency and the claimant is required to submit such proof since actual dependency upon the adoptive parent is a prerequisite for an adopted minor to receive surviving child Social Security benefits after the adoptive parent's death. Robert v. FSM Social Sec. Admin., 21 FSM R. 490, 493-94 (Kos. 2018).

When the immunization records that listed the children's natural mothers did not support the benefits claim because it did not show the children's dependency on the adoptive parents; when no additional evidence was submitted after the hearing for the court to consider; and when the census records show the adopted children in the same household as the wage-earner adoptive parent and his daughters, the natural mothers, the court will remand the matter to the Board to determine whether the children were dependent on the wage-earner's disability payments; whether the children's mothers were employed at the time; and whether dependency would be presumed if the child lived with the adoptive parents. Robert v. FSM Social Sec. Admin., 21 FSM R. 490, 494-95 (Kos. 2018).

That the adoptive father is not identified as the children's parent on official forms may be of little significance in determining dependency. Some forms are necessarily confusing because the question of "parent" can be ambiguous, especially with respect to medical records. Robert v. FSM Social Sec. Admin., 22 FSM R. 388, 392 (Kos. 2019).

A child is deemed dependent upon his proven natural parent or adoptive parent unless such parent was not living in the same household with or contributing to the child's support. Robert v. FSM Social Sec. Admin., 22 FSM R. 388, 393 (Kos. 2019).

Regardless of arguments about the application of presumptions, case law requires a determination of

the adoptive children's "actual dependency" on the deceased adoptive parent. This does not regard a presumption. It is a factual inquiry and primarily focused on documentary evidence. Robert v. FSM Social Sec. Admin., 22 FSM R. 388, 394 (Kos. 2019).

A valid claim for adopted child benefits requires proof of adoption and of the adopted child's dependency on the wage earner. Robert v. FSM Social Sec. Admin., 22 FSM R. 388, 394 (Kos. 2019).

Social Security has the regulatory authority to request additional proof of dependency and the claimant is required to submit such proof. Actual dependency upon the adoptive parent is a prerequisite for an adopted minor to receive surviving child Social Security benefits after the adoptive parent's death. Robert v. FSM Social Sec. Admin., 22 FSM R. 388, 394 (Kos. 2019).

A Social Security claimant becomes "entitled" to benefits once he or she has applied and has provided convincing evidence of entitlement. A Social Security benefit applicant is responsible for providing the evidence needed to prove his or her entitlement to Social Security benefits. Robert v. FSM Social Sec. Admin., 22 FSM R. 388, 394 (Kos. 2019).

Regulations provide Social Security with wide discretion in obtaining evidence that it considers determinative on the issue of an adopted child's dependency. The Social Security Administrator has the discretion to request any documents or evidence that will prove the child's dependency on the insured person. Robert v. FSM Social Sec. Admin., 22 FSM R. 388, 394-95 (Kos. 2019).

Based on the wide discretion granted to Social Security under regulation § 100.22 to determine dependency, a request for evidence of the adopted child's "economic dependency" is within the scope of the Board's authority. Robert v. FSM Social Sec. Admin., 22 FSM R. 388, 395 n.7 (Kos. 2019).

While the court recognizes the difficulties a Social Security claimant may have in substantiating her claim, the burden of proof remains with the applicant as a matter of law and does not shift to the Social Security Administration. Robert v. FSM Social Sec. Admin., 22 FSM R. 388, 396 (Kos. 2019).

– Taxes, Liens, and Penalties

For Social Security purposes, wages means payment, salary, or compensation for employment, whether received in cash or a medium other than cash, such as meals. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (I), 7 FSM R. 280, 284 (Yap 1995).

Social Security contributions are taxed from both employer and employee, and the employer is responsible for assessing the employee's contribution and withholding it from wages as and when paid. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (I), 7 FSM R. 280, 285 (Yap 1995).

The cash value of meals provided by the employer, even if provided for the convenience of the employer, constitute wages subject to the social security tax. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (I), 7 FSM R. 280, 288 (Yap 1995).

Both employer and employee must pay a tax or contribution to the social security trust fund. It is the employer's responsibility to deduct the employee's contribution from the wages it pays. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (II), 7 FSM R. 365, 367 (Yap 1996).

Social security taxes are a percentage calculated from the wages actually received by the employee not from the amount in the employment contract. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (II), 7 FSM R. 365, 367 (Yap 1996).

The maximum statutory penalty that may be assessed for failure to pay social security taxes is $1000. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (II), 7 FSM R. 365, 368 (Yap 1996).

Interest on unpaid social security taxes is assessed at 12% from date due until paid even if part of a court judgment and even though court judgments normally bear a 9% interest rate. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (II), 7 FSM R. 365, 370 (Yap 1996).

The Social Security Administration is entitled to its reasonable attorney's fees and costs when a court determines that a contribution is due. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (II), 7 FSM R. 365, 370 (Yap 1996).

Under 53 F.S.M.C. 605(3) an employer is delinquent each quarter that it fails to both file a report and pay within ten days after the end of the quarter. Therefore an employer may be subject to the maximum penalty of $1,000 each time (quarter) it is delinquent. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM R. 129, 132 (App. 1997).

Both interest, 53 F.S.M.C. 605(4), and penalties, 53 F.S.M.C. 605(3), may be applied to an employer who is delinquent, as was intended by Congress. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM R. 129, 132-33 (App. 1997).

When Congress has specifically given Social Security, not the courts, the discretion to levy a penalty and limited that discretion to $1,000 a quarter and Social Security has exercised its discretion by levying a penalty less than that allowed by the statute, the court is generally bound to enforce it. The courts cannot usurp the power Congress granted to another governmental body. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM R. 129, 133 (App. 1997).

A trial court may, pursuant to 53 F.S.M.C. 605(4), award attorney's fees and collection costs, including fees for a successful appeal, to the Social Security Administration. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM R. 129, 134 (App. 1997).

Social security taxes, although imposed on actual earned income, are levied pursuant to a constitutional authority other than that to impose taxes on income. Thus, although social security taxes are an "income" tax, they are not "national taxes" that the national government must pay half of to the state where collected. Chuuk v. Secretary of Finance, 9 FSM R. 424, 434-35 (App. 2000).

Although income-related, neither the fishing fees levied under Article IX, section 2(m) nor the social security taxes levied under Article IX, section 3(d) are income taxes within the meaning of Article IX, section 2(e) or national taxes within the meaning of section 5. Chuuk v. Secretary of Finance, 9 FSM R. 424, 435 (App. 2000).

The social security tax lien arises by operation of law whenever social security taxes become due and are not paid. In re Engichy, 12 FSM R. 58, 64 (Chk. 2003).

Under 53 F.S.M.C. 607, Social Security taxes specifically take priority over other tax liens. In re Engichy, 12 FSM R. 58, 65 (Chk. 2003).

As Congress clearly intended, social security tax liens must be given priority over all other claims and liens and paid first. In re Engichy, 12 FSM R. 58, 66 (Chk. 2003).

Interest on unpaid social security taxes continues to accrue at 12% until paid, even though a judgment normally bears interest at 9%. FSM Social Sec. Admin. v. Lelu Town, 13 FSM R. 60, 62 (Kos. 2004).

Social Security taxes do have a priority over all other claims and liens. FSM Social Sec. Admin. v. Yamada, 18 FSM R. 88, 89 (Pon. 2011).

Even when the court is reluctant to refer the dispute for prosecution on contempt and social security tax

evasion charges, Social Security itself may direct the matter to the FSM Department of Justice's attention for investigation and further action, including possible prosecution. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 128, 130 (Pon. 2015).

SOVEREIGN IMMUNITY

The Trust Territory Government is not immune from suit in the Truk State Court because the High Court has overturned the doctrine of sovereign immunity accepted by that court in the past. Suda v. Trust Territory, 3 FSM R. 12, 14 (Truk S. Ct. Tr. 1985).

The Trust Territory of the Pacific Islands is a political entity possessing many of the attributes of an independent nation, and is to be regarded as a sovereign for the purpose of the statute of limitations. FSM Dev. Bank v. Yap Shipping Coop., 3 FSM R. 84, 86 (Yap 1987).

No clause in the FSM Constitution is equivalent to the eleventh amendment of the United States Constitution, which generally bars citizens from using United States federal courts to seek monetary damages against states. Edwards v. Pohnpei, 3 FSM R. 350, 361 (Pon. 1988).

Courts lack authority to establish sovereign immunity to general tort claims through judicial action. Edwards v. Pohnpei, 3 FSM R. 350, 363 (Pon. 1988).

Since the Constitution's Professional Services Clause is a promise that the national government will take every step "reasonable and necessary" to provide health care to its citizens, a court should not lightly accept a contention that 6 F.S.M.C. 702(4), which creates a $20,000 ceiling of governmental liability, shields the government against a claim that FSM government negligence prevented a person from receiving necessary health care. Leeruw v. FSM, 4 FSM R. 350, 362 (Yap 1990).

The Federated States of Micronesia, as a sovereign nation, may bestow immunity upon civilian employees of another nation in order to obtain benefits for this nation's citizens. Samuel v. Pryor, 5 FSM R. 91, 98 (Pon. 1991).

The Compact of Free Association provides to the United States immunity from the jurisdiction of the FSM Supreme Court for claims arising from the activities of United States agencies or from the acts or omissions of the employees of such agencies. Samuel v. United States, 5 FSM R. 108, 111 (Pon. 1991).

The FSM Supreme Court has jurisdiction over a suit against the national government by the states alleging that under the Constitution the states are entitled to 50% of all revenues from the EEZ because the FSM has waived its sovereign immunity in cases to recover illegally collected taxes and for claims arising out of improper administration of FSM statutory law. Chuuk v. Secretary of Finance, 7 FSM R. 563, 568 (Pon. 1996).

The government has no sovereign immunity from suits seeking to prevent the improper administration of FSM statutes and regulations. Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM R. 111, 115 (Chk. 1997).

Courts lack the authority to establish sovereign immunity to general tort claims through judicial action. Conrad v. Kolonia Town, 8 FSM R. 183, 194 (Pon. 1997).

The purpose of 6 F.S.M.C. 701 *et seq.* is to permit and define certain specific causes of action against the FSM. The statute creates specified causes of action, not sovereign immunity. Louis v. Kutta, 8 FSM R. 312, 321 n.6 (Chk. 1998).

Creation of a doctrine of sovereign immunity of the FSM from garnishment should be left to the specific, unambiguous, and explicit action of Congress. The court will not create such a doctrine by judicial

action. Louis v. Kutta, 8 FSM R. 312, 321 (Chk. 1998).

The question of proper service is different from the question of the validity of an immunity defense. The issue of sovereign immunity does not involve a jurisdictional defect in the same sense as does improper service of process. Rather, the sovereign immunity defense technically comes into consideration only after jurisdiction is acquired and simply provides a ground for relinquishing jurisdiction previously acquired. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 372 n.2 (Kos. 2000).

The determination of whether Tonga and its agents are immune from suit is a decision that is better made by the FSM government's executive branch because the FSM Constitution expressly delegates the power to conduct foreign affairs to the President and because whether a party claiming immunity from suit has the status of a foreign sovereign is a matter for the executive branch's determination and is outside the competence of the courts. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 373 (Kos. 2000).

International organizations, their property, and their assets wherever located, and by whomsoever held, are accorded the same immunity from suit and every form of judicial process by the Federated States of Micronesia government that it accords to foreign governments, but the nature of the immunity the FSM affords foreign governments is still an open question. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 373 n.5 (Kos. 2000).

Proceedings in a suit against a foreign government may be postponed in order to give the FSM Department of Foreign Affairs the opportunity to decide whether the court should recognize the foreign government's sovereign state immunity from suit. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 373-74 (Kos. 2000).

When other trial division cases recognize the principle of sovereign immunity and the trial court decision appealed from only observed that in the absence of a specific expression by the legislature, sovereign immunity would not prevent the court from garnishing property held by the FSM for a state, when the constitutionality of the FSM's sovereign immunity statute was not before the court, and when the FSM served only as a mere garnishee in a situation which Congress has prevented from recurring by the enactment of 6 F.S.M.C. 707, the trial court decision will not effect future litigation involving the FSM and the FSM's appeal is thus moot. FSM v. Louis, 9 FSM R. 474, 483-84 (App. 2000).

A suit over an incident involving a foreign vessel, will not be dismissed when the vessel was engaged in commercial activity, and not in sovereign acts. Kosrae v. Kingdom of Tonga, 9 FSM R. 522, 523 (Kos. 2000).

National government sovereign immunity is waived for claims for injunction arising out of alleged improper administration of FSM statutory laws, or any regulations issued pursuant to such statutory laws. Udot Municipality v. FSM, 10 FSM R. 354, 359 (Chk. 2001).

The FSM has waived sovereign immunity for claims for damages, injunction, or mandamus arising out of alleged improper administration of Federated States of Micronesia statutory laws, or any regulations issued pursuant to those laws. FSM v. Udot Municipality, 12 FSM R. 29, 53 (App. 2003).

When the claims advanced fall within the FSM's statutory waiver of sovereign immunity, the court need not decide whether defendant allottees are part of the national government and cloaked with sovereign immunity. FSM v. Udot Municipality, 12 FSM R. 29, 54 (App. 2003).

On a motion to dismiss brought by the FSM Development Bank, the bank's claim of sovereign immunity will be considered first since, if the bank prevails on this ground, the merits of the bank's other claims need not be considered. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 125 (Chk. 2005).

Generally, sue-and-be-sued clauses in statutes creating or empowering a governmental corporation or

agency are waivers of immunity, and waivers by Congress of governmental immunity in case of such instrumentalities should be liberally construed. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 126 (Chk. 2005).

The sue-and-be-sued language in 30 F.S.M.C. 105(3) is a general waiver of sovereign immunity so that when Congress launched the FSM Development Bank into the commercial world and endowed it with the power "to sue and be sued," the bank was as amenable to a civil suit as a private enterprise would be under like circumstances. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 126 (Chk. 2005).

Even under national law, sovereigns, any sovereign, have sovereign immunity. But sovereigns are generally considered to have waived that immunity when the sovereign has acted as a participant in commerce instead of as a sovereign. It would seem unfair if a state, as a competitor in a commercial enterprise, could not be held liable and assessed the same damages that another commercial competitor, who committed the same acts, would be assessed. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 20 n.5 (App. 2006).

When whether 6 F.S.M.C. 702(2), which does not limit the FSM's liability to a certain dollar amount, or 6 F.S.M.C. 702(4), which limits recovery on an individual claim in that subsection to $20,000, applies, must await the presentation of facts not yet in evidence and requires that certain facts be proven and certain rulings of law made before it can be resolved, the claims against the FSM of over $20,000 will not be dismissed for failure to state a claim. FSM v. Kana Maru No. 1, 14 FSM R. 368, 373 (Chk. 2006).

Chapter six of Title Six is the Trust Territory of the Pacific Islands sovereign immunity statute. If it ever had any application to the FSM, it would have been supplanted or repealed by implication when the FSM Congress enacted a sovereign immunity statute, FSM Pub. L. No. 1-141, specifically applicable to the FSM national government. It remained part of the FSM Code because, at the time the FSM laws were codified, the Trust Territory government retained vestigial functions and authority in the FSM. By its terms, chapter six relates only to the Trust Territory government's liability and not to the liability of any of the FSM constitutional governments. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 604 (Pon. 2009).

Although the FSM Constitution's framers initially intended that there be no sovereign immunity in the FSM, they decided that that policy was too absolute and that the Constitution should remain silent on the subject so that the FSM Congress could decide which actions should be permitted against the government. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 604 (Pon. 2009).

From the wording of the chapter seven policy statement, 6 F.S.M.C. 701, it is clear that Congress's intent was that chapter seven contained the FSM national government's entire assertion of, and limited waiver of, its sovereign immunity, and that Title Six, chapter six does not grant any, and has no effect on, the FSM national government's sovereign immunity. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 604 (Pon. 2009).

6 F.S.M.C. 702(3) waives the FSM's sovereign immunity only for claims, whether liquidated or unliquidated, upon an express or implied contract with the FSM. But, although the equitable doctrine of unjust enrichment operates in the absence of an enforceable contract when a party has received something of value and neither paid for it or returned it, unjust enrichment is a theory applicable to implied contracts. Thus, depending upon the facts of a case, 6 F.S.M.C. 702(3) does not bar an unjust enrichment claim since it does waive the FSM's sovereign immunity for implied (as well as express) contract claims. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 605 (Pon. 2009).

The FSM has waived its sovereign immunity for suits seeking to prevent the improper administration of FSM statutes and for injunctions to prevent that improper administration. Marsolo v. Esa, 18 FSM R. 59, 64 (Chk. 2011).

Sovereign immunity should not be confused with official immunity for public officers. Government

officials who are performing their official duties are generally shielded from civil damages, and the court has previously recognized that some government workers have been held partially or completely immune from tort liability on grounds that they are public officers. This immunity, intended to serve the purpose of encouraging fearless and independent public service, has been bestowed upon prosecutors as well as other public officials. Marsolo v. Esa, 18 FSM R. 59, 64 (Chk. 2011).

The FSM cannot raise a sovereign immunity defense when it has statutorily waived its sovereign immunity for damages arising out of the improper administration of FSM statutory laws and when a sound basis for the FSM's waiver of sovereign immunity may be the waiver for claims, whether liquidated or unliquidated, upon an express or implied contract with the FSM because the Memorandum of Understanding between Chuuk and the FSM provides that the FSM handles, processes, and pays the Chuuk Special Education Program payroll. Since that express contract obligates the FSM to make all properly obligated withholdings from the employees' pay, the Chuuk Health Care Plan is, by statute, an intended third-party beneficiary of the contract between the FSM and Chuuk so that the Plan's claim is therefore a claim based on Chuuk's contract with the FSM. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 497 (Chk. 2013).

Since the Federated States of Micronesia has waived its sovereign immunity only to the extent of the first $20,000 in damages, when a plaintiff's actual damages exceed that amount, judgment shall be entered in her favor for $20,000. Lee v. FSM, 19 FSM R. 80, 83, 86 (Pon. 2013).

The court will not recharacterize damages as a part of the uninjured spouse's loss-of-consortium claim and alter the nature of the damages claim solely to circumvent the FSM's statutory limited waiver of its sovereign immunity that prevents the injured spouse from being awarded the full amount of the damages she suffered. The court will comply with Congress's policy choice and its intent in enacting the limited waiver. Lee v. FSM, 19 FSM R. 80, 85 (Pon. 2013).

Since 6 F.S.M.C. 702(2) specifically waives the FSM's sovereign immunity for claims for damages, injunction, or mandamus arising out of alleged improper administration of FSM laws, the FSM has waived its sovereign immunity for a suit by a state alleging that the FSM failed to comply with the FSM Constitution's mandate that not less than 50% of the national tax revenues be paid into the treasury of the state where collected. Chuuk v. FSM, 20 FSM R. 373, 375 (Chk. 2016).

Even when a state consents to be sued, its waiver of sovereign immunity does not allow its courts to force it to make an appropriation to satisfy a judgment in the absence of consent to the appropriation. When a money judgment has been rendered, the state's liability has been ascertained, but then the court's power ends. Kama v. Chuuk, 20 FSM R. 522, 531-32 (Chk. S. Ct. App. 2016).

A sovereign's judicial power does not extend to lawsuits against the sovereign unless the sovereign has waived its immunity to suit and then only to the extent that it has waived its immunity. Kama v. Chuuk, 20 FSM R. 522, 532 (Chk. S. Ct. App. 2016).

– Chuuk

The court will not judicially create the right of sovereign immunity from suit for Chuuk State. This is a legislative function. Epiti v. Chuuk, 5 FSM R. 162, 166-67 (Chk. S. Ct. Tr. 1991).

A plaintiff may not as a matter of law recover punitive damages from the State of Chuuk. Kaminaga v. Chuuk, 7 FSM R. 272, 274 (Chk. S. Ct. Tr. 1995).

The State of Chuuk is immune from civil suits for damages arising out of malicious prosecution. Kaminaga v. Chuuk, 7 FSM R. 272, 274-75 (Chk. S. Ct. Tr. 1995).

The Trust Territory Code provisions for orders in aid of judgment are not available as against Chuuk because, when it barred the courts' power of attachment, execution and garnishment of public property, the

clear legislative intent was to supersede or repeal all provisions of the Trust Territory Code, Title 8 insofar as they allowed seizure of Chuuk state property. Kama v. Chuuk, 9 FSM R. 496, 498 (Chk. S. Ct. Tr. 1999).

Proceedings in aid of a judgment are supplementary proceedings to enforce a judgment, the same as attachment, execution and garnishment, and as against Chuuk State public property, are prohibited by § 4 of the Chuuk Judiciary Act. Kama v. Chuuk, 9 FSM R. 496, 498 (Chk. S. Ct. Tr. 1999).

When state law clearly provides that no action shall be brought against the state for any actions or omissions of the Chuuk Coconut Authority and that the Authority's debts or obligations shall not be debts or obligations of the Legislature or state government, and neither will be responsible for the same, the state and the governor will be dismissed as defendants from a suit against the Authority because as a matter of law no action lies against the state and no liability attaches. Konman v. Adobad, 11 FSM R. 34, 35 (Chk. S. Ct. Tr. 2002).

A plaintiff may not as a matter of law recover punitive damages from the State of Chuuk. This principle has been modified somewhat by the enactment section 6 of the Chuuk State Sovereign Immunity Act of 2000, but that Act did not become law until January 25, 2001, and it does not apply to damage claims before that time. Zion v. Nakayama, 13 FSM R. 310, 314 (Chk. 2005).

Although a compelling state interest exists in protecting the state from garnishment and execution of its funds as governments cannot effectively administrate essential public services with litigants constantly raiding their coffers, but since Congress has created a statutorily-based action for civil rights violations as these violations are particularly egregious in that they infringe upon what we commonly recognize as unalienable human rights, what must be struck is an adequate balance between protecting a government's ability to maintain sufficient funds to operate and the ability to hold the government accountable for violating its citizens' most basic rights. Barrett v. Chuuk, 16 FSM R. 229, 234 (App. 2009).

None of the FSM Code statutory exemptions to garnishment and execution provide an exception to execution or garnishment when the debtor is a state government. Barrett v. Chuuk, 16 FSM R. 229, 234 (App. 2009).

The FSM Constitution's supremacy clause does not permit a state law to prevent the enforcement of a national statute which gives a private cause of action for rights guaranteed by the FSM Constitution, especially when it is the solemn obligation of state governments to uphold the principles of the FSM Constitution and to advance the principles of unity upon which the Constitution is founded. Barrett v. Chuuk, 16 FSM R. 229, 234-35 (App. 2009).

A cause of action against the State of Chuuk accrues or arises and the limitations period starts running from the date on which the event triggering the cause of action occurred. Dungawin v. Simina, 17 FSM R. 51, 54 (Chk. 2010).

Since sovereign immunity implicates a court's subject matter jurisdiction, the defense of sovereign immunity can be raised at any time, either by a party or by the court. The law is well established that counsel for the State or one of its agencies may not by failure to plead the defense, waive the defense of governmental immunity in the absence of express statutory authorization. Eot Municipality v. Elimo, 20 FSM R. 7, 10-11 (Chk. 2015).

Even when there is no provision in the state's constitution or its statutes expressing the immunity of the state from liability for interest payments not assented to, such immunity is an attribute of sovereignty and is implied by law for the state's benefit. Eot Municipality v. Elimo, 20 FSM R. 7, 11 (Chk. 2015).

Statutes, 6 F.S.M.C. 1401; 8 TTC 1, that read: "Every judgment for the payment of money shall bear interest at the rate of nine percent a year from the date it is entered" are statutes of general application to

money judgments and not statutes that specifically address judgments against sovereign defendants. Eot Municipality v. Elimo, 20 FSM R. 7, 11 (Chk. 2015).

Logically, when the Commonwealth of the Northern Marianas also has an identically-worded statute derived from the same source as the FSM Code and Chuuk state law – the Trust Territory Code, the statutes would be interpreted and applied against their respective sovereigns in the same manner. Eot Municipality v. Elimo, 20 FSM R. 7, 11 (Chk. 2015).

In the absence of an express statutory waiver of immunity against post-judgment interest, the Chuuk government is not liable for such interest even though there is a statute of general application imposing 9% post-judgment interest on money judgments, but Chuuk is liable for the 5% interest it agreed to on a loan. Eot Municipality v. Elimo, 20 FSM R. 7, 11-12 (Chk. 2015).

Since the Chuuk Sovereign Immunity Act permits suits against the state government for claims, whether liquidated or unliquidated, that are made upon an express or implied agreement with the State of Chuuk or with any of its political subdivisions, it does not bar a suit to recover funds that, by agreement, were to be passed on by the state government to the municipal governments. Eot Municipality v. Elimo, 20 FSM R. 482, 490 (Chk. 2016).

Sovereign immunity does bar the imposition of interest as part of or on a judgment against the State of Chuuk. Eot Municipality v. Elimo, 20 FSM R. 482, 490 (Chk. 2016).

The judicial branch can, consistent with the state's waiver of sovereign immunity, declare the amount of the state's liability, but while the Chuuk State Supreme Court is empowered to declare the rights as between a judgment creditor and the government, it cannot enforce payment of the judgment absent legislative appropriation. Kama v. Chuuk, 20 FSM R. 522, 531 (Chk. S. Ct. App. 2016).

Even when a state consents to be sued, its waiver of sovereign immunity does not allow its courts to force it to make an appropriation to satisfy a judgment in the absence of consent to the appropriation. When a money judgment has been rendered, the state's liability has been ascertained, but then the court's power ends. Kama v. Chuuk, 20 FSM R. 522, 531-32 (Chk. S. Ct. App. 2016).

When Chuuk not only has not expressly waived its sovereign immunity to writs of attachment, execution, and garnishment, but has also gone further and affirmatively enacted legislation emphatically notifying the public and potential litigants that it has not waived its immunity to those writs, that statute is a valid expression of the separation of powers doctrine enshrined in the Chuuk Constitution. Kama v. Chuuk, 20 FSM R. 522, 532 (Chk. S. Ct. App. 2016).

– Kosrae

The phrase "may assume liability is incurred by the chartered State Government," Kos. Const. art. XVI, § 7, is ambiguous because there are no guidelines for when the state is supposed to consent to being sued and when it is not. Seymour v. Kosrae, 3 FSM R. 537, 541 (Kos. S. Ct. Tr. 1988).

Article VI, section 9 of the Kosrae State Constitution provides no basis for assuming that sovereign immunity is inherent in the Kosrae State Constitution because sovereign immunity was a creation of Trust Territory common law. Seymour v. Kosrae, 3 FSM R. 537, 541 (Kos. S. Ct. Tr. 1988).

Determinations as to whether claims of citizens against the previous Kosrae state chartered government may now be upheld against the constitutional state government are to be made by the judiciary on the basis of: 1) when the cause of action arose; 2) the identity of the officer or person whose action created the liability; and 3) the place where the original action creating the liability occurred. Seymour v. Kosrae, 3 FSM R. 539, 542-43 (Kos. S. Ct. Tr. 1988).

– Pohnpei

Customary and traditional practices within a state should be considered in determining whether the people of that state would expect their state government to be immune from court action. Panuelo v. Pohnpei (I), 2 FSM R. 150, 159 (Pon. 1986).

Neither the Pohnpei Constitution, laws, custom nor tradition, nor the common law, grant the Pohnpei State Government sovereign immunity from all unconsented suits against the state. Panuelo v. Pohnpei (I), 2 FSM R. 150, 161 (Pon. 1986).

The Pohnpei Government Liability Act immunizes the State of Pohnpei and its employees from suit unless the claim underlying the suit is specifically authorized by the Act or some other state law, and even with respect to those claims, the Act imposes a variety of restrictions and limitations on the maintenance of those suits. The Act's definition of State of Pohnpei includes all branches of government, any corporation, and other person or entity primarily acting as instrumentalities or agencies of the government, and all boards, commissions, public corporations, authorities, departments, divisions or offices of the government and this definition is more than broad enough to encompass the Pohnpei Port Authority. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 226 & n.2 (Pon. 2005).

Tort claims, tax claims, contract claims, breach of fundamental rights, claims for damages, injunctive relief or writ of mandamus arising from the alleged unconstitutionality or improper administration of Pohnpei statutes or regulations, any other civil action or claim against the state founded upon any law or any regulation, or upon any express or implied contract with the Pohnpei government or for liquidated or unliquidated damages in cases not sounding in tort, and actions for collection of judgments based on claims allowed against the State of Pohnpei can be sued upon within two years of the date on which they accrue. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 226-27 (Pon. 2005).

Since, by its own terms, the Pohnpei Government Liability Act statute of limitations is applicable only to those claims identified in Section 4 of that Act, which identifies a number of different claims, including claims based on violation of Pohnpei state law such as the Pohnpei Constitution, but does not expressly identify claims that are based upon national law or the National Constitution, the plaintiff's claim for declaratory judgment based on violation of the National Constitution and its claim for damages for civil rights violations under 11 F.S.M.C. 701(3) are not subject to the Act's statute of limitations and will not be dismissed on the ground that they are time barred by that statute of limitations. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 227-28 (Pon. 2005).

Pohnpei state government and its agencies are statutorily immune from punitive damages. Berman v. Pohnpei, 22 FSM R. 377, 382 (Pon. 2019).

– Yap

Yap has specifically extended its sovereign immunity waiver to include set-offs. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 318, 325 n.6 (Yap 2017).

STATUTES

A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law. FSM v. Nota, 1 FSM R. 299, 304 (Truk 1983).

An unconstitutional statute may not be redeemed by voluntary administrative action. Suldan v. FSM (II), 1 FSM R. 339, 357 (Pon. 1983).

A criminal statute must not be so vague and indefinite as to fail to give fair notice of what acts will be punished but the right to be informed of the nature of the accusation does not require absolute precision of

perfection of criminal statutory language. Laion v. FSM, 1 FSM R. 503, 507 (App. 1984).

The right to be informed of the nature of accusation requires that a statute be sufficiently explicit to prescribe the offense with reasonable certainty and not be so vague that persons of common intelligence must necessarily guess at its meaning. Laion v. FSM, 1 FSM R. 503, 507 (App. 1984).

The required degree of precision under the right to be informed of the nature of the accusation may be affected by considerations such as limits upon the capacity for human expression and difficulties inherent in attempts to employ alternative methods of stating the concept. Laion v. FSM, 1 FSM R. 503, 508 (App. 1984).

Some generality may be inescapable in proscribing conduct but the standard of precision required under the right to be informed of the nature of the accusation is greater in criminal statutes than in civil statutes. Laion v. FSM, 1 FSM R. 503, 508 (App. 1984).

Since the Trust Territory High Court and District Courts were still active at the time of codification, provisions in the FSM Code referring only to them quite likely were intended only to regulate those courts. Rauzi v. FSM, 2 FSM R. 8, 14 (Pon. 1985).

Public Law No. 2-48, promulgating the codification of the FSM statutes and speaking only of "All enacted law of the Interim Congress of Micronesia . . . and all enacted law of the Congress of the Federated States of Micronesia" as "readopted and reenacted as positive law of the Federated States of Micronesia," may not be interpreted as an attempt to repeal or purge the Trust Territory law from the law of the Federated States of Micronesia. Joker v. FSM, 2 FSM R. 38, 43 (App. 1985).

In approving the current codification of laws, the Congress "readopted and reenacted as positive law" those portions of the Code relating to laws enacted by the FSM Congress or the Interim Congress of the Federated States of Micronesia. For such laws then the Code itself indisputably is the official version. In the event of conflict between the Code and the language of the statute as reported in other sources, including congressional journals, the Code would be deemed accurate and would prevail. FSM v. George, 2 FSM R. 88, 91 (Kos. 1985).

In declining to "reenact" in Public Law No. 2-48 provisions originating with High Commissioners or Congress of Micronesia, Congress seems to have been motivated by transitional considerations rather than a desire to withhold official status from those laws. FSM v. George, 2 FSM R. 88, 92 (Kos. 1985).

The FSM Code was adopted by Congress to facilitate "law making and legal research," since Congress recognized that a "single body of laws" was "needed to organize all applicable statutes into one source." FSM v. George, 2 FSM R. 88, 92 (Kos. 1985).

The Code of the Federated States of Micronesia is intended by Congress to be regarded as the official and controlling version of the language of any legislation reported in the Code. FSM v. George, 2 FSM R. 88, 92 (Kos. 1985).

Where the legislature has a rational basis for a statutorily non-suspect classification, the court will not inquire into the wisdom of that statute. Paulus v. Pohnpei, 3 FSM R. 208, 218 (Pon. S. Ct. Tr. 1987).

Determination as to whether a statute is a state or national law must be made on a statute-by-statute or a section-by-section basis. Edwards v. Pohnpei, 3 FSM R. 350, 355 (Pon. 1988).

The fact that Congress included a particular law in the FSM Code does not indicate conclusively whether the law is to be applied by this court as part of national law, for some parts of the Code were intended to apply only to the Trust Territory High Court in its transitional role until state courts were established. Edwards v. Pohnpei, 3 FSM R. 350, 356 (Pon. 1988).

When there is no statement in an act or implication in its regulative history that Congress intended court deference to administrative interpretations of the statute, courts make their own independent determination as to the meaning of the statute. Michelsen v. FSM, 3 FSM R. 416, 421 (Pon. 1988).

It may not simply be assumed that a reference in a carryover statute to the district administrator always translates directly to governor, or that high commissioner always means president. FSM v. Oliver, 3 FSM R. 469, 475 (Pon. 1988).

Unchartered and unincorporated municipalities in Truk State have authority to enact curfew ordinances as long as they do not conflict with Truk State laws. David v. Fanapanges Municipality, 3 FSM R. 495, 497 (Truk S. Ct. App. 1988).

Although FSM Public Law 2-33, regarding usury, did not appear in the 1982 codification of FSM statutes, it remained effective as did every other law which took effect after October 1, 1981 and it is currently in effect as codified in the 1987 supplement to the FSM Code at 34 F.S.M.C. 201-207. Bernard's Retail Store & Wholesale v. Johnny, 4 FSM R. 33, 36 (App. 1989).

A claim that the FSM liaison office did not fulfill its medical referral obligations as required by law falls within the embrace of 6 F.S.M.C. 702(2), which authorizes damage claims against the government for alleged improper administration of statutory laws or regulations. Leeruw v. FSM, 4 FSM R. 350, 363 (Yap 1990).

Under national law, the governor of a state is the allottee for all Compact of Free Association funds unless he delegates in writing his right to be allottee, so where a state statute allots such funds to the legislative branch without written delegation from the governor, the statute violates national law. Gouland v. Joseph, 5 FSM R. 263, 265 (Chk. 1992).

Where a statute creates a cause of action and then places exclusive, original jurisdiction over all controversies arising from that cause of action in a particular court, another court will have no jurisdiction to entertain claims under that statute. Damarlane v. United States, 6 FSM R. 357, 360 (Pon. 1994).

Criminal statutes in effect on the effective date of the State of Chuuk Constitution (Oct. 1, 1989) that are consistent with the Constitution continue in effect. Chuuk v. Arnish, 6 FSM R. 611, 613 (Chk. S. Ct. Tr. 1994).

When an ordinance is not void upon its face, but its invalidity is dependent upon facts, it is incumbent upon the party relying upon the invalidity to aver and prove the facts which make it so. It is also the rule that one who seeks to overthrow an ordinance on the ground that it was not regularly or properly enacted has the burden of proving that fact. Esechu v. Mariano, 8 FSM R. 555, 556 (Chk. S. Ct. Tr. 1998).

Trust Territory statutes continue in effect except to the extent they are inconsistent with the Constitution, or are amended or repealed. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 62 (Pon. 2001).

When a state has not enacted laws in an area within its jurisdiction such as child support, national law is applicable to the state court proceeding, because the Trust Territory Code reciprocal support enforcement provisions, now codified at 6 F.S.M.C. 1711, are imputed to be state law under the FSM Constitution's Transition Clause. Under that clause, Trust Territory statutes that were applicable to the states became part of the states' laws regardless of whether they were published thereby. They stand as the laws of the states until amended, superseded or repealed. Anson v. Rutmag, 11 FSM R. 570, 572 (Pon. 2003).

Foreign law is a fact which must be pled and proven. But state law does not need to be expressly pled, because the court may take judicial notice of any state law. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 595 (App. 2008).

A statute takes precedence over the procedural rules because while the chief justice has the power to promulgate procedural rules, the rules may be amended by statute, and since the chief justice does not have the power to amend a statute, when Congress has enacted a procedural rule, it is valid. People of Tomil ex rel. Mar v. M/V Mell Sentosa, 17 FSM R. 478, 479 (Yap 2011).

A statute that purports to allow Congress to step around the bill-making process and approve fishing access agreements by resolution, is surely unconstitutional because under the Constitution, Congress may make law only by statute, and may enact statutes only by bill. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 546 (App. 2011).

Under the FSM Constitution's Supremacy Clause, a national statute must control over a conflicting state statute. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 617, 619 (Chk. 2011).

By its terms, a statute enacted by the U.S. Congress that permits declarations in place of affidavits affects only U.S. rules and regulations. When the FSM Congress has not enacted an equivalent statute and no procedural rule has been promulgated to bring about the same result, an unsworn declaration, even when the declarant avers or asserts that it is made "under the penalty of perjury," is not the equivalent of an affidavit required by the FSM rules. This is not a matter of interpreting an FSM procedural rule similar to a U.S. rule, but is rather a matter of not applying a foreign statute that has no FSM counterpart. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 297, 300 & n.1 (Yap 2012).

A statute in force in Chuuk on the Chuuk Constitution's effective date continues in effect to the extent it is consistent with the Chuuk Constitution or until it is amended or repealed. Thus 1TTC 103 is still effective statutory law in Chuuk. Ruben v. Chuuk, 18 FSM R. 425, 430 n.1 (Chk. 2012).

Custom does not divest Congress of its power to regulate shipping and commerce or render the limitation of liability statute, 19 F.S.M.C. 1101-1108, unconstitutional. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 538 (Yap 2013).

While foreign law is a fact which must be pled and proven, national (or state law) does not need to be expressly pled since the court may take judicial notice of any national (or state) law. Thus, the FSM salvage contract statute's application cannot be avoided by trying to characterize a salvage contract as some other kind of contract. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 8 (Pon. 2013).

While rights are often freely assignable, duties are not freely delegated. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 232 (Yap 2013).

A statute takes precedence over the procedural rules because, while the Chief Justice has the power to promulgate procedural rules, those rules may be amended by statute, and because the Chief Justice does not have the power to amend a statute, a Congressionally enacted procedural rule is valid. Setik v. FSM Dev. Bank, 21 FSM R. 505, 517 (App. 2018).

A statute takes precedence over the procedural rules because, while the Chief Justice can promulgate procedural rules, the rules may be amended by statute, and because the Chief Justice does not have the power to amend a statute, a Congressionally enacted procedural rule is valid. Setik v. Mendiola, 21 FSM R. 537, 550 (App. 2018).

Courts have no responsibility for the justice or wisdom of legislation, and no duty except to enforce the law as it is written, unless it is clearly beyond the lawmaking body's constitutional power. FSM v. Kuo Rong 113, 22 FSM R. 515, 526 (App. 2020).

Chuuk State Constitution's transition clause provides that statutes in force at the time the Constitution took effect remain in effect to the extent they comply with the Constitution, or until amended or repealed.

Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 576 (Chk. S. Ct. App. 2020).

– Amendment

The Constitution permits the Chief Justice to promulgate civil procedure rules, which Congress may amend by statute. Since Congress has the authority to amend or create procedural rules by statute, when Congress has enacted a procedural rule, it is valid. The Chief Justice does not have the authority to amend Congressionally-enacted statutes. Therefore, if the statute applies and the statute and the rule conflict, the statute must prevail. Tipingeni v. Chuuk, 14 FSM R. 539, 542 n.1 (Chk. 2007).

A statute takes precedence over the procedural rules because while the chief justice has the power to promulgate procedural rules, the rules may be amended by statute, and since the chief justice does not have the power to amend a statute, when Congress has enacted a procedural rule, it is valid. People of Tomil ex rel. Mar v. M/V Mell Sentosa, 17 FSM R. 478, 479 (Yap 2011).

Congress enacted an exemption statute, 6 F.S.M.C. 1415, and courts cannot broaden statutes beyond their original meaning. Nor do courts have the power to amend a statute. Dison v. Bank of Hawaii, 19 FSM R. 157, 161 (App. 2013).

The Chuuk Legislature may amend any of its earlier statutes that created a governmental agency, in order to alter, or vary, or eliminate any of that agency's powers or duties. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 266 (Chk. 2019).

The power to amend statutes belongs exclusively to the legislature. Existing legislation is subject to amendment in any manner consistent with constitutional limitations. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 266 (Chk. 2019).

A state agency has only such rights, powers, and duties as the state legislature sees fit to bestow upon it through a duly enacted statute. Thus the legislature may, through another duly enacted statute, alter or may revoke any of those rights, powers, and duties. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 266 (Chk. 2019).

– Construction

A fundamental principle of statutory interpretation is that when a statute can be read in two ways, one raising constitutional issues and the other interpreting the language as affecting matters clearly within the constitutional reach of Congress, the latter interpretation should prevail so that the constitutional issue is avoided. FSM v. Boaz (II), 1 FSM R. 28, 32 (Pon. 1981).

When interpreting a statute, courts should try to avoid interpretations which may bring the constitutionality of the statute into doubt. Tosie v. Tosie, 1 FSM R. 149, 157 (Kos. 1982).

While courts will not refuse to pass on the constitutionality of statutes in a proceeding in which such a determination is involved, needless consideration of attacks on their validity and unnecessary decisions striking down statutes will be avoided. Legislative acts are presumed to be constitutional; where fairly possible a construction of a statute will be made that avoids constitutional questions. Truk v. Hartman, 1 FSM R. 174, 180-81 (Truk 1982).

Courts should avoid, where possible, selecting interpretations of a statute which may bring into doubt the constitutionality of that statute. In re Otokichy, 1 FSM R. 183, 190 (App. 1982).

Constitutional issues should not be decided if the statute in question may be interpreted in such a way as clearly to conform with constitutional requirements. Suldan v. FSM (I), 1 FSM R. 201, 205 (Pon. 1982).

If construction of a statute by which a serious doubt of constitutionality may be avoided is fairly possible,

a court should adopt that construction. Suldan v. FSM (II), 1 FSM R. 339, 357-58 (Pon. 1983).

It is a settled rule of statutory construction that a statute adopted from another jurisdiction is presumed to have been adopted as construed by the courts of that jurisdiction. Andohn v. FSM, 1 FSM R. 433, 441 (App. 1984).

Commonly accepted meanings arising out of prior court interpretations in the jurisdictions from which statutes are borrowed may be considered in testing claim that the statute is unconstitutionally vague. Laion v. FSM, 1 FSM R. 503, 509-10 (App. 1984).

Interpretations by other jurisdictions may be considered in determining the meaning of language borrowed from those other jurisdictions. Laion v. FSM, 1 FSM R. 503, 517 n.7 (App. 1984).

The statutory construction rule of lenity reflects the reluctance of courts to increase or multiply punishments absent a clear and definite legislative direction. Laion v. FSM, 1 FSM R. 503, 528 (App. 1984).

Where possible, statutory provisions should be interpreted in such a way as to avoid any potential conflicts between the statute and the Constitution of the Federated States of Micronesia. Ishizawa v. Pohnpei, 2 FSM R. 67, 76 (Pon. 1985).

The Code will determine the content of statutory language to be enforced, although other sources such as congressional journals and even the original version of the statute might be consulted to indicate legislative intent when the language in the Code is ambiguous. FSM v. George, 2 FSM R. 88, 92 (Kos. 1985).

Interpretations which strip clauses of substance and effect run against the norms of interpretation and are greatly disfavored. FSM v. George, 2 FSM R. 88, 94 (Kos. 1985).

Where there is a conflict between a statute of general application to numerous agencies or situations, such as the APA, and a statute specifically aimed at a particular agency or procedure, such as the National Election Code, the more particularized provision will prevail. This rule is based upon recognition that the legislative body, in enacting the law of specific application, is better focused and speaks more directly to the affected agency and procedure. Olter v. National Election Comm'r, 3 FSM R. 123, 129 (App. 1987).

If a dispute properly may be resolved on statutory grounds without reaching potential constitutional issues and without discussing constitutional principles, the court should do so. FSM v. Edward, 3 FSM R. 224, 230 (Pon. 1987).

A cardinal principle of statutory interpretation is to avoid interpretations which might bring into question the constitutionality of the statute. Edwards v. Pohnpei, 3 FSM R. 350, 359 (Pon. 1988).

When dealing with statutes, before discussing constitutional issues a court must first address any threshold issues of statutory interpretation which may obviate the need for a constitutional ruling. Michelsen v. FSM, 3 FSM R. 416, 419 (Pon. 1988).

Where legislative history does not conclusively establish which meaning Congress intended, the statutory provision must be considered against the background of the entire act to arrive at an interpretation consistent with other provisions and with the general design of the act. Michelsen v. FSM, 3 FSM R. 416, 422 (Pon. 1988).

Unreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another which would produce a reasonable result. Michelsen v. FSM, 3 FSM R. 416, 426 (Pon. 1988).

Statutory provisions designed to enhance the capacity of the government to enforce penalties for failure to pay taxes are penal, not remedial, and should be strictly construed. In re Island Hardware, Inc., 3 FSM R. 428, 432 (Pon. 1988).

Courts should not broaden statutes beyond the meaning of the law as written, even if it means that gambling devices just as harmful socially as slot machines, such as poker machines, will be excluded from statutory prohibition of slot machines. In re Slot Machines, 3 FSM R. 498, 500-01 (Truk S. Ct. Tr. 1988).

Courts may not speculate as to the powers and duties of the office of the Attorney General, but must look to the wording of the relevant law, and further, may not speculate as to the probable intent of the legislature apart from the words. Truk v. Robi, 3 FSM R. 556, 562 (Truk S. Ct. App. 1988).

Since Congress used the Trust Territory Investment Act as the overall model in drafting the FSM Foreign Investment Act and adopted language similar to that employed in the Trust Territory statute for describing the activities to be covered in the FSM law, analysis of the new Act must begin with a presumption that Congress intended that the FSM Foreign Investment Act would regulate essentially the same activities as those covered by the Trust Territory Investment Act. Carlos v. FSM, 4 FSM R. 17, 26 (App. 1989).

Statutory changes overruling previous judicial rulings may fundamentally alter the general law in the area newly governed by statute. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 372 (App. 1990).

Because the FSM statute is based upon the United States model, the FSM Supreme Court should look to United States' court decisions under 42 U.S.C. § 1983 for assistance in determining the liability of a governmental body under 11 F.S.M.C. 701(3). Plais v. Panuelo, 5 FSM R. 179, 204 (Pon. 1991).

In providing for civil liability under 11 F.S.M.C. 701(3), Congress intended that the word person would include governmental bodies. Plais v. Panuelo, 5 FSM R. 179, 204-05 (Pon. 1991).

The plain meaning of a statutory provision must be given effect whenever possible. Setik v. FSM, 5 FSM R. 407, 410 (App. 1992).

Where a statute of general application conflicts with a statute of more particular application concerning the same subject matter, the more particularized provision prevails. However, remedial provisions that are merely cumulative and not duplicative apply equally. Setik v. FSM, 5 FSM R. 407, 410 (App. 1992).

That certain provisions of a general statute are overridden by a more specific statute does not imply that the general statute in its entirety is superseded. Setik v. FSM, 5 FSM R. 407, 411 (App. 1992).

When the language in the Code is ambiguous, other sources such as congressional journals may be consulted. Bank of the FSM v. FSM, 6 FSM R. 5, 7 (Pon. 1993).

Statutes should be interpreted so that they are internally consistent. Provisions should be considered against the background of the entire act so as to arrive at a reasonable interpretation consistent with other specific provisions and the general design of the act. Bank of the FSM v. FSM, 6 FSM R. 5, 8 (Pon. 1993).

Where licenses are to be issued to each bank branch, and each bank branch must be scrutinized as to its qualifications for a license, it is a reasonable statutory interpretation that the regulatory license fee must be paid for each bank branch. Bank of the FSM v. FSM, 6 FSM R. 5, 8 (Pon. 1993).

Where the FSM statute governing extradition proceeding is silent on the appealability of extradition proceedings and where the statute has been borrowed from another jurisdiction where extradition

proceedings are not appealable it is presumed that the meaning and application of the statute is as it was interpreted by the courts of the source. In re Extradition of Jano, 6 FSM R. 23, 25 (App. 1993).

A long-standing norm of statutory construction holds that provisions of law must be read so as to be internally consistent and sensible. McCaffrey v. FSM Supreme Court, 6 FSM R. 279, 281 (App. 1993).

Pronouncements by a later legislature concerning the meaning of actions taken by an earlier legislature are generally unreliable, especially when the later legislative body is a part of an entirely different government. Etscheit v. Adams, 6 FSM R. 365, 381 (Pon. 1994).

Courts prefer to read different sections of the same statute in a manner that permits them to be consistent with each other rather than to be inconsistent or at cross purposes. FSM v. Moroni, 6 FSM R. 575, 579 (App. 1994).

The intention of the legislature as to whether a provision is mandatory or not is determined from the language used. The use of the word shall is the language of command and considered mandatory. In re Failure of Justice to Resign, 7 FSM R. 105, 109 (Chk. S. Ct. App. 1995).

Statutes and constitutional provisions must be read together when the statutes are pre-constitution and because they are only effective to the extent they are not in conflict with the Chuuk Constitution. Sana v. Chuuk, 7 FSM R. 252, 254-55 (Chk. S. Ct. Tr. 1995).

Provisions of a law must be read so as to be internally consistent and sensible, and where a term in a statute is unambiguous and dispositive, a court should not examine other materials that might indicate legislative intent. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (I), 7 FSM R. 280, 284 (Yap 1995).

When the statute is not ambiguous there is no need to examine legislative intent, but when the language of the Code is ambiguous, other sources, such as Congressional journals or the original version of the statute may be consulted to give an indication of Congressional intent. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (I), 7 FSM R. 280, 286 (Yap 1995).

Where FSM Code provisions are based on U.S. law FSM courts may, in order to shed light on legislative intent, consider statutory interpretations by U.S. courts without being bound by those cases, but cases interpreting sections of the U.S. Code that were not enacted into the FSM Code are not relevant as an indication of the intent of the FSM Congress. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (I), 7 FSM R. 280, 286 (Yap 1995).

A statute that imposes a penalty is subject to strict construction, particularly where a penalty may be imposed without requiring a finding of a culpable state of mind. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (II), 7 FSM R. 365, 368 (Yap 1996).

The unambiguous words of a statute which imposes criminal penalties cannot be altered by judicial construction to punish someone not otherwise within its reach, no matter how much he deserves punishment. FSM v. Webster George & Co., 7 FSM R. 437, 440 (Kos. 1996).

A general section in a statute cannot expand the class of principals to whom the more specific sections are directed. FSM v. Webster George & Co., 7 FSM R. 437, 440 (Kos. 1996).

Because the provision permitting an automatic increase back to their former salaries by the Governor, Lieutenant Governor, and the members of the legislature, is severable, it thus may be ruled unconstitutional without affecting the validity of the rest of the statute. Chuuk State Supreme Court v. Umwech (II), 7 FSM R. 630, 632 (Chk. S. Ct. Tr. 1996).

Statutes authorizing attachment must be construed strictly. In general, attachment is available only in

certain kinds of actions and then only upon a showing of special grounds. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 659, 662 (Pon. 1996).

The legislature's intention as to whether a provision is mandatory is determined from the language used. The use of the word shall is the language of command and considered mandatory. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 670 (App. 1996).

When the fishing statute sets forth a list of prohibited acts in the disjunctive, commission of any one of the listed acts is unlawful, and the government may pursue separate civil penalties for each. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 90 (Pon. 1997).

A court should construe a statute as the legislature intended. Legislative intent is determined by the wording of the statute. What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Thus a court must give effect to the plain meaning of a statutory provision whenever possible. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM R. 129, 131 (App. 1997).

A provision of law must be read so as to be internally consistent and sensible. Courts should read different sections of the same statute, or even the two sentences that form one subsection, in a manner that permits them to be consistent with each other rather than to be inconsistent or at cross purposes. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM R. 129, 131-32 (App. 1997).

Basing legal analysis on dictionary definitions can be an uncertain proposition. This is particularly so where Congress has explicitly defined the term in the statute. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM R. 129, 132 n.2 (App. 1997).

When Congress has determined that the application of two subsections together would deter tax delinquencies, it is not a court's function to make a contrary determination. A court's function is to apply the statute as Congress intended unless doing so would violate the Constitution. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM R. 129, 133 (App. 1997).

The Supreme Court may exercise personal jurisdiction in civil cases only over persons residing or found in the Federated States of Micronesia or who have been duly summoned and voluntarily appear, except as provided in the long arm statute. The terms "resides in," "is a resident of," and "residence is in" are roughly synonymous. Alik v. Moses, 8 FSM R. 148, 149-50 (Pon. 1997).

Because of the verbs in the statute, only "carry" is defined in the Weapons Control Act, "possess" is given its usual meaning of taking into one's possession, and possession means to have in one's control. FSM v. Fal, 8 FSM R. 151, 155 (Yap 1997).

An obligation of the state to pay a litigant a sum in exchange for dismissal of claims sought that arises from the judgment of dismissal of that case is not contrary to the legislative intent expressed in any provision of the Financial Management Act. Otherwise, no settlement of litigation requiring payment by the state could ever be made. Ham v. Chuuk, 8 FSM R. 300i, 300k (Chk. S. Ct. App. 1998).

It is the purpose of the Financial Management Act to ensure that public funds are only used or promised in a manner provided by law and a judgment of the Chuuk State Supreme Court trial division is a manner provided by law. Ham v. Chuuk, 8 FSM R. 300i, 300k (Chk. S. Ct. App. 1998).

When interpreting a statute, the plain meaning of the statutory provision must be given meaning whenever possible. Courts should not broaden statutes beyond the meaning of the law as written. Joy Enterprises, Inc. v. Pohnpei Utilities Corp., 8 FSM R. 306, 310 (Pon. 1998).

A court should avoid unnecessary constitutional adjudications. When interpreting a statute, courts should, where possible, avoid selecting interpretations of a statute which may bring into doubt the

constitutionality of that statute. If construction of a statute by which a serious doubt of constitutionality may be avoided is fairly possible, a court should adopt that construction. Cornelius v. Kosrae, 8 FSM R. 345, 348 (Kos. S. Ct. Tr. 1998).

Acts of Congress are presumed to be constitutional. Chuuk v. Secretary of Finance, 8 FSM R. 353, 374, 387 (Pon. 1998).

The statutory and regulatory authorities in effect during the time the employees' grievances took place will be applied to the decision. Langu v. Kosrae, 8 FSM R. 427, 432 (Kos. S. Ct. Tr. 1998).

It is a well settled rule of law that an ordinance will be presumed to be valid, unless the contrary appears on its face. Esechu v. Mariano, 8 FSM R. 555, 556 (Chk. S. Ct. Tr. 1998).

Via the analogy implicated by the Transition Clause, under a statute carried over from the Trust Territory which speaks in terms of the Trust Territory and any of its political subdivisions as being persons, Pohnpei is also a person to the same extent that a Trust Territory political subdivision was a person under the statute's prior incarnation. AHPW, Inc. v. FSM, 9 FSM R. 301, 305 (Pon. 2000).

When an ordinance has a savings clause and its provision for election filing fees is found unconstitutional, the filing fee provision of the previous ordinance it superseded will be reinstated. Nameta v. Cheipot, 9 FSM R. 510, 512 (Chk. S. Ct. Tr. 2000).

When a case's disposition and the plaintiffs' sought relief do not require construction of statute as to its constitutionality, courts will not undertake a decision based upon a constitutional issue. Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 545 (Chk. S. Ct. Tr. 2000).

The court will not rule on a statute's constitutionality when it can limit the case's disposition to interpretation of the statute's language as it applies to the question. Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 545 (Chk. S. Ct. Tr. 2000).

When an act lists 23 different and distinct prohibited gaming devices, including "slot machines," but makes no mention of "poker machines" whatsoever, by its failing to list "poker machines" in an extended list of prohibited items, the legislature excluded such machines from the application of the law, and the court will not include the machines into the proscription of the statute something which the Legislature intended to exclude. Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 547 (Chk. S. Ct. Tr. 2000).

Without a separate statute of limitations in the act creating a public corporation, the state legislature obviously intended for suit to be brought against the corporation within the same time period that suit must be brought against the state and its various related entities even though the corporation may act on its own and sue and be sued in its own name. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 558 (Pon. 2000).

The generally recognized rule is that interest should not bear interest, but compound interest may be awarded if authorized by statute. When the statute reads "nine percent a year" it is not an express authorization to compound interest annually, but is instead, without more, merely a statement of the rate of simple interest. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM R. 569, 570 (Chk. 2000).

Title 6, chapter 10, subchapter 1 of the FSM Code is replete with references to officials who either do not exist now or who no longer carry out the functions with which they are identified in the statute, and when confronted with such language in a section thereof, the FSM Supreme Court has generally ruled that the section applies only to the Trust Territory High Court. FSM v. Kuranaga, 9 FSM R. 584, 586 (Chk. 2000).

Because the FSM statute is based upon the United States model, the FSM Supreme Court should consider United States court decisions under 42 U.S.C. § 1983 and § 1988 for assistance in determining the intended meaning of, and governmental liability under 11 F.S.M.C. 701(3). Estate of Mori v. Chuuk, 10

FSM R. 6, 13 (Chk. 2001).

If a statutory provision is unconstitutional and can be severed from the rest of the legislative act, only that provision will be struck down. MGM Import-Export Co. v. Chuuk, 10 FSM R. 42, 44 (Chk. 2001).

A savings clause that merely states that private parties who could previously seek civil remedies for what are now violations of the Chuuk State Environmental Protection Act still retain that right even if the Chuuk Environmental Protection Agency decides to act, does not create any new rights for those persons. Nor does it entitle them to collect any of the penalties created which may be asserted only by the Chuuk Environmental Protection Agency and only to its credit. Moses v. M.V. Sea Chase, 10 FSM R. 45, 51 (Chk. 2001).

The plain meaning of a statutory provision must be given effect whenever possible. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 62 n.7 (Pon. 2001).

When statutes are pre-constitution, the statutes and constitutional provisions must be read together because the statutes are only effective to the extent they are not in conflict with the constitution. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 63 (Pon. 2001).

The assertion that municipalities own submerged reef areas is not sound because 67 TTC 2(1) expressly states that the law established by the Japanese administration was that all marine areas below the ordinary high watermark belong to the government and because a finding that the municipalities were the underlying owners of all submerged reef areas, would render the statute granting them the right to use marine resources there superfluous and inconsistent with the rest of the statute. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 64 (Pon. 2001).

A long-standing norm of statutory construction states that provisions of law must be read so as to be internally consistent and sensible. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 64 (Pon. 2001).

Generally, statutes and enactments in derogation of the common law – existing law – are to be strictly construed. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 122 (Pon. 2001).

Although it is generally agreed that a statute in the derogation of the common law must be strictly construed, this rule of statutory construction cannot be used to defeat the obvious purpose of the legislature, nor to lessen the scope plainly intended to be given the statute. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 122 (Pon. 2001).

When a Pohnpei statute does not show any legislative intent to abolish the well-established principle of absolute judicial immunity for the judicial act of timing the issuance of court decisions and to allow a private suit for damages in such cases, a court can only conclude that the Pohnpei Legislature did not intend to abolish absolute judicial immunity in this instance and did not intend to create a right for damage suits against judges if their decisions were not timely. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 122 (Pon. 2001).

When the statute requires that a statement of contest must be filed within five days "after declaration of the result of the election by the body canvassing the returns" and also provides that upon "tabulation of each of the precinct votes, the Commission shall tabulate or cause to be tabulated the cumulative results, including the total of election results for each nominee, and make these results known to the public," the declaration is when the results are made known to the public. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 153 (Chk. S. Ct. App. 2001).

If a current law is unconstitutional, the previous law generally applies. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 154 (Chk. S. Ct. App. 2001).

Generally, statutes and enactments in derogation of the common law, or existing law, are to be strictly

construed. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 223 (Chk. S. Ct. App. 2001).

The court's task is to apply the law in the manner the Legislature intended as evidenced by the language it used in the statute. If this is unfair, it is a matter for the Legislature to correct, not the court. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 223 (Chk. S. Ct. App. 2001).

FSM Code provisions must be construed with a view to effect their object. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 334 (Pon. 2001).

Generally, a provision is directory and not mandatory if it requires that certain actions be completed, but does not prescribe the result which should follow if those actions are not completed. Jonas v. Kosrae, 10 FSM R. 453, 459 (Kos. S. Ct. Tr. 2001).

The over-obligation of funds statute, 55 F.S.M.C. 220(3), was not intended to create a basis for private parties to sue government officials, but for the government to be able to punish employees and officials who are found to be misusing public funds. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 634 (Pon. 2002).

Statutes which do not, by their terms, provide private citizens with a cause of action for money damages cannot be the basis for private damages claims. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 634 (Pon. 2002).

The court will not infer the existence of a private cause of action in the absence of a clear intent expressed in the statute that such a private cause of action be created. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 634 (Pon. 2002).

The court must begin with the presumption that acts of Congress are constitutional. FSM v. Anson, 11 FSM R. 69, 74 (Pon. 2002).

Acts of the Kosrae Legislature are presumed to be constitutional. Kosrae v. Sigrah, 11 FSM R. 249, 256 (Kos. S. Ct. Tr. 2002).

Courts should avoid, where possible, selecting interpretations of a statute which may bring into doubt the constitutionality of that statute. Accordingly, a defendant is burdened with a high standard of proof in establishing the unconstitutionality of a state law. Kosrae v. Sigrah, 11 FSM R. 249, 256 (Kos. S. Ct. Tr. 2002).

The word "demand" means "ask as by right." When a police officer did request and ask as by right for the defendant's driver's license, even though the officer did not use the word "demand," the officer's request to the defendant for his driver's license satisfies the statute's "demand" requirement. Kosrae v. Sigrah, 11 FSM R. 263, 264 (Kos. S. Ct. Tr. 2002).

The plain meaning of a statutory provision must be given effect whenever possible. Courts should not broaden statutes beyond the meaning of the law as written. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 378 (App. 2003).

The court's role is to construe the relevant statute as the legislature intended. Legislative intent is determined, first and foremost, by the statute's wording. The statute's text is considered the best evidence of legislative intent or will. The court must give effect to the plain meaning of a statutory provision whenever possible. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 379 (App. 2003).

When 53 F.S.M.C. 604 does not contain the broader language of, "or other legal processes," it cannot be interpreted in a manner identical to the U.S. statute that does. The FSM provision is more restrictive than the U.S. provision, as it protects Social Security benefits only from execution, attachment, garnishment,

and assignment and not from other legal processes. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 379 (App. 2003).

The nation's laws are presumed to be constitutional, and when possible, statutory provisions should be interpreted in such a way as to avoid any potential conflicts between the statute and the Constitution. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 382 (App. 2003).

Statutes are presumed constitutional until challenged, and the burden is on the challenger to clearly demonstrate that a statute is unconstitutional. Parkinson v. Island Dev. Co., 11 FSM R. 451, 453 (Yap 2003).

A court should construe a statute as the legislature intended. Legislative intent is determined by the statute's wording. What a legislature says in the statute's text is considered the best evidence of the legislative intent or will. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 477 (Chk. S. Ct. App. 2003).

The Legislature has granted the appellate division "all powers necessary to make the determination" of the contested election. The Legislature's intent when it said "all powers" was that the court could consider all relevant and admissible evidence properly offered. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 477 (Chk. S. Ct. App. 2003).

All statutes are presumed to be constitutional and if there is any other way of disposing of an issue other than on a constitutional ground, then the court should decide the issue in that manner. Thus the court addresses a statute's constitutionality only with reluctance. Estate of Mori v. Chuuk, 11 FSM R. 535, 541 (Chk. 2003).

The conclusion that the statute is unconstitutional to the extent that it denies payment of judgments based on civil rights violations at least implies that the statute may be judicially tailored in application to make the statute otherwise workable. Estate of Mori v. Chuuk, 12 FSM R. 3, 12 (Chk. 2003).

A statutory provision repugnant to the Constitution, would be invalid to the extent of the conflict. FSM v. Udot Municipality, 12 FSM R. 29, 47 (App. 2003).

One principle of statutory construction is that the specific provision prevails over the more general. In re Engichy, 12 FSM R. 58, 64 (Chk. 2003).

If two statutes conflict, the more recent expression of the legislature's will (that is, the most recently enacted statute) prevails over the earlier to the extent of the conflict. In re Engichy, 12 FSM R. 58, 64 (Chk. 2003).

Generally, a specific statutory provision will control rather than a general statute to the extent that they conflict. In re Engichy, 12 FSM R. 58, 69 (Chk. 2003).

Since "enter" means to place anything before a court, or upon or among the records, in a formal and regular manner, and usually in writing, and since common sense must play a part in the way that an agency's statutorily mandated procedures are interpreted, a letter from the Social Security Board stating that it is a final decision by the Board, and that the petitioner has the option of appealing to the FSM Supreme Court, is a final, entered order within the meaning of 53 F.S.M.C. 208. Andrew v. FSM Social Sec. Admin., 12 FSM R. 101, 103-04 (Kos. 2003).

When there is an apparent, or even putative, conflict between a statute of general application like the Administrative Procedures Act, and a statute directed toward a particular agency, the more specific provisions will apply. Andrew v. FSM Social Sec. Admin., 12 FSM R. 101, 104 (Kos. 2003).

Although statutes of limitation on criminal prosecutions must be accorded a rational meaning in

harmony with the obvious intent and purpose of the law, such statutes must be liberally construed in favor of the accused, and exceptions from the benefits of such statutes must be construed narrowly or strictly against the government. The rule of strict construction will not justify an unreasonable interpretation – one contrary to the law's intent. The rule of strict construction simply means that ordinary words are to be given their ordinary meaning. FSM v. Wainit, 12 FSM R. 105, 109-10 (Chk. 2003).

By deliberately using a different term in 11 F.S.M.C. 105(3)(b) from the one defined in 11 F.S.M.C. 104(11), the drafters can only have intended that the meaning be different, and, by not defining it, that the term's meaning should be the common, ordinary English language meaning of the term because words and phrases as used in the code must be read with their context and be construed according to the common and approved usage of the English language. FSM v. Wainit, 12 FSM R. 105, 110 (Chk. 2003).

The common and approved usage in the English language of the term "public officer" is a person holding a post to which he has been legally elected or appointed and exercising governmental functions. "Public officer" is not a legal term of art but carries only its common, ordinary, and unambiguous English language meaning as found in the dictionary. FSM v. Wainit, 12 FSM R. 105, 110-11 (Chk. 2003).

Strictly construing the term "public officer" by using only its plain, ordinary, and unambiguous meaning (or in the code's terms "its common and approved usage"), a mayor falls within the public officer exception to the criminal statute of limitations. FSM v. Wainit, 12 FSM R. 105, 111 (Chk. 2003).

A statute's policy is to be found in the legislative intent, and it is the cardinal rule in the construction of statutes that such intent is, itself, to be found solely in the statute's words if they are free from ambiguity and express a sensible meaning. FSM v. Wainit, 12 FSM R. 105, 111 (Chk. 2003).

A court should construe a statute as the legislature intended. Legislative intent is determined by the statute's wording. What a legislature says in a statute's text is considered the best evidence of the legislative intent or will. Thus a court must give effect to the plain meaning of a statutory provision whenever possible. FSM v. Wainit, 12 FSM R. 105, 111 (Chk. 2003).

When the statute's language is plain and unambiguous, it declares its own meaning and there is no room for construction. FSM v. Wainit, 12 FSM R. 105, 111 (Chk. 2003).

When the statute's drafters deliberately chose the term "public officer" in an exception to the criminal statute of limitations instead of using the term "public servant," as they did in so many other criminal code sections, the statute's object and the drafters' intent was to apply this exception to all public officers, not just to those the criminal code defined as "public servants." This is the statute's plain and unambiguous meaning. If the drafters had intended to restrict the exception to just those persons that had been defined as "public servants," they could easily have inserted that term instead. FSM v. Wainit, 12 FSM R. 105, 111 (Chk. 2003).

FSM Code provisions are to be construed according to the fair construction of their terms, with a view to effect its object and to promote justice. FSM v. Wainit, 12 FSM R. 105, 111 (Chk. 2003).

A national statute whose term "public officer" refers to state and municipal public officials as well as national officials does not raise a constitutional issue involving the allocation of powers between the two sovereigns – state and national – and the three levels of government – national, state, and local because it applies to persons based upon their status as public officers – persons holding posts and exercising governmental functions. It does not matter whether that status is defined and bestowed upon a person by the national government or by another level of government in the FSM. It only matters that the person holds that status. FSM v. Wainit, 12 FSM R. 105, 111 (Chk. 2003).

It is an elemental canon of statutory construction that where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it. AHPW, Inc. v. FSM, 12 FSM R. 114,

122 (Pon. 2003).

The question of whether a statute acts retrospectively or only prospectively is one of legislative intent. Herman v. Municipality of Patta, 12 FSM R. 130, 136 (Chk. 2003).

An Act was not intended to be retroactive when it provided that the Act's "revision" should "not be construed to extinguish any rights or remedies of any party which may have arisen prior to such revision, unless specifically provided otherwise." Herman v. Municipality of Patta, 12 FSM R. 130, 136 (Chk. 2003).

When the statute does not provide for an alternative, the court may not read into a statute words which do not exist therein. Chuuk v. Ernist Family, 12 FSM R. 154, 160 (Chk. S. Ct. Tr. 2003).

Basing legal analysis on dictionary definitions can be an uncertain proposition. Not the least of such concerns is that a comprehensive dictionary aims at setting out all meanings of a word, while a court must determine the precise intended meaning of a word or phrase in a specified context. AHPW, Inc. v. FSM, 12 FSM R. 164, 166 (Pon. 2003).

Even where a litigant may have concerns over its ability to realize on a judgment against the state defendant, that concern alone does not serve to enlarge the scope of a statute to create liability for the national government, against which a judgment may be more collectible. Such issues are for the legislature. AHPW, Inc. v. FSM, 12 FSM R. 164, 167 (Pon. 2003).

There is no meaningful distinction between the terms "compulsory acquisition" and "expropriation." AHPW, Inc. v. FSM, 12 FSM R. 164, 167 (Pon. 2003).

The court cannot read words into a statute that are not there. AHPW, Inc. v. FSM, 12 FSM R. 164, 167-68 (Pon. 2003).

National laws are often applied to persons based on their status, even when that status is defined solely by another government. FSM v. Wainit, 12 FSM R. 201, 205 (Chk. 2003).

Words and phrases as used in the FSM code shall be construed according to the common and approved usage of the English language. FSM v. Wainit, 12 FSM R. 201, 205 (Chk. 2003).

The legislature's intention as to whether a statutory provision is mandatory is determined from the language used. Generally, a provision is directory and not mandatory if it requires that certain actions be completed, but does not prescribe the result which should follow if those actions are not completed. Buruta v. Walter, 12 FSM R. 289, 293 (Chk. 2004).

A cardinal principle of statutory construction is to avoid an interpretation which may call into question the statute's, or the rule's, constitutionality. Adams v. Island Homes Constr., Inc., 12 FSM R. 348, 353 (Pon. 2004).

"Competition" means the effort of two or more parties, acting independently, to secure the business of a third party by the offer of the most favorable terms. "Merchandise" and "commodity" are similar enough in meaning to be interchangeable: "merchandise" is defined as each commodity bought and sold by merchants, while "commodity" is defined as any movable or tangible thing used in commerce as the subject of trade or barter. "Produce" as a noun means articles produced or grown from or on the soil. AHPW, Inc. v. FSM, 12 FSM R. 544, 551 (Pon. 2004).

The nation's laws are presumed to be constitutional. A fundamental principle of statutory interpretation is that where a statute can be read in two ways, one raising constitutional issues and the other interpreting the language as affecting matters clearly within Congress's constitutional reach, the latter interpretation should prevail so that the constitutional issue is avoided. Jano v. FSM, 12 FSM R. 569,

572-73 (App. 2004).

Courts should, where possible, avoid selecting interpretations of a statute which may bring into doubt that statute's constitutionality. Jano v. FSM, 12 FSM R. 569, 573 (App. 2004).

Statutes are presumptively constitutional. Urusemal v. Capelle, 12 FSM R. 577, 586 (App. 2004).

Decisions of the United States courts have been consulted by our nation's courts when the language of the FSM Constitution or statute is comparable to language of the United State Constitution, but when there has been no showing that the Kosrae statutory language is comparable to the language addressed by the United States Supreme Court, those decisions will not be considered, especially when the FSM Supreme Court appellate division has addressed the issue. Melander v. Heirs of Tilfas, 13 FSM R. 25, 27 (Kos. S. Ct. Tr. 2004).

When a state law makes a specific reference to a national statute, any interpretation of that state law must simultaneously present a question of national law. The FSM Supreme Court would have subject matter jurisdiction over such a case. Shrew v. Sigrah, 13 FSM R. 30, 32 (Kos. 2004).

When under the plain language of 30 F.S.M.C. 202(1), only unobligated funds are subject to the Governor's request for distribution and while Kosrae State Law No. 8-17 does not make reference to obligated funds, it makes a specific reference to 30 F.S.M.C. 202(1), there is no conflict between the two laws, because the Kosrae statute, by reference to the national statute, incorporates the qualification for distribution contained in the national statute that only unobligated funds are subject to distribution. A statute must be given its plain meaning wherever possible, and when that plain meaning is derived by looking to the national statute specifically referred to in the state statute, the Governor has an obligation to request the distribution of only unobligated funds. Shrew v. Sigrah, 13 FSM R. 30, 33 (Kos. 2004).

An otherwise valid national statute must control over a state statute. AHPW, Inc. v. FSM, 13 FSM R. 36, 43 (Pon. 2004).

In considering a challenge to a statute's constitutionality, the initial premise upon which the court must begin is that acts of the Kosrae State Legislature and the state's laws are presumed to be constitutional. The court should avoid selecting an interpretation of a statute which may bring into doubt that statute's constitutionality. Kosrae v. Phillip, 13 FSM R. 285, 288 (Kos. S. Ct. Tr. 2005).

A practice which has been followed by a government for a significant period of time is entitled to great weight in establishing that practice's constitutionality. The party that raises the issue has the burden of proof as to the statute's unconstitutionality. Kosrae v. Phillip, 13 FSM R. 285, 288 (Kos. S. Ct. Tr. 2005).

The standard for consideration whether a statute is unconstitutionally vague is that a criminal statute must give fair notice of what acts are criminal conduct and subject to punishment; and the statute must be sufficiently explicit to prescribe the offense with reasonable certainty and not be so vague that person of common intelligence must necessarily guess at its meaning. However, it is accepted that some generality may be necessary in describing the prohibited conduct. Kosrae v. Phillip, 13 FSM R. 285, 289 (Kos. S. Ct. Tr. 2005).

When the language of the Kosrae statute and the United States statute are similar, it is appropriate to look to interpretations by United States courts. Kosrae v. Phillip, 13 FSM R. 285, 289 (Kos. S. Ct. Tr. 2005).

When interpreting the FSM Code, words and phrases must be read with their context and must be construed according to the common and approved usage of the English language. FSM v. Wainit, 13 FSM R. 532, 537, 538, 540 (Chk. 2005).

By deliberately using a different term, "public officer," in 11 F.S.M.C. 105(3)(b) from the ones defined in 11 F.S.M.C. 104(11) and in 11 F.S.M.C. 1301(2), the drafters can only have intended that the meaning be different, and, by not defining it, that the term's meaning should be its common, ordinary English language meaning. FSM v. Wainit, 13 FSM R. 532, 538 (Chk. 2005).

A statute's policy is to be found in the legislative intent. And it is the cardinal rule in the construction of statutes that such intent is, itself, to be found solely in the statute's words, if they are free from ambiguity and express a sensible meaning. FSM v. Wainit, 13 FSM R. 532, 539 (Chk. 2005).

A court should construe a statute as the legislature intended. Legislative intent is determined by the statute's wording. What a legislature says in a statute's text is considered the best evidence of the legislative intent or will. Thus a court must give effect to a statutory provision's plain meaning whenever possible. In other words, when the statute's language is plain and unambiguous, it declares its own meaning and there is no room for construction. FSM v. Wainit, 13 FSM R. 532, 539 (Chk. 2005).

The views of a later Congress about what an earlier Congress intended carry little or no weight. As a matter of law, such evidence can only be given little or no weight. FSM v. Wainit, 13 FSM R. 532, 540 (Chk. 2005).

Since by statute, the classification of the titles, chapters, subchapters, and sections of the FSM Code, and the headings thereto, are made for the purpose of convenient reference and orderly arrangement, and since Congress has specifically prohibited that any implication, inference, or presumption of a legislative construction be drawn therefrom, the court can give no weight or credence to and must reject any argument, implication, inference, or presumption to be draw from a subchapter's heading or from a subsection's arrangement in that subchapter. FSM v. Wainit, 14 FSM R. 51, 54 (Chk. 2006).

Since a statutory provision's plain meaning must be given effect whenever possible and courts should not broaden statutes beyond the meaning of the law as written, when there is no requirement in Section 13.201's express language that the accused be absent at the time the offense was committed, absence is thus not an essential element of the offense of accessory. Nena v. Kosrae, 14 FSM R. 73, 82 (App. 2006).

Generally, when the word "district" appears in an FSM Code provision carried over from the Trust Territory Code by virtue of the Constitution's Transition Clause, "state" will be read in its place. FSM v. Kansou, 14 FSM R. 136, 138 n.1 (Chk. 2006).

An FSM Code provision is to be construed according to the fair construction of its terms, with a view to effect its object and to promote justice. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 191 n.1 (Pon. 2006).

When the plaintiff has a claim de jure that the power conferred (on the court to treble damages) should be exercised because it had proved its right to damages under 32 F.S.M.C. 301 *et seq.* and when, considering the whole anticompetitive practices statute and its nature and object, Congress's intent was to impose a positive duty to treble damages, not a discretionary power to do so, the court will therefore award treble damages. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 191 (Pon. 2006).

When the defendant's anticompetitive acts did not just harm the plaintiff's business, but those acts put it out of business, even if treble damages were discretionary, there would be no more appropriate a case to exercise the discretion to treble damages than one where the anticompetitive acts put the plaintiff out of business. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 191 (Pon. 2006).

The court's obligation is to construe the statute to implement the legislature's intent and the best evidence of its intent is the words used (or not used) in the statute. Robert v. Simina, 14 FSM R. 257, 260 (Chk. 2006).

By deliberately using a different term in 11 F.S.M.C. 105(3)(b) from the one defined in 11 F.S.M.C.

104(11), the drafters must have intended that the meaning be different, and, by not defining it, that the term's meaning should be its common, ordinary English language meaning because words and phrases as used in the FSM Code must be read with their context and be construed according to the common and approved usage of the English language. FSM v. Nifon, 14 FSM R. 309, 313 (Chk. 2006).

The common and approved English language usage of the term "public officer" is a person holding a post to which he has been legally elected or appointed and exercising governmental functions. Strictly construing the term "public officer" by using only its plain, ordinary, and unambiguous meaning (or in the code's terms "its common and approved usage"), a mayor falls within the public officer tolling provision to the criminal statute of limitations, since the plain, unambiguous, and ordinary meaning of "public officer" (an ordinary term for which no construction is required) is that the term includes any person holding a post to which he has been legally elected or appointed and exercising governmental functions. FSM v. Nifon, 14 FSM R. 309, 313 (Chk. 2006).

Words and phrases, as used in the FSM Code or in any act of the Congress or in any regulation issued pursuant thereto must be read with their context and must be construed according to the common and approved usage of the English language. FSM v. Nifon, 14 FSM R. 309, 313 (Chk. 2006).

Under the English language's common and approved usage, words and phrases that modify other words or phrases are positioned as closely as possible to the word or phrase they modify because referential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent. FSM v. Nifon, 14 FSM R. 309, 313 (Chk. 2006).

When the maximum possible penalty for an alleged offense is ten years and the limitations period for offenses "punishable by imprisonment for ten years or more" is six years, the applicable limitations period is six years. The phrase, "ten years or more" does not mean that the maximum possible sentence must be more than ten years. The disjunctive "or" clearly means that, for subsection 105(2) to apply, a maximum possible sentence of only ten years is enough. FSM v. Nifon, 14 FSM R. 309, 314 (Chk. 2006).

Words and phrases, as used in the FSM Code or in any act of the Congress must be read with their context and shall be construed according to the common and approved usage of the English language. FSM v. Sam, 14 FSM R. 328, 334 n.2 (Chk. 2006).

Court-promulgated rules are interpreted using the principles of statutory construction. FSM v. Petewon, 14 FSM R. 463, 466 (Chk. 2006).

The Constitution permits the Chief Justice to promulgate civil procedure rules, which Congress may amend by statute. Since Congress has the authority to amend or create procedural rules by statute, when Congress has enacted a procedural rule, it is valid. The Chief Justice does not have the authority to amend Congressionally-enacted statutes. Therefore, if the statute applies and the statute and the rule conflict, the statute must prevail. Tipingeni v. Chuuk, 14 FSM R. 539, 542 n.1 (Chk. 2007).

If the current law is unconstitutional, the previous law generally applies. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 588 (Chk. S. Ct. App. 2007).

A specific statutory provision prevails over a general provision. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 590 (Chk. S. Ct. App. 2007).

The legislature's intention as to whether a statutory provision is mandatory is determined from the language used. Generally, a provision is directory and not mandatory if it requires that certain actions be completed, but does not prescribe the result which should follow if those actions are not completed. FSM v. Zhang Xiaohui, 14 FSM R. 602, 611 (Pon. 2007).

Although Section 1306 of Title 19 of the FSM Code authorizes the Secretary of the Department of

Transportation, Communication and Infrastructure to investigate violations, there is no provision in Title 19 that prescribes what action shall be taken if an investigation is not undertaken. As such, the requirement that an investigation be undertaken prior to the filing of an information is not mandatory. FSM v. Zhang Xiaohui, 14 FSM R. 602, 611 (Pon. 2007).

When the Legislature has altered the statutory framework only to increase, and not decrease, Kosrae's hiring discretion for contract employees by removing the single qualification that it had placed on the contract employees exemption, the court cannot limit the hiring discretion thus conferred by the Kosrae Legislature in the absence of a statutory basis for doing so since it is the Kosrae Legislature's role to consider and determine the public policy that supports a statute, and to enact legislation that reflects that public policy. Allen v. Kosrae, 15 FSM R. 18, 22 (App. 2007).

When the Bankruptcy Act states the debtor's estate consists of "all property owned by the debtor on the date of the application," the Act should not be interpreted to mean something other than what it says. "All" means "all." Since statutes are to be interpreted according to their plain meaning, and when a statute's language is plain and unambiguous, it declares its own meaning and there is no room for construction. The meaning of "all" is plain and unambiguous." In re Panuelo, 15 FSM R. 23, 27 (Pon. 2007).

Words and phrases used in the FSM Code (of which the Bankruptcy Act is a part) must be read with their context and must be construed according to their common and approved English language usage. In re Panuelo, 15 FSM R. 23, 27 n.1 (Pon. 2007).

Since the FSM Code provisions are construed according to the fair construction of their terms with a view to effect its object and to promote justice, to construe the phrase "all property," to include the debtor's property outside the FSM would construe the Bankruptcy Act and 31 F.S.M.C. 203(1)(a) according to the fair construction of their terms or with a view to effect the Bankruptcy Act's object and to promote justice. In re Panuelo, 15 FSM R. 23, 28 (Pon. 2007).

Statutes are presumed to be constitutional. FSM v. Masis, 15 FSM R. 172, 175 (Chk. 2007).

Courts observe a strict rule of construction against a retrospective operation, and indulge in the presumption that the legislature intended statutes, or amendments thereof, enacted by it, to operate prospectively only, and not retroactively. A contrary determination will be made only when the legislature's intention to make a statute retroactive is stated in express terms, or is clearly, explicitly, positively, unequivocally, unmistakably, and unambiguously shown. Esa v. Elimo, 15 FSM R. 198, 204-05 (Chk. 2007).

It is generally considered violative of the constitutional right to due process to apply a law retroactively that would divest someone of a vested right or property interest. Esa v. Elimo, 15 FSM R. 198, 205 (Chk. 2007).

Since the courts are the final authority on issues of statutory construction, when, based on the undisputed record and reasonable inferences drawn therefrom, the court concludes that the plaintiff is not selling imported items, the case is ripe for summary judgment on the issue of whether the tax statute applies to locally produced aggregate. K&I Enterprises v. Francis, 15 FSM R. 414, 418 (Chk. S. Ct. Tr. 2007).

When "first sale" is defined as "the sale first made after the date of receipt in Chuuk State of taxable tangible items, a tax on first sale in the State of Chuuk of all tangible items, except gasoline and unprocessed and unpackaged items, means that in order for an item to be taxable, there must be "receipt of the item" in Chuuk. The only reasonable inference to be drawn from the definition of "first sale" is that items which have never left Chuuk, that is, locally produced goods are not subject to the statute because they have no "date of receipt" in Chuuk. K&I Enterprises v. Francis, 15 FSM R. 414, 418 (Chk. S. Ct. Tr.

2007).

The time periods running from "discovery" of the offense and the date the offense was committed are subject to the qualifier, "whichever is longer." The court will not read into the statute a qualifier of "whichever is shorter" because this would be directly contrary to the statute's plain meaning. The longer of the two possible calculations of the statutory limitations period applies. FSM v. Narruhn, 15 FSM R. 530, 533 (Chk. 2008).

Although it is a settled rule of statutory construction that a statute adopted from another jurisdiction is presumed to have been adopted as construed by the courts of that jurisdiction, when the statute's substance departs from the other jurisdiction's statute, the result will also differ. In re Panuelo, 15 FSM R. 640, 641 (Pon. 2008).

While there is no statutory definition of exploitation of an economic resource, these words' plain meaning leads to the conclusion that it includes fishing because the FSM's fisheries are undoubtedly a natural resource, marine in character, that are subject to economic exploitation as a result of the market demand for fish. It follows that fishing in the FSM EEZ constitutes the exploitation of a natural resource that subjects a party to the personal jurisdiction of the FSM Supreme Court. FSM v. Fu Yuan Yu 096, 16 FSM R. 1, 3 (Pon. 2008).

When criminal liability is explicitly imposed for the use of a firearm "in connection with or in aid of the commission of any crime against the laws of the Federated States of Micronesia," the use of the term "laws of the Federated States of Micronesia" does not make the statute unconstitutionally vague. This term refers to any or all criminal laws in the Federated States of Micronesia, national, state, or local because if it were otherwise, it would not be possible for the statute to have its obviously intended purpose and effect – to discourage the use of, and to punish the use of, firearms during the commission of other crimes. The plural form of the word "laws" further compels this conclusion. FSM v. Aiken, 16 FSM R. 178, 183 (Chk. 2008).

The appellate division should avoid unnecessary constitutional adjudication, and when interpreting statutes should try to avoid interpretations which may bring the constitutionality of the statute into doubt. Barrett v. Chuuk, 16 FSM R. 229, 234 (App. 2009).

Statutes setting salaries of public officials, like any other statutes, are presumed constitutional, and it is the court's duty to determine whether statutes conform to the Constitution, and if they do not, they will be treated as null and void. Doone v. Simina, 16 FSM R. 487, 490 (Chk. S. Ct. Tr. 2009).

A statutory construction that ends in an absurd result must be rejected. This is because a provision of law must be read so as to be internally consistent and sensible. FSM v. Aliven, 16 FSM R. 520, 533 (Chk. 2009).

Congress has mandated that words and phrases in the FSM Code must be read with their context, and that statutory provisions must be construed according to the fair construction of their terms, with a view to effect its object and to promote justice. FSM v. Aliven, 16 FSM R. 520, 533 (Chk. 2009).

Statutes are to be construed as Congress intended, which is first and foremost determined by the statute's language. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 604 (Pon. 2009).

Because issues of statutory construction and constitutional construction are issues of law, courts have final authority over them, and the issues are ripe for summary judgment, which will be granted to the party that is entitled to it as a matter of law. In ruling on these issues of law, the language of the statutory and constitutional provisions is controlling and the court will construe and give effect to the provisions' plain meaning. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 60 (Chk. S. Ct. Tr. 2010).

The Board of Education Act should be read so that its provisions are internally consistent and sensible and each provision should be considered against the entire Act's background so as to arrive at a reasonable interpretation consistent with other specific provisions and the Act's general design. Since the Board's statutorily-mandated purpose is to provide control and direction and to formulate policy for the Chuuk educational system, if the Act were construed so as to render the Board unable to perform its duties each time members' terms expired without replacements having been confirmed, the Board's ability to discharge its duties would be severely handicapped and its purpose to act towards the betterment of education in Chuuk would be undermined and since the Act contemplates an independent board with the power to perform its functions without interruption, construing the provisions for filling vacancies and appointments, and taking into account the Board's statutory purpose and the Act's overall intent, holdover incumbents continue to hold their seat until there are new incumbents. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 61 (Chk. S. Ct. Tr. 2010).

11 F.S.M.C. 1023(7), which prohibits firearms use in connection with or in aid of the commission of "any crime against the laws of the Federated States of Micronesia," does not restrict liability for firearms use to only those crimes defined in the FSM Code because the term "any crime against the laws of the Federated States of Micronesia," when read in context must refer to any or all criminal laws in the Federated States of Micronesia, national, state, or local, since, if it were otherwise, it would not be possible for the statute to have its obviously intended purpose and effect – to discourage the use of, and to punish the use of, firearms during the commission of other crimes. FSM v. Suzuki, 17 FSM R. 70, 76 (Chk. 2010).

The Constitution unmistakably places upon the judicial branch the ultimate responsibility for interpretation of the Constitution and for determining the constitutionality of statutes. It is the special province and duty of the courts, and the courts alone, to say what the law is and to determine whether a statute is constitutional. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 187 (Pon. 2010).

The question of a statute's constitutionality is not a nonjusticiable political question textually reserved to Congress. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 187 (Pon. 2010).

While the court is mindful that a practice which has been engaged in by a branch of the government for a long period of time is entitled to great weight in establishing the constitutionality of that practice, the passage of time does not automatically make a practice (or a statute) constitutional. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 190 (Pon. 2010).

The Chuuk wrongful death statute phrases the class of persons entitled to recovery in the conjunctive ("and"), not the disjunctive ("or"). Generally the use of the conjunctive "and" instead of the disjunctive "or" would mean that all three named beneficiaries – surviving spouse, children, and next of kin – are within the class of persons for whose benefit a wrongful death action may be brought and construing "and" according to its common and approved English usage would mean that all three groups, spouse, children, and next of kin, compose a single class of beneficiaries in a wrongful death action. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 211 (Chk. 2010).

Words and phrases as used in the Trust Territory Code must be read with their context and must be construed according to the common and approved usage of the English language. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 211 (Chk. 2010).

There is no evidence that the Trust Territory Congress of Micronesia's legislative intent in the wrongful death statute was that "other next of kin" meant only those who would inherit under intestate succession acts, especially since, at the time the Trust Territory wrongful death statute was enacted, there were no intestate succession acts. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 211 (Chk. 2010).

Trust Territory Code provisions must be construed according to the fair construction of their terms, with

a view to effect its object and to promote justice. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 212 (Chk. 2010).

When there is a conflict between a statute of general application and a statute specifically aimed, the more particularized provision will prevail. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 324 (Kos. 2011).

Because "display" means a fixed display such as being posted on a bulkhead, not being produced and displayed on demand, the FSM has proven a violation of the requirement to prominently display a fishing permit in the vessel's wheelhouse when the displayed permit had expired and was thus invalid, and the captain, only when asked for a current permit, promptly displayed one. FSM v. Kana Maru No. 1, 17 FSM R. 399, 405-06 (Chk. 2011).

Before starting an analysis of arguments concerning a statute's constitutionality, it is necessary to review any issues of statutory interpretation which may obviate the need for a constitutional ruling. Berman v. Lambert, 17 FSM R. 442, 446 (App. 2011).

Although parties may stipulate to factual matters, they may not stipulate to interpretations of law. Berman v. Lambert, 17 FSM R. 442, 446, 450-51 (App. 2011).

It is not competent for the parties or their attorneys to determine by stipulation questions as to the existence or proper construction or application of a statute. Berman v. Lambert, 17 FSM R. 442, 446 (App. 2011).

When comparing the terms from different parts of the code, the court must presume that by using different terms, in this case "legal residents" and "residents," the drafters could have only intended that the meaning would also be different. Berman v. Lambert, 17 FSM R. 442, 447 (App. 2011).

Statutes must be interpreted to remain internally sensible and consistent. Berman v. Lambert, 17 FSM R. 442, 447 (App. 2011).

A cardinal rule of statutory construction is that, where possible, courts avoid interpreting a law which may bring its constitutionality into doubt. Berman v. Lambert, 17 FSM R. 442, 447 (App. 2011).

In interpreting a statute, the statutory provision's plain meaning must be given full effect whenever possible. Berman v. Lambert, 17 FSM R. 442, 448 (App. 2011).

If the legislature wanted the statute to provide a hiring and promotion preference to Pohnpeian or FSM citizens, then the legislature would have used "citizen" rather than "legal resident." By not defining the term "legal residents" the term's meaning must be the term's common, recognized definition. Berman v. Lambert, 17 FSM R. 442, 448 (App. 2011).

A court should not interpret a statute in a way that would cause a question as to the statute's constitutionality. Berman v. Lambert, 17 FSM R. 442, 448 (App. 2011).

If a statutory provision is unconstitutional and can be severed from the rest of the legislative act, only that provision will be struck down. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 551 (App. 2011).

A legal conclusion that a statute is unconstitutional implies that it may be judicially tailored to make the statute otherwise workable. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 551 (App. 2011).

Under 24 F.S.M.C. 121, all of the Marine Resources Act's components are severable. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 551 (App. 2011).

The question of whether a statute acts retrospectively or only prospectively is one of legislative intent. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 592 (Pon. 2011).

Courts observe a strict rule of construction against a statute's retrospective operation, and indulge in the presumption that a legislature intends the statutes it enacts, or amendments thereto, to operate prospectively only, and not retroactively. A contrary determination can be made only when the legislature's intention to make a statute retroactive is stated in express terms, or is clearly, explicitly, positively, unequivocally, unmistakably, and unambiguously shown. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 592 (Pon. 2011).

It generally violates the constitutional right to due process to apply a law retroactively that would divest someone of a vested right or property interest. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 592 (Pon. 2011).

When a public law's statutory language seems to speak only in prospective terms and certainly does not expressly state or clearly, explicitly, positively, unequivocally, unmistakably, and unambiguously show legislative intent to make the statute retroactive or for it to be applied retrospectively to previously-awarded public contracts, the movant is entitled to summary judgment and a declaration that the public law does not apply to the parties' earlier contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 592 (Pon. 2011).

The term "Trust Territory" in statutes carried over from the Trust Territory Code should generally be read as meaning "Federated States of Micronesia" when the power involved is a national power. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 617, 619 n.1 (Chk. 2011).

When, by its own terms, the 51 F.S.M.C. 112(7) definition of a "nonresident worker" applies only to FSM Code Title 51, chapter 1, and not even to the rest of the FSM Code, it certainly does not apply to the Chuuk Health Care Act, which contains its own definition for the term "resident." Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 617, 619-20 (Chk. 2011).

A central principle of statutory interpretation is that, when a statute lends itself to two or more readings, a court shall choose the interpretation that is clearly constitutional. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 31 (Pon. 2011).

Generally, when the word "district" appears in an FSM Code provision carried over from the Trust Territory Code by virtue of the Constitution's Transition Clause, "state" will be read in its place. Likewise, "Trust Territory" should be read as "Federated States of Micronesia." Marsolo v. Esa, 18 FSM R. 59, 66 n.5 (Chk. 2011).

Because the FSM civil rights statute is based on the United States model, the FSM Supreme Court should consider United States court decisions under 42 U.S.C. § 1983 and § 1988 for guidance in determining 11 F.S.M.C. 701(3)'s intended meaning and governmental liability thereunder. Kaminanga v. Chuuk, 18 FSM R. 216, 219 n.1 (Chk. 2012).

Under a plain reading of the statute, the FSM Development Bank is not required to obtain permission on a case-by-case basis before starting collection actions for Federated Development Authority loans, and the court will not broaden the statute beyond the meaning of the law as written. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 378, 380 (Kos. 2012).

Statutes are not to be construed by singling out a particular phrase, because the court must construe the words and terms at issue in the context of the other language used in the statute. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 378, 380 (Kos. 2012).

A common maxim of statutory construction is that the expression of one thing means the exclusion of others. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 378, 380 (Kos. 2012).

When both general and specific statutes address a matter, the specific controls the subject. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 378, 380 (Kos. 2012).

A plain reading of the statutes, in context, includes a case-by-case requirement for refinancing FDA loans and by its specific inclusion excludes that requirement from collection efforts. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 378, 380 (Kos. 2012).

When the FSM civil rights statute is not as expansive as 42 U.S.C. § 1988 because it allows an attorney's fee award only in an action brought under 11 F.S.M.C. 701(3) and when an "action" is a court case while a "proceeding" includes both administrative and judicial proceedings, 11 F.S.M.C. 701(3) does not authorize the award of attorney's fees for administrative proceedings, even for administrative proceedings that were a prerequisite to a later court action (the exhaustion of administrative remedies requirement). It authorizes an attorney's fee award only for actions (court cases) brought under 11 F.S.M.C. 701(3). Poll v. Victor, 18 FSM R. 402, 405 (Pon. 2012).

Statutes are presumed constitutional. In re Lot No. 029-A-47, 18 FSM R. 456, 458 (Chk. S. Ct. Tr. 2012).

Since, under the Transition Clause, a statute in force in the State of Chuuk on the effective date of the Chuuk Constitution continues in effect to the extent it is consistent with the Chuuk Constitution or until it is amended or repealed, both 67 TTC 453 and 454 remain as Chuuk state law until amended or repealed since both are consistent with the Chuuk Constitution which requires "just compensation," and since they have not been repealed by implication because they occupy gaps in the recently enacted Chuuk eminent domain statute. In re Lot No. 029-A-47, 18 FSM R. 456, 459 (Chk. S. Ct. Tr. 2012).

A statute that provides only that the Plan's Board "may prescribe" or "may establish" differing premium amounts based on the number of the enrollee's dependants, or on their risk factors, does not appear to require that differing premium amounts be set. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 506 (Chk. 2013).

When an FSM secured transactions statute mirrors and appears to have been drawn from a U.S. statute, U.S. caselaw construing the U.S. statute may be consulted for guidance in construing the FSM statute. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 596 & n.6 (Kos. 2013).

The FSM Development Bank is not defunct because if the public law that restructured it were unconstitutional, then the previous FSM Development Bank statute would apply. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 618 (Pon. 2013).

Congressionally-enacted statutes are presumed to be constitutional. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 619 (Pon. 2013).

Wording in the FSM Code or in statutes enacted by Congress must be construed according to the English language's common and approved usage. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77 (Pon. 2013).

When the people's intent as voiced through its duly elected Congress is expressed in a statute, a court must give effect to the statutory provision's plain meaning whenever possible. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77 (Pon. 2013).

It is a canon of construction that statutes that are *in pari materia* may be construed together, so that inconsistencies in one statute may be resolved by looking at another statute on the same subject. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77 (Pon. 2013).

The court will not recharacterize damages as a part of the uninjured spouse's loss-of-consortium claim

and alter the nature of the damages claim solely to circumvent the FSM's statutory limited waiver of its sovereign immunity that prevents the injured spouse from being awarded the full amount of the damages she suffered. The court will comply with Congress's policy choice and its intent in enacting the limited waiver. Lee v. FSM, 19 FSM R. 80, 85 (Pon. 2013).

Congress enacted an exemption statute, 6 F.S.M.C. 1415, and courts cannot broaden statutes beyond their original meaning. Nor do courts have the power to amend a statute. Dison v. Bank of Hawaii, 19 FSM R. 157, 161 (App. 2013).

Generally, a statutory provision is directory and not mandatory if it requires that certain actions be completed, but does not prescribe the result which should follow if those actions are not completed. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 188 (Chk. 2013).

When the statute is silent about what result should follow if the Health Care Board does not submit draft legislation for the selection of its members by citizen enrolles and when that statute only directs the submission of draft legislation but does not require (nor could it) its enactment, the Board's failure to comply does not render the Board's composition illegal or its acts ultra vires. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 188 (Chk. 2013).

When the statute provides only that the Chuuk Health Care Plan's Board "may prescribe" or "may establish" differing premium amounts based on the number of the enrollee's dependants or on their "risk" factors, the statute does not require it, but leaves it to the Board's discretion, the Board may choose to assess premiums in a different manner. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 189 (Chk. 2013).

When the word "district" appears in an FSM Code provision carried over from the Trust Territory Code by virtue of the Constitution's Transition Clause, "state" will be read in its place. Mori v. Hasiguchi, 19 FSM R. 222, 224 (Chk. 2013).

The statute's use of the indefinite article "a" before the word "court" instead of the definite article "the" indicates that in this particular instance no specific court is referred to and thus other tribunals are included in § 11.612(6)'s reference to "a court." Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 301-02 (App. 2014).

The phrase "whether or not acting under color of law" in the civil rights criminal statute plainly means that Congress, by enacting the statute, made it a crime for a private person to willfully deprive another of, or injure, oppress, threaten, or intimidate the other in the free exercise of his or her rights under the FSM Constitution or laws. FSM v. Tipingeni, 19 FSM R. 439, 445 (Chk. 2014).

By its nature, a statute is a declaration of public policy. Congress determines and declares public policy by enacting statues. Esiel v. FSM Dep't of Fin., 19 FSM R. 590, 594 (App. 2014).

A statute declares public policy. If that statute is constitutional it can never be declared to be against public policy. Esiel v. FSM Dep't of Fin., 19 FSM R. 590, 594 (App. 2014).

When the legislature, by enacting a statute, declares the public policy, the judicial branch must defer to that pronouncement. Thus, when the legislature has declared, by law, the public policy, the judicial department must remain silent, and if a modification or change in such policy is desired the law-making department must be applied to, not the judiciary whose function is to declare the law but not to make it. Esiel v. FSM Dep't of Fin., 19 FSM R. 590, 594 (App. 2014).

When Congress enacted unambiguous statutes it chose what the public policy is – that the FSM national government be paid in full for its expenses in clearing the ships and planes after hours and that those ships and planes pay for actual overtime work. Esiel v. FSM Dep't of Fin., 19 FSM R. 590, 594 (App.

2014).

If the appellants believe that their arguments reflect a public policy better than the one Congress adopted by statute, they can apply to Congress for a modification or change in the statutes. Esiel v. FSM Dep't of Fin., 19 FSM R. 590, 594 (App. 2014).

When there is a conflict between a statute of general application to numerous agencies or situations, such as an Administrative Procedures Act, and a statute specifically aimed at a particular agency or procedure the more particularized provision will prevail. This rule is based upon recognition that the legislative body, in enacting the law of specific application, is better focused and speaks more directly to the affected agency and procedure. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 648 (Chk. S. Ct. Tr. 2015).

Generally, a statutory provision is directory and not mandatory if it requires that certain actions be completed, but does not prescribe the result which should follow if those actions are not completed. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 25 (App. 2015).

The legislature's intention as to whether a statutory provision is mandatory is determined from the language used. Generally, a provision is directory and not mandatory if it requires that certain actions be completed, but does not prescribe the result that should follow if those actions are not completed. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 25 n.6 (App. 2015).

Whether cumulative statutory penalties are permissible is properly determined by seeking out the legislative intent as expressed in the statute's language. FSM v. Kuo Rong 113, 20 FSM R. 27, 31 (Yap 2015).

A statute imposing a penalty is to be strictly construed against the government and in favor of one against whom penalties are sought to be imposed. FSM v. Kuo Rong 113, 20 FSM R. 27, 31 (Yap 2015).

When a penalty provision's statutory language is ambiguous, this ambiguity should be resolved against punishing the same action under two different statutes. FSM v. Kuo Rong 113, 20 FSM R. 27, 31 (Yap 2015).

Read in proper context, 24 F.S.M.C. 611(1)(b) and (c) are aimed at similar types of wrongdoing and uphold a public interest of the same nature. Thus, a vessel's failure to maintain its transponder in good working order, and its consequent failure to ensure transmission of required information from the transponder, is a solitary act that caused only one injury and therefore 24 F.S.M.C. 611(5) should not be construed to authorize cumulative penalties. FSM v. Kuo Rong 113, 20 FSM R. 27, 32 (Yap 2015).

Since Subsection (1) allows NORMA to require that operators perform an integrated act which, when completed in its entirety, ensures transmission of required information from a vessel's transponder and this is reflected in the use of the word "and" between 24 F.S.M.C. 611(1)(b) and (c); since the failure to perform any one part of the integrated act required under subsection 611(1) is sufficient to frustrate entirely the purpose of the subsection; and since a failure to perform multiple component parts of the act required under the subsection is no more frustrating to the statute's purpose than failure to perform only one part, the court will, in the absence of clear legislative intent to impose cumulative penalties, construe 24 F.S.M.C. 611(5) to impose only a single penalty for the failure to comply with the integrated requirements imposed on them under 24 F.S.M.C. 611(1). FSM v. Kuo Rong 113, 20 FSM R. 27, 33 (Yap 2015).

To prove a violation of section 611(1), the government has to show that a defendant: 1) entered into an access agreement or secured a fishing permit; 2) that the access agreement or permit required the defendant to conform to the requirements that NORMA is authorized to impose under section 611(1), and 3) that the defendant failed to comply with these requirements. It follows that a defendant's failure to comply with section 611(1), will, ipso facto, constitute a violation of a permit or access agreement as proscribed by section 906(1)(a),(c). FSM v. Kuo Rong 113, 20 FSM R. 27, 34 (Yap 2015).

In the absence of clear legislative intent to impose cumulative penalties against a single violative act, the court will construe 24 F.S.M.C. 611(5), 906(1) and 920 to impose only one penalty for failure to comply with the integrated requirements imposed as a condition of a permit or access agreement pursuant to 24 F.S.M.C. 611(1). But since 24 F.S.M.C. 901(2) evinces clear legislative intent for the imposition of cumulative penalties by making each day of a continuing violation a separate offense for violations of subtitle I and since the entire Marine Resources Act of 2002 constitutes FSM Code Title 24, Subtitle I, it is proper to impose a separate penalty for each of the four days between April 27, 2013 and April 30, 2013, inclusive, during which the vessel violated a provision of that Act. FSM v. Kuo Rong 113, 20 FSM R. 27, 34-35 (Yap 2015).

That the criminal offense of contempt of court statute is in Title 4, instead of Title 11, is meaningless and no inference that it is not a crime can be drawn from it. This is because the classification of the titles, chapters, subchapters, and sections of the FSM Code, and the headings thereto, are made for the purpose of convenient reference and orderly arrangement, and no implication, inference, or presumption of a legislative construction can be drawn therefrom. FSM v. Ehsa, 20 FSM R. 106, 110 (Pon. 2015).

The addition of the language "in the same manner as the levy of an execution" in 54 F.S.M.C. 153 shows that a different meaning was intended than if the statute had read "by writ of execution." Fuji Enterprises v. Jacob, 20 FSM R. 121, 125 (Pon. 2015).

Statutes are to be interpreted as the legislature intended and a statute's words are the best indication of what the legislature intended. Fuji Enterprises v. Jacob, 20 FSM R. 121, 125 (Pon. 2015).

It is presumed that words included in a statute are not meaningless surplusage because it is an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute. Fuji Enterprises v. Jacob, 20 FSM R. 121, 125 (Pon. 2015).

Since the nation's statutes are presumed to be constitutional, a bank is not required to challenge, on a depositor's behalf, the tax lien statute's constitutionality. The bank may rely on the statute. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

Since, in interpreting Kosrae State Code sections, the singular can mean the plural, therefore "permit" can mean permits if the law otherwise requires more than one permit. Lee v. Kosrae, 20 FSM R. 160, 165 (App. 2015).

The court should construe a statute as the legislature intended. Lee v. Kosrae, 20 FSM R. 160, 165 (App. 2015).

Since 4 F.S.M.C. 124(1) is based on the United States model and its statutory language is verbatim thereto, the court should consider United States legal authority under 28 U.S.C. § 455 for guidance in determining 4 F.S.M.C. 124's meaning concerning recusal as a result of a financial relationship with a lending institution. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 46 (App. 2016).

Generally, when the word "district" appears in an FSM Code provision carried over from the Trust Territory Code by virtue of the Constitution's Transition Clause, the word "state" will be read in its place. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 131 (Pon. 2017).

Since the human trafficking statute does not define recruiting, transporting, harboring, transferring, or receiving, these words' plain meaning will be used to determine whether the actions alleged in each count of the criminal information are included within the statute. FSM v. Shiro, 21 FSM R. 195, 203 (Chk. 2017).

Generally statements made by others [that is, by persons other than congressmen or the bill's draftsman] at the committee hearings concerning the nature and effect of a bill are not accorded much or any weight. FSM v. Siega, 21 FSM R. 291, 296 (Chk. 2017).

When a statute sets forth a list in the disjunctive (using the word "or"), the existence of any one of the listed conditions makes the statute applicable. FSM v. Siega, 21 FSM R. 291, 298 (Chk. 2017).

In the interpretation of statutes, the legislative will is the all-important or controlling factor. The primary rule of construction of statutes is to ascertain and declare the legislature's intention, and to carry such intention into effect to the fullest degree. Chuuk Health Care Plan v. FSM Dev. Bank, 21 FSM R. 300, 305 (Chk. 2017).

A statutory provision's plain meaning must be given effect whenever possible. Chuuk Health Care Plan v. FSM Dev. Bank, 21 FSM R. 300, 305 (Chk. 2017).

A court should construe a statute as the legislature intended as determined by the statute's wording. What a legislature says in the statute's text is considered the best evidence of the legislative intent or will. Chuuk Health Care Plan v. FSM Dev. Bank, 21 FSM R. 300, 305 (Chk. 2017).

A long-standing norm of statutory construction holds that provisions of law must be read so as to be internally consistent and sensible. Interpretations which strip clauses of substance and effect go against the norms of interpretation and are greatly disfavored. Chuuk Health Care Plan v. FSM Dev. Bank, 21 FSM R. 300, 305 (Chk. 2017).

Unreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another which would produce a reasonable result. Chuuk Health Care Plan v. FSM Dev. Bank, 21 FSM R. 300, 305 (Chk. 2017).

Chuuk State Law No. 2-94-06 contemplates a comprehensive health insurance system whereby premium payments were required on behalf of eligible enrollees employed by the national government. The statute's language contemplates a system of "universal" coverage automatically extending to all eligible enrollees, which includes all employed Chuuk residents regardless of their employer. Chuuk Health Care Plan v. FSM Dev. Bank, 21 FSM R. 300, 306 (Chk. 2017).

When the issue of a bank releasing funds under 54 F.S.M.C. 153 is a matter of first impression, the court may look to case law of other jurisdictions, particularly the United States, for comparison and guidance. Fuji Enterprises v. Jacob, 21 FSM R. 355, 361 (App. 2017).

Statutes are to be interpreted as the legislature intended and a statute's words are the best indication of that intent. Fuji Enterprises v. Jacob, 21 FSM R. 355, 361-62 (App. 2017).

A court should construe a statute as the legislature intended. Legislative intent is determined by the statute's wording because what a legislature says in the statute's text is considered the best evidence of the legislative intent or will. Thus, a court must give effect to the plain meaning of a statutory provision whenever possible. FSM v. Mumma, 21 FSM R. 387, 398 (Kos. 2017).

A long-standing norm of statutory construction holds that provisions of law must be read to be internally consistent and sensible. FSM v. Mumma, 21 FSM R. 387, 398 (Kos. 2017).

The FSM Social Security Act is patterned after United States statutes, and it is well settled rule of statutory construction that a statute adopted from another jurisdiction is presumed to have been adopted as construed by that jurisdiction's courts. Eliam v. FSM Social Sec. Admin., 21 FSM R. 412, 417 (App. 2018).

A statutory provision's plain meaning must be given effect whenever possible. Because issues of statutory construction are issues of law, courts have final authority over them and the court will construe and give effect to the provisions' plain meaning. Chuuk v. Jose, 21 FSM R. 566, 569 (Chk. S. Ct. Tr. 2018).

A court should construe a statute as the legislature intended. Legislative intent is determined by the statute's wording – what a legislature says in a statute's text is considered the best evidence of the legislative intent or will. Chuuk v. Jose, 21 FSM R. 566, 569 (Chk. S. Ct. Tr. 2018).

A court must give effect to a statutory provision's plain meaning whenever possible. Chuuk v. Jose, 21 FSM R. 566, 569 (Chk. S. Ct. Tr. 2018).

When the statute never defines imprisonment, the plain meaning of the term governs, which could leave the possibility of defining imprisonment to include house arrest, but the statute's context narrows the definition of imprisonment to refer only to confinement in jail. Chuuk v. Jose, 21 FSM R. 566, 570 (Chk. S. Ct. Tr. 2018).

Only those sections that contain a provision which mandates that defendant shall serve a mandatory x year jail sentence supersede § 1110 and thereby actually remove the court's equitable power to suspend such jail sentence. Chuuk v. Jose, 21 FSM R. 566, 572 (Chk. S. Ct. Tr. 2018).

It is a well-established canon of statutory construction that statutes are presumed to be constitutional. Chuuk v. Silluk, 21 FSM R. 649, 652 (Chk. S. Ct. Tr. 2018).

When a statute's language is plain and unambiguous, it declares its own meaning and there is no room for construction. However, a statute that either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law. A statute that is so vague and ill-defined that the acts prohibited cannot be understood by people of ordinary intelligence, cannot serve as a basis for criminal prosecution. Chuuk v. Silluk, 21 FSM R. 649, 652 (Chk. S. Ct. Tr. 2018).

A court cannot strike down or enjoin statutes merely because they might be unwise and some other course of action is better. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 267 (Chk. 2019).

When a Chuuk Criminal Procedure Rule conflicts with a Chuuk statute, the statute's language prevails because the Chuuk Constitution vests the Chief Justice with the authority to promulgate Criminal Procedure Rules, which the legislature may amend by statute, but the Chief Justice has no authority to amend a statute enacted by the legislature. Therefore, if the statute applies and the statute and the rule conflict, the statute must prevail. Chuuk v. Phillip, 22 FSM R. 425, 428 (Chk. S. Ct. Tr. 2019).

When a Chuuk Criminal Procedure Rule conflicts with a Chuuk statute, the statute's language prevails because the Chuuk Constitution vests the Chief Justice with the authority to promulgate Procedure Rules, which the legislature may amend by statute, but the Chief Justice has no authority to amend a statute enacted by the legislature. Therefore, if the statute applies and the statute and the rule conflict, the statute must prevail. Chuuk v. Fred, 22 FSM R. 429, 432 (Chk. S. Ct. Tr. 2019).

The only relevant question when evaluating a strict liability statute is whether there was compliance. A finding of discreet or overt acts in violation of the Marine Resources Act need not be established in order to find continuing violations under 24 F.M.S.C. 901(2). Thus, when the lack of compliance continued for four days, the court will impose penalties for each day of noncompliance. FSM v. Kuo Rong 113, 22 FSM R. 515, 526-27 (App. 2020).

FSM law does not recognize retroactive application of statutes without specific legislative instructions. FSM v. Kuo Rong 113, 22 FSM R. 515, 528 (App. 2020).

Courts observe a strict rule of construction against a statute's retrospective operation, and indulge in the presumption that a legislature intends the statutes it enacts, or amendments thereto, to operate prospectively only, and not retroactively. A contrary determination can be made only when the legislature's

intention to make a statute retroactive is stated in express terms, or is clearly, explicitly, positively, unequivocally, unmistakably, and unambiguously shown. FSM v. Kuo Rong 113, 22 FSM R. 515, 528 (App. 2020).

When the later enacted public law is silent about whether sections 611(4) and 611(5) were retroactively repealed, the law in effect at the time of the violations will control the imposition of the penalty. FSM v. Kuo Rong 113, 22 FSM R. 515, 528 (App. 2020).

That one section follows another in the FSM Criminal Code is not particularly relevant because the classification of the titles, chapters, subchapters, and sections in the code, and the headings thereto, are made for the purpose of convenient reference and orderly arrangement, and no implication, inference, or presumption of a legislative construction can be drawn therefrom. FSM v. Buchun, 22 FSM R. 529, 535-36 & n.5 (Yap 2020).

The 11 F.S.M.C. 1006(2) statutory presumption about who possesses a firearm or ammunition found in a vehicle or a vessel applies generally to any charge based on the possession of firearms or ammunition found in a vehicle or vessel, and would apply to a prosecution under 11 F.S.M.C. 1005(1). FSM v. Buchun, 22 FSM R. 529, 536 (Yap 2020).

The statute that authorizes the President to delegate his authority to issue entry permits and to permit entry into the FSM of persons, vessels, and aircraft under the provisions of this chapter and regulations promulgated thereto also authorizes the President to delegate his authority to deny issuance of an entry permit and his authority to deny entry of persons, vessels, and aircraft into the FSM because if an official has the delegated authority to issue an entry permit, then that official must also have the authority not to issue the entry permit – that is, to deny an entry permit application or renewal. Macayon v. FSM, 22 FSM R. 544, 553 (Chk. 2020).

– Construction – Adoption by Reference

Under general rules of statutory construction, when a statute adopts a provision by reference, it adopts that provision as it was at the time of adoption and any later changes to the referred provision will have no effect on the statute unless the statute specifically so provides or strongly implies. A statutory provision adopted by reference thus cannot be altered except by further action of the adopting legislature. That is because once the legislature has adopted a provision by reference, it makes that referenced provision its own law just as if it had entirely enacted the provision itself. No other rule would furnish any certainty as to what is the law. Anton v. Cornelius, 12 FSM R. 280, 285 n.1 (App. 2003).

Under the principles of statutory construction, when a statute adopts a provision by reference, it adopts that provision as it was at the time of adoption and any later changes to the referred provision will have no effect on the statute unless the statute specifically so provides or strongly implies. Otherwise, a statutory provision adopted by reference cannot be altered except by further action of the adopting legislature. That is because once the legislature has adopted a provision by reference, it makes that referenced provision its own law just as if it had entirely enacted the provision itself and because no other rule would furnish any certainty as to what is the law. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 629 & n.4 (Yap 2013).

When the FSM statute specifically defines the "Limitation of Liability Convention" as "the Convention on Limitation of Liability for Maritime Claims done at London on November 19, 1976 as modified by its protocols and as amended from time to time, " 19 F.S.M.C. 106(11), the statute specifically provides that later changes to the Liability Convention will be part of FSM law without further action by Congress. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 629 (Yap 2013).

– Construction – "May" and "Shall"

The use of the word shall in a statute is the language of command and considered mandatory. Ting

Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 5 (App. 1997).

While it is true in construction of statutes and rules that the word "may" as opposed to "shall" is indicative of discretion or a choice between two or more alternatives, the context in which the word appears must be the controlling factor. Kama v. Chuuk, 10 FSM R. 593, 599 (Chk. S. Ct. App. 2002).

While it is true in construction of statutes that the word "may" as opposed to "shall" is indicative of discretion or a choice between two or more alternatives, the context in which the word appears must be the controlling factor. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 20-21 (App. 2006).

In construction of statutes the word "may" as opposed to "shall" is indicative of discretion or a choice between two or more alternatives, but the context in which the word appears must be the controlling factor. The fact that the word "may" was used is not conclusive, since it is well settled that permissive words may be interpreted as mandatory where such construction is necessary to effectuate the legislative intent. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 190 (Pon. 2006).

Treble damages were proper when the discretion denoted by the word "may" in the statute lies with the injured party and not the court – the injured party "may" sue and recover treble damages – and when Congress's intent was to give the injured party treble damages if it sues and proves its case. The statute's context compels this conclusion. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 190-91 (Pon. 2006).

When, from the consideration of the whole statute, and its nature and object, it appears that the legislature's intent was to impose a positive duty rather than a discretionary power, the word "may" will be held to be mandatory. A mandatory construction will usually be given to the word "may" when public interests are concerned, and the public or third persons have a claim de jure that the power conferred should be exercised, or whenever something is directed to be done for the sake of justice or for the public good; but never for the purpose of creating a right. In a proper case the word "may" will be construed as "must" or "shall." AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 191 (Pon. 2006).

In construing statutes, the word "may" as opposed to "shall" is indicative of discretion or a choice between two or more alternatives, but the context in which the word appears must be the controlling factor. When, from the consideration of the whole statute, and its nature and object, it appears that the legislature's intent was to impose a positive duty rather than a discretionary power, the word "may" will be held to be mandatory. A mandatory construction will usually be given to the word "may" when public interests are concerned, and the public or third persons have a claim de jure that the power conferred should be exercised, or whenever something is directed to be done for the sake of justice or for the public good; but never for the purpose of creating a right. Accordingly, in a proper case the word "may" will be construed as "must" or "shall." Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 628 (App. 2011).

Despite the usage of the word "shall," FSM case law dictates that if the statute does not advise what will happen if the action is not carried out, then the statutory provision is directory rather than mandatory. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 25 (App. 2015).

When discretionary language "may" is used, which indicates that the insurance board has the power to consider these factors when assessing the insurance premiums and may exercise the power of applying these factors in the future, the discretion to do so is left with the board, and not with the court. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 26 (App. 2015).

– Presumptions

Since by statute, the classification of the titles, chapters, subchapters, and sections of the FSM Code, and the headings thereto, are made for the purpose of convenient reference and orderly arrangement, and since Congress has specifically prohibited that any implication, inference, or presumption of a legislative construction be drawn therefrom, the court can give no weight or credence to and must reject any

argument, implication, inference, or presumption to be draw from a subchapter's heading or from a subsection's arrangement in that subchapter. FSM v. Wainit, 14 FSM R. 51, 54 (Chk. 2006).

A "mini bag," which is an easily-transportable article similar in that nature to a purse, handbag, brief case, attache case, or backpack, is not an "enclosed customary depository" within the meaning of the statutory exception to the statutory presumption that a firearm, dangerous device, or ammunition found in a vehicle or vessel, is prima facie evidence that such firearm, dangerous device, or ammunition is in the possession of all persons in the vehicle or vessel. FSM v. Aliven, 16 FSM R. 520, 533 (Chk. 2009).

Statutory presumptions come in three types: permissive inference, mandatory rebuttable presumption, and conclusive mandatory presumption. FSM v. Aliven, 16 FSM R. 520, 533 (Chk. 2009).

Under the permissive inference type of criminal statutory presumptions, the prosecution is not relieved of the burden of persuasion since the presumption is effective only so long as there is no substantial evidence contradicting the conclusion flowing from the presumption, and the factfinder is left free to accept or reject the inference. FSM v. Aliven, 16 FSM R. 520, 533 (Chk. 2009).

A presumption in a criminal statute creates a permissive inference. Because this permissive presumption leaves the trier of fact free to credit or reject the inference and does not shift the burden of proof, it affects the application of the "beyond a reasonable doubt" standard only if, under the facts of the case, there is no rational way the trier could make the connection permitted by the inference. This is the manner in which the FSM Supreme Court should and will handle a criminal presumption that is "prima facie evidence." FSM v. Aliven, 16 FSM R. 520, 533-34 (Chk. 2009).

The 6 F.S.M.C. 801 provision that: "[a] judgment of any court shall be presumed to be paid and satisfied at the expiration of twenty years after it is rendered" reflects the common-law rebuttable presumption of payment after a lapse of twenty years. It can therefore be implied that the 20-year statute of limitations for enforcing a judgment is a rule that creates a rebuttable presumption of payment. Kama v. Chuuk, 18 FSM R. 326, 336 (Chk. S. Ct. Tr. 2012).

The doctrine of prescription or presumption of payment of a judgment does not apply when 20 years has not yet elapsed. Kama v. Chuuk, 18 FSM R. 326, 336 (Chk. S. Ct. Tr. 2012).

Statutory presumptions come in three types: permissive inference, mandatory rebuttable presumption, and conclusive mandatory presumption. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 154 (Chk. 2013).

Under a mandatory rebuttable presumption, once the predicate facts have been proven, the burden of persuasion shifts to the defense to rebut the presumption, although the burden of proving guilt beyond a reasonable doubt remains with the prosecution, or in a civil case, liability by the preponderance of the evidence. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 154 (Chk. 2013).

Under the permissive inference type of statutory presumptions, the state is not relieved of the burden of persuasion since the presumption is effective only so long as there is no substantial evidence contradicting the conclusion flowing from the presumption, and the fact-finder is left free to accept or reject the inference. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 154 (Chk. 2013).

Unless a cigarette importer produces evidence to overcome the Chuuk tax act's presumption that the cigarettes were sold after importation, the statutory presumption that he sold the cigarettes he brought into Chuuk would stand and he therefore would be liable to the state for the sales tax he should have collected from the buyers when the cigarettes were sold. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 154 (Chk. 2013).

The statutory presumption that judgments over twenty years old have been satisfied is a rebuttable

presumption. Kama v. Chuuk, 20 FSM R. 522, 534 (Chk. S. Ct. App. 2016).

A statutory rebuttable presumption that an FSM passport-holder that has had his or her passport renewed twice in a row, has renounced the citizenship of another nation and that he or she is solely an FSM citizen, has been overcome when a person has conceded that he has not formally renounced any claim he may have to U.S. citizenship and does not wish to do so now. Hartmann v. Department of Justice, 20 FSM R. 619, 623 (Chk. 2016).

The argument that the presumptions "cancel each other out" is not viable. Robert v. FSM Social Sec. Admin., 22 FSM R. 388, 393 (Kos. 2019).

When a plaintiff successfully creates a presumption, he not only satisfies his burden of going forward but also shifts that burden to the defendant. The defendant then must rebut the presumption to satisfy his burden of going forward. The burden of persuasion normally remains on the plaintiff for his claim throughout the trial. Robert v. FSM Social Sec. Admin., 22 FSM R. 388, 393 (Kos. 2019).

The 11 F.S.M.C. 1006(2) statutory presumption about who possesses a firearm or ammunition found in a vehicle or a vessel applies generally to any charge based on the possession of firearms or ammunition found in a vehicle or vessel, and would apply to a prosecution under 11 F.S.M.C. 1005(1). FSM v. Buchun, 22 FSM R. 529, 536 (Yap 2020).

– Repeal

Amendment or repeal of a Trust Territory statute by Congress need not be explicit to be effective. If a Trust Territory statutory provision is inconsistent or in conflict with a statutory provision enacted by Congress, that provision is repealed by implication. FSM v. Albert, 1 FSM R. 14, 15-16 (Pon. 1981).

Under article XV, section 1 of the Constitution, a Trust Territory Code provision is repealed by a subsequent statutory provision enacted by the Congress only if the statutory provisions in question are inconsistent or in conflict. Even if certain provisions are repealed, other provisions of that same statute may remain intact if the statute, without the deleted provision, is self-sustaining and capable of separate enforcement. FSM v. Boaz (II), 1 FSM R. 28, 29 (Pon. 1981).

The fact that Congress repealed many provisions of Title 11 of the Trust Territory Code by implication does not lead to the conclusion that all provisions of Title 11 are repealed. FSM v. Boaz (II), 1 FSM R. 28, 29 (Pon. 1981).

Since the national government does not have major crimes jurisdiction over Title 11 Trust Territory Code assaults calling for imprisonment of no more than six months, the repealer clause of the National Criminal Code would not appear to repeal those sections. FSM v. Boaz (II), 1 FSM R. 28, 30 (Pon. 1981).

The repealer clause of the National Criminal Code repealed those provisions of Title 11 of the Trust Territory code above the monetary minimum of $1,000 set for major crimes. Where the value is below $1,000, section 2 does not apply because it is not within the national court jurisdiction. FSM v. Hartman, 1 FSM R. 43, 46 (Truk 1981).

At common law, repeal of a criminal statute abated all criminal prosecutions which had not reached final disposition in the highest court authorized to review them. In re Otokichy, 1 FSM R. 183, 189-90 n.4 (App. 1982).

A statute is repealed by implication by a constitutional provision when the legislature, under the new constitutional provision, no longer has the present right to enact statutes substantially similar to the statute in question. FSM v. Jano, 6 FSM R. 9, 11 (Pon. 1993).

The test to determine whether the 1991 constitutional amendment repealed a statute by implication is: Does Congress, under the current constitutional provision, have the present right to enact a statute substantially like the statute in question? FSM v. Fal, 8 FSM R. 151, 154 (Yap 1997).

Because the repeal of a statutory prohibition against usury releases any penalties imposed and permits enforcement of the debtor's obligation in accordance with the parties' agreement, it follows that as to a usury defense, the parties' agreement is governed by the law existing when the agreement is enforced. Bank of the FSM v. Mori, 11 FSM R. 13, 15 (Chk. 2002).

When the constitutional amendment to article IX, § 2(p) was ratified, it eliminated Congress's power to define major crimes and repealed by implication Title 11's major crimes provisions. FSM v. Anson, 11 FSM R. 69, 74 (Pon. 2002).

Chuuk municipalities once had the delegated right to regulate alcoholic beverage sales, but in 2001 the state legislature made major revisions to the law pertaining to intoxicating liquors and placed exclusive jurisdiction over the regulation of alcoholic beverages in the state. The Chuuk Legislature's enactment removed any prior municipal authority to regulate the possession and sale of alcoholic beverages – a municipality may not by imposition of licensing fees or taxes regulate the possession or sale of such substances. Ceasar v. Uman Municipality, 12 FSM R. 354, 358 (Chk. S. Ct. Tr. 2004).

When the state statute authorizing municipal tax powers reserved the state's right to enact legislation to assess, levy and collect taxes on any subject for which a tax has been assessed and levied by municipal ordinance and provided that in the event that the state enacted legislation on that same subject, the enactment would repeal the ordinance on the same subject, and when the state has in fact enacted legislation imposing fees on businesses engaged in alcoholic beverage sales, any municipal ordinance imposing business license fees on businesses engaged in alcoholic beverage sales is repealed and a municipality does not have the authority to impose business license fees or taxes on alcoholic beverage sellers. Ceasar v. Uman Municipality, 12 FSM R. 354, 358-59 (Chk. S. Ct. Tr. 2004).

The final test in determining whether a statute is repealed by implication by a new constitutional provision is: Has the legislature, under the new constitutional provision, the present right to enact statutes substantially like the statutes in question? Jano v. FSM, 12 FSM R. 569, 574 (App. 2004).

When the Trust Territory Code Title 67, chapter three, which includes 67 TTC 115, was repealed and replaced by a similar Chuuk state law in 2004, and since the Land Commission acts complained of took place in 1998, and the trial division case was filed in 2000, the Trust Territory Code, Title 67, chapter 3 is the applicable law, but the 2004 Chuuk state statute enacted will apply to the further proceedings on remand. Aritos v. Muller, 19 FSM R. 533, 537 n.2 (Chk. S. Ct. App. 2014).

A state legislature that has created a commission by statute can abolish that commission by statute, just as it could, by statute, abolish most any governmental agency that it has created by statute, except those agencies which the state's constitution requires it to create. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 266 & n.8 (Chk. 2019).

The power to legislate is the power to repeal. A legislature may not bind itself or a future legislature by enacting an irrepealable law. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 266 (Chk. 2019).

If a legislature has the power to abolish an agency, it certainly has the power to exercise a less drastic regulation of the agency's affairs by suspending it. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 267 (Chk. 2019).

If the viability of a statutory provision is questioned because it was meant to be codified but was omitted from the statute books when the FSM laws were codified in 2014 and might thus have been repealed by

implication, the court can still rely on the part of the public law that was not meant to be codified and which will thus remain a viable statute until expressly repealed. Basu v. Amor, 22 FSM R. 557, 565 n.9 (Pon. 2020).

STATUTES OF LIMITATION

It is inappropriate to deny a defendant the right to assert a statute of limitations defense by way of punishment for tardiness in filing its answer. Lonno v. Trust Territory (III), 1 FSM R. 279, 280 (Kos. 1983).

When there are significant issues of fact which may affect the defendant's statute of limitations defense in a civil action, a motion to dismiss on statute of limitations grounds must be denied. Lonno v. Trust Territory (III), 1 FSM R. 279, 281-82 (Kos. 1983).

There is no provision in the Public Service Act nor in the Public Service System Regulation that establishes a time limit for seeking judicial review of agency action. For this reason, the court adopts the six-year statute of limitations established in 6 TTC 305 and holds that the petition for judicial review was filed in a timely manner. Amor v. Pohnpei, 3 FSM R. 28, 33 (Pon. S. Ct. Tr. 1987).

The general rule is that statutes of limitations do not run against the sovereign. FSM Dev. Bank v. Yap Shipping Coop., 3 FSM R. 84, 86 (Yap 1987).

Laches is a tool courts use to limit a party's rights when they have not been timely asserted, such that it is unfair for the court to now redress them. The period of time may be less than the statutory limitations period and each case must be judged on a case by case basis for fundamental fairness. Palik v. Kosrae, 5 FSM R. 147, 155 (Kos. S. Ct. Tr. 1991).

The twenty year statute of limitation to contest land title did not take effect until 1951 so that it could not be asserted as a defense until 1971. Chipuelong v. Chuuk, 6 FSM R. 188, 194 (Chk. S. Ct. Tr. 1993).

In order for an action over an interest in land to be barred by the statute of limitations, the cause of action must arise more than twenty years before the action is brought. If the claim could have been made over twenty years before it was actually made, then the action can no longer be maintained, no matter how meritorious. Chipuelong v. Chuuk, 6 FSM R. 188, 194 (Chk. S. Ct. Tr. 1993).

When 38 years have elapsed since the determination of ownership of a tract of land in the Wito Clan, when there have been public notices posted concerning the determination and concerning its later lease to the Trust Territory; two separate High Court decisions and three determinations of ownership concerning the land, and when construction activity on he land began 36 years ago; this constitutes both constructive and actual notice of the Wito Clan's claim to the land to another clan whose numerous members lived on the same small island. Chipuelong v. Chuuk, 6 FSM R. 188, 195 (Chk. S. Ct. Tr. 1993).

Under section 24(1) of the Pohnpei Government Liability Act of 1991, the statute of limitations on a cause of action brought pursuant to the Act is not suspended during the period of administrative review required by the statute. Abraham v. Lusangulira, 6 FSM R. 423, 425 (Pon. 1994).

Where government title to the tidelands reverted to the traditional owners in 1989, and because the right to bring an action for trespass or ejection must be available to the owner before the time period for adverse possession has run, whether the doctrine of adverse possession exists in Chuukese land law need not be decided because the twenty-year statute of limitations did not start to run until 1989. Cheni v. Ngusun, 6 FSM R. 544, 548 (Chk. S. Ct. App. 1994).

Laches and the statute of limitations are two different defenses. The statue of limitations defense has only one element – the passage of a specific statutory amount of time while the equitable defense of laches has two elements – the passage of a nonspecific amount of time during which the plaintiff engages in

inexcusable delay or lack of diligence in bringing suit, and resulting prejudice to the defendant. Laches is always applied separate from and irrespective of the statute of limitations. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 489 (App. 1996).

Any attempt to breathe new life into tort claims time barred by the relevant and analogous statutes should be approached with caution because they are the type of personal claims for money damages that become increasingly difficult of proof and difficult to defend with the passage of time. Ordinarily such claims are resolved by political and diplomatic efforts. Alep v. United States, 7 FSM R. 494, 498 (App. 1996).

The statute of limitations has run on claims of mismanagement of the Micronesian Claims Act unless there was continuing unlawful conduct that would create a basis for equitable tolling of the statute of limitations. Alep v. United States, 7 FSM R. 494, 499 (App. 1996).

An action for damages for loss of land is subject to a six-year statute of limitations unlike the twenty-year statute of limitations for recovery of an interest in land. Nahnken of Nett v. United States, 7 FSM R. 581, 590 (App. 1996).

As a general rule, the statute of limitations may be invoked by a successor in right. Thus a later transfer of land cannot resurrect a time-barred claim. Nahnken of Nett v. United States, 7 FSM R. 581, 590 (App. 1996).

In the Chuuk State Supreme Court, a hearing for judgment after a default is entered that is held to allow the plaintiff to present to the court further evidence to establish the plaintiff's right to a claim or relief, includes the court's determination of whether the action was brought within the limitation period provided by law. Sipia v. Chuuk, 8 FSM R. 557, 558, 560 (Chk. S. Ct. Tr. 1998).

For trespass the period of limitation begins to run when the project causing the damage is completed, if substantial damage has already occurred, or when the first substantial injury is sustained. Sipia v. Chuuk, 8 FSM R. 557, 559 (Chk. S. Ct. Tr. 1998).

The cause of action arises, and the general statute of limitations begins to run on tort actions for injury to property at the time the injury is sustained. Sipia v. Chuuk, 8 FSM R. 557, 559 (Chk. S. Ct. Tr. 1998).

When the plaintiff claims the state trespassed on her property by installing poles, a road and pipes sometime before the end of 1987 but did not file suit until 1994, recovery will be barred by the six year statute of limitations. Sipia v. Chuuk, 8 FSM R. 557, 559-60 (Chk. S. Ct. Tr. 1998).

A party's claim to land after a municipality has continued its open, notorious, exclusive and hostile occupation of the land for a period of 27 years before he files suit is barred by the twenty-year statute of limitations, and the municipality is the true and lawful owner of title to the land in dispute on the theory of adverse possession. Hartman v. Chuuk, 9 FSM R. 28, 31 (Chk. S. Ct. App. 1999).

A suit filed on March 18, 1997 for a cause of action with a six-year statute of limitation that accrued on March 18, 1991 was filed on the very last day for doing so because in computing any time period the day of the act, event, or default from which the designated time period begins to run is not included. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 78 (Kos. 1999).

All actions in Kosrae State Court must be commenced within the time period stated in Kosrae State Code, title 6, chapter 25. Jonah v. Kosrae, 9 FSM R. 335, 343 (Kos. S. Ct. Tr. 2000).

Because a trespass claim has either a twenty-year or a six-year statute of limitations, the statute of limitations on a trespass starting November, 1999 will not run for many years. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 188 (Pon. 2001).

After a Trust Territory employee's cause of action accrued in 1980 when he completed the informal grievance procedure with his supervisor, he had two options: follow the formal grievance procedure for review by the Personnel Board; or file suit in court for judicial review of his grievance. Since his right to sue was complete then, a suit, filed in 2000, will be barred by the six-year statute of limitations and dismissed. Skilling v. Kosrae, 10 FSM R. 448, 452-53 (Kos. S. Ct. Tr. 2001).

When there is a two year statute of limitations for actions for injury to or for the death of one caused by the wrongful act or neglect of another, when the plaintiff, who was an adult at the time she was injured, filed her complaint over seven years after the injury, and when the testimony yields no information why the statute of limitations had not run two years after the date of the accident, a motion to dismiss based on the statute of limitations will be granted. Adolip v. Mobil Oil Micronesia, Inc., 10 FSM R. 587, 589 (Pon. 2002).

In Kosrae, actions on a judgment and actions for the recovery of land or an interest in land have a twenty year statute of limitations. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 174 (Kos. S. Ct. Tr. 2002).

An action on a judgment filed more than twenty years after the judgment was announced, but less than twenty years after the written judgment was served on the parties is timely filed and not barred by the statute of limitations. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 174 (Kos. S. Ct. Tr. 2002).

The accrual of a cause of action for recovery of land begins when a suit may successfully be maintained upon. Where a cause of action for recovery of land accrued when the Determinations of Ownership were served and when the complaint was filed within twenty years of service, the cause of action for the recovery of land falls within the twenty year limitations period and is not barred by the statute of limitations. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 174 (Kos. S. Ct. Tr. 2002).

The statute of limitations is an affirmative defense which must be raised in the defendant's answer, and when it has not been, the defendant has waived its statute of limitations defense. Tolenoa v. Kosrae, 11 FSM R. 179, 185 (Kos. S. Ct. Tr. 2002).

When the applicable statute of limitations is six years and the construction agreement between the Permans and Felix is dated January 10, 1997 and other operative events occurred in September and October 1997, a July 23, 2002 motion to amend the complaint to add Felix and claims against him is not time barred. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 233 (Pon. 2002).

The review of legal errors is *de novo*. The questions of when a statute of limitations begins to run, and whether a claim is barred by the statute of limitations, are questions of law and to be reviewed *de novo*. Kosrae v. Skilling, 11 FSM R. 311, 315 (App. 2003).

Laches and the statute of limitations are two different defenses. The statute of limitations defense has only one element, which is the passage of a specific statutorily set amount of time. The equitable defense of laches has two elements. One element is the passage of a nonspecific amount of time during which the plaintiff engages in inexcusable delay or lack of diligence in bringing suit, and the other element is the resulting prejudice to the defendant. Kosrae v. Skilling, 11 FSM R. 311, 318 (App. 2003).

Unlike statutes of limitation, which bar an action after a fixed period of time, laches depends upon considerations of fairness, justice, and equity, and is invoked when the applicable statute of limitations has not yet passed. Kosrae v. Skilling, 11 FSM R. 311, 318 (App. 2003).

A statute of limitations defense is not one of the enumerated defenses that may be brought by motion under Rule 12(b), but rather is one of the specific defenses named in Rule 8(c) where a party must set forth affirmatively in the answer, the statute of limitations and any other matter constituting an avoidance or affirmative defense. Segal v. National Fisheries Corp., 11 FSM R. 340, 342 (Kos. 2003).

When claims for food, lodging, and transportation costs could have been first sued upon as of March, 1996, the six year limitations period on those claims expired before the July 4, 2002 complaint was filed. Segal v. National Fisheries Corp., 11 FSM R. 340, 343 (Kos. 2003).

That alleged contracts may have extended from June 5, 1995, to July 5, 1996, does not permit the plaintiffs to pursue all of their alleged claims in a complaint filed on July 4, 2002. The relevant inquiry is when the alleged contract breaches occurred and the consequent causes of action accrued, not when the alleged contracts expired. When all of the claims except those for wages first payable on or after July 4, 1996, accrued more than six years from the filing of the complaint, the complaint will be dismissed, but without prejudice to the filing of an amended complaint for any wage claims that accrued on or after July 4, 1996. Under Civil Rule 15(c), the filing of any such amended complaint will relate back to July 4, 2002, the original complaint's filing date. Segal v. National Fisheries Corp., 11 FSM R. 340, 343 (Kos. 2003).

A statute of limitations is one of the expressly stated affirmative defenses to an action under Civil Rule 8(c). As such, it may be waived. On the other hand, a defect in subject matter jurisdiction may never be waived, and may be raised at any time, even after judgment. Andrew v. FSM Social Sec. Admin., 12 FSM R. 78, 80 (Kos. 2003).

To read the language that a petitioner shall by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part, to mean that the 60 day time period is absolute, which is to say jurisdictional, would be to read the statute as limiting the trial division's jurisdiction to hear such appeals. Statutes which limit a court's jurisdiction are to be construed narrowly. Andrew v. FSM Social Sec. Admin., 12 FSM R. 78, 81 (Kos. 2003).

Given the absence in the statute of any express language limiting the court's jurisdiction, the 60-day period for filing a petition in the FSM Supreme Court trial division to appeal a final order of the Social Security Administration is a statute of limitations. As such, it is one of the specifically enumerated defenses under FSM Civil Rule 8(c) that may be raised in the answer. The time limit does not affect the court's subject matter jurisdiction. Andrew v. FSM Social Sec. Admin., 12 FSM R. 78, 81 (Kos. 2003).

A denial of a motion to dismiss for lack of jurisdiction is without prejudice to Social Security's right to raise the statute of limitations defense by motion pursuant to FSM Civil Rule 12(c). Andrew v. FSM Social Sec. Admin., 12 FSM R. 78, 81 (Kos. 2003).

A statute of limitations defense is an issue for trial when questions of fact exist. AHPW, Inc. v. FSM, 12 FSM R. 114, 123-24 (Pon. 2003).

When the Pohnpei Foreign Investment Board's letter states that the plaintiff is ordered to cease and desist from engaging in business and must surrender her Foreign Investment Permit, the clear implication of the Board's letter is that its revocation decision is effective immediately with no indication that those "orders" would take effect only at the expiration of a 20-day period. Thus, having failed to inform plaintiff of the 20-day waiting period, and having improperly indicated that its revocation decision was immediately effective, the Board cannot rely on the 20-day statutory period to appeal as a basis for dismissing this appeal. To the extent that it functions as a statute of limitation, it begins to run when a permit holder is notified of a Board decision and informed that the decision will become effective in 20 days if not appealed. Cuipan v. Pohnpei Foreign Inv. Bd., 12 FSM R. 184, 186 (Pon. 2003).

The continuing tort doctrine is well-settled law, and dictates that when there is an ongoing pattern of tortious activity where no single incident may be fairly identified as the cause of the harm suffered, then it is appropriate to regard the total effect of the conduct as actionable, and the statute of limitations does not begin to run until the conduct has ceased. In order to invoke the continuing tort doctrine, there must be continuing unlawful acts, and not merely continuing effects from a single original act. AHPW, Inc. v. FSM, 12 FSM R. 544, 553 (Pon. 2004).

The rationale behind the principle that the statute of limitations does not begin to run on a continuing wrong until the wrong is over and done with is that the principle strikes a balance between the plaintiff's interest in being spared having to bring successive suits, and the two distinct interests, that statutes of limitations serve. One is evidentiary – to reduce the error rate in legal proceedings by barring litigation over claims relating to the distant past. The other is repose – to give people the assurance that after a fixed time they can go about their business without fear of having their liberty or property taken through the legal process. When an unlawful course of conduct's final act occurs within the statutory period, these purposes are adequately served, in balance with the plaintiff's interest in not having to bring successive suits, by requiring the plaintiff to sue within the statutory period but letting him reach back and get damages for the entire duration of the alleged violation. Some of the evidence, at least, will be fresh. And the defendant's uncertainty as to whether be will be sued at all will be confined to the statutory period. His uncertainty about the extent of his liability may be greater, but that is often true in litigation. AHPW, Inc. v. FSM, 12 FSM R. 544, 553 (Pon. 2004).

Kosrae State Code, Title 6, Chapter 25 establishes the statutes of limitations which are applicable to specific types of civil actions. All actions in Kosrae State Court must be commenced within the time period stated therein. Skilling v. Kosrae State Land Comm'n, 13 FSM R. 16, 19 (Kos. S. Ct. Tr. 2004).

The statute of limitations is an affirmative defense which must be raised in either the answer or in a motion to dismiss. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 80 (Kos. S. Ct. Tr. 2004).

When the allegations made in the complaint are for causes of action that accrued more than seven years ago, and when claims against the Kosrae State Land Commission for violation of statute and violation of due process are subject to a limitations period of six years, the claims based upon Land Commission actions which took place in 1997 are therefore barred by the statute of limitations and defendants Kosrae State Land Commission and Kosrae state government will be dismissed from the action. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 81 (Kos. S. Ct. Tr. 2004).

The six-year statute of limitations cannot bar an action when all the payments that the plaintiff seeks to recover appear to have taken place within the six years before the complaint was filed. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 127 (Chk. 2005).

Because the allegations of the plaintiff's own complaint demonstrate that certain of its claims are subject to the defense of statute of limitations, the court may chose to dismiss those claims on the statute of limitations, although it is an affirmative defense. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 228 (Pon. 2005).

The continuing tort principle dictates that when there is an ongoing pattern of tortious activity where no single incident may be fairly identified as the cause of the harm suffered, then it is appropriate to regard the total effect of the conduct as actionable, and the statute of limitations does not begin to run until the conduct has ceased. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 17 (App. 2006).

Laches has two elements – the passage of a nonspecific amount of time during which the plaintiff engages in inexcusable delay or lack of diligence in bringing suit, and resulting prejudice to the defendant. Laches is always applied separate from and irrespective of the statute of limitations. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 18 (App. 2006).

Actions for the recovery of land or any interest therein must be started within twenty years after the cause of action accrues. A claim to land clearly cannot be renewed when the statute of limitations on an action to recover an interest in land is twenty years and more than twenty years have passed since the certificate of title in another's favor was issued. Any subsequent attempt to litigate the land's ownership is barred by the statute of limitations. Dereas v. Eas, 14 FSM R. 446, 456 (Chk. S. Ct. Tr. 2006).

If an action accrued to a predecessor in interest, the twenty years statute of limitations is computed when the action first accrued to the predecessor. The statute of limitations does not start to run all over again each time there is a new successor in interest. Dereas v. Eas, 14 FSM R. 446, 457 (Chk. S. Ct. Tr. 2006).

The statute of limitations is an affirmative defense which must be raised in a responsive pleading, such as an answer. It is an expressly stated affirmative defense to an action under Civil Rule 8(c), and as such, it is waived if it is not pled, or if it is not raised in a Rule 12(b)(6) motion for failure to state a claim. FSM Social Sec. Admin. v. Fefan Municipality, 14 FSM R. 544, 546 (Chk. 2007).

When the defendant has waived any statute of limitations defense, the limitations statute will not, as a matter of law, bar a summary judgment for the plaintiff. FSM Social Sec. Admin. v. Fefan Municipality, 14 FSM R. 544, 547(Chk. 2007).

The statute of limitations foreclosed the intervenor's claim, no matter how meritorious it might have been, in 2001 because the statute of limitations started to run in 1981 when the plaintiff was issued his certificate of title and that certificate of title constituted notice to the world of the plaintiff's claim to ownership of Lot No. 029-A-23, especially since the intervenor and the defendant both knew in 1991 that the plaintiff claimed to own the lot, or as the intervenor put it, that the certificate of title in the plaintiff's favor was not correct. Dereas v. Eas, 15 FSM R. 135, 139 (Chk. S. Ct. Tr. 2007).

When the twenty-year statute of limitations for the recovery of land or an interest therein did not expire until 2001 and since during the ten years from 1991, the latest date by which the intervenor and the defendant knew of the plaintiff's certificate of title, neither ever sued the plaintiff, that statute has now become a bar to any claim to Lot No. 029-A-23 by either the defendant or the intervenor. Dereas v. Eas, 15 FSM R. 135, 139 (Chk. S. Ct. Tr. 2007).

Once a claim is filed in court, the time set under a statute of limitations stops running. This means that a claim for adverse possession does not include the time after an action has been filed in a court. Therefore, the 20-year period for the claimants to occupy land openly, notoriously, exclusively, continuously, and under a claim of right must run prior to the time claims were filed. Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 145 (Kos. S. Ct. Tr. 2007).

The statute of limitations is generally an affirmative defense that may be pled in the answer. A statute of limitations defense is not one of the enumerated defenses under Rule 12(b), but rather is one of the specific defenses named in Rule 8(c), where a party must set forth affirmatively in the answer, the statute of limitations and any other matter constituting an avoidance or affirmative defense. The statute of limitations defense may, however, be raised by a Rule 12(b)(6) motion, or, if affidavits are filed with the motion, by a Rule 56 summary judgment motion, as well as by answer, but if there is a question of fact about the defense's existence, the issue then cannot be determined on affidavits, and must be raised in the answer. John v. Chuuk Public Utility Corp., 15 FSM R. 169, 171-72 (Chk. 2007).

If a statutory remedy provides as a condition precedent to enforce the remedy that it must be started within a prescribed time, it is jurisdictional and the statute of limitations may be raised in a Rule 12(b)(6) motion to dismiss. John v. Chuuk Public Utility Corp., 15 FSM R. 169, 172 (Chk. 2007).

The affirmative defense of statute of limitations is to be raised affirmatively in the responsive pleading; it is not a defense that may be brought by a Rule 12(b) motion. George v. George, 15 FSM R. 270, 273 (Kos. S. Ct. Tr. 2007).

The statute of limitations for filing an action is different and distinct from the time limits for filing an appeal from a Land Court or Land Commission decision. An appeal from a Land Court or Land Commission decision is a statutorily-created right. Allen v. Allen, 15 FSM R. 613, 620 (Kos. S. Ct. Tr. 2008).

A statute of limitations is an independent bar to an action, separate from any opportunity to appeal that might be granted by a statute. Allen v. Allen, 15 FSM R. 613, 620 (Kos. S. Ct. Tr. 2008).

When the statute of limitations has expired on all loan instalment payments that became due before July 20, 2001 and when only two instalment payments were due after that date, the lender is, as a matter of law, entitled to judgment for only those two payments. FSM Dev. Bank v. Chuuk Fresh Tuna, Inc., 16 FSM R. 335, 338 (Chk. 2009).

A statute of limitation establishes a time limit for suing in a civil case, based on the date when the claim accrued. The purpose of such a statute is to require diligent prosecution of known claims, thereby providing finality and predictability in legal affairs and ensuring that claims will be resolved while evidence is reasonably available and fresh. Allen v. Allen, 17 FSM R. 35, 39 (App. 2010).

A statute of limitation will bar the maintenance of a cause of action, no matter how meritorious the claim, when it is brought too long after the cause of action arose. Allen v. Allen, 17 FSM R. 35, 39 (App. 2010).

When none of a plaintiff's causes of action are covered by the two-year statutes of limitation and when a complaint against the Land Commission cannot be a claim for the recovery of land from the Land Commission because the Land Commission does not own an interest in the claimed land, any negligence or due process claim against the Land Commission is subject to a six-year limitations period and will be time-barred and dismissed when the Land Commission actions or omissions are all over six years old. Allen v. Allen, 17 FSM R. 35, 39-40 (App. 2010).

When the plaintiff's causes of action arose or accrued in 1986 since, assuming he proved his case, he could have sued successfully for the recovery of the land then, and since no fraud is alleged or apparent, the plaintiff had twenty years within which to seek recovery of the land. Since that time period expired in 2006, the plaintiff's February 2007 complaint is thus time-barred. Allen v. Allen, 17 FSM R. 35, 40-41 (App. 2010).

When the six-year statute of limitations started in December 2002, and expired in December 2008, a case filed on March 23, 2009, was filed too late. Dungawin v. Simina, 17 FSM R. 51, 54 (Chk. 2010).

If it were clear that the allegations in the plaintiff's own complaint demonstrate that his claims are subject to the defense of statute of limitations, the court may dismiss those claims as time-barred even though the statute of limitations is an affirmative defense. But when there are significant factual issues that may affect the defendant's statute of limitations defense, a motion to dismiss on statute of limitations grounds must be denied. Aunu v. Chuuk, 18 FSM R. 48, 50-51 (Chk. 2011).

When the original loan documents were executed over fourteen years ago, the statute of limitations has run on a cause of action based on deception in their execution. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 157-58 (Pon. 2012).

Leave to amend a complaint must be freely given if justice so requires, but the court must deny leave to amend when the amendment would be futile. One reason an amendment would be futile is if the claims are barred by the relevant statute of limitations. Iwo v. Chuuk, 18 FSM R. 252, 254 (Chk. 2012).

While a statute of limitations bars a claim after the passage of a specified time, the common-law rebuttable presumption of payment is, on the other hand, used as evidence, based on the lapse of time, to create a rebuttable inference that the debt has been paid or otherwise satisfied. The presumption is based on the assumption that a person, before the passage of twenty years, would have recovered what belonged to that person unless prevented by some impediment. The persuasiveness of the presumption may be strengthened or diminished by evidence supporting or contradicting the significance of the lapse of time.

Kama v. Chuuk, 18 FSM R. 326, 335 (Chk. S. Ct. Tr. 2012).

The purpose of a statute of limitations is to require diligent prosecution of known claims, thereby providing finality and predictability in legal affairs and ensuring that claims will be resolved while evidence is reasonably available and fresh. Aunu v. Chuuk, 18 FSM R. 467, 469 n.2 (Chk. 2012).

The most frequent attorney error that may be the subject of a successful legal malpractice action is the attorney's failure to comply with a statute of limitation. Aunu v. Chuuk, 18 FSM R. 467, 469 n.2 (Chk. 2012).

When by the time the case was filed on January 14, 2010, the six-year statute of limitations would, even though it had been tolled by the filing of an earlier case, bar any claims arising before September 6, 2003, and when it is undisputed that all of the plaintiff's overtime claims were for 2002, the state has good grounds for and is entitled to summary judgment on its statute of limitations defense. Aunu v. Chuuk, 18 FSM R. 467, 470 (Chk. 2012).

The statute of limitations is an affirmative defense which, if not pled, is waived. Bank of Hawaii v. Susaia, 19 FSM R. 66, 69 n.2 (Pon. 2013).

When, since the State of Chuuk and its Governor cannot prevail on their limitations defense, the plaintiffs' motion for partial summary judgment will be granted against the defendant state because Chuuk was the borrower on the airport renovation loan but since the Governor is not liable on the loan partial summary judgment will not be granted against him. Eot Municipality v. Elimo, 19 FSM R. 290, 295-96 (Chk. 2014).

When the Social Security Board's decision was entered on August 27, 2013, and was received by the plaintiff on September 17, 2013, the 60-day deadline would fall on October 26, 2013, which would have given the plaintiff 39 days to file her claim after service of the Board's decision. She thus had adequate time to file her claim, and when she failed to file her claim in time pursuant to 53 F.S.M.C. 708, the court is unwilling to extend the timeframe to file a claim when the statute's language is clear, and the complaint will dismissed based on its filing being untimely under 53 F.S.M.C. 708. Palikkun v. FSM Social Sec. Admin., 19 FSM R. 314, 317 (Kos. 2014).

When the allegations of the plaintiff's own complaint demonstrate that its claims are subject to the statute of limitations defense, the court may dismiss those claims on the statute of limitations ground, even though it is an affirmative defense. Palikkun v. FSM Social Sec. Admin., 19 FSM R. 314, 317 (Kos. 2014).

Under Rule 15(c), whenever the claim or defense asserted in an amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. Rule 15(c) is based on the notion that once litigation involving particular conduct or a given transaction or occurrence has been instituted, the parties are not entitled to the protection of the statute of limitations against the later assertion by amendment of defenses or claims that arise out of the same conduct, transaction, or occurrence as set forth in the original pleading. Chuuk Health Care Plan v. Department of Educ., 19 FSM R. 435, 438-39 (Chk. 2014).

When, if claims for health insurance premium contributions due before March 16, 2006, had been included in the original complaint and if the FSM had asserted the six-year statute of limitations defense, the statutory defense would have barred their recovery, the proposed amended complaint's relation back to the original filing date of March 16, 2012, cannot revive those claims. The court will therefore permit the proposed amended complaint but bar the plaintiff from seeking any health insurance premium contributions due before March 16, 2006. Chuuk Health Care Plan v. Department of Educ., 19 FSM R. 435, 439 (Chk. 2014).

The general rule is that statutes of limitations do not run against the sovereign. The policy behind the

rule is that the public interest should not be prejudiced by the negligence of public officials. FSM v. Muty, 19 FSM R. 453, 460 (Chk. 2014).

When the complaint was filed on November 26, 2014, the six-year statute of limitations would bar the plaintiffs' claims unless their cause of action accrued on or after November 26, 2008, or some event or action tolled the running of the limitations period so that the six years did not end until November 26, 2014 or later. Thus, events that took place in 2007, cannot successfully overcome a statute of limitations affirmative defense. Onanu Municipality v. Elimo, 20 FSM R. 535, 545 (Chk. 2016).

Even though it is an affirmative defense, a court may choose to dismiss claims based on the statute of limitations, when the allegations of the plaintiff's own complaint demonstrate that certain of its claims are subject to the defense. Tilfas v. Kosrae, 21 FSM R. 81, 87 (App. 2016).

When it is clear that the allegations in the plaintiff's own complaint demonstrate that his claims are subject to the statute of limitations defense, the court may dismiss those claims as time-barred even though the statute of limitations is an affirmative defense. But when there are significant factual issues that may affect the defendant's statute of limitations defense, a motion to dismiss on statute of limitations grounds must be denied. Tilfas v. Kosrae, 21 FSM R. 81, 91 (App. 2016).

When a complaint's allegations are subject to the defense that the statute of limitation has lapsed, a court may choose to dismiss the action, even though it is an affirmative defense. Lonno v. Heirs of Palik, 21 FSM R. 103, 107 (App. 2016).

A statue of limitation generally is not jurisdictional unless it is a limitations period for claims against the government. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 579 (App. 2018).

Raising a statute of limitation as a bar to a remedy does not deprive a court of jurisdiction to hear the cause in the first instance; the court could not adjudicate the question of proper application of the statute if it did not have subject matter jurisdiction. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 579 (App. 2018).

The statute of limitations does not affect a court's jurisdiction because generally a statute of limitation is not jurisdictional unless it is a limitations period for claims against the government. Alik v. Heirs of Alik, 21 FSM R. 606, 621 (App. 2018).

Raising a statute of limitation as a bar to a remedy does not deprive a court of jurisdiction to hear the cause in the first instance; the court could not adjudicate the question of proper application of the statute if it did not have subject matter jurisdiction. Alik v. Heirs of Alik, 21 FSM R. 606, 621 (App. 2018).

When the allegations of the plaintiff's own complaint demonstrate that its claims are subject to the statute of limitations defense, the court may dismiss those claims on the statute of limitations ground, even though it is an affirmative defense. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 12 (Pon. 2018).

Even though it is an affirmative defense, a court may dismiss claims (or grant summary judgment thereon) based on the statute of limitations, when the allegations in the plaintiff's complaint demonstrate that its claims are subject to that defense. Panuelo v. Sigrah, 22 FSM R. 341, 357 (Pon. 2019).

A judgment for the plaintiff awarding him a sum of money creates a debt in that amount in his favor. The plaintiff may maintain proceedings by way of execution for enforcement of the judgment, the plaintiff may also be able to maintain an action upon the judgment. Ordinarily no useful purpose is served by bringing an action in the same state upon the judgment instead of executing upon it, but if the statute of limitations period has almost run, the plaintiff can bring an action upon the judgment and obtain a new judgment upon which the limitations period will run again. FSM Dev. Bank v. Carl, 22 FSM R. 365, 375 (Pon. 2019).

While ordinarily no advantage is gained by bringing an action in the same court upon a judgment, if the statute of limitation period has almost run upon the judgment, the judgment creditor can start the limitation period anew by bringing an action upon the judgment and obtaining a new judgment. FSM Dev. Bank v. Carl, 22 FSM R. 365, 375 (Pon. 2019).

– Accrual of Action

A statute of limitation begins to run when the cause of action accrues. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM R. 157, 159 (Pon. 1989).

In an action to enforce an unpaid stock subscription, the statute of limitations begins to run against the creditors when it runs against the corporation. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM R. 157, 159 (Pon. 1989).

When a stock subscription specifies the date of payment, including payment in installments at specified times, the corporation has no cause of action until the date specified and at that time the statute of limitations begins to run. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM R. 157, 159 (Pon. 1989).

Stock subscriptions which are silent as to the date and terms of payment do not become due until a call has been issued by the corporation or, if the corporation becomes insolvent without ever issuing such a call, then the cause of action to collect unpaid subscriptions accrues when the creditors, by authority of the court, first demand payment. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM R. 157, 161 (Pon. 1989).

A cause of action accrues, and the statute of limitations begins to run, when a suit may be successfully maintained thereon. Where a note is payable in instalments, each instalment is a distinct cause of action and the statute of limitations begins to run against each instalment from the time it becomes due, that is, from the time when an action might be brought to recover it. Waguk v. Kosrae Island Credit Union, 6 FSM R. 14, 17 (App. 1993).

Since the statute of limitations does not commence running until after the cause of action accrues a prerequisite to determining the when the cause of action accrues is a precise clarification of the cause of action. Mid-Pacific Constr. Co. v. Semes (I), 6 FSM R. 171, 174 (Pon. 1993).

In general, a cause of action accrues when the right to bring suit on a claim is complete – the true test in determining when a cause of action arises or accrues is to establish the time when the plaintiff could have first maintained the action to a successful conclusion. Mid-Pacific Constr. Co. v. Semes (I), 6 FSM R. 171, 176 (Pon. 1993).

In cases where a cause of action is contingent on a condition precedent, the statute of limitations does not begin to run until the condition has occurred, and as to a continuing injury until damages are actually sustained. Mid-Pacific Constr. Co. v. Semes (I), 6 FSM R. 171, 176 (Pon. 1993).

A cause of action based on violation of Corporations, Partnerships, and Associations Regulation 2.7 accrues from the point of insolvency of the corporation. Mid-Pacific Constr. Co. v. Semes (I), 6 FSM R. 165, 176-77 (Pon. 1993).

In general, the statute of limitations in an action for fraud begins to run from the time of discovery of the fraud, or when reasonable diligence should have led to discovery of the fraud. Mid-Pacific Constr. Co. v. Semes (I), 6 FSM R. 171, 177 (Pon. 1993).

Claims for torts that took place before 1951 accrued, at the latest, when the applicable Trust Territory statute took effect in 1951. Unless tolled, the statutes of limitation bar the FSM courts from adjudicating such claims. Alep v. United States, 6 FSM R. 214, 219-20 (Chk. 1993).

For actions for the recovery of land or any interest therein the statute of limitations is twenty years after the cause of action accrues, which is when a suit may first be successfully maintained thereon. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 488-89 & n.1 (App. 1996).

The date of accrual for a contribution cause of action is the day the judgment was entered. Obviously a prerequisite to any successful contribution action based on a judgment is the judgment itself. The limitations period for a contribution action is six years. Senda v. Semes, 8 FSM R. 484, 500-01 (Pon. 1998).

In an action brought to recover the balance due upon a mutual and open account, or upon a cause of action on which partial payments have been made, the cause of action shall be considered to have accrued at the time of the last item proved in the account. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 78 (Kos. 1999).

A statute of limitations begins to run when the cause of action accrues. When a complaint alleges that a defendant's anticompetitive actions forced the plaintiff out of business the cause of actions accrues when the plaintiff went out of business. AHPW, Inc. v. FSM, 9 FSM R. 301, 304 (Pon. 2000).

A cause of action accrues, and the statute of limitations begins to run, when a suit may be successfully maintained thereon. Jonah v. Kosrae, 9 FSM R. 335, 344 (Kos. S. Ct. Tr. 2000).

The statute of limitations does not begin to run as to a continuing injury until damages are sustained. Jonah v. Kosrae, 9 FSM R. 335, 344 (Kos. S. Ct. Tr. 2000).

The general rule applicable to negligence actions is that the statue of limitations runs from the time of the negligent act or omission, even though the total damage cannot be ascertained until a later date. Jonah v. Kosrae, 9 FSM R. 335, 344 (Kos. S. Ct. Tr. 2000).

When the original cause of injury is permanent in nature, and the damages may be recovered in one action, then the statute of limitations generally attaches at the time the act complained of is done. Jonah v. Kosrae, 9 FSM R. 335, 344 (Kos. S. Ct. Tr. 2000).

A plaintiff's claim for payment arises at the time that the payment became due because a cause of action arises when the right to bring suit on a claim is complete: the true test in determining when a claim arose is based upon when the plaintiff first could have maintained the action. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 556-57 (Pon. 2000).

When under the parties' contract, the defendant was to pay plaintiff within one year from the time that the defendant accepted the plaintiff's Master Plan and the Master Plan was accepted on October 3, 1994, the plaintiff's claim against defendant arose one year later on October 4, 1995. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 557 (Pon. 2000).

The settled rule that the statute of limitations begins to run upon the accrual of a cause of action applies in actions on implied and quasi contracts. When compensation for services is to be made on a certain date, the statute of limitations on an implied or quasi contract begins to run at that time. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 559 (Pon. 2000).

In general, a cause of action accrues when the right to bring suit on a claim is complete. The true test in determining when a cause of action arises or accrues is to establish the time when the plaintiff could have first maintained the action to a successful conclusion. Skilling v. Kosrae, 9 FSM R. 608, 611 (Kos. S. Ct. Tr. 2000).

While the plaintiff was a state employee, he was subject to the administrative procedures specified for grievances, but when his administrative action was still pending when he retired in 1997, because his grievance had never been ruled on, he was no longer an employee required to comply with the

administrative procedures. His right to bring suit on his claim did not become complete and his cause of action therefore did not accrue his early retirement resulted in termination from state government employment. Skilling v. Kosrae, 9 FSM R. 608, 613 (Kos. S. Ct. Tr. 2000).

For purposes of determining when the statute of limitations ran, a plaintiff's claim for payment arose at the time that the payment became due. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 405 (Pon. 2001).

When payment became due on October 4, 1995 and the statute of limitations would run on October 4, 1997, a March, 1997 letter demanding arbitration in accordance with the contract was within the statute of limitations. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 407 (Pon. 2001).

The accrual of a cause of action for recovery of land begins when a suit may successfully be maintained upon. Where a cause of action for recovery of land accrued when the Determinations of Ownership were served and when the complaint was filed within twenty years of service, the cause of action for the recovery of land falls within the twenty year limitations period and is not barred by the statute of limitations. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 174 (Kos. S. Ct. Tr. 2002).

A cause of action accrues when the right to bring suit to a claim is complete. This is established at the time when the plaintiff could have first maintained the action to a successful conclusion. Kosrae v. Skilling, 11 FSM R. 311, 315 (App. 2003).

When, despite several tries by counsel, a state employee's 1987 written grievance was never acted upon due to the state's inaction throughout the administrative process although the applicable statutes entitled him to a written response, the employee's cause of action accrued and the statute of limitations began to run only when he left state employment in 1997. The state's own inaction cannot be used to run against the six-year statute of limitations. Kosrae v. Skilling, 11 FSM R. 311, 316-17 (App. 2003).

The statute of limitations begins to run from the time that the cause of action accrues, which is to say from the time that a plaintiff first could have initiated a lawsuit on the cause of action alleged. Segal v. National Fisheries Corp., 11 FSM R. 340, 342 (Kos. 2003).

In an installment contract setting, the statute of limitations begins to run from the time that each installment is due. Segal v. National Fisheries Corp., 11 FSM R. 340, 342 (Kos. 2003).

A cause of action to collect salary or wages accrues when an employee has a right to collect the money allegedly owed to him. Thus the statute of limitations began to run from the time that each plaintiff's pay for any specific pay period was due. Segal v. National Fisheries Corp., 11 FSM R. 340, 342 (Kos. 2003).

When, if the plaintiffs' March, 1996 termination of employment was permitted by the terms of their respective contracts, then no wage claims accrued after their; if the terminations violated the contracts, then wage claims would have continued to accrue from then until the contracts ended by their terms on July 5, 1996, but any wage claims that had accrued – i.e., claims for wages that had become due and payable – before the July 4, 1996 complaint was filed, are time barred. Segal v. National Fisheries Corp., 11 FSM R. 340, 342-43 (Kos. 2003).

Given that a cause of action accrues when a suit can be successfully maintained thereon, it is indisputable that if the construction was in fact defective, a suit could have been maintained from the date that construction was completed. Youngstrom v. NIH Corp., 12 FSM R. 75, 77 (Pon. 2003).

Under the Pohnpei statute of limitations, if anyone who is liable to any action fraudulently conceals the cause of action from the knowledge of the person entitled to bring it, the action may be commenced at any time within the times limited within the statute after the person who is entitled to bring the same shall

discover or shall have had reasonable opportunity to discover that he has such cause of action, and not afterwards. Youngstrom v. NIH Corp., 12 FSM R. 75, 77 (Pon. 2003).

If a plaintiff fraudulently conceals allegedly defective construction methods, the six-year limitations period does not begin to run until the date on which the defendant discovered or had a reasonable opportunity to discover the alleged defect. It is not appropriate for the court, at the juncture of a motion to dismiss, to rule on an essentially factual matter. The trial's purpose will be to determine whether the construction methods that are alleged were, in fact, utilized; whether those methods were improper; and if they were, at what point the defendant knew or should have known of them. Youngstrom v. NIH Corp., 12 FSM R. 75, 77-78 (Pon. 2003).

A cause of action accrues when the right to bring suit on a claim is complete. The true test in determining when a cause of action arises or accrues is to establish the time when the plaintiff could have first maintained the action to a successful conclusion. Skilling v. Kosrae State Land Comm'n, 13 FSM R. 16, 19 (Kos. S. Ct. Tr. 2004).

A cause of action accrues when the right to bring suit on a claim is complete. The true test in determining when a cause of action arises or accrues is to establish the time when the plaintiff could have first maintained the action to a successful conclusion. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 81 (Kos. S. Ct. Tr. 2004).

A claim against Pohnpei has accrued when all of the facts comprising said claim exist, regardless of whether said facts are known or have been discovered by the claimant. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 227 (Pon. 2005).

Applying the Pohnpei Government Liability Act statue of limitations, as well as its test for determining when a claim accrues, Mobil's cause of action for contract reformation accrued on September 30, 1997 when it signed the lease agreement underlying this lawsuit since all facts comprising its cause of action for reformation existed at that time whether Mobil knew it or not. Accordingly, Mobil was required to file its claim for reformation by no later than September 30, 1999. Because it did not do so, the claim will be dismissed. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 227 (Pon. 2005).

If an action accrued to a predecessor in interest, the twenty years statute of limitations is computed when the action first accrued to the predecessor. The statute of limitations does not start to run all over again each time there is a new successor in interest. Dereas v. Eas, 14 FSM R. 446, 457 (Chk. S. Ct. Tr. 2006).

The statute of limitations for claiming a violation of due process by the government is covered by the six-year period found in Kosrae Code section 6.2506. Thus, claims against the Land Commission for violation of due process and for failing to apply statutes are governed by the six year statute of limitations. Since the statute of limitations begins to run when a cause of action accrues, when, if there was a violation of due process, the latest time it accrued was when the certificate of title was issued in 1997, and since more than six years passed before the plaintiff asserted his claim, any claim based on a violation of his right to due process fails because it was not filed within the six-year period and will be dismissed. Andon v. Shrew, 15 FSM R. 315, 320 (Kos. S. Ct. Tr. 2007).

Whether a plaintiff's cause of action for slander is time-barred depends on when that cause of action accrued. In general, a cause of action accrues when the right to bring suit on a claim is complete – the true test in determining when a cause of action arises or accrues is to establish the time when the plaintiff could have first maintained the action to a successful conclusion. Jano v. Fujita, 15 FSM R. 405, 408 (Pon. 2007).

As a general rule, a cause of action for libel or slander accrues, so as to start the running of limitations, at the time of publication, and not on the date of discovery of the wrong, or when the alleged injury

occurred. Jano v. Fujita, 15 FSM R. 405, 408 (Pon. 2007).

A cause of action for libel accrues, so as to start the running of limitations, at the time of publication, and not on the date of discovery of the wrong, or when the alleged injury occurred. Jano v. Fujita, 15 FSM R. 494, 497 (Pon. 2008).

The statute of limitations begins to run when a cause of action accrues. When claims against the Land Commission of negligence, violations of due process and for failing to apply statutes accrued either at the time the determination of ownership was issued or when the certificate of title was issued in February 1986, more than six years has passed since those claims accrued and therefore, the statute of limitations has run and those claims must be dismissed. Allen v. Allen, 15 FSM R. 613, 619-20 (Kos. S. Ct. Tr. 2008).

The time for filing an appeal from a Land Commission determination of ownership is not the starting point for the statute of limitations. The starting point for the statutes of limitation set out in Kosrae State Code §§ 6.2503-2306 is the time the action accrued. An action accrues for recovery of land at the time a suit may have been successfully maintained upon, which is when the determination of ownership was issued. It is not related to the service of the determination of ownership. Allen v. Allen, 15 FSM R. 613, 620 (Kos. S. Ct. Tr. 2008).

When a promissory note is payable in instalments, each instalment is a distinct cause of action and the statute of limitations begins to run against each instalment from the time it becomes due, that is, from the time when an action might be brought to recover it. FSM Dev. Bank v. Chuuk Fresh Tuna, Inc., 16 FSM R. 335, 338 (Chk. 2009).

A cause of action arises or accrues when the right to bring suit on a claim is complete; that is, when the plaintiff could have first maintained the action to a successful conclusion. Allen v. Allen, 17 FSM R. 35, 39 (App. 2010).

A cause of action does not accrue for the purposes of a statute of limitations until all elements are present, including damages. Allen v. Allen, 17 FSM R. 35, 39 (App. 2010).

When a plaintiff's claims against the Land Commission are all based on either allegations that he had not received notice of the 1983 and 1984 Land Commission hearings or on the allegation that the Land Commission failed to serve him the February 1986 determination of ownership, his cause of action accrued in February 1986 (or within a reasonable time thereafter to allow for the service he alleges was required) and any claims about lack of notice for the earlier hearings also accrued then because that is when the last element of his several causes of action – damages – occurred. Up until then he could not allege that he had suffered any damages because no one had yet been determined the owner of the parcel. Allen v. Allen, 17 FSM R. 35, 40 (App. 2010).

Although service of a determination of ownership was a necessary condition precedent to start the statutory 120-day time period within which a Land Commission determination can be appealed, this does not have a bearing on a plaintiff's cause of action when he asserts that he was never a party in the Land Commission proceedings and he was not served notice of the hearing or of the determination of ownership since the plaintiff could have sued the named owner anytime after February 25, 1986 determination of ownership, or at the latest, after the March 4, 1986 service on the family representative, because all of the elements of his alleged causes of action were present by then. Allen v. Allen, 17 FSM R. 35, 40 (App. 2010).

Courts have characterized the date from which a limitations period starts running as from when the cause of action accrues and that a cause of action accrues when a suit may first be successfully maintained thereon. Dungawin v. Simina, 17 FSM R. 51, 54 (Chk. 2010).

A cause of action against the State of Chuuk accrues or arises and the limitations period starts running

from the date on which the event triggering the cause of action occurred. Dungawin v. Simina, 17 FSM R. 51, 54 (Chk. 2010).

When a state employee was forced to leave state employment in December 2002, the six-year statute of limitations for claims against the state started running then because it was the date on which the event triggering the cause of action occurred and it was also the time when he could have first successfully maintained a suit on his claim he should not have been forced to resign. Dungawin v. Simina, 17 FSM R. 51, 54 (Chk. 2010).

An unjust enrichment claim has not accrued (and may never accrue) when the prerequisite for the unjust enrichment claim – having an earlier judgment set aside – still has not occurred and may never occur. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 9 (Pon. 2011).

A cause of action arises or accrues when the right to bring suit on a claim is complete; that is, when the plaintiff could have first maintained the action to a successful conclusion. Iwo v. Chuuk, 18 FSM R. 252, 254 (Chk. 2012).

A cause of action on a salvage contract accrues and the statute of limitations period starts to run on the day on which the salvage operations are terminated or the vessel and any part of the cargo is delivered to a safe port. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 11 (Pon. 2013).

By Pohnpei statute, in an action brought to recover the balance due upon a mutual and open account, or upon a cause of action upon which partial payments have been made, the cause of action is considered to have accrued at the time of the last item proved in the account. Bank of Hawaii v. Susaia, 19 FSM R. 66, 70 n.3 (Pon. 2013).

A cause of action accrues and the statute of limitations begins to run, when a suit may be successfully maintained thereon. When a note is payable in installments, each installment is a distinct cause of action and the statute of limitations begins to run against each installment from the time it becomes due, that is, from the time when an action might be brought to recover it. Bank of Hawaii v. Susaia, 19 FSM R. 66, 70 (Pon. 2013).

In an action brought to recover the balance due upon a mutual and open account, or upon a cause of action on which partial payments have been made, the cause of action shall be considered to have accrued at the time of the last item proved in the account. Eot Municipality v. Elimo, 19 FSM R. 290, 294-95 (Chk. 2014).

When it is unclear from what the court has before it exactly when Chuuk made a loan repayment but it must have been some time after April 2005, otherwise that payment would have reduced the loan principal by some degree and since that partial loan repayment was also an acknowledgment of the debt Chuuk owed the municipalities for the airport renovation loan, the plaintiffs' cause of action could not have first accrued and the statute of limitations could not have started to run in 1999 when the loan was made or in 2002 when the loans, as per the memorandum of understanding between Chuuk and its municipalities, started to earn interest. Eot Municipality v. Elimo, 19 FSM R. 290, 295 (Chk. 2014).

Since a partial payment constitutes an acknowledgment of the debt, it is implicitly treated as a new promise to pay, and a new promise to pay has the effect of starting any limitations period all over again. Eot Municipality v. Elimo, 19 FSM R. 290, 295 (Chk. 2014).

When repayment of the airport renovation loan was due a reasonable time after the $500,104.65 partial payment and when, without identifying the exact date that would constitute a reasonable time after the partial payment that the repayment should be complete, the court is confident that, based on the attendant circumstances, that time frame would be within the six-year period before suit was filed on January 24, 2012. Eot Municipality v. Elimo, 19 FSM R. 290, 295 (Chk. 2014).

In general, the statute of limitations in an action for fraud begins to run from the time of discovery of the fraud or when reasonable diligence should have led to discovery of the fraud. FSM v. Muty, 19 FSM R. 453, 460-61 (Chk. 2014).

The true test in determining when a claim arose, is based upon when the plaintiff first could have maintained the action. Setik v. Mendiola, 20 FSM R. 236, 243 (Pon. 2015).

For purposes of determining when the statute of limitations ran, it is well established, that the plaintiffs' claim for payment arose at the time the relevant payment became due. Setik v. Mendiola, 20 FSM R. 236, 243 (Pon. 2015).

A cause of action accrues when the right to bring suit is complete. This is established at the time when the plaintiff could have first maintained the action to a successful conclusion. Setik v. Mendiola, 20 FSM R. 236, 243 (Pon. 2015).

The true test in determining when a claim arose, is based upon when the plaintiff first could have maintained the action. Setik v. Mendiola, 20 FSM R. 320, 326 (Pon. 2016).

The applicable statute provides that in an action brought upon a cause of action on which partial payments have been made, the cause of action is considered to have accrued at the time of the last item proved in the account. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418 (App. 2016).

A cause of action does not accrue for the purposes of a statute of limitations until all elements are present, including damages. Eot Municipality v. Elimo, 20 FSM R. 482, 490 (Chk. 2016).

In a cause of action on which partial payments have been made, the cause of action is considered to have accrued at the time of the last item proved in the account. Pacific Fin. Corp. v. David, 21 FSM R. 5, 6 (Chk. 2016).

When no admissible evidence is submitted to prove the last item alleged in the defendant's account – an alleged October 21, 2011 payment – and when the plaintiff has submitted affidavits by its attorney and by its vice-president, that interest of 23.75% has accrued on the June 15, 2000 principal balance of $1,075.17 equaling $4,164.70 between then and October 6, 2016, the reasonable inference can be drawn that there were no payments on the defendant's promissory note after June 15, 2000. The plaintiff has thus failed to show that there are no genuine issues as to any material fact on the defendant's affirmative defense of statute of limitations. Pacific Fin. Corp. v. David, 21 FSM R. 5, 6 (Chk. 2016).

The questions of when a statute of limitations begins to run, whether and when the statute is tolled, and whether a claim is barred by the statute of limitations are questions of law to be reviewed de novo. Tilfas v. Kosrae, 21 FSM R. 81, 86 (App. 2016).

A cause of action accrues, and the statute of limitations begins to run, when a suit may be successfully maintained thereon – when the plaintiff could have first maintained the action to a successful conclusion. Tilfas v. Kosrae, 21 FSM R. 81, 87, 89 (App. 2016).

A cause of action to collect salary or wages accrues when an employee has a right to collect the money allegedly owed to him. Tilfas v. Kosrae, 21 FSM R. 81, 89 (App. 2016).

A school teacher could not have successfully maintained a cause of action for improper salary classification as of the date of his initial hiring when he had not submitted documentation to the government proving his educational background, thereby giving him a right to collect the higher salary allegedly owed to him. His cause of action began to accrue when, if ever, he submitted the relevant documents necessary to prove he should have been placed at the higher pay level. Tilfas v. Kosrae, 21 FSM R. 81, 89 (App. 2016).

When a state employee's claim for wrongful probation status accrued, at the very latest, on August 26, 1989, because that was when the event triggering the cause of action occurred and when he could have first successfully maintained a suit on his claim since he remained classified as a probationary employee despite working, as of then, one day longer than one year. Thus, when that employee first exercised his administrative remedies and filed a grievance on April 30, 1997, his action for wrongful probationary status is time-barred because his grievance and the initiation of this lawsuit clearly fall outside the six-year statute of limitations. Tilfas v. Kosrae, 21 FSM R. 81, 92 (App. 2016).

When the borrowers made numerous payments and substantially reduced the principal from $17,831.33 to $6,468.20 (as of October 21, 2019), all of the earlier installments have been paid off, leaving only the later installments unpaid and very clearly within the statute of limitations period. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 606 (Pon. 2020).

– Tolling

The Federated States of Micronesia tolling statute, 6 F.S.M.C. 806, applies to persons "entitled to a cause of action," including minors for whom wrongful death actions may be brought. Luda v. Maeda Road Constr. Co., 2 FSM R. 107, 113-14 (Pon. 1985).

The two-year period proclaimed in 6 F.S.M.C. 503(2) is subject to the tolling provisions of 6 F.S.M.C. 806. Accordingly, the statute of limitations has not run against the minor children in this case. Sarapio v. Maeda Road Constr. Co., 3 FSM R. 463, 464 (Pon. 1988).

Nothing in the Compact suspends or tolls the statute of limitations. Alep v. United States, 7 FSM R. 494, 499 (App. 1996).

The statute of limitations has run on claims of mismanagement of the Micronesian Claims Act unless there was continuing unlawful conduct that would create a basis for equitable tolling of the statute of limitations. Alep v. United States, 7 FSM R. 494, 499 (App. 1996).

Because leave to amend a pleading shall be freely given when justice so requires, a plaintiff may be granted leave to amend its complaint to present its argument that the statute of limitations may have been tolled based upon its request that the parties submit their dispute to arbitration when the defendant has not presented any arguments that would show any injustice if the plaintiff amended its complaint. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 559 (Pon. 2000).

Adverse possession is not a claim that can be made against registered land, or land that has been one step (determination of boundaries) away from being registered land since 1981, and the filing of a trespass suit tolls (suspends) any running of the time period needed to assert an adverse possession claim. Church of the Latter Day Saints v. Esiron, 13 FSM R. 99a, 99e (Chk. 2004).

When the plaintiffs have not put forward any grounds that could toll the running of the statute of limitations although they have had an adequate opportunity to do so since the defendants' answer put them on notice that the statute of limitations defense would be asserted and when the plaintiffs were thus not prejudiced by the defendants' failure to bring a separate motion asserting the defense because they had been on notice that they would be required to show why or which of their claims would not be barred by the statute of limitations, summary judgment for the defendants will be granted on the issue of statute of limitations. Zion v. Nakayama, 13 FSM R. 310, 314 (Chk. 2005).

A defendant's wrongful conduct may toll or suspend the running of the statute of limitations as a form of estoppel – a defendant is estopped from raising the defense of statute of limitations because by his wrongful conduct he induced the plaintiff not to sue until the statute of limitations had run out. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 18 n.3 (App. 2006).

A statue of limitation may be tolled (suspended) if the person who is liable to any action fraudulently conceals the cause of action from the knowledge of a person entitled to bring the action. Dereas v. Eas, 14 FSM R. 446, 457-58 (Chk. S. Ct. Tr. 2006).

Generally, filing a lawsuit tolls a statute of limitations. However, for a lawsuit to toll a statute of limitation, that lawsuit must be against the proper party. Dereas v. Eas, 15 FSM R. 135, 139 (Chk. S. Ct. Tr. 2007).

A suit against one person does not arrest the running of the statute of limitations period against another. Dereas v. Eas, 15 FSM R. 135, 139 (Chk. S. Ct. Tr. 2007).

A suit begun against a stranger, or one who sustains no such relation to the proper defendant that a judgment against him would bind such defendant, can have no effect on the operation of the statute of limitations in favor of the party against whom the cause of action properly exists. Dereas v. Eas, 15 FSM R. 135, 139 (Chk. S. Ct. Tr. 2007).

When neither a 1996 lawsuit nor a 2002 lawsuit included any party, that if a judgment were rendered against that party, the judgment would bind the non-movant, and when the non-movant was not a party to either lawsuit, those 1996 and 2002 lawsuits could not have tolled the operation of the statute of limitations in non-movant's favor. Dereas v. Eas, 15 FSM R. 135, 139 (Chk. S. Ct. Tr. 2007).

There are circumstances where a statute of limitations may be tolled, or temporarily suspended. For example, statutory language may include such an exception by stating that an action accrues when a person has knowledge of or discovered the action that caused the injury. This kind of exception is commonly called the "discovery rule." The Kosrae statutes do not include exceptions, but in some jurisdictions, courts apply this exception even though it is not specifically included in the statute of limitations. Allen v. Allen, 15 FSM R. 613, 620 (Kos. S. Ct. Tr. 2008).

The service of a notice or the failure to serve a notice does not suspend the operation of a statute of limitation. Allen v. Allen, 15 FSM R. 613, 620 (Kos. S. Ct. Tr. 2008).

If the Kosrae State Court were to allow a plaintiff to initiate an action beyond the statute of limitations deadline, a plaintiff would have to demonstrate extraordinary circumstances and would carry the burden of proving the plaintiff was entitled to an exception to the statute. Allen v. Allen, 15 FSM R. 613, 620 (Kos. S. Ct. Tr. 2008).

Chuuk's inaction in responding to a former state employee's February 17, 2006 request for payment of lost wages does not toll statute of limitation on the former employee's cause of action for wrongful termination in December 2002. Dungawin v. Simina, 17 FSM R. 51, 54 (Chk. 2010).

Generally, pending litigation will toll the running of any statutory limitations periods. Aunu v. Chuuk, 18 FSM R. 48, 51 (Chk. 2011).

The running of a statute of limitations can be tolled – suspended – by certain events. A defendant's wrongful conduct can, as a form of estoppel, toll or suspend the running of a statute of limitations – for instance, a defendant would be estopped from raising a statute of limitations defense when, by his wrongful conduct, he induced the plaintiff not to sue until the statute of limitations had run out. Iwo v. Chuuk, 18 FSM R. 252, 254 (Chk. 2012).

When a defendant's alleged promise of compensation and its alleged subsequent repudiation of that promise may have tolled the running of the statute of limitations are undated, the plaintiff's cause of action might not, depending on the circumstances, be time-barred, and thus his proposed amended complaint is not futile on its face. Iwo v. Chuuk, 18 FSM R. 252, 255 (Chk. 2012).

A statute of limitations runs against the claims of infants in the absence of a contrary statute or provision. Tarauo v. Arsenal, 18 FSM R. 270, 273 (Chk. 2012).

A two-year statute of limitations will tolled by statute in favor of a minor for whose benefit the action has been brought. Tarauo v. Arsenal, 18 FSM R. 270, 273 (Chk. 2012).

When the original lawsuit was filed on August 7, 2008, the statute of limitations would have barred recovery for any claims for overtime hours worked before August 7, 2002, but while that lawsuit was pending, any further running of the statute of limitations would have been tolled (suspended) for any overtime claims after August 7, 2002. Aunu v. Chuuk, 18 FSM R. 467, 469 (Chk. 2012).

For a lawsuit to toll a statute of limitation, that lawsuit must be against the proper party. Aunu v. Chuuk, 18 FSM R. 467, 470 (Chk. 2012).

A contention that if a creditor, which was receiving partial payments, had wanted to recover the entire debt it would have to sue on each of the missed installment payments before the installment was six years old, makes no sense. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418 (App. 2016).

Under the partial payment rule – that partial payment on the whole debt will toll the running of the statute of limitations – an acknowledgment or promise to perform a previously defaulted contract obligation is effectual, whether oral or in writing, at least in certain types of cases, to start the statute of limitations running anew. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418 (App. 2016).

Whether a partial payment constitutes unequivocal acknowledgment of the whole debt from which an unconditional promise to pay can be implied thereby tolling the statute of limitations is a question for the trier of fact. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418 (App. 2016).

When a letter signed by both parties clearly states that the partial payments were a "repayment plan for the outstanding balance of the loan," it cannot be interpreted in any way other than as an acknowledgment of the whole debt and that the agreed $100 payments were partial payments on the whole debt. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418 (App. 2016).

When a debtor had made partial payments within the limitations period, under both the common law and statutory law (Pohnpei statutory law taking precedence), the statute of limitations will not bar the creditor from proceeding against the debtor for the entire outstanding balance. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

There is substantial authority for the proposition that partial payments by a principal debtor do not toll the statute of limitations as to the note's guarantors. The rationale behind this general rule is that a guarantor's consent to the debtor's future conduct may not be presumed merely on the basis of the original guarantee. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

The general rule is that a payment by the principal before the action is time-barred, operates as a renewal as to the principal, and to a surety, but not to a guarantor. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

A payment by the principal debtor will not operate to toll the statute of limitations as to a guarantor of the debt, even though it might do so as to a surety. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

When the trial court correctly decided that the statute of limitations was tolled by the debtor's partial payments, but did not separately determine whether those partial payments also tolled the statute of limitations with respect to the guarantor mortgagors, the appellate court will vacate the trial court judgment

against the mortgagors and remand the matter for the trial court to conduct further proceedings to make that determination since that determination may need factual findings about whether the mortgagors were aware that the debtor was making partial payments and whether they acquiesced to the acknowledgment of the debt, and the trial court is the place to address those factual issues. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

The statutory sixty-day period to appeal a Kosrae Land Court decision is tolled until proper service is made. Serving notice of a Land Court adjudication or decision, is required in order to give the party a chance to appeal, and if a party is not properly served the Land Court's written determination of ownership, the statutory sixty-day appeals period does not run against that party. Esau v. Penrose, 21 FSM R. 75, 81 (App. 2016).

The questions of when a statute of limitations begins to run, whether and when the statute is tolled, and whether a claim is barred by the statute of limitations are questions of law to be reviewed de novo. Tilfas v. Kosrae, 21 FSM R. 81, 86 (App. 2016).

If a public employee does not prevail on his grievance, then he could have sought judicial review of the decision within the applicable six-year statute of limitations, but when the employee received a decision in his favor, the statute of limitations was immediately suspended and the State's own inaction thereafter cannot be used to run the six-year statute of limitations. Tilfas v. Kosrae, 21 FSM R. 81, 90 (App. 2016).

The statute of limitations cannot be said to have continued to run as against a public employee's claim when the administrative decision was issued in his favor and the administrative grievance process was still pending as to a determination of damages. Tilfas v. Kosrae, 21 FSM R. 81, 90 (App. 2016).

The running of a statute of limitations can be tolled – suspended – by certain events. A defendant's wrongful conduct can, as a form of estoppel, toll or suspend the running of a statute of limitations. Tilfas v. Kosrae, 21 FSM R. 81, 90 (App. 2016).

The statute of limitations does not to continue to run against a state employee when a favorable decision was rendered to him. To come to such a conclusion would mean any agency could immunize itself from judicial review simply by extending delay for six years or until the statute of limitations has run. Therefore, the statute of limitations was suspended when the favorable decision was rendered on December 12, 2001 until the January 22, 2015 decision to overturn the first determination, and thus a petition for writ of mandamus filed in Kosrae State Court on April 1, 2015 was, as a result of the tolled period, well within the six-year limitations period. Tilfas v. Kosrae, 21 FSM R. 81, 91 (App. 2016).

The twenty-year statute of limitations would be an effective affirmative defense against an action on a February 11, 1999 judgment filed after February 11, 2019, but when the action on a judgment was filed January 8, 2019, it was begun within the statutory period, and is thus timely and may proceed to judgment. This is because once an action on a judgment has begun within the statutory period, the creditor's right to recover remains alive, even though the limitation period may subsequently expire. FSM Dev. Bank v. Carl, 22 FSM R. 365, 375 (Pon. 2019).

The institution of an action on a judgment within the statutory period tolls the statute although it is not followed by rendition of judgment, or even service of an answer, within such time. FSM Dev. Bank v. Carl, 22 FSM R. 365, 375 (Pon. 2019).

The institution of an action on a judgment within the twenty-year statutory period set by 6 F.S.M.C. 802(1)(a) tolls that limitation statute even though the court has not yet rendered a judgment and even despite that a defendant did not file and serve her answer within the statutory time period. Because the timely filing of the action tolled the statutory time period, the statute, 6 F.S.M.C. 801, that creates a presumption of satisfaction after the twenty years has passed, does not come into play. FSM Dev. Bank v. Carl, 22 FSM R. 365, 375 (Pon. 2019).

– Which Limitation Applies

The Trust Territory of the Pacific Islands is a political entity possessing many of the attributes of an independent nation, and is to be regarded as a sovereign for the purpose of the statute of limitations. FSM Dev. Bank v. Yap Shipping Coop., 3 FSM R. 84, 86 (Yap 1987).

In the absence of any law or regulation in the Federated States of Micronesia which provides a specific limitation on actions to collect unpaid stock subscriptions, the applicable period is six years. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM R. 157, 159 (Pon. 1989).

The applicable period of limitations on actions arising under the Corporations, Partnerships and Associations Regulations is six years. 6 F.S.M.C. 805. Mid-Pacific Constr. Co. v. Semes (I), 6 FSM R. 171, 174 (Pon. 1993).

An action for damages for negligent surveying is not an action for the recovery of an interest in land, for which the twenty year statute of limitation would apply, therefore it may be barred by the lesser statue of limitations. Damarlane v. United States, 6 FSM R. 357, 361 (Pon. 1994).

Subsequent to the effective date of the Compact the two-year statute of limitations applies to trespass and nuisance suits against the Trust Territory of the Pacific Islands. Jurisdiction over claims for acts or omissions of the government of the Trust Territory of the Pacific Islands is limited to those arising prior to the effective date of the Compact of Free Association. Damarlane v. United States, 7 FSM R. 167, 168 (Pon. 1995).

The statute of limitation for a claim against the State of Chuuk based upon the act or omission of a policeman in connection with the performance of his official duties is two years after the cause of action accrues. Kaminaga v. Chuuk, 7 FSM R. 272, 274 (Chk. S. Ct. Tr. 1995).

For actions for the recovery of land or any interest therein the statute of limitations is twenty years after the cause of action accrues, which is when a suit may first be successfully maintained thereon. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 488-89 & n.1 (App. 1996).

After November 25, 1986, a claim for recovery of taxes paid under an unconstitutional Yap statute is subject to a two-year statute of limitations. Gimnang v. Yap, 7 FSM R. 606, 607, 611 (Yap S. Ct. Tr. 1996).

An action on a judgment may be maintained up to twenty years after the date of entry of the judgment. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 672 (App. 1996).

The applicable statute of limitations period for adverse possession is twenty years. Iriarte v. Etscheit, 8 FSM R. 231, 239 (App. 1998).

The date of accrual for a contribution cause of action is the day the judgment was entered. Obviously a prerequisite to any successful contribution action based on a judgment is the judgment itself. The limitations period for a contribution action is six years. Senda v. Semes, 8 FSM R. 484, 500-01 (Pon. 1998).

Actions for trespass shall be commenced within six years after the cause of action accrues. Sipia v. Chuuk, 8 FSM R. 557, 558 (Chk. S. Ct. Tr. 1998).

Actions for the recovery of land or any interest therein must be commenced within twenty years after the cause of action accrues. Hartman v. Chuuk, 9 FSM R. 28, 31 (Chk. S. Ct. App. 1999).

The statute of limitations for an action to collect the balance due on an open account is six years from the accrual date of the cause of action. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 78 (Kos.

1999).

A sewer overflow case filed within six years of the first overflow is not barred by the statute of limitations. David v. Bossy, 9 FSM R. 224, 225 (Chk. S. Ct. Tr. 1999).

The two year limitation applies to tort actions for both negligence and wilful conduct. David v. Bossy, 9 FSM R. 224, 225 (Chk. S. Ct. Tr. 1999).

An action for damages for loss of land is subject to a six-year statute of limitations. Jonah v. Kosrae, 9 FSM R. 335, 343 (Kos. S. Ct. Tr. 2000).

Breach of contract claims against Pohnpei state have a two year statute of limitations. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 557 (Pon. 2000).

Without a separate statute of limitations in the act creating a public corporation, the state legislature obviously intended for suit to be brought against the corporation within the same time period that suit must be brought against the state and its various related entities even though the corporation may act on its own and sue and be sued in its own name. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 558 (Pon. 2000).

An action upon a judgment must be commenced within 20 years after the cause of action accrued. Walter v. Chuuk, 10 FSM R. 312, 316 (Chk. 2001).

The twenty year statute of limitation does not apply to claims against the Land Commission for violation of due process, violation of statute and for failure to apply an earlier judgment as they are not claims for the recovery of land. These claims are subject to a limitations period of six years and are barred by the statute of limitations and will be dismissed when the Land Commission actions all occurred more than six years ago. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 175 (Kos. S. Ct. Tr. 2002).

6 TTC 305 establishes a period of 6 years in which to bring an action for negligent damage to real property. Ben v. Chuuk, 11 FSM R. 649, 650 (Chk. S. Ct. Tr. 2003).

The creation of laws relating to contracts is not identified in the Constitution as falling within the national government's powers. Rather, it is generally presumed to be a power of the state. Accordingly, state law determines the statute of limitations in a contract case. Youngstrom v. NIH Corp., 12 FSM R. 75, 77 (Pon. 2003).

Pohnpei state law specifies limitation periods of two and twenty years for certain delineated causes of action and provides that all other actions – including contracts – must be commenced within six years after the cause of action accrues. Youngstrom v. NIH Corp., 12 FSM R. 75, 77 (Pon. 2003).

A claim to land clearly could not be renewed when the statute of limitations on an action to recover land or an interest therein is twenty years and more than twenty years have passed since the Certificate of Title in another's favor was issued and since the court decision affirming ownership. Any subsequent attempt to litigate the land's ownership is barred by the statute of limitations. Hartman v. Chuuk, 12 FSM R. 388, 400 (Chk. S. Ct. Tr. 2004).

When no applicable limitations period is specified in the national statute under which a plaintiff has proceeded, the court will apply the most closely analogous state law limitations period so long as doing so does not frustrate or interfere with national policy. AHPW, Inc. v. FSM, 12 FSM R. 544, 553 (Pon. 2004).

When a determination of ownership by the Land Commission is subject to appeal to the Court within 120 days from the date of receipt of notice of the determination and when it is alleged that the plaintiff never received notice of the determination of ownership, accepting the alleged facts as true, then the appeal time limit of 120 days never began to run. Skilling v. Kosrae State Land Comm'n, 13 FSM R. 16, 19 (Kos. S. Ct.

Tr. 2004).

Claims against the Land Commission for violation of statute and violation of due process are subject to a limitations period of six years. When claims against the Land Commission based upon Land Commission actions which took place in 1984 and before occurred more than six years ago, they are barred by the statute of limitations and should be dismissed. Skilling v. Kosrae State Land Comm'n, 13 FSM R. 16, 19 (Kos. S. Ct. Tr. 2004).

A complaint against the Land Commission does not assert a claim for the recovery of land or recovery of an interest in land against the defendants, as the defendants have not been granted ownership of the land. Therefore the twenty year statute of limitations for recovery of an interest in land does not apply to claims against the Land Commission for violation of due process and violation of statute. These claims are subject to a limitations period of six years. Skilling v. Kosrae State Land Comm'n, 13 FSM R. 16, 19 (Kos. S. Ct. Tr. 2004).

A Land Commission determination of ownership is subject to appeal to the Kosrae State Court within 120 days from the date of receipt of notice of the determination. If the determination was not received, then the appeal time limit of 120 days never began to run. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 80 (Kos. S. Ct. Tr. 2004).

Kosrae State Code, Title 6, Chapter 25 establishes three different statutes of limitations which are applicable to specific types of actions: 2 years, 6 years, and 20 years. Most types of actions are subject to the 6 year statute of limitations established by Kosrae State Code § 6.2506. All actions in Kosrae State Court must be commenced within the time period stated in Title 6, Chapter 25. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 80 (Kos. S. Ct. Tr. 2004).

The six-year statute of limitations applies and the twenty year statute of limitations for the recovery of an interest in land does not when no interest in land is at issue because the land title case is pending in state court, and since the real property mortgage has never been enforced, no foreclosure proceedings have ever taken place. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 127 (Chk. 2005).

Tort claims, tax claims, contract claims, breach of fundamental rights, claims for damages, injunctive relief or writ of mandamus arising from the alleged unconstitutionality or improper administration of Pohnpei statutes or regulations, any other civil action or claim against the state founded upon any law or any regulation, or upon any express or implied contract with the Pohnpei government or for liquidated or unliquidated damages in cases not sounding in tort, and actions for collection of judgments based on claims allowed against the State of Pohnpei can be sued upon within two years of the date on which they accrue. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 226-27 (Pon. 2005).

Since, by its own terms, the Pohnpei Government Liability Act statute of limitations is applicable only to those claims identified in Section 4 of that Act, which identifies a number of different claims, including claims based on violation of Pohnpei state law such as the Pohnpei Constitution, but does not expressly identify claims that are based upon national law or the National Constitution, the plaintiff's claim for declaratory judgment based on violation of the National Constitution and its claim for damages for civil rights violations under 11 F.S.M.C. 701(3) are not subject to the Act's statute of limitations and will not be dismissed on the ground that they are time barred by that statute of limitations. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 227-28 (Pon. 2005).

The statute of limitations on contract or unpaid wage claims is six years. Zion v. Nakayama, 13 FSM R. 310, 314 (Chk. 2005).

A six years' statute of limitations applies to all claims to which neither the specific twenty-year, or two-year statutes, apply. Claims against the Land Commission for violation of due process, as they are not claims for the recovery of land (twenty-year statute of limitation), are subject to a six-year limitations period

and are barred and will be dismissed when the Land Commission actions are all over six years old since a complaint against the Land Commission cannot assert a claim for the recovery of an interest in land against the defendant Land Commission because it does not own any interest in the land at issue. Dereas v. Eas, 14 FSM R. 446, 456 n.5 (Chk. S. Ct. Tr. 2006).

The statute of limitations bars a claim to an interest in land if the cause of action arose more than twenty years before the action is brought – if the claim could have been made over twenty years before it was actually made, then the action can no longer be maintained, no matter how meritorious the claim. Dereas v. Eas, 14 FSM R. 446, 456 (Chk. S. Ct. Tr. 2006).

The statute of limitations for an action by a decedent's estate does not apply when the plaintiff is not alleging that she represents the estate, but alleges that she is an insurance policy beneficiary. John v. Chuuk Public Utility Corp., 15 FSM R. 169, 171 (Chk. 2007).

When the plaintiff alleges that she is the third-party beneficiary of an insurance contract, the six-year statute of limitations for breach of contract generally applies. John v. Chuuk Public Utility Corp., 15 FSM R. 169, 171 (Chk. 2007).

The statute of limitations for an action on an open account is six years and when the testimony at trial shows transactions on the open account within the six-year statutory period a motion to dismiss on statute of limitations will be denied. George v. George, 15 FSM R. 270, 273 (Kos. S. Ct. Tr. 2007).

A claim for negligence against the Land Commission and its government employee has a six-year statute of limitations. When, if there was any negligence, the cause of action accrued at the time the certificate of title was issued in 1997 and more than six years have passed, the plaintiff's claim of negligence against the Land Commission and its employee fails. Andon v. Shrew, 15 FSM R. 315, 320 (Kos. S. Ct. Tr. 2007).

For claims relating to ownership of land, the twenty-year statute of limitations found in Kosrae Code section 6.2503 would apply. Andon v. Shrew, 15 FSM R. 315, 321 (Kos. S. Ct. Tr. 2007).

The two-year statute of limitations applies to causes of action for slander. Jano v. Fujita, 15 FSM R. 405, 408 (Pon. 2007).

Because the causes of action for libel and interference with contract and prospective economic advantage are not covered in sections 801 to 804 of title 6, the six-year limitation period set forth in section 805 of Title 6 applies to those causes of action. Jano v. Fujita, 15 FSM R. 405, 408 (Pon. 2007).

State law, and not the national law, provides the controlling limitations period for the causes of action, such as libel and slander and the tort of interference with contract and prospective economic advantage, that arise under state law. Jano v. Fujita, 15 FSM R. 494, 496 (Pon. 2008).

The two-year statute of limitations applies to causes of action for libel. Jano v. Fujita, 15 FSM R. 494, 497 (Pon. 2008).

A cause of action for interference with contract and prospective economic advantage must be commenced within six years after the cause of action accrues. Jano v. Fujita, 15 FSM R. 494, 497 (Pon. 2008).

Kosrae State Code § 6.2506 provides that any action not governed by the limitations of actions stated in other sections is governed by a six-year statute of limitations. Allen v. Allen, 15 FSM R. 613, 619 (Kos. S. Ct. Tr. 2008).

Claims against the Land Commission for negligence, violation of due process and failing to apply

statutes are actions against the government which fall within the limitations period of six years. Allen v. Allen, 15 FSM R. 613, 619 (Kos. S. Ct. Tr. 2008).

The twenty-year statute of limitations under Kosrae State Code § 6.2503 covers actions for the recovery of land or an interest in land and the time period begins when the cause of action accrues. Allen v. Allen, 15 FSM R. 613, 620 (Kos. S. Ct. Tr. 2008).

A conflict of interest claim is that the determination of ownership must be set aside because one of the team members, later became a Land Commission member and was one of the concurring commissioners on the parcel's determination is a claim against the government is an action covered by Kosrae State Code § 6.2601 and falls within the six-year statute of limitations. Allen v. Allen, 15 FSM R. 613, 621 (Kos. S. Ct. Tr. 2008).

The statutory limitation period on the breach of contract claim for an unpaid bank loan is six years after the cause of action accrues since a breach of contract cause of action, or an unpaid bank loan, is not covered in the specific limitations periods set forth in FSM Code, Title 6, sections 801 to 804. FSM Dev. Bank v. Chuuk Fresh Tuna, Inc., 16 FSM R. 335, 338 (Chk. 2009).

The court will not apply the three-year statute of limitations found in the Uniform Commercial Code without a showing that this statute of limitations has been enacted into law in this jurisdiction. The court is at a loss as to what authority would permit it to do this. It cannot legislate. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 445 (Pon. 2009).

Under Kosrae law, a six-year statute of limitation applies to all civil suits not covered by the twenty-year statute of limitation (actions on a judgment or for recovery of land or an interest in land) or by the two-year statutes of limitation (actions for assault and battery, false imprisonment, defamation, against the police for wrongful acts or omissions, medical malpractice, injury or death caused by wrongful act, by a depositor against a bank for a forged or altered check, and wrongful death or an action by or against an estate). Allen v. Allen, 17 FSM R. 35, 39 (App. 2010).

When the plaintiff's causes of action arose or accrued in 1986 since, assuming he proved his case, he could have sued successfully for the recovery of the land then, and since no fraud is alleged or apparent, the plaintiff had twenty years within which to seek recovery of the land. Since that time period expired in 2006, the plaintiff's February 2007 complaint is thus time-barred. Allen v. Allen, 17 FSM R. 35, 40-41 (App. 2010).

When a statute of limitations provides a two-year limitation period for actions for injury to one caused by the wrongful act or neglect of another, the applicable statute of limitations for a negligent infliction of emotional distress claim is two years negligent infliction of emotional distress requires a physical injury or manifestation. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 48 (Chk. 2010).

When a two-year limitations period applies to injuries caused by the wrongful act or neglect of another, it applies to intentional infliction of emotional distress because intentional infliction of emotional distress is caused by a wrongful act – conduct that is extreme and outrageous. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 48 (Chk. 2010).

An emotional distress claim, whether inflicted intentionally or negligently, is barred by the two-year statute of limitations. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 48 (Chk. 2010).

The applicable limitations period for a wrongful termination suit against the State of Chuuk is six years (subject to statutory tolling provisions). Dungawin v. Simina, 17 FSM R. 51, 54 (Chk. 2010).

If Pohnpei had managed to breach contracts – the 1993 loan agreement and the guaranty – that it had never been a party to, it would have had to have done it well before 1999 when the plaintiff filed suit. In

which case, the statute of limitations on that claim expired long before this action was filed in 2010 since, under Pohnpei state law, the limitations period on contract actions against the State of Pohnpei is two years. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 9 (Pon. 2011).

Tort actions against Pohnpei are subject to a two-year limitations period. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 9 n.4 (Pon. 2011).

A breach of contract counterclaim by loan guarantors against the bank would have a six-year limitation period. But, as that would have been a Civil Rule 13(a) compulsory counterclaim, the guarantors had to raise it in their earlier lawsuit or that claim was waived. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 9 (Pon. 2011).

The statute of limitation is 20 years for causes of action that impact land as such. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 157 (Pon. 2012).

When no applicable limitations period is specified in the national statute under which the plaintiff has proceeded, the court will apply the most closely analogous state law limitations period so long as doing so does not frustrate or interfere with national policy. Tarauo v. Arsenal, 18 FSM R. 270, 272-73 (Chk. 2012).

The applicable limitations period for a civil rights action based on mistreatment at Chuuk State Hospital would be two years since that is the limitations period for errors committed by medical practitioners employed by the state and for personal injury actions against the state. Tarauo v. Arsenal, 18 FSM R. 270, 273 (Chk. 2012).

Borrowing a foreign statute of limitations that bars judicial relief has no basis in law when the claim arose from acts on Pohnpei and Pohnpei state law sets a limitation period. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 354 (App. 2012).

When a breach of contract cause of action arose on Pohnpei, Pohnpei's statute of limitations should be used. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 354 (App. 2012).

The two-year limitation period for a depositor's action against a bank or similar institution for the payment of a forged or raised check which bears a forged or unauthorized endorsement does not apply when the defendant is a retail (and wholesale) store and not a bank or a similar financial institution and the plaintiff is not a "depositor" in the defendant "institution." Iriarte v. Individual Assurance Co., 18 FSM R. 340, 362 (App. 2012).

The limitations period for many types of civil rights lawsuits against Chuuk is two years, but for back pay claims it is six years. Aunu v. Chuuk, 18 FSM R. 467, 469 (Chk. 2012).

The applicable statute of limitations for a salvage contract bars any recovery after the two-year period statutory period. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 11 (Pon. 2013).

The two-year statute of limitations in 19 F.S.M.C. 928 applies only to salvage contracts and does not apply to a contract between a salvor and the insurer that is not a salvage contract but is instead a contract of guaranty or a surety or to answer for the liability of another and which may be subject to the six-year statute of limitations for contracts in general. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 11 (Pon. 2013).

The applicable statute of limitation period for an installment contract is six years. Bank of Hawaii v. Susaia, 19 FSM R. 66, 70 (Pon. 2013).

The statute of limitations period for a breach of contract claim against the State of Chuuk is six years. Eot Municipality v. Elimo, 19 FSM R. 290, 294 (Chk. 2014).

The timeframe in which to appeal a decision of the FSMSSA Board is governed by 53 F.S.M.C. 708, which provides that any person aggrieved by a final order of the Board may obtain a review of the order in the FSM Supreme Court trial division by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. Palikkun v. FSM Social Sec. Admin., 19 FSM R. 314, 316 (Kos. 2014).

Conversion has a six-year statute of limitations. FSM v. Muty, 19 FSM R. 453, 460 (Chk. 2014).

Adverse possession is a doctrine under which one can acquire ownership of land if that individual, absent the owner's permission, uses the land openly, notoriously, exclusively, continuously and under claim of right, coupled with a requirement that the owner does not challenge such action until after the statute of limitation has run. The applicable statute of limitation period for adverse possession is twenty years. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 58 (App. 2016).

When, using any of the three ways to analyze an action's nature for statute of limitations purposes, it could not be plainer that the action is one to recover an interest in land, the twenty-year statute of limitations to recover land or an interest in land applies. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 580 (App. 2018).

As a matter of policy, if there is a substantial question or reasonable dispute as to which of two or more statutes of limitation within the jurisdiction should be applied, the doubt should be resolved in favor of the application of the statute containing the longest limitation period. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 580 n.2 (App. 2018).

When the type of interest allegedly harmed is land ownership; when the right that the plaintiffs sue upon is their right to own a certain land parcel; when the remedy sought is to recover registered title to that land parcel that the plaintiffs contend that was lost through the defendants' predecessor's wrongful act; and when the primary interest that the alleged wrongdoer invaded was the plaintiffs' predecessor's registered ownership of that parcel, the action is one for the recovery of title to land. The theory of recovery might be fraud, or due process violation, or negligence, or some other theory such as reformation of contract, but that theory does not change the action's nature for statute of limitations purposes. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 580 (App. 2018).

To determine which statute of limitation to apply, a court must look to the nature of the case. There are three ways to determine a case's nature for statute of limitations purposes: 1) the type of interest allegedly harmed, or 2) the right sued upon, or 3) the remedy sought, rather than the theory of recovery. What is significant for statute of limitations purposes is the primary interest that was invaded by the defendant's wrongful conduct. Alik v. Heirs of Alik, 21 FSM R. 606, 621 (App. 2018).

When, under any of the three ways to analyze an action's nature for limitations purposes, it could not be plainer that the case can only be an action to recover an interest in land, the twenty-year statute of limitations to recover land or an interest in land applies. Alik v. Heirs of Alik, 21 FSM R. 606, 621 (App. 2018).

When the type of interest allegedly harmed is land ownership; when the remedy that the plaintiffs seek is to recover ownership of, and title to, a parcel, which they contend they lost through another's wrongful acts; and, when the primary interest that the other allegedly invaded, by his alleged wrongful conduct, was his siblings' right to joint registered ownership, good against the world, of the parcel, the action's nature, for statute of limitations purposes, as one to recover interests in land and that does not change because the theory of recovery might be fraud, or due process violation, or negligence, or some other theory. Alik v. Heirs of Alik, 21 FSM R. 606, 621 (App. 2018).

As a matter of policy, if there is a substantial question or reasonable dispute about which of two or more statutes of limitation within the jurisdiction should be applied, the doubt should be resolved in favor of

the application of the statute containing the longest limitation period. Alik v. Heirs of Alik, 21 FSM R. 606, 622 (App. 2018).

When most of the plaintiffs' claims are for events that occurred in 2001, 2003, or 2004, and when none of the claims are for the recovery of an interest in land or are an action on a judgment, which are the only causes of action for which the statute of limitations is twenty years, then the statute of limitations for the plaintiffs' claims cannot exceed the six years of the catchall statute, which claims are thus barred by the statute of limitations. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 12 (Pon. 2018).

Any action by or against the executor, administrator, or other representative of a deceased person for a cause of action in favor of, or against, the deceased shall be brought only within two years after the executor, administrator, or other representative is appointed or first takes possession of the assets of the deceased. Panuelo v. Sigrah, 22 FSM R. 341, 358 (Pon. 2019).

A "personal injury" is any harm caused to a person, such as a broken bone, a cut, or a bruise; bodily injury or any invasion of a personal right, including mental suffering and false imprisonment. This does not describe claimed damages that are all monetary losses. Panuelo v. Sigrah, 22 FSM R. 341, 358 n.8 (Pon. 2019).

It seems likely that the six-year, catch-all statute of limitations would apply to purely monetary damages. Panuelo v. Sigrah, 22 FSM R. 341, 358 & n.8 (Pon. 2019).

For an independent action for relief, no statute of limitations would apply because there is no time limit on when an independent action may be brought, but the doctrine of laches is applicable and undue delay can bar relief. Panuelo v. Sigrah, 22 FSM R. 341, 358 (Pon. 2019).

FSM statutory law recognizes the existence of an action on a judgment because it provides a time limit – 20 years – within which one must be brought. FSM Dev. Bank v. Carl, 22 FSM R. 365, 371 (Pon. 2019).

An action may be maintained up to twenty years after the date of entry of the judgment. FSM Dev. Bank v. Carl, 22 FSM R. 365, 371 (Pon. 2019).

The statutory limitation period for an unpaid bank loan is, under 6 F.S.M.C. 805, six years after the cause of action accrues since unpaid loans are not covered in the specific limitations periods set forth in Sections 801 to 804. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 606 (Pon. 2020).

TAXATION

There appears to be uniform acceptance by common law jurisdictions of the principle that government officials are considered employees for income tax purposes. This amounts to a common law rule of taxation and yields a result in harmony with the underlying principles of the taxation system established by the Federated States of Micronesia Income Tax Law. Rauzi v. FSM, 2 FSM R. 8, 12 (Pon. 1985).

A Pohnpei state government official is an employee for purposes of the Federated States of Micronesia Income Tax Law. Rauzi v. FSM, 2 FSM R. 8, 12 (Pon. 1985).

There is a common law of taxation which addresses the status of public officials as employees. Rauzi v. FSM, 2 FSM R. 8, 17 (Pon. 1985).

The FSM Income Tax Law's distinction between employees and businesses obviously reflects congressional expectation that businesses and employees are generally distinguishable on the basis of whether generation of their income would require substantial expenditures by them. Rauzi v. FSM, 2 FSM R. 8, 19 (Pon. 1985).

The Federated States of Micronesia Income Tax Law confirms that it is the nature of the services performed and the person performing the services, rather than the stated identity of the contracting party, which determines the tax treatment for the compensation under the contract. It is of no import that the "contractor" was identified as a corporation rather than as an individual when the contract makes clear that the primary services to be rendered were those of an individual and the corporation was merely a name under which the individual conducted business. Heston v. FSM, 2 FSM R. 61, 64 (Pon. 1985).

A taxpayer who held the high public office of Chief of Finance, whose contract gave him a wide degree of discretion in carrying out governmental powers; and who was not an outside consultant who could merely suggest or advise but was an integral part of the governmental operation is a governmental official, therefore an employee for purposes of the FSM Income Tax Law. Heston v. FSM, 2 FSM R. 61, 65 (Pon. 1985).

All government officials are employees of the government within the meaning of the Federated States of Micronesia Income Tax Law. Heston v. FSM, 2 FSM R. 61, 65 (Pon. 1985).

Although plaintiff incurred expense in carrying out his obligations under contract, they were well below ten percent of the amount he received under the contract. Such expenditures are insufficient to alter plaintiff's status from an "employee" to a "business" under the FSM Income Tax Law. Heston v. FSM, 2 FSM R. 61, 66 (Pon. 1985).

The statement in 54 F.S.M.C. 144(2) that penalties provided in chapter 1 will apply to the gross revenue tax law does not preclude the penalty specified in 54 F.S.M.C. 902 from applying. FSM v. George, 2 FSM R. 88, 91 (Kos. 1985).

Public Law No. 3-32, the predecessor of 54 F.S.M.C. 902 is subject to the interpretation that it was to be a catch-all provision applicable to all taxes which subsequently might be established by Congress. FSM v. George, 2 FSM R. 88, 94 (Kos. 1985).

The penalty provisions of 54 F.S.M.C. 902 apply to failure to make timely payment of the gross revenue tax imposed under 54 F.S.M.C. 141. FSM v. George, 2 FSM R. 88, 94 (Kos. 1985).

The gross revenue tax levied by the national government under 51 F.S.M.C. §§ 141-44 is distinguishable from a sales tax in several ways. Ponape Federation of Coop. Ass'ns v. FSM, 2 FSM R. 124, 127 (Pon. 1985).

The power granted to Congress by FSM Constitution article IX, section 2(e) "to impose taxes on income" includes the power to tax gross revenue. Afituk v. FSM, 2 FSM R. 260, 264 (Truk 1986).

The gross revenue tax as enacted by the Congress of Micronesia continued in effect in the Federated States of Micronesia by virtue of the transition article of the FSM Constitution but, because it was subsequently amended by the FSM Congress and was included in the codification of FSM statutes, may now be considered a law enacted by Congress. Afituk v. FSM, 2 FSM R. 260, 264 (Truk 1986).

Statutory provisions designed to enhance the capacity of the government to enforce penalties for failure to pay taxes are penal, not remedial, and should be strictly construed. In re Island Hardware, Inc., 3 FSM R. 428, 432 (Pon. 1988).

On a claim for declaratory relief from an unconstitutional excise tax, the FSM Supreme Court trial division will not abstain, where the issue could later be certified to the FSM Supreme Court appellate division and result in delay, where the trial court has already retained the case longer than contemplated, where the issue is narrowly posed and not capable of varying resolutions, and where it appears that a greater service may be provided by deciding the issue. Gimnang v. Yap, 4 FSM R. 212, 214 (Yap 1990).

In the Federated States of Micronesia Income Tax Law, 54 F.S.M.C. 111 *et seq.*, cooperatives are not singled out in any way within the definition of business and there is no indication in the tax law that cooperatives are to be treated differently than corporations or any other forms of businesses. KCCA v. Tuuth, 5 FSM R. 68, 70 (Pon. 1991).

Each exclusion from the definition of "gross revenue" in 54 F.S.M.C. 112(5) seems to represent one or another of three possible purposes: to prevent dual taxation of revenue of a single taxpayer, to make allowances for special situations, or to exclude funds received by the taxpayer on behalf of another such as refunds and rebates, moneys held in a fiduciary capacity, cash discounts taken on sales, or proceeds of sales of goods returned by customers when the sale price was refunded in cash or by credit. KCCA v. Tuuth, 5 FSM R. 68, 70-71 (Pon. 1991).

Patronage refunds paid by a cooperative to its members are not refunds within the meaning of 54 F.S.M.C. 112(5)(a) and are not excludable from gross revenue under the FSM Tax Law. KCCA v. Tuuth, 5 FSM R. 68, 71 (Pon. 1991).

A sales tax is oriented toward individual transactions, not total income, and is tied to the price of the goods sold, rather than to the overall success of the taxpayers. Youngstrom v. Kosrae, 5 FSM R. 73, 76 (Kos. 1991).

An income tax typically applies to practically all income, with rates payable based on the total income of the taxpayer, after giving allowance to certain exemptions, and normally extends to all forms of income, including wages and salaries, interest, royalties, fees and returns on capital, as well as income realized through the sale of goods. Youngstrom v. Kosrae, 5 FSM R. 73, 76 (Kos. 1991).

Limitation of the definition of "business" under the FSM income tax law to "all activities . . . carried on within the Federated States of Micronesia" strongly implies that activities carried on elsewhere by a business functioning within the Federated States of Micronesia are not subject to FSM income tax. 54 F.S.M.C. 112(1). Bank of the FSM v. FSM, 5 FSM R. 346, 348 (Pon. 1992).

While there is a presumption that all revenue of a business is derived from sources within the Federated States of Micronesia, the presumption may be rebutted and the tax "levied only on that portion which is earned or derived from sources or transactions within the Federated States of Micronesia." 54 F.S.M.C. 142. Bank of the FSM v. FSM, 5 FSM R. 346, 349 (Pon. 1992).

The statutory scheme emphasizes the location of the business activity which generates the revenue in question. Therefore revenue derived from banking investment transactions in Honolulu and Chicago are not taxable since they are not derived from sources or transactions within the Federated States of Micronesia. Bank of the FSM v. FSM, 5 FSM R. 346, 349 (Pon. 1992).

Where regulations existed referring to a patronage refund as a "bonus or refund" at the time Congress enacted the statute excluding refunds from the definition of gross revenue, the statute unambiguously excludes patronage refunds from gross revenue. KCCA v. FSM, 5 FSM R. 375, 379-80 (App. 1992).

Patronage refunds are not voluntarily paid refunds because the regulations compel the allocation of patronage refunds. Therefore they are properly excludable from gross revenue. KCCA v. FSM, 5 FSM R. 375, 380 (App. 1992).

Under 54 F.S.M.C. 902, a monthly penalty is imposed on delinquent payment of any tax specified in Title 54, including gross revenue tax. Setik v. FSM, 5 FSM R. 407, 409 (App. 1992).

54 F.S.M.C. 143(2) mandates that all businesses compute gross revenue tax liability using the accrual accounting method. NIH Corp. v. FSM, 5 FSM R. 411, 413 (Pon. 1992).

By statute, a taxpayer is liable for penalties and interest on any underpayment of his gross revenue tax liability regardless of the reason for underpayment, unless some other principle of law applies to afford the taxpayer relief. NIH Corp. v. FSM, 5 FSM R. 411, 413-14 (Pon. 1992).

Where the government's prior audit methods had the effect of permitting gross revenue tax computation on the cash basis and where the government's attempts to advise businesses that they are required to use the accrual method have for many years been woefully inadequate, the government will be barred by equitable estoppel from assessing penalties and interest on any underpayment of taxes that was the result of being led to believe that the cash basis was an acceptable method of tax computation. NIH Corp. v. FSM, 5 FSM R. 411, 415 (Pon. 1992).

Moneys held in a fiduciary capacity are specifically excluded by statute from the definition of gross revenue. 54 F.S.M.C. 112(5)(b). The term "fiduciary capacity" is not restricted to technical or express trusts, but extends to money that is not the taxpayer's own, but which is handled for the benefit of another. NIH Corp. v. FSM, 5 FSM R. 411, 416 (Pon. 1992).

A taxpayer who owes social security taxes to the government as employer contributions under the FSM Social Security Act is liable for reasonable attorney's fees if the tax delinquency is referred to an attorney for collection; however, the court may exercise discretion in determining the reasonableness of the fees assessed in light of the particular circumstances of the case. FSM Social Sec. Admin. v. Mallarme, 6 FSM R. 230, 232 (Pon. 1993).

Among the factors which the court may consider in determining the amount of attorney's fees recoverable in an action brought under 53 F.S.M.C. 605 is the nature of the violation, the degree of cooperation by the taxpayer, and the extent to which the Social Security Administration prevails on its claims. FSM Social Sec. Admin. v. Mallarme, 6 FSM R. 230, 232-33 (Pon. 1993).

Rents are income taxable under the FSM Income Tax Statute, and a state tax on gross rental receipts combines to create vertical multiple taxation of a form of income. Truk Continental Hotel, Inc. v. Chuuk, 7 FSM R. 117, 119 (App. 1995).

The name given a tax by a taxing authority is not necessarily controlling as to the type of tax it is. Truk Continental Hotel, Inc. v. Chuuk, 7 FSM R. 117, 119 (App. 1995).

The interval in which a tax is reported and collected and whether it is imposed without regard to profit or loss does not alter whether it is an income tax. Truk Continental Hotel, Inc. v. Chuuk, 7 FSM R. 117, 119 (App. 1995).

The Social Security Administration is entitled to summary judgment for unpaid taxes when it supported its motion with an affidavit detailing the a taxpayer's audit and other evidence indicating the taxpayer's liability, and the taxpayer has provided no evidence to indicate otherwise. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 442, 445-46 (Pon. 1996).

The Social Security Administration is entitled to a penalty of not more than $1,000 and interest of 12% on unpaid taxes. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 442, 446-47 (Pon. 1996).

A taxpayer is liable to the Social Security Administration for reasonable attorney's fees and costs when unpaid taxes are referred to an attorney for collection to the extent which the Social Security Administration prevails on its claims. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 442, 447 (Pon. 1996).

It is unavailing in tax cases, except in special circumstances, to seek a preliminary injunction against enforcement or to have the taxes escrowed pending the outcome. This is in order not to disrupt the financial stability of the governmental unit. Chuuk Chamber of Commerce v. Weno, 8 FSM R. 122, 127 (Chk. 1997).

Under 53 F.S.M.C. 605(3) an employer is delinquent each quarter that it fails to both file a report and pay within ten days after the end of the quarter. Therefore an employer may be subject to the maximum penalty of $1,000 each time (quarter) it is delinquent. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM R. 129, 132 (App. 1997).

Both interest, 53 F.S.M.C. 605(4), and penalties, 53 F.S.M.C. 605(3), may be applied to an employer who is delinquent, as was intended by Congress. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM R. 129, 132-33 (App. 1997).

The following factors are relevant to determining whether fishing fees are taxes: 1) the source of the levy – whether the entity imposing the tax is legislative or administrative; 2) the effect of the levy on the general public – whether the assessment is imposed upon a broad or narrow class; 3) the means by which the levy is made – whether it is voluntary, and produces a benefit to the payor which is commensurate with the payment; and 4) the relationship between the levy and government costs – whether the revenue generated bears a relationship to the costs of the government in administering the particular program. Chuuk v. Secretary of Finance, 8 FSM R. 353, 382-83 (Pon. 1998).

Cases distinguishing between taxes and fees often examine the source of the levy as an indicator of whether the particular payment should be considered a tax or a fee. An assessment imposed directly by the legislature is more likely to be a tax than one imposed by an administrative agency. The classic tax is imposed by a legislature upon many, or all citizens; the classic regulatory fee is imposed by an agency on those subject to its regulation. Chuuk v. Secretary of Finance, 8 FSM R. 353, 383 (Pon. 1998).

Courts also consider whether a governmental levy is directed at the general public, or whether it is imposed on a discrete subsection of the public, in distinguishing between a tax and a fee. An assessment imposed on a broad class of parties is more likely to be a tax than one imposed on a narrow class. One distinguishing characteristic of a fee is that the public agency normally may exact a fee for a grant which, presumably, bestows a benefit on the applicant, not shared by other members of society. Chuuk v. Secretary of Finance, 8 FSM R. 353, 383 (Pon. 1998).

Another distinction between a tax and a fee is whether the levy is exacted voluntarily in exchange for a benefit to the payor. Taxation is a legislative function, and Congress, which is the sole organ for levying taxes, may act arbitrarily and disregard benefits bestowed by the Government on a taxpayer and go solely on ability to pay, based on property or income. A fee, however, is incident to a voluntary act, *e.g.*, a request that a public agency permit an applicant to practice law or medicine or construct a house or run a broadcast station. Chuuk v. Secretary of Finance, 8 FSM R. 353, 384 (Pon. 1998).

A fee for use of property which is controlled by the government is not necessarily a tax, because the government is entitled to receive the benefits of its property just like any private landowner. As a sovereign, the government levies taxes, but as property owner it may charge fees for the use of its property. These fees are paid by choice and in exchange for a particular benefit, the use of government property, just as rents are freely paid for the use of private property. Chuuk v. Secretary of Finance, 8 FSM R. 353, 385 (Pon. 1998).

Revenues from natural resources are not taxes. The constitutional definition of tax was not meant to include amounts received by the national government from disposal of natural resources over which it has control. Chuuk v. Secretary of Finance, 8 FSM R. 353, 386-87 (Pon. 1998).

Although the government is not precluded from charging and trying, in one information, violations of two or more separate provisions of the FSM codes which arise from the same course of conduct, but when the case involves conduct specifically addressed by the tax code (which has comprehensive civil and criminal penalties established for a clearly stated purpose) the government cannot also seek to charge the defendant with alternative violations of criminal code sections providing for criminal penalties up to ten times

greater than those allowed under the tax code and which were not clearly intended to apply to tax crimes. FSM v. Edwin, 8 FSM R. 543, 546 (Pon. 1998).

The legislative history of Title 54 indicates that it was created as a system primarily aimed at recovering revenue rather than punishing wrongdoers with lengthy prison sentences and that the fines and criminal penalties adopted in it were thought to be commensurate with the specified wrongdoing. FSM v. Edwin, 8 FSM R. 543, 547 (Pon. 1998).

There is no clearly expressed Congressional intent for the criminal code to be used to prosecute tax crimes. Since the FSM had existing laws with comprehensive civil and criminal penalties applicable to tax crimes at the time the criminal code was adopted, the implication is that the criminal code was not intended for the purpose of prosecuting such crimes. FSM v. Edwin, 8 FSM R. 543, 549 (Pon. 1998).

The penalties applicable to criminal mischief pertain to deterring the commission of the crime not for the primary purpose of raising revenue as with the tax code which has comprehensive civil and criminal penalties designed specifically for that purpose. FSM v. Edwin, 8 FSM R. 543, 549 (Pon. 1998).

A four-part analysis is applied to determine whether fishing fees are taxes: 1) the source of the levy, 2) the effect of the levy on the general public, 3) the means by which the levy is made, and 4) the relationship between the levy and government costs. Chuuk v. Secretary of Finance, 9 FSM R. 99, 102 (Pon. 1999).

Whether fishing fees are uniform is immaterial to a finding that fishing fees do not constitute a tax. Chuuk v. Secretary of Finance, 9 FSM R. 99, 102 (Pon. 1999).

How Congress appropriates fishing fees is irrelevant to whether they are a tax. Chuuk v. Secretary of Finance, 9 FSM R. 99, 102 (Pon. 1999).

For tax purposes, the FSM Telecommunications Corp. is deemed part of the national government thereby making it exempt from a state use tax. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 292, 294 (Pon. 1999).

Because a Congressional statute set up Telecom to serve the public interest and foster economic development, because Telecom may seek appropriations from Congress and, to the extent approved by the President, grants from sources outside of the FSM, because Telecom's board of directors must submit an annual report reflecting its activities, including financial statements, to the government, and because Telecom has no independent shareholders and is fully owned by the national government, Telecom is deemed, for taxation purposes, to be a part of the national government, and its efforts to carry out its mission should not be hindered by any state's efforts to tax its business activities. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 380, 385 (Pon. 2000).

By making the taxing powers allocated between the national and state governments of Micronesia exclusive and distinct and allocating the exclusive power to tax income and imports, the Constitution's framers sought to avoid vertical multiple taxation and ensure a consistent fiscal policy for Micronesia. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 380, 387-89 (Pon. 2000).

A normal English language reading of the phrase "the revenues" in article IX, section 5's second sentence necessarily refers to those revenues mentioned in section 5's first sentence – national taxes. Chuuk v. Secretary of Finance, 9 FSM R. 424, 434 (App. 2000).

The Constitution delegates to the national government the power to impose only two types of taxes – that based on imports and that on income. Money collected through these forms of taxation are the revenues of which half must be paid into the treasury of the state where collected. Chuuk v. Secretary of Finance, 9 FSM R. 424, 434 (App. 2000).

Fishing fees are not income taxes because the national government's power to impose them does not derive from its power to tax income. Chuuk v. Secretary of Finance, 9 FSM R. 424, 435 (App. 2000).

Not less than half of the national taxes must be paid to the state where collected, but fishing fees are not national taxes because they are imposed, not under the national government's power to impose taxes, but under its power to regulate exploitation of natural resources within the FSM exclusive economic zone. Chuuk v. Secretary of Finance, 9 FSM R. 424, 435 (App. 2000).

Fishing fees are not an income tax because they are not a tax. The national government has the exclusive sovereign right to control access to and exploitation of the natural resources in the FSM's exclusive economic zone and when it imposes fishing fees, the national government is selling access to the exclusive economic zone's living resources to its fishing licensees and it is selling the licensees the opportunity to reduce some of those resources to the licensees' proprietary ownership. Chuuk v. Secretary of Finance, 9 FSM R. 424, 436 (App. 2000).

Gross revenue is defined as the gross receipts of the taxpayer derived from trade, business, commerce, or sales and business is defined to mean any undertaking carried on for pecuniary profit carried on within the FSM for economic benefit either direct or indirect. Ting Hong Oceanic Enterprises v. Ehsa, 10 FSM R. 24, 29 (Pon. 2001).

Once the Secretary of Finance determines that a taxpayer has failed to pay the gross revenue tax it owes, he notifies the taxpayer and demands that the tax be paid. If the taxpayer fails within 30 days to make and file a return and pay the tax which has been assessed, it is appropriate for the Secretary to make a return for the taxpayer from the information available to the Secretary and to assess that amount against the taxpayer. Ting Hong Oceanic Enterprises v. Ehsa, 10 FSM R. 24, 31 (Pon. 2001).

Pursuant to 54 F.S.M.C. 152(3), the Secretary's gross revenue tax assessment is be presumed to be correct unless and until it is proved incorrect by the person, business, or employer disputing the amount of the assessment. Ting Hong Oceanic Enterprises v. Ehsa, 10 FSM R. 24, 31 (Pon. 2001).

When the taxpayer has failed to meet its the burden of showing that the Secretary's assessment was incorrect and has failed to put forth competent evidence in opposition to the Secretary's summary judgment motion and its lengthy opposition contained only legal argument, the taxpayer has failed to submit evidence establishing that the Secretary's assessment was incorrect and summary judgment in the Secretary's favor is appropriate. Ting Hong Oceanic Enterprises v. Ehsa, 10 FSM R. 24, 31 (Pon. 2001).

Import taxes are an exclusive national power, and as such it is a power that is prohibited to the states. MGM Import-Export Co. v. Chuuk, 10 FSM R. 42, 44 (Chk. 2001).

When a plaintiff is due what he should have been paid during the two-week notice period that was required by his contract, but was not paid, the court will award that as damages and the employee's share of taxes should be deducted from this amount and paid to the appropriate taxing agencies as required by law and the employer's share of applicable taxes should not be deducted from this amount, but should be paid to the appropriate taxing agencies as required by law. Reg v. Falan, 14 FSM R. 426, 435 (Yap 2006).

When "first sale" is defined as "the sale first made after the date of receipt in Chuuk State of taxable tangible items, a tax on first sale in the State of Chuuk of all tangible items, except gasoline and unprocessed and unpackaged items, means that in order for an item to be taxable, there must be "receipt of the item" in Chuuk. The only reasonable inference to be drawn from the definition of "first sale" is that items which have never left Chuuk, that is, locally produced goods are not subject to the statute because they have no "date of receipt" in Chuuk. K&I Enterprises v. Francis, 15 FSM R. 414, 418 (Chk. S. Ct. Tr. 2007).

The Chuuk service tax is to be paid by the customer, person, company, or entity obtaining the services, and must be collected by the person, company, or entity providing the services. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 156 (Chk. 2010).

When Chuuk has warned Continental that it is required to collect a service tax as set forth in a regulation implementing a tax statute and that criminal penalties may be imposed on Continental or its employees for failure to comply, the question of whether the Chuuk service tax on Continental passengers and freight shippers is lawful is sufficiently ripe to support a suit seeking declaratory judgment. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 157-58 (Chk. 2010).

It is inconceivable that a party could be made to suffer criminal or civil penalties for the failure to collect a tax but would not have standing to challenge the tax's constitutionality (and thus the requirement that the party must collect it). The inability of a party required by law to collect a tax to challenge that tax's validity would deprive that party of its property (compliance costs, tax collection costs, remittance costs, etc.) without any due process of law. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 158-59 (Chk. 2010).

The unconditional 50% transfer of national taxes to the state treasuries is part of the constitutional framework that, through mandatory revenue sharing, allows the states a high degree of fiscal autonomy while at the same time avoiding undesirable vertical multiple taxation. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 530 n.3 (Chk. 2011).

The Constitution expressly grants the national government, not the state governments, the power to regulate foreign and interstate commerce, and taxation is a form of regulation. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 531 (Chk. 2011).

Pohnpei's first commercial sales tax is assessed against the seller on the first commercial sale within the state. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 31 (Pon. 2011).

The court cannot accept an interpretation that operating a business within Pohnpei is, in and of itself, sufficient to establish the applicability of Pohnpei state tax law due to minimum contact analysis because to accept it would be to accept that a business whose task it is to act as an intermediary or broker between two clients – a producer and a consumer – who are both based outside the FSM would be assessed the Pohnpei first commercial sales tax, even if the tangible personal property never entered Pohnpei since this is the very heart and soul of international commerce. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 32 (Pon. 2011).

When a procurement contract clearly contemplated that the transaction would not be complete until Chuuk had had a chance to inspect, certify, and verify the goods which were the subject of the contract, and thereby accept them; when the procurement contract secured this by withholding payment of the final 25% of the contract amount until acceptance; when the risk of loss remained with the Pohnpei seller until the goods were duly delivered and accepted in Chuuk; and when, although Chuuk eventually paid for the shipping, the seller took on the initial burden and risk by paying for it up front, the locus of performance of the contract was in Chuuk. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 33-34 (Pon. 2011).

Retailers pass on sales taxes to their customers at the cash register, which is commonly and appropriately known as the point of sale. In such retail operations, a customer takes delivery of the goods and perhaps even inspects them at the point of sale. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 34 (Pon. 2011).

Goods cannot properly be deemed to have been sold until both parties to the sale have performed. Performance by the buyer requires payment in full or execution of some sort of instrument of credit which the seller is willing to accept in lieu of payment in full. Performance by the seller requires delivery.

Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 34 (Pon. 2011).

When the buyer, did not pay in full until it had a chance to inspect the goods at one of two specified warehouses in Chuuk and the seller did not complete performance until it had delivered the goods there, the goods were not sold until both performances were completed. Since the locus of performance was Chuuk, the locus of the transaction was likewise in Chuuk – *i.e.*, the goods were sold in Chuuk and because the goods were sold in Chuuk, the Pohnpei state sales tax could not attach to the transaction. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 34 (Pon. 2011).

The Chuuk cigarette tax is part of a tax on the first sale in Chuuk of all tangible items, except unprocessed and unpackaged items. Cigarettes are taxed at the rate of two dollars per pack of 20 cigarettes or at a rate of 10 cents per one cigarette. The statute requires that all sellers keep accurate sales records of taxable sales and that they are to compute their tax liability from those records, and cigarettes are presumed sold within four months of receipt in Chuuk unless the importer can prove the contrary. The importer has the burden of overcoming this statutory presumption and proving that there were no taxable sales. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 153-54 (Chk. 2013).

Unless a cigarette importer produces evidence to overcome the Chuuk tax act's presumption that the cigarettes were sold after importation, the statutory presumption that he sold the cigarettes he brought into Chuuk would stand and he therefore would be liable to the state for the sales tax he should have collected from the buyers when the cigarettes were sold. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 154 (Chk. 2013).

The Chuuk State Tax Act of 2012 provides that if the taxes it imposes are due and unpaid, including penalties charged, the taxes are debts to the state and will constitute liens in favor of the state on all property belonging to the person, business, association, or corporation liable for the tax, and such taxes and penalties may be collected by levy upon such property in the manner as the levy of an execution. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 155 (Chk. 2013).

The Chuuk Legislature can grant a state administrative agency the power to levy in the manner of a levy of an execution for statutory liens held by the state so long as due process concerns are addressed by such mechanisms as a prompt post-levy (or post-execution) hearing being available. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 155 (Chk. 2013).

The determination of whether an assessment is a tax or a fee involves a three-part test that looks to different factors: 1) what entity imposes the charge; 2) what population is subject to the charge; and 3) what purposes are served by the use of the monies obtained by the charge. The classic tax is imposed by a legislature upon many, or all, citizens. It raises money contributed to a general fund, and spent for the benefit of the entire community. The classic regulatory fee is imposed by an agency upon those subject to its regulation. It may serve regulatory purposes indirectly by, for example, raising money placed in a special fund to help defray the agency's regulation-related expenses. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 190 (Chk. 2013).

When the health care assessments or premiums are not imposed by the Chuuk Legislature but are imposed by a public corporation, the Chuuk Health Care Plan through its Board and when the assessments or premiums are not deposited in the Chuuk General Fund but into a special trust fund, these attributes of the premium assessments are characteristic of a classic fee and the opposite of a classic tax. Even though the funds raised will be spent, at least indirectly, for the benefit of the entire Chuuk community since the funds will be spent for the benefit of people needing or using health care services, which is nearly everyone in Chuuk at one time or another, the premium assessments lie nearer the fee end of the spectrum than the tax end. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 190 (Chk. 2013).

Courts facing cases that lie near the mid-point of the spectrum between the classic tax and the classic fee have tended to emphasize the revenue's ultimate use, asking whether it provides a general benefit to

the public of a sort often financed by a general tax, or whether it provides more narrow benefits to regulated companies or defrays the agency's costs of regulation. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 190 (Chk. 2013).

When the health insurance premiums and assessments are not raised for general revenue purposes and cannot be used for any Chuuk state government activity and can only be used for the purposes of the Health Care Plan Act and when the premiums or assessments help defray the cost of providing medical care, the benefits they provide are not of the sort often financed by a general tax. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 190 (Chk. 2013).

Generally, an assessment may be a fee rather than a tax when it is not used for general purposes but is used to defray the expense of performing the duties imposed on the agency and for the general purposes and expense of carrying an act into effect. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 190 (Chk. 2013).

A "fee" is a charge fixed by law for services of public officers and is regarded as compensation for services rendered, but a charge having no relation to services rendered, assessed to provide general revenue rather than compensation, is a "tax." Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 22 (App. 2015).

Any payment exacted by the state or its municipal subdivisions as a contribution toward the cost of maintaining governmental functions, where special benefits derived from their performance are merged in general benefit, is a "tax," while a "fee" is generally regarded as a charge for some particular service. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 22 (App. 2015).

The primary purpose of a "tax" is to obtain revenue for the government, while the primary purpose of a "fee" is to cover expense of providing a service or of regulation and supervision of certain activities. In distinguishing fees from taxes, fees are collected not to raise revenues but to compensate the governmental entity providing the services for its expenses. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 22-23 (App. 2015).

There is a three-part test to determine whether an assessment is a tax or a fee: 1) what entity imposes the charge; 2) what population is subject to the charge; and 3) what purposes are served by the use of the monies obtained by the charge. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 23 (App. 2015).

Fees that are paid into the general public treasury, and disbursable for general public expenses, are taxes. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 23 (App. 2015).

If the premiums collected were a tax, the funds would be deposited into the Chuuk treasury, which can only be appropriated by law for a public purpose. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 23 (App. 2015).

When all revenues received under a system of medical or health insurance, and all other revenues received by the Health Department as payment for medicine and medical services, must be separated from any general fund established by the Legislature and used only for medical purposes, this supports the position that premiums collected by the insurance plan do not fall under the characteristics of a tax because the funds collected are mandated to be separated from other funds collected. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 23-24 (App. 2015).

When, although it is the employed residents of Chuuk who are making health insurance premium contributions, the benefit of medicines and medical services are applied to the general public this would favor considering the payments a tax instead of a fee. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 24 (App. 2015).

Generally, an assessment may be a fee rather than a tax when it is not used for a general purpose but is used to defray the expense of performing the duties imposed on the agency and for the general purpose and expense of carrying an act into effect. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 24 (App. 2015).

The statutory scheme grants the national government the authority to determine the amount of tax due and to collect those taxes. Under 54 F.S.M.C. 152(3), the Secretary of Finance's assessment of the tax amount is presumed correct unless and until it is proven incorrect. The statutory scheme also permits a tax levy on the lien created by 54 F.S.M.C. 153. Fuji Enterprises v. Jacob, 20 FSM R. 121, 125-26 (Pon. 2015).

It is not a bank's duty to challenge the tax authorities' assessment of the amount of tax due from a taxpayer depositor. It is the taxpayer's responsibility to dispute any tax assessed that it disagrees with and for the taxpayer to resolve the issue with the FSM tax authorities. It also is not the bank's responsibility to challenge the constitutionality of 54 F.S.M.C. 153 or the FSM's interpretation of that statute. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

Usually, notice and an opportunity to be heard is given prior to deprivation, but a government does not need to follow this in the case of taxes. The government must, however, provide a post-deprivation opportunity to challenge the tax and a clear and certain remedy. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

Judicial review of an adverse Secretary of Finance decision may be had by an aggrieved taxpayer filing a petition naming the Secretary or his successor in office as the defendant and setting forth assignments of all errors alleged to have been committed by the Secretary in his determination of the tax assessment, the facts relied upon to sustain such assignments of errors, and a prayer for appropriate relief. It will not be dismissed merely because it was labeled a "Complaint" and not called a "Petition" because, regardless of what a party has chosen to call the papers they have filed, those papers are what they are based on their function or the relief they seek, and the court must treat them as such. Fuji Enterprises v. Jacob, 20 FSM R. 279, 280 (Pon. 2015).

When a complaint meets 54 F.S.M.C. 156(1)'s procedural requirements for judicial review of a tax assessment and when the relief that is prayed for is permitted by 6 F.S.M.C. 702(1) (claims for recovery of taxes and penalties) and possibly 6 F.S.M.C. 702(2), (4), and (5) (claims for damages from governmental actions), the court cannot say that it fails to state a claim for which the court can grant relief. Fuji Enterprises v. Jacob, 20 FSM R. 279, 281 (Pon. 2015).

Since 6 F.S.M.C. 702(2) specifically waives the FSM's sovereign immunity for claims for damages, injunction, or mandamus arising out of alleged improper administration of FSM laws, the FSM has waived its sovereign immunity for a suit by a state alleging that the FSM failed to comply with the FSM Constitution's mandate that not less than 50% of the national tax revenues be paid into the treasury of the state where collected. Chuuk v. FSM, 20 FSM R. 373, 375 (Chk. 2016).

Since the national government, and therefore Congress, has no discretion but must remit the first 50% of the national tax collected to the state treasury of the state it was collected in, a dispute about that first 50% would not be a nonjusticiable political question, although a dispute over a percentage higher than 50% would be a nonjusticiable political question textually committed to a discretionary Congressional decision. Chuuk v. FSM, 20 FSM R. 373, 376 (Chk. 2016).

Under 54 F.S.M.C. 152(3), the Secretary of Finance's assessment of taxes is presumed correct unless and until it is proven incorrect. Fuji Enterprises v. Jacob, 21 FSM R. 355, 362 (App. 2017).

Title 54, chapter 3, the Corporate Income Tax Act of 2004, is the FSM's tax regime for major

corporations, which are defined as those corporations that are not principally engaged in business in the Federated States of Micronesia as a bank, that were formed after January 1, 2005, and whose shareholders' equity or paid in capital is $1 million or more, or whose control group has a shareholders' equity or paid in capital of $10 million or more, or that are Title 37 captive insurance companies. These, otherwise foreign, entities incorporate in, and pay income taxes to, the FSM on their world-wide taxable revenue. Chuuk v. FSM, 22 FSM R. 85, 89 (Chk. 2018).

The Constitution expressly grants the FSM national government the power to tax income, and the further provides that not less than 50% of the tax revenues be paid into the treasury of the state where collected. Chuuk v. FSM, 22 FSM R. 85, 90 (Chk. 2018).

The Constitution's framers intended that at least half of all income taxes and import taxes received by the national government would be paid to the states. Chuuk v. FSM, 22 FSM R. 85, 90-91 (Chk. 2018).

The Constitution's framers contemplated and created a system wherein (at least) half of the income tax money received by the national government would go into one or another state treasury. Chuuk v. FSM, 22 FSM R. 85, 91 (Chk. 2018).

The revenue collected under Title 54, chapter 3 is from an income tax. These Title 54, chapter 3 major corporations' income taxes are paid to the FSM national government because these business entities, although they earn their revenue elsewhere in the world, are incorporated in the FSM. Chuuk v. FSM, 22 FSM R. 85, 91 (Chk. 2018).

While the FSM's gross revenue tax (Title 54, chapter 1, subchapter IV) is imposed on the gross income that a business derived, or was presumed to have derived, from sources within the FSM, and not on revenue from sources elsewhere in the world, the major corporations that pay Title 54, chapter 3 income taxes, are generally exempt from the gross revenue tax, 54 F.S.M.C. 323, since they do not conduct business within the FSM, but are subject to taxation on income regardless of the location of the business activity that generated that income. Chuuk v. FSM, 22 FSM R. 85, 91 (Chk. 2018).

The state share of a major corporation's income tax should be paid into state treasury of the state of incorporation and this share is determined after the Micronesia Registrar Advisor has first taken its percentage of the corporate income taxes paid by the major corporations it induced to incorporate in the FSM – the state's 50% share should be calculated from the net amount "collected" by the national government, that is, 50% of the amount of tax levied after the Registration Advisor's percentage is deducted. Chuuk v. FSM, 22 FSM R. 85, 92 (Chk. 2018).

National government revenues derived from constitutional provisions other than its authority to tax income and imports, are not (with one exception) constitutionally subjected to revenue-sharing. Chuuk v. FSM, 22 FSM R. 85, 93 (Chk. 2018).

Businesses are required by law to maintain both gross revenue and wage and salary information records. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 182 (Pon. 2019).

Department of Finance and Administration personnel cannot be required to produce in any court any matter or thing relating to the income taxes imposed except when it is necessary to do so for the purpose of enforcing the FSM tax laws. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 183 (Pon. 2019).

Wages and salaries do not include any wages and salaries received by an employee, who is not an FSM citizen, while employed by an international organization, foreign contractor, or other foreign entity performing services or otherwise conducting business in furtherance of a foreign aid agreement entered into by the FSM, the terms of which require that such wages and salaries will not be subject to taxation by the FSM government. Basu v. Amor, 22 FSM R. 557, 565 (Pon. 2020).

Generally, an employer is required to withhold the wages and salaries tax from its employees' pay, and

the penalties and interest imposed for the failure to withhold the wages and salaries tax from an employee's pay are imposed upon the employer, not the taxpayer. Basu v. Amor, 22 FSM R. 557, 567 (Pon. 2020).

– Constitutionality

State excise tax which levies tax at the port of entry on items imported into a state and which must be paid prior to release of those items from the port of entry, is an import tax within the meaning of FSM Constitution article IX, section 2(d). Wainit v. Truk (II), 2 FSM R. 86, 87 (Truk 1985).

The tax on gross revenues falls squarely within the constitutional authorization given to Congress by article IX, section 2(e) to tax income. Ponape Federation of Coop. Ass'ns v. FSM, 2 FSM R. 124, 126 (Pon. 1985).

That Congress may tax "gross income" is plainly and unmistakably provided for in the words of article IX, section 2(e) of the Constitution. Ponape Federation of Coop. Ass'ns v. FSM, 2 FSM R. 124, 127 (Pon. 1985).

The national power to impose taxes based on imports is exclusive, and not shared by the states. Innocenti v. Wainit, 2 FSM R. 173, 182 (App. 1986).

Taxes imposed on goods because of their entry into a port of entry of the State of Truk, levied at the port of entry in amounts based upon the quality or value of imported goods, and which must be paid to the Division of Revenue prior to release of the items from the port of entry, are taxes based on imports. Such a tax represents an effort to exercise powers expressly delegated to the national government, is beyond the powers of the state, and is null and void. Innocenti v. Wainit, 2 FSM R. 173, 183-84 (App. 1986).

Although retroactive application of a decision holding a state tax unconstitutional would impose hardship upon a state, where funds collected under the tax have already been committed, such a result is not inequitable where the state legislature pushed on with the tax act despite the strong resistance of business people to the tax in the form of a petition and establishment of an escrow account to hold contested payments, and a veto message by the governor of the state, and there is no evidence that the legislature seriously considered the constitutionality of the legislation. Innocenti v. Wainit, 2 FSM R. 173, 186 (App. 1986).

Taxation of gross revenue of business at different amounts and rates depending upon the amount of each business's annual gross revenue is rationally related to the legitimate legislative purposes of requiring businesses who receive less to pay lower tax and of administrative simplicity and therefore does not violate the due process or equal protection provisions of the FSM Constitution. Afituk v. FSM, 2 FSM R. 260, 263 (Truk 1986).

The power granted to Congress by FSM Constitution article IX, section 2(e) "to impose taxes on income" includes the power to tax gross revenue. Afituk v. FSM, 2 FSM R. 260, 264 (Truk 1986).

There is no evidence in the journal of the Constitutional Convention that the phrase "to impose taxes on income" in FSM Constitution, article IX, section 2(e) was derived from the sixteenth amendment of the United States Constitution which permits the United States Congress to "lay and collect taxes on income" so in determining the meaning of the Federated States of Micronesia constitutional provision, no particular weight should be given to the United States cases. Afituk v. FSM, 2 FSM R. 260, 264 (Truk 1986).

A state excise tax imposed on imports is unconstitutional, regardless of the manner of tax payment. Gimnang v. Yap, 4 FSM R. 212, 215 (Yap 1990).

When the record is barren of any relationship between the license fee imposed and the business regulation or licensing objectives and the fee is exacted for the sole purpose of granting a business permission to do business and possesses no attributes of a licensing statute, a municipality's power and

authority to impose tax on the income of a business are foreclosed. Bruton v. Moen, 5 FSM R. 9, 12 (Chk. 1991).

The power of the national government under article IX, section 2(e) of the Constitution, "to impose taxes on income," is an exclusive national power that may not be exercised by the states. Youngstrom v. Kosrae, 5 FSM R. 73, 74 (Kos. 1991).

The Kosrae transaction tax of KC 9.301 is a selective tax rather than an income tax and is not an encroachment upon the national government's exclusive power to tax income. Youngstrom v. Kosrae, 5 FSM R. 73, 76 (Kos. 1991).

A municipal license fee ordinance which separately defines banking and insurance businesses and specifically imposes a different rate upon those businesses than would be imposed upon other kinds of businesses on its face appears to be an effort to regulate banking and insurance and is unconstitutional and void. Actouka v. Kolonia Town, 5 FSM R. 121, 122 (Pon. 1991).

The national government has the exclusive power to tax income and imports. The power to levy other taxes, unless specifically barred by the Constitution, is an exclusive state power. Sigrah v. Kosrae, 6 FSM R. 168, 169-70 (App. 1993).

A transaction tax oriented toward individual transactions and not total income, and only triggered by the transactions it covers, even though paid by the vendor, is analogous to a selective sales tax and is not an unconstitutional encroachment on the national government's exclusive power to tax income. Sigrah v. Kosrae, 6 FSM R. 168, 170 (App. 1993).

A Chuuk state tax on a lessor or landowner who rents or leases land, building or housing unit, for residential, or office space, or other use is not an unconstitutional encroachment on the national government's exclusive power to tax income. Truk Continental Hotel, Inc. v. Chuuk, 6 FSM R. 310, 311 (Chk. 1994).

The Constitution prohibits state and local governments from imposing taxes which restrict interstate commerce. Stinnett v. Weno, 6 FSM R. 312, 313 (Chk. 1994).

Since, given the social and geographic configuration of the State of Chuuk and the structure of the transportation services available, a travel agency would necessarily be essentially interstate commerce, a tax aimed solely at a travel agency restricts or is restrictive of interstate commerce and therefore may not be levied by a state or local government. Stinnett v. Weno, 6 FSM R. 312, 313-14 (Chk. 1994).

Only the national government may constitutionally tax income. The states' taxing power does not include the power to tax income. Truk Continental Hotel, Inc. v. Chuuk, 7 FSM R. 117, 119 (App. 1995).

If a state wishes to obtain funding from a consumption tax, it can avoid a constitutional confrontation by making the taxable incident the sale or rental transaction, and by expressing the requirement that the tax be paid by the consumer. Therefore a state tax on the gross rental receipts of a landlord is an unconstitutional tax on income. Truk Continental Hotel, Inc. v. Chuuk, 7 FSM R. 117, 120 (App. 1995).

The general grant of the taxing power to the state, which allows taxing power to be delegated to the municipalities, is not an exclusive grant preventing municipalities from levying taxes. Wainit v. Weno, 7 FSM R. 121, 123 (Chk. S. Ct. Tr. 1995).

A municipality in Chuuk has the power to tax so long as the state has not preempted the area. Wainit v. Weno, 7 FSM R. 121, 123 (Chk. S. Ct. Tr. 1995).

The power to tax is vested in the state which may delegate certain taxing powers to a municipality.

Without such delegation a municipality has no power to tax. Stinnett v. Weno, 7 FSM R. 560, 561 (Chk. 1996).

A municipal ordinance levying taxes did not continue in effect after the effective date of the Chuuk Constitution because it is inconsistent with that Constitution. Stinnett v. Weno, 7 FSM R. 560, 562 (Chk. 1996).

A litigant may seek a declaratory judgment without first exhausting its administrative remedies where the jurisdiction of the taxing authorities is challenged on the ground that the statute is unconstitutional or that the statute by its own terms does not apply in a given case. Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM R. 111, 115 (Chk. 1997).

The language, "and may delegate certain taxing powers to the municipal governments by statute," contemplates that municipal governments are invested with the power to tax only insofar as they receive that power from the state government. Without express delegation to a municipality of the authority to tax, the municipality lacked this power. Weno v. Stinnett, 9 FSM R. 200, 207 (App. 1999).

The Chuuk Constitution provides for the creation of the state taxing power and its delegation, as the state government may elect, to the municipal governments. Article XIII, section 1 of the Chuuk Constitution provides that the two levels of government are state and municipal. As between these two levels of government the one holding the right to delegate is superior. Weno v. Stinnett, 9 FSM R. 200, 207 (App. 1999).

Because the express provision for delegation of the taxing authority is inconsistent with the notion that municipalities already had this power, in the absence of specific legislative action authorizing a municipality to impose taxes, the municipality does not have the authority to impose business license fees. Weno v. Stinnett, 9 FSM R. 200, 207 (App. 1999).

When the Chuuk Constitution says the state "may delegate certain taxing powers to the municipal governments by statute," it is plain that "certain" in this context means nothing more, and nothing less, than that the state government may delegate such of its taxing powers as it sees fit – the point is that the option is the state government's. Weno v. Stinnett, 9 FSM R. 200, 207 (App. 1999).

The only conclusion to be fairly drawn from the deletion of a sentence giving the municipal governments the exclusive power to levy head taxes and business license fees from the proposal as adopted is that the Chuuk Constitution's framers did not intend that the municipal governments should have the power to levy head taxes and business license fees. Weno v. Stinnett, 9 FSM R. 200, 208 (App. 1999).

Because a man who denies the legality of a tax should have a clear and certain remedy, justice may require that he should be at liberty to pay promptly and bring suit on his side. Weno v. Stinnett, 9 FSM R. 200, 212 (App. 1999).

The filing of a suit to contest the legality of a tax, which the trial court found to be the plaintiffs' only remedy, obviates the need for demonstrating duress and notice of protest, as required by the common law, for payments made after suit is instigated. The filing of suit is protest of the most emphatic sort, and allowing a claim for recovery for payments made thereafter without regard to duress recognizes the "implied duress" under which contested taxes are paid. Weno v. Stinnett, 9 FSM R. 200, 212 (App. 1999).

Duress and protest need not be shown to state a claim for recovery of tax payments extracted under an unconstitutional enactment when the plaintiffs seek refund of payments made after instigation of suit in a court having jurisdiction over the parties, and when such a lawsuit is the plaintiff's only remedy. Weno v. Stinnett, 9 FSM R. 200, 212 (App. 1999).

The taxing authority, if it opts not to provide predeprivation process, must by way of postdeprivation

process provide a clear and certain remedy for any erroneous or unlawful tax collection to ensure that the opportunity to contest the tax is a meaningful one. A clear and certain remedy is one designed to render the opportunity to challenge a tax meaningful by preventing any permanent unlawful deprivation of property. Weno v. Stinnett, 9 FSM R. 200, 213 (App. 1999).

When deciding the question of retroactivity of a decision declaring a tax unconstitutional, a court considers three factors: 1) whether a decision enunciates a new and unanticipated principle; 2) whether retroactive application to this case would promote implementation of the rule at issue, taking into consideration the rule's history; and 3) the equities of the case as they are associated with retroactive application. Weno v. Stinnett, 9 FSM R. 200, 214 (App. 1999).

Because the Chuuk Constitution is clear that only the state government has the power to tax, it cannot be said that such a resolution could not be predicted. Weno v. Stinnett, 9 FSM R. 200, 214 (App. 1999).

To permit taxes to be retained that were extracted under an unconstitutional statute would have the effect of prolonging the viability of an ordinance that runs afoul of the Chuuk Constitution, at the expense of establishing the correct rule. The better course is to permit recovery of the taxes. Weno v. Stinnett, 9 FSM R. 200, 214 (App. 1999).

When litigation over the constitutionality of a municipality's taxes was pending for five years, the municipality was put on notice early on that the taxes collected under the ordinances were subject to a claim for refund, and nothing prevented the municipality from planning for this eventuality. Having failed to do so, it cannot now claim hardship. Weno v. Stinnett, 9 FSM R. 200, 214 (App. 1999).

A state use tax is a tax on imports which impermissibly interferes with interstate commerce such that the use tax is in violation of the FSM Constitution, FSM Const. art. IX, §§ 2(d), 2(g); FSM Const. art. VIII, § 3. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 292, 294 (Pon. 1999).

For tax purposes, Telecom is deemed to be part of the national government and is exempt from any and all state tax liability because it functions are so closely intertwined with the national government that it is appropriate to view it as a national government agency for the purpose of taxation and because, although the FSM Constitution does not specifically delegate the power to establish a telecommunications network to the national government, the circumstances presently existing in the FSM support a conclusion that such a power is of an indisputably national character beyond the control of any state. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 380, 384 (Pon. 2000).

Because the FSM Constitution expressly delegates to Congress the power to regulate interstate commerce and because the existence, availability and quality of telecommunication services in the FSM clearly impacts on interstate commerce, the FSM government is constitutionally authorized to establish the FSM Telecommunications Corporation and may similarly exempt it from taxes or assessments. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 380, 384 (Pon. 2000).

A state "use tax" that instead of collecting the tax at the port in order to release the goods, requires the taxpayer to fill out a form prior to release of the goods after which collection of the assessment is deferred for sixty days, is, despite its name, a tax on imports and an unauthorized action to usurp the national government's exclusive power to impose taxes, duties, and tariffs based on imports. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 380, 386 (Pon. 2000).

A state "use tax" calculated on the value of items brought into the state plus the cost of shipping, handling, insurance, labor or service cost, transportation charges or any expenses whatsoever, has nothing to do with benefits provided by the state associated with the use of the item and cannot be justified as having a substantial nexus with the state. It only serves as an unauthorized burden on interstate commerce. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 380, 386 (Pon. 2000).

Imposing taxes, duties, and tariffs based on imports is a power expressly delegated to Congress. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 579 (App. 2000).

When "commencement of use or consumption" equals importation as it applies to the nonexempt merchandise subject to a use tax, any semantic distinction resulting from making the tax payable upon "commencement of use or consumption" does not render it any less a tax on imports because the name given a tax by a taxing authority is not controlling and because extending the time for payment to 60 days after importation does not change the nature of the tax. The Pohnpei use tax violates the constitutional reservation to Congress of the power to tax imports. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 581 (App. 2000).

As to interstate commerce, Article VIII, section 3 contains the negative counterpart to Article IX, section 2(g)'s positive grant of power by prohibiting state and local governments from imposing taxes which restrict interstate commerce. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 582 (App. 2000).

Since the event triggering the Pohnpei use tax is the unqualified "use or consumption" in Pohnpei of nonexempt goods, the statute applies to goods brought into Pohnpei from Yap, Chuuk, and Kosrae, as well as from locations outside the FSM. It is thus clear that the statute directly regulates or restricts interstate commerce in the same way it does imports. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 582 (App. 2000).

As to goods making their way from any of the other three states into Pohnpei, the direct nexus between the simultaneous arrival of the goods and imposition of the Pohnpei use tax points to direct regulation of interstate commerce. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 582 (App. 2000).

Even assuming that the Pohnpei use tax apportionment clause could be interpreted to remedy concerns about discrimination against interstate commerce, the fact remains that the use tax is indissolubly linked to the event of importation, and no semantic calisthenics liberate the tax from this inherent defect. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 583 (App. 2000).

A state tax that is unconstitutional as an import tax, if applied to interstate commerce, is also restrictive of interstate commerce. The Constitution does not permit a state to erect tax barriers to the free movement of goods among the states. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 583 (App. 2000).

A state use tax that is a tax on imports in violation of Article IX, section 2(d); and that regulates and restricts interstate commerce in violation of Article IX, Section 2(g), and Article VIII, section 3, respectively of the FSM Constitution contravenes the Constitution. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 583 (App. 2000).

A state alcoholic beverage possession tax for which liability is triggered by the act of importation although actual payment may be delayed five days, is an import tax, and as such unconstitutional. MGM Import-Export Co. v. Chuuk, 10 FSM R. 42, 44 (Chk. 2001).

The Chuuk Constitution bans taxes on real property. In re Engichy, 12 FSM R. 58, 69 n.6 (Chk. 2003).

When Continental has alleged a sufficient stake in the action's outcome and is threatened not only with substantial costs if it complies but also with civil and criminal penalties if it does not and these threatened injuries are all traceable to the Chuuk service tax and would be addressed by a favorable decision, it may therefore challenge the legal requirement that it collect the tax (and remit it to the State) even if technically, only the statutorily defined taxpayer has the legal ability to challenge the tax's validity. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 159 (Chk. 2010).

When Chuuk made the taxable incident the purchase of a plane ticket or of freight service and made

the tax payable by the purchaser, it avoided one constitutional confrontation – the service tax is not an income tax since the service tax is a tax on the buyer, not the seller. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 160 (Chk. 2010).

A service tax on plane passengers does not have only an incidental effect on foreign commerce; its only effect is on foreign commerce. A tax on shipping cargo or freight affects only foreign commerce or interstate commerce since the airline does not fly to anywhere in Chuuk except Weno. Since state and local governments are prohibited from imposing taxes which restrict interstate commerce, to the extent that the tax is imposed on freight or cargo shipped from Chuuk to other FSM states, would appear to be specifically barred by the Constitution and to the extent it is imposed on cargo or freight shipped elsewhere, it would be regulation of foreign commerce – in effect, an export tax. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 160 (Chk. 2010).

When the FSM Supreme Court appellate division has held that if a state wishes to obtain funding from a consumption tax, it can avoid a constitutional confrontation by making the taxable incident the sale or rental transaction, and by expressing the requirement that the tax be paid by the consumer and when the Chuuk service tax makes the taxable incident the purchase of a plane ticket or the purchase of freight service and expresses the requirement that the tax be paid by the purchaser, the Chuuk service tax, as applied to Continental, is not an unconstitutional income tax. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 531 (Chk. 2011).

The Chuuk service tax on plane passengers does not have only an incidental effect on foreign commerce. Its main effect (and its sole intended effect) is on foreign commerce. By its terms, it is to be imposed only on those passengers whose "final destination" would be "outside of the FSM." The Chuuk service tax on outgoing paying airline passengers is thus an unconstitutional regulation of foreign commerce. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 531-32 (Chk. 2011).

The tax on shipping air cargo or air freight on Continental affects only foreign commerce or interstate commerce, and since state governments are prohibited from imposing taxes which restrict interstate commerce, to the extent that it is imposed on freight or cargo shipped from Chuuk to other FSM states, the Chuuk service tax would be specifically barred by the Constitution, and to the extent the tax is imposed on cargo or freight shipped elsewhere, it would be regulation of foreign commerce – an export regulation and tax. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 533 (Chk. 2011).

Even if the Chuuk service taxes on air passenger tickets and courier services were not unconstitutional taxes, they would still be invalid when the regulatory enforcement and interpretation of the service tax statute exceeded or limited that statute's reach. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 533 (Chk. 2011).

Even if Pohnpei cannot assess a first commercial sale tax against a business and that business benefits from the business environment which the State of Pohnpei has provided, Pohnpei may recoup the costs of providing infrastructure and business environment through the gross revenue tax. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 32 (Pon. 2011).

Since the term "within the state" in the Pohnpei tax statute modifies the term "sold commercially," the tax would attach only to those sales that are completed within the state. Under such an interpretation the tax would attach only to in-state commercial transactions and the impact on interstate commerce would be minimal and the statute therefore constitutional. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 33 (Pon. 2011).

Because sales taxes paid to Nett under protest depend on the validity of the Pohnpei state tax, Nett and Pohnpei are, jointly and severally, liable for the amount paid to Nett under protest, plus statutory interest. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 34 (Pon. 2011).

Generally, the court avoids unnecessary constitutional adjudication. Thus, when the court has resolved the underlying administrative appeal without the need to address the constitutionality of Pohnpei's tax statute, any declaratory relief as to the tax statute's constitutionality would be inappropriate. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 35 (Pon. 2011).

A tax computed as a percentage of any form of income is a tax on that income. Only the national government can impose a tax on income. A state cannot impose a tax on income. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 506 (Chk. 2013).

When the State Tax Act provides that no person shall have a right of action to challenge the validity of any tax levied by the Act unless that person first pays to the state the tax in question, under protest, and when the state has seized by tax levy $2,931.29, and the state rightly considers that seizure to be a partial payment under protest, the court, without having to analyze it further, unquestionably has jurisdiction over a challenge to the cigarette tax because a cigarette tax payment was made under protest. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 152 (Chk. 2013).

Only the national government can impose taxes on imports and no state may impose taxes that restrict interstate commerce. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 153 (Chk. 2013).

Since imported cigarettes are not taxable unless sold (or presumed sold) and may be nontaxable if not, the Chuuk cigarette tax appears to be a sales tax and not an import tax because the taxable event is their sale not their importation. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 154 (Chk. 2013).

If the Chuuk cigarette tax is imposed on the buyer (customer) and collected by the seller from the buyer for remittance to the state, then the tax statute was carefully crafted to avoid constitutional infirmity. The hallmark of a constitutionally sound state sales tax is that the sale is the taxable incident and the tax is paid by the buyer – the customer or consumer – and not the seller; otherwise it is an unconstitutional income tax. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 154 (Chk. 2013).

Since the Chuuk health care premium assessments are used for the care of the ill and injured and for the general purpose and expense of carrying the Chuuk Health Care Plan Act into effect and since, weighing all the attributes of the Plan's current assessment of Chuuk health care premiums and looking at the totality of the circumstances, the Plan's payroll assessment, even though calculated as a percentage of wages and salaries, is a fee and not a tax. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 190 (Chk. 2013).

When the purpose of the collected funds is specifically for health and medical services and the Chuuk Legislature cannot appropriate the funds collected as premiums and use those funds for other public purposes and when, although the medical services are applied to the general public, the insurance premiums collected are not a tax and thus the method used to calculate premiums is not an unconstitutional tax on income. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 24 (App. 2015).

Taxing income and taxing imports are both powers reserved exclusively to the national government, and therefore forbidden to municipal governments. Isamu Nakasone Store v. David, 20 FSM R. 53, 57 (Pon. 2015).

When a hotel owner with 10 rooms pays the same $50 business license fee annually regardless of how much or how little income is derived from that hotel; when a hotel owner with 31 rooms pays the same $300 regardless of how much or how little income those 31 rooms actually generate; and when, if the owner of a 31-room hotel adds five more rooms and generates even more income, the owner would still pay only $300 annually for a business license, the license fees, even though those license fees are actually taxes, are not taxes on income. Isamu Nakasone Store v. David, 20 FSM R. 53, 57 (Pon. 2015).

A municipal "road service" fee is not a tax on imports since it does not vary based on the amount or

value of the goods brought into the municipality and since it does it vary based on the origin of those goods. It is a flat annual fee or a tax that does not violate the Constitution's prohibition of local taxes which restrict interstate commerce because the road service fee does not restrict or hinder interstate commerce or impose an import tax, but it does restrict or hinder intrastate or inter-municipal commerce, a type of commerce the FSM Constitution does not grant the national government the power to regulate. Isamu Nakasone Store v. David, 20 FSM R. 53, 57-58 (Pon. 2015).

The constitutional command that all national taxes be "imposed uniformly" is not a prerequisite for revenue-sharing only. It commands Congress impose all taxes uniformly. Chuuk v. FSM, 22 FSM R. 85, 93 (Chk. 2018).

The major corporation income tax complies with the constitutional command that national taxes be "uniformly imposed." Chuuk v. FSM, 22 FSM R. 85, 93 (Chk. 2018).

The FSM major corporation income tax rate is a national tax – a tax imposed by the national government pursuant to the national government's constitutional power to tax income. Chuuk v. FSM, 22 FSM R. 85, 93 (Chk. 2018).

The national government has the power to impose only two types of taxes – that based on imports and that on income. Chuuk v. FSM, 22 FSM R. 85, 93 (Chk. 2018).

– License and Permit Fees

A municipality may legislate and impose licensing fees to regulate activities within its jurisdiction subject to a requirement that the licensing fee at least tends to promote the public health, morals, safety or welfare. Bruton v. Moen, 5 FSM R. 9, 12 (Chk. 1991).

When the record is barren of any relationship between the license fee imposed and the business regulation or licensing objectives and the fee is exacted for the sole purpose of granting a business permission to do business and possesses no attributes of a licensing statute, a municipality's power and authority to impose tax on the income of a business are foreclosed. Bruton v. Moen, 5 FSM R. 9, 12 (Chk. 1991).

A municipal license fee ordinance which separately defines banking and insurance businesses and specifically imposes a different rate upon those businesses than would be imposed upon other kinds of businesses on its face appears to be an effort to regulate banking and insurance and is unconstitutional and void. Actouka v. Kolonia Town, 5 FSM R. 121, 122 (Pon. 1991).

The following factors are relevant to determining whether fishing fees are taxes: 1) the source of the levy – whether the entity imposing the tax is legislative or administrative; 2) the effect of the levy on the general public – whether the assessment is imposed upon a broad or narrow class; 3) the means by which the levy is made – whether it is voluntary, and produces a benefit to the payor which is commensurate with the payment; and 4) the relationship between the levy and government costs – whether the revenue generated bears a relationship to the costs of the government in administering the particular program. Chuuk v. Secretary of Finance, 8 FSM R. 353, 382-83 (Pon. 1998).

Cases distinguishing between taxes and fees often examine the source of the levy as an indicator of whether the particular payment should be considered a tax or a fee. An assessment imposed directly by the legislature is more likely to be a tax than one imposed by an administrative agency. The classic tax is imposed by a legislature upon many, or all citizens; the classic regulatory fee is imposed by an agency on those subject to its regulation. Chuuk v. Secretary of Finance, 8 FSM R. 353, 383 (Pon. 1998).

Courts also consider whether a governmental levy is directed at the general public, or whether it is imposed on a discrete subsection of the public, in distinguishing between a tax and a fee. An assessment

imposed on a broad class of parties is more likely to be a tax than one imposed on a narrow class. One distinguishing characteristic of a fee is that the public agency normally may exact a fee for a grant which, presumably, bestows a benefit on the applicant, not shared by other members of society. Chuuk v. Secretary of Finance, 8 FSM R. 353, 383 (Pon. 1998).

Another distinction between a tax and a fee is whether the levy is exacted voluntarily in exchange for a benefit to the payor. Taxation is a legislative function, and Congress, which is the sole organ for levying taxes, may act arbitrarily and disregard benefits bestowed by the Government on a taxpayer and go solely on ability to pay, based on property or income. A fee, however, is incident to a voluntary act, *e.g.*, a request that a public agency permit an applicant to practice law or medicine or construct a house or run a broadcast station. Chuuk v. Secretary of Finance, 8 FSM R. 353, 384 (Pon. 1998).

One characteristic of a fee is that it must be no greater than the government's costs, but in considering costs it is appropriate to consider the government's "real cost," which is not limited to the government's actual expenditures. Chuuk v. Secretary of Finance, 8 FSM R. 353, 384 (Pon. 1998).

A fee for use of property which is controlled by the government is not necessarily a tax, because the government is entitled to receive the benefits of its property just like any private landowner. As a sovereign, the government levies taxes, but as property owner it may charge fees for the use of its property. These fees are paid by choice and in exchange for a particular benefit, the use of government property, just as rents are freely paid for the use of private property. Chuuk v. Secretary of Finance, 8 FSM R. 353, 385 (Pon. 1998).

The level of fishing fees is set at a measure of the value of the asset to the payor, a percentage of the value of the estimated weighted catch. The measure of the value of the service to the payor can be an appropriate measure for a fee. That the value received by the government exceeds the cost of administration is not dispositive when a valuable resource is being removed from the government's control by fishing fees payors. The government is entitled to compensation for its asset like any private property owner. Chuuk v. Secretary of Finance, 8 FSM R. 353, 385-86 (Pon. 1998).

The FSM Constitution contains a provision by which the net revenues from offshore mineral resources are to be divided equally between the states and the national government, FSM Const. art. IX, § 6. There would be no need to specify the division of income from such resources if such revenues were taxes to be automatically divided under article IX, section 5. Chuuk v. Secretary of Finance, 8 FSM R. 353, 386 (Pon. 1998).

Revenues from natural resources are not taxes. The constitutional definition of tax was not meant to include amounts received by the national government from disposal of natural resources over which it has control. Chuuk v. Secretary of Finance, 8 FSM R. 353, 386-87 (Pon. 1998).

A four-part analysis is applied to determine whether fishing fees are taxes: 1) the source of the levy, 2) the effect of the levy on the general public, 3) the means by which the levy is made, and 4) the relationship between the levy and government costs. Chuuk v. Secretary of Finance, 9 FSM R. 99, 102 (Pon. 1999).

Whether fishing fees are uniform is immaterial to a finding that fishing fees do not constitute a tax. Chuuk v. Secretary of Finance, 9 FSM R. 99, 102 (Pon. 1999).

How Congress appropriates fishing fees is irrelevant to whether they are a tax. Chuuk v. Secretary of Finance, 9 FSM R. 99, 102 (Pon. 1999).

The FSM national government has the exclusive right to regulate and harvest living marine resources in the EEZ and is therefore entitled to a reasonable compensation from those whom it allows to share that right. A determination of ownership of the living marine resources does not affect the national

government's right. Chuuk v. Secretary of Finance, 9 FSM R. 99, 102 (Pon. 1999).

Chuuk municipalities are barred from imposing taxes except as specifically permitted by state statute. Municipalities have been delegated, by statute, the authority to require persons to obtain and pay for a business license before engaging or continuing in a business within the municipality in which the business is located. Ceasar v. Uman Municipality, 12 FSM R. 354, 358 (Chk. S. Ct. Tr. 2004).

When the state statute authorizing municipal tax powers reserved the state's right to enact legislation to assess, levy and collect taxes on any subject for which a tax has been assessed and levied by municipal ordinance and provided that in the event that the state enacted legislation on that same subject, the enactment would repeal the ordinance on the same subject, and when the state has in fact enacted legislation imposing fees on businesses engaged in alcoholic beverage sales, any municipal ordinance imposing business license fees on businesses engaged in alcoholic beverage sales is repealed and a municipality does not have the authority to impose business license fees or taxes on alcoholic beverage sellers. Ceasar v. Uman Municipality, 12 FSM R. 354, 358-59 (Chk. S. Ct. Tr. 2004).

A "fee" is a charge fixed by law for services of public officers and is regarded as compensation for services rendered, but a charge having no relation to services rendered, assessed to provide general revenue rather than compensation, is a "tax." Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 22 (App. 2015).

Any payment exacted by the state or its municipal subdivisions as a contribution toward the cost of maintaining governmental functions, where special benefits derived from their performance are merged in general benefit, is a "tax," while a "fee" is generally regarded as a charge for some particular service. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 22 (App. 2015).

The primary purpose of a "tax" is to obtain revenue for the government, while the primary purpose of a "fee" is to cover expense of providing a service or of regulation and supervision of certain activities. In distinguishing fees from taxes, fees are collected not to raise revenues but to compensate the governmental entity providing the services for its expenses. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 22-23 (App. 2015).

There is a three-part test to determine whether an assessment is a tax or a fee: 1) what entity imposes the charge; 2) what population is subject to the charge; and 3) what purposes are served by the use of the monies obtained by the charge. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 23 (App. 2015).

Fees that are paid into the general public treasury, and disbursable for general public expenses, are taxes. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 23 (App. 2015).

If the premiums collected were a tax, the funds would be deposited into the Chuuk treasury, which can only be appropriated by law for a public purpose. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 23 (App. 2015).

When all revenues received under a system of medical or health insurance, and all other revenues received by the Health Department as payment for medicine and medical services, must be separated from any general fund established by the Legislature and used only for medical purposes, this supports the position that premiums collected by the insurance plan do not fall under the characteristics of a tax because the funds collected are mandated to be separated from other funds collected. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 23-24 (App. 2015).

When, although it is the employed residents of Chuuk who are making health insurance premium contributions, the benefit of medicines and medical services are applied to the general public this would favor considering the payments a tax instead of a fee. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 24 (App. 2015).

Generally, an assessment may be a fee rather than a tax when it is not used for a general purpose but is used to defray the expense of performing the duties imposed on the agency and for the general purpose and expense of carrying an act into effect. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 24 (App. 2015).

Pohnpei state law provides that wholesalers and taxi services operating in more than one local government jurisdiction do not have to pay a fee in other than the local jurisdiction where their business establishment is located and that local governments cannot levy business license fees on businesses that do not have any business establishment located within their territory. A "business establishment" is a permanent physical structure operating as a business, and a vehicle does not constitute a business establishment unless such vehicle is fixed in a permanent location. Isamu Nakasone Store v. David, 20 FSM R. 53, 56 (Pon. 2015).

A characteristic of a fee is that it must be no greater than the government's costs – the government's "real cost," which is not limited to the government's actual expenditures. Taxation is a legislative function generally to raise revenue, and the legislature may act arbitrarily and disregard benefits bestowed by the government on a taxpayer and go solely on the taxpayer's ability to pay. Isamu Nakasone Store v. David, 20 FSM R. 53, 57 (Pon. 2015).

When a municipality's business license fees are set arbitrarily at the municipal legislature's prerogative and go on the fee-payer's ability to pay, the license fees are revenue-raising taxes. Isamu Nakasone Store v. David, 20 FSM R. 53, 57 (Pon. 2015).

When a hotel owner with 10 rooms pays the same $50 business license fee annually regardless of how much or how little income is derived from that hotel; when a hotel owner with 31 rooms pays the same $300 regardless of how much or how little income those 31 rooms actually generate; and when, if the owner of a 31-room hotel adds five more rooms and generates even more income, the owner would still pay only $300 annually for a business license, the license fees, even though those license fees are actually taxes, are not taxes on income. Isamu Nakasone Store v. David, 20 FSM R. 53, 57 (Pon. 2015).

A municipal "road service" fee is not a tax on imports since it does not vary based on the amount or value of the goods brought into the municipality and since it does it vary based on the origin of those goods. It is a flat annual fee or a tax that does not violate the Constitution's prohibition of local taxes which restrict interstate commerce because the road service fee does not restrict or hinder interstate commerce or impose an import tax, but it does restrict or hinder intrastate or inter-municipal commerce, a type of commerce the FSM Constitution does not grant the national government the power to regulate. Isamu Nakasone Store v. David, 20 FSM R. 53, 57-58 (Pon. 2015).

– Recovery of Taxes

The question whether taxes paid by plaintiffs under a taxing statute subsequently found to be unconstitutional may be refunded to them turns upon whether the tax was voluntarily paid. Innocenti v. Wainit, 2 FSM R. 173, 187 (App. 1986).

Where taxpayers informed the government that they protested the tax as unconstitutional, and had to pay the tax in order to receive the taxed property, the payments are coerced, not voluntary, and taxpayers are entitled to the refund of all amounts paid. Innocenti v. Wainit, 2 FSM R. 173, 187 (App. 1986).

The FSM Supreme Court will abstain from a claim for recovery of taxes where the defendant state requests abstention, the claim is for monetary relief, and the state has endeavored to develop a body of law in the areas of excise taxes and sovereign immunity. Gimnang v. Yap, 4 FSM R. 212, 214 (Yap 1990).

Under traditional constitutional analysis, taxpayers' efforts to recover tax moneys unlawfully extracted from them by a state may be relegated to state procedures and decision-makers so long as there is a

reasonable procedure under state law whereby the taxpayer may obtain meaningful relief. Gimnang v. Yap, 5 FSM R. 13, 23-24 (App. 1991).

Prior to November 25, 1986, a plaintiff had a common law right to recover taxes paid pursuant to an unconstitutional Yap statute if he could show payment was made under duress and under protest. Gimnang v. Yap, 7 FSM R. 606, 607, 610-11 (Yap S. Ct. Tr. 1996).

After November 25, 1986, a claim for recovery of taxes paid under an unconstitutional Yap statute is subject to a two-year statute of limitations. Gimnang v. Yap, 7 FSM R. 606, 607, 611 (Yap S. Ct. Tr. 1996).

The general rule is that to entitle a taxpayer to a refund of a tax paid pursuant to an unconstitutional law, the tax must have been paid under duress and protest. Chuuk Chamber of Commerce v. Weno, 8 FSM R. 122, 125 (Chk. 1997).

Refund of taxes paid pursuant to an unconstitutional ordinance is an action for restitution, not damages. The principles governing recovery of payment which preclude recovery of voluntary payments are applicable to the recovery of tax payments. The "voluntary payment rule" has barred recovery in restitution. The general rule is that money paid voluntarily under a claim of right to the payment, and with knowledge of the facts by the person making the payment, cannot be recovered back on the ground that the claim was illegal. Chuuk Chamber of Commerce v. Weno, 8 FSM R. 122, 125 (Chk. 1997).

The reason the voluntary payment rule bars recovery in restitution of unlawful taxes is that litigation should precede payment. It thus does not apply to payments made after the commencement of litigation because the rule ceases with the reason on which it is founded. Chuuk Chamber of Commerce v. Weno, 8 FSM R. 122, 125-26 (Chk. 1997).

Normally, notice and an opportunity to be heard is given prior to governmental deprivation of property, but governments need not follow this in the case of taxes. Governments must, however, provide a post-deprivation opportunity to challenge the tax and a clear and certain remedy. Chuuk Chamber of Commerce v. Weno, 8 FSM R. 122, 126 (Chk. 1997).

It is unavailing in tax cases, except in special circumstances, to seek a preliminary injunction against enforcement or to have the taxes escrowed pending the outcome. This is in order not to disrupt the financial stability of the governmental unit. Chuuk Chamber of Commerce v. Weno, 8 FSM R. 122, 127 (Chk. 1997).

Refund of taxes unlawfully paid after commencement of suit is favored by the Innocenti guidelines concerning retrospective application of court decisions where the court decision was clearly foreshadowed by the Chuuk Constitutional provision, where there was no merit to be found in preventing the taxpayers from recovering unlawful taxes paid after the institution of litigation, and where the equitable considerations favor the taxpayers. Chuuk Chamber of Commerce v. Weno, 8 FSM R. 122, 127-28 (Chk. 1997).

For a plaintiff to recover payments made under an unconstitutional tax statute, he must demonstrate that he made those payments under both duress and notice of protest. Weno v. Stinnett, 9 FSM R. 200, 211 (App. 1999).

Because a man who denies the legality of a tax should have a clear and certain remedy, justice may require that he should be at liberty to pay promptly and bring suit on his side. Weno v. Stinnett, 9 FSM R. 200, 212 (App. 1999).

The filing of a suit to contest the legality of a tax, which the trial court found to be the plaintiffs' only remedy, obviates the need for demonstrating duress and notice of protest, as required by the common law, for payments made after suit is instigated. The filing of suit is protest of the most emphatic sort, and allowing a claim for recovery for payments made thereafter without regard to duress recognizes the

"implied duress" under which contested taxes are paid. Weno v. Stinnett, 9 FSM R. 200, 212 (App. 1999).

Duress and protest need not be shown to state a claim for recovery of tax payments extracted under an unconstitutional enactment when the plaintiffs seek refund of payments made after instigation of suit in a court having jurisdiction over the parties, and when such a lawsuit is the plaintiff's only remedy. Weno v. Stinnett, 9 FSM R. 200, 212 (App. 1999).

The taxing authority, if it opts not to provide predeprivation process, must by way of postdeprivation process provide a clear and certain remedy for any erroneous or unlawful tax collection to ensure that the opportunity to contest the tax is a meaningful one. A clear and certain remedy is one designed to render the opportunity to challenge a tax meaningful by preventing any permanent unlawful deprivation of property. Weno v. Stinnett, 9 FSM R. 200, 213 (App. 1999).

Because the Chuuk Constitution is clear that only the state government has the power to tax, it cannot be said that such a resolution could not be predicted. Weno v. Stinnett, 9 FSM R. 200, 214 (App. 1999).

To permit taxes to be retained that were extracted under an unconstitutional statute would have the effect of prolonging the viability of an ordinance that runs afoul of the Chuuk Constitution, at the expense of establishing the correct rule. The better course is to permit recovery of the taxes. Weno v. Stinnett, 9 FSM R. 200, 214 (App. 1999).

When litigation over the constitutionality of a municipality's taxes was pending for five years, the municipality was put on notice early on that the taxes collected under the ordinances were subject to a claim for refund, and nothing prevented the municipality from planning for this eventuality. Having failed to do so, it cannot now claim hardship. Weno v. Stinnett, 9 FSM R. 200, 214 (App. 1999).

If a taxing authority chooses not to provide a pre-deprivation process, it must by way of a post-deprivation process provide a clear and certain remedy for any erroneous or unlawful tax collection to ensure that the opportunity to contest the tax is a meaningful one. A clear and certain remedy is one designed to render the opportunity to challenge a tax meaningful by preventing any permanent unlawful deprivation of property. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 158 (Chk. 2010).

There is no meaningful clear and certain post-deprivation remedy available to a Chuuk taxpayer when Chuuk's financial situation and its general inability to satisfy any court judgment make any purported post-deprivation remedy very unlikely. Thus any unlawful deprivation of a taxpayer's property would essentially be permanent and the opportunity to later contest the service tax would not be a meaningful one. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 158 (Chk. 2010).

When, under the State Tax Act, amounts paid under protest must be kept and deposited in a separate and restricted account which must be returned to the taxpayer if he prevails and since any funds levied by the state to pay the movant's assessed tax liability are rightly considered partial payments under protest and are therefore deposited into "a separate and restricted account," it does not seem that the movant will be irreparably harmed if an injunction does not issue because the return of his money would seem to adequately compensate him. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 153 (Chk. 2013).

A statute that permits a taxpayer to file an action in court to recover any challenged taxes is likely an inadequate substitute for a prompt post-seizure hearing before the tax authorities that might resolve the matter without the need for court proceedings and from which a still aggrieved taxpayer may then resort to a court suit. It may be that such an administrative hearing is available through the statute governing administrative hearings although that is not entirely clear. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 155 (Chk. 2013).

Under the voluntary payment rule, illegal taxes cannot be recovered unless they were paid under

duress and under protest. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 289 (App. 2014).

Title 17, which codifies the Administrative Procedures Act, applies to challenges of administrative decisions raised under Title 54, which codifies the tax law. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 551, 554 (Pon. 2014).

– Tax Liens

Liens under 54 F.S.M.C. 135 have priority even over liens which arose earlier in time. Bank of Guam v. Island Hardware, Inc. (II), 3 FSM R. 105, 108 (Pon. 1987).

The statute 54 F.S.M.C. 153 does not require the government to give notice of its lien claims to any other creditors or even to the taxpayer. This statute, then, authorizes a lien which may be kept secret from interested parties. The effect of such a lien would be determined against the background of the strong general policy against secret liens. Bank of Guam v. Island Hardware, Inc. (II), 3 FSM R. 105, 108 (Pon. 1987).

A section 153 lien should be treated as an equitable lien, its effect to be determined on a case-by-case basis with a view toward equitable considerations, especially when the government has taken reasonable and timely action to notify such other parties to the government's claims based upon tax delinquency. Bank of Guam v. Island Hardware, Inc. (II), 3 FSM R. 105, 108 (Pon. 1987).

Any lien rights of the government under section 135(2) supersede even preexisting lien rights of any other party. Bank of Guam v. Island Hardware, Inc. (II), 3 FSM R. 105, 110 (Pon. 1987).

The priority lien rights provided for the government in section 135(2) relate only to wage and salary tax claims and not to gross revenue taxes or other taxes. Bank of Guam v. Island Hardware, Inc. (II), 3 FSM R. 105, 111 (Pon. 1987).

Under 54 F.S.M.C. 135(2), no other payment to creditors may be made from execution sale proceeds until all amounts owing for wage and salary taxes are paid in full to the government. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 297 (Pon. 1988).

Priority of national government's lien for unpaid business gross revenue taxes under 54 F.S.M.C. 153 is subject to requirement that government take reasonable and timely action to notify other parties of the government's claim, but filing of litigation is sufficient notification to all parties under 54 F.S.M.C. 153. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 297 (Pon. 1988).

53 F.S.M.C. 104 does not establish lien rights in the Trust Territory Social Security Board, and gives the board no lien or priority claim of any kind. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 299 (Pon. 1988).

Claims for wages asserted by low level employees and laborers are entitled to preference over all other claims, except wage and salary tax lien rights of the national government, which are given priority over all other claims and liens by 54 F.S.M.C. 135(2). In re Mid-Pacific Constr. Co., 3 FSM R. 292, 301 (Pon. 1988).

Attachment and seizure create statutory and possessory lien rights which will be unaffected by subsequent writs of execution, but will be subject to national government's wage and salary tax lien claims under 54 F.S.M.C. 135(2), to wage claims of low level employees and laborers, and to pre-existing national government lien rights under 54 F.S.M.C. 153. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 303 (Pon. 1988).

Under 54 F.S.M.C. 135(2), the government's judgment for wages and salary taxes constitutes a lien that is entitled to highest priority. In re Island Hardware, 3 FSM R. 332, 337 (Pon. 1988).

In order for the government's judgment for gross revenue taxes to have a highest priority lien, notice that the tax payments are overdue, not just that tax liability has accrued must be given. In re Island Hardware, 3 FSM R. 332, 338 (Pon. 1988).

Amounts owing for penalties and interest under the tax law, 54 F.S.M.C. 155 and 902, do not qualify for lien treatment under 54 F.S.M.C. 135 or 153. In re Island Hardware, Inc., 3 FSM R. 428, 433 (Pon. 1988).

Where the government is entitled to a lien on the debtor's assets as of the date it gave notice of its claim for those taxes the lien also becomes effective as of that date. In re Pacific Islands Distrib. Co., 3 FSM R. 575, 585 (Pon. 1988).

Language in 54 F.S.M.C. 135(2) that the amount of wage and salary taxes formed "a lien on the employer's entire assets, having priority over all other claims and liens" meant that this statutory lien superseded the general rule of first in time, first in right. In re Engichy, 12 FSM R. 58, 64 (Chk. 2003).

All Social Security taxes, including penalties and interest, constitute a lien upon any property of the employer, having priority over all other claims and liens including liens for other taxes. This creates a lien for social security taxes that has priority over even other tax liens, such as the wage and salary tax liens given first priority in Island Hardware and Pacific Islands Distributing. In re Engichy, 12 FSM R. 58, 64 (Chk. 2003).

The social security tax lien arises by operation of law whenever social security taxes become due and are not paid. In re Engichy, 12 FSM R. 58, 64 (Chk. 2003).

Under 53 F.S.M.C. 607, Social Security taxes specifically take priority over other tax liens. In re Engichy, 12 FSM R. 58, 65 (Chk. 2003).

A social security tax lien has priority over a mortgage because section 607 grants social security tax liens priority over all other liens regardless of whether the other liens arose earlier. In re Engichy, 12 FSM R. 58, 65 (Chk. 2003).

Under the general rule a mortgage first in time has superior right in the absence of the applicability of a statutory provision to the contrary. Section 607 is a statutory provision to the contrary because it grants social security tax liens priority over all other liens regardless of whether the other liens arose earlier. In re Engichy, 12 FSM R. 58, 65 (Chk. 2003).

Social Security's statutory priority tax lien is consistent with the general rule that acknowledges that the first-in-time priorities are also subject to legislative action that restructures the normal priorities. In re Engichy, 12 FSM R. 58, 65 (Chk. 2003).

Social Security's tax lien priority is statutory, not equitable. Statutory law, as enacted by Congress, not equitable principles fashioned by the court, applies. The statute, 53 F.S.M.C. 607, expressly gives Social Security a tax lien superior to all other liens. In re Engichy, 12 FSM R. 58, 65 (Chk. 2003).

As Congress clearly intended, social security tax liens must be given priority over all other claims and liens and paid first. In re Engichy, 12 FSM R. 58, 66 (Chk. 2003).

Social Security taxes do have a priority over all other claims and liens. FSM Social Sec. Admin. v. Yamada, 18 FSM R. 88, 89 (Pon. 2011).

Before garnishing tenants' rental payments to pay the lessor's tax liens, the court should be provided with information concerning the building, including current interests in the building, current leases, and any other facts that the court might require to rule on the garnishment request and any information on the

defendant's dependence on the monthly rental income and other income at her disposal so that the court may order with particularity a writ of garnishment. FSM Social Sec. Admin. v. Yamada, 18 FSM R. 88, 89-90 (Pon. 2011).

Since, by statute, all taxes imposed or authorized under Title 54, chapter 1 are a lien upon any property of the person or business obligated to pay those taxes and since, by statute, those taxes may be collected by levy upon such property in the same manner as the levy of an execution, the statute does not require a court-issued writ of execution or a court judgment before issuance. Instead, it permits a levy in the same manner as the levy of an execution. Fuji Enterprises v. Jacob, 20 FSM R. 121, 125 (Pon. 2015).

The addition of the language "in the same manner as the levy of an execution" in 54 F.S.M.C. 153 shows that a different meaning was intended than if the statute had read "by writ of execution." Fuji Enterprises v. Jacob, 20 FSM R. 121, 125 (Pon. 2015).

Since 54 F.S.M.C. 153 authorizes a tax levy to be made "in the same manner as the levy of an execution," it does not require a court-issued writ of execution. Fuji Enterprises v. Jacob, 20 FSM R. 121, 125 (Pon. 2015).

The statutory scheme grants the national government the authority to determine the amount of tax due and to collect those taxes. Under 54 F.S.M.C. 152(3), the Secretary of Finance's assessment of the tax amount is presumed correct unless and until it is proven incorrect. The statutory scheme also permits a tax levy on the lien created by 54 F.S.M.C. 153. Fuji Enterprises v. Jacob, 20 FSM R. 121, 125-26 (Pon. 2015).

Since the nation's statutes are presumed to be constitutional, a bank is not required to challenge, on a depositor's behalf, the tax lien statute's constitutionality. The bank may rely on the statute. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

It is not a bank's duty to challenge the tax authorities' assessment of the amount of tax due from a taxpayer depositor. It is the taxpayer's responsibility to dispute any tax assessed that it disagrees with and for the taxpayer to resolve the issue with the FSM tax authorities. It also is not the bank's responsibility to challenge the constitutionality of 54 F.S.M.C. 153 or the FSM's interpretation of that statute. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

As long as the notice of levy and execution from the Division of Customs and Tax Administration is regular on its face, a bank is obligated to honor it. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

Usually, notice and an opportunity to be heard is given prior to deprivation, but a government does not need to follow this in the case of taxes. The government must, however, provide a post-deprivation opportunity to challenge the tax and a clear and certain remedy. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

A writ of execution applies to all the judgment debtor's business assets and personal property under 53 F.S.M.C. 607. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 276, 278 (Pon. 2015).

When the tax lien on a sole proprietorship's property was effectuated under 53 F.S.M.C. 607, well before the business transformed and became incorporated, the court will not create an avenue where an individual operating as a business avoids debt by simply morphing into an entity with the same name, albeit a different structure and characteristics. For the court to allow this would be detrimental to statutorily created entities attempting to collect taxes owed. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 276, 278 (Pon. 2015).

When the issue of a bank releasing funds under 54 F.S.M.C. 153 is a matter of first impression, the

court may look to case law of other jurisdictions, particularly the United States, for comparison and guidance. Fuji Enterprises v. Jacob, 21 FSM R. 355, 361 (App. 2017).

Under 54 F.S.M.C. 153, a delinquent taxpayer will have a lien placed on his property, and the lien will be collected in the similar manner as an execution, meaning it may be seized and sold to satisfy the taxes owed. Fuji Enterprises v. Jacob, 21 FSM R. 355, 361 (App. 2017).

The statutory scheme of 54 F.S.M.C. 153, in using the language "in the same manner as a levy of an execution," does not mean that a court-issued writ of execution is required before a levy. Fuji Enterprises v. Jacob, 21 FSM R. 355, 361 (App. 2017).

A bank does not have a duty to dispute a depositor's tax assessment, nor to challenge the constitutionality of 54 F.S.M.C. 153, as these are the account holder's responsibilities, and the bank is obliged to comply with the statutory levy, or face penalties under the law. Fuji Enterprises v. Jacob, 21 FSM R. 355, 362 (App. 2017).

The levy for failure to pay a national tax reaches all non-exempt property of the taxpayer whether in his possession or in the possession of third parties or agencies. Fuji Enterprises v. Jacob, 21 FSM R. 355, 362 (App. 2017).

TORTS

Common law decisions of the United States are an appropriate source of guidance for this court for contract and tort issues unresolved by statutes, decisions of constitutional courts here, or custom and tradition within the Federated States of Micronesia. Review of decisions of courts of the United States, and any other jurisdictions, must proceed however against the background of pertinent aspects of Micronesian society and culture. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 142 (Pon. 1985).

Roughly stated, the general principle is that one person may be liable in tort to another only if the first intentionally or negligently violates a duty owed to the other, and the other is injured as a result. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 142 (Pon. 1985).

According to the Pohnpeian view of civil wrongs, if one damages another's property, he must repair or replace it; if one injures another person, he must apologize and provide assistance to the injured person and his family; if one kills another person, he must provide the assistance that the victim would have provided and may have to offer another person to take the place of victim in his family. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 70-71 (Pon. S. Ct. Tr. 1986).

Primary lawmaking powers for the field of torts lie with the states, not with the national government, but the national government may have an implied power to regulate tort law as part of the exercise of other general powers. Edwards v. Pohnpei, 3 FSM R. 350, 359 (Pon. 1988).

Although the FSM Supreme Court has often decided matters of tort law without stating explicitly that state rather than national law controls, there has been acknowledgment that state law controls in the resolution of contract and tort issues. When the Supreme Court, in the exercise of its jurisdiction, decides a matter of state law, its goal should be to apply the law the same way the highest state court would. Edwards v. Pohnpei, 3 FSM R. 350, 360 n.22 (Pon. 1989).

Chuuk State has adopted common law tort principles as the law of Chuuk State where no specific constitutional or traditional impediment to its adoption exists. Epiti v. Chuuk, 5 FSM R. 162, 165 (Chk. S. Ct. Tr. 1991).

Claims for torts that took place before 1951 accrued, at the latest, when the applicable Trust Territory statute took effect in 1951. Unless tolled, the statutes of limitation bar the FSM courts from adjudicating

such claims. Alep v. United States, 6 FSM R. 214, 219-20 (Chk. 1993).

Where a statute creates a cause of action and then places exclusive, original jurisdiction over all controversies arising from that cause of action in a particular court, another court will have no jurisdiction to entertain claims under that statute. Damarlane v. United States, 6 FSM R. 357, 360 (Pon. 1994).

Various environmental acts that do not provide for a private citizen's cause of action for monetary damages cannot be used to create a duty for the breach of which damages may be awarded. Damarlane v. United States, 6 FSM R. 357, 360-61 (Pon. 1994).

Since state law generally controls the resolution of tort issues the duty of the FSM Supreme Court in a diversity case involving tort law is to try to apply the law the same way the highest state court would. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 455 (Chk. 1994).

Common law tort principles from other jurisdictions have previously been adopted by the Chuuk State Supreme Court where there has been no constitutional or traditional impediment to doing so. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 455 (Chk. 1994).

A tort is a wrong for which the harm that resulted, or is about to result, is capable of being compensated in an action at law. The purpose is to afford compensation for injuries sustained by one person as the result of the unreasonable or socially harmful conduct of another. Primo v. Refalopei, 7 FSM R. 423, 430 n.13 (Pon. 1996).

Any attempt to breathe new life into tort claims time barred by the relevant and analogous statutes should be approached with caution because they are the type of personal claims for money damages that become increasingly difficult of proof and difficult to defend with the passage of time. Ordinarily such claims are resolved by political and diplomatic efforts. Alep v. United States, 7 FSM R. 494, 498 (App. 1996).

The defenses of estoppel, unclean hands and laches are all equitable defenses which do not apply in actions sounding in personal injury. Conrad v. Kolonia Town, 8 FSM R. 183, 193 (Pon. 1997).

Should Pohnpeian custom and tradition not be determinative, the FSM Supreme Court will look to its earlier holding and decisions of United States courts for guidance as to relevant common law tort principles, and will evaluate the persuasiveness of the reasoning in these decisions against the background of pertinent aspects of Micronesian society and culture in Pohnpei. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 248, 253 (Pon. 1998).

The general principle is that one person may be liable in tort to another only if the first intentionally or negligently violates a duty owed to the other, and the other is injured as a result. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 293, 294 (Pon. 1998).

United States common law decisions are an appropriate source of guidance for this court for contract and tort issues unresolved by statutes, decisions of constitutional courts here, or custom and tradition within the Federated States of Micronesia. United States courts have generally followed the provisions of the Restatement of Torts in situations where a plaintiff alleges that a defendant has negligently prevented a third party from rendering assistance. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 293-94 (Pon. 1998).

State law controls in the resolution of contract and tort issues. When the Supreme Court, in the exercise of its jurisdiction, decides a matter of state law, its goal should be to apply the law the same way the highest state court would. When no existing case law is found the FSM Supreme Court must decide issues of tort law by applying the law as it believes the state court would. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 294-95 (Pon. 1998).

A tort is a wrong for which the harm that resulted is capable of being compensated in an action at law. The purpose is to afford compensation for injuries sustained by one person as the result of the unreasonable or socially harmful conduct of another. Generally, one person may be liable in tort to another only if the first intentionally or negligently violates a duty owed to the other, and the other is injured as a result. Asher v. Kosrae, 8 FSM R. 443, 449 (Kos. S. Ct. Tr. 1998).

The states' role in tort law is predominant. Phoenix of Micronesia, Inc. v. Mauricio, 9 FSM R. 155, 158 (App. 1999).

A Kosrae state regulation that covers all persons wanting to fill in and construct on or over land below the ordinary high water mark does not provide any private right of action and cannot be the basis of a claim against the state for violation of law or regulation even if it did not have a specific plan for the seawall that was part of a road-widening project for which it had an overall plan. Jonah v. Kosrae, 9 FSM R. 335, 342-43 (Kos. S. Ct. Tr. 2000).

The purpose of tort law is to afford a victim compensation for injuries sustained as the result of the unreasonable or socially harmful conduct of another. This is true whether the tort is statutorily created, as are the civil rights claims under 11 F.S.M.C. 701(3), or is a creature of the common law, as is a battery cause of action. Atesom v. Kukkun, 10 FSM R. 19, 23 (Chk. 2001).

The statute, 30 F.S.M.C. 104, does not impose a duty upon the FSM Development Bank to provide technical assistance to debtors to whom it has already made a loan, nor to assignees of those debtors. Nor does it give rise to a private cause of action. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 76-77 (Pon. 2001).

United States common law decisions are an appropriate source of guidance for the Kosrae State Court for tort issues unresolved by statutes, decisions of constitutional courts here, or custom and tradition within the Federated States of Micronesia. Talley v. Lelu Town Council, 10 FSM R. 226, 234, 236 (Kos. S. Ct. Tr. 2001).

State law generally determines tort issues, and the FSM Supreme Court in diversity cases must attempt to apply the law in the manner that the highest state court would. Amayo v. MJ Co., 10 FSM R. 244, 253-54 (Pon. 2001).

A given for tort causes of action is that the alleged actor have some interest in or control over the instrumentality that brought about the tortious conduct. Kosrae v. Worswick, 10 FSM R. 288, 291 (Kos. 2001).

The legislature has the power to modify or abolish common law rights or remedies and may supersede the common law without an express directive to that effect, as by adoption of a system of statutes comprehensively dealing with a subject to which the common law rule related. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 416 (Pon. 2001).

The legislative privilege doctrine has both substantive and evidentiary aspects. In substance, the doctrine renders legislators immune from civil and criminal liability based on either speech or debate in the course of proceedings in the legislature. From an evidentiary standpoint, a legislator may claim the privilege in declining to answer any questions outside the legislature itself where those questions concern how a legislator voted, acted, or decided on matters within the sphere of legitimate legislative activity. AHPW, Inc. v. FSM, 10 FSM R. 420, 425 (Pon. 2001).

Statutes which do not, by their terms, provide private citizens with a cause of action for money damages cannot be the basis for private damages claims. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 634 (Pon. 2002).

The court will not infer the existence of a private cause of action in the absence of a clear intent expressed in the statute that such a private cause of action be created. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 634 (Pon. 2002).

The Pohnpei state criminal statutes were intended to provide for criminal penalties for those who commit certain acts which are prohibited by the Act. The Pohnpei Crimes Act is not intended to create a basis for private parties to sue other parties, but to enable the Pohnpei state government to be able to punish those persons who violate provisions of the Act. Statutes which do not by their terms provide citizens with a cause of action for money damages cannot be the basis for private damages claims. Ambros & Co. v. Board of Trustees, 11 FSM R. 17, 25 (Pon. 2002).

The general purpose of tort law is to afford a victim compensation for the injuries or damages sustained as the result of another's unreasonable or socially harmful conduct. In other words, a purpose of tort law is to make the victim whole. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 469 (Pon. 2004).

The continuing tort doctrine is well-settled law, and dictates that when there is an ongoing pattern of tortious activity where no single incident may be fairly identified as the cause of the harm suffered, then it is appropriate to regard the total effect of the conduct as actionable, and the statute of limitations does not begin to run until the conduct has ceased. In order to invoke the continuing tort doctrine, there must be continuing unlawful acts, and not merely continuing effects from a single original act. AHPW, Inc. v. FSM, 12 FSM R. 544, 553 (Pon. 2004).

The rationale behind the principle that the statute of limitations does not begin to run on a continuing wrong until the wrong is over and done with is that the principle strikes a balance between the plaintiff's interest in being spared having to bring successive suits, and the two distinct interests, that statutes of limitations serve. One is evidentiary – to reduce the error rate in legal proceedings by barring litigation over claims relating to the distant past. The other is repose – to give people the assurance that after a fixed time they can go about their business without fear of having their liberty or property taken through the legal process. When an unlawful course of conduct's final act occurs within the statutory period, these purposes are adequately served, in balance with the plaintiff's interest in not having to bring successive suits, by requiring the plaintiff to sue within the statutory period but letting him reach back and get damages for the entire duration of the alleged violation. Some of the evidence, at least, will be fresh. And the defendant's uncertainty as to whether be will be sued at all will be confined to the statutory period. His uncertainty about the extent of his liability may be greater, but that is often true in litigation. AHPW, Inc. v. FSM, 12 FSM R. 544, 553 (Pon. 2004).

A plaintiff's tort claim will not be dismissed as duplicative of his civil rights claim without the benefit of trial because it would be premature to dismiss either claim since the plaintiff has yet to prove the necessary elements of one or both of his two distinct claims and because at this juncture the contention that the tort and civil rights claims are duplicative is without merit. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 154, 156 (Pon. 2005).

A plaintiff's state law claims will not be dismissed because he is seeking a large amount of damages. The amount of damages sought does not determine whether a claim is to be dismissed. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 154, 156 (Pon. 2005).

A tort is any civil cause of action not based on contract. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 16 (App. 2006).

While tort law, especially common law torts like negligence, is primarily a state responsibility, the national government may create tort law when legislating in an area that the Constitution has expressly delegated to Congress the power to legislate. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 16 (App. 2006).

General maritime law has long recognized causes of action in maritime tort for damages resulting from

groundings and oil spills. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 415 (Yap 2006).

The general purpose of tort law is to afford a victim compensation for the injuries or damages sustained as the result of another's unreasonable or socially harmful conduct. In other words, tort law's purpose is to make the victim whole. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 418 (Yap 2006).

A cause of action based on tort will not be lost or abated because of the death of the tort-feasor or other person liable. An action thereon may be brought or continued against the deceased person's personal representative, but punitive or exemplary damages may not be awarded nor penalties adjudged in the action. Dereas v. Eas, 15 FSM R. 446, 448 (Chk. S. Ct. Tr. 2007).

A tort cause of action survives the defendant's death and continues against his personal representative. Dereas v. Eas, 15 FSM R. 446, 448 (Chk. S. Ct. Tr. 2007).

Chuuk has adopted common law tort principles as the law of Chuuk when no specific constitutional or traditional impediment to their adoption existed. Dereas v. Eas, 15 FSM R. 446, 448-49 (Chk. S. Ct. Tr. 2007).

A claimed inability to pay is not a defense to liability. Weriey v. Chuuk, 16 FSM R. 329, 332 (Chk. 2009).

A plaintiff has not met her burden of showing that the state is liable to her for "summary punishment" when she did not disclose what specific conduct she believed constituted summary punishment and her complaint was silent on that point as well. Berman v. Pohnpei, 16 FSM R. 567, 575 (Pon. 2009).

Since, absent a showing of impairment, FSM law is currently silent as to how a court is to define and determine whether an injury is permanent, the court may consider decisions and reasoning of United States courts and other jurisdictions in arriving at its own decisions. Higgins v. Kolonia Town, 17 FSM R. 254, 261 (Pon. 2010).

Torts are primarily areas of state law, and should the FSM Supreme Court take up tort issues, it would apply state law. Ladore v. Panuel, 17 FSM R. 271, 275 (Pon. 2010).

Pohnpei generally follows the Restatement approach in its law concerning tort issues. Peniknos v. Nakasone, 18 FSM R. 470, 485 (Pon. 2012).

Common law decisions from U.S. sources are an appropriate source of guidance for the FSM Supreme Court for contract and tort issues unresolved by statutes or decisions of constitutional courts within the FSM. Ihara v. Vitt, 18 FSM R. 516, 526 (Pon. 2013).

For either a trespass cause of action or a cause of action against a municipal government for due process violations, the plaintiffs did not have to prove title or ownership, just a greater right to possession. Andrew v. Heirs of Seymour, 19 FSM R. 331, 338 (App. 2014).

Criminal law and the law of torts (more than any other form of civil law) are related branches of the law; yet in a sense they are two quite different matters. Criminal law's aim is to protect the public against harm, by punishing harmful results of conduct or at least situations (not yet resulting in actual harm) which are likely to result in harm if allowed to proceed further. Tort law's function is to compensate someone who is injured for the harm he or she has suffered. FSM v. Tipingeni, 19 FSM R. 439, 446 (Chk. 2014).

Frequently a defendant's conduct makes him both civilly and criminally liable. FSM v. Tipingeni, 19 FSM R. 439, 446 (Chk. 2014).

The predatory lending tort is usually either created by statute or relies on an existing statute as a basis for the cause of action. Neither Pohnpei nor the FSM national government has enacted a statute that could make predatory lending a cause of action. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 170 (Pon. 2017).

Title 30, which governs the FSM Development Bank, does not give rise to a private cause of action for borrowers or others. Setik v. Mendiola, 21 FSM R. 537, 556 (App. 2018).

Since tort law is primarily state law, a tort action will be governed by the substantive law of the state where the injury occurred. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 28 (Pon. 2018).

Generally, "business destruction" cannot be a separate cause of action, but if the plaintiff can claim lost personal income that she derived from the business, it may be a measure of damages. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 157 (Chk. 2019).

In FSM case law, there is no tort or cause of action denominated as harassment although there are causes of action that include harassment as a significant component, and there is no tort of "intimidation" and the court will not create one. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 630 & n.2 (Pon. 2020).

– Abuse of Process

Whether interference with the efforts of a non-FSM citizen engaged in business within the Federated States of Micronesia is an abuse of process is not an issue which may be resolved by reference to traditional or customary principles. Mailo v. Twum-Barimah, 2 FSM R. 265, 268 (Pon. 1986).

Common law decisions of the United States are an appropriate source of guidance in addressing claims of abuse of process within the Federated States of Micronesia. Mailo v. Twum-Barimah, 2 FSM R. 265, 268 (Pon. 1986).

Abuse of process occurs where one uses legal process against another's person or property to accomplish an ulterior purpose for which the process was not designed. Mailo v. Twum-Barimah, 2 FSM R. 265, 268 (Pon. 1986).

The process contemplated for the tort of abuse of process is issuance by an official body of some legal document or order which affects the victim's person or property. Mailo v. Twum-Barimah, 2 FSM R. 265, 268 (Pon. 1986).

One of the elements of abuse of process is that the process be used for an improper, ulterior purpose. An ulterior purpose is one in which coercion is used to obtain a collateral advantage not properly involved in the proceeding. The tort typically involves some form of extortion. Some definite act not authorized by the process, or aimed at an objective not legitimate in the use of the process, is required. Bank of Guam v. O'Sonis, 9 FSM R. 106, 111 (Chk. 1999).

When an order and writ are manifestly improper, but their purpose was not collateral to the process used, one of the elements of the tort of abuse of process is not satisfied. Bank of Guam v. O'Sonis, 9 FSM R. 106, 111 (Chk. 1999).

The tort of abuse of process requires some legal process – the use of legal process emanating from an official body. An allegation, that the FSM used the audit process to wrongfully terminate a contract and that the memorandum issued by the U.S. Department of Interior was part of an official legal process authorized and instituted under the Compact, does not meet the requirements of legal process since, as a matter of law, the audit procedure and the memorandum cannot be the process on which an allegation of abuse of process rests. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 485 (Pon. 2009).

When each party vigorously pursues opposite sides of a legitimate dispute (who breached a contract), neither party can seriously argue that either the complaint or the counterclaim constitutes abuse of process. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 485 (Pon. 2009).

One against whom civil proceedings are initiated may recover in an action for the wrongful initiation of the proceedings, if the proceedings have terminated in his favor and were initiated for an improper purpose. Helgenberger v. Helgenberger, 22 FSM R. 244, 250 n.5 (Pon. 2019).

– Alienation of Affections

The tort of criminal conversation's odd name comes about because the act is "criminal" in the sense that it was an ecclesiastical crime and it is "conversation" in the sense of intercourse. Generally, the term "criminal conversation," is synonymous with "adultery," but in its more limited and technical sense, it may be defined as adultery in the aspect of tort. Panuelo v. FSM, 22 FSM R. 498, 506 n.2 (Pon. 2020).

Under Restatement (Second) of Torts § 683, one who purposely alienates one spouse's affections from the other spouse is subject to liability for the harm thus caused to any of the other spouse's legally protected marital interests, which applies only when the marriage relation exists between the parties at the time of the acts that cause the alienation of affections. Panuelo v. FSM, 22 FSM R. 498, 507 (Pon. 2020).

Restatement (Second) of Torts § 684(2) encompasses what was known at common law as "enticement," and under it one who for the purpose of disrupting the marital relation induces one spouse to separate from the other spouse or not to return after being separated, is subject to the liability for the harm thus caused to any of the aggrieved spouse's legally protected marital interests. The tort of enticement is often considered a variety of the alienation of affections tort. The actor is liable only for a separation that results from the actor's conduct. Panuelo v. FSM, 22 FSM R. 498, 507 (Pon. 2020).

Under Restatement (Second) of Torts § 685, one who has sexual intercourse with one spouse is subject to liability to the other spouse for the harm thus caused to any of the other spouse's legally protected marital interests. Under this rule, although knowledge or belief that a person is married is essential to liability for alienation of affections under the § 683 rule, neither knowledge nor belief is necessary to liability under § 685. One who has sexual relations with a married person takes the risk that he or she is married to another. The fact that the spouse misrepresents the marital status is not a defense. Panuelo v. FSM, 22 FSM R. 498, 508 (Pon. 2020).

Some authorities consider these three common law torts – alienation of affections [Restatement § 683], enticement [Restatement § 684(2)], and criminal conversation [Restatement § 685] – to really be one tort – interference with marriage relation, and that they are just three means by which the interference with marriage relation tort may be accomplished. Panuelo v. FSM, 22 FSM R. 498, 508 (Pon. 2020).

The alienation of affections, enticement, and criminal conversation torts are novel questions of Pohnpei state law, and these torts have been abolished in many common law jurisdictions, but are still viable in a number of common law jurisdictions. Panuelo v. FSM, 22 FSM R. 498, 509 (Pon. 2020).

Alienation of affections, enticement, and criminal conversation do not appear to be torts that could be committed by an actor other than a natural person. Panuelo v. FSM, 22 FSM R. 498,511-12 (Pon. 2020).

An action for the alienation of affections lies only against one who produced and brought about or caused an alienation of the affections of the plaintiff's spouse. Panuelo v. FSM, 22 FSM R. 498, 512 (Pon. 2020).

– Anticompetitive Practices

Under 32 F.S.M.C. 302(3), it is illegal for one or more persons to create or use an existing combination of capital, skill, or acts the effect of which is to prevent competition in the manufacture, making, transportation, sale, or purchase of any merchandise, produce, or commodity. The State of Pohnpei is a "person" for purposes of this statute. AHPW, Inc. v. FSM, 12 FSM R. 544, 551 (Pon. 2004).

"Competition" means the effort of two or more parties, acting independently, to secure the business of a third party by the offer of the most favorable terms. "Merchandise" and "commodity" are similar enough in meaning to be interchangeable: "merchandise" is defined as each commodity bought and sold by merchants, while "commodity" is defined as any movable or tangible thing used in commerce as the subject of trade or barter. "Produce" as a noun means articles produced or grown from or on the soil. AHPW, Inc. v. FSM, 12 FSM R. 544, 551 (Pon. 2004).

When Pohnpei arbitrarily set the $1 a pound price for the purchase of pepper from the pepper farmers, a price that bore no relation to the world market price, it created a market condition with which Island Traders could not compete and was not able to purchase the raw pepper it required for its operations. Pohnpei thus prevented competition in the purchase of produce, and by preventing Island Traders from acquiring raw pepper for processing, Pohnpei also prevented competition in the manufacture of merchandise; the merchandise being the finished, processed pepper. Viewed in either light, Pohnpei violated 32 F.S.M.C. 302(3). AHPW, Inc. v. FSM, 12 FSM R. 544, 551-52 (Pon. 2004).

It is unlawful for a person to fix the price of a commodity. This prohibition against fixing the price charged for goods, merchandise, machinery, supplies, or commodities is directed toward sale, and not the purchase, of goods and does not apply when the facts do not involve selling of raw pepper, but conduct in purchasing raw pepper at an anticompetitive price. AHPW, Inc. v. FSM, 12 FSM R. 544, 552 (Pon. 2004).

Under 32 F.S.M.C. 302(2), it is illegal for one or more persons to create or use an existing combination of capital, skill, or acts the effect of which is to limit or reduce the production, or increase the price of, merchandise or any commodity. "Production" means that which is made; i.e. goods, or the fruit of labor, as the productions of the earth, comprehending all vegetables and fruits. AHPW, Inc. v. FSM, 12 FSM R. 544, 552 (Pon. 2004).

When Pohnpei's refusal to hold a trochus harvest allegedly stemmed from environmental concerns, but all of the reports addressing this issue recommended that a trochus harvest be held and the concern was not that there would be too little trochus, but that there would be too much, nothing stood in the way of reasonable limitations on the harvest that could have harmonized both Pohnpei's legitimate environmental concerns and the national law requirement that it not limit the production of any commodity. Failure to do so violated 32 F.S.M.C. 302(2). AHPW, Inc. v. FSM, 12 FSM R. 544, 552 (Pon. 2004).

Anticompetitive conduct is tortious in nature. AHPW, Inc. v. FSM, 12 FSM R. 544, 553 (Pon. 2004).

Loss of future profits is a well-established basis for determining the measure of economic injury resulting from an anticompetitive act which forces the victim out of business. AHPW, Inc. v. FSM, 12 FSM R. 544, 554, 555 (Pon. 2004).

In unfair trade practices cases, courts draw a distinction between the amount of proof necessary to show that some damages resulted from the wrong, and the amount of proof necessary to calculate the exact amount of the damages. A lower burden of proof applies because the most elementary conception of justice and public policy require that the wrongdoer shall bear the risk of the uncertainty which his own wrong has created. AHPW, Inc. v. FSM, 12 FSM R. 544, 554 (Pon. 2004).

In anticompetitive practices cases where causation is established, the burden of proving damages is much less severe. This rule of leniency with regard to proof of damages is necessary because any other rule would enable the wrong-doer to profit by his wrongdoing at his victim's expense. It would be an inducement to make wrongdoing so effective and complete in every case as to preclude any recovery, by

rendering the measure of damages uncertain. Once the fact of damage is established with reasonable certainty, the amount of damages need only be shown with as much certainty as the tort's nature and the case's circumstances permit. In such cases, if it is uncertain and speculative and whether damages have been incurred, then damages will be denied; however, if it is only the amount of the damages that presents the uncertainty, then the court will allow recovery so long as there is proof of a reasonable basis from which the amount can be approximated or inferred. AHPW, Inc. v. FSM, 12 FSM R. 544, 554 (Pon. 2004).

When there is no doubt about the violation of 32 F.S.M.C. 302(2), but when there is nothing of record to establish that even if a trochus harvest had been held after 1994, the plaintiff would have been successful in purchasing enough trochus so that it would have had an adequate source of supply for its button operation, the plaintiff has failed to establish that it was damaged by the defendant's conduct as proscribed 32 F.S.M.C. 302(2). Since that conduct was tortious in nature, the plaintiff is entitled only to nominal damages. AHPW, Inc. v. FSM, 12 FSM R. 544, 555 (Pon. 2004).

Damages under 32 F.S.M.C. 306(2) are subject to trebling. AHPW, Inc. v. FSM, 12 FSM R. 544, 555, 556 (Pon. 2004).

Averaging three years of normal operations when the pepper supply was continuous when the manufacturing process was uninterrupted to arrive at an annual profit, is a projection that provides a reasonable basis from which a plaintiff's lost profits can be approximated or inferred under the lower burden of proof applicable for damages in anticompetitive practices cases. AHPW, Inc. v. FSM, 12 FSM R. 544, 555 (Pon. 2004).

When the conduct's nature was discrete and specific, and would have been amenable to injunctive relief had the plaintiff sought it, once that relief had been awarded there could have been no prospective damages since the conduct giving rise to those damages would necessarily have ceased. There should be no recovery for further diminution of a business's value, predicated on the defendant's continuing wrongdoing, after the defendant has been enjoined. The court will thus not award prospective damages from the time of the lawsuit's filing onward because injunctive relief, to which the claim would have been amenable, would have terminated the conduct complained of. But since under the continuing tort doctrine, a plaintiff is entitled to recover all of the damages that result from on-going tortious conduct, even though the inception of the conduct lies outside the limitations period, the court will award damages from the start of the anticompetitive pepper processing operation in mid-1995 until the plaintiff filed suit. AHPW, Inc. v. FSM, 12 FSM R. 544, 555-56 (Pon. 2004).

When claims of damages for sums the plaintiff owed to third parties on the theory that since its business operations were destroyed by the defendant's conduct, it cannot pay back those amounts, would have depended for their repayment on profits that the operation would have made but for the defendant's conduct. Since future profits are the measure of the business's damages, to allow a separate recovery for these sums would be to permit a double recovery. AHPW, Inc. v. FSM, 12 FSM R. 544, 556 (Pon. 2004).

Any person who proves a violation of 32 F.S.M.C. 302 or 32 F.S.M.C. 303 may recover reasonable attorney's fees. AHPW, Inc. v. FSM, 13 FSM R. 36, 39 (Pon. 2004).

A state is a person under the FSM anticompetitive practices statute when it acts as a participant or competitor in commerce but not when it acts as a regulator of commerce. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 15 (App. 2006).

A Pohnpei state law exempting it from anticompetitive practices liability does not apply to a case brought under the national anticompetitive practices statute since the lawsuit is based on a cause of action created by the national, not the state, statute covering an activity – foreign and interstate commerce – over which the national government may legislate. It would, of course, apply to an action brought under the state anticompetitive practices statute. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 16 (App. 2006).

When the anticompetitive practices statute requires that one or more persons create or use an existing combination of capital, skill, or acts the effect of which is anticompetitive and when the trial court made findings that would show a combination, since the statute is clear that only one "person" can provide the needed "combination," a contention that the trial court had to, and failed to, find that the defendant acted in combination with someone else has no merit. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 19 (App. 2006).

Generally, statutes authorizing multiple damages are remedial and nonpunitive, particularly in anti-trust cases. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 20 (App. 2006).

The treble damages clause in the FSM Anti-competitive practices statute is remedial and not punitive. The multiple portion of the damages – that part in excess of the lost profits the trial court determined as actually proven – is imposed by a national statute enacted in an area in which the national government may legislate. Since this is not a state law tort case in which state law applies and this is a statutory tort created by a national statute, the national, not the state, statute therefore controls. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 20 (App. 2006).

Even under national law, sovereigns, any sovereign, have sovereign immunity. But sovereigns are generally considered to have waived that immunity when the sovereign has acted as a participant in commerce instead of as a sovereign. It would seem unfair if a state, as a competitor in a commercial enterprise, could not be held liable and assessed the same damages that another commercial competitor, who committed the same acts, would be assessed. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 20 n.5 (App. 2006).

The trial court should state some reason for trebling damages other than just stating the anticompetitive practices statute allows it. Compelling justification is not needed or required. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 21 (App. 2006).

The anticompetitive practices statute itself provides the basis for the plaintiff to recover damages together with reasonable attorneys' fees and the costs of suit. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 21 (App. 2006).

Fifteen years' worth of "damages" of lost profits is obviously too long for any reasonably certain future projections. Too many unexpected possible variables could occur. The trial court thus did not abuse its discretion by limiting the damage award to four years of lost profits. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 24-25 (App. 2006).

The anticompetitive practices statute authorizes treble damages. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 190 (Pon. 2006).

Treble damages were proper when the discretion denoted by the word "may" in the statute lies with the injured party and not the court – the injured party "may" sue and recover treble damages – and when Congress's intent was to give the injured party treble damages if it sues and proves its case. The statute's context compels this conclusion. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 190-91 (Pon. 2006).

When the plaintiff has a claim de jure that the power conferred (on the court to treble damages) should be exercised because it had proved its right to damages under 32 F.S.M.C. 301 *et seq.* and when, considering the whole anticompetitive practices statute and its nature and object, Congress's intent was to impose a positive duty to treble damages, not a discretionary power to do so, the court will therefore award treble damages. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 191 (Pon. 2006).

When the defendant's anticompetitive acts did not just harm the plaintiff's business, but those acts put it out of business, even if treble damages were discretionary, there would be no more appropriate a case to exercise the discretion to treble damages than one where the anticompetitive acts put the plaintiff out of business. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 191 (Pon. 2006).

– Assault

Battery is the harmful or offensive contact with a person, resulting from an act intended to cause that contact, while an assault refers to the apprehension of that offensive contact. Once the court is satisfied from the evidence that an actual injury has occurred then it need not consider the separate tort of assault. Conrad v. Kolonia Town, 8 FSM R. 183, 191 (Pon. 1997).

Battery is a harmful, offensive contact with a person resulting from an act intended to cause the contact, while an assault has to do with the apprehension of the offensive contact; when the court determines that a battery has occurred, it need not consider the separate tort of assault. Elymore v. Walter, 9 FSM R. 450, 458 (Pon. 2000).

When there was no evidence that any policemen had an intent to cause an arrestee physical or bodily harm, the state is not liable to her under either theory of assault or battery. Berman v. Pohnpei, 16 FSM R. 567, 575 (Pon. 2009).

A trial court errs as a matter of law by using, in a civil case, a criminal statute to determine the torts' elements and whether the plaintiff was an assault and battery victim. Because it was not a criminal prosecution, the trial court should have looked to Pohnpei tort law and used the elements of the torts of assault and of battery. Berman v. Pohnpei, 17 FSM R. 360, 372 (App. 2011).

Privilege is a legal defense to the torts of assault and battery and may be based upon the fact that the touching is a necessity to protect some private or public interest which is of such importance as to justify the threatened harm. A lawful arrest is just such a privilege and a valid defense to the assault claim and to the battery claim so long as excessive force is not used. Berman v. Pohnpei, 17 FSM R. 360, 372 (App. 2011).

– Battery

A battery or an assault is not determined by the presence or absence of injury; battery is a harmful or offensive contact with a person, resulting from an act intended to cause the plaintiff to suffer such contact, while assault refers to the apprehension of imminent contact. Paul v. Celestine, 4 FSM R. 205, 207 (App. 1990).

When the evidence clearly establishes that plaintiff suffered injuries as a result of intentional direct contact by the defendant the court need only consider the tort of battery, not the separate tort of assault. Meitou v. Uwera, 5 FSM R. 139, 142 (Chk. S. Ct. Tr. 1991).

Despite the finding of battery, defendant will not be found liable for damages if plaintiff consented to battery, of if defendant was in some way privileged to inflict harmful or offensive contact. Meitou v. Uwera, 5 FSM R. 139, 143 (Chk. S. Ct. Tr. 1991).

A person is liable to another for battery if he acts intending to cause harmful contact with a third person or an imminent apprehension of such contact, and a harmful contact indirectly results. Davis v. Kutta, 7 FSM R. 536, 544 (Chk. 1996).

An actor is privileged to use reasonable force, not intended or likely to cause death or serious bodily harm, to defend himself against the unprivileged harmful or offensive contact or other bodily harm which he reasonably believes another is about to inflict intentionally upon him, but the means used must be proportionate to the danger threatened. Davis v. Kutta, 7 FSM R. 536, 544-45 (Chk. 1996).

Even though police may be privileged to use force to prevent the commission of a crime, the battery of an innocent bystander is not privileged. Davis v. Kutta, 7 FSM R. 536, 545 (Chk. 1996).

Civil liability for a battery is not limited to the direct perpetrator of the act charged, but extends to any

person who by any means encourages or incites the battery, or aids and abets it. Davis v. Kutta, 7 FSM R. 536, 545 (Chk. 1996).

Where a number of people fired weapons and others encouraged them to fire or surrendered their weapon so another could fire it, all are jointly and severally liable for battery on an innocent bystander as the person who fired the bullet that struck her. Davis v. Kutta, 7 FSM R. 536, 545 (Chk. 1996).

The commission of the intentional tort of battery by police officers in the scope of their employment is a denial of due process of law. Davis v. Kutta, 7 FSM R. 536, 548 (Chk. 1996).

Battery is the harmful or offensive contact with a person, resulting from an act intended to cause that contact, while an assault refers to the apprehension of that offensive contact. Once the court is satisfied from the evidence that an actual injury has occurred then it need not consider the separate tort of assault. Conrad v. Kolonia Town, 8 FSM R. 183, 191 (Pon. 1997).

Civil liability for a battery is not limited to the direct perpetrator of the act charged. It extends to any person who by any means encourages or incites the battery, or aids and abets it. Each officer who encouraged any other officer to become involved in the fight with plaintiff, either by direct command, by statements or by providing the means for another officer to become involved, is as liable for the battery on plaintiff as the person who actually delivered the kick to his leg. Conrad v. Kolonia Town, 8 FSM R. 183, 192 (Pon. 1997).

The tort of battery is an intentional tort; therefore none of the defenses to negligence such as assumption of risk, comparative negligence, contributory negligence and last clear chance apply to intentional actions on the part of the defendants. Conrad v. Kolonia Town, 8 FSM R. 183, 193 (Pon. 1997).

Privilege is a legal defense to the tort of battery and may be based upon the consent of the person who is the one affected by the touching, or the fact that the touching is a necessity to protect some private or public interest which is of such importance as to justify the threatened harm or, that the touching is one which the actor must cause in the exercise of some action for which freedom of action is essential. Conrad v. Kolonia Town, 8 FSM R. 183, 193 (Pon. 1997).

The commission of the intentional tort of battery by the police officers in the scope of their employment is a denial of due process of law. Physical abuse committed by police officers may violate a prisoner's right to due process of law. The right to due process of law is violated when a police officer batters a person. The public at large has the right to be free of invasions of their person and personal security by any government agent and suspects have the right to be free from the use of excessive force during their arrest. Conrad v. Kolonia Town, 8 FSM R. 183, 195 (Pon. 1997).

A municipality is liable for battery by its police officers when it has ratified their actions by failing to charge them and the lack of any internal discipline whatsoever. Conrad v. Kolonia Town, 8 FSM R. 183, 195 (Pon. 1997).

It is not a manifest error of law or fact requiring a new trial that the court held police officers liable for battery without determining exactly which officer's action caused plaintiff's injury when the court found that each of the defendants had participated in plaintiff's arrest, the court discussed the issues of justifiable force and privilege throughout its decision, and found that defendants had acted with intent to bring about a harmful or offensive contact with plaintiff, which was not justified under the circumstances. Conrad v. Kolonia Town, 8 FSM R. 215, 217-18 (Pon. 1997).

Although under Pohnpeian custom it is inappropriate for a parent, or an individual who stands in the place of a parent, to see his daughter come home late at night with a boyfriend, it is not a corollary that that person is justified under custom in inflicting a battery on the boyfriend, or damaging car he is driving. Elymore v. Walter, 9 FSM R. 450, 456 (Pon. 2000).

When there was no evidence to suggest that a parent's customary privilege to discipline ran beyond the daughter to encompass her boyfriend as well, when there was no evidence to suggest that when the boyfriend dropped the daughter off he was threatening or in any other way posing a danger of physical harm to her such that the parent was entitled to inflict a battery upon the boyfriend in order to defend the daughter as he may have been obligated to do under custom, and when there was no evidence that under custom a parent could attack the car driven by the daughter's boyfriend with the baseball bat as a way of demonstrating his displeasure with the boyfriend for his role in keeping her out late, and in dropping her off under circumstances where he would see them together, Pohnpeian custom does not constitute a defense to either the battery or property damage claims. Elymore v. Walter, 9 FSM R. 450, 456 (Pon. 2000).

Battery is a harmful, offensive contact with a person resulting from an act intended to cause the contact, while an assault has to do with the apprehension of the offensive contact; when the court determines that a battery has occurred, it need not consider the separate tort of assault. Elymore v. Walter, 9 FSM R. 450, 458 (Pon. 2000).

It is enough to constitute a battery that the defendant sets a force in motion which ultimately produces the result, such as striking a glass door so that the plaintiff is hit with the fragments. Elymore v. Walter, 9 FSM R. 450, 458 (Pon. 2000).

Punitive damages are awarded as a punishment to the defendant for his wrongful act and as a warning and example to deter him and others from committing similar acts in the future. As a general rule, punitive damages are allowed for an assault and battery committed wantonly, maliciously, or under circumstances of aggravation. Since battery usually is a matter of the worst kind of intentions, it frequently justifies punitive damages. Elymore v. Walter, 9 FSM R. 450, 459 (Pon. 2000).

A detainee has a civil right to be free of excessive force while detained in the custody. Use of excessive force may constitute a battery. Atesom v. Kukkun, 10 FSM R. 19, 22 (Chk. 2001).

The state, as employer of a police trainee, is responsible for the battery committed by the trainee while acting within the scope of that employment. Atesom v. Kukkun, 10 FSM R. 19, 22 (Chk. 2001).

A battery or wrongful death, by itself, does not constitute a civil rights violation. Harper v. William, 14 FSM R. 279, 282 (Chk. 2006).

Excessive force is defined as the use of unreasonable force by a person having the authority to arrest. A person who has been arrested has the right to be free of excessive force and use of excessive force may constitute battery. Berman v. Pohnpei, 16 FSM R. 567, 575 (Pon. 2009).

When there was no evidence that any policemen had an intent to cause an arrestee physical or bodily harm, the state is not liable to her under either theory of assault or battery. Berman v. Pohnpei, 16 FSM R. 567, 575 (Pon. 2009).

Defenses to negligence, such as comparative negligence, which might lessen an award of damages, do not apply to the intentional tort of battery. Higgins v. Kolonia Town, 17 FSM R. 254, 261 (Pon. 2010).

A trial court errs as a matter of law by using, in a civil case, a criminal statute to determine the torts' elements and whether the plaintiff was an assault and battery victim. Because it was not a criminal prosecution, the trial court should have looked to Pohnpei tort law and used the elements of the torts of assault and of battery. Berman v. Pohnpei, 17 FSM R. 360, 372 (App. 2011).

Under Pohnpei tort law, a battery is a harmful, offensive contact with a person resulting from an act intended to cause the contact, while an assault has to do with the apprehension of the offensive contact. When a court is satisfied from the evidence that an actual injury has occurred, that is, determined that a

battery has occurred, it need not consider the separate tort of assault. Berman v. Pohnpei, 17 FSM R. 360, 372 (App. 2011).

Privilege is a legal defense to the torts of assault and battery and may be based upon the fact that the touching is a necessity to protect some private or public interest which is of such importance as to justify the threatened harm. A lawful arrest is just such a privilege and a valid defense to the assault claim and to the battery claim so long as excessive force is not used. Berman v. Pohnpei, 17 FSM R. 360, 372 (App. 2011).

Whether the Pohnpei police injured an arrestee through the use of excessive force and thus battered her is a question of fact. Thus, when the trial court found as fact that the arrestee had caused her own injuries by struggling with the handcuffs during the travel from the arrest site to the police station, which resulted in the handcuffs tightening further around her wrists and that the handcuffs' tightening was not the result of an officer's conduct, but rather was the result of her own movements, the police did not cause her injury and no use-of-excessive-force battery could have occurred. Berman v. Pohnpei, 17 FSM R. 360, 372 (App. 2011).

Battery is a harmful or offensive contact with a person, resulting from an act intended to cause the plaintiff to suffer such a contact. Palasko v. Pohnpei, 21 FSM R. 562, 564 (Pon. 2018).

According to Pohnpei law, battery is a harmful or offensive contact with a person, resulting from an act intended to cause the plaintiff to suffer such contact. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 31 (Pon. 2018).

Since an essential element for the tort of battery is that the act constituting the battery intended to cause the plaintiff to suffer such contact, a battery claim will be dismissed when there is no evidence to suggest that the forklift operator intended to batter the plaintiff and when this was a workplace accident, not an intentional act. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 31-32 (Pon. 2018).

Under Pohnpei law, battery is a harmful or offensive contact with a person, resulting from an act intended to cause that person to suffer such contact. Pelep v. Lapaii, 22 FSM R. 482, 486 (Pon. 2020).

An essential element to a claim for the tort of battery is that the act constituting the battery was intended to cause the plaintiff to suffer injury from such contact. Pelep v. Lapaii, 22 FSM R. 482, 487 (Pon. 2020).

The defense of voluntary intoxication is not applicable when the defendant's actions constituting a battery were harmful and intentional. Pelep v. Lapaii, 22 FSM R. 482, 487 (Pon. 2020).

Punitive damages are awarded to punish a defendant for his wrongful act and as a warning and example to deter him and others from committing similar acts in the future. As a general rule, punitive damages are allowed for an assault and battery committed wantonly, maliciously, or under circumstances of aggravation. Since battery usually is a matter of the worst kind of intentions, it frequently justifies punitive damages. Pelep v. Lapaii, 22 FSM R. 482, 490 (Pon. 2020).

– Breach of Fiduciary Duty

Where the defendant has breached her fiduciary duty, and converted to her own personal use funds of others, has made no claim of right to any of the funds or offered any defense, and blame thus lies wholly with the defendant, the plaintiff will be allowed to recover its attorney's fees in order to make the victim whole. This is a narrowly drawn exception to the general rule parties will bear their own attorney's fees. Bank of Guam v. Nukuto, 6 FSM R. 615, 617-18 (Chk. 1994).

A financial institution, such as a credit union, that holds money from depositors does have an on-going fiduciary duty to its depositors. Wakuk v. Kosrae Island Credit Union, 7 FSM R. 195, 197 (Kos. S. Ct. Tr.

1995).

A plaintiff's complaint, stating two causes of action for breach of fiduciary duty (both existing under common law), does not arise under the national laws of the FSM so as to confer original jurisdiction on the FSM Supreme Court or show on its face an issue of national law thereby creating removal jurisdiction. David v. San Nicolas, 8 FSM R. 597, 598 (Pon. 1998).

When a case has been removed from state court on the ground that it arose under national law but the plaintiff's complaint only relies upon common law principles of breach of fiduciary duty and as such does not arise under national law because no issue of national law appears on the face of the complaint and no substantial issue of national law is raised, the case will be remanded to the state court where it was initially filed. David v. San Nicolas, 8 FSM R. 597, 598 (Pon. 1998).

FSM case law has not acknowledged the existence of the tort of breach of fiduciary duty in the context of insurance or any other context except banking. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 308 (Pon. 2004).

In a narrowly drawn exception to the general rule that the parties will bear their own attorney's fees, attorney's fees have been awarded as part of costs when a defendant has breached her fiduciary duty to the plaintiff. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 472 (Pon. 2004).

An employee or agent is liable to a third person for injuries resulting from the breach of any duty which the employee or agent owes directly to such third person, and is not liable to a third person for injuries resulting from a breach of duty which the employee or agent owes only or solely to his employer. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 438-39 (Pon. 2009).

Since insurance agents are required to exercise the utmost good faith, loyalty, and honesty toward the insurer during the times that they acted as the insurer's agents, by cashing the premium checks, and thereby failing to send the checks on to the insurer, they breached this duty. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 441 (Pon. 2009).

A defense that the plaintiff should have made a claim against its errors and omissions policy is without merit even if such a policy existed, because the contract expressly addresses what happens. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 445 (Pon. 2009).

Damages for an insurer's claim for breach of fiduciary duty are the same as those for its contract claim, since the breach of fiduciary duty claim is also based on the breach of the agency contracts that the insurer had with its agents. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 446 (Pon. 2009).

Generally, a party bears its own attorney's fees, and this rule is the proper foundation upon which the system in the FSM should be built. An exception to this general rule is that attorney's fees have been awarded for a breach of fiduciary duty. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 449 (Pon. 2009).

Agency is the fiduciary relation which results from one person's manifestation of consent to another that the other shall act on his behalf and subject to his control, and consent by the other to so act, and fiduciary is defined as relating to or founded upon a trust or confidence. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 (App. 2012).

An agent is a fiduciary with respect to the matters within the scope of his agency and the agent is bound to the exercise of the utmost good faith, loyalty, and honesty toward his principal. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 (App. 2012).

Since handling the principal's premium checks was within the scope of their agency and since the

agents did not exercise the utmost good faith, loyalty, and honesty toward the principal when they were its agents because they did not immediately remit all premium checks to the principal, the agents breached the fiduciary duty they owed to the principal and were properly found liable under a breach of fiduciary duty theory. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 (App. 2012).

– Breach of Implied Covenant of Good Faith

Breach of an implied covenant of good faith and fair dealing is a common law cause of action, which is a tort claim that arises out of a contractual relationship between the parties. The implied covenant of good faith and fair dealing rests on the premise that whenever a party's cooperation is necessary for the performance of a contractual promise, there is a condition implied that the cooperation will be given. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 307 (Pon. 2004).

Contracts impose on the parties thereto a duty to do everything necessary to carry them out, and there is an implied undertaking in every contract on each party's part that he will not intentionally and purposely do anything to prevent the other party from carrying out his part of the agreement, or do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract, and the FSM Supreme Court will entertain such claims in the context of insurance contracts, where the insurer possesses greater sophistication, can be expected to assist local insureds in understanding the relevant legal terminology, and has a specialized role in processing claims. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 307 (Pon. 2004).

The court cannot say that an insurance claims process which consumed between 3 and 4 months from the filing of the claim to the issuance of a denial is so lengthy, so egregious, as to constitute bad faith as a matter of law. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 308 (Pon. 2004).

Courts have permitted attorney's fee awards under the vexatious conduct exception when the plaintiff has proven the defendant's breach of the implied covenant or implied duty of good faith and fair dealing (also called the bad faith tort). If a plaintiff were to prevail on a bad faith tort claim against an insurer, the insurer would be liable to him for reasonable attorney's fees that are proximately caused by the bad faith conduct. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 471 (Pon. 2004).

Since contracts impose upon the parties an implied undertaking that each party will not intentionally or purposefully do anything to prevent the other party from carrying out its part of the agreement, breach of an implied covenant of good faith is a common law tort claim that arises out of a contractual relationship between the parties. The court has not yet extended this doctrine's application to contracts beyond insurance contracts. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 605 (Pon. 2009).

Subject to proof at trial, a breach of an implied covenant of good faith claim may sound, at least in part, in contract rather than in tort. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 605 (Pon. 2009).

Breach of an implied covenant of good faith and fair dealing is a common law cause of action, which is a tort claim that arises out of a contractual relationship between the parties. The implied covenant of good faith and fair dealing rests on the premise that whenever a party's cooperation is necessary for the performance of a contractual promise, there is a condition implied that the cooperation will be given. Johnny v. Occidental Life Ins., 19 FSM R. 350, 361 (Pon. 2014).

Contracts impose on the parties a duty to do everything necessary to carry them out, and there is an implied undertaking in every contract on each party's part that he will not intentionally and purposely do anything to prevent the other party from carrying out his part of the agreement, or do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract. The FSM Supreme Court will entertain such claims in the context of insurance contracts, when the insurer possesses greater sophistication, provides the policy, can be expected to assist insureds in understanding the relevant terminology in the policy, and has a specialized role in processing claims. Johnny v. Occidental Life Ins., 19 FSM R. 350, 361-62 (Pon. 2014).

The duty of good faith and fair dealing is implied in the performance and enforcement of all contracts. Johnny v. Occidental Life Ins., 19 FSM R. 350, 362 (Pon. 2014).

Under the circumstances of an insurance case, there may be a duty to disclose information, based on a relationship of confidence or trust between the parties, or based on one party's superior knowledge or means of knowledge. Johnny v. Occidental Life Ins., 19 FSM R. 350, 362 (Pon. 2014).

As used in the insurance context, bad faith does not refer to misconduct of a malicious or immoral nature. Rather, the bad faith concept emphasizes unfaithfulness to an agreed common purpose or to the justifiable expectations of the other party to the contract. In short, a showing of bad faith requires that insurers not act unreasonably or arbitrarily when dealing with their insureds. Johnny v. Occidental Life Ins., 19 FSM R. 350, 362 (Pon. 2014).

The breach of an implied covenant of good faith and fair dealing is a common law tort claim that arises out of a contractual relationship between the parties because contracts impose upon the parties an implied undertaking that each party will not intentionally or purposefully do anything to prevent the other party from carrying out its part of the agreement. FSM courts, however, have not yet extended this doctrine's application to contracts other than insurance contracts. George v. Palsis, 19 FSM R. 558, 568 (Kos. 2014).

When the court has ruled that the plaintiff's right to payment for accrued annual leave hours was contingent on him giving at least two weeks' written notice of his resignation and that since he was terminated involuntarily those events never occurred, the defendants are entitled to summary judgment on the plaintiff's breach of an implied covenant of good faith and fair dealing cause of action insofar as it applies to the plaintiff's accrued annual leave hours claim. George v. Palsis, 19 FSM R. 558, 568 (Kos. 2014).

When the court has not held that the implied covenant of good faith and fair dealing could never be applied to an employment contract, the court, at the summary judgment stage of the proceeding, will not dismiss this cause of action as it might apply to the plaintiff's claim for wrongful termination in violation of his employment contract. George v. Palsis, 19 FSM R. 558, 568 (Kos. 2014).

An injured claimant may not sue an insurer for breach of the duty of good faith and fair dealing. The duty is a product of the fiduciary relationship created by the contract between the insurer and its insured. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 213 (Yap 2015).

An insured's cause of action for the insurer's breach of the covenant of good faith and fair dealing is assignable to the injured third-party claimant, and the assignee may sue on it. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 213 (Yap 2015).

The breach of an implied covenant of good faith and fair dealing is a common law tort claim that arises out of a contractual relationship between the parties because contracts impose upon the parties an implied undertaking that each party will not intentionally or purposefully do anything to prevent the other party from carrying out its part of the agreement. This tort requires some sort of bad faith on the defendant's part. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 428 (App. 2016).

Not every mistake by an insurer or its agent rises to the level of bad faith – is automatically unreasonable or arbitrary. An insurance agent's misrepresentation, particularly an unintentional misrepresentation, may breach the agent's duty of care toward the insured rather than constitute bad faith and unreasonable and arbitrary conduct towards an insured. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 428 (App. 2016).

When the insurance agents' failure to differentiate between the insured's life and cancer policies was

careless, but not arbitrary and unreasonable, and did not deprive the insured of her bargained-for benefit, the trial court's conclusion that the insurers breached the implied covenant of good faith and fair dealing or that they engaged in bad faith conduct was reversible error. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 428-29 (App. 2016).

Breach of an implied covenant of good faith and fair dealing is a common law cause of action. It is a tort claim that arises out of a contractual relationship between the parties, and it rests on the premise that whenever a party's cooperation is necessary for the performance of a contractual promise, there is a condition implied that the cooperation will be given. Donre v. FSM Nat'l Gov't Employees' Health Ins. Plan, 21 FSM R. 592, 598 (Pon. 2018).

When, because of the insured's misconduct, the insurer was not obligated to cooperate by extending medical coverage to the insured, the insured's cause of action for breach of implied covenant of good faith and fair dealing is void. Donre v. FSM Nat'l Gov't Employees' Health Ins. Plan, 21 FSM R. 592, 598 (Pon. 2018).

– Causation

The excavation of large holes on the land of private citizens, in areas where children play, and near a public road, is inherently dangerous and calls for special precautions. One who causes such work to be undertaken may not escape liability simply by employing an independent contractor to do the work. Ray v. Electrical Contracting Corp., 2 FSM R. 21, 25 (App. 1985).

Medical malpractice by hospital staff does not relieve a tortfeasor of his responsibility for damages, because any injuries that might have been caused by the staff flowed naturally from his own acts. Primo v. Refalopei, 7 FSM R. 423, 429 (Pon. 1996).

The proximate cause of an injury is the primary or moving cause which in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, if the injury be one which might be reasonably anticipated or foreseen as a natural consequence of the wrongful act. Primo v. Refalopei, 7 FSM R. 423, 429 (Pon. 1996).

Medical actions of a hospital staff do not constitute an efficient intervening cause that would break the causal link between a tortfeasor's attack and the plaintiff's injuries. Primo v. Refalopei, 7 FSM R. 423, 429 (Pon. 1996).

The employment of a police officer with ten-year old charges and or convictions for violent behavior is insufficient to hold a municipality liable for negligent hiring because the charges and or convictions were too remote and attenuated to be the proximate cause of the plaintiff's injury. Conrad v. Kolonia Town, 8 FSM R. 183, 194 (Pon. 1997).

Proximate cause is the primary or moving cause, or that which, in a natural and continuous sequence; unbroken by any efficient intervening cause, produces the injury and without which the accident could not have happened, if the injury be one which might be reasonably anticipated or foreseen as a natural consequence of the wrongful act. Conrad v. Kolonia Town, 8 FSM R. 183, 194 (Pon. 1997).

Failure to use due care under the circumstances in maintaining a telephone pole guy wire is the proximate cause of an eye injury resulting from a collision with the defective wire because the injury was one that might be reasonably anticipated or foreseen as a natural consequence of the wrongful act. Asher v. Kosrae, 8 FSM R. 443, 450-51 (Kos. S. Ct. Tr. 1998).

The plaintiff has not shown a causative link between the alleged contamination and her injury sufficient to withstand the defendants' summary judgment motion when, as between contaminated and uncontaminated kerosene, a reasonable trier of fact could not exclude the latter so as to conclude that it

was the former that caused her injury. William v. Mobil Oil Micronesia, Inc., 10 FSM R. 584, 586 (Pon. 2002).

Speculation, guess and surmise may not be substituted for competent evidence, and where there are several possible causes of one accident, one or more of which a defendant is not responsible for, a plaintiff cannot recover without proving that the injury was sustained wholly or in part by a cause for which the defendant was responsible. William v. Mobil Oil Micronesia, Inc., 10 FSM R. 584, 587 (Pon. 2002).

When a reasonable trier of fact could not exclude the plaintiff's playing with matches and uncontaminated – as opposed to contaminated – kerosene as the cause of her injuries, it follows that the record taken as a whole could not lead a rational trier of fact to find for her and that the defendants' summary judgment motion must be granted. William v. Mobil Oil Micronesia, Inc., 10 FSM R. 584, 587 (Pon. 2002).

When a plaintiff's determination of ownership is for a lot with one number and the bank holds mortgages on lots with other numbers, the bank does not have a mortgage for the plaintiff's lot and there is no proximate cause between the bank acquiring the mortgage and any later alleged damage to the plaintiff's lot. Whether the mortgage was properly recorded is immaterial. If the plaintiff was damaged, the mortgage did not cause it. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 128 (Chk. 2005).

Causation and damages can appropriately be proven on a class basis when the basis for each resident's claim is the same: a shared traditional ownership of the right to use the marine natural resources appertaining to the municipalities of which each is resident and each class member is seeking to recover for a trespass or nuisance injury to their shared use right interest and the type of injury is common to all class members, such as inability to use or consume marine resources from the inner lagoon because of the necessary government ban on these and injury to particular resources because of the grounding and oil spill, *i.e.*, the reef and mangrove areas. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 417 (Yap 2006).

Causation in maritime tort law is similar to the common law causation principle. A defendant's act or omission must be the proximate cause of the plaintiff's injury. An injury is proximately caused by an act, or failure to act, whenever it appears from the evidence that the act or omission played a substantial part in bringing about or actually causing the injury or damage, and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 417 (Yap 2006).

Causation and damages can appropriately be proven on a class basis when the basis for each person's claim is the same. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 160 (Yap 2007).

The circumstantial evidence proves proximate cause even though exactly how the reef was damaged – whether anchors and/or chains were dragged on the reef; or whether a detached or slack cable or chain used to connect the barge to the tugboat struck the reef; or whether one or both of the vessels struck the reef; or whether some combination of these was responsible – is undetermined since the damages occurred while the two vessels were on the site (or while just the barge was there) and since no other vessels were present at the time and the damage was of the type that must have been caused by one or more of the methods described. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 174-75 (Yap 2012).

When it was the decedent's own actions that were the proximate cause of his death, the causation element of wrongful death cannot be proven. Ruben v. Chuuk, 18 FSM R. 425, 431 (Chk. 2012).

When the delay before a referral to an off-island medical facility, regardless of who caused it, did not proximately cause the patient's death, it cannot be the basis to hold anyone liable for her death. William v.

Kosrae State Hosp., 18 FSM R. 575, 581 (Kos. 2013).

When the insurance carrier approved the patient's off-island referral within two days and was ready to put her on the earliest possible flight but the patient did not leave until 20 days later and when this long delay was the proximate cause of the patient's death, the insurance carrier's actions were not the proximate cause of her death because the insurance carrier did not cause the delay. William v. Kosrae State Hosp., 18 FSM R. 575, 581 (Kos. 2013).

When the employer provided the employee with a short safety briefing prior to his beginning work, but failed to provide him with the proper safety equipment necessary to safely perform his work duties, namely proper protective work shoes which are standard to the industry, it is clear that but for the employer's breach in not providing for or otherwise requiring the proper working boots before allowing him to begin work, he would not have been injured. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 29 (Pon. 2018).

– Comparative Negligence

Comparative negligence, which has displaced contributory negligence in most jurisdictions in the United States, should be given careful consideration by courts even though the *Restatement (Second) of Torts* refers only to contributory negligence and is silent about comparative negligence. There is reason to doubt that the FSM Supreme Court is bound by 1 F.S.M.C. 203 pointing to the *Restatements* as a guide for determining and applying the common law. Ray v. Electrical Contracting Corp., 2 FSM R. 21, 23 n.1 (App. 1985).

Apportionment of fault among several defendants in a personal injury case must be based on the Pohnpeian concept of "kaidehn peid sipal ieu dihp," which requires each wrongdoer to bear the consequences of his or her own fault. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 75 (Pon. S. Ct. Tr. 1986).

In keeping with the spirit of Pohnpeian custom, when defendants are at fault, they should share in the payment of damages based upon their share of liability. Koike v. Ponape Rock Products, Inc. (II), 3 FSM R. 182, 185 (Pon. S. Ct. Tr. 1987).

In apportioning damages among negligent parties, the Pohnpei Supreme Court will consider the following factors: the Pohnpei Constitution, custom and tradition, the degree of negligence of each party, other jurisdictions' efforts to abolish joint liability, the need to minimize the role of insurance companies given Pohnpei's stage of development, the example of the U.S. insurance crisis, other jurisdictions' efforts to modify the rules governing joint and several liability, and American judges' assessments of joint and several liability. Koike v. Ponape Rock Products, Inc. (II), 3 FSM R. 182, 185 (Pon. S. Ct. Tr. 1987).

The "pure system" of comparative negligence is available as a defense to defendants in Chuuk State. The defendant is entitled to a proportional reduction in any damage award upon proof that the plaintiff's negligence was in part the cause of his injuries. Epiti v. Chuuk, 5 FSM R. 162, 167-68 (Chk. S. Ct. Tr. 1991).

Where an employee is commanded to take an action which creates a known risk of injury, his obedience to the command will not bar subsequent recovery for injuries suffered, even where the risk of injury is apparent, but this will not excuse clearly reckless conduct by the employee where he had full knowledge of reasonable means to limit or prevent the injury. Epiti v. Chuuk, 5 FSM R. 162, 169 (Chk. S. Ct. Tr. 1991).

As a loss of consortium claim is derivative from a spouse's claim for damages an award for loss of consortium is properly reduced by the percentage of fault attributable to the spouse. Epiti v. Chuuk, 5 FSM R. 162, 170 (Chk. S. Ct. Tr. 1991).

The doctrine of comparative negligence is more consistent with life in Pohnpei in that the doctrine recognizes that injuries and damages are often caused through a combination of errors and misjudgments by more than one person. Nothing in Pohnpei custom absolves a party who caused injury to another from the customary obligations of apology and reconciliation because the injured party's negligence contributed to the injury. Alfons v. Edwin, 5 FSM R. 238, 242 (Pon. 1991).

Comparative negligence, unlike contributory negligence permits assessment of relative degrees of responsibility and allows awards on that basis. Alfons v. Edwin, 5 FSM R. 238, 242 (Pon. 1991).

Doctrine of comparative negligence is more consistent with custom and tradition on Pohnpei unless, and until the highest Pohnpei state court rules otherwise. Alfons v. Edwin, 5 FSM R. 238, 242-43 (Pon. 1991).

In order for a third party's negligent conduct to afford any relief to defendants by way of a contributory (comparative) negligence theory, it must be demonstrated that the negligent act or omission somehow caused or contributed to the injury sustained and that there was not an independent or superseding cause. Ludwig v. Mailo, 5 FSM R. 256, 261 (Chk. S. Ct. Tr. 1992).

Under the "pure" form of comparative negligence, which is a defense available in Chuuk, a defendant is entitled to a proportional reduction in any damage award upon proof that the plaintiff's negligence was in part the cause of his injuries, but the plaintiff may still recover for all of the harm attributable to the defendant's wrongdoing even if plaintiff's negligence was greater than the defendant's. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 63, 66 (Chk. 1997).

Comparative negligence, not assumption of risk, is the rule in Pohnpei. Amayo v. MJ Co., 10 FSM R. 244, 250 (Pon. 2001).

Comparative fault is a preferable doctrine to that of contributory negligence, and should be considered the law in Pohnpei until and unless the Pohnpei Supreme Court rules otherwise. Primo v. Semes, 11 FSM R. 324, 330 (Pon. 2003).

Under comparative fault principles, a defendant will only be held liable for the percentage of fault he is found responsible for, if any. Primo v. Semes, 11 FSM R. 324, 330 (Pon. 2003).

Comparative fault or comparative negligence is the rule in Chuuk. Under the "pure system" of comparative negligence, which has been recognized as an available defense in Chuuk, a defendant is entitled to a proportional reduction in any damage award upon proof that the plaintiff's negligence was in part the cause of the plaintiff's injuries. Kileto v. Chuuk, 15 FSM R. 16, 18 (Chk. S. Ct. App. 2007).

Neither contributory negligence nor comparative negligence is a defense to a conversion action. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 444-45 & n.5 (Pon. 2009).

Chuuk is a comparative negligence or comparative fault jurisdiction. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 49 (Chk. 2010).

The "pure system" of comparative negligence is applicable in Chuuk; that is, a defendant is liable only for the portion of the harm attributable to the defendant's wrongdoing. To illustrate, if the damage caused by a defendant was 12% greater than what the damage would have been, the defendant would be liable for no more than 12% of whatever actual monetary damages the plaintiffs could prove. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 49 (Chk. 2010).

Defenses to negligence, such as comparative negligence, which might lessen an award of damages, do not apply to the intentional tort of battery. Higgins v. Kolonia Town, 17 FSM R. 254, 261 (Pon. 2010).

Neither contributory nor comparative negligence is a defense against a common law action for conversion. For comparative negligence to be a defense, the plaintiff's cause of action must be one based on negligence. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 356 (App. 2012).

Conversion is an intentional tort and not a cause of action based on negligence and thus comparative negligence cannot be a defense to conversion. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 356 (App. 2012).

Chuuk is a comparative fault or comparative negligence jurisdiction and follows the "pure system" of comparative negligence. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 624 (Chk. S. Ct. App. 2020).

When the defendant had pled comparative negligence as an affirmative defense, and the issue of who was at fault was tried, the trial court should consider comparative negligence when weighing the evidence about fault. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 624 (Chk. S. Ct. App. 2020).

– Conspiracy

In a case in which the defendant proposes a standard of requiring clear and convincing evidence in civil conspiracy cases rather than a preponderance based upon conditions, customs and traditions in Micronesia, it is incumbent upon him to establish such conditions by evidence, because the court will not take judicial notice of such conditions, customs or traditions. Opet v. Mobil Oil Micronesia, Inc., 3 FSM R. 159, 164 (App. 1987).

In a case of civil conspiracy, the burden of proof is a preponderance of the evidence, not a clear and convincing standard, in order to establish the conspiracy. Opet v. Mobil Oil Micronesia, Inc., 3 FSM R. 159, 164 (App. 1987).

In a civil case, the plaintiff has the burden of proving each element of his cause of action by a preponderance of the evidence, and if he fails to do so, judgment will be entered against him. The preponderance of the evidence standard also applies to a civil action for conspiracy. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 456 (Pon. 2009).

Liability for civil conspiracy depends on performance of some underlying tortious act. The conspiracy is not independently actionable; rather, it is a means for establishing vicarious liability for the underlying tort. The mere common plan, design or even express agreement is not enough for liability in itself, and there must be acts of a tortious character in carrying it into execution. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 457 (Pon. 2009).

When the plaintiff has not met his burden of showing that the defendant is liable on any underlying tort theory, his claim that the defendant conspired to commit such a tort must also fail. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 457-58 (Pon. 2009).

Since civil conspiracy is not a cause of action unless an underlying civil wrong has been committed and caused damage, when certain tort counterclaims have survived dismissal motions, the civil conspiracy counterclaim, limited to those underlying torts, will survive a motion to dismiss. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 605 (Pon. 2009).

Liability for civil conspiracy depends on performance of some underlying tortious act and is not independently actionable; rather, it is a means for establishing vicarious liability for the underlying tort. Mori v. Hasiguchi, 19 FSM R. 222, 226 (Chk. 2013).

Civil conspiracy is not an independently actionable tort because it requires the performance of some underlying tortious act, and is a means for establishing vicarious liability for that underlying tort. Panuelo v. FSM, 22 FSM R. 498, 504 (Pon. 2020).

A civil conspiracy cause of action will likely not be dismissed for the failure to state a claim if the complaint also states a claim for one or more of the alleged underlying torts. Panuelo v. FSM, 22 FSM R. 498, 504 (Pon. 2020).

– Contribution

The right of contribution among tortfeasors, where two or more persons become jointly or severally liable in tort for the same injury to a person, is subject to certain limitations which are set out in the statute that creates the cause of action for contribution among joint tortfeasors. Joy Enterprises, Inc. v. Pohnpei Utilities Corp., 8 FSM R. 306, 309 (Pon. 1998).

When a defendant's and plaintiff's prejudgment settlement, by its terms, did not extinguish or discharge a third-party defendant's potential liability to the plaintiff, the defendant's contribution action against the third-party defendant is barred, even though, since the statute of limitations had run, the settlement had the effect of extinguishing the plaintiff's potential claims against the third-party defendant. Under 6 F.S.M.C. 1202(4), for the defendant to be allowed to maintain a contribution action the settlement itself must either have discharged the common liability or extinguished the third-party defendant's liability. Joy Enterprises, Inc. v. Pohnpei Utilities Corp., 8 FSM R. 306, 311 & n.4 (Pon. 1998).

Although the FSM Supreme Court has recognized claims for indemnity based on contractual provisions between two parties, and required precise clarity in the indemnification clause language, it is not prepared to create a common law indemnity claim. Joy Enterprises, Inc. v. Pohnpei Utilities Corp., 8 FSM R. 306, 311 (Pon. 1998).

By statute, when two or more persons become jointly or severally liable in tort there is a right of contribution among them. Senda v. Semes, 8 FSM R. 484, 495 (Pon. 1998).

The date of accrual for a contribution cause of action is the day the judgment was entered. Obviously a prerequisite to any successful contribution action based on a judgment is the judgment itself. The limitations period for a contribution action is six years. Senda v. Semes, 8 FSM R. 484, 500-01 (Pon. 1998).

A person who has discharged more than his proportionate share of a duty owed by himself and another and who is entitled to contribution from the other is entitled to reimbursement limited to the proportionate amount of his net outlay properly expended. When incurred interest expense is part of his net outlay properly expended, the other should contribute toward the interest expense. Senda v. Semes, 8 FSM R. 484, 508 (Pon. 1998).

By statute, a tort-feasor who enters into a settlement agreement is not entitled to recover contribution from another tort-feasor whose liability for the injury or wrongful death is not extinguished by the settlement. Tom v. Pohnpei Utilities Corp., 9 FSM R. 82, 88 (App. 1999).

By statute, a tort-feasor, against whom there is no judgment, and who has agreed while the action was pending against him to discharge the common liability, may sue for contribution within one year of the agreement if he has paid the liability. Tom v. Pohnpei Utilities Corp., 9 FSM R. 82, 88 (App. 1999).

6 F.S.M.C. 1202(4) bars a contribution claim when a settlement agreement does not extinguish another tort-feasor's liability because that liability had already been extinguished by the relevant statute of limitations. Tom v. Pohnpei Utilities Corp., 9 FSM R. 82, 89 (App. 1999).

A defendant is barred from seeking contribution from a joint-tortfeasor when its settlement agreement with the plaintiffs recites that the release does not affect either the plaintiffs' or the defendant's claims against the joint tort-feasor. Tom v. Pohnpei Utilities Corp., 9 FSM R. 82, 89 (App. 1999).

When a defendant is granted summary judgment on the complaint against him, that defendant's cross-claim for contribution and indemnification from another defendant in the event that he is found liable on the complaint will be dismissed since he has no basis to seek indemnification or contribution because the summary judgment order dismissed the complaint against him. Kosrae v. Worswick, 10 FSM R. 288, 292 (Kos. 2001).

No right of contribution exists when a party has not paid more than his pro rata share of the common liability because there has not yet been any finding of liability against any party. Primo v. Semes, 11 FSM R. 324, 330 (Pon. 2003).

An action for contribution may be enforced by a separate action, or by motion when a judgment has been entered against two or more tort-feasors for the same injury or wrongful death, but when no judgment has yet been entered, claims for contribution are premature, and may not be brought by way of a counterclaim. Primo v. Semes, 11 FSM R. 324, 330 (Pon. 2003).

Although the FSM Supreme Court has recognized indemnity claims based on the parties' contractual provisions and has required precise clarity in the indemnification clause language, it has not been prepared to create a common law indemnity claim. Thus, when, even assuming the court were to find a defendant liable, there is no contractual provision for the plaintiff's indemnification by a defendant, a plaintiff's indemnity claim fails. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 112 (Pon. 2010).

Statutorily the right of contribution exists only in favor of a tort-feasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount paid by him in excess of his pro rata share. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 364 (App. 2012).

When no party has paid any of the judgment, an appellate court cannot rule on whether parties would be liable for contribution to a co-defendant since there can be no actual case or dispute until the co-defendant has paid more than its pro rata share because anything the appellate court says now would be an advisory opinion and it does not have any jurisdiction to give advisory opinions. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 364 (App. 2012).

Although the double negative in the statute may make it difficult to quickly grasp the statute's plain meaning, 6 F.S.M.C. 1202(4) bars a tort-feasor's contribution claim against another tort-feasor when the tort-feasor's settlement agreement does not extinguish the other tort-feasor's liability. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 15 (Pon. 2015).

The statute bars a party from seeking contribution from a joint-tortfeasor when its settlement agreement with the claimants does not extinguish the joint tort-feasor's liability. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 16 (Pon. 2015).

When 12 F.S.M.C. 1202(4) would permit the plaintiff to seek contribution from the defendant only if the plaintiff's settlement with the claimant had extinguished the defendant's potential liability and when the plaintiff's complaint clearly states that it did not, the defendant is entitled to judgment in its favor on the plaintiff's contribution claim. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 16 (Pon. 2015).

– Contributory Negligence and Assumption of the Risk

Comparative negligence, which has displaced contributory negligence in most jurisdictions in the United States, should be given careful consideration by courts even though the *Restatement (Second) of Torts* refers only to contributory negligence and is silent about comparative negligence. There is reason to doubt that the FSM Supreme Court is bound by 1 F.S.M.C. 203 pointing to the *Restatements* as a guide for determining and applying the common law. Ray v. Electrical Contracting Corp., 2 FSM R. 21, 22 n.1 (App.

1985).

An employee who is performing a difficult task in one way and is given contrary instructions by his employer and who must be mindful of his employer's instructions or face a possible reprimand is not guilty of contributory negligence. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 66 (Pon. S. Ct. Tr. 1986).

Conduct on an employee's part, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection, constitutes contributory negligence. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 67 (Pon. S. Ct. Tr. 1986).

The common Pohnpeian custom of assisting a person in need should not be dispensed with in order to allow the defense of contributory negligence or assumption of risk to be raised. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 67 (Pon. S. Ct. Tr. 1986).

Assumption of risk typically involves one of the following situations: 1) plaintiff has given his consent in advance to relieve defendant of an obligation of conduct toward him, and to take his chances of injury from a known risk arising from what defendant is to do or leave undone; 2) plaintiff voluntarily enters into a relation with defendant, with knowledge that defendant will not protect him against the risk; 3) plaintiff is aware of a risk already created by defendant's negligence, but proceeds to encounter it by voluntarily taking part even after the danger is known to him. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 67-68 (Pon. S. Ct. Tr. 1986).

Contributory negligence of the owner of property is not a defense available to the wrongdoer in an action for conversion brought by the owner of the property. Opet v. Mobil Oil Micronesia, Inc., 3 FSM R. 159, 166 (App. 1987).

The doctrine of contributory negligence should not be adopted in Truk State in the absence of a statute because it is not in conformity with traditional Trukese concepts of responsibility; in Trukese custom, the wrongdoer cannot excuse his obligations to the injured person or the injured family by arguing that the injury was in part caused by the negligence of the injured party, or that someone else was also responsible. Suka v. Truk, 4 FSM R. 123, 127 (Truk S. Ct. Tr. 1989).

The absolute defenses of Assumption of the Risk and Contributory Negligence are contrary to the traditional Chuukese concepts of responsibility and shall not be available in Chuuk State. Epiti v. Chuuk, 5 FSM R. 162, 167 (Chk. S. Ct. Tr. 1991).

Where an employee is commanded to take an action which creates a known risk of injury, his obedience to the command will not bar subsequent recovery for injuries suffered, even where the risk of injury is apparent, but this will not excuse clearly reckless conduct by the employee where he had full knowledge of reasonable means to limit or prevent the injury. Epiti v. Chuuk, 5 FSM R. 162, 169 (Chk. S. Ct. Tr. 1991).

A plaintiff employee is not barred from recovery for his failure to exercise due care because defendant employer's conduct amounted to a reckless disregard for the safety of its employees. Alfons v. Edwin, 5 FSM R. 238, 241 (Pon. 1991).

Comparative negligence, not assumption of risk, is the rule in Pohnpei. Amayo v. MJ Co., 10 FSM R. 244, 250 (Pon. 2001).

Comparative fault is a preferable doctrine to that of contributory negligence, and should be considered the law in Pohnpei until and unless the Pohnpei Supreme Court rules otherwise. Primo v. Semes, 11 FSM R. 324, 330 (Pon. 2003).

"Assumption of the risk" is a common law defense to negligence, which acts as a complete bar to the plaintiff's recovery because it relieves the defendant of any duty of care to the plaintiff. Kileto v. Chuuk, 15

FSM R. 16, 17-18 (Chk. S. Ct. App. 2007).

The assumption of the risk defense is contrary to the traditional Chuukese concepts of responsibility and is generally not available in Chuuk. Kileto v. Chuuk, 15 FSM R. 16, 18 (Chk. S. Ct. App. 2007).

Those who dash in to save their own property from a peril created by the defendant's negligence, do not assume the risk where the alternative is to allow the threatened harm to occur. Kileto v. Chuuk, 15 FSM R. 16, 18 (Chk. S. Ct. App. 2007).

"Assumption of the risk" usually describes a common law negligence or other tort defense that acts as a complete bar to the plaintiff's recovery because it relieves the defendant of any duty of care to the plaintiff. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 286 (Chk. 2009).

Neither contributory negligence nor comparative negligence is a defense to a conversion action. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 444-45 & n.5 (Pon. 2009).

Neither contributory nor comparative negligence is a defense against a common law action for conversion. For comparative negligence to be a defense, the plaintiff's cause of action must be one based on negligence. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 356 (App. 2012).

– Conversion

Contributory negligence of the owner of property is not a defense available to the wrongdoer in an action for conversion brought by the owner of the property. Opet v. Mobil Oil Micronesia, Inc., 3 FSM R. 159, 166 (App. 1987).

One whose property is converted is entitled to interest at the legal rate from the time of conversion. Bank of Guam v. Nukuto, 6 FSM R. 615, 616 (Chk. 1994).

Where the defendant has breached her fiduciary duty, and converted to her own personal use funds of others, has made no claim of right to any of the funds or offered any defense, and blame thus lies wholly with the defendant, the plaintiff will be allowed to recover its attorney's fees in order to make the victim whole. This is a narrowly drawn exception to the general rule parties will bear their own attorney's fees. Bank of Guam v. Nukuto, 6 FSM R. 615, 617-18 (Chk. 1994).

The elements of an action for conversion are the plaintiffs' ownership and right to possession of the personalty, the defendant's wrongful or unauthorized act of dominion over the plaintiff's property inconsistent with or hostile to the owner's right, and resulting damages. Bank of Hawaii v. Air Nauru, 7 FSM R. 651, 653 (Chk. 1996).

The measure of damages in conversion is the property's market value at the time of conversion plus the legal rate of interest. Bank of Hawaii v. Air Nauru, 7 FSM R. 651, 653 (Chk. 1996).

When there has been no wrongful taking or disposal of the goods, and the defendant has merely come rightfully into possession and then refused to surrender them, demand and refusal are necessary to the existence of the tort of conversion. Continued silence and inaction can amount to a refusal. Bank of Hawaii v. Air Nauru, 7 FSM R. 651, 653 (Chk. 1996).

Punitive damages may be recoverable for conversion where the defendant's act was accompanied by fraud, ill will, malice, recklessness, wantonness, oppressiveness, willful disregard of the plaintiff's rights, or other circumstances tending to aggravate the injury, but defendant's mere failure to respond to an inquiry, or to answer a complaint is not a circumstance entitling a plaintiff to punitive damages. Bank of Hawaii v. Air Nauru, 7 FSM R. 651, 653 (Chk. 1996).

The elements of an action for conversion are the party's ownership and right to possession of the property, the other party's wrongful or unauthorized act of dominion over the property inconsistent with or hostile to the owner's right, and resulting damages. Jonas v. Paulino, 9 FSM R. 519, 521 (Kos. S. Ct. Tr. 2000).

A party's claim for conversion must fail and be dismissed when the has no ownership and rights to possession of the property because title has been confirmed in another. Jonas v. Paulino, 9 FSM R. 519, 521 (Kos. S. Ct. Tr. 2000).

An action for conversion requires proof of the following elements: 1) plaintiff's ownership and right to possession of the property, 2) defendant's wrongful or unauthorized action of dominion over the plaintiff's property inconsistent with or hostile to the owner's right, and 3) damages. Talley v. Lelu Town Council, 10 FSM R. 226, 235 (Kos. S. Ct. Tr. 2001).

When, although there is no dispute that the plaintiff's property was removed from its designated location without his consent and has not been recovered to date, the plaintiff did not prove by a preponderance of the evidence that either defendant converted the property by a wrongful act, the plaintiff cannot recover on his conversion claim. Talley v. Lelu Town Council, 10 FSM R. 226, 236 (Kos. S. Ct. Tr. 2001).

The doctrine of separation of powers is not violated every time a person, who happens to be a senator, allegedly misuses property that is traceable to an appropriation made under national law. If a senator takes a car, boat, desk, computer, or pen that rightfully is in the possession of another person or entity, he should bear the same responsibility and consequences as any other person: he could be charged criminally, or sued in a civil action by the rightful owner for conversion of that property. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 632 (Pon. 2002).

A claim that some private party has taken or deprived someone of their property is, if it was personal property that was allegedly taken, a claim for conversion or for trespass to chattels, and, if it was real property that was allegedly taken by some private party, it is a claim for trespass (including actions for ejectment) or possibly for nuisance (interference with use and enjoyment of land). They are not due process or takings claims. Rosokow v. Bob, 11 FSM R. 210, 215 (Chk. S. Ct. App. 2002).

Prejudgment interest has been allowed on conversion claims. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 471 (Pon. 2004).

The elements of an action for conversion are the plaintiff's ownership and right to possession of the personalty, the defendant's wrongful or unauthorized act of dominion over the plaintiff's property inconsistent with or hostile to the owner's right, and resulting damages. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 128-29 (Chk. 2005).

When, viewing the facts in the light most favorable to the plaintiff and accepting his well-pled allegations (which remain to be proven) as true, a corporation (while under receivership) took dominion over the plaintiff's property; quarried it for rock; crushed the rock into aggregate; sold it; paid various expenses, including workers' wages, the operator's fees, and the receiver's fee; and then paid the royalties, to which the corporation was entitled, to the bank to reduce its indebtedness to the bank, the bank never took dominion over the property the plaintiff alleges is his and the bank is therefore entitled to summary judgment in its favor as a matter of law on the plaintiff's conversion and the "unauthorized sale of property" (the quarried aggregate) claims. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 129 (Chk. 2005).

The elements of a conversion cause of action are: 1) the plaintiffs' ownership and right to possession of the personal property in question; 2) the defendant's unauthorized or wrongful act of dominion over the property that is hostile or inconsistent with the right of the owner; and 3) damages resulting from such action. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 438 (Pon. 2009).

Insurance agents took action inconsistent with and hostile to the insurer's ownership of premium checks when they cashed, or authorized the cashing of, the checks. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 438 (Pon. 2009).

An employee is herself jointly and severally liable with her employers for the checks she converted by cashing them while she was their employee because, under the doctrine of respondeat superior, an agent's act within the scope of his or her agency is the act of the principal, and the result is that both the principal and the agent are jointly and severally liable to the person injured by the wrongful act. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 438 (Pon. 2009).

Even as an insurance agency's employee, the employee had a duty not to cash premium checks without first confirming with the insurer that she had the authority to cash the checks. By failing to do so, the employee intentionally deprived the insurer of its property, and is thus liable for the conversion of the checks that she cashed while she was an the agency's employee. The employers and the employee are jointly and severally liable for the checks that the employee cashed during the time that the employers were acting as the insurer's general agents. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 439 (Pon. 2009).

"Forgery" is a signature of a person that is made without the person's consent and without the person otherwise authorizing it. Signing another's signature with authorization is not forgery. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 440 (Pon. 2009).

When a check is made out to a corporate payee; when the corporate payee's name was endorsed on the reverse side; when the defendant failed to take any steps to determine whether the endorsement was genuine and whether the purported "agent" seeking to cash the checks was authorized by the corporation to do so, the trust placed in the customer was misplaced. In cashing the checks without first verifying the authority of the one seeking to cash the checks, the defendant cashed the checks at its own peril and by depositing the checks into its bank account and receiving credits for those checks, the defendant exercised dominion and control over the checks and was therefore liable for conversion. The good faith of the one cashing the check does not enter into the picture. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 440 (Pon. 2009).

It is a corporation's usual practice to deposit checks payable to it in a bank account Given this consideration, when a person is asked to cash a check bearing a corporate endorsement he is put on his guard and should verify that the endorsement is authentic, and should take the necessary steps to make certain that the person attempting to cash the check is authorized to do so by the payee corporation. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 440 (Pon. 2009).

An actor may be liable for conversion when he has in fact exercised dominion or control and the actor's intention, good or bad faith, and his knowledge or mistake are immaterial. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 441 (Pon. 2009).

Punitive damages may be recovered for conversion when the defendant's acts were accompanied by fraud, malice, recklessness, oppressiveness, or willful disregard of the plaintiff's rights that aggravated the injury or loss inflicted by the defendant. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 441-42 (Pon. 2009).

Although conversion by its nature involves wrongful acts that are hostile to an owner's interest in property, and although the defendants' actions in cashing premium checks were wrongful and showed a disregard of the plaintiff's property rights, that disregard was not sufficient to impose punitive damages because, when the checks were converted, they were converted in material part in the course of the agents' efforts to expedite services to the insurer's policy holders Nor will the court award punitive damages against the business cashing the checks because, while the business's actions in cashing the checks was wrongful, its employees relied in good faith on the insurance agents' representations that they were

authorized to cash the checks. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 442 (Pon. 2009).

Conversion is the civil equivalent of theft. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 443 (Pon. 2009).

An insurer has no duty to its agents to undertake an investigation for the agents' benefit in order to stop the agents from converting the insurer's property. When the insurer's property was converted by the agents' intentional actions, the agents cannot argue that the insurer should have known that they were converting – stealing – the insurer's property, and that since the insurer should have stopped them but did not stop them from doing what they had no right to do, the agents should not have to pay back what they took. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 443 (Pon. 2009).

Neither contributory negligence nor comparative negligence is a defense to a conversion action. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 444-45 & n.5 (Pon. 2009).

A defendant cannot turn the tables on a plaintiff and conclude that the plaintiff was negligent for failing to detect and prevent the conversion earlier than it did. Such a rule, which the court will not adopt, would serve to blame the tort victim. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 445 (Pon. 2009).

A business that was presented, over a period of approximately three-and-a-half years, with checks amounting to over $400,000 that were made payable to a corporate payee, but that cashed the checks at the request of the individual cashing those checks without ever making any efforts to obtain independent confirmation that the individual presenting the check had the corporate payee's authority to do so, cannot rely on defenses of mitigation of damages or apparent authority or good faith commercial standards since the business had a duty to determine whether the individuals had the authority to cash the checks. The business cannot be said to have used good faith commercial business standards. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 445 (Pon. 2009).

A defense that the plaintiff should have made a claim against its errors and omissions policy is without merit even if such a policy existed, because the contract expressly addresses what happens. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 445 (Pon. 2009).

When there is no way of determining what portion of an amount deposited into a bank account was also converted by another defendant and since the plaintiff has the burden of proof, that other defendant will receive the benefit of the doubt created by this question and will not be held liable for the deposited sums. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 447 (Pon. 2009).

One whose property is converted is entitled to recover interest at the legal rate from the time the property is converted. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 448 (Pon. 2009).

Attorney's fees will not be awarded to the plaintiff insurer when the conversion arose as part of the insurer's agents' efforts to address customer concerns about the time it took for policy holders to receive their checks for loans taken out on their policies or for their policies' partial or full surrender value when a substantial amount of the cash obtained from the premium checks was distributed to policy holders and when, once the problem was identified, the current agent was cooperative in helping the insurer determine what sums were missing. Nor will attorney's fees be awarded against the business that cashed the checks, since it acted in reliance on the insurer's agents' representations when its employees cashed the checks. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 449 (Pon. 2009).

Neither contributory nor comparative negligence is a defense against a common law action for conversion. For comparative negligence to be a defense, the plaintiff's cause of action must be one based on negligence. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 356 (App. 2012).

Conversion is an intentional tort and not a cause of action based on negligence and thus comparative negligence cannot be a defense to conversion. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 356

(App. 2012).

As a matter of law, no type of negligence is a defense to the intentional tort of conversion. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 356 (App. 2012).

In common law jurisdictions, conversion is an intentional tort giving rise to strict liability. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 356 (App. 2012).

Conversion is a strict liability tort. The tort-feasor's intent and knowledge are irrelevant to his liability. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 356 (App. 2012).

Conversion is a strict liability tort whereby the foundation of the action rests neither in the knowledge nor the intent of the defendant. Specifically, a defendant can be liable for conversion even when he acted in good faith, lacked knowledge of the conversion, or lacked motive to commit the tort. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 356-57 (App. 2012).

A conversion action is a species of strict liability in which the defendant's good faith, due care, ignorance or mistake are irrelevant and may not be set up as a defense. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 357 (App. 2012).

In a conversion suit, it is no defense that the defendant was not negligent or that the defendant acquired the plaintiff's property through the plaintiff's unilateral mistake, or that the defendant acted in complete innocence and perfect good faith. That is not to say that there are no defenses to a conversion action. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 357 (App. 2012).

A defendant may successfully defend a conversion action by proving that the plaintiff consented to the defendant's taking, or that the defendant had rights in the property superior to the plaintiff's, or that the plaintiff has waived its cause of action, or that the plaintiff is estopped from asserting any right to the property. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 357 (App. 2012).

It is not logical that any individual would have apparent authority to cash a check with a corporate payee, especially a foreign corporation. The corporation's agents may have had apparent authority to perform a number of acts on the corporation's behalf, but cashing checks with the corporation as the payee was not one of them. One who pays out on such a check does so at his own peril. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 359 (App. 2012).

For a retail/wholesale store to cash checks with a corporate payee, particularly a large, off-island corporate payee with an off-island address printed on the check's face, with only an individual's personal endorsement and without written authorization from the corporate payee cannot possibly be considered a good faith commercial business standard. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 359 (App. 2012).

As a matter of law, no individual can ever have the apparent authority to cash a check that has a corporation as the payee, and, as a matter of law, any business that cashes such a check with a corporate payee is not engaged in a commercially reasonable business practice. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 359-60 (App. 2012).

When an insurer, by its acts, ratified only the unauthorized agreements between its agents and its eligible policy-holders – the distribution of cash advances to eligible policy-holders, it "recovered" those funds from its policy-holders and since the insurer is not entitled to a double recovery, it cannot hold others liable for those sums and must give them credit for those sums. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 360 (App. 2012).

Although good faith and mistake are not defenses to an action for conversion, a plaintiff's damages will

be reduced if the defendant returns the property or the plaintiff otherwise recovers the property. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 360 (App. 2012).

Negligence is not a defense to conversion. This includes negligence in hiring the agent who stole or negligence in not discovering the losses sooner. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 361 (App. 2012).

Barring the plaintiff from recovery for losses after it learned that its agent was continuing to cash its premium checks despite its explicit instructions not to, may have a certain appeal to it, but is untenable when the agent had earlier admitted to her stepfather, the defendant's principal, that she had been doing something she should not have, cashing the plaintiff's checks, because the defendant was thus on notice that it should not cash the plaintiff's checks any more. Yet it did. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 362 (App. 2012).

Since conversion is an action at law, laches is not a defense that can be used against a conversion claim. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 362 (App. 2012).

A corporation is not required to warn businesses not to cash checks that have the corporation as the payee since those business should not be cashing checks payable to a large, off-island corporation, anyway. The check casher has the duty to determine whether the person seeking to cash a check with a corporate payee is authorized by the corporation to do so, if it is going to cash the check. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

When prejudgment interest is awarded in a conversion case, the interest starts running on the date of the conversion. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

When even if a petitioner had not signed any of the converted checks, that would not alter the trial court's finding that she had authorized another to sign her name and thus the result would not change and the petitioners would still be liable to the appellee. Iriarte v. Individual Assurance Co., 18 FSM R. 406, 408 (App. 2012).

The elements of an action for conversion are: 1) the plaintiffs' ownership and right to possession of the personalty, 2) the defendant's wrongful or unauthorized act of dominion over the plaintiff's property inconsistent with or hostile to the owner's right, and 3) resulting damages. Ihara v. Vitt, 18 FSM R. 516, 529 (Pon. 2013).

When the employee's unauthorized issuance of one-way plane tickets resulted in a wrongful and unauthorized act of dominion over her employer's funds and was inconsistent with or hostile to its rights as owners of those funds since the employee's actions caused the employer to pay for the unauthorized tickets using company funds, all the elements for conversion are present and have been proven and that employee is liable to her employer under the tort of conversion for conversion for all of the tickets that were issued by her for her mother and sister from Pohnpei to Charleston, South Carolina and return because she is the person who converted the funds. Ihara v. Vitt, 18 FSM R. 516, 530-31 (Pon. 2013).

Whatever arrangements regarding who would be responsible for the payment of the plane tickets that might have been made between an employee's mother and sister and an employee who charged plane tickets for her mother and her sister to her employer does not affect the employee's liability to her employer for all of the tickets because the employee cannot shift liability to another party without her employer's agreement although the employee will be credited for any payments she and her sister made since the employer is not entitled to double recovery. Ihara v. Vitt, 18 FSM R. 516, 531 (Pon. 2013).

One whose property is converted is entitled to interest at the legal rate from the time of conversion. Ihara v. Vitt, 18 FSM R. 516, 531 (Pon. 2013).

Conversion is the civil equivalent of theft. FSM v. Muty, 19 FSM R. 453, 457 n.1 (Chk. 2014).

Conversion has a six-year statute of limitations. FSM v. Muty, 19 FSM R. 453, 460 (Chk. 2014).

One whose property is converted is entitled to interest at the legal rate from the time of conversion. FSM v. Muty, 19 FSM R. 453, 462 (Chk. 2014).

When it has been established that the plaintiff was contractually obligated to pay the sum specified in the invoice, the plaintiff's claim that the defendant's refusal to return his vehicle to his possession until the invoice was paid in full amounted to conversion must fail. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 478 (Pon. 2014).

The elements of an action for conversion are the plaintiff's ownership and right to possession of the personalty, the defendant's wrongful or unauthorized act of dominion over the plaintiff's property inconsistent with or hostile to the owner's right, and resulting damages. Ihara v. Vitt, 19 FSM R. 595, 602 (App. 2014).

Although conversion has sometimes been called the civil equivalent of theft that is not an accurate description. It is not the same as theft. The crime of theft requires the intent to permanently deprive another of the property. Conversion only requires the defendant's wrongful or unauthorized act of dominion over the plaintiff's property be inconsistent with the owner's right. It does not require the intent to permanently deprive the owner of its property. Ihara v. Vitt, 19 FSM R. 595, 602 (App. 2014).

A defendant's argument that she did not steal the property alleged converted and that no criminal case was filed is irrelevant. A conversion may occur even when the defendant has every intention of returning the property. Conversion is a strict liability tort whose foundation rests neither in the knowledge nor the intent of the defendant so a defendant can be liable for conversion even when he acted in good faith, lacked knowledge of the conversion, or lacked motive to commit the tort. Ihara v. Vitt, 19 FSM R. 595, 602 (App. 2014).

When the factual finding that the employee took dominion over her employer's property (its money used to pay for tickets) without its permission is not clearly erroneous, and when the other elements of conversion are undisputed, the elements of conversion have been met. Ihara v. Vitt, 19 FSM R. 595, 602 (App. 2014).

A defendant may successfully defend a conversion action by proving that the plaintiff consented to the defendant's taking, or that the defendant had rights in the property superior to the plaintiff's, or that the plaintiff has waived its cause of action, or that the plaintiff is estopped from asserting any right to the property. Ihara v. Vitt, 19 FSM R. 595, 603 (App. 2014).

Unlawful misappropriation of funds seems to be the same cause of action as conversion. Eot Municipality v. Elimo, 20 FSM R. 482, 488 (Chk. 2016).

The elements of an action for conversion are the plaintiff's ownership and right to possession of the personalty, the defendant's wrongful or unauthorized act of dominion over the plaintiff's property inconsistent with or hostile to the owner's right, and resulting damages. Eot Municipality v. Elimo, 20 FSM R. 482, 488 (Chk. 2016).

When, under prior precedent and the law of the case doctrine, the state government is immune from an interest award as a part of a judgment against the state unless the state has expressly consented to the imposition of interest and when the state government has not expressly consented, by statute or by contract, to the imposition of interest for claims or for a conversion claim, no interest will be permitted. Eot Municipality v. Elimo, 20 FSM R. 482, 489 (Chk. 2016).

The elements of an action for conversion are the plaintiff's ownership and right to possession of the

personalty, the defendant's wrongful or unauthorized act of dominion over the plaintiff's property inconsistent with or hostile to the owner's right, and resulting damages. Onanu Municipality v. Elimo, 20 FSM R. 535, 545 (Chk. 2016).

When the municipalities owned and had a right to possess, as their current account funds, the subject CI funds; when the state government's unauthorized use of those funds for its own purposes was an exercise of dominion over those funds inconsistent with the municipalities' right to them, and the municipalities were damaged, in the amount of their missing funds, by not being able to use those funds themselves, the municipalities have made out a prima facie case that they are entitled to summary judgment for the funds that the state government converted. Onanu Municipality v. Elimo, 20 FSM R. 535, 545 (Chk. 2016).

The elements of a conversion action are the plaintiff's ownership and right to possession of the personalty, the defendant's wrongful or unauthorized act of dominion over the plaintiff's property inconsistent with or hostile to the owner's right, and resulting damages. Setik v. Perman, 21 FSM R. 31, 37 (Pon. 2016).

When a parcel was pledged as collateral for a loan in an executed security instrument and when the borrowers defaulted on the loan and the lender bank instituted enforcement proceedings and was allowed to enforce the mortgage's terms, the borrowers surrendered their ownership interest in this parcel and the ultimate transfer of ownership, as approved by the FSM Supreme Court, cannot be categorized as "wrongful or unauthorized," or a "frozen asset," when the borrowers had earlier obtained a Pohnpei Court of Land Tenure determination of heirship for the parcel that named them as the legal heirs to the property. Setik v. Perman, 21 FSM R. 31, 37-38 (Pon. 2016).

The elements of a conversion cause of action are: 1) the plaintiffs' ownership and right to possession of the personal property in question; 2) the defendant's unauthorized or wrongful act of dominion over the property that is hostile or inconsistent with the owner's right; and 3) damages resulting from such action. Pelep v. Mai Xiong Inc., 21 FSM R. 182, 189 (Pon. 2017).

An owner consented to the taking of his property by instructing the defendant to remove the vehicle, and the consent was direct because the owner requested that the defendant take the vehicle from his home, and indirect through the person at his home who directed the defendant to take the vehicle. Pelep v. Mai Xiong Inc., 21 FSM R. 182, 189 (Pon. 2017).

A defendant may successfully defend a conversion action by proving that the plaintiff consented to the defendant's taking, or that the defendant had rights in the property superior to the plaintiff's, or that the plaintiff has waived its cause of action, or that the plaintiff is estopped from asserting any right to the property. Pelep v. Mai Xiong Inc., 21 FSM R. 182, 189 (Pon. 2017).

The elements of a conversion action are the plaintiff's ownership and right to possession of the personalty, the defendant's wrongful or unauthorized act of dominion over the plaintiff's property inconsistent with or hostile to the owner's right, and resulting damages. "Personalty" is personal property as distinguished from real property. Setik v. Mendiola, 21 FSM R. 537, 555 (App. 2018).

Realty – real property cannot be "converted." Any such conversion claim is misconceived. Setik v. Mendiola, 21 FSM R. 537, 555 (App. 2018).

A litigant's "conversion" claim over real estate can be conceived as a quiet title claim. Setik v. Mendiola, 21 FSM R. 537, 555 (App. 2018).

The elements of an action for conversion are the plaintiffs' ownership and right to possession of the personalty, the defendant's wrongful or unauthorized act of dominion over the plaintiff's property inconsistent with or hostile to the owner's right, and resulting damages. FSM v. Mikel, 22 FSM R. 33, 36

(Chk. 2018).

The national government, through Compact of Free Association funding, has an ownership right and a right to possess access to the Chuuk EPA overseas account, the account itself, and the minutes used to make these calls, but when it is unable to show that the calls were non-official, it has not met its burden of proof on its conversion claim that the defendant's actions were wrongful or that his action resulted in an unauthorized act of dominion over the government's right or control. FSM v. Mikel, 22 FSM R. 33, 36 (Chk. 2018).

Only personal property (personalty) can be subject to conversion; real property cannot. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 161 (Chk. 2019).

A defendant cannot plead, as a defense to a conversion claim, the alleged superior right of a third party (*jus tertii* – the right of a third party) to the property; a defendant can only plead its own defenses, not those of another. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 200 (Pon. 2019).

The right and title of a third party, the so-called jus tertii defense, is not in and of itself a good defense to an action for conversion. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 200 (Pon. 2019).

One who is otherwise liable to another for harm or interference with a chattel is not relieved of that liability because a third person has a legally protected interest in the chattel superior to that of the other. This general rule applies to actions for conversion. The common law name for the right of a third person was *jus tertii*. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 201 (Pon. 2019).

The application of jus tertii in conversion of chattels means that the modern tort of conversion subjects the wrongdoer to liability to the possessor for the chattel's entire value in addition to any special damages resulting from the conversion, and this liability does not depend on the existence of the possessor's responsibility to the owner for the chattel's loss. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 201 (Pon. 2019).

To maintain a common law action for conversion, a plaintiff must establish that he was in possession of the goods, or entitled to possession at the time of the conversion, and this rule has even been applied to permit recovery by one whose possession is wrongful, and in defiance of the owner, although in all such cases the plaintiff has been in possession under some colorable claim of right. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 201 (Pon. 2019).

The converter may also be liable to a person entitled to immediate possession of the chattel or to one entitled to future possession of the chattel. It is immaterial that the one in possession of the chattel is not entitled to retain possession as against some third person, or that he has obtained possession wrongfully. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 201 (Pon. 2019).

When the insureds received refunds through their employer, as what should occur only for group insurance policies, not individual insurance policies, and when the insurer instructed the employer to stop all employee payroll deductions for supplemental group life insurance, the insurer did not convert the insureds' money and was not unjustly enriched. Barnabas v. Individual Assurance Co., 22 FSM R. 252, 257 (Pon. 2019).

For a conversion claim, a prejudgment interest award under maritime law does not differ from a common law award for conversion, because, under the common law, one whose property is converted is entitled to interest at the legal rate from the time of conversion. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 314 n.4 (Pon. 2019).

Conversion can be a maritime tort, and, when it is, it gives rise to a maritime lien. Admiralty jurisdiction over a conversion claim depends on whether the chattel was on navigable waters when the alleged

wrongful exercise of dominion occurred. Maritime conversion is an intentional tort that gives rise to a preferred maritime lien. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 314 (Pon. 2019).

In the admiralty context, as elsewhere, conversion is simply an intentional and wrongful exercise of dominion or control over a chattel, which seriously interferes with the owner's right in the chattel. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 314 (Pon. 2019).

The failure to return property, possession of which was acquired lawfully, when the owner is entitled to its return and makes demand therefor, is a tortious conversion. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 314 (Pon. 2019).

The measure of damages for conversion is the property's market value at the time and place of conversion plus the legal rate of interest from the date of the conversion. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

A conversion is complete when the defendant takes, detains, or disposes of the chattel. At that point, the plaintiff acquires the right to enforce a sale, and recover the property's full value. The defendant cannot undo his wrong by forcing the goods back upon their owner, either as a bar to the action, or in mitigation of damages. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

Regardless of how accurate a May 9, 2019 appraisal was, it cannot be used to establish conversion damages where no evidence relates that appraised value to the chattels' value eight to ten months earlier when the chattels were allegedly converted. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

Even if the conversion occurs in good faith, the plaintiff may nonetheless recover damages beyond the converted property's fair market value. Thus, damages for lost profits are allowed when, either from the article's nature or the case's peculiar circumstances, they might be reasonably supposed to follow from the conversion, even though this recovery of lost profits is above and beyond the chattels' market value. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

The general rule is that compensation for lost profits may be recovered in an action for conversion, when the loss is the proximate result of the defendant's act and the loss can be shown with reasonable certainty. Thus, although the usual measure for conversion damages is the property's value at the time and place of conversion, plus interest, and lost profits may also be recovered if they may reasonably be expected to follow from the conversion. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

Lost profit damages can be awarded for conversion when the plaintiff shows that, but for the conversion, a profit would have been realized from the items converted and shows the extent thereof with reasonable certainty. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

Awards for lost business profits are appropriate damages in a conversion case when proved with reasonable certainty. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315-16 (Pon. 2019).

It would be improper to allow lost business profit damages in every case involving conversion. The damages would only be proper when the person whose property has been converted shows that the conversion has resulted in lost business profits and shows with reasonable certainty the amount of these lost profits. Lost profits is the proper measure of damages, as opposed to lost gross receipts, and this damages amount need only be shown with as much certainty as the tort's nature and the case's circumstances permit. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 316 (Pon. 2019).

Recovery for lost rental income may be limited in time until when the plaintiff could have obtained a replacement for his rental business since, if a plaintiff could have avoided the loss by purchasing a

substitute item, profits from that point on are not the measure of the plaintiff's recovery even if profits were in fact lost. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 316 (Pon. 2019).

Conversion, when committed on navigable waters, is a maritime tort that creates a maritime lien. The measure of damages in a maritime conversion is the property's market value at the time and place of its conversion plus the legal rate of interest from that date, and to these damages, the plaintiff's lost profits can be added when that loss can reasonably be expected to follow from the conversion, or is the proximate result of the defendant's conversion, and when the amount of that loss can be shown with reasonable certainty. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 316 (Pon. 2019).

The elements of a conversion action are the plaintiff's ownership and right to possession of the personal property, the defendant's wrongful or unauthorized act of dominion over the plaintiff's property inconsistent with or hostile to the owner's right, and resulting damages. Panuelo v. Sigrah, 22 FSM R. 341, 361-62 (Pon. 2019).

– Damages

The Pohnpei Supreme Court will adhere to the common law rule followed by the former Trust Territory High Court that the wrongdoer in an automobile accident is not obliged to repair the damaged vehicle nor to pay its original cost; his only obligation is to pay the plaintiff-owner the amount of his loss. Phillip v. Aldis, 3 FSM R. 33, 37 (Pon. S. Ct. Tr. 1987).

To determine damages in a personal injury case, the Pohnpei Supreme Court will consider the victim's loss of income, as well as his inability to provide support through fishing and farming as a result of his disability. To determine the total loss of income, the court will assume that income would be earned until the age of sixty, which is the mandatory retirement age for government employees, though not for private employees. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 73 (Pon. S. Ct. Tr. 1986).

To determine a monetary value for loss of consortium, the Pohnpei Supreme Court will consider the social structure of the society and the extended family system, whereby other members of the family can be expected to provide some, albeit occasional, assistance. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 74 (Pon. S. Ct. Tr. 1986).

The Pohnpei Supreme Court declines to adopt the "collateral source" rule, according to which alternative sources of income available to a victim are not allowed to be deducted from the amount the negligent party owes, because it does not want to discourage customary forms of family restitution. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 74 (Pon. S. Ct. Tr. 1986).

In apportioning damages among negligent parties, the Pohnpei Supreme Court will consider the following factors: the Pohnpei Constitution, custom and tradition, the degree of negligence of each party, other jurisdictions' efforts to abolish joint liability, the need to minimize the role of insurance companies given Pohnpei's stage of development, the example of the U.S. insurance crisis, other jurisdictions' efforts to modify the rules governing joint and several liability, and American judges' assessments of joint and several liability. Koike v. Ponape Rock Products, Inc. (II), 3 FSM R. 182, 185 (Pon. S. Ct. Tr. 1987).

In a wrongful death claim in Truk State, where the total pecuniary estimated loss was $15,288 and where an infant child lost his mother, there should be a finding for the plaintiff in the maximum amount allowed by law, $50,000. Asan v. Truk, 4 FSM R. 51, 56-57 (Truk S. Ct. Tr. 1989).

The mental anguish or grief aspect of a damage award reflects the loss of a broad range of mutual benefits each family member normally receives from others' continued existence, including love, affection, care, attention, companionship, comfort and protection. Suka v. Truk, 4 FSM R. 123, 130 (Truk S. Ct. Tr. 1989).

The term "pecuniary injury" as used in wrongful death statutes traditionally has been interpreted as

including the probable support, services and other contributions that reasonably could have been expected by the beneficiaries had the decedent lived out her full life expectancy, all reduced to present worth. Leeruw v. FSM, 4 FSM R. 350, 365 (Yap 1990).

Where the court cannot compel the state to honor an illegal and/or unconstitutional lease it can order the state to restore the illegally held land, with any and all public improvements removed, to its rightful owner who may also be entitled to damages. Billimon v. Chuuk, 5 FSM R. 130, 137 (Chk. S. Ct. Tr. 1991).

Despite lack of evidence of medical expenses, either that medical treatment was necessary, or that medical treatment was obtained as a result of injuries the court is entitled to presume that some expenditures were made and finds that plaintiff should recover damages for those expenses, even in the absence of proof of purchase. Meitou v. Uwera, 5 FSM R. 139, 145 (Chk. S. Ct. Tr. 1991).

An injured victim is entitled to recover for mental anguish, including humiliation, resulting from unlawful conduct in violation of the victim's civil rights. Meitou v. Uwera, 5 FSM R. 139, 146 (Chk. S. Ct. Tr. 1991).

As a loss of consortium claim is derivative from a spouse's claim for damages an award for loss of consortium is properly reduced by the percentage of fault attributable to the spouse. Epiti v. Chuuk, 5 FSM R. 162, 170 (Chk. S. Ct. Tr. 1991).

A statutory cap on the amount and scope of recovery in a wrongful death action, lawfully enacted by the Kosrae legislature, does not interfere with traditional Kosraean or Micronesian compensation of a victim's family by the tortfeasor. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 361 (Kos. 1992).

Where a plaintiff makes damage claims in tort as well damage claims based on contract, contract clauses limiting the contract damages do not apply. McGillivray v. Bank of the FSM (I), 6 FSM R. 404, 409 (Pon. 1994).

One whose property is converted is entitled to interest at the legal rate from the time of conversion. Bank of Guam v. Nukuto, 6 FSM R. 615, 616 (Chk. 1994).

Where the defendant has breached her fiduciary duty, and converted to her own personal use funds of others, has made no claim of right to any of the funds or offered any defense, and blame thus lies wholly with the defendant, the plaintiff will be allowed to recover its attorney's fees in order to make the victim whole. This is a narrowly drawn exception to the general rule parties will bear their own attorney's fees. Bank of Guam v. Nukuto, 6 FSM R. 615, 617-18 (Chk. 1994).

Actual, not speculative, damages must be proven in order to award damages for wrongful restraint. Estimates of lost gross receipts are insufficient because a claimant is only entitled to lost profits. Sellem v. Maras, 7 FSM R. 1, 6 & n.10 (Chk. S. Ct. Tr. 1995).

Normally, the measure of damages in case of the purchase of personal property induced by misrepresentation is the difference between the fair market value of the property if the true condition were known and what the plaintiff paid for the property. Eram v. Masaichy, 7 FSM R. 223, 226 (Chk. S. Ct. Tr. 1995).

Failure of a creditor to notify the debtor of its failure to obtain insurance is negligence. As a consequence the creditor is liable to the debtor for the entire amount of the debtors' loss, otherwise the debtor is only entitled to return of full amount of insurance premiums paid. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 251 (Chk. 1995).

Where a defendant has trespassed on a plaintiff's land by constructing improvements thereon the measure of damages due the plaintiff is an amount equal to the fair market rental value of the land in the place located over the period of use, and also an amount for any damage to trees or food plants during the

defendant's use of the property and for any conditions caused by the defendant's trespass and use such as the construction of a garbage dump. Ikanur v. Director of Educ., 7 FSM R. 275, 277 (Chk. S. Ct. Tr. 1995).

In a trespass case, a defendant who made improvements to the plaintiff's property is entitled to offset the value of the improvements against damages caused to the plaintiff's property during the trespass, but all improvements made by the defendant on land without the plaintiff's permission become the plaintiff's property and the defendant has no right to any further use of the improvements without the plaintiff's permission. Ikanur v. Director of Educ., 7 FSM R. 275, 277 (Chk. S. Ct. Tr. 1995).

Where a defendant's negligence proximately caused plaintiffs' home to be unsanitary and uninhabitable the measure of damages is the replacement value of the personal property lost and the fair market value of a replacement rental house for the time that the plaintiff's house was uninhabitable. Sandy v. Chuuk, 7 FSM R. 316, 318 (Chk. S. Ct. Tr. 1995).

An entry of default does not relieve a plaintiff of the burden of proving the damages that flowed from the liability thus established. Primo v. Refalopei, 7 FSM R. 423, 428 (Pon. 1996).

A tortfeasor is responsible for all damages flowing from his actions, including injuries related to medical care and treatment. Primo v. Refalopei, 7 FSM R. 423, 430 (Pon. 1996).

Damages for lost future earnings are not awardable where they are duplicative and speculative, but damages may be awarded for financial and emotional loss, and for loss, at present value, of customary services that a child would have preformed if not for her wrongful death. Primo v. Refalopei, 7 FSM R. 423, 433-34 (Pon. 1996).

Compensatory damages for personal injury may include medical expanses incurred, lost wages, impairment of future ability to earn, and other specific costs that accrued as a result of the injury. Davis v. Kutta, 7 FSM R. 536, 548 (Chk. 1996).

Compensatory damages awarded a party for the violation of civil rights includes reasonable attorney fees and costs of suit. Davis v. Kutta, 7 FSM R. 536, 549 (Chk. 1996).

The measure of damages in conversion is the property's market value at the time of conversion plus the legal rate of interest. Bank of Hawaii v. Air Nauru, 7 FSM R. 651, 653 (Chk. 1996).

A specific claim for lost wages that accrued as a result of an injury at the hands of the defendants may be recovered as part of compensatory damages. Conrad v. Kolonia Town, 8 FSM R. 183, 195 (Pon. 1997).

Compensatory damages may be awarded a party who is deprived of civil rights. This award of damages includes reasonable attorney fees and costs of suit. Conrad v. Kolonia Town, 8 FSM R. 183, 196 (Pon. 1997).

Damages for waste are normally the difference in value of the property before and after the act of waste. Wolphagen v. Ramp, 8 FSM R. 241, 244 (Pon. 1998).

The damages for waste committed are usually measured by the injury actually sustained and if the value of the premises has been improved by the acts complained of, the complainants will only recover nominal damages, if any, at law. Wolphagen v. Ramp, 8 FSM R. 241, 244 (Pon. 1998).

Damages for waste can also be determined by the cost of repairing or replacing what was wasted when the damage is small in comparison to property's total value and the amount is readily ascertainable. Wolphagen v. Ramp, 8 FSM R. 241, 245 (Pon. 1998).

A lessor may not recover damages for waste when the removal of termite-infested lumber from uninhabitable houses while trying to turn the houses into a bar improved the value of the property, and because if the property had been abandoned without trying to turn the houses into a bar, the lessor would still have become the owner of two uninhabitable houses. Wolphagen v. Ramp, 8 FSM R. 241, 245 (Pon. 1998).

Where is little guidance in the prior decided opinions of the FSM Supreme Court for damage awards in privacy cases, the court will look to the reasoning of courts in other jurisdictions for guidance in assessing damages. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 414 (Pon. 1998).

A party that has established a cause of action for invasion of privacy is entitled to recover damages for the harm to his or her interest in privacy resulting from the invasion; mental distress proved to have been suffered if it is of a kind that normally results from such an invasion; and special damage of which the invasion is a legal cause. Special damages are demonstrable, direct economic losses resulting from the invasion of privacy. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 414 & n.1 (Pon. 1998).

The gist of the cause of action for invasion of privacy is for direct wrongs of a personal character which result in injury to the plaintiff's feelings, mental and emotional suffering are proper elements of damages. Substantial damages may be recovered, even if the only damages suffered resulted from mental anguish. These damages may include compensation for the wounded feelings, embarrassment, humiliation, and mental pain which a person of ordinary sensibilities would suffer under the circumstances. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 414 (Pon. 1998).

The measure of compensatory damages in a case involving commercial appropriation of one's name or likeness is the value of the benefit derived by the person appropriating the other's name, or the pecuniary loss suffered by the plaintiff whose name has been appropriated. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 414 (Pon. 1998).

In privacy cases in which a plaintiff also seeks damages for unjust enrichment, only one recovery is available because an invasion of another's right of privacy by a publication confers no right to share in the proceeds of such publication's sale of upon the ground that the author has thereby been unjustly enriched. It is inconsistent for the plaintiff to seek recovery for an invasion of the right of privacy, and in the same suit, to claim the right to participate in the profits of the publication. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 414 (Pon. 1998).

When there is little instruction in previously decided FSM cases for assessing damages in an invasion of privacy case, privacy cases in other jurisdictions may provide some useful guidance. FSM cases awarding damages for mental pain and suffering outside the privacy context are also instructive. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 418 (Pon. 1998).

When there is no direct evidence of the amount of damages sustained, nor the amount of money that can compensate for an injury, the court, as trier of fact, must assess an appropriate level of compensatory damages for that injury. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 418 (Pon. 1998).

Compensatory damages for unjust enrichment will be not awarded when this claim conflicts with plaintiff's claim for compensatory damages for invasion of privacy because it is inconsistent for a plaintiff who wishes to recover for invasion of privacy to also claim the right to participate in the profits of publication and because when a privacy cause of action is brought together with another cause of action based on the same objectionable behavior under another theory, generally only one recovery may be awarded. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 418-19 (Pon. 1998).

Damages for lost future earnings are not awardable when they are duplicative and speculative. Asher v. Kosrae, 8 FSM R. 443, 454 (Kos. S. Ct. Tr. 1998).

Plaintiffs' children are not entitled to recover damages when they are not named as plaintiffs to the action. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 542 (Pon. 1998).

The measure of damages for impairment of earning capacity is the difference between the amount which the plaintiff was capable of earning before the injury and the amount which he or she is capable of earning thereafter. Mathebei v. Ting Hong Oceanic Enterprises, 9 FSM R. 23, 26 (Yap 1999).

Where the effect of an injury continues over time, earnings impairment will have two components: the loss sustained from the time of injury until time of trial, designated "loss of time" or lost wages, and the prospective loss that plaintiff will experience after trial due to the injury's on-going impact. The plaintiff has the burden of proof with respect to impairment, which must be demonstrated with a reasonable degree of certainty; however, proof of impairment of earning capacity does not require the specificity necessary to establish lost prospective wages. Mathebei v. Ting Hong Oceanic Enterprises, 9 FSM R. 23, 26 (Yap 1999).

A plaintiff must introduce evidence of his or her earning capacity prior to the injury. Even if there is no evidence of the extent of future loss, evidence of prior earnings warrants recovery for the impairment of future earning capacity which the injury would generally cause. Mathebei v. Ting Hong Oceanic Enterprises, 9 FSM R. 23, 27 (Yap 1999).

A plaintiff's education or lack of education may be considered in determining the amount of damages sustained by diminished earning capacity where the plaintiff has been engaged in manual labor and is incapacitated from doing that type of work. Mathebei v. Ting Hong Oceanic Enterprises, 9 FSM R. 23, 27 (Yap 1999).

Damages for reduction of future earning capacity are not for the wages themselves, but for the loss of the ability to earn money. Mathebei v. Ting Hong Oceanic Enterprises, 9 FSM R. 23, 27 (Yap 1999).

Limitation of employment opportunities resulting from lack of education is a specific factor which a court may consider in awarding damages for reduced earning capacity. Mathebei v. Ting Hong Oceanic Enterprises, 9 FSM R. 23, 27 (Yap 1999).

Damages for a sawmill employee's lost wages will be awarded only for the time period that the sawmill remained in business. When there is no evidence regarding other type of work that the plaintiff did prior to his sawmill employment, the court will decline to award damages for other potential lost wages as being speculative. Sigrah v. Timothy, 9 FSM R. 48, 54 (Kos. S. Ct. Tr. 1999).

A plaintiff who is proud to participate in a ceremony can suffer embarrassment and emotional upset over the commercialization of a photograph of his participation in the ceremony. Because the two findings are not inconsistent and there is evidence in the record to support this conclusion, the damages awarded the plaintiff for invasion of privacy will be affirmed as not clearly erroneous. Phoenix of Micronesia, Inc. v. Mauricio, 9 FSM R. 155, 159 (App. 1999).

When a plaintiff has not been awarded damages, the question is not whether he made his case for damages with the requisite specificity, but whether he has shown entitlement to damages in the first instance. Wolphagen v. Ramp, 9 FSM R. 191, 193 (App. 1999).

In an action for damage to personal property, the plaintiff may recover the cost of the repairs to the damaged property. Elymore v. Walter, 9 FSM R. 450, 456 (Pon. 2000).

As a separate item of damages, and in addition to the cost of repairs, a plaintiff is entitled to be compensated for the loss of the use of the property. Customary rental charges are an adequate measure of damage for loss of use, and are awardable even when the plaintiff has not rented a substitute. The period for which the rental is allowed is the reasonable time that it would take to repair the damaged

property. Elymore v. Walter, 9 FSM R. 450, 457 (Pon. 2000).

If loss-of-use damages is measured by either rental or replacement value and if repairs take a considerable period of time, damages should be measured not on the basis of rental value or replacement cost for the entire period, and not by the aggregate of the charges by the day or week. Elymore v. Walter, 9 FSM R. 450, 457 (Pon. 2000).

The damages for loss of use of property may not exceed the value of the property. Elymore v. Walter, 9 FSM R. 450, 457 (Pon. 2000).

An award for a car's loss of use for a sum substantially more than the car's original price – not to mention its value at the time of the incident – would, in addition to the money necessary to effect the repairs, result in a windfall to the plaintiffs and is not appropriate. Elymore v. Walter, 9 FSM R. 450, 457 (Pon. 2000).

When ten days is a reasonable time in which to obtain auto parts and two weeks is a reasonable time in which to make repairs once the parts have arrived, and when seven days is a reasonable time in which to arrange financing for the repairs, loss of use damages will be awarded for those days. Elymore v. Walter, 9 FSM R. 450, 457-58 & n.2 (Pon. 2000).

Since wrongful death actions are brought for the exclusive benefit of the deceased's "surviving spouse, the children and other next of kin," 6 TTC 202, when the deceased had no spouse or children, the damages are the next of kin's pecuniary injury. Estate of Mori v. Chuuk, 10 FSM R. 6, 15 (Chk. 2001).

When the state took prompt steps in accordance with medical advice to refer the plaintiff for off-island care and treatment, but the plaintiff abandoned the care mid-treatment to return to Chuuk, no damages for lost earnings or pain and suffering after he abandoned the health care will be awarded because there is no evidence as to what the plaintiff's degree of disability would have been had the expected prosthesis been fitted, nor the length of recovery and therapy following the fitting, nor the residual disfigurement, nor the loss, if any, of his future earnings would have been once a prothesis is fitted. Atesom v. Kukkun, 10 FSM R. 19, 23 (Chk. 2001).

Although a civil rights violation claim and a battery claim are separate causes of action, when they arise from the same incident and they cause the same personal injury and when the damage award for the civil rights violation fully compensates the plaintiff for his personal injury, the court cannot award additional damages for the battery because such an award would constitute double recovery and would be a windfall and overcompensate the plaintiff. Atesom v. Kukkun, 10 FSM R. 19, 23 (Chk. 2001).

Compensatory damages are just that – compensation to make the victim whole again. Compensation for an injury is not doubled just because the plaintiff has two different causes of action on which to base that recovery. Only the injury itself is compensated. Moses v. M.V. Sea Chase, 10 FSM R. 45, 50 (Chk. 2001).

Regardless of the disposition of a punitive damages claim, plaintiffs are fully compensated by a damages award. Elymore v. Walter, 10 FSM R. 166, 168 (Pon. 2001).

When there is no direct evidence of the amount of damages sustained, nor the amount of money that can compensate for an injury, the court, as trier of fact, must assess the proper level of compensatory damages for that injury. Talley v. Lelu Town Council, 10 FSM R. 226, 238 (Kos. S. Ct. Tr. 2001).

Damages for harm to personal property is the difference between the value of the property before the tort and its value afterwards. Talley v. Lelu Town Council, 10 FSM R. 226, 238 (Kos. S. Ct. Tr. 2001).

In determining damages, the court may take judicial notice regarding the replacement costs for college transcripts and a college diploma, when they are easily ascertainable and available on the University of

Guam Internet site and from the University of Guam Office of Admissions and Records. Talley v. Lelu Town Council, 10 FSM R. 226, 239 (Kos. S. Ct. Tr. 2001).

No additional damages will be awarded for the "sentimental value" of the lost items when the plaintiff's pain and suffering has already been compensated, because these damages already encompass the "sentimental value" of the lost items. Talley v. Lelu Town Council, 10 FSM R. 226, 239 (Kos. S. Ct. Tr. 2001).

Past and future lost wages, medical expenses, and pain and suffering are all compensable. Amayo v. MJ Co., 10 FSM R. 244, 251 (Pon. 2001).

A plaintiff totally disabled at age 42 can be compensated for the wages he would have earned until age 60. Amayo v. MJ Co., 10 FSM R. 244, 251 (Pon. 2001).

When the injuries sustained are plainly evident, the court is entitled to presume that expenditures for medical expenses were made. Amayo v. MJ Co., 10 FSM R. 244, 252 (Pon. 2001).

Travel and lodging are compensable as medical expenses when the expenditure results from defendant's fault; the charge is reasonable; and the expense serves a medical purposes. Amayo v. MJ Co., 10 FSM R. 244, 252 (Pon. 2001).

Various approaches exist for monetary valuation of damages to reefs: commodity value, which is posited on a sale of the components of the damaged area; tourism value, which is based on what visitors spend to visit the site; and replacement value involves, which is the cost of replacing the damaged corals by reseeding. People of Satawal ex rel. Ramoloilug v. Mina Maru No. 3, 10 FSM R. 337, 339 (Yap 2001).

It is well established that medical expenses are properly a component of negligence damages and may be recovered from the tortfeasor. Amayo v. MJ Co., 10 FSM R. 371, 376 (Pon. 2001).

Pre-judgment interest is rarely awarded as an element of damages. Because tort claims are generally "unliquidated" in that the defendant does not know the precise amount he will be obligated to pay, most courts will not award interest on unliquidated monetary claims, which amount cannot be computed without a trial. Jonas v. Kosrae, 10 FSM R. 441, 445 (Kos. S. Ct. Tr. 2001).

There is no Kosrae statute allowing or directing the court to award pre-judgment interest in public employment cases involving violation of law or regulations, and although pre-judgment interest has been allowed in certain contract and conversion cases, it has not been awarded in these type of cases and will be denied. Jonas v. Kosrae, 10 FSM R. 441, 445 (Kos. S. Ct. Tr. 2001).

Absent any evidence of the cost of repair of a bushcutter, damages for its repair cannot be awarded. Hauk v. Board of Dirs., 11 FSM R. 236, 242 (Chk. S. Ct. Tr. 2002).

Wrongful death actions are brought for the exclusive benefit of the deceased's surviving spouse, children and other next of kin. The pecuniary injury consists of funeral expenses (including a novena) and the earnings that the deceased would have used to support his family, had he lived. The future earnings calculation may be based on the victim's continued employment and earnings at the same rate until he reached the FSM retirement age of 60. Herman v. Municipality of Patta, 12 FSM R. 130, 138 (Chk. 2003).

No damages will be awarded for the cost of a loan to finish building a cement house started before the victim's death when the court has just awarded damages for lost earnings because any loan would have been repaid out of those earnings had the victim lived. Herman v. Municipality of Patta, 12 FSM R. 130, 138 (Chk. 2003).

Since a claim for negligent infliction of emotional distress cannot be sustained without evidence of actual physical illness resulting from the mental and emotional distress, a plaintiff who failed to provide

evidence of actual physical illness resulting from the defendants' actions cannot obtain any monetary recovery on this claim. Tomy v. Walter, 12 FSM R. 266, 272 (Chk. S. Ct. Tr. 2003).

Prejudgment interest has been allowed on conversion claims. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 471 (Pon. 2004).

Prejudgment interest might rightfully be sought on what would appear to be a liquidated claim in the sense that it is capable of ascertainment by mathematical computation. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 471 (Pon. 2004).

The court is generally without authority to award attorney's fees in the absence of a specific statute or contractual provision allowing recovery of such fees. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 471 (Pon. 2004).

When no statute or contractual provision has been put forth to support an attorney's fees award to a prevailing party, the basis for an award must be found in some exception to the general rule that the parties must pay their own attorney's fees. Such an exception is where attorney's fees are awarded as an element of costs when it is shown that such fees were traceable to the opposing party's unreasonable or vexatious actions, or when a party acts vexatiously, or in bad faith, presses frivolous claims, or employs oppressive litigation practices. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 471 (Pon. 2004).

Courts have permitted attorney's fee awards under the vexatious conduct exception when the plaintiff has proven the defendant's breach of the implied covenant or implied duty of good faith and fair dealing (also called the bad faith tort). If a plaintiff were to prevail on a bad faith tort claim against an insurer, the insurer would be liable to him for reasonable attorney's fees that are proximately caused by the bad faith conduct. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 471 (Pon. 2004).

In a narrowly drawn exception to the general rule that the parties will bear their own attorney's fees, attorney's fees have been awarded as part of costs when a defendant has breached her fiduciary duty to the plaintiff. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 472 (Pon. 2004).

In order to prove lost rental damages, a business should be prepared to show that all other similar available vehicles were rented and that the had to turn away customers who would otherwise had rented the damaged pickup, and the number of days it would have been rented. A long-term, ongoing business might show this by comparing the average of the total rental days of all pickups combined for each month before the pickup was damaged with the average total rental days for each month after the accident. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 472 (Pon. 2004).

Under the traditional "new business rule," which applies to any business without a history of profits, it has been recognized that evidence of expected profits from a new business is too speculative, uncertain, and remote to be considered and does not meet the legal standard of reasonable certainty. But lost profits can be recovered by a new business when it is possible to show, by competent evidence and with reasonable certainty, that profits would have been made in the particular situation, and the amount of those profits. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 472 (Pon. 2004).

The proper measure of damages resulting from a business tort is lost profits as opposed to lost gross receipts. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 472 (Pon. 2004).

Any recovery for lost rental income may be limited in time until that point at which the plaintiff could have obtained a replacement for his rental business since if a plaintiff could have avoided the loss by purchasing a substitute item, profits are not the measure of the plaintiff's recovery even though profits were in fact lost. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 472 (Pon. 2004).

Consequential damages, of which economic loss such as lost profits may be an example, are available

for negligent misrepresentation (deceit) claims if reasonably foreseeable. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 472 (Pon. 2004).

Loss of future profits is a well-established basis for determining the measure of economic injury resulting from an anticompetitive act which forces the victim out of business. AHPW, Inc. v. FSM, 12 FSM R. 544, 554, 555 (Pon. 2004).

In unfair trade practices cases, courts draw a distinction between the amount of proof necessary to show that some damages resulted from the wrong, and the amount of proof necessary to calculate the exact amount of the damages. A lower burden of proof applies because the most elementary conception of justice and public policy require that the wrongdoer shall bear the risk of the uncertainty which his own wrong has created. AHPW, Inc. v. FSM, 12 FSM R. 544, 554 (Pon. 2004).

In anticompetitive practices cases where causation is established, the burden of proving damages is much less severe. This rule of leniency with regard to proof of damages is necessary because any other rule would enable the wrong-doer to profit by his wrongdoing at his victim's expense. It would be an inducement to make wrongdoing so effective and complete in every case as to preclude any recovery, by rendering the measure of damages uncertain. Once the fact of damage is established with reasonable certainty, the amount of damages need only be shown with as much certainty as the tort's nature and the case's circumstances permit. In such cases, if it is uncertain and speculative and whether damages have been incurred, then damages will be denied; however, if it is only the amount of the damages that presents the uncertainty, then the court will allow recovery so long as there is proof of a reasonable basis from which the amount can be approximated or inferred. AHPW, Inc. v. FSM, 12 FSM R. 544, 554 (Pon. 2004).

Damages under 32 F.S.M.C. 306(2) are subject to trebling. AHPW, Inc. v. FSM, 12 FSM R. 544, 555, 556 (Pon. 2004).

Averaging three years of normal operations when the pepper supply was continuous when the manufacturing process was uninterrupted to arrive at an annual profit, is a projection that provides a reasonable basis from which a plaintiff's lost profits can be approximated or inferred under the lower burden of proof applicable for damages in anticompetitive practices cases. AHPW, Inc. v. FSM, 12 FSM R. 544, 555 (Pon. 2004).

When the conduct's nature was discrete and specific, and would have been amenable to injunctive relief had the plaintiff sought it, once that relief had been awarded there could have been no prospective damages since the conduct giving rise to those damages would necessarily have ceased. There should be no recovery for further diminution of a business's value, predicated on the defendant's continuing wrongdoing, after the defendant has been enjoined. The court will thus not award prospective damages from the time of the lawsuit's filing onward because injunctive relief, to which the claim would have been amenable, would have terminated the conduct complained of. But since under the continuing tort doctrine, a plaintiff is entitled to recover all of the damages that result from on-going tortious conduct, even though the inception of the conduct lies outside the limitations period, the court will award damages from the start of the anticompetitive pepper processing operation in mid-1995 until the plaintiff filed suit. AHPW, Inc. v. FSM, 12 FSM R. 544, 555-56 (Pon. 2004).

When claims of damages for sums the plaintiff owed to third parties on the theory that since its business operations were destroyed by the defendant's conduct, it cannot pay back those amounts, would have depended for their repayment on profits that the operation would have made but for the defendant's conduct. Since future profits are the measure of the business's damages, to allow a separate recovery for these sums would be to permit a double recovery. AHPW, Inc. v. FSM, 12 FSM R. 544, 556 (Pon. 2004).

When a statute provides for attorney's fees to the prevailing party, a plaintiff need not receive all of the relief that he seeks in order to be eligible for attorney's fees so long as he prevails on a significant issue. AHPW, Inc. v. FSM, 13 FSM R. 36, 40 (Pon. 2004).

When improvements were made by a plaintiff for his own benefit to what the trial court ruled was his own property, the defendants are not liable for the improvements. Narruhn v. Aisek, 13 FSM R. 97, 99 (Chk. S. Ct. App. 2004).

For an emotional distress award there must be a foreseeable physical manifestation of the distress. Narruhn v. Aisek, 13 FSM R. 97, 99 (Chk. S. Ct. App. 2004).

When the acts that comprise the false imprisonment tort are also the acts that constitute the civil rights violations, the court will not make a separate award of damages for this tort, since to do so would result in a double recovery. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 493 (Pon. 2005).

Generally, statutes authorizing multiple damages are remedial and nonpunitive, particularly in anti-trust cases. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 20 (App. 2006).

The treble damages clause in the FSM Anti-competitive practices statute is remedial and not punitive. The multiple portion of the damages – that part in excess of the lost profits the trial court determined as actually proven – is imposed by a national statute enacted in an area in which the national government may legislate. Since this is not a state law tort case in which state law applies and this is a statutory tort created by a national statute, the national, not the state, statute therefore controls. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 20 (App. 2006).

The trial court should state some reason for trebling damages other than just stating the anticompetitive practices statute allows it. Compelling justification is not needed or required. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 21 (App. 2006).

The anticompetitive practices statute itself provides the basis for the plaintiff to recover damages together with reasonable attorneys' fees and the costs of suit. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 21 (App. 2006).

Fifteen years' worth of "damages" of lost profits is obviously too long for any reasonably certain future projections. Too many unexpected possible variables could occur. The trial court thus did not abuse its discretion by limiting the damage award to four years of lost profits. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 24-25 (App. 2006).

The anticompetitive practices statute authorizes treble damages. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 190 (Pon. 2006).

Treble damages were proper when the discretion denoted by the word "may" in the statute lies with the injured party and not the court – the injured party "may" sue and recover treble damages – and when Congress's intent was to give the injured party treble damages if it sues and proves its case. The statute's context compels this conclusion. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 190-91 (Pon. 2006).

When the plaintiff has a claim de jure that the power conferred (on the court to treble damages) should be exercised because it had proved its right to damages under 32 F.S.M.C. 301 *et seq.* and when, considering the whole anticompetitive practices statute and its nature and object, Congress's intent was to impose a positive duty to treble damages, not a discretionary power to do so, the court will therefore award treble damages. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 191 (Pon. 2006).

When the defendant's anticompetitive acts did not just harm the plaintiff's business, but those acts put it out of business, even if treble damages were discretionary, there would be no more appropriate a case to exercise the discretion to treble damages than one where the anticompetitive acts put the plaintiff out of business. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 191 (Pon. 2006).

Detrimental reliance damages are the actual expenses incurred in reliance on the representation and do not include depreciation. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 192 (Pon. 2006).

Damages under the civil rights act generally include only compensatory damages. Annes v. Primo, 14 FSM R. 196, 206 (Pon. 2006).

Wrongful death actions are brought for the exclusive benefit of the deceased's surviving spouse, the children and other next of kin. When the decedent had no spouse or children, the damages are the next of kin's pecuniary injury. Lippwe v. Weno Municipality, 14 FSM R. 347, 353 (Chk. 2006).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages. So long as a party has prevailed in a civil rights suit as a whole, that party is entitled to fees for all time reasonably spent on the matter, including the time spent on pendent state law claims that would not otherwise be statutorily entitled to a fee award, if the pendent claims arise out of a common nucleus of operative fact as the civil rights claim. Lippwe v. Weno Municipality, 14 FSM R. 347, 354 (Chk. 2006).

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To obtain damages in a nuisance action, a person pursuing a private cause of action must have suffered significant harm. To maintain a damage action for public nuisance, a person must have suffered damage different in kind from that suffered by the general public. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 417 (Yap 2006).

Compensatory damages are compensation to make the victim whole again. Compensation for an injury is not doubled just because the plaintiff has two different causes of action on which to base that recovery. Only the injury itself is compensated. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 418 (Yap 2006).

The plaintiffs must prove their damages to a reasonable certainty. Once the fact of damage is established with reasonable certainty, the amount of damages need only be shown with as much certainty as the tort's nature and the case's circumstances permit. In such cases, if it is uncertain and speculative whether damages have been incurred, then damages will be denied; however, if it is only the amount of the damages that presents the uncertainty, then the court will allow recovery so long as there is proof of a reasonable basis from which the amount can be approximated or inferred. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 418 (Yap 2006).

When there is no evidence in the record of physical injury to the plaintiff or of any physical manifestation of emotional distress by the plaintiff, there can be no award of damages for mental distress or mental anguish. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 418-19 (Yap 2006).

When there was no cultural damage caused by a delay in the transfer of intergenerational knowledge of swimming and other water skills, even if it were possible to obtain money damages for "cultural" damages, which the court does not so hold, there was no cultural injury for which recovery might be sought. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 420 (Yap 2006).

Inability to access the inner lagoon for bathing and swimming has an economic effect and damages may be awarded for that economic loss. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 420 (Yap 2006).

No offset for sums spent on cleanup can be given since the defendants had a duty to mitigate their damages and a legal duty imposed by Yap law to respond to the oil spill and clean up as much as possible. The oil spill cleanup protected them from greater liability. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 420 (Yap 2006).

Setoff implies that both the plaintiff and defendant have independent causes of action maintainable against the other, while mitigation (of damages) does not involve facts which constitute a cause of action in favor of the defendant, but facts that show that the plaintiff is not entitled to as large an amount as the plaintiff's showing would otherwise justify. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 420 (Yap 2006).

Injured parties in maritime tort cases are typically awarded prejudgment interest. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 420 (Yap 2006).

In those few cases in which the court has awarded prejudgment interest when it was not provided for by contract or statute, the court has always awarded the legal interest rate – 9% simple interest. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 420-21 (Yap 2006).

The general rule is that when there is no statutory or contractual basis for a request for attorney fees, each party will normally bear its own attorney's fees. One exception to this rule is the private attorney general theory. A party seeking attorney's fees under the private attorney general theory must demonstrate that it has vindicated a right that benefits a large number of people, that the right sought to be enforced required private enforcement, and it must prove that the right is of societal importance. The private attorney general theory applies in the FSM, provided that these criteria are strictly met. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 421 (Yap 2006).

When a class action has vindicated rights that benefit a large number of people; when these rights required private enforcement since the State of Yap was not in the position to vindicate the private rights of the people of Rull and Gilman; when, considering Yapese society's heavy reliance on the inner lagoon's marine resources, the rights enforced were of great societal importance; and when Yapese society's dependence on the resources of the shoreline, inner reefs, and mangrove stands is a salient feature of Yap's social and geographical configuration; the use of the private attorney general theory conforms to the Constitution's Judicial Guidance Clause that court decisions are to be consistent with the social and geographical configuration of Micronesia. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 421 (Yap 2006).

The usual method of determining reasonable attorney's fees awards is based on the fair hourly rate in the locality where the case was tried. Since any attorney's fees award must be based upon a showing and a judicial finding, that the amount of fees is reasonable, the plaintiffs must therefore submit detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which a claim for compensation is made. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 421 (Yap 2006).

Reinstatement to his former position and back pay to the date of his termination to the date he is reinstated are remedies are generally available to an employee who has shown wrongful discharge. But the amount awarded in back pay should be reduced to the extent the plaintiff has mitigated his damages by securing other employment. Reg v. Falan, 14 FSM R. 426, 436-37 (Yap 2006).

An attorney's fees award under a private attorney general theory can only be made, if at all, at the litigation's conclusion. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 161-62 (Yap 2007).

Civil rights plaintiffs are entitled damages for pain and suffering from a police beating and the arrested plaintiff is also entitled to damages for not being advised at the time of his arrest of the reason for his arrest,

and for the time that he spent in police custody from the time of his arrest until his release six hours later. Hauk v. Emilio, 15 FSM R. 476, 480 (Chk. 2008).

When a plaintiff presents no evidence about any wages lost from being off work for a week, or about any cost for the local massage, she is not entitled to those damages. Hauk v. Emilio, 15 FSM R. 476, 480 (Chk. 2008).

Reinstatement to his former position and back pay to the date of his termination to the date he is reinstated are remedies generally available to an employee who has shown wrongful discharge with the amount awarded in back pay reduced to the extent the plaintiff has mitigated his damages by securing other employment. But the court cannot reinstate a terminated employee in his former position when he is past the mandatory retirement age. It can only award him back pay for time before his retirement date, and any income through alternative employment that was received for employment after he would have had to retire from his Public Service System employment will not be used to reduce the back pay award. Kimeuo v. Simina, 15 FSM R. 664, 666 (Chk. 2008).

When no evidence was introduced at trial of how much, if any, unused annual leave the plaintiff had accrued before he was wrongfully terminated, the court cannot make an award for unused accrued annual leave. Kimeuo v. Simina, 15 FSM R. 664, 667 (Chk. 2008).

In order to be eligible to be paid sick leave, an employee must be ill. The employee will not be paid sick leave when he was not sick. When a plaintiff was not sick when he was wrongfully terminated, he is not entitled to any sick leave. Kimeuo v. Simina, 15 FSM R. 664, 667 (Chk. 2008).

The law does not permit an injured party to recover double for the same damage. Compensatory damages are just that – compensation to make the victim whole again. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 62 (App. 2008).

Compensation for an injury is not doubled simply because the plaintiff has two different causes of action on which to base that recovery. Only the injury itself is compensated. However, if the specific damages in question are properly a component of the total damages resulting from negligence, then they be recovered from the tortfeasor, as a tortfeasor is responsible for all damages flowing from his actions. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 63 (App. 2008).

When the class plaintiffs successfully pursued two separate causes of action arising from the same incident, negligence and nuisance, and were awarded compensatory damages, including damages for the physical damage to the reef and marine area as well as their loss of use of this resource, their purported discomfort and annoyance does not generate an additional, separate award of damages since the compensatory damages that were awarded, which flowed from the negligence claim, addressed the loss related to the use of property including any discomfort or annoyance that may have been experienced. Any additional award of damages for their nuisance claim would have resulted in a double recovery. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 63 (App. 2008).

The private attorney-general doctrine makes no distinction in the award of attorney's fees based upon the overall amount of damages that are awarded, nor does it differentiate between an award of monetary damages from injunctive relief. Attorney's fees not otherwise awardable, may be awarded under the private attorney general doctrine only when the lawsuit has met certain requirements, including vindicating rights that benefit a large number of people, when the private parties were required to file suit to enforce those rights because a government authority was unable to do so, and when the rights enforced are of great social importance. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 65 (App. 2008).

When private citizens are pursuing purely civil claims – the tort of negligence – against other private citizens and the Yap government could not have undertaken any action to vindicate the plaintiffs' rights pursued, an award of attorney's fees under the private attorney-general doctrine is erroneous. It is thus an abuse of discretion for the trial court to award attorney's fees and costs under the private attorney-general

doctrine in a case in which the government could not have taken any action to vindicate the rights of the people affected. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 65 (App. 2008).

The private attorney general theory permits government reimbursement of a party's attorney fees when it must hire its own attorney to enforce a right shared by a large number of people, when it is in the public interest. The theory recognizes that the government does not always adequately protect the rights of citizens, and that people who successfully defend the rights of the public at their own cost deserve to have their attorney fees paid for, as if they had been provided the services of a "private attorney general." M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 65 (App. 2008).

When the plaintiff's testimony on the element of damages is speculative, conclusory, and lacking in foundation, the plaintiff did not meet his burden of proof on the issue of damages and a judgment in the defendant's favor is therefore appropriate. Jano v. Fujita, 16 FSM R. 323, 328 (Pon. 2009).

When a person is unlawfully detained against his will, a civil wrong is committed for which he may seek redress. Such a claim is separate and distinct from a civil rights claim, but, at the same time, such a claim may serve as a basis for deprivation of liberty under the FSM civil rights statute. The relevant concern in this regard is that damages should not be awarded for both claims, since to do so would be to permit a double recovery. FSM v. Koshin 31, 16 FSM R. 350, 355 (Pon. 2009).

The FSM is liable to a ship captain for the wrongful retention of his passport, and hence the wrongful detention of the captain himself, for the period that the captain was required to remain in Pohnpei after he had requested the release of his passport. While damages in such a case can be difficult to quantify, an award of damages in the amount of $120 per day is appropriate. FSM v. Koshin 31, 16 FSM R. 350, 355 (Pon. 2009).

A ship captain will be awarded his attorney's fees and costs incurred in successfully bringing his counterclaim for civil rights violation and may submit his affidavit in support of his claim for fees and costs, which should meet the specificity standard. FSM v. Koshin 31, 16 FSM R. 350, 355 (Pon. 2009).

An employee is herself jointly and severally liable with her employers for the checks she converted by cashing them while she was their employee because, under the doctrine of respondeat superior, an agent's act within the scope of his or her agency is the act of the principal, and the result is that both the principal and the agent are jointly and severally liable to the person injured by the wrongful act. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 438 (Pon. 2009).

Damages for an insurer's claim for breach of fiduciary duty are the same as those for its contract claim, since the breach of fiduciary duty claim is also based on the breach of the agency contracts that the insurer had with its agents. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 446 (Pon. 2009).

Both principal and agent are jointly and severally liable for the torts that the agent commits in the course and scope of the work performed for the principal. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 446 (Pon. 2009).

When there is no way of determining what portion of an amount deposited into a bank account was also converted by another defendant and since the plaintiff has the burden of proof, that other defendant will receive the benefit of the doubt created by this question and will not be held liable for the deposited sums. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 447 (Pon. 2009).

One whose property is converted is entitled to recover interest at the legal rate from the time the property is converted. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 448 (Pon. 2009).

There is no property right that is recognized by the law of the FSM as "damages." Damages is a legal term of art that refers generally to a remedy which may be granted by the court to a party in a civil action. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 456 (Pon. 2009).

A private party cannot seek an award under a private attorney general theory when it is suing for purely civil claims involving money damages that only vindicate the rights of just one plaintiff. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 606 (Pon. 2009).

Back pay compensatory damages are the measure of compensatory damages for wrongful discharge. Compensation for an injury is not doubled just because the plaintiff has two different causes of action on which to base that recovery because only the injury itself is compensated. Sandy v. Mori, 17 FSM R. 92, 95-96 (Chk. 2010).

From awards of back pay damages the employer must deduct the applicable wage and salary taxes and social security taxes, which must then be remitted to the appropriate tax authorities. Sandy v. Mori, 17 FSM R. 92, 96 (Chk. 2010).

When a plaintiff did not submit any evidence about his damages and therefore could not have proven damages, his negligence claim fails. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 119, 123 (Chk. 2010).

A plaintiff must prove his damages to a reasonable certainty. Once damage is factually established to a legal reasonable certainty, the amount of damages need only be shown with as much certainty as the tort's nature and the case's circumstances permit. Higgins v. Kolonia Town, 17 FSM R. 254, 261 (Pon. 2010).

Compensatory damages aim to make the victim whole again. Higgins v. Kolonia Town, 17 FSM R. 254, 261 (Pon. 2010).

When there is no direct evidence of the amount of damages sustained, the court must assess an appropriate level of compensatory damages for that injury. Higgins v. Kolonia Town, 17 FSM R. 254, 261 (Pon. 2010).

In awarding compensatory damages, a court may consider past and future lost wages, medical expenses, and a plaintiff's pain and suffering. Higgins v. Kolonia Town, 17 FSM R. 254, 261 (Pon. 2010).

Permanent injuries are analyzed by the level of impairment the injury has caused to the whole person. When an injury's effect continues over time, earnings impairment will have two components: the loss sustained from the time of injury until time of trial, designated "loss of time" or lost wages, and the prospective loss that plaintiff will experience after trial due to the injury's on-going impact. The plaintiff has the burden of proof with respect to impairment, which must be demonstrated with a reasonable degree of certainty; however, proof of impairment of earning capacity does not require the specificity necessary to establish lost prospective wages. Higgins v. Kolonia Town, 17 FSM R. 254, 261 (Pon. 2010).

Since, absent a showing of impairment, FSM law is currently silent as to how a court is to define and determine whether an injury is permanent, the court may consider decisions and reasoning of United States courts and other jurisdictions in arriving at its own decisions. Higgins v. Kolonia Town, 17 FSM R. 254, 261 (Pon. 2010).

An injured plaintiff is entitled to be reimbursed for any lost-wages he might have reasonably been able to earn had the injury not occurred, that is, as a whole person. To justify reimbursement, a plaintiff must also show that he was unable, because of the injury, to acquire the monies sought as compensatory damages. When he was physically able to perform light duty work for his employer six months after the injury, at a minimum, he is entitled to receive the wages he could have earned during his months of incapacity. Higgins v. Kolonia Town, 17 FSM R. 254, 262 (Pon. 2010).

When, once the plaintiff was physically able to work he did not inform his employer of his ability

because his assailant remained employed there in a position of authority and he was afraid of being harmed again by his assailant who still would have been in close physical proximity to his victim and when Kolonia Town stopped paying his salary without any notice to him, the plaintiff's fear of returning to work was reasonable, and therefore, finds he is entitled to receive his back wages for the 36 weeks he was not paid his salary before returning to his job. Higgins v. Kolonia Town, 17 FSM R. 254, 262 (Pon. 2010).

When the majority of the plaintiff's weakness and inabilities arose from the atrophy of his muscles through their disuse; when at the time of the trial, he was employed and earning a higher wage than before; and when there was no persuasive evidence about the permanence of his injuries or the loss of function, range of motion or strength in his extremities, and despite the absence of professional physical therapy treatment on Pohnpei, the court is unable to determine a permanent damage award. Higgins v. Kolonia Town, 17 FSM R. 254, 262 (Pon. 2010).

When the court has received no persuasive evidence that the care provided to the plaintiff at the Pohnpei State Hospital was negligent or harmful, or that the care provided in the Philippines was unique or necessary to making him whole or that the Pohnpei State Hospital is not adequately equipped and staffed to provide a sufficient standard of care to safely and properly remove the metal plate, the court is unable to find that a return to the Philippines is a reasonable expense necessary to making the plaintiff whole and include this expense in the damage award, but he is entitled to be reimbursed for the costs he incurred traveling to the Philippines and having the metal plate installed in his leg. Higgins v. Kolonia Town, 17 FSM R. 254, 262-63 (Pon. 2010).

In a civil rights action, the court may award costs and reasonable attorney's fees to the prevailing party when a review of the relevant case law and the statute's permissive language indicate that such an award is merited. Higgins v. Kolonia Town, 17 FSM R. 254, 263 (Pon. 2010).

A trial court may award damages only for successful claims. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 437 (App. 2011).

Under detrimental reliance, damages are the actual expenses incurred in reliance on the representation. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 120 (App. 2011).

Injured parties in maritime tort cases are typically awarded prejudgment interest. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 175 (Yap 2012).

While the FSM statute, 6 F.S.M.C. 1401, by its terms, applies solely to judgments from the date of entry, the court has judicially adopted 9% simple interest per annum as the legal interest rate to be applied when prejudgment interest is awarded and the interest rate has not been otherwise designated by statute or contract. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 176 (Yap 2012).

It is error for a trial court to award $25,000 in compensatory damages without making any findings about actual damage or providing any reasoning on how it reached that figure or what evidence it relied on. Phillip v. Moses, 18 FSM R. 247, 251 (Chk. S. Ct. App. 2012).

Courts often apportion liability on the party best able to prevent the loss. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 359 (App. 2012).

Once the insurer ratified its agents' unauthorized agreements with its eligible policy-holders, it was barred from recovering any of that money from others because that would be a double recovery since the insurer had already "recovered" those funds from its policy-holders. Plaintiffs are not permitted a double recovery. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 360 (App. 2012).

An insurer did not ratify its agents' check-cashing agreements with a business by giving the business

credit for its agents' cash advances to its eligible policy-holders. It merely recognized that it was not entitled to double recovery. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 360 (App. 2012).

The court will not award the plaintiff the land's rental value as well as its sale price when there was no evidence before the court that the plaintiff would have or would have been able to rent that land to someone else if the defendant was not occupying it because to recover both the sale price and the rental value would be a double recovery. Double recovery is not permissible. Killion v. Nero, 18 FSM R. 381, 387 (Chk. S. Ct. Tr. 2012).

Land does not "earn" interest. It may increase or appreciate in value, in which case, the current fair market value includes the increase or appreciation. Killion v. Nero, 18 FSM R. 381, 387 (Chk. S. Ct. Tr. 2012).

An essential element of any tort is damages. Alexander v. Pohnpei, 18 FSM R. 392, 400 (Pon. 2012).

When no evidence of special or particular damages was introduced at trial, the court can rely on previous case law to assess damages for the wrongful arrest and detention. Alexander v. Pohnpei, 18 FSM R. 392, 401 (Pon. 2012).

When, regardless of the number of grounds on which the plaintiff's arrest was illegal, it was still only one illegal arrest, the court will make one damage award of $500 for the illegal arrest. Alexander v. Pohnpei, 18 FSM R. 392, 401 (Pon. 2012).

In a civil rights case, a prevailing plaintiff is entitled to an award of costs and reasonable attorney's fees as part of compensatory damages. Alexander v. Pohnpei, 18 FSM R. 392, 401 (Pon. 2012).

The FSM civil rights statute's purpose is to allow a civil rights litigant to employ reasonably competent counsel to pursue civil rights litigation without cost to herself, particularly when the damages are small or uncertain and would not otherwise induce an attorney to pursue the matter. Alexander v. Pohnpei, 18 FSM R. 392, 401 (Pon. 2012).

One whose property is converted is entitled to interest at the legal rate from the time of conversion. Ihara v. Vitt, 18 FSM R. 516, 531 (Pon. 2013).

When damages are calculated based on figures in statements made during closing argument, those damage amounts are not supported by evidence properly before the trial court, and, as such, any judgment based on them would be vacated and the court cannot take the "judicial notice" of the plaintiffs' requested figures. William v. Kosrae State Hosp., 18 FSM R. 575, 582-83 (Kos. 2013).

The court cannot award any damages for someone who is no longer a party and for whom no one has been substituted, even if the damages were adequately proven and could be determined with satisfactory certainty. William v. Kosrae State Hosp., 18 FSM R. 575, 583 (Kos. 2013).

Determination of damages is an essential element of the plaintiffs' causes of action. Trial is the time for plaintiffs to present evidence about the amount of their damages since, in civil cases, the plaintiff has the burden of proving at trial each element of the plaintiff's cause of action by a preponderance of the evidence, and if the plaintiff fails to do so, judgment will be entered against the plaintiff. William v. Kosrae State Hosp., 18 FSM R. 575, 583 (Kos. 2013).

When a plaintiff does not submit any evidence about his damages and therefore cannot prove damages, the plaintiff's negligence claim fails. William v. Kosrae State Hosp., 18 FSM R. 575, 583 (Kos. 2013).

Since the Federated States of Micronesia has waived its sovereign immunity only to the extent of the first $20,000 in damages, when a plaintiff's actual damages exceed that amount, judgment shall be entered

in her favor for $20,000. Lee v. FSM, 19 FSM R. 80, 83, 86 (Pon. 2013).

The general rule is that the uninjured spouse who loses income when he or she provides nursing care or maid service for the injured spouse is not entitled to recover damages equal to his or her lost income as part of a loss-of-consortium claim. Instead the damages are recoverable by the injured spouse and the measure of damages for nursing services supplied by a relative who leaves his or her employment to render such services is not the amount of lost earnings but rather is the reasonable value of the nursing services supplied. Lee v. FSM, 19 FSM R. 80, 84 (Pon. 2013).

A tortfeasor who caused an automobile accident would expect to pay the market rate for the care provided to the injured party, not the wages of a stockbroker. Thus, if there is to be recovery of lost income, it cannot be part of the uninjured spouse's claim for loss of consortium because a loss-of-consortium claim is not based on economic damages. Lee v. FSM, 19 FSM R. 80, 84 (Pon. 2013).

The uninjured spouse's loss-of-consortium claim is based upon the loss of services provided by the injured spouse before his or her injury. The uninjured spouse's income from his own employment is not a service that the injured spouse once provided. Thus, any recovery of damages for care provided to an injured spouse must be part of the injured spouse's claim. Lee v. FSM, 19 FSM R. 80, 84 (Pon. 2013).

The uninjured spouse's lost income or the nursing or maid services performed by the uninjured spouse, even when calculated at the reasonable maid or nursing services rate, are not part of the uninjured spouse's loss-of-consortium claim but are rather a measure of the injured spouse's damages. Lee v. FSM, 19 FSM R. 80, 84 (Pon. 2013).

While the better view may be that the dollar value in the judgment reflect the amount the Japanese yen is valued at on the day the court enters judgment because that is the only way the plaintiff would receive the Japanese yen amount equal to the yen she spent on necessary medical bills and other services, the court will not decide this issue when the plaintiff's damages total between $28,454.13 and $30,310.37 depending on the conversion date, and the FSM has waived its sovereign immunity only to the extent of the first $20,000 in damages so only a $20,000 judgment can be entered. Lee v. FSM, 19 FSM R. 80, 85-86 (Pon. 2013).

Damages for an automobile that was imported from Japan into Yap and destroyed on Yap, where the U.S. dollar is the medium of exchange and where the vehicle was valued in U.S. dollars when it was imported, will be computed in U.S. dollars, not Japanese yen. Lee v. FSM, 19 FSM R. 80, 86 (Pon. 2013).

When the defendants are liable for trespass, but the plaintiff failed to present any evidence of damages at trial, the plaintiff is entitled to nominal damages only, which will be set at one dollar. Harden v. Inek, 19 FSM R. 244, 252 (Pon. 2014).

When the plaintiffs made two claims in their complaint – trespass and due process violation – and sought damages for both, but the trial court did not calculate any damages, neither claim has been fully adjudicated and therefore neither claim could be granted partial final judgment status under Rule 54(b). Andrew v. Heirs of Seymour, 19 FSM R. 331, 338 (App. 2014).

Actual damages are an amount to compensate for a proven injury or loss; damages that repay actual losses and are also termed compensatory damages, or tangible damages, or real damages. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 377 (Pon. 2014).

An issue that is not part of the trial mandated by the appellate court and that may not be appropriate for trial since there may not be disputed material facts, might be resolved by a summary adjudication without the need of a trial so, rather than delay the mandated trial further, the court will separate the issue from the civil rights damages trial. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 379 (Pon. 2014).

Reinstatement to his former position and back pay from the date of termination to the date of reinstatement are remedies generally available to an employee who has shown wrongful discharge. However, the amount of back pay must be reduced to the extent that the plaintiff has mitigated his damages by securing other employment. Manuel v. FSM, 19 FSM R. 382, 391-92 (Pon. 2014).

Damages in defamation cases generally consider whether the allegedly defamatory statement: exposes the plaintiff to (public) hatred, contempt, ridicule or obloquy (shame or disgrace); causes people to shun or avoid the plaintiff; or has a tendency to injure the plaintiff in his occupation or adversely affect the plaintiff's trade or business. Zacchini v. Hainrick, 19 FSM R. 403, 414 (Pon. 2014).

Damages for defamation are divided into three categories, 1) punitive damages or exemplary damages, where actual malice or recklessness is shown; 2) special damages such as the loss of business which are recoverable only on proof of loss of specific economic benefits; and 3) general damages which follow inevitably from the defamatory imputation. General damages can include loss of reputation, shame, mortification, and hurt feelings. Zacchini v. Hainrick, 19 FSM R. 403, 414 (Pon. 2014).

Speculative injury is not enough, with regard to special injury, it must be demonstrably shown. Zacchini v. Hainrick, 19 FSM R. 403, 415 (Pon. 2014).

One whose property is converted is entitled to interest at the legal rate from the time of conversion. FSM v. Muty, 19 FSM R. 453, 462 (Chk. 2014).

Generally, statutes authorizing multiple damages are remedial and nonpunitive, particularly in anti-trust cases. FSM v. Muty, 19 FSM R. 453, 462 n.4 (Chk. 2014).

A false imprisonment claim is separate and distinct from a civil rights claim, but, at the same time, it may serve as a basis for deprivation of liberty under the FSM civil rights statute. The relevant concern in this regard is that damages should not be awarded for both claims, since to do so would be to permit a double recovery. Kon v. Chuuk, 19 FSM R. 463, 466-67 (Chk. 2014).

Valuing the loss of a person's liberty interest because he was subjected to the cruel and unusual punishment of being forced to remain in jail for 161 days after his sentence had ended, is, like trying to calculate damages for pain and suffering, difficult because no fixed rules exist to aid in that determination, which lies in the court's sole discretion. Kon v. Chuuk, 19 FSM R. 463, 467 (Chk. 2014).

Whether cumulative statutory penalties are permissible is properly determined by seeking out the legislative intent as expressed in the statute's language. FSM v. Kuo Rong 113, 20 FSM R. 27, 31 (Yap 2015).

A statute imposing a penalty is to be strictly construed against the government and in favor of one against whom penalties are sought to be imposed. FSM v. Kuo Rong 113, 20 FSM R. 27, 31 (Yap 2015).

When a penalty provision's statutory language is ambiguous, this ambiguity should be resolved against punishing the same action under two different statutes. FSM v. Kuo Rong 113, 20 FSM R. 27, 31 (Yap 2015).

Clear legislative intent for cumulative penalties can be indicated by provisions providing for separate penalties for each day of a violation, as found section 901(2) of the Marine Resources Act, or where a separate penalty is expressly imposed for each violation. FSM v. Kuo Rong 113, 20 FSM R. 27, 31 (Yap 2015).

Read in proper context, 24 F.S.M.C. 611(1)(b) and (c) are aimed at similar types of wrongdoing and uphold a public interest of the same nature. Thus, a vessel's failure to maintain its transponder in good working order, and its consequent failure to ensure transmission of required information from the transponder, is a solitary act that caused only one injury and therefore 24 F.S.M.C. 611(5) should not be

construed to authorize cumulative penalties. FSM v. Kuo Rong 113, 20 FSM R. 27, 32 (Yap 2015).

Since Subsection (1) allows NORMA to require that operators perform an integrated act which, when completed in its entirety, ensures transmission of required information from a vessel's transponder and this is reflected in the use of the word "and" between 24 F.S.M.C. 611(1)(b) and (c); since the failure to perform any one part of the integrated act required under subsection 611(1) is sufficient to frustrate entirely the purpose of the subsection; and since a failure to perform multiple component parts of the act required under the subsection is no more frustrating to the statute's purpose than failure to perform only one part, the court will, in the absence of clear legislative intent to impose cumulative penalties, construe 24 F.S.M.C. 611(5) to impose only a single penalty for the failure to comply with the integrated requirements imposed on them under 24 F.S.M.C. 611(1). FSM v. Kuo Rong 113, 20 FSM R. 27, 33 (Yap 2015).

The usual remedy for trespass to land (and when applicable nuisance and negligence claims are based on similar facts) is either a judgment for an amount equal to the diminution in the land's value or a judgment for an amount that would be needed to restore the land to its previous condition, whichever is the lesser amount. To award both would constitute an impermissible double recovery. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 78-79 (Pon. 2015).

To grant a judgment against the state government for funds that the national government admits that it still holds and is willing to pay would permit double recovery. Eot Municipality v. Elimo, 20 FSM R. 482, 489 n.2 (Chk. 2016).

When, under prior precedent and the law of the case doctrine, the state government is immune from an interest award as a part of a judgment against the state unless the state has expressly consented to the imposition of interest and when the state government has not expressly consented, by statute or by contract, to the imposition of interest for claims or for a conversion claim, no interest will be permitted. Eot Municipality v. Elimo, 20 FSM R. 482, 489 (Chk. 2016).

To grant a judgment against the state government for funds that the national government admits that it still holds and is willing to pay would permit double recovery. Onanu Municipality v. Elimo, 20 FSM R. 535, 540 n.4 (Chk. 2016).

When a defendant is found negligent, the remedy is money damages, but if irreparable future harm is threatened, a court, by injunction, may also act to prevent future damage. Alik v. Heirs of Alik, 21 FSM R. 606, 620 & n.6 (App. 2018).

While it may be uncontested that the value of a reef on the main island of Yap is $600 per square meter, the court cannot presume, without evidence, that $600 a square meter is an accurate value for any particular Yap outer island reef, especially where on the outer island there may be more reef and fewer people who have the right to rely on or depend on the reef's resources. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 22 (Yap 2018).

An appropriate measure of damages for a damaged coral reef may be the cost of restoration without grossly disproportionate expense. Or if the cost of restoration would not be an appropriate measure because it would entail a grossly disproportionate expense, damages could be measured by the economic value of the marine resources lost or diminished by the reef damage. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 22 (Yap 2018).

When considering loss of enjoyment of life, the court takes into account the plaintiff's change of lifestyle. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 30 (Pon. 2018).

When the employer paid the employee's salary during the time he was attempting to recover from his workplace injury, even after his discharge from the hospital, until the termination of his employment, and when the employer also paid his medical bills, damages for lost wages during that time and for his medical bills is inappropriate. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 30 n.1 (Pon. 2018).

Since Pohnpei is a mixed subsistence and cash economy, people rely on a person's employability to bring in the cash necessary to help support himself and his family in addition to the farm and fish products which he could produce through farming on his lands and fishing. Thus, a workplace injury, may greatly impair both the person's employability and his ability to provide from farming and fishing. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 30 (Pon. 2018).

When an employer is liable to an employee for a workplace injury permanently disabling the employee, the court must in all fairness determine a reasonable time frame to aid in calculating the amount of lost wages damages to award the plaintiff. Wages up to age sixty is a reasonable time frame. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 30 (Pon. 2018).

Unlike other forms of trespass, trespass to chattels requires some actual damage to the chattel before the action can be maintained, and nominal damages will not be awarded, so that in the absence of any actual damage the action will not lie. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 154 (Chk. 2019).

Generally, "business destruction" cannot be a separate cause of action, but if the plaintiff can claim lost personal income that she derived from the business, it may be a measure of damages. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 157 (Chk. 2019).

Damages for waste are normally the difference in value of the property before and after the act of waste. Since the damages for waste committed are usually measured by the injury actually sustained, if the value of the premises has been improved by the acts complained of, the complainants will only recover nominal damages, if any, at law. Hartman v. Henry, 22 FSM R. 292, 297 (Pon. 2019).

Proof of diminution in value of property can be made by introducing the cost of repairs, and when the cost of repairs is submitted as evidence, the fact that repairs were not ultimately made does not prevent the property owner from securing recovery based on those estimated costs. Hartman v. Henry, 22 FSM R. 292, 297 (Pon. 2019).

The allowance of damages is to award just compensation without enrichment. There is thus no universal test for determining the value of property injured or destroyed. The mode and amount of proof must be adapted to the facts of each case. Hartman v. Henry, 22 FSM R. 292, 297 (Pon. 2019).

When the lessee did not have the obligation to restore the property to its original state, damages are recoverable only for the former lessee's acts which rendered the property unsafe and require remediation in order to make the lessor whole. Hartman v. Henry, 22 FSM R. 292, 298 (Pon. 2019).

When the lease did not require the lessee, at the lease's termination, to remove the structures and foundations, the lessor's requested damages will be reduced because the lessee should not have to pay for the removal of slabs and foundations that remain on the property. Hartman v. Henry, 22 FSM R. 292, 298 (Pon. 2019).

Damages for permissive waste is not recoverable, including any damages related to clearing trees and brushes or cutting and removing. Hartman v. Henry, 22 FSM R. 292, 298 (Pon. 2019).

When a bridge that was constructed on the property was, under the lease, a permissible structure that improved the property's value, the former lessee is not liable for its removal. Hartman v. Henry, 22 FSM R. 292, 298 (Pon. 2019).

Damages will be awarded for certain potentially dangerous materials including cut pipes, wires, rebar, certain other items left protruding from the ground and property that were a safety hazard and should have been removed because it resulted in the diminution of the properties' value. Hartman v. Henry, 22 FSM R. 292, 299 (Pon. 2019).

The measure of damages for conversion is the property's market value at the time and place of conversion plus the legal rate of interest from the date of the conversion. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

A conversion is complete when the defendant takes, detains, or disposes of the chattel. At that point, the plaintiff acquires the right to enforce a sale, and recover the property's full value. The defendant cannot undo his wrong by forcing the goods back upon their owner, either as a bar to the action, or in mitigation of damages. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

Regardless of how accurate a May 9, 2019 appraisal was, it cannot be used to establish conversion damages where no evidence relates that appraised value to the chattels' value eight to ten months earlier when the chattels were allegedly converted. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

Even if the conversion occurs in good faith, the plaintiff may nonetheless recover damages beyond the converted property's fair market value. Thus, damages for lost profits are allowed when, either from the article's nature or the case's peculiar circumstances, they might be reasonably supposed to follow from the conversion, even though this recovery of lost profits is above and beyond the chattels' market value. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

The general rule is that compensation for lost profits may be recovered in an action for conversion, when the loss is the proximate result of the defendant's act and the loss can be shown with reasonable certainty. Thus, although the usual measure for conversion damages is the property's value at the time and place of conversion, plus interest, and lost profits may also be recovered if they may reasonably be expected to follow from the conversion. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

Lost profit damages can be awarded for conversion when the plaintiff shows that, but for the conversion, a profit would have been realized from the items converted and shows the extent thereof with reasonable certainty. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

Awards for lost business profits are appropriate damages in a conversion case when proved with reasonable certainty. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315-16 (Pon. 2019).

It would be improper to allow lost business profit damages in every case involving conversion. The damages would only be proper when the person whose property has been converted shows that the conversion has resulted in lost business profits and shows with reasonable certainty the amount of these lost profits. Lost profits is the proper measure of damages, as opposed to lost gross receipts, and this damages amount need only be shown with as much certainty as the tort's nature and the case's circumstances permit. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 316 (Pon. 2019).

Recovery for lost rental income may be limited in time until when the plaintiff could have obtained a replacement for his rental business since, if a plaintiff could have avoided the loss by purchasing a substitute item, profits from that point on are not the measure of the plaintiff's recovery even if profits were in fact lost. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 316 (Pon. 2019).

Conversion, when committed on navigable waters, is a maritime tort that creates a maritime lien. The measure of damages in a maritime conversion is the property's market value at the time and place of its conversion plus the legal rate of interest from that date, and to these damages, the plaintiff's lost profits can be added when that loss can reasonably be expected to follow from the conversion, or is the proximate result of the defendant's conversion, and when the amount of that loss can be shown with reasonable certainty. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 316 (Pon. 2019).

A "personal injury" is any harm caused to a person, such as a broken bone, a cut, or a bruise; bodily

injury or any invasion of a personal right, including mental suffering and false imprisonment. This does not describe claimed damages that are all monetary losses. Panuelo v. Sigrah, 22 FSM R. 341, 358 n.8 (Pon. 2019).

In awarding compensatory damages, a court may consider past and future lost wages, medical expenses, and a plaintiff's pain and suffering. Pelep v. Lapaii, 22 FSM R. 482, 488 (Pon. 2020).

A plaintiff, who has proved that the defendant committed battery, is entitled to an award of compensatory damages when he has lost wages and his future ability to earn income is impaired because of the battery. The plaintiff is allowed to recover damages for loss of his capacity to earn wages even if he was unemployed at the time of the injuries, and therefore unable to prove actual lost wages or if the plaintiff was rendering gratuitous services without compensation when injured. Pelep v. Lapaii, 22 FSM R. 482, 489 & n.5 (Pon. 2020).

A trespass plaintiff's failure to proffer any evidence of monetary damages is not fatal to his trespass claim – monetary damages are not an essential element of the trespass tort because, if evidence of actual damages is lacking in a successful trespass action, the trial court will award nominal damages. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 621 (Chk. S. Ct. App. 2020).

Diminution of a property's value is not the sole measure of nuisance damages. Special damages may also be awarded for nuisance. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 621 (Chk. S. Ct. App. 2020).

When the nuisance, or the injury arising from it, is not permanent and has been or can be abated, the plaintiff usually recovers the depreciation in the rental or use value of his or her property during the period in which the nuisance exists, plus any special damages, but rental and use value are not necessarily the same thing, and a plaintiff who actually occupies the premises may recover the "use value," or special value to him or her. Discomfort or inconvenience in the use of the property is, of course, relevant to both establish special damage and as evidence bearing on the loss of rental or use value. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 621 (Chk. S. Ct. App. 2020).

In a nuisance case, the land occupant may recover special damages in addition to the depreciation in market or use value. This commonly includes damages for personal discomfort or illness resulting from the nuisance, and the plaintiff may also recover the reasonable cost of his or her own efforts to abate the nuisance or prevent future injury. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 622 (Chk. S. Ct. App. 2020).

– Damages – Mitigation of

When a plaintiff makes a claim for damages, he has a duty to mitigate those damages, which means that a plaintiff who has taken reasonable steps to minimize the amount of his damages may recover the amount of those expenses. Elymore v. Walter, 9 FSM R. 450, 457 (Pon. 2000).

Failure to mitigate damages will usually not bar a claim but rather reduce any damages awarded, although in some cases it may reduce the damages to zero. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 127 (Chk. 2005).

Under the general principle of mitigation of damages, a plaintiff should not be encouraged to maximize his recovery by sitting on his rights. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 24 (App. 2006).

Reinstatement to his former position and back pay to the date of his termination to the date he is reinstated are remedies are generally available to an employee who has shown wrongful discharge. But the amount awarded in back pay should be reduced to the extent the plaintiff has mitigated his damages by securing other employment. Reg v. Falan, 14 FSM R. 426, 436-37 (Yap 2006).

When a plaintiff suing for wrongful discharge has introduced no evidence of his efforts to mitigate his damages by attempting to secure a job during his periods of unemployment, the plaintiff is precluded from recovery of damages for these periods. Reg v. Falan, 14 FSM R. 426, 437 (Yap 2006).

When an employer has unlawfully discharged an employee in violation of his civil rights and the former employee obtains alternative employment, in calculating damages, the income from the alternative employment will be deducted from the back pay owed to the employee, since otherwise the plaintiff could recover a windfall, which would violate the principles of compensatory damages. Robert v. Simina, 14 FSM R. 438, 443 (Chk. 2006).

That a plaintiff has a duty to mitigate his damages is clear. He must take reasonable steps to minimize those damages. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 445 (Pon. 2009).

A business that was presented, over a period of approximately three-and-a-half years, with checks amounting to over $400,000 that were made payable to a corporate payee, but that cashed the checks at the request of the individual cashing those checks without ever making any efforts to obtain independent confirmation that the individual presenting the check had the corporate payee's authority to do so, cannot rely on defenses of mitigation of damages or apparent authority or good faith commercial standards since the business had a duty to determine whether the individuals had the authority to cash the checks. The business cannot be said to have used good faith commercial business standards. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 445 (Pon. 2009).

A wrongfully discharged government employee has a duty to mitigate his damages by actively looking for and accepting any reasonable offer of employment; otherwise back pay damages cannot be awarded. If the former government employee obtains other employment, the amount he is awarded in back pay must be reduced by the amount he mitigated his damages – by the amount he received from the other employment – since otherwise he could recover a windfall, which would violate the principles of compensatory damages. Sandy v. Mori, 17 FSM R. 92, 94 (Chk. 2010).

When the discharged employee has not presented any evidence about whether and where he sought employment during a certain time period, he has introduced no evidence of his efforts to mitigate his damages by attempting to secure a job during his periods of unemployment, and he is thus precluded from recovery of damages for those periods since it is the plaintiff's burden to prove every element of his case, including all of his damages. Sandy v. Mori, 17 FSM R. 92, 95 (Chk. 2010).

One sound reason for the mitigation principle is that it makes commercial sense to discourage a plaintiff from sitting back and letting damages get larger instead of stemming further losses. But an innocent party cannot be expected to take steps to mitigate damages before it was aware of the breach. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 361 (App. 2012).

Any inaction before the date the plaintiff became aware of the breach cannot be a failure to mitigate damages because the plaintiff did not know it had any to mitigate. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 361 (App. 2012).

It is well established that a plaintiff seeking an award of back pay as damages for wrongful termination has a duty to mitigate damages by actively seeking alternative employment. Manuel v. FSM, 19 FSM R. 382, 391 (Pon. 2014).

The failure to mitigate damages is an affirmative defense for which the defendant bears the burden of proof. The common law rule establishing failure to mitigate damages as an affirmative defense is sound because to hold otherwise would be to impose a burdensome requirement upon every plaintiff in a wrongful termination case and because a holding that failure to mitigate damages is an affirmative defense puts the burden of proof on defendants, who presumably would refrain from litigating this issue unless the question

of failure to mitigate damages is actually in dispute. Manuel v. FSM, 19 FSM R. 382, 391 (Pon. 2014).

– Damages – Nominal

The damages for waste committed are usually measured by the injury actually sustained and if the value of the premises has been improved by the acts complained of, the complainants will only recover nominal damages, if any, at law. Wolphagen v. Ramp, 8 FSM R. 241, 244 (Pon. 1998).

The amount of damages to be awarded in invasion of privacy cases rests with the sound discretion of the trier of fact. The fact that damages may be difficult to ascertain, or that they cannot be measured by a pecuniary standard, is not a basis for denying all recovery even though there is no direct evidence of the amount of damage sustained. However, to recover substantial compensatory damages, the plaintiff must prove these damages. If there has been no material injury to the plaintiff, or if there is no evidence that damage has been sustained, or no evidence to serve as a basis for the calculation of damage, plaintiff will be awarded nominal damages only. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 414 (Pon. 1998).

When a plaintiff is entitled to punitive damages against a defendant because he acted with malice, but that defendant has no net worth and there was a substantial damage, fee and cost award only a nominal punitive damage award is proper. Bank of Guam v. O'Sonis, 9 FSM R. 106, 113 (Chk. 1999).

Nominal damages, or none at all, are awarded for ameliorating waste. Wolphagen v. Ramp, 9 FSM R. 191, 194 (App. 1999).

When a defendant with no net worth and no income is liable for punitive damages in addition to a substantial damage award, only a nominal punitive damage award of $1 is proper. When the net worth and income of defendants is not known, but it is known that they are employed and thus have an income, it is appropriate to award more than just nominal punitive damages. Herman v. Municipality of Patta, 12 FSM R. 130, 139 (Chk. 2003).

When there is no doubt about the violation of 32 F.S.M.C. 302(2), but when there is nothing of record to establish that even if a trochus harvest had been held after 1994, the plaintiff would have been successful in purchasing enough trochus so that it would have had an adequate source of supply for its button operation, the plaintiff has failed to establish that it was damaged by the defendant's conduct as proscribed 32 F.S.M.C. 302(2). Since that conduct was tortious in nature, the plaintiff is entitled only to nominal damages. AHPW, Inc. v. FSM, 12 FSM R. 544, 555 (Pon. 2004).

A court may award a plaintiff reasonable attorney's fees in litigating a statutory cause of action that provides for award of attorney's fees to the prevailing party even though the plaintiff obtains only nominal damages. The fact that only nominal damages are awarded however may be considered in determining the amount of the attorney's fees. AHPW, Inc. v. FSM, 13 FSM R. 36, 39-40 (Pon. 2004).

Nominal damages are usually $1. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 25 n.8 (App. 2006).

Common-law courts traditionally have vindicated deprivations of certain "absolute" rights that are not shown to have caused actual injury through the award of a nominal sum of money. By making the deprivation of such rights actionable for nominal damages without proof of actual injury, the law recognizes the importance to organized society that those rights be scrupulously observed; but at the same time, it remains true to the principle that substantial damages should be awarded only to compensate actual injury or, in the case of exemplary or punitive damages, to deter or punish malicious deprivation of rights. Because the right to procedural due process is "absolute" in the sense that it does not depend upon the merits of a claimant's substantive assertions, and because of the importance to organized society that procedural due process be observed, the denial of due process should be actionable for nominal damages without proof of actual injury. Robert v. Simina, 14 FSM R. 438, 444 (Chk. 2006).

Nominal damages are usually one dollar. Robert v. Simina, 14 FSM R. 438, 444 n.3 (Chk. 2006).

Although an arrestee, who was not informed of her rights to access to counsel when she was handcuffed, was told her full rights at the police station, this does not excuse the police's failure to advise her of rights regarding to access to counsel on the scene when she was first placed in handcuffs. Since the arrestee was not harmed by the failure to advise her, when she was first placed in handcuffs, of rights regarding to access to counsel, the state is liable to her for nominal damages in the amount of one dollar. Berman v. Pohnpei, 16 FSM R. 567, 576 (Pon. 2009).

If a defendant's acts caused trespass on a plaintiff's land and chattels but no actual damages are proven, the plaintiff would be entitled to no more than nominal damages ($1). Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 50 (Chk. 2010).

If a defendant trespasses on a plaintiff's land but no actual damages can be proven, the plaintiff is entitled to nominal damages ($1). Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 112 (Pon. 2010).

In a successful trespass claim where no evidence exists of actual damages, the trial court will award nominal damages. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 437 (App. 2011).

When the defendants are liable for trespass, but the plaintiff failed to present any evidence of damages at trial, the plaintiff is entitled to nominal damages only, which will be set at one dollar. Harden v. Inek, 19 FSM R. 244, 252 (Pon. 2014).

The lack of proof of actual damage amounts is not fatal to a trespass claim because, in a successful trespass claim when no evidence exists of actual damages, the trial court will award nominal ($1) damages. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 155 (Chk. 2019).

A plaintiff has the burden to prove the amount of any damages caused by the trespass. But a plaintiff's failure to proffer any evidence of monetary damages is, however, not fatal to his trespass claim because monetary damages are not an essential element of the trespass tort since, in a successful trespass action when evidence of actual damages is lacking, the trial court will award nominal ($1) damages. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 163 (Chk. 2019).

Damages for waste are normally the difference in value of the property before and after the act of waste. Since the damages for waste committed are usually measured by the injury actually sustained, if the value of the premises has been improved by the acts complained of, the complainants will only recover nominal damages, if any, at law. Hartman v. Henry, 22 FSM R. 292, 297 (Pon. 2019).

Failure to demonstrate actual damages often warrants only nominal damages for the trespass. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 421 (Chk. S. Ct. Tr. 2019).

– Damages – Pain and Suffering

The Pohnpei Supreme Court recognizes pain and suffering as a principal element of damages in personal injury cases, but because there is no fixed formula to determine the monetary amount, the court has to use its discretion. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 73 (Pon. S. Ct. Tr. 1986).

In a wrongful death claim, parents of the deceased child are entitled to claim pecuniary damages and damages for their own pain and suffering from the loss of their child. Suka v. Truk, 4 FSM R. 123, 130 (Truk S. Ct. Tr. 1989).

Although in the usual case in Truk the damages for loss of income will be lower than, for instance, Guam or Hawaii because of the wage scale there, and medical expense damages will normally be greatly

reduced because in the usual case the government absorbs the medical bills, there is no justification for reducing a mental pain and suffering award because of the citizenship of the parents or the geographic location of the accident causing the injury. Suka v. Truk, 4 FSM R. 123, 131 (Truk S. Ct. Tr. 1989).

To recover for pain and suffering a plaintiff need only show "suffering," not both "pain" and "suffering" as the term includes not only the physical pain but also fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation, indignity, embarrassment, apprehension, terror or ordeal. Ludwig v. Mailo, 5 FSM R. 256, 262 (Chk. S. Ct. Tr. 1992).

Awarding damages for pain and suffering is one of the most difficult tasks of a court because the determination lies solely in the discretion of the trier of fact and no fixed rules exist to aid in the determination. Primo v. Refalopei, 7 FSM R. 423, 434 (Pon. 1996).

Compensatory damages for personal injury also include pain and suffering, past as well as the reasonable value of future pain and suffering. An award for pain and suffering is not reduced merely because the injury took place in Chuuk. The court must use its discretion in awarding it. Davis v. Kutta, 7 FSM R. 536, 549 (Chk. 1996).

A person injured by the intentional tort of another is entitled to an award for pain and suffering, including mental anguish. Davis v. Kutta, 7 FSM R. 536, 549 (Chk. 1996).

Calculating damages for pain and suffering is a difficult task because no fixed rules exist to aid in that determination which lies in the sole discretion of the trier of fact, and in making the calculation, it is proper to consider not only past pain but future pain. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 63, 66 (Chk. 1997).

A person injured through the negligent or intentional tort of another is entitled to an award of damages for pain and suffering. Calculating the amount is difficult because there are no fixed rules to help in that determination. The determination lies in the sole discretion of the trier of fact. Asher v. Kosrae, 8 FSM R. 443, 453-54 (Kos. S. Ct. Tr. 1998).

Compensatory damages for personal injury include pain and suffering, past as well as the reasonable value of future pain and suffering. The court must use its discretion in awarding it. Pain and suffering includes mental anguish. Asher v. Kosrae, 8 FSM R. 443, 454 (Kos. S. Ct. Tr. 1998).

In determining pain and suffering, it is proper to consider not only past pain but future pain, and to consider the loss of enjoyment of life as an element of pain and suffering. Asher v. Kosrae, 8 FSM R. 443, 454 (Kos. S. Ct. Tr. 1998).

Awarding damages for pain and suffering does not present a facile endeavor, since this is a matter committed to the discretion of the court, and there are no established rules for making such an award. Mathebei v. Ting Hong Oceanic Enterprises, 9 FSM R. 23, 26 (Yap 1999).

Calculating the damages for pain and suffering is a difficult task because there are no fixed rules to aid in that determination, which lies in the sole discretion of the trier of fact. In determining pain and suffering, it is proper to consider not only past pain but future pain. It is also appropriate to consider loss of enjoyment of life as an element of pain and suffering. Sigrah v. Timothy, 9 FSM R. 48, 54 (Kos. S. Ct. Tr. 1999).

"Pain and suffering" includes fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation, indignity, embarrassment, apprehension, terror or ordeal. A plaintiff is entitled to such damages as will fully compensate him for the injuries directly flowing from the alleged tort, including physical pain and suffering as well as the mental suffering caused by the tortious act. Elymore v. Walter, 9 FSM R. 450, 458 (Pon. 2000).

Calculating the appropriate monetary award for pain and suffering is difficult, because such an award is not subject to precise calculation, and the matter is committed to the court's entire discretion. The court in making an award for pain and suffering is guided by other cases in the FSM which have addressed this issue. Elymore v. Walter, 9 FSM R. 450, 459 (Pon. 2000).

A deceased's parent (or her estate) is entitled to damages that include her mental pain and suffering for the loss of her child that resulted from her child's wrongful death, without regard to provable pecuniary damages. Estate of Mori v. Chuuk, 10 FSM R. 6, 15 (Chk. 2001).

A person injured through the negligence of another is entitled to an award of damages for pain and suffering. Awarding damages for pain and suffering is one of a court's most difficult tasks because the determination lies solely in the discretion of the trier of fact and no fixed rules exist to aid in the determination. Talley v. Lelu Town Council, 10 FSM R. 226, 238 (Kos. S. Ct. Tr. 2001).

A person who is injured through the negligence of another is entitled to an award of damages for pain and suffering. To recover for pain and suffering a plaintiff need only show "suffering," not both "pain" and "suffering" as the term includes not only the physical pain but also fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation, indignity, embarrassment, apprehension, terror or ordeal. Talley v. Lelu Town Council, 10 FSM R. 226, 238 (Kos. S. Ct. Tr. 2001).

Past and future lost wages, medical expenses, and pain and suffering are all compensable. Amayo v. MJ Co., 10 FSM R. 244, 251 (Pon. 2001).

Pain and suffering serves as a convenient label under which a plaintiff may recover not only for physical pain but also for fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation, indignity, embarrassment, terror, or ordeal. It covers disfigurement and deformity, impairment of ability to work or labor, anxiety or worry proximately attributable to an injury and mental distress caused by impairment of the enjoyment of life and it includes anxiety and embarrassment from disfigurement or limitations on activities. Amayo v. MJ Co., 10 FSM R. 244, 252 (Pon. 2001).

Determining damages for pain and suffering is difficult because there are no precise rules for determining the amount, which lies within the sole discretion of the trier of fact. Amayo v. MJ Co., 10 FSM R. 244, 252 (Pon. 2001).

Civil rights damages may include damages for the victim's pain and suffering before his death. Calculating damages for pain and suffering is difficult because no fixed rules exist to aid in that determination, which lies in the court's sole discretion. Herman v. Municipality of Patta, 12 FSM R. 130, 137 (Chk. 2003).

The rule is well settled that to authorize damages for pain and suffering, such must be the result of physical injury. Narruhn v. Aisek, 13 FSM R. 97, 99 (Chk. S. Ct. App. 2004).

When there is no evidence in the record of physical injury to the plaintiff or of any physical manifestation of emotional distress by the plaintiff, an award of damages for pain and suffering must be set aside. Narruhn v. Aisek, 13 FSM R. 97, 99 (Chk. S. Ct. App. 2004).

Calculating damages for pain and suffering is difficult because no fixed rules exist to aid in that determination, which lies in the court's sole discretion. Lippwe v. Weno Municipality, 14 FSM R. 347, 353 (Chk. 2006).

A decedent's mother as the deceased's parent is entitled to damages that include her mental pain and suffering for the loss of her child, without regard to provable pecuniary damages. Lippwe v. Weno Municipality, 14 FSM R. 347, 353 (Chk. 2006).

When the plaintiffs asked for $5,000 for the raising of plaintiff's blood pressure and $5,000 for physical, mental, and emotional distress and for $5,000 for pain and suffering, but no evidence was placed before the court regarding these damage claims and no manifestation of physical injury was placed into evidence, these damages cannot be awarded. Hartman v. Krum, 14 FSM R. 526, 532 (Chk. 2007).

Civil rights plaintiffs are entitled damages for pain and suffering from a police beating and the arrested plaintiff is also entitled to damages for not being advised at the time of his arrest of the reason for his arrest, and for the time that he spent in police custody from the time of his arrest until his release six hours later. Hauk v. Emilio, 15 FSM R. 476, 480 (Chk. 2008).

When, in a wrongful termination case, no evidence of physical pain or a physical manifestation of suffering was introduced, no damages can be awarded for pain and suffering because the rule is well settled that to award damages for pain and suffering, such must be the result of physical injury or of a physical manifestation of emotional distress. Kimeuo v. Simina, 15 FSM R. 664, 667 (Chk. 2008).

When a person is injured through the negligence of another, the victim is entitled to an award of damages for pain and suffering. Analyzing a damage request for pain and suffering is difficult, no fixed rules exist to aid in the determination, and it is solely within the trier of fact's discretion. Higgins v. Kolonia Town, 17 FSM R. 254, 261 (Pon. 2010).

In awarding compensatory damages, a court may consider past and future lost wages, medical expenses, and a plaintiff's pain and suffering. Higgins v. Kolonia Town, 17 FSM R. 254, 261 (Pon. 2010).

To recover for pain and suffering a plaintiff need only show "suffering." The term includes not only physical pain but: fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation, indignity, embarrassment, apprehension, terror or ordeal. When analyzing a pain and suffering award, it is proper to consider not only past pain, but also future pain and the loss of enjoyment of life. Higgins v. Kolonia Town, 17 FSM R. 254, 261 (Pon. 2010).

When the plaintiff's injury being knocked unconscious had caused him to suffer; when he spent one week in the Pohnpei State Hospital and approximately four months in a cast; when he was then required to leave his wife and new child to travel to the Philippines to undergo surgery where a metal plate was attached to his right tibia; when because of this treatment, his muscles atrophied since the unavailability of professional physical therapy left him unable to perform regular tasks for an unspecified time; and when the manner that his injuries were incurred and his subsequent condition also left him with a reasonable fear of Kolonia Town's Chief of Police, the plaintiff will be awarded $21,000 for pain and suffering. Higgins v. Kolonia Town, 17 FSM R. 254, 263 (Pon. 2010).

Awarding damages for pain and suffering is one of the most difficult tasks for a court because the determination lies solely in the court's discretion with no fixed rules exist to aid in the determination. In making that calculation, it is proper to consider not only past pain but future pain. Lee v. FSM, 19 FSM R. 80, 83 (Pon. 2013).

Pain and suffering serves as a convenient label under which a plaintiff may recover not only for physical pain but also for fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation, indignity, embarrassment, terror, or ordeal and it covers disfigurement and deformity, impairment of ability to work or labor, anxiety or worry proximately attributable to an injury and mental distress caused by impairment of the enjoyment of life and it includes anxiety and embarrassment from disfigurement or limitations on activities, but to award damages for pain and suffering, such must be the result of physical injury. Lee v. FSM, 19 FSM R. 80, 83 (Pon. 2013).

A plaintiff will be awarded damages for pain and suffering when she suffered grievous physical injury along with disfigurement and fright and anxiety in addition to the pain from the injury. Lee v. FSM, 19 FSM R. 80, 83 (Pon. 2013).

"Pain and suffering" is a convenient label under which a plaintiff may recover not only for physical pain but also for fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation, indignity, embarrassment, terror, or ordeal and it covers disfigurement and deformity, impairment of ability to work or labor, anxiety or worry proximately attributable to an injury and mental distress caused by impairment of the enjoyment of life, and it includes anxiety and embarrassment from disfigurement or limitations on activities. To award damages for pain and suffering, such must be the result of physical injury. Pelep v. Lapaii, 22 FSM R. 482, 489 (Pon. 2020).

A person, who is injured through another's negligent or intentional tort, is entitled to an award of damages for pain and suffering. Calculating the amount is difficult because there are no fixed rules to help in that determination. The determination lies in the sole discretion of the trier of fact. Pelep v. Lapaii, 22 FSM R. 482, 489 (Pon. 2020).

– Damages – Punitive

An employer generally may not be held liable for punitive damages for the tortious acts of its employees. However, an employer may be held liable for punitive damages if 1) the employer authorized the act, 2) the employer knew the employee was unfit for the position at the time of the hiring, or 3) the employer ratified the tortious act of the employee. Meitou v. Uwera, 5 FSM R. 139, 146 (Chk. S. Ct. Tr. 1991).

There is no authority to award punitive damages against a foreign national government even when it is otherwise liable for damages. Damarlane v. United States, 6 FSM R. 357, 361 (Pon. 1994).

Punitive damages are not recoverable for ordinary negligence. Elwise v. Bonneville Constr. Co., 6 FSM R. 570, 572 (Pon. 1994).

Punitive damages merely constitute an element of recovery in an underlying cause of action. Therefore no punitive damages may be recovered without an underpinning independent cause of action. Urban v. Salvador, 7 FSM R. 29, 33 (Pon. 1995).

Punitive damages are a derivative, not an independent cause of action, and must rest upon some other, underlying cause of action because it is merely an element of damages in that cause of action. Thus, if all other causes of action are dismissed then punitive damages must necessarily also be dismissed. Semwen v. Seaward Holdings, Micronesia, 7 FSM R. 111, 113 (Chk. 1995).

A plaintiff may not as a matter of law recover punitive damages from the State of Chuuk. Kaminaga v. Chuuk, 7 FSM R. 272, 274 (Chk. S. Ct. Tr. 1995).

Punitive damages may be awarded when a tort was committed with actual malice, or deliberate violence, or the acts complained of were wanton, reckless, malicious and oppressive and are given to enhance compensatory damages. Punitive damages depend on the existence of compensatory damages and cannot be awarded in the absence of compensatory damages. Primo v. Refalopei, 7 FSM R. 423, 435-36 & n.29 (Pon. 1996).

Punitive damages will not be awarded where the plaintiff has not claimed and proved that a defendant acted with actual malice or deliberate violence. Davis v. Kutta, 7 FSM R. 536, 546 (Chk. 1996).

Punitive damages may be recoverable for conversion where the defendant's act was accompanied by fraud, ill will, malice, recklessness, wantonness, oppressiveness, willful disregard of the plaintiff's rights, or other circumstances tending to aggravate the injury, but defendant's mere failure to respond to an inquiry, or to answer a complaint is not a circumstance entitling a plaintiff to punitive damages. Bank of Hawaii v. Air Nauru, 7 FSM R. 651, 653 (Chk. 1996).

Punitive damages are not recoverable for ordinary negligence. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 63, 67 (Chk. 1997).

Punitive damages are typically given as an enhancement of compensatory damages because of the wanton, reckless, malicious or oppressive character of defendant's conduct, but will not be given when compensatory damages will deter similar future actions and the excessive force used on a person resisting arrest was not of such a character. Conrad v. Kolonia Town, 8 FSM R. 183, 196 (Pon. 1997).

Punitive damages may also be awarded where it is shown that the defendant acted with malice or with a gross disregard for plaintiff's right to privacy, in order to punish the defendant for its conduct and to deter the defendant and others from engaging in like conduct in the future. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 414 (Pon. 1998).

When the evidence presented shows that the defendant relied on what he believed was appropriate consent and had acted in accordance with what he thought was appropriate custom and had not acted with malice, with an intent to violate plaintiff's rights, punitive damages will not be awarded. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 417 (Pon. 1998).

Punitive damages will be rejected when the defendant conducted its blasting and quarrying activities with an intentional, reckless or wanton disregard of the of the plaintiffs' rights and safety. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 541 (Pon. 1998).

When a plaintiff is entitled to punitive damages against a defendant because he acted with malice, but that defendant has no net worth and there was a substantial damage, fee and cost award only a nominal punitive damage award is proper. Bank of Guam v. O'Sonis, 9 FSM R. 106, 113 (Chk. 1999).

Judicial immunity protects from liability for punitive damages. Bank of Guam v. O'Sonis, 9 FSM R. 106, 113 (Chk. 1999).

A defendant's financial condition is relevant to a punitive damages claim and a proper subject of discovery, if, under the applicable law, the defendant's financial condition has a bearing on the amount of punitive damages to be awarded. Elymore v. Walter, 9 FSM R. 251, 253 (Pon. 1999).

If a defendant is found liable for punitive damages, a court cannot make an award having a meaningfully deterrent effect unless the court knows the extent of the defendant's wealth. The greater or lesser the degree of defendant's wealth, the greater or lesser would be the amount of the punitive award, since a small award relative to overall wealth would not meaningfully deter, whereas a large award relative to overall wealth would be unduly onerous. Elymore v. Walter, 9 FSM R. 251, 253 (Pon. 1999).

Punitive damages are recoverable for tortious acts which involve actual malice or deliberate violence, or where the conduct involved is shown to be wanton, reckless, malicious and oppressive. Elymore v. Walter, 9 FSM R. 251, 254 (Pon. 1999).

A trial judge abuses his discretion when he denies a motion to compel production of financial information in a case where punitive damages are claimed, if the plaintiff submits factual support for the claim and the defendant fails to demonstrate good cause for a protective order preventing discovery; but the defendant is usually entitled to a protective order that the information only be revealed to the discovering party's counsel or representative, that demands be limited only to information needed to determine the defendant's present net worth, and that the information be sealed or otherwise restricted to use in the current proceeding only. Elymore v. Walter, 9 FSM R. 251, 254 (Pon. 1999).

A defendant facing a claim for punitive damages may be required to answer discovery concerning current net worth, but cannot be compelled to reveal his financial status for the previous five years. The court may order plaintiffs' counsel not to divulge this information to anyone until such time as the court

determines punitive damages liability, at which time the court will order what is to be done with the discovered information. Elymore v. Walter, 9 FSM R. 251, 254 (Pon. 1999).

Punitive damages are awarded as a punishment to the defendant for his wrongful act and as a warning and example to deter him and others from committing similar acts in the future. As a general rule, punitive damages are allowed for an assault and battery committed wantonly, maliciously, or under circumstances of aggravation. Since battery usually is a matter of the worst kind of intentions, it frequently justifies punitive damages. Elymore v. Walter, 9 FSM R. 450, 459 (Pon. 2000).

Punitive damages may be awarded for tortious acts that are committed with deliberate violence, as when a defendant waits at night with a baseball bat and then repeatedly swings the bat at a car's windshield and sunroof although he never saw the driver or knew who it was and the driver never saw the defendant or got out of the car. In such circumstances, an award of punitive damages is appropriate and the defendant, having been offended by that which he had made overt efforts to see, can scarcely be heard to complain of the offense or that the offense otherwise mitigates his conduct's consequences. Elymore v. Walter, 9 FSM R. 450, 459 (Pon. 2000).

When an award of punitive damages is appropriate, materials relating to the defendant's financial status must be submitted to the court before it will enter a punitive damages award. Elymore v. Walter, 9 FSM R. 450, 460 (Pon. 2000).

Punitive damages are not permitted against the State of Chuuk, but punitive damages may be awarded against a police officer trainee assigned as a jailer and which are justified by the wanton, malicious, deliberate and violent nature of his battery of a detainee. Atesom v. Kukkun, 10 FSM R. 19, 24 (Chk. 2001).

When six months have elapsed since the plaintiffs first asked for time to find new counsel and a court order explicitly stated what the consequences would be if new counsel did not file a notice of appearance by March 30, 2001, the plaintiffs' remaining punitive damages claim, absent a showing of good cause and excusable neglect, will be dismissed, and, given the purpose of punitive damages, a final judgment entered. Elymore v. Walter, 10 FSM R. 166, 168-69 (Pon. 2001).

The purpose of punitive damages is to punish the tortfeasor, not compensate the victim. Elymore v. Walter, 10 FSM R. 166, 168 (Pon. 2001).

Punitive damages are a windfall to the plaintiff and not a matter of right. Elymore v. Walter, 10 FSM R. 166, 168 (Pon. 2001).

Regardless of the disposition of a punitive damages claim, plaintiffs are fully compensated by a damages award. Elymore v. Walter, 10 FSM R. 166, 168 (Pon. 2001).

Punitive damages may be awarded when a tort was committed with actual malice, or deliberate violence, or the acts complained of were wanton, reckless, malicious and oppressive and are given to enhance compensatory damages. Punitive damages depend on the existence of compensatory damages and cannot be awarded in the absence of compensatory damages. Talley v. Lelu Town Council, 10 FSM R. 226, 239 (Kos. S. Ct. Tr. 2001).

Punitive damages are not recoverable for ordinary negligence. Talley v. Lelu Town Council, 10 FSM R. 226, 239 (Kos. S. Ct. Tr. 2001).

Ordinary negligence is not a basis for punitive damages. In order for negligence to constitute wantonness meriting imposition of punitive damages, the plaintiff must show that the one acting or failing to act realized the imminence of the danger and failed to take steps to prevent it because he was indifferent to whether the injury occurred. Amayo v. MJ Co., 10 FSM R. 244, 250 (Pon. 2001).

As a matter of public policy, governments are generally not liable for punitive damages. Herman v. Municipality of Patta, 12 FSM R. 130, 138 (Chk. 2003).

Under the Chuuk State Sovereign Immunity Act of 2000, punitive (or exemplary) damages not greater than the compensatory damages and of not more than $20,000 may be awarded against the state or a municipality only if the injury was as a result of a government employee or agent who, acting under color of authority, violated the individual rights secured by the Chuuk Constitution. But the Sovereign Immunity Act of 2000 is not retrospective – it does not apply to claims that arose before its enactment – and prior law bars any punitive damage awards against a municipal government. Herman v. Municipality of Patta, 12 FSM R. 130, 138 (Chk. 2003).

While punitive damages are not permitted against a municipality, they can be awarded and are justified against individuals for their wanton, malicious, and deliberately violent treatment of a victim in detention. Herman v. Municipality of Patta, 12 FSM R. 130, 139 (Chk. 2003).

Since the purpose of punitive damages is to punish the tortfeasor, not to compensate the victim, a defendant's financial condition is relevant to a punitive damages claim because the defendant's financial condition has a bearing on the amount of punitive damages to be awarded. Herman v. Municipality of Patta, 12 FSM R. 130, 139 (Chk. 2003).

When a defendant with no net worth and no income is liable for punitive damages in addition to a substantial damage award, only a nominal punitive damage award of $1 is proper. When the net worth and income of defendants is not known, but it is known that they are employed and thus have an income, it is appropriate to award more than just nominal punitive damages. Herman v. Municipality of Patta, 12 FSM R. 130, 139 (Chk. 2003).

Punitive damages may not be recovered from Chuuk State as a matter of law. Tomy v. Walter, 12 FSM R. 266, 272 (Chk. S. Ct. Tr. 2003).

While exceptions exist, the general rule is that punitive damages may not be awarded absent an award of monetary damages. Tomy v. Walter, 12 FSM R. 266, 272 (Chk. S. Ct. Tr. 2003).

In order to obtain an award of punitive damages, a plaintiff must establish that the defendant acted with actual malice or deliberate violence. Tomy v. Walter, 12 FSM R. 266, 272 (Chk. S. Ct. Tr. 2003).

No punitive damages can be awarded when the plaintiff has not sustained his burden of demonstrating that the defendant's actions were intentional, wilful, and malicious, rather than merely negligent. Punitive damages may not be awarded for ordinary negligence. Tomy v. Walter, 12 FSM R. 266, 272 (Chk. S. Ct. Tr. 2003).

Continued disobedience of court judgments and orders or of any court decision, may be grounds for a finding in the future, that the disobedience of the court's orders and decisions is wilful, deliberate, and intended to cause harm to the victim. Punitive damages may be recoverable in the future against any government officer or employee who is found to have wilfully violated the court orders and judgments. Tomy v. Walter, 12 FSM R. 266, 273 (Chk. S. Ct. Tr. 2003).

It is well established that punitive damages are not recoverable for ordinary negligence. Such damages also will not be awarded unless it has been claimed and proved that the defendant acted with actual malice or deliberate violence. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 309 (Pon. 2004).

Since tort law generally is an area governed by state law, exemplary or punitive damages are not awardable against the State of Pohnpei under Pohnpei state law and a claim for exemplary damages against it will e dismissed. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 154, 155 (Pon.

2005).

Punitive damages will be denied when the plaintiffs' complaint makes no allegations that the defendants' actions were willful, wanton, or malicious or alleges facts that could constitute willfulness, wantonness, or malice, and when the cause of action is contract. Punitive damages are not a contract remedy since only compensatory damages are allowed for breach. Zion v. Nakayama, 13 FSM R. 310, 313 (Chk. 2005).

A plaintiff may not as a matter of law recover punitive damages from the State of Chuuk. This principle has been modified somewhat by the enactment section 6 of the Chuuk State Sovereign Immunity Act of 2000, but that Act did not become law until January 25, 2001, and it does not apply to damage claims before that time. Zion v. Nakayama, 13 FSM R. 310, 314 (Chk. 2005).

Punitive damages may be awarded when a tort was committed with actual malice, or deliberate violence, or the acts complained of were wanton, reckless, malicious and oppressive and are given to enhance compensatory damages. But when the plaintiff has failed to sustain his burden of proof against the defendant on his cause of action based in tort: fraud, and therefore has not prevailed upon his fraud claim, punitive damages may not be imposed. Isaac v. Palik, 13 FSM R. 396, 402 (Kos. S. Ct. Tr. 2005).

The State of Pohnpei cannot be held liable for punitive damages. Annes v. Primo, 14 FSM R. 196, 206 (Pon. 2006).

Although punitive damages claims against the state will be dismissed, when the state is not the only defendant, an unchallenged punitive damage claim against a police officer will not be stricken. Annes v. Primo, 14 FSM R. 196, 206 (Pon. 2006).

Generally, punitive damages are not a contract remedy, because only compensatory damages are allowed for breach of contract. Nor can punitive damages be awarded under non-contract (i.e., tort) causes of action unless the defendant's actions were alleged and proven to be willful, wanton, and malicious or with deliberate violence. Hartman v. Krum, 14 FSM R. 526, 532 (Chk. 2007).

A cause of action based on tort will not be lost or abated because of the death of the tort-feasor or other person liable. An action thereon may be brought or continued against the deceased person's personal representative, but punitive or exemplary damages may not be awarded nor penalties adjudged in the action. Dereas v. Eas, 15 FSM R. 446, 448 (Chk. S. Ct. Tr. 2007).

When the defendants' counterclaim for wrongful arrest is dismissed and the defendants' claim for punitive damages is based on the claim for wrongful arrest, the punitive damages claim is likewise dismissed because punitive damages are derivative and must rest on another underlying cause of action. FSM v. Koshin 31, 16 FSM R. 15, 20 (Pon. 2008).

Although, for punitive damages to be awarded, there must be evidence of gross negligence, it is not necessary for such proof to be set forth in the complaint. Nakamura v. Mori, 16 FSM R. 262, 268 (Chk. 2009).

Punitive damages are derivative, in the sense that they derive from and depend on a separate and independent cause of action. They may be awarded when the acts complained of are wanton, reckless, malicious, and oppressive, but punitive damages are not awardable for breach of contract, since only compensatory damages are allowed in contract cases. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 441 (Pon. 2009).

Punitive damages may be recovered for conversion when the defendant's acts were accompanied by fraud, malice, recklessness, oppressiveness, or willful disregard of the plaintiff's rights that aggravated the injury or loss inflicted by the defendant. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 441-42 (Pon.

2009).

Although conversion by its nature involves wrongful acts that are hostile to an owner's interest in property, and although the defendants' actions in cashing premium checks were wrongful and showed a disregard of the plaintiff's property rights, that disregard was not sufficient to impose punitive damages because, when the checks were converted, they were converted in material part in the course of the agents' efforts to expedite services to the insurer's policy holders Nor will the court award punitive damages against the business cashing the checks because, while the business's actions in cashing the checks was wrongful, its employees relied in good faith on the insurance agents' representations that they were authorized to cash the checks. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 442 (Pon. 2009).

The purpose of punitive damages is not to compensate the plaintiff (since they are not a matter of right and are a windfall to the plaintiff), but to punish the tortfeasor. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 48 (Chk. 2010).

Punitive damages may be recoverable for tortious acts when the tortfeasor's act is accompanied by fraud, or involves ill will, actual malice, recklessness, wantonness, oppressiveness, willful disregard of the plaintiff's rights, or other circumstances tending to aggravate the injury. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 48 (Chk. 2010).

Punitive damages are not recoverable for ordinary negligence. For punitive damages to be awarded, there must be evidence of gross negligence. Gross negligence is the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 49 (Chk. 2010).

When there was no evidence before the court from which it could find that the defendant's contractor intentionally failed to perform a manifest duty in reckless disregard of the consequences or that its act was accompanied by fraud, ill will, actual malice, recklessness, wantonness, oppressiveness, or willful disregard of the plaintiffs' rights, a motion to dismiss the plaintiffs' punitive damages claim will be granted. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 49 (Chk. 2010).

When the court has dismissed the underlying causes of action for compensatory damages, the punitive damages claim must also be dismissed because punitive damages are not an independent cause of action but must rest upon some other, underlying cause of action as merely an element of damages in the underlying cause of action. Ruben v. Chuuk, 18 FSM R. 425, 431 (Chk. 2012).

Punitive damages cannot be imposed on the Board of Trustees of the Pohnpei State Public Lands Trust because the Pohnpei state government is statutorily immune from punitive damages and the Board is a Pohnpei government agency. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 377 (Pon. 2014).

Punitive damages are, by definition, not actual (compensatory) damages, but are a windfall. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 377 (Pon. 2014).

Punitive damages resulting from the alleged defamatory statement cannot, under the express malice standard, be shown by inferences. Inferences are not enough. Zacchini v. Hainrick, 19 FSM R. 403, 414 (Pon. 2014).

Punitive damages may be recoverable for conversion when the defendant's act was accompanied by fraud, or when they are authorized by statute. FSM v. Muty, 19 FSM R. 453, 462 (Chk. 2014).

Liability for punitive damages is determined by the fact-finder after an evidentiary proceeding. This is in part because the tortfeasor's finances must be examined. Since the purpose of punitive damages is to punish the tortfeasor, not to compensate the victim, a defendant's financial condition is relevant to a punitive damages claim because the defendant's financial condition has a bearing on the amount of punitive damages that can be awarded. Punitive damages will therefore not be granted on summary judgment.

FSM v. Muty, 19 FSM R. 453, 462 (Chk. 2014).

For punitive damages to be awarded, there must be evidence of gross negligence. Fuji Enterprises v. Jacob, 21 FSM R. 355, 363 n.8 (App. 2017).

Pohnpei state government and its agencies are statutorily immune from punitive damages. Berman v. Pohnpei, 22 FSM R. 377, 382 (Pon. 2019).

Punitive damages may be awarded when a tort was committed with actual malice, or deliberate violence, or the acts complained of were wanton, reckless, malicious and oppressive and are given to enhance compensatory damages. Punitive damages depend on the existence of compensatory damages and cannot be awarded in the absence of compensatory damages. Pelep v. Lapaii, 22 FSM R. 482, 490 (Pon. 2020).

Punitive damages are awarded to punish a defendant for his wrongful act and as a warning and example to deter him and others from committing similar acts in the future. As a general rule, punitive damages are allowed for an assault and battery committed wantonly, maliciously, or under circumstances of aggravation. Since battery usually is a matter of the worst kind of intentions, it frequently justifies punitive damages. Pelep v. Lapaii, 22 FSM R. 482, 490 (Pon. 2020).

If a defendant is found liable for punitive damages, a court cannot make an award having a meaningfully deterrent effect unless the court knows the extent of the defendant's wealth. The greater or lesser the degree of defendant's wealth, the greater or lesser would be the punitive award's amount, since a small award relative to overall wealth would not meaningfully deter, whereas a large award relative to overall wealth would be unduly onerous. Pelep v. Lapaii, 22 FSM R. 482, 490 (Pon. 2020).

When a defendant with no net worth and no income is liable for punitive damages in addition to a substantial damage award, only a nominal punitive damage award of $1 is proper. Pelep v. Lapaii, 22 FSM R. 482, 490 (Pon. 2020).

When an award of punitive damages is appropriate, evidence of the defendant's financial status must be submitted to the court before it will enter a punitive damages award. The court cannot enter a punitive damages award when no testimony was adduced about the defendant's financial status and the court does not have any information about the defendant's income and expenses. Pelep v. Lapaii, 22 FSM R. 482, 490-91 (Pon. 2020).

– Defamation

Tort claims for tortious interference with contractual relationships, defamation, and interference with prospective business opportunities are causes of action that arise under state law. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 203 (Pon. 2001).

Until such time as the plaintiff demonstrates the allegedly defamatory nature of the publications at issue, either by way of trial or proper motion accompanied by admissible supporting evidence, a permanent injunction cannot lawfully issue against the publication of speech that the defendants contend is true and which involves matters of public concern. O'Sullivan v. Panuelo, 10 FSM R. 257, 262 (Pon. 2001).

The complainant's right to bring a civil suit against the defendant for the tort of defamation is not impaired by the court's dismissal of the criminal defamation charges against her. Kosrae v. Waguk, 11 FSM R. 388, 392 (Kos. S. Ct. Tr. 2003).

Although no definition of libel has ever been formulated that is sufficiently comprehensive to cover all cases, libel may be defined as a false and unprivileged publication by writing or other fixed representation to the eye which exposes any person to hatred, contempt, ridicule, or obloquy or which cause him to be

shunned or avoided or which has a tendency to injure him in his occupation. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 557 (Chk. 2005).

There are constitutional limitations on defamation actions when the action involves a public official, a public figure, or a matter of substantial public controversy. In such instances, knowledge that the defamatory statement was false, or malice, or a reckless disregard for the truth must be shown in addition to the other elements of libel or slander. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 557 (Chk. 2005).

When the plaintiff was the CEO of CPUC, an instrumentality of the State of Chuuk, he was a public figure, and he might also be considered a public official. The power situation on Weno is always a matter of substantial public controversy. Thus in a libel action, when a resolution and memorandum were part of the CPUC Board of Directors' and its Chairman's official duties, the higher public figure standard and the principle of absolute or qualified privilege would both apply to the Board's and Chairman's official communications as part of official duties. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 557 (Chk. 2005).

When the complaint did not plead that the defendant knew that its allegations were false, or that they were made with malice, or that they were made with a reckless disregard of the truth, and even taking the facts as pled in the complaint as true, the facts alleged are insufficient as a matter of law for the court to find the defendant liable for libel under the higher public figure standard, especially when the communications appear to be privileged. Liability for libel is not deemed established merely because the defendant defaulted. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 557 (Chk. 2005).

Mean-spirited, accusatory words designed to harm another person, without regard to their truth or falsity are the kind of words that may result in a civil suit for the tort of defamation. However, the current criminal statute, Kosrae State Code § 13.313, may not be used to pursue a criminal prosecution for defamation because it does not clearly specify what types of speech are prohibited. Kosrae v. Taulung, 14 FSM R. 578, 581 (Kos. S. Ct. Tr. 2007).

The two-year statute of limitations applies to causes of action for slander. Jano v. Fujita, 15 FSM R. 405, 408 (Pon. 2007).

Whether a plaintiff's cause of action for slander is time-barred depends on when that cause of action accrued. In general, a cause of action accrues when the right to bring suit on a claim is complete – the true test in determining when a cause of action arises or accrues is to establish the time when the plaintiff could have first maintained the action to a successful conclusion. Jano v. Fujita, 15 FSM R. 405, 408 (Pon. 2007).

As a general rule, a cause of action for libel or slander accrues, so as to start the running of limitations, at the time of publication, and not on the date of discovery of the wrong, or when the alleged injury occurred. Jano v. Fujita, 15 FSM R. 405, 408 (Pon. 2007).

State law, and not the national law, provides the controlling limitations period for the causes of action, such as libel and slander and the tort of interference with contract and prospective economic advantage, that arise under state law. Jano v. Fujita, 15 FSM R. 494, 496 (Pon. 2008).

The two-year statute of limitations applies to causes of action for libel. Jano v. Fujita, 15 FSM R. 494, 497 (Pon. 2008).

A cause of action for libel accrues, so as to start the running of limitations, at the time of publication, and not on the date of discovery of the wrong, or when the alleged injury occurred. Jano v. Fujita, 15 FSM R. 494, 497 (Pon. 2008).

Truth is a defense to libel. Smith v. Nimea, 16 FSM R. 186, 191 (Pon. 2008).

When the truth of the allegedly libelous letter is in dispute; when a factual dispute exists as to whether the allegedly libelous letter played a role in the denial of the plaintiff's application for a foreign investment permit, the business opportunity alleged to have been interfered with by the defendant; and when these factual disputes are material to the claim, both parties' summary judgment motions on the claim of libel and interference with business opportunity will be denied. Smith v. Nimea, 16 FSM R. 186, 191 (Pon. 2008).

When the plaintiff has alleged sufficient facts to support a defamation action and the defendants allege either that the statements were true, or for some defendants, that they did not make the statements, a factual dispute exists as to who said what about the plaintiff, and whether the statements were false. Under these circumstances, there are facts to be determined at trial and summary judgment motions will be denied. Yoruw v. Ira, 16 FSM R. 464, 465 (Yap 2009).

Defamatory statements would still qualify as slanderous if they were spoken but not committed to writing. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 485 (Pon. 2009).

When the truth of alleged defamatory statements is at issue, the parties may litigate the issue of truth or falsity at trial. Pre-trial dismissal is not warranted. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 485-86 (Pon. 2009).

Tort claims, including claims for tortious interference with contractual relationships, defamation, and interference with prospective business opportunities, are causes of action which arise under state law. Smith v. Nimea, 18 FSM R. 36, 45 (Pon. 2011).

The history of the law of defamation defies brief restatement. Smith v. Nimea, 18 FSM R. 36, 45 (Pon. 2011).

Libel is a subset of defamation, and as a cause of action is not well defined but FSM case law has at least once defined libel as a false and unprivileged publication by writing or other fixed representation to the eye which exposes any person to hatred, contempt, ridicule, or obloquy or which causes him to be shunned or avoided or which has a tendency to injure him in his occupation. Smith v. Nimea, 18 FSM R. 36, 46 (Pon. 2011).

Considerations of constitutional law and free speech sometimes apply to defamation cases, as when the action involves a public official, a public figure, or a matter of substantial public controversy. In such cases, beyond the other elements of defamation, the plaintiff must show that the defendant knew that the defamatory statement was false, or acted with malice or a reckless disregard for the truth. Smith v. Nimea, 18 FSM R. 36, 46 (Pon. 2011).

Although falsity is included in the FSM's definition of defamation, falsity is not a traditional element of a plaintiff's prima facie case; rather, truth is an affirmative defense. Even so, a court must distinguish between statements of fact and assertions of opinion, because opinions, false or not, libelous or not, are constitutionally protected and may not be the subject of private damage actions, provided that the facts supporting the opinions are set forth. Smith v. Nimea, 18 FSM R. 36, 46 (Pon. 2011).

An allegedly defamatory statement was published when it was set forth in ink in the defendant's letter to the Foreign Investment Board. Smith v. Nimea, 18 FSM R. 36, 46 (Pon. 2011).

Libel and defamation in general consider whether the allegedly defamatory statement exposes the plaintiff to (public) hatred, contempt, ridicule, or obloquy (shame or disgrace); causes people to shun or avoid the plaintiff; or has a tendency to injure the plaintiff in his occupation or adversely affect the plaintiff's trade or business. Smith v. Nimea, 18 FSM R. 36, 47 (Pon. 2011).

A letter to the Foreign Investment Board which was not released to the public did not expose the plaintiff to hatred, contempt, ridicule, or obloquy, because if people could not learn of the letter, they could not derive from the letter a reason to shun or avoid him; nor could the letter have injured the plaintiff's occupation since he was no longer employed at the time of the defendant's letter; and nor did it harm his trade or business because his proposed software business was not in existence at the time of the letter and because the Foreign Investment Board's denial of his application was based not on the concerns raised in the letter, but on problems with capitalization. Smith v. Nimea, 18 FSM R. 36, 47 (Pon. 2011).

Opinions, even if objectionable, are not actionable as defamation. Were the court to recognize opinions as actionable defamation, the judiciary would be flooded with civil actions based on little more than the equivalent of schoolyard taunts. Smith v. Nimea, 18 FSM R. 36, 47 (Pon. 2011).

A court, in considering the context of the alleged defamatory statements, cannot ignore that the alleged defamatory letter came as a response to a public solicitation for comments initiated by the Foreign Investment Board and that the FIB's role as an administrative and investigatory agency strongly attenuates what minimal defamatory effect the letter may otherwise have had. Smith v. Nimea, 18 FSM R. 36, 47 (Pon. 2011).

A cause of action for business libel must fail when the defendant did no more than respond to a solicitation for public comment by a government agency in a matter of public interest. Smith v. Nimea, 18 FSM R. 36, 48 (Pon. 2011).

Free speech is not a limitless right. One limitation comes from defamation law. FSM Dev. Bank v. Abello, 18 FSM R. 192, 196 (Pon. 2012).

Libel is a subset of defamation, and is defined as a false and unprivileged publication by writing or other fixed representation to the eye which exposes any person to hatred, contempt, ridicule, or obloquy or which causes him to be shunned or avoided or which has a tendency to injure him in his occupation. FSM Dev. Bank v. Abello, 18 FSM R. 192, 197 (Pon. 2012).

A court considers whether the allegedly defamatory statement: exposes the plaintiff to (public) hatred, contempt, ridicule or obloquy (shame or disgrace); causes people to shun or avoid the plaintiff; or has a tendency to injure the plaintiff in his occupation or adversely affect the plaintiff's trade or business. FSM Dev. Bank v. Abello, 18 FSM R. 192, 197 (Pon. 2012).

Considerations of constitutional law and free speech sometimes apply in defamation cases, as when the action involves a public official, a public figure, or a matter of substantial public controversy. In such cases, beyond the other elements of defamation, the plaintiff must show that the defendant knew that the defamatory statement was false, or acted with malice or a reckless disregard for the truth. FSM Dev. Bank v. Abello, 18 FSM R. 192, 197 (Pon. 2012).

A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him. Peniknos v. Nakasone, 18 FSM R. 470, 484 n.7 (Pon. 2012).

In order to establish a claim for defamation-republisher, the plaintiff must prove that the defendant republished: 1) defamatory statements; 2) a non-privileged communication to a third-party; 3) the falsity of that statement; 4) referencing the plaintiff; 5) at least negligence on the publisher's part; and 6) prove resulting injury. Peniknos v. Nakasone, 18 FSM R. 470, 485 (Pon. 2012).

One who repeats or otherwise republishes a defamatory matter is subject to liability as if he had originally published it. Peniknos v. Nakasone, 18 FSM R. 470, 485 (Pon. 2012).

Publication of a defamatory matter is its communication intentionally or by a negligent act to one other

than the person defamed; and one who intentionally and unreasonably fails to remove defamatory matter that he knows to be exhibited on land or chattels in his possession or under his control is subject to liability for its continued publication. Peniknos v. Nakasone, 18 FSM R. 470, 485 (Pon. 2012).

A republication of the defamatory matter to a third person is essential to liability for defamation-republisher – in order to establish liability, there must be evidence that the defendant republished defamatory matter either intentionally or negligently to a third party other than the plaintiff. Peniknos v. Nakasone, 18 FSM R. 470, 485 (Pon. 2012).

In the case of slander, as opposed to libel, the act is usually the speaking of the words. Peniknos v. Nakasone, 18 FSM R. 470, 485 (Pon. 2012).

In an action for defamation, the plaintiff has the burden of proving, when the issues are properly raised 1) the communication's defamatory character, 2) its publication by the defendant, 3) its application to the plaintiff, 4) the recipient's understanding of the defamatory meaning, 5) the recipient's understanding of it as intended to be applied to the plaintiff, 6) special harm resulting to the plaintiff from its publication, 7) the defendant's negligence, reckless disregard or knowledge regarding the truth or falsity and the communication's defamatory character, and 8) the abuse of a conditional privilege. Peniknos v. Nakasone, 18 FSM R. 470, 485-86 n.9 (Pon. 2012).

In an action for defamation-republisher, a plaintiff's statement of facts are insufficient to show the essential element of republication by the defendant when the plaintiff does not name the defendant's employee(s) that made the republication of any defamatory communication, or state when, where, and how the communication(s) occurred or who were the communication's recipients. Peniknos v. Nakasone, 18 FSM R. 470, 486 (Pon. 2012).

If a defendant repeats or otherwise republishes defamatory matter, it is subject to liability as if it had originally published the matter. A standard of proof similar to that which would be applied to the original publisher is required. Peniknos v. Nakasone, 18 FSM R. 470, 486 (Pon. 2012).

The tort of defamation includes libel and slander and generally embodies the public policy that individuals should be free to enjoy their reputations unimpaired by false and defamatory attacks. Zacchini v. Hainrick, 19 FSM R. 403, 411 (Pon. 2014).

The tort of libel may be defined as a false and unprivileged publication by writing or other fixed representation to the eye which exposes any person to hatred, contempt, ridicule, or obloquy or which causes him to be shunned or avoided or which has a tendency to injure him in his occupation. Libel is a smaller subset of defamation – libel is written or visual defamation; slander is oral or aural defamation. Zacchini v. Hainrick, 19 FSM R. 403, 411 n.1 (Pon. 2014).

Defamation causes of action arise under state law. Pohnpei generally follows the Restatement approach in its law concerning tort issues. Zacchini v. Hainrick, 19 FSM R. 403, 411 (Pon. 2014).

A communication is defamatory if it tends so to harm the reputation of another so to lower him in the estimation of the community or to deter third persons from associating or dealing with him. Zacchini v. Hainrick, 19 FSM R. 403, 411 (Pon. 2014).

A threshold issue is whether a statement is objectively defamatory or merely subjectively offensive. The gravamen or gist of an action for defamation is it denigrates the opinion which others in the community have of the plaintiff and invades the plaintiff's interest in his reputation and good name. It is not based on any physical or emotional distress to the plaintiff that may result. Zacchini v. Hainrick, 19 FSM R. 403, 411-12 n.3 (Pon. 2014).

Four elements must be proven in a defamation claim: 1) false and defamatory statement concerning another; 2) an unprivileged publication to a third party; 3) fault amounting at least to negligence on part of

the publisher; and 4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. The plaintiff thus has the burden to show falsity, publication, fault, and injury. Zacchini v. Hainrick, 19 FSM R. 403, 412 (Pon. 2014).

Since truth is an affirmative defense to a defamation action, the court must distinguish between statements of fact and assertions of opinion, because opinions, false or not, libelous or not, are constitutionally protected and may not be the subject of private damage actions, provided that the facts supporting the opinions are set forth. Zacchini v. Hainrick, 19 FSM R. 403, 412 (Pon. 2014).

Opinions, even if objectionable, are not actionable as defamation. An opinion is a personal comment about another's conduct, qualifications, or character that has some basis in fact, and whether a statement is an opinion, must be determined by the totality of the circumstances, including the forum in which the statement is made, the medium in which the statement was disseminated, and the audience to which it is published. Zacchini v. Hainrick, 19 FSM R. 403, 412 (Pon. 2014).

When, from the totality of the circumstances, it is clear that the nature of a job reference is to ask for an opinion about the employee's characteristics and conduct and the nature of the numerical scale for the opinion is not objective; when the defendant's oral answers were either true or non-verifiable opinions; when any undisclosed imputation was not necessarily and unequivocally false and therefore could not be the subject of an implied defamation claim; and when it is clear that the interview question is asking for an employer's opinion about what his previous employee's weaknesses were, those weaknesses are not verifiable as either right or wrong, and thus cannot be the subject of a defamation claim. Zacchini v. Hainrick, 19 FSM R. 403, 414-15 (Pon. 2014).

Truth is an absolute bar to a defamation claim. Zacchini v. Hainrick, 19 FSM R. 403, 413 (Pon. 2014).

An inference of falsity cannot be extended to non-verifiable opinions. Zacchini v. Hainrick, 19 FSM R. 403, 413 (Pon. 2014).

Publication is a term of art, meaning that there was a communication to a third party person other than the person defamed. Zacchini v. Hainrick, 19 FSM R. 403, 413 (Pon. 2014).

Without communication to another person a statement is of no consequence, but a statement is published even if made only to one other person. Furthermore, the publication must also be "unprivileged." When the publication is invited, procured, or consented to by the plaintiff, the publication is generally not deemed sufficient. Zacchini v. Hainrick, 19 FSM R. 403, 413 (Pon. 2014).

Generally, establishing that the alleged defamatory statements were made to just one other person is enough, but when the statements were made to an employee of a reporting service that the plaintiff had hired, the plaintiff both invited and consented to the publication of the job references by signing up for the reporting service, and in doing so, requested that an agent procure the statements on his behalf, and legally, therefore, it cannot be said that the job reference was published to a third party under this term of art. Zacchini v. Hainrick, 19 FSM R. 403, 413-14 (Pon. 2014).

In the employment context, references are protected by a qualified privilege, also known as the "merchant's" privilege. Responses by past employers to inquiries from prospective employers raise a conditional privilege based on the performance of a private duty. Zacchini v. Hainrick, 19 FSM R. 403, 414 (Pon. 2014).

A communication derogatory of an employee's character or attributes, or concerning the reasons for his discharge or circumstances surrounding the termination of his employment generally, may be qualified, or conditionally privileged if made in good faith, in a reasonable manner and for a proper purpose. To overcome the merchant's privilege the plaintiff must demonstrate "express malice," or in modern terms, actual malice. Actual malice means that statements were made with knowledge of its falsity or a reckless

disregard for the truth by clear and convincing evidence. Zacchini v. Hainrick, 19 FSM R. 403, 414 (Pon. 2014).

Damages in defamation cases generally consider whether the allegedly defamatory statement: exposes the plaintiff to (public) hatred, contempt, ridicule or obloquy (shame or disgrace); causes people to shun or avoid the plaintiff; or has a tendency to injure the plaintiff in his occupation or adversely affect the plaintiff's trade or business. Zacchini v. Hainrick, 19 FSM R. 403, 414 (Pon. 2014).

Damages for defamation are divided into three categories, 1) punitive damages or exemplary damages, where actual malice or recklessness is shown; 2) special damages such as the loss of business which are recoverable only on proof of loss of specific economic benefits; and 3) general damages which follow inevitably from the defamatory imputation. General damages can include loss of reputation, shame, mortification, and hurt feelings. Zacchini v. Hainrick, 19 FSM R. 403, 414 (Pon. 2014).

Punitive damages resulting from the alleged defamatory statement cannot, under the express malice standard, be shown by inferences. Inferences are not enough. Zacchini v. Hainrick, 19 FSM R. 403, 414 (Pon. 2014).

Speculative injury is not enough, with regard to special injury, it must be demonstrably shown. Zacchini v. Hainrick, 19 FSM R. 403, 415 (Pon. 2014).

When, even considered in the light most favorable to the plaintiff, only one of the elements of defamation can be met, the inability to prove the other elements of the claim, necessarily requires that summary judgment be granted for the defendants with regard to the defamation claim. Zacchini v. Hainrick, 19 FSM R. 403, 415 (Pon. 2014).

Defamation is a false and unprivileged publication which exposes any person to hatred, contempt, ridicule, or obloquy or which causes him to be shunned or avoided or which has a tendency to injure him in his occupation. George v. Palsis, 19 FSM R. 558, 567 (Kos. 2014).

Defamation is a state law cause of action. Apostol v. Maniquiz, 22 FSM R. 146, 149 (Chk. 2019).

The right not to be defamed, libeled, or slandered is not a right guaranteed by the Constitution or by the civil rights statute. Apostol v. Maniquiz, 22 FSM R. 146, 149 (Chk. 2019).

Whether an allegedly defamatory pleading in a case filed in a national court is privileged or actionable should be decided as a matter of national law and is thus a matter arising under national law. Helgenberger v. Helgenberger, 22 FSM R. 244, 249 (Pon. 2019).

A private litigant is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding, or in the institution of or during the course and as a part of, a judicial proceeding in which he participates, if the matter has some relation to the proceeding. This privilege is based upon the public interest in according to all men the utmost freedom of access to the courts of justice for the settlement of their private disputes. Like the privilege of an attorney, it is absolute. Helgenberger v. Helgenberger, 22 FSM R. 244, 249-50 (Pon. 2019).

The absolute privilege or immunity for litigants and their attorneys is necessary for them to be protected not only from civil liability but also from the danger of even an unsuccessful civil action. It is thus necessary that the court not inquire into the propriety of their conduct in civil proceedings brought against them for misconduct in their position. The privilege, or immunity, is absolute and the protection is complete, and is not conditioned upon the honest and reasonable belief that the defamatory matter is true or upon the absence of ill will on the actor's part, but is based upon a policy that treats the ends to be gained by permitting defamatory statements as outweighing the harm that may be done to the reputation of others. Helgenberger v. Helgenberger, 22 FSM R. 244, 250 (Pon. 2019).

At common law, parties to judicial proceedings are granted an absolute privilege to use defamatory language because of the overriding public interest that persons should speak freely and fearlessly in litigation, uninfluenced by the possibility of being brought to account in an action for defamation. This common law principle is eminently suitable for the FSM because it is difficult to see how any court system could function otherwise. It is sound public policy. Helgenberger v. Helgenberger, 22 FSM R. 244, 250 (Pon. 2019).

Statements contained in pleadings, affidavits, depositions and other documents directly related to the case partake of this privilege; they cannot serve as the basis for an action for defamation. Since this privilege is absolute and the immunity is complete, whether counsel made a reasonable inquiry into the facts before filing the complaint is irrelevant. Helgenberger v. Helgenberger, 22 FSM R. 244, 250 (Pon. 2019).

Statements in pleadings, if relevant and pertinent to the issues, are absolutely privileged even if the statements are false and made maliciously. Helgenberger v. Helgenberger, 22 FSM R. 244, 250 (Pon. 2019).

False, misleading, or defamatory communications, even if made with malicious intent, are not actionable if they are material to, and made in the course of, a judicial or quasi-judicial proceeding. Helgenberger v. Helgenberger, 22 FSM R. 244, 250 (Pon. 2019).

Statements made by counsel and parties in the course of judicial proceedings are privileged as long as such statements are material and pertinent to the questions involved irrespective of the motive with which they are made. Helgenberger v. Helgenberger, 22 FSM R. 244, 251 (Pon. 2019).

Because the plaintiffs have an absolute privilege or complete immunity from defamation liability to the counterclaimant, the court must grant the plaintiffs summary judgment on the defamation counterclaims and the court must deny the counterclaimant's cross motion for summary judgment. Helgenberger v. Helgenberger, 22 FSM R. 244, 251 (Pon. 2019).

A litigant's absolute privilege applies not only to defamation actions, but to any tort action based on statements made in connection with a judicial proceeding. These include the intentional infliction of emotional distress, the invasion of privacy, and false light actions, including false light invasion of privacy claims that fail to meet the standards for defamation. Helgenberger v. Helgenberger, 22 FSM R. 244, 251 n.7 (Pon. 2019).

Libel is a false and unprivileged publication by writing which exposes any person to hatred, contempt, ridicule, or obloquy or which causes him or her to be shunned or avoided or which has a tendency to injure him or her in his or her occupation. Berman v. Pohnpei, 22 FSM R. 377, 381 (Pon. 2019).

The court will not grant the plaintiff summary judgment on her defamation claim when it has no basis to find as an undisputed fact that the inclusion of a false statement in a statement, the rest of which was true, caused any damage, especially because the court cannot find that that one false statement, and that false statement alone, caused damages. Berman v. Pohnpei, 22 FSM R. 377, 381-82 (Pon. 2019).

Libel is written or visual defamation and slander is oral or aural defamation. Panuelo v. FSM, 22 FSM R. 498, 510 (Pon. 2020).

When the movants seek to dismiss a slander cause of action for the failure to state a claim and their ground is a factual defense, the court, accepting the plaintiff's factual allegations as true and the inferences drawn therefrom in her favor, cannot dismiss that cause of action on that ground. Panuelo v. FSM, 22 FSM R. 498, 510 (Pon. 2020).

– Defamation Per Se

Defamation per se follows the ordinary defamation analysis, except the requirement to show special injury is waived when the disparaging statements impute a 1) criminal offense; 2) a loathsome disease; 3) a matter incompatible with his business, trade, profession or office; 4) or sexual misconduct. Zacchini v. Hainrick, 19 FSM R. 403, 415 (Pon. 2014).

Defamation per se is words which on their face and without the aid of extrinsic proof are recognized as injurious. It is words that are obviously harmful without innuendo, colloquium, or explanation. The words must be susceptible of but one meaning, and that an opprobrious one. When the defamatory character of the statements is apparent on its face – that is when the words used are so obviously and materially harmful to the plaintiff that the injury to his or her reputation may be presumed. Zacchini v. Hainrick, 19 FSM R. 403, 415 (Pon. 2014).

Defamation per se follows the ordinary defamation analysis, except the requirement to show special injury is waived when the disparaging statements impute a 1) criminal offense; 2) a loathsome disease; 3) a matter incompatible with his business, trade, profession or office; 4) or sexual misconduct. Zacchini v. Hainrick, 19 FSM R. 403, 415 (Pon. 2014).

Summary judgment must be granted for the defendants on the plaintiff's defamation per se claim when, although the alleged defamatory remarks relate to the plaintiff's professional reputation, the business imputation is not apparent on the face of the words and the disparagement is only made by reference to the context and to innuendo to explain why those words are opprobrious. Zacchini v. Hainrick, 19 FSM R. 403, 415 (Pon. 2014).

The defendants must be granted summary judgment on the plaintiff's defamation per se claim when the plaintiff cannot meet the legal standards necessary to prove the four elements of defamation at trial. The inability to prove even one element bars the claim. Zacchini v. Hainrick, 19 FSM R. 403, 415 (Pon. 2014).

Defamation per se follows the ordinary defamation analysis, except the requirement to show special injury [that is, that the false statement caused compensatory damages] is waived when the disparaging statements impute 1) a criminal offense; 2) a loathsome disease; 3) a matter incompatible with his or her business, trade, profession or office; or 4) sexual misconduct. Berman v. Pohnpei, 22 FSM R. 377, 381 (Pon. 2019).

A court cannot, as a matter of law, conclude that a false statement that an attorney had sued a particular government agency would impute a matter that would be incompatible with an attorney's profession and thus constitute defamation per se when, if an occasion had arisen where it seemed advisable, the attorney would have sued the agency and when suing that agency would be completely compatible not only with the attorney's profession but also with her particular practice. Berman v. Pohnpei, 22 FSM R. 377, 382 (Pon. 2019).

Summary judgment for the defendants on a plaintiff's defamation per se claim leaves the regular libel or defamation claim unresolved. Berman v. Pohnpei, 22 FSM R. 377, 382 (Pon. 2019).

– Duty of Care

In a jurisdiction like Pohnpei, where individual and economic development is beginning to take place and people are not quite sophisticated about the uses or proper handling of certain machinery or equipment introduced into the community to support such development, the procurer, user, owner, or seller of such equipment or machinery must take precautionary measures to educate people, either through written or oral explanation, about the proper handling, operation or storing of such equipment or machinery, and to inform them about the harm that might result if such equipment or machinery is not properly handled,

operated or stored. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 68 (Pon. S. Ct. Tr. 1986).

So long as a state retains its role as the primary provider of health care services in that state, it is legally obligated to make a reasonable effort to provide a health care system reasonably calculated to meet the needs of the people of the state, but the state may make decisions to limit the scope of medicines to be maintained, so long as the decisions are based upon sound medical judgment arrived at through consideration of the health needs and financial realities of the state. Amor v. Pohnpei, 3 FSM R. 519, 530-31 (Pon. 1988).

Once a state health services decision has been made that a particular medicine should be obtained for patients, the state health services staff and other responsible state officials are under a duty to take reasonable steps to obtain the medicine. Amor v. Pohnpei, 3 FSM R. 519, 531 (Pon. 1988).

The standard of care for doctors at the Truk State hospital is that they are to exercise professional judgment in the attempt to diagnose the illness of the patient, and then, consistent with available facilities and supplies, act on that diagnosis. Asan v. Truk, 4 FSM R. 51, 56 (Truk S. Ct. Tr. 1989).

When a person elects to operate a vehicle on the public streets he owes a duty to pedestrians and others using the road and adjacent areas to operate the vehicle in a safe and prudent manner. When the breach of this duty by driving in a fast and careless manner is the proximate cause of an injury the driver will be held liable. Ludwig v. Mailo, 5 FSM R. 256, 259 (Chk. S. Ct. Tr. 1992).

Only when there is a duty of care, breach of this duty, damage caused by the breach, and determination of the value of the damage can there be a liability for negligence. Nena v. Kosrae, 5 FSM R. 417, 420 (Kos. S. Ct. Tr. 1990).

Everyone has a duty of care to act in such a way that other people are not harmed. Duties of care differ according to the circumstances and the exact parameters of each person's responsibilities towards others will be defined through time by judicial decisions and statutes. Nena v. Kosrae, 5 FSM R. 417, 421 (Kos. S. Ct. Tr. 1990).

The state, when building a road, has a duty of care to take precautions to avoid foreseeable harm, and it has a duty of care not to take undue advantage of a landowner's generosity and lack of understanding of his rights. Nena v. Kosrae, 5 FSM R. 417, 421 (Kos. S. Ct. Tr. 1990).

Generally, a breach of duty is proven by the testimony of witnesses who describe what a reasonable person, acting in compliance with the duty of care, would have done or not done in the same situation. In rare circumstances when the facts are indisputable and when they raise such a strong inference that all reasonable people agree on the duty of care, the court can decide, as a matter of law, the person has breached his duty of care. Nena v. Kosrae, 5 FSM R. 417, 421 (Kos. S. Ct. Tr. 1990).

When the state fails to tell a landowner that he has the option to refuse to grant the state an easement for a road, it has breached its duty of care. Nena v. Kosrae, 5 FSM R. 417, 421-22 (Kos. S. Ct. Tr. 1990).

In order to be liable for a breach of the duty of care the breach must cause damage. Nena v. Kosrae, 5 FSM R. 417, 422 (Kos. S. Ct. Tr. 1990).

A defendant must exercise due care not to cause others emotional distress that leads in turn to a foreseeable physical result. Eram v. Masaichy, 7 FSM R. 223, 226-27 (Chk. S. Ct. Tr. 1995).

Where there was no physical manifestation of the emotional distress that was foreseeable there can be no claim for negligent infliction of emotional distress. Eram v. Masaichy, 7 FSM R. 223, 227 (Chk. S. Ct. Tr. 1995).

To license police officers to carry firearms without adequate training breaches the duty of care of the

state and the chief of police because the duty of care is heightened when the instrumentality given the police is a deadly one. Davis v. Kutta, 7 FSM R. 536, 547 (Chk. 1996).

An employer owes a duty of care toward its employee to see that the employee is properly educated about the operation of clearly dangerous machinery. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 63, 65 (Chk. 1997).

Where the employer is aware that unsafe procedures are being used and safe procedures are possible, but the employer does not demand them, the employer breaches its duty of care toward its employees. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 63, 65 (Chk. 1997).

Acts that do not provide for a private citizen's cause of action for monetary damages cannot be used to create a duty for the breach of which damages may be awarded. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 292 (Pon. 1998).

The common law "incomplete privilege" of one to enter onto the land of another in times of private necessity is essentially codified by 19 F.S.M.C. 805(3), which states that "no person, including the owner or occupier of land may hinder or impede a rescuer." But it cannot have been the intent of 19 F.S.M.C. 805(3) to prevent law enforcement officials from carrying out their official duties in the face of an emergency rescue situation. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 292 (Pon. 1998).

The general principle is that one person may be liable in tort to another only if the first intentionally or negligently violates a duty owed to the other, and the other is injured as a result. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 293, 294 (Pon. 1998).

Everyone has a duty of care to act in such a way that other people are not harmed. Duties of care differ according to the circumstances. The exact parameters of each person's responsibilities towards others will be defined through time by judicial decisions and statutes. Asher v. Kosrae, 8 FSM R. 443, 449 (Kos. S. Ct. Tr. 1998).

There is a duty to take precautions in installing a telephone pole and wires to avoid foreseeable harm, for example, a child or another person walking into the dangling wire and causing injury. Asher v. Kosrae, 8 FSM R. 443, 449 (Kos. S. Ct. Tr. 1998).

Generally, a breach of duty is proven by the testimony of a witness who describes what a reasonable person, acting in compliance with the duty of care, would have done or not done in the same situation. Asher v. Kosrae, 8 FSM R. 443, 449 (Kos. S. Ct. Tr. 1998).

In determining liability for negligent injuries generally, electricity providers are required to use reasonable care in the construction and maintenance of their lines and apparatus, and will be responsible for any conduct falling short of this standard. Asher v. Kosrae, 8 FSM R. 443, 449 (Kos. S. Ct. Tr. 1998).

Electricity providers transmitting or using electricity are required to guard against events which can be reasonably foreseen or anticipated. The extent of the duty or standard of care is measured in the terms of foreseeability of injury from the situation created. It is not necessary that a power provider anticipate the precise injury to someone who had a right to be in the vicinity. Asher v. Kosrae, 8 FSM R. 443, 449-50 (Kos. S. Ct. Tr. 1998).

One in the business of generating and distributing electricity who engages to install electric equipment must exercise the care of a reasonably prudent person skilled in the practice and art of installing such equipment according to the state of the art or method generally used by persons engaged in a like business at the time the work is done. An electricity provider is also charged with the duty of maintaining their electrical equipment and appliances. Asher v. Kosrae, 8 FSM R. 443, 450 (Kos. S. Ct. Tr. 1998).

It is the imperative duty of electricity providers to make reasonable and proper inspection of their wires and other equipment and to use due diligence to discover and repair defects. A failure to perform such duty constitutes negligence. Asher v. Kosrae, 8 FSM R. 443, 450 (Kos. S. Ct. Tr. 1998).

An electricity provider must make reasonable and proper inspections of its appliances with such frequency as appears reasonably necessary, and use due diligence to discover and remedy defects so that injury will not result. The presence of a conspicuous defect or dangerous condition of the electrical appliance which has existed for a considerable length of time will create a presumption of constructive notice of the defect. Asher v. Kosrae, 8 FSM R. 443, 450 (Kos. S. Ct. Tr. 1998).

The provisions of the Kosrae State Code do not impose a duty upon the state to grant medical referrals to every person. Asher v. Kosrae, 8 FSM R. 443, 451 (Kos. S. Ct. Tr. 1998).

Although neither state law nor regulation imposes any duty upon the state to make a medical referral to every person, a volunteer who gratuitously offers to provide service or assistance to another, and causes that other to rely upon the offer rather then to seek alternative ways of responding to the need, owes a duty to perform the donated services with reasonable care. Asher v. Kosrae, 8 FSM R. 443, 451 (Kos. S. Ct. Tr. 1998).

When the state volunteers to provide medical service or assistance and causes the someone to rely upon that offer, what constitutes reasonable action or assistance must be determined in light of the surrounding circumstances. Asher v. Kosrae, 8 FSM R. 443, 451 (Kos. S. Ct. Tr. 1998).

In order to impose a duty upon the state to return a patient to Pohnpei for treatment, the state must know about the need for further medical care. If the state was not informed, it cannot be charged with the knowledge or the duty to return a patient for further medical treatment. Asher v. Kosrae, 8 FSM R. 443, 451 (Kos. S. Ct. Tr. 1998).

One who carries on a dangerous activity must use care commensurate with the risk or danger of injury involved or suffer liability for resulting injuries. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 535 (Pon. 1998).

It is a breach of a duty of care to fail to warn persons known to be on nearby land when blasting will occur. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 540 (Pon. 1998).

The common law definition of negligence includes the failure to use such care as a reasonably prudent person would use in a similar situation. Sigrah v. Timothy, 9 FSM R. 48, 53 (Kos. S. Ct. Tr. 1999).

An employer owes a duty of care toward its employee to see that the employee is properly educated about the operation of clearly dangerous machinery. An employer who recognizes the potential danger of a work situation, but who fails to take steps to reduce the danger or warn his employees of the danger is negligent. Sigrah v. Timothy, 9 FSM R. 48, 53 (Kos. S. Ct. Tr. 1999).

30 F.S.M.C. 104 does not require the FSM Development Bank to provide technical assistance to persons the bank loans money to, but simply permits it to provide such assistance. The bank has no duty to provide technical assistance. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 76 (Pon. 2001).

The statute, 30 F.S.M.C. 104, does not impose a duty upon the FSM Development Bank to provide technical assistance to debtors to whom it has already made a loan, nor to assignees of those debtors. Nor does it give rise to a private cause of action. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 76-77 (Pon. 2001).

In order to be liable for a breach of duty of care, the breach must cause damage. Talley v. Lelu Town Council, 10 FSM R. 226, 236 (Kos. S. Ct. Tr. 2001).

A general contractor in control of a structure or premises owes to the employees of any other contractor rightfully thereon a duty to exercise ordinary care to keep the structure or premises in a safe condition for their use. Amayo v. MJ Co., 10 FSM R. 244, 250 (Pon. 2001).

An employer has a duty to exercise ordinary or reasonable care commensurate with the nature of the business to protect the employee from the hazards incident to it, and the employer is bound to exercise this degree of diligence in providing his employee with a safe working place. Amayo v. MJ Co., 10 FSM R. 244, 250 (Pon. 2001).

An owner/general contractor who actively supervises daily construction operations has a duty to keep the premises safe for all workers on the job and is ultimately liable for injuries occurring on the worksite when those injuries result from failure to perform that duty. Amayo v. MJ Co., 10 FSM R. 244, 250 (Pon. 2001).

When a general contractor had a duty to provide a safe work environment for the construction work to be done at the second story heights and his duty in this regard ran not only to the employees of subcontractors, but to those that he employed directly as well, which included the plaintiff, and when his failure to provide any kind of safety equipment, precautions, instructions or supervision resulted in the plaintiff's fall and consequent injury, he is therefore liable for the damages suffered as a result of that injury. Amayo v. MJ Co., 10 FSM R. 244, 250-51 (Pon. 2001).

30 F.S.M.C. 104(b) does not create a duty for the FSM Development Bank to provide technical assistance, but rather authorizes the FSM Development Bank to provide such assistance as a part of its functions. FSM Dev. Bank v. Ifraim, 10 FSM R. 342, 345 (Chk. 2001).

Sellers of inflammable liquids owe a high duty toward consumers to exercise care in the sales of inflammable liquids to consumers. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 348, 353 (Pon. 2001).

When, according to the complaint's allegations, the defendants' medical malpractice led to the deceased's death, and when, attached to the defendants' summary judgment motion is an affidavit of a medical doctor who is board certified in the field of family practice and the affidavit recites that the doctor has reviewed the medical records and that his opinion is that her diagnosed illness, tuberculosis of the spine, was so serious that in order to avoid paralysis, it would have been acceptable practice to administer the medications in question even if the deceased's treating doctors had been aware of her hepatitis history, the doctor's affidavit is relevant evidence based on an adequate foundation, that tends to show that the defendants did not violate the applicable standard of care. This evidence is of sufficient weight that left unopposed, no genuine issue of material fact exists under FSM Civil Rule 56, and the defendants are entitled to judgment as a matter of law. Since the plaintiffs have offered nothing to meet the evidence offered by the defendants, no genuine issues of material fact therefore exist, and the defendants are entitled to summary judgment in their favor. Joe v. Kosrae, 13 FSM R. 45, 47 (Kos. 2004).

The bailee, having custody of the bailor's property, has the obligation to exercise due care to protect the property from loss, damage or destruction. Palik v. PKC Auto Repair Shop, 13 FSM R. 93, 96 (Kos. S. Ct. Tr. 2004).

While a mortgagee bank may have policies and rules it must follow that require it to inquire into the purported collateral or security and require ownership documents and certified maps of the property's location when land is used as collateral or security for its loans, it has not been shown that violation of these policies and rules creates a duty to a stranger to the mortgage. They may create a duty to the bank's shareholder, and failure to follow them may result in the bank holding worthless security, but the bank has not been shown to have a general duty to all landowners not to accept a mortgage to land one of them might later claim. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 127-28 (Chk. 2005).

Since a bank owed no duty of care to a plaintiff when it took a mortgage to secure a loan to another,

and that mortgage, even if it is unenforceable, was not the proximate cause of the plaintiff's alleged damages, the bank is entitled to summary judgment as a matter of law on the plaintiff's negligence and void mortgage causes of action. Additional reasons for this are that the bank has not attempted to foreclose its mortgage and that the mortgage does not cover the lot for which the plaintiff has a determination of ownership. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 128 (Chk. 2005).

A mortgagee, is not an insurer or guarantor of the mortgagor's actions. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 129 (Chk. 2005).

Duties of care differ according to the circumstances. The test is whether the injury, under all the circumstances, might reasonably been foreseen by a person of ordinary intelligence and prudence. Phillip v. Kosrae, 14 FSM R. 109, 113 (Kos. S. Ct. Tr. 2006).

The municipality, chief, and jailer owed a prisoner a duty of care, had a duty to regularly observe his condition, breached that duty by failing to provide the required checks on his condition. These defendants are therefore liable under for the prisoner's death by neglect. The municipality, through its subsequent conduct, effectively ratified its agents' conduct. Lippwe v. Weno Municipality, 14 FSM R. 347, 353 (Chk. 2006).

"Assumption of the risk" is a common law defense to negligence, which acts as a complete bar to the plaintiff's recovery because it relieves the defendant of any duty of care to the plaintiff. Kileto v. Chuuk, 15 FSM R. 16, 17-18 (Chk. S. Ct. App. 2007).

"Assumption of the risk" usually describes a common law negligence or other tort defense that acts as a complete bar to the plaintiff's recovery because it relieves the defendant of any duty of care to the plaintiff. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 286 (Chk. 2009).

An insurer has no duty to its agents to undertake an investigation for the agents' benefit in order to stop the agents from converting the insurer's property. When the insurer's property was converted by the agents' intentional actions, the agents cannot argue that the insurer should have known that they were converting – stealing – the insurer's property, and that since the insurer should have stopped them but did not stop them from doing what they had no right to do, the agents should not have to pay back what they took. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 443 (Pon. 2009).

An employer has a duty to exercise ordinary or reasonable care commensurate with the nature of the business to protect the employee from the hazards incident to it, and the employer is bound to exercise this degree of diligence in providing his employee with a safe working place. Duty of care is one of the four elements of a negligence cause of action. Roosevelt v. Truk Island Developers, 17 FSM R. 264, 265-66 (Chk. 2010).

Generally, one who undertakes to render professional service is under a duty to the person for whom the service is to be performed to exercise such care, skill, and diligence as men in that profession ordinarily exercise under like circumstances. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 579-80 (Pon. 2011).

The law imposes upon persons performing architectural, engineering, and other professional and skilled services the obligation to exercise a reasonable degree of care, skill and ability, which generally is taken and considered to be such a degree of care and skill as, under similar conditions and like surrounding circumstances, is ordinarily employed by their respective professions. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580 (Pon. 2011).

Unless he represents that he has greater or less skill or knowledge, one who undertakes to render services in the practice of a profession or trade is required to exercise the skill and knowledge normally possessed by members of that profession or trade in good standing in similar communities. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580 (Pon. 2011).

The circumstances to be considered in determining the standard of care, skill, and diligence to be required of a professional include the terms of the employment agreement, the nature of the problem which the supplier of the service represented himself as being competent to solve, and the effect reasonably to be anticipated from the proposed remedies. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580 (Pon. 2011).

Although a professional's duty of care exists independent of and is not created by contract, a contract may furnish the conditions for that duty's fulfilment. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580 (Pon. 2011).

The reasonable care standards apply similarly to architects, engineers, doctors, lawyers, and like professionals engaged in furnishing skilled services for compensation and general negligence principles apply. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580 (Pon. 2011).

Ordinarily, a determination that the care, skill, and diligence exercised by a professional engaged in furnishing skilled services for compensation was less than that normally possessed and exercised by members of that profession in good standing and that the damage sustained resulted from the variance requires expert testimony to establish the prevailing standard and the consequences of departure from it in the case under consideration. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580-81 (Pon. 2011).

Because the fact-finder is not permitted to speculate as to the standard against which to measure the acts of the professional in determining whether he exercised a reasonable degree of care, expert testimony is required. Only in a few very clear and palpable cases can a court dispense with the expert testimony requirement to establish the parameters of professional conduct and find damages to have been caused by a professional's failure to exercise reasonable care, skill, and diligence. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 581 (Pon. 2011).

Vessels had a duty not to cause any damage to the reef and marine resources in Yap waters, which was breached by the vessels' failure to maintain a position off of Yap without causing damage to Yap's fringing reef and its attendant marine resources. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 174 (Yap 2012).

A corporation is not required to warn businesses not to cash checks that have the corporation as the payee since those business should not be cashing checks payable to a large, off-island corporation, anyway. The check casher has the duty to determine whether the person seeking to cash a check with a corporate payee is authorized by the corporation to do so, if it is going to cash the check. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

The police, as state officers, have no constitutional duty to rescue persons because due process considerations are not implicated when the state fails to help someone already in danger. Ruben v. Chuuk, 18 FSM R. 425, 429 (Chk. 2012).

As a general rule, a person has no legal duty to control the conduct of another. An affirmative duty to aid or protect arises only when a special relationship exists between the parties. Ruben v. Chuuk, 18 FSM R. 425, 430 (Chk. 2012).

A special relationship creating a duty of care exists when a person is in police custody, but when an officer pursues but does not have any actual contact with the person pursued, that person was never seized or in custody. Ruben v. Chuuk, 18 FSM R. 425, 430 (Chk. 2012).

When a person was never in police custody, the "deliberate indifference" duty of care standard for the liability of law enforcement officials towards prisoners does not apply. Ruben v. Chuuk, 18 FSM R. 425, 430 (Chk. 2012).

When a person is in police custody, a special duty arises because the police would have then assumed

responsibility for the person as he would not be able to protect himself. Ruben v. Chuuk, 18 FSM R. 425, 430 (Chk. 2012).

The police, by giving up their search for him and leaving the area, did not breach any special duty they might have had toward a person they had seen running away. Ruben v. Chuuk, 18 FSM R. 425, 431 (Chk. 2012).

When a person has created the dangerous situation himself, other persons have no duty to rescue him unless they had a special relationship with him – a special duty towards him. Ruben v. Chuuk, 18 FSM R. 425, 431 (Chk. 2012).

The police are generally not liable to a plaintiff who injures himself fleeing the police. Ruben v. Chuuk, 18 FSM R. 425, 431 (Chk. 2012).

When there is no factual basis for the existence of a special duty, the defendants' summary judgment motion should be granted since one of the essential elements of negligence cannot be proven. Ruben v. Chuuk, 18 FSM R. 425, 431 (Chk. 2012).

A doctor and the state hospital did not breach their duty to render professional medical services when they exercised such care, skill, and diligence as someone in that profession ordinarily exercises under like circumstances when they correctly diagnosed the patient's ailment, when they recommended her for off-island referral to an appropriate medical facility since they were unable to do the tests to confirm their diagnosis and since they were unable to offer all of the treatment options that might be needed, and when they offered her appropriate medical care as an in-patient until she could go to an off-island medical facility for her follow-up, but she refused admission. William v. Kosrae State Hosp., 18 FSM R. 575, 581 (Kos. 2013).

Since the state did not have a statutorily-created duty under Kosrae Code § 12.1103 to assist in paying for the family attendant's airfare, it did not have a statutorily-created duty to inform the family attendant that he could ask the State for financial assistance for his own airfare. William v. Kosrae State Hosp., 18 FSM R. 575, 582 (Kos. 2013).

The state cannot be said to have breached its duty when there was insufficient evidence before the court that it was state policy to pay for family attendant's airfare and to then seek repayment by wage or salary allotments; when there was no evidence about when this policy was implemented, by whom it was implemented, whether this policy was in existence in July 2001, the process used to apply for these funds, and whether there were any such funds available in late July 2001 that could have been used to immediately pay for the family attendant's ticket; when the statute barred the use of medical referral funds in a manner contrary to regulation; and when if no funds were available in July 2001, any request would have been futile and it would have been pointless to tell the family attendant that the State could assist. William v. Kosrae State Hosp., 18 FSM R. 575, 582 (Kos. 2013).

A 1991 memorandum of understanding between the insurer and the Kosrae State Hospital that required that the hospital provide all necessary health care services within Kosrae to all covered persons and that these services would include the cost of a medical or other attendant to accompany a covered person to a health care facility is an agreement that allocates the cost of attendants between the parties to the memorandum and it does not, by itself, allocate costs or create duties between the state and the insureds ("covered persons") and their families. William v. Kosrae State Hosp., 18 FSM R. 575, 582 (Kos. 2013).

While there may be no general duty to explain the type of insurance involved, insurance agents may be found to have additional duties when specifically questioned by the insured as to the appropriate level of insurance. Johnny v. Occidental Life Ins., 19 FSM R. 350, 358 (Pon. 2014).

When the plaintiff has not demonstrated that the defendant's actions reflect a standard of care that is unreasonable under the circumstances, the plaintiff's negligence claim must fail. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 478 (Pon. 2014).

When the bank showed sufficient diligence in investigating the borrowers' financial condition and the borrowers' ability to repay the loan they sought, if the bank had a duty to the borrowers to investigate their ability to pay and to not lend them money if they did not have the ability to repay, it did not breach that duty. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 171 (Pon. 2017).

Although a party has a duty not to destroy another's property, that duty is not breached when the property's removal was authorized. Pelep v. Mai Xiong Inc., 21 FSM R. 182, 187 (Pon. 2017).

When a reasonable person, in considering the totality of the circumstances, would find that the defendant did not breach its duty of care, the plaintiff's claim for negligence is not substantiated. Pelep v. Mai Xiong Inc., 21 FSM R. 182, 188 (Pon. 2017).

An employer has a duty to exercise ordinary or reasonable care commensurate with the nature of the business to protect the employee from hazards incident to it. The employer is bound to exercise this degree of diligence in providing its employee with a safe working place. Duty of care is one of the four elements of a negligence cause of action. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 28 (Pon. 2018).

An employer has a duty to provide its employee with proper training, equipment, and a safe work environment. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 28 (Pon. 2018).

In a place like Pohnpei, where industrial and economic development continues to take shape and the people are not quite sophisticated about the uses or proper handling of certain machinery or equipment, a procurer, user, owner, or seller of equipment or machinery must take extra precautionary measures in educating the people about the proper handling, operation, or storage of any such machinery or equipment and also inform the people about the potential harm if such machinery or equipment is not properly handled, operated, or stored. Failure to observe such extra precautionary measures may render the equipment's procurer, user, owner, operator, or the seller liable for any injury that might result from such failure. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 28 (Pon. 2018).

Education or information about dangerous machinery or equipment can be made in writing, or by oral explanation, through demonstration, or uses of signs easily understood and noticeable. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 28 (Pon. 2018).

When an employer is aware that unsafe procedures are being used and safe procedures are possible but the employer does not demand them, the employer breaches its duty of care toward its employees. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 28 (Pon. 2018).

An employer breaches its duty of care when it fails to provide its employee with proper footwear appropriate for the hazardous work site despite being aware of the importance of proper footwear on the work site and despite it being company policy to require proper work equipment. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 28 (Pon. 2018).

A public utility's duty of care extends beyond just a duty to landowners. It also has a duty to those persons who reside on, or who work on, or who otherwise occupy land. Thus, a plaintiff may seek relief under a negligence cause of action as a resident or an occupant of the affected land. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 154 (Chk. 2019).

– False Arrest

A person arrested for obstructing justice because she refused to give the police officers access to her

car and interfered with their peaceful attempts to talk with her husband, whom she locked inside the car, is arrested for an offense committed in the police officers' presence, and, that being the case, a warrant did not need to be issued prior to the arrest. Since the officers correctly determined that they had probable cause to arrest without a warrant because her conduct fell within the Pohnpei state law definition of obstruction of justice, they did not conduct an unlawful or false arrest of her. Berman v. Pohnpei, 16 FSM R. 567, 574 (Pon. 2009).

Regardless of whether civil liability can be imposed for failing to inform an arrestee of her rights or for failing to inform her of the cause and authority of her arrest, civil liability will be imposed when it was illegal to arrest her without a warrant where she was arrested. Alexander v. Pohnpei, 18 FSM R. 392, 400 (Pon. 2012).

When no evidence was presented at trial that the Director of Public Safety was personally involved in the plaintiff's arrest and jailing or that he directed its manner or timing, the court cannot presume that because his wife was the complainant that he ordered or directed that the plaintiff be arrested and jailed because, in the absence of evidence, an inference just as likely is that a zealous subordinate, believing it would curry favor with his superior, decided that a quick arrest and some jail time were in order. The court therefore will not hold the Director, in his personal capacity, liable to the plaintiff. Alexander v. Pohnpei, 18 FSM R. 392, 400 (Pon. 2012).

When no evidence was presented that supports the liability of the Director of Public Safety in his official capacity, judgment for an illegal arrest by the Pohnpei state police will be entered solely against the Pohnpei state government. Alexander v. Pohnpei, 18 FSM R. 392, 400 (Pon. 2012).

When no evidence of special or particular damages was introduced at trial, the court can rely on previous case law to assess damages for the wrongful arrest and detention. Alexander v. Pohnpei, 18 FSM R. 392, 401 (Pon. 2012).

When, regardless of the number of grounds on which the plaintiff's arrest was illegal, it was still only one illegal arrest, the court will make one damage award of $500 for the illegal arrest. Alexander v. Pohnpei, 18 FSM R. 392, 401 (Pon. 2012).

– False Imprisonment

A redressible civil wrong is committed when a person is unlawfully detained against his will. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 295 (Pon. 1998).

The elements of false imprisonment are 1) detention or restraint of one against his or her will, and 2) the unlawfulness of such detention or restraint. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 295 (Pon. 1998).

A false imprisonment claim is separate and distinct from a civil rights claim. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 154, 156 (Pon. 2005).

Corrections officers' actions in holding the plaintiff in jail for more than 24 hours constituted tortious conduct, specifically the tort of false imprisonment. Since these actions were carried out within the scope of their employment rather than for their own personal purposes and the acts complained of were perpetrated in government buildings devoted to law enforcement purposes, under these circumstances, the governmental employer should be held responsible for what was done and thus, Pohnpei and its Department of Public Safety are liable for this tort. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 491, 492-93 (Pon. 2005).

False imprisonment's elements are: 1) restraint or detention of one against his or her will and 2) unlawfulness of the restraint or detention. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483,

492 (Pon. 2005).

When a person is unlawfully detained against his will, a civil wrong is committed for which he may seek redress. Such a claim is separate and distinct from a civil rights claim, but, at the same time, such a claim may serve as a basis for deprivation of liberty under the FSM civil rights statute. The relevant concern in this regard is that damages should not be awarded for both claims, since to do so would be to permit a double recovery. FSM v. Koshin 31, 16 FSM R. 350, 355 (Pon. 2009).

The FSM is liable to a ship captain for the wrongful retention of his passport, and hence the wrongful detention of the captain himself, for the period that the captain was required to remain in Pohnpei after he had requested the release of his passport. While damages in such a case can be difficult to quantify, an award of damages in the amount of $120 per day is appropriate. FSM v. Koshin 31, 16 FSM R. 350, 355 (Pon. 2009).

When no evidence was presented at trial that the Director of Public Safety was personally involved in the plaintiff's arrest and jailing or that he directed its manner or timing, the court cannot presume that because his wife was the complainant that he ordered or directed that the plaintiff be arrested and jailed because, in the absence of evidence, an inference just as likely is that a zealous subordinate, believing it would curry favor with his superior, decided that a quick arrest and some jail time were in order. The court therefore will not hold the Director, in his personal capacity, liable to the plaintiff. Alexander v. Pohnpei, 18 FSM R. 392, 400 (Pon. 2012).

False imprisonment's elements are: 1) restraint or detention of one against his or her will and 2) unlawfulness of the restraint or detention. Kon v. Chuuk, 19 FSM R. 463, 466 (Chk. 2014).

A false imprisonment claim is separate and distinct from a civil rights claim, but, at the same time, it may serve as a basis for deprivation of liberty under the FSM civil rights statute. The relevant concern in this regard is that damages should not be awarded for both claims, since to do so would be to permit a double recovery. Kon v. Chuuk, 19 FSM R. 463, 466-67 (Chk. 2014).

The common law torts of false arrest and false imprisonment overlap a great deal and, in the usual case, a false arrest is followed by and becomes a part of a false imprisonment. However, there are those occasions where a lawfully executed initial arrest may be followed by an unlawful detention giving rise to liability for false imprisonment. Kon v. Chuuk, 19 FSM R. 463, 467 (Chk. 2014).

When there was an initial lawful arrest followed by lawful confinement in the Chuuk state jail pursuant to Chuuk State Supreme Court orders, but once the prisoner's release date passed his lawful detention became unlawful detention without an arrest and it thus became false imprisonment without a false arrest. Kon v. Chuuk, 19 FSM R. 463, 467 (Chk. 2014).

The police had probable cause to arrest a person and that arrest was lawful when they knew that he had someone else's pigs and that he would not release them to their owner. Since his arrest was lawful, the resulting overnight detention was lawful and was not false imprisonment. Palasko v. Pohnpei, 20 FSM R. 90, 96 (Pon. 2015).

– Fraud

In general, the statute of limitations in an action for fraud begins to run from the time of discovery of the fraud, or when reasonable diligence should have led to discovery of the fraud. Mid-Pacific Constr. Co. v. Semes (I), 6 FSM R. 171, 177 (Pon. 1993).

The elements of fraud are 1) misrepresentations, 2) made to induce action by the plaintiffs, 3) with reliance by the plaintiffs upon the misrepresentations, 4) to their detriment. Pohnpei v. Kailis, 6 FSM R. 460, 462 (Pon. 1994).

Rule 9(b) requires that in allegations of fraud that the circumstances constituting the fraud shall be stated with particularity. The extent of the particularity is guided by Civil Rule 8(a) which requires a short and plain statement of the claim. Pohnpei v. Kailis, 6 FSM R. 460, 462 (Pon. 1994).

In order to make a prima facie case of intentional misrepresentation a plaintiff must produce some evidence of: 1) a misrepresentation by the defendant, 2) scienter or the defendant's knowledge that the statements were untrue, 3) intent to cause the plaintiff to rely on the misrepresentations, 4) causation or actual reliance by the plaintiff, 5) justifiable reliance by the plaintiff and 6) damages. The misrepresentation must be a false and material representation of a past or present fact. Eram v. Masaichy, 7 FSM R. 223, 225 (Chk. S. Ct. Tr. 1995).

A plaintiff is justified in relying on a defendant's representations of a vehicle's "good shape and operation" where the defendant is a mechanic with superior knowledge of vehicles and this particular vehicle's condition. Eram v. Masaichy, 7 FSM R. 223, 225 (Chk. S. Ct. Tr. 1995).

When pleading fraud the pleader must state the time, place, and content of the false misrepresentation, the fact misrepresented and what was obtained as a consequence of the fraud. Pacific Agri-Products, Inc. v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 291, 293 (Pon. 1995).

The extent of the particularity required when pleading fraud is guided by FSM Civil Rule 8(a), which requires a "short and plain statement of the claim." Chen Ho Fu v. Salvador, 7 FSM R. 306, 309 (Pon. 1995).

The elements of fraud are 1) a misrepresentation, 2) made to induce action by plaintiff, 3) reliance by plaintiff on the misrepresentation, 4) to plaintiff's detriment. Chen Ho Fu v. Salvador, 7 FSM R. 306, 309 (Pon. 1995).

Because the elements of fraud are 1) misrepresentations, 2) made to induce action by the plaintiff, 3) with reliance by the plaintiff upon the misrepresentations, 4) to their detriment, a plaintiff must put on evidence that the misrepresentations were done to induce action by him, and that he relied on them to his detriment. Mid-Pacific Constr. Co. v. Semes, 7 FSM R. 522, 526 (Pon. 1996).

In Chuuk, the elements of fraud or intentional misrepresentation are: 1) a misrepresentation by the defendant, 2) scienter or the defendant's knowledge that the statements were untrue, 3) intent to cause the plaintiff to rely on the misrepresentations, 4) causation or actual reliance by the plaintiff, 5) justifiable reliance by the plaintiff and 6) damages. Kaminanga v. FSM College of Micronesia, 8 FSM R. 438, 442 (Chk. 1998).

Actions or conduct, as well as words, can constitute the necessary misrepresentation for fraud. In some cases, the misrepresentations may be made by a failure to disclose information. Kaminanga v. FSM College of Micronesia, 8 FSM R. 438, 443 (Chk. 1998).

In all averments of fraud the circumstances constituting fraud must be stated with particularity. Medabalmi v. Island Imports Co., 10 FSM R. 32, 35 (Chk. 2001).

Any proposed amended complaint seeking to add a civil fraud charge against a defendant must state the circumstances constituting fraud with particularity. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 333 (Pon. 2001).

When the plaintiff's complaint seems to plead fraud, and a defendant moves to dismiss for failure to state a claim but the argument is that this claim should be dismissed because it was not plead with particularity, the court may treat that as a request for a more definite statement, grant the request, and require the plaintiff to amend its complaint to state with greater clarity which facts it believes constitute fraud.

Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 92 (Pon. 2003).

In order to make a prima facie case of intentional misrepresentation, a plaintiff must produce some evidence of 1) a misrepresentation by the defendant, 2) scienter or the defendant's knowledge that the statements were untrue, 3) intent to cause the plaintiff to rely on the misrepresentations, 4) causation or actual reliance by the plaintiff, 5) justifiable reliance by the plaintiff and 6) damages. The misrepresentation must be a false and material representation of a past or present fact. Isaac v. Palik, 13 FSM R. 396, 401 (Kos. S. Ct. Tr. 2005).

In considering evidence relevant to misrepresentation, actions or conduct, as well as words, can constitute the necessary misrepresentation for fraud. In some cases, the misrepresentations may be made by a failure to disclose information. Isaac v. Palik, 13 FSM R. 396, 401 (Kos. S. Ct. Tr. 2005).

When the defendant, an elderly widow, unsophisticated in legal terminology and property transactions, in good faith believed that as owner of the two parcels, she had the authority to sell them to the plaintiff and also believed, in good faith, that execution and filing of the "quitclaim deed" would be adequate documentation to transfer title to the plaintiff, the defendant did not have knowledge that her representations regarding her authority to sell the subject parcels were untrue or incorrect, the plaintiff has failed to sustain his burden of proof as to all elements required for the tort of intentional misrepresentation or fraud. Isaac v. Palik, 13 FSM R. 396, 401 (Kos. S. Ct. Tr. 2005).

The elements of the tort of fraud are: 1) misrepresentation by the defendant, 2) defendant's knowledge that the statements were untrue, 3) intent to cause the plaintiff to rely upon the misrepresentations, 4) actual reliance by the plaintiff, 5) justifiable reliance, and 6) damages. Benjamin v. Youngstrom, 13 FSM R. 542, 548 (Kos. S. Ct. Tr. 2005).

When the plaintiffs have not presented evidence of any misrepresentations made by the defendant to them, with intent to cause the plaintiffs to rely upon them, several elements of the tort of fraud have not been satisfied, the fraud causes of action must fail. Benjamin v. Youngstrom, 13 FSM R. 542, 549 (Kos. S. Ct. Tr. 2005).

Rule 9(b) requires that in allegations of fraud, the circumstances constituting the fraud be stated with particularity. The extent of particularity requires a short and plain statement of the claim. When pleading fraud, the pleader must state the time, place, and content of the false misrepresentation, the fact misrepresented, and what was obtained as a consequence of the fraud. Kinere v. Sigrah, 13 FSM R. 562, 567 (Kos. S. Ct. Tr. 2005).

When the plaintiff has not satisfied the procedural requirements for pleading fraud because she has failed to state the time, place and content of the false misrepresentation made by the defendants, the fraud cause of action must fail due to the lack of pleading with particularity as required by Rule 9(b). Kinere v. Sigrah, 13 FSM R. 562, 567 (Kos. S. Ct. Tr. 2005).

The elements of the tort of fraud are: 1) misrepresentation by the defendant, 2) defendant's knowledge that the statements were untrue, 3) intent to cause the plaintiff to rely upon the misrepresentations, 4) actual reliance by the plaintiff, 5) justifiable reliance, and 6) damages. Kinere v. Sigrah, 13 FSM R. 562, 567 (Kos. S. Ct. Tr. 2005).

When the plaintiff failed to present any evidence that the defendant knew his statements were untrue and when the defendant's statements were presented to the Kosrae State Land Commission for their consideration of evidence and determination of ownership for the subject parcels, there was no actual or justifiable reliance by the plaintiff upon those statements and if there was any reliance, it was by the Land Commission in their consideration of the claims and evidence pertaining to ownership of the subject parcels. The plaintiff has thus failed to submit competent evidence in support of her fraud cause of action. Kinere v. Sigrah, 13 FSM R. 562, 568 (Kos. S. Ct. Tr. 2005).

The tort of "fraud-act of mistake" has not been recognized in Kosrae, but since this cause of action appears to sound in negligent misrepresentation, therefore an analysis of the action as the tort of negligence is appropriate. Kinere v. Sigrah, 13 FSM R. 562, 568 (Kos. S. Ct. Tr. 2005).

The elements of fraud or intentional misrepresentation in Chuuk are: 1) a misrepresentation by party, 2) scienter or the party's knowledge that the statements were untrue, 3) intent to cause another to rely on the misrepresentations, 4) causation or actual reliance by the other, 5) justifiable reliance by the other, and 6) damages. Dereas v. Eas, 14 FSM R. 446, 457 (Chk. S. Ct. Tr. 2006).

In all averments of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity, although a person's malice, intent, knowledge, or other condition of mind may be averred generally. Dereas v. Eas, 14 FSM R. 446, 458 (Chk. S. Ct. Tr. 2006).

The elements of a cause of action for fraudulent misrepresentation are: 1) misrepresentations 2) made to induce action by the plaintiff 3) with reliance by the plaintiffs upon the misrepresentation 4) to their detriment. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 442 (Pon. 2009).

An assurance that things were "going smooth – most of the time" is a type of generalized opinion that is not the sort of specific representation on which a hearer may reasonably rely. Reliance must be reasonable. Even when a fiduciary relationship existed between the parties, the parties to such a relationship may certainly communicate at times on a superficial, conventional level where the statements made do not give rise to reasonable reliance that could be the basis for a fraudulent misrepresentation cause of action. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 442-43 (Pon. 2009).

Because the elements of fraud are: 1) a knowing or deliberate misrepresentation by the defendant, 2) made to induce action by the plaintiff, 3) with justifiable reliance by the plaintiff upon the misrepresentations, 4) to the plaintiff's detriment, a plaintiff must show that the misrepresentations were done to induce action by him, and that he relied on them to his detriment. Arthur v. Pohnpei, 16 FSM R. 581, 597 (Pon. 2009).

Rule 9(b) requires that in all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. The extent of the particularity is guided by Civil Rule 8(a) which requires a short and plain statement of the claim. When alleging fraud, a plaintiff must state with particularity the circumstances constituting fraud and must identify particular statements and actions and specify why they are fraudulent. Conclusory allegations do not satisfy Rule 9(b)'s requirements and subject the pleader to dismissal. Arthur v. Pohnpei, 16 FSM R. 581, 597 (Pon. 2009).

When, taking the guarantors' factual allegations as true – that the bank misrepresented to plaintiffs that the documents were in accord with the loan, caused plaintiffs to rely upon said representations and knew plaintiffs would so rely – it is difficult to see how the guarantors were harmed thereby because, if the bank had prepared all the documents correctly, the documents would have shown that a corporation was the borrower and that the guarantors were guarantors with the result that the guarantors would be liable on their guaranty, and since this result is no different than that in the judgment rendered in the former litigation, any alleged reliance on the bank's representation could not have been to the guarantors' detriment since they were in no worse position than if the loan documents were accurately prepared. Arthur v. Pohnpei, 16 FSM R. 581, 597-98 (Pon. 2009).

The elements of intentional misrepresentation are: 1) a misrepresentation by the defendant, 2) scienter or the defendant's knowledge that the statements were untrue, 3) intent to cause the plaintiff to rely on the misrepresentations, 4) causation or actual reliance by the plaintiff, 5) justifiable reliance by the plaintiff, and 6) damages; and since the elements of fraud are: 1) a knowing or deliberate misrepresentation by the defendant, 2) made to induce action by the plaintiff, 3) with justifiable reliance by the plaintiff upon the misrepresentations, 4) to the plaintiff's detriment, which means that a plaintiff must show that the misrepresentations were done to induce action by him, and that he relied on them to his detriment, a close reading indicates that the elements of fraud and of intentional misrepresentation are the

same and they are the same cause of action. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 584-85 (Pon. 2011).

If the contractor had told the FSM that it done soil testing when it had not and if the FSM relied on that misrepresentation to its detriment, then that could have constituted an intentional material misrepresentation or fraud. But when the contractor informed the FSM that it had not done soil testing but had instead used the soil tests done elsewhere for its design preparations and the FSM then waived this requirement for these two projects; when the contractor included clauses in draft construction bid documents submitted to the FSM for its approval that the construction contractors conduct soil testing; and when, even if soil testing has been done in the design phase, soil testing is still necessary in the construction phase (and may have been particularly necessary here since the pre-design soil testing has been waived), there was thus no misrepresentation made to the FSM. The contractor is entitled to summary judgment on the FSM's fraud claim based on putting soil testing requirements in the bid documents. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 585 (Pon. 2011).

Since reliance upon a defendant's misrepresentation to one's detriment are essential elements of a plaintiff's case for fraud or intentional misrepresentation, when the plaintiff has not identified any misrepresentation by the defendant upon which the plaintiff relied to its detriment, the plaintiff has failed to make a showing sufficient to establish the existence of elements essential to its case and summary judgment in the defendant's favor is appropriate. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 585 (Pon. 2011).

When the plaintiff does not identify any statement made during one incident that it detrimentally relied on or any damages caused by it and the other alleged incident is not properly before the court and was not pled with particularity, the defendant is entitled to summary judgment on the fraud or misrepresentation claim based on those allegations. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 585 (Pon. 2011).

A party cannot, by raising a new fraud claim in a summary judgment opposition, bypass the Rule 9(b) provision that the circumstances constituting fraud must be pled with particularity and effect a de facto amendment to its pleading. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 586 (Pon. 2011).

When a project was never put out to bid and its bid documents never used, the plaintiff cannot show elements essential to its claim – that it relied on those bid documents to its detriment. Accordingly, the defendant is entitled to summary judgment on the fraud or misrepresentation claim based on allegations that the bid documents prepared by the defendant contained terms that they should not have. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 586 (Pon. 2011).

When the plaintiff has not shown that it relied to its detriment on the exculpatory language in bid documents prepared by the defendant, elements essential to its fraud claim, the defendant will be granted summary judgment on the fraud or misrepresentation claim based on allegations that the defendant prepared bid documents with exculpatory language. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 586 (Pon. 2011).

Since the elements of fraud are: 1) a knowing or deliberate misrepresentation by the defendant, 2) made to induce action by the plaintiff, 3) with justifiable reliance by the plaintiff upon the misrepresentations, 4) to the plaintiff's detriment, a plaintiff must show that the misrepresentations were done to induce action by him, and that he relied on them to his detriment. Mori v. Hasiguchi, 17 FSM R. 630, 637 (Chk. 2011).

A party averring fraud or mistake must plead the circumstances constituting fraud or mistake with particularity. The extent of particularity is governed by Rule 8(a). Sorech v. FSM Dev. Bank, 18 FSM R. 151, 158 (Pon. 2012).

The elements of fraud are 1) a knowing or deliberate misrepresentation by the defendant 2) made to induce action by the plaintiff 3) with justifiable reliance by the plaintiff upon the misrepresentations 4) to the plaintiff's detriment. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 158 (Pon. 2012).

Collateral fraud, also known as extrinsic fraud, is a fraud that is collateral to the issues being considered in the case. Fraud is regarded as extrinsic when it prevents a party from having a trial or from presenting all of his case to the court, or when it operates upon matters pertaining not to the judgment itself but to the manner in which it is procured, so that there is not a fair submission of the controversy. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 160 (Pon. 2012).

When, even assuming the plaintiffs' allegations are true, they do not state that a plaintiff relied upon the misrepresentations the plaintiffs allege to be the basis of the collateral fraud, much less that her reliance induced her to act to her detriment, and when they do not state that the defendant prevented her from having a trial or from presenting her case to the court, the court, viewing the facts and inferences in the light most favorable to the plaintiffs, cannot but conclude that the defendant is entitled to judgment as a matter of law. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 160 (Pon. 2012).

In general, the statute of limitations in an action for fraud begins to run from the time of discovery of the fraud or when reasonable diligence should have led to discovery of the fraud. FSM v. Muty, 19 FSM R. 453, 460-61 (Chk. 2014).

In order to make a prima facie case of intentional misrepresentation, a plaintiff must produce some evidence of: 1) a misrepresentation by the defendant; 2) scienter or the defendant's knowledge that the statements were untrue; 3) intent to cause the plaintiff to rely on the misrepresentations; 4) causation or actual reliance by the plaintiff; 5) justifiable reliance by the plaintiff; and 6) damages. The misrepresentation must be a false and material representation of a past or present fact. In some cases, the misrepresentations may be made by failure to disclose information. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 477 (Pon. 2014).

When the plaintiff proffered no evidence that would support a conclusion that the defendant knew the repairs suggested to the plaintiff were unnecessary or insufficient, the plaintiff failed to present evidence that would satisfy the scienter requirement for intentional misrepresentation and that claim must fail. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 477-78 (Pon. 2014).

Fraud in the inducement is a fraud occurring when a misrepresentation leads another to enter into a transaction with a false impression of the risks, duties, or obligations involved. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 291 (Pon. 2016).

The only type of fraud not subject to the one-year limitation for relief from judgment is fraud on the court. This is because Rule 60(b) does not limit the time in which the court may set aside a judgment for fraud on the court. Fraud on the court is a lawyer's or party's misconduct so serious that it undermines or is intended to undermine the integrity of the judicial proceeding. A finding of fraud on the court is justified only by the most egregious misconduct directed to the court itself, such as bribery of a judge or counsel's fabrication of evidence, and must be supported by clear, unequivocal, and convincing evidence. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 291 (Pon. 2016).

The winning bidder at a court-ordered land sale auction and therefore the new owner of the property pursuant to a court order transferring title, did not commit fraud or misrepresentation when the bidder did not disclose, on the previous owners' behalf, an argument which had previously been rejected by the FSM Supreme Court. Setik v. Perman, 21 FSM R. 31, 39 (Pon. 2016).

"Predatory lending" is a term generally used to characterize a range of abusive and aggressive lending practices, including deception or fraud, charging excessive fees or interest rates, making loans without regard to a borrower's ability to repay, or refinancing loans repeatedly over a short period of time to incur additional fees without any economic gain to the borrower. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 170 (Pon. 2017).

The elements of intentional misrepresentation or fraud (essentially the same cause of action) are: 1) a knowing or deliberate misrepresentation by the defendant 2) made to induce action by the plaintiff 3) with justifiable reliance by the plaintiff upon the misrepresentations 4) to the plaintiff's detriment. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 178 (Pon. 2017).

A plaintiff must show that the misrepresentations were done to induce action by him, and that he relied on them to his detriment. Thus, when there is no evidence that the employer, even if it made the alleged statement that it would employ him for the next 50 years (or its later employment verification statement to a bank), were statements made to induce him to borrow a large sum to build himself a house, the better view is that he (and the bank) relied on his improved financial condition and future prospects when he sought the loan. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 178 (Pon. 2017).

Intentional misrepresentation, negligent misrepresentation, and promissory estoppel all contain elements of detrimental reliance. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 178 n.11 (Pon. 2017).

Even if substantial evidence were proffered to demonstrate the existence of fraud, that proffer was inadequate. Ordinarily, a proponent's burden to establish fraud is clear and convincing evidence, which is the highest burden of proof in civil cases. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 310, 315 (App. 2017).

Since "substantial evidence" is "more than a scintilla, but less than a preponderance, substantial evidence would be insufficient to prove fraud, even if the usual, lower burden of proof – preponderance of the evidence – was applied. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 310, 315 (App. 2017).

The elements of fraud or intentional misrepresentation are: 1) a knowing or deliberate misrepresentation by the defendant, 2) made to induce action by the plaintiff, 3) with justifiable reliance by the plaintiff upon the misrepresentations, 4) to the plaintiff's detriment. Setik v. Mendiola, 21 FSM R. 537, 556 (App. 2018).

Fraud upon the court is the most egregious misconduct directed to the court itself, such as bribery of a judge or fabrication of evidence by counsel, which must be supported by clear, unequivocal and convincing evidence. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 12 (Pon. 2018).

An unsuccessful legal maneuver based on an incorrect, but colorable, legal argument cannot rise to the level of a fraud upon the court. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 12 (Pon. 2018).

A lawyer's incorrect legal argument does not, by itself, constitute a fraud upon the court since an attorney is to be expected to responsibly present his client's case in the light most favorable to his client. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 12 (Pon. 2018).

In a claim for fraud, the pleader must state the time, place, and content of the false misrepresentation, the fact misrepresented, and what was obtained or given up as a consequence of the fraud. FSM v. Mikel, 22 FSM R. 33, 37 (Chk. 2018).

Since the elements of fraud are: 1) a knowing or deliberate misrepresentation by the defendant, 2) made to induce action by the plaintiff, 3) with justifiable reliance by the plaintiff upon the misrepresentations, 4) to the plaintiff's detriment, a plaintiff must show that the misrepresentations were done to induce action by the plaintiff, and that the plaintiff relied on them to the plaintiff's detriment, and Rule 9(b) requires that when alleging fraud, the circumstances constituting the fraud must be stated with particularity. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 202 (Pon. 2019).

When alleging with the required particularity the circumstances constituting fraud, a plaintiff must identify particular statements and actions and specify why they are fraudulent. Conclusory allegations will not satisfy the requirement to plead with particularity and will subject the pleader to dismissal. Thus, someone pleading fraud should state the time, place, and content of the misrepresentation, the fact

misrepresented, and what was obtained as a consequence of the fraud. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 202 (Pon. 2019).

A complaint does not plead a fraud cause of action with the requisite particularity when it does not identify any misrepresentation that a defendant made to the plaintiff with the intent to induce action (or non-action) by the plaintiff, and which then reasonably induced that action (or non-action) by the plaintiff, to the plaintiff's detriment and when, at most, it alleges misrepresentations made to government agencies with the intent to induce non-action by those agencies. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 202 (Pon. 2019).

The elements of fraud or intentional misrepresentation are: 1) a knowing or deliberate misrepresentation by the defendant, 2) made to induce action by the plaintiff, 3) with the plaintiff's justifiable reliance upon the misrepresentations, 4) to the plaintiff's detriment. Panuelo v. Sigrah, 22 FSM R. 341, 360 (Pon. 2019).

Civil Procedure Rule 9(b) requires that in allegations of fraud that the circumstances constituting the fraud must be stated with particularity, and the extent of this particularity is guided by Rule 8(a), which requires a short and plain statement of the claim. Panuelo v. Sigrah, 22 FSM R. 341, 360-61 (Pon. 2019).

When alleging fraud, a plaintiff must state with particularity the circumstances constituting fraud and 'must identify particular statements and actions and specify why they are fraudulent. Conclusory allegations do not satisfy the requirements of Rule 9(b) and subject the pleader to dismissal. Panuelo v. Sigrah, 22 FSM R. 341, 361 (Pon. 2019).

When, even assuming the plaintiff's allegations are true, she does not state that she relied upon the misrepresentations she alleges to be the basis of the fraud, much less that her reliance induced her to act to her detriment, and when she does not state that the defendant prevented her from presenting her case to the court, the court, viewing the facts and inferences in the light most favorable to the non-movant, cannot but conclude that the defendant is entitled to judgment as a matter of law. Panuelo v. Sigrah, 22 FSM R. 341, 361 (Pon. 2019).

If a fraud allegation, that failed to adequately plead a regular fraud cause of action, was meant to be an allegation of fraud on the court, which is a further ground to set aside a judgment that Bankruptcy Rule 9024 (by adopting Civil Procedure Rule 60) permits to be brought in an independent action, that allegation will also be wanting because the doctrine of fraud upon the court is narrow and limited in scope and not every allegation of fraud rises to the level of fraud upon the court. Panuelo v. Sigrah, 22 FSM R. 341, 361 (Pon. 2019).

A finding of fraud on the court is justified only by the most egregious misconduct directed to the court itself, such as bribery of a judge or fabrication of evidence by counsel, and must be supported by clear, unequivocal and convincing evidence. Panuelo v. Sigrah, 22 FSM R. 341, 361 (Pon. 2019).

A grant of relief for fraud on the court ordinarily requires that: 1) the fraud is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury; 2) the fraud involves the most egregious conduct, such as bribery of a judge or the fabrication of evidence in which an attorney is implicated; and 3) the party perpetrating the fraud acted with an intent to deceive or defraud the court. Further, the fraud must have actually deceived the court. These requirements are strictly applied because a finding of fraud on the court is exempt from time limits and because it permits the severe consequence of allowing a party to overturn the finality of a judgment. Panuelo v. Sigrah, 22 FSM R. 341, 361 (Pon. 2019).

– Governmental Liability

Given the Memorandum of Understanding of December 31, 1979 between the President and the Trust

Territory High Commissioner, its accompanying Functions Agreement No. 3, and the State-National Leader's Conference resolution on health and education (Sept. 28, 1979), and given the absence of assumption of functions agreements entered into by the states, whether the national government is immune from liability arising out of operation of the hospitals within the FSM is a question of fact. Manahane v. FSM, 1 FSM R. 161, 168-73 (Pon. 1982).

The emphasis in governmental tort liability cases has been on the special status of government, its functions and its officials rather than on the degree of control tests commonly employed in nongovernmental cases. Even those commentators who specifically note that the *respondeat superior* doctrine applies to the government analyze governmental liability issues in terms of public policy considerations rather than through a degree of control analysis which distinguishes between closely supervised and high-ranking officials. Rauzi v. FSM, 2 FSM R. 8, 16 (Pon. 1985).

The State of Pohnpei and its agencies may be held liable in tort subject to legislative restrictions that may be imposed and to certain other recognized common law exceptions. Panuelo v. Pohnpei (I), 2 FSM R. 150, 163 (Pon. 1986).

Courts lack authority to establish sovereign immunity to general tort claims through judicial action. Edwards v. Pohnpei, 3 FSM R. 350, 363 (Pon. 1988).

Any liability of the state for suffering or death caused by defective health care provided by the state must be based upon theories of negligence, not strict liability. Amor v. Pohnpei, 3 FSM R. 519, 534 (Pon. 1988).

Whether the relationship between U.S. National Health Service Corps doctors and the State of Pohnpei is such that the doctrine of *respondeat superior* may be applicable in an action for medical malpractice so that the state may be made to respond in damages for any negligence of the doctor has not been determined. Amor v. Pohnpei, 3 FSM R. 519, 536 (Pon. 1988).

A claim that the FSM liaison office did not fulfill its medical referral obligations as required by law falls within the embrace of 6 F.S.M.C. 702(2), which authorizes damage claims against the government for alleged improper administration of statutory laws or regulations. Leeruw v. FSM, 4 FSM R. 350, 363 (Yap 1990).

Under the Compact of Free Association and the Federal Programs and Services Agreement, civilian employees of the United States government have immunity from civil and criminal process for wrongful acts and omissions done within the scope and in performance of official duty, unless expressly waived by the U.S. government. Samuel v. Pryor, 5 FSM R. 91, 95 (Pon. 1991).

When force is employed by a police officer in an apparent use of official authority, the governmental employer should be held responsible for what is done. Plais v. Panuelo, 5 FSM R. 179, 201 (Pon. 1991).

A state's ratification and acceptance of its employee's torts through its subsequent conduct is an independent ground for holding the state jointly and severally liable for those torts. Plais v. Panuelo, 5 FSM R. 179, 202-03 (Pon. 1991).

The doctrine of *respondeat superior* is not to be used to determine whether a governmental entity is liable under 11 F.S.M.C. 701(3) for civil rights violations inflicted by government employees. The government entity may be held liable under 11 F.S.M.C. 701(3) when violations are caused by officials who are responsible for final policy making with respect to the of action chosen from various alternatives. Plais v. Panuelo, 5 FSM R. 179, 205-06 (Pon. 1991).

Confining a prisoner in dangerously unsanitary conditions, which represent a broader government-wide policy of deliberate indifference to the dignity and well-being of prisoners, is a failure to provide civilized

treatment or punishment, in violation of prisoners' protection against cruel and unusual punishment, and renders the state liable under 11 F.S.M.C. 701(3). Plais v. Panuelo, 5 FSM R. 179, 208 (Pon. 1991).

When a state government is acting on behalf of the national government by virtue of the joint administration of law enforcement act, the state's officers and employees are agents of the national government and are acting "under color of authority" within the meaning of 6 F.S.M.C. 702(5). Plais v. Panuelo, 5 FSM R. 179, 209-10 (Pon. 1991).

The national government is liable for violations of 6 F.S.M.C. 702(2) when it has abdicated its responsibility toward national prisoners. Plais v. Panuelo, 5 FSM R. 179, 210-11 (Pon. 1991).

The national government is a person within the meaning of 6 F.S.M.C. 702(2) and will be held liable under that section when civil rights violations are in substantial part due to a governmental policy of deliberate indifference to the constitutional rights of national prisoners and failure to attempt to assure civilized treatment to prisoners. Plais v. Panuelo, 5 FSM R. 179, 211 (Pon. 1991).

Since by statute the Trust Territory government would be liable to private litigants only under circumstances where a private person would be liable to the claimant for similar acts and because declaring title to the property could only be accomplished by an administering governmental authority there is no tort for loss of property for declaring title because private persons have no authority to declare title. Nahnken of Nett v. United States (III), 6 FSM R. 508, 527 (Pon. 1994).

Any action of the Land Commission in excess of its statutory authority would be actionable only against the Commission itself, not the United States since it was not an agency of the U.S. government. Nahnken of Nett v. United States (III), 6 FSM R. 508, 528 (Pon. 1994).

The state, not the chief of police, is vicariously liable under the doctrine of respondeat superior for the torts of its police officers committed in the course and scope of their employment when force is employed in the use of even apparent official authority. Davis v. Kutta, 7 FSM R. 536, 545-46 (Chk. 1996).

The state is liable for injuries proximately caused by the employment of untrained or poorly trained police officers, and for the failure to adequately train them, and the chief of police is liable for any injury resulting from breach of duties connected with his office. Davis v. Kutta, 7 FSM R. 536, 546 (Chk. 1996).

Summary judgment will be granted on the issue of the state's liability for the its employee's act when there is no genuine issue of material fact that at the time of the accident the employee was negligent, that he was acting at the direction of his employer and within the scope of his employment, and that his conduct was not wanton or malicious. Glocke v. Pohnpei, 8 FSM R. 60, 61-62 (Pon. 1997).

Although a town government is not automatically liable for all the torts of its agents and employees, it is liable for those torts committed in the course and scope of employment under the doctrine of respondeat superior. When force is employed by police officers in use of even apparent official authority, the government employer should be held responsible for whatever results. Conrad v. Kolonia Town, 8 FSM R. 183, 192 (Pon. 1997).

The Pohnpei Governmental Liability Act, Pon. S.L. No. 2L-192-91, provides for no immunity for torts committed by governmental employees acting within the scope of their employment. Conrad v. Kolonia Town, 8 FSM R. 183, 194 (Pon. 1997).

Although a municipality would be liable for the injuries proximately caused by employment of poorly trained police officers, and for failure to adequately train them, there is no liability where the plaintiff has failed to prove by any competent evidence that the level of police training provided by the municipality was deficient, or that that level of training violated the proper standard of care in the community, or even what level of training would be appropriate giving due consideration to the social and geographical configuration

of the Federated States of Micronesia. Conrad v. Kolonia Town, 8 FSM R. 183, 194 (Pon. 1997).

Persons liable for civil rights violations include government entities. Conrad v. Kolonia Town, 8 FSM R. 183, 195 (Pon. 1997).

A municipality is liable for battery by its police officers when it has ratified their actions by failing to charge them and the lack of any internal discipline whatsoever. Conrad v. Kolonia Town, 8 FSM R. 183, 195 (Pon. 1997).

A complaint's allegations that officials' knowing interference prevented two ships from refloating their ship after it had grounded on a reef, that the ship's crew were arrested by the officials without cause, and that this actively and unreasonably prevented rescue the vessel's by other boats, and that that interference was the direct cause of the boat's damage, set forth a claim in negligence and are sufficient to survive a motion to dismiss. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 294 (Pon. 1998).

The state, as employer of a police trainee, is responsible for the battery committed by the trainee while acting within the scope of that employment. Atesom v. Kukkun, 10 FSM R. 19, 22 (Chk. 2001).

When force is employed by a police officer in an apparent use of official authority, the governmental employer should be held responsible for what is done. Herman v. Municipality of Patta, 12 FSM R. 130, 136 (Chk. 2003).

As a matter of public policy, governments are generally not liable for punitive damages. Herman v. Municipality of Patta, 12 FSM R. 130, 138 (Chk. 2003).

Under the Chuuk State Sovereign Immunity Act of 2000, punitive (or exemplary) damages not greater than the compensatory damages and of not more than $20,000 may be awarded against the state or a municipality only if the injury was as a result of a government employee or agent who, acting under color of authority, violated the individual rights secured by the Chuuk Constitution. But the Sovereign Immunity Act of 2000 is not retrospective – it does not apply to claims that arose before its enactment – and prior law bars any punitive damage awards against a municipal government. Herman v. Municipality of Patta, 12 FSM R. 130, 138 (Chk. 2003).

While punitive damages are not permitted against a municipality, they can be awarded and are justified against individuals for their wanton, malicious, and deliberately violent treatment of a victim in detention. Herman v. Municipality of Patta, 12 FSM R. 130, 139 (Chk. 2003).

Even where a litigant may have concerns over its ability to realize on a judgment against the state defendant, that concern alone does not serve to enlarge the scope of a statute to create liability for the national government, against which a judgment may be more collectible. Such issues are for the legislature. AHPW, Inc. v. FSM, 12 FSM R. 164, 167 (Pon. 2003).

While § 219 of the Foreign Investment Laws admits of a cause of action for prospective, injunctive relief against the FSM, it does not permit an action for damages. Chapter 3 provides a remedy for damages, but notwithstanding the fact that the remedy is against Pohnpei, and not the FSM, it is nevertheless a remedy. If the plaintiff prevails, the conduct alleged will not go unsanctioned. AHPW, Inc. v. FSM, 12 FSM R. 164, 167 (Pon. 2003).

Since tort law generally is an area governed by state law, exemplary or punitive damages are not awardable against the State of Pohnpei under Pohnpei state law and a claim for exemplary damages against it will be dismissed. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 154, 155 (Pon. 2005).

Governmental entities, such as the State of Pohnpei and the Pohnpei Department of Public Safety, are

"persons" within the meaning of 11 F.S.M.C. 701 *et seq*. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 491 (Pon. 2005).

Corrections officers' actions in holding the plaintiff in jail for more than 24 hours constituted tortious conduct, specifically the tort of false imprisonment. Since these actions were carried out within the scope of their employment rather than for their own personal purposes and the acts complained of were perpetrated in government buildings devoted to law enforcement purposes, under these circumstances, the governmental employer should be held responsible for what was done and thus, Pohnpei and its Department of Public Safety are liable for this tort. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 491, 492-93 (Pon. 2005).

Qualified immunity is not a defense to a criminal prosecution. "Qualified immunity" partially shields public officials performing discretionary functions from civil liability and damages. Public officials are not immune or exempt from criminal liability and prosecution. FSM v. Wainit, 14 FSM R. 51, 55 (Chk. 2006).

The mere presence of prosecutors during a search is not *per se* improper. A prosecutor may assist in a search to provide legal advice. The reason a prosecutor might not want to participate in investigative matters such as executing a search warrant is that prosecutors only enjoy a limited immunity from civil liability when participating in investigative acts, unlike the absolute immunity from civil liability that prosecutors enjoy for their actions connected with their role in judicial proceedings. FSM v. Wainit, 14 FSM R. 51, 57 (Chk. 2006).

Prison officials have a duty to protect the inmates' constitutional rights and the well-being. The protection of the inmates' well-being requires that civilized treatment be provided to inmates, including reasonably sanitary conditions and medical care. Phillip v. Kosrae, 14 FSM R. 109, 113 (Kos. S. Ct. Tr. 2006).

Confining a prisoner in dangerously unsanitary conditions, which represent a broader government-wide policy of deliberate indifference to the prisoners' dignity and well-being, is a failure to provide civilized treatment, and renders the state liable to the injured inmate. Likewise, there is state liability by the arbitrary and purposeless denial of medical care to inmates, where such denial is based upon deliberate indifference to an inmate's medical needs. The standard of "deliberate indifference" is adopted to determine whether there is liability for the plaintiff's injuries which resulted from his fellow inmate's actions and the defendants' alleged failure to assure the plaintiff's well-being through civilized treatment. Phillip v. Kosrae, 14 FSM R. 109, 113 (Kos. S. Ct. Tr. 2006).

Liability for failure to protect a prisoner against harm from other inmates is measured against the standard of deliberate indifference. Deliberate indifference occurs when a prison official causes an inmate unnecessary and wanton infliction of pain by deliberately disregarding a serious threat to the prisoner's safety after actually becoming aware of that threat. Mere negligence or inadvertence is not sufficient to hold prison officials liable. Government liability for failure to protect an inmate from harm caused by other inmates may be established by showing that the prison officials knew that there was an imminent danger and consciously refused to do anything about the danger. Phillip v. Kosrae, 14 FSM R. 109, 114 (Kos. S. Ct. Tr. 2006).

When there was no evidence that the government defendants knew of the risk or threat, or had reason to know of the risk or threat that a certain inmate would throw hot water at the plaintiff, the defendants were not aware and could not have been reasonably aware of a threat of hot water being thrown at the plaintiff and thus did not deliberately disregard a threat towards the plaintiff and did not consciously refuse to do anything about the danger that they did not know about. Accordingly, the defendants' conduct did not meet the standard of deliberate indifference towards the plaintiff, and therefore did not breach the duty of care towards the plaintiff. Consequently the defendants are not liable to the plaintiff for his injuries and damages sustained from the hot water thrown at him by another inmate. Phillip v. Kosrae, 14 FSM R. 109, 114 (Kos. S. Ct. Tr. 2006).

Equitable estoppel is (and should be) applied to governments in the FSM when this is necessary to prevent manifest injustice and when the interests of the public will not be significantly prejudiced. But a party asserting equitable estoppel against the government must prove more than is required when it is asserted against a private entity. The government may not be estopped on the same terms as any other litigant. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 192 (Pon. 2006).

Another element must be established when a party asserts estoppel against the government – affirmative misconduct on the government's part. "Affirmative misconduct" has never been clearly defined by any court. This much, however, is clear. The misconduct complained of must be "affirmative," which indicates more than mere negligence is required. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 192 (Pon. 2006).

"Detrimental reliance" requires, at the very least, that a party has changed its position for the worse as a consequence of the government's purported misconduct. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 192 (Pon. 2006).

When the defendant affirmatively signed a Letter of Commitment that it would issue the plaintiff a permit to purchase the first 60 metric tons of shell from the Pohnpei reefs during each annual trochus harvest and made other promises or representations that there would be a trochus harvest and the plaintiff reasonably relied upon these representations that there would be a trochus harvest and, until it finally stopped business in 1998, kept employees on so that it would be ready to go back into the trochus button business, the defendant is liable. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 192 (Pon. 2006).

The doctrine of *respondeat superior* may be applied to impose liability upon a state for the negligent torts of its employees. The theory may also be applied to intentional torts when committed by a police officer or other official in an apparent use of official authority. In other words, a state may only be held liable for torts committed in the scope of employment. Annes v. Primo, 14 FSM R. 196, 204 (Pon. 2006).

Generally, the question of whether a police officer acted within the scope of employment is a question of fact, rather than a legal question, although, if the facts are undisputed and can support only one conclusion, the inquiry becomes legal. Thus to survive a defendant's motion to dismiss, it is enough that the plaintiff has alleged assault and battery by a government employee cloaked with the authority of the state. Annes v. Primo, 14 FSM R. 196, 204 & n.3 (Pon. 2006).

A state may be held liable if, through subsequent conduct, it ratifies the tort of an individual defendant. Annes v. Primo, 14 FSM R. 196, 204 n.4 (Pon. 2006).

A state may be held liable for alleged civil rights violations when policymakers are involved in the challenged action and have made a deliberate choice to follow a particular course of action. This type of liability is not vicarious; it is direct, but when a plaintiff has not alleged that an individual with policymaking authority was involved in his injury, there is no basis upon which to impose liability on the state for a police officer's alleged civil rights violations. Annes v. Primo, 14 FSM R. 196, 205 (Pon. 2006).

Although a state may not be held vicariously liable for the due process violations of its agents, it may be held liable in both tort and civil rights for failure to train. Annes v. Primo, 14 FSM R. 196, 205 (Pon. 2006).

The State of Pohnpei cannot be held liable for punitive damages. Annes v. Primo, 14 FSM R. 196, 206 (Pon. 2006).

A government entity may be held liable under 11 F.S.M.C. 701(3) when violations are caused by officials who are responsible for final policy making with respect to the action chosen from various alternatives. Lippwe v. Weno Municipality, 14 FSM R. 347, 352 (Chk. 2006).

A motion to strike a punitive damages claim against the FSM on the ground that, under FSM law,

punitive damages are not recoverable against the national government on any theory, although styled as a motion to strike under Rule 12(f), may more accurately be characterized as one (under Rule 12(b)(6)) to dismiss for failure to state a claim upon which relief can be granted. FSM v. Kana Maru No. 1, 14 FSM R. 368, 374 (Chk. 2006).

The elements of a negligence claim and a claim of violation of Constitutional rights against Kosrae and its employees are set out in Kosrae Code § 6.2601. Subsection (c) permits an action for loss of property caused by the negligent or wrongful act or omission by a government employee acting within the scope of their employment and under circumstances where a private person would be liable. Subsection (d) permits an action for injury resulting from the conduct of a government employee acting under color of authority and in violation of a right specified under Article II of the Kosrae Constitution. The right to due process is one of the specified rights. Andon v. Shrew, 15 FSM R. 315, 320 (Kos. S. Ct. Tr. 2007).

The statute of limitations for claiming a violation of due process by the government is covered by the six-year period found in Kosrae Code section 6.2506. Thus, claims against the Land Commission for violation of due process and for failing to apply statutes are governed by the six year statute of limitations. Since the statute of limitations begins to run when a cause of action accrues, when, if there was a violation of due process, the latest time it accrued was when the certificate of title was issued in 1997, and since more than six years passed before the plaintiff asserted his claim, any claim based on a violation of his right to due process fails because it was not filed within the six-year period and will be dismissed. Andon v. Shrew, 15 FSM R. 315, 320 (Kos. S. Ct. Tr. 2007).

A claim for negligence against the Land Commission and its government employee has a six-year statute of limitations. When, if there was any negligence, the cause of action accrued at the time the certificate of title was issued in 1997 and more than six years have passed, the plaintiff's claim of negligence against the Land Commission and its employee fails. Andon v. Shrew, 15 FSM R. 315, 320 (Kos. S. Ct. Tr. 2007).

A governmental entity is liable for battery by its police officers when the entity ratified the battery by failing to charge the officers and by the lack of any internal discipline whatsoever and a governmental entity that employs untrained police officers and permits their use of excessive force will be held responsible for the officers' unlawful acts for violation of the plaintiffs' civil rights. Hauk v. Emilio, 15 FSM R. 476, 479 (Chk. 2008).

Where the plaintiffs were set upon and beaten by police officers and one plaintiff was arrested and no reason was provided to that plaintiff when the officers detained and arrested him, nor was any reason subsequently given although 12 F.S.M.C. 214(1) provides that any person making an arrest must, at or before the time of arrest, make every reasonable effort to advise the person arrested as to the cause and authority of the arrest, the plaintiff's detention for six hours was without any justification, precisely the sort of conduct that 11 F.S.M.C. 701 was meant to protect against. The assaulting police officers were acting under color of law and as agents of the defendant Chuuk Department of Public Safety, which is an agency of the defendant Chuuk state government. Thus these defendants are liable for the violation of the plaintiffs' civil rights under 11 F.S.M.C. 701. Hauk v. Emilio, 15 FSM R. 476, 479 (Chk. 2008).

A suit against an offender in his or her official capacity is treated as a claim against the entity that employs that officer, but a public official that leaves office may still be liable for money damages in his or her personal capacity. Thus, an official capacity claim against a former official is meaningless unless it continues as a claim against that person's successor in office in the successor's official capacity. The office continues and is responsible for, and is presumed to have knowledge of, its earlier acts. Herman v. Bisalen, 16 FSM R. 293, 296 (Chk. 2009).

A claimed inability to pay is not a defense to liability. Weriey v. Chuuk, 16 FSM R. 329, 332 (Chk. 2009).

Since the FSM civil rights statute is based on the U.S. model, the FSM Supreme Court should consider U.S. jurisprudence under 42 U.S.C. § 1983 and § 1988 for assistance in determining the intended meaning of, and governmental liability under 11 F.S.M.C. 701(3). Sandy v. Mori, 17 FSM R. 92, 96 n.3 (Chk. 2010).

When a tort claim – trespass – that the state occupied and continues to occupy the plaintiff's property to the exclusion of all others rises to the level of a constitutional claim and a civil rights violation, it is a taking of the plaintiff's property without just compensation. Stephen v. Chuuk, 18 FSM R. 22, 25 (Chk. 2011).

Chuuk cannot escape liability when the plaintiff did not accept the risk that Chuuk might not be able to find funds and was not promised payment only when and if funds were available; when the plaintiff was told on November 24, 1995, that Chuuk was still awaiting the Chuuk Department of Treasury's issuance of a check for full payment of the insurance premium which Chuuk hoped would be within a week, and was asked to "Please bear with us your usual patient [sic] and understanding"; when the plaintiff would have had every reason to believe that the funds had been appropriated and, apparently like in previous years, Chuuk was waiting for them to become available and the paperwork done to cut the check; when the same should be true for fiscal 1997, when Chuuk informed the plaintiff that it had submitted a requisition to Chuuk Finance for $84,000 and was making daily follow-up; and when the judgment was not on a breach of contract theory. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 119 (App. 2011).

Regardless of whether civil liability can be imposed for failing to inform an arrestee of her rights or for failing to inform her of the cause and authority of her arrest, civil liability will be imposed when it was illegal to arrest her without a warrant where she was arrested. Alexander v. Pohnpei, 18 FSM R. 392, 400 (Pon. 2012).

A suit for damages against someone in his official capacity is a claim against the entity or agency that employs that person. Hence, a suit against the Director of Public Safety in his official capacity is a claim against the Pohnpei Department of Public Safety. Alexander v. Pohnpei, 18 FSM R. 392, 400 (Pon. 2012).

When no evidence was presented that supports the liability of the Director of Public Safety in his official capacity, judgment for an illegal arrest by the Pohnpei state police will be entered solely against the Pohnpei state government. Alexander v. Pohnpei, 18 FSM R. 392, 400 (Pon. 2012).

When a person was never in police custody, the "deliberate indifference" duty of care standard for the liability of law enforcement officials towards prisoners does not apply. Ruben v. Chuuk, 18 FSM R. 425, 430 (Chk. 2012).

The police are generally not liable to a plaintiff who injures himself fleeing the police. Ruben v. Chuuk, 18 FSM R. 425, 431 (Chk. 2012).

Since supervisory liability requires proof of the underlying liability of the officers being supervised, when the officers on the scene cannot be held liable because they did not breach any duty owed to the decedent and because they were not the proximate cause of his death, the Director of Public Safety (and Chuuk as respondeat superior) cannot be held liable either. Ruben v. Chuuk, 18 FSM R. 425, 431 (Chk. 2012).

Pohnpei cannot be held liable for money damages for the actions of non-state actors. Berman v. Pohnpei, 19 FSM R. 111, 117 (App. 2013).

Punitive damages cannot be imposed on the Board of Trustees of the Pohnpei State Public Lands Trust because the Pohnpei state government is statutorily immune from punitive damages and the Board is a Pohnpei government agency. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 377 (Pon. 2014).

A Port Authority and a pilot are immune from any negligence claim for the pilot's acts or omissions in berthing a vessel, but not from a gross negligence claim. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 16 (Pon. 2015).

When, under prior precedent and the law of the case doctrine, the state government is immune from an interest award as a part of a judgment against the state unless the state has expressly consented to the imposition of interest and when the state government has not expressly consented, by statute or by contract, to the imposition of interest for claims or for a conversion claim, no interest will be permitted. Eot Municipality v. Elimo, 20 FSM R. 482, 489 (Chk. 2016).

A statue of limitation generally is not jurisdictional unless it is a limitations period for claims against the government. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 579 (App. 2018).

The statute of limitations does not affect a court's jurisdiction because generally a statute of limitation is not jurisdictional unless it is a limitations period for claims against the government. Alik v. Heirs of Alik, 21 FSM R. 606, 621 (App. 2018).

Public officials are generally entitled to qualified official immunity so that government officials who are performing their official duties are generally shielded from civil damages. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 630-31 (Pon. 2020).

The objective test to determine whether public officials are shielded from liability for damages is that government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 631 (Pon. 2020).

More than bare allegations of malice are required to deny public officials' qualified immunity for acts conducted in the course of official duties. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 631 n.4 (Pon. 2020).

A government official is not personally liable when the official was not in a situation where the official could be expected to know that certain conduct would violate statutory or constitutional rights or when the tone or content of the official's letters to the plaintiff was not threatening and there was no evidence that the motive for these letters was personal vengeance. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 632 (Pon. 2020).

– Immunity

Some government workers have been held partially or completely immune from tort liability on grounds that they are public officers. This immunity, intended to serve the purpose of encouraging fearless and independent public service, has been bestowed upon prosecutors as well as other public officials. Rauzi v. FSM, 2 FSM R. 8, 16 (Pon. 1985).

Under the Compact of Free Association and the Federal Programs and Services Agreement, civilian employees of the United States government have immunity from civil and criminal process for wrongful acts and omissions done within the scope and in performance of official duty, unless expressly waived by the U.S. government. Samuel v. Pryor, 5 FSM R. 91, 95 (Pon. 1991).

A United States federal employee does not waive immunity from civil liability under the Compact of Free Association and the Federal Programs and Services Agreement when the civilian employee initiated litigation in the FSM Supreme Court in a separate lawsuit with different claims against different parties and where the affirmative misconduct is within the scope and in the performance of the official duty. Samuel v. Pryor, 5 FSM R. 91, 97 (Pon. 1991).

The FSM Supreme Court is immune from an award of damages, pursuant to 11 F.S.M.C. 701(3), arising from the performance by the Chief Justice of his constitutionally granted rule-making powers.

Berman v. FSM Supreme Court (II), 5 FSM R. 371, 374 (Pon. 1992).

The Chief Justice, in making rules, is performing a legislative function and is immune from an action for damages. Berman v. FSM Supreme Court (II), 5 FSM R. 371, 374 (Pon. 1992).

The grant of immunity to the Chief Justice while performing his rule-making authority is to protect the independence of one exercising a constitutionally granted legislative power. Berman v. FSM Supreme Court (II), 5 FSM R. 371, 374 (Pon. 1992).

A judge is generally granted absolute civil immunity from civil liability for acts done in the exercise of a judicial function. Jano v. King, 5 FSM R. 388, 391 (Pon. 1992).

A judge loses the cloak of judicial immunity in only two instances. A judge is not immune for actions not taken in the judge's judicial capacity, and a judge is not immune for actions, though judicial in nature, taken in the absence of all jurisdiction. Jano v. King, 5 FSM R. 388, 391 (Pon. 1992).

An act performed by a judge does not have to be an adjudicatory act in order for it to be a judicial act. Judges and justices of the courts of the Federated States of Micronesia are protected by the cloak of judicial absolute immunity for judicial functions performed unless they are in complete absence of jurisdiction. Jano v. King, 5 FSM R. 388, 392-93 (Pon. 1992).

Prosecutors enjoy absolute immunity from prosecution for their actions which are connected to their role in judicial proceedings, which include participation in hearings related to obtaining search warrants. Prosecutors do not, however, enjoy absolute immunity from prosecution for their role as an administrative or investigative officers, which includes participation in and giving advice regarding the execution of a search warrant. Jano v. King, 5 FSM R. 388, 396 (Pon. 1992).

Judges and justices of the FSM are protected by the cloak of absolute immunity for judicial functions performed, unless the functions were performed in the complete absence of jurisdiction. Issuance of a search warrant is within the jurisdiction of FSM courts. Therefore it is a judicial act to which immunity attaches. Liwi v. Finn, 5 FSM R. 398, 400-01 (Pon. 1992).

Prosecutors are absolutely immune from prosecution for their actions which are connected to their role in judicial proceedings, but do not enjoy absolute immunity from prosecution for their role as an administrative or investigative officer. Therefore prosecutors are absolutely immune for involvement in judicial proceedings to obtain a search warrant, but not for participation in and giving police advice regarding the execution of a search warrant. Liwi v. Finn, 5 FSM R. 398, 401 (Pon. 1992).

A chief justice's actions in reviewing an attorney's application for admission is a judicial function that is entitled to absolute immunity from suit for damages. Berman v. Santos, 7 FSM R. 231, 240 (Pon. 1995).

A judge is generally granted absolute immunity from civil liability for acts done in the exercise of a judicial function. A judge loses the cloak of judicial immunity in only two events: First, a judge is not immune from non-judicial actions, i.e. actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. Bank of Guam v. O'Sonis, 9 FSM R. 106, 112 (Chk. 1999).

Absolute immunity affords complete protection from a damage award to a public official as long as the challenged act falls within the scope of the activity for which the immunity is conferred. Bank of Guam v. O'Sonis, 9 FSM R. 106, 112 (Chk. 1999).

The factors determining whether an act by a judge is a judicial one relate to the nature of act itself, *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity. The second question in deciding whether immunity exists

is whether the judge acted in complete absence of all jurisdiction. Bank of Guam v. O'Sonis, 9 FSM R. 106, 112 (Chk. 1999).

Judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly. A judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors. Bank of Guam v. O'Sonis, 9 FSM R. 106, 112 (Chk. 1999).

Judicial immunity protects from liability for punitive damages. Bank of Guam v. O'Sonis, 9 FSM R. 106, 113 (Chk. 1999).

A judge is generally granted absolute immunity from civil liability for acts done in the exercise of a judicial function. Few doctrines were more solidly established at common law than the immunity of judges for damages for acts committed within their judicial jurisdiction. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 121 (Pon. 2001).

Judges lose their judicial immunity only for non-judicial actions (actions not taken in the judge's judicial capacity), or for actions, though judicial in nature, taken in the complete absence of all jurisdiction. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 121 (Pon. 2001).

Two factors, both relating to the nature of act itself, determine whether an act by a judge is a judicial one: whether it is a function normally performed by a judge, and whether the parties dealt with the judge in his judicial capacity. The second question in deciding whether immunity exists is whether the judge acted in complete absence of all jurisdiction. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 121 (Pon. 2001).

When a Pohnpei statute does not show any legislative intent to abolish the well-established principle of absolute judicial immunity for the judicial act of timing the issuance of court decisions and to allow a private suit for damages in such cases, a court can only conclude that the Pohnpei Legislature did not intend to abolish absolute judicial immunity in this instance and did not intend to create a right for damage suits against judges if their decisions were not timely. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 122 (Pon. 2001).

Under FSM caselaw, prosecutors enjoy absolute immunity from prosecution for their actions which are connected to their role in judicial proceedings, including participation in hearings related to obtaining search warrants. Prosecutors do not, however, enjoy absolute immunity for their role as administrative or investigative officers. Prosecutors are absolutely immune for involvement in judicial proceedings to obtain a search warrant, but not for participation in and giving police advice regarding the execution of a search warrant. Sipos v. Crabtree, 13 FSM R. 355, 366 (Pon. 2005).

A request for, appearance at, and the presentation of evidence related to obtaining a search warrant is considered part of a prosecutor's judicial function, for which the prosecutor enjoys absolute immunity. This is true even though no criminal information has been filed yet since search warrants are usually, but not always, sought before criminal charges are filed. The defendants therefore enjoy absolute immunity for all alleged wrongful acts related to obtaining search warrants or other pretrial orders of a similar nature. Sipos v. Crabtree, 13 FSM R. 355, 367 (Pon. 2005).

A prosecutor's actions in seeking (and obtaining) release conditions during an initial appearance in a criminal case, was a judicial function for which prosecutors enjoy absolute prosecutorial immunity. Sipos v. Crabtree, 13 FSM R. 355, 367 (Pon. 2005).

In order to determine whether a judge is liable for damages for his actions, the court asks whether the judge was performing judicial acts and whether his court had jurisdiction. When the answer to both

questions is yes, the judge was not acting in complete absence of all jurisdiction, even when he had clearly acted in excess of his jurisdiction, and the judge was therefore immune from any suit for compensatory or punitive damages for his actions, but that does not end the inquiry. When the plaintiff had obtained permanent prospective injunctive relief against the judge under the civil rights act, it was entitled to the attorney's fees and costs incurred in obtaining that relief in that case, but not for any expenses incurred in the state court case in which the judge had exceeded his jurisdiction even though the FSM Supreme Court had to enjoin him from conducting any further proceedings in it. Ruben v. Petewon, 15 FSM R. 605, 608 (Chk. 2008).

Sovereign immunity should not be confused with official immunity for public officers. Government officials who are performing their official duties are generally shielded from civil damages, and the court has previously recognized that some government workers have been held partially or completely immune from tort liability on grounds that they are public officers. This immunity, intended to serve the purpose of encouraging fearless and independent public service, has been bestowed upon prosecutors as well as other public officials. Marsolo v. Esa, 18 FSM R. 59, 64 (Chk. 2011).

The President has absolute immunity from damages liability for his official acts. Furthermore, the court does not have the jurisdiction to enjoin the President in the performance of his official duties such as enforcing a Congressionally enacted statute. Since suits contesting the actions of the executive branch should be brought against the President's subordinates, not against the President himself, a motion to dismiss the President will therefore be granted. Marsolo v. Esa, 18 FSM R. 59, 65 (Chk. 2011).

A qualified official immunity applies to public officials. An official who simply enforces a presumptively valid statute will rarely thereby lose his or her immunity from suit. Absent extraordinary circumstances, liability will not attach for executing the statutory duties one was appointed to perform. Marsolo v. Esa, 18 FSM R. 59, 65 (Chk. 2011).

A qualified official immunity defense which requires a facially-valid arrest warrant, does not apply when there was no arrest warrant but only an eviction order. Jacob v. Johnny, 18 FSM R. 226, 231 (Pon. 2012).

A judge is generally granted absolute immunity from civil liability for acts done in the exercise of a judicial function. A judge loses the cloak of judicial immunity in only two events: First, a judge is not immune from non-judicial actions, i.e. actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. Jacob v. Johnny, 18 FSM R. 226, 232 (Pon. 2012).

Few doctrines were more solidly established at common law than the immunity of judges for damages for acts committed within their judicial jurisdiction. Jacob v. Johnny, 18 FSM R. 226, 232 (Pon. 2012).

When analyzing whether a judge was performing judicial acts, the factors determining whether an act by a judge is a "judicial" one relate to the nature of act itself (whether it is a function normally performed by a judge) and to the expectations of the parties (whether they dealt with the judge in his judicial capacity). Issuing eviction orders, denying motions, and the like are all acts or functions normally performed by a judge. Jacob v. Johnny, 18 FSM R. 226, 232 (Pon. 2012).

When the Pohnpei Supreme Court is a court of general jurisdiction and when it is undisputed that the Pohnpei Supreme Court has jurisdiction over cases that the plaintiff filed there since she filed those cases there for the very reason that that court had jurisdiction, the plaintiff cannot allege that a Pohnpei justice acted in complete absence of jurisdiction when he issued orders in her cases even though she clearly alleges that he acted in excess of his jurisdiction. Jacob v. Johnny, 18 FSM R. 226, 232 (Pon. 2012).

Judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction and are alleged to have been done maliciously or corruptly, and a judge is absolutely immune from liability for his judicial acts even if his exercise of authority

is flawed by the commission of grave procedural errors. Jacob v. Johnny, 18 FSM R. 226, 232 (Pon. 2012).

Since a judge is absolutely immune from liability for his judicial acts even if those acts were done maliciously or corruptly or in excess of his jurisdiction or if his exercise of authority was flawed by the commission of grave procedural errors, he is thus immune from a plaintiff's compensatory damages claims. Jacob v. Johnny, 18 FSM R. 226, 233 (Pon. 2012).

Judicial immunity does not prevent a judge from being subject to prospective injunctive relief when the judge has acted, not in complete absence of jurisdiction, but in excess of jurisdiction. Judicial immunity does not apply against the imposition of prospective injunctive relief because no common law precedent ever granted such immunity. Jacob v. Johnny, 18 FSM R. 226, 233 (Pon. 2012).

When a Pohnpei Supreme Court judge is immune from suit and thus from the imposition of compensatory damages, the compensatory damages claims against him must be dismissed. But when the plaintiff's factual allegations against the judge, viewed in the light most favorable to the plaintiff, are claims that the judge acted in excess of his jurisdiction and violated the plaintiff's civil rights in doing so, the court will not dismiss her claims against the judge for injunctive relief and for 11 F.S.M.C. 701(3) reasonable attorney's fees and costs incurred in obtaining that relief, since she alleges sufficient facts which, if proven that the judge acted in excess of his jurisdiction, state a claim for which the FSM Supreme Court can grant her some relief. Jacob v. Johnny, 18 FSM R. 226, 233-34 (Pon. 2012).

Police officers have a qualified official immunity from civil liability when they arrest someone for whom they have a facially-valid arrest warrant. Helgenberger v. U Mun. Court, 18 FSM R. 274, 282 (Pon. 2012).

Judges are generally granted absolute immunity from civil liability for acts done in the exercise of a judicial function. Few common law doctrines were more solidly established than a judge's immunity for damages for acts committed within his judicial jurisdiction. Helgenberger v. U Mun. Court, 18 FSM R. 274, 283 (Pon. 2012).

A judge loses the cloak of judicial immunity in only two events: first, a judge is not immune from non-judicial actions, i.e. actions not taken in the judge's judicial capacity; and second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. The first question is whether the acts were judicial. Helgenberger v. U Mun. Court, 18 FSM R. 274, 283 (Pon. 2012).

The factors determining whether an act by a judge is a "judicial" one and therefore one for which the judge is immune from civil liability relate to the nature of act itself, *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity. The issuance of a bench warrant; the contempt finding; and, under U's constitutional setup, the impeachment trial, the conviction, the denial of the substitution of counsel, and the defendant's removal from office were all judicial acts, taken in a judicial capacity. Helgenberger v. U Mun. Court, 18 FSM R. 274, 283 (Pon. 2012).

The second question in deciding whether judicial immunity exists is whether the judge acted in complete absence of all jurisdiction because judges cannot be held civilly liable for their judicial acts, even when those acts were in excess of their jurisdiction, or are alleged to have been done maliciously or corruptly, and judges are also absolutely immune from civil liability when they committed grave procedural errors in their exercise of authority. Helgenberger v. U Mun. Court, 18 FSM R. 274, 283 (Pon. 2012).

"Facially valid" does not mean "lawful." An erroneous court order or a court order that is infirm or unlawful can be a facially valid order. Jacob v. Johnny, 20 FSM R. 612, 617 (Pon. 2016).

An official charged with the duty of executing a facially valid court order enjoys absolute immunity from

liability for damages in a suit challenging conduct prescribed by that order. Because controversies sufficiently intense to erupt in litigation are not easily capped by judicial decree, the common law provided absolute immunity from subsequent damages liability for all persons – governmental or otherwise – who were integral parts of the judicial process. Jacob v. Johnny, 20 FSM R. 612, 617-18 (Pon. 2016).

Absolute immunity for officials assigned to carry out a judge's orders is necessary to insure that such officials can perform without the need to secure permanent legal counsel. Non-judicial officers whose official duties have an integral relationship with the judicial process are entitled to absolute immunity for their quasi-judicial conduct since it would be unfair to spare the judges who give orders while punishing the officers who obey them. Jacob v. Johnny, 20 FSM R. 612, 618 (Pon. 2016).

Tension between trial judges and those officials responsible for enforcing their orders would inevitably result were there not absolute immunity for both. If law enforcement officials assigned to carry out a judge's orders were not absolutely immune, they would then, for their own protection, need to scrutinize every court order and investigate its background before deciding whether to try to enforce it. The judicial system cannot function that way. Jacob v. Johnny, 20 FSM R. 612, 618 (Pon. 2016).

Enforcement officials must not be required to act as pseudo-appellate courts scrutinizing judges' orders. The public interest demands strict adherence to judicial decrees, and absolute immunity will ensure the public's trust and confidence in courts' ability to completely, effectively and finally adjudicate the controversies before them. Jacob v. Johnny, 20 FSM R. 612, 618 (Pon. 2016).

An official who is absolutely immune for a person's arrest and for her confinement to jail because those were acts prescribed by a judge's facially valid order, only has qualified immunity from civil liability arising from the conditions under which that person was held in jail. This is because absolute immunity extends only to acts prescribed by the judge's order, and the judge's order did not prescribe the person's treatment in jail. It only prescribed her arrest and confinement. Jacob v. Johnny, 20 FSM R. 612, 618 (Pon. 2016).

The FSM Supreme Court would look upon a true negligence suit against the Pohnpei Court of Land Tenure with great disfavor because, when a defendant is found negligent, the remedy is money damages, and because the Pohnpei Court of Land Tenure is a court, and, as a court, it is immune from a suit for money damages for its judicial acts. Setik v. Perman, 22 FSM R. 105, 119 n.12 (App. 2018).

A private litigant is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding, or in the institution of or during the course and as a part of, a judicial proceeding in which he participates, if the matter has some relation to the proceeding. This privilege is based upon the public interest in according to all men the utmost freedom of access to the courts of justice for the settlement of their private disputes. Like the privilege of an attorney, it is absolute. Helgenberger v. Helgenberger, 22 FSM R. 244, 249-50 (Pon. 2019).

"Absolute privileges" are properly classified as immunities, since they are based upon the actor's personal position or status. Helgenberger v. Helgenberger, 22 FSM R. 244, 250 n.4 (Pon. 2019).

The absolute privilege or immunity for litigants and their attorneys is necessary for them to be protected not only from civil liability but also from the danger of even an unsuccessful civil action. It is thus necessary that the court not inquire into the propriety of their conduct in civil proceedings brought against them for misconduct in their position. The privilege, or immunity, is absolute and the protection is complete, and is not conditioned upon the honest and reasonable belief that the defamatory matter is true or upon the absence of ill will on the actor's part, but is based upon a policy that treats the ends to be gained by permitting defamatory statements as outweighing the harm that may be done to the reputation of others. Helgenberger v. Helgenberger, 22 FSM R. 244, 250 (Pon. 2019).

At common law, parties to judicial proceedings are granted an absolute privilege to use defamatory

language because of the overriding public interest that persons should speak freely and fearlessly in litigation, uninfluenced by the possibility of being brought to account in an action for defamation. This common law principle is eminently suitable for the FSM because it is difficult to see how any court system could function otherwise. It is sound public policy. Helgenberger v. Helgenberger, 22 FSM R. 244, 250 (Pon. 2019).

Statements contained in pleadings, affidavits, depositions and other documents directly related to the case partake of this privilege; they cannot serve as the basis for an action for defamation. Since this privilege is absolute and the immunity is complete, whether counsel made a reasonable inquiry into the facts before filing the complaint is irrelevant. Helgenberger v. Helgenberger, 22 FSM R. 244, 250 (Pon. 2019).

Statements in pleadings, if relevant and pertinent to the issues, are absolutely privileged even if the statements are false and made maliciously. Helgenberger v. Helgenberger, 22 FSM R. 244, 250 (Pon. 2019).

False, misleading, or defamatory communications, even if made with malicious intent, are not actionable if they are material to, and made in the course of, a judicial or quasi-judicial proceeding. Helgenberger v. Helgenberger, 22 FSM R. 244, 250 (Pon. 2019).

Statements made by counsel and parties in the course of judicial proceedings are privileged as long as such statements are material and pertinent to the questions involved irrespective of the motive with which they are made. Helgenberger v. Helgenberger, 22 FSM R. 244, 251 (Pon. 2019).

Because the plaintiffs have an absolute privilege or complete immunity from defamation liability to the counterclaimant, the court must grant the plaintiffs summary judgment on the defamation counterclaims and the court must deny the counterclaimant's cross motion for summary judgment. Helgenberger v. Helgenberger, 22 FSM R. 244, 251 (Pon. 2019).

A litigant's absolute privilege applies not only to defamation actions, but to any tort action based on statements made in connection with a judicial proceeding. These include the intentional infliction of emotional distress, the invasion of privacy, and false light actions, including false light invasion of privacy claims that fail to meet the standards for defamation. Helgenberger v. Helgenberger, 22 FSM R. 244, 251 n.7 (Pon. 2019).

– Infliction of Emotional Distress

A defendant must exercise due care not to cause others emotional distress that leads in turn to a foreseeable physical result. Eram v. Masaichy, 7 FSM R. 223, 226-27 (Chk. S. Ct. Tr. 1995).

Where there was no physical manifestation of the emotional distress that was foreseeable there can be no claim for negligent infliction of emotional distress. Eram v. Masaichy, 7 FSM R. 223, 227 (Chk. S. Ct. Tr. 1995).

For a negligent infliction of emotional distress claim to be compensable, a physical manifestation is required. Pau v. Kansou, 8 FSM R. 524, 526 (Chk. 1998).

One of the elements of an intentional infliction of emotional distress claim is that the plaintiff must have suffered some physical manifestation of the alleged infliction of emotional distress. When the plaintiff neither alleged, nor proved at trial, any physical ailments or manifestations resulting from his termination from employment his claim must fail for lack of proof. Hauk v. Board of Dirs., 11 FSM R. 236, 241 (Chk. S. Ct. Tr. 2002).

Since a claim for negligent infliction of emotional distress cannot be sustained without evidence of

actual physical illness resulting from the mental and emotional distress, a plaintiff who failed to provide evidence of actual physical illness resulting from the defendants' actions cannot obtain any monetary recovery on this claim. Tomy v. Walter, 12 FSM R. 266, 272 (Chk. S. Ct. Tr. 2003).

For an emotional distress award there must be a foreseeable physical manifestation of the distress. Narruhn v. Aisek, 13 FSM R. 97, 99 (Chk. S. Ct. App. 2004).

When there is no evidence in the record of physical injury to the plaintiff or of any physical manifestation of emotional distress by the plaintiff, an award of damages for pain and suffering must be set aside. Narruhn v. Aisek, 13 FSM R. 97, 99 (Chk. S. Ct. App. 2004).

A defendant must exercise due care not to cause others emotional distress that leads in turn to a foreseeable physical result, but when there is no evidence in the record of physical injury to the plaintiff or of any physical manifestation of emotional distress by the plaintiff, no award of damages for can be made for emotional distress. Hauk v. Lokopwe, 14 FSM R. 61, 65 (Chk. 2006).

When the plaintiff presented no evidence that any of the defendants' acts that he complained of caused him any physical injury; when he did not present any evidence that any mental anguish or emotional distress he might have had resulted in any physical manifestation and, in fact, presented no evidence at all of any mental anguish or emotional distress on his part; and when he put on no evidence that anyone intended to inflict emotional distress upon him, the court had to dismiss his mental anguish and intentional infliction of emotional distress claims. Hauk v. Lokopwe, 14 FSM R. 61, 66 (Chk. 2006).

When there is no evidence in the record of physical injury to the plaintiff or of any physical manifestation of emotional distress by the plaintiff, there can be no award of damages for mental distress or mental anguish. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 418-19 (Yap 2006).

When there was no evidence of physical injury to any plaintiff or of any physical manifestation of emotional distress by any plaintiff, there can be no award of damages for pain and suffering even if the plaintiffs had proven they had been wrongfully discharged in violation of their civil rights. Robert v. Simina, 14 FSM R. 438, 443 (Chk. 2006).

Common issues of law and fact do not predominate for an infliction of emotional distress claim because this cause of action involves personal injury. A claim for infliction of emotional distress cannot be sustained without evidence of physical injury to the plaintiff or of a foreseeable physical manifestation or physical illness resulting from the plaintiffs' mental and emotional distress. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 160 (Yap 2007).

When the complaint does not allege that the class as a whole suffered a common physical injury, any compensable emotional distress must be each individual's physical manifestation or illness. Since the basis of each person's claim, and of the defendants' liability for that claim, is different for each class member and evidence of this necessary element for liability on an emotional distress claim would thus be highly individualized and unique to each class member and could only be proven on an individual basis, class certification of infliction of emotional distress claims would not be appropriate. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 160 (Yap 2007).

When each person's individual infliction of emotional distress claim would require a separate mini-trial, no class can be certified for this cause of action and any claims for the personal injury of infliction of emotional distress will have to proceed on an individual basis. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 160 (Yap 2007).

If the court is persuaded that no definable class is present, it may have the class allegations stricken and allow the action to proceed on an individual basis. Thus when no definable class is present for the infliction of emotional distress cause of action, the court will order that the complaint be amended to

eliminate allegations that the named plaintiffs represent absent persons for any infliction of emotional distress claims and the named plaintiffs may proceed on their individual infliction of emotional distress claims, if they so choose. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 160-61 (Yap 2007).

When, in a wrongful termination case, no evidence of physical pain or a physical manifestation of suffering was introduced, no damages can be awarded for pain and suffering because the rule is well settled that to award damages for pain and suffering, such must be the result of physical injury or of a physical manifestation of emotional distress. Kimeuo v. Simina, 15 FSM R. 664, 667 (Chk. 2008).

When, in the original complaint, the plaintiffs sought damages for pain and suffering, they inartfully pled an emotional distress claim, and a clarification of this claim in an amended complaint will not prejudice the defendants. Nakamura v. Mori, 16 FSM R. 262, 269 (Chk. 2009).

When there is no evidence in the record of physical injury to the plaintiff or of any physical manifestation of emotional distress by the plaintiff, no award of damages can be made for emotional distress. Berman v. Pohnpei, 16 FSM R. 567, 577 (Pon. 2009).

Physical injury to the plaintiff or the plaintiff's physical manifestation of emotional distress is a necessary element that must be proven for an award for infliction of emotional distress. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 48 (Chk. 2010).

When a statute of limitations provides a two-year limitation period for actions for injury to one caused by the wrongful act or neglect of another, the applicable statute of limitations for a negligent infliction of emotional distress claim is two years. Negligent infliction of emotional distress requires a physical injury or manifestation. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 48 (Chk. 2010).

Recovery for intentional infliction of emotional distress requires conduct that is extreme and outrageous. The tort of intentional infliction of emotional distress is sharply limited and only applies in the most egregious circumstances. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 48 (Chk. 2010).

When a two-year limitations period applies to injuries caused by the wrongful act or neglect of another, it applies to intentional infliction of emotional distress because intentional infliction of emotional distress is caused by a wrongful act – conduct that is extreme and outrageous. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 48 (Chk. 2010).

An emotional distress claim, whether inflicted intentionally or negligently, is barred by the two-year statute of limitations. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 48 (Chk. 2010).

When, weighing the evidence before the court, the defendant's alleged wrongful act – unblocking a culvert – was not extreme and outrageous conduct, the plaintiffs have not proven an element of the intentional infliction of emotional distress tort. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 48 (Chk. 2010).

A defendant must exercise due care not to cause others emotional distress that leads in turn to a foreseeable physical result. Poll v. Victor, 18 FSM R. 235, 246 (Pon. 2012).

One element of an intentional infliction of emotional distress claim is that the plaintiff must have suffered some physical manifestation of the alleged infliction of emotional distress, and when the plaintiff did not prove at trial any physical ailments or manifestations resulting from his employment termination, his claim must fail for lack of proof and no award of damages can be made for emotional distress. Poll v. Victor, 18 FSM R. 235, 246 (Pon. 2012).

Since a claim for negligent infliction of emotional distress cannot be sustained without evidence of

actual physical illness resulting from the mental and emotional distress, a plaintiff who fails to provide evidence of actual physical illness resulting from the defendants' actions cannot obtain any monetary recovery on the claim. Peniknos v. Nakasone, 18 FSM R. 470, 490 (Pon. 2012).

When no specific evidence was brought forth to indicate that the plaintiff has suffered any physical manifestation of emotional distress and when the plaintiff presented no evidence that any of the defendant's acts she complained of caused her any physical injury; or that any mental anguish or emotional distress she might have had resulted in any physical manifestation; or that anyone intended or negligently inflicted emotional distress upon her, her infliction of emotional distress causes of action cannot withstand a summary judgment challenge. Peniknos v. Nakasone, 18 FSM R. 470, 490 (Pon. 2012).

When faced with a defendant's summary judgment motion, the court cannot give any heed to the nonmovant plaintiff's assertion that he intends to call witnesses at trial to support his emotional distress claim or to his assertion that a favorable judgment on his wrongful termination claims will amply support this claim because the plaintiff must show that he has admissible evidence to support his claim, and the time for him to do that is now, or never. George v. Palsis, 19 FSM R. 558, 567 (Kos. 2014).

One element of an intentional infliction of emotional distress claim is that the plaintiff must have suffered some physical manifestation of the alleged infliction of emotional distress, and when the plaintiff has not shown any physical ailments or manifestations resulting from his employment termination, his claim must fail for lack of proof and the defendants are entitled to summary judgment on this cause of action. George v. Palsis, 19 FSM R. 558, 567 (Kos. 2014).

Physical injury to the plaintiff or the plaintiff's physical manifestation of emotional distress is a necessary element that must be proven for an award for infliction of emotional distress. Palasko v. Pohnpei, 20 FSM R. 90, 98 (Pon. 2015).

When the plaintiff did not plead any physical manifestation of emotional distress but did plead a physical injury – a battery – in connection with his arrest, whether that physical injury (battery) occurred (and also whether any emotional distress was inflicted) are a genuine issues of material fact precluding summary judgment on this claim. Palasko v. Pohnpei, 20 FSM R. 90, 98 (Pon. 2015).

The tort of infliction of emotional distress is sharply limited, only applying in the most egregious circumstances, and recovery for intentional infliction of emotional distress requires conduct that is extreme and outrageous. Solomon v. FSM, 20 FSM R. 396, 403 (Pon. 2016).

A plaintiff's allegation of a defendant's failure to respond to the plaintiff's salutations; of projecting "bad vibes;" of purportedly not assigning an adequate work load; of a disproportionate amount of scrutiny supposedly placed on her tardiness, in juxtaposition to fellow employees and allegedly noting the employee's requests for leave, hardly rise to the level of "extreme and outrageous" conduct on the defendants' part, and as a result, falls short of a claim on which relief might be granted. Solomon v. FSM, 20 FSM R. 396, 403 (Pon. 2016).

A person must exercise due care not to cause others emotional distress that leads in turn to a foreseeable physical result. Palasko v. Pohnpei, 21 FSM R. 562, 565 (Pon. 2018).

When there is no evidence in the record of physical injury to the plaintiff or of any physical manifestation of emotional distress by the plaintiff, no award of damages for can be made for emotional distress. Palasko v. Pohnpei, 21 FSM R. 562, 565 (Pon. 2018).

When the plaintiff's physical injury to support his intentional infliction of emotional distress claim was contingent on his battery claim, and when the court concluded that the battery cause of action was unsubstantiated, the intentional infliction of emotional distress claim must also be dismissed. Palasko v. Pohnpei, 21 FSM R. 562, 565 (Pon. 2018).

Recovery for intentional infliction of emotional distress requires conduct that is extreme and outrageous. This tort is sharply limited and only applies in the most egregious circumstances. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 32 (Pon. 2018).

An employer's negligence by not providing proper work boots to its employee and an unfortunate workplace accident do not satisfy the "extreme and outrageous" element necessary to recover damages under the tort of intentional infliction of emotional distress. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 32 (Pon. 2018).

A claim for negligent infliction of emotional distress requires evidence of such extreme mental anguish and distress that medical assistance is sought or necessary as a result of the negligence. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 32 (Pon. 2018).

When a plaintiff does indeed suffer from some distress, but it does not rise to the degree required to recover under the tort of negligent infliction of emotional distress, the emotional distress claim must be dismissed. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 32 (Pon. 2018).

A litigant's absolute privilege applies not only to defamation actions, but to any tort action based on statements made in connection with a judicial proceeding. These include the intentional infliction of emotional distress, the invasion of privacy, and false light actions, including false light invasion of privacy claims that fail to meet the standards for defamation. Helgenberger v. Helgenberger, 22 FSM R. 244, 251 n.7 (Pon. 2019).

Recovery for intentional infliction of emotional distress requires conduct that is extreme and outrageous. This tort is sharply limited and only applies in the most egregious circumstances. One element of such a claim is that the plaintiff must have suffered some physical manifestation of the alleged infliction of emotional distress. Pelep v. Lapaii, 22 FSM R. 482, 488 (Pon. 2020).

A defendant who followed the plaintiff and attacked him with a machete, cutting him four times, acted in an extreme and outrageous manner and inflicted serious physical injuries on the plaintiff, which shocked him at the time and continue to cause him to feel scared. Accordingly, the plaintiff's cause of action for intentional infliction of emotional distress is sustained. Pelep v. Lapaii, 22 FSM R. 482, 488 (Pon. 2020).

Recovery for intentional infliction of emotional distress requires conduct that is extreme and outrageous, and this tort is sharply limited and applies only in the most egregious circumstances. One element of an intentional infliction of emotional distress claim is that the plaintiff must have suffered some physical manifestation of the alleged infliction of emotional distress, and when there is no evidence in the record of physical injury to the plaintiff or of any physical manifestation of the emotional distress by the plaintiff, her claim must fail and the emotional distress cause of action must be dismissed. Panuelo v. FSM, 22 FSM R. 498, 509 (Pon. 2020).

When a plaintiff did not allege that her humiliation or emotional distress caused her any physical manifestation, she did not allege an essential element of the tort, and the court must dismiss this claim for the failure to state a claim for which it can grant relief. Panuelo v. FSM, 22 FSM R. 498, 509-10, 512 (Pon. 2020).

– Interference with a Contractual Relationship

Relief may be granted under the law of Pohnpei for a claim of tortious interference with a contractual relationship, when an individual's economic advantages obtained through dealings with others are knowingly jeopardized out of petty or malicious motives or by the improper or unjustified conduct of a third party. Federated Shipping Co. v. Ponape Transfer & Storage Co., 4 FSM R. 3, 14 (Pon. 1989).

Where a defendant's allegedly offensive actions were taken in the course of a good faith effort to protect a legally cognizable interest, such actions do not constitute tortious interference with a contractual relationship under the law of Pohnpei. Federated Shipping Co. v. Ponape Transfer & Storage Co., 4 FSM R. 3, 15 (Pon. 1989).

When the defendants are not parties to the contract they tortiously interfered with and have no meaningful presence in the FSM, although the economic harm was allegedly targeted to an FSM plaintiff, it is insufficient to establish personal jurisdiction over the defendants. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 132 (Pon. 1999).

Tort claims for tortious interference with contractual relationships, defamation, and interference with prospective business opportunities are causes of action that arise under state law. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 203 (Pon. 2001).

Relief may be granted under Pohnpei law for a claim of tortious interference with a contractual relationship when an individual's economic advantages obtained through dealings with others are knowingly jeopardized out of petty or malicious motives, or by a third party's improper or unjustified conduct. In order to succeed on the merits of a tortious interference claim, a plaintiff will also have to demonstrate that her business was lawful, and that defendants' conduct was improper or unjustified. Yang v. Western Sales Trading Co., 11 FSM R. 607, 617 (Pon. 2003).

When the plaintiff alleges facts regarding a defendant having familial ties that gave him either inside information or favorable treatment in the proceeding below that dissolved the plaintiff's public land assignment, under the relevant standard of review, the tortious interference with contract claim cannot be dismissed at this point. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 92 (Pon. 2003).

Relief may be granted for a claim of tortious interference with a contractual relationship when an individual's economic advantages obtained through dealings with others are knowingly jeopardized out of petty or malicious motives, or by a third party's improper or unjustified conduct, but when a defendant's allegedly offensive actions were taken in the course of a good faith effort to protect a legally cognizable interest, such actions do not constitute tortious interference with a contractual relationship. Dereas v. Eas, 15 FSM R. 446, 449 (Chk. S. Ct. Tr. 2007).

When a defendant believed that he still owned ¾ or ¼ of a lot, he believed that he had a legally cognizable interest in some portion of that lot and thus his actions in asking the state not to pay the rent to the plaintiff and his actions in suing the state instead of the plaintiff, although wrong-headed or the result of poor legal advice or a misconception of the law, were taken in the good faith belief that he had a legally cognizable interest in the land. Therefore the plaintiff's motion for summary judgment on his tortious interference with a contractual relationship claim will be denied as a matter of law. Dereas v. Eas, 15 FSM R. 446, 449-50 (Chk. S. Ct. Tr. 2007).

When the non-moving defendants have a valid defense to the tortious interference with a contractual relationship claim and when the moving plaintiff had an adequate opportunity to show that they did not, summary judgment in the defendants' favor is appropriate. Dereas v. Eas, 15 FSM R. 446, 450 (Chk. S. Ct. Tr. 2007).

Claims of interference with contractual relations and interference with prospective business advantage, are both causes of action that arise under Pohnpei state law. Jano v. Fujita, 16 FSM R. 323, 326-27 (Pon. 2009).

It may be sufficient to impose liability that the defendant has acted intentionally to interfere with a known contract or prospect of economic advantage, that he has caused harm in so doing, and that he has acted in pursuit of some purpose considered improper. Jano v. Fujita, 16 FSM R. 323, 327 (Pon. 2009).

When no FSM case has discussed the specific elements of the causes of action for interference with contractual relations or interference with prospective business advantage, the court may consider authorities from other jurisdictions in the common law tradition. Jano v. Fujita, 16 FSM R. 323, 327 (Pon. 2009).

The individual elements of the cause of action for interference with contract are 1) a valid contract; 2) knowledge by the defendant of the contract; 3) intentional interference by the defendant which induces breach of the contract; 4) absence of justification on the part of the defendant; and 5) resulting damages. Jano v. Fujita, 16 FSM R. 323, 327 (Pon. 2009).

Both the cause of action for interference with contract and the cause of action for interference with prospective business require a showing of damages. Jano v. Fujita, 16 FSM R. 323, 327 (Pon. 2009).

When the plaintiff did not show by a preponderance of the evidence that the defendant knew of a specific contract or contracts that the plaintiff had with third parties, and that the defendant intentionally interfered with any such contract; when a letter was alleged as the interference with contract, but the plaintiff failed to prove by a preponderance of the evidence that the letter actually served as the means by which the defendant allegedly interfered with a specific contract that he knew the plaintiff had with a third party; when a later letter does not admit that the prior letter contained false statements but is a retraction of the prior letter; and when the retraction does not establish that the prior letter constituted an unjustified interference by the defendant with a specific contract to which the plaintiff was a party, the plaintiff is not entitled to recover damages from the defendant on a claim for interference with contract. Jano v. Fujita, 16 FSM R. 323, 327 (Pon. 2009).

It may be sufficient to impose liability that the defendant has acted intentionally to interfere with a known contract or prospect of economic advantage, that he has caused harm in so doing, and that he has acted in pursuit of some purpose considered improper. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 457 (Pon. 2009).

The specific elements of the causes of action for interference with contract are 1) a valid contract; 2) knowledge by the defendant of the contract; 3) intentional interference by the defendant which induces breach of the contract; 4) absence of justification on the part of the defendant; and 5) resulting damages. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 457 (Pon. 2009).

Both the cause of action for interference with contract and the cause of action for interference with prospective business advantage require a showing of damages. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 457 (Pon. 2009).

When the individual plaintiff did not have a valid contract with anyone or any entity, the first element required for proving interference – a valid contract – cannot be met and he cannot therefore recover against the defendant under an interference with contract theory. Even assuming that the plaintiff did have a valid contract with some entity relevant to the action, the court's ruling would remain the same because the plaintiff did not prove that the defendant took any action that could be reasonably interpreted as interference with a contract and failed to prove that the defendant had specific knowledge of any contract to which any of the plaintiff's various corporations were a party and since there was no showing of any intentional conduct which resulted in any interference or breach of contract and no showing that the plaintiff was harmed in any way by the alleged interference and since the scarce evidence provided on any purported damages for interference was unfounded and speculative. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 457 (Pon. 2009).

Parties to a contract cannot, as a matter of law, tortuously interfere with their own contractual relations. Yoruw v. Ira, 16 FSM R. 464, 466 (Yap 2009).

Complaints to government officials are not sufficient to establish tortious interference with contractual

relations. The tort requires that a defendant act intentionally with a known contract or prospect of economic advantage, that he has caused harm in so doing, and that he has acted in pursuit of some purpose considered improper. Yoruw v. Ira, 16 FSM R. 464, 466 (Yap 2009).

The elements of interference with contractual relations are 1) a valid contract; 2) knowledge by the defendant of the contract; 3) intentional interference by the defendant which induces breach of the contract; 4) absence of justification on the defendant's part; and 5) resulting damages. Jano v. Fujita, 16 FSM R. 502, 504 (Pon. 2009).

The elements of the cause of action for interference with contract are 1) a valid contract; 2) knowledge by the defendant of the contract; 3) intentional interference by the defendant which induces breach of the contract; 4) absence of justification on the part of the defendant; and 5) resulting damages. Salomon v. Mendiola, 20 FSM R. 138, 141 (Pon. 2015).

A bank's acts in trying to collect a loan repayment do not state a claim for relief under a cause of action for interference with prospective business advantage or expectancy or under a cause of action for interference with contract. Salomon v. Mendiola, 20 FSM R. 138, 141 (Pon. 2015).

Claims of interference with contractual relations and interference with prospective business advantage, are both causes of action that arise under Pohnpei state law. Santos v. Pohnpei, 21 FSM R. 495, 499 (Pon. 2018).

The causes of action for interference with contract's specific elements are 1) a valid contract; 2) the defendant's knowledge of the contract; 3) the defendant's intentional interference, which induces breach of the contract; 4) absence of justification on the defendant's part; and 5) resulting damages. Santos v. Pohnpei, 21 FSM R. 495, 499 (Pon. 2018).

When no witnesses or evidence supported Pohnpei's argument that the Pohnpei Visitors Bureau General Manager's hiring needed the state government's approval, Pohnpei interfered with the plaintiff's contractual relationship with the PVB when it did not let him receive any pay although he worked performing services for four or five months. Santos v. Pohnpei, 21 FSM R. 495, 500 (Pon. 2018).

The elements of the cause of action for tortious interference with a contract are 1) a valid contract; 2) the defendant's knowledge of the contract; 3) the defendant's intentional interference which induces breach of the contract; 4) absence of justification on the defendant's part; and 5) resulting damages. Panuelo v. FSM, 22 FSM R. 498, 505 (Pon. 2020).

The tort of interference with contractual or economic relations is a part of the larger body of tort law generally aimed at upholding an individual's right to be secure against harm and interference from others, not only as to their physical integrity, their freedom to move about and their peace of mind, but even to the extent of protecting opportunities for economic gain and for pleasant and advantageous relations with others. Panuelo v. FSM, 22 FSM R. 498, 505 (Pon. 2020).

It is generally recognized that interference with existing contractual relations applies to any type of contract, except a contract to marry – marriage contracts are specifically excluded from the tort of intentional interference with contract. Panuelo v. FSM, 22 FSM R. 498, 505 (Pon. 2020).

A plaintiff cannot sue for tortious interference with a contract when that contract is a marriage contract. Panuelo v. FSM, 22 FSM R. 498, 505, 511 (Pon. 2020).

– Interference with Customary Property Rights

A cause of action that alleges that the plaintiffs' customary and traditional rights to use an island might be better described as intentional interference with a customary and traditional property right than trespass.

That the plaintiffs referred to it as a trespass should not, in itself, be an obstacle to them prevailing on this point if the evidence warrants, because except for judgments rendered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings. Rosokow v. Bob, 11 FSM R. 210, 217 (Chk. S. Ct. App. 2002).

– Interference with Prospective Business Opportunity

Tort claims for tortious interference with contractual relationships, defamation, and interference with prospective business opportunities are causes of action that arise under state law. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 203 (Pon. 2001).

State law, and not the national law, provides the controlling limitations period for the causes of action, such as libel and slander and the tort of interference with contract and prospective economic advantage, that arise under state law. Jano v. Fujita, 15 FSM R. 494, 496 (Pon. 2008).

A cause of action for interference with contract and prospective economic advantage must be commenced within six years after the cause of action accrues. Jano v. Fujita, 15 FSM R. 494, 497 (Pon. 2008).

Claims of interference with contractual relations and interference with prospective business advantage, are both causes of action that arise under Pohnpei state law. Jano v. Fujita, 16 FSM R. 323, 326-27 (Pon. 2009).

It may be sufficient to impose liability that the defendant has acted intentionally to interfere with a known contract or prospect of economic advantage, that he has caused harm in so doing, and that he has acted in pursuit of some purpose considered improper. Jano v. Fujita, 16 FSM R. 323, 327 (Pon. 2009).

When no FSM case has discussed the specific elements of the causes of action for interference with contractual relations or interference with prospective business advantage, the court may consider authorities from other jurisdictions in the common law tradition. Jano v. Fujita, 16 FSM R. 323, 327 (Pon. 2009).

The elements of a cause of action for interference with prospective business advantage or expectancy are 1) plaintiff's existing or reasonable expectation of economic benefit or advantage; 2) defendant's knowledge of that expectancy; 3) defendant's wrongful intentional interference with that expectancy; 4) reasonable probability that the plaintiff would have received anticipated economic benefit in absence of interference; and 5) damages resulting from interference. Jano v. Fujita, 16 FSM R. 323, 327, 327-28 (Pon. 2009).

Both the cause of action for interference with contract and the cause of action for interference with prospective business require a showing of damages. Jano v. Fujita, 16 FSM R. 323, 327 (Pon. 2009).

When a plaintiff did not show that the defendant knew of any reasonable expectancy that the plaintiff had and that the defendant wrongfully interfered with it and when the plaintiff failed to meet his burden of proof with respect to the element of damages, he cannot prevail on a claim for interference with prospective economic advantage. Jano v. Fujita, 16 FSM R. 323, 327-28 (Pon. 2009).

It may be sufficient to impose liability that the defendant has acted intentionally to interfere with a known contract or prospect of economic advantage, that he has caused harm in so doing, and that he has acted in pursuit of some purpose considered improper. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 457 (Pon. 2009).

The elements of a cause of action for interference with prospective business advantage or expectancy are 1) plaintiff's existing or reasonable expectation of economic benefit or advantage; 2) defendant's

knowledge of that expectancy; 3) defendant's wrongful intentional interference with that expectancy; 4) reasonable probability that the plaintiff would have received anticipated economic benefit in absence of interference; and 5) damages resulting from interference. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 457 (Pon. 2009).

Both the cause of action for interference with contract and the cause of action for interference with prospective business advantage require a showing of damages. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 457 (Pon. 2009).

The elements of interference with prospective business advantage are 1) plaintiff's existing or reasonable expectation of economic benefit or advantage; 2) defendant's knowledge of that expectancy; 3) defendant's wrongful intentional interference with that expectancy; 4) reasonable probability that the plaintiff would have received anticipated economic benefit in absence of interference; and 5) damages resulting from interference. Jano v. Fujita, 16 FSM R. 502, 504 (Pon. 2009).

Generally, a plaintiff in a cause of action for interference with business opportunities must prove: 1) the plaintiff's existing or reasonable expectation of economic benefit or advantage; 2) the defendant's knowledge of that expectancy; 3) the defendant's wrongful intentional interference with that expectancy; 4) reasonable probability that the plaintiff would have received anticipated economic benefit in absence of interference; and 5) damages resulting from interference. This cause of action requires a showing of damages. Smith v. Nimea, 18 FSM R. 36, 45 (Pon. 2011).

A plaintiff has not met the burden of producing the preponderance of evidence required to show that the defendant interfered with his expectancy when he failed to show by a preponderance of the evidence that he would have received the anticipated economic benefit in the absence of the defendant's letter because the letter objected to the plaintiff's application on the grounds of his alleged technical shortcomings and his contentious nature but the Foreign Investment Board's denial cited the plaintiff's inadequate funds, not technical capabilities. Smith v. Nimea, 18 FSM R. 36, 45 (Pon. 2011).

Tort claims, including claims for tortious interference with contractual relationships, defamation, and interference with prospective business opportunities, are causes of action which arise under state law. Smith v. Nimea, 18 FSM R. 36, 45 (Pon. 2011).

The elements of a cause of action for interference with prospective business advantage or expectancy are 1) plaintiff's existing or reasonable expectation of economic benefit or advantage; 2) defendant's knowledge of that expectancy; 3) defendant's wrongful intentional interference with that expectancy; 4) reasonable probability that the plaintiff would have received anticipated economic benefit in absence of interference; and 5) damages resulting from interference. Salomon v. Mendiola, 20 FSM R. 138, 141 (Pon. 2015).

A bank's acts in trying to collect a loan repayment do not state a claim for relief under a cause of action for interference with prospective business advantage or expectancy or under a cause of action for interference with contract. Salomon v. Mendiola, 20 FSM R. 138, 141 (Pon. 2015).

Claims of interference with contractual relations and interference with prospective business advantage, are both causes of action that arise under Pohnpei state law. Santos v. Pohnpei, 21 FSM R. 495, 499 (Pon. 2018).

– Invasion of Privacy

Wide ranging and unwarranted movement of police officers on private land may constitute an unreasonable invasion of privacy, or establish that the investigation had evolved into a search. FSM v. Mark, 1 FSM R. 284, 290 (Pon. 1983).

While the constitutional provision barring invasion of privacy only protects persons from governmental intrusion into their affairs, not from intrusions by private persons, it does indicate a policy preference in favor of protection of privacy. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 455 (Chk. 1994).

Privacy law comprises four distinct kinds of invasion (although other forms may arise) of four different interests of the plaintiff, which are tied together by a common name, but otherwise have little in common except that each represents an interference with the right to be let alone. A plaintiff's privacy may be invaded in two or more of the four tortious ways and in those cases he may maintain his action for invasion of privacy on all of the grounds available. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 455-56 (Chk. 1994).

The elements of the privacy tort of unreasonable publicity given to the other's private life are: 1) there must be a public disclosure; 2) the facts disclosed must be private facts, rather than public ones; and 3) the matter made public must be one that would be offensive and objectionable to a reasonable person of ordinary sensibilities. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 456 (Chk. 1994).

Whoever publicizes a matter about another that places the other in a false light before the public is liable for tortious invasion of privacy if the false light in which the other was placed would be highly offensive to a reasonable person, and the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 456 (Chk. 1994).

One is liable for intentional intrusion, physical or otherwise, upon the solitude or seclusion or private affairs or concerns of another if the intrusion would be highly offensive to the reasonable person. The unauthorized photographing of a person who is not in a public place will incur liability for the unreasonable intrusion upon the seclusion of another. Failure of the plaintiff to plead she was not in a public place when the photograph was taken means an essential element of the tort has not been pled. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 457 (Chk. 1994).

There may be liability for the tort of appropriation of another's name or likeness when one appropriates the name or likeness of another for his own use or benefit. The right is in the nature of a property right. Incidental use of a name or likeness does not incur liability. Plaintiff's name or likeness must have intrinsic commercial or value associated with it. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 457-58 (Chk. 1994).

There may be liability for unauthorized use of name or likeness when the plaintiff is identifiable from the appropriated name or likeness, the name or likeness is used for trade or advertising purposes, and the use is unauthorized. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 458-59 (Chk. 1994).

Consent is not effective beyond the scope for which it is given. Therefore consent to have one's photograph taken is not consent for its exhibition or publication. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 459 (Chk. 1994).

A court can find as a matter of law whether defendant's use of plaintiff's likeness was predominately commercial because the characterization of the nature of an alleged tortious publication or a defense to such a claim is often decided as a matter of law. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 459 (Chk. 1994).

In the invasion of privacy context courts interpret "advertising purposes" broadly to include the use of a person's name or picture for all types of promotional endeavors. Thus where a corporation widely distributed its calendar free to the public for use and display wherever it does business the court may conclude as a matter of law that the calendar was used for advertising or trade purposes. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 459 (Chk. 1994).

Incidental unauthorized use of a name or likeness is not actionable if the use was in the context of a public event or newsworthy item of public interest. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 459 (Chk. 1994).

Because the primary lawmaking powers for the field of torts lie with the states, not the national government, the FSM Supreme Court's duty in an invasion of privacy case on Pohnpei is to try to apply the law the same way the highest state court in Pohnpei would. This involves an initial determination of whether it is contrary to, or consistent with, Pohnpei state law to recognize a right of privacy and an action for that right's violation. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 248, 251-52 (Pon. 1998).

Although Pohnpei has not adopted the Restatement (Second) of Torts as state law, Pohnpei state constitutional guarantees of freedom from certain intrusions indicate that a policy preference of the protection of privacy exists in Pohnpei, and there is no constitutional or traditional impediment to the recognition of a right to privacy in Pohnpei. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 248, 252-53 (Pon. 1998).

Although the FSM Supreme Court declines to adopt this formal three-pronged test for evaluating commercial appropriation invasion of privacy claims in Pohnpei, it notes that the following elements are present and create liability: 1) the plaintiff must be identifiable from the appropriated image or likeness; 2) the image or likeness must be used for trade or advertising purposes; and 3) the use must be unauthorized. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 248, 259 (Pon. 1998).

Postcards produced for sale are produced for predominately commercial purposes, and when a person's image fills the entire frame of the postcard, his presence is not merely incidental to the illustration of the sakau ritual. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 248, 259-60 (Pon. 1998).

Although a plaintiff may have implicitly consented to having his picture taken, that does not constitute consent to the use of that photograph in the form of a postcard for sale to the general public, because consent is not effective beyond the scope for which it is given. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 248, 260 (Pon. 1998).

A nanmwarki does not have authority to authorize the commercial use of another person's image without that person's consent even though the photograph was taken at a traditional feast hosted by the nanmwarki. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 248, 261 (Pon. 1998).

There is no recovery for false light invasion of privacy where the matter publicized is not untrue or highly offensive. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 248, 262 (Pon. 1998).

A person's appearance on a postcard showing a sakau ceremony cannot be interpreted as support for the postcard maker's commercial services, or be interpreted as trivializing or demeaning to the Pohnpeian culture, when the photograph was taken at a public event and accurately depicts what occurred at that event. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 248, 262 (Pon. 1998).

There is no impediment to recognition of a right to privacy in Pohnpei and therefore no impediment to recognition of a cause of action for violation of that right. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 413 (Pon. 1998).

Where is little guidance in the prior decided opinions of the FSM Supreme Court for damage awards in privacy cases, the court will look to the reasoning of courts in other jurisdictions for guidance in assessing damages. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 414 (Pon. 1998).

A party that has established a cause of action for invasion of privacy is entitled to recover damages for the harm to his or her interest in privacy resulting from the invasion; mental distress proved to have been suffered if it is of a kind that normally results from such an invasion; and special damage of which the

invasion is a legal cause. Special damages are demonstrable, direct economic losses resulting from the invasion of privacy. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 414 & n.1 (Pon. 1998).

The gist of the cause of action for invasion of privacy is for direct wrongs of a personal character which result in injury to the plaintiff's feelings, mental and emotional suffering are proper elements of damages. Substantial damages may be recovered, even if the only damages suffered resulted from mental anguish. These damages may include compensation for the wounded feelings, embarrassment, humiliation, and mental pain which a person of ordinary sensibilities would suffer under the circumstances. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 414 (Pon. 1998).

Punitive damages may also be awarded where it is shown that the defendant acted with malice or with a gross disregard for plaintiff's right to privacy, in order to punish the defendant for its conduct and to deter the defendant and others from engaging in like conduct in the future. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 414 (Pon. 1998).

The amount of damages to be awarded in invasion of privacy cases rests with the sound discretion of the trier of fact. The fact that damages may be difficult to ascertain, or that they cannot be measured by a pecuniary standard, is not a basis for denying all recovery even though there is no direct evidence of the amount of damage sustained. However, to recover substantial compensatory damages, the plaintiff must prove these damages. If there has been no material injury to the plaintiff, or if there is no evidence that damage has been sustained, or no evidence to serve as a basis for the calculation of damage, plaintiff will be awarded nominal damages only. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 414 (Pon. 1998).

The measure of compensatory damages in a case involving commercial appropriation of one's name or likeness is the value of the benefit derived by the person appropriating the other's name, or the pecuniary loss suffered by the plaintiff whose name has been appropriated. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 414 (Pon. 1998).

In privacy cases in which a plaintiff also seeks damages for unjust enrichment, only one recovery is available because an invasion of another's right of privacy by a publication confers no right to share in the proceeds of such publication's sale of upon the ground that the author has thereby been unjustly enriched. It is inconsistent for the plaintiff to seek recovery for an invasion of the right of privacy, and in the same suit, to claim the right to participate in the profits of the publication. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 414 (Pon. 1998).

When there is little instruction in previously decided FSM cases for assessing damages in an invasion of privacy case, privacy cases in other jurisdictions may provide some useful guidance. FSM cases awarding damages for mental pain and suffering outside the privacy context are also instructive. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 418 (Pon. 1998).

When there is no direct evidence of the amount of damages sustained, nor the amount of money that can compensate for an injury, the court, as trier of fact, must assess an appropriate level of compensatory damages for that injury. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 418 (Pon. 1998).

Compensatory damages for unjust enrichment will be not awarded when this claim conflicts with plaintiff's claim for compensatory damages for invasion of privacy because it is inconsistent for a plaintiff who wishes to recover for invasion of privacy to also claim the right to participate in the profits of publication and because when a privacy cause of action is brought together with another cause of action based on the same objectionable behavior under another theory, generally only one recovery may be awarded. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 418-19 (Pon. 1998).

A photograph that is used to make a postcard offered for sale is being used primarily for trade purposes. Phoenix of Micronesia, Inc. v. Mauricio, 9 FSM R. 155, 159 (App. 1999).

A plaintiff who is proud to participate in a ceremony can suffer embarrassment and emotional upset over the commercialization of a photograph of his participation in the ceremony. Because the two findings are not inconsistent and there is evidence in the record to support this conclusion, the damages awarded the plaintiff for invasion of privacy will be affirmed as not clearly erroneous. Phoenix of Micronesia, Inc. v. Mauricio, 9 FSM R. 155, 159 (App. 1999).

For invasion of privacy – false light, the theory is that someone who publicizes a matter about another that places the other in a false light before the public is liable for tortuous invasion of privacy if the false light in which the other was placed would be highly offensive to a reasonable person, and the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed. Peniknos v. Nakasone, 18 FSM R. 470, 487 (Pon. 2012).

For liability to exist for false light invasion of privacy it is not necessary, although it is often the case, that the plaintiff be defamed; the plaintiff need only be subject to an unreasonable and highly objectionable false portrayal before the public based on the sensibilities of a reasonable person. Peniknos v. Nakasone, 18 FSM R. 470, 487 (Pon. 2012).

Whoever publicizes a matter about another that places the other in a false light before the public is liable for tortious invasion of privacy if the false light in which the other was placed would be highly offensive to a reasonable person, and the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed. George v. Palsis, 19 FSM R. 558, 567-68 (Kos. 2014).

Publication is a necessary element of defamation and of the false light tort. George v. Palsis, 19 FSM R. 558, 568 (Kos. 2014).

Summary judgment will be granted for the defendants on the plaintiff's defamation and false light cause of action when the plaintiff has failed to make a sufficient showing on essential elements of his case with respect to which he has the burden of proof and when he, in his opposition to the summary judgment motion, has not shown that he has admissible evidence to support his claim, and the time for him to do that is now, or never. George v. Palsis, 19 FSM R. 558, 568 (Kos. 2014).

A litigant's absolute privilege applies not only to defamation actions, but to any tort action based on statements made in connection with a judicial proceeding. These include the intentional infliction of emotional distress, the invasion of privacy, and false light actions, including false light invasion of privacy claims that fail to meet the standards for defamation. Helgenberger v. Helgenberger, 22 FSM R. 244, 251 n.7 (Pon. 2019).

– Loss of Consortium

To determine a monetary value for loss of consortium, the Pohnpei Supreme Court will consider the social structure of the society and the extended family system, whereby other members of the family can be expected to provide some, albeit occasional, assistance. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 74 (Pon. S. Ct. Tr. 1986).

As a loss of consortium claim is derivative from a spouse's claim for damages an award for loss of consortium is properly reduced by the percentage of fault attributable to the spouse. Epiti v. Chuuk, 5 FSM R. 162, 170 (Chk. S. Ct. Tr. 1991).

The right to recover damages for loss of consortium is recognized in Pohnpei. Amayo v. MJ Co., 10 FSM R. 244, 253 (Pon. 2001).

Loss of consortium contemplates something more than loss of general overall happiness, and includes components of love and affection, society and companionship, sexual relations, right of performance of

material services, right of support, aid and assistance, and felicity. Amayo v. MJ Co., 10 FSM R. 244, 253 (Pon. 2001).

Some qualifications that have placed on the right to recover for the loss of parental consortium, or the loss of the society and companionship of an injured parent, have been that the children must be minors, and that the injury to the parent must be serious, permanent, and disabling so as to render the parent unable to provide the love, care, companionship, and guidance to the child, and so overwhelming and severe that the parent-child relationship is destroyed or nearly destroyed. Amayo v. MJ Co., 10 FSM R. 244, 253 (Pon. 2001).

The Constitution admonishes that court decisions are to be consistent with the "social and geographical configuration of Micronesia," and a cause of action for loss of parental consortium is consistent with this admonition in that it acknowledges the important role played by the family in the many distinct cultures of Micronesia. Amayo v. MJ Co., 10 FSM R. 244, 253 (Pon. 2001).

Minor children have a right of recovery for the loss of their father's love, care, affection, companionship, and guidance (loss of parental consortium) which they have suffered as a result of the grievous injury to their father. Amayo v. MJ Co., 10 FSM R. 244, 254 (Pon. 2001).

Loss of consortium is more than the loss of general overall happiness and it includes components of love and affection, society and companionship, sexual relations, right of performance of material services, right of support, aid and assistance, and felicity. Lee v. FSM, 19 FSM R. 80, 84 (Pon. 2013).

The general rule is that the uninjured spouse who loses income when he or she provides nursing care or maid service for the injured spouse is not entitled to recover damages equal to his or her lost income as part of a loss-of-consortium claim. Instead the damages are recoverable by the injured spouse and the measure of damages for nursing services supplied by a relative who leaves his or her employment to render such services is not the amount of lost earnings but rather is the reasonable value of the nursing services supplied. Lee v. FSM, 19 FSM R. 80, 84 (Pon. 2013).

A tortfeasor who caused an automobile accident would expect to pay the market rate for the care provided to the injured party, not the wages of a stockbroker. Thus, if there is to be recovery of lost income, it cannot be part of the uninjured spouse's claim for loss of consortium because a loss-of-consortium claim is not based on economic damages. Lee v. FSM, 19 FSM R. 80, 84 (Pon. 2013).

The uninjured spouse's loss-of-consortium claim is based upon the loss of services provided by the injured spouse before his or her injury. The uninjured spouse's income from his own employment is not a service that the injured spouse once provided. Thus, any recovery of damages for care provided to an injured spouse must be part of the injured spouse's claim. Lee v. FSM, 19 FSM R. 80, 84 (Pon. 2013).

The performance of material services in a loss-of-consortium claim is for the non-economic services that the injured spouse used to perform for the uninjured spouse, not the services that the uninjured spouse later performed for the injured spouse. Lee v. FSM, 19 FSM R. 80, 84 (Pon. 2013).

The uninjured spouse's lost income or the nursing or maid services performed by the uninjured spouse, even when calculated at the reasonable maid or nursing services rate, are not part of the uninjured spouse's loss-of-consortium claim but are rather a measure of the injured spouse's damages. Lee v. FSM, 19 FSM R. 80, 84 (Pon. 2013).

The court will not recharacterize damages as a part of the uninjured spouse's loss-of-consortium claim and alter the nature of the damages claim solely to circumvent the FSM's statutory limited waiver of its sovereign immunity that prevents the injured spouse from being awarded the full amount of the damages she suffered. The court will comply with Congress's policy choice and its intent in enacting the limited waiver. Lee v. FSM, 19 FSM R. 80, 85 (Pon. 2013).

– Malicious Prosecution

The five elements of the tort of malicious prosecution or wrongful or unjustified initiation of a civil suit are satisfied when: 1) the defendant initiated the civil litigation, 2) the litigation was resolved in the plaintiff's favor, 3) the defendant did not have probable cause to initiate the civil litigation, 4) the defendant exhibited malice or ill will, and 5) the litigation caused significant interference with the plaintiff's property. Island Cable TV-Chuuk v. Aizawa, 8 FSM R. 104, 106-07 (Chk. 1997).

When an accused's motion to dismiss alleges, in the complete absence of supporting facts or reference to any legal standard under which such facts might be analyzed, that there is probable cause to believe the State has intentionally and maliciously instituted criminal actions against him, the court will not take such an allegation lightly as it implicates the integrity of the Chuuk State Attorney General's office and will order the defendant to show cause for making the allegation. Chuuk v. Hauk, 17 FSM R. 508, 514 (Chk. S. Ct. Tr. 2011).

– Negligence

Where it is undisputed that the original employer had no right to control the workplace or the employee's actions at the time that plaintiff-employee was injured, exercised no actual control over the manner of work, knew nothing which would have increased the plaintiff's knowledge of the risk he was facing, and did nothing to cause the injury, the court may conclude as a matter of law that the defendant is not liable for plaintiff's injuries. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 144 (Pon. 1985).

The common law definition of negligence, which includes the failure to use such care as a reasonably prudent person would use in a similar situation, is consistent with the Pohnpeian concept of civil wrong. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 66 (Pon. S. Ct. Tr. 1986).

The Pohnpei Supreme Court will apply an English principle to the situation of a joint enterprise such that when parties to a joint enterprise, or their agents, perform work on another man's property and cause damage to the other man or his property through failure to exercise due care, then they are liable. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 67 (Pon. S. Ct. Tr. 1986).

An employer who recognizes the potential danger of a work situation, but who fails to take steps to reduce the danger or warn his employees of the danger, is guilty of nonfeasance and negligence. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 69 (Pon. S. Ct. Tr. 1986).

A corporation and its shareholders are liable for the wrongful act of their employees under the doctrine of respondeat superior. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 70 (Pon. S. Ct. Tr. 1986).

In apportioning damages among negligent parties, the Pohnpei Supreme Court will consider the following factors: the Pohnpei Constitution, custom and tradition, the degree of negligence of each party, other jurisdictions' efforts to abolish joint liability, the need to minimize the role of insurance companies given Pohnpei's stage of development, the example of the U.S. insurance crisis, other jurisdictions' efforts to modify the rules governing joint and several liability, and American judges' assessments of joint and several liability. Koike v. Ponape Rock Products, Inc. (II), 3 FSM R. 182, 185 (Pon. S. Ct. Tr. 1987).

Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances. Amor v. Pohnpei, 3 FSM R. 519, 531 (Pon. 1988).

Any liability of the state for suffering or death caused by defective health care provided by the state must be based upon theories of negligence, not strict liability. Amor v. Pohnpei, 3 FSM R. 519, 534 (Pon. 1988).

The standard of care for doctors at the Truk State hospital is that they are to exercise professional judgment in the attempt to diagnose the illness of the patient, and then, consistent with available facilities and supplies, act on that diagnosis. Asan v. Truk, 4 FSM R. 51, 56 (Truk S. Ct. Tr. 1989).

In a case where a patient died following the normal delivery of her child, where the evidence fails to show any demonstrable effort at diagnosis and no treatment as a result of diagnosis, the standard of care expected of a doctor at the Truk State Hospital was not met and the evidence proves negligence. Asan v. Truk, 4 FSM R. 51, 56 (Truk S. Ct. Tr. 1989).

Where the driver of a vehicle dropped off a child and then failed to see that the way was clear before starting the vehicle in motion, the driver was negligent and is liable for the death of the child. Suka v. Truk, 4 FSM R. 123, 129-30 (Truk S. Ct. Tr. 1989).

One person may be liable to another if the first negligently violates a duty owed to the other and thereby causes the other to suffer injury or loss. Leeruw v. FSM, 4 FSM R. 350, 357 (Yap 1990).

A volunteer who gratuitously offers to provide service or assistance to another, and causes that other to rely upon the offer rather than to seek alternative ways of responding to the need, owes a duty to perform the donated services with reasonable care. Leeruw v. FSM, 4 FSM R. 350, 357 (Yap 1990).

The FSM liaison officers generally owe a duty, established by statutory authorizations and administrative directives, to exercise reasonable care and diligence in providing timely transportation services to medically-referred citizens, and when the FSM liaison office personnel are aware of facts which reveal that a medically-referred citizen is in serious condition and that the timing of her travel for further medical attention is crucial, those officials have a duty to inquire how long the stabilization procedure will take, when it will be appropriate for the citizen to travel and what, if any flights are available for the injured person. Leeruw v. FSM, 4 FSM R. 350, 358 (Yap 1990).

What constitutes reasonable action or assistance must be determined in light of the surrounding circumstances. Leeruw v. FSM, 4 FSM R. 350, 358 (Yap 1990).

One who has acted negligently may be held liable only for the damages proximately caused by that negligence. Leeruw v. FSM, 4 FSM R. 350, 361 (Yap 1990).

A claim that the FSM liaison office did not fulfill its medical referral obligations as required by law falls within the embrace of 6 F.S.M.C. 702(2), which authorizes damage claims against the government for alleged improper administration of statutory laws or regulations. Leeruw v. FSM, 4 FSM R. 350, 363 (Yap 1990).

Where the national government, through the Guam liaison office, undertook to assist in transporting persons being medically referred to other locations and then failed to provide competent and reasonable assistance, the failure to fulfill the duty owed was a failure of the government liaison office and not of just one or two staff members of that office. Leeruw v. FSM, 4 FSM R. 350, 364 (Yap 1990).

Under the Compact of Free Association and the Federal Programs and Services Agreement, civilian employees of the United States government have immunity from civil and criminal process for wrongful acts and omissions done within the scope and in performance of official duty, unless expressly waived by the U.S. government. Samuel v. Pryor, 5 FSM R. 91, 95 (Pon. 1991).

Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances. It is the failure to do what a person of ordinary prudence would have done under similar circumstances. Epiti v. Chuuk, 5 FSM R. 162, 166 (Chk. S. Ct. Tr. 1991).

Where any reasonable employer would have ordered all electrical power cut off while any work was

being performed in close proximity to high voltage lines, the failure to do so is clearly negligent. Epiti v. Chuuk, 5 FSM R. 162, 166 (Chk. S. Ct. Tr. 1991).

When a person elects to operate a vehicle on the public streets he owes a duty to pedestrians and others using the road and adjacent areas to operate the vehicle in a safe and prudent manner. When the breach of this duty by driving in a fast and careless manner is the proximate cause of an injury the driver will by held liable. Ludwig v. Mailo, 5 FSM R. 256, 259 (Chk. S. Ct. Tr. 1992).

In order for a third party's negligent conduct to afford any relief to defendants by way of a contributory (comparative) negligence theory, it must be demonstrated that the negligent act or omission somehow caused or contributed to the injury sustained and that there was not an independent or superseding cause. Ludwig v. Mailo, 5 FSM R. 256, 261 (Chk. S. Ct. Tr. 1992).

Until proven contrary to Kosraean custom the Kosrae State Court will entertain actions for negligence as tort liability for negligence is consistent with Micronesian culture. Nena v. Kosrae, 5 FSM R. 417, 420 (Kos. S. Ct. Tr. 1990).

Only when there is a duty of care, breach of this duty, damage caused by the breach, and determination of the value of the damage can there be a liability for negligence. Nena v. Kosrae, 5 FSM R. 417, 420 (Kos. S. Ct. Tr. 1990).

An action for damages for negligent surveying is not an action for the recovery of an interest in land, for which the twenty year statute of limitation would apply, therefore it may be barred by the lesser statue of limitations. Damarlane v. United States, 6 FSM R. 357, 361 (Pon. 1994).

Punitive damages are not recoverable for ordinary negligence. Elwise v. Bonneville Constr. Co., 6 FSM R. 570, 572 (Pon. 1994).

A creditor who undertakes to secure credit insurance for a debtor is liable to the debtor for negligent performance of that duty or of duty to notify debtor if insurance not obtained. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 251 (Chk. 1995).

Failure of a creditor to notify the debtor of its failure to obtain insurance is negligence. As a consequence the creditor is liable to the debtor for the entire amount of the debtors' loss, otherwise the debtor is only entitled to return of full amount of insurance premiums paid. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 251 (Chk. 1995).

Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances. Davis v. Kutta, 7 FSM R. 536, 546 (Chk. 1996).

The state is liable for injuries proximately caused by the employment of untrained or poorly trained police officers, and for the failure to adequately train them, and the chief of police is liable for any injury resulting from breach of duties connected with his office. Davis v. Kutta, 7 FSM R. 536, 546 (Chk. 1996).

Because tort law is primarily state law a negligence action will be governed by the substantive state law and the FSM Supreme Court's duty is to try to apply the law the same way the highest state court would. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 63, 64-65 (Chk. 1997).

Under Chuuk state law the elements of actionable negligence are the breach of a duty on the part of one person to protect another from injury, and that breach is the proximate cause of an injury to the person to whom the duty is owed, which may be summarized as: a duty of care, a breach of that duty, which breach proximately causes damages. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 63, 65 (Chk. 1997).

The employment of a police officer with ten-year old charges and or convictions for violent behavior is insufficient to hold a municipality liable for negligent hiring because the charges and or convictions were too remote and attenuated to be the proximate cause of the plaintiff's injury. Conrad v. Kolonia Town, 8 FSM R. 183, 194 (Pon. 1997).

The definition of "negligence," as the term is used in the common law countries, is applicable or similar to the Pohnpeian understanding of negligence. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 293 (Pon. 1998).

Negligence is the omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent man would not do. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 293 (Pon. 1998).

Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances; it is the doing of some act which a person of ordinary prudence would not have done under similar circumstances or failure to do what a person of ordinary prudence would have done under similar circumstances. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 293 (Pon. 1998).

United States common law decisions are an appropriate source of guidance for this court for contract and tort issues unresolved by statutes, decisions of constitutional courts here, or custom and tradition within the Federated States of Micronesia. United States courts have generally followed the provisions of the Restatement of Torts in situations where a plaintiff alleges that a defendant has negligently prevented a third party from rendering assistance. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 293-94 (Pon. 1998).

One who knows or has reason to know that a third person is giving or is ready to give to another aid necessary to prevent physical harm to him, and negligently prevents or disables the third person from giving such aid, is subject to liability for physical harm caused to the other by the absence of the aid for which he has prevented the third person from giving. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 294 (Pon. 1998).

A complaint's allegations that officials' knowing interference prevented two ships from refloating their ship after it had grounded on a reef, that the ship's crew were arrested by the officials without cause, and that this actively and unreasonably prevented rescue the vessel's by other boats, and that that interference was the direct cause of the boat's damage, set forth a claim in negligence and are sufficient to survive a motion to dismiss. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 294 (Pon. 1998).

Under Chuuk state law the elements of actionable negligence are the breach of a duty on the part of one person to protect another from injury, and that breach is the proximate cause of an injury to the person to whom the duty is owed. Kaminanga v. FSM College of Micronesia, 8 FSM R. 438, 442 (Chk. 1998).

A negligence claim may be stated when a party has breached its duty to negotiate in good faith. Kaminanga v. FSM College of Micronesia, 8 FSM R. 438, 442 (Chk. 1998).

In determining liability for negligent injuries generally, electricity providers are required to use reasonable care in the construction and maintenance of their lines and apparatus, and will be responsible for any conduct falling short of this standard. Asher v. Kosrae, 8 FSM R. 443, 449 (Kos. S. Ct. Tr. 1998).

It is the imperative duty of electricity providers to make reasonable and proper inspection of their wires and other equipment and to use due diligence to discover and repair defects. A failure to perform such duty constitutes negligence. Asher v. Kosrae, 8 FSM R. 443, 450 (Kos. S. Ct. Tr. 1998).

The placing of a guy wire within areas that are traveled may constitute negligence where the wire is not

guarded, covered, rendered easy to see, and a person is injured by a collision with it. An electricity provider can be held liable for injures sustained from a collision if it is shown that the company's negligence in the erection or the maintenance of such wire was the proximate cause of the injury. The test is whether the injury under all of the circumstances, might reasonably been foreseen by a person of ordinary intelligence and prudence. Asher v. Kosrae, 8 FSM R. 443, 450 (Kos. S. Ct. Tr. 1998).

It is reasonably foreseeable to a person of ordinary intelligence and prudence that a dangling, frayed wire could cause injury to passersby in the vicinity of the pole and wire. Asher v. Kosrae, 8 FSM R. 443, 450 (Kos. S. Ct. Tr. 1998).

A state will be liable for damages resulting from personal injury as a result of a collision with a guy wire when the state erected and maintained the guy wire to support a pole carrying its electric transmission wires, when for a considerable length of time prior to the accident it failed to make reasonable and proper inspections of the guy wire as necessary and failed to use due diligence to discover and remedy the defective guy wire so that that injury would not result, and when the type injury which occurred was reasonably foreseeable. Asher v. Kosrae, 8 FSM R. 443, 450 (Kos. S. Ct. Tr. 1998).

Negligence is a separate tort from nuisance. Although negligence is one kind of conduct upon which liability for nuisance may be based, negligence is not a necessary ingredient for a nuisance. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 534 (Pon. 1998).

Under Pohnpei law, negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances. It is the doing of some act which a person of ordinary prudence would not have done under similar circumstances or failure to do what a person of ordinary prudence would have done under similar circumstances. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 535 (Pon. 1998).

The elements of actionable negligence are: 1) a duty of care, 2) a breach of that duty, and 3) damages proximately caused by that breach. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 535 (Pon. 1998).

One who carries on a dangerous activity must use care commensurate with the risk or danger of injury involved or suffer liability for resulting injuries. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 535 (Pon. 1998).

The focus of a negligence analysis is on the actor's conduct, while the focus of an intentional nuisance analysis is on the resulting interference. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 541 (Pon. 1998).

Only when there is a duty of care, breach of this duty, damage caused by the breach, and determination of the value of the damage can there be a liability for negligence. A plaintiff must show that the defendants owed the plaintiff a duty of care, and that the defendants breached this duty. The plaintiff must also show that his injuries were caused by the breach and that a value can be assigned to his injuries. Sigrah v. Timothy, 9 FSM R. 48, 53 (Kos. S. Ct. Tr. 1999).

The common law definition of negligence includes the failure to use such care as a reasonably prudent person would use in a similar situation. Sigrah v. Timothy, 9 FSM R. 48, 53 (Kos. S. Ct. Tr. 1999).

The two year limitation applies to tort actions for both negligence and wilful conduct. David v. Bossy, 9 FSM R. 224, 225 (Chk. S. Ct. Tr. 1999).

Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances. Duties of care differ according to the circumstances. The exact parameters of each person's responsibilities towards others will be defined through time by judicial decisions and

statutes. Jonah v. Kosrae, 9 FSM R. 335, 341 (Kos. S. Ct. Tr. 2000).

The elements required to prevail on a negligence claim are: a duty of care, a breach of that duty, and damages proximately caused by that breach. Only when there is a duty of care, breach of this duty, damage caused by the breach, and determination of the value of the damage can there be a liability for negligence. Jonah v. Kosrae, 9 FSM R. 335, 341 (Kos. S. Ct. Tr. 2000).

Because the state had a duty of care to construct the seawall in a manner which a reasonably careful person would have done in similar circumstances and a reasonably careful person would have constructed the seawall in accordance with accepted methods of seawall construction in Kosrae at that time during the late 1980s, and because at that time black rock was routinely used for seawall construction as the best method to dissipate wave energy from the ocean, the state did not breach its duty to, and is not liable to the plaintiff for negligence by using black rocks for erosion control measures and construction of the seawall. Jonah v. Kosrae, 9 FSM R. 335, 341 (Kos. S. Ct. Tr. 2000).

The general rule applicable to negligence actions is that the statue of limitations runs from the time of the negligent act or omission, even though the total damage cannot be ascertained until a later date. Jonah v. Kosrae, 9 FSM R. 335, 344 (Kos. S. Ct. Tr. 2000).

Under Chuuk state law the elements of actionable negligence are the breach of a duty on the part of one person to protect another from injury, and that breach is the proximate cause of an injury to the person to whom the duty is owed, which may be summarized as: a duty of care, a breach of that duty, which breach proximately causes damages. Estate of Mori v. Chuuk, 10 FSM R. 6, 14 (Chk. 2001).

Jailers, and their superiors, owe detainees a duty of care, which may include the duty to regularly observe a detainee's condition, and may breach that duty by failing to provide the required checks on his condition, had a duty of watchfulness when they are aware or should be aware of the effect on the detainee of the scolding he received and when these failures are the proximate cause of the plaintiff's death, these defendants are liable under 6 TTC 201(1) for the plaintiff's death by neglect. Estate of Mori v. Chuuk, 10 FSM R. 6, 14 (Chk. 2001).

Only when there is a duty of care, breach of this duty, damage caused by the breach, and determination of the value of the damage can there be a liability for negligence. A plaintiff must show that the defendants owed the plaintiff a duty of care, and that the defendants breached this duty. The plaintiff must also show that his injuries were caused by the breach and that a value can be assigned to his injuries. The common law definition of negligence includes the failure to use such care as a reasonably prudent person would use in a similar situation. Talley v. Lelu Town Council, 10 FSM R. 226, 236 (Kos. S. Ct. Tr. 2001).

Negligence may include a condition created by the negligent conduct of a government entity, or its employees, a condition which created a reasonably foreseeable risk of the kind of injury which afflicted the plaintiff, and that the injury proximately caused by the condition. Talley v. Lelu Town Council, 10 FSM R. 226, 236 (Kos. S. Ct. Tr. 2001).

When the act of losing the key, or providing the key to allow one or more unauthorized persons access to the municipal building and the office area breached the duty of care to protect the plaintiff's property and created a reasonably foreseeable risk that the property in the building would be moved, damaged or removed from the premises, and when the plaintiff's property was removed from its designated location, the loss of the key, or the providing it to unauthorized persons proximately caused the plaintiff's loss of his personal property, and the defendants are liable for tort of negligence. Talley v. Lelu Town Council, 10 FSM R. 226, 236 (Kos. S. Ct. Tr. 2001).

Punitive damages are not recoverable for ordinary negligence. Talley v. Lelu Town Council, 10 FSM R. 226, 239 (Kos. S. Ct. Tr. 2001).

Ordinary negligence is not a basis for punitive damages. In order for negligence to constitute wantonness meriting imposition of punitive damages, the plaintiff must show that the one acting or failing to act realized the imminence of the danger and failed to take steps to prevent it because he was indifferent to whether the injury occurred. Amayo v. MJ Co., 10 FSM R. 244, 250 (Pon. 2001).

The failure to exercise the degree of care that a reasonably prudent and careful person would use under the same circumstances constitutes negligence. Amayo v. MJ Co., 10 FSM R. 244, 250 (Pon. 2001).

When a general contractor had a duty to provide a safe work environment for the construction work to be done at the second story heights and his duty in this regard ran not only to the employees of subcontractors, but to those that he employed directly as well, which included the plaintiff, and when his failure to provide any kind of safety equipment, precautions, instructions or supervision resulted in the plaintiff's fall and consequent injury, he is therefore liable for the damages suffered as a result of that injury. Amayo v. MJ Co., 10 FSM R. 244, 250-51 (Pon. 2001).

When one company assigned its employee to work for another company, and the assigning company was effectively stripped of control over the way the work was done, and when the assigning company had no knowledge of facts unknown to the employee that would have affected the risk faced by him, and did nothing else to cause the employee's injury, there is no negligence liability on the part of the assigning company. Amayo v. MJ Co., 10 FSM R. 244, 251 (Pon. 2001).

When an employee is directed or permitted by his employer to perform services for another employer he may become the employee of such other in performing the services and since the question of liability is always raised because of some specific act done, the important question is whether or not, as to the act in question the employee was acting in the business of and under the direction of one or the other employer. Amayo v. MJ Co., 10 FSM R. 244, 251 (Pon. 2001).

Negligence consists of four essential elements: 1) a legal duty owed to the plaintiff by the defendant, 2) a breach of that duty, 3) injury to the plaintiff, and 4) a showing that the breach was the proximate cause of the injury. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 348, 352-53 (Pon. 2001).

It is well established that medical expenses are properly a component of negligence damages and may be recovered from the tortfeasor. Amayo v. MJ Co., 10 FSM R. 371, 376 (Pon. 2001).

In determining whether conduct is negligent, the customs of the community, or of others under like circumstances, are factors to be taken into account, but are not controlling where a reasonable man would not follow them. Amayo v. MJ Co., 10 FSM R. 371, 384 (Pon. 2001).

It is not a defense to negligence to say that others engaged in the same conduct would have operated in the same way, without taking safety precautions, and were, or are on an ongoing basis, negligent. Amayo v. MJ Co., 10 FSM R. 371, 384 (Pon. 2001).

The construction of a multistory building using imported technology is not imbued with Pohnpeian custom and tradition so as to lend itself to an analysis in those terms. Amayo v. MJ Co., 10 FSM R. 371, 384 (Pon. 2001).

Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances, or the failure to do what a person of ordinary prudence would have done under similar circumstances. Billimont v. Chuuk, 11 FSM R. 77, 81 (Chk. S. Ct. Tr. 2002).

In order to prove negligence, a plaintiff must prove the existence of a duty, breach of the duty, and damages proximately caused by the breach. Billimont v. Chuuk, 11 FSM R. 77, 81 (Chk. S. Ct. Tr. 2002).

The plaintiff, in order to establish the defendant's negligence in failing to pay the sums due under the lease, has the burden of proving by a preponderance of the evidence the existence of a duty on the defendant's part to pay. But, given the lease's illegal nature, this essential fact cannot be proven as a matter of law. Billimont v. Chuuk, 11 FSM R. 77, 81 (Chk. S. Ct. Tr. 2002).

As a matter of law no reasonably prudent person would commit an act the consequence of which might result in that person's imprisonment. Billimont v. Chuuk, 11 FSM R. 77, 81 (Chk. S. Ct. Tr. 2002).

When a reasonably prudent person in the Director of Treasury's position would not willingly and intentionally violate Chuuk state laws, and when to pay sums purportedly due under the contract at issue would violate Chuuk state laws, subjecting the party authorizing payment to criminal penalties, the plaintiff cannot as a matter of law prove a material and indispensable element of her claim of negligence for failure to pay her because the sums are due her on an illegal contract. Billimont v. Chuuk, 11 FSM R. 77, 81 (Chk. S. Ct. Tr. 2002).

Each of the familiar elements of a cause of action for negligence – duty, breach of duty, proximate cause, and damages – should be alleged, and a negligence counterclaim that does not is deficient and a motion to dismiss it will be granted. Adams v. Island Homes Constr., Inc., 11 FSM R. 445, 449 (Pon. 2003).

6 TTC 305 establishes a period of 6 years in which to bring an action for negligent damage to real property. Ben v. Chuuk, 11 FSM R. 649, 650 (Chk. S. Ct. Tr. 2003).

No punitive damages can be awarded when the plaintiff has not sustained his burden of demonstrating that the defendant's actions were intentional, wilful, and malicious, rather than merely negligent. Punitive damages may not be awarded for ordinary negligence. Tomy v. Walter, 12 FSM R. 266, 272 (Chk. S. Ct. Tr. 2003).

Once a plaintiff has presented a *prima facie* case of entitlement to judgment on a cause of action, the burden shifts to the defendants to raise a question of material fact. Thus when the defendants have raised no such question, and where there is a duty of care, a breach of that duty, damage caused by the breach, and the value of the damage can be determined, liability as to the defendants' negligence has been established. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 308 (Pon. 2004).

It is well established that punitive damages are not recoverable for ordinary negligence. Such damages also will not be awarded unless it has been claimed and proved that the defendant acted with actual malice or deliberate violence. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 309 (Pon. 2004).

A presumption arises that a bailee who has sole actual and exclusive possession of the goods has been negligent if he cannot explain the loss, disappearance or damage of the bailed property, its parts or contents. Palik v. PKC Auto Repair Shop, 13 FSM R. 93, 96 (Kos. S. Ct. Tr. 2004).

A bailee is liable for all repairs and replacement for the bailed property that are necessary due to his neglect or lack of care. Palik v. PKC Auto Repair Shop, 13 FSM R. 93, 96 (Kos. S. Ct. Tr. 2004).

In assessing damages, the court may take judicial notice of the prevailing cost in Kosrae of items similar to the ones lost. Palik v. PKC Auto Repair Shop, 13 FSM R. 93, 96 (Kos. S. Ct. Tr. 2004).

When the plaintiffs allege two separate claims for the same damages in this suit and one sounds in contract and alleges a breach of a purchase agreement since part of the plaintiffs' agreed share of the purchase price was not paid to them and the other claim sounds in tort and alleges that the defendant was negligent in wrongfully releasing the remaining balance to someone else without taking such precautionary measures that a reasonably prudent person would be expected to take as a holder of funds that plaintiffs

were entitled to, the court will analyze the contract claim first and finding a breach of the purchase agreement, need not address the plaintiffs' negligence tort claims. Edgar v. Truk Trading Corp., 13 FSM R. 112, 117 (Chk. 2005).

Under Chuuk law, the elements of actionable negligence are the breach of a duty on the part of one person to protect another from injury, and that breach is the proximate cause of an injury to the person to whom the duty is owed. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 127 (Chk. 2005).

For a plaintiff to recover for negligence, the defendant must owe a duty of care to the plaintiff and have breached that duty. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 127 (Chk. 2005).

The result of "negligence" in failing to properly record a mortgage on unregistered land is that the mortgage is ineffective against third parties – someone other than the mortgagor who had no notice of the mortgage (and the result is the same for registered land when a mortgage is not properly endorsed on the certificate of title). Rudolph v. Louis Family, Inc., 13 FSM R. 118, 128 & n.4 (Chk. 2005).

Since a bank owed no duty of care to a plaintiff when it took a mortgage to secure a loan to another, and that mortgage, even if it is unenforceable, was not the proximate cause of the plaintiff's alleged damages, the bank is entitled to summary judgment as a matter of law on the plaintiff's negligence and void mortgage causes of action. Additional reasons for this are that the bank has not attempted to foreclose its mortgage and that the mortgage does not cover the lot for which the plaintiff has a determination of ownership. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 128 (Chk. 2005).

The tort of "fraud-act of mistake" has not been recognized in Kosrae, but since this cause of action appears to sound in negligent misrepresentation, therefore an analysis of the action as the tort of negligence is appropriate. Kinere v. Sigrah, 13 FSM R. 562, 568 (Kos. S. Ct. Tr. 2005).

Negligence consists of four essential elements: 1) legal duty owed to the plaintiff by the defendant, 2) breach of that duty, 3) injury to the plaintiff, and 4) showing that the breach was the proximate cause of the injury. Kinere v. Sigrah, 13 FSM R. 562, 568 (Kos. S. Ct. Tr. 2005).

When there is no competent evidence that a defendant breached a duty owed to the plaintiff since his duty was to represent his late father's interests before the Land Commission, summary judgment will be awarded the defendant on the plaintiff's "fraud-act of mistake" – negligent misrepresentation cause of action. Kinere v. Sigrah, 13 FSM R. 562, 568-69 (Kos. S. Ct. Tr. 2005).

Under Chuuk state law the elements of actionable negligence are the breach of a duty on the part of one person to protect another from injury, and that breach is the proximate cause of an injury to the person to whom the duty is owed. Hauk v. Lokopwe, 14 FSM R. 61, 65 (Chk. 2006).

Liability for the tort of negligence requires that there be a duty of care owed by the defendants to the plaintiff, a breach of this duty, damages caused by the breach, and a determination of the value of the damages. Generally, negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances. Phillip v. Kosrae, 14 FSM R. 109, 113 (Kos. S. Ct. Tr. 2006).

Under Chuuk state law the elements of actionable negligence are the breach of a duty on the part of one person to protect another from injury, and that breach is the proximate cause of an injury to the person to whom the duty is owed, which may be summarized as: a duty of care, a breach of that duty, which breach proximately causes damages. Lippwe v. Weno Municipality, 14 FSM R. 347, 353 (Chk. 2006).

The elements of a maritime negligence cause of action are four: 1) existence of a duty requiring a person to conform to a certain standard of conduct in order to protect others against unreasonable risks; 2) breach of that duty by engaging in conduct that falls below the standard of conduct, which is usually called

"negligence"; 3) a reasonably close causal connection between the unreasonable conduct and any resulting injury, often referred to as "proximate cause"; and 4) actual loss, injury or damage to another party. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 416 (Yap 2006).

A genuine issue of material fact precluding summary judgment is whether, even if the Pohnpei construction industry's customary business practice did not include safety features that would have prevented or lessened the plaintiff's injuries, one or more of those safety feature(s) was so simple or so inexpensive in relation to the possible consequences that the Pohnpei construction industry ought to have adopted them and should be liable for the failure to adopt them. Amayo v. MJ Co., 14 FSM R. 487, 489 (Pon. 2006).

The elements of actionable negligence are the breach of a duty of care on the part of one person to protect another from injury, and that breach is the proximate cause of an injury to the person to whom the duty is owed. Kileto v. Chuuk, 15 FSM R. 16, 17 (Chk. S. Ct. App. 2007).

The plaintiffs' negligence claims fail when they failed to prove by a preponderance of the evidence that their homes would not have flooded with mud if the partially-blocked entrance to the Mt. Tonachau road culvert had remained partially blocked and when they also did not prove that the defendant's contractor, by restoring the Mt. Tonachau road and drainage system to its designed (and previous) state, breached its duty not to cause injury to residents and landowners downhill from the Mt. Tonachau roadwork. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 119, 123 (Chk. 2010).

When a plaintiff did not submit any evidence about his damages and therefore could not have proven damages, his negligence claim fails. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 119, 123 (Chk. 2010).

FSM admiralty law recognizes a cause of action for damages to coral reefs and marine resources caused by marine vessels. The elements of maritime negligence are: 1) the existence of a duty requiring conformance to a certain standard of conduct in order to protect others against unreasonable risks; 2) a breach of that duty by engaging in conduct that falls below the standard of conduct (usually called "negligence"); 3) a reasonably close causal connection between the unreasonable conduct and any resulting injury (often called "proximate cause"); and 4) an actual loss or injury to another party. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 174 (Yap 2012).

In Chuuk, the elements of actionable negligence are the breach of a duty of care on the part of one person to protect another from injury, and that breach is the proximate cause of an injury to the person to whom the duty is owed. Ruben v. Chuuk, 18 FSM R. 425, 430 (Chk. 2012).

When a plaintiff has failed to make a showing sufficient to establish the existence of any element essential to its case on which it will bear the burden of proof at trial, summary judgment in the defendant's favor is appropriate. Ruben v. Chuuk, 18 FSM R. 425, 430 (Chk. 2012).

When there is no factual basis for the existence of a special duty, the defendants' summary judgment motion should be granted since one of the essential elements of negligence cannot be proven. Ruben v. Chuuk, 18 FSM R. 425, 431 (Chk. 2012).

Liability for the tort of negligence requires that there be a duty of care owed by the defendants to the plaintiff, a breach of this duty, damages caused by the breach, and a determination of the value of the damages. William v. Kosrae State Hosp., 18 FSM R. 575, 580 (Kos. 2013).

Only when there is a duty of care, breach of this duty, damage caused by the breach, and determination of the value of the damage can there be a liability for negligence. The plaintiffs have the burden of proving each these elements in order to prevail on a negligence claim, and if the plaintiffs fail to prove any one element, judgment will be entered against them. William v. Kosrae State Hosp., 18 FSM R.

575, 580 (Kos. 2013).

When the delay before a referral to an off-island medical facility, regardless of who caused it, did not proximately cause the patient's death, it cannot be the basis to hold anyone liable for her death. William v. Kosrae State Hosp., 18 FSM R. 575, 581 (Kos. 2013).

When the insurance carrier approved the patient's off-island referral within two days and was ready to put her on the earliest possible flight but the patient did not leave until 20 days later and when this long delay was the proximate cause of the patient's death, the insurance carrier's actions were not the proximate cause of her death because the insurance carrier did not cause the delay. William v. Kosrae State Hosp., 18 FSM R. 575, 581 (Kos. 2013).

Since the state did not have a statutorily-created duty under Kosrae Code § 12.1103 to assist in paying for the family attendant's airfare, it did not have a statutorily-created duty to inform the family attendant that he could ask the State for financial assistance for his own airfare. William v. Kosrae State Hosp., 18 FSM R. 575, 582 (Kos. 2013).

The state cannot be said to have breached its duty when there was insufficient evidence before the court that it was state policy to pay for family attendant's airfare and to then seek repayment by wage or salary allotments; when there was no evidence about when this policy was implemented, by whom it was implemented, whether this policy was in existence in July 2001, the process used to apply for these funds, and whether there were any such funds available in late July 2001 that could have been used to immediately pay for the family attendant's ticket; when the statute barred the use of medical referral funds in a manner contrary to regulation; and when if no funds were available in July 2001, any request would have been futile and it would have been pointless to tell the family attendant that the State could assist. William v. Kosrae State Hosp., 18 FSM R. 575, 582 (Kos. 2013).

A 1991 memorandum of understanding between the insurer and the Kosrae State Hospital that required that the hospital provide all necessary health care services within Kosrae to all covered persons and that these services would include the cost of a medical or other attendant to accompany a covered person to a health care facility is an agreement that allocates the cost of attendants between the parties to the memorandum and it does not, by itself, allocate costs or create duties between the state and the insureds ("covered persons") and their families. William v. Kosrae State Hosp., 18 FSM R. 575, 582 (Kos. 2013).

When a plaintiff does not submit any evidence about his damages and therefore cannot prove damages, the plaintiff's negligence claim fails. William v. Kosrae State Hosp., 18 FSM R. 575, 583 (Kos. 2013).

Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 478 (Pon. 2014).

When the plaintiff has not demonstrated that the defendant's actions reflect a standard of care that is unreasonable under the circumstances, the plaintiff's negligence claim must fail. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 478 (Pon. 2014).

The focus of a negligence analysis is on the defendants' conduct, while the focus of an intentional nuisance analysis would be on the resulting interference. Damarlane v. Damarlane, 19 FSM R. 519, 531 (Pon. 2014).

When an insurance carrier's endorsement contained within an employer's policy limited the applicability of the CNMI Workers' Compensation Program to "the benefits provided under the Workers' Compensation Law of the CNMI," (which would entail that statute's "determination of pay," that statute's exclusive remedy provision setting forth tort immunity does not apply, and an employee would not be forestalled from also bringing a civil action sounding in negligence. Hairens v. Federated Shipping Co., 20

FSM R. 404, 409 (Pon. 2016).

Liability for the tort of negligence requires that there be a duty of care owed by the defendant to the plaintiff, a breach of the duty, damages caused by the breach (i.e. proximate cause), and a determination of the value of the damages. Setik v. Perman, 21 FSM R. 31, 39 (Pon. 2016).

While tort law, especially a common law tort like negligence, is primarily a state responsibility, the national government may create tort law when legislating in an area that the Constitution has expressly delegated to Congress the power to legislate. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 170 n.4 (Pon. 2017).

To properly state a negligence claim, a plaintiff must show that the defendant owed the plaintiff a duty of reasonable care, that the defendant breached that duty, that damage resulted, and that that breach of duty was the proximate cause of the damage. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 170 (Pon. 2017).

If negligent lending were a cause of action, the borrowers would have to show that the bank owed them a duty of reasonable care to not lend them any money if the bank knew, or should have known, that there was not a reasonable likelihood that the borrowers could repay the loan in conformity with the loan's repayment terms. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 171 (Pon. 2017).

Because tort law is primarily state law, a negligence action will be governed by the substantive state law and the FSM Supreme Court's duty is to try to apply the law the same way the highest state court would. Pelep v. Mai Xiong Inc., 21 FSM R. 182, 187 (Pon. 2017).

For purposes of Pohnpei law, "negligence" is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances. Pelep v. Mai Xiong Inc., 21 FSM R. 182, 187 (Pon. 2017).

When a reasonable person, in considering the totality of the circumstances, would find that the defendant did not breach its duty of care, the plaintiff's claim for negligence is not substantiated. Pelep v. Mai Xiong Inc., 21 FSM R. 182, 188 (Pon. 2017).

When a plaintiff does not submit any evidence about his damages, his negligence claim fails. Fuji Enterprises v. Jacob, 21 FSM R. 355, 363 (App. 2017).

When a defendant is found negligent, the remedy is money damages, but if irreparable future harm is threatened, a court, by injunction, may also act to prevent future damage. Alik v. Heirs of Alik, 21 FSM R. 606, 620 & n.6 (App. 2018).

A maritime negligence cause of action's elements are: 1) existence of a duty requiring persons to conform to a certain standard of conduct in order to protect others against unreasonable risks; 2) conduct that falls below that standard thus breaching that duty (usually called "negligence"); 3) a reasonably close causal connection between the unreasonable conduct and the resulting injury, (often called "proximate cause"); and 4) an actual loss, injury, or damage to another party. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 19 (Yap 2018).

Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances; it is the doing of some act which a person of ordinary prudence would not have done under similar circumstances or failure to do what a person of ordinary prudence would have done under similar circumstances. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 27 (Pon. 2018).

Negligence consists of four essential elements: 1) a duty of care, 2) a breach of that duty, 3) injury to the plaintiff, and 4) a showing that the breach was the proximate cause of the plaintiff's injury. Luzama v.

Mai Xong, Inc., 22 FSM R. 23, 27 (Pon. 2018).

Only when there is a duty of care, breach of this duty, damages caused by the breach, and determination of the value of damage can there be liability for negligence. The plaintiff has the burden of proving each of these elements in order to prevail on a negligence claim, and if the plaintiff fails to prove any one element, judgment will be entered against him. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 27 (Pon. 2018).

The FSM Supreme Court would look upon a true negligence suit against the Pohnpei Court of Land Tenure with great disfavor because, when a defendant is found negligent, the remedy is money damages, and because the Pohnpei Court of Land Tenure is a court, and, as a court, it is immune from a suit for money damages for its judicial acts. Setik v. Perman, 22 FSM R. 105, 119 n.12 (App. 2018).

A public utility's duty of care extends beyond just a duty to landowners. It also has a duty to those persons who reside on, or who work on, or who otherwise occupy land. Thus, a plaintiff may seek relief under a negligence cause of action as a resident or an occupant of the affected land. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 154 (Chk. 2019).

– Negligence – Gross Negligence

Gross negligence has been construed as requiring willful, wanton, or reckless misconduct, or such utter lack of care as will be evidence thereof. Hauk v. Lokopwe, 14 FSM R. 61, 65 (Chk. 2006).

A negligence cause of action may be amended to add a punitive damages claim subject to proof at trial and, in the absence of such proof, the defendants may move to disallow any punitive damages award. Nakamura v. Mori, 16 FSM R. 262, 268 (Chk. 2009).

Punitive damages are not recoverable for ordinary negligence. For punitive damages to be awarded, there must be evidence of gross negligence. Gross negligence is the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 49 (Chk. 2010).

A Port Authority and a pilot are immune from any negligence claim for the pilot's acts or omissions in berthing a vessel, but not from a gross negligence claim. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 16 (Pon. 2015).

Gross negligence has been construed as requiring willful, wanton, or reckless misconduct, or such utter lack of care as will be evidence thereof. Gross negligence can thus occur in a wide range of circumstances. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 16 (Pon. 2015).

There are a variety of circumstances in which a pilot's navigating too fast combined with other circumstances have equaled gross negligence on the pilot's part. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 16-17 (Pon. 2015).

A "gross negligence" claim lodged against the Pohnpei Court of Land Tenure that is predicated upon a purported failure to provide notice when it issued a new certificate of title, fails when, not only did the litigants have adequate notice, they took full advantage of an ability to be heard, as reflected in the numerous unsuccessful challenges that were mounted to the transfer of ownership, thereby contradicting this claim that notice was deficient. Setik v. Perman, 21 FSM R. 31, 39 (Pon. 2016).

Gross negligence is the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting another's life or property. Fuji Enterprises v. Jacob, 21 FSM R. 355, 362 (App. 2017).

For punitive damages to be awarded, there must be evidence of gross negligence. Fuji Enterprises v.

Jacob, 21 FSM R. 355, 363 n.8 (App. 2017).

– Negligence – Medical Malpractice

Any causative factors not within the exclusive control of the alleged negligent party render res ipsa loquitur doctrine inapplicable to an action for medical malpractice. Amor v. Pohnpei, 3 FSM R. 519, 534-35 (Pon. 1988).

Whether the relationship between U.S. National Health Service Corps doctors and the State of Pohnpei is such that the doctrine of *respondeat superior* may be applicable in an action for medical malpractice so that the state may be made to respond in damages for any negligence of the doctor has not been determined. Amor v. Pohnpei, 3 FSM R. 519, 536 (Pon. 1988).

The Compact of Free Association's immunization provisions, which limit a plaintiff's right to sue a physician for malpractice, do not affect a fundamental right, and therefore, the provisions need not be subjected to a strict scrutiny, but instead should be tested under the less stringent rational relationship test. Samuel v. Pryor, 5 FSM R. 91, 104 (Pon. 1991).

Medical malpractice by hospital staff does not relieve a tortfeasor of his responsibility for damages, because any injuries that might have been caused by the staff flowed naturally from his own acts. Primo v. Refalopei, 7 FSM R. 423, 429 (Pon. 1996).

When, according to the complaint's allegations, the defendants' medical malpractice led to the deceased's death, and when, attached to the defendants' summary judgment motion is an affidavit of a medical doctor who is board certified in the field of family practice and the affidavit recites that the doctor has reviewed the medical records and that his opinion is that her diagnosed illness, tuberculosis of the spine, was so serious that in order to avoid paralysis, it would have been acceptable practice to administer the medications in question even if the deceased's treating doctors had been aware of her hepatitis history, the doctor's affidavit is relevant evidence based on an adequate foundation, that tends to show that the defendants did not violate the applicable standard of care. This evidence is of sufficient weight that left unopposed, no genuine issue of material fact exists under FSM Civil Rule 56, and the defendants are entitled to judgment as a matter of law. Since the plaintiffs have offered nothing to meet the evidence offered by the defendants, no genuine issues of material fact therefore exist, and the defendants are entitled to summary judgment in their favor. Joe v. Kosrae, 13 FSM R. 45, 47 (Kos. 2004).

Summary judgment will be denied in a medical malpractice action when genuine issues of material fact exist with regard to the arrangements for the patient's follow-up after she returned to Kosrae and with regard to whether she took her medicine as directed that preclude judgment as a matter of law. William v. Kosrae State Hospital, 13 FSM R. 307, 309 (Kos. 2005).

Medical malpractice is negligence in rendering professional medical services. William v. Kosrae State Hosp., 18 FSM R. 575, 580 (Kos. 2013).

Generally, one who undertakes to render professional service is under a duty to the person for whom the service is to be performed to exercise such care, skill, and diligence as someone in that profession ordinarily exercises under like circumstances. William v. Kosrae State Hosp., 18 FSM R. 575, 580-81 (Kos. 2013).

A doctor and the state hospital did not breach their duty to render professional medical services when they exercised such care, skill, and diligence as someone in that profession ordinarily exercises under like circumstances when they correctly diagnosed the patient's ailment, when they recommended her for off-island referral to an appropriate medical facility since they were unable to do the tests to confirm their diagnosis and since they were unable to offer all of the treatment options that might be needed, and when they offered her appropriate medical care as an in-patient until she could go to an off-island medical facility

for her follow-up, but she refused admission. William v. Kosrae State Hosp., 18 FSM R. 575, 581 (Kos. 2013).

Since a patient may always refuse medical treatment, the Kosrae defendants cannot be said to have breached their duty of care and be held liable for the results of the patient's refusal to remain at Kosrae State Hospital for treatment until she could leave for an off-island medical facility. William v. Kosrae State Hosp., 18 FSM R. 575, 581 (Kos. 2013).

The statute that provides that the state may not deny medical care available in the state to a person because of the inability to pay a fee and that makes no distinction in treatment or care because of inability to pay does not apply to off-island airfare because that is not a fee paid to the state government and is not a fee for medical services provided by the state and the off-island medical referral services are not medical care available in the state. William v. Kosrae State Hosp., 18 FSM R. 575, 581-82 (Kos. 2013).

– Negligence – Negligence per se

Violation of a statute creates a rebuttable presumption of negligence. Put another way, the unexcused violation of law which defines reasonable conduct is negligence in itself. Glocke v. Pohnpei, 8 FSM R. 60, 61 (Pon. 1997).

The FSM Supreme Court has never adopted the principle that the violation of a statute constitutes negligence per se giving rise to strict liability, but the court has held that negligence per se in the FSM means that the violation of a statute creates a rebuttable presumption of negligence. Even then, violations of statutory standards may form the basis of a claim of negligence per se only if the plaintiff is within the class of persons whom the statute was intended to protect and if the harm was of the type the enactment was intended to prevent. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 95 (Yap 2013).

The statutory basis for a negligence *per se* claim need not provide for a private right of action. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 95 (Yap 2013).

– Negligence – Professional Malpractice

A claim that a design contractor used the wrong coordinate system for a road survey work seems more like, or as much a professional malpractice claim as a breach of contract claim. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 577 n.9 (Pon. 2011).

FSM law has previously recognized professional malpractice as a cause of action for the profession of medicine (medical malpractice) and for the profession of law (legal malpractice). FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 579 (Pon. 2011).

Adopting the common law standard for professional malpractice (or recognizing it beyond just the medical and legal professions) is desirable, needed, and appropriate, and would be appropriate even if the FSM had an extensive regulatory and licensing regime for professionals. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 579 (Pon. 2011).

Generally, one who undertakes to render professional service is under a duty to the person for whom the service is to be performed to exercise such care, skill, and diligence as men in that profession ordinarily exercise under like circumstances. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 579-80 (Pon. 2011).

U.S. common law decisions are an appropriate source of guidance for the FSM Supreme Court for contract and tort issues unresolved by statutes, decisions of FSM courts, or FSM custom and tradition and professional malpractice may implicate both contract and tort issues. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580 n.13 (Pon. 2011).

The law imposes upon persons performing architectural, engineering, and other professional and skilled services the obligation to exercise a reasonable degree of care, skill and ability, which generally is taken and considered to be such a degree of care and skill as, under similar conditions and like surrounding circumstances, is ordinarily employed by their respective professions. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580 (Pon. 2011).

Unless he represents that he has greater or less skill or knowledge, one who undertakes to render services in the practice of a profession or trade is required to exercise the skill and knowledge normally possessed by members of that profession or trade in good standing in similar communities. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580 (Pon. 2011).

The circumstances to be considered in determining the standard of care, skill, and diligence to be required of a professional include the terms of the employment agreement, the nature of the problem which the supplier of the service represented himself as being competent to solve, and the effect reasonably to be anticipated from the proposed remedies. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580 (Pon. 2011).

Although a professional's duty of care exists independent of and is not created by contract, a contract may furnish the conditions for that duty's fulfilment. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580 (Pon. 2011).

Professional malpractice sounds in tort as a form of negligence. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580 (Pon. 2011).

The reasonable care standards apply similarly to architects, engineers, doctors, lawyers, and like professionals engaged in furnishing skilled services for compensation and general negligence principles apply. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580 (Pon. 2011).

Ordinarily, a determination that the care, skill, and diligence exercised by a professional engaged in furnishing skilled services for compensation was less than that normally possessed and exercised by members of that profession in good standing and that the damage sustained resulted from the variance requires expert testimony to establish the prevailing standard and the consequences of departure from it in the case under consideration. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580-81 (Pon. 2011).

Because the fact-finder is not permitted to speculate as to the standard against which to measure the acts of the professional in determining whether he exercised a reasonable degree of care, expert testimony is required. Only in a few very clear and palpable cases can a court dispense with the expert testimony requirement to establish the parameters of professional conduct and find damages to have been caused by a professional's failure to exercise reasonable care, skill, and diligence. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 581 (Pon. 2011).

Although the argument that acceptance of the 100% design and payment for it is waiver of any claims that the wastewater plant design was defective and that any alleged "defects" were not latent but were obvious and patent and known beforehand could prevail on a breach of contract claim, when this is a professional malpractice tort claim, the question is not whether the contractor breached the contract's terms but whether it violated its duty of reasonable care towards its client. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 581 (Pon. 2011).

When the court does not have before it evidence (and expert testimony would likely be needed) of what a design professional's duty entails when questions are raised about whether a proposal was over-designed or is unworkable under local conditions, the court will not speculate in that regard. The existence of these factual issues bars summary judgment on the professional malpractice allegation. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 581 (Pon. 2011).

When the court has nothing before it about what a design professional's duty is in relation to designing

within a proposed budget, it will not speculate in that regard. Thus, whether the cost overruns in the design were such that they were the result of not exercising the reasonable care a professional in good standing would under similar conditions and like surrounding circumstances is a factual question barring summary judgment. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 582 (Pon. 2011).

When the parties' contract creates the deadlines, the tardy submission of reports, except in the most egregious cases, may be less professional malpractice than a contract breach, although even then the breach might not be material. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 582 n.16 (Pon. 2011).

Even when there is no FSM regulatory or statutory requirement that final design plans be stamped or that certain professionals stamp only certain plans, the court will not speculate about the standard against which to measure the civil engineer's acts in determining whether he acted properly in stamping electrical designs to indicate they were the final version rather than having an electrical engineer do it or indicating it in some other manner since evidence, most likely expert, must be produced about the standard professionals should be expected to follow in the FSM – in this case, not whether plans should be stamped by a professional but whether a civil engineer's stamp on electrical engineering plans is contrary to the degree of care a civil engineer should exercise. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 583 (Pon. 2011).

When, because the only evidence it produced was not competent, the nonmovant has not overcome the movant's admissible evidence that all the required plans were left behind and when the nonmovant gave the movant no opportunity to cure its omission, if in fact it had failed to leave every plan it should have, the movant is entitled to summary judgment on the claim that it committed malpractice by failing to leave its plans behind. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 583-84 (Pon. 2011).

When the movant asked in discovery for how it was to have committed malpractice and the nonmovant did not mention assuring that construction contractors produced shop drawings, the nonmovant is limited to what instances of malpractice it alleged and disclosed and cannot seek to introduce in its summary judgment opposition another instance based on different facts and theory of liability. The movant is therefore entitled to summary judgment on the claim that it committed malpractice by failing to see that the construction contractors produced the required shop drawings. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 584 (Pon. 2011).

Generally, one who undertakes to render professional service is under a duty to the person for whom the service is to be performed to exercise such care, skill, and diligence as someone in that profession ordinarily exercises under like circumstances. William v. Kosrae State Hosp., 18 FSM R. 575, 580-81 (Kos. 2013).

– Negligent Misrepresentation

Negligent misrepresentation is established where the defendant made a false representation of fact which was either known by the defendant to be false or the defendant had an insufficient basis of information to make the factual representation; the representation is made with the intent to induce the plaintiff to act or refrain from acting, in reliance upon the misrepresentation; plaintiff has justifiably relied thereupon; and damage to plaintiff has resulted from such reliance. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 308 (Pon. 2004).

Summary judgment on a negligent misrepresentation claim will be granted when the uncontroverted and dispositive fact is that the defendants misled the plaintiff to believe that his rental fleet would be covered by the insurance policy if the vehicles were damaged while driven by renters, but the defendants failed to bind the type of coverage that was both requested and promised and when the defendants have not attempted to meet their burden of showing that there is a genuine issue of fact as to this claim. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 308-09 (Pon. 2004).

A measure of damages for the tort of negligent misrepresentation (also called deceit) employs the benefit of the bargain rule when damages can be proved with reasonable certainty. Under this principle, the insurer would be entitled to its premium, which would be set off against what it owed its insured. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 469 (Pon. 2004).

Consequential damages, of which economic loss such as lost profits may be an example, are available for negligent misrepresentation (deceit) claims if reasonably foreseeable. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 472 (Pon. 2004).

To claim promissory estoppel a party must prove that: 1) a promise was made; 2) the promisor should reasonably have expected the promise to induce actions of a definite and substantial character; 3) the promise did in fact induce such action; and 4) the circumstances require the enforcement of the promise to avoid injustice. Elements 3) and 4) are sometimes referred to collectively as "detrimental reliance." Misrepresentation, too, contains the elements of reasonable reliance and damages. Johnny v. Occidental Life Ins., 19 FSM R. 350, 358 (Pon. 2014).

It is clear that the plaintiff's claim for negligent misrepresentation must fail when the plaintiff cannot show that the defendant's representations were incorrect. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 478 (Pon. 2014).

The elements of negligent misrepresentation are: 1) false information is supplied as a result of the failure to exercise reasonable care or competence in communicating the information; 2) the person for whose benefit the information is supplied suffered the loss; and 3) the recipient relies upon the misrepresentation. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 430 (App. 2016).

For negligent misrepresentation, a plaintiff must establish: 1) negligence in making 2) a misrepresentation 3) that is material and 4) that causes detrimental reliance. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 430 (App. 2016).

The elements of negligent misrepresentation are: 1) justifiable and detrimental reliance on 2) information provided without reasonable care 3) by one who owed a duty of care. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 430 (App. 2016).

The essential elements of a claim for negligent misrepresentation are that plaintiffs justifiably relied to their detriment on information prepared without reasonable care by a person who owed the relying party a duty of care. Misrepresentation contains the elements of reasonable reliance and damages. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 430 (App. 2016).

When the plaintiff did not plead a negligent misrepresentation cause of action even though many of her factual allegations met all the tort's elements and when the evidence at trial proved that she was entitled to relief under that theory, the elements of which overlap those of the promissory estoppel and detrimental reliance theory that she pled and the trial court analyzed and granted her judgment on, the appellate court will affirm the trial court judgment on the ground that the plaintiff was entitled to relief for negligent misrepresentation because the record contained adequate and independent support that the plaintiff detrimentally relied on an agent's misrepresentation that her daughter was covered until age 25 "no matter what," and that that misrepresentation was material and made without reasonable care. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 430 (App. 2016).

Intentional misrepresentation, negligent misrepresentation, and promissory estoppel all contain elements of detrimental reliance. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 178 n.11 (Pon. 2017).

A negligent misrepresentation claim's essential elements are that the plaintiff justifiably relied to his or her detriment on information prepared without reasonable care by a person who owed the relying party a duty of care. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 178-79 (Pon. 2017).

For a negligent misrepresentation claim: false information must be supplied as a result of the failure to exercise reasonable care or competence in communicating the information; the person for whose benefit the information is supplied suffered the loss; and the recipient relies upon the misrepresentation. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 179 (Pon. 2017).

An employer's alleged statement in 2008 that the worker's employment would last fifty years cannot reasonably be seen as a negligent statement inducing the employee's action in 2010 and 2011 to borrow home construction money from a bank. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 179 (Pon. 2017).

– Nuisance

Nuisance is generally regarded as a substantial interference with the use and enjoyment of another's land caused by intentional and unreasonable conduct, or caused unintentionally by negligent or reckless conduct, or the performance of an abnormally dangerous activity. A substantial interference is actual, material, physical discomfort, material annoyance, inconvenience, discomfort, or hurt, or significant harm, that affects the health, comfort, or property of those who live nearby. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 534 (Pon. 1998).

An intentional invasion of another's interest in the use and enjoyment of land is unreasonable if a) the gravity of the harm outweighs the utility of the actor's conduct, or b) the harm caused by the conduct is serious and the financial burden of compensating for it and similar harm to others would not force the defendant out of business. In determining the gravity of harm, a court will consider the extent and character of the harm, the social value and suitability to the community of the use and enjoyment involved, and the burden on the person harmed of avoiding the harm. In determining the utility of the conduct, a court will consider the social value and suitability to the community of the conduct, and the impracticability of preventing or avoiding the invasion. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 534 (Pon. 1998).

Nuisances are classified as either permanent, continuing, recurring or temporary in nature. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 534 (Pon. 1998).

A permanent nuisance is one which may be expected to continue indefinitely, and is generally caused by a single act that permanently affects the property's value. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 534 (Pon. 1998).

A temporary, recurring or continuing nuisance is one which is intermittent or periodic and can be abated, such as an ongoing or repeated disturbance caused by noise, vibration or a foul odor. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 534 (Pon. 1998).

Nuisances that affect the public at large are classified as public nuisances, while those that affect an individual or a small number of individuals are classified as private nuisances. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 534 (Pon. 1998).

Negligence is a separate tort from nuisance. Although negligence is one kind of conduct upon which liability for nuisance may be based, negligence is not a necessary ingredient for a nuisance. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 534 (Pon. 1998).

There is no liability for nuisance when the structural damage to the plaintiffs' house was caused by the plaintiffs' improper construction, poor maintenance and general deterioration and not by vibrations from the defendant's nearby blasting. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 539 (Pon. 1998).

Defendant created a permanent nuisance with its creation of a cliffline at the boundary of plaintiffs' property that has made plaintiffs' land susceptible to erosion over time, diminishing the value of plaintiffs'

land. Defendant shall compensate plaintiffs for the diminished property value, and further undertake reasonable efforts to stabilize the cliffline to prevent future erosion. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 540 (Pon. 1998).

The first step in evaluating nuisance liability is to determine whether there has been substantial interference with plaintiffs' use and enjoyment of their land. The second step is to determine whether the harm caused by the defendant was intentional or unintentional. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 540 (Pon. 1998).

When harm is intentionally caused, liability attaches if the harm is unreasonable. Under the definition of nuisance, interference is unreasonable if the gravity of the harm outweighs the utility of the conduct, or the harm is serious and the financial burden of compensating for it and similar harm to others would not force the defendant out of business. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 540-41 (Pon. 1998).

If harm is unintentionally caused, nuisance liability will attach when it is the result of negligent or reckless conduct, or the result of an abnormally dangerous activity. If defendant's conduct was unintentional, the next step would be to evaluate whether the conduct was reasonable (i.e. negligence analysis), or the result of an abnormally dangerous activity. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 540-41 n.2 (Pon. 1998).

The focus of a negligence analysis is on the actor's conduct, while the focus of an intentional nuisance analysis is on the resulting interference. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 541 (Pon. 1998).

The logic behind an intentional nuisance analysis is that, regardless of whether a defendant acted with reasonable care, it is unfair (i.e. unreasonable) to allow the defendant to intentionally cause serious harm to a plaintiff without compensating the plaintiff. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 541 (Pon. 1998).

A defendant will not be required to abate its nuisance when it operates under permits granted by appropriate state agencies, its quarrying operation uses proper blasting methods, its quarry operation is necessary, and its quarrying activities have substantial public utility for the people in Pohnpei. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 541 (Pon. 1998).

Nuisance is generally regarded as a substantial interference with the use and enjoyment of another's land caused by intentional and unreasonable conduct, or caused unintentionally by negligent or reckless conduct, or by the performance of an abnormally dangerous activity. Jonah v. Kosrae, 9 FSM R. 335, 341-42 (Kos. S. Ct. Tr. 2000).

The first step of the two-step analysis for nuisance requires that there be a substantial interference with the use and enjoyment of another's land. A substantial interference is actual, material, physical discomfort, material annoyance, inconvenience, discomfort, or hurt, or significant harm, that affects the health, comfort, or property of those who live nearby. Jonah v. Kosrae, 9 FSM R. 335, 342 (Kos. S. Ct. Tr. 2000).

The second step of the analysis for nuisance describes the actions of the potential liable party. The interference with the use and enjoyment of another's land must be caused by intentional and unreasonable conduct, or caused unintentionally by negligent or reckless conduct, or the performance of an abnormally dangerous activity. Jonah v. Kosrae, 9 FSM R. 335, 342 (Kos. S. Ct. Tr. 2000).

A party is not liable for nuisance when there is no evidence that the party intentionally caused the erosion damage, or that its actions were reckless, unreasonable, or abnormally dangerous and when it has already been shown that the party was not negligent. Jonah v. Kosrae, 9 FSM R. 335, 342 (Kos. S. Ct. Tr.

2000).

A claim that some private party has taken or deprived someone of their property is, if it was personal property that was allegedly taken, a claim for conversion or for trespass to chattels, and, if it was real property that was allegedly taken by some private party, it is a claim for trespass (including actions for ejectment) or possibly for nuisance (interference with use and enjoyment of land). They are not due process or takings claims. Rosokow v. Bob, 11 FSM R. 210, 215 (Chk. S. Ct. App. 2002).

Nuisance is generally regarded as a substantial interference with the use and enjoyment of another's land caused by intentional and unreasonable conduct, or caused unintentionally by negligent or reckless conduct, or the performance of an abnormally dangerous conduct. A substantial interference is actual, material, physical discomfort, material annoyance, inconvenience, discomfort, or hurt, or significant harm, that affects the health, comfort, or property of those who live nearby. Ambros & Co. v. Board of Trustees, 11 FSM R. 262a, 262h (Pon. 2002).

An intentional invasion of another's interest in property in the use and enjoyment of land is unreasonable if a) the gravity of the harm outweighs the utility of the actor's conduct, or b) the conduct is serious and the financial burden of compensating for it and similar harm to others would not force the defendant out of business. In determining the gravity of the harm, a court will consider the extent and character of the harm, the social value and suitability to the community of the use and enjoyment involved, and the burden on the person harmed of avoiding the harm. In determining the utility of the conduct, a court will consider the social value and suitability to the community of the conduct, and the impracticability of preventing or avoiding the invasion. Ambros & Co. v. Board of Trustees, 11 FSM R. 262a, 262h (Pon. 2002).

If the actor's conduct is negligent, then to establish a nuisance it must be shown that the actor's negligent or reckless conduct caused a substantial interference with the use and enjoyment of another's land. Ambros & Co. v. Board of Trustees, 11 FSM R. 262a, 262h n.1 (Pon. 2002).

To prevail on a claim for nuisance, a party must show that another substantially interfered with the use and enjoyment of his land by intentional or unreasonable conduct. A substantial interference is actual, material, physical discomfort, material annoyance, inconvenience, discomfort, or hurt, or significant harm, that affects the health, comfort or property of those who live nearby. Ambros & Co. v. Board of Trustees, 12 FSM R. 206, 214 (Pon. 2003).

A nuisance is an activity which arises from unreasonable or unlawful use by a person of his own property, and that disturbs another in possession of his property, or an offensive, unpleasant, or obnoxious thing or practice, especially a continuing or repeated invasion or disturbance of another's right. While it is undisputed that suicides and suicide attempts are events which disturb others, particularly family members and friends, and possibly a large number of persons in the community on a small island such as Kosrae, these events cannot be classified as public nuisances. Kosrae v. Nena, 13 FSM R. 63, 66-67 (Kos. S. Ct. Tr. 2004).

Causes of action for public and private nuisance are recognized in admiralty law, borrowing from traditional common law principles. Admiralty courts look to general sources of the common law for guidance, such as the Restatement (Second) of Torts. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 416 (Yap 2006).

Nuisance law is frequently used to address liability in environmental contamination cases. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 416 (Yap 2006).

A nuisance is a substantial interference with the use and enjoyment of another's land resulting from intentional and unreasonable conduct, or caused unintentionally by negligent or reckless conduct, or the performance of an abnormally dangerous activity. A substantial interference is actual, material, physical

discomfort, material annoyance, inconvenience, discomfort, or hurt, or significant harm, that affects the health, comfort, or property of those who live nearby. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 416 (Yap 2006).

A private nuisance is a non-possessory invasion of another's interest in the use and enjoyment of land. A public nuisance involves an unreasonable interference with a right common to the general public. A nuisance can be both a public and a private nuisance. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 416 (Yap 2006).

To obtain damages in a nuisance action, a person pursuing a private cause of action must have suffered significant harm. To maintain a damage action for public nuisance, a person must have suffered damage different in kind from that suffered by the general public. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 417 (Yap 2006).

When a vessel's grounding and subsequent oil spill was an unreasonable interference with the interests in the affected marine resources, resulting in significant damage, and resulted in physical injury to the reef and mangroves, and other features of the lagoon environment, a significant harm, and when the plaintiffs have suffered an injury special in kind from other Yap residents because of their traditional ownership and use interests in the particularly affected natural resources, the defendants are thus liable to plaintiffs on the theory of both public and private nuisance since the court considers the interest of the Yapese in exclusive use and exploitation of the submerged lands inside the fringing reef analogous to interests in dry land in other common law countries. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 417 (Yap 2006).

Nuisance is a cause of action involving a substantial interference with one's use and enjoyment of one's land caused by another's intentional and unreasonable conduct, or another's unintentional negligent or reckless conduct, or another's performance of abnormally dangerous conduct. Nakamura v. Mori, 16 FSM R. 262, 269 (Chk. 2009).

When the original complaint alleged that the defendants' negligence damaged the plaintiffs' property and interfered with their use and enjoyment of their dwelling, the defendants will not be prejudiced by an amended complaint including a nuisance theory of recovery. Nakamura v. Mori, 16 FSM R. 262, 269 (Chk. 2009).

Nuisance is a cause of action involving a substantial interference with one's use and enjoyment of one's land caused by another's intentional and unreasonable conduct, or another's unintentional negligent or reckless conduct, or another's performance of abnormally dangerous conduct. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 119, 123 (Chk. 2010).

The plaintiffs' nuisance claims fail when there was no evidence supporting a claim that the defendant's contractor's conduct was intentional and unreasonable; when road and drainage maintenance and clearing is not an inherently abnormally dangerous conduct; and when the plaintiffs have failed to prove that the defendant was negligent. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 119, 123-24 (Chk. 2010).

FSM admiralty law recognizes a cause of action for nuisance. The Yapese interest in exclusive use and exploitation of their submerged lands on and within the fringing reef is analogous to interests in dry land. A nuisance is a substantial interference with the use and enjoyment of another's land (either dry or submerged in Yap) resulting from intentional and unreasonable conduct or caused unintentionally by negligent or reckless conduct. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 176 (Yap 2012).

The owners were liable under a nuisance cause of action when its vessels substantially interfered with the plaintiffs' use and enjoyment of the affected reef both when the vessels were present and afterward because of the resulting damage. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 176 (Yap 2012).

When the nuisance damages are the same (or lesser portion of) those awarded for maritime negligence, no further damages will be awarded for the nuisance cause of action. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 176 (Yap 2012).

Defendants may be liable for nuisance regardless of whether they violated any environmental regulations and regardless of and without reference to any environmental regulations or laws. Violation of any such regulations might be used as evidence that a nuisance exists. A plaintiffs' nuisance cause of action is not and cannot be based on statutes or regulations when the complaint would state a common law cause of action for nuisance even if there were no environmental laws. Damarlane v. Damarlane, 19 FSM R. 97, 108 (App. 2013).

National or state environmental laws and regulations are relevant to a nuisance claim only to the extent that failure to comply with those laws and regulations that apply to the defendants, may be evidence that the defendants' conduct is unreasonable, negligent, or reckless. However, reference to those laws is not necessary for the plaintiffs to prevail on a nuisance cause of action. Damarlane v. Damarlane, 19 FSM R. 97, 109 (App. 2013).

Nuisances are classified as either permanent, continuing, recurring or temporary in nature – a permanent nuisance is one which may be expected to continue indefinitely, and is generally caused by a single act that permanently affects the property's value while a temporary, recurring or continuing nuisance is one which is intermittent or periodic and can be abated, such as an ongoing or repeated disturbance caused by noise, vibration, or a foul odor. Damarlane v. Damarlane, 19 FSM R. 97, 109 (App. 2013).

Nuisances that affect the public at large are classified as public nuisances, while those that affect an individual or a small number of individuals are classified as private nuisances. Damarlane v. Damarlane, 19 FSM R. 97, 109 (App. 2013).

Nuisance law is frequently used to address liability in environmental contamination cases. Damarlane v. Damarlane, 19 FSM R. 97, 109 (App. 2013).

The first step in evaluating nuisance liability is to determine whether there has been substantial interference with plaintiffs' use and enjoyment of their land. The second step is to determine whether the harm caused by the defendant was intentional or unintentional. Damarlane v. Damarlane, 19 FSM R. 97, 109 (App. 2013).

When harm is intentionally caused, liability attaches if the harm is unreasonable. Under the definition of nuisance, interference is unreasonable if the gravity of the harm outweighs the utility of the conduct, or the harm is serious and the financial burden of compensating for it and similar harm to others would not force the defendant out of business. Damarlane v. Damarlane, 19 FSM R. 97, 109-10 (App. 2013).

If harm is unintentionally caused, nuisance liability will attach when it is the result of negligent or reckless conduct, or the result of an abnormally dangerous activity. Damarlane v. Damarlane, 19 FSM R. 97, 110 (App. 2013).

Once liability has attached (that is, if the nuisance claims are proven), the remedies that the plaintiffs can seek are money damages for past interference and, when it is a recurring or continuing nuisance, an abatement of the nuisance – an injunction ordering those causing the nuisance to cease certain activities. Damarlane v. Damarlane, 19 FSM R. 97, 110 (App. 2013).

An evidentiary hearing must be conducted before the abatement of a nuisance or injunction can issue (or be denied). This evidentiary hearing may be consolidated with the trial on the merits if the trial is advanced, but one must be held on the application for an injunction. Damarlane v. Damarlane, 19 FSM R. 97, 110 (App. 2013).

When the plaintiffs failed to raise the issue of nuisance, or damages arising from nuisance, at trial, that count of the complaint is waived. Harden v. Inek, 19 FSM R. 244, 252 (Pon. 2014).

A nuisance is generally regarded as a substantial interference with the use and enjoyment of another's land caused by intentional and unreasonable conduct, or caused unintentionally by negligent or reckless conduct, or the performance of an abnormally dangerous activity. A substantial interference is actual, material, physical discomfort, material annoyance, inconvenience, discomfort, or hurt, or significant harm that affects the health, comfort, or property of those who live nearby. Damarlane v. Damarlane, 19 FSM R. 519, 530 (Pon. 2014).

The first step in evaluating nuisance liability is to determine whether there has been substantial interference with plaintiffs' use and enjoyment of their land and the second step is to determine if the harm caused by Defendants was intentional or unintentional. Damarlane v. Damarlane, 19 FSM R. 519, 530 (Pon. 2014).

The defendants are not liable for nuisance caused by noisy members of the public when the defendants do not have the lawful right to exercise control over the revelers' behavior on the causeway, or to ask them to leave. Damarlane v. Damarlane, 19 FSM R. 519, 530-31 (Pon. 2014).

If harm is unintentionally caused, nuisance liability will attach when it is the result of negligent or reckless conduct, or the result of an abnormally dangerous activity. Damarlane v. Damarlane, 19 FSM R. 519, 531 (Pon. 2014).

The focus of a negligence analysis is on the defendants' conduct, while the focus of an intentional nuisance analysis would be on the resulting interference. Damarlane v. Damarlane, 19 FSM R. 519, 531 (Pon. 2014).

Since the plaintiffs could not prove that the defendants' actions in maintaining huts and a small store on the causeway proximately caused the noise pollution affecting the plaintiffs and since the cost to the defendants of removing the huts would substantially outweigh the harm caused to the plaintiffs by the huts, nuisance liability has not attached against the defendants. Damarlane v. Damarlane, 19 FSM R. 519, 532 (Pon. 2014).

Nuisances that affect the public at large are classified as public nuisances, while those that affect an individual or small number of individuals are classified as private nuisances. Damarlane v. Damarlane, 19 FSM R. 519, 532 (Pon. 2014).

As a general rule, a public nuisance gives no right of action to an individual either for equitable relief, or for damages. A private plaintiff may bring an action for public nuisance only where he can show that he has sustained significant damage or injury which is different in type from the harm suffered by the community at large. Damarlane v. Damarlane, 19 FSM R. 519, 532 (Pon. 2014).

When the disposal of human waste into the lagoon causes degradation to water quality that harms the community at large, the plaintiffs did not show that they were uniquely affected by this environmental degradation. Therefore the public nuisance cause of action against the defendants for constructing faulty toilet facilities lies with the governmental authorities, and not with the private plaintiffs. Damarlane v. Damarlane, 19 FSM R. 519, 532 (Pon. 2014).

While negligent conduct can give rise to a nuisance claim when the conduct has caused substantial interference with the use and enjoyment of another's property that causes substantial harm, when the amount of damage and whether there was substantial harm are genuine issues of material fact, summary judgment will be denied. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 21 (Yap 2018).

Private nuisance is a tort that protects the interest of those who own or occupy land from conduct committed with the intention of interfering with a particular interest–the interest in use and enjoyment. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 156 (Chk. 2019).

The distinction between trespass and nuisance is that trespass is an invasion of the plaintiff's interest in the exclusive possession of her land, while nuisance is an interference with her use and enjoyment of it. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 156 (Chk. 2019).

If harm is unintentionally caused, nuisance liability will attach if it is the result of negligent or reckless conduct, or if it is the result of an abnormally dangerous activity. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 156 (Chk. 2019).

Often the situation involving a private nuisance is one where the invasion is intentional merely in the sense that the defendant has created or continued the condition causing the interference with full knowledge that the harm to the plaintiff's interest are occurring or are substantially certain to follow. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 157 (Chk. 2019).

A nuisance can be both a public and a private nuisance, but to maintain a damage action for public nuisance, a person must have suffered damage different in kind from that suffered by the general public. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 157 (Chk. 2019).

As a general rule, a public nuisance gives no right of action to an individual either for equitable relief, or for damages, and a private plaintiff may bring an action for public nuisance only if she can show that she has sustained significant damage or injury that is different in type from the harm suffered by the community at large. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 157 (Chk. 2019).

Nuisance as a substantial interference with the use and enjoyment of another's land. Nuisance occurs if the substantial interference with the enjoyment of one's land arises from intentional (or negligent) unreasonable conduct, or the performance of an abnormally dangerous activity. "Substantial interference" is an actual, material, physical discomfort, material annoyance, inconvenience, discomfort, or hurt, or significant harm, that affects the health, comfort, or property of those who live nearby. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 422 (Chk. S. Ct. Tr. 2019).

A public utility did not create a nuisance when it installed primary electric poles and replaced pipes because neither qualify as unreasonable conduct nor an abnormally dangerous activity. Public utilities often engage in the installation and replacement of utilities to provide the entire community with a higher standard of living. Neither create any realistic danger to the landowner or surrounding landowners and they provide benefits to the community. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 423-24 (Chk. S. Ct. Tr. 2019).

A nuisance cause of action may arise when a defendant has been negligent and that negligence has substantially interfered with the plaintiff's use and enjoyment of his property. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 621 (Chk. S. Ct. App. 2020).

Diminution of a property's value is not the sole measure of nuisance damages. Special damages may also be awarded for nuisance. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 621 (Chk. S. Ct. App. 2020).

When the nuisance, or the injury arising from it, is not permanent and has been or can be abated, the plaintiff usually recovers the depreciation in the rental or use value of his or her property during the period in which the nuisance exists, plus any special damages, but rental and use value are not necessarily the same thing, and a plaintiff who actually occupies the premises may recover the "use value," or special value to him or her. Discomfort or inconvenience in the use of the property is, of course, relevant to both establish special damage and as evidence bearing on the loss of rental or use value. Chuuk Public Utility Corp. v.

Rain, 22 FSM R. 612, 621 (Chk. S. Ct. App. 2020).

In a nuisance case, the land occupant may recover special damages in addition to the depreciation in market or use value. This commonly includes damages for personal discomfort or illness resulting from the nuisance, and the plaintiff may also recover the reasonable cost of his or her own efforts to abate the nuisance or prevent future injury. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 622 (Chk. S. Ct. App. 2020).

– Product Liability

A plaintiff who establishes the existence of risk factors which may have caused the injury, must show that these risk factors did in fact cause the injury. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 348, 353 (Pon. 2001).

It is enough that the plaintiff introduce evidence from which reasonable men may conclude that it is more probable that the event was caused by the defendant than that it was not. Stated another way, it does not require that the proof eliminate every possible cause other than the one on which plaintiff relies, but only such other causes, if any, which fairly arise from the evidence. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 348, 353 (Pon. 2001).

When no product defect is found, causes of action based on strict product liability and on breach of warranty fail and *res ipsa loquitur* is not applicable. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 348, 353 (Pon. 2001).

On a design defect products liability claim, evidence of other accidents is admissible to show a dangerous condition so long as the proponent makes a foundational showing that the prior accidents occurred under substantially the same circumstances. Further, evidence proffered to illustrate the existence of a dangerous condition necessitates a high degree of similarity because it weighs directly on the ultimate issue to be decided by the finder of fact. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 583 (Pon. 2002).

When the alleged defect in the kerosene resulted from the contamination of the product, and not its design, logic dictates that the plaintiff must show a high degree of similarity between the accident in this case and the accidents in the other cases before the other accidents will be admitted on the question of the dangerous condition of the allegedly contaminated product. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 583 (Pon. 2002).

When the instant case is similar to the other accidents to the extent that the alleged defect is the same, i.e., contaminated kerosene, but the manner in which the other accidents occurred is quite different, the other accidents are not sufficiently similar to be admissible on the question of dangerousness. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 583 (Pon. 2002).

– Respondeat Superior

Under the common law there are only two reasons for distinguishing between agents of a principal who are "servants" or "employees" of the principal and agents who are independent contractors. The most common is to determine the possible liability of the principal for torts of the agent within the scope of employment. The second purpose is to determine the obligations, rights and immunities between the principal and the agent. The earlier common law rules making distinctions for this purpose have for the most part been supplanted by social legislation such as workers' compensation, minimum wage, fair labor standards, social security and income tax laws. Rauzi v. FSM, 2 FSM R. 8, 15 (Pon. 1985).

The emphasis in governmental tort liability cases has been on the special status of government, its functions and its officials rather than on the degree of control tests commonly employed in

nongovernmental cases. Even those commentators who specifically note that the *respondeat superior* doctrine applies to the government analyze governmental liability issues in terms of public policy considerations rather than through a degree of control analysis which distinguishes between closely supervised and high-ranking officials. Rauzi v. FSM, 2 FSM R. 8, 16 (Pon. 1985).

A corporation and its shareholders are liable for the wrongful act of their employees under the doctrine of *respondeat superior*. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 70 (Pon. S. Ct. Tr. 1986).

Whether the relationship between U.S. National Health Service Corps doctors and the State of Pohnpei is such that the doctrine of *respondeat superior* may be applicable in an action for medical malpractice so that the state may be made to respond in damages for any negligence of the doctor has not been determined. Amor v. Pohnpei, 3 FSM R. 519, 536 (Pon. 1988).

An employer may be liable for the negligent acts of employees, but not for acts committed outside the scope of employment. Suka v. Truk, 4 FSM R. 123, 126 (Truk S. Ct. Tr. 1989).

An employer generally may not be held liable for punitive damages for the tortious acts of its employees. However, an employer may be held liable for punitive damages if 1) the employer authorized the act, 2) the employer knew the employee was unfit for the position at the time of the hiring, or 3) the employer ratified the tortious act of the employee. Meitou v. Uwera, 5 FSM R. 139, 146 (Chk. S. Ct. Tr. 1991).

When force is employed by a police officer in an apparent use of official authority, the governmental employer should be held responsible for what is done. Plais v. Panuelo, 5 FSM R. 179, 201 (Pon. 1991).

A state's ratification and acceptance of its employee's torts through its subsequent conduct is an independent ground for holding the state jointly and severally liable for those torts. Plais v. Panuelo, 5 FSM R. 179, 202-03 (Pon. 1991).

The doctrine of *respondeat superior* is not to be used to determine whether a governmental entity is liable under 11 F.S.M.C. 701(3) for civil rights violations inflicted by government employees. The government entity may be held liable under 11 F.S.M.C. 701(3) when violations are caused by officials who are responsible for final policy making with respect to the of action chosen from various alternatives. Plais v. Panuelo, 5 FSM R. 179, 205-06 (Pon. 1991).

The individuals owning an unincorporated business are liable under the *respondeat superior* principle for the tortious injuries caused by their employee who was acting on behalf of the business and within the scope of his employent. Ludwig v. Mailo, 5 FSM R. 256, 259 (Chk. S. Ct. Tr. 1992).

Since the plaintiffs could have discovered the defendant's true ownership interest in the liable employer, it would place an undue burden on a minority interest owner in an unincorporated business to impose liability on him in excess of his ownership interest. Ludwig v. Mailo, 5 FSM R. 256, 260 (Chk. S. Ct. Tr. 1992).

The state, not the chief of police, is vicariously liable under the doctrine of respondeat superior for the torts of its police officers committed in the course and scope of their employment when force is employed in the use of even apparent official authority. Davis v. Kutta, 7 FSM R. 536, 545-46 (Chk. 1996).

Although a town government is not automatically liable for all the torts of its agents and employees, it is liable for those torts committed in the course and scope of employment under the doctrine of respondeat superior. When force is employed by police officers in use of even apparent official authority, the government employer should be held responsible for whatever results. Conrad v. Kolonia Town, 8 FSM R. 183, 192 (Pon. 1997).

A fishing association is not liable under a general theory of agency when the complaint does not make a general agency allegation, and instead asserts liability based on an agreement's language, and nothing in the agreement renders the other defendants the agents of the fishing association such that the association is liable under the respondeat superior doctrine for the damages flowing from a vessel's alleged negligent operation. Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM R. 112, 115 (Kos. 2001).

The doctrine of *respondeat superior* may be applied to impose liability upon a state for the negligent torts of its employees. The theory may also be applied to intentional torts when committed by a police officer or other official in an apparent use of official authority. In other words, a state may only be held liable for torts committed in the scope of employment. Annes v. Primo, 14 FSM R. 196, 204 (Pon. 2006).

Generally, the question of whether a police officer acted within the scope of employment is a question of fact, rather than a legal question, although, if the facts are undisputed and can support only one conclusion, the inquiry becomes legal. Thus to survive a defendant's motion to dismiss, it is enough that the plaintiff has alleged assault and battery by a government employee cloaked with the authority of the state. Annes v. Primo, 14 FSM R. 196, 204 & n.3 (Pon. 2006).

When confronted with a situation where a principal may be held vicariously liable for its agent's acts, a plaintiff, at the plaintiff's option, may sue either the principal, the agent, or both. Thus, an agent is not an indispensable or necessary party to a vicarious liability claim against the principal. Nakamura v. Mori, 16 FSM R. 262, 268 (Chk. 2009).

Since an agent is not an indispensable party to a vicarious liability claim against the principal, the principal would not be prejudiced if leave were granted to amend the complaint against it to include a vicarious liability claim against it for an agent's acts even if the plaintiffs do not also sue the agent. Nakamura v. Mori, 16 FSM R. 262, 268 (Chk. 2009).

An employee is herself jointly and severally liable with her employers for the checks she converted by cashing them while she was their employee because, under the doctrine of respondeat superior, an agent's act within the scope of his or her agency is the act of the principal, and the result is that both the principal and the agent are jointly and severally liable to the person injured by the wrongful act. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 438 (Pon. 2009).

Both principal and agent are jointly and severally liable for the torts that the agent commits in the course and scope of the work performed for the principal. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 446 (Pon. 2009).

Vicarious liability is not a cause of action but a means by which a defendant is held liable for the act of another, such as a principal being held liable for the torts or contracts of its agent. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 48 (Chk. 2010).

An agent who employs a subagent is the latter's principal and is responsible both to third persons and to his principal for the subagent's derelictions. Thus the agent is subject to liability to the principal for harm to the principal's property or business caused by the subagent's negligence or other wrong to the principal's interests. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 (App. 2012).

Since supervisory liability requires proof of the underlying liability of the officers being supervised, when the officers on the scene cannot be held liable because they did not breach any duty owed to the decedent and because they were not the proximate cause of his death, the Director of Public Safety (and Chuuk as respondeat superior) cannot be held liable either. Ruben v. Chuuk, 18 FSM R. 425, 431 (Chk. 2012).

Vicarious liability is not a cause of action but a means by which a defendant is held liable for the act of another, such as a principal being held liable for the torts or contracts of its agent. Respondeat superior is

just the same doctrine holding an employer or a principal liable for the employee's or agent's wrongful acts. Neither term describes a cause of action. George v. Palsis, 19 FSM R. 558, 570 (Kos. 2014).

When two of the corporation's officials remain as defendants, the plaintiff's claim of respondeat superior or vicarious liability will not be dismissed since the corporation is still potentially vicariously liable for any liability they might have. George v. Palsis, 19 FSM R. 558, 571 (Kos. 2014).

– Strict Liability

Any liability of the state for suffering or death caused by defective health care provided by the state must be based upon theories of negligence, not strict liability. Amor v. Pohnpei, 3 FSM R. 519, 534 (Pon. 1988).

Strict liability arises where the activity performed is not merely dangerous, but abnormally dangerous. One who carries on an abnormally dangerous activity is subject to liability for harm to the person, land or chattels of another resulting from the activity, although he has exercised the utmost care to prevent the harm. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 535 (Pon. 1998).

Strict liability is limited to the kind of harm, the possibility of which makes the activity abnormally dangerous. In determining whether an activity is abnormally dangerous, the following factors are to be considered: a) the existence of a high degree of some harm to the person, land or chattels of others; b) the likelihood that the harm that results from it will be great; c) the inability to eliminate the risk by the exercise of reasonable care; d) the extent to which the activity is not a matter of common usage; e) the inappropriateness of the activity to the place where it is carried on; and f) the extent to which its value to the community is outweighed by its dangerous attributes. Whether the activity is an abnormally dangerous one is to be determined by the court. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 535 (Pon. 1998).

A strict liability claim will be rejected when the defendant's blasting was not performed in an abnormally dangerous manner. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 541 (Pon. 1998).

Strict liability arises where the activity performed is not merely dangerous, but abnormally dangerous, so that one who carries on an abnormally dangerous activity is subject to liability for harm to the person, land or chattels of another resulting from the activity, although he has exercised the utmost care to prevent the harm. Nakamura v. Mori, 16 FSM R. 262, 269 (Chk. 2009).

When there is nothing inherently abnormally dangerous about road drainage systems, a proposed amendment to add a strict liability claim for damages from a road drainage system would be denied as futile since it would not be able to withstand a summary judgment motion. Nakamura v. Mori, 16 FSM R. 262, 269 (Chk. 2009).

– Trespass

Entering private land is at least technically a trespass, absent express or implied consent to the visit. FSM v. Mark, 1 FSM R. 284, 290 (Pon. 1983).

The FSM Constitution terminated all existing indefinite term land use agreements five years after the effective date of the Constitution. After that date, without a new lease agreement the occupier becomes a trespasser on the land. Billimon v. Chuuk, 5 FSM R. 130, 132 (Chk. S. Ct. Tr. 1991).

Utility poles do not constitute trespass on land when the owner consented to their placement, accepted compensation for crop damage, and signed an agreement which effectively granted an easement for placement of utility poles. Palik v. Kosrae, 5 FSM R. 147, 155-56 (Kos. S. Ct. Tr. 1991).

Encroachment of a road on adjacent parcels is a trespass when the state has not used the property without interruption for the statutory period, nor for a period of time that would make the assertion of plaintiff's rights unfair. Palik v. Kosrae, 5 FSM R. 147, 156 (Kos. S. Ct. Tr. 1991).

When a landowner voluntarily enters into a statement of intent to grant the state an easement the state has not violated the landowner's constitutional rights by "taking" his property without just compensation, and is not liable for trespass. Nena v. Kosrae, 5 FSM R. 417, 425 (Kos. S. Ct. Tr. 1990).

A leasehold interest in land is a sufficient possessory interest to give a party standing to maintain an action for trespass. In re Parcel No. 046-A-01, 6 FSM R. 149, 154 (Pon. 1993).

To prevail in an action for trespass, a plaintiff must prove a wrongful interference with his possessory interest in the property. Damages naturally resulting from the trespass alleged may be proved without being specially pleaded. In re Parcel No. 046-A-01, 6 FSM R. 149, 155 (Pon. 1993).

When plaintiff leaseholders present a written lease agreement and the certificates of title issued to the lessor and the defendants admit to occupying the land in question, the leaseholders have made a prima facie case for trespass. In re Parcel No. 046-A-01, 6 FSM R. 149, 155-56 (Pon. 1993).

Where the alleged trespassers did not claim to have an interest in the land at the time of the determination of ownership they cannot now raise as a defense a claim that the land in question is public land when that issue was decided in the determination of ownership process and certificates of title issued. In re Parcel No. 046-A-01, 6 FSM R. 149, 156-57 (Pon. 1993).

Private individuals lack standing to assert claims on behalf of the public. When the state government has certified ownership of land, and the traditional leaders' suit to have land declared public land failed, private individuals cannot raise the same claim. In re Parcel No. 046-A-01, 6 FSM R. 149, 157 (Pon. 1993).

Noncitizen plaintiffs have standing to sue for trespass if they have a leasehold interest in the land. Ponape Enterprises Co. v. Soumwei, 6 FSM R. 341, 343 (Pon. 1994).

It is unnecessary to have a fee simple title to land in order to bring an action for trespass. All that is needed is a possessory interest. A trespass action is one for violation of possession, not for challenge to title. Ponape Enterprises Co. v. Soumwei, 6 FSM R. 341, 343 (Pon. 1994).

In a trespass case the judgment is for physical possession of the land and the standard is based on who has better right of possession not who has the better title. Ponape Enterprises Co. v. Soumwei, 6 FSM R. 341, 345 (Pon. 1994).

A court need not decide whether a party who is being sued for trespass, and who does not claim ownership, may raise as an affirmative defense a challenge to the validity of a plaintiff's Certificate of Title issued under the Torrens land registration system when the issues raised by the defendant are insufficient to challenge the Certificate of Title. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 51-52 (App. 1995).

A trespass cause of action accrues when there is an intrusion upon the land of another which invades the possessor's interest in the exclusive possession of his land. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 177 (Pon. 1995).

Substantial, open and notorious occupation of land is constructive notice of occupant's claim and puts all persons on inquiry as to the nature of occupant's claim, and whoever willfully avoids learning of such trespass will be charged with constructive notice. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 177-78 (Pon. 1995).

To maintain a trespass action, a plaintiff must prove that at the time of the alleged trespass he had either actual possession or the right to immediate possession. Sana v. Chuuk, 7 FSM R. 252, 254 (Chk. S. Ct. Tr. 1995).

Where a defendant has trespassed on a plaintiff's land by constructing improvements thereon the measure of damages due the plaintiff is an amount equal to the fair market rental value of the land in the place located over the period of use, and also an amount for any damage to trees or food plants during the defendant's use of the property and for any conditions caused by the defendant's trespass and use such as the construction of a garbage dump. Ikanur v. Director of Educ., 7 FSM R. 275, 277 (Chk. S. Ct. Tr. 1995).

In a trespass case, a defendant who made improvements to the plaintiff's property is entitled to offset the value of the improvements against damages caused to the plaintiff's property during the trespass, but all improvements made by the defendant on land without the plaintiff's permission become the plaintiff's property and the defendant has no right to any further use of the improvements without the plaintiff's permission. Ikanur v. Director of Educ., 7 FSM R. 275, 277 (Chk. S. Ct. Tr. 1995).

The common law "incomplete privilege" of one to enter onto the land of another in times of private necessity is essentially codified by 19 F.S.M.C. 805(3), which states that "no person, including the owner or occupier of land may hinder or impede a rescuer." But it cannot have been the intent of 19 F.S.M.C. 805(3) to prevent law enforcement officials from carrying out their official duties in the face of an emergency rescue situation. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 292 (Pon. 1998).

The court's role in a civil trespass case is to determine which party has the greater possessory right to disputed property. In a criminal trespass case, in contrast, the court must determine whether the prosecution has established each element of the crime of trespass beyond a reasonable doubt. Nelson v. Kosrae, 8 FSM R. 397, 403 (App. 1998).

When title to land in a designated registration area becomes an issue in a case involving damage claims for trespass, and there is no pending case before the land commission concerning this land or a previous final determination of ownership, a court may remand the question of ownership to the land commission to be determined within a limited time. Once ownership is determined, the court may proceed because more than an interest in land is at stake, and the land commission can only adjudicate interests in land. Pau v. Kansou, 8 FSM R. 524, 527 (Chk. 1998).

An action for trespass has been broadly defined in the FSM as a wrongful interference with another's possessory interest in property. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 533 (Pon. 1998).

One is subject to liability to another for trespass, irrespective of whether he causes harm to any legally protected interest of the other, if he 1) intentionally and without consent enters land in the possession of the other, or causes a thing or person to do so, or 2) intentionally and without consent remains on the land of the other, or 3) intentionally fails to remove from the land a thing which he is under a duty to remove. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 533-34 (Pon. 1998).

When the intrusion is the result of reckless or negligent conduct, or the result of an abnormally dangerous activity, trespass liability attaches only where harm is caused to the land, to the possessor, or to a thing or a third person in whose security the possessor has a legally protected interest. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 534 (Pon. 1998).

There is no liability for trespass when the construction and use of a turnaround area did not exceed that contemplated by the parties in a valid lease agreement. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 539 (Pon. 1998).

When the parties did not reach a full understanding of what would be provided in exchange for the right

to build an access road across the plaintiffs' land, but the defendant did agree to compensate the plaintiffs in some way, and when the defendant represented to the plaintiffs that the access road, once constructed, would be usable by the plaintiffs' vehicle, the defendant is liable to make the road passable by car or truck. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 539-40 (Pon. 1998).

Defendant committed a trespass when it caused two to three inches of soil to deposit on plaintiffs' land in an area approximately 12 by 14 feet. Defendant is liable to plaintiffs for the cost to return this area of plaintiffs' land to its original condition. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 540 (Pon. 1998).

Actions for trespass shall be commenced within six years after the cause of action accrues. Sipia v. Chuuk, 8 FSM R. 557, 558 (Chk. S. Ct. Tr. 1998).

For trespass the period of limitation begins to run when the project causing the damage is completed, if substantial damage has already occurred, or when the first substantial injury is sustained. Sipia v. Chuuk, 8 FSM R. 557, 559 (Chk. S. Ct. Tr. 1998).

The cause of action arises, and the general statute of limitations begins to run on tort actions for injury to property at the time the injury is sustained. Sipia v. Chuuk, 8 FSM R. 557, 559 (Chk. S. Ct. Tr. 1998).

When the plaintiff claims the state trespassed on her property by installing poles, a road and pipes sometime before the end of 1987 but did not file suit until 1994, recovery will be barred by the six year statute of limitations. Sipia v. Chuuk, 8 FSM R. 557, 559-60 (Chk. S. Ct. Tr. 1998).

In the case of a continuing trespass the statute of limitation does not begin to run from the date of the original entry, but recovery may be had for a period of time not exceeding the statutory period immediately preceding the institution of the action. David v. Bossy, 9 FSM R. 224, 226 (Chk. S. Ct. Tr. 1999).

Where the act of a wrongdoer involves a course of action which is a direct invasion of the rights of another, such conduct is regarded as a trespass of a continuing character. David v. Bossy, 9 FSM R. 224, 226 (Chk. S. Ct. Tr. 1999).

A possessory interest in a land parcel gives standing to maintain an action for trespass and other torts. It is unnecessary to have a fee simple title to the land in order to bring an action for trespass. All that is needed is a possessory interest. Jonah v. Kosrae, 9 FSM R. 332, 334 (Kos. S. Ct. Tr. 2000).

When a plaintiff has been granted the right to utilize the land through land use agreements he holds a sufficient possessory interest to give him standing to maintain an action for trespass. It is unnecessary to have a fee simple title to land in order to bring an action for trespass. Jonah v. Kosrae, 9 FSM R. 335, 343 (Kos. S. Ct. Tr. 2000).

An action for trespass has been broadly defined in the FSM as a wrongful interference with another's possessory interest in property. A trespass cause of action accrues when there is an intrusion upon another's land which invades the possessor's interest in the exclusive possession of his land. To prevail in an action for trespass, a plaintiff must prove a wrongful interference with his possessory interest in the property. Jonah v. Kosrae, 9 FSM R. 335, 343 (Kos. S. Ct. Tr. 2000).

When the state did not intentionally cause the black rocks to appear on the plaintiff's land, it did not intentionally cause a trespass to plaintiff's land, and when the state was not negligent or reckless in constructing the seawall and constructing the seawall was not an abnormally dangerous activity, no trespass liability attaches to, and the state is not liable to, the plaintiff for trespass. Jonah v. Kosrae, 9 FSM R. 335, 343 (Kos. S. Ct. Tr. 2000).

Although under a common law ejectment theory one is privileged to exercise reasonable force to

prevent an intrusion onto his property, provided that he has first requested the intruder to leave the premises, or where circumstances are such that such a request is unnecessary, such a theory would have no application to a case when he said nothing before he started hitting another's car, and the evidence was inconclusive as to whether the driveway was private property from which he would have been entitled to eject intruders. Elymore v. Walter, 9 FSM R. 450, 456 n.1 (Pon. 2000).

When a trespass action is not an action to set boundaries or to determine the ownership of any particular property and when the defendant never directly asserts an ownership interest in the land on which he allegedly trespasses, but rather asserts the rights of third parties, who (and any claims they may have) are not currently before the court, it is not an "action with regard to interests in land" within the meaning of 67 TTC 105 requiring a showing of special cause why action by a court is desirable before it is likely the Land Commission can make a determination on the matter. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 180 (Pon. 2001).

To prevail in an action for trespass, a plaintiff must prove a wrongful interference with his possessory interest in the property. The plaintiff must prove his possession of the property, the time and location of the trespass, and the act of trespass. A cause of action for trespass accrues when there is an intrusion upon the land of another which invades the possessor's interest in the exclusive possession of his land. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 183 (Pon. 2001).

A possessor without a claim of right in real property may maintain trespass against anyone who unlawfully disturbs his possession except against the lawful owner or someone claiming under him. The defendant in such a trespass action may not set up in defense the title of a third person with whom there is no privity or connection. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 185 (Pon. 2001).

A defense to a trespass action that someone other than the plaintiff owned the land would only be material if the defendant alleged that that someone authorized him to use the land. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 185 (Pon. 2001).

When a defendant produces only incompetent evidence, regarding other people and other tracts of land, wholly unrelated to the land on which he is allegedly trespassing, and when the speculative and conflicting statements contained in his pleadings are insufficient to create a material fact as to his right to possess any part of the land, there are no material issues of fact and the plaintiff is entitled to summary judgment on its trespass claim. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 186 (Pon. 2001).

A trespass action is one for violation of possession, not for challenge to title. A trespass case is brought to re-establish possession, not to determine ownership or quiet title. A trespass case is a judgment for physical possession of the land and should be based on the standard of who has the superior right of possession, not who has the better title. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 187 (Pon. 2001).

A trespass defendant's bald assertions of third party ownership does nothing to diminish a plaintiff's superior right to possession of the land as to him and is immaterial to the issue of which party to the trespass action has the superior right of possession. A plaintiff's summary judgment motion will therefore be granted as to this affirmative defense. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 187-88 (Pon. 2001).

Because a trespass claim has either a twenty-year or a six-year statute of limitations, the statute of limitations on a trespass starting November, 1999 will not run for many years. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 188 (Pon. 2001).

When a plaintiff has acted expeditiously to notify a defendant of his trespass as soon as the defendant began construction on the land, there has been no unreasonable delay prejudicing the defendant which could give rise to a laches defense. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 188 (Pon.

2001).

A defendant's summary judgment motion based on assertions of the validity of a third party's potential claim is insufficient as a matter of law to establish a triable issue of fact as to the plaintiff's superior right of possession. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 188 (Pon. 2001).

The absence of a certificate of title does not affect a trespass case when the plaintiff holds the land under a color of title which is superior to the defendant's claimed right of possession. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 188 (Pon. 2001).

When a plaintiff has proven actual possession of part of the land, it operates as possession of the whole of the land covered by the quitclaim deeds. To require all landowners to construct buildings and fences on the entirety of their property in order to protect it from trespassers and interlopers is simply not practical. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 188 (Pon. 2001).

A noncitizen plaintiff who does not have title to the land may sue for trespass if he has a possessory interest. Marcus v. Truk Trading Corp., 10 FSM R. 387, 390 (Chk. 2001).

An action for trespass is for a wrongful interference with another's possessory interest in property. The court's role in a civil trespass is to determine which party has the greater possessory right to disputed property. A trespass action is one for violation of possession, not for challenge to title. Shrew v. Killin, 10 FSM R. 672, 674 (Kos. S. Ct. Tr. 2002).

A plaintiff with a certificate of title for a parcel clearly has greater possessory interest to the disputed property so that a defendant is liable for trespass on the plaintiff's parcel when he has entered, cleared and planted crops inside the established boundaries of the plaintiff's parcel without the plaintiff's consent. Shrew v. Killin, 10 FSM R. 672, 674 (Kos. S. Ct. Tr. 2002).

A trespass action is one for violation of possession, not for challenge to title. It is therefore not a proper proceeding for the defendant to challenge title and allege due process violations in the proceedings that determined the plaintiff's title to the parcel. The defendant may challenge the title through separate proceedings as appropriate. Shrew v. Killin, 10 FSM R. 672, 674-75 (Kos. S. Ct. Tr. 2002).

One is subject to liability to another for trespass, irrespective of whether he causes harm to any legally protected interest of the other if he 1) intentionally and without consent enters land in the other's possession, or causes a thing or person to do so, or 2) intentionally and without consent remains on the other's land, or 3) intentionally fails to remove from the land a thing which he is under a duty to remove. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 99-100 (Pon. 2002).

The plaintiffs have made a prima facie case for a trespass cause of action when they have established that they own the land pursuant to certificates of title and that the defendants are on the property without their consent, but in order to determine whether the plaintiffs should be granted summary judgment, the court needs to consider the defendants' arguments in opposition to the plaintiffs' motion, and if the defendants' arguments fail to establish a genuine issue of material fact exists, then it is appropriate for the court to enter summary judgment. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 100 (Pon. 2002).

When, even if a lease were deemed null and void or that the plaintiffs lacked the authority to enter into the agreement, the defendants have still failed to show that the plaintiffs do not own the property or to offer any evidence supporting their claim that they have a right to possession of the property. It would not prevent the plaintiffs from prevailing in their trespass action. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 102 (Pon. 2002).

In a claim for damages to land, such as trespass, all the co-owners of the affected land are indispensable parties to the action and must be joined if they are not already parties; otherwise the

defendant faces a substantial risk that it may be subject to multiple or inconsistent judgments if any of the other persons who claim to be co-owners decide to sue. Ifenuk v. FSM Telecomm. Corp., 11 FSM R. 201, 203-04 (Chk. 2002).

A claim that some private party has taken or deprived someone of their property is, if it was personal property that was allegedly taken, a claim for conversion or for trespass to chattels, and, if it was real property that was allegedly taken by some private party, it is a claim for trespass (including actions for ejectment) or possibly for nuisance (interference with use and enjoyment of land). They are not due process or takings claims. Rosokow v. Bob, 11 FSM R. 210, 215 (Chk. S. Ct. App. 2002).

A cause of action that alleges that the plaintiffs' customary and traditional rights to use an island might be better described as intentional interference with a customary and traditional property right than trespass. That the plaintiffs referred to it as a trespass should not, in itself, be an obstacle to them prevailing on this point if the evidence warrants, because except for judgments rendered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings. Rosokow v. Bob, 11 FSM R. 210, 217 (Chk. S. Ct. App. 2002).

When it is clear that regardless of the probability of appellant's success on appeal, he cannot demonstrate any right to possession of the property at the current time greater than that of the appellee, and when regardless of any stay of execution and of the offering of any supersedeas bond adequate to obtain the court's approval, the appellee is currently entitled to possession of her property pending the appeal's outcome and the appellant is not and must vacate the premises at the earliest possible moment. Konman v. Esa, 11 FSM R. 291, 297 (Chk. S. Ct. Tr. 2002).

As between a bare occupier of land and one holding under a deed, the deed holder has the greater right to possession. Rosario v. College of Micronesia-FSM, 11 FSM R. 355, 359 (App. 2003).

Who had, or has, title to the property was never at issue in a trespass action in which no counterclaim was brought to quiet title to the disputed land. Our law is clear that in an action for trespass, the judgment is for right of possession; in such a case, the issue is who has the superior right to possession, not who has title. Rosario v. College of Micronesia-FSM, 11 FSM R. 355, 359 (App. 2003).

The trial court did not err when it found that one party's right to possess the land was superior to another's because it had color of title, through a quitclaim deed, to the property. Rosario v. College of Micronesia-FSM, 11 FSM R. 355, 359 (App. 2003).

When the record is devoid of evidence that a non-party opposes or has ever challenged ownership of the disputed land, it does not bear on the question of who, as between the parties, has the greater right to possession of the disputed land. Nor are whether, relative to the disputed property, a public hearing was held or a certificate of title issued, or alleged defects in the quitclaim deed by which the plaintiff took its interest germane because these are title questions that do not relate to the issue in a trespass action, which is one of right of possession. These types of claims are insufficient as a matter of law to establish triable issues of fact as to the superior right of possession between the parties. Rosario v. College of Micronesia-FSM, 11 FSM R. 355, 359-60 (App. 2003).

When the action was not one to set boundaries or to determine the ownership of any particular property, the case was not an "action with regard to interests in land" within the meaning of 67 TTC 105 because the defendant never asserted an ownership interest on his own behalf in the land, but rather asserted the alleged rights of third parties who were not before the court. Thus the trial court, when it determined who had the greater possessory right to the disputed property, did not err when it did not refer the matter to the Pohnpei Court of Land Tenure. Rosario v. College of Micronesia-FSM, 11 FSM R. 355, 360 (App. 2003).

It is not practical to require all landowners to construct buildings or build fences on the entirety of their

property in order to protect it from trespassers. Rosario v. College of Micronesia-FSM, 11 FSM R. 355, 360 (App. 2003).

When the College presented competent evidence that the land to which a deed refers is located miles from the disputed property and when Rosario produced only incompetent evidence regarding other people and other tracts of land that was wholly unrelated to land at issue, the trial court correctly concluded that Rosario's evidence relating to his claim of a possessory interest was insufficient to create a genuine issue of material fact as to his right to possess any part of the land. Thus, as between the parties, the College has the greater right of possession. Rosario v. College of Micronesia-FSM, 11 FSM R. 355, 360-61 (App. 2003).

A trespass case will be dismissed for failure to join the land's co-owners as indispensable parties plaintiff because any judgment in a rendered in the co-owners' absence will be prejudicial to the defendant since any of the other co-owners could sue for the same trespass, thus subjecting the defendant to multiple judgments for the same acts; because even a judgment in the defendant's favor would not prevent another co-owner from suing for the same acts; because there are no protective provisions that could be included in a judgment that would lessen the prejudice; and because the plaintiff has an adequate remedy since the dismissal is without prejudice – he may refile the case with the co-owners included. Ifenuk v. FSM Telecomm. Corp., 11 FSM R. 403, 405 (Chk. 2003).

A court can determine no more than who among the parties before it has a better claim to title (or in the case of trespass – possession). A court usually cannot determine who has title good against the world. Land registration (determination of title presumptively good against the world) is the province of the Land Commission and its procedures. Enlet v. Bruton, 12 FSM R. 187, 191 (Chk. 2003).

To prevail in an action for trespass, a party must prove a wrongful interference with his possessory interest in the property. Ambros & Co. v. Board of Trustees, 12 FSM R. 206, 212 (Pon. 2003).

When a party has a valid possessory interest in the property and has shown that another has interfered with his possessory interest, he has proved that the other has trespassed on property to which he has a superior right of possession and he is thus entitled to summary judgment against the other on his claims for trespass. Ambros & Co. v. Board of Trustees, 12 FSM R. 206, 213 (Pon. 2003).

Trespass actions determine who has a better right to possession of the land. Kiniol v. Kansou, 12 FSM R. 335, 336 (Chk. 2004).

When title to land in a designated registration area becomes an issue in a case involving damage claims for trespass, a court may remand the question of ownership to the land commission to be determined within a limited time. Once the land commission has determined ownership, the court may proceed because more than an interest in land is at stake, and the land commission can only adjudicate interests in land. Kiniol v. Kansou, 12 FSM R. 335, 336 (Chk. 2004).

When the issue of the location of the boundary between the plaintiffs' land and the defendant's land is remanded to the Chuuk Land Commission, the owner of the tower on the land with the defendant's permission is not a party to the remanded Land Commission proceedings as that proceeding only concerns title, not trespass to or possession of, land. But it remains a party to the trespass action in court. Kiniol v. Kansou, 12 FSM R. 335, 337 (Chk. 2004).

When the bank's real property mortgage has never been enforced because receivership was the chosen remedy; when no agent of the bank is alleged to have entered or to have quarried the property the plaintiff contends is his; when the receivership was not the bank's agent over which it had control, direction, or authority; when the execution of a mortgage, even an invalid mortgage, is not an "authorization" by the mortgagee for anyone to either enter the mortgaged land or to trespass on another's land, viewing the facts in the light most favorable to the plaintiff, the bank, by asking for and obtaining amended receivership terms

to facilitate aggregate production to meet another's needs and to set up a payment plan for the judgment-creditors' benefit, did not commit or authorize a trespass. The bank is therefore entitled to summary judgment in its favor on the trespass cause of action. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 129-30 (Chk. 2005).

Trespass actions determine who has a better right to possession of the land. Kiniol v. Kansou, 13 FSM R. 456, 458 (Chk. 2005).

When title to land in a designated registration area or its boundaries becomes an issue in a trespass case, a court may remand the ownership question to the Land Commission for it to determine within a limited time. If no special cause has been shown why court action is desirable before the Land Commission can make its boundary determination, the boundary issue should be remanded to the Land Commission. Once the Land Commission has determined ownership or boundaries, the court may proceed when more than an interest in land is at stake, and the Land Commission can only adjudicate interests in land. Kiniol v. Kansou, 13 FSM R. 456, 458 (Chk. 2005).

To maintain a trespass action, a plaintiff must prove that at the time of the alleged trespass he had either actual possession or the right to immediate possession. Mailo v. Chuuk, 13 FSM R. 462, 466 (Chk. 2005).

The court's role in a civil trespass case is to determine which party has the greater possessory right to the property, and an action for trespass has been broadly defined in the FSM as a wrongful interference with another's possessory interest in property. Mailo v. Chuuk, 13 FSM R. 462, 466 (Chk. 2005).

When a defendant has shown a superior right to present possession of a parcel and the plaintiff has not shown any right to immediate possession of any of the parcels he owns or any right to actual possession until 2019, the plaintiff cannot maintain a trespass action against the defendant and the defendant has the superior possessory right and is entitled to summary judgment as a matter of law against the plaintiff on the plaintiff's trespass cause of action. Mailo v. Chuuk, 13 FSM R. 462, 470 (Chk. 2005).

A trespass action is one for violation of possession. George v. Abraham, 14 FSM R. 102, 109 (Kos. S. Ct. Tr. 2006).

A trespass action will be stayed when the court cannot determine which person or persons have right to possession of the land until Land Court proceedings have determined the heirs of the deceased certificate of tile holder. George v. Abraham, 14 FSM R. 102, 109 (Kos. S. Ct. Tr. 2006).

Trespass is wrongful interference with a possessory interest in property. Defendants are liable for trespass if the plaintiff proves he owns or has a possessory interest in the land and the defendants intentionally and without consent enter or remain on the land. Siba v. Noah, 15 FSM R. 189, 196 (Kos. S. Ct. Tr. 2007).

A trespass action is one for violation of possession, not for challenge to title. Siba v. Noah, 15 FSM R. 189, 196 (Kos. S. Ct. Tr. 2007).

Since a trespass action is one for violation of possession, not for challenge to title, when a claim of trespass is raised and title to land is an issue and there is no pending case before a land commission or there is a previous determination of ownership, then the question of ownership may be remanded to the land commission. Once that ownership is determined, then a court can proceed on the trespass claim, if necessary, because a trespass claim involves more than an interest in land. Siba v. Noah, 15 FSM R. 189, 196-97 (Kos. S. Ct. Tr. 2007).

A trespass action is one for violation of possession, not for challenge to title. The court's role in a claim for trespass is to determine which party has the greater possessory right. Thus, when the plaintiff did

not offer evidence to support his claim even though it was his burden to prove that he had the greater possessory right and that the defendant intruded upon that interest and the record shows that the defendant had title and therefore a greater possessory right, the plaintiff's trespass claim must fail. And, when the defendant did not offer evidence of trespass by the plaintiff, so his allegation of trespass raised in his pre-trial brief will also fail. Andon v. Shrew, 15 FSM R. 315, 322 (Kos. S. Ct. Tr. 2007).

A grant of a right of way does not constitute a trespass because trespass laws are intended to protect those who have a right to possess and use land, and the doctrine of trespass does not act to prohibit the grantees' usage of land provided that they stay within the easement or right of way granted to them. Akinaga v. Heirs of Mike, 15 FSM R. 391, 398 (App. 2007).

If a defendant's acts caused trespass on a plaintiff's land and chattels but no actual damages are proven, the plaintiff would be entitled to no more than nominal damages ($1). Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 50 (Chk. 2010).

When a plaintiff, based on its paid-up and unexpired prior lease, had a right superior to a later lessee to possess or occupy a public land lot No. 014-A-08, when the later lessees occupied that lot, they were trespassing. This is because the issue in a trespass action is who among the parties has the superior right to possession. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 112 (Pon. 2010).

If a defendant trespasses on a plaintiff's land but no actual damages can be proven, the plaintiff is entitled to nominal damages ($1). Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 112 (Pon. 2010).

An action for trespass has been broadly defined in the FSM as a wrongful interference with another's possessory interest in property, and a trespass cause of action accrues when there is an intrusion upon another's land which invades the possessor's interest in the exclusive possession of his land. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 119, 124 (Chk. 2010).

To prevail in a trespass action, a plaintiff must prove a wrongful interference with his possessory interest in the property. When the intrusion is the result of reckless or negligent conduct, trespass liability attaches only where harm is caused to the land, to the possessor, or to a thing or a third person in whose security the possessor has a legally protected interest. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 119, 124 (Chk. 2010).

A court does not need the presence of all owners of all property abutting the land's purported boundaries, and any other landowners in the vicinity whose property or property lines would have to appear on a certified survey map to decide the limited issue raised by a plaintiff's cause of action for trespass, that is, to decide whether the defendant is trespassing or occupying land to which the plaintiff church has a better right to possess or occupy. The court does not need to (and without the other necessary parties cannot) determine where all of the other boundaries lie because the only issue properly before the court, and the only issue the court may rule upon without violating the due process rights of non-parties, is whether it is more likely than not that the land the plaintiff leased was owned by the lessor and because the determination of boundaries of any other parts of the land which the plaintiff does not claim a leasehold or of the boundaries of any other parcels of land in the area is not before the court. Church of the Latter Day Saints v. Esiron, 17 FSM R. 229, 233-34 (Chk. 2010).

When there is a prior Chuuk State Supreme Court case that deals with the ownership issue and in which the alleged trespasser may soon be joined, and when the state court, unlike Chuuk Land Commission, has the power to issue monetary awards, the later-filed FSM Supreme Court trespass case will be dismissed without prejudice. Setik v. Pacific Int'l, Inc., 17 FSM R. 304, 307 (Chk. 2010).

A plaintiff must prove a wrongful interference with his possessory interest in the property to include possession of the property, the time and location of the trespass, and the act of trespass in order to prevail, but it is not for the court to assist him in proving any or all of these elements by ordering a Land Commission re-survey absent a showing of special circumstances. For the plaintiff to make the request in

the first place suggests that uncertainty about his land boundaries implicates the allegation of trespass; otherwise it is unclear what the purpose of such a survey would be and while a court order might expedite the certification or surveying of boundaries, that alone is not sufficient to warrant accommodating the request. Truk Trading Co. v. John, 17 FSM R. 382, 384 (Chk. S. Ct. Tr. 2010).

In a successful trespass claim where no evidence exists of actual damages, the trial court will award nominal damages. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 437 (App. 2011).

When a tort claim – trespass – that the state occupied and continues to occupy the plaintiff's property to the exclusion of all others rises to the level of a constitutional claim and a civil rights violation, it is a taking of the plaintiff's property without just compensation. Stephen v. Chuuk, 18 FSM R. 22, 25 (Chk. 2011).

When the plaintiffs have an exclusive leasehold interest in a town lot for the duration of the lease, such a possessory interest is sufficient to support an action for trespass. Harden v. Inek, 19 FSM R. 244, 252 (Pon. 2014).

When the defendants are liable for trespass, but the plaintiff failed to present any evidence of damages at trial, the plaintiff is entitled to nominal damages only, which will be set at one dollar. Harden v. Inek, 19 FSM R. 244, 252 (Pon. 2014).

For either a trespass cause of action or a cause of action against a municipal government for due process violations, the plaintiffs did not have to prove title or ownership, just a greater right to possession. Andrew v. Heirs of Seymour, 19 FSM R. 331, 338 (App. 2014).

To prevail in an action for trespass, a plaintiff must prove a wrongful interference with a valid possessory interest in land. A plaintiff can demonstrate wrongful interference by showing that a defendant, 1) intentionally and without consent enters land in the plaintiff's possession, or causes a thing or person to do so, or 2) intentionally and without consent remains on the plaintiff's land, or 3) intentionally fails to remove from the land a thing which he is under a duty to remove. Damarlane v. Damarlane, 19 FSM R. 519, 528 (Pon. 2014).

For the purpose of establishing trespass, a plaintiff can demonstrate a valid possessory interest in land by proving that at the time of the alleged trespass he had either actual possession, or the right to immediate possession of the land. Damarlane v. Damarlane, 19 FSM R. 519, 528 (Pon. 2014).

Judgment in a trespass case is for physical possession of the land, and the court's role is to determine which party has the greater possessory right to disputed property. Damarlane v. Damarlane, 19 FSM R. 519, 528 (Pon. 2014).

When the court cannot establish that the plaintiffs' pending application under the Pohnpei Residential Shoreline Act of 2009 complies with the Act's requirements, the plaintiffs have not demonstrated an inchoate possessory interest over the landfill by virtue of their pending application for a leasehold interest, and since the plaintiffs do not have title or a leasehold interest in the landfill and cannot demonstrate an inchoate possessory interest under the Act, they cannot demonstrate a legally cognizable property right to exclusive possession of the landfill and therefore their trespass claim must fail. Damarlane v. Damarlane, 19 FSM R. 519, 530 (Pon. 2014).

Since the alleged defect in the deed, in terms of the concomitant condition to the fee simple that conveyed the subject land to the FSM, is a question that does not relate to the issue in this trespass action, which is one of right of possession because In an action for trespass, the judgment is for the right of possession; in such a case, the issue is who has the superior right to possession, not who has title. FSM v. Falan, 20 FSM R. 59, 62 (Pon. 2015).

Under a trespass cause of action, the trespasser is liable for his intentional failure to remove from the land a thing he has a duty to remove. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 78 (Pon. 2015).

The usual remedy for trespass to land (and when applicable nuisance and negligence claims are based on similar facts) is either a judgment for an amount equal to the diminution in the land's value or a judgment for an amount that would be needed to restore the land to its previous condition, whichever is the lesser amount. To award both would constitute an impermissible double recovery. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 78-79 (Pon. 2015).

One is subject to liability to another for trespass, irrespective of whether he causes harm to any legally protected interest of the other if he 1) intentionally and without consent enters land in the other's possession, or causes a thing or person to do so, or 2) intentionally and without consent remains on the other's land, or 3) intentionally fails to remove from the land a thing which he is under a duty to remove. Palasko v. Pohnpei, 20 FSM R. 90, 97 (Pon. 2015).

The defendants are entitled to summary judgment on a plaintiff's trespass claim when unrebutted affidavit evidence defendants shows that the plaintiff told the police to get the pigs from his land and return them and shows that a resident of the property was there and gave him permission to enter the land and retrieve the pigs. Palasko v. Pohnpei, 20 FSM R. 90, 97 (Pon. 2015).

The government owners and users of a right of way across land are not liable for the landowners' neighbors' alleged encroachment on the land. Any remedy for that alleged encroachment, the landowners must seek from their neighbors. Iwo v. Chuuk, 20 FSM R. 652, 656 (Chk. 2016).

Since the Yap Constitution recognizes traditional rights and ownership of marine resources, a vessel's unconsented grounding on Sorol reef constitutes a trespass, and since proof of damages is not necessary to prove trespass, both the grounding and the running of lines from the vessel to the reef are trespasses. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 21 (Yap 2018).

No defendant in a trespass action can plead the *jus tertii* – the right of possession outstanding in some third person – as against the fact of possession in the plaintiff. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 154 (Chk. 2019).

An action for trespass has been broadly defined in the FSM as a wrongful interference with another's possessory interest in property, and a trespass cause of action accrues when there is an intrusion upon another's land which invades the possessor's interest in the exclusive possession of her land. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 155 (Chk. 2019).

Any person in the actual and exclusive possession of the property may maintain the trespass action, although the person has no legal title, and is in wrongful occupation, as for example under a void lease, or in mere adverse possession. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 155 (Chk. 2019).

The lack of proof of actual damage amounts is not fatal to a trespass claim because, in a successful trespass claim when no evidence exists of actual damages, the trial court will award nominal ($1) damages. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 155 (Chk. 2019).

In many jurisdictions, in order for a trespass action to be maintained, the act constituting the invasion of the plaintiff's possessory interest or causing the invasion of the plaintiff's possessory interest must be intentional, so that accidental entries are often actionable when produced negligently or as a consequence of abnormally dangerous activities but not as trespasses. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 156 (Chk. 2019).

It is unclear whether, in Chuuk, there must be an intentional act by the defendant for a plaintiff to be able to maintain a trespass action. It appears that may be needed in Pohnpei, and maybe Kosrae, but where one reported case appears to permit a trespass action when the defendant's act was reckless or negligent conduct, but even then trespass liability would attach only if harm was caused to the land. Thus,

a defendant will be denied summary judgment when sewage was alleged to have been negligently deposited on the land. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 156 (Chk. 2019).

The distinction between trespass and nuisance is that trespass is an invasion of the plaintiff's interest in the exclusive possession of her land, while nuisance is an interference with her use and enjoyment of it. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 156 (Chk. 2019).

The court's role in a civil trespass case is to determine which party has the greater right to possession of the disputed property. It is not an action to determine title. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 162 (Chk. 2019).

An action for trespass is broadly defined in the FSM as a wrongful interference with another's possessory interest in the real property. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 162 (Chk. 2019).

A plaintiff has the burden to prove the amount of any damages caused by the trespass. But a plaintiff's failure to proffer any evidence of monetary damages is, however, not fatal to his trespass claim because monetary damages are not an essential element of the trespass tort since, in a successful trespass action when evidence of actual damages is lacking, the trial court will award nominal ($1) damages. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 163 (Chk. 2019).

Even though the plaintiff did not plead an ejectment cause of action, the court could, if he proves he has a greater current possessory right to the land, grant the plaintiff actual possession of land through an ejectment remedy because, except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 163 (Chk. 2019).

When the plaintiff's certificate of title (and underlying determination of ownership) is ineffective against the lessee, the plaintiff has not shown by the preponderance of the evidence that he has a current possessory interest in the land superior to that of the lessee on the land. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 164 (Chk. 2019).

A co-owner's trespass case will be dismissed for failure to join the land's other co-owner as an indispensable party plaintiff because any judgment rendered in the other co-owner's absence would prejudice the defendant(s). This is because the other co-owner could later sue for the same trespass, thus subjecting the defendant(s) to multiple judgments for the same acts; because even a judgment in the defendant's favor would not prevent another co-owner from suing for the same acts; because no protective provisions could be included in a judgment that would lessen the defendant's prejudice; and because the plaintiff has an adequate remedy since the dismissal is without prejudice, and he may then refile the case with all the other co-owners included as plaintiffs. Nicky v. Chuuk Public Utility Corp., 22 FSM R. 239, 242 (Chk. 2019).

In a claim for damages to land, such as trespass, all the affected land's co-owners are indispensable parties to the action and must be joined if they are not already parties; otherwise the defendant faces the substantial risk that it may be subject to multiple or inconsistent judgments if any of the other co-owners later sue. Nicky v. Chuuk Public Utility Corp., 22 FSM R. 239, 242 n.4 (Chk. 2019).

When the plaintiff's averments in his proposed first amended complaint do not cure the complaint's indispensable party problem, the best course is to dismiss this case without prejudice to any future litigation by all of the land's co-owners (whoever they then are), claiming that the defendants are trespassing on the land. Nicky v. Chuuk Public Utility Corp., 22 FSM R. 239, 243 (Chk. 2019).

While an action for trespass remains proper for the court to hear because it is a court of general jurisdiction under the Chuuk State Judiciary Act of 1990, the Land Commission must resolve the question of title before the court can determine the trespass issue since the tideland was in a land registration area and no special cause was shown for court jurisdiction. Irons v. Rudolph, 22 FSM R. 408, 410 (Chk. S. Ct. Tr. 2019).

To maintain an action for trespass, the plaintiff must prove that: 1) he had actual possession of land and 2) the defendant wrongfully interfered with 3) the plaintiff's possessory interest in that property. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 421 (Chk. S. Ct. Tr. 2019).

An action for trespass has been broadly defined as a wrongful interference with another's possessory interest in property, and a trespass cause of action accrues when there is an intrusion upon another's land which invades the possessor's interest in the exclusive possession of his land. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 421 (Chk. S. Ct. Tr. 2019).

To maintain a trespass action, a plaintiff must prove that at the time of the alleged trespass he had either actual possession or the right to immediate possession. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 421 (Chk. S. Ct. Tr. 2019).

Failure to demonstrate actual damages often warrants only nominal damages for the trespass. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 421 (Chk. S. Ct. Tr. 2019).

No trespass was committed when the public utility already had an easement over the pipes that it replaced on the plaintiff's land, and the law did not require instruction from the land owner since the soil that the utility dug up to replace the pipes was never redistributed – it was placed over the pipes again. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 423 (Chk. S. Ct. Tr. 2019).

No trespass was committed when the public utility placed primary utility poles to connect the general public in that area to electricity because the landowner's right to possessory interest remains subject to the public utility's right to use the soil above and below the land for public utility purposes. Thus, no interference with the land owner's possessory interest occurred. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 423 (Chk. S. Ct. Tr. 2019).

To prevail in a trespass action, a plaintiff must prove a wrongful interference with his interest in the exclusive possession of the land. But any person in the actual and exclusive possession of the property may maintain the trespass action. Ownership is not a requirement. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 620 (Chk. S. Ct. App. 2020).

When it was undisputed that the plaintiff was in actual and exclusive possession of the land, the plaintiff had standing to maintain a trespass action for alleged intrusions into his right of possession of the land. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 620-21 (Chk. S. Ct. App. 2020).

A trespass plaintiff's failure to proffer any evidence of monetary damages is not fatal to his trespass claim – monetary damages are not an essential element of the trespass tort because, if evidence of actual damages is lacking in a successful trespass action, the trial court will award nominal damages. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 621 (Chk. S. Ct. App. 2020).

In a claim for damages to land, such as trespass, all the co-owners of the affected land are indispensable parties to the action and must be joined if they are not already parties. Otherwise, the defendant faces a substantial risk that it may be subject to multiple or inconsistent judgments if any of the other persons who claim to be co-owners decide to sue. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 621 (Chk. S. Ct. App. 2020).

– Trespass to Chattels

The tort of trespass to chattels, or personal property, is the intentional use of or interference with a chattel which is in the possession of another without justification. Trespass includes the unlawful taking away of personal property of another. Whoever commits or causes another to commit an act of trespass is liable for the trespass and its damages. Talley v. Lelu Town Council, 10 FSM R. 226, 234 (Kos. S. Ct. Tr. 2001).

When, although there was substantial evidence to support finding that the plaintiff's personal property had been interfered with or taken away by another person, the plaintiff did not carry his burden of proof to show that either defendant did or caused another person to interfere with or take or move his property away from its designated location, the plaintiff cannot recover on his claim for trespass to chattels. Talley v. Lelu Town Council, 10 FSM R. 226, 235 (Kos. S. Ct. Tr. 2001).

A claim that some private party has taken or deprived someone of their property is, if it was personal property that was allegedly taken, a claim for conversion or for trespass to chattels, and, if it was real property that was allegedly taken by some private party, it is a claim for trespass (including actions for ejectment) or possibly for nuisance (interference with use and enjoyment of land). They are not due process or takings claims. Rosokow v. Bob, 11 FSM R. 210, 215 (Chk. S. Ct. App. 2002).

The tort of trespass to chattels, or personal property, is the intentional use of or interference with a chattel which is in the possession of another without justification, so that when there was no evidence that the defendant intentionally interfered with the plaintiffs' personal property (inside their homes), the plaintiffs fail to prove their trespass to chattels claim. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 119, 124 (Chk. 2010).

The tort of trespass to chattels (personal property) is the intentional use of or interference with a chattel which is in the possession of another without justification. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 154 (Chk. 2019).

Unlike other forms of trespass, trespass to chattels requires some actual damage to the chattel before the action can be maintained, and nominal damages will not be awarded, so that in the absence of any actual damage the action will not lie. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 154 (Chk. 2019).

When the plaintiff has not put forth any admissible evidence that any of her chattels were damaged so that she is entitled to compensation for them; when she has not alleged that any specific chattel was damaged, or its value; and when she has not put forward any evidence that the defendant's interference with her chattels was intentional, the defendant is entitled to summary judgment on the plaintiff's trespass to chattels claim. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 155 (Chk. 2019).

– Unfair Competition

There is no common law tort of unfair competition in the FSM because that field of law has been preempted by the Consumer Protection Act of 1970. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 414 (Pon. 2001).

The Consumer Protection Act of 1970 exclusively provides the means by which unfair competition between businesses should be dealt with under both national and applicable state law. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 415 (Pon. 2001).

The Consumer Protection Act vests consumers with a civil cause of action against anyone engaged in activity which is deceptive or misleading, and authorizes the Attorney General to seek injunctive relief against such activity, to prosecute criminal violations of the Act, and to seek civil and criminal penalties against those who violate the Act. The Act does not provide a means for recourse by businesses against other competing businesses. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 415-16 (Pon.

2001).

The Consumer Protection Act abolishes any common law action for unfair competition. Businesses do not have standing to sue competitors for violations of 34 F.S.M.C. 103, including passing off goods or services as those of another. Because Congress has legislated comprehensively in this field, it should be Congress that decides whether to provide businesses with a private cause of action against competitors for engaging in unfair competition. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 416 (Pon. 2001).

Attempts to threaten or induce merchants not to sell competing products violate 32 F.S.M.C. 303. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 417 (Pon. 2001).

– Use of Excessive Force

In making an otherwise lawful arrest, a police officer may use whatever force is reasonably necessary to effect the arrest, and no more; he must avoid using unnecessary violence. Meitou v. Uwera, 5 FSM R. 139, 143 (Chk. S. Ct. Tr. 1991).

The tort of use of excessive force results from the arrest by a person having the authority to do so but accomplished by the use of unreasonable force. Conrad v. Kolonia Town, 8 FSM R. 183, 191 (Pon. 1997).

A detainee has a civil right to be free of excessive force while detained in the custody. Use of excessive force may constitute a battery. Atesom v. Kukkun, 10 FSM R. 19, 22 (Chk. 2001).

Violating a person's civil right to be free from excessive force while detained by the municipal police, is a violation of 11 F.S.M.C. 701(3). Herman v. Municipality of Patta, 12 FSM R. 130, 135 (Chk. 2003).

A detainee has a civil right to be free of excessive force while detained in the custody. The use of excessive force results from the arrest by a person having the authority to do so but accomplished by the use of unreasonable force. Herman v. Municipality of Patta, 12 FSM R. 130, 136 (Chk. 2003).

Excessive force is defined as the use of unreasonable force by a person having the authority to arrest. A person who has been arrested has the right to be free of excessive force and use of excessive force may constitute battery. Berman v. Pohnpei, 16 FSM R. 567, 575 (Pon. 2009).

Although an arrestee sustained some bruising to her wrists, the bruising was not the result of any arresting officer's conduct since when the arrestee was handcuffed, the cuffs were loose enough that they could slide up and down her wrists and there was enough space between the metal of the cuff and her skin to fit a regular-sized ballpoint pen, but during the travel from the arrest site to the police station, she struggled with the handcuffs, resulting in their tightening further around her wrists. Since the tightening of the handcuffs was not the result of an officer's conduct, but of the arrestee's own movements, the police did not use any unreasonable force in arresting and handcuffing her. Berman v. Pohnpei, 16 FSM R. 567, 575 (Pon. 2009).

Whether the Pohnpei police injured an arrestee through the use of excessive force and thus battered her is a question of fact. Thus, when the trial court found as fact that the arrestee had caused her own injuries by struggling with the handcuffs during the travel from the arrest site to the police station, which resulted in the handcuffs tightening further around her wrists and that the handcuffs' tightening was not the result of an officer's conduct, but rather was the result of her own movements, the police did not cause her injury and no use-of-excessive-force battery could have occurred. Berman v. Pohnpei, 17 FSM R. 360, 372 (App. 2011).

Since a police officer may employ no more force than he reasonably believes to be necessary to effect the arrest, the tort of use of excessive force (which may constitute a battery) results from the arrest by a person having the authority to do so but accomplished by the use of unreasonable force. An arrestee has

a civil right to be free of excessive force when being detained. Palasko v. Pohnpei, 20 FSM R. 90, 97 (Pon. 2015).

In effecting an arrest, a police officer may employ no more force than he reasonably believes to be necessary. The tort of use of excessive force results from the arrest by a person having the authority to do so but accomplished by the use of unreasonable force. Palasko v. Pohnpei, 21 FSM R. 562, 564-65 (Pon. 2018).

– Waste

Damages for waste are normally the difference in value of the property before and after the act of waste. Wolphagen v. Ramp, 8 FSM R. 241, 244 (Pon. 1998).

The damages for waste committed are usually measured by the injury actually sustained and if the value of the premises has been improved by the acts complained of, the complainants will only recover nominal damages, if any, at law. Wolphagen v. Ramp, 8 FSM R. 241, 244 (Pon. 1998).

Damages for waste can also be determined by the cost of repairing or replacing what was wasted when the damage is small in comparison to property's total value and the amount is readily ascertainable. Wolphagen v. Ramp, 8 FSM R. 241, 245 (Pon. 1998).

A lessor may not recover damages for waste when the removal of termite-infested lumber from uninhabitable houses while trying to turn the houses into a bar improved the value of the property, and because if the property had been abandoned without trying to turn the houses into a bar, the lessor would still have become the owner of two uninhabitable houses. Wolphagen v. Ramp, 8 FSM R. 241, 245 (Pon. 1998).

It does not automatically follow that because the lessor could prevent a change in the use of the premises, he should also be compensated as a result of the changes made to the structures when the trial court found that the structures were uninhabitable before the alterations were begun, and when the trial court noted evidence that the changes made had actually improved the structures. Wolphagen v. Ramp, 9 FSM R. 191, 194 (App. 1999).

When the trial court found that houses were uninhabitable before the lessee made alterations, the question is the cost to return the houses to their (uninhabitable) state before the work was done. The trial court holding that the lessor is not entitled to houses in livable condition, made so at the lessee's expense, when he would have been left with uninhabitable houses had the lessee taken no steps to alter the premises will thus be affirmed. Wolphagen v. Ramp, 9 FSM R. 191, 194 (App. 1999).

Nominal damages, or none at all, are awarded for ameliorating waste. Wolphagen v. Ramp, 9 FSM R. 191, 194 (App. 1999).

Waste is permanent harm to real property committed by a tenant. This may include the destruction, misuse, alteration, or neglect of premises by one lawfully in possession thereof. Hartman v. Henry, 22 FSM R. 292, 297 (Pon. 2019).

To constitute waste the act must be wrongful, and it is the general rule that no act of a tenant will amount to waste unless it is or may be prejudicial to the inheritance. Hartman v. Henry, 22 FSM R. 292, 297 (Pon. 2019).

Damages for waste are normally the difference in value of the property before and after the act of waste. Since the damages for waste committed are usually measured by the injury actually sustained, if the value of the premises has been improved by the acts complained of, the complainants will only recover nominal damages, if any, at law. Hartman v. Henry, 22 FSM R. 292, 297 (Pon. 2019).

Proof of diminution in value of property can be made by introducing the cost of repairs, and when the cost of repairs is submitted as evidence, the fact that repairs were not ultimately made does not prevent the property owner from securing recovery based on those estimated costs. Hartman v. Henry, 22 FSM R. 292, 297 (Pon. 2019).

The allowance of damages is to award just compensation without enrichment. There is thus no universal test for determining the value of property injured or destroyed. The mode and amount of proof must be adapted to the facts of each case. Hartman v. Henry, 22 FSM R. 292, 297 (Pon. 2019).

Voluntary (or commissive) waste is committed when a tenant does a deliberate or voluntary destructive act. Hartman v. Henry, 22 FSM R. 292, 297 (Pon. 2019).

Permissive waste occurs when a tenant allows destruction of property by neglect, omission, or permission. Hartman v. Henry, 22 FSM R. 292, 297 (Pon. 2019).

"Meliorating" waste, while technically waste, results when the character of land is altered but it results in the land being improved rather than injured, and acts or conduct which would otherwise constitute waste may be authorized or legalized by an appropriate provision in the document creating a tenancy. Hartman v. Henry, 22 FSM R. 292, 297 (Pon. 2019).

A lessee committed voluntary waste when, at the lease's conclusion, it did not remove certain fixtures from the property in a manner that would render the property safe and the property usable for farming or other uses because, when the lessors did not exercise the option under the lease to purchase fixtures and other property from the lessee, the lessee had the obligation to remove those fixtures in such a manner that it did not diminish the property by creating unsafe conditions. Hartman v. Henry, 22 FSM R. 292, 297 (Pon. 2019).

The lessee did not commit any waste by constructing buildings and structures authorized by the lease agreement, such as the main building, bungalows ("abandoned houses"), or pedestrian bridge. Hartman v. Henry, 22 FSM R. 292, 297 (Pon. 2019).

When the lessee did not have the obligation to restore the property to its original state, damages are recoverable only for the former lessee's acts which rendered the property unsafe and require remediation in order to make the lessor whole. Hartman v. Henry, 22 FSM R. 292, 298 (Pon. 2019).

When the lease did not require the lessee, at the lease's termination, to remove the structures and foundations, the lessor's requested damages will be reduced because the lessee should not have to pay for the removal of slabs and foundations that remain on the property. Hartman v. Henry, 22 FSM R. 292, 298 (Pon. 2019).

Damages for permissive waste is not recoverable, including any damages related to clearing trees and brushes or cutting and removing. Hartman v. Henry, 22 FSM R. 292, 298 (Pon. 2019).

When a bridge that was constructed on the property was, under the lease, a permissible structure that improved the property's value, the former lessee is not liable for its removal. Hartman v. Henry, 22 FSM R. 292, 298 (Pon. 2019).

Damages will be awarded for certain potentially dangerous materials including cut pipes, wires, rebar, certain other items left protruding from the ground and property that were a safety hazard and should have been removed because it resulted in the diminution of the properties' value. Hartman v. Henry, 22 FSM R. 292, 299 (Pon. 2019).

– Wrongful Arrest

Whether or not to pursue a citation in lieu of arresting the vessel lies within the FSM's discretion. Failure to pursue an administrative penalty under the Administrative Penalties Regulations does not render an arrest wrongful. FSM v. Koshin 31, 16 FSM R. 15, 19 (Pon. 2008).

While the fishing violations alleged in the complaint are subject to citation under the Administrative Penalties Regulations, the citation process is not mandatory. The citation process to assess an administrative penalty and a civil lawsuit for civil penalties proceed on two separate tracks. The fact that the FSM has not cited the vessel under the Administrative Penalty Regulations but instead has pursued Title 24 civil penalties is not a sufficient ground as a matter of law upon which to allege a cause of action for wrongful arrest against the FSM. FSM v. Koshin 31, 16 FSM R. 15, 20 (Pon. 2008).

– Wrongful Death

The common law today reflects no policy against wrongful death actions. The Federated States of Micronesia Supreme Court is not required to adopt the restrictive method of interpretation employed by the first courts who approached wrongful death statutes more than a century ago. Luda v. Maeda Road Constr. Co., 2 FSM R. 107, 113 (Pon. 1985).

Wrongful death statutes, including the $100,000 ceiling on wrongful death claims, are part of the law of the states and are not national law. Edwards v. Pohnpei, 3 FSM R. 350, 360 (Pon. 1988).

In a case where a patient died following the normal delivery of her child, where the evidence fails to show any demonstrable effort at diagnosis and no treatment as a result of diagnosis, the standard of care expected of a doctor at the Truk State Hospital was not met and the evidence proves negligence. Asan v. Truk, 4 FSM R. 51, 56 (Truk S. Ct. Tr. 1989).

In a wrongful death claim in Truk State, where the total pecuniary estimated loss was $15,288 and where an infant child lost his mother, there should be a finding for the plaintiff in the maximum amount allowed by law, $50,000. Asan v. Truk, 4 FSM R. 51, 56-57 (Truk S. Ct. Tr. 1989).

In a wrongful death claim, parents of the deceased child are entitled to claim pecuniary damages and damages for their own pain and suffering from the loss of their child. Suka v. Truk, 4 FSM R. 123, 130 (Truk S. Ct. Tr. 1989).

Although the death, and all key events giving rise to the wrongful death claim, occurred in Guam, damages should be determined under FSM law when the claim is brought under 6 F.S.M.C. 503, the FSM wrongful death statute. Leeruw v. FSM, 4 FSM R. 350, 365 (Yap 1990).

The term "pecuniary injury" as used in wrongful death statutes traditionally has been interpreted as including the probable support, services and other contributions that reasonably could have been expected by the beneficiaries had the decedent lived out her full life expectancy, all reduced to present worth. Leeruw v. FSM, 4 FSM R. 350, 365 (Yap 1990).

Since under Yapese custom a daughter in her adult years may be expected to provide certain services for her mother, the loss of such customary services should be considered in calculating the mother's pecuniary injury resulting from her daughter's death. Leeruw v. FSM, 4 FSM R. 350, 365 (Yap 1990).

That a plaintiff parent of a decedent child can be awarded damages to include mental pain and suffering for the loss of such child is an exception to the general rule that wrongful death actions exclude compensation for pain and suffering, medical expenses, emotional distress or sorrow, or loss of companionship or consortium. Leeruw v. FSM, 4 FSM R. 350, 366 (Yap 1990).

Given that a 19-year old daughter is considered a child under Yapese custom, that the decedent was a 19-year old daughter who up to the time of her death continued to live with her parents in Yap and to perform those household chores expected under custom of young female persons within families in Yap,

and that the parents were accompanying their daughter en route to obtain medical services when she died, the daughter was a child within the meaning of 6 F.S.M.C. 503. Leeruw v. FSM, 4 FSM R. 350, 366 (Yap 1990).

A statutory cap on the amount and scope of recovery in a wrongful death action, lawfully enacted by the Kosrae legislature, does not interfere with traditional Kosraean or Micronesian compensation of a victim's family by the tortfeasor. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 361 (Kos. 1992).

Families of wrongful death victims do not constitute a suspect class for purposes of equal protection analysis. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 362 (Kos. 1992).

There is no fundamental interest in unbounded wrongful death recovery requiring strict scrutiny of a state law imposing a recovery cap. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 362 (Kos. 1992).

Among the rational bases supporting the constitutionality of a state statute capping wrongful death recovery are a desire to create foreseeable limits on government liability; to promote insurance; to encourage settlement of claims; and to ease the burden on courts and families of valuing losses incurred through the death of a family member. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 363 (Kos. 1992).

Because there is no survival statute in the FSM that would allow a deceased victim to sue a tortfeasor, the deceased cannot be awarded damages for wrongful death. The statute does allow a deceased's personal representative to sue for wrongful death on behalf of the deceased's relatives. Primo v. Refalopei, 7 FSM R. 423, 430-32 (Pon. 1996).

Damages for lost future earnings are not awardable where they are duplicative and speculative, but damages may be awarded for financial and emotional loss, and for loss, at present value, of customary services that a child would have preformed if not for her wrongful death. Primo v. Refalopei, 7 FSM R. 423, 433-34 (Pon. 1996).

In Chuuk, wrongful death is a state law cause of action created by a Trust Territory statute, 6 TTC 201-203, that is state law pursuant to the FSM and Chuuk Constitutions' transition clauses. Estate of Mori v. Chuuk, 10 FSM R. 6, 13 (Chk. 2001).

The FSM Supreme Court may exercise pendent jurisdiction over a state law wrongful death claim when it arises from the same nucleus of operative fact and is such that it would be expected to be tried in the same judicial proceeding as a plaintiff's national civil rights claims. Estate of Mori v. Chuuk, 10 FSM R. 6, 13 (Chk. 2001).

Jailers, and their superiors, owe detainees a duty of care, which may include the duty to regularly observe a detainee's condition, and may breach that duty by failing to provide the required checks on his condition, had a duty of watchfulness when they are aware or should be aware of the effect on the detainee of the scolding he received and when these failures are the proximate cause of the plaintiff's death, these defendants are liable under 6 TTC 201(1) for the plaintiff's death by neglect. Estate of Mori v. Chuuk, 10 FSM R. 6, 14 (Chk. 2001).

A Public Safety Director, as the policy maker for the department, may, by failing to investigate the issue of accountability for a detainee's death, ratify the shift supervisor's and the jailer's actions. Estate of Mori v. Chuuk, 10 FSM R. 6, 14 (Chk. 2001).

Since wrongful death actions are brought for the exclusive benefit of the deceased's "surviving spouse, the children and other next of kin," 6 TTC 202, when the deceased had no spouse or children, the damages are the next of kin's pecuniary injury. Estate of Mori v. Chuuk, 10 FSM R. 6, 15 (Chk. 2001).

A deceased's parent (or her estate) is entitled to damages that include her mental pain and suffering for the loss of her child that resulted from her child's wrongful death, without regard to provable pecuniary damages. Estate of Mori v. Chuuk, 10 FSM R. 6, 15 (Chk. 2001).

Wrongful death is a state law cause of action created by a Trust Territory statute, 6 TTC 201-203, that is state law pursuant to the FSM and Chuuk Constitutions' transition clauses. Herman v. Municipality of Patta, 12 FSM R. 130, 136 (Chk. 2003).

The FSM Supreme Court may exercise pendent jurisdiction over a state law wrongful death action when it arises from the same nucleus of operative fact and is such that it would be expected to be tried in the same judicial proceeding as the plaintiff's national civil rights claims. Herman v. Municipality of Patta, 12 FSM R. 130, 136 (Chk. 2003).

Wrongful death actions are brought for the exclusive benefit of the deceased's surviving spouse, children and other next of kin. The pecuniary injury consists of funeral expenses (including a novena) and the earnings that the deceased would have used to support his family, had he lived. The future earnings calculation may be based on the victim's continued employment and earnings at the same rate until he reached the FSM retirement age of 60. Herman v. Municipality of Patta, 12 FSM R. 130, 138 (Chk. 2003).

A battery or wrongful death, by itself, does not constitute a civil rights violation. Harper v. William, 14 FSM R. 279, 282 (Chk. 2006).

Wrongful death is a state law cause of action created by a Trust Territory statute that is state law pursuant to the FSM and Chuuk Constitutions' transition clauses. The FSM Supreme Court exercises pendent jurisdiction over a wrongful death action when it arises from the same nucleus of operative fact and is such that it would be expected to be tried in the same judicial proceeding as the national civil rights claims. Lippwe v. Weno Municipality, 14 FSM R. 347, 352 (Chk. 2006).

Wrongful death actions are brought for the exclusive benefit of the deceased's surviving spouse, the children and other next of kin. When the decedent had no spouse or children, the damages are the next of kin's pecuniary injury. Lippwe v. Weno Municipality, 14 FSM R. 347, 353 (Chk. 2006).

A decedent's mother as the deceased's parent is entitled to damages that include her mental pain and suffering for the loss of her child, without regard to provable pecuniary damages. Lippwe v. Weno Municipality, 14 FSM R. 347, 353 (Chk. 2006).

Every wrongful death action is for the exclusive benefit of the surviving spouse, the children, and other next of kin, if any, of the decedent as the court may direct. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 210 (Chk. 2010).

The Trust Territory wrongful death statute is valid as Chuuk state law through the Chuuk Constitution's transition clause. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 210 & n.1 (Chk. 2010).

The Chuuk wrongful death statute phrases the class of persons entitled to recovery in the conjunctive ("and"), not the disjunctive ("or"). Generally the use of the conjunctive "and" instead of the disjunctive "or" would mean that all three named beneficiaries – surviving spouse, children, and next of kin – are within the class of persons for whose benefit a wrongful death action may be brought and construing "and" according to its common and approved English usage would mean that all three groups, spouse, children, and next of kin, compose a single class of beneficiaries in a wrongful death action. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 211 (Chk. 2010).

There is no evidence that the Trust Territory Congress of Micronesia's legislative intent in the wrongful death statute was that "other next of kin" meant only those who would inherit under intestate succession acts, especially since, at the time the Trust Territory wrongful death statute was enacted, there were no

intestate succession acts. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 211 (Chk. 2010).

The Pohnpei Intestate Succession Act cannot be used to restrict the operation of the Trust Territory wrongful death statute now applied as Chuuk state law. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 211 (Chk. 2010).

Under Chuukese custom, children are expected to and do in fact contribute to support of their parents. If they are not married and are employed they give larger amounts than when they have a family of their own, but the support in some amount will continue, in a normal relationship, as long as the parents live. Whether there is an obligation under the custom to support parents or other members of the family, largely depending on their need, does not affect the next of kin's entitlement to damages for pecuniary loss. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 211 (Chk. 2010).

If a decedent had been married, this would not eliminate parental support under custom, nor would it relieve the wrongdoer under the wrongful death statute. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 212 (Chk. 2010).

In determining the class of persons entitled to recovery the better cases favor an extended operation of the wrongful death statutes for the purpose of maximizing their remedial objectives. A remedial objective of the Chuuk wrongful death statute is to compensate those persons who had the right to rely on the decedent for pecuniary support had the decedent lived. Under Chuukese custom, these include, in addition to the decedent's spouse and children, the decedent's parents. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 212 (Chk. 2010).

Since there is no indication that parental support has ceased to be the custom in Chuuk and since parents are undoubtedly "other next of kin" under the Chuuk wrongful death statute, parents of adult children, consistent with custom, are included within the single class of persons entitled to recover in a wrongful death action even when there are other members (surviving spouse and children) of the class present. But even when a plaintiff is within the class of persons who may benefit from a wrongful death action, that plaintiff still must prove pecuniary damages in order for a money judgment to be awarded, and, of course, the plaintiff must also prove the other elements of a wrongful death cause of action. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 212 (Chk. 2010).

When the employer instructed the employees to use safe procedures such as pulling rebars out (or inserting them) from the oceanside and not the roadside and when the employer provided its employees with a safe working place and did not knowingly permit unsafe procedures to be used, it did not breach its duty of care to its employees. Accordingly, since the plaintiff has failed to prove this essential element of a wrongful death claim, she cannot prevail. Roosevelt v. Truk Island Developers, 17 FSM R. 264, 266 (Chk. 2010).

When it was the decedent's own actions that were the proximate cause of his death, the causation element of wrongful death cannot be proven. Ruben v. Chuuk, 18 FSM R. 425, 431 (Chk. 2012).

When a plaintiff cannot prove that the defendants had a duty toward the decedent that the defendants breached, the plaintiff cannot prove an essential element of his case and the defendants must be granted summary judgment. Ruben v. Chuuk, 18 FSM R. 425, 431 (Chk. 2012).

TRANSITION OF AUTHORITY

Amendment or repeal of a Trust Territory statute by Congress need not be explicit to be effective. If a Trust Territory statutory provision is inconsistent or in conflict with a statutory provision enacted by Congress, that provision is repealed by implication. FSM v. Albert, 1 FSM R. 14, 16 (Pon. 1981).

Under article XV, section 1 of the Constitution a Trust Territory Code provision is repealed by a

subsequent statutory provision enacted by the Congress only if the statutory provisions in question are inconsistent or in conflict. Even if certain provisions are repealed, other provisions of that same statute may remain intact if the statute, without the deleted provision, is self-sustaining and capable of separate enforcement. FSM v. Boaz (II), 1 FSM R. 28, 29 (Pon. 1981).

The fact that Congress repealed many provisions of Title 11 of the Trust Territory Code by implication does not lead to the conclusion that all provisions of Title 11 are repealed. FSM v. Boaz (II), 1 FSM R. 28, 29 (Pon. 1981).

Since the national government does not have major crimes jurisdiction over Title 11 Trust Territory Code assaults calling for imprisonment of no more than six months, the repealer clause of the National Criminal Code would not appear to repeal those sections. FSM v. Boaz (II), 1 FSM R. 28, 30 (Pon. 1981).

Secretarial Order 3039, section 2 cleared the way for the assumption of jurisdiction by FSM courts by delegating the judicial functions of the government of the Trust Territory of the Pacific islands to the Federated States of Micronesia. Thus, the High Court's previous exclusive jurisdiction under 6 TTC 251 was effectively delegated to the Federated States of Micronesia, insofar as the Constitution of the Federated States of Micronesia authorizes such jurisdiction. Lonno v. Trust Territory (I), 1 FSM R. 53, 57-58 (Kos. 1982).

The language of Secretarial Order 3039, section 5(a) contemplates continued Trust Territory High Court activity pursuant to the "present procedural and jurisdictional provisions of Trust Territory law" only until new functioning courts are established by the constitutional governments, and recognizes that the jurisdictional provisions of Trust Territory law will necessarily be revised when those courts have been established. Lonno v. Trust Territory (I), 1 FSM R. 53, 59 (Kos. 1982).

A Secretarial Order, issued by one responsible official with full authority to state his intentions and instructions precisely, typically should not require reference to other documents for explanation. It is not a product of compromises and discussions among numerous legislators, where contemporaneous discussion may be especially helpful in determining the intention of the legislature in using certain words. Lonno v. Trust Territory (I), 1 FSM R. 53, 61 (Kos. 1982).

Delegation of former Trust Territory High Court judicial functions under 6 TTC 251 to the courts of the Federated States of Micronesia did not violate Executive Order No. 11021. Lonno v. Trust Territory (I), 1 FSM R. 53, 63 (Kos. 1982).

Interpretation of Secretarial Order 3039 as acquiescing in FSM Supreme Court jurisdiction over suits against the Trust Territory does not conflict with any residual United States obligation to oversee activities of the FSM courts pending termination of the Trusteeship Agreement nor does this interpretation imperil any interest the United States government may have in protecting the Trust Territory government against unfair or overreaching actions by the courts of the new constitutional governments. Lonno v. Trust Territory (I), 1 FSM R. 53, 64 (Kos. 1982).

Trust Territory High Court appellate division jurisdiction by writ of certiorari over appeals from the courts of last resort of the respective jurisdictions of the Federated States of Micronesia, the Marshall Islands, and Palau eliminates any possible risk which might otherwise be posed to the United States or its interests or responsibilities here by the full exercise of constitutional jurisdiction by the courts of the constitutional governments. Lonno v. Trust Territory (I), 1 FSM R. 53, 64-65 (Kos. 1982).

The Secretary of the Interior has the power to terminate the Trust Territory High Court's exclusive jurisdiction over suits against the Trust Territory because that jurisdiction was originally conferred upon the High Court by authority emanating from the Department of Interior. Lonno v. Trust Territory (I), 1 FSM R. 53, 65-67 (Kos. 1982).

The Trust Territory High Court's former exclusive jurisdiction over lawsuits against the Trust Territory government has been delegated to the constitutional governments covered by Secretarial Order 3039. Within the Federated States of Micronesia, the allocation of this former exclusive High Court jurisdiction between the Supreme Court of the Federated States of Micronesia and the various state courts will be determined on the basis of jurisdictional provisions within the Constitution and laws of the Federated States of Micronesia and its respective states. Lonno v. Trust Territory (I), 1 FSM R. 53, 68 (Kos. 1982).

Until the state courts are established, the Trust Territory High Court retains that portion of its exclusive jurisdiction formerly held under 6 TTC 251 which does not fall within the constitutional jurisdiction of the FSM Supreme Court. Lonno v. Trust Territory (I), 1 FSM R. 53, 68 (Kos. 1982).

The Seaman's Protection Act, originally enacted for the entire Trust Territory by the Congress of Micronesia, relates to matters that now fall within the legislative powers of the national government under article IX, section 2 of the Constitution, and has therefore become a national law of the Federated States of Micronesia under article XV. That being so, a claim asserting rights under the Act falls within the FSM Supreme Court's jurisdiction under article XI, section 6(b) of the Constitution as a case arising under national law. 19 F.S.M.C. 401-437. Lonno v. Trust Territory (I), 1 FSM R. 53, 72 (Kos. 1982).

Retention of the power to play a major role in executive functions, to suspend legislation enacted by the Congress, and to entertain appeals from the court of last resort, the very essence of government, suggests that the Trust Territory government remains, not a foreign state, but an integral part of the national government here. Lonno v. Trust Territory (I), 1 FSM R. 53, 72 (Kos. 1982).

Under the present state of affairs, the Trust Territory government cannot be considered a foreign state, citizen or subject thereof within the meaning of article XI, section 6(b) of the Constitution. Lonno v. Trust Territory (I), 1 FSM R. 53, 74 (Kos. 1982).

It would be contrary to the desire of the framers of the Constitution that local officials retain control over local matters if the FSM Supreme Court were to relinquish jurisdiction over issues involving local and state powers to the Trust Territory High Court, which is the least local tribunal now existing in the Trust Territory. In re Nahnsen, 1 FSM R. 97, 110 (Pon. 1982).

The Constitution contemplates that decisions affecting the people of the Federated States of Micronesia will be decided by courts appointed by the constitutional governments of the Federated States of Micronesia. This in turn requires an expansive reading of the FSM Supreme Court's jurisdictional mandate while we await establishment of functioning state courts. In re Nahnsen, 1 FSM R. 97, 111 (Pon. 1982).

Title 11 of TT Code is not inconsistent with nor violative of the FSM Constitution; therefore 11 TTC continued in effect after the effective date of the Constitution and until the National Criminal Code's effective date. Truk v. Otokichy, 1 FSM R. 127, 130 (Truk 1982).

Title 11 of the Trust Territory Code, before the effective date of the National Criminal Code, is not a national law because its criminal jurisdiction was not expressly delegated to the national government, nor is it a power of indisputably national character; therefore, it is not within the FSM Supreme Court's jurisdiction. Truk v. Otokichy, 1 FSM R. 127, 130 (Truk 1982).

The delegation of judicial functions to the Federated States of Micronesia, pursuant to Secretarial Order 3039, section 2 does not by itself give the FSM Supreme Court jurisdiction over Title 11 Trust Territory Code crimes occurring before the National Criminal Code's effective date. Truk v. Otokichy, 1 FSM R. 127, 131 (Truk 1982).

The national and state governments' assumption of powers from the Trust Territory government is accomplished through the transfer and transition approach rather than by operation of law. Manahane v. FSM, 1 FSM R. 161, 167 n.3 (Pon. 1982).

The FSM Supreme Court has jurisdiction to try Title 11 Trust Territory Code cases if they arise under a national law. Title 11 of the Trust Territory Code is not a national law. It was not adopted by Congress as a national law and it did not become a national law by virtue of the transition article. Truk v. Hartman, 1 FSM R. 174, 178 (Truk 1982).

Sections of Title 11 of the Trust Territory Code covering matters within the jurisdiction of Congress owe their continuing vitality to Section 102 of the National Criminal Code. Thus, the criminal prosecutions thereunder are a national matter and fall within the FSM Supreme Court's constitutional jurisdiction. In re Otokichy, 1 FSM R. 183, 185 (App. 1982).

Upon inception of constitutional self-government by the people of the Federated States of Micronesia, criminal law provisions in Title 11 of the Trust Territory Code became the law of governments within the Federated States of Micronesia by virtue of the Constitution's transition provisions. In re Otokichy, 1 FSM R. 183, 187 (App. 1982).

The savings clause, 11 F.S.M.C. 102(2), unlike the other sections of the National Criminal Code, was intended to apply to offenses committed before the Code's effective date. It specifically authorizes prosecutions of Title 11 Trust Territory Code offenses occurring prior to the enactment of the National Criminal Code. Therefore, these prosecutions fall within the FSM Supreme Court's constitutional jurisdiction. In re Otokichy, 1 FSM R. 183, 189-90 (App. 1982).

Change of forum for Title 11 Trust Territory Code cases from the Trust Territory High Court to the FSM Supreme Court is a procedural matter with no effect on the defendants' substantive rights. In re Otokichy, 1 FSM R. 183, 193 (App. 1982).

Any power the Trust Territory High Court, the District Courts and the Community Courts may have to exercise judicial powers within the Federated States of Micronesia is to be exercised not as that of autonomous foreign states but as integral parts of the domestic governments. Those courts continue to exercise trial court functions in Ponape only on an interim basis, until the State of Ponape establishes its own courts, either under its present state charter or under any constitution which Ponape may adopt. In re Iriarte (I), 1 FSM R. 239, 244 (Pon. 1983).

The interim nature and limited purpose of the Trust Territory High Court, the District Courts and the Community Courts does not suggest that these entities are immune to the restraints imposed upon officials authorized to act by constitutions or statutes approved by citizens of the Federated States of Micronesia or their representatives. To the contrary, respect for constitutional self-government and the Trusteeship Agreement provisions to which they trace their power to act here, mandate that these interim entities act with great restraint, only as necessary to supplement the constitutional courts and until creation of constitutional courts here. In re Iriarte (I), 1 FSM R. 239, 244-45 (Pon. 1983).

The exercise of governmental powers by the Trust Territory High Court, the District Courts and the Community Courts must be carried out in a manner consistent with constitutional self-government and are subject to the safeguards erected by the Constitution for citizens of the Federated States of Micronesia. In re Iriarte (I), 1 FSM R. 239, 245 (Pon. 1983).

The Federated States of Micronesia Constitution does not contemplate that FSM citizens should be required to travel to Saipan or to petition anyone outside of the FSM to realize rights guaranteed to them under the Constitution. In re Iriarte (I), 1 FSM R. 239, 253 (Pon. 1983).

The FSM Supreme Court should not intrude unnecessarily in the efforts of the Trust Territory High Court to vindicate itself and other judges through court proceedings within the Trust Territory system. In re Iriarte (I), 1 FSM R. 239, 254 (Pon. 1983).

The Constitution does not contemplate that FSM citizens must first petition any person or body outside the Federated States of Micronesia as a condition to consideration of their constitutional claims by courts established under this Constitution. In re Iriarte (II), 1 FSM R. 255, 267 (Pon. 1983).

The Trust Territory High Court is an anomalous entity operating on an interim basis adjacent to a constitutional framework and consisting of judges appointed by officials of the United States Department of the Interior. These and other considerations point toward the propriety and necessity of vigilance by the FSM Supreme Court to uphold the constitutional rights of FSM citizens. In re Iriarte (II), 1 FSM R. 255, 267 (Pon. 1983).

Transfer of a case not in active trial in the Trust Territory High Court is mandatory unless the legal rights of a party are impaired by the transfer. U.S. Dep't Int. Sec'l Order 3039, § 5(a) (1979). Actouka v. Etpison, 1 FSM R. 275, 277 (Pon. 1983).

National court jurisdiction over the Trust Territory Weapons Control Act is consistent with 12 F.S.M.C. 102 which states in part that criminal prosecutions shall be conducted in the name of the Federated States of Micronesia for violations of the statutes of the Trust Territory which continued in effect by virtue of the transition article of the Constitution and which are within the FSM national government's jurisdiction. 11 F.S.M.C. 1201-1231. FSM v. Nota, 1 FSM R. 299, 303 (Truk 1983).

8 F.S.M.C. 206 authorizes the transfer of authority from the Trust Territory and its officials to the Federated States of Micronesia government and its officials. Thus the reference in the Trust Territory Weapons Control Act to the High Commissioner and the Attorney General of the Trust Territory does not prevent its effectiveness as national law of the Federated States of Micronesia. 11 F.S.M.C. 1201-1231. FSM v. Nota, 1 FSM R. 299, 303 (Truk 1983).

The Trust Territory High Court has the legitimate authority to issue writs of certiorari for cases from the FSM Supreme Court; the Supreme Court cannot disregard an opinion resulting from such review. U.S. Dep't Int. Sec'l Order 3039, § 5(b). Jonas v. Trial Division, 1 FSM R. 322, 326-29 (App. 1983).

A writ of certiorari is improvidently granted by the Trust Territory High Court unless the FSM Supreme Court decision affects the Secretary of the Interior's ability to fulfill his responsibilities under Executive Order 11021. Jonas v. Trial Division, 1 FSM R. 322, 329 n.1 (App. 1983).

Title 5 of the FSM Code, including section 514, is in essence the Trust Territory High Court judiciary act. The statute was enacted when the Trust Territory High Court had general original jurisdiction over criminal cases within the area that is now the Federated States of Micronesia. The act was not deleted in the codification process but remains part of the body of FSM national law because at the time of codification, the Trust Territory High Court still had extensive original jurisdiction in the Federated States of Micronesia. In re Raitoun, 1 FSM R. 561, 564 (App. 1984).

In light of the Constitution's Transition Clause, action by the FSM Congress is not necessary in order to establish that violations of the Weapons Control Act are prohibited within the Federated States of Micronesia. The only question is whether those are state or national law prohibitions or both. If the definition of major crimes in the National Criminal Code bears upon the Weapons Control Act at all, it is only for that purpose of allocating between state and national law. Joker v. FSM, 2 FSM R. 38, 43 (App. 1985).

The Transition Clause of the FSM Constitution effectively adopts statutes of the Trust Territory, including the Weapons Control Act, and serves as the original enactment of a body of law, criminal as well as civil, for the new constitutional government. Further action by the FSM Congress is not necessary to establish that violations of the Weapons Control Act are prohibited within the FSM. Joker v. FSM, 2 FSM R. 38, 43 (App. 1985).

Public Law No. 2-48, promulgating the codification of the FSM statutes and speaking only of "All enacted law of the Interim Congress of Micronesia . . . and all enacted law of the Congress law of the Federated States of Micronesia" as "readopted and reenacted as positive law of the Federated States of Micronesia," may not be interpreted as an attempt to repeal or purge the Trust Territory law from the law of the Federated States of Micronesia. Joker v. FSM, 2 FSM R. 38, 43 (App. 1985).

There is nothing absurd about a weapons control scheme that recognizes that both the national and the state governments have an interest in controlling the possession, use and sale of weapons. While Congress and the states may eventually wish to allocate their respective roles with more precision, the current Weapons Control Act appears to provide a workable system during these early years of transition and constitutional self-government. Joker v. FSM, 2 FSM R. 38, 44 (App. 1985).

In declining to "reenact" in Public Law No. 2-48 provisions originating with High Commissioners or Congress of Micronesia, Congress seems to have been motivated by transitional considerations rather than a desire to withhold official status from those laws. FSM v. George, 2 FSM R. 88, 92 (Kos. 1985).

Procedural statute 6 F.S.M.C. 1018, providing that the court may tax any additional costs incurred in litigation against the losing party other than fees of counsel, applies only to Trust Territory courts and not to courts of the Federated States of Micronesia, and therefore does not preclude the FSM Supreme Court from awarding attorney's fees as costs. Semens v. Continental Air Lines, Inc. (II), 2 FSM R. 200, 205 (Pon. 1986).

The gross revenue tax as enacted by the Congress of Micronesia continued in effect in the Federated States of Micronesia by virtue of the transition article of the FSM Constitution but, because it was subsequently amended by the FSM Congress and was included in the codification of FSM statutes, may now be considered a law enacted by Congress. Afituk v. FSM, 2 FSM R. 260, 264 (Truk 1986).

According to Secretarial Order No. 3039, § 5(a), all cases against the Trust Territory of the Pacific Islands and the High Commissioner that were filed in the FSM at the time the Truk State Court was certified will continue to remain within the exclusive jurisdiction of the High Court. Those cases filed after certification are not within the jurisdiction of the High Court. Suda v. Trust Territory, 3 FSM R. 12, 14 (Truk S. Ct. Tr. 1985).

Under the Constitution of the Federated States of Micronesia, the national government, not the state governments, assumes any "right, obligation, liability, or contract of the government of the Trust Territory." Salik v. U Corp. (I), 3 FSM R. 404, 407 (Pon. 1988).

The underlying principle of the Transition Clause of the Constitution, FSM Const. art. XV, § 1, is that a new constitution ought to bring with it no greater changes than are necessary to effectuate its terms. FSM v. Oliver, 3 FSM R. 469, 476 (Pon. 1988).

That a carryover statute covers topics that now fall into areas of both state and national responsibilities is not a sufficient ground for reducing the reach of the statute or allowing it to fall short of its originally intended scope. FSM v. Oliver, 3 FSM R. 469, 477 (Pon. 1988).

If neither state nor national powers alone are sufficient to carry out the original purposes of a carryover statute, or if state and national powers are invoked, then the statute is enforceable as both state and national law. FSM v. Oliver, 3 FSM R. 469, 477 (Pon. 1988).

Determinations as to whether claims of citizens against the previous Kosrae state chartered government may now be upheld against the constitutional state government are to be made by the judiciary on the basis of: 1) when the cause of action arose; 2) the identity of the officer or person whose action created the liability; and 3) the place where the original action creating the liability occurred. Seymour v. Kosrae, 3 FSM R. 539, 542-43 (Kos. S. Ct. Tr. 1988).

The Kosrae constitutional state government may be held liable for actions taken by police officers under the previous chartered state government, approximately one month before ratification and four months before implementation of the Kosrae Constitution, in falsely arresting and abusing a citizen in Kosrae. Seymour v. Kosrae, 3 FSM R. 539, 543 (Kos. S. Ct. Tr. 1988).

As a matter of constitutional law, the authority to exercise executive, legislative and judicial powers came to the Federated States of Micronesia under the FSM Constitution, by operation of law, not through delegation of Trust Territory functions. United Church of Christ v. Hamo, 4 FSM R. 95, 103 (App. 1989).

The Constitution of the FSM has been the supreme law of the Federated States of Micronesia since May 10, 1979 and from that time on, nonconstitutional officials could be authorized to exercise powers assigned to the national government by the Constitution only through authorization by constitutional officials or pursuant to some other power rooted in the Constitution. United Church of Christ v. Hamo, 4 FSM R. 95, 104 (App. 1989).

In specifically authorizing the President to act pursuant to Secretarial Order 3039 in accepting executive functions from the Trust Territory, the FSM Congress implicitly adopted those provisions of Secretarial Order 3039 concerning transfer of executive functions as law of the Federated States of Micronesia. United Church of Christ v. Hamo, 4 FSM R. 95, 104 (App. 1989).

The FSM Constitution provides no authority for any courts to act within the Federated States of Micronesia, other than the FSM Supreme Court, inferior courts to be established by statute, and state or local courts. United Church of Christ v. Hamo, 4 FSM R. 95, 105 (App. 1989).

The transitional actions of the FSM Congress, intended to adopt as law of the Federated States of Micronesia those portions of Secretarial Order 3039 relating to judicial functions within the FSM and permitting the Trust Territory courts to continue functioning within the FSM pending establishment of constitutional courts, were a necessary and proper exercise of Congress' power under the Constitution to provide for a smooth and orderly transition. United Church of Christ v. Hamo, 4 FSM R. 95, 105 (App. 1989).

The FSM Supreme Court normally will refuse to review the correctness of an earlier Trust Territory High Court judgment, which has become final through affirmance on appeal or through lack of a timely appeal, and claims that the earlier judgment is ill-reasoned, unfair or even beyond the jurisdiction of the High Court typically will not be sufficient to escape the doctrine of res judicata. United Church of Christ v. Hamo, 4 FSM R. 95, 107 (App. 1989).

In light of the Trust Territory High Court's insistence on maintaining control over cases within the Federated States of Micronesia in disregard of Secretarial Order 3039 and to the exclusion of the new constitutional courts, its characterizations of Joint Rule No. 1 as "simply a memorandum" and of the words "active trial" in Secretarial Order 3039 as merely "administrative guidance," its acceptance of appeals after it was precluded from doing so by Secretarial Order 3039, its decision of appeals after Secretarial Order 3039 was terminated and its continued remand of cases to the High Court trial division for further action even after November 3, 1986, there can be no doubt that for purposes of res judicata analysis, the High Court was a court lacking capacity to make an adequately informed determination of a question concerning its own jurisdiction. United Church of Christ v. Hamo, 4 FSM R. 95, 118 (App. 1989).

Although final judgment in a case has been entered by the Trust Territory High Court, because any effort by a party to have the High Court consider its own jurisdiction would have been futile, it is procedurally fair to later afford the party an opportunity to question that jurisdiction. United Church of Christ v. Hamo, 4 FSM R. 95, 118-19 (App. 1989).

Where the Trust Territory High Court improperly retained a case for four years after the FSM Supreme Court was certified, and continued to hold the case more than a year after the Truk State Court was

established, issuing a judgment based upon filed papers, without there ever having been a trial, let alone an active trial, in the case, by the time judgment was issued the subject matter of the litigation was so plainly beyond the High Court's jurisdiction that its entertaining the action was a manifest abuse of authority. United Church of Christ v. Hamo, 4 FSM R. 95, 119 (App. 1989).

Where the Trust Territory High Court's exercise of jurisdiction was a manifest abuse of authority, allowing the judgment of the High Court to stand would undermine the decision-making guidelines and policies reflected in the judicial guidance clauses of the national and state constitutions and would thwart the efforts of the framers of the Constitution to reallocate court jurisdiction within the Federated States of Micronesia by giving local decision-makers control over disputes concerning ownership of land. United Church of Christ v. Hamo, 4 FSM R. 95, 119 (App. 1989).

Decisions regarding res judicata and the transitional activities of the Trust Territory High Court typically should be made on the basis of larger policy considerations rather than the equities lying with or against a particular party. United Church of Christ v. Hamo, 4 FSM R. 95, 120 (App. 1989).

Actions of the Trust Territory High Court taken after the establishment of functioning constitutional courts in the Federated States of Micronesia, and without a good faith determination after a full and fair hearing as to whether the "active trial" exception permitted retention of the cases, were null and void, even though the parties failed to object, because the High Court was without jurisdiction to act and its conduct constituted usurpation of power. United Church of Christ v. Hamo, 4 FSM R. 95, 122 (App. 1989).

The Corporations, Partnership and Agency regulations were adopted pursuant to, and affect the reach of, the Trust Territory statute regulating corporations and, since those statutory provisions are part of FSM national law by virtue of the Transition Clause of the FSM Constitution, the regulations too must retain their effect until they are amended or repealed pursuant to FSM law. Mid-Pac Constr. Co. v. Senda, 4 FSM R. 376, 381 (Pon. 1990).

The Corporation, Partnership and Association Regulations incorporated by 37 TTC 52 (1980) remain in effect as FSM national law by virtue of the Transition Clause, FSM Const. art. XV, § 1, until they are amended or repealed by Congress. Mid-Pacific Constr. Co. v. Semes (II), 6 FSM R. 180, 187 (Pon. 1993).

Statutes and case law inherited from the Trust Territory are invalid to the extent that they are inconsistent with the state constitution which is the supreme law of Chuuk. Nimeisa v. Department of Public Works, 6 FSM R. 205, 210 (Chk. S. Ct. Tr. 1993).

The United States could not assume responsibility for, or be held liable for, the absence of separate adjudicatory body for public land disputes when the exclusive authority to establish such a body had been transferred to the Ponape district legislature. Nahnken of Nett v. United States (III), 6 FSM R. 508, 528 (Pon. 1994).

Title 3 of the Trust Territory Code represents interim legislation prior to the time when the former Trust Territory Districts were chartered, and had no continuing existence after the adoption of the Truk Charter in 1977. Wainit v. Weno, 7 FSM R. 121, 123 (Chk. S. Ct. Tr. 1995).

Whether carryover provisions from the Trust Territory Code are state or national laws must be determined on a statute-by-statute, or a section-by-section, basis. Burke v. Torwal, 7 FSM R. 531, 534 (Pon. 1996).

The reciprocal child support enforcement provisions of chapter 17 of Title 6 of the FSM Code remain in effect as part of state law. Burke v. Torwal, 7 FSM R. 531, 534 (Pon. 1996).

A proceeding for enforcement of a CNMI child support order in the FSM is properly filed in state court by the state attorney general, not in national court by the FSM Attorney General. Burke v. Torwal, 7 FSM R. 531, 535-36 (Pon. 1996).

Because whatever vestigial authority the Trust Territory or the United States may have had after May 10, 1979, disappeared on November 3, 1986, when the Federated States of Micronesia became independent, governmental conduct after that date is not attributable to the United States or to the Trust Territory. Nahnken of Nett v. United States, 7 FSM R. 581, 591 (App. 1996).

Although the Kosrae Constitution contains no impairment of contracts clause, it is not silent in this area. The Kosrae Transition Clause provides that contracts continue unaffected. Cornelius v. Kosrae, 8 FSM R. 345, 352 (Kos. S. Ct. Tr. 1998).

Trust Territory Code Title 67 remains in effect in Chuuk through the Chuuk Constitution Transition Clause. Pau v. Kansou, 8 FSM R. 524, 526 (Chk. 1998).

Title 32, sections 301 *et seq.* date from the Trust Territory period but continue in effect pursuant to the FSM Constitution's Transition Clause. AHPW, Inc. v. FSM, 9 FSM R. 301, 305 (Pon. 2000).

Via the analogy implicated by the Transition Clause, under a statute carried over from the Trust Territory which speaks in terms of the Trust Territory and any of its political subdivisions as being persons, Pohnpei is also a person to the same extent that a Trust Territory political subdivision was a person under the statute's prior incarnation. AHPW, Inc. v. FSM, 9 FSM R. 301, 305 (Pon. 2000).

Trust Territory statutes that mostly never took effect cannot be relied upon to interpret provisions of the FSM Constitution. Chuuk v. Secretary of Finance, 9 FSM R. 424, 432-33 (App. 2000).

Under the Chuuk Constitution's transition clause, Trust Territory Code Title 67, which authorizes and empowers land commissions to determine the ownership of any land in its district, applies in Chuuk. In re Lot No. 014-A-21, 9 FSM R. 484, 490 (Chk. S. Ct. Tr. 1999).

Chuuk, as the succeeding sovereign, is entitled to rely on the taking of the land in question by the Trust Territory, the previous sovereign, and is not required to correct any wrong in the original 1968 Trust Territory taking because it is now too late. Sefich v. Chuuk, 9 FSM R. 517, 518 (Chk. S. Ct. Tr. 2000).

When in 1968 the Trust Territory entered the land in question and, pursuant to 6 TTC 302, acquired title by adverse possession 20 years later in 1988, Chuuk is the successor to the title. Sefich v. Chuuk, 9 FSM R. 517, 519 (Chk. S. Ct. Tr. 2000).

Title 6, chapter 10, subchapter 1 of the FSM Code is replete with references to officials who either do not exist now or who no longer carry out the functions with which they are identified in the statute, and when confronted with such language in a section thereof, the FSM Supreme Court has generally ruled that the section applies only to the Trust Territory High Court. FSM v. Kuranaga, 9 FSM R. 584, 586 (Chk. 2000).

The witness fees in 6 F.S.M.C. 1011 apply only to the Trust Territory High Court. FSM v. Kuranaga, 9 FSM R. 584, 586 (Chk. 2000).

Trust Territory statutes continue in effect except to the extent they are inconsistent with the Constitution, or are amended or repealed. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 62 (Pon. 2001).

Title 67, Section 2 of the Trust Territory Code continues in effect under the transition clause of the FSM Constitution, is consistent with other provisions in the FSM and Pohnpei Constitutions, and clearly confirms that all marine areas below the ordinary high water mark belong to the government. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 66 (Pon. 2001).

Trust Territory Code Title 67 remains in effect in Chuuk through the Chuuk Constitution Transition Clause. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM R. 367, 369 (Chk. 2001).

A Trust Territory statute (except to the extent it is amended, repealed, or is inconsistent with the Constitution), which related to matters that now fall within the national government's legislative powers became national law upon the Constitution's ratification, and the other Trust Territory laws presumably became law of each of the states at the same time; and if neither state nor national powers alone are sufficient to carry out the statute's original purpose, or if state and national powers are invoked, then the statute is enforceable as both state and national law. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 414-15 (Pon. 2001).

Because the national government has the exclusive power to regulate foreign and interstate commerce, the Consumer Protection Act is the law of the FSM insofar as any advertising, sale, offer or distribution involves commerce between the states of the FSM or with any foreign entity. The Consumer Protection Act also is the law of the states of the FSM, insofar as it involves commerce which is intrastate and has not been repealed by the state legislatures. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 415 (Pon. 2001).

Title 67 of the Trust Territory Code remains Chuuk state law pursuant to the Chuuk Constitution's Transition Clause and because it has never been amended or repealed. Stephen v. Chuuk, 11 FSM R. 36, 41 n.1 (Chk. S. Ct. Tr. 2002).

A Kosrae district Trust Territory High Court judgment in a trespass action will not be set aside as invalid because it was in a designated land registration area when the registration area designation was not filed in the Kosrae district High Court and the prevailing defendants did not ask that title be issued to them, but only that the complaint be dismissed. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 172-73 (Kos. S. Ct. Tr. 2002).

The Kosrae State Court has always accepted and enforced Trust Territory High Court decisions as valid and binding, consistent with the Kosrae constitutional provisions on transition of government. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 173 (Kos. S. Ct. Tr. 2002).

Under the FSM Constitution's Transition Clause, Trust Territory statutes applicable to the states became part of the states' laws regardless of whether they were published in the FSM Code; they are the laws of the states until amended, superseded or repealed. Villazon v. Mafnas, 11 FSM R. 309, 311 (Pon. 2003).

When a state has not enacted laws in an area within its jurisdiction such as child support, national law is applicable to the state court proceeding, because the Trust Territory Code reciprocal support enforcement provisions, now codified at 6 F.S.M.C. 1711, are imputed to be state law under the FSM Constitution's Transition Clause. Under that clause, Trust Territory statutes that were applicable to the states became part of the states' laws regardless of whether they were published thereby. They stand as the laws of the states until amended, superseded or repealed. Anson v. Rutmag, 11 FSM R. 570, 572 (Pon. 2003).

When the Chuuk Legislature has made no effort to repeal, supersede or amend the Trust Territory Code regarding land tenure in Chuuk, pursuant to Article XV, § 9 of the Chuuk Constitution, the Trust Territory Code provisions still apply to land disputes. Chuuk v. Ernist Family, 12 FSM R. 154, 158 n.3 (Chk. S. Ct. Tr. 2003).

The states of Yap and Kosrae repealed the Trust Territory Code when they enacted their state codes. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 509 (App. 2005).

Generally, when the word "district" appears in an FSM Code provision carried over from the Trust Territory Code by virtue of the Constitution's Transition Clause, "state" will be read in its place. FSM v. Kansou, 14 FSM R. 136, 138 n.1 (Chk. 2006).

Under the Chuuk Constitution's Transition Clause, Trust Territory Code Title 8 is still applicable law in Chuuk. Chuuk v. Andrew, 15 FSM R. 39, 42 n.2 (Chk. S. Ct. App. 2007).

Trust Territory judicial decisions are not stare decisis, that is, they are not binding precedent on FSM courts. Nakamura v. Moen Municipality, 15 FSM R. 213, 218 (Chk. S. Ct. App. 2007).

Since a statute in force in the State of Chuuk on the effective date of the Chuuk Constitution continues in effect to the extent it is consistent with the Chuuk Constitution, or until it is amended or repealed; since nothing in the Trust Territory survival of actions statute is inconsistent with the Chuuk Constitution; and since the statute has not been amended or repealed, 6 TTC 151(1) remains the law in Chuuk. Dereas v. Eas, 15 FSM R. 446, 448 (Chk. S. Ct. Tr. 2007).

Chapter six of Title Six is the Trust Territory of the Pacific Islands sovereign immunity statute. If it ever had any application to the FSM, it would have been supplanted or repealed by implication when the FSM Congress enacted a sovereign immunity statute, FSM Pub. L. No. 1-141, specifically applicable to the FSM national government. It remained part of the FSM Code because, at the time the FSM laws were codified, the Trust Territory government retained vestigial functions and authority in the FSM. By its terms, chapter six relates only to the Trust Territory government's liability and not to the liability of any of the FSM constitutional governments. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 604 (Pon. 2009).

Trust Territory High Court decisions are not stare decisis in the Federated States of Micronesia, but their rationale may be adopted when persuasive. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 212 (Chk. 2010).

Trust Territory Code Title 17 is retained as Chuuk state law through the Chuuk Constitution's Transition Clause. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 540 n.1 (Chk. 2011).

Title 67 of the Trust Territory Code remains Chuuk state law pursuant to the Chuuk Constitution's Transition Clause and because it has not been amended or repealed. FSM Dev. Bank v. Kansou, 17 FSM R. 605, 608 n.2 (Chk. 2011).

The term "Trust Territory" in statutes carried over from the Trust Territory Code should generally be read as meaning "Federated States of Micronesia" when the power involved is a national power. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 617, 619 n.1 (Chk. 2011).

A statute in force in Chuuk on the Chuuk Constitution's effective date continues in effect to the extent it is consistent with the Chuuk Constitution or until it is amended or repealed. Thus 1TTC 103 is still effective statutory law in Chuuk. Ruben v. Chuuk, 18 FSM R. 425, 430 n.1 (Chk. 2012).

Since, under the Transition Clause, a statute in force in the State of Chuuk on the effective date of the Chuuk Constitution continues in effect to the extent it is consistent with the Chuuk Constitution or until it is amended or repealed, both 67 TTC 453 and 454 remain as Chuuk state law until amended or repealed since both are consistent with the Chuuk Constitution which requires "just compensation," and since they have not been repealed by implication because they occupy gaps in the recently enacted Chuuk eminent domain statute. In re Lot No. 029-A-47, 18 FSM R. 456, 459 (Chk. S. Ct. Tr. 2012).

An argument that citizens' rights must be upheld over a Trust Territory High Court judgment because the Trust Territory High Court was not a constitutional court must be rejected when there were no constitutional courts in 1960 when the judgment was issued and the Trust Territory courts were the only functioning court system then. The impropriety of the Trust Territory High Court deciding cases when both the Trust Territory High Court and constitutional FSM courts were simultaneously in existence and functioning thus offers no support. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 303-04 (App. 2014).

Under a plain reading of Secretarial Order 2969, Trust Territory public lands were transferred to the respective Trust Territory districts, and thus Trust Territory public lands on Weno were earlier transferred to the Truk District government. Although, on July 12, 1979, when the FSM Constitution took effect, any Trust Territory government interest in property was transferred to the FSM for retention or distribution in accordance with the FSM Constitution, public land on Weno was not Trust Territory government property since all Trust Territory public land there had already been transferred to the Truk district government. It would thus have been Truk district government property. Chuuk v. Weno Municipality, 20 FSM R. 582, 584-85 (Chk. 2016).

Under Secretarial Order 2969, Amendment No. 1, Trust Territory public lands in Chuuk were conveyed to the Chartered Truk District Government, and the Chuuk state government is the legal successor to the Truk district government. Iwo v. Chuuk, 20 FSM R. 652, 655 (Chk. 2016).

Neither Secretarial Order No. 2969 nor Secretarial Order No. 3039 relates to privately held land, nor do they dictate how the FSM as a nation should structure its government to deal with issues related to private lands and their title, transfer, and ownership. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 332 (Pon. 2019).

The FSM Constitution, art. XV, § 3, states that a property interest held by the Trust Territory government is transferred to the FSM for retention or distribution in accordance with the Constitution. Other FSM Constitution provisions govern land ownership and use, and FSM law allows for national government eminent domain and real property acquisition. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 333 (Pon. 2019).

Chuuk State Constitution's transition clause provides that statutes in force at the time the Constitution took effect remain in effect to the extent they comply with the Constitution, or until amended or repealed. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 576 (Chk. S. Ct. App. 2020).

TRANSLATION

Where plaintiff's complaint is written in English and the defendant requests a written translation into a local Micronesian language, and where it appears that this is the only language the defendant can speak or read, the trial judge may order that the court provide a written translation and that the expense of providing the translation shall be taxed as a cost to the party not prevailing in the action. Rawepi v. Billimon, 2 FSM R. 240, 241 (Truk 1986).

Because the Chuuk Constitution provides that Chuukese is the state language, but both Chuukese and English are official languages, a criminal appellant in the Chuuk State Supreme Court has no constitutional right to a transcript in both Chuukese and English. Reselap v. Chuuk, 8 FSM R. 584, 586 (Chk. S. Ct. App. 1998).

Since the appellate record must be sufficient to permit the court to insure that the issues on appeal were properly raised before the trial court, the appellants are responsible for presenting a record sufficient to permit the court to decide the issues raised on appeal, and the record must be one which provides the court with a fair and accurate account of what transpired in the trial court. They therefore have the burden of providing an appendix that is reviewable by the court – a certified translation of the Chuukese transcript. Setik v. Ruben, 17 FSM R. 301, 303 (App. 2010).

When an appellant argues that some of the trial court's legal and factual findings are incorrect, specifically its factual findings about the ownership of a particular piece of land, the issue is certainly relevant to the appeal, but without a translation of the deposition transcript, the appellate court cannot conclude that the deposition transcript is relevant. Thus, if the deposition transcript's assertions are part of the reported case, there is no need to include it in the appendix but if the assertions are not part of the reported case, the appellants have the burden of providing a certified translation of the deposition transcript.

Setik v. Ruben, 17 FSM R. 301, 303 (App. 2010).

When the trial transcript and a deposition transcript relied upon by the appellants are in Chuukese and have not been translated, the court may order the appellants: 1) to provide a certified translation of the trial transcript and either a certified translation of the deposition transcript or a statement that the appellants will not rely on the deposition transcript; or 2) to stipulate to a continuation of oral argument and move for enlargement of time to file a certified translation; or 3) to proceed with oral argument as scheduled without the benefit of the appendix. Setik v. Ruben, 17 FSM R. 301, 303 (App. 2010).

Usually, when the record is not in a form that fairly and accurately provides the appellate court with an account of what happened in the lower court because it has not been translated into English, the appellate court will stop the analysis of the issue there and proceed to the next since the appellants have not met their responsibility to present the court with a record sufficient to permit it to decide the issues raised on appeal and which provides the court with a fair and accurate account of what transpired in the trial court proceedings. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 504 n.2 (App. 2011).

Appellate litigants should translate court decisions and other necessary parts of the record into English in order to facilitate and ensure a proper appellate review. Otherwise, the appellate court may be unable, except in an uncommon case, to ensure a proper review of the record and the litigants' arguments. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 657 n.2 (App. 2011).

The scope and manner of examination and cross-examination during the Rule 15 depositions is the same as would be allowed in the trial itself. This includes the prosecution making available to the defendant or his counsel for examination and use during the deposition any statement of the witness being deposed which is in the government's possession and to which the defendant would be entitled at the trial. The deposition procedure will also include frequent pauses in the testimony so as to allow for translation for the defendant's benefit. The prosecution will be responsible for engaging and compensating a court-approved translator so that the defendant can follow the testimony and confer with his defense counsel. FSM v. Tipingeni, 19 FSM R. 439, 450 (Chk. 2014).

Translation expenses are generally allowed as costs. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 79 (Pon. 2015).

TREATIES

Conduct of foreign affairs and the implementation of international agreements are properly left to the non-judicial branches of government. The judicial branch has the power to interpret treaties. In re Extradition of Jano, 6 FSM R. 93, 103 (App. 1993).

Extradition treaties are to be construed liberally to effect their purpose of surrender of fugitives to be tried for their alleged offenses. In re Extradition of Jano, 6 FSM R. 93, 103 (App. 1993).

The ordinary or usual meaning shall be given to words, phrases, and terms in a treaty. Terms are to be considered in their context and a contrary meaning may be indicated by the context. Preparatory documents and subsequent conduct of the parties can be used to determine the parties' intentions. Alep v. United States, 6 FSM R. 214, 218 (Chk. 1993).

Although the FSM Supreme Court has the power to interpret treaties, it should not do so if the issue may be decided on other grounds. Louis v. Kutta, 8 FSM R. 228, 229-30 (Chk. 1998).

The imposition of community service on a juvenile offender would not violate the provisions or spirit of the United Nations Convention on the Rights of the Child since community service, could be considered as guidance, supervision, counseling, education and vocational training, which are all preferred alternatives to institutional care (detention), which is also explicitly permitted under the Convention. Kosrae v. Ned, 13

FSM R. 351, 354 (Kos. S. Ct. Tr. 2005).

Extradition treaties are to be liberally construed to effect their purpose of surrender of the persons sought to be tried for their alleged crimes. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 372 (Yap 2005).

An "access agreement" is a treaty, agreement or arrangement entered into by the Authority pursuant to Title 24 in relation to access to the exclusive economic zone for fishing by foreign fishing vessels. But a fishing access agreement is usually not a treaty because treaties are compacts or agreements between sovereign nations and most fishing access agreements are commercial agreements between the FSM national government and a commercial enterprise. They are business deals – not treaties. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 189 (Pon. 2010).

A treaty is a compact made between two or more independent nations with a view to the public welfare. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 189-90 (Pon. 2010).

Since the Constitution specifically delegates to Congress the power to ratify treaties but does not grant Congress the power to approve or reject fishing access agreements, ruling unconstitutional the statute that requires congressional approval for fishing access agreements for more than nine vessels would not impair Congress's ability to ratify treaties and to advise and consent to presidential appointments. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 190 (Pon. 2010).

Since approval of commercial fishing agreements is not a power that the Constitution confers on Congress, but a power that Congress has conferred upon itself by statute, the court's conclusion that that statute is unconstitutional does not have any effect on access agreements that are actually negotiated and concluded as treaties between sovereign nations because, just like any other treaty, the President would continue to submit those to Congress for ratification. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 190 (Pon. 2010).

Article 15 of the 1944 Convention on International Aviation, which bars fees, dues, or other charges being imposed by any contracting State in respect solely of the right of transit over or entry into or exit from its territory of any aircraft of a contracting State or persons thereon, does not bar a tax only on outgoing passengers, freight, or cargo from Chuuk. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 533-34 (Chk. 2011).

In order to ratify a treaty, two-thirds of the members of Congress must vote in favor of ratification. Ratification may not be done by the resolution process where only eight votes are necessary. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 547 & n.1 (App. 2011).

A treaty is an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation. FSM v. Ezra, 19 FSM R. 486, 490 n.2 (Pon. 2014).

Pacta sunt servanda ("agreements must be kept"), is the rule of law that applies to all agreements made within the framework of the international legal system, and is the basis of the law of treaties, and once in force treaties are binding on the parties to them and must be performed in good faith. FSM v. Ezra, 19 FSM R. 486, 492 & n.5 (Pon. 2014).

A treaty signed by the President, and ratified by Congress, is our law. FSM v. Ezra, 19 FSM R. 486, 497 (Pon. 2014).

Only those fisheries management agreements that require the FSM to enforce, on a reciprocal basis, the fisheries laws of foreign countries against persons who have violated the fisheries law of that foreign country, must, under 24 F.S.M.C. 120(2), implemented by National Oceanic Resource Management Authority regulation. FSM v. Kimura, 20 FSM R. 297, 304 (Pon. 2016).

A fisheries management agreement is any agreement, arrangement, or treaty in force to which the FSM is a party, not including any access agreement, which has as its primary purpose cooperation in or coordination of fisheries management measures in all or part of the region. Such an agreement, by its nature, would not be self-executing. FSM v. Kimura, 20 FSM R. 297, 304 (Pon. 2016).

In determining whether a treaty is self-executing, a court looks to the text, the negotiation and drafting history, and the postratification understanding of the signatory nations. Preparatory documents and the parties' subsequent conduct can be used to determine the parties' intentions. Additionally, the executive branch's interpretation of a treaty is entitled to great weight. Estate of Gallen v. Governor, 21 FSM R. 457, 461 n.1 (Pon. 2018).

TRUSTEESHIP AGREEMENT

Under article 6 of the Trusteeship Agreement, the United States is obligated to foster the development of suitable political institutions with the goal of self-government by the inhabitants, and to promote economic, social and educational advancement. Neimes v. Maeda Constr. Co., 1 FSM R. 47, 51 (Truk 1981).

Interpretation of Secretarial Order 3039 as acquiescing in FSM Supreme Court jurisdiction over suits against the Trust Territory does not conflict with any residual United States obligation to oversee activities of the FSM courts pending termination of the Trusteeship Agreement nor does this interpretation imperil any interest the United States government may have in protecting the Trust Territory government against unfair or overreaching actions by the courts of the new constitutional governments. Lonno v. Trust Territory (I), 1 FSM R. 53, 64 (Kos. 1982).

Trusteeship principles call for similarity between the self-government accorded the peoples of the Northern Mariana Islands by the United States, and that granted other parts of the Trust Territory. If the administering authority were to permit those peoples selecting a closer and more dependent relationship with the administering authority a higher degree of autonomy than those seeking other relationships, the dual standard could suggest an effort to discourage self-government and independence of the people within the Trust Territory. Lonno v. Trust Territory (I), 1 FSM R. 53, 67 (Kos. 1982).

The interim nature and limited purpose of the Trust Territory Court, the District Courts and the Community Courts does not suggest that these entities are immune to the restraints imposed upon officials authorized to act by constitutions or statutes approved by citizens of the Federated States of Micronesia or their representatives. To the contrary, respect for constitutional self-government and the Trusteeship Agreement provisions to which they trace their power to act here, mandate that these interim entities act with great restraint, only as necessary to supplement the constitutional courts and until creation of constitutional courts here. In re Iriarte (I), 1 FSM R. 239, 244-45 (Pon. 1983).

The Trust Territory High Court must promote constitutional self-government to satisfy the provisions of the Trusteeship Agreement to which is subject. In re Iriarte (II), 1 FSM R. 255, 268 (Pon. 1983).

The Trusteeship Agreement cannot be given retroactive effect to cover events that took place before it came into force. Alep v. United States, 6 FSM R. 214, 216 (Chk. 1993).

Monetary damages are not legal remedies available to an individual for breach of the Trusteeship Agreement, either through the treaty or as codified. Alep v. United States, 6 FSM R. 214, 217-18 (Chk. 1993).

A U.S. statute requiring aliens to dispose of landholdings within ten years of acquisition never applied in the Trust Territory because the Trust Territory never had the status of a U.S. territory and the U.S. Congress never specifically extended its application to the Trust Territory. Nahnken of Nett v. United

States (III), 6 FSM R. 508, 524-25 (Pon. 1994).

The Trusteeship Agreement does not provide individuals with a private cause of action for damages for alleged breach of any of its provisions. Nahnken of Nett v. United States (III), 6 FSM R. 508, 526 (Pon. 1994).

Although the Trusteeship Agreement was a source of individual legal rights, it, standing alone, did not create private rights of action for money damages for bureaucratic abuses attributed to U.S. or Trust Territory officials. Alep v. United States, 7 FSM R. 494, 496 (App. 1996).

WEAPONS

There is no automatic prohibition against use of a dangerous weapon to protect oneself and family against an intruder, even against an intruder without a weapon, so long as the weapon is not used in deadly fashion and the actual force employed is not more than would be reasonably necessary for purposes of protection. FSM v. Ruben, 1 FSM R. 34, 38 (Truk 1981).

Whether a particular item is dangerous often depends upon the use to which it is being put. Laion v. FSM, 1 FSM R. 503, 511 (App. 1984).

A "dangerous weapon" under 11 F.S.M.C. 919(1) is an object which, as used, may be anticipated to produce death or great bodily harm. Laion v. FSM, 1 FSM R. 503, 512 (App. 1984).

In considering whether the term "dangerous weapon" is so vague as to render 11 F.S.M.C. 919 unconstitutional, it is relevant that a court in the United States has held that term sufficiently definite to meet United States constitutional standards. Laion v. FSM, 1 FSM R. 503, 513 (App. 1984).

A gun with a defective trigger is a firearm under 11 F.S.M.C. 1204(4). The statute's purpose may not be evaded by such simple expedients as dismantling the weapon, maintaining weapons and ammunition in separate places, removing one easily replaceable part, or other similar ploys. Under the statute, current operability is not an essential element of the crime of possession of a firearm. Ludwig v. FSM, 2 FSM R. 27, 34 (App. 1985).

Because a Rule 41(e) motion for return of seized property is predicated on the seizure's illegality and the showing of a right to possession, return of unregistered firearms is improper because possession of unregistered firearms is unlawful there is thus no right to possession. FSM v. Santa, 8 FSM R. 266, 268 (Chk. 1998).

A dangerous weapon is any object that, as used or attempted to be used, can endanger life or inflict great bodily harm. Shoes worn on the feet are dangerous weapons when used to kick a victim. Stationary objects can also be dangerous or deadly weapons. Palik v. Kosrae, 8 FSM R. 509, 513 (App. 1998).

A Philippine slingshot consists of a forked piece of wood to which is attached an elastic that is used to propel a piece of sharpened metal that has been crafted into a dart-like object, often feathered at one end for aerial stability. It is this metal dart-like object that transforms a regular (not particularly dangerous) slingshot, which uses stones, into a dangerous Philippine slingshot. FSM v. Masis, 15 FSM R. 172, 174 (Chk. 2007).

A Philippine slingshot is a dangerous device within the statutory definition. FSM v. Masis, 15 FSM R. 172, 175 (Chk. 2007).

An individual who manufactures, produces, uses, sells, possesses, acquires, or disposes a slingshot, pachinko, arrow or dart nikapich or Indian pana has violated Chuuk state law. The legislature has defined

possession as the holding of the slingshot or pachinko, arrow or dart or nikapich or Indian pana, which includes keeping inside or outside the house or within the premises of the owner, inside any vehicles, offices, or anywhere which a person suspected to be in possession placed it. Chuuk v. Roman, 21 FSM R. 138, 143 (Chk. S. Ct. Tr. 2017).

When, although the government did not present any direct evidence to prove its point, it presented compelling circumstantial evidence that before the victim was shot the defendant had been arguing with the witness, at which time he threatened her with non-specific bodily harm, and within seconds of his threat a dart was shot from the defendant's location toward the witness's location and hit her daughter, who she was holding in her arms, the government has met its burden to prove beyond a reasonable doubt that the defendant did unlawfully use a slingshot. Chuuk v. Roman, 21 FSM R. 138, 145 (Chk. S. Ct. Tr. 2017).

When an eyewitness saw the defendant with a slingshot in his possession, this account of the defendant holding an slingshot in his hand is sufficient to prove beyond a reasonable doubt that he did unlawfully possess a slingshot. Chuuk v. Roman, 21 FSM R. 138, 145 (Chk. S. Ct. Tr. 2017).

– Exemptions

Some exceptions under 11 F.S.M.C. 1203, whereunder possession of a firearm is permissible, relate to considerations separate from the essential elements of the crime and require the defendant to place them in issue. A defendant claiming exemption as a law enforcement officer or United States military person engaged in official duty, §§ 1203(1), (4), or as a designated crocodile hunter, § 1203(5), is not disputing any element of the government's basic case. Instead, these exemption claims bring into play new facts, uniquely within the knowledge of the defendant, which the government could overlook by focusing on whether the conduct prohibited by the Weapons Control Act has occurred. The defendant is in a far better position to place these exemptions in issue and it is fair to require that he do so. Ludwig v. FSM, 2 FSM R. 27, 36 (App. 1985).

The 11 F.S.M.C. 1203(1), (4) and (5) exemptions, whereunder possession of a firearm is permissible, are defenses within the meaning of 11 F.S.M.C. 107, although they are not affirmative defenses for they are not so designated. The ultimate burden of persuasion remains with the government, but the defendant has the burden of going forward with sufficient evidence to raise these exemptions as issues. Ludwig v. FSM, 2 FSM R. 27, 36 (App. 1985).

The 11 F.S.M.C. 1203(2) exemption for curios, ornaments and historical pieces whereunder possession of a firearm is permissible requires findings that the firearm be in "unserviceable condition" and "incapable of being fired or discharged." Ludwig v. FSM, 2 FSM R. 27, 37 (App. 1985).

Inapplicability of the 11 F.S.M.C. 1203(2) exemption whereunder possession of a firearm is permissible because it is in unserviceable condition, is incapable of being fired or discharged and is being kept as a curio, ornament or historical piece is an essential element of the government's case in prosecution for unlawful possession of a firearm under 11 F.S.M.C. 1202. Ludwig v. FSM, 2 FSM R. 27, 37 (App. 1985).

A trial court may not simply presume that a person who possesses a firearm is not keeping it as a curio, ornament or for historical significance. This would be an irrational or arbitrary, hence unconstitutional, presumption or inference because one cannot determine from mere possession of a firearm alone the purpose or nature of that possession. Ludwig v. FSM, 2 FSM R. 27, 37 (App. 1985).

The 11 F.S.M.C. 1203(2) exemption whereunder possession of a firearm is permissible applies only if the firearm is: 1) unserviceable; 2) incapable of being fired or discharged; and 3) being kept as a curio, ornament or for its historical significance. Ludwig v. FSM, 2 FSM R. 27, 37-38 (App. 1985).

When the accused produced no evidence to substantiate his claim that the weapon he allegedly possessed was in unserviceable condition (such as producing the weapon itself, or even a witness's report on the weapon's condition) and that it was kept as a curio, an ornament, or for historical purposes, but

instead, argued that despite his repeated discovery requests, the government had failed to provide access to the firearm that he allegedly possessed so that it could, in turn, be inspected, this argument is more appropriately suited for a motion to compel discovery, rather than a motion to dismiss. The accused is free to raise at trial the defense that the weapon he allegedly possessed falls within the exemption. FSM v. Tosy, 15 FSM R. 463, 466 (Chk. 2008).

A "mini bag," which is an easily-transportable article similar in that nature to a purse, handbag, brief case, attache case, or backpack, is not an "enclosed customary depository" within the meaning of the statutory exception to the statutory presumption that a firearm, dangerous device, or ammunition found in a vehicle or vessel, is prima facie evidence that such firearm, dangerous device, or ammunition is in the possession of all persons in the vehicle or vessel. FSM v. Aliven, 16 FSM R. 520, 533 (Chk. 2009).

The inapplicability of the 11 F.S.M.C. 1003(2) exemption is an essential element of the government's case in a prosecution for unlawful possession of a firearm, and since it is an essential element 11 F.S.M.C. 1003(2)'s inapplicability must be pled. FSM v. Meitou, 18 FSM R. 121, 128-29 (Chk. 2011).

Under 11 F.S.M.C. 1003(2), in order to be exempt from criminal liability for possession of a firearm, the court must be persuaded beyond a reasonable doubt that the firearm is: 1) unserviceable; 2) incapable of being fired or discharged; and 3) being kept as a curio, ornament or for its historical value. All three of these requirements must be satisfied for this exemption to apply. FSM v. Meitou, 18 FSM R. 121, 129 (Chk. 2011).

Current operability of a firearm absolutely negates application of the Section 1003(2) exemption. For the exemption to apply, a firearm's current inoperability is not enough; it must also be proven that the firearm was not being kept as either a curio, or an ornament, or for its historical value or significance. FSM v. Meitou, 18 FSM R. 121, 129 (Chk. 2011).

An information charging firearms possession is sufficient if it or the supporting affidavit contains an allegation that negates any one of the three 11 F.S.M.C. 1003(2) requirements and the prosecution's proof at trial is sufficient if it negates beyond a reasonable doubt any one of the three requirements. FSM v. Meitou, 18 FSM R. 121, 129 (Chk. 2011).

A supporting affidavit's averment that the accused had been drinking and was openly displaying the handgun at the public market is viewed as just barely enough to give the accused notice of the essential element of the charges against him that the 11 F.S.M.C. 1003(2) exemption does not apply because in the appellate court's view, an intoxicated defendant displaying a firearm in public is inconsistent with the 1003(2) exemption because it is inconsistent with a claim that the accused was keeping the handgun as a curio, ornament, or a piece with historical value. FSM v. Meitou, 18 FSM R. 121, 129 (Chk. 2011).

Under 11 F.S.M.C. 1003(2), in order to be exempt from criminal liability for possession of a firearm, the court must be persuaded beyond a reasonable doubt that the firearm is: 1) unserviceable; 2) incapable of being fired or discharged; and 3) being kept as a curio, ornament, or for its historical value. All three of these requirements must be satisfied for this exemption to apply, and if any one of them is not met, this exception does not apply. FSM v. Sonis, 18 FSM R. 620, 622 (Chk. 2013).

When there is evidence before the court from which the court can infer that the handgun was serviceable – testimony of two officers that they had tried to and did get the firearm to work and from that evidence the court could infer that the handgun was capable of being fired or discharged; and when, from the circumstances under which the firearm was found and where it was found, abandoned by the accused in a mop bucket at Chuuk International Airport (right where he told the police he left it), the court could infer that he was not keeping the handgun as a curio, or as an ornament, or for its historical value but that his possession of the handgun must have been for some other reason. FSM v. Sonis, 18 FSM R. 620, 622 (Chk. 2013).

A 9mm handgun that was not kept as a curio, ornament, or for its historical significance or value is not exempt under 11 F.S.M.C. 1003(2). FSM v. Buchun, 22 FSM R. 529, 533 n.2 (Yap 2020).

– Identification Card

In requiring an identification card in order to possess a dangerous device there was not an intent to require such a card for that category of dangerous devices which can be used to inflict bodily harm and which under the circumstances of its possession serves no lawful purpose. 11 F.S.M.C. 1204(3). Este v. FSM, 4 FSM R. 132, 136-37 (App. 1989).

There is no Weapons Control Act provision that bans the importation of an otherwise legal firearm without possessing a valid identification card issued by the FSM Department of Justice. FSM v. Mumma, 21 FSM R. 387, 398, 399 n.6 (Kos. 2017).

A person without an identification card can violate either 11 F.S.M.C. 1005(1) or 11 F.S.M.C. 1006(1) by acquiring or purchasing, or by possessing, or by using a firearm. But if that person, without a valid identification card, does any of those things but does not carry the firearm, that person has not committed the lesser misdemeanor of 11 F.S.M.C. 1007. The misdemeanor's key element is the carrying of a firearm. FSM v. Buchun, 22 FSM R. 529, 537 (Yap 2020).

If a defendant holds a valid identification card, then he cannot be convicted of violating either 11 F.S.M.C. 1005(1) or 11 F.S.M.C. 1006(1), even though the firearm he possesses is illegal and cannot be registered under 11 F.S.M.C. 1019, but he could be prosecuted under 11 F.S.M.C. 1023(5). FSM v. Buchun, 22 FSM R. 529, 538 (Yap 2020).

A person does not need to own or possess any firearm, dangerous device, or ammunition to apply for and to be issued an identification card. FSM v. Buchun, 22 FSM R. 529, 538 (Yap 2020).

The statutory scheme in FSM Weapons Control Act, chapter 10 of the FSM Code, clearly requires that a person must hold a valid identification card before obtaining possession of a firearm or ammunition. FSM v. Buchun, 22 FSM R. 529, 538 (Yap 2020).

Section 1023(5) is directed to the evil of prohibited firearms and 11 F.S.M.C. 1005(1) and 11 F.S.M.C. 1006(1) are directed to the evil of persons not obtaining a valid identification card before possessing firearms or ammunition. Thus, Congress clearly intended to address different evils with these different statutory provisions. FSM v. Buchun, 22 FSM R. 529, 538 (Yap 2020).

– Importation

Pleading whether the firearms in question were .22 caliber handguns or .22 caliber rifles is essential because importing the former is banned by the statute, while importing the latter is not. FSM v. Mumma, 21 FSM R. 387, 398 (Kos. 2017).

There is no Weapons Control Act provision that bans the importation of an otherwise legal firearm without possessing a valid identification card issued by the FSM Department of Justice. FSM v. Mumma, 21 FSM R. 387, 398, 399 n.6 (Kos. 2017).

The purchase, possession, or use of a firearm is prohibited without a proper identification card, but this prohibition does not include importation. FSM v. Mumma, 21 FSM R. 387, 398 (Kos. 2017).

The Weapons Control Act does not forbid a person from importing a .22 caliber rifle through the postal service, without holding a license, and applying for a permit before or upon the legal firearm's arrival in the FSM so that he may legally possess and use the imported firearm, with the weapon being seized by FSM Customs Officers until the permit application is granted or denied. FSM v. Mumma, 21 FSM R. 387, 399

(Kos. 2017).

There cannot be a conspiracy when the achievement of the alleged conspiracy was the importation, without a valid identification card, of two firearms that are permitted to be licensed, which is not a national crime. FSM v. Mumma, 21 FSM R. 387, 400 (Kos. 2017).

The court will dismiss charges for illegal possession of ammunition when the factual basis for the charges is entirely insufficient since no one in the FSM ever actually possessed the ammunition because customs officers seized it after postal officials notified them of an incoming package's contents. FSM v. Pelep, 22 FSM R. 400, 403 (Pon. 2019).

– National Government Jurisdiction

The national government has an interest in controlling the proliferation and use of firearms throughout Micronesia; the classifications singled out for a 10-year prohibition on possession appear reasonable. 11 F.S.M.C. 1205. FSM v. Nena, 1 FSM R. 331, 335 (Kos. 1983).

The government has a serious interest, and Congress deserves the support of the FSM Supreme Court, in carrying out policy established to control firearm use. Open violations, without punitive results, weaken the congressional policy and thwart efforts to assure that firearms will be available only to responsible people. Courts must assure that the policy is carried out against those convicted. FSM v. Nena, 1 FSM R. 331, 335-36 (Kos. 1983).

The Transition Clause of the FSM Constitution effectively adopts statutes of the Trust Territory, including the Weapons Control Act, and serves as the original enactment of a body of law, criminal as well as civil, for the new constitutional government. Further action by the FSM Congress is not necessary to establish that violations of the Weapons Control Act are prohibited within the FSM. Joker v. FSM, 2 FSM R. 38, 43 (App. 1985).

There is nothing absurd about a weapons control scheme that recognized that both the national and the state governments have an interest in controlling the possession, use and sale of weapons. While Congress and the states may eventually wish to allocate their respective roles with more precision, the current Weapons Control Act appears to provide a workable system during these early years of transition and constitutional self-government. Joker v. FSM, 2 FSM R. 38, 44 (App. 1985).

Congress may legislate regulation of firearms and ammunition under the foreign and interstate commerce clause of article IX, section 2(g). FSM v. Fal, 8 FSM R. 151, 154 (Yap 1997).

Because Congress has the present authority to enact firearms and ammunition statutes, such previously enacted statutes have continuing vitality. FSM v. Fal, 8 FSM R. 151, 154 (Yap 1997).

The 1991 constitutional amendment that removed national government jurisdiction over major crimes did not remove national government jurisdiction over firearms and ammunition possession under the Weapons Control Act since there was an independent jurisdictional basis for it under the Constitution's foreign and interstate commerce and national defense clauses and Congress has always had the power to define national crimes. Jano v. FSM, 12 FSM R. 569, 574 (App. 2004).

In an examination to determine whether it is a national crime, the focus is: Does the regulation of the possession of firearms and ammunition involve a national activity or function, or is it one of an indisputably national character? Jano v. FSM, 12 FSM R. 569, 575 (App. 2004).

The national government can regulate firearms and ammunition possession since there is an international commerce aspect to the regulation of possession of firearms and ammunition that is related to its manufacture outside of the FSM and to its movement through the nation's customs and immigration

borders and on the additional jurisdictional basis rooted in the national defense clause. Jano v. FSM, 12 FSM R. 569, 576 (App. 2004).

There is a national government interest in regulating the possession of firearms and ammunition in order to provide for the national security, which furthers the nation's interest in its defense, and this, in combination with the international commerce aspects, provides a jurisdictional basis for the national government's regulation of the possession of firearms and ammunition. Jano v. FSM, 12 FSM R. 569, 576 (App. 2004).

The power to provide for the national defense includes the inherent authority to protect the nation from threats both foreign and domestic. Protecting from these threats includes regulating the possession of firearms and ammunition. Jano v. FSM, 12 FSM R. 569, 576 (App. 2004).

The regulation of possession of firearms and ammunition involves a national activity or function because of the international commerce aspects of its manufacture and movement, together with the national government interest in protecting the national security under the national defense clause. In combination, these provide the national government with a jurisdictional basis to regulate the possession of firearms and ammunition. Jano v. FSM, 12 FSM R. 569, 576 (App. 2004).

Even if Congress took no position on its jurisdiction based on Article IX, Section 2(a), the court is well within its power to determine jurisdiction based on this constitutional provision when it is not a situation where the action of the government is being challenged for attempting to implement a non-self-executing provision of the Constitution, but is one where the court determined what authority Congress had to enact statutes regulating the possession of firearms and ammunition. In doing so, the court did not usurp the powers of Congress. Jano v. FSM, 12 FSM R. 633, 635 (App. 2004).

The national government has the power to ban the possession and use of Philippine slingshots in those places under its jurisdiction and in those circumstances that make the offense "inherently national in character" such as when the offense is committed in the FSM Exclusive Economic Zone or in FSM airspace, or on FSM-flagged vessels, or is committed against an FSM public servant in connection with that servant's service. FSM v. Masis, 15 FSM R. 172, 175-76 (Chk. 2007).

The regulation of possession of firearms and ammunition involved a national activity or function because of the international commerce aspects of their manufacture and movement together with the national government interest in protecting the national security under the national defense clause, and that these, in combination, provided the national government's jurisdictional basis to regulate the possession of firearms and ammunition. FSM v. Masis, 15 FSM R. 172, 176 (Chk. 2007).

When the imported materials in a Philippine slingshot are not manufactured abroad with the intent that they be assembled into a Philippine slingshot but are manufactured abroad as other articles or as parts of other articles and are legitimately imported for other purposes but are then recycled into Philippine slingshot parts, a Philippine slingshot is manufactured locally, out of locally available materials. It does not pass through foreign or interstate commerce. That some of those materials were once imported as something else to be used for some other purpose is not enough to implicate the national government's activity or function to regulate foreign commerce. FSM v. Masis, 15 FSM R. 172, 176 (Chk. 2007).

The possession or use of a Philippine slingshot does not implicate the national government's functions and activities in the sphere of national defense or security and the connection, if there is one, is too tenuous to give the national government authority to regulate Philippine slingshots. FSM v. Masis, 15 FSM R. 172, 176 (Chk. 2007).

The national government certainly has the power to criminalize possession or use of explosive, incendiary or poison gas bomb, grenade, mine or similar devices on the same basis that it has the power to regulate the possession and use of firearms and ammunition because these items definitely implicate both

national defense and security and foreign commerce interests on which the Jano court concluded that the national government had the authority to regulate firearms and ammunition. But Philippine slingshots do not. FSM v. Masis, 15 FSM R. 172, 176 (Chk. 2007).

Weapons control has long been recognized as a subject on which both the national and state governments may legislate. It is thus within the power of the State of Chuuk to regulate the possession and use of Philippine slingshots. If it has not done so, that does not mean that it cannot. FSM v. Masis, 15 FSM R. 172, 177 (Chk. 2007).

It has long been recognized that both the national and state governments may enact legislation regulating the possession of firearms. There is nothing particularly absurd about a weapons control scheme that recognizes that both the national and the state governments have an interest in controlling the possession, use and sale of weapons. FSM v. Louis, 15 FSM R. 206, 211 (Pon. 2007).

Congress has an independent jurisdictional basis for the Weapons Control Act under FSM Constitution Article IX, Section 2(g) on foreign and interstate commerce and Article IX, Section 2(a) on national defense. FSM v. Louis, 15 FSM R. 206, 212 (Pon. 2007).

The 1991 constitutional amendment did not proscribe Congress's authority to enact legislation pursuant to its independent authority under the national defense and foreign and interstate commerce clauses. Thus, the 1991 amendment did nothing to curtail Congress's authority to regulate the possession of firearms. FSM v. Louis, 15 FSM R. 206, 212 (Pon. 2007).

Congress does not lack the authority to regulate possession of firearms because it was the framers' clear intent that commerce within a particular state should be regulated locally since there is an international commerce aspect to the regulation of possession of firearms and ammunition that is related to its manufacture outside of the FSM and to its movement through the nation's customs and immigration borders. FSM v. Louis, 15 FSM R. 206, 212 (Pon. 2007).

In concluding that Congress has the authority to regulate the possession of firearms as part of its power to provide for the national defense, the court does not focus on the defendant's intended use of the firearm at issue, but instead focuses on the potential uses of firearms in general. FSM v. Louis, 15 FSM R. 206, 212 (Pon. 2007).

Congress's authority to regulate firearms is not dependent on the defendant's subjective intent because the national government interest in regulating the possession of firearms and ammunition in order to provide for the national security in combination with the international commerce aspects provides a jurisdictional basis for the national government's regulation of the possession of firearms and ammunition. Congress's jurisdiction over the possession of firearms is not tied to the intent of a particular defendant. FSM v. Louis, 15 FSM R. 206, 212 (Pon. 2007).

The national government's power to regulate firearms is derived from both its ability to protect the national security under its power to provide for the national defense and its power to regulate international commerce aspects because of the international commerce aspect of firearms manufacture and movement. In combination, these provide the national government with a jurisdictional basis to regulate the possession of firearms and ammunition. FSM v. Tosy, 15 FSM R. 238, 239 (Chk. 2007).

The national government's jurisdiction over firearms is not limited to only certain circumstances or certain quantities. What the national government can regulate in aggregate, it is able to regulate piece by piece; otherwise it would not be able to regulate it at all, and that, is clearly not the case. FSM v. Tosy, 15 FSM R. 238, 239 (Chk. 2007).

A contention that the FSM Supreme Court lacks subject matter jurisdiction over a case's firearms charges because there was no nexus between those charges and the national government's powers to

regulate interstate and foreign commerce and to provide for the national defense or because national defense and foreign or interstate commerce was not involved or not implicated in the case is without merit. FSM v. Sam, 15 FSM R. 457, 459-60 (Chk. 2007).

– Weapons Control Act

The Trust Territory Weapons Control Act is not inconsistent with any provision of the Constitution. It therefore continued in effect. When the National Criminal Code was enacted, and major crimes were defined, the Trust Territory Weapons Control Act became national law and trials for violations thereof were within the FSM Supreme Court's jurisdiction. 11 F.S.M.C. 1201-1231. FSM v. Nota 1 FSM R. 299, 302-03 (Truk 1983).

National court jurisdiction over the Trust Territory Weapons Control Act is consistent with 12 F.S.M.C. 102 which states in part that criminal prosecutions shall be conducted in the name of the Federated States of Micronesia for violations of the statutes of the Trust Territory which continued in effect by virtue of the transition article of the Constitution and which are within the FSM national government's jurisdiction. 11 F.S.M.C. 1201-1231. FSM v. Nota, 1 FSM R. 299, 303 (Truk 1983).

8 F.S.M.C. 206 authorizes the transfer of authority from the Trust Territory and its officials to the Federated States of Micronesia government and its officials. Thus the reference in the Trust Territory Weapons Control Act to the High Commissioner and the Attorney General of the Trust Territory does not prevent its effectiveness as national law of the Federated States of Micronesia. 11 F.S.M.C. 1201-1231. FSM v. Nota, 1 FSM R. 299, 303 (Truk 1983).

The Weapons Control Act is clear as to its intent in its definition of "dangerous device," that is, to proscribe weapons of violence; its terms become clear in the light of that intent. 11 F.S.M.C. 1204(3). FSM v. Nota, 1 FSM R. 299, 304 (Truk 1983).

While proof of current operability is not essential to a finding of guilt for illegal possession of a firearm, the design and the capacity of the instrument to fire are at the very heart of the Weapons Control Act's definition of a firearm. To prove its case, the government must show that the device "is designed or may be converted to expel . . . projectiles." Ludwig v. FSM, 2 FSM R. 27, 37 (App. 1985).

Although not always essential, current operability of a firearm should be shown by the government, where possible, as standard procedure. Ludwig v. FSM, 2 FSM R. 27, 37 (App. 1985).

The Weapons Control Act violations punishable by imprisonment of three or more years are national crimes. Joker v. FSM, 2 FSM R. 38, 41 (App. 1985).

"Dangerous device" as defined under the Weapons Control Act is not unconstitutionally vague. The language, properly interpreted, affords sufficient notice so that conscientious citizens may avoid inadvertent violations, and constructs sufficiently definite standards to prevent arbitrary law enforcement. Joker v. FSM, 2 FSM R. 38, 45 (App. 1985).

Three categories of devices are identified in the definition of "dangerous device" under the Weapons Control Act and the standards of proof for each differ slightly. Joker v. FSM, 2 FSM R. 38, 45 (App. 1985).

The second category of "dangerous device" under the Weapons Control Act requires demonstration by the government that the item in question was designed or redesigned as a weapon and that the person whose possession is at issue is aware that the instrument was created or modified for that purpose. The intent and knowledge normally might be inferred from the nature of the instrument itself. It does not appear necessary that the possessor be shown to have actually intended to use the instrument as a weapon or for a wrongful purpose. Joker v. FSM, 2 FSM R. 38, 45 (App. 1985).

For the last category of "dangerous device" under the Weapons Control Act, the forbidden instrument

in question must not only be capable of causing bodily injury but it must also be possessed without any "lawful purpose." A violation occurs only when the possession is coupled with a wrongful purpose, that is, a purpose to use the instrument to cause bodily injury, or a complete absence of any lawful purpose, shown through statements or overt conduct of the possessor manifesting wrongful purpose. Joker v. FSM, 2 FSM R. 38, 45 (App. 1985).

Dangerous device is defined in three categories, 1) explosive, etc., 2) an instrument designed or redesigned as a weapon, and 3) an instrument which can be used to inflict bodily harm and which under the circumstances of its possession serves no lawful purpose. Este v. FSM, 4 FSM R. 132, 136 (App. 1989).

Because of the verbs in the statute, only "carry" is defined in the Weapons Control Act, "possess" is given its usual meaning of taking into one's possession, and possession means to have in one's control. FSM v. Fal, 8 FSM R. 151, 155 (Yap 1997).

Because the defendant was affirmatively prevented from taking possession of the cooler which contained the bullets he never had present control or possession of the bullets and therefore was acquitted of the charge of possession of ammunition. FSM v. Fal, 8 FSM R. 151, 155 (Yap 1997).

The absence of an intent element in 11 F.S.M.C. 1223(6) (which prohibits any person from boarding or attempting to board a commercial airliner while carrying a firearm either on his person or in his luggage) evinces a legislative intent to dispense with the mens rea element and make the proscribed conduct a strict liability crime. The court can properly infer from Congress's silence in subsection (6) and lack of silence in subsections (1) and (2) that Congress intended that subsection (6) constitute a strict liability offense, whereas subsections (1) and (2) do not. Sander v. FSM, 9 FSM R. 442, 447 (App. 2000).

Although 11 F.S.M.C. 1223(6) does not dispense with the mental element that the defendant must know or be aware that he had the shotgun in his possession, the statute does dispense with the specific intent to board the aircraft knowing that it was illegal to do so with a shotgun. Sander v. FSM, 9 FSM R. 442, 447 (App. 2000).

Because violation of 11 F.S.M.C. 1223(6) is not a case of an attempt to commit a crime but a case where "attempt to board" is an element of the offense, 11 F.S.M.C. 201 (the attempt statute) does not apply to the crime of attempting to board a commercial aircraft with a firearm. Sander v. FSM, 9 FSM R. 442, 448 (App. 2000).

When sufficient evidence was before the trial court such that it could reasonably have been persuaded beyond a reasonable doubt that the defendant did not attempt to turn in the shotgun to an appropriate official because the trial court could reasonably have concluded that the defendant's actions at the security screening area were consistent with the way any passenger might have dealt with any piece of carry on luggage, and that it did not constitute turning in the shotgun to an "appropriate official" under 11 F.S.M.C. 1223(6), its findings were not clearly erroneous and will not be disturbed. Sander v. FSM, 9 FSM R. 442, 449 (App. 2000).

Since there is no language in the aid or abet statute, 11 F.S.M.C. 301(1)(d), or in the firearms possession or use statutes, 11 F.S.M.C. 1023(5) and (7), that limits the application of one statute to the other, a defendant may be charged with aiding or abetting firearms possession or use. FSM v. Sam, 14 FSM R. 328, 333 (Chk. 2006).

Subsection 1023(7) does not restrict liability to use of a firearm to commit crimes defined by Title 11 (the national criminal code) of the FSM Code or to the FSM Code in general. It prohibits use in connection with or in aid of the commission of "any crime against the laws of the Federated States of Micronesia," a term which must refer to any or all criminal laws in the Federated States of Micronesia, national, state, or local because if it were otherwise, it would not be possible for the statute to have its obviously intended purpose and effect – to discourage the use of, and to punish the use of, firearms during the commission of other crimes. FSM v. Sam, 14 FSM R. 328, 333-34 (Chk. 2006).

Since, under 11 F.S.M.C. 1023(7), the government must prove beyond a reasonable doubt that the firearm was used to commit a crime, when the amended information does not allege what crime or crimes, the firearm was used to commit, or even that it was used to commit any crime, it therefore fails to allege an essential element of 11 F.S.M.C. 1023(7), and that count of the amended information will be dismissed for failure to state an offense. FSM v. Sam, 14 FSM R. 328, 334 (Chk. 2006).

A criminal information will not be dismissed on the ground that it fails to allege that the weapon in question was a handgun of .22 caliber or greater because the information alleges that the defendant possessed a .22 handgun and because a handgun's caliber is irrelevant since 11 F.S.M.C. 1023(5) prohibits the possession of any handgun, regardless of caliber. FSM v. Sato, 16 FSM R. 26, 28 (Chk. 2008).

All offenses involving a handgun are felonies under Title 11, chapter 10. FSM v. Aliven, 16 FSM R. 520, 527 n.1 (Chk. 2009).

11 F.S.M.C. 1023(7), which prohibits firearms use in connection with or in aid of the commission of "any crime against the laws of the Federated States of Micronesia," does not restrict liability for firearms use to only those crimes defined in the FSM Code because the term "any crime against the laws of the Federated States of Micronesia," when read in context must refer to any or all criminal laws in the Federated States of Micronesia, national, state, or local, since, if it were otherwise, it would not be possible for the statute to have its obviously intended purpose and effect – to discourage the use of, and to punish the use of, firearms during the commission of other crimes. FSM v. Suzuki, 17 FSM R. 70, 76 (Chk. 2010).

The use of a firearm to commit a Chuuk state law crime, such as robbery, is a national offense even though the robbery itself is not a national offense. FSM v. Suzuki, 17 FSM R. 70, 76 (Chk. 2010).

Since the possession of any handgun is banned, an information charging the illegal possession of a handgun is not deficient when the information does not allege the handgun's exact barrel length, color, caliber, or whether the handgun was a pistol or a revolver. The allegation that an accused possessed a handgun is an allegation that the firearm had a barrel length under twenty-six inches because that is the statutory definition of a handgun. FSM v. Meitou, 18 FSM R. 121, 127 (Chk. 2011).

The carefully written statutory language precludes evasion of the statute's purpose by such simple expedients as dismantling the weapon, maintaining weapons and ammunition in separate places, removing one easily replaceable part, or other similar ploys. Under the statute, current operability is not an essential element of the crime of possession of a firearm. FSM v. Meitou, 18 FSM R. 121, 128 (Chk. 2011).

The firearm statute's purpose cannot be evaded by such simple expedients as dismantling the weapon, maintaining weapons and ammunition in separate places, removing one easily replaceable part, or other similar ploys. Under the statute, current operability is not an essential element of the crime of possession of a firearm. FSM v. Sonis, 18 FSM R. 620, 622 (Chk. 2013).

An argument that the defendant never possessed the firearm is not fatal to a charge that he attempted to illegally possess a weapon. FSM v. Mumma, 21 FSM R. 387, 400-01 (Kos. 2017).

A defendant's contention that there was no attempt to commit the crime of possession of a firearm without a valid license because he applied for such license shortly after the firearm arrived in his postal box, may be raised at trial as evidence that he made no attempt to possess the firearm without a license, but the ultimate burden of persuasion remains with the government to prove the elements of attempt in spite of these assertions. FSM v. Mumma, 21 FSM R. 387, 401 (Kos. 2017).

When both the defendant's intent and whether he committed an act sufficient to amount to an attempt are questions of fact inappropriate for determination before trial, the defendant's motion to dismiss the

charge of attempt to possess a firearm without having a valid identification card will be denied. FSM v. Mumma, 21 FSM R. 387, 401 (Kos. 2017).

The only elements needed for a successful 11 F.S.M.C. 1023(5) prosecution is that the firearm is something other than a .22 rile or a .410 shotgun and the defendant knows that he possesses a firearm. FSM v. Pillias, 22 FSM R. 334, 335 n.1 (Chk. 2019).

Unlawful firearms possession is almost a strict liability crime – the defendant need only know that he possesses a firearm, and in the case of prosecutions under 11 F.S.M.C. 1005, and that he does not possess a firearms identification card. FSM v. Pillias, 22 FSM R. 334, 338 (Chk. 2019).

Neither 11 F.S.M.C. 1005(1) nor 11 F.S.M.C. 1006(1) is the lesser included offense of the other because both impose liability for possession of a firearm or ammunition without an identification card. Section 1005(1) imposes liability for acquiring a firearm or ammunition in any manner, while Section 1006(1) imposes liability only if the acquisition is by purchase, and Section 1006(1) imposes liability for the use of a firearm or ammunition, while Section 1005(1) does not, but it is difficult to see how someone could use a firearm or ammunition without actually also possessing that firearm or ammunition, and it is also difficult to see how a person could acquire or purchase a firearm or ammunition without also then necessarily actually possessing that firearm or ammunition. FSM v. Buchun, 22 FSM R. 529, 535 & n.4 (Yap 2020).

The 11 F.S.M.C. 1006(2) statutory presumption about who possesses a firearm or ammunition found in a vehicle or a vessel applies generally to any charge based on the possession of firearms or ammunition found in a vehicle or vessel, and would apply to a prosecution under 11 F.S.M.C. 1005(1). FSM v. Buchun, 22 FSM R. 529, 536 (Yap 2020).

If a defendant is charged with violating both 11 F.S.M.C. 1005(1) and 11 F.S.M.C. 1006(1) and the court finds the defendant guilty of either 11 F.S.M.C. 1005(1) or 11 F.S.M.C. 1006(1), the court must then dismiss the other count because 11 F.S.M.C. 1005(1) and 11 F.S.M.C. 1006(1) charge the same crime. FSM v. Buchun, 22 FSM R. 529, 536 (Yap 2020).

11 F.S.M.C. 1007 is a misdemeanor because anyone convicted of it cannot be imprisoned for more than one year and because a felony is any crime which is punishable by imprisonment for more than one year. FSM v. Buchun, 22 FSM R. 529, 536 n.7 (Yap 2020).

A person without an identification card can violate either 11 F.S.M.C. 1005(1) or 11 F.S.M.C. 1006(1) by acquiring or purchasing, or by possessing, or by using a firearm. But if that person, without a valid identification card, does any of those things but does not carry the firearm, that person has not committed the lesser misdemeanor of 11 F.S.M.C. 1007. The misdemeanor's key element is the carrying of a firearm. FSM v. Buchun, 22 FSM R. 529, 537 (Yap 2020).

The prosecution, to secure a 11 F.S.M.C. 1007 conviction, has to prove an element that it does not have to prove to convict under either 11 F.S.M.C. 1005(1) or 11 F.S.M.C. 1006(1). It must prove that not only did the defendant possess the firearm without holding an identification card, but that the defendant also carried the firearm, which is not an element of either 11 F.S.M.C. 1005(1) or 11 F.S.M.C. 1006. Section 1007 is directed to a different evil – the carrying of a firearm, either unsafely or by someone without a valid identification card (or both), while Sections 1006 and 1005(1) are directed toward the evil of possession of a firearm or ammunition without an identification card. FSM v. Buchun, 22 FSM R. 529, 537 (Yap 2020).

The Section 1007 misdemeanor is not a lesser included offense of 11 F.S.M.C. 1023(5) because that felony can easily be committed without violating 11 F.S.M.C. 1007 because, to violate 11 F.S.M.C. 1007, the firearm, whether legal or illegal, must be carried. FSM v. Buchun, 22 FSM R. 529, 537 (Yap 2020).

To obtain a conviction under either 11 F.S.M.C. 1005(1) or 11 F.S.M.C. 1006(1), the prosecution must

prove that the person in possession of a firearm does not hold a valid identification card. To obtain a conviction under 11 F.S.M.C. 1023(5), the prosecution must prove that the person possesses an illegal firearm, such as a handgun. Thus, each statutory provision (treating 11 F.S.M.C. 1005(1) and 11 F.S.M.C. 1006(1) as one provision) requires the proof of a fact that the other does not. FSM v. Buchun, 22 FSM R. 529, 538 (Yap 2020).

If a defendant holds a valid identification card, then he cannot be convicted of violating either 11 F.S.M.C. 1005(1) or 11 F.S.M.C. 1006(1), even though the firearm he possesses is illegal and cannot be registered under 11 F.S.M.C. 1019, but he could be prosecuted under 11 F.S.M.C. 1023(5). FSM v. Buchun, 22 FSM R. 529, 538 (Yap 2020).

The statutory scheme in FSM Weapons Control Act, chapter 10 of the FSM Code, clearly requires that a person must hold a valid identification card before obtaining possession of a firearm or ammunition. FSM v. Buchun, 22 FSM R. 529, 538 (Yap 2020).

Section 1023(5) is directed to the evil of prohibited firearms and 11 F.S.M.C. 1005(1) and 11 F.S.M.C. 1006(1) are directed to the evil of persons not obtaining a valid identification card before possessing firearms or ammunition. Thus, Congress clearly intended to address different evils with these different statutory provisions. FSM v. Buchun, 22 FSM R. 529, 538 (Yap 2020).

Since 11 F.S.M.C. 1007 requires proof that the weapon was carried, while 11 F.S.M.C. 1023(5) does not, and 11 F.S.M.C. 1023(5) requires proof that the firearm was illegal, while 11 F.S.M.C. 1007 does not, and since the two statutes are directed to different evils – Section 1023(5) is directed to the evil of prohibited firearms and 11 F.S.M.C. 1007 is directed to the evil of improper carrying of a firearm, a defendant can be convicted of both. FSM v. Buchun, 22 FSM R. 529, 538 (Yap 2020).

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